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Motor Vehicle Safety
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5231 of August 28, 1984

Ostomy Awareness Month, 1984

By the President of the United States of America

A Proclamation

Ostomy is a type of surgery which allows for drainage when a person has lost the normal function of digestive or urinary systems due to birth defects, disease, injury or other disorders. Nearly 1.5 million Americans have had ostomy surgery, and approximately 125,000 new ostomates join their ranks each year.

Ostomy was formerly referred to as "the secret surgery" because ostomates did not want others to know. Today, largely through the efforts of the United Ostomy Association, Americans needing this treatment are becoming more aware of the opportunities for education, mutual aid, and support that are of such great benefit to them and to their families. Increased public understanding of ostomy will eventually help dispel the fear of those about to undergo this surgery as well as the fear that confronts their families. Both the Federal government and the private sector are deeply committed to the proper care and advancement of knowledge about gastrointestinal diseases and public education about ostomy.

To increase public acceptance of ostomy surgery and to emphasize the need for continued educational efforts, the Congress, by House Joint Resolution 587, has designated the month of August 1984 as "Ostomy Awareness Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 1984 as Ostomy Awareness Month, and I call upon all Americans to observe this month with appropriate ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-23236
Filed 8-28-84; 4:05 pm]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 402

[Amdt. No. 2; Docket No. 1496S]

Raisin Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final Rule; Correction.

SUMMARY: The Raisin Crop Insurance Regulations (7 CFR Part 402), published as a final rule in the Federal Register on Monday, July 23, 1984, (49 FR 29559) contained several errors in the Claim for Indemnity section of the policy. This document is published to correct those errors.

ADDRESS: Any written comments or inquiries on this document should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325. The corrections are as follows:

FR Doc. 84–19352, appearing at page 29559, July 23, 1984, is corrected as follows:

Section 402.7(d), subsections 9 (a) and (h) are corrected in the Raisin Crop Insurance Policy to read as follows:

§ 402.7 The application and policy.

* * * * *

(d) * * *

9. Claim for Indemnity

a. Any claim for indemnity must be submitted to us on our form not later than March 31 after the date for the end of the insurance period.

* * * * *

h. We may require you to recondition a representative sample(s) of not more than 20 tons of raisins damaged by rain to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value such raisins at the current market price or the amount of insurance, whichever is higher. If the representative sample(s) do not meet RAC standards for marketable raisins, the cost of reconditioning such sample(s) will be deducted from the total value of the raisins for the unit.

* * * * *

The Authority Citation for 7 CFR Part 402 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, D.C., on: August 20, 1984.

Diana Moslak,

Acting Secretary, Federal Crop Insurance Corporation.

Dated: August 21, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84–23096 Filed 8–29–84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 341]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 341 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 31–September 6, 1984. This regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 341 (§ 908.641) becomes effective August 31, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The regulation is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The regulation is consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984. The committee met again publicly on August 21, 1984, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges. The committee reports the demand for Valencia oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Agricultural marketing service, Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

Section 908.641 is added as follows:

§ 908.641 Valencia Orange Regulation 341.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 31, 1984, through September 6, 1984, are established as follows:

(a) District 1: Unlimited cartons;
(b) District 2: 350,000 cartons;
(c) District 3: Unlimited cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 27, 1984.

Thomas R. Clark,
Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–23095 Filed 8–29–84; 8:45 am]
BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Definition of Small Business

AGENCY: Small Business Administration.

ACTION: Interim Emergency Rule.

SUMMARY: SBA is immediately establishing on an interim emergency basis a new size standard of $3.5 million annual average receipts for the industry of individual and family social services (SIC–8321). This action is necessary because no published size standard presently exists for this industry and a size standard is required for purposes of affording financial and procurement assistance for otherwise eligible businesses.

DATES: Effective August 30, 1984. Comments on what should be the permanent size standard for this industry should be submitted by October 29, 1984.

ADDRESSES: *All comments to:* Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, (202) 653–6373.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Act, 15 U.S.C. 631, *et seq.*, and 13 CFR 121.10(b), in urgent situations, SBA may put into effect interim emergency size standards when needed for program purposes if no size standard exists for the industry in question. SBA believes there is an urgent need for the immediate establishment of the size standard set forth below in order to facilitate the operation and availability of our financial and procurement assistance programs. Otherwise eligible applicants for assistance would be denied the opportunity to apply for such assistance without the existence of a relevant size standard. This size standard therefore is made effective upon publication. The standard is hereby being established on an interim basis at $3.5 million average annual receipts for the industry of individual and family social services (SIC–8321). SBA's rationale supporting the establishment of this standard is set forth below. Public comments, however, are invited as to what size standard should be permanently established. As stated above, this procedure is being undertaken in response to an emergency situation and is therefore exempted from timely compliance with Executive Order 12291 and the Regulatory Flexibilty Act (see section 8, E.O. 12291 and 5 U.S.C. 608). SBA will publish analyses pursuant to the Executive Order and the Regulatory Flexibility Act as soon as practicable. There are no recordkeeping or paperwork requirements inherent in this document. SBA will publish a final size standard as soon after the expiration of the comment period on this interim emergency standard as possible.

List of Subjects in 13 CFR Part 121

Small businesses, Small business size standards.

Initial research indicates that in 1982 there were 4,361 firms in this industry with $3.3 billion annual sales. Average sales and employment per firm were $756,000 and 43 persons. The median size firm (half large and half smaller) had about $225,000 in sales and 11 employees.

The industry appears to be competitive with low average firm size and a low level of concentration. The nine largest firms in the industry are responsible for 19 percent of total sales, and this relatively low percentage is typical of other service industries. More than 80 percent of the industry's firms have fewer than 50 employees indicating that it is relatively easy to enter this industry and compete effectively. SBA thus believes that a relatively low size standard is required in this industry and is establishing a $3.5 million average annual receipts size standard on an interim basis. The $3.5 million size standard represents the minimum size standard for services, and there is no reason to provide a higher size standard based on the industry structure as shown above.

PART 121—[AMENDED]

Accordingly, pursuant to 15 U.S.C. 634(b)(6), SBA hereby amends § 121.2(c)(2) of Part 121 of 13 CFR by publishing on an interim emegency basis a new size standard of $3.5 million for SIC–8321.

§ 121.2 [Amended]

(c) * * *
(2) * * *

* * * * *

Major Group 83—Social Services

8321	Individual and Family Social Services	$3.5

* * * * *

Dated: August 17, 1984.

James C. Sanders,
Administrator.

[FR Doc. 84–23126 Filed 8–29–84; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 84N–0162]

Antibiotic Drugs; Ceforanide for Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that provided for the inclusion of accepted standards for a new antibiotic drug, ceforanide for injection. This document corrects three technical errors.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–16788, appearing on page 25845, in the issue for Monday, June 25, 1984, the following corrections are made:

§ 436.348 [Corrected]

(1) On page 25846 in the second column, in § 436.348 *High-pressure*

liquid chromatographic assay for ceforanide, in the first sentence of paragraph (b) the word "concentrated" is changed to read "11*N*".

§ 436.349 [Corrected]

(2) On page 25847 in the third column, in § 436.349 *High-pressure liquid chromatographic assay for L-lysine in ceforanide for injection,* in the first sentence in paragraph (g), the word "micrograms" is changed to read "percent".

§ 442.250 [Corrected]

(3) On page 25848 in the third column, in § 442.250 *Ceforanide for injection,* in paragraph (b)(1)(i)(*a*) and in the next to last sentence in paragraph (b)(1)(i)(*b*) the figure "1.25" is changed to read "1.0".

Dated: August 22, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-22863 Filed 8-29-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 430, 436, and 442

[Docket No. 84N-0251]

Antibiotic Drugs; Sterile Cefonicid Sodium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile cefonicid sodium. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective August 30, 1984; comments, notice of participation, and request for hearing by October 1, 1984; data, information, and analyses to justify a hearing by October 29, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile cefonicid sodium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 442 (21 CFR Parts 430, 436, and 442) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended;

a. In § 430.4 by adding new paragraph (a)(52) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(52) *Cefonicid.* 5-Thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid, 7-[(hydroxyphenylacetyl)amino]-8-oxo-3-[[[1-(sulfomethyl)-1*H*-teterazol-5yl]-thio]methyl]-, disodium salt, [6R-[6 ,7 (R*)]].

b. In § 430.5 by adding new paragraphs (a)(82) and (b)(84) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(82) *Cefonicid.* The term "cefonicid master standard" means a specific lot of cefonicid that is designated by the Commissioner as the standard of comparison in determining the potency of the cefonicid working standard.

(b) * * *

(84) *Cefonicid.* The term "cefonicid working standard" means a specific lot of a homogeneous preparation of cefonicid.

c. In § 430.6 by adding new paragraph (b)(84) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(84) *Cefonicid.* The term "microgram" applied to cefonicid means the cefonicid activity (potency) contained in 1.150 micrograms of the cefonicid master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended by adding new § 436.350 to read as follows:

§ 436.350 High-performance liquid chromatographic assay for cefonicid.

(a) *Apparatus.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 3 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b) *Procedure.* Perform the assay and calculate the drug content using the temperature, instrumental conditions, and calculations specified in the monograph for the drug being tested with a flow rate not to exceed 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the apparatus described in paragraph (a) of this section; and the reagents and working standard and sample solutions described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. Record the peak responses and calculate the prescribed system suitability requirements as follows:

(c) *System suitability test.* Using the apparatus and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factor.* Calculate the tailing factor (T), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T=\frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$ = Width of peak at 5 percent height; and

f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates (n) of the column as follows:

$$n=5.545\left[\frac{t_R}{w_h}\right]^2$$

where:

n=Efficiency, as number of theoretical plates for column;

t_R=Retention time of solute; and

w_h=Peak width at half-height.

(3) *Resolution factor.* Calculate the resolution factor (R), between desacetyl cefonicid and cefonicid, as follows:

$$R=\frac{2(t_2-t_1)}{\frac{w}{1}+\frac{w}{2}}$$

where:

t_1=Retention time of desacetyl cefonicid;

t_2=Retention time of cefonicid; and

w_1 and w_2=Widths of the bases of the corresponding peaks obtained by extrapolating the relatively straight sides of the peaks to the baseline.

(4) *Coefficient of variation (relative standard deviation).* Calculate the coefficient of variation (S_R in percent) as follows:

$$S_R=\frac{100}{\bar{X}}\left[\frac{\sum_{i=1}^{N}(X_i-\bar{X})^2}{N-1}\right]^{1/2}$$

where:

X is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, using the sample solution in lieu of the working standard solution.

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended:

a. By adding new § 442.20a to read as follows:

§ 442.20a Sterile cefonicid sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sterile cefonicid sodium is a white to off-white lyophilized powder. It is so purified and dried that:

(i) If the cefonicid sodium is not packaged for dispensing, its cefonicid content is not less that 832 micrograms and not more than 970 micrograms of cefonicid per milligram on an anhydrous basis. If the cefonicid sodium is packaged for dispensing, its cefonicid content is not less than 832 micrograms and not more than 970 micrograms of cefonicid per milligram on an anhydrous basis and also, each container contains not less than 90 percent and not more than 120 percent of the number of milligrams of cefonicid that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 5.0 percent.

(v) Its pH in an aqueous solution containing 50 milligrams per milliliter is not less than 3.5 and not more than 6.5.

(vi) The specific rotation in a methanol solution containing 10 milligrams of cefonicid sodium per milliliter at 25° C is −40°±5°.

(vii) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefonicid content, sterility, pyrogens, moisture, pH, specific rotation, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) If the batch is packaged for repacking or for use as an ingredient in the manufacture of another drug:

(*1*) For all tests except sterility: 10 packages, each containing at least 500 milligrams.

(*2*) For sterility testing: 20 packages, each containing equal portions of approximately 300 milligrams.

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Cefonicid content.* Proceed as directed in § 436.350 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 254 nanometers, and a column packed with octadecyl silane bonded silica ranging from 3 to 30 micrometers in particle size. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(*a*) *0.2M Ammonium phosphate solution.* Transfer 23.0 grams of ammonium dihydrogen phosphate to a 1-liter volumetric flask. Dissolve and dilute to volume with distilled water. Mix well.

(*b*) *Mobile phase.* Mix 0.2*M* ammonium phosphate solution : methyl alcohol : distilled water (1 : 2.5 : 16.5). Filter through a suitable filter capable of removing particulate matter to 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(ii) *Working standard and sample solutions*—(*a*) *Preparation of working standard solution.* Prepare the working standard solution fresh before injection by dissolving an accurately weighed portion of the cefonicid working standard with sufficient mobile phase as described in paragraph (b)(1)(i)(*b*) of this section to obtain a solution containing approximately 20 micrograms of cefonicid per milliliter.

(*b*) *Preparation of sample solutions*—(*1*) *Product not packaged for dispensing (micrograms of cefonicid per milligram).* Dissolve an accurately weighed portion of the sample with sufficient mobile phase as described in paragraph (b)(1)(i)(*b*) of this section to obtain a concentration of approximately 20 micrograms of cefonicid per milliliter.

(*2*) *Product packaged for dispensing.* Determine both micrograms of cefonicid per milligram of the sample milligrams of cefonicid per container. Use separate containers for preparation of each sample solution as described in paragraphs (b)(1)(ii)(*b*)(*2*) (*i*) and (*ii*) of this section.

(*i*) *Micrograms of cefonicid per milligram.* Dissolve an accurately weighed portion of the sample with sufficient mobile phase as described in paragraph (b)(1)(i)(*b*) of this section to obtain a concentration of approximately 20 micrograms of cefonicid per milliliter.

(*ii*) *Milligrams of cefonicid per container.* Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Further dilute an aliquot of the solution thus obtained with sufficient mobile phase to obtain a concentration of approximately 20 micrograms of cefonicid per milliliter.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 1.3 at 5 percent of peak height.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 1,500 theoretical plates.

(*c*) *Resolution factor.* Prepare a resolution solution containing desacetyl cefonicid by heating a 200-microgram-per-milliliter solution of cefonicid working standard in mobile phase described in paragraph (b)(1)(i)(*b*) of this section, on a steam bath for 30 minutes. Inject a known volume between 10 and 20 microliters of the desacetyl cefonicid containing solution in the same manner as described for the standard solution. The resolution factor (*R*) between cefonicid and desacetyl cefonicid is satisfactory if it is not less than 1.1.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability parameters have been met, then proceed as described in § 436.350(b) of this chapter.

(iv) *Calculations*—(*a*) Calculate the micrograms of cefonicid per milligram of sample as follows:

$$\text{Micrograms of cefonicid per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100\text{-}m)}$$

where:

A_u = Area of the cefonicid peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefonicid peak in the chromatogram of the cefonicid working standard;

P_s = Cefonicid activity in the cefonicid working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture content of the sample.

(*b*) Calculate the cefonicid content of the container as follows:

$$\text{Milligrams of cefonicid per container} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the cefonicid peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefonicid peak in the chromatogram of the cefonicid working standard;

P_s = Cefonicid activity in the cefonicid working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 50 milligrams of cefonicid per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 50 milligrams per milliliter.

(6) *Specific rotation.* Dissolve and dilute an accurately weighed sample with sufficient methanol to obtain a concentration of approximately 10 milligrams of cefonicid sodium per milliliter. Proceed as directed in § 436.210 of this chapter, using a 1.0-decimeter polarimeter tube. Calculate the specific rotation on an anhydrous basis.

(7) *Identity.* The high-performance liquid chromatogram of the sample, determined as directed in paragraph (b)(1) of this section, compares qualitatively to that of the cefonicid working standard.

b. By adding new § 442.220 to read as follows:

§ 442.220 Sterile cefonicid sodium.

The requirements for certification and the tests and methods of assay for sterile cefonicid sodium packaged for dispensing are described in § 442.20a.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective August 30, 1984. However, interested persons may, on or before October 1, 1984, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 1, 1984, a written notice of participation and request for hearing, and (2) on or before October 29, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under

21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective August 30, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: August 23, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-22881 Filed 8-29-84; 8:45 am]

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21 CFR Parts 430, 436, 442, 444, and 448

[Docket No. 84N-0258]

Antibiotic Drugs; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by making updatings, minor noncontroversial technical changes, and revocations in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulation.

DATES: Effective August 30, 1984; comments, notice of participation, and request for hearing by October 1, 1984; data, information, and analyses to justify a hearing by October 29, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by making updatings, minor noncontroversial technical changes, and revocations in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use. In one instance, the need for a change was called to FDA's attention by an industry representative. To aid the reader in understanding the types of amendments in this document, the amendments are grouped into three general classes for discussion in this preamble: updating, technical changes, and revocation.

Updating

In § 444.542b (21 CFR 444.542b), paragraph (a)(1)(vii) is revised and paragraph (a)(1)(viii), (ix), and (x) is added to provide public standards for three drug products containing neomycin in combination with a corticosteriod. In a Drug Efficacy Study Implementation notice published in the **Federal Register** of March 28, 1984 (49 FR 11888), FDA reclassified these drug products as effective for the indication stated in that notice.

Technical Changes

1. In §§ 444.542a(a)(1)(i)(*a*) and 444.542c(a)(1)(vi), the name "flurandrenolone" is changed to read "flurandrenolide" to be in agreement with the United States Adopted Names (USAN) designation.

2. In §§ 444.342d(b)(1) (i) and (ii), 448.313a(a)(1), 448.513a(a)(1), 448.513d(a)(1), and 448.513e(a)(1), the upper potency limits are raised from 120 percent to 130 percent. The sole manufacturer has submitted adequate data to support the higher limit.

Revocation

Sections 442.19 *Cephacetrile sodium,* 442.219 *Cephacetrile sodium for injection,* and 444.542d *Neomycin sulfate aerosol* are removed. These drugs are no longer manufactured. Also, conforming amendments are made to Parts 430 and 436 where applicable.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 430

Administrative practice and procedure; Antibiotics

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, cepha.

21 CFR Part 444

Antibiotics, oligosaccharide.

21 CFR Part 448

Antibiotics, peptide.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, 442, 444, and 448 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

§§ 430.5 and 430.6 [Amended]

a. In § 430.5 *Definitions of master and working standards,* by removing and reserving paragraphs (a)(54) and (b)(54).

b. In § 430.6 *Definitions of the terms "unit" and "microgram" as applied to antibiotic substances,* by removing and reserving paragraph (b)(57).

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

§§ 436.33, 436.105, and 436.205 [Amended]

a. In § 436.33 *Safety test,* by removing "Cephacetrile sodium" from the table in paragraph (b).

b. In § 436.105 *Microbiological agar diffusion assay,* by removing "Cephacetrile" from the tables in paragraphs (a) and (b).

c. In § 436.205 *Hydroxylamine colorimetric assay,* by removing "Cephacetrile" from the table in paragraph (b) and by removing "Cephacetrile sodium" from the table in paragraph (c).

§ 436.313 [Removed]

d. By removing § 436.313 *Thin layer chromatographic identity test for cephacetrile sodium.*

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended:

§§ 442.19 and 442.219 [Removed]

a. By removing § 442.19 *Cephacetrile sodium.*

b. By removing § 442.219 *Cephacetrile sodium for injection.*

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

4. Part 444 is amended:

a. In § 442.342d, by revising the last sentence in paragraph (b)(1) (i) and (ii) to read as follows:

§ 444.342d Neomycin sulfate-polymyxin B Sulfate————ophthalmic suspension (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

* * * * *

(b) * * *

(1) * * *

(i) * * * Its content of neomycin is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain.

(ii) * * * Its content of polymyxin is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin that it is represented to contain.

* * * * *

b. In § 444.542a, by revising paragraph (a)(1)(i)(*a*) to read as follows:

§ 444.542a Neomycin sulfate ointment; neomycin sulfate————ointment (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section.

(a) * * *

(1) * * *

(i) * * *

(*a*) 0.5 milligram of flurandrenolide; or

* * * * *

c. In § 444.542b, paragraph (a)(1)(vii) is revised and paragraph (a)(1) (viii), (ix), and (x) is added to read as follows:

§ 444.542b Neomycin sulfate———— cream (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(vii) 1 milligram of triamcinolone acetonide; or

(viii) 2.5 milligrams, 5.0 milligrams, or 10.0 milligrams of hydrocortisone; or

(ix) 10.0 milligrams or 25.0 milligrams of hydrocortisone acetate; or

(x) 0.5 milligram of flurandrenolide.

* * * * *

d. In § 444.542c, by revising the sentence in paragraph (a)(1)(vi) to read as follows:

§ 444.542c Neomycin sulfate———— lotion (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).

(a) * * *

(1) * * *

(vi) 0.5 milligram of flurandrenolide.

* * * * *

§ 444.542d [Removed]

e. By removing § 444.542d *Neomycin sulfate aerosol.*

PART 448—PEPTIDE ANTIBIOTIC DRUGS

5. Part 448 is amended:

a. In § 448.313a, by revising the second and third sentences in paragraph (a)(1) to read as follows:

§ 448.313a Bacitracin zinc-polymyxin B sulfate ophthalmic ointment.

(a) * * *

(1) * * * Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain.* * *

* * * * *

b. In § 448.513a, by revising the third and fourth sentences in paragraph (a)(1) to read as follows:

§ 448.513a Bacitracin zinc-polymyxin B sulfate ointment.

(a) * * *

(1) * * * Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. * * *

* * * * *

c. In § 448.513d, by revising the third, fourth, and fifth sentences in paragraph (a)(1) to read as follows:

§ 448.513d Bacitracin zinc-neomycin sulfate-polymyxin B sulfate topical powder.

(a) * * *

(1) * * * Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its neomycin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. * * *

* * * * *

d. In § 448.513e, by revising the third, fourth, and fifth sentences in paragraph (a)(1) to read as follows:

§ 448.513e Bacitracin zinc-neomycin sulfate-polymyxin B sulfate topical aerosol.

(a) * * *

(1) * * * Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its neomycin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of neomycin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. * * *

* * * * *

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments, therefore, shall become effective August 30, 1984. However, interested persons may, on or before October 1, 1984, submit written comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 1, 1984 a written notice of participation and request for hearing, and (2) on or before October 29, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specifed in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All

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submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective August 30, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: August 23, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84–22982 Filed 8–29–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Famphur

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by Ralston-Purina Co. The NADA provides for the use of famphur as a pour-on formulation for use on cattle to control grubs and to reduce lice infestations.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ben Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63164, is the sponsor of NADA 43–215 which provides for use of famphur 13.2 percent. The drug is used as a pour-on formulation for the control of cattle grubs and to reduce cattle lice infestations. The drug was approved by letter dated June 4, 1970.

This action codifies the previously approved NADA but does not change the approved use of the drug. Because the application was approved before July 1, 1975, the sponsor is not required to submit a summary of the safety and effectiveness data and information under the Freedom of Information provisions of the animal drug regulations in 21 CFR 514.11(e)(2)(ii). However, a summary of the basis for approval is available upon request in accordance with 21 CFR 514.11(e)(2)(i).

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in Part 524

Animal drugs, topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.83), Part 524 is amended in § 524.900 by revising paragraph (c), to read as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.900 Famphur.

* * * * *

(c) *Sponsor.* See Nos. 010042 and 017800 in § 510.600(c) of this chapter.

* * * * *

Effective date. August 30, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 23, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–22997 Filed 8–29–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Ticarcillin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for intrauterine use of a ticarcillin infusion for treating mares for endometritis caused by beta-hemolytic streptococci.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 55–095 providing for use of Ticillin® (sterile ticarcillin disodium) intrauterine infusion for horses for treating infections of beta-hemolytic streptococci. The NADA is approved and the regulations are amended to reflect the approval. The basis of this approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an enviromental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii) (*a*) and (*e*)) may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 540

Animal drugs; Antibiotics, penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 540 is amended by adding new Subpart I consisting of § 540.680 to read as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Subpart I—Certain Other Dosage Forms

§ 540.680 Ticarcillin.

(a) *Requirements for certification.* See § 440.90a of this chapter.

(b) *Tests and methods of assay.* See § 440.90a of this chapter.

(c) *Conditions of marketing*—(1) *Specifications.* Each vial contains the equivalent of 6 grams of ticarcillin (as ticarcillin disodium) to be reconstituted with 25 milliliters of sterile water for injection or sterile physiological saline, and diluted to desired volume of use.

(2) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) *Indications for use.* For intrauterine use in horses for treatment of endometritis caused by beta-hemolytic streptococci.

(ii) *Amount.* 6 grams per day, intrauterine, for 3 consecutive days during estrus.

(iii) *Limitations.* For intrauterine use in horses only. Infuse aseptically. Not for use in horses raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. August 30, 1984.

(Sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n)))

Dated: August 23, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–22996 Filed 8–29–84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–181; Re: Notice No. 497]

Mississippi Delta Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury Decision).

SUMMARY: This final rule establishes a viticultural area in the States of Mississippi, Tennessee, and Louisiana to be known as "Mississippi Delta." The Bureau of Alcohol, Tobacco and Firearms believes that the establishment of the Mississippi Delta viticultural area and the subsequent use of its name as an appellation of origin in wine labeling and advertising will enable industry to label wines more precisely, and will help consumers to better identify the wines from this area.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area.

Notice of Proposed Rulemaking

ATF received a petition from Mr. Samuel H. Rushing of The Winery Rushing, for the establishment of a viticultural area in northwestern Mississippi (with minute segments in Tennessee and Louisiana), to be known as "Mississippi Delta." In response, ATF published a notice of proposed ruelmaking, Notice No. 497, in the **Federal Register** on December 23, 1983 (48 FR 56799). That notice solicited public comment with respect to the proposed viticultural area. Five public comments were received, all of them endorsing the area as proposed. Therefore, this Treasury decision establishes the Mississippi Delta viticultural area with boundaries as proposed in Notice No. 497.

General Description of the Viticultural Area

The Mississippi Delta viticultural area is leaf-shaped and extends for a length of about 180 miles with a maximum width of about 65 miles. It comprises approximately 6,000 square miles.

The area is a flat, alluvial plain with extremely rich soil. Topsoil in the area is often 35 feet deep. The area is one of the more highly productive agricultural regions in the United States. Growing conditions are favorable to a wide variety of crops. Major crops are cotton, soybeans, grain sorghum, and rice. To a much lesser extent, the area is also a grape-producing region.

In the early part of this century, before Prohibition, grape growing was profitable in the area. Recently, the State of Mississippi has invested millions of dollars in Mississippi State University's Enology Laboratory, located at Stoneville in the heart of the Delta region. This expenditure is based upon belief that the region will someday become "the grape producing area of the Southeast," according to a letter of support form the head of that Laboratory. Estimates of current vineyard acreage range from 50 to 250 acres. There are vineyards dispersed through the area, and one winery is operating.

Name of the Area

The term "delta" is commonly understood to mean a triangular area by the mouth of a river, formed by alluvial deposits. The Mississippi Delta is an exception to this, in that it is an area of alluvial deposits located several hundred miles above the mouth of the Mississippi River. However, according to the evidence the area is a true delta, for its deposits were first laid down in an era of pre-history when the mouth of the Mississippi was much farther north. In more recent times, prior to the construction of the Mississippi River levee system, the area received periodic additional deposits whenever the Mississippi and/or Yazoo River flooded.

Geologists sometimes call the area the "Yazoo Basin," since the area is primarily drained by the Yazoo River, but locally and in literature it is most commonly called the "Mississippi Delta," or just "The Delta."

Author David Cohn's famous statement that the Mississippi Delta "begins in the lobby of the Peabody Hotel in Memphis and ends on Catfish Row in Vicksburg" has been quoted numerous times in histories of Mississippi. In particular, this statement appears in *Mississippi: A History,* by John K. Bettersworth, and *Mississippi,* by the Federal Writers' Project of the Works Progress Administration. (Memphis and Vicksburg are the approximate northern and southern boundaries of the Mississippi Delta viticultural area.)

Because of the danger of flooding, the Mississippi Delta was sparsely settled until about 100 years ago, when the levee system began to make agriculture feasible there. Nevertheless, within this century, the area has developed a considerable distinctive history and reputation.

Geographical Features; Boundaries

The western boundary of the area is the levee system of the Mississippi River. West of that, the land is not suitable for agriculture because it is subject to unpredictable, periodic floods. The land that is not protected by the levee system is used primarily for sporting purposes, such as hunting and fishing.

The eastern boundary of the area follows the very striking geographical feature known as the loess bluffs. These bluffs, which rise 100 feet high along the entire eastern side of the Mississippi Delta abruptly demarcate the change from alluvial soil to the windblown soil of the loess hills region. The division between the almost totally flat delta and the very hilly region east of the loess bluffs is dramatic and obvious to an observer.

Because of its shape, the area comes to a point at it north and south ends. At Memphis and at Vicksburg, the loess bluffs come right down to the Mississippi River, thus isolating the Mississippi Delta totally between the bluffs to the east and the river to the west.

Although sharply distinguishable from the areas immediately to the east and west, the Delta is almost totally homogeneous within its boundaries. The land is flat, and the rivers and streams meander very slowly through shifting channels. When one of them changes course, it leaves behind a partially filled "ox-bow lake." Otherwise, there are no significant geographical features within the area to alter its uniformity.

The boundaries of the proposed viticultural area may be found on three U.S.G.S. maps in the scale of 1:250,000 series: Helena (AR, MS, TN), Greenwood (MS, AR, LA), and Jackson (MS, LA). The boundaries are described in 27 CFR 9.96, as added by this document.

Miscellaneous

ATF does not wish to give the impression by approving the Mississippi Delta viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage can only come form consumer acceptance of the Mississippi Delta wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981 (46 FR 13193), the Bureau has determined that this final regulation is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority in 27 U.S.C. 205, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.96, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.96 Mississippi Delta.

* * * * *

Par. 2. Subpart C of 27 CFR Part 9 is amended by adding § 9.96, which reads as follows:

§ 9.96 Mississippi Delta.

(a) *Name.* The name of the viticultural area described in this section is "Mississippi Delta."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Mississippi Delta viticultural area are three U.S.G.S. maps. They are titled:

(1) Helena, scale of 1:250,000, 1955 (revised 1977).

(2) Greenwood, scale of 1:250,000, 1953 (revised 1979).

(3) Jackson, scale of 1:250,000, 1955 (revised 1973).

(c) *Boundary*—(1) *General.* The Mississippi Delta viticultural area is located in Mississippi, Louisiana, and Tennessee. The starting point of the following boundary description is the intersection of the Illinois Central Gulf (I.C.G.) Railroad and the Mississippi River levee system, on the southeast side of Lake Horne, between Lake View, Mississippi, and Walls, Mississippi, on the Helena map.

(2) *Boundary Description*—(i) From the starting point generally southward along the Mississippi River levee system until it again intersects the I.C.G. Railroad, near Twin Lake, Mississippi (about 10 miles north of Vicksburg, on the Jackson map). In any place where there is more than one continuous levee, the one closest to the Mississippi River is the boundary.

(ii) From the intersection described in paragraph (c)(2)(i), the boundary continues southward along the I.C.G. tracks, until they merge with another branch of the I.C.G. Railroad, near Redwood, Mississippi.

(iii) Then generally northeastward along that other branch of the I.C.G. Railroad, to the Leflore County-Holmes County line (on the Greenwood map).

(iv) Then southeastward along that county line to the Leflore County-Carroll County line.

(v) Then generally northward along that county line to Mississippi Route 7.

(vi) Then generally northeastward along Route 7 to the 90° 00′ longitude line.

(vii) Then northward along that longitude line to Mississippi Route 8.

(viii) Then eastward along Route 8 to Mississippi Route 35.

(ix) Then northward along Route 35 to Mississippi Route 322 (on the Helena map).

(x) Then generally eastward along Route 322 to the Panola Quitman Floodway.

(xi) Then northward along that floodway to the range line R.9W./R.8W.

(xii) Then northward along that range line to the 200 ft. contour line (north of Ballentine, Mississippi).

(xiii) Then generally northeastward along that contour line to Mississippi Route 3.

(xiv) Then northward along Route 3 to the Tunica County-Tate County line.

(xv) Then northward along that county line to the Tunica County-De Soto County line.

(xvi) Then northward along that county line to the I.C.G. Railroad.

(xvii) Then northward along the I.C.G. tracks to the starting point.

Signed: August 7, 1984.

W. T. Drake,

Action Director.

Approved: August 21, 1984.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 84-23023 Filed 8-29-84; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[Eighth Coast Guard District Regulation 84-05]

Safety Zone: Vicinity of New Orleans Harbor, Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone in New Orleans Harbor, Mississippi River between the Lower End of the Desire St. Wharf (LMR mile 93.5 AHP) and the Gretna Traffic Light (RDB mile 96.6 AHP). The Safety Zone is needed to protect barges engaged in construction activities for the New Greater New Orleans Mississippi River Bridge from safety hazards associated with a constricted navigation channel and the consequent close proximity of passing vessels to the construction site. The Coast Guard Captain of the Port has delegated the authority to permit entry to the Safety Zone to the traffic control light toweman or the New Orleans Vessel Traffic Service (VTS). All vessels are being required to contact the vessel traffic light towerman or VTS New Orleans, announce their intentions for entering or mooring within the Safety Zone, and obtain permission to proceed.

EFFECTIVE DATE: The provisions of this regulation became effective on 22 February 1984 when an Emergency Safety Zone was established by Captain of the Port of New Orleans. The regulations will terminate on 31 October 1984, or, if no longer needed, earlier at the discretion of the Captain of the Port, New Orleans. Comments on this regulation will be accepted and considered at any time prior to its termination.

ADDRESS: Comments should be mailed to Captain of the Port, U.S. Coast Guard, 4640 Urquhart St., New Orleans, LA 70117. The comments will be available for inspection and copying at that address in the Waterways Safety Department. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Richard E. Ford c/o Captain of the Port, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117, Phone: (504) 589-7117.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication (5 U.S.C. 553b(3)(B)). Following normal rulemaking procedures delaying the effective date of the regulation would have been contrary to the public interest since immediate action was needed to respond to the potential safety hazards involving vessel traffic on the Mississippi River near the bridge construction site. The Crescent River Pilots Association, New Orleans-Baton Rouge Steamship Association, the Board of Commissioners of the Port of New Orleans, and the New Orleans Steamship Association were consulted prior to the effective date of this regulation. However, since this regulation will remain in effect for approximately six months, public comment is desirable to insure that this regulation is both reasonable and workable. Accordingly, written or verbal comments may be made to the Captain of the Port, New Orleans at the address noted above.

Comments should identify the particular portion of the regulation to which they apply, and should include supporting reasons. Commentors should supply their names and addresses and identify the docket number for the regulation. Receipt of written comments will be acknowledged if a stamped self-addressed post card or envelope is enclosed. Based on comments received, this regulation may be changed.

Drafting Information

The drafters of this regulation are LCDR Richard E. Ford, Port Safety Officer, and LCDR Larry Hereth, Project Officer for the Captain of the Port, and LCDR William B. Thomas, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation resulted from the construction of the New Greater New Orleans Mississippi River Bridge. The John F. Beasley Construction Company (contractor for the bridge) requested one-way vessel traffic in the vicinity of the construction site to protect their barges. Several barges are being used periodically to erect steel at various locations, progressing from both banks toward the center of the river. This construction can be disrupted, and safety hazards created, by large wakes from passing vessels. The barges at the construction site tend to impede navigation in a portion of the Mississippi River known for its high volume of vessels. Current regulations in 33 CFR 161.402 (which are activated by high river stages) do not provide adequate control over vessels passing the bridge construction site.

The Safety Zone (33 CFR 165.T810 49 FR 13695 of 6 April 1984) established to counteract problems with river traffic congestion in connection with the 1984 Louisiana World Exposition does not conflict with this Safety Zone. Nor is there conflict between this Safety Zone and the Security Zone (33 CFR 165.T811 49 FR 13696 of 6 April 1984) established in the portion of the Mississippi River immediately adjacent to the Exposition site. However, neither of these regulations provide adequate control over vessels passing the bridge construction site.

To safeguard the bridge construction site, the Captain of the Port initially established an Emergency Safety Zone on the river on 22 February 1984. Notice of the zone was accomplished by Broadcast Notice to Mariners and publication in the Local Notice to Mariners. This Safety Zone is also designed to make maximum use of the current vessel traffic control lights (described in 33 CFR 161.402) when they are in operation to control vessel traffic around Algiers Point during high river stages. In the event the vessel traffic control light system is not operating, VTS New Orleans will be used to control vessel traffic in this Safety Zone. In either case, only one-way traffic will be permitted in the vicinity of the bridge construction site during construction activities that constrict the channel. VTS New Orleans can be contacted on CH 11 VHF-FM (156.550 MHz) or CH 16 VHF-FM (156.8 MHz), or by calling 504-589-

2772. The traffic light towerman can be contacted on CH 11 VHF-FM (156.550 MHz) or CH 67 VHF-FM (156.375 MHz). The overall economic impact is expected to be minimal. VTS New Orleans reports that average delays have been less than fifteen minutes since the emergency safety zone went into effect. Most vessels are able to transit the area with either no, or only a slight delay.

This regulation is considered to be "nonsignificant" under the policies outlined in DOT Order 2100.5 of 22 May 1980, and "non-major" under Executive Order 12291. The expected impact of this regulation is minimal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T823 to read as follows:

§ 165.T823 Safety Zone: New Orleans Harbor, Mississippi River.

(a) *Location.* The following is a Safety Zone: New Orleans Harbor, Mississippi River between the lower end of Desire St. Wharf (LDB mile 93.5 AHP) and the Gretna Traffic Light (RDB mile 96.6 AHP).

(b) *Regulations.* (1) In accordance with the general regulations in 165.11 of this part, entry into this zone is prohibited unless as authorized by the Captain of the Port, New Orleans. The Gretna Traffic Light towerman, the Governor Nichols Traffic Light towerman and VTS New Orleans are delegated the authority to permit entry into the Safety Zone.

(2) All vessels intending to enter or move within the Safety Zone shall, prior to entering or moving within the Safety Zone, contact:

(i) The Gretna Traffic Light towerman or the Governor Nichols Traffic Light towerman, announce their intentions and obtain permission to proceed; or

(ii) VTS New Orleans, announce their intentions and obtain permission to proceed.

(3) All vessels transiting the bridge construction site during construction activities are urged to proceed at minimal speed and to give the derrick barges as wide a berth as possible.

(4) The John F. Beasley Construction Company (contractor for the bridge) shall notify VTS New Orleans 30 minutes prior to moving any equipment into the channel that will remain in the channel and impede navigation to any degree.

(5) This regulation terminates on 31 October 1984, or at the discretion of the Captain of the Port, New Orleans.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3; 48 FR 35404)

Dated: July 26, 1984.

John L. Bailey,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 84-23065 Filed 8-29-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

Amendment of Part 74 of the Commission's Rules To Reflect an Editorial Change in Auxiliary Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends § 74.24(g) of the Commission's Rules to reflect the new telephone number of the Auxiliary Services Branch. This rule pertains to the notification and coordination procedure for short-term operation by certain classes of auxiliary broadcast stations. In order to facilitate this procedure, interested parties may telephone the Auxiliary Services Branch.

DATE: Effective August 3, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 632-6485.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio, Television.

Order

In the matter of amendment of Part 74 of the Commission's Rules to reflect an editorial change.

Adopted: August 3, 1984.
Released: August 9, 1984.

By the Chief, Mass Media Bureau.

1. The Commission has under consideration an editorial change in § 74.24(g) of the Rules to reflect the new telephone number of the Auxiliary Services Branch in the Audio Services Division of the Mass Media Bureau.

2. Section 74.24(g) of the Rules pertains to short-term operation by certain classes of auxiliary broadcast stations and the requirement that broadcast licensees notify the appropriate frequency coordinating committee or any licensee(s) assigned the use of the proposed frequency. In order to facilitate this notification and coordination process, information on active coordination committees may be obtained by telephoning the Auxiliary Services Branch. The telephone number of this Branch has been recently changed to (202) 634-6307.

3. The amendment adopted herein is editorial and public comment is unnecessary. The prior notice and comment procedures and effective date provision of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are therefore inapplicable. Authority for the amendment adopted herein is contained in section 4(i) of the Communications Act of 1934, as amended.

4. In view of the foregoing, it is ordered, that effective August 3, 1984, Part 74 of the Commission's Rules is amended as set forth in the Appendix hereto.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

PART 74—[AMENDED]

47 CFR 74.24 paragraph (g) is revised to read as follows:

§ 74.24 Short-term operation.

* * * * *

(g) The Part 73 licensee of this chapter, prior to operating pursuant to the provisions of this section shall, for the intended location or area-of-operation, notify the appropriate frequency coordination committee or any licensee(s) assigned the use of the proposed operating frequency, concerning the particulars of the intended operation and shall provide the name and telephone number of a person who may be contacted in the event of interference. Information on active frequency coordination committees may be obtained by contacting the FCC's Auxiliary Services Branch at (202) 634-6307 between 8:00 a.m. and 4:30 p.m. Eastern Time. Except as provided below, this notification provision shall not apply where an unanticipated need for immediate short-term mobile station operation would render compliance with the provisions of this paragraph impractical.

* * * * *

[FR Doc. 84-23027 Filed 8-29-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 14]

Child Restraint Systems for Use in Motor Vehicles and Aircraft

AGENCY: National Highway Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems*, so that child restraint systems can be certified for use in motor vehicles, or for use in both motor vehicles and aircraft. The requirements for certifying child restraints for use in aircraft were formerly specified in the Federal Aviation Administration's (FAA) Technical Standard Order (TSO) C100, which required that in order for child restraint systems to be certified for use in aircraft, they must first be certified for use in motor vehicles and then pass three additional performance tests. Simultaneously with the effective date of this rule, FAA will rescind the requirements of TSO C100 and take action to permit child restraints certified under the requirements of this rule to be used in aircraft.

The notice of proposed rulemaking which preceded this final rule proposed to add the three performance requirements of the TSO and one additional performance requirement for restraints with tether straps to Standard No. 213. This rule adopts one of the three performance requirements of the TSO, the inversion test, and requires that child restraint manufacturers wishing to certify their products for use in both motor vehicles and aircraft certify that the product complies with requirements of the test. The other performance requirements proposed in the notice are not incorporated in this rule because a joint testing program conducted by FAA and NHTSA last year showed these requirements to be redundant. Child restraints which passed the existing higher performance requirements in Standard No. 213 easily passed the requirements of the TSO, which indicates that those TSO requirements are unnecessary to establish that child restraints are effective in the differing environment of the aircraft interior. Accordingly, compliance with those requirements is no longer required to certify child restraints for use in aircraft.

Child restraints which are certified for use in both motor vehicles and aircraft will be required to be labeled in red with the phrase "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT". Child restraints certified only for use in motor vehicles will not be required to change the information currently required by Standard 213 on their labels.

By combining and simplifying the requirements for certifying child restraints for use in motor vehicles and aircraft, FAA and NHTSA hope to encourage more child restraint manufacturers to certify their products for use in both modes of transportation. The ultimate goal of seeking more models of child restraints to be certified for use in both motor vehicles and aircraft is to encourage families traveling by air to use child restraints for their children before, during, and after the air travel portion of their trips.

EFFECTIVE DATE: This rule becomes effective February 28, 1985.

ADDRESS: Petitions for reconsideration may be submitted within 30 days after publication of this rule in the **Federal Register** to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: This rule amends Standard No. 213, *Child Restraint Systems* (49 CFR 571.213), so that child restraint systems can be certified for use in both motor vehicles and aircraft, or simply for use in motor vehicles. These amendments are intended to encourage families traveling by air to use child restraints to protect their children before, during, and after the air travel portion of their trips.

Background

Need for Increased Use of Child Restraints

Parents cannot adequately protect their very young children against the risk of death and injury while riding in motor vehicles or aircraft either by holding them in their lap or by fastening a lap belt around them. The forces generated during sudden stops even at speeds as low as 10-15 miles per hour (mph) make it physically impossible for a parent to hold and protect a child in his or her arms. Using a lap belt is better, but it is still inadequate for this purpose (particularly for children under the age of one year) because of the physical dimensions, bone structure, and weight distribution of young children.

The most effective protection that can be afforded these young children are special supplementary seating devices, which are attached to and secured by the lap belt in the vehicle or aircraft. These devices, generically referred to as child restraints, are specifically designed to take into account the physiological differences between young children and older children and adults, and to offer the appropriate protection for these young children exposed to the large energy levels inherent in vehicle crashes.

Efforts to Promote Increased Use of Child Restraints

The NHTSA has been working hard to promote the use of child restraints by more parents. The agency has been advising the various States on the drafting of mandatory child restraint use laws. Such laws have now been enacted in 49 States and the District of Columbia. These laws have significantly increased the sales and use of child restraints, and increased the public awareness of the safety consequences of allowing children to travel unrestrained in motor vehicles.

In addition, the NHTSA has been working to educate the public on the benefits of child restraints. Working with medical professionals, childbirth educational programs and others, the agency has provided information to pediatricians and prospective parents on ways to protect their children in motor vehicles. Further, the agency has developed manuals on how to develop a child restraint loaner program that can assist parents unable to afford their own child restraints.

All of these factors have succeeded in greatly increasing the use of child restraints for children riding in motor vehicles. Currently, restraint usage for infants less than one year old is about 68 percent; and for children ages 1 to 4 the rate is 44 percent; based on the agency's continuing survey of restraint usage in 19 cities.

Impediments to Increased Use of Child Restraints

This heightened use and awareness, combined with the limited number of child restraint models which can be used in both motor vehicles and aircraft, caused confusion and frustration for families traveling by air and car. Both NHTSA and FAA have standards for child restraints. Until recently, of the 42 models of child restraints certified under NHTSA's Standard No. 213 for use in motor vehicles, only 5 models were also approved under the FAA's standard for use in aircraft. If a family tried to take one of the remaining 37 models of child restraints, they were usually required to check the restraint along with the rest of their luggage. This discouraged families from traveling with the unapproved child restraints, and resulted in the child not having the benefit of the safety seat not only during the takeoff and landing of the aircraft, but also when the family was driving in a motor vehicle on the ground portions of the trip.

From a safety viewpoint, data on injuries and fatalities show that travel by air is much safer than by motor vehicle. For children up to 4 years of age, approximately one fatality and 10 injuries occur yearly during commercial air travel vs. over 600 fatalities and 70,000 injuries to motor vehicle occupants. Consequently, the main benefits from the use of child restraints will be derived from the motor vehicle portion of the trip.

The NHTSA Child Restraint Standard

As an initial step toward ensuring that child restraint systems would offer adequate protection to their occupants, NHTSA issued Standard No. 213 in 1970. That standard, which was issued under the authority granted in the National Traffic and Motor Vehicle Safety Act of 1966, as amended (hereinafter "the Safety Act"; 15 U.S.C. 1381 *et seq.*), became effective in 1971. As then drafted, it specified various static tests to ensure the safe performance of child restraints. However, subsequent data showed that child restraints which passed these static tests might not prove effective at protecting a child in certain vehicle crash situations.

Under the current standard, which became effective January 1, 1981, the performance of child restraint systems is evaluated in dynamic tests under conditions simulating a frontal crash of an average car at 30 mph. The restraint is anchored by a lap belt and, if provided with the restraint, by a supplemental anchorage belt (known as a tether strap). An additional frontal impact test at 20 mph is conducted for restraints equipped with either tether straps or internal harness and a restraint surface. In that additional test, child restraints with tether straps are tested with the straps detached and child restraints with a restraint surface (e.g., a padded shield) are tested with the restraint surface in place but with the child restraint system's internal harness unbuckled. The additional 20 mph tests are intended to ensure a minimum level of safety performance when the restraints are improperly used. Thus, child restraints with tethers or with a restraint surface are tested at both 20 and 30 mph, while those without tethers or such a surface are tested at 30 mph only. Both the 20 mph and the 30 mph tests are conducted with the child restraint fastened to a seat representing the typical motor vehicle bench seat.

To protect the child, limits are set on the amount of force exerted on the head and chest of a child test dummy during the dynamic testing of restraints specified for children over 20 pounds. Limits are also set on the amount of frontal head and knee excursions experienced by the test dummy in forward-facing child restraints. To prevent a small child from being ejected from a rearward-facing restraint, limits are set on the amount that the seat can tip forward and on the amount of excursion experienced by the test dummy during the simulated crash.

Compliance of child restraints with Standard No. 213 is assured by the requirement in the Safety Act that manufacturers certify compliance for each child restraint. The agency may review the basis for that certification and conduct testing to assure compliance. The Safety Act provides for the assessment of civil penalties for failures to comply with applicable safety standards, and for certifications which the manufacturer in the exercise of due care has reason to know are false or misleading in a material respect.

The FAA Child Restraint Standard

In May 1982, the FAA issued its own child restraint standard, Technical Standard Order (TSO) C100. One of the key factors underlying the development of TSO C100 was child restraint testing conducted by the Civil Aeromedical Institute in 1974. The results of that testing appeared in FAA test report "Child Restraint Systems for Civil Aircraft" (FAA-AM-78-12, March 1978). Another factor was the FAA's determination that differences in the environments of aircraft and motor vehicles necessitated its establishing performance requirements to address the special safety risks posed to young children traveling in aircraft. One of these differences is the tendency of the seat back of aircraft seats to fold forward with the application of a very low force. The FAA determined that there was a need to control the interaction between the young child, especially those facing rearward in a child restraint, and the seat back to ensure that the seat back does not apply unacceptable levels of force onto the child. The FAA also determined that there was a need to address the danger that in-flight turbulence (especially in the upward direction) might throw a child out of his or her child restraint.

Accordingly, the FAA drafted TSO C100 so that it requires each child restraint to meet the requirements of NHTSA's Standard No. 213 and four additional requirements. First, while attached to an aircraft passenger seat with a free-folding seat back by an aircraft safety belt, and occupied by a test dummy, each child restraint must provide protection in an impact producing a 20 mph velocity change. There is no double testing of child restraints with tethers as under Standard No. 213. Such restraints are tested only once in an impact and with their tethers unattached. Second, each child restraint must retain its occupant during an inversion test. Third, each child restraint must withstand the static forces specified in Federal Aviation Regulations § 25.561 (14 CFR 25.561), with each of the forces acting separately. Fourth, TSO C100 specifies requirements for marking child restraints with assembly and usage instructions, providing a copy of such instruction to child restraint users and submitting a copy of these instructions and various technical information and test results to the FAA. In addition, the TSO procedures require the establishment and maintenance of a manufacturer quality control system. The quality control system is intended to assure that seats are manufactured in such a way as to meet the standard's performance requirements.

For a child restraint to be approved for use in aircraft, the manufacturer must submit specified information to the FAA along with a certifying statement that the restraint meets the requirements of TSO C100. After the FAA approval is issued, if airlines permit, the restraint can be used for infants or young children during all phases of flight, including takeoff and landing. Once the FAA approved a particular model of child restraint, that agency followed a policy of accepting child restraints of that model that were manufactured prior to the date of approval for use in aircraft during all phases of flight, provided that those earlier child restraints were substantially identical to the approved one and were properly identified as to make and model by a Standard No. 213 certification label.

The result of these differing requirements was that only a few of the child restraints certified for use in motor vehicles were also certified for use in aircraft. In 1983, the National Transportation Safety Board (NTSB) considered the safety problems facing young children traveling in motor vehicles and aircraft and urged that a variety of actions be taken to promote the use of child restraints. It urged that all States adopt laws requiring that infants and young children be placed in child restraints when riding in motor vehicles. It also recommended that the DOT simplify its standards specifying performance requirements for child restraints by combining all technical requirements into a single standard (NTSB Safety Recommendations A-83-1, issued February 24, 1983).

After considering the benefits which would result from the increased use of child restraints, the FAA and the NHTSA jointly concluded that the process of certifying child restraints for use in both motor vehicles and aircraft could and should be simplified and expedited. By combining the separate NHTSA and FAA standards into a single standard under the jurisdiction of a single agency, child restraint manufacturers could avoid the difficulties of dealing with different standards, methods of certification, and testing procedures promulgated by the two agencies. Accordingly, a notice of proposed rulemaking (NPRM) was published at 48 FR 36849, August 15, 1983.

Details of the NPRM

The NPRM proposed that the NHTSA would be the sole agency responsible for enforcing the new Standard No. 213, which would be applicable to child restraint systems designed for use in both motor vehicles and aircraft. In essence, the NPRM proposed that the requirements in both agencies standards for child restraints be unchanged and simply combined into an expanded Standard No. 213, with one further performance test added for child restraints to be certified for use in aircraft. This would avoid the problems inherent in dealing with the differing certification procedures of the two agencies and consolidate all of the requirements into one standard.

Under the proposal, manufacturers which elected to certify their child restraints for use on aircraft would have to certify that these restraints could pass those four additional tests. Those manufacturers which did not elect to certify their restraints for use on aircraft would not have to make that certification. The existing requirements in Standard No. 213 applicable to child restraints certified for use in motor vehicles were not proposed to be changed in any way by the NPRM. What was proposed was simply an option for manufacturers to subject their restraints to some additional testing if they wanted to certify those restraints for use on aircraft.

Three of the four additional performance tests proposed to be added to Standard No. 213 for child restraints certified for use on aircraft were drawn almost verbatim from the FAA's child restraint standard. These additional tests were proposed to be required to ensure that child restraints certified for use in aircraft would offer adequate protection to young children in the unique interior environment of aircraft.

The first additional test proposed in the NPRM was a dynamic impact test at 20 mph for all restraints not equipped with a tether strap. The child restraint would be attached to a representative aircraft seat only by the aircraft seat belt attached to the aircraft seat. The child restraint would not be permitted to fail or deform in a manner that could seriously injure or prevent subsequent extrication of the occupant. This test was taken almost verbatim from paragraph (a)(2)(i) of TSO C100.

The second additional test proposed in the NPRM would apply only to child restraints equipped with a tether strap. These restraints would be tested under the same procedures as untethered restraints, except that the impact would be at 30 mph with the tether strap unattached. The same criteria for determining satisfactory performance specified above for untethered restraints would again be used. This requirement was not drawn from TSO C100. However, NHTSA decided to include the requirement because the FAA believed that, since aircraft seats have no place to which the tether strap could be anchored, it was necessary to subject such restraints to a more stringent performance test to ensure that these restraints would offer adequate aircraft safety.

The third test proposed in the NPRM was an inversion test. Its purpose is to ensure that the child restraint could protect the child from air turbulence. The test, drawn directly from the language of paragraph (a)(2)(ii) of TSO C100, would have required the combination of a child restraint, test dummy, and aircraft passenger seat to be rotated to an inverted position and held there without any failure or deformation of the child restraint that could seriously injure or prevent the subsequent removal of the occupant.

The fourth additional test proposed in the NPRM would have required each child restraint to withstand the ultimate inertia forces specified in 14 CFR 25.561, with each of those forces acting separately. This requirement was specified in paragraph (a)(2)(iii) of TSO C100. Engineering analysis would have been acceptable in lieu of actual testing to establish compliance with this proposed requirement.

The procedures to be followed in conducting these tests or analyses were drawn from paragraph (a)(2)(iv) of TSO C100. They provided for the testing or analysis of child restraints to determine their adequacy for protecting the weight and stature of child for which the restraint is designed. The test dummies to be used were those specified in section S7 of Standard No. 213. Other procedural provisions related to the placing of the test dummy in the restraint, the attaching of the restraint to the aircraft seat, and the design of the aircraft seat.

As noted above, the NPRM gave child restraint manufacturers an option either to certify their restraints for use in both motor vehicles and aircraft or to certify the restraints only for use in motor vehicles. Those electing the latter option would have been required by the NPRM to include the statement, "THIS RESTRAINT IS NOT CERTIFIED FOR USE IN AIRCRAFT", on the certification label and operating instructions for the child restraint. This labeling requirement was proposed to ensure that parents seeking to buy restraints for use in both modes of transportation and airline flight attendants would easily ascertain whether a particular child restraint was not certified for use in aircraft.

The NPRM also announced that FAA and NHTSA would jointly test many models of child restraints for compliance with the TSO C100 requirements. The test results generated by this program were made available to the manufacturers of the tested restraints to assist them to certify their child restraints for use in both modes of transportation.

FAA-NHTSA Testing of Child Restraints

The testing program evaluated all 42 models of child restraints currently manufactured and certified as meeting the requirements of Standard No. 213 to determine whether they complied also with the existing requirements of TSO

C100. (See DOT HS-806-413.) There was some preliminary difficulty in determining how to establish whether a child restraint system had "failed or deformed in a manner that could seriously injure or prevent subsequent extrication of a child occupant," the criterion for determining compliance with the tests in TSO C100. The two agencies agreed to use the performance requirements specified in section S5 of Standard No. 213, but to exclude the head and chest acceleration requirements set forth in section S5.1.2.

All 42 models of child restraints, including the 11 which have tether straps, were subjected to the 20 mph dynamic test while attached to a representative aircraft seat, and all passed by a considerable margin. Similarly, the three tethered child seats and eight tethered booster seats were subjected to a 30 mph impact with the tether unattached, and all again passed by a considerable margin. The performance of the three tethered child seats was not appreciably different than was registered by them in the 20 mph impact test, and the head and knee excursions measured in this test were well under those recorded for the restraints in the Standard No. 213 tests. All 42 models were subjected to the TSO C100 inversion test, and all 42 were deemed to have passed those requirements. Additionally, all 42 models were subjected to the static loading tests at the levels specified in TSO C100, and all 42 passed the test.

All 42 models were also tested to the requirements of "old" Standard No. 213, which required the restraint to withstand inertia loads approximately three times greater than those specified in TSO C100. Standard No. 213 was upgraded from these old requirements primarily because of the structural failures which occurred in 30 mph dynamic tests of restraints which met the static load requirements under the old version of the standard. NHTSA believed that any of the restraints which could satisfy the dynamic testing requirements of the new Standard No. 213 would also satisfy the static loading requirements of the old standard. Since the loads required under the old standard were approximately three times the level required by the TSO, any devices which could satisfy the old standard would *ipso facto* satisfy the TSO requirements.

In this testing to the levels prescribed under the old standard, 40 of 42 models of child restraints passed. The two restraints which failed the tests did so in only one direction, and at load levels 2½ times those required in the TSO.

The joint testing program made it possible for the manufacturers of every model of child restraint currently produced to seek prompt FAA approval for the restraints under TSO C100. This has expedited the process for certifying current models of child restraints for both aircraft and motor vehicle use. At present 36 models have received TSO approval.

However, the Department of Transportation still believes that it is necessary to proceed with a final rule in this area. As a practical matter, new child restraints will be introduced into the market, and those models would face the same obstacles which were confronted by current models before the completion of the joint testing program. It is poor regulatory policy to subject manufacturers to needless and repetitious testing of the identical product to satisfy slightly differing requirements of two different agencies. These considerations impel FAA and NHTSA to proceed to a final rule at this time, so that the situation which existed prior to the joint program does not recur at some future date.

Comments

Most of the more than 20 commenters on the NPRM endorsed the concept of combining the FAA and NHTSA standards into one standard. Some of the commenters expressed qualified support for the concept, but reserved final judgment until the results of the joint testing program were made available to the public.

Only one commenter opposed the basic concept of combining the two standards, and that opposition was based on the belief that NHTSA was neither competent nor properly equipped to regulate items related to aviation and the aircraft industry. First, NHTSA believes it should be emphasized that this rule was developed with the cooperation and support of the FAA, which certainly has the necessary expertise regarding the aviation industry. Further, child restraints are not items which are uniquely related to aviation and the aircraft industry; most of the lifesaving benefits of child restraints accrue while the young child is riding in a motor vehicle. Finally, both NHTSA and FAA gained new knowledge about the interplay of the aircraft seat, child restraint, and child during a sudden deceleration during the recently completed joint testing program. For these reasons, the agencies believe it is appropriate to go forward with this rulemaking.

Several comments raised issues outside the scope of this rulemaking. These included permissible seat positions for approved child restraints in aircraft, retroactive certification for aircraft use of models recently approved for such use, the extent to which individual airlines must examine the restraint's certification to determine its validity, differences in the various airlines' policies permitting the use of child restraints, and so forth. This rulemaking is addressing only the steps child restraint manufacturers must take to certify their products for use in motor vehicles and aircraft. The procedures regulating the actual use of the restraints in aircraft are not being addressed herein; such procedures will be decided solely by the FAA. These and other questions on the procedures should be addressed to that agency.

The commenters made several objections to each of the four proposed additional requirements, to which compliance would have to be certified if a manufacturer wanted to certify its child restraint for use in aircraft. Regarding the first proposed additional test that child restraints without tether straps be tested in an aircraft seat at a 20 mph impact, these commenters argued that all child restraints certified as complying with Standard No. 213 are already subjected to a 30 mph impact in the more severe environment of a car seat. Accordingly, this argument continued, the proposal to require a lower speed test in a less severe environment would simply add to the testing burden for child restraint manufacturers, without ensuring any higher degree of safety.

One of the child restraint manufacturers correctly noted in its comments that the reason for proposing the 20 mph test in the aircraft seat was the concern that the more flexible back of such a seat could snap forward on impact and hit the child restraint and/or child with additional crash forces and that those additional forces would not be considered in the 30 mph test with the restraint attached to a car seat. This commenter suggested that their own testing and some NHTSA tests in 1982 showed that the back of the aircraft seat does not exert significant forces relative to the crash forces. The commenter concluded that NHTSA should delete this proposed requirement unless the joint testing program showed some evidence that significant forces were actually exerted.

The joint testing program showed that the forces to which the test dummy and restraint are subjected in the 20 mph dynamic test in the aircraft seat were ⅓ to ½ less than those to which they were subjected in the 30 mph dynamic test in the car seat. This finding was hardly significant or surprising, given the lower speed at impact.

A far more significant finding was made regarding the amount of the loading imposed by the flexible aircraft seat back on the restrained dummy. For this testing, the aircraft seat back was instrumented with a triaxial accelerometer so that quantitative assessments of the produced forces could be made. Inspection of the acceleration-time histories and the loads measured on the aircraft seat belts revealed that in every test the maximum forces generated by the child restraints (as measured by the test dummy and including the peak and chest accelerations and the peak belt loads) occurred some 25–40 milliseconds before the occurrence of the peak acceleration of the seat back. Also, the magnitude of the head and chest accelerations imparted to the child seat occupant by the restraining action of child seats were much higher than those imparted later on by the action of the aircraft seat back. These facts indicate that the loads imparted when the seat back struck the child restraint and its occupant are relatively insignificant when compared with the loads imparted by the crash. Confirmation of this was found in the fact that the seat back acceleration had no significant influence on the head and chest accelerations measured in the test dummies. However, the loads measured on the aircraft seat belt were increased during the seat back acceleration. This finding suggests that the load exerted by the acceleration of the seat back is transferred directly through the structure of the child restraint to the seat belt. This fact would again confirm the view that the seat back acceleration poses no threat to the occupant of a child restraint.

Based on these results, which occurred in each test, NHTSA believes that it has been established that seat back acceleration poses an inconsequential threat to occupants of child restraints, and that any restraint which protects its occupant against the crash forces will adequately protect its occupant against the forces generated by the seat back acceleration. Given these conclusions, it is unnecessary to test child restraints for their ability to protect a child against the threat of the folding aircraft seat back. Accordingly, the agency has deleted the requirement that child restraints be certified for use in aircraft capable of protecting a restrained child in a 20 mph impact when attached to an aircraft seat.

Many of the commenters objected to the requirement that tethered restraints be subjected to a 30 mph crash in an aircraft seat with the tether unattached. The rationale for these objections was perhaps best summed up in the NTSB comment. The NTSB stated that it could understand subjecting restraints with tethers to the same test as restraints without tethers, and not permitting the restraints with tethers to have their tether strap attached during the test. Such a proposal would ensure that these restraints could pass the same requirements as other child restraints, and that they could do so under the conditions present in aircraft; i.e., with their tether straps unattached. However, the NTSB continued, it was not justifiable to require these restraints to undergo a more severe test than other restraints. One child restraint manufacturer commented that this 30 mph test requirement would not ensure any higher level of safety on aircraft since the aircraft seats themselves would not withstand a 30 mph impact. This commenter went on to say that in an actual crash at 30 mph, there is as much potential of injury to the child from the failure of the aircraft seat itself as from the failure of the child restraint.

As indicated above in the section summarizing the joint testing program, the tests conducted on child restraints with tethers showed that all of those restraints easily passed this 30 mph crash test requirement, that the results were not much higher than were those measured in the 20 mph tests, and that the results showed an appreciably lower force level for the restraints in this test than were obtained in the Standard No. 213 misuse test. Given the conclusion that the seat back acceleration does not transmit any significant forces to the occupant of the child restraint and the fact that this test imposes lower crash forces than the Standard No. 213 tests, it seems unnecessary to require the child restraint manufacturers to certify compliance with this test. The points made in the comments on this proposal also are convincing, so it has been determined not to incorporate this test in the final rule.

The third proposed additional test was an inversion test whose purpose is to ensure that the child restraints certified for use in aircraft could adequately protect the child against the dangers posed by sudden air turbulence. The commenters who addressed this issue seemed to generally agree that this was a hazard which child restraints for use in aircraft should protect against and that restraints which passed the requirements of Standard No. 213 would not necessarily pass this test. NHTSA also believes that the inversion test was not shown to be redundant of existing test procedures, and has determined that this test should be incorporated in this final rule. The requirements for this inversion test are adopted verbatim from those proposed in the NPRM. Several commenters questioned some of the inversion test procedures and offered suggested alternatives. The agency agrees some refinements could be made. However, it is necessary first to issue a new NPRM. The NPRM, which proposes to amend the requirements for the inversion test adopted in this rule, discusses these comments further.

The fourth additional test proposed in the NPRM was a static load test. Several commenters questioned the need for the relatively low inertial loads of that test to be applied to the restraints, considering the much greater loads to which the child restraint is subjected in the testing for Standard No. 213. This fact, together with the joint testing results which showed that all currently produced child restraints can withstand loads at least 2½ times greater than those specified in this proposed test, leads NHTSA to conclude that this test is redundant and does not ensure any higher level of safety. Accordingly, it is not adopted in this final rule.

Several commenters addressed the criteria used to determine if a child restraint has passed the two simulated crash tests and the inversion test applicable to restraints for aircraft use. These criteria were that the child restraint system "may not fail nor deform in a manner that could seriously injure or prevent subsequent extrication of a child occupant." Some of the child restraint manufacturers asked precisely how one determines if a restraint has failed or deformed in such a manner. Another commenter opined that those criteria "are so vague and subjective as to be of no substantive value whatsoever."

NHTSA agrees with these commenters' judgment that the criteria for determining compliance could be made more objective. However, the Administrative Procedure Act requires that interested persons be given notice of proposed rulemaking and an opportunity to comment thereon prior to an agency's adopting changed requirements as a final rule (5 U.S.C. 553). This provision of the law prevents the agency from adopting these more objective criteria in this final rule, because the interested persons would not have had an opportunity to comment on those criteria. Accordingly, NHTSA is today publishing a notice of proposed rulemaking to incorporate more objective criteria for the inversion test. This notice has a 45-day comment

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period, to provide any interested persons with the chance to comment on the changes while allowing the agency to move promptly to incorporate more objective criteria.

Most of the commenters addressed the issues raised by the language proposed to be labeled on child restraints which were certified only for use in motor vehicles. The NPRM proposed that such child restraints have the statement "THIS RESTRAINT IS NOT CERTIFIED FOR USE IN AN AIRCRAFT." A number of commenters opposed this "negative" labeling because it could give consumers the impression that such a restraint was not as safe for motor vehicle use as a restraint which was certified for use in both aircraft and motor vehicles. In fact, both restraints would have been certified as passing the same dynamic tests for use in motor vehicles. Other problems alleged to exist with this labeling scheme were that consumers would not be sure whether a child restraint not bearing such a label could be used safely in aircraft, and that this "negative" labeling could result in older, unlabeled and uncertified seats being used on aircraft. Further, the proposed labeling could make it difficult for flight attendants to determine which restraints were actually approved for use in aircraft, causing delays and frustration for parents wishing to use child restraints on flights. These commenters all requested that the "negative" labeling proposed in the NPRM be replaced with a simple positive statement in the final rule.

NHTSA agrees with these comments. The informational purposes of the labeling requirement would be better served by simple positive declarations. The labeling requirement adopted in the final rule specifies that child restraints certified for use only in motor vehicles recite the same certification that is currently required, with no additional statements, and those restraints certified for use in both motor vehicles and aircraft simply add a statement of that dual certification.

Finally, a child restraint manufacturer asked that the final rule clarify the standard aircraft seat assembly to be used for testing the child restraint. The NPRM stated in section S7.3(b) that a "representative aircraft passenger seat" be used. The term "representative aircraft passenger seat" was defined in section S5 of the NPRM as either a production seat approved by the FAA or a simulated seat conforming to Drawing Package SAS-100-2000. NHTSA believes this definition is clear, and will result in consistent test results. No further changes to this definition have been made in this final rule.

OMB Clearance

The labeling requirements for child restraints are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. OMB has approved the labeling requirements for child restraints certified for use in motor vehicles (OMB No. 2127-0511), but has not approved the labeling requirements for child restraints certified for use in motor vehicles and aircraft. Accordingly, those labeling requirements have been submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). A notice will be published in the **Federal Register** when OMB approves this information collection.

Impacts

NHTSA has analyzed the impacts of this rule and determined that the rule is not "major" within the meaning of Executive Order 12291, but is "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The rule simplifies and combine the requirements of two existing government regulations into one regulation. It would not impose any new burdens upon any manufacturer. If a child restraint manufacturer wishes to continue certifying one of its child restraint models for use in motor vehicles only, the requirements for doing so are unchanged and the testing costs would remain at about $3,500. If a child restraint manufacturer wishes to certify a model for use in motor vehicles and aircraft, its testing costs under Standard No. 213 would increase by about $1,500 to a total of about $5,000. However, the total testing costs for certifying a model to this combined Standard No. 213 will be less than the total testing costs for certifying compliance with Standard No. 213 and TSO C100 (estimated at about $8,000). Further, this cost reduction and the need to certify to only one agency's regulation, instead of two agencies' regulations, should provide a slightly reduced cost of compliance for those child restraint manufacturers that choose to certify their products for use in motor vehicles and aircraft. Although these impacts are minimal, a regulatory evaluation has been prepared.

NHTSA has also considered the impacts of this rule on small entities, as required by the Regulatory Flexibility Act. Based upon this consideration, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. While some of the child restraint manufacturers are small businesses, the amendments in this rule are optional requirements which need not be met by any manufacturer. Those manufacturers desiring to take the additional step of certifying their products for use in aircraft will find their costs reduced over what they would have been before this rule became effective. This would represent a slight benefit to these small businesses. Small organizations and small governmental units will be minimally affected by these changes, since they do not purchase significant numbers of child restraints. Even if they did purchase significant numbers of restraints, the cost impacts will be minimal as a result of this rule.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that this rule will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, the following amendments are made to § 571.213, *Child restraint systems,* of Title 49 of the Code of Federal Regulations.

1. Paragraph S1 is revised to read as follows:

S1. *Scope.* This standard specifies requirements for child restraint systems used in motor vehicles and aircraft.

2. Paragraph S2 is revised to read as follows:

S2. *Purpose.* The purpose of this standard is to reduce the number of children killed or injured in motor vehicle crashes and in aircraft.

3. Paragraph S3 is revised to read as follows:

S3. *Application.* This standard applies to child restraint systems for use in motor vehicles and aircraft.

4. The definition of "Child restraint system" in paragraph S4 is revised to read as follows:

"Child restraint system" means any device except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 50 pounds or less.

5. Paragraph S4 is amended by adding the following new definition in alphabetical order:

"Representative aircraft passenger seat" means either a Federal Aviation Administration approved production aircraft passenger seat or a simulated aircraft passenger seat conforming to Drawing Package SAS–100–2000.

6. Paragraph S5 is revised to read as follows:

S5. *Requirements for child restraint systems certified for use in motor vehicles.* Each child restraint certified for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1.

7. Section S5.5.2 is amended by the addition of a new paragraph (m) which reads as follows:

* * * * *

(m) Child restraints that are certified as complying with the provisions of section S8 shall be labeled with the statement "THIS RESTRAINT IS CERTIFIED FOR USE IN MOTOR VEHICLES AND AIRCRAFT". This statement shall be in red lettering, and shall be placed after the certification statement required by paragraph (e) of this section.

8. Paragraph S7.3 is revised to read as follows:

S7.3 *Standard seat assemblies.* The standard seat assemblies used in testing under this standard are:

(a) For testing for motor vehicle use, a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000 (consisting of drawings and a bill of materials); and

(b) For testing for aircraft use, a representative aircraft passenger seat.

9. A new paragraph S8 is added to the standard to read as follows:

S8. *Requirements, test conditions, and procedures for child restraint systems manufactured for use in an aircraft.* Each child restraint system manufactured for use in both motor vehicles and aircraft must comply with all of the applicable test requirements specified in section S5 and, when tested in accordance with the conditions and procedures of S8.2, the additional requirements specified in section S8.1.

S8.1 Child containment for conditions of in-flight turbulence must be determined by inversion tests. The combination of a representative aircraft passenger seat, child restraint system, and appropriate test dummy must be rotated from the normal upright position to an inverted position. The combination must remain inverted for at least 3 seconds with neither failure nor deformation that could seriously injure or prevent subsequent extrication of a child occupant. Child containment must be demonstrated for rotation in the forward direction and a sideward direction.

S8.2 Each configuration and mode of installation must be tested for protection of a child of a weight and stature for which the child restraint system is designed. The child occupant must be simulated with an appropriate test dummy as specified in paragraph S7. Placement of each restraint system in a representative aircraft passenger seat and placement of the test dummy must be in accordance with the manufacturer's instructions. Each child restraint system must be attached to the seat by means of an aircraft safety belt without supplementary anchorage belts or tether straps; FAA Technical Standard Order approved safety belt extensions may be used. The representative aircraft passenger seat used in each test must have a seat back that is completely free to fold over.

(Secs. 103, 109, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegation of authority at 49 CFR 1.50)

Issued on August 24, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84–22987 Filed 8–29–84; 8:45 am]

BILLING CODE 4910–59–M

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Proposed Rules

Federal Register
Vol. 49, No. 170
Thursday, August 30, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872 and 873

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance and Family Optional Life Insurance

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: OPM proposes to regulate the period of time following loss of group life insurance coverage during which employees and family members, in the case of family optional insurance, may convert their coverage under the Federal Employees' Group Life Insurance (FEGLI) Program to an individual policy. Further, agencies would be required to provide a notice of the loss of group coverage to affected individuals. OPM proposes to regulate the time period because a number of employees have commented that the regulations and OPM's 15 day administrative extension of time are insufficient.

DATE: Comments must be received on or before October 29, 1984.

ADDRESS: Written comments may be sent to Lucretia F. Myers, Office of Pay and Benefits Policy, Compensation Group, P.O. Box 57, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20044, or delivered to Room 4351.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632-9677.

SUPPLEMENTARY INFORMATION: The FEGLI regulations provide a 31-day extension of life insurance coverage to insured employees and family members covered under the family optional insurance who lose group coverage for reasons other than voluntary cancellation. This 31-day extension applies only if the insured is not eligible to re-acquire group coverage within 3 calendar days after the event causing loss of coverage. The current FEGLI regulations also provide that an employee who loses group coverage may convert, to an individual policy, all or part of that coverage *during the 31 days* coverage is extended. OPM has, in the past, administratively extended the 31-day timeframe for conversion by allowing the employee 15 days from the date of the agency's notice of the right to convert, if that 15-day extension provided the employee more time. However, the 15-day extension is sometimes still insufficient notice for many employees and for their survivors who are covered by the family optional insurance.

A number of employees have commented that they believe the regulations and OPM's 15 day administrative extension of time are insufficient. They noted that many times the agencies do not furnish them timely notice of the right to convert their coverage. Further, 15 days from the date of the notice does not allow enough time for the notices to reach them via regular mail service and for them to react. Therefore, OPM proposes to amend the regulations to provide a conversion period which ends 31 days after the event causing loss of coverage or notification of the right to convert, whichever is later. The 31-day extension of coverage after the loss of group coverage is not affected by this change.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only employees of the Federal Government.

List of Subjects in 5 CFR Parts 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

For the reasons set forth above, OPM proposes to amend Title 5 of the Code of Federal Regulations as follows:

PART 870—BASIC LIFE INSURANCE

1. In § 870.501, paragraph (e) is revised to read as follows:

§ 870.501 Termination and conversion of insurance coverage.

* * * * *

(e)(1) After termination of group coverage for any reason other than voluntary cancellation, an employee may, upon application and without medical examination, convert all or any part of his/her basic life insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of the group coverage and right to convert, whichever is later.

(4) When an agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion to a individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after an employee becomes eligible to convert basic life insurance. The employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the basic life insurance. The Office of Federal Employees' Group Life Insurance will determine if the employee is eligible to convert, and when the determination is

affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her basic life insurance coverage under the provisions of paragraph (e)(4) of this section, the individual plan coverage is retroactive to the day following the 31-day extension of group coverage. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

PART 871—STANDARD OPTIONAL LIFE INSURANCE

2. In § 871.501, paragraph (e) is revised to read as follows:

§ 871.501 Termination and conversion of insurance.

* * * * *

(e)(1) After termination of group coverage for any reason other than voluntary cancellation, an employee may, upon application and without medical examination, convert all or any part of his/her standard optional insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of the group coverage and right to convert, whichever is later.

(4) When an agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion of an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after an employee becomes eligible to convert the standard optional insurance. That employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the standard optional insurance. The Office of Federal Employees' Group Life Insurance will determine if the employee is eligible to convert, and when the determination is affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her standard optional insurance coverage under the provisions of paragraph (e)(4) of this section, the individual plan coverage is retroactive to the day following the 31-day extension of group coverage. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

3. In § 872.501, paragraph (e) is revised to read as follows:

§ 872.501 Termination and conversion of insurance.

* * * * *

(e)(1) After termination of group coverage for any reason other than voluntary cancellation, an employee may, upon application and without medical examination, convert all or any part of his/her additional optional insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employee's Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of group coverage and right to convert, whichever is later.

(4) When the agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion to an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after an employee becomes eligible to convert the additional optional insurance. The employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the additional optional insurance. The Office of Federal Employees' Group Life Insurance will determine if the employee is eligible to convert, and when the determination is affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her additional optional insurance under the provisions of paragraph (e)(4) of this section, the individual plan coverage is retroactive to the day following the 31-day extension of group coverage. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

PART 873—FAMILY OPTIONAL LIFE INSURANCE

4. In § 873.501, paragraphs (e) and (f) are revised to read as follows:

§ 873.501 Termination and conversion of insurance.

* * * * *

(e)(1) After termination of group coverage for any reason other than voluntary concellation, an employee may, upon application and without medical examination, convert all or any part of his/her family optional insurance to an individual policy. The rates of the individual policy are the rates applicable to the employee's attained age and class of risk. An employee is eligible to convert the policy only if he/she does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The employing agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event causing the loss of coverage.

(3) The employee's request for conversion information must be submitted to the Office of Federal Employee's Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the employee received notice of loss of group coverage and right to convert, whichever is later.

(4) When an agency fails to provide the notification described in paragraph (e)(2) of this section, or the employee fails for other reasons beyond his/her control to request conversion as described in paragraph (e)(3) of this section, he/she may request conversion to an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after an employee becomes eligible to convert the family optional insurance. The employee must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the family optional insurance. The Office of Federal Employees' Group Life Insurance will determine if the employee is eligible to convert, and when the determination is affirmative, the employee may convert within 31 days of that determination.

(5) When an employee converts his/her family optional insurance coverage under the provisions of paragraph (e)(4) of this section, the individual plan coverage is retroactive to the day following the 31-day extension of group coverage. The employee must pay the premiums due for the retroactive period.

(6) An employee who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (e)(4) of this section.

(f)(1) Following the death of an insured employee, annuitant or compensationer, or following the termination of group coverage of an employee for any reason other than voluntary cancellation, family members as defined by 5 U.S.C. 8701(d) may, upon application and without medical examination, convert their family optional insurance coverage to an individual policy. The rates of the individual policy are the rates applicable to the family member's attained age and class of risk. A family member is eligible to convert the policy only if the employee does not return, within 3 calendar days from the terminating event, to a position allowing coverage under the group plan.

(2) The paying agency must notify the employee of the loss of group coverage and the right to convert to an individual policy either prior to or immediately following the event (except in the event of death) causing the loss of coverage. A family member can not convert to an individual policy if the employee or former employee exercises his/her right of conversion under paragraph (e)(1) of this section. In the event of death, the paying agency will furnish the decedent's family members with a notice of loss of group coverage and the right to convert to an individual policy.

(3) The family member's request for conversion information must be submitted to the Office of Federal Employees' Group Life Insurance and postmarked within 31 days following the date of the terminating event or within 31 days of the date the family member received notice of the loss of group coverage and right to convert, whichever is later.

(4) When the paying agency fails to provide the notification described in paragraph (f)(2) of this section, or the family member fails for other reasons beyond his/her control to request conversion as described in paragraph (f)(3) of this section, he/she may request conversion to an individual policy by writing to the Office of Federal Employees' Group Life Insurance. Such a request must be filed within six months after a family member becomes eligible to convert the family optional life insurance. The family member must show that he/she was not notified of the loss of coverage and the right to convert, and was not otherwise aware of it, or that he/she was unable, for cause beyond his/her control, to convert the family optional insurance coverage. The Office of Federal Employees' Group Life Insurance will determine if the family member is eligible to convert, and when the determination is affirmative, the family member may convert within 31 days of that determination.

(5) When a family member converts his/her coverage under the provisions of paragraph (f)(4) of this section, the individual plan coverage is retroactive to the day following the 31-day extension of group coverage. The family member must pay the premiums due for the retroactive period.

(6) A family member who fails to exercise his/her right to convert to an individual policy within 31 days after receiving notice of the right to convert or within 31 days of the terminating event, whichever is later, is deemed as having declined coverage unless OFEGLI determines the failure was for cause beyond his/her control as described in paragraph (f)(4) of this section.

* * * * *

Authority: 5 U.S.C. 8716.

[FR Doc. 84-22910 Filed 8-29-84; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to revise temporarily a pooling provision of the Nebraska-Western Iowa Federal milk order. The proposed action would increase from 40 to 50 percent for the months of September through November 1984 the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status. The action was requested by a cooperative association representing producers supplying the market and by a large pool distributing plant operator in order to assure an adequate supply of milk.

DATE: Comments are due not later than September 6, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUMMARY: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that fluid milk processors will have adequate supplies of milk delivered to their plants to meet the fluid milk needs of their customers and ensure that dairy farmers receive the benefits of having their milk disposed of in the higher-valued uses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.7(b)(3) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of September through November 1984.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the Federal Register. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include September 1984 in the temporary revision period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are the supply plant shipping requirements as set forth in § 1065.7(b) that are applicable during the months of September through November 1984. The specific revision would increase the supply plant shipping percentage requirements 10 percentage points from the present 40 percent to 50 percent during each respective month.

Pursuant to the provisions of § 1065.7(b)(3), the supply plant shipping percentages as set forth in § 1065.7(b) may be increased or decreased by up to 20 percentage points during any month to encourage additional milk shipments needed to assure an adequate supply of milk to fluid milk handlers, or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby received the benefits that accrue from such pricing.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association which represents a large proportion of the producers supplying the Nebraska-Western Iowa market, and Wells Dairy, Inc., a handler who operates distributing plants pooled under the order, requested that the percentage of supply plants receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to be pooled be increased temporarily from 40 to 50 percent. The proponents of the temporary revision cite declining milk production and increasing Class I disposition in the Nebraska-Western Iowa marketing area.

The cooperative states that producer milk pooled on the market has declined from year-earlier levels for each month of 1984, with a range by month of 5.1 percent in January 1984 to 15.4 percent in June 1984 below the same month in the previous year. In total for the first seven months of 1984, producer milk pooled under the Nebraska-Western Iowa order has decreased by nearly 11 percent. According to the cooperative, milk production has declined because of the lower prices to producers, higher milk production costs, and the Milk Diversion Program. Mid-Am cites a Cornell University extension report that 30.6 percent of the commercial dairy farmers in Iowa, and 42.3 percent in Nebraska, are participating in the Milk Diversion Program, under which dairy farmers are paid for reducing milk production. At the same time, the cooperative points out, the price support level for dairy products has been reduced 50 cents per hundredweight, resulting in uniform prices paid to producers for January–July 1984 that averaged 27 cents lower than uniform prices for the same period of 1983. Mid-Am states that costs of producing milk have risen over the same period, producing a cost-price squeeze in net dairy farmer income, which is likely to continue and even accelerate the downward trend in milk production.

Data referred to by the cooperative show that Class I disposition in the Nebraska-Western Iowa market has shown increases ranging from 5.3 percent in July to 13.6 percent in March over year-earlier levels for each month of 1984. The cooperative states that the National Advertising and Promotion Program and the improved economy likely will result in a continuing improvement in Class I sales for the remaining months of 1984. Both Mid-Am and Wells Dairy state that increased supply plant shipping requirements will assure a continued adequate milk supply for distributing plants in the Nebraska-Western Iowa market. The cooperative points out that such a temporary increase will equalize the performance standards for supply plants qualifying for pooling pursuant to § 1065.7(b) with those pooled pursuant to § 1065.7(c).

Therefore, it may be appropriate to increase the aforementioned shipping percentage for the months of September through November 1984 to assure an adquate supply of milk for fluid use.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on August 27, 1984.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 84-23096 Filed 8-29-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket RM79-76-222 (Pennsylvania-5)]

High-Cost Gas Produced From Tight Formations; Request for Withdrawal of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for withdrawal of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Request for Withdrawal of Proposed Rulemaking contains the request of the Commonwealth of Pennsylvania that its recommendation that the Bald Eagle (Oswego) Formation be designated as a tight formation under § 271.703 be withdrawn.

DATES: Comments on the proposed withdrawal are due on September 10, 1984.

No public hearing is scheduled in this docket as yet. Written requests for a

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public hearing are due on September 10, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Elisabeth Pendley, (202) 357–8511,
or
C.W. Gray, Jr., (202) 357–8731.

SUPPLEMENTARY INFORMATION: On August 13, 1984, the Commonwealth of Pennsylvania Department of Environmental Resouces, Bureau of Topographic and Geologic Survey (Pennsylvania) submitted a request to withdraw the Bald Eagle (Oswego) tight formation [1] recommendation which it filed with the Federal Energy Regulatory Commission (Commission) on December 1, 1983, under § 271.703 of the Commission's regulations.[2] The Notice of Proposed Rulemaking was issued by the Director of the Office of Pipeline and Producer Regulation on February 17, 1984.[3]

In its request, Pennsylvania stated that additional information has become available to them since their original December 1, 1983 tight formation proposal was filed. Additionally, inconsistencies and lack of support data enumerated in the staff deficiency letter of July 2, 1984 made it apparent that the Bald Eagle (Oswego) Formation recommendation should be withdrawn. Further, Pennsylvania stated that it will resubmit the Bald Eagle (Oswego) Formation recommendation if appropriate and adequate data become available in the future.

Interested persons may comment on the proposed withdrawal of this rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 10, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–222 (Pennsylvania–5) and should give reasons, including supporting data, for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conforming copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing and should file the request with the Secretary of the Commission no later than September 10, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will *not* be amended to include the Bald Eagle Formation in Pennsylvania as a designated tight formation in the event the Commission adopts Pennsylvania's request to withdraw its tight formation recommendation.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84–23020 Filed 8–29–84; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 204

Claims Against the Maritime Administration Under the Federal Tort Claims Act

AGENCY: Maritime Administration, Transportation.

ACTION: Proposed rule.

SUMMARY: This rule establishes a system for processing Federal tort claims involving the Maritime Administration, and provides information to the public on filing such claims, pursuant to authority delegated by the Secretary of Transportation under 49 CFR 1.45(a).

DATE: Comments must be received on or before October 29, 1984.

ADDRESS: Send comments to: Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Any commentator who wishes acknowledgement of the receipt of comments should include a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Juan J. Hernandez, Office of the Chief Counsel, Maritime Administration, Room 7221, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone (202) 426–5712.

SUPPLEMENTARY INFORMATION: The heads of the several operating administrations of the Department of Transportation are delegated, under 49 CFR 1.45(a) (2) and (3), the responsibility of implementing the Federal Tort Claims Act (28 U.S.C. 2671–2680). On August 6, 1981, the Maritime Administration became an operating administration of the Department of Transportation (Pub. L. 97–31). This regulation is necessary to provide information on the tort claims processing procedure so that potential claimants may exercise rights conferred explicitly by statute.

Executive Order 12291, Statutory Requirements and DOT Procedure

Pursuant to E.O. 12291 and the Department of Transportation's Regulatory Policies and Procedure, dated May 22, 1980 (DOT Order 2100.5), respectively, the Maritime Administration has determined that this is not a major rule or a significant rule. This is merely a procedural rule that supplements controlling regulations of another agency. It would generate very little economic impact since it merely advises the public on agency procedure with respect to the exercise of legal rights conferred by statute. Accordingly, the economic impact has been found to be so minimal that futher evaluation is unnecessary. Therefore, the Maritime Administrator certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. This proposed rule contains an information collection requirement in § 204.8. It has been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on this information collection requirement should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, ATTN: Desk Officer, Maritime Administration. Persons submitting comments to OMB are also requested to submit a copy of their comments to MARAD as indicated under "**ADDRESSES.**"

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[1] The Bald Eagle (Oswego) Formation included Chapman, Grugan, and Gallaher Townships, Clinton County, and McHenry Township, Lycoming County.

[2] 18 CFR 271.703 (1983).

[3] 49 FR 6920 (February 24, 1984). One favorable comment was received and no hearing was requested.

List of Subjects in 46 CFR Part 204

Claims, Tort claims, Administrative practice and procedure.

Accordingly, a new Part 204 is added to Title 46, Code of Federal Regulations, to read as follows:

PART 204—CLAIMS AGAINST THE MARITIME ADMINISTRATION UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

204.1 Scope and procedure for filing claims.
204.2 Claims payable.
204.3 Claims not payable.
204.4 Time limitations on claims.
204.5 Notification to claimant of action on claim.
204.6 Payment of claims.
204.7 Delegation of authority.
204.8 Where to file claims.
204.9 Indemnity or contribution.
204.10 Attorney's fees.

Authority: 28 U.S.C. 2672; 28 CFR 14.11; 49 CFR 1.45(a) (2) and (3).

§ 204.1 Scope and procedure for filing claims.

This part prescribes the requirements and procedure for administrative settlement of claims against the United States, involving the Maritime Administration, under the Federal Tort Claims Act, based on death, personal injury, or damage to or loss of property. The controlling regulations are promulgated by the Department of Justice at 28 CFR Part 14—Administrative Claims Under Federal Tort Claims Act. These regulations supplement those of the Department of Justice and provide specific guidance regarding claims processing in the Maritime Administration.

§ 204.2 Claims payable.

Claims for death, personal injury, or damage to or loss of real or personal property are payable when the death, injury or damage is caused by a negligent or wrongful act or omission of an employee of the Maritime Administration, while acting within the scope of employment and under circumstances in which the United States, if a private person, would be liable to the claimant under the law of the place where the act or omission occurred.

§ 204.3 Claims not payable.

A claim is not payable under the regulations in this Part 204 if such tort claim is excluded from the scope of the Federal Tort Claims Act, as amended, pursuant to 28 U.S.C. 2680.

§ 204.4 Time limitations on claims.

(a) A claim can be settled only if presented in writing within two years after it accrues.

(b) The two year statute of limitations is not tolled until the Maritime Administration receives from a claimant, or the claimant's duly authorized agent or legal representative, an executed Standard Form 95, "Claims for Damage, Injury, or Death," or written notification of an incident, together with a claim for money damages in a sum certain, for death, personal injury, or damage to or loss of real of personal property. When a claim is received in any office, mail unit, or other Maritime Administration activity which does not have settlement authority over the claim, such office, unit or activity shall transmit it to the official vested with such authority without dealy (see § 204.13, this part).

(c) A claimant may regard the failure of the Maritime Administration to make a final disposition of a claim within six months after the date of receipt of the claim by the Maritime Administration as a final denial for the purpose of filing suit.

§ 204.5 Notification to claimant of action on claim.

(a) If a claim is approved (either for the amount claimed or less than such full amount), the claimant, prior to the disbursement of an award, shall sign a domument releasing the United States, its agents and employees from all further claims relating to the incident giving rise to the approved claim.

(b) If the claim is finally denied, the official vested with such authority shall inform the claimant by certified or registered mail of the final denial of the claim. Notification of final denial shall include a statement that a claimant who does not accept or is dissatisfied with the action may institute suit against the United States not later than six months after the date of mailing of the notice of final denial.

§ 204.6 Payment of claims.

(a) Once the amount to be paid has been agreed upon, the agency shall attempt to forward a check for such amount to the claimant within thirty days.

(b) If a claimant is represented by an attorney, both the claimant and the claimant's attorney shall be designated as payees on any check delivered to the claimant's attorney.

§ 204.7 Delegation of authority.

(a) Subject to written approval of the Attorney General of the United States of any payment in excess of $25,000, the Chief Counsel of the Maritime Administration is authorized to deny or Settle and authorize payment of tort claims in any amount.

(b) The Associate Administrator for Policy and Administration is authorized to deny or settle and authorize payment of all tort claims in an amount not exceeding $10,000, except that the Superintendent, United States Merchant Marine Academy, may deny or settle and authorize payment of tort claims originating from occurrences at the Academy in amounts not exceeding $5,000.

§ 204.8 Where to file claims.

Claims shall be filed with the appropriate official as follows:

(a) Chief Counsel (MAR-220), Maritime Administration, Department of Transportation, Room 7232, Nassif Building, 7th and D Streets, SW., Washington, D.C. 20590

(b) Associate Administrator for Policy and Administration (MAR-300), Maritime Administration, Department of Transportation, Room 7217, Nassif Building, 7th and D Streets, SW., Washington, D.C. 20590

(c) Superintendent (MMA-5100), United States Merchant Marine Academy, Maritime Administration, Kings Point, NY 11024

§ 204.9 Indemnity or contribution.

(a) *Sought by the United States.* If a claim arises under circumstances in which the United States is entitled to indemnity or contribution under a contract or the applicable law governing joint tort-feasors, the Chief Counsel of the Maritime Administration shall notify the third party of the claim and request the third party to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, a claim shall be settled only after consultation with the Department of Justice as provided in 28 CFR 14.7.

(b) *Sought from the United States.* Claims for indemnity or contribution from the United States shall be settled under this part if the incident giving rise to liability and the claim is otherwise cognizable under this part.

§ 204.10 Attorney's fees.

Attorney's fees for any claim settled under this part are limited to not more than twenty percent of the amount paid in settlement.

By Order of the Maritime Administrator.

Georgia P. Stamas,
Secretary, Maritime Administration.
August 21, 1984.

[FR Doc. 84-22980 Filed 8-29-84; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 84-801; RM-4246; FCC 84-401]

Amendment of the Exemptions in Part 15 of the Commission's Rules for Controlling the Interference Potential of Computers and Similar Electronic Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule change, if ultimately adopted, would exempt large equipment produced in quantities of 10 or less and equipment intended for exclusive use in scientific laboratories from radio interference limits for digital electronic equipment in Part 15, Subpart J of the FCC Rules. This action is needed to respond to a petition for rulemaking from Electronics Associates, Inc. The intended effect of this action is to relieve manufacturers of regulatory burdens where there is minimal risk that an equipment will cause interference to TV and radio communications.

DATES: Comments on this proposal are requested by October 5, 1984 and reply comments are requested by October 22, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Julius P. Knapp, Federal Communications Commission, Office of Science and Technology, 2025 M Street, NW., Washington, DC 20554, Phone: (202) 653-8247.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Computing device, Labeling, Reporting and recordkeeping requirements, Harmful interference, Communications equipment.

Proposed Rule Making

In the matter of amendment of the exemptions in Subpart J of Part 15 of the Commission Rules for controlling the interference potential of computers and similar electronic equipment, Gen Docket No. 84-801, RM-4246.

Adopted: August 13, 1984.

Released: August 21, 1984.

By the Commission: Commissioner Rivera absent.

1. The Commission has before it a petition from Electronics Associates Inc., hereinafter EAI, seeking relief from the regulations in Part 15, Subpart J, which govern the interference potential of digital electronic computing devices, for two models of its computers: EAI model 1000 and EAI model 2000. The petition, designated RM-4246, was put on public notice and comments were received from Perkin Elmer Corporation supporting the EAI petition and from the Association of Maximum Service Telecasters generally opposing the EAI petition.

2. The EAI model 1000 is manufactured in Australia by a wholly owned subsidiary of the petitioner. It is sold in the USA in quantities of less than 10 units per year primarily to educational institutions. The EAI model 2000 is primarily located in large industrial complexes where it is used to make engineering evaluations of the equipment being produced by simulating certain aspects of the product. This model was introduced in 1977 and is now nearing the end of its life cycle according to EAI, who estimates a total world-wide annual sale of about 10–20 units for the next few years. EAI reports that to date a total of 181 units have been sold worldwide, most going to U.S. Government installations and to foreign customers.[1] Only 46 units (25%) have been sold to nongovernment customers in the USA.

3. Both the models 1000 and 2000 are called hybrid computers, since they combine digital and analog processes. Both are subject to the Commission's Rules for computing devices in Part 15, Subpart J.[2] The computer rules were adopted in 1979 to control a rising incidence of interference from computers and similar electronic devices—both those used in the home and in business/industry. A final compliance date of October 1, 1983 was set which required that all computers manufactured thereafter comply with these rules. Five categories of equipment are specifically exempted from the technical requirements, which can be summarized as follows: Equipment used in transportation vehicles; electronic control or power systems utilized by a public utility or in an industrial plant; test equipment; appliances; and, professional type medical equipment. Although exempt equipment is not subject to technical standards, in the event that the equipment causes harmful interference the operator is responsible to correct the interference, pursuant to 47 CFR 15.803.[3]

4. To relieve the regulatory burden on its equipment, EAI petitioned for two additional exemptions to those already in § 15.801(c). The first is for computing devices sold in unit quantities of 300 or less per year. The second is for computing devices used in engineering and scientific development facilities. Its request is based on the firm's two models described above, viz., EAI model 1000 and EAI model 2000. It argues that the computers are large and in many cases require subsystems supplied to EAI by others before the computer can be tested. As a result, the firms says it is extremely costly and in some cases actually impossible to test its computers on an open field test site. Nor is it practical to test such a hybrid system at the customer's premises, since the testing would have to be done in a high noise environment.[4] It also argued that since the computing device rules apply only to a portion of its equipment, the firm would be required to implement major design changes for that portion sold to non-government entities—a procedure which EAI considers economically unacceptable. EAI, unfortunately, did not submit information or data regarding costs, expected delays, etc. to support its contention. Nor, did it state why the number 300 was chosen. EAI presents no data relevant to the question of interference. The petitioner merely states in general terms that its computers are well buffered from other spectrum users, implying that because its computers are so located, interference will not arise.

Comments on EAI Petition

5. Perkin-Elmer Corp. joins EAI in its argument that it is not feasible to make the detailed measurements required for verification of computers built in small quantities, and stresses that this is an even more serious question when dealing with custom built or one-of-a-kind computing equipment. Perkin-Elmer also raises the question of how to treat older systems which are reordered from time to time by its customers. Thus, Perkin-Elmer supports the EAI proposals, but leans more toward a less rigorous enforcement of the October 1,

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[1] Computers sold to the U.S. Government or any of its agencies and computers manufactured for export are exempt from the FCC marketing regulations by statute, 47 U.S.C. 302(c). See 47 CFR 2.807(d).

[2] Computing device is defined in § 15.4(m) of the Rules, which basically includes any electronic device, e.g. computer, that uses digital techniques. Computing devices have an electronic frequency generator, called a clock oscillator, to control the timing of events in the computer, that can and does radiate and cause harmful interference to radio communications, if not properly controlled.

[3] For a more complete explanation of the Computing Device Rules, see Bulletin OST-62, "Understanding FCC Rules for Computing Devices", which is available from the FCC Consumer Assistance Office.

[4] Testing at the customer's site is permitted under 47 CFR 2.806, promulgated by the Commission by *Report and Order* in General Docket 81-463, adopted March 11, 1982, 46 FR 43709, April 1, 1982.

1983 compliance date, urging the Commission to be lenient in granting waiver requests. The Association of Maximum Service Telecasters (MST) points out that EAI has not provided any information as to the total number of computing devices that would be exempt, their distribution, or their interference potential. MST contends that this lack of information makes it impossible to assess the public interest aspects of the proposed amendment. MST urges the Commission to defer action on the EAI petition until such information is made available and can be evaluated. No reply comments were received.[5]

Discussion

6. Before addressing the merits of the subject pleading, we would like first to emphasize that we have in fact designed the computing device rules to be of minimal burden to manufacturers, both large and small alike. Most computer equipment, including the EAI equipment, is subject only to verification of compliance. Verification merely requires that the manufacturer perform measurements to determine compliance with the technical standards, place a label on the product, insert information in the instruction manual, and retain a copy of the verification records in the company's file. No submittal to the Commission is required. Only personal computer equipment is subject to FCC certification, a procedure which requires the manufacturer to submit a written application for Commission review and approval. Details on the verification and certification procedures are set forth in Part 2, Subpart J of the Rules. Verification, or certification, as the case may be, is a prerequisite to legal marketing of the equipment pursuant to the marketing rules in Part 2, Subpart I.

7. In addition, as mentioned above, we have temporarily exempted certain categories of equipment from these rules. The circumstances surrounding each exemption is not the same in each case; but, in general, our decision to exempt an equipment was guided by evidence indicating that the risk of interference was minimal and that the cost of compliance with a specific emanation requirement would be high. In the instant situation, while we agree with MST that the petition has presented very little information as to the interference risk associated with the requested exemption, it has triggered a general concern about how the computing device rules impact manufacturers of large specialty one-of-a-kind equipment. The Commission is particularly concerned about the impact the rules have on a small manufacturer of this equipment. For example, testing is a major concern for a small manufacturer, since, in most cases it must contract someone else to do the testing for it at the customer's site. On the other hand, before an additional exemption can be considered, the interference potential of such systems must be considered.

8. The interference potential of such equipment may be discussed from several viewpoints. First, if we assume that the exemption is properly worded so that it includes only large one-of-a-kind equipment or large specialized scientific equipment, the number of equipment could be assumed to be relatively small. Second, the location of this type of equipment is expected to be in industrial areas, universities or research laboratories, where the equipment is likely to be remote from communication and broadcast receivers. Two questions arise. How far will such equipment be from receivers? How many one-of-a-kind equipment may be involved? Unfortunately, we do not know the answers to these questions without data from industry. The Commission can only estimate that the actual number and location of the equipment will be low and sufficiently remote. Assuming this to be the case, it may be more cost-effective and beneficial to the public to risk some interference from such equipment and to correct interference on an individual basis. Considering then the four above mentioned factors (location, number of units, risk, and the potential benefit), it may be advantageous to consider a proposal to add another exemption to § 15.801(c) for large specialized equipment.[8]

9. Considering the above discussion, we are proposing herein to add an exemption for large, essentially one-of-a-kind equipment or large multi-system equipment built in quantities of ten or less. We reject the suggestions made by EAI and Perkin Elmer to exempt equipment built in quantities of less than 300 and 50, respectively, since these numbers seem to be unreasonably high. To reduce the risk of interference, the exemption must be limited to a small number of essentially large one-of-a-kind type of equipment. Also, by keeping the number small, the potential for abuse of the exemption will be reduced. However, the number ten is not a magic number either and we seek comments to the question of: "What is an appropriate number of large special purpose equipment to exempt?" We also solicit comments to the question of "How can we best define the equipment to be exempted?" At the present time, it is not clear to us how this exemption can be written, so that the number of services is limited. We are concerned that unless an adequate definition can be written, abuse of the exemption or a flood of requests for interpretations may be the result. Neither situation would be acceptable. We solicit comments on how best to define the equipment under the exemption.[7]

10. An alternative to the exemption, which was mentioned by Perkin-Elmer, is to develop a streamlined procedure for granting waivers. Normally, a waiver takes three months to be acted upon. Perkin-Elmer is requesting that the procedure be streamlined so that waivers could routinely be acted upon by the staff. While such a procedure has some appeal, the same criteria for limiting such waiver requests could also be applied to an exemption. An appropriately defined exemption, if it can be written, would avoid burdening the Commission with handling a multitide of individual requests. For these reasons, we are not inclined to favorably consider a streamlined waiver procedure at this time. Comments on this idea are solicited however.

11. We are also proposing to clarify the exemption in § 15.801(c)(3) for industrial, commercial, and medical test equipment. From the letters we have received inquiring about the computing device rules, there appears to be some

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[5] On April 26, 1984, Cray, Inc. filed a separate petition for rulemaking to exempt specialized scientific computing devices. The petition, RM-4797, was put on public notice on May 14, 1984. The exemption requested by Cray is virtually identical to that requested by EAI. A similar request was also filed by Denelcor, Inc. on May 3, 1984 also seeking to exempt specialized scientific computing devices. The latter petition, RM-4816, was placed on public notice on June 29, 1984. Upon receipt of comments and replies on both of these new petitions, we will decide what action is appropriate. We have elected to move forward based on the EAI petition rather than delay this matter any further. However, it appears that the concerns voiced by Cray and Denelcor are addressed herein.

[8] This proposal is not without risks. A certain number of one-of-a-kind equipment may in fact be located near a sensitive receiver system. Without proper safeguards, harmful interference may occur. Locating interference sources is also a difficult and burdensome task. However, the risks here seem minimal and without a detailed interference study, which is difficult if not impossible to obtain, we are inclined to put forth this proposal and solicit comments.

[7] For the purposes of this proposed exemption, computer systems which differ only insofar as identification, application, (e.g. analyzing one type of data vs. another), or the number and/or types of peripherals and other accessories, will be counted as the same system. Systems unexpectedly produced beyond 10 are not exempt and are subject to the pertinent requirements.

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confusion about the terms in front of test equipment [8]. The exemption was originally intended to cover equipment used to measure electrical parameters in the industrial, commercial and medical environment, such as oscilloscopes, counters, etc. At the time the exemption was proposed in 1976, it was believed that such equipment would be utilized by technicians who would be capable of correcting interference problems should they occur. It is now apparent that unskilled individuals are using test equipment in all environments, including in the home. We, therefore, solicit comments about whether the Commission should delete the exemption or merely limit the exemption to test equipment intended for use in scientific and university laboratories, as requested by Perkin-Elmer and EAI. We have proposed the latter, but invite comments on these questions.

12. The text of the proposed rules can be found in the appendix to this Notice. It is emphasized that we also seek answers to the questions raised herein.

13. Perkin-Elmer, in its comments, also requests that there should be some provisions for allowing older non-compliant systems that may be reordered by a customer. We are not inclined to go along with this request, since the Commission has allowed industry four years to bring such equipment into compliance and to permit the continuation of older equipment would extend the previous unsatisfactory situation. We do, however, invite comments on this suggestion by Perkin-Elmer.

Procedural Matters

14. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the Commission issues the following initial regulatory flexibility analysis:

I. Reason for action

This proceeding is in response to a petition for rulemaking requesting that certain equipment be made exempt from the FCC radio noise requirements for computing devices.

II. The objective

The Commission is proposing to exempt large equipment produced, imported, or marketed in quantities of 10 or less and equipment used in scientific laboratories from complying with the specific emanation limits and labeling requirements being imposed on most other computing devices. The objective is to reduce the burden of these rules on manufacturers whether there appears to be little risk that the equipment will cause substantial interference.

III. Legal basis

The action proposed is in furtherance of sections 4(i), 302(a), 303(g), and 303(r) of the Communications Act of 1934, as amended, which permit the Commission to make reasonable regulations governing the interference potential of radio frequency equipment and to promote the larger and more effective use of radio in the public interest.

IV. Entities affected; nature of economic impact; significant alternatives

The rules proposed in this Notice will relieve a regulatory burden for certain types of computer equipment, as noted in paragraph II above. This action is expected to have an economically beneficial effect on computer manufacturers, particularly small manufacturers. However, we currently do not know exactly how many small businesses will be included among these firms. No significant alternatives are apparent at this time.

V. Recording, record-keeping and other compliance requirements

This proposal seeks to remove record-keeping and other compliance requirements that presently apply to the subject computer equipment. The exempt equipment would be subject only to a general proscription against causing harmful interference.

15. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time that a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is issued by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits an oral *ex parte* presentation, addressing matters not fully covered in any previously filed written comments for the proceeding, must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state the docket number of the proceeding to which it relates. See § 1.1231 of the Commission's rules, 47 CFR 1.1231.

16. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis of the expected impact of these proposed policies and rules on small entities. The initial analysis is set forth in paragraph 11. Written public comments are requested on the initial analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.*).

17. Authority for issuance of this *Notice* is contained in sections 4(i), 302, 303(g) and 303(r) of the Communications Act of 1984, as amended. In accordance with the applicable procedures set forth in § 1.415 of the regulations, interested persons may file comments on or before October 5, 1984, and reply comments on or before October 22, 1984. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. A summary of these Commission procedures governing *ex parte* presentations in informal rule making is available from the Commission's Consumer Assistance Office, Washington, D.C. 20554.

18. In accordance with the provisions of § 1.419 of the regulations, an original and five copies of all comments, reply comments, briefs, and other documents shall be furnished to the Commission. To obtain the widest possible response in this proceeding, informal comments (without extra copies) will be accepted, but these comments should make specific reference to this proceeding. Responses will be available for public inspection during regular working hours in the Commission's Public Reference Room located at its headquarters at 1919 M Street, NW., Washington, D.C. 20554. For further information concerning this

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[8] To date the Commission has received approximately 1000 letters inquiring about various aspects of the computing device rules 47 CFR Part 15, Subpart J.

proceeding, contact Mr. Julius P. Knapp (202) 653–8247.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission

William J. Tricarico,
Secretary.

Appendix

Section 15.801 of the FCC Rules, 47 CFR 15.801, is proposed to be amended by revising the present text of paragraph (c)(3) and adding a new paragraph (c)(6) to read as follows:

§ 15.801 Scope of this Subpart

* * * * *

(c) Pending the resolution of the proceeding in FCC Docket No. 20780 and related proceedings dealing with restricted radiation and computing devices, the following computing devices remain subject to Section 15.803 but are exempt from complying with other requirements of this subpart.

* * * * *

(3) Test equipment and equipment intended for exclusive use in scientific laboratories, including university laboratories.

* * * * *

(6) Large multi-system equipment produced imported, or marketed in quantities of 10 or less per year. For purposes of this exemption, computer systems which differ only insofar as identification, application, or the number and/or types of peripherals and other accessories, will be counted as the same system. Systems unexpectedly produced beyond 10 are not exempt and are subject to the pertinent requirements.

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[FR Doc. 84–23030 Filed 8–29–84; 8:45 am]

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47 CFR Part 73

[Docket No. 16041; RM–571; Docket No. 18927; RM–1525; FCC 84–402]

Amendment of the Commission's Rules With Respect to Television Network Programs Not Made Available to Certain Television Stations; and Amendment of the Commission's Rules to Limit Television Stations' Access to the Programs of More Than One National Network

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; termination of proceedings.

SUMMARY: This action terminates two pending rule making proceedings (Docket Nos. 16041 and 18927) which generally concerned the availability of network programs to independent stations and "small" television markets. Given the absence of any indication that current network practices are inadequate with respect to our initial concerns and the staleness of the records in these proceedings, the Commission found that termination of the subject proceedings without further action was warranted.

FOR FURTHER INFORMATION CONTACT: Thomas S. Walsh, Mass Media Bureau, (202) 632–7792.

Order (Proceedings Terminated)

In the matter of [1] amendment of Part 73 of the Commission's Rules with respect to television network programs not made available to certain television stations; Docket No. 16041, RM–571 and amendment of § 73.658 of the Commission's Rules to limit television stations' access to the programs of more than one national network; Docket No. 18927, RM–1525.

Adopted: August 17, 1984.

Released: August 20, 1984.

By the Commission: Commissioner Rivera absent.

1. The Commission has before it two proceedings, both of which generally concern the availability of network television programs to independent stations. This *Order* concludes these proceedings.

2. *Docket No. 16041.* This proceeding was begun by a *Notice of Proposed Rule Making and Notice of Inquiry* released on June 9, 1965.[2] The proceeding was divided into two parts: (1) Proposed rules designed to make programs not cleared by regular affiliates available to other stations in the same market; and (2) a proposed rule, and a *Notice of Inquiry,* concerning the provision of network programs to "small markets."

3. Comments were filed late in 1965 and the reply comment period closed on January 3, 1966. On March 25, 1970, a *Notice and Order Setting Oral Argument* [3] was issued and oral argument was held on April 30, 1970. A *Report and Order* in response to the various comments and pleadings was adopted on December 19, 1970.[4]

4. In that *Report and Order,* the Commission stated its continued concern with network performance in making programming widely and equitably available. Regarding the availability of uncleared network programming, the Commission expressed a particular interest in: (1) The compensation received by independent stations carrying network programs; (2) the adequacy of notice that such programs will be available; (3) the availability of "special" programs uncleared by regular affiliates; and (4) programming "recapture" (i.e., withdrawal of network programs) policies.[5] With respect to the provision of network programming to small markets, the Commission expressed a concern that the networks improve the availability of such programming.[6]

5. In lieu of adopting rules in response to these concerns, the Commission elected to seek specific information regarding voluntary network practices in these areas. Accordingly, the networks were directed to report to the Commission by June 30, 1971, on their policies and practices related to the issues addresseed in the proceeding. The record was kept open for receipt of this information, which was timely filed by each network. No subsequent comments or pleadings have been received in this proceeding which indicate to the Commission that network practices, as they relate to our initial concerns, are inadequate. Given these facts and the staleness of the record now before us, we believe it is appropriate to terminate this proceeding without further action.

6. *Docket No. 18927.* This proceeding was begun by a *Notice of Inquiry and Notice of Proposed Rule Making* adopted on July 22, 1979.[7] While this rule making also addressed the availability of network programming, it did so in a much narrower context than the proceeding in Docket No. 16041. Specifically, it was directed to the need for rules restricting affiliated stations from carrying the programs of more than one national network in certain three-station markets. We were particularly concerned with markets comprised of two VHF affiliates and a UHF independent station and the impact that multiple network programming by the affiliates would have on the likelihood of affiliation opportunities for the UHF facility. The Commission also inquired whether regulatory intervention was advisable with respect to other market

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[1] Although these proceedings have not been officially consolidated by the Commission, they address related concerns and, therefore, are being considered together in this *Order.*

[2] FCC 65–484, 30 7066 (June 12, 1965).

[3] FCC 70–308, 35 FR 5416 (April 1, 1970).

[4] 28 F.C.C. 2d 772.

[5] *Id.* at 784.

[6] *Id.* at 794.

[7] FCC 70–801, 35 FR 12133 (July 29, 1970).

types and whether, generally, we should act to further the availability of network programming in small markets.

7. Comments and informal filings were received and a *Report and Order* was adopted on March 24, 1971.[8] In that *Report and Order*, specific rules addressing the principal issues raised in this proceeding were adopted and remain in force today.[9] Various petitions for reconsideration and related pleadings were timely filed in connection with this *Report and Order* and were addressed in a *Memorandum Opinion and Order* adopted July 28, 1971.[10] No comments or other submissions have been filed in this proceeding since 1971. As with Docket No. 16041, the record in this proceeding is now stale and we have no indication that additional Commission action is necessary or appropriate with respect to the matters initially considered in our *Notice*. We conclude, therefore, that the proceeding in Docket No. 18927 should also be terminated.

8. Accordingly, it is ordered, that the above-captioned proceedings are terminated.[11]

9. Authority for the actions taken herein is contained in sections 4 (i) and (j) and 303 of the Communications Act of 1934, as amended.

10. For further information concerning this proceeding, contact Thomas S. Walsh, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-23029 Filed 8-29-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 15]

Child Restraint Systems for Use in Motor Vehicles and Aircraft

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems*, to specify more objective criteria for the testing procedures and determining compliance with the inversion requirement specified in this standard. The inversion test has been added to the standard in a final rule published in today's edition of the **Federal Register**, and is an optional requirement with which compliance must be certified if a child restraint manufacturer wishes to certify its restraints for use in both motor vehicles and aircraft. The more objective criteria proposed in this notice for the inversion requirement are the procedures actually used by this agency and the Federal Aviation Administration (FAA) in a recently completed joint testing program, in which each model of child restraint currently manufactured was tested for compliance with the inversion requirements. All of these models passed this requirement.

DATES: Comments must be submitted not later than October 15, 1984. The proposed effective date for these amendments is 180 days after the publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Docket hours are 8:00 a.m. to 4:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: In today's edition of the **Federal Register**, NHTSA has published a final rule amending the requirements of Standard No. 213, *Child Restraint Systems* (49 CFR 571.213). That final rule allows the manufacturers of child restraint systems to certify their products for use in motor vehicles, as has always been required under the standard, or to certify the systems for use in both motor vehicles and aircraft. This latter option is now available as a result of an agreement between NHTSA and the FAA to simplify and expedite the process for certifying child restraints for use in both motor vehicles and aircraft.

To carry out the intent of this agreement, a notice of proposed rulemaking (NPRM) on this subject was published at 48 FR 36849, August 15, 1983. The NPRM proposed combining the existing requirements for certifying child restraints for use in motor vehicles (Standard No. 213) with the existing requirements for certifying child restraints for use in aircraft (FAA's Technical Standard Order C100) and adding one additional test to certify child restraints for use in aircraft. The FAA agreed that it would rescind its Technical Standard Order applicable to child restraints for use in aircraft when a final rule was effective specifying requirements for certifying child restraints for use in aircraft under Standard No. 213.

After publication of this NPRM, NHTSA and FAA conducted a joint testing program to encourage child restraint manufacturers to certify their restraints for use in both motor vehicles and planes. The program tested every currently manufactured model of child restraint for compliance with the requirements proposed in the NPRM for certifying child restraints for use in aircraft and every model passed.

As a result of this testing program and the comments received in response to the NPRM, NHTSA decided not to adopt two of the three performance tests formerly specified in the FAA's Technical Standard Order and the one additional test proposed to be added for child restraints to be certified for use in aircraft. Those requirements were judged to be either redundant of existing requirements in Standard No. 213's tests for restraints to be certified for use in motor vehicles or unnecessary to ensure adequate safety protection for children riding in aircraft. For a more in-depth discussion of these issues, readers are referred to the preamble of the final rule.

The inversion test was the one additional performance test which NHTSA deemed necessary to determine if a child restraint would offer adequate protection for its occupant while riding in aircraft. The language specifying the procedures to be followed in conducting the inversion test and in determining that a particular child restraint had passed the test was drawn almost verbatim from paragraph (a)(2)(ii) of FAA's Technical Standard Order C100. For the testing, the rule specified that the combination of a representative aircraft passenger seat, child restraint system and an appropriate test dummy must be rotated from a normal upright position to an inverted position, and remain inverted for at least 3 seconds. The combination is required to be rotated in both the forward direction and a sideward direction. Satisfactory performance is achieved if "neither failure nor deformation that could seriously injure or prevent subsequent extrication of a child occupant" is shown for the child restraint system being tested.

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[8] 28 F.C.C. 2d 169.

[9] *See* 47 CFR 73.658(1).

[10] 31 F.C.C. 2d 87.

[11] In the event interested parties believe that further Commission action is warranted with respect to the matters considered in the captioned proceedings, they may file appropriate petitions for rule making.

The commenters who addressed the issues raised by the proposed inversion test generally agreed that such a test was appropriate. They said that the test would not be duplicative of the tests prescribed in Standard No. 213 for child restraints for use in motor vehicles and that the test would measure the child restraint's ability to protect occupants against a hazard which is presented while traveling in aircraft.

However, the commenters questioned the particular inversion test set forth in the NPRM. Most commenters addressing this proposed test stated that it was crucial to specify the rate at which the child restraint is to be rotated to an inverted position. One commenter went so far as to opine that, absent a specified rate of rotation, almost any existing child restraint could be made to pass this test simply because of frictional resistance and the stiffness of the dummies. Another commenter presented a detailed list of possible ambiguities in the test conditions specified in the NPRM for this inversion test.

These commenters also addressed the criteria used to determine if a child restraint has performed satisfactorily during the inversion test. Some child restraint manufacturers asked precisely how anyone could determine if a restraint has "failed or deformed in a manner that could seriously injure or prevent subsequent extrication of a child occupant." Another commenter opined that these criteria are "so vague and subjective as to be of no substantive value whatsoever." A different commenter stated that the proposed criteria were not objective, and therefore NHTSA lacked authority to adopt such criteria in a Federal motor vehicle safety standard. In reaching this conclusion, this commenter noted that section 102(2) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391(2)) requires motor vehicle safety standards to provide "objective criteria."

After reviewing both the proposed criteria drawn from the FAA's Technical Standard Order and the comments, NHTSA concluded that more objective criteria should be specified for the new inversion test in Standard No. 213. However, the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) precluded the agency from adopting more objective criteria for the inversion test in the final rule published today. This is because 5 U.S.C. 553 requires that interested persons receive notice of proposed rulemaking, and that such notice shall include either the terms or substance of the proposed rule or a description of the subjects and issues involved. For example, NHTSA agrees that the rate of rotation of this representative aircraft seat is a crucial aspect of the inversion test. However, no particular rate of rotation was specified in the NPRM. Thus, the public was not put on notice that NHTSA was considering requiring a specific rotation rate of "x" degrees per second, and not "y" or "z" degrees per second. If the final rule were to adopt a rotation rate of "x" degrees per second, the public would have never received notice and an opportunity to comment on the merits of the "x" degree per second rotation rate. Accordingly, the final rule published today adding the optional inversion test for child restraint systems does not include a specific rotation rate. Instead, the rule adopts the language proposed for that test in the NPRM.

However, as noted above, NHTSA agrees with the commenters that more objective criteria should be specified for the inversion test. This notice proposes more objective criteria and gives the public an opportunity to comment on them.

One commenter suggested that NHTSA adopt the requirements of European Regulation ECE 44 (Restraining Devices for Child Occupants of Power-Driven Vehicles) relating to overturning, for the inversion test. The commenter noted that the adoption of these requirements might permit the international use of child restraint systems. Since NHTSA is interested in promoting the international harmonization of requirements, this comment was carefully considered. It was not ultimately selected for inclusion in this notice, however. European Regulation ECE 44 specifies a rate of rotation of 2 to 5 degrees per second. NHTSA has tentatively concluded that this rotation is too slow to be representative of the sudden pitches which can occur when aircraft encounter air turbulence.

This notice proposes to establish the criteria used in the joint testing program for the inversion test as the criteria to be followed for the inversion test in Standard No. 213. Before starting the joint testing program for evaluating each model of child restraint currently manufactured, NHTSA and FAA agreed on more objective criteria to be used for the inversion test. Both agencies believed the criteria used in the joint testing program were consistent with the language of the NPRM. As noted above, each model of child restraint currently certified as complying with Standard No 213's requirements for child restraints for use in motor vehicles passed this inversion test.

To begin the inversion test proposed in this notice, a representative aircraft seat must be set in the normal upright position. The normal upright position means the same seat adjustment position and the same horizontal and vertical orientation as shown for the seat in a new Figure 6. This Figure 6 is a copy of the FAA Drawing Package SAS-100-2000, which is referenced as a source showing a representative aircraft seat in the final rule adding the inversion test to Standard No. 213. By incorporating the Drawing Package in Standard No. 213, NHTSA intends to make it simpler to determine compliance with the inversion test.

The child restraint to be tested is attached to the representative aircraft seat using only an FAA approved aircraft safety belt. The test dummy is placed in the child restraint according to the provisions of section S6.1.2.3. The combination of the aircraft seat, child restraint, and test dummy is then rotated forward 180 degrees, at a rate of 35 to 45 degrees per second, around a horizontal axis that is contained in the median transverse vertical plane of the seating surface portion of the aircraft seat and is located one inch below the bottom of the seat frame, and held in the inverted postion for three seconds. The child restraint is deemed to have passed this test if the child restraint does not fall out of the aircraft safety belt and if the test dummy does not fall out of the child restraint. By a forward rotation, NHTSA means that the top of the transverse vertical plane shall rotate forward and down around the horizontal axis 180 degrees, i.e., until that plane has been inverted.

The dummy is then removed from the child restraint and the child restraint is removed from the representative aircraft seat. Both are again positioned as they were for the forward rotation part of the inversion test. This time, the combination of the aircraft seat, child restraint, and test dummy is rotated 180 degrees to the side, at a speed of 35 to 45 degrees per second, around a horizontal axis that is contained in the median longitudinal, vertical plane of the seating surface portion of the aircraft seat and is located one inch below the bottom of the rearmost lower edge of the seat frame, and held in the inverted position for three seconds. Compliance is determined using the same criteria specified above for the forward rotation test. The rotation around the horizontal axis may be either to the right or to the left.

The agency wishes to emphasize that the criteria for judging compliance require only that neither the child restraint completely fall out of the aircraft seat nor the test dummy fall completely out of the child restraint. These criteria for judging compliance are fully consistent with statutory requirement of objectivity because the criteria are dependent upon simple visual observation, there is no room for disagreement concerning the results, and they are not dependent upon the subjective opinions of human beings.

This notice also proposes to clarify the requirement that child restraint manufacturers which certify restraints for use in aircraft must provide instructions for using the restraints in aircraft seats. This requirement is currently implicit in the language of section S8.2 of Standard No. 2132, which specifies that placement of the restraint in the aircraft seat and placement of the test dummy in the child restraint shall be in accordance with the manufacturer's instructions. However, the agency believes that this requirement should be made more explicit. Accordingly, this notice proposes that each child restraint system for use in aircraft shall be accompanied by printed instructions in the English language that provide a step-by-step procedure for placing the restraint system on an aircraft seat, securing the restraint to the aircraft seat, positioning a child in the restraint, and adjusting the system to fit the child.

The final change proposed in this notice is simply a more convenient way of showing a representative aircraft passenger seat to the readers of Standard No. 213. The final rule published today refers to Drawing No. SAS-100-2000 as showing an illustration of a representative aircraft passenger seat. Any interested person can examine and copy that drawing in NHTSA's Technical Reference Library. However, the drawing is simple enough that the agency believes it could be incorporated into the standard. Accordingly, this notice proposes to add a new Figure 6 to Standard No. 213. This new Figure 6 is just a copy of Drawing No. SAS-100-2000, so that the reader will not have to take the further step of looking for that drawing in the Technical Reference Library. Since this is a copy of the drawing, adopting this proposed amendment would not change the requirements of Standard No. 213 in any respect.

The NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted, these amendments would simply clarify the testing procedures to be followed for child restraint systems which the manufacturer chooses to certify for use in aircraft. No additional requirements are imposed for restraints to be certified for use in aircraft. Instead, these amendments clarify how that optional testing should be conducted. Since the impacts would be minimal, a full regulatory evaluation has not been prepared.

In accordance with the Regulatory Flexibility Act, the NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments to Standard No. 213 would not have significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. This certification is based on the discussion above pursuant to Executive Order 12291; that is, these amendments only clarify the existing requirements without adding any further requirements. Thus, there would be no impact on child restraint manufacturers nor on any small organizations and governmental units which purchase child restraints.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that this proposed rule would not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571, § 571.213, be amended to read as follows:

1. Paragraph S4 would be amended by revising the definition of "representative aircraft passenger seat" to read as follows:

"Representative aircraft passenger seat" means either a Federal Aviation Administration approved production aircraft passenger seat or a simulated aircraft passenger seat conforming to Figure 6.

2. Paragraph S8 would be revised to read as follows:

S8. *Requirements, test conditions, and procedures for child restraint systems manufactured for use in aircraft.*

Each child restraint system manufactured for use in both motor vehicles and aircraft must comply with all of the applicable requirements specified in section S5 and with the additional requirements specified in S8.1 and S8.2.

S8.1 *Installation instructions.* Each child restraint system manufactured for use in aircraft shall be accompanied by printed instructions in the English language that provide a step-by-step procedure, including diagrams, for installing the system in aircraft passenger seats, securing the system to the seat, positioning a child in the system when it is installed in aircraft, and adjusting the system to fit the child. In the case of each child restraint which is not intended for use in aircraft at certain adjustment positions, the following statement, with the manufacturer's restrictions inserted, shall be included in the instructions.

DO NOT USE THE —— ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT IN AIRCRAFT.

S8.2 *Inversion test.* When tested in accordance with S8.2.1 through S8.2.5 and adjusted in any position which the manufacturer has not, in accordance with S8.1, specifically warned against using in aircraft, each child restraint system manufactured for use in aircraft shall meet the requirements of S8.2.1 through S8.2.5.

S8.2.1 A representative aircraft passenger seat shall be positioned and adjusted so that its horizontal and vertical orientation and its seat back angle are the same as shown in Figure 6.

S8.2.2 The child restraint system shall be attached to the representative aircraft passenger seat using only a Federal Aviation Administration approved aircraft safety belt, according to the restraint manufacturer's instructions for attaching the restraint to an aircraft seat. No supplementary anchorage belts or tether straps may be attached; however, Federal Aviation Administration approved safety belt extensions may be used.

S8.2.3 In accordance with S6.1.2.3.1 through S6.1.2.3.3, place in the child restraint any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is recommended in accordance with S5.6.

S8.2.4 If approved, shoulder and pelvic belts that directly restrain the dummy shall be adjusted in accordance with S6.1.2.4.

S8.2.5 In the combination of representative aircraft passenger seat, child restraint, and test dummy shall be rotated forward around a horizontal axis which is contained in the median transverse vertical plane of the seating surface portion of the aircraft seat and is located one inch below the bottom of the seat frame, at a speed of 35 to 45 degrees per second, to an angle of 180 degrees. The rotation shall be stopped when it reaches that angle and the seat shall be held in this position for three seconds. The child restraint shall not fall out of the aircraft safety belt, nor shall the test dummy fall out of the child restraint at any time during the rotation or the three second period.

S8.2.6 Repeat the procedure set forth in S8.2.4. The combination of the representative aircraft passenger seat, child restraint, and test dummy shall be rotated sideway around a horizontal axis which is contained in the median longitudinal vertical plane of the seating surface portion of the aircraft seat and is located one inch below the bottom of the seat frame, at a speed of 35 to 45 degrees per second, to an angle of 180 degrees. The rotation shall be stopped when it reaches that angle and the seat shall be held in this position for three seconds. The child restraint shall not fall out of the aircraft safety belt, nor shall the test dummy fall out of the child restraint at any time during the rotation or the three second period.

3. A new Figure 6 would be added at the end of § 571.213, appearing as follows:

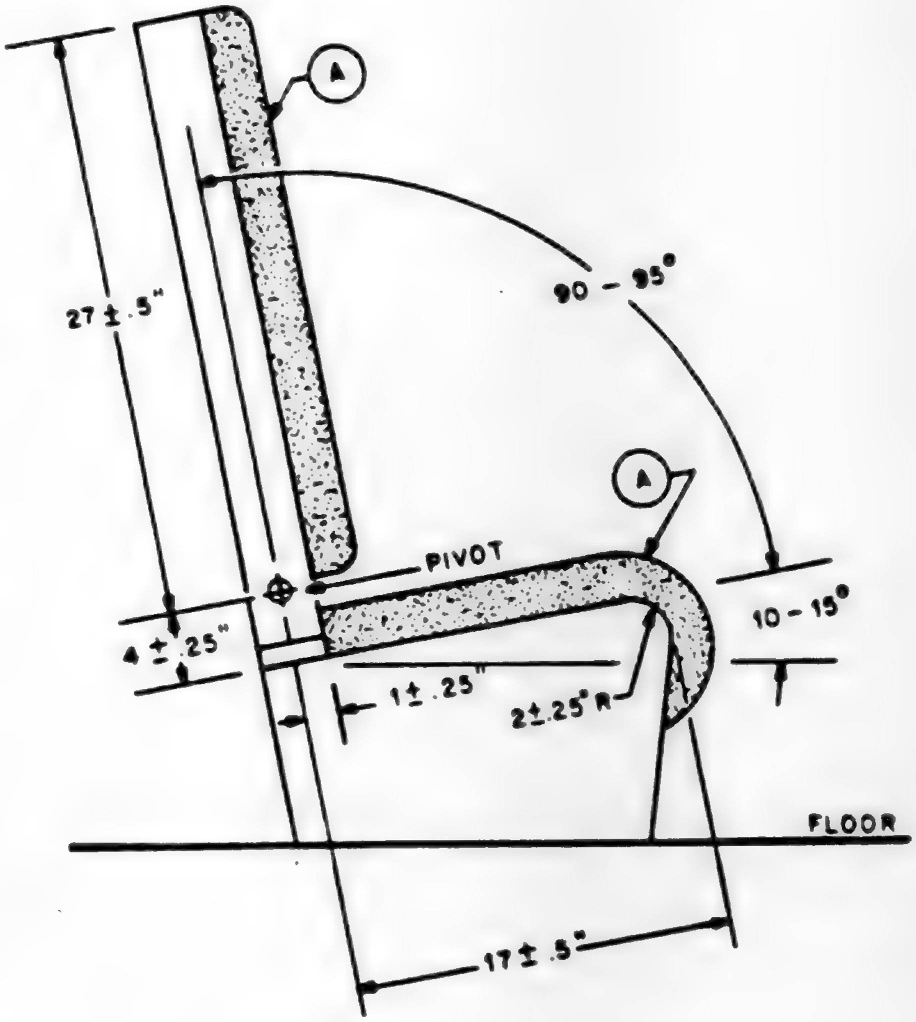

FIGURE 6 : SIMULATED AIRCRAFT PASSENGER SEAT

"A" represents a 2- to 3-inch-thick polyurethane foam pad, 1.5–2.0 pounds per cubic foot density, over 0.020-inch-thick aluminum pan, and covered by 12- to 14-ounce marine canvas. [illegible] sheet aluminum pan is 20 inches [illegible] and supported on each side by a rigid structure. The seat back is a rectangular frame covered with the aluminum sheet and weighing between 14 and 15 pounds, with a center of mass 13 to 16 inches above the pivot. The mass moment of inertia of the seat back is between 195 and 220 ounce-inch-second.[2] The seat back is free to fold forward about the pivot, but a stop prevents rearward motion. The passenger safety belt anchor points are spaced 21 to 22 inches apart and are located in line with the pivot.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 24, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-22958 Filed 8-29-84; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 49, No. 170
Thursday, August 30, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; North Kaibab Grazing Advisory Board; Meeting

The North Kaibab Grazing Advisory Board will meet at 1:00 P.M., Tuesday, October 2, 1984, at the Coconino County Building, Fredonia, Arizona. The purpose of this meeting is development of allotment management plans and utilization of Range Betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona, 86046, telephone (602) 635–2681. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Those attending may express their views when recognized by the chairman.

Dated: August 24, 1984.

Leonard A. Lindquist,

Forest Supervisor.

[FR Doc. 84–23057 Filed 8–29–84; 8:45 am]

BILLING CODE 3410–11–M

Malheur National Forest Grazing Advisory Board; Meeting

The Malheur National Forest Grazing Advisory Board will meet at 7:00 p.m. on October 9, 1984 at Alec Gay Hall, 172 SE Dayton Street, John Day, Oregon 97845.

The purpose of this meeting is to discuss allotment management plans and expenditure of Range Betterment funds.

The meeting will be open to the general public. Persons interested in presenting a subject at the meeting may file a request and brief before the meeting with: Forest Supervisor, Malheur National Forest, 139 NE Dayton Street, John Day, Oregon 97845. Written statements may be filed with the board or after the meeting.

Dated: August 15, 1984.

Kenneth L. Evans,

Forest Supervisor.

[FR Doc. 84–23098 Filed 8–29–84; 8:45 am]

BILLING CODE 3410–02–M

Human Nutrition Information Service

Joint Nutrition Monitoring Evaluation Committee, Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Joint Nutrition Monitoring Evaluation Committee

Date: October 2, 1984 and October 3, 1984

Place: Conference Room 561A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782

Time: 9:00 a.m. to 5:00 p.m.

Purpose: To evaluate the findings of the Nationwide Food Consumption Survey (NFCS), the National Health and Nutrition Examination Survey (NHANES), and other Federal nutrition monitoring efforts and develop a report on the nutritional status of the U.S. population.

Agenda: The agenda for the sixth meeting will include the following items: review text and charts completed to date and plan future work.

The meeting is open to the public. There is a limited amount of space available for public attendance. Written statements or comments of concern to the committee may be submitted to Isabel D. Wolf, Administrator, Human Nutrition Information Service, 6505 Belcrest Road, Room 360, Hyattsville, MD 20782.

Done at Washington, DC, this 21st day of August 1984.

Isabel D. Wolf,

Administrator.

[FR Doc. 84–23089 Filed 8–29–84; 8:45 am]

BILLING CODE 3410–KE–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Redesignation and Membership Change of SES Performance Review/Executive Resources Board

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to document the designation of members on the Executive Resources and Performance Review Board (ERPRB). The purpose of the Board is to review performance agreements, performance appraisals and ratings, recommendations for certain personnel actions and other related materials, and to make appropriate recommendations to the SES appointing authority concerning such matters in a manner that will assure fair and equitable treatment of senior executives and the organizations of which they are members. No change is made to the function of the Board.

Paul W. Bateman, Chairman, Deputy Assistant Secretary for Economic Development, Economic Development Administration, Washington, D.C.

Alan Cecilio, Executive Secretary, Personnel Officer, Economic Development Administration, Washington, D.C.

Travis Dungan, Alternate Chairman, Deputy Assistant Secretary for Finance, Economic Development Administration, Washington, D.C.

John Corrigan, Deputy Assistant Secretary for Operations, Economic Development Administration, Washington, D.C.

Beverly Milkman, Director, Office of Planning, Technical Assistance, Research, and Evaluation, Economic Development Administration, Washington, D.C.

Robert M. Hill, Director, Seattle Regional Office, Economic Development Administration, Seattle, Washington

Edward M. Levin, Jr., Chief Counsel, Economic Development Administration, Washington, D.C.

Craig M. Smith, Director, Philadelphia Regional Office, Economic Development Administration, Philadelphia, PA

Otto Wolff, Deputy Assistant Secretary for Administration, Office of the Secretary, Washington, D.C.

Dated: August 17, 1984.

Paul W. Bateman,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 84–23059 Filed 8–29–84; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Docket Nos. 35 and 36-84]

Foreign-Trade Zone 23, Erie County, NY; Applications for Subzones for Ontario Knife and Robinson Knife

Applications have been submitted to the Foreign-Trade Zones Board (the Board) by the County of Erie, New York, grantee of Foreign-Trade Zone 23, requesting special-purpose subzone status for the manufacturing facilities of Ontario Knife Company in Franklinville, New York, and those of the Robinson Knife Company in Springville, New York, both in the Buffalo Customs port of entry area.

The applications were submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). They were formally filed on August 22, 1984. The applicant is authorized to make this proposal under Chapter 201 of the Laws of New York, 1974, as amended by Chapter 60 of the Laws of New York, 1984. A POE adjacency issue regarding the Ontario Knife facility will be reviewed by the U.S. Customs Service.

The proposed subzone for Ontario Knife would be at the company's manufacturing plant covering 8 acres at Riggs and Empire Street, Franklinville, Cattaraugus County. The company produces professional knives and other cutlery employing 150 persons. Because of import competition, now at some 40 percent of the U.S. market, the company has indicated that unless it uses some lower-priced foreign stainless and carbon steel for its blades, either complete knives or blades would have to be imported in order to keep its market. The company also plans to increase its export sales.

The proposed subzone for Robinson Knife would be located at the company's manufacturing facilities covering 14 acres at Main and Carolina Streets in Springville, Erie County. The company and its on-site subsidiaries, Fiddlers Green Plastics and Griffon Cutlery Company, produce cutlery, kitchen tools, scissors and manicure sets. The company imports some finished cutler, scissors and most manicure implements and sets. It plans to produce more of the manicure implements and assemble the sets domestically using foreign components and domestic materials such as handles. There would also be a greater effort to export.

Zone procedures will exempt both companies from payment of duties on foreign material used in their exports. This is especially important to Ontario Knife which is planning a major expansion in Canadian and other foreign markets. On domestic sales, benefits include duty deferral and the ability to take advantage of the same duty rate available to importers of completed products. The duty rate on steel for knives to be used by Ontario Knife is 7.6 percent for carbon steel and 19.5 percent for stainless, whereas the duty for knives is 7 percent and knife blades is 3.6 percent. The duty rate for the manicure implements now imported by Robinson Knife is 11.9 percent, while the rate for manicure sets is 6.3 percent. The savings from zone procedures will help both companies reduce costs on products that are competing with products made abroad. Both plants are threatened with cutbacks in employment unless costs are reduced.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the applications and report to the Board. The committee consists of: Dennis Puccinelli (Chairman) Foreign-Trade Zone Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Robert R. Hardiman, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, N.Y. 14207.

Comments concerning the proposed subzones are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 29, 1984.

Copies of the applications are available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office,
1312 Federal Bldg., 111 W. Huron
Street, Buffalo, N.Y. 14202

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 1529,
14th and Pennsylvania, NW.,
Washington, D.C. 20230

Dated: August 24, 1984.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 84-23056 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

[A-475-401]

Certain Valves, Couplings, Nozzles and Connections, of Brass, Suitable for Use in Interior Fire Protection Systems, From Italy; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A); and, that we have determined to postpone our final determination as to whether sales of certain valves, couplings, nozzles, and connections, of brass, suitable for use in interior fire protection systems, from Italy, have occurred at less than fair value, until not later than November 23, 1984.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Julia E. Hathcox, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0184.

SUPPLEMENTARY INFORMATION:

The Petition

On February 21, 1984, the Department of Commerce published notice in the **Federal Register** (49 FR 6396) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673a(b)), and antidumping investigation to determine whether valves, couplings, nozzles and connections, of brass, suitable for use in interior fire protection systems, from Italy, were being, or were likely to be, sold at less than fair value. On July 10, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 28083). The notice stated that if this investigation proceeded normally we would make our final determination by September 17, 1984.

Counsel for respondent in this case requested that we extend the period for the final determination until not later than November 23, 1984, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it publishes notice of its preliminary determination if the exporters who account for a significant proportion of the merchandise request an extension after an affirmative preliminary determination. Accordingly, we will issue a final determination in this case not later than November 23, 1984.

The date for the public hearing orginally scheduled for August 3, 1984 is being changed. We will hold a public hearing on September 10, 1984, at 10:00 a.m. in room 3708, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. This notice is published pursuant to section 735(d) of the Act.

Dated: August 20, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23052 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-403]

Egg Filler Flats From Canada: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Initiation of Antidumping Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether egg filler flats from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds, normally, the ITC will make its preliminary determination on or before October 8, 1984, and we will make ours on or before January 10, 1985.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Aceto, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION:

The Petition

On August 3, 1984, we received a petition in proper form filed by Keyes Fibre Company and Packaging Corporation of America on behalf of the U.S. industry producing egg filler flats. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that the imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or threaten material injury to, a United States industry. The petitioners based United States price on Canadian offers for sale to U.S. distributors, less amounts for freight, U.S. customs duties and commissions. Foreign market value was based on the ex-factory price charged for the product in the Canadian market. The home market price was then adjusted to reflect differences in sales unit sizes, since in the U.S. prices are quoted per thousand egg filler flats while in Canada they are quoted per "bundle" of 140 egg filler flats. A comparison of the United States price with the foreign market value yields an apparent dumping margin of 59.5%.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on egg filler flats and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether egg filler flats from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 10, 1985.

Scope of Investigation

The product under investigation is molded pulp egg filler flats, measuring approximately 11½ inches square, as currently provided for under TSUSA item number 256.7000 ("articles of pulp, not including articles of paper and paperboard").

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by October 8, 1984, whether there is a reasonable indication that imports of egg filler flats from Canada are materially injuring, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23053 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-565-401]

Initiation of Countervailing Duty Investigation: Certain Textiles and Textile Products From the Philippines

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in the Philippines of certain textiles and textile products, as described in the "Scope of Investigation" section below, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 25, 1984.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3530 or 377-0187.

SUPPLEMENTARY INFORMATION:

Petition

On August 2, 1984, we received a petition from the American Textile Manufacturers Institute (ATMI), the Amalgamated Clothing and Textile Workers Union (ACTWU), and the International Ladies' Garment Workers Union (ILGWU) on behalf of the domestic textiles and textile products industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers, manufacturers, or exporters in the Phillipines of textiles and textile products receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act"). The Philippines is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, section 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain textiles and textile products and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in the Philippines of certain textiles and textile products, as listed in the "Scope of the Investigation" section of the notice, receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by October 25, 1984.

Scope of the Investigation

The products covered by this investigation are certain textiles and textile products. The merchandise is currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) item numbers as listed in Appendix A to this notice.

Allegations of Bounties or Grants

The petition alleges that producers, manufacturers, or exporters in the Philippines of certain textiles and textile products receive benefits under the following programs that constitute bounties or grants:

A. Foreign Currency Retention Scheme
B. Preferential Access to Foreign Exchange
C. The Bataan Export Processing Zone
D. Preferential Export Credit
E. Incentives to Exporters Under the Export Incentives Act and Sections 11 and 12 of the Investment Incentive Policy Act of 1983
F. Tax Incentives for Preferred Investments
G. Development Bank Equity

Petitioners allege that Continental Manufacturing Corporation and Redson Garments have received equity infusions from the Development Bank of the Philippines although they have been unequity worthy since 1981.

We are initiating with respect to these allegations. We are not initiating on the following allegations:

A. Development Bank Loans

Petitioners allege that the producers and exporters of the products under investigation receive loans on a preferential basis from the Development Bank of the Philippines (DBP), a government owned bank, and other development banking institutions.

In our final determination on Canned Tuna from the Philippines (48 FR 50133), we found that loans from the Development Bank of the Philippines do not confer bounties or grants. This petition does not provide any new evidence to cause us to reinvestigate this allegation.

B. World Bank Modernization Program

Petitioners allege that the producers and exporters of the products under investigation benefit from a massive modernization program sponsored by the World Bank which provides benefits in the form of grants, preferential loans, and training services. Petitioners further allege that to the extent the funds from the program are provided to nonexporting textile mills that supply the fabric used to produce apparel and other textile products for export, they confer countervailable upstream subsidies because the direct recipients of the benefits are related to the firms that produce apparel and other products for exports and thus there is reason to expect the benefits are passed through.

In addition, the petitioners allege that the World Bank project attracted co-financing from a group of Japanese banks and insurance companies, in the form of a loan to the DBP and that the proceeds of this loan are used for the same purposes as the modernization program and therefore, confer countervailable benefits to exporters of textiles and textile products.

Section 303 of the Act (19 U.S.C. 1303) permits the assessment of countervailing duties only when a country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation pays or bestows a bounty or grant upon the manufacture, production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government. Since the merchandise under investigation is produced in the Philippines, and expansion program sponsored by the World Bank is not countervailable.

For the same reasons, a loan granted by a group of Japanese banks and insurance companies to the DBP would not be countervailable.

Dated: August 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A

The products covered by this investigation are certain textiles and textile products. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated* (TSUSA) listed below.

Yarns

303.1000 303.2040 307.6810 307.6820 307.6830 310.5049

Cordage

315.3500 315.4500 316.3000 316.5600 319.0300 319.0500

Fabric

3281004 3234092 3357500

Special Constructional Fabrics

347.6040 348.0080 348.0095 348.0575 349.1060 351.0500
351.3000 351.4010 351.4610 351.4660 351.6060 352.8060
353.5052 355.2500 355.4530 357.1500 357.7060 357.8060
358.0210

Textile Furnishings

360.1515 360.1520 360.4225 360.4825 360.7000 360.7800
360.7900 360.8300 361.4500 361.4900 361.5420 361.5426
361.5620 361.5660 363.0120 363.0200 363.0515 363.0525
363.2562 363.2564 363.2575 363.2580 363.3020 363.5115
363.8512 363.8555 365.5060 365.7825 365.7855 365.7865
365.8100 365.8300 365.8640 365.8660 365.8670 365.8680
366.1540 366.1840 366.1855 366.4600 366.4700 366.4820
366.4840 366.5100 366.5400 366.5740 366.7200 366.7700
366.7925 366.7930 367.5500 367.6025 367.6040 367.6060
367.6500

Apparel

370.0800 370.1200 370.1600 370.8420 372.1010 372.1020
372.1030 372.1036 372.1040 372.1060 372.1540 372.1560
372.3500 372.6020 372.7000 372.7520 372.7540 373.2200
374.1000 374.2500 374.3530 374.3550 374.4000 374.6020
376.1600 376.2425 376.2430 376.2470 376.2825 376.2830
376.2846 376.2886 376.5408 376.5609 376.5612 376.5618
378.0545 378.0550 378.0553 378.0560 378.0571 378.0576
378.1035 378.1535 378.1540 378.6080 378.6530 379.0215
379.0220 379.0230 379.0240 379.0490 379.0605 379.0615
379.0620 379.0640 379.0645 379.0840 379.2020 379.2320
379.2360 379.2610 379.2630 379.2830 379.2840 379.3120
379.3130 379.3140 379.3180 379.3334 379.3336 379.3540
379.3905 379.3915 379.3925 379.3930 379.4020 379.4030
379.4040 379.4050 379.4060 379.4140 379.4330 379.4615
379.4620 379.4640 379.4650 379.4660 379.4670 379.5220
379.5520 379.5530 379.5535 379.5540 379.5545 379.5550
379.5560 379.5565 379.5700 379.5800 379.6210 379.6215
379.6220 379.6230 379.6240 379.6250 379.6260 379.6270
379.6280 379.6430 379.6470 379.7250 379.7530 379.7610
379.7620 379.7630 379.7650 379.8311 379.8318 379.8355
379.8360 379.8420 379.8906 379.8911 379.8915 379.8930
379.8935 379.8940 379.9010 379.9020 379.9030 379.9035
379.9040 379.9100 379.9510 379.9525 379.9530 379.9535
379.9540 379.9550 379.9555 379.9565 379.9575 379.9580
379.9585 379.9650 383.0005 383.0010 383.0015 383.0020
383.0205 383.0206 383.0210 383.0211 383.0215 383.0218
383.0221 383.0225 383.0233 383.0250 383.0265 383.0305
383.0306 383.0320 383.0330 383.0335 383.0340 383.0350
383.0355 383.0390 383.0505 383.0506 383.0520 383.0570
383.0610 383.0611 383.0615 383.0616 383.0620 383.0630
383.0632 383.0805 383.0810 383.0815 383.0820 383.0825
383.0830 383.0835 383.0838 383.0841 383.0844 383.0855
383.0856 383.0859 383.0860 383.1802 383.1803 383.1807
383.1808 383.1820 383.1841 383.1842 383.1857 383.1860
383.1910 383.1920 383.1925 383.1930 383.1935 383.1940
383.2005 383.2013 383.2014 383.2016 383.2020 383.2025
383.2035 383.2040 383.2050 383.2052 383.2054 383.2058
383.2060 383.2205 383.2210 383.2215 383.2220 383.2225
383.2230 383.2240 383.2245 383.2250 383.2305 383.2310
383.2315 383.2320 383.2325 383.2330 383.2335 383.2340
383.2350 383.2351 383.2352 383.2354 383.2356 383.2360
383.2365 383.2550 383.2580 383.2590 383.2706 383.2707
383.2708 383.2709 383.2720 383.2725 383.2730 383.2731
383.2750 383.2820 383.2830 383.2835 383.2910 383.3010
383.3020 383.3030 383.3040 383.3050 383.3060 383.3065
383.3080 383.3085 383.3090 383.3200 383.3405 383.3415
383.3420 383.3430 383.3435 383.3445 383.3448 383.3450
383.3452 383.3460 383.3465 383.3468 383.3600 383.4015
383.4200 383.4300 383.4702 383.4704 383.4705 383.4707
383.4709 383.4711 383.4715 383.4720 383.4721 383.4730
383.4747 383.4749 383.4753 383.4755 383.4759 383.4761
383.4763 383.4765 383.4816 383.4818 383.4820 383.4821
383.4823 383.4825 383.5030 383.5036 383.5038 383.5039
383.5040 383.5045 383.5047 383.5049 383.5050 383.5052
383.5053 383.5062 383.5063 383.5072 383.5073 383.5075
383.5080 383.5082 383.5086 383.5088 383.5090 383.5295
383.5304 383.5316 383.5332 383.5372 383.5392 383.5395
383.5825 383.5845 383.6330 383.6340 383.6371 383.6395
383.7205 383.7210 383.7510 383.7520 383.7540 383.7550
383.7560 383.7864 383.7868 383.7878 383.7882 383.8002
383.8003 383.8004 383.8005 383.8043 383.8044 383.8045
383.8047 383.8070 383.8073 383.8108 383.8110 383.8114
383.8115 383.8116 383.8117 383.8135 383.8140 383.8146
383.8160 383.8300 383.8605 383.8620 383.8621 383.8622
383.8630 383.8635 383.8645 383.8650 383.8660 383.8661
383.8663 383.8665 383.8669 383.8670 383.9010 383.9015
383.9020 383.9025 383.9030 383.9035 383.9040 383.9041
383.9050 383.9051 383.9060 383.9065 383.9070 383.9071
383.9205 383.9210 383.9211 383.9215 383.9225 383.9230
383.9235 383.9240 383.9245 383.9246 383.9265 383.9270
383.9273 383.9276 383.9290 383.9291 383.9525

Miscellaneous

385.5000 385.6120 385.6140 385.6300 385.7040 386.0430
386.2000 386.5045 387.3700 389.3000 389.4000 389.5000
389.6265 389.7000 702.5600 703.0500 703.1000 703.1600
704.1020 704.2000 704.2500 704.3220 704.3240 704.4010
704.4504 704.4506 704.4508 704.5015 704.6500 704.8520
704.8550 704.9000 705.8520 706.3200 706.3400 706.3640
706.3680 706.3840 706.3850 706.4106 706.4121 706.4140
706.4150 727.8200

[FR Doc. 84-23054 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Cook Inc.; Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), a U.S. Department of Commerce, intends to grant to Cook Incorporated, having an office in Bloomington, Indiana, an exclusive right to practice the invention embodied in U.S. Patent 4,437,857, "Method and Apparatus for Traversing Blood Vessels." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84–23058 Filed 8–29–84; 8:45 am]

BILLING CODE 3510–04–M

International Trade Administration

[A–122–036]

Instant Potato Granules From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On July 9, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on instant potato granules from Canada. The review covers the two known manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period September 1, 1982, through August 31, 1983

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 27965–27966) the preliminary results of its administrative review of the antidumping finding on instant potato granules from Canada (37 FR 20175, September 27, 1972). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of instant potato granules from Canada. This merchandise is currently classifiable under items 140.5000, 140.7000, and 141.8610 through 141.8630 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and the period September 1, 1982, through August 31, 1983.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a disclosure or a hearing. Based on our analysis, the final results of review are the same as the preliminary results, and we determine that the following margins exist for the period September 1, 1982, through August 31,1983.

Manufacturer/exporter	Margin (percent)
McCain Foods Limited	0
Vauxhall Foods Limited	0

The Department shall instruct the Customs Service not to assess antidumping duties on appropriate entries. Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48((b) of the Commerce Regulations, on any shipments of Canadian instant potato granules entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23121 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-043]

Printed Vinyl Film From Argentina; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review and Revocation of Antidumping Finding.

SUMMARY: On January 10, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on printed vinyl film from Argentina. The review covered the one known manufacturer and/or exporter of this merchandise to the United States, Plavinil Argentina S.A.I.C., and the period August 1, 1982, through July 31, 1983. There were no known shipments of this merchandise to the United States during the period and there were no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke. We received no comments. We also determined that there were no shipments of this merchandise to the United States during the period August 1, 1983, through the date of the tentative determination to revoke. We advised all interested parties that there were no shipments and we provided an additional opportunity to comment.

We received one comment from the petitioner. Based on our analysis, these final results cover up to the date of our tentative determination to revoke and we revoke the antidumping finding on printed vinyl film from Argentina.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Susan M. Crawford, Office of Compliance, International Trade Administration, U.S Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130/2209.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 1262) the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on printed vinyl film from Argentina (38 FR 22794, August 24, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of printed vinyl film, also known as printed polyvinyl chloride sheeting, currently classifiable under item 771.4312 of the Tariff Schedules of the United States Annotated.

The review covered the one known manufacturer and/or exporter of Argentinean printed vinyl film to the United States, Plavinil Argentina S.A.I.C., and the period August 1, 1982, through July 31, 1983. There were no known shipments of this merchandise to the United States during the period and there were no known unliquidated entries. The Department has also determined that there were no shipments of this merchandise to the United States during the period August 1, 1983, through January 10, 1984, the date of publication of the tentative determination to revoke.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The Department provided all interested parties further preliminary results for the period up to the date of the tentative determination, and gave interested parties an additional opportunity to comment. In response to the additional opportunity to comment, the petitioner, Dynamit Nobel, submitted one comment.

Comment: Dynamit Nobel objects to our intention to revoke this finding. It argues that the present market conditions remain unchanged from eleven years ago when the Treasury Department conducted its investigation and found dumping margins, and that if we revoke the finding now we will worsen the current market situation.

Department's Position: Dynamit Nobel did not present any quantifiable data to support its objection. Plavinil Argentina has met our requirements for revocation and has submitted the written agreement required by § 353.54(e) of the Commerce Regulations, and, absent such quantifiable evidence from the petitioner, we believe it appropriate to revoke the finding.

Final Results of the Review and Revocation

Based on our analysis of the comment received, in accordance with § 353.54 of the Commerce Regulations, we revoke the antidumping finding on printed vinyl film from Argentina. For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value. This revocation applies to all unliquidated entries of Argentinean printed vinyl film entered, or withdrawn from warehouse, for consumption on or after January 10, 1984, the date of our tentative determination to revoke the finding.

This administrative review, revocation, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353., 353.54).

Dated: August 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23124 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-104]

Strontium Nitrate From Italy; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Duty Order.

SUMMARY: On May 14, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on strontium nitrate from Italy. The review covers the one known exporter of this merchandise to the United States, Societa Bario e Derivati S.p.A., and the period June 1, 1982, through May 31, 1983.

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We gave interested parties an opportunity to submit oral or written comments on the preliminary results and our tentative determination to revoke. We received no comments. Based on our analysis, the final results of reviews are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden of Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 203354) the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on strontium nitrate from Italy (46 FR 32864, June 25, 1981). The Department has now competed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of strontium nitrate, a chemical compound $Sr(NO_3)_2$, currently classifiable under item 421.7400 of the Tariff Schedules of the United States Annotated.

The review covers the one know exporter of Italian strontium nitrate to the United States, Societa Bario e Derivati S.p.A. ("SABED"), and the period June 1, 1982, through May 31, 1983.

Final Results of the Review

We invited interested parties to comment on the preliminary results and our tentative determination to revoke. The Dapartment received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review, and we determine that no dumping margins exist for the period June 1, 1982, through May 31, 1983. the Department shall instruct the Customs Service not to assess dumping duties on all appropriate entries.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 335.48 (b) of the Commerce Regulations, on shipment of Italian strontium nitrate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department intends to begin immediately the next administrative review. The Department will examine exports by SABED made during the period June 1, 1983, through May 14, 1984, the date of our tentative determination to revoke, in our next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 23, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23122 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-25-M

[A-423-077, A-427-078, A-428-082]

Sugar From France, Belgium, and the Federal Republic of Germany; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on sugar from France, Belgium, and the Federal Republic of Germany. The review covers the thirteen known exporters and third-country resellers of this merchandise to the United States and two consecutive periods from June 1, 1982, through May 31, 1984. There were no known shipments of this merchandise to the United States during the periods and there are no known unliquidated entries.

As a result ofthe review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the margins calculated on the last known shipments. Interested parties are invited to comment on these results.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 1786) the final results of its last administrative review of the antidumping finding on sugar from France, Belgium, and the Federal Republic of Germany (44 FR 33878, June 13, 1979) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of sugar, both raw and refined, with the exception of specialty sugars, currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated.

The review covers the thirteen known exporters and third-country resellers of French, Belgian, and West German sugar to the United States and two consecutive periods from June 1, 1982, through May 31, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 102 percent, 103 percent, and 121 percent shall be required on all shipments of French, Belgian, and West German sugar, respectively, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-23120 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-072]

Viscose Rayon Staple Fiber From France; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding of viscose rayon staple fiber from France. The review covers the two known exporters and the one known third-country reseller of this merchandise to the United States and the period March 1, 1983, through February 29, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the margin calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 24427) the final results of its last administrative review of the antidumping finding on viscose rayon staple fiber from France (44 FR 17156, March 21, 1979) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 209.4325 of the Tariff Schedules of the United States Annotated.

The review covers the two known exporters of French viscose rayon staple fiber, Rhone-Poulenc Textile and Achille Bayart et Cie, and the one known third-country (Netherlands) reseller, B.V. Textielfabriek Huizen, and the period March 1, 1983 through February 29, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 24 percent shall be required on all shipments of French viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice an may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23123 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of the Air Force

SN 6-274,698 (4,447,149)
Pulsed Laser Radar Apparatus
SN 6-287,451 (4,454,513)
Simulation of an Electronic Countermeasure Technique
SN 6-339,205 (4,453,587)
Replication of High Power Laser Mirrors
SN 6-339,258 (4,453,995)
Method of Making Compartmented, Filament Wound, One-Piece Aircraft Fuel Tanks
SN 6-339,261 (4,453,806)
Eye Safe Laser Transmitter
SN 6-370,233 (4,448,742)
Low Cost Thermal Protection System Processing
SN 6-465,228 (4,449,032)
Variable Gain Oven Temperature Control Circuit
SN 6-512,847 (4,448,645)
Electroding of Multi-Layered Epitaxial Structures
SN 6-601,514
Constant Speed Drive with Compensation Using Differential Gears
SN 6-601,520
Applique Rate Converter
SN 6-601,873
Halo-Substituted Diphospha-s-Triazines and their Derivatives
SN 6-601,874
Dihalo-Monaphospha-s-Triazines and Their Derivatives
SN 6-604,508
Broadband Guided-Wave Optical

Frequency Translator Using an Electro-Optical Bragg Array
SN 6–606,325
Feed Displacement Correction in a Space Fed Lens Antenna
SN 6–610,897
System for Removal of Airborne Contaminants from Aircraft Environmental Control Systems
SN 6–614,904
Direct Lift Command Blending
SN 6–614,905
Shock Absorbing Missile Launch Pad
SN 6–615,502
Bulk Acoustic Resonator Tracking Filter
SN 6–615,503
Selection of Data From Busses for Test
SN 6–616,454
Damaged Radar Radome Repair Device
SN 6–617,445
Method for Refining Microstructures of Prealloyed Powder Metallurgy Titanium Articles.
SN 6–617,447
Method for Refining Microstructures of Blended Elemental Powder Metallurgy Titanium Articles.
SN 6–617,449
Triggered Spark Gap Discharger
SN 6–617,456
Multi-(OTeF5)-Substituted Flurocarbons
SN 6–617,667
Intrusion Barrier and Detection Apparatus
SN 6–619,244
Inspection Workstation Data Entry Method
SN 6–622,379
Deception Pattern for Camouflage

[FR Doc. 84–23090 Filed 8–29–84; 8:45 am]
BILLING CODE 3510–04–M

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,
Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–256,206 (4,451,265)
Diesel Fuel-Aqueous Alcohol Microemulsions
SN 6–351,400 (4,452,288)
Powdered Tree Chipper or Bark Hack
SN 6–378,317 (4,454,680)
Rope Wick Chemical Recovery Apparatus
SN 6–385,162 (4,449,391)
Method for Separating Closed Bolls of Cotton by Maturity
SN 6–427,229 (4,451,267)
Microemulsions From Vegetable Oil and Aqueous Alcohol with Trialkylamine Surfactant as Alternative Fuel For Diesel Engines
SN 6–507,191 (4,454,268)
Starch-Based Semipermeable Films
SN 6–586,617
Process to Impart Smooth-Dry and Flame Retardant Properties to Cellulosic Fabric
SN 6–586,618
Process to Produce Durable Press Low Formaldehyde Release Cellulosic Textiles
SN 6–610,949
Suffocation-Type Insect Trap with Pitfall and Attractant
SN 6–611,042
Anticlostridial Agents
SN 6–348,575 (4,449,823)
Device for Measurement of the Spectral Width of Nearly Monochromatic Sources of Radiant Energy
SN 6–348,576 (4,444,501)
Stabilizing Mechanism for Optical Interferometer
SN 6–611,552
Magnetoresistive Skin for Robots
SN 6–612,291
Modulation Transfer Spectroscopy for Stabilizing Lasers

Department of Health and Human Services

SN 6–294,368 (4,451,648)
Process for the Production of 2-B-D-Ribofuranosylthiazole-4-Carboxamide
SN 6–329,590 (4,362,510)
Cementitious Dental Compositions Which Do not Inhibit Polymerization
SN 6–475,215
Multi-Layer Coil Assembly Coaxially Mounted Around the Rotary Axis for Preparatory Countercurrent Chromatography
SN 6–499,093
Monoclonal Antibodies to Cytoskeletal Proteins
SN 6–540,667
Tumor Treatment in Humans with 4′-Carboxyphthalato(1,2-Diaminocyclohexane)Platinum (II)

Department of the Interior

SN 6–376,851 (4,457,624)
Suspended Sediment Sensor
SN 6–488,481 (4,453,594)
Solution Mining of Coal by Electrolysis

Department of the Air Force

SN 6–329,557
Simultaneous Detection of Time Coincident Signals in an Adaptive Doppler Tracker
SN 6–339,206 (4,426,131)
Replaceable Diffraction Gratings for Cooled Laser Optics
SN 6–465,942 (4,437,080)
Method and Apparatus Utilizing Crystalline Compound Superconducting Elements Having Extended Strain Operating Range capabilities Without Critical Current Degradation
SN 6–595,153
Method to Reveal Microstructures in Single Phase Alloys
SN 6–596,471
Phase Only Optical Filter for use in an Optical Correlation System
SN 6–598,949
Compact Broadband Rectangular to Coaxial Waveguide Junction

Department of the Army

SN 6–212,766
Walsh Function Light Pattern Image Analyzer and Method
SN 6–469,333
Frequency Modulated Phase Locked Loop
SN 6–473,467
Improved Chirp Transform Correlator
SN 6–592,140
Pipe Corrosion Monitoring Apparatus and Method
SN 6–600,241
A Method for Producing Nutritionally Dense Freeze Dried Food Bars
SN 6–600,700
Portable Trapping Device
SN 6–605,456
Method of Directly Crystallizing a (Sm + Ti): Fe = 1:5 Compound
SN 6–606,729
Porous Catalytic Metal Plate Degeneration Bed in a Gas Generator
SN 6–608,824
Tone Signalling Adapter for a Telephone Set
SN 6–608,840
Distributed Pulse Forming Network

for Magnetic Modulator
SN 6–611,292
High Power Optical Switch for Microsecond Switching
SN 6–612,524
Semiconductor Multipactor Device
SN 6–620,301
Shaft Coupling Device
SN 6–623,883
Temperature Controlled Adjusting Mechanism
SN 6–624,896
Tactical High Frequency Antennas

National Security Agency

SN 6–180,075 (4,383,261)
Method For Laser Recording Utilizing Dynamic Preheating

[FR Doc. 84–23127 Filed 8–29–84; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF COMMERCE

DEPARTMENT OF LABOR

Steel Advisory Committee; Meeting

On December 6, 1983, five subcommittees were established to serve the Steel Advisory Committee. Those subcommittees were: Subcommittee on the State of the Industry, Subcommittee on Trade Issues, Subcommittee on Capital Formation Issues, Subcommittee on Industry Rationalization Issues, and Subcommittee on Employment, Productivity and Adjustment Issues.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1976), as amended, notice is hereby given that the Subcommittee on Capital Formation will meet on September 12, 1984 at 10:30 a.m.–11:30 a.m. This meeting will be held in Room 4426, Department of Treasury, Washington, D.C.

The purpose of this meeting is to present this Subcommittee's consensus recommendations regarding Capital Formation. For further information regarding this Subcommittee's agenda, meeting schedule, objectives or structure, please contact Dr. Timothy P. Roth, Executive Director, Steel Advisory Committee, whose mailing address is: Room 6324, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; or telephone (202) 377–0703. With regard to general questions relating to the Administration of this Subcommittee as required by the Federal Advisory Committee Act, please contact Robert H. Brumley II, Special Assistant to the General Counsel, U.S. Department of Commerce, (202) 377–4772.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Executive Director of the Committee in advance of this meeting. The Subcommittee Chair retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Dated: August 27, 1984.

Timothy P. Roth,

Executive Director, Steel Advisory Committee.

[FR Doc. 84–23037 Filed 8–29–84; 8:45 am]

BILLING CODE 3510–BP–M; 4510–23–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Officials of the Government of the Republic of the Philippines Authorized To Issue Export Visas and Exempt Certifications

Dated: August 27, 1984.

The Chairman of the Committee for the implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 31, 1984. For further information contact Carl Ruths, International Trade Specialist (202) 377–4212.

Background

On November 28, 1979 a CITA directive was published in the **Federal Register** (44 FR 68005), which establishes an export visa requirement and certification for exemption of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported to the United States. One of the requirements is that the visas and certifications for exemption must be signed by an official authorized by the Government of the Republic of the Philippines. The Government of the Republic of the Philippines has named three officials to issue these documents. A list of these officials, along with facsimiles of their signatures, is published as an enclosure to the letter to the Commissioner of Customs which follows this notice. This list supersedes all previous such lists.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 27, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 23, 1979 from the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products in designated categories for which the Government of the Republic of the Philippines had not issued an appropriate export visa or exempt certification.

Effective on August 31, 1984, the directive of November 21, 1979 is hereby further amended to include the enclosed list of officials authorized by the Government of the Republic of the Philippines to issue export visas and exempt certifications. These are the only officials currently so authorized Facsimiles of their signatures are also enclosed.

The action taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton, wool and man-made fiber textile products from the Philippines has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

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OFFICIALS AUTHORIZED BY THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES TO ISSUE VISAS AND CERTIFICATIONS FOR EXEMPTION FOR TEXTILE AND APPAREL PRODUCTS EXPORTED TO THE UNITED STATES

Name	Signature
Aida Cabardo	
Asuncion B. Kalalo	
Eden Malapad	

[FR Doc. 84-23051 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

August 27, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 31, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On June 21, 1984 a notice was published in the **Federal Register** (49 FR 25498) which established import restraint limits for women's, girls' and infants' knit shirts and blouses in Category 339 and woven shirts in Category 640, produced or manufactured in Indonesia and exported during the ninety-day period which began on May 29, 1984 and extended through August 26, 1984. To facilitate implementation of the limits established for the categories during the twelve-month period which began on July 1, 1984, the ninety-day period is being cancelled and limits are being established instead for the period which began on May 29, 1984 and extended through June 30, 1984.

Consultations have been held concerning these categories, but no solution was reached on mutually satisfactory limits. The United States Government has decided, therefore, to control imports of textile products in Categories 339 and 640 exported during the May 29–June 30, 1984 period at levels of 15,383 dozen for Category 339 and 15,437 dozen for Category 640.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached, further notice will be published in the **Federal Register**.

In the event the limits established for the May 29–June 30, 1984 period have been exceeded, such excess amounts, if allowed to enter, will be charged to the levels established for the twelve-month period which began on July 1, 1984.

The letter published below cancels and supersedes the directive of June 18, 1984 to the Commissioner of Customs and establishes modified restraint limits for textile products in Categories 339 and 640, produced or manufactured in Indonesia and exported during the period May 29–June 30, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 27, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of June 18, 1984.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1983, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 31, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Categories 339 and 640, produced or manufactured in Indonesia, and exported during the period which began on May 29, 1984 and extended through June 30, 1984, in excess of the following levels:

Category	Restraint level [1]
339	15,383 dozen.
640	15,437 dozen.

[1] The levels have not been adjusted to account for any imports exported after May 28, 1984.

Textile products in Categories 339 and 640 which have been exported to the United States prior to May 29, 1984 shall not be subject to this directive.

Textile products in Categories 339 and 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Indonesia and with respect to imports of cotton and man-made fiber textile products from Indonesia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-23118 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Exported from Indonesia

August 27, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 31, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On June 21, 1984 a notice was published in the **Federal Register** (49 FR 25498) which established an import restraint limit for women's, girls' and infants' knit shirts and blouses in Category 339 and woven shirts in Category 640, produced or manufactured in Indonesia and exported during the ninety-day period which began on May 29, 1984 and extends through August 26, 1984, pursuant to the consultation provision of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for these categories during consultations, to limit its exports during the period beginning on July 1, 1984 and extending through June 30, 1985 to 182,058 dozen for Category 339 and 182,698 dozen for Category 640.

The notice also stated that merchandise in Categories 339 and 640 which is in excess of the ninety-day limits, if it is allowed to enter, may be charged to the twelve-month limits. The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed in consultations, to control imports at the designated limits. The limits may be adjusted later to include swing and carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 27, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13, and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 31, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 339 and 640, produced or manufactured in Indonesia and exported during the period which began on July 1, 1984 and extends through June 30, 1985, in excess of the following limits:

Category	12-month restraint limit[1]
339	182,058 dozen.
640	182,698 dozen.

[1] The limits have not been adjusted to reflect for any imports exported after June 30, 1984.

Merchandise in the foregoing categories which is in excess of the limits estabished for exports during the period May 29–June 30, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers are published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

The action taken with respect to the Government of Indonesia and with respect to imports of cotton and man-made fiber textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-23119 Filed 8-29-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday and Friday, 20 and 21 September 1984.

Times of Meeting: 0830–1700 hours, both days (Closed).

Place: White Sands Missile Range, New Mexico.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army TRADOC U.S. Army Training and Doctrine Command) Operations Research Activity (TORA) will meet for classified briefings and discussions. The Subgroup is tasked with a review of TORA to improve its operation and will look at TORA's current projects and future workload, as well as analytic capabilities. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C.,Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-74046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84-23093 Filed 8-29-84; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, 2 and 3 October 1984.

Times of Meeting: 0800–1700 hours, both days (Closed).

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (BMD) Follow-On will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issues of the study effort, i.e., Discrimination, Anti-Tactical Missile, and Strategic Air Defense.

The subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–23094 Filed 8–29–84; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement; Cumberland and Tennessee Rivers Below Barkley Canal

AGENCY: U.S. Army Corps of Engineers, Nashille District.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Cumberland and Tennessee Rivers Below Barkley Canal Navigation Study.

I. Summary

The navigation study of the Cumberland and Tennessee Rivers below Barkley Canal was authorized by Senate Committee on Public Works Resolution, dated 2 October 1972, as amended on 9 September 1982, by resolution of the Senate Committee on Environment and Public Works. The U.S. Army Corps of Engineers is preparing a feasibility report/EIS as required by the National Environmental Policy Act (NEPA) for navigation improvement alternatives within the study area. The report will identify and evaluate beneficial and adverse effects of alternatives on the resources of the study area.

The study area includes the Corps of Engineers' Barkley Lock and Dam at Cumberland River (Mile 30.6) downstream to the Cumberland River's confluence with the Ohio River at Mile 920.5 (Smithland, Kentucky); the Tennessee Valley Authority's Kentucky Lock and Dam at Mile 22.4 on the Tennessee River, which enters the Ohio River at Mile 932.5 near Paducah, Kentucky; and the 1.75-mile-long open navigation canal which joins Barkley and Kentucky Lakes approximately 2.2 miles upstream from Barkley Dam.

A. Structural plans being studied, alone or in combination, include the construction of additional locking capacity at Kentucky Lock and modifications to ten bendways on the Cumberland River downstream of Barkley Dam. Variations for providing additional locking capacity at Kentucky Lock are a 600′ x 110′ lock or a 1,200′ x 110′ lock, both located adjacent to the existing lock. An additional structural alternative would consist of modification of ten bendways coupled with traffic regulation.

B. Nonstructural alternatives include regulating traffic, congestion fees, and no action.

II. Scoping Process

The public is invited to submit written comments within 30 days of this notice, to aid in determining the issues to be covered in the DEIS. Comments have also been solicited by letter of 24 May 1984.

The EIS will identify, describe, and evaluate the existing environmental, cultural, and recreational resources; explain the navigation problems of the Cumberland and Tennessee Rivers downstream of Barkley Canal and possible solutions to the navigation problems; and evaluate the impacts associated with the alternatives under consideration. The following is a preliminary list of significant issues which would be analyzed and addressed in the DEIS:

A. Effects on fish and wildlife.
B. Effects on terrestrial habitat.
C. Effects on endangered species.
D. Effects on prime and unique farmlands.
E. Effects on aquatic habitats.
F. Effects on cultural resources.
G. Effects on water quality.
H. Effects of discharge of fill material below ordinary high water under section 404 of the Clean Water Act of 1977.

Coordination will be conducted with the US Fish and Wildlife Service (FWS) to insure compliance with section 7 of the Endangered Species Act of 1973, as amended in 1978, as well as the FWS and Kentucky Department of Fish and Wildlife under the Fish and Wildlife Coordination Act (48 Stat. 401 as amended; 16 U.S.C. 661 et seq.). The cultural resources reconnaissance for the project area has been coordinated with Kentucky Historic Preservation Officer and the State Archeologist.

Copies of the draft and final EIS will be transmitted to state and Federal agencies for comments and filed with the Environmental Protection Agency in accordance with ER 200–2–2 and 40 CFR Parts 1500–1508.

III. Scoping Meeting

No scoping meeting will be conducted unless comments indicate that one is needed to obtain adequate input from the public and from other agencies. Scoping has been undertaken by mail.

IV. Estimated Completion

The DEIS should be made available to the public in August 1985.

Questions. The District point of contact for questions concerning this project DEIS is Ms. Liz Rhodes, (615) 251–5028 or FTS 852–5028. All correspondence should be sent to the following address: U.S. Army Engineer District, Nashville, Planning Branch, Environmental Analysis Section, PO Box 1070, Nashville, Tennessee 37202.

Dated: August 21, 1984.

William T. Kirkpatrick,

Colonel, Corps of Engineers, Commanding.

[FR Doc. 84–23084 Filed 8–29–84; 8:45 am]

BILLING CODE 3710–GF–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Department of the Army (DA) Permit for a 6-Mile Long Public Access Road Causeway Connecting Ebeye Island to the Islands North of Ebeye, Kwajalein Atoll, Republic of the Marshall Islands

August 21, 1984.

AGENCY: U.S. Army Corps of Engineers, Honolulu District, Pacific Ocean Division, Fort Shafter, Hawaii.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Description of the proposed action: The applicant, Kwajalein Development Authority (KADA), proposes to construct approximately 1.7 miles of causeway and 3.8 miles of roadway linking the island of Ebeye with the six small islands to the north. The purpose of the causeway/roadway is to provide more land area for the people of Ebeye to relieve the existing overcrowding and substandard living conditions. The proposed project requires a Department of the Army (DA) permit under section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Description of reasonable alternatives: Because of the preliminary nature of the project, details on reasonable alternatives have not been finalized. The applicant is in the process of determining various alternatives, which will include:

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a. Alternative alignments of the road causeway,

b. No action alternative,

c. Dock construction for boat access between the islands to preclude construction of the road causeway,

d. Relocation of Ebeye population to other islands or areas.

3. Description of the scoping process for the EIS.

a. A public notice shall be issued announcing the intent to prepare a DEIS for the proposed permit action and inviting public comments and participation of affected Federal, State and local agencies, and other interested private organizations and parties as to specific factors of concern which should be addressed in the DEIS. Upon preparation of the DEIS, a public notice shall be issued summarizing the facts of the case and announcing the availability of the DEIS. If a public hearing is requested, it will be held after completion of the DEIS.

b. The significant issues to be analyzed in depth in the DEIS will include:

(1) Impacts of the project on the marine environment and coastal zone,

(2) Project impacts on rare or endangered species, flora, or fauna, if any,

(3) Coastal water quality and oceanographic impacts,

(4) Air quality and noise impacts,

(5) Socioeconomic impacts on residents of Ebeye and impacts on public facilities,

(6) Land use considerations and impacts,

(7) Historic and archaeological considerations,

(8) Water supply, electrical, sewage system, recreational, and transportation impacts.

4. It is estimated that DEIS will be made available to the public in December 1984.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Stanley Arakaki, Room 205, Building 230, Fort Shafter, Hawaii 96858. Telephone: (808) 438-9258.

Dated: August 23, 1984.

Michael M. Jenks,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-23071 Filed 8-29-84; 8:45 am]

BILLING CODE 3710-NN-M

Department of the Navy

Chief of Naval Operations; Executive Panel Advisory Committee Special Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Special Warfare Task Force will meet September 25-26, 1984, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine special warfare forces missions and roles. The entire agenda for the meeting will consist of discussions of key issues related to special warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 765-1205.

Dated: August 24, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-23079 Filed 8-29-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[ACN-07-70002]

Office of Special Education and Rehabilitative Services

Education of the Handicapped Act, Part B; Intent to Repay to the Nebraska Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Education Department.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education intends to repay under a grantback arrangement to the Nebraska Department of Education (SEA) an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) after a June 8, 1981 final decision by the Department's Education Appeal Board. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before September 29, 1984.

ADDRESS: All written comments should be submitted to Dr. David J. Rostetter, Acting Director, Division of Assistance to States, Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3605, MES), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. David Rostetter. Telephone: (202) 732-1024.

SUPPLEMENTARY INFORMATION:

A. Background

Under Part B of the Education of the Handicapped Act (EHA-B) as in effect during fiscal years 1973 and 1974, participating States were permitted to use 5 percent (or $100,000, whichever was greater) of the funds allotted to the States for administration of the State EHA-B plan and for planning on the State and local level. Nebraska state Legislative Bill 403, as enacted, stipulated that the education of all handicapped children of school age was the responsibility of the local school district and that State funds would be used to pay most of the additional educational costs associated with handicapped children. To recieve their initial allocation of State funds, the local school districts were required to collect and verify information about handicapped children, but the State legislature did not appropriate funds to collect and verify the required information. In place of State funds, 31 local educational agencies used EHA-B funds to collect and verify the information required under the State law.

The audit report found that when the data collection expenses of the LEAs were added to the other State expenditures for planning and administration of the Nebraska EHA-B program, the SEA had exceeded the statutory limitation (5% or $100,000) by $94,274 ($2,809 in fiscal year 1984 and $91,465 in fiscal year 1974).

On September 7, 1977, the Bureau of Education for the Handicapped, Office of Education, DHEW, issued a final letter of determination based on the audit requesting a refund of $94,274. On December 13, 1979, the SEA appealed the audit determination to the Education Appeal Board. On June 8, 1981, the Education Appeal Board issued its decision upholding the $94,274 audit exception. On June 22, 1984, the Department of Education acknowledged receipt of the SEA's payment of $101,005 ($94,274 refund plus $6,731 accumulated interest) as full settlement of the claim.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds ($94,274 not including interest). The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program, and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded under a Grantback Arrangement

By letter dated July 10, 1984, the SEA formally requested repayment, under a grantback arrangement, of 75 percent of the audit exception of $94,274 which it had returned to the Department, with interest, as settlement of a final audit determination. The amount of the grantback would be $70,705. With its request, the SEA provided assurances that the practices and procedures that resulted in the final determination have been corrected and that it is in all other respects in compliance with the requirements of the program. Also included with the SEA's request was a budget plan for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA, in its July 10, 1984 request (with subsequent revisions), described its plan to use the grantback funds to support the special educational needs of pre-kindergarten handicapped children in programs administered under Part B of the Education of the Handicapped Act.

Under the plan presented by the SEA, grantback funds will be used to purchase equipment and materials to support services provided under the Early Childhood Special Education (ECSE) program. The ECSE program complies with the requirements of the EHA–B. Parent and advocate support of the ECSE program is provided through the State Special Education Advisory Council. The items to be purchased with the grantback funds will be housed at the Nebraska Diagnostic Resource Center (NDRC), a learning resource component for the sensory impaired. The NDRC serves handicapped children in all school districts in the State. Placement of the equipment and materials at the NDRC will allow for distribution of the items to the LEAs through an existing loan system. The equipment and materials will also be available for direct use by students who come to the NDRC for short-term assessment experiences. The plan proposed by the SEA will provide the greatest impact from the funds available for expenditure rather than granting small amounts of funds to a limited number of selected LEAs. Because the funds requested under this grantback arrangement must be expended by September 30, 1984, in accordance with section 456(c) GEPA, the SEA will use these funds to purchase equipment and materials by September 30, 1984.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under Section 456 of GEPA, including the SEA's discharge of its payment obligations to the Department, the SEA's assurances described in Part C of this notice, and the SEA's plan and budget, the Secretary makes the folowing determinations:

(1) The SEA has corrected the practices and procedures that resulted in the final audit detemination, and is in all other respects in compliance with the requirements of the EHA–B program;

(2) The SEA has submitted a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the EHA-B program and will benefit handicapped children who are served by the program; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the EHA-B program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available, under a grantback arrangement to the SEA, an amount of $70,705 which is 75 percent of the funds, exclusive of interest, the Department has recovered after the Education Appeal Board's final decision on this audit. The Secretary bases his intention to enter into a grantback arrangement under section 456 of GEPA on his determinations outlined in Part E of this notice, and payment by the SEA of all funds owed to the Department as a result of the final audit determination.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purpose of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be expended by September 30, 1984.

(3) The SEA must, not later than 90 days, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and approved budget.

(4) Separate accounting records must be maintained documenting the expenditure of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Nebraska SEA. Interested persons may send written comments to Dr. David Rostetter at the address at the beginning of this notice. All comments must be received on or before September 29, 1984.

(Catalog of Federal Domestic Assistance No: 84.027—Assistance to States for Education of Handicapped Children)

Dated: August 28, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-23252 Filed 8-28-84; 4:30 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Liquefied Gaseous Fuels Spill Test Facility

In accordance with Congressional action on the Continuing Resolution, (Pub. L. 97-377), the Department of Energy (DOE), in support of the Fossil Energy Liquefied Gaseous Fuels (LGF) Spill Test Program, is setting forth this notice that it is preparing to construct a unique spill test facility where tests could be performed on hazardous chemicals and liquefied gaseous fuels. The facility will be made available for testing on a user-fee basis. This will allow users and suppliers of these materials and other interested parties to develop a technical data base of safety-related information. A site has been selected for this facility (the U.S. Department of Energy's Nevada Test Site) and the DOE and its contractors are nearing completion of detailed design associated with the LGF Spill Test Facility. User interest in this facility has been encouraging as evidenced by comments received on the Preliminary Facility Design Description Document.

It is intended that the facility be of generic design, capable of spilling large volumes of several types (e.g., cryogenic, isothermal, aerosol-forming, and chemically reactive) of hazardous materials at high rates onto different surfaces and under varying conditions. In conjunction with this notice, the DOE is now soliciting potential users to review design details of the facility. The DOE cannot provide compensation for this activity.

The following activities are contemplated. Detailed design packages will be available shortly. A period of thirty (30) days for review and formation of comments will occur before the date of a scheduled forum. Written comments can be presented and verbally addressed before a representative of DOE and its contracted designers at the forum. A fifteen (15) day period following the forum would be planned for receipt of final written comments. This period will permit consideration of all comments received by the Department.

The Department is presently planning to conduct the forum in Las Vegas, Nevada. The exact date and location will be provided to you upon finalization of plans. The potential exists for visit to the facility construction site on the day following the forum meeting.

FOR FURTHER INFORMATION CONTACT: Mr. J.E. Walsh, Jr., Deputy Assistant Secretary for Management, Planning and Technical Coordination, Office of Fossil Energy, FE-10, U.S. Department of Energy, Washington, D.C. 10545.

Issued in Washington, D.C. on August 13, 1984.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 84-23036 Filed 8-29-84; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Amendment of the Final Billing Credits Policy to Require a Cost-Effective Determination for Resources Other Than Conservation

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of amendment of final billing credits policy, including deleted language and replacement language.

SUMMARY: This notice announces BPA's decision to amend the final Billing Credits Policy to require a Regional Act cost-effectiveness determination for resources other than conservation.

Responsible Official: Eleanor Y. Adelman, Billing Credits Coordinator, is the official responsible for amendment of the final policy.

DATE: These changes are effective immediately.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212, 503-230-3478. Oregon callers outside of Portland may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048. Information may also be obtained from:

Ms. Eleanor Y. Adelman, Billing Credits Coordinator, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, 503-230-3602.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Earl C. Schoer, Acting Upper Columbia Areas Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1983, BPA published its final Billing Credits Policy in the **Federal Register** (48 FR 43464). The final policy provided that a resource need not be shown to be cost-effective, as defined

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in the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), to be eligible for a billing credit. At the same time that the final Billing Credits Policy was published, BPA published a notice in the **Federal Register** (48 FR 43512) soliciting comments on whether the Billing Credits Policy should be amended to require that a resource undergo a cost-effectiveness determination in order to establish that resource's eligibility for a billing credit.

BPA's proposed Billing Credits Policy, published in the **Federal Register** on March 5, 1982, (47 FR 9760), had not required that a resource be shown to be cost-effective to be eligible for a billing credit. This issue received relatively few comments during the official comment period, which ended on April 23, 1982. On April 27, 1983, the Northwest Power Planning Council (Regional Council) adopted its Regional Conservation and Electric Power Plan (Council's Plan) which provided that all BPA resource acquisition must be cost-effective. On April 8, 1983, the Regional Council formally expressed concern that the lack of a cost-effectiveness determination to establish a resource's eligibility for a billing credit might constitute an inconsistency between BPA's Billing Credits Policy and the Regional Council's plan.

Because of the Regional Council's concern that there might be an inconsistency between the Council's Plan and the Billing Credits Policy, BPA decided to reconsider the issue of the cost-effectiveness determination requirements for a billing credit resource.

BPA opened a formal comment period on the issue of whether the final Billing Credits Policy should be amended to require a cost-effectiveness determination for a resource to be eligible for a billing credit. The original 45-day comment period, lasting from September 23, 1983, to November 7, 1983, was extended at the request of the Regional Council to January 28, 1984.

A total of 19 letters were submitted in response to the **Federal Register** notice on amending the policy. The respondents included public utility districts, direct-service industries, investor-owned utilities, the Regional Council, State agencies, environmental groups, and other interested parties. In addition, a public meeting was held on November 15, 1983, to discuss technical aspects of the issues.

After careful consideration of all comments, the Administrator has decided that: (1) That final Billing Credits Policy be amended to require that resources other than conservation undergo a Regional Act cost-effectiveness analysis to determine their eligibility for a billing credit; and (2) conservation resources need not be shown to be cost-effective.

BPA believes that the question of a Regional Act cost-effectiveness analysis to determine the eligibility of a resource for a billing credit is a matter of policy, not of law. BPA believes that several factors must be weighed in this decision, including consistency among BPA policies, encouragement of regional conservation, and allowance of individual resource planning by local entities and customers. The needs of BPA customer groups who may participate in the billing credits program and the concerns of the Regional Council should also be factors in the decision.

Since BPA's original decision not to require a cost-effectiveness determination to establish the eligibility of a billing credit resource, many factors have changed. The most important factor is that the region is forecast to be in a period of prolonged energy surplus. BPA's original decision was designed to provide the largest possible pool of potential billing credit resources available to meet the region's energy needs. Since the region is now surplus, the imposition of a cost-effectiveness requirement, which would limit the available pool of resources eligible for a billing credit, is no longer a major consideration.

Additionally, when BPA wrote the Billing Credits Policy, the agency's cost-effectiveness policy was in early stages of development. Subsequently, BPA has done substantial work on developing a cost-effectiveness policy, using as a framework the definition in section 3(4) of the Regional Act. The cost-effectiveness policy should provide considerable flexibility in the determination of a resource's cost-effectiveness. Thus the concern that a cost-effectiveness requirement in the Billing Credits Policy might significantly hamper local initiative in resource development has been substantially assuaged.

BPA is continuing to develop its resource programs and policies. Cost effectiveness is a major tenet of all these programs except for research, development, demonstration projects, and for billing credits. The absence of a cost-effectiveness requirement in the Billing Credits Policy may raise questions of consistency among BPA programs.

BPA had a number of questions on the issue of whether to require a cost-effectiveness determination for conservation resources under billing credits.

In formulating the final Billing Credits Policy, BPA was particularly concerned about the effects of applying a cost-effectiveness standard to potential billing credit conservation resources. BPA believes that conservation resources already have significant restraints on their eligibility for a billing credit because of the requirement that these resources must be "independently undertaken." This precludes eligibility for a conservation measure contained in BPA's conservation programs.

The Regional Act requires that BPA acquire cost-effective conservation. Were BPA to apply a cost-effectiveness requirement to potential conservation billing credit resources, eventually few if any, measures would qualify for a billing credit because BPA would presumably have already included them in its conservation programs. A billing credit may be granted only for conservation measures or actions that go beyond BPA's programs to capture conservation that is presumably not cost-effective, at least on a regional basis. BPA believes that this is what Congress intended under the Regional Act. Not requiring a cost-effectiveness determination under billing credits for conservation resources would therefore be consistent with this legislative mandate.

II. Amended Language

The language changes follow. Deleted language is set within brackets. New or revised language is inserted and set within arrow marks.

Section 2: Definitions

Section 2, paragraph (r) is amended to include the following at the end of the definition of "cost-effective:"

►For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.◄

►In determining the amount of power that a conservation measure or other resource may be expected to save or produce, the Council or the

Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.◄

►For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure nor resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.◄

Section 5: Qualifying Renewable Resources

(Delete:)

[(2) In analyzing the environmental effects of a renewable resource, the Administrator shall take into account quantifiable environmental costs and benefits directly attributable to a resource.

(3) Neither the Administrator nor a customer seeking a billing credit need show that a renewable resource is cost-effective to be eligible for a billing credit.]

(Replace with:)

►(2) The Administrator may not grant a billing credit to a customer for a renewable resource until the resource is shown to be cost-effective.◄

The rest of section 5 is accordingly renumbered with section 5(b)(4) becoming section 5(b)(3).

Section 6: Qualifying Multipurpose Projects

(Delete:)

[(2) In analyzing the environmental effects of a multipurpose project, the Administrator shall take into account quantifiable environmental costs and benefits directly attributable to a project.

(3) Neither the Administrator nor a customer seeking a billing credit need show that a multipurpose project is cost-effective to be eligible for a billing credit.]

(Replace with:)

►(2) The Administrator may not grant a billing credit to a customer for a multipurpose project until the project is shown to be cost-effective.◄

The rest of section 6 is accordingly renumbered with section 6(b)(4) becoming section 6(b)(3).

Section 7: Other Qualifying Resources

(Delete:)

[(2) In analyzing the environmental effects of the resource, the Administrator shall take into account quantifiable environmental costs and benefits directly attributable to a resource.

(3) Neither the Administrator nor a customer seeking a billing credit need show that a resource is cost-effective to be eligible for a billing credit.]

(Replace with:)

►(2) The Administrator may not grant a billing credit to a customer for any other qualifying resource until the resource is shown to be cost-effective.◄

The rest of section 7 is accordingly renumbered with section 7(b)(4) becoming section 7(b)(3).

Issued in Portland, Oregon on August 22, 1984.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 84-23033 Filed 8-29-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-004; OFP Case Nos. 50076-9142-08, 09-22]

Order Granting Exemption; Municipal Light and Power, Anchorage, AK

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Municipal Light and Power, Anchorage, Alaska, Exemptions From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On February 3, 1984, Municipal Light and Power (ML&P), Anchorage, Alaska, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting permanent reliability of service exemptions for two proposed new electric powerplants from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The units for which ML&P seeks exemptions are two natural gas-fired combustion turbines with nameplate ratings of 80 MW each, that will operate in combined cycle with a heat recovery steam turbine unit (as a base load integrated system) to produce electrical power at the George M. Sullivan Generating Station, Anchorage, Alaska. The new units, identified as Units 8 and 9 (hereafter "Sullivan 8 and 9") are expected to commence operations to meet load forecast electrical demands commencing in 1984.

Pursuant to section 212(f) of the Act and 10 CFR 503.40, ERA hereby issues this order granting th ML&P permanent reliability of service exemptions from the prohibitions of FUA for its two proposed new electric powerplants, Sullivan 8 and 9, at the George M. Sullivan Generating Station.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on October 29, 1984.

FOR FURTHER INFORMATION CONTACT:

Robert A. McCann, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-1649

Steven E. Ferguson, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6D-033, Washington, D.C. 20585, Phone (202) 252-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available for inspection upon request at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.-4:00 p.m.

SUPPLEMENTARY INFORMATION: ML&P proposes to install two new combustion turbine powerplant units, Sullivan 8 and 9, at its George M. Sullivan Generating Station, located in Anchorage, Alaska. The new units, together with a heat recovery steam unit, will operate as a base load integrated system, producing electricity to meet forecast demands, commencing with the winter of 1984-85.

Section 212(f) of FUA and 10 CFR 503.40 provide for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97-394 (42 U.S.C. 8322) provides that:

> In the case of any new electric power plant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural

gas (as that term is defined in such Act), as a primary energy source in such power plant, the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other application provisions of such Act, shall be granted by the Secretary of Energy. Nothing in this section shall apply to any new electric power plant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to Sullivan 8 and 9 in the **Federal Register** on June 12, 1984 (49 FR 24168) commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of ML&P's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed July 27, 1984. No comments were received and no hearing was requested.

In accordance with the requirements of 10 CFR 503.40 (a) and (c), ML&P's petition for permanent exemptions for Sullivan 8 and 9 included evidence and supporting information demonstrating that Sullivan 8 and 9 are qualifying powerplants under section 317 of Pub. L. 97–394; that no alternate power supply exists; and that the use of mixtures in the units is not feasible. In addition, ML&P submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

After review of ML&P's environmental impact analysis and other relevant information, ERA has determined that the granting of the requested exemptions would clearly not result in significant effects on the quality of the human environment, and, as such, requires neither an environmental impact statement nor an Environmental Assessment. ERA's compliance with the documentary requirements of the National Environmental Policy Act of 1969 (NEPA) have accordingly been satisfied by the preparation of a memorandum for the file in accordance with section A.3(c)(1) of DOE's NEPA guidelines.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that ML&P has satisfied all of the eligibility requirements for the requested exemptions as set forth in 10 CFR 503.40, and pursuant to section 212(F) of FUA, ERA hereby grants ML&P permanent reliability of service exemptions for two new electric powerplants to be installed at the George M. Sullivan Generating Station, Anchorage, Alaska, permitting the use of natural gas or petroleum as a primary source in the units.

Pursant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Wasington, D.C. on August 23, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–23034 Filed 8–29–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP-649-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

August 24, 1984.

Take notice that on August 14, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP84–649–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that CIG proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG propose to transport up to 5,000 Mcf of natural gas per day for the account of NGL Production Company (NGL) pursuant to a gas transportation agreement (Agreement) dated July 3, 1984.

CIG states that it would transport the gas for the account of NGL from existing points of interconnection between the Montana-Dakota Utilities Company (Mondak) pipeline and the CIG pipeline in Park County, Wyoming, and Fremont County, Wyoming, to Northwest Pipeline Company (Northwest) in Sweetwater County, Wyoming, or at existing interconnections between Northwest and Mountain Fuel Resources (Mountain Fuel) in Sweetwater County, Wyoming, and Unitah County, Utah. The Mountain Fuel delivery points would only be used subject to mutual agreement of Northwest, CIG, and Mountain Fuel for specific periods of time and for agreed-upon volumes of gas, it is stated. CIG indicates there would be no additional cost to NGL or CIG for using these additional delivery points.

CIG states that the gas is purchased by Overthrust Gas Brokers Company (OGBC) from Cities Service Oil Company (Cities) and sold by OGBC to NGL pursuant to a gas purchase contract dated January 18, 1984. CIG indicates that NGL has agreed to pay OGBC $2.455 per million Btu for the gas which incudes OGBC's agency fee of 12.0 cents per million Btu and reimbursement of 23.5 cents per million Btu for Mondak's transportation charge incurred in delivering the gas to CIG.

CIG proposes to charge NGL a rate of 36.08 cents per Mcf plus and AIC charge of 2.5 cents per million Btu, it is indicated. These rates are set forth in CIG's Rate Schedule AIC–1 in CIG's FERC Gas Tariff, Original Volume No. 1, it is explained. CIG states that the proposed end-use of this gas is to replace fuel and shrinkage in the processing of Northwest's gas at NGL's processing plants.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23011 Filed 8–29–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–650–000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

August 24, 1984.

Take notice that on August 14, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No.

CP84–650–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that CIG proposes to transport gas on behalf of NGL Production Company (NGL) under authorization issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with Commission and open to public inspection.

CIG proposes to transport up to 3,000 Mcf of natural gas per day for NGL for a term expiring June 30, 1985. It is stated that NGL would purchase the subject natural gas from Industrial Gas Services, Inc., at the outlet of the Raymer Plant in Weld County, Colorado. CIG states that Northwest Central Pipeline Corporation (Notherwest) would transport NGL's gas from the outlet of the Raymer Plant for delivery to CIG at existing points in Sweetwater, Wyoming. It is indicated that CIG would transport and deliver NGL's gas to Northwest at three existing points of delivery, two in Sweetwater County, Wyoming and one Uintah County, Utah. It is explained that the Uintah County and one of the Sweetwater County delivery points are where Northwest receives gas from Mountain Fuel Resources for the account of CIG. It is further stated that Northwest would transport and deliver NGL's gas to NGL's Foundation Creek, North Douglas Creek, and Moxa Arch processing plants located in Rio Blanco County, Colorado, and Lincoln County, Wyoming.

It is indicated that NGL would use the subject gas exclusively to help replace the fuel and shrinkage incurred in processing Northwest's gas at NGL's processing plants.

CIG proposes to charge NGL a transportation rate of 36.08 cents per Mcf plus an added incentive charge of 2.5 cents per million Btu. It is stated that the transportation rate is CIG's systemwide rate based upon the settled cost-of-service in Docket No. RP82–54 and that the rate is stated in CIG's Rate Schedule AIC–1 in in CIG's FERC Gas Tariff, Original Volume No. 1.

Any person or the Commission's staff may, within days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23012 Filed 8–29–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP63–272–000, et al.]

Consolidated Gas Transmission Corp.; Redesignation

August 27, 1984.

On June 1, 1984, Consolidated Gas Transmission Corporation filed in Docket No. CP63–272–000, *et al.*, a petition requesting that it be designated as holder of the effective Natural Gas Act certificates of public convenience and necessity issued to Consolidated Gas Supply Corporation. In accordance with a dissolution of the Consolidated Gas Supply Corporation and pursuant to authorization issued December 20, 1983, in Docket No. CP80–346–000, 25 FERC ¶61,397, the jurisdictional natural gas operations are to be conducted by and under the name of Consolidated Gas Transmission Corporation. By the order of December 20, 1983, the Commission reissued to Consolidated Gas Transmission Corporation the then-effective certificates of Consolidated Gas Supply Corporation. These are identified in the appendix hereto.

The applications currently pending before the Commission which were filed by Consolidated Gas Supply Corporation, the authorizations issued to Consolidated Gas Supply Corporation since December 20, 1983, the F.E.R.C. Gas Tariff on file, and any other records or proceedings relating to the former Consolidated Gas Supply Corporation are hereby redesignated as those of Consolidated Gas Transmission Corporation.

A listing of authorizations and pending proceedings is set forth in the appendix.

This action is taken pursuant to 18 CFR 375.302(s) of the Commission's rules.

Kenneth F. Plumb,

Secretary.

Appendix–Consolidated Gas Transmission Corporation

List of Certificates Issued Prior to December 20, 1983

CP63–272–000, CP63–285, CP63–302, CP63–311, CP64–35, CP64–56, CP65–394, CP66–45, CP66–225, CP66–250, CP66–290, CP66–343, CP67–6, CP67–40, CP67–212, CP67–254, CP67–307, CP67–328, CP67–372, CP68–9, CP68–113, CP68–260, CP68–281, CP68–298, CP68–315, CP69–17, CP69–78, CP69–87, CP69–92, CP69–120, CP69–207, CP69–235, CP69–242, CP69–253, CP69–264, CP69–274, CP69–286, CP26–292, CP69–308, CP70–31, CP70–170, CP70–215, CP70–227, CP70–250, CP70–263, CP71–17, CP71–46, CP71–100, CP71–101, CP71–102, CP71–103, CP71–104, CP71–105, CP71–212, CP71–251, CP72–40, CP72–173, CP72–183, CP72–203, CP72–213, CP72–249, CP72–250, CP72–300–015, CP72–303, CP73–146, CP73–242, CP73–288, CP73–313, CP74–9–000, CP74–34, CP74–168, CP74–229, CP74–249, CP74–268, CP74–276, CP75–4, CP75–5, CP75–8, CP75–22, CP75–158–006, CP75–233, CP75–259, CP75–260, CP76–5, CP76–180, CP76–260, CP76–265–002, CP76–294, CP76–295, CP76–396, CP77–144, CP77–201, CP77–205, CP77–257, CP77–336, CP77–355, CP77–372, CP77–538–001, CP77–585, CP78–22, CP78–55, CP78–141, CP78–143, CP78–161, CP78–225, CP78–269, CP78–288, CP78–289, CP78–377, CP78–394, CP78–479, CP78–506, CP78–529, CP79–26, CP79–92, CP79–132, CP79–190, CP79–193, CP79–228, CP79–272, CP79–319–002, CP79–333, CP79–370, CP79–419, CP80–44, CP80–121, CP80–208, CP80–223–001, CP80–260–004, CP80–266, CP80–292, CP80–293, CP80–296, CP80–299, CP80–307, CP80–330, CP80–375, CP80–385, CP80–442–000, CP80–455, CP80–486, CP81–179–000, CP81–187–000, CP81–188–004, CP81–244–000, CP81–277–002, CP81–284–000, CP81–285–000, CP81–289–000, CP81–385–000, CP81–407–000, CP81–447–000, CP81–452–000, CP81–464–000, CP81–519–000, CP81–528–000, CP82–10–000, CP82–11–001, CP82–61–001, CP82–113–000, CP82–135–000, CP82–162–000, CP82–187–001, CP82–191–001, CP82–195–000, CP82–277–000, CP82–353–000, CP82–381–002, CP82–415–000, CP82–531–000, CP82–537–000, CP82–557–000, CP83–3–000, CP83–52–000, CP83–82–000, CP83–176–001, CP83–177–000, CP83–338–000, CP83–382–000, CP83–386–000, CP83–403–004, CP83–460–000

Consolidated Gas Transmission Corporation

List of Certificates Issued Since December 20, 1983, and Pending Certificate Applications

CP81–31–002,
CP83–403–000,
CP83–410–003,
CP84–52–000,
CP84–126–000,
CP84–127–000,
CP84–274–000,

CP84–280–001,
CP84–300–000

Consolidated Gas Transmission Corporation

List of the Tariff, Rate, and Other Proceedings

RP67–2, RP69–10, RP69–19, RP70–2, RP71–52, RP71–71, RP71–77, RP71–126, RP72–29, RP72–34, RP72–43, RP72–47, RP72–57, RP72–10, RP72–11, RP72–124, RP72–141, RP73–2, RP73–25, RP73–26, RP73–27, RP73–28, RP73–29, RP73–30, RP73–31, RP73–32, RP73–33, RP73–34, RP73–56, RP73–67, RP73–81, RP73–107–008, RP73–115, RP74–32, RP74–38, RP74–67, RP74–90, RP75–5, RP75–11, RP75–14, RP75–18, RP75–91, RP76–72, RP77–7, RP77–29, RP77–39, RP77–140–000, RP78–52–015, RP79–22–015, RP79–47, RP79–73, RP80–12, RP80–52, RP80–16–015, RP80–67, RP80–116, RP81–12–000, RP81–63–000, RP81–77–000, RP81–80–009, RP81–114–005, RP82–30–000, RP82–64–000, RP82–115–000, RP83–92–000, RP83–126–000, RP84–23–002, RP84–35–001, TA80–1–22–000, TA80–2–22–003, TA81–1–22–000, TA81–2–22–000, TA82–1–22–000, TA82–2–22–005, TA83–1–22–000, TA83–2–22–004, TA84–1–22–005, TA84–2–22–001, TA78–11, TA79–31, TA79–100, TA80–6, TA80–29, TA81–29–000, TA82–17–000, TA83–7–000, SA80–9, GP80–12–002, GT81–4–000, Gt83–24–000, ST80–100, ST81–196–000, ST81–260–000, ST82–273–000, ST83–64–000, ST83–71–000, ST83–120–000, ST83–259–000, ST83–266–000, ST83–456–000, ST83–757–000, ST83–758–000

Consolidated Gas Transmission Corporation

List of Pending Cases in Which Interventions Have Been Filed

Boundary Gas, Inc.

CP81–107–000

Tennessee Gas Pipeline Company

RP77–62, RP80–97, RP81–54–000, RP81–56–000, RP82–10–000, RP82–12–000, RP82–121–000, RP82–125–000, RP83–8–000, RP83–19–000, RP83–74–000, RP83–109–000, RP84–3–000, RP84–17–000, TA82–1–9–000, TA82–2–9–000, TA83–1–9–000, TA83–2–9–000 & 001, CI83–269–000, CI83–502–000

Tennessee-Boundary

CP81–296–000, CP82–470–000, CP82–544–000

Texas Eastern Transmission Corporation

RP74–41, RP79–28–002, RP81–81–000, RP83–109–000, RP83–9–000, RP83–102–000, RP82–446–000, RP83–224–000, TA83–2–17–000, TA84–1–17–000, TC82–42–000

Texas Gas Transmission Corporation

RP83–131–001, RP82–403–000, CP82–418–000, CP82–419–000, CP83–485–000, CP84–56–000, TA83–1–18–001, TA83–2–18–000 TA84–1–18–003

Transcontinental Gas Pipe Line Corporation

RP82–3–000, RP82–55–000, RP83–11–000, RP83–30–002, RP83–49–000, RP83–137–000, RP84–38–000, CP77–453, CP78–328–004, CP82–125–003, CP82–385–000, CP82–503–000, TA81–1–29–002, TA83–2–29–000

United Gas Pipe Line Company

RP82–16–000, RP82–57–000, RP83–52–000, RP83–53–000, RP83–118–000, RP84–42–000, CP83–397–000, TA82–2–11–000, TA83–1–11–000 TA84–1–11–000

Carnegie Natural Gas Company

CP84–61–000

Columbia Gas Transmission Corporation

CP84–38–000

High Island Offshore System

CP75–104

Northern Natural Gas Company

CP83–21–000

Pipeline Gas Cutback Procedures

RP83–124–000

[FR Doc. 84–23010 Filed 8–29–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–628–000]

Mountain Fuel Resources, Inc.; Application

August 24, 1984.

Take notice that on August 1, 1984, Mountain Fuel Resources, Inc. (Applicant), 79 South State Street, Salt Lake City, Utah 84147, filed in Docket No. CP84–628–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of one mainline tap and related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate one three-inch tap and related metering and regulating facilities on its transmission Main Line No. 35 at an estimated cost of $63,588, to effect the delivery of natural gas to Mountain Fuel Supply Company (Mountain Fuel) under Rate Schedules CD–1 and X–33 of its FERC Gas Tariff for ultimate sale to Exxon Company, U.S.A. (Exxon). It is stated that deliveries of natural gas by Applicant to Mountain Fuel at the proposed mainline tap would enable Mountain Fuel to make a distribution sale of up to 2,300 Mcf per day to Exxon under Mountain Fuel's Public Service Commission of Wyoming tariff. It is explained that Exxon would use the gas to operate equipment, generate electricity and provide space heating during construction of its Shute Creek gas processing plant located in Lincoln County, Wyoming.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant to the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23013 Filed 8–29–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP73-289-004]

Natural Gas Pipeline Company of America; Petition To Amend

August 24, 1984.

Take notice that on August 2, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP73-289-004 a petition to amend the order issued December 10, 1973, as amended, in Docket No. CP73-289 pursuant to section 7 of the Natural Gas Act so as to authorize the exchange of natural gas between Natural and Texas Eastern Transmission Corporation (Texas Eastern) at additional points of delivery in Kenedy and Wharton Counties, Texas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Natural states that the December 10, 1973, order, as amended, authorizes the exchange of up to 15,000 Mcf of natural gas per day between Natural and Texas Eastern. Natural proposes that the order further be amended to provide two additional points of delivery. It is stated that a January 4, 1983, amendment to the exchange agreement between Natural and Texas Eastern provides for an additional point of delivery to Natural at the inlet of Natural's existing measurement facilities on the outlet of the Sarita Gasoline Plant located in Kenedy County, Texas. It is further stated that a September 15, 1983, amendment to the exchange agreement provides for an additional point of delivery to Natural at an existing interconnection of facilities between Tennessee Gas Piepline Company, a Division of Tenneco Inc., and Natural located near Hungerford, Wharton County, Texas. Exchange of natural gas at the Wharton delivery point was implemented under Order 60, it is explained.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23015 Filed 8-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-644-000]

Natural Gas Pipeline Company of America; Request Under Blanket Authorization

August 24, 1984.

Take notice that on August 13, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP84-644-000 a request pursuant to § 157.205 of the Commission's Regulations that Natural proposes to construct and operate pipeline and appurtenant facilities in Vermilion Block 221 and extending to a point of connection with Stingray Pipeline Company's (Stingray) existing 20-inch pipeline in Vermilion, SA, Block 260, offshore Louisiana, under authorization issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it has contracted to purchase natural gas to be produced by Shell Offshore, Inc. (Shell), in Vermilion Blocks 220 and 221. Natural estimates that the proved and probable reserves in Blocks 220 and 221 are approximately 136,000,000 Mcf of gas of which approximately 93,000,000 Mcf are dedicated to Natural. In order to effect the delivery of this gas onshore, Natural proposes to construct and operate approximately 13.3 miles of 12¾-inch lateral, a dual 8-inch measuring facility, 12-inch tie-in and appurtenant facilities required to connect Shell's platform in Vermilion Block 221 to a point of connection with Stingray's existing 20-inch pipeline in Vermilion, SA, Block 260, offshore Louisiana. Stingray would transport and redeliver onshore such gas to Natural pursuant to Natural's entitlements under Stingray's presently effective Rate Schedule T-1, it is explained.

Natural states that the estimated cost of the project is $8,580,000 which would be financed initially with funds on hand, with permanent financing being undertaken as part of Natural's overall long term financing program.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23016 Filed 8-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-627-000]

Northwest Central Pipeline Corp.; Request Under Blanket Authorization

August 24, 1984.

Take notice that on August 1, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP84-627-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northwest Central proposes to transport gas on behalf of NGL Production Company (NGL) under authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central proposes to transport up to 3 billion Btu of natural gas per day for NGL for a term expiring June 30, 1985. It is stated that NGL would purchase the subject natural gas from Industrial Gas Services, Inc., at the outlet of the New Raymer Plant in Weld County, Colorado. Northwest Central states that the gas to be purchased by NGL involves gas supplies released by Northwest Central. It is indicated that this gas would be delivered into Northwest Central's pipeline at an existing point of interconnection and then would be redelivered to Colorado Interstate Gas Company (CIG) for Northwest Pipeline Corporation's (Northwest) account, on behalf of NGL, at two existing points of connection in Sweetwater County, Wyoming. It is stated the CIG would redeliver NGL's gas to Northwest at existing points of connection in Sweetwater County,

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Wyoming, or Uintah County, Utah. It is further stated that Northwest would then redeliver thermally equivalent volumes of gas, less fuel, to NGL's Foundation Creek, North Douglas Creek and Moxa Arch processing plants located on Northwest's facilities in Rio Blanco County, Colorado, and Lincoln County, Wyoming.

It is indicated that NGL would use the subject gas exclusively to help replace the fuel and shrinkage incurred in processing Northwest's gas at NGL's processing plants.

Northwest Central proposes to charge NGL in accordance with the then effective rates and provisions, including added incentive charge, set forth in Northwest Central's FERC Gas Tariff, Original Volume No. 2.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23017 Filed 8-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-475-000 and CP84-475-001]

Northwest Pipeline Corp.; Request Under Blanket Authorization

August 24, 1984.

Take notice that on June 11, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP84-75-000, a request as amended on July 30, 1984, in Docket No. CP84-475-001, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northwest proposes to transport natural gas on behalf of NGL Production Company (NGL) under the authorization issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 3 billion Btu per day of natural gas for NGL for a term expiring June 30, 1985. The request indicates that the natural gas to be transported would be purchased from Industrial Gas Services, Inc., by NGL, at the outlet of the Raymer Plant in Weld County, Colorado, and would be used to replace fuel and shrinkage incurred in the processing of Northwest's gas at NGL's processing plants.

Nothwest states that Northwest Central Pipeline Corporation would transport NGL's gas from the outlet of the Raymer Plant for delivery to Colorado Interstate Gas Company (CIG) at existing points in Sweetwater County, Wyoming, and that CIG would then transport and deliver NGL's gas to Northwest in Sweetwater County, Wyoming, or Uintah County, Utah. It is further stated that Northwest would transport and deliver NGL's gas to NGL's Foundation Creek, North Douglas Creek and Moxa Arch processing plants located in Rio Blanco County, Colorado, and Lincoln County, Wyoming.

Northwest proposes to charge NGL a mainline transportation rate of either 1.25 cents of 2.50 cents per million Btu depending on which processing plant the gas is delivered, an added incentive charge of 2.5 cents per million Btu and a GRI adjustment of 1.16 cents per million Btu. Northwest also proposes to retain 0.83 percent of the quantities transported as reimbursement for mainline fuel usage.

Any person of the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file purusant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest if filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23018 Filed 8-29-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-647-000]

Western Gas Interstate Co.; Application

August 24, 1984.

Take notice that on August 13, 1984, Western Gas Interstate Company (Western), 400 West 15th Street, Suite 900, Austin, Texas 78701, filed in Docket No. CP84-647-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an off-system limited-term sale of natural gas to Southern Union Gas Company, a division of Southern Union Company (SUG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

During the one year term of the gas sales agreement, dated August 8, 1984, between SUG and Western, Western proposes to sell to SUG up to 2,200,000 Mcf of natural gas on a best-efforts, interruptible basis, at a maximum daily volume of 10,000 Mcf. Western states that the gas would be used in SUG's Austin, Texas, area distribution system. It is explained that the gas sales agreement is effective on the date of initial delivery of gas after Western and other parties providing transportation of the gas to Austin, Texas, receive acceptable Commission authorization to sell or transport the gas. Western proposes to deliver the sales volumes to a point on Panhandle Eastern Pipe Line Company's (Panhandle Eastern) pipeline located in Section 25, T4N, R22ECM, Beaver County, Oklahoma, for transportion by Panhandle Eastern to the Diamond Shamrock McKee processing plant (McKee Plant) located in Section 399, Blk. 44, H&TC Railroad Survey, Moore County, Texas. Western requests authority to sell the gas to SUG at Northern Natural Gas Company, Division of InterNorth, Inc.'s (Northern), pipeline facilities at the outlet of the McKee Plant. The gas would be tranported to Austin for SUG's account by Northern and Valero Transmission Company, it is submitted.

Western states that the proposed sale of SUG would be at a price which is the higher of the weighted average cost per Mcf of gas receivable from inventory under the Panhandle Eastern and Phillips Petroleum Company (Phillips) exchange banks or Western's weighted average cost per Mcf of gas for its Northern Division as included in its currently effective purchased gas adjustment.

Western further states that it entered into the gas sales agreement with SUG in order to relieve the excess deliverability on its system attributable to the imbalance volumes which have built up under the aforementioned exchange agreements with Panhandle Eastern and Phillips. Western indicates that gas would be made available to SUG only during periods when Western is not allocating quantities of gas on its system pursuant to the curtailment provisions of its FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Western to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23019 Filed 8-29-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $165,068.21 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings, involving the following parties: Bayside Fuel Oil Depot Corporation (Case No. HEF-0035), Butler Petroleum Corporation (Case No. HEF-0046), Central Oil Company (Case No. HEF-0047), and Lawrence H. Glover (Case No. HEF-0081).

DATES AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to the applicable case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to four Consent Orders entered into by the DOE and the following parties: Bayside Fuel Oil Depot Corporation, Butler Petroleum Corporation, Central Oil Company, and Lawrence H. Glover (the consent order firms). These Consent Orders settled possible pricing violations in the firms' sales of refined petroleum products to customers during the consent order periods referred to in Appendix A to the Proposed Decision.

The Proposed decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by the consent order firms pursuant to the four Consent Orders. The DOE has tentatively decided that these consent order funds should be distributed to those customers of the consent order firms who establish that they were injured by the firm's alleged overcharges. Such customers will receive refunds proportionate to the volume of motor gasoline they purchased from the consent order firm. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585

Dated: August 23, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 23, 1984.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Case: Bayside Fuel Oil Depot Corporation, Butler Petroleum Corporation, Central Oil Company, Lawrence H. Glover.

Date of Filing: October 13, 1983

Case Numbers: HEF-0035, HEF-0046, HEF-0047, HEF-0081.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition October 13, 1983, requesting that OHA implement special refund proceedings to distribute the funds received pursuant to Consent Orders entered into by the DOE and the following parties: Bayside Fuel Oil Depot Corporation (Bayside), Butler Petroleum Corporation (Butler), Central Oil Company (Central), and Lawrence H. Glover (Glover) (*1*) (collectively referred to in this Proposed Decision as the consent order firms).

I. Background

Each of the consent order firms is a "reseller-retailer" of "refined petroleum products" as those terms were defined in 10 CFR 212.31. ERA audits of the consent order firms revealed possible pricing violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes with the DOE concerning certain sales of refined petroleum products. Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their respective customers during the consent order periods. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the settlement amounts, the products covered by the Consent Orders, and the dates of the consent order periods are set forth in Appendix A to this Proposed Decision.

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement Subpart V proceedings with respect to the four consent order funds and have determined that it is appropriate to establish such proceedings. In so far as possible, the consent order funds should be distributed to those customers of the consent order firms who absorbed (or were injured by) the consent order firms' price increases which allegedly were in violation of DOE regulations. The ERA audit files identify a number of customers that purchased refined petroleum products directly from the consent order firms during the audit periods. (2) Their names are set forth in Appendix B. While no specific alleged overcharge amounts are indicated for these customers, in our view they may well have been adversely affected by any alleged overcharges by the consent order firms and should be given notice of this proceeding and an opportunity to request a refund. We also recognize, however, that there may be other purchasers of petroleum products from the consent order firms who were not mentioned in the ERA audit files and who may have been injured by the pricing practices of one of the consent order firms during the relevant consent order period. We therefore propose to establish a claims procedure in which we will accept applications for refund from customers, including those not listed in Appendix B, who can demonstrate that they were injured as a result of any alleged overcharges made by one of the consent order firms during the appropriate consent order period. (3)

Many of the consent order firms' customers listed in Appendix B appear to be petroleum product resellers, i.e., retailers and wholesalers. We propose that these firms and other claimants who resold the refined petroleum products they purchased from one of the consent order firms be required to demonstrate that they did not pass on to their customers the price increases implemented by the firm. *See, e.g., Vickers*. In other words, resellers of a consent order firm's products will be required to demonstrate that during the relevant consent order period they would have maintained their prices for the petroleum product at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased refined petroleum products from a consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges to its customers. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

We recognize that the type of showing referred to above may be too complicated and burdensome for resellers which purchased relatively small amounts of refined petroleum products from a consent order firm. For example, some firms may lack all of the records necessary to prove that they did not pass through the alleged overcharges to their customers. Firms also may be discouraged from filing an application where the cost of compiling the necessary information is high relative to the amount of their potential refund. Therefore, after examining the records in each of the cases involved in this proceeding to assess the difficulty firms will have in gathering the data necessary to file an application, we propose that a reseller whose average monthly purchases of a consent order firm's refined petroleum products during the relevant consent order period are less than or equal to the threshold level specified in Appendix A not be required to present a detailed showing of injury and be presumed to have been adversely affected by any alleged overcharges.(4) *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982); *Vickers*. The threshold levels established in these cases vary because of different circumstances presented in each case.(5) Applicants whose purchases fall below the threshold level need only submit information documenting the amount of refined petroleum products purchased from the consent order firm during the appropriate consent order period in order to demonstrate injury and to receive a refund.

Many of the consent order firms' customers listed in Appendix B appear to the ultimate consumers (end-users) of the petroleum products they purchased from the consent order firms. Our experience in prior refund proceedings leads us to conclude that this category of customers absorbed the consent order firms' alleged overcharges and have thereby been injured, since they did not resell the covered products they purchased, and they were not subject to federal energy regulations. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984); *Union Texas Petroleum Corp.*, 6 Fed. Energy Guidelines ¶ 90,052 (1984) (Proposed Decision); *Standard Oil Co. (Indiana)/Union Camp Corp.* 11 DOE ¶ 85,007 (1983). We therefore propose that to receive a refund, these applicants only be required to submit information concerning the volume of their purchases from the consent order firm during the appropriate consent order period.

We also propose that firms that made only spot purchases from one of the consent order firms be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firms' product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to recover the product prices they paid to the consent order firms. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982) (hereinafter cited as *Amoco*).

III. Calculation of Refund Amounts

We must further determine the proper method for dividing each of the four consent order funds among successful applicants. In many Subpart V proceedings we have based the refund amount on the volume of petroleum products which an applicant purchased from a consent order firm. *See Amoco; Vickers*. Under this method, we presume that the alleged overcharges were spread equally among all gallons of product sold which were covered by the consent order. We believe that generally this volumetric approach generally provides an equitable framework for refunds where the ERA audit file does not specify individual overcharge amounts for each of a firm's customers. *See Amoco*. The volumetric method also is easy to administer and allows applicants to compute readily the size of their potential refund and thereby make an informed choice on whether to file an application. Since in the present case the information available in the ERA audit files is insufficient to base refunds on the amount each individual applicant was allegedly overcharged, we propose to use the volumetric method to allocate the four consent order funds.(*6*)

To determine the volumetric factor, each consent order fund will be divided by the estimated total volume of refined petroleum products sold by the consent order firm during the relevant consent order period.(*7*) The volumetric refund amounts are set forth in Appendix A.(*8*) In each case, this results in a refund amount for each gallon of refined petroleum products which an applicant purchased from the consent order firm. The interest which has accrued on the money in each escrow account will be distributed to each successful claimant in proportion to its refund amount.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Amoco; Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in these proceedings should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the Federal Register, copies will be provided to the consent order firms' customers whose names and addresses we have obtained from the ERA audit files. If appropriate, we also intend to publicize this proceeding in local newspapers in the areas where the consent order firms conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the consent order firms listed in Appendix A to this Decision and Order will be distributed in accordance with the foregoing determination.

Footnotes

(*1*) The DOE entered into the Glover Consent Order with Lawrence H. Glover and three other individuals: Ruth H. Glover, Terry Malcolm, and Berna Eich.

(*2*) With regard to the Glover consent order, the record indicates that Glover had five classes of purchaser during the consent order period: Wholesale customers (those who resold the propane they bought from Glover), residential metered customers (individual end-users whose purchasers were gauged using a meter), industrial metered customers (commercial end-users whose purchase were gauged using a meter), cylinder customers (end-users who purchsead 100 lb. cylinders of propane from Glover), and bulk customers (end-users who made bulk purchasers from Glover). However, the Glover Consent Order applies only to the firm's sales to its bulk class of purchaser. Therefore only customers within that class will be eligible for a refund from the Glover consent order fund.

(*3*) The Bayside Consent Order required Bayside to refund $616 directly to the Environmental Protection Agency of the City of New York (EPA/NYC). This sum represents a pro rata portion of the amount Bayside allegedly overcharged EPA/NYC during the period November 1, 1973 through March 12, 1974, according to a Notice of Probable Violation issued to Bayside on February 6, 1979. In light of this direct refund by Bayside, we propose that EPA/NYC be ineligible for a further refund based on its purchases during that period. EPA/NYC is eligible, however, to apply for a refund based on any purchases it made from Bayside during the remainder of the Bayside consent order period, March 13, 1974 through April 30, 1974.

(*4*) As stated in previous Decisions, the purpose of the DOE special refund procedures is to provide an efficient and equitable mechanisim for refunding money to parties who were injured by adjudicated or alleged overcharges. *See, e.g., Office of Enforcement*, 9 DOE ¶ 82,508 (1981). To this end, the DOE regulations governing special refund procedures provide that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption of injury with regard to resellers who purchased small volumes of the consent order firms refined petroleum products is consistent with these principles. It reduces the amount of information these firms must submit with their applications, operates to distribute refunds as widely as possible to the affected class, and reduces administrative costs of processing small claims.

(*5*) In determining the threshold in each case, we have taken into consideration the difficulty resellers would have in compiling the records necessary to establish injury above the threshold level and the total amount of the refund to which such firms would be entitled to receive at the threshold level. Specifically, we have considered the volumetric refund factor (see part III the Decision), the length of time since the consent order period, and the number of months in the consent order period.

As in prior refund cases, resellers whose average monthly purchases during the period for which a refund is claimed exceed the threshold level may elect to apply for a refund based on the threshold amount.

(*6*) The volumetric method proposed in these proceedings represents a presumption as to the allocation of alleged overcharges among a consent order firm's customers. Any applicant that believes that it bore a disproportionate percentage of alleged overcharges resulting in economic injury greater than the volumetric amount may submit information to support its claim. *See*

Amoco, 10 DOE at 88,199; *Hendel's Inc.*, Case No. HEF0089 (July 26, 1984) (Proposed Decision).

(*7*) Because the ERA audit files do not list the volume of refined petroleum products sold by Butler and Bayside for the entire consent order periods, we have extrapolated sales figures for these firms from the available audit data.

(*8*) The Central Consent Order calls for Central to remit $54,799.12 to the DOE in four yearly installments from October 1, 1979 through October 1, 1982. As of June 30, 1984, however, Central has paid only $41,099.34. If Central does not remit the remainder of the consent order monies before the processing of refund applications in this proceeding, refunds to Central's customers may have to be reduced proportionally. For this reason, no refunds will be distributed from the Central escrow fund until after the close of the period for filing refund applications.

APPENDIX A

Name of firm	Consent order period	Consent order amount	Products covered	Volumetric amount	Threshold amount (gallons per month)
Bayside Fuel Oil Depot Corp., Brooklyn, NY.	Nov. 1, 1973 to Apr. 30, 1974.	$51,727.00	No. 2 heating oil	$0.001380	125,000
Butler Petroleum Corp., Butler, PA	Oct. 1, 1973 to Sept. 15, 1979.	13,500.00	Motor gasoline	0002844	75,000
Central Oil Co., Raynham, MA	Nov. 1, 1973 to Oct. 3, 1974.	54,799.12	Motor gasoline, No. 2 heating oil.	.01734	50,000
Lawrence H. Glover, Patchogue, NY.	Nov. 1, 1973 to Feb. 28, 1976.	45,042.09	Propane (retail bulk class).	.01926	25,000

Appendix B–1

Bayside Fuel Oil Depot Corp.

AR Fuel
Bandolene Fuel
Bayside Fuel Oil
Blue Diamond
Cameo Coal Fuel
Carrier Fuel
City of New York Environmental Protection Agency
Empire State
Greater Fuel Corp.
Heatfast Fuel Oil
LaForgia Fuel
S.J. Minerva
Osher & Reiss
Radisch Bros.
V. Savino
Sco Fuel
Trojan Fuel Oil
Troy Fuel

Appendix B–2

Butler Petroleum Corp.

Anderson Car Wash
Anderson Service
Anderson's Texaco
Leroy Andrews
Anke Excavating
Ariaco
Arts Country Store
Tom Barger
Beale's
J.M. Beatty
George Beck's Wholesale
Begger
Jim Benton
Tom Berger
Best Tire
Beverage Management
Bill's Tire
Bi-Rite Oil Company
Brayman Construction Co.
Buchler Trucking
Randy Burr
Peter Busi
Butler Vulcanizing
Calvin Texaco
Roger Cameron
John Campbell
E. Carben
Carneis
Castle Rubber
Cirilla's
Clinton Oil
Dean Cooper
Wade Cooper
Bill Coring
Corner's
Crarajis
Crevar Brothers
Edwards
Elias
R. Elliott
Fardily Tire Sales
Fawley's
Fisher
Five Points
Flanders
Garzoney Texaco
Greater Pittsburgh Service Corp.
Group Service Station
Paul Haas
Hammond Garage
Hartman Oil
Helfrich
Henning
Herits
Bill Hesidence
Highland Paving
Chuck Holben
Homewood Garage
Hummel's
Hunter's Tire Sales
Irwin's Rustproofing
J&D Texaco
Jenkins Car Wash
Jernis Airsound
Joe's Texaco
Jean Kaiser
Kissick
Edward Kudlac
Klug
Kyle's
Laasky
Lambert's Texaco
Don Lenning
Rodney Lipsomb
F. Crimchen
Croup's Texaco
D&S Oil
Darrow Marina
Dave's Marina
William Davis
Dibello Service
Tom Dixon
Eckrich
Debra Manuel
Lou Magnatta
Mark Lines
Martin Tire
M. Mastows
Melin & Son
Mike's & Sons
Moran Carpets
Morgan's East
Morgan's North
Morgan's West
M. Mostowy
Muddy Creak Twp.
Northway Car Wash
Novak's
Osborne Builders
P. Olfe
Oxygen Emergency Supply Co.
David Pollick
Presto Texaco
Sam Price
Prior's Truck Stop
Edward Rapur
Jerry Rice's Service
Rikal's
C.H. Riley
C.L. Risch
Risch Store
Riverside Car Wash
Rod's Texaco
Roger's Texaco
Ruffer
L. Saaliner
Sachan
Logan Farm
M&S Backhow
Mike Mastoway
McClarin
L. McGinnis
McKissick
McNeilly Car Wash
Fred Mackey
Macko Texaco
K. McKossick
Main Street Texaco
Schubert's
Mel Schwartz
Seaham
Sechen Limestone
Seven-Eleven #115
Seven-Eleven #128
Seven-Eleven Indiana
Seven-Eleven Neville Island
George Shockey
Skander Tire
Carl Smith
Larry Smith
Neil Snyder
Soldshetter
Leroy Spalinger
Star Glo Car Wash

Stewart Bee
Sutton's Gas-O-Mat
Neil Szcyski
Thomas
Dave Trapina
Wexford Tire Company
Twin Willows
V.W. Williams
Voelker
Vurko
Zanella's
Zapps
Zapsick
Zassick
Zekler

Appendix B-3

Central Oil Company

Airport Service Station
Albert's Service Station
L.G. Balfour Co.
Belmiro Barros
Belben's Service Station
Berkley Common Garage
Bernard's Service Station
Biss Lumber Co., Inc.
Bridgewater Motor Sales, Inc.
Caffee Farm
Captain Bub's Marina
Cataloni's Service Station
A.L. Cedergren
Chickering's Sunnyside Station
Cobb's General Store
Coffee Service, Inc. (C&F Foods)
Crosby's Service Station
Arthur DeMattos
Easton Country Club, Inc.
John M. Evangelho
Fagerberg's Garage
John Fernandes
Ferriera Farms
Ben Flint
C&B Welding
Antone Gomes
Hallock's Puritan Market
O.H. Hansen
Harodite Company
Ralph S. Hayward
Kenneth Horton
Hotz Brothers Mink Farm
William Houghton
Instron Corporation
J.&R. Farm, Inc.
Jackson Brothers
Kris Getty
A.C. Lawton
Linton's Variety
Marion Lumber Co.
O.J. Moitoza
Howard D. Moquin
C.M. Munroe
Murphy's Garage
Nemasket Bottling
Norton Center Garage
Norton Golf Course
Antone Oliveira
Roy C. Oman
Orsine's Garage
Poquoy Brook Country Club
Joseph Quintal
Robertson Homes, Inc.
Rock Village Store
Ruggiero's Service Station
E. Sabalewski
Scott's Service Station
Segransett Country Club
Arthur M. Sharp
Simond's Garage
South Main Street Variety
Souza Brothers
Stanley's Motor Sales
Merle Stetson
S&S Lumber Company
Super Tire
Arthur Turner
Ventura Grain Co., Inc.
Westville Garage
Wiksten Brothers Dairy
Willow Tree Poultry Farm
Russell W. Wilson
Winner's Circle

Appendix B-4

Lawrence H. Glover

Joseph Biscay
Robert Brandt
Grady Brooks
Silas Coleman
George Dorsett
Albert Evans
D. Miller
Simmons
N. Stevenson
Mozell Walker
James Wilson

[FR Doc. 84-23117 Filed 8-29-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; Period of July 9 Through August 3, 1984

During the period of July 9 through August 3, 1984, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: August 22, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Otis Ainsworth, Laurel, Mississippi; HEE-0066, crude oil

Otis Ainsworth filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. In its exception application, Ainsworth requested retroactive exception relief which, if granted, would permit the firm to retain allegedly excessive revenues received in sales of crude oil during the period of September 1973 through December 1977. In considering the exception request, the Department of Energy noted that Ainsworth's Application for Exception was filed in response to a pending DOE enforcement proceeding (Case No. BRO-0552) involving alleged crude oil pricing violations during the stated time period. The DOE determined that Ainsworth had inordinately delayed its request for retroactive exception relief from the price regulations, and that an award of such relief at a late stage of an enforcement proceeding would result in considerable prejudice to the DOE in its enforcement efforts. Since an Application for Exception is a proceeding in equity, the DOE concluded that the equitable doctrine of laches is applicable and bars Ainsworth's dilatory claim for retroactive exception relief. Accordingly, on August 3, 1984, the DOE issued a Proposed Decision and Order which determined that the exception request be denied. The proposed determination signifies a more stringent approach by the DOE in evaluating Applications for Exception that involve requests for retroactive exception relief from DOE price regulations engendered in response to enforcement proceedings.

Three L, Inc., Houston, Texas; HEE-0093, reporting requirements

Three L, Inc. filed an Application for Exception from the obligation to file Form EIA-782B. The exception request, if granted, would exempt Three L from that requirement. On August 3, 1984, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted to the extent that Three L be allowed to file simplified reports using estimates based on previously submitted data.

[FR Doc. 84-23118 Filed 8-29-84; 8:45 am]

BILLING CODE 6450-01-M

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UMI

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51526; TSH-FRL 2623-5]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-18049 beginning on page 28614 in the issue of Friday, July 13, 1984, make the following correction: In the second column of page 28614, the second word in the fourth line under the heading "PMN 84-872" should read "tin".

BILLING CODE 1505-01-M

[OPTS-51527; FRL-2628-7]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-18601, beginning on page 28616 in the issue of Friday, July 13, 1984, make the following corrections: On page 28617, the last word in the next to last line of the first column should read "Hexabromodiphenyl".

BILLING CODE 1505-01-M

[OPTS-53062; FRL-2626-8]

Premanufacture Notices; Monthly Status Report for May 1984

Correction

In FR Doc. 84-18315, beginning on page 28439 in the issue of Thursday, July 12, 1984, make the following corrections:

1. On page 28441, in the second column of Table I, in the first through fifth lines under the subheading "Identity and generic name," the word "hydroxyl" should read "hydroxy".
2. On page 28442, in the second column of Table III, under the subheading "Identity and generic name," the 19th line from the bottom should read "Generic name: Modified acrylic resin."
3. On page 28443, in the second column of Table II, under the subheading "Identity and generic name," the first word in the ninth line from the bottom should read "Cyano" and the fourth word in the forty-second line from the bottom should read "diethylaminoethylether".
4. On page 28445, in the second column of Table V, the third word in the twenty-first line under the subheading "Identity and generic name" should read "Chromium," the last word in the thirty-fourth line under the same subheading should read "hydroxyphenylazo", and the bracketed portion of the thirteenth line from the bottom should read, "[1-OXO-2-propenyl) OXY]".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 23, 1984.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on this information collection should contact Martin Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: 3060-0010
Title: Ownership Report
Form No.: FCC 323
Action: Revision
Respondents: All AM, FM, and TV licensees/permittees, with the exception of sole proprietorship and 50/50 ownership
Estimated Annual Burden: 2,616; Responses: 18,312 Hours.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84-23031 Filed 8-29-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-796 and 84-797; File Nos. BRH-820802D3 and BPH-821101BA]

Darrel Peters Productions, Inc. and Midwest Broadcast Associates, Ltd.; Hearing Designation Order

In re application of Darrel Peters Productions, Inc.; HAS: Station WSEX (FM), Arlington Heights, Illinois, 92.7 MHz, Channel 224A, 3.0 kW (H&V), 300 feet; for renewal of license (MM Docket No. 84-796; File No. BRH-820802D3) and Midwest Broadcast Associates, Ltd.; req: Arlington Heights, Illinois, 92.7 MHz, Channel 224A, 3.0 kW (H&V), 300 feet, for construction permit for a new FM station (MM Docket No. 84-797; File No.BPH-821101BA).

Adopted: August 7, 1984.
Released: August 24, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of (i) Darrel Peters Productions, Inc., (Peters) for renewal of license of WSEX(FM),[1] Arlington Heights, Illinois; (ii) Midwest Broadcast Associates, Ltd. (MBA), for a construction permit for a new FM station on the channel presently occupied by WSEX(FM); (iii) a "Motion for Expedited Grant of Application" filed by MBA; (iv) an Opposition filed by Peters; and (v) other related pleadings.

2. On August 2, 1982, Radio Communications Group, Ltd. (RCG) filed an application for renewal of license for WTCO(FM) (now WSEX(FM)). An application for assignment of RCG's license to Peters was pending. The assignment application was granted by the Commission and on September 14, 1982, Peters consummated the assignment of license. Peters informed the Commission of the consummatiion of the assignment by letter dated September 18, 1982. On December 13, 1982, Peters filed an amendment to the renewal application substituting itself for RCG. MBA argues that RCG ceased being the licensee of WTCO(FM) on September 14, 1982, and that the failure to file an amendment or new renewal application substituting Peters for RCG prior to December 1, 1982, allowed the license to automatically expire and precludes Peters from now prosecuting the application. Therefore, MBA argues that since its application for an authorization to operate on 92.7 MHz at Arlington Heights, Illinois, the "Motion for Expedited Grant" of its application for construction permit should be granted. In opposition, Peters contends that, as the Commission-approved assignee of the license, it is the successor-in-interest to all authorizations and applications in effect or pending at the time it became licensee; that it has prosecuted the application in good faith; and that the failure to amend the pending renewal application prior to December 1, 1982, did not automatically terminate the license.

3. It is well settled that a broadcast authorization does not automatically lapse or terminate. Instead, an authorization to broadcast will terminate *only* upon the abandonment of the broadcast operation by the permittee or by an adverse administrative action by this Commission specifically terminating the authorization. *Mass Communications, Inc.* v. *F.C.C.*, 266 F. 2d 681 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 828 (1959). In

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[1] On January 24, 1983 the Commission granted Peters' request to change the call sign of the station from WTCO(FM) to WSEX(FM).

the instant case, there has been no adverse administrative action against Peters, and Peters has not abandoned the operation of WSEX(FM) or prosecution of its renewal application. *Cf., MG-TV Broadcasting Co.* v. *F.C.C.*, 408 F. 2d 1257 (D.C. Cir 1968). Accordingly, MBA's "Motion for Expedited Grant" is without merit and, therefore, is dismissed.

4. Both applicants are qualified to operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., NW., Washington, D.C. 20554.

7. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, That the aplicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and manner prescribed in that Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-23025 Filed 8-29-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-8305 31AA; et al.; MM Docket Nos. 84-807, et al.]

Gary and Berta Frank, et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Gary and Berta Frank, Prescott Valley, AZ.	BPH-830531AA	84-807
B. Prescott Valley Broadcasting Co., Prescott Valley, AZ.	BPH-830613AC	84-808
C. Mary Murphy, Prescott Valley, AZ.	BPH-830930AB	84-809

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Audio Services Division, Mass Media Bureau.

[FR Doc. 84-23026 Filed 8-29-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-780, et al.; File Nos. BPCT-840125Kg, et al.]

Johnny G. Box, et al.; Hearing Designation Order

In re applications of Johnny G. Box (MM Docket No. 84-780; File No. BPCT-840125KG); William Varecha d/b/a TV-49 (MM Docket No. 84-781; File No. BPCT-840424KF); and Amos Communications, Inc. (MM Docket No. 84-782; File No. BPCT-840424KH); for construction permit for Channel 49 Paducah, Kentucky.

Adopted: July 30, 1984.

Released: August 6, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 49, Paducah, Kentucky.

2. No determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tublation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. TV-49 has not supplied this data. Accordingly, TV-49 will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after this Order is released.

4. TV-49 has not completed section III, FCC Form 301. However, TV-49 indicates that an appropriate certification would be submitted. We have not received such an amendment. Accordingly, TV-49 will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in section III, FCC Form 301, as to its financial qualifications. If TV-49 cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is

unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each applicant would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that TV-49 shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the release date of this Order.

9. It is further ordered, That TV-49 shall submit a financial certification in the form required by section III, Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

10. It is further ordered, That to avail themselves of the opportunity too be heard, the applicants, and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notices as required by § 73.3594(g) of the Rules.

Federal Communication Commission.
Stephen F. Sewell,
Acting Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-23024 Filed 8-29-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Notice of Acquisition of Control (OMB No. 3064-0019).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4446.

Summary

The FDIC is requesting OMB to extend to September 30, 1987 the expiration date of Form FDIC 6822/01 used by any person or persons acting in concert to provide notice to the FDIC prior to acquiring ownership control of an insured state nonmember bank. Such written prior notice is required under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). The form has been assigned OMB No. 3064-0019 which currently expires on October 31, 1984. It is estimated that 30 hours are required, on the average, to prepare a notice of acqusition of control.

Dated: August 10, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84-23104 Filed 8-29-84; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Deregistration Form For Registered Transfer Agents (OMB No. 3064-0027).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4446.

Summary

The FDIC is requesting OMB to extend to September 30, 1987 the expiration date of form (OMB No. 3064-0027) used by an insured nonmember bank to withdraw from registration with the FDIC as a transfer agent. Under FDIC regulation 12 CFR Part 341 such written notice of withdrawal is required when a registered transfer agent ceases to engage in the functions of a transfer agent. This requirement implements the provisions of section 17A(c)(3)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1). It is estimated that 25 minutes are required, on the average, to prepare the required notice of withdrawal.

Dated: August 21, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-23105 Filed 8-29-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Atlantic South Coastal Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 21, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Atlantic South Coastal Corporation,* Savannah, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Ameribank, N.A., Savannah, Georgia.

2. *Farmers National Bancshares, Inc.,* Opelika, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers National Bank of Opelika, Opelika, Alabama.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *New Ulm Financial Corporation,* New Ulm, Texas; to acquire 100 percent of the voting shares of Lexington State Bank, Lexington, Texas.

Board of Governors of the Federal Reserve System, August 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22992 Filed 8-29-84; 8:45 am]

BILLING CODE 6210-01-M

Premier Financial Services, Inc.; Application to Engage de Novo in Permissible Nonbanking Activites

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefit to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resource, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu if a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Premier Financial Services, Inc.,* Freeport, Illinois; to engage *de novo* through its subsidiary, Premier Trust Services, Inc., Freeport, Illinois, in fiduciary, agency, and custodial functions and activities performed by a trust company. These activities would be performed in the State of Illinois.

Board of Governors of the Federal Reserve System, August 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22993 Filed 8-29-84; 8:45 am]

BILLING CODE 6210-01-M

Union Bancshares, Inc.; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 84-22503), published at page 33725 of the issue for Friday, August 24, 1984. The notice should read as follows: Union Bancshares, Inc., Wichita, Kansas to engage de novo through its subsidiary, UBI Growth Capital, Inc., in the activity of providing credit to new companies. This activity will be performed in Kansas. Comments on this application must be received not later than September 14, 1984.

Board of Governors of the Federal Reserve System, August 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22994 Filed 8-29-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0077]

Dental X-Ray Patient Selection Criteria Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of the Dental X-Ray Patient Selection Criteria Panel. This is the third meeting of the Panel. The meeting is being called to develop criteria for the selection of asymptomatic dental patients for several dental X-ray examinations.

DATES: Open sessions: September 20, 1984, 8:30 a.m. to 9:30 a.m., and September 21, 1984, 8:30 a.m. to 9:30 a.m.; closed sessions: September 20, 1984, 9:45 a.m. to 5 p.m., and September 21, 1984, 9:45 a.m. to 4 p.m.

ADDRESS: The Panel meeting will be held at the Cascades Conference Center, Williamsburg, VA 23187.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (HFZ-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health, FDA conducts and supports research and training to minimize unproductive radiation exposure from diagnostic radiological examinations. One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To reduce the use of ineffective examinations, it is important that the dentist have current information about when a given radiological study is likely to provide needed diagnostic information. This information can take the form of decision guidelines based on patient signs, symptoms, or history, sometimes known as patient selection criteria.

Under one part of a program designed to facilitate the development and testing by the dental profession of patient selection criteria for diagnostic radiological examinations, FDA is providing logistical support for the convening of a small panel of clinical and scientific experts to formulate draft patient selection criteria or statements of use. A detailed description of the x-ray patient selection criteria development process was published in the **Federal Register** of June 9, 1981 (46 FR 30568).

Any interested person who wishes to request time for an oral presentation during the open portion of the meeting, or who would like to submit written comments to the Panel and is unable to attend the open portion of the meeting, should inform the contact person listed above, either orally or in writing, before the meeting. Persons attending the meeting who did not request time for an oral presentation will be permitted to make a presentation at the conclusion of the open portion if time permits.

A list of committee members, the meeting agenda, and summaries of the previous Panel meeting may be reviewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The summaries of the Panel meetings contain minutes of the open sessions and copies of written data and views submitted to the Panel in open session.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-22998 Filed 8-29-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0253]

Skull X-Ray Referral Criteria Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of the Skull X-Ray Referral Criteria Panel. This is the sixth meeting of the Panel. The meeting is being called to finalize the Panel's statement on referral criteria for selecting patients for skull radiography following head trauma. A draft copy of the Panel's statement was mailed to relevant professional organizations and a notice of availability inviting comments on the draft statement appeared in the **Federal Register** of May 15, 1984 (49 FR 20556).

DATES: Open sessions: September 20, 1984, 8 a.m. to 10 a.m., and September 21, 1984, 10:15 a.m. to 12 m.; closed sessions: September 20, 1984, 10:15 a.m. to 5 p.m., and September 21, 1984, 8 a.m. to 10 a.m.

ADDRESS: The Panel meeting will be held at the Cascades Conference Center, Williamsburg, VA 23187.

FOR FURTHER INFORMATION CONTACT: Philip M. McClean, Center for Devices and Radiological Health (HFZ-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health, FDA conducts and supports research and training to minimize unproductive radiation exposure from diagnostic radiological examinations. One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To reduce the use of ineffective examinations, it is important that the doctor have current information about when a given radiological study is likely to provide needed diagnostic information. This information, which can take the form of decision guidelines based on patient signs, symptoms, or history, is termed here "referral criteria."

Under one part of a program designed to facilitate the development and testing by the medical profession of referral criteria for diagnostic radiological examinations, FDA is providing logistical support for the convening of small panels of clinical and scientific experts to formulate draft referral criteria or statements of use. A detailed description of the x-ray referral criteria development process was published in the **Federal Register** of June 9, 1981 (46 FR 30568).

Any interested person who wishes to request time for an oral presentation during the open portion of the meeting, or who would like to submit written comments to the Panel and is unable to attend the open portion of the meeting, should inform the contact person listed above, either orally or in writing, before the meeting. Persons attending the meeting who did not request time for an oral presentation will be permitted to make a presentation at the conclusion of the open portion if time permits.

A list of committee members, the meeting agenda, and summaries of the previous Panel meetings may be reviewed at the Dockets Management Branch (FHA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The summaries of the Panel meetings contain minutes of the open sessions, copies of written data and views submitted to the Panel in open session, and summaries of the closed sessions.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-22999 Filed 8-29-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1984:

Name: Maternal and Child Health Research Grants Review Committee

Date and Time: November 7-9, 1984, 9:00 a.m.—5:00 p.m.

Place: Conference Room N, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 7, 1984, 9:00 a.m. to 10:00 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will also report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 7, 1984, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the Provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact GONTRAN LAMBERTY, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443–2190.

Agenda items are subject to change as priorities dictate.

Date: August 24, 1984.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 84–23000 Filed 8–29–84; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Carcinogenesis Studies of Amosite Asbestos

The HHS' National Toxicology Program today announces the availability of the technical report describing lifetime carcinogenesis studies of amosite asbestos, administered in feed to Syrian golden hamsters.

Carcinogenesis studies of amosite asbestos were conducted by administering diets containing one percent asbestos in pellets from conception of the mothers through the lifetime of male and female Syrian golden hamsters. Control groups consisted of 127 male and 126 female hamsters and the amosite asbestos groups consisted of 252 male and 254 female hamsters.

Under the conditions of these studies, the ingestion of amosite asbestos at a level of one percent in the diet for the lifetime of the animals was not toxic and gave no evidence of carcinogenicity in male or female Syrian golden hamsters.

Copies of *Lifetime Carcinogenesis Studies of Amosite Asbestos in Syrian Golden Hamsters (Feed studies) (T.R. 249)* are available without charge from the NTP Public Information Office, M.D., B2–04, Box 12233, Research Triangle Park, N.C. 27709. Telephone: (919) 541–3991. FTS: 629–3991.

Dated: August 24, 1984.

David P. Rall, M.D., Ph.D.,

Director.

[FR Doc. 84–23022 Filed 8–29–84; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Filing of Plat of Survey; Salt Lake City, UT

AGENCY: Bureau of Land Management, Utah.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately;

Salt Lake Meridian, Utah

T. 19 S., R. 4 W.,
T. 22 S., R. 6 W.,
T. 25 S., R. 6 W.

These plats, in three (3) sheets, representing: (1) The dependent resurvey of a portion of the North boundary, and a portion of the subdivisional lines, and a partial subdivisional survey of Section 4, T. 19 S., R. 4 W., Salt Lake Meridian, Utah; (2) the dependent resurvey of a portion of the Corn Creek Indian Reservation Boundary, a portion of the North Boundary, and a portion of the subdivision lines, and a partial subdivisional survey of Section 3, T. 22 S., R. 6 W., Salt Lake Meridian, Utah, and (3) the dependent resurvey of a portion of the subdivisional lines and a portion of the patented mining claims in Sections 19 and 30, and a partial subdivisional survey of Section 30, T. 25 S., R. 6 W., Salt Lake Meridian, Utah for Group 612, were accepted August 13, 1984.

Salt Lake Meridian, Utah

T. 30 S., R. 1 W.

This plat was prepared to show the subdivision of original lot 4 into lots 5 and 6, and is based upon the plat accepted December 12, 1923 for Section 19, T. 30 S., R. 1 W., Salt Lake Meridian, Utah was accepted July 27, 1984.

These plats will immediately become the basic record for describing the land for all authorized purposes. The plats have been placed in the open files and are available to the public for information only. These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries relating to these lands should be sent to the Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111.

Orval L. Hadley,

Chief, Lands and Minerals, Operations.

[FR Doc. 84–23001 Filed 8–29–84; 8:45 am]

BILLING CODE 4310–DQ–M

[N–39945]

Nevada; Airport Lease Application

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Dee Heckethorn has applied for an airport lease for the following land:

Mount Diablo Meridian

T. 14 N., R. 66 E.,
  Sec. 22, E½SE¼SE¼;
  Sec. 27, E½NE¼, NE¼SE¼, W½SE¼SE¼, E½W½SW¼.

The area described is located in White Pine County, Nevada. The application was filed on August 3, 1984, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, Ely District Office, SR 5 Box 1, Ely, Nevada 89301.

Merrill L. DeSpain,

District Manager.

[FR Doc. 84–23056 Filed 8–29–84; 8:45 am]

BILLING CODE 4310–HC–M

Miles City, MT, District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that the Miles City District Grazing Advisory Board will meet October 10, 1984, at 10 a.m. in the conference room at the Miles City District Office, Bureau of Land Management, Garryowen Road, Miles City, Montana.

Agenda for the meeting includes: Fiscal Year 1985 Range Improvement Projects, Range Improvement methods and treatments, and Cooperative Management Agreements.

The meeting is open to the public and oral or written statements may be made for consideration by the board. Summary minutes of the meeting will be maintained in the Miles City District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

For further information contact District Manager, Miles City District, BLM, P.O. Box 940, Miles City, Montana 59301.

Dated: August 22, 1984.

Robert A. Teegarden,

Associated District Manager.

[FR Doc. 84-23080 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-DN-M

[W-39192]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease; Johnson County, WY

August 23, 1984.

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-39192 for lands in Johnson County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the new lease terms for rentals and royalties at rates of $5.00 per acre, and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessees having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-39192 effective May 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Harold G. Stinchcomb,

Chief, Branch of Fluid Minerals.

[FR Doc. 84-23070 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Disposal of Public Lands; Bernalillo, NM

AGENCY: Bureau of Land Management, Albuquerque District Office, Interior.

ACTION: Notice of Realty Action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management (BLM) is proposing to dispose of approximately 100 acres of public land in the town of Valencia, Valencia County, New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the 100 acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53 U.S.C. 178), the Recreation and Public Purposes Act (45 U.S.C. 869 et. seq.), and Sales under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

Valencia, New Mexico Public Land Disposal Block I

T. 7 N., R. 2 E., NMPM,
  Sec. 25, lot 1.
T. 7 N., R. 3 E., NMPM,
  Sec. 30, lot 1, 2, 3, 4.
T. 6 N., R. 2 E., NMPM,
  Sec. 1, lot 2.
T. 6 N., R. 2 E., NMPM,
  Sec. 11, lot 3, 5, 11.
T. 6 N., R. 2 E., NMPM,
  Sec. 4, lot 1.
T. 6 N., R. 2 E., NMPM,
  Sec. 10, lot 4.

Comprising approximately 100.00 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendation of the BLM's 1979 Rio Grande, Management Framework Plan. (2) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands. Consequently, disposal would best serve the public interest. (3) Various public meetings were held throughout the area during the land use planning process. An additional public meeting was held by the City Park Department. (4) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional delegation and the relevent congressional committees by BLM.

The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority.

1. *Color-of-Title.* Color-of-Title disposals will be made to any applicant within the disposal area who qualified under the Color-of-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who have occupied the parcels before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

3. *Public Purposes.* If unoccupied lands within the disposal area are identified for recreational or other public purposes by state or local governments or other qualified public purposes applicants, they will be considered for disposal under the R&PP Act.

4. *Competitive Sale.* On unoccupied tracts that have no public value, the terms and conditions of the disposals are: (1) All disposals will be made subject to prior valid existing rights. (2) All the minerals in the public lands covered by this Notice of Realty Action, along with the rights to explore, prospect for, mine and remove the minerals will be reserved to the United States. (3) Tracts which lie within the Rio Grande will be subject to E.O. 11988 which precludes the seeking of compensation from the U.S. or its agencies in the event existing or future facilities on those tracts are damaged by flood.

Additional information pertaining to this disposal including the environmental documents are available for review in the Rio Puerco Resource Area Office, 3550 Pan American Freeway, NE, Albuquerque, New Mexico 87107 or telephone 505-766-3114. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Rio Puerco Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

L. Paul Applegate,

District Manager.

[FR Doc. 84-23078 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-FB-M

[A-18898]

Arizona; Conveyance of Public Land

August 21, 1984.

Notice is hereby given that pursuant to section 203(a)(3) of the Act of October 21, 1976, 90 Stat. 2750, 43 U.S.C. 1713, the State of Arizona for the Arizona Department of Health Services, has purchased by noncompetitive sale at the fair market value of $256,000.00, public land in Maricopa County, Arizona, described as:

Gila and Salt River Meridian, Arizona

T. 4S., R. 1W.,
  Sec. 32.

Containing 640.00 acres.

The purpose of this notice is to inform the public and interested State and local government officials of the issuance of the patent to the above-named party.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-23061 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-32-M

[A-18936]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, (BLM) Interior.

ACTION: Notice of Realty Action—Exchange, Public lands in Mohave County, Arizona.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 22 N., R. 19 W.,
Sec. 36, W½ and W½E½.
Comprising 480 acres, more or less.

In exchange for these lands, the United States will acquire the following decribed lands from Irving S. Schneider and Wanda Adams of Davie, Florida:

Gila and Salt River Meridian, Arizona

T. 22 N., R. 20 W.,
Sec. 27, all.
Comprising 640 acres, more or less.

The exchange involves only the surface estate of the public selected lands and the private offered lands.

The purpose of the exchange is to acquire the non-Federal lands in the Black Mountains northwest of Kingman, Arizona which important bighorn sheep habitat. The exchange is consistent with the Bureau of Land Management land use plans and would result in a public benefit.

The above lands will be subject to an appraisal to determine their value. If it is determined that the values are not equal, adjustment may be made in the total number of acres to be exchanged, or a cash payment not to exceed 25 percent of the value of the public lands may be made to equalize values.

Lands to be transferred from the United States will be subject to the following reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

2. All minerals in the subject are reserved to the State of Arizona as granted by the Act of Congress, June 24, 1910.

3. Subject to such restrictions as may be imposed by the County Floodplain Administrator in Accordance with the "Amendment Floodplain Regulation for the Unincorporated Area of Mohave County, Arizona," as adopted by the Mohave County Board of Supervisors by resolution No. 82-1 of May 17, 1982, and recorded in Book 824, page 895 of Official Records, Mohave County, Arizona.

4. Subject to right-of-way A-19235, A-19236, A-19237, and A-19238, for road purposes for the Mohave County Board of Supervisors under Title V, section 501 of the Act of October 21, 1976 (43 U.S.C. 1761).

5. Subject to right-of-way AR-033346 for telephone purposes for American Telephone and Telegraph Company, under the Act of March 4, 1911 (36 Stat. 1253, as amended; 43 U.S.C. 961).

6. Subject to the right of the grazing allottee, James Briggs, to continue his grazing use of the parcel until May 8, 1986. Grazing fees will be paid to the new landowner but may not exceed the fees charged by the Bureau of Land Management for that year.

Private lands to be acquired by the United will be subject to the following reservation:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 73 of Deeds, page 235, Mohave County, Arizona.

Publication of this notice will segregate the subject lands from all appropriations under the public land laws. This segregation will terminate upon the issuance of a patent or two years from the date of this notice, or upon publication of a Notice of Termination.

SUPPLEMENTARY INFORMATION: Detailed information concerning this exhange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman Arizona 86401.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final dtermination. In the absence of any action by the District Manager, this realty action will become the determination of the Department of the Interior.

Dated. August 21, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84-23061 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-32-M

[M-57769]

Land Exchange, Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Public Lands in Madison County suitable for exchange (M-55769).

SUMMARY: The following described public lands located in Madison County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 2 S., R. 2 W.
Sec. 19: NE¼NE¼, 40.00 acres.
Sec. 29: lot 5, 27.10 acres.
Sec. 31: lots 2, 3, 4, 5, 7, 8, 9, 10, 11, and 12, 365.11 acres.
Sec. 32: lots 1, 2, and 3, NE¼SW¼, 155.28 acres.
Total acreage is 587.49 acres.

In exchange for these lands, the Federal Government will acquire the following lands in Madison County from J. Jud Chalmers of Pony, Montana:

Principal Meridian Montana

T. 3 S., R. 1 E.
sec. 10: lot 2, 17.00 acres; lot 4, 23.18 acres.
Excluding Montana Highway Department right-of-way of approximately 6.3 acres.
Total acreage is 33.88 acres.

DATES: For a period of 45 days from the date of first publication of this Notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a tract of land which is heavily used for recreational purposes in conjunction with the Madison River and the nearby Bear Trap Wilderness. The exchange is consistent with the Bureau's planning. The public interest will be well served by making the exchange.

Effective as of the date this Notice is published, the public lands selected in the exchange shall be segregated from all the nondiscretionary public land laws, including the mining laws.

Terms and Conditions

1. The acreage will be adjusted or a monetary payment may be utilized to equalize values.

2. The exchange involves only the surface estate; all minerals owned by the Federal Government will be reserved to the United States. All minerals owned by Chalmers will be reserved.

Patents will contain the following reservations to the United States:

1. Rights-of-way for ditches and canals constructed by the authority of the United States (26 Stat. 391; 43 U.S.C. 945).

2. All minerals with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary of the Interior may prescribe (43 U.S.C. 1719).

3. Existing and future oil and gas leases on all parcels.

4. All valid existing rights.

FOR FURTHER INFORMATION CONTACT: The Butte District at the above address.

Dated: August 23, 1984.

Gerald L. Quinn,

Acting District Manager.

[FR Doc. 84-23076 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-DN

[CA-12964]

California; Opening of Land Subject to Section 24 of the Federal Power Act

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 16 U.S.C. 818) and pursuant to the determination of the Federal Energy Regulatory Commission, in DA-1141 California, it is ordered as follows:

1. Subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law, the following described land in the Plumas National Forest withdrawn in FERC Project Application No. 6332, will not be injured or destroyed for the purposes of power development, and shall effective immediately, become available for consummation of pending Forest Service Exchange Application, CA-10370, under the General Exchange Act of March 20, 1922, 43 Stat. 465, as amended, 16 U.S.C. 485, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920.

Mount Diablo Meridian

T. 26 N., R. 12 E.,
Sec. 31, S½S½SE¼NE¼.

The area described aggregates approximately 10 acres in Plumas County.

2. The State of California has waived its preference right of application for highway rights-of-way on material sites afforded it by section 24 of the Federal Power Act.

The land has been open to applications and offers under the mineral leasing laws. These lands remain segregated from the mining laws under Forest Service Exchange Application, CA-10370.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Dated: August 22, 1984.

Ed Hastey,

State Director, California.

[FR Doc. 84-23088 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-84-M

[Group 758]

California; Filing of Plat of Survey

August 23, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, San Diego County

T. 11S., R. 4E.

2. This plat, representing the dependent resurvey of a portion of the Rancho San Jose de Valle, a portion of the subdivisional lines, and Mineral Survey No. 4187, the survey of the subdivision of sections 10, 11, and 14, T. 11 S., R. 4 E., San Bernardino Meridian, under Group No. 758, California, was accepted August 3, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 84-23082 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-40-M

[CA-14378]

Realty Action; Noncompetitive Sale of Public Lands in San Bernardino County, CA; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action—Noncompetitive sale of public lands in San Bernardino County.

SUMMARY: This document amends the Notice of Realty Action for the sale of public land in California that appeared on pages 30600–30601 in the **Federal Register** of Tuesday, July 31, 1984 (49 FR 30600), CA 14378.

SUPPLEMENTARY INFORMATION: The amendment is made to the terms and conditions of the sale. The following reservations is added subject to those rights granted by oil and gas lease CA 13536 under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181).

Dated: August 23, 1984.

H.W. Riecken,

District Manager, California Desert District.

[FR Doc. 84-23083 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-40-M

[C-28705]

Colorado; Proposed Continuation of Reclamation Withdrawal

August 21, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 120-acre withdrawal be continued for an additional 20 year period. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: All comments should be addressed to State Director, Colorado State Office, 1037 20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303-844-2592.

The Bureau of Reclamation proposes that the existing land withdrawal made by Bureau Order dated May 25, 1950, as amended, be continued for a period of 20 years in accordance with section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 43 U.S.C. 1714.

This order currently withdraws 120 acres of public land. The land is located in T. 51 N., R. 7 W., New Mexico Principal Meridian, Colorado.

The purpose of the withdrawal is to protect the Smith Fork Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-23077 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action; Competitive Sealed Bid Public Land Sales in Gooding County ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Competitive Sealed Bid Public Land Sales in Gooding County, on the following:

Tract No.	Case file No.	Legal description	Acres
1	I-20404	T. 6 S., R. 14 E., B.M., Sec. 19, NW¼SE¼	40
6	I-20405	T. 7 S., R. 14 E., B.M., Sec. 24, NW¼NW¼	40
7	I-20406	T. 7 S., R. 14 E., B.M., Sec. 24, SW¼NW¼	40
8	I-20407	T. 7 S., R. 14 E., B.M., Sec. 24, NW¼SW¼	40
9	I-20408	T. 7 S., R. 14 E., B.M., Sec. 24, NE¼SW¼	40
45	I-20411	T. 6 S., R. 14 E., B.M., Sec. 2, lot 4	39.76
		Total acres	239.76

SUMMARY: The above-described public land tracts were examined, and through land use planning and public imput are determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. Fair market value will be available no less than 30 days prior to the sale date. Only sealed bids shall be accepted.

The lands when patented will be subject to the following reservations to the United States:

1. Ditches and canals.
2. Oil and Gas resources.
3. All valid, existing rights and reservations of record.

The lands are hereby segregated from all appropriation under the public land laws, including the mining laws until sold or this sale is suspended.

Sealed bids must be received in this office no later than 1:00 p.m. on December 14, 1984. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value.

A $50 nonreturnable filing fee for processing such conveyance along with at least one fifth of the full bid price must accompany each bid. Failure to deposit these sums shall result in disqualification.

If not sold at this time, the parcels will be offered the second Friday of each month at the same time, 1:00 p.m., for sealed bids until sold or the sale is suspended.

DATE AND ADDRESS: The sale offering will be held on December 14, 1984 at 1:00 p.m. in the Shoshone District Office, 400 West F Street, Shoshone Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale and conditions, bidding procedures, and other details can be obtained by contacting Joe Aitken at (208) 886-2206 or writing to BLM, P.O. Box 2B, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager at the above address.

Dated: August 21, 1984.

Charles J. Haszier,

District Manager.

[FR Doc. 84-23100 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-GG-M

[M-60987 and M-60988]

Realty Action; Modified Competitive Sales in Rosebud County, MT

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M-60987 and M-60988, Modified Competitive Sales of Public Land in Rosebud County, Montana.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than fair market value.

Parcel No. 1-M-60987—Appraised Value $4,000

Principal Montana Meridian

T. 8 N., R. 41 E.,
Sec. 24: SW¼SE¼, containing 40.00 acres.
T. 8 N., R. 42 E.,
Sec. 28: NE¼4NW¼, containing 40.00 acres.
Total Acreage, 80.00 acres.

Parcel No. 2-M-60988—Appraised Value $2,000

Principal Montana Meridian

T. 10 N., R. 34 E.,
Sec. 28: SE¼SE¼, containing 40 acres.

The land will be offered for sale by sealed bid only utilizing modified competitive bidding procedures on October 31, 1984 at 1:30 p.m. at Montana State Office, Bureau of Land Management, 222 North 32nd Street, P.O. Box 31434, Billings, Montana 59107-1434.

Adams Livestock Company of Rosebud, Montana, is the authorized grazing permittee who will be the designated bidder on Parcel No. 1, M-60987. These public lands are two separated 40-acre subsections located approximately 12 and 15 miles, respectively, north of Rosebud, Montana. Both forties are isolated, difficult and uneconomical to manage as part of the public lands and are not suitable for management by another federal agency. Both forties are rough sagebrush/native grasslands. Physical access via vehicle is possible over ranch trails during dry weather. There is no legal access to either forty. The forth in T. 8 N., R. 41 E. is not fenced and there are no range improvement. The forty in T. 8 N., R. 42 E. is fenced on the north boundary and another fence crosses it on the west side. Other than these fences, there are not any range improvements on this forty.

Joe Kanta of Melstone, Montana, the authorized grazing permittee, will be the designated bidder on Parcel No. 2, M–60988. This 40-acre subsection is approximately three miles west of Ingomar, Montana. This forty is isolated, difficult and uneconomical to manage as part of the public lands and is not suitable for management by another federal agency. Topography is rough with the majority of this 40 acres being a large butte. Vegetation is sagebrush/native grasses with a few scattered juniper trees in a small coulee on the north side of the butte. Physical access via vehicle is possible on a ranch trail during dry weather. There is no legal access. There is no water and there are no range improvements. A boundary fence is on the east side.

The proposed sale is consistent with the Bureau's planning system, and Rosebud County Commissioners were contacted on February 29, 1984 and concur with the proposed sale and that there is no need for a hearing. The transfer of the parcels into private ownership will benefit the public interest and provide for better land management.

Terms and Conditions

The terms and conditions applicable to the sales are:

1. All minerals will be reserved to the United States, together with the right to explore, prospect for, mine, and remove same under applicable law and regulations;
2. A right-of-way for ditches or canals will be reserved to the United States in accordance with 43 U.S.C. 945;
3. The sale of these lands will be subject to all valid existing rights and reservations of record.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information relating to the sale, including the land report and environmental assessment is available for review at the Miles City District Office, west of Miles City, Montana.

SUPPLEMENTARY INFORMATION:

Bidder Qualifications

The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state of the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of Montana. Bids must be made by the principal or his agent.

Bid Standards

No bid will be accepted for less than the appraised fair market value and bids must be individually submitted for either Parcel No. 1 (M–60987) or Parcel No. 2 (M–60988).

Method of Bidding

The land will be sold by sealed bid. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of Interior, Bureau of Land Management for not less than one-fifth of the amount bid. Sealed bids will be received at the Montana State Office, Bureau of Land Management, until 1 p.m., October 31, 1984. Sealed bids will be opened in the Montana State Office, 222 North 32nd Street, Billings, Montana.

The sealed bid envelope must be addressed as follows:

Cashier—Sealed Bids, Public Land Sale
M————, P.O. Box 31434, Billings,
Montana 59107–1434

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental biddings. The designated high bidders shall be allowed to submit oral or sealed bids as designated by the authorized officer. The highest qualifying sealed bid shall then be publicly declared.

Modified Competitive Bidding

For a period of 30 days following the date of the sale, Adams Livestock Company of Rosebud, Montana, the designated bidder for Parcel No. 1, and Joe Kanta of Melstone, Montana, the designated bidder for Parcel No. 2, will be offered the right to meet the highest qualifying bid. The designated bidder must submit a bid of at least the fair market value prior to the sale date in order to be considered under the modified bidding provisions. If either meets the highest bid on the respective parcel(s), and the land will be sold to the designated bidder(s) and the other high bid will be returned. If either designated bidder refuses to meet the highest bid or to submit any bid at all prior to the sale date, the modified competitive bidding provisions shall be waived.

Sale Continuation

In the event these parcels are not sold at the original designated sale offering, the parcel(s) will then be available for sale over the counter on a first come, first served basis, at the Montana State Office, Bureau of Land Management, 222 North 32nd Street, Billings, Montana. Sealed bids will only be opened each Wednesday.

Final Details

Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days. Failure to submit the required amount within the 180-day time period will result in forfeiture of the deposit and the lands will be offered to the next qualifying bidder.

Dated: August 20, 1984.

Robert A. Teegarden,

Acting District Manager.

[FR Doc. 84–23114 Filed 8–29–84; 8:45 am]

BILLING CODE 4310–DN–M

Colorado State Office; Emergency ORV Restrictions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Off-Road Vehicle Decisions.

SUMMARY: Notice is hereby given that effective immediately, all public lands (640 Acres) in Section 20, T. 1 N., R. 3 W., Ute Meridian are closed to off-road vehicle use (ORV); and the public lands located within the sections listed below (6,675 acres) are limited to existing roads and trails except for snowmobiles operating on snow.

T. 5 S., R. 89 W., 6 P.M.,
  Secs. 16, 20, 21, 25, 26, 27, 28, 29, 33, 34, 35, 36.
T. 6 S., R. 89 W., 6 P.M.,
  Secs. 6, 7, 8, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 26.

Additional Information

The purpose of the closure in the area of the Rattlesnake Canyon Arches is to protect the wilderness characteristics, primarily naturalness in the Black Ridge Wilderness Study Area (CO–070–113).

The limited closure around Glenwood Springs, Colorado is to protect soils and vegetation in the Glenwood Springs Debris Flow Hazard Zone designated as an Area of Critical Environmental Concern in the 1984 Glenwood Springs Resource Management Plan.

The authority for these restrictions is 43 CFR 8341.2. These emergency restrictions will remain in effect until off-road vehicle designations are implemented in these areas.

FOR FURTHER INFORMATION CONTACT: Wade Johnson, District Recreation Planner, Grand Junction District, 764 Horizon Drive, Grand Junction, CO 81503, (303) 243-6552.

Dated: August 21, 1984.

Wright Sheldon,

District Manager, Grand Junction Office.

[FR Doc. 84-23106 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-DN-M

Designation of Lassen Red Rocks Scenic Area, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of Lassen Red Rocks Scenic Area.

SUMMARY: Pursuant to the authority of 43 CFR Part 8352 and Delegation of Authority 1203, I have designated the public lands in the following described area the Lassen Red Rocks Scenic Area:

Mount Diablo Meridian, Nevada

T. 24 N., R. 18 E.
 Sec. 29: W½SW¼.
 Sec. 30: SE¼, E½SW¼.
 Sec. 31: E½NW¼, NE¼, N½NE¼SE¼.
 Sec. 32: W½NW¼, NW¼SW¼.

The area aggregates approximately 700 acres, all of which are public lands managed by the Bureau in Lassen County, California (500 acres), and Washoe County, Nevada (200 acres).

EFFECTIVE DATE: August 17, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas J. Owen, District Manager, Bureau of Land Management, 1050 E. William St., Suite 335, Carson City, Nevada 89701; (702) 882-1631.

Dated: August 24, 1984.

Thomas J. Owen,

District Manager, Carson City District, Nevada.

[FR Doc. 84-23082 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-HC-M

[INT-DEIS-84-47]

Availability; Environmental Impact Statement; Draft; Rangely Carbon Dioxide Pipeline Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, BLM has prepared a DEIS for the proposed Rangely Carbon Dioxide Pipeline Project.

SUPPLEMENTARY INFORMATION: BLM has prepared a DEIS for the Rangely Carbon Dioxide Pipeline Project. Chevron USA, Inc. has applied to the BLM Wyoming, Utah, and Colorado State Offices for a right-of-way permit to build and operate a 176-mile-long, 16-inch-diameter pipeline to carry carbon dioxide from Exxon Corporation's proposed La Barge gas plant at the Shute Creek site northeast of Opal, Wyoming, to the Rangely Weber Sand Unit oil field (Colorado) where the carbon dioxide would be used for enhanced oil recovery. Ancillary facilities to be built would include a microwave communication system, a Supervisory Control and Data Acquisition (SCADA) system to detect leaks, and a booster compressor station (Sand Wash Alternative only).

FOR FURTHER INFORMATION CONTACT: Janis VanWyhe, Project Leader, Division of EIS Services, Bureau of Land Management, 555 Zang Street, First Floor East, Denver, Colorado 80228, (303) 234-6737.

Copies of the DEIS may be inspected at the following locations:

Bureau of Land Management, Public Affairs, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240

Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003

Bureau of Land Management, Colorado State Office, 1037 20th Street, Denver, Colorado 80202

Bureau of Land Management, Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111

Bureau of Land Management, Division of EIS Services, 555 Zang Street, First Floor East, Denver, Colorado 80228

Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82901

Bureau of Land Management, Craig District Office, P.O. Box 248, Craig, Colorado 81625

Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, Utah 84078

Copies of the DEIS may be obtained from BLM's Division of EIS Services at the address listed above, and a limited number of single copies may be obtained from BLM's Rock Springs District Manager at the address listed above.

P. D. Leonard,

Associate State Director.

[FR Doc. 84-23087 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3088, Block 623, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on August 23, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolber; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 23, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23087 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; McMoRan Offshore Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordinaton Document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Offshore Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2690, Block A–471, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducts from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on August 23, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 23, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23088 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on lease OCS–G 5506, Block 248, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 23, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Units, Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 22, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23089 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting Raymond A. Hicks at 303–231–3147. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the phone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Auditing and Financial System Reports on Solid Minerals.

Abstract: Auditing and Financial System (AFS) information is needed from lessees and lease operators to provide comprehensive sales and royalty data on coal and other solid minerals produced from leased Federal and Indian lands. The data is used to document payments, to maintain royalty accounts, and for audits.

Bureau Form Numbers: MMS–4014, MMS–4030.

Frequency: Intermittently, monthly, quarterly.

Description of Respondents: Companies producing solid minerals from Federal and Indian leases.

Annual Responses: 1,464.

Annual Burden Hours: 727.

Bureau Clearance Officer: Dorothy Christopher, 703-435-6213.

Dated: July 20, 1984.

Robert E. Boldt,

Associate Director for Royalty Management.

[FR Doc. 84-23080 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2834, Block 238, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbon with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on August 21, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 21, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23072 Filed 8-29-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-195]

Certain Cloisonne Jewelry; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: The Answer, Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 24, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: August 24, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23003 Filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-185]

Certain Rotary Wheel Printing Systems; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Olympie Werke Aktiengesellschaft and Olympia U.S.A., Inc. (Olympia).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 24, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: August 24, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-23003 Filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332-190, Headwear of Cotton and of Manmade Fibers, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of proposals

(1) Number of forms submitted: three.

(2) Title of forms: (a) Questionnaire for Producers of Headwear of Cotton and of Manmade fibers and

(b) Questionnaire for Importers of Headwear of Cotton and of Manmade Fibers

(c) Questionnaire for Retailers of Headwear of Cotton and of Manmade Fibers.

(3) Type of request: new.

(4) Frequency of use: nonrecurring.

(5) Description of respondents: U.S. producers, importers, and retailers of headwear of cotton or of manmade fibers.

(6) Estimated number of respondents: 500.

(7) Estimated total number of hours to complete the forms: 6,250.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Charles Ervin, the USITC agency clearance officer (tel. no. 202-523-4463). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Ms. Francine Picoult, Desk Officer for U.S. International Trade Commission (202-395-7231). If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436).

Issued: August 24, 1984.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-23009 Filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-201]

Certain Products With Gremlin Character Depictions; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for expedited temporary relief were filed with the U.S. International Trade Commission on July 25, 1984, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Warner Bros. Inc., 75 Rockefeller Plaza, New York, New York 10019. An amendment to the complaint and to the memorandum in support of the motion for expedited temporary relief were filed on August 10, 1984. Supplemental information was also filed on August 14, 1984. The complaint as amended alleges unfair methods of competition and unfair acts in the importation of certain products with Gremlin character depictions into the United States, or in their sale, by reason of alleged (1) infringement of U.S. Copyright Reg. No. VAu 54-951; (2) infringement of U.S. Copyright Reg. No. VAu 54-952; and (3) infringement of U.S. Copyright Reg. No. PAu 214-201. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct expedited temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 22, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain products with Gremlin character depictions into the United States, or in their sale, by reason of alleged (1) infringement of U.S. Copyright Reg. No. VAu 54-951; (2) infringement of U.S. Copyright Reg. No. VAu 54-952; and (3) infringement of U.S. Copyright Reg. No. PAu 214-201, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for expedited temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, and the memorandum in support thereof, which were filed on July 25, 1984, and the amendment to the memorandum in support of the motion for expedited temporary relief, which was filed on August 10, 1984, shall be forwarded to the presiding officer for an initial determination pursuant to § 210.53(b) of the rules.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Warner Bros. Inc., 75 Rockefeller Plaza,
New York, New York 10019

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Chin Mei Co. Ltd., 150 Fu Te South Road, San Chung City, Taipei County, Northern Taiwan
Crichton Trading Co., 58 Changon W. Road, 7th Floor, Taipei, Taiwan
Founders Enterprises Ltd., 4th Floor, 34 Lane 81, Fu Hsing North Road, Sung Shan District, Taipei City, Northern Taiwan
Jar Jung Co. Ltd., P.O. Box 30-465, Taipei, Northern Taiwan
Kai Chen Industries, Co. Ltd., P.O. Box 48594, Taipei, Taiwan
Keyne Enterprise Co. Ltd., 1st Floor, 13 Lane 116, Chien Min Road, Shih Pai District, Taipei City, Northern Taiwan
Ladies and Gentlemen Ornaments Co. Ltd., 2nd Floor, 117 San Yang Road, San Chung City, Taipei County, Northern Taiwan
Lay Grand Co. Ltd., Fifth Floor, Hung Fu Nan Fu Bldg., 96 Roosevelt Road, Section 1, Ky Ting District, Taipei City, Northern Taiwan
Lien Ho Plastic Co. Ltd., 2nd Floor, 4 Alley 2 Lane 325, Shui Yuan Road, Hsi Chih Toun, Taipei County, Northern Taiwan
Lion City Industries (also d/b/a/ Lion City Industrial Co. Ltd.), 1st Floor, 3 Alley 20 Lane 158, Pa Te Road, Section 3, Taipei City, Northern Taiwan
Shine Land Inc., F. 8, No. 97, Section 2, Nan King E. Road, Taipei, Taiwan
Shiuh Cha Trading Ltd., 8th Floor, 139 Keelung Road, Section 1, Taipei City, Northern Taiwan
Ta Hsin Co. Ltd., 2nd Floor, 171 Chung Hsiao Road, Section 1, San Chung City, Taipei County, Northern Taiwan
Te Feng Industrial Store, 2nd Floor, 18 Alley 58 Lane 7, Li Ming Road, Nan Tun District, Taichung City, Central Taiwan
The Superior Taiwan Corp., P.O. Box 55-1266, Taipei, Northern Taiwan
Tiger Lion Enterprise Co. Ltd., 5th Floor, 7 Lane 342, Lung Chiang Road, Chung Shan District, Taipei City, Northern Taiwan
Y.C. Low Enterprise Co. Ltd., 6th Floor, 470-472 PA TE Road, Section 4, Sung Shan District, Taipei City, Northern Taiwan
Ying Zan Enterprises Corp., 5th Floor-1, 212 An Ho Road, Ta An District, Taipei City, Northern Taiwan
Bethel Enterprises Co., 56 West 28th Street, New York, New York 10001
C.H. Trade, 20 West 27th Street, New York, New York 10001
Dai-Dai Industrial Corp. (also d/b/a JC Imports and FADA Trading), 1204 Broadway, New York, New York 10001
Dae Rim Trading, Inc., 43 West 30th Street, New York, New York 10001
Hope Industries Inc., 1170 Broadway, New York, New York 10001
Jim Trading Corp., 1181 Broadway, New York, New York 10001
Komax General Corp. (also d/b/a The Komax General Corp.), 1232 Broadway, New York, New York 10001
Mason Imports, Inc., 1214 Broadway, New York, New York 10001
Motivic Inc., 53 West 36th Street, New York, New York 10001
Multinational Products Corp. (also d/b/a Multinational Products), 1181 Broadway, New York, New York 10001
Samba Trading Corp. (also d/b/a Samba Jewelry Corp.), 842 Avenue of the Americas, New York, New York 10001
Top Line, 1220 Broadway, New York, New York 10001
Young Man General Merchandise Co., 41 West 30th Street, New York, New York 10001
Yu Il International Trading Corp. (also d/b/a Yuil International Trading Corp.), 868 Avenue of the Americas, New York, New York 10001

(c) Gary Rinkerman, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding officer shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considerd by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for expedited temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for expedited temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a wavier of the right to appear and contest the allegations of the complaint and this notice and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, telephone 202/523-0471.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202/523-1273.

Issued: August 24, 1984.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-23098 Filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

[332-190]

Headwear of Cotton and of Manmade Fibers

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning headwear of cotton and of manmade fibers.

EFFECTIVE DATE: August 22, 1984.

FOR FURTHER INFORMATION CONTACT: Reuben Schwartz (202-523-0114) or Marilyn Borsari (202-523-5703), Textiles, Leather Products, and Apparel Division, U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

The Commission instituted investigation No. 332-190, Headwear of Cotton and of Manmade Fibers, following receipt on June 13 and July 23, 1984, of a request therefor from the United States Trade Representative. The data collected will be used by the Committee for the Implementation of Textile Agreements in assessing the effect of imports of headwear of cotton and of manmade fibers on the U.S. industry.

In accordance with the Trade Representative's request, the objective of the study will be to gather and present the following information with respect to headwear of cotton and of manmade fibers: U.S. production, imports, exports, capacity utilization, productivity, unfilled orders, inventories, employment, and prices. The Commission expects to complete its study by January 4, 1985.

By Order of the Commission.

Issued: August 24, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23006 Filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-198]

Certain Portable Electronic Calculators; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Sears, Roebuck & Co.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 27, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: August 27, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23006 Filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-196 (Preliminary)]

Certain Red Raspberries From Canada

Determination

On the basis of the record [1] developed in investigation No. 731-TA-196 (Preliminary), the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury [2] by reason of imports from Canada of red raspberries, provided for in items 146.54, 156.56, and 146.74 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 5, 1984, growers and packers of red raspberries and the American Frozen Food Institute filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain red raspberries from Canada. Accordingly, effective July 5, 1984, the Commission instituted antidumping investigation No. 731-TA-196 (Preliminary) under section 733(a) of the Act. Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on July 18, 1984 (49 FR 29163). A public conference was held in Washington, D.C. on July 27, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on August 20, 1984. A public version of the Commission's report, *Certain Red Raspberries From Canada* (investigation No. 731-TA-196 (Preliminary), USITC Publication 1565, August 1984) contains the views of the Commission and information developed during the investigation.

Issued: August 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23004 filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

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[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Lodwick finds a reasonable indication of material injury.

[Investigation No. 337-TA-178]

Certain Vinyl-Covered Foam Blocks; Commission Decision Not To Review Initial Determination; Deadline for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the initial determination (I.D.) of its presiding officer (ALJ) that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation. The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding.

Authority: 19 U.S.C. 1337; 19 CFR 210.50-210.56.

SUPPLEMENTARY INFORMATION: On July 26, 1984, the ALJ issued an I.D. that grants a motion for summary determination by the complainant. The ALJ has determined that there is a violation of section 337 in the unauthorized importation and sale of certain vinyl-covered foam blocks. No petition for review was filed. The

Commission on August 21, 1984, determined not to review the I.D. Consequently, the I.D. has become the Commission's determination on violation of section 337 in this investigation.

Recently, this investigation was terminated as to one of the two named respondents Talbot Toys, Inc., on the basis of a consent order. The summary determination effectively terminates the investigation with respect to the remaining respondent, Candid Industies.

Written Submissions

Inasmuch as the Commission has found that a violation of section 337 has occurred, it may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease-and-desist orders forbidding unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of relief, if any, that should be ordered.

If the Commission contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or a cease-and-desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submission concerning the amount of the bond, if any, that should be imposed.

The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease-and-desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day that is fourteen (14) days after publication of this notice in the Federal Register.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadline stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the ALJ. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's office.

Notice of this investigation was published in the Federal Register of December 29, 1983, 48 FR 57634.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Office of the General Counsel, telephone 202–523–0079.

Issued August 24, 1984.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-23007 Filed 8-29-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-216X)]

Burlington Northern Railroad Co.; Abandonment in Adams County, IL; Exemption

The Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is between milepost 265.32 near Quincy and milepost 269.60 near Marblehead, a distance of approximately 4.20 miles in Adams County, IL.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Illinois has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on September 28, 1984, (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 10, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 18, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, Forth Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditional upon environmental or public use conditions.

Decided: August 17, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 84-23043 Filed 8-29-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-113X)]

Illinois Central Gulf Railroad Co.; Abandonment Exemption in Livingston County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the Illinois Central

Gulf Railroad Company from the requirements of prior approval under 49 U.S.C. 10903 *et seq.* regarding the abandonment of 1.44 miles of track extending from milepost 106.01 to milepost 107.45 at Pontiac, Livingston County, IL, subject to the standard employee protective conditions.

DATES: This exemption shall be effective on October 1, 1984. Petitions for reconsideration must be filed by September 19, 1984. Petitions for stays must be filed by September 10, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-43 (Sub-No. 113X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: John H. Doeringer, 233 N. Michigan Avenue, Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,
Secretary.

[FR Doc. 84-23044 Filed 8-29-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30534]

Pocono Northeast Railway, Inc.; Securities and Acquisition and Operation Exemption in Plains Township and Wilkes-Barre, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission (1) exempts from the requirement of prior approval under 49 U.S.C. 11343 *et seq.* the acquisition and operation by Pocono Northeast Railway, Inc., of two lines of railroad belonging to the Delaware & Hudson Railway Company, one extending from milepost 208.08 in Plains Township, PA, to milepost 210.69 near Conyinghan Street in Wilkes-Barre, PA, a distance of 2.61 miles, and the other extending from milepost 209.87, an intermediate point on the line described above, to the north line of Linden Street in Wilkes-Barre, a distance of about 2,500 feet, subject to employee protective conditions; and (2) exempts from the requirement of prior approval under 49 U.S.C. 11301 the insurance by Pocono Northeast Railway, Inc., of a secured note in the amount of $90,000 in connection with its acquisition of the lines of railroad described above.

DATES: These exemptions shall be effective on August 29, 1984. Petitions to reopen must be filed by October 1, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30534 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Mark H. Sidman, Suite 350, 1575 Eye Street, NW., Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,
Secretary.

[FR Doc. 84-23042 Filed 8-29-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

The third quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, D.C., on September 20, 1984. The meeting will take place in the Departmental Conference Room at the Department of Housing and Urban Development, Room 10233, 451 Seventh Street, SW., from 9:00 to 12 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the federal effort in the area of juvenile justice and delinquency prevention.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-7655.

Dated: August 24, 1984.

Alfred S. Regnery,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84-23059 Filed 8-29-84; 8:45 am]

BILLING CODE 4410-18-M

National Advisory Committee for Juvenile Justice and Delinquency Prevention; Meeting

The thirty-second quarterly meeting of the National Advisory Committee for Juvenile Justice and Delinquency Prevention will be held in Washington, D.C., on September 11 and 12, 1984.

The meeting will be held at the Georgetown Inn, Georgetown Court, 1310 Wisconsin Avenue, NW., from 9:00 a.m. to 5:00 p.m. daily. The public is welcome to attend.

The agenda will include discussion and topics related to the redirection of the Federal effort in juvenile justice.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-7655.

Dated: August 22, 1984.

Alfred S. Regnery,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84-23061 Filed 8-29-84; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-69]

NASA Advisory Committee on Minority Graduate Researchers; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Subcommittee of the NASA Advisory Committee on Minority Graduate Researchers.

DATE AND TIME: September 7, 1984, 8 a.m. to 4:30 p.m.

ADDRESS: NASA Headquarters, 400 Maryland Avenue, SW, Room 6004, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Harriett G. Jenkins, Code U, National

Aeronautics and Space Administration, Washington, D.C. 20546 (202/453-2167).

SUPPLEMENTARY INFORMATION: The NASA Advisory Committee on Minority Graduate Researchers was established to advise senior management on the most desirable approaches, strategies or systems which will help expand the resource pool of talented minorities who can carry out significant scientific and engineering research related to NASA objectives. The Committee is chaired by Dr. John Hernandez and is composed of eight members. The Subcommittee is composed of three members. It is imperative that the Subcommittee meet at this time to consolidate the Committee's findings and develop the final Committee Report to NASA within the next few weeks.

Visitors will be admitted to the meeting room up to its capacity, which is approximately 50 persons including Committee members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

September 7, 1984

8 a.m. Welcome, housekeeping items and tasks for the day.

9:15 a.m. Subcommittee members will develop the final Committee Report for NASA, and on which the Agency will base its report to Congress.

4:30 p.m. Adjourn.

Dated: August 23, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-22990 Filed 8-29-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by October 1, 1984.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202-786-0233) or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

New Form

Title: Faculty Graduate Study Program for Historically Black Colleges and Universities
Form Number: N/A
Frequency of Collection: Annually
Respondents: Individuals and Historically Black Colleges and Universities
Use: Application, evaluation, and award process for NEH Graduate Study Program for Faculty at Historically Black Colleges and Universities
Estimated Number of Respondents: 50
Estimated Hours of Respondents to Provide Information: 725

Dated: August 24, 1984.

Victor J. Loughnan,

Director, Division of Administration.

[FR Doc. 84-23040 Filed 8-29-84; 8:45 am]

BILLING CODE 7536-01-M

National Endowment for the Arts

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on September 17, 1984 from 9:00 a.m.-9:00 p.m.; September 18, 1984 from 8:30 a.m.-9:00 p.m.; September 19, 1984 from 8:30 a.m.-6:45 p.m.; and, September 20, 1984 from 8:00 a.m.-7:00 p.m. in Room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

A portion of this meeting will be open to the public on September 20 from 4:30-7:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on September 17 from 9:00 a.m.-9:00 p.m.; September 18 from 8:30 a.m.-9:00 p.m.; September 19 from 8:30 a.m.-6:45 p.m.; and, September 20 from 8:00 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 22, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-23063 Filed 8-29-84; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Individuals Section) to the National Council on the Arts will be held on September 14, 1984, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 22, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-23062 Filed 8-29-84; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) to the National Council on the Arts will be held on September 19-21, 1984 from 9:00 a.m.-5:30 p.m. in Room 730 of the Nancy Hawks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

A portion of this meeting will be open to the public on September 21 from 10:00 a.m.-12:30 p.m., to discuss policy and guidelines.

The remaining sessions of this meeting on September 19-20 from 9:00 a.m.-5:30 p.m.; September 21 from 9:00 a.m.-10:00 a.m. and 12:30 p.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 23, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-23074 Filed 8-29-84; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Festivals Section) to the National Council on the Arts will be held on September 17-18, 1984 from 9:00 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

A portion of this meeting will be open to the public on September 18 from 2:00-3:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on September 17 from 9:00 a.m.-5:30 p.m. and on September 18 from 9:30 a.m.-2:00 p.m. and from 3:00-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 24, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-23075 Filed 8-29-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports and Recommendations

Reports Issued

Highway Accident Report: Samuel Coraluzzo Company, Inc., Tractor Cargo Tank Semitrailer Mechanical Failure, Overturn, and Fire, Interstate 76 (Schuylkill Expressway), Philadelphia, Pennsylvania, October 7, 1983 (NTSB/HAR-84/02) (NTIS Order No. PB84-916202).

Pipeline Accident Report: Mid-America Pipeline System Liquefied Petroleum Gas Pipeline Rupture, West Odessa, Texas, March 15, 1983 (NTSB/PAR-84/01) (NTIS Order No. PB84-916501).

Pipeline Accident Report: Interstate Power Company Natural Gas Explosion and Fire, Clear Lake, Iowa, July 12, 1983 (NTSB/PAR-84/02) (NTIS Order No. PB84-916502).

Railroad Accident Report: Rear End Collision of Seaboard System Railroad Freight Trains Extra 8051 North and Extra 1751 North, Sullivan, Indiana, September 14, 1983 (NTSB/RAR-84/02) (NTIS Order No. PB84-916302).

Safety Study: Airport Certification and Operations (NTSB/SS-84/02) (NTIS Order No. PB84-917002).

Aircraft Accident Report: Republic Airlines, Inc., Convair 580, N844H, Brianerd, Minnesota, January 9, 1983 (NTSB/AAR-83/08) (NTIS Order No. PB83-910408.

Aircraft Accident Report: Eastern Air Lines, Inc., Boeing 727-225, N8838E, Raleigh, North Carolina, November 12, 1975 (NTSB/AAR-83/06) (Supersedes—NTSB-AAR-76-15) (NTIS Order No. PB83-910406).

Aircraft Accident Report: Landry Aviation Lockheed Learstar L-18, N116CA, Silvana, Washington, August 21, 1983 (NTSB/AAR-84/06) (NTIS Order No. PB84-910406).

Aircraft Accident Reports: Brief Format, U.S. Civil and Foreign Aviation, Issue Number 14 of 1982 Accidents (NTSB/AAB-84/06) (NTIS Order No. PB84-916906).

Aircraft Accident Reports: Brief Format, U.S. Civil and Foreign Aviation Issue Number 15 of 1982 Accidents (NTSB/AAB-84/07) (NTIS Order No. PB84-916907).

Aircraft Accident Reports: Brief Format, U.S. Civil and Foreign Aviation Issue Number 12 of 1982 Accidents (NTSB/AAB-84/04) (NTIS Order No. PB84-916904).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703-487-4650 and to order subcriptions to reports call 703-487-4630.

Recommendations To

Aviation—*Federal Aviation Administration: Jul. 9: A-84-65:* In conjunction with the airplane manufacturer, evaluate the circumstances of recent incidents of main landing gear malfunctions involving Boeing 727 airplanes which have been modified in accordance with the original Airworthiness Directive 79–04–01, with particular emphasis on the geometric relationship between the main landing gear and the wheelwell doors that may permit the tire to jam on the wheel-well door so that the gear cannot be extended, to determine whether the provisions of revised Airworthiness Directive 79–04–01 regarding optional installation of the new safety bar identified in Boeing Service Bulletin 727–32–275 should be made mandatory as an added measure to preclude landing gear/wheel-well door jams. *Jul. 11: A–84–66:* Review the design, the installation, and the maintenance requirements for the stall avoidance system on Fairchild Swearingen Models SA 226 and SA 227 airplanes to verify system reliability and maintainability, and take action as needed to preclude unwarranted actuations of the system that could present hazards to the airplanes. *Jul. 12: A–84–76:* Require that Air Carrier Principal Operations Inspectors review the training programs of their respective carriers and if necessary specify that they be amended to emphasize requirements:

—For flightcrews to take immediate and aggressive action to determine the source and severity of any reported cabin fire and to begin an emergency descent for landing or ditching if the source and severity of the fire are not positively and quickly determined or if immediate extinction is not assured.

—For flight attendants to recognize the urgency of informing flightcrews of the location, source, and severity of any fire or smoke within the cabin.

—For both flightcrews and flight attendants to be knowledgeable of the proper methods of aggressively attacking a cabin fire by including hands-on-training in the donning of protective breathing equipment, the use of the fire ax to gain access to the source of the fire through interior panels which can be penetrated without risk to essential aircraft components, and the discharge of an appropriate hand fire extinguisher on an actual fire.

A–84–77: Require that Airplane Flight Manuals, Air Carrier Flight Operations manuals, and Flight Attendant Manuals be amended to include comprehensive discussions and illustrations showing the proper use of a fire ax and the locations in each model of aircraft operated where a fire ax can be used safely to gain access to a fire or smoke emission source. *A–84–78:* Require that those interior cabin panels of transport category airplanes, including panels of the lavatories and galleys, which can be safely penetrated with a fire ax be identified by an acceptable and standardized means. *Jul. 13: A–84–67:* Require the manufacturer to revise the FAA-approved flight manual for the Bell 206 model helicopter to include the information on loss of tail rotor effectiveness provided in Operations Safety Notice 206–83–10. *A–84–68:* Review and evaluate the substantiation data for the Bell 206 model helicopter, collected in flight testing, to show compliance with 14 CFR 27.143-Controllability and Maneuverability, to verify that the rotorcraft is safety controllable and maneuverable during steady-state flight and during any maneuver appropriate to the type; if compliance is not verified, requre appropriate modifications or limitations of the helcopters' flight envelope. *Jul. 16: A–84–69:* Institute recurrent training for all air traffic control personnel which emphasizes the need for strict adherence to existing position relief briefing procedures to assure a timely and complete transfer of essential information. *A–84–70:* Modify flight progress strip marking procedures pertaining to "wrong altitude for direction of flight" assignments to uniformly require inclusion of a notation regarding the status of the transfer of relevant information to other controllers. *A–84–71:* Require as part of each facility's Quality Assurance Program that the Regional Flight Surgeon or his designee examine air traffic control personnel who have been invoved in an operational error or similar incident before they are allowed to return to operational duties. *A–84–72:* Expedite the acquisition of sufficient satellite channels to provide the Miami ARTCC with uninterrupted radar service in the area of proposed expanded radar coverage. *A–84–73:* Acquire sufficient satellite channels for the Miami ARTCC to improve the quality and reliability of radio communications transmitted to/from remote island facilities. *A–84–74:* Review the route intersections currently used for computer-generated flight progress strip postings in the Miami ARTCC oceanic area and designate additional intersections as necessary to assist controllers to detect more reliably potential crossing traffic/route conflicts within the nonradar environment. *Jul. 16: A–84–79:* Issue an Airworthiness Directive applicable to Cessna Models 206, 207, and nonturbocharged Model 210, to require a periodic inspection of the induction airbox assembly for evidence of cracking, chafing, or looseness and to require that the airbox be repaired, replaced, or secured as necessary. *A–84–80:* Evaluate the installation of the new, heavier Cessna induction airbox assembly, Part No. 1250705–8, as a possible alternative to the periodic inspection of the original airbox assembly for evidence of cracking chafing, or looseness. *A–84–81:* Emphasize in Advisory Circular No. 43–16, General Aviation Airworthiness Alerts, occurrences of induction airbox metal fatigue and breakage due to vibration and the importance of rigorous periodic inspections of the assemblies for evidence of cracking, chafing, or looseness. *Aug. 15: A–84–85:* Issue an Airworthiness Directive to require compliance with the provisions of Piper Aircraft Corporation Service Bulletin No. 779, dated May 25, 1984, which recommends inspection of the strut housing assembly and replacement of the landing gear upper bearing retaining pins within the next 100 hours of operation or at the next scheduled maintenance event, whichever occurs first. *Aug. 15: A–84–87:* Conduct a Directed Safety Investigation (DSI) of Mooney Model M–20 and M–20A airplanes to ascertain the degree of undetected structural deterioration of these airplanes. If the results indicate a significant level of deterioration, an Emergency Airworthiness Directive should be issued requiring an immediate inspection of all M–20 and M–20A airplanes and/or replacement of the wood empennage with an all-metal empennage as provided for in Mooney Service Bulletin M–20–170A. The inspections should be performed at a Mooney Service Center or at other approved facilities skilled in the maintenance of wooden airplanes. *A–84–88:* Issue an Airworthiness Directive requiring that the next 100-hour or annual inspection of Mooney Model M-20 and M-20A airplances be performed at a Mooney Service Center or at other designated facilities skilled in the maintenance of wooden airplanes. Similar inspections conducted at these designated facilities should be required at appropriate, periodic intervals, e.g., once every 3 years. *A–84–89:* Issue an Airworthiness Directive requiring that owners/operators of Mooney M-20 and M-20A airplanes shelter the airplanes from the environment when parked, either by hangaring or through the use of wing and empennage covers. *A–84–90:* Issue an Advisory Circular relating to the maintenance, inspection, and repair of wooden airplanes exclusively. *A–84–91:* Continue to publish malfunction and Defect Reports regarding the deterioration of wooden airplanes in Advisory Circular No. 43–16, General Aviation Airworthiness Alerts. *A–84–92:*

Conduct a research and development program at the Federal Aviation Administrations' Technical Center to determine the potential of various nondestructive testing techniques in applications involving the inspection of wooden airplanes. *Aug. 15: A-84-93:* Establish at the Civil Aeromedical Institute the capability to perform state-of-the-art toxicological tests on the blood, urine, and tissue of pilots involved in fatal accidents to determine the levels of both licit and illicit drugs at both therapeutic and abnormal levels. *A-84-94:* Review the research and literature on the potential effects on pilot performance of both licit and illicit drugs, in both therapeutic and abnormal levels, and use that to develop and actively disseminate to pilots usable guidelines on potential drug interactions with piloting ability. *A-84-95:* In coordination with the Office of the Secretary, U.S. Department of Transportation, institute appropriate research to further the understanding of potential effects on pilot performance of both licit and illicit drugs, in both therapeutic and abonormal levels, and actively disseminate those findings. *Aug. 15: A-84-96:* Identify the makes and models of twin-engine airplanes equipped with prestolite 100-ampere alternators and evaluate them for susceptibility of the alternators to ice formation in the brushholders that can cause interruption of electrical power generation, and take the action necessary to correct any deficiencies that cause such ice formation. *Aug. 23: A-84-97:* Require that use of a combination of methods, such as the fluorescent penetrant and eddy current inspection methods, to detect cracks in their initial stages in CF 6-50 stage 1 , high pressure turbine disks in order to increase the reliability of detecting cracks in these disks. *Aug. 23: A-84-98:* Require that airports certificated for air carrier operations install signs at all runway and taxiway entrances, exits, and intersections that indicate the identity to the runway or taxiway. *A-84-99:* Require that the graphics on taxiway/runway identification signs be standardized and of sufficient size to enable them to be legible to aircraft crewmembers in all meteorological conditions in which air carrier operations are authorized. *A-84-100:* Require that airport operators inspect and maintain the lights illuminating airport taxiway/runway identification signs as part of the daily airport inspection requirements. *A-84-101:* Require at all airports certificated for air carrier operations that uniform signs be installed which are classified by function (e.g., runway entrance, runway exit, taxiway intersection) with each function having a unique shape, color, and/or size so that runway entrance signs are distinguishable from all other advisory signs on airport property. *A-84-102:* Require that air carriers incorporate in training of their crewmembers procedures and responsibilities during ground operations in restricted visibility conditions, to enable them to operate safely in such conditions.

U.S. Department of Transportation: Jul. 16: A-84-75: Take the action needed to minimize delays and additional schedule slippages in the completion and commissioning of the radar installation at Nassau, Bahamas, and Grand Turk Island.

Ayres Corporation: Jul. 9: A-84-64: Issue a mandatory Service Bulletin for Aero Commander, S2R agricultural airplanes with serial numbers preceding S/N 2241 that would require the installation of a doubler that adequately distributes shoulder harness crash loads to prevent the tearing of the aft cockpit bulkhead structure.

Highway—*State of Connecticut: Jul. 19: H-84-31:* Reopen the paved-over drains on the Mianus River Bridge and any other bridge in Connecticut which may have paved-over drains, institute a program to modify the bridge drainage systems so that they provide for proper runoff of surface water and to require regular cleaning and maintenance of drainage systems. *H-84-32:* Establish and enforce a policy of reviewing and evaluating proposed modifications of bridge drainage systems to preclude reducing the effectiveness of the systems. *H-84-33:* Require the cleaning of critical elements of bridges and access routes thereto immediately before or in the course of major bridge safety inspections. *H-84-34:* Improve the quality of review of bridge inspection reports, and provide for face-to-face reviews of reports on a selected sample of bridges by reviewers and inspectors. *H-84-35:* Revise Bridge Inspection Form BRI 18 (Ed.1-81) to provide for the recording of information regarding:

(1) Specified critical elements with individual ratings supported by a narrative explanation;

(2) Observations and measurements of alignment of members; and

(3) Use of specialized equipment to gain access to the bridge area being inspected or the reasons why specialized equipment was not used.

H-84-36: Prepare individual inspection and maintenance manuals for large or complex bridges within Connecticut. *H-84-37:* After consultation with the Bridge Safety and Inspection Section, install as necessary, handholds, safety belt connections, handrails, catwalks, and safety wires on existing bridges to assist inspectors in safely moving through the superstructures and gaining access to critical elements of the bridge. *H-84-38:* Review the bridge safety inspection manuals and bridge maintenance manuals and voluntary standards of the American Association of State Highway and Transportation Officials and incorporate those which affect bridge safety into the Connecticut Department of Transportation bridge safety inspection procedures and bridge maintenance practices. *H-84-39:* Require that a representative of the Bridge Safety and Inspection Section review the plans for new bridges for safe and effective inspectability and maintainability before acceptance of the design.

Federal Highway Administration: Jul. 19: H-84-40: Develop a detailed and comprehensive integrated bridge inspection procedure using all available source materials, including but not limited to the Federal Highway Administration's "Bridge Inspector's Training Manual" and the American Association of State Highway and Transportation Officials' "Manual for Bridge Maintenance (1976)" and "Manual for Maintenance Inspection of Bridges (1978)." *H-84-41:* Amend 23 CFR 650.303 to include an integrated bridge inspection procedure in its entirety or to incorporate such a procedure by reference. *H-84-42:* Develop a model bridge inspector's field handbook in a convenient checklist format which encompasses all the elements of an integrated bridge inspection procedure to be prescribed by 23 CFR 650.303 if amended as recommended by the Safety Board. *H-84-43:* Establish a bridge inspection enforcement program that will assure compliance with 23 CFR 650.303 amended as recommended by the Safety Board. *H-84-44:* Develop and disseminate procedures for inspection of hidden elements of pin and hanger assemblies which do not involve the dismantling of the assemblies. *H-84-45:* Prescribe objective dimensional standards for the alignment of bridge spans to facilitate detection of misalignment caused by deterioration of pin and hanger assemblies. *H-84-46:* In cooperation with the States, identify bridges that have a pin and hanger assembly design using bearing stresses above those allowed by the 1983 Interim Specification-Bridges, 1983 of the American Association of State Highway and Transportation Officials, and designate them for frequent inspection.

H-84-47: Augment the current inventory and rating methodology of the National Bridge Inspection Standards, which emphasizes an overall rating for planning large-scale replacement or rehabilitation funding, to require inspections and ratings of sufficient depth and detail to address all elements critical to safety. *H-84-48:* Require that the design of any Federal-aid bridge include an analysis of inspectability and maintainability. *H-84-49:* Conduct detailed inspections of the Mianus River Bridge and other representative bridges having a skewed and nonskewed suspended span design with pin and hanger assemblies to determine whether there is a significant difference between the two designs in terms of the movement of hangers on pins due to either dead or live loading and whether such movement is acceptable. *H-84-50:* Require each State to develop an individualized inspection procedure for each bridge under State inspection jurisdiction that has critical elements whose failure will almost certainly result in a catastrophic failure of the bridge. *H-84-51:* Prescribe criteria for in-depth inspections of pin and hanger assemblies based on objective measures of the risk of hidden deterioration, such as the time since the last inspection, and/or whether the pin and hanger assembly is dismantled. *H-84-52:* Prescribe an objective standard for repair or replacement of pin and hanger assemblies according to measured conditions of misalignment, distortion, or changes in the position of elements of the assembly. *H-84-53:* Change the format of the "Bridge Inspector's Training Manual" to provide for page-change updating, to key the manual to inspection forms, to prescribe mandatory examinations and inspector evaluations of individual critical elements as well as overall conditions, and to describe an optional methodology for effective on-site inspection. *H-84-54:* Include in the annual bridge inspection program audit a review of the State's bridge inspection training programs.

American Association of State Highway and Transportation Officials: Jul. 19: H-84-55: Modify Article 1.7.27 of the "Standard Specifications for Highway Bridges" (1977) and succeeding "Interim Specifications" to describe forces which might result in lateral movements of members on pins to be considered in designing pinned assemblies.

U.S. Department of Transportation: Jul. 19: H-84-56: Direct the DOT Inspector General to review the Federal Highway Administration's bridge inspection audit program for its sufficiency in establishing State compliance with the National Bridge Inspection Standards.

American Institute of Steel Construction: Jul. 19: H-84-57: Review the pin cap detail shown in the AISC Manual of Steel Construction to determine if it should be deleted from the manual or if qualifying conditions should be attached to its use.

National Committee on Uniform Traffic Laws and Ordinances: Jul. 19: H-84-58: Modify Section 12-220 of the Uniform Vehicle Code to require the use of hazard warning signals whenever a motor vehicle becomes a hazard to motorists on a highway.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a cost of 14 cents per page ($1 minimum charge).

Dated: August 24, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-23032 Filed 8-29-84; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection:

NRC Form 482, "Registration Certificate—Medical Use of Byproduct Material Under General License"

3. The form number if applicable: NRC Form 482.

4. How often the collection is required: New registrations may be submitted at any time. Renewal is not required, but changes to the information submitted must be reported to NRC within 30 days of the change.

5. Who will be required or asked to report: Physicians who wish to use certain radioactive byproduct materials for specified diagnostic uses under the general license established in 10 CFR 35.31.

6. An estimate of the number of responses: 20.

7. An estimate of the total number of hours needed to complete the requirement or request: 10.

8. An indication of whether Section 3504 (h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC Form 482 must be submitted by physicians wishing to use certain radioactive byproduct materials for specified diagnostic uses under the general license established in 10 CFR 35.31.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 27th day of August 1984.

For the Nuclear Regulatory Commission.

Michael L. Springer,

Deputy Director, Office of Administration.

[FR Doc. 84-23106 Filed 8-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of relief from the requirements of 10 CFR 50.55a(g)(6)(i) to Boston Edison Company (the licensee), for the Pilgrim Nuclear Power Station, located in Plymouth County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The relief would extend the date for completion of the ASME hydrostatic tests of Classes II and III systems at the plant following ten years of operation until startup from refuel outage number 7. That startup is expected to occur during the third quarter of 1986. About two-thirds of the tests will be completed during the present outage, including those for all components that are being replaced. Thus, the tests to be postponed are approximately one-third of those required.

The relief would be responsive to the licensee's application for relief dated June 27, 1983.

The Need for the Proposed Action

The relief is needed because the licensee does not expect to complete all of the hydrostatic tests before resuming operation of the plant in October 1984. To meet the schedular requirements set forth by the ASME Boiler and Pressure Vessel Code, all of these would have to be completed during the current plant outage.

Environmental Impact of the Proposed Action

Postponement of one-third of the hydrostatic tests until the end of the 1986 outage should not have any adverse effects since the systems involved are subject to frequent observation by the operators during their rounds. Leakage from pipes, valves and other components would be noticed and corrected promptly. Therefore, the Commission concludes that there would be no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. In would not affect non-radiological plant effluents and would have no other environmetal impact. Therefore, the Commission concludes that there would be no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Pilgrim Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for relief dated June 27, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Plymouth Public Library, North Street, Plymouth, Massachusetts.

Dated at Bethesda, Maryland, this 24th day of August 1984.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23111 Filed 8-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-325/324]

Carolina Power & Light Co.; of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting relief from some requirements of 10 CFR 50.55a(g) to Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed relief would relax the requirements for inservice testing of some pumps and valves per 10 CFR 50.55a(g)(6)(i). The licensee has determined that certain test requirements were impractical and has provided its basis for the determinations. The relief requests from pump testing would be granted on the basis of alternate means of demonstrating operability or alternate times to demonstrate operability (i.e. cold shutdown vs during operations). The Relief requests granted from valve testing would be granted on the basis of alternate means of demonstrating operability, alternate frequency of testing, alternate times of testing or alternate procedures of testing. The fuel oil transfer system and the diesel generator air start valves were not included in the licensee's program. The staff review concluded that they should have been included. The licensee was so informed and agreed to include them in the next ten year first program beginning July 1984. All other pumps and valves important to safety have been properly included. The relief is responsible to the licensee's application for relief dated October 12, 1983, as supplemented by letter dated March 29, 1984.

The Need for the Proposed Action

The proposed relief is needed because certain requirements are not practical to be performed at the time or frequency indicated in Section XI of the ASME Code. In some cases alternate means or procedures for testing were found to be more practical. In all cases in which relief is proposed to be granted the licensee has provided the basis for the relief.

Environmental Impacts of the Proposed Action

The proposed relief will provide a degree of inservice inspection testing of pumps and valves that is equivalent to that required by Section XI of the ASME Code. Consequently, the probability of accidental failures of pumps and valves has not been increased and the post-accident radiological releases will not be greater then previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief.

With regard to potential non-radiological impacts, the proposed relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Brunswick Steam Electric Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the relief dated October 12, 1983, and supplement dated March 29, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., and at the Southport Brunswick County

Library 108 W. Moore St. Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 27th day of August, 1984.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Division for Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84–23110 Filed 8–29–84; 8:45 am]

BILLING CODE 7590-01-M

[License No. 12–19730–01, EA 84–11]

Lixiscope of America, Inc.; Order Imposing Civil Monetary Penalties

I

Lixiscope of America, Inc. (the "licensee"), 3000 Dundee Road, Northbrook, IL 60062, is the holder of Byproduct Material License No. 12–19730–01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the possession of iodine-125 as sealed sources for storage, use, demonstration, training and distribution in Lixiscope imaging devices. License No. 12–19730–01 was issued on July 1, 1981 and expires on June 30, 1986.

II

As a result of a routine inspection conducted on December 2, 1983 and January 10, 1984 by the Commission's Region III Office, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served on the licensee by letter dated April 4, 1984.

The Notice stated the nature of the violations, the provisions of the Commission's requirements that the licensee had violated, and the cumulative amount of the proposed civil penalties. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties with two letters dated April 10 and 27, 1984.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the violations occurred as stated, and the penalties proposed for the violations set out in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the cumulative amount of Two Thousand Five Hundred Dollars within 30 days of the date of this Order, by check, draft or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555. Other arrangements for payment may be submitted in writing to the Director, Office of Inspection and Enforcement, within 20 days of the date of this Order.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Should the licensee fail to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings, and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 24th day of August 1984.

For the Nuclear Regulatory Commission

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusions

The violations and associated civil penalties are identified in the Notice of Violation and Proposed Imposition of Civil Penalties dated April 4, 1984. The Office of Inspection and Enforcement's Evaluation and Conclusions regarding the licensee's responses dated April 10 and 27, 1984 are presented herein. As requested by the licensee, we have disregarded the April 10th letter and consider that it was superseded by the April 27th letter.

In its response, the licensee admits that each violation occurred as described in the Notice of Violation. Additionally, the licensee offered several reasons why the civil penalties should be mitigated. NRC's evaluation of these reasons is presented below, followed by conclusions regarding the proposed civil penalties.

Licensee's Request for Mitigation

1. The licensee claims that it relied on the advice of its vendor, Lixi, Inc., and its former radiation protection consultant. While acknowledging its responsibility to comply with NRC requirements, the licensee argues that these circumstances warrant reconsideration of the NRC's finding with respect to careless disregard.

2. The licensee argues that the civil penalties should be mitigated because of its prompt corrective actions, and because it obtained a new radiation protection consultant.

3. Finally, the licensee argues that consideration should be given to its ability to pay in determining the amount of the civil penalty.

NRC Evaluation

1. The NRC determined the amount of the civil penalty in this matter based on the careless disregard shown by the licensee for NRC requirements and the licensee's lack of candor in dealing with the NRC.

When an NRC license is issued, the licensee must assume full responsibility for conducting all activities in accordance with NRC regulatory requirements. Although a licensee may choose to rely on others in carrying out certain responsibilities, the responsibility to assure that these activities are conducted in accordance with NRC requirements remains with the licensee. In this instance, the licensee completely delegated certain responsibilities for various activities to others and did not assure that these activities were conducted in accordance with NRC requirements.

The NRC's inspection of the licensee uncovered a substantial number of violations evidencing, at a minimum, lack of attention by the licensee in ensuring compliance with NRC requirements. The licensee argues in its response that some of the violations were caused in part by misleading representations made by the licensee's consultant regarding the licensee's regulatory responsibilities. The staff has examined Mr. Huber's letter of September 27, 1982 and does not believe that it can be read as the licensee suggests as being misleading regarding the licensee's obligation under the license. Even assuming for the purpose of argument that it was misleading, the responsibility for compliance with license conditions and the consequences of noncompliance remain with the licensee.

In addition to the substantial regulatory non-compliance found in the licensee's program, the NRC determination of careless disregard was based on the licensee's lack of candor in dealing with the NRC.

During the NRC inspection of the licensee's program on December 2, 1983 and January 10, 1984, and during the Enforcement Conference on January 13, 1984, the licensee made misleading statements to the NRC regarding the receipt, use, and transfer of Lixiscopes containing iodine-125 sealed sources. Although not authorized to transfer iodine-125 sealed sources to residents of Maryland, the licensee stated that it believed it was authorized even though the State of Maryland had specifically denied authorization. In addition, during the Enforcement Conference, the licensee stated it had recalled an iodine-125 sealed source from Maryland and that this source was now in storage at its Northbrook, Illinois facility. However, it then admitted the source had never been recalled but instead had been transferred to another resident of Maryland. Such misleading statements to the NRC further demonstrate a careless disregard for NRC requirements.

Such egregious conduct on the part of the licensee warranted substantial escalation of the base civil penalty and the licensee's submittal has provided no adequate basis for mitigation.

2. The violations described in the April 4, 1984 Notice of Violation were identified by the NRC and, although corrective actions were taken by the licensee, they were neither unusually prompt nor extensive. Mitigation of civil penalties is only warranted when prompt and extensive corrective actions are taken. Corrective action is always required and normal corrective actions are not considered a basis for mitigation of civil penalties.

3. The NRC's Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of civil penalties and this was taken into account when the civil penalties were proposed. If the licensee at this time still wants to make equal quarterly installments as requested in their April 27th letter, a request in writing should be submitted to the Director, Office of Inspection and Enforcement within 20 days of the date of the enclosed Order.

Conclusion

After reviewing the licensee's reasons why the civil penalties should be mitigated, the NRC Staff has concluded that the licensee has not provided an adequate basis for mitigation of the civil penalties. Accordingly, civil penalties of Two Thousand Five Hundred Dollars are imposed.

[FR Doc. 84-23107 Filed 8-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL]

Long Island Lighting Co., (Shoreham Nuclear Power Station, Unit 1; Resumption of Hearing Regarding Emergency Diesel Engines)

August 23, 1984.

Please take notice that the Atomic Safety and Licensing Board will convene, on September 10, 1984, at 10:30 a.m., the resumption of the evidentiary hearing in the Nuclear Regulatory Commission proceeding on the application of Long Island Lighting Company (LILCO) for a license to operate the Shoreham Nuclear Plant located in Suffolk County, Long Island, New York. The hearing will be held at the New York State Court of Claims, State Office Building, Veterans Memorial Highway, Hauppauge, New York. The hearing will continue, as necessary, generally on a Monday through Thursday schedule.

The purpose of this session of hearing is to take up the contention of Suffolk County which calls into question whether there is reasonable assurance that the Shoreham emergency diesel generators can reliably perform their function of providing backup electrical power to run the nuclear plant safely in the event of a loss of all off-site power sources. In its September 1983 decision, the Board indicated that the diesel generator issue which had only recently arisen was the only pending issue before it which must be resolved before a low power license could be authorized. (A separate Licensing Board is presiding over a proceeding to rule on LILCO's exemption request which seeks a low power license based on emergency power sources other than the diesel generators.)

The Licensing Board consists of the following Administrative Judges from the NRC Atomic Safety and Licensing Board Panel (ASLBP): Lawrence Brenner, a lawyer who is Chairman of the Board; Dr. Peter A. Morris and Dr. George A. Ferguson, both of whom are nuclear physicists. Dr. Ferguson, a part-time member of the ASLBP, is a Professor of Nuclear Engineering at Howard University in Washington, D.C.

The public is invited to attend, but there will be no opportunity for members of the public to participate during these evidentiary hearing sessions.

It is so ordered.

Dated at Bethesda, Maryland, August 23, 1984.

For the Atomic Safety and Licensing Board.

Lawrence Brenner,

Chairman, Administrative Judge.

[FR Doc. 84-23109 Filed 8-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket 50-278]

Philadelphia Electric Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Correction

L

In FR Doc. 84-21283 beginning on page 32136 in the issue of Friday, August 10, 1984, make the following correction.

On page 32137, first column, second complete paragaph, first line, "September 6, 1984" should have read "September 10, 1984".

Dated: August 24, 1984.

Thomas R. Combs,

Chief, Correspondence and Records Branch.

[FR Doc. 84-23113 Filed 8-29-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-296]

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Unit 3, Modification of March 25, 1983 Order Confirming License Commitments on Post-TMI Related Issues

I

The Tennessee Valley Authority (licensee) is the holder of Facility Operating License No. DPR-68 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit 3, at steady state reactor power levels not in excess of 3293 megawatts thermal. The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

On March 25, 1983, the Commission issued on Order modifying the license, effective immediately, requiring the license to implement and maintain certain specific NUREG-0737 items on dates specified in the Attachments to the Order. Among other requirements, the confirmatory Order required the licensee to install containment radiation monitoring instrumentation meeting the requirements of Item II.F.1.3, of NUREG-0737 prior to startup in Cycle 6.

By letter dated March 27, 1984, TVA informed the staff that it has been determined that the design of necessary cable connections to the drywell penetration for the installation of this equipment is inadequate and therefore, full environmental qualification of the installed system is questionable. Revision of the design and procurement and installation of the equipment to meet the environmental qualification requirements within the time remaining in the current (end-of-cycle 5) outage is not possible. By a letter dated March 27, 1984 TVA requested that relief from the schedular requirements of the subject Order be granted for Item II.F.1.3 to extend the required completion date from "before startup in Cycle 6" to "before startup in Cycle 7" (a period of about 19 months).

As a compensatory measure, TVA committed to maintain the existing containment radiation monitors in service during the upcoming Cycle 6 operation. These radiation monitors perform the same function as the monitors required by NUREG–0737, Item II.F.1.3, except that they do not have the extended range (10^8 rad/hour). As an additional backup, TVA has the capability at Browns Ferry to periodically collect and anaylze samples of the containment atmosphere.

For the Browns Ferry Nuclear Plant, Unit 3, we find that with respect to NUREG–0737, Item II.F.1.3, the licensee has made a responsible effort to implement this requirement, there is a good cause for a delay in having radiation monitors fully qualified for the environmental conditions specified in Item II.F.1.3 and that acceptable interim compensatory measures have been provided.

III

Accordingly, pursuant to sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that the completion date for NUREG–0737, Item II.F.1.3 required in the March 25, 1983 "Order Confirming Licensee Commitments on Post-TMI Related Issues" be extended to: "Prior to startup in Cycle 7." The licensee is also required to maintain the existing containment radiation monitors in service in accordance with the present Technical Specifications. The Order of March 25, 1983, except as modified herein, remains in effect in accordance with its terms.

The Director, Office of Nuclear Reactor Regulation, may relax or rescind any of the above conditions in writing for good cause shown by the licensee.

IV

The licensee may request a hearing within 20 days of the date of publication of this Order in the **Federal Register.** A request for a hearing shall be addressed to the Director, Office of the Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section III of this Order.

This Order shall become effective upon the licensee's consent or upon expiration of the time within which the licensee may request a hearing or, if a hearing is requested by the licensee, on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 24th day of August, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 84–23112 Filed 8–29–84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Issuance of OFPP Policy Letter No. 84–2, "Noncompetitive Procurement Procedures," Rescission

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Issuance of OFPP Policy Letter No. 84–2, "Noncompetitive Procurement Procedures," RESCISSION Memorandum.

SUMMARY: This OFPP Policy Letter RESCISSION Memorandum rescinds OFPP Policy Letter No. 84–2, "Noncompetitive Procurement Procedures," dated February 27, 1984. FAR implementation of this policy letter was to be effective on October 1, 1984. The FAR Councils are now working on the Competition in Contracting Act FAR implementation, which will be available in draft form in October. It would be confusing, disruptive, administrative burdensome, and costly to attempt to implement Policy Letter 84–2 in October in view of the short time available before the Competition in Contracting Act becomes effective on March 31, 1985. The rescission memorandum requests continuation of specific administrative controls with respect to noncompetitive procurements.

FOR FURTHER INFORMATION CONTACT: William Maraist, Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503 (202) 395–3300.

Dated: August 15, 1984.

Donald E. Sowle,

Administrator.

Memorandum to the Heads of Executive Departments and Establishments

From Donald E. Sowle, Administrator

Subject: OFPP Policy Letter No. 84–2 Rescission

August 15, 1984.

1. *Purpose.* The purpose of this memorandum is to rescind OFPP Policy Letter 84–2, Noncompetitive Procurement Procedures, dated February 27, 1984.

2. *Background.* OFPP Policy Letter 84–2 established specific circumstances permitting noncompetitive procurement and certain procedural controls on their use. The policy letter was the result of a strong administration position to increase competition and to control noncompetitive procedures. The administration position was manifested in the proposal for a Uniform Federal Procurement System submitted to Congress on February 26, 1982, in Executive Order 12352 on Federal Procurement Reforms, March 17, 1982 and in the President's August 11, 1983 memorandum to the Heads of Executive Departments and Agencies.

As expected, but sooner than anticipated, the Congress also took action during this time to enhance competition and restrict or control noncompetitive procedures. The competition in contracting Act was appended to the Deficit Reduction Act and became law (Pub. L. 98–369) when it was signed by the President on July 18, 1984. The act provides specific circumstances permitting noncompetitive procurement and administrative controls which are similar to but not identical to those in OFPP Policy Letter 84–2.

A notice of FAR implementation of Policy Letter 84–2 was published in the **Federal Register** on June 29, 1984 to be effective October 1, 1984. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are now working on FAR implementation of the Competition in Contracting Act which will be available in draft form in October.

3. *Rescission.* It would be confusing, disruptive, administratively burdensome, and costly to attempt to implement Policy Letter 84–2 in October in view of the short time available before the Competition in Contracting Act becomes effective. The agencies will be commenting on implementing procedures for the Competition in Contracting Act, which will be published in final form in November, and preparing for training to meet the March 31, 1985 effective date. Accordingly, OFPP Policy Letter 84–2, Noncompetitive Procurement Procedures, February 27, 1984, is hereby rescinded.

4. *Procedures.* The President, in his August 11, 1983, memorandum, called upon each of you to assure that competition is the preferred method of procurement in your department or agency. The rescission of Policy Letter 84–2 does not signal a change of emphasis in this respect. I therefore request that you continue to: (a) Communicate to your program and procurement personnel a strong commitment to competition; (b) promote advance procurement planning, market research and early communication between program and procurement personnel to identify opportunities for competition early in the acquisition cycle; (c) strictly enforce the requirement for complete justification of noncompetitive procurements and careful scrutiny by review officials; (d) take

reasonable steps, where competition is impracticable, to remove or overcome barriers to competition for subsequent procurements; (e) provide appropriate training; and (f) use data systems to track noncompetitive procurements and progress toward increasing competition.

5. *Concurrence.* This rescission has the concurrence of the Director of Office of Management and Budget.

[FR Doc. 84-23084 Filed 8-29-84; 8:45 am]

BILLING CODE 3110-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Coal Options Task Force; Regular Meeting

AGENCY: Coal Options Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4.

Activities will include:

- Approval of minutes of the fourth meeting
- Status Report: Assessing the implications of The Clean Air Act, Clean Water Act and NEPA
- Status Report: Potential Coal Options
  - —Creston PSD Permit Extension
  - —Available capacity at Boardman site
- Assessing schedules, constraints to development and associated probabilities of potential coal options
- Format, content, schedule and responsbilities for the Task Force Report
- Other business
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Coal Options Task Force.

DATE: Friday, September 21, 1984, 9:00 a.m.

ADDRESS: The meeting will be held at the Council Conference Room at 700 SW. Taylor; Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION, CONTACT: Jeff King, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-23073 Filed 8-29-84; 8:45 am]

BILLING CODE 0000-00-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective September 1, 1984, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 12.825 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Invesment Act, as amended by section 524 of Pub. L. 96–221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: August 27, 1984.

Robert G. Linebarry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-23125 Filed 8-29-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORATION

Coast Guard

[CGD 84-066]

Ship Structure Committee; Charter Renewal

SUMMARY: U.S.C.G. announces the renewal of the charter of the Ship Structure Committee.

The purpose of the Committee is to conduct an aggressive research program which will, in the light of changing technology in marine transportation, improve the design, materials, and construction of the hull structure of ships and marine platforms by an extension of knowledge in these fields for the ultimate purpose of increasing the safe and efficient operation of all marine structures.

FOR FURTHER INFORMATION CONTACT: LCDR D. Anderson, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard (G–MTH–4) Washington, D.C. 20593, (202) 426–2205 or 426–2197.

Dated: August 27, 1984.

A.D. Breed,

Commodore, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 84-23086 Filed 8-29-84; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to section V, review procedure and hearing rules, Station Committee on Education Allowances that on September 18, 1984, 9:00 A.M. the Houston Regional Office Station Committee on Educational Allowances shall at 2515 Murworth, Room 306, Houston, Texas conduct a hearing to determine whether approval should be reinstated to G. Crawford Pipe Inc. under Pub. L. 98–77, The Emergency Veterans' Job Training Act of 1983. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: August 23, 1984.

C.L. Dollarhide,

Director, Education Service.

[FR Doc. 84-23087 Filed 8-29-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 170
Thursday, August 30, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, September 4, 1984.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW. Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. EEOC's Proposed Budget for FY 1986

Closed

1. Litigation Authorization: General Counsel Recommendations
2. Proposed Contract for Services in Connection with a Court Case.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: August 28, 1984.

Cynthia C. Matthews,
Executive Officer.

This Notice Issued August 28, 1984.

[FR Doc. 84–23184 Filed 8–28–84; 2:16 pm]
BILLING CODE 6750–06–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, August 27, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application for capital assistance under section 13(i) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Application of Federated Bank and Trust Company, a proposed new bank to be located at 10 Foster Avenue, Gibbsboro, New Jersey, for Federal deposit insurance and for consent to exercise trust powers.

Application of Bear Stearns Trust Company, a proposed new bank to be located at 28 West State Street, Trenton, New Jersey, for Federal deposit insurance and for consent to exercise full trust powers.

Application of Merrill Lynch Bank and Trust Company, a proposed new bank to be located at Merrill Lynch Corporate Campus, Princeton Forrestal Center, Plainsboro Township, New Jersey, for Federal deposit insurance and for consent to exercise limited trust powers.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: August 28, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84–23218 Filed 8–28–84; 3:25 pm]
BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, August 27, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Mr. David L. Chew, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), concurred in by Director Irvine H. Sprague (Appointive), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: American Bank & Trust Company New York, New York

A personnel matter.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: August 28, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84–23219 Filed 8–28–84; 3:26 pm]
BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:17 p.m. on Friday, August 24, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in

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closed session, by telephone conference call, to:

(A) Adopt a resolution making funds available for the payment of the insured deposits in Hereford State Bank, Hereford, Colorado, which was closed by the Colorado State Bank Commissioner on August 24, 1984; and

(B) Consider recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liguidating agent of those assets:

Memoranda and Resolutions re: The First National Bank of Midland, Midland, Texas

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting purusant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: August 27, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-23220 Filed 8-28-84; 3:28 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 5, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to the Board's margin regulations to provide automatic marginability for NASD's (National Association of Securities Dealers) National Market System securities.

2. Proposed fees for Federal Reserve electronic payments services, and implementation of off-line surcharges for wire transfers and net settlement services. (Proposed earlier for public comment: Docket No. R-0505)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23236 Filed 8-28-84; 3:50 pm]

BILLING CODE 6210-01-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register**, but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 5890 / Pub. L. 98-399

To establish a commission to assist in the first observance of the Federal legal holiday honoring Martin Luther King, Jr. (Aug. 27, 1984; 98 Stat. 1473) Price: $1.50

S. 1547 / Pub. L. 98-400

To amend the conditions of a grant of certain lands to the town of Olathe, Colorado, and for other purposes. (Aug. 27, 1984; 98 Stat. 1476) Price: $1.50

S. 2036 / Pub. L. 98-401

To require the Secretary of the Interior to convey to the city of Brigham City, Utah, certain land and improvements in Box Elder County, Utah. (Aug. 27, 1984; 98 Stat. 1477) Price: $1.50

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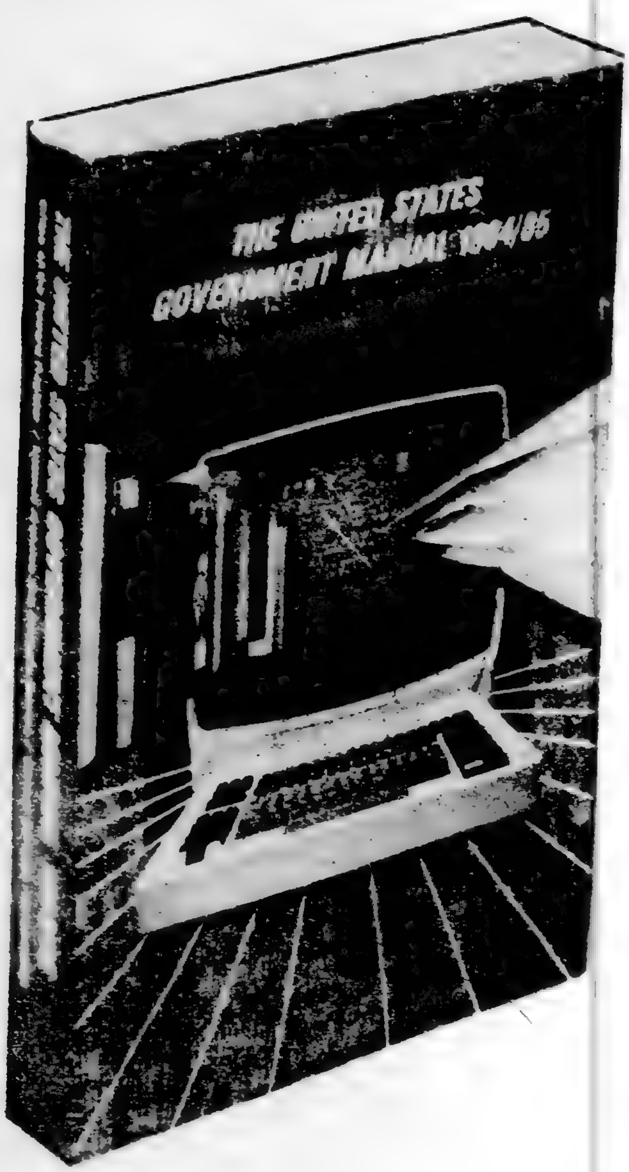

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

Olives Grown in California; Interim Amendment of Subpart—Rules and Regulations; and Fruits: Import Regulations, Ripe Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule would amend the administrative rules and regulations to change or delete outdated or incorrect material. These changes are necessary to conform order provisions to current U.S. Standards for Grades of Canned Ripe Olives and industry grading practices. Changes are also made to reference the current committee name, and revise the names of administrative reports. This rule also provides for the establisment of grade and size requirements for 1984–85 crop year olives for limited use, as well as providing for a revision of the Olive Import Regulations to conform to a previous amendment made effective in 1983. These changes are designed to clarify and improve marketing order operations.

EFFECTIVE DATE: August 31, 1984. Comments due by 30 days after **Federal Register** publication date.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of California olives for the benefit of producers, and will not substantially affect costs for those persons directly regulated.

This amendment is issued under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the California Olive Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

On July 30, 1982, § 932.18 was amended to provide that the "Committee" means the California Olive Committee which locally administers the order. The committee recommended that references to the former committee name (Olive Administrative Committee) are no longer applicable and should be amended to reference the current Committee name, or its abbreviation (COC). Thus, provisions with respect to incoming regulations and handler transfers and reports should be amended to redesignate all applicable forms from "OAC" to "COC". In addition §§ 932.151 and 932.154 should be amended to change the names of the forms used for lot identification and certification of natural condition olives, and disposition of noncanning olives. Such amendments recognize the name of form change, but in no way modify the forms' contents or corresponding burdens.

Section 932.52(a)(3) provides that use of processed olives smaller than the sizes prescribed for whole and pitted styles may be established annually for limited use and the subparagraph further provides that such minimum sizes may also include a size tolerance as recommended by the Committee and approved by the Secretary. It appears that the requirements of the past marketing season will continue to be appropriate. Thus, § 932.153 should be revised to provide for the establishment of minimum sizes contained in § 932.52(a)(3) for olives from the 1984–85 crop. These requirements are the same as have been established in 12 of the past 13 crop years.

In § 932.149, modified minimum grade requirements for specified styles of canned olives of the ripe type, references and corresponding definitions for terms not specified in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) are no longer needed because U.S. Oliver Standards have been amended to include these definitions. Thus, such provisions should be deleted from § 932.149(b).

Table I—Limits for Defects in § 932.149 should be amended to change the limit for minor and major stems for halved olives, and the limit for severe blemishes for whole, whole pitted, and halved olives. These changes bring the table into conformity to current industry practice. In addition § 932.149(c) should be deleted because it is no longer applicable.

Also, as a conforming change § 932.154(c) should be amended to specify that the size of any transferred olives be certified by the "Processed Products Branch, USDA", instead of the currently specified "Processed Products Standardization and Inspection Branch, USDA", as it was formerly known.

In § 932.161 the words "or minced" should be deleted, where they occur, in order to comply with U.S. Standards for Grades of Canned Ripe Olives.

Section 944.401(b)(1) should be amended to delete a specified time period, where no requirements are applicable with respect to color and blemishes for canned green ripe olives imported, in order to conform to a change in § 932.150 that was made effective December 1, 1983.

It is found that it is impractical and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) There is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act; (2) the handling of the 1984 crop of domestic olives is expected to begin soon, and it is intended that this action be applicable to all olives of such crop: (3) handlers are aware of this action as proposed by the California Olive Committee; (4) some of the changes represent a continuation in the relief of restrictions from the last marketing season and no useful purpose is served by delaying the effective date; and (5) the remaining changes are either non-substantive in nature, or merely conform the regulations to current industry practices.

List of Subjects in 7 CFR Parts 932 and 944

Marketing agreements and orders, Olives, California, Imports, Food grades and standards.

PART 932—[AMENDED]

Therefore, Part 932, Subpart—Rules and Regulations (7 CFR 932.108–932.161) and Part 944 Fruits; Import Regulations (7 CFR 944.401) are amended as follows:

1. Section 932.149 is amended by deleting paragraph (c) and revising paragraph (b) and Table I, to read as follows:

§ 932.149 Modified minimum grade requirements for specified styles of canned olives of the ripe type.

* * * * *

(b) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) including the terms "U.S. Grade B", "U.S. Grade C", "size", "character", "defects", and "Ripe Type": *Provided,* That Table I of this section shall apply in lieu of the tables for limits for defects contained in said standards.

TABLE I—LIMITS FOR DEFECTS

	Whole per 50 olives	Pitted per 50 olives	Halves per 100 halves	Segmented per 255 gm (9oz)	Sliced per 255 gm (9oz)	Chopped per 255 gm (9oz)	Broken pitted per 255 gm (9oz)
HEVM, HEM or EVM	1	1	1	2	Fairly free	Fairly free	2.
Stems:							
Minor and major stems inclusive	3	3	3				
Major stems	2	2	2	3	3	3	4.
Minor and major blemishes, minor and major wrinkles and mutilated.	10	10	No limit	Fairly free	Fairly free	Fairly free	No limit.
Provided: Major blemishes, major wrinkles do not exceed.	5	5	25				51 gm.[1]
Further provided: Mutilated do not exceed	3	3					
Broken pieces and poorly cut units			25	Fairly free	Fairly free		
Mechanical damage	5	5	20				
Blowouts, cross pitted, plunger and pitter damage.		15					
Obvious split pit or misshapen	5						
Severe blemishes (green-ripe type only)	3	3	3				

[1] Major blemishes only.

2. Sections 932.151, 932.154, 932.161 are amended as follows:

Section	Current language	Amended language
932.151(b)	Form OAC-2 "Lot Identification Tag"	COC 3A or 3C, weight and grade report.
932.151(b)	Identification tag	Weight and grade report.
932.151(d)(2)	Form OAC-3 "Report of Size-Grade of Natural Condition Olives".	Form COC-3A or 3C weight and grade report.
932.151(d)(2)	Form OAC-3	Form COC-3A or 3C.
932.151(e)(1)	Form OAC-5 "Report of Non-Canning Olive Inspection Disposition".	Form COC-5, report of limited and undersize and cull olives inspection and disposition.
932.151(e)(1)	Form OAC-5	Form COC-5.
932.151(e)(2)	Form OAC-5	Form COC-5.
932.151(e)(2)	OAC control card	COC control card.
932.154(a)	Form OAC-6	Form COC-6.
932.154(b)	Form OAC-5 "Report of Non-Canning Olive Inspection Disposition".	Form COC-5, report of limited and undersize and cull olives inspection and disposition.
932.154(c)	Processed products standardization and inspection branch, USDA.	Processed products branch, USDA.
932.161(b)(1)	OAC Form 21	COC Form 21.
932.161(b)(2)(i)	OAC Form 29a	COC Form 29a.
932.161(b)(2)(ii)	OAC Form 29b	COC Form 29b.
932.161(d)(1)	OAC Form 27a	COC Form 27a.
932.161(d)(2)	OAC Form 27b	COC Form 27b.
932.161(e)(1)	OAC Form 27c	COC Form 27c.
932.161(e)(2)	OAC Form 27b	COC Form 27b.
932.161(f)(1)	OAC Form 28a	COC Form 28a.
932.161(f)(2)	OAC Form 28b	COC Form 28b.

3. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of minimum grade and size requirements for 1984–85 crop olives used in limited use styles.

(a) *Grade.* On and after August 1, 1984, any handler may use processed olives of the respective variety groups in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1984, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* Except as provided in § 932.51(a)(2)(i), on and after August 1, 1984, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1984, through July 31, 1985 and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1984, or after July 31, 1985;

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/90 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/90 pound:

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/140 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/180 pound: *Provided,* That not to exceed 10 percent of the olives in any lot or sublot may be smaller than 1/180 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 20 percent

of the olives in any lot or sublot may be smaller than $1/140$ pound.

4. Section 932.161 is amended by removing the words "or minced" where they occur in paragraphs, (b)(1)(ii), (c), (d)(2), (e)(2), and (f)(2).

PART 944—[AMENDED]

5. Section 944.401(b)(1) is revised to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(1) Canned ripe olives shall grade at least U.S. Grade C: *Provided*, That with respect to defects, the limits for defects as contained in Table I of § 932.149 shall apply as shall the requirements of U.S. Grade B for character for canned whole, pitted and broken pitted olives, and the requirement that canned chopped olives be practically free from identifiable units of pit caps, end slices, and slices as defined in § 932.149(a)(2): *Provided further*, That no requirements shall be applicable with respect to color and blemishes for canned green ripe olives imported.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 28, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–23257 Filed 8–30–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Aero Coach Aviation International, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Aero Coach Aviation International, Inc. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: August 16, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Aero Coach Aviation International, Inc. on August 16, 1984 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportational lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number os small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, "Aero Coach Aviation International, Inc."

* * * * *

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: August 28, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84–23225 Filed 8–30–84; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0528]

Interest on Deposits; Regulation Q; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and tornadoes in the designated counties of Wisconsin.

EFFECTIVE DATE: June 12, 1984, for the Wisconsin counties of Dane and Iowa; July 10, 1984, for the Wisconsin counties of Menominee, Oneida, and Vilas.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452–3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On June 12, 1984, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Wisconsin counties of Dane and Iowa major disaster areas. On July 10, 1984, the Wisconsin counties of Menominee, Oneida and Vilas were also designated major disaster areas. The Board regards the President's actions as recognition by the Federal government that disasters of major proportions have occurred. The President's designations enable victims of the disasters to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas, as a result of the severe storms and tornadoes beginning on or about April 27, 1984, for the Wisconsin counties of Menominee, Oneida and Vilas, and June 8, 1984, for the Wisconsin counties of Dane and Iowa. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to June 12, 1984, for the counties of Dane and Iowa, and July 10, 1984, for the counties of Menominee, Oneida and Vilas, and will remain in effect until 12 midnight, December 29, 1984.

List of Subjects in 12 CFR Part 217

Advertising, Banks, Banking, Federal Reserve System, Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the Wisconsin counties directly affected by the severe storms and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, August 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23260 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 618

General Provisions

AGENCY: Farm Credit Administration.

ACTION: Final rule; notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) is confirming the effective date of final regulations adopting new and amended regulations setting out the authorization for technical assistance and financially related services programs and requiring district board policy guidelines and FCA approval for such programs (49 FR 23159, June 5, 1984). This regulation allows the Farm Credit System (System) institutions greater latitude in developing and implementing technical assistance and financially related services programs pursuant to district policies, FCA regulations, and the Farm Credit Act of 1971, as amended (Pub. L. 92-181 as amended by Pub. L. 96-592).

EFFECTIVE DATE: August 10, 1984.

FOR FURTHER INFORMATION CONTACT:
Charles E. Baker, Financially Related Services Section, (703) 883-4138, or
Kenneth L. Peoples, Office of General Counsel, (703) 883-4024

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, as amended (12 U.S.C. 2243, 2246, and 2252)

Donald E. Wilkinson,

Governor.

[FR Doc. 84-23103 Filed 8-30-84; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-19]

Changes to Controlled Airspace, Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule modifies the description of controlled airspace in the vicinity of the Honolulu International Airport, HI, without changing the physical size and shapes of the affected airspace. This action replaces the incorrect references to a navigational aid which was relocated with references to geographical coordinates.

DATES: Effective date—0901 GMT, August 30, 1984. Comments must be received on or before October 12, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Dirctor, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-19, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves redescribing controlled airspace without changing its size or shape and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171, § 71.181 and § 71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to modify the descriptions of the Honolulu, HI, Control Zone, Transition Area, and Terminal Control Area, so that they no longer reference distances and bearings from a navigational aid that is scheduled to be relocated effective August 30, 1984. The navigational aid references have been replaced with geographical coordinate references. This action does not alter the physical size or shape or effectiveness of the affected airspace. Sections 71.171, 71.181 and 71.401(b) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

I find that in view of the amendment's nature as a redescription and the pending relocation of the navigational aid referenced in the existing rule, notice or public procedure under 5 U.S.C. 553(b) is impracticable, unnecessary and contrary to the public interest and also that good cause exists for making this amendment effective August 30, 1984.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas and Terminal control areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, §71.171, §71.181 and §71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

§71.171 [Amended]

Honolulu, HI [Revised]

Within a 5-mile radius of Honolulu International Airport (lat. 21°19'15" N., long. 157°55'45" W.); within a 5-mile radius of NAS Barbers Point (lat. 21°1835" N., long. 158°04'30" W.); 2 miles south of a line from lat. 21°21'27" N., long. 158°00'59" W.; to lat. 21°21'29" N., long. 157°59'46" W.; and within an area bounded by a line from lat. 21°15'43" N., long. 158°01'00" W.; to lat. 21°10'54" N., long. 158°10'39" W.; to lat. 21°16'41" N., long. 158°13'56" W.; to lat. 21°19'04" N., long. 158°09'08" W.; to the point of beginning.

§71.181 [Amended]

Honolulu International Airport, HI [Revised]

That airspace extending upward from 700 feet above the surface south and southeast of Honolulu beginning at lat. 21°20'30" N., long. 157°51'15" W.; thence south to lat. 21°15'30" N., long. 157°49'15" W.; thence east along the shoreline to and clockwise along the arc of a 15 NM radius circle centered on Honolulu International Airport (lat. 21°19'15" N., long. 157°55'45" W.) to lat. 21°08'40" N., long. 158°07'35" W.; thence northwest to lat. 21°10'29" N., long 158°11'29" W.; thence to lat. 21°15'43" N., long 158°00'59" W.; then counterclockwise along the arc of a 5-mile radius circle centered on NAS Barbers Point (lat. 21°18'35" N., long. 158°04'30" W.) to and counterclockwise along the arc of a 5-mile radius circle centered on Honolulu International Airport to the point of beginning; and an area bounded by a line from lat. 21°10'29" N., long. 158°11'29" W.; to lat. 21°16'16" N., long 158°14'45" W.; to lat. 21°16'41" N., long. 158°13'56" W.; to lat. 21°15'43" N., long. 158°00'59" W.; to the point of beginning.

Honolulu, Wheeler AFB, HI [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line from lat. 21°25'53" N., long. 158°04'02" W.; to lat. 21°26'01" N., long. 158°00'19" W.; to lat. 21°27'19" N., long. 158°00'21" W.; thence clockwise along the 3-mile radius circle centered on Wheeler AFB (lat. 21°29'00" N., long. 158°02'30" W.); to lat. 21°26'49" N., long. 158°04'04" W.; to the point of beginning; and that airspace extending upward from 700 feet above the surface within 2 miles northwest of and parallel to the centerline of Runway 06 (068°38'40" bearing) beginning at the 3-mile radius arc and extending northeast to intercept an arc of a 5-mile radius circle centered on Wheeler AFB (lat. 21°29'00" N., long. 158°02'30" W.) thence clockwise along the 5-mile arc to the Koko Head, HI, VORTAC 305° radial; thence northwest along the Koko Head, HI, VORTAC 305° radial to the arc of the 3-mile radius circle.

§71.401 [Amended]

Honolulu, HI [Revised]

Primary Airport

Honolulu International Airport (lat. 21°29'20" N., long. 157°55'27" W.) Boundaries.

Area A. That airspace extending upward from the surface to and including 9,000 feet MSL within an area bounded by a line beginning at the Honolulu ILS Runway 4R DME (lat. 21°20'01" N., long. 157°54'23" W.), to lat. 21°18'39" N., long. 157°51'15" W.; thence direct to a point on bearing 145°, and 4.5 miles from the ILS Runway 4R DME; thence along the 145° bearing to, and then clockwise along, the 7.5-mile radius arc of the ILS Runway 4R DME to lat. 21°17'19" N., long. 158°01'53" W.; to lat. 21°20'11" N., long. 158°01'57" W.; and then east along a line 0.5 miles north of, and parallel to, the ILS Runway 8L localizer course to a point 1.5 miles west of the ILS Runway 4R DME, thence direct to the point of beginning.

Area B. That airspace extending upward from 1,500 feet MSL to and including 9,000 feet MSL between 7.5 miles and 15 miles of the ILS Runway 4R DME and bounded on the east by a line from lat. 21°12'30" N long. 157°54'00" W., to lat. 21°06'28" N., long. 157°47'22" W.; and on the west by a line 1.5 miles northwest of, and parallel to, the ILS Runway 4R localizer course, excluding that airspace within Area A.

Area C. That airspace extending upward from 2,000 feet MSL to and including 9,000 feet MSL between 15 miles and 22 miles of the ILS Runway 4R DME and bounded on the northeast by the Koko Head VORTAC (lat. 21°16'06" N., long. 157°42'21" W.) 111° radial and on the west by a line 1.5 miles northwest of, and parallel to, the ILS Runway 4R localizer course.

Area D. That airspace extending upward from 3,000 feet MSL to and including 9,000 feet MSL within 22 miles of the ILS Runway 4R DME, south of a line from lat. 21°20'11" N., long. 158°01'57" W., to lat. 21°26'13" N., long. 158°17'01" W., north of a line 1.5 miles northwest of, and parallel to, the ILS Runway 4R localizer course to lat. 21°17'19" N., long. 158°01'53" W.; excluding that airspace within Areas G, H, and I.

Area E. That airspace extending upward from 4,000 feet MSL to and including 9,000 feet MSL within a 32-mile radius of the ILS runway 4R DME extending from a line between lat. 21°06'11" N., long. 157°36'02" W.; and lat. 21°01'14" N., long. 157°26'36" W.; clockwise to a line from lat. 21°30'08" N., long. 158°26'56" W.; to lat. 21°26'13" N., long. 158°17'01" W.; excluding Areas A, B, C, D, G, H and J.

Area F. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL bounded by a line 0.5 miles northwest of, and parallel to, the Koko Head VORTAC 050° radial beginning at the Koko Head 291° radial and extending to lat. 21°25'15" N., thence southeast along a 152° heading to, and then along the 32-mile radius arc of the ILS Runway 4R DME to lat. 21°01'14" N., long. 157°26'36" W.; to lat 21°06'11" N., long. 157°36'02" W.; thence direct to the point of beginning, excluding that airspace within areas C and J.

Area G. That airspace extending upward from 1,600 feet MSL to and including 9,000 feet MSL within an area bounded by a line from lat. 21°20'11" N., long. 158°01'57" W.; to lat. 21°20'11" N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°01'56" W.; to the point of beginning.

Area H. That airspace extending upward from 1,900 feet MSL to and including 9,000 feet MSL within an area bounded by a line from lat. 21°20'11" N., long. 158°01'57" W.; to lat. 21°20'10 N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°03'00" W.; to the point of beginning.

Area I. That airspace extending upward from 1,000 feet MSL to and including 9,000 feet MSL within an area bounded by a line from lat. 21°20'10" N., long. 158°03'55" W.; to lat. 21°20'09" N., long. 158°11'35" W.;to lat. 21°19'09" N., long. 158°11'34" W.; to lat. 21°19'11" N., long. 158°03'55" W.; to the point of beginning.

Area J. That airspace extending upward from 1,600 feet MSL to and including 9,000 feet MSL within 15 miles of the ILS Runway 4R DME, bounded on the north by a line extending west along the Koko Head VORTAC 111°/281° radial until intersecting, and then proceeding along the H–5Freeway to lat. 21°18'39" N., long. 157°1'15" W.; bounded on the west by Area A, and on the south by a line from lat. 21°12'30" N., long. 157°54'00" W.; to lat. 21°06'28" N., long 157°47'22" W.

Area K. That airspace extending upward from the surface to and including 2,000 feet MSL within an area south of the H–1 Freeway, between lat. 21°22'32" N., long. 157°55'40" W.; to lat. 21°21'29" N., long. 157°54'00" W.; and lat. 21°18'39" N., long. 157°51'15" W.; east of long. 157°55'40" W., and north of Area A.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 22, 1984.

John W. Baier

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–23136 Filed 8–30–84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24217; Amdt. No. 1276]

Air Traffic and General Operating Rules; Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. The amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Aviation safety, Approaches, Standard instrument.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

§ 97.23 [Amended]

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, VOR-A, Amdt. 7
Iron Mountain/Kingsford, MI—Ford, VOR RWY 1, Amdt. 9
Iron Mountain/Kingsford, MI—Ford, VOR RWY 19, Amdt. 4
Iron Mountain/Kingsford, MI—Ford, VOR RWY 31, Amdt. 11
Sault Ste. Marie, MI—Chippewa County Intl, VOR-A (TAC), Amdt. 3

* * * *Effective October 11, 1984*

Bentonville, AR—Bentonville Muni, VOR-A, Amdt. 6
Lakeland, FL—Lakeland Muni, VOR RWY 13, Amdt. 3
Lakeland, FL—Lakeland Muni, VOR RWY 27, Amdt. 3
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 10, Amdt. 14
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 28, Amdt. 19
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 33L, Amdt. 4
Aurora, MO—Aurora Memorial Muni, VOR/DME-A, Amdt. 1
Chester, SC—Chester Muni, VOR/DME RWY 23, Amdt. 3
Lancaster, SC—Lancaster County, VOR/DME-A, Amdt. 5
Riverton, WY—Riverton Regional, VOR RWY 10, Amdt. 8
Riverton, WY—Riverton Regional, VOR RWY 28, Amdt. 8

* * * *Effective September 27, 1984*

Hartford, CT—Hartford-Brainard, VOR-A, Amdt. 6
Davenport, IA—Davenport Muni, VOR RWY 3, Amdt. 7

Davenport, IA—Davenport Muni, VOR RWY 21, Amdt. 6
Auburn-Lewiston, ME—Auburn-Lewiston Muni, VOR/DME-A, Amdt. 2
Dickinson, ND—Dickinson Muni, VOR-A, Amdt. 1

* * * *Effective August 15, 1984*

West Palm Beach, FL—Palm Beach Intl, VOR RWY 31, Amdt. 1

* * * *Effective August 13, 1984*

Casa Grande, AZ—Casa Grande Muni, VOR RWY 5, Amdt. 2

§ 97.25 [Amended]

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

* * * *Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, LOC BC RWY 11, Amdt. 5
Iron Mountain/Kingsford, MI—Ford, LOC/DME BC RWY 19, Amdt. 6

* * * *Effective October 11, 1984*

Sarasota/Bradenton, FL—Sarasota-Bradenton, LOC/DME BC RWY 14, Amdt. 3, Cancelled
Winder, GA—Winder, LOC RWY 31, Amdt. 6
Morganton, NC—Morganton-Lenoir, SDF RWY 3, Amdt. 1

* * * *Effective September 27, 1984*

Davenport, IA—Davenport Muni, LOC RWY 15, Amdt. 2
Norman, OK—Max Westheimer, LOC RWY 3, Amdt. 2

* * * *Effective August 22, 1984*

Jamestown, ND—Jamestown Muni, LOC/DME BC RWY 12, Amdt. 5

* * * *Effective August 15, 1984*

West Palm Beach, FL—Palm Beach Intl, LOC BC RWY 27R, Amdt. 11

§ 97.27 [Amended]

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

* * * *Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, NDB RWY 17, Amdt. 9
Alton/St. Louis, IL—St. Louis Regional, NDB RWY 29, Amdt. 7
Sault Ste. Marie, MI—Chippewa County Intl, NDB RWY 16, Amdt. 3
Sault Ste. Marie, MI—Chippewa County Intl, NDB RWY 34, Amdt. 2
Wadsworth, OH—Wadsworth Muni, NDB RWY 2, Orig.

* * * *Effective October 11, 1984*

Winder, GA—Winder, NDB RWY 31, Amdt. 6
Sturgis, MI—Kirsch Muni, NDB RWY 18, Amdt. 3
Sturgis, MI—Kirsch Muni, NDB RWY 24, Amdt. 7
Morganton, NC—Morganton-Lenoir, NDB RWY 3, Amdt. 1
Southport, NC—Brunswick County, NDB-A, Amdt. 3
Aiken, SC—Aiken Muni, NDB RWY 24, Amdt. 6
Lancaster, SC—Lancaster County, NDB RWY 24, Amdt. 2
Houston, TX—Hull Field, NDB RWY 17, Amdt. 6
Houston, TX—Hull Field, NDB RWY 35, Amdt. 2

* * * *Effective September 27, 1984*

Davenport, IA—Davenport Muni, NDB RWY 3, Amdt. 13
Auburn-Lewiston, ME—Auburn-Lewiston Muni, NDB RWY 4, Amdt. 5
DuBois, PA—DuBois-Jefferson County, NDB RWY 25, Amdt. 8
Mesquite, TX—Phil L. Hudson Field, NDB-A, Orig., Cancelled
Mesquite, TX—Phil L. Hudson Muni, NDB RWY 17, Orig.

§ 97.29 [Amended]

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, ILS RWY 29, Amdt. 7
Iron Mountain/Kingsford, MI—Ford, ILS RWY 1, Amdt. 6
Sault Ste. Marie, MI—Chippewa County Intl, ILS RWY 16, Amdt. 4

* * * *Effective October 11, 1984*

Baltimore, MD—Baltimore-Washington Intl, ILS RWY 10, Amdt. 10
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 15R, Amdt. 11
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 28, Amdt. 5
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 33L, Amdt. 3
Columbus, OH—Port Columbus Intl, ILS RWY 10L, Amdt. 12
Riverton, WY—Riverton Regional, ILS RWY 28, Amdt. 1

* * * *Effective September 27, 1984*

Windsor Locks, CT—Bradley Intl, ILS RWY 33, Amdt. 2
Auburn-Lewiston, ME—Auburn-Lewiston Muni, ILS RWY 4, Amdt. 3
Dickinson, ND—Dickinson Muni, ILS/DME RWY 32, Orig.
DuBois, PA—DuBois-Jefferson County, ILS RWY 25, Amdt. 6
Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, ILS RWY 4, Amdt. 31

* * * *Effective August 22, 1984*

Jamestown, ND—Jamestown Muni, ILS RWY 30, Amdt. 5

* * * *Effective August 15, 1984*

West Palm Beach, FL—Palm Beach Intl, ILS RWY 9L, Amdt. 21

* * * *Effective August 13, 1984*

Casa Grande, AZ—Case Grande Muni, ILS/DME RWY 5, Amdt. 2

§ 97.31 [Amended]

5. By amending § 97.31 RADAR SIAP identified as follows:

* * * *Effective October 11, 1984*

Baltimore, MD—Baltimore-Washington Intl, RADAR 1, Amdt. 9

§ 97.33 [Amended]

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective October 11, 1984*

St Louis, MO—Lambert-St Louis Intl, RNAV RWY 30R, Amdt. 1

* * * *Effective September 27, 1984*

Dickinson, ND—Dickinson Muni, RNAV RWY 32, Orig., Cancelled
Dickinson, ND—Dickinson Muni, RNAV RWY 14, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "signifianct rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C., on August 24, 1984.

Kenneth S. Hunt,
Director of Flight Operations

[FR Doc. 84-23140 Filed 8-30-84; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: 14 CFR Part 1214 is amended by adding this new Subpart 1214.6, "Nonscientific Payloads." This Subpart, in conjunction with Subparts 1214.1, 1214.2, and 1214.8, states NASA policy on the flight of nonscientific payloads aboard the Space Transportation System (STS). The intended effect of this rule is to broaden the range of potential launch service customers and increase the access of the general public to the STS.

EFFECTIVE DATE: August 31, 1984.

ADDRESS: Deputy Associate Administrator for External Relations (Code L), NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Ritchie, (202) 453–8306.

SUPPLEMENTARY INFORMATION: On May 7, 1984, NASA published a proposed rule in the **Federal Register** (49 FR 19313) inviting public comments by July 6, 1984, on "Nonscientific Payloads" aboard the STS. This rule establishes policy and general procedures for broadening the range of potential launch service customers and increasing the access of the general public to the STS.

Three comments were received on the proposed rule. The first contained three recommendations: (1) Include a representative from the arts on the Nonscientific Payloads Evaluation Committee, (2) carry art reduced rates on a space available basis, and (3) eliminate the requirement that all nonscientific payloads be returned to Earth aboard the same STS flights that carry them into orbit. In developing the proposed rule, NASA considered all of these actions and chose not to adopt them for the following reasons. The Nonscientific Payloads Evaluation Committee is an organization internal to NASA, established to assist in making decisions for which only the Agency is responsible; therefore, it is appropriate that the membership of the Committee be limited to NASA personnel. In addition, the Committee does not expect to make recommendations on proposed payloads based on issues of artistic merit, precluding the need for a member with arts expertise. If an occasion should arise in which such expertise is needed for its deliberations, the Committtee will seek assistance from such recognized authorities as the National Endowment for the Arts. With respect to recommendation 2, NASA has no authority to single out arts payloads as more worthy than other categories, therefore justifying their flight at subsidized rates. It is the objectives of the Agency to treat all nonscientific payloads equally, whatever their nature. On recommendation 3, NASA intends to avoid contributing unnecessarily to the already substantial accumulation of objects currently in Earth orbit, some of which are functioning spacecraft and the rest debris. The accumulation causes difficulty for tracking activities and could pose a potential hazard at more densely cluttered altitudes. Therefore, unless a clear necessity is served by leaving a payload in orbit, it will be returned to Earth aboard the same flight that carries it into orbit.

The second comment also urged elimination of that portion of the rule requiring nonscientific payloads be returned to Earth aboard the same flights that carry them into orbit. The purpose in this instance, however, was not to leave the payloads in orbit, but to propel them into destructive reentry. The response to recommendation 3 of the first comment applies to this comment as well. In addition, we do not wish to increase the number of space objects that reenter Earth's atomosphere.

The third comment expressed concern that, despite disclaimers to the contrary, acceptance of a nonscientific payload for flight aboard the STS will constitute an endorsement by NASA of the payload. NASA does not believe this to be a valid concern because Agency policy and regulations beyond this particular regulation prohibit endorsement of commercial products.

Several changes were made in the text on NASA initiative. Section 1214.1603(c) was changed to "officers, or their designees" from "officials." The term officer is preferred in order to be consistent with the National Aeronautics and Space Act of 1958 as amended. The addition of designees provides latitude to management necessary for the proper functioning of the Committee. Section 1214.1606(f) was changed to "human or animal life" from "animal life" and § 1214.1606(k) and (l) were added to aid clarity. The remaining changes were to correct typographical errors.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Payload specialist, Mission manager, NASA-related payload, Mission specialist, Investigator working group, Government employees, Government procurement, Security measures, Space transportation and exploration, SSUS Procurement, Small self-contained payloads, Reimbursement for shuttle services, Authority of Space Transportation System (STS) Commander, Articles authorized to be carried on space transportation system flights, Space Transportation System Personnel Reliability Program, Nonscientific payloads.

PART 1214—SPACE TRANSPORTATION SYSTEM

14 CFR Part 1214 is amended by adding Subpart 1214.16 to read as follows:

Subpart 1214.16—Nonscientific Payloads

Sec.
1214.1600 Scope.
1214.1601 Applicability.
1214.1602 Relation to Subparts 1214.1, 1214.2, and 1214.8.
1214.1603 Definitions.
1214.1604 Policy.
1214.1605 Approval of nonscientific payloads.
1214.1606 Preconditions for acceptance.

Authority: 42 U.S.C. 2473.

Subpart 1214.16—Nonscientific Payloads

§ 1214.1600 Scope.

This Subpart establishes NASA policy regarding the accommodation of nonscientific payloads aboard the STS.

§ 1214.1601 Applicability.

This Subpart applies to NASA Headquarters and field installations.

§ 1214.1602 Relation to Subparts 1214.1, 1214.2, and 1214.8.

Except as specifically noted, the provisions of the Space Shuttle and Spacelab policies also apply to nonscientific payloads. In event of any inconsistencies in the policies, the reimbursement policy established by this Subpart will govern with respect to nonscientific payloads.

§ 1214.1603 Definitions.

(a) *Nonscientific payloads.* All cargoes that do not meet the definitions of national defense payloads; communications, weather, or other high technology satellites; materials sciences/processing payloads; scientific experiments; engineering test articles; or other similarly technical cargoes routinely considered for flight as conventional or self-contained payloads.

(b) *Total operations costs.* All direct and indirect costs. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead and contract administration.

(c) *Committee.* The Nonscientific Payload Evaluation Committee, established in NASA Headquarters for the purpose of reviewing technically feasible requests to fly nonscientific payloads. The Committee consists of the following NASA Headquarters officers, or their designees: Chief Engineer (Code D), Associate Administrator for Policy (Code F), General Counsel (Code G), Associate Administrator for External Relations (Code L), as Chairperson, Associate Administrator for Space Flight (Code M), Associate Administrator for Space Science and Applications (Code E), Chief Scientist (Code P), and Associate Administrator for Aeronautics and Space Technology (Code R). The Committee will meet within 30 days of the effective date of this Subpart and not less than once every 90 days thereafter. The Committee will develop procedures to carry out this policy.

(d) *Technically feasible for flight.* All physical aspects and operational characteristics of a payload which make it suitable for flight aboard the STS. Evaluation of the proposed payload for acceptance includes, but is not limited to, compatability with STS operating systems and other payloads, compliance with national and international radio spectrum regulations, safety considerations of the vehicles and crew, risk to other payloads, and ability of the STS to meet all customers' operational requirements.

§ 1214.1604 Policy.

(a) Nonscientific payloads are eligible for flight aboard the STS. Although the Space Shuttle and Spacelab were developed for the purpose of accommodating technical cargoes of the type described in § 1214.1603(a), nonscientific payloads may be flown on a space available basis.

(b) Normally no more than 10 percent of STS flight capability, as defined in Subparts 1214.1, 1214.2, and 1214.8, will be employed for nonscientific payloads.

(c) Nonscientific payloads must be approved by the Associate Deputy Administrator for flight prior to manifesting.

(d) Nonscientific payloads may be remanifested to accommodate technical cargoes.

(e) Reimbursement for standard services provided to nonscientific payloads normally will be based on total operations cost recovery.

(f) Information concerning the details which must be included in a nonscientific payload request, and current prices and fees may be obtained from Customer Services Division (Code MC), Office of Space Flight, NASA Headquarters, Washington, DC 20546.

(g) Exceptions to this policy may be granted at the discretion of the Associate Deputy Administrator.

§ 1214.1605 Approval of nonscientific payloads.

(a) All requests to fly nonscientific payloads aboard the STS will be addressed to the Director, Customer Services Division, who will screen the requests and forward those found technically feasible for flight to the Nonscientific Payload Evaluation Committee.

(b) The Committee will evaluate each request considering such matters as:

(1) The sponsor and nature of the proposed payload;

(2) The plan for developing the payload;

(3) Endorsement or opposition by a recognized professional, business, or charitable organization;

(4) The purpose to which the payload may be put when returned to Earth;

(5) Compliance with national and international radio regulations for payloads intentionally transmitting electromagnetic energy; and

(6) Other considerations which are appropriate to specific requests.

(c) Committee findings will be documented and forwarded directly to the Associate Deputy Administrator. Approval of nonscientific payloads for flights aboard the STS is reserved to the Associate Deputy Administrator.

(d) Rejected requests will be returned to their sponsors with explanations for their rejection.

§ 1214.1606 Preconditions for acceptance.

(a) Sponsors must accept responsibility for all expenses associated with or arising from their respective nonscientific payloads.

(b) Nonscientific payloads must be technically feasible for flight as determined by the Director, Customer Services Division, Office of Space Flight.

(c) NASA reserves the right to obtain evaluations of nonscientific payload requests from any individuals or organizations of its own choosing.

(d) Nonscientific payload sponsors must be willing to appear before the Nonscientific Payload Evaluation Committee to explain their requests.

(e) No payload will be accepted for flight which is inconsistent with NASA's mission or otherwise not in the national interest.

(f) No human or animal life will be permitted in a nonscientific payload.

(g) Nonscientific payloads will not be permitted to operate as free flyers.

(h) Nonscientific payload sponsors must enter into a standard NASA launch services agreement.

(i) All nonscientific payloads will be returned to Earth aboard the same STS flights that carry them into orbit.

(j) Acceptance for flight does not consitute NASA endorsement or certification (other than for Space Shuttle flight) of a nonscientific payload.

(k) NASA specifically reserves the right to reject nonscientific payloads proposed—or which appear to be proposed—solely or primarily for the purposes of advertising, publicity, endorsements, or other means of promotion.

(l) Each request to fly a nonscientific payload must be accompanied by a nonrefundable processing fee.

James M. Beggs,

Administrator.

[FR Doc. 84-23148 Filed 8-30-84; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0321]

Listing of Color Additives for Coloring Contact Lenses

Correction

In FR Doc. 84-19699 beginning on page 30065 in the issue of Thursday, July 26, 1984, make the following correction.

On page 30065, column 2, line 4 in the "**SUMMARY**" paragraph "1,4-bis([2-methylphenyl)-" should read "1,4-bis[(2-methylphenyl)-".

BILLING CODE 1505-01-M

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21 CFR Part 74

[Docket No. 83C-0167]

D&C Blue No. 6; Listing as a Color Additive for Coloring Sutures

Correction

In FR Doc. 84-19603 beginning on page 29955 in the issue of Wednesday, July 25, 1984, make the following correction:

§ 74.3106 [Corrected]

On page 29956, in § 74.3106(a), third column, the third line should have read as follows: "biindoline]-3,3'dione (CAS Reg. No.".

BILLING CODE 1505-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Griseofulvin

Correction

In FR Doc. 84–19700 beginning on page 30066 in the issue of Thursday, July 26, 1984, make the following corrections.

On page 30067, in column 1, tenth line, "21 U.S.C. 360(e)" should read "21 U.S.C. 360b(e)".

BILLING CODE 1505-01-M

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21 CFR Part 607

[Docket No. 84N–0145]

Biologics Products; Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products; Amendment To Exempt Certain Transfusion Services From Registration

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to exempt from FDA's requirements for establishment registration and product listing (and routine establishment inspection) certain transfusion services that routinely prepare red blood cells and that are approved for Medicare reimbursement by the Health Care Financing Administration (HCFA). FDA is amending the regulations as a followup to a revision of a Memorandum of Understanding (MOU) between the Public Health Service (PHS), FDA, and HCFA. Under this revision of the MOU, FDA will not perform routine inspections of transfusion services that routinely prepare red blood cells, to avoid duplicative regulatory inspections of such facilities by both HCFA and FDA. The amended MOU is published with this final rule as Appendix A.

DATE: This amendment is effective August 31, 1984.

Comments will be accepted until October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN–368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 25, 1980 (45 FR 19316), FDA published a notice announcing the execution of a MOU effective January 21, 1980, between the PHS, FDA, and HCFA. The purpose of the understanding was to consolidate responsibilities for inspecting and surveying certain blood-banking and transfusion programs. Implementation of that MOU allowed, among other things, HCFA and FDA to stop performing duplicative regulatory inspections of over 3,000 transfusion services. Transfusion services exempted from FDA registration and inspection requirements are facilities that are part of either a hospital or an independent clinical laboratory and that perform compatibility testing and transfusion of blood and blood components but are not engaged in the routine collection or processing of blood or plasma (except recovered plasma) except for therapeutic collections, and the hospitals or the independent testing laboratories are approved by HCFA for participation in the Medicare program.

FDA published the MOU in the **Federal Register** to allow its review by the public, in conformance with its policy (announced in the **Federal Register** of October 3, 1974 (39 FR 35697) and codified at 21 CFR 20.108(c)) of publishing in the **Federal Register** the text of all MOU's executed by FDA.

In the **Federal Register** of September 30, 1980 (45 FR 64601), FDA proposed to amend the biologics regulations on establishment registration and product listing to implement the MOU described above. The MOU provided that FDA would not perform routine regulatory inspections of transfusion services "* * * not engaged in the routine collection or processing * * *" of blood when the facility is approved for participation in the Medicare program by HCFA. In the preamble of its proposal of September 30, 1980, FDA defined the phrase "routine collection or processing" to include the collection of blood for autologous transfusion and the routine preparation of any blood component, including red blood cells. Thus, FDA proposed not to exempt from the requirements of establishment registration and product listing (and routine regulatory inspection) any transfusion service routinely preparing red blood cells.

In the **Federal Register** of December 30, 1980 (45 FR 85727), FDA published a rule implementing the MOU based on the proposal of September 30, 1980. In the preamble to that rule, the agency summarized a number of comments on the proposal. The comments requested (paragraph 4, 45 FR 85729) that FDA also provide an exemption from FDA's requirements concerning establishment registration and product listing to transfusion services that routinely prepare red blood cells. In the response in the preamble, FDA stated that the definition of a transfusion service in the MOU did not include a transfusion service that routinely prepared red blood cells. For that reason, the agency rejected the comments because they concerned a matter outside the scope of that rulemaking. However, FDA advised it would explore the possibility of amending the MOU to include an exemption for such transfusion services and allow FDA to amend the regulations to provide the additional exemption requested by the comments.

Accordingly, FDA advises that the amendments to the MOU, urged by the comments and summarized below, were studied by the Department and approved by the Secretary of Health and Human Services on June 6, 1983. The amendments were effective on that date.

1. Section IIA, 1: The definition of a transfusion service was modified to include the words "or red blood cells". The revised definition reads as follows: A "transfusion service" is a facility, which is part of either a hospital or an independent clinical laboratory, and which performs compatibility tests for, but is not engaged in the routine collection or processing of, blood or plasma (except recovered plasma or red blood cells) except for therapeutic collections, and the hospital or the independent testing laboratory is approved by HCFA for participation in the Medicare program.

2. Section II, C: The last sentence which read, "Once HCFA adopts the FDA standards as indicated in paragraph D below, these facilities will not be registered as blood establishments with PHS/FDA" was changed to read, "These facilities will not be registered as blood establishments with PHS/FDA."

3. All references to Department of Health, Education, and Welfare and HEW were changed to Health and Human Services and HHS, respectively.

The current MOU, as amended on June 6, 1983, is published as Appendix A to this final rule.

FDA is making a conforming amendment in 21 CFR 607.65(f) of the biologics regulations to exempt from FDA's requirements for establishment registration and product listing about 550 hospital-based transfusion services that routinely prepare red blood cells, provided that these transfusion services are approved for Medicare reimbursement by HCFA. FDA finds that registration and product listing by these transfusion services are not necessary for the protection of the public health.

Other blood establishments not discussed in the exemption in the revised MOU must, of course, continue to meet the FDA's requirements for establishment registration and product listing.

The Commissioner finds for good cause under 5 U.S.C. 553(b)(B) and 21 CFR 10.40(e)(1) that notice and public procedure are unnecessary. The establishment registration and product listing requirements have as their purpose ensuring that FDA has an inventory of regulated establishments and products, and here that purpose is adequately met by HCFA's approvals. Although FDA usually employs notice-and-comment rulemaking to grant exemptions from establishment registration and product listing under section 510, the revision in § 607.65 is a minor conforming amendment to reflect the elimination, with no adverse effects on public health, of duplicative regulatory requirements for certain transfusion services. FDA already has implemented the provisions of the amended MOU agreement. Accordingly, the Commissioner finds good cause not to delay the effective date of the amendment of § 607.65(f).

The agency, nevertheless, is providing a 30-day period, until October 1, 1984, during which it will accept comments on the rule. If FDA decides on the basis of comments received that any change in the amendments is necessary, it will publish the change in the **Federal Register**.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule does not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the rule does not constitute a major rule as defined in section 1(b) of the Executive Order. FDA is exempting from requirements of establishment registration and product listing (and from routine establishment inspection) about 550 hospital-based transfusion services that routinely prepare red blood cells and that are approved for Medicare reimbursement by HCFA. This action avoids duplicative routine regulatory inspections of these facilities by both HCFA and FDA, and thereby reduces a regulatory burden without loss of consumer protection.

Therefore, FDA is granting an exemption within the meaning of 21 CFR 10.40(c)(4)(i) from routine FDA inspections of certain transfusion services.

List of Subjects in 21 CFR Part 607

Blood.

PART 607—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 510, 701, 52 Stat. 1040–1042 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 607 is amended in § 607.65 by revising paragraph (f) to read as follows:

§ 607.65 Exemptions for blood product establishments.

* * * * *

(f) Transfusion services which are a part of a facility approved for Medicare reimbursement and engaged in the compatibility testing and transfusion of blood and blood components, but which neither routinely collect nor process blood and blood components. The collection and processing of blood and blood components in an emergency situation as determined by a responsible person and documented in writing, therapeutic collection of blood or plasma, the preparation of recovered human plasma for further manufacturing use, or preparation of red blood cells for transfusion are not acts requiring such transfusion services to register.

* * * * *

Effective date. This regulation is effective August 31, 1984.

(Secs. 201, 510, 701, 52 Stat. 1040–1042 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371); Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: August 10 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Appendix A—Memorandum of Understanding for Administration of Blood-Banking and Transfusion Service Programs

Note: This appendix will not appear in the Code of Federal Regulations

I. Purpose and Background

Since 1966, hospitals and independent laboratories participating in the program of Health Insurance for the Aged and Disabled established by Title XVIII of the Social Security Act (Medicare), have been surveyed by the Department of Health and Human Services (HHS), most recently including the Health Care Financing Administration (HCFA), for compliance with the applicable provisions of the Medicare statute and regulations. These regulations include requirements affecting the blood banking and transfusion services of hospitals and independent laboratories. (Hospitals accredited by the Joint Commission on the Accrediation of Hospitals (JCAH) or the American Osteopathic Association (AOA) are deemed under the Medicare Act and regulations to meet most of the Medicare requirements.)

Since 1973, the Food and Drug Administration (FDA) has concurrently conducted administrative inspections of blood banks and transfusion services engaged in the collection, processing, storage, compatibility testing, or distribution of blood and blood components under the drug provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and the biological products provisions of the Public Health Service Act (42 U.S.C. 262).

Most nongovernmental hospitals and independent laboratories with blood-banking or transfusion service capabilities approved by the Medicare program are also subject to inspection by FDA. In early 1979, HCFA and FDA proposed to coordinate all Federally authorized inspections of hospital blood banks and transfusion services in order to minimize duplication of effort and to reduce the burden on affected facilities. This Memorandum of Understanding finalizes the consolidation within HCFA of all responsibilities for the inspection and surveying of approximately 3,000 transfusion services. However, other blood establishments, as defined below, will remain subject to inspection under the Public Health Service (PHS)/FDA program, and will also be subject to HCFA requirements if they choose to participate in the Medicare program.

PHS/FDA and HCFA shall continue to act under existing delegations of authority, and no transfer of statutory functions or authority is made here. HCFA shall, however, conform many of its program requirements for the survey of blood banks and transfusion services to those issued by PHS/FDA. This includes the adoption of certain of the PHS/FDA regulations applicable to blood and blood component products set forth at 21 CFR Part 606.

Additionally, PHS/FDA shall no longer inspect on a routine basis clinical laboratories or portions thereof which perform tests such as hepatitis tests, serum protein electrophoresis, or quantitative immunoglobulin determinations in support of the preparation of biological products by a firm registered with PHS/FDA, if the clinical laboratory is approved under the HCFA program.

II. Substance of Agreement

A. *Definitions:* For the purpose of this agreement, the following definitions apply:

1. A "transfusion service" is a facility, which is part of either a hospital or an independent clinical laboratory, and which performs compatibility tests for, but is not engaged in the routine collection or processing of blood or plasma (except recovered plasma or red blood cells) except for therapeutic collections, and the hospital or the independent testing laboratory is approved by HCFA for participation in the Medicare program.

2. A "blood establishment" is any other facility or portions of a facility registered as such with FDA pursuant to 21 U.S.C. Part 510 and 21 CFR Part 607. Blood establishments include hospital and nonhospital blood banks, plasmapheresis centers, and the clinical laboratories performing required testing for these establishments.

B. *Transfusion service survey and approval.* HCFA shall be responsible for:

1. Surveying hospitals and independent laboratories, including the transfusion service, and applying the Medicare conditions of participation and conditions for coverage through the Medicare survey, certification, and facility approval process, including the utilization of HCFA's system of Medicare State survey agency agreements;

2. Approving and disapproving hospitals and independent laboratories for purposes of Medicare.

3. Surveying the transfusion service of hospitals and independent laboratories in conjunction with PHS/FDA, when such a survey is appropriate to certify and document any alleged significant deficiency or deficiencies, which would, if confirmed to be present, adversely affect the health and safety of patients.

4. Conducting special surveys of the transfusion services of hospitals and independent laboratories concerning administrative, procedural, licensure, technical certification or related matters as needed, or when requested by PHS/FDA or others, as appropriate.

5. Conducting enforcement activities, such as the investigation and referral of cases to the Inspector General of the Department of Health and Human Services for further action.

6. Negotiating, approving, and administering agreements with the Medicare State survey agencies; and

7. Applying the administrative review and hearing provisions applicable to hospitals and independent laboratories under Medicare.

C. *Survey of good manufacturing practices in facilities performing emergency blood collections only.* HCFA shall survey the procedures related to the collection and processing (including labeling) of blood and blood components for transfusion at transfusion services in hospitals and independent clinical laboratories participating in the Medicare program. These facilities will not be registered as blood establishments with PHS/FDA.

D. *Development of technical and scientific standards.* PHS/FDA shall be responsible for the promulgation and interpretation of technical and scientific standards relating to transfusion services and blood establishments and for responding to inquiries concerning these standards except as indicated in paragraph E below. HCFA shall undertake to adopt these standards for use in the Medicare program.

E. *Application of personnel and proficiency testing standards.* For purposes of the Medicare program, the HCFA standards for personnel (42 CFR 405.1028 (d), (g), and (i) for hospitals and 42 CFR 405.1310 through 405.1315 for independent clinical laboratories) and proficiency testing (42 CFR 405.1314(a)) shall apply. For purposes of the PHS/FDA program, the PHS/FDA standards for personnel (21 CFR 600.10 for licensed establishments and 21 CFR 606.20 of registered blood establishments) shall apply to registered, licensed and unlicensed blood establishments.

F. *Special investigations of clinical laboratories.* PHS/FDA shall no longer routinely inspect clinical laboratories or portions thereof which perform hepatitis tests or other laboratory procedures for registered blood establishments when the laboratory is surveyed by and meets the requirements of the HCFA program. When a special investigation is required by PHS/FDA to document the presence of any alleged significant deficiency or deficiencies which would, if confirmed, adversely affect the safety or efficacy of products, or the safety or health of donors, the investigation by FDA will be coordinated with regional HCFA personnel.

G. *Adverse transfusion reaction reporting.* The provisions of 21 CFR 606.170(b) require that fatal transfusion reactions related to the administration of blood or blood components be reported as soon as possible to PHS/FDA. PHS/FDA evaluates these reports and, when indicated, may undertake special investigations to determine whether remedial action has been or needs to be undertaken by the blood establishment.

PHS/FDA shall continue to receive these reports from blood banks and transfusion services in hospitals and independent laboratories participating in the Medicare program. Those reports received by FDA from transfusion services will be transmitted to HCFA for evaluation and followup under that program. In addition, PHS/FDA shall transmit to HCFA those reports which involve fatalities resulting from errors and accidents in areas of a hospital unrelated to the collection or processing of blood or blood components.

H. *Research and development.*

1. PHS/FDA shall be responsible for conducting studies related to the technical and scientific aspects of the administration and regulation of transfusion services and blood establishments, including studies for standards' development, improved quality control practices and testing, and evaluation methodologies.

2. HCFA shall be responsible for conducting studies pertaining to the Medicare coverage and amount of reimbursement to hospitals and independent laboratories stemming from the activities of their transfusion services and blood banks, the survey and approval of such services, the appropriate utilization of services, and the related administrative processes.

I. *Training.*

1. PHS/FDA shall furnish technical assistance to HCFA for the training of laboratory surveyors of the Medicare State survey agencies and other HCFA survey personnel with respect to the technical and scientific standards applicable to transfusion services and blood banks.

2. HCFA, in conjunction with PHS/FDA, shall be responsible for training laboratory surveyors of the Medicare State survey agencies and HCFA personnel concerning blood banking administration and procedure.

J. *Amendments.* This agreement may be modified at any time in writing by the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Administrator of the Health Care Financing Administration, or their authorized delegates. PHS/FDA and HCFA shall review this memorandum of understanding within 2 years after its effective date. Either party in the interim has a right to an earlier review of this agreement or any of its provisions.

K. *Resolution of differences.* In any case in which PHS/FDA and HCFA find that the resolution of significant differences with respect to this agreement cannot be achieved, the matter will be referred by the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Administrator, HCFA, to the Undersecretary or the Secretary for decision.

Dated: June 6, 1983.

Amended memorandum of understanding approved by:

Margaret M. Heckler,

Secretary of the Department of Health and Human Services.

[FR Doc. 84-23149 Filed 8-30-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Rescheduling of Methaqualone From Schedule II to Schedule I

Correction

In FR Doc. 84-22556 beginning on page 33870 in the issue of Monday, August 27, 1984, make the following correction:

On page 33870, third column, in the first paragraph under "**SUPPLEMENTARY INFORMATION**", fifth and sixth lines from the bottom, remove the brackets surrounding "August 27, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7973]

Income Tax; Treatment of Transfer of Property Between Spouses, Tax Treatment of Alimony and Separate Maintenance Payments, and Dependency Exemption in the Case of Child of Divorced Parents

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the treatment of transfers of property between spouses or former spouses, the tax treatment of alimony and separate maintenance payments, and the dependency exemption in the case of a child of divorced parents. Changes to the applicable law were made by the Tax Reform Act of 1984. These regulations affect persons who transfer property to or receive property from their spouses or former spouses, persons who pay or receive alimony and separate maintenance payments, and divorced or separated persons who are custodial on noncustodial parents, and provide them with the guidance necessary to comply with the law.

In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATE: The temporary regulations apply to transfers of property between spouses or former spouses after July 18, 1984, (except as otherwise provided in § 1.1041-1T(f)), alimony or separate maintenance payments made with respect to divorce or separation instruments executed after December 31, 1984, and dependency exemptions claimed for tax years beginning after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC: LR:T (LR-136-84) (202) 566-4336, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the treatment of transfers of property between spouses, or former spouses incident to divorce, under section 1041 of the Internal Revenue Code of 1954 (Code), as added by section 421 of the Tax Reform Act of 1984 (Act) (Pub. L. 98-369, 98 Stat. 793), alimony or separate maintenance payments under sections 71 and 215 of the Code, as amended by section 422 of the Act (Pub. L. 98-369, 98 Stat. 795), and the dependency exemption in the case of a child of divorced or separated parents under section 152 of the Code, as amended by section 423 of the Act (Pub. L. 98-369, 98 Stat. 799). The temporary regulations provided by this document will remain in effect until superseded by final regulations on these subjects.

These temporary regulations are presented in the form of questions and answers. The questions and answers are not intended to address comprehensively the issues raised by sections 1041, 71, 215 and 152(e). Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues arising under sections 1041, 71, 215 and 152(e). No inference, however, should be drawn regarding questions not expressly raised and answered.

Explanation of Provisions

Property Transfers Between Spouses or Former Spouses Incident to Divorce

Prior to enactment of the Act, a transfer of property to a spouse (or former spouse) in exchange for the release of marital claims resulted in the recognition of gain or loss to the transferor. The spouse receiving the property received a basis in the transferred property equal to its fair market value. Section 421 of the Act adds a new section 1041 to the Code which provides that no gain or loss is recognized on a transfer of property between spouses, or former spouses if incident to a divorce. Under new section 1041, the transferee's basis is equal to the transferor's adjusted basis immediately before the transfer. A transfer between former spouses will be treated as incident to a divorce if it occurs within 1 year after the marriage ceases or is related to the cessation of the marriage.

Generally, the amendments made by section 421 apply to transfers made after July 18, 1984, except transfers under any instrument in effect on or before July 18, 1984. Two transitional rules contained in section 421 of the Act provide that if both spouses or former spouses elect, the rules of section 1041 will apply to all transfers made after December 31, 1983 or to all transfers after July 18, 1984 under any instrument in effect on or before July 18, 1984. The regulations provide the manner and time to make the elections.

Alimony and Separate Maintenance Payments

Alimony and separate maintenance payments are deductible from income by the payor under section 215 of the Code and includible in the income of the payee under section 71 of the Code. Prior to enactment of the Act, a payment qualified as alimony or separate maintenance if it met several requirements. First, the payment was required to be in discharge of a legal obligation imposed by a family or marital relationship. Second, the payment was required to be made under a decree of divorce or separate maintenance, a written separation agreement, or a decree of support or maintenance. Third, the payment was required to be "periodic" as defined in § 1.71–1(d) of the regulations. In addition, payments which were fixed as child support were not treated as alimony.

Under section 422 of the Act, alimony and separate maintenance payments under a decree of divorce or separate maintenance or a written instrument incident to such a decree, a written separation agreement, or a decree requiring support or separate maintenance continue to be deductible by the payor and includible in the income of the payee. However, the Act provides a new definition of alimony and separate maintenance payments. Such payments no longer must be made on account of a family or marital relationship, nor must they be "periodic". Instead, if six requirements are met, a payment received by, or on behalf of, the payee spouse (or former spouse) will qualify as an alimony or separate maintenance payment. First, the payment must be in cash. Second, the payment must not be designated as a payment which is nondeductible by the payor and nonincludible in income by the payee. Third, if the parties are separated under a decree of divorce or legal separation, they must not be members of the same household at the time payment is made. Fourth, the payor must not have any liability to make any such payment (or any substitute for such payment) after the death of the payee and the divorce or separation instrument must state that there is no such liability. Fifth, the payment must not be treated as child support. Sixth, payments must be made in each year of a defined 6 consecutive post-separation calendar year period in order for annual payments during this period in excess of $10,000 to qualify as alimony or separate maintenance payments. In addition, in the event that annual alimony or separate maintenance payments decrease by more than $10,000 during the 6-year period, section 71(f) and the regulations under that section provide for a "recapture" of excess alimony or separate maintenance payments. The recaptured amount is included in the gross income of the payor spouse for the year in which the total payments decrease by more than $10,000 and deducted in computing the adjusted gross income of the payee spouse for the same year.

Under the Act, there is no change in the treatment of payments which are fixed as child support. However, if a payment that would otherwise qualify as an alimony or separate maintenance payment will be reduced upon the happening of a contingency specified in the instrument relating to a child of the payor spouse, such as attaining a specified age, marrying, dying, leaving school, or a similar contingency, or will be reduced at a time which can clearly be associated with such a contingency, an amount equal to the amount of such reduction will be treated as an amount fixed as child support. The regulations are designed to provide as much certainty as is consistent with the statutory language.

Penalties

The Act provides that a penalty may be assessed against a payee who fails to supply the payor with the payee's social security number. A similar penalty may be assessed against a payor who fails to report the payee's social security number on the payor's return of tax for the taxable year in which an alimony or separate maintenance payment is made. If the failure of either party is due to reasonable cause and not to willful neglect, no penalty will be assessed against that party.

Dependency Exemption

Under present law, a general rule, the custodial parent (the parent having custody of the child for the greater part of the year) is allowed the $1,000 exemption for each dependent child. However, under two special rules, the noncustodial parent is entitled to the exemption if that parent meets certain requirements relating to the child's support. The Act eliminates the two special rules and adds a simple exception to the general rule. Under this exception, the custodial parent can release his/her claim to the dependency exemption to the noncustodial parent by signing a written delcaration releasing the claim to the dependency exemption to the noncustodial parent for a year, a number of specified years, or permanently. The declaration must be attached annually to the noncustodial parent's return of tax for each year the dependency exemption is released.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (control no. 1545–0074).

Drafting Information

The principal author of these temporary regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service.

However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1—1.281–1

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.1001–1—1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Adoption of Amendments to the Regulation

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1.—A new § 1.1041–1T is added immediately following § 1.1039–1 to read as follows:

§ 1.1041–1T Treatment of transfer of property between spouses or incident to divorce (temporary).

Q–1 How is the transfer of property between spouses treated under section 1041?

A–1 Generally, no gain or loss is recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse or, if the transfer is incident to a divorce, a former spouse. The following questions and answers describe more fully the scope, tax consequences and other rules which apply to transfers of property under section 1041.

(a) *Scope of section 1041 in general.*

Q–2 Does section 1041 apply only to transfers of property incident to divorce?

A–2 No. Section 1041 is not limited to transfers of property incident to divorce. Section 1041 applies to any transfer of property between spouses regardless of whether the transfer is a gift or is a sale or exchange between spouses acting at arm's length (including a transfer in exchange for the relinquishment of property or marital rights or an exchange otherwise governed by another nonrecognition provision of the Code). A divorce or legal separation need not be contemplated between the spouses at the time of the transfer nor must a divorce or legal separation ever occur.

Example (1). A and B are married and file a joint return. A is the sole owner of a condominium unit. A sale or gift of the condominium from A to B is a transfer which is subject to the rules of section 1041.

Example (2). A and B are married and file separate returns. A is the owner of an independent sole proprietorship, X Company. In the ordinary course of business, X Company makes a sale of property to B. This sale is a transfer of property between spouses and is subject to the rules of section 1041.

Example (3). Assume the same facts as in example (2), except that X Company is a corporation wholly owned by A. This sale is not a sale between spouses subject to the rules of section 1041. However, in appropriate circumstances, general tax principles, including the step-transaction doctrine, may be applicable in recharacterizing the transaction.

Q–3 Do the rules of section 1041 apply to a transfer between spouses if the transferee spouse is a nonresident alien?

A–3 No. Gain or loss (if any) is recognized (assuming no other nonrecognition provision applies) at the time of a transfer of property if the property is transferred to a spouse who is a nonresident alien.

Q–4 What kinds of transfers are governed by section 1041?

A–4 Only transfers of property (whether real or personal, tangible or intangible) are governed by section 1041. Transfers of services are not subject to the rules of section 1041.

Q–5 Must the property transferred to a former spouse have been owned by the transferor spouse during the marriage?

A–5 No. A transfer of property acquired after the marriage ceases may be governed by section 1041.

(b) *Transfer incident to the divorce.*

Q–6 When is a transfer of property "incident to the divorce"?

A–6 A transfer of property is "incident to the divorce" in either of the following 2 circumstances—

(1) The transfer occurs not more than one year after the date on which the marriage ceases, or

(2) The transfer is related to the cessation of the marriage.

Thus, a transfer of property occurring not more than one year after the date on which the marriage ceases need not be related to the cessation of the marriage to qualify for section 1041 treatment. (See A–7 for transfers occurring more than one year after the cessation of the marriage.)

Q–7 When is a transfer of property "related to the cessation of the marriage"?

A–7 A transfer of property is treated as related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument, as defined in section 71(b)(2), and the transfer occurs not more than 6 years after the date on which the marriage ceases. A divorce or separation instrument includes a modification or amendment to such decree or instrument. Any transfer not pursuant to a divorce or separation instrument and any transfer occurring more than 6 years after the cessation of the marriage is presumed to be not related to the cessation of the marriage. This presumption may be rebutted only by showing that the transfer was made to effect the division of property owned by the former spouses at the time of the cessation of the marriage. For example, the presumption may be rebutted by showing that (a) the transfer was not made within the one- and six-year periods described above because of factors which hampered an earlier transfer of the property, such as legal or business impediments to transfer or disputes concerning the value of the property owned at the time of the cessation of the marriage, and (b) the transfer is effected promptly after the impediment to transfer is removed.

Q–8 Do annulments and the cessations of marriages that are void *ab initio* due to violations of state law constitute divorces for purposes of section 1041?

A–8 Yes.

(c) *Transfers on behalf of a spouse.*

Q–9 May transfers of property to third parties on behalf of a spouse (or former spouse) qualify under section 1041?

A–9 Yes. There are three situations in which a transfer of property to a third party on behalf of a spouse (or former spouse) will qualify under section 1041, provided all other requirements of the section are satisfied. The first situation is where the transfer to the third party is required by a divorce or separation instrument. The second situation is where the transfer to the third party is pursuant to the written request of the other spouse (or former spouse). The third situation is where the transferor receives from the other spouse (or former spouse) a written consent or ratification of the transfer to the third party. Such consent or ratification must state that the parties intend the transfer to be treated as a transfer to the nontransferring spouse (or former spouse) subject to the rules of section 1041 and must be received by the transferor prior to the date of filing of the transferor's first return of tax for the taxable year in which the transfer was made. In the three situations described above, the transfer of property will be treated as made directly to the nontransferring spouse (or former spouse) and the nontransferring spouse will be treated as immediately transferring the property to the third party. The deemed transfer from the nontransferring spouse (or former spouse) to the third party is not a transaction that qualifies for nonrecognition of gain under section 1041.

(d) *Tax consequences of transfers subject to section 1041.*

Q–10 How is the transferor of property under section 1041 treated for income tax purposes?

A–10 The transferor of property under section 1041 recognizes no gain or loss on the transfer even if the transfer was in exchange for the release of marital rights or other consideration. This rule applies regardless of whether the transfer is of property separately owned by the transferor or is a division (equal or unequal) of community property. Thus, the result under section 1041 differs from the result in *United States* v. *Davis*, 370 U.S. 65 (1962).

Q–11 How is the transferee of property under section 1041 treated for income tax purposes?

A–11 The transferee of property under section 1041 recognizes no gain or loss upon receipt of the transferred property. In all cases, the basis of the transferred property in the hands of the transferee is the adjusted basis of such property in the hands of the transferor immediately before the transfer. Even if the transfer is a bona fide sale, the transferee does not acquire a basis in the transferred property equal to the transferee's cost (the fair market value). This carryover basis rule applies whether the adjusted basis of the transferred property is less than, equal to, or greater than its fair market value at the time of transfer (or the value of any consideration provided by the transferee) and applies for purposes of determining loss as well as gain upon the subsequent disposition of the property by the transferee. Thus, this rule is different from the rule applied in section 1015(a) for determining the basis of property acquired by gift.

Q–12 Do the rules described in A–10 and A–11 apply even if the transferred property is subject to liabilities which exceed the adjusted basis of the property?

A–12 Yes. For example, assume A owns property having a fair market value of $10,000 and an adjusted basis of $1,000. In contemplation of making a transfer of this property incident to a divorce from B, A borrows $5,000 from a bank, using the property as security for the borrowing. A then transfers the property to B and B assumes, or takes the property subject to, the liability to pay the $5,000 debt. Under section 1041, A recognizes no gain or loss upon the transfer of the property, and the adjusted basis of the property in the hands of B is $1,000.

Q–13 Will a transfer under section 1041 result in a recapture of investment tax credits with respect to the property transferred?

A–13 In general, no. Property transferred under section 1041 will not be treated as being disposed of by, or ceasing to be section 38 property with respect to, the transferor. However, the transferee will be subject to investment tax credit recapture if, upon or after the transfer, the property is disposed of by, or ceases to be section 38 property with respect to, the transferee. For example, as part of a divorce property settlement, B receives a car from A that has been used in A's business for two years and for which an investment tax credit was taken by A. No part of A's business is transferred to B and B's use of the car is solely personal. B is subject to recapture of the investment tax credit previously taken by A.

(e) *Notice and recordkeeping requirement with respect to transactions under section 1041.*

Q–14 Does the trasnsferor of property in a transaction described in section 1041 have to supply, at the time of the transfer, the transferee with records sufficient to determine the adjusted basis and holding period of the property at the time of the transfer and (if applicable) with notice that the property transferred under section 1041 is potentially subject to recapture of the investment tax credit?

A–14 Yes. A transferor of property under section 1041 must, at the time of the transfer, supply the transferee with records sufficient to determine the adjusted basis and holding period of the property as of the date of the transfer. In addition, in the case of a transfer of property which carries with it a potential liability for investment tax credit recapture, the transferor must, at the time of the transfer, supply the transferee with records sufficient to determine the amount and period of such potential liability. Such records must be preserved and kept accessible by the transferee.

(f) *Property settlements—effective dates, transitional periods and elections.*

Q–15 When does section 1041 become effective?

A–15 Generally, section 1041 applies to all transfers after July 18, 1984. However, it does not apply to transfers after July 18, 1984 pursuant to instruments in effect on or before July 18, 1984. (See A–16 with respect to exceptions to the general rule.)

Q–16 Are there any exceptions to the general rule stated in A–15 above?

A–16 Yes. Two transitional rules provide exceptions to the general rule stated in A–15. First, section 1041 will apply to transfers after July 18, 1984 under instruments that were in effect on or before July 18, 1984 if both spouses (or former spouses) elect to have section 1041 apply to such transfers. Second, section 1041 will apply to all transfers after December 31, 1983 (including transfers under instruments in effect on or before July 18, 1984) if both spouses (or former spouses) elect to have section 1041 apply. (See A–18 relating to the time and manner of making the elections under the first or second transitional rule.)

Q–17 Can an election be made to have section 1041 apply to some, but not all, transfers made after December 31, 1983, or some but not all, transfers made after July 18, 1984 under instruments in effect on or before July 18, 1984?

A–17 No. Partial elections are not allowed. An election under either of the two elective transitional rules applies to all transfers governed by that election whether before or after the election is made, and is irrevocable.

(g) *Property settlements—time and manner of making the elections under section 1041.*

Q–18 How do spouses (or former spouses) elect to have section 1041 apply to transfers after December 31, 1983, or to transfers after July 18, 1984 under instruments in effect on or before July 18, 1984?

A–18 In order to make an election under section 1041 for property transfers after December 31, 1983, or property transfers under instruments that were in effect on or before July 18, 1984, both spouses (or former spouses) must elect the application of the rules of section 1041 by attaching to the transferor's first filed income tax return for the taxable year in which the first transfer occurs, a statement signed by both spouses (or former spouses) which includes each spouse's social security number and is in substantially the form set forth at the end of this answer.

In addition, the transferor must attach a copy of such statement to his or her return for each subsequent taxable year in which a transfer is made that is governed by the transitional election. A copy of the signed statment must be kept by both parties.

The election statements shall be in substantially the following form:

In the case of an election regarding transfers after 1983:

Section 1041 Election

The undersigned hereby elect to have the provisions of section 1041 of the Internal Revenue Code apply to all qualifying transfers of property after December 31, 1983. The undersigned understand that section 1041 applies to all property transferred between spouses, or former spouses incident to divorce. The parties further understand that the effects for Federal income tax purposes of having section 1041 apply are that (1) no gain or loss is recognized by the transferor spouse or former spouse as a result of this transfer; and (2) the basis of the transferred property in the hands of the transferee is the adjusted basis of the property in the hands of the transferor immediately before the transfer, whether or not the adjusted basis of the transferred property is less than, equal to, or greater than its fair market value at the time of the transfer. The undersigned understand that if the transferee spouse or former spouse disposes of the property in a transaction in which gain is recognized, the amount of gain which is taxable may be larger than it would have been if this election had not been made.

In the case of an election regarding preexisting decrees:

Section 1041 Election

The undersigned hereby elect to have the provisions of section 1041 of the Internal Revenue Code apply to all qualifying transfers of property after July 18, 1984 under any instrument in effect on or before July 18, 1984. The undersigned understand that section 1041 applies to all property transferred between spouses, or former spouses incident to the divorce. The parties further understand that the effects for Federal income tax purposes of having section 1041 apply are that (1) no gain or loss is recognized by the transferor spouse or former spouse as a result of this transfer; and (2) the basis of the transferred property in the hands of the transferee is the adjusted basis of the property in the hands of the transferor immediately before the transfer, whether or not the adjusted basis of the transferred property is less than, equal to, or greater than its fair market value at the time of the transfer. The undersigned understand that if the transferee spouse or former spouse disposes of the property in a transaction in which gain is recognized, the amount of gain which is taxable may be larger than it would have been if this election had not been made.

Par. 2. New § 1.71–1T is added immediately following § 1.71–1 to read as set forth below:

§ 1.71–1T Alimony and separate maintenance payments (temporary).

(a) *In general.*

Q–1 What is the income tax treatment of alimony or separate maintenance payments?

A–1 Alimony or separate maintenance payments are, under section 71, included in the gross income of the payee spouse and, under section 215, allowed as a deduction from the gross income of the payor spouse.

Q–2 What is an alimony or separate maintenance payment?

A–2 An alimony or separate maintenance payment is any payment received by or on behalf of a spouse (which for this purpose includes a former spouse) of the payor under a divorce or separation instrument that meets all of the following requirements:

(a) The payment is in cash (see A–5).

(b) The payment is not designated as a payment which is excludible from the gross income of the payee and nondeductible by the payor (see A–8).

(c) In the case of spouses legally separated under a decree of divorce or separate maintenance, the spouses are not members of the same household at the time the payment is made (see A–9).

(d) The payor has no liability to continue to make any payment after the death of the payee (or to make any payment as a substitute for such payment) and the divorce or separation instrument states that there is no such liability (see A–10).

(e) The payment is not treated as child support (see A–15).

(f) To the extent that one or more annual payments exceed $10,000 during any of the 6-post-separation years, the payor is obligated to make annual payments in each of the post-separation years (see A–19).

Q–3 In order to be treated as alimony or separate maintenance payments, must the payments be "periodic" as that term was defined prior to enactment of the Tax Reform Act of 1984 or be made in discharge of a legal obligation of the payor to support the payee arising out of a marital or family relationship?

A–3 No. The Tax Reform Act of 1984 replaces the old requirements with the requirements described in A–2 above. Thus, the requirements that alimony or separate maintenance payments be "periodic" and be made in discharge of a legal obligation to support arising out of a marital or family relationship have been eliminated.

Q–4 Are the instruments described in section 71(a) of prior law the same as divorce or separation instruments described in section 71, as amended by the Tax Reform Act of 1984?

A–4 Yes.

(b) *Specific requirements.*

Q–5 May alimony or separate maintenance payments be made in a form other than cash?

A–5 No. Only cash payments (including checks and money orders payable on demand) qualify as alimony or separate maintenance payments. Transfers of services or property (including a debt instrument of a third party or an annuity contract), execution of a debt instrument by the payor, or the use of property of the payor do not qualify as alimony or separate maintenance payments.

Q–6 May payments of cash to a third party on behalf of a spouse qualify as alimony or separate maintenance payments if the payments are pursuant to the terms of a divorce or separation instrument?

A–6 Yes. Assuming all other requirements are satisfied, a payment of cash by the payor spouse to a third party under the terms of the divorce or separation instrument will qualify as a payment of cash which is received "on behalf of a spouse". For example, cash payments of rent, mortgage, tax, or tuition liabilities of the payee spouse made under the terms of the divorce or separation instrument will qualify as alimony or separate maintenance payments. Any payments to maintain property owned by the payor spouse and used by the payee spouse (including mortgage payments, real estate taxes and insurance premiums) are not payments on behalf of a spouse even if those payments are made pursuant to the terms of the divorce or separation instrument. Premiums paid by the payor spouse for term or whole life insurance on the payor's life made under the terms of the divorce or separation instrument will qualify as payments on behalf of the payee spouse to the extent that the payee spouse is the owner of the policy.

Q–7 May payments of cash to a third party on behalf of a spouse qualify as alimony or separate maintenance payments if the payments are made to the third party at the written request of the payee spouse?

A–7 Yes. For example, instead of making an alimony or separate maintenance payment directly to the payee, the payor spouse may make a cash payment to a charitable organization if such payment is pursuant to the written request, consent or ratification of the payee spouse. Such request, consent or ratification must state that the parties intend the payment to be treated as an alimony or separate maintenance payment to the payee spouse subject to the rules of section 71, and must be received by the payor spouse prior to the date of filing of the payor's first return of tax for the taxable year in which the payment was made.

Q–8 How may spouses designate that payments otherwise qualifying as alimony or separate maintenance payments shall be excludible from the gross income of the payee and nondeductible by the payor?

A–8 The spouses may designate that payments otherwise qualifying as alimony or separate maintenance payments shall be nondeductible by the payor and excludible from gross income by the payee by so providing in a divorce or separation instrument (as defined in section 71(b)(2)). If the spouses have executed a written separation agreement (as described in section 71(b)(2)(B)), any writing signed by both spouses which designates otherwise qualifying alimony or separate maintenance payments as nondeductible and excludible and which refers to the written separation agreement will be treated as a written separation agreement (and thus a divorce or separation instrument) for purposes of the preceding sentence. If the spouses are subject to temporary support orders (as described in section 71(b)(2)(C)), the designation of otherwise qualifying alimony or separate payments as nondeductible and excludible must be made in the original or a subsequent temporary support order. A copy of the instrument containing the designation of payments as not alimony or separate maintenance payments must be attached to the payee's first filed return of tax (Form 1040) for each year in which the designation applies.

Q–9 What are the consequences if, at the time a payment is made, the payor and payee spouses are members of the same household?

A–9 Generally, a payment made at the time when the payor and payee spouses are members of the same household cannot qualify as an alimony or separate maintenance payment if the spouses are legally separated under a decree of divorce or of separate maintenance. For purposes of the preceding sentence, a dwelling unit formerly shared by both spouses shall not be considered two separate households even if the spouses physically separate themselves within the dwelling unit. The spouses will not be treated as members of the same household if one spouse is preparing to depart from the household of the other spouse, and does depart not more than one month after the date the payment is made. If the spouses are not legally separated under a decree of divorce or separate maintenance, a payment under a written separation agreement or a decree described in section 71(b)(2)(C) may qualify as an alimony or separate maintenance payment notwithstanding that the payor and payee are members of the same household at the time the payment is made.

Q–10 Assuming all other requirements relating to the qualification of certain payments as alimony or separate maintenance payments are met, what are the consequences if the payor spouse is required to continue to make the payments after the death of the payee spouse?

A–10 None of the payments before (or after) the death of the payee spouse qualify as alimony or separate maintenance payments.

Q–11 What are the consequences if the divorce or separation instrument fails to state that there is no liability for any period after the death of the payee spouse to continue to make any payments which would otherwise qualify as alimony or separate maintenance payments?

A–11 If the instrument fails to include such a statement, none of the payments, whether made before or after the death of the payee spouse, will qualify as alimony or separate maintenance payments.

Example (1). A is to pay B $10,000 in cash each year for a period of 10 years under a divorce or separation instrument which does not state that the payments will terminate upon the death of B. None of the payments will qualify as alimony or separate maintenance payments.

Example (2). A is to pay B $10,000 in cash each year for a period of 10 years under a divorce or separation instrument which states that the payments will terminate upon the death of B. In addition, under the instrument, A is to pay B or B's estate $20,000 in cash each year for a period of 10 years. Because the $20,000 annual payments will not terminate upon the death of B, these payments will not qualify as alimony or separate maintenance payments. However, the separate $10,000 annual payments will qualify as alimony or separate maintenance payments.

Q–12 Will a divorce or separation instrument be treated as stating that there is no liability to make payments after the death of the payee spouse if the liability to make such payments terminates pursuant to applicable local law or oral agreement?

A–12 No. Termination of the liability to make payments must be stated in the terms of the divorce or separation instrument.

Q–13 What are the consequences if the payor spouse is required to make one or more payments (in cash or property) after the death of the payee spouse as a substitute for the continuation of pre-death payments which would otherwise qualify as alimony or separate maintenance payments?

A–13 If the payor spouse is required to make any such substitute payments, none of the otherwise qualifying payments will qualify as alimony or separate maintenance payments. The divorce or separation instrument need not state, however, that there is no liability to make any such substitute payment.

Q–14 Under what circumstances will one or more payments (in cash or property) which are to occur after the death of the payee spouse be treated as a substitute for the continuation of payments which would otherwise qualify as alimony or separate maintenance payments?

A–14 To the extent that one or more payments are to begin to be made, increase in amount, or become accelerated in time as a result of the death of the payee spouse, such payments may be treated as a substitute for the continuation of payments terminating on the death of the payee spouse which would otherwise qualify as alimony or separate maintenance payments. The determination of whether or not such payments are a substitute for the continuation of payments which would otherwise qualify as alimony or separate maintenance payments, and of the amount of the otherwise qualifying alimony or separate maintenance payments for which any such payments are a substitute, will depend on all of the facts and circumstances.

Example (1). Under the terms of a divorce decree, A is obligated to make annual alimony payments to B of $30,000, terminating on the earlier of the expiration of 6 years or the death of B. B maintains custody of the minor children of A and B. The decree provides that at the death of B, if there are minor children of A and B remaining, A will be obligated to make annual payments of $10,000 to a trust, the income and corpus of which are to be used for the benefit of the children until the youngest child attains the age of majority. These facts indicate that A's liability to make annual $10,000 payments in trust for the benefit of his minor children upon the death of B is a substitute for $10,000 of the $30,000 annual payments to B. Accordingly, $10,000 of each of the $30,000 annual payments to B will not qualify as alimony or separate maintenance payments.

Example (2). Under the terms of a divorce decree, A is obligated to make annual alimony payments to B of $30,000, terminating on the earlier of the expiration of 15 years or the death of B. The divorce decree provides that if B dies before the expiration of the 15 year period, A will pay to B's estate the difference between the total amount that A would have paid had B survived, minus the amount actually paid. For example, if B dies at the end of the 10th year in which payments are made, A will pay to B's estate $150,000 ($450,000–$300,000). These facts indicate that A's liability to make a lump sum payment to B's estate upon the death of B is a substitute for the full amount of each of the annual $30,000 payments to B. Accordingly, none of the annual $30,000 payments to B will qualify as alimony or separate maintenance payments. The result would be the same if the lump sum payable at B's death were discounted by an appropriate interest factor to account for the prepayment.

(c) *Child support payments.*

Q–15 What are the consequences of a payment which the terms of the divorce or separation instrument fix as payable for the support of a child of the payor spouse?

A–15 A payment which under the terms of the divorce or separation instrument is fixed (or treated as fixed) as payable for the support of a child of the payor spouse does not qualify as an alimony or separate maintenance payment. Thus, such a payment is not deductible by the payor spouse or includible in the income of the payee spouse.

Q–16 When is a payment fixed (or treated as fixed) as payable for the support of a child of the payor spouse?

A–16 A payment is fixed as payable for the support of a child of the payor spouse if the divorce or separation instrument specifically designates some sum or portion (which sum or portion may fluctuate) as payable for the support of a child of the payor spouse. A payment will be treated as fixed as payable for the support of a child of the payor spouse if the payment is reduced (a) on the happening of a contingency relating to a child of the payor, or (b) at a time which can clearly be associated with such a contingency. A payment may be treated as fixed as payable for the support of a child of the payor spouse even if other separate payments specifically are designated as payable for the support of a child of the payor spouse.

Q–17 When does a contingency relate to a child of the payor?

A–17 For this purpose, a contingency relates to a child of the payor if it depends on any event relating to that child, regardless of whether such event is certain or likely to occur. Events that relate to a child of the payor include the following: the child's attaining a specified age or income level, dying, marrying, leaving school, leaving the spouse's household, or gaining employment.

Q–18 When will a payment be treated as to be reduced at a time which can clearly be associated with the happening of a contingency relating to a child of the payor?

A–18 There are two situations, described below, in which payments which would otherwise qualify as alimony or separate maintenance payments will be presumed to be reduced at a time clearly associated with the happening of a contingency relating to a child of the payor. In all other situations, reductions in payments will not be treated as clearly associated with the happening of a contingency relating to a child of the payor.

The first situation referred to above is where the payments are to be reduced not more than 6 months before or after the date the child is to attain the age of 18, 21, or local age of majority. The second situation is where the payments are to be reduced on two or more occasions which occur not more than one year before or after a different child of the payor spouse attains a certain age between the ages of 18 and 24, inclusive. The certain age referred to in the preceding sentence must be the same for each such child, but need not be a whole number of years.

The presumption in the two situations described above that payments are to be reduced at a time clearly associated with the happening of a contingency relating to a child of the payor may be rebutted (either by the Service or by taxpayers) by showing that the time at which the payments are to be reduced was determined independently of any contingencies relating to the children of the payor. The presumption in the first situation will be rebutted conclusively if the reduction is a complete cessation of alimony or separate maintenance payments during the sixth post-separation year (described in A–21) or upon the expiration of a 72-month period. The presumption may also be rebutted in other circumstances, for example, by showing that alimony payments are to be made for a period customarily provided in the local jurisdiction, such as a period equal to one-half the duration of the marriage.

Example: A and B are divorced on July 1, 1985, when their children, C (born July 15, 1970) and D (born September 23, 1972), are 14 and 12, respectively. Under the divorce decree, A is to make alimony payments to B of $2,000 per month. Such payments are to be reduced to $1,500 per month on January 1, 1991 and to $1,000 per month on January 1, 1995. On January 1, 1991, the date of the first reduction in payments, C will be 20 years 5 months and 17 days old. On January 1, 1995, the date of the second reduction in payments, D will be 22 years 3 months and 9 days old. Each of the reductions in payments is to occur not more than one year before or after a different child of A attains the age of 21 years and 4 months. (Actually, the reductions are to occur not more than one year before or after C and D attain *any* of the ages 21 years 3 months and 9 days through 21 years 5 months and 17 days.) Accordingly, the reductions will be presumed to clearly be associated with the happening of a contingency relating to C and D. Unless this presumption is rebutted, payments under the divorce decree equal to the sum of the reduction ($1,000 per month) will be treated as fixed for the support of the children of A and therefore will not qualify as alimony or separate maintenance payments.

(d) *Excess front-loading rules.*

Q–19 What are the excess front-loading rules?

A–19 The excess front-loading rules are two special rules which may apply to the extent that payments in any calendar year exceed $10,000. The first rule is a minimum term rule, which must be met in order for any annual payment, to the extent in excess of $10,000, to qualify as an alimony or separate maintenance payment (see A–2(f)). This rule requires that alimony or separate maintenance payments be called for, at a minimum, during the 6 "post-separation years". The second rule is a recapture rule which characterizes payments retrospectively by requiring a recalculation and inclusion in income by the payor and deducation by the payee of previously paid alimony or separate maintenance payment to the extent that the amount of such payments during any of the 6 "post-separation years" falls short of the amount of payments during a prior year by more than $10,000.

Q–20 Do the excess front-loading rules apply to payments to the extent that annual payments never exceed $10,000?

A–20 No. For example, A is to make a single $10,000 payment to B. Provided that the other requirements of section 71 are met, the payment will qualify as an alimony or separate maintenance payment. If A were to make a single $15,000 payment to B, $10,000 of the payment would qualify as an alimony or separate maintenance payment and $5,000 of the payment would be disqualified under the minimum term rule because payments were not to be made for the minimum period.

Q–21 Do you excess front-loading rules apply to payments received under a decree described in section 71(b)(2)(C)?

A–21 No. Payments under decrees described in section 71(b)(2)(C) are to be disregarded entirely for purposes of applying the excess front-loading rules.

Q–22 Both the minimum term rule and the recapture rule refer to 6 "post-separation years". What are the 6 "post separation years"?

A–22 The 6 "post-separation years" are the 6 consecutive calendar years beginning with the first calendar year in which the payor pays to the payee an alimony or separate maintenance payment (except a payment made under a decree described in section 71(b)(2)(C)). Each year within this period is referred to as a "post-separation year". The 6-year period need not commence with the year in which the spouses separate or divorce, or with the year in which payments under the divorce or separation instrument are made, if no payments during such year qualify as alimony or separate maintenance payments. For example, a decree for the divorce of A and B is entered in October, 1985. The decree requires A to make monthly payments to B commencing November 1, 1985, but A and B are members of the same household until February 15, 1986 (and as a result, the payments prior to January 16, 1986, do not qualify as alimony payments). For purposes of applying the excess front-loading rules to payments from A to B, the 6 calendar years 1986 through 1991 are post-separation years. If a spouse has been making payments pursuant to a divorce or separation instrument described in section 71(b)(2) (A) or (B), a modification of the instrument or the substitution of a new instrument (for example, the substitution of a divorce decree for a written separation agreement) will not result in the creation of additional post-separation years. However, if a spouse has been making payments pursuant to a divorce or separation instrument described in section 71(b)(2)(C), the 6-year period does not begin until the first calendar year in which alimony or separate maintenance payments are made under a divorce or separation instrument described in section 71(b)(2) (A) or (B).

Q–23 How does the minimum term rule operate?

A–23 The minimum term rule operates in the following manner. To the extent payments are made in excess of $10,000, a payment will qualify as an alimony or separate maintenance payment only if alimony or separate maintenance payments are to be made in each of the 6 post-separation years. For example, pursuant to a divorce decree, A is to make alimony payments to B of $20,000 in each of the 5 calendar years 1985 through 1989. A is to make no payment in 1990. Under the minimum term rule, only $10,000 will qualify as an alimony payment in each of the calendar years 1985 through 1989. If the divorce decree also required A to make a $1 payment in 1990, the minimum term rule would be satisfied and $20,000 would be treated as an alimony payment in each of the calendar years 1985 through 1989. The recapture rule would, however, apply for 1990. For purposes of determining whether alimony or separate maintenance payments are to be made in any year, the possible termination of such payments upon the happening of a contingency (other than the passage of time) which has not yet occurred is ignored (unless such contingency may cause all or a portion of the payment to be treated as a child support payment).

Q–24 How does the recapture rule operate?

A–24 The recapture rule operates in the following manner. If the amount of alimony or separate maintenance payments paid in any post-separation year (referred to as the "computation year") falls short of the amount of alimony or separate maintenance payments paid in any prior post-separation year by more than $10,000, the payor must compute an "excess amount" for the computation year. The excess amount for any computation year is the sum of excess amounts determined with respect to each prior post-separation year. The excess amount determined with respect to a prior post-separation year is the excess of (1) the amount of alimony or separate maintenance payments paid by the payor spouse during such prior post-separation year, over (2) the amount of the alimony or separate maintenance payments paid by the payor spouse during the computation year plus $10,000. For purposes of this calculation, the amount of alimony or separate maintenance payments made by the payor spouse during any post-separation year preceding the computation year is required by any excess amount previously determined with respect to such year. The rules set forth above may be illustrated by the following example. A makes alimony payments to B of $25,000 in 1985 and $12,000 in 1986. The excess amount with respect to 1985 that is recaptured in 1986 is $3,000 ($25,000 − ($12,000 + $10,000)). For purposes of subsequent computation years, the amount deemed paid in 1985 is $22,000. If A makes alimony payments to B of $1,000 in 1987, the excess amount that is recaptured in 1987 will be $12,000. This is the sum of an $11,000 excess amount with respect to 1985 ($22,000 − $1,000 + $10,000)) and a $1,000 excess amount with respect to 1986 ($12,000 − ($1,000 + $10,000)). If, prior to the end of 1990, payments decline further, additional recapture will occur. The payor spouse must include the excess amount in gross income for his/her taxable year begining with or in the computation year. The payee spouse is allowed a deduction for the excess amount in computing adjusted gross income for his/her taxable year beginning with or in the computation year. However, the payee spouse must compute the excess amount by reference to the date when payments were made and not when payments were received.

Q–25 What are the exceptions to the recapture rule?

A–25 Apart from the $10,000 threshold for application of the recapture rule, there are three exceptions to the recapture rule. The first exception is for payments received under temporary support orders described in section 71(b)(2)(C) (see A–21). The second exception is for any payment made pursuant to a continuing liability over the period of the post-separation years to pay a fixed portion of the payor's income from a business or property or from compensation for employment or self-employment. The third exception is where the alimony or separate maintenance payments in any post-separation year cease by reason of the death of the payor or payee or the remarriage (as defined under applicable local law) of the payee before the close of the computation year. For example, pursuant to a divorce decree, A is to make cash payments to B of $30,000 in each of the calendar years 1985 through 1990. A makes cash payments of $30,000 in 1985 and $15,000 in 1986, in which year B remarries and A's alimony payments cease. The recapture rule does not apply for 1986 or any subsequent year. If alimony or separate maintenance payments made by A decline or cease during a post-separation year for any other reason (including a failure by the payor to make timely payments, a modification of the divorce or separation instrument, a reduction in the support needs of the payee, or a reduction in the ability of the payor to provide support) excess amounts with respect to prior post-separation years will be subject to recapture.

(e) *Effective dates*

Q–26 When does section 71, as amended by the Tax Reform Act of 1984, become effective?

A–26 Generally, section 71, as amended, is effective with respect to divorce or separation instruments (as defined in section 71(b)(2)) executed after December 31, 1984. If a decree of divorce or separate maintenance executed after December 31, 1984, incorporates or adopts without change the terms of the alimony or separate maintenance payments under a divorce or separation instrument executed before January 1, 1985, such decree will be treated as executed before January 1, 1985. A change in the amount of alimony or separate maintenance payments or the time period over which such payments are to continue, or the addition or deletion of any contingencies or conditions relating to such payments is a change in the terms of the alimony or separate maintenance payments. For example, in November 1984, A and B executed a written separation agreement. In February 1985, a decree of divorce is entered in substitution for the written separation agreement. The decree of divorce does not change the terms of the alimony A pays to B. The decree of divorce will be treated as executed before January 1, 1985 and hence alimony payments under the decree will be subject to the rules of section 71 prior to amendment by the Tax Reform Act of 1984. If the amount or time period of the alimony or separate maintenance payments are not specified in the pre-1985 separation agreement or if the decree of divorce changes the amount or term of such payments, the decree of divorce will not be treated as executed before January 1, 1985, and alimony payments under the decree will be subject to the rules of section 71, as amended by the Tax Reform Act of 1984.

Section 71, as amended, also applies to any divorce or separation instrument executed (or treated as executed) before January 1, 1985 that has been modified on or after January 1, 1985, if such modification expressly provides that section 71, as amended by the Tax Reform Act of 1984, shall apply to the instrument as modified. In this case, section 71, as amended, is effective with respect to payments made after the date the instrument is modified.

Par. 3. New § 1.215–1T is added immediately after § 1.215–1 to read as follows:

§ 1.215–1T Alimony, etc., payments (temporary).

Q–1 What information is required by the Internal Revenue Service when an alimony or separate maintenance payment is claimed as a deduction by a payor?

A–1 The payor spouse must include on his/her first filed return of tax (Form 1040) for the taxable year in which the payment is made the payee's social security number, which the payee is required to furnish to the payor. For penalties applicable to a payor spouse who fails to include such information on his/her return of tax or to a payee spouse who fails to furnish his/her social security number to the payor spouse, see section 6676.

Par. 4. New § 1.152–4T is added immediately after § 1.152–4 to read as follows:

§ 1.152–4T Dependency exemption in the case of a child of divorced parent, etc. (temporary).

(a) *In general.*

Q–1 Which parent may claim the dependency exemption in the case of a child of divorced or separated parents?

A–1 Provided the parents together would have been entitled to the dependency exemption had they been married and filing a joint return, the parent having custody of a child for the greater portion of the year (the custodial parent) will generally be entitled to the dependency exemption. This rule applies to parents not living together during the last 6 months of the calendar year, as well as those divorced or separated under a separation agreement.

Q–2 Are there any exceptions to the general rule in A–1?

A–2 Yes, there are three exceptions. The general rule does not apply (i) if a multiple support agreement is in effect (see section 152(c)), (ii) if a decree or agreement executed prior to January 1, 1985 provides that the custodial parent has agreed to release his or her claim to the dependency exemption to the noncustodial parent and the noncustodial parent provides at least $600 of support to the child (see section 152(e)(4)), or (iii) if the custodial parent relinquishes the exemption in the manner described in A–3.

Q–3 How may the exemption for a dependent child be claimed by a noncustodial parent?

A–3 A noncustodial parent may claim the exemption for a dependent child only if the noncustodial parent attaches to his/her income tax return for the year of the exemption a written declaration from the custodial parent stating that he/she will not claim the child as a dependent for the taxable year beginning in such calendar year. The written declaration may be made on a form to be provided by the Service for this purpose. Once the Service has released the form, any declaration made other than on the official form shall conform to the substance of such form.

Q–4 For what period may a custodial parent release to the noncustodial parent a claim to the exemption for a dependent child?

A–4 The exemption may be released for a single year, for a number of specified years (for example, alternate years), or for all future years, as specified in the declaration. If the exemption is released for more than one year, the original release must be attached to the return of the noncustodial spouse and a copy of such release must be attached to his/her return for each succeeding taxable year for which he/she claims the dependency exemption.

Q–5 May only the custodial parent claim a deduction under section 213(d) for medical expenses paid by the parent or an income exclusion under section 105(b) for medical expenses paid by an employer for a dependent child?

A–5 No. Under the new rules, if a child receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, that child will be treated as a dependent of both parents for purposes of sections 105(b) and 213(d). Thus, a parent can deduct medical expenses paid by that parent for a child even though a dependency exemption for the child is claimed by the other parent. The special rule of sections 105(b) and 213(d) does not apply where over half of the support of a child is treated as having been received from a person under the provisions of section 152(c) (relating to multiple support agreements).

Q–6 When does section 152(e), as amended by the Tax Reform Act of 1984, become effective?

A–6 Section 152(e), as amended, is effective with respect to dependency exemptions for taxable years beginning after December 31, 1984.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 1041(d)(4) (98 Stat. 798, 26 U.S.C. 1041(d)(4)), 152(e)(2)(A) (98 Stat. 802, 26 U.S.C. 152(e)(2)(A)), 215(c) (98 Stat. 800, 26 U.S.C. 215(c)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954. Approved by the Office of Management and Budget under control number 1545–0074.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.
August 17, 1984.
Approved:
Ronald A. Pearlman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23129 Filed 8–30–84; 8:45 am]

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26 CFR Part 1

[T.D. 7971]

Income Tax; Taxable Years Beginning After December 31, 1953; Returns Relating to Foreclosures and Abandonments of Security

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirement of reporting abandonments, foreclosures, and other acquisitions of property securing indebtedness. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person who, in connection with a trade or business, lends money secured by property, and who later either acquires an interest in any property securing the indebtedness, or has reason to know that the property which is security for the indebtedness has been abandoned. The regulations provide these persons with the guidance necessary to comply with the law. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The regulations are effective for acquisitions and abandonments of property after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the reporting of abandonments, foreclosures, and other acquisitions of property securing indebtedness under section 6050J of the

Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 687). The temporary regulations will remain in effect until superseded by final regulations on this subject. In the Proposed Rules section of this issue of the **Federal Register** is a notice of proposed rulemaking relating to information reporting of transfers of security to persons other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 688).

Explanation of Provisions

Section 6050J provides that an information return must be made by any person who, in connection with a trade or business, lends money secured by property, and who later either acquires an interest in the property or has reason to know the property has been abandoned. Any person required to make an information return under section 6050J must also furnish a statement to the applicable taxpayer (or taxpayers) on or before January 31 of the calendar year following the year in which the acquisition or abandonment of property occurs. Section 6050J is effective for acquisitions and abandonments of property after December 31, 1984.

Due to the effective date of section 6050J, there is a need for immediate guidance so that persons subject to section 6050J can make preparations to comply with these provisions. Therefore, these regulations have been drafted in question and answer format in order to facilitate their timely publication. No inference should be drawn, however, regarding issues not raised herein or regarding the inclusion of certain questions, and not others, in these regulations. The regulations provide rules relating to the reporting requirements of section 6050J, including the persons and property subject to the reporting requirement, the information required to be reported, and when a person has reason to know that property which secures a loan has been abandoned.

Special Analyses

The Commissioner of Internal Revenue has determined that this regulation is not a major rule as defined in Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and a Regulatory Impact Analysis is not required for this rule.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0877.

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

The following new § 1.6050J-1T shall be added at the appropriate place.

§ 1.6050J-1T Questions and answers concerning information returns relating to foreclosures and abandonments of security.

The following questions and answers relate to the requirement of reporting foreclosures and abandonments of security under section 6050J of the Internal Revenue Code Act of 1954, as added by section 148 of the Tax Reform Act of 1984 (98 Stat. 687).

Requirement of Reporting

In General

Q-1: What does section 6050J provide with respect to the reporting of acquisitions and abandonments of property that secures indebtedness?

A-1: Section 6050J provides that an information return must be made by any person who, in connection with a trade or business conducted by the person (except as provided in A-13), lends money and, in full or partial satisfaction of the debt, acquires an interest in any property that is security for the debt, or has reason to know that the property has been abandoned. For purposes of these questions and answers, a person who lends money in connection with a trade or business is referred to as a "lender".

Trade or Business Requirement

Q-2: Must a person be in the trade or business of lending money in order to be subject to the reporting requirement of this section?

A-2: No. A person does not have to be in the trade or business of lending money to be subject to this reporting requirement. Thus, if L sells automobiles and lends money to B to enable B to purchase an automobile from L for use in B's trade or business, and that automobile is security for the loan, L would be subject to this reporting requirement. Similarly, if P promotes interests in an oil well, and lends money to I to enable I to invest in the oil well which is security for the loan, P would be subject to this reporting requirement.

Q-3: How does the reporting requirement apply in the case of pools, fixed investment trusts, or other similar arrangements through which undivided beneficial interests or participations in indebtedness are offered?

A-3: In these cases, the owners of the undivided beneficial interests or participations are not subject to this reporting requirement. Instead, the trustee, record owner, or person acting in a similar capacity is treated as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with respect to each loan or other evidence of indebtedness. For situations when more than one return or statement must be filed, see A-29, A-31, and A-41. The trustee, record owner, or person acting in a similar capacity, rather than the owners of beneficial interests or participations, is subject to the applicable penalty provisions (see A-43).

Q-4: How does the reporting requirement apply in the case of corporate, tax-exempt, or other bank issues?

A-4: In these cases, the owners or holders of a bond issue are not required to report. Instead, the trustee or person acting in a similar capacity is treated as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with respect to a bond issue. For situations when more than one return or statement must be filed, see A-29, A-31, and A-41. The trustee or person acting in a similar capacity, rather than the owners or holders of a bond issue, is subject to the applicable penalty provisions (see A-43).

Property Subject to Reporting

Q-5: Does the reporting requirement apply to all types of property securing indebtedness?

A-5: No. The reporting requirement does not apply to any loan made to an individual and secured by an interest in tangible personal property which is neither held for investment nor used in a trade or business. For rules governing when the reporting requirment applies to tangible personal property of a type ordinarily used for personal purposes, see A-8.

Q-6: Does the reporting requirement apply when property securing indebtedness is held both for personal use and for use in a trade or business?

A-6: Yes. The reporting requirement applies when property securing indebtedness is held both for personal use and for use in a trade or business. Similarly, the reporting requirement applies when the borrower holds such property both for personal use and for investment purposes.

Q-7: Does the reporting requirement apply to indebtedness secured by a personal residence?

A-7: Yes. A lender is subject to the reporting requirement if the property that is security for the loan is real property, including a personal residence, whether or not held for investment or used in a trade or business.

Q-8: In the case of a loan made to an individual and secured by personal property of a type that is ordinarily used for personal purposes, how does a lender know whether such property is used in a trade or business or held for investment purposes?

A-8: In the case of a loan made to an individual and secured by personal property of a type that is ordinarily used for personal purposes, such as an automobile, computer, or boat, the lender is subject to the reporting requirement if the lender knows that the property will be used in a trade or business or held for investment purposes. For this purpose, a lender knows information if the information is included on the books and records of the lender or its agents pertaining to the loan, or is known by the lender or agent's officers, partners, principals or employees, but only if such information was acquired in the course of their ordinary business activities on behalf of the lender. For example, if a borrower indicates on the loan agreement or disclosure statement that the borrower intends to use the property securing the loan in the borrower's trade or business, the lender is subject to this reporting requirement. Similarly, if the borrower notifies the lender that the borrower intends to convert the property from personal use to use in a trade or business, the lender is subject to the reporting requirement.

Q-9: If a lender maintains a system under which the lender classifies loans according to the use of property that secures the loan (such as use in a trade or business or personal use), may the lender rely on this system in determining whether the reporting requirement applies?

A-9: Yes. A lender may rely on the classification system to determine whether the reporting requirement applies, provided that the classification system is designed and reasonably maintained to ensure accuracy in identifying the use of property.

Acquisition of an Interest

Q-10: For purposes of the reporting requirement, when is a lender treated as acquiring an interest in property that is security for indebtedness?

A-10: In general, an interest in property is acquired on the earlier of the date title is transferred to the lender or the date possession and the burdens and benefits of ownership are transferred to the lender. If State or other applicable law provides for an objection period within which the borrower and other appropriate parties may object to the lender's proposal to retain the property in satisfaction of the indebtedness, a lender is treated as acquiring an interest in the property on the date this objection period expires. If the lender purchases the property at a sale held to satisfy the indebtedness, such as at a foreclosure or execution sale, the lender is treated as acquiring an interest in the property on the later of the date of the sale or the date the borrower's right of redemption, if any, expires. See A-15 for rules governing reporting when a party other than the lender acquires property securing indebtedness at a foreclosure, execution or similar sale.

Q-11: If a lender takes possession of property that is security for a loan for a limited purpose, such as completing construction on or improvement to the property, is the lender treated as having acquired an interest in the property at that point?

A-11: No. The lender in these circumstances in not treated as acquiring an interest in the property. However, the lender must report if he later acquires an interest in the property in full or partial satisfaction of the indebtedness (see A-10 or A-15).

Indirect Acquisition

Q-12: If a lender acquires an interest in a partnership, trust, or other entity in full or partial satisfaction of a loan that is secured by the assets or property owned by the partnership, trust, or other entity, is the lender treated as acquiring an interest in the property securing the loan?

A-12: Yes. A lender in this case acquires an interest in the underlying assets or property and the reporting requirements of this section apply to the acquisition of that interest in a partnership, trust, or other entity.

Treatment of Governmental Units

Q-13: How does the reporting requirement apply to a governmental unit?

A-13: A governmental unit (or any agency or instrumentality thereof) which lends money secured by property is subject to the reporting requirement without regard to the requirement that the money be lent in connection with a trade or business. A governmental unit (or any agency or instrumentality thereof) subject to the reporting requirement must designate an officer or employee to make the return. The officer or employee appropriately designated must make the return in the form and manner prescribed by this section.

Notification of Sale Under Section 7425(b)

Q-14: Does a return filed as required under this section constitute a notification of sale under section 7425(b)?

A-14: No. A return filed under this section is not considered a notification of sale under section 7425(b).

Sale to Third Party

Q-15: If a party other than the lender purchases property securing a loan at a foreclosure, execution, or similar sale, must the lender report under this section?

A-15: Yes. The lender must report if a party other than the lender purchases property securing the lender's loan at a foreclosure, execution, or similar sale. If the proceeds of that sale are applied to satisfy all or any portion of the lender's loan, the lender must treat the property as having been abandoned. The lender will be treated as having reason to know that the property has been abandoned as of the date of the sale (see A-19). If no proceeds of such a sale are made available to satisfy any portion of the lender's loan but the lender's security interest foreclosed upon is terminated, reduced, or otherwise impaired by reason of the sale, the lender will be treated as having reason to know that the property has been abandoned as of the date of the sale (see A–19).

Treatment of Foreign Borrowers

Q–16: How does the reporting requirement apply in the case of foreign borrowers where the property securing the loan is located outside the United States?

A–16: No reporting is required where both of the following requirements are met: (a) The property securing the loan is located outside the United States, and (b) at any time before the lender is required to report, the borrower furnishes the lender with a statement, signed upon penalty of perjury, that he is an exempt foreign person (unless an employee or other agent of the lender who is responsible for receiving or reviewing these statements has actual knowledge that the statement is incorrect). For purposes of this section, the borrower is an exempt foreign person if he:

(1) Is not a citizen of the United States, a resident of the United States, a person treated as a resident of the United States by reason of an election under section 6013 (g) or (h) or a United States corporation or other United States entity;

(2) Is not subject to the provisions of section 877; and

(3) At the time the statement is furnished, is not, or reasonably expects not to be, engaged in a trade or business in the United States during the current year in connection with the loan or property securing the loan.

If, after providing the statement, the borrower ceases to be an exempt foreign person, he must so notify the lender in writing within 30 days of this change in status. If the lender is so notified, this exemption from the reporting requirement no longer applies.

Abandonments

Q–17: For purposes of this reporting requirement, when has an abandonment occurred?

A–17: An abandonment has occurred when the objective facts and circumstances indicate that the borrower intended to and has permanently discarded the property from use.

Q–18: Does the fact that a lender knows or has reason to know of an abandonment of property securing a loan mean that the borrower is entitled to an abandonment loss?

A–18: No. The definition of an abandonment of property securing a loan in A–17 applies only for purposes of this reporting requirement and is not intended to apply for other purposes, such as determining whether a borrower would be entitled to an abandonment loss.

Q–19: Under what circumstances will a lender be considered to have reason to know that property which is security for a loan has been abandoned?

A–19: Whether a lender has reason to know that property which is security for a loan has been abandoned is to be determined with reference to all the facts and circumstances concerning the status of the property. When the lender in the ordinary course of business becomes aware or should become aware of circumstances indicating that the property has been abandoned, the lender will be deemed to know all the information that would have been discovered through a reasonable inquiry. For example, if a borrower has failed (without adequate explanation) to make payments on the loan for a substantial period, the lender must make a reasonable inquiry to determine whether there has been an abandonment. If a reasonable inquiry would reveal objective facts and circumstances indicating that the borrower intended to and has permanently discarded the property from use, then the lender has reason to know that the property has been abandoned. If a lender knows or has reason to know that the property has been abandoned and reasonably expects to commence foreclosure, execution sale, or similar proceedings, see A–20.

Q–20: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale, or similar proceedings, is reporting of the abandonment required?

A–20: In these circumstances, the lender need not report as of the date he knows or has reason to know that the property has been abandoned. Instead, the lender must report as of the date he acquires an interest in the property or a third party purchases the property at a foreclosure, execution or similar sale (see A–10 and A–15). In any other case, the lender must report as of the date the lender knows or has reason to know that the property has been abandoned (see A–18).

Q–21: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale or similar proceedings but in fact does not commence such proceedings within the three month period, must the lender report?

A–21: Yes. In these circumstances, the lender's obligation to report the abandonment arises at the close of the three month period. For example, if on December 31, 1985, a lender first has reason to know that property securing his loan has been abandoned and reasonably expects to commence foreclosure proceedings within three months, the lender is not required to report as of December 31, 1985 (see A–20). However, if the lender does not in fact commence foreclosure proceedings by March 31, 1986, the lender's obligation to report arises on this date. The lender must provide information on the abandonment under A–27 as of the date the lender first had reason to know of the abandonment (December 31, 1985). The lender must file the return required under this section with the Internal Revenue Service on or before February 28, 1987, and furnish a statement to the borrower on or before January 31, 1987 (see A–33 and A–40).

Subsequent Holder of a Loan

Q–22: To whom does the reporting requirement apply when a person lends money secured by property and subsequently transfers his interest in the indebtedness to another person?

A–22: The subsequent holder of a loan is treated as the lender for purposes of this reporting requirement and is the party required to report with respect to events occurring after the date he acquires the loan. This rule applies to all subsequent holders of a secured loan, including governmental units or any agencies or instrumentalities thereof. For example, if the Federal National Mortgage Association purchases real property loans from a lender, it would be subject to the reporting requirement.

Multiple Lenders

Q–23: If more than one person lends money secured by the same property, and one lender forecloses upon or otherwise acquires an interest in the property, must the other lenders report under this section?

A–23: Yes. In these circumstances, other lenders must report if they know or have reason to know that the property securing their loans is foreclosed upon or otherwise acquired by another lender and the sale or other acquisition terminates, reduces, or otherwise impairs their security interests in the property (see A–15). For example, if there is a first and second mortgage on a building, and the second mortgagee knows or has reason to know that the first mortgagee has foreclosed upon the building, the second mortgagee is subject to the reporting requirement even if no part of the indebtedness owed to him is satisfied by the proceeds of the foreclosure sale. For a description of the reporting requirement applicable to the first mortgagee, see A–10 and A–15.

Q–24: If more than one person lends money secured by property, and one lender knows or has reason to know that the property has been abandoned, must each lender report under this section?

A–24: No. Each lender is required to report only when he knows or has reason to know that property has been abandoned (see A–19).

Form and Manner of Return

Form of Return

Q–25: What form shall be used to make a return required by section 6050J?

A–25: Except as provided in A–35, the return must be made on Forms 1096 and 1099. The person required to make the return, however, may prepare and use a form which contains provisions substantially similar with those of Forms 1096 and 1099 if the person complies with any revenue procedures relating to substitute Forms 1096 and 1099 in effect at that time.

Information Included on Return

Q–26: What information must be included on a return required by reason of an acquisition of an interest in property that is security for a loan?

A–26: The following information must be included on the return:

(a) The name and address of the borrower with respect to the secured indebtedness;

(b) The borrower's TIN, as defined in Section 7701(a);

(c) A general description of the property in which an interest is acquired;

(d) Whether the borrower is personally liable for repayment of the indebtedness;

(e) The date on which the person acquired an interest in the property (see A–10 or A–15);

(f) The amount of the indebtedness outstanding at the time the interest in property is acquired;

(g) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time the interest is acquired;

(h) The amount of the indebtedness satisfied by the acquisition; and

(i) Any other information as may be required by Forms 1096 and 1099.

Q–27: What information must be included on a return required because a person knows or has reason to know that property which is security for a loan has been abandoned?

A–27: The following information must be included on the return:

(a) The information required in A–26 (a), (b), and (d);

(b) A general description of the property abandoned;

(c) The date on which the person first knows or has reason to know that the property has been abandoned;

(d) The amount of the indebtedness outstanding as of the date on which the person first knows or has reason to know that the property has been abandoned;

(e) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time of abandonment; and

(f) Any other information as may be required by Forms 1096 and 1099.

Partnership Borrower

Q–28: If a borrower is a partnership, must the TIN of each partner be reported?

A–28: No. If a borrower is a partnership, only the TIN of the partnership must be reported.

Multiple Borrowers

Q–29: If there is more than one borrower on a single secured loan, must a person required to report under this section make a return with respect to each borrower on the loan?

A–29: Yes. Generally, a separate return must be made with respect to each borrower on a secured loan. However, only one report is required if the lender knows that the borrowers hold property as tenants by the entirety or that the property is held as community property.

General Description of Property

Q–30: What type of information constitutes a general description of the property?

A–30: A general description of the property consists of information that sufficiently identifies the property. In the case of real property, a general description consists of the property's address unless this information is not available or would not sufficiently identify the property, in which case a legal description (*i.e.,* section, lot, block) must be provided instead. A general description of personal property consists of the type, make and model (where applicable) of the property. For example, an automobile would be described as "Car—1983 Pontiac Firebird." However, in the case of a single loan secured by more than one piece of personal property, a general description consists of the type or category of the pieces acquired or abandoned. For example, if the security for a single loan is six desks and seven typewriters, a general description of the property would be "Office Equipment."

Multiple Acquisitions and Abandonments

Q–31: Must each acquisition and abandonment that occurs in a taxable year be reported on a separate return?

A–31: Generally, each acquisition and abandonment required to be reported by a person for a taxable year must be reported on a separate return. However, in the case of a single loan secured by more than one piece of property, separate returns will not be required when a person acquires an interest in, or knows or has reason to know of the abandonment of, more than one piece of property that is security for the single loan in a taxable year. Instead, the person shall make one return for all of the acquisitions and one return for all of the abandonments of property that are security for the loan for a taxable year.

Fair Market Value

Q–32: In the case of a foreclosure, execution, or similar sale, what is the fair market value of the property for purposes of the reporting requirement?

A–32: In general, in the absence of clear and convincing evidence to the contrary, the proceeds of the foreclosure, execution, or similar sale will be considered the fair market value of the property for purposes of this reporting requirement.

Time for Filing

Q–33: When must a person file the return or returns required by section 6050J with the Internal Revenue Service?

A–33: The return or returns must be filed on or before February 28th of the year following the calendar year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

Place for Filing

Q–34: Where must the return or returns be filed?

A–34: The return or returns must be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for the Form 1099 series.

Use of Magnetic Media

Q–35: What rules apply with respect to the use of magnetic media?

A–35: Any return required under section 6050J must be filed on magnetic media to the extent required by section 6011(e). Any person not required by section 6011(e) to file returns under section 6050J on magnetic media may request permission to do so. See § 1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

Requirement of Furnishing Statements to Borrowers

In General

Q–36: What statements must be furnished to borrowers?

A–36: Any person required to make an information return under section 6050J must furnish a statement to each borrower whose name is required to be set forth in a return filed with the Internal Revenue Service. For the date when the statement must be furnished, see A–40.

Q–37: Is the statement considered to be furnished to the borrower if it is mailed to the borrower at the borrower's last known address?

A–37: Yes.

Information Included on Statement

Q–38: What information must be included on the statement?

A–38: The statement must include the following information:

(a) Except in the case where the return is made on behalf of a governmental unit (or any agency or instrumentality thereof), the name and address of the person required to make the information return;

(b) In the case where the return is made on behalf of a governmental unit or any agency or instrumentality thereof, the name and address of such unit, agency or instrumentality;

(c) The information required under A–26 or A–27, whichever is applicable; and

(d) A legend stating that the information is being reported to the Internal Revenue Service.

Copy of Form 1099 to Borrowers

Q–39: May the requirement of furnishing a statement be met by furnishing a copy of the Form 1099 filed with respect to that borrower?

A–39: Yes. The requirement of furnishing a statement may be met by furnishing to the borrower a copy of the Form 1099 containing the same information filed with the Service with respect to that borrower, or a reasonable facsimile thereof, provided that the form or the reasonable facsimile bears a legend stating that the information is being reported to the Internal Revenue Service.

Time of Furnishing Statement

Q–40: When is a statement required to be furnished to the borrower?

A–40: A statement is required to be furnished to the borrower on or before January 31 of the year following the calendar year in which the acquisition or abandonment of property occurs.

Multiple Borrowers

Q–41: If a person required to report under this section must make an information return with respect to more than one borrower on a single loan, of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

A–41: Yes. A separate statement must be furnished to each borrower with respect to which a separate return is required under section 6050J.

Extensions of Time

Q–42: Are there any circumstances under which an extension of time may be granted with respect to the requirement of furnishing statements to borrowers?

A–42: Yes. Upon written application of the person required to report, the service center director may, for good cause shown, grant that person an additional period (not to exceed 30 days) in which to furnish statements under section 6050J with respect to any calendar year. The application for an extension must be addressed to the director of the service center with which the returns must be filed. The application must contain a concise statement of the reasons for requesting the extension in order to aid the service center director in determining the period of extension, if any, to be granted. The application must state at the top of the first page that it is made under section 1.6050J–1T and must be signed by the person required to report under section 6050J. In general, the application should be filed not earlier than September 30 of the year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property, and not later than January 15 of the following year.

Penalties

Q–43: Are there penalties for failing to comply with the requirements of section 6050J and the regulations thereunder?

A–43: Yes. The penalty for failing to make any information return with respect to any borrower under section 6050J is provided in section 6652. The penalty for failing to furnish a statement to any borrower is provided in section 6678.

Effective Date

Q–44: When is section 6050J effective?

A–44: Section 6050J is effective for acquisitions and abandonments of property after December 31, 1984.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 6050J and 7805 of the Internal Revenue Code of 1954 (98 Stat. 687, 68A Stat. 917, 26 U.S.C. 6050J, 7805 respectively).

(Approved by the Office of Management and Budget under control number 1545–0877)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 17, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23133 Filed 8–30–84; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 7974]

Temporary Income Tax Regulations Under the Tax Reform Act of 1984 Relating to a Transitional Rule for Certain Transfers of Intangibles

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to a transitional rule for certain transfers of intangibles to foreign corporations. This transitional rule was enacted as a part of the Tax Reform Act of 1984. The regulations are issued to provide immediate guidance to the public and to the Service for ruling purposes.

DATE: The regulations apply to transfers of intangible property made after June 6, 1984, and before January 1, 1985. However, they do not apply to any transfer or exchange of property described in a ruling request filed under section 367(a) of the Internal Revenue Code of 1954 before March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mary E. Dean of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289 (not a tollfree call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 367(a) of the Internal Revenue Code. The transitional rule implemented by these regulations relates to certain transfers of intangibles under section 367(a) and is part of section 131 of the Tax Reform Act of 1984 (Pub. L. No. 98-369, 98 Stat. 494) (hereinafter, the "Act").

Explanation of Provisions

This Treasury decision adds a new § 1.367(a)-4T to the Code of Federal Regulations. The Act amended section 367(d) of the Internal Revenue Code to provide special rules for transfers of intangibles taking place after December 31, 1984, in taxable years ending after that date. A transitional rule was provided in section 131(g) of the Act to protect against transfers made after June 6, 1984, and before January 1, 1985, in order to avoid the rules of new section 367(d). The Act provided that this transitional rule may be waived at the discretion of the Service.

Paragraph (a) of § 1.367(a)-4T provides the general rule that transfers of intangible property made after June 6, 1984, and before January 1, 1985, shall be treated as made pursuant to a plan having as one of its principal purposes the avoidance of Federal income tax.

Paragraph (b) details the applicability of the general rule. The Act provides that the general rule will not apply to transfers of property described in a request filed before March 1, 1984. This exception is reflected in paragraph (b).

Paragraph (c) contains guidelines for the granting of a waiver from the general rule of paragraph (a). Paragraph (c)(1) sets forth transfers which will be granted a waiver. Paragraph (c)(2) sets forth transfers which will not be granted a waiver. The transfers described in paragraph (c)(2) (i) and (ii) are listed in the conference report as transfers that should not be given a waiver. Paragraph (c)(3) lists facts and circumstances which will be used in determining whether a waiver is to be granted for transfers not described in paragraph (c) (1) or (2).

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 20, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for this regulation. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Mary E. Dean of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 1.301-1—1.385-6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

PART 1—[AMENDED]

Adoption of Amendments to the Regulations

The amendments to 26 CFR Part 1 are as follows:

Income Tax Regulations

A new § 1.367(a)-4T is added immediately after § 1.367(a)-3, to read as follows:

§ 1.367(a)-4T Temporary regulations providing a transitional rule for certain transfers of intangibles.

(a) *General rule.* If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property to a foreign corporation, then, except as provided to the contrary in this section, the transfer shall be treated for purposes of section 367(a) of the Code as pursuant to a plan having as one of its principal purposes the avoidance of Federal income tax. For purposes of this section, the term "intangible property" means any—

(1) Patent, invention, formula, process, design, pattern or know-how;

(2) Copyright, literary, musical, or artistic composition;

(3) Trademark, trade name, or brand name;

(4) Franchise, license, or contract;

(5) Method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(6) Any similar item which property has substantial value independent of the services of any individual.

(b) *Period covered.* The rules of this section apply to transfers of intangible property made after June 6, 1984, and before January 1, 1985. However, these rules will not apply to any transfer or exchange of property described in a request for ruling filed under section 367(a) before March 1, 1984 or with respect to which a ruling was obtained before June 6, 1984. In the case of a transfer described in a request for ruling filed before March 1, 1984, the guidelines of Revenue Procedure 68-23 (68-1 CB 821) will be applicable (even if the transfer is made after December 31, 1984).

(c) *Waiver*—(1) *Waiver granted.* Application of the general rule of paragraph (a) of this section will be waived for any of the following transfers of intangible property:

(i) A transfer of intangible property for which the transferor agrees to apply to the transfer the rules applicable to post-December 31, 1984 transfers under section 367(d) as amended by section 131(b) of the Tax Reform Act of 1984.

(ii) A transfer for which the transferor—

(A) Purchased the intangible property from an unrelated third party,

(B) Has not deducted or claimed as credits against tax any research and development or other similar expenses incurred in developing the property, and

(C) Would have received for the transfer a favorable ruling under the guidelines of Revenue Procedure 68-23 (68-1 CB 821) as applicable prior to the Tax Reform Act of 1984;

(iii) A transfer in fact required by a foreign government as a necessary condition of doing business in the foreign country or compelled by a genuine threat of immediate expropriation by a foreign government; or

(iv) A transfer of good will, going concern value or similar intangible property developed by a foreign branch.

(2) *Waiver not granted.* Application of the general rule of paragraph (a) of this section will not, except as provided in paragraph (c)(1)(i) of this section, be waived for any of the following transfers:

(i) A transfer of intangible property that is not fully developed;

(ii) A transfer of intangible property that is not essential to the active conduct of a trade or business of the transferee; or

(iii) A transfer that would not have received a favorable ruling under the guidelines of Revenue Procedure 68-23. (See section 3.02(1) (a)(iv) and (b)(i) through (iv) of that revenue procedure.) For purposes of paragraph (c)(2)(i), intangible property will be treated as fully developed if it has been used in a

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trade or business or if no further significant research and development expenses are required or expected to be incurred prior to such use. For purposes of paragraph (c) of this section, intangible property is not essential to the active conduct of a trade or business unless the products or services to which the intangible relates may not be sold in a foreign country without access by ownership, license, or otherwise to the intangible property, or unless such access to the intangible property is necessary to realization of a level of earnings reasonable for that trade or business from sales of such products or services in that country.

(3) *Facts and circumstances.* In the case of a transfer not described in paragraph (c)(1) or (c)(2), a waiver may be granted subject to a facts and circumstances determination of whether the transfer would be pursuant to a plan having as one of its principal purposes the avoidance of Federal income tax. Waiver with respect to a transfer not described in paragraph (c)(1) will be granted only upon a determination that the transfer made before January 1, 1985, was not made for the purpose of avoiding the application of section 367(d). Favorable facts and circumstances to be considered in this regard in determining if a waiver of the general rule of paragraph (a) of this section will be given include (but are not limited to):

(i) The existence of a binding commitment (either with an unrelated party or with a foreign government or governmental agency) made before June 6, 1984, to transfer the intangible property;

(ii) The existence of a documented plan prior to March 1, 1984, to transfer the properties before January 1, 1985; and

(iii) Anticipated use of the intangible by the transferee immediately or soon after the transfer.

For purposes of paragraph (c)(3) (i) and (ii) of this section, the earlier the commitment or plan was made, the greater is the probability that a waiver will be given. In general, demonstration of the facts described in paragraph (c)(3)(iii) will not be sufficient for a waiver in the absence of other facts indicating that a waiver should be granted. Waiver will be granted under this paragraph (c)(3) only if the intangible property is fully developed, if the intangible property is essential to the active conduct of a trade or business of the transferee, and if a favorable ruling would have been issued under the guidelines of Revenue Procedure 68–23.

(4) *Effect of Waiver.* If the general rule of paragraph (a) of this section is waived, then a favorable ruling for the transfer of the intangible will be granted pursuant to Revenue Procedure 68–23.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. The period during which the transition rule of section 131(g) of the Act is applicable is a short period which has already begun. The Service presently has rulings pending which are subject to the transitional rule. Thus, both Service personnel and transferors of intangibles are in need of immediate guidance.

For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and section 131(g) of the Tax Reform Act of 1984 (98 Stat. 494).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: August 17, 1984.

Ronald A. Pearlman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23211 Filed 8–30–84; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Parts 41 and 48

[T.D. 7970]

Heavy Vehicle Use Tax; Tax on Diesel Fuel; Tax on the Sale of Piggyback Trailers; Extension of Payment Due Date for Certain Fuel Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the imposition of heavy vehicle use tax, the increase of the tax on diesel fuel, the reduction for a one-year period of the tax on the sale of piggyback trailers and semi-trailers, and the extension of the payment due date for certain fuel taxes. Changes to the applicable tax law were made by the Highway Revenue Act of 1982 and the Tax Reform Act of 1984. The regulations would affect owners of highway motor vehicles, retailers and users of diesel fuel, purchasers and sellers of piggyback trailers, and certain qualified persons liable for fuel taxes, and would provide them with the guidance needed to comply with those Acts.

DATE: The regulations relating to the heavy vehicle use tax are effective after June 30, 1984. The regulations relating to the tax on diesel fuel are effective after July 31, 1984. The regulations relating to the tax on the sale of piggyback trailers are effective for piggyback trailers sold at retail after July 17, 1984, and before July 18, 1985. The regulations relating to the fuel tax payment date are effective for certain fuel taxes due after March 31, 1983.

FOR FURTHER INFORMATION CONTACT: William A. Jackson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (LR–33–84) (202) 566–4336, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to heavy vehicle use tax under sections 4481, 4482, and 4483 of the Internal Revenue Code of 1954 (Code), as amended by section 513 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98–369, 98 Stat. 1003). This document also contains temporary regulations in the form of questions and answers relating to an increase in the tax on diesel fuel under section 4041(a) of the Code, a credit or refund to original purchasers of diesel-powered automobiles and light trucks under section 6427(g) of the Code, and an exemption of certain buses from the diesel fuel tax under section 6427(b)(2) of the Code as amended by sections 911(a), 911(b), and 915 of the Tax Reform Act of 1984, respectively. Also contained are temporary regulations in the form of questions and answers relating to a reduction in the retailer's excise tax on the sale of piggyback trailers and semi-trailers under section 4051(d) of the Code, as amended by section 921 of the Tax Reform Act of 1984. Also included are questions and answers relating to an extension of the payment due date for certain fuel taxes under section 518(a) of the Highway Revenue Act of 1982 as amended by section 734(i) of the Tax Reform Act of 1984.

The temporary regulations provided by this document will remain in effect until superseded by final regulations on these subjects. In forthcoming documents, proposed regulations dealing with the subject matter of this document will be issued as proposed Excise Tax Regulations under sections 4481, 4482, and 4483 of the Code (26 CFR Part 41) and sections 4041, 4051 and 6427 of the Code (26 CFR Part 48). The forthcoming proposed regulations will include revisions to either the use tax schedules or the method used to determine the taxable gross weight of highway motor vehicles for purposes of the heavy vehicle use tax. The forthcoming proposed regulations will also include provisions relating to section 143(a) of the Highway Revenue Act which provides that if a State registers highway motor vehicles without receiving proof of payment of the Federal Highway Use Tax, that State's Federal-aid highway funds may be reduced up to 25 percent for that fiscal year. This provision is effective for States registering highway motor vehicles on or after January 1, 1985.

The portion of these temporary regulations which are presented in the form of questions and answers are not intended to address comprehensively the issues raised by sections 4041, 4051, 6427(b)(2), and 6427(g). Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues arising under the above-mentioned sections. No inference, however, should be drawn regarding questions not expressly raised and answered.

Heavy Vehicle Use Tax

This document contains temporary regulations relating to the heavy vehicle use tax. Prior to enactment of the Highway Revenue Act of 1982 ("Highway Revenue Act") and the Tax Reform Act of 1984 ("Tax Reform Act"), an excise tax was imposed on the use on the public highways of any highway motor vehicle which (together with the semi-trailers and trailers customarily used in connection with highway motor vehicles of the same type as such vehicle) had a taxable gross weight in excess of 26,000 pounds, at a rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof. Use tax schedules set forth in § 41.4482(b)–1 were used to determine the taxable gross weight of highway motor vehicles.

Section 901 of the Tax Reform Act provides, effective for taxable periods beginning on or after July 1, 1984, that the heavy vehicle use tax is imposed only on highway motor vehicles which (together with the semi-trailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) have a taxable gross weight of at least 55,000 pounds. Under the temporary regulations, the use tax schedules are revised to reflect the increased threshold for incurring tax liability and to provide a new category for tractor-trailer-trailer combinations.

A person who owns 5 or fewer vehicles and operates 5 or fewer vehicles at all times during the taxable period beginning July 1, 1984, is allowed to use for that taxable period, the lesser of the rate imposed by section 4481(a) as effective on July 1, 1984, or the rate of $3.00 for each 1,000 pounds of taxable gross weight. The Highway Revenue Act provides that vehicle ownerships shall be aggregated to determine common control of vehicles for purposes of the one-year special rule for small owner-operators.

In addition, an exemption from the tax is provided for vehicles that will not be used for more than 5,000 miles on public highways during any taxable period. The Tax Reform Act provides that this exemption applies to agricultural vehicles that will not be used more than 7,500 miles on the public highways during any taxable period.

Finally, section 902 of the Tax Reform Act provides a 25 percent reduction of the tax imposed by section 4481 in the case of certain trucks used in logging.

Increase in the Diesel Fuel Tax

This document contains temporary regulations in the form of questions and answers relating to the increase in the diesel fuel tax. Section 911 of the Tax Reform Act increases the tax on diesel fuel subject to tax under section 4041(a) of the Code on or after August 1, 1984, from 9 cents a gallon to 15 cents a gallon. The temporary regulations clarify that if the tax imposed by section 4041(a)(1) of the Code is improperly paid upon the sale of diesel fuel to a retailer, the retailer must nevertheless pay the full diesel fuel tax when the fuel is sold for use a in diesel-powered highway vehicle.

Diesel Fuel Differential

This document also contains temporary regulations in the form of questions and answers relating to the diesel fuel differential amount payable in the form of an income tax credit or an excise tax refund to original purchasers of qualified diesel-powered vehicles. Section 911 of the Tax Reform Act, in addition to increasing the tax on diesel fuel from 9 cents a gallon to 15 cents a gallon for fuel sold or used on or after August 1, 1984, provides for the advance repayment of this increased tax (the diesel fuel differential amount) to original purchasers of qualified diesel-powered highway vehicles.

A "qualified diesel-powered highway vehicle" is any diesel-powered highway vehicle that has at least 4 wheels, has a gross vehicle weight rating of 10,000 pounds or less, and is registered for highway use in the United States under the laws of any State. An "original purchaser" is generally the first person to purchase a qualified diesel-powered highway vehicle after January 1, 1985, and before January 1, 1988, for use other than resale. In addition, a person who holds a qualified diesel-powered highway vehicle on January 1, 1985, for use other than resale, will be treated as an original purchaser, entitled to advance repayment of the diesel fuel differential amount or a fraction thereof.

The diesel fuel differential amount payable to an original purchaser of a qualified diesel-powered highway vehicle is $102, except such amount is $198 in the case of a truck or van. The fraction of the diesel fuel differential amount which is payable to a holder on January 1, 1985 of a qualified diesel-powered highway vehicle is determined by the model year of the vehicle. No amount is payable to a holder of a vehicle with a model year of 1978 or earlier. The basis of a qualified diesel-powered highway vehicle is, for purposes of subtitle A of the Code, reduced by the diesel fuel differential amount (or applicable fraction thereof).

Tax on Diesel Fuel Used in Certain Buses

This document also contains temporary regulations in the form of questions and answers relating to the refund of all or a portion of the excise tax on diesel fuel used in certain intercity, local and school buses. Section 915 of the Tax Reform Act provides for a refund of 12 cents a gallon with respect to intercity, local and school buses unless the diesel fuel is used in a qualified local bus, in which case a full 15 cents a gallon refund is allowable. A "qualified local bus" is a bus that is engaged in furnishing intracity passenger land transportation and has a seating capacity of at least 20 adults (not including the driver). Such transportation must be available to the general public and be along regular scheduled routes. Further, the bus must either be under contract with a State or local government or be receiving more than a nominal subsidy from a State or local government.

Reduction in Tax on the Sale of Piggyback Trailers

Also contained in this document are temporary regulations in the form of questions and answer relating to the temporary reduction of the excise tax on the retail sale of piggyback trailers or semi-trailers. Prior to enactment of the Tax Reform Act, the tax imposed by section 4051(a) of the Code on the first retail sale of a piggyback trailer or semi-trailer was 12 percent of the amount for which the article was sold. Section 921 of the Tax Reform Act temporarily reduces this tax to 6 percent of the amount for which a piggyback trailer or semi-trailer is sold in the case of sales which occur after July 17, 1984, and before July 18, 1985. In order to qualify for this reduced rate of tax, both the seller and the purchaser must register with the Internal Revenue Service and the purchaser must certify to the seller that the piggyback trailer or semi-trailer will be used, or resold for use, principally in connection with trailer-on-flatcar service by rail, or will be incorporated into an article which will be so used or resold. A special rule is provided to permit purchasers and sellers of piggyback trailers sold after July 17, 1984, and before October 30, 1984 to register to make such sales by October 30, 1984. If any piggyback trailer or semi-trailer which was sold subject to the reduced 6 percent tax under section 4051(a) is not used or resold for a use which qualifies for such rate, then such use or resale shall be treated as a sale to which section 4051(a) applies. The amount of tax imposed under section 4051(a) on such sale shall be equal to the amount of tax imposed on the first retail sale and the person so using or reselling such trailer or semi-trailer shall be liable for such tax.

Extension of Payment Due Date for Certain Fuel Taxes

Section 518(a) of the Highway Revenue Act authorized the Secretary to prescribe regulations which permit any qualified person whose liability for tax under section 4081 is payable with respect to semimonthly periods to have a due date of 14 days after the close of each semimonthly period if payment is made by wire transfer to any government depositary authorized under section 6302(c). Temporary regulation were published in § 145.3-1 implementing this provision. Section 734(i) of the Tax Reform Act provides that the use of the extended due date is permissible for wire transfers made to a Federal Reserve Bank, except as provided in regulations prescribed by the Secretary or his delegate. This temporary regulation provides that the extended due date provided in section 518(a) of the Highway Revenue Act for payment of fuel taxes under section 4081 will continue to be available for wire transfers made to authorized government depositaries in accordance with §145.3-1

Need for Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analysis

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (control no. 1545-0143).

Drafting Information

The principal authors of these temporary regulations are William A. Jackson and Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR Part 41

Excise taxes, Motor vehicles.

26 CFR Part 48

Agriculture, Arms and ammunition, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 41 and 48 are amended as follows:

PART 41—[AMENDED]

Paragraph 1. New §§ 41.4481-1T and 41.4481-1aT are added immediately after § 41.4481-1 to read as follows:

§ 41.4481-1T Imposition of tax (Temporary).

(a) *In general.* A tax is imposed under section 4481 (a) of the Code for each taxable period beginning after June 30, 1984 on the first use on the public highways in the United States during such period of any highway motor vehicle that (together with the semi-trailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds, at the rate specified in paragraph (b) of this section. The tax is imposed on the use of such a highway motor vehicle only if, at the time of the use of such vehicle, it is registered or required to be registered in the name of a person (whether or not such person is the person who uses the vehicle). In addition, the tax is imposed on the use in the United States of any Canadian highway motor vehicle that is registered in a Canadian province and has a "prorate license" under the Uniform Vehicle Registration Proration and Reciprocity Agreement (or similar agreements) to satisfy the registration laws of certain of the United States. See, however, §§ 41.4483-1, 41.4483-2 41.4483-2T relating, respectively, to exemptions from the tax in the case of highway motor vehicles used by a State or any political subdivision thereof, certain transit-type buses, and vehicles used for 5,000 or fewer miles (7,500 or fewer miles in the case of agricultural vehicles) on public highways. See § 41.4483-3T relating to a reduction in tax in the case of certain trucks used in logging. For definitions of the terms "registered", "highway motor vehicle", "taxable gross weight", "taxable period", and "use", see §§ 41.4481-3, 41.4482(a)-1, 41.4482(b)-1, and paragraphs (b) and (c) of § 41.4482(c)-1, respectively.

(b) *Rate of tax.* For taxable periods after June 30, 1984, the tax is computed on each 1,000 pounds of taxable gross weight or fraction thereof of each highway motor vehicle the use of which at any time during the taxable period is subject to the tax. Thus, any fraction of 1,000 pounds of taxable gross weight in excess of 55,000 pounds of taxable gross weight is treated as 1,000 pounds for purposes of the computation of the tax. Following are the rates of tax in effect for taxable periods after June 30, 1984:

Taxable gross weight	Rate of tax
At least 55,000 pounds but not over 75,000 pounds.	$100 per taxable period plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550.

See however, § 41.4481–1aT for special rules in the case of a small owner-operator. See § 41.4482(b)–1T for schedule of taxable gross weights for the taxable period beginning July 1, 1984.

(c) *Computation of tax.* (1) Except as provided in paragraph (c)(2) of this section (and § 41.4481–1aT in the case of small owner-operators), the tax on the use of a particular highway motor vehicle for the taxable period is computed as follows:

(i) For vehicles with a taxable gross weight of at least 55,000 pounds, but not over 75,000 pounds, add to $100 an amount equal to $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds; and

(ii) For vehicles with a taxable gross weight over 75,000 pounds, the tax is $550.

(2) If the first taxable use of a particular highway motor vehicle is made after the end of the first month of the taxable period, the tax on the use of such vehicle for such taxable period is computed by multiplying the amount of tax that would be due for a full taxable period, as computed under paragraph (c)(1) of this section, by a fraction. Such fraction shall have as its numerator the number of months in the taxable period beginning with the month of first taxable use and as its denominator the number of months in the entire taxable period. See example (2) of paragraph (e) of this section.

(3) If in any taxable period a highway motor vehicle is destroyed or stolen before the first day of the last month in the taxable period, and is not subsequently used during such taxable period, the tax shall be calculated proportionately from the first day of the month in the period in which the first taxable use of the highway motor vehicle occurs to and including the last day of the month in which the highway motor vehicle was destroyed or stolen. Any tax paid under section 4481(a) on such a highway motor vehicle in excess of the tax calculated in the preceding sentence, shall be an overpayment for which a refund of tax may be claimed. For purposes of this paragraph (c)(3), a highway motor vehicle is destroyed if the vehicle is damaged due to an accident or other casualty to such an extent that it is not economical to rebuild.

(4) If the use of a highway motor vehicle during the taxable period is discontinued (for reasons other than destruction or theft as described in paragraph (c)(3) of this section) or is converted to a use which is exempt from the tax imposed by section 4481(a), the computation of the tax is not affected and no right to refund of any tax paid under section 4481 arises.

(d) *Refund of tax under section 4481(a).* Any claim for refund of an overpayment of tax under section 4481(a) due to destruction or theft of the vehicle shall be made in accordance with the applicable provisions of this section and § 301.6402–2 (Regulations on Procedure and Administration) and shall be filed by the person in whose name the vehicle is registered or required to be registered when the vehicle is destroyed or stolen. A claim for refund of the tax imposed by section 4481(a) is to be filed on Form 843 (Claim).

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). In the taxable period beginning July 1, 1984, the first taxable use of a particular highway motor vehicle, a bus, having a taxable gross weight of 56,000 pounds occurs on July 10, 1984, at which time the vehicle is registered in the name of X. A tax of $122 ($100+$22) is imposed on X for the use of such vehicle for such taxable period.

Example (2). On July 1, 1984, X has registered in his name a highway motor vehicle having a taxable gross weight of 60,000 pounds. The vehicle is in "dead storage" until August 10, 1984, at which time X starts using the vehicle on the public highways in carrying on his trucking business. On August 10, 1984, the vehicle is still registered in X's name. Since the first taxable use of this highway motor vehicle during the taxable period occurred on August 10, 1984, X is required to pay a tax of $192.50 ([$100+(5×$22)]×$^{11}/_{12}$) for such taxable period.

Example (3). On April 15, 1985, a vehicle with a taxable gross weight of 70,000 pounds and registered in the name of Y is completely destroyed. Y had purchased the vehicle from X who had paid the tax for the taxable period beginning July 1, 1984. Y is entitled to a refund of tax for those full months after destruction in the taxable period ending June 30, 1985. Thus, Y may file a claim for a refund of $71.67—$^{2}/_{12}$ of the total tax of $430 ($100+(15×$22)).

§ 41.4481–1T Special rules for small owner-operators (temporary).

(a) *In general.* In the case of a small owner-operator (as defined in paragraph (b) of this section), the tax imposed by section 4481(a) for the taxable period beginning July 1, 1984, and ending June 30, 1985, is—

(1) For vehicles with a taxable gross weight under 55,000 pounds—no tax,

(2) For vehicles with a taxable gross weight of at leats 55,000 pounds but not over 58,000 pounds—the amount determined by using the rate of tax set forth in paragraph (b) of § 41.4481–1T, and

(3) For vehicles with a taxable gross weight over 58,000 pounds—$3.00 for each 1,000 pounds (or fraction thereof) of taxable gross weight, but not to exceed $550.

If the first taxable use of a particular highway motor vehicle subject to tax under this section is made after the end of the first month of the taxable period, or if a particular highway motor vehicle subject to tax under this section is destroyed or stolen before the first day of the last month in the taxable period, the tax shall be computed using the proration rules provided in §§ 41.4481–1T(c) (2) and (3), respectively. The tax imposed by section 4481(a) on a small owner-operator for taxable periods beginning after June 30, 1985, is the amount determined by using the rate of tax set forth in paragraph (b) of § 41.4481–1T.

(b) *Small owner-operator.* For purposes of this section, the term "small owner-operator" means any person who at all times during the taxable period owns no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481(a) for such taxable period and operates no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481(a) for such taxable period. For purposes of the preceding sentence, a vehicle on which the tax has been suspended under § 41.4483–2T(a) shall be considered a vehicle with respect to which a tax is imposed by section 4481(a). A person may qualify as a small owner-operator under this section with respect to vehicles which such person owns and operates, notwithstanding the fact that such vehicles are registered or are required to be registered in the name of another person. Such other person who has registered or is required to register the vehicles, but who does not own or operate the vehicles, will be entitled to compute tax under § 41.4481–1T, to the extent the vehicles are owned and operated by small owner-operators. See example (5) of paragraph (f) of this section. In the case of a lease of a vehicle, the lessor is treated as the owner and the lessee is treated as the operator of such vehicle.

(c) *Aggregation of vehicle ownerships.* For purposes of paragraph (b) of this section all highway motor vehicles upon which the tax under section 4481(a) is imposed which are owned or operated by—

(1) Any trades or businesses (whether or not incorporated) which are under common control with a taxpayer (as defined in § 1.52–1(b)), or

(2) Any member of any controlled group of corporations of which a taxpayer is a member, for any taxable period,

shall be treated as being owned or operated by such taxpayer during such taxable period.

(d) *Controlled groups of corporations.* For purposes of paragraph (c)(2) of this section the term "controlled group of corporations" has the same meaning assigned to it in section 1563(a), except that—

(1) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(2) The determination shall be made without regard to sections 1563(a)(4) and 1563(e)(3)(C).

(e) *Highway motor vehicle.* For purposes of this section, the term "highway motor vehicle" has the same meaning assigned to such term in section 4482(a) and the regulations thereunder.

(f) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). On July 1, 1984, Z is the owner and operator of 5 highway motor vehicles each of which has a taxable gross weight of 60,000 pounds. On July 5, 1984, Z leases an additional 2 highway motor vehicles with a taxable gross weight of 60,000 pounds for use in Z's trucking business. Even though Z only owns 5 highway motor vehicles with respect to which a tax is imposed under section 4481(a), Z is operating a total of 7 such vehicles. Therefore, Z does not qualify as a small owner-operator under this section.

Example (2). On July 1, 1984, X is the owner and operator of 5 highway motor vehicles each of which has a taxable gross weight in excess of 58,000 pounds as determined under the schedules set forth in § 41.4482(b)–1T. X pays tax on these vehicles under section 4481 as provided in paragraph (a)(3) of this section. A new vehicle weighting 60,000 pounds is added to X's operating fleet in October 1984. X's small owner-operator status ceases upon the addition of the 6th vehicle to X's fleet and additional tax liability is incurred at such time in an amount equal to the excess of the tax which would have been imposed on the original 5 vehicles under § 41.4481–1T(b) for the entire taxable period over the tax X paid for these vehicles under paragraph (a)(3) of this section. Tax liability for the 6th vehicle is determined under the rate set forth in § 41.4481–1T(b) for the period from October 1, 1984, to June 30, 1985, under the proration rules in § 41.4481–1T(c)(2).

Example (3). On July 1, 1984, Y is the owner and operator of 100 highway motor vehicles. For purposes of determining whether or not Y qualifies as a small owner-operator, the taxable gross weight of the vehicles is determined by reference to the schedules set forth in § 41.4482(b)–1T. Ninety-seven of the vehicles have a taxable gross weight of less than 55,000 pounds. Three of the vehicles have a taxable gross weight of 60,000 pounds. Thus, Y is the owner and operator of a fleet of 5 or fewer vehicles subject to tax under section 4481(a) and is a small owner-operator. The tax imposed by section 4481(a) is applied by determining the rate of tax under paragraph (a) of this section. Thus, for the taxable period July 1, 1984, through June 30, 1985, Y is liable for no tax on the vehicles weighing less than 55,000 pounds, and $540 ($180×3) of tax on the vehicles weighing 60,000 pounds.

Example (4). Assume the same facts as in example (3), except that on January 1, 1985, Y buys three highway motor vehicles each of which weighs 60,000 pounds. Y's small owner-operator status ceases upon the addition of the three vehicles to Y's fleet and Y must redetermine the tax on the vehicles using the rates in § 41.4481–1T(b). The redetermined tax on the original three vehicles weighing 60,000 pounds is $630 ($210×3). Since Y already paid $540 on these three vehicles, the additional amount to be paid is $90 (without interest). In addition, Y is liable for tax on the three added 60,000 pound vehicles for the period from January 1, 1985, through June 30, 1985, at the rates set forth in § 41.4481–1T(b). Thus, the tax due on these vehicles is $315 ($\frac{6}{12}$×[3×$210]). The total tax due from Y is $405, and must be paid with a Form 2290 filed by February 28, 1985.

Example (5). Fleet carrier A has entered into operating agreements with 50 highway motor vehicle operators, each of which will provide services to A's shipping customers. None of the 50 operators are under common control with A or are members of a controlled group of corporations of which A is a member. Twenty of A's vehicle operators have purchased two truck-tractors (the "vehicles") under conditional sales contracts with A while 10 vehicle operators purchased two vehicles under conditional sales agreements with other persons. All 30 of these operators are treated as owning their vehicles for Federal income tax purposes. The remaining 20 operators own outright two vehicles each. For purposes of determining the amount of tax imposed by section 4481(a), each owner of two vehicles is considered a small owner-operator. In the interest of administrative convenience, A registers all 100 of its fleet vehicles in its own name under the laws of A's home state and pays the tax imposed on these vehicles. A is reimbursed by the operators for registration fees and taxes paid. Since A neither owns nor operates the 100 vehicles which are owned and operated by the small owner-operators, A pays the tax under section 4481(a) based on the rate applicable to small owner-operators.

Example (6). Assume the same facts as in example (5), except that twenty of A's vehicle operators have leased two vehicles each from A, rather than purchasing the vehicles under conditional sales contracts. As to these twenty leased vehicles, A is treated as the owner of the vehicles and cannot compute tax under section 4481(a) for these vehicles based on the rate applicable to small owner-operators, but must instead compute the tax based on the rate set forth in § 41.4481–1T(b). A is still eligible to compute tax under section 4481(a) on the other 80 vehicles based on the rate applicable to small owner-operators because these vehicles are owned and operated by small owner-operators.

Example (7). P is a corporation which owns more than 50 percent of the single outstanding class of stock of three corporations, X, Y and Z. X Corporation operates and has registered in its name two highway motor vehicles, each of which has a taxable gross weight in excess of 55,000 pounds. Y and Z Corporations operate and have registered in their names three and two vehicles, respectively, each of which has a taxable gross weight in excess of 55,000 pounds. For purposes of paragraph (c)(2) of this section, Corporations P, X, Y, and Z are treated as members of a "controlled group of corporations" as that term is defined in § 41.4481–1aT(d). Thus, although each corporation pays the Federal Highway Use Tax on its vehicles separately from the other corporations, ownership and operation of their vehicles must be aggregated and none of the corporations qualify as a small owner-operator under this section. Accordingly, each corporation shall furnish such information as is required on the first Form 2290 filed for the taxable period and determine its tax liability under the rates set forth in § 41.4481–1T(b).

Par. 2. New § 41.4482(b)–1T is added immediately after § 41.4482(b)–1 to read as follows:

§ 41.4482(b)–1T Schedule of taxable gross weights for the taxable period beginning July 1, 1984, and ending June 30, 1985 (temporary).

The following schedule of taxable gross weights, based on the sum of the weights referred to in § 41.4482(b)–1(a), is hereby prescribed for the taxable period beginning July 1, 1984. Any highway motor vehicle which falls in one of the categories shown in the following schedule shall be considered, for purposes of the regulations in this part, to have the taxable gross weight assigned to such category. Any highway motor vehicle which does not fall in one of the categories shown in the following schedule shall be considered, for purposes of the regulations in this part, to have a taxable gross weight of less than 55,000 pounds.

Use Tax Schedule

	Taxable gross weight (in pounds)
1. Single units:	
(a) 4 axled truck equipped for use as a single unit with actual unloaded weight of less than 22,000 pounds	55,000
(b) 4 axled truck equipped for use as a single unit with actual unloaded weight of 22,000 pounds or more and less than 30,000 pounds	66,000
(c) 4 axled truck equipped for use as a single unit with actual unloaded weight of 30,000 pounds or more	80,000
(d) More than 4 axled truck equipped for use as a single unit	80,000
2. Tractor-trailer combinations:	
(e) 2 axled truck-tractor with actual unloaded weight of 11,000 pounds or more	60,000
(f) 3 or 4 axled truck-tractor with actual unloaded weight of less than 13,000 pounds	65,000
(g) 3 or 4 axled truck-tractor with actual unloaded weight of 13,000 pounds or more and less than 17,000 pounds	70,000
(h) 3 or 4 axled truck-tractor with actual unloaded weight of 17,000 pounds or more	74,000
(i) More than 4 axled truck-tractor	80,000
3. Tractor-trailer-trailer combinations:	
(j) 2 or more axled truck-tractor used to haul more than one trailer	80,000
4. Truck-trailer combinations:	
(k) 2 axled truck with actual unloaded weight of 12,000 pounds or more and equipped for use in combinations	55,000
(l) 3 or 4 axled truck with actual unloaded weight of less than 14,000 pounds and equipped for use in combinations	65,000
(m) 3 to 4 axled truck with actual unloaded weight of 14,000 pounds or more and less than 19,000 pounds and equipped for use in combinations	74,000
(n) 3 or 4 axled truck with actual unloaded weight of 19,000 pounds or more and equipped for use in combinations	76,000
(o) More than 4 axled truck equipped for use in combinations	80,000
5. Buses: Actual unloaded weight of vehicle plus 150 pounds for each unit of seating capacity provided for passengers and driver.	

Par. 3. New § 41.4483–2T is added immediately after § 41.4483–2 to read as follows:

§ 41.4483–2T Exemption for trucks used for 5,000 or fewer miles and agricultural vehicles used for 7,500 or fewer miles on public highways (temporary).

(a) *Suspension of tax*—(1) *In general.* Liability for the tax imposed by section 4481(a) with respect to any highway motor vehicle is suspended during a taxable period if it is reasonable to expect that the vehicle will be used for 5,000 or fewer miles on public highways during such taxable period and the owner furnishes in the time and manner required the information required under paragraph (a)(2) of this section. See paragraph (g) of this section regarding special rules for agricultural vehicles. See § 41.4482(c)–1(c) for the meaning of "use" on the public highways.

(2) *Information to be supplied in support of suspension of tax.* The owner of a highway motor vehicle who reasonably expects that the vehicle will be used for 5,000 or fewer miles on public highways during a taxable period shall furnish on the first Form 2290 (Heavy Vehicle Use Tax Return) filed during the taxable period for such motor vehicle, such information as is required by the Form in order to support the suspension of tax under paragraph (a) of this section.

(b) *Cessation of suspension from tax.* If a highway motor vehicle on which the tax under section 4481(a) is suspended for a particular taxable period under paragraph (a)(1) of this section is used for more than 5,000 miles on public highways during such taxable period, the owner of the vehicle shall pay the tax for the entire taxable period in accordance with section 4481(a). The tax shall be reported on Form 2290, which must be filed on or before the last day of the month immediately following the month in which the use of the vehicle during the taxable period exceeds 5,000 miles. If such Form is filed within the time required by the preceding sentence, it shall be treated as timely filed.

(c) *Exemption.* If at the end of any taxable period during which the tax under section 4481(a) on a highway motor vehicle was suspended under paragraph (a)(1) of this section the vehicle has not been used for more than 5,000 miles on public highways, the vehicle shall be exempt from the tax for that taxable period. The owner of the vehicle shall verify that the vehicle was used for less than 5,000 miles in such ended taxable period on the first Form 2290 filed for the next taxable period.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A is the owner of 6 highway motor vehicles, each of which has a taxable gross weight in excess of 55,000 pounds. None of these 6 vehicles are agricultural vehicles. The vehicles are placed in use during July 1984. Because of the nature of his business, A reports on the first Form 2290 filed after June 30, 1984, that he reasonably expects that none of the vehicles will be used for more than 5,000 miles on public highways. Accordingly, the tax imposed by section 4481(a) is suspended for A's 6 vehicles for the taxable period July 1, 1984, through June 30, 1985.

Example (2). Assume the same facts as in example (1) except that during the month of February 1985, the use of one of A's vehicles exceeds 5,000 miles on public highways. A is liable for the full tax for the taxable period July 1, 1984, through June 30, 1985, for that vehicle at the rate set forth in § 41.4481–1T(b), and must so report on Form 2290 filed on or before March 31, 1985, the last day of the month following the month in which the use exceeds 5,000 miles.

(e) *Refund of tax for highway motor vehicle used 5,000 or fewer miles.* If a highway motor vehicle on which the tax imposed by section 4481(a) has been paid for a given taxable period is used for 5,000 or fewer miles on public highways during such taxable period, the person who paid the tax may file a claim for refund of an overpayment of the tax at the end of the taxable period. Claims for refunds of tax made under this paragraph (e) shall be filed in the same manner as claims for refunds filed under § 41.4481–1T(d). Refunds of tax made under this paragraph (e) shall be without interest.

(f) *Relief from liability for tax under certain circumstances.* If the tax imposed by section 4481(a) on a highway motor vehicle is suspended for any taxable period under paragraph (a) of this section and the vehicle is transferred while the suspension is in effect, the transferor will not be liable for any tax on such vehicle for such taxable period if such transferor furnishes a statement to the transferee on which is included the transferor's name, address and taxpayer identification number, the vehicle identification number, the date of transfer of the vehicle, the number of miles the vehicle has been used on the public highways during the taxable period, the odometer reading at the time of the transfer, and the name, address and taxpayer identification number of the transferee. The statement required in the preceding sentence shall be attached by the transferee to a Form 2290 which must be filed on or before the last day of the month following the month in which such vehicle is transferred. The suspension from tax under paragraph (a) continues until the vehicle is used on the public highways for more than 5,000 miles during the taxable period (including use by the transferor for the portion of the taxable period prior to the transfer). If the transferor has furnished the statement required in this paragraph (f), the transferee and not the transferor is liable for the entire tax under section 4481(a) for the taxable period in which the transfer was made. If the transferor has not furnished such statement to the transferee, then the transferor is also liable for the tax on the use of such vehicle for such taxable period to the extent that the tax or an installment payment of the tax has not been previously paid. See paragraph (b) of this section relating to cessation of suspension from tax.

(g) *Special rule for agricultural vehicles*—(1) *In general.* In applying the provisions of this section to an agricultural vehicle, "7,500" shall be substituted for "5,000" each place it appears in paragraph (a) through (f) of this section.

(2) *Meaning of terms*—(i) *Agricultural vehicle.* An agricultural vehicle is any highway motor vehicle—

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(A) Used (or expected to be used) primarily for farming purposes, and

(B) Registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

A highway motor vehicle is used primarily for farming purposes if more than one-half of such vehicle's use (determined on the basis of mileage) during the taxable period is for farming purposes. Further, the highway motor vehicle must be registered (under the laws of the State or States where such vehicle is required to be registered) as a highway motor vehicle used for farming purposes for the entire taxable period in order to qualify as an agricultural vehicle. See § 41.4482(a)–1 for the definition of "highway motor vehicle".

(ii) *Farming purposes.* For purposes of this section, "farming purposes" means the transporting of any farm commodity to or from a farm, or the use directly in agricultural production.

(iii) *Farm commodity.* A "farm commodity" is any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife. A farm commodity does not include a commodity which has been changed by a processing operation from its raw or natural state. For example, juice which has been extracted from fruits or vegetables is not a farm commodity for purposes of this paragraph (g).

(iv) *Farm.* The term "farm" includes stock (including feed yards for fattening cattle), dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of any agricultural or horticultural commodity. Greenhouses and other similar structures used primarily for purposes other than the raising of agricultural or horticultural commodities (for example, display, storage, or fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(v) *Agricultural production*—(A) *In general.* A highway motor vehicle is considered to be used directly in agricultural production only if it is used as indicated in the following paragraphs.

(B) *Use of a highway motor vehicle in connection with cultivating, raising, and harvesting.* A highway motor vehicle is considered to be used directly in agricultural production if such vehicle is used in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife. A highway motor vehicle which is used in connection with operations such as canning, freezing, packaging, or other processing operations will not be considered to be used directly in agricultural production.

(C) *Use of a highway motor vehicle in connection with planting, cultivating, caring for, cutting, etc., of trees.* A highway motor vehicle is used directly for agricultural production if it is used in connection with planting, cultivating, caring for, or cutting of trees, or in connection with the preparation (other than milling) of trees for market; but only if such operations are incidental to farming operations. These farming operations include felling trees and cutting them into logs or firewood, but do not include sawing logs into lumber, chipping, or other milling operations. The operations specified in this paragraph (g)(2)(v)(C) will be considered "incidental to farming operations" only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a treefarmer or timbergrower may not claim that a highway motor vehicle used in that trade or business is used directly in agricultural production.

(D) *Use of a highway motor vehicle in connection with the operation, management, conservation, improvement, or maintenance of a farm.* A highway motor vehicle is used directly for agricultural production if it is used in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment. Examples of these operations include clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, painting, and other activities which contribute in any way to the conduct of a farm as such, as distinguished from any other enterprise in which the owner of the highway motor vehicle may be engaged.

(3) *Mileage on farm not counted toward 7,500 mile limit.* For purposes of this section, the number of miles which a highway motor vehicle is driven on a farm and not on the public highways shall not be taken into account when determining whether the vehicle's mileage is in excess of 7,500 miles. Accurate records should be kept by taxpayers of the number of miles that a highway motor vehicle is operated on a farm.

(h) *Owner.* For purposes of this section the term "owner" means, with respect to any highway motor vehicle, the person described in section 4481(b)

(Approved by the Office of Management and Budget under control number 1545–0143)

Par. 4. New § 41.4483–3T is added immediately after § 41.4483–3 to read as follows:

§ 41.4483–3T Reduction in tax for trucks used in logging (temporary).

(a) *In general.* The tax imposed by section 4481 shall be reduced by 25 percent in the case of a truck used in logging.

(b) *Truck used in logging.* The term "truck used in logging" means any highway motor vehicle which—

(1) Is used exclusively during the taxable period for the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) Is registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products.

Products harvested from the forested site may include timber which has been processed for commercial use by sawing into lumber, chipping or other milling operations if such processing occurs prior to transportation from the forested site.

PART 48—[AMENDED]

Par. 5. New § 48.4041–2T is added immediately after § 48.4041–2 to read as follows:

§ 48.4041–2T Questions and answers concerning the increased diesel fuel tax (temporary).

Q–1. What is the amount of tax imposed on diesel fuel under section 4041(a) on or after August 1, 1984, and before October 1, 1988?

A–1. The tax on diesel fuel under section 4041(a) for such period is 15 cents a gallon.

Q–2. Who must file a return and pay the tax for diesel fuel sold for use as a fuel in a diesel-powered highway vehicle?

A–2. Any person who sells diesel fuel for use as a fuel in a diesel-powered highway vehicle (hereinafter "retailer") must file a return and pay the tax on diesel fuel sold for such use.

Q–3. Is a retailer required to file a return and pay tax on diesel fuel sold by the retailer for use in a diesel-powered highway vehicle if tax was paid on the sale to the retailer by the person from whom the retailer purchased the diesel fuel (hereinafter "wholesaler")?

A–3. Yes. The retailer must file a return and pay the tax imposed by section 4041(a)(1) on diesel fuel sold by the retailer for use as a fuel in a diesel-powered highway vehicle. No tax is payable on the sale of diesel fuel unless such fuel is sold for use in a diesel-powered highway vehicle. Therefore, the wholesaler should not have paid any tax on the sale of the diesel fuel to the retailer. Where tax was nevertheless paid on the sale to the retailer, the retailer must pay the tax imposed by section 4041(a)(1) when the fuel is sold for use in a diesel-powered highway vehicle. Thus, for example, if a retailer purchased diesel fuel before August 1, 1984 and the wholesaler paid a tax of 9 cents a gallon on the fuel sold, the retailer is nevertheless obligated to pay the tax imposed by section 4041(a)(1) when the retailer sells the fuel for use in a diesel-powered highway vehicle. In the case of a sale for such use occurring on or after August 1, 1984, the tax on the fuel sold is 15 cents a gallon even though only 9 cents a gallon was paid on the sale to the retailer.

Q–4. Who may obtain a refund from the Internal Revenue Service for the tax improperly paid on the sale of the diesel fuel to the retailer?

A–4. Only the wholesaler who paid the tax may obtain a refund for any tax paid on the sale of the diesel fuel to the retailer. Such refund may be obtained only after the retailer is reimbursed by the wholesaler for the tax paid.

Par. 6. New § 48.4051–1T is added immediately after § 48.4042–3 to read as follows:

§ 48.4051–1T Questions and answers concerning the temporary reduction in the excise tax on the sale of piggyback trailers and semi-trailers (temporary).

The following questions and answers concern the reduction in the tax imposed by section 4051(a) in the case of piggyback trailers and semi-trailers sold after July 17, 1984, and before July 18, 1985.

Q–1 What is the excise tax imposed by section 4051(a) on the first retail sale of a piggyback trailer or semi-trailer if such sale occurs after July 17, 1984, and before July 18, 1985?

A–1 The tax imposed by section 4051(a) on the first retail sale of a piggyback trailer or semi-trailer after July 17, 1984, and before July 18, 1985, is 6 percent of the price for which such trailer or semi-trailer is sold if the requirements set forth below are met. If any of these requirements are not met, then the tax imposed by section 4051(a) on such sale is 12 percent of the price for which such trailer or semi-trailer is sold. The requirements for the reduced rate are as follows:

(A) Both the seller and the purchaser of the piggyback trailer or semi-trailer are registered with the Internal Revenue Service in the manner described in A–3 below, unless one of the exceptions set forth in section 4222 and the regulations thereunder applies,

(B) The purchaser provides the seller with a properly executed piggyback certificate, and

(C) The seller retains such certificate in his possession.

Q–2 What qualifies as a "piggyback trailer or semi-trailer"?

A–2 For purposes of this section, a "piggyback trailer or semi-trailer" is any trailer or semi-trailer which is designed for use principally in connection with trailer-on-flatcar service by rail and meets the Association of American Railroads specifications for use in connection with trailer-on-flatcar service by rail.

Q–3 How do the purchaser and seller of a piggyback trailer or semi-trailer register with the Internal Revenue Service in order to qualify for the reduced rate of tax?

A–3 In order to qualify for the reduced rate of tax imposed by section 4051(a) on the first retail sale of a piggyback trailer or semi-trailer, both the purchaser and seller of the piggyback trailer or semi-trailer must, prior to the sale of such trailer or semi-trailer (except in the case of sales after July 17, 1984, and before October 30, 1984, for which sales the purchaser and seller must be registered before October 30, 1984, file a Form 637 (Registration for tax-free transactions under Chapter 32 of the Internal Revenue Code) unless one of the exceptions to the registration requirement set forth in section 4222 and the regulations thereunder applies. Form 637 shall be completed in duplicate and executed in accordance with the instructions contained on the reverse of the Form 637. This Form shall be filed with the District Director for the district in which the principal place of business of the registrant is located. Copies of Form 637 may be obtained from any district director or local IRS office. Any person who receives a validated Certificate of Registry (validated Form 637), shall be considered to be registered for purposes of this section.

Q–4 What information must be included on the piggyback certificate that the purchaser must furnish the seller upon the first retail sale of a piggyback trailer or semi-trailer?

A–4 A properly executed piggyback certificate must include the following:

(A) The name, address and taxpayer identification number of the purchaser,

(B) The date that the piggyback trailer or semi-trailer was sold to the purchaser,

(C) A description of such trailer or semi-trailer,

(D) A statement that the piggyback trailer or semi-trailer will be used, or resold for use, principally in connection with trailer-on-flatcar service by rail, or will be incorporated into an article which will be so used or resold, and

(E) The signature of the purchaser.

The following form of certificate will be acceptable for purposes of this section and must be adhered to in substance:

Certificate

(For use by purchasers of a piggyback trailer or semi-trailer that is eligible for a reduced rate of tax under section 4051(d) of the Internal Revenue Code of 1954.)

———— 19—— (Date)

1. I, the undersigned, hereby certify that I am, or the (Name of company) ———— of which I am (Position held) ————, is, purchasing from (the seller) ————, the piggyback trailer(s) or semi-trailer(s) specified in section 2. I also certify that such trailer(s) or semi-trailer(s) will be (check one):

—— used, or resold for use, principally in connection with trailer-on-flatcar service by rail, or

—— incorporated into an article which will be so used or resold.

2. *Description of piggyback trailer or semi-trailer.* (a) Type, (b) Quantity, (c) Serial number, (d) Gross vehicle weight rating, (e) Date of sale, (f) Invoice number, (g) Name of the manufacturer of trailer or semi-trailer.

I understand that the willful use of this certificate to evade or defeat the excise tax otherwise applicable under section 4051(a), will subject me to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both, together with cost of prosecution.

____

(Signature)

____

(Address)

Q–5 What if a piggyback trailer or semi-trailer is sold in the manner described in A–1 (thereby becoming eligible for a reduced rate of tax under section 4051(a)) and then is used, or resold for a use, other than for use principally in connection with trailer-on-flatcar service?

A–5 If any piggyback trailer or semi-trailer which was subject to tax under section 4051(a) at a rate of 6 percent is not used or resold for a use which qualifies for such rate then: (A) Such use or resale shall be treated as a sale to which section 4051(a) applies, (B) The amount of the tax imposed under section 4051(a) on such sale shall be equal to the amount of tax imposed on the first retail sale, and (C) The person so using or reselling such trailer or semi-trailer shall be liable for such tax.

(Approved by the Office of Management and Budget under control number 1545–0143)

Par. 7. New § 48.6151–1T is added immediately after § 48.6151–1 to read as follows:

§ 48.6151–1T Question and answer relating to the extension of the payment due date for certain fuel taxes (temporary).

Q–1 To whom must wire transfer payments of the tax under section 4081 be made in order to permit qualified persons (as defined in section 518(b) of the Highway Revenue Act of 1982) whose liability for such tax is payable with respect to semi-monthly periods, to have a payment due date of 14 days after the close of each semi-monthly period?

A–1 For qualified persons whose liability for tax under section 4081 arises after March 31, 1983, the due date for each payment is 14 days after the close of each semi-monthly period if the payment is made by wire transfer to any authorized government depositary in accordance with § 145.3–1.

Par. 8. New §§ 48.6427–1T and 48.6427–2T are added immediately after § 48.6427–1 to read as follows:

§ 48.6427–1T Questions and answers concerning the tax on diesel fuel used in certain buses (temporary).

The following questions and answers concern the amount to be refunded in the case of diesel fuel used in certain buses as provided in section 6427(b).

Q–1 Are intercity, local or school buses eligible for a credit or refund of tax paid under section 4041(a) for diesel fuel so used?

A–1 Yes. Generally, in the case of diesel fuel sold or used after July 31, 1984, on which tax was imposed under section 4041(a)(1) and which is used in intercity, local, or school buses, the amount of credit or refund is 12 cents a gallon. However, the amount to be refunded in the case of diesel fuel used in a local bus while such bus is being operated as a "qualified local bus" is 15 cents a gallon.

Q–2 When is a local bus considered to be operated as a "qualified local bus"?

A–2 A local bus is considered to be operated as a qualified local bus if such bus—

(1) Is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes,

(2) Has a seating capacity of at least 20 adults (not including the driver), and

(3) Is under contract with (or is receiving more than a nominal subsidy from) any State or local government (as defined in section 4221(d)) to furnish such transportation.

A company that operates qualified local buses is eligible for the 15 cents a gallon credit or refund only with respect to fuel used while such buses are operating as qualified local buses. For example, a company that operates its buses along subsidized and unsubsidized intracity routes may obtain the 15 cents a gallon credit or refund only with respect to fuel used while operating the subsidized intracity routes. A bus is under contract with a State or local government only if the contract imposes a bona fide obligation on the operator of the bus to furnish the transportation to which the contract relates. A subsidy is more than nominal if the subsidy is reasonably expected to exceed an amount equal to 3 cents multiplied by the number of gallons of diesel fuel used while operating on subsidized routes.

Q–3 What is meant by the term "intracity passenger land transportation"?

A–3 The term "intracity passenger land transportation" means the land transportation of passengers to and from points located within the same metropolitan area. The term includes transportation along routes that cross State, city or county boundaries provided such routes remain within the metropolitan area.

§ 48.6427–2T Questions and answers concerning the advance repayment of increased diesel fuel tax to original purchasers of diesel-powered automobiles and light trucks (temporary).

The following questions and answers concern the credit or refund of the diesel fuel differential amount to the original purchaser of a qualified diesel-powered highway vehicle as provided in section 6427(g).

In General

Q–1 Is a credit or refund of the increased diesel fuel tax available to purchasers of diesel-powered vehicles?

A–1 Yes. A credit or refund of the diesel fuel differential amount may be claimed for qualified diesel-powered highway vehicles purchased after January 1, 1985, and before January 1, 1988. A credit or refund of a fraction of the diesel fuel differential amount may be claimed for certain qualified diesel-powered highway vehicles held on January 1, 1985. No interest is payable on the diesel fuel differential amount (or fraction thereof).

Q–2 Who is eligible to claim the credit or refund of the diesel fuel differential amount (or fraction thereof)?

A–2 Any person who is, or is treated as, an original purchaser of a qualified diesel-powered highway vehicle may claim this credit or refund.

Q–3 Who qualifies as an original purchaser?

A–3 Generally, an original purchaser is the first person to purchase a qualified diesel-powered highway vehicle for use other than resale. In addition, a person holding a qualified diesel-powered highway vehicle for a use other than resale at the end of January 1, 1985, is treated as an original purchaser. However, State or local governments (as defined in section 4221(d)(4)) or nonprofit educational organizations (as defined in section 4221(d)(5)), do not qualify as original purchasers or as holders who are treated as original purchasers.

Q–4 Will the use of a vehicle by a dealer as a demonstrator be treated as a use other than resale?

A–4 No. Thus, a dealer may not claim a credit or refund under this section for a vehicle used as a demonstrator vehicle; rather, the first person to purchase the demonstrator vehicle for a use other than resale will qualify as the original purchaser of the vehicle.

Q–5 Will the lease or rental of a vehicle by its owner be treated as a use other than resale?

A–5 Yes. The lease or rental of a vehicle is treated as a use other than resale both in the case of vehicles purchased after January 1, 1985, and vehicles held on such date. Thus, for example, a person who purchases a qualified diesel-powered highway vehicle on January 15, 1985, and leases the vehicle under either a long-term or short-term lease under which the lessee is not treated as the owner for Federal income tax purposes, is eligible to claim a credit or refund for the diesel fuel differential amount.

Q–6 If a person purchases a vehicle subject to a lien and registers the vehicle in the name of the lienholder, who is eligible to claim the credit or refund?

A–6 The purchaser is eligible to claim the credit or refund even if the lienholder holds title to the vehicle.

Q–7 What is a qualified diesel-powered highway vehicle?

A–7 A qualified diesel-powered highway vehicle is any diesel-powered highway vehicle (as defined in § 48.4041–7(b)) which—

(1) Has at least 4 wheels,

(2) Has a gross vehicle weight rating (within the meaning of § 48.4061(a)–1(f)(3)) of 10,000 pounds or less, and

(3) Is registered for highway use in the United States under the laws of any State.

Q–8 What is the diesel fuel differential amount?

A–8 The diesel fuel differential amount is $102 in the case of a vehicle other than a truck or van and $198 in the case of a truck or van. A van for this purpose is a vehicle which has no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

Special Rule for Vehicles Held on January 1, 1985

Q–9 Who is eligible to claim the credit or refund for vehicles purchased on or before January 1, 1985?

A–9 In the case of a qualified diesel-powered highway vehicle purchased on or before January 1, 1985, the person holding such vehicle at the end of January 1, 1985, for a use other than resale is the only person eligible to claim the credit or refund of the applicable fraction of the diesel fuel differential amount. For this purpose, the owner of the vehicle for Federal income tax purposes is treated as the holder of the vehicle. Thus, a lessee of a vehicle under either a long-term or short-term lease will not be treated as the holder of such vehicle at the end of January 1, 1985 (unless the lease is treated as a sale for Federal income tax purposes).

Q–10 What is the amount of credit or refund allowable to a person holding a qualified diesel-powered highway vehicle on January 1, 1985?

A–10 The amount of credit or refund allowable depends upon the model year of the qualified diesel-powered highway vehicle. The table below sets forth the applicable amounts:

Model year of qualified diesel-powered highway vehicle	Amount	
	Other than truck or van	Truck or van
1984 or 1985	$102	$198
1983	85	165
1982	68	132
1981	51	99
1980	34	66
1979	17	33

No credit or refund is allowed in the case of a 1978 or earlier model year vehicle.

Q–11 What is the model year of a vehicle?

A–11 The model year designated by the manufacturer for the vehicle is the model year for purposes of the table in A–10.

Reduction in Basis

Q–12 What effect does allowance of the diesel fuel differential amount (or fraction thereof) have on the basis of a qualified diesel-powered highway vehicle?

A–12 For purposes of subtitle A of the Internal Revenue Code, the basis of any qualified diesel-powered highway vehicle is reduced by the diesel fuel differential amount (or fraction thereof) allowable with respect to such vehicle. For example, if a qualified diesel-powered highway vehicle is purchased for business purposes by an original purchaser on January 2, 1985, the basis of such vehicle for purposes of determining depreciation, investment tax credit, and the amount of again or loss to be recognized upon a disposition of the vehicle, is reduced by $102 in the case of a vehicle other than a truck or van, and $198 in the case of a truck or van. Such basis reduction shall be considered to occur on the date of purchase or, in the case of a vehicle held on January 1, 1985, on such date.

Q–13 Does the credit or refund have any effect on the income tax deduction for diesel fuel used for business purposes?

A–13 No. A taxpayer who has claimed a credit or refund under this section may nevertheless claim any otherwise allowable deduction for diesel fuel purchased.

Claiming Credit or Refund of the Diesel Fuel Differential Amount

Q–14 May the diesel fuel differential amount (or fraction thereof) be claimed for a qualified diesel-powered highway vehicle more than once?

A–14 No. The diesel fuel differential amount (or fraction thereof) may be claimed only once for a qualified diesel-powered highway vehicle. The claim is made by the original purchaser and is claimed as an income tax credit, unless the original purchaser is eligible under section 6427 (j) to file a claim for refund in lieu of an income tax credit.

Q–15 How does a person claim the diesel fuel differential amount (or fraction thereof) as an income tax credit?

A–15 The amount of credit determined under A–8 or A–10 is entered on Form 4136 together with any other credits to be entered on such Form. The Form 4136 is then attached to the original purchaser's income tax return. In the case of a qualified diesel-powered highway vehicle purchased by an original purchaser after January 1, 1985, and before January 1, 1988, the credit is claimed on the income tax return for the taxable year during which the vehicle was purchased. In the case of a person who is treated as an original purchaser by reason of holding the vehicle at the end of January 1, 1985, the credit is claimed on the income tax return for the taxable year which includes December 31, 1984, *i.e.* the tax return for 1984 in the case of a calendar year taxpayer.

Q–16 How does an original purchaser who is eligible to claim the diesel fuel differential amount as a refund, do so?

A–16 The diesel fuel differential amount may be claimed by the original purchaser as a refund by filing Form 843 (Claim) with the Internal Revenue Service.

(Approved by the Office of Management and Budget under control number 1545–0143)

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 4051(d)(2)(B)(ii) (98 Stat. 1009; 26 U.S.C. 4051(d)(2)(B)(ii)), 4483(d) (96 Stat. 2178; 26 U.S.C. 4483(d)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: August 17, 1984.

Ronald A. Pearlman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23130 Filed 8–30–84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Approval of Amendment to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Virginia as an amendment to the State's permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to the Virginia statute concerning a reorganization of the Commonwealth's Executive Department as it relates to Virginia's administration of SMCRA.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and Federal regulations, and is approving it. The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this action. The State specified in its submission of the amendment that the effective date for the statutory change in Virginia is January 1, 1985. In accordance with the State's specified effective date, the Director is approving the amendment with an effective date for implementation of the amendment of January 1, 1985.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Field Office Director, Big Stone Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088–61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register**.

II. Submission of Amendment

By letter dated June 13, 1984, Virginia submitted Chapter 590 of the 1984 Acts of Assembly signed April 7, 1984, by the Governor. The statutory change will bring together those State programs which are responsible for the administration of SMCRA through the Virginia Surface Mining Control and Reclamation Act of 1979 and all programs related to mining, mineral resources, and energy into new Department of Mines, Minerals and Energy. The new department will contain all the current duties and responsibilities now vested in the Department of Conservation and Economic Development and the Division of Mined Land Reclamation as the regulatory authority in Virginia.

Those Sections of the Code of Virginia currently part of Virginia's approved permanent program which have been amended are:

Section

1. 45.1–228
2. 45.1–229
3. 45.1–230
4. 45.1–231
5. 45.1–234
6. 45.1–236
7. 45.1–237
8. 45.1–239
9. 45.1–241
10. 45.1–242
11. 45.1–243
12. 45.1–244
13. 45.1–247
14. 45.1–248
15. 45.1–250
16. 45.1–251
17. 45.1–252
18. 45.1–253
19. 45.1–255
20. 45.1–256
21. 45.1–260
22. 45.1–261.1
23. 45.1–262
24. 45.1–270.5
25. 45.1–270.7

On July 16, 1984, OSM published a notice in **Federal Register** announcing receipt of the amendment and inviting public comment on whether the proposed amendment satisfied the criteria for approval of state program amendments at 30 CFR 732.15 and 732.17 (49 FR 28743). The public comment period ended August 15, 1984. The opportunity to request a public hearing was provided but none was requested.

III. Director's Findings

The Director finds in accordance with SMCRA and 30 CFR 732.1 and 732.15, that the program amendment submitted by Virginia on June 13, 1984, meets the requirements of SMCRA and 20 CFR Chapter VII, as discussed below.

The Federal regulations at 30 CFR 732.17(b)(2) stipulate that the State shall promptly notify the Director, in writing, of any changes in the authority of the regulatory authority to implement, administer or enforce the approval program. As noted above, Virginia formally notified OSM or the impending reorganization of the regulatory authority by letter of June 13, 1984.

After reviewing the documents, OSM has determined that the reorganization of the State executive department which brings together those State programs responsible for the administration of SMCRA through the Virginia Surface Mining Control and Reclamation Act of 1979 into a new Department of Mines, Minerals and Energy, meets the requirements of SMCRA and the Federal regulations. The new department will be responsible for all programs related to mining, mineral resources and energy and will contain all the current duties now vested in the Department of Conservation and Economic Development as the regulatory authority authorized to implement, administer and enforce the approval regulatory program under SMCRA.

Further, the Division of Mined Land Reclamation (DMLR), which currently administers the program under the Department of Conservation and Economic Development will continue to administer the program under the Department of Mines, Minerals and Energy and the State has indicated that all current DMLR regulations will remain in force. The State has also assured that the current staffing and funding levels of the approved program will remain intact.

Therefore, the Director finds that the newly designated regulatory authority has the capability to implement, administer, and enforce the approved program provisions consistent with 30 CFR 732.15(b).

IV. Public Comment

No comments were received by OSM in response to this State program amendment submitted by Virginia.

V. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*: On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 or actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 27, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 946—VIRGINIA

1. 30 CFR Part 946.10 is revised to read as follows:

§ 946.10 State regulatory program approval.

The Virginia State Program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and clarified in a meeting with OSM on September 21 and 22, 1981, and in a letter to the Director of the Office of Surface Mining on October 15, 1981, was conditionally approved, effective December 15, 1981. Beginning on that date, the Department of Conservation and Economic Development, Division of Mined Land Reclamation, was deemed the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. By a statutory revision found in Chapter 590 of the 1984 Acts of Assembly signed by the Governor of Virginia on April 7, 1984, the authorities and responsibilities for administering the Virginia State Program are incorporated into the newly established Department of Mines, Minerals and Energy. Effective January 1, 1985, the Department of Mines, Minerals and Energy will be the regulatory authority and contain all the current duties and responsibilities now vested in the Department of Conservation and Economic Development. Copies of the approved program, as amended are available for review at:

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219.

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Office of Surface Mining Reclamation and Enforcement, Room 5124, 100 L Street, NW, Washington, D.C. 20240.

2. 30 CFR 946.15 is amended by adding a new paragraph (n) as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(n) The following amendment is approved effective January 1, 1985: Chapter 590 of the 1984 Acts of Assembly to revise various sections of Title 45 of the Code of Virginia, submitted June 13, 1984.

[FR Doc. 84-23206 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

Black Canyon of the Gunnison National Monument, CO; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule designates locations in the park where snowmobiles may be used by the park visitor for recreational purposes. This rulemaking has been designed to provide for recreational use and enjoyment of park resources as well as to provide for the preservation of the park in a manner that is consistent with the general snowmobile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Kastellic, Superintendent, Black Canyon of the Gunnison National Monument, P.O. Box 1648, Montrose, Colorado 81402, Telephone: 303-240-6522.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassement of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified as Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with a park's natural, cultural, scenic and aesthetic values; safety considerations; park managment objectives and protection of wildlife and other park resources. The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations.

On November 26, 1974, the National Park Service (NPS) published a notice in the **Federal Register** (39 FR 41282) establishing areas in the Black Canyon of the Gunnison National Monument that were open to snowmobile use. That notice complied with the requirements of Executive Order 11644.

Public Participation

In the fall of 1974 an environmental assessment was prepared on alternatives for snowmobile use in the Black Canyon of the Gunnison National Monument. Public response to the proposed snowmobile routes was invited by press release from the Superintendent. The response period was from November 26, 1974 to December 26, 1974. No negative responses were received. No public meetings were held to discuss the proposal.

In compliance with the revised National Park Service snowmobile policy published in the **Federal Register** (44 FR 47412) on August 13, 1979, the Black Canyon of the Gunnison National Monument published its proposed snowmobile regulations in the **Federal Register** July 15, 1983 (48 FR 32365). During the 30 day period allowed for public comment, no responses were received. The regulations adopted today are the same as those proposed on July 15, 1983.

Drafting Information

The following individual participated in the writing of these regulations: Joseph Kastellic, Superintendent, Black

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Canyon of the Gunnison National Monument.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the Service has prepared an environmental assessment on this final rule which is available at the address noted previously.

The Department of the Interior has determined that this document is not major rule within the meaning of Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), nor does this rulemaking require the preparation of a regulatory analysis. This conclusion is based on the finding that no substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, filling stations, parts stores, and retail snowmobile outlets.

List of Subjects in 36 CFR Part 7

National Parks.

Authority

The Service authority for promulgating this regulation is 16 U.S.C. 1 and 3.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. Add a new § 7.53 as follows:

§ 7.53 Black Canyon of the Gunnison National Monument.

(a) *Snowmobiles* (1) During periods when snow depth prevents regular vehicular travel to the North Rim of the Monument, as determined by the superintendent, snowmobiling will be permitted on the graded, graveled North Rim Drive and parking areas from the north monument boundary to North Rim Campground and also to the Turnaround.

(2) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when there is sufficient snow cover and when these roads and parking areas are closed to all other motor vehicle use by the public. These routes will be marked by signs, snow poles, or other appropriate means. Snowmobile use outside designated routes is prohibited.

(b) [Reserved]

Dated: July 24, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23104 Filed 8–30–84; 8:45 am]

BILLING CODE 4310-70-M

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36 CFR Part 7

Theodore Roosevelt National Park, ND

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On July 15, 1983, the National Park Service published in the **Federal Register** (48 FR 32366), a proposed rule to designate locations within Theodore Roosevelt National Park where snowmobiles may be used for recreational purposes during the winter season. This proposal was made available for public review and comment for 30 days. This final regulation provides for the preservation and recreational enjoyment of the park consistent with Executive Order 11644, National Park Service snowmobile policy and Department of the Interior off-road vehicle policy.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Harvey D. Wickware, Superintendent, Theodore Roosevelt National Park, Medora, North Dakota 58645, Telephone: (701) 623–4466.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972 directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat and not adversely affect scenic, natural or aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobiling use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations. This regulation is necessary to comply with Servicewide policy.

A notice was published in the **Federal Register** March 13, 1975 (40 FR 11768); designating the Little Missouri River channel within Theodore Roosevelt National Park as the authorized snowmobile trail. The route has since received sporadic winter use dependent upon snow and ice conditions. The routes designated by this final rulemaking are the same as those routes identified and adopted in 1975.

Public Participation

In 1975 an environmental assessment was prepared on alternatives for snowmobile use in Theodore Roosevelt National Park. Public response to the proposed snowmobile routes was invited by press release from the Superintendent. Only two citizens voiced opposition to allowing snowmobile use on the Little Missouri River.

The proposed snowmobile regulations for Theodore Roosevelt National Park were published July 15, 1983, in the **Federal Register** (48 FR 32366). No comments were received during the 30 day public comment period. The final regulations are the same as those proposed in 48 FR 32366.

Drafting Information

The following persons participated in the writing of these regulations: Harvey D. Wickware, Superintendent and Robert D. Powell, Chief Ranger, Theodore Roosevelt National Park.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This conclusion is based on the finding that the majority of use will be for access to snowmobiling areas on adjacent lands. There may be a limited positive result for local repair shops, filling stations, parts stores and retail snowmobile outlets.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the National Park Service has prepared an environmental assessment and a finding of no significant impact for this regulation. Copies are available at the address listed at the beginning of this rulemaking.

List of Subjects; 36 CFR Part 7

National Parks

Authority

Section 3 of the Act of August 25, 1916 (16 U.S.C. 3). In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—[AMENDED]

1. Add a new § 7.54 as follows:

§ 7.54 Theodore Roosevelt National Park

(a) *Snowmobiles.* (1) Designated routes open to snowmobile use are the portions of the Little Missouri River which contain the main river channel as it passes through both units of Theodore Roosevelt National Park. Ingress and egress to and from the designated route must be made from outside the boundaries of the park. There are no designated access points to the route within the park.

(2) The superintendent shall determine the opening and closing dates for the use of designated snowmobile routes each year, taking into consideration snow, weather and river conditions. He shall notify the public by posting of appropriate signs at the main entrance to both units of the park. The superintendent may, by the posting of appropriate signs, require persons to register or obtain a permit before operating any snowmobiles within the park. The operation of snowmobiles shall be in accordance with State laws in addition to the National Park Service regulations.

(b) [Reserved]

Dated: July 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23163 Filed 8–30–84; 8:45 am]

BILLING CODE 4310-70-M

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36 CFR Part 7

Curecanti National Recreation Area, CO; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final Rule.

SUMMARY: This final regulation designates those areas within Curecanti National Recreation Area where snowmobiles may be used for recreational purposes. This regulation provides for the preservation and enjoyment of the Recreation Area in a way that is consistent with both the snowmobile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Glen Alexander, Superintendent, Curecanti National Recreation Area, P.O. Box 1040, Gunnison, Colorado 81230. Telephone: (303) 641–2337.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by Federal Register notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the Federal Register on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives; and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowobile use shall be promulgated as special regulations in the Code of Federal Regulations.

This final regulation is necessary to comply with Servicewide policy. Its promulgation also responds to public interest in additional recreational opportunities at Curecanti National Recreation Area. Snowmobile use areas will comprise the frozen water surface of and designated access roads to Blue Mesa Lake within the recreation area, which are normally used by motorboats and motorized vehicles during the open water seasons.

Public Participation

In the winter of 1981 an environmental assessment was prepared on alternatives for snowmobile use in Curecanti National Recreation Area. Public response to the proposed snowmobile routes was invited by a press release from the Superintendent. The response period was from January 27, 1981, to February 27, 1981. No negative responses were received. No public meetings were held to discuss the proposal.

In compliance with the revised National Park Service snowmobile policy published in the Federal Register (44 FR 47412) on August 13, 1979, Curecanti National Recreation Area published its proposed snowmobile regulations in the **Federal Register** November 18, 1983 (44 FR 52484). During the 30-day public comment period, two responses were received. The U.S. Fish and Wildlife Service requested a determination of effect of this regulation on any endangered species, in this case, the bald eagle. The National Park Service has determined that there will be no significant impact on the wintering bald eagle. A second response was received from the snowmobile industry, which encouraged adoption of the proposed rule.

The regulations adopted today are the same as those proposed November 18, 1983.

Drafting Information

The following individuals participated in the writing of the regulations: James C. Riggs, Arnold B. Simmons, and Roger Andrascik, all of Curecanti National Recreation Area.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Law

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the Service has prepared an environmental assessment and a finding of no significant impact for this final regulation which is available at the address noted previously.

The Department of the Interior has determined that this document is not a major rule within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), nor does this rulemaking require the preparation of a regulatory analysis. This conclusion is based on the finding that no substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, filling stations, parts stores, and retail snowmobile outlets.

List of Subjects in 36 CFR Part 7

National parks.

Authority: The Service's authority for promulgating this regulation is 16 U.S.C. 1 and 3.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows: § 7.51 is amended by adding a new paragraph (c) as follows:

§ 7.51 Curecanti National Recreation Area

* * * * *

(c) *Snowmobiles.* Snowmobiles are permitted to operate within the boundaries of Curecanti National Recreation Area provided:

(1) That the operators and machines conform to the laws and regulations governing the use of snowmobiles as stated in this chapter and those applicable to snowmobile use promulgated by the State of Colorado where they prove to be more stringent or restrictive than those of the Department of the Interior.

(2) That their use is confined to the frozen surface of Blue Mesa Lake, and designated access roads. A map of areas and routes open to snowmobile use will be available in the office of the superintendent.

(3) That for the purposes of this section, snowmobile gross weight will be limited to a maximum of 1200 lbs. (machine and cargo) unless prior permission is granted by the superintendent.

Dated: August 8, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23162 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-70-M

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36 CFR Part 7

Dinosaur National Monument, CO and UT; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On April 28, 1983, the National Park Service published in the **Federal Register** (48 FR 19185), a proposed rule to designate those areas within Dinosaur National Monument where snowmobilies may be used for recreational purposes. This proposal was made available for public review and comment for a period of thirty (30) days. This final regulation provides for the preservation and recreational enjoyment of the park consistent with the National Park Service snowmobile policy and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Joe L. Kennedy, Superintendent, Dinosaur National Monument, P.O. Box 210, Dinosaur, Colorado 81610. Telephone: (303) 374-2216.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harrassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979, (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with a park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations.

This final regulation is necessary to comply with Servicewide policy. Snowmobiling has previously been permitted on approach roads to Dinosaur National Monument, but not within the Monument proper. However, pursuant to the Act of September 8, 1960 (74 Stat. 857,861), these roads constitute a part of the Monument, and are subject to the regulations of the National Park

Service. The National Park Service administers approximately 40 miles of such approach roads within a 200 foot right-of-way.

Two sections of these roads, totaling about 22 miles, are not plowed in the winter and will be designated as snowmobile routes. These proposed routes would be used by snowmobilers primarily for access to lands administered by the Bureau of Land Management.

Public Participation

It is the policy of the National Park Service, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. In the summer of 1982, an environmental assessment was prepared on alternatives for snowmobile use at Dinosaur National Monument. Public reponse to the proposed snowmobile routes was invited in the **Federal Register** from April 28, 1983, through May 31, 1983. No comments were received during the ensuing thirty (30) day public review period. Consequently, the final rule published here is the same as that proposed on April 28, 1983.

Drafting Information

The following individuals participated in the writing of these regulations: Joe L. Kennedy, Superintendent and John E. Welch, Chief Ranger, Dinosaur National Monument.

Paperwork Reduction Act

This regulation does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the finding that the majority of use will be for access to snowmobiling areas on adjacent lands. No substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, gas stations, parts stores and retail snowmobile outlets.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the National Park Service has prepared an environmental analysis for this regulation, which is available at the address listed at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks.

Authority: Section 3 of the Act of August 25, 1916 (16 U.S.C. 3).

In consideration of the foregoing, amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. In § 7.63 add a new paragraph (c) as follows:

§ 7.63 Dinosaur National Monument

* * * * *

(c) Snowmobiles: (1) Designated routes which will be open to smowmobile use are approximately 20 miles of the Harpers Corner Road in Colorado and approximately 2 miles of the Cub Creek Road in Utah. The Harpers Corner Road section extends from the Plug Hat Overlook to the Echo Park Road Turnoff. The Cub Creek Road section extends from the Chew Ranch Road, 1 mile north of the Green River Bridge, to the point where the Cub Creek Road leaves the southern boundary of the monument.

(2) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when there is sufficient snow cover and when these roads are closed to all other motor vehicle use by the public.

(3) Snowmobile use outside designated routes is prohibited.The superintendent shall determine the opening and closing dates for use of the designated snowmobile routes each year.

Dated: July 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23166 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-70-M

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36 CFR Part 7

Zion National Park, UT; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On July 15, 1983, the National Park Service published in the **Federal Register** (48 FR 32367), a proposed rule to designate those areas in Zion National Park where snowmobiles may be used for recreational purposes. This final regulation provides for the preservation and enjoyment of the park in a way consistent with both the snowmobile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984

FOR FURTHER INFORMATION CONTACT: Superintendent, Zion National Park, Springdale, Utah 84767, Telephone: (801) 772-3256.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harrassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR) § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with a park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations.

The regulation is necessary to comply with Servicewide policy. Recreational use of the designated snowmobile routes will be encouraged. However, it is expected that most of the use will be by private individuals traveling through Zion National Park to their property north of the park boundary. Snowmobile routes will comprise 11.75 miles on the Kolob Terrace Road and in the area of the Lava Point Fire Lookout. Specifically, five segments of road are proposed for designation as follows: (1) The 3.5-mile paved portion of the Kolob Terrace Road from the park boundary in the west one-half of section 33, Township 40 South, Range 11 West, Salt Lake Base and Meridian, north to where this road leaves the park in the northwest corner of sec. 16, T. 40 S., R 11 W., SLBM; (2) An approximately 5-mile paved portion of the Kolob Terrace Road from the park boundary, north of Spendlove Knoll, in sec. 5, T. 40 S., R. 11 W., SLBM; (3) An approximately 1-mile portion of unplowed, graded road from the park boundary in the southeast corner of sec. 13, T. 39 S., R. 11 W., SLBM, south to Lava Point Fire Lookout in the northwest quarter of sec. 31, T. 39 S., R. 10 W., SLBM; (4) An approximately 2-mile portion of unplowed, graded dirt road from the Lava Point Ranger Station, southeast to the West Rim Trailhead and then to a point where the road divides and leaves the park in the southeast corner of sec. 30, and the northeast corner of sec. 31, T. 39 S., R. 10 W., SLBM; and (5) An approximately ¼-mile portion of the unplowed, graded dirt road from the Lava Point Ranger Station, north to the park boundary where the road leaves the park, all in the southeast corner of sec. 13, T. 39 S., R. 11 W., SLBM.

Public Participation

An environmental assessment was prepared on alternatives for snowmobile use at Zion National Park. Public response was invited by press release from the superintendent. The regulation is established to comply with Executive Order 11644 and to provide for public access to private lands north of the park.

The proposed snowmobile regulations for Zion National Park were published in the **Federal Register** (48 FR 32367) on July 15, 1983. During the thirty (30) day public comment period, one comment was received opposing the establishment of any snowmobile route. As the intent of Executive Order 11644 is to allow snowmobile use where reasonable, this objection was considered and rejected. The rule published here is the same as that proposed on July 15, 1983.

Drafting Information

The following persons participated in the writing of this regulation: M.S. Nicholson, and L.L. Hays, Zion National Park.

Paperwork Reduction Act

This regulation does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Service has determined that the regulations contained in this rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis. This conclusion is based on the finding that the majority of use will be for access to adjacent lands. No substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, filling stations, parts stores and retail snowmobile outlets.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332, *et seq.*), the Service has prepared an environmental assessment and a finding of no significant impact of the rule. Copies are available at the address listed at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks.

Authority: Section 3 of the Act of August 25, 1916 (16 U.S.C. 3).

In consideration of the foregoing, amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. In § 7.10 add a new paragraph (e) as follows:

§ 7.10 Zion National Park

* * * * *

(e) *Snowmobiles.* After consideration of snow and weather conditions, the superintendent may permit the use of snowmobiles on designated routes within the park. Snowmobile use is restricted to the established roadway. All off-road use is prohibited. The designated routes are defined as follows:

(1) All of the paved portion of the Kolob Terrace Road from the park boundary in the west one-half of Sec. 33, T. 40 S., R. 11 W., Salt Lake Base and Meridian, north to where this road leaves the park in the northwest corner of Sec. 16, T. 40 S., R. 11 W., SLBM. This paved portion of the Kolob Terrace Road is approximately three and one-half miles in length.

(2) All of the unplowed, paved portions of the Kolob Terrace Road from the park boundary, north of Spendlove Knoll, in Sec. 5, T. 40 S., R. 11 W., SLBM, north to where this road leaves the park in the southwest corner of Sec. 23, T. 39 S., R. 11 W., SLBM, a distance of approximately five miles.

(3) The unplowed, graded dirt road from the park boundary in the southeast corner of Sec. 13, T. 39 S., R. 11 W., SLBM, south to Lava Point Fire Lookout in the northwest quarter of Sec. 31, T. 39 S., R. 10 W., SLBM, a distance of approximately one mile.

(4) The unplowed, graded dirt road from the Lava Point Ranger Station, southeast to the West Rim Trailhead and then to a point where this road divides and leaves the park, in the southeast corner of Sec. 30, and the northeast corner of Sec. 31, T. 39 S., R. 10 W., SLBM, a distance of approximately two miles.

(5) The unplowed, graded dirt road from the Lava Point Ranger Station, north to the park boundary where this road leaves the park, all in the southeast corner of Sec. 13, T. 39 S., R. 11 W., SLBM, a distance of approximately one-fourth mile.

Dated: July 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23165 Filed 8–30–84; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 1

Disinterments From National Cemeteries

AGENCY: Veterans Administration.

ACTION: Final regulation amendment.

SUMMARY: The Veterans Administration is changing its regulation on disinterment from national cemeteries. The regulation currently states that disinterment of the remains of the dependent of a veteran which were interred in a national cemetery, based

on an agreement by the veteran to be buried in the same or adjoining grave, may be authorized by the Chief Memorial Affairs Director. It has been determined that eligibility for burial of a dependent in a national cemetery is not contingent on the interment of the veteran in the same or any other national cemetery. Therefore, the paragraph providing procedures for this requirement is being removed.

EFFECTIVE DATE: This regulation is effective August 16, 1984.

FOR FURTHER INFORMATION CONTACT: Sonja McCombs, Management Analyst, Department of Memorial Affairs, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2987.

SUPPLEMENTARY INFORMATION: On March 29, 1984, a proposed amendment to 38 CFR 1.621 was printed on Page 12283 of the **Federal Register.** A 30-day comment period was provided. No comments were received; therefore, the regulation amendment is hereby adopted as final.

The Administrator has determined that this regulation is nonmajor in accordance with Executive Order 12291, Federal Regulation. The Administrator hereby certifies that this amendment will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations apply almost exclusively to individual veterans and their survivors. They will have no significant impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions).

There is no Catalog of Federal Domestic Assistance number involved.

List of Subjects in 38 CFR Part 1

Cemeteries, Claims, Government property, Veteran.

By direction of the Administrator.

Approved: August 16, 1984.

Everett Alvarez, Jr.,
Deputy Administrator.

PART 1—[AMENDED]

§ 1.621 [Amended]

38 CFR Part 1, GENERAL, is amended by removing paragraph (d) to § 1.621.

(38 U.S.C. 210(c))

[FR Doc. 84-23186 Filed 8-30-84; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 8

National Service Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration is amending regulations to reflect that premiums for National Service Life Insurance (NSLI) "V" term policyholders will be capped at the renewal age 70 premium rate. Most commercial companies limit either the number of term renewals or fix an age at which renewal is no longer available. NSLI "V" term policies, however, can be renewed an indefinite number of times. With each five year term renewal, the premiums increase to reflect the mortality experience associated with the higher ages. By capping the premium cost at the renewal age 70 rate, this proposal will provide financial relief for elderly policyholders.

EFFECTIVE DATE: September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Carey, Assistant Director for Insurance, VA Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

SUPPLEMENTARY INFORMATION: On pages 29972 and 29973 of the **Federal Register** of July 25, 1984, there was published a notice of proposed regulatory developments to reflect that premiums for National Service Life Insurance (NSLI) "V" term policyholders will be capped at the renewal age 70 premium rate. Interested persons were given 30 days within which to submit written comments, suggestions, or objections regarding the proposed regulation.

A written objection to the proposed regulations was filed on August 23, 1984, which questioned whether there would be sufficient funds available to ensure the future financial solvency of the term capping proposal. In that regard, the VA Actuarial Staff has thoroughly reviewed the financial implications of the term capping proposal, which is funded exclusively by surplus funds derived from term policies, and has concluded that sufficient funds will be available to meet the financial needs of the proposal.

Moreover, an eminent actuary, who is an officer in the Society of Actuaries, has formally reviewed all financial aspects of the term capping proposal and has concluded that the proposal is financially sound.

The Commentator was also concerned that the reduction or elimination of dividends, which will occur under the term capping proposal, will have a negative impact on term policyholders who have their premiums waived due to total disability. He states that since totally disabled policyholders already pay no premiums, the only effect on this group will be a reduction or elimination of the opportunity to purchase paid-up additional insurance with policy dividends. In fact, the term capping proposal has no effect on the policyholders' rights as provided under their contracts of insurance. Therefore, any term policyholder, including those who would have their preimums capped under the proposed regulation, having a total disability waiver of premiums may exercise his or her contractual right to convert to a permanent plan policy. In this manner, these policyholders would continue to receive dividends which may be applied to purchase paid-up additional insurance.

Having considered the objection, we conclude that the proposed regulations should be published as final.

The Administrator hereby certifies that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant ot 5 U.S.C. 605(b), this rule is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule will affect only certain NSLI insureds. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The agency has also determined these regulations are non-major in accordance with Executive Order 12291, **Federal Register.** These regulations will not have a large effect on the economy, will not cause an increase of costs or prices, and will not otherwise have any significant adverse economic effects.

(Catalog of Federal Domestic Assistance Number is 64.103)

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: August 28, 1984.

Harry N. Walters,
Administrator.

PART 8—[AMENDED]

38 CFR Part 8, National Service Life Insurance, is amended as follows:

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1. In § 8.3, paragraph (a) is revised to read as follows:

§ 8.3 Premium rates.

(a) The premium rates for participating insurance, other than policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (b), (d), or (3), respectively, are based on the American Experience Table of Mortality and interest at the rate of 3 percent per annum: *Provided*, that on or after September 1, 1984, National Service Life Insurance "V" five-year level premium term rates shall not exceed the renewal age 70 term premium rate. The premium rates for participating insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (b), (d), or (e), respectively, are based on the 1958 Commissioners Standard Ordinary Basic Mortality Table and interest at the rate of 3 percent per annum. (38 U.S.C. 702 and 706)

* * * * *

2. In § 8.85, paragraph (a) is revised to read as follows:

§ 8.85 Renewal of National Service Life Insurance on the 5-year level premium term plan and limited convertible 5-year level premium term plan.

(a) Effective July 23, 1953, except as provided in paragraph (c) of this section, all or any part of National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the applicable level premium term rate for the then attained age of the insured: *Provided*, that on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate: *Provided further*, that in any case in which the insured is shown by satisfactory evidence to be totally disabled at the expiration of the term period of his or her insurance under conditions which would entitle him or her to continued insurance protection but for such expiration, such insurance, if subject to renewal under this paragraph shall be automatically renewed for an additional period of 5 years at the applicable premium rate. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be at the applicable level premium term rate on that day: *Provided further*: that no insurance is subject to renewal if the policyholder has exercised his or her optional right to change to another plan of insurance. (38 U.S.C. 705 and 706)

* * * * *

3. In § 8.113, paragraph (e) is revised to read as follows:

§ 8.113 Premium waiver under section 622 of the National Service Life Insurance Act, as amended, and section 724 of Title 38, United States Code.

* * * * *

(e) National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan shall be automatically renewed for an additional 5-year period at the premium rate for the then attained age of the insured, provided the premiums on such insurance are being waived under this section at the expiration of the term period: *Provided*, that on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate: *Provided further*, that limited convertible term insurance may not be renewed after the insured's fiftieth birthday. The renewl of insurance under this section shall be effective as of the day following the expiration of the preceding term period, and the premium for such renewed insurance will be at the applicable level premium term rate on that day. The premiums on the insurance renewed under this section shall continue to be waived while the insured continues in active service and for 120 days after separation therefrom. (38 U.S.C. 705 and 706)

* * * * *

[FR Doc. 84–22820 Filed 8–27–84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action MO 1535; A-7-FRL-2663-2]

Approval and Promulgation of the Missouri State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On February 15, 1984, the Missouri Air Conservation Commission adopted amendments to State regulations entitled "Open Burning Restrictions." These amendments establish the requirement for operating permits for the open burning of untreated wood waste at solid waste disposal and processing installations. Due to the permit requirement and the restrictive measures against open burning in nonattainment areas, the overall effect of the amendments will be to tighten the Missouri Department of Natural Resources control over open burning. EPA is approving these amendments as a revision to the Missouri State Implementation Plan (SIP).

EFFECTIVE DATE: This action will be effective October 30, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the State's submission is available for review at the following addresses:

Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106
Missouri Department of Natural Resources, 1101 Rear Southwest Blvd., Jefferson City, Missouri 65102
Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460
Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

Written comments should be sent to: Jane C. Johnson, Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jane C. Johnson at the above address or call (816) 374–3791, (FTS) 758–3791.

SUPPLEMENTARY INFORMATION: On February 15, 1984, after notice and public hearing, the Missouri Air Conservation Commission amended regulations 10 CSR 10–2.100, 3.030, 4.090, and 5.070 entitled "Open Burning Restrictions." The amendments require operating permits for open burning of untreated wood waste at solid waste disposal and processing installations effective April 12, 1984. The original regulations, except 10–5.070, allowed open burning of untreated wood waste without an operating permit at installations holding valid Waste Management licenses. Due to the additional permit requirement and restrictive measures against open burning in nonattainment areas, the overall effect of the amendments will be to tighten control over open burning.

Regulation 10–5.070 pertains to the St. Louis Air Quality Control Region (AQCR). Although the amended regulation appears to allow open burning in limited situations, the regulation contains two provisions which would effectively prohibit open burning. First, the regulation states that it does not supercede applicable local ordinances; St. Louis City and County have local ordinances banning open burning. Second, the regulation prohibits open burning in nonattainment areas, unless it can be shown that alternatives to open burning would produce greater emissions. The St. Louis AQCR is nonattainment for ozone. Therefore, EPA has determined that the revised regulation would not impose less stringent requirements than those contained in the approved SIP.

On December 15, 1984, the State of Missouri submitted a draft of this revision to the SIP. A public hearing was held on January 18, 1984, and EPA submitted comments to the State in a letter dated January 24, 1984. These amendments to the open burning regulations were then adopted on February 15, 1984, by the Missouri Air Conservation Commission and published on April 2, 1984, in Volume 9, Number 4 of the *Missouri Register.*

Action: EPA approves this submission as a revision to the Missouri SIP. EPA believes this action is noncontroversial and is approving it without prior proposal. The public is advised that this action is effective October 30, 1984 unless we receive written notice within 30 days from the date of publication that someone wishes to submit adverse or critical comments. In such case, this action will be withdrawn and rulemaking will commence again by announcing a proposal of this action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2)].

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: August 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart AA—Missouri

Section 52.1320 is amended by adding a new paragraph (c)(45) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(45) The Missouri Department of Natural Resources submitted revisions to regulations 10 CSR 10–2.100, 3.030, 4.090, and 5.070 requiring operating permits for open burning of untreated wood waste at solid waste disposal and processing installations effective April 12, 1984.

[FR Doc. 84–23180 Filed 8–30–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[OW–FRL–2663–4]

Ocean Dumping; Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing dredged material disposal site located in the Gulf of Mexico offshore of Galveston Harbor as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an ocean dumping site for the current and future disposal of this material.

DATE: This site designation shall become effective on October 1, 1984.

ADDRESSES: The Environmental Impact Statement (EIS) and the letter of comment are available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC

EPA Region VI, 1201 Elm Street, Dallas, Texas

U.S. Army Corps of Engineers Library, Galveston District, 400 Barracuda, Galveston, Texas

FOR FURTHER INFORMATION CONTACT: Mr. T.A. Wastler, Chief, Marine Protection Branch (WH–585), EPA, Washington, DC 20460, 202/755–0356.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (hereafter "the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was last extended on February 7, 1983 (48 FR 5557 et seq.). That list established this site as an interim site.

On October 7, 1983, EPA proposed designation of this site for the continuing disposal of dredged material from the Galveston, Texas, area (48 FR 45798). The public comment period expired on November 21, 1983. One letter of comment was received on the proposed rule. The commenter concurred with the selection of the site and suggested that additional sites might be necessary to accommodate future requirements.

The location of the dredged material disposal site is approximately 3.7 nautical miles southeast of Galveston Island, positioned approximately in a rectangle with coordinates as follows:

29°18′00″ N., 94°39′30″ W.;
29°15′54″ N., 94°37′06″ W.;
29°14′24″ N., 94°38′42″ W.;
29°16′54″ N., 94°41′30″ W.

The site occupies an area of approximately 6.6 square nautical miles. Water depths within this area range from 10 to 15.5 meters. This site has been used for dredged material disposal since at least 1931. The average annual disposal rate since 1958 has been less than 2 million cubic yards.

EPA has prepared an EIS in accordance with EPA's Statement of Policy for Voluntary Preparation of EIS's (39 FR 16186, May 7, 1974; 39 FR 37119, October 21, 1974). On July 30, 1982, a notice of availability of the draft EIS for public review and comment was published in the Federal Register (47 FR 33001). The public comment period on this draft EIS closed September 13, 1982. On November 26, 1982, a notice of availability of the final EIS for public review and comment was published in the Federal Register (47 FR 53477). The public comment period on the final EIS closed December 27, 1982. No additional comments were received.

The EIS evaluated ocean alternatives to the continued use of the Galveston dredged material disposal site. These alternatives include no action and three general ocean environments off Galveston which were considered as potentially suitable areas in which to locate an ocean disposal site: The shallow-water area, including the proposed site, the mid-shelf area, where no specific site was located, and the deepwater area more than 90 nautical miles southwest of Galveston.

The alternatives are each within separate major marine environments off Galveston. The shallow-water area (including the proposed site) is a high-energy environment heavily influenced by wave action, coastal or nearshore processes, agricultural runoff, and storms. The deepwater and mid-shelf areas are low-energy environments influenced primarily by offshore and shelf currents.

Appendix A of the draft EIS evaluated and compared the environmental and economic characteristics of the three areas using the ocean dumping site selection criteria. Some of the more important of these criteria in relation to the three potentially suitable disposal areas are discussed below.

Location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile phases.

The entire shelf region supports valuable commercial fish and shrimp fisheries. Areas off the shelf support a relatively insignificant commercial fishery. The proposed site is in the vicinity of Galveston Bay, an important nursery area for number of commercially important species of fish and shrimp. These species are typical of nearshore western Gulf waters; therefore, the proposed site represents only a small portion of their geographic range.

The mid-shelf area supports valuable commercial fish and shrimp fisheries. The brown shrimp grounds and several offshore banks that represent valuable fishery resources areas exist there.

The deepwater area may be a feeding area for oceanic fish. However, there are no well-defined migratory pathways in the area. This area was selected in order to avoid shallow-water habitats of valuable shellfish and finfish.

Location in relation to beaches and other amenity areas.

The proposed site is about 3.7 nautical miles southeast of the nearest land, Galveston Island. Prevailing southwesterly bottom currents carry the dumped material away from Galveston and the local beaches. The disposal of dredged material will not have a significant adverse impact of free-swimming finfish and shellfish of the area.

The mid-shelf and deepwater areas are located more than 20 nautical miles and 53 nautical miles respectively from the nearest land. Therefore, disposal would have no significant adverse impact on beaches and other coastal and nearshore amenities.

Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Prevailing bottom currents at the proposed site flow south and southwest under normal conditions. Shoaling caused by disposal of dredged material in the high-energy shallow water area is not expected to be a concern. Temporary mounds form, but little evidence exists of significant long-term accumulation or mounding of material deposited at the proposed site.

The effects of disposal at mid-shelf sites have not been extensively studied because the mid-shelf region does not contain many disposal sites, and few studies have been undertaken with respect to the fate of dredged material deposited on the open shelf. However, existing information indicates most material falls to the bottom immediately after disposal. Although there is some turbidity of short duration, the material is dispersed over a wide area. Current direction is generally in a southwesterly direction.

Shoaling is less likely to occur in deep water than shallow water due to spreading and dispersion of the sediment as particles settle to the bottom.

For a more complete discussion of the ocean dumping site selection criteria considered, interested persons should examine pages A–7 through A–24 of the EIS. The summary contained in Appendix A recommends that the interim (proposed) site be designated for continuing use. This recommendation is based on several factors. The proposed site has received material dredged from the Galveston Bay Channel System since at least 1931. Past studies which are cited in the EIS have not discerned any significant adverse impacts from disposal at the proposed site and have determined that this is a high-energy erosional zone which can generally accept large volumes of dredged material with little apparent net change to the bottom.

Active oil and gas exploration and drilling occur in the mid-shelf area off Galveston. Fixed structures, such as platforms, and the supply vessels servicing them, would present navigational hazards to the hopper dredges used in channel maintenance. In addition, disposal at a mid-depth site would be more likely to have a long-term effect on the benthos than would disposal at a shallow-water site.

The primary reason against recommending designation of a deepwater site is transportation costs. It is estimated that dredging costs would increase 279 to 298 percent if the disposal area changed to that location.

The final EIS includes the Agency's assessment of the four comments received during the comment period on the draft EIS. Comments correcting facts presented in the draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point by point in the final EIS, following the letters of comment.

Based on the information reported in the EIS, EPA is designating the existing Galveston site for continuing use for the ocean disposal of dredged material where the applicant has demonstrated compliance with EPA's ocean dumping criteria. The EIS and the letter of comment are available for inspection at the addresses given above.

The designation of the existing Galveston dredged material disposal site as an EPA Approved Ocean Dumping Site is being published as final rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region VI. An appropriate monitoring program for the site will be developed jointly by EPA and the Corps of Engineers, and continued use of the site will be permitted as long as no significant adverse environmental effects occur at the site.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effect which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: August 24, 1984.

Henry L. Longest II,

Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40, § 228.12 is amended by removing paragraph (a)(1)(i)(D) and adding new paragraph (b)(20) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(20) Galveston Dredged Material Site—Region VI. Location: 29°18'00" N., 94°39'30" W.; 29°15'54" N., 94°37'06" W.; 29°14'24" N., 94°38'42" W.; 29°16'54" N., 94°41'30" W.

Size: 6.6. square nautical miles.
Depth: Ranges from 10 to 15.5 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the Galveston, Texas, area.

[FR Doc. 84-23180 Filed 8-30-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[Federal Acquisition Circular 84-4]

Federal Acquisition Regulation; Noncompetitive Procurement Procedures.

AGENCY: Department of Defense (DoD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of amendments.

SUMMARY: Federal Acquisition Circular (FAC) 84-4, dated August 29, 1984, cancels Item II of FAC 84-3 and, therefore, the amendments to 48 CFR, Chapter 1, Part 15 (Part 15 of the Federal Acquisition Regulation (FAR)) that were published in the **Federal Register** on June 29, 1984 (49 FR 26740), and which were to be effective October 1, 1984, are withdrawn.

The revisions in FAC 84-3 to FAR Part 15 implemented Office of Federal Procurement Policy (OFPP) Policy Letter 84-2, subject: "Noncompetitive Procurement Procedures." Subsequent to the issuance of OFPP Policy Letter 84-2 and FAC 84-3 in the **Federal Register**, the Competition in Contracting Act (CICA), Title VII, Pub. L. 98-369, was enacted. As a result of the enactment of the CICA, the OFPP policy letter has been rescinded.

Accordingly, and in order to eliminate an unnecessary burden on those involved in the procurement process, Item II of FAC 84-3 and the amendments ot 48 CFR, Chapter 1, Part 15 (Part 15 of the FAR) that were published in the **Federal Register** on June 29, 1984 (49 FR 26740), are withdrawn.

EFFECTIVE DATE: August 29, 1984.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION: FAC 84-3, published in the **Federal Register** on June 29, 1984 (49 FR 26740), contained, among other things, revised FAR coverage on noncompetitive procurement procedures implementing Office of Federal Procurement Policy (OFPP) Policy Letter 84-2, subject: "Noncompetitive Procurement Procedures," to be effective October 1, 1984.

The Competition in Contracting Act of 1984, Pub. L. 98-369, signed July 18, 1984, which preempted OFPP Policy Letter 84-2, is to be fully implemented by April 1, 1985. Implementing the requirements of the OFPP letter now and replacing them with a new set of procedures on April 1, 1985, would create an unnecessary burden on those involved in the procurement process. Therefore, OFPP has rescinded Policy Letter 84-2. As a result of OFPP's action, the amendments published in the **Federal Register** on June 29, 1984 (49 FR 26740) as Item II of FAC 84-3 and corresponding amendments to FAR Part 15 have been canceled.

Notwithstanding the rescission of OFPP Policy Letter 84-2 and Item II of FAC 84-3, Government personnel are reminded that it is the policy of the Government to pursue competition to the maximum extent practicable, and it is their responsibility to assure compliance with this policy. Government personnel are also reminded that Pub. L. 98-72 requirements for approving sole-source contracts and those resulting from unsolicited proposals remain in effect. Guidance on these policies and procedures is contained in Federal Procurement Regulations (FPR) Temporary Regulation 75, FPR Amendment 230, Defense Acquisition Circular 76-48, and NASA Procurement Notice 84-1.

List of Subjects in 48 CFR Ch. I

Government procurement.

Roger M. Schwartz,

Director, FAR Secretariat.

Federal Acquisition Circular

[Number 84-4]

All Federal Acquisition Regulation and other directive material contained in Federal Acquisition Circular 84-4 is effective on August 29, 1984.

Mary Ann Gilleece,

Deputy Under Secretary, Acquisition Management.

Ray Kline,

Acting Administrator of General Services.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

August 29, 1984.

The amendments to 48 CFR Chapter 1 Part 15 published in 49 FR 26740 are withdrawn.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C.; 2453(c).

[FR Doc. 84–23347 Filed 8–30–84; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-02; Notice 6]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: On May 17, 1984 (49 FR 20879) NHTSA proposed to amend FMVSS 108 to allow use of center high mounted stop lamps beginning September 1, 1984, requiring conformance only with location and reflection minimization requirements. That action was taken pursuant to a request by General Motors Corporation that NHTSA specify that the lamp may be installed before the effective date of September 1, 1985. Adoption of an optional compliance date would preempt any state laws that might prohibit the lamp's early introduction. This Notice amends Standard No. 108 to allow installation of the lamp effective August 1, 1984. The agency anticipates that this action will promote early achievement of the safety benefits associated with the addition of center high-mounted stop lamps. This notice also responds to a petition for reconsideration of the amendments to Federal Motor Vehicle Safety Standard No. 108 published on May 17, 1984 (49 FR 20818).

DATES: These amendments are effective August 31, 1984. The effective date for voluntarily installing center high-mounted stop lamps and for location and reflection minimization requirements for those devices is August 1, 1984.

ADDRESS: Petitions for reconsideration of the rule should refer to the docket and notice numbers set forth above and be submitted (preferably with 10 copies) to National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202–426–2153).

SUPPLEMENTARY INFORMATION: In its petition for reconsideration of NHTSA's final rule establishing requirements for a center high-mounted stop lamp on passenger cars manufactured on or after September 1, 1985 (see 48 FR 48235, October 18, 1983) General Motors requested that NHTSA amend Standard No. 108 to specify that the lamp may be introduced before the effective date. The purpose of this request was to obtain earlier preemption of any state laws that might prohibit the lamp's early introduction. On May 17, 1984, NHTSA responded to GM's request (49 FR 20879) and proposed to allow (but not require) early introduction of the stop lamp. Only requirements regarding lamp location and minimization of reflections would be applicable to cars manufactured with center high-mounted stop lamps between September 1, 1984, and September 1, 1985.

Comments on the proposal were received from Chrysler Corporation, Ford Motor Company, Volkswagen of America, General Motors, and Parker Hannifin Corporation. All commenters concurred with the proposal. Ford and General Motors recommended that the final rule be effective upon its publication in the **Federal Register**. GM further commented that the proposal "did not address the after market package which General Motors had intended to make available through our dealers, since it only speaks of passenger cars manufactured between September 1, 1984 and September 1, 1985."

The agency agrees that an effective date as early as practicable is in the public interest, and, in accordance with the proposal and the comments of GM and Ford, has designated August 1, 1984, as that date. Because the vehicle certification attached pursuant to 49 CFR Part 567 requires only the month and year of manufacture, generally the agency sets an effective date for new vehicle requirements as of the first day of a month so that a manufacturer will not have to certify to differing requirements within a single month. An effective date as of the first of the month also assists the agency in its compliance efforts. NHTSA does not understand that any 1985 model vehicles equipped with a lamp will be manufactured before August 1, 1984, and consequently found no reason to adopt an effective date earlier than that date.

The agency was not aware that GM had intended to offer an aftermarket package until receiving its comment. Such an amendment would be outside the scope of the proposal, and accordingly, was not considered. Under paragraph S4.7.1, the standard covers the aftermarket only to the extent that GM (or any manufacturer) offers a lamp intended as replacement for an original equipment center high-mounted stop lamp. However, to encourage retrofit in the aftermarket, NHTSA will study GM's request and consider whatever legal action may be required to remove impediments to the lamp's use.

Parker Hannifin Corporation, manufacturer of Ideal turn signal and hazard warning signal flashers, petitioned for reconsideration of the amendment to FMVSS No. 108 published on May 17, 1984 (49 FR 20818), which was based upon the original petitions for reconsideration of the final rule requiring center mounted stop lamps. Specifically, Parker Hannifin objected to new paragraph S4.6(b) which stated that "high-mounted stop lamps on passenger cars manufactured on or after September 1, 1985, but before September 1, 1986, may flash when the hazard warning system is activated". In the commenter's opinion, the agency had given no prior notice "to this function", and stated that the agency's action will "create a chaotic condition in the automotive flasher industry." The company avers that an insufficient period of time exists "for the development of a 'due care' basis for certification of hazard warning flashers rated for seven (7) lamps for conformance to FMVSS 108". The existing basis for certification of conformance of thermal flashers is said to be "up to six (6) lamps". Parker Hannifin recommended that the agency prohibit the additional lamp from flashing, or rule that certification for flashers can exclude the center high-mounted stop lamp. In its opinion, the agency's action is the very type of substantive rulemaking without notice which the Third Circuit found objectionable in *Wagner Electric Corp. v. Volpe* (466 F. 2d 1013 (3rd. Cir. 1972)).

Parker Hannifin's belief that the provision allowing flashing was adopted without notice overlooks the circumstances under which the center high mounted stop lamp was made subject to a prohibition against flashing. Although the preamble to the proposed rule did not raise the issue and the commenters did not address it, the specific text of the amendment, taken in context with the other requirements of the standard, required the center high mounted stop lamp to be steady-burning. However, the agency recognizes that it was a reasonable reading of the proposal for the commenters to believe that the light could be flashing. Thus, in order to avoid imposing a burden on vehicle manufacturers due to their interpretation, the May 1984 amendment allowed the lights to flash on vehicles manufactured before September 1, 1986.

The factual situation differs greatly from that of *Wagner*. Before the amendment complained of by Wagner, flashers were required to be "designed to conform" to Standard No. 108, but the burden of certification was upon vehicle manufacturers as aftermarket equipment was not covered until January 1, 1972. NHTSA amended the standard without sufficient notice to apply it to all flashers, for whatever purpose manufactured, thus placing the certification responsibility entirely upon flasher manufacturers. Further, the flashers were required to "conform", not merely be "designed to conform". In the instant case, the effect upon flasher manufacturers is a remote one. In order to facilitate early adoption of a safety device with demonstrable public benefits, at a minimum cost, the agency has allowed vehicle manufacturers to continue to use existing wiring systems for a limited time, if they so choose. There is no requirement that the new lamp flash when the hazard warning signals do, there has been no change to existing Federal or SAE materials applicable to flashers, and given the perceived limited use of the new lamp during 1985 model production, there would appear to be minimal impact upon original equipment and aftermarket requirements for flashers of existing designs. Nor can NHTSA provide an interpretation that certification for flashers may exclude the center mounted lamp. That permission is already implicitly contained in Standard No. 108 which allows the manufacturer to specify the design load at which its flasher is intended to operate. Accordingly the agency has decided to deny Parker Hannifin's petition.

NHTSA has considered the potential impacts of this rule and has determined that the rule is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation guidelines. The conclusions in the original regulatory evaluation for the final rule are not affected by the adoption of this rule. A free copy of that evaluation is available from the Docket Section.

The agency has also considered the impacts of these amendments under the Regulatory Flexibility Act. I certify that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those businesses affected by this amendment, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small organizations and governmental units which purchase cars equipped with center high-mounted stop lamps will not be significantly affected. The increase in new car prices for vehicles manufactured by companies which opt for early compliance will be negligible.

Because motor vehicle manufacturers must make timely decisions with respect to plans for the 1985 model year and because this amendment will facilitate the early introduction of a safety device, the agency finds that an effective date, earlier than 180 days after issuance of the final rule, is in the public interest. The change adopted in this notice relieves restrictions. Additional notice and comment on the August 1, 1984 early compliance date is unnecessary because of the minor nature of the change from the proposal.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

PART 571—[AMENDED]

§ 571.108 [Amended]

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, is amended as follows:

1. A new paragraph S4.1.42 is added to read:

S4.1.1.42 A passenger car manufactured between August 1, 1984, and September 1, 1985, may be equipped with a high-mounted stop lamp that conforms to S4.3.1.8.

2. Paragraph (b) of paragraph S4.8 is amended by changing the date "September 1, 1985" to "August 1, 1984".

The engineer and attorney primarily responsible for this rule are Kevin Cavey and Taylor Vinson, respectively.

(Secs. 103, 119 Pub. L. 89–563; 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued: August 24, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-23045 Filed 8-29-84; 11:16 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1220

[No. 38849]

Review of Preservation of Records Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; notice of effective date.

SUMMARY: The purpose of this Notice is to specify the effective date of the final rules published at 49 FR 3477, January 27, 1984. The effective date has been pending due to review and approval by the Office of Management and Budget. The effective date is June 6, 1984.

The objective of the Commission's review in the original order was to determine the relevance of each record, the appropriateness of the prescribed retention periods, and the purpose for which each record is needed for the Commission's regulatory mission. For many records, the retention periods were reduced or the recordkeeping requirements were eliminated.

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, (202) 275–7448.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1220

Preservation of records.

Authority: 49 U.S.C. 10321 and 11146 and 5 U.S.C. 553.

James H. Bayne,

Secretary.

[FR Doc. 84-23189 Filed 8-30-84; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine the Yaqui Chub To Be an Endangered Species with Critical Habitat, and To Determine the Beautiful Shiner and the Yaqui Catfish To Be Threatened Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Yaqui chub (*Gila purpurea*) to be an endangered species, and the beautiful shiner (*Notropis formosus*) and the Yaqui catfish (*Ictalurus pricei*) to be threatened species. Critical habitat on the San Bernardino National Wildlife Refuge (NWR) is designated for these three fishes. A special rule is included to allow take of the threatened species for educational, scientific, and conservation purposes in accordance with Arizona State laws and regulations. This determination is being made because populations of these species have been seriously reduced by habitat modifications including arroyo cutting, water diversion, impoundment construction, development of canal systems for irrigated agriculture, and excessive pumping of underground aquifers. An imminent threat to the remaining populations of Rio Yaqui fishes is the possible release of exotic fish such as the red shiner and channel catfish, which may result in intense competition and/or genetic swamping. The Rio Yaqui fishes occur in the Rio Yaqui Basin which drains western Sonora and portions of eastern Chihuahua in Mexico, and the extreme southeastern corner of Arizona. The Yaqui chub also has been recorded from the Rio Sonora and Rio Matape on the Pacific slope of Mexico, and the beautiful shiner formerly inhabited small drainages in the closed Guzman Basin, including Rio Mimbres in New Mexico, and the Casa Grandes, Santa Maria, and Del Carmen, just east of the Rio Yaqui. This action provides the protection of the Endangered Species Act of 1973, as amended, to these species.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

FOR FURTHER INFORMATION CONTACT: Dr. James E. Johnson, Regional Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

All of the Rio Yaqui fishes addressed in this rule were first collected and described from San Bernardino Creek, just south of the Arizona-Sonora border, in the latter half of the 19th century (Girard, 1856; Rutter, 1896). Adult Yaqui chubs are known to inhabit pools and undercut banks in permanent streams. The beautiful shiner is found in a variety of habitats, but the largest populations occur in the riffles of small streams. Yaqui catfish are usually found in large streams in areas of medium to slow current. Besides the above information on basic habitat preferences, little is known about the biology of the Rio Yaqui fishes. The biology of the beautiful shiner and the Yaqui catfish is thought to be similar to that of the red shiner and the channel catfish, respectively.

In the past, these fishes were found throughout the Rio Yaqui basin and in a few smaller adjacent drainages (Branson, 1960; Contreras-Balderas, 1975; Hendrickson, 1980; Koster, 1957; McNatt, 1974; Miller, 1977; Miller and Simon, 1943; Minckley, 1973). The range of these species has been significantly reduced, primarily due to habitat destruction. Remaining populations are in danger of being subjected to intense competition and genetic swamping through the indiscriminate release of closely related exotics (e.g., red shiner and channel catfish).

The Yaqui chub was considered by the Service for listing in 1966 and 1973, but no action was taken because its status in Mexico was undetermined (Bur. Sport Fish. Wildl. Res. Publs. 34 and 114). A list published in March of 1979 by the Endangered Species Committee of the American Fisheries Society recommended special concern for the status of the beautiful shiner and the Yaqui catfish, and described the Yaqui chub as endangered (Deacon *et al.*, 1979).

In 1978, the Fish and Wildlife Service contracted with biologists from Arizona State University and the University of Michigan to survey the status of fishes in the Rio Yaqui system of Mexico (Hendrickson *et al.*, 1980). These workers found only one specimen of the Yaqui chub after extensive collection efforts throughout the Rio Yaqui drainage. They also noted range reductions for the beautiful shiner and the Yaqui catfish and expressed concern for the status of these species.

The Yaqui chub, beautiful shiner, and Yaqui catfish were included on the December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 includes those taxa for which the Service has substantial information on hand to support the appropriateness of proposing to list the species as endangered or threatened. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list the Yaqui chub. Evaluation of this petition by the Service found that substantial information had been presented indicating that the petitioned action may be warranted. A notice of this finding was published on June 14, 1983 (48 FR 27273). Finding on the merits that the petitioned action was warranted, the Service on July 15, 1983, published a proposed rule to determine the Yaqui chub to be an endangered species with critical habitat, and the beautiful shiner and Yaqui catfish to be threatened species with critical habitat (48 FR 32527).

Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32527) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, foreign governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in "The Douglas Daily Dispatch" in Douglas, Arizona, on October 8, 1983, which invited general public comment. A total of five written comments were received on the proposal, one each from the Arizona Game and Fish Department, the Arizona Department of Water Resources, the Bureau of Land Management (BLM), the U.S. Forest Service, and the Mexico Direccion de Flora y Fauna Silvestre (Directorate of Wild Flora and Fauna). No public hearing was requested or held.

The Arizona Game and Fish Department submitted comments supporting the proposal and expressing concern about proposed geothermal exploration on the BLM lands in the San

Bernardino Valley and its possible adverse effects on the waters of the San Bernardino NWR. The Service responded that, while leasing of such resources has occurred, any further actions, such as drilling, would be subject to consultation with the Service under Section 7 of the Endangered Species Act.

The Arizona Department of Water Resources and the BLM submitted comments stating that they knew of no activities that would be affected by the proposal. The U.S. Forest Service responded that they had no opposition to the proposal, and commented that they knew of no potential habitat on their lands for suitable reintroduction of any of the three species.

The Mexico Direccion de Flora y Fauna Silvestre submitted comments expressing their concern for these species and their support for the Service's conservation efforts for these species. These comments also outlined problems these species face in Mexico.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Yaqui chub (*Gila purpurea*) should be classified as an endangered species, and that the beautiful shiner (*Notropis formosus*) and the Yaqui catfish (*Ictalurus pricei*) should be classified as threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to these species are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All three species of Rio Yaqui fish are seriously affected by a variety of habitat modifications. These species existed in San Bernardino Creek, Arizona, until the spring flows supporting the creek diminished and the remaining aquatic habitat was destroyed by cattle. Arroyo cutting, diverting stream headwaters, construction of impoundments, and excessive pumping of underground aquifers are responsible for the reduction of permanent stream habitat and for failing springs. The remaining U.S. populations of Yaqui chub are limited to a few springs on the San Bernardino NWR (USFWS, 1979) and to Leslie Creek (Silvey, 1975), both in southeastern Arizona, and are threatened by a gradually dwindling spring flow. The shiner and Yaqui catfish have been extirpated from the United States. Many river systems in Mexico, especially in lowland areas, have been highly modified into canal systems for irrigation agriculture. These alterations destroy pool habitats and have adverse impacts on fish populations.

The San Bernardino Valley is known to have potential geothermal energy resources (Hahman, 1979), although the area is not a Known Geothermal Resource Area (KGRA). The BLM has issued leases for geothermal resources on some of their lands adjacent to the San Bernardino NWR. Exploration and development of these leases could potentially cause depletion or pollution of the underground aquifers that supply water to the springs of the refuge, and could thereby result in loss of pollution of the flows of those springs. However, if exploration and development are properly designed and regulated, such effects are not expected (Cheremisinoff and Morresi, 1976).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These fishes are not used for any commercial purposes, and past scientific collecting has had no impact on existing populations.

C. *Disease or predation.* Introduced predatory fishes, such as largemouth bass, bluegill, black bullhead, channel catfish, and green sunfish are present in some portions of the remaining range of the Rio Yaqui fishes, and probably prey opportunistically on them. The threat of such predation will continue to increase in the remaining habitats of these species in Mexico. This threat is minor at present in U.S. habitats, and steps are already being taken to alleviate it.

D. *The inadequacy of existing regulatory mechanisms.* The Yaqui chub is listed as a Group II species on the threatened and unique wildlife list of Arizona (Ariz. Game and Fish Comm., 1982). Species listed as Group II are defined as beign endangered of being eliminated from the State. Arizona law allows take of Yaqui chub under a scientific collecting permit, or under a valid fishing license by angling. The beautiful shiner and the Yaqui catfish are listed in Group I of the Arizona list of threatened native wildlife (species extirpated from Arizona that still exist elsewhere, and which may possibly be reestablished in Arizona). Because Group I species do not exist in the State, Arizona law does not officially protect them. However, if reestablished, these fishes would probably be relisted as Group II species and their take would be regulated by the State. Arizona law does not provide protection of essential habitat. The Rio Yaqui fishes receive no protection in Mexico.

E. *Other natural or manmade factors affecting its continued existence.* Extant populations of the beautiful shiner and the Yaqui catfish are seriously threatened by the introduction of closely related exotic species. Future releases of the red shiner, *Notropis lutrensis* (currently, widely established in Arizona), into the Rio Yaqui system may reduce beautiful shiner populations through competition or by genetic swamping. The Yaqui catfish may be similarly affected by expanding populations of the channel catfish (*Ictalurus punctatus*) and blue catfish (*Ictalurus furcatus*) that are already established in the Rio Yaqui drainage. This type of interaction has been shown to be detrimental to other native fishes, as illustrated by the rapid elimination of native Yaqui topminnow (listed as endangered and found in the same drainage) populations after introduciton of the closely related common mosquitofish (*Gambusia affinis*), documented by Minckley (1973), Schoenherr (1973) and others. The introduction of exotics in Mexico is expected to continue at an increased rate as the interior portions of Sonora and Chihuahua are developed. The establishment of exotic species in Mexico may also result in intense competitive pressure on existing populations of the Yaqui chub.

This action is the result of careful assessment of the best scientific information available, as well as the best assessment of the threats faced by these fishes. Based on this evaluation, it was determined that the beautiful shiner and Yaqui catfish are threatened species, and the Yaqui chub is an endangered species, as defined by section 3 of the Act. Threatened status for the beautiful shiner and Yaqui catfish seems appropriate based on their status and distribution in Mexico and because of the threats to their remaining habitat in the U.S. and Mexico. The Yaqui chub faces similar threats and has a more restricted distribution in Mexico. Endangered status for the Yaqui chub is most appropriate. If these fishes are not listed their status could continue to decline.

Critical Habitat

The Act and 50 CFR Part 424 define critical habitat as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of the Act, upon determination by the Secretary that such areas are essential for the conservation of the species.

The Act in section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat for the Rio Yaqui fishes as follows: Arizona, Cochise County: All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S R30E.

The known constituent elements for the Rio Yaqui fishes include clean, small, permanent streams and spring pools without any exotic fishes. The streams should have deep pool areas separated by riffles and flowing areas with moderate current. Backwater areas of stream and springs with overgrown cut banks and accumulations of detritus are necessary for feeding and shelter. The Service has determined that these physical or biological features are essential to the conservation of these species.

Section 4(b)(8) of the Act requires that any proposed or final regulation which designates critical habitat be accompanied by a brief description and evaluation of those activities which may adversely modify such habitat if undertaken, or may be affected by such designation. Any activity which would lower the ground water level to the extent that the water flow from springs on San Bernardino NWR would be reduced could adversely impact the critical habitat. Such activities include, but are not limited to, pumping of ground water for agricultural purposes, and drilling activities associated with geothermal exploration. Any activity which would significantly alter the water chemistry of springs on San Bernardino NWR could adversely impact the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into surface or underground waters at a point source or by dispersal release. An additional activity which could adversely impact critical habitat is the release of exotic or nonnative fishes. Predation and competition from these introductions could reduce or eliminate populations of the endangered and threatened fishes.

The aquatic habitats of San Bernardino NWR, designated as critical habitat, provide habitat for one of the two existing populations of Yaqui chubs. Additionally, the aquatic habitats on San Bernardino Refuge provide expansion habitat for the Yaqui chub and are considered prime reintroduction sites for the beautiful shiner and Yaqui catfish.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has evaluated the proposed critical habitat designation for the Rio Yaqui fishes, taking into consideration all additional information and comments received. The information brought forward on economic or other impacts did not warrant adjustment of the proposed critical habitat designation. Activities that may be affected by the designation of critical habitat are discussed in the Available Conservation Measures section of this rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Recovery actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Yaqui chub, beautiful shiner and Yaqui catfish, and requires them to ensure that their actions do not result in the destruction or adverse modification of these critical habitats which have been determined by the Secretary. If a "may affect" determination is made, the Federal agency must enter into consultation with the Service. Regulations implementing this interagency cooperation provision are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983).

The only possible activity with Federal involvement that may potentially affect the designated critical habitat is geothermal exploration. This activity is beyond the boundary of the San Bernardino NWR, but could possibly affect underground aquifers supplying surface waters to the critial habitat. Geothermal exploration in the San Bernardino Valley is subject to Federal regulation and licensing by the BLM. It should be emphasized that critical habitat designation may not affect geothermal exploration activities in the vicinity. The designation of critical habitat for these species does not specifically preclude geothermal development in the area. Exploration activities will be allowed to proceed in the vicinity of critical habitat as long as artesian and surface water supplies at San Bernardino NWR are adequately protected.

The Act and implementating regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions which apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations codified at 50 CFR 17.22, 17.23, and 17.32 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not avaiable. In addition, the two species proposed as threatened, the Yaqui catfish and beautiful shiner, have a special rule which will allow take for educational, scientific, or conservation purposes in accordance with applicable State laws and regulations. Any violation of applicable State law would be a violation of the Endangered Species Act. At present no State laws or regulations are applicable to the Yaqui catfish or beautiful shiner, because neither species is presently found in Arizona. When the reintroduction of these species into Arizona waters occurs, the State will regulate taking in accordance with already existing laws and regulations regarding fishes. This special rule will allow these fishes to be managed as threatened species, thus allowing for more efficient management of the species, and enhancing their conservation. Without the special rule, all prohibitions of an endangered species status would apply.

The Service will review these species to determine whether they should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, implemented through section 8(A)(e) of the Act, and whether they should be considered for other international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for these fishes will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on a Determination of Effects which is available at the U.S. Fish and Wildlife Service Regional Office (see **ADDRESS** section).

The following information was considered in determining the economic and other impacts that might result from the determination of critical habitat.

Agriculture, primarily cattle production, constitutes the primary product of the areas surrounding the critical habitat. These activities are not expected to affect or be affected by the critical habitat designation on the San Bernardino NWR.

Some interest had been shown in potential geothermal resources in the vicinity of San Bernardino NWR. Geothermal drilling might possibly affect the underground aquifer supplying surface waters at San Bernardino NWR, the critical habitat of the Rio Yaqui fishes. Any exploration activities, however, are subject to regulation and licensing by the BLM. The adjacent area is not a KGRA and there are currently no leases or any interest in that area that would affect or be affected by the critical habitat designation.

The final critical habitat designation for the threatened and endangered Rio Yaqui fishes should cause no additional impacts upon the present economic status of Cochise County.

The final rule designating critical habitat for three fish species contain no recordkeeping or information collection requirements as defined by the Paperwork Reduction Act of 1980.

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Authors

The primary authors of this rule are Mr. Jim Bednarz, Ms. S.E. Stefferud, and Dr. James Johnson, U.S. Fish and Wildlife Service, Regional Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following entry in alphabetical order under "FISHES" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
*	*	*	*	*	*	*	*
Catfish, Yaqui	*Ictalurus pricei*	U.S.A. (AZ), Mexico	Entire	T	157	17.95(e)	17.44(g)
Chub, Yaqui	*Gila purpurea*	U.S.A. (AZ), Mexico	Entire	E	157	17.95(e)	N/A
Shiner, beautiful	*Notropis formosus.*	U.S.A. (AZ, NM), Mexico.	Entire	T	157	17.95(e)	17.44(g)
*	*	*	*	*	*	*	*

3. Amend § 17.95(e) by adding critical habitat of the Yaqui chub after chub, Spotfin:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Yaqui Chub *(Gila purpurea)*

Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include clean permanent water with deep pools and intermediate areas with riffles, areas of detritus or heavily overgrown cut banks in the Rio Yaqui drainage, and the absence of introduced exotic fishes.

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BEAUTIFUL SHINER
YAQUI CATFISH
YAQUI CHUB

Cochise County, ARIZONA

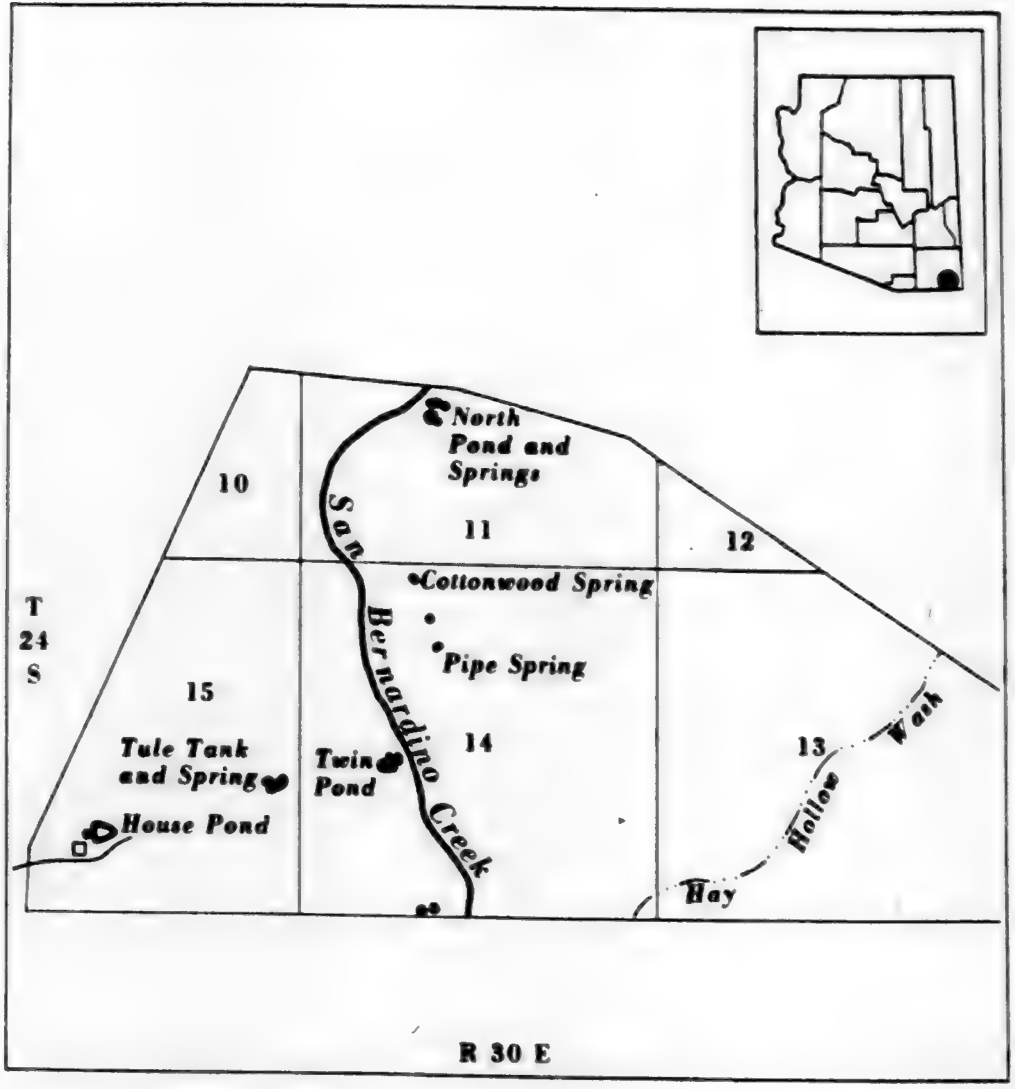
North Pond and Springs
10
11
12
San Bernardino Creek
Cottonwood Spring
Pipe Spring
T 24 S
15
14
13
Tule Tank and Spring
Twin Pond
House Pond
Hay Hollow Wash
R 30 E

* * * * *

4. Amend § 17.95(e) by adding critical habitat of the beautiful shiner after Pupfish, Leon Sprinep:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Beautiful Shiner *(Notropis formosus)*

Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include small permanent streams with riffles, or intermittent creeks with pools and riffles in the Rio Yaqui drainage with clean unpolluted water. These waters should be free of introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA

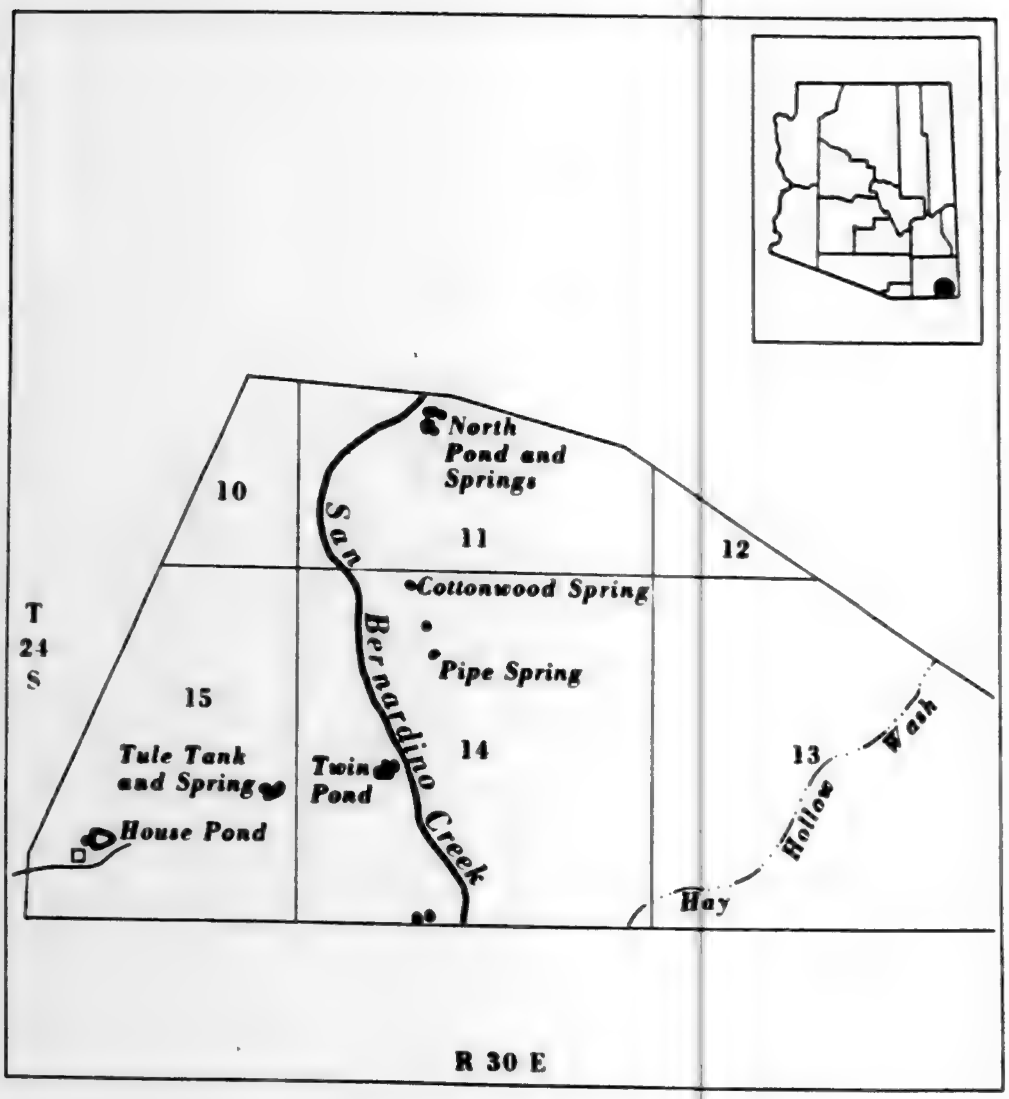
North Pond and Springs
10
11
12
San Bernardino Creek
Cottonwood Spring
Pipe Spring
T 24 S
15
14
13
Tule Tank and Spring
Twin Pond
House Pond
Hay Hollow Wash
R 30 E

* * * * *

5. Amend § 17.95(e) by adding critical habitat of the Yaqui catfish before Cabefish, Alabama:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Yaqui Catfish *(Ictalurus pricei)*

Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include clean unpolluted permanent water in streams with medium current with clear pools in the Rio Yaqui drainage. These waters should be without introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA

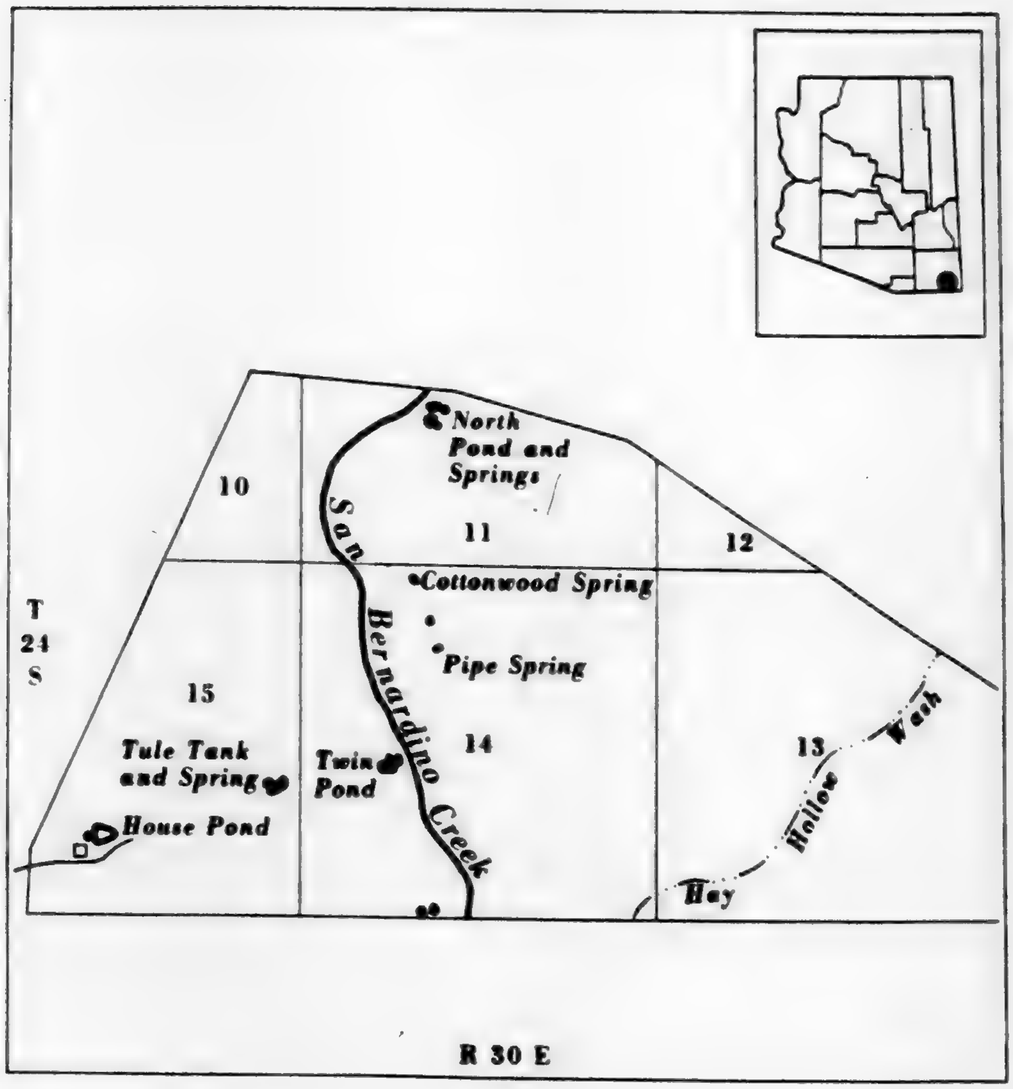

* * * * *

6. Amend § 17.44 by adding a new paragraph (h) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(h) Yaqui catfish (*Ictalurus pricei*) and beautiful shiner (*Notropis formosus*).

(1) All provisions of § 17.31 apply to these species, except that they may be taken for educational, scientific, or conservation purposes in accordance with applicable Arizona State laws and regulations.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

Dated: August 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-22933 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Thelypodium stenopetalum (slender-petaled mustard) and Sidalcea pedata (pedate checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Thelypodium stenopetalum* (slender-petaled mustard) and *Sidalcea pedata* (pedate checker-mallow) to be endangered species. This action is being taken because over 85 percent of the historic meadowland habitat for these plants has been eliminated by dam construction and urban and commercial development. Most of the remaining habitat in their limited range is subject to development and/or adverse modification. The designation of these species as endangered provides the protection of the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Specialist, Regional Office, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea pedata (pedate checker-mallow) is a multi-stemmed, perennial herb of the mallow family. Asa Gray first described this species in 1887 from "Bear Valley in the San Bernardino Mountains, southern California." It grows from a fleshy taproot. The leaves are predominately basal with 3-5 lobes. The few cauline leaves are three-parted, each part biternately dissected into linear segments. The flowers are clustered into loosely spicate racemes up to 25 cm long with deep pinkish-rose petals. *Thelypodium stenopetalum* (slender-petaled mustard) is an herbaceous short-lived perennial. Sereno Watson described this mustard in 1887 from "Bear Valley, San Bernardino Mountains, on stony hillsides near the upper lake." It has simple decumbent to subdecumbent stems 3–8 dm tall. The cauline leaves are oblong-lanceolate, 1–5 cm long, 0.5–0.9 cm wide and sagittate at the base. The inflorescence is a 1–2 dm long raceme. The flower petals are mostly lavender or whitish and crisped above. The sessile fruits are straight or slightly incurved, 3–5 cm long and ascending. Both of these plant species are localized in the moist alkaline meadows of the Big Bear Basin of San Bernardino County, California.

Although these species were once more abundant locally, the impoundment of Big Bear Lake in the late 1800's and subsequent urbanization have eliminated nearly all of the natural meadowlands of Big Bear Valley, an estimated reduction from more than 7,000 acres to about 1,000 acres. Most of the known stands of checker-mallow and mustard plants were destroyed by these activities. Almost all of the former wet meadow habitats necessary to the continued existence of these species have been eliminated. Both species now exist as very reduced populations having severly restricted distributions.

Studies supported by the U.S. Forest Service (Krantz, 1979) and later studies (Krantz, 1982) have estimated total occupied acreage for the pedate checker-mallow (including scattered residual plants) at about 14.5 acres. Total acreage of slender-petaled mustard populations has been estimated at approximately 16 acres divided among six sites in four general areas (Krantz, 1979, 1980, 1982).

At present the pedate checker-mallow remains in significant numbers only at three locations near Bluff Lake, Baldwin Lake, and the south shore of Big Bear Lake, all of which are under private ownership. Scattered individuals can also be found in a few other areas, mostly vacant lots or remnant meadows surrounded by housing or commercial developments. Such scattered plants apparently do not reproduce and are expected to die out.

The slender-petaled mustard is now known from only four locations, the south shore of Big Bear Lake, near Baldwin Lake, near Erwin Lake, and in Holcomb Valley. The first three are privately owned and under consideration for additional development. The fourth site, Holcomb Valley on National Forest land, was threatened by off-road vehicle (ORV) use. The Forest Service is aware of this population and has implemented protective measures at the site.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the 1973 Act, and of its intention thereby to review the status of the plant taxa named within. *Sidalcea pedata* and *Thelypodium stenopetalum* were included in that notice. The July 1, 1975, notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479) of a new notice of review for plants, which included these species. On July 28, 1982, Tim Krantz petitioned the Service to list both these species, and furnished information about their current status. A proposed rule to determine endangered status followed in the **Federal Register** of July 15, 1983 (48 FR 32522–32525).

Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32522–32525) and associated notifictions, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Sun paper of San Bernardino County on September 9, 1983, which invited general public comment. No public hearing was requested. Seven responses (six containing comments) were received, and the comments are discussed below.

Comments by four professional botanists and one geologist strongly supported the listing of both plant species. A botanist with a State native plant society indicated that habitat conditions have deteriorated further since the status surveys of 1978–80. A university botanist also mentioned additonal documented habitat loss and present peril of these plants. A representative of a botanical journal pointed out that mountain meadows tend to be fragile and to recover their full floristic complement quite slowly after being overused. He considered protection of such areas to be essential.

A professional geologist discussed the distinctive "pavement" soil profile in the Big Bear area and its concomitant unique flora. Because deep disturbances of the soil profile can permanently destroy the pavement habitat, he suggested that other rare pavement endemics be listed as well. No particular species were named by this commentor, but the Service presently has several species restricted to that general area under review, and would appreciate additional information regarding any of them.

An additional comment by the California Department of Water Resources suggested that critical habitat be designated to allow early consideration of these species in future planning for State and local activities. Critical habitat was not designated to avoid focusing attention on the plants, which could result in injurious collection or other taking activities. However, the Service will endeavor to keep affected State and local agencies informed of the location and status of the plants that might affect planning processes undertaken pursuant to the California Environmental Quality Act (CEQA).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard) should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sidalcea pedata* A. Gray (pedate checker-mallow) and *Thelypodium stenopetalum* Watson (slender-petaled mustard) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* These two plant species are both restricted in range to the few remaining wet alkaline meadows of the Big Bear Lake Basin. Both species occur in very low numbers and most of the wet meadows necessary for their continued existence have been eliminated by urban and commercial developments. About 80 percent of the remaining habitat is subject to development, much of it anticipated in the next few years. In a few areas, off-road vehicle activity has also eliminated colonies and damaged habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to either of these species.

C. *Disease or predation.* Historically, cattle grazing in the Big Bear Lake basin probably affected the species composition of many of the meadow areas formerly supporting these plants. A few of the remaining colonies of both species still suffer possible adverse impacts from cattle grazing, but this threat appears less imminent than the development threats mentioned in Factor A above.

D. *The inadequacy of existing regulatory mechanisms.* Although the pedate checker-mallow and slender-petaled mustard are listed by the State of California as endangered, State law principally addresses salvage of plants when there is a change in land use and restrictions on trade, and does not provide sufficient protection to ensure survival of the species in its natural habitat. Federal listing would provide some additional protection for both species, and provide new options for their protection and management.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the pedate checker-mallow and the slender-petaled mustard as endangered. Urban and commercial development threaten to eliminate wet meadow habitats that support the plants. These listing actions will increase the protection of both plant species. Critical habitat is not being designated for either species because it may focus attention on the plants and might encourage taking.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. All known colonies of pedate checker-mallow and all but one colony of slender-petaled mustard occur on private lands, where direct Federal involvement is minimal. Critical habitat designation would probably focus attention upon the listed plants and their rare and vulnerable status, and might encourage collection for private or commercial purposes. The danger thus posed to these species by the designation of critical habitat outweights the minimal protections that would be provided.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that conservation actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some consultation involving actions on Forest Service lands is anticipated. A consultation will be conducted for issuance of a special use permit for a permanent pipeline carrying wastewater from the Big Bear Basin to Lucerne Valley that now crosses Forest Service property. No other actions are presently known that would require a consultation under section 7.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the pedate checker-mallow and slender-petaled mustard, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activites involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued since these species are not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to posession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to the slender-petaled mustard on U.S. Forest Service lands in the Holcomb Valley. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417). Permits for exceptions to this prohibition are available through section 10(a)(1)(A) of the Act. It is anticipated that few permits for the removal and reduction to possession of the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

The Service will review these species to determine whether they should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8(A)(e) of the Act, and whether they should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined in regulations implementing the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Krantz, T.P. 1979. A botanical investigation of *Sidalcea pedata.* Prepared for the San Bernardino National Forest. 24 pp. unpubl. rept.

Krantz, T.P. 1980. *Thelypodium stenopetalum,* the slender-petaled mustard: a botanical survey of the species throughout its range.

Prepared for the San Bernardino National Forest. 43 pp. + appendices, unpubl. rept.

Krantz, T.P. 1982. Petition for listing as Endangered *Sidalcea pedata* and *Thelypodium stenopetalum*. Petition to U.S. Fish and Wildlife Service, dated 22 July 1982. 10 pp.

Authors

The primary authors of this rule are Mr. Monty D. Knudsen and Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, Sacramento, California (916/440–2791). Dr. George E. Drewry of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order by family and genus, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Brassicaceae—Mustard family:						
*	*	*	*	*	*	*
Thelypodium stenopetalum	Slender-petaled mustard	U.S.A. (CA)	E	158	NA	NA
*	*	*	*	*	*	*
Malvaceae—Mallow family:						
*	*	*	*	*	*	*
Sidalcea pedata	Pedate checker-mallow	U.S.A. (CA)	E	158	NA	NA
*	*	*	*	*	*	*

Dated: August 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23156 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Deregulate the Bahama Swallowtail Butterfly and To Reclassify the Schaus Swallowtail Butterfly From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service make a final determination to remove the Bahama swallowtail butterfly (*Heraclides (Papilio) andraemon bonhotei*) from the U.S. List of Endangered and Threatened Wildlife, and to reclassify the Schaus swallowtail butterfly (*Heraclides (Papilio) aristodemus ponceanus*) from threatened to endangered status. The action is taken under the authority of the Endangered Species Act of 1973, as amended. Both species occur in Dade and Monroe Counties, Florida, and were listed as threatened species in 1976. A recent review of the status of each of these species indicates that the Bahama swallowtail is only a sporadic resident of the United States. It is not subspecifically distinct from the non-threatened Bahaman population of this species and does not presently qualify for listing under the Endangered Species Act, as amended. The Schaus swallowtail has declined in numbers and range since the time of its listing. This action is consistent with a petition filed with the Service on March 9, 1983, by the Florida Game and Fresh Water Fish Commission, and also follows the recommendations of the approved Schaus swallowtail butterfly recovery plan. This rule removes the protection of the Endangered Species Act from the Bahama swallowtail, and affords the Schaus swallowtail the protection of endangered status. Neither species remains eligible for a special rule at 50 CFR 17.47 that permits non-commercial take of adults, so that special rule is deleted.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.–4:30 p.m.) at the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Bahama (*Heraclides (Papilio) andraemon bonhotei*) and Schaus (*Heraclides (Papilio) aristodemus ponceanus*) swallowtail butterflies are representatives of tropical species which reach their northern limits of distribution in southern Florida. The Bahama swallowtail was described by Sharpe in 1900. It has dark brown wings with a median yellow band and has two pairs of tails on the hindwings. The Schaus swallowtail was described by Schaus in 1911. Adults have blackish-brown wings with broad rusty patches under the hindwings. Only one pair of tails is present. The primary food of the larval Schaus swallowtail is torchwood (*Amyris elemifera*), while the larval Bahama swallowtail feeds on key lime (*Citrus aurantifolia*) and various *Ruta* and *Xanthoxylum* species.

The Bahama swallowtail has been recorded from Miami and Elliott Key, Dade County, and from Key Largo and Long Key, Monroe County. Most of the records are from Elliott Key. The best available evidence indicates that this species is not a permanent resident of the U.S., nor is it subspecifically distinct from the resident *Heraclides andraemon bonhotei* population in the Bahamas. This species has occasionally reproduced in the U.S., but apparently soon dies out. The most recent known breeding in the U.S. was on Elliott Key in 1972 (U.S. Fish and Wildlife Service, 1982).

The Schaus swallowtail originally occurred from the Miami area south through the Florida Keys as far as Lower Matecumbe Key. The last records from Miami were in 1924. Presumably, urban development eliminated the habitat of the species there. The last records for Upper and Lower Matecumbe Keys were in the mid-1940's.

The disappearance of the species from these Keys apparently coincided with heavy collecting pressure, although collecting is not known to have caused the decline. In the early 1970's, the butterfly was relatively abundant on north Key Largo, but appears to be rare there now. The known range of the Schaus swallowtail is now Elliott and Old Rhodes Keys in Biscayne National Park, Dade County, and north Key Largo, Monroe County (Loftus and Kushlan, 1982; U.S. Fish and Wildlife Service, 1982).

Both the Bahama and Schaus swallowtail butterflies are restricted to tropical hardwood hammocks, which constitute the climax vegetation of upland areas in the Florida Keys. Formerly, this vegetation type occurred more widely in south Florida, but has been largely eliminated on the mainland. The hammocks are closely related floristically to the West Indies, and constitute the only tropical upland

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plant community found in the continental U.S. The Florida Keys contain the largest remaining hammocks, but many of the areas are highly subject to development pressures because of restrictions on development in the surrounding lowland (mangrove) areas. Local, State, and Federal laws presently limit development on these wetlands. The hammocks contain a large number of plant species rare to Florida, many of which are considered threatened or endangered by this State. The tropical hardwood hammock plant community is considered to be one of the most restricted and vulnerable habitat types in the U.S.

Both butterflies were proposed for listing as federally threatened on April 22, 1975 (40 FR 17757). The proposal was made final on April 8, 1976 (41 FR 17736). The final regulation included a special rule at 50 CFR 17.47(a) exempting both species from some of the protective provisions available to threatened species under 50 CFR 17.31. Non-commercial take of adults was allowed, provided that other local, State, and Federal regulations were complied with. Chapter 39–27 of the Florida Administrative Code, however, presently lists the Bahama and Schaus swallowtail butterflies as threatened, and prohibits take, possession, sale or transport of all life stages of these species, except by permit. The Federal special rule is superseded by Florida State legislation, because the special rule allows take of adults only where the take would be in compliance with all other local, State, and Federal regulations. Section 6(f) of the Endangered Species Act allows State taking prohibitions to be more restrictive than those imposed by the Act or its implementing regulations.

Section 4(c)(2) of the Endangered Species Act, as amended, requires that a 5-year review of the List of Endangered and Threatened Wildlife be carried out to determine whether any species should be removed from the list or changed in status. A 5-year review notice for the Bahama and Schaus swallowtail butterflies was published by the Service in the February 27, 1981, **Federal Register** (46 FR 14652).

At the time the Bahama swallowtail was listed, the Endangered Species Act allowed protection for distinct population segments of all types of wildlife. The 1978 Amendments to the Act restricted protection at the population level to vertebrates. Since the U.S. populations of the Bahama swallowtail are not subspecifically distinct from the Bahaman populations, and since the subspecies *bonhotei* is not in danger of extinction throughout all or a significant portion of its range, the Act, as amended, requires that this species be removed from the List of Endangered and Threatened Wildlife.

The Florida Game and Fresh Water Fish Commission recently carried out research on the status of the Bahama and Schaus swallowtail butterflies. The studies were funded in part with funds provided by the Service under Section 6 of the Endangered Species Act. The results of this research were incorporated into a recovery plan for the Schaus swallowtail butterfly, including recommendations for the Bahama swallowtail (U.S. Fish and Wildlife Service, 1982). The plan recommended that the Bahama swallowtail be delisted, and that the Schaus swallowtail be reclassified from threatened to endangered, based on its decline in numbers and distribution.

In a petition dated February 23, 1983, and received March 9, 1983, the Florida Game and Fresh Water Fish Commission requested that the Schaus swallowtail be reclassified as an endangered species. An administrative finding that the requested action might be warranted was made on May 9, 1983.

On August 29, 1983, the Service published in the **Federal Register** (48 FR 39096) a proposal to delist the Bahama swallowtail and to reclassify the Schaus swallowtail butterfly from threatened to endangered. Publication of this proposed rule signified that the requested action was warranted, and constituted a required finding in accordance with section 4(b)(3)(B)(ii) of the Act as amended in 1982.

Summary of Comments and Recommendations

In the August 29, 1983, proposed rule (48 FR 39096) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Miami, Florida, *Herald* on September 25, 1983, and in the Tavernier, Florida, *Keynoter* on September 22 and 29, 1983; general comment on the proposal was invited. Eight comments were received.

Florida's Department of Natural Resources (Division of Parks and Recreation) and Department of Agriculture and Consumer Services (DACS) supported the proposals. DACS noted, however, that *Heraclides aristodemus* specimens from Andros Island in the Bahamas appeared to be indistinguishable from those in the Florida Keys. Bahaman populations of *Heraclides aristodemus* are presently ascribed to the subspecies *driophilus*. Another commenter, a lepidopterist, also supported the proposal. He indicated that there was evidence that the Cuban population of *Heraclides ponceanus* (presently ascribed to the subspecies *telmenes*), might also be identical to the Florida populations of *ponceanus* but that there is not presently sufficient data to substantiate this. The Service responds that, with respect to the taxonomic status of *Heraclides aristodemus*, the current scientific literature considers *Heraclides aristodemus ponceanus* to be restricted to the Keys of Monroe and Dade Counties, Florida. If at any time revisionary work were to indicate that *ponceanus* should be synonymized with one or more of the other subspecies of *Heraclides aristodemus*, the Service would review the status of the Schaus swallowtail with respect to section 4(a) of the Endangered Species Act. If the taxon were not in danger of extinction throughout all or a significant portion of its range, or likely to become endangered in the foreseeable future, it would no longer qualify for the protection of the Endangered Species Act. For example, if the butterfly were determined to be widespread and abundant in Cuba and the Bahamas, with no serious threat to its continued existence on these islands, the Florida population would not be eligible for the protection of the Act.

Support for the proposals was also received from the Florida Natural Areas Inventory, the National Park Service (Biscayne National Park), the International Union for Conservation of Nature and Natural Resources (Conservation Monitoring Centre) and two private citizens.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Bahama swallowtail should be removed from the U.S. List of Endangered and Threatened Wildlife, and that the Schaus swallowtail butterfly should be reclassified from threatened to endangered status. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments to the Act—see

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proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Bahama swallowtail butterfly (*Heraclides andraemon bonhotei*) and Schaus swallowtail butterfly (*Heraclides aristodemus ponceanus*) are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Bahama swallowtail occurs throughout the Bahama Islands. There is no information indicating any threat to the species throughout its range.

Development for residential and recreational purposes threatens to modify or eliminate tropical hardwood forest hammocks on which the Schaus swallowtail depends. Uplands in the Florida Keys, though limited in area, are of much development interest due to the many wetland (mangrove) areas that are virtually impossible to develop. The entire range of this butterfly is vulnerable to modification or destruction from hurricanes. As the range of the species becomes increasingly limited and fragmented, the likelihood of a single hurricane destroying all or most of the remaining population increases.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Both the Bahama and Schaus swallowtail butterflies are popular with collectors. Although a few individuals of the Bahama swallowtail may occasionally be collected when this species appears in Florida, there is no information indicating that the species is threatened by overutilization in the Bahamas.

At the time of the listing of the Schaus swallowtail as a threatened species, some correspondents believed that collection of this species represented a threat. Since the species was listed, it has decreased in range and numbers. Collecting is now probably a greater threat than at the time of listing.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* This final rule removes the Bahama swallowtail butterfly from the protection of the Endangered Species Act. Federal listing as threatened and similar state listing under Chapter 39–27.04 of the Florida Administrative Code both provide regulatory protections for the Schaus swallowtail butterfly, but its population has generally declined, even subsequent to listing. Reclassification from threatened to endangered will benefit the Schaus swallowtail by giving increased priority to its recovery needs, pursuant to section 4(g)(4) of the Act, as amended.

E. *Other natural or manmade factors affecting its continued existence.* The Bahaman segment of the Bahama swallowtail populations provides it with insurance against the risk of extinction. The Schaus swallowtail could lose a significant portion of its remaining populations from hurricanes or frost. The range of this species has decreased substantially in recent decades. The present restricted range could be greatly reduced or eliminated by a single hurricane. The Schaus swallowtail is near the limits of its cold-tolerance in south Florida, and a single severe freeze could also greatly reduce the population.

Insecticide application may have adverse affects on the Schaus swallowtail. The Monroe County Mosquito Control District applies insecticides to control adult and larval mosquitoes. Both ground and aerial applications are made. The large amount of insecticides applied annually in Monroe County (4–5 thousand gallons of Dibrom and Baytex mixed with 50–60 thousand gallons of diesel fuel) could adversely affect the Schaus swallowtail as well as other insects native to the hardwood hammocks.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to reclassify the Schaus swallowtail butterfly from threatened to endangered status and to remove the Bahama swallowtail butterfly from the U.S. List of Endangered and Threatened Wildlife. The Schaus swallowtail has declined since the time it was listed as threatened; the Bahama swallowtail no longer biologically or legally qualifies for the protection of the Endangered Species Act. The reason for not designating critical habitat for the Schaus swallowtail is discussed in the following section. A decision to take no action would leave both species in inappropriate status. Therefore, no action would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time any species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Schaus swallowtail butterfly. Section 4(b) of the Act requires publication of critical habitat maps in the Federal Register. Publication of critical habitat descriptions would make this species even more vulnerable to collecting and other pressures and would increase enforcement problems. Though taking prohibitions exist, effective enforcement is difficult, particularly outside Biscayne National Park. For these reasons, the recovery plan for the Schaus swallowtail butterfly expressly recommends that no publicity be given to the remaining colonies of this species. Therefore, it would not be prudent to determine critical habitat for the Schaus swallowtail butterfly at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below. These conservation measures will no longer apply to the Bahama swallowtail butterfly.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 9, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service. Since the Schaus swallowtail is already protected by section 7 of the Act by its listing as a threatened species, reclassifying the species to endangered will not affect this requirement.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered

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wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits my be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

A special rule (50 CFR 17.47(a), pursuant to section 4(d) of the Act) previously allowed non-commercial take of both the Bahama and Schaus swallowtail butterflies. These exemptions applied, however, only if concordant with State and local regulations and ordinances. Florida State law presently prohibits collecting these species except by permit, thus overriding the special rule.

This final rule removes all Federal protection for the Bahama swallowtail, and, by deleting the special rule for the Schaus swallowtail butterfly, brings existing Federal regulatory prohibitions into conformance with current State law. Few effects are anticipated from this change; the Bahama swallowtail is an occasional migrant to the U.S. and few specimens could be taken here. No additional effects are expected regarding the Schaus swallowtail, because take is already prohibited by State law except under permit.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Loftus, W.F., and J.A. Kushlan. 1982. The status of the Schaus swallowtail and the Bahama swallowtail butterflies in Biscayne National Park. National Park Service, South Florida Research Center, Everglades National Park. Report M-649. 18 pp.

U.S. Fish and Wildlife Service. 1982. Schaus swallowtail butterfly recovery plan. U.S. Fish and Wildlife Service, Atlanta, Georgia. 57 pp.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580). Dr. George E. Drewry of the Service's Washington Office served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by changing the status of the Schaus swallowtail butterfly, under "INSECTS," from threatened to endangered; changing its scientific name, to reflect current usage, and revising the "special rules" column, as follows:

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Insects:	*	*	*	*	*		*
Butterfly, Schaus swallowtail.	*Heraclides* (*Papilio*) *aristodemus ponceanus.*	U.S.A. (FL).........	NA............................	E.............	13,159	NA..........	NA
*	*	*	*	*	*		*

3. Further amend § 17.11(h) by removing the Bahama Swallowtail butterfly *(Papilio andraemon bonhotei)*, under "INSECTS," from the list of Endangered and Threatened Wildlife.

§ 17.47 [Reserved]

4. Section 17.47 is removed and reserved.

Dated: August 14, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23157 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Key Largo Woodrat and Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Key Largo woodrat and cotton mouse, two small mammals native to Key Largo, Monroe County, Florida. Destruction and alternation of tropical hardwood hammock forest, to which both species are restricted, is a threat to their continued existence. Both were listed as endangered by an emergency rule on September 21, 1983, but that rule expired on May 18, 1984. This final rule restores the protection of the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is August 31, 1984 because the Service considers that the period between the expiration of the emergency rule covering the Key Largo woodrat and cotton mouse, and the implementation of this permanent final rule, should be as brief as possible because of the threats facing these species.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.—4:30 p.m.) at the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Flordia 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered

Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) was described by Sherman (1955). It is a small mammal, just over a foot in length including the haired tail, and the overall coloration is gray-brown above and white below. It is the southernmost subspecies of woodrat in the U.S., and is separated by a 150-mile gap from other Flordia woodrat (*N. f. floridana*) populations. The Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) was described by Schwartz (1952). It is about half as long as the woodrat, and its coloration is reddish brown above and white below. Both the woodrat and cotton mouse are endemic to Key Largo, Monroe County, Florida, and originally occurred throughout the hardwood hammocks on this Key, but have disappeared from most of their original range. Both species were introduced to Lignumvitae Key, Monroe County, Florida, in 1970. The woodrat may have reached the carrying capacity of the available habitat on this 90-hectare (220-acre) key, a State botanical site, but the status of the cotton mouse there is unknown. The Florida Department of Parks and Recreation had considered relocating the woodrat and cotton mouse from Lignumvitae Key, because neither species is native there. No such translocation efforts are presently planned, however.

The upland areas that the woodrat and cotton mouse inhabit on north Key Largo reach an elevation of about 4 meters (13 feet). The uplands support a rich biota, including many rare plant species. The climax vegetation type is a hardwood hammock forest with close floristic affinities to the West Indies. The hammocks are restricted to upland areas because they do not tolerate the intrusion of salt water in the tidal lowland areas.

Species associated with the north Key Largo hammocks include the Schaus swallowtail butterfly (*Papilio aristodemus ponceanus*), federally threatened; and several Florida State-listed plant species: tamarindillo (*Acacia choriophylla*), powdery catopsis (*Catopsis berteroniana*), prickly apple (*Cereus gracilis* var. *simpsonii*, a cactus which the Service presently has under review (48 FR 53647, November 28,1983) for possible listing as endangered or threatended), silver palm (*Coccothrinax argentata*) lignum-vitae (*Guaiacum sanctum*), inkwood (*Hypelate trifoliata*), mahogany mistletoe (*Phoradendron rubrum*), and brittle thatch palm (*Thrinax microcarpa*).

Tropical hardwood hammocks develop a closed canopy when they are mature, providing a more moderate, humid environment than the surrounding habitats. The Key Largo woodrat and cotton mouse are restricted to these hammocks. Tropical hardwood hammocks were originally found from Key West northward into the southern peninsula of Florida. Many of the hardwood hammocks on the peninsula, however, have been destroyed due to human activities. This habitat is one of the most limited and threatened ecosystems in Florida. The hammocks on north Key Largo represent some of the larges remaining tracts of this vegetation type. Based on work carried out on Key Largo from 1968 to 1973, Brown (1978) reported that the Key Largo woodrat had been extirpated by fires and development from the southern two-thirds of Key Largo.

Hersh (1981) studied the ecology of the woodrat on north Key Largo. Woodrat densities on a 5.25-hectare (13-acre) study area varied between 2 and 2.5 woodrats per hectare (0.8–1.0 woodrat per acre). Mean home range was 0.2368 hectares (0.6 acre). Each woodrat used several stick nests (about 5.6 nests per woodrat). Woodrats fed on leaves, buds, seeds, and flowers of a variety of plants.

Based on studies carried out on north Key Largo from January to August of 1979, Barbour and Humphrey (1982) found that the woodrat and cotton mouse were most abundant in mature hammocks and were rare or absent in young or recovering hammocks. Cotton mouse density was estimated to be 21.8 mice per hectare (8.8 per acre) in mature forest, but only 1.2 per hectare (0.5 per acre) in successional forest. About 463 hectares (1144 acres) on north Key Largo were occupied by woodrats. Stick nests were absent from two hammocks surveyed southwest of the U.S. 1–State Route 905 intersection. The total woodrat population on north Key Largo was estimated to be 654; the introduced population on Lignumvitae Key was estimated to be 85.

On May 19, 1980, Dr. Stephen R. Humphrey of the Florida State Museum, Gainesville, Florida, petitioned the Service to add the Key Largo woodrat and cotton mouse to the U.S. List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The petition included a status report prepared under contract to the Florida Game and Fresh Water Fish Commission. Portions of the report were recently published (Barbour and Humphrey 1982). In the **Federal Register** of July 28, 1980 (45 FR 49961–49962), the Service published a notice of petition acceptance and status review, and announced its intention to propose listing the two Key Largo rodents. In the **Federal Register** of December 30, 1982 (47 FR 58454–58460), these two mammals were included in category 1 of the Service's Review of Vertebrate Wildlife, meaning that there was sufficient information on hand to support the biological appropriateness of a listing proposal. In the **Federal Register** of September 21, 1983 (48 FR 43040–43043), the Service issued an emergency rule listing both species as endangered (for details, see below under "Available Conservation Measures"). The emergency rule expired on May 18, 1984. In the **Federal Register** of February 9, 1984 (49 FR 4951–4956), the Service published a proposed permanent determination of endangered status and critical habitat for the two species.

Summary of Comments and Recommendations

In the proposed rule of February 9, 1984, and associated notifications, all interested parties were requested to submit information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Miami Herald* on February 29, 1984, the *Marathon Keynoter* on March 1, 1984, and the *Key West Citizen* on March 2, 1984. On March 12, 1984, the Service received a request for a public hearing on the proposal. The hearing was held on April 24, 1984, in the Plantation Key Courthouse, Monroe County, Florida.

During the comment period, 62 comments were received. The hearing was attended by 118 persons; 33 individuals made oral statements, and 12 written statements were handed in. Official comment was received from the Florida Game and Fresh Water Fish Commission, which supported the proposal.

A large number of comments or oral statements either supported or opposed listing these species, but provided no substantive data. Support for the listing proposal was voiced by six environmental organizations. Opposition was generally received from landowners, attorneys representing landowners, realtors, and businesses. One individual also presented a petition signed by 157 persons opposing the proposal.

The opposing comments received can be placed in a number of general groups, depending on content. These categories of comments, and the Service response to each, are listed below.

1. The Key Largo woodrat and/or cotton mouse should not receive the protection of the Endangered Species Act because rodents are pest species and have no intrinsic value to mankind. Some persons stated that Key Largo woodrats had invaded their homes.

Service response. Any species of native wildlife or plant (except a pest insect) is eligible, under the appropriate circumstances, for the protection of the Endangered Species Act. Economic value to mankind is not a factor that the Service may consider in determining whether to list endangered or threatened species. The Key Largo woodrat and cotton mouse are native rodents that generally avoid contact with humans. They have not been implicated in spreading disease to humans. The comments referring to rat problems appear to involve the black rat (*Rattus rattus*), an introduced pest species that is common in and around human dwellings in the Keys. The black rat also occurs in hardwood hammocks on north Key Largo (Hersh, 1981). The Service has no documented evidence of woodrats invading human dwellings.

2. Sufficient habitat for the conservation of the Key Largo woodrat and cotton mouse is included within areas scheduled for acquisition by the Federal (U.S. Fish and Wildlife Service) or Florida State (Department of Natural Resources) governments.

Service response. The Key Largo woodrat and cotton mouse have already disappeared from most of their original range. The scheduled acquisitions, if completed, would improve the potential for conserving the surviving populations, but would not eliminate the danger of extinction. As proposed, these acquisitions would include about 630 acres of hardwood hammocks supporting an estimated 318 woodrats, 49 percent of the total population of 654 woodrats estimated by Barbour and Humphrey (1982) for north Key Largo. At this time, acquisition of less than 150 acres of hammock has taken place. Fifty-one percent of the estimated total woodrat population on north Key Largo (336 woodrats) occurs in areas outside the proposed acquisition projects. These areas represent most of the highest density populations of the woodrat. Similar population percentages presumably apply to the cotton mouse. Although populations of both species would probably reach higher densities in the acquisition areas as hardwood hammocks matured, the most favorable habitat is now outside the acquisition projects.

Two commenters noted that Brown (1978) suggested that preservation of a few hundred acres of climax tropical hammock on north Key Largo would be sufficient to save the Key Largo woodrat and cotton mouse, and that, failing this, introduction of both species could be made to Old Rhodes Key or Elliott Key in Key Biscayne National Park. The Service believes that more than a few hundred acres of hardwood hammock would be required for the long-term survival and recovery of the Key Largo woodrat and cotton mouse. Transplanting is discussed below under "3." Although the Service provided part of the funding for the publication in which Dr. Brown's species accounts and recommendations appeared (See "Literature Cited," below), the contributors to the publication did not represent the Service or its policies, and the Service is not in any way restricted to the conservation recommendations made in the publication.

3. The Lignumvitae Key State Botanical Site, as well as potnetial introduction sites in Key Biscayne National Park (or elsewhere in the Florida Keys) could provide adequate habitat for the conservation of the Key Largo woodrat and cotton mouse, negating the need to list them.

Service response. The seemingly successful introduction of the Key Largo woodrat onto Lignumvitae Key indicates that this species might be able to colonize other hardwood hammocks in the upper Florida Keys. The principal hardwood hammocks remaining in the upper Keys, other than those on north Key Largo, are those of Key Biscayne National Part in Dade County. However, while transplantation to these areas may be a supplementary means of helping the species to survive, the Service must also act to preserve the ability of the species to exist in its current range. One of the primary purposes of the Endangered Species Act is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved (16 U.S.C. 1531(b)). In accordance with this purpose, the Service's policy is to attempt to conserve and recover endangered and threatened species within their known historic ranges. While transplantation of species may be a valuable conservation measure, it is not an acceptable procedure to preclude listing. Furthermore, any Service recovery efforts for these species could only take place if they were listed. Regardless of the merit of any transplantation proposals, the Service can commit Endangered Species Act funding and manpower only for the recovery of listed species. After a species is listed, the Service prepares a recovery plan; recovery activities could include, but would not ordinarily be restricted to, transplantation.

4. The Key Largo woodrat and cotton mouse are adequately protected by existing local, State, and Federal regulations (namely, designation of the Florida Keys as an Area of Critical State Concern, regulations affecting dredge and fill activities, customer service policies of the Florida Keys Aqueduct Authority, the Monroe County Land Clearing Ordinance, and rules in the Florida Administrative Code affecting John Pennekamp Coral Reef State Park).

Service response. Proposed principles for guiding development for the Florida Keys Area of Critical State Concern (Florida Statute § 380.0552) contain provisions for the protection of upland resources. The proposed principles, if adopted and rigorously enforced, would apparently provide considerable protection to hardwood hammocks. Designation of federally endangered and threatened species would aid in the recognition and preservation of such areas, however, and would not duplicate the development guidelines. The Service cannot at the present time predict what the final form of the principles for guiding development will be or assess the effectiveness of their enforcement. The Service cannot depend on these proposals to adequately protect the rodents. The Service does not believe the regulations affecting dredge and fill activities and John Pennekamp State Park provide any specific protection to the upland hardwood hammocks on north Key Largo. While the establishment of new access channels and marinas would increase the value of properties now lacking water access, the lack of such access does not mean these areas will be impractical to develop. Many "landlocked" properties on Key Largo have been intensively developed. The policies of the Florida Keys Aqueduct Authority, contrary to one comment received, do not exclude water delivery to all the hardwood hammocks of the Keys, but only to selected areas. The areas denied delivery on north Key Largo are nearly all within proposed Federal or State acquisition projects, mainly west of State Route 905. None of the above-mentioned regulations, either individually or in concert, duplicate the protection afforded endangered or threatened species by the Endangered Species Act.

5. The Key Largo woodrat and cotton mouse are not valid species or subspecies and are not native to Key Largo; they are, therefore, ineligible for the protection of the Endangered Species Act. Mr. Alan B. Maxwell, of Sea Critters, Inc., submitted that the Key Largo woodrat and cotton mouse were not valid subspecies because the woodrat could only be differentiated from mainland Florida populations by an internal (skull) character, and the cotton mouse was characterized by a trait (red pelage) also expressed to a lesser degree by cotton mice *(Peromyscus gossypinus palmarius)* from the southeastern Florida mainland. Mr. Maxwell indicated direct contact had taken place between the Key Largo cotton mouse and mainland forms of this species. He further stated that electrophoretic or immunological studies might confirm whether or not the Key Largo woodrat or cotton mouse are true subspecies. Mr. Maxwell also suggested that these species could be reared in captivity in any numbers desired and their survivability could be improved by hybridizing them with cotton mice and woodrats from mainland Florida.

Service response. The characters used to distinguish the Key Largo woodrat and cotton mouse are typical of anatomical features used in rodent taxonomy to recognize species or subspecies. While additional electrophoretic or immunological data might aid in understanding taxonomic relationships in these species, such data would not provide a definitive decision on whether or not the Key Largo woodrat and cotton mouse should be considered distinct subspecies. Though present-day contact between the Key Largo cotton mouse and mainland cotton mice is unlikely, the Key Largo cotton mouse was probably derived from the nearby mainland populations. Subspecies generally share many morphological characters, and intergrades between subspecies often cannot be identified to the subspecific level. This is the inevitable result of the fact that conspecific subspecies usually interbreed in areas of contact. While captive breeding is a possible Service recovery action, it is not a substitute for maintenance of sufficient populations of the species of concern in natural habitats. With regard to hybridization, it is against Service policy to hybridize listed species with other listed or nonlisted species (or subspecies). The Service has concluded that such hybridization can harm the chances of a species' survival and is not an acceptable conservation measure under the Endangered Species Act.

6. Dr. Earl R. Rich, a biologist retained by attorneys representing several landowners, proposed that the Key Largo woodrat was introduced to Key Largo by coastal trading vessels in the early part of the twentieth century, and that the introduced woodrat population was derived from north Florida, Georgia, or South Carolina populations of *Neotoma floridana floridana.* Dr. Rich concluded that morphometric study of coastal plain populations of *N. f. floridana* would be likely to show these populations to be more closely related to the Key Largo woodrat than are peninsular Florida populations.

Service response. The Florida Keys support many endemic mammal species or subspecies that are derived from mainland populations, but that diverged on the Keys. There is no evidence to suggest that woodrats did not colonize the Florida Keys in the same manner as the rest of the terrestrial vertebrate fauna there. Unlike the introduced black and Norway rats, woodrats are not human commensals and are not likely stowaways on ships. Sherman (1955) did examine some specimens of *Neotoma floridana* from the coastal plain of north Florida (New Berlin, Duval County), and they were less similar to the Key Largo woodrat than were some of the specimens taken farther to the south on the mainland peninsula (Gainesville and Gulf Hammock).

7. The Key Largo woodrat and cotton mouse are not qualified for the protection of the Endangered Species Act because they are not in danger of extinction throughout all or a significant portion of their range.

Service response. The Key Largo woodrat and cotton mouse have been largely or completely extirpated from their former range on Key Largo south of the U.S. 1—State Route 905 intersection. The Service's evaluation of potential future habitat destruction and development is discussed below under "Factors Affecting the Species."

8. Development is not imminent on north Key Largo; therefore there is no immediate need to list these species.

Service response. The Service agrees that imminent development appears less likely now than at the time it was petitioned to list these species. This is due to proposed Federal and State acquisition, a moratorium on the acceptance of new major development proposals in Monroe County, and Florida Keys Aqueduct Authority hookup policy. A slowdown in the demand for residential units on Key Largo has also apparently made immediate development less likely. Nonetheless, several projects have preliminary or final approval or are under construction in areas near to or within habitat of the Key Largo woodrat and cotton mouse. The Service assumes that in the foreseeable future north Key Largo will continue to be an area subject to development pressures. The final constraints on development in the area will depend on the Monroe County Land Use Plan, currently under revision. Additional details on development activities on north Key Largo and the need for Federal protection of these species are discussed below under "Summary of Factors Affecting the Species" and "Available Conservation Measures."

9. Development design and management criteria, rather than limiting the availability of utilities, would be a useful approach in minimizing impacts on the Key Largo woodrat and cotton mouse. The South Florida Regional Planning Council suggested that an example of this approach was the development order issued with respect to the Port Bougainville Development on north Key Largo.

Service response. The Service agrees that design of developments and management requirements could reduce the effects of development on the hardwood hammocks on which the Key Largo woodrat and cotton mouse depend. However, the Endangered Species Act does not give the Service any jurisdiction over such local or State planning. The Service's involvement is generally through Section 7 of the Endangered Species Act, affecting only Federal agencies. Federal participation, for example funding, often takes place long before specific development planning is carried out. After the Federal action has taken place, the Service would have no further jurisdiction over specific planning or management requirements for any development.

10. The Key Largo woodrat and cotton mouse occur much more widely in Monroe County, and therefore should not be listed.

Service response. Three comments indicated that woodrats occurred in areas from which they were not reported by Barbour and Humphrey (1982). These sites, each involving a few nests, were near or adjacent to occupied habitat documented by Barbour and Humphrey. No significant range extensions have been reported for either the Key Largo woodrat or cotton mouse.

11. The proposal of the Key Largo woodrat and cotton mouse as endangered species, with critical habitat, is a hasty bureaucratic measure. Insufficient time was available to allow

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the presentation of additional scientific data.

Service response. All notification requirements of the Endangered Species Act regarding comment periods and hearings were met during the proposal of these species (see beginning of "Summary of Comments and Recommendations," above). Extensive notifications were also made following the emergency listing of September 21, 1983. The Service recognizes that the Key Largo woodrat and cotton mouse are not well known biologically, but such is often true of endangered and threatened species. Section 4(b)(1)(A) of the Endangered Species Act requires that listing decisions be made on the basis of the best *available* scientific and commercial data. Recovery measures may well include research on the ecology, distribution, and population dynamics of these species. The present scientific data available for the Key Largo woodrat and cotton mouse, however, indicate that they are endangered, in accordance with the five factors specified in section 4(a)(1) of the Act. This determination accords with the State of Florida, whose Game and Fresh Water Fish Commission has recognized these species as endangered.

12. Several comments specifically addressed the shape and size of the critical habitat for these species, or addressed potential economic effects of designating critical habitat.

Service response. These comments will be considered in a final regulation designating critical habitat for the Key Largo woodrat and cotton mouse (see "Critical Habitat," below).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Key Largo woodrat and the Key Largo cotton mouse should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments to the Act—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Key Largo woodrat and cotton mouse formerly occurred throughout the hardwood hammock forests of Key Largo, Monroe County, Florida (Schwartz, 1952; Sherman, 1955; Brown, 1978). These species are presently restricted to the northern portion of Key Largo, except for an introduced population of the woodrat (and possibly the cotton mouse) on Lignumvitae Key, Monroe County (Barbour and Humphrey, 1982). The area of Key Largo north of the U.S. 1—State Route intersection—is the site of the following ongoing or approved residential projects: under construction, Port Bougainville—2,806 units, Largo Beach and Tennis Club, 224 units; preliminary approval, Anchor Bay—159 units, Nichols Subdivision—22 units, Garden Cove—366 units; final approval, Carysfort Yacht Club—512 units (Status of Major Development Projects in Monroe County, Florida, Department of Community Affairs report, January 20, 1984). Approximately one-half of the Key Largo woodrat and cotton mouse habitat is contained in proposed Federal and State land acquisition projects, but only a small proportion of these areas has yet been acquired. If these acquisitions were completed, about 50 percent of Key Largo woodrat and cotton mouse populations would be protected. This would include only about 318 woodrats, however, based on the estimates of density provided by Barbour and Humphrey (1982). Most of the mature Key Largo hammocks with the highest woodrat and cotton mouse densities lie outside the proposed acquisition boundaries. The future of these areas will depend on planning decisions of Monroe County and the State of Florida, as well as the demand for residential and commercial development on north Key Largo. The Service believes that north Key Largo will continue to be an attractive area for residential development, even if such development is slowed by the present major development proposal moratorium, by current economic conditions, and by more restrictive local or State regulations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be applicable.

C. *Disease or predation.* Not now known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* The proposed Federal and State acquisition projects on north Key Largo would provide protection to an estimated one-half of the surviving Key Largo woodrat and cotton mouse populations. Only a small proportion of the proposed upland areas has yet been acquired. Many of the acquisition areas are also denied access to fresh water by the customer service policies of the Florida Keys Aqueduct Authority (Sections 7.01 and 7.02). The principal protection for hardwood hammocks outside the proposed acquisition areas derives from section 18–23 of the Monroe County Code, which requires protection of tropical hardwood hammock communities to the maximum extent possible in the course of land clearing. The past application and enforcement of this ordinance has been largely ineffective in preserving hammocks, although individual trees may be saved. A proposed amendment of § 380.0552 of the Florida Statutes, Florida Keys Area as an Area of Critical State Concern, may, if adopted, increase the amount of protection given hardwood hammocks in the Keys. Permits for clearing small areas of hammock continue to be given by Monroe County, however. No existing regulations duplicate the protective and recovery provisions of the Endangered Species Act, as amended. The Act will impose conservation requirements on Federal agencies carrying out activities on north Key Largo, and requires the Service to develop a recovery plan for the Key Largo woodrat and cotton mouse (see "Available Conservation Measures"). The Key Largo woodrat and cotton mouse are considered endangered by the State of Florida (Administrative Code Chapter 39–27.03), but this statute does not protect the habitat of these species.

E. *Other natural or manmade factors effecting its continued existence.* The Key Largo woodrat may be at the carrying capacity of the available habitat on Lignumvitae Key. The status of the cotton mouse on this Key is unknown. The apparent extirpation of the Key Largo woodrat and cotton mouse from the southern portion of Key Largo indicates that these species are not tolerant of fragmented, highly disturbed hammocks.

The decision to determine endangered status for the Key Largo woodrat and cotton mouse was based on an assessment of the best available scientific information and of past, present, and probable future threats to these species. Because of the need to promptly publish these determinations, no determination of critical habitat can be made at this time. A decision to determine only threatened status would not be justified given the current low population levels, restricted range, and potential jeopardy from habitat destruction of the Key Largo woodrat and cotton mouse. A decision to take no action would exclude both species from needed protection pursuant to the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the involved species.

In the case of the Key Largo woodrat and cotton mouse, the Service believes that a prompt determination of endangered status is essential. An emergency listing of both species as endangered was published in the **Federal Register** on September 21, 1983 (48 FR 43040–43043), but expired on May 18, 1984. A permanent final determination of endangered status is now necessary to restore the appropriate legal classifications, to provide the protection of the Act, and to maintain the effectiveness of a relevant biological opinion issued by the Service pursuant to section 7. This opinion is that a loan by the Rural Electrification Administration (REA), for the financing of increased electrical delivery on north Key Largo by the Florida Keys Electric Cooperative (FKEC) would result in development that would jeopardize the survival of the two species. If the Key Largo woodrat and cotton mouse were only proposed, but not listed, they would be eligible only for the consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of the concerned Federal agency. Therefore, in order to ensure that the full benefits of section 7 will apply to the Key Largo woodrat and cotton mouse, prompt determination of endangered status is essential. The Service is, however, currently performing the economic and other impact analyses required for a determination of critical habitat for the two species, and does plan to make such a determination in the near future.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29990). Section 7 requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species or critical habitat, the responsible Federal agency must enter into consultation with the Service.

On June 27, 1983, the Service entered into formal section 7 consultation with REA concerning financing of an electric substation and system expansion by the FKEC. The system expansion would potentially allow about 6,000 more electric drops in the north Key Largo area. The Key Largo woodrat and cotton mouse were listed by an emergency rule on September 21, 1983, to allow them to be considered in the consultation, which also dealt with the federally endangered American crocodile and the federally threatened Schaus swallowtail butterfly. On October 27, 1983, the Service's Regional Director in Atlanta, Georgia, issued a biological opinion concerning the American crocodile, the Schaus swallowtail butterfly, and the Key Largo woodrat and cotton mouse. The opinion indicated that the construction of the substation would not jeopardize any listed species, but expansion of the electric delivery capability would facilitate development that would jeopardize the continued survival of the Key Largo woodrat and cotton mouse. The REA has not yet responded to the Service's findings and recommendations in the October 27, biological opinion. Restoration of protection for these species pursuant to section 7 of the Endangered Species Act will assure that they are considered in REA's formulation of loan conditions relating to increased electrical delivery on north Key Largo.

A previous Service consultation pursuant to section 7 of the Endangered Species Act occurred in relation to the Farmers Home Administration (FmHA) funding of the Florida Keys Aqueduct Authority's new aqueduct in the Florida Keys. The Service's concern was that the new pipeline would facilitate development, thereby adversely affecting listed species. FmHA entered into consultation with the Fish and Wildlife Service on February 4, 1980. The consultation involved one endangered species, the American crocodile, and one threatened species, the Schaus swallowtail butterfly, on north Key Largo. A biological opinion issued by the Service on May 29, 1980, indicated that these species would be jeopardized by the project. FmHA agreed to condition its loan to restrict water delivery on north Key Largo, thus avoiding a violation of section 7(a)(2) of the Endangered Species Act. The areas thus excluded from water delivery were within the proposed boundaries of the Crocodile Lake National Wildlife Refuge as well as uplands of several sections of land east of the refuge. About 45 percent of the total Key Largo woodrat and cotton mouse population on north Key Largo occurs in hammocks as a result of the existing biological opinion. Much of the densely occupied habitat, however, lies outside these areas. Since the FmHA is not involved with the construction and operation of the pipeline, no future Federal involvement with this project is anticipated. Because of the high-cost nature of housing development anticipated for north Key Largo, other Federal subsidies are not likely in this area.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Barbour, D.B., and S.R. Humphrey. 1982. Status and habitat of the Key Largo woodrat and cotton mouse (*Neotoma floridana smalli* and *Peromyscus gossypinus allapaticola*). J. Mamm. 63:144–148.

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Schwartz, A. 1952. Three new mammals from southern Florida. J. Mamm. 33:381–385.

Sherman, H.B. 1955. Description of a new race of woodrats from Key Largo, Florida. J. Mamm. 36:113–120.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by adding the following two entries, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*	*	
Mouse, Key Largo cotton	*Peromyscus gossypinus allapaticola*	U.S.A. (FL)	Entire	E	131E, 160	NA	NA
*	*	*	*	*	*	*	
Woodrat, Key Largo	*Neotoma floridana smalli*	U.S.A. (FL)	Entire	E	131E, 160	NA	NA
*	*	*	*	*	*	*	

Dated: August 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23158 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 40441–4076]

Atlantic Tuna Fisheries

Correction

In FR Doc. 84–19552 beginning on page 29796 in the issue of Tuesday, July 24, 1984, make the following corrections:

1. On page 29798, second column, paragraph 2., first line, "Trade" should have read "Table".

§ 285.31 [Corrected]

2. On page 29800, in § 285.31(cc), first column, third line, "§ 385.33" should have read "§ 285.33".

BILLING CODE 1505–01–M

Proposed Rules

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

[Amdt. 3]

Standards for Approval of Warehouses for Cotton or Cotton Linters

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations found at 7 CFR 1427.1081 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Cotton or Cotton Linters. The proposed rule would: (1) Permit a parent company to submit a financial statement for a wholly-owned subsidiary; (2) permit warehousemen to submit financial statements on forms other than on Form TW-51; (3) incorporate for CCC purposes USDA regulations governing suspension and debarment; (4) permit CCC to accept an irrevocable letter of credit on forms other than Form CCC-33A; (5) delete the use of a Certificate of Competency issued by the Small Business Administration for a warehouseman who is deficient in net worth; (6) delete certain references to the withdrawal of approval of warehouses by CCC; and (7) make certain other miscellaneous changes.

DATES: Comments must be received on or before October 30, 1984 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Transportation and Storage Division, United States Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013; (202) 447-4018 or 447-7433.

FOR FURTHER INFORMATION CONTACT: Lynn W. Howe, 202-447-5785, Transportation and Storage Division, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Departmental Regulation 1512-1 and Executive Order 12291 and has been classified "not major." It has been determined that the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

The Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices. Section 4(h) of the CCC Charter Act provides that the Corporation shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate.

Further, section 5 of the CCC Charter Act provides that in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth standards of approval which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of agricultural commodities which are owned by CCC or which are serving as collateral for price support loans made available by CCC.

CCC proposes to amend the following regulations which govern the Standards for Approval of Warehouses for Cotton or Cotton Linters (7 CFR 1427.1081 *et seq.*) in the manner described below.

Section 1427.1081(d)(2) of the regulations currently requires warehousemen to submit financial statements on Form TW-51 and permits a chain of warehouses owned and operated by a single business entity to submit only one financial statement. Several warehousemen have complained that their independently prepared financial statements should satisfy CCC needs and they should not be required to incur the added expense and paperwork burden of submitting financial information on the TW-51. Also, several warehousemen whose warehouse facilities are wholly-owned and operated by a parent company have requested that the financial statement which is prepared for the parent company and which includes the combined financial position of the parent company and all subsidiaries be accepted by CCC. These warehousemen believe that to prepare a separate financial statement for each subsidiary warehouse is very costly and unnecessary. This proposed rule would permit warehousemen to submit financial statement to CCC on forms other than the TW-51 with the approval of the Director, Kansas City Commodity Office (KCCO), or the Director's designee. In addition, this proposed rule provides that a financial statement from the parent company may be accepted by CCC in lieu of individual statements from each wholly-owned subsidiary if approved by the Director, KCCO, or the Director's designee.

Section 1427.1082(c) of the regulations currently provides that, in meeting the standards for approval, the warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse must not be either suspended or debarred under CCC's suspension and debarment regulations, 7 CFR Part

1407. Since the Board of Directors of the Corporation has adopted, with limited reservations, the regulations implemented by the Department of Agriculture with respect to the suspension and debarment of individuals and firms contracting with CCC, the provisions of § 1427.1082(c) have been amended to incorporate a reference to these provisions. A conforming amendment incorporating a reference to the Department's suspension and debarment regulations has also been made in § 1427.1086(c)(2).

Section 1427.1083(e) of the regulations currently provides that CCC may accept an irrevocable letter of credit in lieu of the required amount of bond coverage if the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation and the letter of credit is submitted to CCC on Form CCC-33A, "Irrevocable Letter of Credit". Several Banks have objected to the use of Form CCC-33A and would prefer to use their own letter of credit form. This proposed rule would permit commercial banks to issue letters of credit on forms other than Form CCC-33A, provided that such forms are approved by the Director, KCCO, or the Director's designee.

Section 1427.1085(b) of the regulations currently provides that a Certificate of Competency issued by the Small Business Administration (SBA) for a warehouseman will be accepted by CCC for the purpose of establishing compliance by the warehouseman with certain of the Standards for Approval and the warehouseman will not be required to furnish bond coverage for any deficiency in net worth. The SBA has been reluctant to issue a Certificate of Competency to warehousemen since there is no guarantee that CCC-owned commodities will be stored with a warehouseman who has been issued a certificate. In fact, there have been no cotton warehousemen approved with a Certificate of Competency in the recent past. Accordingly, it has been concluded that the provisions of § 1427.1085(b), which reference the use of a Certificate of Competency, are not needed and this proposed rule would delete that section accordingly.

Section 1427.1086 of the present regulations sets forth the procedures under which CCC approves or disapproves a warehouse for the purpose of storing cotton and cotton linters owned by CCC or pledged to CCC as price support loan collateral. These regulations also provide for the administrative appeal procedures which may be utilized by a warehouseman whose warehouse was not approved by CCC. In addition, § 1427.1086 sets forth the procedures and requirements involving the withdrawal of approval of a warehouse by CCC as a result of the failure of the warehouse to continue meeting the standards for approval or for the failure of the warehouseman to perform the contractual obligations specified in the CCC storage agreement. This proposed rule would delete any references in § 1427.1086 to the withdrawal of approval of warehouses by CCC since it is felt that these regulations should only relate to the approval, rather than the disapproval, of warehouses by CCC. Terms and conditions with respect to the continuing obligations of the warehouseman to meet the standards of approval and storage commitments will be set forth in the Cotton Storage Agreement entered into between the warehouseman and CCC.

Section 1427.1086(c)(1) has also been revised to provide that any request by a warehouseman for reconsideration of a determination by CCC that the warehouseman has failed to meet the Standards for Approval must be in writing. Previously, such a request for reconsideration could be made orally to the Director, KCCO, as well as in writing.

In addition to the foregoing, § 1427.1081(b) of the regulations has been amended to correct the mailing address for the Kansas City Commodity Office and the table of contents have been revised and a new § 1427.1088 added to include control numbers assigned by the Office of Management and Budget (OMB) under provisions of 44 U.S.C. Chapter 35 to information collection requirements.

List of Subjects in 7 CFR Part 1427

Cotton, Loan Programs—Agriculture, Packaging and containers, Price support programs, surety bonds and warehouses.

Proposed Rule

PART 1427—[AMENDED]

Accordingly, it is proposed that the regulations at 7 CFR Part 1427 be amended as follows:

1. The table of contents to Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters is amended as follows:

* * * * *

1427.1088 OMB Control Numbers Assigned to Paperwork Reduction Act.

2. In § 1427.1081, paragraphs (b) and (d)(2) are revised to read as follows:

§ 1427.1081 General statement and administration.

* * * * *

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

* * * * *

(d) * * *

(2) A current financial statement of Form TW-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form TW-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

* * * * *

3. In § 1427.1082, paragraph (c)(2) is revised to read as follows:

§ 1427.1082 Basic standards.

* * * * *

(c) * * *

(2) Be neither suspended nor debarred under applicable suspension and debarment regulations of the Department of Agriculture.

* * * * *

4. In § 1427.1083, paragraph (e) is revised to read as follows:

§ 1427.1083 Bonding requirements for net worth.

* * * * *

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit," or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

§ 1427.1085 [Amended].

5. Section 1427.1085 is amended by deleting paragraph (b) and by redesignating paragraph (c) and (d) as paragraph (b) and (c), respectively.

6. Section 1427.1086 is revised to read as follows:

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will appove a warehouse if it detemines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval of the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees or the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideation of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatified with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting and appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable regulations established by the Department of Agriculture. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

7. Section 1427.1088 is added to read as follows:

§ 1427.1088 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1428) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714b, 6714c)

Signed at Washington, D.C. on August 28, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-23256 Filed 8-30-84; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1204

[NHTSA Docket No. 84-08; Notice 1]

Uniform Standards for State Highway Safety Program

AGENCY: National Highway Traffic Safety Administration, (NHTSA) Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend 23 CFR Part 1204, Highway Safety Programs, to clarify the States' flexibility in administering State highway safety programs while eliminating apparent Federal paperwork burdens in seven of the eighteen highway safety standards.

DATES: Comments are due on or before October 1, 1984.

ADDRESSES: Comments should refer to the docket number and be submitted to the Docket Section, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: George Reagle, Associate Administrator for Traffic Safety Programs, NHTSA, (202-426-0837) or Howard Hanna, Chief, Program Development Division, Office of Highway Safety, FHWA, both located at 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2131).

SUPPLEMENTARY INFORMATION: The Highway Safety Act of 1966, (Pub. L. 89-564 80 Stat. 731) directed the Secretary of Transportation to promulgate uniform standards for State highway safety programs, specified the subjects of several standards, and required States to conform to these uniform standards or risk losing portions of their Federal-aid highway funds (Section 402 of the Highway Safety Act of 1966). Between June 1967 and May 1972, the Secretary promulgated 18 Uniform Federal Standards to be met by State highway safety programs. Fourteen of these standards relate to drivers and vehicles and are administered by the National Highway Traffic Safety Administration; three standards relate to highways and are administered by the Federal Highway Administration; one standard relates to pedestrian safety and is jointly administered by both agencies.

On April 8, 1982, NHTSA and FHWA published a final rule (47 FR 15116) identifying five NHTSA program areas and one FHWA program area as the highway safety programs most effective in reducing accidents, injuries, and fatalities. Inherent in this rulemaking process was the subordinate issue of what will become of the 18 highway safety standards. These standards have formed the basis for State highway safety programs for a number of years. While the NPRM for the April 1982 rule did not specifically address this issue a number of commenters encouraged NHTSA and FHWA to maintain the existing 18 standards as non-binding guidelines for use by the States. The preamble to the April 1982 rule recognized the subordinate issue of what will become of the standards and anticipated some changes to the standards by a subsequent rulemaking. This proposal is intended to accomplish that purpose in part by clarifying that any apparent Federal burdens associated with these standards are not binding on the States.

The Paperwork Reduction Act of 1980 prohibits the imposition of nonessential reporting or recordkeeping burdens on State or local governments as well as the general public. Consistent with the goals of the Act, with our commitment in 1982 to review the 18 standards, and with comments expressed in the 1982 rulemaking urging the agencies to retain the standards as non-binding guidelines, we have determined that several of those standards contain language that appears to impose substantial mandatory Federal recordkeeping and reporting burdens on State governments as a condition to receiving Federal highway safety funds. While the recordkeeping and reporting requirements of these standards have been administered as guidelines for many years, we recognize the need to clarify that these seven standards do not impose mandatory burdens on State governments.

In the Highway Safety Act, Congress specified several subjects (for example, accident investigation reporting) which must be included in uniform standards promulgated by the Secretary. (23 U.S.C. 402(a)). Some of these subjects encompassed recordkeeping and reporting that was being done by the States before enactment of the Act, and would clearly continue—in some form—in the absence of Federal laws and regulations. In recognition that highway safety programs are primarily of State interest, we propose changing language in Part 1204 which overstates the appropriate Federal role and appears to impose mandatory Federal requirements on the States.

We propose to retain these seven standards as guidelines for state programs, but clarify that the States have broad flexibility to tailor the implementation elements of the standards for these programs to best suit their individual needs. We specifically seek comment on the impact of this proposed amendment on the States in administering their highway safety programs.

These proposed amendments to the Highway Safety Program Standards under 23 U.S.C. 402 do not change the requirements for the State Highway Safety Improvement Program under 23 CFR Part 924.

NHTSA and FHWA have analyzed the impact of this action and have determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. Because these amendments will permit greater flexibility in determining methods to implement Federal standards, but will impose no obligations, the changes will have no major economic impact on State or local governments. Because there will be virtually no economic or other impact from this proposal, a full regulatory evaluation is not necessary.

In accordance with the Regulatory Flexibility Act, the Agencies have evaluated the effects of this action on small entities. Based on this evaluation, we certify that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed changes pertain only to State implementation of highway safety programs and will not affect small businesses or small governmental units. While some of the programs may use the services of small business contractors, we believe that the programs would not be changed substantially so as to affect these business' services. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

The Agencies have also analyzed this proposed action for the purpose of the National Environmental Policy Act. The Agencies have determined that the proposed amendments will not have any effect on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the Agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. Because NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, we recommend that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed, stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 23 CFR Part 1204

Highway safety programs.

(Catalog of Federal Domestic Assistance Program number 20.205, Highway Research, planning, and construction and number 20.600, State and Community Highway Safety. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

PART 1204—[AMENDED]

In consideration of the foregoing, the following amendments are proposed to Part 1204 of Title 23 of the Code of Federal Regulations:

1. Section 1204.4 Highway Safety Program Standard No. 1 is revised to read as follows:

Highway Safety Program Standard No. 1

Periodic Motor Vehicle Inspection

Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do occur, and shall require the owner to correct such conditions.

I. A model program would provide, at a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time may be designated under an experimental, pilot, or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Traffic Safety Administration.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. Class of vehicle.
2. Date of inspection.
3. Make of vehicle.
4. Model year.
5. Vehicle identification number.
6. Defects by category.
7. Identification of inspector.
8. Mileage or odometer reading.

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

2. Section 1204.4 Highway Safety Program Standard No. 2 is revised to read as follows:

Highway Safety Program Standard No. 2

Motor Vehicle Registration

Each State shall have a motor vehicle registration program.

I. A model registration program would be such that every vehicle operated on public highways is registered and the following information is readily available for each vehicle:

A. Make.
B. Model year.
C. Identification number (rather than motor number).
D. Type of body.
E. License plate number.
F. Name of current owner.
G. Current address of owner.
H. Registered gross laden weight of every commercial vehicle.

II. Each program should have a records system that provides at least the following services:

A. Rapid entry of new data into the records or data system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

D. Data available for statistical compilation as needed by authorized sources.

E. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

3. Section 1204.4 Highway Safety Program Standard No. 5 is revised to read as follows:

Highway Safety Program Standard No. 5

Driver Licensing

Each State shall have a driver licensing program: (a) To insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. A model program would provide, as a minimum, that:

I. Each driver holds only one license, which identifies the type(s) of vehicle(s) he is authorized to drive.

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.

2. Ability to read and comprehend traffic signs and symbols.

3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise in the operation of an automobile, and other driver responsibilities.

4. Visual acuity, which must meet or exceed State standards.

B. Is reexamined at an interval not to exceed 4 years, for at least visual acuity and knowledge of rules of the road.

IV. A record on each driver should be maintained which includes positive identification, current address, and driving history. In addition, the record system should provide the following services:

A. Rapid entry of new data into the system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

D. Ready availability of data for statistical compilation as needed by authorized sources.

E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license should be issued for a specific term, and should be renewed to remain valid. At time of issuance or renewal each driver's record should be checked.

VI. There should be a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There should be:

A. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

B. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, welfare or other benefits or exemptions for the blind or nearly blind.

C. A medical advisory board or equivalent allied health professional unit composed of qualified personnel to advise the driver license agency on medical criteria and vision standards.

VIII. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary. The evaluation shall attempt to ascertain the extent to which driving without a license occurs.

4. Section 1204.4 Highway Safety Program Standard No. 9 is revised to read as follows:

Highway Safety Program Standard No. 9

Identification and Surveillance of Accident Locations

Each State, in cooperation with county and other governments, shall have a program for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

I. A model program would provide, as a minimum, that:

A. There is a procedure for accurate identification of accident locations on all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program shall be periodically evaluated by the State and the Federal Highway Administration should be provided with an evaluation summary.

5. Section 1204.4 Highway Safety Program Standard No. 10 is revised to read as follows:

Highway Safety Program Standard No. 10

Traffic Records

Each State, in cooperation with its political subdivisions, shall maintain a Statewide traffic records system.

A model program would provide, as a minimum that:

I. Information on vehicles and system capabilities should include (conforms to Motor Vehicle Registration standard):

A. Make.

B. Model year.

C. Identification number (rather than motor number).

D. Type of body.

E. License plate number.

F. Name of current owner.

G. Current address of owner.

H. Registered gross laden weight of every commercial vehicle.

I. Rapid entry of new data into the records or data system.

J. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

K. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

L. Data available for statistical compilation as needed by authorized sources.

M. Identification and ownership of vehicles sought for enforcement or other operational needs.

II. Information on drivers and system capabilities should include (conforms to Driver Licensing standard):

A. Positive identification.

B. Current address.

C. Driving history.

D. Rapid entry of new data into the system.

E. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

F. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

G. Ready availability of data for statistical compilation as needed by authorized sources.

H. Ready identification of drivers sought for enforcement or other operational needs.

III. Information on types of accidents should include:

A. Identification of location in space and time.

B. Identification of drivers and vehicles involved.

C. Type of accident.

D. Description of injury and property damage.

E. Description of environmental conditions.

F. Causes and contributing factors, including the absence of or failure to use available safety equipment

IV. There should be methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and acccident experience by specified groups.

V. All traffic records relating to accidents collected hereunder should be open to the public in a manner which does not identify individuals.

VI. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

6. Section 1204.4 Highway Safety Program Standard No. 14 is revised to read as follows:

Highway Safety Program Standard No. 14

Pedestrian Safety

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages. A model program would provide as a minimum that:

I. There should be a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There should be established Statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations, and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There should be established a Statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content should include emphasis on:

(1) Behavior characteristics of the three types of pedestrians most commonly involved in accidents with vehicles: (i) Children; (ii) persons under the influence of alcohol; (iii) the elderly;

(2) Accident avoidance techniques that take into account the hazardous conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content should be included in:

(1) All driver education and training courses;

(2) Driver improvement courses; and

(3) Driver license examinations.

IV. There should be statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near the streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There should be a statewdse program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There should be a statewide program for establishment and enforcement of traffic regulations designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program should be periodically evaluated by the States, and the National Highway Traffic Safety Administration and the Federal Highway Administration should be provided with an evaluation summary.

7. Section 1204.4 Highway Safety Program Standard No. 18 is amended by revising paragraphs I, IV and V to read as follows:

Highway Safety Program Standard No. 18

Accident Investigation and Reporting

I. *Scope.* This standard establishes the requirement that each State shall have a highway safety program for accident investigation and reporting.

* * * * *

IV. *Requirements.* Each State, in cooperation with its political subdivisions, shall have an accident investigation program. A model program would be structured as follows:

A. *Administration.* 1. There should be a State agency having primary responsibility for administration and supervision of storing and processing accident information, and providing information needed by user agencies.

2. There should be employed at all levels of government adequate numbers of personnel, properly trained and qualified, to conduct accident investigations and process the resulting information.

3. Nothing in this standard should preclude the use of personnel other than police officers, in carrying out the requirements of this standard in accordance with laws and policies established by State and/or local governments.

4. Procedures should be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of accidents and subsequent processing of resulting data.

5. Each state should establish procedures for entering accident information into the statewide traffic records system established pursuant to Highway Safety Program Standard No. 10, Traffic Records, and for assuring uniformity and compatibility, of this data with the requirements of the system, including as a minimum:

a. Use of uniform definitions and classifications acceptable to the National Highway Traffic Safety Administration and identified in the Highway Safety Program Manuals.

b. A standard format for input of data into the statewide traffic records system.

c. Entry into the statewide traffic records system of information gathered and submitted to the responsible State agency.

B. *Accident reporting.* Each State should establish procedures which require the reporting of accidents to the responsible State agency within a reasonable time after occurrence.

C. *Owner and driver reports.* 1. In accidents involving only property damage, where the vehicle can be normally and safely driven away from the scene, the drivers or owners of vehicles involved should be required to submit a written report consistent with State reporting requirements, to the responsible State agency. A vehicle should be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway. Each report so submitted should include, as a minimum, the following information relating to the accident:

a. Location.
b. Time.
c. Identification of driver(s).
d. Identification of pedestrian(s), passenger(s), or pedal-cyclist(s).
e. Identification of vehicle(s).
f. Direction of travel of each unit.
g. Other property involved.
h. Environmental conditions existing at the time of the accident.
i. A narrative description of the events and circumstances leading up to the time of impact, and immediately after impact.

2. In all other accidents, the drivers or owners of motor vehicles involved should be required to immediately notify the police of the jurisdiction in which the accident occurred. This includes, but is not limited to accidents involving: (1) Fatal or nonfatal personal injury, or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway, and therefore requires towing.

D. *Accident investigation.* Each State should establish a plan for accident investigation and reporting which should meet the following criteria:

1. Police investigation should be conducted of all accidents as identified in section IV.C.2 above. Information gathered should be consistent with the police mission of detecting and apprehending law violators, and should include, as a minimum, the following:

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that (1) contributed to the accident where the investigating officer has reason to believe that violations were committed regardless of whether the officer has sufficient evidence to prove the violation(s); and (2) for which the driver was arrested or cited.

b. Information necessary to prove each of the elements of the offense(s) for which the driver was arrested or cited.

c. Information, collected in accordance with the program established under Highway Safety Program Standard No. 15, Police Traffic Services, section I–D, relating to human, vehicular, and highway factors causing individual accidents, injuries, and deaths, including failure to use safety belts.

2. Accident investigation teams should be established, representing different interest areas, such as police; traffic; highway and automotive engineering; medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining probable causes of accidents, injuries, and deaths. These teams should conduct investigations of an appropriate sampling of accidents in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, and that have a significantly large or disproportionate number of accidents.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of accidents or injury-producing accidents.

c. Drivers, pedestrians, and vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of motor vehicle traffic accidents or injuries.

d. Accidents in which causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors that concern State and national emphasis programs.

V. *Evaluation.* The program should be evaluated at least annually by the State Substance of the evaluation report should be guided by Chapter V of the Highway Safety Program Manual. The National Highway Traffic Safety Administration should be provided with a copy of the evaluation report.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50)

Issued on: August 28, 1984.

Diane K. Steed,

Deputy Administrator, National Highway Traffic Safety Administration.

R.A. Barnhart,

Administrator, Federal Highway Administration.

[FR Doc. 84-23226 Filed 8-28-84; 4:52 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-181-84]

Returns Relating to Foreclosures and Abandonments of Security

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the requirement of reporting abandonments, foreclosures, and other acquisitions of property securing indebtedness. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by October 30, 1984. The regulations are proposed to be effective for acquisitions and abandonments of property after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-181-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC: LR:T, (202) 566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The regulations provide guidance concerning information returns relating to abandonments, foreclosures, and other acquisitions of property securing indebtedness under section 6050J of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 687, 26 U.S.C. 6050J). The regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. 84-23133 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules. In the Proposed Rules section of this issue of the **Federal Register** is a notice of proposed rulemaking relating to information reporting of transfers of security to persons other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 688, 26 U.S.C. 6050J(f)).

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by Chapter 6 of Title 5, United States Code.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these regulations is Annettee J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.601-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23132 Filed 8-30-84; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[LR-182-84]

Returns Relating to Transfers of Security to Persons Other Than the Lender

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to information reporting by lenders of any transfer of property that is security for indebtedness to a person other than the lender. This action is necessary because changes to the applicable law were made by the Tax Reform Act of 1984. These regulations would affect any person who, in connection with a trade or business, lends money on a nonrecourse basis that is secured by property (other than a personal residence) and later knows or has reason to know of any transfer of property that is security for the indebtedness of a person other than the lender. The regulations would provide these persons with the guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered by October 30, 1984 The regulations are proposed to be effective for any transfer of property (other than a personal residence) that is security for nonrecourse indebtedness after the date the Treasury decision based on these proposed rules is published in the **Federal Register**.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-182-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, Attention: CC:LR:T, (202) 566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations relating to information reporting by lenders of any transfer of property that is security for indebtedness to a person other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 688). The regulations are to be issued under the authority contained in sections 6050J(f) and 7805 of the Internal Revenue Code of 1954 (98 STat. 688, 68A Stat. 917, 26 U.S.C. 6050J, 7805 respectively). In the Rules and Regulations portion of this issue of the **Federal Register** is the text of temporary regulations relating to information reporting of abandonments, foreclosures, and other acquisitions of property securing indebtedness under section 6050J of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 687). The text of the temporary regulations also serves as the comment document for the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

Explanation of Provisions

Section 6050J requires information reporting by any person who, in connection with a trade or business, lends money secured by property, and who later either acquires an interest in the property or has reason to know that the property has been abandoned. Section 6050J(f) provides that, to the extent the Secretary of the Treasury prescribes by regulation, any transfer of property that is security for indebtedness to a person other than the lender will be treated as an abandonment for purposes of the reporting requirement.

Under the proposed rules contained in this document, any lender who makes a nonrecourse loan must report the transfer of the property securing the loan to a person other than the lender if the lender knows or has reason to know both that the transfer has occurred and that the entire amount of the indebtedness secured by the property is not satisfied in connection with the transfer. The proposed rules define, for purposes of the reporting requirement, when lenders know or have reason to know of a transfer in which less than the entire amount of outstanding indebtedness is satisfied. The rules proposed in this document would apply to any transfer of real property (other than a personal residence) and any transfer of tangible personal property used in a trade or business or held for investment after the date the Treasury decision based on these proposed rules is published in the **Federal Register.**

Alternative rules have been considered. For example, the Service has considered requiring reporting under the proposed rule described in the preceding paragraph only in those cases where the lender also knows or has reason to know one or more of the following facts: (1) That the fair market value of the property at the time it is transferred is less than the outstanding indebtedness secured by the property; (2) that the amount of cash consideration (not including notes or other evidences of indebtedness) paid by the third party to the borrower at the date of transfer is less than 15 percent of the outstanding indebtedness; (3) that the amount of cash consideration plus the fair market value of other property (not including notes or other evidences of indebtedness) paid to the borrower at the date of transfer is less than 15 percent of the outstanding indebtedness; (4) that the transfer was made by way of gift; and (5) that the transfer was made by way of charitable contribution.

Comments are sought on the proposed rule as well as the alternatives that were considered or any other alternative. Such comments should focus on the type of information available to lenders in the ordinary course of their business.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretive and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by Chapter 6 of Title 5, United States Code.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—[AMENDED]

The following new § 1.6050J-2 shall be added at the appropriate place.

§ 1.6050J-2 Questions and answers concerning information returns relating to any transfer of property which secures indebtedness to a person other than the lender.

The following questions and answers relate to the reporting requirement regarding transfers of property which secure indebtedness to a person other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added by section 148 of the Tax Reform Act of 1984 (98 Stat. 688).

Q-1: Under what circumstances must a lender who makes a nonrecourse loan report a transfer by the borrower of the

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property securing the loan to a person other than the lender?

A-1: If a lender knows or has reason to know that property (other than a personal residence) securing a nonrecourse loan is transferred to a person other than the lender and that the entire amount of the outstanding indebtedness owed to the lender is not satisfied in connection with the transfer, the lender is required to report. For purposes of this question and answer, a lender knows or has reason to know information if—

(a) The information is included on the books and records of the lender or its agents pertaining to the loan, or

(b) The lender or its agents, or the officers, partners, other principals, or employees of the lender or its agents, know or have reason to know such information in the course of their ordinary business activities on behalf of the lender.

Q-2: If a lender knows or has reason to know of a transfer described in the preceding answer, how must a lender report?

A-2: A lender must treat the transfer of property which secures the indebtedness as an abandonment of the property for purposes of the reporting requirement. The lender must report according to the rules provided in § 1.6050J-1T.

Q-3: When is § 1.6050J-2 effective?

A-3: Section 1.6050J-2 is effective for transfers of property after the date the Treasury decision based on proposed § 1.6050J-2 is published in the **Federal Register**.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23131 Filed 8-30-84; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[LR-195-78]

Certain Returned Magazines, Paperbacks, or Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to a method of accounting for certain returns of magazines, paperbacks, or records. Changes were made in the applicable law by the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with the Act and would affect all taxpayers who elect to use the method of accounting for their trades or businesses of selling magazines, paperbacks, or records.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 30, 1984. The amendments are proposed to be effective for taxable years beginning after September 30, 1979.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-195-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR-195-78), (202) 566-3238, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 458 of the Internal Revenue Code of 1954. These amendments are proposed to reflect the changes made by section 372 of the Revenue Act of 1978 (92 Stat. 2860) and are to be issued under the authority contained in sections 7805 and 458 (b)(8) and (e)(5) of the Internal Revenue Code of 1954 (68A Stat. 917; 92 Stat. 2861-2; 26 U.S.C. 7805, 458 (b)(8) and (e)(5)).

In general, section 372 of the Revenue Act of 1978 permits a taxpayer in the trade or business of selling magazines, paperbacks, or records to use a special method of accounting for the return of magazines, paperbacks, or records sold before the end of the taxable year and returned before the close of the merchandise return period for that taxable year. This method of accounting is available only to those taxpayers who use the accrual method of accounting for the trade or business of selling magazines, paperbacks, or records and who make an election to use section 458. Under this section, a taxpayer may elect to exclude from gross income amounts attributable to the qualified sale of magazines, paperbacks, or records provided the merchandise was sold before the end of the taxable year and returned before the close of the merchandise return period. The exclusion is available only if the original sale was a qualified sale. In order to be a qualified sale, the taxpayer must have, at the time of the sale, a legal obligation to adjust the sales price of merchandise that is not sold by the purchaser and the taxpayer must actually make an adjustment to the sales prices of the merchandise because of the purchaser's failure to resell it. Section 458 also provides special accounting rules for treatment of the transitional adjustment resulting from the section 458 election.

The proposed regulations contain rules that determine how and when a suspense account established under section 458(e) must be taken into account by the transferee in the case of certain transactions where there is nonrecognition of gain or loss to either party because of the application of subchapter C of the Internal Revenue Code of 1954. These rules apply generally to transactions where there is a transfer of substantially all of the assets of a trade or business in which paperbacks or records are sold. In general, the principles of section 381 and § 1.381(c)(4)-1 will be applied. The proposed regulations, however, take no position on what rules apply to other transactions described in section 458(e)(5), such as, for example, transfers involving less than substantially all the assets of a trade or business in which paperbacks or records are sold. It is anticipated that rules applicable to such transactions will be developed by regulations, rulings, or otherwise as the issues arise.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Special Analyses

The Commission of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Secretary of the Treasury has certified that this rule, if issued, will not have a significant impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required. The Secretary's certification is based on a determination that the economic impact of the regulation flows directly from the underlying statute, since the regulation prescribes the treatment of the required suspense account in transactions where there is nonrecognition of gain by reason of subchapter C of chapter 1 of the Code by applying principles contained in that subchapter.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980.

Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these proposed regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue and the Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.441-1—1.483-2

Income taxes, Accounting, Deferred compensation plans.

PART 1—[AMENDED]

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph. The following new § 1.458-1 shall be added immediately before § 1.458-10:

§ 1.458-1 Exclusion for certain returned magazines, paperbacks, or records.

(a) *Introduction.* For taxable years beginning after September 30, 1979, section 458 allows accrual basis taxpayers to elect to use a method of accounting that excludes from gross income some or all of the income attributable to qualified sales during the taxable year of magazines, paperbacks, or records that are returned before the close of the applicable merchandise return period for that taxable year. Any amount so excluded cannot be excluded or deducted from gross income for the taxable year in which the merchandise is returned to the taxpayer. For the taxable year in which the taxpayer first uses this method of accounting, the taxpayer is not allowed to exclude from gross income amounts attributable to merchandise returns received during the taxable year that would have been excluded from gross income for the prior taxable year had the taxpayer used this method of accounting for such prior year. (See paragraph (e) of this section for rules describing how this amount should be taken into account.) The election to use this method of accounting shall be made in accordance with the rules contained in section 458(c) and in § 1.458-10 and this section. A taxpayer who does not elect to use this method of accounting can reduce income for such returned merchandise only for the taxable year in which the merchandise is actually returned unsold by the purchaser.

(b) *Definitions*—(1) *Magazine.* The term "magazine" means a publication, usually paper-backed and sometimes illustrated, that is issued at regular intervals and contains stories, poems, articles, features, etc. This term includes periodicals, but does not include newspapers or volumes of a single publication issued at various intervals.

(2) *Paperback.* The term "paperback" means a paperback book other than a magazine. Unlike a hardback book, which usually has stiff front and back covers that enclose pages bound to a separate spine, a paperback book is characterized by a flexible outer cover to which the pages of the book are directly affixed. If an item satisfies the definitions of both magazines and paperbacks, it is to be treated as a paperback for purposes of this section.

(3) *Record.* The term "record" means a disc, tape, or similar item on which musical, spoken or other sounds are recorded, but does not include an item that also contains a visual recording. However, the term does not include blank records, tapes, etc., on which it is expected the ultimate purchaser will record. The following items, provided they carry pre-recorded sound, are examples of "records": cassettes, eight track tapes, reel-to-reel tapes, cylinders, and flat discs.

(4) *Qualified sale.* In order for a sale to be considered a qualified sale, both of the following conditions must be met:

(i) The taxpayer must be under a legal obligation (as determined by applicable State law), at the time of sale, to adjust the sales price of the magazine, paperback, or record on account of the purchaser's failure to resell it; and

(ii) The taxpayer must actually adjust the sales price of the magazine, paperback, or record to reflect the purchaser's failure to resell the merchandise. The following are examples of adjustments to the sale price of unsold merchandise: cash refunds, credits to the account of the purchaser, and repurchases of the merchandise. The adjustment need not be equal to the full amount of the sales price of the item. However, a markdown of the sales price under an agreement whereby the purchaser continues to hold the merchandise for sale or other disposition (other than solely for scrap) does not constitute an adjustment resulting from a failure to resell.

(5) *Merchandise return period*—(i) *In general.* Unless the taxpayer elects a shorter period, the "merchandise return period" is the period that ends 2 months and 15 days after the close of the taxable year for sales of magazines and 4 months and 15 days after the close of the taxable yer for sales of paperbacks and records.

(ii) *Election to use shorter period.* The taxpayer may select a shorter merchandise return period than the applicable period set forth in paragraph (b)(5)(i) of this section.

(iii) *Change in merchandise return period.* Any change in the merchandise return period after its initial establishment will be treated as a change in method of accounting.

(c) *Amount of the exclusion*—(1) *In general.* The amount of exclusion with respect to any qualified sale is equal to the lesser of—

(i) The amount covered by the legal obligation referred to in paragraph (b)(4)(i) of this section, or

(ii) The amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(2) *Price adjustment in excess of legal obligation.* The excess, if any, of the amount described in paragraph (c)(1)(ii) of this section over the amount described in paragraph (c)(1)(i) of this section should be excluded in the taxable year in which it is properly accurable under section 461.

(d) *Return of the merchandise*—(1) *In general.* The exclusion from gross income allowed by section 458 applies with respect to a qualified sale of merchandise only if the seller receives, before the close of the merchandise return period, either—

(i) The physical return of the merchandise, or

(ii) Satisfactory evidence that the merchandise has not been and will not be resold (as defined in paragraph (d)(2) of this setion).

For the purpose of this paragraph, evidence of a return received by an agent of the seller (other than the purchaser who purchased the merchandise from the seller) will be considered to be received by the seller at the time the agent receives the merchandise or evidence.

(2) *Satisfactory evidence.* Evidence that merchandise has not been and will not be resold is satisfactory only if the seller receives

(i) Physical return of some portion of the merchandise (*e.g.,* covers) provided under either the agreement between the seller and the purchaser, or the practice of the industry, such return indicates that the purchaser has not sold and will not resell the merchandise, or

(ii) A written statement from the purchaser specifying the quantities of each title not resold provided either—

(A) The statement contains a representation that the items specified will not be resold by the purchaser, or

(B) The past dealings, if any, between the parties and the practice of the industry indicates that such statement constitutes a promise by the purchaser not to resell the items.

(3) *Retention of evidence.* In the case of a return of merchandise (described in paragraph (d)(1)(i) of this section) or portion thereof (described in paragraph (d)(2)(i) of this section), the seller has no obligation to retain physical evidence of the returned merchandise or portion thereof so long as there is documentary evidence that describes the quantity of physical items returned to the seller and that indicates that the items were returned before the close of the merchandise return period.

(e) *Transitional adjustment*— (1) *In general.* An election to change from some other method of accounting for the return of magazines, paperbacks, or records to the method of accounting described in section 458 is a change in method of accounting that requires a transitional adjustment. Section 458 provides special rules for transitional adjustments that must be taken into account as a result of this change. See paragraph (e)(2) of this section for special rules applicable to magazines and paragraph (e) (3) and (4) of this section for special rules applicable to paperbacks and records.

(2) *Magazines: 5-year spread of decrease in taxable income.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned magazines for a taxable year, section 458(d) and this subparagraph provide a special rule for taking into account any decrease in taxable income resulting from the adjustment required by section 481(a)(2). Under these provisions, one-fifth of the transitional adjustment shall be taken into account in the taxable year of the change and in each of the 4 succeeding taxable years. For example, if the application of section 481(a)(2) would produce a decrease in taxable income of $50 for 1980, the year of change, then $10 (one-fifth of $50) shall be taken into account as a decrease in taxable income for 1980, 1981, 1982, 1983, and 1984.

(3) *Suspense account for paperbacks and records*—(i) *In general.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned paperbacks and records for a taxable year, section 458(e) provides that, in lieu of applying section 481, an electing taxpayer shall establish a separate suspense account for its paperback business and its records business. The initial opening balance of the suspense account is described in paragraph (e)(3)(ii)(A) of this section. An initial adjustment to gross income for the year of election is described in paragraph (e)(3)(ii)(B) of this section. Annual adjustments to the suspense account are described in paragraph (e)(3)(iii)(A) of this section. Gross income adjustments are described in paragraph (e)(3)(iii)(B) of this section. Examples are provided in paragraph (e)(4) of this section. The effect of the suspense account is to defer all, or some part, of the deduction of the transitional adjustment until the taxpayer is no longer engaged in the trade or business of selling paperbacks or records, whichever is applicable.

(ii) *Establishing a suspense account*—(A) *Initial opening balance.* To compute the initial opening balance of the suspense account for the first taxable year for which an election is effective, the taxpayer must determine the section 458 amount (as defined in paragraph (e)(3)(ii)(C) of this section) for each of the three preceding taxable years. The initial opening balance of the account is the largest such section 458 amount.

(B) *Initial year adjustment.* If the initial opening balance in the suspense account exceeds the section 458 amounts (as defined in paragraph (e)(3)(ii)(C) of this section) for the taxable year immediately preceding the year of election, such excess is included in the taxpayer's gross income for the first taxable year for which the election was made.

(C) *Section 458 amount.* For purposes of paragraph (e)(3)(ii), the section 458 amount for a taxable year is the dollar amount of merchandise returns that would have been excluded from gross income under section 458(a) for such taxable year if the section 458 election had been in effect for such taxable year.

(iii) *Annual adjustments*—(A) *Adjustment to the suspense account.* Adjustments are made to the suspense account each year to account for fluctuations in merchandise returns. To compute the annual adjustment, the taxpayer must determine the amount to be excluded under the election from gross income under section 458(a) for the taxable year. If the amount is less than the opening balance in the suspense account for the taxable year, the balance in the suspense account is reduced by the difference. Conversely, if such amount is greater than the opening balance in the suspense account for the taxable year, the account is increased by the difference (but not to an amount in excess of the initial opening balance described in paragraph (e)(3)(ii)(A) of this section). Therefore, the balance in the suspense account will never be greater than the initial opening balance in the suspense account determined in paragraph (e)(3)(ii)(A) of this section. However, the balance in the suspense account after adjustments may be less than this initial opening balance in the suspense account.

(B) *Gross income adjustments.* Adjustments to the suspense account for years subsequent to the year of the election also produce adjustments in the taxpayer's gross income. Adjustments which reduce the balance in the suspense account reduce gross income for the year in which the adjustment to the suspense account is made. Adjustments which increase the balance in the suspense account increase gross income for the year in which the adjustment to the suspense account is made.

(4) *Examples.* (i) The provisions of paragraph (e) (3) of this section may be illustrated by the following examples:

Example (1). Assume that X corporation, a paperback distributor, makes a timely section 458 election for its taxable year ending December 31, 1980. Assume also that if the election had been in effect for the taxable years ending on December 31, 1977, 1978, and 1979, the dollar amounts of the qualifying returns would have been $5, $8, and $6, respectively. Under these facts, the initial opening balance of X's suspense account on January 1, 1980 is $8, the largest of these amounts. Since the initial opening balance ($8), is larger than the qualifying returns for 1979 ($6), the initial adjustment to gross income for 1980 is $2 ($8−$6).

Example (2). Assume the same facts as in example (1). Assume also that X has $5 in qualifying returns for its taxable year ending December 31, 1980. Under these facts, X must reduce its suspense account by $3, which is the excess of the opening balance ($8) over the amount of qualifying returns for the 1980 taxable year ($5). X should also reduce its gross income for 1980 by $3. Thus, the net amount excludable from gross income for the 1980 taxable year after taking into account the qualifying returns, the gross income adjustment, and the initial year adjustment is $6 ($3+$5−$2).

Example (3). Assume the same facts as in example (2). Assume also that X has qualifying returns of $7 for its taxable year ending December 31, 1981. Under these facts, X must increase its suspense account balance by $2, which is the excess of the amount of qualifying returns for 1981 ($7) over X's opening balance in the suspense account ($5). X must also increased its gross income by $2. Thus, the net amount excludable from gross income for the 1981 taxable year after taking into account the qualifying returns and the gross income adjustment is $5 ($7 − $2).

Example (4). Assume the same facts as in example (3). Assume also that X has qualifying returns of $10 for its taxable year ending December 31, 1982. Under these facts the opening balance in X's suspense account of $7 will not be increased in excess of the initial opening balance ($8). A must also increase gross income by $1. Thus, the net amount excludable from gross income for the 1982 taxable year is $9 ($10 − $1).

(ii) Examples (1) through (4) may be summarized by the following table:

	Years ending December 31					
	1977	1978	1979	1980 [1]	1981	1982
Facts:						
Qualifying returns during merchandise return period for the taxable year	$5	$8	$8	$5	$7	$10
Adjustment to suspense account:						
Opening balance				8	5	7
Addition to account [2]					2	1
Reduction to account [3]				(3)		
Opening balance for next year				5	7	8
Amount excludable from income:						
Initial year adjustment				(2)		
Amount excludable as qualifying returns in merchandise return period				5	7	10
Adjustment for increase in suspense account					(2)	(1)
Adjustment for decrease in suspense account				3		
Net amount excludable for the year				6	5	9

[1] Year of change.

[2] Applies when qualifying returns during the merchandise return period exceed the opening balance; the addition is not to cause the suspense account to exceed the initial opening balance.

[3] Applies when qualifying returns during the merchandise return period are less than the opening balance

(f) *Subchapter C transactions*—(1) *General rule.* If a transfer of substantially all the assets of a trade or business in which paperbacks or records are sold is made to an acquiring corporation, and if the acquiring corporation determines its basis in these assets, in whole or part, with reference to the basis of these assets in the hands of the transferor, then for the purposes of section 458(e) the principles of section 381 and § 1.381(c)(4)-1 will apply. The application of this rule is not limited to the transactions described in section 381(a). Thus, the rule also applies, for example, to transactions described in section 351.

(2) *Special rules.* If, in the case of a transaction described in paragraph (f)(1) of this section, an acquiring corporation acquires assets that were used in a trade or business that was not subject to a section 458 election from a transferor that is owned or controlled directly (or indirectly through a chain of corporations) by the same interests, and if the acquiring corporation uses the acquired assets in a trade or business for which the acquiring corporation later makes an election to use section 458, then the acquiring corporation must establish a suspense account by taking into account not only its own experience but also the transferor's experience when the transferor held the assets in its trade or business. Furthermore, the transferor is not allowed a deduction or exclusion for merchandise returned after the date of the transfer attributable to sales made by the transferor before the date of the transfer. Such returns shall be considered to be received by the acquiring corporation.

(3) *Example.* The provisions of paragraph (f)(2) of this section may be illustrated by the following example.

Example. Corporation S, a calendar year taxpayer, is a wholly owned subsidiary of Corporation P, a calendar year taxpayer. On December 31, 1982, S acquires from P substantially all of the assets used in a trade or business in which records are sold. P had not made an election under section 458 with respect to the qualified sale of records made in connection with that trade or business. S makes an election to use section 458 for its taxable year ending December 31, 1983, for the trade or business in which the acquired assets are used. Assume that P's qualified record returns within the 4 month and 15 day merchandise return period following the 1980 and 1981 taxable years were $150 and $170 respectively. Assume further that S's qualified record returns during the merchandise return period following 1982 were $160. S must establish a suspense account by taking into account both P's and S's experience for the 3 immediately preceding taxable years. Thus, the initial opening balance of S's suspense account is $170. S must also make an initial year adjustment of $10 ($170–$160), which S must include in income for S's taxable year ending December 31, 1983. P is not entitled to a deduction or exclusion for merchandise received after the date of the transfer (December 31, 1982) attributable to sales made by the transferor before the date of transfer. Thus, P is not entitled to a deduction or exclusion for the $160 of merchandise received by S during the first 4 months and 15 days of 1983.

(g) *Adjustment to inventory and cost of goods sold.* If a taxpayer makes adjustments to gross receipts for a taxable year under the method of accounting described in section 458, the taxpayer may also be required to make appropriate corresponding adjustments to purchases or closing inventory and to cost of goods sold for the same taxable year. Such adjustments will be required, for example, where the taxpayer holds the merchandise returned for resale and where the taxpayer is entitled to receive a price adjustment from the person or entity that sold the merchandise to the taxpayer.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23135 Filed 8-30-84; 8:45 am]

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26 CFR Part 1

[LR-107-84]

Collapsible Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking to amend the income tax regulations under section 341, relating to collapsible corporations, to reflect amendments to that section made by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Tax Reform Act of 1984 (1984 Act). The 1984 Act amended the definition of a collapsible corporation in section 341(b)(1) and modified the limitation in section 341(d)(2) on the application of section 341 to gain recognized upon the sale or exchange of stock, or a distribution with respect to stock, of a collapsible corporation. These proposed amendments to the regulations will provide the public with guidance needed to comply with the law.

DATES:

Proposed Effective Date

The amendments to the regulations reflecting the 1984 Act are proposed to be effective for sales or exchanges of stock, or distributions with respect to stock, of a corporation occurring after July 18, 1984. A modification to § 1.341–4(a) is proposed to be effective in the case of stock acquired after June 22, 1984, and before January 1, 1988. An amendment conforming § 1.341–1(b) to TEFRA is proposed to be generally effective for distributions after August 31, 1982.

Dates for Comments and Requests

Written comments and requests for a public hearing must be delivered or mailed by October 30, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–107–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Michel A. Daze of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 341 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 222(e)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 480) (TEFRA) and sections 65 and 1001 (a)(1) and (b)(2) of the Tax Reform Act of 1984 (98 Stat. 498, 1011) (1984 Act). The proposed amendments are to be issued under the authority contained in Code sections 341(d) and 7805 (98 Stat. 498, 26 U.S.C. 341(d);' 68A Stat. 917, 26 U.S.C. 7805, respectively).

Gain Treated as Ordinary Income

Under section 341(a), the entire gain from the sale or exchange of stock of a collapsible corporation, including a complete or partial liquidation, or from a distribution by a collapsible corporation that is treated under section 301(c)(3)(A) as gain from the sale or exchange of property, is considered as ordinary income. Paragraph (2) of section 341(a) was amended by section 222(e)(5) of TEFRA to conform section 341(a) with other amendments to the Code relating to distributions in partial liquidation. The provisions of § 1.341–b, which treat gain recognized as ordinary income, are proposed to be amended to reflect this amendment to section 341(a) by TEFRA.

Section 341(a) converts only long-term capital gain to ordinary income. As amended by section 1001(a)(1) of the 1984 Act, section 1222(3) defines long-term capital gain as gain from the sale or exchange of a capital asset held for more than 6 months, effective for property acquired after June 22, 1984, and before January 1, 1988. Section 1001(b)(2) of the 1984 Act makes a conforming amendment to section 341(a). This limitation on the application of section 341 is reflected in a proposed amendment to § 1.341–4(a).

Collapsible Corporation Defined

Before the 1984 Act, a collapsible corporation was generally defined as a corporation formed or availed of principally for the manufacture, construction, production, or purchase of certain types of property with a view to the sale or exchange of stock (including liquidation of the corporation), or a distribution to shareholders, before the realization by the corporation of a "substantial part" of the taxable income to be derived from such property. Several courts have disagreed as to whether the term "substantial part" should be interpreted by reference to taxable income realized from the property before the collapse (sale, exchange, or distribution), or to taxable income remaining to be realized after the collapse.

The rule that a corporation is not collapsible if the amount of taxable income realized before the collapse is substantial in relation to the total taxable income to be derived from the property has been consistently followed by the Tax Court and adopted by two Circuit Courts of Appeal. *Commissioner* v. *Kelley*, 32 T.C. 135 (1959), *aff'd*, 293 F.2d 904 (5th Cir. 1961); *Zongker* v. *Commissioner*, 39 T.C. 1046 (1963), *aff'd*, 334 F.2d 44 (10th Cir. 1964); *Day* v. *Commissioner*, 55 T.C. 257 (1970). After Kelley, a corporation could avoid collapsible status by realizing as little as one-third of the taxable income to be derived from its property. In contrast, the Third Circuit has held that the amount of taxable income realized could not be substantial unless only an insubstantial part to be derived from the property remained unrealized. *Abbott* v. *Commissioner*, 258 F.2d 537 (3d Cir. 1957). After first adhering to the Third Circuit's position in *Abbott* (Rev. Rul. 62–12, 1962–1 C.B. 321), the Service has acquiesced in several decisions of the Tax Court that refer to the income realized before the collapse (Rev. Rul. 72–48, 1972–1 C.B. 102).

The 1984 Act amends the definition of a collapsible corporation to require that a corporation realize at least two-thirds of the taxable income to be derived from the property in order to avoid collapsible status. The intent is to adopt the view that less than a substantial part must remain unrealized at the time of the collapse and to replace the *Abbott* interpretation with a more definite standard. H.R. Rep. No. 432, 98 Cong., 2d Sess. 1382–3 (1984). This standard is reflected in proposed amendments to §§ 1.341–2 and 1.341–5.

Seventy Percent Limitation

Even if a corporation is collapsible, section 341(d)(2), as amended by the 1984 Act, provides that section 341 will not apply to gain recognized during a taxable year by a shareholder unless more than 70 percent of such gain is attributable to property described in section 341(b)(1) (collapsible property). If 70 percent or less of the gain is attributable to collapsible property, none of the gain is subject to section 341. If more than 70 percent is so attributable, the entire gain is treated as ordinary income, absent any other limitation on the application of section 341. If property is manufactured, constructed, produced, or purchased by a corporation with the proscribed view, but the collapsible event occurs after the realization of two-thirds of the taxable income to be derived from the property, then the property is not collapsible property for purposes of the 70 percent limitation. Section 341(d) was further amended to provide that, in determining whether property is described in section 341(b)(1) for purposes of applying the 70 percent limitation, all property described in section 1221(1) is to be treated, to the extent provided in regulations, as one item of property.

Under § 1.341–4(c)(2), the gain attributable to collapsible property is the excess of the recognized gain of a shareholder with respect to stock in a collapsible corporation over the gain which the shareholder would have recognized if the collapsible property had not been manufactured, constructed, produced, or purchased. Thus, as the number of items of property with respect to which a corporation has realized two-thirds of the taxable income to be derived therefrom increases, the amount of the shareholder's gain attributable to collapsible property decreases. Under § 1.341–2(a)(4), if property is a unit of an integrated project involving several properties similar in kind, a determination of the amount of taxable income realized is made by reference to the aggregate of the properties constituting the single project. Congress was concerned that the 70 percent limitation would prevent the application of section 341 in some cases when a corporation has not realized in the aggregate two-thirds of the taxable income from separate projects consisting of section 1221(1) property, but with respect to an individual project the corporation has realized two-thirds of the taxable income to be derived therefrom. H.R. Rep. No. 431, *supra*, at 1383. Therefore, the Secretary was authorized to promulgate regulations treating all property described in section 1221(1) as one item of property. H.R. Rep. No. 861, 98th Cong., 2d Sess. 848 (1984).

Accordingly, new paragraphs (c)(4) through (c)(8) are proposed to be added to § 1.341–4. Paragraph (c)(4) provides that section 1221(1) property that is also collapsible property, without regard to whether two-thirds of the taxable income to be derived from such property has been realized, is aggregated and treated as one item of property. Thus, separate projects that consist of such section 1221(1) property are aggregated and treated as a single item of property. If, after applying the aggregation rules of paragraph (c)(4), the corporation has realized less than two-thirds of the taxable income to be derived from the aggregated property, the aggregated property is treated as property described in section 341(b)(1) for the purpose of applying the seventy percent limitation.

The collapsible corporation provisions of section 341 are designed to prevent a taxpayer from converting what otherwise would be ordinary income to a corporation from the manufacture, construction, production, or purchase of property into capital gain from the sale or exchange of stock of the corporation. To carry out the intent of section 341 as amended by the 1948 Act, proposed paragraph (c)(5) provides that, if one of the purposes for forming or availing of a corporation that is related to another corporation is to avoid the application of the aggregation rule provided in the last sentence of section 341(d) and proposed paragraph (c)(4), section 1221(1) property held by both corporations is subject to aggregation. Comments are invited on the extent to and the manner in which such aggregation should be required.

In addition, proposed paragraph (c)(6) provides that a section 1221(1) property is not aggregated with another section 1221(1) property and treated as one item of property under paragraphs (c)(4) and (5), even if such other section 1221(1) property represents a prior aggregation, if the effect would be to reduce the amount of the gain recognized during the taxable year with respect to stock of a collapsible corporation that is attributable to property described in section 341(b)(1).

Proposed paragraph (c)(7) contains the effective dates of the proposed amendments to § 1.341–4 and proposed paragraph (c)(8) provides examples illustrating the application of the 70 percent limitation when gain is attributable to section 1221(1) property.

Effective Dates

The proposed amendment to § 1.341–1(b), which would conform the regulations to section 222(e)(5) of TEFRA, is proposed to be generally effective for distributions after August 31, 1982. The amendment to the limitation on the application of section 341 provided in § 1.341–4(a) is proposed to be effective for stock acquired after June 22, 1984, and before January 1, 1988. All other amendments to the regulations under section 341 are proposed to be effective for sales or exchanges of stock, or distributions with respect to stock, of a collapsible corporation occurring after July 18, 1984.

Comments and Request for a Public Hearing

Before these proposed amendments to the regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of the proposed amendments to the regulations is Michel A. Dazé of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developeing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301-1—1.385-8

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

PART 1—[AMENDED]

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.341-1 [Amended]

Paragraph 1. Paragraph (b) of § 1.341–1 is amended by removing "under section 331," and adding instead "under section 331 or under section 302(b)(4) as added by the Tax Equity and Fiscal Responsibility Act of 1982,".

§1.341-2 [Amended]

Par. 2. Section 1.341–2 is amended by removing "a substantial part of the taxable income" from paragraph (a)(1)(iii)(*a*), from first sentence of paragraph (a)(2), and from the second and third sentences of paragraph (a)(4), and adding instead "two-thirds of the taxable income (or, in the case of sales, exchanges, or distributions before July 19, 1984, a substantial part of the taxable income)".

Par. 3. Paragraphs (a) and (c) of § 1.341–4 are revised to read as set forth below.

§ 1.341-4 Limitations on application of section.

(a) *General.* This section shall apply only to the extent that the recognized gain of a shareholder upon his stock in a collapsible corporation would be considered, but for the provisions of this section, as gain from the sale or exchange of a capital asset held for more than 1 year (6 months in the case of stock acquired after June 22, 1984, and before January 1, 1988; 6 months for taxable years before 1977; 9 months for taxable years beginning in 1977). Thus, if a taxpayer sells at a gain stock of a collapsible corporation which he had held for six months or less, this section would not, in any event, apply to such gain. Also, if it is determined, under provisions of law other than section 341, that a sale or exchange at a gain of stock of a collapsible corporation which has been held for more than 1 year (6 months in the case of stock acquired after June 22, 1984, and before January 1, 1988; 6 months for taxable years before 1977; 9 months for taxable years beginning in 1977) results in ordinary income rather than long-term capital gain, then this section (including the limitations contained herein) has no application whatsoever to such gain.

* * * * *

(c) *Seventy-percent rule.* (1) This section shall apply to the gain recognized during a taxable year upon the stock in a collapsible corporation only if more than 70 percent of such gain is attributable to the property referred to in section 341(b)(1). If more than 70 percent of such gain is so attributable, then all of such gain is subject to this section, and, if 70 percent or less of such gain is so attributable, then none of such gain is subject to this section.

(2) For the purpose of this limitation, the gain attributable to the property referred to in section 341(b)(1) is the excess of the recognized gain of the shareholder during the taxable year upon his stock in the collapsible corporation over the recognized gain which the shareholder would have if the property had not been manufactured, constructed, produced, or purchased. In the case of gain on a distribution in partial liquidation or a distribution described in section 301(c)(3)(A), the gain attributable to the property shall not be less than an amount which bears the same ratio to the gain on such distribution as the gain which would be attributable to the property if there had been a complete liquidation at the time of such distribution bears to the total gain which would have resulted from such complete liquidation.

(3) Gain may be attributable to the property referred to in section 341(b)(1) even though such gain is represented by an appreciation in the value of property other than that manufactured, constructed, produced, or purchased. Where, for example, a corporation owns a tract of land and the development of one-half of the tract increases the value of the other half, the gain attributable to the developed half of the tract includes the increase in the value of the other half.

(4) Except as provided in paragraph (c)(6) of this section, the determination of whether property is described in section 341(b)(1) is made by aggregating and treating as one item of property all property meeting both of the following requirements:

(i) It is stock in trade of the corporation or other property of a kind which would be properly included in the inventory of the corporation if on hand at the close of the taxable year, or property held by the corporation primarily for sale to customers in the ordinary course of the corporation's trade or business (section 1221(1) property), and

(ii) It is described in section 341(b)(1) without regard to whether the corporation has realized two-thirds or more of the taxable income to be derived from such property. Thus, separate projects that consist of property described in both (i) and (ii) of the preceding sentence are aggregated and treated as a single item of property. If, after applying the aggregation rules of this paragraph (c)(4), the corporation has realized less than two-thirds of the taxable income to be derived from the aggregated property, the aggregated property is treated as property described in section 341(b)(1) for the purpose of applying section 341(d)(2) and this paragraph (c).

(5) If one of the purposes for forming or availing of a corporation that is related to another corporation is to avoid the application of the last sentence of section 341(d) and paragraph (c)(4) of this section, section 1221(1) property that is described in paragraph (c)(4) of this section and held by one corporation is subject to aggregation with such property of the related corporation.

(6) Property described in section 1221(1) is not aggregated with other property described in section 1221(1) and treated as one item of property under paragraph (c) (4) and (5) of this section, even if such other section 1221(1) property represents a prior aggregation, if the effect would be to reduce the amount of the gain recognized during the taxable year with respect to stock of a collapsible corporation that is attributable to property described in section 341(b)(1).

(7) Paragraphs (c) (4), (5), and (6) of this section are effective for sales or exchanges of stock, or distributions with respect to stock, of a corporation occurring after July 18, 1984.

(8) The following examples illustrate the application of the seventy percent rule:

Example (1). (i) On January 2, 1985, A forms corporation X and contributes $1 million cash in exchange for all the X stock. Corporation X immediately purchases for $400,000 property that is not described in section 341(b)(2) of section 341(b)(3) and is not stock of another collapsible corporation. As of December 31, 1985, the corporation has sold the property and realized all of the taxable income to be derived from the property, resulting in a profit of $100,000 (after taxes).

(ii) On January 15, 1985, X also acquires for $300,000 each two separate tracts of land in neighboring cities, for the purposes of subdividing and developing each tract into lots suitable for sale as homesites and holding them primarily for sale to customers in the ordinary course of business. Each tract is expected to produce $1.25 million of taxable income. A, however, intends to sell all the X stock before ⅔ of the taxable income is derived from either tract. As of December 31, 1985, X has realized $900,000 of taxable income from tract I (72%), but only $250,000 (20%) from tract II. On January 1, 1986, A sells all the X stock.

(iii) Under paragraph (c)(4) of this section, both tracts are aggregated and treated as one item of property to determine if that item is property described in section 341(b)(1) for the purpose of determining the amount of gain on the sale of the X stock attributable to property so described. Although more than two-thirds of the taxable income to be derived from tract I has been realized by X, less than two-thirds has been realized from the two tracts in the aggregage

$$\frac{900{,}000+250{,}000}{1{,}250{,}000+1{,}250{,}000} \text{ or } 46\% \text{ .}$$

Thus, the two tracts constitute an item of property that is described in section 341(b)(1).

(iv) Assume A recognizes $750,000 gain upon the sale of the X stock, but A would have recognized only $100,000 gain had the two tracts of land not been acquired for subdivision and sale. Thus, the gain attributable to property described in section 341(b)(1) is $650,000. Because such gain is more than 70 percent of the total gain recognized by A, the entire gain from the sale of the X stock is subject to section 341(a).

Example (2). (i) The facts are the same as in example (1), with the following modification. Tract I is acquired for $150,000 and is expected to produce $465,000 of taxable income. Tract II is acquired for $450,000 and is expected to produce $1,850,000 of taxable income. As of December 31, 1985, X has realized 100% of the taxable income from tract I, but only $1,130,000 (61.1%) from tract II. On January 1, 1986, A sells all the X stock.

(ii) The two tracts are not aggregated and treated as one item of property because the amount of gain from the sale of the X stock attributable to property described in section 341(b)(1) would be reduced below that amount which would be so attributable without aggregation. If the tracts were aggregated, X would have realized more than two-thirds of the taxable income from the two tracts

$$\frac{465{,}000+1{,}130{,}000}{465{,}000+1{,}850{,}000} \text{ or } 68.9\%\text{,}$$

and none of A's gain would be attributable to property described in section 341(b)(1).

(iii) If the tracts are not aggregated, however, tract II is property described in section 341(b)(1) since X has not realized two-thirds of the taxable income to be derived from that tract. Therefore, the gain recognized on the sale of the X stock attributable to property described in section 341(b)(1) (tract II) is determined under this paragraph (c) without regard to paragraph (c)(4). If the gain attributable to tract II is more than 70 percent of the total gain recognized by A, the entire gain from the sale of the X stock is subject to section 341(a).

Example (3). On January 2, 1985, A forms corporation X and contributes $800,000 cash in exchange for all the X stock. Corporation X immediately acquires three tracts of land in separate cities for the purpose of subdividing and developing each tract into lots suitable for sale as homesites and holding them primarily for sale to customers in the ordinary course of business. Tract I is expected to produce $250,000 of taxable income, tract II, $50,000, and tract III, $700,000. A, however, intends to liquidate the corporation before ⅔ of the taxable income is derived from any of the projects. As of December 31, 1985, X has realized 100% of the taxable income from tracts I and II, but only $400,000 (57.1%) from tract III. On January 2, 1986, A liquidates the corporation and recognizes gain. Under paragraph (c)(6) of this section, only tracts II and III are aggregated and treated as one item to determine if that item is property described in section 341(b)(1). Because less than two-thirds of the taxable income has been realized from those tracts in the aggregate

$$\frac{50{,}000 + 400{,}000}{50{,}000 + 700{,}000} \text{ or } 60\%,$$

tracts II and III constitute an item of property that is described in section 341(b)(1). If more than 70 percent of A's gain is attributable to that item of property, all of A's gain is subject to section 341(a).

Example (4). The facts are the same as in example (1), except that on December 31, 1985, X transfers tract II to a newly formed subsidiary, S, in exchange for all the S stock in a transaction to which section 351 applies. One of the purposes for the transfer is to avoid aggregation of the two tracts when A sells all the X stock. Under paragraph (c)(5) of this section, the two tracts are aggregated and treated as one item of property to determine if that item is property described in section 341(b)(1). That item is so described because only 46 percent of the taxable income to be derived therefrom has been realized. Accordingly, for purposes of applying section 341(d) and this paragraph (c), gain recognized upon the sale of the X stock that is attributable to both tract I and tract II is gain attributable to property described in section 341(b)(1).

Example (5). The facts are the same as in example (4), except that, before acquiring tract II, X transfers $300,000 to a newly formed subsidiary, S, which in turn acquires tract II. One of the purposes of the transfer is to avoid aggregation of the two tracts when A sells all the X stock. Upon a sale of all the X stock by A, tract I and tract II are aggregated and treated as one item of property under paragraph (c)(5) of this section. The results are the same as in example (4).

* * * * *

Par. 4. Section 1.341-5 is amended as follows:

1. Paragraph (b)(5) is amended by removing "a substantial part of the taxable income" and adding instead "two-thirds of the taxable income (or, in the case of sales, exchanges, or distributions before July 19, 1984, a substantial part of the taxable income)".

2. Paragraph (d) is revised to read as set forth below:

§ 1.341-5 Application of section.

* * * * *

(d) The following examples will illustrate the application of this section:

Example (1). (i) On January 2, 1985, A formed the W Corporation and contributed $50,000 cash in exchange for all of the stock thereof. The W Corporation borrowed $900,000 from a bank and used $800,000 of such sum in the construction of an apartment house on land which it purchased for $50,000. The apartment house was completed on December 31, 1985. On December 31, 1985, the corporation, having determined that the fair market value of the apartment house, separate and apart from the land, was $900,000, made a distribution (permitted under the applicable State law) to A of $100,000. At this time, the fair market value of the land was $50,000. As of December 31, 1985, the corporation has not realized any earnings and profits. In 1986, the corporation began the operation of the apartment house and received rentals therefrom. The corporation has since continued to own and operate the building. The corporation reported on the basis of the calendar year and cash receipts and disbursements.

(ii) Since A received a distribution and realized a gain attributable to the building constructed by the corporation, since, at the time of such distribution, the corporation has not realized two-thirds of the taxable income to be derived from such building, and since the construction of the building was a substantial activity of the corporation, the W Corporation is considered a collapsible corporation under paragraph (b) of § 1.341-5. The provisions of section 341(d) do not prohibit the application of section 341(a). Therefore, the distribution, if and to the extent that it may be considered long-term capital gain rather than ordinary income without regard to section 341, will be considered ordinary income under section 341(a).

(iii) In the event of the existence of additional facts and circumstances in the above case, the corporation, notwithstanding the above facts, might not be considered a collapsible corporation. See § 1.342-2 and paragraph (a) of § 1.341-5.

Example (2). (i) On January 2, 1985, B formed X Corporation and became its sole shareholder. In August 1985, the corporation completed construction of an office building. It immediately sold this building at a gain of $50,000, included this entire gain in its return for 1985, and distributed this entire gain (less taxes) to B. In June 1986, the corporation completed construction of a second office building. In August 1986, B sold the entire stock of X Corporation at a gain of $12,000, which gain is attributable to the second building.

(ii) X Corporation is a collapsible corporation under section 341(b) for the following reasons: The gain realized through the sale of the stock of X Corporation was attributable to the second office building, the construction of that building was a substantial activity of X Corporation during the time of construction and, at the time of sale, the corporation had not realized two-thirds of the taxable income to be derived from such building. Since the provisions of section 341(d) do not prohibit the application of section 341(a) to B, the gain of $12,000 to B is, accordingly, considered ordinary income.

Example (3). The facts are the same as in example (2), except that the following facts are shown: B was the president of the X Corporation and active in the conduct of its business. The second building was constructed as the first step in a project of the X Corporation for the development for rental purposes of a large suburban center involving the construction of several buildings by the corporation. The sale of the stock by B was caused by his retiring from all business activity as a result of illness arising after the second building was constructed. Under these additional facts, the corporation is not considered a collapsible corporation. See § 1.341-2 and paragraph (a) of § 1.341-5.

Example (4). (i) On January 2, 1978, C formed the Y Corporation and became the sole shareholder thereof. The Y Corporation has been engaged solely in the business of producing motion pictures and licensing their exhibition. On January 2, 1985, C sold all of the stock of the Y Corporation at a gain. The Y Corporation has produced one motion picture each year since its organization and before January 2, 1985, it has realized at least two-thirds of the taxable income to be derived from each of its motion pictures except the last one made in 1984. This last motion picture was completed September 1, 1984. As of January 2, 1985, no license had been made for its exhibition. The fair market value on January 2, 1985, of this last motion picture exceeds the cost of its production by $50,000. A material part of the production of this last picture was completed on January 1, 1984, and between that date and January 2, 1985, the corporation had realized taxable income of $500,000 from other motion pictures produced by it. The corporation has consistently distributed to its shareholder its taxable income when received (after adjustment for taxes).

(ii) Although the corporation is within paragraph (b) of this section with respect to the production of property, the amount of the unrealized income from such property ($50,000) is not substantial in relation to the amount of the income realized, after the completion of a material part of the production of such property and prior to sale of the stock, from such property and other property produced by the corporation

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($500,000). Accordingly, the Y Corporation is within paragraph (c)(2) of this section, and is not considered a collapsible corporation.

Example (5). The facts are the same as in example (4) except that C sold all of his stock to D on February 1, 1984. On January 2, 1985, D sold all of the Y Corporation stock at a gain, the gain being attributable to the picture completed September 1, 1984, and not released by the corporation for exhibition. In view of the change of control of the corporation, the provisions of paragraph (c)(2) of this section are not significant at the time of the sale by D, and the Y Corporation would be considered a collapsible corporation on January 2, 1985. See § 1.341-2 and paragraph (a) of § 1.341-5.

Roscoe L Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23134 Filed 8-30-84; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[LR-153-84]

Treatment of Transfer of Property Between Spouses, Tax Treatment of Alimony and Separate Maintenance Payments, and Dependency Exemption in the Case of Child of Divorced Parents; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the treatment of transfers of property between spouses or former spouses, the tax treatment of alimony and separate maintenance payments, and the dependency exemption in the case of a child of divorced parents. The temporary regulations also serves as the text for this Notice of Proposed Relemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 20, 1984. These regulations are proposed to be effective for transfers of property between spouses or former spouses after July 18, 1984 (except as otherwise provided in § 1.1041-1T(f)), alimony or separate maintenance payments made with respect to divorce or separation instruments executed after December 31, 1984, and, to dependency exemptions released for tax years beginning after December 31, 1984.

ADDRESS: Send comments and request for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-153-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR-153-84) (202) 566-4336, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations which are proposed to be based on the temporary regulations would amend Part 1 of Title 26 of the Code of Federal Regulations. The regulations provide rules relating to the treatment of transfers of property between spouses, or former spouses incident to divorce under 1041 of the Internal Revenue Code of 1954 (Code) as added by section 421 of the Tax Reform Act of 1984 (Act) (Pub. L. 98-369, 98 Stat. 793), alimony or separate maintenance payments under sections 71 and 215 of the Code as amended by section 422 of the Act (Pub. L. 98-369, 98 Stat. 795) and the dependency exemption in the case of a child of divorced parents under section 152 of the Code, as amended by section 423 of the Act (Pub. L. 98-369, 98 Stat. 799). These regulations are to be issued under the authority contained in sections 1041(d)(4) (98 Stat. 798, 26 U.S.C. 1041(d)(4)), 152(e)(2)(A) (98 Stat. 802, 26 U.S.C. 152(e)(2)(A)), 215(c) (98 Stat. 800, 26 U.S.C. 215(c)) and 7805 (68A Stat. 917, 26 U.S.C 7805) of the Code. For the text of the temporary regulations, see FR Doc. 84-23129 (T.D. 7973) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these temporary regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.61-1—1.281-1

Income taxes, Taxable income, Deductions, Exemptions.

List of Subjects in 26 CFR 1.1001-1—1.1102-3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23128 Filed 8-30-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on the Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the State of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments are submitted as further modifications to the Kentucky program. The amendments pertain to (1) procedures that enable sureties to cancel bonds for non-contemporaneous reclamation violations, (2) bond credit for operators who are mining certain abandoned mined lands and establishment of a fund utilizing penalties and fines in excess of $800,000 a year for this purpose (3) Senate Bill 300 and its accompanying policy statement pertaining to incremental bonding, (4) emergency regulations implementing House Bill 514 pertaining to reclamation deferments and the Settlement Agreement for Sierra Club v. Clark *et al.*, Civil Action 83-85, U.S. District Court for Eastern District of Kentucky, (5) Kentucky House Bill 868 pertaining to the receipt of surety bonds and (6) House Bill 888 pertaining to permit transfers.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before October 1, 1984 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on September 25, 1984 beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, as listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in the support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Lexington, Kentucky, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1983 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1983 **Federal Register** notice.

III. Submission of Program Amendments

By a letter dated August 3, 1984, Kentucky submitted to OSM pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. These modifications include changes to Kentucky's statute and regulations and a new policy statement. The amendments are discussed below separately.

1. Senate Bill 285

Senate Bill 285 revises KRS 350.066 through 350.077 to provide that a surety upon receipt of a copy of a notice of non-compliance for failure to maintain contemporaneous reclamation may notify the permittee or the insured that surety on any area disturbed after 30 days from the surety's notice may be refused unless the violation is abated.

Additionally, Kentucky submitted revised regulations for 405 KAR 10:035 that provide procedures for (1) request and notice of surety bond cancellation, (2) permit revocation or deletion of the areas subject to cancellation, and (3) bond release or forfeiture after approval of cancellation.

2. Senate Bill 298

Kentucky is adopting a new provision to its statute that pertains to the remining of property classified as abandoned mine land under KRS 350.560 and the inclusion of such remining in the abandoned mine land enhancement program. Additionally, the new statute contains provisions concerning bond amounts and forefeiture for this type of operation. Further, the bill contains a revision to section 2 of KRS 350.990, paragraph 1, that establishes a fund to be used for the new provisions described above.

3. Senate Bill 300

Senate Bill 300 revises KRS 350.060 to provide procedures for the approval of an incremental bonding plan allowing permit applicants to pay acreage fees in increments according to the approved bonding plan.

Kentucky submitted, as part of its program amendment, a policy memorandum dated July 10, 1984, that directs the implementation of Senate Bill 300. The policy memorandum provides direction to the Regional Administrators on the processing and approval of incremental bonding plans and acreage fees paid in increments.

4. House Bill 514

Kentucky submitted emergency regulations, 405 KAR 16:020E, intended to implement the reclamation deferment portion of House Bill 514. The regulations are intended to reflect the settlement agreement entered by the U.S. District Court on June 15, 1984, in Sierra Club v. Clark *et al.*, Civil Action 83–35 (E.D. KY.).

5. House Bill 868

House Bill 868 amends KRS 350.032 pertaining to the account for receipt of surety bonds. In paragraph 3, Kentucky has adopted specific procedures for handling forfeited surety bonds. Additionally, paragraph 11 provides that the Kentucky Department of Insurance shall revoke a surety's certificate if the surety fails to comply with the provisions of KRS 350.032, paragraph 3.

6. House Bill 888

House Bill 888 amends KRS 350.135 to reflect changes adopted by regulations pertaining to transferee permit applications. The amendment specifies the transferor's and the transferee's liabilities in obtaining written approval to the transfer from the State. Additionally, these provisions contain the conditions by which the State can approve a transfer.

Therefore, the Director is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issues of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: August 28, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

[FR Doc. 84–23208 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 915

Permanent State Regulatory Program of Iowa; Consideration of Modification of Deadline

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: Because material submitted by the State did not satisfy the condition of approval OSM is considering modifying the deadline for Iowa to meet a condition of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition concerns the prepayment of civil penalties.

DATE: Comments not received on or before 4:00 p.m. October 1, 1984, will not necessarily be considered.

ADDRESSES: Written comments must be mailed or hand-delivered to: Office of Surface Mining, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

Copies of the Iowa program, all written comments received in response to this notice, and all other documents referenced in this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240;

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Field Office Director, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

Background on the Iowa Program

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April

10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register.**

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Iowa agreed to satisfy original conditions (a) and (c) by July 1, 1981 and condition (b) by January 1, 1982. Original conditions (a), (b) and (c) have been removed (47 FR 22950, May 26, 1982, and 47 FR 39482, September 7, 1982). On November 9, 1983, OSM announced the Secretary's decision to impose a new condition of approval on the Iowa program (48 FR 51457).

Background on the Condition

When Iowa's program was conditionally approved by the Secretary of the Interior on January 21, 1981, it did not include a prepayment requirement comparable to that contained in section 518(c) of SMCRA and 30 CFR 845.19. At the time of issuance of the conditional approval of Iowa's permanent program, the Secretary was enjoined on constitutional grounds by the U.S. District Court for the Southern District of Iowa From requiring the State to include in its program a provision comparable to the prepayment requirement in section 518(c) of SMCRA. *Star Coal Co.* v. *Andrus*, 14 ERC 1325 (1980). The issue of the constitutionality of section 518(c) was also pending before the U.S. Supreme Court in two cases. Because of the court cases pending at the time of his decision, the Secretary did not condition his approval of Iowa's program upon correction of the absence of an escrow requirement in the civil penalty provisions.

However, the decision notice on Iowa's program (Finding 4th(3)), stipulated that should the Supreme Court rule that the prepayment requirement of section 518(c) was constitutional, the Secretary would then take steps to require Iowa to comply with the requirements relating to prepayment of civil penalties.

In both of the cases before the Supreme Court, the issue of the constitutionality of section 518(c) was pretermitted on the ground that the issue was not ripe for the Court to decide. *See Hodel* v. *Virginia Surface Mining and Reclamation Association*, 452 U.S. 264, 16 ERC 1027 (1981); *Hodel* v. *Indiana*, 452 U.S. 314, 16 ERC 1048 (1981). Although the Supreme Court did not rule on the constitutionality of section 518(c), the decisions in the *Hodel* and *Star Coal* cases removed the legal restraints on the Secretary's statutory obligation to require Iowa to comply with the prepayment provisions of SMCRA and existing regulations.

Therefore, on January 14, 1982, OSM notified the Iowa Department of Soil Conservation (DSC) that an amendment to Iowa's program was needed because the cases in which the constitutionality of SMCRA's prepayment provision was challenged had been decided and the injunction against the Secretary in the case of *Star Coal* had been lifted.

In the January 14, 1982 letter, OSM noted that it was considering modifying the Federal penalty prepayment requirement because of its concern that rigid adherence to the rule, in certain circumstances, might violate the constitutional guarantee of due process. However, on May 25, 1982, OSM notified the State that no modification to the Federal prepayment rule was anticipated in the near future and set a deadline of June 30, 1983, for the State to amend its program. On August 16, 1982, OSM promulgated final rules modifying the inspection, enforcement and civil penalty provisions of the permanent regulatory program. OSM made no change to the prepayment requirement.

On March 18, 1983, the Iowa Deputy Attorney General, on behalf of the DSC, informally submitted to OSM for review three alternative bills which would amend the Iowa statute concerning civil penalty assessment. On May 25, 1983, the DSC requested a one-year extension of the June 30, 1983, deadline because the legislative session had ended and no action had been taken on any of the three alternatives. The DSC noted that a one-year extension was necessary because the Iowa General Assembly would not convene again until January 1984.

OSM notified Iowa, on August 2, 1983, that the Secretary would propose adding a new condition to the Iowa program requiring the State to amend its program by June 30, 1984, to incorporate requirements consistent with section 518(c) of SMCRA and 30 CFR 845.19. On November 9, 1983, OSM announced the Secretary's decision to impose the condition.

Proposal to Extend Deadline

By letter dated May 2, 1984, Iowa requested the OSM informally review Iowa House File 531, to determine if the legislation would satisfy the condition imposed on the Iowa program. Iowa stated that House File 531 was enacted by the 70th Iowa General Assembly and signed into law by the Governor to satisfy the condition. OSM reviewed House File 531 and advised Iowa by letter of June 8, 1984, that the legislation would not satisfy the condition because it did not require prepayment prior to judicial review.

On July 16, 1984, Iowa requested clarification of the alternatives available to the State program in view of OSM's determination that House File 531 would not satisfy the condition. OSM responded on August 6, 1984, by notifying Iowa that because of the good-faith efforts made by the Iowa Department of Soil Conservation and the Iowa General Assembly, OSM would propose that the deadline for Iowa to meet the condition be extended until June 30, 1985. OSM stated that its staff and legal counsel would be available to work with the State prior to the next legislative session to develop a proposal which will be acceptable to both OSM and the State.

Therefore, OSM is proposing that the deadline for the State to meet this condition be extended until June 30, 1985. OSM requests comments on this proposed extension.

Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act.

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a

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substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

Dated: August 28, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

[FR Doc. 84-23207 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 925

Permanent State Regulatory Program of Missouri

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Missouri (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On August 6, 1984, Missouri requested an extension of time for the development of a blaster certification program until August 6, 1985. Each State with a regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) is required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by 4:00 p.m. October 1, 1984, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, 818 Grand Avenue, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Subchapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after the publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of the Missouri program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On August 6, 1984, Missouri requested an extension of the March 4, 1984 deadline, until August 6, 1985, to submit its blaster certification program. The State's letter indicated that it is depending on technical assistance from knowledgeable parties outside the State's staff and therefore, requires additional time to coordinate such assistance. Additionally, Missouri explains that the extension of time is necessary to accommodate its regulatory process in accordance with procedures established by the Missouri Secretary of State.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: August 27, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

[FR Doc. 84-23206 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 3

Dependency of Parents; Compensation; Correction

AGENCY: Veterans Administration.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on compensation for dependent parents that appeared at pages 32863 and 32864 in the **Federal Register** of Friday, August 17, 1984, (49 FR 32863 and 32864). The action is necessary to correct a typographical error in a proposed income limitation.

DATE: Comments on the proposed rule must be received on or before September 28, 1984.

ADDRESSES: Send comments to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert M. White 202-389-3005.

Dated: August 28, 1984.

Nancy C. McCoy,

Chief, Directives Management Division.

The following correction is made to FR Doc. 84-21614 appearing on page 32864 in the issue of August 17, 1984:

§ 3.250 [Corrected]

On page 32864, center column, in § 3.250, paragraph (a)(1)(iii), the figure "$285" is corrected to read "$185".

[FR Doc. 84-23038 Filed 8-30-84; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 17

Definition of Medical Services

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendments.

SUMMARY: The Veterans Administration is proposing to amend its medical regulations (38 CFR Part 17) to conform with provisions of Pub. L. 98-160, Veterans' Health Care Amendments of 1983. The proposed amendment redefines medical services to include preventive health care and provides continuing treatment eligibility for certain persons disabled as a result of VA treatment.

DATE: Comments must be received on or before October 1, 1984. It is proposed to make this amendment effective the date of the statutory changes which they implement, November 21, 1983.

ADDRESSES: Interested persons are invited to submit written comments, suggestions and objections regarding this proposed amendment to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address, between the hours of 8 a.m. to 4:30 p.m. Monday through Friday, except holidays until October 16, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, (202) 389-3785.

SUPPLEMENTARY INFORMATION: Public Law 98-160 amended 38 U.S.C. 601(6)(A)(i) to include preventive health care services as part of the definition of medical services. The law also amended 38 U.S.C. 610(a)(3) relating to eligibility for VA hospital and nursing home care. That section authorizes care for a person receiving VA compensation. The statutory amendment authorizes continuing eligibility for care for certain persons who had received compensation for an injury or disability as a result of receiving VA care or as a result of participation in a rehabilitastion program under 38 U.S.C. chapter 31. Continuing hospital and nursing home care eligibility is provided, when the individual's compensation payments are discontinued due to receiving payments from a judgement or tort settlement in connection withg the injury or disability, so long as such eligibility is provided for in the court judgement or settlement.

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this change will regulate only the eligibility of individuals to these benefits.

The Catalog of Federal Domestic Assistance Numbers are: 64.002, 64.009, 64.010, and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Government programs—Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: August 16, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows:

1. In § 17.30, paragraphs (l) and (m)(1) are revised to read as follows:

§ 17.30 Definitions.

* * * * *

(l) *Hospital care.* The term "hospital care" includes:

(1) Medical services rendered in the course of hospitalization of any veteran and transportation and incidental expenses pursuant to the provisions of § 17.100;

(2) Such mental health services, consultation, professional counseling, and training for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of a veteran or dependent or survivor of a veteran receiving care under the provisions of § 17.54(c) (38 U.S.C. 601(5)), as amended by Pub. L. 93-82, sec. 101(b); Pub. L. 94-581, sec. 102(1); and

(3)(i) Medical services rendered in the course of the hospitalization of a dependent or survivor of a veteran receiving care under the provisions of § 17.54(c), and (ii) transportation and incidental expenses for such dependent or survivor of a veteran who is in need of treatment for any injury, disease, or disability and is unable to defray the expense of transportation. (38 U.S.C. 601(5), as amended by Pub. L. 93-82, sec. 101(b); Pub. L. 98-160)

(m) *Medical services.* The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services:

(1) Surgical services, dental services and appliances as authorized in §§ 17.60(f), 17.120, 17.123 and 17.123a, optometric and podiatric services (in the case of a person otherwise receiving care or services under this chapter) the preventive health care services set forth in 38 U.S.C. 662, and except for veterans authorized outpatient care under § 17.60(e), wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary. (38 U.S.C. 601(6)(A)(i); sec. 106, Pub. L. 98-160)

* * * * *

2. In § 17.48, paragraph (b) is revised to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(b)(1) Under paragraph (c)(1) of § 17.47, veterans who are receiving disability compensation awarded under § 3.800 of this title, where a disease, injury or the aggravation of an existing disease or injury occurs as a result of VA examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. chapter 31, under any law administered by the VA and not the result of his/her own willful misconduct. Treatment may be provided for the disability for which the compensation is being paid or for any other disability. Treatment under the authority of § 17.47(c)(1) may not be authorized during any period when disability compensation under § 3.800 of this title is not being paid because of the provisions of § 3.800(a)(2), except to the extent continuing eligibility for such treatment is provided for in the judgment for settlement described in § 3.800(a)(2) of this title. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160)

(2) Under paragraph (c)(3) of § 17.47, "No adequate means of support"—when an applicant is receiving an income of $415 or more per month from any source for personal use, this fact will be considered prima facie evidence of adequate means of support. This is subject to rebuttal by a showing that such income is not adequate to provide the care required by reason of the veteran's disability or that the income is not available for the veteran's use because of other obligations such as contributions in whole or in part to the support of a spouse, child, mother or father. In all such cases of alleged inadequate means of support, the circumstances will be submitted to the Director for decision. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160).

* * * * *

[FR Doc. 84–23237 Filed 8–30–84; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Federal Information Resources Management Regulation (FIRMR); Publication of Integrated Provisions

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking and availability of drafts of certain parts.

SUMMARY: This notice announces the availability of the Block A portion of the proposed integrated text to be published as Amendment 1 to the FIRMR. No changes will be made in authorities, policies, or procedures from those contained in codified portions of the Federal Procurement Regulations (FPR) and Federal Property Management Regulations (FPMR) from which the provisions are derived. Nevertheless, users may desire to become acquainted with the manner in which the integration is made. While comment and review is not solicited, all comments and suggestions received will be considered.

DATES: Any comments on the proposed provisions should be submitted in writing to the Policy Branch, OIRM at the address shown below on or before October 1, 1984. FIRMR Block "A" and the applicable FIRMR Part number must be cited in all correspondence related to this notice.

ADDRESS: Comments should be submitted to the General Services Administration, KMPP, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Leticia Boddie, Policy Branch, Office of Information Resources Management, telephone 202–566–0194 or FTS, 566–0194. A single copy of any of the parts comprising Block A are available upon request; please specify the part(s) desired.

SUPPLEMENTARY INFORMATION: GSA has established (49 FR 20994, May 17, 1984) the FIRMR to provide a single regulation for use by Federal agencies governing certain of their information activities. Text was published for only Part 201–1. An amendment to the FIRMR is under development to publish an integrated FIRMR text for codified Federal Procurement Regulations (41 CFR Subparts 1–4.11, 1–4.12, and 1–4.13) and Federal Property Management Regulations (41 CFR Parts 101–35, 101–36, 101–37). The first of four blocks of integrated FIRMR text has been drafted. Block A consists of six FIRMR parts. Each part includes derivation and distribution tables relating FIRMR sections to FPR/FPMR sources. The parts in Block A are—

Part 201–1—Definitions of Words and Terms
Part 201–6—Protection of Personal Privacy
Part 201–7—Security of Information Resources Systems
Part 201–8—Implementation and Use of Federal Standards (Proposed Supp. 1 to Temp. Reg. 2 is also available)
Part 201–11—Competition
Part 201–16—Planning

List of Subjects in 41 CFR Chapter 201

Government information resources activities, Government procurement.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: August 23, 1984.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 84–23215 Filed 8–30–84; 8:45 am]

BILLING CODE 6820-25-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[No. 39777]

Negative Surcharge Tariffs; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules (Exemption).

SUMMARY: The Commission proposes, under 49 U.S.C. 10505, to exempt the filing of negative surcharges from the provisions of section 10762(b)(2) that require concurrences of acceptances by parties to rail joint tariffs. This exemption is proposed to permit rail carriers unilaterally to continue to publish allowance ("negative surcharge") tariffs to the extent such tariffs are authorized by section 10705a(a), which expires September 30, 1984. The Chicago and North Western Transportation Company has filed a petition for such an exemption. However, we conclude that continuance of this pricing option should be considered on an industrywide basis.

DATE: Comments are due on October 1, 1984.

ADDRESS: Send an original and, if possible, 15 copies of comments referring to No. 39777 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245, or Mont L. Burrup (202) 275–6447.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Environment and energy. This action will not significantly affect the quality of the human environment or energy conservation.

Regulatory Flexibility Certification. The Commission certifies that the proposed rule (exemption) will not, if promulgated, have a significant economic impact on a substantial number of small entities, because (1) it involves only "negative surcharges" (i.e., unilateral joint rate reductions) which, among others, have been authorized by a statutory provision that will expire; (2) negative surcharges are borne by the proposing carrier and do not affect the revenues earned by its connections on interline traffic; and (3) the Commission found in Ex Parte No. 427, *Joint Rates Study: A Report to Congress Pursuant to Section 217 of the Staggers Rail Act of 1980* (not printed), served November 18, 1982, at page 22, that only 14 such surcharges were published in fiscal year 1981.

List of Subjects in 49 CFR Part 1039

Railroads.

This notice is issued pursuant to 5 U.S.C. 553 and 49 U.S.C. 10505, 10321, and 10762.

Decided: August 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,
Secretary.

Appendix

PART 1039—[AMENDED]

Title 49 CFR Part 1039, is proposed to be amended by adding the following new § 1039.18.

§ 1039.18 Allowance ("negative surcharge") tariff exemption.

Rail allowance ("negative surcharge") tariffs reducing the total charges applicable to a movement subject to a joint rate in which the carrier publishing the tariff participates, when the reduction is borne solely by that carrier, are exempt from the provisions of 49 U.S.C. 10762(b)(2) that require concurrences or acceptances by other parties to the joint rate.

[FR Doc. 84-23170 Filed 8-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Ribes Echinellum (Miccosukee Gooseberry) Proposed To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list *Ribes echinellum* (Miccosukee gooseberry), a native plant of Florida and South Carolina, as a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. *Ribes echinellum* is threatened by potential recreational activities, development of its lakeshore habitat, and logging. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Ribes echinellum.* The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 30, 1984. Public hearing requests must be received by October 15, 1984.

ADDRESSES: Comments amd materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, S.W., Atlanta, Georgia 30303. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Ingram at the above address (404/221-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Ribes echinellum was first discovered by two Florida botanists in the early spring of 1924, along the shore of Lake Miccosukee in Jefferson County, Florida (Coville, 1924). *Ribes echinellum* remained known only from this one population along the shores of Lake Miccosukee for over 30 years, until a second population was located about 200 miles northeast in McCormick County, South Carolina in 1957 (Radford, 1959). The South Carolina location is considered to represent one of the most unusual floristic assemblages in the two Carolinas (Radford and Martin, 1975). These two sites remain the only known locations for *Ribes echinellum.*

This unique plant is a shrub that reaches 1 meter in height and forms patches that often measure several meters in diameter. The plant has spiny stems and 3-lobed leaves that measure 1–2 centimeters long. The flowers are greenish white and small. The fruits are spiny and measure up to 22 millimeters in diameter.

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Ribes echinellum* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** publication, which also determined 13 plant species to be endangered or threatened species (43 FR 17909). On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82479); *Ribes echinellum* was included in that notice as a category-1 species. Category-1 species are those for which data in the Service's possession indicate listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ribes echinellum* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Ribes echinellum* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to add species to the list. Notice of this finding was published in the **Federal Register** on January 20, 1984, (49 FR 2485). Publication of this proposal constitutes the next 1-year finding requirement, which must be made by October 13, 1984.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ribes echinellum* (Coville) Rehder (Miccosukee gooseberry) (Syn: *Grossularia echinella* Coville), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Because of its localization to only two sites, *Ribes echinellum* is particularly vulnerable to any natural or man-influenced disturbance. The South Carolina population occurs on lands managed as a nature preserve by the South Carolina Wildlife and Marine Resources Department. Increased visitation by the public to this area could increase the risk of accidental destruction and trampling. Additional protection and management planning is needed at the South Carolina site; species biology research is needed to determine what type of management the *Ribes* needs. The species' continued existence is more tenuous in Florida. The Florida population is privately owned and the site has potential for lakeside development. The present owner has no plans to sell or develop the site, but subsequent owners may well choose to develop the site for homesites or recreational developments, if protection planning does not occur. Logging of the associated hardwoods and severe fire could pose additional threats to the Florida population (Milstead, 1978). It is known that logging has occurred near part of the Florida site with observed detrimental effects (Kral, 1977).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Both populations of *Ribes echinellum* occur at sites (riveredge and lakeshore) that have potential for recreational use. If this recreational use is not controlled with the protection of the *Ribes* as a primary consideration, negative impacts to the populations could result. Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. The Miccosukee gooseberry is not in demand for these purposes at present but with publicity such a demand could occur.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Ribes echinellum* is afforded limited protection under Florida State law, Chapter 65–426, which includes prohibitions concerning taking, transport, and the sale of plants listed under the Florida law. South Carolina does not have a State law to protect endangered plants, but *Ribes echinellum* is indirectly protected under the Natural Area prohibitions against unauthorized plant taking. The Endangered Species Act would offer additional protection for the species.

E. *Other natural or manmade factors affecting its continued existence.* The small size and number of the populations cause this species to be in danger of extinction due to natural perturbations such as lightning fires or to natural fluctuations in the numbers of extant individuals.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ribes echinellum* as threaten. With only two populations of this species known to exist it appears to warrant protection uder the Act; threatened status seems appropriate since one of the sites is in State ownership. Critical habitat is not proposed for designation, as is discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Ribes echinellum* at this time. Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. Increased publicity and the provision of specific location information associated with critical habitat designations could result in taking pressures on the Miccosukee gooseberry. Prohibitions against taking of plants are difficult to enforce. Taking is not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Although South Carolina State law prohibits unauthorized plant taking from natural areas, drawing attention to this site could increase enforcement problems. Increased visitation at both sites stimulated by critical habitat designation could result in trampling problems. But the appropriate South Carolina land-management agency and the Florida landowner have been informed of the locations of this species and the importance of protecting *Ribes echinellum*, so no additional benefits from the notification function of a critical habitat designation would result. Therefore, it would not be prudent or beneficial to determine critical habitat for *Ribes echinellum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No Federal involvement is expected or known for *Ribes echinellum*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Ribes echinellum* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the U.S. to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appear on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Ribes echinellum* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Ribes echinellum* is not known to occur on Federal lands. However, this new protection will apply to *Ribes echinellum* once revised regulations are promulgated if this plant is ever found on Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Ribes echinellum*,

(2) The location of any additional populations of *Ribes echinellum* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Ribes echinellum*.

Final promulgation of the regulation on *Ribes echinellum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Service's southeastern Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Coville, F.V. 1924. *Grossularia echinella*, a spiny-fruited gooseberry from Florida. Journal of Agricultural Research 28:71-76.

Kral, R. 1977. Personal communication by letter to Dr. R. R. Altevogt (then Staff Botanist at Office of Endangered Species, Washington, D.C.) regarding the Florida population he visited in 1977.

Milstead, Wayne L. 1978. Status report on *Ribes echinellum*, U.S. Fish and Wildlife Service, Atlanta, Georgia.

Radford, A.E. 1959. A relict plant community in South Carolina. Journal of the Elisha Mitchell Scientific Society 75:35-43.

Radford, A.E., and D.L. Martin. 1975. Potential Ecological Natural Landmarks, Piedmont Region, Eastern United States. UNC-Chapel Hill, North Carolina.

Authors

The primary authors of this proposed rule are Ms. E. LaVerne Smith and Mr. Quinn P. Sinnott, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975). Status information and a preliminary listing package were provided by Dr. Wayne C. Milstead, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Saxifragaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Saxifragaceae—Saxifrage family:						
Ribes echinellum	Miccosukee gooseberry	U.S.A. (FL, SC)	T		NA	NA
*	*	*	*	*	*	*

Dated: August 13, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23160 Filed 8-30-84; am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Special Volunteer Programs

AGENCY: ACTION.

ACTION: Notice of availability of funds; demonstration grants.

The Office of Policy and Planning of ACTION announces the availability of funds for fiscal year 1984 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part C, 42 U.S.C. 4992).

Grant awards in excess of $50,000 will be selected through a competitive procedure.

ACTION will fund these demonstration grants almost exclusively from interagency funds. Applications will be reviewed as specific interagency agreements are signed. The purpose of this competitive process is to identify and support innovative volunteer service projects that have potential for widespread use in low-income areas in the Rio Grande Valley and Southwest Texas.

A. Objective

Volunteer Demonstration Projects address areas of human and social concern where citizens, as volunteers, can contribute toward individual self-reliance and community self-sufficiency. Projects funded under this announcement must utilize volunteers to help alleviate the widespread hardships presently experienced by the citizens of the Rio Grande Valley and Southwest Texas areas.

The types of projects envisioned to be funded are, for example: emergency food and shelter; job readiness training and placement; literacy; nutrition services; youth programs; other community and economic development projects.

B. Eligible Applicants

Only applications from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant

ACTION anticipates that up to $1,000,000 in interagency funds will be available for grants, for the purpose of this announcement. There are no restrictions on the dollar amounts of grant awards; the average competitive grant will fall within the $100,000 to $125,000 range. Grants will be awarded for a maximum of 12 months and are generally non-renewable.

Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate any specific amount of money, or any part thereof, for demonstration grants.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated against the general criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicant organizations from or closely proximate to the Rio Grande Valley and Southwest Texas will be given preference in order to help alleviate the widespread hardships presently experienced by citizens living in these areas.

Should submitted applications fall within the general category, applicants will be notified individually as to any specific restrictions which may be subsequently placed upon the interagency funds in order that their applications may be revised to conform with such restrictions.

The General Criteria are as follows:

—Potential to recruit and motivate volunteers to provide, effectively and efficiently, direct and, in rare cases, indirect assistance to targeted communities in the Rio Grande Valley and Southwest Texas;

—Carefully formulated, time-phased measurable objectives and feasibility of methods for meeting those objectives;

—Feasibility of proposed budget;

—Evidence of commitment from collaborating agencies and organizations when such is expected to contribute to the value or success of the project;

—Promise of developing innovations or knowledge in areas of priority, and of significance to national program development;

—Capability of proposed staff;

—Potential for replication of the project model; plans for implementation and dissemination of results of project, including any products for use by others;

—Likelihood of completion of project within proposed timetable;

—Adequacy of plans for data gathering and evaluation.

While applicants are not required to contribute a specific portion of project costs, they are encouraged to do so. Applicants capable of such contributions should specify the sources and amounts of non-federal contributions, and the sources and nature of in-kind non-federal contributions.

E. Application Review Process

ACTION's Office of Policy and Planning Staff, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications for awards in excess of $50,000 upon a competitive basis. The ACTION Assistant Director for Policy and Planning will make the final selection from among the highest-rated applications.

F. Application Submission and Deadline

One signed original and two (2) copies of all completed applications must be submitted to the Assistant Director for Policy and Planning, room M–606, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. The deadline for receipt of applications by the Agency is September 21, 1984. Those eligible for consideration will be evaluated against the above-stated criteria and the purposes for which the interagency funds may be used.

All grant applications must consist of:

a. Action Project Narrative (Form A–1036) which includes a Project Work Plan, specifying projected number of volunteer hours by quarter by work stations.

b. Application for Federal Assistance (Form A–1017) with narrative budget justification.

c. CPA certification of accounting capability.

d. Articles of Incorporation.

e. Proof of nonprofit status or an application for non-profit status, which should be made through the documentation.

f. Resume of proposed project director candidates, if available, or the resume of the Executive Officer of the applicant agency.

g. List of sponsor's governing board members and their relationship to the community.

Those eligible for consideration at any given time will be evaluated against the above-stated criteria and the purposes for which the interagency funds may be used.

To receive an application form, please call the Office of Policy and Planning toll free number (800) 424-8580, Ext. 81.

Signed at Washington, D.C., this 28th day of August 1984.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 84-23262 Filed 8-30-84; 8:45 am]

BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment; Denmark

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of Country of Origin Adjustment for Certain Condensed Milk from Denmark.

SUMMARY: Presidential Proclamataion 4708 issued December 11, 1979, amended Headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States to permit the Secretary of Agriculture to make country of origin adjustments for unlicensed quotas that will not be filled by the country of origin listed opposite the quota. This notice implements such an adjustment with respect to the quota quantity assigned to Denmark for condensed milk in airtight containters.

DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Diary, Livestock and Poultry Division, Foreign Agricultural Servivce, Room 6616 South Building, Department of Agriculture, Washington, DC. 20250 or telephone at (202) 447-5270.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not affect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable signficant effects on the quality of the human environment. Consquently, no environmental impact statement is necessary for this proposed rule.

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Headnote 3(a)(iii) of the Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of origin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calender year. I hereby determine that it is not likely that the amount of condensed milk specified in TSUS Item 949.90 for Denmark will be entered from the country during calendar year 1984.

Notice is hereby given that the 1984 unused quota quantity for condensed milk specified in TSUS Item 949.90 for Denmark may be imported from Canada, Denmark, the Nethelands and Australia for the remainder of the 1984 quota year.

This quota quantity for TSUS Item 949.90 will revert to the original supplying country on January 1, 1985.

Issued at Washington, D.C. this 13th day of August, 1984.

Leo V. Mayer,

Acting Administrator.

[FR Doc. 84-23155 Filed 8-28-84; 8:45 am]

BILLING CODE 3410-10-M

Rural Electrification Administration

Intent To Prepare a Draft Environmental Impact Statement and Annoucement of a Public Scoping Meeting for Proposed Electric Transmission Project in Western North Dakota

AGENCY: Rural Electrification Administration..

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement and Conduct a Public Scoping Meeting.

SUMMARY: The Rural Electrification Administration (REA) intends to conduct a public scoping meeting and may prepare a Draft Environmental Impact Statement (EIS) in connection with a joint project proposed by Basin Electric Power Cooperative (Basin) and Montana-Dakota Utilities Company (MDU) of Bismark, North Dakota. The project consists of the construction and operation of approximately 112 kilometers (70 miles) of 230 kV electric transmission line from Basin's existing Charlie Creek Substation in McKenzie County, North Dakota. Basin may request REA financing assistance for the project..

DATE: REA will conduct a public scoping meeting at the Watford City Hall (Civic Center), 213 E. 2nd Street, Watford City, North Dakota, on October 2, 1984, at 7:30 CST..

ADDRESS: Any interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the public scoping meeting, in order for the comments to be part of the formal record. Comments should be sent to Mr. Frank W. Bennett, Director, NCA-E, REA, Room 0230-S U.S. Department of Agriculture, 14th Street and Independence Avenue, SW, Washington, D.C. 20250..

FOR FURTHER INFORMATION CONTACT: Mr. Frank W. Bennett, NCA-E, address above, telephone (202) 382-1400, FTS 382-1400, or Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismark, North Dakota 58501, telephone (701) 223-0441.

SUPPLEMENTARY INFORMATION: REA, in order to meet its requirements under the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA *Environmental Policies and Procedures* 7 CFR Part 1794 (49 FR 9544-9558, dated March 13, 1984), hereby gives notice that it intends to conduct a public scoping meeting and may prepare and EIS for the construction and operation of the Charlie Creek to Williston 230 kV transmission line. According to the provisions of 7 CFR Part 1794 regarding electric transmissioin facilites of the type proposed by Basin and MDU, REA is allowed to determine, after the scoping process is completed and an acceptable Environmental Analysis is submitted by Basin and MDU, whether to prepare an EIS or a finding of no significant impact. REA will take into account the input from Federal, State, and local government agencies and interested groups and individuals in making this decision.

Alternatives to be considered by REA may include, among other considerations: (1) No action; (2) alternative routes; (3) alternative voltages; (4) local generation; (5) upgrading existing facilities; (6) underground transmission; (7) load management and conservation.

The public scoping meeing, to be conducted by a representative of REA, will be held to solicit public input and including, but not limited to, the nature of the proposed project, its possible location, alternatives, and any environmental concerns that should be considered. Requests for additional information concerning the scoping meeting may be directed to Basin or REA at the addresses and telephone numbers listed above.

Any REA financing assistance to Basin will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken after compliance with the environmental procedures required by NEPA have been satisfied.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 27, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23265 Filed 8-30-84; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-583-002]

Bicycle Tires and Tubes From Taiwan; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On April 13, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on bicycle tires and tubes from Taiwan. The review covers the period January 1, 1982, through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. After review of the comment received, the final results are the same as the preliminary results.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 14777) the preliminary results of its administrative review of the countervailing duty order on bicycle tires and tubes from Taiwan manufactured by the one Taiwanese company covered by the order, Cheng Shin Rubber Company, Ltd. (47 FR 6913, February 17, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Because the International Trade Commission ("the ITC") determined under section 104(b) of the Trade Agreements Act of 1979 that no industry in the United States would be injured by importations of this merchandise if this countervailing duty order were revoked (48 FR 26655), the Department revoked this order effective December 30, 1982, the date the ITC notified the Department that Cheng Shin had requested an injury determination.

Scope of the Review

Imports covered by the review are shipments of Taiwanese pneumatic bicycle tires and tubes of rubber or plastic, manufactured by Cheng Shin, whether such tires and tubes are sold together as units or separately. Such merchandise is currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982, through December 31, 1982, and six programs: (1) Preferential income tax rate ceilings; (2) preferential export financing; (3) income tax holidays; (4) tax deductions for investment in production equipment; (5) export loss reserves; and (6) deferred duty payments on raw materials.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from Cheng Shin.

Comment: Cheng Shin argues that there is adequate evidence in the record to demonstrate that the 25 percent income tax ceiling set by Article 15 of the Statute for the Encouragement of Investment is not a countervailable subsidy. Because "any productive enterprise limited by shares in Taiwan may benefit from the 25% ceiling," it is not limited "to an enterprise or industry, or group of enterprises or industries." In support of its argument, Cheng Shin cited a recent final affirmative detemination on steel products from Argentina in which we found that an import duty exemption for capital goods was provided to a wide variety of industries and therefore not a subsidy (49 FR 18006, April 26, 1984).

Department's Position: In the cited case, the Department's determination was based on verified data supporting respondent's contention that the program was generally available and so applied. In this case, it is not clear on the basis of information presently available to us that this program is in fact available to all applicants on the same terms. Absent such evidence, we cannot reverse our previous determination that the ceiling is limited to a group of industries.

Final Results of the Review

After review of the comment received, the final results are the same as the preliminary results. We determine the aggregate net subsidy to be 0.76 percent for the period January 1, 1982, through December 31, 1982. The Department will instruct the Customs Service to assess countervailing duties of 0.76 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1982, and entered, or withdrawn from warehouse, for consumption before December 30, 1982, the effective date of the revocation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: August 27, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-23224 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-001]

Cotton Sheeting and Sateen From Peru; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On April 6, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton sheeting and sateen from Peru. The review covers the period January 1, 1982 through December 31, 1982 and three programs.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, we held a public hearing on May 21, 1984. After review of all comments received, the Department has determined the net bounty or grant during the period of review to be 19.72 percent *ad valorem*.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 13730) the preliminary results of its administrative review of the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4508, February 1, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of: (1) Plain-woven cotton fabric sheeting, not fancy or figured and not napped, made of singles yarn, with an average yarn number between 3 and 26, imported in Textile and Apparel Category 313, currently classifiable under items 320.-36,320.-38,320.-40,320.-44 of the Tariff Schedules of the United States Annotated ("TSUSA"): And (2) 100% carded cotton sateen fabrics woven with a satin weave and not napped, imported in Textile and Apparel Category 317, and currently classifiable under TSUSA item 320.-54 and 321.-54.

The review covers the period January 1, 1982 through December 31, 1982 and three programs: (1) Certificate of Tax Rebate ("CERTEX"); (2) Nontraditional Export Fund ("FENT"); and (3) Articles 8, 9, 12, 14, 16 of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the American Textile Manufacturer's Institute ("ATMI"), we held a public hearing on May 21, 1984.

Comment 1: The petitioner contends that any elimination of "direct" FENT and CERTEX benefits on exports of cotton sheeting and sateen to the United States would not eliminate the subsidy conferred on exports of those products to the United States, since exports to the United States continue to receive benefits from the application of those programs on exports to other countries. Such continuing benefits constitute countervailable indirect subsidies on exports to the United States.

Department's Position: We disagree and we reiterate our position stated in the final results of administrative review on cotton yarn from Brazil (49 FR 15250, April 18, 1984).

Comment 2: The petitioner argues that the Department's position stated in cotton yarn from Brazil is a misconception of both established economic theory and the plain language of the statute. Because rational businesses seek to maximize profits overall, not just on sales to any single market, Peruvian firms have a clear economic incentive to allocate any benefits received so as to produce at optmum operating levels. Because of the importance of the U.S. market to Peruvian exporters, there is a clear incentive to maintain sales at high levels, and so, benefits from whatever source will be applied to that end. Additionally, the Department's position incorrectly assumes that to be countervailable a benefit must be tied directly to U.S. exports, thus ignoring the statutory provision that indirect bestowals be countervailed.

Department's Position: Export subsidies have an incentive effect on exports to markets for which the subsidy is available. Where the incentive is tied to exports to the United States, we neutralize the incentive by applying a countervailing duty equal to the subsidy on the exports to the United States. Regardless of the ultimate use to which the subsidy is put, the impact of the program is to provide an incentive to exports to a given market. To accept petitioner's argument, we would have to assume that the subsidy benefited all production, including domestically consumed production, of all products of the manufacturer.

Comment 3: The petitioner contends that the Department must conduct a complete verification before attempting to calculate a deposit rate. The Department's verification of only the changes in the CERTEX and FENT programs, which occurred after the period of review, clearly serves the interests of the Government of Peru and prejudices the petitioner. Without a complete verification, the Department has no way of determining whether the Peruvian government has supplemented the FENT and CERTEX programs with other programs. Furthermore, in light of the Court of International Trade's ("the CIT") decision in *Florsheim Shoes Co.* v. *United States* (slip opinion, 83-125, December 1, 1983), the Department will not have the flexibility to recapture any understatement of the correct countervailing duty amount if the CIT decision is sustained on appeal.

Department's Position: The Department has consistently maintained that verifications in section 751 reviews are discretionary. Because of the brevity of the period during which entries were suspended, the fact that a verification had been conducted recently, and the lack of prior litigation in this case, we had decided not to verify during this administrative review. However in the quenstionnaire response, the Government of Peru presented the Department with actions which had the potential to significantly lower future subsidy amounts. We then decided to verify the elimination of the CERTEX and FENT benefits on exports to the United States, only because of that potential. Other programs remained essentially as they had when last verified, so we did not, and still do not, find a complete verification necessary.

With regard to the *Florsheim* case, the Department has appealed that decision and does not intend to adjust its behavior in anticipation of loss on appeal.

Comment 4: The petitioner argues that the record does not adequately explain the reduced levels of subsidies found for Articles 8, 9, and 16 of the Export Law. Such significant reductions are an additional reason for the Department to conduct a complete verification.

Departments Position: For this review, calculations of the benefits attributable to Articles 8, 9, and 16 were based on the entire year 1982. In reaching the final determination, the Department relied only on data covering a quarter of a year, or less. We believe the calculations based on a full year's activity more accurately reflect the benefits granted. As to verification see our response to Comment 3.

Comment 5: The Government of Peru argues that the Department erred in applying a one percent interest charge on FENT foreign currently loans to the soles received by a borrower rather than to the dollar amount of the loan. Further, the Government of Peru argues that such loans are soles, not dollar loans and the benefit should be calculated by comparing the effective cost in soles with a soles benchmark. The effective cost is the difference between the soles disbursed (dollar principal converted to soles on the date disbursed) and the soles repaid (dollar principal and interest converted to soles on the date repaid). In support of its position, the Peruvian government cites our treatment of dollar indexed peso loans in Argentina, most recently in the final determination on cold-rolled carbon steel flat-rolled products (49 FR 18006, April 26, 1984).

Department's Position: We have reexamined the record in this case and have determined that the one percent interest charge is correctly applied against the dollar principal of the loans. We have also concluded that these loans are dollar loans and that the appropriate benchmark is a dollar benchmark. Unlike the peso loans in Argentina, which were indexed the dollar, the loans in Peru involve actual dollar borrowings. Firms receiving the dollar loans, in effect, lend the dollars to the Central Bank and receive interest payments which offset the cost of the loan.

In recalculating the benefit from the foreign currency FENT loans, we multiplied the dollar value of the loans by the difference between the benchmark rate, the cost of borrowing from external resources, and the preferential rate and adjusted for the number of days the loans were outstanding. We then deducted the cost of depositing the dollars with the Central Bank to arrive at the net subsidy amount. Following this procedure we find the benefit from this program to be 1.32 percent *ad valorem*.

Comment 6: The Government of Peru argues that the Department should exclude from its Article 16 of the Export Law subsidy calculations suspensions and deferrals of import duties for equipment which cannot be used to produce items covered by the countervailing duty order.

Department's Position: We do not have sufficient information to make this adjustment.

Comment 7: The Government of Peru argues that suspensions of import duties under Article 16 are actually exemptions and thus, should be expensed in the year of receipt, not treated as interest free loans.

Department's Position: In order to qualify for the exemption, firms must export 40 percent of their total production, and earn foreign exchange equal to 100 percent of the imported equipment. No exemptions of import duties under Article 16 are granted until the exporters meet those specific export requirements. Therefore, our treatment of the suspensions as interest free loans until the exemption is granted is appropriate.

Comment 8: The Government of Peru argues that in treating the deferrals and suspensions of import duties under Article 16, as interest free loans, the Department did not ensure that the amounts countervailed would not exceed the actual amount of import duties. Furthermore, these suspensions and deferrals should not be treated as short-term loans rolled over every year, but rather as five-year loans (the maximum length of the deferral or suspension).

Department's Position: We agree. The deferred and suspended duties outstanding from previous years (1979–1981) were treated as if long-term loans were taken out in equal amounts in each of the three years. We used equal amounts for each year because we do not know the amounts suspended or deferred during each year. The portion "borrowed" in 1979 was compared to a 1979 benchmark (The benchmarks used were the end of period discount rates as reported in the International Monetary Fund's *International Financial Statistics*). Similarly, the 1980 and 1981 portions were "borrowed" at 1980 and 1981 benchmarks. Each of the three "loans" was then treated as if it had a five year-repayment schedule. Using the long-term methodology outlined in the "Subsidies Appendix" (Subsidies Appendix to the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina, 49 FR 18006) we calculated the benefit attributable to 1982. Using that methodology, the sum of the present values of the amounts countervailed (calculated in the year of receipt) will not exceed the face value of the "loan". We find the benefit from this program to be 0.33 percent *ad valorem*, for the period of review.

For purposes of a cash deposit of estimated countervailing duties attributable to Article 16, we used deferred and suspended duties through 1982. We calculated a rate of 0.77 percent *ad valorem*.

In reaching this final determination, we found a number of mathematical errors in the preliminary calculations. Our correction of these errors has resulted in the following recalculated rates of bounty or grant:

	Percent *ad valorem*
CERTEX	16.72
Articles 8 & 9 of the Export Law	0.29
Article 12 of the Export Law	1.06

Final Results of the Review

After reviewing all of the comments received and adjusting for methodological changes, we determine the total bounty or grant to be 19.72 percent *ad valorem* during the period of review.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final calculation of duty under the countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before (for non-signatories) the date of the countervailing duty order, here February 1, 1983. The Department therefore will instruct the Customs Service to assess countervailing duties of 19.72 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 19, 1982, the date of the Department's affirmative preliminary determination, and on or before December 31, 1982.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.12 percent of the entered value of any shipment of Peruvian cotton sheeting and sateen entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The

Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: August 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-23221 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-002]

Cotton Yarn From Peru; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On April 6, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Peru. The review covers the period January 1, 1982 through December 31, 1982 and three programs.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, we held a public hearing on May 21, 1984. After review of all comments received, the Department has determined the net bounty or grant during the period of review to be 20.65 percent *ad valorem*.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 13732) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Peru (48 FR 4508, Feb. 1, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of various cotton yarns currently classifiable under the following Tariff Schedules of the United States item numbers:

300.60, 302.01 through 302.80, 301.01 through 301.60, 302.70, 301.70, 302.80, 301.80, 302.82, 301.82, 302.84, 301.84, 302.86, 301.86, 302.88, 301.88, 302.92 301.92, 302.94, 301.94, 302.96, 301.96, 302.98, 301.98

The review covers the period January 1, 1982 through December 31, 1982 and three programs: (1) Certificate of Tax Rebate ("CERTEX"); (2) Nontraditional Export Fund ("FENT"); and (3) Articles 8, 9, 12, 14, 16 of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the American Yarn Spinners Association ("AYSA"), we held a public hearing on May 21, 1984.

Comment 1: The petitioner contends that any elimination of "direct" FENT and CERTEX benefits on exports of cotton yarn to the United States would not eliminate the subsidy conferred on exports of those products to the United States, since exports to the United States continue to receive benefits from the application of those programs on exports to other countries. Such continuing benefits constitute countervailable indirect subsidies on exports to the United States.

Department's Position: We disagree and we reiterate our position stated in the final results of administrative review on cotton yarn from Brazil (49 FR 15250, Apr. 18, 1984).

Comment 2: The petitioner argues that just as the Department recognizes that a domestic subsidy confers a benefit on all production and sales, it must also recognize that an export subsidy confers a benefit on all export sales. In this case obvious factors make clear why exporters apply benefits received for third country exports to the United States: (1) The loss of the already established U.S. consumer base would severely limit the firms' ability to export anywhere; (2) the United States is a natural outlet for Peruvian exports; (3) sales to the United States guarantee payment in hard currency U.S. dollars; (4) economies of scale are dependent upon production volume; and (5) diversified export markets avoid disruption due to individual country market fluctuations.

Department's Position: Export subsidies have an incentive effect on exports to markets for which the subsidy is available. Where the incentive is tied to exports to the United States, we neutralize the incentive by applying a countervailing duty equal to the subsidy on the exports to the United States. Regardless of the ultimate use to which the subsidy is put, the impact of the program is to provide an incentive to exports to a given market. To accept petitioner's argument, we would have to assume that the subsidy benefited all production, including domestically consumed production, of all products of the manufacturer.

Comment 3: The petitioner argues that to accept its argument that direct benefits on exports to third countries provide indirect benefits on exports to the United States we would not have to assume the export subsidy benefits all production. Rather, export subsidies should not be applied to domestic sales because export subsidies are expressly intended to promote export performance and because the statute expressly recognizes this distinction. Further, in the Peruvian situation of concern here, the exclusion of international competition from the domestic market obviates the need to apply export subsidies to domestic sales.

Department's Position: We agree that export subsidies should not be applied to domestic production, and as stated above, that export subsidies provide an incentive to export. Where, as in this case, the export subsidies can be tied to a particular market, we hold that the incentive effect is limited to that particular market. The petitioner cannot argue that there is a fungible benefit across export markets from shipment-specific export subsidies and, at the same time, that there is no fungible benefit between the export and domestic subsidies.

Comment 4: The petitioner contends that the Department must conduct a complete verification before attempting to calculate a deposit rate. The Department's verification of only the changes in the CERTEX and FENT programs, which occurred after the period of review, clearly serves the interests of the Government of Peru and prejudices the petitioner. Without a complete verification, the Department has no way of determining whether the Peruvian government has supplemented the FENT and CERTEX programs with other programs. Furthermore, in light of the Court of International Trade's (the CIT") decision in *Florsheim Shoes Co.* v.

United States (slip opinion, 83-125, December 1, 1983), the Department will not have the flexibility to recapture any understatement of the correct countervailing duty amount if the CIT decision is sustained on appeal.

Department's Position: The Department has consistently maintained that verifications in section 751 reviews are discretionary. Because of the brevity of the period during which entries were suspended, the fact that a verification had been conducted recently, and the lack of prior litigation in this case, we had decided not to verify during this administrative review. However in the questionnaire response, the Government of Peru presented the Department with actions which had the potential to significantly lower future subsidy amounts. We then decided to verify the elimination of the CERTEX and FENT benefits on exports to the United States, only because of that potential. Other programs remained essentially as they had when last verified, so we did not, and still do not, find a complete verification necessary.

With regard to the *Florsheim* case, the Department has appealed that decision and does not intend to adjust its behavior in anticipation of loss on appeal.

Comment 5: The Government of Peru argues that the Department erred in applying one percent interest charge on FENT foreign currency loans to the soles received by a borrower, rather than to the dollar amount of the loan. Further, the Government of Peru argues that such loans are soles, not dollar loans, and the benefit should be calculated by comparing the effective cost in soles with a soles benchmark. The effective cost is the difference between the soles disbursed (dollar principal converted to soles on the date disbursed) and the soles repaid (dollar principal and interest converted to soles on the date repaid). In support of its position, the Peruvian government cites our treatment of dollar indexed peso loans in Argentina, most recently in the final determination on cold-rolled carbon steel flat-rolled products (49 FR 18006, Apr. 26, 1984).

Department's Position: We have reexamined the record in this case and have determined that the one percent interest charge is correctly applied against the dollar principal of the loans. We have also concluded that these loans are dollar loans and that the appropriate benchmark is a dollar benchmark. Unlike the peso loans in Argentina, which were indexed against the dollar, the loans in Peru involve actual dollar borrowings. Firms receiving the dollar loans, in effect, lend the dollars to the Central Bank and receive interest payments which offset the cost of the loan.

In recalculating the benefit from the foreign currency FENT loans, we multiplied the dollar value of the loans by the difference between the benchmark rate, the cost of borrowing from external resources, and the preferential rate and adjusted for the number of days the loans were outstanding. We then deducted the cost of the dollars deposited with the Central Bank to arrive at the net subsidy amount. Following this procedure, we find the benefit from this program to be 2.10 percent *ad valorem*.

Comment 6: The Government of Peru argues that the Department should recalculate the Article 16 of the Export Law benefits to eliminate a clerical error in one firm's reported benefits.

Department's Position: We agree, and have adjusted our calculations.

Comment 7: The Government of Peru argues that the Department should exclude from its Article 16 subsidy calculations suspensions and deferrals of import duties on equipment which cannot be used to produce items covered by the countervailing duty order.

Department's Position: We do not have sufficient information to make this adjustment.

Comment 8: The Government of Peru argues that suspensions of import duties under Article 16 are actually exemptions and thus, should be expensed in the year of receipt, not treated as interest free loans.

Department's Position: In order to qualify for the exemption, firms must export 40 percent of their total production and earn foreign exchange equal to 100 percent of the imported equipment. No exemptions of import duties under Article 16 are granted until the exporters meet those specific export requirements. Therefore, our treatment of the suspensions as interest free loans until the exemption is granted is appropriate.

Comment 9: The Government of Peru argues that in treating the deferrals and suspensions of import duties under Article 16, as interest free loans, the Department did not ensure that the amounts countervailed would not exceed the actual amount of import duties. Furthermore, these suspensions and deferrals should not be treated as short-term loans rolled over every year, but rather as five-year loans (the maximum length of the deferral or suspension).

Department's Position: We agree. The deferred and suspended duties outstanding from previous years (1979-1981) were treated as if long-term loans were taken out in equal amounts in each of the three years. We used equal amounts because we do not know the amount suspended or deferred during each year. The portion "borrowed" in 1979 was compared to a 1979 benchmark (the benchmarks used were the end of period discount rates as reported in the International Monetary Fund's, *International Financial Statistics*). Similarly, the 1980 and 1981 portions were "borrowed" at 1980 and 1981 benchmarks. Each of the three "loans" was then treated as if it had a five year repayment schedule. Using the long-term methodology outlined in the "Subsidies Appendix" (Subsidies Appendix to the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina, 49 FR 18006) we calculated the benefit attributable to 1982.

Using that methodology, the sum of the present values of the amounts countervailed (calculated in the year of receipt) will not exceed the face value of the "loan". We find the benefit from this program to be 2.33 percent *ad valorem* during the period of review.

For the purposes of a cash deposit of estimated countervailing duties attributable to Article 16, we used deferred and suspended duties through 1982. We calculated a rate of 5.40 percent *ad valorem*.

In reaching these final results, we found a number of mathematical errors in the preliminary calculations. Our correction of those errors has resulted in the following recalculated rates of bounty or grant:

	Percent—ad valorem
CERTEX	16.07
Articles 8 & 9 of the Export Law	0.13
Article 12 of the Export Law	0.02

Final Results of the Review

After reviewing all of the comments received and adjusting for methodological changes, we determine the total bounty or grant to be 20.65 percent *ad valorem* during the period of review.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final calculation of duty under the countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before (for non-signatories) the date of the countervailing duty order, here February 1, 1983. The Department therefore will instruct the Customs Service to assess countervailing duties of 20.65 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 19, 1982, the date of the Department's affirmative preliminary determination, and on or before December 31, 1982.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 5.55 percent of the entered value of any shipment of Peruvian cotton yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: August 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-23222 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-037]

Cotton Yarn From Brazil; Partial Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Partial Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by the Government of Brazil, the International Trade Commission conducted an investigation and determined that revocation of a portion of the countervailing duty order on cotton yarn from Brazil would not cause injury to an industry in the United States. The Department of Commerce consequently is revoking, in part, the countervailing duty order. All entries of cotton combed yarn, blended cotton combed yarn and blended cotton carded yarn made on or after August 3, 1981, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Peggy Clarke, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 15, 1977, the Treasury Department published in the **Federal Register** a countervailing duty order regarding cotton yarn from Brazil (42 FR 14089).

On August 3, 1981, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Government of Brazil had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA").

On May 17, 1984, the ITC notified the Department of its determination that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of certain Brazilian cotton yarn if the order were revoked (49 FR 21811, May 23, 1984). Specifically, the ITC determined that an industy in the United States would not be materially injured, or threatened with material injury, by reason of imports of Brazilian combed yarn wholly of cotton, provided for in item 302.—with statistical suffixes 26 and 28 of the Tariff Schedules of the United States Annotated (TSUSA), and of blended cotton yarn, provided for in TSUSA item 300.60 with statistical suffixes 20 through 28. As a result, the Department is revoking the countervailing duty order concerning those products from Brazil with respect to all such merchandise entered, or withdrawn from warehouse, for consumption on or after August 3, 1981, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 3, 1981, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries.

This revocation does not affect shipments of carded yarn wholly of cotton provided for in TSUS items 301.01 through 301.98, inclusive, and in item 302.— with statistical suffixes 20, 22 and 24 of the TSUSA. These shipments are subject to the administrative review procedures set forth in section 751 of the Tariff Act of 1930.

This partial revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: August 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23223 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of fee revisions for laboratory accreditation programs.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces fee revisions covering laboratory accreditation programs (LAPs) for thermal insulation materials ("Insulation LAP"), freshly mixed field concrete ("Concrete LAP"), carpet ("Carpet LAP"), solid fuel room heaters ("Stove LAP"), acoustical testing services ("Acoustics LAP"), personnel dosimeter processing ("Dosimetry LAP"), and commercial products ("Commercial LAP").

Laboratories interested in becoming accredited may request an application package by contacting the Manager, Laboratory Accreditation.

EFFECTIVE DATE: Laboratories applying for initial accreditation or accreditation renewal on or after October 1, 1984, will be charged the fees described herein.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, Administration Building, Room A531, Gaithersburg, MD 20899; (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background

Fees for the Insulation, Concrete, Carpet, Stove, and Acoustics LAPs were last revised as announced in the **Federal Register** on August 8, 1983 (48 FR 35986-35989). Fees for the Dosimetry LAP were announced in the **Federal Register** on July 28, 1983 (48 FR 34315-34316). Fees for the Commercial LAP were announced in the **Federal Register** on January 20, 1984 (49 FR 2496–2499). In accordance with paragraph (c) of sections 7a.10 and 7b.10 of the NVLAP Procedures (15 CFR Parts 7a and 7b), notice is hereby given of fee revisions covering the above mentioned LAPs.

Basis of Fees

NVLAP fees are based on the premise that all operational costs incurred by NBS in evaluating and accrediting laboratories are recovered from fees charged to the applicant laboratories. Fees pay for the maintenance of all operational LAPs, processing applications, administering proficiency testing, preparing evaluation reports and certificates, as well as labor, travel and expense costs of technical experts used in the accreditation process. Fees vary depending on assessment and evaluation time which depends in turn on the number and complexity of test methods, proficiency testing requirements, and frequency of visits to the laboratories in each of the LAPs.

Basis of Fee Increase

Fees are being increased, effective October 1, 1984, in response to Federal policy to fully offset recoverable costs of government programs by user fees where direct beneficiaries can be identified. All costs to maintain established LAPs are included in this revision. Fee income will be used for the maintenance and support of current LAPs. Development costs for the establishment of new or proposed LAPs will be borne either by the requestors of those LAPs or other outside resources.

New Fee Model

The following fee components comprise the revised fee schedule. Current fees versus revised fees are summarized in the accompanying chart.

A LAP initiation fee in the range of $220 to $650 to cover first year "start-up" costs for new applicants.

A single administrative fee of $875 per 12 month accreditation period per laboratory. The fee of $875 is the same for each laboratory regardless of the number of LAPs in which it is enrolled.

For those LAPs with test method fees (ranging from $80 to $490 per test method), there are minimum and maximum fees established for each LAP. These minimum and maximum fees are intended to offset actual costs more accurately since the total time to assess a laboratory, administer proficiency testing, and evaluate a laboratory takes a minimum of one to two work-days, and usually can be expected not to exceed six work-days.

Effect of Fee Increase

Under the new fee schedule the average cost increase is about 9% for laboratories already participating in LAPs other than the Acoustics and Dosimetry LAPs. The fee increases for Acoustics and Dosimetry LAPs reflect the need for more income to achieve self-sufficiency.

The detailed fees for new and renewal applicants are described in the appendices to this notice.

Fee component	Current schedule	New schedule
A. Administrative fee.	$800 per 12-mo accreditation period, except Dosimetry LAP $400 per 12-mo accreditation period.	$875 per 12-mo accreditation period.
B. Individual test method fee.	$70 to $450	$80 to $490.
C. Test method fee minima and maxima:		
Insulation LAP	$600/$4,000	$650/$4,350.
Concrete LAP: None—fees paid directly to Cement and Concrete Reference Laboratory (CCRL).		
Carpet LAP	$600/$1,500	$650/$1,650.
Stove LAP	$1,050/$1,500	$1,150/$1,650.
Acoustics LAP	$600/$2,400	$650/$3,300.
Dosimetry LAP	$725/$900	$850/$1,050.
Commercial LAP	$600/$3,000	$650/$3,300
D. One-time initiation fee:		
Insulation LAP	$600	$650.
Concrete LAP	$200	$220.
Carpet LAP	$600	$650.
Stove LAP	$600	$650.
Acoustics LAP	$600	$650.
Dosimetry LAP	$400	$450.
Commercial LAP	$600	$650.
E. Special fees: Special evaluation, special administrative, unusual costs, foreign laboratory.	Travel costs, assessor wage costs, other costs.	Same.

Dated: August 28, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Fees for Evaluating an NVLAP Applicant

All fees must be paid to NBS before an initial or renewal decision on accreditation is made. Failure by a laboratory to pay renewal fees on a timely basis will lead to the loss of accreditation.

Administrative Fee. A single administrative fee of $875 covering one 12 month accreditation period will be charged each participating laboratory. This fee is derived from direct and indirect administrative costs for operating established LAPs.

LAP Initiation Fees. These are one-time fees for LAP applicants. The fee for each LAP is based on the costs for processing new applicants.

Test Method Fees. The total cost of test method fees is obtained by summing individual fees for those LAPs where test methods are specified. The total test method fees are limited by the minimum and maximum for each LAP.

Dosimetry LAP Assessment and Proficiency Testing Fees. Unlike other LAPs, which include costs of on-site assessments and proficiency testing in the Test Method Fee, enrollment in the Dosimetry LAP requires payment of separate Assessment and Proficiency Testing Fees.

Specal Evaluation Fee. For those applicants requiring faster service than the normal evaluation schedule allows, a special fee to cover the extra costs for actual travel, per diem, and labor to carry out the special evaluation will be charged.

Special Administrative Fee. If a laboratory has not completed all requirements for accreditation within one year from the first day of the next quarter following receipt of its application, it will be billed an administrative fee of $875 to maintain its application. The full administrative fee plus the applicable LAP fees will be required when it is ready to be accredited.

Foreign Laboratory Fee. Foreign laboratories are offered NVLAP accreditation on the same basis as domestic laboratories. Costs for travel of assessors and mailing of proficiency testing materials outside of the continental United States will be added to normal charges. Upon application, a foreign laboratory must make arrangement for paying the standard evaluation fee in U.S. currency before the assessor leaves the United States. If travel time from port of embarkation to the foreign destination is more than 4 hours but less than 20 hours, the foreign laboratory will also be required to pay labor time for one additional day. Travel time for the return trip will also be billed to the laboratory. For travel times greater than 20 hours, 2 days of labor time for each trip will be charged. When an assessor has been scheduled to visit the foreign laboratory, the laboratory will also be notified of the additional costs for labor time to be paid to NBS before an assessor leaves the United States. More than one assessor may be required to assess the laboratory if it requests accreditation in more than one LAP. Fees will be assessed accordingly.

Unusual Cost Fee. NBS reserves the right to impose extra fees for applicants requiring especially long or complex evaluations. Extra fees will be discussed with the applicant before being imposed.

Appendix 1.—Insulation LAP Fee

Administrative Fee: $875.

One-time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual fees for those test methods in which a laboratory seeks accreditation. The individual fees are given in the following table where test methods are listed by NVLAP Code. An asterisk (*) indicates that required proficiency testing costs are included in the individual test method fee. There are minimum and maximum total Test Method Fees for this LAP.

The minimum is $650.

The maximum is $4,350.

The minimum is assesed when the sum of individual fees is less than that amount. The maximum is assesed when the sum exceeds that amount.

INDIVIDUAL TEST METHOD FEES

Test method	Annual fee
01/C01 to 01/C03	$150
01/D01 to 01/D04	80
01/D05 to 01/D06	150
01/D07 to 01/D12	80
01/D13 to 01/D25	150
01/D26	*440
01/D27 to 01/D29	150
01/F01	80
01/F02	*490
01/F05	80
01/F06	220
01/F07	*490
01/F08	*440
01/S01 to 01/S14	150
01/T01	*490
01/T04	*470
01/T05	220
01/T06	*490
01/T09 to 01/T10	150
01/V02 to 01/V03	80
01/V04	150
01/V05 to 01/V06	80

Appendix 2.—Concrete LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $220.

Total Test Method Fee: The Total Test Method Fee for this LAP is for on-site visits by the inspection organization, ASTM's Cement and Concrete Reference Laboratory (CCRL), authorized by NBS to conduct NVLAP on-site visits. A laboratory that has been inspected by CCRL within two years prior to its application does not pay the CCRL fee until the time of its next CCRL inspection. A laboratory that has not been inspected by CCRL within two years prior to its application must be inspected and pay the required CCRL fee. The CCRL fee will be invoiced and collected by ASTM for CCRL with each inspection. Regularly scheduled inspections will occur on the average of once every 2½ years.

Test Method Group Fees

There are 2 groups of test methods for this LAP as shown below.

The CCRL fee for the Field Group of test methods is $975.

The CCRL fee for the Field plus Laboratory Group of test methods is $1,150.

Test method	Field group	Field and laboratory group
02/M01	X	X
02/M03	X	X
02/M01	X	X
02/M01	X	X
02/M01	X	X
02/M01	X	X
02/M02	Optional	Optional

Appendix 3.—Carpet LAP Fee

Administrative Fee: $875

One-Time Fee for New Applicants: $650

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual fees for those test methods in which a laboratory seeks accreditation. The individual fees are given in the following table where each test method is listed by NVLAP Code. An asterisk (*) indicates that required proficiency testing costs are included in the individual test method fee. There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $650

The maximum is $1,650

The minimum is assessed when the sum of individual fees is less than that amount. The maximum is assessed when the sum exceeds that amount.

INDIVIDUAL TEST METHOD FEES

Test method	Annual fee
03/C01	*$240
03/C02	80
03/D01	*250
03/D02	80
03/S02	*180
03/E01	80
03/F01	220
03/F02	220
03/F03	80
03/F04	*300
03/B01	220
03/B01	300

Appendix 4.—Stove LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by selecting one of the four following options.

(1) Physical/Fire Group (04/F00), $1,150;

(2) Physical/Fire Group (04/F00) plus Mobile Home Group (04/M00), $1,420;

(3) Physical/Fire Group (04/F00) plus Electrical Group (04/E00), $1,130; or

(4) All three Groups (04/F00, 04/M00, 04/E00), $1,650.

There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $1,150.

The maximum is $1,650.

Appendix 5.—Acoustics LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual fees for those test methods in which a Laboratory seeks accreditation. The individual fees are given in the following table where each test method is listed by NVLAP Code. An asterisk (*) indicates that required proficiency testing costs are included in the individual test method fee.

There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $650.

The maximum is $3,300.

The minimum is assessed when the sum of individual fees is less than that amount. The maximum is assessed when the sum exceeds that amount.

Test method	Annual fee
08/P01	$150
08/P02*	250
08/P03*	350
08/P04*	250
08/P05	110
08/P06*	390
08/P07 to 08/P08	150
08/P09*	350
08/P10*	300
08/P11* to 08/P12*	210
08/P13* to 08/P14*	300
08/P15* to 08/P16*	210
08/P17*	300
08/P18* to 08/P19*	210
08/P20* to 08/P21*	300
08/P22* to 08/P23*	210
08/E01	100
08/E02	140
08/E03*	240
08/E04* to 08/E05	290
08/E06 to 08/E08	110
08/E09 to 08/E10	100
08/E11* to 08/E12	240
08/E13 to 08/E14	100
08/E15	370
08/E16 to 08/E19	110
08/E20 to 08/E21	140
08/E22 to 08/E26	100

Certain pairs of test methods in the Acoustics LAP are similar in technical scope. If a laboratory is interested in applying for one or more of these pairs, the laboratory pays a reduced annual charge for one of the test methods in each pair. The test method pairs and reduced charges are listed below.

Test method	Annual fee
08/P10 to 08/P17	$100
08/P11 to 08/P18	100
08/P12 to 08/P19	100
08/P13 to 08/P20	100
08/P14 to 08/P21	100
08/P15 to 08/P22	100
08/P16 to 08/P23	100
08/P17 to 08/P10	100
08/P18 to 08/P11	100
08/P19 to 08/P12	100
08/P20 to 08/P13	100
08/P21 to 08/P14	100
08/P22 to 08/P15	100
08/P23 to 08/P16	100
08/E03 to 08/E11	100
08/E11 to 08/E03	100

Appendix 6—Dosimetry LAP Fee

(Based on a Two-Year Accreditation Period)

Administrative Fee: $1,750.

One-Time Fee for New Applicants: $450.

Assessment Fee: The minimum assessment fee is $650 based on a one work-day assessment. An additional fee will be imposed at a rate of $450 per work-day if additional assessor time is required. Also, an additional fee of $450 per location will be charged for assessing processors which have one or more remotely located facilities. Most assessments are likely to take two work-days.

Proficiency Testing Fee: The proficiency testing fee is the sum of each category fee for each dosimeter model/type for each category for which accreditation is requested. The Table below lists the fees for each of the eight categories of testing. If a processor fails one or more categories, retesting will be required. The category fees for retesting will be the same as shown in the Table.

FEES FOR PROFICIENCY TESTING BY CATEGORY

[One dosimeter model/type tested in one category]

Category	Fee
I	$850
II	850
III	850
IV	850
V	850
VI	1,050
VII	1,050
VIII	1,050

Appendix 7.—Commercial Products LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual test method fees for those test methods in which a laboratory seeks accreditation. The individual fees are given in the following table where each test method is listed by NVLAP Code.

There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $650.

The maximum is $3,300.

The minimum is assessed when the sum of the individual fees is less than that amount. The maximum is assessed when the sum exceeds that amount.

Test method codes	Test method category	Fee per test method
Paints and Related Coatings and Materials		
09/A01 to 09/A29	Intrinsic physical properties.	$80
09/B01 to 09/B42	Performance and performance change.	110
09/C01 to 09/C40	Chemical properties and compositions.	110
09/D01 to 09/D16	Sample conditioning and preparation.	80
Paper and Related Products		
09/E01	Paper and paperboard	110
09/E02 to 09/E09		80
09/E10		110
09/E11 to 09/E21		80
09/F01 to 09/F02	Paper specifications	80
09/G01 to 09/G08	Pressure sensitive tapes.	80
09/H01	Packaging	110
09/H02 to 09/H03		80
09/H04 to 09/H22	Federal test method standard for preservation, packaging, and packaging materials.	80
Mattresses		
09/K01		110
09/K02		140
09/K03 to 09/K04		110
09/K05		140
09/K06		80

[FR Doc. 84-23189 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program (NVLAP)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of formal establishment of a program for accrediting laboratories that test photographic film.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the formal establishment of a laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP). Initially, the LAP will cover test methods included in five ANSI Standards for photographic film. A separate notice appearing in this issue of the **Federal Register** includes the fees for this LAP. Laboratories that are interested in becoming accredited under the Photographic Film LAP may request an application package by contacting the Manager, Laboratory Accreditation, National Bureau of Standards.

DATES: Each laboratory that submits a completed application which is postmarked no later than December 1, 1984, will be included in the first group of laboratories to be evaluated for accreditation. Applications received after that date will be included in subsequent groups as they can be scheduled.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, Admin. A531, Gaithersburg, MD 20899 (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background. This notice is issued in accordance with § 7a.8 of the NVLAP procedures (15 CFR 7a.8). Establishment of this laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP) follows the request letter from the Association for Information and Image Management (AIIM) (formerly the National Micrographics Association) dated March 22, 1983. The AIIM letter identified twelve photographic film standards and test methods for inclusion in the LAP.

A notice announcing a preliminary finding of need which was published on May 20, 1983 (48 FR 22775-22777), proposed that the twelve standards and test methods identified in the AIIM request letter be included in the LAP. Comments received in response to the preliminary finding of need proposed that additional standards and test methods for photographic film be added to the program. The final finding of need for the LAP published on September 30, 1983 (48 FR 44873-44875) identified 26 standards and test methods proposed by persons responding to the preliminary finding of need notice.

In January, 1984, a task group of photographic film experts was established by AIIM to evaluate the 26 standards and test methods to determine their appropriateness for the program. This evaluation resulted in a proposal that eight of the 26 standards and test methods be retained in the LAP. On June 22, 1984, a public workshop was held at AIIM headquarters in Silver Spring, Maryland as announced in the June 11, 1984 **Federal Register** (49 FR 24042).

The purpose of the workshop was to discuss technical requirements for laboratories that test photographic film and determine which test methods should require proficiency testing. It was the consensus of the workshop

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attendees that three of the proposed eight standards and test methods should be deleted from the LAP (see workshop minutes on file at the Central Reference and Records Inspection Facility, Department of Commerce, Washington, DC). Other standards and test methods may be added to the program if formally requested provided they are within the scope of the LAP. The purpose of the LAP is to provide national recognition to laboratories capable of performing tests in accordance with the designated test methods.

Accredition Process. The accreditation process for this LAP is described below, followed by an appendix of operational information for this LAP.

Dated: August 28, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Accreditation Process for the Photograhic Film LAP

Requesting An Application. Any testing laboratory interested in becoming accredited under this LAP should contact the Manager, Laboratory Accreditation, National Bureau of Standards, Admin. A531, Gaithersburg, MD 20899, (301) 921-3431. He will send an application package as explained below. All laboratories submitting applications postmarked by December 1, 1984, and accompanied by the requisite fee or purchase order will be scheduled for an initial on-site visit as part of the first group of laboratories considered for accreditation under this LAP. Applications received after this date will be included in subsequent groups of laboratories to be considered for accreditation.

Application Package. The application package includes an application form with a test method selection list, fee schedule, and the Photographic Film LAP handbook which describes the general requirements for accreditation.

Fees. In a separate notice appearing in this issue of the **Federal Register,** NBS announces the fees for the Photographic Film LAP. The fee schedule provides interested laboratories with the information needed to calculate the annual fee associated with the scope of accreditation desired. This fee must be paid before any accreditation decision is made. Also, failure to pay an annual renewal fee will lead to automatic expiration of accreditation at the end of the laboratory's accreditation period.

Enrollment. After payment of the required accreditation fee, the Laboratory will be scheduled for an on-site visit and will be notified of any additional written information which must be supplied, and of any applicable proficiency testing requirements which must be completed for the evaluation.

Basic Conditions for Accreditation. To be accredited under the NVLAP procedures, a laboratory must agree in writing the following conditions:

(1) Be examined and audited, initially and on a continuing basis;

(2) Pay accreditation fees and charges;

(3) Avoid reference by itself and forbid others utilizing its services from referencing its accredited status under NVLAP in consumer media and in product advertising or on product labels, containers, and packaging or the contents therein, or in any other way which might convey the concept of product certification by NBS (Note: A NVLAP accredited laboratory may advertise its accredited status on its letterhead, brochures, and test reports as well as in trade publications and other laboratory services publications.);

(4) Maintain compliance with applicable general and specific criteria and with applicable requirements of the NVLAP procedures (15 CFR Part 7a); and

(5) Participate in proficiency testing that may be required for attaining or maintaining accreditation.

Criteria. The NVLAP general and specific criteria for evaluating laboratories, which are described in §§ 7a.19–7a.30 of the NVLAP procedures (15 CFR 7a.19–7a.30), address a laboratory's organizational structure, technical management, professional and ethical business practices, and system for assuring the quality of test results. The criteria also address aspects of a laboratory directly related to the reliable performance of each test method for which the laboratory desires accreditation, including staff competence and training, facilities and equipment, test plans, calibration procedures, recordkeeping, data handling procedures, and quality control checks and audits.

On-site Visits. Regularly scheduled on-site visits are conducted to assess a laboratory's compliance with the NVLAP criteria. In addition, monitoring visits of limited scope are used to assure that accredited laboratories continue to comply with the criteria or to resolve any testing problems that an accredited laboratory may appear to have. The on-site assessor will conduct an exit interview with the laboratory's management at the conclusion of an on-site visit to summarize the assessor's findings. Each laboratory is notified whenever deficiencies are identified and is given an opportunity to correct those deficiencies before formal accreditation recommendations are prepared or any action is started to revoke accreditation. The laboratory must permit the on-site assessor to review and examine any records or other documents required by the criteria. Also, if a hearing under 5 U.S.C. 556 has been instituted under the NVLAP procedures, the laboratory must permit NBS personnel to review and copy any records or other documents required by the critiera. Failure of the laboratory to cooperate with the on-site assessor will be grounds for the initiation of adverse accreditation action.

Proficiency Testing. Proficiency testing is an integral part of the NVLAP accreditation process. While the existence of facilities, equipment, and personnel which satisfy the criteria indicates a laboratory's overall capability to obtain good results, an analysis of actual test results for certain test methods is also necessary to determine if the overall capability does in fact produce the desired results. A laboratory's failure to participate fully in the conduct of required proficiency testing may also be grounds for the initiation of adverse accreditation action.

Evaluation and Recommendations. An evaluation team composed primarily of peers in the applicable testing areas uses the following information to review each laboratory:

(1) Written information supplied by the laboratory;

(2) Results of proficiency testing; and

(3) Written reports of the assessor regarding on-site visits to the laboratory.

If additional deficiencies are identified beyond those cited during the on-site visit, the laboratory is given written notification of those deficiencies and a reasonable period (ordinarily 30 days) in which to correct or resolve them. After review of the above information and the laboratory's response to any notification of deficiencies, an accreditation recommendation for the laboratory will be made by the evaluation team.

Accreditation Decision. Aided by the recommendations of the evaluation team, a decision is made whether to grant or deny initial accreditation for new laboratories or renewal for currently accredited laboratories. The laboratory is notified by letter of the decision. If accreditation denial is proposed, the notification letter will state the reason.

Appeals. When denial of accreditation is proposed, a laboratory has 30 days from the date of receipt of the notification to request a hearing. The notification will specify to whom a request for a hearing should be sent. If a hearing is not requested, the denial becomes final. If a hearing is requested, it is held pursuant to 5 U.S.C. 556.

Accreditation Period. Laboratories are granted accreditation for one year with individual laboratory anniversary dates occurring on the first of January, April, July, or October. A laboratory will be assigned one of these anniversary dates which is closest to the time that the decision to grant accreditation is made but in no case shall the anniversary date be less than 12 months from the date of the decision.

Accreditation Renewal. Each accredited laboratory is sent a renewal application form before its current accreditation expires (anniversary date). If acted upon promptly by the laboratory, the lead time will be sufficient to complete the renewal evaluation before the current accreditation expires. The laboratory may use the renewal application form to add or drop test methods for the new accreditation period.

Termination. Any accredited laboratory may voluntarily terminate its accreditation at any time. Likewise, an applicant laboratory may voluntarily terminate its application at any time prior to the completion of action on the application. The matter of refunds is covered in § 7a.15 of the NVLAP Procedures (15 CFR 7a.15).

Revocation. If the Director of NBS or designee finds that an accredited laboratory has violated the terms of its accreditation, the Director or designee may, after consultation with the laboratory, notify that laboratory that he proposes to revoke its accreditation. The laboratory has 30 days in which to appeal a proposed revocation by requesting a hearing. A proposed revocation will specify to whom a request for a hearing should be sent. If a hearing is not requested, the revocation becomes final. If a hearing is requested, it is held pursuant to 5 U.S.C. 556.

Public Notification. Accreditation actions are published in the **Federal Register** within 30 days of such action and in NVLAP quarterly and annual reports.

Compliance with Existing Laws. NVLAP accreditation does not relieve the laboratories from the necessity of observing and complying with existing federal, state, and local statutes, ordinances, or regulations that may be applicable to its operations, including consumer protection and antitrust laws.

Appendix—Operational Information for the Photographic Film LAP

On-site Visits. Regularly scheduled on-site visits will occur every two years. In addition, laboratories will be subject to monitoring visits.

Test Methods. The test methods included in the Photographic Film LAP are listed in the Appendix to the notice of fees for the Photographic Film LAP which appears in this issue of the **Federal Register**. Applicant laboratories may be accredited for one or more of the test methods listed.

Proficiency Testing. NBS recognizes that there may be existing or developing collaborative reference or round-robin testing programs that could be adopted as an integral part of proficiency testing requirements for this LAP. Those parties responsible for such programs are invited to identify themselves and the details of their program for consideration and use as a proficiency testing program for this LAP. Interested parties should contact the Manager, Laboratory Accreditation, NBS, Admin. A531, Gaithersburg, MD 20899; (301) 921–3431. To be accepted for use as a proficiency testing program for this LAP, the program must:

(1) Be ongoing and open to anyone interested in participating;

(2) Issue written reports of its results which include statistical analyses of submitted data and identification of statistical outliers;

(3) Have published descriptions of its programs and procedures which are available to anyone;

(4) Have adequate procedures for the distribution, control, and characterization of testing samples; and

(5) Be willing to provide the identity of participating laboratories and their individual results if they are also participating in the LAP.

NBS may select one or more of these programs for use as a requirement in this LAP. This selection would be based on minimum cost to the laboratories seeking accreditation and availability of programs to meet the overall needs of the LAP.

[FR Doc. 84-23107 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program (NVLAP); Fees

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of fees for the laboratory accreditation program for photographic film.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the fees for the laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP). A separate notice appearing in this issue of the **Federal Register** describes the accreditation process for the Photographic Film LAP. Laboratories that are interested in becoming accredited under this LAP may request an application package by contacting the Manager, Laboratory Accreditation, National Bureau of Standards.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, Admin. A531, Gaithersburg, MD 20899; (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Background. In a separate notice in this issue of the **Federal Register**, NBS announced the formal establishment of a laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP). Pursuant to § 7a.10(b) of the NVLAP procedures (15 CFR 7a.10(b), notice is hereby given of the fees which the Director of the National Bureau of Standards (NBS) has established for the Photographic Film LAP.

Basis of Fees. NVLAP fees are based on the premise that all operational costs incurred by NBS in evaluating laboratories seeking accreditation are recovered from fees charged to the applicant laboratories. Fees pay for processing applications, preparing evaluation reports and certificates, as well as the work-hours, travel, and per diem costs of assessors involved in the evaluation process. The fees vary depending on the assessment time, which in turn depends on complexity of test methods and frequency of visits to the laboratories.

Administrative Fee. An annual administrative fee of $875 will be charged each participating laboratory. This fee is based on the estimated administrative costs for operating the LAP.

LAP Initiation Fee. This is a one-time fee of $650 for new applicants in this LAP. The fee is based on higher costs for processing new applications, assisting new applicants and initial assessment.

Test Method Fee. There is a fee associated with each test method. The total cost of test method fees is obtained by summing individual fees for those test methods in which the applicant requests accreditation. Minimum and maximum fees are imposed for this LAP. The total test method fees are limited by a minimum of $650 and a maximum of $1,400. Laboratories already enrolled in other LAPs are not required to pay the minimum for this LAP if they apply for test methods whose fees total less than $650.

Fees for Foreign Laboratories. Foreign laboratories are offered NVLAP accreditation on the same basis and involving the same criteria as is required of domestic laboratories. However, the cost of the assessor's travel time and expenses and the cost of mailing proficiency testing materials outside of the continental United States will be added to the normal fees.

The fee model for the Photographic Film LAP is outlined in the Appendix to this notice.

Dated: August 28, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Appendix—Photographic Film LAP Fee Model

Administration Fee: $875.

Initiation Fee: $650.

Total Test Method Fee: The Total Test Method Fee is the sum of the individual test method fees for those test methods in which a laboratory seeks accreditation, except where the minimum or maximum total test method fees apply. The minimum is $650. The maximum is $1,400. The minimum is assessed when the sum of the individual fees is less than that amount. (Note that laboratories already enrolled in other LAPs are not subject to this minimum.) The maximum is assessed when the sum exceeds that amount. The individual test method fees are given in the following table listing the test methods.

TABLE-TEST METHODS FOR PHOTOGRAPHIC FILM LAP

NVLAP code	Test method designation	Short title	Test method fee ($)
10/PO1	ANSI PH 1.25-1984.	Standard for safety photography film.	80
10/PO2	ANSI Ph 1.28-1981.	Specifications for silver-gelatin/cellulose ester film.	420
10/PO3	ANSI PH 1.29-1971.	Methods for determining curl of film.	80
10/PO4	ANSI PH 1.41-1981.	Specification for silver-gelatin/polyester film.	420
10/PO5	ANSI PH 1.60-1979.	Specifications for ammonia-processed Diazo film.	420

[FR Doc. 84-23188 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Issuance of Permit; Moscow Zoo

On July 11, 1984, Notice was published in the **Federal Register** (49 FR 28304) that an application had been filed with the National Marine Fisheries Service by the Moscow Zoo, 123242, B Grusinskaya I, U.S.S.R., for a permit to obtain one (1) rehabilitated beached/stranded California sea lion (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on August 22, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Public Display Permit for the above activity to the Moscow Zoo subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 24, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23195, Filed 8-30-84; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit; Knie's Kinderzoo

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals a authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Knie's Kinderzoo (P266B).

b. Address Gebruder knie AG, CH-8640 Rapperswill, Switzerland.

2. Type of Permit Public Display.

3. Name and Number of Animals: Bottlenose dolphins (Tursiops truncatus) 2.

4. Type of Take: Captive maintenance.

5. Location of Activity: Florida waters.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the maine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Division International Traffic and Animal Welfare have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: August 24, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–23194 Filed 8–30–84; 8:45 am]

Billing Code 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–256, 206 (4,451,265)
Diesel Fuel-Aqueous Alcohol Microemulsions
SN 6–351,400 (4,452,288)
Powered Tree Chipper or Bark Hack
SN 6–378,317 (4,454,680)
Rope Wick Chemical Recovery Apparatus
SN 6–385,162 (4,449,391)
Method for Separating Closed Bolls of Cotton by Maturity
SN 6–427,229 (4,451,267)
Microemulsions From Vegetable Oil and Aqueous Alcohol with Trialkylamine Surfactant as Alternative Fuel For Diesel Engines
SN 6–507,191 (4,454,268)
Starch-Based Semipermeable Films
SN 6–586,617
Process to Impart Smooth-Dry and Flame Retardant Properties to Cellulosic Fabric
SN6–586,618
Process to Produce Durable Press Low Formaldehyde Release Cellulosic Textiles
SN 6–610,949
Suffocation-Type Insect Trap with Pitfall and Attractant
SN 6–611,042
Anticlostridial Agents

Department of Commerce

SN 6–348,575 (4,449,823)
Device for Measurement of the Spectral Width of Nearly Monochromatic Sources of Radiant Engery
SN 6–348,576 (4,444,501)
Stabilizing Mechanism for Optical Interferometer
SN 6–611,552
Magnetoresistive Skin for Robots
SN 6–612,291
Modulation Transfer Spectroscopy for Stabilizing Lasers

Department of Health and Human Services

SN 6–294,368 (4,451,618)
Process for the Production of 2-B-D-Ribofuranosylthiazole-4-Carboxamide
SN 6–329,590 (4,362,510)
Cementitious Dental Compositions Which Do not Inhibit Polymerization
SN 6–475,215
Multi-Layer Coil Assembly Coaxially Mounted Around the Rotary Axis for Preparatory Countercurrent Chromatography
SN 6–499,093
Monoclonal Antibodies to Cytoskeletal Proteins
SN 6–540,667
Tumor Treatment in Humans with 4'-Carboxyphthalato (1,2-Diaminocyclohexane) Platinum (II)

Department of Interior

SN 6–376,851 (4,457,624)
Suspended Sediment Sensor
SN 6–488, 481 (4,453,594)
Solution Mining of Coal by Electrolysis

Department of the Air Force

SN 6–329,557
Simultaneous Detection of Time Coincident Signals in an Adaptive Doppler Tracker
SN 6–339,206 (4,426,131)
Replaceable Diffraction Gratings for Cooled Laser Optics
SN 6–465,942 (4,437,080)
Method and Apparatus Utilizing Crystalline Compound Superconducting Elements Having Extended Strain Operating Range capabilities Without Critical Current Degradation
SN 6–595,153
Method to Reveal Microstructures in Single Phase Alloys
SN 6–598,471
Phase Only Optical Filter for use in an Optical Correlation System
SN 6–598,949
Compact Broadband Rectangular to Coaxial Waveguide Junction

Department of the Army

SN 6–212,766
Walsh Function Light Pattern Image Analyzer and Method
SN 6–469,333
Frequency Modulated Phase Locked Loop
SN 6–473,467
Improved Chirp Transform Correlator
SN 6–592,140
Pipe Corrosion Monitoring Apparatus and Method
SN 6–600,241
A Method for Producing Nutritionally Dense Freeze Dried Food Bars
SN 6–600,700
Portable Trapping Device
SN 6–605,456
Method of Directly Crystallizing a (Sm+Ti): Fe=1:5 Compound
SN 6–606,729
Porous Catalytic Metal Plate Degeneration Bed in a Gas Generator
SN 6–608,824
Tone Signalling Adapter for a Telephone Set
SN 6–608,840
Distributed Pulse Forming Network for Magnetic Modulator
SN 6–611,292
High Power Optical Switch for Microsecond Switching
SN 6–612,524
Semiconductor Multipactor Device
SN 6–620,301
Shaft Coupling Device
SN 6–623,883
Temperature Controlled Adjusting Mechanism
SN 6–624,896
Tactical High Frequency Antennas

National Security Agency

SN 6–180,075 (4,383,261)
Method For Laser Recording Utilizing Dynamic Preheating

[FR Doc. 84–23153 Filed 8–30–84; 8:45 am]

BILLING CODE 3410–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Restraint Limit for Certain Wool Textile Products Exported From Yugoslavia

August 28, 1984.

On May 10, 1984, a notice was published in the Federal Register (49 FR

19888) announcing that, on April 30, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of the Socialist Federal Republic of Yugoslavia to enter into consultations concerning exports to the United States of men's and boys' suit-type coats in Category 433, produced or manufactured in Yugoslavia.

The United States Government has decided, inasmuch as consultations with the Government of the Socialist Federal Republic of Yugoslavia to reach a mutually satisfactory solution concerning this category have not been held, to control imports of wool textile products in Category 433, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on April 30, 1984 and extends through April 29, 1985 at a level of 3,184 dozen. Inasmuch as charges for imports during the period which began on May 1 and extended through June 30, 1984, have amounted to 3,257 dozen, an amount in excess of the twelve-month restraint limit, no further shipments will be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption until further notice.

The letter published below directs the Commissioner of Customs to establish a control limit of 3,184 for Category 433 and to charge 3,257 dozen to that limit.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: James Nader, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1984.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on September 4, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 433, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on April 30, 1984, in excess of 3,184 dozen.[1]

Textile products in Category 433 which have been exported to the United States prior to April 30, 1984 shall not be subject to this directive.

Textile products in Category 433 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

The action taken with respect to the Government of the Socialist Federal Republic of Yugoslavia and with respect to imports of wool textile products from Yugoslavia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-23209 Filed 8-28-84; 3:04 pm]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1984 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 31, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 22, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 25664) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1984:

SIC 0782

Ground Maintenance, Recreation Areas,
Naval Air Station, Lemoore, California.

C.W. Fletcher,

Executive Director.

[FR Doc. 84-23216 Filed 8-30-84; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: October 3, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

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[1] The level of restraint has not been adjusted to reflect any imports exported after April 29, 1984. Imports during the period May 1 through June 30, 1984 have amounted to 3,257 dozen.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 8465

Sheath, Axe, Plastic; 8465-01-110-2078
Sheath, Brush Hook, Plastic; 8465-01-136-4720
Sheath, McCleod Tool, Plastic; 8465-01-136-4718
Sheath, Shovel, Plastic; 8465-01-136-4719
Sheath, Tool, Pulaski, 8465-01-067-9999

SIC 7369

Commissary Shelf Stocking and Custodial Eielson Air Force Base, Alaska
Commissary Shelf Stocking and Custodial Myrtle Beach Air Force Base, South Carolina

SIC 9199

Forms/Publication Storage and Distribution, Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C.

C.W. Fletcher,
Executive Director.

[FR Doc. 84-23217 Filed 8-30-84; 8:45 am]
BILLING CODE 6820-33-M

Privacy Act of 1974; Annual Records System Notice

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Change of address

Notice is hereby given that the Committee for Purchase from the Blind and Other Severely Handicapped has moved from 2009 14th Street North, Suite 610, Arlington, Virginia 22201 to 1755 Jefferson Davis Highway, Suite 1107, Arlington, Virginia 22202.

Accordingly, the address of the Executive Director shown under CBH-1, CBH-2, and CBH-3 which appears on pages 48075 and 48076 of the **Federal Register**, Vol. 42, No. 184, Thursday, September 22, 1977 is changed to read "1755 Jefferson Davis Highway, Suite 1107, Arlington, Virginia 22202".

C. W. Fletcher,
Executive Director.

[FR Doc. 84-23213 Filed 8-30-84; 8:45 am]
BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 83-2]

1982 Jukebox Royalty Distribution Determination

AGENCY: Copyright Royalty Tribunal (Tribunal).

ACTION: Notice of Final Determination.

SUMMARY: The Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of jukebox royalty fees deposited for 1982 performances.

FOR FURTHER INFORMATION CONTACT:
Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Washington, DC 20036. Phone: (202) 653-5175.

SUPPLEMENTARY INFORMATION: In accordance with 17 U.S.C. 116(c)(3), the Tribunal on December 13, 1983 published notice in the **Federal Register** (48 FR 55497) of a controversy concerning distribution of the 1982 jukebox royalties. The Tribunal in the same order provided for substantial partial distribution of the 1982 royalties. The sum of $1,350 was distributed to the Italian Book Corporation and 90% of the remainder of the royalty fund was distributed to the designated common agent of the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC. These claimants have reached agreement on the distribution of the 1982 jukebox royalties. On October 6, 1983 these claimants filed a motion to distribute the entire royalty fund to these claimants in accordance with the terms of their voluntary agreement.

The Tribunal has determined the distribution of the 1982 jukebox royalties on the written record in this proceeding. We have considered the materials submitted by claimants, including materials submitted at the direction of the Tribunal. The Tribunal on December 13, 1983 directed ASCAP, BMI, SESAC and the Italian Book Corporation to submit the justification for the royalty distribution proposal provided in their voluntary agreement. On January 25, 1984 we requested ASCAP, BMA and SESAC to submit information as to the extent of Spanish-language compositions in their repertories. On the basis of this record, the Tribunal has determined to award the entire royalty fund to ASCAP, BMI, SESAC and the Italian Book Corporation in accordance with the terms of their voluntary agreement. We discuss below our reasons for not making an award to other claimants.

Latin American Music and Latin American Music, Inc.

Latin American Music and Latin American Music, Inc. (A.C.E.M.L.A.) claim to own or administer more than 20,000 copyrights of traditional and popular Spanish language songs. These claimants assert that the 1980 census estimates of the United States population includes 14.7 million persons of Spanish origin, and that these estimates "do not take into account the millions of undocumented Spanish-speaking aliens in this country."[1] Claimants further asserted that sample 1983 trade charts presented as exhibits in this proceeding show that "there were a substantial number of hit songs in Spanish that represented claimants' copyrights." Claimants also asserted that "most jukeboxes tend to be located in bars and smaller restaurants, both of which are numerous in Hispanic communities." On the basis of these arguments and the evidence submitted A.C.E.M.L.A. requests an award of 5% of the royalty fund.

We reject any argument that the size of the Hispanic population, with or without the inclusion of undocumented Spanish-speaking aliens, establishes an entitlement of A.C.E.M.L.A. to the jukebox royalty funds. We also cannot justify an award to A.C.E.M.L.A. on the basis of assertions as to the prevalence of jukeboxes in Hispanic communities.

Although there is not in our record any survey of jukebox performances of copyrighted music, it is reasonable to conclude that there are performances of Spanish language copyrighted compositions on jukeboxes, but that such performances comprise only a small portion of all performances. We also find in this record evidence which supports a finding that many of these performances are of compositions licensed by other claimants. From this record we have no basis on which to make any judgment about jukebox performances of A.C.E.M.L.A. compositions or the value of the A.C.E.M.L.A. catalog in relation to the catalogs of other performing rights societies.

In all our distribution proceedings the Tribunal has been attentive to the limited resources of smaller claimants. But our determinations cannot rest on faith, hope and charity. We must have in the record of this proceeding or otherwise some benchmarks by which to judge a claim.

Records of other Tribunal proceedings contain considerable information about the other performing rights societies, but even recourse to such proceedings would not be of any avail in considering the A.C.E.M.L.A. claim. We have in other distribution proceedings looked to various indicia of value reflected in performance or licensing data not directly related to the particular use involved in the distribution. We find no such data in any record that would provide a basis for an award to A.C.E.M.L.A. In particular, we find persuasive the evidence submitted on behalf of ASCAP and BMI in response to the sample trade charts presented by A.C.E.M.L.A.

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[1] Statement of A.C.E.M.L.A., October 27, 1983, p. 2.

Michael W. Walsh

Michael W. Walsh filed a claim to jukebox royalties covering two identified musical compositions that he asserted were performed on jukeboxes in 1982. He listed jukeboxes in three establishments in New York State that he asserted contained these works during 1982. ASCAP, BMI and SESAC in a joint statement of July 25, 1984 responded to the evidence presented by Mr. Walsh. On the basis of the record before us, the Tribunal concludes that any royalty fees that could be directly related to the identified compositions would be sufficiently de minimus as not to justify an award.

Sammie Belcher, Jr.

Sammie Belcher, Jr. submitted no evidence in justification of his claim. The Tribunal makes no award to Mr. Belcher.

It is therefore ordered that $1,500 of the 1982 jukebox royalty fund be awarded to the Italian Book Corporation, and that the balance of the fund be awarded to the designated common agent of the ASCAP, BMI and SESAC. It is further ordered that the royalty fees not previously distributed be distributed in accordance with this award.

Distribution of Jukebox Royalty Fees

(Financial statement of royalty fees for compulsory licenses for Jukeboxes for 1982.)

Royalty fees deposited	$2,902,904.86
Interest income	660,800.00
Gain on Matured Securities	104,203.34
Total	3,667,908.20
Less:	
Operating costs of the Copyright Office	149,867.00
Refunds issued	2,470.50
P.L. 97-276	700.00
P.L. 98-51	40,000.00
Cost of investments	358,823.29
Total cost of initial investments matured on 9/30/83	213,137.12
1/19/84 Distribution of fees	2,891,999.26
Total	3,656,997.17

Balance on hand 6/30/84	10,911.03
Face amount of securities due 9/27/84	365,000.00
Approximate amount for distribution on September 27, 1984	375,911.03

Commissioner Hall did not participate in this determination.

Dated: August 28, 1984.

Thomas C. Brennan,

Chairman.

[FR Doc. 84-23210 Filed 8-30-84; 8:45 am]

BILLING CODE 1410-12-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 28, 1984.

Change in closure determination for meeting of the USAF Scientific Advisory Board Ad Hoc Committee on a Large Rocket Test Facility, 18–19 September 1984, published in **Federal Register** on 27 August 1984, 49 FR 33923. The meeting will concern matters listed in section 552b(c) of Title 5, United States Code, specifically paragraph (3) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84-23193 Filed 8-30-84; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Women's Educational Programs. The agenda will include a discussion of the Council's forums, planning activities for the coming year, site visits to WEEA grantees, and election of committee officers. This notice also describes the function of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: September 19, 1984, 7:00 p.m. to 10:00 p.m., September 20, 1984, 10:00 a.m. to 12:00 noon, and 1:45 p.m. to 4:00 p.m.; September 21, 1984, 9:00 a.m. to 12:15 p.m. and 1:30 p.m. to 3:30 p.m.

ADDRESS: The meeting will be held at the Capitol Holiday Inn, 550 C Street, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Sally Todd, Deputy Director, National Advisory Council on Women's Educational Programs, 425 13th Street, N.W., Suite 416, Washington, D.C., 20004, (202) 376-1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approval programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on September 19, 1984, from 7:00 p.m. to 10:00 p.m. The agenda will include discussion of the Forums, the Council's FY 1985 budget, unfinished and new business.

The meetings of the Civil Rights, Federal Policies, Practices, and Programs, and WEEA Program Committees will take place on September 21, 1984, from 9:00 a.m. to 10:00 a.m.

The agenda for the Civil Rights Committee will include the election of officers, the Sexual Harassment brochure, the Ambassadorship Program, unfinished and new business.

The agenda for the Federal Policies, Practices, and Programs Committee will include discussion of current legislation, unfinished and new business.

The agenda for the WEEA Program Committee will include discussion of site visits, unfinished and new business.

The meeting of the Council is open to the public. Records will be kept of the proceedings and will be available for public inspection at the Office of the National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C. on August 28, 1984.

Sally A. Todd,

Acting Executive Director.

[FR Doc. 84-23228 Filed 8-30-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Adult Education

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 24–26, 1984, 9:00 a.m. to 5:00 p.m.

ADDRESS: Hotel Stewart, 351 Geary Street, San Francisco, Calif.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 425 13th St., NW., Washington, D.C. 20004, 202/376-8892.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The meeting of the Council is open to the public. The proposed agenda includes: Oath of Office Ceremony, Review of Literacy Report, FY-84 & FY-85 Council Budgets, Committee Reports, ABE/ESL Program Visitation.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 425 13th St., NW., Suite 323, Washington, D.C. 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C. on August 27, 1984.

Rick Ventura,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 84-23270 Filed 8-30-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forth coming meeting of the full Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 25–28, 1984, 9:00 A.M. until conclusion of business each day.

ADDRESS: Sheraton-Santa Fe Inn, 750 North St. Francis Drive, Santa Fe, New Mexico 87501 505/982-5591.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street, NW., Washington, D.C. 20004 (202)/376-8882).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilites under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.

(2) Executive Director's Report.

(3) Action on previous minutes.

(4) Committee discussions and reports.

(5) Review of NACIE's FY'84, FY'85, and FY'86 budgets.

(6) Plans for future NACIE activities.

(7) Regular Council business.

(8) Public Testimony.

(9) On-site visits to Santa Fe/Albuquerque area (September 26–27, 1984).

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street, NW., Suite 326, Washington, D.C. 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Dated: August 28, 1984. Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education

[FR Doc. 84-23271 Filed 8-30-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Establishment of Performance Review Board; Names of Board Members

Section 4314(c) of title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Department of Energy establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s) to review, evaluate, and make a final recommendation on performance appraisals assigned to Departmental members of the Senior Executive Service. The Performance Review Board established for the Department of Energy also makes written recommendations to the Executive Personnel Board or the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards, and performance-related actions.

Section 4314(c) of title 5, United States Code requires that notice of appointment of Performance Review Board members be published in the **Federal Register**. The following persons have been appointed to serve on the performance review board standing register for the Department of Energy:

William F. Anderson
Earl E. Gjelde
Charles E. Kay
Donald H. Pearlman
Emily S. DeRocco
James F. McAvoy
Robert H. Bauer
William S. Heffelfinger
Harry L. Peebles
J. Merle Schulman
Helene S. Markoff
K. Dean Helms
Cleo N. Mitchell, Jr.
Gene K. Fleming
Robert E. Greeves
John W. Polk
Morris L. Myers
Nathaniel H. Pierson
William V. Vitale
Joseph G. Coyne
Charles R. Tierney
Elizabeth E. Smedley
Gail T. Young
Carl W. Guidice
Arthur E. Guyer
McKinley E. Bryant

Berton J. Roth
Thomas J. Davin, Jr.
Vincent E. Mason, II
Edwin R. Itnyre
David G. Newman
Eric J. Fygi
Thomas C. Newkirk
Craig S. Bamberger
Theodore D. Miles
William H. Mellor, III
Melinda Carmen
Robert G. Rabben
James K. White
Ralph D. Goldenberg
Leon Silverstrom
Gordon W. Harvey
Matthew T. Abruzzo
William R. Partridge
Wayne I. Tucker
James U. DeFrancis
Constance Stuart
Christopher J. Warner
George Breznay
Thomas O. Mann
Richard T. Tedrow
Thomas L. Wieker
George J. Bradley, Jr.
Barton R. House
Harold Jaffe
Edward J. Hanrahan
William J. Silvey
Richard H. Williamson
Howard F. Perry
James S. Herod
David E. Patterson
Robert W. Davies
Robert J. Stern
Robert W. Barber
Richard D. Furiga
Joseph R. Maher
Howard S. Coleman
Robert L. San Martin
Melvin H. Chiogioji
Donna Fitzpatrick
Alan J. Streb
Frederick H. Morse
John E. Mock
Richard A. Benson
Louis V. Divone
James S. Kane
George Y. Jordy
Delmar D. Mayhew
William A. Wallenmeyer, Jr.
Richard H. Kropschot
James F. Leiss
Antoinette G. Joseph
John F. Clarke
J. Ronald Young
Robert W. Wood
Charles W. Edington
Donald K. Stevens
Louis C. Ianniello
Bernard Hildebrand
Nelia H. Davies
Ryszard Gajewski
James W. Culpepper
Francis C. Gilbert
John L. Gilbert
Ronald W. Cochran
Maurice J. Katz
Donald K. Gestson
James W. Vaughn, Jr.
John R. Longenecker
Franklin E. Coffman
Neal Goldenberg
Kermit O. Laughon
David B. LeClaire
Gene L. Rogers
John W. Shirley, Sr.
Charles H. Brown, Jr.
Thomas L. Foster
Robert M. Forssell
Carl H. Schmitt
Donald E. Erb
David B. Pye
Donald L. Bauer
Richard E. Harrington
Jeremiah E. Walsh
Augustine A. Pitrolo
Sun W. Chun
Paul T. Michael
James W. Workman
Milton C. Lorenz
Carl A. Corrallo
Avrom Landesman
Albert H. Linden, Jr.
Kenneth A. Vagts
Jimmie L. Petersen
John C. Geidl
Yvonne M. Bishop
Frank E. Lalley
Charles C. Heath
W. David Montgomery
Leonard A. Jacobvitz
Raymond G. Romatowski
Donald Ofte
James R. Nicks
Paul R. Wagner
Jack R. Roeder
William R. Cooper
Charles E. Troell
Hilary J. Rauch
Donald L. Bray
Fred C. Mattmueller
John P. Kennedy
Andrew E. Mravca
Troy E. Wade, II
Nick C. Aquilina
Jon P. Hamric
Richard A. Schwarz
Joe B. LaGrone
Percy Brewington, Jr.
John T. Milloway, Jr.
Ewin B. Kiser, Jr.
C. Raymond Somerlock
Herschel D. Hickman
James C. Hall
William P. Snyder
Richard A. DuVal
Donald W. Pearman, Jr.
Robert L. Morgan
Goetz K. H. Oertel
Thomas R. Clark
Ray D. Duncan
Richard C. Amick
Michael J. Lawrence
Edward S. Goldberg
Harry Geisinger
Warren L. Jamison
Robert J. Cross
Peter J. Johnson
Robert E. Ratcliffe
Edward W. Sienkiewicz, Jr.
James J. Jura
Robert L. McPhail
William H. Clagett, IV
Joe D. Hall
Lawrence R. Anderson
Scott P. Anger
Andrew W. Battese
Ernest Baynard
Raymond A. Beirne
Charles E. Bullock
Robert W. Cackowski
Bernard B. Chew
Lynne H. Church
William Connelly
Marilyn L. Doria
Quentin A. Edson
Philip L. Essley, Jr.
Russell E. Faudree, Jr.
Jerome M. Feit
Morris R. Fitzgerald
Lynn H. Hargis
Howard Kilchrist
Randolph E. Mathura
William G. McDonald
Louis W. Mendonsa
Gordon E. Murdock
Karen K. Nygaard
Kenneth M. Pusateri
William Satterfield
Michael Schopf
Leon J. Slavin
Joseph J. Solters
Robert J. Szekely
Anthony F. Toronto
Charles Teclaw
Maynard Ugol
Barbara J. Weller
Bernard Wexler
Kenneth A. Williams

Issued in Washington, D.C. on August 20, 1984.

Martha Hesse Dolan,
Assistant Secretary, Management and Administration.

[FR Doc. 84-23320 Filed 8-30-84; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Proposed Revision of Form EIA-254; Quarterly Progress Report on Status of Reactor Construction

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of proposed revision to Form EIA-254, "Quarterly Progress Report on Status of Reactor Construction" and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) is proposing a revision of Form EIA-254, "Quarterly Progress Report on the Status of Reactor Construction." The proposed revised form will be titled, "Semiannual Report on the Status of Reactor Construction." After approval by the Office of Management and Budget (OMB) is obtained, the EIA will begin using the revised form in January 1985.

Comments: To obtain additional information or copies of the revised form contact: Justine Johnson, Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration; U.S. Department of Energy, Mail Stop 2F-021; EI-531; Washington, D.C. 20585; (202)252-6330. Written comments must be received on or before October 1, 1984.

Background

The revised Form EIA-254 collects data on nuclear units for electric power generation that are planned or under construction by an electric utility. The form collects data that is used by various DOE offices for analysis and to answer congressional inquiries. In addition, the data are published at the *Survey of Nuclear Power Plant Construction Costs* (DOE/EIA-0439).

The primary data elements are respondent identification, name and location of nuclear electric generating units, contact name, address, telephone number, electrical capacity expressed as design electrical rating in net megawatts, unit construction status, and unit ownership. Estimated nuclear plant costs for the categories of direct, indirect, contingency, common facility costs, Allowance for Funds Used During Construction (AFUDC), and disbursed cost to date are also requested.

The chronological and labor data reported are: date first fuel is to be loaded, date unit is to be placed in commercial operation (month/year), total direct labor required for unit construction from site clearance to full-power licensing (man-hours), and direct labor expended to date.

The revised Form EIA-254 differs from the current verion in two ways: (1) The Form EIA-254 is now mandatory and (2) the frequency of reporting has been reduced from quarterly to semiannually. Other changes include: the manner in which the AFUDC is reported, the addition of questions on labor expended, and the deletion of most of the unit chronological data. As in the past, the revised version of the Form EIA-254 is designed for preprinted data that have been previously submitted. The preprinted data will need only to be verified and updated by the respondent. After the OMB approval is obtained, all U.S. electric utilities must file this form for each qualifying U.S. plant that is planned or under construction. A qualifying plant is any plant that is under construction or any planned nuclear fueled unit which will generate electricity for sale commercially. The Form EIA-254 must be submitted within 30 days after receipt. The number of person-hours required to complete the Form EIA-254 is estimated to be 1 hour per unit. Because this form will be filed semiannually for approximately 55 nuclear reactor units, the annual total industry burden is estimated to be 110 hours. From its information collection budget, the EIA will allocate 110 hours for the collection of the 1985 data.

Request for Comments

The Form EIA-254 is reproduced following this notice. The EIA invites prospective respondents to comment on the planned extension within 30 days of the publication of this notice. The following general guidelines are provided to assist the preparation of responses:

(As a potential respondent)

A. Are the instructions clear and sufficient?

B. Can the data be submitted in accordance with the response time specified in the instructions?

C. How many hours, including time for preparation and administrative review, will your utility require to complete and submit a form for each plant?

D. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

E. How can the form be improved?

F. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency and the means of collection.

(As a potential user)

A. When aggregated for publication in the "Semiannual Report on the Status of Reactor Construction," can you use data indicated on the form?

B. For what purposes would you use these data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are these alternate sources of data and do you use them? What are their deficiencies?

Comments or summaries of comments submitted in response to this notice will be included in the request for the OMB approval of this data collection and will become a matter of public record.

Issued in Washington, D.C., August 28, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450-01-M

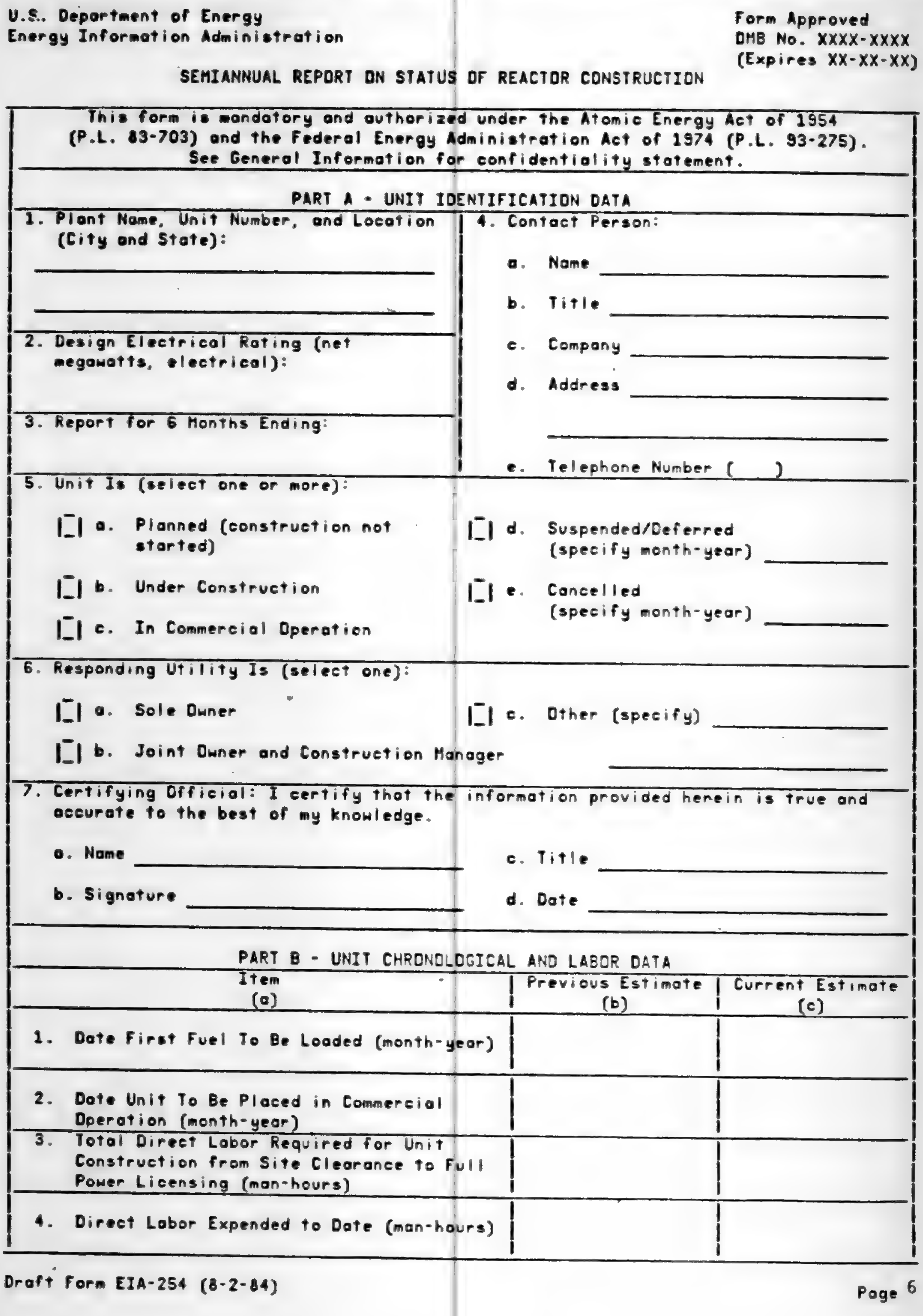

U.S. Department of Energy
Energy Information Administration

Form Approved
OMB No. XXXX-XXXX
(Expires XX-XX-XX)

SEMIANNUAL REPORT ON STATUS OF REACTOR CONSTRUCTION

This form is mandatory and authorized under the Atomic Energy Act of 1954 (P.L. 83-703) and the Federal Energy Administration Act of 1974 (P.L. 93-275). See General Information for confidentiality statement.

PART A - UNIT IDENTIFICATION DATA

1. Plant Name, Unit Number, and Location (City and State): ____________________

2. Design Electrical Rating (net megawatts, electrical):

3. Report for 6 Months Ending:

4. Contact Person:

a. Name ____________________
b. Title ____________________
c. Company ____________________
d. Address ____________________
____
e. Telephone Number (   )

5. Unit Is (select one or more):

☐ a. Planned (construction not started)
☐ b. Under Construction
☐ c. In Commercial Operation
☐ d. Suspended/Deferred (specify month-year) __________
☐ e. Cancelled (specify month-year) __________

6. Responding Utility Is (select one):

☐ a. Sole Owner
☐ b. Joint Owner and Construction Manager
☐ c. Other (specify) __________

7. Certifying Official: I certify that the information provided herein is true and accurate to the best of my knowledge.

a. Name ____________________
b. Signature ____________________
c. Title ____________________
d. Date ____________________

PART B - UNIT CHRONOLOGICAL AND LABOR DATA

Item (a)	Previous Estimate (b)	Current Estimate (c)
1. Date First Fuel To Be Loaded (month-year)		
2. Date Unit To Be Placed in Commercial Operation (month-year)		
3. Total Direct Labor Required for Unit Construction from Site Clearance to Full Power Licensing (man-hours)		
4. Direct Labor Expended to Date (man-hours)		

Draft Form EIA-254 (8-2-84)

U.S. Department of Energy
Energy Information Administration

SEMIANNUAL REPORT ON STATUS OF REACTOR CONSTRUCTION (continued)

PART C - UNIT COST DATA AT COMPLETION

Item (a)	Estimated Cost (thousands of dollars) Previous (b)	 Current (c)
1. Direct Costs		
a. Land and Land Rights		
b. Structures and Improvements		
c. Reactor Plant Equipment		
d. Turbogenerator Units		
e. Accessory Electric Equipment		
f. Miscellaneous Power Plant Equipment		
g. Total Direct Cost (lines 1a to 1f)		
2. Indirect Cost		
3. Contingency Cost		
4. Common Facility Cost (for multiple-unit construction projects only; see instructions)		
5. Allowance for Funds Used During Construction (AFUDC)		
6. Total Unit Cost (lines 1g + 2 + 3 + 4 + 5)		

PART D - UNIT COST DATA TO DATE

Item (a)	Actual Cost (thousands of dollars) Previous (b)	 Current (c)
1. Disbursed Cost to Date With AFUDC		
2. Disbursed Cost to Date Without AFUDC		
3. Disbursed Cost Plus Other Commitments to Date With AFUDC		
4. Disbursed Cost Plus Other Commitments to Date Without AFUDC		

NOTES:

Draft Form EIA-254 (8-2-84)

BILLING CODE 6450-01-C

Semiannual Report on Status of Reactor Construction

General Information

I. Purpose

Form EIA-254, "Semiannual Report on Status of Reactor Construction", collects data on nuclear units for electric power generation that are planned or under construction by an electric utility. The data are utilized by various DOE offices for analyses, in statistical publications, and to answer Congressional inquiries.

II. Who Should Submit

Each electric utility in the United States and Puerto Rico responsible (i.e., the sole owner or construction manager for jointly owned units) for planned nuclear units or nuclear units under construction must submit one form for each such unit. If the respondent is not the sole owner or joint owner and construction manager of the unit, please describe your involvement under Part A, item 6.

III. Where and When to Submit

Mail one copy of Form EIA-254 in the enclosed envelope on or before the date indicated in the cover letter to:

Energy Information Administration
Nuclear and Alternate Fuels Division
Mail Stop 2F-021, Forrestal Building
Washington, D.C. 20585

Retain a completed copy of this form for your files. For additional information, write to the above address, or call Justine Johnson at: (202) 252-6330.

IV. What to Submit

Submit data on the total cost of the unit, even if the unit is jointly owned. For the first filing, complete and submit all of Part A and column c in Parts B, C, and D. For subsequent filings, a preprinted form will be sent. Update preprinted data in Part A by striking out incorrect data and entering correct data. Item 7 in Part A must be completed by a certifying official. Provide current data in column c of Parts B, C, and D. If data from previous reporting period have not changed, write "NC" (no change) in column c. The form EIA-254 need not be completed for a nuclear unit after it is in commercial operation and construction is completed and the total cost for the unit is firm.

V. Sanctions and Confidentiality Statements

This mandatory form is authorized under the Atomic Energy Act of 1954 (P.L. 83-703) and the Federal Energy Administration Act of 1974 (P.L. 93-275). The information will not be published by DOE in individually identifiable form, except as noted under item VI below. Upon receipt of a request for individually identifiable information, DOE will initiate the following procedures:

A. The information will be kept confidential to the extent that it satisfies the criteria in the Freedom of Information Act (FOIA) exemption for trade secrets and confidential commercial information and DOE regulations implementing the FOIA, and is prohibited from public release by the Trade Secrets Act, 18 U.S.C. Sec. 1905.

Upon receipt of a request for disclosure of this information under the FOIA, DOE shall, in accordance with the procedures and criteria provided in 10 CFR 1004.11, make a final determination of whether the information is exempt from disclosure. To assist in this determination, respondents should demonstrate to DOE that their information constitutes trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position.

A letter accompanying the completed form that explains, on an element-by-element basis, if possible, why the information would cause the respondent substantial competitive harm if released to the public would aid in this determination. A new confidentiality statement need not be provided with each form if the statement submitted previously has not changed.

B. Requests from other Federal agencies for this data shall be evaluated in accordance with the DOE Policy on the Disclosure of Individually Identifiable Energy Information in the possession of the EIA (45 FR 59812 (1980)). Respondents should be aware that the information is also subject to release to state agencies for limited purposes when the state can assure protection of the information from release.

C. Except as otherwise provided by law, the information will also be made available in response to an order of a court of competent jurisdiction, or upon written request from: the Congress, any Congressional committee, the General Accounting Office, or other Congressional agencies authorized to receive such information.

VI. Releasable Data

In accordance with DOE FOIA regulations, 10 CFR 1004.11 et seq., EIA plans to release to the public upon request only the following Form EIA-254 data: Part A, items 1 through 6; Part B; Part C, item 6; and Part D, items 1 and 3.

Part C Instructions

Item

1 to 6—All estimated costs should be for the unit at completion of construction. Figures should exclude costs that would be included (when the unit goes into commercial operation) in the Federal Energy Regulatory Commission Uniform System of Accounts (US of A) accounts 350 through 359 (Transmission Plant), 360 through 373 (Distribution Plant), and 389 through 399 (General Plant). Also exclude all fuel costs.

1 to 6—Enter the estimated capital unit cost (except item 4, see below) using a current dollar basis (i.e., as disbursed). Report the total unit cost, even if the unit is jointly owned. Exclude all Allowance for Funds Used During Construction (AFUDC) costs, except in item 5.

1a to 1g—Include the cost of escalation during construction due to inflation. All US of A references are to indicate the type of data requested by line. Report as if construction work in progress amounts were allocated to the indicated accounts when the unit goes into commercial operation.

1a—Report per US of A account 320, Land and Land Rights. Include the cost of land and land rights used in connection with nuclear power generation. Include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leasehold, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land.

1b—Report per US of A account 321, Structures and Improvements. Include the cost in place of structures and improvements used and useful in connection with nuclear power generation. Include vapor containers and nuclear production roads and railroads in this account.

1c—Report per US of A account 322, Reactor Plant Equipment. Include the installed cost of reactors, reactor fuel handling and storage equipment, pressurizing equipment, coolant charging equipment, purification and discharging equipment, radioactive waste treatment and disposal equipment, boilers, steam and feed water piping, reactor and boiler apparatus and accessories and other reactor plant equipment used in the production of steam to be used primarily for generating electricity, including auxiliary superheat boilers and associated equipment in systems which change temperatures or pressure of steam from the reactor system.

1d—Report per US of A account 323, Turbogenerator Units. Include the cost installed of main turbine-driven units and accessory equipment used in generating electricity by steam.

1e—Report per US of A account 324, Accessory Electric Equipment. Include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced by nuclear power, and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts. Such motors shall be included in the account in which the equipment with which they are associated is included. Do not include transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

1f—Report per US of A account 325, Miscellaneous Power Plant Equipment. Include the cost installed of miscellaneous equipment in and about the nuclear generating plant devoted to general station use, and which is not properly includible in any of the foregoing nuclear-power production accounts.

2—Enter the cost of general expense items that apply to the overall construction of a plant, not to a direct cost account. Indirect costs include construction management services, home office engineering and services, field office engineering and services, and owner's indirect costs. Exclude all operator training costs.

3—Enter all allowable for unforeseen or unpredictable costs resulting from design changes, work stoppages, overtime, and other such occurrences.

4—Enter the multiple-unit construction costs that cannot be attributed separately to each unit. Report all common facility costs on the Form EIA-254 of the unit that is expected to go into commercial operation first. Report under NOTES the unit number(s) of the other unit(s) for which common costs are being reported or, as appropriate, the unit number under which common costs are reported. Refer to the common cost section of US of A account 107, Construction Work in Progress—Electric.

5—Enter the amount of the AFUDC allowance to compensate utility debt and equity investors for the use of their money from the time funds for unit construction are spent until the unit goes into operation. Include the AFUDC for all the owners, if the unit is jointly owned. If AFUDC data are not available from another owner, specify under NOTES the name(s) of the other owner(s) of the unit for which AFUDC is not reported.

Part D. Instructions

Item

1 to 4—Enter the actual capital unit cost to date using a current dollar basis (i.e., as disbursed). Report the total unit cost, even if the unit is jointly owned. All costs should exclude the same US of A accounts noted in the first instruction in Part C; also exclude fuel costs.

1, 3—Include the amount of the AFUDC allowance (as per Part C, item 5 instruction) with the disbursement cost (item 1) and disbursed costs plus other commitments (item 3) figures. Include the AFUDC for all the owners, if the unit is jointly owned. If AFUDC data are not available from another owner, specify under NOTES the name(s) of the other owner(s) of the unit for which AFUDC is not reported.

[FR Doc. 84-23272 Filed 8-30-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-649-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 14, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP84-649-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that CIG proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 5,000 Mcf of natural gas per day for the account of NGL Production Company (NGL) pursuant to a gas transportation agreement (Agreement) dated July 3, 1984.

CIG states that it would transport the gas for the account of NGL from existing points of interconnection between the Montana-Dakota Utilities Co. (Mondak) pipeline and the CIG pipeline in Park County, Wyoming, and Fremont County, Wyoming, to Northwest Pipeline Company (Northwest) in Sweetwater County, Wyoming, or at existing interconnections between Northwest and Mountain Fuel Resources, Inc. (Mountain Fuel), in Sweetwater County, Wyoming, and Uintah County, Utah. The Mountain Fuel delivery points would only be used subject to mutual agreement of Northwest, CIG, and Mountain Fuel for specific periods of time and for agreed-upon volumes of gas, it is stated. CIG indicates there would be no additional cost to NGL or CIG for using these additional delivery points.

CIG states that the gas is purchased by Overthrust Gas Brokers Company (OGBC) from Cities Service Oil Company and sold by OGBC to NGL pursuant to a gas purchase contract dated January 18, 1984. CIG indicates that NGL has agreed to pay OGBC $2.455 per million Btu for the gas which includes OGBC's agency fee of 12.0 cents per million Btu and reimbursement of 23.5 cents per million Btu for Mondak's transportation charge incurred in delivering the gas to CIG.

CIG proposes to charge NGL a rate of 36.08 cents per Mcf plus an added incentive charge of 2.5 cents per million Btu, it is indicated. These rates are set forth in CIG's Rate Schedule AIC-1 in CIG's FERC Gas Tariff, Original Volume No. 1, it is explained. CIG states that the proposed end-use of this gas is to replace fuel and shrinkage in the processing of Northwest's gas at NGL's processing plants.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23236 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-158-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 8, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-158-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue transporting natural gas on behalf of Ashland Oil, Inc. (Ashland), under the authorization issued in Docket No. CP84-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia explains that it filed, pursuant to § 157.205 of the Commission's Regulations, its original request for authorization to transport up to 225,000,000 Btu equivalent of natural gas per day on behalf of Ashland for use at Ashland's plant in Covington, Kentucky, on December 29, 1983. The Commission issued a notice of Columbia's request and, since no protest was filed with the Commission, Columbia was authorized to transport gas on behalf of Ashland for the term of the transportation agreement which is to expire on September 20, 1984, it is explained.

Columbia states that Ashland has requested an extension of the transportation service through June 30, 1985. Therefore, a new transportation agreement is being extered into which would provide that Columbia transport up to 225,000,000 Btu equivalent of natural gas per day on behalf of Ashland, it is explained. It is indicated that The Union Light, Heat & Power Company, the distributor serving Ashland, has the capacity to perform the transportation service without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23239 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-170-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 13, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-170-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes an extension of its authority to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 11 billion equivalent of natural gas per day for Bethlehem through June 30, 1985. Columbia states that the gas to be transported would be purchased from Industrial Energy Services Company (IESCO) and Park-Ohio Energy, Inc. (Park-Ohio), and would be used as process gas and boiler fuel in Bethlehem's Steelton, Pennsylvania, plant.

It is indicated that Columbia has released certain gas supplies of IESCO and Park-Ohio and that these supplies are subject to the ceiling price provisions of sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Bethlehem has made arrangements to purchase this released gas from IESCO and Park-Ohio. Columbia states that it would receive the gas from IESCO and Park-Ohio and redeliver the gas to UGI Corporation (UGI), the distribution company serving Bethlehem, near Steelton, Pennsylvania. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) 40.11 cents per dth equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dth equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23240 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-171-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 13, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP8-171-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes an extension of its authority to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 10 billion equivalent of natural gas per day for Bethlehem through June 30, 1985. Columbia states that the gas to be transported would be purchased from Industrial Energy Services Company (IESCO) and Park-Ohio Energy, Inc. (Park-Ohio), and would be used as process gas and boiler fuel in Bethlehem's Bethlehem, Pennsylvania, plant.

It is indicated that Columbia has released certain gas supplies of IESCO and Park-Ohio and that these supplies are subject to the ceiling price provisions of Sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Bethlehem has made arrangements to purchase this released gas from IESCO and Park-Ohio. Columbia states that it would receive the gas from IESCO and Park-Ohio and redeliver the gas to UGI Corporation (UGI), the distribution company serving Bethlehem, near Hellerton, Pennsylvania. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) 40.11 cents per dth equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dth equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23241 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-610-000]

CP National Corp.; Filing

August 28, 1984.

The filing Company submits the following:

Take notice that on August 20, 1984, CP National Corporation ("CPN") tendered for filing related to a Residential Purchase and Sale Agreement (Agreement between CPN and The Bonneville Power Administration ("BPA"):

1. Bonnevile Power Administration's written report on Appendix 1 and Average System Cost submitted by CP National on April 1, 1984.

2. The Average System Cost as determined by Bonneville of 29.83 mills per kilowatt hour.

3. A revised Appendix 1 of CP National wherein the Average System Cost is 29.83 mills per kilowatt hour.

This filing is pursuant to section 205(c) of the Federal Power Act. The Agreement provides for the exchange of electric power between CPN and BPA for the benefit of CPN's residential and farm customers.

A copy of the letter submitting the filing was served upon BPA and "Industrial Customers of BPA."

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23242 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-619-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on July 30, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-619-000 a request, as supplemented August 14 and 20, 1984, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate one new delivery point and appurtenant facilities in Meeker County, Minnesota, to accommodate natural gas deliveries to Western Gas Inc. (Western Gas), which would provide service for the community of Cosmos, Minnesota, under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate a new town border station, 2.3 miles of 3-inch plastic branchline and regulation station necessary to deliver gas to Western Gas. Northern has estimated the cost of construction to be $127,568.

The town of Cosmos would utilize its natural gas for residential and commercial heating, it is asserted. Northern has estimated first year peak day and annual volumes of 113 Mcf and 15,000 Mcf, respectively.

Northern states that initial volumes delivered through the proposed facilities are within Western Gas' existing firm entitlement and that beyond the first year of gas service, Western Gas would be required to contract with Northern for the purchase of incremental firm entitlement to be commensurate with the peak day needs of Cosmos. Northern states that the firm entitlement increase will be the subject of a future separate application pursuant to section 7(c) of the Natural Gas Act.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23243 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-620-000]

Northern Natural Gas Company, Division of InterNorth, Inc., Request Under Blanket Authorization

August 28, 1984.

Take notice that on July 30, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-620-000 a request, as supplemented August 14 and 20, 1984, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate a delivery point and 5.0 miles of 4-inch branch line and appurtenant facilities to accommodate nautral gas deliveries to North Central Public Service (NCPS) for Ham Lake Township, Minnesota, under the authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate one new town border station and associated branchline facilities for the delivery of natural gas to NCPS. Cost of the proposed facilities is estimated at $396,480.

The proposed town border station would supply natural gas to the Ham Lake Township primarily for residential and commercial heating, it is asserted. Northern has estimated peak day and annual volumes of 800 Mcf, and 120,000 Mcf, respectively.

Northern states that initial volumes delivered through the proposed facilities are within NCPS' existing firm entitlement and that beyond the first year of gas service, NCPS would be required to contract with Northern for the purchase of incremental firm entitlement necessary to increase its supplies to a level that would be commensurate with the peak day needs of Ham Lake. Northern states that the firm entitlement increase will be the subject of a future separate application pursuant to Section 7(c) of the Natural Gas Act.

Any person or the Commission's staff may, within 45 days after issuance of the instance notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant requests shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23244 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-632-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 3, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-632-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate one new town border station in Chicago County, Minnesota, in order to establish a new single delivery point to accommodate natural gas deliveries to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), under the authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The new town border station would enable Peoples to deliver natural gas to the North Branch Industrial Park for its commercial and residential needs, it is asserted.

Northern has estimated the cost of construction to be $37,408.

Northern further states that the additional volumes to be delivered through the proposed facilities are within Peoples' present entitlements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23245 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

August 28, 1984.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1982 Basic Report

Valuation Docket No. PV-1478-000 G & T Pipeline Company, P.O. Box 2511, Houston, Texas 77001

On or before October 8, 1984, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 84-23251 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-608-000]

Puget Sound Power & Light Co.; Filing

August 28, 1984.

Take notice that Puget Sound Power & Light Company ("Puget") on August 20, 1984, tendered for filing proposed changes in its Rate Schedule FERC No. 78 relating to the Centralia Transmission Agreement executed on September 22, 1980, between Puget and the City of

Seattle, City Light Department ("Seattle").

The Agreement generally requires Puget to provide capacity for the transmission of Seattle's share of the output from the Centralia Steam-Electric Generating Plant from BPA's C.W. Paul Substation to Puget's Talbot Hill Substation. Charges for service under the Agreement will increase from $1.41 per kilowatt per year to $1.44 per kilowatt per year, effective July 1, 1984. The increase is made pursuant to and in accordance with provisions of the Agreement calling for escalation in the event of certain increased costs incurred by Puget.

A copy of the filing was served upon Seattle.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23246 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-611-000]

Puget Sound Power & Light Co.; Filing

August 28, 1984.

Take notice that Puget Sound Power & Light Company ("Puget") on August 20, 1984, tendered for filing, as an initial rate schedule, Agreement for Standby Transmission Service dated as of April 1, 1984, between Puget and Public Utility District No. 1 of Whatcom County ("District").

The Agreement generally allows Puget to provide the District standby transmission service in the event of an interruption of the District's line. The initial rate is $140 per day for each day that capacity is made available to District. Service under the Agreement commenced on April 1, 1984.

A copy of the filing was served upon District.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23247 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01

[Docket No. G-5045-001, et al.]

Shell Western E&P Inc., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

August 28, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft^3	Pressure base
G-5045-001, D, Aug. 9, 1984	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210.	United Gas Pipe Line Co., Weeks Island Field, Iberia Parish, LA.	(1)	
G-5716-000, D, Aug. 9, 1984	WTA Energy Inc., P.O. Box 30159, Amarillo, TX 79120.	Northern Natural Gas Co., Texas Panhandle Field, Carson County, TX.	(2)	
CI84-531-000, E, Aug. 10, 1984	Tenneco Oil Co. (successor in interest to Shell Western Exploration & Production, Inc.), P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Co., Kansas-Hugoton Field, Haskell County, KS.	(3)	14.73
CI84-532-000, E, Aug. 10, 1984	do	Northwest Central Pipleine Corp., Kansas Hugoton Field, Haskell County, KS.	(3)	14.73
CI84-533-000, E, Aug. 10, 1984	do	Colorado Interstate Gas Co., Kansas Hugoton Field, Grant County, KS.	(3)	14.73
CI84-534-000, E, Aug. 10, 1984	do	Northern Natural Gas Co., Kansas Hugoton Field, various counties, KS.	(3)	14.73
CI84-535-000, E, Aug. 10, 1984	do	Mobil Producing Texas & New Mexico Inc., Kansas Hugoton Field, Grant County, KS.	(3)	14.73
CI84-536-000, E, Aug. 10, 1984	do	Northern Natural Gas Co., Kansas Hugoton Field, Grant County, KS.	(3)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI84-537-000, E, Aug. 10, 1984	do	Mobil Producing Texas & New Mexico Inc., Kansas Hugoton Field, Grant County, KS.	(3)	14.73
CI84-538-000, E, Aug. 10, 1984	do	Northern Natural Gas Co., Kansas Hugoton Field, Haskell County, KS.	(3)	14.73
CI84-539-000, E, Aug. 10, 1984	do	Northwest Central Pipeline Corp., Kansas Hugoton Field, various counties, Kansas.	(3)	14.73
CI84-540-000, E, Aug. 10, 1984	do	Northern Natural Gas Co., Kansas Hugoton Field, Haskell County, KS.	(3)	14.73
CI84-541-000, E, Aug. 10, 1984	do	do	(3)	14.73
CI84-542-000, E, Aug. 10, 1984	do	Panhandle Eastern Pipe Line Co., Kansas Hugoton Field, Grant County, KS.	(3)	14.73
CI84-543-000, E, Aug. 10, 1984	do	Northern Natural Gas Co., Kansas Hugoton Field, Haskell County, KS.	(3)	14.73
CI84-544-000, E, Aug. 10, 1984	Phillips Petroleum Co. (successor in interest to Phillips Oil Co.), 336 HS&L Bldg., Bartlesville, OK 74004.	United Gas Pipe Line Co., Crescent Farms & Hollywood Fields, Terrebonne Parish, LA.	(4)	14.73
CI84-545-000, A, Aug. 13, 1984	Amoco Production Co. (USA), Post Office Box 50879, New Orleans, LA 70150.	Amoco Gas Co., South Timbalier Block 161, Offshore, LA.	(5)	15.025
CI85-547-000, D, Aug. 9, 1984	Edwin L. Cox, 3800 InterFirst One, Dallas, TX 75202.	Natural Gas Pipeline Co. of America, Camrick Area, Texas and Beaver Counties, OK.	(6)	
CI84-548-000, A, Aug. 17, 1984	Getty Oil Co., P.O. Box 1404, Houston, TX 77001	Tennessee Gas Pipeline Co., West Cameron Block 67, Offshore, LA.	(7)	
CI84-549-000 (CI76-460), B, Aug. 13, 1984.	Texaco Inc., P.O. Box 60252, New Orleans, LA 70160.	Transcontinental Gas Pipe Line Corp., High Island 206 Field, Offshore, TX.	(8)	
G-4622-002, CI63-657-002, July 20, 1984.	Amoco Production Co., Donnell Drilling Co., 1925 Mercantile Dallas Bldg., Dallas, TX 75201.	El Paso Natural Gas Co., Levelland Gasoline Plant, Hockley County, TX.	(9)	
G-9299-000, D, Aug. 13, 1984	Phillips Petroleum Co., 336 HS&L Bldg., Bartlesville, OK 74004.	El Paso Natural Gas, Tunstill Plant, Reeves County, TX.	(10)	
G-12004-004, D, Aug. 13, 1984	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Transcontinental Gas Pipe Line Corp., West Gueydan Field, Vermilion County, LA.	(11)	
CI61-649-000, D, Aug. 15, 1984	Gulf Oil Corp., Post Office Box 2100, Houston, TX 77252.	Texas Gas Transmission Corp., Bayou Sale Field, St. Mary Parish, LA.	(12)	
CI65-739-003, D, Aug. 16, 1984	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210.	ANR Pipeline Co., Kings Bayou Field, Cameron Parish, LA.	(13)	
CI72-685-001, D, Aug. 13, 1984	Phillips Petroleum Co., 336 HS&L Bldg., Bartlesville, OK 74004.	El Paso Natural Gas Co., Tunstill Plant, Reeves County, TX.	(14)	
CI74-184-002, D, Aug. 16, 1984	Pan Eastern Exploration Co., P.O. Box 1330, Houston, TX 77251-1330.	Panhandle Eastern Pipe Line Co., Hemphill County, TX.	(15)	
CI79-394-001, D, Aug. 15, 1984	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Co., Domkey & Larena Fields, Beaver County, OK.	(16)	
CI80-341-001, E, Aug. 16, 1984	Phillips Petroleum Co. (successor in interest to Phillips Oil Co.), 336 HS&L Bldg., Bartlesville, OK 74004.	Tennessee Gas Pipeline Co., East Cameron Block 353 Field, Cameron Parish, LA.	(17)	14.73
CI80-403-001, E, Aug. 16, 1984	do	Transcontinental Gas Pipe Line Corp., West Cameron Area, Offshore Cameron, LA.	(18)	14.73
CI84-546-000, B, Aug. 6, 1984	Orla Petco, Inc	Phillips Petroleum Co., Geraldine Field, Reeves County, TX.	(19)	
CI84-550-000, B, Aug. 13, 1984	James Joseph LaRosa, GPC 3355, Chart Code 2930.	Consolidated Gas Supply Corp., Coal District, Harrison County, WV.	(20)	
CI84-551-000, B, Aug. 15, 1984	Gulf Oil Corp., P.O. Box 2100, Houston, TX 77252	Equitable Gas Co., Glenville West Field, Gilmer County, WV.	(21)	
CI84-552-000 (CI84-248), B, Aug. 16, 1984.	Phillips Oil Co., 336 HS&L Bldg., Bartlesville, OK 74004.	Florida Gas Transmission Co., Nueces Bay Field, Nueces County, TX.	(22)	

[1] Acreage released to lessors effective May 2, 1984.

[2] Buyer has determined that five oil wells producing casinghead gas and which are located on committed and dedicated acreage do not qualify for connection. Buyer has released the wells on the dedicated acreage from the contract.

[3] Tenneco Oil Company is acquiring this property as of April 1, 1984.

[4] Effective December 1, 1983, Phillips Oil Co. assigned to Applicant, its interest in various leases in the Crescent Farms and Hollywood Fields in Terrebonne Parish, Louisiana.

[5] Applicant is filing under Gas Purchase Contract dated July 20, 1984.

[6] Depletion of reserves. Wells ceased to produce in January, 1981.

[7] Applicant is filing under Gas Purchase Contract dated August 6, 1984.

[8] All Texaco acreage committed to this Gas Rate Schedule has been assigned to Huffco Petroleum Corp.

[9] Change in delivery point.

[10] The gathering system serving the wells for which abandonment is sought was rendered inoperable and is uneconomical to repair

[11] Mobil Oil Exploration & Producing Southeast Inc. assigned 100% of its rights, title and interest of the property to the Great Southern Oil & Gas Inc.

[12] Two leases have been completely released and the third lease has been partially released.

[13] Leases released to lessors effective July 13, 1984.

[14] The gathering system serving the wells for which abandonment is sought was rendered inoperable and is uneconomical to repair

[15] In order for Panhandle to receive this gas four transportation agreements needed to be negotiated. Panhandle was unable to work out these agreements. Gas was never produced in commercial quantities attributable to Pan Eastern Exploration Company's interest.

[16] Depleted reserves.

[17] Effective December 1, 1983, Phillips Oil Co. assigned to Applicant, its interest in the OCS-G-2262 and produced from "A" Platform in Block 353 in the East Cameron Area, South Addition, Offshore Cameron Parish, Louisiana.

[18] Effective December 1, 1983, Phillips Oil Co. assigned to Applicant, its interest in the West Cameron Area, Block 33 Field, Offshore Cameron Parish, Louisiana.

[19] Purchaser (Phillips Petroleum Co.) has discontinued operation of the Gathering System due to unprofitability.

[20] Wells have not produced since 1976.

[21] The only lease covered by the contract dated September 21, 1971, as amended, between Gulf and Equitable was cancelled on August 10, 1983 and the last well on the lease was plugged and abandoned as of the same date.

[22] All leases have been assigned.

Filing Code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 84-23248 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01

[Docket No. CP77-52-007]

Trunkline Gas Co.; Petition To Amend

August 28, 1984.

Take notice that on July 30, 1984, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-52-007 a petition to amend the Commission's order issued December 14, 1978, in Docket No. CP77-52-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize a change in the transportation service which Trunkline provides to Gulf Oil Company (Gulf), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that presently Trunkline is transporting natural gas for Gulf pursuant to a transportation agreement dated September 24, 1976, as amended October 10, 1977. It is stated that this service was authorized by the order issued December 14, 1976. It is further stated that Trunkline performs this service under Rate Schedule T-26 of its FERC Gas Tariff, Original Volume No. 2.

Trunkline proposes under the terms of Amendment No. 2 that the contract quantity would, on April 1, 1984, increase to 120,000 Mcf of gas per day, and on April 1, 1985, the contract quantity would be reduced to 62,208 Mcf for a period to two years. It is asserted that at the end of that two-year period, Gulf would nominate a contract quantity, within the limits provided in the Amendment, for the next two-year period.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23249 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-643-000]

United Texas Transmission Company, et al.; Complaint, Petition for Declaratory Order and Petition for Investigation

August 28, 1984

Take notice that on August 10, 1984, United Texas Transmission Company (UTTCO), 600 Travis—P.O. Box 1478, Houston, Texas 77001, filed a complaint and petition in Docket No. CP84-643-000 pursuant to Rules 206 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.206 and 385.207) requesting that the Commission find that certain natural gas sales by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), to Entex, Inc. (Entex), and which Entex allegedly resells to Houston Lighting & Power (HL&P), are in violation of the Natural Gas Act, that the Commission direct Tennessee to cease its violations, and that the Commission initiate an investigation, all as more fully set forth in the petition on file with the Commission and open to public inspection.

UTTCO asserts Tennessee holds certain authorizations to make sales of natural gas of up to 20,332 Mcf per day to Entex at eight designated locations in Mississippi, under Tennessee's Rate Schedules G and GS, and to make overrun sales at the same designated locations, under Tennessee's Rate Schedule R. UTTCO states that notwithstanding the volumetric and geographic limitations of the certificates and rate schedules, filings by Tennessee in Docket No. ST84-771-000 and its affiliate, Channel Industries Gas Company (Channel, a Texas intrastate pipeline), in Docket No. ST84-794-000, show that Tennessee is making sales to Entex of up to 100,000 Mcf of gas per day for resale to HL&P's Cedar Bayou power plant near Houston, Texas.

UTTCO asserts that Tennessee has no certificate authority to make unlimited interruptible sales to Entex for resale to customers geographically removed from the areas to which the underlying service certificate relates nor to new customers at any location. UTTCO alleges that, stripped of the participation by Entex, the transaction is a massive off-system sale by Tennessee to HL&P, and that the transaction is an attempt by Tennessee to displace other suppliers in a market Tennessee is not certificated to serve. UTTCO further alleges Tennessee, Entex and Channel purportedly used Section 311 of the Natural Gas Policy Act of 1978 as authority to carry out the transaction.

UTTCO requests that the Commission (a) issue an order requiring Tennessee and Entex to show cause why they should not be held in violation of Section 7 of the Natural Gas Act and institute an immediate investigation into the matters set forth in UTTCO's complaint; (b) immediately order Tennessee to cease and desist from the sales to Entex for resale outside the specified Mississippi service areas and issue an appropriate declaratory order that such sales are in violation of the Natural Gas Act; and (c) grant UTTCO such other relief as may be just, including that necessary to compensate for harm done. If the Commission is unable to issue such orders, UTTCO requests that the Commission institute an evidentiary hearing on these matters and any other related matters.

Pursuant, to Rule 213 of the Commission's Rules of Practice and Procedure, Tennessee, Entex and Channel are to respond within 30 days from the date of this notice.

Any person desiring to be heard or to make any protest with reference to said petition and complaint should on or before September 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23250 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-555-000]

ANR Production Co.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited-Term Partial Abandonment Authorization

August 27, 1984.

Take notice that on August 17, 1984, ANR Production Company (ANR or Applicant), of 5075 Westheimer, Suite 1100 West, Houston, Texas 77056, filed an application for Limited-Term Partial Abandonment and Limited-Term Blanket Certificate of Public Convenience and Necessity and Request for Expedited Review pursuant to sections 4 and 7 of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act.

The certificate would authorize (1) the partial abandonment of the sale to Transcontinental Gas Pipe Line Corporation (Transco) from Mustang Island Block A-85; (2) a limited-term certificate of public convenience and necessity for the short-term sale of gas from Mustang Island Block A–85 using a spot sales format; and (3) the transportation of gas under ANR's spot sales program by any willing intrastate pipeline, Hinshaw pipeline or interstate pipeline.

Applicant seeks authorization for the period from the date of authorization through December 31, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23230 Filed 8–30–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84–556–000]

Cenergy Exploration Co.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited-Term Partial Abandonment Authorization

August 27, 1984.

Take notice that on August 17, 1984, Cenergy Exploration Company (Cenergy or Applicant), of 10210 N. Central Expressway, Suite 500, Dallas, Texas 75231, filed an application for Limited-Term Partial Abandonment and Limited-Term Blanket Certificate of Public Convenience and Necessity and request for Expedited Review pursuant to sections 4 and 7 of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act.

The certificate would authorize (1) the partial abandonment of the sale to Transcontinental Gas Pipe Line Corporation (Transco) from Vermilion Block 348; (2) a limited-term certificate of public convenience and necessity for the short-term sale of gas Vermilion Block 348 using a spot sales format; (3) the transportation of gas under pipeline, Hinshaw pipeline or interstate pipeline.

Applicant seeks authorization for the period from the date of authorization through December 31, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protest and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23231 Filed 8–30–84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5 and Project No. 2776]

The Montana Power Co. and the Confederated Salish and Kootenai Tribes of the Flathead Reservation; Availability of Environmental Assessment

August 31, 1984.

The Montana Power Company (MPC) was issued a fifty-year license for the Kerr Project in 1930. The original license expired on May 22, 1980, and is currently under annual license to MPC. Competing applicants for the new license are MPC and the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

This notice is being issued in light of the Presiding Judge's order of July 11, 1984, and in light of the decision in *Confederated Tribes and Bands of the Yakima Indian Nation* v. *FERC,* Nos. 82–7561, 82–7562, and 83–7038 (9th Cir. Jun. 7, 1984).

An Environmental Assessment of the project has been prepared by the Commission staff. A section on project safety has been included in this assessment. This notice solicits comments from the public indicating any concerns above and beyond those noted in the Environmental Assessment, including whether an environmental impact statement is needed.

The Commission staff, in preparing this Environmental Assessment, analyzed the need for power, the proposed project and alternatives, and the environmental impacts.

The Environmental Assessment makes the following findings. Issuance of a license for the Kerr Project would perpetuate conditions that have existed for almost 50 years. Lands used for project purposes would continue to be preempted from other uses. Continued operation of the Kerr Project by either MPC or the Tribes would not result in any additional impacts or exacerbate those impacts that have occurred or would continue to occur under the operational regime proposed by either applicant. The development of appropriate mitigative measures would ensure that the future operation of the project would not significantly affect the environmental resources of the project area.

On the basis of the record and staff's independent environmental analysis, the issuance of a license for the Kerr Project with appropriate mitigative measures would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff concludes that an Environmental Impact Statement is not required.

The Environmental Assessment will be available for public review at the following libraries:

1. Polson City Library, 1st Street East, Polson, Montana.
2. Flathead County Library, 247 1st Avenue East, Kalispell, Montana.
3. Missoula Public Library, 301 East Main, Missoula, Montana.

All comments should be filed within 20 days of the date of this notice and addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should clearly show the project name and number (Project Nos. 5 & 2776) on the first page.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23229 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-274-004]

Mountain Fuel Resources, Inc.; Filing

August 27, 1984.

Take notice that on August 16, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance Substitute Original Sheet No. 76 to its FERC Gas Tariff, First Revised Volume No. 1 and Substitute Original Sheet Nos. 8, 9, 10, and 12 to its FERC Gas Tariff, Original Volume No. 3.

Resources states that it has incorporated certain suggestions and requests made by the Staff of the Commission into the tendered tariff sheets as follows: Sheet No. 76 is revised to reflect the revisions to Appendix A to Resources' Form of Service Agreement; Sheet No. 8 is revised to include a $0.29199/Dth rate as Resources' temporary transportation rate applicable to services conditioned upon adherence to § 284.103 of the Commission's regulations; Sheet Nos. 9 and 10 are revised to clarify reference to gathering service as not being subject to the jurisdiction of the Commission, to exclude reference to gathering under Resources' Rate Schedule X-33, and to include gathering as a service performed under Rate Schedules X-22, X-23 and X-31; Sheet No. 10 is revised to exclude reference to temporary transportation for Pacific Gas and Electric Company; and Sheet No. 12 is revised to reference the applicable charges and reimbursements set forth on Resources' Statement of Effective Rates in Original Volume No. 3 of its FERC Gas Tariff.

Resources states that it has further revised Sheet No. 8 to state the currently effective GRI charge applicable to transportation for end-users and those customers that do not include a GRI charge in their rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23232 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-47-012]

Northwest Pipeline Corp.; Compliance With Opinion 213

August 27, 1984.

Take notice that on August 13, 1984, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as a part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Fifteenth Revised Sheet No. 10
Tenth Revised Sheet No. 10-A
Second Revised Sheet No. 81

Original Volume No. 2

Tenth Revised Sheet No. 2
Fifth Revised Sheet No. 2-A
Fifth Revised Sheet No. 2-B

The above mentioned tariff sheets are revised to incorporate the reassignment of debt costs and the capitalization structure between Northwest's Rate Schedule T-1 and all other services performed by Northwest under the terms of the Commission's Opinion 213 in Docket No. RP81-47-000 dated April 5, 1984. In the event the Commission does not accept certain of the above-listed tariff sheets for filing, Northwest has requested that Alternate Fifteenth Revised Sheet No. 10 and Alternate Tenth Revised Sheet No. 10-A of its FERC Gas Tariff, Revised Volume No. 1 and Alternate Fifth Revised Sheet No. 2-B of its FERC Gas Tariff, Original Volume No. 2 be made effective in lieu of Fifteenth Revised Sheet No. 10, Tenth Revised Sheet No. 10-A and Fifth Revised Sheet No. 2-B.

An affective date of June 1, 1984, is requested for all tariff sheets referenced in this docket.

A copy of this filing has been served on all parties on record in Docket No. RP81-47-000 and all affected state agencies.

Any persons desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE. Washington, DC. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23233 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-34-000]

Roche Products, Inc.; Complaint

August 27, 1984.

Take notice that on August 9, 1984, Roche Products, Inc. (Roche) submitted for filing its complaint pursuant to section 385.206 of the Commission's Rules of Practice and Procedure.

Roche states in this complaint that Puerto Rico Electric Power Authority (PREPA) is in contravention of §§ 292.303 and 292.401 of the Commission's regulations. Roche states that PREPA refuses to purchase energy and capacity from qualifying facilities, refuses to sell energy and capacity to qualifying facilities in accordance with § 292.305 of the Commission's regulations, and refuses to make such interconnections with qualifying facilities necessary to accomplish purchases and sales required by § 292.303. Further Roche states that PREPA has not offered to operate in parallel with any qualifying facility which complies with applicable standards and has not implemented subpart C of the Commission's regulations under section 210 of the Public Utility Regulatory Policies Act of 1978.

According to Roche in every application for certification filed prior to the application filed by Roche Products, Inc., PREPA has intervened. Lacking a substantive basis for challenge, it merely petitioned, according to Roche, for an evidentiary hearing or in the alternative for the proceeding to be held in abeyance pending PREPA's submission of a petition for rulemaking.

Roche states that because PREPA has refused to recognize even one qualifying facility and has challenged all applicants for qualifying status, even when it has no basis for doing so, there is some question as to PREPA's good faith.

Wherefore, Roche requests that:

PREPA be ordered to implement that regulations enumerated above expeditiously and in good faith.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23234 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of approximately 1,950 grams of plutonium and 11,130 grams of depleted uranium to the Power Reactor and Nuclear Fuel Development Corp., Tokai-Mura, Japan, for use in the fabrication of mixed oxide fuels for the fast breeder reactor program. The United States Nuclear Regulatory Commission has issued license number XSNM 2070 for the export of this material to Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of this nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 27, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23173 Filed 8-30-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51528; TSH-FRL 2634-6]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-19244 beginning on page 29451, in the issue of Friday, July 20, 1984, make the following correction: On page 29452, second column, the second line under the heading "PMN 84-925" should read "Chemical. (G) Substituted substituted".

BILLING CODE 1505-01-M

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-19739 beginning on page 30238 in the issue of Friday, July 27, 1984, make the following corrections:

1. On page 30240, first column, the number at the beginning of the ninth line should read "100" and the two less-than/equal-to signs in the last line should be greater-than signs.

2. On page 30240, third column, the less-than/equal-to sign in the ninth line under the heading PMN-84-971 should be a greater-than sign.

BILLING CODE 1505-01-M

[OPTS-51534; FRL-2662-5]

Toxic Substances; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-six PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-1074, 84-1075, 84-1076, 84-1077 and 84-1078—November 17, 1984.

PMN 84-1079, 84-1080, 84-1081, 84-1082, 84-1083, 84-1084, 84-1085 and 84-1086—November 18, 1984.

PMN 84-1087, 84-1088, 84-1089, 84-1090, 84-1091, 84-1092, 84-1093, 84-1094, 84-1095, 84-1096, 84-1097, 84-1098 and 84-1099—November 20, 1984.

Written comments by:

PMN 84-1074, 84-1075, 84-1076, 84-1077 and 84-1078—October 18, 1984.

PMN 84-1079, 84-1080, 84-1081, 84-1082, 84-1083, 84-1084, 84-1085 and 84-1086—October 19, 1984.

PMN 84-1087, 84-1088, 84-1089, 84-1090, 84-1091, 84-1092, 84-1093, 84-1094, 84-1095, 84-1096, 84-1097, 84-1098 and 84-1099—October 21, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51534]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-1074

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Polyurethane polymer.

Use/Production. (S) Polyurethane polymer for use in compounded sealants and adhesives. Prod. range: 50,000-250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 2 hrs/da.

Environmental Release/Disposal. No release.

PMN 84-1075

Manufacturer. Confidential.

Chemical. (G) Propargyl ester.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 85–360 kg/yr.

Toxicity Data. Acute oral: 155 mg/kg; Acute dermal: 0.05 g/kg; Irritation: Skin—Not determined.

Exposure. Confidential.

Environmental Release/Disposal. 0.05 to less than 1 kg/batch released to land. Disposal by incinceration and landfill.

PMN 84–1076

Manufacturer. The Dow Chemical Company.

Chemical. (S) Benzene, 1-(1-phenylethenyl)-3-(1-phenylethyl).

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 1 worker.

Environmental Release/Disposal. Less than 0.005 to 0.01 kg/hr, less than 1 kg/day and 0.5 kg/drum released to air with less than 1 kg/day to less than 0.5 kg/drum to water. Disposal by incineration and navigable waterway after treatment.

PMN 84–1077

Manufacturer. Confidential.

Chemical. (G) Polyamine ion exchange resin.

Use/Production. (S) Industrial water demineralization and metals extraction. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Less than 1 kg/batch released to air, water or landfill. Disposal by incineration, landfill and navigable waterway.

PMN 84–1078

Manufacturer. The Dow Chemical Company.

Chemical. (G) Partial sodium salt of aminomethylene phosphonic acid.

Use/Production. (G) Scale inhibitor. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to water. Disposal by navigable waterway after treatment.

PMN 84–1079

Manufacturer. The Dow Chemical Company.

Chemical. (G) Alkylated diphenyl oxide.

Use/Production. (S) Site-limited and industrial intermediate for sulfonated product to be used on site to manufacture surfactants and sold to others as a raw material to make sulfonated surfactants. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Moderate, Eye—Slight.

Exposure. Manufacture and use: dermal.

Environmental Release/Disposal. Release to air and water. Disposal by navigable waterway after treatment.

PMN 84–1078

Manufacturer. Confidential.

Chemical. (G) Cyclic phosphite.

Use/Production. (G) Polymer stabilizer. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames Test: No mutagenic activity; 14 Day dietary toxicity study: Negative; LC_{50} 96 hr (Bluegill): >1,000 mg/1.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1081

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to land. Disposal by controlled landfill.

PMN 84–1082

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to land. Disposal by publicly owned treatment works (POTW) and controlled landfill.

PMN 84–1083

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to land. Disposal by controlled landfill.

PMN 84–1084

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to water and land. Disposal by POTW and controlled landfill.

PMN 84–1085

Importer. Confidential.

Chemical. (G) Polymer of aliphatic diamines, and alkanediol polyester, a monoalcohol polyether, and aliphatic diisocyanates.

Use/Import. (S) One of the polymers in a fabric finish—for the treatment of industrial fabrics. Prod. range: 100,000–500,000 kg/yr.

Toxicity Data. None expected.

Exposure. None expected.

Environmental Release/Disposal. Release negligible.

PMN 84–1086

Importer. Marubeni America Corporation.

Chemical. (G) Caprolactone modified by hydroxy ethyl acrylate.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. Ames Test: Negative; TLm_{24} (Fish)—6 parts per million (ppm); TLm_{48} (Fish) 6 ppm; TLm_{96} (Fish) 6 ppm.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84–1087

Manufacturer. Confidential.

Chemical. (G) Modified polyester.

Use/Production. (G) Coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 14 workers, up to 6 hrs/da.

Environmental Release/Disposal. No release.

PMN 84–1088

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (G) Coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 14 workers, up to 6 hrs/da.

Environmental Release/Disposal. No release.

PMN 84-1089

Manufacturer. Confidential.

Chemical. (G) Modified, maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land. Disposal by sanitary landfill and plant air oxidation lagoon.

PMN 84-1090

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84-1091

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84-1092

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84-1093

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84-1094

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84-1095

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use:, dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84-1096

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84-1097

Importer. Confidential.

Chemical. (G) Alkyl phosphate ester amine salt.

Use/Import. (S) Industrial and consumer softener and water repellent for leather. Import range: Confidential.

Toxicity Data. Acute oral: 10,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 4 workers.

Environmental Release/Disposal. Disposal by on-site biological treatment.

PMN 84-1098

Manufacturer. Georgia-Pacific Corporation.

Chemical. (G) Acetal interpolymer.

Use/Production. (G) Chemical stabilizer. Prod. range: 10,000–20,000 kg/yr.

Toxicity Data. Acute oral: 2.5 g/kg; Irritation: Eye—Slight to no irritation; LC_{50}—4,000 ppm.

Exposure. Manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. No relase.

PMN 84-1099

Importer. Molecular Rearrangement, Inc.

Chemical. (S) 4-anilino-4'-hydroxy azo benzene.

Use/Import. (S) Industrial light sensitive dyestuff for film. Import range: 50–150 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Use: dermal.

Environmental Release/Disposal. No release.

Dated: August 27, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-23048 Filed 8-30-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59169; FRL-2662-4]

Toxic Substances; Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing

purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by September 17, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-59169]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Managment Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

TME 84-78

Close of Review Period. October 6, 1984.

Manufacturer. Confidential.

Chemical. (G) Modified, maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land. Disposal by sanitary landfill and plant air oxidation lagoon.

TME 84-79

Close of Review Period. October 6, 1984.

Manufacture. Confidential.

Chemical. (G) Alkyl phosphate potassium salt.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: August 27, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-23049 Filed 8-30-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2662-8]

Availability of Environmental Impact Statements Filed August 20, 1984 Through August 24, 1984

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840378, Draft, AFS, TX, NM, OK, Cibola National Forest and Kiowa, Rita Blanca, Black Kettle and McClellan Creek National Grasslands, Land and Resource Management, Due: December 10, 1984, Contact: C. Phil Smith (505) 766-2185.

EIS No. 840379, Final, FHW, AR, Pine Bluff Railroad Demonstration Project, Jefferson County, Due: October 1, 1984, Contact: Paul Pool (501) 378-5355.

EIS No. 840380, Draft, EPA, REG, Volatile Organic Liquid Storage Tanks, VOC Emissions, Standards of Performance, Due: October 15, 1984, Contact: James Durham (919) 541-5671.

EIS No. 840381, Draft, COE, IA, Mississippi River Lock and Dam 11 Hydropower Development, Dubuque County, Due: October 15, 1984, Contact: (309) 788-6361 EXT 6384.

EIS No. 840382, Final, BLM, NV, White Pine Power Project, 1500 MW Coal-Fired Electric Generating Station, Development, Right-of-Way, White Pine County, Due: October 1, 1984, Contact: Ed Tilzey (702) 784-5448.

EIS No. 840383, Final, AFS, WA, Early Winters Alpine Winter Sports Study, Ski Development, Permit, Okanogan National Forest, Okanogan County, Due: October 1, 1984, Contact: Michael Lunn (509) 422-2704.

EIS No. 840384, Draft, COE, NJ, Molly Ann's Brook Flood Control Project, Passic County, Due: October 15, 1984, Contact: Lou Benard (212) 264-3609.

EIS No. 840385, Draft, COE, NY, VT, Narrows of Lake Champlain Federal Channel, Maintenance Dredging, Whitehall to Benson Landing, Due: October 15, 1984, Contact: Karen Gustina (212) 264-4662.

EIS No. 840386, DSuppl, EPA, SC, Georgetown Harbor Area, Ocean Dredged Material Disposal Site, Designation, Georgetown, Horry and Eley Counties, Due: October 15, 1984, Contact: Theodore Bisterfeld (404) 881-3776.

EIS No. 840387, Draft, FHW, NC, Bogue Sound (Third) Bridge, Construction, US 70 to NC-58, Carteret County, Due: October 15, 1984, Contact: Ken Bellamy (919) 755-4346.

Dated: August 28, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-23159 Filed 8-30-84; 8:45 am]

BILLING CODE 6560-50-M

[A-2-FRL-2663-6]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Action.

SUMMARY: The purpose of this notice is to announce that between August 1, 1983, and June 30, 1984, the U.S. Environmental Protection Agency, Region II, issued ten final determinations relative to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart. (See **SUPPLEMENTARY INFORMATION**)

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng., Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA has made final determinations relative to the sources listed below:

Name of applicant	Type of source	Location	Type of final action	Date of final action
New York City Department of General Services.	Installation of two 750 KW emergency diesel engines.	New York, NY	PSD nonapplicability	Sept. 13, 1983.
Auburn Steel Company, Inc	Expansion of steel furnance capacity	Auburn, NY	Final PSD permit	Sept. 27, 1983.
IBM	Installation of 5 emergency units	Owego, NY	Modification of PSD permit	Oct. 12, 1983.
Consolidated Gas Supply Corporation.	Turbine replacement at gas transmission station.	Tompkins County, NY	Final PSD permit	Oct. 31, 1983.
Schering-Plough Corporation (SPC).	Construction of a new oil and gas-fired boiler to replace old equipment.	Chatham, NJ	Final PSD permit	Nov. 22, 1983.
Procter and Gamble Co	Request for use of natural gas as back-up fuel to wood-fired boiler.	Staten Island, NY	Modification of PSD permit	Nov. 25, 1983.
New York Power Authority	700 MW coal and refuse-fired steam generating facility.	Arthur Kill Station, Staten Island, NY	Denial of PSD permit	Feb. 6, 1984.
VIRCO	New petroleum refinery	St. Croix, Virgin Islands	Denial of PSD permit extension request	Mar. 30, 1984.
Roche Products, Inc	Cogeneration facility	Manati, Puerto Rico	Final PSD permit	June 12, 1984.
Tishman Speyer Crown Realties	Cogeneration facility	375 Hudson Street, New York, NY	Final PSD permit	June 12, 1984.

The notice contains only a list of the sources which have received final determinations. Copies of these determinations and related materials are available for public inspection at: Environmental Protection Agency, Region II Office, Permits Administration Branch, Office of Policy and Management, 26 Federal Plaza, Room 432, New York, New York 10278 (212) 264-4711.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register.** Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 22, 1984.

Richard T. Dewling,

Acting Regional Administrator.

[FR Doc. 84-23197 Filed 8-30-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 16-17, 1984

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on July 16-17, 1984.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that the expansion in economic activity is continuing at a strong pace, but there are indications of moderation in some sectors. In May and June, industrial production and retail sales expanded further, though at a somewhat slower pace than earlier in the year. Nonfarm payroll employment rose substantially further in both months and the civilian unemployment rate fell to 7.1 percent in June. Housing starts declined in May to a rate appreciably below the average in the first fourth months of 1984. Information on outlays and spending plans continues to suggest strength in business fixed investment. Since the beginning of the year, average prices and the index of average hourly earnings have risen more slowly than in 1983.

M1 grew rapidly in May and June after having changed little in April, while M2 continued to expand moderately. M3 growth slowed somewhat in June but was relatively strong over the second quarter. From the fourth quarter of 1983 through June, M1 grew at a rate somewhat below the upper limit of the Committee's range for 1984; M2 increased at a rate a little below the midpoint of its longer-run range, while M3 expanded at a rate above the upper limit of its range. Total domestic nonfinancial debt continued to grow in the second quarter at a pace above the Committee's monitoring range for the year, reflecting very large government borrowing along with strong private credit growth. Interest rates have fluctuated considerably since the May meeting of the Committee. Financial markets were affected by concerns arising from international debt problems. On balance, rates on private short-term securities rose further, while rates on Treasury bills were about unchanged; in long-term debt markets, rates on most private obligations changed little while those on Treasury bonds declined.

The foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has risen considerably further since mid-May to a level above its peak in early January. The merchandise trade deficit rose further in April-May compared with the first quarter; an increase in oil and non-oil imports exceeded a slight rise in exports.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at this meeting to reaffirm the ranges for monetary growth that it had established in January: 4 to 8 percent for M1 and 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The associated range for total domestic nonfinancial debt was also reaffirmed at 8 to 11 percent for the year 1984. It was anticipated that M3 and nonfinancial debt might increase at rates somewhat above the upper limits of their 1984 ranges, given developments in the first half of the year, but the Committee felt that higher target ranges would provide inappropriate benchmarks for evaluating longer-term trends in M3 and credit growth. For the 1985 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1984 to the fourth quarter of 1985, of 4 to 7 percent for M1, 6 to 8½ percent for M2, and 6 to 9 percent for M3. The associated range for nonfinancial debt was set at 8 to 11 percent.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the short run, the Committee seeks to maintain existing pressures on reserve positions. This action is expected to be consistent with growth in M1, M2, and M3 at annual rates of around 5½, 7½, and 9 percent respectively during the period from June to September. Somewhat greater reserve restraint would be acceptable in the event of more substantial growth of the monetary aggregates, while somewhat lesser restraint might be acceptable if growth of the monetary aggregates slowed significantly. In either case, such a change would be considered only in the context of appraisals of the continuing strength of the business expansion, inflationary pressures, financial market conditions, and the rate of credit growth. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 8 to 12 percent.

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[1] The Record of policy actions of the Committee for the meeting of July 16-17, 1984, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

By order of the Federal Open Market Committee, August 27, 1984.

Stephen H. Axilrod,

Secretary

[FR Doc. 84-23142 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

DeMotte Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 21, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *DeMotte Bancorp,* Demotte, Indiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of Demotte State Bank, Demotte, Indiana.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Volunteer Bancshares, Inc.,* Jackson, Tennessee; to acquire 100 percent of the voting shares of the successor by merger to Milan Banking Company, Milan, Tennessee; and to merge with First Selmer Bancshares, Inc., Selmer, Tennessee, thereby indirectly acquiring First National Bank of Selmer, Selmer, Tennessee.

C. **Federal Reserve Bank of Kansas** City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Financial Bancorp, Inc.,* Trinidad, Colorado; to become a bank holding company by acquiring 90 percent of the voting shares of Trinidad National Bank, Trinidad, Colorado.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Overton Bancshares, Inc.,* Fort Worth, Texas; to acquire 80 percent of the voting shares of the following banks: Ridglea National Bank, Fort Worth, Texas, and First National Bank Mansfield, Mansfield, Texas.

2. *University Bancorporation, Inc.,* College Station, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of University National Bank, College Station, Texas.

Board of Governors of the Federal Reserve System, August 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23144 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

First Wisconsin Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Elanco Investment Services, Inc., Milwaukee, Wisconsin, in brokerage services and related securities credit activities. Notice is for approval to expand the geographic scope of activities to include the entire United States.

Board of Governors of the Federal Reserve System, August 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23143 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

Midland Bank PLC; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California, 94105:

1. *Midland Bank Plc,* London, England; to engage *de novo* through its subsidiary, Midland International Trade Services (USA) Corporation, New York, New York, in making acquiring, or servicing loans or other extensions of credit for its own account or for the account of others, including but not limited to the businesses of commercial finance, factoring and asset based financing, and including the secured and unsecured financing of trade, commodity and construction activities, domestically, abroad, and in international commerce.

Board of Governors of the Federal Reserve System, August 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23145 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 24.

Public Health Service

Health Resources and Services Administration

Subject: Requirements to Disclose HMO Financial Information to Members (0915-0064)—extension/no change
Respondents: Health maintenance organizations
OMB Desk Officer: Fay S. Iudicello

National Institutes of Health

Subject: Evaluation of NCI Training of Maxillofacial Prosthodontists—new collection
Respondents: NCI sponsored prosthodontists
Subject: Evaluation of Statewide Hypertension Programs—new collection
Respondents: Hypertension program administrators and service providers
Subject: University of Iowa's 65+ Rural Health Study Final Household Interview—new collection
Respondents: Individuals participating in the epidimiologic study on aging in Iowa
Subject: Yale University's Health and Aging Project Final Household Interview—new collection
Respondents: Individuals participating in the epidemiologic study on aging in New Haven, Connecticut
Subject: East Boston Neighborhood Health Center's Senior Health Project Final Household Interview—new collection
Respondents: Individuals participating in the epidemiologic study on aging in East Boston, Massachusetts
Subject: Iowa 65+ Rural Health Study Substudy #3 "Iowa Bereanement Substudy"—new collection
Respondents: Individuals participating in the epidemiologic study on aging in Iowa
Subject: Yale University's Health and Aging Project Substudy #3 "Adjustment to Widowhood"—new collection
Respondents: Individuals participating in the epidemiologic study on aging in New Haven, Connecticut
OMB Desk Officer: Fay S. Iudicello

Centers for Disease Control

Subject: National Disease Surveillance Program—II Case Summaries (0920-0004)—revision
Respondents: State and territorial health departments
Subject: Uranium Miners—Low Dose Investigation Follow up Survey—new collection
Respondents: Uranium miners who were examined by the Public Health Service between 1950 and 1960.
OMB Desk Officer: Fay S. Iudicello

Alcohol, Drug Abuse and Mental Health Administration

Subject: Preliminary Study of Commonalities Underlying the Addicative Process—new collection
Respondents: Individuals
Subject: Epidemiologic Catchment Area Program—UCLA Site (0930-0088)—extension/no change
Respondents: Individuals
Subject: Community Support Program Client Follow up Study (0930-0097)—extension/no change
Respondents: Individuals, State and local governments
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Quarterly Periodic Interim Payment (PIP) Report—existing collection
Respondents: Medicare fiscal intermediaries
Subject: Information Collected on Provider Refunds, Section 3401 of Intermediary Manual, and Section 7080 of Carrier Manual—new collection
Respondents: Health care providers participating in Medicare Revision
Subject: Revision to the Medicaid State Plan Preprint, Supplement 9 to Attachment 267 for Transfer of Resources (0938-0193)—revision
Respondents: Medicaid State agencies
Subject: End Stage Renal Disease Medical Information System (0938-0064)—revision
Respondents: End stage renal disease facilities
Subject: End Stage Renal Disease Billing Supplement Form (0938-0230)—revision
Respondents: End stage renal disease facilities
Subject: Departmental Clinical Lab Survey Report Form (0938-0032)—existing collection
Respondents: State survey agencies
Subject: Blood Bank Inspection Checklist (0938-0170)—existing collection
Respondents: State survey agencies
Subject: Preclearance of Information Collection for Evaluation of the Social/Health Maintenance Organizations (S/HMO) Demonstrations—new collection
Respondents: Social health maintance organizations
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Representative Payee Custody Report (Conditional Approval)—new collection
Respondents: Parents and spouses with custody of beneficiaries

Subject: Statement of Care and Responsibility for Beneficiary (0960–0109)—extension no change
Respondents: Individuals and institutions having custody of beneficiaries
Subject: Statement of Employer (0960–0030)—extension no change
Respondents: Certain employees paying wages
OMB Desk Officer: Robert J. Fishman

Office of the Secretary

Subject: A Comparison of Private and Public Social Services Programs—new collection
Respondents: State or local governments, businesses, non-profit institutions
OMB Desk Officer: Robert J. Fishman

Office of Human Development Services

Subject: Referral for WIN Registration (Individuals) (IM–3) (0980–0111)—extension/no change
Respondents: State governments
OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer)

Date: August 24, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–23174 Filed 8–30–84; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 84G–0191]

Amerace Corp.; Filing of Petition for Affirmation of GRAS Status; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that announced that Amerace Corp. had filed a petition (GRASP 3G0285) proposing affirmation that an insoluble lactase enzyme preparation is generally recognized as safe (GRAS) for use in making lactose hydrolyzed whey, lactose hydrolyzed whey permeate, and lactose hydrolyzed milk permeate. The notice was published in the **Federal Register** of June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 202204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–16157 appearing at page 24952 in the **Federal Register** of Monday, June 18, 1984, the following corrections are made in the third column under "**SUPPLEMENTARY INFORMATION**": (1) in the fifth and sixth lines from the bottom of the first paragraph, *"Aspergillus niger"* is corrected to read *"Aspergillus oryzae"* and (2) in the next to the last line and the last line in the first paragraph, "whey permeate, and milk permeate" are corrected to read "lactose hydrolyzed whey permeate, and lactose hydrolyzed milk permeate".

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–23151 Filed 8–30–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82P–0252]

Power Technology Inc.; Availability of Approved Variance for Laser-Aimed Firearms

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that an extension of a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for an alignment laser product termed "laser-aimed firearm" manufactured by Power Technology, Inc. The electronic product is intended to be mounted onto a customer-supplied weapon and, as an alignment device, will aid in improving aiming speed and accuracy.

DATES: The variance became effective January 19, 1983, and ended January 19, 1984. The extension of the variance was approved on April 20, 1984, and ends January 19, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Power Technology, Inc., P.O. Box 9769, Little Rock, AR 72219, an extension of its variance from certain provisions of the performance standard for laser products for its laser-aimed firearm product line.

The specific requirements of the standard for which a variance has been granted pertain to the performance features of a remote-control connector (§ 1040.10(f)(3)), key control (§ 1040.10(f)(4)), emission indicator (§ 1040.10(f)(5)(ii)), and beam attenuator (§ 1040.10(f)(6)). All other provisions of the performance standard remain applicable to the product. CDRH considers the laser-aimed firearm to be a surveying, leveling, or alignment laser product as defined in § 1040.10(b)(35). Thus, the product is required to comply with all provisions of § 1040.11(b), inlcuding the emission radiant power limit of 5 milliwatts between 400 nanometers and 710 nanometers. The 5-year extension of the variance will allow for the continuing distribution of this product into commerce.

CDRH has determined that: (a) The requirements of §§ 1040.10(f)(3), (4), (5)(ii), and (6) are not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by constraints on the physical and optical design and on the labeling of the product. The laser system incorporated into the laser-aimed firearm can be turned on only by using a normally off momentary switch whose actuation is significantly distinct, but not necessarily physically separate, from the trigger action of the weapon itself to prevent inadvertent firing of the weapon. In addition, labels and instructions that are provided to users of laser-aimed firearms, servicing dealers, and distributors are required to include adequate information and instructions to assure that individuals who are untrained in the safe use of lasers can use the product safely.

Power Technology, Inc., is to establish and maintain current records with respect to the radiation safety of the laser-aimed firearms, especially with regard to those sold to the general public. These records are to include copies of all written communications between the manufacturer and dealers, distributors, and purchasers concerning radiation safety including complaints, investigations, instructions, or explanations affecting the use, repair, adjustment, maintenance, or testing of the listed product. Therefore, on April 20, 1984, FDA approved the requested extension by letter to the manufacturer from the Deputy Director, CDRH. The variance will terminate on January 19, 1989.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23150 Filed 8-30-84; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Meeting; Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Administration for Children, Youth and Families.

Time and Date: 9:00 a.m. to 5:30 p.m.—Thursday, September 27, 1984.

Place: Department of Transportation, 7th and D Streets, SW., Washington, D.C., Room 6332/4/6.

Status: Advisory Board meetings are open for public observation. However, because of security precautions at all Government buildings, persons wishing to attend the meeting, but who do not have Government identification, should call the contact person listed below for information about access to the building.

Matters to be Considered: At this meeting, the Advisory Board will discuss the status of the Child Abuse and Neglect Legislation; a briefing presented to the Secretary of the Department of Health and Human Services on the National Center on Child Abuse and Neglect; Fiscal Year 1985 Plans for Discretionary Child Abuse and Neglect Activities; Fiscal Year 1984 Discretionary Grants to States; Status of a Coordination Effort Between the Office of Juvenile Justice and Delinquency Prevention and the National Center on Child Abuse and Neglect; Results of the Children's Trust Fund Symposium held on June 21 and other current child abuse and neglect activities.

Contact Person for More Information: Arlene Taylor, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, D.C. 20013; (202) 245–2840.

Dated: August 24, 1984.

Philip Jarmack,

HDS Committee Management Officer.

[FR Doc. 84-23172 Filed 8-30-84; 8:45 am]

BILLING CODE 4130-01-M

Health Resources and Services Administration

Health Maintenance Organizations

AGENCY: Public Health Service, Health Resources and Services Administration, HHS.

ACTION: Notice; qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be federally qualified health maintenance organizations (HMOs).

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Associate Director for Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–4106.

SUPPLEMENTAL INFORMATION: Regulations (42 CFR 110.605(d)) issued under Title XIII of the Public Health Service Act (the Act) require that a list and description of all newly qualified HMOs be published on a periodic basis in the **Federal Register**. This notice is an accumulation of information regarding those HMOs that have been qualified since the last such list was published on July 13, 1984. There are three categories of qualified HMOs: operational, transitionally qualified, and preoperational (see 42 CFR 110.602 and 110.603).

The following entities have been determined to be qualified HMOs under Section 1310(d) of the Act (42 U.S.C. 300e–9(d)): (Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a)).

1. Maxicare Health Insurance Company (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 732 North Jackson Boulevard, Milwaukee, Wisconsin 53202. The service area for the Milwaukee/Waukesha regional component comprises the following zip codes:

53005	53150	53214
53007	53151	53215
53012	53154	53216
53022	53172	53217
53024	53186	53218
53029	53202	53219
53046	53203	53220
53051	53204	53221
53072	53205	53222
53074	53206	53223
53080	53207	53224
53089	53208	53225
53092	53209	53226
53103	53210	53227
53110	53211	53228
53130	53212	53233
53132	53213	

The service area for the Appleton/Sheboygan regional component comprises the following zip codes:

53001	53088	54915
53011	54129	54931
53013	54232	54940
53014	54245	54942
53015	54106	54944
53023	54113	54947
53042	54130	54949
53061	54136	54950
53070	54150	54951
53073	54169	54952
53075	54170	54961
53081	54911	54983
53085	54914	

Date of qualification: June 8, 1984.

2. Group Health of Spokane, Inc. (Staff Model, see section 1310(b)(1) of the Act), Great Western Freeway Plaza Building, W. 1500 4th Avenue, Spokane, Washington 99204–1639. On June 30, 1983, the Group Health Cooperative of Puget Sound, Inc. (GHC), a not-for-profit corporation, purchased substantially all of the assets and business of INA Healthplan of Washington, Inc. (INAHW), a federally qualified, for-profit HMO. On the date of purchase, the assets and business of INAHW were transferred to Group Health of Spokane, Inc. (GHS), a wholly-owned affiliate of GHC certified to operate as a not-for-profit HMO by the State of Washington, effective July 1, 1983. Subsequently, the not-for-profit GHS was approved for Federal qualification, and the Federal qualification for INAHW was voluntarily relinquished. The service area comprises all of Spokane County and zip codes 99008, 99013, 99029, and 99034.

Date of qualification: June 20, 1984.

3. Virginia Health Plan, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 8550 Lee Highway, Suite 600, Fairfax, Virginia 22031. The service area comprises the counties of Arlington, Fairfax, and Price William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Date of qualification: June 27, 1984.

4. HMO of Kansas, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), P.O. Box 110, Topeka, Kansas 66601. The service area for the Topeka regional component comprises the following zip codes in the following towns:

Auburn	66402
Berryton	66490
Burlingame	66413
Carbondale	66414
Delia	66418
Denison	66419
Dover	66420
Eskridge	66423
Grantville	66429
Harveyville	66431
Hoyt	66440
Lawrence	66044
Lecompton	66050
Maple Hill	66507
Mayetta	66509
Meriden	66512
Oskaloosa	66066
Overbrook	66524
Ozawkie	66070
Pauline	66619
Perry	66073
Rossville	66533
St. Marys	66536
Scranton	66537
Silver Lake	66539
Tecumseh	66542
Topeka	66601
Topeka	66603—66612
Topeka	66614—66618
Valley Falls	66088
Wakarusa	66546

The service area for the Wichita regional component comprises the following zip codes in the following towns:

Andale	67001
Andover	67002
Augusta	67210
Beaumont	67012
Belle Plaine	67013
Bentley	67016
Benton	67017
Burns	66840
Burrton	67020
Cassoday	66842
Cheney	67025
Clearwater	67026
Colwich	67030
Conway Springs	67031
DeGraff	66840
Derby	67037
Douglass	67039
ElDorado	67042
Elberg	67041
Garden Plain	67050
Goddard	67053
Greenwich	67055
Halstead	67056
Haven	67543
Haverhill	67042
Haysville	67060
Kechi	67067
Latham	67072
Leon	67074
Maize	67101
Mayfield	67103
Milton	67106
Mount Hope	67108
Mulvane	67110
Murdock	67111
McConnell AFB	67221
Newton	67114
North Newton	67117
NE Wichita	67230, 67238
Oxford	67119
Peck	67120
Potwin	67123
Reece	67045
Rock	67131
Rosalia	67132
Rosehill	67133
Sedgwick	67135
Towanda	67144
Udall	67146
Valley Center	67147
Viola	67149
Wellington	67152
Whitewater	67154
Wichita	67201-67220
Wichita	67223
Wichita	67226-67228
Wichita	67231-67233
Wichita	67235, 67236
Wonsevu	66801
Yoder	67585

Date of qualification: July 20, 1984.

(Transitionally Qualified Health Maintenance Organizations; 42 CFR 110.603(b))

5. SHARE Health Plan of Iowa, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 950 Office Park Road, Suite 200, West Des Moines, Iowa 50265. The service area comprises Polk County and Warren County.

Date of qualification: June 20, 1984.

(Preoperational Qualified Health Maintenance Organizations; 42 CFR 110.603(c))

6. Health Plan of Mid America (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 4510 Bellview, Suite 104, Kansas City, Missouri 64111. The service area comprises the counties of Johnson, Leavenworth, and Wyandotte in Kansas; the counties of Jackson, Clay, and Platte in Missouri; and zip codes 64087 and 64102 in Cass County, Missouri.

Date of qualification: July 24, 1984.

(Qualified Regional Components: 42 CFR 110.603(e))

7. HMO of Florida, Orlando (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of HMO of Florida, Jacksonville, Florida 32216. The service area comprises the counties of Orange, Osceola, and Seminole; zip codes 32711, 32726, 32727, 32757, 32778, and 32784 in Lake County; and zip codes 32780, 32815, 32901, 32903, 32920, 32922, 32925, 32931, 32935, 32937, 32952, 32955, and 32959 in Brevard County.

Date of qualification: June 4, 1984.

8. Maxicare—Northern California (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Maxicare, Hawthorne, California 90250. The service area comprises San Francisco County, San Mateo County, Santa Clara County, Alameda County, and Contra Costa County.

Date of qualification: July 3, 1984.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 4:30 p.m. on Tuesdays and Thursdays, except for Federal holidays, in the Office of Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Department of Health and Human Services, Rm. 9-11, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Questions about the qualification review process or requests for information about qualified HMOs should be sent to the same office.

Dated: August 27, 1984.

John H. Kelso,

Acting Administrator.

[FR Doc. 84-23196 Filed 8-30-84; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1439]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information colleciton requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Manager Certification Compliance
Office: Public and Indian Housing
Form number: None
Frequency of submission: Annually
Affected Public: State or Local Governments
Estimated burden hours: 1,500
Status: New
Contact: Odessa W. Burroughs, HUD, (202) 472–4703; Robert Neal, OMB, (202) 395–7316

Proposal: Community Development Block Grant Small Cities Application Package
Office: Community Planning and Development
Form number: HUD–4124
Frequency of submission: Annually
Affected Public: State or Local Governments
Estimated burden hours: 20,000
Status: Reinstatement
Contact: Cornelia B. Robertson, HUD, (202) 755–6322; Robert Neal, OMB, (202) 395–7316

Proposal: Funding Formula Data Collection Forms
Office: Public and Indian Housing
Form number: HUD–52720, 52720A, 52720B, 52720C, 52720D, 52721, 52721A, 52722A, and 52722B
Frequency of submission: Annually
Affected Public: State or Local Governments
Estimated burden hours: 13,800
Status: Reinstatement
Contact: Joan DeWitt, HUD, (202) 426–1872; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 31, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84–23201 Filed 8–30–84; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–84–1440]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application—Project Mortgage Insurance/NH–ICF
Office: Housing
Form number: HUD–92013, 92013–NH–ICF, and 92013–HOSP
Frequency of submission: On Occassion
Affected public: Non-Profit Institutions and Businesses or Other For-Profit
Estimated burden hours: 33,251
Status: Reinstatement
Contact: Joseph Malloy, HUD (202) 755–6223, Robert Neal, OMB, (202) 395–7316

Proposal: Manufactured Home Procedural and Enforcement Regulations—Monitoring Inspection Fees
Office: Housing
Form number: NCSBCS–301, 302, 303, and 304
Frequency of submission: Monthly
Affected public: Businesses or Other For-Profit
Estimated burden hours: 10,951
Status: Revision
Contact: James C. McCollom, HUD (202) 755–7920, Robert Neal, OMB, (202) 395–7316

Proposal: Urban Development Action Grant Program
Office: Community Planning and Development
Form number: SF–424, HUD–3440, 3441, 3442, 3443, 3444, 3445, and 3446
Frequency of submission: On Occasion and Semi-Annually
Affected public: State or Local Governments
Estimated burden hours: 71,155
Status: Extension
Contact: Sheila Platoff, HUD, (202) 755–7362, Robert Neal, OMB, (202) 395–7316

Authority. Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 14, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-23203 Filed 8-30-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1441]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Application for Insurance Benefits
Office: Administration
Form number: HUD-27011
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 46,800
Status: Revision
Contact: John L. Stahl, HUD, (202) 755-5163; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 21, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-23202 Filed 8-30-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-7282]

Oregon Conveyance of Public Lands, Order Providing for Opening of Land

Correction

In FR Doc. 84-20813, beginning on page 31501, in the issue of Tuesday, August 7, 1984, make the following corrections:

1. On page 31502, in the second column, under the line, "T. 40 S., R. 42 E.," insert,

"Secs. 16 and 36.
T. 41 S., R. 42 E.,".

2. In the third column, in the first paragraph, in the third line, "(8,335.95)" should read "(8,335.95".

3. Also in the third column, in the fourth line under "Willamette Meridian", "E½ and" should read "E½, and".

BILLING CODE 1505-01-M

[A-19064]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 19 W.,
  section 2, lots 1-4, S½N½, S½.

Comprising 640.52 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from John P. Buss of North Hollywood, California.

Gila and Salt River Meridian, Arizona

T. 25 N., R. 14 W.,
  section 27, all.

Comprising 640 acres, more or less.

The exchange involves only the surface estate of the public selected lands and the private offered lands.

The purpose of the exchange is to acquire the non-Federal lands near the Music Mountains northeast of Kingman, Arizona, which have a high potential for wildlife development and livestock grazing. The exchange is consistent with the Bureau of Land Management land use plans and would result in a public benefit.

The above lands will be subject to an approval to determine their value. If it is determined that the values are not equal, an adjustment may be made in the total number of acres to be exchanged, or a cash payment not to exceed 25 percent of the value of the public lands may be made to equalize values.

Lands to be transferred from the United States will be subject to the following reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

2. All minerals in the subject are reserved to the State of Arizona as granted by the Act of Congress, June 24, 1910.

3. Subject to such restrictions as may be imposed by the County Flood plain Administrator in accordance with the "Amended Floodplain Regulation for the Unincorporated Area of Mohave County, Arizona," as adopted by the Mohave County Board of Supervisors by Resolution No. 82-1 of May 17, 1982, and recorded in Book 824, page 895 of Official Records, Mohave County, Arizona.

4. Subject to right-of-way A–19236, A–19238, A–19239, and A–19240, for road purposes for the Mohave County Board of Supervisors under Title V, section 501 of the Act of October 21, 1976 (43 U.S.C. 1761).

5. Subject to right-of-way AR–033346 for telephone purposes for American Telephone and Telephone Company, under the Act of March 4, 1911 (36 Stat. 1253, as amended; 43 U.S.C. 961).

6. Subject to the right of the grazing allottee, James Briggs, to continue his grazing use of the parcel until May 8, 1986. Grazing fees will be paid to the new landowner, but may not exceed the fees charged by the Bureau of Land Management for that year.

Private lands to be acquired by the United States will be subject to the following reservation:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 75 of Deeds, page 329, Mohave County, Arizona.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

SUPPLEMENTARY INFORMATION: Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: August 21, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84–23115 Filed 8–30–84; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pennzoil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2045, Block 270, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 23, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 23, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–23152 Filed 8–30–84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Fire Island National Seashore; Availability of Land Protection Plan

AGENCY: National Park Service, Fire Island National Seashore

ACTION: Notice of the availability of Land Protection Plan

Notice:

The Land Protection Plan for Fire Island National Seashore is now available. The Plan outlines a program to manage and protect private or non-Federal lands within the authorized boundaries with techniques other than direct federal purchase of property.

The Plan has been revised to incorporate comments received during a thirty day comment period which ended in March 1983.

Copies of the Plan may be obtained from the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchoque, New York, 11772; or from the North Atlantic Regional Office, 15 State Street, Boston, Massachusetts, 01970.

This Plan will be approved by the Regional Director, North Atlantic Regional Office thirty (30) days from the date of this notice.

Dated: August 22, 1984.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 84–23161 Filed 8–30–84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30505]

Alabama Southern Railroad Company, Inc. and the Alabama Great Southern Railroad Company—Acquisitions, Operations and Trackage Rights-Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10901 (1) acquisition by Alabama Southern Railroad Company, Inc. (ASR) of Southern Railroad Company's 10.3-mile line of railroad from York, AL to Lilita, AL, (2) acquisition by ASR from the Alabama Great Southern Railroad Company (AGS) of trackage rights at York, AL; (3) acquisition by AGS from ASR of trackage rights over the line in (1) above at York and 3,000 feet eastward; and (4) acquisition by ASR from the Sumter & Choctaw Railway Company of the latter's 3.5-mile line from Lilita to Bellamy, AL.

DATES: This exemption will be effective on August 31, 1984. Petitions to reopen must be filed by September 20, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30505 to:.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles H. White, Jr., 1000 Potomac Street, NW., Washington, DC 20007

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 24, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison concurred in part and dissented in part with a separate expression. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–23171 Filed 8–30–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 218X)]

Burlington Northern Railroad Company—Abandonment—In Boulder and Weld Counties, Co.; Exemption

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is between milepost 22.17, near Lafayette, and milepost 26.00 near Erie, a distance of 3.83 miles in Boulder and Weld Counties, CO.

BN has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Colorado has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on September 30, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 10, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 20, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, Assistant General Solicitor, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 24, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84–23168 Filed 8–30–84; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Anderson, Clayton and Co., Interfirst Plaza, 1100 Louisiana Street, Suite 3800, Houston, Texas 77002

Mailing Address: P.O. Box 2538, Houston, Texas 77252

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation:

(i) Gaines Foods, Inc., Red Oak Plaza, West Red Oak Lane, White Plains, New York 10604. Incorporated in the State of Delaware.

(ii) Great Southwest Warehouses, Inc., 3721 Dacoma Street, P.O. Box 2588, Houston, Texas 77252. Incorporated in the State of Texas.

(iii) Igloo Corporation, 1001 West Belt Drive, P.O. Box 19332, Houston, Texas 77024. Incorporated in the State of Delaware.

1. Parent corporation and address of principal office: Cedar River Truck Company, Inc., Powers, Michigan 49847.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporations: Cedar River Lumber Company, Inc.—Michigan.

1. Parent corporation and address of principal office: Hillenbrand Industries, Inc., Highway 46, Batesville, Indiana.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(I) Batesville Casket Company, Inc., Indiana corporation

(II) Hill-Rom Company, Inc., Indiana corporation

(III) American Tourister, Inc., Indiana corporation

(IV) Batesville International Corporation, Indiana corporation

(V) Medeco Security Locks, Inc., Virginia corporation

1. Parent corporation and address of principal office: IC Industries, Inc., One Illinois Center, 111 East Wacker Drive, Chicago, Illinois 60601.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Abex Corporation, Six Landmark Square, Stamford, Connecticut 06902–2268 (Incorporated in Delaware)

Accent International, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)

Alton Manufacturing Company, 4830 Transport Drive, Dallas, Texas 75247 (Incorporated in Texas)

Bolingbrook 55 Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)

Boston Bean Pot, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)

Bubble-Up Company, Inc., 2800 North Talman Avenue, Chicago, Illinois 60618 (Incorporated in Delaware)

Chesley Industries, Inc., 20775 Chesley Drive, Farmington, Michigan 48024 (Incorporated in Michigan)

Chicago Intermodal Company, 233 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)

Cosmic Enterprises, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)

Cosmic Stores, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in New York)

Cove Development Corporation, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)

Cypress Bend Corporation, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Florida)

Dad's Root Beer Company, 2800 North Talman Avenue, Chicago, Illinois 60618 (Incorporated in Illinois)
Environ of Inverray, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Florida)
Friend Brothers, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)
GM&O Land Company, 233 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Mississippi)
Gas Welding, Inc., 401 South Rohlwing, Addison, Illinois 60101 (Incorporated in Illinois)
Genadco Advertising Agency, Inc., 1745 North Kolmar Avenue, Chicago, Illinois 60639 (Incorporated in Illinois)
Helvetia Redevelopment Corporation, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Missouri)
Helvetia Leasing Corporation, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Hussmann Acceptance Company, 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Missouri)
Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Delaware)
Hussmann Refrigeration, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Missouri)
Huth Manufacturing Corporation, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in California)
IC Equipment Leasing Company, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
IC Equities, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
IC Industries, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
IC Leasing, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
IC Products Company, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
ICP Holding Corp., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Indiana)
Illinois Center Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
International Stamping Co., Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Wisconsin)
Kolmar Products Corporation, 1745 North Kolmar Avenue, Chicago, Illinois 60639 (Incorporated in Wisconsin)
Krack Corporation, 401 South Rohlwing, Addison, Illinois 60101 (Incorporated in Illinois)
Midas International Corporation, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Midas Properties, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in New York)
Midas Realty Corporation, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Mississippi Valley Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Muffler Corporation of America, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Illinois)
Wine & Spirits Enterprises, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Missouri)
North Carolina Corp., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)
Oak Village Development Corp., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
Pepsi-Cola General Bottlers, Inc., 1745 North Kolmar Avenue, Chicago, Illinois 60639 (Incorporated in Delaware)
Pet Incorporated, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
LaSalle Properties, Inc., 900 Commerce Road East, Suite 107, New Orleans, Louisiana 70123 (Incorporated in Louisiana)
Mid-America Improvement Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
S & T South, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
St. Louis Lithographing Company, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Missouri)
South Properties, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
Southland Canning & Packing Co. Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Louisiana)
Spartanburg Dairy, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Georgia)
Stuckey's Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Stuckey's Stores, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
William Underwood Company (Maine), 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Maine)
William Underwood Company (Mass.), 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)
California Specialty Stores, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in California)
Richardson & Robbins Co., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
S & T of Mississippi, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Mississippi)
Violet Packing Co., Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Louisiana)
Hussmann International, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Delaware)
Illinois Central Export Corporation, Six Landmark Square, Stamford, Connecticut 06902-2268 (Incorporated in Delaware)
Krack Corporation International, 401 South Rohlwing, Addison, Illinois 60101 (Incorporated in Delaware)
Pet International Sales, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Hussmann Distributing Company, Inc., 10420 Baur Boulevard, St. Louis, Missouri 63132 (Incorporated in Delaware)
IC Acquisition Company, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Mexican Holding Co., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Missouri)
Midas Euro, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)

1. Parent corporation and address of principal office: QST Industries, Inc., 231 South Jefferson Street, Chicago, IL.

2. Wholly-owned subsidiaries which will participate in operations and States of incorporation are as follows:

(i) Quick Service Textiles, Inc., Illinois.
(ii) Samuel Haber's Sons, Illinois.
(iii) Dallas Bias Fabrics, Texas.

(iv) Dallas Bias Fabrics of El Paso, Texas.

(v) Dal-Bac Manufacturing, Texas.

Withdrawal of Notice of Intent to Engage in Compensated Intercorporate Hauling Operations.

Parent Corporation: Larry E. Self d/b/a Action Drywall, 102 Cedar Lane, Chattanooga, TN 37421. Published at 49 FR 30255, July 27, 1984.

James H. Bayne,

Secretary.

[FR Doc. 84-23167 Filed 8-30-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30540]

Southern Railway Co.—Exemption—Acquisition and Operation in Huntsville, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition and operation by the Southern Railway Company of 2.15 miles of railroad abandoned by Seaboard System Railroad, Inc., at Huntsville in Madison County, AL.

DATES: This exemption is effective on August 31, 1984. Petitions to reopen must be filed by September 20, 1984.

ADDRESS: Send pleadings referring to Finance Docket No. 30540 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Nancy S. Fleischman, 1050 Connecticut Avenue, NW. Suite 740, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystem, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: August 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc 84-23227 Filed 8-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-16]

B. Ruppe Drugstore, Inc., Albuquerque, NM; Hearing

Notice is hereby given that on April 23, 1984, the Drug Enforcement Administration, Department of Justice, issued to B. Ruppe Drugstore, Inc., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke its DEA Certificate of Registration, AB6412100, and deny its application for renewal of such registration as a retail pharmacy under 21 U.S.C. 323(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, September 13, 1984, in Room 8323, U.S. District Court, Federal Building, 500 Gold Avenue, SW., Albuquerque, New Mexico.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-23204 Filed 8-30-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-7]

Revocation of Schedule II Registration; Ralph E. Lambert, M.D.

On March 7, 1983, the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control, issued an Order to Show Cause proposing to revoke the certificate of registration, AL3378824, of Ralph E. Lambert, M.D., of Westwego, Louisiana. Dr. Lambert requested a hearing on the issues raised by the Order to Show Cause and, on June 23, 1983, the hearing in this matter was held in New Orleans, Louisiana. Administrative Law Judge Francis L. Young presided throughout these proceedings.

On December 14, 1983, the Administrative Law Judge transmitted the record of these proceedings to the Administrator pursuant to 21 CFR 1316.65(c). The Administrator has considered this record in its entirety and, pursuant to the provisions of 21 CFR 1316.66, hereby issues his final order in this matter. The Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge in their entirety. Judge Young found, as does the Administrator, that Dr. Lambert was convicted of felony offenses relating to controlled substances. There is, therefore, a lawful or statutory basis for the revocation of Dr. Lambert's registration. 21 U.S.C. 824(a)(2).

After considering all of the facts and circumstances in the record of this case, including the underlying conduct which led to Dr. Lambert's arrest and conviction as well as mitigating evidence relating to the doctor's medical practice, Judge Young recommended that the Administrator revoke only that portion of Dr. Lambert's registration pertaining to narcotic and non-narcotic controlled substances listed in Schedule II. Judge Young further recommended that Dr. Lambert's Schedule II privileges be restored after a period of one year, provided that DEA does not become aware of any future conduct on the part of this registrant inconsistent with the public interest.

The Administrator, after a great deal of consideration, has decided to follow the Administrative Law Judge's recommendation that the revocation in this case be limited to Schedule II. This should not be construed as in any way minimizing the very serious nature of the crimes of which Dr. Lambert was convicted. Further, the Administrator declines to follow the Administrative Law Judge's suggestion that Dr. Lambert's Schedule II privileges be restored after the passage of one brief year. An application for registration in Schedule II will be given due consideration when filed. However, the Administrator will not commit DEA to any date certain for approval of such application. In leaving this registrant with the authority to prescribe controlled substances in Schedules III, IV and V, the Administrator expects that Dr. Lambert will strictly comply with all Federal and state laws and regulations relating to controlled substances. Should the Administrator learn of any future misconduct on the part of this individual, he will not hesitate to initiate new proceedings to revoke the remainder of this registration.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824, as redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that DEA Certificate of Registration AL3378824 be, and it hereby is, revoked with respect to controlled substances in Schedule II only. The revocation herein shall be effective October 1, 1984.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,
Administrator.

[FR Doc. 84-23179 Filed 8-30-84; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 82-26]

Augustus E. Stewart, D.O.; Revocation of Registration

On September 21, 1982, the Drug Enforcement Administration [DEA] issued an Order to Show Cause initiating proceedings to revoke DEA Certificate of Registration AS5409316, previously issued to Augustus E. Stewart, D.O. [Respondent], of 4541 West Indian School Road, Phoenix, Arizona. The Order to Show Cause, which also sought to deny the Respondent's pending application for renewal of his registration, alleged that the Respondent lacked requisite state authorization to prescribe or dispense controlled substances and that he had materially falsified an application for such registration. Respondent requested a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge Francis L. Young.

Subsequently, the Government dismissed the charge of material falsification and moved for summary judgment on an amended Order to Show Cause which alleged that by order dated January 7, 1982, the Arizona Board of Osteopathic Examiners in Medicine and Surgery [hereinafter, "the Board"] had placed Respondent's license to practice osteopathic medicine on probation for a period of five years, provided, *inter alia*, that he prescribe, dispense or administer no controlled substances listed in Schedules II or III. The Administrative Law Judge provided the Respondent an opportunity to respond to the Government's motion but no such response was ever received. In an opinion dated December 15, 1982, Judge Young concluded that the Respondent indeed lacked requisite authority to be registered to handle controlled substances in Schedules II and III and recommended that the Respondent's registration be revoked with respect to those schedules. Judge Young further recommended that Respondent be granted a registration limited to Schedules IV and V. The Administrative Law Judge forwarded his opinion, together with the administrative record of this proceeding, to the Administrator on January 11, 1983.

A copy of the Administrative Law Judge's opinion was sent to the Respondent, through his attorney, on December 15, 1982. Nevertheless, on January 7, 1983, Respondent submitted another application for renewal of his registration in all schedules. Accordingly, final action in this matter was deferred pending investigation of this application. Investigation of the Respondent's activities as an osteopathic physician had continued following the Board's probation order. On September 30, 1983, the Board entered a summary suspension of the Respondent's license to practice osteopathic medicine and surgery in Arizona. Subsequently, on March 29, 1984, the Board permanently revoked the Respondent's license. No appeal of that order was taken and the Respondent is no longer practicing osteopathic medicine in Arizona.

This agency has consistently held that if a registrant or applicant is without authority to handle controlled substances in the state in which he practices or proposes to practice, DEA is without statutory authority to issue or to maintain a registration. *Michael C. Barry, M.D.*, [no docket number], 48 FR 33777 (1983); *Floyd A. Santner, M.D.*, Docket No. 79-23, 47 FR 51831 (1982). Accordingly, pursuant to the provisions of 21 U.S.C. 824(a)(3), Respondent's registration must be revoked and all pending applications for renewal thereof denied.

Pursuant to the authority vested in the Attorney General by sections 303 and 304 of the Controlled Substances Act, 21 U.S.C. 823 and 824, as redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that DEA Certificate of Registration AS5409316 be, and it hereby is, revoked, effective immediately. All pending applications for renewal of such registration are hereby denied.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,
Administrator.

[FR Doc. 84-23178 Filed 8-30-84; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 82-15]

K & B Successors, Inc.; Revocation of Registration

On March 30, 1982, the then Acting Administrator of the Drug Enforcement Administration (DEA) issued to K & B Successors, Inc., of New York, New York, an Order to Show Cause proposing to revoke the Respondent's DEA Certificate of Registration, AK5260132, authorizing the Respondent to dispense controlled substances in the course of its business as a retail pharmacy. On April 19, 1982, the Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge Francis L. Young.

On May 4, 1982, following a telephone conference with counsel for both sides, the Administrative Law Judge ordered that further proceedings be held in abeyance pending his receipt of notification as to whether the Government desired to proceed with the prosecution of this matter in light of certain alleged changes in the ownership of the Respondent pharmacy. On September 10, 1982, Government counsel notified the Administrative Law Judge that the Government was ready to proceed with the case and requested that proceedings leading toward a hearing be resumed. Prehearing statements were subsequently filed, a prehearing conference was held by telephone and, on November 24, 1982, Judge Young issued his Prehearing Ruling in this matter. In his Prehearing Ruling the judge granted the Government's motion to include as a subject of this proceeding DEA Certificate of Registration AK1799812, which certificate had been issued to the Respondent in October, 1982. Judge Young ruled that this amendment would not prejudice the Respondent and that the essence of this proceeding would not be altered in any way.

The hearing in this matter was held in Washington, D.C., on January 6, 1983. Thereafter, counsel for both sides filed proposed findings of fact and conclusions of law for consideration. On March 23, 1983, Judge Young issued his Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and a Recommended Decision, hereinafter referred to as the Administrative Law Judge's "opinion." Copies of the opinion were mailed to counsel for both sides. The Respondent filed exceptions to the judge's opinion. Subsequently, the Administrative Law Judge transmitted the entire record of these proceedings to the Administrator for his consideration. The Administrator has reviewed the record herein and, pursuant to the provisions of 21 CFR 1316.67, hereby issues his final order, based upon such findings of fact and conclusions of law hereinafter set forth.

The Administrator adopts the rulings, findings of fact, conclusions of law and the decision recommended by the Administrative Law Judge in their entirety. While the Administrator has chosen to reiterate some of the findings in this final order, his failure to do so in all cases should not be construed as in any way limiting his total adoption of Judge Young's most complete and well considered opinion in this matter.

The Administrator finds that the Respondent, K & B Successors, Inc., is duly incorporated under the laws of the State of New York and operates a retail pharmacy which is licensed and registered by the New York State Department of Education. Commencing in September, 1972, and continuing until January, 1982, Alvin Brod and Sidney Korn were the sole principals and shareholders of the Respondent pharmacy. Each owned fifty percent of the stock. Mr. Brod was President and Mr. Korn was Secretary/Treasurer. Mr. Brod was also the managing pharmacist while Mr. Korn, who was not a pharmacist, was in charge of medical sales to physicians.

The State of New York requires the use of triplicate prescription forms for all prescriptions for Schedule II controlled substances. These forms are issued to individual practitioners. They are numbered and they are not transferable between doctors. The state maintains a record of the dates of issuance as well as the serialization of the forms issued to each practitioner. Losses or thefts of triplicate blanks must be reported to the state. When a practitioner issues such a Schedule II prescription, he keeps the third copy for his records and gives the first two to the patient. The pharmacy filling the prescription keeps the first copy and sends the second copy to Albany on a monthly basis. Prescriptions for controlled substances in Schedule III, IV or V are written on the more familiar single-page "white" prescription blanks.

In late January or early February, 1980, DEA Compliance Investigator Donald H. Brown received information to the effect that an individual had been providing a well-known musician with complete pads of New York State triplicate prescription forms, as well as "white" prescription blanks, on a weekly basis. This individual reportedly had an arrangement with a pharmacist who had been providing him with drugs, also on a weekly basis. Further investigation revealed that at least once a week the musician engaged the services of a limousine service to be driven from his home in Greenwich, Connecticut, to the apartment of the cooperating individual. He would stay there for a short while after which he and the informant would drive to the K & B Pharmacy in New York. He would then enter the pharmacy, later to emerge carrying a brown paper bag. He and the informant would then return to the latter's apartment. Later, he would return to the limousine with a smaller bag and would be driven home.

Telephone toll records subpoenaed by DEA revealed that on each of these occasions, the musician called the Respondent pharmacy from his home. He later told DEA personnel that he would call Mr. Brod to find out if his drugs were ready. Receiving an affirmative reply, he would then call for the limousine and make the trip to New York. The stops at the informant's apartment were for the purpose of facilitating the arrangement that he had with the informant whereby that individual supplied the blank prescriptions in return for a portion of the drugs the musician purchased, without valid prescription, from the pharmacy. The package which he bought from Mr. Brod was slightly different each time. Mr. Brod varied the drugs in order to avoid suspicion. A typical package might contain 25 to 50 Dilaudid; 180 Desoxyn, Biphetamine, Dexadrine or other amphetamine-type drug; 200 to 300 Quaalude or Tuinal; and a variety of Schedule III, IV or V medications. Mr. Brod often sold the Schedule II items in quantities of 180 so that he could write prescriptions of 60 each for his files.

These purchases occurred on a weekly basis beginning sometime in mid-1977 and were described as "really getting into full gear" in mid-1978. The musician stated that the weekly package of drugs which he purchased from Mr. Brod cost him $1,200 to $1,500 per week. The purchases ended in June 1980, when the investigation openly focused on the pharmacy.

On June 5, 1980, Investigator Brown and an investigator of the New York State Bureau of Narcotics Enforcement served on the Respondent pharmacy a grand jury subpoena for all of the pharmacy's Schedule II prescription files. While serving the subpoena, the investigators noticed a large stock of triplicate prescriptions which still had the second copy attached. Respondents admitted that they had been lax in sending these copies off to Albany. Although they were told to bring those copies in with the remainder of the subpoenaed records, the copies were sent to Albany where analysis of the 457 prescriptions submitted showed 215 of them to be fraudulent in one way or another. On June 11, 1980, the date on which the subpoena was returnable, the Respondent had not complied. After a telephone call from an Assistant U.S. Attorney, advising Korn and Brod that they were in contempt of the grand jury, one prescription file was brought in. Finally, on June 16, 1980, after repeated telephone calls, they surrendered the remainder of their Schedule II prescriptions. On that day, they brought in twelve files containing approximately 1,000 prescriptions each. Upon analysis, it was found that these prescriptions bore the serial numbers of sets which had been reported stolen. Some were found to have been purportedly written by doctors other than those to whom they had been issued by the state. In some cases, prescriptions had been filled out so as to indicate that they had been filled by the pharmacy on a date which predated that on which the prescription form had been issued by the authorities in Albany. All of the blanks which the informant had recalled giving to the musician were found among the prescriptions belatedly surrendered by Messrs. Korn and Brod.

Subsequently, it was revealed that during the same two-year period during which they had been selling drugs to the musician Korn and Brod had been receiving blank prescriptions from him for the purpose of being able to account in their files for the drugs illegally sold to him. But, instead of filling out the prescriptions and putting them into their files, they had been throwing them in to a box in their basement. Accordingly, when they received the grand jury subpoena for all of their Schedule II prescription files, they knew that those files could not account for all of the drugs they had been selling illegally. After receiving the subpoena, the two men took their records to Mr. Brod's home where, using a blackboard or large chart, they began to reconstruct the pharmacy records going back to 1977 or early 1978. The pharmacy's purchasing records dictated the number of prescriptions which would have to be falsified in order to cover a given quantity of drugs during a given period of time. Additionally, since many of the prescription blanks had consecutive serial numbers, they had to be spread out and "buried" in the files. Sitting around the Brod's dining room table and under Mr. Brod's direction, Mrs. Brod, Mrs. Korn, and their children filled out prescriptions. Ten to twelve thousand prescriptions had to be forged in this manner, explaining why it took the Respondents from June 5 to June 16, 1980, to comply with the subpoena. This enormous effort to bury prescriptions was not effective, however, and did not deceive the investigators.

On July 31, 1980, a plea bargaining agreement was entered into whereby Alvin Brod agreed to enter a plea of guilty to one count of an information charging conspiracy to unlawfully dispense, distribute and possess with intent to distribute thousands of dosage units of Schedule II narcotic and nonnarcotic controlled substances. On December 23, 1980, in the United States District Court for the Southern District of New York, Mr. Brod was convicted of violating 21 U.S.C. 846 and Mr. Korn was convicted of aiding and abetting in the distribution of Schedule II controlled substances in violation of 21 U.S.C. 841(a)(1) and 841(b)(1)(B), and 18 U.S.C. 2. These are felony offenses relating to controlled substances.

On or about January 4, 1982, Alvin Brod and Sidney Korn resigned their offices and directorships in the Respondent corporation and the corporation redeemmed Mr. Korn's shares for an agreed sum of money. Mr. Brod's shares were transferred to his wife, Ruth Brod. Mrs. Brod is the current President, sole director, officer and shareholder of the Respondent corporation. Alvin Brod continues to be employed by the Respondent. He handles medical sales and waits on trade. A supervising pharmacist, Mr. Solomon Feingold, is responsible for the pharmacy aspect of the business. Mr. Feingold fills and handles prescriptions, keeps records and inventories of controlled substances and fills out all DEA forms. As of the date of the hearing in this matter, Mr. Feingold was not lawfully empowered to order Schedule II controlled substances on behalf of the owner, Mrs. Brod. She admitted that she had never executed a power of attorney and did not know of the requirement.

The Respondent asserts that the operation of the pharmacy is not presently under the control of any individual who has been convicted of a crime relating to controlled substances. Therefore, Respondent urges that its registration ought not be removed.

Mr. Brod and Mr. Korn have been convicted of controlled substance-related felony offenses. Their convictions resulted from their activities while they were co-owners, officers and directors of the Respondent pharmacy, and while Mr. Brod was its managing or supervising pharmacist. Their illicit sales of controlled substances were centered around the pharmacy. They diverted controlled substances from the pharmacy and abused its registration. The Drug Enforcement Administration has consistently held that under such circumstances there is a lawful basis for the revocation of the pharmacy's DEA registration. *Arenstein v. California State Board of Pharmacy,* 265 C.A. 179, 71 Cal. Rptr. 357 1968); *Leonard S. Cohen, t/a Senate Drug Store,* Docket No. 72–5, 38 FR 9522 (1973); *Norman Bridge Drug Co., Inc.,* Docket No. 74–22, 41 FR 3108 (1976); *Big-T Pharmacy, Inc.,* Docket No. 80–34, 47 FR 51830 (1982); *Lawson & Sons Pharmacy and Fenwick Pharmacy,* [No. docket number], 48 FR 16140 (1983).

The Administrator concludes, as did the Administrative Law Judge, that there is a lawful and statutory basis for the revocation of this pharmacy's DEA registration pursuant to 21 U.S.C. 824(a)(2).

The Respondents assert that there are sufficient mitigation circumstances to compel a conclusion that the K & B Pharmacy, now under the ownership, control and supervision of Ruth Brod, should remain in the business of dispensing controlled substances. The Administrative Law Judge saw no merit in this contention, nor does the Administrator. Alvin Brod, who callously disregarded his public trust as a registered pharmacist, remains on the premises. His wife, an obsentee owner, supervises the business by visiting for an hour or so once a week while maintaining full time employment as a social welfare examiner in Nassau County, New York, some miles distant from K & B's Manhattan location. Under the present and contemplated arrangement, Mr. Brod and the supervising pharmacist would be together daily in a store measuring nine by twenty-two feet in its totality. Supposedly, the pharmacist will go about his duties effectively ignoring and being ignored by Mr. Brod. As Judge Young points out, Mr. Feingold's corporate employer has but one stockholder, one officer and one director, Mr. Brod's wife, who only comes to the store once a week, who is not a trained pharmacist, and who has not been shown to possess any significant experience in operating a pharmacy. The influence that Mr. Brod will doubtlessly continue to exert over this tiny pharmacy's operations is bound to be pervasive. Under all of the facts and circumstances present in the record of this proceeding, the Administrator concludes that Mr. Brod's continued association with this pharmacy would be an intolerable affront to the public interest as manifested in the Controlled Substances Act.

Even if the Respondent did not insist upon Mr. Brod's continued employment on the premises, the Administrator would be hard pressed to find mitigation sufficient to warrant a decision in favor of this pharmacy. The new owner, Mrs. Brod, is not above engaging in corrupt activity if her husband's welfare and business are at stake. For a period of about ten days she, with her husband and children, and Mr. and Mrs. Korn and their children, diligently set about the forging of several thousands of prescriptions for dangerous drugs in a bizarre effort to falsify the Respondent's controlled substance records. She claims that she did not really appreciate what she was doing. Neither the Administrative Law Judge nor the Administrator find this assertion to be credible. Mrs. Brod was married to a pharmacist for many years. She is an educated woman. No matter what she thought was the purpose of this recordkeeping marathon, she knew that she had no authority to fill out prescriptions and sign physicians' names to them. She knew that the same was true with respect to her children. Yet she did these things, in consort with her husband, children and others, on a massive scale and over a period of several days. Judge Young concluded that he was unable to find that the pharmacy would be in safe and reliable hands if entrusted to the supervision of Mrs. Brod. The Administrator agrees with that conclusion. Society cannot tolerate the presence of individuals within the pharmacy profession who abdicate their professional responsibility and permit themselves to become conduits by which dangerous controlled substances reach the illicit marketplace. The registrations of K & B Successors, Inc., must be revoked.

Having concluded that there is a lawful basis for the revocation of the Respondent pharmacy's DEA registrations and having further concluded that the public interest demands such revocation, it is the Administrator's decision that these registrations be revoked. Accordingly, pursuant to the authority vested in the Attorney General by section 304 of the Controlled Substances Act, 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator orders that DEA Certificates or Registration AK5260132 and AK1799812 be, and they hereby are, revoked, effective October 1, 1984.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84–23177 Filed 8–30–84; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management
Market Study of the Readers of Disabled USA
OIPA-1
One time only
Individuals or households
760 responses; 99 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the President's Committee on Employment of the Handicapped will conduct a direct-mail survey of a randomly selected group of subscribers to *Disabled USA*. The data will be used to determine the usefulness of the information in the publication.

Market Study of the Readers of Current Wage Developments
OIPA-2
One time only
Individuals or households
320 responses; 32 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the BLS will conduct a direct-mail survey of a randomly selected group of subscribers to *Current Wage Developments*. The data will be used to determine the usefulness of the information in the publication.

Market Study of the Readers of Resource Guide to Labor-Management Cooperation
OIPA-3
One time only
Individuals or households
320 responses; 24 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the Labor-Management Services Administration will conduct a direct-mail survey of a randomly selected group of subscribers to *Resource Guide to Labor-Management Cooperation*. The data will be used to determine the usefulness of the information in the publication.

Market Study of the Readers of A Woman's Guide to Her Job Rights
OIPA-4
One time only
Individuals or households
480 responses; 63 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the Women's Bureau will conduct a direct-mail survey of a randomly selected group of subscribers to *A Woman's Guide to Her Job Rights*. The data will be used to determine the usefulness of the information in the publication.

Extension

Employment and Training Administration
Program Monitoring Report and Job Service Complaint Form
1205-0039; ETA 5-148 and ETA 8429
On occassion; quarterly
State or local governments
208 responses; 5,608 hours; 2 forms

The forms are necessary as part of compliance with NAACP v. Marshall, and with Department of Labor regulations (20 CFR Parts 651, 653, and 658) under the Wagner-Peyser Act, as amended by the JTPA, regarding the establishment and functioning of State employment services. The forms will allow the public to file complaints and State agencies to provide appropriate reports.

Extension

Mine Safety and Health Administration
Rock Bolt Test Procedures and Rock Bolt Anchorage Capacity Tests
1219-0086
On occasion
Businesses or other for profit; small businesses or organizations
450 respondents; 7,200 hours

Requires metal and nonmetal mine operators that use rock bolting to perform anchorage method tests and anchorage capacity tests. Records are required to be kept of the test results. The purpose of the records are to establish that tests have been made and that adequate anchorage is achieved.

Signed at Washington, D.C. this 29th day of August, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-23269 Filed 8-30-84; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Federal Committee on Apprenticeship; Renewal

Notice is given that after consultation with the General Services Administration, it has been determined that the FCA, whose charter expires September 27, 1984, is hereby renewed for the period October 1, 1984, to September 30, 1986. This action is necessary and in the public interest.

The Committee will be an effective instrument for providing assistance through advice and counsel to the Secretary of Labor and the Assistant Secretary of Labor for Employment and

Training in their development and implementation of administration policies addressing critical skill shortage occupations with particular current emphasis in the defense industry; in carrying out their program responsibilities in the apprenticeship and other structured training, and by furnishing recommendations on such matters as training for the employed, the disadvantaged, minorities and women.

The Committee will consist of 10 representatives of employers, 10 representatives of organized labor, and 5 representatives of the public, including one or more educators.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed on September 27, 1984.

Interested persons are invited to submit comments regarding the renewal of the Federal Committee on Apprenticeship. Such comments should be addressed to: Mrs. M. M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D Street, NW., Room 6314, Washington, D.C. 20213.

Signed at Washington, D.C., this August 27, 1984.

Raymond J. Donovan

Secretary of Labor.

[FR Doc. 84-23298 Filed 8-30-84; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-124; Exemption Application No. L-4723 et al.]

Grant of Individual Exemptions; Local 723 Teamsters Welfare Fund of Northern New Jersey, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Local 723 Teamsters Welfare Fund of Northern New Jersey (the Plan) Located in Montville, New Jersey

[Prohibited Transaction Exemption 84-124; Exemption Application No. L-4723]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the sale for $48,500 in cash (plus one-half of the original closing costs), of an undivided one-half interest (the One-Half Interest) in certain improved real property by Teamsters Local 723 Welfare Fund Holding Company, Inc. (the holding company of the Plan) to Local 723 Holding Company (the holding company of Local 723 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) provided the amount paid for the One-Half Interest is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 15, 1984 at 49 FR 24824.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Tasty Baking Company Pension Plan (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 84-125; Exemption Application No. D-4961]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease of certain real property by the Plan to Tasty Baking Company (the Employer) and the possible future cash sale of the Property by the Plan to the Employer, provided the terms and conditions of the transactions are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party, and that any purchase by the Employer is at no less than fair market value at the date of sale.

Effective Date: If granted, the proposed exemption will be effective July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1984 at 49 FR 26842.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Mainland Pathology Associates, Inc. Employees' Pension Trust (the Plan) Located in La Marque, Texas

[Prohibited Transaction Exemption 84-126; Exemption Application No. D-5010]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the prior sale by the Plan of an improved parcel of real property to Kurt Weiss, M.D. and Frances J. Weiss, his wife, parties in interest with respect to the Plan, provided that the price paid was not less than the fair market value of the property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27850.

Effective Date: The effective date of the exemption is April 10, 1979.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Retirement Plan of Shape Corporation (the Plan) Located in Grand Haven, Michigan

[Prohibited Transaction Exemption 84-127; Exemption Application No. D-5161]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of seven years, to the proposed loans (the Loans) by the Plan of up to 25% of its assets to Shape Corporation, the Plan sponsor, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27854.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire seven years after the date of grant with respect to the making and holding of any Loan.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Rainier News, Inc. Profit Sharing Plan (the Plan) Located in Everett, Washington

[Prohibited Transaction Exemption 84-128; Exemption Application No. D-5261]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 1, 1975 through May 31, 1984, to the loan of $100,000 made on September 14, 1974, by the Plan to Mr. Robert L. Spencer, provided the terms of the loan were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the loan was made.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27859.

Effective Date: This exemption is effective from January 1, 1975 through May 31, 1984.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Jamestown Clinic, Ltd. Employees' Retirement Plan (the Plan) Located in Jamestown, North Dakota

[Prohibited Transaction Exemption 84-129; Exemption Application No. D-5274]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a lease, effective July 1, 1984, of certain improved real property by the Plan to Jamestown Clinic, Ltd., the sponsor of the Plan; provided that such lease is on terms and conditions at least equivalent to those which the Plan would receive in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1984 at 49 FR 26844.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

The Metro Bank Corp. Retirement Plan (the Retirement Plan) and The Metro Bank Corp. Profit Sharing Plan (the Profit-Sharing Plan; collectively, the Plans) Located in Denver, Colorado

[Prohibited Transaction Exemption 84-130; Exemption Application Nos. D-5404 and D-5405]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plans of two notes (the Notes) to the Metro National Bank, the sponsor of the Plans, for cash in the amount of the greater of the outstanding balances of the Notes or the fair market value of the Notes at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984, at 49 FR 27860.

For further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 28th day of August 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23200 Filed 8-30-84; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-4644]

Withdrawal of the Proposed Exemption Involving the Medical Radiologic Consultants, P.C. Employee Savings & Profit Sharing Retirement and Trust (the Plan) Located in Saginaw, MI

In the **Federal Register** dated April 24, 1984 (49 FR 17612), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of Medical Radiologic Consultants, P.C. (the Employer) and involved a proposed loan of $50,000 (the Loan) by the Plan to the Employer and the guarantee of the repayment of the Loan by the principal stockholder of the Employer.

By letter dated June 22, 1984, the applicant's representative notified the Department that the applicant was no longer seeking an exemption for the Loan. Therefore, the Department is hereby withdrawing the notice of pendency.

Signed at Washington, D.C., this 14th day of August 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23185 Filed 8-30-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84-70]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, adn other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB reviewer.

DATE: Comments must be received in writing by September 10, 1984. If you anticipate commenting on a form but find the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: Employment Inquiry.
Type of Request: Reinstatement of a previously approved collection for which approval has expired.
Frequency of Report: As required.
Type of Respondent: Individuals or households, businesses or other for-profit, federal agencies or employees.
Annual Reporting Hours: 175.

Abstract-Need/Users: The NASA Form 606 is used as a pre-employment reference check to obtain pertinent information about qualifications and chartacter of applicants selected for appointment to other than scientific positions with NASA.

Title: NASA Contractor Financial Management Reports.
Type of Request: Reinstatement of a previously approved collection for which approval has expired.
Frequency of Report: Monthly.
Type of Respondent: Businesses or other for-profit.
Annual Reporting Hours: 184,800.

Abstract-Need/Users: The NASA Form 533 series is the basic financial management program evaluation which is used to report actual and projected data assuring that contractor performance is realistically planned and supported by dollar resources.

Title: DoD Industrial Plant Equipment Requisition (NASA Use).
Type of Request: Reinstatement of a previously approved collection for which approval has expired.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Reporting Hours: 34.

Abstract-Need/Users: The DoD Form 1419 provides a standard format and procedure by both NASA and DoD for obtaining, certifying, and acting upon contractor requirements for Government equipment.

L. W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84-23146 Filed 8-30-84; 8:45 am]

BILLING CODE 7510-01-M

[84-71]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission. The NASA Supplement to the Federal Acquisition Regulation has been previously cleared by OMB (2700-0043), subject to submission of the clearance requests for specific reporting and recordkeeping requirements.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by September 10, 1984. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Review and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of

Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2941.

Report

Title: NASA FAR Supplement, Part 18–23, Environment, Conservation and Occupational Safety.

Type of Request: Existing regulation (no change proposed).

Frequency of Report: On occasion.

Type of Respondent: Small and Large Businesses, State and Local Governments and Non-Profit Institutions.

Annual Responses: 750.

Annual Burden: 30,000 hours.

Abstract-Need/Users: Where unique facility safety or health requirements exist, including hazardous deliverables or operations, suitable contractor safety and health plans are required, as are accident reports.

L. W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84–23147 Filed 8–30–84; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Design Arts Advisory Panel (Overview Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 17, 1984, from 9:00 a.m. to 5:30 p.m. in room MO–9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy and guidelines.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–23284 Filed 8–30–84; 8:45 am]

BILLING CODE 7537–01–M

Map Application Announcement for Fiscal Year 1985

AGENCY: Institute of Museum Services, NFAH.

ACTION: Map application announcement for fiscal year 1985. This grant application announcement applies only to the Museum Assessment Program (MAP).

Following the date of publication of this announcement, the Institute of Museum Services (IMS) will be receiving applications for grants under the Museum Assessment Program (MAP) for Fiscal Year 1985.

Nature of Program: The Director of IMS makes grants under the Museum Assessment Program to assist museums in carrying out institutional assessments. The program is designed to help museums—particularly those with small budgets—to provide better services and broaden their bases of private and other non-Federal financial support through an independent professional assessment of their programs and operations. A museum as defined in 45 CFR 1180.3 may apply for a MAP grant. A museum which receives a MAP grant for a fiscal year may not receive another MAP grant in the same or any sequential fiscal year. Accordingly, a museum which received a grant under the MAP program in Fiscal Years 1981, 1982 or 1984 (the only prior year in which grants were made) is ineligible for such assistance in Fiscal year 1985 or any subsequent year.

A museum must use the grant for assessment assistance to pay for: expenses of institutional assessment such as registration fees; surveyor honoraria; travel and other expenses of surveyor; and technical assistance materials. The amount of a MAP grant may not exceed $1000.

Grant Application Procedures: The Director considers an application (on a form supplied by IMS) by a museum for a grant for assessment assistance only if (1) The museum applies for assessment to an appropriate professional organization as defined in the regulations and (2) that the professional organization notifes IMS that the application (to the professional organization) for assessment is complete and that the museum applying for assessment is eligible to participate as a museum as defined in 45 CFR 1180.3 of the regulations. The American Association of Museums (AAM) is an organization which has been designated as an appropriate professional organization. To participate in the assessment program, a museum MUST APPLY TO AAM and complete the self-study questionnaire and IMS MAP application provided by AAM. IMS supplies the AAM with application forms and instructions. These are then forwarded by AAM to applicant museums. IMS applications are supplied to AAM until available funds are exhausted or until April 26, 1985, whichever first occurs. Interested museums should contact AAM for further information: The American Association of Museums, 1055 Thomas Jefferson Street, NW., Washington, D.C. 20007. Telephone: (202)338–5300.

The Director of IMS approves applications meeting the MAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications are approved for awards, subject to the availability of funds, until a given date in the fiscal year established by publication in the **Federal Register**. For Fiscal Year 1985, IMS establishes two such dates, October 26, 1984 and April 26, 1985. If a musuem's MAP application is received on or before the indicated date, it will be processed together with other MAP applications received during that period. Applications received after the indicated date will be processed during the subsequent period. In no event will applications received after April 26, 1985 be processed for Fiscal Year 1985 awards. There are no selection criteria. Matching requirements do not apply.

Applicable Regulations: Applicable regulations may be found in 45 CFR 1180.70–.76.

FOR FURTHER INFORMATION CONTACT: Michele N. Rossi, Confidential Assistant to the Director, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202)786–0536.

Dated: August 28, 1984.

Susan E. Phillips,

Director, Institute of Museum Services.

[FR Doc. 84–23203 Filed 8–30–84; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for the Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences

Date and Time: September 17–18, 1984—9:00 a.m. each day

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550

Type of Meeting: 9/17 Open—9:00 a.m. to 3:30 p.m., 9/17 Closed—3:30 p.m. to 5:30 p.m., 9/18 Open—9:00 a.m. to finish

Contact Person: Dr. Judith S. Sunley, Deputy Division Director, Division of Mathematical Sciences, Room 304, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than September 12, 1984.

Purpose of Committee: To provide advice and recommendations concerning support for research in the mathematical sciences.

Agenda:

Monday, September 17, 1984—9:00 a.m. to 3:30 p.m.—Open

Introductory Remarks
Current Status of the Division including:
  1. organization and staff
  2. FY 1985 Budget estimates
  3. FY 1984 activity wrap-up
  4. special projects report
  5. current implementation of past initiatives
Mathematical sciences at other Federal agencies
Impact of other Foundation programs
  1. Science and Engineering Education
  2. International programs
  3. Office of Advanced Scientific Computing
  4. Others
Current plans for the future

Monday, September 17, 1984—3:30 p.m. to 5:30 p.m.—Closed

Discussion and review of pending proposals with policy implications.

Tuesday, September 18, 1984—9:00 a.m. to finish—Open

Plans for the future
  1. graduate research fellowships
  2. emphasis on graduate students, post-docs, young investigators
  3. project-style support
  4. scientific areas of emphasis within the mathematical sciences
  5. institutes
Other business

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

August 28, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-23258 Filed 8-30-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Biological, Behavioral, and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological, Behavioral, and Social Sciences (BBS)

Date and Time: September 19 & 20, 1984; 9:00 a.m. to 5:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550

Type of Meeting: Open

Contact Person: Dr. David T. Kingsbury, Assistant Director, Biological, Behavioral, and Social Sciences, (202) 357-9854, Room 506, National Science Foundation, Washington, D.C. 20550

Summary of Minutes: May be obtained from the contact person named above.

Purpose of Advisory Committee: The Advisory Committee for BBS provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BBS.

Agenda:

Review and discussion of the information sciences in NSF, including presentations by active researchers in the field. General discussion of the FY 1986 initiatives which relate to BBS. Discussion of NSF general operating/management philosophy. Plans will be made for subsequent meetings of the committee.

Dated: August 28, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-23259 Filed 8-30-84; 8:45 am]

BILLING CODE 7555-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: J.J.W. Trucking, Ltd., dba James J. Williams (Case No. 120-535)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 to J.J.W. Trucking, Ltd., dba James J. Williams. A notice of the request for exemption was published in the Federal Register on June 21, 1984 (49 FR 25549). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption, the comment thereon (discussed below), and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW, Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, DC 20006; (202) 254-4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the Federal Register, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On June 21, 1984 (49 FR 25549), the PBGC published a notice of the pendency of a request from J.J.W. Trucking, Ltd., dba James J. Williams (formerly Michaud-Wyman, Inc.) ("Michaud-Wyman"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Michaud-Wyman of substantially all the assets of J.D.R. Enterprises, Inc. (formerly J.J.W. Trucking, Ltd., dba James J. Williams) ("J.D.R."). The agreement recited an effective date of July 1, 1983; the agreement was made, and the sale closed, on August 30, 1984.

In connection with the sale, Michaud-Wyman assumed J.D.R.'s responsibilities, under a collective bargaining agreement with Local 690 of the Western Conference of Teamsters, to contribute to the Western Conference of Teamsters Pension Trust Fund (the "Fund") for substantially the same number of contribution base units for which J.D.R. had an obligation to contribute.

The amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $49,832.71 (the average annual contributions of J.D.R. for the three plan years preceding the sale). J.D.R.'s potential withdrawal liability to the Fund is estimated to be $67,010.72.

Michaud-Wyman is a new corporation, and thus was unable to submit financial statements in compliance with PBGC regulation (29 CFR 2643.2(d)(7)). It did submit unaudited financial statements for its short first year of operations ending December 31, 1983, showing a net loss of $25,111.25 and net assets of $19,888.75.

Michaud-Wyman stated that the request for an exemption should be granted on a *de minimis* basis. The average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred was $470,590,339. Thus, the amount of the bond/escrow is about one-hundredth of one percent of the amount of employer contributions.

The Fund, by counsel, submitted a comment on Michaud-Wyman's exemption request, objecting to any waiver of the bond/escrow requirement on the ground that such a waiver would increase the Fund's risk of financial loss. In support of this objection, it noted that Michaud-Wyman had negative working capital of $290,000 on December 31, 1983; operating losses exceeding $25,000 for the six-month period ending that date; and an investment of only $45,000 by its shareholders. It also pointed out that the shareholders personally guaranteed the purchase contract and that their personal assets are limited, making further investment in Michaud-Wyman unlikely.

However, the issue is not whether a waiver would cause any increase in the plan's risk of loss, but whether it would cause a significant increase. "[W]hen the amount of the bond/escrow is very small in comparison to the total annual contributions to a plan, an exemption from the bond/escrow requirement would not significantly increase the risk of financial loss to the plan." *Heinemann's, Inc., et al.*, 48 FR 29638, 29639 (June 27, 1983) (bond of about one-eighth of one percent of total annual contributions waived). In such a case, the financial condition of the purchaser is irrelevant. Accordingly, the PBGC concludes that the points raised by the Fund do not provide a basis for denying Michaud-Wyman's request for a waiver.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title V of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to Michaud-Wyman's purchase of assets from J.D.R. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That determination is made by the plan sponsor.

Issued at Washington, D.C., on this 24th day of August, 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-22928 Filed 8-30-84; 8:45 am]

BILLING CODE 7708-01-M

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Fargo, North Dakota, will hold a public meeting at 9:30 a.m., Tuesday, October 2, 1984, at the Federal Building, Room 319, 657-2nd Avenue North, Fargo, North Dakota, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call Robert L. Pinkerton, District Director, U.S. Small Business Administration, 657-2nd Avenue North, Fargo, North Dakota 58102—(701) 237-5771, extension 5131.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 27, 1984.

[FR Doc. 84-23266 Filed 8-30-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, October 5, 1984, at the Federal Office Building, 301 South Park, Room 389, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449-5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 27, 1984.

[FR Doc. 84-23267 Filed 8-30-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Regulatory Flexibility Criteria and Guidance

On July 29, 1982 (47 FR 32825), the Federal Aviation Administration published in the **Federal Register** proposed definitions of small entities, significant economic impact, and guidance for making determinations required by the Regulatory Flexibility Act of 1980. Comments were requested from the public on these proposed definitions, and seven comments were received. On July 15, 1983, the FAA adopted an Agency Order (Order 2100.14) which establishes definitions and guidelines for use in implementing the Regulatory Flexibility Act.

Comments

Seven commented on the proposed definitions, and these are discussed briefly below:

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Three commenters indicated that FAA should use a standard for small business adopted by the Civil Aeronautics Board of an air carrier provising air transportation only with aircraft up to 60 seats or 18,000 pounds payload capacity. While the CAB definition may be satisfactory for its purpose, FAA does not believe that it takes into account the concept of scale economies, which FAA's definition incorporates.[1] These economies operate without regard to the size of aircraft operated. Adoption of the definition that all operators of a certain size aircraft are "small" or "large" businesses would also result in an anomaly of never having a "small business" operator of large aircraft.

Two commenters questioned the need for a floor of 11 entities as a threshold number representing a "substantial number." The language of the FAA Order adopts 11 as a minimum number, because FAA believes that "substantial number" was never meant to apply to a few entities. In view of possible cases in which the total number of entities affected is small, the FAA order allows for judgement on the part of the rulemaking official to find a number lower than 11 to be a substantial number.

Two comments involved airports. One commenter believed that the FAA definition of small entity should include all privately owned—public use airports. FAA agrees FAA's Order adopts this approach that all such airports are small entities. One commenter believed FAA should consider enplanements at an airport, as well as the population of the entity which runs the airport. FAA believes that enplanements are not necessarily relevant since an airport could have limited or no air carrier service and therefore a small number of enplanements, and yet be an important general aviation facility and be a large business by any reasonable standard. FAA believes that the proper standard relates the airport to the size of the entity which must pay compliance costs of any airport regulations, rather than the number of passengers that might use scheduled air service.

Several comments suggested that the numbers of employees in size thresholds was too small, or seemed disparate. One commenter argued that the proposed standards for SIC's 3724 and 3728 were too low. Upon review, FAA changed the final standards to reflect a higher employment level for SIC 3728 because the group of firms with 250 to 499 employees actually achieved the lowest production cost per dollar of shipment value, and the value of the proposed standars is set at the midpoint of the next smallest first size class, 100 to 249. A commenter noted the disparity between the thresholds in SIC's 3721 and 3724, but these remain unchanged in FAA's Order. While the disparity is present, we believe it is related to the nature of the industry. As outlined in FAA's invitation for public comment on the proposed definitions, the highest scale economies of firm in SIC 3724 occur at a larger size of firm than for firms in SIC 3721.

One commenter argued that the "economies of scale" argument is not appropriate, and that FAA should use SBA criteria for employment thresholds. However, FAA review of our methodology indicates that it is an appropriate alternative. The SBA standards present problems, as outlined in our invitation for public comment. These need not be reiterated here. The concept of establishing size thresholds for determining whether an entity is small, and another threshold for what constitutes significant economic impact is based on a belief that the SBA standards are often not based on economic criteria or that FAA lacks and cannot easily obtain the data to apply the criteria. Furthermore, the efficiency of different size firms—or the economies of scale—bears on whether a firm should be considered large or small, within the intent of the Regulatory Flexibility Act.

A commenter suggested use of an employee threshold of 200 for SIC 4583, aircraft repair facilities. Upon review, this recommendation was accepted.

Several comments argued against specific proposed thresholds, but provided no data supporting alternative thresholds. These include a commenter requesting an operator fleet size of 19, rather than 9, and a commenter recommending a lower cost threshold for commuters. These comments, since unsupported, were rejected. A commenter suggested a $5,000 threshold of significant cost for aircraft repair facilities. While this suggestion is not specifically adopted, the FAA has decided to use the lowest threshold, $3,000 in annualized cost, when no specific cost threshold has been determined.

Finally, a commenter recommended that "independently owned and operated" should be dropped from the definitions as it is not statutorily necessary to retain this language in the Agency definition. However, FAA believes it is central to the intent of the legislation, and supported by the legislative history of the Act, that the protection of the act should extend to independent operations, not divisions or subsidiaries of large conglomerates. The phrase is kept in the FAA Order.

Accordingly FAA publishes the following order 2100.14 entitled, "Regulatory Flexibility Criteria and Guidance".

Issued in Washington, D.C. on August 7, 1984.

Harvey B. Safeer,

Director of Aviation Policy and Plans, APO-1.

Department of Transportation

Federal Aviation Administration

[2100.14]

July 15, 1983.

Subject: Regulatory Flexibility Criteria and Guidance

1. *Purpose.* This order provides guidance on FAA's procedures for implementing the Regulatory Flexibility Act of 1980 (Public Law 96–354, September 19, 1980). The order provides guidance for the conduct of regulatory flexibility analyses and reviews. It also provides criteria for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities.

2. *Distribution.* This order is distributed to the division level in Washington, the regions and the Mike Monroney Aeronautical Center. It is of interest to all responsible for changing and maintaining the Federal Aviation Regulations.

3. *General provisions.* An FAA official exercising regulatory issuance authority, who must determine whether an existing Federal Aviation Regulation or a proposed change has a significant economic impact on a substantial number of small entities, shall use the definitions and criteria in paragraphs 4 through 9. However, if paragraph 8 does not contain a small entity definition for the type of entity the proposed or existing regulation affects, the official shall use the Small Business Administration's (SBA) definition in Title 13 of the Code of Federal Regulations. Also, if paragraph 9 does not contain a significant cost threshold for the type of entity the proposed or existing regulation affects, the official shall use the lowest significant cost threshold in paragraph 9. When, using these criteria, an FAA rulemaking official finds or believes that a proposed rule would have, or an existing rule has, a significant economic impact on a substantial number of small entities, the

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[1] See for example, *Economic Regulation of Domestic Air Transport,* George W. Douglas and James C. Miller II, Brookings Institution, 1974.

official shall prepare a regulatory flexibility analysis or review of that rule and follow paragraph 7 of this order.

4. *Small entities.* Small entities are those small businesses and small not-for-profit organizations which are independently owned and operated and have no more employees or own no more aircraft than the threshold levels listed in paragraph 8; and airports operated by small governmental jurisdictions which have no more population than the threshold level listed in paragraph 8.

5. *Substantial number of small entities.* A substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule, or any number of small entities subject to the rule which is substantial in the judgment of the rulemaking official.

a. *Small entities subject to the rule.* A small entity subject to the rule is one required by the rule to alter its practices. Included are those small entities already in voluntary compliance with a proposed rule and those small entities prevented by the rule from engaging in an aviation activity.

b. *Notices of proposed rulemaking or final rules containing multiple unrelated rule changes.* A notice of proposed rulemaking (NPRM) or final rule may include two or more substantive rule changes or unrelated that each affects different small entities. A substantial number of small entities subject to that NPRM or final rule means a substantial number of small entities subject to any one of the changes.

6. *Significant economic impact on a small entity.* A significant economic impact on a small entity means annualized net compliance cost to that entity, which when adjusted for inflation is greater than or equal to the threshold significant cost level for the entity type shown in paragraph 9. Annualized net compliance cost includes uniform annualized costs for purchase of capital items.

a. *Notices of proposed rulemaking or final rules containing multiple closely related rules changes.* An NPRM or final rule may include two or more substantive rule changes so closely related that they affect the same small entities. If, for any entity, the total annualized net compliance cost, adjusted for inflation, of all rule changes proposed in that NPRM or final rule equals or exceeds the threshold significant cost level for that entity, each such rule change in that NPRM or final rule has a significant economic impact on that small entity.

7. *Small entity impact considered in a regulatory flexibility analysis or review.* Whenever an FAA rulemaking official conducts a Regulatory Flexibility analysis or review, the official shall, in that analysis or review, consider the effects of the rule not only on the small entities directly subject to the rule, but also on other small entities with a direct economic relationship (i.e. customer relationship where money, goods or services are exchanged) to those small entities directly subject to the rule.

8. *Size thresholds for small entities.* Size thresholds for entity types and Standard Industrial Classifications are:

Standard industrial classification(s)	Entity type	Size threshold
3721	Aircraft and aircraft parts manufacturers	75 employees.
3724	Aircraft engine and engine parts manufacturers.	375 employees.
3728	Manufacturers of aircraft parts and auxiliary equipment not elsewhere classified.	175 employees.
4511	Operators of aircraft for hire [1]	9 aircraft owned, but not necessarily operated.
4582	Airports	49,999 [2] [3] population in town, city or county which operates the airport.
4582	Aircraft repair facilities	200 employees.
7629		
7699		
8299	Pilot schools	10 employees.
Does not apply	Not-for-profit aviation organizations	The same standard applicable to an equivalent for profit aviation enterprise.

[1] Entity types are those entities to which FAA regulations apply in 14 CFR, Parts 121, 127 and 135.

[2] If two or more towns, cities, or counties operate an airport jointly, the populations should be totaled to determine whether the airport is small.

[3] Privately owned, public-use airports are considered small.

9. *Threshold significant regulatory costs.* Threshold annualized cost levels for entity types and Standard Industrial Classifications are:

Standard industrial classification	Entity type	Threshold annualized cost levels (in December 1981 dollars)
3721	Aircraft and aircraft parts manufacturers	$12,000
3724	Aircraft engine and engine parts manufacturers	18,000
3728	Manufacturers of aircraft parts and auxiliary equipment not elsewhere classified.	8,000
4511	Operators of aircraft for hire:	
	Scheduled (Entire fleet has a seating capacity of over 60) [1].	77,000
	Other scheduled [1]	43,000
	Unscheduled	3,000
4582	Airports	5,000
4582	Aircraft repair facilities	
7629		
7699		
8299	Pilot schools	
Does not apply	Not-for-profit aviation organizations	

[1] A scheduled operator is one holding out to the public air transportation service for passengers from identified air terminals at a set time announced by timetable or schedule published in a newspaper, magazine, or other advertising medium.

J. Lynn Helms,
Administrator.

[FR Doc. 84-23130 Filed 8-30-84; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Denial of Petition To Commence Defect Proceeding

This notice sets forth the reasons for the denial of a petition to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On September 6, 1983, Alan R. Schwartz of Washington, DC petitioned for an investigation of a possible safety-related defect in 1975–76 model Fiat 124 passenger cars, specifically to determine whether they contain the same rust defect as the 1970–74 models recalled by the manufacturer.

As part of its earlier investigation (agency file C7–20), NHTSA had included the 1975 and 1976 models. By those years the 124 line had been scaled down to the Sport Coupe (discontinued after 1975) and the Spider. As of September 1978 the agency's files showed only a total of 8 complaints for the two model years in question. Since that time only two additional complaints have been received, neither alleging accident or injury. The agency believes that the improvement in rust protection demonstrated after 1974 is due to corrective actions taken by Fiat, to improve corrosion resistance on the 124 Spiders and Coupes.

NHTSA concluded that there was no reasonable possibility that an order of the nature requested would be issued at the conclusion of an investigation, and denied the petition on February 3, 1984.

(Secs. 124, 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410a, 1412); delegations of authority of 49 CFR 1.50 and 501.8)

Issued on August 20, 1984.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 84–23175 Filed 8–30–84; 8:45 am]

BILLING CODE 4910–59–M

Petitions To Commence Defect Proceedings; Denials

This notice sets forth the reasons for the denials of petitions to commence a preceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On January 7, 1984, Ms. Faith Little of Washington, D.C., petitioned NHTSA to commence a defect proceeding with respect to an alleged timing belt failure in 1981–82 Ford Escort and Mercury Lynx passenger cars. Ms. Little believes that "sudden engine failure while on the road is always a safety hazard".

The agency reviewed its files and found 14 similar complaints; however there were no reports of safety problems. Ford Motor Company advised that it had taken several actions in connection with the problem including extension of warranty to cover belt breakage, for 60,000 miles or 5 years, extension of warranty to cover engine damage associated with timing belt breakage, and improvement of timing belt material. It also reported that it had made an engineering change beginning with 1983 model year vehicles so that belt breakage would not cause damage to the engine.

Accordingly, the agency determined that there was not a reasonable possibility that an order requiring notification and remedy of a safety related defect would be issued at the conclusion of an investigation, and on July 17, 1984, Ms. Little's petition was denied.

Mr. Van Storm of Los Angeles, California, asked the agency on March 23, 1984, to investigate an alleged seat belt defect in 1983 and 1984 model Ford F250 HD pickup trucks, specifically that the belt would cause a blister on the occupant's neck because of the reel location.

No complaints of a similar nature appeared in the agency's files for 1982–84 Ford pickups. NHTSA examined the upper torso restraint in a 1983 Ford truck, with four adult males of different heights and weights and observed no interference between the neck and webbing. The petition was denied on July 17, 1984, as the agency determined that there was no reasonable possibility that at the conclusion of the investigation an order would be issued requiring the manufacturer to notify and remedy a safety related defect.

The agency received a petition dated November 20, 1983, from Mr. Thomas J. Wade of Glens Falls, New York, concerning alleged problems in his 1978 Plymouth Horizon: Transaxle lockup, lack of power steering assist, electrical system failures, and excessive engine oil consumption. Mr. Wade did not indicate to the agency that these problems had presented safety hazards.

The agency reviewed Mr. Wade's complaints. While transaxle lockup can possibly occur, an agency engineering study has disclosed no evidence that such lockup presents a safety-related hazard. With respect to power steering, there can be some stickiness when the unit is cold, but manual steering is not affected. Electrical problems were apparently caused by the Horizon's alternator, and this was considered a normal maintenance item. As for excessive oil consumption, in view of warning signals presented to a vehicle owner, such as leaks, the agency has not considered this a safety related problem.

Accordingly the agency determined that there was not a reasonable possibility that an order requiring notification and remedy of a safety related defect would be issued at the conclusion of an investigation, and on June 7, 1984, Mr. Wade's petition was denied.

(Secs. 124, 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410(a), 1412); delegations of authority at 49 CFR 1.50 and 501.8).

Issued on August 20, 1984.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 84–23176 Filed 8–30–84; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Advisory Committee on the International Monetary System; Meeting

Notice is hereby given that the Advisory Committee on the International Monetary System will meet at the Treasury Department on September 14, 1984.

The meeting is called in order to obtain the opinions of the participants in the Advisory Committee regarding international monetary questions to be discussed at the annual meeting of the Board of Governors of the International Monetary Fund on September 24–27 and the related meeting of the Interim Committee of the Board of Governors on September 22.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set forth in 5 U.S.C. 552b(c)(1) and that the public interest requires such meetings to be closed to public participation. The matters to be discussed concern the foreign relations of the United States, some of which are the subject of negotiations with other governments. Public disclosure of the matters discussed could be expected to cause identifiable harm to the national security of the United States.

Any comment or inquiry with respect to this notice can be addressed to Barry S. Newman, Director, Office of International Monetary Policy, U.S. Department of the Treasury, Washington, D.C. 20220, (202) 566–5081.

Dated: August 8, 1984.

Beryl W. Sprinkel,

Under Secretary for Monetary Affairs.

[FR Doc. 84–23261 Filed 8–30–84; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Public Law 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Executive House Hotel, 1515 Rhode Island Avenue, NW, at Scott Circle, Washington, DC 20005, on October 15 and 16, 1984. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8:00 a.m., on October 15 and 16, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-389-3702), prior to September 28, 1984.

The meeting will be closed from 8:00 a.m. to 5:30 p.m. on October 15, and from 8:00 a.m. to 12:45 p.m. on October 16, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92-463, as amended by section 5(c) of Pub. L. 94-409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: August 27, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-23191 Filed 8-30-84; 8:45 am]

BILLING CODE 8320-01-M

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee will be held in Room 817 at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on September 17 and 18, 1984. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Educational and Clinical Centers established by the Department of Medicine and Surgery.

The sessions will convene at 8:30 a.m. both days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Von Hudson, Program Assistant, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389-2298) prior to September 12, 1984.

Dated: August 23, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-23190 Filed 8-30-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Wage Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Administration Wage Committee for calendar year 1983 has been issued.

The report summarizes activities of the Committee on matters related to wage surveys and pay schedules for Federal prevailing rate employees. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC. 20540

Veterans Administration, Office of the Committee Secretary, VA Wage Committee, Room 1108, 810 Vermont Avenue, NW., Washington, DC. 20420.

Dated: August 27, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-23192 Filed 8-30-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1.

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 34123, August 28, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., August 28, 1984.

STATUS: Open.

CHANGE IN MEETING: Changes order in which previous items 3 through 16 were presented; corrected titles of previous items 10, 13, 14, 16; and added item 17.

3. Memorandum re: Current Status of Polish Indebtedness.

4. Resolution re: Ratification of Policy Docket Cz-161a, Revision 4, Amendment 3, Policies for Collection, Settlement, and Adjustment of Certain Claims By or Against Commodity Credit Corporation.

5. Report re: Cash Management Report.

6. Memorandum re: Peanut Loan and Purchase Program for the 1982 through 1985 Marketing Years, XCP-31a, Advisory Memorandum No. 2.

7. Memorandum re: Tobacco Price Support Program for the 1982 and Subsequent Crops, XCP-40a, Advisory Memorandum No. 2.

8. Docket XCP-98a, Amendment 1 re: Milk Price Support Program 1982-83 through 1984-85 Marketing Years.

9. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.

10. Report re: Status of Commodity Donation Programs.

11. Report re: Status of Ultra-High Temperature (UHT) Milk Pilot Program.

12. Report Re: Status Report on $90 Million African Assistance Sales Program.

13. Resolution re: Ratification of Docket Cz-266, Resolution No. 21, Amendment 2, Commodities Available for Pub. L. 480 During Fiscal Year 1984.

14. Resolution re: Ratification of Sale of CCC-Owned Nonfat Dry Milk to CONASUPO.

15. Resolution re: Ratification of Repurchase Offers on Export Credit Guarantees for Sudan and Peru.

16 Report re: Status of Export Credit Sales and Guarantee Programs.

17. Resolution re: Raisin Export Recovery Program.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Ashworth, Secretary Commodity Credit Corporation, Post Office Box 2415, Room 3086 South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-8165.

Dated: August 29 1984.

Richard A. Ashworth,

Secretary, Commodity Credit Corporation.

[FR Doc. 84-23373 Filed 8-29-84; 3:58 pm]

BILLING CODE 3410-05-M

2

FEDERAL ELECTION COMMISSION

DATE: Wednesday, September 5, 1984.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE: Thursday, September 6, 1984.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive
  Presidential Primary Matching Funds
Draft Advisory Opinion No. 1984-36:
  Gordon K. Gayer on behalf of American
    Health Capital, Inc.
State and local elections and the Federal
  Campaign Law Brochure
Treatment of income taxes paid relating to
  investment income—1984 Presidential
  Primary Matching Fund recipients
Finance Committee Report
Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-23290 Filed 8-29-84; 10:28 am]

BILLING CODE 6715-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11 a.m., Wednesday, September 5, 1984, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed establishment of emergency computer backup within the Federal Resrve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 29, 1984.

Jame McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23330 Filed 8-29-84; 1:04 pm]

BILLING CODE 6210-01-M

4

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, September 5, 1984.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.

2. Review of Central Liquidity Facility Lending Rate.

3. Central Liquidity Facility Agent Reimbursement Rate for FY'85.

4. Central Liquidity Facility Reserving Targets for FY'85.

5. Review of Appeal of Regional Director's Denial of Merger Proposal: Arkansas Central Federal Credit Union (Continuing) and Benton County Government Employees Federal Credit Union (Merging).

6. Review of Appeals of Regional Director's Denial of C.G.A. Federal Credit Union's (Brooklyn, New York) request to amend its field of membership.

7. Proposed Rule: Federal Credit Union Ownership of Fixed Assets, Part 701.36, NCUA Rules and Regulations

* * * * *

TIME AND DATE: 10:30 a.m., Wednesday, September 5, 1984.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Merger. Closed Pursuant to Exemptions (8) and (9)(A)(ii).
3. Personnel Actions. Closed Pursuant to Exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84-23373 Filed 8-29-84; 3:58 pm]

BILLING CODE 7537-01-M

5

POSTAL RATE COMMISSION

TIME AND DATE: 8:30 a.m., Tuesday, September 4, 1984.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The interlocutory matters in Docket No. R84–1, Postal Rate and Fee Changes.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254–3880.

Charles L. Clapp,

Secretary.

[FR Doc. 84-23289 Filed 8-29-84; 10:11 am]

BILLING CODE 7715-01-M

6

POSTAL SERVICE

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, September 10, 1984, at the USPS Training Center in Potomac, MD, and at 9:30 a.m. on Tuesday, September 11, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the September 10 meeting is closed to public observation. The September 11 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245–3734.

At its meeting on August 6, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for September 10. (See 49 FR 32489, August 14, 1984.) The agenda item of the meeting to be closed concerns strategic planning in connection with continued collective bargaining negotiations involving the Postal Service and four labor organizations respresenting certain postal employees.

Agenda

Monday Session, September 10 (Closed)

1. Strategic Planning—Collective Bargaining.

Tuesday Session, September 11 (Open)

1. Minutes of the Previous Meeting, August 6–7, 1984.
2. Remarks of the Postmaster General.
   (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)
3. USPS Tentative Budget Program.
   (Mr. Coughlin, Senior Assistant Postmaster General, Finance Group, will discuss the Postal Service's tentative budget program for fiscal year 1986 with the Board.)
4. Postal Rate Commission Budget.
   (Under the Postal Reorganization Act, the Postal Rate Commission periodically proposes and submits to the Postal Service a budget for the Commission's expenses. The budget is to be considered approved as submitted if the Governors do not act to adjust it by unanimous written decision. This matter is included on the agenda to give the Governors an opportunity to act on the Commission's budget.)
5. Briefing on INTELPOST.
6. Briefing on status of the "clusterbox" program.
   (Mr. Hagburg, Assistant Postmaster General, Delivery Services Department, will brief the Board on the status of the Neighborhood Distribution and Collection Box Unit Program.)
7. Capital Investments:
   a. Austin, Texas (General Mail Facility).
   b. Beaumont, Texas (General Mail Facility and Vehicle Maintenance Facility).
   c. O'Hare Field, Chicago, IL (Airmail Facility).
   d. New York City (Vehicle Maintenance Facility and parking garage).
   e. 5,000 Integrated Retail Terminals (Automation of post office window services).
   f. Central Processing Units for Postal Data Centers.
8. Viewing film "*What's in the Mail Today*".
9. Consideration of tentative agenda for the October 2–3, 1984, meeting in Cleveland, Ohio.

David F. Harris,

Secretary.

[FR Doc. 84-23288 Filed 8-29-84; 10:11 am]

BILLING CODE 7710-12-M

7

TENNESSEE VALLEY AUTHORITY

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m. (EDT), Wednesday, August 29, 1984.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following items are added to the previously announced agenda:

Real Property Transactions

5. Supplement to Contract No. TV–53306A between TVA and Monroe County, Tennessee, amending payment of obligations of County for exercise of option to purchase 474 acres adjacent to the Niles Ferry Industrial Park and providing for assumption by County of certain TVA responsibilities for land management of the Tellico Reservoir shoreland located in the County.

Unclassified

7. Supplement to Contract No. TV–60001A between TVA and the Agency for International Development (AID) to provide additional AID funding to continue work being performed by TVA for AID in providing assistance to medium-size cities in underdeveloped countries in programs to conserve energy and natural resources.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that

TVA business requires the subject matter of this meeting be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Richard M. Freeman,
Director.

John B. Waters,
Director.

[FR Doc. 84-23332 Filed 8-29-84; 1:19 pm]

BILLING CODE 8120-01-M

federal register

Friday
August 31, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473, (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The Numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alaska: AK82-5152	October 22, 1982.
Minnesota:	
MN83-2001	Jan. 14, 1983.
MN83-2057	July 29, 1983.
MN83-2058	July 29, 1983.
MN83-2059	July 29, 1983.
MN84-5015	May 25, 1984.
Missouri: MO84-4025	Apr. 27, 1984.
Mississippi:	
MS83-1015	Apr. 1, 1983.
MS83-1014	Mar. 3, 1983.
New York: NY83-3027	July 22, 1983.
Ohio: OH83-5127	Dec. 23, 1983.
Tennessee:	
TN83-1087	Nov. 25, 1983.
TN83-1088	Nov. 25, 1983.
TN84-1005	Mar. 9, 1984.
Utah: UT83-5120	Sept. 30, 1983.
Washington: WA83-5110	June 3, 1983.
Wisconsin: WI83-2041	May 13, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The Numbers of the decisions being superseded and their dates of Publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Arkansas: AR83-4008 (AR84-4053)	Jan. 7, 1983.
Kentucky:	
KY83-1061 (KY84-1026)	Sept. 16, 1983.
KY83-1063 (KY84-1027)	Sept. 16, 1983.
KY83-1062 (KY84-1028)	Sept. 16, 1983.
Tennessee:	
TN82-2060 (TN84-1023)	Nov. 19, 1982.
TN83-1086 (TN84-1024)	Nov. 25, 1983.

Signed at Washington, D.C., this 24th day of August 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AK82-5125 - MOD. #8
(47 FR 47150 - October 22, 1982)
Statewide, Alaska

	Basic Hourly Rates	Fringe Benefits
Change:		
PLUMBERS; STEAMFITTERS:		
Area 2	$25.20	$5.60
Area 3	22.65	6.85
Add:		
LABORERS & POWER EQUIPMENT OPERATORS, receive 10% premium while performing tunnel or underground work.		

DECISION #MO84-4025-MOD #2
49 FR 18220-April 27,1984)
Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri; Johnson & Wyandotte Counties, Kansas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement Masons (Building Construction):		
Zone 1	$15.395	2.33
Elevator Constructors	16.89	2.69+ a
Elevator Constructors' Helpers	70%JR	2.69+ a
Elevator Constructors' Helpers (Prob.)	50%JR	2.69+ a
Ironworkers:		
Zone 1	17.25	3.25
Plumbers	18.46	2.70
Roofers:		
Roofers	16.48	2.91

DECISION No. MS 83-1015 MOD. # 5
(48 FR 14312 - April 1, 1983)
Hinds County, Mississippi

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$14.54	$2.05
Carpenter Classifications:		
Carpenters	12.00	.70
Power Saw Operators (1 HP or Over)	12.25	.70
Fiber Glass Insulation Application	12.15	.70
Millwrights	12.60	.70
Piledrivermen	12.35	.70
Cement Mason Classifications:		
Cement Masons	10.70	1.10
Float Machine Operators	10.90	1.10
Glaziers	12.63	.02
Lathers	11.00	.70
Plasterers	11.25	1.10
Line Construction:		
Linemen	13.43	1.10 + 3%
Cable Splicer	13.73	1.10 + 3%
Groundman	8.13	1.10 + 3%

DECISION No. MS83-1014 MOD. # 3
(48 FR 12646 - March 3, 1983)
Warren County, Mississippi

	Basic Hourly Rates	Fringe Benefits
CHANGE		
Asbestos Workers	$14.54	$2.05
Glazers	12.63	.02

DECISION NUMBER MN83-2001 - MOD. #3
(48 FR 1910 - January 14, 1983)
Anoka, Benton, ...
Winona & Wright Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons:		
Area 4	$17.58	$.95
Area 10	15.20	.95
Ironworkers:		
Area 1	17.10	3.64
Area 2	15.22	3.85
Painters:		
Area 1:		
Brush & Roller	16.06	2.68
Structural Steel & Bridges	16.81	2.68
Area 4:		
Brush	14.61	1.93
Structural Steel & Bridges	15.21	1.93
Laborers:		
Area 1:		
Class 1	12.35	2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.65
Area 2:		
Class 1	10.00	2.75
Class 2	10.15	2.75
Class 3	10.20	2.75
Class 4	10.35	2.75
Class 5	10.45	2.75
Class 6	10.70	2.75
Area 3:		
Class 1	12.15	1.70
Class 2	12.30	1.70
Class 3	12.35	1.70
Class 4	12.50	1.70
Class 5	12.60	1.70
Class 6	12.85	1.70
Area 4:		
Class 1	11.88	3.00
Class 2	12.03	3.00
Class 3	12.08	3.00
Class 4	12.23	3.00
Class 5	12.33	3.00
Class 6	12.58	3.00

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Laborers (Cont'd):		
Area 5:		
Class 1	$12.68	$2.20
Class 2	12.83	2.20
Class 3	12.88	2.20
Class 4	13.03	2.20
Class 5	13.13	2.20
Class 6	13.33	2.20
Power Equipment Operators:		
Area 1:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.46	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65
Area 2:		
Group 1	15.52	2.65
Group 2	14.99	2.65
Group 3	14.83	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65
Area 3:		
Group 1	13.78	2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65

DECISION NUMBER MN83-2057 - MOD. #3
(48 FR 34614 - July 29, 1983)
Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, & Washington Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$18.32	3.94
Bricklayers; Stonemasons	16.88	2.94

DECISION NUMBER MN83-2057 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Carpenters; Millwrights; & Piledrivermen:		
Commercial Building:		
Carpenters & Piledrivermen	$15.86	$3.87
Electricians:		
Anoka (Anoka & Fridley Twps. & Cities of Andover, Anoka, Columbia Hgts., Coon Rapids, Fridley, Hilltop, Ramsey & Spring Lake Park), Carver, Hennepin, & Scott Counties:		
Commercial Building:		
Electricians	17.76	29.6%
Cable Splicers	18.26	29.6%
Elevator Constructors:		
Mechanic	17.935	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
Ironworkers	17.10	3.64
Lathers; Drywall Hangers	16.05	3.71
Painters:		
Exclu. Dakota, Ramsey & Washington Cos.:		
Brush; Roller; & Wallpaper	16.06	2.68
Sandblaster; Spray; & Structural Steel	16.81	2.68
Residential of 8 units or less	80%JR	2.68
Sanders	12.76	1.72
Tapers	17.01	1.72
Pipefitters; Plumbers; & Steamfitters:		
Dakota, Ramsey & Washington Cos.:		
Plumbers	16.53	5.58
Pipefitters; Steamfitters	16.72	5.39
Remaining Cos.:		
Plumbers	14.95	7.4+b
Plasterers:		
Anoka (Extreme eastern section) Co.	14.05	3.72
Tile Setters	16.65	2.32

	Basic Hourly Rates	Fringe Benefits
Change:		
Laborers:		
Site Preparation, Excavation & Incidental Paving:		
Class 1	$12.35	$2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.85
Power Equipment Operators:		
Building Construction:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65
Class 5	17.00	2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65
Site Preparation, Excavation & Incidental Paving:		
Class 1	16.16	2.65
Class 2	15.63	2.65
Class 3	15.46	2.65
Class 4	15.34	2.65
Class 5	13.22	2.65
Class 6	12.48	2.65

DECISION NUMBER MN83-2058 - MOD. #4
(48 FR 34617 - July 29, 1983)
Benton, Sherburne, & Stearns Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$18.32	$3.94

DECISION NUMBER MN83-2058 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Carpenters:		
Building Construction:		
Benton (Exclu. Little Rock & Skaja) Co., Sherburne (Except Southern Tip), & Stearns Cos.:		
Carpenters; Millwrights; & Piledrivermen:		
Commercial Building inclu. 4 story apartments	$14.93	$1.10
Residential, inclu. single dwellings, duplexes, row houses, town houses, & walk-up apartments not to exceed 3 stories in height above ground	11.40	1.10
Sherburne (Southern Tip) Co.:		
Commercial Building:		
Carpenters; Piledrivermen	15.86	3.87
Electricians:		
Benton, Sherburne (Haven, Palmer, Santiago, Becker & Clear Lake Twps.), & Stearns Cos.:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	13.31	13.5%+ 1.57
Ironworkers	17.10	3.64
Lathers; Drywall Hangers	16.05	3.71
Painters:		
Sherburne (Eastern 2/3) Co.:		
Brush; Paperhangers; & Rollers	16.06	2.68
Sandblasting; Spray; & Steel	16.81	2.68
Residential of 8 units or less	80%JR	2.68
Sanders	12.76	1.72
Tapers	17.01	1.72

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Plumbers; Steamfitters:		
Benton, Sherburne (Western ½), & Stearns Cos.	$14.88	$3.36
Sherburne (Eastern ½) Co.:		
Plumbers	14.95	7.14
Tile Setters	16.65	2.32
Laborers:		
Site Prepraration, Excavation & Incidental Paving:		
Benton & Stearns Cos.:		
Class 1	10.00	2.75
Class 2	10.15	2.75
Class 3	10.20	2.75
Class 4	10.35	2.75
Class 5	10.45	2.75
Class 6	10.70	2.75
Sherburne Co.:		
Class 1	12.35	2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.85
Power Equipment Operators:		
Building Construction:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65
Class 5	17.00	2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65
Site Preparation, Excavation & Incidental Paving:		
Benton (E. of the Western Right-of-Way of Hwy #10), Sherburne (Exclu. area South of the Northern Boundary of T-33-N & East of the Western Boundary of R-27-W), & Stearns (East of the Western Right-of-Way of Minn. Hwy #15) Cos.:		

MODIFICATIONS P. 5

DECISION NUMBER MN83-2058 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operators (Cont'd):		
Group 1	$15.52	$2.65
Group 2	14.99	2.65
Group 3	14.83	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65
Benton (Rem. of Co.) & Stearns (Rem. of Co.) Cos.:		
Group 1	13.78	2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65
Sherburne (Rem. of Co.) Co.:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.46	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65

DECISION NUMBER MN83-2059 - MOD. #2
(48 FR 34620 - July 29, 1983)
Carlton, Cook, Itasca, Koochiching, Lake, & St. Louis Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons; Plasterers:		
Building Construction:		
Carlton, Cook, Lake, & St. Louis (Exclu. area N. of White Face River) Cos.:		
Cement Masons	15.85	.95
Plasterers	15.50	1.50
Itasca & St. Louis (N. of White Face River) Cos.:		
Cement Masons	15.20	.95
Residential:		
Itasca & St. Louis (N. of White Face River) Cos.:		
Cement Masons	13.00	.95

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Cement Masons (Cont'd):		
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Cook, Lake & St. Louis (S. of T 55 N) Cos.	$17.58	$.95
Itasca & St. Louis (N. of T 55 N) Cos.	15.20	.95
Electricians:		
Carlton, Cook, Itasca (S. part, inclu. Blackberry, Goodland, & Wawina), Lake, & St. Louis (Bounded on the north by the lines of Kelsey Twp. extended East & West) Cos.	15.75	32%
Itasca (Exclu. section S. of a line extending East & West of the South line of Grand Rapids & Trout Lake Twp.), Koochiching, & St. Louis (Northern part bounded by the South line of Ellsburg Twp. extended East & West) Cos.:		
Exclu. Residential Up to & Inclu. 6-plexes under one roof:		
Electrical Installations above $14,000.00:		
Electricians	13.56	26½%+ .96
Cable Splicers	14.11	26½%+ .96
Electrical Installations less than $14,000.00:		
Electricians	11.01	26½%+ .96
Cable Splicers	11.56	26½%+ .96
Ironworkers	15.22	3.85
Painters:		
Residential & Commercial Repaint:		
Brush	12.00	1.93
Paperhangers; Spray; Steel; & Tapers	12.60	1.93
New Commercial Building:		
Brush	14.61	1.93
Paperhangers; Spray; Steel; & Tapers	15.21	1.93

MODIFICATIONS P. 6

DECISION NUMBER MN83-2059 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Plumbers; Steamfitters:		
Koochiching Co.:		
Heavy Commercial Building over $25,000.00	$18.37	$2.25+d
Residential & Light Commercial Building not to exceed $25,000.00	13.85	2.25+d
Roofers:		
Itasca, Koochiching, & St. Louis (N 2/3) Cos.	13.58	1.52
Tile Setters:		
Exclu. St. Louis (Duluth) Co.	16.65	2.32
Laborers:		
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:		
Class 1	11.88	3.00
Class 2	12.03	3.00
Class 3	12.08	3.00
Class 4	12.23	3.00
Class 5	12.33	3.00
Class 6	12.38	3.00
Itasca & St. Louis (N. of T 55N) Cos.:		
Class 1	12.68	2.20
Class 2	12.83	2.20
Class 3	12.88	2.20
Class 4	13.03	2.20
Class 5	13.13	2.20
Class 6	13.33	2.20
Koochiching Co.:		
Class 1	10.00	1.40
Class 2	10.15	1.40
Class 3	10.20	1.40
Class 4	10.35	1.40
Class 5	10.45	1.40
Class 6	10.70	1.40
Power Equipment Operators:		
Building Construction:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operators (Cont'd):		
Class 5	$17.00	$2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Itasca (E. of the Western Right-of-Way of Minn. Hwy 6), & Koochiching (E. of a N-S line from the Canadian border to Pelland, the Western Right-of-Way of U.S. Hwy 71, from Pelland to Big Falls & Minn. Hwy 6) Cos.:		
Group 1	15.52	2.65
Group 2	14.99	2.65
Group 3	14.83	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65
Cook, Lake, & St. Louis Cos.:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.46	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65
Itasca (Rem. of Co.) & Koochiching (Rem. of Co.) Cos.:		
Group 1	13.78	2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65

Add:
Footnote:
d. 2 paid holidays: 4th of July and Labor Day

DECISION NUMBER MN84-5015 - MOD. #1
(49 FR 22154 - May 25, 1984)
Aitkin, Becker,...Wright and Yellow Medicine Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 3	$18.32	$3.94
Electricians:		
Area 1	15.75	32%
Area 4:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	13.31	13.5%+ 1.57
Area 6:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	12.53	13.5%+ 1.57
Area 9:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	12.58	13.5%+ 1.57
Area 10:		
Electricians	17.76	29.6%
Cable Splicers	18.26	29.6%
Ironworkers:		
Area 1	15.22	3.85
Area 2	17.10	3.64
Lathers; Drywall Hangers:		
Area 1	16.05	3.71
Tile Setters:		
Area 2	16.65	2.32
Truck Drivers:		
Area 11	11.75	

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Laborers:		
Area 10:		
Group 1	$11.75	$1.35
Group 2	11.80	1.35
Group 3	11.85	1.35
Group 4	11.90	1.35
Group 5	12.00	1.35
Group 6	12.05	1.35
Group 7	12.10	1.35
Power Equipment Operators:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65
Class 5	17.00	2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65

DECISION NO. NY83-3027 - MOD. #3
(48 FR 33622 - July 22, 1983)
Nassau & Suffolk Counties, New York

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.14	8.53
BOILERMAKERS	21.06	.04+ 37%
BRICKLAYERS	18.19	6.57
CARPENTERS		
Nassau County (Remainder of County)		
Building, Residential, Heavy & Highway	17.66	6.78
DIVERS	20.87	8.015
ELECTRICIANS		
Building	19.65	.70+ 35.5%
Wiring of single or multiple family dewellings & apartments up to and including 2 stories	13.30	34%
Installation of television receivers, radio receivers, record receivers, record players and associated apparatus and antenna and home appliances and closed circuit TV and multiple outled distribution systems, sound and intercommunication systems and commercial electromechancial devices and appliances where such is not part of an electrical contract	11.075	a
ELEVATOR CONSTRUCTORS	18.80	3.69+ b+c
ELEVATOR CONSTRUCTORS HELPERS	14.10	3.69+ b+c
ELEVATOR CONSTRUCTORS HELPERS (Probationary)	9.40	
MODERNIZATION & REPAIR ELEVATOR CONSTRUCTORS	15.94	3.69+ b+c
MODERNIZATION & REPAIR ELEVATOR CONSTRUCTOR HELPER	11.95	3.69+ b+c

	Basic Hourly Rates	Fringe Benefits
MODERNIZATION & REPAIR ELEVATOR CONSTRUCTORS HELPER (Probationary)	9.40	
GLAZIERS	18.55	6.10
IRONWORKERS		
Structural	16.00	13.00
Ornamental	16.58	9.30
LABORERS		
Building	14.75	5.38
Heavy & Highway		
Concrete & curb form setters, asphalt rakers	12.47	.75+13% +d
Aspahlt Workers & roller boys, asphalt top shovelers & smoothers, asphalt tampers, jackhammers, & drill men, hoppermen, carpenters' tenders, pipejoiners & setters, concrete laborers (structures), stone spreading laborers, trackmen grading & excavating laborers, yard laborers puddlers on concrete pavement, asphalt plant (batcher & hoppermen), all other unskilled laborers	11.68	.75+13% +d
MILLWRIGHTS	17.79	7.66
PAINTERS		
Nassau County (Inwood, Lawrence, Cedarhurst, Woodmere, Hewlett, Hewlett Bay, East Rockaway, part of Rockville Center, Atlantic Beach, Long Beach, Lido Beach, Point Lookout, Gibson, and part of Valley Stream		
Painters	15.16	.01+30%
Spray	18.41	.01+30%
Fire Escapes	17.33	.01+30%
Nassau County (Remainer of County) & Suffolk Co.		
Painters & Drywall Finishers	19.98	5.28
Spraying: scaffold or rolling scaffold over 18 ft.	18.61	5.28

MODIFICATIONS P. 9

DECISION NO. NY83-3027 - MOD. #3

CONTINUED

	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D)		
Sandblasting; structural steel	20.24	5.28
Repaint of hospitals, schools and apartment houses	13.55	5.28
PAPERHANGERS	16.84	5.28
PLASTERERS	14.75	5.00
PLUMBERS		
Nassau County		
Building, Heavy & Highway Construction	16.72	5.17
Residential (Jobbing repair to present plumbing systems that does not change the existing roughing or any minor alterations job where the change to the existing roughing does not have a labor cost in excess of $1,500)	11.25	4.01
Suffolk County	18.75	6.20
SPRINKLER FITTERS & STEAMFITTERS	19.82	7.00
Refrigeration, Air Conditioning and Oil Burner Maintenance and Installation Mechanics (Installation of commercial equipment where the combined horsepower does not exceed 5 horsepower; Installation of air cooling, heating and air conditioning on any job where the combined horsepower does not exceed 10 horsepower)	13.98	1.57
STONE DERRICKMEN & RIGGERS	17.44	9.07
STONE MASONS	18.00	3.75

DECISION NO. TN84-1005
MOD # 1
(49 FR 9082 - March 9, 1984)

Davidson County, Tennessee

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELEVATOR CONSTRUCTORS:		
Mechanics	$12.18	$3.00-a
Helpers	8.53	3.00-a
Probationary Helpers	6.09	
Plasterers	11.90	1.11

DECISION NO. TN83-1088
MOD # 4
(48 FR 53272 - November 25, 1983)

Shelby County, Tennessee

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELEVATOR CONSTRUCTORS		
Mechanics	14.68	3.29-b
Helpers	10.28	3.29-b
Probationary Helpers	7.34	

MODOFICATIONS P. 10

DECISION NO. TN83-1087
MOD # 6
(48 FR 53270 - November 25, 1983)

Hamilton, Marion, Polk and Rhea Counties, Tennessee

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Wiremen	$14.40	$1.25+ 12%
Cable Splicers	14.65	1.25+ 12%
ELEVATOR CONSTRUCTORS:		
Mechanics	13.505	3.29+ a
Helpers	9.45	3.29+ a
Probationary Helpers	6.75	
LINE CONSTRUCTION:		
Linemen and Operators of Hole Digging Equipment and Tractor With Winch	14.40	1.25+ 11½%
Cable Splicers	14.65	1.25+ 11½%
Operator of Hole Digging Equipment without Winch	12.37	1.25+ 11½%
Groundmen	10.20	1.25+ 11½%
PAINTERS:		
Tanks, Steel Towers, Stacks, Bridges & Pumping Stations	11.75	1.20
SHEET METAL WORKERS:		
Hamilton County	13.83	2.39+ 3%
All Other Counties	14.33	2.39+ 3%

DECISION NUMBER OH83-5127 - MOD. #5
(48 FR 56903 - December 23, 1983)
Adams, Allen,...Wood & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:		
Area 19	$19.47	$3.40+a
Cement Masons:		
Area 14	19.47	3.40+a
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 17	19.47	3.40+a
Plasterers:		
Area 11	19.47	3.40+a

MODIFICATIONS P. 11

DECISION NO. WA83-5110 - Mod#17 (48 FR 25108 - June 3, 1983) Statewide Washington	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ROOFERS:		
Area 6:		
Roofers	$14.60	$2.90
Handling irritating material (Coal Tar, Epoxy)	16.06	2.90
OMIT:		
ROOFERS:		
Area 6:		
Handling irritating material (Coal Tar, Epoxy) in confined area		
ADD:		
CARPENTERS:		
Area 1:		
All construction, remodeling, repair, or renovation of buildings under $2,000,000.00 (excluding mechanical and electrical work) and bridges and related work under $500,000.00:		
All classifications receive 80% of the published basic hourly rates plus full fringes.		
LABORERS (Area 1), POWER EQUIPMENT OPERATORS (Area 1), AND TRUCK DRIVERS (Area 1):		
All projects or components of projects less then the dollar amounts listed below:		
All classifications receive 80% of the published basic hourly rates plus full fringes:		
Paving $ 75,000.00		
Crushing 200,000.00		
Grading, and Clearing 350,000.00		
Bridges and related work 500,000.00		
Utilities Unlimited		
Buildings 2,000,000.00		
(Paving within 45 mile radius of Spokane or Lewiston shall receive full rate.) On projects involving more than one component, each component shall be considered separately in determining the wage that applies to that component.		
ALL OTHER WORK NOT COVERED ABOVE: Receive full rates		

DECISION NO.WI83-2041-MOD#3 (48 FR-21811-May 13, 1983) Statewide Wisconsin	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters & Piledrivermen:		
Area 1		
Carpenters	$12.90	$2.65
Piledrivermen	13.16	2.65
Area 3		
Carpenters	14.71	2.36
Piledrivermen	14.80	2.36
Area 4		
Carpenters	15.11	1.96
Piledrivermen	15.20	1.96
Area 5		
Carpenters	14.29	2.12
Piledrivermen	14.49	2.12
Area 6		
Carpenters	14.65	4.03
Piledrivermen	15.82	4.16
Area 7		
Carpenters & Piledrivermen	14.00	3.05
Area 8		
Carpenters & Piledrivermen	15.86	3.87
DECISION NO. UT83-5120 - MOD. #7 (48 FR 44992 - September 30, 1983) Statewide, Utah		
CHANGE:		
IRONWORKERS:		
Fence Erectors;		
Structural; Ornamental; Reinforcing	$16.65	$3.35

SUPERSEDEAS DECISION

STATE: ARKANSAS
COUNTY: STATEWIDE
DECISION NO. AR84-4053
DATE: Date of Publication
SUPERSEDES DECISION #AR83-4008 dated January 7, 1983 in 48 FR 927
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, highways, runways and water & sewer utilities, (but does not include structures on highway rest areas).

	Basic Hourly Rates	Fringe Benefits
Bricklayers	$7.00	
Carpenters	7.00	
Concrete Finishers	7.00	
Electricians	8.50	
Ironworkers:		
Structural	6.10	
Reinforcing	5.30	
Laborers:		
Air tool operator	5.00	
Asphalt heater operator	5.00	
Asphalt raker	5.70	
Carpenter helper	5.00	
Chain saw operator	5.00	
Checker grade	5.30	
Concrete finisher helper	5.00	
Concrete joint sealer	5.00	
Concrete saw operator	5.00	
Formsetter	5.30	
Laborer	3.80	
Pipelayer	5.30	
Powderman	6.20	
Vibratorman	5.00	
Painter	6.00	
Pile driver leadman	6.00	
Power Equipment Operators:		
Aggregate spreader oper.	5.60	
Asphalt plant fireman	4.70	
Asphalt plantdrier oper.	4.70	
Batch plant oper.	5.60	
Bulldozer Operators:		
Finish	6.70	
Rough	5.50	
Bull float operator	5.50	
Concrete curing machine operator	5.50	
Concrete mixer operator:		
Less than 5 sacks	5.00	
5 sacks and over	6.00	
Backhoe op.- rubber tired (1 yard or less)	5.90	
Cherry picker operator	5.90	
Concrete paver operator	6.50	
Concrete spreader oper.	6.50	
Crane, derrick, dragline, shovel, backhoe opers.:		
1½ yard or less	6.50	
over 1½ yards	7.00	

Power Equipment OP. cont.	Basic Hourly Rates	Fringe Benefits
Crusher operator	$5.50	
Distributor operator	5.50	
Drill operator (wagon or truck)	5.50	
Elevating grader oper.	6.50	
Euclid or like equipment operator (bottom or end dump)	5.10	
Finishing machine oper.	5.90	
Forklift operator	4.90	
Form grader operator	4.90	
Front end loader oper.:		
Finish	6.50	
Rough	5.50	
Hydro seeder operator	5.00	
Mechanic	6.70	
Mechanic Helper	5.10	
Motor patrol operator:		
Finish	6.70	
Rough	5.50	
Mulching machine oper.	5.00	
Oiler and greaser	5.30	
Pile driver operator	6.00	
Pug mill operator	5.00	
Roller operator (self propelled)	5.10	
Scraper operator:		
Finish	6.70	
Rough	5.50	
Sod slicing machine op.	4.80	
Stabilizer mixing machine operator	5.50	
Tractor operator (crawler type)	5.00	
Tractor operator (farm and wheel)	5.00	
Tractor operator wheel type (with attachments 1 yd. or under	5.40	
Trenching machine oper.	5.40	
Stonemasons	7.00	
Truck Drivers:		
Distributor truck driver	5.30	
Semi-trailer	5.30	
Lowboy driver	5.50	
Transit mix truck driver	5.30	

DECISION #AR84-4053 Page 2

	Basic Hourly Rates	Fringe Benefits
Truck driver (heavy-maximum pay load in excess of 3,000 lbs.)	$5.00	
Truck driver (light-miximum pay load 3,000 lbs.)	4.70	
Well drillers	6.70	
Welders: receive rate prescribed for craft performing operation to which welding is incidental.		

	Basic Hourly Rates	Fringe Benefits

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standeards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Kentucky

COUNTIES: Allen, Ballard, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, McCracken, Mclean, Marshall, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren and Webster

DECISION NUMBER: KY84-1026

DATE: Date of Publication

Supersedes Decision Number KY83-1061 dated September 16, 1983 in 48 FR 41706

DESCRIPTION OF WORK: HEAVY AND HIGHWAY CONSTRUCTION PROJECTS

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$18.05	3.175
CARPENTERS:		
Highway Construction	11.70	2.05
Heavy Construction	12.60	2.05
CEMENT MASONS	13.65	2.00
ELECTRICIANS	16.24	13-1/4% +1.25
IRONWORKERS	18.10	2.46
LABORERS:		
Group I	10.50	2.20
Group II	10.75	2.20
Group III	10.80	2.20
Group IV	11.40	2.20
PAINTERS:		
Brush and Roller	15.90	2.50
Spray, Sandblast and Power Tools	16.90	2.50
PILEDRIVERMEN:		
Highway Construction	11.95	2.05
Heavy Construction	12.85	2.05
PLUMBERS & PIPEFITTERS	17.51	2.13
POWER EQUIPMENT OPERATORS		
Highway Construction Projects:		
Class A	13.65	2.75
Class B	11.23	2.75
Class C	11.61	2.75
Class D	10.97	2.75
POWER EQUIPMENT OPERATORS		
Heavy Construction Projects (Including bridges across commercially navigable rivers):		
Class A	$14.95	2.75
Class B	12.12	2.75
Class C	11.32	2.75
Class D (50¢ above Class A rate)		
TRUCK DRIVERS:		
Truck Helper	12.10	1.85
Drivers - three (3) tons and under, greaser, tire changer and truck mechanic helper	12.15	1.85
Drivers - Winch Truck and A-Frame Truck when used in transporting material	12.26	1.85
Truck Mechanic	12.38	1.85
Drivers - over three (3) tons, truck-mounted rotary drills, semi-trailers or pole trailers, dump trucks (tandem axle), distributors, mixer trucks (all types)	12.45	1.85
Drivers - Euclid and other heavy earth moving equipment and lowboy, pavement breakers	12.46	1.85

WELDERS: Receive rate for craft performing operation to which welding is incidental.

CLASSIFICATION DEFINITIONS

LABORERS:

GROUP I - General Laborers; asphalt plant laborers; concrete laborers; asphalt laborers; storm and sanitary sewer laborers; carpenter tenders; cement mason tenders; mesh handlers and placers; landscaping and seeding; planters and treetrimmers; sign, guardrail, and fence installers; grade checkers; aging and curing of concrete; truck spotters and dumpers; batch truck dumpers; rip-rap and grouters; dredging laborers; right-of-way laborers; wrecking and demolition laborers; drill helpers and all hand digging and hand back filling.

GROUP II - Wagon drills; jack hammers; paving breakers; chain saw; concrete saw; paving joint machine; vibrator operator; power driven Georgia buggy or wheelbarrow; sand blaster and concrete chippers; green concrete cutting; brickmasons tenders and motar mixer; pipe layers; joint makers; batter board man (sanitary and storm sewer); dry cement handlers; concrete rubbers; walk-behind tamper machine; walk-behind trenching machine; surface grinderman; hand-operated grouter and grinder machine operator; deck hand; scow man; burner and welder.

GROUP III - Powderman and blaster; side rail setters (including rail-paved ditches); tunnel laborers (free air); gunnite operator and mixer man; gunnite nozzleman; asphalt luteman and rakeman; air tract driller (all types); grout pump operator.

GROUP IV - Tunnel blasters; tunnel muckers (free air); miners and drillers (free air); caisson workers (free air).

OPERATING ENGINEERS
(Highway Construction Projects);

CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compressor plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine (two or more drums); locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; sideboom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydrocrane; backfiller; gurries; subgrader; tailboom.

CLASSIFICATION DEFINITIONS (CONT'D)

OPERATING ENGINEERS (CONT'D):

CLASS B - All air compressors (over 900 cu. ft. per min.); bituminous mixer; concrete mixer (under 21 cu. ft.); elevator (one drum or buck hoist); welding machine; form grader; roller (rock); tractor (50 HP or over); bull float; finish machine; outboard motor boat; electric vibrator; compactor/self-propelled compactor; boom-type tamping machine; truck crane oiler; switchman or brakeman; mechanic helper; whirley oiler; tractair and road widening trencher; joint sealing machine; throttle valve man; tugger; well points; flexplane; fireman and hoist (one drum); skid-mounted or trailer-mounted concrete pumps; fork lift (regardless of lift height); Ross carrier; dredge engineer and elevator (regardless of ownership when used to hoist building material).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor; cement gun; conveyor; grout pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand oiler and hydraulic post driver.

POWER EQUIPMENT OPERATORS - HEAVY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compress plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine; mechanic welder; locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; side boom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydrocrane; backfiller; gurries; subgrader; tailboom; Letourneau or carry-all scoop.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity); bituminous mixer; concrete mixer (under 21 cu. ft.); welding machine; form grader; roller (rock); tugger; tractor (50 HP and over); bull float; finish machine; outboard motor boat; well points; flexplane; fireman; boom-type tamping machine; truck crane oiler; greaser on grease facilities servicing heavy equipment; switchman or brakeman; joint sealing machine; mechanic helper; whirley oiler; tractair and road-widening trencher; electric vibrator compactor/self-propelled compactor; throttle valve; elevator (one drum or buck hoist); power sweeper (riding type); core drill and caisson drill helper (truck mounted); skid-mounted or trailer-mounted concrete pumps; forklift (regardless of lift height); Ross carrier; dredge engineer; elevator (regardless of ownership when used to hoist building material).

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATOR (CONT'D):

CLASS C - Bituminous distributor; cement gun; conveyor; group pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand; steerman; hydraulic post driver; core drill; caisson drill helper (track or skid-mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150) and over (including jib) shall receive fifty ($.50) cents above Class A rate.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contractclauses 29 CFR 5.5(a)(1)(ii)(A).

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTIES: Adair, Barren, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Estill, Floyd, Garrard, Green, Harlan, Hart, Jackson, Johnson, Knott, Knox, Lawrence, Laurel, Lee, Leslie, Letcher, Lincoln, McCreary, Magoffin, Martin, Menifee, Metcalfe,Monroe, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Taylor, Wayne, Whitley and Wolfe

DECISION NO.: KY84-1027

DATE: Date of Publication

Supersedes Decision NumberKY83-1063 dated September16, 1983 in 48 FR 41709.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	13.15	1.85
CEMENT MASON	13.00	1.85
ELECTRICIANS	15.66	3% + 1.00
IRONWORKERS:		
Structural	13.25	1.85
Reinforcing	13.05	1.85
LABORERS:		
Laborers - general, steam Jenny	11.20	1.85
Hand blade operator, batch truck dumper, deck hand or scow man	11.45	1.85
Power driven tool operator of following: wagon drill, chain saw, jack hammer, concrete saw, sand blaster, concrete chipper, pavement breaker, vibrator, power wheel barrow, power buggy	11.55	1.85
Sewer pipe layer, bottom man, dry cement handler, concrete rubber, mason tender	11.55	1.85
Asphalt lute and rakeman, siderail setter	11.60	1.85
Gunnite nozzleman, gunnite operator	11.70	1.85
Tunnel laborer (free-air)	11.75	1.85
Tunnel mucker (freeair)	11.80	1.85
Tunnel miner, blaster and driller (freeair)	12.15	1.85
Laborers (Cont'd):		
Caisson Worker	12.70	1.85
Powderman	12.80	1.85
Drill operator of percussion type drills which are both powered and propelled by an independent air supply	14.00	1.85
PAINTERS:		
Guard rail	10.00	1.75
Structural	13.20	1.75
PILEDRIVERMEN	12.80	1.85
PLUMBERS & PIPEFITTERS	15.63	2.00
TRUCK DRIVERS:		
Drivers, 3 tons and under	11.78	1.85
Drivers, over 3 tons	11.99	1.85
Drivers, truck mounted rotary drill	11.99	1.85
Drivers, semi-trailer or pole trailer	11.65	1.85
Drivers, dump truck, tandem axle	11.65	1.85
Drivers, euclid and other heavy earth moving equipment and low boy	12.56	1.85
Drivers, winch truck and A-Frame when used in transporting material	11.55	1.85
Truck mechanic	11.75	1.85
Truck helper	11.45	1.85
Tire changer and truck mechanic helper	11.78	1.85
Drivers of distributors	11.65	1.85

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	Basic Hourly Rates	Fringe Benefits
Drivers on pavement breakers	11.80	1.85
Driver on mixer trucks (all types)	11.70	1.85
Greaser on greasing facilities	12.65	1.85
POWER EQUIPMENT OPERATORS:		
Class A	14.55	1.85
Class B	12.30	1.85
Class C	12.65	1.85
Class D	12.06	1.85

	Basic Hourly Rates	Fringe Benefits
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR 5.5(a)(1)(ii)(A).		

WELDERS: Receive rate for craft performing operation to which welding is incidental.

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS:

Class A - Auto patrol, batcher plant, bituminous paver, cableway, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (regardless of ownership when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, letourneau or carry-all scoop, bulldozer, mechanic, orangepeel bucket, piledriver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, well points, winch truck, push dozer, grout pump, high lift, fork lift, (regardless of lift height), all types of boom cats, multiple operator, core drill, tow or push boat, A-Frame winch truck, concrete paver, gradeall, hoist, hyster, material pump, pumpcrete, Ross Carrier, sheep foot, side boom, throttlevalve man, rotary drill, power generator, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, tugger, backfiller gurries, subgrader, electric vibrator compactor, welder burner.

Class B - All air compressors (200 cu. ft. per min. orgreater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, flexplane, fireman, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, self-propelled compactor, tractair and road widening trencher.

Class C - Greaser on grease facilities servicing heavy equipment.

Class D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, air compressors (under 200 cu. ft. per min. capacity), concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, hydraulic post driver.

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTIES: Anderson, Bath, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Carroll, Carter, Clark, Elliott, Fayette, Fleming, Franklin, Gallatin, Grayson, Grant, Greenup, Hardin, Harrison, Henry, Jefferson, Jessamine, Larue, Lewis, Madison, Marion, Mason, Meade, Mercer, Montgomery, Nelson, Nicholas, Oldham, Owen, Robertson, Rowan, Scott, Shelby, Spencer, Trimble, Washington, and Woodford

DECISION NUMBER: KY84-1028 DATE: Date of Publication

Supersedes Decision Number KY83-1062 dated September 16, 1983 in 48 FR 41707.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	12.96	1.85
CEMENT MASONS	13.14	3.32
CEMENT MASON on suspended scaffold	13.39	3.32
ELECTRICIANS	16.14	13½% + 1.25
IRONWORKERS	13.50	4.72
LABORERS:		
Group I	10.50	2.20
Group II	10.75	2.20
Group III	10.80	2.20
Group IV	11.40	2.20
PAINTERS:		
Spray, sandblast and waterblast	11.62	1.28
Brush	11.17	1.28
PILEDRIVERMEN	13.21	1.85
PIPEFITTERS	17.25	3.22
PLUMBERS	15.98	3.55
POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION		
Class A	13.65	2.75
Class B	11.23	2.75
Class C	11.61	2.75
Class D	10.97	2.75
POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION INCLUDING BRIDGES ACROSS COMMERCIALLY NAVIGABLE RIVERS:		
Class A	14.95	2.75
Class B	12.12	2.75
Class C	11.32	2.75
Class D (50¢ above Class A rate)		

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Drivers - single axle dump and flat bed trucks	12.34	71.50a
Drivers - Semi-trailer or pole trailer when used to pull building materials and equipment	12.34	71.50a
Driver - dump truck, tandem axle	12.34	71.50a
Driver - Euclid and other heavy earth moving equipment and low boy	12.44	71.50a
Driver - Winch truck and A-Frame truck when used in transporting materials and Ross Carrier	12.44	71.50a
Drivers - Fork lift truck when used to transport building materials	12.44	71.50a
Truck mechanic	12.34	71.50a
Truck helper	12.05	71.50a
Greaser, tire changer and mechanic helper	12.16	71.50a
Driver of distributors	12.34	71.50a
Driver on pavement breakers	12.44	71.50a
Driver on mixer trucks (all types)	12.37	71.50a
Mobile batch truck helper	12.05	71.50a

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTE:
a - Per week per employee who has been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

CLASSIFICATION DEFINITIONS

LABORERS:
GROUP I - General Laborers; asphalt plant laborers; concrete laborers; asphalt laborers; storm and sanitary sewer laborers; carpenter tenders; cement mason tenders; mesh handlers and placers; landscaping and seeding; planters and treetrimmers; sign, guardrail, and fence installers; grade checkers; aging and curing of concrete; truck spotters and dumpers; batch truck dumpers; rip-rap and grouters; dredging laborers; right-of-way laborers; wrecking and demolition laborers; drill helpers and all hand digging and hand back filling.

GROUP II - Wagon drills; jack hammers; paving breakers; chain saw; concrete saw; paving joint machine; vibrator operator; power driven Georgia buggy or wheelbarrow; sand blaster and concrete chippers; green concrete cutting; brickmasons tenders and motar mixer; pipe layers; joint makers; batter board man (sanitary and storm sewer); dry cement handlers; concrete rubbers; walk-behind tamper machine; walk-behind trenching machine; surface grinderman; hand-operated grouter and grinder machine operator; deck hand; scow man; burner and welder.

GROUP III - Powderman and blaster; side rail setters (including rail-paved ditches); tunnel laborers (free air); gunnite operator and mixer man; gunnite nozzleman; asphalt luteman and rakeman; air tract driller (all types); grout pump operator.

GROUP IV - Tunnel blasters; tunnel muckers (free air); miners and drillers (free air); caisson workers (free air).

CLASSIFICATION DEFINITIONS

OPERATING ENGINEERS
(Highway Construction Projects);
CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compressor plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine (two or more drums); locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; sideboom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydro-crane; backfiller; gurries; subgrader; tailboom.

CLASS B - All air compressors (over 900 cu. ft. per min.); bituminous mixer; concrete mixer (under 21 cu. ft.); elevator (one drum or buck hoist); welding machine; form grader; roller (rock); tractor (50 HP or over); bull float; finish machine; outboard motor boat; electric vibrator; compactor/self-propelled compactor; boom-type tamping machine; truck crane oiler; switchman or brakeman; mechanic helper; whirley oiler; tractair and road widening trencher; joint sealing machine; throttle valve man; tugger; well points; flexplane; fireman and hoist (one drum); skid-mounted or trailer-mounted concrete pumps; fork lift (regardless of lift height); Ross carrier; dredge engineer and elevator (regardless of ownership when used to hoist building material).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor; cement gun; conveyor; grout pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand oiler and hydraulic post driver.

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS - HEAVY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compress plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine; mechanic welder; locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; side boom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydrocrane; backfiller; gurries; subgrader; tailboom; Letourneau or carry-all scoop.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity); bituminous mixer; concrete mixer (under 21 cu. ft.); welding machine; form grader; roller (rock); tugger; tractor (50 HP and over); bull float; finish machine; outboard motor boat; well points; flexplane; fireman; boom-type tamping machine; truck crane oiler; greaser on grease facilities servicing heavy equipment; switchman or brakeman; joint sealing machine; mechanic helper; whirley oiler; tractair and road-widening trencher; electric vibrator compactor/self-propelled compactor; throttle valve; elevator (one drum or buck hoist); power sweeper (riding type); core drill and caisson drill helper (truck mounted); skid-mounted or trailer-mounted concrete pumps; forklift (regardless of lift height); Ross carrier; dredge engineer; elevator (regardless of ownership when used to hoist building material).

CLASS C - Bituminous distributor; cement gun; conveyor; group pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand; steerman; hydraulic post driver; core drill; caisson drill helper (track or skid-mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150) and over (including jib) shall receive fifty ($.50) cents above Class A rate.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contractclauses 29 CFR 5.5(a)(1)(ii)(A).

SUPERSEDEAS DECISION

STATE: TENNESSEE
COUNTIES: CARTER, GREENE, HAWKINS, JOHNSON, SULLIVAN, UNICOI, & WASHINGTON
DECISION NO.: TN84-1023
DATE: Date of Publication
Supersedes Decision Number TN82-2060, dated November 19, 1982 in 47 FR 52323.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS - (does not include single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$13.20	
CARPENTERS	7.10	.01
CEMENT MASONS	5.71	
ELECTRICIANS	6.94	
ELEVATOR CONSTRUCTORS:		
Mechanics	12.78	$3.00+a
Helper	8.95	3.00+a
Probationary Helpers	6.39	
GLAZIERS	5.74	
IRONWORKERS	7.96	
LABORERS:		
Unskilled	3.72	
Asphalt Rakers	4.44	
LATHERS	6.17	

	Basic Hourly Rates	Fringe Benefits
PAINTERS	$ 5.00	
PLASTERERS	6.00	
PLUMBERS & PIPEFITTERS	5.99	
ROOFERS	5.46	
SHEET METAL WORKERS	10.53	3%+ 2.05
SOFT FLOOR LAYERS	7.20	
TILE SETTERS	6.00	
TRUCK DRIVERS	4.32	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.00	
Bulldozer	4.50	
Crane	9.50	
Fork Lift	6.00	
Front End Loader	6.55	
Motor Grader	5.85	
Roller	5.30	
Scraper - Pan	4.50	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

a - Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day, Friday after Thanksgiving Day; Christmas Day. Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: TENNESSEE

COUNTIES: ANDERSON, KNOX, MONROE AND ROANE

DECISION NO.: TN84-1024

DATE: Date of Publication

Supersedes Decision No.TN83-1086 dated November 25, 1983 in 48 FR 53269.

DESCRIPTION OF WORK: BUILDING CONSTRUCTIONPROJECTS (does not include single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$15.64	$2.16
BOILERMAKERS	16.20	3.375
BRICKLAYERS, STONEMASONS, MARBLE MASON, TILE SETTERS & TERRAZZO WORKERS:		
Roane County	14.67	1.55
Anderson, Knox & Monroe Counties	12.71	.60
CARPENTERS & SOFT FLOOR LAYERS	12.91	1.48
CEMENT MASONS	12.61	
ELECTRICIANS:		
Anderson (Oak Ridge A.E.C. Area & Oak Ridge Townsite only) and Roane Counties:		
Wiremen	13.66	1.50 +3½%
Cable Splicers	14.48	1.50 +3½%
Anderson (Remainder of County), Knox & Monroe Counties:		
Wiremen & Technicians	13.56	1.75 +3½%
Cable Splicers	14.06	1.75 +3½%
ELEVATOR CONSTRUCTORS:		
Mechanics	12.78	3.00+a
Helpers	8.95	3.00+a
Probationary Helpers	6.39	
IRONWORKERS:		
Reinforcing	13.15	2.05
Structural & Ornamental	13.29	2.05
LATHERS	11.64	.27
LINE CONSTRUCTION:		
Anderson (Oak Ridge A.E.C. Area & Oak Ridge Townsite only) & Roane Counties:		
Linemen & Equipment Operators	13.66	1.50 +3½%
Cable Splicers	14.48	1.50 +3½%
Groundmen	12.73	1.50 +3½%

	Basic Hourly Rates	Fringe Benefits
Anderson (Remainder of County), Knox & Monroe Counties:		
Linemen, Heavy Equipment Oprs. & Hole Diggers	$12.26	$1.05 +3½%
Truck drivers with winch	9.60	1.05 +3½%
Truck drivers w/o winch	9.10	1.05 +3½%
Groundmen	9.20	1.05 +3½%
MILLWRIGHTS	14.15	1.29
PAINTERS	12.56	1.57
PILEDRIVERMEN	13.16	1.48
PLASTERERS	14.38	
PLUMBERS AND PIPEFITTERS	14.35	1.92
ROOFERS	10.50	.25
SHEET METAL WORKERS:		
Knox County	14.08	3%+ 2.19
Anderson, Monroe & Roane Counties	14.58	3%- 2.18
SPRINKLER FITTERS	14.57	3.23
LABORERS:		
GROUP I	8.81	1.00
GROUP II	8.96	1.00
GROUP III	8.99	1.00
GROUP IV	9.11	1.00
GROUP V	9.31	1.00
GROUP VI	9.61	1.00
TUNNEL CLASSIFICATIONS:		
GROUP I	8.81	1.00
GROUP II	9.21	1.00
GROUP III	9.36	1.00
GROUP IV	9.51	1.00
GROUP V	9.61	1.00

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

DECISION # TN84-1024

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Trucks up to 3 tons, and including 4 yd. dump trucks, struck measure and pickup trucks	$8.37	$.90+b
Trucks 3 to 5 tons and including 5 yd. dump trucks, struck measure	8.79	.90+b
Trucks 5 tons and over including dump trucks over 6 yds., struck measure, special equipment as Ready-mix concrete trucks, tank trucks, floats, lowboys, winch trucks, semi-trailers, any type trucks pulling or towing equipment	9.15	.90+b
Greaser, tire repairmen, tire changer and oiler	8.49	.90+b

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Basic Hourly Rates	Fringe Benefits

DECISION #TN84-1024

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
GROUP A	$12.59	$1.80
GROUP B	11.00	1.80
GROUP C	9.62	1.80
GROUP D	8.75	1.80

CLASSIFICATIONS DEFINITIONS

LABORERS

GROUP I - Construction laborers

GROUP II Form setter and stripper, pipelayer, asphalt raker, jackhammer operator, air tool operator, vibrator, operator, chain saw operator, barco tamp operator, mortar mixer, plasterer tender, all power driven tool operators, hod carriers, power buggy, yarner, potman, snakeman, grademan

GROUP III - Acetylene Burner

GROUP IB - Wagon drill operator

GROUP V - Powderman

GROUP VI - Caisson hole man

TUNNEL CLASSIFICATIONS

GROUP I - Laborers, outside:

GROUP II - Tunnel laborers

GROUP III _ Chuck tenders

GROUP IV - Nozzleman; concrete gun operator

GROUP V - Tunnel miner

POWER EQUIPMENT OPERATORS

GROUP A - Backhoes; cableways, ross carrier; clamshells; cranes; derricks; draglines; turnapulls, pans; scrapers; scoops; head tower machines; end loaders; locomotives (over 20 tons); shovels; dozers; fork-lifts (over 8' lift); core drills; foundation drills; graders; mechanics; welders; winch truck with A-Frame; skimmer scoops; locomotive cranes; overhead cranes; skid rigs; piledrivers; side boom tractors; euclid loaders; derrick boat; dredge boats; hoist (any size handling steel or stone); engines used in connection with hoists material; mucking-machines; cherry pickers; tower cranes; skylift gradall.

Basic Hourly Rates	Fringe Benefits

DECISION NO. TN84-1024

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP B - Tractors; farm type Tractors (with attachments); Central compressor plants; elevators (used for hoisting building materials); central mixing plants; hoist (not handling steel or stone); Pumpcrete machine; concrete pumps; backfillers (other than cranes); tracmobile; crushing plant; elevating grader; earth augers; forklifts (8' lift or under); paving machine (blacktop/concrete); boat operator or engineer (30 tons or over); blacktop rollers; switchman; locomotive (under 20 tons); Maintainers.

GROUP C - Asphalt plant; barber-green type loader; engine tender (other than steam); mixers (over 2 bags, not to include central plants); pumps (not more than 3); scrifiers; spreader box (bituminous); asphalt mixers; Portable compressors (not more than 3); roller; sub-grader machine; tractors (farm type without attachments); cable head tower engineman; dredge booster pump; boat operator or engineers (under 30 tons); finishing machine; fireman & oiler (combination); motor crane oiler & driver; welding machines (not more than 3); heaters (stationary or portable, not more than 5); compressors (portable, not more than 3); greaser or fuel truck.

GROUP D - Air compressor (1 portable); fireman; portable crushers; welding machine (1); conveyors; pump (1); Oiler; heater (1).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

FOOTNOTES:

a - Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day. Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.

b - $41.00 per week, per employee

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federal register

Friday
August 31, 1984

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, common snipe, gallinules; teal in September, in the contiguous United States; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special falconry seasons during 1984–85. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

DATE: Effective on August 31, 1984.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C., telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 23, 1984, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (49 FR 11120) a proposal to amend 50 CFR Part 20, with comment periods ending June 21, July 16 (later extended to July 18) and August 17 (later extended to August 29), 1984, respectively, for the 1984–85 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and the late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 13, 1984, the Service published in the **Federal Register** (49 FR 24417) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late season frameworks. On July 9, 1984, the Service published for public comment in the **Federal Register** (49 FR 28026) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early season migratory bird hunting regulations. On July 19, 1984, the Service published in the **Federal Register** (49 FR 29238) a fourth document consisting of final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 7, 1984, the Service published a fifth document (49 FR 31421) consisting of a final rulemaking for the early season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected early season hunting dates, hours, areas and limits for the 1984–85 season. On August 20, 1984, the Service published a sixth document in the **Federal Register** (49 FR 33090) consisting of a proposed rulemaking dealing specifically with frameworks for late season migratory bird hunting regulations. The final rule described here is the seventh in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe and gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special falconry seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Nontoxic Shot Regulations

On August 13, 1981, the Service published in the **Federal Register** (46 FR 40879) final rules describing nontoxic shot zones for waterfowl hunting. When eaten by waterfowl, spent lead pellets can have a toxic effect. Nontoxic shot zones reduce availability of lead pellets in selected waterfowl feeding areas.

Amendments to these regulations were published in the **Federal Register** (47 FR 32546; July 28, 1982 and 48 FR 26457; June 8, 1983). These amendments relate to changes in Maine, Massachusetts, Indiana, Nebraska, Michigan, Illinois, Texas and Florida.

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] ". . . by taking such action necessary to insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Subsequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 5, 1984, the Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 23, 1984 (at 49 FR 11124), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20340.

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated July 19, 1984 (at 49 FR 29238).

Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (49 FR 11120, March 23, 1984; 49 FR 24417, June 13, 1984; and 49 FR 28026, July 19, 1984), the Service published in the **Federal Register** on July 19, 1984 (49 FR 29238) final early season frameworks for Alaska, Puerto Rico, the Virgin Islands; and on August 7, 1984 (49 FR 31421), those for the contiguous United States and Hawaii. Copies of the final frameworks were also sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rice and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years, and benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 23, June 13, and July 9, 1984, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are amended as set forth below.

The rules that eventually will be promulgated for the 1984–85 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 704 et seq.), as amended.

List of Subjects in 50 CFR Part 20

PART 20—[AMENDED]

Exports, Hunting, Imports, Transportation, Wildlife.

1. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico.*

	Doves	Pigeons
Daily bag limit	10 singly or in the aggregate of all permitted species.	5
Possession limit	10 singly or in the aggregate of all permitted species.	5

Season dates: Sept. 1 to Oct. 30, 1984.

Shooting hours: One-half hour before sunrise to sunset daily.

Restrictions: Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove (*Tortola cardosantera*); white-winged dove (*Tortola aliblanca o cubanita*); mourning dove (*Tortola rabilarga o rabiche*); and scaly-naped pigeon (*Paloma turca o torcaz).*

Closed Areas

No season is prescribed for doves and pigeons on Mona Island in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

No season is prescribed for doves and pigeons in the Municipality of Culebra and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the

Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth Regulations for Additional Restrictions

(b) *Puerto Rico.*

	Ducks	Coots	Common gallinules	Common snipe
Daily bag limits	4	Closed	6	6
Possession limits	8	Closed	12	12

Season dates: Nov. 10 to Dec. 10, 1984 and Feb. 2 to Feb. 25, 1985.

Shooting hours: One-half hour before sunrise until sunset daily

Restrictions: No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); purple gallinule (*Porphyrula martinica*) and coots (*Fulica americana* and *Fulica caribaea*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)—Pato rojo (protected); purple gallinule (*Porphyrula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columba inornata wetmorei*)—Paloma sabanera (protected).

(c) *Virgin Islands.*

	Zenaida dove	Scaly-naped pigeon	Ducks
Daily bag limits	10	5	4
Possession limits	10	5	8

Season dates:

Zenaida dove and scaly-naped pigeon: Sept. 1 through Oct. 30, 1984.

Ducks only: Dec. 1, 1984 through Jan. 24, 1985.

Shooting hours: One-half hour before sunrise until sunset daily.

Restrictions: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyrula martinica*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Zenaida dove (*Zenaida aurita*)—mountain dove; bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected); ground dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected); and scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

2. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting hours: One-half hour before sunrise to sunset daily.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Open Seasons—Ducks, Geese, Cranes and Common Snipe

Area	
Northern: State Game Mgmt. Units 11-13 and 17-26.	Sept. 1 to Dec. 16
Gulf Coast: State Game Mgmt. Units 5-7, 9, 14-16 and Unimak Island.	Sept. 1 to Dec. 16.
Southeast: State Game Mgmt. Units 1-4.	Sept. 1 to Dec. 16
Pribilof and Aleutian Islands: State Game Mgmt. Unit 10 except Unimak Island.	Oct. 8 to Jan. 22.
Kodiak: State Game Mgmt. Unit 8	Oct. 8 to Jan 22

DAILY BAG AND POSSESSION LIMITS

Area	Ducks [1]	Geese [2]	Emperor geese	Brant	Common snipe	Sandhill cranes
Northern	10-30	6-12	2-4	2-4	8-16	2-4
Gulf Coast	8-24	6-12	2-4	2-4	8-16	2-4
Southeast	7-21	6-12	2-4	2-4	8-16	2-4
Pribilof and Aleutian Islands	7-21	6-12	2-4	2-4	8-16	2-4
Kodiak	7-21	6-12	2-4	2-4	8-16	2-4

[1] In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: Scoter, eider, oldsquaw, harlequin and American and red-breasted mergansers.

[2] No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1-9, 14-16 and 18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is prohibited from September 1 to September 15. In Units 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited.

3. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Mourning Doves—Eastern Management Unit.*

In all States except Alabama, Illinois, Tennessee and Louisiana:	
Daily bag limit	12
Possession limit	24
In Illinois, Louisiana and Tennessee:	
Daily bag limit	15
Possession limit	30
In Alabama:	
Daily bag limit	15
Possession limit	15

Shooting hours: One-half hour before sunrise until sunset daily except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Alabama:	
North Zone: [1] All of Autauga, Barbour, Bullock, Butler, Chilton, Choctaw, Clarke, Conecuh, Crenshaw, Dallas, Elmore, Lee, Lowndes, Macon, Marengo, Monroe, Montgomery, Pike, Russell, Washington and Wilcox Counties.	
One-half hour before sunrise to sunset.	Sept. 15 to Oct. 26 and Dec. 15 to Jan. 1.
Remaining counties in North Zone:	
12 noon to sunset	Sept. 15 to Sept. 24.
One-half hour before sunrise to sunset.	Sept. 25 to Oct. 26 and Dec. 15 to Jan. 1.
South Zone: [1] One-half before sunrise to sunset.	Oct. 6 to Nov 24 and Dec. 22 to Dec. 31.
Connecticut	Closed.
Delaware (12 noon to sunset)	Sept. 1 to Sept. 29 and Oct. 15 to Oct. 27 and Dec. 17 to Jan. 12.
Florida: [1]	
12 noon to sunset	Oct. 6 to Oct. 28.
One-half hour before sunrise to sunset.	Nov. 10 to Nov. 25 and Dec. 15 to Jan. 14.
Georgia:	
North Zone: [1]	
12 noon to sunset	Sept. 1.
One-half hour before sunrise to sunset.	Sept. 2 to Oct. 2 and Nov. 22 to Nov. 25 and Dec. 8 to Jan. 10
South Zone: [1]	
12 noon to sunset	Sept. 29.
One-half hour before sunrise to sunset.	Sept. 30 to Oct. 30 and Nov. 22 to Nov 25 and Dec. 8 to Jan. 10.
Illinois (12 noon to sunset)	Sept. 1 to Oct. 30.
Indiana (12 Noon to sunset)	Sept. 1 to Oct. 30.
Kentucky (11 a.m. to sunset)	Sept. 1 to Oct. 31 and Dec. 1 to Dec. 9.

Louisiana:	
North Zone:[4] 12 noon to sunset.	Sept. 1 to Sept. 9 and Oct. 13 to Nov. 4 and Dec. 8 to Jan. 4.
South Zone:[4] 12 noon to sunset.	Oct. 13 to Nov. 18 and Dec. 8 to Dec. 30.
Maine	Closed.
Maryland:	
12 noon to sunset	Sept. 1 to Oct. 20.
One-half hour before sunrise to sunset.	Nov. 15 to Nov. 24 and Dec. 22 to Dec. 31.
Massachusetts	Closed.
Michigan	Closed.
Mississippi (One-half hour before sunrise to sunset).	Sept. 1 to Sept. 23 and Oct. 20 to Nov. 18 and Dec. 21 to Jan. 6.
New Hampshire	Closed.
New Jersey	Closed.
New York	Closed.
North Carolina:	
12 noon to sunset	Sept. 1 to Sept. 29.
One-half hour before sunrise to sunset.	Nov. 17 to Nov. 24 and Dec. 14 to Jan. 15.
Ohio	Closed.
Pennsylvania:	
12 noon to sunset	Sept. 1 to Oct. 18.
One-half hour before sunrise to sunset.	Nov. 3 to Nov. 24.
Rhode Island:	
12 noon to sunset	Sept. 10 to Sept. 30.
One-half hour before sunrise to sunset.	Oct. 20 to Nov. 7 and Dec. 17 to Jan. 15.
South Carolina (One-half hour before sunrise to sunset).	Sept. 1 to Oct. 6 and Nov. 17 to Nov. 24 and Dec. 21 to Jan. 15.
Tennessee:	
12 noon to sunset	Sept. 1.
One-half hour before sunrise to sunset.	Sept. 2 to Sept. 29 and Oct. 13 to Oct. 20 and Dec. 15 to Jan. 6.
Vermont	Closed.
Virginia:	
12 noon to sunset	Sept. 8 to Oct. 27.
One-half hour before sunrise to sunset.	Nov. 19 to Nov. 24 and Dec. 22 to Jan. 4.
West Virginia:	
12 noon to sunset	Sept. 1 to Nov. 1.
One-half hour before sunrise to sunset.	Dec. 24 to Dec. 31.
Wisconsin	Closed.

[1] In Alabama, the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

[2] In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

[3] In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to the Little Ocmulgee River, down the Little Ocmulgee to the Ocmulgee River, southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east along the Altamaha River to the eastern border of Tattnall County, north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

[4] In Louisiana, the North Zone is defined as that area lying north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell, and Interstate Highway 10 from Slidell to the Mississippi State line. The South Zone consists of the remainder of Louisiana.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:

Daily bag limit	10
Possession limit	20
In Nebraska and Texas:	
Daily bag limit	12
Possession limit	24
In Arkansas, Colorado, Kansas, New Mexico, North Dakota, Oklahoma, South Dakota, Wyoming and Montana:	
Daily bag limit	15
Possession limit	30

Shooting hours: One-half hour before sunrise until sunset daily except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Arkansas	Sept. 1 to Sept. 30 and Dec. 15 to Jan. 13.
Colorado	Sept. 1 to Oct. 15.
Iowa	Closed.
Kansas	Sept. 1 to Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1 to Nov. 9.
Montana	Sept. 8 to Nov. 6.
Nebraska	Sept. 1 to Oct. 15.
New Mexico[1]	Sept. 1 to to Sept. 30 and Nov. 17 to Dec. 16.
North Dakota	Sept. 1 to Oct. 30.
Oklahoma	Sept. 1 to Oct. 15.
South Dakota	Sept. 1 to Sept. 30.
Texas:[2] [3]	
North Zone	Sept. 1 to Nov. 9.
Central Zone	Sept. 1 to Oct. 30 and Jan. 5 to Jan. 14.
South Zone[4]	Sept. 20 to Nov. 12 and Jan. 5 to Jan. 20.
Wyoming	Sept. 1 to Oct. 15.

[1] In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of these species.

[2] In Texas, the three zones are North, South and Central as follows:

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then southeast on U.S. 87 to the Port Lavaca Channel and along the Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between between the North and South Zones.

[3] In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and 2 can be white-tipped doves; and the possession limit is 24, of which no more than 4 may be whitewings and 4 may be whitetips.

[4] In Texas, the mourning dove season in the special white-winged dove area of the South Zone is September 20–November 8 and January 5–January 20.

(c) *Mourning Doves—Western Management Unit.*

In Washington:	
Daily bag limit	10
Possession limit	20
In Arizona:	
Daily bag limit	12
Possession limit	24
In California, Idaho, Nevada, Oregon and Utah:	
Daily bag limit	15
Possession limit	30

Shooting hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Arizona[1]	Sept. 1 to Sept. 23 and Nov. 28 to Jan. 13.
California[2]	Sept. 1 to Oct. 15 and Nov. 17 to Dec. 1.
Idaho	Sept. 1 to Oct. 30.
Nevada[2]	Sept. 1 to Oct. 30.
Oregon	Sept. 1 to Sept. 30.
Utah	Sept. 1 to Sept. 30.
Washington	Sept. 1 to Sept. 15.

[1] In Arizona, during September 1 through 23 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 28 through January 13, the bag and possession limits are 12 and 24 mourning doves, respectively.

[2] In those counties of California (Imperial, Riverside and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves, singly or in the aggregate of these species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

Notice.—Hawaii—Subject to the applicable provisions of the preceding sections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in—	Season dates	Limits	
		Bag	Poss.
Arizona (Statewide)	Sept. 1 to Sept. 23.	[1]6	[1]12
California:			
Counties of Imperial, Riverside and San Bernardino.	Sept. 1 to Oct. 15 and Nov. 17 to Dec. 1.	[2]10	[2]20
Remainder of State	Closed.		
Nevada:			
Counties of Clark and Nye.	Sept. 1 to Oct. 30.	[2]10	[2]20
Remainder of State	Closed.		
New Mexico	Sept. 1 to Sept. 30 & Nov. 17 to Dec. 16.	[3]15	[3]30
Texas:[4]			
Area in South Zone	Sept. 1, 2, 8 and 9.	[5]10	[5]20
Remainder of State: See mourning dove regulations.			

[1] In Arizona, during September 1 through 23 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

[2] In designated counties of California and Nevada, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

[3] In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

[4] SPECIAL WHITE-WINGED DOVE AREA IN SOUTH ZONE—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along state Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

(5) In Texas, the daily bag limit in the special white-winged dove area is 10 white-winged, mourning and white-tipped doves in the aggregate of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limit is twice the daily bag limit.

(e) *Band-tailed Pigeons.*

Shooting hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in—	Season dates	Limits	
		Bag	Poss.
Arizona[1]	Oct. 12 to Nov. 10.	5	10
California.			
Counties of Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity.	Sept. 29 to Oct. 28.	5	5
Remainder of State	Dec. 8 to Jan. 6	5	5
Colorado: In all lands west of U.S. Interstate 25 and Small Game Management Units 80, 81, 82 and 83.	Sept. 1 to Sept. 30.	5	10
Nevada:[1] Carson City, Churchill, Douglas, Humboldt, Lyon, Mineral, Pershing, Washoe, and Storey Counties only.	Sept. 1 to Sept. 30.	5	5
New Mexico:			
North Zone[2]	Sept. 1 to Sept. 20.	5	10
South Zone[2]	Oct. 1 to Oct. 20	5	10
Oregon	Sept. 1 to Sept. 30.	5	5
Utah	Sept. 1 to Sept. 30.	5	10
Washington	Sept. 1 to Sept. 30.	5	5

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[1] Each hunter must have for Arizona a special bird permit stamp issued by the State and for Nevada a special permit issued by the State.

[2] In New Mexico, the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is defined as that area lying south and west of the North Zone.

4. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits and shooting hours for rails, woodcock and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	[1] 25	See footnote[2]	[3] 5	8
Possession limit	[1] 25	do	10	16

Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.
Check State regulations for additional restrictions, including area descriptions.

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Seasons in the Atlantic Flyway				
Connecticut	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Oct. 20 to Dec. 1	Oct. 20 to Dec. 1.
Delaware	do	do	Oct. 15 to Oct. 27 and Nov. 19 to Jan. 9.	Oct. 15 to Oct. 27 and Nov. 19 to Jan. 31.
Florida	do	do	Dec. 1 to Feb. 3	Nov. 3 to Feb. 17.
Georgia	Sept. 12 to Nov. 20	Sept. 12 to Nov. 20	Nov. 20 to Jan. 23	Nov. 20 to Feb. 28.
Maine	Sept. 1 to Nov. 9	Closed	Oct. 1 to Nov. 30	Sept. 1 to Dec. 16.
Maryland	do	Sept. 1 to Nov. 9	Oct. 15 to Nov. 23 and Dec. 7 to Dec. 31.	Oct. 1 to Jan. 15.
Massachusetts	do	Closed	Deferred	Sept. 1 to Dec. 15.
New Hampshire	Closed	do	Oct. 1 to Dec. 4	Oct. 1 to Dec. 4.
New Jersey:[4]				
North Zone	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Oct. 6 to Nov. 29	Oct. 6 to Jan. 19.
South Zone	do	do	Oct. 27 to Dec. 1 and Dec. 15 to Jan. 2.	Do.
New York:				
Long Island	Closed	Closed	Oct. 1 to Nov. 23	Closed.
Remainder of State	Sept. 1 to Nov. 9	do	do	Sept. 1 to Nov. 23.
North Carolina	Sept. 6 to Nov. 14	Sept. 6 to Nov. 14	Nov. 12 to Jan. 15	Nov. 12 to Feb. 26.
Pennsylvania	Sept. 1 to Nov. 9	Closed	Oct. 20 to Nov. 10	Oct. 20 to Dec. 15.
Rhode Island	Sept. 15 to Nov. 23	Sept. 15 to Nov. 23	Oct. 20 to Dec. 7 and Dec. 17 to Jan. 1.	Sept. 15 to Dec. 7 and Dec. 17 to Jan. 8.
South Carolina	Sept. 21 to Oct. 27 and Nov. 20 to Dec. 22.	Sept. 21 to Oct. 27 and Nov. 20 to Dec. 22.	Nov. 22 to Jan. 25	Nov. 14 to Feb. 28.
Vermont	Sept. 29 to Dec. 7	Closed	Oct. 1 to Dec. 4	Sept. 29 to Dec. 7.
Virginia	Sept. 8 to Nov. 16	Sept. 8 to Nov. 16	Oct. 29 to Jan. 1	Oct. 17 to Jan. 31.
West Virginia	Sept. 3 to Nov. 11	Closed	Oct. 13 to Dec. 16	Sept. 3 to Dec. 18.
Seasons in the Mississippi Flyway				
Alabama[5]	Nov. 12 to Jan. 20	Nov. 12 to Jan. 20	Nov. 28 to Jan. 31	Nov. 14 to Feb. 28.
Arkansas	Sept. 1 to Nov. 9	Closed	Nov. 3 to Jan. 6	Nov. 17 to Feb. 28.
Illinois	do	do	Oct. 1 to Dec. 4	Sept. 8 to Dec. 23.
Indiana	do	do	Sept. 22 to Nov. 25	Sept. 1 to Dec. 16.
Iowa[6]	do	do	Sept. 15 to Nov. 18	Do.
Kentucky	Deferred	do	Oct. 1 to Dec. 4	Oct. 1 to Dec. 4.
Louisiana	Sept. 22 to Sept. 30 and Nov. 3 to Jan. 2.	Sept. 22 to Sept. 30 and Nov. 3 to Jan 2.	Dec 8 to Feb. 10	Nov. 3 to Feb 17.
Michigan[7]	Sept. 15 to Nov. 14	Closed	Sept. 15 to Nov. 14	Sept. 15 to Nov. 14.
Minnesota	Sept. 1 to Nov. 4	do	Sept. 1 to Nov. 4	Sept. 1 to Nov. 4.
Mississippi	Oct. 20 to Dec. 28	Oct. 20 to Dec. 28	Dec. 22 to Feb. 24	Nov. 10 to Feb. 24.
Missouri	Sept. 1 to Nov. 9	Closed	Oct. 1 to Dec. 4	Oct. 1 to Dec. 4.
Ohio	do	do	Sept. 21 to Nov. 24	Sept. 1 to Nov. 24 and Dec. 7 to Dec. 28.
Tennessee	Deferred	do	Oct. 13 to Nov. 18 and Feb. 1 to Feb. 28.	Nov. 19 to Feb. 28.
Wisconsin	do	do	Sept. 15 to Nov. 18	Deferred.

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Seasons in the Central Flyway				
Colorado [8]	Sept. 1 to Nov. 9	Closed	Closed	Sept. 1 to Nov. 9 and Dec. 8 to Dec. 30.
Kansas	Sept. 15 to Nov. 23	do	Oct. 1 to Dec. 4	Sept. 15 to Dec. 30.
Montana [8]	Closed	do	Closed	Deferred.
Nebraska [9]	Sept. 1 to Nov. 9	do	Sept. 15 to Nov. 18	Sept. 1 to Dec. 15.
New Mexico [8]	Sept. 8 to Nov. 16	do	Closed	Sept. 8 to Dec. 9.
North Dakota	Closed	do	do	Sept. 29 to Nov. 27.
Oklahoma	Sept. 1 to Nov. 9	do	Nov. 20 to Jan. 23	Oct. 20 to Feb. 3.
South Dakota [10]	Closed	do	Closed	Sept. 1 to Oct. 31.
Texas	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Deferred	Deferred.
Wyoming [8]	Sept. 22 to Nov. 30	Closed	Closed	Sept. 22 to Jan. 6.
Seasons in the Pacific Flyway				
Colorado [8]	Sept. 1 to Nov. 9	Closed	Closed	Sept. 1 to Nov. 9 and Dec. 8 to Dec. 30.
Montana [8]	Closed	do	do	Deferred.
New Mexico [8]	Sept. 8 to Nov. 16	do	do	Sept. 8 to Dec. 9.
Wyoming [8]	Sept. 22 to Nov. 30	do	do	Sept. 22 to Dec. 23.

[1] The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

[2] In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

[3] In Pennsylvania and Rhode Island, the woodcock bag limit is 3 daily and 6 in possession.

[4] For description of zones or management units within a State, see State regulations.

[5] In Alabama, the rail limits are 15 daily and 15 in possession.

[6] In Iowa, shooting hours are sunrise to sunset. Rail limits are 15 daily and 25 in possession.

[7] See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

[8] The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide, *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

[9] In Nebraska, the rail limits are 10 daily and 20 in possession.

[10] In South Dakota, the snipe limits are 5 daily and 15 in possession.

NOTE.—Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

NOTE.—No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway. Consult waterfowl regulations to be published later for information concerning the snipe season in Montana.

5. Section 20.105 is amended by revising paragraphs (a)-(c) and by amending paragraph (d).

§ 20.105 Seasons, limits and shooting hours for waterfowl, coots and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.*

(1) An open season for taking scoter, eider and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1984, and January 20, 1985, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the Town of Riverhead to Red Cedar Point in the Town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated and designated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting hours are one-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in:	
Connecticut	Sept. 21–Jan. 5.
Delaware	Sept. 22–Jan. 5.
Georgia	Nov. 22–Jan. 19.
Maine	Oct. 1–Jan. 15.
Maryland	Deferred.
Massachusetts	Deferred.
New Hampshire	Sept. 15–Dec. 30.
New Jersey	Oct. 6–Jan. 19.
New York (Long Island only)	Sept. 23–Jan. 7.
North Carolina	Deferred.
Rhode Island	Do.
South Carolina	Do.
Virginia	Do.

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Vrginia and Maryland in those areas described, delineated and designated in their respective hunting regulations as being open to sea duck hunting.

Note.—States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* September season: An open season for teal ducks (blue-winged, green-winged and cinnamon) is prescribed according to the following table in those areas which are described, delinated and designated in the hunting regulations of the following States:

Daily bag limit	4
Possession limit	8

Shooting hours: Sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in the Mississippi Flyway:	
Alabama[1]	Sept. 8–Sept. 16.
Arkansas	Sept. 15–Sept. 23.
Illinois[2]	Sept. 8–Sept. 16.
Indiana[3]	Sept. 1–Sept. 9.
Louisiana	Sept. 22–Sept. 30.
Mississippi	Sept. 15–Sept. 23.
Missouri	Sept. 8–Sept. 16.
Ohio	Sept. 7–Sept. 15.
Seasons in the Central Flyway:	
Colorado[4], [5]	Sept. 1–Sept. 9.
Kansas	Sept. 15–Sept. 23.
New Mexico[5]	Sept. 8–Sept. 16.
Oklahoma	Do.
Texas	Sept. 15–Sept. 23.

[1] In Alabama, shooting hours in Mobile Delta north of the causeway and south of the L&N Railroad are sunrise to 12 noon.

[2] In Illinois, the shooting hours are from 7 a.m.–4 p.m. local time by State regulation.

[3] In Indiana, the Kankakee and LaSalle Fish and Wildlife Areas, and portions of Atterbury, Hovey Lake, Jasper-Pulaski and Piegon River Fish and Wildlife Areas are closed to teal hunting by State regulations.

[4] Only in Lake and Chaffee Counties, and that portion of Colorado east of U.S. Highway-Colorado State Highway 85 from the Wyoming State line to its intersection with U.S. Interstate Highway 25 to the New Mexico State line.

[5] Central Flyway portion only.

(c) *Gallinules.*

Daily bag limit	15
Possession limit	30

Shooting hours: One-half hour before sunrise to sunset.

Check State Regulations for Additional Restrictions

Seasons in the Atlantic Flyway:	
Connecticut	Sept. 1–Nov. 9.
Delaware	Do.
Florida[1]	Do.
Georgia	Oct. 12–Oct. 14 and Nov. 22–Nov. 25 and Dec. 8–Jan. 19.
Maine	Sept. 1–Nov. 9.
Maryland	Do.
Massachusetts	Do.
New Hampshire	Closed.
New Jersey	Sept. 1 to Nov. 9
New York:	
Long Island	Closed.
Remainder of State	Sept. 1–Nov. 9.
North Carolina	Sept. 6–Nov. 14.
Pennsylvania	Sept. 1–Nov. 9.
Rhode Island	Sept. 15–Nov. 23.
South Carolina	Sept 21–Oct. 27 and Nov. 20–Dec. 22.
Vermont	Sept. 29–Dec. 7.
Virginia	Deferred.
West Virginia	Do.
Seasons in the Mississippi Flyway:	
Alabama[2]	Nov. 12–Jan. 20.
Arkansas	Nov. 10–Jan. 18.
Illinois	Closed.
Indiana	Sept. 1–Nov. 9.
Iowa	Closed.
Kentucky	Deferred.
Louisiana	Sept 22–Sept. 30 and Nov 3–Jan. 2.
Michigan	Deferred.
Minnesota	Do.
Mississippi	Oct. 20 to Dec. 28.
Missouri	Closed.
Ohio	Sept. 1 to Nov. 9.
Tennessee	Deferred.
Wisconsin	Do.
Seasons in the Central Flyway:	
Colorado[3]	Closed.
Kansas	Closed.
Montana[3]	Deferred.
Nebraska	Closed.
New Mexico[3]	Oct. 16 to Dec. 24.
North Dakota	Closed.
Oklahoma	Sept. 1 to Nov. 9.
South Dakota	Closed.
Texas	Sept. 1 to Nov. 9.
Wyoming[3]	Closed.
Seasons in the Pacific Flyway:	
All States and portions thereof.	Deferred.

[1] The gallinule season in Florida applies to the common gallinule only. There is no open season on the purple gallinule in Florida.

[2] In Alabama, the gallinule limits are 15 daily and 15 in possession.

[3] Seasons apply to Central Flyway portion of State only.

Note.—States with deferred seasons may select gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Atlantic Flyway

Flywaywide Restrictions.

Shooting (including hawking) hours: One half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits	
		Bag	Possession
* * * * *			
Florida:			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.	Sept. 22 to Sept. 26	4	8
* * * * *			

Mississippi Flyway

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits	
		Bag	Possession
* * * * *			
Iowa:			
Ducks	Sept. 12 to Sept. 26	([1])	([1])
* * * * *			
Kentucky:			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.	Sept. 12 to Sept. 16	4	8
* * * * *			
Tennessee:			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.	Sept. 15 to Sept. 19	4	8
* * * * *			

[1] Limits to conform to those set for the regular season.

* * * * *

6. Section 20.106 is amended by revising the Central and Pacific Flyways as follows:

§ 20.106 Seasons, limits and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes, and with shooting hours from one-half hour before sunrise until sunset in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley) the season has been deferred.

(b) In the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay and Roosevelt, the inclusive dates for the regular season are October 27, 1984, through January 27, 1985. In the New Mexico experimental sandhill crane season hunt areas, each permittee may take no more than 3 cranes, each of which must be tagged upon taking. In Area 1 (those portions of Dona Ana, Luna and Sierra Counties west of Interstate Highway 25, north of Interstate Highway 10, east of New Mexico Highways 26 and 27 between Deming and Hillsboro, and south of New Mexico Highway 90), and Area 2 (that portion of Luna County south of Interstate Highway 10), the inclusive season dates are October 27 through October 29, 1984; December 15 through December 17, 1984; and January 12 through January 14, 1985. Each person participating in the experimental season must obtain and have in his possession while hunting, a valid special permit issued by New Mexico.

(c) In Oklahoma (that portion west of I–35) the season has been deferred.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to Canada; and west of a line starting where ND No. 14 enters Canada, then south on ND No. 14 to U.S. Highway 83, then south on U.S. Highway 83 to South Dakota) the inclusive dates are Sept. 8–Nov. 4; in Zone 2 (that area east of Zone 1 and west of U.S. Highway 281) the inclusive dates are Sept. 8–Sept. 28.

(f) In Montana (the Central Flyway portion except that area south of I–90 and west of the Bighorn River), the season has been deferred.

(g) In South Dakota, the inclusive season dates are September 29 through November 4, 1984.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston Counties, the inclusive season dates are September 22 through November 18, 1984.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting, a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to an authorized law enforcement official upon request.

Pacific Flyway: In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season has been deferred.

In the Wyoming experimental sandhill crane-Canada goose hunt areas (Bear River drainage and Star Valley of Lincoln County), hunting is by State permit only with limits of 2 sandhill cranes and 3 Canada geese per season. The inclusive season dates are September 1 through September 14, 1984.

* * * * *

7. Section 20.109 is revised as follows:

§ 20.109 Extended seasons, limits and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate.
Possession limit	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Atlantic Flyway	
Florida:	
Mourning doves and white-winged doves.	Sept. 29 to Jan. 13.
Woodcock	Oct. 27 to Feb. 10.
Snipe	Nov. 3 to Feb. 17.
Ducks, mergansers and coots.	Oct. 13 to Dec. 2 and Dec. 8 to Jan. 13.
Gallinules and rails	Sept. 1 to Dec. 13.
Maryland:	
Mourning doves	Sept. 1 to Oct. 20 and Nov. 15 to Jan. 10.
Rails	Sept. 1 to Dec. 16.
Woodcock	Oct. 15 to Dec. 2 and Dec. 5 to Jan. 31.
Snipe	Oct. 1 to Jan. 15.
Gallinules	Sept. 1 to Dec. 16.
Ducks, coots, geese	Deferred.
Pennsylvania:	
Mourning doves	Sept. 1 to Dec. 15.
Ducks, mergansers, coots and geese.	Oct. 1 to Jan. 7.
Virginia:	
Woodcock and snipe	Oct. 17 to Jan. 31.
Mourning doves and rails	Sept. 24 to Dec. 3 and Dec. 20 to Jan. 4.
Mississippi Flyway	
Illinois:	
Mourning doves, woodcock and rails.	Sept. 1 to Dec. 16.
Snipe	Sept. 10 to Dec. 25.
Teal	Sept. 8 to Sept. 16.
Ducks, mergansers and coots.	Oct. 1 to Jan. 6.
Iowa:	
Ducks, coots, rails, snipe woodcock and mergansers.	Sept. 22 to Jan. 6.
Geese	Sept. 29 to Jan. 6.
Michigan:	
Woodcock, snipe, and rails	Sept. 1 to Dec. 16.
Ducks, mergansers, coots, gallinules and geese.	Sept. 29 to Jan. 13.
Minnesota:	
Woodcock, snipe and rails	Sept. 1 to Dec. 16.
Ducks, mergansers, coots, gallinules and geese.	Sept. 29 to Jan. 13.
Mississippi:	
Ducks, mergansers and coots.	Nov. 3 to Dec. 14.
Mourning doves	Sept. 29 to Oct. 14 and Nov. 28 to Dec. 16.
Missouri: Mourning doves	Sept. 1 to Dec. 16.
Wisconsin:	
Rails, woodcock, snipe and gallinules.	Do.
Ducks, mergansers and coots.	Oct. 1 to Jan. 15.
Central Flyway	
New Mexico:[1]	
Mourning doves, white-winged doves and band-tailed pigeons.	Sept. 1 to Nov. 6 and Nov. 17 to Dec. 28.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay and Roosevelt Counties.	Oct. 13 to Jan. 27.
Ducks, mergansers, coots and gallinules.	Oct. 15 to Jan. 20.
Canada and white-fronted geese.	Do.
Snow, blue and Ross' geese	Nov. 14 to Feb. 28.
Texas:	
Mourning doves (statewide)	Sept. 1 to Nov. 30 and Jan. 5 to Jan. 20.
Rails and gallinules	Sept. 1 to Dec. 16.
White-winged doves	Sept. 1 to Nov. 30 and Jan. 5 to Jan. 20.
Wyoming:	
Mourning doves	Sept. 1 to Oct. 15.
Snipe and rails	Sept. 22 to Nov. 30.
Pacific Flyway	
Idaho:	
Mourning doves only	Sept. 1 to Oct. 30.
New Mexico:[1]	
Mourning doves, white-winged doves and band-tailed pigeons.	Sept. 1 to Nov. 6 and Nov. 17 to Dec. 28.
Ducks, mergansers, coots and gallinules.	Oct. 6 to Jan. 20.
Geese	Do.
Oregon: Mourning doves and band-tailed pigeons.	Sept. 1 to Dec. 16.
Utah:	
Mourning doves	Sept. 1 to Sept. 30.
Snipe	Oct. 1 to Jan. 15.
Ducks, mergansers and coots.	Do.
Wyoming:	
Mourning doves	Sept. 1 to Oct. 15
Snipe and rails	Sept. 22 to Nov. 30.

[1] In New Mexico, the aggregate bag and possession limits of all species are 3 and 6, respectively.

Note.—See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Dated: August 17, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Part IV

Nuclear Regulatory Commission

10 CFR Parts 50 and 51

Waste Confidence Decision and Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses; Final Rules

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

Waste Confidence Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Waste Confidence Decision.

SUMMARY: The Nuclear Regulatory Commission initiated a rulemaking proceeding on October 25, 1979 to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal of off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available. This proceeding became known as the "Waste Confidence Rulemaking" and was conducted partially in response to a remand by the U.S. Court of Appeals for the D.C. Circuit. *State of Minnesota* v. *NRC.* 602F 2d 412 (1979). The Commission also stated that in the event it determined that on-site storage of spent fuel would be necessary or appropriate after the expiration of facility licenses, it would propose a rule addressing the environmental and safety implications of such storage.

The Commission's decision is summarized in the following findings:

(1) The Commission finds reasonable assurance that safe disposal of high level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

(2) The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(3) The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

(4) The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating licenses at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

(5) The Commission finds reasonable assurance that safe independent onsite or offset spent fuel storage will be made available if such storage capacity is needed.

In keeping with its commitment to issue a rule providing procedures for considering environmental effects of extended onsite storage of spent fuel in licensing proceedings, the Commission is issuing, elsewhere in this issue, final amendments to 10 CFR Parts 50 and 51.

FOR FURTHER INFORMATION CONTACT: Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634–3295, or Sheldon Trubatch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; telephone (202) 634–3224.

The Commission's Decision

In the Matter of RULEMAKING on the Storage and Disposal of Nuclear Waste (Waste Confidence Rulemaking)

[PR–50, –51 (44 FR 61372)]

August 22, 1984.

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Decision

1.0 Introduction

1.1 Initiation of the Waste Confidence Rulemaking Proceeding

In response to the remand of the U.S. Court of Appeals for the District of Columbia Circuit (*State of Minnesota* v. NRC, 602 F.2d 412 (1979)), and as a continuation of previous proceedings conducted in this area by NRC (44 FR 61372), the Commission initiated a generic rulemaking proceeding on October 25, 1979. In its Notice of Proposed Rulemaking, the Commission stated that the "purpose of this proceeding is solely to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available." The Commission also stated that in the event it determined that on-site storage of spent fuel would be necessary or appropriate after the expiration of facility licenses, it would propose a rule addressing the environmental and safety implications of such storage. The Commission recognized that the scope of this generic proceeding would be broader than the Court's instruction, which required the Commission to address the questions of whether off-site storage for spent fuel would be available by the expiration of reactor operating licenses and if not, whether spent fuel could continue to be safely stored on-site (44 FR 61373).

However, the Commission believed that the primary public concern was whether nuclear waste could be disposed of safely rather than with an off-site solution to the storage problem per se. Moreover, as stated in the **Federal Register** Notice of October 25, 1979, the Commission committed itself to reassess its basis for reasonable assurance that methods of safe permanent disposal of high level waste would be available when they are needed. In conducting that reassessment, the Commission noted that it would "draw upon the record compiled in the Commission's recently concluded rulemaking on the environmental impacts of the nuclear fuel cycle (44 FR 45362–45374 [August 2, 1979])" (44 FR 61373).

The Department of Energy (DOE), as the lead agency on nuclear waste management filed its statement of position (PS) on April 15, 1980. Statements of position were filed by 30 participants by June 9, 1980, and were followed by cross statements (CS) from 21 of the participants by August 11, 1980.

1.2 Establishment of the Working Group

On May 28, 1980, the Commission directed the staff to form a Working Group to advise the Commission on the adequacy of the record to be compiled in this proceeding, to review the participants' submissions and identify issues in controversy and any areas in which additional information would be needed. The Working Group submitted a report to the Commission on January 29, 1981. The report summarized the record, identified key issues and controversies, and commented on the adequacy of the record for considering the key issues. The participants were invited to submit comments on the adequacy of the Working Group's summary of the record and its identification and description of the issues. Such comments were made by 20 participants by March 5, 1981.

1.3 Commission's Order for Oral Presentations

The Commission found additional limited proceedings to be useful to allow the participants to state their basic positions directly to the Commissioners and to enable the Commissioners to discuss specific issues with them. In addition, the Commission invited comment on the following policy developments: (1) the Administration's announcement[1] of a policy favoring commercial reprocessing of spent fuel and instructing the Secretary of Energy to proceed swiftly toward deployment of a means of storing and disposing of commercial high-level radioactive waste, and (2) the submission of information to the Presiding Officer in this proceeding by DOE on March 27, 1981, concerning the DOE decision to "discontinue [its] efforts to provide federal government-owned or controlled away-from-reactor (AFR) [spent fuel] storage facilities." The participants were asked to comment on the significance to the proceeding of issues, particularly institutional concerns, resulting from these policy developments and to comment on the merits of DOE's new projection of spent fuel storage requirements and on the technical and practical feasibility of DOE's suggested alternative storage methods.

To implement the additional limited proceedings, the Commission consolidated the participants into the following identifiable groups: (a) federal government, (b) state and local participants, (c) industry, and (d) public interest groups (Second Prehearing Memorandum and Order, November 6, 1981). Prehearing statements (PHS) were provided by the consolidated groups, as well as by individual participants. The oral arguments were presented to the Commissioners on January 11, 1982.

The extensive record, comprised of all written and oral submissions provides the primary basis for the Commission's decision regarding the safe storage and disposal of spent fuel and nuclear waste. However, while the Commission was preparing this Waste Confidence decision, the Nuclear Waste Policy Act of 1982 (NWPA) was enacted. The Commission found that this Act had a significant bearing on the Commission's decision, and the Commission has considered the NWPA in reaching its conclusions. The Commission believes that the NWPA had its most significant impact in narrowing the uncertainties surrounding institutional issues. Moreover, although the NWPA is intrinsically incapable of resolving technical issues, it will establish the necessary programs, milestones, and funding mechanisms to enable their resolution in the years ahead.

The Commission's preliminary decision in the Waste Confidence proceeding was served on the consolidated participants on May 17, 1983. However, the parties to this proceeding had not yet had an opportunity to comment on what implications, if any, the NWPA had on the Commission's decision. Further, the Commission's discussion of the safety of dry storage of spent nuclear fuel, in its preliminary decision, relied substantially on material not yet in the record. Therefore, the preliminary decision was issued as a draft decision. The Commission requested the consolidated groupings of participants to comment on either or both of these issues. In addition, the Commission found that onsite storage after license expiration might be necessary or appropriate, and therefore, in accordance with its notice initiating this proceeding, it proposed a rule to establish how the environmental effects of extended onsite storage would be considered in licensing proceedings (48 FR 22730, May 20, 1983), as amendments to 10 CFR Parts 50 and 51.

Subsequently, in response to public comments on the proposed amendments to 10 CFR Part 51, the Commission reopend the comment period to address the environmental aspects of the fourth finding of the Commission's Waste Confidence decision, on which the proposed amendment to Part 51 is based (48 FR 50746, November 3, 1983). Public comments were requested on: (1) The environmental aspects of the fourth finding—that the Commission has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) the implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51.

After reviewing these additional comments, the Commission found no reason to modify its fourth finding or the supporting determination.

The analysis of comments, together with the Commission's response is summarized in the Addendum to the Commission's decision.

The Commission notes that two relevant developments have occurred subsequent to the closing of the record in the Waste Confidence proceeding. They are the publication of DOE's draft Mission Plan for the Civilian Radioactive Waste Management Program (April, 1984) and the Commission's concurrence in DOE's General Guidelines for Recommendation of Sites for Nuclear Waste Repositories (July 3, 1984). These developments are a matter of public record, and in the case of the Commission's concurrence was the conclusion of a separate public proceeding. The Commission has considered the effects of these developments on its previously announced decision in this proceeding and determined that these developments do not substantially modify the Commission's previous conclusions.

The decision is summarized as five Commission findings in Section 2.0. The detailed rationale for these findings, including references to the record developed in this proceeding, is contained in the Appendix to this document. The Commission considers these five findings to be a response to the mandate of the U.S. Court of Appeals for the District of Columbia Circuit and, in addition, a generic determination that there is reasonable assurance that radioactive waste can and will be safely stored and disposed of in a timely manner.

In keeping with its commitment to issue a rule providing procedures for considering environmental effects of extended onsite storage of spent fuel in licensing proceedings, final amendments to 10 CFR Parts 50 and 51 are being issued simultaneously with this decision.

2.0 Commission Findings [2]

(1) The Commission finds reasonable assurance that safe disposal of high level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

(2) The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent

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[1] Presidential Nuclear Policy Statement, October 9, 1981.

[2] All findings by the Commission in this proceeding are limited to the storage and disposal of high-level radioactive waste and spent fuel generated by nuclear power reactors required to be licensed under sections 103 or 104 b of the Atomic Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)), and to facilities intended for such storage or disposal. The Commission's findings in this proceeding do not address the storage and disposal of high-level radioactive waste or spent fuel resulting from atomic energy defense activities, research and development activities of the Department of Energy, or both. This is consistent with the Nuclear Waste Policy Act of 1982, section 8(c).

fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(3) The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

(4) The Commission finds reasonable assurance, that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

(5) The Commission finds reasonable assurance that safe independent onsite or offsite spent fuel storage will be made available if such storage capacity is needed.

3.0 Future Actions by the Commission

The Commission's Waste Confidence decision is unavoidably in the nature of a prediction. While the Commission believes for the reasons set out in the decision that it can, with reasonable assurance, reach favorable conclusions of confidence, the Commission recognizes that the possibility of significant unexpected events remains open. Consequently, the Commission will review its conclusions on waste confidence should significant and pertinent unexpected events occur, or at least every 5 years until a repository for high-level radioactive waste and spent fuel is available.

.0 For Further Information Contact

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Dated at Washington, D.C. this 22nd day of August, 1984. Commissioner Zech did not participate in this action.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Addendum to the Commission's Waste Confidence Decision

Introduction

On May 17, 1983, the Commission issued its proposed decision in the Waste Confidence proceeding, and asked the consolidated groups of participants to comment on two aspects of the decision: the implications of the Nuclear Waste Policy Act (NWPA) for the decision and the Commission's discussion of the safety of dry storage of spent nuclear fuel, which relied substantially on material not in the record. The analysis of these comments is subdivided into several issue categories and presented, with NRC's responses, in Part I below. The membership of the consolidated groups responding to the Commission's request as well as the abbreviations used to identify the groups are provided in Section 3 of Part I.

Subsequently, in response to public comments on the Commission's proposed amendment to 10 CFR Part 51 (48 FR 22730, May 20, 1983), the Commission reopened (48 FR 50746, November 3, 1983) the comment period to address the environmental aspects of the fourth finding of the Commission's proposed Waste Confidence decision on which the proposed amendment to Part 51 is based. Public comments were requested on: (1) The environmental aspects of the fourth finding—that the Commission has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) the implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51. The analysis of public comments and NRC's responses are presented in Part II of this document. The list of respondents to this reopened comment period and the abbreviations used to identify them are given in Section 4 of Part II.

The Commission notes that two relevant developments have occurred subsequent to the closing of the record in the Waste Confidence proceeding. They are the publication of DOE's draft Mission Plan of the Civilian Radioactive Waste Management Program (April, 1984) and the Commission's concurrence in DOE's General Guidelines for Recommendation of Sites for Nuclear Waste Repositories (July 3, 1984). These developments are a matter of public record, and in the case of the Commission's concurrence was the conclusion of a separate public proceeding. The Commission has considered the effects of these developments on its previously announced decision in this proceeding and determined that these developments do not substantially modify the Commission's previous conclusions.

Part I. Analysis of the Consolidated Groups' Comments on the Commission's Waste Confidence Decision and NRC Responses

1. Effect of the Nuclear Waste Policy Act on the Commission's Decision

A. General

(1) *Summary of Comments.* The Consolidated Industry Group agreed with the Commission's view that the NWPA contains provisions pertinent to all of the major elements relevant to mined geologic disposal of high level radioactive wastes (Industry, p. 3). The Industry Group called attention to the comprehensive nature of the NWPA which authorizes DOE to undertake steps leading to the construction, operation and maintenance of a deep geologic test and evaluation facility; requires DOE to prepare a waste management mission plan; establishes a prescribed schedule for repository siting, construction and operation; defines the decision-making roles of affected states and Indian tribes in repository site-selection and evaluation; provides for the continuity of Federal management of the nuclear waste program and continued funding; and facilitates the establishment of an overall integrated spent fuel and waste management system. The Industry Group suggested that these features of the Act should increase the Commission's confidence that waste can and will be disposed of safely. The Group pointed out that the Act also contains special procedures to facilitate the licensing of spent fuel storage capacity expansion and transshipments; directs DOE research, development and cooperation with utilities in developing dry storage and rod compaction; and provides for federally supplied interim storage capacity to supplement that of industry (Industry, pp. 4–8).

The Industry Group believed that the NWPA's enactment—in and of itself—provides a sound basis for confidence that institutional difficulties can and will continue to be resolved. At the same time, Industry stated that the NWPA's enactment was not essential for the Commission to reach an affirmative decision in this proceeding (Industry, p. 9).

In contrast, the Consolidated Public Interest Group (CPIG) believed that the NWPA provides an insufficient basis for the Commission's decision in this proceeding with respect to the availability or timing of a nuclear waste repository. The CPIG contended that the NWPA contains many areas of ambiguity, and gave as examples:

> (i) Section 114(a) of the NWPA requires DOE to make a recommendation to the President for the first repository site, accompanied by the preliminary comments by the Commission concerning the suitability of three alternative candidate sites for licensing under 10 CFR Part 60. DOE interprets this section to require such preliminary comments *before* site characterization begins * * * The Commission staff interprets that section * * * to require a judgment of suitability under 10 CFR Part 60 *after* site characterization has occurred.
>
> (ii) DOE originally interpreted Sec. 112(f) to permit continuation of ongoing site characterization at Hanford before completion of the DOE siting guidelines. DOE now concedes that such site characterization work must await completion of an environmental assessment prepared in accordance with final DOE siting guidelines (CPIG, pp. 2–3).

(2) *NRC Response.* The Commission has considered the effect of enactment of the Nuclear Waste Policy Act of 1982 and concludes that the Act provides support for timely resolution of technical uncertainties and reduces uncertainties in the institutional arrangements for the participation of affected states and Indian tribes in the siting and development of repositories and in the long-term management, direction and funding of the repository program. The bases for the Commission's conclusion are set forth in the decision and will not be repeated here. The passage of the Act provides evidence of a strong national commitment to the solution of the radioactive waste management problem.

The Commission recognizes the possibility of differing interpretations regarding the implementation of the NWPA. With respect to CPIG's discussion of Section 114(a), the Commission is unaware of any differences between DOE and NRC in the interpretation of this section of the Act. We note that DOE's recommendation of a repository site to the President would necessarily be made after DOE's preliminary determination that three sites are suitable for development. DOE and NRC now agree that the preliminary determination of site suitability for the alternative sites should be made following site characterization (Commission's Final Decision on the U.S. Department of Energy's General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories [July 3, 1984]).

Concerning Section 112(f), DOE has continued site characterization at Hanford during formulation of the siting guidelines; in accordance with the views of the states and environmental groups, DOE has deferred drilling of the exploratory shaft pending the completion of the guidelines, submission of the site characterization plan to NRC and preparation of an environmental assessment of site characterization activities.

B. Technical Aspects

(1) *Summary of Comments.* The Consolidated Industry Group believed that the Act contained provisions pertinent to all of the major elements relevant to disposal (Industry, p. 3). The Consolidated Public Interest Group, on the other hand, contended that the NWPA did not resolve technical uncertainties concerning repository development and safety (CPIG, p. 5). The Consolidated State Group did not believe that the NWPA supported a finding of confidence because it failed to resolve technical questions and merely set target dates for deciding on the site of the first waste repository. The State Group noted that if technical problems are not resolved by the dates proposed by Congress, the milestone dates will have to be postponed. The State Group contended too that, although the Act authorizes DOE to conduct research on unresolved technical issues, the research could uncover additional problems (States, p. 2). However, DOE pointed out that the NWPA provides for a focused, integrated and extensive research and development program for the deep geologic disposal of high-level waste and spent fuel. DOE believed that Sec. 215 of the Act enhances confidence in the timely availability of disposal facilities by authorizing a research facility to develop and demonstrate a program for waste disposal. DOE also stated that the schedule for a Test and Evaluation Facility would require the *in situ* testing described in Sec. 217 of the Act to begin not later than May 6, 1990, thus allowing for research and development results to be incorporated in the repository which is scheduled to open in 1998 (DOE, pp. 11, 12).

(2) *NRC Response.* As the record of this proceeding shows, there are no known technical problems that would make safe waste disposal impossible. Clearly, further engineering development and site-specific evaluations will be required before a repository can be constructed. The Commission did not propose to rely on the NWPA as the basis for resolving technical uncertainties. Rather, the Commission found that the NWPA provides a framework for facilitating the solution of the remaining technical issues. Title II of the Act authorizes DOE to undertake steps leading to the construction, operation and maintenance of a deep geologic test and evaluation facility and to conduct the necessary research and development as well as to establish a demonstration program. The schedule set forth in the Act is consistent with the objective of assuring repository operation within the time period discussed in the Waste Confidence decision. The "Mission Plan" which is required by the Act will provide an effective management tool for assuring that the many technical activities are properly coordinated and that results of research and development projects are available when needed.

C. Institutional Aspects

(1) *Summary of Comments.* The Consolidated State Group believed that the NWPA failed to resolve institutional questions. The States argued that their cooperation cannot be assumed in the event that the general public in the vicinity of a proposed site is opposed to the location. Further, the States contended that, if a site is vetoed by a host state or Indian tribe, there is no assurance that Congress will vote to override the veto. Moreover, if the veto is overridden, a legal challenge is likely and the outcome is uncertain (States, p. 3).

The Consolidated Public Interest Group also believed that the NWPA has not significantly reduced institutional uncertainties regarding participation and objections of affected states and Indian tribes. As examples of institutional difficulties, CPIG pointed out that state officials and Indian tribes still have concerns regarding the adequacy of time to monitor and comment upon agency proposals, the lack of agency response to their concerns, and inadequate funding to support their full participation. Further, CPIG noted that the Act (Sec. 115) provides states and Indian tribes with strong new authority to veto the siting of a repository within their borders (CPIG, p. 5).

DOE, on the other hand, believed that Sections 116 and 117 of the NWPA will reduce Federal-state institutional uncertainties (DOE p. 9).

I(2) *NRC Response.* It would be unrealistic to expect that the NWPA will resolve all institutional issues. However, it does provide specific statutory procedures and arrangements for accomplishing such resolution. The right of affected states and Indian tribes to disapprove a site designation under the NWPA might create uncertainty in gaining the needed approvals. Nevertheless, the NWPA's establishment of a detailed process for state and tribal participation in the development of repositories and for the resolution of disputes should minimize the potential for substantial disruption of plans and schedules. The Commission does not expect that the NWPA can eliminate all disagreement about development of waste repositories. However, in providing for information exchange, financial and technical assistance to affected groups, and meaningful participation of affected states and tribes in the decision-making process, the Act should minimize the potential for direct confrontations and disputes.

D. Funding Aspects

(1) *Summary of Comments.* The Consolidated Industry Group expressed its general belief that the NWPA assures adequate funding for interim storage and disposal of radioactive waste (Industry, pp. 6, 7). Similarly, DOE believed that the funding mechanism provided by the NWPA should largely remove uncertainties in assuring adequate resources to complete the program (DOE, pp. 10, 11). On the other hand, the Consolidated States Group contended that, since the law can be changed at any time, the NWPA assures neither an adequate level of funding nor a prolonged Congressional commitment (States, p. 4).

(2) *NRC Response.* The Commission believes that the general approach prescribed by the NWPA is to operate DOE's radioactive waste program on a full cost recovery basis. It seems clear that Congress intended to establish a long-term program for waste management and disposal, with built-in reviews and adjustments of funding as necessary to meet changing requirements. In this regard, the Act provides that DOE must annually review the amount of the established fees to determine whether collection of the fees will provide sufficient revenues to offset the expected costs. In the event DOE determines that the revenues being collected are less than the amount needed to recover costs, DOE must propose to Congress an adjustment to the fees to ensure full cost recovery. The Act also provides that, if at any time, the monies available in the waste fund are insufficient to support DOE's nuclear waste program, DOE will have the authority to borrow from the Treasury. The Commission believes that long-term funding provisions of the Act will ensure adequate financial support for DOE's nuclear waste program for FY 1984 and beyond.

The Commission believes that uncertainties regarding the adequacy of financial management of the nuclear waste program have also been reduced by the NWPA requirement that an Office of Civilian Radioactive Waste Management be established within the Department of Energy. This Office is to be headed by a Director, appointed by the President with Senate confirmation, who will report directly to the Secretary of Energy. Further, the Act stipulates that an annual comprehensive report of the activities and expenditures of the Office will be submitted to Congress and that an annual audit of the Office will be conducted by the Comptroller General, who will report the results to Congress.

Some concern has been expressed that the Congress may amend the funding provisions of the NWPA and thereby undermine the financial stability of the Federal radioactive waste management program. Commenters have not provided any basis for this belief. The Commission considers this possibility to be most unlikely. It is reasonable to assume that the long-range public health and safety and political concerns which motivated the Congress over the past several years to pass the NWPA will continue to motivate the Congress in considering amendments to the NWPA.

E. Schedule

(1) *Summary of Comments.* DOE contended that the NWPA provides additional assurance that a repository will be available by 1998. As the basis for this belief, DOE stated that sections 111 through 125 of the NWPA provide specific schedules and reporting requirements for the timely siting, development, construction, and operation by 1998 of a repository for high level waste and spent fuel (DOE, p. 6). DOE believed that these schedules and reporting requirements will ensure that deadlines are met. The Commission notes that DOE recognizes that there has been a delay of about 1-year in its schedule for meeting early milestones such as publication of its siting guidelines; nevertheless, DOE continues to maintain that its date for completion of repository development will be met (DOE Draft Mission Plan for the Civilan Radioactive Waste Management Program, April 1984).

The Consolidated Public Interest Group, however, did not believe that the provision of specific dates in the NWPA gives assurance that they will be met. CPIG cited, for example, the delay in preparing DOE's site selection guidelines, which were due by June 1983, and were expected to be delayed further (CPIG, p. 4).

Further, the CPIG contended that a date for the availability of a repository is not certain since both the President and the NRC have explicit authority to reject any or all site proposals that are submitted to them (CPIG, p. 4). Also, CPIG believed that the legislation contemplates the possibility of delay beyond satutory deadlines and NWPA's legislative history indicates that the timing of repository availability remains uncertain (CPIG, p. 5).

(2) *NRC Response.* One of the primary purposes of the NWPA is "to establish a schedule for the siting, construction, and operation of repositories that will provide reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository." (Sec. 111(b)(1)). The Commission believes this purpose will be achieved.

As the Commission noted in the proposed decision, the Congress would not be able to legislate the schedules for the accomplishment of fundamental technical breakthroughs if it believed that such breakthroughs were necessary. They are not necessary. Rather, it is the Commission's judgment that the remaining uncertainties can be resolved by the planned step-by-step evaluation and development based on ongoing site studies and research programs. The Commission believes the Act provides means for resolution of those institutional and technical issues most likely to delay repository development, both because it provides an assured source of funding and other significant institutional arrangements, and because it provides detailed procedures for maintaining progress, coordinating activities and rectifying weaknesses.

The Commmission believes that the milestones established by the Act are generally consistent with the schedules presented by DOE in the Waste

Confidence proceeding and that those milestones are generally reasonable. Achievement of the scheduled first date of repository operation is further supported by other provisions of the Act which specify means for resolution of issues most likely to delay repository completion. One of the earlier milestones-publication of DOE's general guidelines for the recommendation of sites for a repository—was about a year behind schedule and the Commission was concerned that his delay could result in corresponding delays in DOE's nomination of at least five sites for characterization work. However, DOE has indicated in its draft Mission Plan (April, 1984) that the subsequent milestones have been scheduled to provide completion of the first repository by 1998. The Commission believes that the timely attainment of a repository does not require DOE's program schedule to adhere strictly to the milestones set out in the NWPA over the approximately 15 year duration of the repository development program. Delays in some milestones as well as advances in others can be expected.

The Commission has no evidence that delays of a year or so in meeting any of the milestones set forth in the NWPA would delay the repository availability date by more than a few years beyond the 1998 date specified in the NWPA. The Commission found reasonable assurance that a repository would be available by 2007–09, a decade later than that specified in the NWPA, and a date which allows for considerable slippage in the DOE schedule. The Act also requires that any Federal agency that determines that it cannot comply with the repository development schedule in the Act must notify both the Secretary of Energy and Congress, provide reasons for its inability to meet the deadlines, and submit recommendations for mitigating the delay. The Commission notes that the Act also clarifies how the requirements of the National Environmental Policy Act are to be met. These provisions of the Act, as well as the provisions for research, development and demonstration efforts regarding waste disposal, increase the prospects for having the first respository in operation not later than the first few years of the next century.

The repository development schedule may have to accommodate such contingencies as vetoes of proposed repository sites, prolonged public hearings, protracted litigation, possible project reorientation, or delay in promulgation of siting guidelines. The schedule now incorporated into the Act allows substantial time for these possibilities.

2. Discussion of the Safety of Dry Storage

A. Summary of Comments

DOE believed that the availability of dry storage techniques provides further reasonable assurance of the ability to safely store nuclear wastes at least 30 years beyond the expiration of reactor operating licenses. DOE stated that the citations quoted in the Commission's rationale are reliable and representative of the literature in the area, and that the Commission's technical judgment on dry storage conforms with DOE's experience and is accurate and correct (DOE, p. 16). The Consolidated Industry Group also stated that the pertinent points in the Commission's discussion appear to be adequately supported with appropriate references (Industry, pp. 10, 11).

In further support of the safety of dry storage, DOE cited the following:

—Extensive world-wide experience shows that dry fuel handling and storage is safe and efficient. Irradiated fuel has been handled, shipped, and safely stored under dry conditions since the mid-1940's. All types of irradiated fuel have been handled dry at hot cells, where a variety of phenomena have been observed in detail. The passive nature of most dry storage concepts contributes to the safety of interim storage by not requiring active cooling systems involving moving parts (DOE, p. 16).

—Regarding specific experience, DOE stated that a reactor fuel has been successfully stored in dry vaults licensed under Part 50 at the Hallam sodium-cooled graphite research reactor in Nebraska and the Fort St. Vrain HTGR prototype facility in Colorado. In addition, dry storage of zircaloy-clad fuel has been successfully conducted in drywells and in air-cooled vaults at DOE's Nevada Test Site. There is favorable foreign experience with dry storage at Wylfa, Wales in Great Britain, at Whitesell in Canada, in the Federal Republic of Germany, in France where vault dry storage of vitrified waste is routine, and in Japan, where a dry storage vault has been recently constructed (DOE, p. 17).

—To date, all dry storage tests have indicated satisfactory storage of zircaloy-clad fuel without cladding failure over the temperature range of 100 degrees C to 570 degrees C, in inert atmospheres. Existing data which support the conclusion that spent fuel can be stored safely in an inert atmosphere for at least 30 years is being augmented by additional ongoing research (DOE, pp. 17, 18).

None of the consolidated groups of participants offered comments which were critical of the Commission's discussion of the safety of dry storage.

B. NRC Response

The Commission is confident that dry storage installations can provide continued safe storage of spent fuel at reactor sites for at least 30 years after expiration of the reactor operating licenses.

3. List of Respondents

Consolidated Participants as Respondents to the Commission's Waste Confidence Decision

1. Department of Energy (DOE)
2. Consolidated States Representative [1] (States)
3. Consolidated Public Interest Representative [2] (CPIR)
4. Consolidated Industry Representative [3] (Industry)

PART II: Commission Consideration of Additional Comments on Its Fourth Finding

1. Introduction

On November 3, 1983, the Commission reopened the comment period in this proceeding to receive comments on: (1)

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[1] The Consolidated States Group consists of the Attorney General of the State of New York, Minnesota (by its Attorney General and the Minnesota Pollution Control Agency), Ohio, South Carolina and Wisconsin. The remaining participants previously consolidated in the States Group have not joined in these comments.

[2] The Consolidated Public Interest Group is represented here by the Natural Resources Defense Council, Inc., the New England Coalition on Nuclear Pollution, the Sierra Club, the Environmental Coalition on Nuclear Power, Wisconsin's Environmental Decade, Mississippians Against Disposal, Safe Haven, Ltd., John O'Neill, Jr., and Marvin Lewis.

[3] The Consolidated Industry Group is represented by: American Institute of Chemical Engineers; American Nuclear Society; Association of Engineering Geologists; Atomic Industrial Forum; Bechtel National; Consumers Power; General Electric; Neighbors for the Environment; Scientists and Engineers for Secure Energy; Tennessee Valley Authority; the Utilities Group (Niagara Mohawk Power Corporation, Omaha Public Power District, Power Authority of the State of New York, and Public Service Company of Indiana, Inc.); and the Utility Nuclear Waste Management Group—Edison Electric Institute. In order to emphasize the independent nature of its participation, the American Nuclear Society has chosen to proceed separately. ANS continues to protest its assignment to the Consolidated Industry Group and has offered separate comments on the Commission's Waste Confidence decision. Since only the consolidated groups of participants were invited to comment on the proposed decision, the ANS's separate comments are not discussed here. Further, TVA, as a Federal agency, wishes to stress the independent nature of its paticipation.

The environmental aspects of its fourth finding—that it has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51 (48 FR 50746).

The Commission has considered those comments and, for the reasons discussed below, finds no reason to substantively modify its fourth finding or other related aspects of its decision in this proceeding. The Commission has, however, made revisions in its fourth finding to clarify its original intent.

Thirteen comments were received. Seven commenters identified various reasons which they believed argued against the finding.[4] Six commentors supported the finding.[5] In addition to the issues on which the Commission specifically requested comments, some commentors raised additional issues regarding the Commission's compliance with the National Environmental Policy Act (NEPA).

2. Environmental Aspects of Extended Storage of Spent Fuel

A. Radiological Consequences of Spent Fuel Storage

The Commission's proposed fourth finding stated:

> The Commission finds reasonable assurance that, if necessary, spent fuel can be stored safely without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations.

The public was invited to submit additional comments on the environmental aspects of this finding. Those comments, and the Commission's responses to them, are set out below.

The State of Minnesota ("Minnesota"), through its Attorney General, and the Sierra Club believe that an event at the spent fuel pool for Prairie Island Nuclear Generating Station ("Prairie Island") indicates that irradiated spent fuel assemblies are degrading rapidly with time. In December 1981, during a fuel transfer operation at Prairie Island, the top nozzle assembly separated from the remainder of a spent fuel assembly due to stress corrosion cracking of the spent fuel assembly while it was in the spent fuel pool. Minnesota and the Sierra Club acknowledge that this separation was an isolated event; over 5,000 similar spent fuel assemblies have been moved successfully at other plants. These commentors also acknowledge that television examination showed no corrosion cracking of similarly designed fuel assemblies at other nuclear power plants: Zion, Trojan, Kewanee and Point Beach. They also acknowledge that even though the water contaminant contributing to stress corrosion cracking has never been identified, the possibility that it may have been sulfates has led the Commission to suggest that Prairie Island monitor the sulfate levels of its spent fuel pool.

However, the Sierra Club contended[6] that the NRC staff essentially ignored the opinion of Mr. Earl J. Brown, an NRC engineer, that sulfate contamination is a generic problem at Pressurized Water Reactors (PWRs). The Sierra Club also believes that television inspection of spent fuel assemblies in spent fuel pools cannot reveal the initial signs of stress corrosion cracking. For these reasons, the Sierra Club and Minnesota believe that there is no assurance that spent fuel can be stored safely in spent fuel pools for 30 years after reactor shut down or for 60 years after irradiation.

The NRC investigated the Prairie Island event and found it to be an isolated event without generic impact. The staff also concluded that if a fuel assembly were to drop due to top nozzle failures, such an event would not lead to a criticality hazard in a spent fuel pool and that such an accident would result in radiation levels at the site boundary well within the limits in 10 CFR Part 100. The NRC Staff Assessment Report ("SAR") and associated memoranda, although already publicly available in the Commission's Public Document Room, have been added to the docket of this proceeding. That SAR concluded that the event was caused by intergranular stress-corrosion cracking due to an unidentified corrodant temporarily present in the spent fuel pool.

As for the Sierra Club's specific comments, the staff recognized that sulfate contamination was suspected to have contributed to the corrosion and recommended that licensees administratively control sulfate level concentrations in spent fuel pools. Such monitoring had been recommended by Mr. Brown as the only action that should be taken in response to the incident. Although Mr. Brown stated that in his opinion the event was a "potential" generic issue for PWRs, subsequent staff investigation revealed that the event was an isolated incident. The staff also considered the properties of the steel used in the spent fuel assemblies and acknowledged that they could have contributed to the event. However, the absence of any similar events for 5,000 other spent fuel assemblies indicated that the type of steel was not critical. Accordingly, the Commission finds no basis for reconsidering the Safety Assessment Report's finding that the Prairie Island event was an isolated incident and recommendation that sulfate control was an adequate response, or for altering its conclusion concerning the potential environmental impacts of stored spent fuel.

Wisconsin, Safe Haven, Ltd. and NRDC contended that the environmental effects of extended spent fuel storage are site specific and should be considered on a case-by-case basis.[7] Safe Haven believes that the individuality of each plant and its environmental surroundings necessitate separate evaluations of extended storage of spent fuel, but identified no site-specific factors which would result in significant environmental impacts. NRDC listed some site specific factors: geology, hydrology, seismicity, ecological factors and individual proposals for spent fuel management and storage. However, NRDC did not suggest how these factors could lead to significant site-specific environmental impacts that would preclude the

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[4] Department of Law of the State of New York, Marvin Lewis, Sierra Club, Safe Haven, Ltd., Attorney General of the State of Minnesota, Department of Justice of the State of Wisconsin and Natural Resources Defense Council, Inc.

[5] Scientists and Engineers for Secure Energy, Inc. American Institute of Chemical Engineers, American Nuclear Society, Utility Nuclear Waste Management Group—Edison Electric Institute, and U.S. Department of Energy.

[6] Sierra Club also stated that the staff did not consider an Oak Ridge report (ORNL 3684, Nov. 1964) which identified water vapor as contributing to corrosion of the type of steel used in spent fuel assemblies. That report is not germane to light water reactor fuel because it addressed the sensitization of stainless steel in a high temperature gas cooled reactor environment, which is very different from the environment of a light water reactor. Refer to the discussion in Sec. 2.4A of the Appendix to the Commission's decision.

[7] Safe Haven also suggested that a full environmental and safety review should accompany any utility's proposed plans submitted pursuant to 10 CFR 50 (§ 50.54(aa)) for extended storage of spent fuel. The Commission will treat its review of any such utility proposal in accordance with the established procedures for considering any application for a license amendment.

Commission from making a generic finding. Similarly, Wisconsin listed as relevant factors proximity to population centers, highways, geologic faults, dams, flood plains or shorelines affected by erosion, but offered no suggestion of how these factors could affect the Commission's generic determination. For example, there has been no discussion of why the Commission's seismic design requirements, though site specific, are not generically adequate to assure that spent fuel can be stored for up to 30 more years in a spent fuel pool designed to withstand the largest expected earthquake at each reactor site. Mr. Marvin Lewis contended that the fourth finding had no basis because the Commission had little or no experience with storing spent fuel for 30 years or with storing fuel that could be up to 70 years old. Mr. Lewis also asserted that the pyrophoricity of the zircaloy tubes containing spent fuel for 30 years presents and unknown fire danger. This comment is based on a private communication to Mr. Lewis regarding the condition of the spent fuel at Three Mile Island, Unit 2. By the terms of that letter, any fire danger associated with pyrophoricity of zircaloy arises from the accident conditions at TMI–2. NRC has previously studied the effects of loss of water from pools on the temperature of stored spent fuel (NUREG/CR–0649, "Spent Fuel Heatup Following Loss of Water During Storage" [March, 1979]). While this study noted that oxidation could become self-sustaining for temperatures in the neighborhood of 850–950° C (NUREG/CR–0649, page 13), the study shows that such oxidation can only occur for extreme temperature conditions and for spent fuel that has been stored for a relatively brief storage period. In order for rapid oxidation to occur, the age of the spent fuel (30,000 MWD/MT burnup) would have to be in the range of less than 10 days to less than two years, depending on the density at which it is stored (see page 55, Figure 17 of NUREG/CR–0649). Moreover, one must assume a continuing oxygen supply adequate to sustain the oxidation. Any damaged spent fuel such as that from TMI–2, would be canned to avoid particulate loss and would have already aged several years. Neither the heat load leading to temperatures capable of initiating rapid oxidation nor the presence of an adequate supply of oxygen to sustain a pyrophoric reaction would seem to be present in any storage configuration or under conditions that would receive NRC approval. While it is correct that spent fuel has not been stored for over 30 years, the record shows that utilities have successfully stored spent fuel for over 20 years, and that there are no known physical processes which would indicate that it is impractical to extrapolate that experience to make predictions about the behavior of spent fuel for 70 years of storage.

The Utility Nuclear Waste Management Group—Edison Electric Institute and the U.S. Department of Energy referred to several documents in the record which show that the relatively low energy content of spent fuel and the relatively benign static environment of spent fuel storage render insignificant the radiologic impacts arising from extended storage of spent fuel. As discussed in more detail below, these documents also show that there are no significant non-radiologic environmental impacts arising from such extended storage. Under these circumstances, the Commission finds that it has sufficient experience with spent fuel storage to predict spent fuel behavior during 70 years of storage and to find that such storage will not result in significant environment effects.

B. Non-Radiological Consequences of Spent Fuel Storage

The Commission's fourth finding rested in part on the Commission's determination that there are no significant non-radiological consequences due to the extended storage of spent fuel which could adversely affect the environment. The public was invited to comment also on this finding and to provide a detailed discussion of any such environmental impacts. Mr. Marvin Lewis asserted that the continuous storage of spent fuel under water for 30 years or more requires unprecedented institutional guarantees. He also noted that there had been no consideration of financial, economic and security implications of storage for 30 or more years. Mr. Lewis did not expand upon these assertions to explain how they would result in significant non-radiological environmental consequences. In any event, the more than twenty years of experience with storing spent fuel demonstrates that storage of spent fuel for 30 years or more does not require unprecedented institutional guarantees or raise unique questions regarding finances, economics or the security of extended spent fuel storage. Further, the Commission will require all reactor licensees, 5 years before expiration of their operating license to provide a plan for managing the spent fuel prior to disposal. Moreover, the record documents referred to by UNWMG–EEI, DOE and AIF show that there are no significant non-radiological environmental impacts associated with the extended storage of spent fuels. The amount of heat given off by spent fuel decreases with time as the fuel ages and decays radioactively. No additional land needs to be devoted to storage facilities because reactor sites have adequate space for additional spent fuel pools or dry storage installations. The additional energy and water needed to maintain spent fuel storage is also environmentally insignificant. No commentor has challenged these assessments of environmental impacts and the Commission has no reason to question their validity. Under these circumstances, the Commission has no reason to reassess its prior determination that extended storage of spent fuel will present no significant non-radiological consequences which could adversely affect the environment.

3. Commission Compliance With NEPA

Several participants challenged the Commission's compliance with NEPA. The States of New York ("New York") and Wisconsin contend that since its inception, this proceeding has focused on the availability and safety of spent fuel storage, and has been conducted outside the scope of NEPA. New York supports this contention with the following quote from the First Prehearing Conference Order (February 1, 1980):

> This rulemaking proceeding does not involve a major federal action having a significant impact on the environment, and consequently an environmental impact statement is not required by NEPA . . .

New York asserts that this statement caused the participants not to consider NEPA in their filings. Accordingly, New York believes that the Commission cannot now transform the Waste Confidence Proceeding into a NEPA proceeding. In New York's view, joined by the Natural Resources Defense Council, Inc. ("NEDC"), NEPA required the Commission to prepare an environmental impact statement ("EIS") or environmental assessment to consider the environmental impacts of spent-fuel storage at reactor sites beyond the expiration dates of reactor licenses. The Utility Nuclear Waste Management Group-Edison Electric Institute ("UNWMC–EEI") believes that it has been clear from the outset of this proceeding that the Commission intended to develop environmental regulations appropriate to the issues considered here. UNWMG–EEI cites several factors in support of its position:

(1) this proceeding was the direct outgrowth of a NEPA case, *Minnesota* v. *NRC*, 602 F.2d 412 (D.C. Cir. 1979); (2) the Notice of Proposed Rulemaking explicitly stated a Commission intent to deal with environmental aspects of spent fuel storage; (3) the proceeding was docketed under Part 51, the Commission's regulations implementing NEPA; (4) the Commission stated that it would draw on the record of the rulemaking on environmental impact of the nuclear fuel cycle (Table S–3) and included in the NRC Data Bank for this proceeding sources of information on the environmental impacts of spent fuel storage; and (5) several participants included in their statements information pertaining to the environmental impacts of spent fuel storage.

The Commission believes that from the very beginning of this proceeding, participants were on notice that environmental aspects of spent fuel storage were under consideration. The notice initiating this proceeding stated, in pertinent part:

> If the Commission finds reasonable assurance that safe, off-site disposal for radioactive wastes from licensed facilities will be available prior to expiration of the facilities' licenses, it will promulgate a final rule providing that the *environmental and safety implications of continued on-site storage after the termination of licenses* need not be considered in individual licensing proceedings. In the event the Commission determines that on-site storage after license expiration may be necessary or appropriate, it will issue a proposed rule providing *how that question will be addressed.*
>
> * * * * *
>
> Based on the material received in this proceeding and on any other relevant information properly available to it, the Commission will publish a proposed or final rule in the **Federal Register**. Any such final rule will be effective thirty days after publication.
>
> 44 FR 61372, 61273–61374 (1979). (Emphasis supplied).

It is clear from this notice that if the Commission found that onsite storage after termination of reactor operating licenses would be necessary or appropriate, then it would propose a rule for dealing with the question of environmental and safety implications of continued onsite storage. New York's reference to the statement in the First Prehearing Conference Order is inapposite. That statement addressed the issue of whether a decision in this proceeding would be a proposal for major federal action having significant impact on the environment so as to require an EIS. The Presiding Officer found that the decision itself would not require an EIS. His decision in no way implied a change in the scope of the proceeding as announced in the notice initiating it.

There is also nothing about the Commission's fourth finding which requires an EIS. Neither New York nor NRDC has explained how this finding is a major federal action having a significant impact on the human environment. The finding provides a basis for a rule that provides that environmental impacts from extended storage of spent fuel are so insignificant as not to be required to be included in an impact statement. The validity of such a rule depends on the procedures used to promulgate it and the record supporting it. An EIS is not required because such a rule itself has no environmental impacts, significant or otherwise.[8] To require an EIS here would be essentially to require an EIS to show that no EIS is required. Clearly such a result would be incorrect. Accordingly, the Commission finds that NEPA does not require an EIS to support the fourth finding.

4. List of Respondents

Respondents to the Commission's November 3, 1983 Order (48 FR 50746) To Reopen the Period for Limited Comment on the Environmental Aspects of the Commission's Fourth Finding in the Waste Confidence Proceeding

1. Attorney General of the State of New York (N.Y.)
2. Marvin Lewis (Lewis)
3. Sierra Club Radioactive Waste Campaign (Sierra)
4. Scientists and Engineers for Secure Energy, Inc. (SE2)
5. Safe Haven, Ltd. (S.H.)
6. American Institute of Chemical Engineers (AICE)
7. Atomic Industrial Forum, Inc. (AIF)
8. Utility Nuclear Waste Management Group—Edison Electric Institute (UNWMG–EEI)
9. Natural Resources Defense Council, Inc. (NRDC)
10. Attorney General of the State of Wisconsin (Wis.)
11. U.S. Department of Energy (DOE)
12. American Nuclear Society (ANS)
13. Attorney General of the State of Minnesota (Minn.)

Appendix—Rationale for Commission Findings in the Matter of the Waste Confidence Proceeding

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1.0 Introduction

The rationale for the five Commission findings resulting from the Waste Confidence proceeding is summarized below. This rationale is based principally on the record of the proceeding which includes participants' position statements, cross-statements, pre-hearing and oral statements (in the discussion below, the participants are identified by the citations defined in the Reference Notation at the end of this document). The Commission also relied on the provisions of the Nuclear Waste Policy Act of 1982 (NWPA), and other substantive material not originally included in the record relating to the discussion of the safety of dry storage of spent nuclear fuel in the Commission's Fourth Finding; the NWPA and the dry storage material have now been incorporated into the record along with the relevant comments of participants in this proceeding.

The Commission notes that two relevant developments have occurred subsequent to the closing of the record in the Waste Confidence proceeding.

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[8] See, for example, *Natural Resources Defense Council, Inc., v. U.S. Nuclear Regulatory Commission*, 547 F.2d 633, 653, n. 57 (D.C. Cir. 1976), *reversed on other grounds, sub nom. Vermont Yankee Nuclear Power Corp. v. NRC*, 435 U.S. 519 (1978).

They are the publication of DOE's draft Mission Plan for the Civilian Radioactive Waste Management Program (April, 1984) and the Commission's concurrence in DOE's General Guidelines for Recommendation of Sites for Nuclear Waste Repositories (July 3, 1984). These developments are a matter of public record, and in the case of the Commission's concurrence was the conclusion of a separate public proceeding. The Commission has considered the effects of these developments on its previously announced decision in this proceeding and determined that these developments do not substantially modify the Commission's previous conclusions.

2.0 Rationale for Commission Findings

2.1 *First Commission Finding*

The Commission finds reasonable assurance that safe disposal of radioactive waste and spent fuel in a mined geologic repository is technically feasible.

The Commission finds that safe disposal of high-level radioactive waste and spent fuel is technically possible and that it is achievable using existing technology. Although a repository has not yet been constructed and its safety and environmental acceptability demonstrated, no fundamental breakthrough in science or technology is needed to implement a successful waste disposal program. Those participants who questioned the availablity of a repository did not contend that fundamental scientific breakthroughs were required, but questioned whether technical problems could be resolved in a timely manner. The record supports the conclusion that the safe disposal of high level radioactive waste and spent nuclear fuel from licensed facilities can be accomplished.

The Department of Energy's (DOE) position is that disposal in mined geologic repositories can meet the goal of providing safe and effective isolation of radionuclides from the environment (DOE PHS pp. 2, 4; Tr. p. 11). A number of participants stated that waste containment and isolation from the biosphere are scientifically feasible (USGS PS p. 4; NRDC PS p. 9; UNWMG–EEI PS, Doc. 1 p. 22, Doc. II p. II–6; Consolidated Industry Group Tr. p. 16; Consolidated States Group Tr. p. 98). This view is consistent with the conclusions of the *Report to the American Physical Society by the Study Group on Nuclear Fuel Cycles and Waste Management* (Rev. Mod. Phys., Vol. 50, No. 1, Pt. II, p. S6, Jan. 1980) and the *Report to the President of the Interagency Review Group on Nuclear Waste Management* (Final Report, March, 1979, p. 38).

The conclusion that safe radioactive waste disposal is technically feasible is based on consideration of the basic features of repository design and the problems to be solved in developing the final design. A mined geologic repository for disposal of high-level radioactive waste, as developed during the past three decades, will be based on application of the multi-barrier approach for isolation of radionuclides. The high-level radioactive waste or spent fuel is to be contained in a sealed package and any leakage from the package is to be retarded from migrating to the biosphere by engineered barriers. These engineered barriers include backfilling and sealing of the drifts and shafts of the mined repository. We believe that the isolation capability and long-term stability of the geologic setting provide a final barrier to migration to the biosphere.

The selection of a suitable geologic setting is one of the key technical problems which DOE must solve. Other problems include development of waste packages that can contain the waste until the fission product hazard is greatly reduced and engineered barriers that can effectively retard migration of radionuclides out of the repository. The Commission recognizes that these three problems are not only the ones which DOE's program must solve, but they are critical components of the multi-barrier approach for nuclear waste isolation. Much of the discussion in this proceeding has focused on these problems. We have reviewed each of these issues and have concluded that they do not present an insoluble problem which will prevent safe disposal of radioactive waste and spent fuel.

A. The Identification of Acceptable Sites

There is general agreement among the participants that the period during which the wastes must be isolated from the biosphere is at least several millenia and that such prolonged isolation can be achieved in a deep mined respository provided the geologic setting is suitable. The geologic setting is the "final" isolating barrier. If the waste package and engineered barriers fail to perform as expected, the geologic barrier must prevent harmful quantities of radioactive materials from entering the human environment.

The Commission believes that technically acceptable sites exist and can be identified. In many locations in the continental United States there are geologic media potentially suitable for a waste repository. These media occur in large, relatively homogeneous and unfaulted formations and have properties (e.g., mechanical strength, thermal stability, impermeability to water which qualify them as potential host rocks for radioactive wastes. The potential host rocks include those being investigated by DOE—that is, domed salt, bedded salt, tuff, basalt, granite, and shale (DOE PS pp. II–70 to II–[illegible]). Thousands of square miles of the United States are underlain with formations containing extensive masses of such potential host rocks. Moreover, more than one-half of the United States is underlain with rock that has been stable against significant deformation and disruption for over ten million years. The potential sites being investigated by DOE are in regions of relative tectonic stability (USGS PS pp. 19, 23, 24, 25, 26, 28; Tr. p. 236).

Host rock suitability and formation stability are not the only relevant technical factors to be considered in repository site selection. Geohydrologic conditions—particularly the absence of significant groundwater flow from the repository to the biosphere—must be favorable for effective isolation of the wastes (USGS PS p. 11). DOE's investigations reveal that the hydrologic characteristics of a major portion of the sites underlain with stable formations of potential host rock appear to be suitable for repository location (Tr. p. 236; DOE PS p. II–77).

These general conclusions about the extent of potential repository sites are based on the results of DOE's site exploration program (DOE PS Appendix B) and the extensive body of earth-sciences information available at the United States Geological Survey—the Federal agency principally concerned with earth-sciences issues and, under a DOE–USGS Memorandum of Understanding, a primary source of geologic, hydrologic and mineral resource data for the National Waste Terminal Storage program (USGS PS p. 2 and Appendix A; DOE PS p. III–44).

DOE's site exploration efforts are focused on four host rocks (domed salt, bedded salt, basalt, and tuff) in six regions (Gulf Interior, Paradox Basin, Permian Basin, Salina Basin, DOE Hanford Site, DOE Nevada Test Site) (DOE PS Appendix B). Although investigations of granite sites in the U.S. have been limited, DOE is developing data on the potential of granite as a host rock in collaboration with foreign investors. A Swedish-American cooperative program (DOE's Lawrence Berkeley Laboratory is the U.S. principal in the program) has involved a series of *in situ* tests in a granite formation conducted at the Stripa mine in Sweden. The investigations included determinations of thermally induced stresses and deformations in the granite rock mass. Another cooperative study at Studsvik in Sweden involved experiments in nuclide migration in fractured subsurface crystalline rocks (DOE PS p. II–258).

Some participants objected to the fact that most of DOE's site exploration involved federally-owned or -controlled areas, arguing that this would result in ignoring sites that were technically better (NRDC PS p. 17; Tr. p. 206). This objection, apparently based on the assumption that Federal lands investigated were limited in area and geologic diversity, is not supported by the record. The Federal lands being investigated by DOE are extensive and geologically diverse; moreover, they are more readily accessible to DOE and some of them, such as Nevada Test Site, have been previously subjected to extensive geologic assessment. These latter factors are significant advantages (DOE PS Appendix B; UNWMG–EEI CS p. IV. B–4). Although, as the United States Geological Survey pointed out, there may be advantages from a purely earth-science viewpoint in examining all parts of the country for their potential as repositories, time and resource limitations require that site exploration efforts be concentrated in limited regions fairly early so that detailed site-specific characterization efforts can be undertaken in a timely way (USGS PS p. 17).

A specific site has not yet been identified as technically acceptable, and investigations of potential sites have shown some to be unsuitable. This does not necessarily mean that DOE's site selection program will be unsuccessful in identifying technically acceptable sites. The elimination of some sites is to be expected in a pursuit of the site selection program and is not, as some participants implied, an indication that suitable sites cannot ultimately be found.

Although the record of this proceeding does not show that DOE has progressed far enough in site characterization to confirm the existence of an acceptable site, the record does indicate that DOE's site characterization and selection program is technically sound. The data obtained in each stage of the screening process are analyzed and compared against criteria that must be satisfied for adequate performance of the total isolation system. DOE's program is providing information on site characteristics at a sufficiently large number and variety of sites and geologic media to support the expectation that one or more technically acceptable sites will be identified (DOE PS pp. III–8 to III–24; CS p. II–140). As discussed above, DOE's site screening efforts have concentrated on a diverse set of potentially suitable geologic media and are directed to an examination of large areas of the country on both federally-owned and non-federal lands (USGS PS p. 17).

The technology for site identification is particularly well-advanced (UNWMG–EEI PS p. III–A–b79). The record describes numerous site characterization techniques, both remote sensing and *in-situ*, which are being used to evaluate sites (DOE PS pp. II–84 to II–103). The location and demonstration of acceptability of repository sites are problems which can be solved by the investigative and analytical methods now available (AEG PS p. 1). Site selection criteria are being refined (DOE PS pp. II–80 to II–83; 48 FR 5671, February 7, 1983) and the technology exists for site characterization (DOE PS pp. II–84 to II–103). Areas have been found where most natural geologic and hydrologic processes operate at rates favorable to long-term containment in a mined repository (DOE PS p. II–128; Consolidated Industry Group PHS p. 9).

The Commission recognizes that there are gaps in the current state of knowledge about potential repository sites and geologic media, and about geochemical processes which affect radionuclide migration (e.g., CEC PS pp. 17, 54; NRDC PS pp. 18, 50, 64; NY pp. 38, 80; USGS CS pp. 5, 6). The gaps include a lack of a detailed understanding of such relevant processes as sorption of radionuclide-bearing molecules by the geologic media, leaching of the wastes by groundwater, and radionuclide migration through subsurface formations. Some participants contend that these gaps and uncertainties in knowledge make it difficult to predict on the basis of any effort less than a detailed on-site investigation whether a candidate repository site will be technically suitable (e.g., NRDC PS pp. 18, 50, 53; ECNP PS pp. 3, 4; NECNP PS pp. 20, 21, 22).

The Commission recognizes that detailed site characterization is necessary to confirm that a proposed site is indeed suitable. The Commission does not believe, however, that all uncertainties must be resolved as a pre-condition to repository development. The performance of a repository may be bounded by using conservative values for controlling parameters, such as waste form solubility, ground water travel time and retardation of radionuclides. Furthermore, bounding analyses can be useful to take residual gaps in knowledge and uncertainties into account. If it can be established that a repository can perform its isolation function using established, conservative values for the controlling parameters, then it is not necessary to resolve uncertainties in the range of value these parameters may exhibit (DOE CS pp. II–83, II–84, II–130, III–9, III–12).

The statements of those participants who are pessimistic about timely accomplishment of disposal tend to assign equal importance to all areas of uncertainty. Hence, they contain few attempts to assess the consequences of gaps in knowledge or to project the benefits of expected results from ongoing research and development efforts. It is the Commission's belief that the waste isolation system elements are adequately understood so that major unforeseen surprises in results of research and development are highly unlikely. This view is supported by USGS (USGS CS pp. 1–2).

A further concern of some participants is that, even if DOE were to identify a potentially acceptable repository site, the *in-situ* testing required to determine acceptability would breach the integrity of the candidate site (NY PS pp. 59, 63–65). If, for example, boreholes essential to characterize a potential site result in penetration of aquifers which are not amenable to effective sealing, this might make the site unacceptable (DOE PS pp. II–161 to II–164). However, no persuasive evidence was presented in the record to support the position that *in-situ* tests for site characterization work are likely to compromise the integrity of candidate sites. The Commission believes that *in-situ* tests can be successfully accomplished without adversely affecting site integrity for the following reasons. Many non-destructive remote sensing methods are available for determining site characteristics. Further, boreholes can be located in shafts or pillars of the future repository to minimize the possibility of leakage through them.

As discussed later, borehole sealing methods are expected to be adequate. The number of boreholes necessary to adequately characterize a site can be minimized by careful planning and by use of remote sensing methods in conjunction with the drilling program (DOE PS pp. II–84 to II–103, II–181). Finally, the Commission believes that if a site is found to be sufficiently sensitive to the testing program so that its integrity would be destroyed, then that site would necessarily be found unacceptable.

In summary, the Commission believes that technically acceptable sites for disposal of radioactive waste and spent fuel exist and can be found. There are a number of suitable host rock type to select from; many areas are underlain with massive, stable formations containing these host rocks; the areas being investigated by DOE contain such rock formations; and the uncertainties in knowledge of the earth and material sciences relevant to the identification of an acceptable repository site are not fundamental uncertainties that would prevent the identification of technically acceptable sites. Further, *in-situ* testing required to characterize a candidate site would not necessarily compromise its integrity.

B. The Development of Effective Waste Packages

1. *Waste Package Considerations.* An important technical aspect of safe waste disposal is to assure that the waste form and the balance of the waste package, including the primary container and ancillary enclosures, are capable of containing the radioactivity for a time sufficient for the hazard from fission-product activity to be significantly reduced (e.g., DOE PS p. II–8). Decay heat, groundwater and nuclear radiation could cause the waste package components to interact with each other or with the host rock materials in such a way as to degrade the ability of the package to contain the radionuclides. These items are discussed below.

To assure long-term containment, DOE's conceptual design of a waste package is based on a defense-in-depth approach and involves a number of components including spent fuel, stabilizer (or filler), waste canister, overpack, and an emplacement hole sleeve. The stabilizer is intended to improve heat transfer from the spent fuel, to provide mechanical resistance to possible canister collapse caused by lithostatic pressure, and to act as a corrosion-resistant barrier between the spent fuel and the canister. Selection of canister overpack and emplacement hole sleeve materials will be based on tests of their chemical and physical integrity at various temperatures and levels of radiation and under various conditions of groundwater chemistry, as well as tests of their compatibility with each other and with the host rock materials under repository conditions. The canister, overpack, and sleeve should constitute relatively impermeable elements of the waste package. A variety of candidate materials is being considered for these elements. The various waste package components are to be combined in a conservative design that will compensate for the overall technical uncertainties in containment capability. The requirement for retrievability during some specified period after emplacement places conditions (e.g., ruggedness) on waste package design which are added factors to be considered in its development (DOE PS p. II–129 to II–152, II–282).

It is apparent from the foregoing that the development of an effective waste package depends on obtaining engineering data on those materials that appear to be promising candidates for package components. DOE is studying over 28 candidate materials for canisters and overpack (DOE PS p. II–143). The DOE evaluation program indicates that many of these materials are promising. For example, iron alloys have demonstrated long term durability (DOE PS p. II–144, Reference 383), and titanium alloys and nickel alloys show high resistance to corrosion (DOE PS p. II–144, Refs. 315, 338, 342). Ceramics are resistant to chemical degradation and have many other desirable properties (DOE PS p. II–145, Refs. 337, 347, 348 and 349). Preliminary analysis indicates that mild steel canisters with an appropriate backfill material would be a feasible waste package for either a salt or hard rock repository. For more demanding requirements, such as brine applications, the alloys of titanium, zirconium or nickel appear to represent alternate choices (DOE PS p. II–150, Refs. 337, 382). The DOE program also includes experimental studies of the release of radioisotopes from spent fuel exposed to simulated repository conditions (e.g., salt brine and fresh water with varying dissolved oxygen content). The studies are being conducted under temperature and pressure conditions that bound and exceed repository conditions (DOE PS pp. II–139 to II–141).

Not all participants were optimistic about waste package development. One participant asserted that in spite of DOE's efforts to develop a package that would remain inert and stable under repository conditions, none had yet been found and the DOE program would not succeed in finding one (NRDC PS p. 46). Other participants pointed to the limits of present knowledge, particularly about the leaching of radioisotopes from spent fuel in a groundwater environment, and concluded that it is not possible to select a waste form which will prevent radioisotopes from migrating to the biosphere (e.g., CEC PS p. 51). They also pointed out that chemical and physical properties of spent fuel varied widely and depended on burnup, location within the reactor core, age, and physical integrity; design of a system of barriers to accommodate this heterogeneity within the context of a given geohydrologic environment would be a major undertaking (NY PS p. 83).

The Commission recognizes the difficulties which must be overcome in developing a suitable waste package. A large body of experimental data must be accumulated and applied to a variety of candidate arrangements of waste package components. Suitably conservative assumptions must be postulated to define the repository conditions. Data from experiments of relatively short duration have to be used to predict behavior for much longer periods. It is common practice in materials research to perform short-duration experiments under physical or chemical conditions much more severe than those expected for the longer duration and, from known fundamental properties of the materials under investigation, to extrapolate the experimental data to predict long-term behavior. Conservatism can usually be assured by making the experimental conditions sufficiently severe.

The complex composition of the mixture of radionuclides in fission products and their basic chemical properties are known and have been the subject of investigation for more than three decades. The large body of published data on fission product chemistry and experience with fission product mixtures should provide considerable support for predicting the behavior of spent fuel and high-level radioactive waste in waste package designs.[1] The Commission, therefore, concludes that the chemical and physical properties of spent nuclear fuel and high-level radioactive waste can be sufficiently understood to permit the design of a suitable waste package.

The Commission also concludes that the DOE program is capable of developing a suitable waste package which can be disposed of in a mined geologic respository. This conclusion is based upon the large number of candidate materials being considered by DOE, the detailed evaluation of these materials to be conducted as part of the DOE program and the results of DOE's preliminary analysis of candidate materials, as described above (see Sec. 2.1(b)(1)). The Commission's conclusion that the development of a suitable waste package is technically feasible is also consistent with other material in the record. For example, a study sponsored by the National Academy of Sciences (NAS) concluded that no insurmountable technical obstacles were foreseen to preclude safe disposal of nuclear wastes in geologic formations (UNWMG–EEI PS Doc. 2 p. II–8). The United States Geological Survey stated that a long-lived canister is within the capability of materials science technology to be achieved in the same time frame as repository site identification, qualification and development (USGS PS p. 11). The National Research Council, after reviewing the Swedish waste disposal work (DOE PS p. II–335 Ref. 380), concluded that the Swedish waste package could contain the radionuclides in spent fuel rods for hundreds of thousands of years (DOE CS p. II–98).

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[1] Published compilations of such data, although not specifically included in the record of this proceeding, are well known to the nuclear science and engineering community. Examples are the three volumes of the National Nuclear Energy Series, "Radiological Studies: The Fission Products," by C. D. Coryell and N. Sugarman, McGraw-Hill, 1951; "Reactor Handbook," Second Edition, Vol. II, Fuel Reprocessing, edited by S.M. Stoller and R.B. Richards, Interscience Publishers, Inc., New York, 1961).

2. *Effect of Reprocessing on Waste Form and Waste Package.* The waste form itself (spent fuel or other high-level waste) serves as the first barrier to radionuclide release and thus supplements the containment capability of the other components of the waste package as well as the repository's natural isolation capability. Throughout this processing it has been assumed that the waste form would be spent fuel discharged from light water reactors, with mechanical disassembly for volume reduction and packaging in a canister as the only potential modifications. The relevant properties of the spent fuel (irradiated uranium dioxide pellets and zircaloy cladding) are known. DOE's program has been directed toward providing data to determine the behavior of spent fuel as a waste package component under repository conditions. In its Position Statement DOE stated that the "representative case" to be considered in this proceeding is the disposal and storage of spent fuel from commercial reactors and that this does not foreclose "other approaches, such as the reprocessing of spent fuel and solidification of resultant nuclear wastes" (DOE PS p. I–2).

On August 27, 1981 the National Resources Defense Council filed a Motion for Judgment requesting a prompt ruling that, on the basis of the present record, there is not reasonable assurance that off-site storage or disposal will be available by the year 2007–09. NRDC stated that, because the present Administration[1] had changed Federal policy towards commercial reprocessing of spent fuel (reprocessing was deferred "indefinitely" in April 1977 by the previous Administration), the disposal of spent fuel would be contrary to the present Administration's policy, and thus spent fuel was no longer a valid "reference waste form" for this proceeding. As a consequence, according to NRDC, DOE schedules and timetables, which were based on spent fuel storage and disposal, were irrelevant. The NRDC view was challenged by DOE as well as by seven participants representing utilities and the nuclear industry. The Commission took note of the NRDC filings and the responsive filings by other participants, considering them part of the record, and in its November 6, 1981 Second Prehearing Memorandum and Order asked the participants to address the significance of commercial reprocessing to the Commission's decision in the waste confidence proceeding. In response, the participants addressed this change in government policy in their prehearing statements filed in December 1981.

In response to those who argued that the change of reprocessing policy invalidated DOE's position, DOE stated that the program for development of the technology is not dependent on the waste form. Moreover, DOE pointed out that the purpose of this proceeding—"to determine whether there is at least one safe method of disposal or storage for high-level radioactive waste" is not changed by this Administration's support of reprocessing of spent fuel (DOE PHS pp. 2–3). Some participants who agreed with DOE commented that spent fuel disposal involves greater difficulty than disposal of solidified reprocessing waste because of its higher radioactivity and less easily handled form; in addition, they asserted that the removal of the uranium and most actinides by reprocessing would ease the requirements for safe long-term storage and simplify the waste disposal problem (UNWMG–EEI PHS p. 16; SE2 PHS p. 4). Others contended that spent fuel is a more difficult waste form because heat dissipation and packaging problems involved in disposal appear to be more severe than in disposal of solidified reprocessing waste (AIF PHS p.6; ANS PHS p. 5).

The Commission recognizes that the proceeding has been primarily concerned with storage and disposal of spent fuel. However, the Commission does not believe that the possibility of future reprocessing, and the potential need to dispose of high-level radioactive waste resulting from reprocessing, significantly alters the technical feasibility or the schedule for developing a mined geologic repository and the design of its multiple barriers.

With regard to technical feasibility, the effect of spent fuel reprocessing on the commercial radioactive waste disposal problem is not a new consideration. The disposal of waste from reprocessing spent fuel has been studied for a longer time than the disposal of spent fuel. Until 1977, the commercial waste management program was directed primarily toward disposal of waste from spent fuel reprocessing, and those efforts have continued. A variety of waste forms has been studied (DOE PS pp. II–153 to II–160). Thus, considerable information is already available on the technical feasibility of developing a suitable waste form for reprocessed high-level radioactive waste. In fact, there is evidence that the disposal of reprocessed high-level waste may pose fewer technical challenges than the disposal of spent fuel (Tr. p. 29). Moreover, commercial reprocessing of spent fuel cannot be undertaken in this country in the absence of a full NRC licensing review. That review will consider, among other things, the waste form to be produced by the reprocessing method and its implications for waste disposal. Unless the Commission determines that commercial reprocessing and management of its products assure adequate protection to the public health and safety and the common defense and security, spent fuel will continue to be the predominant commercial waste form available for disposal in a repository.

With regard to the impact on DOE's repository schedule, the Commission recognizes that DOE's waste package development program will eventually be affected to some extent by the nature of the waste form under development. However, the direction taken in research and evaluation of materials being conducted in the DOE program is expected to produce results which would be relevant to the waste package design, regardless of which waste form is used (DOE PS pp. II–141 to II–152, CS pp. II–96 to II–100). Moreover, the choice of waste form will not significantly affect other elements of the DOE repository program. The storage and disposal of reprocessed waste would involve substantially the same problems as those being addressed for spent fuel, and a change in waste form would not alter the site-selection program or the program for development of suitable engineered barriers (DOE PHS p. 3). Thus, DOE's program is proceeding on a basis that would permit the disposal of either high-level waste or spent fuel. This approach is consistent with the recommendations of the Interagency Review Group in its March 1979 report to the President (IRG Final Report, p. 73) and with the direction in the Nuclear Waste Policy Act of 1982 (Sec. 111(a)(2)). Finally, as noted above, any decision to permit the commercial reprocessing of spent fuel will include consideration of the reprocessed waste form and its implications for waste disposal. For these reasons, the Commission concludes that the possibility of commercial reprocessing does not substantially alter the technical feasibility of, or the schedule for, developing a suitable waste package.

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[1] The NRDC statement was based on DOE testimony before a Congressional committee. The President's Nuclear Policy Statement of October 8, 1981 confirmed the DOE testimony.

The Commission concludes that the basic knowledge of spent fuel and high-level waste and its behavior in a repository environment, together with DOE's ongoing development and testing program, are sufficient to provide assurance that a waste package can be developed that will provide adequate containment until the potential hazard from the fission product activity is sufficiently reduced.

C. The Development of Effective Engineered Barriers for Isolating Wastes From the Biosphere

1. *Backfill Materials.* In DOE's conceptual design, one engineered barrier consists of backfill materials for filling voids between canister, overpack, sleeve and host rock. The materials are chosen to retard radionuclide migration. The task is to design and test barrier materials which will be effective for very long periods of time. Candidate materials include bentonite, zeolites, iron, calcium or magnesium oxide, tachyhydrite, anhydrite, apatite, peat, gypsum, alumina, carbon, calcium chloride, crushed host rock, and others (DOE PS p. II–147). Host rock or other materials would also be used to backfill drifts and shafts within the repository.

The California Department of Conservation (CDC) contends that repository shaft and borehole backfill material performance may be degraded as a result of increased temperature and other factors (CDC PS pp. 19–22). However, the expected temperature rise in the shaft backfill material will be only about 10 Farenheit degrees, and will cause no significant degradation of the shaft backfill material (DOE, PS p. II–347 Ref. 527 NUREG/CR 0495). Other participants believe that there is inadequate information to permit development of long-lived engineered barriers that will effectively contain high-level radioactive wastes (NRDC PS pp. 18, 32; I11 PS pp. 3–4; NECNP PS p. 18). CDC further contends that at this time, no information appears to have been developed that specifies the best type of backfill material to be used in particular geologic media (CDC PS pp. 19–22). However, the choice of backfill must take into account the rock media at the selected site as well as the waste package material. Thus, the backfill cannot be selected until a repository site has been selected. The NWTS program has as its objective, providing information on a practical range of options for backfill materials. Although a considerable amount of work remains to be done, an active research and development program on backfill materials is underway (DOE PS p. II–147). Further, that program is providing information to evaluate the backfill material options, as well as to establish a basis for selection of a suitable material for the geologic media being considered. The Commission believes that this approach provides an adequate basis for concluding that effective backfill materials will be identified in a timely fashion.

In the National Waste Terminal Storage program a wide range of candidate backfill materials have been and are continuing to be evaluated (DOE PS II–129 to II–152). The DOE studies include measurements of the appropriate properties of backfill material including nuclide sorption capacities, capability to prevent or delay ground water flow, thermal conductivity, mechanical strength, swelling, plastic flow and methods of backfill emplacement. Data on available candidate materials show significant radionuclide sorption capabilities and sorptive properties can be maintained at elevated temperature and in the presence of radiation (DOE CS pp. II–98, II–99). Analyses indicate that several of the materials could provide adequate performance characteristics (DOE PS, Part II, Ref. 339, 340, 346, 372, 374, 376). As an example of the development of effective engineered barriers, the results of Swedish studies on radionuclide release in a repository were cited. The studies showed that a bentonite clay backfill, in conjunction with a thick copper canister (with spent fuel inside) could prevent the release of radionuclides to the host rock in the presence of granitic ground water for thousands to hundreds of thousands of years. In the Swedish experiments, the clay barrier provided sorptive properties which were predicted to delay the breakthrough of various radionuclides for thousands of years and also served to chemically condition the ground water, reducing its corrosive effect on the canister (DOE PS pp. II–145, II–148). The use of certain clays to retard the transport of radionuclides released by the waste package is applicable to repository designs here in this country. While DOE has not proposed using thick copper canisters as employed in the Swedish studies, this example of a durable combination of waste package and backfill material which was demonstrated to be effective in isolating radionuclides for very long times, indicates that the basic approach is reasonable. The use of clays, combined with other appropriate materials, could provide an effective means for radionuclide retardation and corrosion control.

In sum, the Commission believes that DOE's ongoing developmental studies reported in this proceeding (DOE PS pp. II–129 to II–152) are technically sound and provide a basis for reasonable assurance that engineered barriers can be developed to isolate or retard radioactive material released by the waste package.

2. *Borehole and Shaft Sealants.* A major factor in repository performance is the effective sealing of boreholes and shafts during repository closure operations. All penetrations provide potential pathways for radionuclides to reach the biosphere or for ground water to enter the repository. The penetrations must be sealed for an extended period of time. Further, the geology and hydrology at a particular site, as well as the expected temperature and pressure conditions during repository lifetime, must be understood in order to make a proper choice of the borehole and shaft sealing materials and to develop effective borehole and shaft seals.

Some participants concluded that current information concerning the technology for the sealing of the boreholes and shafts is inadequate. They also questioned the capability of the DOE program to develop sufficient information to allow effective seal design (CDC PS pp. 19–22; NRDC PS p. 5). The views of several participants who expressed concern about sealing were reflected in the comments of CDC. The Commission's response to each of the points raised by CDC on borehole and shaft sealing issues is discussed below.

CDC indicated that since long-term effects of heat and radiation on seal materials were not a factor in past oil and gas borehole sealing experience, such experience is not applicable to repository sealing.[3] However, at distances of more than several feet from waste canisters emplaced in a repository, radiation exposures are small and the temperature rise at seals in the shafts and boreholes is insignificant for sealing purposes (DOE CS II–108).

CDC also believes that the tests of cement seals with epoxy resins in bedded salt deposits discussed by DOE are insufficient to provide assurance of seal stability over a period of 10,000 years, especially when the effects of higher temperature and radiation are not included. As noted above, temperature and radiation effects on seals are expected to be negligible.

While these tests may not provide conclusive proof of performance for 10,000 years, they are expected to provide useful information for seal development.

CDC states that the results of field tests described by DOE as continuing over the next few years will not be completed in time to contribute to seal design criteria which are to be completed[4] in 1982. However, the final seal design for the selected site is scheduled for two years after a site is selected (DOE PS p. II–184). Testing up to that date is expected to be useful in designing an effective seal.

CDC questioned whether tests of waste package system component interactions with the surrounding media in bedded salt described by DOE will be completed in time for location of a repository. However, the Commission finds no basis for this assertion in the record. The DOE program appears to be adequately addressing this issue. Studies are in progress to characterize further the interactions between candidate backfill-getter materials and waste container alloys. These studies include investigations of dry rock salt/metal interactions and high intensity radiation/salt/brine/metal interactions. (DOE PS p. II–149, II–150).

CDC asserts that DOE has not discussed designing backfill material and penetration seals to allow for safe reentry if retrieval should become necessary. However, the provision to retrieve high-level waste and spent fuel for a number of years after the repository is filled has been addressed by DOE (DOE PS pp. II–280 to II–283). Although it has not yet been established whether backfilling and sealing will be conducted before repository closure, these operations may be reserved until a final decision for closure is made. In any event, CDC provides no basis for concluding that providing for retrievability will necessarily create any major difficulties for the design of backfill material and penetration seals.

According to one participant, "There is no established way to seal a repository so as to prevent radionuclide release to the biosphere for the necessary period of time. DOE has termed the sealing problem a 'key unknown' but there is no consensus that the technology which is currently anticipated will provide adequate seals for even a few decades" (Consolidated States Group PHS p. 8). Other participants maintained that seals must perform as well as the host rock in preventing radionuclide migration (NRDC PS p. 55). The DOE position is that the seal should provide a barrier with sufficient integrity to ensure acceptable consequences and sealing adequacy should be determined only on a site-specific basis (DOE CS p. II–106). DOE asserted that its program will successfully resolve remaining uncertainties in repository sealing technology (DOE CS pp. II–106 to II–109).

DOE has been studying cement-based borehole plugging and has examined use of grout materials for application to the Waste Isolation Pilot Plant (WIPP) and other potential repository sites. Earth-melting technology for plugging in salt and use of compacted natural earth materials are also being investigated (DOE PS p. II–183, CS p. 106–109). There is a considerable body of experience in sealing subsurface formations in the oil, gas, and other mineral extraction industries. However, related industrial experience and requirements for sealing a repository differ in one important respect: repository sealing must be effective for a very long time while most other sealing applications are for relatively short time periods (DOE PS p. II–182). Future DOE effort will be needed to verify borehole seal performance and durability for each candidate medium. An important aspect of DOE's work is to determine the rate of degradation of seal performance as a function of time. DOE plans to determine seal performance specifications for a particular site on the basis of calculated predictions of radionuclide release and transport to the accessible environment (DOE PS p. II–182). These predictions are expected to indicate that a site whose characteristics for waste isolation are clearly superior may not require sealing performance specifications as stringent as those for a less favorable site.

Based upon the extensive experience with shaft and borehole sealing in other industries and DOE's detailed program for evaluating the long-term performance of seals, the Commission believes that there is a reasonable basis to expect that long-term effective borehole and shaft seals can be developed.

D. Summary of Views on the Technical Feasibility of Safe Waste Disposal

The Commission notes that participants in the Waste Confidence Rulemaking proceeding have generally agreed there are no known fundamental technical problems which would make safe waste disposal impossible. Where they differ is the extent to which the technical problems of disposal technology and siting have already been solved and the capability of DOE to solve them, and particularly to solve them by 2007–09 or by the expiration date of reactor operating licenses (e.g., NY PS p. 3; NECNP PS p. 171; Minn PS pp. 13–20 of Enclosure).

The Commission believes that the record provides a basis for reasonable assurance that the key technical problems can be solved. Technically acceptable sites exist and can be found among the various types of geologic media and locations under investigation by DOE. Currently developed geophysical methods for site evaluation appear capable of adequately characterizing the site, and the residual uncertainties in earth sciences data do not seem to be an insurmountable impediment. Further, the Commission believes that the multi-barrier approach to waste package design is sound and that package development is being adequately addressed by DOE. DOE's development work on backfill materials and sealants provides a reasonable basis to expect that backfill materials and long-term seals can be developed. Reprocessing of spent fuel would only become a licensed commercial activity if disposal of reprocessing waste in a mined repository would be established as technically feasible. While the Commission recognizes that more engineering development and site-specific work on disposal technology will have to be conducted before a waste repository can be constructed and operated, the Commission concludes that it is technically feasible to safely dispose of high-level radioactive waste and spent fuel in a mined geologic repository.

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[3] The Commission notes that the extensive oil and gas borehole sealing experience has not been concerned with very long-term sealing. Therefore, DOE's sealing research and development must provide a basis to extend that experience for the development of long-term seals for a repository.

[4] DOE has published "Schematic Designs for Penetration Seals For a Reference Repository In Bedded Salt," ONWI–406, November, 1982.

2.2 Second Commission Finding

The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

While the record of the proceeding supports a finding that disposal is technically achievable, the Federal government has, in the past, made inadequate progress in developing sound waste management policies and programs. The Commission notes that DOE has stated in its April 1984 draft Mission Plan that the first repository will begin operations in 1998, and that the second will start up in 2004. However, it is recognized that both technical and institutional issues contribute to uncertainties concerning DOE's ability to complete one or more mined geologic repositories for high-level radioactive waste by those dates. The technical issues concern DOE's ability to find technically acceptable sites in a timely fashion and the timely development of waste forms, packages, and engineered barriers. The institutional issues concern primarily Federal-state relations and the management and funding of the Federal program.

The Commission has considered the effect of enactment of the Nuclear Waste Policy Act of 1982 and concludes that the Act helps to reduce these scheduling and institutional concerns. The Act provides support for timely resolution of technical uncertainties by: (1) Establishing specific milestones for all the key tasks; (2) coordinating the activities of all the involved Federal agencies; (3) providing for time schedules and a mission plan for the accomplishment of the tasks; and (4) providing a mechanism for monitoring progress, for identifying failures to meet the schedules and the milestones, and for adjusting the future elements of the program in the event that such failures occur. In order to further enhance the resolution of technical uncertainties regarding rock thermal-geomechanics the Act provides for the establishment of a Test and Evaluation facility to carry out *in-situ* studies of rock at repository depth. The Act also reduces uncertainties in the institutional arrangements for the participation of affected states in the siting and development of repositories and in the long-term management, direction and funding of the repository program. The Commission's assessment of both the technical and institutional factors is discussed below.

A. Technical Uncertainties

The ability to construct and operate a mined geologic repository that will provide for the safe disposal of high-level radioactive waste and spent fuel by the years 2007–09 has been challenged by several participants. In addition to the institutional issues which must be resolved, interrelated technical problems have to be solved in a coordinated and timely fashion. The Department of Energy is confident the technical problems can be solved as scheduled in the National Waste Terminal Storage Program plans (DOE PS p. III–66, CS p. III–13; DOE draft Mission Plan, April 1984). Other participants conclude that because of unresolved technical problems, DOE's schedule cannot be met (e.g., Consolidated Public Interest Group PHS pp. 2–7; Consolidated State Group PHS pp. 1–13). For convenience, we consider the technical controversy in two categories: (a) finding technically accceptable sites in a timely fashion, and (b) the timely development of waste packages and engineered barriers.

1. *Finding Technically Acceptable Sites in a Timely Fashion.* To assure the adequacy of a candidate site requires extensive onsite investigations including drilling or excavating, as well as analyses and technical evaluations. Although DOE has not yet begun subsurface site characterization to enable identification of an acceptable site, the record does indicate that DOE's site screening and selection program is providing information on site characteristics at a sufficiently large number and variety of sites and geologic media to support the expectation that one or more technically acceptable sites will be identified.

DOE is investigating four geologic media at a number of sites: domed salt (Gulf Interior Region); bedded salt (Paradox Basin, Permian Basin, Salina Basin); basalt (DOE's Hanford Site), and volcanic tuff (DOE's Nevada Test Site). Investigations in a fifth media (granite) are planned, but sites have not yet been determined (DOE PS Appendix B). Exploratory shaft excavation at three sites in different geologic media was to begin for basalt in April, 1983, for volcanic tuff in October, 1983, and for salt in December, 1983 (Tr. pp. 241–242). However, the Nuclear Waste Policy Act of 1982 (NWPA) imposed new conditions which made it necessary to revise this schedule. The NWPA specified that DOE had to prepare environmental assessments for each of five nominated sites, from which three sites would be recommended to the President for characterization. DOE's preparation of environmental assessments and recommendation of three sites were to be accomplished in keeping with the provisions of the repository siting guidelines required by the NWPA. The Commission's concurrence in DOE's siting guidelines on July 3, 1984, enables DOE to proceed to nominate and recommend repository sites for characterization. DOE has recently published a revised schedule for site selection milestones in its April, 1984 draft Mission Plan. As described in its Mission Plan, the current status of DOE's site selection schedule calls for the issuance of environmental assessments for five nominated sites and the recommendation of three of those sites for characterization by December, 1984. DOE's schedule for work in the various geologic media is summarized below.

Salt: Resolution of the identified key screening issues in FY 1984 is expected to permit nomination of a candidate salt dome site in December, 1984. DOE is still choosing from among several salt domes in the Gulf Coast interior region (Tr. pp. 243–244; DOE Draft Mission Plan, April, 1984). For bedded salt, primary effort has been focused on the Palo Duro Basin in Texas, the Paradox Basin in Utah, and the Permian Basin, particularly the Delaware basin in the Los Medanos area, the site considered for the proposed WIPP. The Bureau of Land Management issued the report "Environmental Assessment of DOE Proposed Location and Baseline Studies in the Paradox Basin, Utah-Final" UT-060-51-2-11, in July, 1982. Each of the seven potentially acceptable salt sites has been evaluated for environmental conditions, and a site characterization plan is expected to be issued for salt in September, 1985. DOE will start land access and permitting activities for salt after negotiating agreements with affected states and Indian tribes (DOE Draft Mission Plan, April, 1984).

Basalt: The basalt formations at the Hanford reservation in the center of the Pasco basin (Columbia Plateau, central Washington) are prime candidates for repository sites. DOE expects to issue a site characterization plan for basalt in January, 1985 and start drilling for the exploratory shaft in March, 1985 (DOE Draft Mission Plan, April 1984).

Volcanic Tuff: The Nevada Test Site offers several suitable candidates for waste repository siting. The primary focus is welded tuff on Yucca Mountain, where DOE has begun a program of drilling and geophysical evaluation. DOE expects to issue site characterization plan for tuff in March, 1985 and begin shaft work in September 1985 (DOE Draft Mission Plan, April 1984).

Granite: Granite and other crystalline rock media are being considered for the second repository (DOE Draft Mission Plan, April 1984). DOE has conducted only limited investigations of granite at the Nevada Test Site (DOE PS pp. B–66, B–72), but is developing data on the potential of granite as a repository medium in collaboration with Swedish investigators (DOE PS p. II–258). This project has already produced a large amount of rock thermal-mechanics data at repository depth for use in repository designs in granite media in this county (DOE PS pp. II–258 to II–260).

As indicated in our discussion of technical feasibility, the identification of technically acceptable sites is a key problem and the date of successful solution of this problem is a critical milestone in the repository program. Those participants who believe DOE could not meet its site selection schedule asserted that determination of the acceptability of proposed repository sites requires information that will not be available when needed. They maintained that DOE's knowledge is seriously incomplete with respect to all of the potential sites considered to date. Further, they asserted that because new information could disqualify any of the potential sites, as it did at the Palestine dome, there is, as yet, no basis for reasonable assurance that an acceptable repository site will be available in the time period under consideration (NRDC PS p. 44; NECNP PS p. 24). The Commission recognizes that if the DOE program were further along, e.g., in the middle of exploratory shaft work, there would be much more site-specific information available (including the results of *in-situ* tests) and a firmer basis for assessing whether DOE's revised schedule can be met. However, the Commission can make a reasonable prediction with the information now before it.

Underlying the pessimism of some participants is apparently a belief that DOE's past record in solving technical problems undermines the possibility of finding confidence in DOE's ability to solve the waste disposal problems in a timely way. The Commission acknowledges that in the past the waste programs of DOE and its predecessor organizations have experienced difficulty in making timely progress toward a solution of the nuclear waste problem. However, the Commission need not rely on this past record in making its confidence determination. The DOE program is now adequately addressing the issues yet to be resolved in identifying an acceptable site and DOE's schedule is a reasonable one (see the discussion in Section 2.2 B.4 of this document). The qualifications and professional experience of the many scientists and engineers on the overview committees and peer review groups who advise and consult on the DOE program should provide confidence in DOE's efforts (DOE CS Appendix D). The support of the USGS in the earth sciences field (USGS PS Appendix A) clearly contributes to confidence that the technical problems associated with identifying an acceptable repository site will be solved. As noted before, no fundamental technical breakthroughs are necessary. Rather, completing the program is a matter of step-by-step evaluation and development based on ongoing site studies and research programs.

The Commission believes that the enactment of the Nuclear Waste Policy Act of 1982 provides impetus to that program and helps ensure that it will be completed on a schedule consistent with the Commission's findings. The Nuclear Waste Policy Act establishes a detailed step-by-step plan for developing a waste repository. The Act directs DOE to prepare a comprehensive Mission Plan which will establish programmatic milestones for research, development, technology demonstration and systems integration. The Act also requires the various Federal agencies involved in the program to coordinate their activities. Involved agencies must report their progress, or lack thereof, to Congress, explain any slip in schedule and set a new schedule for activities. Thus, the Act provides a framework and schedule for developing a repository.

The schedule set forth in the Act calls for the identification of adequate sites in time to meet the final decision date on construction authorization by the NRC and well before the time at which such action would be necessary to assure repository operation within the time period discussed in this decision. The time between sinking of an exploratory shaft and the completion of site characterization contemplated by the Act (Sec. 112, 114) is 26 months, with an extension to 38 months under certain conditions; the DOE schedule for these activities is generally compatible with this schedule (see Section 2.2 B.4 below).

The Nuclear Waste Policy Act also puts in place procedures (Sec. 115, 116, 117, 118, 119) which the Commission believes will help to resolve potential institutional problems that might affect the schedule for site selection. These are discussed in detail hereafter. The Commission believes that the provisions of the Act should also provide resources (Sec. 302, 303) to adequately fund the site selection and characterization work.

Given all of these considerations, the Commission concludes that there is reasonable assurance that technical uncertainties—unsolved technical problems and information gaps—will be removed in time for DOE to meet its proposed schedule. DOE's program is adequate and its schedule is reasonable. The Act provides a greater degree of confidence than existed previously that site selection will proceed within the general time frame that DOE has described in its position statement.

2. *Timely Development of Waste Packages and Engineered Barriers.* Some participants have expressed strong reservations concerning DOE's ability to develop waste forms, packages, and engineered barriers in a timely fashion. The DOE technical effort to solve problems was characterized as only just being defined in many significant areas, including the prevention of corrosion of waste canisters (NRDC PS p. 18). Other participants contended that: the design and evaluation studies of penetration seals and backfill material might not be completed soon enough to meet the goal of achieving an operational repository by 1997 to 2006; the long-term effects of heat and radiation on the integrity of the seal materials are not known; tests of cement seals with epoxy resin in bedded salt deposits are insufficient to assure stability of such seals over a period of 10,000 years; and field tests of liquid permeability during a period of three months cannot provide confidence concerning the stability of seals during a period of 10,000 years. Participants also contended that no information had yet been provided which specified the type of backfill material most suitable for specific geological media and capable of withstanding thermal stress (CDC PS pp. 19–22).

Although technical problems associated with the development of waste packages and engineered barriers could delay DOE's schedule, DOE believes that the uncertainties surrounding the waste package would be resolved or bounded as a result of implementation of its program (DOE PS p. II–160, CS p. II–96). The DOE Waste Package Program Plan (ONWI–96) which was issued in August 1980, updated in June 1981 (NWTS–96) and updated further in DOE's April, 1984 Draft Mission Plan, sets forth details of DOE's program. Waste package performance criteria will be developed in the near future. Final action on the criteria will be contingent upon the final issuance of NRC's technical criteria (10 CFR Part 60, Subpart E), the publication of the relevant regulatory guides on waste packages, and the ONWI–33 series of criteria documents, i.e., the reports DOE/NWTS–33 (1), (2), (3), "NWTS Program Criteria For Mined Geologic Disposal of Nuclear Wastes."

Earlier, DOE had planned to complete the waste package preliminary designs for salt in September 1982, for basalt in June 1985, for tuff in June 1984, for granite in September 1984, and for argillaceous rock in December 1984, and to establish a baseline for waste form specifications by June 1983 (ONWI–96). According to DOE's April, 1984 draft Mission Plan, the current reference canister material for basalt is carbon steel. Alternative materials include an iron-chromium-molybdenum alloy, copper and a copper-nickel alloy. On the basis of preliminary corrosion-test results, carbon steel has also been selected as the reference canister material for salt. The titanium alloy Tricode 12 has been designated as an alternative material. Type 304L stainless steel has been identified as the reference container material for tuff; other austenitic stainless steels, Inconel and copper are alternatives. Waste-package conceptual designs have been developed for basalt, salt and tuff. (The conceptual design for tuff is based on saturated conditions; a conceptual design for the unsaturated zone will be available in late FY 84 [DOE draft Mission Plan, April 1984]).

Tests with spent fuel and borosilicate glass have been initiated under site-specific conditions for basalt, salt and tuff. Preliminary waste acceptance requirements have been developed for basalt and salt. In addition, for salt media, interim waste-acceptance requirements for borosilicate glass and draft waste acceptance requirements for spent fuel were prepared in FY 83. Preliminary requirements for tuff will be prepared in FY 84. DOE intends to submit the baseline waste form specifications developed during the conceptual design studies for acceptance by NRC. The specifications will be subjected to configuration control for application throughout the waste processing and disposal program.

According to the DOE Draft Mission Plan the complete waste package performance model will be verified and validated by September 1989. Further, the program plan calls for completion of the waste package final design that takes into account the selected site environmental conditions, after completion of in-situ testing in FY 89 and FY 90. Packing material is included in the reference waste package only for basalt. The reference packing material for basalt is a mixture of crushed basalt and sodium-bentonite clay. Ongoing physical property testing of reference packing material is expected to be completed in FY 87 and ongoing radionuclide sorption, solubility and diffusion testing are to be completed by September, 1989.

Some participants' statements are pessimistic assessments based on the fact that the DOE program has not yet reached the critical milestones—e.g., establishment of waste form specifications, completion of waste package preliminary designs, verification of a waste package performance model, and qualification of barrier materials. However, the Commission believes that these technical problems will be solved without delaying a repository schedule. DOE has put in place an extensive nuclear waste research program that addreses each of these technical problems. Research results already reported on waste form packaging and barrier materials indicate that these research efforts, although not yet completed, can reasonably be expected to provide solutions to those problems when those solutions are needed to meet the DOE schedule (DOE PS pp. II–129 to II–197, CS pp. II–93 to II–100).

The Commission's positive assessment is strengthened by provisions in the Nuclear Waste Policy Act of 1982. Title II of the Act authorizes DOE to undertake steps leading to the construction, operation and maintenance of a deep geologic test and evaluation facility and to establish a focused and integrated research, development and demonstration program. In the area of waste package design, the Act directs that DOE's Mission Plan identify a process for solidifying high-level radioactive waste or packaging spent fuel with an analysis of the data to support selection of the solidification process or packaging technique. The Act calls for a schedule for implementing such a plan and for an aggressive research and development program to provide a high-integrity disposal package at a reasonable price (Sec. 301(a)(8)). The Commission notes that DOE's published Draft Mission Plan (April, 1984) addresses these issues in detail. Congressional authorization of those programs, together with the assurance of necessary funding, provides the Commission additional confidence that the required research work will be done in a timely manner.

The Commission also notes that the programs to solve the major technical problems relating to the timely development of waste forms, waste packages, and engineered barriers can proceed in parallel. Because the waste repository must be designed as a system, the problems are interrelated; however, the relationships are such that solving one problem need not await the solution of another. DOE could proceed for a number of years on waste package development before making a decision on the form of the waste, without affecting the repository availability schedule.

B. Institutional Uncertainties

The principal institutional issues that affect the schedule for availability of a mined geologic repository include: measures for dealing with Federal-state disputes; an assured funding mechanism that will be sufficient over time to cover the period for developing a repository; an orginizational capability for managing the high-level waste program, whether this be DOE or a successor organization; and a firm schedule and establishment of responsibilities which will lead to repository development in a reasonable period of time. Each of these is discussed in turn.

1. *Measures for Dealing with Federal-State-Local Concerns.* The President and Congress have recognized the need to involve state and local governments in the decision-making process and have taken steps, including enactment of the Nuclear Waste Policy Act of 1982, to establish an institutional framework to accomplish this end. DOE pointed out that Presidents Carter and Reagan have considered state involvement in site selection an important aspect of the high-level radioactive waste disposal program. President Carter, in his message to Congress, directed "the Secretary of Energy to provide financial and technical assistance to States and other jurisdictions to facilitate full participation of State and local government in review and licensing proceedings." He committed the Federal Government to work with state, tribal and local governments in the siting of high level waste repositories. Within a framework of "consultation and concurrence," a host state would have a continuing role in Federal decision-making involving the siting, design and construction of a high-level waste

repository (DOE CS pp. II–11, 13–14). President Reagan's statement of October 8, 1981 similarly instructed DOE to work closely with industry and state governments in developing methods of storing and disposing of commercial high-level waste.

Although industry groups believed that DOE had made substantial progress in cooperating with state and local authorities by encouraging their direct participation in planning and preliminary site selection activities (UNWMG–EEI CS pp. V–27, V–28), states and environmental groups were skeptical that the mechanisms proposed by DOE for incorporating state and local views (e.g., consultation and concurrence) would work satisfactorily. Many states asserted a lack of confidence in DOE's claims that it would be able to gain agreement from states by persuasive measures (e.g. Ohio PS p. 5; NY PS p. 74; Wis PS Kelly p. 5) and noted that information sharing was inadequate to reduce or overcome a state's resistance to a repository (e.g., NY PS p. 74; NRDC PS p. 69). The states also believed that DOE had underestimated potential state and local opposition to the siting of a repository (CEC PS p. 27, Ohio PS p. 12) and that consultation and concurrence must include a mechanism for resolving intergovernmental disputes (Vt PS p. 3). Other participants argued that many states had already imposed bans on waste disposal (NECNP PS p. 32) and that DOE had presented no means for resolving state nonconcurrence (NRDC PS p. 69). Still others claimed that the state's role in the site selection process must be specifically defined (Del PS p. 6); but the DOE had provided no basis for optimism that this could be done (NECNP PS p. 69). Some participants suggested that local opposition to waste repositories could be overcome by providing financial compensation to nearby communities (AIChE PS p. 6) but that DOE had not adequately considered compensation to host communities for socioeconomic impacts (Ohio PS p. 14).

The recently-enacted Nuclear Waste Policy Act of 1982 defines the roles of the states and Indian tribes in repository site selection, and thereby reduces some of the uncertainties in settling disputes between the Federal government and affected states and Indian tribes. By providing for information exchange, for financial and technical assistance, and for processes of consultation, cooperation, negotiation and binding written agreement, the Act should help to minimize the potential for more formal objections and confrontations.

Specifically, the Act requires DOE to identify the states with one or more potentially acceptable sites for a repository and to notify the governing bodies of the affected states or Indian tribes of those sites (Sec. 116(a)). The Act establishes detailed procedures for consultation with the states and Indian tribes regarding repository sites selection (Sec. 117). DOE, NRC and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a state must provide to the state and to any affected Indian tribe, timely and complete information regarding plans made with respect to the site characterization, development, design, licensing, construction, operation, regulation, or decommissioning of such a repository (Sec. 117(a)(1)). If DOE fails to provide such information requested by the state or affected Indian tribe in a timely manner, it must cease operations at the site (Sec. 117(a)(2)). The Act also provides that DOE must consult and cooperate (Sec. 117(b)) with the affected states and Indian tribes and must enter into a binding written agreement (Sec. 117(c)) setting forth the procedures under which information transfer, consultation and cooperation is to be conducted.

Following consultation with affected states and Indian tribes, the Secretary of Energy is to recommend to the President three sites suitable for characterization as candidates for selection as the first and second repositories (by July 1, 1985 and July 1, 1989 respectively) (Sec. 112(b), (B), (C)). The President must then submit to Congress his recommendation of sites qualified for construction authorization for a first and second repository (no later than March 31, 1987 and March 31, 1990 respectively) (Sec. 114(a)(2)(A)). Following submission by the President of a recommended site to Congress, the Governor or legislature of the state, or the Indian tribe in which such site is located may disapprove the site designation and submit (within 60 days) a notice of disapproval to Congress (Sec. 116(b)(2)). The site is disapproved unless Congress passes a joint resolution within 90 days to override the state or Indian tribe disapproval (Sec. 115 (c)). The Commission recognizes that the latter provision may create uncertainty in gaining the needed approvals of repository sites from the affected states or Indian tribes. Nevertheless, the Commission believes that, on balance, this Congressional action to establish a detailed process for state and tribal involvement in the development of repositories will reduce overall uncertainties by encouraging Federal-state cooperation and by limiting the potential for formal state or Indian tribe objections that could lead to disruption of project plans and schedules. This conclusion is consistent with the views expressed by state participants in this proceeding that a mechanism for state participation, including the resolution of state objections and nonconcurrences, is necessary for state cooperation and for progress in repository development (Tr. pp. 117, 119, 120). Further, the Act fixes the point in time at which a state may raise formal objections. Once that time has passed, this should reduce uncertainties at later stages.

The Act stipulates that DOE will reimburse costs incurred by affected states and Indian tribes in participating in the activities identified above. The Act provides that the Secretary of Energy shall make financial grants (Secs. 116, 118) to each state or affected Indian tribe notified by DOE that a potentially acceptable repository site exists within its jurisdiction. These grants are made to enable the state or affected Indian tribe to participate in the review and approval activities required by the Act (Secs. 116, 117), or authorized by written agreement entered into with DOE. Further, DOE is to make financial grants (Secs. 116, 118) to each state or affected Indian tribe where a candidate site for a repository is approved, to enable the state or Indian tribe to conduct the following activities: (a) Review activities taken for purposes of determining impacts of such a repository, (b) develop a request for impact assistance, (c) engage in site monitoring, testing or evaluation, (d) provide information to its residents, and (e) request information. In addition, the Act specifies that financial assistance will be provided to mitigate any economic, social, public health and safety, or environmental impacts of the development of a repository. The Act also provides that state and local government units shall receive payments equal to the amount they would receive from taxing such site charaterization and repository development activities in the same manner that they tax other real property and industrial activities (Sec. 116). By providing a tangible benefit to those localities or Indian reservations where repository sites are being investigated, this provision should address one concern frequently expressed by state and tribal organizations, and may result in a more willing acceptance of a repository site.

In sum, the Commission believes that the provisions of the Nuclear Waste

Policy Act of 1982 reduce uncertainties regarding the role of affected states and Indian tribes in repository site selection and evaluation, and minimize the potential for direct confrontation between the Federal government and the states or tribal organizations with respect to the disposal of commercial high-level waste and spent fuel. By reducing these uncertainties, the Act should help minimize the potential that differences between the Federal government and states or Indian tribes will substantially disrupt or delay the repository program. Further, as discussed previously in this Section, the decision-making process set up by the Act provides a detailed, step-by-step approach which builds in regulatory involvement. This should also provide confidence to states and Indian tribes that the program will proceed on a technically sound and acceptable basis.

2. *Continuity of the Management of the Waste Program.* The Commission recognizes that the waste disposal program involves activities conducted over a period of decades. Thus, there is a need for long-term stability of management and organization. The Commission's Second Prehearing Memorandum and Order of November 6, 1981, sought comments on the implications of the possible dismantling of the DOE and assignment of its functions to other Federal agencies. In response, DOE stated: "The ability of the Federal Government to implement the waste isolation program would not be affected by the President's September 24, 1981 proposal to dismantle DOE. As demonstrated by his Nuclear Policy Statement of October 8, 1981 . . . the President is committed to the swift deployment of means of storing and disposing of commercial high-level nuclear waste. Thus, some governmental unit will continue the program aggressively if DOE is dismantled" (DOE PHS p. 8). The DOE statement was amplified by the Deputy Secretary of Energy in the oral presentations on January 11, 1982: ". . . as far as the reorganization is concerned, the plan is not, I think, to do away with the activities of the Department of Energy. The plan, as it has been announced so far, is to in fact merge the activities, in particular, these activities into the Department of Commerce. And we do not visualize at this time any significant changes in the way in which the program relating to waste management would be altered, either technically or from a management point of view" (Tr. p. 13).

The nuclear industry participants agreed with DOE's view on this question (Consolidated Industry Group PHS p. 18; AIF PHS p. 7; SE2 PHS p. 6; ANS PHS p. 8, UG p. 2). However, state participants and intervenor groups disputed the DOE view. They saw the potential dismantlement of DOE as leading to further delay in resolution of the radioactive waste disposal problem and asserted that DOE's possible abolition made representations regarding the future success of its waste program useless (Consolidated State Group PHS, pp. 2, 9; Minn PHS pp. 6–8).

The Commission does not believe that the Administration's proposal to transfer the activities of the Department of Energy to the Department of Commerce introduces substantial new uncertainties regarding the continuity of Federal management of the nuclear waste program. As the Department of Energy stated, the Administration's proposal, if adopted, would simply transfer the nuclear waste program functions from one Federal agency to another. Moreover, Congressional action is needed to adopt the Administration's proposal. Yet, in the three years since the Administration's proposal to dismantle DOE was made, there has been no discernible action by the Congress to proceed with adoption of the proposal. Because the Congress has not taken action toward adoption of the Administration's proposal, and because the proposal, even if adopted, would consist of only a transfer of the program from one agency to another, the Commission does not believe that the Administration's proposal constitutes a significant source of management uncertainty for the nuclear waste program.

The Commission believes that residual uncertainties regarding the continuity of Federal management of the nuclear waste program have also been reduced by the Nuclear Waste Policy Act of 1982. The Act provides for the establishment of an Office of Civilian Radioactive Waste Management within the Department of Energy. This Office is to be headed by a Director appointed by the President, with Senate confirmation, who will report directly to the Secretary of Energy (Sec. 304). Further, the Act raises the activities of this Office to a high level of visibility and accountability by stipulating that an annual comprehensive report of the activities and expenditures of the Office will be submitted to Congress and that an annual audit of the Office will be conducted by the Comptroller General, who will report the results to Congress. The Act also requires two additional elements that provide added assurance of continuity: a "Mission Plan" and a schedule of activities for DOE. The Mission Plan is a detailed and comprehensive report which is intended to provide "an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act." The Secretary of Energy has already submited a draft Mission Plan to the states, the afffected Indian tribes, the Commission and appropriate government agencies for their comments; after revising the plan, DOE must submit it to the appropriate Congressional committees (Sec. 301 (a) and (b)). The schedule of DOE's activities in conducting this program was discussed in Section 2.2 A.1 above. Taken together, the provisions of the Nuclear Waste Policy Act establish a detailed management framework for the conduct of the repository program that should help ensure both sound management and continuity—whether the responsibility for the repository program is retained in DOE or is transferred to another Federal agency.

3. *Continued Funding of the Nuclear Waste Management Program.* There is general agreement among all participants that the program to develop a mined geologic repository for nuclear wastes will require more than a decade of effort at a total cost of several billion dollars. A steady source of funding will be needed to assure the timely success of the program. DOE pointed out that it would request an adequate level of funding for the National Waste Terminal Storage (NWTS) Program as stated in the Department's Position Statement (DOE CS p. II–30). In addition, DOE stated that Congress' commitment to the commercial waste disposal program was demonstrated by the continuous increase in the level of funding since 1976. The funding level was increasd by more than a factor of 10 between 1976 and 1980 (DOE CS p. II–30). Some participants disagreed with DOE's optimism concerning the future availability of funds and pointed out the competing priorities for Federal funds could deprive DOE of the necessary resources (CDC PS p. 7; Lewis PS p. 9; NRDC PS p. 28; Tr. p. 203).

Congress passed a continuing resolution for FY 1983 funding of DOE's nuclear waste program at the level of $259.4 million. This is about $10 million more than DOE's earlier FY 1983 request of $249 million. Additionally, the Nuclear Waste Policy Act authorizes the Secretary of Energy to enter into contracts and collect a fee of 1 mill per kilowatt-hour of electricity generated by nuclear reactors in return for the Federal

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government's acceptance of title, subsequent transportation, and disposal of high-level radioactive waste or spent fuel (Sec. 302(a)(2)). In order to be able to use a Federal repository, the Act required the generator or owner of such waste or spent fuel to enter into a contract by June 30, 1983 or the date on which generation is commenced or title is taken, whichever occurs later (Sec. 302(b)(2)). The Commission must require the negotiation of such contracts as a precondition to the issuance or renewal of a license (Sec: 302(b)(1)(B)). The Commission notes that all such contracts have been executed. DOE testified in the January 11, 1982 hearing that it expected the funds collected under such a program would allow support of the DOE waste program at an initial level of $185 million. Under the program subsequently adopted by the Congress, these funds are to be placed into a nuclear waste fund to support DOE's repository program. The general approach prescribed by the Act is to operate DOE's nuclear waste program on a full cost recovery basis. In this regard, the Act provides that DOE must annually review the amount of the fees established to evaluate whether collection of the fees will provide sufficient revenues to offset the costs expected. In the event DOE determines that the revenues being collected are less than the amount needed in order to recover the costs, DOE must propose to Congress an adjustment to the fee to insure full cost recovery. The Act also provides (Sec. 302(e)(5)) that, if at any time, the monies available in the Waste Fund are insufficient to support DOE's nuclear waste program, DOE will have the authority to borrow from the Treasury. The Commission believes that the long-term funding provisions of the Act should provide adequate financial support for DOE's nuclear waste program.

4. *DOE's Schedule for Repository Development.* The DOE reference schedule described in its April, 1984 draft Mission Plan establishes the earliest date of repository availability as 1998 and delineates the logic and the period of activities that are deemed achievable under current program assumptions. While DOE acknowledges that contingency time is required in the schedule to accommodate such factors as institutional uncertainties, public hearings, or possible project reorientation, it believes that an appropriate amount of time has, in fact, been allowed in the reference schedule. Under the reference schedule, DOE expects that disposal facilities will be operational in 1998 (DOE draft Mission Plan, April 1984). DOE's updated repository development schedule specifies the critical milestones prior to commencing construction of the first repository as:

March 1985 (basalt), September 1985 (tuff), ——— ——— (salt).	Commencement of exploratory shaft work* at three sites (three different media: salt, basalt and tuff).**
August 1990	Submission of application for authorization to construct the first repository.
August 1993	Construction authorization for the first repository.

* Including borehole drilling.

** An October, 1982 update of this information indicated that a pilot borehole was started in September 1982 for an exploratory shaft in tuff at the Nevada Test Site. In May 1982, DOE initiated work on surface preparation, construction of drilling pads and support buildings for the drilling operation at the BWIP basalt site. In January 1982, a borehole was begun at a point 300 feet from the BWIP planned exploratory shaft location to provide data for planning the shaft excavation. No exploratory shaft work has begun at the Paradox Basin bedded salt site. As noted in the siting discussion under the Second Commission Finding, the Nuclear Waste Policy Act of 1982 requires DOE to complete certain actions before site characterization. These include issuance of siting guidelines concurred in by NRC, preparation of environmental assessments, notification of state and affected Indian tribes where sites are located, and holding of public hearings in the vicinity of each site.

The Commission concurred in DOE's repository siting guidelines on July 3, 1984, enabling DOE to proceed to complete the other site selection tasks. The Commission notes that DOE's draft Mission Plan (April 1984) anticipated the completion of the siting guidelines by Mid-Summer 1984 and DOE revised its site selection schedule accordingly. Final environmental assessments for five nominated sites (including salt, basalt and tuff media) are to be completed in December 1984, at which time three of the five sites will be recommended for characterization.

NRC's construction authorization (under 10 CFR Part 60) would mark the end of the site selection process.

Some participants believe that DOE cannot have a waste disposal facility available by 2007. These participants concluded that DOE's slow progress in the past suggests that DOE may be unable to solve the many problems that will arise in the future and that DOE's schedule for repository development is unduly optimistic (e.g., Minn. PS p. 6; Ill. PS p. 2; OCTLA PS pp. 8–9; CDC PS p. 7).

One of the primary purposes of the recently enacted Nuclear Waste Policy Act of 1982 is "to establish a schedule for the siting, construction, and operation of repositories that will provide reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository." (Sec. 111(b)(1)). The Commission recognizes that, if fundamental technical breakthroughs were necessary, it would not be possible for Congress to legislate their solution or specify schedules for their accomplishment. However, as discussed previously, such breakthroughs are not necessary. Rather, the remaining uncertainties are reflected in the need for step-by-step evaluation and development based on ongoing site studies and research programs. The Commission believes the Act provides means for resolution of those institutional and technical issues most likely to delay repository development, both because it provides an assured source of funding and other significant institutional arrangements, and because it provides detailed procedures for maintaining progress, coordinating activities and rectifying weaknesses. For these reasons, the Commission believes that the selection and characterization of suitable sites and the construction of repositories will be accomplished within the general time frame established by the Act, or within a few years thereafter.

The provisions of the Nuclear Waste Policy Act of 1982 that establish schedules for repository development are elaborate and allow for various contingencies. A number of steps are involved before NRC considers authorization of construction. DOE is to nominate five sites it believes suitable for site characterization for possible repository development (Sec. 112(b)). DOE is to recommend for site characterization three candidate sites to the President (Sec. 112(b)(1)(B); the President is to recommend one of the characterized sites to the Congress (Sec. 114(a)(2)(A)); the affected state or Indian tribe is given an opportunity to submit a notice of disapproval of the Congress (Secs. 115(b), (116)(b)(2), 118(a)); the Congress may overturn a state or Indian tribe's disapproval of the site by passing a resolution of approval (Sec. 115(c)); and, if Congress approves or no notice of disapproval is submitted by a state or Indian tribe, then DOE is to apply for construction authorization (Sec. 114(b).

DOE's revised reference schedule (DOE draft Mission Plan, April 1984) states that the application for repository construction authorization will be submitted to the Commission in August 1990. Under the terms of the Act the Commission is expected to reach a decision within 3 years of the application date, or by August 1993 (Sec. 114) (under certain conditions, extension by 1 year would be permitted). If the NRC decision is favorable, the repository would be constructed and begin operation, according to DOE's "reference schedule," in January 1998. Earlier dates can be achieved if the Presidential review time is reduced, if DOE promptly files the construction authorization application, if NRC provides a construction authorization in less than 3 years, or if DOE constructs the repository in a shorter period than provided in its estimated schedule. However, it is prudent to assume that such a contraction of the schedule will not be realized.

The Nuclear Waste Policy Act of 1982 establishes "not later than January 31, 1998" as the date when DOE is to begin disposal of high-level radioactive waste or spent fuel (Sec. 302(a)(5)(B)). This is consistent with the current dates of the DOE schedules discussed above and with the detailed step-by-step milestones established by the Act. The schedule established by the Act would assure the operation of the first repository well before the years 2007–2009, i.e., the period of concern in the present proceeding.

Despite the delays in DOE's earlier milestones, the Commission believes that the program established by the Act is generally consistent with the schedule presented by DOE in this proceeding and that DOE's milestones are generally both realistic and achievable. Achievement of the scheduled first date of repository operation is further assured by other provisions of the Act which specify means for resolution of those institutional and technical issues most likely to delay repository completion. In addition to those provisions discussed previously, the Commission notes that the Act clarifies how the requirements of the National Environmental Policy Act are to be met (e.g., Secs. 113 (c), (d); 114 (a), (f); 119(a); 121(c)). The Act also requires that any Federal agency determining that it cannot comply with the repository decision schedule in the Act must notify both the Secretary of Energy and Congress, explaining the reasons for its inability to meet the deadlines. The agency must also submit recommendations for mitigating the delay (Sec. 114(e)(2)). These provisions of the Act, as well as those that support the technical program—the provisions for research, development, and demonstration efforts regarding waste disposal (Title II of the Act), increase the prospects for having the first repository in operation not later than the first few years of the next century.

The Commission also finds reasonable assurance that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel generated up to that time. The Nuclear Waste Policy Act of 1982 establishes Federal responsibility and a clearly defined Federal policy for the disposal of such waste and spent fuel and creates a Nuclear Waste Fund to implement Federal policy. The Act establishes as a matter of national policy that this responsibility is a continuing one, and provides means for the Secretary of Energy to examine periodically the adequacy of resources to accomplish this end.

The Commission notes that as of September 30, 1982, the generating capacity of all commercial nuclear power plants in the U.S. with operating licenses or construction permits was 131 electrical gigawatts (GWe) and the capacity of those under construction permit review was about 5 GWe (NUREG–0871, Vol 1, No. 4, p. 2, 8). DOE, in its letter of March 27, 1981 to the presiding officer of this proceeding, provided an estimate of 180 GWe for the capacity of operating LWRs in the year 2000. This value is significantly lower than the value (276 GWe) presented in DOE's 1980 position statement (DOE PS p. V–4) and lower than that (202 GWe) presented in the NRC's Generic Environmental Impact Statement on spent fuel handling and storage (NUREG–0575, Vol. 1, p. 2–4). The validity of the latter predictions has been affected by the cancellations of a number of proposed units during the past two years. The DOE 1981 estimate of 180 GWe in the year 2000 appears to be a reasonable estimate of the likely installed capacity at that time. On this basis, during the 40 years of operation of each plant, using as a realistic assumption a 60 percent capacity factor, the electrical energy generation would be about 4300 GWe-years. Assuming 38 metric tons of heavy metal (MTHM) is discharged for each gigawatt-year (IRG Final Report p. D–6; NUREG–0575, Vol. 1 p. 2–4) the total discharged spent fuel from these plants would likely be about 160,000 metric tons. The capacity of each proposed repository will depend on such factors as the thermal loading limit in waste emplacement, space limitations within the host rock, nuclear power generation capacity in the region to be serviced by the repository, and economy of scale considerations (DOE PS pp. III–70 to 79; IRG Final Report p. D–21). In its cross statement DOE's estimate that three to six repositories might be needed was based on the assumption that nuclear power generation capacity grows to 250 GWe by the year 2000 and remains at that level until 2040 (DOE CS p. II–53). The representative characteristics of each repository used by DOE were 2000 acres and a 40 to 100 kW/acre loading, corresponding to a repository capacity of about 70,000 to 170,000 metric tons of uranium, respectively (DOE PS p. III–76). Reflecting the reduction in nuclear power projections, DOE estimated in the January 1982 hearing that the ultimate reactor capacity would be about 200 GWe (Tr. p. 236). DOE then assumed a repository capacity of 100,000 metric tons and concluded that "between two and three" repositories would be needed (Tr. p. 237). To accommodate the 160,000 metric tons we have assumed, two repositories each with 100,000 metric tons capacity would appear to be sufficient.

Repository completion and operation at three-year intervals would result in having adequate capacity about three years after initial operation of the first repository (DOE PS p. III–86). As noted earlier, emplacement of spent fuel in the first repository should begin not later than the first few years of the next century. Thus, if the first repository begins to receive spent fuel in the year 2005, the second may begin operation as early as 2008, in which case all spent fuel would be emplaced by about 2026, assuming DOE's estimated receiving rates (DOE PS p. III–71) and operation of each repository as completed. Because the rate of waste emplacement during the first five years of operation would be about 1800 metric tons per year (DOE PS p. III–71), only 5400 metric tons would be emplaced in the first repository by the time the second began operation. This would satisfy the requirements of Section 114(d) of the Nuclear Waste Policy Act, i.e., the prohibition of emplacement of more than 70,000 metric tons in the first licensed repository before the second repository is in operation. If the DOE estimated emplacement rates (which would increase to 6000 metric tons/year after the first five years) are realized, it will take about 15 years to emplace 70,000 metric tons in the first repository.

For the foregoing reasons, the Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commerical high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

2.3 Third Commission Finding

The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

Nuclear power plants whose operating licenses expire after the years

2007–09 will be subject to NRC regulation during the entire period between their initial operation and the availability of a waste repository. The Commission has reasonable assurance that the spent fuel generated by these licensed plants will be managed by the licensees in a safe manner. Compliance with the NRC regulations and any specific license conditions that may be imposed on the licensees will assure adequate protection of the public health and safety. Regulations primarily addressing spent fuel storage include 10 CFR Part 50 for storage at the reactor facility and 10 CFR Part 72 for storage in independent spent fuel storage installations (ISFSI). Safety and environmental issues involving such storage are addressed in licensing reviews under both Parts 50 and 72, and continued storage operations are audited and inspected by NRC. NRC's experience in more than 80 individual evaluations of the safety of spent fuel storage shows that significant releases of radioactivity from spent fuel under licensed storage conditions are extremely remote (see discussion in Section 2.4).

Some nuclear power plant operating licenses expire before the years 2007–09. For technical, economic or other reasons, other plants may choose, or be forced, to terminate operation prior to 2007–09 even though their operating licenses have not expired. For example, the existence of a safety problem for a particular plant could prevent further operation of the plant or could require plant modifications that make continued plant operation uneconomic. The licensee, upon expiration or termination of its license, may be granted (under 10 CFR Part 50 or Part 72) a license to retain custody of the spent fuel for a specified term (until repository capacity is available and the spent fuel can be transferred to DOE under Sec. 123 of the Nuclear Waste Policy Act of 1982) subject to NRC regulations and license conditions needed to assure adequate protection of the public. Alternatively, the owner of the spent fuel, as a last resort, may apply for an interim storage contract with DOE, under Sec. 135(b) of the Act, until not later than 3 years after a repository or monitored retrievable storage facility is available for spent fuel. For the reasons discussed above, the Commission is confident that in every case the spent fuel generated by those plants will be managed safely during the period between license expiration or termination and the availability of a mined waste repository for disposal.

To assure the continuity of safe management of spent fuel, the Commission, in a separate action, is preparing an amendment to 10 CFR Part 50 which would require licensees of operating nuclear power reactors to submit, no later than 5 years before expiration of the reactor operating license, written notification to the Commission, for its review and approval, of the actions which the licensee will take to manage and provide funding for the management of all irradiated fuel at the reactor site following expiration of the reactor operating license, until ultimate disposal of the spent fuel in a repository. The licensee's notification will be required to specify how the licensee will fund the financial costs of extended storage or other disposition of spent fuel. It is possible for the funding of the storage to be provided by an internal reserve fund or special assessment during that 5-year period to cover the costs of storage of the spent fuel after the expiration of the reactor operating license. The storage costs are not large relative to power generation costs. A representative figure is $1-million/year for storage of spent fuel in reactor basins beyond the operating license expiration [Addendum 2 to "Technology, Safety and Costs of Decommissioning a Reference BWR Power Station," NUREG/CR 0130 (July 1983); Addendum 1 to Technology, Safety and Costs of Decommissioning a Reference PWR Power Station," NUREG/CR 0672 (July 1983)].

Additional assurance that the conditions necessary for safe storage will be maintained until disposal facilities are available is provided by the Commission's authority to require continued safe management of the spent fuel past the operating license expiration or termination (10 CFR 50.82). If a utility should have technical problems in continuing its commitment to maintain safe storage of its spent fuel, NRC as the cognizant regulatory agency would intervene and the utility would be required to assure safe storage. If a licensee fails financially, or otherwise must cease its operations, the cognizant state public utility commission would be likely to require an orderly transfer to another entity. The successor would take over the licensee's facilities and, provided the conditions for transfer of licenses prescribed in NRC regulations (10 CFR 50.80) were met by the succeeding entity, operation of the original licensee's facilities would be permitted to continue. Moreover, an orderly transfer to a successor organization would be mandatory to protect the substantial capital investment. Further, the Commission believes that the possibility of a need for Federal action to take over stored spent fuel from a defunct utility or from a utility that lacked technical competence to assure safe storage is remote, but the authority for such action exists (sections 186c and 188 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2236, 2238).

Interim storage capacity may be required for plants whose operating licenses expire or are terminated before sufficient repository capacity is available. As discussed in the rationale for the fifth finding, the Nuclear Waste Policy Act of 1982 includes a number of provisions to assure the availability of interim storage capacity for spent fuel during the period before repository operation (Secs. 131 through 137). Provisions are made for Federal government supplied interim storage capacity (up to 1900 metric tons) for civilian power reactors whose owners cannot reasonably provide adequate storage capacity.

In all cases where the interim storage is at a licensee's site, safe management will be assured by compliance with NRC regulations and specific license conditions. Where DOE provides the interim storage capacity, except in the use of existing capacity at Government-owned facilities, DOE is to "comply with any applicable requirements for licensing or authorization" (Sec. 135(a)(4)). If existing federally-owned storage facilities are used, NRC is required to determine "that such use will adequately protect the public health and safety" (Sec. 135(a)(1)). These provisions of the Act would assure that spent fuel will be managed in a safe manner until repository capacity is available. Facilities for reprocessing high-level waste, should any be constructed or become operational before a repository is available, would be licensed under 10 CFR Part 50, and solidification and interim storage of high level waste would be provided for at such facilities. For the foregoing reasons, the Commission finds reasonable assurance that high-level waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available for its safe disposal.

2.4 Fourth Commission Finding

The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that *reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.*

Although the Commission has reasonable assurance that at least one mined geologic repository will be available by the years 2007–09, the Commission also realizes that for various reasons, including insufficient capacity to immediately dispose of all existing spent fuel, spent fuel may be stored in existing or new storage facilities for some periods beyond 2007–09. The Commission believes that this extended storage will not be necessary for any period longer than 30 years beyond the term of an operating license. For this reason, the Commission has addressed on a generic basis in this decision the safety and environmental impacts of extended spent fuel storage at reactor spent fuel storage basins or at either onsite or offsite spent fuel storage installations. The Commission finds that spent fuel can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of reactor operating licenses. To ensure that spent fuel which remains in storage will be managed properly until transferred to DOE for disposal, the Commission is proposing an amendment to its regulations (10 CFR Part 50). The amendment will require the licensee to notify the Commission, five years prior to expiration of its reactor operating license, how the spent fuel will be managed until disposal.

The Commission's finding is based on the record of this proceeding which indicates that significant releases of radioactivity from spent fuel under licensed storage conditions are highly unlikely. It is also supported by the Commission's experience in conducting more than 80 individual safety evaluations of storage facilities.

The safety of prolonged spent fuel storage can be considered in terms of four major issues: (a) The long-term integrity of spent fuel under water pool storage conditions, (b) structure and component safety for extended facility operation, (c) the safety of dry storage, and (d) potential risks of accidents and acts of sabotage at spent fuel storage facilities. Each of these issues is discussed separately below, in light of the information provided by the participants in this proceeding, and NRC experience in regulating storage of spent fuel.

A. Long-Term Integrity of Spent Fuel Under Water Pool Storage Conditions

The Commission finds that the cladding which encases spent fuel is highly resistant to failure under pool storage conditions. As noted by DOE in its Position Statement, there are up to 18 years of continuous storage experience for zircaloy-clad fuel and 12 years continuous storage experience for stainless-clad fuel (DOE PS p. IV–73). Corrosion studies of irradiated fuel at 20 reactor pools in the United States suggest that there is no detectable degradation of zircaloy cladding. Data from corrosion studies of spent fuel stored in Canadian pools also support this finding (A.B. Johnson, Jr., "Behavior of Spent Nuclear Fuel in Water Pool Storage," (UC–70) Battelle Pacific Northwest Laboratories (BNWL–2256, September, 1977) pp. 10–11, 17).

The long-term integrity of spent fuel in storage pools, which has been confirmed by observation and analysis, was cited by industry participants (e.g., Consolidated Industry Group: PHS pp. 3–6; UNWMG–EEI PS Doc. 4, p. 8; UG p. 2). No degradation has been observed in commercial power reactor fuel stored in onsite pools in the United States. Extrapolation of corrosion data suggests that only a few hundredths of a percent of clad thickness would be corroded after 100 years (A.B. Johnson, Jr., "Utility Spent Fuel Storage Experience," PNL–SA–6863, presented at the American Nuclear Society's Executive Conference on Spent Fuel Policy and its Implications, Buford, Georgia (April 2–5, 1978). The American Nuclear Society cited a study (G. Vesterbend and T. Olsson, BNWL–TR–320, May 1978, English Translation of RB78–29), which concluded that degradation mechanisms such as general corrosion, local corrosion, stress corrosion, hydrogen embrittlement, and delayed hydrogen cracking are not expected to produce degradation to any significant extent for 50 years (ANS PS p. 34).

Canadian experience, including occasional examination during 17 years of storage, has indicated no evidence of significant corrosion or other chemical degradation. Even where the uranium oxide pellets were exposed to pool water as a result of prior damage of the fuel assembly, the pellets have been inert to pool water, an observation also confirmed by laboratory studies ("Canadian Experience with Wet and Dry Storage Concepts," presented at the American Nuclear Society's Executive Conference on Spent Fuel Policy and Its Implications, Buford, Georgia (April 2–5, 1978)). Another Canadian study concluded that "50 to 100 years under water should not significantly affect their [spent fuel bundles] integrity" (Walker, J.F., "The Long-Term Storage of Irradiated CANDU Fuel Under Water," AECL–6313 Whiteshell Nuclear Research Establishment, January 1979). This appraisal was based on findings such as no deterioration by corrosion or mechanical damage during 16 years of storage in water, no release of fission products from the uranium dioxide matrix during 11 years of storage in water, and no fission-product induced stress corrosion cracking anticipated during water storage at temperatures below 100°C (Hunt C.E.L., J.C. Wood and A.S. Bain, "Long-Term Storage of Fuel in Water" AECL–6577, Chalk River Nuclear Laboratories, June 1979).

The ability of spent fuel to withstand extended water basin storage is also supported by metallurgical examination of Canadian zircaloy clad fuel after 11 years of pool storage, metallurgical examination of zircaloy clad PWR and BWR high burn-up fuel after five and six years in pool storage, and return of Canadian fuel bundles to a reactor after 10 years of pool storage. Periodic hot cell examination of high burn-up PWR and BWR bundles over 6 years of pool storage at the WAK Fuel Reprocessing Plant in Germany has also confirmed that spent fuel maintains integrity under pool storage conditions. Other countries having favorable experience with pool storage of zircaloy-clad spent fuel include: the United Kingdom, 13 years; Belgium, 12 years; Japan, 11 years; Norway, 11 years; West Germany, 9 years; and Sweden, 7 years (op. cit., A. B. Johnson, Jr., p. 7). Programs of monitoring spent fuel storage are being conducted in Canada, the United Kingdom and the Federal Republic of Germany (DOE PS pp. IV—59 to IV–61; UNWMG–EEI PS Doc. 4, p. 23).

The only fuel failures which have occurred in spent fuel pools involved types of fuel and failure mechanisms not found at U.S. commercial reactor facilities, e.g., degradation of zircaloy-clad metallic uranium fuel from the Hanford N-Reactor as a result of cladding damage in the fuel discharge system. The system differs from the fuel discharge systems of commercial reactors. Moreover, metallic uranium fuel is not used in commercial power reactors. NRDC cited some conclusions drawn by Mr. Justice Parker regarding his lack of confidence in long-term storage of spent fuel, based on the Windscale Inquiry in Great Britain in 1978, which involved stainless-steel-clad gas-cooled reactor fuel (NRDC PS p. 92). This is not pertinent to pool storage of commercial spent fuel since the high temperature conditions in a gas-cooled reactor which can cause sensitization of the cladding are not experienced by fuel in boiling or pressurized water reactors (op. cit., A.B. Johnson, Jr., pp. 17–18).

Some participants did not agree that there is an adequate basis for confidence in safe extended-term spent fuel storage. Although agreeing with the extent of experience cited by DOE and other participants, the Natural Resources Defense Council, for example, stressed that more experience is needed before one can be confident of safe extended storage. NRDC considered the length of storage experience cited by DOE as insufficient to establish that spent fuel can be stored safely for periods well in excess of 40 years (NRDC PS pp. 88–92). A similar position was taken by the State of Minnesota (Minn PHS pp. 8–9). NRDC referred to the problem of the long-term storage of spent fuel reported in the Windscale Inquiry Report by the Hon. Mr. Justice Parker, Vol. 1, pp. 29–30. However, the conclusion quoted from the report, when taken in context, refers only to irradiated fuel from AGR (advanced gas-cooled) nuclear power plants. As noted earlier, the conditions to which the fuel cladding is exposed in gas-cooled reactors differs from those in U.S. commercial light water reactors. Moreover, the cladding of AGR fuel is identified as stainless steel in the Windscale Inquiry Report. Only two commercial LWR nuclear power plants operating in the U.S. today use stainless steel clad. Most U.S. nuclear fuel is zircaloy clad, and reactor operators have not seen evidence of degradation of LWR spent fuel, either zircaloy or stainless steel clad, in storage pools (*Nuclear Technology*, "Spent Fuel Storage Experience," A.B. Johnson, Jr., p. 171, Vol. 43, Mid-April 1979). Further, as stated earlier, cladding degradation caused by stainless steel sensitization in an AGR high temperature environment is not pertinent to the lower temperature environment of LWR's. Therefore, the problem of long-term storage of spent fuel reported in the Windscale Inquiry is not relevant to U.S. spent fuel.

After expiration of a reactor operating license, the fuel storage pools at the reactor site would be licensed under 10 CFR Part 72. The requirements of 10 CFR Part 72 provide for operation under conditions involving a careful control of pool water chemistry to minimize corrosion. The required monitoring of the pool water would provide an early warning of any problems with defective cladding, so that corrective actions may be taken. Experience indicates that, under licensed storage conditions, significant releases of radioactivity are highly unlikely. The Commission is confident that the regulations now in place will assure adequate protection of the public health and safety and the enviroment during the period when the spent fuel is in storage ("Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG–0575, August 1979: Vol. 1, pp. ES–12, 4–10 to 4–17).

Although confidence that spent fuel will maintain its integrity during storage for an additional 30 years beyond the facility's license expiration date involves an extrapolation of experience by a factor of two or three in time, the extrapolation is made for conditions in which corrosion mechanisms are well understood. Technical studies cited above support the conclusion that corrosion would have a negligible effect during several decades of extended pool storage. The Commission finds that this extrapolation is reasonable and is consistent with standard engineering practice.

B. Structure and Component Safety for Extended Facility Operation For Storage of Spent Fuel in Water Pools

Questions were raised concerning the adequacy of structural materials and components of spent fuel storage basins to function effectively during periods that are double those assumed in the base design. This concern was expressed in connection with the possible necessity for longer storage times if permanent disposal is not available by the year 2006 (Del PS p. 4). The experience at the General Electric Company Morris Operation in Illinois, where a mechanical failure caused contaiminated water to leak into the environment, was cited as an example of an unforeseen failure that could jeopardize the safety of spent fuel storage (NECNP PS p. 65). A generic problem regarding pipe cracks in borated water systems at PWR plants was also cited as evidence of uncertainty that long-term interim storage would be safely accomplished without modification and fuel shuffling NECNP PS p. 64). The Commission notes that the latter problem was discussed in detail in the Atomic Safety and Licensing Board Notification, "Pipe Cracks in Stagnant Borated Water Systems at PWRs" dated August 14, 1979, in the ASLB consideration of a proposed licensing amendment to permit modification of a spent fuel storage pool [11 NRC 245 (1980)]. The Notification referred to by NECNP indicated that cracks had occurred in safety-related type-304 stainless steel piping systems which contained stagnant borated water. Apparently, the cracking was attributable to stress corrosion caused by the residual welding stresses in heat-affected zones. The NRC staff review found that such cracking was not directly related to spent fuel pool modifications, and that necessary repairs could be readily made. The staff concluded that cracks in low-pressure spent fuel cooling system do not have safety significance.

Extensive experience with storage pool operation has demonstrated the ability of pool components to withstand the operating environment (DOE CS pp. II–145 to II–148). In the relatively few cases of equipment failure, pool operators have been able to repair the equipment or replace detective components promptly (UNWMG–EEI PS Doc. 4, p. 25; UG p. 2). The Commission finds no reason why spent fuel storage basins would not be capable of performing their cooling and storage functions for a number of years past the design-basis period of 40 years if they are properly maintained.

As one participant pointed out," . . . the pool structure as well as the racks are designed to withstand extreme physical conditions set forth in NRC licensing requirements. These include seismic, hydrologic, meteorological and structural requirements" (UNWMG–EEI PS Doc. 4 p. 25; UG p. 2). The design requirements are set forth in 10 CFR Parts 50 and 72. The design-basis siting conditions for storage pools at reactor sites are those of the reactor itself. Siting conditions are reviewed by the NRC staff, the Advisory Committee or Reactor Safeguards and the Atomic Safety and Licensing Board at the construction permit stage and then reviewed again in connection with the issuance of the facility's operating license. In issuing a power reactor operating license, the Commission is, in effect, expressing its confidence that the design-basis siting conditions will not be exceeded during the 40-year license period. If pool storage facilities were used to store spent fuel after expiration of reactor operating licenses, the utilities would be able, as part of their continuing maintenance of storage facilities, to replace defective components in a timely way, if needed, so as to avoid any safety problems. Some participants (e.g., NECNP PS pp. 63–63; Minn PHS pp. 8–9; and Del PS p. 4), do not place the same weight which the Commission does on experience at spent fuel storage facilities and on studies cited by DOE and certain others which support the argument that the structural integrity of these basins can be readily maintained (DOE CS pp. II–145, III–13; UNWMG–EEI PS Doc. 4 p. 19). The disagreements appear to center largely on the extent to which present experience may be relied upon as a basis for predicting the safety of spent fuel storage over a period two or three times the design period.

The degradation mechanisms involved in spent fuel pool storage are well understood. The resulting changes in fuel cladding and pool systems and components are gradual and thus provide sufficient time for the identification and development of remedial action without subjecting plant personnel or the public to significant risk. The fuel storage racks are designed to maintain their integrity for many decades; if they fail in any way, they may be replaced. There are a number of routine and radiologically safe methods for maintenance at spent fuel storage basins to ensure their continued effective performance. These include replacing racks or other components, or moving spent fuel to another storage facility. The Commission finds that the extensive operating experience with many storage pools adequately supports predictions of long-term integrity of storage basins.

The Commission concludes that the experience with spent fuel storage provides an adequate basis for confidence in the continued safe storage of spent fuel in water pools either at or away from a reactor site for at least 30 years after expiration of the plant's license.

C. Safety of Dry Storage of Spent Fuel

While the record of this proceeding has focussed on water pool storage, the Commission notes that dry storage of spent fuel has also been addressed to a limited extent (e.g., DOE PS pp. IV–12 to IV–22 and IV–63 CS p. II–147, PHS p. 9; UNWMG–PS Doc 4 pp. 16–17 and CS pp. III–6–7; Tr. pp. 69–72). The NRC's regulation 10 CFR Part 72 specifically covers dry storage of spent fuel (Section 72.2(c)), and experience with dry storage was a subject of public comment in the rulemaking ("Analysis of Comments on 10 CFR Part 72," NUREG–0587, pp. II–12 to II–13). NRC reports, the "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575) and "Dry Storage of Spent Nuclear Fuel, A Preliminary Survey of Existing Technology and Experience" (NUREG/CR–1223) which have been referenced in this proceeding, examined potential environmental impacts and experience with interim dry storage of spent fuel. The GEIS (Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, NUREG–0575, Vol. 1, p. 8–2, August 1979) contained the conclusion that the use of alternative dry passive storage techniques for aged fuel, now being investigated by the Department of Energy, appears to be as feasible and environmentally acceptable as storage of spent fuel in water basins. Prior to the adoption of Part 72, dry storage of irradiated fuel had been licensed under Part 50 at the Hallam sodium graphite reactor. Dry storage is also presently licensed under Part 50 at the Ft. St. Vrain high temperature gas reactor.

Although the number of years of experience with dry storage systems is less than that with water pool storage, the understanding of some of the material degradation processes experienced in water pool storage should be applicable to dry storage. As discussed below, dry storage involves a simpler technology than that represented by water basin storage systems.[5] Water basin storage relies upon active systems such as pumps, renewable filters, and cooling systems to maintain safe storage. Favorable water chemistry must also be maintained to retard corrosion. On the other hand, dry storage reduces reliance upon active systems and does not need water which together with impurities may corrode spent fuel cladding. With convective circulation of an inert atmosphere in a sealed dry system, there is little opportunity for corrosion.[6] For these reasons, the Commission believes that safe dry storage should be achievable without undue difficulty. New dry storage experience with light water reactor (LWR) fuel is becoming available for examination, and the evaluations discussed below suggest that the favorable results of up to almost two decades of dry storage experience with non-LWR spent fuel can also be obtained for LWR spent fuel in adequately designed dry storage installations.

A recent review of dry storage experience by A.B. Johnson, Jr., et al. in "Behavior of Spent Nuclear Fuel and Storage Components in Dry Interim Storage" (PNL–4189, August 1982), provides an update of dry storage activities, particularly with respect to zircaloy-clad spent fuel. In this report, (pp. 18–24) the experimental data base for non-zircaloy-clad spent fuel, including stainless steel clad fuel and the data base for zircaloy-clad fuel are discussed. Tests conducted to verify the integrity of zircaloy cladding have not indicated any degradation in dry storage (p. 27). In summary, the report states (pp. 44–45):

> - Operating information is available from fueled dry well, silo, vault, and metal cask storage facilities. Maximum operational histories are:

	All fuel	Zircaloy-clad fuel
Dry wells	Up to 18 years	Up to 3 to 4 years.
Vaults	Up to 18 years	Up to 1 year.
Silos	Up to 7 years	Up to 7 years.
Metal casks		<1 year

All times related to 1982.

> Operational history with interim storage in metal casks is minimal; however, there is extensive experience with metal shipping casks. In addition, metal storage casks have been designed and tested, and cask tests with irradiated fuel are currently under way in the Federal Republic of Germany and are planned in Switzerland and the United States. The integrity of zircaloy-clad fuel in a given demonstration test is relevant to predicting fuel behavior in other dry storage concepts under similar conditions.

Information on experience with dry cask storage in other countries is also becoming available. K. Einfeld and J. Fleisch's paper, "Fuel Storage in the Federal Republic of Germany" discussed the results of dry storage research on spent fuel in an inert atmosphere. They note on page 3 of their report:

> Several tests have been conducted to verify the integrity of LWR spent fuel cladding in dry storage. To date none of the integrity tests has indicated that the cladding is degrading during long-term storage. Even under conditions more severe than in the casks, the fuel shows no cladding failures. From the tests listed in Table II it can be concluded that dry storage under cask conditions even with starting temperatures to 400° C is not expected to cause cladding failures over the interim storage period.

Einfeld and Fleisch continue, in their report (pp. 3–4) to comment on the successful demonstration of cask storage:

> A technical scale demonstration program with a fuel CASTOR cask is underway in the FRG since March 1982. The 16 assemblies which are subject to that program originate from the Wurgassen boiling water reactor. They resided in the core during 4 cycles of operation, burning up to about 27.8 GWD/t U.
>
> The general objectives of the demonstration with a fully instrumented cask and fuel bundles are the verification of cask design parameters, the operational experience in cask handling and the expansion of the data base on fuel performance. Fig. 2 shows a schematic

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[5] See, for example, K. Einfeld and J. Fleish, "Fuel Storage in the Federal Republic of Germany; and R.J. Steffen and J.B. Wright, "Westinghouse Advanced Energy Systems Division," Proceedings of the American Nuclear Society's Topical Meeting on Options for Spent Fuel Storage, in Savannah, Georgia, September 26 through 29, 1982; also A.B. Johnson, Jr., E.R. Gilbert, and R.J. Guenther, "Behavior of Spent Nuclear Fuel and Storage System Components in Dry Interim Storage," PNL–4189, August 1982.

[6] K. Einfeld and J. Fleisch, Ibid, p. 3.

> drawing of the cask design and the axial thermocouple locations.
>
> The operational experiences and corresponding test data confirm the assumptions made about the cask concept and the cask loading and handling procedure. In addition, the technology data base for operating an interim storage plant could be expanded.

- —In-pool loading of a large storage cask and specific cask handling has been successfully demonstrated.
- —The passive heat transfer capabilities of the cask and fuel cladding integrity have been verified. The maximum local fuel rod temperatures for fuel with about one year decay time were within the expected range.
- —The total radiation shielding characteristics (<10 mrem/h) are verified in practice" (references deleted).

The authors conclude:

> The realization of the transport/storage cask concept, which is well under way in the Federal Republic of Germany, will provide sufficient interim spent fuel storage capacity with the facilities planned or under construction. Dry interim storage is a proven technology and thus it constitutes an essential step in closing the backend of the nuclear fuel cycle.

R.J. Steffens and J.B. Wright's paper[7], "Drywell Storage Potential," discussed drywell storage experience with pressurized water reactor spent fuel at the Nevada Test site. On page 6 of the paper, the authors note:

> Another drywell performance assessment method being employed during the demonstration storage period is that of periodically monitoring the storage canister atmosphere for fission products, specifically krypton-85 gas. Samples drawn to date have shown no detectable concentrations of this product after approximately 3 years of storage, indicating a maintenance of the fuel cladding integrity.

A third paper presented at the same Topical Meeting, by E.R. Gilbert and A.B. Johnson, Jr., "Assessment of the Light-Water Reactor Fuel Inventory for Dry Storage," focuses on dry spent fuel storage with respect to an acceptable temperature range for storage in air. They conclude on page 8 of their report:

> Dry storage demonstrations now in progress suggest that by 1986 a major fraction of the U.S. PWR spent fuel inventory that was placed in water storage before 1981 can be stored in dry storage facilities below 150 to 200 °C.
>
> The LWR fuel inventory offers good prospects that the thermal characteristics of consolidated fuel will be acceptable for dry storage by proper selection of fuel.
>
> Dry storage of LWR fuel with defective cladding may be tolerable in inert cover gases or at temperatures below the threshold for significant oxidation in oxidizing cover gases. The range of acceptable storage temperatures is being investigated.

With respect to dry storage of spent fuel, the Commission notes the summary statement from A.B. Johnson, Jr., et al., "Behavior of Spent Nuclear Fuel and Storage Components in Dry Interim Storage" (PNL-4189), page xvii:

> Operational problems in vaults and dry wells have been minor after up to 18 yr. of operation (in 1982); and 7 yr of silo experience suggests that decades of satisfactory operation can be expected. Demonstration tests with irradiated fuel in metal storage casks are just beginning, but metal shipping casks with mild steel chambers have been used since the mid-1940s. Metal storage/shipping casks have successfully survived fire, drop, and crash tests.

Thus, with respect to the storage of spent fuel under dry conditions at storage installations located either at reactor sites or away from reactor sites, the Commission believes that current dry-storage technology is capable of providing safe storage for spent nuclear fuel. The modular character of dry storage installations enhances the ability to perform maintenance or to correct mechanical defects, if any should occur. The Commission is confident that its regulations will assure adequate protection of the public health and safety and the environment during the period when the spent fuel is in storage.

The Commission notes that section 211(2)(B) of the Nuclear Waste Policy Act authorizes the Secretary of Energy to carry out research on, and to develop facilities to demonstrate, dry storage of spent nuclear fuel. Although this provision indicates a judgment on the part of the Congress that additional research and demonstration is needed on the dry storage of spent fuel, the Commission believes the information discussed above is sufficient to reach a conclusion on the safety and environmental effects of extended dry storage. All areas of safety and environmental concern (e.g., maintenance of systems and components, prevention of material degradation, protection against accidents and sabotage) have been addressed and shown to present no more potential for adverse impact on the environment and the public health and safety than storage of spent fuel in water pools.

The technical studies cited above support the conclusion that corrosion would have a negligible effect during several decades of extended dry storage. The Commission's confidence in the safety of dry storage is based on an understanding of the material degradation processes, rather than merely on extrapolation of storage experience—together with the recognition that dry storage systems are simpler and more readily maintained. For these reasons, the Commission is confident that dry storage installations can provide continued safe storage of spent fuel at reactor sites for at least 30 years after expiration of the plant's license.

D. Potential Risks of Accidents and Acts of Sabotage at Spent Fuel Storage Facilities

The Commission finds that the risks of major accidents at spent fuel storage pools resulting in off-site consequences are remote because of the secure and stable character of the spent fuel in the storage pool environment, and the absence of reactive phenomena—"driving forces"—which may result in dispersal of radioactive material. Reactor storage pools and independent spent fuel storage installations have been designed to safely withstand accidents caused either by natural or man-made phenomena. Even remote natural risks such as earthquakes and tornados and the risks of human error such as in handling or storing spent fuel are addressed in the design and operational activities of storage facilities and in NRC's licensing reviews thereof under its regulations. Under 10 CFR Parts 50 and 72, spent fuel is stored in facilities structurally designed to withstand accidents and external hazards, such as those cited above, and to preclude radiation and radioactive material emissions from spent fuel that would significantly endanger the public health and safety. In order to preclude the possibility of criticality under normal or accident conditions, the spent fuel is stored in racks designed to maintain safe geometric configurations under seismic conditions. The spent fuel itself consists of solid ceramic pellets which are encapsulated in metal clad rods held in gridded assemblies and stored underwater in reinforced concrete structures or in sealed dry storage installations such as concrete dry wells, vaults and silos or massive metal casks. The properties of the spent fuel (which in extended storage has decayed to the point where individual fuel assemblies have a heat generation rate of several hundred watts or less) and of the benign storage environment result in spent fuel storage being an activity with very little potential for adversely affecting the environment and the public health and safety. While any system employing high technology is subject to some equipment breakdowns or accidents, water pool storage facilities have operated with few serious problems (DOE PS at IV–56 to IV–57; UNWMG–EEI PS Doc. 4 p. 26). In these cases, the events at spent-fuel pools have been manageable on a timely basis. Similarly, dry storage of spent fuel, as discussed in Section C above, appears to be at least as safe as water pool storage. A discussion of risks related to spent fuel storage is provided below.

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[7] Proceedings of the American Nuclear Society's Topical Meeting on Options for Spent Fuel Storage, in Savannah, Georgia, September 26 through 29, 1982.

Comments from participants on the subject of accidents and their potential consequences at spent-fuel storage facilities included a description of nonspecific references to numerous "accidents" in spent-fuel storage facilities, a discussion of cases of leaks and inadvertent releases of contaminated storage pool water, and a suggestion that waste storage should be physically separated from reactor operation to reduce the risk of damage to the storage facility in the event of a reactor accident, and vice versa (NY PS pp. 102–107; OCTLA PS p. 12). The State of New York, in its discussion of possible accidents at spent-fuel storage pools, cited reports of an accident in the Soviet Union that is believed to have involved reprocessing plant wastes stored in tanks at a waste storage facility (NY PS pp. 107–108). The situation, as reconstructed from limited data, cannot be compared to the storage of ceramic fuel in metal cladding, placed in water storage pools. The issue raised, therefore, is not relevant to this proceeding. The need for continued management of pool storage facilities over an extended time period was considered by some participants as creating a potential hazard because of the increased possibility of human errors or mismanagement (NRDC PS pp. 89–90). The State of New York characterized the Three Mile Island reactor accident as caused by multiple technical and human failures, and postulated that such failures are possible at storage facilities, and would result in serious off-site consequences (NY PS p. 107).

These observations do not appear to take account of the numerous safety analyses that have been made of water pool storage and of alternative long-term storage methods which have demonstrated storage to be both safe and environmentally acceptable. Of course, the possibility of human error cannot be completely eliminated. However, Commission regulations (e.g., 10 CFR Part 55; 10 CFR Part 72, Subpart I) include explicit requirements for operator training, the use of written procedures for all safety-related operations and functions in the plant, and certification or licensing of operators, with the objective of minimizing the opportunity for human error. Unlike the accident at the Three Mile Island reactor, human error at a spent fuel storage installation does not have the capability to create a major radiological hazard to the public. The absence of high temperature and pressure conditions that would provide a driving force essentially eliminates the likelihood that an operator error would lead to a major release of radioactivity (DOE CS pp. II–156 to 158). In addition, features incorporated in storage facilities are designed to mitigate the consequences of accidents caused by human error or otherwise (DOE PS IV–34).

The possibility of terrorist attacks on nuclear facilities was advanced as an argument against the acceptability of extended interim storage of spent fuel (NRDC PS p. 90). The intentional sabotage of a storage pool facility is possible, and NRC continues to implement actions to further improve security at such facilities. The consequences would be limited by the realities that, except for some gaseous fission products, the radioactive content of spent fuel is in the form of solid ceramic material encapsulated in high-integrity metal cladding and stored underwater in a reinforced concrete structure. Under these conditions, the radioactive content of spent fuel is relatively invulnerable to dispersal to the environment (Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, NUREG–0575, Vol. 1.). Similarly, dry storage of spent fuel in dry wells, vaults, silos and metal casks is also relatively invulnerable to sabotage and natural disruptive forces, because of the weight and size of the sealed, protective enclosures which may include 100-ton steel casks, large concrete lined near-surface caissons and surface concrete silos (NUREG/CR–1223, p. IV–C–2).

E. Summary

In summary, the Commission finds that spent fuel can be stored safely at independent spent fuel storage installations or at reactor sites for at least 30 years beyond the expiration of reactor operating licenses. This finding is based on extensive experience and on many factors that are not site-specific. These factors include the substantial capability of the fuel cladding to maintain its integrity under storage conditions, a capability verified in extensive technical studies and experience; the extreme thermal and chemical stability of the fuel form, enriched uranium oxide pellets; the long-term capability of spent fuel storage facilities to dissipate spent fuel heat and retain any radioactive material leakage; and the relatively straightforward techniques and procedures for repairing spent fuel storage structures, replacing defective components or equipment, or undertaking other remedial actions to assure containment of radioactivity (A.B. Johnson, Jr., "Behavior of Spent Nuclear Fuel in Water Pool Storage", (UC–70) Battelle Pacific Northwest Laboratories (BNWL–2256, September 1977)). These factors contribute to the assurance that spent fuel can be stored for extended periods without significant impact on the public health and safety and the environment. Moreover, any storage of spent fuel at independent spent fuel storage installations or reactor sites beyond the operating license expiration will be subject to licensing and regulatory control to assure that operation of the storage facilities does not result in significant impacts to the public health and safety.

For the reasons discussed previously (Sections 2.4 A through D above), the Commission also concludes, from the record of this proceeding, that storage of spent fuel either at or away from a reactor site for 30 years beyond the operating license expiration would not result in a significant impact to the environment or an adverse effect on the public health and safety. The Commission's findings are also supported by NRC's experience in more than 80 individual safety evaluations of spent fuel storage facilities conducted in recent years. The record indicates that significant releases of radioactivity from spent fuel under licensed storage conditions are highly unlikely. This is primarily attributable to the resistance of the spent fuel to corrosive mechanisms and the absence of any conditions that would result in offsite dispersal of radioactive material. The Commission concludes that the possibility of a major accident or sabotage with off-site radiological impacts at a spent-fuel storage facility is extremely remote because of the characteristics of spent-fuel storage. These include the inherent properties of the spent fuel itself, the benign nature of the water pool or dry storage environment, and the absence of any conditions that would provide a driving force for dispersal of radioactive material. Moreover, there are no significant additional non-radiological impacts which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses for reactors. The non-radiological environmental impacts associated with site preparation and construction of storage facilities are, and will continue to be, considered by the NRC at the time applications are received to construct these facilities, which are licensed under NRC's regulations in either 10 CFR Part 50 for reactors or 10 CFR Part 72 for independent spent fuel storage facilities. The procedure to be followed in implementing the Commission's generic determination is the subject of rulemaking which the Commission has conducted.

2.5 Fifth Commission Finding

The Commission finds reasonable assurance that safe independent onsite spent fuel storage or offsite spent fuel storage will be made available if such storage capacity is needed.

The technology for independent spent fuel storage installations as discussed under the fourth Commission Finding, is available and demonstrated. The regulations and licensing procedures are in place. Such installations can be constructed and licensed within a five-year time interval. Before passage of the Nuclear Waste Policy Act of 1982 the Commission was concerned about who, if anyone, would take responsibility for providing such installations on a timely basis. While the industry was hoping for a government commitment, the Administration had discontinued efforts to provide those storage facilities (Tr. pp. 157–158). The Nuclear Waste Policy Act of 1982 establishes a national policy for providing storage facilities and thus helps to resolve this issue and assure that storage capacity will be available.

Prior to March 1981, the DOE was pursuing a program to provide temporary storage in off-site, or away-from-reactor (AFR), storage installations. The intent of the program was to provide flexibility in the national waste disposal program and an alternative for those utilities unable to expand their own storage capacities (DOE PS p. I–11; DOE CS p. II–66).

Consequently, the participants in this proceeding assumed that, prior to the availability of a repository, the Federal government would provide for storage of spent fuel in excess of that which could be stored at reactor sites. Thus, it is not surprising that the record of this proceeding prior to the DOE policy change did not indicate any direct commitment by the utilities to provide AFR storage. On March 27, 1981 DOE placed in the record a letter to the Commission stating its decision "to discontinue its efforts to provide Federal government-owned or controlled away-from-reactor storage facilities." The primary reasons for the change in policy were cited as new and lower projections of storage requirements and lack of Congressional authority to fully implement the original policy.

The record of this proceeding indicates a general commitment on the part of industry to do whatever is necessary to avoid shutting down reactors or derating them because of filled spent fuel storage pools. While industry's incentive for keeping a reactor in operation no longer applies after expiration of its operating license, utilities possessing spent fuel are required to be licensed and to maintain the fuel in safe storage until removed from the site. Industry's response to the change in DOE's policy on federally-sponsored away-from-reactor (AFR) storage was basically a commitment to do what is required of it, with a plea for a clear unequivocal Federal policy (Tr. pp. 157–159). The Nuclear Waste Policy Act of 1982 has now provided that policy.

The Nuclear Waste Policy Act defines public and private responsibilities for spent fuel storage and provides for a limited amount of federally-supported interim storage capacity. The Act also includes provisions for monitored retrievable storage facilities and for a research, development and demonstration program for dry storage. The Commission believes that these provisions provide added assurance that safe independent onsite or offsite spent fuel storage will be available if needed.

In Subtitle B of the Act, "Interim Storage Program," Congress found that owners and operators of civilian power reactors "have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors" by maximizing the use of existing storage facilities onsite and by timely additions of new onsite storage capacity. The Federal government is responsible for encouraging and expediting the effective use of existing storage facilities and the addition of new storage capacity as needed. In the event that the operators cannot reasonably provide adequate storage capacity to assure the continued operation of such reactors, the Federal government will assume responsibility for providing interim storage capacity for up to 1900 metric tons of spent fuel (Sec. 131(a)). Such interim storage capacity is to be provided by the use of available capacity at one or more Federal facilities, the acquisition of any modular or mobile storage equipment including spent fuel storage racks, and/or the construction of new storage capacity at any reactor site (Sec. 135(a)(1)).

The Nuclear Waste Policy Act authorizes the Secretary of Energy to enter into contracts with generators or owners of spent fuel to provide for storage capacity in the amount provided in the Act (Sec. 136(a)(1)). However, such contracts may be authorized only if the NRC determines that the reactor owner or operator cannot reasonably provide adequate and timely storage capacity and is pursuing licensed alternatives to the use of Federal storage capacity (Sec. 135(b)).[8] Further, any spent fuel stored in the "interim storage program" is to be removed from the storage site on facility "as soon as practicable" but in no event later than 3 years following the availability of a repository or monitored retrievable storage facility (Sec. 135(e)). The Act establishes an "Interim Storage Fund" for use in activities related to the development of interim storage facilities, including the transportation of spent fuel and impact assistance to state and local governments (Sec. 136(d)).

In addition to providing for interim storage capacity, Congress found that "the long-term storage of high level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel." By June 1, 1985, the Secretary of Energy must complete a detailed study of the need for, and feasibility of, such a facility and submit to Congress a proposal for the construction of one or more such facilities. The Act also directs the Secretary of Energy to establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at reactor sites and provide consultative and technical assistance on a cost-sharing basis to assist utilities lacking interim storage capacity to obtain the construction, authorization and appropriate license from the NRC. Such assistance may include the establishment of a research and development program for the dry storage of no more than 300 metric tons of spent fuel at federally-owned facilities (Sec. 218, (a)(b)(c)).

The Commission's confidence that independent on-site and/or off-site storage capacity for spent fuel will be available as needed is further supported by the strong likelihood that only a portion of the total spent fuel generated will require storage outside of reactor storage basins (DOE PS pp. V–3 to V–13). Estimates of the amount of spent fuel requiring storage away from reactors have declined significantly over the duration of this proceeding (DOE March 27, 1981 letter from O. Brown II, DOE Office of General Counsel, to M. Miller NRC, Presiding Officer in this proceeding).

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[8] Accordingly, the Commission has published proposed "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity," 10 CFR Part 53 (48 *FR* 19382, April 29, 1983).

DOE reported that cummulative spent fuel discharges, previously estimated as 100,000 metric tons of uranium (MTU), dropped to 72,000 MTU through the year 2000. Projected requirements for additional spent fuel storage capacity begin in 1986 (instead of 1981) and increase to 9500 MTU per year by 1997. Earlier projections indicated a need for 16,000 MTU per year for additional storage capacity in 1997.[9] DOE pointed out that additional storage requirements could be satisfied in a number of ways, including: (a) Use of private existing AFR storage facilities; (b) construction of new water basins at reactor facilities or away from reactor facilities by private industry or the utilities; (c) transshipment of spent fuel between reactors operated by different utilities; (d) disassembly of spent fuel and storage of spent fuel rods in canisters; and (e) dry storage at reactor sites.

Subsequently, DOE published new estimates for additional spent fuel storage capacity ("Spent Fuel Storage Requirements", DOE/RL–82–1, June, 1982). These estimates show a maximum required away-from-reactor (AFR) storage capacity of 8610 metric tons uranium of spent fuel in the year 1997. This is a decline from DOE's previously published planning-base case. The information in Table 1 below is excerpted from DOE/RL–83–1 and provides a range of projections of additional storage capacity needs. The first column is a projection of storage capacity needed over and above the currently existing and planned storage capacity. The second column provides projected values of additional storage capacity needed if maximum re-racking is conducted at existing or planned reactor basin storage pools. The storage capacity needs shown in the second column are somewhat smaller than in the first column. A further decrease in additional needed storage capacity is shown in the third column, which takes into account the possibility of transshipment of fuel from one reactor basin to another basin owned by the same utility. The projected values of needed storage capacity in the first and third columns provide a range of upper and lower bound values, respectively. The most likely outcome expected by DOE corresponds to the values in the second column. This was formerly known as the planning base case and is now termed the reference case. All projections shown in the table assume the maintenance of a full core reserve. The magnitude of need for additional spent fuel storage capacity projected by DOE has continued to decline, even though DOE has not assumed the use of newly developed technology, such as fuel rod consolidation.

The cumulative amount of spent fuel to be disposed of in the year 2000 is expected to be 58,000 metric tons of uranium [Spent Fuel Storage Requirements (Update of DOE/RL–82–1) DOE/RL–83–1, published January, 1983]. The additional required storage capacity of 13,000 metric tons of uranium projected in the second column for the year 2000 is less than 25% of the total quantity of spent fuel projected to be in storage. It is expected that additional storage will be provided at the reactor site, with some smaller portion to be moved offsite.

TABLE 1.—ADDITIONAL CUMULATIVE SPENT FUEL STORAGE REQUIREMENTS, OVER AND ABOVE CURRENT AND PLANNED STORAGE AT REACTOR STORAGE BASINS (METRIC TONS OF URANIUM)[1]

	No change in current or planned storage capacity	Use maximum reracking of current and planned storage capacity	Maximum reracking plus transshipment
Year:			
1982	0	0	0
1983	0	0	0
1984	13	13	0
1985	13	13	0
1986	110	110	3
1988	550	490	80
1990	1,500	1,360	310
1995	5,610	5,060	3,000
2000	14,760	13,090	10,370

[1] Spent Fuel Storage Requirements (Update of DOE/RL–82–1) DOE/RL–83–1, published January, 1983.

In response to the Commission's Second Prehearing Memorandum and Order (Nov. 6, 1981) the participants commented on the significance to the proceeding of issues resulting from the DOE policy change on spent fuel storage. The utilities generally limited their written responses to a restatement of the safety of interim storage and an affirmation of the technical and practical feasibility of the alternatives to Federal AFR storage facilities. An implied commitment by industry to implement AFR storage if necessary using one of the several feasible spent fuel storage alternatives is evident from the responses of the utilities, the nuclear industry, and associated groups (i.e., Tr. p. 159).

Based upon the foregoing, the Commission has, then, reasonable assurance that safe independent onsite or offsite spent fuel storage will be available if needed. The technology is demonstrated and the licensing procedures in place. The Nuclear Waste Policy Act establishes a national policy on interim storage of spent fuel and provides for contingency Federal storage capacity to augment that provided by industry. Further, the amount of fuel which may have to be stored in independent spent fuel storage facilities is less than was originally thought.

Reference Notation

The following abbreviations have been used for the reference citations in the Appendix:

PS Position Statement
CS Cross-Statement
PHS Pre-Hearing Statement
Tr. Transaction[*] of January 11, 1982 public meeting with the Commissioners

Participants have been identified by the following citations:

Citation and Participant

AIChE—American Institute of Chemical Engineers
ANS—American Nuclear Society
AEG—Association of Engineering Geologists
AIF—Atomic Industrial Forum, Inc.
—Bech—Bechtel National, Inc.
CDC—California Department of Conservation
CEC—California Energy Commission
CPC—Consumers Power Company
Del—State of Delaware
DOE—U.S. Department of Energy
ECNP—Environmental Coalition on Nuclear Power
GE—General Electric Company
Ill—State of Illinois (PS includes Roy affidavit)
Lewis—Marvin I. Lewis
Lochstet—Dr. William A. Lochstet
Minn—State of Minnesota
MAD—Mississippians Against Disposal
NECNP—New England Coalition on Nuclear Pollution
NfE—Neighbors for the Environment (PS includes papers by Dornsife, Rae, and Strahl)
NRDC—Natural Resources Defense Council, Inc.
NY—State of New York

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[9] DOE's planning-base studies assume maximum basin re-racking at reactors and the maintenance of full-core reserve in reactor basins.

[*] The Commission considers this transcript to be part of the administrative record in this rulemaking. However, the transcript has not been reviewed for accuracy by the Commission on the participants, and therefore is only an informal record of the matters discussed.

OCTLA—Ocean County and Township of Lower Alloway Creek
Ohio—State of Ohio
SC—State of South Carolina
SE2—Scientists and Engineers for Secure Energy, Connecticut Chapter
SHL—Safe Haven, Ltd.
SMP—Sensible Main Power, Inc.
TVA—Tennessee Valley Authority
UNWMG-EEI—Utility Nuclear Waste Managment Group—Edison Electric Institute
USGS—United States Geological Survey
Vt—State of Vermont
Wis—State of Wisconsin (PS includes comments by Deese, Mudrey, Kelly, and Leverance)
UG—The Utilities Group (Niagara Mohawk Power Corp., Omaha Public Power District, Power Authority of the State of New York, and Public Service Company of Indiana, Inc.)

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10 CFR Parts 50 and 51

Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to incorporate the following provisions: (1) The Commission has reasonable assurance that no significant environmental impacts will result from the storage of spent fuel for at least 30 years beyond the expiration of nuclear reactor operating licenses. Accordingly, no discussion of any environmental impact of spent fuel storage for the period following expiration of the license or amendment applied for, is required in connection with the issuance or amendment of an operating license for a nuclear reactor or in connection with the issuance of an initial license or an amendment to an initial license for an independent spent fuel storage installation. (2) Operating nuclear power reactor licensees are required no later than 5 years before expiration of the reactor operating license, to submit for NRC review and approval, their plans for managing spent fuel at their site until the spent fuel is transferred to the Department of Energy for disposal.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634-3295, or Sheldon Trubatch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634-3224.

SUPPLEMENTARY INFORMATION:

Background

By a Notice of Proposed Rulemaking dated October 25, 1979 (44 FR 61372), the Nuclear Regulatory Commission ("Commission" or "NRC") began a generic rulemaking proceeding "to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of." This proceeding became known as the "Waste Confidence" rulemaking proceeding, and was conducted partially in response to a remand by the United States Court of Appeals for the D.C. Circuit. *State of Minnesota* v. *NRC*, 602 F.2d 412 (1979). *State of Minnesota* involved a challenge to license amendments to permit the expansion of spent fuel pool storage capacities at two nuclear power plants. It was contended that uncertainty regarding ultimate disposal of commercial nuclear wastes required the Commission to consider the safety and environmental implications of storing spent fuel in the pools for an indefinite period following expiration of the plants' operating licenses. The Commission had excluded consideration of such long-term onsite storage from the license amendment proceedings, relying on its earlier finding (42 FR 34391, July 5, 1977) that safe permanent disposal of reactor wastes would be available when needed.

The Court of Appeals agreed with the Commission that, in accordance with the "rule of reason" implicit in the National Environmental Policy Act (NEPA), impacts of extended on-site storage of spent fuel need not be considered in licensing proceedings unless such storage was reasonably foreseeable and not merely a theoretical possibility. The Court held, however, that the Commission's statement of reasonable confidence in the timely availability of waste disposal solutions was "not the product of a rulemaking record devoted expressly to considering the question" and furthermore did not address the particular problem whether disposal solutions would be available before the expiration of plant operating licenses. *Id.* at 417. Accordingly, the D.C. Circuit remanded to the Commission for determination "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-2009, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the site beyond those dates." *Id.* at 418. The Court noted that "the breadth of the questions involved and the fact that the ultimate determination can never rise above a prediction suggest that the determination may be a kind of legislative judgment for which rulemaking would suffice." *Id.* at 417. The Court agreed that the Commission "may proceed in these matters by generic determinations." *Id.* at 419. *Accord, Potomac Alliance* v. *NRC*, 682 F.2d 1030 (D.C. Cir. 1982).

Amendment to Part 51

Elsewhere in this issue, the Commission announced the conclusions it reached in the Waste Confidence rulemaking proceeding. The Commission found that there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007-2009. However, some reactor operating licenses may expire without being renewed or some reactors may be permanently shut down prior to this period. Since independent spent fuel storage installations have not yet been extensive by developed, there is then a probability that some onsite spent fuel storage after license expiration may be necessary or appropriate. In addition, the Commission also realizes that some spent fuel may be stored in existing or new storage installations for some period beyond 2007-2009.

The Commission hereby adopts a rule providing that the environmental impacts of at-reactor storage after the termination of reactor operating licenses need not be considered in Commission proceedings related to issuance or amendment of a reactor operating license. This rule has the effect of continuing the Commission's practice, employed in the proceedings reviewed in *State of Minnesota*, of limiting considerations of environmental impacts of spent fuel storage in licensing proceedings to the period of the license in question and not requiring the NRC staff or the applicant to address the impacts of extended storage past expiration of the license applied for. The rule relies on the Commission's generic determination in the Waste Confidence proceeding that the licensed storage of spent fuel for 30 years beyond the reactor operating license expiration either at or away from the reactor site is feasible, safe, and would not result in a significant impact on the environment. For the reasons discussed in the Waste Confidence decision, the Commission believes there is reasonable assurance that adequate disposal facilities will become available during this 30-year period. Thus, there is no reasonable probability that storage will be unavoidable past the 30-year period in which the Commission has determined that storage impacts will be insignificant.

The same safety and environmental considerations apply to fuel storage installations licensed under Part 72 as for storage in reactor basins. Accordingly, in licensing actions involving (a) the storage of spent fuel in new or existing facilities, or (b) the expansion of storage capacity at existing facilities, the NRC will continue to require consideration of reasonably foreseeable safety and environmental impacts of spent fuel storage only for the period of the license applied for. The amendment to 10 CFR Part 51 confirms that the environmental impacts of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following expiration of the reactor or installation storage license or amendment applied for need not be addressed in any environmental report, impact statement, impact assessment, or other analysis prepared in connection with the reactor operating license or amendment to the operating license, or initial license for an independent spent fuel storage installation, or amendment thereto.

The Commission's conclusions with respect to safety and environmental impacts of extended storage beyond expiration of current operating licenses are supported by the record in NRC's Waste Confidence proceeding and by NRC's experience in more than 80 individual safety and environmental evaluations conducted in storage licensing proceedings. The record of the Waste Confidence proceeding indicates that significant release of radioactivity from spent fuel under licensed storage conditions is highly unlikely because of the resistance of the spent fuel cladding to corrosive mechanisms and the absence of any conditions that would provide a driving force for dispersal of radioactive material. The non-radiological environmental impacts associated with site preparation and construction of storage facilities are and will continue to be considered by the NRC at the time applications are received to construct these facilities, which are licensed under NRC's regulations in either 10 CFR Part 50 for reactors or 10 Part 72 for independent spent fuel storage installations. There are so significant additional non-radiological impacts which could adversely affect the environment for storage past the expiration of operating licenses at reactors and independent spent fuel storage installations.

The amendments to Part 51 published here include § 51.23 (a), (b) and (c) as well as conforming amendments in §§ 51.30(b), 51.53 (a) and (b), 51.61, 51.80, 51.95 and 51.97. Paragraph 51.23(a) is a restatement of a final generic Commission determination (elsewhere in this issue) based on the Waste Confidence rulemaking proceeding, while § 51.23 (b) and (c) establish the procedures for implementing that generic determination in individual licensing cases.

Amendment to Part 50

The Commission is also adopting an amendment to 10 CFR Part 50 as set forth here, concerning the management of spent fuel from nuclear power reactors whose operating licenses may expire prior to the availability of a repository. The procedures established by this amendment are intended to confirm that there will be adequate lead time for whatever actions may be needed at individual reactor sites to assure that the management of spent fuel following the expiration of the reactor operating license will be accomplished in a safe and environmentally acceptable manner.

The Commission amends § 50.54 to establish requirements that the licensee for an operating nuclear power plant reactor shall no later than 5 years prior to expiration of the reactor operating license submit plans for NRC review and approval of the actions which the licensee proposes for management of all irradiated fuel at the reactor upon expiration of its operating license. No specific course of action is required of the licensee by the NRC. Licensee actions could include, but are not necessarily limited to, continued storage of spent fuel in the reactor spent fuel storage basin, storage in an independent spent fuel storage installation (refer to 10 CFR 72.3(m)) located at the reactor site or at another site; transshipment to and storage of the fuel at another operating reactor site in that reactor's basin; reprocessing of the fuel if it appears that licensed reprocessing facilities will be available; or disposal of the fuel in a repository. The proposed licensee actions must be consistent with NRC requirements for licensed possession of irradiated or spent fuel (as defined in § 72.3(v)) and must be capable of being authorized by the NRC and implemented by the licensee on a timely basis. The licensee's plans must specify how the financial costs of extended storage or other disposition of spent fuel will be funded. Further, the licensee's plans must describe the proposed disposition of all irradiated fuel from the reactor. The licensee shall notify the NRC of any significant changes to these plans; changes are not precluded provided that the licensee maintains the capability to manage the spent fuel safely.

The Commission notes that extended storage of spent fuel at a reactor beyond the expiration date of the operating license will require an amendment to the Part 50 license to cover possession only of the reactor and spent fuel under the requisite provisions of Parts 30, 50 and 70, or an authorization pursuant to Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation" (ISFSI). This rulemaking does not alter the requirements and provisions of Parts 51 and 72 with respect to the performance of environmental reviews of the impacts of spent fuel storage in an independent spent fuel storage installation or extended storage in a reactor spent fuel pool. This means that the NRC staff will continue to perform environmental reviews before issuing a license under 10 CFR Part 72 or an amendment for extended storage under 10 CFR Part 50. Notice of the receipt of a license application for storage of spent fuel pursuant to Part 72 will be published in the **Federal Register**.

Related Commission Actions

On March 13, 1978, the NRC published an Advance Notice of Proposed Rulemaking indicating that the NRC was reevaluating its decommissioning policy and considering amending its regualtions to provide more specific guidance on decommissioning of nuclear facilities (43 FR 10370). In January 1981, NRC published a "Draft Generic Environmental Impact Statement on Decommissioning Nuclear Facilities" (NUREG-0586). Proposed amendments to 10 CFR Parts 30, 40, 50, 51, 70, and 72 are being prepared by the NRC staff for Commission consideration. The proposed amendments for decommissioning would allow unrestricted use of a reactor or independent spent fuel storage installation site and would permit termination of the license. However, the storage of irradiated fuel either in a reactor basin or in an independent spent fuel storage installation would require restricted access and management of the storage facility to protect public health and safety. Thus, any continued storage of spent fuel beyond expiration of an operating license would be licensed under either Parts 50 or 72 and could preclude final decommissioning of the site.

Analysis of Public Comment

1. Introduction

Proposed amendments to 10 CFR Parts 50 and 51, related to the Commission's Waste Confidence decision, were published in the **Federal Register** (48 FR 22730) for public comment on May 20, 1983. Section 50.54(aa) (formerly identified as § 50.54(x)) proposed to require licensees to submit no later than 5 years before expiration of reactor operating licenses a plan for post-operation management of spent fuel which is onsite at the time of license expiration. Section 51.23(a) (formerly identified as § 51.5(e)(1)) proposed a restatement of the Commission's generic determination in the Waste Confidence decision that no significant environmental impacts will result from onsite or offsite storage of spent fuel up to 30 years after reactor operating license expiration, that there is reasonable assurance that a repository will be available by 2007–2009, and that sufficient repository capacity will be available within 30 years beyond license expiration to dispose of reactor waste and spent fuel. Section 51.23(b) (formerly identified as § 51.5(e)(2)) proposed that the environmental impacts of potential extended spent fuel storage (i.e., storage beyond the period of an existing or initial license) need not be addressed in connection with a reactor operating license or the license for an independent spent fuel storage installation.

Comments were received from 21 respondents to the May 20, 1983 request. In addition to substantive comments discussed below, some commenters questioned: (1) The adequacy of the opportunity to comment on the Commission's fourth finding and supporting documentation; (2) the Commission's compliance with NEPA. In response, the Commission reopened the comment period (48 FR 50746, November 3, 1983). These later comments represent expanded discussions of procedural and environmental issues raised in the May 20, 1983 comment period and the Commission's responses to them are set out in the companion Waste Confidence decision published concurrently with this document. For the reasons discussed there, the Commission found no basis to modify its fourth finding or the related supporting documentation. The participants are identified by the abbreviated citations defined in Section 5 below.

2. Proposed Provisions of 10 CFR 50.54(bb)

a. Timely Submission of Spent Fuel Management Plans

(1) *Summary of Comments.* The proposed rule would require each reactor licensee to submit, no later than 5 years before expiration of the operating license, written notification to the Commission describing the licensee's program for post-operational management of all irradiated fuel which is at the reactor at the time of exporation of the operating license, pending ultimate disposal of the irradiated fuel in a repository.

Some respondents agreed with the proposed notification date (Tol. Ed., UNWMG–EEI p. 3; MP&L). Others believed that the submittal of notification only 5 years before expiration of the reactor operating license was too late; rather, they would require utilities with operating reactors to submit spent fuel management plans within six months of issuance of this rule. For new reactors, these latter respondents advocated submission of plans prior to issuance of an operating license (UCS p. 2; NECNP p. 1; Hiatt) or even sooner (CNPP p. 1). Still others agreed that early planning was essential but did not recommend specific timing for submittal of plans (Wis. p. 2; ISAS p. 1; WED, EPI pp. 1, 2).

Among the reasons advanced for recommending an earlier planning requirement were the following: Industry's alleged record of reluctance to accept its responsibilities for spent fuel storage (Hiatt; ISAS p. 1; EPI p. 1); five years before license expiration the utility's primary concerns would be the massive inventory of spent fuel on hand, possible financial constraints as a result of reduction in the rate base, and the need to concentrate on newer and more long-term generating facilities (UCS, p. 2). UCS remarked that the requirement to submit a management plan near the end of the license term implied NRC might be willing to permit development of onsite semi-permanent storage facilities (UCS p. 2). Other respondents pointed out that earlier planning for spent fuel management is needed because the reactor may be shut down prior to the license expiration date; some plants may be shut down prematurely as a result of accidents or inability to meet newer regulatory requirements, and others may be shut down because of premature aging, steam generator or primary system degradation, or unacceptable severe accident risks (ISAS p. 1; EPI pp. 1, 2). One respondent recommended that the NRC require utilities to prepare spent fuel management plans every 5 years (EPI p. 3).

The Utility Decommissioning Group stated that consideration of premature shutdown due to accidents or other conditions was speculative and irrelevant to the Commission's proposed rule (UDG p. 7). An industry representative commented that the requirement to verify submittals for NRC authorizations was inappropriate since some authorizations would not be needed as early as five years before operating license expiration; an alternative schedule for seeking such authorizations was suggested (AIF, p. 7). Finally, one respondent stated that licensee plans should only address spent fuel management up to the time when the material and title are delivered to DOE for disposal (SE2 p. 4).

(2) *NRC Response.* The Commission believes that the choice of five years prior to operating license expiration represents a reasonable timeframe for licensees to submit their spent fuel management plans.

Delaying a request for such plans until the license expiration is imminent would not permit the timely implementation of alternative actions in the event deficiencies in the plans are identified by the Commission. Time is needed to ensure that the proposed plans are consistent with the licensee's long range plans, such as decommissioning, and that the plans meet whatever requirements are involved in the transfer of title to spent fuel to the Secretary of Energy for disposal in a repository.

On the other hand, the Commission believes that a requirement for a licensee to develop spent fuel management plans a decade or two before license expiration would be unnecessarily restrictive and could even be counterproductive. Such premature plans would be likely to undergo several revisions to accommodate to changing circumstances and their usefulness would be questionable.

Premature shutdown or termination of a reactor's license which results in an unanticipated need for interim storage or disposal arrangements is not expected to be a generic problem. The Commission will consider the consequences of premature termination of operation, should such an event occur, on a case-by-case basis. Even if a reactor shuts down prematurely, it will still be required to comply with license requirements.

Premature shutdown of a reactor could not pose a problem for storage of spent fuel, because intermediate or long-term demands on the spent fuel storage facilities at a shutdown reactor (whether shut down prematurely or because of operating license expiration) will be limited by termination of spent fuel production. Any short-term need for storage would be related to the desirability of maintaining a full core reserve, which is not a safety issue.

AIF's concern that it may be inappropriate for a licensee to apply for all necessary NRC authorizations five years before license expiration has been taken into account by changing the third sentence of the proposed § 50.54(bb) to read "Where implementation of such actions require NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been *or will be* made to NRC and shall identify them." (Emphasis added.)

Under the terms of the Nuclear Waste Policy Act of 1982, the Secretary of Energy will take title to spent fuel at a licensee's facility and transport the spent fuel to a repository for ultimate disposal. Because of this, each licensee's spent fuel management plans need only consider actions to be taken until the time of spent fuel transfer to the Secretary of Energy, rather than until the time of ultimate disposal. The final words of the first sentence of the proposed § 50.54(bb) have been revised to read ". . . until *title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its* ultimate disposal in a repository." (Emphasis added.)

b. Plans for Funding Spent Fuel Management

(1) *Summary of Comments.* The proposed rule would require a licensee's notification to include plans for financing the management of all irradiated fuel upon expiration of the reactor operating license until the ultimate disposal of the fuel in a repository.

Some respondents believed that the funding for spent fuel management should be considered together with funding for decommissioning (e.g., UDG pp. 5–7; UNWMG–EEI, p. 5; Tol Ed; AIF p. 6). They contended that, if funding for spent fuel management were to be addressed separately from decommissioning, the Commission should recognize that utilities generally would be permitted by the rate-making authorities to recover costs associated with extended fuel storage (UDG p. 6; AIF pp. 7, 8). Moreover, since each utility will have to demonstrate to NRC its ability to finance decommissioning—which will involve far greater costs than the maintenance and monitoring of spent fuel storage—the funding required for post-operating license spent fuel management will be assured (UDG pp. 5–7; AIF pp. 7, 8). Others believe that the funding required for post-OL management of spent fuel would be assured because the utilities are financially responsible (UDG pp. 5–7; AIF pp. 7, 8); still others contended that if a utility operates a reactor, it should be required to have adequate funding set aside now to manage the spent fuel (UCS p. 3). On the other hand, some respondents expressed the view that, when the notification of plans is due, a utility might not wish to spend or even retain the funds required for spent fuel management (CNPP p. 1), e.g., Turkey Point, (FUSE p. 2).

(2) *NRC Response.* Following termination of reactor operation, actions to manage irradiated fuel stored on the plant site or to provide for its removal would include activities taken prior to and subsequent to decommissioning. In all cases after operating license termination, continued spent fuel storage at the nuclear power plant site would be subject to licensing under 10 CFR Part 50 or 72.

The suggestion that funding for decommissioning and spent fuel management be considered together would appear to offer no significant advantage. The costs of each are readily separable. Moreover, it is possible that rate-making authorities will treat cost recovery for decommissioning differently from costs of extended spent fuel storage, in which case separation of costs would be necessary. In addition, the scheduling of spent fuel storage and disposal is likely to depend primarily on factors not directly related to decommissioning such as irradiated fuel age, status of disposal facilities and availability of spent fuel transport casks. The Commission also notes that all reactor licensees have contracted with DOE for disposal of their spent fuel; further, any new reactor operating license will require that the licensee have a contract in place with DOE for disposal of all spent fuel generated.

c. Meaning of "Approval" of Plans for Spent Fuel Management

(1) *Summary of Comments.* The proposed 10 CFR 50.54(bb) provides for Commission "review and approval" of the licensee's spent fuel management plans. One respondent noted that there is no indication whether the NRC "approval" would take the form of an order or a license amendment and recommended that the concept of "approval" be eliminated from the rule (AIF pp. 6, 7). Others characterized formal approval as unnecessary (UDG p. 7) and burdensome (UNWMG–EEI, pp. 3–5; Tol. Ed.), or as creating "a new layer of approvals" (SE2 p. 3). It was suggested that the NRC staff review the plans, alert licensees to any deficiencies, and undertake formal approval only when action is taken to implement the plan through license amendments or other regulatory actions (AIF pp. 6,7; UNWMG–EEI p. 4).

(2) *NRC Response.* The Commission's review of each licensee's plans for management and ultimate disposal of all irradiated fuel at the reactor following operating license expiration is intended to assure that each licensee has made adequate advance preparations, including allowance for contingencies, for managing spent fuel in a manner which provides adequate protection of the public health and safety and the environment until it is transferred to the Secretary of Energy for disposal. Because the plans would be developed at least five years prior to operating license expiration, they would be based on the utility's forecast of its future situation. Some utilities may have sufficient uncertainty in their forecasts to preclude an early firm commitment to details of a program for management of spent fuel after operating license expiration. Accordingly, the Commission will consider the notification to be submitted under § 50.54(bb) as a formal expression of intent. The notification is part of an information gathering process which is more specific, but similar in nature to the provisions of § 50.54(f), which states:

> The licensee will at any time before expiration of the license, upon request of the Commission submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended or revoked.

The provisions of § 50.54(bb) may be used by the Commission in determining if it needs to take any further action. The Commission's review will focus on the identification of discrepancies or omissions and its "approval" will signify that, based on the information available at the time of filing the notification, the licensee's plans are sound and will provide adequate protection of the public health and safety and the environment. Between the time the Commission indicates its preliminary approval of the plans and the date of expiration of the operating license, the licensee may propose for Commission consideration modifications or supplementation of its plans. In this way, prior to license expiration, the licensee will have developed a course of action which the Commission has approved as satisfying the regulatory requirements for safety and environmental protection. The plan would then, at license expiration and termination of reactor operation, become part of the conditions of an amended Part 50 license for a shut down reactor facility, or a Part 72 license for storage of spent nuclear fuel following termination of reactor operation.

In order to clarify the Commission's intent that the Commission's approval of the licensee's plans for spent fuel management is not a final approval, the word "preliminary" has been inserted before "approval" in the first sentence of the proposed § 50.54(bb) and the following sentence is inserted after the first sentence: "Final Commission review will be undertaken as part of the proceeding for continued licensing under Part 50 or Part 72."

d. Relationship of Extended Spent Fuel Storage to Decommissioning

(1) *Summary of Comments.* In view of the potential juxtaposition of actions to implement spent fuel management plans addressed in § 50.54(bb) and decommissioning plans, some respondents urged that promulgation of the former be considered in the decommissioning rulemaking (UDG pp. 3–6) or coordinated with the decommissioning requirements (UDG pp. 5–7; UNWMG–EEI p. 5; EPI p. 2; AIF pp. 5, 6; Pilalis p. 2; MSS p. 2). The concerns were that the two rules (§ 50.54(bb) and decommissioning) might be conflicting or duplicative with respect to site access, preferred decommissioning mode, and financing (Pilalis p. 1; AIF pp. 5, 6). The record of the decommissioning rulemaking was cited as providing support for the Commission's determination that the environmental and safety implications of extended storage of spent fuel need not be considered in licensing proceedings (AIF pp. 3, 4; UDG p. 5).

(2) *NRC Response.* Here again, the Commission considers the decommissioning process as a set of actions separate from those discussed in § 50.54(bb). To delay issuance of a rule for extended spent fuel storage in order to combine it with the decommissioning rule which is being developed would serve no useful purpose. The safety and environmental implications of the two processes differ significantly. Specifically, decommissioning involves many more complex considerations than post-OL spent fuel management plans. Although the two activities may overlap in time, they are so different that combining the associated regulatory requirements into a single rulemaking would have no apparent advantage.

Although there is a potential for overlap between the plans submitted in the § 50.54(bb) notification and the decommissioning plans, the overlap is most likely to be limited to scheduling aspects, e.g., situations where the presence of spent fuel in the reactor storage pool must be taken into account when considering decommissioning options. The Commission does not consider the potential for conflict from such overlapping activities to be sufficient to delay the present rulemaking until decommissioning regulations are in place. Clearly the utility must decide which decommissioning option it wishes to choose before operating license expiration. The utility's spent fuel management plans submitted in response to § 50.54(bb) and its choice of decommissioning options, should be consistent. Such consistency may be achieved by modifying either the decommissioning plan, the spent fuel management plan, or both.

3. Miscellaneous Comments

a. Recognition of Yakima Indian Rights

(1) *Summary of Comments.* The Yakimas stated that their sovereign rights cannot be properly protected by generalized rulemaking and that Federal rules must be based upon recognition of their treaty rights (YIN p. 2). They also contended that environmental impact analyses for siting nuclear waste storage and disposal facilities are based on value systems not related to those of affected Indian tribes (YIN, Enclosure 2). The Yakimas believe that environmental impact studies have consistently failed to look beyond the Judaeo-Christian socio-economic heritage and as a result there have been repeated nuisance violations of the sovereign rights guaranteed to the Yakimas by the Treaty of 1855 (YIN p. 2 of Attachment 2).

(2) *NRC Response.* This final rule does not concern repository siting, or the extended storage of spent fuel at any reactor located within the tribal lands. Siting will be considered under procedures laid out by the Nuclear Waste Policy Act (NWPA), DOE siting guidelines, and NRC regulations for high-level waste disposal (10 CFR Part 60). All of these recognize Indian rights in the siting of waste repositories and provide for participation by affected Indian tribes.

b. Extended Length of Time for Storage

(1) *Summary of Comments.* The Environmental Policy Institute states that the Commission may not assume that plants will be able to dispose of fuel in a repository on a schedule reflecting OL termination because the NWPA carries a presumption that significant repository capacity will be taken up by defense waste; moreover, section 135(e) of the NWPA requires that spent fuel in interim Federal storage must be moved within three years of the availability of permanent disposal of storage facilities. Furthermore, EPI notes that DOE proposes in its contracts to give priority to the oldest fuel (EPI pp. 2, 3). Pilalis adds that the contracts give priority to fuel from permanently shutdown reactors.

(2) *NRC Response.* The Commission notes that the various categories (e.g., wastes from commercial or defense activities) of high-level waste and spent fuel are addressed in the NWPA in a manner which assures that they will be dealt with or managed and disposed of with appropriate priorities. The NWPA mandates a Mission Plan from the Secretary of DOE (section 301(a)), which includes:

> . . . an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur, (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal; (section 301(a)(9)).

Thus the intention of the NWPA is to provide adequate repository capacity on a timely basis for all high-level radioactive waste and spent fuel and to take into account the various priorities for disposal established by the Act itself. The Commission notes in its Waste Confidence decision (elsewhere in this issue) that:

> . . . sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel generated up to that time. The Nuclear Waste Policy Act of 1982 establishes Federal responsibility and a clearly defined Federal policy for the disposal of such waste and spent fuel and creates a Nuclear Waste Fund to implement Federal policy. The Act establishes as a matter of national policy that this responsibility is a continuing one, and provides means for the Secretary of Energy to examine periodically the adequacy of resources to accomplish this end (Appendix to the Commission's decision [section 2.2B4]).

In any event, the Commission does not assume, as EPI contends, that plants will be able to dispose of spent fuel in a repository on a schedule corresponding to OL termination. The Commission's second finding states (in part) that sufficient repository capacity will be available within 30 years beyond OL termination. The priority that DOE proposes to follow in its contracts for acceptance of the oldest spent fuel does not affect this situation.

4. Non-Substantive Revisions in the Amendment to 10 CFR Part 51.

Non-substantive revisions were made in the amendment to Part 51 for clarification and to conform to the recently published (49 FR 9352, March 12, 1984, effective June 7, 1984, 49 FR 24512, June 14, 1984) general revision of 10 CFR Part 51 and related conforming amendments implementing CEQ NEPA regulations.

5. Listing of Participants

Respondents to the May 20, 1983 Invitation for Public Comment (48 FR 22730) on the Proposed Amendments to 10 CFR Parts 50 and 51, "Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of the Reactor's Operating License

1. New York Attorney General (NY Atty. Gen.)
2. Floridians United for Safe Energy (FUSE)
3. Toledo Edison Company (Tol. Ed.)
4. Environmental Policy Institute (EPI)
5. Utility Decommissioning Group (UDG)
6. Atomic Industrial Forum, Inc. (AIF)
7. Utility Nuclear Waste Management Group and the Edison Electric Institute (UNWMG—EEI)
8. Wisconsin (Wis.)
9. Middle South Services, Inc. (MSS)
10. Coalition for Nuclear Power Postponement (CNPP)
11. Union of Concerned Scientists (UCS)
12. Indiana Sassafras Audubon Society (ISAS)
13. Yakima Indian Nation (YIN)
14. Wisconsin Environmental Decade (WED)
15. Labros E. Pilalis (Pilalis)
16. New England Coalition on Nuclear Pollution, Inc. (NECNP)
17. Scientists and Engineers for Secure Energy, Inc. (SE2)
18. Susan L. Hiatt (Hiatt)
19. Mississippi Power and Light Co. (MP&L)
20. Department of Energy (DOE)
21. Consolidated Public Interest Representative (CPIR)

Respondents to the Commission's November 3, 1983 Order (48 FR 50746) To Reopen the Period for Limited Comment on the Environmental Aspects of the Commission's Fourth Finding in the Waste Confidence Proceeding

1. Attorney General of the State of New York (N.Y.)
2. Marvin Lewis (Lewis)
3. Sierra Club Radioactive Waste Campaign (Sierra)
4. Scientists and Engineers for Secure Energy, Inc. (SE2)
5. Safe Haven, Ltd. (S.H.)
6. American Institute of Chemical Engineers (AIChE)
7. Atomic Industrial Forum, Inc. (AIF)
8. Utility Nuclear Waste Management Group—Edison Electric Institute (UNWMG–EEI)
9. Natural Resources Defense Council, Inc. (NRDC)
10. Attorney General of the State of Wisconsin (Wis.)
11. U.S. Department of Energy (DOE)
12. American Nuclear Society (ANS)
13. Attorney General of the State of Minnesota (Minn.)

Environmental Impact

This final rule amends 10 CFR Part 51 of the Commission's regulations to incorporate the generic determination made by the Commission at the conclusion of the Waste Confidence rulemaking proceeding that for at least 30 years beyond the expiration of reactor operating licenses no significant environmental impacts will result from the storage of spent fuel in reactor facility storage pools or independent spent fuel storage installations located at reactor or away-from-reactor sites. The detailed environmental analysis on which the generic determination was based can be found in the record at that proceeding published elsewhere in this issue. This rulemaking action formally incorporating the generic determination in the Commission's regulations has no separate independent environmental impact.

The other amendments to Parts 50 and 51 of the Commission's regulations set out in the final rule contain procedures which relate to the submission and review of applications for licenses, license amendments and other forms of permission. The final rule specifies notification procedures applicable to licensee proposals for the management of irradiated fuel following expiration of a reactor operating license and the types of environmental information required to be submitted or addressed in connection with an application for a license or license amendment to store spent fuel at a nuclear power reactor or at an independent spent fuel storage installation after the reactor operating license has expired. Accordingly, these amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(3). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of these amendments.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (approval numbers 3150–0011 and 3150–0021).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants are dominant in their service areas and do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Fire prevention, incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

For the reasons set out in the Preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 51.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 96-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, a new paragraph (bb) is added to read as follows:

§ 50.54 Conditions of licenses.

Whether stated therein or not, the following shall be deemed conditions in every license issued.

* * * * *

(bb) For operating nuclear power reactors, the licensee shall, no later than 5 years before expiration of the reactor operating license, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor upon expiration of the reactor operating license until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository. Final Commission review will be undertaken as part of any proceeding for continued licensing under Part 50 or Part 72. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions require NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

3. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201), secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

4. A new § 51.23 is added to read as follows:

§ 51.23 Temporary storage of spent fuel after cessation of reactor operation—Generic determination of no significant environmental impact.

(a) The Commission has made a generic determination that for at least 30 years beyond the expiration of reactor operating licenses no significant environmental impacts will result from the storage of spent fuel in reactor facility storage pools or independent spent fuel storage installations located at reactor or away-from-reactor sites. Further, the Commission believes there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the year 2007–2009, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(b) Accordingly, as provided in §§ 51.30(b), 51.53, 51.61, 51.80(b), 51.95 and 51.97(a), and within the scope of the generic determination in paragraph (a) of this section, no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the reactor operating license or amendment or initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment or other analysis prepared in connection with the issuance or amendment of an operating license for a nuclear reactor or in connection with the issuance of an initial license for storage of spent fuel at an ISFSI, or any amendment thereto.

(c) This section does not alter any requirements to consider the environmental impacts of spent fuel storage during the term of a reactor operating license or a license for an ISFSI in a licensing proceeding.

5. In § 51.30, a new paragraph (b) is added to read as follows:

§ 51.30 Environmental assessment.

* * * * *

(b) Unless otherwise determined by the Commission, an environmental assessment will not include discussion of any aspect of the storage of spent fuel within the scope of the generic determination in § 51.23(a) and in accordance with the provisions of § 51.23(b).

6. Section 51.53 is revised to read as follows:

§ 51.53 Supplement to Environmental Report.

(a) *Operating license stage.* Each applicant for a license or for renewal of a license to operate a production or utilization facility covered by § 51.20 shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report—Operating License Stage," which will update "Applicant's Environmental Report—Construction Permit Stage." Unless the applicant requests the renewal of an operating license or unless otherwise required by the Commission, the applicant for an operating license for a nuclear power reactor shall submit this report only in connection with the first licensing action authorizing full power operation. In this report, the applicant shall discuss the same matters described in §§ 51.45, 51.51 and 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit. Unless otherwise required by the Commission, no discussion of need for power or alternative energy sources or alternative sites for the facility or of any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b) is required in this report. The "Supplement to Applicant's Environment Report—Operating License Stage" may incorporate by reference any information contained in the "Applicant's Environmental Report—Construction Permit Stage," final environmental impact statement or record of decision previously prepared in connection with the construction permit.

(b) *Post operating license stage.* Each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report—Post Operating License Stage." Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall only address the environmental impact of spent fuel storage for the term of the license applied for. The "Supplement to Applicant's Environmental Report—Post Operating License Stage" may incorporate by reference any information contained in "Applicant's Environmental Report—Construction Permit Stage," "Supplement to Applicant's Environmental Report—Operating License Stage," final environmental impact statement, supplement to final environmental impact statement or records of decision previously prepared in connection with the construction permit or operating license.

7. Section 51.61 is revised to read as follows:

§ 51.61 Environmental report—Independent spent fuel storage installation (ISFSI) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document, entitled "Applicant's Environmental Report—ISFSI License." The environmental report shall contain the information specified in § 51.45 and shall address the siting evaluation factors contained in Subpart E of Part 72 of this chapter. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), no discussion of the environmental impact of the storage of spent fuel at an ISFSI beyond the term of the license or amendment applied for is required in an environmental report submitted by an applicant for an initial license for storage of spent fuel in an ISFSI, or any amendment thereto.

8. Section 51.80 is revised to read as follows:

§ 51.80 Draft environmental impact statement—Material license.

(a) The NRC staff will either prepare a draft environmental impact statement or as provided in § 51.92, a supplement to a final environmental impact statement for each type of action identified in § 51.20(b) (7)–(12). Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.70, 51.71, 51.72 and 51.73 will be followed.

(b) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission, and in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a draft environmental impact statement on the issuance of an initial license for storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel storage only for the term of the license or amendment applied for.

9. Section 51.95 is revised to read as follows:

§ 51.95 Supplement to final environmental impact statement.

(a) *Operating license stage.* In connection with the issuance of an operating license for a production or utilization facility, the NRC staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility, which will update the prior environmental review. The supplement may incorporate by reference any information contained in the final environmental impact statement or in the record of decision prepared in connection with the construction permit for that facility. The supplement will include a request for comments as provided in § 51.73. The supplement will only cover matters which differ from, or which reflect significant new information concerning matters discussed in the final environmental impact statement. Unless otherwise determined by the Commission, a supplement on the operation of a nuclear power reactor will not include discussion of need for power or alternative energy sources or alternative sites or of any aspect of the storage of spent fuel for the nuclear power reactor within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b), and will only be prepared in connection with the first licensing action authorizing full power operation.

(b) *Post operating license stage.* In connection with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement, the supplement to the final environmental impact statement—operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisioins of § 51.23(b), a supplemental environmental impact statement for the post operating licence stage or an environmental assessment as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

10. A new § 51.97 is added to read as follows:

§ 51.97 Final environmental impact statement—Materials license.

(a) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission, and in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a final environmental impact statement on the issuance of an initial license for the storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel storage only for the term of the license or amendment applied for.

(b) [Reserved]

Dated at Washington, D.C. this 22nd day of August, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-23183 Filed 8-30-84; 8:45 am]

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1020

Diagnostic X-Ray Systems and Their Major Components; Amendments to Performance Standard; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 76N-0308]

Diagnostic X-Ray Systems and Their Major Components; Amendments to Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the performance standard for diagnostic x-ray systems and their major components by revising and adding requirements concerning computed tomography x-ray (CT) systems. CT systems are new medical diagnostic tools whose use in the United States has grown significantly in recent years. Because CT systems have many performance features that are unlike conventional x-ray systems, the current performance standard for diagnostic x-ray systems is not entirely appropriate for CT systems. The amendments to the standard address the special characteristics of CT systems.

EFFECTIVE DATE: September 3, 1985, except for § 1020.30(a), (b)(36)(iii)–(v), (58)–(62), (h)(3)(vi)–(viii), and (n); §§ 1020.31 and 1020.32 (introductory texts); § 1020.33(a), (b) and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2), all of which are effective November 29, 1984. For additional information concerning these effective dates, see paragraphs 76 and 78 in the preamble of this document.

FOR FURTHER INFORMATION CONTACT: Joseph Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 1980 (45 FR 72204), FDA proposed to amend the performance standard for diagnostic x-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32) (diagnostic x-ray equipment standard) by revising the current diagnostic x-ray equipment standard and by adding new requirements in 21 CFR 1020.33 concerning CT systems.

When the diagnostic x-ray equipment standard was originally established, CT systems were only in the developmental stage and were not in routine clinical use in the United States. For this reason, FDA did not include in the standard any special provisions for CT systems. The agency has evaluated the standard as it relates to CT systems, has considered the comments on the October 31, 1980 proposal, and has concluded that, because of the special characteristics of CT systems, there are several areas in which the current diagnostic x-ray equipment standard is inadequate or inappropriate for proper control of CT systems. Therefore, the agency is amending the performance standard to address the radiation safety aspects of CT systems.

Interested persons were given until December 30, 1980, to comment on the proposal. In the **Federal Register** of January 2, 1981 (46 FR 111), the agency extended the comment period to January 29, 1981. FDA received 20 comments from interested persons, including individuals, manufacturers, a medical professional society, an industry association, and a regulatory agency. A summary of the substantive comments and FDA's responses are discussed below.

General Comments

1. One comment commends the agency on setting a standard in a difficult area. The comment states that providing performance information about CT systems will make it possible for purchasers of CT equipment to relate image quality to radiation dose and to make more intelligent decisions regarding use of the equipment. Three comments disagree with the proposal, pointing to the inconsistency of the proposed requirements for CT equipment as compared to the requirements for conventional x-ray equipment. These comments argue that manufacturers of CT systems should not be required to provide imaging performance documentation when fluoroscopic and cineradiographic manufacturers are not required to do so, even though fluoroscopic and cineradiographic equipment can deliver a greater radiation dose to the patient than can CT equipment.

The agency acknowledges that the approach taken in this final rule differs from that taken in the diagnostic x-ray equipment standard for conventional x-ray equipment. However, CT systems are a new type of x-ray system. Thus, new approaches are necessary to develop appropriate controls that will protect the public health without unduly constraining a developing, dynamic technology. The agency believes that the most effective means to assure the safe and effective use of CT systems without limiting technological advances in the field is to require disclosure to users of information regarding performance of the system rather than to use an approach that exclusively relies on performance requirements (which approach currently characterizes the performance standard for conventional x-ray systems).

Fluoroscopic systems are controlled by requirements on x-ray field size and alignment and by limits on exposure rates contained in the performance standard or dictated by the image receptor system used. These limits were established based on experience and apply to systems that are essentially similar in design and operation. However, exposure limits for CT systems do not now exist, and it appears impracticable at this time to establish such limits due to the evolving technology associated with CT systems. In addition, the images produced by CT systems appear to improve with increasing system radiation output. FDA concludes that CT users need to be provided information on the radiation dose delivered by a CT system as a function of operating conditions so that they may make appropriate choices of standard or special operating conditions for each system.

Users of CT systems need dose information to inform them of the radiation doses associated with various scanning techniques. The doses to which patients are exposed from computed tomography procedures are not easily measured, and many purchasers are not equipped to make the measurements necessary to characterize the dose distributions resulting from computed tomography. The information that this rule requires that CT system manufacturers furnish to purchasers and users will most efficiently meet the need created by purchasers' and users' inability to make such measurements.

Also, information on the imaging performance of CT systems is needed to assure that the dose information provided for a standard technique or suggested operating technique is meaningful. To require manufacturers to provide dose information, without requiring them also to provide imaging performance information for the same conditions of operation, could result in the selection of the standard technique for the information required by § 1020.33(c), which would produce the appearance of low dose but would not provide imaging performance satisfactory for clinical procedures.

FDA believes that requiring manufacturers to provide dose and imaging performance information is the least burdensome effective approach to promoting the safe use of CT systems. Many manufacturers currently provide this type of information to interested persons but do so by various means.

This final rule standardizes the form and manner by which this information is presented. Although these amendments establish some performance requirements of the type that characterize conventional x-ray systems, FDA believes that greater reliance on standards of performance could unnecessarily restrict the design of new CT systems or require redesign of current models. Therefore, the agency concludes that the information approach should be emphasized.

2. Two comments urge FDA especially to consider the impact of the proposed amendments on users and the States. However, the comments do not specify the type of special consideration desired.

FDA advises that State radiation control officials were provided early drafts of the proposed amendments and were urged to comment on the proposal. No adverse comments or requests for special consideration were received from State agencies. The labeling and user information requirements established in the final rule are intended to provide users of CT systems with essential information, while equipment features to be included on any CT system are intended to provide radiation protection. FDA recognizes, however, that many of the new requirements are not amenable to verification by State radiation control personnel during routine compliance inspections. Thus, the agency is developing an appropriate compliance testing plan and methodology (see also paragraph 44 in this preamble for a related comment).

3. One comment states that CT systems are among the most dangerous and least effectively used radiological technologies in common medical use. The comment points out that FDA does not have the authority to control equipment use and argues that such control is needed to solve the problem. The comment also suggests that, by amending the diagnostic x-ray equipment standard as proposed, FDA would facilitate the acquisition and misuse of CT systems. The comment contends that, in many procedures the radiation dose delivered by CT systems is of the same order of magnitude as the doubling does for leukemia; thus, FDA's action would help to produce a major epidemic of radiation-induced leukemia, cancers, and other diseases in the next 20 years.

The agency does not agree that these amendments will facilitate the acquisition and misuse of CT systems. An informed user is less likely to misuse a CT system than a user lacking the information that the standard will provide. The amendments should increase user awareness of the does delivered by CT systems. Also, the comment's statement regarding the safety and the effective use of computed tomography is not substantiated by scientific data. On the contrary, organizations such as the American College of Radiology have concluded that the diagnostic effectiveness of computed tomography is no longer in question. The comment's evaluation of computed tomography risk (based on 5 rem as the doubling dose for leukemia) has not been supported by valid scientific evidence. Further, the support cited for the comment's contention is replete with news release items and unpublished reports. The few published reports quoted represent the opinion and analysis of a small minority of scientists.

Risk from the use of computed tomography needs to be evaluated against its considerable and well-established benefits. The provisions that this final rule establish only deal with safety and technical effectiveness of CT systems, which is all that a performance standard can address. The standard is aimed at assuring the CT systems will perform as the manufacturers claim and that patients of, and nonpatients near, such systems are protected by minimizing the possibility of accidental exposure and limiting stray radiation. The required dose information (as measured in phantoms) helps to assure technical effectiveness of such systems. These features indeed address the concerns voiced by the comment.

The agency will continue monitoring scientific data on the risk of ionizing radiation associated with diagnostic radiology as such data become available. FDA also will continue its programs designed to encourage reduction of radiation doses while maintaining or increasing the quality and effectiveness of diagnostic radiology in general, including radiation produced by CT systems. However, the agency concludes that the comment has not presented sufficient grounds to warrant a change in the final rule.

4. One comment argues that the proposed amendments would substantially increase the cost of computed tomography equipment with a yield in benefit that is at least unclear.

FDA does not agree with this comment, which was not supported by any data. The comment did not provide any information as to which requirements would add significant costs, nor did it object to the agency's assessment of the economic impact of the proposed rule, which assessment was included in the administrative file on the proposal and available for public review. Although the benefits of the amendments cannot be quantified precisely, many of the requirements implement basic radiation safety principles. Considering the risks and benefits, the estimated costs of the amendments are small. The threshold assessment supporting these conclusions is on file in FDA's Dockets Management Branch (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and is available for public review between 9 a.m. and 4 p.m., Monday through Friday. FDA rejects the comment as speculative.

5. One comment indicates that the degree of verification specified completely ignores the customary pattern of CT system scanningin which the radiologist participates in image production and can identify problems and make adjustments as he or she proceeds with an examination.

FDA believes that, rather than ignoring the crucial role of radiologists, the amendments provide radiologists with information to assist them in the optimal use of CT systems rather than placing design constrains on the equipment itself. The agency disagrees with the comment.

6. One comment states that FDA should require manufacturers to supply with CT systems a list of all documentation and software available for hardware/software diagnosis. According to the comment, this information would allow a greater degree of quality assurance on the various systems.

The suggested information does not relate directly to the radiation safety performance of CT systems. Also, all such information and documentation would not be appropriate for every user of a CT system. Further, FDA believes that availability of information regarding software available for hardware/software diagnosis would be more appropriately a matter for negotiation between the vendor and purchaser during the procurement process. FDA also believes that the quality assurance provisions of the amendments are adequate to address the minimum needs of all users and that it would be inappropriate to include the suggested provision in the final rule.

7. One comment states that FDA should require that CT systems have the capability to determine the area of any region of interest (ROI) in a tomogram. The comment argues that this capability is an important feature in a CT system, with many clinical applications, and manufacturers should be required to provide a method to calculate and display ROI areas. According to the

comment, manufacturers should also be required to specify in the operators' manual the accuracy with which ROI areas may be determined.

FDA acknowledges that a display of ROI areas may be a useful feature in many clinical situations, but the agency concludes that such information is not radiation-safety related. Thus, it would not be appropriate for FDA to establish any such requirement in a performance standard issued under the Radiation Control for Health and Safety Act of 1968. The agency declines to add such a requirement to the standard.

General Definitions

8. One comment notes that, throughout the proposed regulations, "scan" (proposed § 1020.30(b)(59)) and "scan sequence" (proposed § 1020.33(b)(14)) appear to refer to different things, but the definitions do not clearly delineate the difference. The comment suggests that FDA restrict the definition of "scan" to a single tomogram and that FDA define "scan" as "the process of collecting the x-ray transmission data which is necessary to produce a single tomogram. However, a multiple tomogram unit collects data for two or more tomograms simultaneously (i.e., in a single scan)."

FDA advises that it intended the term "scan" to refer to the process of obtaining x-ray transmission data to construct an image or tomogram whereas "scan sequence" refers to a series of scans conducted under preselected conditions of operation. To make clear its intent, FDA has revised § 1020.30(b)(59) in the final rule to define "scan" as "the complete process of collecting x-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms." (See also paragraph 32 in this preamble for a discussion of the revised definition of "scan sequence.")

9. One comment on the proposed definition of "tomogram" (§ 1020.30(b)(61)) suggests that the word "depiction" be replaced by the word "mapping" to add to the specificity of the term "tomogram."

FDA notes that "mapping" is a mathematical term having a meaning that is not appropriate to describe a tomogram obtained with conventional tomographic equipment. The definition of "tomogram" is intended to be a general definition, not restricted to tomograms obtained from CT systems. Therefore, no change is necessary.

10. One comment disagrees with the agency's rationale for using the term "tomogram" to represent the output of a CT system. The comment argues that the term "slice" has been in common usage within the industry for several years and that use of the term "slice" to represent output of a CT system is preferable.

FDA notes that the term "slice," as commonly used by industry, refers to the portion of the body that is scanned for the production of a computed tomography image. In contrast, the term "tomogram" refers to the depiction of the x-ray attenuation properties of a section through a body. The two representations are not the same. "Tomographic plane," however, as defined in § 1020.33(b)(17) of this final rule, is analogous to the term "slice." Even if the term "slice" may commonly be used to represent output of a CT system, the term "slice" does not lend itself to a precise definition, nor does it form an adequate framework for constructing mandatory requirements (see 45 FR 72206). The definitions recommended by a working group of the International Commission on Radiation Units and Measurements (ICRU) specifically include definitions of the terms "tomographic section" and "tomographic plane." They do not, however, include a definition of the term "slice." The nomenclature proposed by ICRU is consistent with this final rule. Therefore, the agency concludes that no change in the definition of "tomogram" is necessary.

Applicability

11. FDA has determined that proposed § 1020.33(a) did not clearly express the agency's intent with respect to new, remanufactured, or reassembled CT systems. The manufacturing process includes actions or activities, such as refurbishing or remanufacturing, to upgrade an electronic product by providing new features or capabilities that were not part of the original design. The agency believes that strict adherence to this principle may be inappropriate for CT systems and, on its own initiative, has revised § 1020.33(a) in the final rule to make clear that the rule applies to newly manufactured and to "remanufactured" CT systems as defined in new § 1020.33(b)(13). FDA advises that a remanufactured CT system is any system which is modified such that the resulting radiation dose and imaging performance of the system become substantially equivalent to any CT system manufactured by the original manufacturer after the effective date of these amendments. Thus, when any CT system previously certified under § 1020.31 or § 1020.32 is so modified, it is considered to be remanufactured, and the modified system becomes subject to the requirements of § 1020.33. This policy will assure that a user who receives any substantially modified CT system will be provided appropriate information regarding the system and that such system will include the performance features required by § 1020.33.

FDA recognizes that subjecting used CT systems to the same requirements that apply to new ones could add to the cost of used CT systems. However, purchasers of used CT systems have the same need for information concerning dose and imaging performance and for the performance required by § 1020.33 as do purchasers of new CT systems. The user benefits from these required features, such as accurate scan increment and indication of the tomographic plane for a CT system, justify the expected costs of bringing used systems into compliance with § 1020.33. The agency intends to evaluate the need to expand the applicability clause of § 1020.33 to include any CT system manufactured prior to the effective date and sold and subsequently reassembled. At the present time, however, these systems will not require certification of compliance with § 1020.33 unless they meet the definition of a "remanufactured system."

To maintain consistency, the applicability paragraph of § 1020.30 also has been revised and renumbered.

12. Two comments on § 1020.33(a) state that §§ 1020.31 and 1020.32 should be revised to exclude CT systems from the provisions of the diagnostic x-ray standard applicable to radiographic and fluroscopic equipment because many CT systems produce digital radiographic images that are used to locate precisely internal anatomical landmarks to enable patients to be positioned accurately for CT scanning. The comments argue that the amendments, as proposed, do not recognize such radiographic "localization" procedures and that it is not clear whether the provisions of § 1020.31 or § 1020.32 would apply to such an imaging mode.

FDA agrees that CT systems should be excluded from the requirements of §§ 1020.31 and 1020.32, and the introductory paragraphs of these sections of the final rule have been modified accordingly. FDA recognizes that many CT systems can operate in a mode which does not produce a computed tomogram. For example, many systems operate in a mode that has been termed "digital radiography" or "scanned projection radiography," and produce an image analogous to conventional projection radiography. The agency did not intend to address this feature of CT systems nor are any of the requirements established by this rule directed to such feature. The provisions established by new § 1020.33 apply only to the computed tomography mode of operation.

FDA did not receive any suggestions for controls on the scanned projection radiography mode of operation, and the agency is not aware of specific adverse experiences associated with this mode of operation that would necessitate controls not currently incorporated into such systems. In view of the continuing development of this feature on some CT systems involving special techniques such as dual energy projection scanning, the agency has not proposed requirements at this time.

X-ray systems that are not CT systems but that provide digital imaging capability continue to be subject to § 1020.31 or § 1020.32. The agency is continuing to assess developments in the areas generally referred to as digital radiography or digital fluoroscopy and will address these areas should the need for additional controls be demonstrated.

CT System Definitions

13. One comment on § 1020.33(b)(1), the definition of "computed tomography dose index (CTDI)," suggests that FDA make clear that the CTDI applies to a single scan. Two other comments observe that the definition as written applies to single tomogram systems only. Another comment indicates that, for a multiple tomogram system, it is not clear to which tomographic plane the dose profile should be referenced.

The proposed definition of CTDI would have applied to systems producing a single tomogram in a scan. FDA has modified the definition ofCTDI (final § 1020.33(b)(1)) to allow for multiple tomogram systems. The CTDI concept is applicable to multiple tomogram systems to describe the average dose resulting from a series of scans where the individual tomographic sections imaged during the scan are adjacent and the increment between scans is the product of the number of tomograms produced in a single scan (n) and the nominal tomographic section thickness (T). When the increment between scans is other than nT, the denominator of the expression for the CTDI has to be modified to correspond to the magnitude of the scan increment.

For multiple tomogram systems, the dose profile is obtained simultaneously for all tomographic sections in a scan. Thus, a dose profile is associated with the scan rather than an individual tomogram or tomographic plane. The planes of the individual tomograms are assumed to be perpendicular to the axis about which the x-ray tube revolves. Based on these considerations and those discussed in paragraph 14 of this preamble, FDA has revised § 1020.33(b)(1) to define CTDI as: the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan; that is:

$$\mathrm{CTDI} = \frac{1}{nT} \int_{-7T}^{+7T} D(z)\,dz$$

Where:

z=position along a line perpendicular to the tomographic plane.
D(z)=Dose at position z.
T=Nominal tomographic section thickness.
n=Number of tomograms produced in a single scan.

This definition assumes that the dose profile is centered around z=o) and that, for a multiple tomogram system, the scan increment between adjacent scans is nT.

14. Several comments support the concept of CTDI. However, these comments argue that it may be difficult to compute the integral if the limits are as proposed (i.e., +/− infinity). The comments suggest that extrapolating to "zero" dose, especially for small-slice thicknesses, may result in misleading CTDI's. These coments recommend that integration be performed over a finite length.

FDA advises that the concept of the CTDI was proposed for its usefulness in estimating the average dose from a typical clinical procedure consisting of a series of adjacent scans. This estimate of average dose is most accurate when the dose profile is integrated over a length corresponding to the product of the number of scans in a procedure and the increment between scans. For large slice thicknesses (approximately 10 millimeters (mm)), there is little difference between integrating the dose profile over the length typical of a procedure, e.g., 10 to 15 times the slice thickness, or integrating the dose profile over the ideal limits of +/− infinity as FDA originally proposed. With the advent of CT systems designed to allow the use of narrow slice thicknesses (a few mm), the concerns of the comment regarding the limits of integration are valid.

Based on measurements on systems providing slice thicknesses of 5 mm or less, the use of integration limits of +/− infinity or any single specified length suitable for large slice thicknesses would not be realistic and would result in overestimation of the average dose from a procedure consisting of a limited number (10 to 15) of adjacent narrow slices. Integration limits of +/− infinity would assume that procedures employing narrow slice thicknesses consist of large numbers of adjacent scans, perhaps as many as 50 to 100 scans. It is more appropriate to integrate over a distance related to the slice thickness. Therefore, the limits of integration in the final definition of CTDI have been changed to specify integration over a length equal to 14 times the nominal tomographic section thickness centered about the dose profile.

The choice of 14 section thicknesses as the length over which integration will be done is influenced by several considerations but is ultimately somewhat arbitrary. For large slice thicknesses, the difference between integration over 14 slice thicknesses and integration over a greater length is small. In addition, typical CT clinical procedures involving the head consist of 8 to 10 adjacent scans, whereas there is some evidence that typical procedures involving the body consist of more than 10 adjacent scans. Adopting the length of 14 slice thicknesses is a compromise that allows the approximation of both modes of scanning in one definition of CTDI. There are only anecdotal data to indicate the number of scans in a typical procedure when the procedure consists of a series of very narrow slice thicknesses such as are currently available on some CT systems. Indeed, there may not be a "typical procedure" when using very narrow slices because such techniques usually follow localization scans and should be limited in number due to radiation dose considerations. FDA chose a length consisting of 14 times the slice thickness to provide a good estimate of the average dose from a series of narrow slices as well as from larger slices.

FDA notes that the CTDI can be obtained by integrating the dose profile for a single scan or by directly measuring the average dose in an interval T at the center of a series of 14 scans spaced by the nominal tomographic section thickness.

15. A comment notes that the CTDI has not been assigned a measurement unit (e.g., rad, Gray).

FDA advises that the CTDI may be expressed in the unit used to describe absorbed dose, the Gray in the revised System Internationale (SI). Because the requirement to state the CTDI is informational, FDA is allowing manufacturers the opportunity to use the older unit, the rad, or both units for describing absorbed dose when communicating dose information to the radiological community where the newer unit is less familiar. No specific requirement on the unit to be used is specified.

16. Several comments on proposed § 1020.33(b)(2) suggest that FDA should clarify the definition of "contrast scale." The comments argue that, in some materials, there is a rapid change in linear attenuation coefficient as a function of effective photon energy and that the effective photon energy can be a function of location in a phantom and of phantom size. Thus, the agency needs to make clear how effective photon energy is established and how the variation of contrast scale versus phantom size or location within a phantom should be specified. According to the comments, pioneer CT systems were operated at high kilovoltage (kVp) because of the limited efficiency of detection of the x-ray beam that limited the signal to the detector. With the advent of larger x-ray beams and more efficient detectors, these system limitations have been reduced, and multiple kVp's that result in large variations in the contrast scale for a CT system are being used.

The agency agrees that the effects of the energy dependence of the contrast scale need to be reflected in the manufacturers' choice of methods for measuring and specifying the contrast scale for each particular system. however, uncertainties or variations in this quantity due to variations in the effective energy of the x-ray beam would be addressed in the description of test methods and statement of maximum deviation required by final § 1020.33(c)(3)(v). Therefore, FDA concludes that a change in the definition of contrast scale is not necessary.

17. Several comments suggest that the term "contrast scale" in final § 1020.33(b)(2) should be changed to "CT contrast scale" to make clear that the term applies only to CT systems.

FDA believes that the addition of the word "computed tomography" or the letters "CT" to the term "contrast scale" would not add any information or clarity to the definition. FDA advises that all definitions in § 1020.33(b) are specific to CT systems. Therefore, no change is necessary.

18. A comment suggests that the definition of "contrast scale" might be generalized as, "the change in linear coefficient per unit change in CT number." Thus, according to the comment, the contrast scale would be a fraction of the CT number and would have a particular value for water but possibly different values for other substances.

The agency notes that to reference the contrast scale and description of system noise to water reflects conventional usage of the term. The comment did not provide any reason or advantage to be gained by deviating from this convention. Therefore, the agency rejects the comment.

19. One comment on proposed § 1020.33(b)(4) suggests that "CT number" should be defined more precisely, e.g., to state how it relates to x-ray attenuation.

FDA does not believe that it would be useful to try to define "CT number" more precisely because there is not any unique relationship between the CT number and x-ray attenuation. The agency rejects the suggestion.

20. Two comments suggest that FDA delete from § 1020.33(b) its proposed definition of "dose." The comments argue that any definition of the term "dose" should be included in § 1020.30(b) and should be the definition recommended by ICRU.

FDA believes that a definition of the term is needed to attach an explicit meaning to "dose" when it is used with respect to CT systems. However, FDA agrees that it should be included in § 1020.30(b) because it also is applicable to other diagnostic x-ray systems. FDA also agrees that ICRU's established definition should be adopted. Therefore, the agency has removed and reserved proposed § 1020.33(b)(5) and has added the revised definition of "dose" in new § 1020.30(b)(62).

21. Two comments on § 1020.33(b)(6) suggest that this definition should be entitled "CT dosimetry phantom," rather than "dosimetry phantom" as proposed.

Although, as discussed in paragraph 17 of this preamble, all definitions in § 1020.33(b) apply to CT systems, the agency agrees with this suggestion because the CT dosimetry phantom defined in final § 1020.33(b)(6) is specifically designed for use with CT systems, whereas dosimetry phantoms are used for determining doses delivered by other x-ray systems. FDA has revised the term accordingly.

22. On its own initiative, FDA has incorporated into final § 1020.33(b)(6) a description of standard CT dosimetry phantoms. At the time FDA issued the proposed amendments, the agency intended to describe the standard CT dosimetry phantoms in a separate FDA publication to be made available to interested persons (see 45 FR 72206). Proposed § 1020.33(b)(6) referred to the separate document for the description and suggested design for phantoms to be used to measure and report dose information. The agency has reconsidered the matter and has concluded that it is appropriate to include the description within the standard, which will obviate the need for interested persons to refer to a separate document for the description. The document "Standard Computed Tomography Dosimetry Phantoms" (Ref. 1 in the proposal) will not be issued at this time.

23. Two comments on § 1020.33(b)(7) suggest that this definition be entitled "CT dose profile," rather than "dose profile" as proposed. The comments also suggest that the word "tomographic" in the proposed definition be changed to read "CT." The comments also ask whether the profile should be measured in air or at a specified location within a phantom.

As discussed in paragraph 17 of this preamble, the definitions in § 1020.33 apply only to CT systems. Therefore, it is unnecessary to specify or explicitly use the term "computed tomography" or "CT" with each definition included in § 1020.33(b). A dose profile may be measured in any material or media and is not restricted to any particular line. To obtain the dose information that § 1020.33(c) requires be provided with a CT system necessitates measurement of the dose in the standard CT dosimetry phantom and that dose profiles be obtained along lines parallel to the axis of rotation of the phantom and perpendicular to the tomographic plane. To make clear its intent, FDA has revised final § 1020.33(b)(7) to read: " 'Dose profile' means the dose as a function of position along a line."

24. One comment on § 1020.33(b)(9) argues that, as proposed, the definition of "multiple tomogram system" may include a system producing several images in a single sequence while performing a function such as dynamic scanning. The comment suggests that the word "simultaneously" should be added after "tomogram" if the agency intended to exclude such a system.

FDA agrees that the suggested change would clarify the definition. Therefore, the agency has revised § 1020.33(b)(9) to read: " 'Multiple tomogram system' means a computed tomography system which obtains x-ray transmission data simultaneously during a single scan to produce more than one tomogram." (See also paragraph 13 of this preamble for a related comment.)

25. One comment on § 1020.33(b)(10), the definition of "noise," states that the concept of noise may be simplified by defining it in terms of only the standard deviation of the CT numbers. The comment argues that the standard

deviation is simpler and is perfectly adequate for noise comparative purposes because the multiplicative contrast scale in the proposed definition is approximately the same (except for minor changes produced by differences in the beam quality of the scanners) for all CT systems. Besides the obvious advantage of eliminating the need to perform the calculations set forth in the proposed definition, use of the standard deviation of the CT numbers would be more directly applicable for assessing limitations due to noise fluctuations in the familiar CT number scale, according to the comment. The comment suggests that, because the images are clinically evaluated in terms of CT numbers and CT number differences, the noise should be expressed in these same units.

FDA does not agree that the multiplicative factor of the contrast scale is "approximately the same" for all CT systems. Because CT systems are not required to and do not use the same contrast scale, the definition of "noise" as proposed is necessary if that term is to be at all useful in describing the performance of different models of CT systems having different contrast scales. Therefore, FDA declines to revise the definition.

26. A comment on § 1020.33(b)(10) suggests that, because the contrast scale and attenuation coefficient may be dependent upon the conditions of operation of a CT system, FDA should include these factors as explicit elements of the definition. This comment notes that the proposed definition of noise would include fixed pattern fluctuations in the CT numbers (analogous to structure mottle in radiographic screens) as well as fluctuations dependent upon the x-ray beam; under such conditions, "noise" would not be a single function of dose, according to the comment.

The agency advises that noise and the other characteristics that describe system performance are functions of the system's conditions of operation. Thus, if the agency specifies any of these characteristics, it also needs to specify the contitions of operation. With regard to the information required by the new standard to be provided for CT systems, noise shall be specified for the same conditions of operation as the dose information. There is no need to specify the conditions of operation in the definition of any of the performance parameters. Therefore, a change in final § 1020.33(b)(10) is not necessary.

27. Several comments on § 1020.33(b)(11), the proposed definition of "nominal slice thickness," point out that FDA elsewhere rejected the terms "slice" and "slice plane" presumably because the terms cannot be precisely defined, yet FDA proposed to define "slice" in § 1020.33(b)(11). These comments suggest that, for consistency's sake, the word "slice" in the heading of § 1020.33(b)(11) should be replaced by "tomogram."

The agency notes that the comments received regarding the proposed definition of "nominal slice thickness" and related definitions illustrate the difficulties in attempting to develop standard nomenclature useful for regulatory purposes where a strong consensus as to the preferred terminology does not exist. Some persons have adopted terminology from conventional radiography, particularly tomography, while others use terms invented or adapted especially for computed tomography. In considering the definitions to be included in the standard, the agency followed common usage where possible. However, some definitions or sets of definitions that have been proposed by various authors, comments, or standards groups are inappropriate because they lack the precision or definitiveness required for regulatory usage. In this instance, terms are needed to describe and differentiate between the image produced by the CT process and the portion or section or an object whose properties are reflected in the image produced. The proposed definitions in § 1020.33 used the term "tomogram" to describe the image produced by computed tomography in the same sense as in conventional tomography. However, FDA did not attempt to designate that portion of an object being imaged by the CT process, although reference is made to the thickness of the region imaged.

Two other concepts underlying the amendments need clarification. These are the terms used to refer to the thickness of the section whose properties contribute to the CT image. The thickness of the imaged volume is reflected in the quantity which has commonly been called the "slice thickness," which usually has been specified by manufacturers of CT systems as a technique of operation selectable by the user. This term generally is used to denote the distance by which the patient is translated between consecutive scans to obtain complete imaging of a region of the body.

The "section thickness" or "slice thickness" also is embodied in the concept of the width of the "sensitivity profile" or "axial response function." The width of the sensitivity profile should bear some relation to the value used for section thickness, although the relationship has not been uniform among manufacturers. Several comments objected to the idea of standardizing this relationship but did not explain any basis for their objections. The agency concludes that a uniform method of relating the width of the sensitivity profile to the value used for the nominal tomographic section thickness is necessary for the nominal tomographic section thickness to be a useful description of system performance. Use of a standard specification could require changes in the designated section or slice thickness of some current models of CT systems. Based on these considerations, the agency concludes that the proposed term "nominal slice thickness" would be inappropriate and in final § 1020.33(b)(11) uses the term "nominal tomographic section thickness." FDA also has added new § 1020.33(b)(18) to define "tomographic section."

28. Another comment on § 1020.33(b)(11) notes that it may be beneficial not to restrict the definition of "nominal slice thickness" (nominal tomographic section thickness) to measurements at the center of the volume. Several comments state that changing the value of the "nominal" slice thickness setting at the operator control console frequently changes the separation of the x-ray beam collimators and the corresponding FWHM (full width half maximum) of the sensitivity profile, which may or may not be equal to the nominal setting. For this reason, the comments suggest that "nominal slice thickness" should be stated as "sensitivity thickness" or "sensitivity FWHM."

FDA disagrees. In specifying that the tomographic section thickness be measured at the center of the tomographic section, FDA has chosen an appropriate compromise location for measuring this parameter. The tomographic section thickness as determined from the sensitivity profile varies as a function of location in the tomographic plane. The term "nominal" is applied to the tomographic section thickness at the center of the tomographc section to indicate the variability of the section thickness.

29. Two comments on proposed § 1020.33(b)(11) argue that FDA should avoid specifying the percent of the sensitivity profile at which the nominal slice thickness is defined. The comments suggest that the definition should extend to the thickness of the tomographic plane (cut thickness) only and the percent of the sensitivity profile at which it is specified should be provided by the manufacturer. These comments also suggest that terms such as "cut

"thickness" and "cut level" should be defined.

The agency concludes that restricting the definition in the manner proposed by the comments would result in a nonuniform method of measurement. The agency also believes that it is inappropriate to define all the terms in use in the field; only terms that are used in the regulations need to be defined. Therefore, the agency rejects the comments.

30. One comment on proposed § 1020.33(b)(12) suggests that FDA define more precisely the term "picture element." The comment argues that a tomogram can be regarded (and defined, if desired) as a mapping of certain x-ray attenuation data (CT numbers). Specifically, the comment suggests that a picture element be defined as a square of area alpha centered on a map point, where alpha is the reciprocal of the number of map points per unit area of body cross section. Two other comments argue that the word "PIXEL" should be included in the definition as an acronym for picture element because it has become an accepted and frequently used acronym for the term "picture element."

The agency does not believe that "picture element" needs to be more precisely defined. The word "elemental" means a fundamental unit incapable of being further subdivided and is an adequate description. The acronym "PIXEL" is not required as it is not used in the standard. Furthermore, the definition established by § 1020.33(b)(12) is similar to the definition proposed by a working group of ICRU. Therefore, the agency concludes that it should not modify the definition as suggested. (See also paragraph 72 in this preamble for a related comment.)

31. One comment on proposed § 1020.33(b)(13), the definition of "scan increment," suggests that the phrase "between successive scans" be inserted between "system" and "measured" for clarity. The comment implies that "scan" has the more restricted meaning.

The agency agrees that the suggested change may clarify the definition and has revised final § 1020.33(b)(14) accordingly.

32. One comment on proposed § 1020.33(b)(14), the definition of "scan sequence," notes that one could conceive of a sequence of many scans in which the CT conditions of operation were automatically varied during the sequence. The comment argues that such automatic variations of x-ray parameters are commonly employed in angiography of the legs, and the agency's definition should not be unduly restrictive.

The agency agrees that the conditions of operation of a CT system could vary in a predetermined manner during a preselected series of scans comprising the scan sequence. Therefore, the agency has revised § 1020.33(b)(15) in this final rule to read: " 'Scan sequence' means a preselected set of two or more scans performed consecutively under preselected CT conditions of operation."

33. Two comments on proposed § 1020.33(b)(15), the definition of "sensitivity profile," argue that the proposed definition is incomplete. These comments suggest that the phrase "to a test point" be inserted between "CT system" and "as a function."

FDA previously considered using a phrase similar to that suggested in these comments but concluded that such wording is not necessary to define the parameter. Including the suggested phrase would allow the interpretation that the sensitivity profile of a CT system is to be measured using a small test point positioned across the x-ray field. The test method used to determine the sensitivity profile may be at the discretion of the manufacturer but is required to be documented in the information provided to the user of a CT system. Therefore, the agency concludes that the definition of "sensitivity profile" should be retained as proposed, and final § 1020.33(b)(16) so provides.

Information To Be Provided to Users

34. One comment on § 1020.33(c) suggests that the standard should allow required information to be provided in a separately bound volume that would be referenced in the user's manual.

The agency agrees that it would be appropriate to allow the technical and safety information required by § 1020.33(c) to be included in a separate manual. Therefore, the agency has revised the last sentence of the introductory paragraph of § 1020.33(c) to read: "This information shall be identified and provided in a separate section of the user's instruction manual or in a separate manual devoted only to this information."

35. Another comment on § 1020.33(c) argues that manufacturers should state the allowable variations in the conditions of operation, such as x-ray tube potential, current, etc., or the allowable variations in output performance but that it is not necessary to specify both variables. The comment states that some CT systems have ony a single kVp value that is used for all procedures. Beam quality for such systems can be adjusted to suitable values by selectable filters without changing kVp, according to the comment. Therefore, because the definition of technique factor accuracy is only a means to control dose and image quality, specifying the allowable variations in dose and image quality (CT conditions of operation) precludes the need to use technique factor accuracy as a compliance parameter for CT systems. The comment recommends that the introductory sentence in proposed § 1020.33(c) be revised to read: "Each manufacturer of a CT x-ray system shall provide the following technical and safety information, in lieu of that required under § 1020.30(h)(3)(vi) and (vii) of this chapter, to purchasers * * *."

The agency advises that imaging performance information is required to be provided only for suggested standard conditions of operation, not for the entire range of system operating conditions. The information that § 1020.33(c) requires be provided to users will not address the accuracy of technique factors over the entire range of system operation. Although the need for technique factor accuracy in most CT applications may be less than the need for consistency of output, there are applications such as bone mineral determinations or dual energy scanning for which accuracy of technique factors may be of concern. Until further information is available on this question, the agency is retaining the requirement as proposed. The requirement for technique factors accuracy is currently under review for all x-ray equipment as part of FDA's program for retrospective review of the diagnostic x-ray standard (see 47 FR 51710; November 16, 1982; also see 49 FR 2918; January 24, 1984), and the agency will consider the suggestion as part of this review.

36. Several comments on § 1020.33(c)(2) suggest that the dose information measurements be made by using dosimetry phantoms without patient supports and attenuation material in the beam. The comments argue that the normal patient support and attenuation materials vary from facility to facility depending on the clinical needs of the facility. Thus, according to the comments, measurements taken without the patient support and other attenuators would be more readily reproducible by a facility than would measurements taken under the conditions proposed by FDA. Also, because of the differences in the design of a patient support (to which a patient tends to conform) versus a dosimetry phantom, the dose information obtained with patient supports may be misleading. These comments conclude that, because dose measurements in a

phantom are not directly transferable to human dose distribution or to clinical image quality, the ability to reproduce measurements provided by the CT system manufacturer is more important than measurements simulating clinical scanning.

The requirements in § 1020.33(c)(2) are intended to provide users of CT systems with information on the radiation doses delivered to standard phantoms. FDA recognizes that the doses to a phantom do not correspond directly to doses to a patient. However, the doses measured in the phantoms provide an indication of the magnitude of the doses that would be delivered to patients and of the changes in doses as a function of changes in conditions of operation.

The agency concludes that, because of the variability in patient bolusing and supporting devices, the dose measurements should be made with the phantom placed on the normal patient couch, tabletop, or support device but without any other attenuating materials used. Therefore, the agency has revised the last sentence of § 1020.33(c)(2) to read: "All dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuating materials present."

37. Two comments disagree with FDA's representation in the preamble to the proposal that dose information obtained using standard dosimetry phantoms would be indicative of the magnitude of doses to be expected in patients under the same set of conditions and system operation (see 45 FR 72207). The comments argue that this claim has not been substantiated scientifically and urge FDA to state in the final rule that the phantom dosimetry is not a precise indicator of the dose delivered to any particualr patient.

FDA does not contend that the dose information to be provided by use of standard dosimetry phantoms will be a precise measure of the dose to each patient, nor did it so contend in the proposal. The dosimetry phantoms allow radiation dose to be measured in a standard manner, and the resulting dose information will demonstrate the variation in dose as a function of system conditions of operation. User information provided by manufacturers should fully explain the limitations of the dose information provided and clearly state that the data are from measurements in cylindrical phantoms and will not correspond exactly to patient doses. The required dose information is obtained using standard cylindrical phantoms and is only indicative of the doses delivered to patients under similar conditions. The exact dose delivered to a particular patient will vary depending on conditions of operation and patient variables. FDA concludes that it is not necessary to make any changes in the regulations to disclaim precision of the dose information.

38. One comment on proposed § 1020.33(c)(2) and the draft publication describing standard phantoms (see paragraph 22 of this preamble) suggests that the standard spell out in more detail the dose that is to be specified in user information. The comment also recommends that the standard dosimetry phantoms should be composed of polystyrene rather than polymethylmethacrylate (PMMA) and argues that polystyrene allows for more precise measurement of dose through the use of ionization chambers that can also be made from polystyrene-equivalent materials.

FDA intends that the dose information provided in accordance with § 1020.33(c)(2) would be the absorbed dose in the phantom; i.e., the dose in PMMA. The agency chose PMMA in lieu of polystyrene because of fabrication considerations. The former is less expensive and easier to machine. The differences in attenuation properties between the two materials and muscle tissue are not significant for the purpose of the final rule.

39. One comment notes that the thermoluminescent (TLD) dosimetry phantom may not be necessary because CTDI can be measured using a long pencil-type (integrating along the patient's axis) ionization chamber.

FDA does not agree that the TLD dosimetry phantom is not necessary. Although the CTDI may be measured with a long ionization chamber, a phantom is necessary to obtain the dose measurement. The regulations leave the choice of instrumentation for measuring the dose to the manufacturer but require the dose to be measured using the standard CT dosimetry phantoms specified in these regulations.

40. One comment states that FDA should require manufacturers to provide a computer readout of estimated dose (and estimated deviation) for given factors, serial scans, and patient size.

FDA disagrees. Although it may be feasible for a computer readout of estimated dose to furnish users with information on the dose delivered by a CT system, the comment did not provide any reason why FDA should require this information as part of the standard. It is not clear that users need dose information for every scan performed by a system. Dose information would be important when standard techniques are being established or when significant deviations from standard practice are considered. FDA concludes that the information required by the amendments is sufficient to promote safe use of CT systems.

41. One comment objects to setting upper limits of dose and stressed that physicians should select the dose as necessary to meet individual needs.

The agency advises that the final rule does not establish upper limits on CT system doses. Therefore, a change is not necessary.

42. Another comment notes that, to comply with the regulations, the CTDI would have to be evaluated at least 28 times for a CT system that operates with multiple x-ray tube potentials or current levels and allows multiple scan times, slice thicknesses, and head and body scans. The comment states that a CT system user needs information concerning only the maximum single slice and maximum multiple slice dose for the typical head scan and the typical body scan (4 dose values); any other conditions could be estimated because accuracy of dose information is not very important, and the regulations are intended only to help the user "estimate" the radiation hazard.

FDA agrees that several evaluations of dose are necessary for each model of a CT system to establish the variation in dose as a function of system conditions of operation. However, this needs to be done only once for each model. The resultant information provided to users will permit the estimation of dose versus technique factors that the comment suggests. The agency disagrees with the implication that the number of dose evaluations needed to comply with the provisions of the standard are excessive.

43. Two comments argue that, although the CTDI is an important dose indicator, simple statements of various maximum point doses may be more useful. The comments indicate that the CTDI should be included in user information, but the maximum point dose (and its relative distribution for typical modes of operation) is the relevant measure needed by the physician using a CT system. These comments suggest that other dose descriptors may be more useful than the multiple scan average doses along lines parallel to the axis of rotation of the CT system (the information expressed by the CTDI).

The comments provide no data or other evidence to support their argument. The "maximum point dose" may be highly localized, as in the case of a 360° scanner, which rotates more than 360°, resulting in some regions of the body being irradiated twice during a scan. The "maximum point dose" does not indicate the dose received by the majority of the volume of tissue imaged or exposed to radiation. A consensus as to what dose information is most useful to users of CT systems does not exist. The agency believes that, once understood by users, the multiple scan average dose for the locations specified will be a useful and relevant description of doses resulting from CT systems. However, the final rule does not prohibit manufacturers from also providing information regarding maximum point doses. FDA concludes that manufacturers should be required to state the CTDI, and the final rule so provides.

44. A comment notes that the proposed requirements would not be readily adapted to field testing for compliance by State inspection programs. The comment argues that the proposed CTDI would be difficult to measure with instruments currently available to State compliance inspectors and urges FDA to develop information to help State inspectors verify CTDI's.

FDA agrees that field testing by State radiation control personnel may not be feasible for many of the requirements established for CT systems. The agency is currently developing an appropriate compliance testing strategy for CT systems; techniques for field testing will be developed where appropriate.

45. One comment concurs with the use of CTDI as a dose description and expands on the agency's description of the "useful features" of the CTDI (see 45 FR 72207). The comment recommends that FDA limit the maximum allowable misalignment of a CT system by requiring that the CTDI be less than or equal to the product of some number N (where N can be chosen to be 2.0, 2.5, or 3.0) and the maximum dose in a phantom.

The comment provided no evidence to show why the suggested criteria should be used to limit CT system performance or what the effect of such limits would be on image quality for various CT system designs. In view of the uncertainties about how existing CT system designs relate to the proposed criteria, FDA concludes that it is appropriate to retain the proposed approach of providing dose information without imposing limits on the dose delivered. Purchasers of CT systems may evaluate the relationship between CTDI and the maximum dose and use this information in their purchase decisions without FDA imposing a requirement of the kind suggested.

46. On its own initiative, FDA has incorporated into the amendments in § 1020.33(c)(2)(i) the measurement locations in the CT dosimetry phantom for determining CTDI. At the time of the proposal, FDA intended to describe the standard CT dosimetry phantom and specify the dose measurement locations in a separate FDA publication to be made available to interested persons (Ref. 1 in the proposal). As stated in paragraph 22 of this preamble, the agency has concluded that it will be more useful to include this information in the regulations rather than in a separate document. Section 1020.33(c)(2)(i) is revised accordingly.

47. One comment questions the provision in proposed § 1020.33(c)(2)(ii) that, as each individual CT condition of operation is changed, "all others shall be maintained at the typical values" required by § 1020.33(c)(2)(i). The comment notes that some equipment is designed so that a change of one CT condition of operation automatically causes a change in one of more other conditions; e.g., decreasing the x-ray tube potential may automatically increase the tube current to maintain sufficient dose for proper imaging. The comment suggests that only the independent conditions of operation need to be held constant and recommends that § 1020.33(c)(2)(ii) be revised to require only that, as each individual condition of operation is changed, other "independent" conditions be maintained.

FDA agrees with the comment. Dependent variables should be clearly identified by the manufacturer and explained to users to allow accurate estimation of changes in dose as a function of changes in system operating conditions. The agency has revised the third sentence of § 1020.33(c)(2)(ii) accordingly.

48. One comment argues that it is unnecessary to express results in terms of a normalized CTDI as proposed. The comment also asserts that proposed § 1020.33(c)(2)(ii) is difficult to understand as written and suggests that it should be revised to read: "the relative CTDI for the central location of the dosimetry phantom for each selectable rate and duration of x-ray exposure. The other conditions of operation are to be kept at the typical values described in paragraph (c)(2)(i) of this section. The CTDI is to be normalized to the value specified in paragraph (c)(2)(i) of this section for the central location. When there are more than two rate and duration selections, only the maximum and minimum CTDI need be given."

FDA disagrees with the suggested revision. Users need information that describes each independent condition of operation that affects the magnitude of the radiation dose delivered with all other independent technique factors held constant. The suggested provision would not convey the intent of the requirement and would not result in the necessary information being provided. The normalized CTDI is needed for convenience in calculating or estimating the resulting multiple scan average radiation dose when conditions of operation other than the standard conditions of § 1020.33(c)(2)(i) are used.

49. One comment on § 1020.33(c)(2)(iii) suggests that providing a direct CTDI value rather than a normalized value would be more meaningful to users of CT systems. Also, the comment states that the third sentence of proposed § 1020.33(c)(2)(iii) is unnecessary because it is redundant to § 1020.33(c)(2). The comment suggests that § 1020.33(c)(2)(iii) be revised to read: "The CTDI, at the location 1 centimeter interior to the phantom having the maximum CTDI in § 1020.33(c)(2)(i), for each selectable value of peak tube potential. When more than three values can be selected, the CTDI shall be given for the minimum, maximum, and a typical value of peak tube potential."

FDA believes that, for convenience in estimating the change in doses when several independent technique factors are varied from the standard values simultaneously, the normalized values of the CTDI will be more useful than would the suggested direct value. The normalized values would have to be calculated as a first step in any dose estimation procedure. Thus, FDA concludes that it should retain the requirement that CTDI be provided as a normalized value. However, to clarify the requirement, FDA has revised the last sentence of proposed § 1020.33(c)(2)(iii) and redesignated it as the second sentence to read: "When more than three selections of peak tube potential are available, the normalized CTDI shall be provided, at least for the minimum, maximum, and a typical value of peak tube potential." The agency agrees that the third sentence of proposed § 1020.33(c)(2)(iii) is redundant and has removed it from the paragraph.

50. Two comments on § 1020.33(c)(2)(iv) suggest that the dose profile should be reported at the location coincident with the maximum CTDI at 1 centimeter (cm) interior to the surface of the dosimetry phantom rather than at the center of the phantom as proposed by FDA. The comments argue

that, because of scatter radiation, the dose profile at the center of the phantom would make a well-collimated system appear to be poorly collimated. The comments assert that the dose profile obtained at the maximum dose location would best reflect the system collimation efficiency in that, as the profile is obtained nearer the center or exit side of the phantom, the increasing scatter radiation contribution to the dose profile distorts the profile.

FDA agrees that the dose profile will be the narrowest on the source side of the phantom. Such a profile would not reflect the thickness of the irradiated volume for a highly divergent beam. The profile measured at the center of the phantom is more reflective of the average thickness of the irradiated volume. Although a comparison of dose profiles and axial sensitivity profiles provides an indication of collimation efficiency, this comparison should be done at the center of the phantom where the volume irradiated by scatter radiation is reflected in the width of the profile. If FDA intended that manufacturers examine the collimation efficiency by only comparing the beam profile with the sensitivity profile, it would have provided that the measurement of intensity be made with an air equivalent phantom to reduce the effects of scatter. However, this is not the case. FDA intends that manufacturers provide information on the width of the irradiated volume from a single scan. Because scatter radiation contributes to this irradiation, the measurement should be made at the center of the dose phantom with scatter radiation contributing to the dose profile as it would under actual use conditions. FDA advises that the final rule allows manufacturers to provide additional information comparing dose and axial sensitivity profiles at locations other than the center of the phantom, but the agency declines to require that such information be provided.

51. One comment on proposed § 1020.33(c)(2)(vi) pointed out that, contrary to the statement in the paragraph, measurement protocols for determination of compliance were not described in the draft publication describing standard phantoms (Ref. 1 in the proposal).

The comment is correct. The agency has removed proposed § 1020.33(c)(2)(vi) from the final rule. As stated in paragraph 22 of this preamble, the document, "Standard Computed Tomography Dosimetry Phantoms," will not be issued at this time.

FDA's policy is to make measurement procedures available to the public by announcement of their availability in the **Federal Register**. The agency is developing a compliance testing program to support the amendments established by this final rule. When developed, FDA will make the procedures available for public review.

52. On its own initiative, the agency has revised the introductory paragraph in § 1020.33(c)(3) to amplify and clarify the meaning of the phrase "and all other aspects of data collection" as it applies to imaging performance information to be provided to users and to provide that such "other aspects" need only be "similar" to those used to provide dose information under § 1020.33(c)(2)(i). FDA intends that the conditions under which imaging performance information is obtained correspond closely to the conditions under which dose information is obtained. Such conditions would include use of a phantom or test device that has x-ray attenuation properties in the imaged tomographic section similar to those of the corresponding dose phantom. For the imaging performance parameters to be meaningful, they need to be obtained with phantoms that reflect realistic x-ray attenuation conditions, and FDA has revised § 1020.33(c)(3) so to provide.

By providing that the x-ray attenuation properties of the material in the tomographic section approximately correspond to those of the CT dosimetry phantom, FDA has left the choice of the design or construction of phantoms for determining the imaging performance to the manufacturer so long as the design and construction provide "similar" x-ray attenuation properties. It is not appropriate to describe precisely the imaging phantoms due to a lack of standardization in this area. However, it is appropriate that imaging phantoms have x-ray attenuating properties which differ from those of the dosimetry phantoms by no more than 20 percent. The agency will deem phantoms which have imaging properties that differ from those of dosimetry phantoms by no more than this to be "similar" as that word is used in § 1020.33(c)(3). Variations in phantom design, shape, dimensions, and materials prevent a more precise requirement at this time.

53. One comment on proposed § 1020.33(c)(3)(i) recommends that the statement of "noise" to be provided as part of the image performance information include the location within the image in which the measurement is made, the number of picture elements used in computing the "noise," the area of each picture element, and disclosure of whether the area used for the measurement of "noise" is circular or square.

The agency advises that the information referred to in the comment is part of the "test protocol or procedure" to be provided in accordance with § 1020.33(c)(3)(v). A change in § 1020.33(c)(3)(i) is not necessary.

54. One comment on proposed § 1020.33(c)(3)(ii) notes that § 1020.33(b)(8) defines the modulation transfer function as a two-dimensional function. Therefore, the direction of the graphical section through the modulation transfer function should be stated. In addition, the location of the point of measurement of the modulation transfer function should be specified, according to the comment.

FDA believes that the information described in this comment is properly part of the test methodology and, thus, would be included in the information provided in accordance with § 1020.33(c)(3)(v). The choice of factors concerning measurement method is left to the manufacturer. A change in § 1020.33(c)(3)(ii) is not necessary.

55. A comment on proposed § 1020.33(c)(3)(ii) argues that, to characterize the imaging performance of a CT system, it is necessary to obtain documentation on both high contrast spatial resolution and low contrast detectability. This comment notes that, under proposed § 1020.33(d)(1), the manufacturer is required to provide information on both high contrast and low contrast detectability as well as on an alternative to the modulation transfer function. The comment suggests that the requirement in § 1020.33(c)(3)(ii) be changed to state: "For the same imaging processing and presentation mode as that used in the statement of noise, a graphical presentation of the modulation transfer function or a picture of a scan of a high contrast resolution pattern, and a picture of a scan of a low contrast detectability pattern. The scan pictures must be accompanied by a description of the number and shape of the objects that constitute the test pattern. The scan pictures must include CT number measurements of the objects detected and their surroundings to have an indication or relative contrast."

FDA could have required that manufacturers provide more specific information, including the noise power spectrum. However, at the present time, the agency believes that to require a complete physical description of imaging performance would be excessive. Section 1020.33(c)(3)(ii) in the final rule requires an indication of imaging performance as given by the noise and modulation transfer function. This makes the dose information

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meaningful. The particular parameters suggested in the comment do not offer any advantages for quantifying system performance because they are subjective measures and, therefore, are inappropriate for performance specifications. The agency concludes that it should not modify the standard as recommended by the comment.

Quality Assurance

56. One comment on § 1020.33(d) endorses FDA's proposal to require that manufacturers provide quality assurance (QA) information, emphasizing that such information will be helpful to users of CT systems. Another comment, however, argues that the proposed requirements would be inconsistent with the rest of the diagnostic x-ray standard in that FDA would require QA test tools and instructions to be supplied with computed tomography equipment but not with other diagnostic x-ray system components, e.g., x-ray tubes, intensifying screens, and image intensifiers, for which such tools are equally applicable.

FDA agrees that the standard applicable to CT systems differs somewhat from the standards applicable to other diagnostic x-ray systems. FDA believes that the unique nature of CT systems requires that new approaches be taken to assure the radiation safety and optimum performance of such systems. The difference in approaches is not an argument against their dual implementation. FDA has concluded that for CT systems it is more appropriate to emphasize providing the user with performance information and QA tools rather than to set performance limitations. Whereas the final rule sets some CT system performance limitations, its purpose is to avoid inhibiting the evolving technology of computed tomography, which overly restrictive performance limitations might do.

57. One comment on proposed § 1020.33(d)(1) recommends that FDA require that QA test phantoms provided with any CT system be capable of measuring nominal tomographic section thickness as defined in § 1020.33(b)(11). The comment states that section thickness depends on collimator setting and alignment, which often are adjusted in the field. Unless the section thickness for each individual unit is determined, the information provided under § 1020.33(c)(3)(iv) may be misleading, according to the comment.

The agency agrees that the QA phantoms provided with a CT system should include the capability to measure the tomographic section thickness. Such measurement will allow evaluation of the collimation system, which has a direct impact on patient dose. Many current designs allow operator variation of the tomographic section thickness, and a check of collimator function is a needed QA procedure. FDA has revised § 1020.33(d)(1) in the final rule to add "nominal tomographic section thickness" as a QA test parameter.

58. A comment on proposed § 1020.33(d)(1) notes that the regulation would require manufacturers to provide a phantom capable of indicating "resolution," but FDA did not define "resolution" in the proposed rule. The comment suggests that, if a "bar-type" resolution pattern is to be indicated, FDA should define "resolution."

FDA advises that CT system manufacturers may choose the type of indication of system resolution capability. A manufacturer is required only to specify the acceptable range of performance and provide the user a means of verifying that the specified performance is obtained. Because the standard does not require CT systems to provide a specific level of spatial resolution, it is not necessary to define the term.

59. A comment from a manufacturer of QA phantoms describes a phantom that it manufactures and suggests that this phantom be mentioned in the final rule. The comment stresses the importance of acceptance testing of the CT imaging system with a QA phantom and also suggests that the final rule require or strongly recommend routine quality assurance testing by CT users.

It is not appropriate for FDA to endorse specific products in a performance standard. Such endorsement of a proprietary article is contrary to FDA policy. It also would be inappropriate to require or recommend user practices by means of a performance standard that is directed to equipment and equipment manufacturers.

Information in Advertisements

60. Several comments on proposed § 1020.33(e) assert that FDA does not have the authority to regulate CT system advertisements through provisions in a performance standard issued under the Radiation Control for Health and Safety Act of 1968. Two comments refer to FDA's authority in this area under the Federal Food, Drug, and Cosmetic Act as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295), arguing that under this act FDA has the authority to take regulatory action against a device as misbranded if the labeling is false or misleading, and, in deciding whether a device's labeling is false or misleading, FDA may consider representations made in the device's advertising. The comments further argue that, if a CT system is deemed to be misbranded because of misleading advertising, FDA has the power to initiate a seizure action against the device or injunction action to halt its distrubution, and, therefore, any restrictions in this final rule on CT system advertising would be redundant. Other comments argue that proposed § 1020.33(e) would impose severe recordkeeping burdens on manufacturers, and, unless modified, would constrain the exchange of scientific information about computed tomography. Still other comments question the usefulness of the requirement for users of CT systems on the grounds that advertising is not intended to be all inclusive in describing a product and that the radiation doses delivered by CT systems would be adequately addressed by the requirements to provide information to users.

FDA disagrees that it lacks authority to require certain language to appear in advertising of these products. Also, FDA believes that sufficient authority exists under sections 502 (q) and (r) and 520(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (q) and (r) and 360j(e)) to impose the proposed requirements on advertising materials related to CT systems. Such requirements may be established by regulation for restricted devices; thus, the proposed requirement envisioned the regulation of CT systems as restricted devices. Authority under the Radiation Control for Health and Safety Act may also exist. FDA has concluded, however, that, in light of the information required to be provided to users (§ 1020.33(c)), the provisions regarding advertising materials are not necessary at this time and would have imposed excessive burdens on manufacturers. FDA, therefore, has removed proposed § 1020.33(e) from the final rule and designated that paragraph as reserved.

Control and Indication of Conditions of Operation

61. Several comments on § 1020.33(f)(2)(ii) support FDA's proposal to require that an operator initiate each individual scan for the typical or normal situation in which spatial incrementing is the basis for the scan series. However, the comments point out that certain special studies necessitate the initiation of each individual scan in a series on the basis of biological function or preprogrammed

time intervals; in these situations it is impractical if not impossible for the operator to initiate each individual scan. Two comments suggest that it may be inappropriate to require operator initiation of individual scans for high-speed consecutive scan-flow studies. One of the comments indicates that it may be necessary for the operator to interrupt a preprogrammed series because of reasons other than machine function, e.g., patient distress. Another comment states that some CT systems permit interscan delays of as much as 60 seconds; thus, for a study of 10 to 15 consecutive scans, a complete run can take 10 to 15 minutes. In such circumstance, the operator's attention may be distracted.

The agency concludes that advances in technology since FDA initially developed these amendments have negated the need for the operator to initiate each individual scan. Scan times have decreased significantly. FDA believes that the likelihood of a technician leaving the patient unobserved during a scan is now very slight. The use of a constant pressure switch could lead to retakes because a technician accidentally released the switch during a scan. Therefore, the agency has removed proposed § 1020.33(f)(2)(ii) from the final rule. Proposed § 1020.33(f)(2) (iii) and (iv) has been renumbered in the final rule as § 1020.33(f)(2) (ii) and (iii), respectively.

Tomographic Plane Indication and Alignment

62. One comment on proposed § 1020.33(g) states that the light localizer on some CT systems locates the position of the slice on the patient's skin but does not indicate the plane of the scan relative to the patient's longitudinal axis. Therefore, according to the comment, side lasers or light localizers are needed to indicate the plane of the scan accurately relative to the patient's axis.

The agency notes that requirements of final § 1020.33(g)(1) provide for visual indication of a reference plane, which would require indication of at least 3 points to define. Thus, a change in § 1020.33(g)(1) is not needed.

63. Two comments on § 1020.33(g)(3) argue that patient alignment needs to be more precise than FDA proposed to allow. The comments assert that increments of as little as 1.5 millimeters (mm) are used to examine fine structures, e.g., within a patient's head, and that allowing 5 mm total error in the indicated location of the tomographic plane would not assure correct patient positioning. These comments also express concern that a more stringent requirement than that proposed would add significantly to the costs of CT systems; indeed, the conversion from mechanical to electronic controls might pose a whole series of new problems.

FDA believes that the comments have confused the proposed requirement in § 1020.33(g)(3) that total error in indicated tomographic plane may not exceed 5 mm with the requirement in § 1020.33(i) that scan increment accuracy be maintained within ±1 mm. Variations in patient anatomy are such that it is difficult to locate internal structures from external landmarks with greater accuracy than the 5 mm margin of error specified in § 1020.33(g)(3). FDA concludes that the error limits should be retained as proposed. However, FDA has modified the wording of § 1020.33(g)(3) to clarify the requirement.

64. Proposed § 1020.33(g)(5) would have established absolute illumination levels for any light localizer used to provide visual determination of the tomographic or reference plane for a CT system. FDA recognizes that factors other than illumination level may be acceptable if a light source is used to meet the requirements of § 1020.33(g) (1) and (2), i.e., to allow visual determination of the tomographic plane. Further, FDA recognizes that, in many cases, such as when a CT system is located in a room with variable or reduced illumination level, the necessity for the plane to be defined at ambient light conditions of 500 lux might be excessive. Therefore, FDA has concluded that the use of a variable intensity light to define the tomographic or reference plane is appropriate provided the defining light can be set by the operator to be visible in an ambient setting of up to 500 lux. FDA has revised final § 1020.33(g)(5) accordingly.

Beam-on and Shutter Status Indicators

65. Several comments on proposed § 1020.33(h)(1) state that status indicators need not be so numerous or so positioned as to be visible from every point from which access to the x-ray beam is possible. The comments argue that indicators visible from the locations occupied by the operator would provide adequate operator protection. The comments suggest that FDA require only that visual indicators be discernible from "any point external to the patient opening" where insertion of any part of the human body into the primary beam is possible.

FDA agrees with the comments and has revised the last sentence of § 1020.33(h)(1) as suggested. It is not necessary for the indicator to be visible from inside the patient opening of the housing of the scanning mechanism.

66. Two comments on § 1020.33(h)(2) urge that the limits on emitted radiation should extend to any part of the scanner housing rather than being applied only to the tube housing assembly as proposed. The comments also state that the limits should not apply to CT systems where the diagnostic source assembly is energized only during a scan sequence. The comments suggest that FDA revise the introductory sentence of § 1020.33(h)(2) to read: "For systems when the diagnostic source assembly is energized between scan sequences, the radiation emitted through the housing of the scanner mechanism shall not exceed * * *."

FDA intended § 1020.33(h)(2) to apply only to continuously energized CT systems. The agency recognizes that proposed § 1020.33(h)(2) was unclear as to whether systems that energize and deenergize for each scan sequence (as opposed to systems that have the x-ray tube continuously energized) would be subject to the restrictions. However, the agency believes that the comments' suggested introductory phrase also is vague. To make clear its intent, FDA has revised the initial phrase of the introductory sentence in § 1020.33(h)(2) to read: "For systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x-rays with a shutter, the radiation emitted may not exceed * * *."

67. A comment contends that proposed § 1020.33(h)(2) would pertain only to systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x-rays with a shutter attached to the tube-housing assembly. The comment suggests that FDA did not consider CT systems that do not use a shutter as an "on-off" switch for a continuously operating x-ray tube. Some CT systems employ shutter mechanisms only after the "on" switch is activated and high voltage is to be supplied to the x-ray tube, according to the comment. In these systems, the shutter is closed only for the few seconds required for "ramp-up" to the level of operational voltage, thereby reducing potential radiation exposure compared to machines without this feature. The comment suggests that FDA clarify § 1020.33(h)(2) with respect to machines that do not have continuously operating x-ray generators. FDA advises that revised § 1020.33(h)(2) in this final rule (see paragraph 66 of this preamble) applies to any CT system using a shutter regardless of the purpose of the shutter. The comment did not suggest how the requirement should be applied to the systems described. The

agency concludes that the comment does not justify the proposed change in the provision.

68. A comment objects to the specific reference in proposed § 1020.33(h)(2) that emitted radiation be measured over an "area," arguing that many radiation detectors are three dimensional, and the output corresponds to a weighted integral over the sensitive volume of the detector. The comment suggests that FDA revise the last sentence of § 1020.33(h)(2) to provide that measurements be taken over a "planar" area of 100 square centimeters "having no chord [without any straight line] greater than 20 cm long."

The comment's suggestion would not change the meaning of § 1020.33(h)(2) or improve the clarity of the last sentence of the regulation. Therefore, the agency declines to make the suggested change.

69. One comment urges FDA to require shielding on mobile CT systems.

The agency believes that it would be inappropriate to impose facility shielding requirements through electronic product performance standards. The shielding requirements for mobile systems are not any different from the shielding requirements for fixed systems and have traditionally been within the province of State and local radiation control agencies.

Scan Increment Accuracy

70. Two comments on proposed § 1020.33(i) state that the agency's intent with respect to necessary scan increment accuracy is unclear. The comments suggest that § 1020.33(i) be revised to provide that compliance be measured by determining the deviation of indicated versus actual scan increment based on measurements taken with "anywhere from no-load up to 100-kilogram mass" on the patient support device. These comments also suggest that the regulation be revised to provide that the specified maximum deviation of ±1 mm "not be exceeded" at any point along the patient support device.

As FDA indicated in the preamble to the proposal, the intent of the provisions in § 1020.33(i) is to assure that the difference between the indicated scan increment and the actual distance traveled by the patient on the support device not exceed 1 mm. The final rule requires that this level of accuracy be maintained for weights on the table ranging from zero to 100 kilograms (approximately 220 pounds) for the range of travel or 30 cm, whichever is less. To make clear its intent, FDA has revised the proposed phrase "* * * at most, a 100 kilogram mass * * *" to read in the final rule "* * * a mass 100 kilograms or less."

CT Number Mean and Standard Deviation

71. A comment on proposed § 1020.33(j) urges that FDA limit the number of significant figures that can be included in the display of the mean and standard deviation of CT numbers for an array of picture elements so as not to allow an implied precision for density resolution greater than that of which the CT system is capable. Because the scales for CT numbers are selected to display the smallest density variations that can meaningfully be resolved, the calculated values of mean and standard deviation should be "rounded off" and displayed consistent with the CT number scale for the system. Therefore, the comment suggests that FDA should require that the mean and standard deviation of the CT numbers be displayed "in decimal form with equal precision and with no more than two significant figures to the right of the decimal point."

FDA disagrees. The comment does not provide any radiation protection rationale for the suggested provision. FDA believes that the method of displaying these parameters should be left to manufacturers of CT systems. Users should readily be able to judge the extent of precision that is meaningful for these parameters.

72. One comment on proposed § 1020.33(j) argues that "CT number" needs to be defined. The comment also suggests that the definition of "picture element" in § 1020.33(b)(12) should be expanded to denote an area and that a CT number should be assigned to each map point. Thus, a picture element would have not only a size (area) and location, but another, independent quality expressed as its CT number.

FDA notes that "CT number" is defined in § 1020.33(b)(4). Also, as discussed in paragraph 30 of this preamble, FDA believes that expanding the definition of "picture element" is not necessary to accomplish the purpose of the final rule. FDA concludes that adopting the comment's suggestion would not serve any purpose.

73. On its own initiative, FDA has made nonsubstantive changes in final § 1020.30(b)(36) (iii) and (iv), and in § 1020.33(b)(2), (c)(3) and (c)(3)(ii), (f)(2), and (g)(5). These changes correct misspellings or are intended to clarify the standard. They do not change its intent.

74. Also, on its own initiative, FDA has added a provision in § 1020.33 (c)(2)(v) and (c)(3)(v) to require manufacturers to provide a statement of maximum deviation from the dose and imaging performance information stated under § 1020.33(c)(2) (i), (ii), (iii), and (iv), and (c)(3) (i), (ii), (iii), and (iv), respectively. The addition of these provisions makes clear that manufacturers' actual values for these parameters in production machines may not deviate from the stated limits.

Certification

75. FDA recognizes that manufacturers of CT systems may wish to comply with § 1020.33 in lieu of § 1020.31 prior to the effective date of these amendments. Compliance with § 1020.33 prior to the effective date will be permitted if authorized in writing by the Director, Office of Compliance, Center for Devices and Radiological Health, upon application by the manufacturer. In addition, the following conditions are required to be met: (1) The certification label prescribed in § 1010.2 (21 CFR 1010.2) indicates that the system complies with §§ 1020.30 and 1020.33, and (2) the initial report prescribed in § 1002.10 (21 CFR 1002.10) has been submitted to the Director as specified in § 1002.10, describing the QA program used to assure compliance with § 1020.33.

Effective Dates

76. FDA is aware that users of CT systems are establishing increasing numbers of protocols for high-resolution examinations (e.g., spine, pituitary, pancreas). These examinations can lead to relatively high radiation doses to patients. Although protocols for high-resolution examinations are not necessarily inappropriate, they should be established in the context of a knowledgeable clinical decision. This decision should balance the risks to the patient against the potential benefit to be derived from the examination. Such a decision cannot adequately be made without knowledge of both the potential benefit from and dose associated with the examination. Currently, information on radiation dose associated with the various conditions of use is limited, particularly for nonstandard conditions of operation. Provisions of the final rule require that such dose information be measured and made available to purchasers of CT systems. The agency believes it imperative that dose information as a function of technique be made available to clinical personnel as soon as possible. FDA, therefore, concludes that good cause exists and that the public interest would best be served by making § 1020.30 (a), (b)(36)(iii)–(v), (58)–(62), (h)(3)(vi)–(viii), and (n); § 1020.33 (a), (b), and (c)(2); and

the provision of § 1020.33(c)(1) as it affects § 1020.33(c)(2) effective on November 29, 1984 instead of 1 year as proposed. Remaining provisions of § 1020.33 will become effective on September 3, 1985.

Regulatory Impact

77. In accordance with Executive Order 12291, FDA has determined that this final rule does not warrant designation as a "major rule" under any of the criterial specified under section 1(b) of the Order. The threshold assessment that led to the determination that this is not a major rule has been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is, therefore, exempt. In any event, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities for the reasons stated in the threshold assessment.

Paperwork Reduction Act

78. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in § 1020.33 (c), (d), (g), and (j) in this final rule will be submitted for approval to the Office of Management and Budget (OMB). These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register** prior to November 29, 1984.

List of Subjects in 21 CFR Part 1020

Electronic products, Ionizing radiation, Medical devices, Radiation protection, Standards, Television receivers, X-rays.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1020 is amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. In § 1020.30, the introductory text of paragraph (b), paragraph (c), paragraphs (d)(2), (d)(2)(vi), (d)(3)(ii), introductory text of paragraph (e), paragraph (g), paragraphs (h)(1), (h)(1)(ii), (p)(6), and (q)(2), the words "this section and §§ 1020.31 and 1020.32" wherever they appear are changed to read "this section and §§ 1020.31, 1020.32, and 1020.33"; in paragraphs (d), (d)(1)(vii), and (d)(2)(viii),the words "by § 1020.31 or § 1020.32" are changed to read "by § 1020.31, § 1020.32, or § 1020.33"; by revising paragraph (a), by revising the introductory text of paragraph (b)(36), redesignating paragraph (b)(36)(iii) as (b)(36)(v), adding new paragraph (b)(36) (iii) and (iv); by adding new paragraph (b) (58), (59), (60), (61), and (62); by revising paragraph (h)(3) (vi) and (vii) and adding new paragraph (h)(3)(viii); and by revising the first sentence of paragraph (n), to read as follows:

§ 100.30 Diagnostic x-ray systems and their major components.

(a) *Applicability.* (1) The provisions of this section are applicable to:

(i) The following components of diagnostic x-ray systems:

(*a*) Tube housing assemblies, x-ray controls, x-ray high-voltage generators, tables, cradles, film changers, vertical cassette holders mounted in a fixed location and cassette holders with front panels, and beam-limiting devices manufactured after August 1, 1974.

(*b*) Fluoroscopic imaging assemblies manufactured after August 1, 1974 and before April 26, 1977.

(*c*) Spot-film devices and image intensifiers manufactured after April 26, 1977.

(*d*) Cephalometric devices manufactured after February 25, 1978.

(*e*) Image receptor support devices for mammographic x-ray systems manufactured after September 5, 1978.

(ii) Diagnostic x-ray systems, except computed tomography x-ray systems, incorporating one or more of such components; however, such x-ray systems shall be required to comply only with those provisions of this section and §§ 1020.31 and 1020.32 which relate to the components certified in accordance with paragraph (c) of this section and installed into the systems.

(iii) Computed tomography x-rays systems manufactured before November 29, 1984.

(2) The following provisions of this section and § 1020.33 are applicable to computed tomography x-ray systems manufactured or remanufactured on and after November 29, 1984:

(i) Section 1020.30(a);

(ii) Section 1020.30(b)(36) (iii)–(v);

(iii) Section 1020.30(b) (58)–(62);

(iv) Section 1020.30(h)(3) (vi)–(viii);

(v) Section 1020.30(n);

(vi) Section 1020.33 (a) and (b);

(vii) Section 1020.33(c)(1) as it affects § 1020.33(c)(2); and

(viii) Section 1020.33(c)(2).

(3) The provisions of this section and § 1020.33 in its entirety, including those provisions in paragraph (a)(2) of this section, are applicable to computed tomography x-ray systems manufactured or remanufactured on and after September 3, 1985.

(b) * * *

(36) "Technique factors" means the following conditions of operation:

* * * * *

(iii) For CT equipment designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs.

(iv) For CT equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent.

(v) For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

* * * * *

(58) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(59) "Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms.

(60) "Scan time" means the period of time between the beginning and end of x-ray transmission data accumulation for a single scan.

(61) "Tomogram" means the depiction of the x-ray attenuation properties of a section through a body.

(62) "Dose" means the absorbed dose as defined by the International Commission on Radiation Units and Measurements. The absorbed dose, D, is the quotient of de by dm where de is the

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mean energy imparted by ionizing radiation to matter of mass dm.

* * * * *

(h) * * *

(3) * * *

(vi) A statement of the maximum deviation from the preindication given by labeled technique factor control settings or indicators during any radiographic or CT exposure where the equipment is connected to a power supply as described in accordance with this paragraph. In the case of fixed technique factors, the maximum deviation from the nominal fixed value of each factor shall be stated;

(vii) A statement of the maximum deviation from the continuous indication of x-ray tube potential and current during any fluoroscopic exposure when the equipment is connected to a power supply as described in accordance with this paragraph; and

(viii) A statement describing the measurement criteria for all technique factors used in paragraph (h)(3) (iii), (vi), and (vii) of this section; for example, the beginning and end points of exposure time measured with respect to a certain percentage of the voltage waveform.

* * * * *

(n) *Aluminum equivalent of material between patient and image receptor.* Except when used in a CT x-ray system, the aluminum equivalent of each of the items listed in Table II, which are used between the patient and image receptor may not exceed the indicated limits. * * *

* * * * *

2. By revising the introductory paragraph of § 1020.31, to read as follows:

§ 1020.31 Radiographic equipment.

The provisions of this section apply to equipment for the recording of images, except equipment involving use of an image intensifier or computed tomography x-ray systems manufactured on or after November 29, 1984.

* * * * *

3. By revising the introductory paragraph of § 1020.32, to read as follows:

§ 1020.32 Fluoroscopic equipment.

The provisions of this section apply to equipment for fluoroscopy and for the recording of images through an image intensifier except computed tomography x-ray systems manufactured on or after November 29, 1984.

* * * * *

4. By adding new § 1020.33, to read as follows:

§ 1020.33 Computed tomography (CT) equipment.

(a) *Applicability.* (1) The provisions of this section, except for paragraphs (b), (c)(1), and (c)(2) are applicable as specified herein to CT x-ray systems manufactured or remanufactured on or after September 3, 1985.

(2) The provisions of paragraphs (b), (c)(1), and (c)(2) are applicable to CT x-ray systems manufactured or remanufactured on or after November 29, 1984.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) "Computed tomography dose index (CTDI)" means the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan; that is:

Where:

z=position along a line perpendicular to the tomographic plane.

$D(z)$=Dose at position z.

T=Nominal tomographic section thickness.

n=Number of tomograms produced in a single scan.

This definition assumes that the dose profile is centered around $z=0$ and that, for a multiple tomogram system, the scan increment between adjacent scans is nT.

(2) "Contrast scale" means the change in linear attenuation coefficient per CT number relative to water; that is:

$$\text{Contrast scale} = \frac{\mu_x - \mu_w}{(CT)_x - (CT)_w}$$

Where:

μ_w=Linear attenuation coefficient of water.

μ_x=Linear attenuation coefficient of material of interest.

$(CT)_w$=CT number of water.

$(CT)_x$=CT number of material of interest.

(3) "CT conditions of operation" means all selectable parameters governing the operation of a CT x-ray system including nominal tomographic section thickness, filtration, and the technique factors as defined in § 1020.30(b)(36).

(4) "CT number" means the number used to represent the x-ray attenuation associated with each elemental area of the CT image.

(5) [Reserved]

(6) "CT dosimetry phantom" means the phantom used for determination of the dose delivered by a CT x-ray system. The phantom shall be a right circular cylinder of polymethlmethacrylate of density 1.19±0.01 grams per cubic centimeter. The phantom shall be at least 14 centimeters in length and shall have diameters of 32.0 centimeters for testing any CT system designed to image any section of the body (whole body scanners) and 16.0 centimeters for any system designed to image the head (head scanners) or for any whole body scanner operated in the head scanning mode. The phantom shall provide means for the placement of a dosimeter(s) along its axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom. Means for the placement of a dosimeter(s) or alignment device at other locations may be provided for convenience. The means used for placement of a dosimeter(s) (i.e., hole size) and the type of dosimeter(s) used is at the discretion of the manufacturer. Any effect on the doses measured due to the removal of phantom material to accommodate dosimeters shall be accounted for through appropriate corrections to the reported data or included in the statement of maximum deviation for the values obtained using the phantom.

(7) "Dose profile" means the dose as a function of position along a line.

(8) "Modulation transfer function" means the modulus of the Fourier transform of the impulse response of the system.

(9) "Multiple tomogram system" means a CT x-ray system which obtains x-ray transmission data simultaneously during a single scan to produce more than one tomogram.

(10) "Noise" means the standard deviation of the fluctuations in CT number expressed as a percent of the attenuation coefficient of water. Its estimate (S_n) is calculated using the following expression:

$$S_n = \frac{100 \times CS \times s}{\mu_w}$$

Where:

CS=Contrast scale.

μ_w=Linear attenuation coefficient of water.

s=Estimated standard deviation of the CT numbers of picture elements in a specified area of the CT image.

(11) "Nominal tomographic section thickness" means the full-width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which x-ray transmission data are collected.

(12) "Picture element" means an elemental area of a tomogram.

(13) "Remanufacturing" means modifying a CT system in such a way that the resulting dose and imaging performance become substantially

equivalent to any CT x-ray system manufactured by the original manufacturer on or after November 29, 1984. Any reference in this section to "manufacture", "manufacturer", or "manufacturing" includes remanufacture, remanufacturer, or remanufacturing, respectively.

(14) "Scan increment" means the amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(15) "Scan sequence" means a preselected set of two or more scans performed consecutively under preselected CT conditions of operations.

(16) "Sensitivity profile" means the relative response of the CT x-ray system as a function of position along a line perpendicular to the tomographic plane.

(17) "Single tomogram system" means a CT x-ray system which obtains x-ray transmission data during a scan to produce a single tomogram.

(18) "Tomographic plane" means that geometric plane which the manufacturer identifies as corresponding to the output tomogram.

(19) "Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

(c) *Information to be provided for users.* Each manufacturer of a CT x-ray system shall provide the following technical and safety information, in addition to that required under § 1020.30(h), to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution of such information. This information shall be identified and provided in a separate section of the user's instruction manual or in a separate manual devoted only to this information.

(1) *Conditions of operation.* A statement of the CT conditions of operation used to provide the information required by paragraph (c) (2) and (3) of this section.

(2) *Dose information.* The following dose information obtained by using the CT dosimetry phantom. For any CT x-ray system designed to image both the head and body, separate dose information shall be provided for each application. All dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuating materials present.

(i) The CTDI at the following locations in the dosimetry phantom:

(*a*) Along the axis of rotation of the phantom.

(*b*) Along a line parallel to the axis of rotation and 1.0 centimeter interior to the surface of the phantom with the phantom positioned so that CTDI is the maximum obtainable at this depth.

(*c*) Along lines parallel to the axis of rotation and 1.0 centimeter interior to the surface of the phantom at positions 90, 180, and 270 degrees from the position in paragraph (c)(2)(i)(*b*) of this section. The CT conditions of operation shall be the typical values suggested by the manufacturer for CT of the head or body. The location of the position where the CTDI is maximum as specified in paragraph (c)(2)(i)(*b*) of this section shall be given by the manufacturer with respect to the housing of the scanning mechanism or other readily identifiable feature of the CT x-ray system in such a manner as to permit placement of the dosimetry phantom in this orientation.

(ii) The CTDI in the center location of the dosimetry phantom for each selectable CT condition of operation that varies either the rate of duration of x-ray exposure. This CTDI shall be presented as a value that is normalized to the CTDI in the center location of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section having a value of one. As each individual CT condition of operation is changed, all other independent CT conditions of operation shall be maintained at the typical values described in paragraph (c)(2)(i) of this section. These data shall encompass the range of each CT condition of operation stated by the manufacturer as appropriate for CT of the head or body. When more than three selections of a CT condition of operation are available, the normalized CTDI shall be provided, at least, for the minimum, maximum, and mid-range value of the CT condition of operation.

(iii) The CTDI at the location coincident with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom for each selectable peak tube potential. When more than three selections of peak tube potential are available, the normalized CTDI shall be provided, at least, for the minimum, maximum, and a typical value of peak tube potential. The CTDI shall be presented as a value that is normalized to the maximum CTDI located at 1 centimeter interior to the surface of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section having a value of one.

(iv) The dose profile in the center location of the dosimetry phantom for each selectable nominal tomographic section thickness. When more than three selections of nominal tomographic section thicknesses are available, the information shall be provided, at least, for the minimum, maximum, and midrange value of nominal tomographic section thickness. The dose profile shall be presented on the same graph and to the same scale as the corresponding sensitivity profile required by paragraph (c)(3)(iv) of this section.

(v) A statement of the maximum deviation from the values given in the information provided according to paragraph (c)(2) (i), (ii), (iii), and (iv) of this section. Deviation of actual values may not exceed these limits.

(3) *Imaging performance information.* The following performance data shall be provided for the CT conditions of operation used to provide the information required by paragraph (c)(2)(i) of this section. All other aspects of data collection, including the x-ray attenuation properties of the material in the tomographic section, shall be similar to those used to provide the dose information required by paragraph (c)(2)(i) of this section. For any CT x-ray system designed to image both the head and body, separate imaging performance information shall be provided for each application.

(i) A statement of the noise.

(ii) A graphical presentation of the modulation transfer function for the same image processing and display mode as that used in the statement of the noise.

(iii) A statement of the nominal tomographic section thickness(es).

(iv) A graphical presentation of the sensitivity profile, at the location corresponding to the center location of the dosimetry phantom, for each selectable nominal tomographic section thickness for which the dose profile is given according to paragraph (c)(2)(iv) of this section.

(v) A description of the phantom or device and test protocol or procedure used to determine the specifications and a statement of the maximum deviation from the specifications provided in accordance with paragraph (c)(3) (i), (ii), (iii), and (iv) of this section. Deviation of actual values may not exceed these limits.

(Information collection requirements approved by the Office of Management and Budget under number .)

(d) *Quality assurance.* The manufacturer of any CT x-ray system shall provide the following with each system. All information required by this subsection shall be provided in a separate section of the user's instructional manual.

(1) A phantom(s) capable of providing an indication of contrast scale, noise, nominal tomographic section thickness,

the spatial resolution capability of the system for low and high contrast objects, and measuring the mean CT number of water or a reference material.

(2) Instructions on the use of the phantom(s) including a schedule of testing appropriate for the system, allowable variations for the indicated parameters, and a method to store as records, quality assurance data.

(3) Representative images obtained with the phantom(s) using the same processing mode and CT conditions of operation as in paragraph (c)(3) of this section for a properly functioning system of the same model. The representative images shall be of two forms as follows:

(i) Photographic copies of the images obtained from the image display device.

(ii) Images stored in digital form on a storage medium compatible with the CT x-ray system. The CT x-ray system shall be provided with the means to display these images on the image display device.

(Information collection requirements approved by the Office of Management and Budget under number .)

(e) [Reserved]

(f) *Control and indication of conditions of operation*—(1) *Visual indication.* The CT conditions of operation to be used during a scan or a scan sequence shall be indicated prior to initiation of a scan or a scan sequence. On equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of the CT conditions of operation shall be visible from any position from which scan initiation is possible.

(2) *Timers.* (i) Means shall be provided to terminate the x-ray exposure automatically by either deenergizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination shall occur within an interval that limits the total scan time to no more than 110 percent of its preset value through the use of either a backup timer or devices which monitor equipment function. A visible signal shall indicate when the x-ray exposure has been terminated through these means and manual resetting of the CT conditions of operation shall be required prior to the initiation of another scan.

(ii) Means shall be provided such that the exposure from the system does not exceed the radiation levels specified in § 1020.30(k) except when x-ray transmission data are being collected for use in image production or technique factor selection.

(iii) Means shall be provided so that the operator can terminate the x-ray exposure at any time during a scan, or series of scans under x-ray system control, of greater than one-half second duration. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to the initiation of another scan.

(g) *Tomographic plane indication and alignment.* (1) For any single tomogram system, means shall be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(2) For any multiple tomogram system, means shall be provided to permit visual determination of the location of a reference plane. The relationship of the reference plane to the planes of the tomograms shall be provided to the user in addition to other information provided according to § 1020.30(h). This reference plane can be offset from the location of the tomographic planes.

(3) The distance between the indicated location of the tomographic plane or reference plane and its actual location may not exceed 5 millimeters.

(4) For any offset alignment system, the manufacturer shall provide specific instructions with respect to the use of this system for patient positioning, in addition to other information provided according to § 1020.30(h).

(5) If a mechanism using a light source is used to satisfy the requirements of paragraph (g) (1) and (2) of this section, the light source shall allow visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(Information collection requirements approved by the Office of Management and Budget under number .)

(h) *Beam-on and shutter status indicators.* (1) Means shall be provided on the control and on or near the housing of the scanning mechanism to provide visual indication when and only when x rays are produced and, if applicable, whether the shutter is open or closed. If the x-ray production period is less than one-half second, the indication of x-ray production shall be actuated for one-half second. Indicators at or near the housing of the scanning mechanism shall be discernible from any point external to the patient opening where insertion of any part of the human body into the primary beam is possible.

(2) For systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x rays with a shutter, the radiation emitted may not exceed 100 milliroentgens (2.58×10^{-5} coulomb/kilogram) in 1 hour at any point 5 centimeters outside the external surface of the housing of the scanning mechanism when the shutter is closed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimensions greater than 20 centimeters.

(i) *Scan increment accuracy.* The deviation of indicated scan increment from actual scan increment may not exceed 1 millimeter. Compliance shall be measured as follows: The determination of the deviation of indicated versus actual scan increment shall be based on measurements taken with a mass 100 kilograms or less, on the patient support device. The patient support device shall be incremented from a typical starting position to the maximum incrementation distance or 30 centimeters, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment may be taken anywhere along this travel.

(j) *CT number mean and standard deviation.* (a) A method shall be provided to calculate the mean and standard deviation of CT numbers for an array of picture elements about any location in the image. The number of elements in this array shall be under user control.

(2) The manufacturer shall provide specific instructions concerning the use of the method provided for calculation of CT number mean and standard deviation in addition to other information provided according to § 1020.30(h).

(Information collected requirements approved by the Office of Management and Budget under number .)

Effective date. This regulation shall be effective September 3, 1985, except for the following, which shall be effective November 29, 1984: § 1020.30 (a), (b) (36) (iii)–(v), (58)–(62), (h)(3)(vi)–(viii), and (n); §§ 1020.31 and 1030.32 (introductory texts); § 1020.33 (a), (b), and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2).

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f); secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371))

Dated: July 13, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84–23154 Filed 8–30–84; 8:45 am]

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August 31, 1984

Part VI

Department of Commerce

Patent and Trademark Office

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37 CFR Part 1

Patent Maintenance Fees; Final Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 40442-4092]

Final Rules for Patent Maintenance Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent cases, Part I of Title 37, Code of Federal Regulations, to provide rules and procedures for the payment of patent maintenance fees. Public Law 96–517, enacted on December 12, 1980 and Pub. L. 97–247, enacted on August 27, 1982, provided for the payment of maintenance fees at intervals of 3½, 7½ and 11½ years from the date of grant of the patent for maintaining in force an original patent, a reissue patent of an invention, and under Pub. L. 96–517, a plant patent and reissues thereof. The changes provide specific rules and procedures which will assist patentees in avoiding the inadvertent expiration of patent for failure to pay the appropriate maintenance fee.

EFFECTIVE DATE: November 1, 1984.

FOR FURTHER INFORMATION CONTACT: R. Franklin Burnett by telephone at (703) 557–3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed primarily to (1) establish a set of rules and procedures for the payment of patent maintenance fees; and (2) effect the provisions of Pub. L. 96–517 and 97–247 with respect to payment of maintenance fees. The proposed rules were published on April 24, 1984, in Volume 49 of the **Federal Register**, pages 17692 through 17698; and on May 8, 1984, at Volume 1042 of the *Official Gazette*, pages 22 through 38. A public hearing was held on the proposed rule changes on June 26, 1984.

A public briefing on the Office's maintenance fee payment plans was announced at 49 FR 2806 on January 23, 1984, and at 1038 *Official Gazette* 293 on January 31, 1984. The public briefing was held on February 22, 1984.

Discussion of Specific Rules

Section 1.1, is amended as proposed to add a new paragraph (d) to provide a "Box M. Fee" in the Patent and Trademark Office to which all maintenance fee correspondence and payments should be directed. Changes in small entity status in patents and changes in the "fee address" under § 1.363, as well as payments of maintenance fees should be directed to "Box M. Fee".

Section 1.9, paragraph (d) is amended as proposed to make a change in citation and title of the rule of the Small Business Administration which relates to the small business size standard for paying reduced patent fees. This change was published in the **Federal Register** as a final rule on February 9, 1984 at 49 FR 5024–5048. The wording of the rule itself was not changed. This change is made to bring the wording of title 37, Code of Federal Regulations into conformance with title 13, Code of Federal Regulations.

Section 1.17, is amended as proposed to establish in paragraph (h) a fee of $120 for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent. Paragraph (h) of § 1.17 is also amended to establish a fee of $120 for reconsideration of a decision on petition refusing to accept the delayed payment of a maintenance fee in an expired patent.

Section 1.19, is amended as proposed to add new paragraphs (f) and (g). New paragraph (f) provides for a $10.00 fee for a microfiche copy of a patent file wrapper record. Microfiche copies of these patent files have recently become available for patents issued after January 1, 1984. No fee had previously been set by rule for this service. This fee is not directly related to maintenance fees but is set at this time for convenience. New paragraph (g) establishes a $3.00 fee for providing an uncertified statement indicating either the status of payment of maintenance fees due on a patent or the expiration of a patent. This charge does not apply to any receipt normally provided to the fee addressee as a result of the payment of a maintenance fee, but does apply in any other instance when written evidence of the status of payment of maintenance fees on a patent is requested, whether by the patentee or a member of the public.

Section 1.20, is amended as proposed to add new paragraphs (k), (l) and (m). New paragraph (k) provides for a $100.00 surcharge for paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 and before August 27, 1982. Since Pub. L. 96–517 did not provide for small entities, the surcharge amount of $100 applies to all such patents. New paragraph (l) provides for a $100 surcharge for patentees other than a small entity and a $50 surcharge for small entity patentees when paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant based on an application filed on or after August 27, 1982. This surcharge of $100 is subject to a 50% reduction for small entities pursuant to Pub. L. 97–247.

New paragraph (m) provides for a $500 surcharge for accepting payment of a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee. This $500 surcharge applies only under Pub. L. 97–247 where the patent is based on an application filed on or after August 27, 1982 and where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable. The requirement that the delay be "unavoidable" is the same as that for reviving an abandoned application under 35 U.S.C. 133. However, the amount of evidence required will depend upon when the showing that the delay was "unavoidable" is made. This surcharge does not apply to patents based on applications filed prior to August 27, 1982 since acceptance of a maintenance fee after expiration of a patent for non-timely payment is not possible under Pub. L. 96–517. Since this surcharge is provided for under 35 U.S.C. 41(c), it is not subject to a 50% reduction for small entities. The surcharge in paragraph (m) is not in addition to the surcharge in paragraph (1), but is in lieu thereof.

Section 1.33 is amended as proposed to add a new paragraph (d) which allows a "correspondence address" or change thereto to be filed during the enforceable life of the patent. The "correspondence address" will be used in correspondence relating to maintenance fees unless a separate "fee address" has been specified. Paragraph (d) also includes a reference to § 1.363 relating to the "fee address" to be used for maintenance fee purposes.

New § 1.362 is added to provide for times for payment of maintenance fees. New paragraph (a) sets forth the requirement that maintenance fees as set forth in § 1.20(e)–(j) must be paid in order to maintain a patent in force if the application maturing into a patent was filed on or after December 12, 1980 and is subject to the payment of maintenance fees. The maintenance fee amounts set in § 1.20(e)–(g) are subject to adjustment in accordance with the provisions of Pub. L. 96–517. The maintenance fee amounts set in § 1.20(h)–(j) are subject to adjustment in accordance with the provisions of Pub. L. 97–247 on October 1, 1985, and every third year thereafter, to reflect fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. Other patent fees are also subject to similar adjustments.

New paragraph (b) of § 1.362 stipulates that no maintenance fees are due for plant patents if the plant patent application was filed on or after August 27, 1982 or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees. New paragraph (c) defines the pertinent application filing dates for purposes of determining whether maintenance fees are applicable. Paragraph (c)(1) establishes that for national applications not claiming benefit of an earlier application, the actual United States filing date controls. Paragraph (c)(2) establishes that for national applications claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date controls. Paragraph (c)(3) provides that for continuing national applications claiming benefit of a prior application under 35 U.S.C. 120, the actual United States filing date of the continuing application is the controlling date. Paragraph (c)(4) provides that for a reissue application, the United States filing date of the application which matured into the original patent upon which the reissue application is based will control. Paragraph (c)(5) establishes that for an international application which has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty controls. This is consistent with 35 U.S.C. 363.

Paragraph (d) of new § 1.362 sets forth the time periods when maintenance fees can be paid without a surcharge. Those periods, referred to generally as the "window period," are the six-month periods preceding each due date, i.e., 3 years through 3 years and six months, 7 years through 7 years and six months, and 11 years through 11 years and six months after grant of the patent. The "due dates" are defined in 35 U.S.C. 41(b). A maintenance fee paid on the last day of a window period can be paid without surcharge. The last day of a window period is the same date (anniversary date) the patent was granted 3 years and six months, 7 years and six months, or 11 years and six months after grant of the patent. Paragraph (d) has been modified from the proposal to add "and" between items (2) and (3) and change the comma at the end of the paragraph to a period.

Paragraph (e) of new § 1.362 sets forth the grace periods during which maintenance fees, under either Pub. L. 96–517 or Pub. L. 97–247, may be paid with the surcharge under § 1.20 (k) or (l). The grace periods are the six-month periods immediately following each due date, i.e., after 3 years and six months and up to 4 years, after 7 years and six months and up to 8 years, and after 11 years and six months and up to 12 years after grant of the patent. A maintenance fee may be paid with the surcharge on the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant to prevent the patent from expiring.

Paragraph (f) of new § 1.362 specifies that where the last day for paying a maintenance fee falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee may be paid on the next succeeding day which is not a Saturday, Sunday, or federal holiday. For example, if the "window period" provided by paragraph (d) for paying a maintenance fee without surcharge ended on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee can be paid without surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday. Likewise, if the grace period provided by paragraph (e) for paying a maintenance fee with surcharge ended on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee could be paid with surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday. In the latter situation, the failure to pay the maintenance fee and surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday will result in the patent expiring on a date (4, 8, or 12 years after the date of grant) earlier than the last date on which the maintenance fee and surcharge could be paid. This situation results from the provisions of 35 U.S.C. 21, but those provisions do not extend the expiration date of the patent if the maintenance fee and any requried surcharge are not paid when required. For example, if the grace period ended on Saturday, the maintenance fee and surcharge could be paid on the next succeeding business day, e.g. Monday, but the patent will have expired at midnight on Saturday if the maintenance fee and surcharge were not paid on the following Monday. Paragraph (f) has been modified from the proposal to explicitly refer to "any necessary surcharge" for clarity since the ability to pay on the next succeeding day which is not a Saturday, Sunday, or federal holiday within the District of Columbia applies to the maintenance fee, including any necessary surcharge.

Paragraph (g) of new § 1.362 establishes that if the proper fees are not received within the time period specified in paragraphs (d), (e), or (f) the patent expires at the end of the grace period set forth in paragraph (e). Paragraph (g) also specifies that a patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.

New § 1.363 is added as proposed to provide for a "fee address" for maintenance fee purposes. New paragraph (a) specifies that the correspondence address used during prosecution of the application will be used unless (1) a "fee address" is provided for maintenance fee purposes when submitting the issue fee, (2) a correspondence address change for all purposes is filed after payment of the issue fee, or (3) a "fee address" or a change in the 'fee address" is filed after payment of the issue fee.

Paragraph (b) of new § 1.363 specifies that an assignment does not result in a change of address for maintenance fee purposes. Due to the possible expiration of a patent for failure to timely pay the appropriate maintenance fee, patentees should ensure that the Patent and Trademark Office is properly notified of the proper "fee address" to which all maintenance fee communications are to be directed. Under both Pub. L. 96–517 and Pub. L. 97–247 the burden is on the patentee to timely pay maintenance fees. The Patent and Trademark Office will attempt to assist patentees through appropriate courtesy notices. However, the failure to receive one or more notices will not relieve the patentee of the obligation to timely pay the appropriate maintenance fee to prevent the patent from expiring by operation of law if the maintenance fee is not paid. Section 1.363 does not provide for maintenance fee correspondence to be directed to more than one address.

New § 1.366 is added to establish the guidelines and procedures for submission of maintenance fees, including any necessary surcharges. New paragraph (a) states that the patentee may pay maintenance fees and any necessary surcharges or any person or organization may pay maintenance fees and any necessary surcharges on behalf of the patentee without filing in the Patent and Trademark Office evidence of authorization by the patentee to pay maintenance fees. This will enable patentees to pay the maintenance fees and any necessary surcharges themselves or authorize some person or organization to pay maintenance fees and any necessary surcharges on their behalf. No verification of the authority to pay maintenance fees and any necessary surcharges in a particular patent will be made by the Patent and Trademark Office. While anyone may pay the maintenance fees and any necessary surcharges on a patent, any Patent and Trademark Office notices relating to maintenance fees will be mailed to the "fee address" set forth in § 1.363. Paragraph (a) has been modified from the proposal to explicitly refer to "any necessary surcharges" for clarity.

Paragraph (b) of new § 1.366 specifies that a maintenance fee and any necessary surcharge for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid, and at the proper time, i.e., within the periods set forth in § 1.362. Paragraph (b) has been modified from the proposal by changing "proper amount" to "amount due on the date the maintenance fee and any necessary surcharge are paid." This change results from adoption of a suggestion that a maintenance fee payment made during the window period should not require adjustment if the maintenance fees are thereafter increased to reflect increases in the Consumer Price Index. Under paragraph (b) as adopted herein, if the amount of the maintenance fee is correct on the date it is paid and credited to the patent, a later change in the maintenance fees to reflect changes in the Consumer Price Index will not require a modification in the amount paid. However, in order for the maintenance fee to be considered paid it must be submitted in accordance with § 1.366. Paragraph (b) has also been modified from the proposal to explicitly refer to § 1.362(f) for purposes of clarity where the last day for paying a maintenance fee with or without a surcharge falls on a Saturday, Sunday, or a federal holiday within the District of Columbia. In such circumstances, the fee with any necessary surcharge may be paid on the next succeeding day which is not a Saturday, Sunday, or federal holiday. The maintenance fee and any necessary surcharge may be paid in the manner set forth in § 1.23, i.e., it should be in United States specie, Treasury notes, national bank notes, post office money orders, or by certified check. As indicated in § 1.23, if the maintenance fee payment is sent in any other form, the Office may delay or cancel the credit until collection is made. For example, a personal or other uncertified check drawn on a United States bank which is not immediately negotiable, e.g., because of lack of signature or insufficient funds, will not constitute payment of a maintenance fee. However, a personal check drawn on a United States bank can be used if it is immediately negotiable. Any remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the maintenance fee required.

Paragraph (b) of new § 1.366 also provides that maintenance fees may be paid by an authorization to charge a deposit account established pursuant to § 1.25. The authorization to charge the deposit account must be submitted within the periods set forth in § 1.362 and must be limited to maintenance fees payable on the date of submission. The authorization to charge the deposit account cannot, under paragraph (b), be submitted prior to the third, seventh, or eleventh year after the grant of the patent. If an authorization to charge a deposit account were submitted to pay the maintenance fee due at three years and six months after grant, a new authorization to charge a deposit account or other form of payment will have to be submitted at the appropriate time for each of the maintenance fees due at 7 years and six months and 11 years and six months. Paragraph (b) also specifies that any payment or authorization filed at any time other than that set forth in § 1.362 (d), (e) or (f) will not serve as a payment of the maintenance fee, except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner pursuant to § 1.378. Paragraph (b) also specifies that a payment of less than the required amount, a payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds, will not constitute payment of a maintenance fee on a patent. The authorization is required to authorize the immediate charging of the fee to the deposit account. An authorization would be improper if it only authorized the fee to be charged at a later date, e.g., on the last possible day of payment without surcharge. Such an authorization would not serve as payment of the maintenance fee. Any payment which fails to result in the entire proper amount of the maintenance fee being present on the due date will not constitute payment of the maintenance fee. Paragraph (b) also specifies that the certificate of mailing procedures of § 1.8 or the mailing by "Express Mail" provisions of § 1.10 may be utilized in paying maintenance fees. The specific requirements of either § 1.8 or § 1.10 must be fully complied with if either is used.

Paragraph (c) of new § 1.366 establishes the data necessary and desired when submitting maintenance fee payments and any necessary surcharges. New paragraph (c) specifies that maintenance fee payments and any necessary surcharges must include at least the (1) patent number and (2) United States application serial number. Paragraph (c) has been modified from the proposal to explicity refer to "any necessary surcharges" for clarity since the identifying information must also be supplied when submitting surcharges. The wording of § 1.366(c) has also been changed from the proposal to clarify that the required application serial number is that of the application upon which the patent issued. This change from the proposal makes clear that the serial number required to be submitted is not that of a prior parent application but rather, the actual application which matured into the patent for which maintenance fees are to be paid. If the maintenance fee is being paid on a reissue patent, the serial number required is that of the reissue application. Since this required information will be used as a cross-check to ensure that the maintenance fee is properly credited, the application serial number must correspond to the patent which issued therefrom. If less than the required information is submitted, the Office will not credit the payment. Additionally, if notice is required that the proper identifying data has not been submitted, it would result in requiring the payment of a surcharge if the necessary data is submitted after the "window period" closes. If the required information is not submitted until after the end of the grace period, the patent would have expired because of the failure to properly identify the patent to which the maintenance fee payment is to be credited prior to the expiration of the grace period. The patentee in such a circumstance could proceed under § 1.378, if appropriate, or could file a petition under § 1.377 within the period set therein seeking to have the maintenance fee accepted as timely even though all of the proper identifying data was not present prior to the expiration of the grace period.

Paragraph (d) of new § 1.366 specifies that the following information should also be submitted for each patent on which a maintenance fee or surcharge is paid: (1) Whether it is the 3½, 7½, or 11½ year fee, (2) whether small entity status is being changed or claimed with the payment, (3) the amount of the maintenance fee and any surcharge being submitted, (4) any assigned payor number, (5) patent issue date and (6) United States application filing date. Paragraph (d) has been modified from the proposal to explicitly refer to "any necessary surcharges" for clarity. Paragraph (d) has also been changed from the proposal to emphasize that when the payment is being made on a reissue patent the required patent number and application serial number are those of the reissue patent and reissue application. Where the payment is a maintenance fee and any necessary surcharge on a reissue patent, in addition to the information requested for all payments, paragraph (d) as adopted herein also requests certain identifying data relating to the original patent, i.e., original patent number, original patent issue date, and original United States application filing date. The reason for requesting the original patent number, original patent issue date, and original United States application filing date is that the original filing and issue dates are the dates which control if and when maintenance fees must be paid to prevent the reissue patent from expiring. The reference to a payor number has been added. A payor number will be assigned to each "fee address" in order to facilitate data input and subsequent changes in the location of the "fee address." Details of the "payor number" system will be announced to the public in a future *Official Gazette* notice. Although the submission of the information requested in paragraph (d) is not mandatory, it would expedite the processing of the maintenance fee payments.

The final rule thus requires less mandatory information, i.e., the patent number and U.S. application serial number, than would have been required by the proposed rule. The required information is considered to be the least that is required to make a cross-check and thus assure that the maintenance fee is being credited to the proper patent. The patent issue date and the application filing date, which were included in the proposed rule as mandatory information, are included in the final rule as desirable, but not mandatory, information. The effect of this change is that an error in either the patent issue date or the application filing date, or both, by the person paying the maintenance fee would not result in a refusal to accept the maintenance fee and to credit the payment thereof to the patent, if the patent number and United States application serial number were correct, i.e., in agreement. However, if any error included either the patent number or the United States application serial number such that they were not in agreement the payment would not be accepted and credited until correction was made. The date of the correction would be the date the maintenance fee payment is credited as being made.

Paragraph (e) of new § 1.366 specifies that maintenance fee payments and any surcharges relating thereto must be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in § 1.23 or by an authorization to charge a deposit account. Maintenance fee payments and surcharge payments relating thereto which are co-mingled with payments for other fees or charges, e.g., application filing fees, issue fees, petition fees, document supply fees, etc., will not be accepted. The maintenance fees require processing by a separate area of the Office and are not processed in the same manner as other fees and charges. Maintenance fees for a number of patents can be submitted together in one submission and one payment. Paragraph (e) specifies that if maintenance fee payments for more than one patent are submitted together, they should be submitted on as few sheets as possible, listing the patent numbers in increasing patent number order. If the payment submitted, which can be made as a single payment, is insufficient to cover the maintenance fees and any surcharges for all the listed patents, the payment will be applied in the order the patents are listed. In such a circumstance where the fees are insufficient, the maintenance fee and any surcharge for one or more of the last listed patents will not be paid.

Paragraph (f) of new § 1.366 serves as a reminder to patentees of the necessity to check for the loss of small entity status prior to paying each maintenance fee on a patent. This is already a requirement of § 1.28(b). Paragraph (f) provides that notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. If status as a small entity has been previously established by filing a statement and such status is checked and is found to be proper, no notification is required. It is not necessary to file new verified statements claiming small entity status at this point if the status as a small entity has been established and is still proper even if rights have been transferred to a small entity who has not previously filed a verified statement. The requirement is to notify the Patent and Trademark Office of the loss of entitlement and to pay the maintenance fee in the proper amount for other than a small entity where appropriate. The refund provisions of § 1.28(a) for later submitted small entity statements will apply to maintenance fees.

Paragraph (g) of new § 1.366 provides that maintenance fees and surcharges relating thereto will not be refunded except in accordance with §§ 1.26 and 1.28(a). A patentee cannot obtain a refund of a maintenance fee which was due and payable on the patent. Any duplicate payment will be refunded to the fee address.

New § 1.377 is added as proposed to provide a mechanism for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent. Paragraph (a) of new § 1.377 specifies that a patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a mantenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee. This petition may be used, for example, in situations where an error is present in the identifying data required by § 1.366(c) with the maintenance fee payment, i.e., either the patent number or the application serial number are incorrect. A petition under § 1.377 would provide an avenue for seeking relief. A petition under § 1.377 would not be appropriate where there is a complete failure to include at least one correct mandatory identifier as required by § 1.366(c) for the patent since no evidence would be present as to the patent on which the maintenance fee was intended to be paid. If the maintenance fee payment with an incorrect mandatory identifier was made near the end of the grace period, the patent might expire since the Office would not credit the fee to a patent. For patents based on applications filed between December 12, 1980 and August 27, 1982, there is no provision for acceptance of a maintenance fee after the grace period such as in § 1.378 and so the filing of a petition under § 1.377 would not be appropriate where the patentee paid a maintenance fee on one patent when the patentee intended to pay the maintenance fee on a different patent but through error identified the wrong patent by patent number and application serial number. Likewise, a petition under § 1.377 would not be appropriate where the entire maintenance fee payment, including any necessary surcharge, was not filed prior to expiration of the patent.

Paragraph (b) of new § 1.377 specifies that any petition under new § 1.377 must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of. The petition must be accompanied by the petition fee of $120 provided for in the amendment to § 1.17(h). Paragraph (b) also provides that the petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Patent and Trademark Office.

Paragraph (c) of new § 1.377 specifies that any petition filed under the section must comply with the requirements of paragraph (b) of § 1.181 and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes of paragraph (c) of § 1.377. The petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office. If the petition is signed by a person not registered to practice before the Patent and Trademark Office, the petition must include the authority of the person signing the petition as patentee, assignee, or other party in interest.

New § 1.378 is added as proposed to establish the procedure for acceptance of the delayed payment of a maintenance fee in an expired patent. This procedure is only available under Pub. L. 97-247 where the application on which the patent is based was filed on or after August 27, 1982. If the maintenance fee is due under Pub. L. 96-517, i.e., the application on which the patent is based was filed on or after December 12, 1980, and before August 27, 1982, the delayed payment of the maintenance fee is not provided for by statute and cannot be accepted after expiration of the patent, and the patent cannot be reinstated.

Paragraph (a) of new § 1.378 provides that the Commissioner may accept the payment of any maintenance fee due on a patent based on an application filed on or after August 27, 1982, after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable. The surcharge set forth in § 1.20(m) must be paid as a condition of accepting payment of the maintenance fee. No separate petition fee is required for this petition. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the intervening rights provisions of 35 U.S.C. 41(c)(2).

Paragraph (b) of new § 1.378 specifies the requirements of a petition for acceptance of the delayed payment of a maintenance fee filed within six months of the expiration of the patent. Under paragraph (b), the petition must include the required maintenance fee set forth in § 1.20 (h)–(j); the surcharge set forth in § 1.20(m); and a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee. In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, an argument that the patentee was ignorant of the requirement to pay maintenance fees will not constitute a showing of unavoidable delay. Evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable. For example, an error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and if it were shown that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees.

Paragraph (c) of new § 1.378 specifies the requirements of a petition for acceptance of the delayed payment of a maintenance fee filed more than six months after the expiration of a patent. These requirements are much more stringent in view of the heavy burden of proof that the delay was unavoidable. The legislative history of Pub. L. 97-247, House Report No. 97-542 (Committee on the Judiciary), indicates that "[a]fter the expiration of a reasonable period of time, the patentee would bear a heavy burden of proof that the delay was unavoidable." The six-month period provided for petition under paragraph (b) is considered to be a reasonable period of time within which to seek reinstatement of a patent which expired for failure to pay the maintenance fee. Any petition filed more than six months after expiration must meet the more stringent requirements of paragraph (c). Under paragraph (c), the petition must include the same elements as in paragraph (b) and, in addition, must demonstrate that the failure to pay the maintenance fee was unavoidable due to circumstances outside of the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee. The showing in a petition under paragraph (c) must be sufficient in scope and content to meet the heavy burden of proof required to show that a delay in payment of the maintenance fee of more than six months after expiration of the patent was unavoidable. In contrast to a petition under paragraph (b), a showing in a petition under paragraph (c) of an error in a docketing system will not be sufficient to find that the delay was unavoidable. Instead, a petition filed under paragraph (c) must demonstrate that the circumstances resulting in the delay were entirely outside the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee, e.g., serious efforts without success to raise the funds required to pay the maintenance fee.

Paragraph (d) of new § 1.378 requires that a petition filed under § 1.378 be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes of paragraph (d) of § 1.378. Under paragraph (d), the petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office. If the petition is signed by a person not registered to practice before the Patent and Trademark Office, the petition must include the authority of the person signing the petition as patentee, assignee, or other party in interest.

Paragraph (e) of new § 1.378 provides a mechanism for obtaining reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a). This mechanism is a petition for reconsideration which may be filed within two months of, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee. In contrast to petitions filed under paragraph (a), the petition for reconsideration filed under paragraph

(e) of new § 1.378 will require the separate petition fee set forth in the amendment to § 1.17(h). Paragraph (e) also provides that after the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Paragraph (e) also provides for refund of the maintenance fee and the surcharge set forth in § 1.20(m) if the delayed payment of the maintenance fee is not accepted. The refund will be made following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Paragraph (e) specifies that the fee for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Response to Comments on the Rules

Specific comments were received on a number of the proposed rule changes. Eight letters submitting written comments were received. Oral testimony was presented by two persons (one person testified on behalf of the American Intellectual Property Law Association) at the public hearing conducted on June 26, 1984. All of the written and oral comments were considered in adopting the changes set forth herein. The comments submitted appear below along with responses thereto.

Comment

One comment suggested that the surcharge set at 37 CFR 1.20(m) for accepting a maintenance fee after expiration of the patent should be reduced from $500.00 to $50.00 and that this amount should be reduced by 50 percent for small entities.

Reply

The suggestion has not been adopted. The surcharge set at 37 CFR 1.20(m) is considered to be appropriate in view of the importance of the relief being obtained. Before a surcharge under 37 CFR 1.20(m) is due the patent will have already expired due to the failure to pay a maintenance fee within a one-year period provided for the payment. Setting a lower amount as the surcharge would tend to denigrate the importance of the relief obtained by the acceptance of a maintenance fee after expiration of a patent. Further, a lower surcharge is not justified in view of the ample opportunity for payment of the maintenance fee which is presented by the one-year period in which payment can be made and the fact that the public is now on notice that maintenance fees are due and payable. Further, the Patent and Trademark Office will provide courtesy notices regarding the need to pay maintenance fees at a plurality of points in time before the patent expires. Such a notice now appears on the patent grant and presently plans are to print such a courtesy notice on the Notice of Allowance and the Issue Fee Receipt. Notices will be printed in the *Official Gazette* listing the patent number ranges of patents on which maintenance fees can be paid and a notice will be mailed to the patentee during the grace period if the maintenance fee is not paid. Therefore, relatively few patentees should fail to pay the maintenance fee before expiration of the patent due to unavoidable circumstances. The surcharge set at 37 CFR 1.20(m) is established pursuant to 35 U.S.C. 41(c) and therefore the small entity provisions of Pub. L. 97-247 do not apply to this fee. Also, Pub. L. 97-247 provides that the surcharge set at 37 CFR 1.20(m) could be in addition to any surcharge established for payment of the maintenance fee during the grace period as set at 37 CFR 1.20(l). The Patent and Trademark Office has established a separate surcharge set at 37 CFR 1.20(m) not in addition to the surcharge set at 37 CFR 1.20(l), but in lieu thereof. The amount set at 37 CFR 1.20(m) is not seen to be excessive.

Comment

Two comments suggested that the small entity reduced fee provisions of Pub. L. 97-247 should have been applied to maintenance fees required under Pub. L. 96-517.

Reply

The maintenance fee amounts under Pub. L. 96-517 set at 37 CFR 1.20(e)-(g) were previously set and are not part of the present rulemaking. It should be noted, however, that Pub. L. 96-517 did not provide for reduction of fees for small entities. Reductions of fees for small entities were established in Pub. L. 97-247 only for fees under 35 U.S.C. 41 (a) and (b) thereof. The maintenance fee levels in 37 CFR 1.20(e)-(g), however, were established under 35 U.S.C. 41 (c) of Pub. L. 96-517 rather than 35 U.S.C. 41(a) or (b) of Pub. L. 97-247. Therefore, the fee amounts previously set at 37 CFR 1.20(e)-(g) are not seen to be subject to reduction for small entities.

Comment

One comment suggested that the Office permit any of the maintenance fees to be paid in advance, either at the time of paying the issue fee or during any of the window periods. Another comment suggested that the Office should accept a fee payment earlier than the window period if the fee has no possibility of being changed due to changes in the Consumer Price Index.

Reply

These suggestions have not been adopted. The second comment listed above points out the problem with regard to the suggestion in the first comment. Public Law 97-247 provided for adjustments of the maintenance fees every third year to reflect any fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. Allowing maintenance fees to be paid in advance would preclude such adjustments to these maintenance fees unless very burdensome administrative steps were implemented to require adjustments in the fee amount previously paid when the maintenance fees are adjusted at a later time. Requiring maintenance fees to be paid in a consistently time-ordered basis as in § 1.362 will also be helpful administratively and for budgeting purposes. As to the second comment above, it is not seen that there would be substantial benefit to the public since the period would be short during which a maintenance fee could not change due to changes in the Consumer Price Index. Thus, the patentee would only be able to make the maintenance fee payment a short time before the period during which payment may be made pursuant to § 1.362.

Comment

Two comments suggested that a maintenance fee made during the window period should not require adjustment if the maintenance fees are thereafter increased to reflect increases in the Consumer Price Index.

Reply

These comments have been adopted by an appropriate change in paragraph (b) of § 1.366. Maintenance fees which are paid during the window period in the amount required on the date of payment will be accepted as proper and full payment. If the maintenance fees change after such a proper payment, no adjustment in the amount will be required or permitted. Thus, if the maintenance fee increases before the close of the window period, the patentee will not be required to make up any deficiency between the amount properly paid during the window period and the new increased fee. Likewise, if the maintenance fee decreases before the close of the window period, no refund will be permitted of part of the maintenance fee properly paid in the amount due when the payment was made. Payments must be made in the amount proper on the date of payment. For example, if payment is made during the grace period, the payment must be made in the amount then required irrespective of the amount of the maintenance fee which would have been due if payment had been made during the window period.

Comment

Three comments were directed to the proposed requirements in § 1.366(c) for data identifying the patent upon which maintenance fee payments are being made. One comment indicated that many computer annuity systems now existing have a data base designed to accept only two identifying numbers. This comment and one other comment suggested that the patent number and issue date be required to be submitted with the maintenance fee to identify the patent number. Another comment suggested that the required identifying data be the patent number, issue date, name of the inventor and title of the invention.

Reply

The suggested changes to the proposed rule have been adopted in part. The requirement for identifying data to uniquely identify the patent for which maintenance fees are being paid is an important one. The Patent and Trademark Office and the public must be able to determine with certainty which patents are in force and which patents have expired because the maintenance fees were not paid. The comments seem to recognize that at least two identifiers are necessary so that a cross-check can be made to avoid errors. The suggested use of the issue date with the patent number would not provide a reliable cross-check. In excess of one thousand patents usually issue on each issue date. Therefore a mistake in the last four digits in the patent number supplied with the maintenance fee payment would often not be detected by use of the issue date as a cross-check. The Patent and Trademark Office has determined that the two best identifying data units for use as a cross-check are the patent number and the application serial number. These identifiers are unique since each is specific to one patent or application and are thus required to be provided with a maintenance fee payment by the final rule. The application serial number and the patent number are both listed on the issue patent and in the *Official Gazette* and therefore should be readily available to patentees.

Comment

One comment suggested that no petition fee should be charged for filing a petition under 37 CFR 1.377 seeking review of a decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent. The comment further suggested that, if a fee is charged, the filing of a petition thereunder should be presumed to be a request for a return of the petition fee if it is determined that the refusal to accept and record a maintenance fee payment was due to Patent and Trademark Office error.

Reply

The suggestion that no petition fee be charged has not been adopted. The petition fee, although required in advance, will be retained by the Patent and Trademark Office only in those instances where the refusal to accept and record the fee resulted from an error on the part of someone other than the Patent and Trademark Office. In those instances where the refusal to accept and record the fee resulted from a Patent and Trademark Office error the Office intends to refund the petition fee, either based upon the request included in the petition or upon the initiative of the Office. The reason for including a request for a refund, where appropriate, in the petition is to ensure that such request is not inadvertently overlooked. In view of the expense involved, it would be inappropriate to process a petition without a petition fee where the error necessitating the petition was made by the petitioner or someone acting on behalf of the patentee.

Comment

One comment suggested that the term "unavoidable" should be more specifically defined in 37 CFR 1.378 (b)(3) and (c)(3), if possible.

Reply

As stated in this rulemaking, the requirement that the delay in payment of the maintenance fee be "unavoidable" is the same as that for reviving an abandoned application under 35 U.S.C. 133. This standard has been in effect for many years and should be well understood by the public. The rule is seen to be adequate as written, especially in view of the discussion in this rulemaking which includes several specific examples based on when the petition to accept the delayed payment of a maintenance fee is filed.

Comment

One comment suggested that Pub. L. 97–247 should be "liberally interpreted" to permit acceptance of delayed payments of maintenance fees required under Pub. L. 96–517. Proposed 37 CFR 1.378 was limited to patents issuing on applications filed on or after August 27, 1982, the effective date of Pub. L. 97–247.

Reply

The final rule has not been changed from the proposal. The remedy suggested by the comment cannot be provided in view of the language of 35 U.S.C. 41(c)(1) which applies only to maintenance fees required by 35 U.S.C. 41(b) of Pub. L. 97–247. Section 17(a) of Pub. L. 97–247 clearly states "the maintenance fees provided for in section 3(b) of this Act shall not apply to patents applied for prior to the date of enactment of this Act."

Comment

Several of the comments received were directed to proposed statutory changes which were said to be desirable in the area of maintenance fees.

Reply

These comments were not suggesting that the proposed rules were not in compliance with the present statutes, but rather that the statutes themselves should be changed. These comments are beyond the scope and purpose of this rule change.

Implementation of Maintenance Fee Payment Procedures

The Patent and Trademark Office is presently developing its internal working procedures for processing maintenance fee payments and for notifying the public as to the status of maintenance fee payments on particular patents. The first maintenance fees become due early in 1985. In order to be as helpful as possible in informing the public as to the Patent and Trademark Office's current plans it is useful to outline the basic procedures the Patent and Trademark Office intends to adopt to process maintenance fees so that the interrelationship with the rules is understood. These basic procedures are subject to change as experience and circumstances dictate.

Notices by the Patent and Trademark Office

Under the statutes, the Patent and Trademark Office has no duty to notify patentees when their maintenance fees are due. It is the responsibility of the patentee to assure that the maintenance fees are paid to prevent expiration of the patent. The Patent and Trademark Office will, however, provide some notices as reminders that maintenance fees are due, but the notices, errors in the notices, or the lack of notices, will in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. The notices provided by the Patent and Trademark Office will be merely courtesy in nature and intended to aid patentees. These notices, errors in these notices, or the lack of notices, will in no way shift the burden of monitoring the time for paying maintenance fees on patents from the patentee to the Patent and Trademark Office.

Preprinted Standard Notice Wording

The patent grant currently includes a reminder that maintenance fees may be due. The Notice of Allowance and Issue Fee Receipt are presently planned to be revised to contain reminder notice wording that maintenance fees may be due.

Official Gazette Notice

A notice will appear in each issue of the *Official Gazette* which will indicate which patents have been granted 3, 7 and 11 years earlier, that the window period has opened and that maintenance fee payments will now be accepted for these patents.

Another *Official Gazette* notice published after expiration of the grace period will indicate any patent which has expired due to non-payment of maintenance fees and any patents which have been revived under 35 U.S.C. 41(c). An annual compilation of such expirations and revivals will also be published.

Courtesy Reminder Notice

Since patentees are expected to maintain their own record systems and since most patentees are expected to pay their maintenance fees during the "window period" to prevent payment of a surcharge, the Office will not send any reminder notices to patentees at the fee address until after the grace period has begun. This will reduce and simplify the mailing of notices but still give patentees an opportunity to pay their maintenance fees with surcharge during the grace period before expiration of their patents. Such notices will be mailed to the fee address as set forth in § 1.363.

Action Notices

The Office will issue a receipt for payment of maintenance fees after entry of the maintenance fee payment. Such a receipt will provide an opportunity for the patentee to check if the Office has properly credited the payment. The original document submitted by the patentee when paying the maintenance fee will also be appropriately marked and returned to the fee address. If actual experience indicates that they are not needed, the receipt notices and/or the return of the original document may be discontinued.

The patentee will also be notified by mail at the fee address as set forth in § 1.363 of any expiration or revival of the patent.

Fee Address

The patentee may provide the Patent and Trademark Office with a fee address under § 1.363, which address may be different from the correspondence address under § 1.33, when submitting the issue fee or in a separate later-filed paper. The fee address will be used by the Office for all correspondence directed to the patentee concerning maintenance fees. If no separate fee address is provided by the patentee under § 1.363, the correspondence address under § 1.33 will also be used for maintenance fee purposes.

Payment of Maintenance Fees

Transmittals of maintenance fees may be limited to a single patent or may involve several patents. If a transmittal involves several patents they should be listed in increasing numerical order. The following format is suggested for use when paying maintenance fees and any necessary surcharges. Although only the mandatory identification elements consisting of the patent number and United States application serial number, set forth in § 1.366(c) are required, the items referred to in § 1.366(d) should also be included to expedite processing of maintenance fees and any necessary surcharges. In addition, the indication of the fee code used by the Patent and Trademark Office would assist in proper financial crediting within the Office. It is also suggested that the telephone number of the person submitting the payment be supplied.

February 22, 1984.

Commissioner of Patents and Trademarks,
Box M. Fee, Washington, D.C. 20231

Dear Sir: Enclosed is a check drawn for the amount of $1,500 for the payment of the maintenance fees on the following patents.

Patent No.	Serial No.	Patent date	Application filing date	Payment year	Small entity	Amount paid		Surcharge	Fee code
P.P. 5,188	380,062	Feb. 7, 1984	May 20, 1981	4		$200			170
Re. 31,522	481,494	Feb 14, 1984	Apr. 1, 1983	4		200		$100	170/176
*(4,374,741)		(Feb. 22, 1983)	(July 21, 1981)						
4,429,419	339,620	Feb. 7, 1984	Jan. 15, 1982	4		200			170
4,429,433	412,101	Feb. 7, 1984	Aug. 27, 1982	4	No	400			173
4,429,439	458,474	Feb. 7, 1984	Jan. 17, 1983	4	Yes	200			273
**4,432,000	380,681	Feb. 14, 1984	Aug. 26, 1981	4		200			170
		Subtotal				1,400		100	
		Total amount paid.					1,500		

*NOTE.—Information from original patent is included in parenthesis for the reissue patent for which payment is being made.
**NOTE.—Application Filing Date is the PCT-International Filing Date.

The Commissioner is hereby authorized to charge any deficiency in the required fee or to credit any overpayment to Account No. 12–3456.

Respectfully submitted,

John Doe
(703) 557–3054

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). Public Law 97–247 has taken into consideration the impact it may have on small entities.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The maintenance fee payment information collection requirement contained in the final rules has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Comments relating to this requirement should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Commerce, Patent and Trademark Office.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Pub. L. 96-517 and Pub. L. 97-247, the Patent and Trademark Office is amending Title 37 of the Code of Federal Regulations as set forth below.

PART 1—[AMENDED]

37 CFR Part 1, is amended as follows:

1. Section 1.1 is amended by adding a new paragraph (d) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(d) Payments of maintenance fees in patents and other communications relating thereto should be additionally marked "Box M. Fee."

§ 1.9 [Amended]

2. Paragraph (d) of § 1.9 is amended by changing the citation "13 CFR 121.3-18, published on September 30, 1982 at 47 FR 43273." to "13 CFR 121.12." and by changing the words "§ 121.3-18 Definition of small business for paying reduced patent fees under Title 35, U.S. Code" to "§ 121.12 Small business for paying reduced patent fees."

3. Section 1.17 is amended by adding to the end of paragraph (h) the following:

§ 1.17 Patent application processing fees.

* * * * *

(h) * * *

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent

* * * * *

4. Section 1.19 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(f) Microfiche copy of patent file record...$10.00

(g) Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent...$3.00

5. Section 1.20 is amended by adding new paragraphs (k), (l) and (m) to read as follows:

§ 1.20 Post-issuance fees.

(k) Surcharge for paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 and before August 27, 1982.................................... $100.00

(l) Surcharge for paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after August 27, 1982:

By a small entity (§ 1.9(f))......................... $50.00

By other than a small entity.....................$100.00

(m) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee on a patent based on an application filed on or after August 27, 1982, where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable.....................$500.00

6. Section 1.33 is amended by adding a new paragraph (d) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

* * * * *

(d) A "correspondence address" or change thereto may be filed with the Patent and Trademark Office during the enforceable life of the patent. The "correspondence address" will be used in any correspondence relating to maintenance fees unless a separate "fee address" has been specified. See § 1.363 for "fee address" used solely for maintenance fee purposes.

7. A new center heading and § 1.362 is added to Subpart B to read as follows:

Maintenance Fees

§ 1.362 Time for payment of maintenance fees.

(a) Maintenance fees as set forth in § 1.20 (e)-(j) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.

(b) Maintenance fees are not required for plant patents based on applications filed on or after August 27, 1982 or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.

(c) The application filing dates for purposes of payment of maintenance fees are as follows:

(1) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.

(2) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date of the application.

(3) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date of the continuing application.

(4) For a reissue application, the United States filing date of the original non-reissue application on which the patent reissued is based.

(5) For an international application which has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.

(d) Maintenance fees may be paid in patents without surcharge during the periods extending respectively from:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20 (k) or (l) during the respective grace periods after:

(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee,

(2) 7 years and 6 months and through the day of the 8th anniversary of the

grant for the second maintenance fee, and

(3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.

(f) If the last day for paying a maintenance fee without surcharge set forth in paragraph (d) of this section, or the last day for paying a maintenance fee with surcharge set forth in paragraph (e) of this section, falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee and any necessary surcharge may be paid under paragraph (d) or paragraph (e) respectively on the next succeeding day which is not a Saturday, Sunday, or federal holiday.

(g) Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.

8. A new § 1.363 is added to Subpart B to read as follows:

§ 1.363 Fee address for maintenance fee purposes.

(a) All notices, receipts, refunds, and other communications relating to payment or refund of maintenance fees will be directed to the correspondence address used during prosecution of the application as indicated in § 1.33(a) unless:

(1) A "fee address" for purposes of payment of maintenance fees is set forth when submitting the issue fee, or

(2) A change in the correspondence address for all purposes is filed after payment of the issue fee, or

(3) A "fee address" or a change in the "fee address" is filed for purposes of receiving notices, receipts and other correspondence relating to the payment of maintenance fees after the payment of the issue fee, in which instance, the latest such address will be used.

(b) An assignment of a patent application or patent does not result in a change of the "correspondence address" or "fee address" for maintenance fee purposes.

9. A new § 1.366 is added to Subpart B to read as follows:

§ 1.366 Submission of maintenance fees.

(a) The patentee may pay maintenance fees and any necessary surcharges, or any person or organization may pay maintenance fees and any necessary surcharges on behalf of a patentee. Authorization by the patentee need not be filed in the Patent and Trademark Office to pay maintenance fees and any necessary surcharges on behalf of the patentee.

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid and may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362 (d), (e) or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The certificate of mailing procedures of either § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance fees are being paid must include the following:

(1) The patent number, and

(2) The serial number of the United States application for the patent on which the maintenance fee is being paid.

(d) Payments of maintenance fees and any surcharges should identify the fee being paid for each patent as to whether it is the 3½, 7½ or 11½ year fee, whether small entity status is being changed or claimed, the amount of the maintenance fee and any surcharge being paid, any assigned payor number, the patent issue date and the United States application filing date. If the maintenance fee and any necessary surcharge is being paid on a reissue patent, the payment must identify the reissue patent by reissue patent number and reissue application serial number as required by paragraph (c) of this section and should also include the original patent number, the original patent issue date and the original United States application filing date.

(e) Maintenance fee payments and surcharge payments relating thereto must be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in § 1.23 or by an authorization to charge a deposit account. If maintenance fee and surcharge payments for more than one patent are submitted together, they should be submitted on as few sheets as possible with the patent numbers listed in increasing patent number order. If the payment submitted is insufficient to cover the maintenance fees and surcharges for all the listed patents, the payment will be applied in the order the patents are listed, beginning at the top of the listing.

(f) Notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. See § 1.28(b).

(g) Maintenance fees and surcharges relating thereto will not be refunded except in accordance with §§ 1.26 and 1.28(a).

10. A new § 1.377 is added to Subpart B to read as follows:

§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

(a) Any patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee.

(b) Any petition under this section must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(h). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

(c) Any petition filed under this section must comply with the requirements of paragraph (b) of § 1.181 and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

11. A new § 1.378 is added to Subpart B to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent based on application filed on or after August 27, 1982.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent based on an application filed on or after August 27, 1982, after expiration of the patent if, upon petition, the dalay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable and if the surcharge required by § 1.20(m) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section within six months of the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(h)-(j);

(2) The surcharge set forth in § 1.20(m); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee.

(c) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section more than six months after the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(h)-(j);

(2) The surcharge set forth in § 1.20(m); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and the failure to timely pay the maintenance fee was due entirely to circumstances outside of the control of the patentee. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee and the circumstances which were outside of the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee. The showing must be sufficient in scope and content to meet the heavy burden of proof required to show that a delay in payment of the maintenance fee of more than six months after expiration of the patent was unavoidable.

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(m) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. The fee set forth in § 1.17(h) for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Dated: July 30, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84-23181 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-16-M

federal register

Friday
August 31, 1984

Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1985 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-279-F]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System; and Fiscal Year 1985 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Rule.

SUMMARY: This final rule amends the Medicare regulations published as an interim final rule on September 1, 1983 (48 FR 39752) and a final rule on January 3, 1984 (49 FR 234). Those regulations implement section 1886 of the Social Security Act, which changes the method of payment for inpatient hospital services from a cost-based, retrospective reimbursement system to a prospective payment system based on diagnosis-related groups.

In addition, in the addendum to this final rule, we are making changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services applicable to discharges occurring on or after October 1, 1984, in the case of the Federal portion of the payment, and effective with hospital cost reporting periods beginning on or after October 1, 1984, in the case of the hospital-specific portion. These changes are applicable in the second year of the three-year transition period for the prospective payment system.

We are also implementing in this final rule certain changes in the inpatient hospital prospective payment system resulting from the enactment of Pub. L. 98-369 on July 18, 1984.

EFFECTIVE DATES: With certain exceptions, these regulations are effective with discharges occurring on or after October 1, 1984, or with hospital cost reporting periods beginning on or after October 1, 1984. We refer the reader to section VII.A. of this preamble for a detailed discussion of effective dates.

FOR FURTHER INFORMATION, CONTACT:

Paul Elstein, (301) 597-1755—Transfers; Referral Centers; Indirect Medical Education Costs; CRNAs
Paul Olenick (301) 594-9349—Urban/Rural Areas; Prospective Payment Rates
Sheridan Gladhill (301) 594-9440—Rehabilitation Units
Thomas Hoyer (301) 594-9446—Physician Attestation
George Cray (301) 597-3874—Base Year Appeals

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Final Rules Implementing Inpatient Hospital Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for inpatient hospital services is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list contains 470 specific categories.

Section 1886(d)(1)(A) of the Act provides for a three-year transition period during which a declining portion of the total prospective payment rate is based on a hospital's historical cost in a given base year, and a gradually increasing portion is based on a regional Federal rate per discharge in the first year and a blend of a regional and national Federal rate per discharge in the second and third years. Beginning with the fourth year, and continuing thereafter (that is, for hospital cost reporting periods beginning on or after October 1, 1986), Medicare payment for inpatient hospital services will be made entirely under national DRG payment rates.

We published an interim final rule in the **Federal Register** (48 FR 39752) on September 1, 1983 to implement the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1983. In that rule we established criteria for determining—

- Which hospitals are included in and excluded from the prospective payment system;
- The basis of payment under the prospective payment system;
- The prospective payment rate methodology;
- Additional payment amounts;
- Special treatment of certain hospitals; and
- Other conforming changes.

In particular, we identified the prospective payment rates to be used for the first year of the transition period. We issued a final rule (49 FR 234) on January 3, 1984 to make changes resulting from our consideration of public comments that were received in response to the interim final rule.

B. Summary of July 1984 Proposed Rule

On July 3, 1984 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (49 FR 27422) to amend 42 CFR Part 405 in order to make further changes in the prospective payment regulations. We proposed to—

- Pay cost outlier payments to a transferring hospital for extraordinarily high-cost cases;
- Revise the definition of full-time direction for an excluded rehabilitation unit;
- Make less restrictive the criteria for expansion of an excluded rehabilitation unit;
- Clarify the scope of the physician's certification statement and the accompanying penalty statement;
- Provide a special adjustment for hospitals redesignated by the Executive Office of Management and Budget (EOMB) to be no longer a part of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA);
- Clarify which census division a hospital belongs to if an MSA or NECMA crosses a census division boundary;
- Authorize additional administrative actions as a basis upon which a prospective recalculation of a hospital's base year cost may be made; and
- Expand the definition of a referral center to encompass more rural hospitals.

In addition, in the addendum to the NPRM (49 FR 29438), we proposed changes in the methods, amounts, and factors necessary to implement the second year of the transition payment period, applicable to discharges occurring on or after October 1, 1984, in the case of the Federal portion of the payment and effective with hospital cost reporting periods beginning on or after October 1, 1984, in the case of the hospital-specific portion.

In section II. of this preamble and section II. of the addendum to this document, we describe changes we are making to those proposals in response to public comments that we received timely.

C. Summary of Recent Legislation (Title III of Pub. L. 98-369)

On July 18, 1984, the President signed into law Pub. L. 98-369, the Deficit Reduction Act of 1984. Title III of Division B of this Act, the Medicare and Medicaid Budget Reconciliation Amendments of 1984, contains several changes relating to the hospital prospective payment system. Section 2311 of Pub. L. 98–369, which is related to specific proposals we had set forth in the NPRM, is discussed in section II. of this preamble. Section III. of this preamble contains a discussion of the following changes to the prospective payment system mandated by sections 2307(b) and 2312 of Pub. L. 98–369:

- In determining the indirect medical education adjustment, the interns and residents in approved programs are to be counted regardless of whether they are employed by the hospital in which they are working (section 2307(b)).
- Hospitals will be paid on a reasonable cost basis for anesthesia services provided by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiology assistants) (section 2312 requires such payment for CRNAs).

In addition, the provisions in section 2310 (rate of increase limitation) of Pub. L. 98–369 that affect the FY 1985 prospective payment rates are discussed in the addendum to this final rule.

D. Number and Types of Public Comments

A total of 3,951 letters were received containing comments on the proposed regulations by the comment-period deadline of August 2, 1984. Among the many issues raised, the following subjects prompted the majority of comments:

- Criteria for classification as a referral center;
- Physician attestation requirement as part of the discharge summary;
- Reduction of the weighting factors by 2.4 percent;
- Wage index (especially rural);
- Outlier policies especially with regard to transfer cases;
- Budget neutrality adjustments and availability of data;
- Dialysis services especially when admitted for unrelated treatment;
- Criteria for classification as a rehabilitation hospital or unit; and
- General concerns about the net increase in rates.

In addition to comments received as a result of the NPRM, we also received a small number of comments on issues not discussed in the NPRM.

II. Changes to Current Regulations Resulting From the NPRM or Resulting From Pub. L. 98–369

A. Payment of Cost Outliers to Hospitals That Transfer Patients (§ 405.470)

Under § 405.470(c)(4), a hospital that transfers a patient receives a per diem payment determined by dividing the full payment rate for the discharge by the average length of stay for the applicable DRG assigned to the case. Payment to a transferring hospital may not exceed the full DRG rate regardless of the length of stay or exceptionally costly care provided.

Based on our experience during the first year under the prospective payment system, we now believe that cost-outlier payments (additional payments) should be available to transferring hospitals for exceptionally costly cases. We are modifying § 405.470(c)(4) as proposed in the NPRM, to permit a transferring hospital to receive cost-outlier payments, for patients transferred on or after October 1, 1984, if the cost-outlier criteria in § 405.475(d) are met.

We received comments from hospitals and hospital associations regarding this provision. The issues raised by the commenters are as follows:

Comment—All the comments we received regarding the change in the transfer payment policy were in favor of our extending cost outlier payments to transferring hospitals. However, several commenter questioned our rationale for not providing day outlier payments to transferring hospitals. They stated that medical review should be adequate to identify appropriate day outlier cases in transferring hospitals. In the absence of the addition of day outlier payments, the commenters suggested that we amend § 405.475(a)(2) to allow the transferring hospital to receive cost outlier payments even if the discharge qualified for day outlier payment.

One commenter suggested that in the NPRM (49 FR 27422) we implied that those patients who are kept in the transferring hospital long enough to qualify for day outlier payments are usually receiving inappropriate care. The commenter stated that it is not unusual for critically ill patients, such as severely burned patients, who would meet day outlier criteria to be transferred to an acute rehabilitation unit.

Response—We do not agree that extending day outlier payments to transferring hospitals is appropriate. We regret that our rationale in the NPRM concerning day outlier payments to transferring hospitals was perceived to be objectionable. However, for FY 1985 a discharge will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 22 days or 1.94 standard deviations. We believe that it is reasonable to state that any severely ill patient who needs to be transferred for more specialized care would in all likelihood be transferred before this threshold is met. One commenter mentioned severely burned patients as an exception to this situation. Discharges for neonates and burn patients (DRGs 385 and 456 respectively) represent situations in which patients are transferred to another facility for specialized care. We revised § 405.470(c) in the January 3, 1984 final rule (49 FR 314) to state that these discharges are not subject to the transfer payment policy. Rather, the weighting factors for these two DRGs are based on the assumption that the patient will be transferred. The transferring hospital in these instances is paid the full DRG rate plus any applicable outlier payments in the same manner as the rules that apply to nontransferring hospitals.

We recognize that an individual hospital may experience a case in which a patient is kept for a sufficient number of days, and would meet the day outlier threshold, before it is determined that the patient should be transferred. However, we continue to believe that the vast majority of transfer cases would not qualify as day outliers.

We do not wish to discourage needed transfers from occurring more promptly by offering the possibility of day outlier payments. At the same time, we believe that the average day outlier threshold is sufficiently high that we do not expect that the preclusion of day outlier payments will be an incentive for hospitals under the prospective payment system to move unusually demanding cases into other hospitals.

However, at the same time, we do not wish to encourage inappropriate transfers in cases where cost outlier patients are about to stay past the day outlier threshold. We agree with the commenter who suggested that we pay the cost outlier payment in these cases.

Because we believe that day outliers are inapplicable to transferring hospitals, day outlier criteria (and thresholds) should not apply. Likewise, the preclusion of cost outlier status for hospitals that meet day outlier criteria under sections 1886(d)(5)(A) (i) and (ii) of the Act does not apply to transferring hospitals. Therefore, we are granting cost outlier payments to transferring hospitals where cost outlier patients stay past the day outlier threshold.

(Payments to transferring hospitals are exceptions to ordinary payment amounts, as authorized under section 1886(d)(5)(C)(iii) of the Act, and the terms under which outlier payments are granted to transferring hospitals are therefore also subject to the Secretary's discretion under section 1886(d)(5)(C)(iii).)

After October 1, 1984, we will be receiving bills for cost outlier payments for transferring hospitals. As we have stated in previous documents, we will continue to make such adjustments to the interim transfer policy as warranted by our review of these payments.

Comment—One commenter stated that the present cost outlier thresholds make it literally impossible for a hospital to qualify for cost outlier payments based on costs incurred for transferred patients. The commenter recommended that the cost outlier thresholds for transferred patients be redefined as the greater of 1.5 times the DRG payment rate multiplied by the ratio of actual days prior to transfer divided by the average length-of-stay per DRG, or $12,000 multiplied by that ratio (actual days divided by the average length-of-stay). The commenter believes that this change would recognize the specific needs of small rural facilities that are often the areas of first resource utilization in stabilizing patients for transfer to another facility.

Response—We do not agree with the commenter's estimation that no transfer situations will qualify for the cost outlier thresholds. It was the realization that such cases actually have occurred that led to this change in the transfer payment policy. In one example brought to our attention, a small hospital treated a very ill patient for a number of complications over a period of 10 days incurring charges of $25,378. The patient developed renal failure and was transferred to another hospital where dialysis could be provided. The second hospital, which discharged the patient, was paid the DRG rate for dialysis treatment. The first hospital was paid per diem payments limited to the DRG rate of the patient's principal diagnosis in that hospital which was $6,789. Had the first hospital qualified for cost outlier payments, the payment would have been about $10,000.

In another example, a patient was transferred back to the first hospital after being transferred to receive specialized care. Thus, the first hospital not only qualified for per diem payments as a transferring hospital, but received DRG and outlier payments as the discharging hospital as well. The second hospital provided specialized care incurring costs that reached the cost outlier threshold but was entitled only to per diem payments as the transferring hospital. Thus, it is quite possible for a transferring hospital to incur costs reaching the outlier thresholds.

However, this commenter illustrates our point that a hospital that admits a patient, evaluates his condition as requiring transfer, and stabilizes the patient would not incur the same high front-end costs as a hospital that evaluates a patient on admission and contemplates providing all the services that the patient will need. In this latter situation, the hospital may have to transfer the patient for specialized acute care even though it initially intended to provide all services. This hospital is likely to incur costs qualifying for the cost outlier thresholds.

Comment—Some commenters stated that the beginning of a patient's course of treatment is the most resource intensive, and, therefore, the transferring hospital should receive the full payment rate or should be paid in some other manner such as a sliding scale, which reflects this resource intensive phase of treatment.

Response—There are little data in support of the position that in typical transfer cases the beginning of a patient's course of treatment is the most resource intensive. Furthermore, as we pointed out in the January 3, 1984 final rule (49 FR 245), there is no generally acceptable method of measuring this resource intensity. Therefore, using this approach would not be feasible.

Comment—Many commenters were opposed to our goal of making one payment to the final discharging hospital instead of making per diem payments to transferring hospitals. They believe it would impose a great administrative burden on hospitals to tend to discourage hospitals from undertaking appropriate transfers.

One commenter stated that under the prospective payment system more hospitals are expected to specialize in the services that are delivered most efficiently and minimize activity in areas of inefficiency. The commenter believes that the move toward one payment would inhibit transfers and undermine this tendency toward greater efficiency. Several commenters suggested that we develop a methodology that would provide incentives for appropriate transfers, such as full DRG payment or cost reimbursement to the transferring hospital. Another commenter maintained that a single payment would force hospitals to formalize financial agreements for referral arrangements with many hospitals in order to anticipate all possible transfer situations.

Response—We do not agree with the commenter's proposal that we change our goal of providing one payment to the final discharging hospital, and continue to pay per diem payments to transferring hospitals. The prospective payment system is intended to provide full payment less applicable deductibles and coinsurances for all inpatient services associated with a particular episode of hospitalization. Our transfer policy is an interim policy to be used until we restructure the payment methodology for making one payment to the final discharging hospital for the full treatment. In these situations, the final discharging hospital would arrange to provide compensation to the transferring hospital for a portion of the inpatient services. Therefore, hospital managers should anticipate our final discharge payment policy and incorporate this eventual change into their financial and management planning and enter into cooperative agreements.

We agree with the commenter's belief that the final move to one payment in transfer cases should encourage hospitals to formalize agreements for referrals of specific types of cases to the hospitals that have become more efficient in the delivery of that type of care. We do not think that it is unreasonable to expect a hospital to anticipate referral needs for situations it may encounter and eventually enter into transfer and reimbursement agreements with other hospitals.

Comment—Several commenters requested that we amend § 405.470(c) to state that a patient transferred from a hospital's acute-care bed to a swing-bed is considered discharged.

Response—Prior to the prospective payment system, a patient receiving a skilled nursing facility (SNF) level of care in a hospital with swing-bed approval was considered to have been discharged from the hospital and readmitted to the SNF, even though the patient did not physically leave the facility. The distinction in this situation for a hospital subject to the prospective payment system is that the acute-care stay is paid on a prospective payment basis rather than a cost reimbursement basis. Under § 405.120, a hospital with swing-bed approval continues to be considered an SNF when it is delivering an SNF level of care. Thus, patients receiving an SNF level of care in these hospitals are considered to be discharged as already provided for under § 405.470(c) because they are transferred to another hospital or unit that is excluded from the prospective payment system.

B. Direction of Rehabilitation Units (§ 405.471)

Section 1886(d)(1)(B) of the Act excludes rehabilitation hospitals and rehabilitation units that are distinct parts of hospitals from the prospective payment system. The regulations implementing this exclusion are set forth in §§ 405.471(c)(2), (c)(4)(i), and (c)(4)(iii).

Specifically, the regulations at §§ 405.471(c)(2)(v) and (c)(4)(iii)(F) provide that rehabilitation hospitals and units that wish to be excluded from the prospective payment system must have a director of rehabilitation who—

- Provides services to the hospital or unit or its inpatients on a full-time basis;
- Is a doctor of medicine or osteopathy;
- Is licensed under State law to practice medicine or surgery; and
- Has had, after completing a one-year hospital internship, at least two years of training or experience in the medical management of inpatients requiring rehabilitation services.

Many hospitals and some national organizations have expressed dissatisfaction with our application of the full-time director requirement, especially with respect to "small" rehabilitation units, because they believe that in many cases this requirement is unnecessary and burdensome.

After reconsideration of our position, we decided that we should relax our full-time director requirement to some degree, and we proposed to amend § 405.471(c)(4)(iii)(F)(1) to remove the requirement for full-time service by directors of excluded rehabilitation units. We proposed to replace that requirement with a provision that specified that the director of a unit must provide services to the unit and its inpatients for at least 20 hours per week.

We also proposed a clarifying change to §§ 405.471(c)(2)(v)(A) and (c)(4)(iii)(F)(1) to specify that time spent by the director of a rehabilitation hospital or unit in providing services to the rehabilitation hospital or unit and to its inpatients is to be counted in meeting the direction requirement.

We received comments on these provisions from hospitals, hospital associations, and individuals. The specific comments and our responses are as follows:

Comment—One commenter suggested that we not change our current requirement for full-time direction of excluded rehabilitation units. This commenter is concerned that the proliferation of rehabilitation units resulting from the relaxation of requirements may undermine the prospective payment system.

Response—We share the commenter's concern about the need to avoid changing our exclusion criteria in a way that would lead to an unintended proliferation of excluded rehabilitation units. However, for the reasons stated above, and as outlined in the NPRM (49 FR 27423), we believe that some relaxation of the current requirement is warranted. Therefore, we did not adopt this comment.

Comment—One commenter stated that if we revise the current regulations to eliminate the requirement for full-time service by unit directors, we should include other provisions in the regulations to ensure that directors actually perform services for a unit and its patients, and do not serve as "directors" in name only.

Response—First, we wish to point out that the medical direction provision is not the only requirement a unit must meet to be excluded. Among the many other requirements a unit must meet are those relating to the medical condition of patients, the types of therapies available, and the preadmission screening of potential patients. We believe that it is very unlikely that a unit that is sufficiently involved in rehabilitation to meet all these requirements could function with a director who provided only nominal services. Most physicians expect to be compensated for service as unit directors, and it is also unlikely that a hospital would pay a director for services that were not actually performed.

We are continuing to monitor the implementation of the prospective payment system, and we will consider imposing other requirements if it appears that the exclusion provisions are being abused by hospitals with unit directors who provide only nominal services. However, based on our experience to date, we do not believe that further requirements concerning a unit director's duties are needed.

Comment—Several commenters noted that the Conference Committee Report on Pub. L. 98–369 included language that reflects their views on the full-time director requirement for rehabilitation units. The report states, "The conferees do not believe this regulatory requirement to be necessary. Alternatively, the conferees expect that professionally established standards will be relied upon—for example, those of the Joint Commission on Accreditation of Hospitals (JCAH) or of the Commission on Accreditation of Rehabilitation Facilities (CARF), and these do not contain a full-time medical director requirement." (H.R. Rep. No. 98–861, 98th Congress, 2d session 1356 (1984).) Another commenter cited similar statements that appeared in the Congressional Record.

The commenters who referred to these statements of congressional views on this issue made different recommendations. Some commenters suggested that we not apply the medical direction requirement to any facility accredited by JCAH or CARF. Others suggested that we eliminate any minimum time requirement for unit directors.

Response—In developing the basic exclusion criteria for rehabilitation hospitals and units that were published on September 1, 1983, we reviewed the JCAH and CARF accreditation criteria. Based on this review, we concluded that facilities accredited by either JCAH or CARF could be deemed to have met certain criteria. However, the JCAH and CARF accreditation requirements relate primarily to the management of individuals' rehabilitation programs rather than to the direction of rehabilitation hospitals or units. Moreover, neither the JCAH nor the CARF requirements specify the minimum time a physician must spend in unit direction. Because of these factors, we did not adopt the comment suggesting that we permit rehabilitation units to substitute JCAH or CARF accreditation for unit direction in qualifying for exclusion.

Moreover, we share the concern of one commenter that it is important to avoid criteria that could result in only nominal direction of rehabilitation units. To help prevent this from occurring, we believe it is necessary to maintain a minimum time requirement for unit directors. Therefore, we did not adopt the recommendation that we delete that requirement.

Comment—Some commenters suggested that any relaxation of the current full-time direction requirement for units should be made retroactive to the beginning of the prospective payment system, that is, effective for all cost reporting periods beginning on or after October 1, 1983. Retroactive applicability of this provision would allow units that previously did not meet the exclusion requirements to benefit from our change in policy. The commenters believe that a retroactive effective date would be appropriate in this case because the limited time available for preparation and distribution of the exclusion criteria did not allow many hospitals the opportunity to recruit full-time directors for their rehabilitation units.

Response—We are sympathetic to the concerns of those who believe the statutorily imposed schedule for implementing the prospective payment system made it difficult for hospitals to meet the exclusion criteria. However, for the reasons detailed below, we did not adopt the comment regarding retroactive exclusions.

First, there would be numerous administrative problems created by such a retroactive change. All payments made thus far under the prospective payment system to units that would qualify for retroactive exclusion would be invalid, and the amounts to be paid would have to be recalculated on the basis of cost reimbursement. This would be administratively cumbersome and burdensome to the hospitals, their intermediaries, and our staff.

More significant than administrative problems, however, are our concerns about fairness. Hospitals subject to the prospective payment system that transferred patients to units that were not excluded at the time may have collected less than full payment for those patients. This occurs because of the payment rules applicable to "transfers" from one prospective payment system hospital to another. Had the units been excluded at the time, the different payment rules applicable to "discharge" from the transferring hospital and "admission" to the excluded unit would have resulted in more favorable payment to the discharging hospital. If we were to retroactively adjust those payments, another layer of administrative difficulty is added. If we did not, fairness to the discharging hospital would become an issue.

Some beneficiaries would be subject to unexpected retroactive liability for previous services. This would be caused by the way we handle inpatient days after benefits are exhausted under the prospective payment system. For those beneficiaries who exhaust their regular benefit days during a stay in a hospital subject to the prospective payment system, all subsequent nonoutlier days are "free"; that is, the beneficiary cannot be charged for them and they are not counted as lifetime reserve days. Similarly, for those beneficiaries who exhaust their lifetime reserve days during such a stay, all subsequent nonoutlier days are "free". In excluded units, the handling of those days is quite different. After exhausting regular benefit days, the beneficiary is liable for all subsequent days unless he or she elects to use lifetime reserve and be liable for sizable coinsurance amounts on each lifetime reserve day. If all lifetime reserve days are exhausted, the beneficiary is liable for all subsequent days.

In summary, to make this change retroactive would benefit only a very small number of units and only for a period of one year. By contrast, the cost would be—

- Increased administrative burden on those units, their intermediaries, and HCFA;
- Inequitable treatment of other hospitals; and
- Unfair retroactive imposition of liability on some beneficiaries.

On balance, we do not believe the costs of such a policy are justified by the limited benefits.

Comment—One commenter stated that it is arbitrary to apply the same minimum time requirement for the directors' services to all rehabilitation units' regardless of the units size. This commenter recommended that the minimum time requirement for each unit be related to the size and services of the unit.

Response—We agree that the amount of time a physician must spend to direct a unit can vary greatly depending on the unit's size, its scope of services, and other factors. Moreover, the time required may also vary because of differences in the types of medical conditions for which patients are treated, or the severity of patients' conditions. However, we have no objective data that would permit us to classify units by size and types of services furnished and establish a separate minimum time requirement for each. In the absence of these data, it would be impractical to use variable requirements. We believe it is both simpler and more equitable to prescribe a minimum time requirement for all units. Therefore, we did not adopt this comment.

Comment—One commenter stated that both our current and proposed unit direction requirements have the unintended effect of requiring physicians who serve as unit directors to perform administrative duties that are generally performed by nonphysicians. The commenter stated that this is inconsistent with current medical practice and is not cost effective.

Response—We do not agree that either requirement would have this effect. On the contrary, under our requirements, the physician who directs a rehabilitation unit would be free to delegate certain administrative duties to nonphysician hospital employees, if this would result in a more effective use of his or her time.

Comment—One commenter suggested that, in determining which services performed by the director may be considered services to a unit and its patients, we take into account the variety of services that physicians specializing in rehabilitation medicine currently perform in hospitals. This commenter stated that the services that count toward meeting the unit direction requirement should include the following:

- Preadmission screening of patients not yet admitted to the unit, and postdischarge review of patients' conditions for purposes of assessing the unit's quality of care.
- Educational activities concerning rehabilitation that are conducted for the benefit of health professionals who work in other areas of the hospital.
- Direction of rehabilitation-related activities in other hospital departments such as the physical therapy department.

To assure that these activities are counted toward the unit director's service, this commenter recommended that services be considered services to a unit and its patients if—

- The services have a direct benefit to the unit and its patients; and
- The services are consistent with existing standards of practice for rehabilitation units that have been adopted by the field of rehabilitation and its national standard-setting associations.

Response—We agree with this commenter's view that not all activities performed by a physician who is a director of a rehabilitation unit will necessarily involve current patients of the unit, or be carried on within the physical area designated as the rehabilitation unit. However, we are concerned that the definition of "services to a unit and its patients" proposed by the commenter is so broad that it could cover some services (for example, general educational activities on rehabilitation techniques) that only very indirectly provide benefits to the unit and its patients. Therefore, we did not revise the proposed regulations based on this comment.

We are continuing to monitor the implementation of the prospective payment system with regard to excluded units and will issue further instructions on this issue as they are needed.

C. Expansion of Excluded Rehabilitation Units and Exclusion of New Rehabilitation Hospitals and Units (§ 405.471)

Section 405.471(c)(4)(iii)(A) states that in order to be excluded, a rehabilitation unit must have treated, during its most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitative services for the treatment of one or more of the ten medical conditions listed in that paragraph.

We proposed a change concerning the application of the 75 percent rule to those already excluded rehabilitation units that intend to expand. We proposed to permit units with an occupancy level of at least 90 percent to increase their number of beds or square footage by up to ten percent at the start of a cost reporting period without applying the 75 percent rule to the added beds or space.

We also specified in the NPRM that if a unit increased in size beyond the level that would be specifically permitted under the amendment discussed in the previous paragraph, the additional beds or rooms would not be eligible for exclusion until they had been used to provide inpatient care for a full 12-month cost reporting period, and all space the hospital wishes to exclude must qualify for exclusion under the 75 percent rule.

We also proposed to codify in the regulations our policy that changes in the square footage or number of beds of any excluded unit would be recognized only at the start of a cost reporting period.

Comments on these issues were received from hospitals, hospital associations, and individuals and follows:

Comment—One commenter suggested that we not make any changes in policy that would allow hospitals to expand or add excluded rehabilitation units. The commenter's opinion is that these changes could permit hospitals to avoid the cost-restraining effects of the prospective payment system and that this would be contrary to its purpose.

Response—We share this commenter's concern about the importance of avoiding any changes that would create an incentive for the proliferation of rehabilitation beds or units. However, we believe that it is possible to permit expansions without creating such an incentive. Therefore, we did not adopt this comment.

Comment—Most of those who commented on this section of the NPRM approved of the concept of adopting a more flexible policy on the expansion of excluded rehabilitation units. Some commenters also supported the specific proposals that were set forth in the NPRM. However, many other commenters stated that our proposed revisions would not give hospitals the flexibility they need to respond to changes in the need for rehabilitation services. These commenters also criticized our proposal to require additions that exceed the 10 percent limit described in the NPRM to be in operation for a 12-month cost reporting period before they can be eligible for exclusion. The commenters believe that this policy would be cumbersome to administer and financially disadvantageous to hospitals, and that it could restrict a patient's access to rehabilitation services.

In this context, we also received a number of comments expressing opposition to our policy stated in the preamble to the final regulations published on January 3, 1984 (49 FR 241) that new rehabilitation hospitals and units must be in operation for a full 12-month cost reporting period before they can be eligible for exclusion. The commenters stated that this provision created serious financial problems for new hospitals and units and is particularly unfair to those hospitals and units that were in planning or under construction before the prospective payment system was implemented.

Commenters suggested various approaches that they believe would avoid the perceived inequities of our current policy while providing adequate protection against unnecessary proliferation of rehabilitation facilities. Some recommended that new rehabilitation hospitals and units should be excluded on a provisional basis for their first cost reporting period of operation, with a restrospective payment adjustment for those that did not meet the 75 percent requirement. Other commenters suggested that both new and expanded hospitals and units should be excluded during their first cost reporting period of operation or expansion based on certifications by the hospital or unit that they will comply with the 75 percent requirement. Operating data for the first 12-month cost reporting period of the new or newly expanded facility would be used in determining whether the facility would continue to be excluded for the next cost reporting period.

Response—The requirement that rehabilitation hospitals and units have a full 12-month cost reporting period history of furnishing intensive rehabilitation before they can initially be excluded from the prospective payment system was intended to avoid unintentional incentives to convert acute-care beds to rehabilitation beds merely to avoid inclusion into the prospective payment system. The 12-month waiting period to qualify for exclusion was intended to ensure that the hospital was actually furnishing intensive rehabilitation care. However, the rule has proven to be unnecessarily harsh when applied to new hopitals and units seeking exclusion for the first time. Consequently, we have added provisions in §§ 405.471 (d) and (e) to permit a new hospital or unit to certify that it will meet the 75 percent rule for its initial excluded cost reporting period.

A new hospital is one that seeks exclusion as a rehabilitation hospital for the first full 12-month cost reporting period of its participation in Medicare as a hospital. A new unit is one that has been added to an existing hospital. Any hospital that previously sought exclusion (successfully or not) for a rehabilitation unit will not be recognized as creating a "new" unit. Nor will mere conversion of existing hospital beds and facilities be recognized as creation of a "new" unit. New beds are defined as ones for which the hospital has obtained approval by increasing its bed capacity under both State licensure and Medicaid certification. Note that there is no net increase if the hospital "adds" 20 "new" beds and deletes 20 previously licensed and certified beds, even if the beds and their location are different. We view this as another form of conversion. The hospital may identify legitimate new beds as a new rehabilitation unit only or the *first* full 12-month cost reporting period that the beds are used to furnish inpatient care. We recognize that hospitals may occasionally need to combine some new beds with some existing beds to create a rehabilitation unit, and it is not always feasible to artificially keep the two types of beds separate. Consequently we will recognize a unit as "new" if more than half of its beds are new.

By applying these principles to the expansion of existing units, we will permit a hospital to expand an already-excluded unit by adding new beds for the first full 12-month cost reporting period that the new beds are used to furnish inpatient care. The definition of "new beds" is the same as for new units, explained in the preceding paragraph. The population actually treated in the unit during its most recent 12-month cost reporting period must conform to the 75 percent rule for the unit's exclusion to be renewed, but the hospital may certify that the population to be treated in the new beds will meet the 75 percent rule for their initial excluded cost reporting period.

These changes in the rules for exclusion of new hospitals, new units, and new beds are applicable only once—when the facilities first gain excluded status. We will verify that hospitals and units remain eligible for continued exclusion in future years by examining the prior 12-month cost reporting period records. In any case where the 75 percent rule is not complied with during an excluded cost reporting period, exclusion for the next cost reporting period will be denied.

Comment—A commenter objected to our policy of recognizing a change in the size of an excluded unit only at the start of a cost reporting period. The commenter believes that most hospitals have the accounting capability to determine the costs attributable to changes in the unit's bed size that take place during a cost reporting period. The suggestion is that since hospitals can manage the data, we should recognize these changes for purposes of exclusion from the prospective payment system as soon as possible. However, another commenter supported our policy and stated that considering an expansion as part of an excluded unit only at the beginning of a cost reporting period is essential to ensure proper payment.

Response—We recognize that some hospitals have accounting systems that are sophisticated enough to find and apportion the costs that result from changes in unit size that occur during a cost reporting period. However, in the interest of administrative simplicity and accurate payment, we continue to believe that we should recognize changes in unit size only at the start of a cost reporting period. We have adopted this policy because we are concerned that serious billing, cost reporting, and other payment problems could arise if a hospital or unit is paid under different systems (prospective payment and reasonable cost) for different parts of the same cost reporting period. Also, this policy would result in uncontrolled fluctuation as hospitals add or subtract beds in their excluded units. This unwarranted instability would undermine the prospective payment system. Therefore, we did not make any change in the final regulations based on the first comment.

Comment—One commenter stated that recognition of changes in unit size only at the start of a cost reporting period is not consistent with the Provider Reimbursement Manual instructions on separate cost entities, which permit separate cost entities to be recognized for quarters of cost reporting periods. The commenters also stated that our proposed policy is too inflexible to permit hospitals to respond quickly to changes in patient need for rehabilitation services. This commenter recommended that we recognize changes in unit size effective with the beginning of the calendar month after the month in which the changes occur.

Response—The provisions of the Provider Reimbursement Manual cited by the commenter relate to the establishment of separate cost entities in hospitals that are reimbursed on a reasonable cost basis. The implications of these changes are less complex than those of the exclusion of a unit, since the latter situation requires the operation of two different payment systems within the same hospital and use of different payment systems for certain beds during different parts of the same cost reporting period. In view of this, we do not believe it is inconsistent to apply a different rule to each situation.

We share the commenter's view that some flexibility is needed to permit hospitals to adapt to shifts in the demand for various types of services. However, we are also aware of the danger that uncontrolled fluctuation in unit size could prevent accurate payment and lead to other problems outlined above. Therefore, we are making no changes based on this commenter's recommendation.

D. Physician Attestation (§ 405.472)

Section § 405.472(d)(2)(i) requires that, as a part of DRG validation, the attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest in writing to the principal diagnosis, secondary diagnoses, and names of procedures performed. These regulations require that the following statement immediately precede the physician's signature:

> I certify that the identification of the principal and secondary diagnoses and the procedures performed is accurate and complete to the best of my knowledge. (Notice: Intentional misrepresentation, concealment, or falsification of this information may, in the case of a Medicare beneficiary, be punishable by imprisonment, fine, or civil penalty.)

Since publication of this requirement, many physicians and hospitals have questioned the need for such a requirement and other physicians have found its language to be offensive. In addition, some physicians have complained about the manner in which hospitals have been implementing the physician attestation requirement and have been under the wrong impression that hospitals are required under the regulations to use particular methods for its implementation.

Many of the concerns expressed by physicians reflected misunderstandings about the certification and penalty requirement and a need for clarification of the requirement. Therefore, we proposed the following modifications to both the language and the positioning of the statements to clarify the scope of the statements and to provide additional guidance to the hospitals in their implementation of the attestation requirement:

- In order to clarify that the physician is attesting only to the diagnoses and procedures performed, we proposed to replace the word "identification" with the phrase "narrative descriptions."
- We also proposed to add the word "major" before the phrase "procedures performed" to clarify that the physician is not attesting to minor procedures that were performed of which he or she is unaware.
- We proposed that the certification statement appear on the discharge summary sheet, rather than on another type of hospital form.
- We proposed to separate the certification statement from the penalty statement. The certification would appear on each patient's discharge summary sheet, but the penalty statement would be provided only annually to the physician in a notice for which the physician would acknowledge receipt in writing. As proposed, the annual notice would state the following:

> **Notice To Physicians**
>
> Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature on the discharge summary sheet. Anyone who misrepresents, falsifies, or conceals this information may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

Acknowledgment of receipt of this notice would be kept on file at the hospital and made available to us upon request. In submitting each claim, the hospital would certify that it had on file an acknowledgment from the attending physician involved.

- We further noted in the preamble to the NPRM that, for a reasonable time, hospitals would be permitted to continue to use the language and positioning of the certification and penalty statements prescribed in the January 3, 1984 final rule.

The comments we received on this proposal were from physicians and hospitals and the organizations that represent them and medical records personnel.

Comment—Many commenters, primarily physicians and organizations that represent them, commented that the entire physician attestation requirement, including both the certification and the notice to physicians, should be eliminated. In support of their comment, they noted that these requirements do not impose a new liability upon physicians but, rather, simply underline existing statutory requirements. They also asserted that rules governing medical records already accomplish the objectives of this requirement and that our requirements are not necessary to achieve our purpose. They further commented that retaining the requirement would create an unnecessary recordkeeping burden for them and for hospitals and constituted an affront to the dignity of the medical profession. They recommended that any attestation should be obtained from the entity seeking payment; that is, the hospital.

Response—As we noted in the NPRM (49 FR 27425), the use of certification and penalty statements is standard in Federal programs that involve the obligation of Federal funds. These statements have always appeared on cost reports and claim forms used by physicians and other providers as part of the Medicare and Medicaid programs. As we noted at the time, the penalty language is not intended to impugn the integrity of the medical profession; rather, it is a standard cautionary measure routinely used to single out isolated wrongdoers. In fact, the necessity of these statements for successful prosecution of wrongdoers was also noted in the NPRM in a quote from a communication from the U.S. Department of Justice. We believe that the physician is the key person in the diagnosis and treatment of a patient and that it is upon the physician that we should rely for information about his or her diagnosis and the procedures performed.

We recognize that many physicians object in principle to the use of a certification and of a cautionary statement. We believe, however, that the provisions we proposed, as they are modified in this final rule, go as far as possible in dealing with these concerns given our overall responsibility for effective management of the Medicare program.

Comment—Most commenters approved of our proposal to make physician acknowledgment of the penalty statement an annual requirement with the hospital responsible for obtaining it and keeping it on file. However, many physicians and some hospital administrators commented that this requirement still imposes a burden on providers and will continue to present an affront to physicians.

Response—Our proposal does not eliminate the requirement, but we believe that it does significantly lessen the problems about which physicians complained. The penalty statement is not a prominent part of the medical record and is not routinely encountered by physicians when they complete the certification. At the same time, our proposal still creates the explicit acknowledgment of the effects of misrepresentation we believe is essential to the prosecution of the few wrongdoers who may be identified. We believe the requirements we proposed go as far as possible towards meeting the concerns of physicians and we have retained them in the final regulations.

Comment—The proposed regulations indicated that the hospital, in submitting each claim, would certify that it had on file an acknowledgment from the physician as required by § 405.472(d). Some commenters noted that certification on a claim-by-claim basis would be unnecessarily burdensome and that the current Medicare bill does not contain a space for such certification. It was suggested that claim-by-claim certification not be required.

Response—We agree. The final regulations simply establish as a requirement for the prospective payment system that the hospital obtain the signed acknowledgments before claims are submitted and that it keep them on file. We will monitor compliance through the DRG validation process. Certifications will not be required on hospital bills.

Comment—Several commenters raised questions as to the acceptability of rubber stamps and electronic signatures in completing the physician attestation. There were also questions as to whether the term "in writing" precluded the use of typed narrative descriptions or computer-generated narrative descriptions.

Response—The requirement for the physician's signature is meant to elicit an actual signature by the attending physician. Rubber stamps and facsimile signatures of other types are not acceptable. We believe such methods of affixing a signature are primarily used by persons other than the person whose signature is being affixed. Since we plan to rely very heavily on the information and because the accuracy of the information is the personal responsibility of the physician and he or she is liable for any inaccurate information attested to, we believe it is essential to assure that the physician personally sign the certification. We also know, however, that some hospitals have systems under which the narrative description of the diagnoses and procedures are generated in the medical records department, sometimes mechanically, and presented to the attending physician for his or her approval. We believe this is appropriate and do not intend the regulation to preclude it so long as the attending physician agrees to it and signs his or her name to the certification.

Comment—Some commenters, especially medical records professionals, objected to the use of the term "major" in connection with procedures performed. The term was used in both the certification and notice statements contained in the proposed regulations. The commenters noted that the term "major" could cause confusion. It was also noted that procedures that could be termed "major" and "minor" could be significant for DRG classification. It was suggested that the term be deleted.

Response—The term "major" was inserted into the certification and penalty statements in response to physician comments that the word "procedures," unmodified, appeared to make them responsible for listing all procedures, whether major or minor and whether or not they had personally performed them or had knowledge of them. They noted that there are occasions upon which procedures are performed without the direct knowledge of the attending physician. As we noted in the proposed regulation, we did not intend to require that the attending physician attest to all the procedures performed but only to those procedures of which he or she was aware. We agree with the commenters that the word "major" could cause confusion if it were taken to have a precise technical meaning; however, we have used the word in a more general sense for the purposes discussed above and do not intent to further define it or to require that it be used as a technical test to determine which procedures should be listed and which ones should be omitted. Accordingly, we are retaining the word "major" in both the certification and penalty statements with the understanding that it be construed as discussed above.

Comment—Several commenters suggested that the identification of the principal and secondary diagnoses is primarily a payment convention and should be left to hospitals rather than required of physicians.

Response—We do not agree. It is our intention to use the physician attestation process to identify (after study) the reason why an attending physician admitted a patient to the hospital for treatment. While payment is determined on the basis of this information, we do not believe it is merely a payment convention which may be left to the hospital. We believe that the physician is the key figure in the diagnosis and treatment of patients and that it is most appropriate to rely upon his or her decisions in this matter.

Comment—In the revised language of the acknowledgment statement proposed in the July 3 document, we omitted the word "intentional" in connection with language about misrepresentation, falsification, and concealment of information. Some commenters suggested that this omission represented a decision to expand the liability of physicians to include unintentional errors.

Response—As we have noted previously, the statement that we are seeking physicians to read and acknowledge does not add or diminish legal liability for misconduct. It simply provides a reminder that there are currently laws that impose penalties for misrepresentation, falsification, and concealment of information. We omitted the word "intentional" because it does not accurately describe the applicable criminal and civil liabilities and therefore does not provide fair warning to physicians of the consequences of misconduct. Again, however, we note that the language of the notice will not affect the legal liability of physicians under applicable laws.

Comment—The largest number of commenters, primarily medical records professionals and hospital administrators, commented that a requirement that the certification appear on a specific document is unnecessarily restrictive and that the requirement that it be placed on the hospital discharge summary presents real problems in terms of medical records completion and hospital administration. A major problem is that the discharge summary is required by the Joint Commission on the Accreditation of Hospital (JCAH) standards to be completed in a "reasonable" time. In practice, this has been taken to be from 15 to 30 days. Some delay is encountered as physicians wait for final laboratory results that may not be available at discharge. Often there is also some delay in transcribing dictated statements. Standards of the JCAH do not require a dictated discharge summary for all cases. For example, a final progress note may be substituted for a discharge summary in the case of patients who have problems of a minor nature and require less than 48 hours of hospital care. In some instances, these summaries are prepared by physicians other than the attending physician.

Two basic concerns about the use of discharge summaries arise from these comments. One is that pressure from hospitals for early completion of discharge summaries in order to assure adequate cash flow may well lead to a deterioration in the quality and quantity of information reported. Another concern is that delays in completing the summaries could add two weeks or more to the length of time it takes a hospital to submit a claim for payment.

Response—We agree with these comments. We had specified the use of the discharge summary in the proposed regulation as a means of assuring that the physicians understood that they were attesting to the diagnoses and procedures performed rather than the medical codes applied to them; however, we did not intend to cause any of the unfortunate results pointed out in these comments. Accordingly, we have dropped the requirement that the certification be placed on the discharge summary. The location of the certification in the medical record may be determined by the hospital. We note again, however, that we do not intend the physician to be responsible for more than his or her own narrative statement of the diagnoses and procedures. A physician is not responsible for hospital coding accuracy.

F. Hospitals in Areas Redesignated as Rural (§§ 405.473 and 405.476)

Section 1886(d)(2)(D) of the Act requires that average standardized amounts per discharge be determined for hospitals located in urban areas and rural areas of the nine census divisions and the nation. Under the prospective payment system, a hospital's payment rate is dependent, to some degree, on whether the county in which a hospital is located is designated as an urban area or as a rural area. The term "urban area" is defined as provided in section 1886(d)(2)(D) of the Act, in accordance with the Executive Office of Management and Budget's (EOMB's) designations, as a Metropolitan Statistical Area (MSA), a New England County Metropolitan Area (NECMA), or certain New England counties deemed to be urban areas under section 601(g) of Pub. L. 98–21 (42 U.S.C. 1395ww (note)). The term "rural area" means any area outside an urban area.

Periodically, EOMB revises the list of MSA or NECMA designations based on a continuing analysis of factors such as changes in population and commuting patterns. Depending on those changes, a hospital may be reclassified as urban and thus receive the higher urban payment rate, or it may lose its urban area status and receive the lower, rural Federal rate. We recognize these reclassifications, for the purpose of determining payment, beginning with the start of the next Federal fiscal year following EOMB's announcement of the change.

For a hospital that loses its urban area status, the resulting reduction in its Federal payment rate may cause a serious financial burden for the hospital if it suddenly must operate at the lower rate without time for adaptation.

Section 1886(d)(8) of the Act, as added by section 2311(c) of Pub. L. 98–369, provides for an adjustment to the payment amounts for hospitals reclassified from urban to rural after April 20, 1983. Therefore, we are revising §§ 405.473(b) and (c) and adding a new paragraph § 405.476(i) to provide that, effective with hospital cost reporting periods beginning on or after October 1, 1983, a hospital that loses its urban status, as a result of an EOMB redesignation occurring after April 20, 1983, may qualify for special consideration by having its rural Federal rate phased in over a two year period. The hospital will receive, in addition to its rural Federal rate, in the first cost reporting period, two-thirds of the difference between its present rural Federal rate and the urban Federal rate that would have been paid had it retained its urban status, and, in the second reporting period, one-third of the difference. The adjustment will be applied for two successive cost reporting periods beginning with the cost reporting period in which we recognize the reclassification.

Of course, if the hospital is subsequently reclassified during this special transition period as urban, the special adjustments would cease to apply.

In the NPRM (49 FR 27426), we proposed that a hospital meet a qualifying test in order to receive the special two-year adjustment. For a hospital to be eligible for the additional payments, the hospital-specific portion had to exceed the hospital's Federal rural rate after the Federal rate was adjusted by the hospital's rural area wage level index and by the doubled indirect teaching adjustment factor. Because section 2311(c) of Pub. L. 98–369 does not require this test or a similar qualifying test, we are eliminating the qualifying test in this final rule.

We also proposed to make the special adjustment effective for two Federal fiscal years because the Federal rates are updated according to the Federal fiscal year.

However, the law specifically makes the special adjustment effective according to cost reporting periods, beginning on or after October 1, 1983. Therefore, we are modifying the final regulations to conform to the requirement of Pub. L. 98–369.

As a result of EOMB's June 30, 1983 revision of the MSA or NECMA designations, 49 counties that were previously classified as urban lost their urban status. This resulted in the reclassification of 51 hospitals from urban to rural status and the subsequent payment to the hospitals of the lower rural rates for the census divisions in which they are located. Under the new section 1886(d)(8) of the Act, each of these hospitals will also be eligible to receive the two year adjustment effective with their cost reporting periods that began in Federal fiscal year (FY) 1984.

Comment—One commenter noted that section 2311(c) of Pub. L. 98–369 provides that additional payments be made to hospitals reclassified as rural hospitals on or after April 20, 1983. The additional payments are effective with cost reporting periods beginning on or after October 1, 1983. The commenter recommended that we revise § 405.476(i) to conform the effective date of this provision with the date contained in the legislation.

Response—We agree with the commenter and have revised § 405.476(i) to provide that the effective date of the reclassified rural hospitals' provision is with a hospital's cost reporting period beginning on or after October 1, 1983. We note that, based on section 2311(b) of Pub. L. 98–369, we are also revising the effective date in § 405.473(b)(6)(ii) for a hospital located in an MSA or NECMA that crosses over two or more census divisions. The effective date of these provisions is also with a hospital's cost reporting period beginning on or after October 1, 1983.

Comment—Several commenters agreed with our proposal to permit hospitals located in counties that lost their urban designation after April 20, 1983 to receive an additional payment. However, one commenter proposed that additional criteria be provided under which a hospital located in a rural county could be considered urban and paid an urban rate.

Response—The rationale for providing additional payment under § 405.476(i) is to prevent serious financial hardship to a hospital that could not have anticipated a redesignation of the county as rural. In order to permit a smooth transition to the rural rate, additional payments are made for two cost reporting years. This should allow hospitals adequate time to budget and plan expenses in terms of a rural rate. We do not believe that the full urban rate should be paid since the hospital is now designated rural, and this payment is only a supplement to the rural rate.

As we have explained previously, the designation of a county as urban or rural is based on whether or not it is located within an MSA or NECMA as designated by EOMB. The standards for determining whether or not a particular location qualifies as an MSA or NECMA are not within the technical control of the Department of Health and Human Services. EOMB determines the MSAs and their effective dates based on standards prepared by the Federal committee on MSAs which advised EOMB on metropolitan area definitions. As stated previously, we are not aware of any criteria that are as objective as the MSA criteria for use in determining whether a hospital is urban or rural. We do not believe it would be appropriate to establish criteria in the regulations that have been derived solely to allow a targeted hospital or groups of hospitals to be classified as urban. Rather, any such criteria should have broad applicability and serve to delineate common characteristics that objectively define urban and rural areas.

In addition at the end of the two cost reporting periods, the hospital will be receiving a national rate. As part of the development of a national rate, Congress has requested a study due at the end of FY 1985 on the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates. Based on that study and other studies mandated by Congress, we will be evaluating the continuing necessity of establishing separate urban national rates and rural national rates.

Comment—A number of commenters stated that the NPRM did not adequately address what they believe are fundamental inequities in the urban/rural classification system that is based on EOMB's definition of urban areas. A few commenters believe that the urban rates were too high in comparison to the rural rates that are applied to rural hospitals.

Response—It appears that a number of commenters share the erroneous impression that we are arbitrarily using EOMB's MSA/NECMA definitions in determining urban versus rural areas under the prospective payment system. We have employed EOMB's definitions of Standard Metropolitan Statistical Areas (SMSAs) as the bases of an urban/rural classification system since the implementation, in 1974, of the hospital routine cost limits under section 223 of Pub. L. 92–603, and subsequently for the total inpatient hospital cost limits in 1982 under Pub. L. 97–248. Moreover, section 601(e) of Pub. L. 98–21 specifies that hospitals must be grouped by urban or rural location within the United States and each census region (established by the Bureau of the Census) when calculating the standardized payment rates. The law (section 1886(d)(2)(D) of the Act) requires that separate average standardized amounts be computed for hospitals located in rural as opposed to urban areas. The law further defines an urban area as an area within an SMSA as designated by EOMB or within such similar area as the Secretary has recognized under the regulations establishing limits on total inpatient operating costs under Pub. L. 97–248. Hospitals located outside these areas are considered to be located in rural areas.

On June 30, 1983, EOMB began using MSAs in lieu of SMSAs. MSAs are designated and defined following a set of new standards prepared by the Federal committee on MSAs which advised EOMB on metropolitan area definitions. We believe that the MSA system is the only one currently available that meets the requirements for use as a classification system in a national payment program. The MSA classification is a widely accepted statistical standard developed for use by Federal agencies in the production, analysis and publication of data on metropolitan areas. The standards have been developed with the aim of producing definitions that will be as consistent as possible for all MSAs nationwide. The objective standards used to establish MSAs are based on 1980 census data and include not only population criteria, but also standards for determining the degree of economic and social integration among potentially qualifying counties.

We believe that section 1886(d) of the Act prescribes the precise method to be employed for computing the standardized Federal urban and rural rates. This method takes into account the actual costs of hospitals located in urban and rural areas. We refer the reader to more detailed discussions in the September 1, 1983 interim final rule (48 FR 39763) and the January 3, 1984 final rule (49 FR 251).

Comment—One commenter recommended that we adopt the definition of urbanized areas used by the Census Bureau in lieu of EOMB's definitions of MSAs/NECMAs. Yet, another commenter recommended against using Census Bureau data.

Response—Our employment of some other classification method of urban/rural categories would not resolve many of the problems raised by the commenters. We believe that any classification system will produce situations in which hospitals believe that they are not fairly represented by the classification system. It is questionable whether adopting the Census Bureau's definition of urbanized areas in lieu of EOMB's definitions would improve the circumstances of those hospitals which are currently classified as rural under the prospective payment system. Although applying the Census Bureau's definition would result in more areas being defined as urban, it would not necessarily increase the number of hospitals classified as urban. The Census Bureau's definition is based on the population of cities and villages, whereas EOMB's definition is county specific, thereby generally encompassing a larger geographic area than the Census Bureau definition for the same metropolitan area. Therefore, some hospitals that are classified as urban under EOMB's definition may be classified as rural under the Census Bureau's definition.

In addition, because the Census Bureau's definitions are city or village specific rather than county specific, we would be unable to correlate these geographic areas with the wage and employment data provided to us by the Bureau of Labor Statistics (BLS) for the construction of the hospital wage index. However, even if the BLS data were available on a city or village specific basis, we believe the sharper urban/rural distinctions would further exacerbate differences in the urban and rural payment rates.

Comment—One commenter argued that the proposed remedy for reclassified rural hospitals fails to rectify the problems caused by variations in rural wage rates. These are the problems that the current hospital wage index also fails to address. The commenter also believes that the NPRM does not address the problem of hospitals that experience high average costs per discharge due to the greater intensity of services furnished in the hospital.

Response—We agree with the commenter that the regulations (§ 405.473(c)(2)(i)(D)) do not address variations in rural wage rates or the inability of the current hospital wage index to measure and control for variations in wage rates that occur in rural areas throughout each state. These regulations, as proposed in the NPRM and as amended by section 2311(c) of Pub. L. 98–369, are not intended to address problems with the wage index. Rather, the provisions serve to alleviate a major inequity resulting from a hospital being reclassified from urban to rural status, and the abrupt disruption to its cash flow that may accompany such a change. The problems with the wage index have been discussed in the August 30, 1983 final rule implementing provisions of Pub. L. 97–248 (48 FR 39433) and in the January 3, 1984 final rule (49 FR 257). We have maintained that the inability of the current wage index to measure and control for difficulties arising from the variation in rural wage levels is a result of the lack of suitable alternative data for determining appropriate labor markets for rural hospitals. Simply extending the definition of urban areas to include hospitals in adjacent rural counties and applying the urban wage index to these hospitals, as some previous commenters have suggested, is not a solution we can accept without clear evidence indicating that these hospitals are in the same labor market as hospitals within the urban boundaries. While we are mindful of the need to improve the sensitivity of the wage index to variations in wage rates paid throughout rural areas, thus far no one has come forth with a better method than the current one for identifying appropriate rural labor market areas.

It should be noted that hospitals, reclassified as rural, whose intensity of services and costs more closely resemble that of urban hospitals, may meet the criteria for rural referral centers contained in § 405.476(g)(1) of the regulations. A hospital that meets these requirements may receive the urban Federal standardized payment rate applicable to the census division in which the hospital is located rather than the rural rate.

F. Census Division Boundaries (§ 405.473)

Section 1886(d)(2)(D) of the Act requires that separate average standardized amounts per discharge be determined for hospitals located in urban areas and rural areas in each of the nine census divisions and the nation. This yields 18 basic regional rates and two national rates. The definition of urban area is generally based on the MSA and NECMA designations issued by EOMB.

Despite the application of a single urban wage index to determine the payment rate for all hospitals within a given MSA or NECMA, different standardized rates apply to hospitals located in certain MSAs or NECMAs that cross over census division boundaries. Currently, there are 14 MSAs that overlap census division boundaries resulting in two or more basic Federal payment rates applying to the same urban area.

Section 1886(d)(2)(D) of the Act, as amended by section 2311(b) of Pub. L. 98–369, authorizes the Secretary to deem a hospital to be located in the region in which the largest number of hospitals in the same MSA are located or the largest number of discharges occur. We elected to assign hospitals to an MSA or NECMA based on the census division with the largest number of hospitals rather than the largest number of discharges in order to maintain consistency with the present method of computing the Federal standardized amounts.

We are, therefore, amending §§ 405.473(b) and (c), by revising the method for determining the census area in which an MSA or NECMA is located for the purpose of computing the Federal standardized payment rates.

Henceforth, a hospital in an MSA or NECMA that crosses two or more census divisions will be deemed to belong to the census division in which most of the MSA's or NECMA's hospitals are located. This revised definition is effective with cost reporting periods beginning on or after October 1, 1983.

As an exception to this definition, section 2311(d)(2) of Pub. L. 98–369 requires that the new payment rates, for those hospitals that are placed in a less advantageous position because the majority of hospitals in their respective MSAs or NECMAs are in a census division with a lower Federal standardized rate, are not to be effective for cost reporting periods occurring in FY 1984. The deeming provisions apply to these hospitals effective with their cost reporting periods beginning on or after October 1, 1984.

In addition to revising the effective date (to cost reporting periods beginning in Federal FY 1984) that was proposed in the NPRM, because of the legislation affecting those hospitals which will be assigned a census division with a lower federal rate, we deleted the transitional one-year only payment (for FY 1985) to those hospitals. We eliminated the payment provision because the legislation provides these hospitals with a transitional grace period in FY 1984 to the extent that the lower rate will not apply to them for their cost reporting periods that begin during this year.

Because we decided to deem a hospital located in an MSA or NECMA that crosses census divisions to belong to the census division in which the largest number of hospitals within the MSA or NECMA are located, we needed to resolve the situation in which an equal number of hospitals are located in each part of an MSA or NECMA that overlaps two or more census divisions. Section 2311 of Pub. L. 98-369 refers only to the assignment of hospitals on the basis of hospitals or discharges. This section, however, does not specifically preclude assignment on other bases. Neither does it give any instructions for dealing with the exceptional condition of an equal number of either hospitals or discharges. Hence, in the case in which an equal number of hospitals are located in each part of an MSA or NECMA that crosses census division boundaries, we believe assigning hospitals to the census division with the higher Federal rate, as proposed in the NPRM (49 FR 27436), is consistent with Congressional intent to remedy the problem of multiple Federal rates being established for hospitals within the same urban area. Furthermore, because this provision does not adversely affect hospitals, and is relatively easy to administer, we are retaining it in the final rule.

Comment—One commenter noted that under section 2311(b) of Pub. L. 98-369 the Secretary is authorized to deem the location of hospitals within an MSA or NECMA that crosses census divisions to one of the census divisions. The basis for deciding to which census division a hospital is to be assigned would be either the census division in which the largest number of hospitals in the MSA or NECMA is located or in which the greatest number of discharges occurs. The commenter recommended that we base the assignment of hospitals on the greatest number of discharges rather than on the largest number of hospitals as we had proposed in the NPRM.

Response—We considered deeming the location of hospitals on the basis of discharges, along with other alternative bases, but elected the largest number of hospitals provision as the most appropriate basis for several reasons. First, the number of hospitals located within and MSA or NECMA is much more likely to remain stable from year to year than the number of discharges. The number of discharges may fluctuate significantly for a number of reasons including the opening or closing of patient services, deliberate manipulation by hospitals, or unexpected events such as a fire. Fluctuation in discharges could result in shifting the deemed location of the MSA or NECMA from one census division to another in the two succeeding years. This, we believe, would enormously complicate the rate setting process and create uncertainty for hospitals as to which Federal rate they could expect to receive for the final year of the prospective payment system transition period.

Second, the calculation of the standardized rates is determined based on an average cost per case across all hospitals in a region without regard to weighting based on the number of discharges in each hospital. Thus, assignment of hospitals based on the greatest number of hospitals maintains consistency with the method of calculating the standardized rates. Furthermore, to assure that assignment of hospitals to one census division or another was based on a complete count of discharges, we would have to use data that was at least one year old because of the delay in receiving bills, especially from large hospitals that tend to have a greater proportion of outlier cases than small hospitals. In contrast, the largest number of hospitals provision can be determined immediately. Thus, for administrative simplicity, and assurance of accuracy in deeming the location of an MSA or NECMA, we have elected to utilize the number of hospitals as the basis for deeming.

Finally, were we to deem the location of hospitals on the basis of discharges rather than on the largest number of hospitals, it is likely that, based on the latest data available, more hospitals would experience reduction in their Federal payment rates than would occur using the methodology we have elected.

Comment—One commenter inquired how hospitals would be assigned when an MSA or NECMA crosses over three census divisions. The commenter suggested that the situation may arise in which the census division with the lowest of the three Federal standardized rates may have the largest number of hospitals, although the number of hospitals combined in the other two census divisions exceeds the first. The commenter believes that it is inequitable to assign all hospitals within the MSA to the lowest paying census division because the combined number of hospitals in the other two census divisions exceeds the first.

Response—There are hospitals located in MSAs that cross over three census divisions, but none in which the combined number of hospitals in two of the census divisions exceeds the number in the third census division having the largest number. However, even if such a case were to occur in FY 1986 (the last year that rates will be set for each census division), we believe that § 405.473(c)(2)(ii)(A), which describes the largest number of hospitals provision, is sufficiently broad to cover this situation. Our use of the term "most" in referring to the location of the largest number of hospitals, rather than the term "majority," is specifically intended to resolve these situations. Furthermore, section 2311(b) of Pub. L. 98-369 clearly supports the largest number of hospitals provision. There is no authority under the law to base a hospital's rate, in a situation involving an MSA or NECMA that crosses over three census divisions, on the rate paid to the majority of hospitals when that majority spans two or three census regions. We also note that § 405.473(c)(2)(ii)(B), which provides for hospitals to receive the higher Federal payment rate when an equal number of hospitals in the MSA or NECMA are located in each of the intersected census divisions, is applicable only in those situations in which the location of the MSA or NECMA cannot be determined based on the largest number of hospitals provision.

G. Base Year Appeals (§ 405.474)

Section 405.474(b) states that the intermediary's estimate of a hospital's base-year cost and subsequent modifications, made for purposes of determining the hospital-specific rate under the prospective payment system, are final and may not be changed except as prescribed in the regulations. Under the exception set forth at § 405.474(b)(3), in making a change to the estimate, the intermediary is allowed to take into account a successful appeal of the hospital's base period notice of amount of program reimbursement, as described in §§ 405.1801 through 405.1883.

In the NPRM, we proposed to revise § 405.474(b)(3) to include the results of a reopening and revision of a cost report determination under §§ 405.1885 through 405.1889, a prehearing order or finding under §§ 405.1821 or 405.1853, or a final administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877, as a basis upon which a recalculation of a hospital's base year costs may be made on a prospective basis (49 FR 27437).

In this final rule, we are including the results of an Administrator's review under § 405.1875, as well as the administrative actions specified in the NPRM, as a basis upon which a recalculation of a hospital's base year may be made on a prospective basis. This change provides an additional basis upon which the recalculation may be made. In addition, we are clarifying that the term "final administrative or judicial review decision" in § 405.474(b)(3)(i)(C)(*1*)(*iii*) (redesignated as § 405.474(b)(3)(i)(C)(*1*)(*iv*) in this final rule) means a decision that is no longer subject to review under applicable law or regulations by a higher reviewing authority. This change does not affect the current provision in § 405.474(b)(3)(i)(C)(*2*), and therefore, the intermediary will recalculate a hospital's base year costs effective with the first day of the hospital's first cost reporting period beginning on or after the date of the decision. The date that the decision is no longer subject to review will not be used for this purpose.

Our responses to the comments that we received from hospital associations and related organizations are as follows:

Comment—Several commenters supported our proposal in § 405.474(b) to include other administrative actions as a basis of recalculating base year costs, but took the position that the adjustments to base year costs should be applied retroactively to a hospital's entry into the prospective payment system. Another commenter urged that we revise the proposed changes to require retroactive adjustments that would suggest alternative methods for payment of the retroactive amounts due. One other commenter recommended that the adjustments to base year costs be effective 30 days after final resolution, and that a lump sum payment be made for all discharges occurring between the hospital's entry into the prospective payment system and the effective date. Finally, another commenter stated that base year costs should be permitted to be recalculated retroactively with no limits placed on the basis for making such recalculations.

Response—The matters of retroactive application versus prospective effect and the limited basis for recalculating base year costs are not related to our proposed changes as stated in the NPRM. We do not believe that there is a valid reason to change the views we expressed on these matters in the January 3, 1984 final rule (49 FR 259–260). In taking into account additional costs recognized as allowable costs for a hospital's base year, we believe that only a prospective revision for subsequent years based on information developed independent of the prospective payment system is appropriate. We believe that this policy and the regulatory changes in this final rule are consistent with congressional recognition that, during the transition period, establishment of the prospective payment rates would have to be done rapidly based on the best data available (Joint Explanatory Statement of the Committee of Conference, Item 3.B, Congressional Record—House, p. H1773, March 24, 1983).

Comment—One commenter believes that the proposed changes would allow intermediaries to reopen base year cost report determinations to "retroactively" affect payment rates. For this reason, the commenter suggested that reopenings should be limited to adjustments of those specific costs that are appealed by the provider.

Response—We believe that the proposed changes that are incorporated in this final rule do address the concern of this commenter. Under those regulations at §§ 405.474(b)(3)(i)(C)(1) and (2), the intermediary's estimate of base year costs and modifications thereto may be changed only to take into account additional costs recognized as allowable costs. These allowable costs that result from a reopening and revision are effective with the hospital's first cost reporting period beginning on or after the date of the revision. The revised base year costs will not be used to recalculate the hospital-specific portion for fiscal years beginning before the date of the revision.

H. Referral Centers (§ 405.476)

Section 1886(d)(5)(C)(i) of the Act directs the Secretary to provide exceptions or adjustments to the prospective payment system that consider the special needs of regional and national referral centers (specifically including those hospitals of 500 or more beds located in rural areas).

Section § 405.476(g)(1) provides that a referral center is an acute care hospital with a Medicare provider agreement that—

- Is located in a rural area and has 500 or more beds; or
- Has an inpatient population such that at least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital. In addition, at least 60 percent of the hospital's Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries must be furnished to beneficiaries who live more than 25 miles from the hospital.

The payment adjustment provisions are in § 405.476(g)(2) and state that rural referral centers which have 500 or more beds are paid prospective payment rates based on the urban rather than the rural, adjusted standardized amounts as adjusted by the applicable DRG weighting factor and the hospital's area wage index. There are no payment adjustments for rural referral centers with less than 500 beds.

While we believe that the criteria for referral center status are reasonable, upon further analysis of the special circumstances applicable to rural referral centers of less than 500 beds and based on information we received from the industry since publication of the interim final rule in September 1983, we proposed in the NPRM a separate set of criteria that would meet these unique circumstances. We proposed to add the following alternative set of criteria (two mandatory and a choice of one out of three other criteria) that could be used to determine whether any hospital located outside of an MSA or NECMA is a referral center:

- The hospital would have to have a 1981 case-mix index of at least 1.03 as published in the September 1, 1983 **Federal Register** (48 FR 39847).

We proposed to allow hospitals that do not meet the 1.03 case-mix index benchmark an alternative criterion. A hospital whose published case-mix index is below 1.03 could meet this requirement if its case-mix index for the first cost reporting period subject to prospective payment (that is, the first reporting period beginning on or after October 1, 1983) is at least 1.0903. We obtained the 1.0903 figure by multiplying the 1.03 case-mix figure by a factor of 1.0585. This factor represented the estimated increase in a hospital's case-mix index reflecting the increased accuracy and completeness of billing information that would result from making payments to hospitals based on this information as occurs under the prospective payment system. Since the hospital case-mix indexes published in the September 1, 1983 **Federal Register** rely on data from a period in which hospital payments were not dependent on complete and accurate billing data, it was estimated that the indexes were, on average, understated by 5.85 percent. (See section II.C. of the addendum for a more detailed discussion of the estimated increase in a hospital's case-mix index.)

- The hospital's number of discharges (excluding discharges from subprovider units (as that term is defined in section 2336 of the Provider Reimbursement Manual, HCFA Pub. 15–1)) must have been at least 6,000 for the most recent cost reporting period completed by the hospital before it applies for referral center status.

In addition to meeting the two criteria mentioned above (case mix and number of discharges), a hospital would have to meet one of the following three criteria:

- More than 50 percent of the hospital's medical staff are specialists; that is, they have completed minimal training requirements as recognized by the American Board for Osteopathic Specialists.
- The hospital's inpatient population is such that 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital.

- At least 40 percent of all inpatients treated at the hospital have been referred to the hospital either from physicians not on the hospital's staff or from other hospitals.

We proposed that these criteria be used in determining whether a hospital qualifies for an adjustment as a referral center that would be effective for discharges occurring on or after October 1, 1984. We proposed that these referral centers would be paid prospective payment rates on the basis of the urban, rather than the rural, adjusted standardized amounts as adjusted by the applicable DRG weighting factor and the hospital's area wage index. Therefore, these hospitals would be paid on the same basis as those hospitals that meet the criteria in § 405.476(g)(1)(i) (that is, rural hospitals with 500 or more beds). In addition, we proposed that rural hospitals that meet the criteria in § 405.476(g)(1)(ii) (related to percentage of Medicare patients referred and proximity of Medicare patients' residences to the hospital) would also be paid, for discharges occurring on or after October 1, 1984, prospective payment rates on the basis of the urban, rather than the rural, adjusted standardized amounts.

We did not include in the NPRM any payment adjustment for urban hospitals that meet the referral center criteria in § 405.476(g)(1)(ii) because of a lack of data on these hospitals.

The NPRM also stated that we are considering instituting a periodic review of the status of hospitals that have qualified for a payment adjustment as referral centers. This review would allow us to determine if these hospitals continue to meet the criteria for referral center status.

Section 2311(a) of Pub. L. 98–369 amended section 1886(d)(5)(C)(i) of the Act by providing that, effective October 1, 1984, rural hospitals can appeal to the Secretary to be classified as rural referral centers based on criteria established by the Secretary. These criteria would allow a hospital to demonstrate that it should be classified as a referral center because certain of its operating characteristics are similar to those of a typical urban hospital located in the same census region.

Because we have regional data available on case-mix indexes and the number of discharges, for the period represented in the data base used to establish the standard amounts (1981 cost and billing data), we developed regional measures for these two criteria which we think represent operating characteristics that are similar to those of a typical urban hospital in the same census region. For each region we compared the median case-mix index values and the median number of discharges of urban hospitals to the criteria we proposed in the NPRM. We used the median rather than the mean to avoid discrepancies that may arise with hospital case-mix index values or number of discharges that, because they are extremely high or low, would distort the average for urban hospitals.

The median case-mix index values for urban hospitals on a regional basis using the 1981 MEDPAR data were as follows:

Region	Median urban case mix
1	1.055
2	1.071
3	1.035
4	1.046
5	1.010
6	1.022
7	0.972
8	1.056
9	1.073

The comparing the regional case-mix index values with the 1.03 case-mix benchmark for 1981 as proposed in § 405.476(g)(1)(iii)(A) of the NPRM, all but three regions have an average case-mix index for urban hospitals above the 1.03 criterion proposed to establish eligibility for referral center status. We considered replacing the 1.03 case-mix index value with the regional case-mix index values but decided not to do so because a number of hospitals in the six regions with higher case-mix index values would no longer meet this criterion. Instead, we are revising § 405.476(g)(1)(iii)(A) to permit hospitals to meet the case-mix criterion by having a published case-mix index value that is equal to or greater than—

- 1.03 in 1981 based on the index values published in the September 1, 1983 interim final rule (48 FR 39847); or
- The median urban case-mix index value for the region in which the hospital is located for 1981 as contained in the table above.

In addition, we are allowing hospitals the alternative of meeting the case-mix index criterion if the hospital's case-mix index is at least 1.1053 for the hospital's first cost reporting period subject to the prospective payment system.

We are also allowing hospitals the alternative of meeting the case-mix index criterion if the hospital's case mix index for the hospital's first cost reporting period subject to the prospective payment system is equal to or greater than the following regional benchmarks:

Region	Adjusted median urban case mix
1	1.132
2	1.149
3	1.111
4	1.122
5	1.084
6	1.097
7	1.043
8	1.133
9	1.151

These values represent an adjustment (7.31 percent) to the median urban case mix index values determined from the 1981 MEDPAR data. The adjusted regional medians are the regional benchmarks equivalent to the 1.1053 general overall standard.

Because the law now requires hospitals to request referral center status in the quarter before the first quarter of the hospital's cost reporting period for which the change is requested in most cases the request will need to be made before the end of the first year subject to the prospective payment system. Therefore, the determination under the alternative standard must of necessity be made on less than a full year's worth of claims. However, every attempt will be made to include as many months as is possible.

Our data show that the number of hospital discharges also varies considerably among regions. The median number of discharges for 1981 for urban hospitals on a regional basis determined from the data used to establish the standard amounts is as follows:

Region	Urban discharges
1	7,467
2	8,601
3	7,785
4	9,309
5	6,330
6	8,515
7	5,888
8	9,928
9	5,564

In comparing the regional number of discharges with the 6,000 discharges requirement as proposed in § 405.476(g)(1)(iii)(B) of the NPRM, all but two of the regions have an average number of discharges that exceeds the 6,000 discharges criterion used to establish eligibility for referral center status. We considered replacing the 6,000 discharges requirement with the regional numbers of discharges but decided not to do so because a number of hospitals in the seven regions with a greater number of discharges than the

6,000 discharges would no longer meet this criterion. Instead, we are revising § 405.476(g)(1)(iii)(B) to permit hospitals to meet the number-of-discharges requirement by providing that the hospital's number of discharges (excluding discharges from subprovider units) is at least—

- 6,000 for the hospital's cost reporting period that ended in 1981;
- 6,000 for the hospital's most recently completed cost reporting period; or
- The median number of discharges of urban hospitals for the region in calendar year 1981 in which the hospital is located for either the cost reporting period that ended in 1981 or its most recently completed cost reporting period.

The statute also requires that these appeals must be submitted during the quarter before the first quarter of a hospital's cost reporting period. (Hospitals whose cost reporting periods begin in October 1984 would be allowed to submit their appeals during the first quarter of that period.) A final determination on the appeal must be made within 60 days after the date the appeal was submitted. Any payment adjustments required due to a hospital's new classification as a referral center will be made effective as of the beginning of the cost reporting period.

In addition, section 2311(a) of Pub. L. 98–369 states that the characteristics that the Secretary establishes for determining rural referral centers may include wages, scope of services, service area, and the mix of medical specialties. We are retaining the criteria we proposed in the NPRM because we believe they adequately conform to the operating characteristics suggested in the legislation at section 2311(a) for the reasons discussed below.

- *Scope of services.*—Although we did not propose to set a numeric qualifier on the scope (that is, number) of services offered by a rural referral center, one of the three optional criteria (§ 405.476(g)(1)(iii)(C)) would specify that "more than 50 percent of the hospital's medical staff are specialists." In addition, we proposed a qualifier based on case-mix index values of at least 1.03. We believe that these two criteria are the best criteria we have at this time to describe scope of services.
- *Service area*—We believe that the optional criterion we proposed in § 405.476(g)(1)(iii)(D) adequately addresses this aspect of the legislation. This provision requires that a hospital would have to have at least 60 percent of its discharges made for inpatients who reside more than 25 miles from the hospital.
- *Mix of medical specialties*—This characteristic appears to be closely related to the scope of services characteristic. As mentioned above, one of the optional criteria would require that more than 50 percent of a hospital's medical staff are specialists. We believe that this criterion is adequate to meet congressional intent.
- *Wages*—None of our proposed criteria addresses the issue of the comparability of a rural hospital's wages to those of a "typical urban hospital in the same region." We believe that this criterion presents a serious problem. We must define the range within which the rural facility's wages resemble those of the typical urban hospital.

Since the Bureau of Labor Statistics (BLS) will not release wage data on individual hospitals, we currently do not have adequate data that can be used both to compute a typical (average) urban wage rate by region and to determine a hospital specific wage level. In fact, BLS will not reveal even comparative measures, which would allow indirect identification of individual hospitals. However, the wage survey currently being conducted by HCFA will provide the needed information. With data from the wage survey, it will be relatively easy to compute an average urban wage level by region, in addition to an average wage for individual hospitals. While individual hospital wage information could be obtained from a hospital's cost report, the survey data incorporate elements of consistency and uniformity of definition.

We believe that we should not adopt a wage criterion at this time for the following reasons:

- Wages are the operating characteristic least directly representative of a hospital's performance as a referral center.
- It is questionable whether rural referral centers compete directly with their urban counterparts for nonprofessional staff.
- Wages can be driven by a variety of forces unrelated to the services available in the hospital; for example, union contracts, local labor shortages, and management choice.
- A wage criterion presents irreconcilable boundary disputes inherent in the entire urban/rural classification problem.
- Because wage rates are directly controllable by the hospitals and due to the present payment adjustment (that is, the urban standardized payment), there would be some incentive to bid up wage rates.

We received comments on the proposed provisions for referral centers from hospitals, hospital associations, and individuals. Our responses to those comments are as follows:

Comment—Several commenters questioned the definition of "specialists" that we proposed in one of the rural referral center criteria (§ 405.476(g)(1)(iii)(C). They pointed out that the American Board of Medical Specialties does not recognize specific training requirements. Rather, it recognizes specialty boards, and these boards establish the training requirements necessary for admission to the certification process. Therefore, they believe that the definition of "specialists" should be clarified. Some commenters asked whether family practitioners, radiologists, pathologists, or anesthesiologists could be counted as specialists.

Response—We have clarified the definition of specialists in § 405.476(g)(1)(iii)(C). The new definition provides that a specialist either must be certified as a specialist by one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists; have completed the current training requirements for admission to the certification examination of one of the Member Boards of the American Board of Medical Specialities or the Advisory Board of Osteopathic Specialists; or have successfully completed a residency program in a medical specialty accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association. All specialists that meet this definition can count toward meeting this criterion.

Comment—Some commenters asked whether the term "medical staff" as used in § 405.476(g)(1)(iii)(C) refers to only active medical staff.

Response—We believe that the definition of medical staff should be limited to active medical staff and are revising § 405.476(g)(1)(iii)(C) accordingly. Some hospitals have staff members in the categories of courtesy staff, consulting staff, or honorary staff. It is highly unlikely that physicians will refer patients to a hospital solely because of the presence of these types of staff. Therefore, they will not be counted in the percentage of specialists that a hospital may need to meet to qualify for referral center status.

Comment—Several commenters were unclear about where a hospital should submit the material to justify its rural referral center status and the process that is followed in making the determination.

Response—In the September 1, 1983 interim final rule (48 FR 39783), we stated that a hospital seeking referral center status should submit documentation to its fiscal intermediary. The intermediary would review the material, make a recommendation, and forward the material to the appropriate HCFA regional office. The regional office would review the documentation, also make a recommendation for or against approval, and submit the material to HCFA central office where a final decision would be made. Because of the volume of hospitals that we expect will qualify for referral center status under the revised regulations, we have determined that it will be more efficient, and hospitals will receive determinations more promptly, if the regional office handles all stages of the review. Thus, we are altering the current procedure to eliminate both the intermediary and central office review. A hospital should submit its request and documentation directly to its appropriate regional office. The regional office will review the data to determine if additional information is needed. If additional data are necessary the regional office will notify the intermediary in a timely manner and the intermediary will supply the documentation to the regional office also in a timely fashion. The regional office will then make a final determination within 60 days after receipt of the hospital's request and notify the hospital of its decision.

Comment—Several commenters inquired whether hospitals meeting the proposed criteria would receive retroactive adjustment to October 1, 1984.

Response—In the NPRM, we stated that the criteria published in § 405.476(g)(1) (i) and (ii) and the criteria proposed in § 405.476(g)(1)(iii) would be effective for discharges occurring on or after October 1, 1984. However, after the NPRM was published, Pub. L. 98–369 was enacted. Section 2311(a) of Pub. L. 98–369 states that a hospital must submit its request for rural referral center status during the quarter preceding the start of its fiscal year (except that hospitals with a fiscal year starting on October 1, 1984 have until January 1, 1985 to submit their requests). Based on the law, we are altering our proposed effective date to conform with the statutory requirement. If we determine that a hospital meets the criteria for rural referral center status, payments will be effective with the start of the provider's cost reporting period.

Comment—A number of commenters pointed out a problem with the alternative criterion for hospitals that do not meet the 1.03 case-mix index criterion for 1981. We proposed that a hospital may meet this criterion if its case-mix index for the first cost reporting period under the prospective payment system is at least 1.0903. The commenters stated that the reduction in the DRG relative weights of 2.4 percent effective October 1, 1984 makes it more difficult for hospitals, whose accounting year began after October 1, 1983, to reach that index because their case mix is lowered by the reduced weights.

Response—We agree with the commenters' statement and did not intend to penalize those hospitals attempting to meet the 1.0903 case-mix criterion. Therefore, we are revising the regulations at § 405.476(g)(1)(iii)(A) to incorporate the following change. If a hospital does not have a case-mix index of at least 1.03 for 1981, it may still meet this criterion if it has a case-mix index of at least 1.1053 for its first cost reporting period under the prospective payment system, that is, cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984. For this purpose only, the DRG relative weights in effect during Federal fiscal year 1984 would apply in calculating the case-mix index values. Based on approximately 2.5 million admissions processed in HCFA, representing about half the admissions in FY 1984, we have found an increase in average case mix of 7.31 percent over the 1981 levels. Since average case mix has increased in this fashion, the case-mix index criteria applicable for determining referral center status should be similarly increased to reflect the change. This is necessary to assure that designation as a referral center under the alternative standards reflects the present complexity of cases so that the expectation for qualification based on experience in the first year under the prospective payment system is on a par with that observed in the 1981 data. We note that each additional update of Medicare claims data shows that the average case mix is increasing. It should be noted that the question of whether the increase in case mix is "real" or merely the result of more accurate coding, which is relevant to the issue of budget neutrality described below, is not relevant to setting appropriate criteria for rural referral centers. As discussed above, based on section 2311(a) of Pub. L. 98–369, a hospital may also meet the case-mix index criterion if its case mix for 1981 is at least the median urban case-mix index for the region in which the hospital is located for either the cost reporting period that ended in 1981 or its most recently completed cost reporting period.

Also, as stated previously, hospitals are required to submit their requests for rural referral center status during the quarter preceding the start of their fiscal year (except that hospitals with a fiscal year starting October 1, 1984 have until January 1, 1985). If approved, the adjustment will be effective with the start of the hospital's second cost reporting period subject to the prospective payment system (that is, cost of reporting periods beginning on or after October 1, 1984).

Comment—Several commenters believe that if a hospital's 1981 case-mix index value was not at least 1.03 and, therefore, it does not meet the mandatory criteria set forth in § 405.476(g)(1)(iii)(A), then the hospital should be allowed to use other criteria. The following are the commenters' suggestions:

- Hospitals should be given the option of requesting a recalculation of their 1981 case-mix index value based on data from 100 percent of its cases.
- Hospitals should be allowed to substitute data from the Commission on Professional Hospital Activities (CPHA) to demonstrate the complexity of their cases.
- Hospitals should be permitted to average their 1980 and 1981 index values to meet the 1.03 standard.

Another commenter believes that the 1.03 standard is too low and that it should be raised to 1.05 to more accurately identify true referral centers and minimize the impact on budget neutrality.

Response—We do not believe that hospitals should be allowed to substitute other criteria for the one we published in the NPRM. We selected the 1981 case-mix index for this criterion because it represents the most current published data available. Specifically, we are not accepting any of the suggestions for the reasons set forth below.

The basic tenet of the prospective payment system is that the rates paid to hospitals are determined prospectively and are based on the best data available at the time. Thus, a hospital knows in advance what its payment amounts will be. In addition, revisions to case-mix index values, whether upward or downward, would upset the budget neutrality adjustment. Therefore, we have denied any hospital the right to request review of its 1981 case-mix index value based on 100 percent of its cases. This policy holds whether the request for review is for purposes of meeting the referral center criteria or for determining the hospital-specific portion of a hospital's payment rate.

We cannot allow substitution of the CPHA data in lieu of our published 1981 case-mix index because these data are developed and published by a source totally independent of HCFA. We have no way to verify either the raw data submitted by the hospital to CPHA or CPHA's processing of the data except by performing a 100 percent review ourselves. We do not believe a review by HCFA is appropriate.

Also, we do not agree that we should allow a hospital to average its 1980 and 1981 index values in order to meet the 1.03 case-mix criterion. Averaging of index values is inconsistent with our policy of using the most currently published data available. In addition, if we made the averaging mandatory, some hospitals that have a 1981 index value of at least 1.03 might be disqualified if forced to average their 1980 and 1981 values.

Finally, we believe that the 1.03 case-mix index value is an adequate measure of the complexity of a hospital's cases and we do not believe that increasing the value to 1.05 would be appropriate.

Comment—We received comments that disagreed with our setting the discharges level specified in the criterion set forth in § 405.476(g)(1)(iii)(B) at 6,000. Some of these commenters pointed out that, because of the greater emphasis that is currently being placed on alternatives to hospitalization, many hospitals will be experiencing a decline in admission rates. Therefore, the discharge level should be lowered. In contrast, one commenter suggested that the required number of discharges should be increased to lower the number of hospitals that will meet the referral center criteria and, thus, lessen the impact on budget neutrality.

Response—We believe that the 6,000 discharges requirement helps to ensure that only above average size hospitals qualify for referral center status. At the same time, we do not believe that this number needs to be increased to guarantee that only a limited number of hospitals meet the criteria.

However, in response to those commenters concerned about decreasing admission rates, we are revising the regulations at § 405.476(b)(1)(iii)(B) to allow a hospital to meet the 6,000 discharge figure either for its cost reporting period ending in 1981 or for its most recent cost reporting period completed before it applies for referral center status.

Comment—Several commenters questioned whether the 6,000 discharge criterion should be based on a hospital's total discharges or its Medicare discharges. Other commenters urged that the criterion be based on hospitals' total discharges because the nationwide distribution of Medicare beneficiaries is not uniform.

Response—Although we did not specify in the NPRM whether the criterion is based on a hospital's total discharges or its Medicare discharges, the criterion is to be based on 6,000 total discharges. We agree with commenters that requiring 6,000 Medicare discharges would place an unfair hardship on some facilities.

Comment—Some of the commenters stated that hospitals that fail to meet the mandatory criteria in §§ 405.476(b)(1)(iii) (A) and (B) by only a small margin, and therefore fail to qualify as referral centers, end up with a payment rate that is significantly different from those hospitals that meet the criteria by only a small margin. Examples cited by commenters were cases where one hospital has a 1981 case-mix index value of 1.03 and another hospital has a 1981 case-mix index value of 1.02, or one hospital has just over 6,000 discharges in one of the required cost reporting periods and another has slightly less than 6,000. In both cases, the first hospital receives payment based on the urban standardized amounts and the second hospital receives significantly less because its payment rate is based on rural standardized amounts.

Response—Whenever numeric standards are established, there will be those entities that narrowly miss meeting them as well as those that narrowly succeed in meeting them. Regardless of the standards selected, this will be true. If we did allow exceptions to these criteria, they would have to be limited to certain tolerances that, again, some hospitals would fail to meet by a small margin.

Both of the mandatory criteria specified in § 405.476(g)(1)(iii) are measures of a hospital's referral center status. The case-mix index criterion measures the complexity of a facility's cases and differentiates a true referral center from other hospitals. With regard to the 6,000 discharge criterion, as noted in the NPRM (49 FR 27429), we believe that Congress intended that referral center status be granted only to those facilities of above average size and utilization. As also noted in the NPRM (49 FR 27433), we project that approximately 113 facilities will meet these two criteria; thus, we continue to believe that our criteria meet congressional intent and are not unduly stringent.

Finally, it should be noted that hospitals that do not meet the referral center criteria as provided in § 405.476(g)(1)(iii) can still qualify for referral center status if they meet the criteria in § 405.476(g)(1)(ii). Also, hospitals that do not meet the 1981 case-mix index criterion have the opportunity to qualify if they meet the alternative case-mix index value of 1.1053 during their first cost reporting period subject to the prospective payment system or if they meet the median case-mix index for the region in which they are located.

Comment—One commenter stated that the establishment of the two mandatory criteria of case-mix index and patient discharge is inconsistent with Congressional intent. However, the majority of commenters who responded to our NPRM agreed that the mandatory criteria should be met by a hospital in order to qualify as a referral center.

Response—We believe that the two mandatory criteria set forth in §§ 405.476(g)(1)(iii) (A) and (B) are the principal characteristics that distinguish a hospital as a referral center. A hospital that meets one of the three case-mix index criteria demonstrates a level of complexity that we believe is consistent with the intent of Congress when it included the referral center provision in the prospective payment legislation.

The criterion relating to hospital discharges was chosen as one of the mandatory criteria because we believe Congress intended that the referral center provision apply to hospitals of above average size and utilization (Congressional Record, Vol. 129, No. 34, March 17, 1983, S3224). We believe that a reliable measure of a hospital's operation is the number of patients discharged.

Comment—A commenter was concerned that the proposed revisions to the referral center criteria do not conform to the statutory changes enacted in Pub. L. 98–369. However, another commenter stated that we should not include any of those statutory changes in this final rule because they should first be published as an NPRM so the public will have an opportunity to comment.

Response—Section 2311(a) of Pub. L. 98–369 amended section 1886(d)(5)(c)(i) of the Act to provide that rural hospitals may appeal to the Secretary to be classified as a rural referral center on the basis of criteria to be established by the Secretary. We believe that the regulatory changes stated in § 405.476(g) of this final rule regarding regional referral center criteria conform with the Congressional interest and statutory provisions in section 2311(a) of Pub. L. 98–369.

Therefore, we are not publishing a notice of proposed rulemaking for these provisions (see section VI.C. of the preamble), although we will monitor the impact of these provisions on referral centers.

Comment—Several commenters recommended a different approach for determining referral center status. They suggested that we should define "referral" based on specialty rather than on the criteria set forth in the proposed regulations. Under this proposal, a hospital that treats more expensive cases than the average for particular DRGs would receive adjustment only for those DRGs.

Response—Although we are not certain whether the data would indicate large enough cost differences within individual DRGs to justify referral status for hospitals treating patients within those DRGs, we will continue to review and consider this suggestion.

Comment—We received several comments that expressed concern about the optional criteria that require 60 percent of all discharges to be made for inpatients who reside more than 25 miles from the hospital and require that at least 40 percent of all inpatients have been referred to the hospital (§§ 405.476(g)(1)(iii) (D) and (E)).

Response—As we indicated in the NPRM (49 FR 27429), the alternative set of criteria we proposed were designed to meet the unique circumstances of rural referral centers with less than 500 beds. We believe that, in order to meet the intent of Congress, a rural referral center should satisfy criteria that ensure that the hospital draws its patients from a wide geographic area. The proposed criteria were structured using the best information available to us. Since there are limited specific data on referral patterns available, we specifically solicited comments on these criteria.

As a result of the comments received, we believe that the criteria set forth in the NPRM are fairly stated. We received only two comments on the 60 percent residence and 40 percent referral optional criteria, and neither commenter suggested criteria that would better express the intent of the legislation.

One of the main reasons we established special treatment regulations for rural referral centers was to allow hospitals that serve a substantial number of patients outside a local area a more favorable rate of payment. We believe that the criterion related to patient residency conforms with congressional intent (that is, the 60-percent qualification best establishes what is meant by "a substantial number of patients live outside the local area") and, therefore, will allow those hospitals that are truly referral centers to qualify.

In light of comments received, we believe that there is no reason to change the criterion that states that at least 40 percent of all inpatients treated at the hospital are referred to the hospital either from physicians not on the hospital's staff or from other hospitals. This criterion gives weight to the actual referral, which we believe was one of the basic objectives of the provision. It is reasonable to expect that a considerable number of a referral center's patients would come from actual referrals. In addition, it is our opinion that the source of the patient population of a referral center should differ from that of a typical rural hospital. By meeting this 40-percent criterion, a hospital would demonstrate this difference.

Comment—One commenter suggested that a referral center should be evaluated based on the extent to which it meets the total health care needs of the community; that is, whether the majority of the Medicare beneficiaries that reside in a referral center's service area receive care at the center. The commenter also said that a referral center should be evaluated based on whether the center provides services without having to transfer patients to other hospitals.

Response—Without a precise definition of a referral center's "service area", such a criterion is difficult to develop and evaluate. We believe that one of our optional criteria, that at least 60 percent of a referral center's total discharges be for inpatients who live more than 25 miles from the hospital, addresses this issue from a different approach.

Also, we believe that one of our optional criteria for referral centers, while providing a different approach, responds to the commenter's latter suggestion. Rather than monitoring the number of patients that a hospital transfers, we are monitoring the percentage of patients referred to the referral center.

Comment—One commenter urged that a rural referral center wage index be determined based on the wage index of the nearest urban area or on an average of the wage index of the nearest urban area and the rural wage index for the State in which the hospital is located.

Response—We believe that using the wage index of the nearest urban area would be unrealistic because of difficulties in determining which urban area is closest to the rural hospital, especially in rural areas that are bounded by two or more urban areas. In addition, we do not believe that the wages paid by all rural referral centers would necessarily equal those of nearby urban facilities. For example, it is questionable whether rural referral centers compete directly with urban hospitals for nonprofessional staff. Therefore, it remains our opinion that the rural wage index is appropriate for rural referral centers, and, therefore, we have not adopted this commenter's suggestion.

Comment—One commenter believes that the criterion set forth at § 405.476(g)(1)(iii)(E) is incomplete. That criterion provides that at least 40 percent of all inpatients treated at a hospital must have been referred to the hospital either from physicians not on the hospital's staff or from other hospitals. The commenter contends that patients are likely to consult a physician on the choice of a hospital and then later have themselves admitted to that hospital; thus, they would be self-referred patients. However, the criterion does not allow self-referred patients to be applied to the 40 percent requirement.

Response—This criterion is designed to give weight to the actual fact of referral, which is an essential feature of a rural referral center. We agree that the scenario described by the commenter will occur occasionally; however, we believe that in most cases these patients will be seeking admission to small rural hospitals. In these cases, if the patient requires further specialized attention, he or she will be referred to a larger facility that can furnish those services. It is these facilities that we believe should be receiving rural referral center status.

Comment—In the NPRM (49 FR 27429), we specifically requested comments on one aspect of the criteria set forth in §§ 405.476(g)(1)(iii) (D) and (E). The former criterion measures the percentage of a hospital's inpatients who reside more than 25 miles from the hospital and the latter measures the percentage of a hospital's inpatients who are referred. In both cases, we are basing the criteria on all inpatients; however, we requested input from the public on whether or not we should base the criteria on only Medicare inpatients. We received numerous comments most of which were in favor of our basing these criteria on the entire inpatient population.

Response—We agree with the majority of the commenters that in computing these percentages we should take all of the hospital's inpatients into account. We believe this is appropriate because the type of services furnished, the intensity of care, and the population radius served by the hospital would be based on total inpatient population. Referral centers have higher costs because of the services they provide to all inpatients, not only those who are Medicare beneficiaries.

Comment—Some hospitals suggested that the mix of mandatory and optional criteria that are set forth in § 405.476(g)(1)(iii) should be revised. For example, a few commenters recommended that the mandatory 6,000 discharge criterion should become one of the optional criteria, and hospitals should have to meet three of the four optional criteria. Another suggestion was that none of the criteria should be mandatory and a hospital should have a wider range of optional criteria to meet. This commenter suggested that we should add criteria related to wages and scope of services (for example, 24-hour emergency care, intensive care unit, nuclear medicine) and then allow a hospital to meet four out of seven of these criteria.

Response—As we stated in the NPRM (49 FR 27429), we believe that the two mandatory criteria (that is case-mix index and number of discharges) are the key factors that allow us to satisfy what we understand congressional intent to be in enacting this provision. The level of complexity and the high technology of the care furnished are, in our opinion, among the principal characteristics that distinguish hospitals that are referral centers from typical rural hospitals. We also believe that Congress intended a referral center to be above average size. It is our contention that case-mix and number of discharges are the suitable measures for these characteristics. Therefore, we are retaining these two mandatory criteria in order to adequately classify hospitals as referral centers.

Concerning the additional optional criteria mentioned by the commenters, as stated earlier in the preamble, we currently have no means of comparing wages and, even when we are able to gather data, we are not certain that wages are directly representative of a hospital's performance as a referral center for patients from a wide area. With regard to scope of services, those specialized services suggested by the commenters are typically furnished in many rural hospitals, not just those that should qualify as referral centers; therefore, we do not believe specialized services to be a unique characteristic of referral centers.

Comment—Several commenters requested that we give prompt attention to developing referral center criteria for urban hospitals.

Response—In the NPRM (49 FR 27429), we stated that it will not be possible to make payment adjustments for urban hospitals until we have the opportunity to examine and analyze in detail information pertaining to these hospitals. Since we have received only two applications from urban hospitals applying for referral center status, we have not yet gathered enough information to compare urban referral centers to other urban hospitals.

Comment—In response to our request for comments on the possibility of our conducting periodic reviews of referral centers to determine if they continue to meet the criteria, we received a limited number of suggestions. Most commenters suggested that if the reviews are conducted, then they should be done at 12 to 24-month intervals and that a hospital should not lose its referral center status unless it has failed to meet the criteria for at least two consecutive years. Two commenters proposed that if a referral center fails to meet the criteria for two consecutive years, there should be a transition period to prevent the hospital from suffering hardship due to its return to a lower payment rate.

Response—We have determined that periodic reviews of rural referral centers should take place every three years. We feel that this would avoid penalizing a hospital that falls slightly below the criteria in a given year.

A hospital that fails to continue to meet the criteria needed to qualify for rural referral status in its first two years of participation as such, will automatically be disqualified after the third year. The facility will have the right to reapply and requalify in the future.

In other situations we will look to the hospital's performance during the third year in conjuction with experience in the first two years to determine if referral center status should be continued. Following the end of the first quarter of the hospital's third year as a referral center (or the third year following renewal in future years) the hospital will be required to submit sufficient data (records of Medicare claims, discharge projections, information supporting the optional criteria) to permit evaluation of the hospital's expected performance during the period. If the hospital meets the criteria in the third year and has met them in either of the two preceding years, referral center status will be continued. If the hospital fails to meet the criteria in the third year and has failed in either or both of the preceding years, referral center status will be terminated. If the provider fails to meet the criteria in the third year but has met the criteria in both of the preceding years referral center status will be presumed to continue but that hospital will be reviewed again in the immediately following year. If the hospital fails to meet the criteria in the immediately following year as well, referral center status will be terminated. The review will be completed by the end of the third quarter of the reporting period in which it is conducted so that the provider may be notified of the result in advance of the ensuing year. A hospital that is found to qualify upon review will receive an additional three years of referral center status, except for those hospitals for which referral center status was presumed subject to second review. But, if the hospital is determined not to meet the criteria for referral center status upon completion of the third year review, it will no longer be classified as a rural referral center.

We would have to perform reviews of the two mandatory criteria of case-mix index and number of discharges in different ways. Since we are requiring, for our third year review, a less than complete year of data (as of the end of the third quarter of the hospital's accounting year), the third year case-mix index criterion will be based on a nine-month period at the most.

The second mandatory criterion of having at least 6000 discharges is based on the hospital's most recent cost reporting period before it applies for rural referral center status. Therefore, we will be able to review three complete cost reporting periods to determine if the provider continues to meet the discharge criterion.

A facility that is determined ineligible to continue as a rural referral center will lose its status after the third cost reporting period. A hospital that has qualified as a referral center beginning January 1, 1985, and which upon our review no longer meets the qualifications to continue being paid as a referral center, would revert back to payment as a rural facility as of the beginning of its cost reporting period, January 1, 1988.

We believe that no transitional or phase-in period is necessary to accompany this change in status. Those hospitals that are disqualified as rural referral centers have already benefitted from at least three years of payment at the urban rate. Therefore, after appropriate notification, we believe that a decrease in the facility's payment is inappropriate.

I. Inpatient Renal Dialysis

In the January 3, 1984 final rule (49 FR 247), we agreed to review the issue of payment for inpatient dialysis. Based on our assessment of the impact of providing inpatient dialysis, we proposed not to provide special treatment for inpatient dialysis.

Comment—Several commenters expressed concern that, because end-stage renal disease (ESRD) beneficiaries require inpatient dialysis whenever they are admitted to a hospital are concentrated in certain hospitals, these hospitals are bearing the brunt of the added expense of furnishing inpatient dialysis. Consequently, if additional payment is not provided for the extra expense, the commenters believe that hospitals will no longer provide this service resulting in a hardship to patients.

Response—Based on the comments received, we are providing an additional payment for hospitals that have a significant number of ESRD beneficiary discharges. While the overall impact of providing inpatient dialysis is not great, we recognize that where these beneficiaries are concentrated in a few facilities, a disincentive to treat ESRD beneficiaries might result. We are providing an additional payment to hospitals in which ten percent or more of the Medicare dischages are ESRD beneficiary discharges in a cost reporting period. To determine the number of ESRD discharges, discharges classified in DRG No. 302 (Kidney Transplant), DRG No. 316 (Renal Failure) and DRG No. 317 (Admit for Renal Dialysis) are excluded. In these DRGs, dialysis is not ordinarily limited to ESRD beneficiaries and the relative weights adequately reflect dialysis because it occurs relatively frequently.

In most hospitals, the likely incidence of inpatient dialysis is small in relationship to the patient population and can be considered to be represented in the Federal standardized amounts. However, we think those few hospitals most extremely impacted by the ESRD beneficiary population should be afforded some protection against the chance of encountering inpatient dialysis expenses which could not be offset by revenue from cases in which the DRG payment was greater than the hospital's cost. Therefore, a special payment is being provided. Consistent with the objectives of the prospective payment system, the special payment is not intended to recognize the actual cost an individual hospital might incur in delivering inpatient dialysis service or to provide full reimbursement of all costs in every case. Rather, it is intended to ameliorate those circumstances in which the concentration of beneficiaries receiving dialysis may be such that the hospital would not be able to absorb the entire expense with revenue from other less costly cases.

The additional payment provided will be based on the average length of stay for ESRD beneficiaries in that facility times a factor based on the average direct cost of furnishing dialysis during a usual beneficiary stay. The average direct cost of dialysis was determined from the data obtained in connection with establishing the composite rate reimbursement for outpatient maintenance dialysis. The data used was from hospital-based facilities. An average of those cost directly representative of the dialysis service was determined. The average number of dialysis sessions per week was obtained from the same data base. This was done to avoid any incentive for increasing the frequency of dialysis sessions which could exist if payment were related to the number of dialysis sessions in the current period.

In order to estimate the additional cost above the DRG rate that a hospital would incur to furnish dialysis, we selected only those costs representing the direct cost of furnishing this service and excluded all overhead cost. Overhead cost of the inpatient service would be reflected in the DRG rate. Using salary, employee health and welfare, drugs, supplies, and laboratory costs, we determine a cost of $111.67 per session. These costs were broken down as follows:

Salary	$52.67
EH & W	11.59
Drugs	3.09
Supply	39.69
Lab	4.63
Total	111.67

This amount will be paid only on the Federal portion of the payment rate. The cost of furnishing dialysis is already appropriately reflected in the hospital-specific portion. A hospital qualifying for the payment in a reporting period will receive an amount equal to the estimated weekly cost of dialysis times the hospital's average ESRD length of stay expressed as a ratio to one week multiplied by the number of ESRD beneficiary discharges, excluding discharges classified in DRG Nos. 302, 316 and 317.

III. Changes to Regulations Based on Pub. L. 98–369

As previously noted, Pub. L. 98–369 was enacted on July 18, 1984. This section contains a discussion of two provisions in that law relating to the hospital prospective payment system.

A. Payment for Indirect Medical Education (§ 405.477)

Section 2307(b) of Pub. L. 98–369 amends section 1886(d)(5)(B) of the Act to require that we not distinguish between interns and residents employed by the hospital and those providing services in the hospital but employed by others, in determining the additional payment amount for indirect medical education due hospitals under the prospective payment system.

For hospitals in the first year under the prospective payment system, we counted only interns and residents who were employed by the hospital. In the final rule, published January 3, 1984 (49 FR 234), on the prospective payment system, we revised our policy to include in the count of interns and residents those employed by other organizations with a longstanding historical relationship for medical education with the hospital. In each case, the organizations were required to be sole employers of substantially all of the interns and residents furnishing services at the hospital.

The change mandated by section 2307(b) of Pub. L. 98–369 is to be effective for cost reporting periods beginning on or after October 1, 1984. (See revised § 405.477(d)(2) of these regulations for changes regarding calculation of indirect medical education costs.)

Because the law requires that we do not distinguish, in counting interns and residents, on the basis of who employs the individual, we are required to establish a system of counting on the basis of where services are provided and to calculate full-time employees on that basis. No intern or resident will be counted as more than one full-time employee in any reporting period, regardless of the number of hospitals in which he or she works. Therefore, when working at more than one hospital, each intern's or resident's time will be apportioned to each facility. To avoid the potential for counting interns and residents more than once, we are requiring that hospitals submit quarterly reports to their intermediaries that contain the following information:

- Monthly listing of all interns and residents providing services during the month;

- Each intern's and resident's social security number; and
- The actual hours worked at the hospital during each month.

Where the hospital is unable to supply documentation of the times worked by interns and residents, their services will not be counted as part of the overall calculation of the payment amount.

The final lump-sum payment for indirect medical education costs will not be made until the fiscal intermediary completes audits of the first year's cost reports.

To conform § 405.477(d)(2) to the revised policy, we are also deleting the requirements regarding employment and other relationships.

We invite public comments on this issue and if, after consideration of all comments received, we determine that the policy should be revised, we will publish the changes in the **Federal Register** and address all comments received on this issue.

B. Payment for Non-Physician Anesthetists (§ 405.477)

Section 2312 of Pub. L. 98–369 amends sections 1886(a)(4) and 1886(d)(5) of the Act to require that we pay an additional amount to hospitals paid under the prospective payment system, for "reasonable costs incurred" for anesthesia services provided by certified registered nurse anesthetists. See the new § 405.477(c)(3) in these regulations regarding determination of this payment amount.

Section 2312(a) provides for reimbursement to hospitals on a reasonable cost basis as a pass-through for the costs that hospitals under prospective payment incur in connection with the services of certified registered nurse anesthetists (CRNAs). (See the discussion below in this section of our use of the term "nonphysician anesthetist" in lieu of CRNA.) It further provides that this shall be the only payment made to the hospital for such services. Section 2312(b) excludes anesthesia services furnished by a CRNA from the definition of the term "operating costs of inpatient hospital services." Section 2312(c) provides that the amendment is effective for hospital cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987.

The statute establishing the prospective payment system did not directly address the services of nonphysician anesthetists. As such, they would have been treated under provisions of section 602(e) of Pub. L. 98–21 (section 1862(a)(14) of the Act) which excluded from Medicare coverage all items, supplies and services furnished to hospital inpatients other than physicians' services that are not directly furnished by the hospital or by others under arrangements with the hospital. That is, the costs attributable to nonphysician anesthetists' services (including those billed "incident to" physicians' services under Part B) would have been included in a hospital's base period costs and hospital-specific portion of the total payment amount.

However, during the process of developing the interim final rule implementing the prospective payment system, it was decided that there should be an exception to the section 1862(a)(14) exclusion (under the authority in section 602(k) of Pub. L. 98–21) to recognize the unique relationship between the physician-employer and anesthetist-employee. The exception permitting the continuation of part B billing by physicians for the services of their anesthetist employees applied to such arrangements that existed on the last day of the hospital's prospective payment base period for the duration of the transition period (cost reporting periods beginning prior to October 1, 1986.) Thus, for the first year under the prospective payment system, payment was made for the services of nurse anesthetists either through prospective payment to the hospital or through billings by eligible physicians.

The conference report that accompanied section 2312 does not discuss the rationale for the amendment. However, there is a clear indication that it was the intent of Congress that Medicare payment methods not discourage the use of CRNAs by hospitals. In addition, the conference report indicates that the conferees expect the exception permitting "incident to" billing by physicians who employ CRNAs to be modified to sanction such billings resulting from employment relationships that began after the base period under the prospective payment system ended.

The conference agreement limited the provision to "anesthesia services furnished by certified registered nurse anesthetists." The conferees then define such services as, "those related to the preparation for, administration of, and recovery from anesthesia."

It is questionable whether the benefits associated with a strict interpretation of the term "anesthesia services" would be worth the burden that extensive time studies of the activities of each hospital-employed nonphysician anesthetist would impose. In the absence of evidence to the contrary, it can be argued that, generally, everything a nonphysician anesthetist does in a hospital is related to the provision of anesthesia services. However, we should not pass through the costs of a nonphysician anesthetist who is functioning in a position outside the field. For example, we would not want to create an incentive for hospitals to hire a CRNA and receive the pass-through payment amount even though the individual is serving in another nursing capacity. In the case of independently contracting nonphysician anesthetists whose services a hospital obtains under arrangements, all such services could be presumed to be related to the provision of anesthesia. For the purpose of implementing the amendment, nonphysician anesthetists will be defined to exclude any such anesthetists not actively engaged in functioning as an anesthetist without further differentiation according to specific services or time allocations.

The original exception in the interim final rule applies to situations where a physician employed "anesthetists" as of the last day of the hospital's base period. As presented in the preamble and regulations text of the interim final rule, we did not limit its application only to services of CRNAs. The exception also applied to services of physician-employed Anesthesiology Assistants (AAs) assuming all other related requirements were satisfied. The amendment and the conference report use the terms "certified registered nurse anesthetist" and "CRNA" throughout. However, despite the precise wording of the amendment and conference report, we believe that it was congressional intent to apply this pass-through payment amount to the services of all qualified hospital-employed nonphysician anesthetists (that is, CRNAs and AAs consistent with applicable State law) for the following reasons:

- It is consistent with the current exception (§ 405.553(b)(4)).
- It is consistent with the goal of discouraging the substitution of interns and residents for the services of any qualified anesthetist, not just CRNAs (§ 405.421(d)(6)).
- It is consistent with the current standard for hospital departments of anesthesia (§ 405.1031(b)(2)(iv)) that the hospital staff designates those persons qualified to administer anesthesia.
- It would help to assure that prospective payments to hospitals reflect the same services whether the anesthetist is employed by a physician or by a hospital.

The current exception under § 405.553(b)(4) applies to the services of all physician-employed anesthetists where certain criteria are met. It is stated in the conference report that it is the understanding of the conferees that those physicians meeting the current exception could, ". . . continue to bill for CRNA services. . . ." Further, the report goes on to indicate that physicians not meeting the current exception could begin to bill for all the services of CRNAs they "subsequently employed" for the duration of the time-limited exception. These "understandings" are not reflected in the statutory language.

The exception is modified (see § 405.553(b)(4)) to require only a valid employment relationship to sanction "incident to" billing of anesthesia services and to eliminate the provision tying the exception to the prospective payment base period. An employment relationship for this purpose is not established where the anesthesiologist and the anesthetist are both compensated by a hospital, medical school, or another entity, other than an incorporated group practice of physicians, for services furnished in a hospital. Additionally, we would like to stress that the exception requires close coordination between the intermediary and the carrier. The intermediary should notify the appropriate carriers of the dates of cost reporting periods of hospitals in its service area when changes in employment relationships between physicians and anesthetists occur so that the appropriate time units may be used in the computation of reasonable charges. The exception will apply to existing and new employment relationships between physicians and anesthetists beginning with hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987.

Under section 2312 of Pub. L. 98–369, costs of anesthesia services furnished by certified registered nurse anesthetists are removed from the definition of "operating costs" of inpatient hospital services. Therefore, in all hospitals paid under the prospective payment system the costs of such services and those of anesthesiology assistants included in calculation of base period costs will be removed for purposes of determining the hospital-specific portion of the total payment amount. These recalculations of base period costs will be performed by intermediaries.

With regard to the Federal rates, the costs attributable to the services of nonphysician anesthetists have been estimated based on the best information available to us, and we have removed these costs from the Federal rates. This is necessary to avoid paying for these services twice. Accordingly, the standardized amounts have been revised to reflect this change. As a result, as discussed in the impact analysis, we expect that in FY 1985, about $160 million will be passed through and paid on a cost basis.

We invite public comments on this issue and if, after consideration of all comments received, we determine that the policy should be revised, we will publish the changes in the **Federal Register** and address all comments received on this issue.

IV. Other Changes to Regulations

In the September 1, 1983 interim final rule, we erroneously deleted § 405.452(c)(5) regarding the cost apportionment method of allocating costs for home health agencies (HHAs). To remedy this mistake, we are amending § 405.452 in this document by adding a new paragraph (a)(3) that restores the deleted material.

V. Summary of Changes

For the convenience of the reader, we are summarizing the changes we are making to the regulations. The reader is referred to the detailed discussions above for an explanation of the rationale for these changes.

A. Payment of Cost Outliers to Transferring Hospitals

We are amending §§ 405.470(c)(4) and 405.475(a) to permit a transferring hospital to be paid an additional payment for extraordinarily high cost cases that meet the cost outlier critera in § 405.475(d).

B. Direction of Rehabilitation Units

We are revising § 405.471(c)(4)(iii)(F) to provide that the director of an excluded rehabilitation unit must serve the unit and its inpatients for at least 20 hours per week, rather than on a full-time basis.

C. Exclusion of New Rehabilitation Hospitals and Units and Expansion of Already Excluded Rehabilitation Units

We are adding new §§ 405.471 (d), (e), and (f) to provide the following:

- Changes in the capacity (that is, number of beds or square footage) of excluded units will be recognized only at the start of a cost reporting period.
- New rehabilitation hospitals and units that seek first-time exclusion and an already excluded unit that seeks to add new beds may certify that they intend to serve a population that meets the requirements of the 75-percent rule instead of actually demonstrating that they have met these requirements for the previous 12-month cost reporting period.

D. Physician Attestation

We are revising § 405.472(d)(2)(i) to clarify the scope of the physician's certification statement and the accompanying penalty statement and to change the method for implementation of the attestation requirements.

E. Hospitals in Areas Redesignated as Rural

We are adding new §§ 405.473(c)(2) and 405.476(i) to provide a special adjustment of the rural average standardized amounts to hospitals that are located in counties in MSAs or NECMAs that are redesignated by EOMB to be no longer a part of an MSA or NECMA.

- In § 405.473(c)(2), we define the phrase "hospital reclassified as rural" as a hospital located in a county that is in an MSA or NECMA that is redesignated by EOMB after April 20, 1983 to no longer be in an MSA or NECMA.
- In § 405.476(i), we state that we will provide for a two year phase-in of the rural Federl payment amounts to a hospital, located in an area redesignated as rural. For the first cost reporting period, the additional amount is an amount equal to two-thirds of the difference between the urban and rural area standardized amounts adjusted for area wage differences for the appropriate region in which the hospital is located. For the second cost reporting period, the additional amount is an amount equal to one-third of the difference between the urban and rural area standardized amounts adjusted for area wage differences for the appropriate region in which the hospital is located.

F. Census Division Boundaries

Also, in the new § 405.473(c)(2), we are clarifying to which census division a hospital belongs when an MSA or NECMA crosses a census division boundary.

- In § 405.473(c)(2), for the purpose of MSAs or NECMAs that overlap census divisions, we deem hospitals in the entire MSA or NECMA as belonging to the census division in which most of the hospitals in that MSA or NECMA are located. We are not applying this change in FY 1984 to hospitals that are adversely affected by such a change; that is, as a result of a redesignation in which a hospital ends up in a census division with a lower Federal rate. In addition, if there are an equal number of hospitals located in each part of an MSA or NECMA that crosses one or more census divisions, we deem all the hospitals to belong to the census division with the highest Federal rate.

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G. Base Year Appeals

We are revising § 405.474(b)(3)(i)(C) to include, as a basis upon which a prospective recalculation of hospital's base year cost may be made, administrative actions such as a reopening of a cost report and a revision of a cost report determination, or a prehearing order of finding, in addition to a final administrative or judicial review decision.

H. Referral Centers

We are adding an alternative set of criteria to § 405.476(g)(1) that expand the definition of referral centers to encompass more rural hospitals. We are paying hospitals that meet these criteria the urban (rather than the rural) adjusted standardized amounts. We are also revising § 405.476(g)(2) so that rural hospitals that meet the criteria set forth in § 405.476(g)(1)(ii) are also paid the urban (rather than the rural) adjusted standardized amounts for cost reporting periods on or after October 1, 1984. In addition, we are adding a new § 405.476(g)(3) to provide for a triennial review of referral centers to determine if they continue to meet the criteria of § 405.476(g)(1).

I. Inpatient Renal Dialysis

We are adding criteria in § 405.476(j)(1) that would provide additional payments to a hospital for inpatient dialysis provided to ESRO beneficiaries if the hospital has established that ten percent or more of its total Medicare discharges are ESRO patient discharges, excluding discharges classified into DRG Nos. 302, 316 or 317. The additional payment to the hospital will be equal to the average length of stay of ESRO patients, expressed as a ratio to one week, times the estimated weekly cost of dialysis multiplied by the number of ESRO patient discharges.

J. Payment for Indirect Medical Education

In determining indirect medical education costs of hospitals, we are revising § 405.477(d)(2) to allow interns and residents to be counted on the basis of where their services are provided and to calculate FTEs on that basis. Hospitals will be required to submit quarterly reports to their intermediaries documenting the time worked by interns and residents. The final lump-sum payment for indirect medical education costs will not be made until the fiscal intermediary completes audits of the first year's cost reports.

K. Payment for Nonphysician Anesthetists

We are adding a new § 405.477(c)(3) to pay hospitals for the reasonable costs incurred for anesthesia services provided by qualified nonphysician anesthetists. We are also revising §§ 405.470 and 405.474 reflecting the change that estimated costs of anesthetists' services are removed in determining the Federal and hospital-specific rates. These provisions are effective with hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987.

L. Home Health Agency Cost Apportionment Method

As discussed in section IV. above, we are adding a new § 405.452(a)(3) to replace the provision that was erroneously deleted by providing that the cost per visit by type-of-service method applies to the allocation of HHA service costs.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires that a regulatory impact analysis be performed and made available on any major rule. A "major rule" is defined as one that would result in an annual effect on the national economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity or innovation.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires that a regulatory flexibility analysis be performed and made available for each rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities.

Under the RFA, small entities include small businesses, nonprofit organizations, and governmental jurisdictions of less than 50,000 population. We treat all hospitals as small entities. Thus, a regulatory flexibility analysis is required if a substantial number of hospitals would be significantly affected by a regulatory document.

If we considered the net effects only, we would not expect the policy changes implemented by this rule to meet the criteria of a major rule. Due to the distributive effects of the prospective payment rate methodology, such as adjustments for budget neutrality, a change that results in substantially increased payments for one group of hospitals under the prospective payment system is offset by compensating decreases in payment rates for all other hospitals under the system. (Note that the *aggregate* effect of an increase is offset by a corresponding *aggregate* decrease. Thus, a large increase for a small group is balanced by a small decrease for a large group.) Further, many of the changes that increase payments for some hospitals, such as the provision affecting the hospitals located in areas redesignated rural by EOMB in June 1983, do not have a substantial effect on total payments, and have negligible effects on the budget neutrality adjustment factors.

However, some of the provisions of this rule will result in increases in payments to certain groups of hospitals large enough so that the budget neutrality mechanism results in a redistribution of aggregate payments, due to the offsetting decrease of payments to other hospitals, amounting to over $100 million. Even though the *net* effect on aggregate payments to all hospitals might not be significant, due to increases and decreases offsetting each other, we believe that a redistribution of this magnitude constitutes an economic impact meeting the threshold criteria of a major rule.

Further, it is clear that these changes will affect a substantial number of hospitals, and that the effects for certain groups of those hospitals, such as those reclassified as rural by the MSA system, or hospitals that may meet the new referral center criteria, will certainly be significant. Therefore, a regulatory flexibility analysis is required.

In the discussion below, we discuss the expected impacts of these changes and then summarize our expectations of their net effect. This discussion, in combination with the rest of this preamble, constitutes a combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

B. Objectives

These changes do not represent any change in the objectives or basic incentives of the prospective payment system. Rather, we are merely resolving the first and most pressing problems of implementation, in order to ensure that those objectives are achieved and that the incentives created push toward the intended effects. As noted in the final rule published January 3, 1984, we fully expected the prospective payment system to:

- Restructure hospitals' economic incentives, establishing market-like forces;

- Link payment to diagnosis, basing payment on a system that more accurately identifies the product being purchased on behalf of Medicare beneficiaries;
- Establish the Federal Government as a prudent buyer of services, adopting an active role in determining payments for inpatient services on behalf of Medicare beneficiaries; and
- Restrain the rate of hospital cost increases, and, therefore, moderate the outflow from the Medicare trust funds.

We expect these changes to further those objectives while avoiding or minimizing unintended adverse consequences and ensuring that outcomes in general are reasonable and equitable. Thus, the intent of these changes is essentially to fine tune the prospective payment system without undercutting our original objectives. This means giving more to some hospitals, where appropriate, and therefore, if necessary, taking a little from others, to maintain balance.

C. Transfers

Paying cost outlier payments to transferring hospitals will benefit those hospitals incurring such costs and will be more equitable than our current payment policy. Although it may appear that this change will result in larger aggregate payments for outlier services, we do not expect the aggregate amount of such payments to be substantial. Generally, transfers occur in less than 1.5 percent of cases. Of this number, a small portion result in high costs to the transferring hospital. Since this is a small portion of a group of cases already known to be relatively small, we believe the increased payments for these cases will be negligible compared to total payments for inpatient hospital services. We do not believe it is necessary or desirable to reflect this change either our budget neutrality methodology or in the determination of cost outlier trim points. As a result, we do not expect any hospitals will be disadvantaged by this change.

D. Rehabilitation Hospitals and Units

We are making two changes in the regulations governing rehabilitation hospitals and units excluded from the propsective payment system—

- We will no longer require the director of a unit to be full-time; and
- We are eliminating the 12-month waiting period before exclusion from the prospective payment system for new or expanding rehabilitation hospitals or units.

These revisions will result in the accelerated approval of rehabilitation hospitals, units, and beds for exclusion from the prospective payment system, which in turn will affect the total amount of inpatient hospital costs subject to the prospective payment system. The greater the cost-based payments made to hospitals and units excluded from the prospective payment system, the smaller the total of payments under that system becomes.

Before October 1, 1983, rehabilitation hospitals and units were not given special recognition by Medicare payment methods, and we did not collect data on them. Since they were excluded by statute from the prospective payment system, we have established criteria and procedures to identify and pay them, and have begun to develop data on them.

As noted in the proposed rule, we expected to have excluded around 80 hospitals and around 440 units under the current regulations, by October 1, 1984. (Since we do not have historical program data, these are only rough estimates, but they are not inconsistent with the applications for exclusion to date.) As of July 31, 1984, we have recognized 43 rehabilitation hospitals and 284 rehabilitation units for purposes of excluding them from the prospective payment system.

Of the 85 hospitals that had been denied exclusion of a potential rehabilitation unit as of July 31, 1984, 31 applicants were denied because they lacked a director who could be considered "full-time" under the current regulations. We expect that some, but not all, of these will be approved under the new requirements. Any unit so approved will be excluded from the prospective payment system beginning with its next cost reporting period.

Further, with regard to the revisions affecting 12 months of prior operations for new hospitals and units, we expect a number of facilities to elect exclusion effective with their first cost reporting period beginning on or after October 1, 1984. However, this entails some risk for a facility, since it must commit itself to meeting all the requirements for that period in order to retain excluded status for its subsequent cost reporting period. Therefore, we do not expect all the potential new hospitals and units to elect exclusion on this basis. As of July 1984, we had denied exclusion requests from several hospitals that wanted to begin operation of a unit, but that had not yet operated the unit for 12 months. However, we have no way of knowing how many hospitals did not file such requests due to their knowledge about the requirement of a full year's operation.

We expect these changes to permit an increased rate of growth of the total number of rehabilitation beds (and associated costs) excluded from the prospective payment system. Unfortunately, presently we have only fragmentary data on the numbers of beds in approved units, and no historical experience in the occupancy rates of units. As a result, we cannot estimate accurately the future effect of these changes.

It has been suggested that permitting expansion or opening of new hospitals or units without requiring 12-months of prior operation might create opportunities for hospitals to "game" the prospective payment system by avoiding its cost constraining incentives. We agree that this type of provider behavior, if it did result, would be undesirable. However, for several reasons, we do not believe this will be a significant problem. First, under the rate of increase limits required by section 1886(b) of the Act and implemented by regulations at § 405.463, excluded units already have strong incentives to minimize per case costs. We do not believe these incentives will be altered significantly by this change. Second, and more important, since the undesirable behaviors mentioned are very familiar to us, there are already mechanisms in place that restrain them. For example, both pre-admission screening and later medical reviews create counter-incentives in the form of potential denial of payment.

E. Physician Attestation

The change in physician attestation practice is merely a revision of language and method of implementation of the attestation requirements that is intended to address criticisms aimed at phrasing and potential misunderstandings. We still require a signed certification statement for each discharge; however, the penalty statement will be provided to the physician for his acknowledgement on only an annual basis. We do not expect this change to have any effect on payments.

We did receive a number of comments that argued that requiring the attestation to be on the discharge summary would be a burden to hospitals and could adversely affect their cash flow. As discussed elsewhere in this preamble, this was not intended, and we have revised the requirement to avoid these consequences. There is still some paperwork burden associated with the attestation requirement, and particularly with the maintenance of a separate file for signed penalty statements, but we do not believe this burden to be excessive, in view of the advantages achieved in terms of prevention and control of fraud, abuse, and waste.

F. MSA Redesignations

As discussed above, we will make additional payments to hospitals located in counties that lost their urban status as a result of an EOMB MSA/NECMA redesignation after April 20, 1983, effective with cost reporting periods beginning on or after October 1, 1983.

In the NPRM, we had proposed to make additional payments only to those hospitals that had hospital-specific rates greater than their rural Federal rates. We projected that the 32 hospitals that would receive two-thirds of the difference between the urban rate they would otherwise have received and their rural rate would be paid an estimated $4 million for FY 1985. However, we are now implementing the two-year phase-in beginning with FY 1984 cost reporting periods. Note that the impact is affected by the size of the Federal portion of the transition payment rates. Thus, for cost reporting periods beginning in FY 1984, we will calculate two-thirds of the difference between urban and rural rates for only the 25 percent Federal portion, and for cost reporting periods beginning in FY 1985, we will calculate one-third of the difference between urban and rural rates for the 50 percent Federal portion.

We estimate that this provision will initially affect 51 hospitals affected by the June 1983 EOMB redesignation, located for the most part in the East North Central and West South Central regions. There may be future redesignations, but we have no way to predict them or estimate their impact. Considering the payment to each hospital of two-thirds of the difference the first year and of one-third the second year, this will cost an estimated $4 million in additional payments for cost reporting periods beginning in FY 1984, and $4 million for cost reporting periods beginning in FY 1985.

For fiscal years 1984 and 1985, significantly increasing payments for a group of hospitals results in reduced payment to other hospitals through the budget neutrality mechanism. These additional payments affect few hospitals and are too small in the aggregate to have a large effect on the budget neutrality adjustment factors. As we stated in the proposed rule, increasing FY 1985 payments by $4 million would result in a decrease in the average payment to other hospitals of less than 50 cents.

G. Census Division Boundaries

As explained above, a hospital that is located in an MSA or NECMA that crosses census division boundaries will be deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located. Assuming that all of the hospitals in the effected MSAs continue to participate in the Medicare program, and that no new hospitals emerge in those areas, we estimate that this change will have a significant affect on only 23 of the 146 hospitals in the 14 MSAs affected:

- 11 hospitals will be paid at a higher Federal regional rate; and
- 12 hospitals will be paid at a lower adjusted Federal regional rate. (By statute, these hospitals will be held harmless for cost reporting periods beginning in FY 1984.)

Of the 146 hospitals in affected MSAs, 120 will not be reclassified. The remaining three hospitals are located in States that have waivers and are thus excluded from the prospective payment system.

We project that the 11 hospitals reclassified into regions that have higher regional rates will receive about $135 more per case than they could receive if we did not implement this change. The 12 hospitals adversely affected will receive about $90 less per case.

Nearly all of the affected hospitals are located in only three regions: South Atlantic, East North Central, and East South Central. The larger proportion of the decrease in payments will be experienced by hospitals in the East North Central region. Hospitals located in the East South Central region will benefit the most.

We estimate that the total payment increase for benefited hospitals will amount to about $3 million in the aggregate for cost reporting periods beginning in FY 1984, and $5 million for cost reporting periods beginning in FY 1985. The corresponding decrease to adversely affected hospitals will amount to about $3 million for cost reporting periods beginning in FY 1985. We also estimate that our decision not to impose these reductions for cost reporting periods beginning FY 1984 will result in program costs of about $2 million. The FY 1985 net increase of about $2 million, considering payments to all 23 directly affected hospitals ($5 million − $3 million = $2 million) will result in a negligible effect on other hospitals through the budget neutrality mechanism, reducing the average FY 1985 per case payment by less than 50 cents.

H. Base Year Appeals

We do not expect a significant economic impact to result from the clarification of the provision governing the appeal of base year costs on which transition period prospective payment rates are partially based. We do not view this clarification as a change of policy, since we had not intended to implement the regulation, as published on January 3, 1984, as rigidly as some parties seem to believe. Further, the impact of the base year costs involved diminishes throughout the transition period. Once full national DRG-related payment rates are implemented, revisions or new findings concerning base-year costs will have no effect on prospective payment rates.

We do not have adequate data to estimate how many hospitals will have their base period costs recalculated under this provision. However, we believe the aggregate amounts of additional payments resulting from recalculations will not be substantial enough to affect our overall expectations of program expenditures. This change has no effect on the budget neutraliy adjustment calculations.

I. Referral Centers

The additional criteria permitting rural hospitals to qualify as referral centers and be paid at urban rates will result in a significant number of new referral centers being recognized. As explained in the NPRM we do not have adequate data to project how many hospitals could meet each of the criteria proposed. However, we can determine how many hospitals had enough discharges and met the case-mix criteria based on the 1981 MEDPAR data. Based on just this data, in the NPRM we projected that as many as 113 hospitals might qualify as referral centers under the proposed criteria. We expect that incorporating regional criteria for rural referral centers, as discussed above, will permit about another 25 hospitals to meet the case-mix and discharge criteria, resulting in a total of around 139 hospitals that we can identify as potential rural referral centers.

We expect that nearly all of the hospitals that are able to meet both the discharge and case-mix criteria, will also meet one or more of the other criteria. In addition, some rural hospitals with less than 500 beds may qualify as referral centers under the existing criteria at § 405.476(g)(1)(ii). We will pay those hospitals at the urban rate, too. We cannot be sure how many hospitals may qualify under § 405.476(g)(1)(ii), how many of the hospitals that meet the discharge and case-mix criteria may be denied referral center status under the other criteria, or how many of the hospitals not represented by our data base may qualify for rural referral center payment. However, these uncertainties tend to balance out.

Therefore, considering all the limitations of currently available data, we do not believe the total number of potential rural referral centers with less than 500 beds is likely to differ significantly from the projected total population of 139 potential new rural referral centers identified solely on the basis of 1981 discharge and case mix.

We have identified some potential new rural referral centers in every region, but there are significant regional differences in their distribution. As noted in the NPRM, more than half of the potential referral centers identified are in only three regions: East North Central, East South Central, and South Atlantic. The New England and Middle Atlantic regions each have less than seven potential referral centers. The regions benefiting most from the new regional criteria are the East South Central, West North Central, West South Central, and Pacific regions.

Considering the difference between urban and rural rates, the increased aggregate payments to these hospitals will be substantial. We project that in FY 1985 these hospitals could be paid, in the aggregate, about $100 million more than they would be paid based on their rural rates. Due to the budget neutrality mechanism, the estimated increased payments to new referral centers will result in reduced payments to all other hosptials. We estimate that the average FY 1985 per case payment to other hospitals will be reduced by about $12 as a result of this change.

J. Payment for Inpatient Renal Dialysis

As discussed above in response to comments we have decided to make additional payments for maintenance dialysis treatments to those hospitals that have ESRD patients representing 10 percent or more of their total Medicare discharges, excluding discharges in DRG 302, 316, and 317.

Based on the data available to us, we expect approximately 8 to 12 hospitals will qualify for these extra payments annually. Each of these hospitals will be paid $335 for each week-equivalent of ESRD beneficiary inpatient stays. We estimate that affected hospitals would be paid approximately an additional $1.4 million for ESRD beneficiary discharges occurring in FY 1985.

K. Payment for Services of Anesthetists

As required by section 2312 of Pub. L. 98–369, we will pay for the costs of anesthetists' services on a pass-through basis. Ideally, we would be able to implement this in a manner that had no net effect on program expenditures, in that we would adjust the prospective payment rates (both Federal and hospital-specific portions) to take into account an aggregate amount that was exactly equal to the aggregate cost-based payments that we would make instead. However, it must be realized that a prospective estimate of such precision is impossible; all that can be done is to make the best estimate possible and adopt administrative measures that ensure that potential over or under payments are as small as possible. We believe the process described in section III.B of this preamble will accomplish this. As a result, we expect any effect on program costs to be negligible.

Nonetheless, this provision will result in substantial redistribution of payments, since we estimate the costs of anesthetists' services related to inpatient services furnished to Medicare beneficiaries will be about $160 million for hospital accounting years beginning in FY 1985. Through the Federal rate calculation methodology, these costs have been averaged in and paid to all hospitals. However, hospitals do not all incur comparable costs for such services: in some hospitals anesthesia is induced only by physicians, and in others by anesthetists employed by physicians. As a result of averaging, it could be argued that Federal rates result in overpayment to those hospitals that do not incur such costs, and underpayment to those hospitals that incur high costs for anesthetists' services. By paying these costs as a pass-through, and reducing prospective payments accordingly, hospitals that do not incur these costs will experience a reduction in revenues, and hospitals that do will experience an increase.

L. Indirect Medical Education Costs

The new rules governing the counting of interns and residents will probably result in greater numbers of them being considered in computing payment for indirect medical education costs for a substantial number of hospitals. This will result in increased payments to those hospitals.

At this time, we have no way of estimating how much this count and the related payments might increase. We expect that our increased audit activity will avoid overcounting, and may even result in reduced payments to some hospitals. We do not expect that such potential reductions would be large enough to offset all the increased payments.

Based on the audit data we accumulate, we will reexamine the teaching adjustment factor. A substantial increase in the number of interns and residents recognized would suggest that a smaller effect on indirect costs would be attributable to each one. This in turn would suggest that a lower percentage adjustment factor would be more accurate. However, we do not have data at this time that would suggest such a reduction. Therefore, we are continuing to use the current factor of 11.59 percent.

M. Adjustments for Area Wage Levels

As discussed in the Addendum to this rule, we have attempted to develop a new area wage index based on our own survey of hospital wages, instead of the current wage index based on data collected by the Bureau of Labor Statistics (BLS) of the Department of Labor. Under the Medicare prospective payment system, the area wage index has two principal functions:

- To adjust the per case costs of each hospital in the data base used to compute urban and rural regional and national adjusted average standardized amounts (Federal rates) in order to remove the effects of differing area wages; and
- In computing the actual payment for an inpatient hospital case, to adjust the labor portion of the Federal rate.

Using a different area wage index would not affect aggregate payments under the prospective payment system. However, it would result in a different distribution of payments among hospitals. This redistribution would be the result not only of increases and decreases of the index values for particular urban or rural areas, but, during the transition period, of the necessary restandardization of Federal regional rates for all regions.

Many commenters, particularly those from rural areas, hoped that a new area wage index would correct perceived inequities resulting from the current wage index. We grant that our analysis to date suggests that use of the new wage data would affect the wage index values for a number of areas. However, as must be expected in any revision of an index such as this, not all the changes would benefit the affected hospitals—it appears likely that the new data would result in reductions for several areas, which would correspondingly reduce payments to hospitals in those areas. We expect that, if we were to implement a new wage index based on the wage survey data we accumulated this year, a significant redistribution of payments might result. Before imposing such a redistribution, we must take steps to ensure that any revised wage index values are based on survey data that are reasonably complete and that have been verified for accuracy.

Our decision not to change the index at this time should not be considered to have an impact equivalent to changing the index, since section 2316 of Pub. L. 98–369 requires that we make a new index effective for cost reporting periods beginning on or after October 1, 1983. Thus, the impact would result from the delay in the redistribution, and, though not inconsequential, we do not expect the adverse consequences of this delay to exceed the problems likely to result from premature implementation of an inaccurate index. See the Addendum for a further discussion of these issues.

N. Updated Payment Rates

One of the primary functions of this document is to publish updated prospective payment rates in accordance with statutory and regulatory requirements (section 1886(d) of the Act and § 405.470(e) of the regulations). Accordingly, the Addendum to this document, which is printed after the text of the regulations, sets forth tables of new Federal national and regional rates, new DRG relative weights and outlier thresholds, and new factors for calculating hospital-specific rates. In accordance with section 1886(d)(1)(D) of the Act, the Federal rate for FY 1985 will be a blend set at 75 percent of the Federal regional rate plus 25 percent of the Federal national rate. This blend will take effect for all Federal rates for all discharges occurring on or after October 1, 1984. Further, as each hospital begins its second year under prospective payment, with its cost reporting period beginning on or after October 1, 1984, the relative proportions of hospital-specific and Federal portions will change from 75 and 25 percent, respectively, to 50 percent hosptial-specific and 50 percent Federal.

For FY 1985, section 1886(e)(1) of the Act requires that Federal and hospital-specific payment rates continue to be adjusted for budget neutrality. (See the technical explanation of the budget neutrality adjustment methodology in section V. of the Addendum.) As a result, aggregate FY 1985 prospective payments for inpatient hospital services are projected to be the same as they would have been for those services in FY 1985 had the Medicare payment system in effect at the time of enactment of the prospective payment legislation continued in effect. It should be emphasized that we have no discretion in this matter—the FY 1985 payment rates *must* be made budget neutral to what would have been paid under prior law.

In the absence of the budget neutrality requirement, the FY 1985 payment rates would increase over the FY 1984 rates in accordance with sections 1886(b)(3)(B) (as amended by section 2310 of Pub. L. 98–369) and 1886(d)(3)(A) of the Act, by the percentage increase in the hospital market basket index (an input price index) plus 0.25 percentage point. For FY 1985, we estimate that increase would be about 6.62 percent. However, as a result of the budget neutrality and other adjustments, the proposed Federal payment rates as published will increase by 5.2 percent. The hospital-specific payment rates will increase from 6.62 to 7.14 percent, before application of the budget neutrality adjustment factor, depending on the starting date of the hospital's cost reporting period. The budget neutrality adjusted rates will increase from 5.88 percent to 6.40 percent.

The main factors that contribute to the reduction of the rate of increase below 6.62 percent are:

- Incorporation into the estimate of payments under prior law, on which the budget neutrality adjustment is based, of:

—The statutory reduction of the case-mix adjusted limits (from 115 percent to 110 percent of the mean per care costs for each group of hospitals) that would have applied under section 1886(a) of the Act; and

—The ending of payment for 25 percent of costs in excess of a hospital's rate of increase limit (target amount) under section 1886(b) of the Act;

- The disparity resulting from the difference between the months when lower and higher cost hospitals tend to enter the prospective payment system during FY 1984. More of the hospitals that have higher costs, due to higher wage index values and higher indirect teaching adjustments, have cost reporting periods beginning late in the Federal fiscal year. As a result, these hospitals had little effect on the estimated FY 1984 average payment levels used in the budget neutrality adjustment methodology. However, all of these hospitals will be paid based on the new Federal rates for all months of FY 1985. Reflection of this situation in the budget neutrality calculations for FY 1985, which eliminates the disparity, results in some reduction of the published FY 1985 rates; and
- Finally, increases in payments to certain hospitals as discussed elsewhere in this analysis, which must be offset by decreases in the Federal and hospital-specific payment rates due to the statutory requirement of budget neutrality

However, in addition, to the factors that would decrease the rates, we expect other factors to result in rate increases. Specifically, the change in outlier policy and the adjustment to reflect the most recent data on the level of transfer payments under the prospective payment system both produce increases in the adjusted Federal rates. (See the Addendum for discussion of both of these subjects.)

The following example serves to illustrate in dollar terms the impact of these factors on the increase in the Federal rates published in the Addendum to this rule. The New England region's urban rate is $2967 in FY 1984 (adding labor and non-labor components). This rate, increased by 6.62 percent, would be $3163 for FY 1985, before adjustment for budget neutrality. However, the FY 1985 urban Federal regional rate for New England is $3122, or $41 less than the rate would have been if we had simply increased the FY 1984 rate by 6.62 percent. The example below indicates how the requirement for budget neutrality accounts for the 41 dollar difference. (See Section V of the Addendum, Technical Explanation of Budget Neutrality Adjustment Methodology, for more details.)

EXAMPLE

FY 1984 Rate: New England urban	$2,967
Increase by 6.62 percent	+196
Additional year of rate of increase limits and elimination of 25% allowance for costs in excess of limits	−30
Reduce case-mix limits from 115% to 110% of mean	−13
Phase-in disparity	−12
Effect of regulatory changes	−31
Adjust for transfers under prospective payment	+15
Adjust for change in outlier policy	+30
FY 1985 Rate: New England urban	3,122

We expect that the actual average *payment* per case during FY 1985 will increase by more than the published Federal payment *rates* as a result of the following.

- Hospitals with higher wage index values entered the prospective payment system later, on average, than hospitals with lower wage index values. Thus, average payments to hospitals in FY 1985 will be higher than in FY 1984 because a higher proportion of admissions in FY 1985 will be associated with hospitals with a higher wage index.
- Hospitals with higher payments for the indirect costs of medical education entered the prospective payment system later, an average, than hospitals with lower payments for those costs. Therefore, average payments to hospitals in FY 1985 will be higher than in FY 1984 because a higher proportion

of admissions in FY 1985 will be associated with hospitals with higher payments related to indirect medical education cost.

- Hospitals with reporting periods starting later in FY 1984 are expected to have higher base year costs and hospital-specific rates because of the continuing increases in costs. This will further increase FY 1985 average prospective payments over FY 1984 average prospective payments.
- Several provisions allow for increased payments to some hospitals for FY 1985. These provisions include new criteria for rural referral centers, extra payments to certain hospitals that are in counties redesignated from urban to rural by EOMB, and relief for hospitals in MSAs that overlap more than one region.

In sum, considering all the factors affecting the level of payments, we expect Medicare payments to hospitals to increase by more than nine percent in FY 1985.

Comment—We received numerous comments concerning the inadequacy of prospective rate increases. Commenters stated that the 5.6 percent increase in the rates, when offset by the across the board reduction in the DRG weights and the 0.75 percent reduction in the technology adjustment (to market basket plus one-quarter of a percentage point, as mandated by section 2310 of Pub. L. 98–369), results in only a nominal overall rate increase that violates the Department's commitment to increase the payment rates to reflect market basket increases. Virtually all commenters strongly objected to the 2.4 percent reduction in the DRG weights. Some stated that this is an arbitrary adjustment which violates Congressional intent as indicated in the Conference Committee Report accompanying Pub. L. 98–369. In this report, the conferees stressed that the appropriateness of the new payment levels would be vital to the success of the program.

Many commenters also stated that the nature of the adjustment to the weights was inappropriate since it reflects changes in case-mix indexes for any and all reasons. These commenters believe that hospitals should not be penalized for responding appropriately to incentives created by the prospective payment system. Most commenters urged that the reduction in the DRG weights be eliminated and that the 5.6 percent increase in the rates be maintained.

Response—We stress that the FY 1985 reduction of the rate of inflation permitted under the prospective payment system, as well as of the target rate percentages for those hospitals excluded from the prospective payment system and subject to the rate-of-increase limits as specified in § 405.463, is mandated by section 2310 of the (Pub. L. 98–369). Under the law, the percentage change in the rates cannot exceed the market basket plus one-quarter of one percentage point (rather than, as under prior law, market basket plus one percentage point). However, it is important to note that the ultimate level of the prospective payment rates for FY 1985 is dictated by the budget neutrality requirement of section 1886(e)(1) of the Act which is not altered by Pub. L. 98–369.

By the same token, making no reduction in the DRG weights would require a decrease in the budget neutrality factor. In establishing the payment levels for FY 1985 we are required by law to maintain total prospective payments at the same level that would have been paid under the law in effect prior to the enactment of the prospective payment system. The TEFRA legislation (Pub. L. 97–248) enacted a new section 1886(a) of the Act, which established a system of limits on inpatient operating costs per case and target percentage increases designed to restrain increases in overall payments for inpatient hospital services in FY 1983 through FY 1985. Allowable costs per case were limited to no more than 120 percent of the average for similar hospitals in FY 1983, lowered to 115 percent in FY 1984 and 110 percent in FY 1985. That legislation also enacted a new section 1886(b) of the Act, which established separate rate-of-increase limits, expressed as hospital-specific target amounts, with bonuses for hospitals with costs less than their target amounts and penalties for hospitals whose costs exceeded their target amounts. For FY 1984, hospitals with costs in excess of their target amounts were reimbursed 25 percent of the excess. This 25 percent payment was eliminated for FY 1985. This change, when combined with the reduction in allowable total costs per case, substantially restrained increases in projected total expenditures under the TEFRA rules in FY 1985. It was therefore necessary to reduce the rates in order to remain within the TEFRA limits and achieve budget neutrality.

Budget neutrality considerations also mandate that all factors which will affect the level of total DRG payments be considered in establishing the prospective payment rates. Therefore, it was necessary to consider increases in case-mix indexes because of their direct impact on the amounts paid for each case. During the early stages of the prospective payment system, changes in hospital behavior are a natural outgrowth of adaptation to the new system. While we anticipated these behavior changes at the time the DRG system was developed, we were unable to accurately assess their impact until we had actual experience under the program. Based on billing experience thus far under the prospective payment system, we determined that the aggregate increase in hospital case-mix has exceeded our initial estimate of 3.38 percent. This additional increase in case-mix indexes will result in actual payments under the prospective payment system that are higher than predicted from the 1981 MEDPAR data and our initial study of PSRO data, which only reflected changes occurring from improvement in the overall reporting of patient data. Therefore, in order to ensure budget neutrality, we must consider changes in case-mix indexes resulting not only from improved medical recordkeeping, but also from other changes in hospital behavior, since more cases are falling within the higher weighted DRGs.

As explained in the proposed notice, we elected to adjust for the additional increase in case-mix indexes through an overall reduction in the DRG relative weights. We believe this approach is more desirable than applying the adjustment through the budget neutrality factor, which would result in an actual decrease in the hospital-specific rates from the prior year. By reducing the DRG weights and the resulting payment amounts at the beginning of the Federal fiscal year, rather than with each hospital cost reporting year, hospitals with cost reporting periods beginning earlier in the Federal fiscal year would not have to subsidize those hospitals with cost reporting periods beginning later in the Federal fiscal year. We believe adjusting the DRG weights in the manner we have is more equitable and will benefit hospitals by maintaining a more even cash flow.

Since we are bound by the requirement in the law to maintain budget neutrality, we are not in a position to eliminate the overall reduction in the DRG weights without reducing the budget neutrality adjustment factor. Within the constraints of the budget neutrality requirements and methodology, we stress again that if the adjustments for increased case-mix indexes is not achieved through reduction of the weights, then it must be accomplished through the budget neutrality adjustment factor. While an adjustment for changes in case mix may be one which would be made in any event, the legal requirement for budget neutrality makes the adjustment imperative for FY 1985. Not to make the adjustment is not an option available to us under current law. The only choice given to us was to make the adjustment to the weights or the rates. Given the consequences of adjusting the rates, particularly the hospital-specific portion, we opted for a reduction in the DRG weights as a more equitable way to achieve the same result.

Comment—A commenter suggested that hospitals that enter the prospective payment system later will not be paid more than hospitals that entered it earlier.

Response—We analyzed the distribution of hospitals as they enter the prospective payment system, and found that hospitals that are concentrated in areas with higher wage index values, and in the regions with higher Federal regional rates, enter the system later. Further, these same hospitals have higher average indirect teaching payments. Therefore, hospitals that enter the prospective payment system later will have higher average reimbursement.

O. Excluded Hospitals and Units

Section II.A.3. of the Addendum to this final rule sets forth the estimated values of the market basket plus 0.25 percentage point for calendar years 1984 through 1986. In addition to being used for updating the average standardized amounts on which Federal payment rates under the prospective payment system are based, these values will be used to determine the target amounts for those hospitals that are excluded from the prospective payment system but subject to the rate-of-increase limits required by section 1886(b) of the Act.

Section 2310 of Pub. L. 98–369 amended section 1886(b)(3)(B) of the Act to specify that the annual target amount for each hospital and unit subject to the rate of increase limit be updated annually using a target rate percentage equal to the market plus one-quarter of one percentage point, rather than the market basket plus one percentage point. This will apply to cost reporting periods beginning on or after October 1, 1984. For the affected cost reporting periods, a hospital or unit that has per case costs in excess of its target amount (a hospital-specific ceiling on reimbursable inpatient operating costs per case) will not be paid any of the costs in excess of its target amount. However, a hospital or unit that has per case costs less than its target amount will be paid its allowable inpatient operating cost per case plus the lower of 50 percent of the difference between the hospital's or unit's per case costs and the target amount or 5 percent of the target amount. As a result, this change in setting the target amount will affect each hospital or unit in one of three ways.

- If a hospital's costs would have exceeded its target amount using a market-basket-plus-one percentage-point target rate percentage, it will exceed its new target amount by an even greater amount, and will have its Medicare reimbursement reduced accordingly.
- If a hospital's costs are lower than its target amount as calculated using the new target rate pecentage, it will receive additional payments, as described above, but these payments will be lower than could have been paid had the target rate percentage been set at market basket plus one percentage point. This difference represents a cost to hospitals and units affected this way.
- Finally, some hospital's and units will have per case costs greater than its target amount as calculated using the market-basket-plus-one-quarter target rate percentage, but less than the target amount that would have resulted using the old target rate percentage formula. The total cost of this change to these hospitals and units equal the costs disallowed using the new target amount plus the amount of additional payments that would have been received under the old target amount.

P. Summary

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise, and to discuss those costs and benefits in impact analyses for major rules to show that the potential benefits outweigh the cost to society.

In the aggregate, the net effect these changes would have on the overall level of total payments could be considered negligible. To the extent that any aggregate change results at all, it will be the result of our inability to reflect all these changes explicitly and accurately in the budget neutrality adjustment methodology. Five of the major provisions of this rule (outlier payments to transferring hospitals, director of rehabilitation units expansion of rehabilitation units, physician attestation, and base year appeals) are not reflected in that methodology. However, as discussed above in relation to each provision, although we expect the economic impacts of these provisions to be negligible in the aggregate, each of them has significant benefits.

For the most part, the costs and disadvantages that could result from these changes will take the form of reductions of payment rates through budget neutrality adjustment. However, as discussed above, the decrease in the budget neutrality factors largely results from considerations outside the scope of these provisions and, under budget neutrality, quantifiable benefits in the form of payment increases for some must be offset by payment decreases for others.

The primary benefit resulting from these regulations is the maintenance and effective management of the prospective payment system itself. The incentives of this system are expected to produce substantial benefits in the form of economy and efficiency of operation of participating hospitals, and as improvements in trends of the health care marketplace as a whole. As noted earlier, the objective of these provisions is to fine tune the prospective payment system. Compared to the magnitude and impact of the system as a whole, the effects of these changes will be relatively small.

We believe that, from this perspective, the higher payment rates afforded to those hospitals directly and quantifiably advantaged by these rule changes, as well as the nonquantifiable benefits afforded to rehabilitation units and hospitals with affected transfer outlier cases and base year appeals, more than offset the costs resulting from those provisions. For the above reasons, we believe that this document meets the objectives of E.O. 12291 and the Regulatory Flexibility Act.

VII. Other Required Information

A. Effective Dates

Generally, the changes to the regulations implemented by this final rule are effective with cost reporting periods beginning on or after October 1, 1984. However, certain other effective dates are involved.

The change in § 405.452 (HHA cost apportionment method), which corrects an erroneous deletion from the September 1, 1983 interim final rule, is effective October 1, 1983.

As a result of the enactment of Pub. L. 98–369, two regulatory changes, § 405.473 (Census division boundaries) and § 405.476 (Hospitals in areas redesignated as rural), are effective with cost reporting periods beginning on or after October 1, 1983. However, those hospitals that would receive a lower Federal rate as a result of the changes in § 405.473 will not receive that rate until their cost reporting periods that begin on or after October 1, 1984.

The following regulatory amendments are effective with cost reporting periods beginning on or after October 1, 1984:

§ 405.471 Rehabilitation facility direction and expansion.
§ 405.476 Rural referral center criteria.
§ 405.477 Indirect medical education and CRNA services.

The changes in § 405.472 that relate to physician attestation requirements are effective October 1, 1984. Despite this effective date, for a reasonable time hospitals may continue to use the language and positioning of the certification and penalty statements prescribed in the January 3, 1984 final rule. However, we fully expect that hospitals will expeditiously implement the new requirements.

The changes to § 405.474 (Base year appeals) are effective on October 1, 1984. In addition, the changes in the payment of cost outliers to transferring hospitals (§ 405.470), and the provisions for additional payments to a hospital that has ten percent or more ESRD patient discharges (§ 405.476), are effective with discharges occurring on or after October 1, 1984.

B. Waiver of 30-day Delay of Certain Effective Dates

Generally, we provide a 30-day delay in the effective date of a substantive rule. As stated above, most of the changes to the regulations in this final rule have effective dates that apply to hospital cost reporting periods beginning on or after October 1, 1984. However, certain changes have other effective dates for which we are waiving the customary delay.

There are two provisions that are effective with cost reporting periods beginning on or after October 1, 1983. The effective date for these regulations changes (that is, the MSA/NECMA redesignation in § 405.473 and census boundary divisions in § 405.476) are mandated by section 2311 of Pub. L. 98-369, which was enacted on July 18, 1984. To comply with this statutory mandate, and to inform the public generally and affected hospitals in particular about these changes, we have included these provisions in this final rule. We also note that the NPRM contained proposed changes concerning these matters, and we have responded to those comments in this final rule. Therefore, we believe that a delay in the effective date is unnecessary and contrary to the public interest, and we find good cause to waive the requirement.

As discussed above, we are also restoring material unchanged to § 405.452 (concerning HHAs), which was erroneously deleted in the September 1, 1983 interim final rule. The effective date is October 1, 1983. Because this is a technical amendment to correct an error, we find that a delay in the effective date is unnecessary. Therefore, we find good cause to waive a delay in the effective date here also.

C. Waiver of Proposed Rulemaking

The APA (5 U.S.C. 553) requires us to publish a notice of proposed rulemaking in the **Federal Register** for substantive rules and to afford a period for public comment. The notice generally is to include a description of the subjects and issues involved. However, this requirement does not apply if an agency finds good cause that such a notice-and-comment procedure is impractical, unnecessary or contrary to the public interest. In this case, the agency must incorporate an explanation of its finding in the rule to be issued.

We issued an NPRM on July 3, 1984 (49 FR 27422) and provided a period for public comment on most of the regulatory amendments contained in this final rule. Only the changes concerning regional criteria for referral centers (§ 405.476(g)), payments for anesthesia services (§ 405.477(c)), and payments for indirect medical education costs were not described in the NPRM. These regulatory amendments implement sections 2307(b), 2311(a) and 2312 of Pub. L. 98-369 respectively. The statute which was enacted on July 18, 1984, provided that these provisions are effective with cost reporting periods beginning on or after October 1, 1984. It is clear, therefore, that undergoing a proposed rulemaking process with respect to these provisions was impractical and, in terms of notifying affected parties of the implementing regulations before the statutory effective date was not in the public interest. In addition, beneficiaries are not adversely affected by the three provisions, and, since each of these provisions will result in additional payments to certain hospitals, we believe the hospital industry, on balance, will experience greater benefit than disadvantage. Therefore, we find good cause to waive proposed rulemaking for these regulatory provisions.

D. Paperwork Reduction Act

Section 405.477(d)(2)(v)(B) requires hospitals to report on the hours worked by interns and residents. This reporting requirement is subject to EOMB approval under section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 and following). We are seeking approval of this information collection requirement, and we will publish the EOMB control number in the **Federal Register** when the requirements are approved.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Cost-based reimbursement, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reasonable charges, Reporting requirements, Rural areas, Prospective Payment System, X-rays.

42 CFR Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

A. Subpart D is amended to read as follows:

1. The authority citation for Subpart D reads as follows:

AUTHORITY: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. The table of contents for Subpart D is amended by revising the title of § 405.476 to read as follows:

Sec.

* * * * *

§ 405.476 Special treatment for certain facilities under the prospective payment system.

* * * * *

3. Section 405.452 is amended by revising the section title and adding a new paragraph (a)(3) to read as follows:

§ 405.452 Determination of cost of services to beneficiaries.

(a) Principle. * * *

(3) *Cost per visit by type-of-service method—Home health agencies.* For cost reporting periods beginning on or after October 1, 1980, all home health agencies must use the cost per visit by type-of-service method of apportioning costs between Medicare and non-Medicare beneficiaries. Under this method, the total allowable cost of all visits for each type of service is divided by the total number of visits for that type of service. Next, for each type of

service, the number of Medicare covered visits is multiplied by the average cost per visit just computed. This represents the cost Medicare will recognize as the cost for that service, subject to cost limits published by HCFA (see § 405.460).

* * * * *

4. In § 405.470, paragraphs (a)(1) and (b)(4) are revised; the introductory language of paragraph (b)(5) is reprinted unchanged; paragraph (b)(5)(iv) is revised; a new paragraph (b)(5)(v) is added; paragraph (c)(4) is redesignated as paragraph (c)(4)(i); and a new paragraph (c)(4)(ii) is added to read as follows:

§ 405.470 Prospective payment general provisions.

(a) *Scope*—(1) *Purpose.* Sections 405.470 through 405.477 of this subpart implement section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

(b) *Basis of Payment.* * * *

(4) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

(i) Capital-related costs, as described in § 405.414 and an allowance for return on equity, as described in § 405.429.

(ii) Direct medical education costs, for those approved education programs described in § 405.421.

(iii) Costs for direct medical and surgical services of physicians in teaching hospitals exercising the election in § 405.521.

(iv) Kidney acquisition costs incurred by a certified renal transplantation centers.

(v) For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, costs of qualified nonphysician anesthetists' services.

(5) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates, hospitals will receive payments for:

* * * * *

(iv) Bad debts of Medicare beneficiaries (see §§ 405.420 and 405.477(d)(1)); and

(v) ESRD beneficiary discharges if such discharges are 10 percent or more of the hospital's total Medicare discharges (see § 405.476(j)).

(c) Discharges and transfers.

* * * * *

(4) Payment to a hospital transferring an inpatient to another hospital.

* * * * *

(ii) Effective with discharges occurring on or after October 1, 1984, a transferring hospital may qualify for an additional payment for extraordinarily high-cost cases that meet the criteria for cost outliners as described in §§ 405.475(a)(2) and (d).

* * * * *

5. In § 405.471, the introductory language of paragraphs (c)(2) and (c)(2)(v) is reprinted unchanged; paragraphs (c)(2)(ii) and (c)(2)(v)(A) are revised; the introductory language of paragraphs (c)(4)(iii) and (c)(4)(iii)(F) is reprinted unchanged; paragraphs and (c)(4)(iii)(A) and (c)(4)(iii)(F)(1) are revised; and new paragraphs (d), (e), and (f) are added to read as follows:

§ 405.471 Hospitals and hospital services subject to and excluded from the prospective payment system.

* * * * *

(c) Excluded hospitals and hospital units: classifications. * * *

(2) Rehabilitation hospitals. A rehabilitation hospital must—

(ii) Except as provided in paragraph (d) of this section, have treated, during its most recent 12-month cost reporting period, an inpatient population of whom at least 75 percent required intensive rehabilitative services for the treatment of one or more of the following conditions:

(A) Stroke.
(B) Spinal cord injury.
(C) Congenital deformity.
(D) Amputation.
(E) Major multiple trauma.
(F) Fracture of femur (hip fracture).
(G) Brain injury.
(H) Polyarthritis, including rheumetoid arthritis.
(I) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.
(J) Burns.

* * * * *

(v) Have a director of rehabilitation who—

(A) Provides services to the hosptial and its inpatients on a full-time basis;

* * * * *

(4) *Psychiatric, rehabilitation, and alcohol/drug units (distinct parts).*

* * * * *

(iii) A rehabilitation unit (distinct part) must—

(A) Except as provided in paragraph (e) of this section, have treated, during its most recent 12-month cost reporting period, an inpatient population of whom at least 75 percent required intensive rehabilitative services for the treatment of one or more of the following conditions:

(*1*) Stroke.
(*2*) Spinal cord injury.
(*3*) Congenital deformity.
(*4*) Amputation.
(*5*) Major multiple trauma.
(*6*) Fracture of femur (hip fracture).
(*7*) Brain injury.
(*8*) Polyarthritis, including rheumatoid arthritis.
(*9*) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.
(*10*) Burns.

* * * * *

(F) Have a director of rehabilitation who—

(1) Provides services to the unit and to its inpatients for at least 20 hours per week;

* * * * *

(d) *First-time exclusion of new rehabilitation hospitals.* A hospital that seeks exclusion as a rehabilitation hospital for the first full 12-month cost reporting period that occurs after it becomes a Medicare participating hospital may provide a written certification that the inpatient population it intends to serve meets the requirements of paragraph (c)(2)(ii) of this section instead of showing that it has treated such a population during its most recent 12-month cost reporting period.

(e) *Exclusion of new rehabilitation units and expansion of excluded rehabilitation units*—(*1*) *New units.* If a hospital has not previously sought exclusion for any rehabilitation unit, and has obtained approval for added bed capacity under State licensure and under its Medicare certification, it may identify the new beds as a new rehabilitation unit for the first full 12-month cost reporting period during which the beds are used to furnish inpatient care. A unit that is comprised of some beds that were previously licensed and certified, and some new beds, will be recognized as a new rehabilitation unit only if the majority of beds are new. For the first cost reporting period in which a hospital seeks exclusion of a new rehabilitation unit, the hospital may provide a written certification that the inpatient population it intends the unit to serve meets the requirements of paragraph (c)(4)(iii)(A) of this section instead of showing that it has treated such a population during its most recent 12-month cost reporting period.

(2) *Expansion of excluded units.* If a hospital that has an excluded rehabilitation unit has obtained approval for added bed capacity, under State licensure and under its Medicare certification, and seeks to add the new beds to its existing excluded unit for the first full 12-month cost reporting period during which the new beds are used to furnish inpatient care, the hospital may provide a written certification that the inpatient population that the new beds are intended to serve meets the requirements of paragraph (c)(4)(iii)(A) of this section instead of showing that those beds were used to treat such a population during the unit's most recent 12 month cost reporting period.

(f) *Changes in the size of excluded units.* For purposes of exclusion from the prospective payment system under this section, the number of beds and square footage of each excluded unit will remain the same throughout each cost reporting period, and any change in the number of beds or square footage considered to be part of an excluded unit may be made only at the start of a cost reporting period.

6. In § 405.472, paragraph (d)(2)(i) is revised to read as follows:

§ 405.472 Conditions for payment under the prospective payment system.

* * * * *

(d) Medical review activities for hospitals paid under the prospective payment system.

* * * * *

(2) *DRG validation.* (i) The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest to the principal diagnosis, secondary diagnoses, and names of major procedures performed. The information must be in writing in the medical record. Below the diagnostic and procedural information, and on the same page, the following statement must immediately precede the physician's signature:

> I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge.

In addition, when the claim is submitted, the hospital must have on file a current signed acknowledgement from the attending physician that the physician has received the following notice:

> "**Notice to Physicians:** Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws."

The acknowledgement must have been completed within the year prior to the submission of the claim.

* * * * *

7. Section 405.473 is amended by revising paragraphs (b)(6) and (c)(1), revising and redesignating paragraphs (c)(2) through (c)(6) as (c)(3) through (c)(7) respectively, and adding a new paragraph (c)(2) to read as follows:

§ 405.473 Basic methodology for determining Federal prospective payment rates.

* * * * *

(b) Federal rates for fiscal year 1984. * * *

(6) *Geographic classifications.* (i) For purposes of paragraph (b)(5) of this section, the following definitions apply:

(A) The term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

(B) The term "urban area" means:

(*1*) A Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget; or

(*2*) The following New England counties, which are deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21, 42 U.S.C. 1395ww (note)): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(C) The term "rural area" means any area outside an urban area.

(D) The phrase "hospital reclassified as rural" means a hospital located in a county that was part of an MSA or NECMA, as defined by the Executive Office of Management and Budget, but is not part of an MSA or NECMA as a result of an Executive Office of Management and Budget redesignation occurring after April 20, 1983.

(ii) For hospitals within an MSA or NECMA that crosses census division boundaries, the following provisions apply:

(A) The MSA or NECMA is deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located.

(B) If a hospital would receive a lower Federal rate because most of the hospitals are located in a census division with a lower Federal rate than the rate applicable to the census division in which the hospital is located, the payment rate will not be reduced for any cost reporting period beginning before October 1, 1984.

(C) If an equal number of hospitals within the MSA or NECMA are located in each census division, such hospitals are deemed to be in the census division with the higher Federal rate.

* * * * *

(c) *Federal rates for fiscal years after Federal fiscal year 1984*—(1) *General rule.* HCFA will determine a national adjusted prospective payment rate, for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system under § 405.471, and will determine a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A. Each such rate will be determined for hospitals located in urban or rural areas within the United States and within each such region respectively, as described in paragraphs (c)(2) through (c)(7) of this section.

(2) *Geographic classifications.* (i) For purposes of this paragraph, the following definitions apply:

(A) The term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

(B) The term "urban area" means—

(1) A Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget; or

(2) The following New England counties, which are deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21, 42 U.S.C. 1395ww (note)): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(C) The term "rural area" means any area outside an urban area.

(D) The phrase "hospital reclassified as rural" means a hospital located in a county that was part of an MSA or NECMA, as defined by the Executive Office of Management and Budget, but is not part of an MSA or NECMA as a result of an Executive Office of Management and Budget redesignation occurring after April 20, 1983.

(ii) For hospitals within an MSA or NECMA that crosses census division boundaries, the following provisions apply:

(A) The MSA or NECMA is deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located.

(B) A hospital that receives a higher Federal rate for its cost reporting period that began before October 1, 1984, because it meets the conditions described in paragraph (b)(6)(ii)(B) of this section will receive the lower Federal rate applicable to all hospitals in the MSA or NECMA in which it is located effective with the hospital's cost reporting period that begins on or after October 1, 1984.

(C) The higher Federal rate is payable to all hospitals in the MSA or NECMA if an equal number of hospitals within the MSA or NECMA are located in each census division.

(3) *Updating previous standardized amounts*—(i) *For fiscal year 1985.* HCFA will compute an average standardized amount for each group of hospitals described in paragraph (b)(5) of this section (urban areas and rural areas within the United States, and urban areas and rural areas within each region), equal to the respective adjusted average standardized amount computed for fiscal year 1984 under paragraph (b)(7) of this section—

(A) Increased for fiscal year 1985 by the applicable percentage increase under § 405.463(c);

(B) Adjusted by the estimated amount of medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements;

(C) Reduced by a proportion equal to the proportion (estimated by HCFA) of the total amount of prospective payments which are additional payment amounts attributable to outlier cases under § 405.475; and

(D) Adjusted for budget neutrality under paragraph (c)(5) of this section.

(ii) For fiscal year 1986 and thereafter, HCFA will compute an average standardized amount for each group of hospitals described in paragraph (b)(5) of this section, equal to the respective adjusted average standardized amounts computed for the previous fiscal year—

(A) Increased by the applicable percentage increase determined under paragraph (c)(4) of this section; and

(B) Adjusted by the estimated amount of Medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements;

(C) Reduced by a proportion equal to the proportion (estimated by HCFA) of the amount of payments based on the total amount of prospective payments which are additional payment amounts attributable to outlier cases under § 405.475.

(4) *Determining applicable percentage changes for fiscal year 1986 and following.* The Secretary will determine for each fiscal year (beginning with fiscal year 1986) the applicable percentage change which will apply for purposes of paragraph (c)(3)(ii) of this section as the applicable percentage increase for discharges in that fiscal year, and which will take into account amounts the Secretary believes necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In making this determination, the Secretary will consider the recommendations of the Prospective Payment Assessment Commission.

(5) *Maintaining budget neutrality for fiscal year 1985.* For fiscal year 1985, HCFA will adjust each of the reduced standardized amounts determined under paragraph (c)(3) of this section as required for fiscal year 1985 to ensure that the estimated amount of aggregate payments made, excluding the hospital-specific portion (that is, the total of the Federal portion of transition payments, plus any adjustments and special treatment of certain classes of hospitals for fiscal year 1985) is not greater or less than 50 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under the law as in effect on April 19, 1983. The aggregate payments considered under this paragraph exclude payments for per case review by a utilization and quality control peer review organization, as allowed under section 1866(a)(1)(F) of the Act.

(6) *Computing Federal rates for urban and rural hospitals.* For each discharge classified within a Diagnosis-Related Group, HCFA will establish for the fiscal year a national prospective payment rate and will establish a regional prospective payment rate, for each region, each of which is equal—

(i) For hospitals located in an urban area in the United States or that region respectively, to the product of—

(A) The adjusted average standardized amount (computed under paragraph (c)(3) of this section) for the fiscal year for hospitals located in an urban area in the United States or that region; and

(B) The weighting factor (determined under paragraph (a)(2) of this section) for that diagnosis-related group; and

(ii) For hospitals located in a rural area in the United States or that region (respectively), to the product of—

(A) The adjusted average standardized amount (computed under paragraph (c)(3) of this section) for the fiscal year for hospitals located in a rural area in the United States or that region; and

(B) The weighting factor (determined under paragraph (a)(2) of this section) for that diagnosis-related group.

(7) *Adjusting for different area wage levels.* HCFA will adjust the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (c)(6) of this section which are attributable to wages and labor-related costs, for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

8. In § 405.474, paragraph (b)(2)(i) is revised, the introductory language of paragraph (b)(3)(i) is reprinted unchanged, and paragraph (b)(3)(i)(C) is revised to read as follows:

§ 405.474 Determination of transition period payment rates.

* * * * *

(b) *Determining the hospital-specific rate.*

* * * * *

(2) *Modifications to base year costs.* (i) Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base year inpatient operating costs, as necessary,

to eliminate nursing differential costs (as described in § 405.430), direct medical education costs (as described in § 405.421), capital-related costs (as described in § 405.414), kidney acquisition costs incurred by hospitals approved as renal transplantation centers (as described in § 405.476(h)), and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services (see § 405.477(c)(3)). Kidney acquisition costs in the base year will be determined by multiplying the hospital's average kidney acquisition cost per kidney times the number of kidney transplants covered by Medicare Part A during the base period. Malpractice insurance costs will be included in the inpatient operating costs, as described in § 405.452. Also, higher costs that were incurred for purposes of increasing base year costs, or either one-time nonrecurring higher costs or revenue offsets that have the effect of distorting base year costs as an appropriate basis for computing the hospital-specific rate or higher costs that result from changes in hospital accounting principles initiated in the base year, will be excluded from base year costs for purposes of this section.

* * * * *

(3) *Limitations on modifying calculations.* (i) The intermediary will use the best data available at the time in estimating each hospital's base year costs and the modifications to those costs authorized by paragraph (b)(2) of this section. The intermediary's estimate of base year costs and modifications thereto is final and may not be changed after the first day of the first cost reporting period beginning on or after October 1, 1983, except as follows: * * *

(C)(*1*) To take into account additional costs recognized as allowable costs for the hospital's base year as the result of—

(*i*) A reopening and revision of the hospital's base year notice of amount of program reimbursement under §§ 405.1885 through 405.1889;

(*ii*) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under §§ 405.1821 or 405.1853 that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement;

(*iii*) An affirmation, modification, or reversal of a Provider Reimbursement Review Board decision by the Administrator of HCFA under § 405.1875 that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement; or

(*iv*) An administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877 that is final and no longer subject to review under applicable law or regulations by a higher reviewing authority, and that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement.

(*2*) The intermediary will recalculate the hospital's base year costs, incorporating the additional costs recognized as allowable for the hospital's base year. Adjustments to base year costs to take into account these additional costs will be effective with the first day of the hospital's first cost reporting period beginning on or after the date of the revision, order or finding, or review decision. The hospital's revised base year costs will not be used to recalculate the hospital-specific portion as determined for fiscal years beginning before the date of the revision, order or finding, or review decision.

* * * * *

9. Section 405.475 is amended by revising and redesignating paragraph (a) as (a)(1), adding a new paragraph (a)(2) to read as follows, and revising paragraph (d)(1) to read as follows:

§ 405.475 Payment for outlier cases.

(a) *General rule.* (1) Except as provided in paragraph (a)(2) of this section concerning transferring hospitals, HCFA will provide for additional payment, approximating a hospital's marginal cost of care beyond thresholds specified by HCFA, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if—

(i) The beneficiary's length of stay (including days at the SNF level of care if a SNF bed is not available in the area) exceeds the mean length of stay for the applicable DRG by the lesser of—

(A) A fixed number of days, as specified by HCFA; or

(B) A fixed number of standard deviations, as specified by HCFA;

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a national cost/charge ratio, exceed the greater of—

(A) A fixed dollar amount (adjusted for area wage levels) as specified by HCFA; or

(B) A fixed multiple of the Federal prospective payment rate. During the transition period, the Federal rate is a combination of the national rate and regional rate as follows:

Federal fiscal year	Regional rate percentage	National rate percentage
October 1, 1983	100	
October 1, 1984	75	25
October 1, 1985	50	50
October 1, 1986		100

(2) *Outlier cases in transferring hospitals.* HCFA will provide cost outlier payments to a transferring hospital that does not receive payment under § 405.470(b)(2) for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a national cost/charge ratio, exceed the greater of the criteria specified in paragraphs (a)(1)(ii)(A) or (B) of this section.

* * * * *

(d) *Payment for extraordinarily high-cost cases (cost outliers).* (1) A hospital may request its intermediary to make an additional payment for inpatient hospital services that meet the criteria established in accordance with paragraph (a)(1)(ii) of this section.

* * * * *

10. Section 405.476 is amended by revising the section title; amending paragraph (a) by adding new paragraphs (a)(6) and (7); revising paragraph (g); and adding new paragraphs (i) and (j) to read as follows:

§ 405.476 Special treatment of certain facilities under the prospective payment system.

(a) *General rules.*

* * * * *

(6) *Hospitals that are located in urban areas and that are reclassified as rural.* HCFA will adjust the rural Federal payment amounts for hospitals reclassified as rural, as defined in §§ 405.473(b)(6)(i)(D) or 405.473(c)(2)(i)(D). The criteria for this adjustment are set forth in paragraph (i) of this section.

(7) *Hospitals that have a high percentage of ESRD beneficiary discharges.* HCFA will make an additional payment to a hospital if ten percent or more of its total Medicare discharges in a cost reporting period beginning on or after October 1, 1984 are ESRD beneficiary discharges. In determining ESRD discharges, discharges in DRG Nos. 302, 316, and 317 are excluded. The criteria for this additional payment are set forth in paragraph (j) of this section.

* * * * *

(g) Referral centers.—(1) *Criteria.* HCFA will consider a hospital's request for a referral center adjustment to the hospital's prospective payment rates only if the hospital is an acute care hospital that has a provider agreement under Part 489 of this chapter to participate in Medicare as a hospital: and the hospital meets the criteria specified in either paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section.

(i) The hospital is located in a rural area (as defined in § 405.473(c)(2)(i)) and has 500 or more beds available for use.

(ii) The hospital has an inpatient population such that at least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital. In addition, at least 60 percent of the hospital's Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries are furnished to beneficiaries who live more than 25 miles from the hospital.

(iii) For cost reporting periods beginning on or after October 1, 1984, the hospital is located in a rural area (as defined in § 405.473(c)(2)(i)) and the hospital meets the criteria specified in paragraphs (g)(1)(iii)(A) and (g)(1)(iii)(B) of this section and at least one of the three criteria specified in paragraphs (g)(1)(iii)(C) through (g)(1)(iii)(E) of this section.

(A) The hospital's case-mix index is at least—

(*1*) 1.03 in 1981;

(*2*) 1.1053 for the hospital's first year under the prospective payment system (for this purpose only, the DRG relative weights in effect during Federal fiscal year 1984 would apply in calculating the case-mix index values);

(*3*) For the cost reporting period that ended in 1981 the median urban case-mix index values in calendar year 1981 calculated by HCFA for the region in which the hospital is located; or

(*4*) For the first cost reporting period under the prospective payment system, the adjusted median urban case-mix index values calculated by HCFA for initial cost reporting periods under the prospective payment system for the region in which the hospital is located.

(B) The hospital's number of discharges (excluding discharges from subprovider units) is at least—

(*1*) 6,000 for the hospital's cost reporting period that ended in 1981;

(*2*) 6,000 for the hospital's cost recently completed cost reporting period: or

(*3*) For either the cost reporting period that ended in 1981 or its most recently completed cost reporting period, the median number of discharges of urban hospitals for cost reporting periods ending in 1981 for the region in which the hospital is located.

(C) More than 50 percent of the hospital's active medical staff are specialists who—

(*1*) Are certified as specialists by one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists;

(*2*) Have completed the current training requirements for admission to the certification examination of one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists; or

(*3*) Have successfully completed a residency program in a medical specialty accredited by the Accreditation Council of Graduate Medical Education or the American Osteopathic Association.

(D) The hospital's inpatient population is such that at least 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital.

(E) At least 40 percent of all inpatients treated at the hospital are referred from other hospitals or from physicians not on the hospital's staff.

(2) *Payment to referral centers*—(i) *Payment to rural referral centers with 500 or more beds.* A hospital that meets the criteria of paragraph (g)(1)(i) of this section will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 405.473 (b)(10) or (c)(6), as adjusted by the hospital's area wage index.

(ii) *Payment to all other rural referral centers.* Beginning with cost reporting periods beginning on or after October 1, 1984, a hospital that is located in a rural area (as defined in § 405.473(c)(2)(i)) and meets the criteria of paragraph (g)(1)(ii) or (g)(1)(iii) of this section will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 405.473 (b)(10) or (c)(6), as adjusted by the hospital's area wage index.

(3) *HCFA review of referral center status.* The status of each hospital that is receiving a referral center adjustment will be reviewed by the HCFA regional office every three years to determine if the hospital still meets the criteria set forth in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section. If the determination is to the effect that the hospital no longer qualifies for a referral center adjustment, the adjustment will be discontinued beginning on the first day of the hospital's next cost reporting period.

* * * * *

(i) *Hospitals reclassified as rural.* Effective with cost reporting periods beginning on or after October 1, 1983, a hospital reclassified as rural, as defined in §§ 405.473(b)(6)(i)(D) or 405.473(c)(2)(i)(D), may receive an adjustment to its rural Federal payment amount for two successive cost reporting periods.

(1) *First year adjustment.* The hospital will have its rural average standardized amounts adjusted based on an amount, in addition to its rural average standardized amount, that equals two-thirds of the difference between the urban and rural standardized amounts reflecting the appropriate regional/national blend otherwise applicable to the cost reporting period for which an adjustment is made.

(2) *Second year adjustment.* A hospital that continues to be reclassified as rural will have its rural average standardized amounts adjusted based on an amount, in addition to its rural average standardized amount, that equals one-third of the difference between the urban and rural amounts reflecting the appropriate regional/national blend otherwise applicable to the cost reporting period for which an adjustment is made.

(j) *Hospitals that have a high percentage of ESRD beneficiary discharges.*—(1) *Criteria for classification.* Effective for discharges occuring on or after October 1, 1984, HCFA will provide an additional payment to a hospital, as described in paragraph (j)(2) of this section, for inpatient dialysis provided to ESRD beneficiaries if the hospital has established that ten percent or more of its total Medicare discharges are ESRD beneficiary discharges, excluding discharges classified into DRG No. 302 (Kidney Transplant), DRG No. 316 (Renal Failure) or DRG No. 317 (Admit for Renal Dialysis), in a cost reporting period beginning on or after October 1, 1984.

(2) Additional payment. A hospital that meets the criteria of paragraph (j)(1) of this section will be paid an additional payment for each ESRD beneficiary discharge except for those excluded under paragraph (j)(1) of this section. The payment is based on the estimated weekly cost of dialysis and the average length of stay of ESRD beneficiaries for the hospital. The estimated weekly cost of dialysis is the average number of dialysis sessions furnished per week during the 12-month period that ended June 30, 1983 multiplied by the average cost of dialysis for the same period. The average cost of dialysis includes only those costs determined to be directly related to the dialysis service. (These costs include salary, employee health

and welfare, drugs, supplies, and laboratory services.) The average cost of dialysis will be reviewed and adjusted, if appropriate, at the time the composite rate reimbursement for outpatient dialysis is reviewed. The payment to a hospital will be equal to the average length of stay of ESRD beneficiaries in the hospital, expressed as a ratio to one week, times the estimated weekly cost of dialysis multiplied by the number of ESRD beneficiary discharges except for those excluded under paragraph (j)(1) of this section. This payment is made only on the Federal portion of the payment rate.

11. Section 405.477 is amended by adding a new paragraph (c)(3), and revising paragraphs (d)(2)(v) and (d)(2)(vi) to read as follows:

§ 405.477 Payments to hospitals under the prospective payment system.

* * * * *

(c) *Payments determined on a reasonable cost basis*—* * *

(3) *Anesthesia services of hospital employed nonphysician anesthetists.* For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, payment will be determined on a reasonable cost basis for anesthesia services provided in the hospital by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiology assistants) employed by the hospital.

(d) *Additional payments.* * * *

(2) Indirect medical education costs. * * *

(v) In order to have interns and residents included in the count under paragraph (d)(2)(ii)(A) of this section, the following requirements must be met:

(A) The interns and residents must be enrolled in a teaching program approved under §405.421 (excluding those employed by the hospital, but furnishing services at another site).

(B) The hospital must submit quarterly reports to its fiscal intermediary. The reports must include the following information:

(*1*) Monthly listing of all interns and residents providing services during the month;

(*2*) The social security number of each intern and resident; and

(*3*) The actual hours worked at the hospital during each month.

(C) No intern or resident will be counted as more than one full-time employee in any reporting period, regardless of the number of hospitals in which he or she is providing services. When working at more than one hospital, each intern's or resident's time will be apportioned proportionately to each facility.

(D) Fiscal intermediaries must complete audits of cost reports verifying the correct count of interns and residents.

(vi) Except as provided in paragraph (d)(2)(vi)(C) of this section, the number of full-time equivalent interns and residents under paragraph (d)(2)(ii)(A) of this section must equal the sum of—

(A) Interns and residents providing services for 35 hours or more per week; and

(B) One half of the total number of interns and residents providing services less than 35 hours per week (regardless of the number of hours worked).

(C) The number of interns and residents that provide services in more than one hospital will be apportioned proportionately to each facility.

* * * * *

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement of Services of Hospital Interns, Residents, and Supervisory Physicians

B. Subpart E is amended to read as follows:

1. The authority citation for Subpart E reads as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842(b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395K, 1395l(a), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. Section 405.553 is amended by revising paragraph (b)(4) to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

* * * * *

(b) *Services furnished by an anesthesiologist or by an anesthetist employed by the anesthesiologist.* * * *

(4) The provisions of paragraph (b)(1)(ii) of this section do not apply to inpatient hospital services furnished by an anesthetist employed by a physician if the services are furnished during a cost reporting period beginning on or after October 1, 1984 and before October 1, 1987.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medical Insurance)

Carolyne K. Davis,
Administrator, Health Care Financing Administration.

Approved: August 27, 1984.

Margaret M. Heckler,
Secretary.

[**Editorial Note:** The following addendum will not appear in the Code of Federal Regulations.]

Addendum—*Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1984, and Update Factors Effective With Cost Reporting Periods Beginning on or After October 1, 1984*

I. Summary and Background

In this addendum, in accordance with §405.470(e)(2)(ii), we are making changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services during the second year of the transition period. For hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, each hospital's payment per discharge will be comprised of 50 percent of the Federal rate and 50 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Act). We note that, while the changes to the hospital-specific portion of the prospective payment rate are determined on the basis of cost reporting periods, the changes to the Federal portion are determined on the basis of the Federal fiscal year (FY).

During Federal FY 1985, the Federal rates will, for the first time, be comprised of a blend of the national rate (25 percent) and the regional rate (75 percent) as required by section 1886(d)(1)(D) of the Act. During the first year of the transition period (that is, Federal FY 1984), the Federal rates are comprised solely of the regional rate.

As discussed in further detail in section II, below, we are making changes (proposed on July 3, 1984, 49 FR 27422) in the determination of the prospective payment rates that were published in the interim final rule on September 1, 1983 (48 FR 39752) and modified in the final rule published on January 3, 1984 (49 FR 234). The changes, to be made prospectively, affect the calculation of adjusted standardized amounts and the transition period prospective payment rates. As part of these changes, we are incorporating adjustments for the new market basket index and budget neutrality. We also included in the discussion below a summary of the comments we received on the addendum of the July 3, 1984 notice of proposed rulemaking (NPRM) and our responses to the comments.

We are also implementing changes to the prospective payment rates for FY 1985 resulting from the enactment of Pub. L. 98–369. Section 2307(b) of Pub. L. 98–369 requires that, in determining the indirect medical education adjustment, interns and residents in approved programs are to be counted regardless of who employs them. Section 2310 of Pub. L. 98–369 requires that, effective October 1, 1984, the annual inflation rate to be applied to hospitals will be equal to the annual rate of increase in the hospital market basket plus .25 percent. Section 2312 requires that anesthesia services provided by certified registered nurse anesthetists be paid for on a reasonable cost basis. We are expanding this payment method to also cover such services of anesthesiology assistants. Section 2316 of Pub. L. 98–369 requires that a wage index be developed that incorporates hospital wage differences between full-time and part-time workers. We discuss below the changes we are making to implement these provisions.

II. Changes to Prospective Payment Rates and DRG Weighting Factors for FY 1985

Section 1886(d)(3)(A) of the Act specifies that the FY 1984 Federal prospective payment rates be updated for FY 1985. In accordance with section 1886(b)(3) of the Act, the FY 1984 urban and rural average standardized amounts are to be increased by the applicable market basket index plus one percent. In FY 1985, these amounts are to be increased by the applicable market basket index plus .25 percent.

The basic methodology for determining a hospital's prospective payment rates is set forth in §§ 405.473 and 405.474 of the regulations. For a more detailed discussion of that methodology, we refer the reader to the interim final and final rule, referred to above.

Below, we discuss the manner in which we are changing some of the factors or methodology used for determining the prospective payment rates. These changes are effective with discharges occurring on or after October 1, 1984, or with hospital cost reporting periods beginning on or after October 1, 1984.

Comment—Several commenters maintained that one of the purposes of the prospective payment system, the establishment of fixed reliable reimbursement rates for Medicare inpatient cases, was being undermined by what were perceived to be continual regulatory changes in the payment methodology.

It was pointed out that many features of the prospective payment system, including provisions for certain retroactive adjustments, are so complicated as to cause confusion and uncertainty. This lack of stability was seen as reminiscent of the previous retrospective cost based reimbursement system.

Response—We sympathize with those who may find it difficult to understand or keep up with the changes in the prospective payment system. Several of its more technical features, such as the case-mix index, adjustment for indirect medical education costs, and computation of the budget neutrality reductions, are admittedly complex. However, we point out that most of these features were created in response to specific provisions of the law. Others, such as the provision to make additional payments to hospitals located in counties or county equivalents that have lost their urban status, were initially proposed to address perceived inequities in the system in response to comments received. The most recent revisions incorporated in this final rule, for example, the reduction in the annual inflation rate used to develop the FY 1985 rates from a rate equal to the market basket plus one percent to the market basket plus one quarter of one percent, reflect specific provisions of Pub. L. 98–369, which was enacted July 18, 1984.

A. Calculation of Adjusted Standardized Amounts.

1. *Development of a New Hospital Wage Index.* Section 1886(d)(2)(C)(ii) of the Act requires that, in computing Federal prospective payment rates for the first year of the prospective payment system (FY 1984), we standardize the average cost per case of each hospital used in the data base for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the standardized urban and rural amounts for the nine census regions and national rates (Table 1 of this addendum) be adjusted for a hospital's area wage level as part of the methodology for determining the prospective payment to a hospital. To fulfill both requirements, we constructed a wage index to measure variations in the average cost per case.

We used hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS') ES 202 reporting system to construct the wage index, applied under both of the above provisions of the Act, for computing prospective payments to hospitals during FY 1984. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

In the addendum to our proposed rule (49 FR 27438), we explained the basis for our decision not to use the data from HCFA's initial hospital wage survey to develop an improved wage index, one which particularly resolves the part time employment problem. Although we had hoped the quality of the records submitted in response to the survey initiated March 16, 1984 would have permitted the construction of a more refined index, our initial analysis of the reported data revealed a significant number of inaccurate or otherwise questionable entries. Although attempts were made to obtain corrected data for all hospitals for which obvious errors were detected in the survey reports, we concluded that the quality of the survey results, even after including corrected records, was suspect in enough areas so that a reliable wage index would not be constructed in time for the publication of the FY 1985 prospective payment rates. We stated, however, that we would continue to correct errors in the survey reports so that a data base of sufficient quality could be obtained to permit development of a revised wage index.

In order to ensure that any revised wage index would be developed from the best national records currently available, we decided to afford each hospital subject to the prospective payment system the opportunity to examine and verify the accuracy of the survey data reported for that hospital. On July 2, 1984, we sent a letter to each hospital through the Medicare fiscal intermediaries requesting each hospital to validate, and if necessary, to correct the survey information initially reported for that facility. We pointed out what we believed to be the sources of some of the more common errors in the survey reports previously submitted and asked hospitals to review and ensure the accuracy of certain key data items.

Each hospital was also requested to complete a signed certification attesting to the accuracy of the reported data and to submit the validated records directly to our central office. As of August 9, 1984, we had received certified survey forms from 4,367 hospitals.

Section 2316(a) of Pub. L. 98–369 requires the Secretary to conduct a study to develop an appropriate wage index, one which explicitly considers hospital wage differences between full-time and part-time workers. Provided that the certified survey data are determined to be accurate and reasonably complete, we plan to use these records for purposes of this study and to construct a revised wage index that complies with this statutory requirement. Section 2316(b) of Pub. L. 98–369 also provides that any changes made in the hospital wage index under section 2316(a) shall be retroactive to October 1, 1983. We remain hopeful that the validated survey records that hospitals are certifying as being correct will permit the development of an improved measure of relative hospital wage levels in accordance with the requirements of Pub. L. 98–369.

Comment: Several commenters expressed concern that the proposed regulations did not correct the apparent disparities between the urban and rural wage indexes. One commenter suspected that in view of the volume of information collected on the Medicare cost report, our decision not to use the preliminary survey results to construct a revised wage index had more to do with the "unpopularity" of our findings rather than their inaccuracy.

Response: The basis for these comments is the belief that application of a single rural wage index to all rural counties within a State does not recognize the widely varying labor market conditions that may prevail throughout the State. Several rural hospitals located in countries adjacent to urban areas maintain that they are particularly disadvantaged by this policy because they incur labor costs comparable to urban hospitals. Although the present urban/rural distinction based on criteria established by EOMB is expressly mentioned in the statute, the implication of these comments is that an alternative means for aggregating rural counties to obtain wage indexes more reflective of economically integrated rural areas needs to be investigated. We are mindful of the need for further research in this area and have, in fact, acknowledged this in the final rule published August 30, 1983, which implemented the Medicare provisions of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982 (see 48 FR 39433). This view was reiterated in the final rule for the first year of the prospective payment system published January 3, 1984 (49 FR 257). However, to date, the empirical basis for a superior alternative rural definition that recognizes more local hospital labor markets has not been presented.

Comments that suggest that the Medicare hospital cost report already provides sufficient information to develop an improved wage index, to overcome the major deficiencies of the BLS data, are simply not correct. Constructing a wage index based on currently available cost reports would not solve the part-time employment problem since the cost report does not use a standard definition of full-time equivalent (FTE) employee or provide total hours worked for all hospital personnel. In addition, the compliance rate among hospitals in completing those purely statistical items on the cost report, which could be used to derive an improved wage index, varies widely and would result in our inability to develop an index at all for many locales.

With respect to the suggestion that our decision not to use the initial survey results to implement a revised wage index was for reasons other than those presented in the NPRM, we deny this categorically. We pointed out in the addendum to the NPRM that we were attempting to obtain corrected survey reports from all hospitals for which questionable survey data had been submitted. On July 2, 1984, we sent a formal request to each hospital subject to the prospective payment system through the Medicare fiscal intermediaries to obtain validated survey data certified to be accurate. We find it rather discouraging that several of those hospitals that were critical of our seeming inability to develop an improved wage index in time for the FY 1985 version of the prospective payment system were among those providers that failed to submit a timely response to our July 2 request for verification of the accuracy of the data previously submitted on the survey reports.

Comment—One commenter maintained that multiplying the labor-related portion of the regional rates by the area wage index yielded Federal rates that inappropriately penalize rural hospitals. The commenter pointed out that rural hospitals have lower labor costs when compared to urban facilities. Thus, multiplying these lower labor costs by the applicable rural wage index represents a "double reduction" in computing the Federal rate.

Response—The commenter's statement fails to consider that the labor-related costs used to develop the Federal rates are standardized to remove the effects of differences in wage levels among hospital urban/rural areas. This adjustment is accomplished by dividing the labor-related portion of each hospital's average cost per discharge by the appropriate area wage index. The resulting labor deflated costs are averaged for all urban and rural areas within each region and within the nation. The prospective payment system methodology provides that the regional and national average labor deflated cost per discharge, multiplied by the hospital's area wage index, are the bases for computing the Federal rates. We point out that this method is a technically accurate basis for determining the payment rates that recognize local differences in hospital wage levels. It also complies with sections 1886(d)(2)(C)(ii) and 1886(d)(2)(H) of the Act.

The purpose of standardizing labor costs for area wage levels is to remove the effect of differences in hospital wages from the cost data prior to averaging. Theoretically, the standardized costs represent what labor costs would have been in each locale with hospital wage levels equal to the national average. However, paying hospitals in each area the average labor deflated cost per discharge would result in overpayments to providers in low wage areas and underpayments to hospitals in high wage areas. Therefore, in computing the Federal rates it is necessary to multiply the standardized labor-related regional and national rates by the area wage index in order that the payment rates appropriately reflect local wage levels.

Comment—One commenter was dismayed by the fact that we have not yet developed a wage index that addresses the technical limitations in the BLS data currently used to construct the measure. The commenter inquired whether any improved wage index would be implemented effective October 1, 1984 as required by section 2316(b) of Pub. L. 98–369.

Response—We had hoped that the accuracy of the data provided in response to HCFA's hospital wage survey would have permitted the development of an improved index, one that particularly resolves the inability of the BLS records to control for area differences in hospital part-time employment in time for the fiscal year 1985 update of the prospective payment system. Unfortunately, for reasons explained in our July 3, 1984 proposed rule, as well as in our previous response above, the incompleteness of some of the survey data precluded the implementation of a more refined hospital wage index effective October 1, 1984. We have asked hospitals to verify the accuracy of key items reported in the wage survey. Because of this action, we remain hopeful that the final survey results will provide a data base of sufficiently high quality so that an improved index can be constructed as soon as practicable.

Section 2316(a) of Pub. L. 98–369 provides that the Secretary shall conduct a study to develop an appropriate wage index, one which explicitly considers wage differences between full-time and part-time workers. Section 2316(b) also provides that any changes made in the wage index pursuant to section 2316(a) shall be retroactive to October 1, 1983. Therefore, in compliance with the law, any revised wage index that addresses the part-time employment problem will be effective October 1, 1983.

Comment—One commenter urged HCFA to expedite the development of a new wage index for the FY 1985 prospective payment system rates. The commenter requested that the new index recognize area differences in full-time versus part-time employment, and in salary and wage scales for rural and urban areas. The commenter suggested that we should not delay in developing a new wage index merely because of the data quality concerns and that those hospitals that refuse to participate in the wage survey or supply erroneous data should be penalized. It was noted that section 2316 of Pub. L. 98–369 required the Secretary to report to Congress within 30 days after the enactment of Pub. L. 98–369 on a new wage index that takes into account wage differences of full-time and part-time workers. In addition, the commenter noted that this report was to include criteria under which a hospital may obtain an adjustment to its wage index if the index does not accurately reflect hospital wage levels in the labor market area serving the hospital.

Response—Contrary to the commenter's position, we believe that the issue of data quality is of utmost importance in deriving a new wage index. As we have explained in prior **Federal Register** documents, the wage index is a measure of the relative differences in wages paid throughout the various areas of the country. Because the wage index is a crucial part of the prospective payment system payment formula, the data must be of uniform high quality across all areas. If data are missing from a large number of hospitals, or the quality of the data is uneven, the index will be distorted. This would lead to prospective payments that are too low in some areas, and correspondingly too high in other areas. While the commenter suggests that hospitals that do not cooperate with the wage survey effort be penalized, we know of no way this can be accomplished within the framework of the wage index.

In this connection, we note that one major association supported our attempt to obtain accurate data for use in constructing a new wage index. In the view of this association, the importance of data quality has been heightened by the requirement in section 2316(b) of Pub. L. 98–369 that the new wage index be retroactive to October 1, 1983.

The commenter also confuses the issue of full-time and part-time employment, and the issue of labor markets. Provided that accurate data are obtained from the wage survey, an index can be constructed that would take into account differences among areas with respect to full-time and part-time employment.

The issue of labor markets, however, is not one which can be addressed solely through the gathering of appropriate data elements. Rather, the issue is how the data are grouped or aggregated. Under the current construction of the wage index, urban areas are those areas as defined by EOMB, that fall within the boundaries of MSAs or NECMAs. Rural areas are defined on a statewide basis as those counties in a State that do not fall within an MSA or NECMA. (These are the same urban and rural area designations that are used in deriving the Federal standardized amounts under section 1886(d)(2)(D) of the Act.) We realize that these designations, particularly with respect to rural areas, may not in all instances conform to hospital labor markets. We discuss this issue above as well as in previous **Federal Register** documents. While further research is warranted in this area, we currently have no other statistically valid and widely accepted measures of urban/rural areas comparable to the MSA and non-MSA designations. Consequently, the FY 1985 rates in this addendum continue to reflect usage of the EOMB designations in the construction of the wage index.

We are cognizant of the requirements of section 2316 of Pub. L. 98–369 regarding the development of a wage index. However, the law does not require the development of criteria for making wage index adjustments as part of the report to Congress on a wage index that takes into account wage differences between full-time and part-time workers. This report, as the commenter stated, was due to Congress within 30 days (by August 17, 1984) of the enactment of Pub. L. 98–369. On the other hand, section 2316(c) of Pub. L. 98–369 contains no specific due date for the report on proposed criteria for wage index adjustments. In view of this, and because we are committing our available resources to implementing the wage index report under section 2316(a) of Pub. L. 98–369, we do not intend to address the development of adjustment criteria in the near future.

Comment—One commenter suggested, with respect to designations of rural referral centers, that these centers be granted a wage index adjustment that would amount to a new wage index computed on a county-specific basis. According to this commenter, the current wage index, which aggregates all rural hospitals together in deriving an index value, does not provide adequate consideration to the actual labor market in which a rural referral center operates.

Response—As discussed above in the addendum to this final rule, as well as in previous **Federal Register** documents, we agree with the commenter's assessment that the state-wide non-MSA status is a less than perfect method for aggregating rural wage and employment data in order to compute a wage index for rural hospitals. As we have noted, this is an area that requires further research for alternative definitions of hospital labor markets.

However, we do not believe that a county-specific wage index represents an acceptable alternative to the current index. The county boundaries may be just as inaccurate as state-wide boundaries in defining hospital labor markets. In addition, the disaggregation of the data that is involved in developing a county-specific wage index magnifies any deficiencies or inaccuracies in the data. Because data from a relatively large number of facilities are used to compute an index (as under the current formula), data deficiencies or inaccuracies tend to balance off. This balancing protection would not occur under a county-specific formula.

Another problem with a county-specific index is that, because each index value would be based on the wages of only a few hospitals, such an index comes close to recognizing the actual wages paid by an institution, even though those wages may be too high relative to the average wage in the area. This method, in effect, would represent a partial return to the cost-based reimbursement system in effect prior to the implementation of the prospective system. (Under that system Medicare is paid on the basis of actual costs incurred by a hospital.) We reiterate that it is not the purpose of the prospective payment system wage index to represent the actual wage costs incurred by any one hospital; rather, the wage index is intended to represent the average cost of wages in a particular area as compared to average hospital wages nationwide.

With respect to the use of BLS data for deriving the wage index, we note that these data are subject to a confidentiality requirement that would limit their usefulness in computing county-specific index values. Under this requirement, disclosure of actual data or indexes for areas that include fewer than three reporting units is prohibited. (A reporting unit is the smallest unit for which data are recorded on the employer's contribution report. Therefore, two or more hospitals owned by one organization could appear as one reporting unit.) The confidentiality requirement would be a particular problem with respect to rural counties where there are generally fewer hospitals than in urban areas. We note that the commenter was unable to provide county-specific indexes for a large number of rural counties because of the confidentiality requirement.

2. Grouping of Urban/Rural Averages Within Geographic Areas

Under section 1886(d)(2)(D) of the Act, the average standardized amounts per discharge must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation.

For FY 1985 the Federal rates are comprised of the national role (25 percent) and the regional rate (75 percent) (section 1886(d)(1)(D) of the Act). Therefore, we are revising Table 1 in this addendum to add a category for national averages so that Table 1 would contain 20 standardized amounts (ten urban amounts and ten rural amounts further divided into labor-related and nonlabor-related portions).

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and rural categories include hospitals from all urban or rural geographic areas, respectively. However, certain national adjustment factors, such as those for outliers and budget neutrality, differ slightly from the regional adjustment factors.

On June 29, 1984, EOMB announced, effective June 30, 1984, revised listings of MSA/NECMA designations that are used in calculating the standardized amounts. As stated in the January 3, 1984 final rule (49 FR 253), such changes in designation are not recognized in the prospective payment rates until the beginning of the next fiscal year following the announced changes.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we are updating the urban and rural average standardized amounts using the applicable target rate percentage specified in section 1886(b)(3)(B) of the Act as amended by section 2311 of Pub. L. 98-369. This section of the law specifies that, effective October 1, 1984, the annual inflation rate to be applied for updating the target rate applicable to hospitals that are subject to section 1886(b) of the Act, as well as to hospitals under the prospective payment system, will be equal to the annual rate of increase in the hospital market basket plus .25 percent instead of the annual rate of increase in the market basket plus one percent as previously provided. The market basket identifies the most commonly used categories of goods and services that contribute to total hospital inpatient operating expense and weights each category to reflect the estimated proportion of total hospital operating expenses attributable to that category. The table below includes the estimated percentages used for updating the average standardized amounts for calendar years 1984 through 1986.

MARKET BASKET PLUS .25 PERCENT

Calendar year	Percentage
1984	6.25
1985	6.75
1986	7.35

Section 1886(b)(3)(B) of the Act also requires that the market basket rate of increase plus .25 percent be applied in determining the target amounts for those hospitals that are excluded from the prospective payment system but subject to the target rate-of-increase limits specified in § 405.463. These target rate percentages would be applied in computing hospital target amounts for cost reporting periods beginning on or after October 1, 1984.

Comment—Several commenters expressed concern that the reduction in the annual inflation rate used to compute the prospective payments from the market basket plus one percent to the market basket plus one quarter of one percent would result in inadequate reimbursement for new technology.

Response—Section 2310 of Pub. L. 98-369 amended section 1886(b)(3)(B) of the Act to provide that the inflation factor used to develop the prospective payment rates for FY 1985 and FY 1986 would be equal to the market basket rate plus one quarter of one percentage point. Although the commenters implied that the purpose of the previous one percent allowance was to provide an explicit adjustment for the costs of new technology, we point out that the precise basis for the add-on (one percent) was not specified by Congress in the conference committee reports that accompanied Pub. L. 97-248 and Pub. L. 98-21. One could also reasonably conclude that the purpose of the one percent add-on was to provide a tolerance factor for imprecision in the market basket forecasts, or to account for the net effect of those variables not reflected in the hospital imput price index, such as changes in population, productivity, or service intensity.

We believe the explicit language of section 2310 of Pub. L. 98-369 and section 1886(d)(3)(A) of the Act requires a reduction in the standardized amounts used to compute the Federal rates before adjusting for budget neutrality. Similarly, the revision to section 1886(b)(3)(B) of the Act also affects the updating of the hospital-specific portion of the prospective payment rates (again prior to adjusting for budget neutrality), as well as the maximum rate of increase in costs allowed for hospitals excluded from the prospective payment system. Although section 2310 of Pub. L. 98-369 requires a reduction in the add-on to the inflation factor used to trend the FY 1984 rates, the law makes no change in the budget neutrality provisions. Thus, while the Federal rates and updating factors used to trend the hospital-specific portion have been reduced in this final rule to reflect the inflation factor prescribed by section 2310 of Pub. L. 98-369, we point out that the offset for budget neutrality has also been adjusted. The reduction in the regional and national standardized rates and hospital-specific portion update factors attributable to section 2310 of Pub. L. 98-369 is entirely due to the revised budget neutrality adjustments for 1984 and 1985.

Comment—One commenter recommended that we adjust the prospective payment rates if our market basket estimates of inflation prove to be inaccurate. In order to preserve the prospective nature of the system, it was suggested that we compensate for market basket forecasting errors by providing for a corresponding adjustment in the rates for the following fiscal year.

Response—The main thought of this comment parallels comments raised in previous prospective payment regulations. As we have stated one of the purposes of the prospective payment system is the establishment of known payment rates prospectively.

Therefore, we have not adopted the suggestion that the rates be adjusted retroactively.

Comment—One commenter noted that only one firm, Data Resources Incorporated (DRI), currently prepares the forecasts of the rate of change in the hospital input price index, (that is, the market basket), which is used to update the prospective payment system. It was recommended that we use several firms to obtain forecasts of the rate of increase in the market basket to trend the prospective payment system.

Response—The basis for the commenter's recommendation is that several estimates would increase the precision of the market basket forecasts used to develop the prospective payment rates. However, we have no reason to believe the use of several economic forecasting firms would yield superior or more accurate estimates of the rate of increase in the market basket than those currently provided by one contractor. Aside from the substantial additional expense that use of several firms would entail, there is no evidence that the forecasts provided to us to date have been biased. In addition, we point out that all economic forecasting firms have an equal opportunity to bid competitively for the contract under which the estimates of the rate of change in the hospital input price index are provided according to prescribed criteria.

4. Adjustments to Average Standardized Amounts

a. *Part B Costs.* Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital or by an entity under arrangements made by the hospital. In order to adjust urban and rural regional and national standardized amounts per discharge so that they represent costs previously billed under Part B, the amounts for FY 1985 are increased by .13 percent. (We note that this figure (.13 percent) represents the same percentage increase that is used in FY 1984.) This is an estimate made by HCFA's Office of Financial and Actuarial Analysis of the costs of inpatient hospital services previously billed to HCFA under Part B.

b. *FICA Taxes.* Section 1886(b)(6) of the Act requires that adjustments be made for purposes of the target rate limits in recognition that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. As explained in the preamble of the interim final rule (48 FR 39766), the conference committee report accompanying Pub. L. 98-21 expressed the intent that the Federal rate under prospective payment also be adjusted to reflect this change (H.R. Rep. No. 98-47, 98th Cong., 1st Sess. 184 (1983)). We estimate the amount of the adjustment for FY 1985 to the urban and rural, regional and national standardized amounts necessary to account for additional costs of payroll taxes for hospitals entering the Social Security system to be .18 percent, which is the same percentage increase as in FY 1984.

Therefore, we are increasing the standardized amounts by this percentage.

c. *Outliers.* Section 1886(d)(5)(A) of the Act requires that in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may also be made for cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year.

We are reducing the size of the reserve for outliers from 6.0 persent of total payments, which we had established for FY 1984, to 5.0 percent of total payments while providing proportionately greater payment for typical cases and avoiding any great risk of general disadvantage to hospitals. As we indicate in the final rule (49 FR 265), we will pay for any outlier that meets the criteria in § 405.475, even if aggregate outlier payments result in more than five percent (as proposed) of total payments. For those hospitals that experience a higher incidence of outliers, we believe that, in the aggregate, other adjustments (such as the medical education adjustment) are in place to assist these hospitals.

In accordance with these requirements, we have calculated the factors necessary to adjust the national and regional amounts for FY 1985 to take into account outlier payments of five percent of total payments based on the blended Federal rates. The outlier adjustment factors are as follows:

Regional—.950
National—.950

We are revising, as well, the day outlier and cost outlier thresholds so that total estimated outlier payments for FY 1985 would be 5.0 percent of total payments. A discharge in FY 1985 will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 22 days or 1.94 standard deviations. We refer the reader to Table 5 in this addendum for the DRG outlier thresholds.

For FY 1985, a discharge that does not qualify as a day outlier will be considered a high cost outlier if the cost of covered services exceeds the greater of 2.0 times the Federal rate for the DRG or $13,000.

The methodology for calculating these factors is explained in detail in section V. of this addendum. It should be noted that the regional outlier reduction value (.950) represents an adjustment to the standardized amounts for FY 1985 but without regard to reductions for outlier payments in FY 1985.

Comment—We received comments from a number of teaching hospitals objecting to the proposd increase in the outlier thresholds necessary to maintain the reduction in the reserve for outliers from 6.0 percent of total payments to 5.0 percent of total payments. Because these hospitals generally have a higher incidence of outlier cases, they argued that we should retain the 6.0 percent outlier reserve.

Response—We believe that it is desirable to reduce the size of the outlier reserve from 6.0 percent to 5.0 percent because it allows proportionately greater payment for typical cases and avoids any great risk of general disadvantage to hospitals. Maintaining a 6.0 percent outlier reserve results in less payment to all hospitals for typical cases. While benefiting facilities with a greater incidence of outliers, it penalizes those hospitals with relatively few outlier cases. We believe that it is in the greater interest of hospitals and the program to eliminate some of the reserve for outliers and include the corresponding amount in the standardized amounts thereby providing all hospitals with somewhat larger Federal rates for typical cases. We believe that the indirect medical education adjustment provided to teaching hospitals will help to minimize the effect that increases in the outlier thresholds might have on these hospitals.

As we indicated in the January 3, 1984 final rule (49 FR 265), we will pay for any outlier that meets the criteria in § 405.475 even if the aggregate outlier payments result in more than the estimated level.

Comment—We received comments suggesting that the mean lengths of stay by DRG should be recalculated based on actual prospective payment experience to date in order to reflect decreases in the average length of stay resulting from implementation of the prospective payment system. Since these numbers are used to calculate transfer and outlier payments, failure to recalculate the mean lengths of stay removes financial incentives for additional improvements by the hospital industry.

Response—The standardized amounts reflect the number of inpatient days per case based on 1981 hospital experience. Therefore, if the mean length of stay were recalculated to reflect the actual changes in lengths of stay from the 1981 data base, adjustment to the standardized amounts would also be required to reflect the decreased costs resulting from shorter inpatient stays.

Comment—Several commenters objected to the increase in the outlier thresholds stating that recent HCFA reports indicate that outlier payments to date account for less than two percent of total DRG payments. This would indicate that the outlier thresholds established for FY 1984 were too high since outlier payments thus far under the prospective payment system appear to be well below the 6.0 percent expected outlier payment level. Therefore, while a reduction in the outlier reserve is appropriate, inceases in the outlier thresholds are not warranted. Also, one commenter stated that we have presented no evidence to demonstrate a quantitative relationship between the newly established thresholds and the expected reduction in outlier payments.

Response—The 2 percent figure cited by the commenters is misleading in that it represents the proportion of total DRG payments that were paid for outlier cases. The outlier adjustment, however, is applied only to the Federal portion of the payment amount (that is, 25 percent during the first year of the transition period). Since the cost of outlier cases are already reflected in each hospital's base period operating costs used to compute the hospital-specific portion of the blended rate during the transition period, the outlier adjustment is not applied to the hospital-specific portion of the DRG payment. Therefore, in determining the extent of outlier payments, only the Federal portion (25 percent) of total DRG payments should be considered rather than total DRG payments overall.

We calculated the revised outlier thresholds using 1981 MEDPAR data such that estimated outlier payments would equal 5.0 percent of total Federal DRG payments. The length-of-stay and cost outlier criteria were calibrated so that the national average shares of length-of-stay and cost outlier payments would be 85 and 15 percent respectively. Therefore, based on the revised outlier thresholds, we estimate that in total, 4.25 percent of Federal DRG payments will be for day outliers and .75 percent will be for cost outliers.

Based upon outlier and DRG payment data received through July 27, 1984, there is no evidence to suggest that total outlier payments are below the levels intended. Therefore, as discussed above, we are continuing to set the outlier thresholds on the basis of the 1981 MEDPAR data.

Comment—One commenter objected to the current provision that a case that qualifies for payment as a day outlier is not eligible for cost outlier payments. It was recommended that cost outlier status be granted for those cases in which a hospital could demonstrate a "significant financial loss" due to the requirement to treat such cases as day outliers.

Response—We recognize that hospitals may receive less payment under the day outlier criteria for cases that otherwise qualify as both day and cost outliers. This fact, however, does not mean that a hospital will incur a significant financial loss because the pospective payment system provides financial incentives for cases in which a provider's costs are less than the standard payment rate. Aside from the administrative burden presented by the need to establish standards under which a "significant financial loss" has occurred if the recommendation were adopted, we point out that the commenter's suggestion may be at odds with statutory intent. Under section 1886(d)(5)(D)(ii) of the Act, a case is eligible for payment as a cost outlier only if it cannot be considered a length of stay outlier. Our interpretation, which we believe is reasonable and supportable, precludes greater cost outlier payments if a case also qualifies as a day outlier. We previously responded to similar comments received in this connection in the interim final rule of September 1, 1983 (48 FR 39776). The reader is referred to a summary of the comments and our responses, which appeared in the final rule of January 3, 1984 (49 FR 266). For these same reasons we have not adopted the recommendation.

d. *Anesthetists' Services.* Under section 2312 of Pub. L. 98–369, the costs to the hospital of the services of nonphysician anesthetists will be reimbursed in full by Medicare on a reasonable cost basis. In order to ensure that these services will be paid for only once, we must remove their costs from the prospective payment rates.

For cost reporting periods beginning in FY 1985, we have reduced the adjusted standardized amounts to reflect the removal of these costs by means of the budget neutrality adjustment methodology. Our method for doing this is explained in section V.D. of this Addendum. We estimate that FY 1985 payments for anesthetists services will be about $160 million, or 0.5 percent of Medicare operating costs for hospital accounting years beginning in FY 1985.

By incorporating these estimated costs in the nonoperating costs of each hospital for purposes of the budget neutrality comparisons, we have, in effect, reduced the national adjusted average standardized amount by 0.32 percent, and reduced the regional adjusted average standardized amount by 0.42 percent. (The reason for the difference in the FY 1985 blending portions for Federal national and regional rates and the phasing in of cost reimbursement for anesthetists services at the beginning of each hospital's cost reporting period.)

Since the requirement of budget neutrality does not apply for FY 1986, next year we will adjust the average standardized amounts directly to take the costs of anesthetists services into account. Based on current data, we expect this to result in an 0.524 percent reduction in those amounts. Since the national and regional blending portions are equal for FY 1986 Federal rates, and since cost-based reimbursement for anesthetists' services is effective for all of FY 1986, the same reduction would apply in both cases.

e. *Budget Neutrality.* In accordance with section 1886(e)(1) of the Act, the prospective payment system should result in aggregate program reimbursement equal to "what would have been payable" under the reasonable cost provisions of prior law; that is, for FYs 1984 and 1985, the prospective payment system must be "budget neutral".

During the transition period, the prospective payment rates are a blend of a hospital-specific portion and a Federal portion. Further, effective October 1, 1984, the Federal portion will be a blend of national and regional rates. As a result, we must determine three budget neutrality adjustments—one each for both the national and regional rates, and one for the hosptial-specific portions. The methodology we are using to make these adjustments is explained in detail in section V. of this addendum.

Based on the data available to date, we have computed the following Federal rate budget neutrality adjustment factors:

Regional—.950
National—.954

As with the regional outlier adjustment factor, the regional budget neutrality factor represents estimated payments under the prospective payment system for FY 1985 as compared to estimated reimbursement under the law in effect prior to Pub. L. 98–21, for the same period (FY 1985), without regard to the reduction for either outlier payments in FY 1984 or budget neutrality in FY 1984.

B. Adjustments for Area Wage Levels and Cost-of-Living in Alaska and Hawaii

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section C. below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as revised in this addendum, contains the actual labor-related and nonlabor-related shares that will be used to calculate the Federal payment rates.

1. Adjustment for Area Wage Levels

Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the national and regional prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amount by the appropriate wage index for the area in which the hospital is located.

In the absence of a HCFA wage index, we decided to continue using the BLS wage index computed from the 1981 ES 202 data to adjust the Federal standardized rates applicable for FY 1985. The wage index appearing in the addendum to the September 1, 1983 interim final rule (48 FR 39871) was also computed from hospital wage and employment data for 1981 furnished to us from BLS through its ES 202 employment and wage system. However, the wage indexes appearing in Tables 4a and 4b of this addendum have been updated to reflect the most recent corrections in the 1981 ES 202 data. The revised wage indexes incorporate corrections that were—

- Published in the NPRM (49 FR 27442);
- Issued to regional offices after publication of the interim final rule; or
- Based on revised data reviewed subsequent to the last issuance to the regional office.

In addition, the index also reflects the most recent changes in urban area definitions. These new MSA definitions were announced by EOMB on June 29, 1984 (see EOMB Announcement 84–16 for further information).

As result of these corrections and revisions, the national average monthly wage for hospital workers has increased from the previous average of $1,071.50 used to compute the wage index in the September 1, 1983 document to $1,073.68. We believe that this is an appropriate time to recalculate all the urban and rural wage index values using the new national average wage so as to achieve the greatest accuracy possible for reflecting the relative differences in wage levels between the various urban and rural areas throughout the country. Usually, during the year when we receive corrected employment and wage data for a particular area from BLS, we revise only the index for that particular area. While the corrected data, depending on the magnitude of the correction, could also affect the national average, we do not revise all the index values at that time to reflect the new national average. We do not do so because generally the effect on the national average is minimal. Moreover, recalculating all the index values to take account of this new average would lead to continuing uncertainty amoung many hospitals as to the amount of payment they would receive for discharges. This uncertainty and its attendant administrative complexity would be compounded if there were several such changes during a particular period, as is frequently the case.

However, because we are now promulgating new rates for the second year of the prospective payment system, we believe that this is an appropriate time to fully revise the hospital wage index to reflect all the changes that have occurred over the previous year (FY 1984). In this manner, we hope to ensure the greatest possible accuracy in the wage index consistent with administrative simplicity and equitable treatment for all hospitals.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 1985, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii is made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE—COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.15
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.125

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM–591 letter series.)

C. DRG Weighting Factors

In both the interim final rule (48 FR 39889) and the final rule (49 FR 332), we explained that, as a part of applying budget neutrality, we were adjusting the Federal standardized amounts downward to reflect a 3.38 percent expected improvement in hospitals reporting of patient diagnoses and procedures performed on the Medicare hospital bill. This improvement in the accuracy and completeness of reported patient information was anticipated because the prospective payment system makes payments to hospitals based on a patient's diagnosis and procedures performed. Thus, the prospective payment system offers hospitals an incentive to report complete and accurate medical information on the billing records sent to the fiscal intermediaries, whereas the previous system, based as it was on the reimbursement of incurred costs, without regard to a patient's condition, provided no such incentive.

Increasing the accuracy and completeness of medical data reported on the bills has the effect of raising hospital case-mix index values, which in turn results in higher payments to hospitals. The emerging experience under the prospective payment system indicates that the average case mix submitted on the inpatient bills has increased more than the 3.38 percent anticipated for FY 1984. To correct for the distortion caused by this higher than expected case mix, we are revising the payment system for FY 1985.

In the NPRM, we noted that, as of March 1984, we had observed an increase in case mix 2.4 percent more than the 3.38 percent anticipated for FY 1984. Additional data received through July 1984 indicate that average case mix has increased 7.3 percent, or 3.8 percent more than anticipated for FY 1984 (1.0338 x 1.038 = 1.073).

We believe that, for the most part, this does not represent a "real" increase in case mix, but a paper one. Recent study shows that, in the absence of the prospective payment system, average case mix might have been expected to increase by about 0.3 percent through FY 1984. However, it is possible that a portion of the increase in case mix could have resulted from factors such as shifting lower intensity cases to the outpatient setting. As discussed in more detail below, commenters offered many explanations for the increase in average case mix that we have not been able to support from the data available to us currently. As a result, we plan to do a study that will enable us to identify with greater precision the relative influence of the various potential causes of this increase.

Since the results of such a study are not yet available, and considering the controversy resulting from the NPRM proposal to reduce DRG weights across-the-board by 2.4 percent, we have decided not to fully reduce, at this time, the DRG weights by the method proposed. Instead, we subtracted 0.3 percent (representing the estimated real increase in case mix that might have occurred in the absence of the prospective payment system) from 2.4 percent. The remaining 2.1 percent represents an increase in average case mix that may or may not be based on real increases in resource consumption per case. Because it is virtually certain that a substantial portion of this 2.1 percent increase in average case mix is not "real", but considering that we are not yet able to identify how much, we are reducing DRG weights by only half of that percent, or 1.05 percent.

Thus, for discharges occurring on or after October 1, 1984, we are reducing each DRG relative weight by an amount equal to only a portion of the observed increase in hospital case-mix values over the increase projected from fiscal year 1984. That is, we are reducing the DRG relative weights 1.05 percent by dividing each of the relative weights published in Table 5 of the interim final rule (48 FR 39876) by 1.0105. (We note that the relative weight for DRG 302 was corrected in a **Federal Register** notice published on October 19, 1983 (48 FR 48469).)

All inpatient hospital discharges are categorized according to one of 470 DRGs, as discussed in the interim final rule (48 FR 39760). We believe that the titles of five DRGs, as issued in Table 5 of the interim final rule, are inaccurate or misleading. For example, the title of DRG 316 should have been "Renal Failure" instead of "Renal Failure Without Dialysis". Accordingly, revised titles for DRGs 57, 58, 129, 316 and 317 are included in Table 5 of this addendum.

We received comments from hospital associations and consultant groups. Most of the comments concerned the proposed reduction of the DRG relative weights.

Comment—Many commenters suggested that, since we had already adjusted the fiscal year 1984 standardized amounts downward to reflect a 3.38 percent improvement in coding, we should not make any further adjustments related to reporting diagnoses and procedures.

Response—We used the best data available at the time to adjust the fiscal year 1984 standardized amounts to take expected improvements in the accuracy of coding into account. However, we did not have data on how the payment incentives established by the prospective payment system would affect reporting of diagnoses and procedures. Therefore, the adjustments we made did not reflect potential behavioral changes related to those incentives. To date, we have now analyzed 2.5 million discharges under the prospective payment system, which fully reflect the effect of those incentives, and we believe this affords us a better measure of the effect of coding improvements in the average case mix.

Comment—Several commenters stated that the hospital industry should have timely access in the data and methodologies used to construct the prospective payment rates, the factor by which the DRG weights were reduced, and the calculation of the adjustment factors, especially the budget neutrality adjustment. It was also recommended that all data be released at the time the payment rates are published in the **Federal Register**. Some commenters recommended that the data used to compute the reduction in the DRG relative weights and the budget neutrality adjustment be published for review and comment, or that we at least offer additional opportunities to inspect and comment on the data and their utilization.

Response—We agree that hospitals should have access to the data used in connection with the development of the prospective payment system. We would like to point out that public access to disclosable information is provided under the Freedom of Information Act (5 U.S.C. 552). While we cannot guarantee that all requested information will be disclosed at all or in the format desired by the requester, we will respond promptly to all information requests and provide all available data to assist the hospital industry and other interested parties in the evaluation of the prospective payment system.

It should be noted that most of the data that the budget neutrality adjustment is based on has already been made available. We believe that these data in conjunction with the explanation of the budget neutrality methodology presented in the NPRM (49 FR 27458) should enable individuals to replicate the adjustment factors.

We do not agree that all data should be released simultaneously with the publication of prospective payment rates in the **Federal Register**. The data are voluminous, and would be of no interest to many hospitals and individuals that are otherwise involved in hospital payments. In addition, we believe the lengthy and detailed description of the data and the development of rates contained in the **Federal Register**, along with the many examples furnished, afford the reader all the information necessary for an understanding of the propective payment system. Those individuals, hospitals, or associations desiring additional data and other material, either for verification of rates or for other purposes, may request this data under the Freedom of Information Act.

Furthermore, we disagree that additional opportunity to comment is warranted. In the NPRM, we included an explanation of the budget neutrality determination and the methodology used to reduce the relative weights that is sufficiently detailed to permit replication of the computation as noted above.

We believe this explanation meets the requirements of section 1886(d)(6) of the Act, which requires that the published notice of methodology, data, and rates includes an explanation of any adjustments. We fully expect to be actively involved in dialogue with hospitals and other parties during the continuing implementation of the prospective payment system. Further, we will publish future notices of methodology, data, and rates for public review and comment on an annual basis. Accordingly, we have not offered further opportunity for comment on this rulemaking as commenters suggested.

Also, as noted above, we will attempt to furnish all data that has not been previously released upon request under the Freedom of Information Act and that is consistent with maintaining the privacy of individuals and sound management of the program.

Comment—A number of commenters challenged our legal authority to reduce the DRG weights across the board as we proposed. Some stated that the

Secretary does not have the authority to recalibrate the DRG weights until FY 1986. Others said the law specifically states that budget neutrality adjustments should be made to the standardized amounts (for Federal rates) and to the updating factors (for hospital-specific rates) before application of the DRG weights.

Response—We believe that the reduction in the DRG weightings is fully authorized by the statute. The source of the Secretary's authority to assign particular weightings to each DRG is section 1886(d)(4)(B) of the Act, which provides that for each DRG "the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups." Thus, the Secretary has clear authority to assign any weightings to the DRGs as long as they collectively reflect the relative use of resources associated with the DRGs. The across-the-board reduction of the DRG weightings does not alter the relative relationship between the DRG weightings. The DRG weightings continue to reflect the relative hospital resources used for discharges within the DRG, and therefore are wholly consistent with the statutory requirement.

The commenters are not correct when they argue that the Secretary is prohibited from revising the DRG weightings prior to FY 1986. This argument is based on section 1886(d)(4)(C) of the Act, which states that "The Secretary shall adjust the classifications and weighting factors . . . for discharges in fiscal year 1986 and at least every four fiscal years thereafter, to reflect charges in treatment patterns, technology, and other factors which may change the relative use of hospital resources." In the first place, this provision is not the source of the Secretary's authority to assign DRG weightings, but is simply a requirement as to when and how the Secretary must, at a minimum, exercise the authority conferred by section 1886(d)(4)(B) of the Act to assign DRG classifications and weightings. The language of section 1886(d)(4)(C) does not purport to limit the Secretary's authority. Moreover, the legislative history of section 1886(d)(4)(C) demonstrates that it was intended simply to require periodic updating of the DRG weightings to keep the DRG system current. The reference to FY 1986 was evidently inserted into the statute by the Conference Committee to require the Secretary to update the DRGs *earlier* than would have been required under the versions of the bill passed by the House and the Senate. There is no indication that Congress intended to prohibit the Secretary from acting until FY 1986. Finally, section 1886(d)(4)(C) addresses only the issue of revising the DRG weightings to account for changes in the relative use of hospital resources. It is irrelevant to the issue of across-the-board revisions to the weightings that do not alter the relative weightings.

Section 1886(e)(1) of the Act requires that both the Federal portion and hospital-specific portion of transition period payment rates for FYs 1984 and 1985 be adjusted to be budget neutral—that is, that they be adjusted to ensure that the aggregate payment amounts resulting from prospective payment rates for the operating costs of inpatient hospital services are not greater or less than the aggregate payment amounts that would have been payable for such services under the law in effect before the enactment of Pub. L. 98-21 on April 20, 1983. Our methodology for determining the amount of these adjustments is described in section V. of this Addendum.

It is true that in developing the FY 1984 budget neutrality adjustment factors we included our estimate of the increase in case mix that we expected to result from improvements in coding. Further, we could include the new information we have on increases of case mix in the budget neutrality adjustment factors for FY 1985. Several considerations contributed to our decision not to do that. First, we identified that there was an increase of case mix significantly in excess of our earlier estimated increase. Second, we determined that, if we took no action to take this increase into account, we would be making aggregate payments under the prospective payment system at a case-mix level significantly higher than intended, and higher than we estimated would have resulted in response to the case-mix adjusted limits and rate of increase limits established under TEFRA. This would violate the requirement of budget neutrality, and would also undercut the understanding on which prospective payment rates were initially set. Finally, we considered various ways of taking this change in case mix into account. One means was through the budget neutrality adjustment methodology. However, as discussed below, we determined that this alternative would have adverse consequences that could be avoided by adjusting the DRG weights.

By maintaining the level of the average case-mix index, we are able to eliminate the need to decrease the budget neutrality adjustment factor, since the reduction in the DRG weights effectively negates the increased payments associated with higher valued case-mix indexes. Nonetheless, this adjustment, while it certainly affects the budget neutrality adjustment, is not a budget neutrality adjustment per se. Rather, it is an adjustment designed to ameliorate certain undesirable effects of the budget neutrality adjustment. Furthermore, even if this reduction in the weights were construed purely as a budget neutrality adjustment, we believe it conforms to the intent of the law.

If the adjustment to reflect increased case-mix indexes were included in the budget neutrality factors for FY 1985, the hospital-specific payment amounts would be reduced below the level set for FY 1984. This reduced hospital-specific rate would continue for some hospitals into FY 1986, after the DRG weights have been recalibrated, and would adversely affect the revenues of some hospitals. Those hospitals that have cost reporting periods beginning early in FY 1985 would bear a disproportionate budget neutrality burden in order to compensate for those hospitals whose reporting periods begin late in FY 1985. Therefore, we believe periods begin late in FY 1985. Therefore, we believe applying an overall adjustment to the DRG weights is more equitable, since it distributes the burdens of the adjustment more equitably and provides a more even cash flow for all hospitals. We do not believe we have acted counter to the intent of the law by reducing the DRG weights in order to alleviate the adverse impact such an adjustment would have if it was applied to the updating factors for computing the hospital-specific portion of the payment rate. It should be emphasized that reducing the DRG weights instead of the updating factors does not affect aggregate payments to hospitals.

Comment—We received comments from hospitals whose cost reporting periods begin later in the Federal fiscal year objecting to making the across-the-board reduction in the DRG weights effective October 1, 1984. They do not believe this is equitable, since hospitals with cost reporting periods beginning earlier in the Federal fiscal year have the benefit of more months of DRG payments at the higher cost weights.

Response—We believe it is appropriate to apply an adjustment to take into account the higher case-mix indexes resulting from improved coding and other changes in hospital behavior and that this adjustment should be applied to all providers on the same basis through adjustment of the DRG weighting factors.

Hospitals whose cost reporting periods begin later in the Federal fiscal year did not enter the prospective payment system until later and remained under cost reimbursement for a longer time relative to hospitals whose cost reporting periods begin early in the Federal fiscal year. These hospitals had greater opportunity to adapt to the new system and to implement improved coding practices as well as other changes in behavior prior to entering the prospective payment system. Therefore, we believe the timing of the adjustment should be the same for all hospitals, since it is expected that the same degree of behavior adjustments will have been implemented in all hospitals regardless of their cost reporting periods. The alternative, which is to take account of increased case-mix indexes through the budget neutrality adjustment to the Federal standardized amounts and the hospital-specific rates, would have meant that hospitals whose cost reporting periods begin later in the Federal fiscal year would have been subsidized at the expense of those hospitals whose periods begin earlier in the Federal fiscal year. This could hardly be characterized as an equitable solution, given the greater opportunity of those whose reporting periods begin later in the Federal fiscal year to anticipate and adapt to the new system.

Comment—We received many comments suggesting that a large part of the reported increase in the average case-mix index is "real" and that we should allow for the full amount of the "real" increase in the prospective payment rates. Commenters suggested that the increase in case mix was due to increased use of outpatient services for low-severity cases, leaving a higher case mix in the inpatient setting. Commenters also suggested that Medicare beneficiaries are growing older and sicker with a resulting higher inpatient case mix. Many comments suggested that admission levels have dropped and that we should not reduce the rates.

Response. As noted above, we are planning to do a study that will enable us to identify the relative influence of the various potential causes of the increase in average case mix.

The budget neutrality adjustment factors are determined by computing an estimated reimbursement level under TEFRA and comparing it to estimated payment levels under the prospective payment system, separately for both Federal and hospital-specific rates, as if there were no budget neutrality requirement.

The estimated reimbursement level under TEFRA is computed by estimating each hospital's cost per admission limited by each hospital's estimated peer group limit and target amount limit. Any increase in "real" case mix result in increased costs per admission and are built into our assumptions on the rate of increase in cost per admission. To the extent that the cost per admission assumptions used in determining the TEFRA payments recognize an increase in case mix, case-mix increases that would have occurred under TEFRA have already been recognized in the calculation of the TEFRA cost per admission. We would be recognizing case mix increases twice in the prospective payment rates if we failed to make any adjustment for reported case mix.

It is apparent that many of the commenters were not aware that, even if the observed case-mix increase would have occurred under TEFRA, it would have been recognized only under the exceptions process, because section 1886(a) of the Act allowed for adjustments to the limits only due to increases in costs per admission and in the hospital market basket.

Under our regulations at §§ 405.460 and 405.463, we would not have, except under limited circumstances, adjusted the TEFRA limits for reported increases in case mix. We estimate these limited case-mix adjustments to have a negligible effect on the overall average per case costs under TEFRA, so we did not adjust the estimated payments under the TEFRA limits for changes in case mix. (See also the next comment and response.)

In estimating the payment level under the prospective system, we must reflect all changes in case mix from the 1981 MEDPAR level, regardless of cause, since payments are directly proportional to the case-mix level. If we ignored changes in case mix, we would incorrectly estimate the prospective payment level. The budget neutrality ratio is computed by dividing the estimated TEFRA reimbursement by the estimated prospective payment amount.

We modeled the expected increase in average case mix due to the aging of the Medicare population. Assuming that the case mix level of each age-sex interval would not change from the 1981 MEDPAR level, we computed the average case mix for the estimated Medicare population for the next 25 years. After 25 years, the case-mix level was 0.1 per cent higher than the first-year case-mix level. Over three to four years, the change in case-mix level attributable to aging is negligible. This analysis suggests that the aging of the Medicare population is not the cause of the observed increase in case-mix level.

We compared the average case-mix levels of the 1979, 1980, and 1981 MEDPAR files. The case-mix level increased 0.3 percent in 1980 and decreased 0.1 percent in 1981. This relatively small change in average case-mix level would not lead us to expect the increase in average case-mix observed under the prospective payment system.

For the three waiver States that do not reimburse on the basis of DRGs (Maryland, Massachusetts, and New York), we compared the 1984 case-mix level with the 1981 MEDPAR case-mix level. In each case, the 1984 average case mix is slightly lower than the 1981 average case mix.

We compared increases in admission levels for admissions under TEFRA and the prospective payment system using the admission notices and discharge notices through July 1984. We found that admission rates under TEFRA and the prospective payment system were about the same. If low-severity cases are now being treated on an outpatient basis, this is a continuation of a trend in medical practice that began before the prospective payment system.

We also cannot adjust payment rates for the observed decline in admission levels since admissions for all patients, not just Medicare, are declining. This decline in admissions cannot be attributed to the incentives of the prospective payment system.

We have analyzed the patterns of case-mix increases as hospitals phase into the prospective payment system. If the case-mix increase were entirely "real", it would continue to progressively increase both before and after the hospital was on the prospective payment system. Our analysis shows that case-mix increases almost immediately when the hospital comes onto the prospective payment system and then remains at that level.

Comment— Some commenters argued that in determining the changes in case-mix indexes resulting from implementation of the prospective payment system we failed to consider changes in case-mix under the TEFRA provisions which may have affected the level of payment under TEFRA. One commenter pointed to the provisions in the regulations that establish changes in case-mix as a basis for an exception to both the limit on allowable cost ($405.460(g)(9)) and the rate of increase ceiling ($405.463(e)). According to this commenter, these exceptions would certainly impact payments under TEFRA.

Response— While changes in case-mix indexes may have occurred under TEFRA, the effect on the level of payments would be negligible, since hospitals are paid actual cost up to an established limit. The regulations do permit the granting of exceptions to the TEFRA cost limits and rate of increase ceiling based on changes in case mix. However, these exceptions are granted only on a limited basis and only where the provider can demonstrate that it has experienced an abrupt change in case mix due to the addition of new services or the discontinuance of previously provided services. Therefore, in the aggregate, changes in case mix under TEFRA would have little effect on total cash outlays since only a comparatively few hospitals will be granted increases in their TEFRA cost limits or rate of increase ceiling. To date, only a handful of exceptions have been granted. In addition, we do not believe the same incentives to improve coding of bills exist under TEFRA since hospital payments are not dependent on the DRG to which a case is assigned.

Finally, it should be noted that budget neutrality and adjustments for increases in case mix are based on estimates using the best data available and are made on a prospective basis. To the extent definitive data could be obtained on exceptions and adjustments, it would not be available until some time after the estimates were made. For example, final determinations on exception requests are generally not made until many months or even years after the period to which they pertain has closed.

Comments— Some commenters suggested that hospitals would increase their reported case mix under TEFRA, especially if they felt they would be affected by the TEFRA limits in later years.

Response— While this scenario is likely, it would not "pass through" these reported increases in case mix for the following reasons.

1. The FY 1985 TEFRA limits would have been based on the 1982 MEDPAR experience, which is almost entirely pre-TEFRA experience.

2. Even if TEFRA data with higher case mix were used to set TEFRA limits in later years, the limits would not increase by the magnitude of the reported increase in case mix because we would continue to divide the cost experience by the case mix in computing peer group means. We would then apply each hospital's case mix to the peer group means to compute the hospital's limit. Since we would, on average, divide and multiply by the same average case mix, the only way the limits could increase is by increases in actual costs. True underlying increases in case mix would increase the limits because they are part of overall cost increases, even though reported increases in case mix would not affect the average level of the limits.

Comment—Many commenters suggested that the proposed 2.4 percent adjustment for increase in case mix be withdrawn because the adjustment was based on inadequate and biased data. Many comments stated that the hospitals that started early under prospective payment are unlike the hospitals that start later, especially in terms of case mix.

Response—The proposed 2.4 percent adjustment for case mix increase was based on analysis of approximately 896,000 admissions processed in HCFA representing about 15 percent of the prospective payment admissions expected during FY 1984. These were the best data at the time the NPRM was published. Our analysis showed that average case mix under prospective payment had increased about 5.85 percent above the 1981 levels. This was 2.4 percent greater than we had estimated case mix would increase due to improved coding. We now have approximately 2.5 million admissions processed in HCFA, representing about half of the admissions in FY 1984. These data show that the increase in average case mix is 7.3 percent rather than 5.85 percent. Because we cannot identify with certainty why each additional update of the data shows that the average case mix is increasing, we are undertaking a study, as described above, that will enable us to identify with greater precision the causes of this increase.

Comment—Some comments suggested that we assumed that hospitals would have identical diagnosis and admission patterns every year for purposes of computing case-mix increases.

Response—We assumed that case-mix index patterns averaged over all hospitals would be about the same every year. Since we observed a stable case-mix level over the 1979 through 1981 MEDPAR files, we believe that this assumption was reasonable.

Comment—Some commenters suggested that new diagnostic and treatment services would increase the case weights which is part of the reason for the increase in average reported case mix.

Response—Since we did not recalibrate the DRGs, these new diagnostic and treatment services are not included in the DRG weights. The only way reported case mix can increase is by changing the relative frequency of different DRGs, not by the treatment mode for any particular DRG.

Comment—Some commenters suggested that because some healthy beneficiaries elected to continue to receive health benefits coverage from their employers, Medicare is left with a sicker population with a higher case mix.

Response—Even though these hospital stays are reimbursed by a plan other than Medicare, Medicare will pay for any gaps in coverage. Further, these hospital stays are still applied to the beneficiary's spell of illness. Therefore, we must receive bills for these purposes. Since the bills must have diagnostic information, they are also included in the calculation of the average case mix. The fact that a beneficiary may elect to have his health coverage provided by his employer has no effect on the average case mix.

Comment—Many commenters suggested that hospital inpatients are now more acutely ill than previously, and that is part of the reason for increases in reported case mix.

Response—We are puzzled by the term "more acutely ill" because of its unclear meaning. Some of the factors that determine the assignment of a DRG are the particular illness, the presence of additional illnesses that may complicate the case, age, sex, and the presence or absence of certain procedures. The degree of illness is not a factor in assigning a DRG. If a particular case of an illness is more severe than average, we have outlier provisions to handle these cases, even though the DRG does not change. It is not clear that more acutely ill patients would necessarily increase the average case mix.

Comment—Several comments suggested that we should not reduce the DRG weights because admissions are lower than the level of projected admissions used to determine Medicare expenditures as projected in the Federal budget. These commenters seemed to believe that the purpose of reducing the DRG weights was to achieve some targeted amount of savings. They argued that the lower level of admissions would result in substantial savings and that we should not seek more.

Response—Under Medicare, we pay only when beneficiaries receive covered services. Budget neutrality requires that for FYs 1984 and 1985 we pay in the aggregate the same amount for covered services furnished under the prospective payment system as would have been paid for those services under TEFRA. The amount submitted to the Federal budget is a projection for planning purposes, not a promise to pay a specific amount. Therefore, in determining payment rates under the prospective payment system, we do not have to make up any differences between projected and actual admissions. As discussed above and in section V of this addendum, we do not believe that the decline of admissions is a consequence of the prospective payment system.

Comment—We received many comments suggesting that we should not reduce the DRG relative weights because of a few hospitals "gaming" the system. We should address gaming on an institution by institution basis.

Response—The increase in case mix is pervasive and is spread throughout the country. Because of the extent of the case-mix increase, it is not possible to attribute this increase solely to a few "gaming" hospitals. Since the prospective payment system sets a payment rate for a DRG, we cannot set rates differently for different Hospitals, other than the adjustments specified in the law.

Comment—Some comments stated that the severe winter weather raised the case-mix level by postponing elective admissions, and that the increased case-mix level would decline in the spring and summer.

Response—When we analyzed case-mix data through July 1984, we didn't see the increased level in case-mix decrease in spring and summer. Rather, it continued to increase.

Comment—A commenter suggested that a higher reported case mix implies greater resource consumption. The commenter also suggested that we shouldn't compare case mix to the 1984 level and that we are assuming a 2.4 percent case-mix increase from 1984 to 1985, but that our assumed increase in case mix from 1981 to 1984 is zero percent. It was also suggested that the validity of the case-mix adjustment for 1985 was not addressed.

Response—Even though the reported case mix has increased, we do not believe that resources are being consumed at a higher rate. The substantial decrease in the rates of hospital cost increases suggests that resource consumption may possibly be declining. We must compare case-mix levels to 1981, since the 1981 case mix was used to set the payment rates. We are not projecting a 2.4 percent case-mix increase from FY 1984 to FY 1985. At the time of the NPRM, we had observed an increase in case mix of 2.4 percent beyond what we expected. Subsequently, the observed FY 1984 case mix level is 3.8 percent higher than expected. We are projecting no further increase in the case-mix level for FY 1985.

We expect the FY 1985 case-mix level to be as valid as the FY 1984 case mix for payment purposes. Diagnostic coding is now being reviewed, and we expect the level of review to be similar in FY 1985.

Comment—A commenter suggested that more intense cases should be paid for at the value of care given.

Response—The DRG system was constructed to achieve this result in the aggregate.

Comment—A commenter stated that its length of stay dropped from 9 days to 7 days.

Response—We have not reduced payments for decreases in length of stay.

Comment—Some commenters suggested that we should adjust only those DRG weights that cause the increase in average case mix.

Response—Although some DRG weights affect the average case mix more than others due to a greater relative frequency and higher values, we cannot adjust the relative weights for individual DRGs simply because more discharges fall into them. The relative weights of DRGs reflect their relative resource consumption. Adjusting the weights of individual DRGs to reflect frequency would distort the relationship of these relative measures.

Comment—A commenter suggested that the 2.4 percent reduction in the DRG relative weights is inappropriate because we had no sound actuarial techniques for estimating what case-mix change would have been payable under TEFRA, because the 1979 to 1981 change in case mix is inaccurate and has no bearing on the 1981 to 1984 period, and because the 0.5 percent annual change in case mix from 1979 to 1981 is significant.

Response—The statement that case mix increased at a 0.5 percent annual rate from 1979 to 1981 is incorrect. The case mix changed at a 0.1 percent annual rate over the period 1979 to 1981. Whatever case mix level hospitals would have reported under TEFRA if there was no prospective payment system, we would not, except under extraordinary circumstances, have adjusted the TEFRA limits for changes in case mix level. If the cost per admission increased because of increases in case mix, we would have paid the increased cost subject to the TEFRA limits. Hence we have reliable estimates what case mix change would have been payable under TEFRA.

Even though the MEDPAR data do not have the most accurate diagnostic information, we believe that comparing the trends in case-mix in the 1979, 1980, and 1981 MEDPAR files is valid for the following reasons:

1. All the MEDPAR years used the ICD–9 codes and the same DRG Grouper program.
2. The reporting incentives and level of review were the same in all three years.
3. We feel the biases in all three years are similiar and that analyzing trends in case mix is valid. We believe that the 1979 to 1981 experience has a bearing on the 1981 to 1984 case mix trends. We do not expect the mix of diseases to change greatly and permanently.

Comment— One commenter noted that the outlier threshold values in Table 5 of the addendum to the NPRM (49 FR 27451), that is, DRGs 223, 224, and 225, were incomplete.

Response— The outlier threshold values for DRGs 223, 224, and 225 were misprinted in the addendum to the NPRM. Those values for DRGs 223, 224, and 225 should be 29, 24, and 15 respectively. The corrected values are listed in Table 5 of the addendum to this final rule.

D. Further Changes as a Result of Pub. L. 98–369

This section contains a discussion of two changes made as a result of enactment of Pub. L. 98–369. Both changes are effective with cost reporting periods beginning on or after October 1, 1984.

1. Indirect Medical Education

In accordance with section 2307(b) of Pub. L. 98–369, in counting the number of interns and residents for purposes of calculating the additional payment for indirect medical education, we are counting on the basis of where services are provided and not on the basis of who employs them. Additionally, as required under § 405.477(d)(2)(v)(B) (as revised), hospitals must submit quarterly reports regarding interns and residents and final payment will not be made until cost reports are audited and the correct number of interns and residents verified by the fiscal intermediaries.

2. Payment for Services of Nonphysician Anesthetists

Section 2312 requires that the anesthesia services of certified registered nurse anesthetists be paid for on a reasonable cost basis. Also, as described in the new § 405.477(c)(3), we are paying on this basis for anesthesia services of anesthesiology assistants. Because hospitals will receive additional payment amounts for these services, we are removing such costs, based on our best estimates, from the Federal rates and hospital-specific rates.

E. Calculation of Prospective Payment Rates for FY 1985

FY 1985 represents the second year of the three-year transition period.

General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1984 and Before October 1, 1985 Prospective Payment Rate = Hospital-Specific Portion + Federal Portion

1. Hospital-Specific Portion

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience and is derived from the following formula:

Prior Year Hospital-Specific Portion × Updating Factor × 50 percent × DRG Weight—For a more detailed discussion of the hospital-specific portion, we refer the reader to the interim final rule (48 FR 39772).

Comment—Several commenters cited problems with the formula for determining the hospital-specific portion in calculating the prospective payment rates for FY 1985 (49 FR 27445). Specifically, they stated that the formula was unclear and appeared to be inconsistent with the updating factors used in determining the hospital-specific portion.

Response—We agree that the summary formula expressing the calculation of the hospital-specific portion for the second year of the prospective payment system was confusing and inconsistent with the updating factors. We have revised the formula accordingly to indicate that for FY 1985 the hospital-specific portion is—

Prior Year Hospital-Specific Portion × Updating Factor × 50 percent × DRG Weight.

a. Budget Neutrality. The hospital-specific portion of the payment rates will be adjusted for cost reporting periods that begin between October 1, 1983 and October 1, 1985, to maintain budget neutrality in accordance with section 1886(e)(1)(A) of the Act. The hospital-specific portion of the rate is set at 50 percent in the hospital's second transition year.

An adjustment will be made to the otherwise applicable target rate percentage to maintain budget neutrality of the hospital-specific portion of the payment. To determine the necessary adjustment, we estimated what the average payment per case would have been under the reasonable cost methodology under the law in effect before enactment of Pub. L. 98–21. This estimate is compared to a projection of average payment per case based on the hospital-specific portion of the prospective payment amount. The methodology we used in making these estimates and comparisons is explained in further detail in section V of this addendum. The applicable factor for adjusting the hospital-specific portion to maintain budget neutrality in FY 1985 is .993. This factor has been included in the updating factor discussed in section b below.

b. Updating Factor. For cost reporting periods ending between September 30, 1984 and August 31, 1986, we are applying an update factor to a hospital's previous hospital-specific rate that is equal to the compounded applicable target rate percentage (as applied under the rate of increase limits in § 405.463) as adjusted by a budget neutrality factor of .993. The table below sets forth the updating factors applicable to discharges in FY 1985.

If cost reporting period ends	And second cost reporting period under PPS ends	Updating factor
Sept. 30, 1984	Sept. 30, 1985	1.05878
Oct. 31, 1984	Oct. 31, 1985	1.05920
Nov. 30, 1984	Nov. 30, 1985	1.05961
Dec. 31, 1984	Dec. 31, 1985	1.06003
Jan. 31, 1985	Jan. 31, 1986	1.06052
Feb. 28, 1985	Feb. 28, 1986	1.06102
Mar. 31, 1985	Mar. 31, 1986	1.06151
Apr. 30, 1985	Apr 30, 1986	1.06201
May 31, 1985	May 31, 1986	1.06251
June 30, 1985	June 30, 1986	1.06300
July 31, 1985	July 31, 1986	1.06350
Aug. 31, 1985	Aug. 31, 1986	1.06400

If a hospital's cost reporting period ends on a date other than those listed above, the update factor for the month nearest to the actual ending date (that is, either before or after) is used. However, for those cases in which a hospital's cost reporting year ending date for the first year under the prospective payment system (column 1 in the table shown above) does not match the ending date of the second cost reporting year under the prospective payment system (column 2 in the table shown above), the fiscal intermediary must contact HCFA for the appropriate adjustment factor.

Comment—One commenter suggested that the language in the NPRM (49 FR 27445) describing the inclusive dates for which the updating factors apply was inaccurate. The commenter believes that, in our discussion, we imply that the updating factors would apply only to cost reporting periods ending on or after September 30, 1984 and through August 30, 1986. He suggests that the updating factors apply to cost reporting periods ending on or after September 30, 1985 and before September 1, 1986.

Response—We agree that the cost reporting dates for applying the updating factors do not clearly express our intention that the factors cover periods ending up through August 31, 1986. We have revised this discussion of cost reporting periods above to include the August 31, 1986 end-date. However, contrary to the commenter's understanding, the updating factors apply to cost reporting periods that begin during Federal FY 1985. Therefore, the period covered by these updating factors begins with the September 30, 1984 end-date.

c. *New Providers.* Hospitals that have not completed a 12-month cost reporting period under Medicare (either under current or previous ownership) prior to September 30, 1983 are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed without regard to the hospital-specific portion. Thus, new providers are paid a blend of 75 percent of the appropriate Federal regional rate and 25 percent of the Federal national rate for discharges occurring on or after October 1, 1984 and before October 1, 1985.

2. Federal Portion

For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the Federal portion of the hospital's total prospective payment will be 50 percent of the hospital's payment amount. Beginning with discharges occurring on or after October 1, 1984, the Federal portion is comprised of a blend of the Federal regional rate (75 percent) and the Federal national rate, (25 percent).

III. Summary of Prospective Payment Rate Changes

We are making the following changes in determining prospective payment rates for FY 1985:

A. Calculation of Adjusted Standardized Amounts

- Update the market basket index.
- Reduce the updating factors to the market basket plus .25 percent in accordance with section 2310 of Pub. L. 98–369.
- Update the cost-of-living adjustment factors for hospitals in Alaska and Hawaii.
- Revise the table of adjusted standardized amounts to include 20 standardized amounts, that is, nine regional figures and a national figure for labor-related and non-labor-related amounts (Table 1).
- Adjust the average standardized amounts upward to reflect more recent

data in estimating costs previously billed under Part B and for FICA taxes.

- Adjust the average standardized amounts downward to remove the estimated costs for outliers.
- Adjust the average standardized amounts to reflect budget neutrality.
- Adjust the average standardized amounts (and hospital-specific portion) to reflect the removal of costs of nonphysician anesthetists' services.

B. Calculation of Prospective Payment Rates

- Determine a new target rate percentage factor for computing the hospital-specific portion that incorporates an adjustment for budget neutrality.
- Determine total prospective payment based on 50 percent Federal portion and 50 percent hospital-specific portion.
- Determine Federal portion based on 75 percent of the Federal regional rate and 25 percent of the Federal national rate.
- Reduce the DRG relative weights for increases in case mix based on bills submitted under the prospective payment system.

IV. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this addendum.

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Region	Urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related
1. New England (CT, ME, MA, NH, RI, VT)	2,453.88	668.56	2,098.04	507.22
2. Middle Atlantic (PA, NJ, NY)	2,205.94	660.71	2,088.21	514.40
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,296.96	612.25	1,889.46	427.43
4. East North Central (IL, IN, MI, OH, WI)	2,452.00	712.68	2,052.37	478.79
5. East South Central (AL, KY, MS, TN)	2,085.43	544.93	1,905.97	399.94
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2,391.81	634.00	1,915.33	410.91
7. West South Central (AR, LA, OK, TX)	2 248 19	590.67	1,845.62	398.47
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,206.95	636.52	1,913.21	447.21
9. Pacific (AK, CA, HI, OR, WA)	2,325.13	745.34	1,999.49	521.49
10. National	2,320.81	684.44	1,943.21	438.18

TABLE 4a.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX (Taylor, TX)	.8395
Akron, OH (Portage, OH, Summit, OH)	1.0713
Albany, GA (Dougherty, GA, Lee, GA)	.8897
Albany-Schenectady-Troy, NY (Albany, NY, Greene, NY, Montgomery, NY, Rensselaer, NY, Saratoga, NY, Schenectady, NY)	.8807
Albuquerque, NM (Bernalillo, NM)	1.0559
Alexandria, LA (Rapides, LA)	.9718
Allentown-Bethlehem, PA-NJ (Warren, NJ, Carbon, PA, Lehigh, PA, Northampton, PA)	1.0486
Alton-Granite City, IL (Jersey, IL, Madison, IL)	.9699
Altoona, PA (Blair, PA)	1.0226
Amarillo, TX (Potter, TX, Randall, TX)	.9677
Anaheim-Santa Ana, CA (Orange, CA)	1.2419
Anchorage, AK (Anchorage, AK)	1.5417
Anderson, IN (Madison, IN)	1.0142
Anderson, SC (Anderson, SC)	.8739
Ann Arbor, MI (Washtenaw, MI)	1.2086
Anniston, AL (Calhoun, AL)	.8606
Appleton-Oshkosh-Neenah, WI (Calumet, WI, Outagamie, WI, Winnebago, WI)	.9644
Asheville, NC (Buncombe, NC)	.9503
Athens, GA (Clarke, GA, Jackson, GA, Madison, GA, Oconee, GA)	.8800
Atlanta, GA (Barrow, GA, Butts, GA, Cherokee, GA, Clayton, GA, Cobb, GA, Coweta, GA, De Kalb, GA, Douglas, GA, Fayette, GA, Forsyth, GA, Fulton, GA, Gwinnett, GA, Henry, GA, Newton, GA, Paulding, GA, Rockdale, GA, Spalding, GA, Walton, GA)	.9395
Atlantic City, NJ (Atlantic, NJ, Cape May, NJ)	1.0627
Augusta, GA-SC (Columbia, GA, McDuffie, GA, Richmond, GA, Aiken, SC)	.9595
Aurora-Elgin, IL (Kane, IL, Kendall, IL)	.9927
Austin, TX (Hays, TX, Travis, TX, Williamson, TX)	1.0631
Bakersfield, CA (Kern, CA)	1.2246
Baltimore, MD (Anne Arundel, MD, Baltimore, MD, Baltimore City, MD, Carroll, MD, Harford, MD, Howard, MD, Queen Annes, MD)	1.0920
Bangor, ME (Penobscot, ME)	.8253
Baton Rouge, LA (Ascension, LA, East Baton Rouge, LA, Livingston, LA, West Baton Rouge, LA)	1.0154
Battle Creek, MI (Calhoun, MI)	1.0578
Beaumont-Port Arthur, TX (Hardin, TX, Jefferson, TX, Orange, TX)	.9854
Beaver County, PA (Beaver, PA)	1.0841
Bellingham, WA (Whatcom, WA)	1.0522
Benton Harbor, MI (Berrien, MI)	.8716
Bergen-Passaic, NJ (Bergen, NJ, Passaic, NJ)	1.0269
Billings, MT (Yellowstone, MT)	.9529
Biloxi-Gulfport, MS (Hancock, MS, Harrison, MS)	.8692
Binghamton, NY (Broome, NY, Tioga, NY)	.9507
Birmingham, AL (Blount, AL, Jefferson, AL, Saint Clair, AL, Shelby, AL, Walker, AL)	1.0026
Bismarck, ND (Burleigh, ND, Morton, ND)	1.0080
Bloomington, IN (Monroe, IN)	.9269
Bloomington-Normal, IL (McLean, IL)	1.0096
Boise City, ID (Ada, ID)	1.0733
Boston-Lawrence-Salem-Lowell-Brockton, MA (Essex, MA, Middlesex, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA)	1.0927
Boulder-Longmont, CO (Boulder, CO)	.9962
Bradenton, FL (Manatee, FL)	.9180
Brazoria, TX (Brazoria, TX)	.8392
Bremerton, WA (Kitsap, WA)	.8972
Bridgeport-Stamford-Norwalk-Danbury, CT (Fairfield, CT)	1.1548
Brownsville-Harlingen, TX (Cameron, TX)	.9186
Bryan-College Station, TX (Brazos, TX)	.9059
Buffalo, NY (Erie, NY)	.9768
Burlington, NC (Alamance, NC)	.8483
Burlington, VT (Chittenden, VT, Grand Isle, VT)	.9632
Canton, OH (Carroll, OH, Stark, OH)	.9778
Casper, WY (Natrona, WY)	1.0236
Cedar Rapids, IA (Linn, IA)	.9960
Champaign-Urbana-Rantoul, IL (Champaign, IL)	1.0224
Charleston, SC (Berkeley, SC, Charleston, SC, Dorchester, SC)	1.0241
Charleston, WV (Kanawha, WV, Putnam, WV)	1.1011
Charlotte-Gastonia-Rock Hill, NC-SC (Cabarrus, NC, Gaston, NC, Lincoln, NC, Mecklenburg, NC, Rowan, NC, Union, NC, York, SC)	.8756
Charlottesville, VA (Albemarle, VA, Charlottesville City, VA, Fluvanna, VA, Greene, VA)	1.2699
Chattanooga, TN-GA (Catoosa, GA, Dade, GA, Walker, GA, Hamilton, TN, Marion, TN, Sequatchie, TN)	.9680
Chicago, IL (Cook, IL, Du Page, IL, McHenry, IL)	1.2240
Chico, CA (Butte, CA)	1.0536

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cincinnati, OH-KY-IN (Dearborn, IN, Boone, KY, Campbell, KY, Kenton, KY, Clermont, OH, Hamilton, OH, Warren, OH)	1.0549
Clarksville-Hopkinsville, TN-KY (Christian, KY, Montgomery, TN)	.8525
Cleveland, OH (Cuyahoga, OH, Geauga, OH, Lake, OH, Medina, OH)	1.2004
Colorado Springs, CO (El Paso, CO)	1.1046
Columbia, MO (Boone, MO)	1.1334
Columbia, SC (Lexington, SC, Richland, SC)	.9583
Columbus, GA-AL (Russell, AL, Chattahoochee, GA, Muscogee, GA)	.9180
Columbus, OH (Delaware, OH, Fairfield, OH, Franklin, OH, Licking, OH, Madison, OH, Pickaway, OH, Union, OH)	1.0402
Corpus Christi, TX (Nueces, TX, San Patricio, TX)	.9628
Cumberland, MD-WV (Allegany, MD, Mineral, WV)	.8887
Dallas, TX (Collins, TX, Dallas, TX, Denton, TX, Ellis, TX, Kaufman, TX, Rockwall, TX)	1.0769
Danville, VA (Danville City, VA, Pittsylvania, VA)	.8682
Davenport-Rock Island-Moline, IA-IL (Scott, IA, Henry, IL, Rock Island, IL)	.9816
Dayton-Springfield, OH (Clark, OH, Greene, OH, Miami, OH, Montgomery, OH)	1.1095
Daytona Beach, FL (Volusia, FL)	.9673
Decatur, IL (Macon, IL)	.9811
Denver, CO (Adams, CO, Arapahoe, CO, Denver, CO, Douglas, CO, Jefferson, CO)	1.2076
Des Moines, IA (Dallas, IA, Polk, IA, Warren, IA)	1.0667
Detroit, MI (Lapeer, MI, Livingston, MI, Macomb, MI, Monroe, MI, Oakland, MI, Saint Clair, MI, Wayne, MI)	1.1945
Dothan, AL (Dale AL, Houston, AL)	.8830
Dubuque, IA (Dubuque, IA)	1.0289
Duluth, MN-WI (St. Louis, MN, Douglas, WI)	.9149
East St. Louis-Belleville, IL (Clinton, IL, St. Clair, IL)	.9469
Eau Claire, WI (Chippewa, WI, Eau Claire, WI)	.9549
El Paso, TX (El Paso, TX)	.9073
Elkhart-Goshen, IN (Elkhart, IN)	.8807
Elmira, NY (Chemung, NY)	1.0239
Enid, OK (Garfield, OK)	.9000
Erie, PA (Erie, PA)	.9808
Eugene-Springfield, OR (Lane, OR)	.9882
Evansville, IN-KY (Posey, IN, Vanderburgh, IN, Warrick, IN, Henderson, KY)	1.0247
Fargo-Moorhead, ND-MN (Clay, MN, Cass, ND)	1.0031
Fayetteville, NC (Cumberland, NC)	.8311
Fayetteville-Springdale, AR (Washington, AR)	.8290
Flint, MI (Genesee, MI)	1.1500
Florence, AL (Colbert, AL, Lauderdale, AL)	.8072
Florence, SC (Florence, SC)	.8055
Fort Collins-Loveland, CO (Larimer, CO)	.9258
Fort Lauderdale-Hollywood-Pompano Beach, FL (Broward, FL)	1.1082
Fort Myers-Cape Coral, FL (Lee, FL)	.8223
Fort Pierce, FL (Martin, FL, St. Lucie, FL)	.9023
Fort Smith, AR-OK (Crawford, AR, Sebastian, AR, Sequoyah, OK)	.9665
Fort Walton Beach, FL (Okaloosa, FL)	.7657
Fort Wayne, IN (Allen, IN, De Kalb, IN, Whitley, IN)	.9348
Fort Worth-Arlington, TX (Johnson, TX, Parker, TX, Tarrant, TX)	.9626
Fresno, CA (Fresno, CA)	1.1927
Gadsden, AL (Etowah, AL)	.9216
Gainesville, FL (Alachua, FL, Bradford, FL)	.9580
Galveston-Texas City, TX (Galveston, TX)	1.1798
Gary-Hammond, IN (Lake, IN, Porter, IN)	1.1395
Glens Falls, NY (Warren, NY, Washington, NY)	.8795
Grand Forks, ND (Grand Forks, ND)	.9573
Grand Rapids, MI (Kent, MI, Ottawa, MI)	.9963
Great Falls, MT (Cascade, MT)	1.0288
Greeley, CO (Weld, CO)	1.0807
Green Bay, WI (Brown, WI)	.9763
Greensboro-Winston-Salem-High Point, NC (Davidson, NC, Davie, NC, Forsyth, NC, Guilford, NC, Randolph, NC, Stokes, NC, Yadkin, NC)	.8558
Greenville-Spartanburg, SC (Greenville, SC, Pickens, SC, Spartanburg, SC)	.9455
Hagerstown, MD (Washington, MD)	.9035
Hamilton-Middletown, OH (Butler, OH)	1.0414
Harrisburg-Lebanon-Carlisle, PA (Cumberland, PA, Dauphin, PA, Lebanon, PA, Perry, PA)	1.0335
Hartford-New Middletown-Britain-Bristol, CT (Hartford, CT, Litchfield, CT, Middlesex, CT, Tolland, CT)	1.0670
Hickory, NC (Alexander, NC, Burke, NC, Catawba, NC)	.9484
Honolulu, HI (Honolulu, HI)	1.1448
Houma-Thibodeaux, LA (Lafourche, LA, Terrebonne, LA)	.9766

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Houston, TX (Fort Bend, TX, Harris, TX, Liberty, TX, Montgomery, TX, Waller, TX)	1.1097
Huntington-Ashland, WV-KY-OH (Boyd, KY, Carter, KY, Greenup, KY, Lawrence, OH, Cabell, WV, Wayne, WV)	.9830
Huntsville, AL (Madison, AL)	.8972
Indianapolis, IN (Boone, IN, Hamilton, IN, Hancock, IN, Hendricks, IN, Johnson, IN, Marion, IN, Morgan, IN, Shelby, IN)	1.0788
Iowa City, IA (Johnson, IA)	1.1400
Jackson, MI (Jackson, MI)	1.0260
Jackson, MS (Hinds, MS, Madison, MS, Rankin, MS)	.9092
Jacksonville, FL (Clay, FL, Duval, FL, Nassau, FL, St. Johns, FL)	.9894
Jacksonville, NC (Onslow, NC)	.8800
Janesville-Beloit, WI (Rock, WI)	.9022
Jersey City, NJ (Hudson, NJ)	1.0890
Johnson City-Kingsport-Bristol, TN-VA (Carter, TN, Hawkins, TN, Sullivan, TN, Unicoi, TN, Washington, TN, Bristol City, VA, Scott, VA, Washington, VA)	.9221
Johnstown, PA (Cambria, PA, Somerset, PA)	1.0263
Joliet, IL (Grundy, IL, Will, IL)	1.1024
Joplin, MO (Jasper, MO, Newton, MO)	.9560
Kalamazoo, MI (Kalamazoo, MI)	1.2244
Kankakee, IL (Kankakee, IL)	.9125
Kansas City, KS-MO (Johnson, KS, Leavenworth, KS, Miami, KS, Wyandotte, KS, Cass, MO, Clay, MO, Jackson, MO, Lafayette, MO, Platte, MO, Ray, MO)	.9861
Kenosha, WI (Kenosha, WI)	1.0786
Killeen-Temple, TX (Bell, TX, Coryell, TX)	.9383
Knoxville, TN (Anderson, TN, Blount, TN, Grainger, TN, Jefferson, TN, Knox, TN, Sevier, TN, Union, TN)	.9146
Kokomo, IN (Howard, IN, Tipton, IN)	1.0096
LaCrosse, WI (LaCrosse, WI)	.9543
Lafayette, LA (Lafayette, LA, St. Martin, LA)	1.0141
Lafayette, IN (Tippecanoe, IN)	.9240
Lake Charles, LA (Calcasieu, LA)	.9921
Lake County, IL (Lake, IL)	1.1061
Lakeland-Winter Haven, FL (Polk, FL)	.9257
Lancaster, PA (Lancaster, PA)	1.0351
Lansing-East Lansing, MI (Clinton, MI, Eaton, MI, Ingham, MI)	1.0493
Laredo, TX (Webb, TX)	.8544
Las Cruces, NM (Dona Ana, NM)	.8438
Las Vegas, NV (Clark, NV)	1.2165
Lawrence, KS (Douglas, KS)	.9776
Lawton, OK (Comanche, OK)	.9257
Lewiston-Auburn, ME (Androscoggin, ME)	.9149
Lexington-Fayette, KY (Bourbon, KY, Clark, KY, Fayette, KY, Jessamine, KY, Scott, KY, Woodford, KY)	.9555
Lima, OH (Allen, OH, Auglaize, OH)	.9967
Lincoln, NE (Lancaster, NE)	.8998
Little Rock-North Little Rock, AR (Faulkner, AR, Lonoke, AR, Pulaski, AR, Saline, AR)	1.0162
Longview-Marshall, TX (Gregg, TX, Harrison, TX)	.8544
Lorain-Elyria, OH (Lorain, OH)	1.0528
Los Angeles-Long Beach, CA (Los Angeles, CA)	1.3010
Louisville, KY-IN (Clark, IN, Floyd, IN, Harrison, IN, Bullitt, KY, Jefferson, KY, Oldham, KY, Shelby, KY)	1.0632
Lubbock, TX (Lubbock, TX)	1.0067
Lynchburg, VA (Amherst, VA, Campbell, VA, Lynchburg City, VA)	.9221
Macon-Warner Robins, GA (Bibb, GA, Houston, GA, Jones, GA, Peach, GA)	.9830
Madison, WI (Dane, WI)	1.0621
Manchester-Nashua, NH (Hillsboro, NH, Merrimack, NH)	.9327
Mansfield, OH (Richland, OH)	.9158
McAllen-Edinburg-Mission, TX (Hidalgo, TX)	.8438
Medford, OR (Jackson, OR)	.9633
Melbourne-Titusville, FL (Brevard, FL)	.9314
Memphis, TN-AR-MS (Crittenden, AR, De Soto, MS, Shelby, TN, Tipton, TN)	1.0744
Miami-Hialeah, FL (Dade, FL)	1.1468
Middlesex-Somerset-Hunterdon, NJ (Hunterdon, NJ, Middlesex, NJ, Somerset, NJ)	1.0611
Midland, TX (Midland, TX)	1.0761
Milwaukee, WI (Milwaukee, WI, Ozaukee, WI, Washington, WI, Waukesha, WI)	1.0419
Minneapolis-St. Paul, MN-WI (Anoka, MN, Carver, MN, Chisago, MN, Dakota, MN, Hennepin, MN, Isanti, MN, Ramsey, MN, Scott, MN, Washington, MN, Wright, MN, St. Croix, WI)	1.0250
Mobile, AL (Baldwin, AL, Mobile, AL)	.9311
Modesto, CA (Stanislaus, CA)	1.0773
Monmouth-Ocean, NJ (Monmouth, NJ, Ocean, NJ)	.9843
Monroe, LA (Ouachita, LA)	.9531
Montgomery, AL (Autauga, AL, Elmore, AL, Montgomery, AL)	.9706
Muncie, IN (Delaware, IN)	.9873
Muskegon, MI (Muskegon, MI)	.9216
Naples, FL (Collier, FL)	1.1170
Nashville, TN (Cheatham, TN, Davidson, TN, Dickson, TN, Robertson, TN, Rutherford, TN, Sumner, TN, Williamson, TN, Wilson, TN)	1.2232
Nassau-Suffolk, NY (Nassau, NY, Suffolk, NY)	1.2068
New Bedford-Fall River-Attleboro, MA (Bristol, MA)	.9843
New Haven-West Haven-Waterbury-Meriden, CT (New Haven, CT)	1.0645
New London-Norwich, CT (New London, CT)	1.0646
New Orleans, LA (Jefferson, LA, Orleans, LA, St. Bernard, LA, St. Charles, LA, St. John The Baptist, LA, St. Tammany, LA)	1.0115
New York, NY (Bronx, NY, Kings, NY, New York City, NY, Putnam, NY, Queens, NY, Richmond, NY, Rockland, NY, Westchester, NY)	1.3629
Newark, NJ (Essex, NJ, Morris, NJ, Sussex, NJ, Union, NJ)	1.1265
Niagara Falls, NY (Niagara, NY)	.8723
Norfolk-Virginia Beach-Newport News, VA (Chesapeake City, VA, Gloucester, VA, Hampton City, VA, James City Co., VA, Newport News City, VA, Norfolk City, VA, Poquoson, VA, Portsmouth City, VA, Suffolk City, VA, Virginia Beach City, VA, Williamsburg City, VA, York, VA)	.9763
Oakland, CA (Alameda, CA, Contra Costa, CA)	1.2590
Ocala, FL (Marion, FL)	1.0060
Odessa, TX (Ector, TX)	.9756
Oklahoma City, OK (Canadian, OK, Cleveland, OK, Logan, OK, McClain, OK, Oklahoma, OK, Pottawatomie, OK)	1.0502
Olympia, WA (Thurston, WA)	1.0543
Omaha, NE-IA (Pottawattamie, IA, Douglas, NE, Sarpy, NE, Washington, NE)	.8982
Orange County, NY (Orange, NY)	1.0041
Orlando, FL (Orange, FL, Osceola, FL, Seminole, FL	1.0125
Owensboro, KY (Daviess, KY)	.8809
Oxnard-Ventura, CA (Ventura, CA)	1.1962
Panama City, FL (Bay, FL)	.9022
Parkersburg-Marietta, WV-OH (Washingtron, OH, Wood, WV)	.9933
Pascagoula, MS (Jackson, MS)	1.0118
Pensacola, FL (Escambia, FL, Santa Rosa, FL)	.9092
Peoria, IL (Peoria, IL, Tazewell, IL, Woodford, IL)	1.1269
Philadelphia, PA-NJ (Burlington, NJ, Camden, NJ, Gloucester, NJ, Bucks, PA, Chester, PA, Delaware, PA, Montgomery, PA, Philadelphia, PA)	1.1736
Phoenix, AZ (Maricopa, AZ)	1.1099
Pine Bluff, AR (Jefferson, AR)	.8757
Pittsburgh, PA (Allegheny, PA, Fayette, PA, Washington, PA, Westmoreland, PA)	1.1364
Pittsfield, MA (Berkshire, MA)	.8795
Portland, ME (Cumberland, ME, Sagadahoc, ME, York, ME)	.9632
Portland, OR (Clackamas, OR, Multnomah, OR, Washington, OR, Yamhill, OR)	1.1172
Portsmouth-Dover-Rochester, NH (Rockingham, NH, Strafford, NH)	.8436
Poughkeepsie, NY (Dutchess, NY)	1.0897
Providence-Pawtucket-Woonsocket, RI (Bristol, RI, Kent, RI, Newport, RI, Providence, RI, Statewide, RI, Washington, RI)	.9753
Provo-Orem, UT (Utah, UT)	.9452
Pueblo, CO (Pueblo, CO)	1.1576
Racine, WI (Racine, WI)	1.0124
Raleigh-Durham, NC (Durham, NC, Franklin, NC, Orange, NC, Wake, NC)	1.0118
Reading, PA (Berks, PA)	1.0265
Redding, CA (Shasta, CA)	1.0522
Reno, NV (Washoe, NV)	1.2962
Richland-Kennewick, WA (Benton, WA, Franklin, WA)	[illegible]
Richmond-Petersburg, VA (Charles City Co., VA, Chesterfield, VA, Colonial Heights City, VA, Dinwiddie, VA, Goochland, VA, Hanover, VA, Henrico, VA, Hopewell City, VA, New Kent, VA, Petersburg City, VA, Powhatan, VA, Prince George, VA, Richmond City, VA)	.9281
Riverside-San Bernardino, CA (Riverside, CA, San Bernardino, CA)	1.1729
Roanoke, VA (Botetourt, VA, Roanoke, VA, Roanoke City, VA, Salem City, VA)	.9996
Rochester, MN (Olmstead, MN)	1.0235
Rochester, NY (Livingston, NY, Monroe, NY, Ontario, NY, Orleans, NY, Wayne, NY)	1.0357
Rockford, IL (Boone, IL, Winnebago, IL)	1.0323
Sacramento, CA (Eldorado, CA, Placer, CA, Sacramento, CA, Yolo, CA)	1.2061
Saginaw-Bay City-Midland, MI (Bay, MI, Midland, MI, Saginaw, MI)	1.0928
St. Cloud, MN (Benton, MN, Sherburne, MN, Stearns, MN)	.8786
St. Joseph, MO (Buchanan, MO)	.9856
St. Louis, MO-IL (Monroe, IL, Franklin, MO, Jefferson, MO, St. Charles, MO, St. Louis, MO, St. Louis City, MO)	1.0694
Salem, OR (Marion, OR, Polk, OR)	1.0559
Salinas-Seaside-Monterey, CA (Monterey, CA)	1.2737
Salt Lake City-Ogden, UT (Davis, UT, Salt Lake, UT, Weber, UT)	.9649
San Angelo, TX (Tom Green, TX)	.9269
San Antonio, TX (Bexar, TX, Comal, TX, Guadalupe, TX)	1.0488
San Diego, CA (San Diego, CA)	1.1873
San Francisco, CA (Marin, CA, San Francisco, CA, San Mateo, CA)	1.3946
San Jose, CA (Santa Clara, CA)	1.2928
Santa Barbara-Santa Maria-Lompoc, CA (Santa Barbara, CA)	1.1094
Santa Cruz, CA (Santa Cruz, CA)	1.1363
Santa Fe, NW (Los Alamos, NM, Santa Fe, NM)	1.0089
Santa Rosa-Petaluma, CA (Sonoma, CA)	1.1808
Sarasota, FL (Sarasota, FL)	.9850
Savannah, GA (Chatham, GA, Effingham, GA)	.9501
Scranton/Wilkes Barre, PA (Columbia, PA, Lackawanna, PA, Luzerne, PA, Monroe, PA, Wyoming, PA)	.9742
Seattle, WA (King, WA, Snohomish, WA)	1.0659
Sharon, PA (Mercer, PA)	.9640
Sheboygan, WI (Sheboygan, WI)	.8574
Sherman-Denison, TX (Grayson, TX)	.8997
Shreveport, LA (Bossier, LA, Caddo, LA)	1.0634
Sioux City, IA-NE (Woodbury, IA, Dakota, NE)	1.0301
Sioux Falls, SD (Minnehaha, SD)	.9426
South Bend-Mishawaka, IN (St. Joseph, IN)	.9715
Spokane, WA (Spokane, WA)	1.1170
Springfield, IL (Menard, IL, Sangamon, IL)	1.1394
Springfield, MO (Christian, MO, Greene, MO)	.9518
Springfield, MA (Hampden, MA, Hampshire, MA)	.9855
State College, PA (Centre, PA)	1.0543
Steubenville-Weirton, OH-WV (Jefferson, OH, Brooke, WV, Hancock, WV)	.9743
Stockton, CA (San Joaquin, CA)	1.1624
Syracuse, NY (Madison, NY, Onondaga, NY, Oswego, NY)	1.4527
Tocoma, WA (Pierce, WA)	1.0424
Tallahassee, FL (Gadsden, FL, Leon, FL)	.9251
Tampa-St. Petersburg-Clearwater, FL (Hernando, FL, Hillsborough, FL, Pasco, FL, Pinellas, FL)	.9963
Terre Haute, IN (Clay, IN, Vigo, IN)	.8809
Texarkana-TX-Texarkana, AR (Miller, AR, Bowie, TX)	1.1081
Toledo, OH (Fulton, OH, Lucas, OH, Wood, OH)	1.1307
Topeka, KS (Shawnee, KS)	1.1108
Trenton, NJ (Mercer, NJ)	1.0365
Tucson, AZ (Pima, AZ)	1.0141
Tulsa, OK (Creeks, OK, Osage, OK, Rogers, OK, Tulsa, OK, Wagoner, OK)	1.0386
Tuscaloosa, AL (Tuscaloosa, AL)	1.0168
Tyler, TX (Smith, TX)	1.0008
Utica-Rome, NY (Herkimer, NY, Oneida, NY)	.9332
Vallejo-Fairfield-Napa, CA (Napa, CA, Solano, CA)	1.3266
Vancouver, WA (Clark, WA)	1.0807
Victoria, TX (Victoria, TX)	.9616
Vineland-Millville-Bridgeton, NJ (Cumberland, NJ)	.9479
Visalia-Tulare-Porterville, CA (Tulare, CA)	1.1331
Waco, TX (McLennan, TX)	.8313
Washington, D.C.-MD-VA (District of Columbia, DC, Calvert, MD, Charles, MD, Frederick, MD, Montgomery, MD, Prince Georges, MD, Alexandria City, VA, Arlington, VA, Fairfax, VA, Fairfax City, VA, Falls Church City, VA, Loudoun, VA, Manassas City, VA, Manassas Park City, VA, Prince William, VA, Stafford, VA)	1.1577
Waterloo-Cedar Falls, IA (Black Hawk, IA, Bremer, IA)	.9081
Wausau, WI (Marathon, WI)	.9426
West Palm Beach-Boca Raton-Delray Beach, FL (Palm Beach, FL)	[illegible]
Wheeling, WV-OH (Belmont, OH, Marshall, WV, Ohio, WV)	.9611
Wichita, KS (Butler, KS, Sedgwick, KS)	1.1191
Wichita Falls, TX (Wichita, TX)	.8701

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Williamsport, PA (Lycoming, PA)	1.0242
Wilmington, DE-NJ-MD (New Castle, DE, Cecil, MD, Salem, NJ)	1.0671
Wilmington, NC (New Hanover, NC)	.8098
Worcester-Fitchburg-Leominster, MA (Worcester, MA)	.9750
Yakima, WA (Yakima, WA)	1.0018
York, PA (Adams, PA, York, PA)	1.0266
Youngstown-Warren, OH (Mahoning, OH, Trumbull, OH)	1.1017
Yuba City, CA (Sutter, CA, Yuba, CA)	1.0807

TABLE 4b.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7775
Alaska	1.4383
Arizona	.8931
Arkansas	.7794
California	1.0100
Colorado	.8317
Connecticut	.9953
Delaware	.8997
Florida	.8682
Georgia	.8481
Hawaii	1.1747
Idaho	.8864
Illinois	.8708
Indiana	.8706
Iowa	.8158
Kansas	.8118
Kentucky	.8146
Louisiana	.8322
Maine	.8545
Maryland	.9370
Massachusetts	.9690
Michigan	.8471
Minnesota	.8572
Mississippi	.8004
Missouri	.8280
Montana	.8694
Nebraska	.7411
Nevada	1.0157
New Hampshire	1.0297
New Jersey [1]	
New Mexico	.9149
New York	.8888
North Carolina	.8467
North Dakota	.8309
Ohio	.9126
Oklahoma	.8582
Oregon	.9543
Pennsylvania	1.0308
Rhode Island [1]	
South Carolina	.8071
South Dakota	.7857
Tennessee	.7980
Texas	.8104
Utah	.8211
Vermont	.8757
Virginia	.8502
Washington	.9477
West Virigina	.9163
Wisconsin	.8454
Wyoming	.9546

[1] All counties within the State are classified urban.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	1	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.3199	19.4	41
2	1	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.2488	15.8	38
3	1	SURG	* CRANIOTOMY AGE <18	2.9183	12.7	35
4	1	SURG	SPINAL PROCEDURES	2.2219	16.0	38
5	1	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.6606	9.8	31
6	1	SURG	CARPAL TUNNEL RELEASE	.3952	2.6	8
7	1	SURG	PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE >69 +/OR C.C.	1.0172	5.3	27
8	1	SURG	PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE <70 W/O C.C.	.7164	4.1	23
9	1	MED	SPINAL DISORDERS + INJURIES	1.3813	9.1	31
10	1	MED	NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR C.C.	1.2951	9.6	32
11	1	MED	NERVOUS SYSTEM NEOPLASMS AGE <70 W/O C.C.	1.2415	8.5	31
12	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.1020	9.4	31
13	1	MED	MULTIPLE SCLEROSIS + CEREBELLAR ATAXIA	1.0045	8.9	31
14	1	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3386	9.9	32
15	1	MED	TRANSIENT ISCHEMIC ATTACKS	.6604	5.6	24
16	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS WITH C.C.	.8503	7.4	29
17	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O C.C.	.8305	7.2	29
18	1	MED	CRANIAL + PERIPHERAL NERVE DISORDERS AGE >69 AND/OR C.C.	.7833	6.6	29
19	1	MED	CRANIAL + PERIPHERAL NERVE DISORDERS AGE <70 W/O C.C.	.6903	5.7	28
20	1	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.3004	7.6	30
21	1	MED	* VIRAL MENINGITIS	.6236	4.5	15
22	1	MED	HYPERTENSIVE ENCEPHALOPATHY	.7787	6.4	28
23	1	MED	NONTRAUMATIC STUPOR + COMA	1.1448	5.9	28
24	1	MED	SEIZURE + HEADACHE AGE >69 AND/OR C.C.	.7203	5.6	26
25	1	MED	SEIZURE + HEADACHE AGE 18-69 W/O C.C.	.6326	4.9	25
26	1	MED	* SEIZURE + HEADACHE AGE 0-17	.4304	3.3	13
27	1	MED	* TRAUMATIC STUPOR + COMA, COMA >1 HR	1.1250	4.1	26
28	1	MED	TRAUMATIC STUPOR + COMA, COMA <1 HR AGE >69 AND/OR C.C.	1.0590	5.9	28
29	1	MED	* TRAUMATIC STUPOR + COMA <1 HR AGE 18-69 W/O C.C.	.7100	3.8	25
30	1	MED	* TRAUMATIC STUPOR + COMA <1 HR AGE 0-17	.3539	2.0	8
31	1	MED	CONCUSSION AGE >69 AND/OR C.C.	.5988	4.6	27
32	1	MED	CONCUSSION AGE 18-69 W/O C.C.	.4472	3.3	19
33	1	MED	* CONCUSSION AGE 0-17	.2457	1.6	5
34	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE >69 AND/OR C.C.	.9824	7.1	29
35	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O C.C.	.8372	6.2	28
36	2	SURG	RETINAL PROCEDURES	.7019	5.0	15
37	2	SURG	ORBITAL PROCEDURES	.5571	3.4	11
38	2	SURG	PRIMARY IRIS PROCEDURES	.4280	3.0	9
39	2	SURG	LENS PROCEDURES	.4958	2.8	6
40	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.3936	2.4	7
41	2	SURG	* EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657	1.6	4
42	2	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS + LENS	.5845	3.8	12
43	2	MED	* HYPHEMA	.3788	4.2	12
44	2	MED	ACUTE MAJOR EYE INFECTIONS	.6233	6.5	22
45	2	MED	NEUROLOGICAL EYE DISORDERS	.5582	4.3	18

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
46	2	MED	OTHER DISORDERS OF THE EYE AGE >17 WITH C.C.	.5902	4.1	23
47	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O C.C.	.5011	3.0	12
48	2	MED	* OTHER DISORDERS OF THE EYE AGE 0-17	.4018	2.9	13
49	3	SURG	MAJOR HEAD + NECK PROCEDURES	2.5007	13.6	36
50	3	SURG	SIALOADENECTOMY	.7086	4.6	14
51	3	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.6632	4.2	15
52	3	SURG	* CLEFT LIP + PALATE REPAIR	.6421	3.8	11
53	3	SURG	SINUS + MASTOID PROCEDURES AGE >17	.5834	3.5	11
54	3	SURG	* SINUS + MASTOID PROCEDURES AGE 0-17	.6889	3.2	11
55	3	SURG	MISCELLANEOUS EAR, NOSE + THROAT PROCEDURES	.4110	2.5	7
56	3	SURG	RHINOPLASTY	.4101	2.8	8
57	3	SURG	* T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE >17	.5196	2.7	9
58	3	SURG	* T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097	1.5	3
59	3	SURG	* TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >17	.3114	2.0	4
60	3	SURG	* TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17	.2616	1.5	3
61	3	SURG	* MYRINGOTOMY AGE >17	.4229	2.1	9
62	3	SURG	* MYRINGOTOMY AGE 0-17	.3089	1.3	3
63	3	SURG	OTHER EAR, NOSE + THROAT O.R. PROCEDURES	1.0975	5.8	28
64	3	MED	EAR, NOSE + THROAT MALIGNANCY	1.0700	5.7	28
65	3	MED	DYSEQUILIBRIUM	.4807	4.6	17
66	3	MED	EPISTAXIS	.4073	3.7	15
67	3	MED	* EPIGLOTTITIS	.6692	4.3	17
68	3	MED	OTITIS MEDIA + URI AGE >69 AND/OR C.C.	.6224	6.0	22
69	3	MED	OTITIS MEDIA + URI AGE 18-69 W/O C.C.	.5361	4.8	19
70	3	MED	* OTITIS MEDIA + URI AGE 0-17	.3659	3.1	10
71	3	MED	* LARYNGOTRACHEITIS	.3552	2.9	9
72	3	MED	NASAL TRAUMA + DEFORMITY	.4807	3.8	18
73	3	MED	OTHER EAR, NOSE + THROAT DIAGNOSES AGE >17	.5163	3.5	17
74	3	MED	* OTHER EAR, NOSE + THROAT DIAGNOSES AGE 0-17	.3427	2.1	9
75	4	SURG	MAJOR CHEST PROCEDURES	2.5773	14.4	36
76	4	SURG	O.R. PROC ON THE RESP SYSTEM EXCEPT MAJOR CHEST WITH C.C.	1.8539	10.6	33
77	4	SURG	O.R. PROC ON THE RESP SYSTEM EXCEPT MAJOR CHEST W/O C.C.	1.7989	9.5	32
78	4	MED	PULMONARY EMBOLISM	1.3949	10.4	32
79	4	MED	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE >69 AND/OR C.C.	1.7795	11.2	33
80	4	MED	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 18-69 W/O C.C.	1.7264	10.9	33
81	4	MED	* RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 0-17	.8652	6.1	28
82	4	MED	RESPIRATORY NEOPLASMS	1.1282	7.4	29
83	4	MED	MAJOR CHEST TRAUMA AGE >69 AND/OR C.C.	.9707	8.1	30
84	4	MED	* MAJOR CHEST TRAUMA AGE <70 W/O C.C.	.7658	5.3	22
85	4	MED	PLEURAL EFFUSION AGE >69 AND/OR C.C.	1.1342	8.4	30
86	4	MED	PLEURAL EFFUSION AGE <70 W/O C.C.	1.1100	7.6	30
87	4	MED	PULMONARY EDEMA + RESPIRATORY FAILURE	1.5368	7.7	30
88	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0304	7.5	30
89	4	MED	SIMPLE PNEUMONIA + PLEURISY AGE >69 AND/OR C.C.	1.0914	8.5	31
90	4	MED	SIMPLE PNEUMONIA + PLEURISY AGE 18-69 W/O C.C.	.9747	7.6	29

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC			TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
91	4	MED	*	SIMPLE PNEUMONIA + PLEURISY AGE 0-17	.5078	4.6	14
92	4	MED		INTERSTITIAL LUNG DISEASE AGE >69 AND/OR C.C.	1.0262	7.8	30
93	4	MED		INTERSTITIAL LUNG DISEASE AGE <70 W/O C.C.	.9623	6.9	29
94	4	MED		PNEUMOTHORAX AGE >69 AND/OR C.C.	1.4225	9.2	31
95	4	MED		PNEUMOTHORAX AGE <70 W/O C.C.	1.1135	7.7	30
96	4	MED		BRONCHITIS + ASTHMA AGE >69 AND/OR C.C.	.7913	6.9	24
97	4	MED		BRONCHITIS + ASTHMA AGE 18-69 W/O C.C.	.7181	6.2	21
98	4	MED	*	BRONCHITIS + ASTHMA AGE 0-17	.4231	3.7	11
99	4	MED		RESPIRATORY SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.7952	5.5	27
100	4	MED		RESPIRATORY SIGNS + SYMPTOMS AGE <70 W/O C.C.	.7650	5.1	24
101	4	MED		OTHER RESPIRATORY DIAGNOSES AGE >69 AND/OR C.C.	.8941	6.8	29
102	4	MED		OTHER RESPIRATORY DIAGNOSES AGE <70	.8930	5.1	28
103	5	SURG	*	HEART TRANSPLANT	.0000	.0	0
104	5	SURG	**	CARDIAC VALVE PROCEDURE WITH PUMP + WITH CARDIAC CATH	6.7815	20.9	43
105	5	SURG	**	CARDIAC VALVE PROCEDURE WITH PUMP + W/O CARDIAC CATH	5.1764	16.2	38
106	5	SURG	**	CORONARY BYPASS WITH CARDIAC CATH	5.2077	20.4	42
107	5	SURG	**	CORONARY BYPASS W/O CARDIAC CATH	3.9476	13.5	35
108	5	SURG		CARDIOTHOR PROC.EXCEPT VALVE + CORONARY BYPASS,WITH PUMP	4.3301	13.3	35
109	5	SURG		CARDIOTHORACIC PROCEDURES W/O PUMP	3.6579	12.1	34
110	5	SURG		MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE >69 AND/OR C.C.	2.9023	14.3	36
111	5	SURG		MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE <70 W/O C.C.	2.5582	13.2	35
112	5	SURG		VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION	2.3256	11.2	33
113	5	SURG		AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB + TOE	2.6522	21.6	44
114	5	SURG		UPPER LIMB + TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.0848	16.6	39
115	5	SURG		PERMANENT CARDIAC PACEMAKER IMPLANT WITH AMI OR CHF	3.8743	15.8	38
116	5	SURG		PERMANENT CARDIAC PACEMAKER IMPLANT W/O AMI OR CHF	2.8367	9.3	31
117	5	SURG		CARDIAC PACEMAKER REPLACE + REVIS EXC PULSE GEN REPL ONLY	1.8021	6.4	28
118	5	SURG		CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT ONLY	1.7624	4.2	18
119	5	SURG		VEIN LIGATION + STRIPPING	1.0500	7.2	29
120	5	SURG		OTHER O.R. PROCEDURES ON THE CIRCULATORY SYSTEM	2.4942	15.0	37
121	5	MED	**	CIRCULATORY DISORDERS WITH AMI + C.V. COMP. DISCH. ALIVE	1.8454	11.9	34
122	5	MED	**	CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.3509	9.8	32
123	5	MED		CIRCULATORY DISORDERS WITH AMI, EXPIRED	1.1242	3.1	25
124	5	MED		CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH + COMPLEX DIAG	2.1969	8.4	30
125	5	MED		CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG	1.6284	5.0	27
126	5	MED		ACUTE + SUBACUTE ENDOCARDITIS	2.6368	18.4	40
127	5	MED		HEART FAILURE + SHOCK	1.0300	7.8	30
128	5	MED		DEEP VEIN THROMBOPHLEBITIS	.8549	9.6	28
129	5	MED		CARDIAC ARREST, UNEXPLAINED	1.5345	4.6	27
130	5	MED		PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR C.C.	.9545	7.1	29
131	5	MED		PERIPHERAL VASCULAR DISORDERS AGE <70 W/O C.C.	.9392	6.4	28
132	5	MED		ATHEROSCLEROSIS AGE >69 AND/OR C.C.	.9087	6.7	29
133	5	MED		ATHEROSCLEROSIS AGE <70 W/O C.C.	.8510	5.2	25
134	5	MED		HYPERTENSION	.6976	6.1	26
135	5	MED		CARDIAC CONGENITAL + VALVULAR DISORDERS AGE >69 AND/OR C.C.	.9819	6.1	28

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** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC			TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
136	5	MED		CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 18-69 W/O C.C.	.9573	4.9	27
137	5	MED	*	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 0-17	.6315	3.3	20
138	5	MED		CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE >69 AND/OR C.C.	.9200	5.7	27
139	5	MED		CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE <70 W/O C.C.	.8217	4.8	23
140	5	MED		ANGINA PECTORIS	.7470	5.5	21
141	5	MED		SYNCOPE + COLLAPSE AGE >69 AND/OR C.C.	.6408	5.0	21
142	5	MED		SYNCOPE + COLLAPSE AGE <70 W/O C.C.	.5621	4.3	18
143	5	MED		CHEST PAIN	.6743	4.4	19
144	5	MED		OTHER CIRCULATORY DIAGNOSES WITH C.C.	1.1150	7.0	29
145	5	MED		OTHER CIRCULATORY DIAGNOSES W/O C.C.	.9916	6.4	28
146	6	SURG		RECTAL RESECTION AGE >69 AND/OR C.C.	2.6801	19.1	41
147	6	SURG		RECTAL RESECTION AGE <70 W/O C.C.	2.4826	17.9	40
148	6	SURG		MAJOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	2.5228	17.0	39
149	6	SURG		MAJOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	2.1924	15.2	37
150	6	SURG		PERITONEAL ADHESIOLYSIS AGE >69 AND/OR C.C.	2.3499	15.3	37
151	6	SURG		PERITONEAL ADHESIOLYSIS AGE <70 W/O C.C.	2.0063	13.4	35
152	6	SURG		MINOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	1.4697	10.6	33
153	6	SURG		MINOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	1.2468	9.3	31
154	6	SURG		STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE >69 AND/OR C.C.	2.6621	14.8	37
155	6	SURG		STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 18-69 W/O C.C.	2.3094	13.0	35
156	6	SURG	*	STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 0-17	.8382	6.0	20
157	6	SURG		ANAL PROCEDURES AGE >69 AND/OR C.C.	.7902	6.0	25
158	6	SURG		ANAL PROCEDURES AGE <70 W/O C.C.	.6341	5.2	19
159	6	SURG		HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE >69 AND/OR C.C.	.9200	7.1	23
160	6	SURG		HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE 18-69 W/O C.C.	.7596	6.0	18
161	6	SURG		INGUINAL + FEMORAL HERNIA PROCEDURES AGE >69 AND/OR C.C.	.6995	5.7	16
162	6	SURG		INGUINAL + FEMORAL HERNIA PROCEDURES AGE 18-69 W/O C.C.	.5793	4.8	12
163	6	SURG	*	HERNIA PROCEDURES AGE 0-17	.4313	2.1	6
164	6	SURG		APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>69 AND/OR C.C.	1.8130	11.9	33
165	6	SURG		APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.5986	11.3	29
166	6	SURG		APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >69 AND/OR C.C.	1.4179	9.4	29
167	6	SURG		APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.0706	7.4	22
168	6	SURG		PROCEDURES ON THE MOUTH AGE >69 AND/OR C.C.	.8541	4.3	25
169	6	SURG		PROCEDURES ON THE MOUTH AGE <70 W/O C.C.	.8899	4.2	26
170	6	SURG		OTHER DIGESTIVE SYSTEM PROCEDURES AGE >69 AND/OR C.C.	2.6326	14.6	37
171	6	SURG		OTHER DIGESTIVE SYSTEM PROCEDURES AGE <70 W/O C.C.	2.3727	13.3	35
172	6	MED		DIGESTIVE MALIGNANCY AGE >69 AND/OR C.C.	1.2141	8.2	30
173	6	MED		DIGESTIVE MALIGNANCY AGE <70 W/O C.C.	1.0408	6.7	29
174	6	MED		G.I. HEMORRHAGE AGE >69 AND/OR C.C.	.9185	6.7	29
175	6	MED		G.I. HEMORRHAGE AGE <70 W/O C.C.	.8150	5.8	24
176	6	MED		COMPLICATED PEPTIC ULCER	1.2309	8.1	30
177	6	MED		UNCOMPLICATED PEPTIC ULCER >69 AND/OR C.C.	.7345	6.6	24
178	6	MED		UNCOMPLICATED PEPTIC ULCER <70 W/O C.C.	.6077	5.5	20
179	6	MED		INFLAMMATORY BOWEL DISEASE	1.0048	8.0	30
180	6	MED		G.I. OBSTRUCTION AGE >69 AND/OR C.C.	.8112	6.2	28

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
181	6	MED	G.I. OBSTRUCTION AGE <70 W/O C.C.	.7763	5.9	28
182	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE >69 +/OR C.C.	.6121	5.4	22
183	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE 18-69 W/O C.C.	.5593	4.8	19
184	6	MED	* ESOPHAGITIS, GASTROENTERITIS + MISC. DIGEST. DISORDERS AGE 0-17	.3782	3.3	11
185	6	MED	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE >17	.6612	4.2	26
186	6	MED	* DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE 0-17	.4112	2.9	11
187	6	MED	DENTAL EXTRACTIONS + RESTORATIONS	.3949	2.7	8
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR C.C.	.7367	5.1	27
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O C.C.	.6508	4.5	23
190	6	MED	* OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.3344	2.1	8
191	7	SURG	MAJOR PANCREAS, LIVER + SHUNT PROCEDURES	4.1357	20.8	43
192	7	SURG	* MINOR PANCREAS, LIVER + SHUNT PROCEDURES	3.8790	20.1	42
193	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 +/OR C.C.	2.4258	17.3	39
194	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O C.C.	1.9674	13.9	36
195	7	SURG	** TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR C.C.	2.1465	16.0	38
196	7	SURG	** TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O C.C.	2.0380	15.8	38
197	7	SURG	** TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >69 AND/OR C.C.	1.4714	11.5	29
198	7	SURG	** TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O C.C.	1.2619	10.1	24
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.4319	17.9	40
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.5550	15.1	37
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.7007	16.9	39
202	7	MED	CIRRHOSIS + ALCOHOLIC HEPATITIS	1.1841	9.3	31
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0823	8.0	30
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	.9581	7.5	30
205	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >69 AND/OR C.C.	1.0710	7.9	30
206	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE <70 W/O C.C.	.9151	6.8	29
207	7	MED	DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR C.C.	.8404	6.6	28
208	7	MED	DISORDERS OF THE BILIARY TRACT AGE <70 W/O C.C.	.7239	5.5	24
209	8	SURG	MAJOR JOINT PROCEDURES	2.2674	17.1	39
210	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR C.C.	2.0617	17.8	40
211	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O C.C.	1.9327	15.9	38
212	8	SURG	* HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.6954	11.1	33
213	8	SURG	AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM + CONN. TISSUE DISORDERS	2.1094	14.3	36
214	8	SURG	BACK + NECK PROCEDURES AGE >69 AND/OR C.C.	1.8236	15.6	38
215	8	SURG	BACK + NECK PROCEDURES AGE <70 W/O C.C.	1.4765	13.0	35
216	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	1.5434	11.3	33
217	8	SURG	WND DEBRID + SKN GRFT EXC HAND,FOR MUSCSKELETAL + CONN.TISS.DIS	2.2587	13.1	35
218	8	SURG	LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 +/OR C.C.	1.4102	10.9	33
219	8	SURG	LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O C.C.	1.0678	8.3	27
220	8	SURG	* LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	.9242	5.3	25
221	8	SURG	KNEE PROCEDURES AGE >69 AND/OR C.C.	1.2595	9.3	30
222	8	SURG	KNEE PROCEDURES AGE <70 W/O C.C.	.9794	6.4	28
223	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE >69 AND/OR C.C.	1.0612	6.9	29
224	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE <70 W/O C.C.	.8859	5.6	24
225	8	SURG	FOOT PROCEDURES	.6409	4.8	15

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
226	8	SURG	SOFT TISSUE PROCEDURES AGE >69 AND/OR C.C.	.7901	5.1	27
227	8	SURG	SOFT TISSUE PROCEDURES AGE <70 W/O C.C.	.6271	4.2	18
228	8	SURG	GANGLION (HAND) PROCEDURES	.3588	2.2	7
229	8	SURG	HAND PROCEDURES EXCEPT GANGLION	.5936	3.4	14
230	8	SURG	LOCAL EXCISION + REMOVAL OF INT FIX DEVICES OF HIP + FEMUR	1.3453	8.9	31
231	8	SURG	LOCAL EXCISION + REMOVAL OF INT FIX DEVICES EXCEPT HIP + FEMUR	.9420	5.3	27
232	8	SURG	ARTHROSCOPY	.6000	3.6	15
233	8	SURG	OTHER MUSCULOSKELET SYS + CONN TISS O.R. PROC AGE >69 +/OR C.C.	1.7553	13.1	35
234	8	SURG	OTHER MUSCULOSKELET SYS + CONN TISS O.R. PROC AGE <70 W/O C.C.	1.2325	8.2	30
235	8	MED	FRACTURES OF FEMUR	1.7403	13.6	36
236	8	MED	FRACTURES OF HIP + PELVIS	1.3711	11.9	34
237	8	MED	SPRAINS, STRAINS, + DISLOCATIONS OF HIP, PELVIS + THIGH	.7847	6.4	28
238	8	MED	OSTEOMYELITIS	1.5350	12.3	34
239	8	MED	PATHOLOGICAL FRACTURES + MUSCULOSKELETAL + CONN.TISS.MALIGNANCY	1.0865	9.2	31
240	8	MED	CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR C.C.	.9608	8.6	31
241	8	MED	CONNECTIVE TISSUE DISORDERS AGE <70 W/O C.C.	.8954	8.0	30
242	8	MED	SEPTIC ARTHRITIS	1.5715	11.2	33
243	8	MED	MEDICAL BACK PROBLEMS	.7473	7.5	30
244	8	MED	BONE DISEASES + SEPTIC ARTHROPATHY AGE >69 AND/OR C.C.	.7711	7.5	30
245	8	MED	BONE DISEASES + SEPTIC ARTHROPATHY AGE <70 W/O C.C.	.7102	6.3	28
246	8	MED	NON-SPECIFIC ARTHROPATHIES	.7073	6.8	28
247	8	MED	SIGNS + SYMPTOMS OF MUSCULOSKELETAL SYSTEM + CONN TISSUE	.6491	5.8	27
248	8	MED	TENDONITIS, MYOSITIS + BURSITIS	.6072	5.4	24
249	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	1.0097	7.6	30
250	8	MED	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE >69 +/OR C.C.	.7351	6.0	28
251	8	MED	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O C.C.	.5902	4.2	26
252	8	MED	* FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 0-17	.3496	1.8	7
253	8	MED	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE >69 +/OR C.C.	.7388	6.6	29
254	8	MED	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O C.C.	.6193	5.3	27
255	8	MED	* FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638	2.9	15
256	8	MED	OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	.8616	6.5	29
257	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	1.0970	9.3	23
258	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C.	1.0618	8.9	21
259	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	1.0036	7.4	29
260	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70	.9228	6.4	27
261	9	SURG	BREAST PROC FOR NON-MALIG EXCEPT BIOPSY + LOC EXC	.7253	4.8	19
262	9	SURG	BREAST BIOPSY + LOCAL EXCISION FOR NON-MALIGNANCY	.4569	3.0	10
263	9	SURG	SKIN GRAFTS FOR SKIN ULCER OR CELLULITIS AGE >69 AND/OR C.C.	2.4480	21.3	43
264	9	SURG	SKIN GRAFTS FOR SKIN ULCER OR CELLULITIS AGE <70 W/O C.C.	2.1802	18.2	40
265	9	SURG	* SKIN GRAFTS EXCEPT FOR SKIN ULCER OR CELLULITIS WITH C.C.	1.4804	8.6	31
266	9	SURG	SKIN GRAFTS EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C.C.	.9386	5.9	28
267	9	SURG	PERIANAL + PILONIDAL PROCEDURES	.6849	5.0	18
268	9	SURG	SKIN,SUBCUTANEOUS TISSUE + BREAST PLASTIC PROCEDURES	.5332	3.0	15
269	9	SURG	OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE >69 +/OR C.C.	.9844	5.7	28
270	9	SURG	OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE <70 W/O C.C.	.8039	4.5	27

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*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC			TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
271	9	MED		SKIN ULCERS	1.3659	12.1	34
272	9	MED		MAJOR SKIN DISORDERS AGE >69 AND/OR C.C.	.8530	7.8	30
273	9	MED		MAJOR SKIN DISORDERS AGE <70 W/O C.C.	.8200	7.3	29
274	9	MED		MALIGNANT BREAST DISORDERS AGE >69 AND/OR C.C.	1.0003	7.5	30
275	9	MED		MALIGNANT BREAST DISORDERS AGE <70 W/O C.C.	.8920	6.4	28
276	9	MED		NON-MALIGANT BREAST DISORDERS	.6003	4.2	22
277	9	MED		CELLULITIS AGE >69 AND/OR C.C.	.8771	8.3	30
278	9	MED		CELLULITIS AGE 18-69 W/O C.C.	.8012	7.2	29
279	9	MED	*	CELLULITIS AGE 0-17	.4739	4.2	13
280	9	MED		TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE >69 +/OR C.C.	.6137	5.4	27
281	9	MED		TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 18-69 W/O C.C.	.5321	4.2	23
282	9	MED	*	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 0-17	.3424	2.2	9
283	9	MED		MINOR SKIN DISORDERS AGE >69 AND/OR C.C.	.6328	5.3	27
284	9	MED		MINOR SKIN DISORDERS AGE <70 W/O C.C.	.5909	4.4	24
285	10	SURG		AMPUTATIONS FOR ENDOCRINE,NUTRITIONAL + METABOLIC DISORDERS	2.8360	24.0	46
286	10	SURG	*	ADRENAL + PITUITARY PROCEDURES	2.8651	16.1	38
287	10	SURG		SKIN GRAFTS + WOUND DEBRIDE FOR ENDOC,NUTRIT + METAB DISORDERS	2.7851	22.8	45
288	10	SURG	*	O.R. PROCEDURES FOR OBESITY	1.5532	10.0	24
289	10	SURG		PARATHYROID PROCEDURES	1.3593	8.3	29
290	10	SURG		THYROID PROCEDURES	.8460	6.0	17
291	10	SURG	*	THYROGLOSSAL PROCEDURES	.4858	2.9	8
292	10	SURG		OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE > 69 +/OR C.C.	2.0096	10.8	33
293	10	SURG	*	OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE <70 W/O C.C.	1.4796	8.0	30
294	10	MED		DIABETES AGE =>36	.8003	7.7	30
295	10	MED		DIABETES AGE <=35	.7380	5.6	26
296	10	MED		NUTRITIONAL + MISC. METABOLIC DISORDERS AGE >69 AND/OR C.C.	.8886	7.3	29
297	10	MED		NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 18-69 W/O C.C.	.7841	6.0	28
298	10	MED	*	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 0-17	.7460	5.4	26
299	10	MED		INBORN ERRORS OF METABOLISM	.9309	6.8	29
300	10	MED		ENDOCRINE DISORDERS AGE >69 AND/OR C.C.	.9630	7.8	30
301	10	MED		ENDOCRINE DISORDERS AGE <70 W/O C.C.	.8058	6.4	28
302	11	SURG		KIDNEY TRANSPLANT	4.1840	24.1	46
303	11	SURG		KIDNEY,URETER + MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.5133	16.2	38
304	11	SURG		KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE >69 +/OR C.C.	1.7765	12.8	35
305	11	SURG		KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE <70 W/O C.C.	1.6866	11.9	34
306	11	SURG		PROSTATECTOMY AGE >69 AND/OR C.C.	1.1281	8.6	30
307	11	SURG		PROSTATECTOMY AGE <70 W/O C.C.	.9414	7.2	26
308	11	SURG		MINOR BLADDER PROCEDURES AGE >69 AND/OR C.C.	1.0333	7.1	29
309	11	SURG		MINOR BLADDER PROCEDURES AGE <70 W/O C.C.	.9193	5.7	28
310	11	SURG		TRANSURETHRAL PROCEDURES AGE >69 AND/OR C.C.	.6998	4.9	20
311	11	SURG		TRANSURETHRAL PROCEDURES AGE <70 W/O C.C.	.5810	4.1	15
312	11	SURG		URETHRAL PROCEDURES, AGE >69 AND/OR C.C.	.7347	5.2	22
313	11	SURG		URETHRAL PROCEDURES, AGE 18-69 W/O C.C.	.6825	5.1	21
314	11	SURG	*	URETHRAL PROCEDURES, AGE 0-17	.4323	2.3	11
315	11	SURG		OTHER KIDNEY + URINARY TRACT O.R. PROCEDURES	2.4625	9.8	32

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** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3176	6.7	29
317	11	MED	* ADMIT FOR RENAL DIALYSIS	.2360	1.2	3
318	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE >69 AND/OR C.C.	.9047	5.5	28
319	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE <70 W/O C.C.	.7859	4.2	26
320	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE >69 AND/OR C.C.	.8039	7.0	29
321	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 18-69 W/O C.C.	.6732	5.6	23
322	11	MED	* KIDNEY + URINARY TRACT INFECTIONS AGE 0-17	.4506	3.7	13
323	11	MED	URINARY STONES AGE >69 AND/OR C.C.	.7057	4.9	26
324	11	MED	URINARY STONES AGE <70 W/O C.C.	.5415	3.9	19
325	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.7172	5.4	27
326	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 18-69 W/O C.C.	.5814	4.3	21
327	11	MED	* KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 0-17	.4975	3.1	14
328	11	MED	URETHRAL STRICTURE AGE >69 AND/OR C.C.	.6440	4.8	22
329	11	MED	URETHRAL STRICTURE AGE 18-69 W/O C.C.	.5271	3.9	17
330	11	MED	* URETHRAL STRICTURE AGE 0-17	.2788	1.6	5
331	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE >69 AND/OR C.C.	.8826	6.3	28
332	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 18-69 W/O C.C.	.7682	5.0	27
333	11	MED	* OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 0-17	.5093	3.2	18
334	12	SURG	MAJOR MALE PELVIC PROCEDURES WITH C.C.	1.5450	12.7	30
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O C.C.	1.3449	11.8	29
336	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR C.C.	.9974	8.4	22
337	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O C.C.	.8403	7.2	17
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.8975	6.3	28
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANT AGE >17	.6030	4.5	15
340	12	SURG	* TESTES PROCEDURES, NON-MALIGNANT AGE 0-17	.4335	2.4	7
341	12	SURG	PENIS PROCEDURES	.9879	6.0	23
342	12	SURG	CIRCUMCISION AGE >17	.4184	2.8	10
343	12	SURG	* CIRCUMCISION AGE 0-17	.3788	1.7	4
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1088	7.4	29
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	.8247	5.6	27
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR C.C.	.9297	6.9	29
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O C.C.	.8218	5.7	28
348	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR C.C.	.8772	6.2	28
349	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O C.C.	.6925	4.9	22
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6033	5.2	20
351	12	MED	* STERILIZATION, MALE	.2627	1.3	3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.6319	4.4	20
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY + VULVECTOMY	1.9175	12.4	34
354	13	SURG	NON-RADICAL HYSTERECTOMY AGE >69 AND/OR C.C.	1.0993	9.6	20
355	13	SURG	NON-RADICAL HYSTERECTOMY AGE <70 W/O C.C.	1.0050	8.8	17
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.8372	8.1	18
357	13	SURG	UTERUS + ADENEXA PROCEDURES, FOR MALIGNANCY	1.8989	13.9	36
358	13	SURG	UTERUS + ADENEXA PROC FOR NON-MALIGNANCY EXCEPT TUBAL INTERRUPT	1.0777	8.0	30
359	13	SURG	* TUBAL INTERRUPTION FOR NON-MALIGNANCY	.4235	2.3	7
360	13	SURG	VAGINA, CERVIX + VULVA PROCEDURES	.5923	4.2	19

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY CUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
361	13	SURG	* LAPAROSCOPY + ENDOSCOPY (FEMALE) EXCEPT TUBAL INTERRUPTION	.4813	2.6	10
362	13	SURG	* LAPAROSCOPIC TUBAL INTERRUPTION	.3094	1.4	3
363	13	SURG	D+C.CONIZATION + RADIO-IMPLANT, FOR MALIGNANCY	.6448	4.3	18
364	13	SURG	D+C.CONIZATION EXCEPT FOR MALIGNANCY	.3986	2.6	9
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.7778	12.7	35
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR C.C.	.8356	5.2	27
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O C.C.	.5726	3.5	24
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.7861	6.7	29
369	13	MED	MENSTRUAL + OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.6887	5.1	27
370	14	SURG	* CESAREAN SECTION WITH C.C.	.9809	7.6	15
371	14	SURG	* CESAREAN SECTION W/O C.C.	.7457	6.1	10
372	14	MED	* VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	.5476	3.8	9
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.4021	3.2	9
374	14	SURG	* VAGINAL DELIVERY WITH STERILIZATION AND/OR D+C	.5435	3.6	7
375	14	SURG	* VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D+C	.6817	4.4	15
376	14	MED	* POSTPARTUM DIAGNOSES W/O O.R. PROCEDURE	.4115	2.9	10
377	14	SURG	* POSTPARTUM DIAGNOSES WITH O.R. PROCEDURE	.4712	2.2	8
378	14	MED	* ECTOPIC PREGNANCY	.8010	5.5	11
379	14	MED	* THREATENED ABORTION	.3136	2.2	8
380	14	MED	* ABORTION W/O D+C	.2677	1.5	4
381	14	MED	* ABORTION WITH D+C	.3565	1.4	4
382	14	MED	* FALSE LABOR	.1823	1.2	2
383	14	MED	* OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	.4272	3.4	14
384	14	MED	* OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3211	2.2	9
385	15		* NEONATES, DIED OR TRANSFERRED	.6811	1.8	14
386	15		* EXTREME IMMATURITY, NEONATE	3.6480	17.9	40
387	15		** PREMATURITY WITH MAJOR PROBLEMS	1.8267	13.3	35
388	15		** PREMATURITY W/O MAJOR PROBLEMS	1.1571	8.6	31
389	15		* FULL TERM NEONATE WITH MAJOR PROBLEMS	.5425	4.7	16
390	15		* NEONATES WITH OTHER SIGNIFICANT PROBLEMS	.3486	3.4	9
391	15		* NORMAL NEWBORNS	.2218	3.1	7
392	16	SURG	SPLENECTOMY AGE >17	2.7458	16.4	38
393	16	SURG	* SPLENECTOMY AGE 0-17	1.5206	9.1	31
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD + BLOOD FORMING ORGANS	1.1030	6.1	28
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7758	6.1	28
396	16	MED	* RED BLOOD CELL DISORDERS AGE 0-17	.6230	4.1	18
397	16	MED	COAGULATION DISORDERS	.9761	6.7	29
398	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE >69 AND/OR C.C.	.8808	6.1	28
399	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE <70 W/O C.C.	.8371	5.6	28
400	17	SURG	LYMPHOMA OR LEUKEMIA WITH MAJOR O.R. PROCEDURE	2.7978	16.9	39
401	17	SURG	LYMPHOMA OR LEUKEMIA WITH MINOR O.R. PROC AGE >69 AND/OR C.C.	1.2280	8.9	31
402	17	SURG	* LYMPHOMA OR LEUKEMIA WITH MINOR O.R. PROCEDURE AGE <70 W/O C.C.	1.1198	7.1	29
403	17	MED	LYMPHOMA OR LEUKEMIA AGE >69 AND/OR C.C.	1.1593	7.1	29
404	17	MED	LYMPHOMA OR LEUKEMIA AGE 18-69 W/O C.C.	1.1665	6.4	28
405	17	MED	* LYMPHOMA OR LEUKEMIA AGE 0-17	1.0408	4.9	27

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC + C.C.	2.2435	15.0	37
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O C.C.	2.1144	13.3	35
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH MINOR O.R.PROC	1.1271	7.1	29
409	17	MED	* RADIOTHERAPY	.8049	5.7	28
410	17	MED	CHEMOTHERAPY	.3490	2.6	12
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.7146	4.7	27
412	17	MED	HISTORY OF MALIGNANCY WITH ENDOSCOPY	.3365	2.0	8
413	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 +/OR C.C	1.0861	7.3	29
414	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O C.C.	1.0251	6.4	28
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS + PARASITIC DISEASES	2.9715	15.1	37
416	18	MED	SEPTECEMIA AGE >17	1.5343	9.2	31
417	18	MED	* SEPTECEMIA AGE 0-17	.7078	5.2	20
418	18	MED	POSTOPERATIVE + POST-TRAUMATIC INFECTIONS	.9864	8.4	30
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR C.C.	.8538	6.9	29
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O C.C.	.7939	6.2	26
421	18	MED	VIRAL ILLNESS AGE >17	.5982	5.4	21
422	18	MED	* VIRAL ILLNESS + FEVER OF UNKNOWN ORIGIN AGE 0-17	.4315	3.2	10
423	18	MED	OTHER INFECTIOUS + PARASITIC DISEASES DIAGNOSES	1.1981	8.8	31
424	19	SURG	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	2.1710	14.2	36
425	19	MED	ACUTE ADJUST REACT + DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6741	5.8	28
426	19	MED	DEPRESSIVE NEUROSES	.9396	9.4	31
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.7598	6.9	29
428	19	MED	DISORDERS OF PERSONALITY + IMPULSE CONTROL	.9640	8.3	30
429	19	MED	ORGANIC DISTURBANCES + MENTAL RETARDATION	.9424	8.8	31
430	19	MED	PSYCHOSES	1.0820	10.8	33
431	19	MED	* CHILDHOOD MENTAL DISORDERS	2.2285	15.4	37
432	19	MED	* OTHER DIAGNOSES OF MENTAL DISORDERS	1.0416	7.2	29
433	20		** SUBSTANCE USE + SUBST INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	.4411	2.5	17
434	20		** DRUG DEPENDENCE	1.0296	9.1	31
435	20		** DRUG USE EXCEPT DEPENDENCE	1.0626	8.0	30
436	20		** ALCOHOL DEPENDENCE	.8761	8.1	30
437	20		** ALCOHOL USE EXCEPT DEPENDENCE	.6119	3.5	26
438	20		** ALCOHOL + SUBSTANCE INDUCED ORGANIC MENTAL SYNDROME	.8333	6.9	29
439	21	SURG	* SKIN GRAFTS FOR INJURIES	1.8030	8.9	31
440	21	SURG	* WOUND DEBRIDEMENTS FOR INJURIES	1.4653	7.2	29
441	21	SURG	* HAND PROCEDURES FOR INJURIES	.7105	3.0	16
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR C.C.	1.8828	9.1	31
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O C.C.	1.5053	6.6	29
444	21	MED	MULTIPLE TRAUMA AGE >69 AND/OR C.C.	.8738	6.7	29
445	21	MED	MULTIPLE TRAUMA AGE 18-69 W/O C.C.	.7452	5.2	27
446	21	MED	* MULTIPLE TRAUMA AGE 0-17	.4796	2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4735	3.7	19
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3469	2.9	9
449	21	MED	TOXIC EFFECTS OF DRUGS AGE >69 AND/OR C.C.	.7255	5.6	28
450	21	MED	TOXIC EFFECTS OF DRUGS AGE 18-69 W/O C.C.	.5895	3.9	23

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
451	21	MED	* TOXIC EFFECTS OF DRUGS AGE 0-17	.2882	2.1	8
452	21	MED	COMPLICATIONS OF TREATMENT AGE >69 AND/OR C.C.	.8404	5.5	28
453	21	MED	COMPLICATIONS OF TREATMENT AGE <70 W/O C.C.	.8926	5.1	27
454	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE >69 AND/OR C.C.	.8139	5.3	27
455	21	MED	* OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE <70 W/O C.C.	.6121	3.5	22
456	22		** BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2.0685	11.6	34
457	22		** EXTENSIVE BURNS	6.7918	12.6	35
458	22	SURG	** NON-EXTENSIVE BURNS WITH SKIN GRAFTS	2.8275	18.3	40
459	22	SURG	** NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT + OTHER O.R. PROC	2.7282	12.7	35
460	22	MED	** NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.4077	9.0	31
461	23	SURG	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	1.6335	8.0	30
462	23	MED	* REHABILITATION	1.8078	13.5	36
463	23	MED	SIGNS + SYMPTOMS WITH C.C.	.7622	6.3	28
464	23	MED	SIGNS + SYMPTOMS W/O C.C.	.7246	6.0	28
465	23	MED	** AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	.2049	1.5	4
466	23	MED	** AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	.6311	3.7	26
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.9697	6.1	28
468			UNRELATED OR PROCEDURE	2.0818	11.2	33
469			***PDX INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470			***UNGROUPABLE	.0000	.0	0

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.

** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.

*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

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V. Technical Explanation of the Budget Neutrality Adjustment Methodology

A. Overview

Section 1886(e)(1) of the Act requires that, for FYs 1984 and 1985, prospective payments be adjusted so that aggregate payments for the operating costs of inpatient hospital services are neither more nor less than we estimate would have been paid under prior legislation for the costs of the same services. To implement this provision, we are making actuarially determined adjustments to the average standardized amounts used to determine Federal national and regional payment rates and to the updating factors used to determine the hospital-specific per case amounts incorporated in the blended transition payment rates for FYs 1984 and 1985. Section 1886(d)(6) of the Act requires that the annual published notice of the methodology, data and rates include an explanation of any budget neutrality adjustments. This section is intended to fulfill that requirement.

In determining the amount of the budget neutrality adjustment factors, we have considered all hospital costs, including pass-through costs such as capital-related and direct medical education costs. However, it should be noted that the *aggregate payments* that will be adjusted to be budget neutral do not include payment for capital-related costs or direct medical education costs, payments for hospital and distinct part unit services excluded from the prospective payment system, payment of a return on equity capital, or payments on a reasonable cost basis to hospitals under the prospective payment system for outpatient services. The costs of anesthetists services are also excluded for hospital cost reporting periods beginning in FY 1985.

For payments in FY 1985, we must take into consideration two situations that did not affect the determination of budget neutrality adjustments for payments in FY 1984. First, effective October 1, 1984, the Federal rate will be a blend of national and regional rates. As a result, we must compute separate estimated per discharge payments for Federal national and regional rates, separate outlier adjustments for those rates, and a budget neutrality adjustment factor for each Federal rate. In addition, during FY 1985 each hospital will experience a change in the blending ratio of its transition payment rates as it enters the cost reporting period beginning on or after October 1, 1984. For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, the transition payment rate is a blend of 75 percent hospital-specific rates and 25 percent Federal rates. For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the blend is 50 percent hospital-specific rates and 50 percent Federal rates. These facts must be reflected at several different points in the methodology, as discussed below.

The budget neutrality adjustments required by the statute are determined by comparing an estimate of FY 1985 reimbursement per discharge, as it would have been under the law in effect prior to enactment of Pub. L. 98–21, with estimates of DRG-related payments per discharge under both regional and national Federal rates (including outlier payments, and payments for the indirect costs of medical education, before budget neutrality adjustment) and with an estimate of the hospital-specific payments per discharge (before budget neutrality adjustment). Therefore, payment under each of the four systems (reasonable cost reimbursement, Federal regional rates, Federal national rates, and hospital-specific rates) must be estimated separately.

Based on the estimates of projected payments under all four systems, we must derive three budget neutrality adjustment factors for FY 1985. The first such factor will be applied in computing Federal regional rates for FY 1985. The second budget neutrality adjustment factor will be applied in computing Federal national rates for FY 1985. The third budget neutrality adjustment factor will be applied in computing the updating factors used to determine the hospital-specific portion of transition payment rates for cost reporting periods beginning during FY 1985.

Although, for methodological reasons, the budget neutrality adjustment is calculated on a per discharge basis, it should be emphasized that the ultimate comparison is between the aggregate payments to be made under the prospective payment system and the aggregate payments that would have been incurred had the prior legislation remained in effect. Therefore, changes in hospital behavior from that which would have occurred in the absence of the prospective payment system are required to be taken into account in determining the budget neutrality adjustment if they affect aggregate payment. For example, if admissions were to increase or decrease under prospective payment beyond the level that would have occurred under prior law, that would have to be considered in the adjustment. However, since we have observed no change in admissions beyond the level that would have occurred under prior law, we are making no adjustment for admission levels.

B. Assumptions and Data

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) established a DRG-adjusted limit on the allowable amount of inpatient operating costs per case and a per case limit on the rate of increase of operating costs of inpatient hospital services. If TEFRA had remained in effect, the DRG-adjusted limit on per case costs would have been set at 115 percent of the mean for cost reporting periods beginning in FY 1984, and at 110 percent of the mean for cost reporting periods beginning in FY 1985. Further, although a hosptial that had allowable costs in excess of its rate of increase target amount could expect to be paid for 24 percent of those costs for a cost reporting period beginning in FY 1983 or 1984, it would be paid no more than its target amount per case for its cost reporting period beginning in FY 1985.

Due to the TEFRA per case limits, the incentives that influence hospital admission patterns are similar under TEFRA and prospective payment. In developing the budget neutrality adjustment factors for the first year under prospective payment, we assumed that the number of admissions under both prior law and the prospective payment system will be the same. As a result, the budget neutrality factors can be calculated by comparing reimbursement per discharge for each of the four systems, and there is no need to estimate an actual number of hospital admissions.

Most hospitals have cost reporting periods beginning and ending on dates that do not coincide with the beginning and ending of Federal fiscal years. Further, at the beginning of a hospital's second cost reporting period under the prospective payment system, the blend between the hospital-specific and Federal portions of the hospital's transition payment rate changes, and the hospital's hospital-specific rate is updated using the most recent updating factor (see section II. D.1.b. in this Addendum). As a result, during FY 1985, most hospitals will have two separate hosptial-specific rates and two separate blends of Federal and hospital-specific rates. (The Federal rate blend of regional and national portions changes at the beginning of FY 1985, not at the beginning of hospital cost-reporting periods, and is therefore constant throughout FY 1985.)

To properly allocate the various payment rates, we developed a distribution of discharges that accounts for:

- The proportion of discharges that occur on or after the beginning of FY 1985 (October 1, 1984) and on or before the end date of the hospital's cost reporting period; and
- The complementary proportion of discharges that occur on or after the beginning date of the hospital's new cost reporting period and on or before the end of the Federal fiscal year (September 30, 1985).

This distribution, which was developed from the March 1983 update of the 1982 discharge notice file, was applied to the number of discharges in the hospital's 1981 data. This procedure properly weights the relative sizes of hospitals and cost reporting period distributions for computing payments per discharge.

Since the prospective payment system is to be budget neutral for included hospitals, and since the prospective payment system will not change payments to hospitals that are excluded from that system, excluded hospitals were removed from the estimates (for example, long term care, psychiatric, and children's hospitals). Further, four States (Maryland, Massachusetts, New Jersey, and New York) currently operate alternative reimbursement systems under Medicare waivers. Since payment amounts in these States will not change because of the prospective payment system, hospitals in these States were removed from the estimation of payment per discharge under each of the systems for purposes of determining budget neutrality.

We also assumed that the means of affording exceptions or special treatment for sole community hospitals under different systems would provide comparable relief to those relatively few hospitals that qualify for such exceptions and treatment. Since the amounts of special payments to these hospitals are assumed to be the same under all four systems, the budget neutrality determination is not affected by these payments. Therefore, we did not make explicit allowance for additional payments to these hospitals in our estimates and comparisons.

Section 1886(e)(1) of the Act requires that total payments under the Federal systems and under the hospital-specific rate system be the same as total payments that would have been payable under provisions of the prior law (that is, the limits that would have been implemented under provisions of TEFRA for FY 1985). To achieve this we have equalized the amounts payable under the Federal rates (both regional and national) and hospital-specific rate systems with those that would have been payable on a periodic basis under TEFRA, not with the total end-of-year cash amounts. As a result, changes of cash flow, timing of payments, and retroactive payments will not affect the budget neutrality determination.

Operating costs are defined differently under the different systems. We excluded malpractice costs and kidney acquisition costs from operating costs under the TEFRA limits. However, both Federal rate systems and the hospital-specific rate system exclude the same kidney acquisition costs but include malpractice costs under operating costs. Further, for hospital cost reporting periods beginning in FY 1985, the costs of services of nonphysician anesthetists must be included in nonoperating costs under both Federal rate systems. We must use a method of comparing costs that takes into account "the payment amounts which would have been payable for such services for those same hospitals", as required under section 1886(e)(1)(A)(ii) of the Act. The actual amounts paid are comparable only if we include both operating and nonoperating costs. Therefore, if we were to compare only the operating costs of the different payment systems we would not fulfill the statutory requirement. Hence, nonoperating costs (excluding payments to proprietary hospitals for a return on equity capital) must also be included in the calculation of the budget neutrality adjustment factors. By using total costs, including nonoperating costs, in the comparisons necessary to determine budget neutrality adjustments, we will ensure that the amounts considered under both Federal rate systems and the hospital-specific rate system are comparable to amounts payable under prior law.

These comparisons will yield adjustments reflecting differences between the systems in a way that prevents distortions by differing definitions of operating costs. The nonoperating costs per discharge were computed using data from the same cost reports and the same increase assumptions as for operating costs. Hence, any inaccuracies in nonoperating cost assumptions would also affect the operating cost estimates in the same manner, so that the effect on the budget neutral factors would be negligible. Further, only the *difference* between prospective payment nonoperating costs and TEFRA nonoperating costs affects the budget neutrality factor. Since the difference is extremely small, the impact of any inaccuracies is minimal.

The equations below illustrate that comparing total costs in determining budget neutrality adjustments produces results identical to those that would have been produced using only operating costs under the Federal national rate system and comparable costs under the TEFRA system.

Cost Components Under Federal Rate and TEFRA systems

(Federal national rate × budget neutral factor) + anesthetists costs = TEFRA operating costs + Malpractice costs

Federal national rate × budget neutral factor + (kidney acquisition costs + capital costs + direct medical education costs + anesthetists costs) = TEFRA operating costs + (Malpractice costs + capital costs + kidney acquisition costs + direct medical education costs)

Federal national rate × budget neutral factor + Federal system nonoperating costs = TEFRA operating costs + TEFRA nonoperating costs

The analysis is identical for the Federal regional rate system and the hospital-specific rate system. Note that payments for a return on equity (which are not classified as operating costs) are excluded from the equations. Since the amounts for return on equity differ among the systems, adding in return on equity would unbalance the equations. (Under prior law, which must be reflected in the TEFRA estimates, the rate of return was set at 1.5 times the Hospital Insurance Trust Fund interest rates, whereas under Pub L. 98–21 the rate of return applicable to the costs related to inpatient hospital services was reduced to 1.0 times that rate.)

C. Estimated Payment Per Discharge Under Prior Law (TEFRA Limits)

To estimate payment per discharge under prior law, the TEFRA limits that would have been published must first be determined. These limits are calculated in the same manner as the FY 1983 limits, except that more recently available data (that is, 1981 cost report and billing data) are used, and the FY 1984 and 1985 limits are set at 115 and 110 percent of the mean, respectively, instead of 120 percent of the mean, in accordance with section 1886 (a)(1)(A)(ii) of the Act. In addition, for cost reporting periods beginning in FY 1985, we would have discontinued payment of 25 percent of the excess costs over a hospital's target amount. The FY 1984 limits are computed using the same cost per discharge assumptions and market basket increase published on January 3, 1984. Since the FY 1984 limits would have been promulgated by October 1, 1983 under the prior law, they must be computed using data and assumptions comparable to what would have been available at the time of issuance, rather than data or assumptions developed subsequently.

Both FY 1984 and 1985 limits were increased by 0.1326 percent to account for the shift to Part A of the cost of certain services furnished by physicians to providers as a result of the regulations on payment for those physicians' services published March 2, 1983. (These rules implement section 1887 of the Act, established by section 108 of TEFRA. (48 FR 8902; 43 CFR 405.480 through 405.482, and 405.550 through 405.556.))

To estimate payment per discharge under the TEFRA limits, cost per discharge must be estimated for each hospital and compared to the costs allowable under the TEFRA limits, that is, DRG-adjusted cost per case limits on inpatient operating costs and the separate limit on the rate of increase of those costs. Since the rate of increase target rate percentage is less than the average rate of increase in hospital costs, comparison of the rate of increase target rate percentage to the average rate of increase in hospital costs would lead to the conclusion that all hospitals would be penalized by the rate of increase limit and that no hospital would receive a bonus. To overcome this erroneous conclusion, the rate of increase target must be compared to cost increases that vary by hospital.

Under section 1886(b)(1) of the Act, a hospital that has per case costs less than its target amount would be paid a bonus of 50 percent of the amount by which the target amount exceeds its cost, or five percent of its target amount, whichever is less. Alternatively, a hospital that has costs in excess of its target amount for any cost reporting periods beginning in FYs 1983 or 1984 would be paid only 25 percent of its costs in excess of the target amount. However, such a hospital would be paid no more than its target amount per discharge for any cost reporting period beginning on or after October 1, 1984.

Hospital cost per discharge data for cost report years 1978, 1979, 1980, and 1981 were analyzed for patterns in rates of increase in costs per discharge. Since the second year of TEFRA uses a two-year rate of increase target over the hospital's base year, and the third year uses a three-year rate of increase target, we analyzed both two-year and three-year rates of increases.

We developed two empirical distributions covering two-year periods of hospitals' percentage rates of cost increase from the available data for 1978 to 1981, inclusive. The means of the two distributions differed, but, for both distributions, the best-fit normal distribution had a standard deviation of 12 percent. In addition, for both cases the standard error of the fit was less than 0.2 percent. Hence, both empirical distributions showed a close fit to normal distribution. In addition, their standard deviations were equal, even though the means were different. Similarly, we found that a normal distribution with a standard deviation of 17 percent closely approximated the three-year rate of increase distribution.

To compute a hospital's cost per discharge for comparison to the hospital's TEFRA rate-of-increase target amount, the hospital's base year costs were increased by a randomly determined factor. For cost reporting periods beginning in FY 1984 this factor was computed by adding the estimated two-year average rate of increase in cost per case to a random number. This random number is generated from a statistical distribution that is normal with a mean of zero, and has a standard deviation of 12 percent. For cost reporting periods beginning in FY 1985, the factor was computed by adding the estimated three-year average rate of increase to a random number generated from the normal distribution with a mean of zero and a standard deviation of 17 percent. In all cases, the random numbers were restricted so that none were further than three standard deviations from the mean. This randomly determined cost per admission for a hospital was compared to the rate of increase limit target amount for determining the reimbursement per discharge under TEFRA. Because of the randomizing process, not all hospitals are shown to be penalized by the target. Hospitals with cost per case over the target amount for reporting periods beginning in FY 1984 are shown as receiving one quarter of their excess costs over that limit. Hospitals with costs over the target amount for periods beginning in FY 1985 are shown as receiving no more than the limits. For purposes of this estimate, payments to those hospitals assigned rates of increase that would result in bonus payments are affected by cost reporting period beginning dates only in relation to the applicable target rate percentage, since the method for determining the amount of bonus payments does not change. To measure the overall stability, the model was tested with ten different sets of random numbers and found to be stable.

The cost per discharge that is compared to the TEFRA limits was adjusted by 0.1326 percent before comparison to the TEFRA limits to account for the shift of certain types of costs to Part A of Medicare because of the regulations on payment for physician's services to patients and providers, published March 2, 1983 and referred to above. Since this adjustment increases the costs of hospitals below the limits, it will have the effect of raising slightly the estimate of TEFRA payment per discharge.

D. Estimated Payment on a Federal Rate (DRG) Basis

The estimated payments per discharge based on DRG-related payments (that is, Federal rates plus outlier payments) were computed separately for national and regional Federal rates and were estimated by directly using the appropriate national or regional adjusted average standarized amounts, adjusted by the applicable wage index, cost of living adjustment (for hospitals in Alaska and Hawaii), and case mix for each hospital. Additional outlier payments were computed using each hospital's historical experience in the MEDPAR file. The payment amounts were further adjusted to include the indirect costs of medical education.

Before the ratios of estimated DRG-related payments to the estimated payments under prior law are computed, we made adjustments to reflect the provisions of these regulations and certain changes of circumstances.

These adjustments take into account:

- The difference in case mix between cases actually reported under the prospective payment system and the 1981 MEDPAR file;
- Payment for transfer cases at less than the full DRG-related payment rate;
- Payment to hospitals located in MSAs that cross census division (regional) boundaries based on the regional rate of the region in which most of the hospitals in the affected MSA are located;
- Payment to hospitals reclassified from urban to rural by the EOMB MSA redesignation;
- The projected increased number of rural referral centers expected to meet the new criteria; and
- Increased nonoperating costs as result of paying for nonphysician anesthetist services on a cost basis.

To adjust for the latest case-mix data, we increased the estimated regional and national payment rates by 4.47 percent, which is the compounded combination of the 3.38 and 1.05 percent increases $(1.0338 \times 1.0105 = 1.0447)$. The derivation of this factor is discussed earlier in this Addendum. Since the relative weight for each DRG was reduced by 1.05 percent, as described earlier in this Addendum, this 4.47 percent adjustment is actually split between the 1.05 percent adjustment in the DRG relative weights, and the 3.38 percent case mix increase factor we developed for the FY 1984 Federal rates.

In order to take the level of payment for transfer cases into account, we computed the transfer savings by month for each hospital using the prospective payment billing data described above. For each transfer case, we subtracted the actual payment from the standard payment for the DRG assigned to that case, then we summed the savings for all transfers in each month to determine the total transfer savings by month. We then divided each hospital's transfer savings by month by the total of what the standard payments would have been for that month if all discharges, including transfers, had been paid at the full DRG-adjusted rate. We then weighted the savings ratios for each hospital by month by the 1981 MEDPAR discharge data for the corresponding months. By this means, we determined that the average payment per case was 0.5 percent lower than if all transfer cases had been paid at the full rate for the applicable DRG.

To reflect the proposed changes affecting hospitals in MSAs that cross census division (regional) boundaries, we took into account the change in payments to hospitals whose regional rates changed as a result of reclassification. The estimated national payment rates are not affected by this provision.

Similarly, we recomputed the estimated national and regional payment rates using the payment rates that would apply for FY 1985 for hospitals that were reclassified from urban to rural as a result of the June 1983 EOMB redesignation of MSAs. For those hospitals so affected, we would pay, for cost reporting periods beginning in FY 1984, two-thirds of the difference between the applicable Federal urban and rural rates, and for cost reporting periods beginning in FY 1985, one-third of the difference between the applicable Federal urban and rural rates.

We also recomputed the estimated national and regional payment rates to reflect appropriate payments to existing referral centers with more than 500 beds and to new rural referral centers with less than 500 beds. We identified rural hospitals in the 1981 cost report files and MEDPAR files with admissions and case-mix index values meeting the national and regional criteria for rural referral centers with less than 500 beds. For these hospitals, we substituted urban for rural adjusted average standardized amounts.

Under section 2312 of Pub. L. 98–369, the costs to the hospital of the services of nonphysician anesthetists will be reimbursed in full by Medicare on a reasonable cost basis. In order to ensure that these costs will be paid for only once, we must remove them from prospective payments. For purposes of determining budget neutrality, we must include these costs in the nonoperating costs under both Federal rate systems.

To estimate the increase in nonoperating costs, we made use of data provided to us by the American Association of Nurse Anesthetists. From the data provided, we determined that there are about 20,000 nurse anesthetists, about one-half of whom are employed by hospitals for inpatient care. Their average 1982 salary was $36,775 in the direct patient care category. Twenty percent must be added for fringe benefits. We used these data and inflated them to FY 1985 using the labor component of the hospital input price index (market basket) to estimate an average FY 1985 total compensation level of $53,554. The average compensation level times one half of the of the 20,000 nurse anesthetists times the 40 percent Medicare share of inpatient days yields an estimated 1985 full year cost to Medicare of about $214 million. $214 million divided by the estimated FY 1985 Medicare operating costs for all hospitals (including hospitals not paid under the prospective payment system) yields the 0.5 percent adjustment factor. We applied the 0.5 percent factor the estimated costs for each hospital and added it to the nonoperating costs for each hospital.

For purposes of this methodology, we did not directly reduce the estimated operating reimbursements for FY 1985 under either Federal rate system because any required adjustment will be part of the budget neutrality factors to be applied to the national and regional standardized amounts.

We did not increase the estimated national or regional payments to reflect the costs of hospital-based physicians' services shifted from Part B to Part A as a result of the regulations published March 2, 1983. The law does not authorize us to adjust the standardized amounts for the effect of those regulations. However, we increased the estimated average per case payments for both hospital-specific rates and payments under prior law to reflect the March 2, 1983 regulations, thus indirectly increasing the national and regional adjusted standardized amounts for FYs 1984 and 1985. Our reasons for making this adjustment in only the latter two cases are quite specific. First, the hospital-based physician regulations were primarily intended to implement section 108 of TEFRA. As such, they are clearly related to the Social Security Act as it stood on April 19, 1983, and should be included, with the case-mix limits and rate of increase limit, among provisions affecting payment levels under previous law. Second, the methodology used by intermediaries to determine each hospital's hospital-specific rate permits hospitals to submit data on this shift from Part B to Part A for purposes of adjusting base-year costs. Thus, the hospital-specific estimates would be inaccurate if we failed to take into account the hospital-based physicians regulations.

By increasing the estimated average per case payments under prior law, we increase the amount against which estimated prospective payments are compared to determine the budget neutrality adjustment. This increases the budget neutrality adjustment factor, which in turn results in higher payments under the prospective payment system. Hence, the adjustment for the hospital-based physicians regulations is reflected in both the Federal rate systems and the hospital-specific rate system, even though the standardized amounts from which the Federal rates are determined are not explicitly adjusted. Further, if the Federal rates did reflect explicit adjustment for the hospital-based physicians regulations, the resulting Federal rate budget neutrality adjustment factor would have been lower than it actually is. The net result would be virtually identical.

E. Estimated Hospital-Specific Payment Per Discharge

To properly estimate the payments per discharge based on the hospital-specific rates to be used during the transition period, the hospital's base year cost per case must first be estimated, since actual base year data are not available currently. To estimate the base year cost, the 1981 cost report data were adjusted by the change in the nursing differential from 1981 to the base year. These data were updated to the base year and the resulting routine operating costs were compared with the appropriate routine cost limit applicable to base year cost reporting periods, as calculated from the September 30, 1981 **Federal Register** notice, to compute the savings resulting from application of the routine cost limits. Total costs were also reduced by the remainder of the amounts based on the Medicare nursing differential, since section 103 of TEFRA, by amending section 1861(v)(1)(J) of the Act, eliminated this differential effective with services furnished on or after October 1, 1982.

Operating costs were computed by carving direct medical education, capital-related, and certain kidney acquisition costs out of total costs. Operating costs were increased by 0.18 percent and 0.13 percent to adjust, respectively, for the extra estimated costs hospitals will report for their base year because of required coverage of their employees under FICA (as required by section 1886(b)(6) of the Act) and for the requirement that certain services are now required to be paid under Part A of Medicare, which were formerly paid under Part B (as required by section 1886(b)(5)(D) of the Act). Operating costs were further increased by 0.1326 percent to account for the shift of certain types of costs to Part A of Medicare because of the regulations on payment for physicians' services to patients and providers, published March 2, 1983 and referred to above.

We increased the nonoperating costs for each hospital by 0.5 percent of estimated operating costs in order to reflect the payment for costs of nonphysician anesthetists services on a cost basis. Since, to implement section 2312 of Pub. L. 98-369, each hospital's hospital-specific portion will be recomputed to carve out the costs of nonphysician anesthetists, we reduced the estimated hospital-specific rate for each hospital by the same amount that we added to the nonoperating costs.

For hospital cost reporting periods beginning in FY 1984, we inflated the base year operating costs by two years of the market basket index increased by one percentage point for each year, using the market basket index values published in the January 3, 1984 final rule. For hospital cost reporting periods beginning in FY 1985, we increased each hospital's estimated hospital-specific rate by the most recently available market basket index values plus one-quarter of one percentage point. We then increased the resulting amount for each hospital by 4.47 percent to account for increases in reported case mix, divided by 1.0105 to account for the revision of the DRG relative weights, and decreased the amount by 0.5 percent to account for payment for transfer cases at less than the full DRG-related amount. These adjustments are discussed above in the section on Federal rates.

F. Adjustment for Outlier Payments

Sections 1886(d)(2)(E) and (d)(3)(B) of the Act require that the average standardized amounts for the Federal rates be reduced so that, when combined with the outlier payments, the resulting payments will be the same as payments under a DRG-related system with no outlier payments but full standard DRG-adjusted rates.

The determination of the outlier payment criteria budget neutrality adjustment was done only with respect to hospitals that will be reimbursed under the prospective payment system, since outlier payments and standard payments under the prospective payment system will not be on behalf of excluded hospitals and hospitals in waiver States. Reimbursement to excluded hospitals and hospitals in wavier States is not changed by the provisions of the prospective payment system.

The outlier criteria were calibrated using experience in the 1981 MEDPAR file so that outlier payments would be five percent of total Federal rate payments.

Since the outlier criteria were calibrated to yield outlier payments equal to five percent of Federal rate payments, the outlier adjustment for both the national and regional rates is 1−.05=.95.

G. Calculation of Budget Neutrality Adjustment Factors

As noted above, we must compute three budget neutrality adjustment factors—one each for adjusting Federal national and regional rates and the other for adjusting the updating factors used to determine the hospital-specific rates. Further, the Federal rate blend changes effective October 1, 1984, and each hospital's blending ratio of hospital-specific and Federal rates will change during FY 1985. To reflect these factors in computations of the budget neutrality adjustment factors, we have weighted estimated payment rates and outlier payments by the discharges that would be paid under each blending ratio.

1. Federal Regional Rate Budget Neutrality Adjustment

Since the standard Federal rate before outlier adjustment, by definition, equals the outlier adjusted Federal rate plus outlier adjusted outlier payments, the former can be substituted for the latter in computing budget neutrality while producing identical results.

For the Federal regional rate system, the following equation must be solved:

Federal regional standard weighted payment per discharge × Federal regional rate budget neutral factor (FRBN) + Federal rate system weighted nonoperating cost per discharge=weighted TEFRA operating reimbursement per discharge+weighted TEFRA nonoperating cost per discharge.

EXAMPLE: COMPUTATION OF FEDERAL REGIONAL RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (FRBN)

Estimated values:	
TEFRA operatiang reimbursement per discharge (Federal blend weighted)	$1,362.86
TEFRA nonoperating cost per discharge (Federal blend weighted)	153.76
Weighted Federal regional rate standard payment per discharge	1,442.53
Weighted Federal nonoperating cost per discharge	145.56

Solve:
$1,442.53 × FRBN + $145.56=$1,362.86+153.76
FRBN=($1,362.86 + $153.76−$145.56) divided by $1,442.53=.950

2. Federal National Rate Budget Neutrality Adjustment

For the Federal national rate system, the following equation must be solved:

Federal national standard weighted payment per disharge × Federal national rate budget neutral factor (FNBN) + Federal rate system weighted nonoperating cost per discharge=weighted TEFRA operating reimbursement per discharge+weighted TEFRA nonoperating cost per discharge.

EXAMPLE: COMPUTATION OF FEDERAL NATIONAL RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (FNBN)

Estimated values:	
TEFRA operating reimbursement per discharge	$1,362.86
TEFRA nonoperating cost per discharge	153.76
Federal national rate standard payment per discharge	1,436.73
Federal nonoperating cost per discharge	145.56

Solve.
$1,436.73 × FNBN + $145.56=$1,362.86+153.76
FNBN=($1,362.86 + $153.76−$145.56) divided by $1,436.73=.954

3. Hospital-Specific Rate Budget Neutrality Adjustment

The budget neutrality adjustment factor for the hospital-specific rate system is only applied to payments for discharges occurring in cost reporting periods starting in FY 1985. We cannot readjust a hospital's hospital-specific rate for its first cost reporting period under prospective payment (the period beginning in FY 1984). The first year hospital-specific rates have been calculated using an updating factor that is already adjusted for FY 1984 budget neutrality. These rates will change only as each hospital begins its second cost reporting period under prospective payment.

As a result, any differences between budget neutrality levels for FYs 1984 and 1985 can be applied only to each hospital's second year hospital-specific rate. Thus, a change in overall level is allocated over less than the full number of discharges occurring in FY 1985.

For the hospital-specific rate system (HSP) the following must be solved:

(HSP payment per discharge for cost reporting periods starting in FY 1985 × Fraction of discharges in FY 1985 for cost reporting periods starting in FY 1985 × 0.50 blending factor × hospital-specific budget neutrality adjustment factor (HSBN)) + (HSP payment per discharge for cost reporting periods starting in FY 1984 adjusted for FY 1984 budget neutrality adjustment factor × Fraction of discharges occurring in FY 1985 for cost reporting periods starting in FY 1984 × 0.75 blending factor) + weighted HSP system nonoperating cost per discharge = weighted TEFRA operating reimbursement per discharge + weighted TEFRA nonoperating cost per discharge.

This yields an HSBN that includes the effect of the FY 1984 HSBN on discharges occurring in FY 1985 for cost reporting periods starting in FY 1984. The effect of the FY 1984 HSP budget neutrality factor must be removed to avoid double application of two years' HSBNs when updating the hospital-specific rates for cost reporting periods starting in FY 1985. This is done by dividing the result of the calculation described above by the FY 1984 HSBN, which was .983.

EXAMPLE: COMPUTATION OF HOSPITAL-SPECIFIC RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (HSBN)

Estimated values:	
TEFRA operating reimbursement per discharge (HSP blend weighted)	$2,112.45
TEFRA nonoperating cost per discharge (HSP blend weighted)	238.97
HSP payment per discharge for cost reporting periods beginning in FY 1985 × fraction of FY 1985 discharges × 0.50 blending factor	1,021.41
HSP payment per discharge for cost reporting periods × fraction of FY 1985 discharges beginning in FY 1984 × 0.75 blending factor × FY 1984 HSBN of 0.983	1,131.23
Weighted HSP nonoperating cost per discharge	223.45

Solve:

($1,021.41 × HSBN) + $1,131.23 + $223.45 = $2,112.45 + $238.97

HSBN = ($2,112.45 + $238.97 − $1,131.23 − $223.45) divided by $1,021.41 = .976

Then, to remove the effect of the FY 1984 HSBN: .976 divided by .983 = .993

Note that the HSP budget neutral factor is not applied to the outlier payments. Outlier payments are paid based only on applicable Federal rates, which already incorporate an adjustment for budget neutrality.

H. SUMMARY—TABLE OF INFLATION ASSUMPTIONS USED IN BUDGET NEUTRALITY DETERMINATION

[In percent]

Calendar year	Cost per admission	Hospital input price index
1982	15.0	9.4
1983	10.9	6.2
1984	9.8	6.0
1985	9.8	6.5

I. SUMMARY—TABLE OF OUTLIER AND BUDGET NEUTRALITY ADJUSTMENT FACTORS—FEDERAL FISCAL YEAR 1985

Adjustment factors	Federal national rates	Federal regional rates	Hospital specific rates
Outlier	0.950	0.952	
Budget neutrality	0.954	0.950	0.993

J. Summary of Changes from Proposed Methodology

As noted elsewhere, this final budget neutrality adjustment methodology incorporates some changes from the methodology as proposed on July 3, 1984. These changes are as follows:

- We incorporated an adjustment to reflect the cost-based reimbursement for non physician anesthetists.
- We modified the modeling of rural referral centers, hospitals redesignated from urban to rural, and MSAs that cross census divisions to be consistent with the provisions of this final rule.
- We reduced the updating of the hospital-specific rates and the Federal rates to market basket plus one quarter percent as specified by section 2310 of Pub. L. 98-364. Since that law did not amend section 1886(e)(1) of the Act, we continued to update the estimated TFRA limits and target amounts by the market basket rate plus one percentage point, in accordance with the law as in effect on April, 20, 1983. Since because of budget neutrality, the actual payment amounts are set by our estimated payments under TEFRA, this provision of Pub. L. 98-369 does not change the FY 1985 payment amounts under the prospective payment system.
- We decreased, from 2.4 percent to 1.05 percent, the factor (to be applied to the DRG weights) to take unanticipated increases in average case mix into account. We also applied this reduced case-mix increase factor to estimated Federal and hospital-specific payments.

K. Responses to Comments on the Proposed Methodology

We received a number of comments on the budget neutrality adjustment methodology as published in the addendum to the July 3, 1984 proposed rule. A summary of those comments and our responses to them follow. (See section II. C. of this Addendum for comments and responses on the reduction of the DRG weights to take into account the increase in average case mix.)

Comment—A number of commenters suggested that we should make adjustments to take the increase in average case mix into account only through the budget neutrality methodology amounts) rather than reducing DRG weights.

Response—We do not agree with these commenters. Our reasons are discussed at length in the sections on DRG weighting factors earlier in this Addendum.

Comment—Some commenters said that in the NPRM discussion of the budget neutrality adjustment methodology, we provided incomplete descriptions of the model used to develop estimates of cost per case under TEFRA; our assumptions, adjustments, and formulae; special studies, including the study of average case-mix increase that regulated in reduction of the DRG weights; and changes in the proposed methodology from that we had used for FY 1984 payments rates. It was suggested that we had not fully complied with section 1886(d)(6) of the Act, requiring us to publish a description of the methodology and data used in computing the prospective payment rates.

Response—We do not agree. We believe that our descriptions are adequate and that we have satisfied all legal requirements. We have released a substantial amount of data, as discussed above in regard to the reduction of DRG weights. Most commenters are satisfied with the level of description we have provided.

Comment—Some commenters suggested that the assumptions for cost per admission increases that we used in modeling TEFRA were too low because recent data partially reflected prospective payment system behavior.

Response—We explicitly adjusted our assumptions upward to remove the effects of prospective payment, especially the shorter lengths of stay. Even after these adjustments, our assumptions are higher than would be justified by recent experience.

Comment—Some commenters suggested that we should further adjust the FICA tax adjustment for those hospitals that first started paying FICA tax in 1983 to reflect the scheduled increase in the FICA tax rate for 1985.

Response—The FICA tax adjustment only makes the costs of hospitals that were not paying FICA tax in the past more comparable to the costs of the remaining hospitals. Any increases in the FICA tax rate are built into our cost per admission assumptions and the hospital input price index and adjusts for the FICA tax increases for all hospitals. Any further adjustment would be an over-adjustment.

Comment—Some commenters suggested that hospitals that are affected by the TEFRA limits would respond and reduce their costs. They suggested that we should assume such changes in behavior for purposes of modeling TEFRA.

Response—This comment makes sense, but we didn't have the time or resources to study hospital responses to the TEFRA reimbursement limits. However, we should point out that if we were to implement the suggestion, the estimated costs under TEFRA would likely be lower, and as a result the budget neutrality ratios would decline.

Comment—A commenter suggested that because we reduced the outlier pool from six percent to five percent, the outlier adjustment should be .952 to be consistent with the adjustment for the six percent outlier pool.

Response—The six percent outlier pool was six percent of Federal standard payments, which is less than six percent of total Federal payments. The five percent outlier pool is set at five percent of total Federal payments, pursuant to section 1886(d)(5)(A)(iv) of the Act, which requires that outlier payments be set at between five percent and six percent.

Comment—One commenter suggested that, in adjusting budget neutrality for rural referral centers, we should assume that only one-half of the hospitals that meet the mandatory requirements would meet any of the optional requirements.

Response—We believe that nearly all of these hospitals will be able to meet at least one of the optional requirements. Further, comments from potential referral centers did not indicate that they would have any problems meeting at least one of the optional requirements.

Comment—One commenter suggested that the hospital-specific rate used in the budget neutrality comparison is too low because of incorrect 1981 case-mix data.

Response—Since the case-mix in 1981 is more likely understated, using "corrected" higher 1981 data would further reduce the hospital-specific rate, since in calculating the hospital-specific rate, we divide by the 1981 case-mix index. It is more likely that the hospital-specific rate is too high.

Comment—One commenter suggested that it was too early in the implementation of the prospective payment system for us to have acquired sufficient experience to estimate regional and national Federal rate payments.

Response—Since prospective payment rates are set in advance, we only need to estimate the number of admissions and average case-mix level to estimate payment levels. We believe that our early experience actually may have understated the increase in average case mix, because the case-mix level has increased more with the accumulation of more experience. We believe that it is likely that our estimate has understated the increase in case-mix level that will actually occur by the end of FY 1985.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register,** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 4596 / Pub. L. 98-402

To amend section 1601(d) of Public Law 96-607 to permit the Secretary of the Interior to acquire title in fee simple to McClintock House at 16 East Williams Street, Waterloo, New York. (Aug. 28, 1984; 98 Stat. 1478) Price: $1.50

S. 2085 / Pub. L. 98-403

To provide continuing authority to the Secretary of Agriculture for recovering costs associated with cotton classing services to producers and to authorize the Secretary of Agriculture to invest funds derived from fees for certain voluntary grading and inspection services. (Aug. 28, 1984; 98 Stat. 1479) Price: $1.50

H.R. 1652 / Pub. L. 98-404

The Reclamation Safety of Dams Act Amendments of 1984. (Aug. 28, 1984; 98 Stat. 1481) Price: $1.50

H.R. 3787 / Pub. L. 98-405

To amend the National Trails System Act by adding the California Trail to the study list, and for other purposes. (Aug. 28, 1984; 98 Stat. 1483) Price: $1.50

H.R. 4707 / Pub. L. 98-406

Arizona Wilderness Act of 1984. (Aug. 28, 1984, 98 Stat 1485) Price: $2.00

H.R. 5604 / Pub. L. 98-407

Military Construction Authorization Act, 1985. (Aug. 28, 1984; 98 Stat. 1495) Price: $3.50

S. 2201 / Pub. L. 98-408

To convey certain lands to the Zuni Indian Tribe for religious purposes. (Aug. 28, 1984; 98 Stat. 1533) Price: $1.50

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 479]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 215,768 cartons during the period September 2–8, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 2, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No.910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on August 28, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.779 is added as follows:

§ 910.779 Lemon Regulation 479.

The quantity of lemons grown in California and Arizona which may be handled during the period September 2, 1984, through September 8, 1984, is established at 215,768 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 29, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–23372 Filed 8–30–84; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1093, 1094, 1096, 1098, 1099, 1102, and 1108

[Docket Nos. AO–356–A22 et al.]

Milk in the Upper Florida and Certain Other Marketing Areas; Order Amending Orders

7 CFR parts	Marketing area	Docket Nos.
1006	Upper Florida	AO–356–A22
1007	Georgia	AO–366–A24
1011	Tennessee Valley	AO–251–A27
1012	Tampa Bay	AO–347–A25
1013	Southeastern Florida	AO–286–A32
1093	Alabama-West Florida	AO–386–A3
1094	New Orleans-Mississippi	AO–103–A45
1096	Greater Louisiana	AO–257–A32
1098	Nashville, Tennessee	AO–184–A47
1099	Paducah, Kentucky	AO–183–A39
1102	Fort Smith, Arkansas	AO–237–A33
1108	Central, Arkansas	AO–243–A37

AGENCY: Agricultural Markting Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Upper Florida and 11 other Federal milk marketing orders. One change increases the Class I price differentials in 10 of the orders by 20 cents per hundredweight for the months of September 1984 through February 1985. Also, a hauling credit is provided for handlers under those 10 orders for supplemental milk brought in from other order plants during the same months. The base-excess plans contained in 6 of the orders will be modified to allow producers' milk delivered to other order plants regulated by the southeastern orders containing base-excess plans to be included in the computation of their bases.

These changes are based on evidence presented at a public hearing held on August 7, 1984, in Atlanta, Georgia. The order changes were requested by a cooperative association that represents dairy farmers who supply milk to the 12 markets.

The adopted order changes are necessary to reflect current marketing conditions and to insure that all handlers in the affected markets share more equitably in the cost of obtaining substantial supplies of supplemental milk during September through February. Because of the limited time available to complete the rulemaking procedures, a recommended decision and the opportunity to file exceptions

thereto were omitted. Cooperative associations representing at least two-thirds of the producers in each market who were engaged in the production of milk for sale during the determinated represented period have approved the issuance of the amended orders.

These amendments to the 12 milk orders also were proposed for the Louisville-Lexington-Evansville and Memphis, Tennessee, orders and adopted in the Assistant Secretary's decision of August 22, 1984. A final rule for those orders is delayed pending the results of referenda to determine producer approval of the amended orders.

EFFECTIVE DATE: September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued August 1, 1984; published August 3, 1984 (49 FR 31072).

Emergency Final Decision: Issued August 22, 1984; published August 28, 1984 (49 FR 34028).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid tentative marketing agreements and orders:

(a) *Findings upon the basis of the hearing record.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending each of the aforesaid orders effective on September 1, 1984. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued August 22, 1984 (49 FR 34028). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending each of the aforesaid orders effective on September 1, 1984, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of this order amending each of the specified orders is approved of or favored by at least two-thirds (three-fourths in the case of Fort Smith) of the producers who were engaged in the production of milk for sale in the respective marketing areas during the determined representative period.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1093, 1094, 1096, 1098, 1099, 1102, 1108

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the aforesaid orders, as amended, and as hereby further amended, as follows:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.50, paragraph (a) is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1006.60, paragraph (h) is revised to read as follows:

§ 1006.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. In § 1007.50, paragraph (a) is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1007.60, paragraph (g) is revised to read as follows:

§ 1007.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, buy a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1007.90 is revised to read as follows:

§ 1007.90 Base milk.

"Base milk" means the producer milk of a producer in each month of February through August that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of February 1985 through August 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1007.13.

4. In § 1007.92, the following language is added to paragraphs (a) and (b):

§ 1007.92 Computation of base for each producer.

(a) * * *

For producer bases to be calculated on or before March 1, 1985, and subject to § 1007.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 145, whichever is more.

(b) * * *

For bases calculated from the September 1984–January 1985 base-forming period, and except as provided in paragraph (c) of this section, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.50, paragraph (a) is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.10, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1011.60, paragraph (g) is revised to read as follows:

§ 1011.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1011.90 is revised to read as follows:

§ 1011.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through June 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1011.13.

4. In § 1011.92, the following language is added to paragraphs (a) and (b):

§ 1011.92 Computation of base for each producer.

(a) * * *

For producer bases to be calculated on or before February 1, 1985, and subject to § 1011.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia-Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September through December 1984 by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) * * *

For bases calculated from the September–December 1984 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1012.50, paragraph (a) is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.95, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1012.60, paragraph (h) is revised to read as follows:

§ 1012.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.50, paragraph (a) is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.15, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1013.60, a new paragraph (h) is added to read as follows:

§ 1013.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. In § 1093.50, paragraph (a) is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1093.60, a new paragraph (g) is added to read as follows:

§ 1093.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1093.90 is revised to read as follow:

§ 1093.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through July that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1093.13.

4. In § 1093.92, the following language is added to paragraphs (a) and (b):

§ 1093.92 Computation of base for each producer.

(a) * * *

For producer bases to be calculated on or before February 28, 1985, and subject to § 1093.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 120, whichever is more.

(b) * * *

For bases calculated from the September 1984-January 1985 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.50, paragraph (a) is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1094.60, a new paragraph (h) is added to read as follows:

§ 1094.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. In § 1096.50, paragraph (a) is revised to read as follows:

§ 1096.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.47, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1096.60, a new paragraph (g) is added to read as follows:

§ 1096.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. In § 1098.50, paragraph (a) is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.85, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1098.60, a new paragraph (g) is added to read as follows:

§ 1098.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. In § 1098.90, the following language is added:

§ 1098.90 Base milk.

* * * * *

For the months of March 1985 through July 1985, base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1098.13.

4. In § 1098.92, the following language is added:

§ 1098.92 Computation of daily average base for each producer.

* * * * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1098.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the number of days' production represented by such producer milk or by 153, whichever is more; or by 138 pursuant to the above provisions.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. In § 1099.50, paragraph (a) is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.70, and plus $0.20 for the months of September 1984 through February 1985.

* * * * *

2. In § 1099.60, a new paragraph (g) is added to read as follows:

§ 1099.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

1. Section 1102.90 is revised to read as follows:

§ 1102.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1102.93 except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1102.13.

2. In § 1102.92, the following language is added:

§ 1102.92 Computation of daily average base for each producer.

* * * * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1102.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis Tennessee; Nashville; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became an approved plant, or a pool plant under any of the above orders, during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been an approved plant or a pool plant during such period.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.90 is revised to read as follows:

§ 1108.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July which is not in excess of such producer's base computed pursuant to § 1108.93, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1108.13.

2. In § 1108.92, the following language is added:

§ 1108.92 Computation of daily average base for each producer.

* * * * *

For producer bases to be calculated on or before February 25, 1985, and subject to § 1108.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a pool plant under this order or any of the above orders during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a pool plant under this or any of the above orders during such peirod.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: September 1, 1984.

Signed at Washington, D.C., on: August 29, 1984.

C. W. Millan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-23390 Filed 8-30-84; 8:45 am]

BILLING CODE 3410-02-M

Office of International Cooperation and Development

7 CFR Part 2200

Availability of Information to the Public

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Final rule.

SUMMARY: This rule explains how to request records from the Office of International Cooperation and Development under the Freedom of Information Act. It supplements the Department's regulations in 7 CFR 1.1–1.16 and Appendix A.

EFFECTIVE DATE: September 4, 1984.

ADDRESSES: Send comments to Mr. Charles H. Cook, Office of International Cooperation and Development, USDA, Washington, DC 20250, (202) 475-5246.

FOR FURTHER INFORMATION CONTACT: Mr. Charles H. Cook, Office of International Cooperation and Development, USDA, Washington, DC 20250, (202) 475-5246.

SUPPLEMENTARY INFORMATION: This rule is an interpretative rule. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated a non-major rule.

Finally, this action is not a rule as defined in Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2200

Freedom of information.

7 CFR is amended by adding a new Chapter XXII and Part 2200 reading as follows:

CHAPTER XXII—OFFICE OF INTERNATIONAL COOPERATION AND DEVELOPMENT

PART 2200—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

2200.1 General.
2200.2 Public inspection, copying and indexing.
2200.3 Requests for records.
2200.4 Denials.
2200.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

§ 2200.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1–1.16 of this title and appendix A thereto, implementing the Freedom of Information Act. The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Office of International Cooperation and Development (OICD) to the public.

§ 2200.2 Public inspection, copying and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. OICD does not maintain materials within the scope of these requirements.

§ 2200.3 Requests for records.

(a) Requests for records of OICD shall be made in accordance with § 1.3(a) of this title and addressed to the Director, Information and Evaluation Staff, Office of International Cooperation and Development, USDA, Room 3059-S, Washington, DC 20250. Authority is hereby delegated to this official to make determinations regarding such requests in accordance with § .14(c) of this title.

(b) Requests should be reasonably specific in identifying the record requested and should include the name, address, and telephone number of the requester.

(c) Available records may be inspected and copied in the Office of the Director, Information and Evaluation Staff, from 8:30 a.m. to 5:00 p.m. local time on regular working days, or may be obtained by mail. Copies will be provided upon payment of applicable fees, unless waived or reduced, in accordance with the Department of Agriculture fee schedule set forth in Appendix A to Part 1, Subpart A, of Subtitle A of this title.

§ 2200.4 Denials.

If the Director, Information and Evaluation Staff determines that a requested record is exempt from mandatory disclosure and the discretionary release would be improper, he/she shall give written notice of the denial in accordance with § 1.5(a) of this title.

§ 2200.5 Appeals.

The denial of a requested record may be appealed in accordance with § 1.3(e) of this title. Appeals shall be addressed to the Administrator, Office of International Cooperation and Development, Washington, DC 20250.

Done at Washington, D.C., this 28th day of August, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84-23370 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-DP-M

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 84-075]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim Rule.

SUMMARY: This document amends the Lethal Avian Influenza interim rule by reducing the area designated as a quarantined area in Pennsylvania because of lethal avian influenza. The quarantined area is changed by deleting a portion of Adams County from the quarantined area (with this change all of Adams County is outside of the quarantined area). The quarantined area was established as part of a mechanism to help prevent the spread of lethal avian influenza. However, it is no longer necessary to quarantine the deleted area for such purpose.

DATES: Effective date is August 29, 1984. Written comments must be received on or before November 5, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. H. A. McDaniel, Chief Staff Officer, Technical Support Staff, VS, APHIS, USDA, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8087.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Lethal Avian Influenza" interim rule which is set forth in 9 CFR Part 81 (48 FR 51422-51423, 51798, 52420-52427, 52885-52887, 53586, 53678-53679, 53679-53681, 53997, 54574-54575, 55402-55405, 55722, 57474-57475, 49 FR 368-369, 2742-2744, 3494, 3839-3845, 5723-5724, 7978-7979, 8412-8415, 8582-8583, 13863-13864, 19288-19289, 19500-19501, 24011-24013, 31055-31057). Among other things, the interim rule designates portions of Pennsylvania and Virginia as quarantined areas and prohibits or restricts certain interstate movements from quarantined areas of poultry, poultry eggs, and other items because of lethal avian influenza.

Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

Effect of Designation as a Quarantined Area

With certain exceptions, the interim rule provides that the following articles designated as prohibited articles are prohibited from being moved interstate from a quarantined area:

(1) Live poultry,
(2) Manure from poultry, and
(3) Litter that has been used by poultry.

The interim rule also provides, with certain exceptions, that the following articles designated as restricted articles are allowed to be moved interstate from a quarantined area only in accordance with certain conditions:

(1) Poultry carcasses or parts thereof,
(2) Eggs from poultry, and
(3) Coops, containers, troughs or other accessories that have been used in the handling of poultry or poultry eggs.

Reduction of Quarantined Area in Pennsylvania

Prior to the effective date of this document, the quarantined area in Pennsylvania included portions of Adams, Berks, Chester, Dauphin, Lancaster, Lebanon, and Schuylkill Counties.

The quarantined area in Adams County was described as:

> That portion of Pennsylvania, beginning at the junction of Heidlersburg Road and Carlisle Road; then southerly along Carlisle Road to its intersection with Brookside Lane; then easterly along Brookside Lane to its intersection with Rentzel Road; then southerly along Rentzel Road to its intersection with Oakhill Road; then easterly along Oakhill Road to its intersection with Stone Jug Road; then northerly along Stone Jug Road to its intersection with Heidlersburg Road; then westerly along Heidlersburg Road to its intersection with Carlisle Road.

This document reduces the quarantined area in Pennsylvania by deleting all of the previously quarantined area in Adams County.

The portion of Adams County that was included in the quarantined area was included because of one premises which contained poultry which had antibodies indicating they were infected with lethal avian influenza. The poultry on that premises have been depopulated and the premises has been cleaned and disinfected. Sufficient time has now elapsed to ensure that this premises is free of lethal avian influenza virus and that no lethal avian influenza virus exists in the previously quarantined area in Adams County. Under these circumstances there is no longer a basis for imposing prohibitions of restrictions because of lethal avian influenza on the movement of live poultry or other items from the area removed from quarantined area status.

With the deletion of a portion of Adams County, the remaining quarantined area in Pennsylvania includes all or portions of Berks, Chester, Dauphin, Lancaster, Lebanon, and Schuylkill Counties and is described as follows:

> That portion of Pennsylvania beginning at the intersection of the eastern bank of the Susquehanna River with the Pennsylvania-Maryland State Line; then northwesterly along the eastern bank of the Susquehanna River to its interstate Highway 83; then east and north along Interstate Highway 83 to its intersection with Interstate Highway 81; then west along Interstate Highway 81 to its intersection with the Susquehanna River; then northwesterly along the Susquehanna River to its intersection with PA Highway 325; then northeasterly along PA Highway 325 to its intersection with U.S. Highway 209; then northeasterly along U.S. Highway 209 to its intersection with PA Highway 61; then southeasterly along PA Highway 61 to its intersection Highway 78; then northeasterly along Interstate Highway 78 to its intersection with the Berks-Lehigh County Line; then southeasterly along the Berks-Lehigh County Line to its intersection with the Berks-Montgomery County Line; then southwesterly along the Berks-Montgomery County Line to its intersection with U.S. Highway 422; then southeasterly along U.S. Highway 422 to its intersection with PA Highway 100; then southerly along PA Highway 100 to its intersection with the Pennsylvania-Delaware State Line; then southwesterly along the Pennsylvania-Delaware Line to its intersection with the Pennsylvania-Maryland State Line; then westerly along the Pennsylvania-Maryland State Line to its intersection with the Susquehanna River.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from a portion of Adams County in Pennsylvania.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action relieves restrictions on the movement of live poultry and certain other items from a portion of Adams County in Pennsylvania. Currently there are no poultry raised in the area being released from quarantine.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under the circumstances explained above, Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

§ 81.4 [AMENDED]

Under the circumstances referred to above, § 81.4 of 9 CFR Part 81 is amended by removing paragraph (a)(1), and by redesignating paragraph (a)(2) as paragraph (a).

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1-3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 2, 65 Stat. 693; secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a-1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 29th day of August, 1984.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84–23319 Filed 8–31–84; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 552 and 572

[No. 84–460]

Net Worth Certificates; Charter Amendments by Federal Institutions

Dated: August 27, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") has amended its regulations implementing the Net Worth Certificate Act, Title II, Pub. L. 97–320, 96 Stat. 1469 (October 15, 1982), (1) to increase the maximum amount of net worth certificates ("NWCs") which the Federal Savings and Loan Insurance Corporation ("Corporation") may purchase from a qualified institution, (2) to define mismanagement of an institution to include actions or inactions which constitute unsafe or unsound practices or other violations of law, (3) to remove the requirement of stockholder approval of issuance of NWCs by stock institutions, and (4) to make certain technical and clarifying changes, including clarification of the method of calculating the amount of NWCs that may be purchased pursuant to a commitment of the Corporation to purchase NWCs. These amendments are intended to promote a more efficient administration of the net worth assistance program and to clarify certain policy objectives of the program.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: James A. Kristufek, Special Assistant to the Director, Office of Examinations and Supervision (202–377–6290), of Clement Dinsmore, Attorney, FSLIC Division, Office of General Counsel (202–377–7051), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Board in Resolution No. 82–793, dated December 8, 1982, 47 FR 58215 (1982), adopted regulations to implement the Net Worth Certificate Act, Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469 (October 15, 1982) ("DIA"). The Board amended these regulations pursuant to Resolution No. 83–87, dated February 18, 1983, 48 FR 8256 (1983).

The Board has since reviewed the thrift industry's response to the net-worth assistance program and has considered the utility of the program as a means of both addressing the present and foreseeable circumstances of the industry and preserving the Corporation's Insurance Fund. As a result, the Board has determined that certain changes in the program would make it more useful as a means to protect the Insurance Fund against undue risk of loss and depletion and to enable members of the thrift industry to survive as independent going concerns during a period of economic transition.

These programmatic changes include, but are not limited to, the regulatory amendments adopted pursuant to this final rule. Changes also will be made in the program's application forms and procedures and the legal documents used to implement the program, specifically including the form of Master Agreement between the Corporation and a qualified institution which issues NWCs to the Corporation.

The Board's policy objectives include using the net-worth assistance program to deter thrift institutions from increasing the Corporation's risk of loss on its insurance liability to insured depositors and account holders. The Board hopes to realize this objective by increasing the amount of assistance available to improve the net-worth condition of thrift institutions insured by the Corporation while requiring the Corporation to review more carefully such institutions' operating losses in order to exclude from the amount of available assistance all losses attributable to management's pursuit of speculative or high-risk strategies that involve unsafe or unsound practices or other violations of regulatory restraints.

In making the regulatory changes reflected in this final rule and in considering related non-regulatory changes in the net-worth assistance program, the Board also anticipates that the program is more likely to enable the Corporation to avoid alternative supervisory actions with respect to insured thrift institutions that would result in more immediate and substantial depletion of the Insurance Fund.

Although not a subject of this final rule, extension or other modification of the Corporation's Appraised Equity Capital rule, § 563.13(c) of the Regulations for the Corporation ("Insurance Regulations"), 12 CFR 563.13(c) (1983), which currently will expire as of December 31, 1985, is under review by the Board's staff. Pursuant to § 572.2(c) of the Insurance Regulations, as amended, the Board has elected to continue to require that thrift institutions participating in the net-worth assistance program include appraised equity capital in their regulatory net worth as permitted by § 563.13(c) of the Insurance Regulations.

II. Regulatory Amendments

A. Amount of Assistance

The Board has amended paragraph (d) of § 572.1 of the Insurance Regulations to remove the distinction between the maximum amount of NWCs which the Corporation may purchase initially from a qualified institution and the maximum amount it may purchase after its initial purchase. This change is accomplished by the deletion of paragraph (d)(2) from § 572.1 and the deletion of paragraphs (b) and (i) from § 572.2. The distinction made under the prior rule derived from the Board's judgment that an institution's operating losses might well be higher prior to the institution's undertaking to comply with the operating restrictions required as a condition to the Corporation's purchase of NWCs. While removing the distinction, the Board will continue to require careful review of an institution's operating losses. Pursuant to paragraph (f) of § 572.1, losses attributable to mismanagement will be excluded in the Corporation's calculation of the maximum permissible amount of NWCs it may purchase.

The Board also has amended paragraph (d) of § 572.1 to simplify the method of calculating the maximum amount of NWCs the Corporation may purchase. Under the rule, as amended, if the Corporation exercises its discretion to purchase NWCs from a qualified institution, it shall purchase NWCs equal to 70% of a qualified institution's operating losses subject to the limitations and other provisions of Part 572. The deletion of paragraph (d)(3) and the revision of paragraph (d)(1) of § 572.1 remove the prior method of calculation that reduced the purchase of NWCs by the Corporation as institutions' net worth approached 3% and that required one or more recalculations of an institution's net worth to determine the ultimate maximum amount of NWCs the Corporation might purchase. While the prior rule closely tracked section 406(f)(5)(E) of the National Housing Act ("NHA"), as amended by the DIA, this final rule facilitates the efficient administration of assistance under the net-worth assistance program, and section 406(f)(5)(F) of the NHA, as amended by the DIA, gives the Corporation discretion to alter the method of calculation suggested in section 406(f)(5)(E).

B. Losses Attributable to Mismanagement

The Board has amended paragraph (f)(1) of § 572.1 of the Insurance Regulations to further clarify the types of mismanagement which the Corporation would consider in determining the amount of NWCs it would purchase from an institution. The illustrations stated in the second sentence of paragraph (f)(1) of § 572.1 have been expanded to make clear that mismanagement resulting in any action or inaction constituting a violation of law or an unsafe or unsound practice, as determined by the Corporation, shall result in a reduction in the amount of NWCs purchased by the Corporation. Enhancement of the Corporation's ability to identify losses attributable to mismanagement will be pursued through revisions to the program's application documents and procedures.

C. Corporate Authorization of Issuance of NWCs

The Board has amended paragraph (i) of § 572.1 to remove the requirement of stockholder approval of a stock institution's issuance of NWCs to the Corporation. Pursuant to paragraph (h)(3) of § 572.1, the Corporation will continue to require a certification that the NWCs have been validly authorized by all necessary corporate action.

The Board has reconsidered the necessity for the stockholder approval requirement in the prior rule, and has determined that under section 406(f)(5)(A) of the NHA, as amended by the DIA, the Corporation may authorize qualified institutions to issue NWCs by corporate action prescribed by the Corporation. The Board has further determined that the stockholder approval requirement in the prior rule created a substantial deterrent to the participation by stock institutions in the Corporation's net-worth assistance program due to the time, organizational effort, and disclosures required to obtain such approval. The costs of compliance with the requirement were potentially substantial, particularly for the publicly held stock institutions with a substantial number of stockholders. Furthermore, the requirement's deterrent effect upon stock institutions' entry into the program prevented the institutions' stockholders from realizing the benefit of the program's support of the institutions' continued viability.

The Board recognizes that, due to the priority in liquidation of the Corporation's claims under NWCs over stockholders' claims provided by section 406(f)(5)(A)(iv) of the NHA, as amended by the DIA, and the dividend restriction that applies to qualified institutions with NWCs outstanding pursuant to section 406(f)(5)(M) of the NHA, as amended by the DIA, the board of directors of a qualified stock institution may choose to authorize the issuance of NWCs subject to the approval of the institution's stockholders. This final rule does not preclude such action; it, however, leaves to the board of directors the determination to take such action.

If the board of directors of a qualified institution determines to seek stockholder approval to authorize the issuance of NWCs, the Corporation will not purchase NWCs from the institution until such approval is obtained.

The revision of paragraph (i) of § 572.1 addresses the corporate authorization of issuance of NWCs by stock and mutual institutions, whether federally or state chartered. In conformance with the above-described amendments to paragraph (i), the Board has amended Part 572 by deleting § 572.10 and paragraph (h)(4) of § 572.1 and by revising paragraph (a)(2) of § 572.1.

In a related change, the Board has amended paragraph (b)(7) of § 552.4 of the Regulations for the Federal Savings and Loan System ("Federal Regulations") to remove the pre-approved amendment to federal stock charters that, upon adoption, permitted board-of-director authorization of issuance of NWCs without prior stockholder approval. This amendment to the Federal Regulations does not, as discussed above, preclude approval of such a charter amendment.

D. Other Changes

The Board has amended paragraphs (c), (e), and (f) of § 572.1 of the Insurance Regulations to cure a technical deficiency in the prior rule. The amendment clarifies that all purchases of NWCs by the Corporation from qualified institutions, whether or not pursuant to a prior commitment based on the Corporation's initial determination of eligibility pursuant to § 572.3(i), are subject to the general restrictions and limitations of paragraphs (e) and (f) of § 572.1. The Board has amended paragraph (g)(1) of § 572.1 to cure a similar deficiency. The amendment clarifies that the net worth maintenance obligation of a holding company or majority stockholder takes account of any commitment by the Corporation to purchase NWCs that may be included in a qualified institution's regulatory net worth.

The Board has amended paragraph (e)(3) of §571.1 to illustrate more clearly the basis upon which the Corporation would be likely to find that a significant supervisory problem existed that justified the Corporation's refusal to purchase NWCs from an institution. The change is designed to make the illustrations given in the paragraph's first sentence more clearly indicative of a significant supervisory problem.

The Board has amended paragraph (a) of § 572.1 to add a new paragraph (a)(3) that provides for the prospective effect of the amendments to Part 572 that the Board has adopted pursuant to this final rule. Purchases by the Corporation of NWCs consummated prior to the effective date of these amendments are unaffected by the rule's changes.

The Board has amended paragraphs (d), (e), (f), and (h) of § 572.2 of the Insurance Regulations to conform Part 572 with the changes in financial reporting requirements implemented pursuant to Board Resolution No. 83–576, dated October 24, 1983, 48 FR 50955 (1983). The change substitutes the quarterly Financial Report for the Semiannual Report as the means of identifying an institution's operating losses. The Board also has amended § 572.3 to add a new paragraph (n) that indicates that institutions with fiscal years ending on a date other than the close of a calendar quarter nevertheless will use the Quarterly Financial Report to identify their operating losses for the purposes of Part 572.

The Board also has amended paragraphs (e) (1) and (3) of § 572.2, as amended, to take account of the continuing participation by some qualified institutions in the net-worth assistance program and the effect of section 406(f)(5)(J) of the NHA. If the Corporation has purchased NWCs from a qualified institution, that purchase will increase the institution's equity capital for the purpose of determining compliance with paragraph (e)(1) of § 572.2. In determining compliance with paragraph (e)(3) of § 572.2, the Corporation will take account of the purchase of NWCs that a qualified institution has requested as of the end of its most recent applicable period but the Corporation has not yet consummated.

The Board has amended paragraphs (a) and (b) of § 572.3 to remove the prior reference to Forms 1286 and 1287. These forms will be replaced by a single form.

The Board has amended paragraphs (a) and (e) of § 572.5 to distinguish more clearly between the Corporation's initial determination of eligibility pursuant to § 572.3(i) and its determination pursuant to paragraphs (g) and (h) of § 572.3. Notwithstanding the initial determination provided by § 572.3(i), an institution, pursuant to § 572.3(a), still must file an application form to report actual operating losses incurred during the period in which an initial determination was made. The Corporation's determination following receipt of the application form would be subject to the appeal procedure of § 572.5, as would any other determination made pursuant to paragraphs (g) and (h) of § 572.3.

Regulatory Analysis

The elements of regulatory analysis for major regulations required by Board Resolution No. 80–584, dated September 11, 1980, have been incorporated into the supplementary information contained herein.

List of Subjects in 12 CFR Parts 552 and 572

Savings and loan associations.

The Board finds that observance of the notice and comment period pursuant to 5 U.S.C. 553(b) and 12 CFR 508.12, and the delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is unnecessary, because it is in the public interest for the Board's program of net-worth assistance, as revised by these amendments to that program, to take effect at the earliest feasible time and these amendments to that program promote a more efficient administration of the program and are to the benefit of participants in the program.

Accordingly, the Board hereby amends Part 552 of Subchapter C, and amends Part 572 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

§ 552.4 [Amended]

1. Amend § 552.4 by removing paragraph (b)(7) thereof.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

2. Revise Part 572, as follows (the entire part, including unchanged provisions, is reprinted here for the benefit of the reader):

PART 572—NET WORTH CERTIFICATES

Sec.
572.1 Purchase of net worth certificates.
572.2 Definitions.
572.3 Application for Corporation purchases of net worth certificates.
572.4 Delegations.
572.5 Right to appeal.
572.6 Effect of Corporation purchase of net worth certificates.
572.7 Dividends.
572.8 Branching.
572.9 Transactions with holding company.
572.10 Board statutory authority.

Authority: Secs. 401, 403, 405, 406, and 407, 48 stat. 1255, 1256, 1257, 1259, and 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1728, 1729, and 1730); secs. 2 and 5, 48 stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); Reorg. Plan No. 3 of 1947, 3 CFR 1943–1948 Comp., p. 1071.

§ 572.1 Purchase of net worth certificates.

(a) *General.* (1) Title II of the Garn-St Germain Depository Institutions Act of 1982 (the "DIA"), Pub. L. 97–320, 96 Stat. 1493, (October 15, 1982), amends section 406(f) of the National Housing Act ("NHA"), 12 U.S.C. 1729(f), to authorize the Corporation, in its sole discretion and on such terms and conditions as it may prescribe, to increase or maintain the capital of a qualified institution by making periodic purchases of net worth certificates ("NWCs") for such form of consideration as the Corporation may determine.

(2) This section explains the Corporation's program for the purchase of NWCs from qualified institutions pursuant to the DIA authority. The other sections of this part specify the procedures for a qualified institution to request that the Corporation purchase NWCs, govern action by the Corporation on such a request, define pertinent terms, and place certain limitations on an institution having outstanding NWCs.

(3) All purchases of NWCs by the Corporation, including purchases made pursuant to commitments issued by the Corporation in accordance with § 572.3(i) of this part, that are made after September 4, 1984, shall be made in accordance with the terms and conditions specified in this part.

(b) *Purchase of NWCs.* Except as otherwise specified in paragraph (c) of this section, the Corporation will only consider the purchase of NWCs from a "qualified institution", as defined in § 572.2 of this part, that requests such purchase by compliance with the application procedure specified in § 572.3 of this part and only on the basis of that institution's operating losses for the applicable period as to which an application is timely filed. If the Corporation approves an application under § 572.3, it may purchase NWCs from the qualified institution in exchange for promissory notes ("FSLIC Notes") in the appropriate amount as determined by the Corporation. Both the NWCs and the FSLIC Notes will be in forms satisfactory to the Corporation, and will contain such terms and conditions as the Corporation determines to be appropriate under the particular circumstances involved. The Corporation retains sole discretion regarding whether or not to purchase NWCs from an institution, the amount of NWCs which it may purchase, and any terms and conditions it may impose in connection with a purchase of NWCs.

(c) *Commitment to purchase NWCs.* (1) If the Corporation determines in accordance with § 572.3(i) of this part that an institution is eligible to sell to the Coporation NWCs allocable to operating losses for the applicable period during which the institution files an application pursuant to § 572.3, the Corporation is committed to purchase, subject to paragraph (e) of this section, that amount of NWCs determined in accordance with paragraphs (d) and (f) of this section.

(2) This commitment exists so long as the institution remains a qualified institution and its amount is calculated and adjusted as appropriate on a month-to-month basis during the appropriate applicable period. Actual purchases will be made on the basis of the results of an applicable period. The amounts of a monthly commitment or monthly operating losses not covered by a commitment that result from the minimum purchase of rounding procedures shall be taken into account in subsequent months and appropriate adjustments made.

(d) *Maximum amount of NWCs*—(1) *General.* The maximum amount of NWCs which the Corporation may purchase from a qualified institution will be based on that institution's (i) operating losses for an applicable period, as defined in § 572.2, and (ii) ratio of equity capital as of the end of the applicable period, as defined in § 572.2, to total assets. If the Corporation determines to purchase NWCs from a qualified institution, it shall purchase NWCs equal to 70% of operating losses subject to the limitations and other provisions of this part.

(2) *Limitations.* (i) The Corporation will not purchase any NWC subsequent to October 15, 1985.

(ii) The Corporation will not purchase NWCs in an amount which causes an institution's ratio of equity capital to total assets to exceed 3 percent.

(iii) The corporation will not purchase NWCs applicable to operating losses for an applicable period if the amount to be purchased under the calculation would be less than $25,000, except that the Corporation may purchase the $25,000 minimum amount if the purchase amount calculated pursuant to paragraph (d)(1) of this section would increase the institution's ratio of equity capital to total assets from an amount less than 0.5 percent to an amount greater than 0.5 percent.

(iv) Purchase will be rounded to the nearest $25,000, except that (A) if the rounding procedure would cause the institution's ratio of equity capital to total assets to be reduced from an amount in excess of 0.5 percent to less than 0.5 percent, the amount purchased will be rounded to the next higher $25,000 multiple, or (B) if the rounding procedure would cause the institution's ratio of equity capital to total assets to be increased to an amount in excess of 3 percent the amount purchased will be rounded to the next lower $25,000 multiple.

(v) Notwithstanding paragraph (d)(2)(iii) of this section, if an institution qualifies for capital assistance for two consecutive applicable periods, but would be excluded from the Corporation's purchase of NWCs because of the $25,000 minimum limitation, the Corporation may purchase NWCs as of the end of that second applicable period on the basis of the cumulative amount for the pertinent applicable periods.

(e) *Restrictions on NWC purchases.* Even if an institution is a qualified institution, as defined in § 572.2, and has operating losses for an applicable period, the Corporation may exercise its discretion not to purchase any NWCs from that institution pursuant to the DIA authority in the following circumstances.

(1) *Cost.* The Corporation may refuse to purchase NWCs if it determines in its sole judgment that such purchase would be costlier to it than alternative transactions available to the Corporation or the institution. Alternative available transactions would include a liquidation of the institution (including the paying of insured accounts), transactions committed to the discretion of the Corporation in accordance with sections 406(f)(1), (2), or (3) of the NHA, or mergers or supervisory conversions available to the institution which would eliminate or significantly reduce the institution's need for capital assistance under the DIA authority. In making this determination of relative cost, the Corporation will consider the net present-value cost to it of all projected purchases of NWCs which would be made under the criteria of this part and alternative transactions or liquidation. The Corporation delegates to the Director of the Federal Home Loan Bank Board's ("Board") Office of the Federal Savings and Loan Insurance Corporation, or his designee, with the concurrence of the General Counsel, or his designee, the authority to determine whether an alternative is less costly than the Corporation's purchase of NWCs under the DIA authority.

(2) *Pending insolvency.* (i) The Corporation may refuse to purchase NWCs from an institution if it determines in its sole judgment that, after giving effect to the proposed purchase of NWCs by the Corporation, that institution would be "insolvent" within six months from the proposed date of purchase. For this purpose, "insolvent" means zero or less equity capital. The fact that the pending "insolvency" of an institution is determined by the FSLIC does not mean either that the FSLIC will or will not grant assistance to that institution under its traditional authority. The FSLIC will exercise its discretion as to such assistance in light of the existing circumstances. Similarly, the fact that an institution reaches a zero equity-capital level does not mandate that the FSLIC take immediate supervisory action. The FSLIC will evalatue its responsibilities at the time, particularly in light of its determination regarding the safety and soundness of the institution.

(ii) Prior to a determination by the Corporation that it will not purchase NWCs from an institution on the basis of the institution's pending insolvency within six months, the Director of the Board's Office of Examinations and Supervision ("OES") or his designee will make an initial determination of pending insolvency and in doing so may project future results of operations on the basis of the average of the results of operations from the institution's most recent three months required to be reported to the Corporation, or on the basis of other criteria deemed reasonable by the Corporation, and will issue to the institution a Preliminary Notice of Pending Insolvency. This Preliminary Notice becomes a final "determination of insolvency within six months" by the Corporation unless within 15 business days after the date of the Preliminary Notice the institution shall submit to the Corporation three copies of a detailed financial analysis, including plans and projections for the institution, which demonstrates that the institution will not be insolvent within six months. This analysis shall be submitted to OES.

(3) *Supervisory problem.* The Corporation may refuse to purchase NWCs from an institution which has failed to satisfy the Corporation concerning a significant supervisory problem, including the failure by an institution to (i) comply with an agreement with the Corporation, or a written request by its Supervisory Agent

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or the Corporation relating to a continuing violation of law, statute, or rule or regulation or an unsafe or unsound practice, or (ii) correct a matter that is the subject of a cease-and-desist order. The Corporation may consider that a supervisory problem under a plan acceptable to the Corporation for the complete resolution of that supervisory problem.

(4) *Business plan.* The Corporation may refuse to purchase NWCs from an institution unless the institution adopts a business plan satisfactory to the Corporation which demonstrates a reasonable probability that the institution will be able to redeem the NWCs. The business plan shall be submitted as part of the application for Corporation purchases of NWCs required by § 572.3, but need not be submitted until the Corporation has issued a preliminary notice of intent to purchase NWCs.

(f) *Reduction of NWC purchases.* The maximum amount of NWCs which the Corporation may purchase from an institution will be reduced in the following manner:

(1) The amount of an institution's operating losses used to calculate the maximum amount of NWC purchases will be reduced by the amount of any losses determined by the Corporation to have been occasioned by mismanagement, by speculation in futures or forward contracts, or by management actions designed for the purpose of obtaining assistance. Mismanagement shall include, but not be limited to, any action which violates a previous agreement with the Corporation or a business plan previously submitted to the Corporation in connection with a purchase of NWCs and any action or inaction which the Corporation determines in its sole judgment constitutes a violation of law or unsafe or unsound practice or practices.

(2) The maximum amount of NWC purchases calculated on the basis of actual operating losses will be reduced by 80 percent of the amount by which the institution's operating expenses exceed the amount that would have been the institution's operating expenses if such expenses, expressed as a percentage of total assets, equaled the mean operating expenses, similarly expressed, of its peer group plus 10 percent of that mean. This reduction will not be made by the FSLIC, however, if the institution demonstrates that its higher-than-peer-group operating expenses are justified in light of its particular circumstances.

(g) *Holding companies.* (1) The Corporation may purchase NWCs under the criteria of this part from a qualified institution that is controlled by a holding company or majority stockholder who has entered into an agreement with the Corporation to maintain the net worth of the institution at a specified level. Under these circumstances the holding company or majority stockholder will be required, as a condition to the Corporation's purchase, to infuse sufficient capital in excess of the Corporation's NWC purchase and commitment to purchase so as to increase the institution's regulatory net worth to the agreed-upon level.

(2) Where a "qualified institution" is controlled by another savings and loan or savings bank institution, the Corporation may consider the purchase of NWCs on the basis of the consolidated equity capital and operating results of the qualified institution together with its parent and any other institutions controlled by the parent.

(h) *Requests for Corporation purchase of NWCs.* (1) A qualified institution may request that the Corporation purchase NWCs from it by complying with the application procedure specified in § 572.3.

(2) A State-chartered institution shall file copies of its application with its State supervisory authority as required by § 572.3 and request that that State supervisor submit to the Principal Supervisory Agent, within 15 days after the application is filed with the Corporation, a certification regarding whether or not (i) the State supervisor objects to the Corporation's purchase of NWCs from the institution, and (ii) the institution is a qualified institution. If the State supervisor formally objects, he may furnish the Principal Supervisory Agent a written explanation of the reasons for his objection. The Corporation will consider the views of the State supervisor submitted in a timely manner, but will not be bound by those views.

(3) All institutions requesting that the Corporation purchase NWCs must be validly authorized to issue those NWCs to the Corporation in exchange for FSLIC Notes. To ensure that valid authorization, the forms required by § 572.3 will require an appropriate certification by the board of directors of the institution. This certificate may be filed by amendment after the Corporation has issued a preliminary notice of intent to purchase athe institution's NWCs.

(4) The burden of validly authorizing the issuance of NWCs to the Corporation rests solely upon the institution and its counsel. Unless challenged or unless there is reason to question the validity of the proposed issuance of NWCs, the Corporation will rely upon the requisite certification by the institution's board of directors in this regard.

(i) *Corporate authorization.* A qualified institution, whether Federally or State chartered and whether a mutual or stock institution, is authorized to issue NWCs to the Corporation upon appropriate resolution of the institution's board of directors and without the prior approval of the institution's stockholders or withdrawable-account holders or depositors.

(j) *Effect on regulatory net worth.* 12 U.S.C. 406(f)(J), as adopted by the DIA, states that "[n]otwithstanding any other Federal or State law, net worth certificates purchased by the Corporation under this paragraph shall be deemed to be net worth for statutory and regulatory purposes." Accordingly, NWCs when purchased by the Corporation under the DIA authority shall constitute an item of the issuing institution's regulatory net worth as defined in § 561.13 of this subchapter. In addition, NWCs which the Corporation is committed to purchase in accordance with paragraph (c) of this section constitute regulatory net worth as defined in § 561.13. This permits the inclusion of outstanding NWCs and those which the Corporation is committed to purchase in the institution's calculation of its reserves and net worth for purposes of paragraphs (a) and (b) of § 563.13.

(k) *State-fund-insured institutions.* A savings and loan association the accounts of which are insured or guaranteed under State law rather than by the Corporation may be a "qualified institution" as that term is defined in § 572.3. Accordingly, it may request the Corporation to purchase NWCs pursuant to § 572.3 if arrangements satisfactory to the Corporation are made by the State-fund-insured institution and its State insurance fund (the "State Fund") to satisfy the following conditions:

(1) The State Fund agrees to indemnify the Corporation for any losses the Corporation may incur as a result of purchasing NWCs from a State-fund-insured institution, including any cash outlays for interest or principal on a FSLIC Note as they are made, and any lost opportunity costs. Such agreement must include a commitment by the State Fund to use its assessment authority over all institutions the accounts of which are insured or guaranteed by it for the purpose of funding this indemnification obligation.

(2) The State Fund (i) agrees to furnish collateral satisfactory to the Corporation to guarantee fulfillment of the indemnification obligation, (ii) obtains the separate agreement of each insured institution the accounts of which are insured by the State Fund to indemnify the Corporation in the event the State Fund does not fulfill the indemnification obligation, or (iii) obtains a guarantee of the indemnification obligation by a person satisfactory to the Corporation.

(3) The State Fund agrees that, during any period when a qualified institution the accounts of which it insures has outstanding NWCs purchased by the Corporation pursuant to this DIA authority, it will establish and maintain a level of assessment on all of its members which results in costs to its members which are at least equivalent to the premium assessment paid to the Corporation by the Corporation's insured institutions during such period.

(4) The State Fund agrees not to impose requirements on State-fund-insured institutions with outstanding NWCs which are inconsistent with the terms and conditions established by the Corporation in connection with its purchase of NWCs from a State-fund-insured institution.

(5) The State Fund agrees to provide to the Corporation, upon its request, full and complete information regarding a State-fund-insured institution's management, financial condition and results of operations, business operations, and compliance with laws and regulations, to the extent such information is available to the State Fund.

(6) The State-fund-insured institution agrees that, during any period when it has outstanding NWCs purchased by the Corporation, it will be governed by all rules and regulations of the Board or other Federal regulatory authority, including examination authority and reporting requirements, which are applicable to insured institutions.

§ 572.2 Definitions.

This section defines the following terms for the purposes of this part:

(a) "Applicable period" means a semiannual fiscal-year period of a qualified institution ended subsequent to September 30, 1982, and prior to October 1, 1985.

(b) "Net worth certificate" or "NWC" means a certificate in the form acceptable to the Corporation issued by a qualified institution to the Corporation in accordance with the provisions of this part, except that with regard to a Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation ("FDIC"), NWC means a certificate issued by that institution to the FDIC in accordance with regulations, policies, or procedures of that agency pursuant to the authority granted by Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469. Any NWC issued by an FDIC-insured institution in accordance with those FDIC procedures shall be deemed to be issued in accordance with the provisions of this part, unless otherwise stated by the Corporation in written form to the institution.

(c) "Equity capital" of an institution means regulatory net worth as defined in § 561.13 of this Subchapter, including any amount of appraised equity capital, as defined in § 563.13(c) of this subchapter, which the institution would be permitted to include in its regulatory net worth, plus savings accounts pledged pursuant to an agreement acceptable to the Corporation.

(d) "Operating losses" of an institution means the total amount of the institution's operating income less the total amount of all of its operating expenses and interest (dividend) charges as reported to the Corporation in accordance with the "Instructions For the Quarterly Financial Report of the Industry Condition Report System"; *provided*, that such operating losses shall be reduced, for institutions that have outstanding NWCS, by expenses otherwise included in operating expenses which are attributable to the payment of, or provisions for, State or local taxes which are determined on the basis of the amount of deposits held by the institution or the interest paid on such deposits.

(e) "Qualified institution" means an "insured institution" as that term is defined in § 561.1 of this subchapter or a State-fund-insured institution which institution and its State Fund have entered into agreements satisfactory to the Corporation regarding indemnification of the Corporation, equivalent level of assessments, and equivalent regulatory standards, which institution as of the end of it most recent applicable period:

(1) Has equity capital of 3 percent or less of its total assets before giving effect to any purchase of NWCs not consummated by the Corporation;

(2) Has incurred operating losses for its most recent applicable period, net of losses which are the result of speculation in futures or forward contracts, management action designed solely for the purpose of qualifying for Corporation purchase of net worth certificates, or excessive operating expenses;

(3) Will have equity capital of at least 0.5 percent of its total assets, after giving effect to the Corporation's purchase of NWCs that has been requested but not consummated and that is based on operating losses for the applicable period;

(4) Has investments in residential mortgage loans or securities backed by such mortgage loans aggregating not less than 20 percent of its total outstanding loans; and

(5) Agrees to comply with all the terms and conditions established by the Corporation in connection with its purchase of NWCs.

(f) "Quarterly Financial Report" means Federal Home Loan Bank Board Form 1313 effective as of January, 1984, as it may be amended.

(g) "State-fund-insured institution" means an institution substantially equivalent to an "insured institution" as that term is defined in § 561.1 except that its accounts are insured or guaranteed under State law rather than by the Corporation. The State insurance or guarantee shall be termed the State Fund.

(h) "Total assets" of an institution means the total amount of assets net of contra-asset accounts reported by the institution to the Corporation in accordance with the "Instructions For The Quarterly Financial Report of the Industry Condition Report System".

§ 572.3 Application for Corporation purchases of net worth certificates.

(a) A qualified institution may request that the Corporation purchase NWCs issued by the institution by filing an application with the Corporation. The form and content of the application shall be as prescribed by the Corporation.

(b) The qualified institution shall file two copies of the application with its principal Supervisory Agent and one copy with the Office of Examinations and Supervision ("OES"), Federal Home Loan Bank Board, Washington, D.C. The application shall be deemed to be filed on the date received by the Principal Supervisory Agent, provided that the copy required to be filed with OES has been sent or given by that date. In addition, a State-chartered institution shall file three copies of its application with its State supervisory authority and request that State supervisor to submit to the Corporation, within 15 business days after the application is filed with the Corporation, a certification regarding whether or not (1) the State supervisor objects to the Corporation's purchase of NWCs in accordance with the provisions of this part, and (2) the application is a qualified institution. The certification by the State supervisor is to assist the Corporation in its determination and is not binding on the Corporation.

(c) An application must request that the Corporation purchase NWCs from a qualified institution on the basis of that institution's operating losses for an applicable period, and shall be filed no later than the later of March 1, 1983, or 30 days after the close of that applicable period.

(d) In addition to requesting that the Corporation purchase NWCs from the institution based on operating losses for the applicable period immediately preceding the filing of the application, the application shall be deemed to request, unless otherwise specified, that the Corporation purchase NWCs from the institution on the basis of its operating losses for the current applicable period.

(e) A qualified institution may request that the Corporation purchase NWCs in an amount less than the Corporation would be willing to purchase.

(f) if an application is acceptable to the Corporation with regard to the applicable period immediately preceding the date of its filing, then the Corporation will issue to the applicant a preliminary notice of an intent to purchase a specified amount of NWCs. Within 45 days after the date of this preliminary notice, the institution shall amend its application to submit any items not previously included, *e.g.*, the certification by the board of directors regarding authority to issue NWCs, or a business plan, and shall submit executed copies of the NWC governing documents.

(g) The corporation will notify the applicant regarding any change in the corporation's preliminary decision, set forth in the preliminary notice, as a result of the additional information submitted by the applicant to complete its application.

(h) If the Corporation finds unacceptable an application pertaining to the applicable period immediately preceding the date of its filing, the Corporation will issue to the applicant a notice of determination not to purchase NWCs.

(i) In addition to determining whether to purchase NWCs based on the applicable period immediately preceding the filing of an application, the Corporation, unless requested not to do so, will make an initial determination regarding the applicant's eligibility to sell NWCs to the Corporation based on operating losses for the current applicable period (*i.e.*, the period during which the application is filed), and will notify the applicant regarding this determination. If an initial determination of eligibility regarding such current period is made by the Corporation, the Corporation will be committed to purchase NWCs allocable to such current applicable period as provided in § 572.1(c) of this part.

(j) The Corporation retains the right to waive, upon a showing of good cause, any of the requirements of this part regarding this timeliness of submissions.

(k) Each application filed by an institution under this part constitutes an offer for the sale of NWCs to be issued by the applicant to the Corporation. Each application will be separately considered.

(l) Purchase by the Corporation of NWCs from an institution as a result of operating losses during one applicable period does not create any right or entitlement in the institution to require the Corporation to purchase NWCs on the basis of operating losses for a different applicable period.

(m) Except as otherwise specified in § 572.1(c) of this part, a qualified institution that applies for Corporation purchase of NWCs does not become entitled to require any such purchase.

(n) Each applicant which has a fiscal year that closes on a date other than the close of a calendar quarter shall submit with its application completed Sections A through E of the Quarterly Financial Report for each of the three-month periods included within the applicable period that the application covers.

§ 572.4 Delegations.

The Corporation delegates all of its authority regarding its actions under this part, not specifically delegated to another member of its staff in § 572.1 of this part, to the Director of the Office of Examinations and Supervision ("OES") of the Federal Home Loan Bank Board (the "Board"), or his designee, who may include the Principal Supervisory Agent; except that no alteration may be made in the standard form of NWC or promissory note of the Corporation prescribed by the Board's General Counsel without the concurrence of the Board's General Counsel or his designee.

§ 572.5 Right to appeal.

(a) Within 15 business days after the date of a final notice issued pursuant to delegated authority announcing the Corporation's intent regarding the purchase of NWCs from an institution, that institution may petition the Board for its consideration of the NWC purchase request. The petition must explain in detail the reason(s) for the institution's belief that the decision made pursuant to delegated authority was inappropriate.

(b) Upon the filing of an appeal petition, as provided for in paragraph (a) of this section, regarding an action taken pursuant to delegated authority, the Director of OES shall either overrule the action and accede to the action requested by the appeal, or submit the matter to the Board for its consideration of the request on the basis of the petition, the application and related documents, including, if applicable, the institution's detailed financial analysis submitted in response to a Preliminary Notice of Pending Insolvency as described in § 572.1 of this part, and any other information which OES or the Board's Office of General Counsel deems appropriate to submit. The Board will not entertain any oral arguments on behalf of the institution.

(c) Notwithstanding the provisions of paragraph (a) of this section, an institution shall not petition the Board and the Board will not consider any appeal of a denial to purchase NWCs on the basis of a final determination of pending insolvency if the institution has failed to submit the requisite financial analysis in response to a Preliminary Notice of Pending Insolvency.

(d) No person other than an applicant under § 572.3 of this part has a right to request Board consideration of Corporation action under this part affecting that applicant, or otherwise to protest that Corporation action. In particular, no person other than the applicant shall have any right to protest a decision by the Corporation: (a) To purchase or decline to purchase NWCs, or (b) regarding the comparative cost of a purchase of NWCs as opposed to alternative remedies.

(e) There is no right to appeal an initial determination by the Corporation pursuant to § 572.3(i) of this part that an applicant is not eligible to sell NWCs based on operating losses for the applicable period during which the application is filed.

§ 572.6 Effect of Corporation purchase of net worth certificates.

Unless expressly provided for by contract, the purchase by the Corporation of NWCs from an institution under the provisions of this part:

(a) imposes no obligation whatsoever on the Corporation to provide any other form of financial assistance to the issuing institution;

(b) does not release, alter, amend, or otherwise affect any outstanding agreement between the issuing institution and the Corporation;

(c) does not limit, restrict, alter, restrain, or otherwise affect the supervisory and regulatory powers, duties, and responsibilities of the Corporation; and

(d) does not waive or grant a forbearance from the enforcement of any provision of law or regulation.

§ 572.7 Dividends.

During any period in which an institution which is organized in stock form has outstanding NWCs issued in accordance with the provisions of this part, such institution shall not pay dividends to its stockholders.

§ 572.8 Branching.

(a) No institution which has outstanding NWCs issued in accordance with the provisions of this part shall establish a new branch office or, without the prior written approval of the Director of the Board's Office of Examinations and Supervision or his designee, who may include the Principal Supervisory Agent, relocate an existing branch office.

(b) Notwithstanding paragraph (a) of this section, the Corporation may in its discretion grant prior written approval for the opening of new offices by an institution which has NWCs outstanding if the existence of those outstanding NWCs results from a business combination whereby the institution acquired another institution that had NWCs outstanding.

§ 572.9 Transactions with holding company.

No institution which has outstanding NWCs issued in accordance with the provisions of this part shall enter into a new contract or modify an existing contract with its parent holding company or an affiliate thereof, without the prior written approval of the Director of the Board's Office of Examinations and Supervision or his designee, who may include the Principal Supervisory Agent.

§ 572.10 Board statutory authority.

(a) Notwithstanding the other provisions of this part, the Board retains the right to authorize the Corporation to purchase NWCs from an institution in accordance with the authority granted by Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469. A purchase effected pursuant to this section shall be subject only to such terms and conditions as are specified by the Board.

(b) The delegation of authority set out in § 572.4 of this part is not applicable to a purchase of NWCs effected in accordance with this section.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84–23356 Filed 8–31–84; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–ASO–13]

Designation of Transition Area, Monroe, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Monroe, Georgia, transition area to accommodate Instrument Flight Rule (IFR) operation at the Monroe Municipal Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the Monroe Non-directional Radio Beacon (NDB), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

EFFECTIVE DATE: 0901 G.m.t., October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Specialist, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 27, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Monroe, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Monroe Municipal Airport (49 FR 26253). The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. All comments received were favorable. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Monroe, Georgia, transition area to accommodate IFR aeronautical operations in the vicinity of Monroe Municipal Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

PART 71—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Monroe, Georgia, transition area is designated under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended), effective 0901 G.m.t., October 25, 1984, as follows:

Monroe, GA [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Monroe Municipal Airport (Lat. 33°46′57″N., Long. 83°41′31″W.); within 3 miles each side of the 212° bearing from the Monroe RBN (Lat. 33°44′15″N., Long. 83°43′37″W.) extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN; excluding that portion which coincides with the Covington transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amemdments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air naviagtion, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 10, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84–23281 Filed 8–31–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 84-ACE-09]

Designation of Transition Area; Eureka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Eureka, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Eureka Municipal Airport, Eureka, Kansas, utilizing the Emporia, Kansas VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR .

EFFECTIVE DATE: October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Eureka, Kansas, Municipal Airport utilizing the Emporia, Kansas, VORTAC as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Eureka, Kansas, at or above 700 feet above the ground within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On Pages 26601 and 26602 of the **Federal Register** dated June 28, 1984, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Eureka, Kansas. Interested Persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Airspace, Transition areas, Aviation safety.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. October 25, 1984, by designating the following transition area:

Eureka, Kansas

That airspace extending upwards from 700′ above the surface within a five-mile radius of the Eureka Municipal Airport (latitude 37°51′02″ N, longitude 96°17′33″ W) and within 1.5 miles each side of the Emporia, Kansas VORTAC. 195° radial extending from the five-mile radius area to 6 miles north/northeast of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on August 21, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-23282 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AWP-15]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule raises the upper limits of two VOR Federal Airways in the States of Arizona and California so that air traffic controllers and pilots may more effectively utilize the airspace along these routes.

EFFECTIVE DATE: 0901 G.m.t., October 25, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On June 18, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to raise the upper limits to 18,000 feet MSL along certain segments of VOR Federal Airways V-135 and V-137 (49 FR 24896). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations raises the upper limits of VOR Federal Airways: (1) V-135 from 9,000 feet MSL to 18,000 feet MSL between Bard, AZ, and Parker, CA; (2) V-137 from 10,000 feet MSL to 18,000 feet MSL between Parker, CA, and Needles, CA; and (3) V-137 from 7,000 feet MSL to 18,000 feet MSL between Imperial, CA, and a point 13 nautical miles southeast of Thermal, CA. By raising the ceilings, a significant operational advantage is gained. The advantages are: (1) Aircraft would not have to be routed fuel-depleting distances away from their planned routes in order to remain within controlled airspace; and (2) turbine powered aircraft would not be kept at the lower and fuel-inefficient altitudes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V-135 [Amended]

By removing the words "to Tonopah, excluding the airspace above 9,000 feet MSL between Bard and Parker, and the airspace above 10,000 feet MSL between Parker and Needles," and substituting the words "to Tonopah."

V-137 [Amended]

By removing the words "Salinas, CA, excluding the airspace above 7,000 feet MSL, between Imperial and the intersection of the Thermal 122° and the Julian, CA, 055° radials." and substituting the words "Salinas, CA."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 21, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-23283 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 84-AWP-5]

Realignment of Jet Route J-65, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule realigns a segment of a Jet Route in the State of California to facilitate a more efficient utilization of the airspace and conserve aviation fuel.

EFFECTIVE DATE: 0901 G.m.t., October 25, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1984, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-65 (49 FR 26602). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations moves a segment of Jet Route J-65 eastward approximately 8 miles to (1) make that route segment a more direct path between those two locations and thereby contribute to aviation fuel conservation; (2) reduce controller workload by removing the need for air traffic controllers to utilize radar vectoring and route monitoring procedures along the proposed route segment alignment; and (3) provide more airspace for high performance aircraft departing northbound from Burbank, CA, and Los Angeles, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

PART 75—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

J-65 [Amended]

By removing the words "INT Palmdale 291° and Bakersfield, CA, 149° radials;" and substituting the words "INT Palmdale 310° and Bakersfield, CA, 140° radials;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 21, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-23279 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 125

[Docket No. 23881; Amdt. 125-5]

Delay of Part 125 Applicability to Part 129 Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment to the Federal Aviation Regulations extends the date from September 1, 1984, to February 28, 1986, for foreign air carriers holding Part 129 operations specifications to comply with Part 125 of the Federal Aviation Regulations. Since the FAA has an active rulemaking project which includes a study of changes to Part 129, this action is necessary to avoid requiring foreign air carriers to comply with rules which may be revised by the FAA in the near future.

DATES: Effective Date of this amendment is August 31, 1984. Comments must be received on or before October 1, 1984.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23881, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ron Myres, Project Development Branch, (AFO-850), General Aviation and Commercial Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 426-8150.

SUPPLEMENTARY INFORMATION:

Background

Part 125 includes, in the applicability under § 125.1(e), a deferred compliance date of September 1, 1984, for foreign air carriers holding operations specifications issued under Part 129. As stated in the preamble to the adoption of Part 125 (45 FR 67214; October 9, 1980), this deferred compliance date was included because the agency was considering a regulatory project to revise Part 129, and it would not have been appropriate to subject foreign air carrriers to Part 125 requirements until the agency could determine the proper action on Part 129. Various revisions to Part 129 are now under active consideration. A rulemaking project is underway at this time, but the FAA foresees that this project and any subsequent rule changes will not be completed until after the compliance date of September 1, 1984.

The FAA is also taking into consideration that proposal of revisions to Part 129 will entail a 120-day comment period to afford all affected persons an opportunity to express their views. With this in mind, the agency has decided to extend the compliance date to February 28, 1986.

Since the deferred compliance date of September 1, 1984, in § 125.1(e) applies only to foreign air carriers holding operations specifications issued under Part 129, the extension of that date applies only to those operators. Other foreign citizen operators of U.S.-registered airplanes covered by Part 125 remain subject to that part.

Need for Immediate Adoption

The FAA is currently considering a rulemaking project to revise Parts 129 and 125 with regard to foreign air carriers. The present data for these carriers to comply with Part 125 for operation of U.S.-registered airplanes will be reached before that rulemaking project is completed. The FAA recognizes an urgent need to amend § 125.1(e) to extend the compliance date and defer imposing Part 125 requirements on these carriers until this rulemaking action is completed. Not adopting this amendment immediately would unnecessarily impose a burden, both monetarily and in terms of resource utilization, on the FAA and the concerned foreign air carriers. Therefore, I find that notice and public procedure are impracticable and contrary to the public interest. In addition, since this amendment relieves restriction, I find that good cause exists for making this amendment effective in fewer than 30 days. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address specified above. All communications received on or before October 1, 1984, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Conclusion

By extending a compliance date, this amendment allows foreign air carriers regulated by Part 129 to continue operating their U.S.-registered airplanes under that part. Thus, for the period of the extension, there is no change in their present regulatory status. Therefore, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed above, it also has been determined that the anticipated economic impact is so minimal that no regulatory evaluation is necessary.

List of Subjects in 14 CFR Part 125

Aircraft, Airplanes, Hours of work, Airports, Air traffic control, Airworthiness, Flammable materials, Cargo, Airmen, Pilots, Drugs, Narcotics, Hazardous materials, Handicapped, Children, Infants, Smoking, Air transportation, Airspace, Chemicals.

Adoption of the Amendment

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

§ 125.1 [Amended]

Accordingly, § 125.1(e) of the Federal Aviation Regulations (14 CFR § 125.1(e)) is amended effective August 31, 1984, by removing the date "September 1, 1984," and substituting the date "February 28, 1986," in place thereof.

(Secs. 313, 601 through 610, and 1102, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983); and 14 CFR 11.45)

Issued in Washington, D.C., on August 20, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 84–23430 Filed 8–30–84; 2:14 pm]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3139]

Cynex Manufacturing Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Hillside, N.J. manufacturer and seller of a power factor controller (a device claimed to reduce the amount of electricity used by any motorized electrical home appliance or tool), among other things, to cease making any enery-related claim for its product unless the claim is based on competent and reliable substantiation. The order also bars the firm from making energy-related claims using the term "up to" or words of similar import, unless a significant number of consumers can achieve the maximum levels of savings or performance claimed; and where consumers cannot reasonably foresee the major factors or conditions affecting the maximum levels of savings or performance, respondent is required to clearly and prominently disclose the class of consumers who can achieve those levels. The company is further prohibited from misrepresenting the purpose, content or conclusions of any test or study; and required to retain records substantiating claims for a period of three years.

DATE: Complaint and Order issued August 6, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/B–415–3, Brinley H. Williams, Washington, D.C. 20580 (202) 8720.

SUPPLEMENTARY INFORMATION: On Wednesday, May 23, 1984, there was published in the **Federal Register**, 49 FR 21762, a proposed consent agreement with analysis In the Matter of Cynex Manufacturing Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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[1] Copies of the Complaint and the Decision and Order filed with the original document.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleading: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170 Economizing or saving; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods: § 13.1710 Qualities and Properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Power factor controllers, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 84–23309 Filed 8–31–84; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket C–3140]

Sovereign Chemical and Petroleum Products, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Chicago, Ill. manufacturer and seller of automotive products, among other things, to cease representing that any automatic transmission fluid or motor oil possesses certain performance or quality characteristics, including any claim that a motor oil has an American Petroleum Institute (API) service classification or a Society of Automotive Engineers (SAE) viscosity, unless such claims can be substantiated by competent and reliable evidence. The manufacturer must retain representative samples of motor oil and automotic transmission fluid from its production batches and filling runs, document its sampling method, and pay for an independent laboratory to test these and other samples obtained in the marketplace. The manufacturer must also maintain records to substantiate claims covered by the order and distribute a copy of the order to all personnel with responsibility for advertising, quality control or corporate policy.

DATE: Complaint and Order issued August 8, 1984.[1]

FOR FURTHER INFORMATION CONTACT: James K. Leonard, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, Ill. 60603. (312) 353–5576.

SUPPLEMENTARY INFORMATION: On Monday, April 23, 1984, there was published in the **Federal Register**, 49 FR 17013, a proposed consent agreement with analysis In the Matter of Sovereign Chemical & Petroleum Products, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective action, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely and Misleadingly: § 13.170 Qualities or properties of product or service; § 13.175 Quality of product or service; § 13.205 Scientific and other relevant facts; § 13.245 Specifications or standards conformance. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–35 Employment of independent agencies; § 13.533–45 Maintain records. Subpart—Misbranding or Mislabeling: § 13.1170 Advertising and Promotion; § 13.1290 Qualities or properties; § 13.1295 Quality or grade; § 13.1330 Specifications or standards conformance. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1886 Quality, grade or type; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Automatic transmission fluid, Motor oil, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 84–23308 Filed 8–31–84; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3141]

Avco Financial Services, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Newport Beach, CA, finance company, among other things, to cease in connection with the collection of debts, using obscenities in conversations with debtors and third parties; threatening to use physical force or violence; improperly contacting or communicating with debtors, their friends, relatives, and employers; or engaging in any conduct that would harass, abuse or oppress a debtor or third party. The order prohibits the company from contacting consumers known to be represented by an attorney or who request in writing that the company cease communications. The order additionally requires that the company maintain a toll-free customer service telephone number; include in certain notices, a prescribed statement informing the recipient of his/her rights under federal law and of the availability of complaint resolution procedures; and resolve complaints within 90 days. The company must also maintain a plan with explicit policies and procedures for lawful debt collection practices, and

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[1] Copies of the Complaint and the Decision and Order filed with the original document.

impose disciplinary sanctions for violations.

DATE: Complaint and Order issued August 9, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Christopher Schwartz, New York Regional Office, Federal Trade Commission, 2243–EB Federal Bldg., 26 Federal Plaza, New York, NY 10278. (212) 264–1242.

SUPPLEMENTARY INFORMATION: On Tuesday, July 12, 1984, there was published in the **Federal Register**, 49 FR 31867, a proposed consent agreement with analysis In the Matter of Avco Financial Services, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed agreement, in disposition of this proceeding.

The prohibited trade practices and/or correction actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.356 Delinquent debtors. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–37 Formal regulatory and/or statutory requirements; § 13.533–45 Maintain records; § 13.533–45(c) complaints; § 13.533–45(e) correspondence; § 13.533–50 Maintain means of communication. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1440 Identity. Subpart—Threatening Suits, Not In Good Faith: § 13.2264 Delinquent debt collection.

List of Subjects in 16 CFR Part 13

Debt collection, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 84–23307 Filed 8–31–84; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3142]

Peabody Barnes, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Mansfield, Ohio manufacturer and seller of sump and sewage pumps and pump systems, among other things, to cease offering a warranty whose duration is measured from the date of manufacture, unless the warranty coverage extends for three years from the date of manufacture, or the company clearly discloses in the warranty, either the date the product was manufactured or an explanation as to how a customer can discover the date of manufacture. Any representation that a product's warranty coverage runs for a certain length of time is prohibited, unless the warranty will actually be in effect for that period. The order also requires the firm to treat every claim for warranty service made within 12 months of installation as timely, regardless of the product's date of manufacture, if the warranty document is not in compliance with this order; issue warranties that comply with the Magnuson-Moss Warranty Act; and send a notice explaining the revisions and changes in the company's warranty policy and documents to its dealers and distributors.

DATE: Complaint and Order issued June 22, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H–238, Christopher R. Brewster, Washington, D.C. 20580, (202) 523–1642.

SUPPLEMENTARY INFORMATION: On Wednesday, May 9, 1984, there was published in the **Federal Register**, 49 FR 19679, a proposed consent agreement with analysis In the Matter of Peabody Barnes, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been filed, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–37 Formal regulatory and/or statutory requirements; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Failing to Comply With Affirmative Statutory Requirements: § 13.1048 Failing to comply with affirmative requirements; § 13.1048–35 Magnuson-Moss Warranty Act. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and statutory requirements; § 13.1852–55 Magnuson-Moss Warranty Act; § 13. § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions.

List of Subjects in 16 CFR Part 13

Pump systems, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Emily H. Rock,

Secretary.

[FR Doc. 84–23306 Filed 8–31–84; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 145

Fees for Mailed Subscriptions to Weekly Advisory Calendar

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission recently proposed to establish an annual fee of $65.00 for non-media mailed subscriptions to its weekly Advisory Calendar. 49 FR 27776 (July 6, 1984). Having reviewed the public comments on the proposed fee, the Commission is now adopting the fee in final form. The Commission has decided, however, to exempt Congress, federal agencies, state and local enforcement agencies, and educational institutions, as well as the media, from paying the subscription fee. It is anticipated that the $65.00 fee will recover a substantial portion of the actual costs to the Commission in publishing and mailing its weekly Advisory Calendar.

EFFECTIVE DATE: September 4, 1984.

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[1] Copies of the Complaint and the Decision and Order filed with the original document.

[1] Copies of the Complaint and the Decision and Order filed with the original Document.

FOR FURTHER INFORMATION CONTACT: Daniel S. Goodman, Esquire, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION: Each week the Commission publishes an Advisory Calendar which includes a schedule of Commission activities, a summary of all Commission legal action, and reprints of all Commission Advisories and news releases. The Commission currently duplicates and mails the Advisory Calendar to all subscribers free of charge, at an annual cost in excess of $170,000.

On July 6, 1984, the Commission published for comment in the **Federal Register** a proposed annual fee of $65.00 for mailed subscriptions to the Advisory Calendar. This fee was designed to recover a substantial portion of the Commission's actual costs in producing and distributing the Advisory Calendar. Under the proposal, media subscriptions would be exempt from the $65.00 fee.

The Commission received four comment letters in response to its proposed fee. One commenter, representing a trade association, supported both the concept of the fee and the $65.00 amount. Two other commenters, one a professor and the other a state enforcement official, indicated that the Advisory Calendar provided useful information but that they would not be able to continue their subscriptions if the $65.00 fee were imposed. The fourth commenter, the president of a futures commission merchant, felt that the cost of informing the public of the Commission's actions should be borne by the government. He also objected to an "arbitrary" fee exclusion for the media.

Upon considering these comments, the Commission has determined to promulgate the $65.00 fee as proposed but to expand the categories of subscribers who will be exempt from the fee. In addition to media subscribers, Congress, federal agencies, state and local enforcement agencies, and educational institutions will be exempt from the annual subscription fee. By expanding the list of exempt subscribers, the Commission believes that it will substantially alleviate the concerns of those commenters who objected to the proposed fee.

The reason for excluding Congress and federal agencies from the subscription fee is to avoid one arm of the federal government charging another for its services, particularly since the subscription fees will go to the U.S. Treasury, rather than to the Commission. It is also logical to exempt state and local enforcement agencies from the subscription fee, inasmuch as these agencies assist the Commission in policing the commodities industry and need timely information about Commission activities to perform this task.

The Commission's decision to exempt educational institutions, such as public libraries and universities, and media subscribers from the subscription fee is consistent with the Commission's policy of widely disseminating information about its activities to the public through media and educational vehicles. The Commission wishes to emphasize that, contrary to the assertion of one commenter, the futures industry will not be "subsidizing" the free media subscriptions. Rather, the Commission itself will bear the costs of the exempt subscriptions, and non-exempt subscribers will pay no more than the actual cost of publishing and mailing the Advisory Calendar to them.[1]

As indicated in the supplementary information accompanying the proposed fee schedule, the $65.00 annual subscription fee will apply to all Advisory Calendars issued on or after October 1, 1984. *See* 49 FR at 27776. The fee for each subsequent fiscal year will be due by September 30 of the preceding fiscal year. Non-exempt subscribers who do not submit a $65.00 check or money order by September 30, 1984 will be removed from the Commission's mailing list. In order to enable it to start collecting subscription fees before the September 30 deadline, the Commission has determined that good cause exists for making this fee schedule effective immediately upon publication. *See* 5 U.S.C. 553(d)(3).

Individuals who wish to begin subscribing to the weekly Advisory Calendar during the middle of a fiscal year will be required to submit a check for $1.25 times the number of weeks remaining in the fiscal year. Back issues and single issues of the weekly Advisory Calendar will be available only for the charges listed in 17 CFR Part 145, Appendix B.

Regulatory Flexibility Act

The Commission has determined that the $65.00 annual subscription fee, which is designed only to recover the Commission's actual costs in publishing and mailing its weekly Advisory Calendar, is small enough that it should not have a significant economic impact on any subscriber. Moreover, the Commission notes that free access to the Advisory Calendar will be provided at the Commission's offices and at approximately 70 educational institutions. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 145

Commission records and information, Fees, Freedom of information.

Adding Appendix D to Part 145 of Chapter 1 of Title 17 of the Code of Federal Regulations.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular in sections 2(a)(11) and 8a(5), 7 U.S.C. 4a(j) and 12a(5); in section 26 of the Futures Trading Act of 1978, as amended by section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a; and in the Independent Offices Appropriation Act of 1952, as amended by Pub. L. 97–258, 96 Stat. 1051 (Sept. 13, 1982) (*see* 31 USCA 9701), the Commission hereby amends Part 145 of Chapter 1 of Title 17 of the Code of Federal Regulations by adding Appendix D. In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 145—COMMISSION RECORDS AND INFORMATION

Appendix D—Schedule of Fees for Weekly Advisory Calendar

(a) The annual cost of a mailed subscription to the Commission's weekly Advisory Calendar shall be $65.00. The cost of a subscription beginning in the middle of a fiscal year shall be $1.25 times the number of weeks remaining in the fiscal year. There shall be no cost to the following categories of subscribers: media, Congress, federal agencies, state and local enforcement agencies, and educational institutions

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[1] In proposing the $65.00 subscription fee, which amounts to $1.25 per week, the Commission assumed that it would be publishing and mailing 450 exempt subscriptions per week and 1,600 non-exempt subscriptions per week. Using these fugures, the Commission calculated the cost of publishing and mailing one copy of the weekly Advisory Calendar to a non-exempt subscriber to be $1.30. 49 FR at 27776. This figure was rounded down to $1.25 to ensure that the Commission would not recover more than its actual costs. *Id.* More recent information indicates that the Commission has approximately 2,700 mail subscribers to the Advisory Calendar, about 500 of which will be exempt from a subscription fee under this final rule. Based on these figures, the Commission calculates that the total weekly cost per paid mailed subscription is $1.28, a figure which has again been rounded down to $1.25.

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(b) Annual subscriptions to the weekly Advisory Calendar shall run on a fiscal-year basis, from October 1 through September 30. The fee for an annual subscription must be received by the last day of the preceding fiscal year. The fee shall not be refundable.

(c) Payment shall be made by check or money order in the amount of $65.00 made payable to the Commodity Futures Trading Commission. Checks or money orders should be sent to the Office of Communication and Education Services, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Payment may be accepted only by personnel in the Office of Communication and Education Services.

* * * * *

Issued in Washington, D.C., on August 28, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-23342 Filed 8-31-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Farmland Industries, Inc., providing for manufacturing a 40-gram-per-pound tylosin premix. The premix is used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Farmland Industries, Inc., Kansas City, MO 64116, is sponsor of a supplement to NADA 46-415 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of a 40-gram-per-pound premix subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (iv). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human envronment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(83) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(83) To 021676: 10 grams per pound, paragraph (f)(1)(iv)(*a*) of this section; 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. September 4, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 27, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-23291 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

The Indian School Equalization Program

August 2, 1984.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Indian Affairs is publishing an interim rule which revise the present requirements of four (4) "Average Daily Membership" (ADM) count weeks and requires one ADM count week for the timely distribution of funds to Bureau funded schools. The revision will address ADM, count weeks, computation of ADM, provisions for declining enrollment, and the schedule for allotments.

EFFECTIVE DATE: This document will become effective September 4, 1984. Comments are due on or before October 4, 1984.

ADDRESS: Written comments should be directed to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, N.W., Washington, D.C. 20240. If preferred, comments may be delivered to Room 3510, Main Interior Building, 18th and "C" Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Garrett (202) 343-2123.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This interim rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Office of Indian Education Programs during its review and analysis of the student ADM counts of this year and previous years has found that: (1) The differences in ADM among four count weeks are not significant; (2) considerable savings in staff time and funds will be realized by eliminating extra count weeks; (3) the current process delays final allotment until the school year for which the funds were appropriated has virtually ended; and (4) school board members, school supervisors, and Area/Agency personnel have emphasized that instituting effective measures requires earlier notification and allotment of funds. In order to effect staff time and cost savings in a timely manner, these regulations are issued on an emergency basis and the Bureau finds there is good cause to make these regulations effective immediately and they will expire on September 30, 1986. The effective date provision complies with the exception provided in 5 U.S.C. 533(d)(3).

The policy of the Bureau is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this interim rule to the location identified in the Address section of this preamble. Comments must be received on or before the date specified in the Date section of this preamble.

The Bureau of Indian Affairs has determined that this rule is not a major rule within the terms of Executive Order 12291 because it will not have a major effect on the economy and will not result in a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, because of these factors, it does not have a significant economic effect on a substantial number of small entities within the terms of the Regulatory Flexibility Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.*

The primary author of this document is Nancy Garrett, Deputy Director, Office of Indian Education Programs, 18th and "C" Streets, N.W., Washington, D.C. 20240, (202) 343-2123.

List of Subjects in 25 CFR Part 39

Indian education, Schools, Grant programs—education and grant programs—Indians.

25 CFR Part 39 is amended as follows:

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM

1. In § 39.30, paragraphs (b), (c) and (d) are revised and new paragraphs (e) and (f) are added to read as follows:

§ 39.30 Definitions.

* * * * *

(b) "Count week" means the last full week in September for the purposes of calculating allotments.

(c) "Final allotment" means that notice of entitlements to funds given to schools, based on the September student count as computed through the Indian School Equalization Formula (ISEF) based on full distribution of Indian School Equalization Program (ISEP) funds available for the fiscal year.

(d) "Initial allotment" means that notice of entitlements to funds given to schools based on the September student count as computed through the Indian School Equalization Formula prior to any adjustments due to fluctuating student counts.

(e) "Student classification" means any special student need area that receives a separate weighting through the Indian School Equalization Formula.

(f) "Tentative allotment" means that notice given to schools of their entitlements to funds based on the September student count as computed through the Indian School Equalization Formula based on a proposed appropriation in the President's budget for the next fiscal year.

2. Section 39.32 is revised to read as follows:

§ 39.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 39.2(f) shall be determined during the last full school week in September during which all students eligible under the definition shall be counted by student program classification.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices and, in the case of off-reservation boarding schools, Area education offices together with each school's supervisor and school board chairperson where a board exists shall be responsible for certifying the validity of each school's student counts. The September ADM will be used to determine final allotments for the school year.

3. Section 39.35 is revised to read as follows:

§ 39.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the ADM for the September count week of the current year.

4. Section 39.36 is revised to read as follows:

§ 39.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average of the current and previous years' September ADM count.

5. Section 39.51 is revised to read as follows:

§ 39.51 Notice of tentative allotments.

The Director shall notify school administrators and boards of allotments of funds based on the September ADM count established under Subpart B of this Part according to the following schedule:

(a) Tentative allotments shall be made by March 15 of the prior fiscal year;

(b) Initial allotments shall be made not later than November 15 of the fiscal year; and

(c) Final allotments shall be made not later than January 15 of the fiscal year.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-23214 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 84-37]

Special Local Regulations: River Days, Ohio River Championships

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 355.5 to 357.0, Ohio River. Outboard tunnel hull boat races will be held on the days of September 1, 2 and 3, 1984, at Portsmouth, Ohio. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations will be effective on the following days: September 1, 2 and 3, 1984.

FOR FURTHER INFORMATION CONTACT: Lt. B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. and 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 355.5 and 357.0 during the "River Days, Ohio River Championships", September 1, 2 and 3, 1984. This event will consist of outboard tunnel hull boat races which could pose hazards to navigation in the area.

Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The revised schedule of events was not received until July 30, 1984, and there was insufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0236 to read as follows:

§ 100.35-0236 Ohio River, miles 355.5 through 357.0.

(a) *Regulated Area:* The area between Mile 355.5 and 357.0 Ohio River is designated the regatta area, and may be closed to commerical navigation or mooring during the following days and (local) times:

September 1, 12:00 noon to 3:00 p.m.
September 2, 10:00 a.m. to 6:00 p.m.
September 3, 12:00 noon to 6:00 p.m.

The above time represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8 MHz) when necessary, by the call sign "COAST GUARD PATROL COMMANDER".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35-0236 will be effective on the following days and times.

September 1, 12:00 noon to 3:00 p.m.
September 2, 10:00 a.m. to 6:00 p.m.
September 3, 12:00 noon to 6:00 p.m.
All times listed are local time

(33 U.S.C. 407, 411, 1233-1236; 46 U.S.C. 2106-2107, 2302, 4308, 4311 (a) and (c), 49 U.S.C. 1655(b)(1), 33 CFR 100.35, 100.40, 100.50, 49 CFR 1.46(b), 1.46(n)(1))

Dated: August 20, 1984.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 84-23367 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 84-45]

Marine Event; Lake Havasu Water Ski Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish Special Local Regulations for the last two dates in the eight date series of water ski shows at the London Bridge Channel, Lake Havasu City, Arizona. This event was held last year as the London Bridge Days Water Ski Show", and regulations were published in the **Federal Register** on September 1983. The sponsor decided to hold this event ("Lake Havasu Water Ski Show") as a continuing series during this year. There was insufficient time to publish proposed rules for the first four dates of this series; therefore, regulations for the first four dates were published in the **Federal Register** on 4 June 1984, and a notice of proposed rule making for the last four dates was also published on 4 June 1984.

These regulations are needed to provide for the safety of life and property on navigable waters during the periods set forth.

EFFECTIVE DATES: These regulations become effective on 25 August 1984 and terminate on 8 September 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate, Long Beach, California 90822, (213) 590-2331.

SUPPLEMENTARY INFORMATION: On 4 June, 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (49 FR 23075). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Comments

Although no official comments were received concerning these regulations one rental boat operation in the regulated area has expressed his concern over lost revenue during this event. Even though he did not reply directly to the proposed rule making, the Coast Guard treated his concerns as comments to this rule. The commenter claims lost revenue because potential customers are not allowed to transit to his business or operate in his general vicinity due to the intermittent closure of the area for this marine event. Other merchants and members of the community also commented on the increase in business generated through the show. The Coast Guard in considering all the comments has determined that the increase in business to the other 19 entities in the area outweigh the small loss of the one negative commenter. Also, concerns have been expressed over the safety of the event; water skiers do take a risk of injury by performing various acrobatic stunts in an enclosed operating area, a risk which the sponsor and participants are willing to take and make the show entertaining. However, the Coast Guard has made minor changes to the final rule to ensure the safety of spectators in the area.

Discussion of Proposed Regulation

Lake Havasu Water Ski Club "Lake Havasu Water Ski Shows" conducted six shows this year on the London Bridge Channel. Two shows remain on the schedule this year; this regulation will cover these shows which will be on 25 August and 8 September 1984. This event involves the use of 3 tournament ski boats, used to tow approximately 30 skiers during the show, which could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic. Moreover, additional revenue generated by this event as well as increased favorable publicity for the waterfront merchants outweighs expected minimal disruptions in business patterns.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a sustantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following § 100.35-11-84-45

§ 100.35-11-84-45 Lake Havasu Water Ski Show, Lake Havasu, Arizona.

(a) *Regulated Area.* That portion of the London Bridge Channel, Lake Havasu City, Arizona commencing approximately 200 yards north of the London Bridge, thence southerly along the channel to approximately 200 yards south of the London Bridge. Event participants may only transit at high speed under the two center spans of the bridge, other spans may be used to transit at a safe and prudent speed so as to not endanger life or property.

(b) *Effective Date.* The regulated area will be closed intermittently to all vessel traffic from 5:00 PM to 7:30 PM on 25 August and 8 September 1984.

(c) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter, beach or remain in the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by U.S. Coast Guard operated and employed small craft, law enforcement agencies and/or the sponsor's vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be in effect at the end of each period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: August 23, 1984.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 84-23306 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 413, 433 and 469

[OW-FRL-2663-7]

Electrical and Electronic Components Point Source Categories and Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; OMB Approval of Information Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rules, technical amendments.

SUMMARY: In the preamble to the Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards, 40 CFR Part 413 and 40 CFR Part 433 promulgated July 15, 1983 and the Electrical and Electronic Components Points Source Category Pretreatment Standards and New Source Performance Standards, 40 CFR Part 469 promulgated December 14, 1983, EPA noted that the information collection requirements were under review at the Office of Management and Budget (OMB). In accordance with the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), those provisions were not effective until OMB approval had been obtained. The Agency is announcing today that OMB has approved these information requirements on June 19, 1984. In conformance with this approval, the Agency is amending the pertinent regulations to include the OMB control number in the body of the rule.

DATE: The following sections are effective as of August 31, 1984: 40 CFR 413.03, 40 CFR 433.12, and 40 CFR 469.32.

FOR FURTHER INFORMATION CONTACT: John C. Newbrough, (202) 382-7188.

Dated: August 24, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

Accordingly, Title 40 of the Code of Federal Regulations is hereby amended as follows:

1. At the end of §§ 413.03, 433.12, and 469.32, the following language is added:

"(Approved by the Office of Management and Budget under control numbers 2040-0074.)"

[FR Doc. 84-23329 Filed 8-31-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 63

[CC Docket No. 79-252; FCC 84-394]

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order lifts unnecessary burdens of tariff and facilities-authorization filings for domestic satellite, miscellaneous common, and digital electronic message service carriers. This action should promote competition and lower rates to consumers.

DATE: September 4, 1984

FOR FUTHER INFORMATION CONTACT: Warren Lavey, Common Carrier Bureau, (202) 632-6910.

List of Subjects in 47 CFR Part 63

Communications common carriers, Common carrier facilities.

Fifth Report and Order

In the matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor; CC Docket No. 79-252.

Adopted August 8, 1984.

Released August 27, 1984.

By the Commission: Commissioner Rivera absent.

I. Introduction

1. Through a series of notices and orders beginning in 1979, this proceeding has adjusted our tariff and facilities-authorization requirements for nondominant suppliers of domestic, interstate, interexchange telecommunications common carrier services.[1] We have removed regulatory burdens which, in light of market forces, are not necessary to protect customers against unjust, unreasonable, and discriminatory rates. These regulatory burdens imposed costs on customers and impaired efficiency in telecommunications services, contrary to the goals of the Communications Act of 1934, 47 U.S.C. 151.[2]

2. In this proceeding, we have taken a step-by-step approach through which we have gained experience with selectively lessening regulatory burdens. Carriers subject to full regulation were distinguished from carriers subject to nondominant regulation because the Commission found that the latter lacked market power, *i.e.*, the ability profitably to charge and maintain a supracompetitive price. Nondominant regulation has two categories, streamlined regulation and forbearance. Streamlined regulation involves, *inter alia*, tariff filings in 14-days' notice, a presumption of lawfulness for tariffs, and no required prior Section 214 line-specific approval for any domestic line. Forbearance involves, *inter alia*, no required tariff filings and no required prior Section 214 line-specific approval for any domestic line. Among other requirements, all dominant and nondominant common carriers are required to charge just, reasonable, and nondiscriminatory rates; must comply with our other Title II regulatory policies; are subject to our complaint process, 47 U.S.C. 208-09; and are subject to the Title III requirements for radio licenses. We applied forbearance to those nondominant carriers—resellers and specialized common carriers—for which we were confident that tariff filings were not necessary to promote our statutory goals.[3]

3. In this Order, we address petitions for reconsideration of the *Fourth Report and Order*,[4] and petitions for applying forbearance to a domestic satellite carrier (domsat)[5] and a carrier providing Digital Electronic Message Service (DEMS).[6] Also, we examine the application of forbearance to additional categories of carriers. We will address in a separate order the proposal set forth in the *Fourth Further Notice*[7] that carriers subject to forbearance cannot file tariffs at the Commission.

II. Reconsideration of the Fourth Report and Order

4. *Western Union.* In its petition for reconsideration, TRT claimed that Western Union Telegraph Co. (WU) has market power by virtue of its domestic telex/TWX network and should be regulated as a dominant carrier. TRT pointed to WU's postalized (distance insensitive) rates, its 1983 domestic telex rate increases, and the international record carriers' (IRCs') small penetration in domestic telex services as evidence of WU's market power. In opposition to TRT's petition, WU cited the findings in the *Fourth Report* that MTS, WATS, and private line services are demand and supply substitutes for public switched record services. WU claimed that many, if not most, of its potential customers can use alternatives to WU's telex/TWX network. These alternatives include the domestic teletypewriter exchange services of

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[1] Briefly, our *Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 308 (1979), to reduce or eliminate tariff and facilities applications requirements for carriers subject to effective competition. The *First Report and Order*, 85 FCC 2d 1 (1980), classified common carriers as dominant or non-dominant and applied streamlined regulation to the latter. The *Further Notice of Proposed Rulemaking*, 84 FCC 2d 445 (1981), proposed to reduce Title II regulation, through a forbearance or definitional theory, for virtually all common carriers except MTS/WATS and private line service offered jointly by AT&T and the independent telephone companies, and Telex/TWX service offered by Western Union. The *Second Report and Order*, 91 FCC 2d 59, 62 (1982), applied forbearance to resellers of terrestrial common carrier services, and stated that we were analyzing the appropriateness of forbearance with respect to other carriers and that we expected to address those issues in future orders. In affirming that order on reconsideration, 93 FCC 2d 54, 60-61 (1983), we stated that we would consider additional exercises of our forbearance authority in future orders. Our *Fourth Report and Order*, 95 FCC 2d 554 (1983), extended forbearance to all other resellers and specialized common carriers, and extended streamlined regulation to domestic satellite carriers, miscellaneous common carriers, and facilities-owning interexchange carriers affiliated with exchange telephone companies.

[2] "So long as our regulation imposes costs on some firms, and thus on the public, not exceeded by the benefits generated thereby, the provision of communications service by those firms can never be as 'efficient' nor can the charges be as 'reasonable' as they might be in the absence of such artificial costs." *First Report*, 85 FCC 2d at 13.

[3] In the *Fourth Report*, 95 FCC 2d at 578, we replaced streamlined regulation of specialized common carriers with forbearance. In support of that decision, we cited the fact that, during the application of streamlined regulation to specialized common carriers, we received only five petitions against their tariff filings. Each allegation of unreasonable rates or other terms of service was found to be without merit. We found little or no likelihood of regulatory problems from forbearance for these carriers. We noted that, under these circumstances, forbearance offers consumers benefits over streamlined regulation of carriers in terms of lower costs and less delay in introducing new offerings and rates, and increased competition. *Id.* at 554-56. No petitions for reconsideration were filed objecting to the application of forbearanc to these facilities-based carriers.

[4] We received petitions for reconsideration from Satellite Business Systems (SBS), Allnet Communications Services, TRT Telecommunications Corp., the State of Hawaii, and American Telephone and Telegraph Co. (AT&T). In its petition for reconsideration, AT&T requested that it be regulated as nondominant. The issues of AT&T's market power and the possibility of decreasing our regulation of AT&T have been raised in Long-Run Regulation of AT&T's Basic Domestic Interstate Services, 95 FCC 2d 510 (1983). We expect to address AT&T's petition for reconsideration and the oppositions to it filed by SBS, Allnet, RCA Communications, Association of Data Processing Service Organizations, Independent Data Communications Manufacturers Association, and MCI Telecommunications Corp. in connection with rulemakings flowing from that inquiry. Until some further action, we will continue to regulate all of AT&T Communication's interstate services as dominant.

[5] SBS Petition for Forbearance, CC Docket No. 79-252 (May 25, 1984).

[6] ICOM Petition for Forbearance and Streamlining, and Motion for Expedited Treatment (May 9, 1984); FCC Public Notice, 49 FR 22,837 (June 1, 1984). The Public Notice requested comments on applying forbearance to all DEMS carriers.

[7] 49 FR 11856 (March 28, 1984).

other carriers; facsimile machines, data terminals, or communicating word processors, together with voice or data transmission services; other forms of record communications; private line voice and data services; and switched voice services offered by AT&T and other carriers. WU stated that a recent survey of a sample drawn from its 1000 largest customers disclosed that its revenue from these customers declined from 1980 to 1983 by 60 percent, 28 percent of these customers were using the IRCs for all or part of the traffic that had previously been serviced by WU, and 48 percent of these customers migrated to intra-company telecommunications systems. As for its postalized rates, WU stated that its costs are basically distance insensitive, this rate structure is the norm for record communications carriers, and Graphnet and ITT-DTS employed postalized rates before WU. Finally, WU noted that its earnings were still deficient after the 1983 rate increase.

5. We have received no petitions opposing the tariffs of, or meritorious formal complaints against,[8] WU since it became subject to streamlined regulation in November 1983. For the reasons stated in the *Fourth Report*[9] and WU's Opposition, we affirm our finding that WU is nondominant in its domestic, interstate, interexchange services. These services of WU have close demand and supply substitutes. The evidence indicates that WU faces strong competition for these services with regard to a substantial portion of its potential customers, and that it lacks the ability profitably to raise its rates above the competitive level for its services. These customers can turn to a number of suppliers of voice, record, or data services—including AT&T—to meet their communications demands. WU's domestic, interstate, interexchange services are in the relevant market of domestic, interstate, interexchange telecommunications services defined in the *Fourth Report*, and WU has a small share thereof. To facilitate compliance with the equal-interconnection requirements of the Record Carrier Competition Act and in light of the tariff-filing requirements of the Commission's interim implementation order,[10] we continue at this time to treat the domestic, interstate, interexchange services of WU and all record carriers covered by the interconnection requirements of that Act under streamlined regulations rather than forbearance. That is, these carriers must continue filing tariffs for the domestic services covered by the interconnection requirements of that Act. We deny TRT's petition for reconsideration.

6. *Affiliates of Exchange Carriers.* In the *Fourth Report*, 95 FCC 2d at 575–79, we decided that the domestic, interexchange, interstate services of all carriers affiliated with exchange telephone companies should be regulated as nondominant. Furthermore, we applied forbearance to GTE Sprint (based on our experience in applying streamlined regulation to it) and to resellers affiliated with exchange telephone regulation to it) and to resellers affiliated with exchange telephone companies. In that order, we applied streamlined regulation to the rest of these affiliated carriers. Allnet's position for reconsideration argued that the Commission should protect against improper cross-subsidization from exchange telephone companies' monopoly services to their interexchange services. Allnet proposed that the Commission should prohibit exchange telephone companies from offering interexchange services. Alternatively, Allnet proposed to require structural separation between exchange telephone companies and their interexchange affiliates, and to regulate the interexchange affiliates as dominant. ISACOMM, a subsidiary of United Telecommunications, supported the application of forbearance to interexchange carriers affiliated with exchange telephone companies, and stated that Allnet's attempt to prohibit or impose separation requirements on such carriers is beyond the scope of this proceeding. American Satellite, which is structurally separated from its affiliate, Continental Telephone Corp., opposed Allnet's proposal that it be subject to additional restrictions, and requested that forbearance be extended to it.

7. Several of our decisions have pointed to our concerns about potential cost-shifting and anticompetitive conduct by exchange telephone companies.[11] Of course, the divestiture of the Bell Operating Companies from AT&T and the structural separation of several large independent exchange telephone companies with affiliated interexchange carriers help meet our regulatory goals. *See* notes 20 and 23 *infra*. Additionally, with regard to affiliated interexchange carriers, we have regulatory tools to inhibit cost-shifting and anticompetitive conduct by exchange telephone companies. Exchange telephone companies are required to interconnect with all interexchange carriers and private systems on just, reasonable, and nondiscriminatory terms.[12] Interstate exchange access services are regulated as dominant and subject to full tariff review.[13] We review the interstate exchange access tariffs filed by exchange telephone companies with the policy goals of achieving reasonable revenue requirements, cost-based rates, and just, reasonable, and nondiscriminatory terms and conditions. Unreasonable bundling of exchange and interexchange services is unlawful; so, too, is unreasonable discrimination by an exchange telephone company in favor of any interstate interexchange carrier.[14] Other facilities-based carriers

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[8] We dismissed as nonmeritorious two complaints against WU's billing and settlement practices for domestic handling of in-bound telex international traffic. RCA Global Communications and Western Union International v. Western Union, Mimeo No. 3285 (April 3, 1984). We have one outstanding petition for declaratory ruling, filed by ITT World Communications, Inc., on August 11, 1983, regarding WU's prices for its combined basic and enhanced services packages.

[9] 95 FCC 2d at 564–66, 571–72. For the year ending June 30, 1983, WU's telex/TWX total operating revenues were $288 million, and WU's total operating revenues from all its regulated services were $897 million. WU's Return on Investment Report filed with the Commission (December 14, 1983). In 1983, AT&T Communications' interstate revenues were $30.4 billion. AT&T's Interstate Monthly Report No. 1 (December 1983).

[10] *See* 95 FCC 2d at 578; 47 U.S.C. 222; Interconnection Arrangements Between and Among the Domestic and International Record Carriers, 89 FCC 2d 928, 91 FCC 2d 483 (1982), *aff'd in relevant part sub nom.* Western Union v. FCC, 729, F.2d 811 (D.D. Cir. 1984). The equal-interconnection provisions of the Record Carrier Competition Act do not sunset. If our tariff-filing requirements for the domestic services of the international record carriers change, we will consider applying forbearance rather than streamlined regulation to their domestic services.

[11] *See generally* BOC Separation Decision, 49 FR 1190 (January 10, 1984), *recon.*, FCC 84–252 (released June 1, 1984) *aff'd sub nom.* Illinois Bell Tel. Co. v. FCC, — F.2d — (7th Cir. 1984); Second Computer Inquiry, 77 FCC 2d 384, *recon.*, 84 FCC 2d 50 (1980), *further recon.* 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Indus. Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2107 (1983); GTE/SPCC Acquisition, 94 FCC 2d 235 (1983); Application of C & P Tel. to Construct Digital Termination Systems, FCC 84–178 (released May 11, 1984).

[12] *See* Bell System Tariff Offerings, 46 FCC 2d 413, 428 *aff'd sub nom.* Bell Tel. Co. of Penn. v. FCC, 503 F. 2d 1250 (3rd Cir. 1974); AT&T: Offer of Facilities to Other Common Carriers, 92 FCC 2d 46, *mod.*, FCC 83–550 (released December 12, 1983); Lincoln Tel. & Tel. Co., 72 FCC 2d 724 (1979), *aff'd*, 659 F.2d 1092 (D.C. Cir. 1981); AT&T: Restrictions on Interconnection of Private Line Services, 60 FCC 2d 939 (1976); Fort Mill Tel. Co. v. FCC, 719 F.2d 89 (4th Cir. 1983); AT&T: Interconnections with Private Interstate Communications Systems, 71 FCC 2d 1 (1979) (ARINC); AT&T: 1.544 Mbps Channels for Connection with Private Interstate Communications Systems, Mimeo No. 636 (released November 8, 1983).

[13] *Fourth Report*, 95 FCC 2d at 576.

[14] *See generally* 47 U.S.C. 202; ECA Tariff Order, FCC 84–51 (released February 17, 1984); Private Line Rate Structure and Volume Discount Practices, 49 FR 18107 (April 27, 1984); MTS and WATS Market

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and resellers should be able to use exchange facilities on the same terms and conditions as to interexchange carriers affiliated with exchange telephone companies. We have investigated carefully the switched and special exchange access tariffs to protect against provisions by which an affiliate of an exchange telephone company or any other interexchange carrier would be favored by discrimination. Our complaint process is available for any allegations of such discrimination. Also, the interexchange carriers that are affiliated with exchange telephone companies and that are treated as nondominant [15] have small market shares.[16] We have received no petitions opposing the tariffs of interexchange carriers affiliated with exchange telephone companies since the *Fourth Report*, and the only formal complaint filed against an affiliated interexchange carrier concerns billing for calls after five rings even though the calls are not completed.[17] If we find that particular interexchange carriers affiliated with exchange telephone companies have market power or otherwise pose regulatory problems, we could require them to file facilities applications and tariffs subject to dominant regulation, or impose other conditions.

8. Interexchange carriers affiliated with exchange telephone companies have increased competition in interstate interexchange services[18] and thereby benefitted consumers through lower-priced services and new offerings. While structural separation decreases opportunities for cost-shifting and anticompetitive conduct, it can also decrease efficiency and affect the interexchange carrier's ability to compete. In the *Second Computer Inquiry*, we stated our commitment to the minimum necessary degree of separation:[19]

> To the extent there may be efficiencies within [carriers'] structures they should not be precluded from capitalizing on them where countervailing regulatory considerations do not demand stringent separation.

While restrictions on interexchange services offered by the Bell Operating Companies (BOCs) and GTE have developed out of antitrust proceedings,[20] we have not previously prohibited exchange telephone companies from providing interexchange common carrier services, or required full structural separation for such activities for all exchange telephone companies.[21] We will consider the problems posed by individual carriers regarding cost-shifting and anticompetitive conduct and may impose restrictions in particular cases, but we see no evidence at this time that imposing such restrictions on all exchange telephone companies would be necessary to protect competition and promote reasonable rates. Accordingly, neither of Allnet's proposals appears warranted to protect the public interest at this time, and we deny Allnet's petition. Nevertheless, our concerns about cost-shifting and anticompetitive conduct by exchange telephone companies led us to require in the *Fourth Report* a certain amount of separation between exchange telephone companies and affiliated interexchange carriers which are regulated as nondominant. In response to informal requests for clarification, these standards are explained in the next paragraph.

9. The *Fourth Report* made domestic, interstate, interexchange resellers *affiliated* with exchange telephone companies subject to forbearance; facilities-owning domestic, interstate, interexchange carriers *affiliated* with exchange telephone companies were placed under streamlined regulation.[22] We hereby explain what we meant by an "affiliate" of an exchange telephone company for purposes of qualifying for regulation as a nondominant carrier. A carrier affiliated with an exchange telephone company is a carrier that is owned (in whole or part) or controlled by, or under common ownership (in whole or part) or control with, an exchange telephone company. We seek to avoid imposing excessive burdens in establishing conditions for when a carrier affiliated with an exchange telephone company qualifies for forbearance, because such burdens would lessen competition and impose costs on consumers. *See* para. 10 *infra*. In order to provide some, albeit not complete, protection against cost-shifting and anticompetitive conduct, an exchange telephone company's affiliate qualifying for nondominant treatment must have separate books of account, and must not jointly own transmission or switching facilities with that exchange telephone company. If the affiliate uses the exchange telepone company's services, it should acquire them via the exchange telephone company's tariffs. An affiliate qualifying for nondominant treatment is not necessarily structurally separated from an exchange telephone company in the sense ordered in the *Second Computer Inquiry*, 47 CFR 64.702 (*e.g.*, fully-separated personnel and marketing are not necessary for nondominant regulation).[23] Interstate services

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Structure (CC Docket No. 78–72, Phase I), 93 FCC 2d 241, *recon.*, FCC 83–356 (released August 21, 1983), *further recon.*, FCC 84–30 (released February 15, 1984). In our approval of GTE Corp.'s acquisition of Southern Pacific Communications Co., we concluded: "We also do not find reason for concern that the transfer is likely to give SPCC/SPSC a preference over other interexchange carriers . . . . The potential for unequal treatment will be greatly diminished, if not eliminated, with the implementation of our access charge plan. . . . [I]nterested parties will have the right to petition against these tariff filings and bring to our attention any proposed tariffs they believe likely to result in an unjust discrimination or preference." GTE/SPCC Acquisition, 94 FCC 2d 235, at 255 (1983). In United Telecom./U.S. Telephone Acquisition, FCC 84–272 (released June 20, 1984), we required United to make available access arrangements on the same terms and conditions to all Other Common Carriers, including its affiliate.

[15] For the reasons stated in note 33 *infra*, we regulate as dominant Alascom Inc., a subsidiary of Pacific Telecom., Inc., which owns exchange telephone companies. By the *Fourth Report*, all other interexchange carriers affiliated with exchange telephone companies are nondominant. But see note 23 *infra* regarding the Bell Operating Companies.

[16] *Fourth Report*, 95 FCC 2d at 575. In 1983, AT&T Communications had interstate revenues of $30.4 billion; GTE Sprint had interstate revenues of $740 million; U.S. Telephone (now affiliated with United Telecom.) had interstate revenues of $13 million; and American Satellite had interstate revenues of about $86 million. AT&T's Interstate Monthly Report No. 1 (December 1983); data filed with the Commission pursuant to 47 CFR 67.121; United Telecom./U.S. Telephone Acquisition, *supra;* AT&T Comments in CC Docket No. 83–1147, Appendix A (April 2, 1984).

[17] Bill Correctors, Ltd. v. GTE Sprint, E–84–18. We have not yet decided the merits of this complaint. Similar complaints were filed against MCI, Lexitel, United States Transmission Systems, and Allnet. Pursuant to the *Fourth Report*, all these carriers are subject to forbearance.

[18] *Fourth Report, supra*, 95 FCC 2d at 572–73, 578; *GTE/SPCC Acquisition, supra*, 94 FCC 2d at 251–62; *United Telecom./ U.S. Tel. Acquisition, supra.*

[19] 77 FCC 2d at 476.

[20] The Modification of Final Judgment (MFJ) limits the ability of the BOCs to offer interexchange services. United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 103 S. Ct. 1240 (1983). *See also* n. 23 *infra*. Also, the proposed consent decree agreed to by GTE and the U.S. Justice Department (Civ. Action No. 83–1298, D.D.C.) would require structural separation between the GTE operating companies and Sprint. GTE/SPCC Acquisition, *supra*, 94 FCC 2d at 240. We do not express any opinion here on the reasonableness of these restrictions.

[21] *See United Telecom., supra.*

[22] 95 FCC 2d at 575–76, 579.

[23] We required that the BOCs employ structural separation for the provision of customer-premises equipment (CPE) and enhanced services. *BOC Separation Decision, supra.* The BOCs currently are barred by the MFJ from providing interLATA services. *See* United States v. Western Electric Co., Civ. Action No. 82–0192 (D.D.C. July 26, 1984). If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation. We have not required structural separation for the other

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provided directly by exchange telephone companies (not through affiliates) are regulated as dominant.

10. Finally, we address the issue of forbearance for all the domestic, interstate, interexchange services of carriers affiliated with exchange telephone companies. There are three reasons to extend forbearance to these carriers and others. First, we found earlier that, if we are reasonably confident that our complaint process and market forces are sufficient to check a carrier's ability profitably to charge unlawful rates, consumers benefit from forbearance rather than streamlined regulation.[24] Forbearance can reduce the costs and delay of a carrier introducing new services or changing rates. This promotes the ability of carriers to satisfy consumers' demands faster and at lower rates. In addition, forbearance facilitates the entry of new carriers and new offerings designed to meet changing market conditions. Also, forbearance can benefit consumers by stimulating competition. Forbearance can stimulate competition by facilitating entry, price decreases, and improved offerings, and by decreasing the disclosure of competitively-sensitive information to rival carriers. Second, we have had favorable experience[25] in applying forbearance to most resellers since August 1982[26] and to all other resellers and specialized common carriers since November 1983. The only formal complaints we have received against carriers subject to forbearance involve the practice of charging customers after five rings even though the call is not completed.[27] Third, during the nine months that facilities-owning interexchange carriers affiliated with exchange telephone companies, miscellaneous common carriers, and domestic satellite carriers have been subject to streamlined regulation, the Commission has received no petitions opposing their tariffs or formal complaints against them.

11. Therefore, we find that it would be in the public interest to apply forbearance to all the domestic, interstate, interexchange services of carriers affiliated with exchange telephone companies.[28] However, we require all of these carriers owning transmission lines to file the semi-annual reports on circuits added provided for by 47 CFR § 63.07. This information will contribute to the completeness of our data on the telecommunications industry's structure and help us mold our regulation of common carriers to serve the public interest.[29]

12. *Domestic Satellite Carriers.* SBS' petition for reconsideration requested forbearance rather than streamlined regulation for its domestic, interstate, interexchange services. SBS stated that its specialized-common-carrier and reseller competitors are subject to forbearance and thereby gain a competitive advantage, and that there has been only a single complaint against a SBS tariff filing in over 200 filings.[30] Comments of GTE Spacenet Corp., GTE Satellite Corp., and American Satellite Co. support forbearance for all domsats. These comments cite the costs and delays related to filing tariffs, and the anticompetitive consequences of having tariffs on file. GTE Satellite noted that none of its tariff filings encountered an opposing petition, and urged expeditious application of forbearance to domsats. No party opposed our finding that domsats are nondominant carriers or opposed SBS' petition for forbearance. Subsequent to its petition for reconsideration, SBS petitioned for forbearance by waiver under para. 37 of the *Fourth Report.*[31]

13. Regarding another proceeding by which we decreased regulatory burdens on domsats, in June 1984 the D.C. Circuit Court of Appeals affirmed our *Transponder Sales* order.[32] This order recognized that domsats do not possess the market power required to impair the reasonable availability of transponder supply, and that the public interest would not be served by tariff regulation of all transponder uses. Accordingly, our decision authorized transponder sales on a non-common carrier basis. In similar recognition of domsats' lack of market power, we applied streamlined regulation to them in the *Fourth Report* and stated that our experience with such regulation might later lead us to apply forbearance to them. For the reasons stated in paras. 10–11 *supra* (including

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exchange telephone companies' CPE activities and enhanced services. For these exchange telephone companies, our treatment of their nondominant interstate, interexchange services would be similar to our treatment of their CPE activities and enhanced services, primarily separate books of account but not structural separation. As noted *supra*, GTE currently employs structural separation between Sprint and the GTE exchange telephone companies, and Continental employs structural separation between American Satellite and the Continental exchange telephone companies. Furthermore, United Telecom. employs structural separation between its interstate, interexchange carriers and its exchange telephone companies. *United Telecom., supra.* While we recognize that this structural separation by these large exchange telephone companies providing interstate, interexchange services impedes cost-shifting and anticompetitive conduct, it appears that a similar requirement for all smaller exchange telephone companies would be unreasonably burdensome. *See Illinois Bell, supra,* slip op. at 19 ("most of the independent companies, apart from GTE, are quite small firms that might find it very costly to establish separate subsidiaries to market customer equipment").

[24] *See Second Report,* 91 FCC 2d at 72–73, *recon.,* 93 FCC 2d at 56, 60; *Fourth Report,* 95 FCC 2d at 555–56, 577–79. While we have not been able to quantify the benefits and costs discussed here, we believe that they are substantial. In the *Further Notice,* 84 FCC 2d at 453–55, we described the effects of prior review of tariffs and required tariff filings in terms of (1) taking away carriers' ability to make rapid, efficient responses to changes in demand and cost; (2) impeding and removing incentives for competitive price discounting; (3) imposing costs on carriers that attempt to make new offerings; and (4) increasing the costs of the Commission's operations. All of these effects can harm consumers through higher prices and services which do not meet their needs.

[25] The D.C. Circuit Court of Appeals once referred to "the kind of issue [involving expert opinions and forecasts of the effects of a regulation on businesses] where a month of experience will be worth a year of hearings. . . . [I]t is the obligation of an agency to make re-examinations and adjustments in the light of experienced." American Airlines, Inc. v. CAB, 359 F.2d 624, 633 (D.C. Cir.), *cert. denied,* 385 U.S. 843 (1966). *See also* Geller v. FCC, 610 F.2d 973, 978 n.39, 980 (D.C. Cir. 1979) (the FCC has the "affirmative duty to ascertain whether [our] regulations still serve [] some aspect of the public interest").

[26] *See* comments of AT&T in CC Docket No. 83–1147 at 25 (more than 400 resale carriers have entered). It appears that at least some of these carriers would not have entered and expanded their services if we required tariff filings (involving costs, delays, and uncertainty about the results of our tariff review) and prior certification as common carriers (again involving costs, delay, and the specter of regulatory entanglements).

[27] *See* note 17 *supra.*

[28] In the *Fourth Report,* 95 FCC 2d at 579, we stated: "We may extend forbearance treatment to other categories of non-dominant carriers in the future after observing the costs and benefits of streamlined regulation of different categories of carriers. Within 18 months after issuance of this Order, we will review our experience and decide whether to continue applying streamlined regulation to carriers we today classify as non-dominant." We find that this revision is warranted at this time for the reasons stated in para. 10 *supra.* By this action, we grant the requests for forbearance of ISACOMM and American Satellite. Earlier commenters in this proceeding also requested forbearance for carriers affiliated with exchange telephone companies. *See, e.g.,* Comments of Central Telephone and Utilities Corp. (April 28, 1981).

[29] *See* Long-Run Regulation of AT&T's Basic Domestic Interstate Services, *supra; Fourth Report,* 95 FCC 2d at 578.

[30] The challenged tariff, filed before we applied streamlined regulation to SBS, involved a proposed auction in connection with its offering of transponder capacity service. SBS subsequently withdrew the auction provision from its tariff.

[31] The *Fourth Report* delegated to the Common Carrier Bureau the authority to apply forbearance to a nondominant carrier on a case-by-case basis. 95 FCC 2d at 579.

[32] Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238 (1982), *aff'd sub nom.* Wold Communications v. FCC, —— F. 2d —— (D.C. Cir 1984). The Court concluded that "the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the marketplace to substitute for direct Commission regulation in appropriate circumstances." slip op. at 22.

our experience in regulating domsats by streamlined regulation) and in the petitions and comments cited in para. 12 *supra*, we find that the costs/benefits of forbearance are more in the public interest than those of steamlined regulation for domsats. We hereby replace streamlined regulation of domsats' domestic, interstate, interexchange services with forbearance.[33] However, we retain our Title III regulation of domsats, the process for certification of non-common carrier domsat systems established in *Transponder Sales*, and the semi-annual reporting requirements on circuits added (47 CFR 63.07) for domsats. Included within our decision to apply forbearance to domsats are grants of SBS's petitions.

14. *Miscellaneous Common Carriers*. Under the *Fourth Report*, miscellaneous common carriers (MCCs) were found nondominant and made subject to streamlined regulation.[34] We stated that our experience with streamlined regulation of MCCs might later lead us to apply forbearance to them. In June 1984 the Common Carrier Bureau granted Southern Satellite's motion to regulate its MCC services by forbearance; the Bureau found that forbearance for these services was more in the public interest than streamlined regulation.[35] For the reasons stated in paras. 10–11 *supra* (including our experience in regulating MCCs by streamlined regulation), we find that the costs/benefits of forbearance are more in the public interest than those of streamlined regulation for all MCCs. We hereby replace streamlined regulation of MCCs' domestic, interstate, interexchange services with forbearance. We retain our Title III regulation of MCCs. Also, MCCs will be subject to the semi-annual reporting requirement on circuits added (47 CFR 63.07).

15. *Hawaii*. The State of Hawaii requested the Commission to require GTE Sprint Communications Corp. to file tariffs or some other reports so as to assure compliance with the conditions in the GTE/SPCC *Acquisition* order[36] regarding rate and service integration. The State of Hawaii recognizes that satisfying its concerns does not require that GTE Sprint file tariffs at the Commission. GTE Sprint responded that requiring it to file tariffs would reduce its ability to compete and is unnecessary to assure compliance with the conditions in that order. Currently, despite our application of forbearance to GTE Sprint, this carrier has tariffs on file at the Commission. These tariffs should provide the information necessary to check on GTE Sprint's compliance with the rate-and-service integration conditions. In case at some future time GTE Sprint no longer has tariffs on file with sufficient information to address the State of Hawaii's concerns, we require that GTE Sprint make reasonably available sufficient information about its rates and services so that the State of Hawaii and the Commission can ascertain whether the carrier is complying with these conditions. Thus, we grant the State of Hawaii's petition. However, we do not require that such information be filed at the Commission unless we specifically request it. We do not believe that it is necessary for us to specify the format or contents of such information at this time. Nor do we, at this time, specify the means by which GTE Sprint could make the information reasonably available.

16. *Initial Certification*. The present rule regarding Section 214 authority for nondominant carriers, 47 CFR 63.07, requires revision so that the language complies with our orders in this proceeding. After the amendments ordered in the *Fourth Report*, the rule states, *inter alia*, that certain filings are necessary for a nondominant carrier to obtain initial certification to become an interstate communications common carrier, or to constuct lines by cable. We have previously ordered that carriers subject to forbearance are not required to make filings under Section 214.[37] Accordingly, we eliminate the language providing for these filing requirements, but maintain the semi-annual reports on initial circuits and circuits added. The revisions to Part 63.07 are shown in the attachment.

17. *Mixed Characteristics*. Finally, we turn to the provisions of the *Fourth Report* regarding carriers with mixed characteristics, such as a carrier providing international services (subject to full regulation), domestic record carrier services with internaional interconnections (subject to streamlined regulation), and domestic resale services (subject to forbearance).[38] Para. 37 of that Order stated that a carrier with mixed characteristics but "separate affiliates" for its various services could be subject to different levels of regulation among its affiliates. On the other hand, we stated that for a single entity with mixed characteristics, all of its services would be subject to the heaviest burden of regulation applicable to any of its services. The concept of "separate affiliate" has caused confusion. This concept was intended to ease the administration of different amounts of regulation for different carriers during this period in which we are evaluating the competition faced by certain carriers in some or all of their services. It was not intended to require that a carrier with mixed characteristics form structurally-separated subsidiaries in the sense ordered in the *Second Computer Inquiry* in order to benefit from some stramlined regulation or forbearance. Nor was it intended to encourage carriers to balkanize their operations.[39]

18. In the case of exchange telephone companies, the requirement of a separate affiliate for nondominant treatment is warranted by our concerns about cost-shifting, discriminatory exchange access, and the dominance of exchange telephone companies in exchange services. *See* para. 9 *supra*. Similarly, concerns about cost-shifting

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[33] A recent report states that there are a substantial number of inactive domestic transponders and that transponder capacity has grown faster than demand. *Transponder Loading Report*, Satellite Week (August 6, 1984) 1–3. However, we will regulate one domsat, Alascom, as dominant. Alascom benefits from the Commission's rate-integration policly for interstate MTS and WATS services to noncontiguous domestic points. Establishment of Domestic Communications Satellite Facilities, 35 FCC 2d 844, 856, 38 FCC 2d 665 (1972), *aff'd sub nom.* Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975); Integration of Rates and Services FCC 83–606 (released January 5, 1984). This policy has led us to inquire into the ability of carriers not receiving rate-integration payments, such as General Communications Inc., to compete in serving Alaska. The current rate-integration arrangements and state of competition warrant regulation of Alascom as dominant. Also, we will continue to regulate the services of AT&T Communications using satellite facilities as dominant. *See* para. 18 *infra*. The domestic services of Communications Satellite Corp. have not been analyzed in this proceeding and, until further action, we will continue to regulate them as dominant. *Notice*, 77 FCC 2d at 311 n. 6.

[34] 95 FFC 2d at 566–67, 575. Earlier comments in this proceeding requested that we apply forbearance to MCCs. *See, e.g.*, Comments of United Video and Comments of Western Tele-Communications (filed April 28, 1981).

[35] Southern Satellite Systems: Petition for Waiver of Certain Common Carrier Regulations, Mimeo No. 4875 (released June 19, 1984).

[36] 94 FCC 2d 235 (1983).

[37] *Second Report*, 91 FCC 2d at 73. Generally, it is contrary to Commission policy to limit entry of common carriers. *See* Specialized Common Carrier Services, 29 FCC 2d 870 (1971), *aff'd sub nom.* Washington Utilities and Transportation Comm'n. v. FCC, 513 F 2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975); Domestic Communications Satellite Facilities, 35 FCC 2d 844 (1972); MCI Telecommunications Corp. v. FCC, 561 F.2d 365 (D.C. Cir. 1977), *cert denied*, 434 U.S. 1040 (1978) (Execunet I); MCI Telecommunications Corp. v. FCC, 580 F.2d 590 (D.C. Cir.), *cert. denied*, 439 U.S. 980 (1978) (Execunet II). Also, it is unnecessary to control investments in lines as a means of regulating nondominant carriers rate bases. We have concluded that nondominant carriers' lack the ability profitably to charge unjust or unreasonable rates.

[38] 95 FCC 2d at 579.

[39] *See* Southern Satellite Systems, *supra*; Comments of GTE Sprint on ICOM Petition at 2.

and anticompetitive conduct lead us to regulate all of the common carrier services of AT&T Communications as dominant at this time.[40] However, we believe that these concerns are not as great with regard to other carriers regulated as dominant.[41] For these other dominant carriers, the costs of requiring a separate affiliate (including higher operational costs from a balkanized supply of services and the possibility that some integrated services will not be offered) do not seem justified by regulatory concerns. We find that the information required on the title page of every tariff and tariff revision should be sufficient to identify whether the tariff includes a service covered by full regulation, streamlined regulation, or forbearance (if the carrier chooses to file a tariff for a service subject to forbearance). Under 47 CFR 61.54(b), the title page must contain a brief statement showing each class of service provided therein and the geographical application of the tariff or supplement. A tariff or tariff revision covering a carrier's mix of services, some subject to full regulation and some subject to nondominant regulation, must be filed with the notice period required for full regulation but with cost support only for the services covered by full regulation. If a tariff includes a mix of services and a revision to the tariff covers only services subject to nondominant regulation, the tariff revision may be filed on 14-days' notice and without cost support. These procedures replace the "separate affiliate" provisions of the *Fourth Report* except for carriers affiliated with exchange telephone companies.

III. Forbearance for DEMS Carriers

19. In 1981 the Commission allocated radio spectrum for nationwide common carrier digital transmission networks (DEMS systems) providing high-speed, two-way transmissions.[42] We anticipated that DEMS systems would be used for document distribution, data communications, and teleconferencing. The intercity links of these networks employ satellite, microwave, fiber optics, or cable facilities, and their intracity facilities include digital termination systems (DTS) and internodal links.[43] Each DTS is a component of a DEMS network. We have allocated 23 channels at 10.6 and 18 GHz for DTS operations in each major city (SMSA), with 14 channels for common carriage.[44] As of May 1984, we have granted approximately 600 construction permits for DTS.

20. In the *Fourth Report*, we noted that the possible nondominance of DEMS carriers had not yet been considered in the *Competitive Carrier Rulemaking.*[45] In May 1984 ICOM filed a petition requesting forbearance treatment for its DEMS, but recommending that we consider DEMS operators' requests for nondominant treatment on a case-by-case basis. ICOM's proposed DEMS system would serve 53 cities in 31 states for voice, data, and fascimile transmissions. ICOM expected that its proposed network will cost about $18.3 million, and that it will face competition from specialized common carriers, private microwave and fiber optic systems, cable television operators, AT&T, WU, value-added resale carriers, domsats, and other DEMS carriers.[46] Our Public Notice [47] requested comments on the application of streamlined regulation or forbearance to DEMS carriers or services generally.[48]

21. We find that the domestic, interstate, interexchange services provided via DEMS have close substitutes. Customers considering DEMS for data, voice, facsimile, or video transmissions have a wide variety of services and suppliers capable of meeting their needs. Instead of using DTS for origination and termination, close substitutes can use switched and special exchange access services offered by exchange telephone companies via wire pair, coaxial cable, microwave, or fiber optics. Or, they can originate and terminate directly to customers' premises using these transmission media or satellite earth stations. DEMS carriers would use the same intercity transmission services as a large number of non-dominant carriers and AT&T. Because of demand and supply substitutability, we find that providers of domestic, interstate, interexchange DEMS services are in the relevant product and geographic markets identified in the *Fourth Report*. None of the commenters in this proceeding dispute this finding.

22. Furthermore, a DEMS carrier offers a new service and will have only a miniscule share of this market.[49] Most directly, the current spectrum allocation and licensing policy provides that any one DEMS common carrier service faces actual or potential competition from 13 other DEMS common carrier services and services using 9 private DTS frequencies. ICOM's estimate that it will cost only $18.3 million for it to construct facilities for its DEMS evidences relatively low cost barriers to entry. Moreover, DEMS carriers compete with established carriers and new entrants using other transmission technologies.[50]

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[40] The basic services of AT&T Information Systems are subject to forbearance. AT&T: Provision of Basic Services Via Resale by Separate Subsidiary, 49 FR 28,835 (July 17, 1984). AT&T Information Systems is structurally separated from AT&T Communications.

[41] After this Order, dominant regulation applies to, *inter alia*, (1) the international services of carriers, (2) exchange services of carriers, (3) AT&T, Communications, and (4) providers of domestic public land mobile radio services, public coast maritime mobile radio services, multipoint distribution services, and cellular mobile radio services. 95 FCC 2d at 582. We have not yet examined the market power of the carriers described in (4). Many of the carriers described in (4) are small and their ability to engage in anticompetitive conduct or cost-shifting appears limited. Pending our review of their market power, the costs of requiring them to establish and operate through separate affiliates to qualify for non-dominant treatment for services that have been classified as non-dominant appear to outweigh the likely benefits. As for the international record carriers, the equal-interconnection requirements of the Record Carrier Competition Act appear to limit potential anticompetitive conduct and cost-shifting, again making separate affiliates unattractive with regard to our regulatory goals. All common carrier services provided by Communications Satellite Corp. are regulated as dominant. *See* note 33 *supra*.

[42] DEMS, 86 FCC 2d 360, 360–61 (1981) (First Report), *petition for review denied sub nom.* Alascom Inc. v. FCC, 727 F.2d 1212 (D.C. Cir. 1984); FCC 83–392 (released September 30, 1983) (Second Report).

[43] *See* Local Area Telecommunications, Tariff F.C.C. Nos. 1 (filed March 16, 1983) and 2 (filed February 20, 1984) (DEMS); ISACOMM, Tariff F.C.C. No. 3 (filed October 19, 1983) (DTS).

[44] Application of C&P Tel., *supra*, at para. 5. Of the 13 channels at 10.6 GHz, seven are for extended networks (30 or more cities) and six are for limited networks (1 to 29 cities).

[45] 95 FCC 2d at 582.

[46] ICOM Petition, *supra*, at 6, 8.

[47] *See* note 6 *supra*.

[48] Digital Terminations Service, Inc., Contemporary Digital Services, Inc., and Local Area Telecommunications, Inc., support forbearance for DEMS provided by all carriers. GTE Sprint and ISACOMM support forbearance for DEMS carriers otherwise eligible for forbearance, and streamlined regulation for DEMS carriers otherwise eligible for streamlined regulation. Tymnet D.T.S., Inc. argued that all DEMS providers offering interstate, domestic, interexchange telecommunications services on a nationwide basis should be subject to streamlined regulation, and that forbearance would be premature until the Commission gained experience in streamlined regulation of DEMS. SBS stated that all similarly-situated non-dominant DEMS carriers should be subject to the same regulatory treatment, and that the Commission should preempt any contrary state regulation. The Association of Long Distance Telephone Companies did not take a position on non-dominant treatment of DEMS, but stated that DEMS carriers should be required to file tariffs with the Commission and must not prohibit resale. Finally, AT&T argued that DEMS should be subject to forbearance when offered by any carrier, including AT&T. SBS, MCI, GTE Sprint, and ISACOMM claimed that the Commission lacks specific information about how AT&T intends to use DTS/DEMS, and that AT&T's request should not be considered in this proceeding. ICOM was renamed as Dama Telecommunications Corp. (DamaNet).

[49] In Nationwide Paging, FCC 84–146, at 8–9 (released May 24, 1984), we found that newly-authorized national paging networks will be nondominant and applied forbearance to them.

[50] *See* note 15 *supra*.

In addition, while our experience with DEMS tariffs has been limited,[51] we have not received any petitions against the DEMS tariffs that have been filed or formal complaints regarding any DEMS service. We conclude that, with two exceptions explained in para. 24 *infra*, all providers of domestic, interstate, interexchange DEMS services should be regulated as nondominant for these services.[52]

23. Finally, we find that forbearance will help promote the entry and expansion of DEMS by relieving carriers of the costs and delay of required tariff filings, and will help promote competition. These developments will benefit consumers. *See* para. 10 *supra*. In many cases, it is most costly for a new carrier to prepare and file its first tariff than any subsequent tariff. The benefits of forbearance over streamlined regulation can be especially great for new carriers. In applying forbearance to DEMS carriers, we are confident that market forces and our complaint process will be sufficient to ensure that these carriers charge just, reasonable, and nondiscriminatory rates. We can impose a requirement of tariff filings and cost support if our experience with DEMS carriers indicates that these regulatory burdens are warranted. For these reasons, we reject Tymnet's contention that we should apply streamlined regulation to DEMS rather than forbearance at this time. Under forbearance, providers of DEMS offerings must charge just, reasonable, and nondiscriminatory rates; DEMS providers must obtain radio licenses under Title III and comply with the procedures and filing requirements we established in General Docket No. 79-188; [53] DEMS services are subject to our complaint process; DEMS providers must file semi-annual reports on their construction progress, 47 CFR 21.43, and on their initial and additional lines, 47 CFR 63.07; and DEMS services must comply with our Title II regulatory policies, including those requiring reasonable, nondiscriminatory interconnections [54] and prohibiting resale restrictions.[55] We apply dominant regulation to intraexchange services provided via DTS, including intraLATA, interstate DTS services of BOCs.[56] Also, we apply dominant regulation when DTS is used to provide interstate exchange access services by an exchange telephone company or by an affiliated carrier in its exchange service area.[57]

24. There are two exceptions to forbearance treatment for all DEMS services. First, exchange telephone companies will be regulated as dominant for their domestic, interstate, interexchange DEMS services which are not provided through affiliated carriers.[58] We expect that exchange telephone companies will continue to be dominant providers of exchange and exchange access services, even with the entry of other DTS carriers. To qualify as a nondominant carrier for its domestic, interstate, interexchange DEMS services, a carrier affiliated with an exchange telephone company must meet the requirements of para. 9 *supra*. Also, AT&T has not filed any applications for DEMS or DTS. We currently apply dominant regulation to AT&T Communications' (ATCOM's) services, and we are uncertain how ATCOM will offer DEMS services or integrate DTS facilities into its other transmission facilities.[59] In light of our concerns about cost-shifting, anticompetitive conduct, and discrimination, we will apply dominant regulation to all of ATCOM's services until we evaluate further the record developed in the AT&T Inquiry and receive specific DEMS applications from AT&T.[60] On the other hand, if AT&T Information Systems provides DEMS services via resale, it can do so subject to forbearance.[61]

25. In their comments and replies, both SBS and Contemporary Digital Services urge that any forbearance be accompanied by preemption of any state regulation inconsistent with that policy. In our orginal DEMS order,[62] we did not preempt any state action at that time. But, we did express our intention to preempt any future state regulation which would interfere with our proposal for the development of end-to-end digital radio common carrier communications services. At the present time, we are not aware of any existing state actions which warrant preemption.

26. We also note that our decision to forbear from requiring Section 214 filings does not in any way relieve applicants from their obligations to obtain a network authorization before proceeding to construct DTS facilities. In our reconsideration of the original DEMS order, we noted that applicants would not have to file separate Section 214 applications because the filing of information required to be submitted in a complete radio application for a DEMS network would be sufficient to make the necessary determinations under Section 214 as well as under Title III.[63] We want to emphasize that our decision today does not in any way affect the network concept of DEMS. Applicants must still seek and receive a network authorization under Title III before any construction may begin.[64] In addition, our decision in no way affects the maximum period for construction, which continues to be no more than 60 months after the grant of construction authority for Extended networks, and 30 months for Limited networks.[65]

IV. Conclusion and Ordering Clauses

27. We believe that the actions ordered today will eliminate unnecessary regulatory burdens, and improve the price and quality of services available to consumers by reducing regulatory costs and delays and promoting competition. We are continuing to examine the costs and benefits of other aspects of our regulation, including regulatory burdens imposed on AT&T, to further the statutory goals of widely-available, reasonably-priced, efficient telecommunications services.

28. It is ordered, pursuant to section 4(i) and (j), 201-205, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 201-205, and 214, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, That the policies set forth herein are adopted, that they are effective on the date of publication in the **Federal Register**,[66] and that § 63.07 of the

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[51] *See* note 43 *supra*.

[52] Para. 18 *supra* explains how carriers with mixed characteristics would have their DEMS services subject to nondominant regulation.

[53] *See* note 42 *supra*.

[54] Application of C & P Tel., *supra*, at 9 & n. 14.

[55] *See* Resale and Shared Use, 60 FCC 2d 261 (1976), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert.* denied, 439 U.S. 895 (1978); Resale and Shared Use of Domestic Public Switched Network Services, 83 FCC 2d 167 (1980).

[56] Application of C & P Tel., *supra*; Fourth Report, *supra*, 95 FCC 2d at 557 n.6 (BOCs' intraLATA, interstate services not in the relevant market of domestic, interstate, interexchange telecommunications services).

[57] *Fourth Report*, 95 FCC 2d at 578.

[58] *See* Application of C & P Tel., *supra*, at 5-6 (use of DTS facilities for exchange or exchange access services by an exchange carrier in its own exchange service areas); para. 9 *supra*.

[59] *See* Reply Comments of MCI Telecommunications Corp. to ICOM Petition (MCI uses DTS facilities for its tariffed services just as it uses microwave, fiber, and other transmission facilities).

[60] Long-Run Regulation of AT&T's Domestic Interstate Services, *supra*; note 4 *supra*.

[61] AT&T: Provision of Basic Services Via Resale by Separate Subsidiary, *supra*.

[62] 86 FCC 2d at 389-90, *petition for review denied sub nom.* Alascom, Inc. v. FCC, 727 F.2d 1212 (D.C. Cir. 1984).

[63] 90 FCC 2d at 335, n. 24.

[64] *See* 47 CFR 21.15(i).

[65] 86 FCC 2d at 385-86; 47 CFR 21.43.

[66] The Commission finds that, because these policies relieve restrictions on competition and

Continued

Commission's Rules, 47 CFR 63.07, is amended as set forth in the Attachment.

29. It is further ordered, that carriers treated by forbearance are given permission to cancel their tariffs on file with this Commission. Cancellation shall be by supplement effective upon five days' notice and the supplement shall reference this Order as authority for cancellation. For this purpose, §§ 61.56, 61.58, and 61.59 of the Rules, 47 CFR 61.56, 61.58, and 61.59, are waived.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment

Section 63.07 of Chapter I of Title 47 of the Code of Federal Regulations is revised in its entirety to read as follows:

§ 63.07 Special procedures for non-dominant domestic common carriers.

(a) Any party that would be a non-dominant domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct, acquire, or operate any transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

(b) Any non-dominant carrier that constructs or acquires (not by lease) initial or additional circuits shall report these circuits to the Commission semi-annually. These reports shall be filed on a consolidated basis on February 1 (covering facilities over which service was initiated during the preceding July 1 to December 31 period) and August 1 (covering facilities over which service was initiated during the preceding January 1 to June 30 period) of each year. These reports shall include:

(1) Caption—"Section 63.07 Report," including initial certification file number (if assigned);

(2) Name and address of carrier;

(3) Type, number and terminal points of circuits added; (in addition, if service is provided via satellite, the identity of the satellite(s) and a transponder-by-transponder loading); and

(4) Construction cost.

The Commission may request supplemental information.

[FR Doc. 84-23344 Filed 8-31-84; 8:45 am]

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public benefits will be derived from putting them into effect without delay, an immediate effective date is in the public interest and has good cause. 5 U.S.C. 553(d), 47 CFR 1.427.

Proposed Rules

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, and 1094

Milk in the Georgia, Alabama-West Florida, and New Orleans-Mississippi Marketing Areas; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of a proceeding on proposed suspension of rules.

SUMMARY: This action terminates a proceeding on a proposed suspension that would provide partial regulation, rather than full regulation, of the Savannah, Georgia, plant of Dairymen, Inc., in competing for sales of aseptically processed fluid milk products (UHT milk) with a Visalia, California, plant.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding—Notice of Proposed Suspension: Issued June 20, 1984; published June 25, 1984 (49 FR 25879).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on June 25, 1984, (49 FR 25879) concerning a proposed suspension of certain provisions of the Georgia, Alabama-West Florida, and New Orlean-Mississippi orders. Interested persons were invited to comment on the proposal in writing by July 2, 1984. The provisions that were proposed to be suspended through December 1985 are as follows:

1. In § 1007.7 the first sentence of paragraph (a), the words, "other than a plant specified in paragraph (d) of this section,".
2. Paragraph (d) of § 1007.7 in its entirety.
3. In the first sentence of § 1093.7(a)(2), the words, "the lesser of a daily average of 1500 pounds or".
4. In the first sentence of § 1094.7(a)(1), the words, "the lesser of a daily average of 1500 pounds of".

Statement of Consideration

The suspension was requested by Dairymen, Inc., which operates a fully regulated plant at Savannah, Georgia, where only aseptically processed fluid milk products (UHT milk) are packaged for distribution in the United States and for export outside the country. The effect of the suspension would be to provide partial regulation for the plant under Federal milk orders.

Comments in opposition to the suspension were received from Borden, Inc., National Independent Dairy-Foods Association, Thompson's Farm Supply, Molinos De Puerto Rico, Inc., Puerto Rico Department of Agriculture, Kinnett Dairies, Inc., Milk Industry Foundation, Mayfield Dairy Farms, Coburg Dairy, Continental Grain Company, Central Soya Puerto Rico, New Jersey Milk Industry Association, the Milk Dealers Association of the Philadelphia Area, Inc., Sociedad Agricola Cooperativa de Puerto Rico and Northeast Dairy Cooperative Federation.

None of the comments supported the Dairymen, Inc., request for suspension. The comments were carefully and fully considered in reaching the conclusion herein.

There are three milk plants in the United States that package UHT milk. The Dairymen, Inc., plant at Savannah, Georiga, is regulated by the Georgia order, and the Gossner Foods plant at Logan, Utah, is regulated by the Great Basin order. These plants are required to pay the Class I prices of the respective orders for all sales of UHT milk.

The Real Fresh plant at Visalia, California, is regulated by the California Milk Board. For UHT milk that is sold outside California in the 47 contiguous states, the California Class II price applies on a temporary basis through December 1985. For UHT milk that is exported outside the United States, the California Class IV price applies.

The suspension of certain order provisions was requested by Dairymen, Inc., because the Visalia, California, plant obtained a contract to supply UHT milk to Fort Stewart, Georgia, by bidding a lower price than Dairymen, Inc. The Real Fresh contract price and the Dairymen, Inc., bid price were not cited in the suspension request.

Suspension of the order provisions requested by Dairymen, Inc., was intended to enable the cooperative to compete more effectively with the Visalia, California, plant for sales of UHT milk in the Georgia marketing area, specifically. The suspension request cited purported competitive difficulties with the Visalia plant in the Georgia market, but it cited no instances of competitive disadvantage in unregulated areas or in export sales with the Visalia, California, plant or with any other competitor.

Dairymen, Inc., claimed that the California Class II price, which was $12.17 a cwt. for March 1984, provides the Visalia plant with a competitive advantage of 4.8 cents a quart for sales outside California in the 47 contiguous states compared with a Georgia Class I price which Dairymen, Inc., must pay for milk that is used in UHT fluid milk products. The Georgia Class I price for March 1984 was $14.35 a cwt.

Dairymen, Inc., claimed that its Savannah, Georgia, plant cannot compete with the Real Fresh plant at such a price difference with the Georgia order Class I price. It is noted, however, that the Dairymen, Inc., comparison does not take into account the Georgia order location value of Class I milk at Visalia, California. When the Georgia order Class I price for March 1984 was $14.35 a cwt., the location value at Visalia, California, was $12.08 a cwt., which was the Georgia Class III price. This was 9-cents a cwt., less than the California Class II price of $12.17.

The suspension action, as proposed by Dairymen, Inc., would result in nonpool status for its UHT milk plant at Savannah. The Dairymen, Inc., plant and the Real Fresh plant would be partially regulated distributing plants in any Federal milk order marketing area where they distribute UHT milk products.

Dairymen, Inc., stated that partial regulation of its Savannah plant by any

Federal milk order would not place the plant at a competitive advantage over regular refrigerated milk sales made within such areas by fully regulated Federal order plants. This is correct, and it applies similarly to the Real Fresh plant at Visalia, California.

All Federal milk orders contain provisions for the orderly movement of unpriced milk into regulated markets. Any nonpool plant that is neither an other order plant nor a producer-handler plant from which Grade A fluid milk products, including UHT milk, are disposed of on routes is designated as a partially regulated distributing plant. Usually, that is a plant which does not have sufficient route disposition in any Federal order marketing area to qualify for pooling under an order.

An operator of a partially regulated distributing plant has three options in meeting the payment obligations of a Federal order for any fluid milk products that such operator disposes of on routes in the marketing area:

(a) The plant incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another milk order.

(b) The plant operator incurs no obligation under the order, except for an administrative assessment charge on the quantity of milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. Under this option, a plant operator whose payments for milk are less than the order's obligations may pay the difference either to his own dairy farmers or the producer-settlement fund of the order.

(c) The plant operator may choose to pay the producer-settlement fund the difference between the Class I price and the producer blend price of the order (both prices adjusted for the location of the plant) on all fluid milk products distributed in the marketing area (less any purchases of milk classified and priced under any Federal milk order).

The above options are designed to place handlers operating partially regulated distributing plants and handlers operating fully regulated plants on a comparable basis with respect to the cost of Class I milk distributed in an order's marketing area.

Under the Georgia order, UHT fluid milk products are classified as Class I milk, as are fresh fluid milk products that require refrigeration. As a partially regulated plant under the Georgia order, the Visalia plant could not have a competitive advantage over the Dairymen, Inc., plant at Savannah, Georgia, in the cost of raw milk. Accordingly, no basis exists for suspending order provisions, as requested by Dairymen, Inc., due to the disposition of UHT milk by the Visalia plant to Fort Stewart, Georgia. Further, our information is that the Visalia dispositions to Fort Stewart were during one month only (April 1984), and amounted to a relatively small quantity of milk.

Also, the suspension request contains no factual basis on which to suspend order provisions to accommodate Dairymen, Inc., sales (if any) of UHT milk in areas not covered by federal milk orders. Neither does any factual basis exist in the suspension request for suspensing order provisions to accommodate exports of Dairymen, Inc., UHT milk outside the United States. As indicated in some of the comments received in opposition to the suspension, a proceeding relative to export sales of UHT milk is pending in the Department. One comment pointed out that numerous participants at the hearing of that proceeding opposed the export proposals made by Dairymen, Inc., and filed detailed briefs based on the evidence in the hearing record of the proceeding.

Concerning UHT exports, one comment was that it was incongruous of Dairymen, Inc., to seek lower milk prices, by a suspension order, to export UHT milk when a shortage of milk for fluid use has developed in the southeastern Federal order markets supplied by Dairymen, Inc. As a result of the shortage, a substantial quantity of milk must be imported into the area from other regions of the country with additional, substantial costs for handling and transportation.

Another comment was that a hearing should be held to consider the order changes requested by Dairymen, Inc., rather than to effectuate the change by a suspension order. The comment pointed out that at a public hearing, the need for the order changes could be explored thoroughly by the proponent, by supporters, and by opponents.

Another comment was that no emergency was demonstrated in the proposed suspension document which would require a suspension order rather than a public hearing to consider the proposed order changes. This comment is particularly pertinent when it is considered that as a partially regulated plant, the Visalia operation can have no competitive advantage over Dairymen, Inc., in the cost of raw milk under the order.

We believe that the considerations discussed herein, and the comments cited, establish that there is no basis to conclude that UHT milk from the Visalia, California plant to the 47 contiguous states outside California presents competitive problems to Dairymen, Inc., in the eastern United States insofar as the cost of raw milk is concerned. Also, there is no evidence in this proceeding that the Visalia plant is in the export market competing with Dairymen, Inc. Since the Visalia plant cannot have a competitive advantage over the Dairymen, Inc., plant in the cost of raw milk, there are no emergency conditions that require a suspension of order provisions. Further, the information developed in this proceeding does not establish that disorderly marketing conditions would result if the suspension is not issued.

On the basis of the foregoing considerations, the suspension request is hereby denied and the proceeding is terminated.

List of Subjects in 7 CFR Parts 1007, 1093, and 1094

Milk-marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on August 28, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–23371 Filed 8–31–84; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[Amdt. 3]

General Regulations Governing Price Support for the 1978 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR Part 1421 governing the Commodity Credit Corporation (CCC) price support loan and purchase program for the 1978 and subsequent crops of grain and similarly-handled commodities with respect to: (1) The reconcentration of warehouse-stored loan commodities; (2) loan interest rates; (3) producer eligibility for

commodity loans; and (4) the assessment of liquidated damages. This proposed rule would also remove obsolete references to annual commodity supplements, provide forgiveness provisions with respect to certain producer violations, and authorize compensation to be made available to rice producers who are required by CCC to deliver rice to a warehouse beyond the producer's customary delivery point.

DATES: Comments must be received on or before October 4, 1984.

ADDRESS: Send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447-8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0087 and 0560-0040.

This proposed rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Producers are obtaining loans with respect to 1984-crop commodities. Since the proposed changes made by these regulations will be applicable to 1984-crop commodities, the comment period is limited to 30 days. Therefore, comments must be received with respect to this proposed rule through October 4, 1984 in order to be assured of consideration.

Annual Commodity Supplements

The regulations at 7 CFR 1421.1 currently provide that price support shall be made available for a particular crop of a commodity only if an annual commodity supplement applicable to such crop is issued. While these supplements were previously codified, they are now set forth in a notice published in the **Federal Register.**

Accordingly, this proposed rule amends § 1421.1 to provide that price support shall be made available for a particular crop of a commodity as determined and announced by the Secretary of Agriculture.

Reconcentration of Warehouse-Stored Loan Commodity

This proposed rule provides that, at the option of a producer, a commodity which has been pledged as collateral by the producer for a price support loan and which is stored in a CCC-approved warehouse may be reconcentrated in another approved warehouse. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. The reconcentration of warehouse-stored commodities would be approved by CCC by completion of Form CCC-699, Reconcentration Agreement and Trust Receipt.

With respect to reconcentration of warehouse-stored commodities, the proposed rule revises 7 CFR Part 1421 to provide that: (1) Warehouse storage loans will be liquidated by delivery to CCC of new warehouse receipt(s) represnting the commodity reconcentrated; (2) new warehouse receipt(s) issued by the subsequent warehouse must: (a) Represent a commodity which is deemed to be stored commingled, (b) be negotiable, and (c) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse; (3) the quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC-699, Reconcentration Agreement and Trust Receipt; (4) a producer must repay, with interest, the amount by which the value of the commodity pledged as collateral for the new warehouse storage loan is less than: (a) The value of the original warehouse-storage loan in the case of a total loan reconcentration; or (b) the value of the quantity of the commodity which CCC approved for reconcentration in the case of a partial loan reconcentration; (5) responsibility for any loss in quality or quantity shall be resolved solely between the new warehouseman and the producer without any liability on the part of CCC; (6) a producer may redeem all or part of the commodity being reconcentrated by paying to CCC the loan principal plus applicable interest and charges; (7) if the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with §§ 1421.733 and 1421.753; (8) except for wheat, barley, sorghum, and rye, CCC will not increase the amount of the loan to reflect transportation costs when commodities are reconcentrated; (9) CCC will increase or decrease the loan to the producer by the amount by which the loan value of the commodity in the subsequent warehouse is greater or less than the value of the commodity pledged as collateral for the original warehouse storage loan; and (10) the maturity date of the new warehouse storage loan shall be the same as the maturity date for the original warehouse storage loan.

Interest Rates

Section 1421.12(b) of the regulations currently provides that price support loans which have not been repaid by the maturity date or the original date on which settlement is required for loans which have been called in the Farmer-Owned Grain Reserve Program shall bear interest at the higher of: (1) The rate of interest which the U.S. Treasury charges CCC for amounts which it borrows during January of the year in which either the loan matures or settlement is originally required; or (2) the interest rate specified in the loan document. This proposed rule provides that the interest rate assessed with respect to unsettled loans shall be the same as the rate which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. Such interest will be assessed beginning: (1) On the date immediately following the maturity date of the loan, or (2) with respect to loans which have been called, on the original required settlement date. In each instance, interest shall continue until the loan is settled.

Commingling Eligible and Ineligible Commodities

Section 1421.17(b) of the regulations currently provides that a commodity is not eligible for price support if it is commingled with (1) an ineligible quantity of the commodity or (2) a quantity of the commodity on which price support has already been obtained, unless the commodity is stored in an approved warehouse or unless the county ASCS office has granted prior approval for such commingling. In addition, § 1421.17(b) provides that a rice producer who produces rice: (1) On a farm which has an acreage allotment, or (2) on a farm to which a producer allotment has been allocated, in excess of the quantity elilgible to be pledged as collateral for a CCC loan may commingle the eligible and ineligible rice and obtain price support on the quantity of rice which is considered to be eligible for price support. Section 601 of the Agriculture and Food Act of 1981 repealed the provisions of the Agricultural Adjustment Act of 1938, as amended, relating to rice allotments. Accordingly, this proposed rule amends § 1421.17 (b) to delete the current provisions and add new requirements which permit producers to obtain price support loans with respect to eligible commodities which are commingled with ineligible commodities if: (1) The producer receives approval from a representative of the appropriate county ASCS office prior to the commingling of the eligible and ineligible commodities and the eligible or ineligible commodity is measured by a representative of the county ASCS office prior to the commingling of the commodities; or (2) the producer certifies the acreage on all farms in which the producer has an interest. If the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest, the producer must: (1) Provide acceptable evidence of the production or purchase of the commodity in order that the county ASC committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on the respective farms and similiar farms in the same county; or (2) have either the eligible or ineligible commodity measured by a representative of the county ASCS office.

Liquidated Damages

Sections 1421.17(g), 1421.18(a), and 1421.19(a) of the current regulations do not adequately address the issue of the aplication of liquidated damages by CCC or other actions which CCC may take when a producer fails to comply with the terms and conditions of a Farm Storage Note and Security Agreement or a Farm Storage Grain Reserve Agreement. Serious and substantial damage to CCC and to the price support and Farmer-Owned Grain Reserve Programs which are conducted by CCC occur when there is: (1) Unauthorized disposition of farm-stored loan collateral by the producer; (2) failure of the producer to deliver a farm/stored commodity by the delivery date specified by CCC; or (3) failure of the producer to repay a loan by the required date when the commodity pledged as collateral for a price support loan has been released for marketing. When such violations occur, CCC also incurs substantial administrative and other costs which are difficult, if not impossible, for CCC to accurately establish.

Accordingly, it is proposed that §§ 1421.17(g), 1421.18(a) and 1421.19(a) be revised to provide that, if any of the described violations occur, the producer shall pay to CCC, in addition to applicable interest and other charges with respect to the loan, liquidated damages on the applicable quantity of the commodity. Liquidated damages will be assessed at 50 percent of the applicable rate of interest which is charged by CCC with respect to delinquent debts on the date the violation occurs. For unauthorized disposition of loan collateral, liquidated damages will be assessed beginning on the date that the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition cannot be determined, such disposition will be considered to have occurred on the later of: (1) The day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. If a producer fails to deliver a farm-stored commodity by the delivery date specified on Commodity Delivery Notice (Form CCC-691) and the producer subsequently repays the loan before delivery is accomplished, liquidated damages will be assessed beginning on the day following the required delivery date and continuing until such time as the loan is repaid. If a producer fails to repay a loan on a farm-stored commodity for which a Marketing Authorization (Form CCC-681-1) has been issued when the commodity has been delivered to the buyer, liquidated damages will be assessed beginning on the earlier of: (1) The expiration date of the marketing authorization, or (2) the date delivery of the commodity to the buyer is completed and shall continue until the loan is repaid.

Unauthorized Removal and Unauthorized Disposition

When a producer has obtained a commodity loan from CCC by pledging as collateral a commodity which is stored on the producer's farm, the producer must not take any action to impair CCC's security interest in the collateral. If the producer removes or otherwise disposes of the collateral without first obtaining the authorization of CCC, CCC's security interest is substantially impaired. Further, unauthorized removal or disposition of CCC farm-stored collateral undermines the effectiveness as well as the integrity of the entire commodity price support loan program. In order to protect CCC's security interest in farm-stored collateral, § 1421.17(g) currently provides that in the event of the first unauthorized removal or disposition, the county ASC committee may call the loan involved and refuse any further farm-stored loans for the producer on any commodity through the end of the next crop year. With respect to the second unauthorized removal, the county ASC committee shall call the loan involved and approve no further farm-stored loans for the producer through the next crop year. This proposed rule would amend § 1421.17(g) to expand the authority of the county ASC committee to take these actions and to take any other actions deemed necessary. Under the proposed rule, the county ASC committee would also have the authority to refuse any further farm-stored loans for the producer for any commodity for a period of time beyond the end of the next crop year if it is determined that such an action is warranted.

Forgiveness of Violations

The Agricultural Act of 1949, as amended, provides that the county ASC committee may forgive some or all of the penalties which a producer would incur as a result of an unauthorized removal of CCC loan collateral. This proposed rule adds a new § 1421.17(i) which would authorize county ASC committees to waive some or all of the penalties and requirements that would normally be imposed on producers who sample, turn, move, or replace farm-stored loan collateral in violation of law or regulation if the county committee determines that: (1) The violation occurred inadvertently or accidently, because of lack of knowledge or understanding of the law or regulation, or because the producer or the producer's agent acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the rights or interests of any person.

Loan and Purchase Settlements on Rice

The number of available CCC-approved rice warehouse facilities in some rice producing areas is limited. Therefore, CCC may direct producers to deliver rice to a CCC-approved warehouse beyond the producer's customary delivery point in settlement of a price support loan or purchase agreement. In order to compensate rice producers for this additional expense, it is proposed that 7 CFR 1421.22(a) be amended to provide that rice producers will be compensated for delivery of rice beyond their customary delivery point.

Miscellaneous Provisions

A new § 1421.29 has been added to indicate the numbers assigned by the Office of Management and Budget for the purpose of complying with the recordkeeping requirements as specified by the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs, agriculture, price support programs, surety bonds, warehouses.

Proposed Rule

PART 1421—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

1. The authority citation is revised to read:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b, 714c), Secs. 101, 105B, 107B, 201, 301, 401, 405, 63 Stat. 1051, as amended, 95 Stat. 1227, as amended, 95 Stat. 1221, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1444d, 1445b–1, 1446, 1447, 1421, 1425).

2. The table of contents to Subpart—General Regulations Governing Price Support for the 1978 and Subsequent Crops is amended by adding § 1421.29 as follows:

* * * * *

Sec.
1421.29 Paperwork reduction act assigned numbers.

* * * * *

3. Section 1421.1 is revised to read as follows:

§ 1421.1 General statement.

This subpart contains the regulations which set forth the general requirements with respect to price support for the 1978 crop and each subsequent crop of barley, corn, flaxseed, oats, rice, rye, sorghum, soybeans, farm-stored peanuts, farm-stored flue-cured tobacco, and wheat. Price support shall be made available for a particular crop of a commodity based upon the level of support which is determined and announced annually by the Secretary. Farm storage loans will be evidenced by notes and secured by security agreements. In certain cases, chattel mortgages or financing statements will be filed. Warehouse storage loans will be evidenced by notes and security agreements and secured by the pledge of warehouse receipts representing an eligible commodity stored in approved warehouse storage. A producer may sell to CCC any or all of an eligible commodity which is not security for a price support loan by delivering to CCC the commodity or the warehouse receipts representing the commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

4. In § 1421.9, paragraph (b) is revised to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit: *Provided, however,* That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.18(c).

* * * * *

5. In § 1421.12, paragraph (b) is revised to read as follows:

§ 1421.12 Interest rate.

* * * * *

(b) Price support loans which have not been repaid by the maturity date or the original required settlement date for called loans shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. Until the loan is settled, such interest will be assessed beginning on the date immediately following the loan maturity date or the original required settlement date for called loans, whichever is applicable.

* * * * *

6. In § 1421.17, paragraphs (b) and (g) are revised and new paragraphs (h) and (i) are added to read as follows:

§ 1421.17 Farm storage loans.

* * * * *

(b) *Commingling eligible and ineligible commodity.* If an eligible quantity of a commodity has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged a collateral for a loan unless: (1) The producer has received prior approval from the county ASCS office to commingle the commodity as evidenced by an approved form CCC–687–1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county ASCS office; or (2) the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production or purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county ASCS office.

* * * * *

(g) *Unauthorized removal and unauthorized disposition.* If there has been an unauthorized removal or

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unauthorized disposition of any part of farm-stored collateral, the county committee may: (1) Call the loan involved, (2) refuse to approve any further farm-stored loans for the producer with respect to any commodity for a period determined to be appropriate by the county committee, and (3) take other actions deemed necessary.

(h) *Liquidated damages.* If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, or the quantity so disposed beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of: (1) the day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 50 percent of the rate of interest which is charged by CCC with respect to deliquent debts at the time the unauthorized disposition is determined to have occurred.

(i) *Waiver of penalties or liquidated damages.* If penalties or liquidated damages are assessed in accordance with paragraph (h) of this section, the county committee may waive some or all of such penalties or liquidated damages if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or the State committee within sixty days from the date the determinations are received, such determination shall be considererd to have been approved.

7. In § 1421.18, paragraphs (a) and (c) are revised to read as follows:

§ 1421.18 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose of any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC the principal amount of the loan which is outstanding with respect to the quantity of the commodity released, plus interest. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a produder fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and the commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-681-1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (1) The expiration date of such marketing authorization, or (2) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

* * * * *

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by repayment of the principal amount of the loan, plus interest, with respect to the quantity of the commodity to be released. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provisions of § 1421.5(b), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC-699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, the county committee may at any time during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. Any such approval shall be subject to all the terms and conditions set forth in Form CCC-699, Reconcentration Agreement and Trust Receipt. Warehouse receipts issued by the subsequent warehouse must: (i) Represent a commodity which is deemed to be stored commingled; (ii) be negotiable; and (iii) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse. The quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC-699, Reconcentration Agreement and Trust Receipt. Liability for any loss in quality or quantity shall be resolved solely between the warehouseman and the producer without any liability on the part of CCC. A producer may redeem all or part of the commodity reconcentrated by paying to CCC the loan principal plus applicable interest and charges before the new warehouse receipt is delivered to CCC. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early

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redemption charges which are applicable in accordance with § 1421.733 and § 1421.753. Except for wheat, barley, sorghum, or rye, commodities which are reconcentrated shall be transported without cost to CCC. CCC shall increase or decrease the loan to the producer by the amount by which the loan value of the commodity stored in the subsequent warehouse is greater than or less than the value of the original warehouse storage loan. The maturity date of the new warehouse storage loan shall be the maturity date applicable to the original warehouse storage loan.

* * * * *

8. In § 1421.19, paragraph (a) is revised to read as follows:

§ 1421.19 Liquidation of farm storage loans.

(a) *General.* In the case of farm storage loans, the producer is required to repay the loan or deliver to CCC a sufficient quantity of the eligible commodity having a price support value equal to or greater than the outstanding balance of the loan. Deliveries may be either of the identical commodity which is subject to the note and security agreement or of other eligible commodities of the same kind. Deliveries shall be made in accordance with written instructions issued by the county ASCS office which shall set forth the time and place of delivery. CCC will not accept delivery of any quantity in excess of the larger of: (1) 110 percent of the measured or certified quantity, or (2) a sufficient quantity of the commodity having a settlement value equal to 110 percent of the loan value being settled. Settlement of the quantity delivered shall be made as provided in § 1421.22. If the producer fails to deliver to CCC the commodity pledged as price support loan collateral by the date specified by CCC on Form CCC-691, Commodity Delivery Notice, and if the producer subsequently redeems the collateral by repaying the loan before delivery is accomplished, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity redeemed. Such liquidated damages shall be assessed beginning on the date following the required delivery date and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the repaid quantity by 50 percent of the rate of interest charged by CCC with respect to delinquent debts on the date the failure to deliver occurred.

* * * * *

9. In § 1421.22, paragraph (a) is revised to read as follows:

§ 1421.22 Settlement.

(a) *General.* Settlement with producers for commodities acquired by CCC as a result of loans made or under purchase agreements entered into under this subpart shall be made as provided in this section and in the applicable commodity regulation. The price support rate at which settlement shall be made shall be determined in accordance with the provisions of the applicable commodity regulations. Settlement shall be made on the basis of the grade, quality, and quantity of the commodity delivered by the producer. In the case of farm-stored peanuts and farm-stored tobacco, paragraphs (b), (c), and (e) of this section shall not apply. In the case of farm-stored rice, paragraphs (b) and (c) of this section shall not apply.

* * * * *

10. A new § 1421.29 is added to read as follows:

§ 1421.29 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Numbers 0560-0087 and 0560-0040 have been assigned.

Signed at Washington, D.C., on August 28, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-23317 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Comptroller of The Currency

12 CFR Part 3

[Docket No. 84-29]

Minimum Capital Ratios; Issuance of Directives

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Proposed rule.

SUMMARY: Section 980 of the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX, 97 Stat. 1153) condified at 12 U.S.C. 3907, directs the Comptroller of the Currency to establish minimum levels of capital for national banks and to require them to achieve and maintain adequate capital. The Office also is required to analyze capital adequacy in taking action on various types of applications such as mergers and branches and in conducting the Office's supervisory activities related to the safety and soundness of individual banks and the banking system. This proposal: (a) Defines capital; (b) establishes required minimum capital ratios; (c) establishes procedures to set higher required minimum capital ratios for an individual bank; and (d) establishes procedures for issuing a directive to require a national bank to achieve and maintain the minimum capital ratios applicable to it.

DATE: Comments must be received by November 5, 1984.

ADDRESSES: Comments should be sent to Docket No. 84-29, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219, Attention: Lynnette Carter. Comments will be available for inspection and photocopying.

Comments specifically addressing the information collection requirements in §§ 3.7 and 3.12 should be submitted to: Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20500, Attention: Desk Officer for the Office of the Comptroller of the Currency. Those comments also should be directed to the Comptroller's Office at the above address.

FOR FURTHER INFORMATION CONTACT: Susan K. Fetner, National Bank Examiner, or John H. Noonan, Director, Commercial Examinations Division (202 447-1164), or Dorthy A. Sable, Senior Attorney (202 447-1880).

SUPPLEMENTARY INFORMATION: .

Background

Capital performs several very important functions in banking institutions. It absorbs losses; helps to maintain confidence in individual banks and the banking system as a whole; and supports growth. Capital also provides protection to depositors in the event of a threatened insolvency.

The Office of the Comptroller of the Currency (Office) has always had a strong concern for the maintenance of adequate capital in individual banks and in the banking system. The protection of depositors and fostering of stability in the financial system are critical to the mission of the Office and capital adequacy plays a key role in the policies and programs used in performing the Office's supervisory functions. A determination of capital adequacy in one of the major objectives of a bank examination and is one of the five components which form the basis of the Uniform Financial Institution Rating System used by the Office in determining the condition of individual banking institutions. Additionally, by enacting the International Lending

Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) (ILSA) Congress has explicitly recognized the importance capital adequacy assumes in the safe and sound operation of the nation's banking system.

Although there is widespread agreement as to the importance of adequate capital, there has been vigorous debate over the years among regulatory authorities, bankers, industry analysts and other regarding what constitutes and adequate level of capital. There is general agreement that the capital of any given bank should be sufficient to maintain public confidence in the institution; support the volume, type and character of the business conducted; provide for the possibilities of loss inherent therein; and permit the bank to continue to meet the reasonable credit requirements of the area served. The quantification of this into an appropriate capital ratio has, however, been the subject of much controversy.

Bank capital ratios, relating the amount of bank capital to bank assets, vary in response to differential growth rates in the numerator—bank capital, and the denominator—bank assets. The growth rate of bank assets is affected by the rate of inflation, credit demand, innovations in bank asset and liability management, and the real rate of growth in the economy. The growth rate of bank capital is a function of the rate of return on assets, the retention rate of earnings, and net new issues of capital securities. The "adequacy" of these bank capital ratios is affected by the economic environment in which banks operate and the magnitude of risk inherent in the structure and operating characteristics of individual institutions.

Several factors have emerged over the past few years which are accentuating the potential demands on bank capital. The decrease in banks' net interest margins, together with a weakening of loan portfolios brought about by shocks in the domestic and world economy have caused a decline in bank profitability and increased levels of risk within the system. The competition for financial services has intensified on both an intraindustry and interindustry basis, placing additional pressures on bank profitability. Further, because of the growing interdependency within the system, problems in one institution can have repercussions on other institutions, arguing for stronger capital levels in both individual banks and the system as a whole. Increasing levels of off-balance sheet risks are also a factor in the need for higher capital.

The Comptroller, the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) have previously adopted and published capital guidelines which, together with the efforts of banks to achieve them, have been successful recently in preventing a decline in bank capital ratios. These policies, while similar, have not been completely uniform and have allowed for some disparity in the treatment of federally regulated banks. Section 908 of ILSA (12 U.S.C. 3907) directs the federal banking agencies to "* * * cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by such other methods as the appropriate Federal banking agency deems appropriate." ILSA also encourages uniformity among the agencies in imposing requirements under the Act. Therefore, pursuant to the Office's authority under ILSA and the authority contained in the National Banking Act, the Office is proposing a regulation on capital requirements. The FRB and the FDIC also have issued similar capital proposals for comment. The proposed regulation is intended to implement the provisions of the ILSA, foster further improvement in bank capital ratios, and eliminate the disparities in treatment of federally regulated banks with respect to capital adequacy. The proposed regulation also sets forth the procedures, pursuant to the authority contained in ILSA, for issuing directives to require banks to achieve and maintain adequate capital.

The proposed regulation will supplement, rather than replace, the Office's supervisory evaluations of capital adequacy. The process of determinig the adequacy of a bank's capital on an ongoing basis begins with a qualitative evaluation of the critical variables that directly bear on the institution's overall financial condition. These variables include the quality, present value, type and diversification of assets; historical and prospective earnings; liquidity (with emphasis on asset/liability management); the quality of management; and the existence of other activities which may expose the bank to risks, including off-balance sheet items, the degree of leverage and risks undertaken by the parent company or other affiliates. Banks with significant weaknesses in one or more of these areas will be expected to maintain higher capital levels than the minimums set forth in the regulation. In addition, the OCC stresses that the capital requirements set forth in this proposed regulation are minimums and that all banks are encouraged to maintain higher levels of capital in order to provide protection against unforeseen adversities.

The Proposal

The regulation would apply to national banks and banks located in the District of Columbia. The regulation would not apply to bank holding companies; however, when considering the condition of or an application from banks which are subsidiaries of holding companies, the activities and condition (including capital adequacy) of the bank holding company will be considered by the Office. Although the proposed regulation would not apply to federal branches and agencies, the Office is considering imposition of a comparable capital equivalency deposit requirement for federal branches and agencies (see Issues for Comment, No. 10).

Under the proposed regulation, the minimum acceptable ratio of total capital to total assets would be established at six (6) percent (%) and the minimum ratio of "primary " capital to adjusted total assets would be established at five and one-half (5 ½) percent (%). These ratios would apply to well-managed banks of all sizes which have no material weaknesses. Based on the December 31, 1983 Call Reports, approximately 95% of all national banks had a primary capital ratio in excess of 6%, a level which would exceed the primary capital requirement established by this regulation. In addition, most of the larger multinational and regional banks (which generally have lower capital ratios than smaller banks) had primary and total capital ratios which would exceed the minimum requirements. A few large banks will be faced with a relatively large dollar shortfall in their capital accounts. While the OCC expects that all banks will make every effort to achieve compliance as rapidly as possible, the Office will consider the individual circumstances and the ability of each bank to achieve compliance.

The proposed regulation represents a change from the interagency guidelines issued by the OCC and the FRB in December 1981 and amended in June of 1983. Regional and multinational banks would be subject to an increase in the primary capital ratio from 5% ot 5½% while community banks would have their minimum primary capital ratio lowered from 6% to 5½%. The new total capital ratio, as proposed, would be 6%. Previously, the guidelines had used a zone concept, based on asset size, to determine the nature and intensity of supervisory action for a particular institution. Multinational and regional banks were presumed to have inadequate total capital if below a 5½% ratio, and community banks were presumed under capitalized if below 6% total capital. The zone concept provided some guidance for bankers and regulators in monitoring total capital levels and consideration is being given to continuing use of the zones in conjunction with a minimum capital requirement. (See Issues for Comment, No. 9).

Primary Capital Definition

Primary capital in the proposed regulation is defined as the total of common and perpetual preferred stock, capital surplus, undivided profits, contingency and other capital reserves, a limited amount of mandatory convertible debt (as defined), minority interests in consolidated subsidiaries, net worth certificates and the allowance for loan and lease losses; minus intangible assets. The term mandatory convertible debt is defined to include only those subordinated debt instruments that mandatorily convert into the issuing bank's common or perpetual preferred stock. The definition intentionally does not include subordinated debt that merely requires the issuer to sell stock in sufficient amounts to replace the debt obligation, even though these instruments are considered as primary capital under OCC's present guidelines. Furthermore, for purposes of meeting the minimum primary capital requirements of this proposed regulation, mandatory convertible debt would be included only to the extent of 20% of primary capital exclusive of such debt. The proposed regulation limits the amount of mandatory convertible debt that would be included in measuring primary capital because, while these instruments contain many of the features of equity capital, they do not represent equity until actually converted.

The proposed definition of primary capital thus also differs from that contained in 12 CFR 7.1100 which defines capital for statutory and supervisory purposes. The Office will amend that interpretive ruling upon adoption of a final regulation under this proposal (see Issues for Comment, No. 1).

Secondary Capital Definition

The definition of secondary capital would include mandatory convertible debt that is not included in primary capital (in excess of 20%), intangible assets, and, subject to certain restrictions in 12 CFR 7.1100, limited life preferred stock and subordinated notes and debentures. As in the case of primary capital, the definition of secondary capital differs from that contained in 12 CFR 7.1100 (See Issues for Comment, No. 1).

Minimum Capital Ratios

The proposal would require banks to have and maintain a ratio of total capital to total assets (as defined) of at least 6% and a ratio of primary capital to adjusted total assets of at least 5½%. These ratios would apply to all national banks, regardless of size. However, the Office would retain the right to establish higher ratios for individual banks whose circumstances warrant a stronger capital base. In addition, banks which have entered into, or subsequently enter into a written agreement or which are or become subject to a cease and desist order under 12 U.S.C. 1818 (b) or (c) requiring higher minimum capital ratios for the bank, must achieve and maintain those higher ratios. Similarly, if higher minimum capital ratios have been or are required as a condition for approval of an application, the bank will be governed by those ratios.

The ratios must be achieved as of each Call Report date and will be calculated in terms of the bank's reported total capital to its reported average total assets and its primary capital to average total assets as adjusted. During the following quarter, the bank must maintain this ratio. If total assets increase, on average, during the quarter, the bank must increase its capital (unless it is already above the minimum) before the upcoming Call Report date, in order to be in compliance with the required ratios as of the Call Report date for that quarter.

Banks which are not able to achieve the ratios by the effective date of the final rule will be required to submit to the Office an acceptable plan to achieve the minimum capital ratios within a reasonable time. The plan itself must be submitted within 60 days after the effective date of the final rule and must set forth the means and time frames in which the bank will achieve the minimum ratios. The Office understands that banks that will need to raise or generate a substantial amount of capital to achieve the ratios will require a reasonable period of time in which to do so and the Office will take this into account in reviewing individual bank plans. Rather than a formal approval or acceptance process, the proposed rule provides that the bank may consider its plan acceptable to the Office unless it is notified to the contrary. It should be noted, however, that under this provision, the Office may subsequently require changes in a bank's plan, such as an acceleration of the time schedule, in the event of changed circumstances. Because not all banks will have the required ratios at the time the final rule becomes effective, or be able to achieve the ratios quickly thereafter, the rule provides that a bank in compliance with an acceptable plan to achieve the ratios will not be considered to be in violation of the regulation.

Finally, the Office has reserved the authority to permit a bank to operate with capital ratios below the minimums when, in the opinion of the Office, the circumstances justify such action. This provision might apply for example, to a situation in which a bank in compliance with the minimum ratios would not be in compliance if it undertook a proposed acquisition which would dilute its capital or increase its assets. Such an acquisition, however, may be necessary or desirable to alleviate a troubled or emergency situation involving another bank. In such circumstances, when the Office believes that the acquisition should be approved, it may specifically authorize the acquiring bank to have capital ratios below the minimums during a specified period of time, *i.e.*, the time necessary for the bank to absorb the acquisition and increase its capital to again meet the minimums specified in the regulation. This provision is not intended to authorize banks below the required minimums to continue to operate with lower capital ratios or to authorize banks to reduce their capital.

Minimum Capital Ratios for an Individual Bank

As noted above, the general minimum captial ratios are intended to apply to sound banks without any significant risks or problems. Higher minimum captial ratios may be appropriate or necessary for individual banks depending upon their circumstances. The International Lending Supervision Act specifically provides the Comptroller with the authority "to establish such minimum level of capital for a banking institution as the [Office], in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." 12 U.S.C. 3907(a)(2). Higher minimum ratios may be estabished for a bank and required as a part of a written agreement or a cease and desist order under 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application. In addition, the proposed rule establishes a procedure for setting higher required minimum capital ratios for an individual bank. This part of the rule sets out examples of situations when higher minimum capital ratios may be necessary or appropriate and examples of the factors which the Office may consider in deciding what a bank's minimum capital ratios should be. These examples are not intended to be exclusive because it is not possible to predict in advance each situation in which higher capital ratios may be necessary or every factor which should be considered in a particular situation.

The procedure provides for written notice from the Office to the bank indicating the capital ratios which the Office believes are appropriate for the bank, the date when they should be achieved, and an explanation of why those ratios are considered appropriate. The bank will have thirty days in which it may respond to the Office in writing. After the close of the bank's response period, or after the bank's response is received, if sooner, the Office will consider any response from the bank. Unless further information or clarification of the bank's response is required, or the time periods are extended for good cause, the Office will reach a decision within thirty days after the close of the response period and will advise the bank in writing whether higher capital ratios will be required for it and, if so, what those ratios are and when they must be achieved. The Office also may require the bank to submit an acceptable plan to achieve the required ratios established for it. This procedure is intended to provide an informative and fair, but relatively uncomplicated and prompt method of addressing an individual bank's need for higher capital levels.

Directives

A directive is a form of order specifically authorized under the International Lending Supervision Act, 12 U.S.C. 3907(b)(2). Issuance of a directive of discretionary when a bank does not have or maintain capital at or above the level required for it, whether under the general minimum capital ratios set forth in the rule, under a decision establishing higher minimum capital ratios for the bank, under the terms of a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive also may be issued when a bank has failed to submit or is not in compliance with an acceptable plan to achieve its required minimum capital ratios.

Under the proposal, the Office will notify a bank in writing of the Office's intention to issue a directive to the bank. The notice will include reasons for the action and the contents of the proposed directive. The bank will have thirty days in which to respond in writing to the notice. The response may state why a directive should not be issued; may propose alternative provisions for the directive; and/or may include a plan to achieve the bank's required minimum captial ratios. The response should include any information which the bank would have the Office consider in deciding whether to issue a directive or what the provisions of the directive should be. Failure to respond within the allotted time period will be deemed to be a waiver of any objections to the proposed directive. After the close of the bank's response period, or after receipt of the bank's response, if sooner, the Office will consider the bank's response and will decide whether to issue the directive as originally proposed or in modified form. Unless the time periods are extended by the Office, for example, in cases where additional information or a clarification of the bank's response is needed, the Office will issue the directive, or notify the bank that a directive will not be issued, within thirty days after the close of the bank's response period.

The terms of the directive will vary in each individual case. The directive may order the bank to achieve and maintain its required minimum capital ratios by a specified date; comply with a previously submitted plan to achieve those ratios; submit and comply with an acceptable plan to achieve the ratios; reduce assets or the rate of growth of assets, or restrict dividends in order to achieve its required capital ratios; or a combination of any of the above or similar actions.

A directive, or any plan submitted pursuant to a directive, is enforceable to the same extent as an effective and outstanding order issued pursuant to 12 U.S.C. 1818(b) which has become final. In addition, violation of a directive may result in civil money penalties against the bank or its officers, directors, employees, or other persons participating in the conduct of its affairs.

Because of the critical importance of adequate capital to the soundness of a bank's operations, the procedure for issuance of a directive has been designed to reach a resolution in a prompt, but fair manner and the Office intends to actively seek enforcement of directives in the event of noncompliance.

Issues for Comment

Comments are requested on the proposal and specifically on the following issues:

(1) Whether the definitions of capital and its components should be the same for the purposes of determining capital adequacy and for statutory purposes, such as the lending limits in 12 U.S.C. 84. The Office adopted one definition for both purposes in Interpretive Ruling 12 CFR 7.1100 and believes that the definitions in this proposed regulation also should govern the determination of capital for both supervisory and statutory purposes since a common definition would avoid complexity and confusion.

(2) Whether higher minimum capital ratios are appropriate or feasible. The Office believes that the minimum capital ratios proposed are appropriate for the banking industry in general and are feasible to achieve and maintain. However, the Office solicits comment on whether higher minimum ratios than those proposed should be required now or required in the next year or two, and whether and when it would be feasible for banks to achieve such higher capital levels.

(3) Whether the proposed regulation should "grandfather" capital components now considered primary capital but which would not be included in primary capital under the proposed regulation. The proposed regulation would not change a bank's total capital. However, some items currently included in primary capital—by Interpretive Ruling 12 CFR 7.1100 or bank practice—would instead be included in secondary capital. One such item is mandatory convertible debt which must be repaid through the sale of common or perpetual preferred stock. This type of mandatory convertible debt, commonly referred to as "equity commitment notes" has been issued by some national banks with the Office's approval. Under the proposed regulation, this type of debt would continue to be counted as capital but it would be considered secondary capital. The Office believes that banks should be able to continue to include in their primary capital, previously approved and issued equity commitment notes or other similar instruments. Therefore, as a transitional rule, such instruments would be included in primary capital to the extent previously authorized, during the original effective term of the instruments.

The other item included in secondary capital in the proposed regulation is intangible assets. While the Office has not ruled previously that this item is included in primary capital, the Office is aware that banks commonly do not exclude intangible assets in calculating primary capital. Comment is requested on the effect on individual banks if intangible assets are excluded from primary capital and, alternatively, the extent to which intangible assets should be includable in primary capital.

(4) Whether the reserves for loan and lease losses should be excluded from capital. Since the amount of a bank's reserve for loan and lease losses is

specifically tailored to its loss experience as well as estimated potential losses on particular assets, it can be argued that all or at least a portion of the reserve should not be considered as capital because it will be depleted. Traditionally, however, these reserves have been considered as capital since they perform one of capital's primary functions, *i.e.*, to serve as a cushion against losses. The Office requests comment on whether all or any portions of loan and lease reserves should be excluded from the definition of capital.

(5) Whether limits should be placed on the amount of subordinated notes and debentures and limited life preferred stock that is included in secondary capital. Limits may include such factors as requiring a minimum original maturity, discounting the amount that is included in secondary capital based on the remaining maturity, and a percentage limit on the aggregate amount that can be included in secondary capital. Certain limits now are imposed in 12 CFR 7.1100 and the Office believes that those or similar restrictions should be placed on these types of instruments when they are included in a bank's capital.

(6) Whether limits should be placed on the amount of secondary capital that can be included in total capital. For example, should secondary capital be limited to an amount equal to 50 percent of primary capital as is now the case under 12 CFR 7.1100? Because the components of secondary capital do not provide the same degree of protection obtained through primary capital, the Office believes that a limit on secondary capital is warranted, at least when determining total capital (capital and surplus) for statutory purposes. (See Issue no. 1). The Office requests comment on the effects such a limit would have, given the proposed definitions of primary and secondary capital.

(7) Whether the minimum capital requirements should be tailored to the risk composition and liquidity of assets. The proposed minimum capital requirements are neutral with respect to the composition of a bank's assets, *i.e.*, the same capital ratio is required for both liquid and illiquid assets and for both high and low risk assets. The Office is concerned that this neutrality may not provide an incentive for banks to enhance or maintain the liquidity or quality of their assets. Asset liquidity is important since it offers banks an alternative to reliance on short term funding, with its inherently volatile conditions, to meet liquidity needs. While asset composition, including risk and liquidity, will be considered in an Office decision to require capital ratios above the minimums for an individual bank, the Office solicits suggestions on ways in which the general minimum requirements or other regulatory requirements could encourage high quality, liquid bank assets. For example, should relatively risk free or liquid assets be excluded or discounted in computing total assets, with higher minimum capital ratios required for the remaining risk assets?

(8) Whether the capital ratios should be calculated on the basis of average or actual total assets. The proposed ratios are minimums and banks are encouraged to maintain higher levels of capital. However, the Office does not want to require banks at the margin to make calculations prior to each increase in their asset portfolios. Similarly, the Office wishes to minimize the likelihood of inadvertent or technical violations. Therefore, in order to avoid these problems, yet assure that the ratios are maintained on a relatively constant basis, total and primary capital would be computed as of each Call Report date and the capital ratios calculated based on average total assets (or average total assets less intangible assets) for that Call Report period. Capital and average total assets already are required to be stated in Call Reports, however, the capital ratios would not need to be stated.

During the following quarter, to comply with the regulation, the bank need only maintain its capital at the levels necaessary to meet the minimum ratios based on the average total assets figure in its most recent Call Report. However, if the bank's assets, on average, increase during the quarter, it must correspondingly increase its capital (if at the minimum level) before the end of the quarter so that it will be in compliance with the required minimum ratios as of the Call Report date for that quarter. Use of the average total assets figure therefore, should eliminate the potential for inadvertant violations and simplify banks' internal procedures for compliance.

The Office is concerned, however, that some banks may have total assets as of the Call Report dates or otherwise that are substantially higher than their average total assets so that the bank, while technically in compliance with the regulation, actually is defeating its purpose, *i.e.*, to assure that banks have the minimum adequate level of capital to support their operations. Therefore, Call Report and examination data on total assets will be reviewed and compared with the reported average total assets figure, where there is significant disparity between these figures on a repeated basis, the bank may be required to maintain its minimum capital ratios on a constant basis in relation to its actual total assets. The Office seeks comment on the average total asset method or alternative methods to achieve compliance with the regulation.

(9) Whether the zone concept provides useful guidance to banks. The Office is considering whether to issue guidelines in conjuction with the final version of the regulation concerning the degree and type of administrative action which would correspond to particular capital ratio zones. Although these guidelines would be primarily for internal agency purposes, they would be published for the information of bank management. Under the zone concept, the Office would consider banks having a total capital ratio in excess of 7% to be adequately capitalized, absent special circumstances. Banks having a total capital ratio between 6–7% would be monitored to determine whether their capital is adequate in light of the quality of assets, management strength, and other factors. Banks having a total capital ratio of less than 6% (the minimum required in the regulation) would be presumed to be undercapitalized and would be subject to appropriate supervision and administrative action.

The proposed regulation itself indicates the range of adminsitrative or supervisory actions which the Office may take if a bank does not have the minimum capital ratios required for it or has not submitted or complied with an acceptable plan to achieve those ratios. Since the appropriate supervisory action necessarily must be determined on a case-by-case basis, the zone concept as a guide for adminstrative actions may not be particularly useful. However, comment on the past or possible future usefulness to the banking industry of the zone would be of assistance to the Office.

(10) Whether the minimum capital requirement should apply to federal branches and agencies. Under 12 U.S.C. 3102(g), federal branches and agencies are required to maintain capital equivalency deposits which, at a minimum, equal 5% of liabilities. The statutory minimum is roughly equivalent to the 5% minimum primary capital requirement for regional and multinational banks in the Office's current guidelines. However, the International Banking Act of 1978 (IBA) also mandates competitive equality

between national banks and federal branches and agencies. Because the operations of federal branches and agencies are not inherently either more or less risky than those of national banks, the Office believes that federal branches and agencies should be subject to comparable capital adequacy requirements. However, since the IBA requires that the capital equivalency deposit consist of cash or investment securities and be computed as a percent of liabilities, a capital-to-assets ratio would be difficult to implement. Alternatively, comparability could be attained by requiring capital equivalency deposits for federal branches and agencies equal to at least 5½% of liabilities, rather than the current 5%. The Office requests comments on this and other means of establishing relatively comparable capital requirements for federal branches and agencies.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) the Comptroller of the Currency has certified that the proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities since nearly all small banks (those with total assets of less than $1 billion) already meet or exceed the primary and total capital ratios proposed in the regulation .

Executive Order 12291

The Comptroller of the Currency has determined that the proposed regulation is a "major rule" and a regulatory impact analysis has been performed in connection with the Office's consideration of this rule. In reviewing the impact of the proposal, the analysis considered that:

(1) 151 national banks have a shortfall, at a minimum, of $3.3 billion in primary capital;

(2) 89 of those banks, plus an additional 111, have a shortfall, at a minimum, of $2.4 billion in secondary capital;

(3) 266 national banks meet both minimums, but face credit and other risks that warrant higher capital ratios (the amount of capital they must raise cannot be easily estimated);

(4) Underwriting costs associated with raising needed capital could approach $200 million, the precise amount depending on the volume of funds raised in capital markets as opposed to the use of retained earnings; and

(5) Until capital ratios are met, dividend payouts could be lower than historical averages.

However, OCC believes the costs of the proposed mandatory minimum capital ratios are outweighed by the benefits. These benefits cannot be easily quantified, but include:

(1) An increased capacity, especially among large banks, to withstand losses associated with credit and other risks that are a normal part of banking;

(2) Increased stability in our financial system; and

(3) Increased capacity to fund economic growth.

The Office is especially interested in receiving additional information bearing on the benefits and costs of this proposal. A copy of the regulatory impact analysis may be obtained from the Office's Communications Division under procedures set forth in 12 CFR 4.17 and 4.17a.

Paperwork Reduction Act

The potential paperwork burdens contained in this rule pertaining to: (1) The preparation of a written plan to increase capital by a national bank that does not have the minimum capital ratios specified in the regulation or individually required for it; and (2) the written response which a bank may make to the Office when notified that higher minimum capital ratios may be required for it; have been submitted to the Office of Management and Budget for review pursuant to 44 U.S.C. 3504(h).

List of Subjects in 12 CFR Part 3

Banks, Banking, Primary, Secondary and total capital, Minimum capital ratios, Procedures for establishing higher minimum capital ratios for an individual bank, Enforcement of minimum capital ratios, Issuance of directives.

This proposal does not duplicate, overlap, or conflict with any existing federal laws and regulations governing national banks with the exception of Interpretive Ruling 12 CFR 7.1100 which will be amended accordingly following adoption of the final version of this proposed regulation.

Authority and Issuance

Accordingly, pursuant to authority under 12 U.S.C. 93a, 3907, and 3909, the Comptroller of the Currency proposes to add a new Part 3 to Title 12 of the Code of Federal Regulations, as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

Subpart A—Authority and Definitions

Sec.
3.1 Authority
3.2 Definitions
3.3 Transitional Rule
3.4 Reservation of Authority

Subpart B—Minimum Capital Ratios

3.5 Applicability
3.6 Minimum Capital Ratios
3.7 Plan to Achieve Minimum Capital Ratios
3.8 Reservation of Authority

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

3.9 Purpose and Scope
3.10 Applicability
3.11 Standards for determination of Appropriate Individual Minimum Capital Ratios
3.12 Procedures
3.13 Relation to Other Actions

Subpart D—Enforcement

3.14 Remedies

Subpart E—Issuance of a Directive

3.15 Purpose and Scope
3.16 Notice of Intent to Issue a Directive
3.17 Response to Notice
3.18 Decision
3.19 Issuance of a Directive
3.20 Amendment of Time Periods
3.21 Change in Circumstances
3.22 Relation to Other Administrative Actions

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C. 93a, 161 and 1818; and 12 U.S.C. 3907 and 3909.

Subpart A—Authority and Definitions

§ 3.1 Authority.

This part is issued under the authority of 12 U.S.C 1 *et. seq.*, 93a, 161 and 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX, 97 Stat. 1153), 12 U.S.C. 3907 and 3909.

§ 3.2 Definitions.

For the purposes of this Part:

(a) "Bank" means a national banking association or a District of Columbia bank.

(b) "Intangible assets" means those assets within the definition of this term in the "Instructions—Consolidated Reports of Condition and Income" (Call Report).

(c) "Mandatory convertible debt" means subordinated debt instruments which require the issuer to convert such offerings into either common or perpetual preferred stock by a date at or before the maturity of the instrument. The maturity of these instruments must be 12 years or less.

(d) "Primary capital" means the sum of (1) and (2) below, minus intangible assets:

(1) Common stock, perpetual preferred stock, capital surplus, undivided profits, reserves for contingencies and other capital reserves, net worth certificates issued by the Federal Deposit Insurance Corporation, minority interests in consolidated subsidiaries, and

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allowances for possible loan and lease losses; and

(2) Mandatory convertible debt to the extent of 20% of the sum of (1);

(e) "Secondary capital" means the sum of: mandatory convertible debt that is not included in primary capital, intangible assets, and limited life preferred stock and subordinated notes and debentures having an original weighted average maturity of at least seven (7) years, subject to the amortization schedule set forth in 12 CFR 7.1100(f)(2).

(f) "Total assets" means the average total assets figure required to be computed for and stated in a bank's most recent quarterly "Consolidated Report of Condition and Income" (Call Report), plus the allowance for possible loan and lease losses. "Adjusted total assets" means total assets minus intangible assets.

(g) "Total capital" means the sum of primary capital and secondary capital.

§ 3.3 Transitional Rule.

Funding instruments approved by the Office as primary of secondary capital and issued prior to the effective date of this regulation may continue to be included, to the extent previously authorized, in a bank's primary or secondary capital as the case may be, during the original effective term of the instrument.

§ 3.4 Reservation of Authority.

Notwithstanding the definitions of "primary capital" and "secondary capital" in § 3.2 (d) and (e), the Office may find that a newly developed or modified funding instrument constitutes or may constitute "primary capital" or secondary capital," and the Office may permit one or more banks to include funds obtained through such instrument as primary or secondary capital, permanently or on a temporary basis, for the purposes of compliance with this Part or for other purposes.

Subpart B—Minimum Capital Ratios

§ 3.5 Applicability.

This subpart is applicable to all banks unless the Office determines, pursuant to the procedures set forth in Subpart C, that different minimum capital ratios are appropriate for an individual bank based upon its particular circumstances, or unless different minimum capital ratios have been established or are established for an individual bank in a written agreement or a temporary or final order pursuant to 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application.

§ 3.6 Minimum Capital Ratios.

A bank must have an maintain total capital equal to at least 6 percent of total assets and primary capital equal to at least 5½ percent of adjusted total assets.

§ 3.7 Plan to Achieve Minimum Capital ratios.

Any bank having total or primary capital ratios less than the minimums set forth in § 3.6 shall, within 60 days of the effective date of this regulation, submit to the Office a plan describing the means and schedule by which the bank shall achieve the minimum capital ratios. The plan may be considered acceptable unless the bank is notified to the contrary by the Office. A bank in compliance with an acceptable plan to achieve the minimum capital ratios will not be deemed to be in violation of § 3.6.

§ 3.8 Reservation of Authority.

When, in the opinion of the Office the circumstances so require, a bank may be authorized to have less than the minimum capital ratios in § 3.6 during a time period specified by the Office.

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

§ 3.9 Purpose and Scope.

The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios for an individual bank above the ratios that would otherwise be applicable to the bank under § 3.6. The Comptroller is authorized under 12 U.S.C. 3907(a)(2) to establish such minimum capital requirements for a bank as the Office, in its descretion, deems necessary or appropriate in light of the particular circumstances of that bank. Proceedings under this subpart may be initiated to require a bank to maintain existing capital ratios which are above those set forth in § 3.6 or other legal authority, as well as to require a bank to reach higher minimum capital ratios.

§ 3.10 Applicability.

Higher minimum capital ratios may be required for an individual bank when the Office believes that the bank's capital is or may become inadequate in view of its circumstances. For example, higher capital ratios than those required in § 3.6 may be appropriate for:

(a) A newly chartered bank;

(b) A bank in need of special supervisory attention;

(c) A bank which has or is expected to have losses resulting in capital inadequacy;

(d) A bank having a high proportion of off-balance sheet risk in relation to other assets and liabilities or a low proportion of liquid assets;

(e) A bank undergoing expansion, either internally or through acquisitions; or

(f) A bank which may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institution which which it has significant business relationships.

§ 3.11 Standards for Determination of Appropriate Individual Minimum Capital Ratios.

The appropriate minimum capital ratios for an individual bank cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Office determination that higher mimimum capital ratios are appropriate or necessary for the bank;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the bank and, if applicable, its holding company and/or affiliate(s);

(d) The bank's liquidity, capital and other ratios compared to the ratios of its peer group; and

(e) The views of the bank's directors and senior management.

§ 3.12 Procedures.

(a) *Notice.* When the Office determines that minimum capital ratios above those set forth in § 3.6 are necessary or appropriate for a particular bank, the Office will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable), and will provide an explanation why the ratios proposed are considered necessary or appropriate for the bank.

(b) *Response.* (1) The bank may respond to any or all of the items in the notice. The response should include any matters which the bank would have the Office consider in deciding whether individual minimum capital ratios should be established for the bank, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice.

(2) Failure to respond within thetime period specified in paragraph (b)(1) of

this section shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* Within 30 days after the close of the bank's response period, the Office will decide, based on a review of the bank's response and other information concerning the bank, whether individual minimum capital ratios should be established for the bank and, if so, the ratios and the date the requirements will become effective. The bank will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the bank.

(d) *Submission of plan.* The decision may require the bank to develop and submit to the Office, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the bank by the date required.

(e) *Amendment of time periods.* The Office may shorten the time periods specified in this subpart: (1) When, in the opinion of the Office, the condition of the bank so requires, provided that the bank is informed promptly of the new time periods; or (2) with the consent of the bank. In its discretion, the Office may extend the time periods for good cause. In particular, the time period for the Office's decision may be extended if, after receipt of the bank's response, further clarification or information is required, or there is a material change in the circumstances affecting either the bank's capital adequacy or its ability to achieve the proposed minimum capital ratios by the proposed date.

(f) *Change in circumstances.* If, after the Office's decision in paragraph (c) of this section, there is a change in the circumstances affecting the bank's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the bank or the Office may propose to the other a change in the minimum capital ratios for the bank, the date when the minimums must be achieved, or the bank's plan (if applicable). The Office may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Office's original decision and any plan required under that decision shall continue in full force and effect.

§ 3.13 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a bank may be established or revised through a written agreement or cease and desist proceedings under 12 U.S.C. 1818(b) or (c) (12 CFR 19.0–18.21), or as a condition for approval of an application.

Subpart D—Enforcement

§ 3.14 Remedies.

A bank that does not have or maintain the minimum capital ratios applicable to it, whether established in Subpart B of this regulation, in a decision pursuant to Subpart C, in a written agreement or temporary or final order under 12 U.S.C. 1818 (b) or (c), or in a condition for approval of an application, or a bank that has failed to submit or comply with an acceptable plan to attain those ratios will be subject to such administrative action or sanctions as the Office considers appropriate, including issuance of a Directive pursuant to Subpart E, other enforcement action, assessment of civil money penalties, and/or the denial, conditioning, or revocation of applications. Failure to achieve or maintain the minimum primary capital ratio also may be the basis for an FDIC action to terminate federal deposit insurance. See 12 CFR 325.4(c).

Subpart E—Issuance of a Directive

§ 3.15 Purpose and Scope.

This subpart is applicable to proceedings by the Office to issue a directive under 12 U.S.C. 3907(b)(2). A directive is an order issued to a bank that does not have or maintain capital at or above the minimum ratios set forth in § 3.6, or established for the bank under subpart C, by a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive may order the bank to (a) achieve the minimum capital ratios applicable to it by a specified date; (b) adhere to a previously submitted plan to achieve the applicable capital ratios; (c) submit and adhere to a plan acceptable to the Office describing the means and time schedule by which the bank shall achieve the applicable capital ratios; (d) take other action, such as reduction of assets or the rate of growth of assets, or restrictions on the payment of dividends, to achieve the applicable capital ratios; or (e) a combination of any of these or similar actions. A directive issued under this rule, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in 12 U.S.C. 1818(k). Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

§ 3.16 Notice of intent to issue a directive.

The Office will notify a bank in writing of its intention to issue a directive. The notice will state:

(a) Reasons for issuance of the directive; and

(b) The proposed contents of the directive.

§ 3.17 Response to notice.

(a) A bank may respond to the notice by stating why a directive should not be issued and/or by proposing alternative contents for the directive. The response should include any matters which the bank would have the Office consider in deciding whether to issue a directive and/or what the contents of the directive should be. The response may include a plan for achieving the minimum capital ratios applicable to the bank. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice.

(b) Failure to respond within the time period specified in paragraph (a) of this section shall constitute a waiver of any objections to the proposed directive.

§ 3.18 Decision.

After the closing date of the bank's response period, or receipt of the bank's response, if earlier, the Office will consider the bank's response, and may seek additional information or clarification of the response. Thereafter, the Office will determine whether to issue the directive as originally proposed or in modified form. A directive will be issued, or the bank advised that the Office has decided not to issue a directive, within 30 days after the closing date of the bank's response period as set forth in § 3.17 unless the response period, or the time for the Office's decision, is extended under § 3.20.

§ 3.19 Issuance of a directive.

(a) A directive will be served by delivery to the bank. It will include or be accompanied by a statement of reasons for its issuance.

(b) A directive is effective immediately upon its receipt by the bank, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Office.

§ 3.20 Amendment of time periods.

(a) The Office may shorten the time periods specified in this subpart:

(1) When, in the opinion of the Office, the condition of the bank so requires, provided that the bank shall be

informed promptly of the new time periods;

(2) With the consent of the bank; or

(3) When the bank already has advised the Office that it cannot or will not achieve its applicable minimum capital ratios.

(b) In its discretion, the Office may extend the time periods for good cause. In particular, the time period for the Office's decision may be extended if, after receipt of the bank's response, further clarification or information is required, or there is a material change in the circumstances affecting either the bank's capital adequacy or its ability to achieve the minimum capital ratios applicable to it by the specified date.

§ 3.21 Change in Circumstances.

Upon a change in circumstances, a bank may request the Office to reconsider the terms of its directive or may propose changes in the plan to achieve the bank's applicable minimum capital ratios. The Office also may take such action on its own motion. The Office may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the directive and plan shall continue in full force and effect.

§ 3.22 Relation to Other Administrative Actions.

A directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Office also may, in its discretion, take any action authorized by law, in lieu of a directive, in response to a bank's failure to achieve or maintain the applicable minimum capital ratios.

Dated: August 29, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-23313 Filed 8-31-84; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AGL-7]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Monroe, Michigan, transition area to accommodate a new RNAV Runway 20 instrument approach to Custer Airport.

The intended effect of this action is to insure segregation of the aircraft using these approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before October 4, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 84-AGL-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new RNAV instrument approach procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The additional airspace designated will be approximately a 1.5 mile expansion to the existing transition area excluding that portion which overlies the Detroit, Michigan, 700-foot transition area.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AGL-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Monroe, Michigan.

Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were published in FAA Order 7400.6, Part 1 dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend

§ 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Monroe, MI

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Custer Airport (lat. 41°56'10"N., long. 83°26'15"W.,) excluding the portion which overlies the Detroit, Michigan, 700-foot transition area.

Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on August 13, 1984.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 84-23276 Filed 8-31-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 542; Ref: Notice Nos. 522 and 534]

Use of Geographic Brand Names

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 522 (49 FR 19330, May 7, 1984). Notice No. 522 proposed a number of alternatives to the present regulation, 27 CFR 4.39(i), governing the use of geographic brand names. Subsequently, on July 12, 1984 (Notice No. 534, 49 FR 28417), ATF reopened the comment period for additional comments in response to three requests. ATF has received another request to extend the comment period from the European Economic Community (Common Market).

DATE: Comments must be received on or before January 2, 1985.

ADDRESS: Comments should be addressed to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 522).

During normal business hours, written comments and Notice No. 522 may be inspected by any person at: Office of Public Affairs and Disclosure, ATF Reading Room (Room 4407), Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Wshington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1984, ATF published Notice No. 522, proposing alternatives to the present regulation, 27 CFR 4.39(i), governing the use of geographic brand names. This action was based on a petition received from the Wine Institute. On July 12, 1984, ATF published Notice No. 534, reopening the comment period for Notice No. 522 until September 14, 1984. The European Economic Community (Common Market) has requested additional time in which to gether comments from member nations. In addition, ATF believes that a response date of September 14, 1984, during the grape harvest, could result in fewer comments from affected individuals. Therefore, ATF is extending the comment period until January 2, 1985.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended, 27 U.S.C. 205.

Approved: August 27, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-[illegible] Filed 8-31-84; 8:45 am]

BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; To Authorize the Guaranty of Certain Manufactured Home Loans Under 38 U.S.C. 1810

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration), in implementing the Veterans' Compensation and Program Improvements Amendments of 1984, is proposing to amend its regulations to provide for the guaranty of some manufactured home loans under 38 U.S.C. 1810 in addition to 38 U.S.C. 1819. Only loans secured by manufactured homes that are permanently situated on a lot (the loan may include the purchase of the lot and must be treated as a single real estate transaction) and are considered to be real property, instead of personal property, in the State where they are located, may be guaranteed under the provisions of 38 U.S.C. 1810 and the corresponding VA regulations. Manufactured home loans that were guaranteed previously under 38 U.S.C. 1819 and meet the above qualifications may be refinanced under 38 U.S.C. 1810 in order to purchase a lot on which to permanently situate the unit or to reduce the interest rate of the original loan.

DATE: Comments must be received on or before October 1, 1984. VA proposes to make these regulations effective 30 days after publication as final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 16, 1984. Persons visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting comments will be received by the Central Office Veterans Services Unit in room 132. Visitiors to VA field stations will be informed that the records are available for inspection only in the Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420 (202) 389-3042.

SUPPLEMENTARY INFORMATION: These amendments to the § 36.4300 series of the VA regulations will implement the provisions of section 205 of the Veterans' Compensation and Program Improvements Amendments of 1984 (Pub. L. 98–223, 98 Stat. 37) to provide for the guaranty of certain manufactured home loans under 38 U.S.C. 1810. Loans for manufactured homes are currently authorized only under 38 U.S.C. 1819 with instructions for their processing contained in 38 CFR 36.4200 through 36.4287.

Many States have considered manufactured homes to be personal property and teated then differently from site-built homes. This concept of manufactured homes can be traced back to the time when manfactured homes or "mobile homes" or "house trailers" as they were once called, were readily transportable and could in ordinary usage be moved from place to place. Because of this, different regulations and procedures were needed for processing manufactured home loans. With the advent of larger and better built manufactured homes there has been a growing tendency to transport these homes to a specific site for permanent installation. More and more veterans are purchasing (or already own) land in order to permanently place a manufactured home on a lot instead of renting space in the traditional "park." In certain States such a manufactured home, permanently placed on land owned by the purchaser of the unit, is treated as real property rather than personal property. Therefore, with the implementaion of Pub. L. 98–233, loans for the purchase of manufactured homes that are permanently affixed to a lot owned, or being purchased by a veteran simultaneously with the unit, may be guaranteed under 38 U.S.C. 1810 if under the laws of the State in which they are located they are considered to be real property.

Pub. L. 98–223 authorizes the following purposes for manufactured home loans under 38 U.S.C 1810: The purchase of a manufactured home unit to be permanently affixed to a lot owned by a veteran; the purchase of a manufactured home unit and the lot to which the home will be permanently affixed; the refinancing of an existing manufactured home/lot loan (if considered real estate in the State where they are located) in order to reduce the interest rate; and to refinance a loan, that was made to purchase a manufactured home unit, in order to purchase a lot on which the manufactured home unit will be permanently placed. When a manufactured home and lot are being purchased or when a loan is refinanced in order to purchase a lot, the loan for the home and lot must be considered as one loan.

Since the status of a manufactured home as real versus personal property is not always clear, the revised regulations will permit a lender to have the option of requesting guarantees for manufactured home loans under section 1810 or 1819 of 38 U.S.C.

Some of the advantages for guaranteeing manufactured home loans under 38 U.S.C. 1810 instead of 38 U.S.C. 1819 are:

(1) Manufactured home values would be established by appraisal and not by use of a manufacturer's invoice.

(2) Manufactured home loans would be at lower interest rates instead of the higher rate now in effect under 38 U.S.C. 1819, thereby reducing veterans' costs. Historically, the interest rate for manufactured home loans has been approximately 2 percent higher than the interest rate for site-built home loans.

(3) Loans could be for longer terms which would reduce monthly payments to veterans. Under current law the term of a loan made to purchase a site-built home may be up to 30 years and 32 days. The loan terms for manufactured homes, guaranteed under 38 U.S.C. 1819, vary and include the following maximum terms:

(a) 20 years and 32 days for the purchase of a single-wide manufactured home or to purchase a single-wide unit and lot.

(b) 15 years and 32 days for the purchase of a lot on which to place a manufactured home already owned by a veteran.

(c) 23 years and 32 days for the purchase of a double-wide unit.

(d) 25 year and 32 days for the purchase of a double-wide manufactured home and lot.

(e) The maximum loan term for the purchase of a used manufactured home may not exceed 25 years and 32 days or the remaining physical life expectancy of the unit as established by the Administrator, whichever is less.

(4) GPM's [Graduated Payment Mortgages) are allowed for site-built home loans but not for manufactured home loans. GPM's provide lower initial monthly payments than traditional fixed payment mortgages with a specific period (usually 5 years) during which the monthly payments will increase at a set rate annually. At the end of the graduation period the payments become level and remain so for the rest of the life of the loan. This type of loan permits veterans who otherwise might not qualify for a loan to do so with the lower intial payments. With implementation of Pub. L. 98–223 veterans purchasing manufactured homes/lots that qualify for guaranty under 38 U.S.C. 1810 will be able to obtain GPM's.

(5) Furniture and other nonrealty items or charges such as insurance would not be included in the loan.

(6) Many more mortgage lenders are expected to participate in the VA manufactured home program as a result of the new law. One reason for this is that loans that are guaranteed under 38 U.S.C. 1810 may be guaranteed for up to 60 percent of the loan amount, not to exceed $27,500 while manufactured home loans guaranteed under 38 U.S.C. 1819 may be guaranteed for only 50 percent of the loan amount, up to a maximum of $20,000. We expect that lenders who now make loans only on site-built housing will be willing to finance manufactured homes and lots that are treated as real estate and eligible for guaranty under 38 U.S.C. 1810.

The following gives a brief description of the amendments to the § 36.4300 series of 38 CFR.

Definitions for Lot and Manufactured Home have been added to § 36.4300. The definitions for Dwelling, Real-Estate Loan and Residential Property have been revised to include manufactured homes.

The formulas in § 36.4302(a) and (c)(1), (2) and (3) have been revised to reflect the two different types of manufactured home loans, those guaranteed under 38 U.S.C. 1810 and those guaranteed under 38 U.S.C. 1819, for computation of a veteran's entitlement.

Sections 36.4302(a) and (i)(2) have been changed to reflect the addition of interest rate reduction loans for manufactured home loans guaranteed unde 38 U.S.C. 1810.

Paragraph (g) has been added to § 36.4306 to provide for the refinancing of a manufactured home loan in order to purchase the lot upon which the manufactured home is or will be permanently located.

Paragraphs (a), (a)(3), (b) and (c) of § 36.4306a have been changed to reference interest rate reduction loans for manufactured home/lot loans that were previously guaranteed under 38 U.S.C. 1819 and will now qualify for guaranty under 38 U.S.C. 1810.

Paragraph (a) (4) of § 36.4306a has been revised to allow the term of an interest rate reduction loan, used to refinance a manufactured home loan previously guaranteed under 38 U.S.C. 1819, to exceed the original term of the loan. In these cases, both the lower interest rate and the longer amortization period will reduce the veteran's monthly mortgage payment.

Section 36.4308(b) has been amended to add a reference to 38 U.S.C. 1810 (a) (9) (B) (i) which provides for interest rate reduction loans for manufactured homes.

Section 36.4311(a) which provides the maximum interest rate that may be charged on home or condominium loans has been amended to include those manufactured home/lot loans guaranteed under 38 U.S.C. 1810.

Paragraph (e) of § 36.4311 is changed to include interest rate reduction loans for certain manufactured home loans.

Section 36.4312(d) (6) (i) is amended to allow discounts on manufactured home/lot refinancing loans guaranteed under 38 U.S.C. 1810.

A notation has been added to § 36.4336(a) (2) (i) to include 38 U.S.C. 1810 (a) (9) (B) (i).

The amendments conform the existing regulations to the requirements of Pub. L. 98–223 and the Administrator has certified that these proposed changes will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code, section 601–612. Pursuant to 5 U.S.C. section 605(b) these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604. The proposed regulations, if adopted, will have no impact on small private and nonprofit organizations and small government jurisdictions and should have a minor but beneficial economic impact upon lenders participating in the Loan Guaranty Program who until now did not make manufactured home loans.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulation, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the Public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices for consumers, individual industries or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Number 64.114)

Technical amendments have also been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97–306, 96 Stat. 1429, enacted October 14, 1982.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured home, Veterans.

These amendments are proposed under authority granted the Administrator by sections 210(c), 1810 and 1819 of title 38, United States Code.

Approved: July 3, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4301, the definitions of "Dwelling", "Real estate loan", and "Residential property" are revised and new definitions for "Lot" and "Manufactured home" are added following the definition of "Lien"; so that the revised and added material reads as follows:

§ 36.4301 Definitions

* * * * *

Dwelling. Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership thereof, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a the term is limited to one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran that is classified as real property under the laws of the State where it is located. (38 U.S.C. 1810(a)(9) and (f))

* * * * *

Lot. A parcel of land acceptable to the Administrator as a manufactured home site. (38 U.S.C. 1810(a)(9))

Manufactured home. A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of: (1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of the VA regulations, manufactured home/lot loans guaranteed under the purview of §§ 36.4300 to 36.4393, inclusive, must be permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase of a manufactured home and lot it must be considered as one loan. (38 U.S.C. 1810(a)(9))

* * * * *

Real-estate loan. Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4300 to 36.4393, inclusive, or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4300 to 36.4393, inclusive, to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 1810(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 1810 (a)(8) (refinancing of a VA guarantee, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 1810(a)(9) (purchase of manufactured homes/lots or the refinancing of such loans in States in which manufactured homes, when permanently affixed to a lot, are considered real property, and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a shall also be considered real estate loans within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a shall also be considered real estate loans.

* * * * *

Residential property. (1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360a, (2) any manufactured home permanently affixed to a lot or owned or being purchased by a veteran and considered to be real property under the laws of the State where it is located, and (3) any improved real property (other than a condominium housing development) or a manufactured home and/or lot, or leasehold estate therein as limited by §§ 36.4300 to 36.4393, inclusive, the

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primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof, or (4) any land to be purchased out of the proceeds of a loan for the construction of a dwelling, and on which such dwelling is to be erected. (38 U.S.C. 1810(f)(2) and (3))

* * * * *

2. In § 36.4302, paragraphs (a), (c)(1), (2) and (3), (f), (h)(3) and (i)(2) are revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) With respect to a loan to a veteran made guaranteed under 38 U.S.C. 1810 the guaranty may not exceed sixty (60) percent of the original principal amount or $27,500, whichever is less. With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8) or (9)(B)(i), the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced. (38 U.S.C. 1803(a), 1810(c))

* * * * *

(c) * * *

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $27,500. The sum remaining is the amount of available entitlement for use, except that entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1819 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $27,500. The sum remaining is the amount of available entitlement for use, except that entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1819 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 1819; the amount of entitlement used for that loan is subtracted from $27,500. The sum remaining is the amount of available entitlement for home loans or manufactured home/lot loans guaranteed under 38 U.S.C. 1810 only. To determine the amount of entitlement available for manufactured home loans, processed under 38 U.S.C. 1819, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 1819.

(38 U.S.C. 1810(c), 1819(c)(4))

* * * * *

(f) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the indebtedness corresponding to that of the original guaranty. However, on a graduated payment mortgage loan, the percentage of guaranty applicable to the original loan amount pursuant to paragraph (a) of this section shall apply to the loan indebtedness to the extent scheduled deferred interest is added to principal during the graduation period without regard to the original maximum dollar amount of guaranty. (38 U.S.C. 1803(b) and (d))

* * * * *

(h) * * *

(3) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally. (38 U.S.C. 1810(e)(3))

* * * * *

(i) * * *

(2) An unmarried surviving spouse who was a co-obligor under an existing VA guaranteed, insured or direct loan shall be considered to be a veteran eligible for an interest rate reduction refinancing loan pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i). (38 U.S.C. 1810 (e)(3))

3. In § 36.4306, new paragraph (g) is added to read as follows:

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

* * * * *

(g) A veteran may refinance (38 U.S.C. 1810(a)(9)(B)(ii)) an existing loan that was for the purchase of, and is secured by, a manufactured home in order to purchase the lot on which the manufactured home is or will be permanently affixed, provided the following requirements are met:

(1) The refinancing of a manufactured home and the purchase of a lot must be considered as one loan;

(2) The manufactured home upon being permanently affixed to the lot will be considered real property under the laws of the State where it is located;

(3) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located;

(4) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Administrator; a reasonable discount as authorized in § 36.4312(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4312.

(5) If the loan being refinanced was guaranteed by the VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 1802(b) the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exceed sixty (60) percent of the new loan. (38 U.S.C. 1810(a)(9)(B)(ii), 1819(a)(1)(G) and (5))

4. In § 36.4306a, the introduction of paragraph (a), subparagraphs (a) (3) and (4), and paragraphs (b) and (c) are revised to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 1810 (a)(8) and (9)(B)(i), a veteran may refinance an existing VA guaranteed, insured or direct loan to reduce the interest rate payable on the VA loan provided the following requirements are met:

* * * * *

(3) The dollar amount of the guaranty of the 38 U.S.C. 1810(a)(8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(4) The term of the refinancing loan (38 U.S.C. 1810(a)(8) may not exceed the original term of the loan being refinanced. For manufactured home loans that were previously guaranteed under 38 U.S.C. 1819 the loan term, if being refinanced under 38 U.S.C. 1810(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 1803(d)(1).

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the entitlement used by the veteran to obtain the loan being refinanced. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1810(a) (1) through (7) and (9)(A) (i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a) (8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(c) Title to the estate which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4350.

(38 U.S.C. 1810(a) (8), (9)(B) (i) and (e))

§ 36.4308 [Amended]

5. In § 36.4308, paragraph (b) is amended by adding "or (9)(B)(i)" following the cite "38 U.S.C. 1810(a)(8)".

6. In 36.4311, paragraphs (a), (b), (c) and (e) are revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13½ per centum per annum, effective August 13, 1984, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13½ per centum per annum on the unpaid principal balance. (38 U.S.C 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13¾ per centum per annum, effective August 13, 1984, the interest rate of any graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13¾ per centum per annum. (38 U.S.C 1803(c)(1))

(c) Effective August 13, 1984, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 15 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

(e) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1810(a)(8) and (9)(B)(i) may specify an interest rate in excess of the rate specified in paragraph (a), (b) and (c) of this section provided the interest rate of the refinancing loan is less than the interest rate of the current VA loan being refinanced. (38 U.S.C. 1803(c)(1) and 1810(c))

7. In § 36.4312, paragraph (d)(6)(i) is revised to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(d) * * *

(6) * * *

(i) To refinance existing indebtedness pursuant to 38 U.S.C. (a)(5), (8), (9)(B)(i) or (ii);

* * * * *

8. In § 36.4336, paragraph (a)(2)(i) is revised to read as follows:

§ 36.4336 Eligibility of loans; reasonable value requirements.

(a) * * *

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 1810(a)(8) or (9)(B)(i), the loan including any scheduled deferred interest added to principal, does not exceed the reasonable value of a new home which is security for a graduated payment mortgage, as appropriate, as determined by the Administrator and

* * * * *

(38 U.S.C. 210(c), 1810, 1819)

[FR Doc. 84-23341 Filed 8-31-84; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2654-5]

Interstate Pollution Abatement; Proposed Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Determination under section 126 of the Clean Air Act (Interstate Pollution Abatement).

SUMMARY: Since air pollution can move freely across State boundaries, the potential exists for sources in one State to affect the air quality in another. Interstate pollution exists when sources located near State lines disperse air pollutants into a nearby State. Interstate pollution also exists when pollutants are transformed and transported over longer distances into other States producing such problems as acid deposition, regional haze, and excessive ozone concentrations.

In sections 110(a)(2)(E) and 126 of the Clean Air Act, Congress provided certain Federal remedies for specific interstate pollution problems. Specifically, a State may petition the Administrator of EPA to find that a major pollution source in another State either (1) prevents it from attaining or maintaining national ambient air quality standards (NAAQS), or (2) interferes with required measures under Part C to prevent significant deterioration of air quality (PSD) or to protect visibility. The Administrator, after public hearing, must grant or deny the petitions. If he finds one or more of these situations to exist, he may prohibit the construction or operation of the offending sources, or he may impose on them compliance schedules designed to reduce emissions enough to remove the interstate injury.

In 1980 and 1980, the States of Pennsylvania, New York, and Maine petitioned the EPA under Section 126, claiming that sources in the Midwest were interfering with their ability to meet NAAQS for sulfur dioxide (SO_2) and total suspended particulates (TSP) and were causing acid rain. In addition, Maine and New York alleged impermissible impacts on visbility in the form of regional haze.

Since sections 110(a)(2)(E) and 126 only apply to pollutants for which EPA has established NAAQS or which are included in the PSD or visibility requirements they cannot apply directly to acid deposition or regional haze. The Administrator finds, based on an analysis of the States' petitions and public comments, that although (SO_2) and TSP do cross State lines into the petitioning States, out-of-State sources have not been demonstrated to be interfering with measures required to prevent significant deterioration or to protect visibility, and the demonstrations of injury are not sufficient to prove that out-of-State sources prevent the petitioning States from attaining or maintaining the NAAQS. Therefore, the Administrator is proposing to deny the petitions.

Although the Agency is proposing to deny the petitions, it recognizes the potential of an interstate SO_2 problem as indicated by Pennsylvania's preliminary study. The Administrator agrees with the State that further study could provide a more conclusive demonstration upon which any future actions could be based. The Agency is therefore soliciting comments on

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whether and how additional study should be conducted.

DATE: Comments on this determination must be received by the Central Docket Section, attention Docket A-81-09, at the address listed below, no later than October 4, 1984.

ADDRESSES: Technical and background documents and a transcript of the public hearing are available for public inspection at Docket No. A-81-09, Central Docket Section (LE-131A), West Tower Lobby, Gallery 1, EPA, 401 M Street, SW., Washington DC. 20460; (202) 382-7548. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Standards Implementation Branch (MD-15), Control Programs Development Division, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina, 27711, (919) 541-5540.

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I. Background

A. Statutory Provisions

The Clean Air Act, section 108-110, 42 U.S.C. 7408, 7409, 7410, makes State implementation plans (SIP's) major instruments for the control of air pollution. The SIP's must include measures (1) to attain and maintain NAAQS, (2) to prevent significant deterioration, and (3) to protect visibility.

1. National Ambient Air Quality Standards (NAAQS)

EPA has the responsibility for establishing NAAQS, the maximum allowable concentrations for specific pollutants, according to certain statutory criteria [Section 108(a)(1), 42 U.S.C. 7408(a)(1)]. There are two types of NAAQS: primary standards, to protect public health, and secondary standards, to protect public welfare. Each State is responsible for enforcing these standards by adopting an implementation plan.

The primary NAAQS for SO_2 are:
(1) 80 $\mu g/m^3$ annual arithmetic mean
(2) 365 $\mu g/m^3$ maximum 24-hour concentration not to be exceeded more than once per year (40 CFR 50.4).

The secondary NAAQS for SO_2 is:
(1) 1,300 $\mu g/m^3$ maximum 3-hour concentration not to be exceeded more than once per year (40 CFR 50.5).

The primary NAAQS for TSP are:
(1) 75 $\mu g/m^3$ annual geometric mean
(2) 260 $\mu g/m^3$ maximum 24-hour concentration not to be exceeded more than once per year (40 CFR 50.6).

The secondary NAAQS for TSP are:
(1) 60 $\mu g/m^3$ annual geometric mean provided as a guide in meeting the 24-hour standard.
(2) 150 $\mu g/m^3$ maximum 24-hour concentration not to be exceeded more than once per year (40 CFR 50.7).

2. Prevention of Significant Deterioration (PSD)

A second set of Clean Air Act provisions imposes requirements to prevent significant deterioration in areas where the ambient air is cleaner than the levels set by the NAAQS. Sections 160-169, 42 U.S.C. 7470-7479, 40 CFR 51.24. Section 163 (42 U.S.C. 7473) sets maximum increases (increments) by which specific pollutants may exceed certain baseline concentrations. Before a new major emissions source can be built or an existing major source can be modified to increase emissions more than a *de minimis* amount, the new or the existing source must obtain a permit, conditioned in part on a showing that the proposed project will not cause or contribute to an exceedance of the allowable increment. Congress has set PSD increments for two pollutnats: sulfur dioxide and particulate matter. Thus SIP's must assure attainment and maintenance of PSD increments for SO_2 and particulates as well as the NAAQS for these pollutants [40 CFR 51.24(a)].

3. Visibility

Section 169A of the Clean Air Act (42 U.S.C. 7491) gives EPA responsibility for promulgating regulations that specify what States must include in their implementation plans to protect visibility in mandatory Class I Federal areas where visibility is "an important value."[1]

On December 2, 1980,[2] EPA published regulations to implement section 169A (40 CFR 51.300—51.307). These regulations are aimed at controlling so-called "plumb blight," defined as "[s]moke, dust, colored gas plumes, or layered haze emitted from stacks which obscure the sky or horizon and are relatable to a single source or a small group of sources * * *."[3] These regulations cover visibility impairment which can reasonably be attributed to a single source or a small group of sources by visual means or other monitoring techniques.

4. Section 126

The Clean Air Act of 1970, in section 110(a)(2)(E), before it was amended in 1977, required only that each State implementation plan include "* * * adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions" from in-State sources would not "interfere with the attainment or maintenance" of NAAQS in other States. The Act, however, did not specify any enforcement mechanism for controlling out-of-State pollution. The Administrator of EPA implemented this provision by a regulation [40 CFR 51.21(c)], that called only for an exchange of information among States, but no further enforcement measures.

In 1977, the House and Senate separately proposed to revise section 110(a)(2)(E) to prohibit interstate pollution levels that would interfere with PSD and visibility measures as well as NAAQS. They also proposed adding section 126 as an enforcement provision for these prohibitions.[4] A Conference Committee of the House and Senate adopted a version of the two proposals which comprises present sections 110(a)(2)(E) and 126.

Section 126(b) of the Clean Air Act, 42 U.S.C. 7426(b) authorizes any State or political subdivision of a State to "petition the Administrator [of EPA] for a finding that any major source[5] emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(E)(i)" of the Act. In turn, section 110(a)(2)(E)(i) requires the implementation plan for each State to contain provisions adequate to prohibit any:

> Stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any * * * national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under Part C [of the Act] to prevent signficant deterioration of air quality or to protect visibility.

After receiving a petition under section 136 and holding a public hearing, the Administrator must either find a violation of section 110 or deny the petition. Section 126 states that the effect of a finding of violation is:

(1) With respect to a proposed new or modified source, to prohibit construction or operation;

(2) With respect to an existing source, to prohibit continued operation for more than 3 months after a finding. The Administrator may permit continued operation beyond 3 months only if the source agrees to an emission limit and meets a compliance schedule designed to reduce emissions enough to remove the interstate injury.

EPA has previously issued one other final determination of a section 126 petition in a decision published in 1982. The Air Pollution Control Division on Jefferson County, Kentucky, filed the petition in 1979, requesting a finding that SO_2 emissions from the Gallagher power plant, located just across the Indiana/Kentucky border in Floyd County, Indiana, were preventing attainment of SO_2 standards in Jefferson County.

After reviewing the record and modeling data, EPA found that the Gallagher plant's contribution to predicted Jefferson County violations of the 24-hour standard for SO_2 was 3–4 percent, and that no violations of the standard were predicted in Jefferson County after Kentucky sources were scheduled to come into compliance with applicable emission limits.[6] EPA therefore determined that:

> Since Gallagher's contributions to violations in Jefferson County are so small, the Agency has concluded that emissions from the Gallagher plant are not preventing attainment and maintenance of the SO_2 standards in Kentucky. Furthermore, since there are no PSD requirements presently applicable to Jefferson County, Gallagher's emissions cannot interfere with PSD measures required to be in the Kentucky SIP. The visibility provisions are not applicable in Jefferson County. In sum, Gallagher does not cause interstate pollution in Jefferson County in violation of section 110(a)(2)(E)(i) (47 FR 6625).

Accordingly, the Administrator denied that petition. The U.S. Court of Appeals for the Sixth Circuit recently affirmed this denial, upholding EPA's interpretation of the provisions of section 126 and their application to the record in that case. *Air Pollution Control District of Jefferson County, Kentucky* v. *EPA* No. 82-3214 (6th Cir. 1984), July 10, 1984.

B. Procedural History of Present Petitions

On December 19, 1980, the Commonwealth of Pennsylvania petitioned the EPA Administrator under section 126 for findings of violations with respect to the NAAQS for SO_2 and TSP. On December 22, 1980, and January 16, 1981, the State of New York submitted a total on nine petitions under section 126, requesting findings that various Midwest sources were causing violations of TSP standards in New York. EPA consolidated the Pennsylvania and New York petitions and on May 1, 1981, issued notice of a joint public hearing [46 FR 24602 (1981)].

At the outset of the 2-day hearing, held in Washington, D.C., on June 18–19, 1981,[7] EPA announced a set of informational criteria considered useful to a finding of violation under section 126. These criteria, intended as general guidelines for petitioning States, were:

> (1) A demonstration establishing the existence and geographic boundaries of the nonattainment or PSD area which is the subject of the petition;
>
> (2) A demonstration that achievement of ambient air quality standards, or of measures necessary to prevent significant deterioration or to protect visibility, is prevented by the named out-of-State sources; and

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[1] EPA has listed those areas at 40 CFR Part 81 Subpart D §§ 81.400—81.437.

[2] 45 FR 80084

[3] 45 FR 80085

[4] *See*, S. Rep. No. 95–127, 95th Cong., 1st Sess. May 10, 1977, 41–42; H.R. Rep. No. 95–294, 95th Cong., 1st Sess., May 12, 1977, 329–311.

[5] "Major source" is defined in the Act to mean: "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)." Section 302, 42 U.S.C. 7602(j).

[6] Interstate Pollution Abatement: Final Determination (47 FR 6625), hereinafter referred to as "*Gallagher*" determination.

[7] The hearing panel consisted of Darryl Tyler, EPA, Acting Director, Control Programs Development Division, Office of Air Quality Planning and Standards; Mary Ann Muirhead, EPA, Office of General Counsel, Joseph Tikvart, EPA, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards; William Baker, Chief, Air Programs Branch, EPA Region II (New York); Sheldon Novick, Regional Counsel, EPA, Region III (Philadelphia); David Kee, Director, Air and Hazardous Materials Division, EPA, Region V (Chicago).

(3) Indications that sources within the petitioning States which impact on the PSD and/or nonattainment areas have been adequately controlled.[8]

On September 11, 1981 (46 FR 45383), EPA upon request extended the public comment period on the petitions until January 4, 1982, to allow the States additional time to examine their petitions and evidence in light of the announced criteria, and to submit additional information in response to the criteria. During this period, on October 7, 1981, the State of Maine filed a petition under section 126.[9] On November 10, 1981, EPA granted Maine's request to consolidate its petition with those of New York and Pennsylvania (46 FR 55551). On January 12, 1982, acting again to allow the States to complete their submissions, EPA further extended the public comment period until March 18, 1982 (47 FR 1304).

EPA received thousands of pages of comments and materials from more than 60 parties supporting and opposing the petitions. The petitioning States submitted technical studies, monitoring data, scientific discussions of long-range transport phenomena, and legal and technical memoranda, as well as rebuttals to comments directed at these submissions. The Administrator received additional comments and similar materials from a number of governmental entities, including the States of Connecticut, Ohio, West Virginia, Massachusetts, Vermont, and Indiana; the Provinces of Ontario and Quebec; and from an array of industry representatives including the Tennessee Valley Authority, the Monongahela Power Company, a group of 14 electric utilities, and a major coal supplier (Peabody Coal Company). The factual and legal issues raised by the petitions and comments are summarized below.

C. The Petitions' Factual Allegations

1. Pennsylvania

Pennsylvania petitioned the Administrator for two separate findings under section 126. First, Pennsylvania asked for a finding that the SO_2 emissions from 38 specific sources—16 in southeastern Ohio and 22 in northwestern West Virginia—prevented attainment and maintenance of SO_2 standards in areas of southwestern Pennsylvania.[10]

Pennsylvania claimed that sources in Ohio and West Virginia caused violations of SO_2 NAAQS in portions of four counties (Washington, Beaver, Fayette, and Westmoreland) in its Southwestern Air Quality Control Region (AQCR),[11] and interfered with its measures to prevent significant deterioration of air quality for SO_2 in three counties (Washington, Beaver, and Allegheny) in the same region.[12] In support of this claim, Pennsylvania relied on a modeling study of the southwestern part of the State conducted by the H.E. Cramer Company.[13] Pennsylvania requested at the hearing that EPA conduct a further study and promulgate emissions limitations as required by the results of the requested study.

Second, Pennsylvania requested a more general finding that Midwest sources emitted particulate matter, including sulfate particulates transformed from SO_2, that prevented it from meeting the NAAQS and from maintaining the PSD increments for TSP.

On June 4, 1984, Pennsylvania amended its petition to expand the list of offending Midwest sources to include all major emitters of SO_2 and TSP, not only in the States of Ohio and West Virginia, but also in Illinois, Indiana, and Kentucky.[14] Pennsylvania named some individual sources, but stated that it "does not believe that only those sources named by the petitioners can be implicated under Section 126(b)" (Pennsylvania Technical Submission, Docket Item II–D–45(b), at 18, n. 3).

In amending its petition, Pennsylvania described the entire State as an "impacted area."[15] It argued that air monitoring data showed that out-of-State sources "dominate Pennsylvania's sulfate concentrations," and that these high sulfate concentrations contribute to violations of the standard for particulate matter.[16] Pennsylvania relied upon air quality monitoring data at a limited number of TSP sampling sites, as well as testimony presented by the State of New York and other technical materials.[17]

With regard to long-range transport of sulfates, Pennsylvania requested that EPA implement "interim cost effective control strategies" such as "coal cleaning, selective mining practices, lease emission dispatching * * *."[18] But Pennsylvania stated that its:

> Petition does not demand immediate remedial action. Instead, the petition requests an affirmative finding of interstate air pollution and proceeding to compile an improved record for resolution of the interstate dispute.[19]

2. New York

In its original petitions New York requested the Administrator to find that 19 named sources in Illinois, Indiana, Michigan, Ohio, Tennessee, and West Virginia emitted sulfur dioxide which converted in the atmosphere into sulfate particulates in amounts preventing New York from attaining the NAAQS for TSP.[20] New York also claimed that sulfates interfered with its program to prevent significant deterioration of air quality for TSP and to protect visibility. In addition, New York complained generally that out-of-State sources were responsible for large quantities of sulfates and acid deposition in New York.

At the June 1981 hearing, New York submitted a list of 59 sources in order to "provide a guide as to plants where initial abatement efforts must be directed." Statement of David R. Wooley, Assistant Attorney General, State of New York, Docket Item II–F–2(a), at 30.

New York subsequently amended its petition to include *all* sources of SO_2 and particulates controlled by State implementation plans in the six States it named originally and Kentucky.[21] Like Pennsylvania, New York described the entire State as affected by sulfates from

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[8] Transcript of June 18, 1981 Hearing at 4–5; *see also* 47 FR 6625, 46 FR 38937–38939, and 46 FR 45383. These criteria were applied as well in resolving Kentucky's claim in the *Gallagher* petition (47 FR 6625).

[9] In its notice Maine sought consolidation with the previously filed petitions, and waived its right to a hearing on its petition.

[10] Pennsylvania Petition, Docket Item II–D–1, at 1, 4–5, Technical Submission of Additional Information Pursuant to Pennsylvania's Section 126 Petition (hereinafter Pennsylvania Technical Submission), Docket Item II–D–45(b) at 1–9.

[11] *See* map 1, reference maps for FR notice, Docket Item III–B–1.

[12] *See* map 2, reference maps for FR notice, Docket Item III–B–1.

[13] Pennsylvania stated: The technical basis for Pennsylvania's petition is an air quality study conducted by the U.S. EPA Middle Atlantic Region by the H.E. Cramer Co., entitled, "Calculations from Compliance Emissions of Long and Short-Term SO_2 Concentrations in the Southwest Pennsylvania AQCR" (1981). * * * Pennsylvania Technical Submission, Docket Item II–D–45(b) at 12.

[14] Letter from Clifford Jones, Secretary of the Pennsylvania Department of Environmental Resources, submitting Supplement to Pennsylvania Petition, Docket Item II–D–23, at 2; Pennsylvania Technical Submission, Docket Item II–D–45(b), at 15–16.

[15] *See* map. 3, reference maps for FR notice, Docket Item III–B–1; Pennsylvania Technical Submission, Docket Item II–D–45(b) at 15.

[16] Pennsylvania Technical Submission, Docket Item II–D–45(b) at 15–17.

[17] *Id.* at 17–18.

[18] Transcript of June 18, 1981 Hearing, Vol. 1 at 86–87.

[19] Pennsylvania's Response to Comments, Docket Item II–D–81 at 1–2.

[20] 46 FR 24602, 24603.

[21] *See*, New York State Memorandum of Law, Docket Item II–D–58 at 4, 7, 52.

SO_2 emissions from the Midwest.[22] New York argued that midwestern sources raised the levels of sulfate particulates throughout the State so that they caused and aggravated violations of the NAAQS for particulates.

New York also claimed that sulfates transported from out of State interfered with its program to prevent significant deterioration of air quality by: (1) Increasing baseline levels of TSP and (2) consuming a significant part of available air quality increment.[23] New York also contended that reduced visibility in the State is associated with the movement of regional haze from the Ohio River Basin.[24]

In support of its petitions, New York relied on air quality monitoring data to establish the levels of ambient sulfates and demonstrate the relationship of these sulfates to violations of particulate standards. New York's data were taken primarily from the western counties of Niagara, Erie, and Chautauqua, but there were some data collected in other areas, including Albany, Rochester, and New York City. New York further attempted to demonstrate the contribution of out-of-State sources to ambient sulfate levels, using analyses of emissions, meteorological and air quality data, and a number of long-range transport modeling studies. These modeling studies focused on parts of western New York and the Adirondacks.

In its request for relief, New York stated that it believed "in most instances, the elimination of its interstate pollution problem can be accomplished by means short of shutting down plants in the named States."[25] New York instead suggested a number of conditions which the Administrator could set to allow the Midwest sources to continue to operate after a Section 126 finding. First, New York sought "a large overall reduction in sulfur dioxide emissions" from the midwestern States. New York asked that, at a minimum, the Administrator place a "regional cap" of 4 pounds of SO_2 per million Btu's on the 59 major power plant sources which New York identified in its hearing testimony as "the largest and most poorly controlled" plants "in the seven [named] Midwestern States."[26] In addition, New York requested the following relief:

(1) Denial of all pending SIP revisions for increased SO_2 limits in the named States;

(2) Withdrawal of approval of recent SIP revisions relaxing SO_2 limits for sources in the named States;

(3) That all sources in the named States emitting large quantities of TSP retrofit reasonably available control technology within 3 years;

(4) That EPA place a priority on enforcing SO_2 emissions limits on sources in the named States;

(5) That EPA require coal washing for industrial and utility boilers in the named States by December 1984;

(6) A halt on construction of all stack height increases in the named States;

(7) EPA evaluation to determine need for additional reductions;

(8) That EPA advise the named States of the inadequacy of their SIP's and call for appropriate revisions.[27]

3. Maine

Maine's petition alleged unlawful interstate pollution from SO_2 sources in the seven midwestern States cited by New York and Pennsylvania.[28] In its petition, Maine stated that it:

> Concedes its inability to trace the effects described in the Maine testimony to any individual source, or even to a list of sources.[29]

Maine did not contend that out-of-State pollution caused violations of NAAQS in Maine, but instead claimed that the cumulative effect of emissions from sources in the seven midwestern States interfered with measures required to be included in its SIP to prevent significant deterioration and protect visibility.[30] Like New York, Maine claimed that sulfate particles transported from out of State elevated its baseline TSP levels and also consumer air quality increments that otherwise would be available to Maine sources. Maine identified the affected areas as three AQCR's in the southern part of the State.[31] In support of its allegations, Maine relied principally on sulfate monitoring data for four sites in the southern part of the State.[32]

Maine also asserted that the long-range transport of sulfates from the Midwest interfered with its ability to keep visibility unimpaired at Acadia National Park. Maine relied primarily on a visibility study measuring contrast and light scattering at the park in 1980.

In its request for relief, Maine asked the Administrator to conduct an investigation into the causes of high sulfate levels in Maine, and "to order sulfur dioxide emissions from these sources reduced enough within a period of 3 years to equitably abate these effects in Maine." Maine requested that the Administrator focus specifically on upwind sources with high emission rates and tall stacks.[33]

In summary, the present petitions request three different kinds of findings under Section 126, relating to: (1) Direct transport of SO_2 (Pennsylvania only); (2) TSP emissions, the transformation of SO_2 into sulfates, and the resulting effect on TSP NAAQS and PSD measures (Pennsylvania, New York, and Maine); and (3) visibility impairment by sulfates (New York and Maine).

Although the petitions claimed that midwestern TSP sources were contributing to the TSP problems in the petitioning States, the petitions did not focus on this issue. Therefore the general impact of midwestern TSP sources is not discussed in this determination.

D. Comments on Petitions

1. Pennsylvania's Claim Relating to Short-Range Transport of Pollutants

Parties opposed to Pennsylvania's petitions sought, in part, to refute the factual allegations underlying those petitions.[34] These parties argue that the Cramer study on which Pennsylvania relies for much of its evidence regarding direct transport of pollutants is "discredited" and "was based on highly inaccurate input data."[35] Hence, the parties assert, Pennsylvania failed to demonstrate that relevant NAAQS violations for SO_2 exist, what quantity of SO_2 comes from the sources it names, and that the violations it alleges could not be caused by local sources.

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[22] New York's Evidence Summary, Docket Item II–D–50(b) at 61. *See* map 4, reference maps for FR notice, Docket Item III–B–1.

[23] New York Evidence Summary, Docket Item II–D–50(b) at 61, 68–69.

[24] In support of this contention New York cited: a study showing an increase in summertime extinction coefficient over the Ohio River Valley and portions of the northeast United States during the period 1948–1972; an analysis showing the number of days on which one or more NWS stations reported low visibility (between 3 and 6 miles); and several observational studies and analyses of satellite imagery of regional haze episodes (New York Evidence Summary, Docket No. II–D–50(b) at 30–31).

[25] See, New York Memorandum of Law, Docket Item II–D–58 at 49.

[26] *Id.* at 49.

[27] Testimony of David Wooley, June 18, 1981, at 103. New York Memorandum of Law, Docket Item II–D–58, at 52–53.

[28] Maine's Evidence and Argument, Docket Item II–D–51(c) at 1–2 and n. 1, 2.

[29] *Id.* at 2.

[30] *Id.* at 2, Rebuttal Argument of the Petitioners: Maine's Technical Case, Docket Item II–D–82, at 3–8.

[31] Maine's Evidence and Argument, Docket Item II–D–51(c) at Appendix B, Rebuttal Argument of the Petitioners, Maine's Technical Case, Docket Item II–D–82 at 4. *See* maps 5 and 6, reference maps for FR notice, Docket Item III–B–1.

[32] Maine's Evidence and Argument, Docket Item II–D–51(c) at 10.

[33] *Id.* at 41–47.

[34] *See, e.g.,* Ohio's EPA's response to Section 126 Petitions, Docket Item II–D–71; Comments of West Virginia Air Pollution Control Commission, Docket Item II–D–62; Comments of National Steel Corporaion, Docket Item II–D–60.

[35] Comments of Ohio Power Co., *et al.,* Docket Item II–D–72 at ii.

2. Claims by the Petitioning States Relating to Long-Range Transport of Pollutants

The petitioning States rely heavily on evidence drawn from long-range air transport modeling. The opposing comments stress the difficulties, limitations, and uncertainties endemic in models of this kind. The comments also emphasize what they describe as the shortcomings of the particular long-range transport models on which the petitioning States relied. Likewise, these critics allege there were weaknesses in the air quality analyses submitted by the States. The comments criticize the monitoring and emissions data submitted by Pennsylvania, New York, and Maine as outdated, inaccurate, and in many instances unverifiable and incomplete.[36]

These critics argue, moreover, that the petitioning States fail to provide adequate data to support their contention that high sulfate levels and concentrations can be found in the air over their territory. What little monitoring data the States submit, according to the comments, are flawed as a result of deficiencies in the monitoring techniques. These data, moreover, do not help to discriminate among the possible sources of the sulfates of which the States complain.[37]

The opposing comments also allege that the petitioning States greatly underestimate the contribution they make to their own and to each other's SO_2 and TSP troubles. Comments point to the amounts of sulfates and particulates emitted from local sources; they also argue that sulfates taken as a whole, from whatever source, play an insignificant role in TSP nonattainment. The commentaries also mention the contributions from non-midwestern States and from Canada to sulfate loadings in New York, Pennsylvania, and Maine.[38]

E. Legal Issues Raised by the Petitions

The petitions and opposing comments raise a number of legal issues concerning the scope and application of Sections 110 and 126 of the Clean Air act. The issues raised and discussed in the petitions and comments include:

(1) The extent to which the Clean Air Act regulates sulfates and acid deposition;

(2) The specificity with which the petitioner must identify an allegedly offending source;

(3) Whether section 126 provides a remedy only for the effect of a single source, or whether it may be applied to the cumulative effect of many sources;

(4) The specificity with which the peritioner must identify the geographic area allegedly affected by the unlawful pollution;

(5) What it means, in the context of sectin 110(a)(2)(E)(i), for an out-of-State source or sources to "prevent" attainment or maintenance of a NAAQS;

(6) What it means, in the context of Section 110(a)(2)(E)(i), for an out-of-State source to "interfere" with measures required to be included in a SIP to prevent significant deterioration or to protect visibility;

(7) Whether relief under Section 126 requires a showing of a violation of a NAAQS, or of a PSD increment or of a visibility measure;

(8) The kind and extent of proof required to establish the causal connection between a source and the alleged unlawful impact;

(9) The extent to which in-State sources must be controlled compared to the out-of-State source or sources;

(10) Procedural issues arising in a proceeding on a Section 126 petition.

The petitions comments, and rebuttals the Agency received contain many detailed arguments concerning the legal issues listed above. It is unnecessary to recite these arguments in detail at this point; rather, we shall discuss them as they relate to the principles and findings upon which this proposed determination is based. In the next part of this notice, however, we shall describe four initial legal issues and the arguments we must consider in order to resolve them. We shall also evaluate those arguments.

II. Threshold Legal Issues

The legal issues raised by the petitioning States and discussed in the comments and refutations are complex and often interrelated. Nevertheless, they concern basic or threshold questions, the answers to which would be crucial in making the kind of finding the States request.[39] These questions are: (1) Which pollutants must we evaluate? (2) What are the geographic areas at issue? (3) What determines an impermissible impact, given the pollutants and areas at issue? (4) What role if any do major out-of-State sources play in any impermissible impact?

A. Which Pollutant?

Section 126 of the Clean Air Act Addresses Pollutants Governed by NAAQS

To make a proper determination under Section 126 of the Clean Air Act, we must distinguish between the kinds of injuries the statute is and is not written to redress. Congress designed Section 126 and Section 110(a)(2)(E) as limited mechanisms to respond to a restricted class of interstate pollution problems. Section 110, as applied through Section 126, requires SIP's to prohibit the transport out of State of pollution which: (1) Prevents attainment or maintenance of NAAQS; or (2) interferes with measures required to be included in a SIP to prevent significant deterioration or protect visibility in any State that receives that pollution. These provisions regulate only those pollutants for which standards have been set or PSD and visibility measures required. This is the plain consequence of the statutory design.[40]

The petitioning States have complained in part of acid deposition[41] and levels of sulfates in the ambient air. These pollutants, however, cannot serve *in themselves* as the basis for a finding under section 126, because NAAQS and PSD restrictions have not been established for them.

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[36] *See, e.g.*, Critique of the Technical Documents Cited by New York and Pennsylvania in Support of their Section 126 Petitions, Smith *et al.*, Docket Item II–D–72, Appendix H. "Critique of Supplemental Submissions by Pennsylvania, New York, and Maine in Support of their Section 126 Petitions Docket Item II–D–72, Appendix A submitted by Ohio Power *et al.*

[37] *See, e.g.*, "Report on Investigations into the Causes of Nonattainment of TSP Standards in Western Pennsylvania and Western New York," Rocco *et al.*, TRC. Docket Item II–D–72, submitted by Ohio Power *et al.*

[38] *See, e.g.*, Comments of Ohio Power *et al.*, Docket Item II–D–72, pp. 172–209

[39] A discussion of these issues also serves to explain the function of the guidelines which the Administrator announced for resolving Section 126 petitions (see I.B., *supra*). As EPA has cautioned, "these guidelines are by no means exhaustive, nor do they represent requirements or prerequisites for an affirmative determination under Section 126. Depending on the individual facts surrounding each petition, the Administrator anticipates that each of these criteria, and perhaps additional information will have varying significance in each determination" [47 FR 6625 (February 16, 1982)].

[40] This is apparent from the wording of Sections 110 (a)(2)(E)(i) and 126(b). But even were it not, the legislative history of the Act demonstrates that these sections are pegged to specific pollutants for which national standards have been set. The House-Senate Conference Committee rejected a Senate proposal to extend Section 110(a)(2)(E) to cover other noncriteria pollutants. *See*, S. Rep. No. 95–127, 95th Cong., 1st Sess. 42 (1977); Conference Report [To accompany HR 6161] HR Rep. No. 95–564, 95th Cong., 1 st. Sess. 10 (1977).

[41] While in the atmosphere, sulfates may react with moisture and form a solution of sulfuric acid, which may precipitate as "acid rain." Sulfates may also be deposited in dry form.

EPA, in its May 1, 1981 notice of hearing on the present petitions, highlighted this explicit limitation on the scope of section 126. In that notice, the Agency underscored the absence of NAAQS and PSD increments for acid deposition and sulfates, and it stated that it thus "has no authority under section 126 to regulate emissions solely because of their impacts on acid deposition or sulfates" (46 FR 24603).

The present petitions however *do* allege violations concerning two pollutants covered by the statute: (1) SO_2 (with respect to the Commonwealth of Pennsylvania); and (2) TSP (with respect to all three petitioning States). The present determination is therefore limited to claimed violations of standards for these two pollutants.

Sulfate particulates can and do constitute a portion of TSP and thus are subject to the ambient standard and PSD increments for particulates. To that extent the Administrator will of course consider sulfates in evaluating claims arising of violations of TSP standards and PSD increments. Acid deposition in other forms, however, is not currently directly regulated by EPA. Thus, the Agency's notice of hearing urged the petitioning States not to base "their arguments on the causes and effects of acid deposition and sulfates except for their contribution to air quality levels relative to the NAAQS" (46 FR 24603).

Virtually all the comments received agreed with the proposition that acid deposition is not regulated by current ambient pollutant control standards.[42] New York contended, however, that "control of acid deposition * * * is contemplated by the [Clean Air] Act's regulatory scheme," noting that controls exist for ambient SO_2 and TSP pollutants "and the form in which the sulfates do damage is irrelevant."[43] EPA has considered New York's argument but remains convinced that section 126 addresses only pollutants subject to regulation under section 110, *i.e.*, pollutants that have NAAQS and increments or that are controlled under the visibility regulations.

B. What Geographic Area is at Issue?

The Clean Air Act Provides Redress for Violations in Specified Geographical Areas

As we have said, relief under the Clean Air Act must be based on a finding that pollution coming from one State (1) prevents another from achieving or maintaining a NAAQS, or (2) interferes with measures required to be included in the SIP to prevent the significant deterioration of air quality or to protect visibility. Since compliance with NAAQS and SIP requirements is determined on a geographic basis, a finding must then refer to a specific geographic area where a NAAQS is not met or maintained or where out-of-State pollution interferes with required PSD or visibility measures. The first guidelines criterion the Administrator announced, therefore, calls for "a demonstration establishing the existence and geographic boundaries of the nonattainment or PSD area which is the subject of the petition." Only after defining the affected area may we proceed to determine the nature of the violation and the role out-of-State pollution may play in causing it.

C. What Pollutant Levels Trigger the Section?

Section 126 Provides Redress When a NAAQS is Violated or a PSD Increment is Exceeded

As the Second Circuit observed in *Connecticut* v. *EPA, 656 F.2d 902, 909 (2d Cir. 1981):*

> The clear intent of the [Clean Air Act] is to require interstate comity only insofar as is necessary to allow each state to comply with the NAAQS and the Act's PSD provisions.

Section 110(a)(2)(E)(i)

> is quite explicit in limiting interstate protection to Federally-mandated pollution standards.

1. Violation of a NAAQS

Section 126 of the Clean Air Act provides redress or relief with respect to interstate pollution that *prevents* attainment or maintenance of a NAAQS. This requirement logically presupposes that the petitioning State has attained or maintained a NAAQS. It is evident that if the standard is being achieved, its attainment or maintenance is not prevented, absent, perhaps, extraordinary circumstances not presented here.[44]

Pennsylvania and New York suggest that a State might invoke Section 126 relief on a showing that emissions from a source in another State "adversely affect"[45]
potential adverse effect" on its air quality. This interpretation, however, departs from the plain meaning of the statute. As the Second Circuit stated in *Connecticut Fund for the Environment* v. *EPA, 696 F.2d 147, 156, 157 (2d Cir. 1982):*

> Absent strong indications to the contrary, the plain language of a statute is the best index of its meaning.

Section 110(a)(2)(E)(i)(I)

> was not intended to do more than prohibit the Agency from approving State implementation plan revisions which will cause violations of the NAAQS in nearby States.[46]

2. Violation of a PSD Increment

The Clean Air Act's PSD program consists primarily of a permit system applicable to new "major" projects, which each State must include in its implementation plan for NAAQS attainment and unclassifiable areas. The permit system prevents the construction of any new "major" project that would cause or contribute to any violation of the SO_2 or TSP increments over baseline concentration levels. The first application for a PSD permit in an area "triggers" the baseline concentration, which is simply "the ambient concentration levels which exist at the time of [that] first application * * *" [Section 169(4), 42 U.S.C. 7479(4)]. Existing pollution, whether or not it enters from out of State, is generally included in the baseline concentration levels.

While SO_2 and TSP concentrations are not to increase above the increments, the State may allocate the permitted increments as it sees fit.[47]

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[42] See *e.g.*, Comments of Tennessee Valley Association, Docket Item II–D–76, pp. 14–15, Response of Peabody Coal Company, Docket Item II–D–46, at 18–19, n. 9, Comments of North American Coal Company, Docket Item II–D–37, at 4–5. Testimony of Ron Shipley on behalf of West Virginia, Transcript of June 18, 1981, hearing at 201.

[43] Reply to Oppositions to New York's Petitions and Comments, Docket Item II–D–15, at 15.

[44] It is possible that a State might seek relief under Section 126 for example, when a new source proposed to be built in a neighboring State would be likely to cause a violation, even if no violation then exists. *But see*, Section 164(e), 42 U.S.C. 7474(e).

Industry representatives have argued that a finding under Section 126 must be based on actual emissions. The Agency previously has rejected this argument in the *Gallagher* determination:

> Nothing in Section 126 precludes consideration of allowable emissions since its prohibition extends to emissions which may occur in the future. This clearly includes emissions allowable under a SIP (47 FR 6627).

[45] New York Memorandum of Law, Docket Item II–D–5–6 at 14–15; Pennsylvania Analysis of Requirements for a Petition under section 126, Docket Item II–D–45e, at 28–30.

[46] The Sixth Circuit recently agreed that section 110(a)(2)(E) "appears to contemplate interstate pollution abatement actions only where interstate emissions prevent attainment of the NAAQS, *i.e.*, only where the standards are violated." *Jefferson County* v. *EPA, supra*, Slip Opinion at 41.

[47] Congress has set the increments as maximum limitations which must be observed by the States, Section 163 of the Clean Air Act, (42 U.S.C. 7473), but "assuming such compliance, growth-

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However, when concentrations threaten to exceed allowable increments, the State must prevent violations either by refusing to grant permits, or by requiring reductions in emissions it had already permitted or included in the baseline concentration, or in post-baseline emissions not subject to the permit program. These latter reductions would offset the new emissions the State may then permit.

Out-of-State pollution may thus contribute to the baseline concentration over which the allowable increment is calculated; it may also consume a portion of the allowable PSD increment, but in general unless it causes that increment to be exceeded, it will not trigger section 126 relief.

The Clean Air Act must be so interpreted because:

(1) If section 110(a)(2)(E) were read to require EPA enforcement of interference not amounting to a PSD increment violation, it would put the Agency either in the position of enforcing one State's programs against others, or of devising a common law of permissible pollution even below the level of any statutory standards, approaches the Courts have rejected in light of the clear statutory language. As the Second Circuit held in *Connecticut* v. *EPA*, 656 F.2d 902, 909 (2d Cir. 1981).

> Nothing in the Act, however, indicates that a State must respect its neighbor's air quality standards (or design its SIP to avoid interference therewith) if those standards are more stringent than the requirements of Federal law. Indeed, Section 110(a)(2)(E) appears to have been carefully drafted to preclude any such interpretation. *See also Alabama Power* v. *Costle*, 636 F.2d 323, 364 (D.C. Cir. 1979).

Thus Section 110(a)(2)(E) should not be read to lend Federal enforcement power to State programs which provide protection beyond the Federally-set increments by establishing margins for growth or by preserving PSD increment below the statutory ceilings. An out-of-State source cannot be found to be interfering with Federal standards unless there is a violation of PSD increment in the petitioning State. *See Air Pollution Control District of Jefferson County, Kentucky* v. *EPA*, *supra*. Slip Opinion at 28–30 (holding that Clean Air Act does not protect "margins for growth" in absence of PSD increment violation).

(2) The Clean Air Act "strikes a careful balance between Federal and State power" by specifically providing that "the prevention and control of air pollution at its source is the primary responsibility of States and local governments" [Section 110(a)(3); *see also* Section 107(a), *Bethlehem Steel Corporation* v. *EPA*, No. 82–2608 (7th Cir. 1983)]. To interpret section 126 to mandate Federal interference with development in the States not violating Federal standards would upset this balance. In enacting Section 126, Congress was not attempting what it had refrained from doing in the Act as a whole—that is, to establish a comprehensive allocation system for air resources. Rather, it was trying to cope with those instances where one State makes it impossible for another to meet its mandatory obligations under the Act. To interpret Section 126 more broadly would authorize, indeed require, the Administrator to redistribute air resources among the States which, surely, lies beyond the mandate of the Agency.

(3) The prohibition in section 110(a)(2)(E)(i)(II) of interstate pollution which "interferes with PSD measures required to be included in the applicable implementation plan" must be read consistently with the prohibition in section 110(a)(2)(E)(i)(I) of interstate pollution that prevents attainment or maintenance of NAAQS.

Congress did not intend the Clear Air Act to provide the maximum relief from interstate pollution generally, a course which could only end with a total ban on such pollution. Rather, Congress intended to provide relief in situations in which out-of-State contributions prevent a State from meeting the requirements of the law. Thus Congress required a NAAQS violation before the Act may be invoked to relieve interstate pollution that threatens public health and welfare. Congress must also have required a violation of a PSD increment for the Act to be triggered on PSD grounds, again with the potential reservation of circumstances not presented here.[48] We cannot suppose that Congress would require a NAAQS violation but not a PSD increment violation as the condition for relief, since the latter addresses surely no greater or more pressing public concern than the former.

For these reasons, we cannot agree with Pennsylvania's assertion that Section 126 offers relief if "any portion of a PSD increment in a receiving State is consumed by out-of-State emissions." [49]

D. What Role Must an Out-of-State Source Play in Causing a Violation of a NAAQS or PSD Increment?

1. The Clean Air Act Provides Redress When the Contribution of the Out-of-State Source is Significant

The Administrator's second guideline expresses the plain statutory requirement for:

> a demonstration that achievement of ambient air quality standards or measures necessary to prevent significant deterioration or to protect visibility is prevented by the named out-of-State source.

Thus, we must ascertain whether an out-of-State source or sources[50] of pollution are responsible for preventing attainment. The Clean Air Act does not tell us, however, how great the contribution made by an out-of-State source must be to "prevent" attainment. Thus, in the previous determination of Kentucky's section 126 Petition, the Administrator noted:

> The Clean Air Act itself provides no guidance on the levels of pollution which constitute prevention of attainment and maintenance of the NAAQS. However, the legislative history of Section 126 suggests that a strict literal interpretation of the term "prevent" is not intended.[51]

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management decisions were left by Congress for resolution by the States." [*Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 364 (D.C. Cir. 1979)]. "EPA has authority under the statute to prevent or correct a violation of the increments, but the agency is without authority to dictate to the States their policy for management of the consumption of allowable increments." *Id.* at 361.

[48] It is possible that a State might seek relief under Section 110(a)(2)(E)(i)(II) not when there is an actual violation of its allowable PSD increment but when out-of-State sources contribute or threaten to contribute significantly to a clear potential violation, as, for example, when emissions from a source proposed for construction in a neighboring State would cause a PSD increment violation in the affected State.

[49] Pennsylvania Analysis of Requirements for a Petition under section 126, Docket Item II–D–45(e) at 23, 27.

[50] A finding under Section 126 is limited to any "*major* source" (emphasis added); *i.e.*, one that emits or has the potential to emit 100 tons or more of pollutant a year [42 U.S.C. 7602(j); 47 FR 6626, February 16, 1982].

EPA rejects the argument made by industry representatives and some States that:

> A Section 126(b) finding may be made only if emissions from a single out-of-State source prevent attainment or maintenance of NAAQS, or interfere with required PSD or visibility measures in another State's implementation plan. The Section does not address the collective effect of an aggregation of sources.

Comments of Ohio Power *et al.*, Docket Item II–D–76 at 34. EPA agrees with petitioning States that Section 126 may be applied to cumulative impacts of sources that are sufficiently identified. *See* Pennsylvania Analysis of Requirements for a Petition under Section 126, Docket Item II–D–45(e) at 22; New York Memorandum of Law, Docket Item II–D–58 at 26, 29. The statutory language and legislative purpose reflected in the legislative history support this construction. Moreover, 1 U.S.C. 1 provides in relevant part that:

> "in determining the meaning of any Act of Congress, unless the context indicates otherwise, words importing the singular include and apply to several persons, parties, or things .*.*.*."

[51] 47 FR 6626 (February 16, 1982).

The petitioning States of New York, Pennsylvania, and Maine, to use their own language, "have presented alternative views of what 'prevent' might mean in the context of Sections 110 and 126 of the Clean Air Act." Rebuttal Legal Argument of the Petitioners, Docket Item II–D–83 at 29. These States, however, agree that:

> a *significant contribution* by out-of-State sources to another State's difficulty in attaining or maintaining the NAAQS constitutes a sufficient basis for an EPA finding that such sources "prevent" the petitioning State from meeting the national air pollution goals. *Id.* (Emphasis in original.)

EPA joins with the petitioning States in believing that where a NAAQS or PSD increment violation occurs it may be sufficient, to trigger Section 126 relief in the circumstances of a given case, for a State to show a significant contribution by an out-of-State source to that violation. The Agency is unconvinced by arguments presented on behalf of Ohio Power *et al.* (Docket Item II–D–72 at 62 *et seq.*) that "(t)he only reasonable interpretation that can be given for the notion of 'preventing attainment or maintenance' is that but for the out-of-State contribution there would be no violation" (*id.* at 62, fn. omitted).

The idea of a "but for" test, as Ohio Power *et al.* present it, is ambiguous between a *necessary* and a *sufficient* condition and between a *logical* and *material* condition of a NAAQS or a PSD increment violation. Accordingly, the appeal to "but for" causality merely adds vagueness and confusion to the concept of prevention it is supposed to explain.

Since the "but for" test therefore fails to assist the task of decision, the Administrator agrees with the petitioning States that a "significant contribution" by an out-of-State source may constitute a sufficient basis for a finding that the source "prevents" the petitioning State from meeting a NAAQS or a PSD increment. This test, applied in *Gallagher*, was recently upheld by the Sixth Circuit (*Jefferson County, Kentucky* v. *EPA*, Slip Opinion at 30–41).

2. What is a Significant Contribution?

A State petitioning under Section 126 for relief from interstate pollution may argue that an out-of-State source prevents it from meeting a NAAQS or a PSD increment only if that source makes a significant contribution to the levels of pollution that cause a NAAQS or PSD increment violation. A "significant" contribution, of course, cannot be merely a *de minimis* contribution. In determining that a contribution is significant, the Administrator will take the following factors, among others, into account:

> the location of the named source;
>
> the nature and degree of the violation: its extensiveness; the number of violations to which the named source has or may have contributed;
>
> the amounts or volumes contributed by the named source as compared with the amounts and volumes contributed by in-State and unnamed out-of-State sources;
>
> the relative stringencies of the pollution controls placed on in-State sources compared to those placed upon out-of-State sources; the use of the best available control technologies on those sources;
>
> the historical record of the petitioning State and the named source State with respect to meeting national air quality objectives;
>
> projections concerning future violations or attainments absent a Section 126 determination;
>
> the degree to which a named source meets SIP requirements in its own State;
>
> the degree to which that source uses its allowable emission quota;
>
> the types of sources involved and the dates they begin to emit;
>
> the relative costs of pollution abatement between sources that contribute to a violation.[52]

The Administrator must weigh such considerations and perhaps other factors in determining whether an out-of-State contribution has a significant effect on the failure of petitioning of States to meet a NAAQS or a PSD increment. The size of the out-of-State contribution is important but not necessarily decisive. It is important, however, that the petitioning States make a strong empirical case that the amounts in question do inhibit significantly their efforts to meet the standards or increments in question. The Administrator cannot find in this record a clear demonstration that contributions from sources in the named States exist in amounts large enough to be considered significant in the context of violations of the applicable standards. Without that threshold demonstration, EPA need not analyze this question in further detail.

III. Pennsylvania's Direct SO_2 Transport Claims

Pennsylvania, in one of its two major claims, asserts that sources in Ohio and West Virginia prevent areas of southwestern Pennsylvania from attaining and maintaining SO_2 standards. We shall evaluate this assertion by asking and answering the questions outlined above, first with respect to possible violations of NAAQS, and then with respect to possible violations of PSD requirements.

A. Which Pollutant and What Geographic Area?

In its August 1981 submission, Pennsylvania alleged that out-of-State sources prevent attainment and maintenance of the NAAQS for SO_2 in three areas in the nine-county southwestern Pennsylvania AQCR.[53]

(1) Area A: An area on the Pennsylvania/West Virginia border (a portion of Washington County);

(2) Area B: Lower Beaver Valley Air Basin[54] (Beaver County);

(3) Area C: The Monongahela Valley Air Basin[55] (portions of Fayette, Washington, and Westmoreland counties.)[56]

B. Are There Violations of the NAAQS for SO_2 in These Areas?

To answer this question we must look at two different bases for a response: the present official designations of the areas, and a 1981 study which serves as the primary basis on which Pennsylvania claims violations of the SO_2 NAAQS.

1. Designations of Nonattainment Areas for SO_2 in Southwestern Pennsylvania

Under section 107 of the Clean Air Act [42 U.S.C. 7407], each State, subject to EPA oversight, must designate those areas which attain, fail to attain, or cannot be classified as attaining, based on available information, the national ambient air quality standards for specific pollutants. Section 171 of the Clean Air Act [42 U.S.C. 7501(a)], defines a nonattainment area for a pollutant as "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant." None of the three areas—A, B, or C—cited by Pennsylvania in its petition is at present a designated nonattainment area.

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[52] As the Administrator noted in the *Gallagher* determination: The "adequacy" of out-of-State controls is a relative matter and may vary depending on a number of circumstances, possibly including social and economic factors [47 FR 6625 (February 16, 1982)].

[53] The southwestern Pennsylvania AQCR consists of the counties of Allegheny, Armstrong, Beaver, Butler, Greene, Fayette, Indiana, Washington, and Westmoreland. *See* map 1, reference maps for FR notice, Docket Item III–B–1.

[54] As defined in Chapter 121 of the Rules and Regulations of the Department of Environmental Resources.

[55] *Id.*

[56] *See* Pennsylvania's Technical Submission of Additional Information, Docket Item II–D–45(b) at 1–2.

Indeed, since the filing of Pennsylvania's petition, there has been a trend toward improvement in air quality in the southwestern portion of the State. In April 1984, EPA approved Pennsylvania's request to redesignate Beaver County (Area B above), located in southwestern Pennsylvania on the border of West Virginia, to attainment status for SO_2. As of May 1984, only portions of two counties in southwestern Pennsylvania are officially designated nonattainment for SO_2 under section 107: one portion of Allegheny County [57] and portions of Armstrong County.[58] Pennsylvania acknowledges a local source to be the problem in Allegheny County and has requested that the relevant portions of Armstrong County be redesignated to attainment status. That request is pending before EPA.

2. Geographic Areas Predicted by Pennsylvania To Have Violations

Pennsylvania relied entirely on a modeling study conducted for Pennsylvania in 1980 by H.E. Cramer (hereafter referred to as the Cramer Analysis)[59] for its identification of areas threatened by short-range SO_2 transport. Of the areas identified by the Cramer Analysis (Areas A, B, and C above), and noted in Pennsylvania's petition, two (Areas A and C) were predicted to be in violation of the NAAQS for sulfur dioxide.[60] In Area C, one receptor was identified as potentially exceeding the annual SO_2 NAAQS. This receptor was located on elevated terrain about 1 kilometer north of the Monessen, Pennsylvania plant of the Wheeling-Pittsburgh Steel.

C. What Is the Role of Out-of-State Sources in Alleged NAAQS Violations?

1. Pennsylvania's Predictions of Violations

Pennsylvania presented no monitoring data showing NAAQS violations in the areas of concern. The Cramer Analysis predicted violations (1) in Area A—an area of approximately 3 x 20 kilometers in Washington County on the Pennsylvania/West Virginia border (Grid 4 in the Cramer Analysis), and (2) in Area C—the Monongahela Valley Air Basin. Table 1 summarizes the status of areas identified by Pennsylvania petition.

TABLE 1.—GEOGRAPHIC AREAS IDENTIFIED BY PENNSYLVANIA PETITION

Geographic area	Section 107 designation	Modeling analysis predictions
1. *Area A:* 3 x 20 kilometer area on Pennsylvania-West Virginia border in Washington County.	Attainment	Nonattainment.
2. *Area B:* Lower Beaver Valley Air Basin: (Beaver County).	do	Attainment.
3. *Area C:* Monongahela Valley Air Basin: (portions of Fayette, Washington, and Westmoreland Counties).	do	Nonattainment at one receptor site.

In Area C, the Cramer Analysis predicted a combined maximum annual SO_2 contribution of 17 $\mu g/m^3$ attributed to out-of-State sources (generally located 50 kilometers away). This is to be compared to the predicted annual contribution of 69.2 $\mu g/m^3$ from Pennsylvania sources.[61] As previously noted, the receptor grid point exceeding the SO_2 NAAQS for the annual average occurred 1 kilometer north of a major SO_2 source at Monessen, Pennsylvania. This source appears to dominate the emissions inventory in this area. Thus, under the Cramer Analysis, in-State sources appear to be responsible for the major portion of maximum annual average concentrations.

The Cramer Analysis predicts that Area A is the area of greatest impact for SO_2 sources located in eastern Ohio and West Virginia. These modeling results predict a maximum annual average SO_2 concentration of 101.4 $\mu g/m^3$, the source contribution analysis from these model estimates indicates contributions as follows: 53 percent from West Virginia sources; 35 percent from Ohio sources; and 12 percent from Pennsylvania sources. We believe that, for the reasons set forth below, these modeling results do not provide a sufficient basis for regulatory action at this time but rather suggest a need for further study.

2. Critique of the Cramer Analysis

The Cramer Analysis used both the LONGZ and SHORTZ dispersion models to estimate annual and short-term SO_2 concentrations respectively. Annual ambient concentrations were predicted using the LONGZ model and applying a 1976–1977 emission inventory and meteorological set. Predicted concentrations were compared to measured air quality at 13 monitor sites from the period 1976–1979. Due to limitations on the availability of long-term records, there was not substantial time period overlap between the modeling analysis and the measured air quality data, thus making evaluation of the model predictions difficult. The SHORTZ (24-hour and 3-hour) model was used to estimate ambient concentrations for a single "worstcase" day (August 28, 1976) and these concentrations were compared only qualitatively to the maximum observed 24-hour and 3-hour values at several nearby monitoring sites. The time periods between model predictions and measured air quality data are also inconsistent. In the final analysis, concentration estimates were made using a 1980 compliance emissions inventory.

As presented in the Cramer analysis, model calculations for the border areas were "preliminary values." Cramer's report accompanying the Analysis expressed uncertainty regarding the assumptions used for worst-case meteorology and uncertainty about the accuracy of the emissions inventories for the facilities located in West Virginia and Ohio. The Report cautioned that "an additional effort beyond the scope of the present study is required to define the magnitude and areal extent of the annual and short-term SO_2 concentrations along the western border of the southwest Pennsylvania AQCR" (Cramer Analysis, at vii).

In addition to and because of the above noted deficiencies, commenters on the petitions cited the limitations of applying the analysis to the specific case presented by Pennsylvania. EPA's technical review also recognizes these limitations. These limitations include unresolved questions about the accuracy of the emissions inventory (which is central to the reliability of any model's output), the specific application of worst case meteorology, and the limited model performance evaluation. Although the Cramer Analysis provides an indication that the annual SO_2 standard may be exceeded, the limitations and preliminary nature of the modeling analysis do not provide a sufficient technical basis to support a finding that a NAAQS violation occurs. Accordingly, we conclude that the results of the LONGZ (long term) modeling analysis do not provide a sufficiently reliable basis for granting this Section 126 petition.

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[57] The following portion of Allegheny County is designated nonattainment for SO_2:

(1) Area within 2-mile radius of Hazelwood Monitor.

In addition, two portions of Allegheny County cannot be classified:

(1) that portion of Allegheny County within an 8-mile radius of Duquesne Golf Association Club House in West Mifflin, excluding the nonattainment area 1 above;

(2) the area within a 2-mile radius of the Bellevue Monitor.

[58] At present the following portions of Armstrong County are designated primary nonattainment for SO_2: Madison Township, Mahoning Township, Boggs Township, Washington Township, Pine Township.

[59] "Calculations from Compliance Emissions of Long- and Short-term SO_2 Concentrations in the southwest Pennsylvania AQCR," H.E. Cramer Co. (1981). The main purpose of the Cramer Analysis was to assist EPA and Pennsylvania in determining the attainment/nonattainment status of selected areas in the Southwest Pennsylvania Air Quality Control Region. As an adjunct to the study, some preliminary estimates were made of the SO_2 air quality in two smaller areas on the western Pennsylvania border, one of which is Area A. The technical deficiencies of this analysis which limit its usefulness are considered in Section C.2, *infra.*

[60] The analysis predicted Area B to be in attainment by 4 percent at the point of maximum estimated concentration.

[61] *See* Pennsylvania Technical Submission of Additional Information, Docket Item II–D–45(b), at 8–9.

EPA further determined that the SHORTZ (short term) model application as presented in the Pennsylvania petition is technically deficient. In addition to more serious questions about the derivation of the short-term inventory, the modeling analysis was performed for only a single day, and suffers from inadequate validation.

Proposed Determination on Pennsylvania's SO_2 NAAQS Violation Claims

Given the limitations previously discussed of the Cramer Analysis, and the limited area and extent of the violations they predict even taken at face value, we find it inadvisable to rely upon them as the basis for such regulatory action as making the finding requested here and setting new emissions limitations for sources in Ohio and West Virginia. Rather, as suggested by Pennsylvania,[62] a new modeling study should be conducted to further evaluate the nature and extent of any current problem, and to provide a basis for establishing revised SIP emission limits, if necessary. Any new study should employ more recent and more reliable emissions inventory data, current and more complete data on meteorological conditions, and should be conducted in accordance with current EPA modeling guidance.

For these reasons, the Administrator proposes to deny Pennsylvania's petition relating to alleged violations of SO_2 NAAQS. Such a denial, however, would not prejudice Pennsylvania's opportunity to file a new petition should a new study with new monitoring data warrant a different decision.

D. Pennsylvania's Allegations of Interferences With PSD Measures

In addition to its allegations concerning the NAAQS for SO_2, Pennsylvania claimed in its petition that out-of-State sources were impermissibly interfering with measures it is required to take to prevent significant deterioration of air quality with respect to that pollutant.[63] An analysis of Pennsylvania's claim with respect to PSD requires us to ask and answer the same questions posed with respect to NAAQS violations.

1. What Geographic Area?

Pennsylvania alleged out-of-State interference with PSD measures required for SO_2 in only one geographic area identified as "Area D."[64] Area D consists of three counties in southwestern Pennsylvania—Beaver, Allegheny, and Washington.[65] Pennsylvania selected this area because the Cramer Analysis predicted that annual concentrations in these areas would exceed $60\ \mu g/m^3$. Since the annual NAAQs is $80\ \mu g/m^3$, and since these three counties are Class II PSD areas subject to an increment of $20\ \mu g/m^3$, Pennsylvania reasoned that "the full PSD increment is not available" in these counties. "Thus, the PSD program in Pennsylvania is interfered with."[66]

2. Are There Present or Potential Future Violations of PSD SO_2 Increments?

There is no evidence of any PSD increment violations in southwestern Pennsylvania. The SO_2 baseline for the southwestern Pennsylvania AQCR—which includes, among others, the counties of Beaver, Washington, and Allegheny—was triggered as of May 1979.[67] Since that time, no projects have been denied permits on increment consumption grounds.

Recent evidence of downward trends in SO_2 emissions indicates that air quality is improving in this region, thereby reducing consumption of PSD increments and lessening the likelihood of a violation.[68] The National Air Quality and Emissions Trends Report, 1982 (March 1984) at 32–36, reports a "steady downward trend" in SO_2 emissions nationwide and in the region encompassing southwestern Pennsylvania, Ohio, and West Virginia. Beaver County has improved from nonattainment to attainment for SO_2. Allegheny County has shown a recent trend in improvement of ambient SO_2 levels. EPA has noted that "SO_2 data have shown a steady and consistent improvement in air quality levels at all monitored sites" [46 FR 30655, 30656, (June 10, 1981)].

Proposed Determination on Pennsylvania's SO_2 PSD Allegations

Because of the lack of a demonstrated violation, the Administrator proposes to find that Pennsylvania has not demonstrated within the meaning of Section 126 that out-of-State sources unlawfully interfere with its PSD measures for SO_2.

IV. Claims Relating to Long-Range Transport of Sulfates and Particulates

Pennsylvania, New York, and Maine allege that particulates and sulfur dioxide transformed into particulates are transported from virtually all major midwestern sources across State boundaries in amounts violating section 110(a)(2)(E)(i) of the Clean Air Act.

These allegations are much broader than Pennsylvania's short-range transport SO_2 claim and involve additional complexities. The same questions are relevant, however, and in answering them we can determine the validity of the claims.

A. Which Pollutant?

When sulfur dioxide is emitted into the atmosphere it may be converted into so-called "secondary" pollutants by undergoing complex chemical reactions by which it further oxidizes into particulate sulfates. The long-range transport of these sulfates is the focus of the petitioning States' concern.[69]

There is no NAAQS for sulfates *per se.* NAAQS has been set, however, for TSP. TSP (particles smaller than a nominal size of 25 to 45 micrometers in diameter) includes sulfate particles. Although the petitioning States are concerned primarily with SO_2 emissions, the NAAQS for TSP provides the basis on which they seek to invoke Section 126.

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[62] Pennsylvania's response to comments Docket Item II–D–81 at 1, 2, 37, 38.

[63] Pennsylvania's Technical Submission of additional information, Docket Item II–D–45(b) at 2.

[64] Pennsylvania's Technical Submission of Additional Information, Docket Item II–D–45(b) at 1–2.

[65] As noted above, Beaver and Washington counties are currently designated in attainment for SO_2, as is all but a portion of Allegheny County.

[66] Pennsylvania's Technical Submission of Additional Information, Docket Item II–D–45(a) at 10.

[67] *See* Appendix i to Pennsylvania's Response to Comments, letter dated March 30, 1982, from Robert J. Blaszczak, EPA, Region III, to James Salvaggio, Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources.

[68] Commonwealth of Pennsylvania, Department of Environmental Resources, 1980 Air Quality Report at 56–58.

[69] New York expressly stated that its evidence "is most specifically related to interstate transport of sulfate from sulfur dioxide sources." New York State Memorndum of Law in Support of Petition for Interstate Pollution Abatement Docket Item II–D–50 at 9.

B. What Geographic Area?

The petitioning States have not identified precisely which geographic areas they claim are affected by sulfates transported from the Midwest. Instead, Pennsylvania and New York have alleged that Midwest sources prevent attainment and maintenance of the TSP NAAQS and interfere with PSD measures for TSP throughout their respective territories.[70]

We must identify, then, the nonattainment areas in Pennsylvania and New York, and then assess the evidence that bears on the possible causes of TSP concentrations in those areas.

C. Are There Violations of TSP NAAQS in the Petitioning States?

1. TSP Nonattainment Areas in Pennsylvania

Portions of the following Pennsylvania counties are designated nonattainment for the primary and/or secondary standards for TSP:

Allegheny: primary
Beaver: primary
Berks: secondary
Blair: secondary
Cambria: primary
Chester: secondary
Erie: secondary
Fayette: secondary
Lackawanna: secondary
Lancaster: primary
Lawrence: primary
Lehigh: primary
Luzerne: secondary
Mercer: primary
Montgomery: secondary
Northampton: primary
Philadelphia: secondary
Washington: primary
Westmoreland: primary
York: primary

2. TSP Nonattainment Areas in New York

Portions of the following counties or boroughs in New York at present are designated nonattainment for the primary and/or secondary standard for TSP:[71]

Albany County: secondary
Bronx: secondary
Erie County: primary and secondary
Greene County: secondary
Kings: secondary
New York: secondary
Niagara County: secondary
Onondaga: secondary
Queens: secondary

One county only—Erie—is designated nonattainment for both primary and secondary standards.

These eight counties are scattered throughout the State: Niagara and Erie in the West; Onondaga in the center, Albany and Greene in the East; and Bronx, Kings New York and Queens in the southeast tip in New York City.[72] Moreover, the nonattainment areas in these counties tend to be urban industrial areas.[73]

3. TSP Nonattainment Areas in Maine

TSP nonattainment areas exist in portions of the following four counties in Maine:

Penobscot: primary and secondary
Kennebec: secondary
Knox: secondary
Washington: secondary

Maine did not claim, however, that nonattainment of TSP NAAQS in these counties was due to out-of-State pollution.[74]

C. What Are the Causes of TSP Nonattainment in the Petitioning States?

Petitioners argued that (1) ambient sulfate levels in their States are high, (2) these high sulfate levels cause violations of the standard for TSP, and (3) all major sources in the named midwestern States are responsible for causing these high sulfate levels. We shall examine each of these assertions in turn.

1. Evidence Concerning Ambient Sulfate Levels

The three petitioning States presented monitoring data as evidence of the sulfate concentrations in their air. The following discussion summarizes this evidence.

a. Pennsylvania's Evidence on Ambient Sulfate Levels

Pennsylvania presented data purporting to show that annual average ambient sulfate levels in various sections of the State ranged from 12–16 $\mu g/m^3$, with a general tendency toward high values in the western part of the State. Data on 24-hour levels were not clearly presented and were based on a limited number of sampling days. One study, however, indicates values ranging from 10–49 $\mu g/m^3$ on a few sampling days.[75]

b. New York's Evidence on Ambient Sulfate Levels

New York's data focused on the Niagara Frontier AQCR, consisting of Erie and Niagara Counties. New York also provided limited information for other areas, such as Albany (Albany County) (New York Evidence Summary, Docket No. II–D–50(b) at 53); Jamestown (Chautauqua County); Rochester (Monroe County); Syracuse (Onondaga Country), (*Id.* at 52); New York City, (*Id.* at 62); and the Adirondacks. Annual values for sulfates appear to range from 11–13 $\mu g/m^3$, 24-hour values ranged between 2 and 54 $\mu g/m^3$, based on 1981 data for selected days and sites where the secondary TSP standard was exceeded and sulfate data were available.[76]

c. Maine's Evidence on Ambient Sulfate Levels

Maine stated that its "case is built on monitoring concentrations of the sulfate fraction of TSP."[77]

Maine's data, taken from limited sampling at five sites,[78] showed that the highest sulfate readings for 24-hour values appear to range between 15–43 $\mu g/m^3$.[79]

2. Technical Considerations

Although these date provide some information on sulfate concentrations, problems with the number of samples and the means used to collect them limit their usefulness. Sulfate concentrations are estimated by determining the quantity of sulfates collected on a portion of a high-volume sampler filter used to measure total TSP concentrations. Certain glass filters, which were used by the petitioning States, are believed to act as a catalyst in the conversion of SO_2 to sulfates, thus creating an artifact sample of sulfates in TSP. This artifact results in an over-estimation of the true sulfate concentration.[80] The petitioners have not corrected their data for this factor.

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[70] *See e.g.*, Pennsylvania's Technical Submission of Additional Information Docket II–D–45(b), at 15: "Concerning impermissible interstate TSP matter impacts, Pennsylvania is identifying the entire State as an impacted area"; New York's Evidence Summary Docket Item II-D-50(b) at 61: "All areas within the boundaries of the State of New York are affected * * * by midwestern SO_2 emissions."

[71] There currently are no counties in the State of New York which are designated nonattainment for SO_2. The last remaining nonattaining county in New York, Erie County on the Niagara Frontier, was designated nonattainment for SO_2 in March 1984.

[72] *See also* New York's Evidence Summary: Sulfates Transported into New York State, Docket Item II–D–50(b) at 61–62.

[73] For instance, the current TSP nonattainment areas in the Niagara Frontier AQCR are: Buffalo, Lackawanna, Tonawanda, Niagara Falls, Niagara, North Tonawanda, Blasdell, Cheektowaga, West Seneca, and Lockport. See 40 CFR 81.333.

[74] Maine complained not of NAAQS violations, but of interference with required PSD and visibility measures in three southern AQCR's: I—Metropolitan Portland; II—Central Maine: III—Downeast. *See* Maine's Petition: Evidence and Argument, Docket Item II–D–51(c) Appendix B; Rebuttal Argument of the Petitioners: Maine's Technical case, Docket Item II–D–82 at 4:

> The boundaries of the affected areas are the AQCR's in which the monitored data was collected, and these are clearly shown on the map that is Appendix B to Maine's "Evidence and Argument."

[75] Report on Investigations into the Causes of Nonattainment of TSP Standards in western Pennsylvania and western New York, Rocco *et al.*, TRC, Docket Item II–D–72.

[76] *See* New York Evidence Summary, Docket Item II–D–50(b) at 44–55.

[77] *See* Petitioners' Rebuttal: Maine's Technical Case, Docket Item II–D–82 at 7.

[78] South Portland, Lewiston, Augusta, Bangor, Acadia National Park.

[79] Petition of the State of Maine—Evidence and Argument, Docket Item II–D–51(c) at 13–18, AQDHS–II Air Quality Data Report.

3. What is the Relationship of Sulfates to TSP Levels?

Even if we accept, for the sake of continuing the analysis, the petitioners' data on ambient sulfate levels, those levels alone cannot trigger section 126. There must be a showing that these levels are significant in causing TSP standard violations.

The petitioning States argue that the monitored sulfate levels significantly interfere with attainment and maintenance of TSP standards. They present a variety of data from the period 1977–1981 indicating that sulfates constitute 10–15 percent of TSP on an annual basis and 10–50 percent on a 24-hour basis.

A close look at the information presented, however, demonstrates that sulfates are *not* a significant contributor to current TSP nonattainment problems. On those days on which the 24-hour secondary NAAQS is exceeded, the corresponding percentage of sulfate is comparatively low. For instance, in the 1981 air quality data presented by New York, on days when the 24-hour secondary standard for TSP was violated, the amount of sulfate from all sources averaged only 10 percent of the TSP in the samples. On approximately half of those days, the percentage of sulfate was less than 10 percent. On the other days, it was 10–20 percent. Sulfate/TSP ratios higher than that appear to occur on days when TSP levels were considerably below the standard.[81]

Data presented by Pennsylvania showed that on the days when the TSP secondary standard of 150 $\mu g/m^3$ was violated, the average sulfate level resulting from all sources was 18 $\mu g/m^3$, again averaging only about 12 percent of the TSP allowable under the standard.[82]

Pennsylvania claimed it observed violations of the TSP secondary standard from May 1980–May 1981 at 27 TSP monitoring sites where the violations were not directly attributable to major point sources. At 14—more than half—the NAAQS would not have been attained even if sulfates had been *entirely* elimiated.

New York and Pennsylvania presented studies incidating that even if sulfates from all sources—local as well as out of State—were entirely eliminated from TSP, the majority of short-term violations still would have occurred. Sulfates simply do not make up the major portion of either annual or 24-hour TSP values where and when these values exceed the NAAQS. On an annual basis sulfates from all sources do not occur for more than 10–15 percent of TSP. On a 24-hour basis they generally do not appear to account for more than 10 and at most 30 percent of TSP on days when TSP secondary standards are exceeded.

4. What Role Do Out-of-State Sources in the Named States Play in TSP Violations?

We have determined that sulfates make up only a small component of TSP. To complete a review of the evidence, however, we must ascertain how much of this contribution can be attributed to identified or indentifiable out-of-State sources.[83] Examination of the sulfate itself does not tell us where it originated. Interstate, local, and biogenic sources all contribute to sulfate levels. Common sense tells us that some of these sulfates come from sources in the named States. But in addition, some come from in-State sources, Canadian sources, and sources in States not named by the petitioners.

Although the scientific community generally recognizes the phenomenon of long-range sulfate transport, it confronts major obstacles when attempting specific identification and quantification of the sulfate contributions of named sources or source regions. The two major but related problem areas are an incomplete understanding of the atmospheric transport, transformation, and deposition processes involved and an inability, at present, to construct an adequate model that is sufficiently accurate to make a finding here, or to support setting emission limitations. These problems are discussed briefly in the following section, to provide a proper background for the evaluation of the available evidence in this particular case.

a. Problems in Predicting Sulfate Levels and Origins

The scientific community at present lacks a complete understanding of several elements of the process of sulfate conversion, long-range transport, and sulfate deposition needed to adequately characterize that process in mathematical simulation models which could be used to support regulatory actions under section 126. There is an incomplete understanding of the atmospheric chemistry to predict with confidence the rate and extent of the conversion of sulfur dioxide to sulfates. The chemical pathways by which sulfates are formed are not fully understood, particularly as sulfate concentration and production relate to other pollutants and atmospheric variables. Transport and dispersion of such pollutants over distances of hundreds of miles is extremely difficult to quantify accurately. For example, the effect of large-scale weather systems and interaction with cumulus clouds introduce complex but potentially important parameters affecting both pollutant trajectories and formation/removal mechanisms. Furthermore, while the role of both wet and dry deposition of sulfates is generally understood, a sufficiently accurate quantification has not been demonstrated for either form of deposition.

Since the conversion, transport, and deposition processes are not fully characterized, air quality simulation models currently available are not adequate for definitive regulatory action as required under Section 126. Available models, while useful for nonregulatory purposes, have not been demonstrated to simulate with sufficient accuracy ambient sulfate patterns or levels, not to describe adequately the relationship between sulfate levels at given receptors and SO_2 emissions from given sources. These limitations are particularly critical in the context of this section 126 petition.

Even the models now proposed or being developed have not as yet undergone extensive field evaluation and have not been recommended for general use. Existing data bases from field studies at medium and long-range transport distances are limited in detail. The application of models to complicated terrain is also problematic. When added to the above, the cited uncertainties resulting from the sulfate chemical conversion process make the difficulties in modeling long-range transport for specific regulatory purposes even more imposing. These are a few of the reasons EPA guidelines on modeling express reservations on the applicability of modeling results projected beyond 50 kilometers for a specific source.[84]

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[80] The error can account for as much as a 6 $\mu g/m^3$ difference, depending upon ambient SO_2 levels, humidity, the specific fiber material, and other factors.

[81] *See* New York *Evidence Summary* Docket Item II–D–50(b) at 55.

[82] "Technical Submission of Additional Information Pursuant to Pennsylvania's Section 126 Petition," Docket Item II–D–45(b) at 16–17.

[83] Commenters on behalf of industry argued that it is necessary under the Clean Air Act to show that actual emissions of specific named sources cause the air pollution complained of. *See e.g.*, Ohio Power *et al.*, Docket Item II–D–72, at 23, 174. They argued, for example that:

> A finding under Section 126(b) may not be made unless it is shown that emissions from a named source contribute to a specific violation in the petitioning state. *Id.* at 23.

The States argued that a source-specific causal connection is unnecessary, and that a violation need only be traced to out-of-State sources in the aggregate. Pennsylvania Analysis of Section 126 Requirements, Docket Item II–D–45(e) at 18–21. For a discussion of Pennsylvania's arguments, see footnote 50 *supra*. Given the record here, it is unnecessary at present for EPA to resolve this question.

Federal appeals courts have reviewed and acknowledged the present limitations on the ability of the Agency to make predictions based on long-range modeling. The Second Circuit has considered and accepted EPA's explanation that it lacks devices for modeling the impact even on neighboring States of secondary formation of sulfate particulates.[85]

The Agency is evaluating and attempting to improve available modeling techniques. It has engaged Argonne National Laboratory, in a project to be completed in 1986, to evaluate selected long-range transport models against certain available data bases submitted to EPA.

In addition, EPA has an extensive ongoing program of research and development and acid deposition. This program and other efforts to improve long-range transport and visibility models are anticipated to improve greatly the data base and allow EPA to develop and evaluate regional scale models.

b. Available Evidence on the Contribution of Out-of-State Sources to Ambient Sulfate Levels

Because present modeling techniques do not allow us to project long-range sulfate transport with sufficient accuracy, we cannot rely on them in making regulatory determination of the kind the petitioners call upon us to make. Given the concerns of the petitioning States, however, we recognize the importance of considering the best available information even when it is fraught with uncertainty.

Even if we give the petitioners' data the most sympathetic reading, it does not justify a finding under Section 126. These data, even taken at face value, fail to show that sources in the named States are responsibile in any significant way for TSP violations in the petitioning States. Therefore if any sources prevent or interfere with the petitioners' ability to meet standards, we cannot conclude that it is these sources.

A large part of New York's evidence concerning out-of-State sulfate transport centered on the Adirondack region, even though that region does not contain any TSP nonattainment areas. In this region, New York relied primarily on the Phase II modeling results from the U.S./Canadian Memorandum of Intent (MOI) on acid rain to estimate the portion of sulfate contributed to annual ambient sulfate levels by non-New York sources.[86] Although New York fails to establish a definitive relationship between the Adirondack sulfate levels and TSP nonattainment areas in the State, we have reviewed these model results.

The MOI Phase II modeling results suggest that midwestern States contribute at most between 21 and 43 percent to Adirondack annual sulfate levels. These calculations also suggest that Pennsylvania's contribution to these levels lies between 7–13 percent, and that of Eastern Canada lies between 14–45 percent. Sources other than the midwestern States, Canada, and Pennsylvania may account for as much as an additional 25 percent.[87]

The modeling results from the MOI study estimated that Ohio, Illinois, Indiana, Michigan, Kentucky, and Tennessee together contributed a mean (based upon all the modeling analyses) of 36.8 percent of Adirondack ambient sulfate contributions. Calculated on the same basis, the mean estimated contribution of Ontario and Quebec was 27.8 percent; that of Pennsylvania was 10.5 percent; and that of New York, Massachusetts, Connecticut, Rhode Island, and Maine combined was 9.9 percent. Sources in other areas were calculated to contribute 15 percent.

These estimates present EPA with the following problem. While the Agency, for reasons explained above,[88] does not interpret the law so narrowly as to compel the petitioning States to name a specific or a single source as the cause of their grievance, the Agency also does not read the Statute to allow a State simply to point to all of the sources collectively from which it might receive out-of-State pollution.

The question arises, then, how large an area, what number of sources, or how many States a petitioner may aggregate before the complaint is to be regarded as lacking in the specificity required by Section 126. The answer to this question, in part, lies in finding a balance between the extent of the aggregation and the size of the contribution.[89] To be "significant," a contribution from a very large area must have a distinctly larger impact on nonattainment or PSD programs than a contribution from a single source; a correspondingly higher threshold therefore applies.

Sulfates, as we noted above, comprise only 10–15 percent of the annual TSP levels which exceed the NAAQS. If we suppose that the six midwestern States contribute almost 37 percent of this 10–15 percent or approximately 4–6 percent of the TSP levels, we cannot find that this is a significant enough contribution to "prevent" attainment and maintenance of the NAAQS for TSP, given the very large area these six States comprise.[90] We are prevented from making this finding, moreover, by the absence of more reliable and more specific data linking Midwest sources to in-State locations. We must bear in mind, moreover, that we are using the data presented by New York for an area not in violation of the TSP NAAQS.

New York also relies in part on estimates projected by a model focusing on Dunkirk, in New York's western Chautauqua County.[91] On the basis of these estimates, New York argues that total emissions (not limited to major sources) from six of the named States (Ohio, Indiana, Michigan, Illinois, West Virginia, and Kentucky), contributed about 75 percent of Dunkirk's estimated ambient sulfate levels in July 1978.[92] These model estimates, however, are of questionable reliability. They are first approximations at best. They depend on the determination of specific air parcel trajectories—an area of great uncertainty when considering the transport distances involved. By the very nature of meteorological conditions, different sources contribute different levels of pollutants to a specific area on different days depending on changing wind directions and other meteorological factors. As stated earlier, the ability to identify specific sources in modeling the long-range interstate transport of air pollutants is limited. The daily variations in contributions may be so great, moreover, that general estimates would be difficult, even if the contributions of specific sources could be traced on any particular day.

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[84] EPA Guidelines on Air Quality Models at 24–46. *See also* 46 FR 8481, 8488.

[85] *Connecticut Fund for the Environment, Inc.* v. *EPA*, 696 F.2d at 175, 177 (2d Cir. 1982). *See also New York* v. *EPA*, 716 F.2d 440, 444 (7th Cir. 1983).

[86] New York Evidence Summary, Docket Item II–D–50(b) at 24–27.

[87] According to the modeling analyses, New York receives more sulfates from its co-petitioner, Pennsylvania, than from two midwestern States, Illinois and Indiana, combined. New York appears to receive from Pennsylvania twice the quantity of sulfates that it receives from Kentucky and Tennessee together. *See*, New York's Evidence Summary, Docket Item II–D–50(b) at 28.

[88] *See* footnote 50, *supra*.

[89] Aggregation of sources should also not be allowed to result in such a loss of individual or group identity that it becomes impossible to fashion a fair remedy.

[90] As noted above, EPA in the *Gallagher* determination found a 3 or 4 percent contribution not significant. (47 FR 6625)

[91] Chautauqua County is in attainment for TSP.

[92] New York's Evidence Summary, Docket Item II–D–50(b) at 25, see also Attachment D.

In many areas, TSP nonattainment is predominantly a local source problem calling for control of local particulate sources of emissions and fugitive dust. Many of the comments the Agency received referred to the contribution of local sources within the petitioning States.[93] Studies and evidence in the record indicate that local sources are responsible for a portion of sulfates in Pennsylvania, New York, and Maine.[94]

Proposed Determination on Long-Range Transport Claims of NAAQS Violations

In sum, the Administrator concludes that: (1) Total sulfates, at the levels alleged by petitioners, are not a major factor in preventing attainment or maintenance of TSP standards in the petitioning States; (2) that sulfates transported from sources in the States named in the petitions have not been shown to make a significant contribution to annual sulfate levels; and (3) that the intrastate, sectional, and regional components of sulfate transport have not been adequately defined. The Administrator therefore proposes to find that out-of-State sources from the named States do not contribute significantly to violations of the TSP NAAQS.

For these reasons the Administrator proposes to deny the petitions with respect to the alleged violations of NAAQS for TSP.

E. Claims of Interference With PSD Measures

Petitioners do not claim and have not shown that any sulfates transported from out of State have caused violations of PSD increments. Rather they claim that sulfates emanating from Midwest sources contribute to consumption of TSP increments in their respective States.[95]

As we have shown earlier, it is not sufficient for States to claim increment consumption absent a violation. Even if it were sufficient, the petitioning States would still have failed to submit evidence showing how much of their TSP increments are consumed by interstate pollution. The States do not demonstrate the extent to which sulfates contribute to the consumption of their overall TSP allotments nor what proportion of these sulfates were transported from out of State.

SO_2 emissions have declined nationally since 1974, while the PSD provisions were added to the Clean Air Act of 1977. Thus, one would expect a decline in the amount of the baseline or increment sulfates consumed, even in the absence of additional regulation.[96]

TSP levels throughout the United States are also declining. *The National Air Quality and Emissions Trends Report, 1982,* noted a decrease in TSP levels between 1978 and 1982:

> The reduction in particulate emissions occurred primarily because of the reductions in industrial processes. This is attributed to a combination of installation of control equipment and reduced industrial activity.

Since the filing of New York's petitions, two counties in that State have been redesignated to attainment from nonattainment status for TSP,[97] and one county, Niagara, in the Niagara AQCR has been redesignated from primary nonattainment to secondary nonattainment.

Likewise in Pennsylvania, SO_2 and TSP levels reflect a trend towards improvement. For example, at Pennsylvania's request the Administrator recently approved a change in the designation from nonattainment to attainment for the primary and secondary TSP standards in Area Number 9, Allegheny County, in the southwestern Pennsylvania AQCR. The Notice of Approval states that: "the air quality improvement in this Region is due to the general improvement in air quality of the industries upwind of this area" [49 FR 9568 (March 14, 1984)]. Another Pennsylvania County, Lycoming, has also recently been redesignated to attainment for TSP.

Proposed Determination of Claims of Long-Range Transport PSD Interference

For the foregoing reasons, the Administrator proposes to deny the petitioners' claims with respect to alleged interference with required PSD measures for TSP.

V. Maine's and New York's Allegations of Visibility Impairment

Maine has alleged that long-range transport of sulfates from the Midwest interferes with measures required to protect visibility in Acadia National Park. Maine complains of "regional haze," which may be described as widespread, regionally homogeneous haze from a multitude of sources which impairs visibility in every direction over a large area. New York's petition also claimed that Midwest sulfate emissions interfere with visibility in some areas of the State.[98]

Section 169A of the Clean Air Act, 42 U.S.C. 7491 (Sup. 1 1977) requires EPA to identify mandatory Class I Federal areas "where visibility is an important value" and which therefore merit action to protect visibility. The mandatory Class I Federal areas are set forth in Sections 163 and 169A, 42 U.S.C. 7472(a). Acadia National Park in Maine is such a Class I Area where visibility is an important value (40 CFR 81.413). New York, however, contains no Class I areas covered by measures required to protect visibility. Section 126 therefore does not apply to its claims.

EPA has promulgated regulations designed to protect visibility in mandatory Class I Federal areas, and has required each State containing such an area to revise its SIP in accordance with these regulations [45 FR 80084 (40 CFR 51.300–51.307)]. To date, Maine has not submitted the required SIP revision to protect visibility in Acadia National Park, and thus Maine has taken no steps and promulgated no measure with which out-of-State sources can be found to interfere with the meaning of section 126 of the Clean Air Act.

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[93] *See, e.g.,* Comments on behalf of Ohio Power *et al.,* Docket Item II–D–72, at 146–149, 174, 176–181, 207, 210–211.

[94] *See, e.g.,* Energy and Environmental Analysis, Inc., Primary Sulfate Emission Inventory for Southwest Pennsylvania and Western New York State (February 8, 1982); TRC Environmental Consultants, Inc., Report on Investigations into Causes of Nonattainment of TSP Standards in Western Pennsylvania and Western New York at 9–13, 16–25, 32. Both Documents in Docket Item II–D–72.

The local iron and steel industry in New York has been observed to have "the most significant impact on particulate matter primary standard nonattainment in the Niagara Frontier" [45 FR 54372, 54375 (August 15, 1980)].

New York forecasts, nevertheless, that the Niagara Frontier AQCR will be in attainment for primary NAAQS. In Erie County, Bethlehem Steel's Lackawanna Works, a local source, dominates the emissions inventory and is therefore the critical factor in attaining TSP requirements. This plant has recently been closed, resulting in air quality improvement in that area.

In Maine, TSP violations have been linked to local sources in Bangor, Brewer (Penobscot County), Augusta (Kennebec County), and Thomaston (Knox County). The sources range from particulates from streets to emissions from cement plants [45 FR 107669, 107770 (February 1980)].

[95] *See e.g.,* New York's Evidence Summary, Docket Item II–D–50(b) at 68. Rebuttal Argument of Petitioner: Maine's Technical Case Docket Item II–D–82 at 3.

[96] *See* "Acid Deposition—Atmospheric Process in Eastern North America," National Academy of Sciences (1983).

[97] Chautauqua County and Richmond County.

[98] New York contended that reduced visibility is associated with the movement of regional haze from the Ohio River Basin when prevailing winds are from the Southwest. New York Evidence Summary, Docket Item II–D–50(b).

Furthermore, even if Maine had adopted EPA's required SIP measures,[99] these regulations are aimed at visibility impairment reasonably attributable to an emission source by visual observations or other techniques. No such haze in Maine is traceable to stack emissions in the Midwest. Accordingly, the visibility impairment of which Maine complains simply is not the subject of "measures required to be included in an applicable implementation plan" [Section 110(a)(2)(E)(i))II)].

However, while regional haze may not be addressable under Section 126 at this time, it is a recognized phenomenon whose complexities have hindered the development of any programs to address the problem. Aware of the need to address the issue, the Administrator has established an interagency Visibility Task Force whose purpose is to research all available information on the subject and develop recommendations on a long-term strategy to deal with regional haze.

Proposed Determination on Allegation of Visibility Impairment

For the foregoing reasons, the Administrator proposes to deny Maine's and New York's petitions with respect to claimed interference with their visibility protection programs.

VI. Conclusion

After a thorough review of the extensive record in these proceedings, the Administrator has determined that, even giving the most sympathetic reading to the evidence presented by petitioners, Section 126 does not authorize a finding of unlawful interstate pollution. Moreover, a review of the best available data fails to show that pollution sources in the named midwestern States are preventing petitioners from attaining or maintaining TSP or SO_2 NAAQS; nor does it show that these sources are impermissibly interfering with SIP measures required to prevent significant deterioration of air quality or to protect visibility.

For the foregoing reasons, the Administrator proposes to deny the petitions. Denial of these petitions does not prejudice the opportunity of these States to file new petitions should circumstances change.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hyrdocarbons.

Dated: August 29, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-23346 Filed 8-31-84; 8:45 am]

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40 CFR Part 52

[A-6-FRL-2663-8]

Proposed State Implementation Plan Disapproval, Federal Assistance Limitations and Construction Moratorium: State of New Mexico

AGENCY: Environmental Protection Agency.

ACTION: Proposed action.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove the inspection and maintenance (I/M) portion of the New Mexico State Implementation Plan (SIP) for attainment of the Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) in Bernalillo County, New Mexico. EPA believes that the I/M portion does not meet the requirements of section 172 of the Clean Air Act (CAA) and that reasonable efforts toward submitting such a plan are not being made. EPA is proposing this determination because the City of Albuquerque repealed the ordinance providing the authority for controlling emissions from motor vehicles in Bernalillo County on March 26, 1984, and closed the inspection facilities on March 28, 1984. The City has initiated informal efforts to reinstate the program; however, after reviewing the facts, EPA has determined that it must find that reasonable efforts have not been made.

This notice also proposes to limit certain federal funding assistance and prohibit the construction or modification of major stationary sources of CO in Bernalillo County as mandated by the CAA. The funding limitations apply to funds provided under the CAA and to the projects and grants under Title 23 of the U.S. Code. This action is being proposed pursuant to sections 110(a)(2)(I) and 176(a) of the CAA because EPA is proposing to disapprove the I/M portion of the New Mexico SIP for Bernalillo County. EPA invites public comment on this action and will hold a public hearing if requests for a hearing are received during the comment period.

If EPA imposes funding restrictions, EPA proposes that these restrictions be removed when either of the following conditions are met:

(a) Implementation of an approved I/M program is achieved in Bernalillo County, or

(b) The County is formally redesignated by EPA to attainment for CO.

The notice also solicits comments on the appropriateness of withholding grants for the construction of sewage treatment works under Section 316(b) of the CAA.

DATES: Written comments or requests for a public hearing must be submitted by October 1, 1984.

ADDRESSES: Written comments or requests for a public hearing should be sent to Jack Divita, Chief, Air Branch, Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270

Copies of this notice are available for public inspection during normal business hours at the following locations:

Air Branch (6AW-AP), Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270
Air Quality Bureau, Environmental Improvement Division, 725 St. Michael's Dr., Crown Building, Santa Fe, New Mexico 87504-0968
Air Pollution Control Division, 924 Park SW., Albuquerque, New Mexico 87103

FOR FURTHER INFORMATION CONTACT: Robert R. Broyles, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2742.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a) of the CAA, the State of New Mexico submitted a Part D SIP in January 1979, which demonstrated that the CO standard could not be attained by December 31, 1982, in Bernalillo County. (A Part D SIP is a SIP submitted by the State in order to meet the requirements of Part D of Title I of the Clean Air Act, as amended in 1977.) Consequently, New Mexico requested and received an extension for attainment of the CO standard in this area. The State was then required to submit a SIP revision in 1982 which would demonstrate attainment of the CO standard by December 31, 1987. The SIP was required to include an I/M program that achieved the emission reduction requirement from light duty vehicles and met EPA's program specifications. The State of New Mexico submitted the 1982 SIP for attainment of the CO NAAQS in Bernalillo County on June 28, 1982. Subsequently, on July 1,

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[99] Alternately, it may be argued that even though Maine has failed to adopt these regulations, they still must be considered "measures *required to be included* in the applicable implementation plan * * * to protect visibility * * *" within the meaning of section 110(a)(2)(E)(i)(II). In either case, our analysis is the same.

1983 (48 FR 30365), EPA approved the 1982 SIP for attainment of the CO NAAQS in Bernalillo County, including the provisions for an I/M program in Bernalillo County. The approved 1982 CO SIP for Bernalillo County contained City and County ordinances requiring all 1968 and newer gasoline powered light duty vehicles to participate in the program and provided for penalties for noncomplying vehicle owners. The SIP also contained the Albuquerque/Bernalillo County Air Quality Board Regulations governing the I/M program and the Albuquerque Traffic Code amendment pertaining to enforcement of the I/M ordinances.

B. I/M Program Disapproval

On January 3, 1983, the I/M program in Bernalillo County began operation. The following events led to the closing of the inspection facilities on March 28, 1984:

January 4, 1983—A suit was filed in the New Mexico District Court to stop the I/M program on both statutory and constitutional grounds, including illegality on statutory grounds of the inspection fee and illegality on constitutional equal protection grounds of the limit on the cost of repairs required

February 8, 1983—The New Mexico District Court dismissed the suit finding that the City had authority to adopt and implement the I/M program

March 2, 1983—The District Court decision was appealed to the New Mexico Supreme Court

February 24, 1984—State Legislature passed Senate Bill 91, which included an amendment prohibiting inspection fees for vehicles five years or older in I/M programs

March 7, 1984—Governor vetoed Senate Bill 91

March 13, 1984—The State Supreme Court ruled on the appeal and the major outcome pertaining to this proposed action was that the City of Albuquerque did not have the authority to impose a vehicle inspection fee, effective March 28, 1984. The State Legislature was in session when the court decision was announced but did not enact legislation to keep the program in operation

March 26, 1984—The Albuquerque City Council revoked ordinance No. 49-1969, governing the operation of the I/M program

March 27, 1984—State Legislature passed Senate Bill 9, which included an amendment prohibiting inspection fees from being charged by or for a local I/M program

March 28, 1984—The inspection stations closed

March 29, 1984—Governor approved Senate Bill 9

The June 28, 1982, SIP submittal appeared to have satisfied all Section 172 requirements, including a commitment to financial and manpower resources, when it was submitted. However, the New Mexico Supreme Court decision, that the financial resource considerations were beyond the authority of the City of Albuquerque/Bernalillo County, means that the SIP revision was apparently not legally adopted before submission to EPA and the revision apparently does not meet the financial resource requirement of Section 172.

In response to the above events, EPA sent a letter to the Governor of New Mexico on March 29, 1984, notifying him of the apparent situation and of EPA's intention to publish a notice proposing to find that the New Mexico 1982 SIP for CO in Bernalillo County now fails to meet the requirements of Part D, Section 172, and informing him of the possible sanctions that could be imposed in the Albuquerque area.

The Governor responded by letter of April 16, 1984, that the City and County had made good faith efforts to develop an I/M program in Bernalillo County despite the recent State Supreme Court decision preventing the collection of inspection fees by the City. The Governor's letter also stated that EPA should refrain from proposing SIP disapproval and sanctions, as long as the responsible governmental entities make reasonable efforts toward submitting an acceptable revision to the SIP.

EPA reviewed the Governor's response and acknowledges that the State, City and County are currently exploring methods to restart the I/M program in Bernalillo County. The Mayor of Albuquerque has informally proposed a plan to restart a City run I/M program. Further, the City has sponsored several meetings to study the I/M problem and possible solutions. The City sponsored meetings have included City, County, and State officials and staff, and State Legislators. Further, the State Legislature and the New Mexico Environmental Improvement Division have each established a task force to investigate the situation and develop solutions. These actions are clear evidence that the City and State are considering the reestablishment of an I/M program in Bernalillo County. However, to date, neither the City or the State has made any formal commitments necessary for the reestablishment of the program. In fact, the State and City missed several opportunities to take actions which could have enabled the continued operation of the program and, as discussed below, the formal actions taken to date appear to hamper the reestablishment of the I/M program.

As previously indicated in the chronology, the State Legislature was in session when the Supreme Court decision was announced and held a special session before the I/M inspection stations closed. The Legislature did not provide enabling legislation for funding the program in either session. Instead, the Legislature passed bills which hindered the reestablishment of the program. Specifically, the State Legislature at its regular 1984 session attached an amendment, which prohibited the application of the I/M requirements to vehicles over five years old, to a bill which had a primary purpose of allowing articulated trucks on interstate highways. Exclusion of these older vehicles would have resulted in an ineffective program, and the Governor vetoed this bill. In the subsequent special session, after the State Supreme Court had held the fee system to be illegal, the State Legislature passed and the Governor signed a bill which prohibited the charging of any fee by or for a local I/M program. Further, the Albuquerque City Council initiated movement toward continuing the I/M program by holding a meeting to discuss alternative funding or temporary funding, but it concluded the meeting by rescinding the ordinance authorizing the I/M program.

In summary, EPA is aware that the City is giving serious consideration to reestablishing an I/M program, however as detailed above, formal actions taken by the City Council and the State Legislature appear to hamper reestablishment of an I/M program. It is EPA's judgment, based on the available facts, that reasonable efforts have not been made at this time toward adopting an I/M program as required by law. Therefore, EPA is required to propose disapproval of the portion of the New Mexico SIP which provides for attainment and maintenance of the CO NAAQS in Bernalillo County and propose sanctions as required by the CAA. If the State should choose to reestablish the program, it will have ample opportunity to clearly demonstrate its intent in the time between the proposal and the finalization of the action to disapprove the SIP and to institute the various sanctions.

C. Construction Ban and Funding Restrictions

Today, EPA is proposing a construction ban and funding restrictions in Bernalillo County, as mandated by Congress under Sections 110(a)(2)(I) and 176(a) of the CAA, and requesting comments on the appropriateness of proposing funding limitations under Section 316(b), sewage treatment works.

Under section 110(a)(2)(I) of the Clean Air Act, if the emissions of a new or modified source of an air pollutant would cause or contribute to a violation of an NAAQS, then construction of the new source or on the modification may not begin until the SIP meets the requirements of Part D. The present notice proposes a finding that the I/M portion of the New Mexico CO SIP for Bernalillo County does not meet the requirements of Part D. Upon notice that this proposed finding has been made final, the construction moratorium will take effect.

Under section 176(a) of the Clean Air Act, certain restrictions on grants of federal air pollution control funds and highway funds will also be imposed following a finding that the SIP does not meet the requirements of Part D, and if the State is not making reasonable efforts toward submitting such a SIP. These restrictions are mandatory in areas in which a primary NAAQS has not been attained and in which transportation control measures such as I/M are necessary for attainment of the NAAQS. Specifically, the provisions of Section 176(a) would be triggered by the following:

(1) The primary NAAQS for CO is not being met in Bernalillo County.

(2) Transportation control measures, including I/M for light duty vehicles, are needed to reduce CO emissions, because the majority of the CO emissions result from the operation of such vehicles.

(3) As discussed above, the SIP submitted by the Governor does not now adequately "consider" all elements of Section 172 of the Clean Air Act, specifically the financial resources needed to implement the I/M program. Reasonable efforts toward submitting such a plan are not being made.

On April 10, 1980, after prior notice and public comment, EPA published its final policies and procedures governing imposition of the section 176(a) funding restrictions [45 FR 24692]. In this notice EPA stated that the geographic applicability of section 176(a) will be the applicable air quality control region; however, EPA would consider applying the limitations to a smaller area if the purpose of the limitations could thereby be better served [45 FR 24695]. In this case, the area affected would be only Bernalillo County. The notice also discussed what adequate consideration of all the required elements in section 172 would entail, pointing out that the State has an affirmative duty to investigate and compile data on the required elements, analyze that data, and consider and incorporate the required elements into the SIP in a manner consistent with the intent and purpose of the Act [45 FR 24695].

With respect to the reasonable effort requirement, the notice states that if a state made a good faith effort, judged on a case-by-case basis, to consider all of the section 172 elements, then the funding limitations would not be imposed [45 FR 24685]. The City and State have considered actions toward the reestablishment of the I/M program. However, the evidence presently available to EPA appears not to support a finding of reasonable efforts as described above.

Finally, the notice outlines the procedures to be followed in imposing the funding limitations under section 176(a). These include a notice by letter to the state and affected political entities followed by a 30 day negotiating period. That letter was sent to Governor Toney Anaya, with copies to other affected officials on March 29, 1984. In the event a satisfactory solution is not developed, EPA would then publish a formal notice of proposed rulemaking with a comment period of at least 30 days and hold a public hearing if requested, followed by a notice of final action. In addition, the docket will be established for the rulemaking to include the materials described in section 307(d) of the CAA. The other administrative procedures provided for under section 307(d) do not apply to this rulemaking, however, because this is not an action listed or designated by the Administrator under section 307(d)(1) [42 U.S.C. 7607(d)(11)]. Normal notice and comment procedures provided for under the Administrative Procedures Act, 5 U.S.C. 551 et seq. will govern this action.

In addition to sections 110(a)(2)(I) and 176(a), section 316(b) of the Clean Air Act allows EPA to withhold, condition or restrict funds for the construction of sewage treatment works if it determines that, in a nonattainment area, there is not an approved SIP that provides for the increase of air pollutants that are reasonably anticipated to result either directly or indirectly from proposed new sewage treatment capacity. Such action may also be taken by EPA if construction of the proposed treatment works will create new sewage treatment capacity that may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any pollutant in excess of the increase provided for under the SIP. The EPA policy and procedures for implementing section 316(b) were published at 45 FR 53382 on August 11, 1980.

As described in the August 11, 1980, policy mentioned above, the public notification and review for the withholding of any construction grants will be done consistent with the section 176(a) procedures for withholding transportation and air grant funding. EPA's Region 6 office is currently developing procedures and criteria for making case-by-case determinations for projects submitted, consistent with published procedures.

D. Proposed Finding and Action

(1) Disapproval of the I/M Portion of the SIP.

Based on New Mexico's apparent failure to meet the requirements of Part D and failure to make reasonable efforts toward submitting such a SIP, EPA is proposing to disapprove the I/M portion of the 1982 CO plan for Bernalillo County.

(2) *Clean Air Act Funds.* Pursuant to section 176(a) of the Act, EPA is proposing to withhold CAA funds from the Albuquerque/Bernalillo County Air Quality Control Board and the New Mexico Health and Environment Department, the agencies which are responsible for the I/M SIP Bernalillo County.

Section 105 of the CAA authorizes EPA to award federal funds to air pollution control agencies to assist them in developing and maintaining their programs. Section 302(b), defines "air pollution control agencies" as State, local, or interstate agencies with powers or duties relating to the prevention and control of air pollution. In some states, EPA awards funds directly to both state and local government agencies. In other States, EPA only awards funds directly to State agencies. In New Mexico, EPA awards funds to both the State and the local agency in Albuquerque.

Section 175 of the Act authorizes EPA to award funds to local agencies with transportation or air quality planning responsibilities to assist them in developing SIP revisions required under Part D. Since all funds appropriated under this section were obligated by EPA as of September 30, 1980, and no additional appropriations have been made, Section 175 grants are not affected by this proposal.

EPA is proposing to calculate the extent of CAA funding limitations, under section 176(a), based on the proportion of the State's population residing in the urbanized area in which I/M is required [44 FR 20376]. This approach was applied in EPA's proposal to withheld certain section 105 grants from the State of Pennsylvania for failure to submit a SIP which included an I/M program for Pittsburgh, Philadelphia, and Allentown-Bethlehem-Easton area [47 FR 9477]. The population residing in the Albuquerque urbanized area will be determined by the 1980 Census.

EPA proposed several methods of withholding section 105 funds on August 3, 1983 (48 FR 35313). Today's notice proposes the use of the method that was indicated as the EPA preferred method in the August 3, 1983 notice. However, EPA is requesting comments on the use of this method and the other methods proposed in the August 3, 1983 notice, as applied to the situation in Bernalillo County.

The following method of determining funding limitations is the preferred method as proposed in the August 3, 1983 notice. The EPA would add all CAA funds which would normally be awarded to all levels of government in the State, and would withhold from that total a percentage which is equal to the percentage of the State's population residing in the I/M urbanized area. Direct grants made to the local government agency responsible for I/M implementation would be affected first, with any remaining restrictions to be applied against State funds.

(3) *Federal Highway Funds.* Pursuant to section 176(a) of the CAA, EPA is proposing to withhold certain federal highway grants. The Regional Administrator of the Federal Highway Administration (FHWA), Region 6 was notified by letter of March 29, 1984, of EPA's initiation of section 176(a) procedures. This letter initiated the 30-day consultation period between EPA and FHWA to negotiate appropriate funding limitations. A meeting was held with FHWA staff on April 6, 1984, to review the procedure for imposing highway funding limitations. Several issues relating to the procedures for imposing the limitations remain unresolved and further meetings are to be scheduled.

(4) *Sewage Treatment Works Funds.* EPA has discretionary authority under section 316(a) of the CAA, to withhold certain grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act (33 U.S.C. 1251 et seq.) to municipalities, sanitation districts, or other eligible grantees. The funding may be withheld in areas which do not have an approved Part D SIP, where emissions associated with a project will contribute directly or indirectly to the violation of any NAAQS, or where treatment capacity will be expanded. If this sanction is imposed, the EPA Regional Administrator may fund a specific project if he finds that it is needed for relief of an immediate public health hazard or improve treatment capability, and will not expand useable treatment capacity by more than one million gallons per day. On November 2, 1983, EPA announced its policy on imposing section 316(b) sanctions, along with policy statements on other sanctions and issues. This policy said that EPA may propose to add section 316(b) restrictions in areas where further inducement to action are needed. These funding limitations, if imposed in Bernalillo County, could amount to approximately $5.0 million for fiscal year 1985.

EPA is proposing to disapprove the New Mexico SIP, with a concomitant finding that the State is not making reasonable efforts to develop an approvable SIP. There would, then, be a nonattainment area (Bernalillo County) without an approved SIP, and in addition, the existing SIP would not provide for the increased emissions which would result from the new treatment capacity. In this situation, EPA believes section 316(b) sanctions may be appropriate. Therefore, EPA is requesting comments at this time on whether the funding limitations allowed by this section should be proposed for the Bernalillo County area. If EPA determines that the imposition of section 316(b) funding limitations are appropriate, they will be proposed in the **Federal Register** at a later date.

(5) *Construction Moratorium.* EPA is proposing to prohibit, as mandated by section 110(a))2)(I), the construction or modification of stationary sources which will cause or contribute to concentrations of CO in Bernalillo County. The ban, when finalized, will apply to all major stationary sources and modifications for CO, which have not yet submitted a complete application for preconstruction permits required under the City/County new source review program for the nonattainment area [See 40 CFR 52.24(a)].

A major stationary source is any source which emits, or has the potential to emit, 100 tons per year or more of a pollutant. [See 40 CFR 52.24(f)(4)]. The moratorium would also prohibit major modifications to existing stationary sources. A major modification is any physical change in a source or change in the operation of a source that would result in a significant net increase of a pollutant [See 40 CFR 52.24(f)(5)]. A significant net increase of CO means a rate of emissions from a source that would equal or exceed 100 tons per year.

E. Summary and Request for Comments and a Public Hearing

EPA will consider any future actions or commitments by the State before making a final determination on this proposal. If the State resumes an approvable I/M program prior to EPA taking final action on this matter, EPA will withdraw this proposal upon approving the revised CO SIP.

EPA is soliciting comments on its proposed finding that the CO SIP in Bernalillo County is no longer approvable, on the proposed sanctions resulting from the determination and on the appropriateness of using section 316(b), sewage treatment works funding limitations in Bernalillo County. EPA will consider all comments and requests for a public hearing received within 30 days of the publication of this notice.

F. Miscellaneous

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. EPA is soliciting public comments on the imposition of funding limitations.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If EPA takes a final action to disapprove the I/M portion of the SIP as proposed today, several sanctions will take effect as outlined below:

(1) A moratorium on the construction and modification of major stationary sources of CO will go into effect in Bernalillo County as required by section 110(a)(2)(I) of the CAA. The moratorium prohibits the construction of sources which would emit, or has the potential to emit, 100 tons of CO per year. The moratorium would also prohibit major modifications to existing major stationary sources of CO, that would result in a significant net increase of CO [40 CFR 52.24(f) (4) and (5)].

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EPA does not have sufficient information to determine the impacts a moratorium may have on small entities because it is difficult to obtain reliable information on future plans for business growth. Since the moratorium would be on major stationary sources of carbon monoxide, which are historically rare, we do not expect a substantial number of small entities to be affected. However, because EPA cannot be certain of the potential impact on small entities, the Agency invites comments on this proposed rule.

(2) Clean Air Act funds would be withheld from the Albuquerque/Bernalillo County Air Quality Control Board and the New Mexico Health and Environment Department, as required by section 176(a) of the CAA. This sanction would not directly affect a small entity, as the two agencies are part of governments responsible for populations of over 50,000.

(3) A limitation will be placed on federal highway funds in Bernalillo County, as required by section 176(a) of the CAA. A determination of the effect of this sanction on small entities is difficult unless each project is judged for safety, mass transit or transportation improvment project related to air quality improvement or maintenance, as these types of projects would be exempt. However, it is believed that some small entities would be affected.

(4) According to section 316(b), certain grants for the construction of sewage treatement works could be withheld. This sanction, if proposed at a later date, will not affect projects that are needed for relief of an immediate public health hazard or that will improve treatment capability, if the project will not expand capacity for future growth. EPA does not believe this funding limitation, if proposed, will affect a substantial number of small entities, but it could affect some. EPA is requesting comments on whether to propose imposition of section 316(b) funding limitations, and the perceived effect of these sanctions if imposed.

Although EPA believes that a final action would be likely to have some impact on small entities, this impact cannot affect some of the Agency's actions. Under the CAA, the imposition of the construction moratorium and the withholding of air grant funds and highway grant funds is automatic and mandatory whenever the Agency makes the necessary findings.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice of proposed disapproval is issued under the authority of sections 110, 172, 176(a), 301 and 316(b) of the Clean Air Act, as amended, 42 U.S.C. 7410(d), 7502, 7506(a), 7601, and 7616(b).

Dated: July 3, 1984.

Frances E. Phillips,

Regional Administrator.

[FR Doc. 84-23328 Filed 8-31-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 57

[OAR-FRL 2662-7]

Nonferrous Smelter Orders Covering the Period January 1, 1983-January 1, 1988

AGENCY: U.S. Environmental Protection Agency.

ACTION: Supplemental notice to proposed rules.

SUMMARY: This notice supplements the Notice of Proposed Second Period Nonferrous Smelter Order (NSO) Regulations published in the September 19, 1983 **Federal Register** on page 42050, *et seq.* The notice addresses some of the issues raised by the public during the subsequent comment period, in particular, those issues which EPA believes require clarification and/or further detail. As specified below, this notice:

(1) Makes available or announces the availability of additional background information,

(2) Amends certain parts of the proposed regulations or announces options under consideration which may be significantly different from the initially proposed regulations.

(3) Announces certain technical amendments.

DATES: Public comment on the contents of this notice is invited. Comments should be postmarked no later than October 4, 1984, and sent to the Central Docket Section at the address shown below.

ADDRESSES: Public comments on this supplemental notice are to be directed to the following address and cited for inclusion in Docket No. A-82-35: U.S. Environmental Protection Agency, Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460.

All of the material included in Docket No. A-82-35 is available for public inspection between 8 a.m. and 4 p.m. at this address. A charge may be made for copying of docket items.

FOR FURTHER INFORMATION CONTACT: Mr. Laxmi Kesari, Stationary Source Compliance Division (EN-341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone: (202) 382-2887.

SUPPLEMENTARY INFORMATION: The remainder of this notice discusses the additional background information and proposed changes to the proposed second period NSO regulations. EPA solicits public comment on both. Commenters should limit their comments to the material presented in and made available by this notice. The text of the proposed changes to the regulations or proposed options follows this discussion.

The information collection requirements contained in the proposed regulations which this notice supplements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (U.S.C. 3501 *et seq.*) and have been assigned Control No. 2060-0051.

Under Executive Order 12291, EPA must judge whether these regulations require a Regulatory Impact Analysis. EPA already determined that the proposed regulations supplemented by today's notice are not major and thus do not require a Regulatory Impact Analysis. The regulations merely provided for interim relief for some entities and require no expenditures other than those already required under existing regulations promulgated under the Clean Air Act. Today's notice adds nothing to the regulations which would require a Regulatory Impact Analysis. EPA has submitted these regulations to OMB for review in accordance with Executive Order 12291.

As required by the Regulatory Flexibility Act (15 U.S.C. 601) the Agency reviewed the impact of the proposed regulations on small entities. Today's notice does not change EPA's past certification that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 57

Administrative practice and procedure, Air pollution control, Metals, Research.

Background

On September 19, 1983, EPA proposed regulations covering the second NSO period, which runs from January 1, 1983 through January 1, 1988. A number of comments were received which were critical of several elements of the regulations. In light of these comments, EPA is considering certain changes to the regulations. This supplemental notice sets forth the significant changes under consideration for further notice and comment. In most cases, the changes under consideration have been specifically designated as changes. In one instance, the change under consideration is set forth only as an option which might be adopted in lieu of the proposed regulations.

This notice also clarifies the basis for certain elements of the regulations and announces the availability of additional background information which support the basis for certain aspects of the regulations. Finally, this notice describes certain corrections and technical changes to the regulations. It should be noted that while some aspects of some of the comments on the proposed regulations are addressed in this notice, this notice is not intended to address all comments received. Comments not addressed in this supplemental notice are still under consideration and a detailed response to comments will be provided at final promulgation.

The Agency solicits comments on the changes, options, and additional information described in this notice so that the final promulgated regulations may reflect the best possible approach in implementing Section 119.

Supplements to the Regulations

1. Changes to the Financial Eligibility Test

a. Clarification of Terminology and Changes Concerning Benchmark in Rate of Return Test

Today's notice proposes to make a technical change to the benchmark used in the Rate of Return test by altering the definition of book value of net investment. The change redefines book value of net investment, without the adjustment to book value (i.e., adding back depreciation of SO_2 control investments made after 1977) that was made in the proposal. That is, book value is redefined as total assets minus current liabilities, in accordance with the generally accepted definition of the term. It should be noted that in the proposal, the Agency had intended to define book value of net investment without the adjustment for depreciation on post-1977 pollution control equipment and then define the benchmark used in the test as book value of net investment plus that adjustment.[1]

Two commenters stated that the adjustment to book value (the adjustment which adds back depreciation on investments in SO_2 control equipment made after 1977) discriminates against smelters which made pollution control investments in 1977 or earlier and recommended that depreciation on all pollution control investments, no matter when made, be added to book value. The Agency agrees that the adjustment as it currently exists does not reward smelters for making pollution control investments in 1977 or earlier and that there is no sound reason for treating post-1977 pollution control investments differently from pre-1978 pollution control investments. At the same time, however, the Agency believes that there is no sound reason for adding to book value depreciation on any pollution control investments. Therefore, the provision for adding depreciation on post-1977 pollution control investments will be deleted.

The Agency is also making a technical change to the method of determining book value of net investment. To insure greater consistency in determining the value of inventory investment, the Agency is specifying that inventory shall be valued at current market value.

A revised Appendix A incorporating these changes (as well as other changes to the financial eligibility tests described below) has been placed in the docket (Docket Item No. IV–A–1) and has also been mailed to each party who testified at the hearing or commented on the proposed regulations.

These changes do not alter EPA's conclusions, as indicated in the proposal, that book value of net investment should generally be greater than liquidation value for smelters.

b. Proposed Option To Use Book Value of Net Investment on a Constant Dollar Accounting Basis in the Rate of Return Test

In addition to book value of net investment, the Agency is considering and now proposing as an option for use in the Rate of Return Test a new benchmark which is an extension of book value. This new benchmark is book value of net investment on a constant dollar accounting basis. This benchmark is among the financial data which is required to be reported by Financial Accounting Standards Statement No. 33 of the Financial Accounting Standards Board (FASB). (Docket Item No. IV–A–6d) (See Instructions for historical cost/constant dollar accounting).

Normally, financial statements are based on historical costs and nominal dollars. That is, valuations are measured at the time assets were acquired or liabilities were incurred. The unit of measurement is the nominal dollars expended or received at the time of the transaction. Thus, financial statements may include assets or liabilities whose dollar values represent differing degrees of purchasing power, depending on when the transactions occurred.

Constant dollar accounting also employs valuations at the time of the original transaction—the historical cost. However, the unit of measurement is changed from nominal dollars to constant dollars (i.e., current year's dollars), so that all items are expressed in terms of dollars having the same purchasing power.

As the Agency explained in the notice of proposed rulemaking, only a closure test (i.e., comparison of present value of cash flows to liquidation value) has a firm basis in economic theory in determining NSO eligibility. However, the court in *Kennecott* v. *EPA*, 684 F.2d 1007 (D.C. Cir. 1982) held that NSO eligibility should be based on a test short of a closure test.

The Agency believes that this new benchmark option meets the requirements of the Kennecott case for the same reasons the Agency indicated that book value meets those requirements in the notice of proposed rulemaking. Because the alternative benchmark is expressed in current year's dollars, it will be somewhat larger than book value of net investment, and therefore should provide a somewhat larger cushion against closure. The Agency seeks comments on this alternative benchmark.

The Agency is continuing its evaluation of the comments already received on the previously proposed eligibility tests. It will respond to those comments and comments on this alternative at final promulgation.

A modification of Appendix A incorporating the proposed option has been placed in the docket (Item No. IV–A–1) and has also been mailed to each party who commented or testified on the proposed regulations.

c. Changes to Profit Protection Test Consideration of Post-1977 Pollution Controls

Special provisions were also made in the proposed Profit Protection test for pollution control equipment installed after 1977. In that test, revenues and costs in the pre-control case are based on operating the smelter without any pollution controls installed after 1977.

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[1] Book value of net investment is an accounting term defined as total assets minus current liabilities. In the proposal, the Agency incorrectly included the adjustment for depreciation of SO_2 controls installed after 1977 as part of the definition of book value. The Agency had simply intended to define the *benchmark* as book value plus depreciation of post-1977 pollution controls.

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These provisions benefit those smelters that invested in pollution controls between the beginning of 1978 and the time of application. Analogously to the adjustment of book value in the Rate of Return Test, the Agency believes that such a benefit implicitly discriminates against those smelters that invested in pollution controls prior to 1977.

The Profit Protection Test has, therefore, been changed so that revenues and costs in the pre-control case are based on the assumption that the smelter is operating with all the SO_2 pollution controls which were installed between 1977 and the time of application for an NSO, in addition to those SO_2 pollution controls which were installed before 1978. (See modified Appendix A, Docket Item No. IV–A–1).

Interest on Long-Term Debt. Commenters correctly pointed out that the profit figure computed in the Profit Protection Test does not include interest on long-term debt as a deductible expense. The Profit Protection Test measures the effect on accounting profits of installing constant SO_2 control. Interest on long-term debt is properly included as an expense in calculating profits, and its omission from the test was an oversight. EPA is changing the calculation of profit so that interest on all debt (short and long-term) that is allocated to the smelter is deducted. (see modified Appendix A, Docket Item No. IV–A–1).

d. Change to Interim Waiver and Rate of Return Tests Overstatement of Horizon Value

Several commenters pointed out that the horizon value computed in the Rate of Return Test may overstate expected cash flows. This would occur when depreciation (for tax purposes) is taken in the last two years of the forecast period but not during the entire horizon period. Depreciation acts to reduce income tax obligations, thereby increasing cash flows. The five-year depreciation life applicable to pollution control investments may end at or near the last year of the forecast period. In such a case, using the last two years of the forecast period as the basis for the horizon period will overstate cash flows over the horizon period.

The degree of overstatement depends on how much depreciation remains over the horizon period. The overstatement is largest when the last year of depreciation is taken in the last year of the forecast period. The overstatement is much smaller when the first year of depreciation occurs in the last year of the forecast period.

This overstatement effects both the Rate of Return Test and the Interim Controls Test. The Agency is therefore changing the horizon value computation in both tests to correct this problem. The horizon value will now be calculated by separating the cash flows related to depreciation of pollution controls and the cash flows from other sources. These latter cash flows will no longer be affected by the timing of the pollution control investment within the forecast period. (See modified Appendix A, Docket Item No. IV–A–1).

e. Change to the Interim Waiver Test

One commenter maintained that the proposed test for a permanent waiver of interim constant controls overstates expected present value of future cash flows, the result being that the test is unfairly difficult to pass. According to the commenter, the test does not consider the real options facing a smelter because it assumes continued operation after 1988 in determining the present value of future cash flows, but it does not take into account the costs of all pollution controls needed to attain full compliance. The commenter further maintained that the test should require an applicant to assume one of two alternatives, comply or shut down by January 1, 1988—whichever alternative gives the greater expected present value of future cash flows.

EPA agrees that the interim waiver test, as currently structured, does not reflect the realistic options facing smelters. Scenarios other than those described by the commenter are possible. However, the Agency believes that it is impractical if not impossible to attempt to structure the interim waiver test so as to exactly track all possible scenarios. As a consequence, the Agency believes that a test structured along the lines suggested by the commenter is reasonable.

Accordingly, the Agency is now proposing that the interim waiver test be modified as follows:

A smelter applying for an interim waiver must assume either (a) cash flows only until January 1, 1988, taking into account interim constant control costs plus the present value of estimated liquidation value as of January 1, 1988 or (b) cash flows until the end of the horizon period, taking into account the costs of interim constant controls plus the costs of any additional SO_2 controls necessary for full compliance (assuming use of controls upon which NSO eligibility was based) by January 1, 1988, whichever set of assumptions gives the higher present value of future cash flows. Thus, a smelter would be eligible for a waiver from the requirement for use of interim constant controls if the higher of the two net present values of cash flows computed under assumptions (a) and (b) is less than liquidation value.

Liquidation value as of January 1, 1988 is taken into account in test (a) because, analytically it must be accounted for in evaluating whether a smelter would choose to close prior to January 1, 1988 rather than on January 1, 1988. Liquidation value at the end of the horizon period is not taken into account in test (b) both because its present value would undoubtedly be only a very small fraction of the present value of future cash flows. For more details on those changes see modified Appendix A (Docket Item No. IV–A–1).

f. Technical Changes

EPA has also made certain minor technical changes in Appendix A; these changes and those discussed above appear in modified Appendix A that has been added to this docket.

2. Forecast Data. A number of commenters have asked for more detail on how EPA arrived at the various forecasts used in the proposed regulations. The commenters desire greater detail on the methodology used, supporting data, expertise of the contractors who produced the forecasts, etc. Outlined below is an explanation of the additional information EPA is today presenting for public review and comment.

a. Toll Smelter Charge Forecasts and Other Forecasts Used in the Regulations

A number of comments were submitted which asked for more detail on the methodology used by EPA's contractor, CRU, Limited, when it developed the forecasts. Today's notice announces that a more detailed description of the methodology, prepared by CRU for EPA, is available and has been placed in the docket (Item No. IV–A–2).

CRU was unable to provide EPA with certain background data and information on some aspects of its methodology because such data and information were proprietary or otherwise confidential in nature. However, the Agency has provided an overall description of CRU's methodology and is making available as much nonproprietary information on CRU's methodology as it reasonably was able to obtain. In any event, the Agency believes that the expertise of CRU, as discussed below, establishes the validity of the methodology used to generate the smelting charge forecasts.

Also placed in the docket (Item Nos. IV–A–3a, IV–A–3b, and IV–J–1) was a description of methodology used by Data Resources, Inc. (DRI) in its development of the forecasts for annual percentage changes in wages, energy costs, and the GNP price deflator, all elements which are used in the NSO eligibility tests.

We are providing this information for review and comment and to demonstrate the validity of EPA's forecasts in this area.

The Agency believes that the information provided by DRI on its methodology is sufficiently complete. The Agency believes that the validity of DRI's methodology and forecasts is established by DRI's qualifications as a leading expert in the field of economic forecasting (described in more detail below).

b. 1. Guidelines for Smelters To Use in Producing Their own Toll Smelter Charge Forecasts

The proposed regulations permitted smelters to petition the Agency to allow use of their own toll smelter charge forecasts. Several comments were received which demonstrate a concern that EPA may not use a smelter's copper forecasts because EPA's forecasts will be given preferential stature. Appendix A has been modified so as to both make clear that a smelter's smelting charge forecasts will be evaluated on their own merits and to provide more specific requirements which smelting charge forecasts of principal products (i.e., copper, for copper smelter, lead for lead smelter, etc.) must satisfy in order to be found acceptable. The requirements are as follows: (1) The smelter generated forecasts must be prepared by a widely recognized forecasting authority with expertise comparable to that of the forecaster relied upon by EPA (Commodities Research Unit, Ltd.). (2) As much documentation of forecasting methodology as can reasonably be obtained from the forecaster must be made available to EPA. The extent of such documentation must, at a minimum, be comparable to the documentation made available by CRU. (See modified Appendix A, Docket Item No. IV–A–1).

We invite comments on these guidelines and other suggestions for guidelines.

2. Alternative Forecasts of Annual Percentage Changes in Energy, Prices, Wages, and GNP Deflator

Appendix A of the proposal provides that smelters may petition the agency to accept projections of annual percentage change in energy, prices, wages, and GNP deflator other than EPA's projections, provided the projections are fully documented. (Appendix A, Section 2.4.2). In light of DRI's expertise, and extensive data banks and the widespread use of DRI's forecasts, EPA wishes to make clear that alternative forecasts of these indices will be accepted only if very compelling reasons are provided. In any event, such forecast must be prepared by a widely recognized forecasting authority with expertise in forecasting comparable to that of DRI. Moreover, the documentation of that forecaster's methodology must be comparable to that provided by DRI.

c. Qualification of Forecasters

1. *Forecasters of Toll Smelter Charge Forecasts.* EPA believes that the toll smelter charge forecasts by CRU constitute a thorough effort by a highly qualified contractor in the field of economic forecasting for the metals industry. The contractor EPA used to prepare these forecasts (CRU, Limited, New York, N.Y.) has had much experience in international metals market studies, by-product sales and production, and the economics of metals production from the mining stage through final refining. In addition, CRU has extensive databanks on mine, smelter, and refinery capacities in the non-socialist world and has had much experience in making detailed forecasts of supply, demand and prices for the nonferrous metals industry. We announce today that we have placed several documents in the docket (Item Nos. IV–A–4 and IV–A–5), discussing in greater detail, CRU's qualifications in these and other areas of expertise.

We believe the documents demonstrate CRU's expertise in the forecasting field and establish the validity of the methodology and forecasts used in these regulations. The documents also provide guidance to NSO applicants who wish to generate their own forecasts by use of a thoroughly competent, well recognized forecasting authority.

2. *Forecaster of Other Forecast Data Elements.* Data Resources, Inc. (DRI) prepared forecasts of annual percentage changes in wages, emergy costs and, the GNP price deflator, to be used by smelters in the NSO application process. EPA believes that DRI's expertise in this area is excellent and considers their forecasts to be very satisfactory for use in the NSO and Interim Waiver Tests. We announce today that there are available in the docket, several items which further support DRI's expertise in this area. The items are numbered IV–A–3a, IV–A–3d, IV–A–3e and IV–A–3f.

c. Updated Calculations of the Forscast Data Indices for Energy Prices, Wages and GNP Deflator

Forecast of annual percentage changes for energy prices (electricity, natural gas, coal, and fuel oil), wages and the GNP deflator have been updated by DRI. These updated forecasts have been placed in the docket (Item IV–A–6) and have also been incorporated in the updated Appendix A (Item IA–A–1). As noted above, EPA has also made available a description of the methodology used by DRI in preparing these forecasts and documentation of DRI's expertise.

Forecasts of copper smelting charges have not been updated, but may be updated in the future. However, those forecasts, as expressed in nominal dollars, have been changed to reflect the application of the updated GNP deflator. Since no forecasts of smelting charges were provided for the year 1991 by CRU, the Agency intends to allow the use of the average of the forecasts for the years 1989 and 1990 in 199 if the forecast period extends to 1991.

Equity Risk Premium. The proposed financial eligibility tests employ a discount rate for converting future cash flows and profits to their present value equivalents. The formula provided to applicants for calculating the discount rate (weighted average cost of capital) incorporates an estimate of the equity risk premium for the nonferrous metals industry. The risk premium provided in the proposed tests was estimated in a study by Pogue.[1]

There was a concern expressed in the comments that the Pogue estimate was out of date, since it was based on data from 1971 through 1974. The Agency felt that this was a valid point, particularly with regard to the copper industry. The 1971 through 1974 period was a period of high growth and healthy profits for the copper industry. Since then, however, the industry has been in recession, with little growth and low or negative profits.

The Agency asked its contractor, TCS, to re-estimate the equity risk premium for the nonferrous metal industry using more recent data. Applying the methodology described in the Pogue study to more recent data, TCS estimated the risk premium to be 8.6 percent. Pogue had arrived at an estimate of 7.75 percent. This higher figure seems to be in accord with the poor performance of the copper industry since the Pogue study was completed. (A detailed description of the method of recalulation of the risk premium was placed in the docket. See Docket Item No. IV–A–6).

Historical Rate of Return. The historical rate of return used in estimating transfer prices on affiliated party transactions is changed from 10.3 to 8.0 percent. The methodology for calculating this figure is in the rulemaking docket (Item No. IV-A-6).

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[1] Pogue, Gerald A., *Estimation of the Cost of Capital for Major United States Industries With Application to Pollution Control Investment*, EPA 230/3–76–001, November 1975, pp. 4–22.

Horizon Value. The horizon factor is calculated by using the current real weighted average cost of capital. Based upon the changed equity risk premium (as explained above), the nominal cost of capital (from which the real cost of capital is derived) has increased. However, the real cost of capital has not changed. (See explanation in Docket Item No. IV-A-6). Therefore, the horizon factor remains unchanged at 9.6.

3. Deadline for Filing Complete NSO Application

A commenter noted that the 90-day period of time between a smelter submitting a letter of intent to apply for an NSO and submitting a completed application was too long. We agree, given that there was NSO regulations effective during the first NSO period, that the industry is familiar with them, and that the information required here is similar. We today propose to shorten the period of time to 60 days, but, as in the original proposal, allow additional time for good cause.

4. Miscellaneous Corrections

A correction to the first period NSO regulations was inadvertently left out of the proposed regulations. The correction was originally proposed as a supplement to the first period NSO regulations (December 24, 1980; 45 FR 85084) and then promulgated on March 23, 1981 (46 FR 18025). We today amend § 57.403 (a) and (b) to make a smelter owner's consent to liability inapplicable in criminal proceedings.

Section 57.201(d)(2)(i) is also corrected today to cite § 57.201(d)(1) instead of § 57.104(d)(1). This was a typographical error.

Dated: August 24, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

PART 57—[AMENDED]

§ 57.201 [Amended]

1. In § 57.201, paragraph (d)(2)(i) is corrected to read as follows:

* * * * *

(d) * * *

(2)(i) If the smelter is determined to be eligible for an NSO under § 57.201(d)(1), the issuing Agency shall apply the Appendix A financial eligibility tests again before issuing an NSO in order to determine if the smelter can comply with its SIP requirements on or before January 1, 1988 by installing adequately demonstrated technology which is reasonably available.

* * * * *

§ 57.202 [Amended]

2. In § 57.202, paragraph (a) is revised to read as follows:

* * * * *

(a) *Letter of Intent.* To initiate an application for an NSO, the owner or operator of a smelter shall send a letter of intent to an appropriate air pollution control agency. The letter of intent shall contain a statement of the owner's intent to apply for an NSO, and an agreement to provide any information required under this part. The letter of intent shall be signed by a corporate official authorized to make such commitments. Upon receipt of any letter of intent by the issuing agency, the SIP emission limitation for sulfur dioxide, as to that applicant, shall be deemed suspended for 60 days. The 60-day suspension may be extended for good cause at the discretion of the Administrator.

* * * * *

3. Section 57.403 is revised to read as follows:

§ 57.403 Written consent.

(a) *The consent.* The NSO shall include a written consent, signed by a corporate official empowered to do so, in the following form:

As a condition of receiving a Primary Nonferrous Smelter Order (NSO) under Section 119 of the Clean Air Act, for the smelter operated by (*name of company*), at (*location*), the undersigned official, being empowered to do so, consents for the company as follows:

(1) In any civil proceeding (judicial or administrative) to enforce the NSO, the company will not contest:

(a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or

(b) The conclusive allocation of liability under NSO provisions satisfying 40 CFR 57.402(d)(1) between the company's smelter and any other smelter(s) for any violation of the National Ambient Air Quality Standards for sulfur dioxide in an area of overlapping DLAs.

(2) The issuing agency (as defined in 40 CFR 57.103) will be allowed unrestricted access at reasonable times to inspect, verify calibration of, and obtain data from ambient air quality monitors operated by the company under the requirements of the NSO.

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under Section 307(b) of the Clean Air Act.

§ 57.802 [Amended]

4. In § 57.802, paragraph (f)(1) is revised to read as follows:

* * * * *

(f) * * *

(1) The higher of the two net present values of future cash flows computed under the two alternative sets of assumptions set forth in the instructions to Schedule D.6 in Appendix A is less than liquidation (salvage) value; or

* * * * *

[FR Doc. 84-23050 Filed 8-31-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule will implement the crisis counseling provisions of the Disaster Relief Act of 1974 (Pub. L. 93-288), section 413. This will establish Federal Emergency Management Agency (FEMA) regulations on crisis counseling assistance, replacing those which are currently published as Department of Health and Human Service (HHS) regulations (42 CFR Part 38). They are based on formal policy review and on seven years of program experience.

DATES: Interested persons may participate in this rulemaking by submitting comments, which will be accepted until November 5, 1984. Any comment submitted on or before that date will be carefully evaluated prior to publication of the final rule.

ADDRESS: Send comments to the Rules Docket Clerk, Federal Emergency Management Agency, Office of the General Counsel, 500 'C' Street, SW, Washington, DC 20472.

All comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 'C' Street, SW, Washington, DC 20472, 202-287-0555.

SUPPLEMENTARY INFORMATION: Under section 413 of the Act, professional crisis counseling services can be provided to victims of major disasters in order to relieve mental health problems caused or aggravated by a major disaster or its aftermath. The assistance is provided primarily in the form of financial aid to States or local agencies or private mental health organizations. The program is intended to supplement the efforts and available resources of the State and local governments. The assistance is short-term and provided at no cost to eligible disaster victims.

FEMA and its predecessor agencies have been providing crisis counseling services through the National Institute of Mental Health in accordance with regulations published by HHS at 42 CFR Part 38 (41 FR 52052) for seven years. During this time FEMA decided to exert more influence over programs under the Disaster Relief Act, including the crisis counseling program. One way to achieve this is by publishing the governing regulations as FEMA regulations.

At the time these regulations are adopted, the current HHS regulations will be without effect.

The following paragraphs contain a section-by-section explanation of the major changes.

Definitions

Definitions were added to describe new procedures and levels of responsibility in the crisis counseling program.

Agency Policy

This section establishes FEMA's policy in providing crisis counseling assistance and describes the responsibilities of FEMA and HHS in coordination and operation of the program.

State Initiation of the Crisis Counseling Program

This section establishes the requirements for obtaining assistance. It states the primary method of obtaining assistance under section 413 (applications by the Governor, FEMA funding through the Secretary and State administration), but provides for designation of a public or private grantee when a State cannot, for serious reasons, administer the program. It also amends the present application process with additional agreements/certifications by the State and a submission of a plan of services for State administered programs.

Assignment of Responsibilities

This section has been added to clarify the responsibilities of the FEMA Regional Directors, FEMA Headquarters staff, and the Secretary related to oversight, management, and operation of the crisis counseling program.

Time Limitations

Language has been added which extends the program period from 180 days to nine months. Program experience had indicated that 180 days are insufficient to meet the intent of the Act and that nine months are more realistic.

Environmental Considerations

This regulation is procedural and FEMA has determined that there will be no significant impact on the environment caused by implementation of this regulation. Recently, an amendment to FEMA's final rule on Environmental Considerations (44 CFR Part 10) was published. That amendment provided categorical exclusions for Crisis Counseling Assistance and Training.

Regulatory Flexibility Act

This rule has been determined not to be a "major rule" within the sense of the Regulatory Flexibility Act (5 U.S.C. 601), for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, an initial regulatory flexibility analysis will not be prepared.

Authority

This rule is issued under the authority of Section 601 of the Disaster Relief Act of 1974 (Pub. L. 93-288).

Content of the Rule

The rule implements section 413 of the Disaster Relief Act of 1974. It states procedures for obtaining financial assistance for providing crisis counseling services to victims of a major disaster declared under the Act.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

§ 205.51 [Removed]

Accordingly, FEMA proposes to remove 44 CFR 205.51 and add new section 44 CFR 205.59:

§ 205.59 Crisis Counseling Assistance and Training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 413 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of Health and Human Services (HHS).

(b) *Definitions.* (1) "Assistant Associate Director" means the head of the Office of Disaster Assistance Programs, FEMA; the official who approves or disapproves a request for assistance under section 413 of the Act.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(5) "Grantee" means the state mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 413 of the Act.

(6) "Immediate services" means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster such as those which may be provided at disaster assistance centers. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency prior to and separate from the regular application process for crisis counseling assistance.

(7) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and

beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations alleviating the damage, loss, hardship, or suffering caused thereby.

(8) "Project Officer" means the person assigned by the Secretary, HHS, to monitor a Crisis Counseling Program, provide technical assistance and guidance, and be the contact point within HHS for program matters.

(9) "Regional Director" means the director of a regional office of FEMA.

(10) "Secretary" means the Secretary of HHS or his/her delegate.

(11) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(c) *Agency policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Assistant Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Associate Director.

(d) *State initiation of the Crisis Counseling Program*—(1) *Assessment.* To obtain assistance under this section, the governor or his/her authorized representative must initiate an assessment of the need for crisis counseling within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental assistance is required.

(2) *Immediate services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Director, upon determining that State resources are insufficient, may provide funds to the State, separate from the application process described in the remainder of this section. The Regional Director shall consult with the Secretary in evaluating the need for immediate services and the State's capability for providing the services. Immediate services are not intended to be a replacement for the regular program. Therefore, funding shall be granted only for that period of time that does not exceed 60 days following the declaration of the disaster except that if an application for the regular program under paragraph (d)(3) of this section, has been submitted, funding for immediate services may continue until a decision has been made on that application.

(3) *Application for Regular Program.* Assistance under section 413 is provided primarily in the form of a grant to a State, local or private mental health organization designated by the Governor to administer the Crisis Counseling Program. The Governor or his/her authorized representative shall submit an application to the Assistant Associate Director, through the Regional Director, and simultaneously to the Secretary, not later than 60 days following the declaration of the major disaster.

(i) The application represents the Governor's agreement and/or certification:

(A) That the requirements are beyond the State and local governments' capabilities;

(B) That the program, if approved, will be implemented according to a plan approved by the Assistant Associate Director;

(C) To maintain close coordination with and provide reports to the Regional Director, the Assistant Associate Director, and the Secretary; and

(D) To include mental health disaster planning in the State's emergency plan prepared under Title II, Pub. L. 93–288.

(ii) The application must include:

(A) Standard Form 424;

(B) The geographical areas within the designated disaster area for which services will be supplied;

(C) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(D) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need; and

(E) A plan of services as described in paragraph (d)(4) of this section.

(4) *Plan of services*—(i) *State Administered Programs.* In accordance with paragraph (d)(3) (ii)(D) of this section, the governor must submit a plan of services to the Regional Director. The plan of services must include:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled; training must be indicated.

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) Training plans. If a training program for staff is planned, it must be described, and the number of workers needing such training;

(D) Facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to both services and training, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(ii) *Public or Private Mental Health Agency Programs.* If the Governor determines, during the assessment, that because of unusual cirmcumstances or serious conditions within the State or local mental health network the State cannot carry out the Crisis Counseling Program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area. In order to obtain the financial assistance requested by the Governor, this agency or organization must submit a plan of services, as in paragraphs (d)(4) of this section. The Governor's application is not complete without this plan of services.

(e) *Assignment of Responsibilities.* (1) The Regional Director shall:

(i) In the case of a request for immediate services, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's request, and obligate and advance funds for this purpose;

(ii) In the case of a regular program application:

(A) Acknowledge receipt of the request;

(B) Request the Secrtary to conduct a review to determine the extent to which assistance requested by the Governor or his authorized representative is warranted;

(C) Based on the recommendation of the Secretary, recommend approval or disapproval of the application for assistance under this section; and forward the recommendation and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance (through the Secretary) if requested to do so; and

(E) Look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) a verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section, and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director and the Assistant Associate Director; and

(vi) Make the appeal determination involving allowable costs and termination for cause as described in paragraph (g)(3) of this section.

(3) The Assistant Associate Director shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate funds and authorize advances of funds to the Department of Health and Human Services;

(iii) Request that the Secretary designate a Project Officer; and

(iv) Maintain liaison with the Secretary.

(f) *Time Limitations*—(1) *Application filing.* The Governor or his/her authorized representative must, not later than 60 days from the date of declaration of a major disaster, submit an application to the Regional Director.

(2) *Program period.* The authorized program period shall not exceed nine months from the first day services are provided, except that upon the request of the Regional Director and the Secretary, the Assistant Associate Director may authorized up to 90 days of additional program period because of documented extenuating circumstances.

(g) *Eligibility guidelines*—(1) *For services.* An individual may be eligible for crises counseling services if he/she was a resident of the designated major disaster area or was located in the area at the time of the major disaster and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) *For training.* (i) Those mental health specialists who are employed under or are consultants to the Crisis Counseling Program are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals.

(ii) All Federal, State and local disaster workers responsible for assisting disaster victims are eligible for the general instruction designed to enable them to deal effectively and humanely with disaster victims.

(h) *Grant Awards.* (1) The amounts of any regular program grant award shall be determined on the basis of the Secretary's estimate of the sum necessary to carry out the grant purpose. The Assistant Associate Director will, depending on availability of funds, advance funds to HHS for regular program funding. The Regional Director may advance funds to a State for immediate services.

(2) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(3) Several other regulations of the Department of Health and Human Services apply to grants under this section. These include, but are not limited to:

45 CFR Part 16—HHS grant appeals procedures
42 CFR Part 50, Subpart D—PHS grant appeals procedures
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services (effectuation of Title VI of the Civil Rights Act of 1964)
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in Federally-assisted programs
45 CFR Part 86—Nondiscrimination on the basis of sex in Federally-assisted programs
45 CFR Part 91—Nondiscrimination on the basis of age in Federally-assisted programs

(4) Any funds granted pursuant to this section shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(i) *Reporting requirements—(1) Grantees (States/Public or Private Agencies).* The grantees shall submit the following reports to the Secretary and the Regional Director:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary:

(ii) A final program report, to be submitted within 45 days after the end of the program period;

(iii) An interim accounting of funds, to be submitted with the final program report;

(iv) A final accounting of funds, if required, upon completion of the audit; and

(v) Such additional reports as the SCO, FCO or Secretary may require.

(2) *The Secretary.* As part of project monitoring responsibilities, the Secretary shall report to the Assistant Associate Director and to the Regional Director at least quarterly on the progress of Crisis Counseling programs, in a report format jointly agreed upon by

the Secretary and the Regional Director. The Secretary may also be required to provide special reports as requested by the Federal Coordinating Officer. The Secretary shall require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities.

(j) *Financial Accountability.* All Federal funds made available to grantees under this section shall be properly accounted for as Federal funds in the accounts of the grantees. The Secretary is accountable to FEMA for funds made available to the Department under section 413. The Secretary shall, within 90 days of completion of a program, submit to the Assistant Associate Director a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the requirements of 44 CFR Subpart I, relating to the reimbursement of Federal agencies by FEMA.

(k) *Federal audits.* The Crisis Counseling Program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA Inspector General, the Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

Dated: August 1, 1984.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84-23311 Filed 8-31-84; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Blackside Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on a petition.

SUMMARY: The Service reports the initial finding that has been made on the substantiality of information in a petition to list the blackside dace (*Phoxinus cumberlandensis*) which occurs in Kentucky and Tennessee. This petition was received by the Service on May 16, 1984. This notice reports the Service's 90-day finding as required by the Endangered Species Act Amendments of 1982.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this notice are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240; (703/235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires that the Service make a finding whether a petition to list, reclassify, or delist a species presents substantial scientific or commercial information that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be published promptly thereafter in the **Federal Register**. Similarly, section 4(b)(3)(D)(i) of the Act requires a finding within 90 days on a petition to revise critical habitat, with prompt publication of the finding. When a positive finding is made on a petition to list, reclassify, or delist a species, the Service is required to promptly commence a review of the status of the species.

The petition to list the blackside dace (*Phoxinus cumberlandensis*) as threatened was submitted by Mr. George Burgess, Secretary-Treasurer of the Southeastern Fishes Council, on May 11, 1984, and was received by the Service on May 16, 1984. The service has reviewed the petition and found that the information submitted was substantial in indicating the petitioned action may be warranted. The administrative record for this finding was completed on July 24, 1984. The criteria in 50 CFR 424.14 were used to define and evaluate the petition and to distinguish it from comments.

For the blackside dace, the required status review began with the December 30, 1982, vetebrate notice of review (47 FR 58454-58460). The blackside dace is a rare minnow with a restricted geographic range in the upper Cumberland River drainage of Kentucky and Tennessee, and has relatively narrow habitat requirements. The blackside dace was discovered in 1975 and described as a new species in 1978. *Phoxinus cumberlandensis* is an inhabitant of small upland streams of the upper Cumberland drainage of southeastern Kentucky and adjacent extreme northern Tennessee. Most populations occur above Cumberland Falls, where the species is believed to have originated. A small number of populations occur in various tributaries below the Falls. General habitat requirements are small streams, moderate gradient with ample pool areas, relatively clean and prodominantly rocky substrates, cool maximum water temperatures, and probably at least moderate amounts of periphytic production for food. These requirements are in turn linked to relatively stable, well-vegetated watersheds and adequate riparian growth to ensure shading and cooling of streams.

The Service hereby solicits data concerning this species now under review for listing. Especially sought is information regarding distribution, threats and any recommended critical habitat for the species. Comments received will be considered in any future actions for this species.

If a petition is found to present substantial information indicating that an action may be warranted, the Service must decide within 12 months of its receipt whether the requested action is warranted in accord with sections 4(b)(3)(B) and 4(b)(3)(D)(ii) of the Act, as amended.

This notice was prepared by Dr. James D. Williams of the Service's Office of Endangered Species in Washington (703/235-1975), with evaulations by appropriate staff biologists in the Washington Office and Endangered Species Program staff of the Service's Regional Offices and Field Stations.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

(Endangered Species Act of 1973, as amended; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*))

Dated: August 24, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23285 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered With Critical Habitat Status for Asclepias Welshii (Welsh's milkweed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing, and reopening of comment period.

SUMMARY: Sec. 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if requested within 45 days of the publication of a proposed rule. The Service gives notice that a public hearing will be held in Kanab, Utah on the proposed determination of endangered with critical habitat status for *Asclepias welshii* (Welsh's milkweed), and that the comment period on the proposal will be reopened.

DATES: The public hearing will be held on Septemger 18, 1984, from 6:00 p.m. to 9:00 p.m. Comments on the proposal must be received by September 28, 1984.

ADDRESS: The public hearing will be held at the Kane County Courthouse, District Courtroom, 70 N. Main, Kanab, Utah. Written comment and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours, by appointment at the Regional Endangered Species Division, 134 Union Boulevard, fourth floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Staff Biologist, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. 25486, DFC, Denver, Colorado 80225, (303/234–2496).

SUPPLEMENTARY INFORMATION:

Background

Asclepias welshii (Welsh's milkweed) is an herbaceous perennial plant, 2.5–10 cm. tall, with large oval leaves and cream colored flowers that are rose-tinged in the middle. The plants grow on sand dunes in the Coral Pink Sand Dunes, Kane County, Utah. The species is jeopardized by ORV use and livestock grazing. The Service proposed a determination of endangered with critical habitat status for *Asclepias welshii* in the **Federal Register**, June 6, 1984 (49 FR 23399–23402). The period for submission of public comments on the proposal was originally scheduled to end on August 6, 1984. Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On July 23, 1984, the Service received a letter from Milo A. Barney, Associate Director for Resource Management, Utah Department of Natural Resources, requesting a hearing on the proposal to determine endangered with critical habitat status for *Asclepias welshii*. The Service has scheduled this hearing for September 18, 1984, for 6:00 p.m. to 9:00 p.m., at the Kane County Courthouse, District Courtroom, 70 N. Main, Kanab, Utah. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing.

In order to accommodate the hearing, the Service also reopens the public comments period on the proposal. Written comments may now be submitted until September 28, 1984, to the Service's Office in the **ADDRESS** section.

Author

The primary author of this notice is Dr. James L. Miller, Staff Biologist, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, Colorado 80225 (303/234–2496).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 28, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23273 Filed 8–31–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of Oregon Department of Agriculture (OR) and Southern Illinois Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Oregon Department of Agriculture (Oregon), and Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The April 2, 1984, issue of the **Federal Register** (49 FR 13061) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Oregon's and Southern Illinois' designations termination on September 30, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by May 2, 1984.

Oregon and Southern Illinois were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the June 1, 1984, issue of the **Federal Register** (49 FR 22840). Comments were to be postmarked by July 16, 1984.

No comments were received regarding Oregon's and Southern Illinois' designation renewal.

FGIS has evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act (7 U.S.C. 71 *et seq.*), and in accordance with section 7(f)(1)(B), has determined that Oregon and Southern Illinois are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the April 2, **Federal Register** issue.

Effective October 1, 1984, and terminating September 30, 1987, Oregon and Southern Illinois are responsible to provide official inspection services in their respective specified geographic areas.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Oregon Department of Agriculture,
Agriculture Building, Salem, OR 97310
Southern Illinois Grain Inspection
Service, Inc., 5900 North Illinois Street,
P.O. Box 3099, Fairview Heights, IL
62208

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: August 17, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84-23253 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Areas Currently Assigned to Agricultural Seed Laboratories, Inc. (AZ), Decatur Grain Inspection, Inc. (IL), and South Carolina Department of Agriculture (SC)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Agricultural Seed Laboratories, Inc. (Agri Seed), Decatur Grain Inspection, Inc. (Decatur), and South Carolina Department of Agriculture (South Carolina).

DATE: Comments to be postmarked on or before October 19, 1984.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determination not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The July 2, 1984, issue of the **Federal Register** (49 FR 27190) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by August 1, 1984.

Agri Seed and South Carolina, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

Two applications were received requesting designation in the Decatur area. Decatur requested designation for the entire geographic area currently assigned to that agency. In addition, Ronald D. and Ruth E. Eddings, proposing to do business as Eddings Grain Inspection Service also applied for designation for the entire geographic area currently assigned to the Decatur agency.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All coments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than October 19, 1984.

Comments and other avialable information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: August 17, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84-23254 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Alabama Department of Agriculture and Industries (AL) and D.R. Schaal Agency (IA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Alabama Department of Agriculture and Industries and D. R. Schaal Agency.

DATE: Applications to be postmarked on or before October 4, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Department Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. The Alabama Department of Agriculture and Industries (Alabama), Beard Building, P.O. Box 3336, Montgomery, AL 36109, was designated under the Act as an official agency for the performance of inspection and weighting functions on March 1, 1982; and the D. R. Schaal Agency (Schaal), 219 River Avenue North, P.O. Box 213, Belmond, IA 50421, for inspection functions on that date.

The agencies' designations terminate on February 28, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alabama, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Alabama, except those export port locations within the State.

The geographic area presently assigned to Schaal, in the State of Iowa, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. 169; U.S. Route 169 north to the northern Kossuth County line.

The following location, outside of the foregoing contiguous geographic area is presently assigned to Schaal and is part of this geographic area assignment: Farmers Co-op Company, Eagle Grove, Wright County.

Exceptions to the described geographic area are the following locations situated inside Schaal's area which have been and will continue to be serviced by the following official agencies:

Central Iowa Grain Inspection Service, Inc.:

1. Farmers Co-op Elevator Company, Chapin, Franklin County;
2. Hampton Farmers Co-op Company, Hampton, Franklin County; and
3. Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

A. V. Tischer and Son, Inc.:

1. Cargill, Inc., Algona, Kossuth County;
2. Big Six Elevator, Burt, Kossuth County;
3. Farmers Elevator, Goldfield, Wright County; and
4. Farmers Co-op Elevator, Holmes, Wright County.

Interested parties, including Alabama and Schaal, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning March 1, 1985, and ending February 29, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Secs. 8, 9, Pub. L. 94-582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: August 17, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84-23255 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Le Bois, the Resort at Cascade Lake, Boise National Forest, Valley County, Idaho; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the proposed Le Bois, The Resort at Cascade Lake on the Cascade Ranger District near Cascade, Idaho.

An application proposing a four-seasons resort near Cascade Lake has been received from a private developer. The resort would include downhill ski facilities on National Forest land and a marina located on land administered by the Bureau of Reclamation. Associated facilities on private land could include a ski lodge, condominiums, public overnight accommodations, a snowmobile and cross-country ski center, food and beverage services, stables, tennis courts, and a golf course.

The range of alternatives for this site will be considered in the environmental impact statement, including maintenance of the current management (no ski or marina development). Other alternatives will consider a resort with some or all of the ski or marina facilities. Alternative locations for uphill facilities, ski runs, and support facilities will be considered.

Federal, State, and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed in the environmental impact statement.

2. Elimination of insignificant issues or those which have been covered by a previous environmental review.

3. Determination of potential cooperating agencies and assignment of responsibilities.

The Bureau of Reclamation, Department of Interior, will participate as a cooperating agency in development of the environmental impact statement to evaluate impacts on water quality, the reservoir fishery, recreational use of the reservoir, and related matters.

Public meetings to provide opportunity for comments will be held at the Hall of Mirrors, 700 West State Street, Boise, Idaho, at 7 p.m., Monday, September 24; and at the Donnelly School, Donnelly, Idaho, at 7 p.m. Tuesday, September 25.

John J. Lavin, Forest Supervisor of the Boise National Forest in Boise, Idaho, is the responsible official.

The analysis is expected to take about 12 months. The draft environmental impact statement should be available for public review by October 1985.

Written comments and suggestions concerning the analysis should be sent to John J. Lavin, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702, by October 14, 1984

Questions about the proposed action and environmental impact statement should be directed to Chuck Jones, District Ranger, Cascade Ranger District, phone 208-382-4271.

John J. Lavin,

Forest Supervisor.

[FR Doc. 84-23304 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Allegheny Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and 7 CFR Part 1794, REA's Environmental Policies and Procedures, has made a Finding of No Significant Impact (FONSI), with respect to a request for financing assistance to Allegheny Electric Cooperative, Inc. (Allegheny), of Harrisburg, Pennsylvania. This proposed financing assistance will be used by Allegheny for the construction of a 20.3 MW conventional hydroelectric generating facility at an existing multipurpose dam located on the Raystown Branch of the Juniata River in Huntingdon County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA), along with Allegheny's Borrower's Environmental Report (BER), and other related material may be reviewed in, or requested from the Office of the Director, Northeast Area—Electric, REA, South Agriculture Building, Room 0243, Washington, D.C. 20250, telephone: (202) 382-1420, or at the offices of Allegheny (Mr. William F. Matson, President), P.O. Box 1266, Harrisburg, Pennsylvania 17108, telephone: (717) 233-5704.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by Allegheny and determined that it represents an accurate evaluation of the environmental impacts of the proposed hydroelectric project. REA has also determined that the proposed hydroelectric project will have no adverse impact on threatened and endangered species, wetlands, important farmland, or known historic and archeological sites. Construction of the powerhouse and tailrace will occur within the downstream floodplain. However, REA has determined there are no practicable alternatives to constructing hydroelectric facilities within a floodplain. Impacts to air and water quality as a result of construction will be short-term and are not expected to be significant.

The alternatives evaluated by REA included no action, other hydroelectric sites, and coal-fired generation. After evaluating these alternatives, REA has determined that construction of the hydroelectric project, as proposed, represents an acceptable alternative when environmental, economic, and technical factors are balanced.

In accordance with 7 CFR Part 1794, Environmental Policies and Procedures, the project was advertised in a newspaper with general circulation in Huntingdon County, Pennsylvania. No comments were received.

Based upon the BER and other related data, REA prepared an EA and FONSI concerning the proposed construction. REA has concluded that if the proposed financing assistance is approved, it will not represent a major Federal action significantly affecting the quality of the human environment. An Environmental Impact Statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 27, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23374 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-15-M

The Big Horn County Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration; USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Big Horn County Electric Cooperative, Inc. (Big Horn), of Lodge Grass, Montana. The project consists of the construction of approximately 56 km (35 miles) of 69 kV transmission line and would be located in Big Horn County, Montana.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) may be reviewed at or obtained from the office of the Director, Western Area—Electric, REA, South Agriculture Building, Washington, D.C. 20240, telephone: (202) 382-8848, or the office of Big Horn County Electric Cooperative, Inc., (Mr. Duane A. Portwood, Manager), Lodge Grass, Montana 59050, telephone: (406) 639-2341, during regular business hours.

SUPPLEMENTARY INFORMATION: REA has reviewed the Borrower's Environmental Report (BER) submitted by Big Horn and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project would consist of approximately 56 km (35 miles) of 69 kV transmission line between the Hardin Substation and the Lodge Grass Substation. The new line would be built on an existing 69 kV transmission line right-of-way after the present line is dismantled. Possible REA actions could include providing financing assistance to Big Horn for the proposed project, approving construction contracts, power rate contract, etc., related to utilization of the proposed facilities.

The BER and EA adequately consider potential impact of the proposed project to resources including threatened and endangered species, important farmland, prime forest land, prime rangeland, cultural resources, floodplains, and wetlands.

Alternatives examined included no action, reconductoring the existing transmission system, energy conservation, alternative transmission routes and plans, and underground construction. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative because it meets Big Horn's needs with a minimum adverse impact.

Based upon the BER and other related data, REA prepared an EA and FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the environment.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, dated March 13, 1984, Big Horn advertised the availability of its BER in the local newspaper. No comments were received.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 28, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23383 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-15-M

Homer Electric Association, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Homer Electric Association, Inc. (Homer Electric), of Homer, Alaska. The project consists of constructing about 96 km (59 miles) of 115 kV transmission line in the southern portion of the Kenai Peninsula, Alaska.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) may be reviewed at or obtained from Mr. William E. Davis, Director, Western Area—Electric, REA, South Agriculture Building, Washington, D.C. 20250, telephone: (202) 382-8848, or the office of Homer Electric Association, Inc. (Mr. B. Kent Wick, Manager), 3977 Lake Street, Homer, Alaska 99603, telephone: (907) 639-2341, during regular business hours.

SUPPLEMENTARY INFORMATION: REA has reviewed the Borrower's Environmental Report (BER) submitted by Homer Electric and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project would consist of approximately 96 km (59 miles) of 115 kV transmission line between the Fritz Creek Substation and the Soldotna Substation in the southern portion of the Kenai Peninsula, Alaska. REA may provide financing assistance to Homer Electric for the proposed project.

The BER and EA adequately consider potential impacts of the proposed project to resources including prime farmland, forest land, rangeland, water quality, air quality, vegetation, floodplains, wetlands, cultural resources and threatened or endangered species.

Alternatives examined included no action, rebuilding the existing transmission system, building generating facilities, energy conservation, alternative voltages, alternative corridors, and underground construction. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative because it meets Homer Electric's need with a minimum of adverse impact.

Based upon the BER and other related data, REA prepared an EA and FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, dated March 13, 1984, Homer Electric advertised the availability of its BER in the local newspaper. No comments were received.

This program is listed in the Catalog of Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 27, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23381 Filed 8-31-84; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Tainter Lake Critical Area Treatment RC&D Measure, Wisconsin; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Enviornmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tainter Lake Critical Area Treatment, RC&D Measure, Dunn County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Cliffton A. Maguire, State Conservationist, Soil Conservation Service, 4607 Hammersley Road, Madison, Wisconsin, 53711, telephone (608) 264–5351.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Cliffton A. Maguire, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns the primary objective to stop the gully advancement and control erosion thus protecting the town road and culverts from potential loss from erosion; the secondary objective is to reduce sediment deposition into Lake Tainter. This action will improve the quality of water, maintain the effectiveness of the fishery resource and reduce property damages and losses which diminish the quality of life for the local residents. The purpose of this measure is critical area treatment. The planned works of improvement include unstable gullies to be shaped and seeded. Runoff waters from the watershed will be controlled through a drop inlet structure, a grassed diversion and conservation treatment of the croplands.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cliffton A. Maguire.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: July 26, 1984.

[FR Doc. 84–23331 Filed 8–31–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed; Week Ended August 24, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date Filed	Docket No.	Description
Aug. 20, 1984	42435	Tower Travel Corporation d/b/a Atlantic Express, c/o Jerrold Scoutt, Jr., Zuckert, Scoutt, Rasenberger and Johnson, 888 Seventeenth Street, NW., Washington, D.C. 20006–3959. Application of Tower Travel Corporation d/b/a Atlantic Express pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity to provide scheduled interstate, overseas and foreign air transportation and charter air transportation, for a fitness determination, and for such approvals of interlocking and ownership relationships as may be required by section 408 and 409 of the Act; Applicant requests issuance of a certificate to authorize it to engage in: (a) Scheduled foreign air transportation of passengers, property and mail, as follows: Between points within the United States of America including, but not limited to, the following coterminal points: New York, New York; Miami, Florida; and points in: France, including Paris, Nice and Marseille; and beyond; (b) Scheduled interstate and overseas air transportation of passengers, property and mail between all points in the United States of America, its territories and possessions; and (c) Worldwide charter air transportation of persons and property to and from points in the United States of America. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 17, 1984.
Aug. 22, 1984	42291	Royalcoach Airline, c/o Morton L. Caplan, Caplan and Overlander, 727 West 7th Street, Suite 255, Los Angeles, California 90017. Supplement No. 1 to the Application of Royalcoach Airline pursuant to section 401 of the Act and Subpart Q of the Board's Procedural Regulations to engage in scheduled interstate/overseas air transportation. Answers may be filed by September 19, 1984.
Aug. 24, 1984	42361	Viacao Aerea Sao Paulo, S. A. (VASP), c/o Robert D. Papkin, Squire, Sanders and Dempsey, 1201 Pennsylvania Avenue, NW., Washington, D.C. 20004. Supplement No. 1 to the Application of VASP for a foreign air carrier permit. Answers may be filed by September 21, 1984.
	42194	Air Via, Inc., c/o John W. Simpson, Kelley Drye and Warren, 1333 New Hampshire Avenue, Washington, D.C. 20036. Amendment No. 4 to the Application of Air Via, Inc. Answers may be filed by September 21, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84–23378 Filed 8–31–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42125; Order 84-8-110]

Connie Kalitta Services, Inc. Application; Foreign Charter Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Application of Connie Kalitta Services, Inc. in Docket 42125 for certificate authority under section 401 of the Federal Aviation Act to offer foreign charter air transportation of property, and mail. Order 84-8-110.

SUMMARY: The Board has tentatively found and concluded that (1) the award of certificate authority to Connie Kalitta Services, Inc. to conduct foreign charter air transportation of property and mail is consistent with the public convenience and necessity, and (2) that Connie Kalitta Services, Inc., is fit, willing, and able to provide such service. The complete text of Order 84-8-110 is available as noted below.

DATES: Objections to the Board's tentative findings and conclusions shall be filed by September 14, 1984. Answers to objections shall be filed by September 21, 1984.

ADDRESS: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 42125.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5445.

SUPPLEMENTARY INFORMATION: The Complete text of Order 84-8-110 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-8-110 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 28, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23376 Filed 8-31-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-8-107; Docket 42445]

Temporary Certificates of Public Convenience; American Airlines, Inc. et al.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Show-Cause Proceeding: Order 84-8-107, Docket 42445.

SUMMARY: The Board is instituting the *Temporary Certificate Extension Show-Cause Proceeding* to consider extending the duration of certain authority contained in the following certificates of public convenience and necessity: American Airlines, Inc. for Routes 234 and 266; Continental Air Lines, Inc. for Route 256; Delata Air Lines, Inc. for Route 176; Eastern Air Lines, Inc. for Routes 239, 240, and 258; Evergreen International Airlines, Inc. for Route 236; Northwest Airlines, Inc. for Route 179; Pan American World Airways, Inc. for Routes 132, 133, 218, and 267; Trans World Airlines, Inc. for Route 147; United Air Lines, Inc. for Routes 229 and 238; and Western Air Lines, Inc. for Route 222.

DATES: Objections to the proposed action shall be filed by September 13, 1984. Replies shall be filed by September 20, 1984.

ADDRESS: All pleadings should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 in Docket 42445, *Temporary Certificate Extension Show-Cause Proceeding.*

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Gaynes, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., NW., Washington, D.C. 20428, (202) 673-5154.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-8-107 is available from our Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428.

By the Civil Aeronautics Board: August 27, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23377 Filed 8-31-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Open Meeting; Correction

On July 31, 1984, a notice was published in the **Federal Register** (49 FR 30560) announcing a meeting of the Importers and Retailers' Textile Advisory Committee on Tuesday, September 11, 1984 at 1:30 p.m., Herbert C. Hoover Building, Room 6802. The purpose of this notice is to advise that the room number for that meeting has been changed to Room 3407.

Dated: August 29, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-23312 Filed 8-31-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Modification No. 1 to Permit No. 431; University of Maine

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 431 issued to Dr. James R. Gilbert, Division of Wildlife, University of Maine, Orono, Maine 04469, on August 15, 1983 (48 FR 38529), is modified to increase the species authorized to be collected.

Accordingly, section A-3 is added:

"3. Up to 50 dead marine mammals per year of the following species may be collected when legally taken incidental to commercial fishing operations:

a. gray seal (*Halichoerus grypus*);

b. white-sided dolphin (*Lagenorhynchus acutus*);

c. common dolphin (*Delphinus delphis*);

d. white-beaked dolphin (*Lagenorhynchus albirostris*); and

e. pilot whale (*Globicephala melaena*)."

This modification becomes effective upon publication in the **Federal Register.**

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 28, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-23384 Filed 8-31-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Additions

Correction

In FR Doc. 84-21912, beginning on page 32897, in the issue of Friday, August 17, 1984, in the third column, the eighth line from the bottom should read *"SIC 7349"*.

BILLING CODE 1505-01-M

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DEPARTMENT OF DEFENSE

Office of the Secretary

Personal Property Program; International Through Government Bill of Lading (ITGBL)

August 24, 1984.

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice of Deadline Extension for Service Organization Certificate.

Reference: **Federal Register** Notice, July 26, 1984, Volume 49, No. 145, page 30088.

SUMMARY: As outlined in referenced notice, all carriers were requested to provide MTMC a notarized copy of the revised Service Organization Certificate (SOC) by August 25, 1984.

MTMC is considering modifications to the new SOC. In view of this, the time frame for submitting the SOC has been extended to November 26, 1984. The SOCs which have been received and accepted by MTMC will remain as part of the carrier's files. However, provisions of the SOC will not become effective until November 26, 1984. In the event that modifications are made, previously submitted SOCs will become invalid, and new SOCs will be provided for resubmission. The effect of this extension is to keep in place the previously existing qualification and common financial and administrative control policies and procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanie Bell, Military Traffic Management Command, ATTN: MT-PPQ (Room 423), Washington, DC 20315.

Robert F. Waldman,

Deputy Director, Directorate of Personal Property.

[FR Doc. 84-23384 Filed 8-31-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

[ACN: 01-30002]

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent to Repay to the Rhode Island State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under Section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Rhode Island State Department of Education (SEA) an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination issued on July 7, 1983 by the Assistant Secretary for Elementary and Secondary Education. This notice describes the SEA's plan, submitted on behalf of the Providence School Department (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before October 4, 1984.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder. Telephone: (202) 245-9846.

SUPPLEMENTARY INFORMATION:

A. Background

On July 7, 1983, the Assistant Secretary for Elementary and Secondary Education issued a final audit determination against the SEA, finding that the LEA had improperly spent $62,273 in funds provided under Title I of the Elementary and Secondary Education Act of 1965 (Title I). This final audit determination was based on an audit of the Title I program in the SEA during Fiscal Year 1982 conducted by the Department's Inspector General Audit Agency.

The Assistant Secretary concluded in his final audit determination that an amount of $34,683 was expended by the LEA for Title I computer-assisted instruction for services to children who were not in greatest need of assistance or who were not identified as educationally deprived, in violation of 34 CFR 201.70 (1981). Although § 201.71(d) provided for the limited participation of non-Title I students, the auditors found that the SEA did not demonstrate that the requirements of the regulations were met for the participation of non-Title I students.

It was further concluded by the Assistant Secretary that the SEA was required to refund $25,716 for disallowed costs which represented Title I teacher and teacher aide salaries and indirect costs associated with excessive and prohibited noninstructional duties that failed to comply with the requirements in 34 CFR 200.61 (1981) of the Title I regulations. The SEA was also required to refund $1,874 improperly expended for resource assistance and training for ineligible special education staff. On August 25, 1983, the SEA made full payment in the amount of $62,273 to the Department.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On May 2, 1984, the SEA formally requested in writing repayment of $46,704 (75 percent of the $62,273 returned to the Department as a result of the final audit determination) under a grantback arrangement. With its request, the SEA provided assurances that the practices and procedures of the LEA that resulted in the final audit determination have been corrected and that the LEA is in all other respects in compliance with the requirements of the program. Also included with the SEA's request was a detailed budget prepared by the LEA for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA, in its May 2, 1984 request, submitted a plan on behalf of the LEA outlining the LEA's intent to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (Chapter 1).

The final audit determination against the LEA resulted from improper expenditures of Title I funds. However, since Chapter 1 supersedes Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The plan demonstrates that the LEA proposes to provide an additional remedial reading specialist at one selected middle school site. The funds will be used to pay the salary and fringe benefits for the remedial reading specialist, buy related supplies and materials, and support appropriate indirect costs. The selected site, Roger William School, has the greatest number of pupils with documented reading difficulties as indicated by the LEA's needs assessment results. Supplementary reading services will be provided for approximately 50 additional students who are reading below their grade level. Services will be provided, to the extent possible, to those eligible Chapter 1 children who were affected by the misexpenditures that resulted in the final audit determination.

Equitable services will be provided to approximately ten additional children in private schools.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under Section 456 of GEPA, including the SEA's discharge of its payment obligations to the Department in August 1983, the SEA's assurances described in Part C of this notice, and the SEA's plan and budget, the Secretary makes the following determinations:

(1) The LEA has corrected the practices and procedures that resulted in the final audit determination, and the LEA is in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the LEA for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the Chapter 1 children who were affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount of $46,704, which is 75 percent of the funds the Department has recovered as a result of the Assistant Secretary's final audit determination. The Secretary bases his intention to enter into a grantback arrangement under Section 456 of GEPA on his determinations outlined in Part E of this notice, and payment by the SEA of all funds owed to the Department as a result of the final audit determination.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with Section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be expended by June 30, 1985.

(3) The SEA, on behalf of the LEA, must, not later than January 1, 1986, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and approved budget.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Rhode Island SEA on behalf of the Providence LEA. Interested persons may send written comments to Dr. A. Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before October 4, 1984.

(Catalog of Federal Domestic Assistance No: 84.010—Educationally Deprived Children—Local Educational Agencies)

Dated: August 28, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-23349 Filed 8-31-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application notice establishing closing dates for transmittal of fiscal year 1985 new awards.

Applications are invited for new projects under the Training Personnel for the Education of the Handicapped program.

Awards under the Training Personnel for the Education of the Handicapped program are authorized by Sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. The Secretary published final regulations for the program on July 11, 1984 (49 FR 28370).

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications may be submitted by State educational agencies, institutions of higher education, and other nonprofit agencies.

Closing Date for Transmittal of Applications

An application for a new award must be mailed or hand delivered on or before November 9, 1984.

Applications Delivered by Mail

An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available Funds

An applicant for a grant may propose a project period of up to 36 months. Generally, awards will be made for a period of 24 to 36 months. Since fiscal year 1985 appropriation levels have not been determined yet, accurate estimates of funding under each priority are not available. It is expected that funding will be available to award new grants at the funding levels indicated under the application notice for each priority. These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Priorities for Funding

The regulations provide that the Secretary, in any fiscal year, may select one or more of the ten published priorities, or any combination of those priorities, for funding. A separate competiton will be held for each priority. In fiscal year 1985 the Secretary will award new grants in accordance with the following priorities included under § 318.11 of the regulations. Funding is available only for institutions and agencies which meet State and professionally recognized standards for the training of special education and related services personnel.

84.029 BH—Preparation of Special Educators

Program Information

This priority supports projects designed to provide preservice training of personnel for careers in special education of handicapped children and youth. The priority includes the preparation of special educators of the handicapped, including personnel trained in speech, language, and hearing impairments, and adaptive physical educators.

Available Funds

About 50 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average grant is expected to be about $60,000.

84.029FH—Preparation of Related Services Personnel

Program Information

This priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

Available Funds

About 10 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average grant is expected to be about $60,000.

84.029QH—Preparation of Personnel To Provide Special Education and Related Services to Newborn and Infant Handicapped Children/Preparation of Related Services Personnel

Program Information

This priority supports projects that address both the Preparation of Personnel to Provide Special Education and Related Services to Newborn and Infant Handicapped Children priority and the Preparation of Related Services Personnel priority. The first priority area supports the preservice preparation of personnel who will serve newborn and infant handicapped children, or newborn and infant children who are determined to be at high risk of being handicapped, or both. Personnel may be prepared to provide short-term special education and related services as necessary in an intensive care nursery, or long-term special education and related services which extend into a preschool program. Projects supported under this priority prepare personnel for employment in programs characterized by strong interaction of the medical, educational, and related services communities, and by involvement of parents or guardians who are the primary care givers for their children. The second priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

An application which does not address both priorities will not be considered. If an application addresses both the combined priority areas and a non-priority area, the Secretary will consider only that portion which addresses the combined priority areas.

Available Funds

About 10 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average award is expected to be about $65,000.

Application Forms

Application forms and program information packages for new applications are scheduled to be available for mailing on September 17, 1984. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 732–1068. (20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: August 28, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84–23380 Filed 8–31–84; 8:45 am]

BILLING CODE 4000–01–M

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of fiscal year 1985 new awards—Parent Organization Projects.

Applications are invited for new awards for parent organization projects under the Training Personnel for the Education of the Handicapped program.

Awards under the Training Personnel for the Education of the Handicapped program are authorized by Sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. The Secretary published final regulations for the program on July 11, 1984 (49 FR 28370).

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth. Section 631(c)(1) of the Act authorizes the Secretary to make grants to private nonprofit organizations for the purposes of providing training and information services to parents of handicapped children and volunteers who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children.

Applications may be submitted by nonprofit parent organizations, as defined in 34 CFR 318.2(b).

Closing Date for Transmittal of Applications

An application for a new award must be mailed or hand delivered on or before March 21, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

This priority supports grants to parent organizations, as defined in § 318.2(b), for the purpose of the Parent Organization Projects priority in § 318.11(b)(8). This priority is directed at providing training and information to parents of handicapped children and youth, and to volunteers who work with parents to enable those individuals to participate more effectively with professionals in meeting the educational needs of handicapped children and youth. These projects must be designed to meet the unique training and information needs of parents of handicapped children and youth, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

In selecting projects under this priority, the Secretary ensures that grants will be—

(A) Distributed geographically to the greatest extent possible throughout all the States; and

(B) Targeted to parents of handicapped children and youth in both urban and rural areas, or on a State or regional basis.

Parent training and information projects assisted under this priority must assist parents to—

(A) Better understand the nature and needs of the handicapped conditions of their handicapped child or youth;

(B) Provide followup support for their handicapped child's or youth's educational programs;

(C) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) Participate in educational decisionmaking processes including the development of their handicapped child's or youth's individualized education program under 34 CFR 300.340–300.349;

(E) Obtain information about the programs, services, and resources available to their handicapped child or youth, and the degree to which the programs, services, and resources are appropriate; and

(F) Understand the provisions for the education of handicapped children and youth as specified under Part B of the Education of the Handicapped Act and 34 CFR Part 300.

Available Funds

About 5 percent of the funds made available for new Training Personnel for the Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average award is expected to be about $65,000.

Application Forms

Application forms and program information packages for new applications are scheduled to be available for mailing on October 9, 1984. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 732–1068. (20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: August 28, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84–23351 Filed 8–31–84; 8:45 am]

BILLING CODE 4000–01–M

Training Personnel for the Education of the Handicapped Program

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of fiscal year 1985 noncompeting continuation applications.

Applications are invited for noncompeting continuation projects under the Training Personnel for the Education of the Handicapped program.

Awards under the Training Personnel for the Education of the Handicapped program are authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act. The Secretary published final regulations for the program on July 11, 1984 (49 FR 28370).

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications may be submitted by State educational agencies, institutions of higher education, and other nonprofit agencies.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered on or before February 1, 1985. If a noncompeting continuation application is late the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail

An application for noncompeting continuation projects must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available Funds

Since fiscal year 1985 appropriation levels have not been determined yet, accurate estimates of funding under each priority are not available. It is expected that funding will be available to award noncompeting continuation grants at originally projected funding levels.

These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Notices

84.029AH—Preparation of Special Educators

Program Information

This priority supports the continued second or third budget period funding for preparation of special educator grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029CH—Preparation of Leadership Personnel

Program Information

This priority supports the continued second or third budget funding for doctoral and post-doctoral personnel preparation grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029EH—Preparation of Related Services Personnel

Program Information

This priority supports the continued second or third budget funding for the preparation of related services personnel grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029GH—State Educational Agency Programs

Program Information

This priority supports the continued second or third budget funding for State educational agency grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029JH—Special Projects

Program Information

This priority supports the continued second or third budget funding for special projects grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029LH—Specialized Training of Regular Educators

Program Information

This priority supports the continued second or third budget funding, for preparation of regular educators grants that were awarded initially in 1983 or 1984, for two or three budget periods.

84.029NH—Preparation of Trainers of Volunteers, Including Parents

Program Information

This priority supports the continued second or third budget funding for the preparation of trainers of volunteers' grants that were awarded initially in 1983, for three budget periods.

84.029NH—Parent Organization Projects

Program Information

This priority supports the continued second or third budget funding for parent organization projects grants that were awarded initially in 1984, for two budget periods.

84.029UH—Transition/Special Educators

Program Information

This priority supports the continued second or third budget funding for transition of handicapped youth to adult and working life grants that were awarded initially in 1984, for two or three budget periods.

Application Forms

Application forms and program information packages for noncompeting continuation applications will be mailed October 9, 1984 to grantees that are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820-0028)

Applicable Regulations.

Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). New final regulations were published on July 11, 1984 (49 FR 28370). Applicants should prepare their applications based on the final regulations.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202. Telephone: (202) 723-1068.

(20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029: Training Personnel for Education of the Handicapped Program)

Dated: August 28, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-23352 Filed 8-31-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: CCS-1]

Policy To Implement Council-Recommended Conservation Surcharge

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to develop a policy and request for recommendations.

SUMMARY: In accordance with the Northwest Electric Power Planning and Conservation Act, the Northwest Power Planning Council (Council) has developed model conservation standards and recommended to the BPA Administrator that a surcharge be imposed on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not adopted, or on customers who have not adopted, the standards or other conservation measures to achieve savings comparable to the standards. BPA is requesting recommendations to assist in the development of a policy concerning the implementation of the Council-recommended surcharge. The policy will focus on certifying compliance with the model conservation standards, reviewing and evaluating alternative plans for achieving savings comparable to the model conservation standards, and determining whether and under what conditions BPA will impose or

excuse a Council-recommended surcharge.

Responsible Official: Sue F. Hickey, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for developing the policy.

DATES: A general information meeting will be held September 13, 1984, at 1:30 p.m. in Room 464 of BPA's Headquarters Building, 1002 NE. Holladay Street, Portland, Oregon. Written comments will be accepted through October 1, 1984.

ADDRESS: Comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, Public Involvement office, at the above address or 503-230-3478. Oregon callers outside of Portland may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. Roy B. Fox, Division of Planning and Evaluation, Office of Conservation, 1002 NE. Holladay Street, Portland, Oregon 97208, 503-230-4304.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Earl C. Schoer, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettemund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Northwest Power Planning Council (Council) has developed model conservation standards and recommended to the Administrator the imposition of a surcharge on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not adopted, or on customers who have not adopted, the standards or other measures to achieve comparable energy savings by January 1, 1986. BPA, through this notice, is initiating its public process to develop a policy for: (1) Certifying compliance with the model conservation standards, (2) reviewing and evaluating alternative plans designed to achieve comparable savings, and (3) determining whether and under what conditions BPA will impose or excuse the Council-recommended surcharge. Customers, State and local governments, Indian tribes, and all other interested groups and individuals are requested to submit recommendations to assist in the development of the policy. BPA requests that the recommendations focus on the identification of issues, clarifying information, and possible ways of treating the issues in the policy. The resulting policy will fulfill BPA's obligations under the terms of BPA's power sales contracts, the Two-Year Action Plan developed as part of the Council's Northwest Conservation and Electric Power Plan (Plan), and the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act).

BPA is proposing the following schedule for developing and adopting this policy.

General Information Meeting—September 13, 1984
Close of Comments on Notice of Intent—October 1, 1984
Publication of Proposed Policy—October 1984
Opportunities for Public Comment—on Proposed Policy—November 1984
Notice of Final Policy—December 31, 1984

The general information meeting, scheduled for September 13, 1984, will be held at the BPA Headquarters Building, 1002 NE. Holladay Street, Portland, Oregon at 1:30 p.m. in Room 464. This meeting will be an informal discussion of conservation surcharges, related issues, and the forthcoming policy.

At this time, the Council is considering amending the surcharge methodology contained in Appendix D of the Plan. While the Council will conduct a separate public involvement process, the Council's amendment process is central to the development of BPA's policy. The Council's surcharge methodology must be used by the Administrator to calculate the surcharge that may be imposed on a customer. Issues surrounding the actual calculation of the surcharge will be handled by the Council and are not a part of BPA's process. It is expected that the Council's methodology also will address issues such as: the possiblity of a single utility serving multiple local jurisdictions, not all of which adopt the model conservation standards or comparable alternatives; adoption of less than all four model conservation standards by a jurisdiction; and exemptions from the Council recommendation to impose the surcharge.

BPA will participate in the Council's public amendment process. BPA's principal concerns are that the Council's methodology be clear and administratively feasible and defensible, provide for fair and equitable treatment of customers, and address the issues surfaced during their amendment process. Interested parties are urged to contact the Northwest Power Planning Council for further information at 700 SW. Taylor, Portland, Oregon 97205.

II. Background

The Regional Act provides for the development of cost-effective conservation as the first priority resource to be used in meeting the electric power needs of the region. Several mechanisms are provided to ensure that such conservation is developed. In addition to the Administrator's authority to acquire conservation or to grant billing credits for conservation that reduces his obligation to acquire other resources, the Council was given authority to develop and include model conservation standards as part of its Plan. These standards adopted by the Council are minimum efficiency requirements for new electrically heated residential structures, new commercial buildings, existing residential structures which convert to electric heat, and existing commercial buildings which convert to electric space conditioning.

Neither BPA nor the Council have authority to implement the model conservation standards. Implementation is dependent on the actions of State or local governments or utilities. The Regional Act does provide an incentive for adoption, however, through the conservation surcharge. The Council may recommend, and BPA may subsequently impose, a surcharge on BPA's customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on customers which have not, implemented the model standards or otherwise achieved comparable savings.

A. Statutory Direction

The Regional Act provides for the development of model conservation standards as part of the Council's Plan in section 4(e)(3). These standards, as described in section 4(f)(1), are to include, among other things, standards applicable to new and existing structures. Such standards should reflect geographic and climatic differences and produce all power savings that are cost-effective for the region and economically feasible for consumers.

Once the standards are included in the Plan, section 4(f)(2) provides that the Council may recommend to the Administrator the imposition of a surcharge on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the customers which have not, implemented the standards or other conservation measures that achieve energy savings comparable to the standards.

Section 4(e)(3)(G) provides for the Council to develop as part of its Plan a methodology for calculating such surcharges. As detailed in Section 4(f)(2):

> Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

B. Actions by the Northwest Power Planning Council

On April 27, 1983, the Council adopted the Northwest Conservation and Electric Power Plan. As required by the Regional Act, the Council's Plan contains model conservation standards for newly constructed residential and commercial buildings, and for conversion of existing residential and commercial buildings to electric space heating and conditioning.

For new residential buildings that receive building permits on or after January 1, 1986, the model conservation standard, written as a performance standard, is as follows:

Building type	kWh/sq. ft./yrs.		
	Climate Zone* 1	Climate Zone* 2	Climate Zone* 3
Single-family	2.0	2.6	3.1
Multi-family	1.2	2.3	2.8

* Climate zones are based on the number of heating degree days experienced in a particular location (Zone 1: less than 6,000; Zone 2: 6,000 to 8,000; Zone 3: in excess of 8,000).

This standard also applies to electric space heating conversions in residential buildings that receive building permits on or after January 1, 1986. For electric space heating conversions in residential buildings that receive building permits on or before December 31, 1985, a special standard, contained in Appendix L of the Plan, is applicable.

For commercial buildings that receive building permits on or after January 1, 1986, the Council has developed a model conservation standard that addresses electric space conditioning, lighting, and domestic hot water. This standard is a modified version of the most recent model energy code of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), ASHRAE 90–80. The standard includes heating, ventilating, and air conditioning equipment performance specifications, lighting budgets, and minimum building envelope efficiency requirements. The lighting budgets are identical to those now required by the City of Seattle's Energy Code, with the exception of office and retail buildings. The standard for office and retail buildings is equivalent to the office standard currently proposed by the California Energy Commission (1.5 watts per square foot plus an additional 1.5 to 3.0 watts per square foot for task and spot lighting).

Chapter 10 of the Councils Plan is a Two-Year Action Plan in which the Council identifies and discusses the task to be performed by BPA, the Council, and others in the region. BPA is to develop a consistent procedure for certifying compliance with each model conservation standard (Action Items 2.3, 3.3, and 6.4 and 7.3). In cases where a jurisdiction or utility elects not to implement the standards but rather to implement other conservation measures to achieve comparable savings (alternative plan), BPA is to develop a procedure for reviewing and evaluating these alternative plans to ensure that savings comparable to those of the model standards will be achieved (Action Items 2.4, 3.6, 6.6, and 7.4). These procedures are to be available by January 1, 1985. A number of other actions designed to facilitate the implementation of the model conservation standards are also specified.

By January 1, 1986, State governments, local governments, or utilities are to adopt and enforce the model conservation standards. Where such standards are not adopted, a plan to achieve comparable savings should be in place by January 1, 1986. Where neither action has occurred, the Council has recommended in section 25 of the Two-Year Action Plan that the Administrator impose a surcharge.

As required by the Regional Act, the Council included a methodology to calculate surcharges as Appendix D of the Plan. This methodology starts by identifying the additional BPA costs and benefit of serving the load resulting from failure to achieve the energy savings of the model conservation standards. Where the cost includes acquiring resources, the Plan will serve as a guide for identifying resource costs. The net incremental costs, the additional cost minus the additional revenue, is divided by the noncomplying customer's load to determine the unit surcharge.

Ad previously noted, the Council is considering amending this methodology. Parties interested in the actual calculation of the surcharge are urged to contact the Council for further information. BPA will consider any amendments to Appendix D in the development of this policy.

C. Actions by the Bonneville Power Administration

As part of BPA's power sales contracts offered in August 1981, BPA is also required to take certain actions. BPA is obligated by Sec. 8(d)(3) of the General Contract Provisions upon adoption of the Plan, to give notice of its intent to adopt a policy setting the standards to be used for imposing the conservation surcharge. The policy shall include:

> (a) standards to be met before Bonneville will excuse surcharges which would otherwise be appropriate, consistent with Bonneville's obligations to implement cost-effective conservation measures to the maximum extent practicable;
>
> (b) that Bonneville will impose surcharges to the extent not excused or suspended under the terms of the rule;
>
> (c) an opportunity for interested persons to present views, data, questions, and arguments to Bonneville relevant to the imposition of surcharges in specific instances, and the adequacy of financial assistance made available by Bonneville;
>
> (d) that surcharges imposed will be continued to the extent and for the period projected energy savings attributed to cost-effective model conservation standards are not achieved.
>
> (e) for recovery from the Purchaser of the additional costs (including increases in the Utility's average system cost) that Bonneville will incur because the projected energy savings attibutable to model conservation standards have not been achieved, subject to the limitations set forth in section 4(f)(1) and 4(f)(2) of Pub. L. 96–501; provided, however, that surcharges will not be levied as a result of an increase in a utility's average system cost except to the extent that the Utility failed to implement conservation measures that are designed to be cost-effective for its Consumers in terms of the electric rates its Consumers pay.

III. Issues

BPA has identified a number of issues associated with the development of this policy. Through this notice, BPA is seeking recommendations on these issues and the identification of and comment on other relevant issues. To facilitate this process, some of the policy issues identified to date are discussed below. Additionally, a variety of options for treating the issue, to the extent these have been identified, are presented.

A. Compliance with the Model Conservation Standards

In order for the region to realize the savings from the model conservation standards, the standards must be adopted and implemented by the appropriate State or local governments or utilities. Jurisdictions which are certified by BPA as having adopted the standards are then exempt from the imposition of the Council-recommended surcharge.

Two general issues have been identified as having policy implications. A brief discussion of each follows.

1. East of Administration

Certification that a jurisdiction has actually adopted the model conservation standards is intended to help ensure that the expected energy savings will be realized. The more rigorous the analysis, the more difficult the administrative burden. A balance must be struck to ensure conformance with the standards without unduly increasing the administrative burden.

Options: A wide range of options exists on this issue. Those described here are not mutually exclusive.

a. Juridictions are presumed to be in compliance upon their certification of the adoption of a code that is the equivalent of the model conservation standards.

b. Jurisdictions are presumed to be in compliance upon adopting code language developed by BPA or the Council to conform with the model conservation standards.

c. Jurisdictions are presumed to be in compliance when projections of energy savings, based on the requirements of the adopted code, indicate energy performance equivalent to the model conservation standards when analyzed by a heat loss methodology.

Discussion: The final policy will need to recognize the trade-off between accuracy and the ease of administration. A self-certification policy might increase the possibility of allowing a code which appears to be the equivalent of the model conservation standards to be certified even if it contains provisions that result in significant loss of energy savings. A detailed analysis of all code language, while helping to eliminate such provisions, might be redundant and would clearly be time-consuming and expensive. A policy which concentrates on those elements of a code that differ from some base code (BPA or Council developed) may provide partial resolution.

2. Burden of Proof

The model conservation standards were developed to maintain as much flexibility as possible for the region. Additionally, specific code language designed to be in compliance with the standards is being developed and will be available shortly. At issue is who should bear the burden for proving that any modification to the base codes or any entirely new codes results in savings equivalent to the model conservation standards.

Options: The options cited below only touch on the possible ways to handle the burden of proof.

a. A jurisdiction would consult with BPA and develop the type of information needed to verify compliance with the model conservation standards.

b. Jurisdictions would provide BPA with copies of the code language. BPA would independently determine if the code results in energy performance equivalent to the model conservation standards.

c. Jurisdictions would provide BPA with certain parameters drawn from the requirements of their code. These parameters would then be used in a specified heat loss methodology to test for perfomance equivalent to the model conservation standards.

Discussion: The resolutions of this and the previous issue are related. The technical assistance that has been available to jurisdictions is also a factor to consider at this point. The burden of proof may need to be a function of the degree of alteration of some base code language.

B. Comparable Savings for Alternative Plans

The Council's Plan includes a portfolio of resources designed to meet a range of loads that the region could experience over the next 20 years. One way of meeting these loads is the conservation of energy through the adoption and enforcement of the various model conservation standards. There are provisions for actions other than the model conservation standards to be taken so long as those actions produce electric energy savings that are comparable to the model conservation standards. These alternative plans, as they are known, are intended to allow greater flexibility in meeting the region's loads.

Six issues have been identified to date that have policy implications. A brief discussion of each follows.

1. Source of Savings

The model conservation standards are designed to secure electric energy savings from the building shell and heating and ventilating systems in the residential and commercial sectors. Since alternative plans are to deliver savings comparable to the model conservation standards, there is an issue as to what sectors (i.e., commercial, residential, industrial) or end-uses (i.e., water heat, space heat) may be appropriately targeted by the alternative plans.

Options: Early discussions have identified a number of possible resolutions of this issue. Among these are:

a. Since the savings must be comparable to those of the model conservation standards, the alternative plans should at least target the same sector.

b. Since the model conservation standard savings are simply one of a number of ways of meeting load, any other source of savings is an acceptable alternative plan.

c. Since the model conservation standard savings are simply one of a number of ways of meeting load, any other source of savings is an acceptable alternative plan so long as no other resource in the resource portfolio is displaced.

Discussion: The Plan embodies a collection of resources designed to meet future loads at least cost. One of these resources is the model conservation standards. There is, however, nothing unique about the end-uses and sectors that the model conservation standards tap for savings. It may be reasonable not to limit alternative plans, therefore, to any specific end-use or sector. However, an alternative plan that simply develops a resource from a sector already targeted for energy conservation program savings will leave the region short the savings that the model conservation standards would have delivered. Therefore, there is some logic in not allowing alternative plans which simply substitute for other energy savings already included in the resource portfolio.

2. Cost of Savings

The model conservation standards are expected to deliver savings to the region at up to 40 mills/kWh. The 40 mills/kWh includes consideration of the cost of adoption and enforcement of the code as well as the cost of the associated conservation measures. In developing alternative plans, questions have arisen as to whether alternative plans should be comparable to the model conservation standards in terms of cost.

Options: Two obvious options have been suggested to date. These are:

a. Since alternative plans will presumably be adopted by State or local jurisdictions or utilities acting on behalf of its citizens or ratepayers, such jurisdictions will only incur costs that are reasonable. No explicit comparability of cost should be required.

b. Alternative plans must deliver savings at a regional cost not to exceed that of the model conservation standards—40 mills/kWh.

Discussion: All of the resources included in the Council's Plan meet the test of regional cost-effectiveness. The substitution of an alternative resource with a higher cost implies that the region is missing an opportunity to develop its least-cost resources, thereby decreasing the overall cost-effectiveness of the resource mix. However, the range of resources eligible for development as an alternative plan would be increased if costs were not imposed as a constraint.

3. Timing of Savings

Since the model conservation standards are electric efficiency improvements in new construction and conversions, the savings coincide with the growth in load. The savings also tend to be very long-lived. In developing comparable savings through alternative plans, a determination must be made regarding comparability in timing.

Options: There are a number of possible ways to approach this issue. The options listed here are representative of the range.

a. Savings for the alternative plan must equal that of the model conservation standards over the 20-year planning period.

b. Savings for the alternative plan must equal that of the model conservation standards on an annual basis over the 20-year planning period.

c. Savings for the alternative plan must equal those of the model conservation standards on a seasonal basis over the 20-year planning period.

Discussion: In assembling its resource portfolio, the Council had to match growth in loads to availability of resources. The model conservation standards coincide with the load growth, assuring that new loads meet these minimum efficiency requirements. By their nature, the model conservation standards also possess an inherent seasonality: savings increase as electric loads increase in winter and summer. Other resources in the resource portfolio tend to complement these characteristics. Conservation developed in lieu of the model conservation standards should at least approximate the annual equivalent in savings produced by model conservation standards. Since the model conservation standards have identified seasonal characterisitics, it may also be reasonable to require matching these in achieving comparable savings.

4. Reliability of Savings

The question of model conservation standard reliability has two elements. The first is the reliability of the installed measures. The second is the reliability of the code implementation. Both of these factors affect the level of savings to be derived from the model conservation standards. Some measure of reliability for the model conservation standards must be established and used as the standard for alternative plans.

Options: Only one approach has been identified to date.

Assume model conservation standards deliver 100 percent of their projected energy savings.

Discussion: The model conservation standards are expected to deliver the projected energy savings. Essentially, structures can be built or converted in such a way as to conform to the Council's standards.Prescriptive paths developed by BPA and the Council have been designed to perform in accordance with the model conservation standards. The main reason that savings are not realized is that compliance with the standards is less than 100 percent; that is, buildings are constructed or converted, for whatever reason, to less than the standard.

Since the region is looking for the maximum level of savings from the model conservation standards and since there is little doubt that once installed properly, conservation measures associated with the model conservation standards will perform reliably, alternative plans should conform to those expectations. However, the standards do present the possibility of less than 100 percent compliance, resulting in less energy savings than predicted. It may be possible to trade off the level of savings with certainty of those savings.

5. Fuel Switching

Adoption and enforcement of the model conservation standards ensure a more efficient load on BPA in the future. The standards apply only to residential and commercial structures depending on electric space conditioning. At issue, then, is whether an alternative plan which depends on simply displacing electric energy with some other energy source is acceptable.

Options: The options currently identified are:

a. Alternative plans must deal with electric energy efficiency improvements.

b. Alternative plans that reduce electric load by displacement are acceptable.

Discussion: The standards are clearly electric energy efficiency improvements and do not depend on the substitution of any other fuel type. The issue seems to focus on whether sources of energy such as geothermal and solar, when used to condition space directly without first being converted to electricity, should be considered as acceptable alternative plans. These fuels may displace electricity, but may or may not be accompanied by efficiency improvements.

6. Burden of Proof

Alternative plans are designed to allow the region flexibility in meeting its resource needs. The Council has adopted four model conservation standards and is developing code language and other technical assistance to implement those standards. For those jurisdictions not adopting the model conservation standards but proposing an alternative plan, the issue is who must bear the burden of proving comparability.

Options: Two extreme options that have been identified are:

a. BPA independently analyzes alternative plans to determine comparability.

b. The jurisdiction develops the necessary information and performs a detailed analysis of the alternative plan's projected savings in accordance with guidelines developed in consultation with BPA.

Discussion: The options are intended to point out extreme positions. Under option a., BPA conducts an independent analysis to determine if an alternative plan delivers comparable savings. Option b. requires the jurisdiction to argue its case for comparability to the model conservation standards, and BPA reviews the case for theoretical and quantitative accuracy.

C. Decision To Impose Council-Recommended Conservation Surcharge

Section 4(f)(2) of the Regional Act notes that the Administrator may impose a surcharge if the Council so recommends. The Council has recommended in the Plan that BPA impose a surcharge on noncomplying customers or customers serving jurisdictions that have adopted neither the model conservation standards nor an acceptable alternative plan. If imposed, the amount of the surcharge will be calculated according to the methodology developed by the Council as part of the Plan. Since the Administrator has discretion in determining whether the surcharge will be imposed, BPA must define the criteria that will guide the decision.

Options: Three options have been identified.

a. The Administrator could decide not to impose the Council-recommended conservation surcharge.

b. The Administrator could decide to impose the Council-recommended conservation surcharge if the customer has not adopted, or serves jurisdictions that have not adopted, the model conservation standards or otherwise achieved savings comparable to the standards.

c. The Administrator could decide to impose the Council-recommended conservation surcharge if the customer has not adopted, or serves jurisdictions that have not adopted, the model conservation standards or otherwise achieved savings comparable to the standards, or has not been exempted from the surcharge using criteria developed by BPA as part of this policy.

Discussion: The Council must recommend the imposition of surcharges before the Administrator may impose them. The Council's plan and subsequent amendment process for the surcharge methodology have given all interested parties an opportunity to express their concerns related to the calculation of the surcharge. It is incumbent on the Council to ensure that the recommendation to impose such surcharge is fair and equitable. Since the recommendation to impose a surcharge was included in the Plan and was subject to examination by all interested parties, additional specific criteria for exemption may be unnecessary. However, conditions may exist or arise under which the imposition of the surcharge is inappropriate. These, if any, need to be identified.

Issued in Portland, Oregon, on August 23, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84-23339 Filed 8-31-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

ONEOK, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of action taken on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with ONEOK, Inc. (ONEOK) as a final order of DOE.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: James O. Neet, Jr., Chief Counsel, Dallas Field Office, Economic Regulatory Administration, Department of Energy, Suite 200-E, 1341 W. Mockingbird Lane, Dallas, Texas 75247, or call (214) 767-7401.

SUPPLEMENTARY INFORMATION: On July 20, 1984, the ERA published a notice in the Federal Register that it had executed a Consent Order with ONEOK on May 31, 1984, which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

Comments were received from three entities representing a total of 10 states. None of the comments objected to the Consent Order. All of the comments focused on the proposed distribution of funds (if any) remaining after payment to identifiable injured parties. All the comments advocated that any remaining funds be distributed on a pro-rata basis to various states to finance energy related projects.

The proposed Consent Order stated that DOE will deposit the sum of $1,800,000.00 received from ONEOK into a suitable account for later distribution by DOE. The ultimate distribution of these funds will depend upon several factors, including the type of alleged violations underlying the Consent Order and the ability of the ERA to identify ONEOK customers which may be entitled to a refund of these funds. ERA has not yet determined an appropriate distribution for the refunded amount. Accordingly, as the Consent Order provides, the monies will be placed in a DOE interest bearing escrow account until an appropriate distribution is determined.

Having considered all comments submitted, DOE has determined that the proposed Consent Order with ONEOK should be made final without modification. The Consent Order was adopted as a final order on September 4, 1984.

Issued in Dallas, Texas on the 23rd day of August, 1984.

James O. Neet, Jr.,

Chief Counsel, Dallas Field Office, Economic Regulatory Administration.

[FR Doc. 84-23340 Filed 8-31-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ST81-79-002, et al.]

Mississippi River Transmission Corp., et al.; Extension Reports

August 29, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before September 27, 1984, file with the Federal

Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-79-002	Mississippi River Transmission Corp., 9900 Clayton Rd., St. Louis, MO 63124	El Paso Natural Gas Co	08-15-84	G	11-15-84
ST81-105-002 [1]	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	El Paso Natural Gas Co	08-01-84	D	10-24-84
ST81-129-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Panhandle Eastern Pipe Line Co	08-01-84	G	10-31-84
ST83-69-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Northern Natural Gas Co	08-01-84	G	11-01-84
ST83-86-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Mississippi River Transmission Corp	08-10-84	G	11-10-84
ST83-91-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Transcontinental Gas Pipe Line Corp	08-01-84	G	11-01-84
ST83-96-001	Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790	Dow Pipeline Co	08-06-84	B	11-19-84
ST83-97-001 [1]	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Esperanza Transmission Co	08-07-84	B	11-04-84
ST83-98-001	Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	08-13-84	C	11-19-84
ST83-100-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	South Carolina Electric and Gas Co	08-10-84	B	11-08-84
ST83-117-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Northern Natural Gas Co	08-02-84	G	11-05-84
ST83-122-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	United Gas Pipe Line Co	08-13-84	G	11-11-84
ST83-125-001 [1]	United Gas Pipe Line Co., P.O. 1478, Houston, TX 77002	Texas Eastern Transmission Co	08-14-84	G	11-11-84
ST83-127-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Houston Pipe Line Co	08-06-84	B	11-04-84
ST83-151-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Acadian Gas Pipeline System	08-10-84	B	11-08-84
ST83-199-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Louisiana Intrastate Gas Corp	08-15-84	B	12-21-84
ST83-260-001	Acadian Gas Pipeline System, 1200 Milam, Suite 2700, Houston, TX 77002	Columbia Gas Transmission Corp., *et al.*	08-03-84	C	12-23-84
ST83-303-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Natural Gas Pipeline Co. of America	08-01-84	G	11-01-84
ST83-306-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Tennessee Gas Pipeline Co	08-01-84	G	11-01-84
ST84-1162-001 [1]	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Tennessee Gas Pipeline Co	08-15-84	G	12-10-83

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-23358 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-33-005]

Mountain Fuel Resources, Inc.; Petition to Amend

August 28, 1984.

Take notice that on July 31, 1984, Mountain Fuel Resources, Inc. (Petitioner), 79 South State Street, Salt Lake City, Utah 84147, filed in Docket No. CP75-33-005 a petition to amend the order issued July 12, 1984, in Docket No. CP75-33-004 pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of time until August 31, 1984, to draw down its Chalk Creek underground storage reservoir (Chalk Creek), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued July 12, 1984, Petitioner was authorized to inject an additional 200,000 Mcf of natural gas into Chalk Creek and delay drawdown until July 31, 1984, in order to maintain natural gas service to the Salt Lake City, Utah, area in the event that spring floods and mudslides caused transmission line failure upstream of Chalk Creek. Petitioner states that because of the wide spread occurrence of mudslides it did not begin drawdown at Chalk Creek until May 30, 1984. Petitioner asserts that 35,000 Mcf of working gas remain in Chalk Creek and that because of declining pressure, it is able to withdraw only 2,000 Mcf of natural gas per day; and it therefore requires the additional time to complete the withdrawals.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23359 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA84-2-16-001, TA84-2-16-002 and RP84-95-001]

National Fuel Gas Supply Corp.; Compliance Filing

August 28, 1984.

Take notice that on August 14, 1984, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 4, proposed to be effective August 1, 1984.

National states that the purpose of this revised tariff sheet is to comply with the Commission Order dated July 31, 1984, requiring National to reflect, *inter alia,* any downward modifications due to its pipeline suppliers' rates and the elimination of estimated balances for the months of June and July, 1984 from Account No. 191. National further states that Substitue First Revised Sheet No. 4 reflects a net increase in National's rate of 63.40¢ per Dth. This change consists of an increase in current purchase gas cost of 32.35¢ per Dth, and an increase in the purchase gas cost surcharge adjustment of 31.05¢ per Dth.

National has mailed copies of its filing to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23360 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST84-901-000]

Northwest Pipeline Corp.; Filing

August 29, 1984.

Take notice that on August 20, 1984, Southwest Gas Corporation (Southwest) filed a "Motion To Intervene, Protest To Certain Part 284 Transportation Activity, And Request For Hearing."

Southwest is questioning Northwest Pipeline Corporation's (Northwest) Initial Full Report (report) filed on June 8, 1984 in the above-captioned docket. The report concerns Northwest's transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle) pursuant to § 284.221 of the Federal Energy Regulatory Commission's (Commission) regulations and the blanket certificate issued to Northwest in Docket No. CP80-163. Southwest questions, *inter alia*, whether Northwest and its customers are providing Panhandle with volumes of gas to replace those volumes of Panhandle's gas consumed or lost as fuel and shrinkage gas during processing at Northwest's Opal plant. Southwest indicates that Northwest assumes that the gathering portion of its transportation service to Panhandle is non-jurisdictional, which Southwest would assert is erroneous. Southwest further states that the report is unclear as to how Northwest will treat the revenues derived from the transportation and gathering service. Because of Commission regulations and because Northwest has not offered any out-of-pocket cost information in connection with the Panhandle service, Southwest believes that the Commission should require Northwest to credit to its Account No. 191 all revenues derived from the Part 284 service in excess of one cent per MMBtu. For the above reasons, Southwest feels compelled to protest and request a hearing.

Southwest, being dependent upon Northwest for supplies of natural gas and being subject to the rates the Commission authorizes Northwest to collect, requests that it be permitted to intervene in the above-captioned proceeding with full rights of a party.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23361 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-40-002]

Raton Natural Gas Co.; Petition for Waiver of the Filing Fee

August 28, 1984.

Take notice that on August 21, 1984, Raton Natural Gas Company (Raton) tendered a Petition For Waiver Of The Filing Fee in connection with its compliance filing of Second Substitute Thirty-Second Revised Sheet No. 3a to its FERC Gas Tariff Original Volume No. 1 on August 14, 1984.

Raton contends that the $2,300 fee for this compliance filing greatly exceeds the costs of the specific services performed for the benefit of Raton and is not consistent with the objective of Commission Order No. 361 which is to establish a reasonable balance between the amount of the filing fee and the estimated cost of processing the filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23362 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST84-967-000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Self-Implementing Transactions

August 29, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to Section 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBtu)
ST84-967	Transcontinental Gas Pipe Line Corp	Celanese Fibers Operations, *et al*	7-02-84	F(157)		
ST84-968	Mid Louisiana Gas Co	Louisiana Intrastate Gas Corp	7-02-84	B		
ST84-969	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	7-02-84	B		
ST84-970	Mountain Fuel Resources, Inc	Reichhold Chemicals, Inc	7-02-84	F(157)		
ST84-971	Mountain Fuel Resources, Inc	Nothwest Pipeline Corp	7-02-84	G		
ST84-972	Mountain Fuel Resources, Inc	United Gas Pipe Line Co	7-02-84			
ST84-973	Mountain Fuel Resources, Inc	Northern Natural Gas Co	7-02-84	G		
ST84-975	Mountain Fuel Resources, Inc	Utah Gas Service Co	7-02-84	B		
ST84-976	Natural Gas Pipeline Co of America	Mississippi River Transmission Corp	7-03-84	G		
ST84-977	Oklahoma Natural Gas Co	Northern Natural Gas Co	7-03-84	C	11-30-84	24.32
ST84-978	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	7-03-84	G		
ST84-979	Tennessee Gas Pipeline Co	Eastern Shore Natural Gas Co	7-05-84	G		
ST84-980	Mountain Fuel Resources, Inc	Pacific Gas and Electric Co	7-02-84	B		
ST84-981	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	7-06-84	G		
ST84-982	Delhi Gas Pipeline Corp	Louisiana Indust. Gas Supply System	7-05-84	C		
ST84-983	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	7-05-84	C		
ST84-984	ANR Pipeline Co	Lukens Steel Co	7-05-84	F(157)		
ST84-985	Northern Natural Gas Co	Pantera Energy Corp	7-05-84	B		
ST84-986	Nothern Utilities, Inc	Montana-Dakota Utilities Co	7-05-84	C		
ST84-987	K N Energy, Inc	Nothern Utilities, Inc	7-05-84	B		
ST84-988	Northern Natural Gas Co	Panhandle Eastern Pipe Line Co	7-05-84	G		
ST84-989	Mountain Fuel Resources, Inc	Northwest Pipeline Corp	7-02-84	G		
ST84-990	Mountain Fuel Resources, Inc	NGL Production Co	7-02-84	F(157)		
ST84-992	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	7-18-84	B		
ST84-994	Tennessee Gas Pipeline Co	Esperanza Transmission Co	7-02-84	B		
ST84-995	National Fuel Gas Supply Corp	UGI Corp. Gas Utility Division	7-02-84	B		
ST84-996	Louisiana Intrastate Gas Corp	Faustina Pipe Line Co	7-06-84	G	12-03-84	20.00
ST84-997	United Gas Pipe Line Co	Tennessee Gas Pipeline Co	7-06-84	G		
ST84-998	Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	7-09-84	B		
ST84-999	Tennessee Gas Pipeline Co	THC Pipeline Co	7-09-84	B		
ST84-1000	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp., *et al*	7-09-84	B		
ST84-1001	Northern Natural Gas Co	Esperanza Transmission Co	7-09-84	B		
ST84-1002	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	7-09-84	B		
ST84-1003	Transcontinental Gas Pipe Line Corp	United States Steel Corp	7-16-84	F(157)		
ST84-1004	National Fuel Gas Supply Corp	Wheatland Tube Co	7-09-84	F(157)		
ST84-1005	Dow Intrastate Gas Co	Louisiana Indust. Gas Supply System	7-09-84	C		
ST84-1006	Equitable Gas Co	Columbia Gas Transmission Corp	7-09-84	G		
ST84-1007	Consolidated Gas Transmission Corp	American Refining Group	7-09-84	F(157)		
ST84-1008	Texas Gas Transmission Corp	Georgia-Pacific Corp	7-09-84	F(157)		
ST84-1009	Texas Gas Transmission Corp	Cincinnati Gas and Electric Co	7-10-84	B		
ST84-1010	Valero Transmission Co	Valero Interstate Transmission Co	6-29-84	C		
ST84-1011	Northern Natural Gas Co	Public Service Electric and Gas Co	7-10-84	B		
ST84-1012	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	7-11-84	B		
ST84-1013	Acadian Gas Pipeline System	ANR Pipeline Co	7-11-84	C		
ST84-1014	Mississippi River Transmission Corp	Western Gas Corp	7-11-84	B		
ST84-1015	Oklahoma Natural Gas Co	Bridgeline Gas Distribution Co	7-11-84	C	12-08-84	10.00
ST84-1016	Channel Industries Gas Co	Tennessee Gas Pipeline Co	7-12-84	C		
ST84-1017	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	7-12-84	B		
ST84-1018	Natural Gas Pipeline Co. of America	Western Gas Corp	7-12-84	B		
ST84-1019	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	7-12-84	G		
ST84-1020	Consumers Power Co	Panhandle Eastern Pipe Line Co	7-13-84	G/F9157)		
ST84-1021	Michigan Gas Storage Co	Consumers Power Co	7-13-84	B		
ST84-1022	Northern Utilities, Inc	K N Enger, Inc	7-13-84	E		
ST84-1023	United Gas Pipe Line Co	IMC Pipeline Co	7-13-84	B		
ST84-1024	United Gas Pipe Line Co	Acadian Gas Pipeline System	7-13-84	B		
ST84-1025	Valero Transmission Co	El Paso Natural Gas Co	7-13-84	C		
ST84-1026	Arkansas Louisiana Gas Co	International Paper Co	7-13-84	F(157)		
ST84-1027	Transcontinental Gas Pipe Line Corp	Valero Transmission Co	7-13-84	E		
ST84-1028	National Fuel Gas Supply Corp	Special Metals Corp	6-29-84	F(157)		
ST84-1029	United Gas Pipe Line Co	Shell Oil Co	7-16-84	F(157)		
ST84-1031	Northern Natural Gas Co	Center Plains Industries, Inc	7-16-84	F(157)		
ST84-1032	ANR Pipeline Co	Faustina Pipe Line Co	7-17-84	B		
ST84-1033	Tennessee Gas Pipeline Co	Louisiana State Gas Corp	7-17-84	B		
ST84-1034	Transcontinental Gas Pipe Line Corp	James River-Norwalk, Inc	7-19-84	F(157)		
ST84-1035	Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	7-19-84	G		
ST84-1036	ANR Pipeline Co	Trunkline Gas Co	7-19-84	G		
ST84-1037	ANR Ripeline Co	Spindletop Gas Distribution System	7-19-84	B		
ST84-1038	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	7-18-84	G		
ST84-1039	ANR Pipeline Co	Faustina Pine Line Co	7-19-84	B		
ST84-1040	Panhandle Eastern Pipe Line Co	Anchor Glass Container Corp	7-19-84	F(157)		
ST84-1041	Columbia Gas Transmission Corp	Wheeling-Pittsburgh Steel Corp	7-24-84	F(157)		
ST84-1042	Trunkline Gas Co	Panhandle Eastern Pipe Line Co	7-23-84	G		
ST84-1043	Northern Natural Gas Co	Termac Gathering Co	7-19-84	B		
ST84-1044	Panhandle Eastern Pipe Line Co	Western Gas Supply Co	7-19-84	B		
ST84-1045	Colorado Interstate Gas Co	St. Luke's Hospital, et al	7-23-84	F(157)		
ST84-1046	Columbia Gas Transmission Corp	Allied Corp., Fiber and Plastics Co	7-24-84	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBtu)
ST84-1047	Columbia Gas Transmission Corp	Glass Containers Corp	7-24-84	F(157)		
ST84-1048	Columbia Gas Transmission Corp	Newport Steel Corp	7-24-84	F(157)		
ST84-1049	Columbia Gas Transmission Corp	PPG Industries, Inc	7-24-84	F(157)		
ST84-1050	Columbia Gas Transmission Corp	Ohio Brass Co	7-24-84	F(157)		
ST84-1051	Columbia Gas Transmission Corp	Jim Walter Corp	7-24-84	F(157)		
ST84-1052	Columbia Gas Transmission Corp	Cincinnati Gas and Electric Co	7-24-84	B		
ST84-1054	Columbia Gas Transmission Corp	Baltimore Gas and Electric Co	7-24-84	B		
ST84-1055	Columbia Gas Transmission Corp	Columbia Gas of New York, Inc	7-24-84	B		
ST84-1056	Columbia Gas Transmission Corp	Columbia Gas of Ohio, Inc	7-24-84	B		
ST84-1057	Columbia Gas Transmission Corp	Columbia Gas of Pennsylvania, Inc	7-24-84	B		
ST84-1058	Natural Gas Pipeline Co. of America	Pioneer Transmission Corp	7-27-84	B		
ST84-1059	Columbia Gas Transmission Corp	Columbia Gas of Pennsylvania, Inc	7-24-84	B		
ST84-1060	Columbia Gas Transmission Corp	Roanoke Gas Co	7-24-84	B		
ST84-1061	Columbia Gas Transmission Corp	UGI Corp	7-24-84	B		
ST84-1062	Columbia Gas Transmission Corp	UGI Corp	7-24-84	B		
ST84-1063	Columbia Gas Transmission Corp	UGI Corp	7-24-84	B		
ST84-1064	Columbia Gas Transmission Corp	Washington Gas Light Co	7-24-84	B		
ST84-1065	Northwest Central Pipeline Corp	Cities Service Oil and Gas Corp	7-24-84	F(157)		
ST84-1066	Tennessee Gas Pipeline Corp	Laurel Fuel Co	7-24-84	B		
ST84-1067	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	7-24-84	B		
ST84-1068	Northwest Central Pipeline Corp	National By-Products, Inc	7-24-84	F(157)		
ST84-1069	Natural Gas Pipeline Co. of America	Louisiana Indust. Gas Supply System, et al	7-27-84	B		
ST84-1070	Delhi Gas Pipeline Corp	UGI Corp	7-27-84	D		
ST84-1071	ANR Pipeline Co	Pioneer Transmission Corp	7-27-84	B		
ST84-1072	Consumers Power Co	Panhandle Eastern Pipe Line Co	7-30-84	G/F(157)		
ST84-1073	Michigan Gas Storage Co	Consumers Power Co	7-30-84	B		
ST84-1074	Panhandle Eastern Pipe Line Co	Illinois Power, et al	7-30-84	F(157)		
ST84-1075	United Gas Pipe Line Co	First Chemical Corp	7-30-84	F(157)		
ST84-1076	Columbia Gulf Transmission Co	Mountain Fuel Resources, Inc	7-30-84	G		
ST84-1077	Columbia Gulf Transmission Co	United Gas Pipe Line Co	7-30-84	G		
ST84-1078	Northern Natural Gas Co	Endevco Pipeline Co	8-01-84	B		
ST84-1079	El Paso Hydrocarbons Co	El Paso Natural Gas Co	7-31-84	C		
ST84-1080	Natural Gas Pipeline Co. of America	Archer-Daniels-Midland Co	7-31-84	F(157)		
ST84-1081	Panhandle Eastern Pipe Line Co	UGI Corp	7-31-84	B		
ST84-1082	Panhandle Eastern Pipe Line Co	Simpson Paper Co	7-31-84	F(157)		
ST84-1083	Panhandle Eastern Pipe Line Co	B.F. Goodrich Co	7-31-84	F(157)		
ST84-1084	Panhandle Eastern Pipe Line Co	PPG Industries, Inc	7-31-84	F(157)		
ST84-1085	Northern Border Pipeline Co	Natural Gas Pipeline Co. of America et al	7-31-84	G		
ST84-1086	El Paso Natural Gas Co	El Paso Hydrocarbons Co	7-31-84	B		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 84-23363 Filed 8-31-84; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Salt Lake City Area; Revised Proposed General Power Marketing Criteria and Allocation Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Publication of the Revised Proposed General Power Marketing Criteria and Allocation Criteria.

SUMMARY: The Western Area Power Administration (Western) has been developing new marketing and allocation criteria for the Colorado River Storage Project (CRSP), Collbran, Provo River, and Ri Grande Projects since the initial public information forum was held on May 22, 1980, in Salt Lake City, Utah. The period for submitting written comments on the proposed criteria published in the **Federal Register** on August 23, 1983, officially ended November 15, 1983. The last information forum was held September 7, 1983, to discuss the published proposed criteria, and a 2-day public comment forum ended October 6, 1983. About 1500 written comments have ben considered in the development of the revised proposed criteria by the Salt Lake City Area (SLCA). The Revised Proposed General Power Marketing Criteria and Allocation Criteria for the SLCA Integrated Projects is published herein, together with a discussion of the issues and revisions. Hypothetical allocation tables are also published herein for the convenience of potential applicants. Major comments which are not addressed in this **Federal Register** notice will be analyzed prior to the issuance of final marketing and allocation criteria.

A brief description of the projects included in the SLCA Integrated Projects follows.

Colorado River Storage Project and Participating Projects (Glen Canyon, Flaming Gorge, Blue Mesa, Crystal, Morrow Point, and Fontenelle Powerplants). Authorized in 1956, the CRSP initiated the cmprehensive development and use of water resources of the Upper Colorado River. CRSP storage units stabilize the erratic flows of the Colorado River and its tributaries so that annual water delivery commitments to the Lower Colorado River Basin, as well as to farmers, municipalities, and industries in the Upper Basin, can be met. Delivery of this water to consumers is accomplished through the participating projects. Several participating projects have been completed, one of which has a powerplant (Fontenelle), and others, such as the Central Utah Project, are under construction. Additional development is expected in future years.

Initial generation began in 1963. The maximum operating capacity of the six powerplants is currently about 1,550 MW. The adjusted average annual generation over the 11-year period from 1972 through 1982 was about 5,588,000 MWh. An adjustment was made to properly reflect generation at the Crystal Powerplant since 1978. These resources are being marketed to about 100 customers and many additional member systems. Existing contracts, with one exception, will terminate at the end of the September 1989 billing period. One contract terminates on November 25, 1991.

Collbran Project (Upper Molina and Lower Molina Powerplants). Authorized in 1952 and in service since 1962, the output of the Collbran Project is sold to one customer. The maximum operating capacity of the powerplants is presently 14.0 MW. The average annual generation over the 18-year period from 1965 through 1982 was 53,300 MWh. The existing contract terminates at the end of the September 1989 billing period.

Rio Grande Project (Elephant Butte Powerplant). The Rio Grande Project was authorized in 1905, and the powerplant went into service in 1940. The maximum operating capacity of the Elephant Buttle Powerplant is 27.0 MW. The average annual generation was 60,700 MWh for the 41-year period from 1941 through 1981. Rio Grande resources are marketed to two customers. The existing sales contracts terminate on September 30, 1989.

Provo River Project (Deer Creek Powerplant). The Deer Creek Powerplant was authorized on August 20, 1951, completed in 1958, and began generation the same year. The maximum operating capacity of Deer Creek Powerplant is about 5.0 MW and the average annual energy production for the 24-year period for 1958 through 1981 was 25,600 MWh.

A contract dated December 20, 1983, among the United States, the Provo River Water Users' Association, Weber River Water Users' Association, and Utah Power & Light Company (UP&L) is terminable only by the mutual consent of the parties. Articles 15 and 16 of the contract provide for the concurrent replacement of capacity and energy losses experienced by UP&L as a result of the diversion of Weber River water to the Provo River, that would otherwise have been used by UP&L to generate power at their hydroplant on the Weber River. However, UP&L has accepted available generation from the Deer Creek Powerplant for a period, usually a month at a time, as satisfactory replacement of the losses experienced. The diversions are made from October 15–April 15. CRSP has purchased the remaining output, except for power sales to the two small project-related loads at the dam site which generally total less than 100 MWh a year.

ADDRESS: On or before October 26, 1984, written comments on the revisions to the proposed criteria and marketing plan may be sent to Mark N. Silverman, Acting Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524–5493.

SUPPLEMENTARY INFORMATION:

Contents of Supplementary Information Section

A. Summary of Revisions
B. Major Issues
C. Special Allocation Issues
D. Other Issues
E. Regulatory Procedure Requirements

A. Summary of Revisions

The major revisions to the proposed General Power Marketing Criteria and Allocation Criteria are listed below:

1. Allocation priorities and eligibility requirements have been clarified and modified to recognize priority of nonpreference entities acting as agents for public entities over other nonpreference entities. Special eligibility requirements for wholesale utilities have been eliminated in favor of contract provisions for all customers. Failure to comply may result in the loss of all or a part of the resources committed. In addition, certain entities taking significant and tangible steps to acquire the means to distribute power within designated periods of time are now recognized as qualified applicants for Federal power. Allocation criteria appear in Appendix B, and include the following additional changes:

(a) Allocations may be eliminated or reduced unless existing customers demonstrate compliance with the spirit of the resale of electric energy article by either directly or indirectly passing on the benefits of purchasing federally-generated power.

(b) If reallocations are required, they will be made at the discretion of the Administrator.

2. The areas in Arizona served by the Continental Divide Electric Cooperative, Navopache Electric Cooperative, and the Littlefield Electric Cooperative that were previously in the Southern Division have been included in the Northern Division for administrative convenience, and the restricted market area for new customers has been defined.

3. The option to purchase 400 GWh was selected. All purchases of firming power and energy would be on a pass-through-cost basis.

4. CRSP marketable resources were reduced slightly for additional priority uses, and amounts have been determined by the Bureau of Reclamation using a new hydrology model. The new model resulted in an increase in the projected annual energy of about 525 GWh. Additional resources may be included prior to finalization of the plan, including abaout 130 MW which may be constructed with non-Federal funds. The derivation of the SLCA Integrated Project's marketable resources is explained in Appendix A.

5. The option to withdraw all CRSP in 1999 from the Southern Division (S.D.) was not selected, but the proposed S.D. commitments from 1989–1999 have been adjusted. Proposed commitments in the S.D. are based on about 17 percent (summer) and about 10 percent (winter) of 1200 MW to reflect the intent of initial CRSP allocations, to reflect changes in Northern Division seasonal load diversity for new customers, and to recognize a potential change in the availability of Federal resources in the S.D. Required energy adjustments in the S.D. would be made in accordance with one of the alternatives described and demonstrated in an Appendix D. This temporary appendix will be eliminated when an alternative is selected and included in Appendix C.

6. The basis of monthly obligations was changed from the resource pattern to load patterns. Load patterns are the bases of existing obligations.

7. The minimum schedule requirement was changed from 65 percent of the average capacity to 35 percent of the firm contract rate of delivery (CROD), subject to adjustment by Western. Thirty five percent of the firm CROD is an existing minimum.

8. A 230–kV point of delivery was added at Four Corners, New Mexico, and a 345–kV point of delivery that is expected to be available at Shiprock, New Mexico was added. The 230–kV points of delivery at Lost Canyon and Four Corners may be uprated to 345–kV prior to 1989, and this potential change has been identified.

9. Statements were added to indicate that diversity among power allocations will be retained by Western and that long-term power commitments will be subject to minor reductions if diversity and losses are not equal, as assumed.

10. A statement was added indicating that a reasonable opportunity to discuss contract terms would be provided prior to Western's contract offer and that allottees would have at least 6 months to consider a contract offer. Allottees would have more than 6 months to consider the contract offer if the offer is made before March 30, 1987. This gives Western and the customer 2 more years than the August 1983 proposal to establish satisfactory contract language.

11. The criteria now state that contract rights would automatically expire if means to receive and distribute power are not acquired by September 30, 1988 unless Western agrees otherwise in writing.

For the potential applicants' convenience, hypothetical allocations are being published with this notice that assume that all qualified applicants formally submit an application, that all existing customers demonstrate compliance with the spirit of the resale of electric energy article, that all allottees desire power with energy at load factors equal to the seasonal factor of the resource pools involved, and that no requests to exchange resources from season to season were received. These allocation tables (Appendix C of criteria) are examples only and should not be interpreted as Western's proposed or final allocations.

B. Major Issues

1. Eligibility Requirements—Application of the Preference Laws

In the **Federal Register** notice of August 23, 1983, Western proposed that resources would be allocated in accordance with preference provisions of Reclamation law in the following order of priority: (1) Preference entities in the market area; (2) preference entities outside the market area; and (3) nonpreference entities in the market area. In addition, to be eligible for an allocation the preference entity must be an electric utility or otherwise eligible for CRSP power pursuant to law, unless it is a Federal or State ultimate consumer load of a defined type.

(a) *Comments:*

Western should change its proposed criteria to treat the Utah Power & Light Company (UP&L) on the same basis as other applicants for power.

Preference laws are an anachronism and are unconstitutional as applied by Western.

Preference status should be granted to the 143 cities, counties and towns who have applied for power through UP&L.

Preference laws have continuing validity and are constitutional.

Preference status should be limited to nonprofit entities that assume utility responsibility.

Criteria should be adopted for deciding among conflicting applications made by preference entities.

(b) *Discussion*:

The above comments have been grouped for discussion into the following numbered categories:

(1) Preference issues raised by UP&L; and

(2) Priorities among qualified preference entities.

(1) *Preference issues raised by UP&L.* One of the central issues that has arisen during the development of marketing criteria for the SLCA Integrated Projects, including the CRSP resource, is the preference clause, and its relationship to UP&L's request for power. UP&L indicates that it wants to be allocated a portion of the marketable Federal power directly. In addition, UP&L has stated its willingness to act as an agent for 143 cities, counties and towns located in Utah and Wyoming, if Western chooses to allocate power directly to those local governments.

Western will first consider the application of UP&L on its own behalf. UP&L is an investor-owned utility primarily subject to the jurisdiction of the Utah Public Service Commission. The CRSP Act of April 11, 1956, does not explicitly contain a provision addressing preference. However, section/4 of the CRSP legislation explicitly states that the Secretary, in the operation of the CRSP storage units and participating projects, shall be governed by the Federal reclamation laws. If any doubt exists that the preference provisions of reclamation law apply, that reservation is extinguished by reference to the storage project's legislative history. The House Committee on Interior and Insular Affairs made its intent clear in the following report language on H.R 4449, one of the bills which was introduced to authorize the CRSP:

> * * * the Committee considered writing into this legislation a power preference provision similar to those in existing reclamation law. Such a provision was not specifically written in because the provisions in general reclamation law, including the Reclamation Project Act of 1939 and the Flood Control Act of 1944, would be applicable to this project * * * The committee wishes to make it clearly understood that, although a power preference provision is not specifically written into this legislation, the committee supports the application of existing power preference provisions to this project. House Report No. 1774, 83d Cong., 2d Sess. 22 (1954). Accord, Arizona Power Authority v. Morton, 549 F.2d 1231, 1237 (9th Cir.), cert. denied 434 U.S. 835 (1977).

The general reclamation law referred to by the Committee gives preference to municipalities, public corporations, public agencies, cooperatives, nonprofit organizations and public bodies. UP&L is none of these. In fact, arguments supporting the application for power by UP&L are contrary to the expressed attitude of UP&L towards the preference clause at the time the CRSP legislation was being considered. The following excerpt is from the testimony of David D. Moffat, Jr., Vice President of the Utah Power & Light Co., before a Senate subcommittee in 1955. Mr. Moffat was explaining several principles for cooperation of private enterprise and the Federal Government, in connection with the marketing of CRSP power, when the following colloquy took place:

> Mr. MOFFAT * * * The private utilities are willing to enter into contracts whereby they will deliver project power to preference customers making such reasonable transmission charges therefor as may be approved by the local regulatory authorities.
>
> Senator O'MAHONEY. When you speak of preference customers; what do you mean?
>
> Mr. MOFFAT. I mean the preference customers as presently interpreted under reclamation law.
>
> Senator ANDERSON. In the Flood Contract Act it provides for utilities and various organizations of that nature owned publicly of a preference.
>
> Senator O'MAHONEY. I am trying to determine whether or not the witness recognizes the law.
>
> Mr. MOFFAT. We certainly do. That is part of the Federal law as we understand it.
>
> Senator O'MAHONEY. You have no contention of any interpretation different from that which has been given heretofore? That there is a real preference, the States and municipalities and the like?
>
> Mr. MOFFAT. That is part of the law at the present time.
>
> Senator O'MAHONEY. You have no desire to change it?
>
> Mr. MOFFAT. Personally I would like to change it sometime, but it is part of the law and until then—
>
> Senator O'MAHONEY. So far as this project is concerned, you are not here advocating any change in that preference?
>
> Mr. MOFFAT. No sir; not in connection with this matter.
>
> Colorado River Storage Project: Hearings on S. 500 Before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, 84th Cong., 1st Sess. 315 (1955).

A prominent theme in UP&L's submission is the impact of the passage of the Department of Energy Organization Act of 1977 on the preference provisions of pre-existing Reclamation law. In particular, UP&L quotes several portions of 42 U.S.C. 7112, which contains eighteen different congressional declarations of departmental purpose, as being of significance in the preference clause analysis.

Western agrees that Congress declared, as a general purpose of the Department of Energy (DOE), that "the productive capacity of private enterprise shall be utilized" in the development of DOE policies. However, both section 302 and section 641 of the DOE Organization Act specifically act to transfer the power marketing functions of the Bureau of Reclamation, including the legislative authorities upon which those functions were based, to the Western Area Power Administration. Included within those transferred authorities are the preference provisions of reclamation law. Western believes that 42 U.S.C. 7152 and 7251 are more specific in their focus than the congressional statements of departmental purpose cited by UP&L. The legislative history of the DOE Organization Act confirms this interpretation. See, e.g., Department of Energy Organization Act: Hearings on S.

826 and S. 591 Before the Senate Committee on Governmental Affairs, 95th Cong., 1st Sess. 179, 520 (1977).

Utah Power & Light also comments that virtually all of the preference clause precedent cited by the public power community existed prior to the creation of the Department of Energy. Western agrees that much preference clause precedent does antedate 1977. Older precedent often exists when laws have been in effect for decades, especially when that precedent is longstanding and consistent. However, this does not mean that preference clause precedent lost its value upon passage of the DOE Act.

To the contrary, courts have recognized the continuing applicability of the standards set forth in reclamation law, even after the passage of the DOE Act. Illustrative is the following excerpt relating specifically to CRSP power from the case of Colorado River Energy Distributors Association v. Lewis, 516 F. Supp. 926, 929 (D.D.C. 1981):

> In 1977 the Bureau of Reclamation's power marketing functions were transferred to the Secretary of Energy, acting through a new power marketing administration under section 302(a) (1) and (3) of the DOE Act. 42 U.S.C. section 7152(a) (1) and (3). The Act established WAPA as the new power marketing administration. The DOE Act did not change the standards set by the Reclamation Project Act of 1939 relating to the marketing of CRSP power under section 9(c).

Among the unchanged standards under section 9(c) of the Reclamation Project Act of 1939 is the preference clause. Thus, it is inaccurate to argue that all judicial and administrative authority on the preference clause question is dated and no longer of value in the post-oil embargo era. Several relatively recent additions to the body of authority recognizing the ongoing validity of the preference clause exist. E.g., Central Lincoln Peoples' Utility District v. Johnson, 686 F.2d 708, 711 (9th Cir. 1982), rev'd on other grounds sub nom. Aluminum Co. of America v. Central Lincoln Peoples' Utility District, 52 U.S.L.W. 4716 (June 5, 1984); City of Anaheim v. Duncan, 658 F.2d 1326, 1328–29 (9th Cir. 1981); Greenwood Utilities Commission v. Schlesinger, 515 F. Supp. 653, 656 n.5 (M.D. Ga. 1981).

The request by UP&L on behalf of 143 cities, counties, and towns within its service area, referred to by UP&L as "the applying municipalities," presents a different question. UP&L is suggesting that these applying municipalities within the States of Utah and Wyoming should all be treated as preference customers, regardless of whether a city is served by UP&L or by a municipal utility. UP&L argues that no Federal law directly applicable to the CRSP requires that a municipality be a utility before preference status exists. The Utah investor-owned utility believes that some "municipal purposes" preference language, used in an act passed by Congress in 1906, could be employed as a basis for selling Federal electricity to a city, regardless of the character of the utility that physically serves that town's citizens.

In making the argument that Western, under the applicable preference clauses, can legally sell electricity to cities that have no utility responsibility, UP&L has expressed its belief that past policies and legal opinions on the question are ill-founded. UP&L is presenting a proposal to Western that it believes will meet the letter of the relevant law and comport with the intent of Congress. This proposal essentially can be summarized in five points:

1. An allocation of CRSP power is requested by the applying municipalities;
2. The applying municipalities will contract with UP&L to deliver CRSP power to each of the city's domestic and rural consumers;
3. The contract will specifically provide that UP&L act as the cities' agent to transmit their respective allocations of CRSP power to each domestic and rural consumer within each city's boundaries, to perform administrative functions in connection with the delivery of CRSP power, and to provide other utility services reflecting the low cost of CRSP power;
4. The applying municipalities will assume the legal responsibility for the distribution of their allocation of CRSP power; and
5. UP&L will perform its obligations at cost.

Reduced to its essentials, UP&L attempts to comply with Western's proposal to sell electricity first to those cities which have "utility responsibility." Under UP&L's proposal, the municipalities would be responsible for the CRSP power load to be served, but would contract with UP&L to perform the utility services necessary to deliver CRSP power to their domestic and rural consumers, thereby achieving the most widespread benefit at the lowest possible rates.

Although the UP&L proposal comes closer to satisfying preference law and Western's marketing criteria than a direct allocation to an investor-owned utility, Western is not presently willing to revise the proposed criteria so as to put those cities currently served by UP&L on the same eligibility level as preference utilities. Several reasons underlie this decision.

The primary reason the UP&L proposal appears to be deficient is that it is inconsistent with congressional intent. The legislative history of the Reclamation Project Act of 1939 bears out the fact that Congress intended for the preference clause to extend to municipalities as distributors of power. Illustrative is the statement made by J. Kennard Cheadle, Assistant to the Commissioner and Chief Counsel for the Bureau of Reclamation, during hearings on the 1939 legislation:

> * * * if there should be both privately and publicly owned distribution systems in the market, generally preference must be given to the publicly owned one to the extent it is in the market. Reclamation Project Act of 1939: Hearings on H.R. 6773 and H.R. 6984 Before the House Committee on Irrigation and Reclamation, 76th Cong., 1st Sess. 132 (1939).

A further example of the intent of Congress can be found in the following exchange between Congressman Case of South Dakota and the Chairman of the House Irrigation and Reclamation Committee, Compton White:

> Mr. Case * * * I can see no objection if private industry is willing to pay the same amount as a city why the city should be encouraged to make a new investment and build duplicate lines, if the private company is willing to pay the same as the city.
>
> The Chairman. We are dealing here with a reclamation project, and power that may be developed in connection with a reclamation project itself does not go into the field of the private industry. That exists simply in connection with the reclamation project. And I think the members of the committee will agree that the municipalities and the organizations enumerated here should be given protection.
>
> Reclamation Project Act of 1939: Hearings on H.R. 6773 and H.R. 6984 Before the House Committee on Irrigation and Reclamation, 76th Cong., 1st Sess. 122 (1939).

More evidence of the congressional understanding of the effect of the 1939 legislation can be found in Congressman Case's statement on the floor of the House of Representatives:

> Mr. Case. There is all the difference in the world between a clause permitting "preference for the sale of power to municipal purposes" and a mandtory clause requiring "preference to municipalities and other public corporations and agencies and cooperatives" in the sale of that power. The net effect of the amendment is to change the bill from a water-conservation measure to a power-promotion measure.
>
> The point of view taken by many of the speakers has been that the amendment merely added R. E. A. cooperatives to a preferred list of public-power distributors already established by law; that is not the

case. Existing law only gives preference to sale for municipal purposes, not to municipalities as distributors of power. 84 Cong. Rec. 10223 (1939).

The legislative history of the Reclamation Project Act of 1939 shows the intention of Congress that Federal hydropower be sold to municipalities as utilities. The marketing of power by Western and Western's predecessors has consistently taken place in accordance with this congressional policy. Courts of law frequently show great deference to the interpretation of a law by the agency charged with its administration. Udall v. Tallman, 380 U.S. 1, 16 (1965). Such deference is due on the preference clause issue.

There can be no doubt that the policies attacked by UP&L are longstanding. Congress has recently outlined the history of preference policy and reaffirmed the validity not only of the preference clause, but also of sales to preference utilities and the principle of yardstick competition. In November of 1983, the Senate Committee on Environment and Public Works issued a report which endorses the continued vitality of preference in the context of non-Federal cost sharing in the construction of Federal water and power projects:

> This section reaffirms long-established policies governing the marketing of hydroelectric power developed at Federal projects. Preference in the marketing of such power is given to public power systems and rural electric cooperatives. The power shall be marketed at uniform, area-wide rates with delivery to purchasers at load centers. Rates are established on a cost basis.
>
> Preference to consumer-owned electric utilities in the use of output of Federal projects is a concept which dates back three-quarters of a century, and has been reiterated in more than 30 statutes. Excess electric power generated by Federal projects is sold to State and local governmental entities and to private, non-profit organizations, when those groups are able and willing to purchase the electricity. To the extent that these preferred customers are not willing to purchase the power, it may be sold to investor-owned utilities.
>
> By assuring the availability of power to municipally-owned utilities and non-profit cooperatives, the preference clause bolsters competition.
>
> Senate Report No. 98-340, 98th Cong., 1st Sess. 53 (1983).

Congress has most recently considered the questions of alteration of existing preference policy in debate over the Hoover Powerplant Act of 1984. During floor debate in the House of Representatives, Representative Boxer of California introduced an amendment to the Hoover legislation whereby power generated by the Boulder Canyon Project would be auctioned off at market rates. 130 Cong. Rec. H3319 (May 3, 1984). The amendment was attacked on the ground that a subversion of preference would occur. Illustrative was the statement of Congressman Lehman of California:

> * * * this amendment would establish a precedent that could drastically affect the way the Federal Government markets and sells the power it produces not only in the West, but throughout the Nation. It could alter a structure which already insures that low-cost wholesale power is provided to those public utilities which express the need.
>
> 130 Cong. Rec. H3314 (May 3, 1984).

Congressman Swift of Washington joined in the criticism, pointing out how the Boxer amendment would work to the detriment of the existing policy of selling Federal power to utilities owned by consumers:

> What this Amendment will do, without benefit of any hearings, is change a 60-year-old policy of this country that said that public utilities, in effect cooperatives, utilities owned by consumers shall have preference to publicly generated power.
>
> Now, maybe that is policy that in some people's judgment is a policy whose time is gone. Some people might argue that it is no longer relevant.
>
> If that is the case, then introduce legislation and let us hold hearings and understand it. But we would hear today, I think, an amendment that is thought out to be something that is going to bring equity, but which simply does not understand what it is tinkering with. We would carelessly eliminate a policy without any serious consideration to what we are doing and the implications of it to publicly owned facilities that serve customers who are their owners. That simply cannot be done on the floor with an amendment such as this that is not thoroughly examined.
>
> If we want to change fundamental policy, there is a process to do that in this country. But let us not change radically a fundamental policy of this century in this Congress, on the floor, with an amendment that has never held any hearings.
>
> 130 Cong. Rec. H3321 (May 3, 1984).

Arguments such as those advanced by Congressmen Lehman and Swift were echoed by Representative Udall of Arizona, who warned that the Boxer amendment would affect not just the lower basin of the Colorado River. The principle would, in the view of Mr. Udall, be extended to upstate New York, the Pacific Northwest, the Missouri River Basin, and other areas of the country. 130 Cong. Rec. H3327 (May 3, 1984). The House was persuaded by the opponents to the Boxer amendment, as it was defeated in a recorded roll call vote. 130 Cong. Rec. H3333 (May 3, 1984).

Two other proposed amendments to the Hoover Powerplant Act of 1984 have relevance to the issue of contemporary congressional policy on the preference questions presented by the UP&L application for power. Congressman Bates of California offered an amendment giving preference in the sale of power from the Hoover uprates to entities serving large residential loads "without regard to whether these entities own their own transmission and distribution facilities." 130 Cong. Rec. H3335 (May 3, 1984). The Bates amendments also required that the purchasing entity certify, as a condition for receiving the uprated power, that such power be resold at cost. Mr. Bates stated that the purpose of his amendment was to avoid the inequity facing the City of San Diego "because of a Catch-22 in the preference clause that says if you do not have the ability to directly distribute the energy, you cannot even wait at the end of the line and have perference."

130 Cong. Rec. H3336 (May 3, 1984). The amendment was rejected. Id. Representative Hunter of California then introduced an amendment which would allow 10 megawatts from the Hoover uprates to be offered to entities in California, with a preference to entities in areas of the State where retail rates for power were high. As with the bill introduced by Representative Bates, Mr. Hunter's amendment allowed for the allocation of power "without regard to whether these entities own their own transmission and distribution facilities." 130 Cong. Rec. H3338 (May 3, 1984). The power would have been put under contract only if the purchasing entity certified that the power would be resold at cost plus distribution costs. Rising in opposition to the Hunter amendment, Representative Udall stated that "this amendment has all the vices of the Bates amendment," and that the Hunter proposal "would destroy the preference clause." 130 Cong. Rec. H3338 (May 3, 1984). The Hunter amendment, as with the Bates proposal, was defeated on the House floor.

As the foregoing discussion indicates, congressional policy regarding the sale of Federal power to municipal utilities is longstanding. The policy has been re-enforced by recent actions of Congress. The congressional will has been consistently carried out by the Department of the Interior and the Department of Energy. Western believes that any change in preference policy, such as that suggested by UP&L, should be initiated in Congress rather than by an administrative agency. As Congressman Swift observed in the debate over the Hoover Powerplant Act, there is a process for those who disagree with the preference clause. That process involves the introduction of new legislation, not an administrative change in contravention of congressional desires.

In addition to the precedent found in the legislative history of reclamation law, Western finds support for its proposed marketing criteria in judicial and administrative precedent. In previous sections of this discussion, the continuing validity of preference clause precedent, in the face of events such as the creation of the Department of Energy and the rising price of oil, has been demonstrated. Western believes that a municipality under the relevant precedent, must be "ready, willing and able" to receive a direct allocation of Federal power. Central Lincoln Peoples' Utility District v. Johnson, 686 F.2d at 714–15; Santa Clara v. Andrus, 572 F.2d 660, 671 (9th Cir.), cert. denied 439 U.S. 859 (1978); "Request of City of Needles for Reinstatement of Sales of Federal Power for Benefit of its Citizens," Department of Energy General Counsel Opinion at 4 (November, 1978). Within the concept of "ready, willing and able" is the requirement of municipal utility responsibility. Western believes that precedent under reclamation law on this issue is consistent with the proposed marketing criteria.

Western cannot agree with UP&L that preference decisions rendered by the Ninth Circuit Court of Appeals should not be followed in the marketing of power from the Colorado River Storage Project. In the case of Arizona Power Authority v. Morton, 549 F.2d at 1237, the Ninth Circuit has explicitly held that CRSP power is to be sold first to preference utilities, and not to investor-owned utilities:

> Power generated by CRSP facilities is sold by the Bureau of Reclamation to power utilities who in turn wheel and sell the power to the ultimate consumers.
>
> * * * * *
>
> This section of the Reclamation Project Act (section 485h(c)) imposes a number of restrictions on the marketing of power. It defines a class of "preference" customers who shall have the first opportunity to purchase hydroelectric power generated by Federal reclamation projects.
>
> This class of preference customers comprises: municipalities and other public corporations or agencies and * * * cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936.
>
> *Id.* The priority accorded to public utilities (preference customers) is by now an important aspect of Federal reclamation projects.

Given the express language employed by the court with regard to CRSP power, coupled with the fact that a portion of the CRSP resources is marketed within the Ninth Circuit, Western feels compelled to adhere to the historic policy of selling Federal power first to preference utilities.

A prominent point advocated by UP&L deals with the concept of widespread use. UP&L maintains that Western's current marketing policy has the effect of creating discrete enclaves of favored utilities, who receive low-cost Federal hydropower to the exclusion of many other citites whose citizens helped pay for the CRSP with tax dollars. On the basis of "widespread use" language found in Federal statutes, as well as fundamental motions of equity, UP&L urges that the benefits of Federal power should be made available to all taxpayers alike.

Western is not presently persuaded by this analysis. Many Federal dollars are spent on purposes that give direct benefits only to a particular group. The use of Federal tax dollars to build and operate public works in the eastern portion of the United States, for example, offers no direct benefit to those who live in the western part of the country. Eligibility requirements of numerous Federal benefits preclude uniform enjoyment of those benefits by all taxpayers. The congressional policy of selling Federal hydropower first to municipal utilities similarly offers direct benefits only to certain eligible entities. Relevant Federal laws give preference to public bodies and cooperatives, not to all taxpayers. While the notion of widespread use is certainly important in the marketing of Federal power, it does not vitiate the preference clause.

Nor can UP&L argue that the 143 cities, towns and counties desiring an allocation of the CRSP resource have no opportunity to obtain the benefits of low-cost Federal power. The opportunity to receive an allocation exists for all taxpayers in the marketing area. To actually obtain those benefits, taxpayers must act together to create a public utility.

Utah Power & Light criticizes Western's proposed marketing criteria on the ground that the "widespread use" policy in reclamation law has been misapplied in an arbitrary and capricious manner. Precedent involving the Power Authority of the State of New York and the Southeastern Power Administration is set forth as being supportive of UP&L's criticism of Western's failure to assure widespread usage of the Federal resource.

Two points must be made in response to this allegation of failure to achieve widespread use. First, the Ninth Circuit Court of Appeals has held that the "widespread use" standards is so vague that a court of law cannot review the Secretary's exercise of administrative discretion under that standard. Santa Clara v. Andrus, 572 F.2d at 667–68. Second, Western does achieve "widespread use" by marketing CRSP power in six states to about 100 utilities serving over one million ultimate consumers. Western's proposal to market 75 MW of SLCA Integrated Projects power mainly to new customers further demonstrates a commitment to the policy of widespread use.

Western believes that there is a rational basis for selling power to municipal utilities rather than to make low-cost power available to residential and rural consumers served by an investor-owned utility. This rational basis which has been consistently set forth by Congress, includes the promotion of competition of utilities through the establishment of a "yardstick" through sales of Federal power to preference utilities.

In its submittal to Western, UP&L notes that its opponents make much of the argument that the preference law is intended to serve the purpose of providing an environment for competition in the utility industry. The preference power community claims that the sale of Federal power to preference customers provides a "yardstick" against which the performance of an investor-owned utility can be gauged.

Rather than categorically stating that the "yardstick" concept is irrelevant under reclamation law, UP&L submits that its proposal for the marketing of CRSP power will promote competition to a greater degree than will the renewal of existing contracts. UP&L's alternative would include, as part of its contractual billing obligations, specific identification of that portion of each customer's bill attributable to CRSP power, and that portion of the bill attributable to supplemental power sources. According to UP&L, this bill would constitute an immediate basis for comparison which would stimulate more competiton than an allocation of power only to municipal utilities.

Western is not persuaded. This proposal would assume that the internal competition within UP&L generated by the proposed billing methodology would be at least as advantageous as the competition that exists under current "yardstick" principles. The competition for new industry that arises between an investor-owned utility and a public utility would be diluted under UP&L's plan. Competition for existing customers would also be lessened. Cf. North Carolina v. VEPCO, 311 S.E.2d 586 (N.C.

1984). Also, the advantages of public power that might cause a municipality to terminate its status as a UP&L customer in favor of preference utility status would be diminished. This would dilute the competition for municipal loads between UP&L and preference utilities.

The legislative history underlying various Federal preference clauses also refutes UP&L's arguments on the relative merits of its yardstick proposal. In addition to the citations of legislative history provided by the American Public Power Association and the National Rural Electric Cooperative Association, Western believes that the following language, taken from a 1956 report of the Committee on Government Operations, further supports the Federal power policy of fostering yardstick competition through sales of preference utilities:

> This Federal power policy, established by Congress in legislation passed in almost every instance after protracted committee hearings and sharp debate on the floor of both Houses, was based throughout on two fundamental principles: (a) maximum development of the Nation's waterpower resources, consistent with use of the streams for other purposes; and (b) preference to public and cooperative electric systems, operated to serve their citizens or members rather than for profit, to prevent monopolization of the power produced through public investment in development of the people's water resources.
>
> House Report No. 2279, 84th Cong., 2d Sess. 13 (1956).

Also persuasive is the following yardstick competition endorsement by the Senate Committee on Environment and Public Works:

> By assuring the availability of power to municipally-owned utilities and non-profit cooperatives, the preference clause bolsters competition.
>
> Senate Report No. 98–340, 98th Cong., 1st Sess. 53 (1983).

Most recently, the principle of yardstick competition entered into the debate over the Boxer Amendment to the Hoover Powerplant Act of 1984. That amendment, described in detail in another section of this discussion, would have required that power generated from Hoover Dam be auctioned off to the highest bidder. 130 Cong. Rec. H3319 (May 3, 1984). Representative Udall opposed the amendment, arguing that the "whole idea of these western projects . . . was to have a yardstick" and that the amendment "would destroy the whole idea of public power as a yardstick and would destroy the preference clause that has served us so well." 130 Cong. Rec. H3327, H3333 (May 3, 1984).

While the Hoover legislation will not, if it becomes law, directly apply to the sale of Colorado River Storage Project power, the defeat of the Boxer Amendment has significance due to the re-affirmation of preference and yardstick competition as a national policy. Western believes that the position of UP&L on this issue is at odds with this policy. Given the consistently evident congressional intent to foster competition through Federal power sales to preference utilities, and the relative lack of competitive advantages in UP&L's proposal, Western believes that a continuation of the past Federal practice of allocating power first to municipal utilities is warranted in this reproposed criteria.

Utah Power and Light also advances the argument that preference laws only establish a priority as to price, and not as to right. If UP&L were to bid a higher price for CRSP power, it is argued, the CRSP would be best served by a sale which would result in additional assistance in the repayment of water projects. In effect, UP&L is suggesting that preference should only be significant if the bids for Federal hydropower are equal.

From the standpoint of the fiscal vitality of water project development in the upper basin of the Colorado River, UP&L's suggestion has some appeal. The Reclamation Project Act of 1939 contains a floor, but no explicit upper limit, on what power rates should be charged for hydropower. 43 U.S.C., section 485h(c). However, the consistent policy of the United States has been to charge the lowest possible rates consistent with sound business principles for CRSP power. A May 15, 1965, letter from the Secretary of the Interior to Wayne Aspinall, the Chairman of the House Committee on Interior and Insular Affairs, explains the foundation for that policy:

> The Colorado River Storage Project is a Reclamation project, and Section 4 of the Colorado River Storage Project makes it subject to all of the Federal reclamation laws. A careful reading of those laws long ago compelled us to the conclusion that the Congress intended that power generated at Reclamation projects be sold at the lowest possible rate consistent with sound business principles. Although this requirement is not found in the Reclamation laws in those particular words, we believe it to be a sound construction of congressional intent—a construction that has, incidentally, been confirmed by long-standing administrative practice.
>
> The basic provision in the Reclamation laws pertaining to power rates is section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C., section 485h(c)). It provides that power from Reclamation projects shall be sold by the Secretary "at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper." In effect, Section 9(c) spells out the "sound business principles" that are applicable. Although those principles are stated in terms of the minimum charge for power, they are also clearly intended to set the maximum charge. The Government of the United States markets power to serve the public interest, not to make a profit. We believe that the public interest is best served by marketing power at the lowest rate consistent with the orderly repayment of all proper costs, and we believe that is what the Congress intended.
>
> Our construction of Section 9(c) of the Reclamation Project Act of 1939 is corroborated by specific provisions in parallel power marketing legislation. Thus, Section 5 of the Flood Control Act of 1944 (16 U.S.C., section 825s) states that the Secretary of the Interior, when disposing of power generated at the Corps of Engineers' projects, shall do so "in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles."
>
> Similarly, Section 6 of the Bonneville Project Act (16 U.S.C., section 832d) states that the rates "shall be fixed and established with a view of encouraging the widest possible diversified use of electrical energy." Since the relationship of demand to price is an inverse one, the lowest price will naturally encourage the most widespread use. In effect, therefore, the Bonneville Project Act similarly requires that the rates for Bonneville power be fixed as low as possible, consistent with statutory repayment requirements.
>
> Since all of these acts deal with the same subject matter, namely the Secretary's statutory responsibilities in the marketing of federally-generated power, they are in pari materia, and each may be examined to shed light on the congressional intent with respect to the others.

The 1965 policy expressed by Secretary Udall has been recently endorsed by both the Department of Energy and the Congress. On December 14, 1983, the Secretary of Energy put into effect a delegation order for the review of power marketing administration rates. 48 FR 55664 (December 14, 1983). Paragraph one of that delegation order requires the administrator to certify that the rate is the lowest possible consistent with sound business principles. The Federal Energy Regulatory Commission, under paragraph three of that same delegation order, is charged with the task of reviewing power rates to assure that they are the lowest possible. Western is also influenced by recent congressional rejections of proposals to auction off Federal power in the context of the Hoover Powerplant Act of 1984. See also Senate Report No. 98–340, 98th Cong., 1st Sess. 53 (1983). Even more to the point, Western has no present authority to use appropriated dollars to even study the possibility of selling Federal power at a market price. Energy and Water Development Appropriation Act of 1984, Pub. L. No. 98–50, section 506, 97 Stat. 247, 261–62 (1983). Under these circumstances, Western cannot adopt UP&L's suggestion that CRSP power should be sold to the highest bidder.

Utah Power and Light suggests that Western need not rely on the Reclamation Project Act of 1939 for authority to sell CRSP power to Utah and Wyoming municipalities not served by preference utilities. Specifically, UP&L relies upon some "municipal purposes" language in the Town Sites and Power Development Act of 1906 as being supportive of such an allocation. 43 U.S.C. section 522. Western believes that more recent preference laws, being more comprehensive than the 1906 legislation, offer a better insight into current congressional intent and policy. Furthermore, the proposed marketing criteria are consistent with the 1906 law, as the sale of power for "municipal purposes" is accomplished through sales to municipal utilities.

Utah Power and Light also points to a contractual arrangement it recently executed with the Bonneville Power Administration (BPA) as embodying the same considerations of fairness and equity that should apply to the sale of CRSP power. According to UP&L, the contract requires BPA to purchase, at UP&L's average cost of service, a volume of electric power equal to that consumed by UP&L's residential consumers in the State of Idaho. BPA apparently is then required to resell an equivalent amount of power, at a rate equal to BPA's average system cost, to UP&L. The savings would then be passed on to residential consumers in Idaho.

Any considerations of fairness and equity inherent in the contractual arrangement described above are a result of the passage of the Pacific Northwest Electric Power Planning and Conservation Act of 1980. 16 U.S.C. 839 et. seq. That piece of legislation empowers BPA to engage in many activities which Western currently lacks statutory authority to emulate, inluding the execution of such a purchase and sale contract. More relevant to the preference issue at hand is the fact that section 5(a) of the 1980 Northwest legislation explicitly provides that all BPA sales shall be subject to the preference and priority provisions of the Bonneville Project Act of 1937, including sections 4 and 5 thereof. 16 U.S.C. 839(c). Section 4(c) of the 1937 Bonneville Project Act specifically provides that an allocation of power to a public body shall not be denied without the allowance of a reasonable time period for the prospective purchaser to become a utility. 16 U.S.C. 823c(c). Western is not persuaded that the passage of the Northwest legislation diluted the validity of preference in the sale of CRSP power to bublic utilities.

Utah Power and Light and the cities, counties and towns it represents find further fault with Westen's proposed marketing criteria on constitutional grounds. More specifically, the criteria allegedly violate constitutional guarantees of due process, equal protection, the right to travel, and the rights of the States of Utah and Wyoming and their citizens under the Tenth Amendment. UP&L also argues that the preference clause is void for vagueness. Each of these allegations are discussed in turn below.

For a claim of deprivation of due process to prevail, the entity suffering the constitutional violation must first fall within the definition of a "person." Assuming that the aggrieved utility, political subdivision or citizen has standing to assert a violation of due process, the next question is whether a liberty or property interest protected by the Fifth Amendment is at stake. The applicable test for determining whether any property right is at issue has been established by the Supreme Court in Board of Regents v. Roth, 408 U.S. 564, 577 (1972):

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.
>
> * * * * *
>
> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source * * * that secure certain benefits and that support claims of entitlement to those benefits.
>
> See also Perry v. Sinderman, 408 U.S. 593, 601 (1972).

Under the Roth test, an investor-owned utility has no legitimate claim of entitlement to Federal hydropower, especially when preference utilities are in competition for that power. Nor are municipalities served by UP&L, or the citizens within those towns, in a position to stake a legitimate claim to CRSP power in the face of an overriding congressional intent to make such power available first to preference utilities. Even assuming that the cities represented by UP&L are within the class of preference entities eligible for CRSP power, they possess no "property" interest in CRSP power as against other preferred entities such as municipal utilities. No procedural due process safeguards are constitutionally required in the allocation decision among preference entities. Santa Clara v. Andrus, 572 F.2d at 676. Furthermore, even if UP&L or the cities it represents are entitled to due process protection, this simply means they must be afforded an opportunity to be heard at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545, 552 (1965). Western believes that they have been afforded ample opportunity in this regard.

Equal protection under the law is the second major constitutional objection raised by UP&L. In summary, UP&L maintains that the cities it serves, and the citizens within those cities, are being treated irrationally by Western. The lack of rationality, according to the investor-owned utility, flows from Western's decision to serve one class of power users, served by the distribution system of UP&L, differently from the class of power users served by municipal utilities. Western is not persuaded by this argument. Assuming for the purpose of discussion that UP&L or the cities on whose behalf UP&L acts have standing to assert a violation of equal protection, there is a rational basis for the classification set forth in the criteria. Among other reasons, preference in the sale of Federal power to municipal utilities serves the intent of Congress promotes local control, prevents investor-owned utilities from making a profit on a public resource, and serves as a yardstick to encourage competition within the utility industry. As a rational basis exists, no equal protection violation occurs. Matthews v. DeCastro, 429 U.S. 181, 185 (1976).

A violation of the constitutionally protected right to travel is also a defect of the proposed marketing criteria, according to UP&L. Western does not agree. Modern case law on the right to travel issue is fundamentally concerned with state residency requirements and their adverse impact on the fundamental needs and rights of the traveler. Memorial Hospital v. Maricopa County, 415 U.S. 250, 261–62 (1974). UP&L does not argue that a new arrival in Utah or Wyoming, in either a town served by a municipal utility or a town served by an investor-owned utility, is charged a higher rate for power than long-time residents. As such, there is no discrimination against an interstate migrant in favor of existing Utah or Wyoming residents. See Dunn v. Blumstein, 405 U.S. 330, 342 n.12 (1972). No fundamental right is at stake simply because one citizen pays more for electricity than another citizen. The question of whether the federally-protected right to travel is violated therefore does not appear to be relevant to Western's marketing criteria.

Still another constitutional violation alleged by UP&L revolves around the Tenth Amendment, which provides that powers not delegated to the United States by the Constitution are reserved to the States or to the people. This assertion is answered by the Supreme Court's decision in Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936). In that case, the disposition of Federal power, under the property clause in Article IV of the Constitution, was expressly held to be an activity to which the Tenth Amendment was inapplicable. Id. at 330. As the allocation and sale of Federal power is not a traditional State function, no Tenth Amendment violation will take place under Western's proposed marketing criteria. Finally, UP&L argues that the preference clause is constitutionally defective as being so vague that reasonable men cannot agree upon the statutes's meaning. Western cannot agree. Successful arguments based upon a "void for vagueness" theory almost universally deal with a fundamental constitutional right, such as freedom of speech, or a liberty interest. No such fundamental right is at stake here. More to the point, courts of law will refer to legislative history and other methods of statutory interpretation and construction prior to finding a statute unconstitutionally vague. Such a reference under the present circumstances yields a consistent pattern of legislative intent that clarifies the standards set forth in preference law. The relevant congressional policy shows a clear desire for Federal power to be marketed first to consumer-owned utility systems. In summary, Western is not, in this reproposal of the CRSP marketing criteria, adopting UP&L's position. However, Western sees relative merit in sales to municipalities, as described in UP&L's proposal, as opposed to direct sales to investor-owned utilities. Therefore, Western is proposing that non-utility municipalities, served by investor-owned utilities at cost, will be entitled to a higher priority than direct sales to investor-owned utilities. This change is not without significance. While it is highly unlikely the long-term firm power would be made available to those towns without utility responsibility, benefits could well be received through short-term sales.

(2) *Priorities among qualified preference entities.*

As to the administrative establishment of priority among qualified preference entities, Western is mindful of the need to balance the needs of existing purchasers of Federal power against the needs of potential new purchasers. Existing customers will, in most cases under the criteria as now proposed, experience a limited reduction in benefits received as the result of offering some benefits to potential new customers who meet the eligibility requirements.

The amounts of power available for potential new customers are probably not sufficient to encourage entities without distribution systems to acquire a system in order to qualify for a share of the available Federal power. This intentional limitation is appropriate because relatively small amounts of new federally developed resources are expected to be available, and it would be unduly disruptive economically to withdraw large amounts of low cost Federal power from existing customers without cause. In addition, since the commitment of Federal power is for a limited contract period only, and the basis for determining the price for Federal power is potentially subject to modification by the Congress, the prospect of acquiring a Federal power allocation today may not be a prudent basis for making a decision to create a consumer-owned utility. Amounts available to potential new customers are intended to provide some benefit to those preference entitites who, for some other reason, have already initiated actions to acquire utility systems, or who already have utility systems. On the other hand, it would be equally unjust to completely exclude qualified preference organizations from participating in the benefits of Federal power simply because the economic or political circumstances of past years precluded purchasing Federal power earlier. The appropriate distribution of power between existing customers and potential new customers cannot be determined in a precise manner. Western's proposed distribution between these two groups reflects our judgment of what is appropriate and fair under the circumstances.

(c) *Summary and Conclusion:*

The application of the preference laws raises issues that are complex. Comments on the preference issue were either in support of or in opposition to the policy of granting preference status to certain classes of organizations. The supporting comments generally rely on the law and urge the status quo be maintained. Comments opposing the granting of preference generally argue the inequity of denying a large segment of the populace in the market area an opportunity to benefit from Federal power on the basis of the preference clause. Western's proposed application of the preference clause is based on long-standing congressional intent and administrative policy, including the fostering of yardstick competition with investor-owned utilities by giving preference in the sale of federally-produced power to consumer-owned utiities. Western concludes that the preference clause still has validity as an important principle in the marketing of Federal power. The attainment of preference status by entities taking the necessary steps to do so will be recognized by Western. Western is convinced, after carefully reviewing the arguments on all sides, that this is the appropriate application of the preference laws. While the UP&L application on behalf of 143 cities, counties, and towns does not constitute a unique situation meriting equal consideration with consumer-owned utilities, the arguments in its favor do persuade Western that such an arrangement is superior to direct sales to investor-owned utilities and should have priority within the nonpreference category. Western proposes to modify the priorities as follows:

(1) Preferences entities within the SLCA Integrated Projects market area;

(2) Preference entities outside the market area; and

(3) Nonpreference entities, provided that those nonpreference entities acting as agents for public entities without distribution systems shall receive priority over nonpreference entities acting on their own behalf.

The law is silent as to any priorities that should be given among qualified preference entities. Generally speaking, when a resource first becomes available, all qualified applicants are treated under identical criteria. However, when a resource has been sold over a long period of time to a group of customers and those contracts expire, Western believes there is justification for treating the existing customers differently than potential new customers. In this sense, they have been given a priority, but this priority is of a different character than that given to preference utilities over invester-owned utiities. Existing preference customers have no vested right in Federal power. However, in balancing the interests of existing and potential new customers that are qualified under the law to preference consideration over investor-owned utilities, Western gives more weight to those currently receiving benefits to avoid inflicting undue economic hardship, while recognizing the need to provide other qualified preference purchasers some reasonable benefits from Federal power.

2. Other Eligibility Requirements

In addition to the eligibility requirements discussed above, Western required in its **Federal Register** notice of August 23, 1983, as amended, that all potential applicants submit applicant profile data on or before December 30, 1983, and proposed special requirements for potential new customers and wholesale utilities. Potential new customers must have had a 1982 load greater than 100 kilowatts, and except for Federal or State ultimate consumer-type loads, must have taken substantive steps to obtain utility status by January 1, 1984. Wholesale utilities were required to satisfy the Administrator (i) that the benefits of federally financied power are distributed at the lowest possible rates to consumers consistent with sound business principles, (ii) that consumers can identify their true power supply costs from all sources so that the costs of growth and the benefits of conservation are identifiable, and (iii) that retailing utilities can identify cost and other significant characteristics of each of its power supplies.

(a) *Comments:*

—Criteria are not clear about whether filing applicant profile data by December 30, 1983 is an eligibility requirement.

—The deadline for filing applicant profile data should be extended beyond December 30, 1983.

—The specific actions required by 1/1/84 to obtain utility status are unclear; the deadline for obtaining such status should be extended.

—Concept of widest possible use of Federal power should be utilized, with benefits distributed through lowest possible rates to consumers.

—Conservation and renewable energy criteria should be established for determining eligibility for an allocation.

—Criteria for eligibility of wholesale utilities are not clear, are unfair, unnecessary, and unduly burdensome; the methods that will be used to apply the criteria are uncertain; and these criteria could create legal and financial problems for some existing customers.

—Requirements for wholesale and retail utilities should be the same.

—Wholesale utilities should be required to show cost of CRSP resources directly to retailing utilities and ultimate consumers should receive information that permits them to understand the benefits of Federal power.

—Special requirements for wholesale utilities should be withdrawn.

—Objectives that the Administrator would use to evaluate wholesale utility applications have been accomplished by contract terms.

(b) *Discussion*:

The above comments have been grouped for discussion into the following numbered categories:

(1) Applicant profile data;

(2) Deadline for attaining utility status;

(3) Special eligibility requirements for wholesale utilities; and

(4) Other special eligibility requirements.

(1) *Applicant profile data.* Certain load, resource and organizational data, referred to as applicant profile data, were requested in a February 4, 1983 **Federal Register** notice. It was stated therein that "Those parties that may be interested in applying for an allocation of these resources must provide the applicant profile data requested herein." The original deadline of March 15, 1983, was extended by a March 14, 1983, notice in the **Federal Register** to April 15, 1983.

In the **Federal Register** notice published August 23, 1983, Western advised that "to be eligible to be considered for an allocation of capacity and energy from the SLCA Integrated Projects under the final marketing plan, those interested utilities not having already done so *must* furnish applicant profile data to the Salt Lake City Area Manager on or before November 15, 1983. On December 7, 1983, a notice in the **Federal Register** extended that deadline to December 30, 1983, and reiterated that "entities that do not submit applicant profile data to Western will not be eligible to apply for an allocation of power under the proposed criteria."

Potential applicants have had nearly 11 months in which to furnish the information requested, and Western has repeatedly emphasized that furnishing the data is a requirement. The revised criteria so states in Appendix B.

A further extension of the deadline for furnishing this information is unwarranted. Sufficient time and notice have been provided. The submitted applicant profile data have been used in determining what allocation alternatives would best serve the needs of entities interested in receiving Federal hydropower. Further, the criteria must be completed and allocations made with sufficient lead time to execute contracts prior to the termination of existing arrangements. An extension of the deadline for furnishing data would delay this process unduly.

An additional consideration is that potential applicants' loads (including existing customers) exceed the amount of available Federal power by about 8 times. A further consideration is that Western has received informal requests to extend this deadline from very few people, and the only formal request came from a municipality for whom UP&L has already submitted data. Therefore, no additional extension will be granted.

(2) *Deadline for attaining utility status.* The proposed general power marketing criteria published August 23, 1983, stated that on or before January 1, 1984, each potential applicant must be either a retail or wholesale utility, a Federal or State ultimate consumer-type load, or an existing CSRP contractor. during the September 7, 1983 information forum, a Western representative indicated that a potential applicant would be considered if it were taking *significant and tangible steps* by that date in order to acquire the means to distribute power by September 30, 1988. Examples of significant and tangible steps were stated to be actions such as:

(i) Evidence of negotiations with an investor-owned utility regarding distribution system acquisition;

(ii) Action before a Public Service or Public Utility Commission to acquire a system;

(iii) Initiation of condemnation proceedings; or

(iv) Evidence of a financial commitment to purchase a transmission system.

Public comment, specifically from West Bountiful City, opposed the imposition of the January 1, 1984 deadline date for demonstration of significant and tangible actions to acquire a means to distribute power. The City argued that the criteria did not allow sufficient time for a new potential applicant to meet the proposed eligibility requirements. Due to the uncertainty regarding eligibility requirements and the short time permitted to qualify with the eligibility requirements known at the time, the City requested that potential applicants be allowed an additional fifteen (15) months to meet eligibility requirements. By extending the January 1, 1984, deadline to March 30, 1985, West Bountiful believed sufficient time would be allowed to demonstrate significant actions and to acquire the ability to distribute power by September 30, 1988.

Western has received requests for an extension of the January 1, 1984, deadline by only three potential applicants who have already submitted

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applicant profile data, none of whom seem willing to proceed with the formation of a municipal utility unless assured that it could obtain low cost Federal power. As stated in the earlier discussion of Eligibility Requirements, Western only intended to provide an opportunity to potential new customers who already had a utility system or who were already in the process of acquiring one to achieve benefits other than solely becoming eligible for an allocation of Federal power. Federal power in this market area was made available on a widespread basis under 1962 marketing criteria, and both long-term and short-term allocations of power have been made periodically ever since. If, since 1962, a municipal has not taken sigificant and tangible steps to acquire a utility system, it is not unreasonable to assume that establishing a municipal utility has not been a priority for the citizens of that city. Since the contract period for which power will be committed is 10 years and since relatively small amounts of additional power and energy are expected to become available in the future, those municipals that establish municipal systems within that period might anticipate a future opportunity to obtain a small amount of Federal power under then current terms and conditions.

One obvious disadvantage to Western of modifying the eligibility requirements to include entities that are in the process of acquiring utility status is that after obtaining an allocation, they may not complete the process by September 30, 1988. Western would then have only 1 year to place that power under contract with somebody else. Since there are at least 143 cities, counties, and towns representing a load of about 3,100,000 kilowatts that could potentially take action to establish consumer-owned utilities if Western extended the deadline of January 1, 1984, for all potential applicants who have already filed applicant profile data, this course of action is not warranted. However, Western does not want to deny an opportunity to those municipals who have initiated an investigation into the feasibility of establishing a municipal system but have not advanced to the stage of having taken significant and tangible steps by January 1, 1984. Consequently, Western is revising the eligibility requirements to allow any potential applicant who has already (1) filed applicant profile data, and (2) specifically requested an extension of the January 1, 1984, deadline, to demonstrate to Western within 1 year of the publication of this notice that it has taken significant and tangible steps to acquire the means to distribute power by September 30, 1988. Three municipalities presently meet these criteria—Mapleton, Richfield, and West Bountiful, Utah.

(3) *Special eligibility requirements for wholesale utilities.* This proposed requirement was vociferously opposed by some joint action agencies, while the objectives outlined were supported by at least one retail level utility.

Western recognizes the many benefits of joint action agencies and definitely is not opposed to them. Western is committed to promoting the objectives of assuring that the benefits of federally-financed power are distributed to consumers and that power supply cost information is available to retailing utilities and the retail level customers. In pursuing those objectives, Western singled out wholesaling utilities because they add another organizational level through which the objectives must be filtered. The suggestion that requirements should be the same for retail and wholesale utilities is well taken in one respect. Certainly the basic objectives apply to both types of utilities.

The observation that the objectives proposed for use by the Administrator to evaluate wholesale utility applications are related to existing contract terms is accurate. The resale of electric energy article promotes these objectives, but does not provide for any penalties in the event of noncompliance. Since the exact requirements of this article have been questioned in the past, and since this same article was singled out during the public process by UP&L in support of its application, a detailed discussion of it is warranted.

UP&L suggested that several CRSP customers are not passing on the benefits of low cost federal power to the ultimate consumer, as required by the resale article in each city's contract. UP&L pointed out that the municipal customers are transferring power revenues to their general funds, and are financing public works, avoiding debt service, and actually creating surpluses in municipal budgets, all as a result of purchasing the CRSP resource at a relatively low cost and setting municipal rates at a level sufficient to assure the general fiscal health of the town.

The resale of electric energy article requires the CRSP purchaser, such as a city with a municipal utility, to take five steps to encourage the widespread use of low cost Federal power. First, the city contractually agrees to make benefits of federally-generated power available at fair and reasonable terms to all of its customers at the lowest possible rates consistent with sound business principles. Second, the city agrees to maintain books of account in accordance with the system of accounts prescribed for public utilities and licensees by the Federal Energy Regulatory Commission. Third, the city agrees to provide the United States with copies of schedules of municipal retail rates. Fourth, the city agrees to submit to the United States an annual statement indicating, among other things, that the charges to customers are consistent with the principles set forth in the first subsection of the resale article. Fifth, the city agrees either to publish operating and financial data annually in a newspaper of general circulation in the city's electrical service area, or to furnish such information by mailing copies of the data to each of its electrical customers.

The philosophy underlying the resale article is explicitly set forth in such statutory law as section 5 of the Flood Contract Act of 1944 (16 U.S.C. section 825s) and section 5 of the Bonneville Project Act of 1937 (16 U.S.C. section 832d). That philosophy, simply stated, involves passing the benefits of low-cost Federal power on to consumers, under fair and reasonable terms, at the lowest possible rates consistent with sound business principles. This concept is related to the preference clause, but goes beyond the establishment of preference to public bodies and cooperatives. The philosophy allows a power marketing administration to verify that the ultimate consumer is receiving the benefits of low-cost Federal power.

The nature of the resale article, and an explanation of the history underlying its development, is sufficiently summarized in a 1967 letter from the Department of the Interior's Assistant Solicitor, Power to the City Attorney of Redwood Falls, Minnesota. The letter harmonizes the resale principle with the practical difficulties of administration:

> Although the principle is clear in concept, experience has proven that the administration of this principle in Federal power marketing operations presents many practical difficulties of interpretation and application. The phrases "fair and reasonable terms" and "sound business principles" are general at best and give rise to many different interpretations among reasonable men as to their precise application. It is for this reason that the article itself does not set forth any specific mechanisms for enforcement. The only specific implementing provisions in the remaining paragraphs are reporting requirements. These are designed to give not only this Department, but more importantly the customers of the contracting utility and the members of the public at large,

> a full opportunity to have the facts relating to resale rate schedules in order to provide a basis for informed public discussion . . . [T]he article is based on a recognition of comity and mutual respect between the Federal marketing agency and the contractor. The principal reliance of the article, therefore, is on information, discussion and accommodation.
>
> Beyond this, the degree of compliance of a contractor with the spirit of the article would be a matter for consideration in deciding on additional power allotments and in reviewing the terms and conditions for further service when a contract by its terms is open for renewal.

Thus, compliance with the resale article, at least historically, has been a factor in the allocation of power and negotiation of contractual terms and conditions. Western believes that the statement of Interior's Assistant Solicitor still has relevance today. Therefore, compliance with the resale article will be considered in the allocation of CRSP power. Applicants presently buying Federal power will be required to demonstrate how their power rates comport with Western policy. This could be accomplished in at least two different ways. First, Western's present customers could show how the benefits of low-cost Federal hydropower have been directly passed on to the ultimate consumer through lower power rates. Or, second, the customer could demonstrate how power rates to the consumer provide revenues to be used to accomplish legitimate public purposes, and that those power rates were established in an open and public manner. The existence of public records which explain the derivation of existing power rates, that are available to the ratepaying consumer, would be significant in meeting this second option. If an applicant cannot meet either of these two tests, or otherwise demonstrate compliance to the Administrator's satisfaction, that applicant may have its allocation rescinded or receive a substantial reduction in its allocation. Resources made available from such reductions will be administratively reallocated. The possibility of noncompliance with the resale article on the part of some customers does not, however, mean that any of the CRSP resource would necessarily be sold to UP&L, since neither UP&L nor the cities, counties, and towns that have applied for power through UP&L are eligible for a first priority to CRSP electricity under the criteria.

Western believes that there is some merit in comments by wholesale utilities on the use of objectives relating to identification of power costs by consumers as allocation criteria. Since the objectives in question can be served through appropriate contractual language, Western is proposing to eliminate the special requirements for wholesale utilities as allocation criteria effective prior to the signing of a contract. Rather, Western will develop contractual language, to be used with both wholesale utilities and retail utilities, to achieve the goal of informing the consumer of the source and cost of various components of power supply. While the existing principles contained in the resale contractual article will very likely be part of this new language, emphasis will be placed on providing information to the power consumer in accordance with flexible but objectively defined standards.

Noncompliance with the contractual provision may result in a penalty of the loss of all or a part of that entity's contract rate of delivery and associated energy.

(4) *Other special eligibility requirements.* One of the comments Western has received on the issue of eligibility requirements is centered on the encouragement of conservation and the development of renewable energy resources. The Environmental Defense Fund and the National Wildlife Federation have suggested that Federal hydropower be sold to those preference entities that develop the best conservation and renewable energy programs. Under their approach, conservation would become an eligibility criterion rather than a goal to be encouraged after an allocation is made and a contract signed.

Western shares with these commentors a desire to encourage meaningful conservation efforts and the development of alternative methods for the generation of power. However, Western is convinced at the present time that its existing conservation and renewable energy program is effective in attaining national and agency conservation goals. In the absence of an acceptable program, the contractual penalty provision of a ten percent reduction in the amount of power sold to a particular preference entity offers a substantial incentive to develop a commitment to conservation.

Western also believes that Congress has endorsed its approach in encouraging conservation efforts through contractual provisions, as opposed to making conservation an allocation criterion. In the course of debate on the floor of the House of Representatives on the Hoover Powerplant Act of 1984, a conservation amendment was offered by Representative Udall of Arizona. 130 Cong. Rec. H3336–37 (May 3, 1984). That conservation amendment, which would apply to all power sold by Western, adopts the approach of striving for conservation goals through contractual provisions with a power allottee, with percentage reductions if pre-defined goals are not realized. Western notes that this amendment was adopted in reaction to objections voiced by the Environmental Defense Fund that the Hoover bill did not have adequate measures for conservation. 130 Cong. Rec. H3337 (May 3, 1984). Given the congressional passage of affirmative legislation which recognizes the appropriateness of encouraging conservation through contractual provisions, Western presently believes that it is inappropriate to modify long-standing allocation practices by making conservation the overriding factor in allocating Federal power resources. However, Western is interested in receiving further comment from the public on this issue prior to making a final decision, and has requested that this idea be analyzed by an independent contractor who will be preparing an environmental report on the proposed marketing criteria for the SLCA Integrated Projects resources. No final decision will be made on this issue until the environmental evaluation of the marketing plan is complete.

(c) *Summary and Conclusion:*

Commentors pointed out the lack of clarity in defining eligibility requirements, and Western recognizes the need for further clarification. In response to the potential hardships of requiring wholesale utilities, for the purpose of qualifying for an allocation, to verify their compliance with identified objectives (selling Federal power at the lowest possible rates to consumers consistent with sound business principles, assuring that consumers can identify true power costs from all sources so that the costs of growth and the benefits of conservation are identified, and assuring that retailing utilities have detailed power supply information), Western will depend upon contract provisions to accomplish the same objectives. However, existing customers must demonstrate compliance with the spirit of the resale of electric energy article in their contract to avoid a substantial reduction or loss of in their post-1989 allocation. The applicant qualifications, now in Appendix B of the criteria, will be revised as follows:

The following requirements must be met in order to be eligible for an allocation of long-term resources from the SLCA Integrated Projects:

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(1) Each potential applicant must have submitted substantially complete applicant profile data to the SLCAO on or before December 30, 1983.

(2) Each potential new customer must have had a 1982 load greater than 100 kilowatts.

(3) On or before January 1, 1984, each potential customer must:

(i) Be a utility, primarily engaged in retail or wholesale sales of electricity, with power supply responsibility for the load to be served; or

(ii) Be a Federal or State ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(iii) Be an existing Western contractor for long-term firm power who does not otherwise qualify above; or

(iv) Have taken significant and tangible steps to acquire the means to distribute power or have taken initial steps to acquire the means to distribute power and have requested an extension of time for taking significant and tangible steps.

The proposed criteria will be modified to indicate that proposed allocations of capacity and energy to any existing customer who fails to demonstrate compliance with the spirit of the resale of electric energy article in its current contract will be reduced or eliminated. See paragraphs 2 and 3 of Appendix B to the revised criteria.

The proposed criteria will be revised to indicate that the contracts will contain a resale of electric energy article requiring purchasers of Federal power to demonstrate that:

(1) The benefits of federally-generated power are distributed to its customers at the lowest possible rates consistent with sound business principles.

(2) Consumers can identify the costs of federally-generated power and non-federally-generated power such that the true costs of growth and the benefits of conservation and/or development of renewable resources are readily identifiable.

When the contractor consists of members or principals who are retail distributors of Federal power, these retail distributors will be directly accountable to Western for complying with the above requirements. One of the ways these requirements may be satisfied by the contractor and its members or principals is to display, on the monthly bills rendered to customers, a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the customer. Failure to comply with the article may result in the loss of all or a part of the resources committed to the customer.

3. Market Area

The proposed market area in the August 1983 **Federal Register** notice for the SLCA Integrated Projects was the same as the existing market area for CRSP, except that a portion of California east of the 115th degree longitude, formerly included in the Southern Division, was deleted. However, Western proposed an option to withdraw all CRSP resources from the Southern Division in 1999, thereby eliminating a portion of the market area. Western proposed to restrict the market area for new customers to the SLCA, and restrict the market area for power from projects other than CRSP to the Northern Division.

(a) *Comments:*

—All resources should be marketed throughout the whole market area.

—There should be no overlapping of market area boundaries for CRSP resources and other Colorado River resources marketed by the Boulder City Area.

—The market area should be defined as stated in the Colorado River Compact, including the total drainage basin, not just the Northern Division.

—The market area should be expanded to include all of the SLCA, including west Texas, and all of the Boulder City Area, including southern California.

—The market area should be limited to the Upper Basin States of Colorado, New Mexico, Utah, and Wyoming when existing contracts terminate.

—The Southern Division should be eliminated from the market area in 1999.

—The Southern Division should not be eliminated from the market area.

—The portion of California presently in the market area should not be deleted.

—The portion of California presently in the market area should be deleted.

—The market area for new customers should include all of the Northern Division.

(b) *Discussion:*

The above comments have been grouped for discussion into the following numbered categories:

(1) Withdrawal from Southern Division;

(2) New customer market area; and

(3) Other market area issues.

(1) *Withdrawal from Southern Division.* One of the major issues which has arisen out of the Salt Lake City Area's post-1989 marketing plan is centered on the allocation of CRSP power to the Southern Division. Many of these comments deal with the nature of the present allocation of 20 percent of the net CRSP capacity available for load in the summer and 7 percent in the winter. Customers in the Southern Division have made comments to the effect that these percentage allocations are permanent, and cannot be altered to their detriment. Some Northern Division customers disagree, arguing that the Southern Division allocation was for the term of the original power sales contracts only, and should not be deemed perpetual when Northern Division preference loads are now large enough to absorb all of the CRSP generation.

A review of the original CRSP criteria of March 9, 1962, reveals no reference to any "permanent" allocation to the Southern Division. However, a number of documents submitted to Western by Southern Division customers suggest that a permanent allocation was intended by the Secretary of the Interior under the circumstances as they existed over 20 years ago. The question which arises out of this historical background is one of definition. What is meant when the word "permanent" is used? Courts of law often interpret words in such a manner as to give them their common meaning. However, several opinions suggest that the word "permanent" does not necessarily mean forever. For example, the Supreme Court of the State of Washington has held that a decree for alimony is "permanent" in that it continues in force until a change in circumstances occurs. Bartow v. Bartow, 121 P.2d 962 (Wash. 1942). In a similar vein, the Supreme Court of the State of Colorado expressed its opinion on the meaning of the concept:

> The word "permanent" relates to time. It means abiding and remaining fixed for such period as is necessary for the accomplishment of the objective in connection with which it is expressed. While it is an antonym of temporary, it does not necessarily imply perpetuity or mean forever.
>
> Parish v. Hainlen, 236 P.2d 115, 118 (Colo. 1951).

In the State of Missouri, the State Supreme Court has held that a "permanent residence" does not mean that residence may never be changed, but that there exists no present intention to change it. Barrett v. Parks, 325 Mo. 974, 180 S.W. 2d 665 (1944). Similarly, a California court has observed that the concept of "permanent employment" means only that employment is to continue indefinitely and until either party wishes to sever the relationship for some good reason. Speegle v. Board of Fire Underwriters, 156 P.2d 426, 429 (Cal. App. 1945).

Aside from court cases such as those listed above, which focus on the common meaning of a term, the intention of a party is often critical in a determination of the meaning of a word. Different customers have varying opinions in this regard. The Colorado-Ute Electric Association, Inc., states that the allocation in question was permanent for the period of the contracts issued under the 1962 criteria (20 years) and the extension thereof under the 1978 criteria (7 years). The Salt River Project, on the other hand, equates "permanent" with the amount of time necessary for achievement of repayment. Both are less than forever. In fact, the original 1962 CRSP marketing criteria allowed for an adjustment of the allocation to the Southern Division based upon changes in the diversity between the winter and summer seasons in the Northern Division. The desire of the United States to retain flexibility in the face of changing conditions was clearly intended in 1962. Aside from the question of the intent that existed in 1962, changes in the allocation criteria over time are significant. The original CRSP marketing criteria remained in existence almost 16 years. On February 9, 1978, revised CRSP marketing criteria were published in the **Federal Register**. As with the original criteria, no reference appears in the 1978 text as to the permanency of the Southern Division allocation. In fact, the 1978 revised criteria specifically state that "these criteria shall supersede and replace the 'General Power Marketing Criteria' for sale of power from CRSP approved March 1962, and continue to be subject to change upon reasonable notice . . . and opportunity for comment by interested parties." As in 1962, the United States reserved the right to adapt to changing circumstances in the sale of Federal hydropower. This administrative reservation of the right to modify marketing criteria to deal with changing circumstances is still appropriate today. Since no provisions in CRSP sales contracts with Southern Division customers require the perpetual renewal of allocations notwithstanding the expiration of the contracts' terms, Western believes that it has the flexibility to respond to differing market conditions. As the United States Supreme Court has observed, an administrative agency must be given ample latitude to adapt its rules and policies to the demands of changing circumstances. Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., U.S.L.W. 4953, 4956 (1983).

Western has the authority to adjust the amount of the CRSP resource allocated to the Southern Division and proposes to adjust the allocations of CRSP, based on existing circumstances.

The proposal, discussed in more detail below, would require reducing Southern Division allocations by 55 megawatts in the summer season, starting in the summer season of 1990. Under this proposal, the winter season allocation for the Southern Division would actually increase by 26 megawatts.

Western's development of this proposal is based on recognition of the intent that went into development of the 1962 CRSP General Power Marketing Criteria. The Southern Division at that time was desirous of 240 MW of the CRSP resource on a long-term basis that was equivalent to 20 percent of the then planned installed capacity of 1166 MW rounded to 1200 MW. The Southern Division was also willing to take all CRSP power surplus to the Northern Division needs on a withdrawable basis. The Northern Division viewed a commitment of 240 MW to the Southern Division on a long-term basis as unacceptable because their load growth by 1979 would exceed the CRSP resource during the winter peak load period. The key to accommodating these desires in 1962 was the then existent load diversity of about 165 MW in the Northern Division between the summer season peak and the winter season peak. The Northern Divison could agree to committing CRSP resources to the Southern Division to serve their summer peak as long as the bulk of that resource (165 MW) was available to the Northern Division for their winter peak. This approach struck a middle ground based upon then-existing circumstances. Before the 1962 marketing criteria was finalized the concept of allocating specific amounts of power was changed to percentages of CRSP power. The previously mentioned load diversity of 165 MW, taken from the 240 MW, left 75 MW or 6.25 percent of the marketable power that was "rounded" to 7 percent for the winter season. The Southern Division's share of 20 percent/7 percent of CRSP marketable resources was used as a basis for establishing the allotments in the 1962 General Power Marketing Criteria.

It is Western's intent to preserve the spirit of the allocation that was made in 1962 while recognizing changing conditions as they are projected to exist in 1989 and beyond. Western's customer profile information for 1989 shows little if any diversity between summer and winter peak loads in the Northern Division. This is consistent with the lessening of diversity shown over the last few years. Since the Northern Division seasonal load diversity in the 1960's was a key factor in finalizing the 1962 criteria, Western believes that some adjustment is warranted. On the other hand, Western believes that the Southern Division was originally seeking a fixed long-term resource to justify their support and interest in CRSP power. Therefore Western proposes to settle this issue by seeking a middle ground approach. Rather than withdraw the Southern Division allocation entirely, Western proposes to preserve the principles upon which the original marketing criteria was developed.

Applying the 20 and 7 percent criteria to 1200 MW results in 240 MW for the summer season and 84 MW for the winter season. This would be a reduction in the existing Southern Division allocations of 25 MW (265–240) for the summer season and 9 MW (93–84) for the winter season.

However, as mentioned above, the load diversity in the Northern Division that was a key factor in the 1962 criteria no longer exists. Therefore Western proposes a compromise approach that reduces the diversity in an amount that will provide equal amounts of power in the summer and winter seasons for the resource pools available to potential new SLCA customers to reflect the lack of seasonal diversity expected in the Northern Division by 1989. Western's August 1983 proposal anticipated offering available power in excess of existing commitments to potential new customers and specified customer groups, together called participating customers in the criteria. Based on the new hydrology model studies supporting these revised proposed criteria, participating customers would receive about 20 MW in the summer and 101 MW in the winter on this basis. Increasing these amounts by 25 MW in the summer and 9 MW in the winter (equal to the reductions in Southern Division allocations) would result in 110 MW of winter power and 45 MW of summer power available to participating customers. By selecting an approximate midpoint of 75 MW as a reasonable amount to make available to participating customers in both seasons, the effects upon Southern Division allocations are shown below:

VOL
49
SS
172
SE
4
984
UMI

	8/83 Allocation Proposal (1)	Adjust. for Revised Marketable Resources (2)	Adjust. on Basis of Initial Allocation (3)	Adjust. for Diversity (4)	Exist. Commit. (5)	Diff. of Col. 4 - 5 (6)
Winter Season - MW						
Southern Division	95	93	84	119	93	+26
Northern Division						
Existing Customers	1200	1200	1200	1200	1200	0
Participating Customers*	114	101	110	75	0	+75
	1314	1301	1310	1275	1200	+75
Total Marketable Power	1409	1394	1394	1394	1293	+101
Summer Season - MW						
Southern Division	254	265	240	210	265	-55
Northern Division						
Existing Customers	1011	1011	1011	1011	1011	0
Participating Customers*	50	20	45	75	0	+75
	1061	1031	1056	1086	1011	75
Total Marketable Power	1315	1296	1296	1296	1276	+20

* Includes a few existing customers with less than 25 percent of their 1980-82 loads supplied from Federal resources or who received allocations based on unique circumstances.

The Southern Division would receive about 17 percent of 1200 MW, or 210 MW, in the summer and about 10 percent of 1200 MW, or 119, MW, in the winter season, a reduction of 55 MW in the summer and an increase of 26 MW in the winter.

The two adjustments proposed would reduce the diversity between the summer and winter allocations in the Southern Division from 185 percent to 76 percent. The Northern Division allocations would have a seasonal diversity of 17 percent instead of the existing seasonal allocation diversity of 18.7 percent. In 1989, the Northern Division loads are expected to have little or no seasonal diversity, while the Southern Division seasonal load diversity is estimated to be 27 percent. Therefore, while the Southern Division would lose a net amount of 29 MW, the relationship between the summer and winter allocations in the Southern Division are still considerably more favorable than in the Northern Division, when compared to seasonal load diversity.

To assist individual existing customers to adjust the diversity between their summer and winter allocations to their best advantage, based on the seasonal characteristics of their loads and other resources, Western is willing to facilitate the trading of capacity from one season for the other season by matching up those individual customers who indicate a desire to trade with other customers within the same Division during the allocation process.

Western believes that allocating the Southern Division the specific amounts of 210 MW (summer) and 119 MW (winter) preserves the intent of the original criteria while at the same time appropriately reflecting changed conditions. Available energy for the Southern Division would be determined by utilizing one of the alternative methods for adjusting the Southern Division energy allocations contained in a temporary Appendix D to the criteria.

In advancing this proposal, Western is mindful of changes in the availability of power resources in the Southern Division. Under the Hoover Powerplant Act of 1984, preference customers in the State of Arizona have first priority to the Federal portion of Navajo Powerplant that is surplus to the needs of the Central Arizona Project. It is also worthwhile noting that the contingent capacity resulting from the Hoover uprating program of 503 MW is proposed to be allocated to Arizona, California and Nevada in the amounts of 188, 127, and 188 MW, respectively, commencing June 1, 1987. Western believes that these resources available to the Southern Division that are not available to the Northern Division and the increased allocation of 26 MW to the Southern Division in the winter season will offset any hardships caused by a reduction of 55 MW from the Southern Division during the summer season.

(2) *New customer market area.* To promote more widespread distribution of the benefits of available Federal power and energy, some commentors suggested that Western should offer power and energy to new customers throughout the market area, or at least throughout the Northern Division. In proposing that the market area for new customers be limited to the SLCA, Western is recognizing that the BCA and LFCA marketing plans have offered or will offer resources to new customers in those areas. A further consideration is the limited amount of resources available to new customers. Potential new preference customers in the SLCA that are entitled to first priority consideration had 1982 loads that are more than 4 times greater than the amount of power available for new customers.

New customers in each area will benefit more by receiving a relatively larger allocation from one area rather than receiving several separate allocations of a smaller magnitude and then being required to integrate these resources, which have different characteristics, with resources from other suppliers. The proposed restriction on the market area for new customers simplifies the customers' resource mix as well as Western's allocation procedures. Western therefore has not modified its original proposal.

(3) *Other market area issues.* The proposed elimination of California from the market area evoked a few comments, some favoring and others opposing the proposed change. No compelling reasons were advanced for either position. Since there are no existing firm power commitments from the SLCA Integrated Projects in that portion of the market area, and the available resources are much smaller than the demand for them, Western did not include any portion of California in the revised proposed criteria. For the same reasons, Western does not propose expanding the market area into west Texas.

A commentor suggested that the entire upper and lower Colorado River Basin be considered a single resource. While the approach has some merit, it is not compatible with the historical development of the resources and therefore not subject to implementation by the SLCA since the Boulder City Area Office has already published a marketing plan for the post-1987 period. However, some of the variations in the Appendix D for deriving Southern Division energy allocations do consider other lower basin commitments, and thereby recognize the concept that lies behind the suggestion.

(c) *Summary and Conclusion:*

The major market area issue was whether or not the Southern Division should continue to receive CRSP power. Western adjusted Southern Division's share of CRSP, as shown in Appendix A, in an effort to preserve the intent of the original allocation, to recognize the change in the Northern Division seasonal load diversity, and to recognize a change in the availability of Federal resources in the Southern Division.

Changes in the descriptions of the Northern and Southern Division market area were made for administrative convenience. The Dixie-Escalante Electric Cooperative, a Northern Division customer, has one small member in the Southern Division, the Littlefield Electric Cooperative. Likewise, two members of another Northen Division customer, Plains Electric G&T Cooperative, are partially in the Southern Division, the Continental Divide Electric Cooperative and Navopache Electric Cooperative. The areas served by these three cooperatives that are members of Northern Division customers have been transferred from the Southern to the Northern Division in the proposed criteria. This change would have little impact upon any prospective contractor under the proposed criteria.

Western also included a description of the area common to the SLCA and the SLCA Integrated Projects market area in the proposed criteria to clarify the market area for potential new customers. Based on a comparison of the amounts of available resources and demand for the resource, Western concluded that an expansion of the proposed market area for new customers was not warranted, particularly since other Federal resources are available to new customers in the BCA and LFCA. Whenever practical, other available Federal resources in the market area were considered, in an effort to develop equitable allocation procedures.

4. SLCA Project Integration

Western proposed the consolidation of the Colorado River Storage, Collbran, Provo River, and Rio Grande Projects to increase the marketable resources, simplify contract development and administration, and create a common rate. Repayment requirements would continue to be determined separately for each project. A preliminary study based on FY 1982 data indicated that a composit rate would increase the CRSP rate by about 0.1 mill, reduce the Collbran rate by about 10 mills, and reduce the Rio Grande rate by about 20 mills.

(a) *Comments:*

—Each project should retain its own rate integrity and financial autonomy.

—Support integration if (1) the concept is legal and (2) Western continues to make power repayment studies for each project.

—Project integration generally provides little benefit to the majority of CRSP customers; financial impact on customers should be evaluated.

—Integration of Rio Grande with CRSP would adversely affect the CRSP repayment schedule; would result in a subsidy to Collbran and Rio Grande Projects.

—Blended rate is contrary to statutory restrictions, and encourages consumption rather than conservation with subsequent adverse impact on the environment.

—A greater amount of long-term firm capacity should be transferred from Collbran and Rio Grande to other CRSP customers.

—Western should integrate these projects in 1985 to obtain the projected benefits as quickly as possible.

(b) *Discussion:*

The comments on project integration provided broad support for the objectives of increasing marketable capacity and administrative efficiencies. A few commentors opposed increasing CRSP costs and objected to the proposal that Collbran and Rio Grande contractors retain existing power commitments.

From Western's perspective, the benefits of project integration rest on three main points. The first advantage is the ability to market additional amounts of capacity by combining the generation of the smaller projects with generation of the Colorado River Storage Project. Secondly, the United States is assured that the Rio Grande and Collbran Projects will be repaid in the prescribed time. Finally, there are advantages to Western and to Western's customers in a single rate adjustment process for the SLCA integrated Projects rather than separate processes for each project.

Integration leads to the availability of a greater amount of marketable power for a number of reasons. Since most of the projects that would be integrated are located in separate river basins and all are geographically widespread, there exists a certain diversity among the projects which can be utilized in integrated operations which could not be recognized in a sale on a long-term basis by the individual projects standing alone. Also, CRSP can readily provide reserves for the integrated projects. If the individual projects must provide their own reserves, the amount of firm power available is reduced, and in some cases, firm power cannot be offered at all for some periods of time. This reduces the desirability and value of the resource and revenues available for repayment.

The Collbran and Rio Grande Projects have experienced difficulty in generating revenues sufficient to meet their repayment requirements. Collbran Project has experienced high maintenance costs, and the Rio Grande Project has experienced substantial periods of drought. Although the past two water years have been above average for Rio Grande, the project still can only produce firm power in marketable quantities in the summer season. These conditions have required frequent and substantial rate adjustments. Integrating the projects will assure repayment of project costs. The slight additional cost under an integrated marketing approach is, Western believes, reasonable considering the efficiencies and additional power to be gained.

The advantage of a single rate process is significant to Western. The current requirement to complete rate adjustment procedures for each project has burdened Western's staff, resulting in the delay of vital marketing and contracting activities. The advantage of a single rate process would permit Western's staff to provide better customer service. Customers currently purchasing power from more than one project will also be spared the burden of participating in more than one rate adjustment process. Each project would retain its separate financial identity and separate power repayment studies. However, the needs of all projects would be handled in a single rate adjustment process. A minimal increase in the CRSP rate, such as .1 mill, could reasonably be absorbed considering the benefits available.

In an arrangement where the resources and revenue requirements from the small projects are added to the CRSP, there is no net impact on the revenues available for CRSP repayment. The rates for Rio Grande and Collbran project power will decrease, and CRSP repayment requirements will continue to be met on time.

Western does not agree that a blended rate among projects will encourage consumption. The principal purchasers of Collbran and Rio Grande Project power draw on a variety of other larger resources to meet their power needs. The impact of the proposed rate change will be much reduced by the time the end-user receives the blended product. Moreover, the marginal prices paid by Western's customers for new power to meet load growth certainly promotes conservation over consumption. The conservation article continued in Western's power sales contracts further discourages unwise consumption. Western is not presently persuaded that the proposed blended rate will adversely impact conservation or the environment, but will not make a final decision unitl its environmental review is completed.

Western also believes that operational integration, reflected in the marketing plan now being proposed, comports with the congressional mandate to operate CRSP powerplants in conjunction with other Federal powerplants so as to produce the greatest amount of marketable power. 43 U.S.C. section 620f.

In addition to the points made above regarding additional capacity, repayment and a single rate adjustment process, intergration reduces the impact of a variety of other conditions the small projects would experience standing alone. All of the small projects lack upstream regulation for their reservoirs so that power production is related in a more immediate way to current weather conditions. Beyond that, the water releases from these projects are controlled by irrigation needs so that the projects standing alone is not capable of shaping its power production pattern to the needs of a customer to the extent necessary to optimize the marketability of the power produced.

Western recognizes, as one comment indicates, that Southern Division entities do not share in the resources of the smaller projects. These integrated projects have never been marketed in the Southern Division and are not located in the southern Division marketing area. For some of the reasons set forth in the discussion of the proposed adjustment to the Southern Division CRSP allocation, Western does not believe it appropriate to market integrated resource power in the Southern Division. Southern Division entities will bear a small increase in the cost of power as a result of integration, along with all Northern Division customers. However, they will continue to share the CRSP resource at a very reasonable cost.

Western continues to propose that the existing customers maintain their existing rights to power from the smaller projects, while the additional marketable power available as the result of integration and a small amount of energy be made available to Northern Division customers. The financial impact on individual customers has not been fully evaluated, but when final FY 1983 power repayment studies for each project are completed, this will be done. If a modification in the proposal is warranted as the result of further analysis, it will be incorporated in the final allocation criteria.

Western sees no legal obstacles to the integration of the resources as proposed, with the power marketed at a uniform, blended rate. No provision in reclamation law proscribes such an integration. In fact, rates for two Western projects have been administratively integrated with smaller Federal power resources in the past. The integration of the Colorado-Big Thompson, Kendrick, North Platte and Shoshone projects into the power repayment study for the Pick-Sloan Missouri Basin Program is one example. The integration of the Pacific Northwest-Pacific Southwest Intertie into the Central Valley Project repayment study is a second instance where administrative integration took place. Under Reclamation law, the Secretary has the authority to perform "any and all acts" for the purpose of putting his statutory responsibilities into full force and effect. 43 U.S.C. section 485i; 43 U.S.C. section 373. In Western's judgment, this flexibility includes the ability to integrate projects and to charge a uniform rate for the resulting power.

Implementing the rate integration as early as 1985, as suggested by at least one commentor, is under consideration. A blended rate for the SLCA Integrated Projects could be established during the next rate adjustment process, which could result in implementation as early as October 1985.

(c) *Summary and Conclusion:*

Western concludes that the benefits outweigh the cost of integrating the resource as proposed. The actual disposition of power from the Collbran and Rio Grande Projects will be further evaluated. Western invites specific suggestions for equitably distributing these resources.

5. Ten Year Contract Term

Western proposed to offer resources from the SLCA Integrated Projects for sale for a 10-year period, beginning in September 1989 and ending in September 1999.

(a) *Comments:*

—A 20-year term of contract, or longer, with the provision to adjust amounts under contract based on changed hydrology after 10 years, would be more satisfactory than a 10-year term.

—The 10-year contract period is acceptable. It assures no constraints upon the development of Upper Basin participating projects, even though these projects would diminish water available for generation.

—Ten-year term creates a tight resource planning posture which is too short to allow for proper planning for alternate firm wholesale power resources. Contract term should be closer to the 35-year life of a coal-fired plant.

—A 10-year term creates uncertainty as to the future availability of Federal power, considered a significant power resource by some customers. The resource is unpredictable and undependable when offered for 10 years.

—A 10-year contract term makes it difficult for customers to negotiate with supplemental power suppliers.

—Ten-year contract terms require excessive administrative and financial expense on the part of the Federal Government and power contractors in almost continual allocation proceedings.

—Other Western marketing plans have provided for longer contract terms, and SLCA resources have been offered for longer contract periods in the past.

—Reclamation law allows a 40-year contract term.

(b) *Discussion:*

The proposed term of contract was the subject of many comments, most of which urged a term of 20 years or longer. Many commentors proposed the adjustment of amounts under contract during the contract period based on changed hydrological conditions. This suggestion seems to offer a middle ground, removing the concern Western has about being locked into contractual commitments not supportable by current hydrology. However, other concerns exist. The concept of adjusting the amounts of power under contract based upon "changed hydrology" does not give the marketing criteria the flexibility to meet changed circumstances other than hydrology.

Western recognizes the strong desire of customers to have as much certainty as possible about future resources. However, there is no absolute certainty about the availability of any resource. Even if a customer has its own thermal unit, that unit may be unexpectedly destroyed by fire, for example. Federal power offers some obvious benefits over construction, principally a very reasonable cost. In addition, Western is willing to obtain firming power and energy in the event the hydroelectric resources are not available when required. One of the drawbacks of Federal power is the limited time for which it is committed. Since commitments will likely be made during 1985 for the period ending in 1999, the known commitment will actually be for about 14 years.

Western is also interested in minimizing administrative procedures which are costly, and will not unnecessarily initiate the development of new marketing or allocation criteria.

However, it is equally important that Western reserve options so that Federal resources in the future can be applied where they are required to meet changing legal and policy requirements. While Western does not foresee the need to adopt policies other than those expressed in these criteria and in the discussion of criteria issues, it is prudent to assure that Western can be responsive to changed circumstances. Western therefore continues to see the need for a 10-year contract term.

An issue related to the certainty of a customer's future Federal power allocation is the 5-year notice provision in the 1978 CRSP power marketing criteria. On February 9, 1978, the Salt Lake City Area Office of Western published in the **Federal Register** general power marketing criteria relating to the sale of power from the CRSP. 43 FR 5559 (1978). In section 8D of those criteria, the following language appears:

> In recognition of the leadtime required to place major generation projects in operation, WAPA will provide a minimum of 5 years' notice should it propose to reduce, upon expiration of a firm power contract between WAPA and a customer, the amount of firm power or long-term peaking power allocated to the customer or substantially change the amount of energy available to the customer under the customer's firm power allocation.

Western believes that through the publication of **Federal Register** notices and the holding of public information and comment forums, notice of proposed capacity and/or energy reductions has been given. However, no firm decision has been made on exactly how much of a reduction would be made as to each customer.

Due to substantial comment on various issues and the requirements of a detailed evaluation of the environmental impacts, if any, of the proposed criteria, it appears likely that final and specific notice will not be provided prior to 1985. Although notice of proposed capacity and/or energy reductions has already been given, Western will give as much notice as possible of any specific and final reductions of CRSP power. A brief paragraph summarizing the five year notice by Western appears at the end of this **Federal Register** notice.

(c) *Summary and Conclusion:*

After consideration of the many comments provided, Western concludes that the most prudent course of action to take is to prepare a 10 year term of contract.

C. Special Allocation Issues

The revised proposed allocation procedures permit the Administrator to appropriately consider special circumstances and to allocate power and energy outside of the formula approach proposed if a situation warrants it. A number of organizations made an appeal for special consideration and the issues each of them raised are discussed below.

1. Bountiful, Utah

(a) *Comments:*

The City of Bountiful's comment letter dated November 15, 1983, states that it requested 37,000 kilowatts from the CRSP in 1969, in both the winter and summer seasons, but was offered only 24,000 kW in the summer season and accepted that amount based on the erroneous understanding that the CRSP was oversold in the summer season and prorata reductions amount the customers were required. Bountiful feels this past unfairness should be remedied in the next allocation.

(b) *Discussion:*

The distribution of power in 1969 was to be the final offering of firm capacity with energy from CRSP for the current contract period. Customers were asked to base their requests for this power on their estimated 1975 power needs. The policy of the marketing agency in 1969 (Bureau of Reclamation, hereafter called Bureau) permitted customers with generating resources to omit the resources in estimating their needs for CRSP power if there was a likelihood the resources may be retired. As a means of administering this procedure Bureau personnel prepared independent estimates of customer's 1975 loads to be used in reviewing the requests for power. These estimates were based on the customer's historical loads and information on each system gained through visits to the customers, discussions, and letters. The Bureau recognized that responsible estimates by people working from different points of view would differ, and therefore, did not take exception to requests for power that exceeded its own estimate by up to 10 percent. In the matter at hand however, the Bountiful summer season load estimate as shown in its letter to Intermountain Consumer Power Association dated July 15, 1969, increased from 11,705 kW in 1974 to 37,000 kW in 1975. While the letter is silent on the handling of the City's generation in the summer season, it indicates it was not included in the winter season estimate of load. The sole support provided for this increase was the possible adoption of a domestic air conditioning rate which, it was thought, would increase loads substantially. The City indicated that it recognized normal summer season growth in the 1970–1974 period (5200 kW to 11,705 kW) and included the hoped-for results of the possible air conditioning rate for the full 1970–1975 period only in the 1975 load estimate. Bureau representatives did not accept this view as being sufficiently supported to warrant the commitment of 37,000 kW and reduced the Bountiful summer season amount accordingly.

(c) *Summary and Conclusion:*

The actual peak loads experienced by the City in the summer of 1975 and winter of 1975–76 were less than 24,000 kW in each season, while the city's firm CROD is 24,910 kW in the summer season and 34,150 kW in the winter season. Western concludes the City was fairly treated in the summer season and received a significantly greater amount than needed in the winter season. Therefore, no special allocation to Bountiful is warranted.

2. Bureau of Reclamation Priority Uses

The Bureau of Reclamation has reserved a portion of the firm power and energy resource for project use, and has requested Western to allocate an additional amount of firm power and energy to the Bureau for priority uses that do not fall within the traditionally defined project use category.

(a) *Comments:*

One commentor opposed the use of project power for municipal and industrial or irrigation loads since it competes with the commentor's own resources in its service area.

The Bureau of Reclamation has provided Western with revised amounts for project use and other priority use loads as follows:

	Winter season		Summer season	
	MW	MWH	MW	MWH
Project Use	27.26	32,760	128.72	250,730
Other Priority Use	11.60	14,340	46.90	88,830
Total	38.86	47,100	175.62	339,560

(b) *Discussion:*

While all of the Bureau's project and other priority use loads exist in some utility's service area, they are typically non-growth loads so that we do not believe they will be adverse to a utility's long-term resource planning. Both project and priority use loads are vital to the economic viability of participating projects, contribute to the efficient use of water, and, in same cases, provide power for salinity control facilities. Western recognizes the importance of all of these activities to the Bureau and to the development of the West and is interested in cooperating with these entities to enhance the successful development and operation of the Participating Projects so that the full purpose of the Colorado River Storage Project Act might be accomplished, within the provision of applicable laws and policies.

(c) *Summary and Conclusions*:

Western has determined it is appropriate to allocate an additional amount of firm power and energy to the Bureau. These amounts will be available for the designated priority uses during the term of the repayment contract or water service contract, whichever is applicable.

3. Albuquerque Operations Office

(a) *Comments*:

The Department of Energy's Albuquerque Operations Office (DOE) requested special consideration because of their unique historical circumstances. The predecessor to the DOE received an allocation of CRSP power in 1962 amounting to 25.4 MW in the winter season and 25.6 MW in the summer season. In the ensuing years, the Federal Government, through the Atomic Energy Commission, negotiated with both the Public Service Company of New Mexico (PNM) and the Bureau of Reclamation, Amarillo Office, for a power supply.

An arrangement was discussed whereby the Bureau would deliver 30 MW of CRSP power to PNM on DOE's behalf and PNM would, in turn, sell DOE 60 MW at a favorable blended rate. DOE's need for a high-load factor resource required the involvement of PNM in the power supply arrangements as well as in the delivery arrangements from Albuquerque to Los Alamos. DOE claims that it relied on PNM to act in its behalf in discussions with the Bureau for the 30 MW, and the record indicates that the Bureau did prepare a draft of contract with PNM for 30 MW of power.

The discussions between the Bureau and PNM continued for an extended period of time until the Bureau no longer had the full 30 MW available for DOE. In 1969, the Bureau notified entities interested in a power supply from CRSP that allocations of power which had not been placed under contract would be rescinded. However, DOE was not notified by the Amarillo Office of this action since, according to a letter to DOE from the Bureau dated August 22, 1973, active negotiations were underway and early execution of agreements was expected.

The Bureau notified DOE on June 5, 1973, that it could provide only 14.6 MW of firm power and in March, 1974, DOE contracted for this amount of firm power in each season. However, DOE complained to the Bureau about the unavailability of the 30 MW it formerly had been discussing. As an eventual result, the Bureau granted DOE 15 MW of peaking capacity as a part of the 1978 allocation of peaking capacity. DOE obtained additional peaking capacity of 2,862 KW in the winter season and 47 KW in the summer season as a result of the reallocation process. DOE now wishes to have its allocation of firm and peaking power all considered as firm power for post 1989 allocation purposes.

(b) *Discussion:*

A review of the historical circumstances indicates that PNM and the Bureau did negotiate over an extended period of time regarding a power supply for DOE and that, by the time the parties were all in agreement, the Bureau no longer had the desired 30 MW available for DOE and, in lieu thereof, notified DOE that it had only 14.6-MW available for sale. As one element in the 1978 allocation of peaking power, the Bureau acknowledged a "mutual misunderstanding" and indicated that DOE should be offered 15 MW of peaking capacity to compensate for this state of affairs. DOE accepted the 15 MW, and added to it 2,862 kW in the winter season and 47 kW in the summer season through the reallocation process. By letter dated November 18, 1983, DOE requested that the 15 MW of peaking capacity granted by the Bureau, as discussed above, be considered firm power for purposes of allocating power in the post-1989 period in addition to the 14.60 MW shown as its firm contract rate of delivery in the distribution tables for Resource Pools 3 and 4.

Western accepts the Bureau's finding of a mutual misunderstanding which deprived DOE of a 30 MW firm power resource to which it would otherwise have been entitled. It is noted, however, that amounts other than 30 MW were discussed, and that the reference to 30 MW existed in the framework of a 14 to 30 MW range. It should be noted also that the 30 MW offer was made by the Bureau but that acceptance was not forthcoming due to circumstances between PNM and DOE and beyond the control of the Bureau. While Western accepts the Bureau's finding, it also believes that DOE bears some responsibility in the matter.

(c) *Summary and Conclusion:*

Given the shared responsibilities for the lack of consummation of the 30 MW contract, Western concludes that the granting of 15 MW of power without energy in each season to DOE is an appropriate action which Western proposes to continue in the post-1989 contract period. It is less than DOE requests; however, it is, in Western's view, an equitable compromise and a major concession in a period of widening cost differences between Federal and private power costs.

4. Enterprise, Utah

(a) *Comments:*

The City of Enterprise has also requested special consideration because of its unique circumstances. It was an initial allottee of Colorado River Storage Project power in 1963. The City proceeded at that time with negotiations with the California-Pacific Utilities Company (Cal-Pac) to acquire a distribution system. Negotiations finally reached an impasse, at which point the City terminated its offer to purchase the system and, instead, built a new distribution system in the City, requiring Cal-Pac to remove its facilities. A discussion of significant events and matters relative to the City's efforts to purchase CRSP power follow:

—A power sales contract was drafted and sent to the City by the Bureau on February 19, 1965, in anticipation of city ownership of a distribution system.

—Negotiations between Cal-Pac and the City continued for an extended period of time without reaching an agreement. On December 29, 1969, representatives of the Bureau, Intermountain Consumer Power Association (ICPA), and the City met to discuss the Bureau's intention of establishing a deadline for new customers to purchase CRSP power. The parties developed a proposed arrangement whereby Enterprise would join ICPA, and ICPA would then contract with the Bureau for CRSP power for the City. The City notified ICPA on December 30, 1969, that the City Council and Power Board had passed a resolution to contract with ICPA for power.

—On February 12, 1970, such a deadline to contract for CRSP power was established by the Bureau. The City's representatives have repeatedly stated that the Bureau's letter of February 12, 1970, announcing the deadline to the City, was not received. Enterprise claims that it did not learn of such a letter until May 17, 1974. The City implies that, had it been aware of such a letter in 1970, the distribution system would not have been acquired. The City did join ICPA, acquired ownership of its distribution system in early 1972, and purchased CRSP power at CRSP rates starting on March 28, 1972, all as arranged by ICPA with the alleged knowledge and cooperation of the Bureau. The City stated, in a letter dated December 27, 1976, that it was under the impression that it was in possession of a long-term firm entitlement to CRSP power through ICPA, and learned otherwise only when the Bureau would not add the City's name to an Exhibit in the ICPA contract.

—The City has claimed a right to its initial CRSP allocation of 2.7 MW (winter) and 3.4 MW (summer) by letters dated December 27, 1976, and February 16, 1977. More recently, the mayor of Enterprise has claimed that Western has a moral responsibility to assist the City with a power supply. In a series of visits during the past few years, at ICPA Board meetings, public forums, and in our offices, City representatives have petitioned for an allocation of Federal power.

(b) *Discussion:*

It seems to Western that all three of the parties bear some responsibility for this misunderstanding. The City, exercising reasonable diligence, could have informed itself as to the status of its CRSP allocation. However, Enterprise was receiving CRSP power at CRSP rates and at a CRSP delivery point through a CRSP meter, and it had been told by Bureau and ICPA representatives that the power supply from CRSP would be placed under contract with ICPA in the City's behalf.

The Bureau knew of the above arrangement, including the installation of the meter. The Bureau could have contacted ICPA or Enterprise about completing the contract arrangements prior to the deadline.

ICPA's actions appear to be central to the misunderstanding. Personnel at ICPA have long since changed. However, it appears that the principal responsibility rested with ICPA management. ICPA had aggressively sought the City's membership, had frequent opportunities to meet with the City and was the City's agent for the purchase of power. ICPA seems to have accepted some responsibility in the matter, indicated by its present policy of sharing the CRSP resource it administers with the City.

(c) *Summary and Conclusion:*

As indicated above, there are certain incongruities in the matter. Western considers it likely that ICPA and Bureau representatives were responsible for assuring the City it would obtain a CRSP power supply and then, for reasons that are unclear, did not follow up on the commitment.

Western believes that the City probably should have had a CRSP power supply properly committed to it in 1970. It was later denied a Federal power supply in the 1978 allocation of peaking capacity since that allocation was based on then existing entitlements to CRSP firm power under contract.

Since the post-1989 allocations for existing customers will be based again on firm power under contract, which would again exclude the City from the existing customer category, Western will consider Enterprise's special circumstances and tentatively intends to allocate power to the City from Resource Pools 5 and 6.

The tentative special allocations were derived by taking one-half of the City's 1975 summer and 1975–76 winter season peak demands. The distribution of CRSP power in which the City failed to gain an entitlement took place in 1970 but was based on each customer's estimated 1975–76 loads. Western selected the factor of 50 percent to reflect generally the portion of the responsiblity it feels rests with the United States in the City's failure to obtain an entitlement of CRSP power in 1970.

The tentative special allocations are as follows: Winter season: 646 kW, 4,425,674 kWh. Summer season: 498 kW, 1,959,243 kWh.

5. Hurricane, Utah

(a) *Comments:*

The City of Hurricane also requested special consideration. It received an allocation of CRSP power in 1965 and was negotiating with the Bureau for a power sales contract while at the same time, negotiating with California Pacific Utilities Company to purchase the City's distribution system. The Bureau was also representing the City in negotiations for a wheeling agreement with Cal-Pac to accomplish the delivery of CRSP power to Hurricane. However, all of these negotiations were ended by the Bureau's letter to the City that it was terminating negotiations for a power sales contract. A more detailed description of significant events follows:

—Hurricane was notified on April 16, 1965 that it had received an alloction of CRSP power of 3,750 kW in the winter and 3,150 kW in the summer.

—The City was told in a letter dated January 22, 1966, that it must have a means of distributing power before the Bureau would enter into a power sales agreement.

—The City indicated by letter dated September 7, 1966, that it was investigating the acquisition of the distribution system and asked for Bureau help in obtaining a wheeling contract with Cal-Pac.

—The Bureau agreed to assist in negotiating a wheeling contract as requested in a letter dated September 23, 1966.

—From this period of time on, negotiations continued between the City and Cal-Pac for purchase of the system, between Cal-Pac and the Bureau for wheeling arrangements, and between the City and the Bureau for a power sales contract.

—The Bureau notified the City by letter dated February 12, 1970, that it would not continue negotiations for a power sales agreement until such time as the City acquired a system and then only if power was then available.

—The City signed an electric service agreement with ICPA dated August 1, 1970, and acquired a distribution system during 1975.

(b) *Discussion:* It seems clear from the record that the City diligently pursued the acquisition of its distribution system while at the same time negotiations for a power sales contract with the Bureau and for a wheeling contract (through the Bureau) with Cal-Pac.

However, Hurricane had not acquired its system by the time the Bureau sent the February 12, 1970, letter terminating negotiations. In fact, it was not until the city had erected some replacement distribution power poles that negotiations with Cal-Pac culminated in an agreement to purchase the system.

In August of 1970 the City executed a service agreement with ICPA and from this point forward until a discussion with a Bureau representative on May 4, 1973, the City indicated it thought it had a firm supply of CRSP power through ICPA. Hurricane, like Enterprise, was receiving CRSP power at CRSP rates through a CRSP revenue meter with the full knowledge of the Bureau.

(c) *Summary and Conclusion:*

It seems clear in retrospect that denial of a power supply to the City was a result of the protracted negotiations with Cal-Pac for purchase of the system. As with enterprise, Hurricane was confused by others and apparently believed it had obtained a firm power supply. In recognition of the United States' share of responsibility in the misunderstanding, Western will consider Hurricane's special circumstances and proposes to allocate power to the City from Resource Pools 5 and 6.

The tentative special allocations were derived by taking one-half of the City's 1975 summer season and 1975–76 winter season peak loads. The 1970 distribution of CRSP power in which the City failed to obtain a power supply was based on each customer's estimated 1975–76 summer and winter season peak loads. Western has selected the 50 percent factor to reflect generally the portion of the responsibility it feels rests with the United States in the City's failure to obtain an entitlement of CRSP power.

The tentative special allocations are as follows: Winter season: 1941 kW, 1,472,945 kWh. Summer season: 858 kW, 1,132,616 kWh.

6. Parowan and Paragonah, Utah

(a) *Comments:*

The City of Paragonah also requests special consideration. The Cities of Parowan and Paragonah each received an allocation of CRSP power in the initial allotment (1962). The Federal power allocations of both were handled through one electric service contract between Parowan and the Bureau.

Paragonah now desires to receive a separate allocation, and the question arises as to how much of the existing contract commitment should be assigned to Paragonah.

(b) *Discussion:*

In such instances, Western will allocate to the qualified preference utility with the load responsibility, in preference to an agent for the utility, if that is the utility's desire.

Western requests in this instance that the cities of Parowan and Paragonah mutually agree upon the amount of the power presently under contract with Intermountain Consumers Power Inc., to which each is entitled. Western will then use the firm power component of such amounts as the basis for arriving at an allocation to each City in Resource Pools 3 and 4.

For purposes of developing the hypothetical allocation shown in Appendix C of the proposed revised criteria, Western has developed the following division of firm power between them:

	Winter season* kW	Summer season* kW
Parowan	1,337	930
Paragonah	193	120
Total	1,530	1,050

*Western utilized amounts it believed were the City's 1960–62 average peak seasonal loads to arrive at these quantities. However, this method of proration between the Cities is not necessarily recommended.

D. Other Issues

1. Derivation of Marketable Resources

Western proposed in August of 1983 that power available from the SLCA Integrated Projects would be based on the maximum operating capacity of the powerplants of the Collbran, Rio Grande and Provo River Projects and on the capacity of the CRSP powerplants based on 90 percent hydrological probability from 1989 to 1999. Energy would be based on average hydrological conditions projected for 1989–1999 and an option to purchase up to 400 GWh of additional energy was also included. Western proposed to purchase firming capacity and energy on a pass-through cost basis. Only reserves and requirements for the Bureau's priority loads were deducted from power available at plant to arrive at marketable power, since losses were assumed to equal diversity. Average generation at plant was reduced by losses and requirements for the Bureau's priority loads and a small amount of energy was shifted from the summer to the winter season.

(a) *Comments:*

—The subtraction of the Bureau's priority loads before the resource is split between the Northern and Southern Division is inequitable since these Federal loads provide benefit only in the Northern Division.

—SLCAO should market long-term power and energy based on median water supply conditions with seasonably adjustable contract rates of delivery and load factors.

—Western should use a hydrological probability, lower than 90 percent, such as a 75 percent hydrological probability that would provide approximately 75 MW of additional available power.

—Western should select the option to obligate long-term firm energy at a level that exceeds average hydrological conditions.

—Opposes marketing maximum amounts of power and energy because that may adversely affect the environment.

—The proposed energy shift does not appear to have a significant impact on the release pattern from Glen Canyon Dam.

—Western has not addressed the environmental impact of the proposed energy shift which could affect air pollution in a wide area.

—Purchasing energy is acceptable if the costs passed through to the customers includes appropriate operation and maintenance charges and interest charges on any costs not paid in the year incurred.

—Western should purchase more than 400 GWh of energy.

—Western should not purchase additional energy because such purchases are not within the intent of the CRSP Act nor the legal authority of Western.

—Energy purchases should be adjusted to individual customer needs.

—The criteria should pass through the costs of purchased power energy to the customers.

—Additional information about the customer's obligation to take purchased energy and the mechanics of passing on purchased energy costs is needed.

—Western should purchase sufficient energy to at least maintain a 58.2 percent seasonal load factor and develop an aggressive program to combine resources.

—All costs of capacity purchases should be on a pass-through-cost basis.

—The combined total reserve of 200 MW for the Loveland-Fort Collins Area and Salt Lake City Area should be reduced by 50 MW.

—Ten percent of marketable power should be retained as reserves.

(b) *Discussion:*

The above comments have been grouped for discussion into the following numbered categories:

(1) Hydrology studies.
(2) Energy shift between seasons.
(3) Purchases.
(4) Reserves.
(5) Deduction for Priority Uses.

(1) *Hydrology studies.* The hydrological studies supporting the proposed August 1983 criteria were based on a model for simulating river operations referred to as the CRSP model, which has subsequently been replaced with a more sophisticated model. This new model, the Colorado River Simulation System (CRSS), was used by the Bureau to arrive at the power at plant (MW) at various probability levels and the average generation at plant (GWh) for the CRSP and Participating Project powerplants. However, while the results differ with the new model, the issues raised are still appropriate to discuss.

The following explanation of how the CRSS model develops the probability levels considered for the revised proposed criteria has been undertaken to clarify the issues raised. The CRSS model computes energy and power from the manufacturer's rating curves for each powerplant in the CRSP system. The model simulates operation of the system of reservoirs by arranging the optimum distribution of water in storage to satisfy downstream water release requirements. As a result, the model can be used to project generation, both power and energy, for each month of each year within a selected study period.

The traditional data base that supports the CRSS model includes water supply (projected hydrology), depletion schedules, release schedules, reservoir starting conditions, sedimentation levels, unit maintenance and uprate schedules, and powerplant limitations.

For the proposed marketing criteria, the projected hydrology for the 10-year period from 1990 to 1999 was simulated by the Bureau's indexed sequential method. Based on the 78 years of historical record (1906–1983) the model produced monthly power and energy estimates which were then analyzed to determine the probability characteristics assuming a normal statistical distribution.

Table A–1 contains a summary of selected probabilities (exceedence levels) and associated power values by months for the 10-year study period 1990–1999. Lowest power values for each season occur in the months of March and April. Critical load periods occur in December or January for the winter season and July and August for the summer season. Therefore, critical seasonal power values and their associated probabilities were selected from the lesser of December and January for the winter season, and the lesser of July and August for the summer season. Firm power values were selected from the 90 percent probability level, and included in Appendix A as "power at plant-CRSP."

Table A–2 contains a summary of selected probabilities (exceedence levels) and associated energy values by months for the same 10-year study period. In addition, winter and summer season totals are tabulated. It should be noted that the season totals are not the same as the sum of the months in each season for each probability level. This is because the seasonal sums were determined before the ranking process rather than summing the individual months after ranking. Additionally, the arithmetic mean is tabulated since it can and often does differ significantly from the median or 50 percent probability level. The mean seasonal values were selected for application in the Post-1989 Power Marketing Criteria, and are included in Appendix B as "average generation at plant-CRSP."

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TABLE A - 1

SUMMARY OF SELECTED PROBABILITIES _/
10-Year Study Period
(1990-1999)

WINTER CAPABILITY - MW

Exceedance Level	OCT	NOV	DEC 2/	JAN 2/	FEB	MAR
Adverse	1486	1478	1467	1452	1442	1437
99%	1530	1524	1516	1499	1495	1491
95%	1565	1560	1549	1535	1527	1524
90%	1589	1584	1575	1561 3/	1552	1546
75%	1649	1647	1636	1623	1612	1612
60%	1691	1688	1682	1670	1662	1658
50%	1691	1691	1691	1690	1686	1683
40%	1691	1691	1691	1690	1689	1689
25%	1691	1691	1691	1690	1689	1689
10%	1691	1691	1691	1690	1689	1689
Minimum	1691	1691	1691	1690	1689	1689

SUMMER CAPABILITY - MW

Exceedance Level	APR	MAY	JUNE	JULY 4/	AUG 4/	SEPT
Adverse	1438	1466	1512	1518	1505	1491
99%	1485	1499	1527	1553	1536	1521
95%	1526	1541	1576	1588	1577	1565
90%	1548	1567	1597	1612	1600 5/	1588
75%	1615	1632	1651	1657	1650	1639
60%	1659	1673	1690	1691	1691	1691
50%	1683	1687	1691	1691	1691	1691
40%	1687	1689	1691	1691	1691	1691
25%	1688	1689	1691	1691	1691	1691
10%	1688	1689	1691	1691	1691	1691
Minimum	1688	1689	1691	1691	1691	1691

1/ Data Source: Bureau CRSS Model, July 1984.
2/ Critical load months, winter season.
3/ Critical seasonal capacity, winter season. Selected for use in criteria.
4/ Critical load months, summer season.
5/ Critical seasonal capacity, summer season. Selected for use in criteria.

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TABLE A - 2

SUMMARY OF SELECTED PROBABILITIES
10-Year Study Period
(1990-1999)

WINTER ENERGY - GWh

Exceedance Level	OCT	NOV	DEC	JAN	FEB	MAR	TOTAL
Adverse	273	269	403	461	302	266	1998
99%	279	274	405	468	314	287	2027
95%	288	285	421	487	341	318	2140
90%	295	291	447	505	357	335	2230
75%	362	360	488	529	397	385	2521
60%	388	377	505	550	427	425	2672
50%	402	385	510	563	445	445	2750
40%	418	492	516	578	463	473	2940
25%	630	886	521	605	492	518	3652
10%	1039	964	525	641	533	579	4281
Minimum	1200	1102	548	723	621	713	4907
Mean	526	566	499	568	445	454	3058 1/

SUMMER ENERGY - GWh

Exceedance Level	APR	MAY	JUNE	JULY	AUG	SEPT	TOTAL
Adverse	223	249	301	417	366	195	1751
99%	248	270	320	440	381	233	1892
95%	295	291	350	472	436	291	2135
90%	312	322	365	507	488	334	2328
75%	383	385	417	580	532	385	2682
60%	443	438	444	608	565	438	2936
50%	482	491	482	639	589	481	3164
40%	510	532	542	682	621	521	3408
25%	568	600	611	761	679	619	3838
10%	698	746	1035	1208	812	747	5246
Minimum	907	974	1165	1258	1119	1169	6592
Mean	488	507	572	722	619	516	3424 1/

1/ Probability level and value selected for use in the Post-1989 Marketing Criteria.

In adopting the use of a 90 percent hydrologic probability (i.e. 10 percent risk of having insufficient available power) as a basis for determination of marketable firm power, Western was influenced by a number of factors. Recognition of the need to provide existing customers a resource similar to their present supply and the need to offer new customers an opportunity to participate in the post-1989 allocation induced Western to depart from the historic policy of using "most adverse" as marketable power. The 90 percent probability level represents a statistical application for CRSP only. The remaining integrated projects are included at maximum operating capacity, a condition that has occurred infrequently in the past.

When the 10 percent risk condition occurs, and/or hydroelectric energy is in short supply, thermal resources are often called on to meet the loads normally served from hydro-generation. This reduces the availability of thermal generation, and often increases its cost. If poor hydrological conditions are experienced in adjoining basins to the northwest or southwest, the situation is worsened as far as the costs related to the risk are concerned. Any shortage of capacity on a hydroelectric system would occur over peak periods. When other utilities in the area are also experiencing heavy demand and competing for any remaining resources, the possibility of power not being available at any price must also be considered in determining the marketable firm resource. For this reason, Western concluded that it would not be prudent to offer marketable power with a higher risk of unavailability than 10 percent.

A proposal that Western utilize median water conditions, and vary contract rates of delivery and related energy seasonally, would complicate the administration of the contracts and we suspect it would not provide the level of reliability most customers desire. Such a marketing procedure would make an unreliable resource and a less attractive commodity for some customers, although it could increase the available resources some of the time. Western has provided for some flexibility by permitting each customer to decide whether or not they want Western to purchase a limited amount of capacity or energy on their behalf on a pass-through-cost basis.

(2) *Energy Shift Between Seasons.* Western proposed to adjust the marketable energy from the Colorado River Storage Project powerplants by increasing energy production 110 GWh in the winter season and with an offsetting decrease in the summer season.

The shift of energy was proposed to distribute equitably the energy reduction among existing customers on a seasonal basis and by so doing offer a product for sale which is more nearly balanced between the winter and summer seasons. However, after re-evaluation, Western concludes that the same objectives can be accomplished by modifying its energy purchase program by purchasing most of the 400 GWh during the winter season and decreasing summer season purchases.

(3) *Purchases.* Western has tentatively decided to adopt the option of obligating long-term firm energy at a level that exceeds that based on average hydrological conditions. Purchase costs incurred in meeting energy commitments normally would be on a pass-through-cost basis to those customers desiring such service.

This option was widely supported by the commentors, although some commentors requested that more energy be purchased. All comments received on the proposal to pass through the costs were favorable, indicative of the wide support among customers for the adoption of businesslike procedures that will assure the repayment of investments financed with appropriations. As stated above, individual customers will have the option to decline the purchased power if they choose to do so.

Western is willing to purchase up to 400 GWh to maintain a resource that has a load factor that is closer to the resource marketed historically. The parameters that must be considered are the system capabilities under varying operating conditions. The SLCA has purchased as much as 2000 GWh annually, but has needed around 1,200 GWh in dry years to meet contract commitments based on average water conditions, as determined with the old CRSP hydrology model. It should be noted that the new CRSS model produces about 525 GWh more annually than the CRSP model did for the 1990–1999 period, which may increase the amounts we may have to purchase under adverse hydrological conditions. It is true, however, that with full reservoirs, on the average, the SLCA should not have to purchase as much firming energy as in the past. Considering the ramifications of the proposed commitments, Western tentatively concludes that the 400 GWh is the appropriate level of purchases. If sufficient customer interest is indicated, Western would be willing to consider purchasing additional amounts for long-term commitments.

Western proposes to pass through the costs of firming power and energy purchases to assure that unanticipated purchase expenses do not delay the repayment of investments, unless the customers and other interested members of the public advise Western that a blended rate is preferable.

One commenter requested that the detailed mechanics of the power and energy pass-through-cost approach be stated in the criteria. Western prefers to develop these details in conjunction with its customers during the contract development process. There will likely be a need for an exchange of information prior to each season on an estimated cost basis with a post season adjustment. Passing through purchase costs as they occur will require customers to have the ability to increase their financial obligations upon relatively short notice. Customers that want Western to purchase firming power and energy for them may need to establish their own fund to ensure that the required funds will be available. We do not find any legal constraints to the purchase of this energy and have in fact purchased larger amounts of energy under the CRSP Act for both firming and fuel replacement needs in most of the past several years. The Colorado River Storage Project Act clearly sets forth the goal of maximizing power sales at firm rates. Purchasing energy allows a firm resource to be marketed that is more compatible with customer load characteristics.

Power marketing administrations have inherent authority to purchase power and energy reasonably incidental to the integration of a hydroelectric project. Kansas City Power & Light Co. v. McKay, 115 F. Supp. 402 (D.D.C. 1953), judgment vacated for lack of standing to sue, 225 F.2d 924 (D.C. Cir.), cert. denied, 350 U.S. 884 (1955). The past practice has been to sell Federal hydropower based upon average water conditions. For many years, the United States has purchased energy to firm up commitments under power contracts. The present proposal is an extension of these same historical purchase principles to reflect the desires of preference customers to accept a slightly higher level of risk than in the past. Western believes that full legal authority exists to market power which is available nine out of ten years and energy which is available half the time. Even the maximum amount of purchases which Western might make under the proposed criteria will normally be made during off-peak periods, with water shaped and stored for use in the production of energy during peak periods. This, in the judgment of Western, is a legally defensible integration of hydroelectric resources. While no final decision will be made on what power and energy will be marketed until the environmental evaluation is complete, Western sees no deficiencies in the legal authority to purchase capacity or energy as proposed.

Western continues to be interested in promoting and is willing to develop coordinated resource proposals with interested customers. However, tieing the development of a resource coordination plan to the completion of these criteria could lead to unacceptable delays. Western therefore does not plan to pursue a coordinated resource plan as part of these marketing criteria.

(4) *Reserves.* Western proposed to maintain 145 MW as reserve capacity to assure continued service to its customers in the event of the unexpected loss of generating resources. This level of reserves would have been adequate to cover an outage of a unit at Glen Canyon Powerplant prior to the uprating that is now in progress.

Discussion

Western is a participant in the Inland Power Pool (IPP), a member of the Western System Coordinating Council (WSCC), and the operator of the Western Area-Upper Colorado (WAUC) Control Area. The requirements of the IPP are identified in the revised Inland Power Pool Agreement dated November 23, 1983, and the WSCC criteria contain prescribed reserve requirements.

Western subscribes to the requirements of both IPP and WSCC. The IPP requirements are now about 70 MW, but they vary month to month and will likely increase as both loads and the largest unit size in IPP increase through 1999. In addition, the IPP is currently restudying its reserve requirements due to concern from some members as to the adequacy of the IPP reserves.

The use of 10 percent of marketable power as a reserve level, as recommended by one commentor, has historical precedent as an appropriate reserve margin. However, it is not used by either the IPP or WSCC.

Another commentor suggests the reserve requirements of LFCAO and SLCAO be combined and thereby reduced. Western has evaluated this possibility as well as including the Boulder City Area Office reserve needs, but found that under IPP guidelines, the reserve requirement would change very slightly as a result of consolidation. In addition, since these are separate projects with different characteristics, statutory requirements and criteria, and they are operated separately, Western has decided not to consolidate pool reserve accounting and requirements among Areas.

WSCC reserve requirements can be met by an operating utility by reserving an amount of capacity equal to the most severe single contingency plus sufficient spinning reserves to provide the necessary regulating margin. If the SLCA were operating independently, its reserve obligation under a very strict interpretation would be 348 MW for a stepup transformer for two Glen Canyon units plus the SLCA regulating margin of 35 MW for a total reserve requirement of 383 MW.

While the benefits of pool membership would be lost if the SLCA were to maintain 383 MW of reserve, holding more reserves than the current or projected IPP reserve requirement is appropriate since the IPP can be dissolved upon 3 years notice by its members. Western has determined that maintaining reserves to cover the largest single contingency is an appropriate middle course under the circumstances, which now amounts to 174 MW rather than 145 MW. These reserves are used for delivering interruptible services such as fuel replacement energy and energy interchanges and permit Western to povide assistance to interconnected utilities in the event of emergencies.

It is in the best interest of the agency and its customers to maintain a reserve position which provides some flexibility in the event irreconcilable differences should arise within IPP and/or reserve requirements are reformulated prior to 1999.

(5) *Deduction for Priority Uses.* One Southern Division commentor suggested that it was inequitable for Western to remove Bureau of Reclamation priority use loads from the available resource before dividing the resources between the Northern and Southern Divisions. This procedure recognizes that the Bureau's priority use loads are a responsibility of the whole project and therefore, all of its customers. Under this proposal, the increase in priority use loads in the new contract period will affect customers in both divisions. Western recognizes this is a change from past precedent. Previously, since the priority uses are physically located in the Northern Division, they were considered Northern Division loads. There is some merit to both points of view. Western has concluded that the recognition that priority use loads are a project responsibility to be shared by both divisions is most consistent with the proposed adjustment in the distribution of the CRSP resource between the two divisions.

(c) *Summary and Conclusion:*

Western is interested in marketing the maximum amount of power it can without assuming a level of risk which could be harmful to either Western or its customers and without causing adverse environmental consequences. After weighing the various probability levels and the proposed purchase of an additional 400 GWh for those customers desiring it on a pass-through-cost basis, Western concludes that the use of the 90 percent probability for determining marketable power is appropriate. The use of average hydrology plus the 400 GWh purchase is tentatively considered a responsible basis for determining marketable energy. These amounts offered may be affected by the evaluation of environmental impacts. Western has concluded that the resource can be balanced between seasons by purchasing most of the 400 GWh during the winter season and decreasing summer season purchases.

After carefully considering the various needs and requirements relative to reserves, Western has provided for a reserve level of 174 MW. This will meet the WSCC and IPP requirements and should give Western sufficient flexibility throughout the 1989–1999 period to always be in a position of maintaining adequate reserves.

The deduction of the Bureau's priority uses before dividing the marketable resources between the Northern and Southern Divisions is reasonable in Western's view, in that it recognizes that priority use loads are a project responsibility to be shared by both divisions.

2. Classes of Service

Western proposes to offer long-term firm power with energy, short-term firm power with or without energy and other services, such as interchange, emergency or maintenance service, transmission service, and nonfirm energy service.

(a) *Comments:*

—Short-term power should be used in the resource coordination program only after it is offered for sale to existing customers.

—Western should offer long-term peaking power for sale and should assign a priority to those entities presently purchasing such power to recognize their commitment to this service since 1978.

—Firm rates should be used in the sale of short-term power.

—Those with existing peaking commitments should receive priority in contracting for short-term power.

(b) *Discussion:*

In the past, when Western determined that short-term firm power or energy was available for sale, such resources were offered to the long-term firm customers first. Under these criteria, such resources will be offered for sale to preference entities first, including long-term firm customers. Since most qualified preference organizations will most likely be long-term firm customers, this difference is not expected to be substantive. In the event a resource coordination program is developed that includes short-term resources from the SLCA Integrated Projects, preference provisions would continue to apply to those offerings. The rates for short-term firm power are not addressed in the criteria, but will be established separately.

Western has proposed to offer long-term firm power with energy as the single class of long-term firm power to be allocated. This proposal has received broad support, apparently because this resource fits into most customers' needs. Some entities could not use peaking power when it was offered prior to the 1978 allocation.

Peaking power was offered at that time since there was no energy available to market with the power. It is not being offered now because it would unnecessarily exclude some potential customers whose system conditions could not accommodate it. Western is including a proposal in the criteria to permit applicants to choose the amount of power they prefer with their share of energy, subject to the limitations imposed by the needs of other applicants and the available resources.

Western recognizes that the proposed criteria may result in shifting power among existing customers to some extent, but this departure from the status quo seems appropriate to simplify the long-term marketing arrangements and preserve the relative distribution of energy among existing customers. Perhaps some small advantages could be granted to existing peaking power customers in the distribution of available power in the event the requested and available power are incompatible. Another possibility is that those with existing peaking power commitments could be given some kind of priority in contracting for short-term firm power.

(c) *Summary and Conclusion:*

Western concludes that the classes of power proposed in the criteria meet the needs of most customers and should therefore be retained. Additional comments on what kind of recognition, if any, should be given to existing peaking power contractors are invited.

3. General Allocation Issues

Western proposed that no applicant should receive an allocation of SLCA Integrated Projects power so that its total post-1989 firm power entitlements from all Federal sources exceeds its avarage peak demand for the 3-year period ending with 1982.

(a) *Comments:*

—Since the average 1980–1982 peak demands were reduced through energy conservation efforts by some customers, the proposal is not a fair basis for limiting an allocation.

(b) *Discussion:*

The intent of the proposed limit on allocations was to correct any previous excessive commitments of Federal power in relation to the customer's load. However, upon reviewing applicant profile data, it became clear that this was not a significant problem. The proposed limitation would have affected a very few organizations, and at least one of them had creatively and aggressively promoted conservation for a number of years. Based on the documentation provided, it was clear that if the load growth pattern had not been altered with substantial load management and conservation efforts, that customers would not have been affected by by proposed limit on allocations. Since Western is obviously interested in promoting conservation, punishing a customer for a successful conservation program is clearly inappropriate.

(c) *Summary and Conclusion:*

The allocation limitation provision will be eliminated. Since an excessive commitment of Federal resources is not a problem, a need for the provision does not exist.

4. Contract Issues

(a) *Comments:*

—A fixed monthly scheduled based on the resource pattern would make it difficult to schedule other resources, and would likely increase costs and require overlapping of resource commitments.

—The proposed monthly resource pattern would force Southern Division customers to take a disproportionate share of their energy during the winter season.

—Additional flexibility in scheduling resources is needed by customers with their own generation.

—Oppose the application of the proposed minimum monthly schedule, and support maintaining the existing minimum scheduled requirements.

—Oppose the minimum monthly schedule, but support a seasonal minimum schedule.

—Oppose a fixed minimum schedule, and suggest that a minimum schedule be implemented only when actual physical operating constraints on the system require it.

—Implementing the proposed minimum schedule would severely limit the power that could be taken during peak hours, which would force contractors to generate or purchase more expensive energy during peak periods. In some cases, oil- or gas-fired peaking units would be used.

—Support the application of the proposed minimum monthly schedule because it will enable Western to purchase thermal energy at night, thus decreasing the cost of energy purchases required to support its commitments to its customers.

—The need for establishing Elephant Butte as a point of delivery is questionable.

—Thermopolis, Casper, Glenrock and Yellowtail should be retained as points of delivery.

—Western should look at the feasibility of building a Federal transmission system in Utah.

—Customer requests assistance in obtaining a transmission path beyond the Federal point of delivery.

(b) *Discussion:*

The above comments have been grouped for discussion into the following numbered categories:

(1) Monthly pattern of resource.

(2) Minimum scheduled rate of delivery.

(3) Delivery conditions.

(1) *Monthly pattern of resource.* The proposed marketing criteria included a monthly pattern for establishing each customer's monthly capacity and energy entitlements, that was based on the resource plant factor after considering reserves, priority uses, energy losses, and generator unit maintenance schedules.

The commentors were unanimous in opposing the proposed monthly pattern of delivery in Exhibit C of the criteria, preferring instead to use the present load pattern method presently in place. This method bases the monthly delivery of SLCA Integrated Projects resources on each customer's monthly peak load and energy use rather than a pattern related to the water operations of the Colorado River Storage Project. As pointed out by the customer, load patterning will result in more efficient use of the available resources, resulting in lower costs to consumers. As long as the SLCA has the resource capability of providing load patterned deliveries, Western is willing to continue to do so. Western therefore replaced the delivery pattern approach used in the August 1983 proposal with the currently used load pattern method in the revised proposed criteria.

(2) *Minimum scheduled rate of delivery.* Western proposed that the minimum scheduled rate of delivery for long-term firm capacity in each billing period would be 65 percent of the average capacity determined by dividing the monthly energy obligation by the number of hours in the month, subject to change under certain operating conditions or objectives as indicated in the proposed criteria.

Almost all commentors opposed this minimum, although some comments indicated that the proposal was not well understood. The proposed method would result in a similar minimum requirement to what is now required, regardless of the load factor associated with the delivery obligations. However, if the load factors of the deliver obligations do not vary significantly from customer to customer, the existing minimum schedule requirements will continue to be adequate for Western's needs, and should not result in inequities among customers. A seasonal minimum schedule does not provide Western sufficient assurance that loads will be sufficiently great to absorb required Integrated Projects generation or to allow Western to purchase energy with sufficient flexibility to take advantage of the lowest market prices.

Western recognizes that the proposed minimum schedule may impose certain constraints upon customers who find it advantageous to take less power, at times, than Western's proposed minimums. One reason that Western is willing to purchase 400 GWh each year is to increase the marketable resource to more nearly approximate the customer's system load factors so that we can provide adequate resources over peak periods.

Western must have load to accommodate required minimum water releases, and to support purchases during offpeak periods to the maximum extent possible. The need for flexibility has been recognized in Section III.C. of the revised proposed criteria which permits Western to modify the requirement as necessary and to waive the requirement for a minimum schedule during peak periods if operating conditions permit and a customer so requests.

(3) *Delivery Conditions.* Normal delivery will be made at SLCA Integrated Projects' transmission system voltages, or at subtransmission voltages if customers have systems operating at lower voltage levels. Designated Federal Points of Delivery or Equivalent Federal Points of Delivery will be at:

(i) Points on the SLCA Integrated Projects transmission system;

(ii) Points on systems of others which have been previously established as delivery points.

The comments raise specific issues which have been addressed in the order shown above.

The Elephant Butte delivery point was established to afford Western a means of integrating the Rio Grande and Colorado River Storage Projects on an operational level. Wheeling arrangements beyond that point of delivery will be the responsibility of the customer.

The Casper, Glenrock, Thermopolis, and Yellowtail delivery points were deleted in the August 1983 proposal since contracts are in place that require customers to pay for transmission service beyond the CRSP transmission system for deliveries at those points. It was deemed appropriate to consistently limit delivery points to those points at which Western's cost responsibility end. On that basis, the Casper, Glenrock, Thermopolis, and Yellowtail points were deleted. Upon further review of our contract rights with the Pacific Power and Light Company and accounting procedures that have been developed during the past few years, Western confirmed that it is appropriate to eliminate those points. Customers desiring service at those points may enter into arrangements with Western's LFCA to obtain transmission service over the Western Division of the Pick-Sloan Missouri Basin system.

The equivalent Federal points of delivery available in Utah are provided under a long-term contract with the Utah Power and Light Company. As long as UP&L provides satisfactory transmission service more economically than can be provided by construction of a Federal system or a joint customer-Federal system, Western will continue to exercise its opition to extend the term of the contract. If circumstances should arise so that this is not the case, Western would evaluate other options, including construction of Federal facilities. This is true at other points of delivery on the systems of non-Federal entities that are presently considered to be equivalent to Federal deliveries as the result of existing transmission arrangements.

In the proposed criteria, Western has indicated its willingness to assist customers in arranging for deliveries beyond the designated delivery points. However, any customer desiring such assistance should make a specific request for it after allocations have been made and contract arrangements are being developed.

(c) *Summary and Conclusion:* Western recognizes the significant customer concern regarding monthly resource pattern, minimum schedules and delivery conditions and has attempted to accommodate customer concerns where possible. Western has concluded that a delivery arrangement based on the customers's monthly load pattern would be more acceptable and it has been included in the criteria. Likewise, in response to comments received, Western has proposed a continuation of existing minimum schedule requirements, with provision for modification as appropriate.

E. Regulatory Procedure Requirements

1. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the marketing plan relates to electric services provided by Western.

Under 5 U.S.C. 601(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

2. Intent to Prepare Environmental Assessment

In compliance with the National Environmental Policy Act of 1969 (NEPA) and the Department of Energy (DOE) regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), Western conducts environmental evaluations of certain rate and allocation actions. Under the DOE regulations, Western is making an environmental assessment of the possible impacts of the revised proposed marketing plan, and expects to a draft environmental assessment available for review by November 1984. Upon completion of that assessment an administrative determination will be made as to whether or not an environmental impact statement is required.

3. Notice of Reduction in Commitments

These proposed criteria constitute notice under section 8D of the February 9, 1978, General Power Marketing Criteria for the CRSP, as revised effective February 6, 1984, that reductions in power and energy are proposed after September 30, 1989. Western understands that each customer is desirous of knowing its final allocation as soon as possible so that adequate resources can be obtained to meet estimated loads, and will expedite the completion of the criteria and allocations.

4. Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1871). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

The Revised Proposed General Marketing Criteria and Allocation Criteria for the SLCA Integrated Projects are published herewith, together with hypothetical allocations for use in understanding how the criteria would be implemented under the stated assumed conditions.

Issued at Golden, Colorado, August 24, 1984.

William H. Clagett,
Deputy Administrator.

SALT LAKE CITY AREA—REVISED PROPOSED GENERAL POWER MARKETING CRITERIA AND ALLOCATION CRITERIA

Part I—General

A. Applicability

These criteria are based upon the provisions of the Acts of Congress approved June 17, 1902 (32 Stat. 388), August 4, 1939 (53 Stat. 1187), and August 4, 1977 (91 Stat. 565). Also, the SLCA criteria are specifically based upon the provisions of the Acts of Congress approved February 25, 1905 (33 Stat. 814), July 3, 1952 (66 Stat. 325), June 18, 1954 (68 Stat. 255), April 11, 1956 (70 Stat. 105, July 7, 1960 (74 Stat. 360), December 23, 1963 (77 Stat. 475), and acts amending or supplementing all of the foregoing legislation. These criteria shall become effective upon approval and promulgation by the Administrator of the Western Area Power Administration (Western) and will apply to all SLCA Integrated Projects power marketed by Western's Salt Lake City Area (SLCA) and to the resources from the SLCA Integrated Projects marketed by Western's Boulder City Area (BCA) and Loveland-Fort Collins Area (LFCA). Existing contract arrangements will only be affected upon amendment by the parties. These criteria shall supersede and replace the "General Power Marketing Criteria" for sale of power from the Colorado River Storage Porject (CRSP) effective February 9, 1978, as revised effective February 6, 1984. These criteria are subject to change upon reasonable notice by the Administrator and the opportunity for comment by interested parties.

B. Marketable Resources

1. *SLCA Integrated Projects:* The SLCA Integrated Projects are those hydroelectric resources operated within the Salt Lake City Area by the Bureau of Reclamation, including the CRSP and Particpating Projects, the Collbran, Provo River, and Rio Grande Projects. Marketable firm resources as of October 1989 are listed below:

Marketable Firm Power	Winter MW	Summer MW
CRSP	1348	1250
Collbran	14	14
Provo River	5	5
Rio Grande	27	27
SLCA Integrated Projects	1394	1296

Marketable Firm Energy	Winter GWh	Summer GWh
CRSP	2786.9	2858.2
CRSP Purchases	366.0	34.0
Collbran	17.5	32.3
Provo River	0	17.7
Rio Grande	18.2	38.5
SLCA Integrated Projects	3188.6	2980.7

2. *Falcon-Amistad Projects:* The Falcon-Amistad Projects are those hydroelectric resources operated within the SLCA by the International Boundary and Water Commission. These marketable resources have been committed under the terms and conditions of Contract No. 7-07-50-P0890 dated August 9, 1977, with South Texas and Medina Electric Cooperatives until June 8, 2033. Said contract, or any revision thereto, embodies the marketing criteria for these projects.

3. *Future Resources:* New or revised marketing criteria will be developed as necessary when future power resources are available and offered for sale.

Part II—Marketing Criteria for SLCA Integrated Projects

A. Market Area.

The market area within which the power from the SLCA Integrated Projects will be marketed is divided into Northern and Southern Divisions.

1. The Northern Division consists of the States of Colorado; New Mexico; Utah; Wyoming; the City of Page, Arizona; a portion of the area in Arizona served by the Navajo Tribal Utility Authority; the areas in Arizona served by the Littlefield Electric Cooperative, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative; and White Pine County and portions of Elko and Eureka Counties in Nevada.

The Southern Division consists of the remaining portion of the State of Arizona, and that part of the State of Nevada in Clark, Lincoln, and Nye Counties which comprise the southern portion of the State.

New customers must have loads located within the portion of the market area that is also within the SLCA, which includes the States of New Mexico and Utah; western Colorado (west of the Continental Divide); the southwest area of Wyoming within the Colorado River Basin; White Pine County and portions of Elko and Eureka Counties in Nevada; and the portion of Arizona that lies in the drainage area of the Upper Colorado River Basin.

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B. Service Seasons

1. *Summer Season:* The 6 month period from the first day of the April billing period of any calendar year through the last day of the September billing period of the same calendar year.

2. *Winter Season:* The 6 month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the next succeeding calendar year.

C. Classes of Service.

Classes of service available for marketing shall be as follows:

1. *Long-term Firm Power With Energy:* Long-term firm power and associated energy available therewith through September 1999, shall be as stated in Appendix A.

2. *Long-term Firm Power With or Without Energy:* To the extent that priority uses, as estimated in Appendix A, have not developed and/or annual streamflow conditions and reservoir operations result in the production of greater amounts of power than what is committed on a long-term basis, short-term firm power with or without energy may be offered for sale on a monthly or seasonal basis. Such offers will be for firm power with energy, without energy, or with the return of energy. This power with or without energy may be used in a resource coordination program.

3. *Other Services:* In addition to marketing the above classes of service, Western will engage in other transactions such as delivering or receiving interchange, emergency assistance, maintenance service and/or regulation services to the extent that water and power resources permit and the contracts contain enabling provisions. In order to conserve fossil fuels, enhance the environment, and/or ensure the availability to preference customers of contracted amounts of power and energy, Western will purchase or exchange power and/or energy as necessary or desirable to supplement its resources. Nonfirm energy service may be available as a result of these purchases or exchanges. To the extent that transmission capacity is determined to be available, Western will provide firm and nonfirm transmission service.

D. Derivation of Marketable Resources

Power available from SLCA resources will be based on the maximum operating capacity of the powerplants of the Collbran, Rio Grando, and Provo River Projects along with the capacity from the CRSP powerplants based on 90 percent hydrological probability during the period from 1989 to 1999. Energy available for load will exceed the based on average hydrological conditions projected for the 10-year period ending September 1999 by about 400 GWh annually. Power and energy will be reserved for certain Bureau of Reclamation priority uses. All resources will be marketed in accordance with applicable Federal laws and policies. The derivation of the marketable resources of the SLCA Integrated Projects and the availability of these resource by seasons is contained in Appendix A.

E. Allocation Priorities

Available resources will be allocated in accordance with the allocation criteria stated in this document (Appendix B) and the preference provisions of Reclamation law in the following order of priority.

1. Preference entities within the SLCA Integrated Project's market area.

2. Preference entities outside the SLCA Integrated Projects' market area.

3. Nonpreference entities, provided that those nonpreference entities acting as agents for public entities without distribution systems shall receive priority over nonpreference entities acting on their own behalf.

These priorities may be recongized within pricing blocks for nonfirm energy.

Part III—Contract Arrangements

Those entities receiving an allocation and taking any other required steps will be offered a contract for the allocated resources based on the criteria stated in this document after reasonable opportunity to discuss proposed contract language has been provided to allottees. Allottees will have six (6) months to accept the offered contract or until September 30, 1987, whichever is later.

A. General Contract Terms

1. *Effective Date and Contract Term.* Existing contracts will be allowed to expire by their own terms. Contracts offered for the sale of newly allocated long-term firm power with energy will become effective on the first day of the October 1989 billing period (or upon expiration of an existing contract if later) as to the delivery of power and energy and they will terminate on the last day of the September 1999 billing period.

2. *Power Receipt and Distribution.* Contractors must have the means to receive and distribute power by September 30, 1988, in order to aviod automatic forfeiture of their contract rights unless Western specifically agrees otherwise in writing.

3. *Conservation and Renewable Energy Program.* Contractors will implement the terms of the Conservation and Renewable Energy (C&RE) Article within 1 year of the date of contract execution. The development of a C&RE program is a responsibility of each Western long-term firm power contractor and its member systems, if any, benefiting from the purchase of federally-generated long-term firm power.

An "Announcement of Final Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs" was published in the **Federal Register** (46 FR 56140) on November 13, 1981. In order to achieve the purposes listed therein, Western will guide and assist its firm power contractors in their C&RE program development, as requested and to the extent possible. Failure to develop a C&RE program that meets the Western Acceptance Criteria may subject a contractor to the potential loss of 10 percent of its firm power allocation.

4. *Allottee Purchasing Agents.* Western may contract with a single purchasing agent for two or more allottees, but only under conditions that permit Western to retain all the benefits of load diversity it would have if separate contracts were executed with each allottee.

5. *Load Diversity Adjustment.* Contract provisions will permit Western to adjust contract rates of delivery downward on a proportional basis in the event load diversity does not cover transmission system losses.

6. *Resale Provisions.* Existing contractors will implement the terms of the Resale of Electric Energy Article upon contract execution. New contractors will implement them upon receipt of Federal power. Failure to comply with these provisions may result in the loss of all or a part of the resources committed to the contractor. The Resale of Electric Energy Article will contain, among other things, a requirement that the contractor demonstrate that:

(a) The benefits of federally-generated power are distributed to the contractor's customers at the lowest possible rates consistent with sound business principles.

(b) Consumers can identify the costs of federally-generated power and non-federally-generated power such that the true costs of growth and the benefits of conservation and/or development of renewable resources are readily identifiable.

When the contractor consists of members or principals who are retail distributors of Federal power, these retail distributors will be directly accountable to Western for complying with the above requirements. One of the ways these requirements may be satisfied by the contractor and its members or principals is to display, on the monthly bills rendered to their customers, a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the Customer.

B. Long-Term Firm Power and Energy Obligations

1. Monthly long-term firm power and energy delivery obligations for each season will be set forth in each contractor's power sales contract. These amounts will be determined in accordance with the estimated monthly pattern of the contractor's load requirements. Western's firm power obligation for any given hour will be limited to the actual power scheduled during that hour; i.e., contractors will not be entitled to claim unscheduled firm capacity as their operating reserve capacity.

2. The monthly energy obligations may be increased from time-to-time at Western's discretion, should short-term conditions allow. If the established limit is increased for any month, it may be subsequently decreased to the normal monthly energy delivery obligations set forth in the power sales contract.

C. Scheduling, Accounting and Billing

Western and its contractors will establish mutually agreeable scheduling and accounting procedures, based upon standard utility industry practices, which will provide efficient, practicable utilization of power and energy. These procedures will be set forth in Western contracts or in separate written agreements made a part thereof. To the extent that firm power or energy is not available from the resources of the SLCA Integrated Projects for any season, up to the amount of Western's contractual obligation to provide power or energy, Western will purchase firming power or energy at the contractor's expense, normally on a pass-through-cost basis, unless a contractor advises Western not to purchase such power or energy on its behalf.

1. *Scheduling:*

(a) The maximum scheduled rate of delivery for long-term firm power in each billing period will be the monthly power obligations based on the contractor's seasonal load pattern of the contractor's loads being served with resources from the SLCA Intergrated Projects.

(b) The minimum scheduled rate of delivery for long-term firm power in each billing period will be 35 percent of the customer's maximum seasonal firm power rate of delivery during all hours of the month. This minimum schedule will normally be required to meet downstream water release requirements, to purchase firming energy, and to make purchases for a fuel replacement or other resource coordination program at a level that will allow utilization of operating reserves. The required minimum scheduled rates may be changed by Western as necessary for the above purposes.

(c) If operating conditions warrant and Western so requests, each customer will schedule its resources from the SLCA Integrated Projects to approximate normal hourly and daily load patterns to avoid abrupt changes in water releases and generation levels or other undesirable results. Upon request by the customer, the requirement for a minimum schedule during onpeak periods may be waived by Western if operating conditions permit.

2. *Accounting and Billing:*

(a) The amounts of power and/or energy to be paid for by the contractor will be determined in accordance with accounting precedures set forth in the contracts, or in separate written agreement made a part thereof and needed not be the monthly power and energy obligations. Said accounting procedures will include determining the amounts of power and energy delivered to the contractor at each point of delivery or point of use and shall establish the amounts of Federal power delivered over Western's transmission system to each contractor at each point of delivery.

(b) These procedures will also provide for billing at multiple points of delivery. If the contractor's system is operated so as to permit power to flow between points of delivery, accounting and billing will be on a coincidental basis. Otherwise, accounting and billing at multiple points of delivery will be on a noncoincidental basis, either by utilizing noncoincidental scheduling or metering information or by reducing coincidental deliveries for the estimated diversity among the delivery points.

(c) The cost of firming power and energy purchased in order to meet the contractual obligation to deliver the SLCA Intergrated Project's power and energy to contractors in each fiscal year shall be the average cost of such power and energy purchased in the SLCA during the fiscal year. These costs shall be accrued during the fiscal year in which they are incurred. To the extent they were not anticipated and collected during the same fiscal year, they will be billed to contractors during the following fiscal year or portion thereof, as Western deems appropriate, along with the regular monthly power bill. If the necessary revolving finds, authorizations, or appropriations are not available to Western, then trust funds will be established prior to Western's expenditures for purchasing firming power and energy.

D. Delivery Conditions

1. Subject to Western's approval, as to specific location and voltage, normal delivery will be made at Western's transmission system voltages or at the contractor's transmission voltage at such established locations. Deliveries may continue to be made at subtransmission voltages at powerplant and substation locations where contractors already have systems operating at such lower voltage levels.

2. Modifications to existing facilities and alternate or additional delivery points requested by contractors may be permitted at the discretion of Western; costs for such modifications being assigned to the appropriate parties. Western has no obligation to furnish additional facilities or increase the transmission or transformer capabilities of its power system. Request for taps will be considered on a case-by-case basis with final determination by Western.

3. Designated or equivalent Federal points of delivery will be at:

(a) Points on the SLCA Integrated Projects' transmission system; or

(b) Points on other Western transmission systems or the system of non-Federal entities which have been established as delivery points under arrangements between Western and other entities.

4. If such arrangements are terminated, then the delivery points under (b) above will be rescinded. These points are listed below and may be modified as provided herein.

BILLING CODE [illegible]

DESIGNATED OR EQUIVALENT FEDERAL POINTS
OF DELIVERY, TAP POINTS, AND VOLTAGES

Arizona	Kilovolt
Glen Canyon	69
Kayenta	230
Long House Valley	230
Mesa 1/ 2/	230
Pinnacle Peak 1/	230

Colorado	
Ault	230
Beaver Creek 2/	115
Collbran Switchyard	115
North Main Tap (Gunnison)	115
Gore Pass Tap	138
Green Mountain	115
Gunnison	115
Hayden	138
Lost Canyon	115, 230 or [345] 3/
Midway	115, 230
Montrose	115
Pueblo 2/	115
Rangely	138
Salida (Poncha Junction)	115
Skito Tap	115
Story 2/	230
Weld	115, 230

New Mexico	Kilovolts
Albuquerque 2/	115
Ambrosia Lake 2/	115
Elephant Butte	115
Four Corners	230 or [345] 3/
Shiprock 115, 230, [345] 4/	

Utah	
Brigham City Tap 2/	138
Bountiful Tap 2/	138
Centerfield 2/	138
Deer Creek	46
Fillmore 2/	138
Flaming Gorge	24.9, 69
Hale Plant Tap 2/	138
Hyrum 2/	138
Murray Tap 2/	138
New Castle Tap 2/	138
Paragonah 2/	138

BILLING CODE 6450-01-C

Utah cont'd	
Sigurd 2/	138
Smithfield Tap 2/	138
South Provo Tap 2/	138
Springville 2/	138
St. George 2/	138
Vernal	138
Upalco Tap 2/	138
Henrieville Tap 2/	230

Wyoming	
Archer	115, 230

1/ Deliveries to Southern Division Nevada customers are made from Mesa or Pinnacle Peak.

2/ Points of delivery on another Federal system or the system of a non-Federal entity.

3/ Scheduled for uprating from 230 kV to 345 kV.

4/ A 345-kV yard will be constructed.

The listing of the above points of delivery does not imply any obligation for Western to furnish additional facilities or to increase transmission or transformer capabilities at those points. Additional delivery points requested by the customers and approved by Western will be permitted, provided that they meet the above criteria and will not result in any expense or loss of revenue to the SLCA Integrated Projects. Delivery will not be made from transformer capacity required for project purposes. Taps on the SLCA Integrated Projects' or other transmission systems, at the customer's expense, will be on a case-by-case basis, with final determination of necessity and desirability to be made by Western and/or the owner of such transmission system.

E. Delivery of Power Beyond Delivery Points

1. All costs, including losses, for delivery of power and energy beyond the established delivery locations shall be the responsibility of the contractor.

2. The following alternatives are available to contractors for accomplishing delivery of power beyond the established delivery locations:

(a) The contractor or contractors may build all facilities to accept delivery at the established voltage at identified delivery locations, in which case the contractor will pay the applicable rates for such power. The basic design of such facilities is subject to Western's approval.

(b) Arrangements may be made with a third party to wheel and deliver power to a contractor's point of use. Such arrangements will normally be made by the contractor, or by a group of contractors, with Western's assistance if desired. When the contractor makes its own wheeling arrangements, the contractor will be billed by the wheeling agent and will pay the wheeling charges directly to the wheeling agent. If Western contracts for the wheeling arrangements on behalf of the contractor or a group of contractors, Western will pass the costs through to the contractors.

(c) Western may construct the transmission line facilities required beyond the identified established delivery locations, if the cost of the facilities constructed by Western beyond such locations are paid by the beneficiaries thereof.

Appendix A—Derivation of Marketable Resources

SLCA INTEGRATED PROJECTS*

[Power—MW]

	Winter	Summer
Power at plant:		
CRSP [1]	1691.0	1691.0
Collbran	14.0	14.0
Provo River	5.0	5.0
Rio Grande	27.0	27.0
Total	1737.0	1737.0
Unavailable power [2]	130.0	91.0
Reserves	174.0	174.0
Priority use	39.0	176.0
Marketable firm power	1394.0	1296.0

*In the event that Reclamation's plans for the development of additional generation in connection with uprating units at Flaming Gorge and Blue Mesa powerplants or building new powerplants, such as the Diamond Fork power system, are sufficiently firm to warrant inclusion in this plan, the marketable resources will be appropriately increased prior to finalization. Reclamation is considering the addition of about 130 megawatts with non-Federal funding. If this additional power is available for allocation, the adjustment to the Southern Division allocations and the amounts available to participating customers may be modified.

[1] Based on CRSS model studies simulating future conditions, July 1984. Includes estimated generator uprates at Glen Canyon scheduled for completion in 1987.

[2] Based on 90% hydrologic availability for CRSP and limiting releases at Glen Canyon to 31,500 cubic feet per second.

SLCA INTEGRATED PROJECTS*

[Energy—GWH]

	Winter	Summer
Average generation of plant:		
CRSP [1]	3058.0	3424.0
Collbran	18.7	34.6
Provo River	[2] 0	18.9
Rio Grande	19.5	41.2
Total average generation	3096.2	3518.7
Purchases [3]	+366.0	+34.0
Total	3462.2	3552.7
Losses (7 pct. at load)	−226.5	−232.4
Priority use	−47.1	−339.6
Marketable firm energy	3188.6	2980.7

*In the event that additional resources are included prior to finalization, these amounts will be appropriately increased.

[1] Based on CRSS model studies simulating future conditions and assuming average hydrologic conditions, July 1984.

[2] The average winter season generation of 6.7 GWh was not included as a marketable resource because winter generation has been provided to Utah Power & Light Company as a result of the Weber-Provo water exchange agreement.

[3] Purchases were scheduled to provide the same load factor (52.3%) for the marketable firm power and energy in each season. However, since the Southern Division resource is comprised of CRSP only, whereas the Northern Division resource includes energy from the Collbran, Rio Grande and Provo River projects, the load factor varies slightly between the two divisions.

Considerations in Determining Southern Division Share of CRSP Resoruces:

- Desire to preserve intent of original allocation between Northern and Southern Division.
- Desire to recognize change in Northern Division seasonal load diversity (a key factor in the original allocation).
- Desire to recognize a possible change in the availability of Federal resources in the Southern Division, i.e., the provisions of the Hoover Powerplant Act of 1984.

Southern Division Share of Initial CRSP Resource: 1200 MW × 20% = 240 MW (Summer), 1200 MW × 7% = 84 MW (Winter).

Change in Diversity; Adjustment in Southern Division's Share: 20% − 7% = 13% = Load diversity in Northern Division in 1960's.

Since load estimates indicate there will be little or no load diversity in the Northern Division in 1989, resources for SLCA new customers and others [1] in the summer and winter seasons were equalized by adjusting the seasonal diversity of the Southern Division allocations, as follows:

	Winter	Winter	Adjusted difference	Summer	Summer	Adjusted difference
Southern Division	84	119	[2] +35	240	210	[2] −30
SLCA new customers and others [1]	101	75	−26	20	75	+55

[1] Referred to as participating customers in Appendix B.

[2] These differences are related to long-term firm only and are included in the total change in the resources available to the Southern Division on page 1 of 7, Appendix B.

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[1] Referred to as participating customers in Appendix B.

ALLOCATION CRITERIA FOR THE SLCA INTEGRATED PROJECTS

1. Bases for Allocations

The total amounts of long-term power and energy available for allocation to the Northern and Southern Divisions of the SLCA Integrated Projects market area are tabulated below and compared to existing commitments:

	WINTER			SUMMER		
	Avail. for Allocation	Exist. Commit.	Chge.	Avail. for Allocation	Exist. Commit.	Chge.
MARKETABLE FIRM POWER - MW 1/	1394	1293	+101	1296	1276	+ 20
SOUTHERN DIVISION	119	93	+ 26	210	265	- 55
NORTHERN DIVISION	1275	1200	+ 75	1086	1011	+ 75
Existing Customers	1200	1200	0	1011	1011	0
Participating Customers*	75	0	+ 75	75	0	+ 75
DETAIL - NO. DIVISION						
CRSP	1229	1186	+ 43	1040	973	+ 67
Collbran	14	14	0	14	14	0
Provo River	5	0	+ 5	5	0	+ 5
Rio Grande	27	0	+ 27	27	24	+ 3
	1275	1200	+ 75	1086	1011	+ 75
MARKETABLE FIRM ENERGY- GWH 1/	3188.57	2659.90	528.67	2980.71	3041.80	-61.09
SOUTHERN DIVISION	281.48	214.20	+67.28	500.76	612.00	-111.24
NORTHERN DIVISION	2907.09	2445.70	+461.39	2479.95	2429.80	+ 50.15
Existing Customers	2736.08	2445.70	+290.38	2308.68	2429.80	-121.12
Participating Customers*	171.01	0.0	+171.01	171.27	0.00	+171.27
DETAIL - NO. DIVISION						
CRSP	2871.39	2428.20	+443.19	2391.45	2336.30	+ 55.15
Collbran 2/	17.50	17.50	0.00	32.30	32.30	0.00
Provo River 2/	0.00	0.00	0.00	17.70	0.00	+ 17.70
Rio Grande 2/	18.20	0.00	+ 18.20	38.50	61.20	- 22.70
	2907.09	2445.70	+461.39	2479.95	2429.80	50.15

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* Participating customers include potential new customers plus those existing customers who were entitled to receive less than 25 percent of their average energy requirements during 1980-82 from Federal resources that were committed on a long-term basis and those who receive allocations based on special circumstances.

1/ These amounts have been rounded for convenience but will be calculated in kilowatts and kilowatt-hours when the final criteria are published.

2/ Energy amounts available for allocation are less than Appendix A amounts because losses (7%, based on load) have been subtracted.

For convenience in referring to the allocation process, the marketable firm power and energy has been divided into the following resource pools:

Resource Pool 1: Southern Division, Winter Season

Resource Pool 2: Southern Division, Summer Season

Resource Pool 3: Northern Division existing customers, Winter Season

Resource Pool 4: Northern Division existing customers, Summer Season

Resource Pool 5: Northern Division participating customers, Winter Season

Resource Pool 6: Northern Division participating customers, Summer Season

The relationship between the power and energy components in each resource pool is shown below $\left(\frac{\text{kWh}}{\text{kW X HRS in season}} = \%\right)$ for comparison with customer's seasonal load factors:

	Resource Pools 1	2	3	4	5	6
Winter	54%		52%		52%	
Summer		54%		52%		52%

The percentage change in the proposed amount of seasonal energy for the existing customer group in each division is as follows:

	Winter	Summer
Southern Division	+31.40%	-18.17%
Northern Division 1/	+11.87%	- 4.90%

1/ Certain existing customers participate in Resource Pools 5 and 6. Those amounts are not included in these percentages.

To promote more widespread and equitable distribution of the benefits of available Federal power and energy, power in excess of amounts presently under contract, and associated energy, as adjusted to equalize amounts available in each season, will be reserved for participating customers in the SLCA (Resource Pools 5 and 6). Other Federal resources have been or will be available from the BCA and LFCA to new customers in those areas.

Since CRSP power and energy available to the Southern Division in the post-1989 period is less than presently under contract for the summer season, Resource Pools 1 and 2 will be offered to existing Southern Division customers only. The CRSP resource only will be allocated in the Southern Division in amounts that represent approximately 17 percent of 1200 MW in the summer season and about 10 percent of 1200 MW in the winter season. The balance of the resources from the SLCA Integrated Projects will be allocated in the Northern Division.

Resource Pools 1 and 2 will be allocated in the Southern Division by adjusting existing commitment as follows:

(A temporary Appendix D contains five alternative methods of adjusting Southern Division allocations, together with the impact each method has on each customer. The selected alternative will be described here in the final criteria and Appendix D will be dropped.)

Available energy in Resource Pools 3 and 4 will be allocated to eligible existing customers in the Northern Division for each season based on the proportion that the customer's present long-term firm power bears to the present long-term firm power commitments in total for the applicable season. Peaking power is excluded from consideration.

The energy available in Resource Pools 5 and 6, after any special allocations have been made, will be allocated based on the proportion that the participating customer's average seasonal peak load within the SLCA for the 3-year period bears to the total of all participating customer's average seasonal peak load for the same period, except that a seasonal energy allocation may not exceed an amount of energy associated with 3,500 kilowatts at the seasonal factor of the available resources or an amount equal to the difference between 25 percent of their average energy requirements during 1980–82 and their total available long-term Federal resources for the period, whichever is less.

Eligible applicants for all Resource Pools may request power with allocated energy to reflect their individual system characteristics. If there is insufficient power to satisfy the requests, the Administrator will limit the power allocated to a load factor that is equal to the seasonal factor of the resource pool. The Administrator may deviate from the application of these allocation criteria when special circumstances warrant it. To assist individual existing customers to adjust the diversity between their summer and winter allocations to their best advantage, based on seasonal characteristics of their loads and resources, Western is willing to facilitate the trading of capacity from one season for the other season by matching up those individual customers who desire to trade with other customers within the same division during the allocation process.

2. *Reductions in Allocations:* The proposed allocation of power and energy to an existing contractor may be reduced in whole or part if the contractor is unable to demonstrate that it has complied with the spirit of the Resale of Electric Energy Article in its existing contract. Compliance may be demonstrated by showing that (1) the benefits of low-cost Federal power have been passed on directly to the consumers through lower power rates, or (2) the benefits have been passed on indirectly if power rates to consumers provide revenues to be used to accomplish legitimate public purposes, and those power rates were established in an open and public manner.

3. *Reallocations:* Firm power and energy available for marketing because an allottee has failed to take significant and tangible steps to acquire a distribution system within the time period allowed, or because any allottee has failed to accept a contract within the time period allowed, or because a contract has been terminated, or because allocations have been reduced for noncompliance with contract provisions may be administratively reallocated.

4. *Applicant Qualifications:* The following requirements must be met in order to be eligible for an allocation of long-term Western resources:

(a) Each potential applicant must have submitted substantially complete applicant profile data to Western on or before December 30, 1983.

(b) Each potential new contractor must have had a 1982 load greater than 100 kilowatts.

(c) On or before January 1, 1984, each potential applicant must:

(1) Be a utility, primarily engaged in retail or wholesale sales of electricity, with responsibility for the load to be served; or

(2) Be a Federal or State agency with an ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(3) Be an existing Western contractor for long-term firm power who does not otherwise qualify above; or

(4) Have taken significant and tangible steps to acquire the means to distribute power or have taken initial steps to acquire the means to distribute power and have requested an extension of time for taking significant and tangible steps. Significant and tangible

steps toward becoming a utility would include some combination of the following:

a. Evidence of a financial commitment to purchase or construct a transmission system to distribute power;

b. Evidence of negotiations with a utility regarding distribution system acquisition;

c. Action before a public service or public utility commission to acquire a distribution system;

d. Initiation of condemnation proceedings; and/or

e. Construction of a distribution system.

5. *Application Procedures:* Upon finalization of these criteria, Western will request all qualified applicants to formally apply for a share of energy and power, under these allocation criteria, within a designated period of time. The Administrator will allocate the available resources under the terms of these criteria.

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Hypothetical Post-1989 Allocations

SLCA Integrated Projects

Resource Pool		Total Marketable Firm Power and Energy MW	GWh	kWh/kW
1	(See Appendix D)	119.00	281.48	2565.4
2	(See Appendix D)	210.00	500.76	2384.6
3	(See pp. 2-3)	1200.00	2736.08	2280.1
4	(See pp. 4-5)	1011.00	2308.68	2283.6
5	(See pp. 6-7)	75.00	171.01	2280.1
6	(See pp. 6 & 8)	75.00	171.27	2283.6

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HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 3 — EXISTING N. D. CUSTOMERS

		EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
AREA	ENTITY	FIRM CROD (MW)	PEAK CROD (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
LF	CENTER	1.50	0.00	1.50	3,825.0	4,247.2	422.2	1.87	0.37
	CODY	2.65	0.71	3.36	6,750.5	7,503.4	752.9	3.30	-0.06
	COLORADO SPRINGS	50.00	20.00	70.00	127,500.0	141,573.6	14,073.6	62.27	-7.73
	FLEMING, TOWN OF	0.05	0.02	0.07	127.5	141.6	14.1	0.06	-0.01
	FORT MORGAN, CITY OF	6.90	1.86	8.76	17,595.0	19,537.2	1,942.2	8.59	-0.17
	FREDERICK	0.04	0.02	0.06	102.0	113.3	11.3	0.05	-0.01
	FT. LARAMIE	0.07	0.03	0.10	178.5	198.2	19.7	0.09	-0.01
	GUERNSEY	0.40	0.11	0.51	1,020.0	1,132.6	112.6	0.50	-0.01
	HAXTON, TOWN OF	0.40	0.11	0.51	1,020.0	1,132.6	112.6	0.50	-0.01
	HOLYOKE, CITY OF	1.50	0.60	2.10	3,825.0	4,247.2	422.2	1.87	-0.23
	LAMAR, CITY OF	2.00	0.54	2.54	5,100.0	5,663.0	563.0	2.49	-0.05
	LINGLE	0.10	0.05	0.15	255.0	283.2	28.2	0.12	-0.03
	LUSK	1.00	0.27	1.27	2,550.0	2,831.5	281.5	1.25	-0.02
	PINE BLUFFS	0.18	0.08	0.26	459.0	509.7	50.7	0.22	-0.04
	PLATTE RVR PWR AUTH	134.90	62.71	197.61	343,995.0	381,965.6	37,970.6	168.00	-29.61
	PUEBLO ARMY DEPOT	4.50	0.00	4.50	11,475.0	12,741.6	1,266.6	5.60	1.10
	TORRINGTON	0.93	0.43	1.36	2,371.5	2,633.3	261.8	1.16	-0.20
	TRI STATE (CO-WY)	179.00	0.00	179.00	456,450.0	506,833.5	50,383.5	222.92	43.92
	WHEATLAND	0.90	0.41	1.31	2,295.0	2,548.3	253.3	1.12	-0.19
	WILLWOOD LIGHT & PWR	0.03	0.02	0.05	76.5	84.9	8.4	0.04	-0.01
	WRAY, CITY OF	0.84	0.23	1.07	2,142.0	2,378.4	236.4	1.05	-0.02
	YUMA	1.07	0.29	1.36	2,728.5	3,029.7	301.2	1.33	-0.03
LF		388.96	88.49	477.45	991,841.0	1101,329.6	109,488.6	484.40	6.95

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HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 3 — EXISTING N. D. CUSTOMERS

		EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
AREA	ENTITY	FIRM CROD (MW)	PEAK CROD (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
SL	AZTEC	2.22	0.50	2.72	5,661.0	6,285.9	624.9	2.76	0.04
	BEAVER CITY	2.14	0.57	2.71	5,457.0	6,059.4	602.4	2.67	-0.04
	BOUNTIFUL	34.15	0.00	34.15	87,082.0	96,694.8	9,612.8	42.53	8.38
	BRIDGER VALLEY	8.40	2.26	10.66	21,420.0	23,784.4	2,364.4	10.46	-0.20
	BRIGHAM CITY	11.00	1.00	12.00	28,050.0	31,146.2	3,096.2	13.70	1.70
	DEFENSE DEPOT-OGDEN	3.70	0.60	4.30	9,435.0	10,476.5	1,041.5	4.61	0.31
	DELTA	1.00	0.00	1.00	2,550.0	2,831.5	281.5	1.25	0.25
	DELTA-MONTROSE-COLB	1.33	0.00	1.33	1,741.3	3,765.9	2,024.6	1.33	0.00
	DIXIE-ESCALANTE	18.07	4.85	22.92	46,078.0	51,164.7	5,086.7	22.50	-0.42
	DOE ALBUQ. OP. OFF.	14.60	17.86	32.46	37,230.0	41,339.5	4,109.5	18.18	-14.28
	EMPIRE ELECTRIC-COLB	0.61	0.00	0.61	799.4	1,727.2	927.8	0.61	0.00
	EPHRAIM	2.80	0.75	3.55	7,140.0	7,928.1	788.1	3.49	-0.06
	FAIRVIEW	0.75	0.20	0.95	1,912.0	2,123.6	211.6	0.93	-0.02
	FARMINGTON	15.00	6.98	21.98	38,250.0	42,472.1	4,222.1	18.68	-3.30
	FILLMORE	1.90	0.51	2.41	4,845.0	5,379.8	534.8	2.37	-0.04
	FLOWELL E.A.	0.29	0.08	0.37	739.0	821.1	82.1	0.36	-0.01
	GARKANE PWR ASSN.	14.82	3.98	18.80	37,791.0	41,962.4	4,171.4	18.46	-0.34
	GRAND VALLEY-COLB	0.42	0.00	0.42	547.7	1,189.2	641.5	0.42	0.00
	GUNNISON	6.00	0.00	6.00	15,300.0	16,988.8	1,688.8	7.47	1.47
	GUNNISON-CNTY-COLB	0.50	0.00	0.50	657.1	1,415.7	758.6	0.50	0.00
	HEBER CITY	4.78	1.29	6.07	12,189.0	13,534.4	1,345.4	5.95	-0.12
	HOLDEN	0.28	0.08	0.36	714.0	792.8	78.8	0.35	-0.01
	HOLY CROSS-COLB	2.45	0.00	2.45	3,209.0	6,937.1	3,728.1	2.45	0.00
	HYRUM	2.88	0.77	3.65	7,344.0	8,154.6	810.6	3.59	-0.06
	IREA -	20.90	0.00	20.90	53,295.0	59,177.8	5,882.8	26.03	5.13
	IREA- COLB	2.82	0.00	2.82	3,690.6	7,984.8	4,294.2	2.82	0.00
	KANOSH	0.30	0.08	0.38	765.0	849.4	84.4	0.37	-0.01
	KAYSVILLE	2.10	0.56	2.66	5,355.0	5,946.1	591.1	2.62	-0.04
	LA PLATA-COLB	1.18	0.00	1.18	1,544.2	3,341.1	1,796.9	1.18	0.00
	LEHI	4.02	1.08	5.10	10,251.0	11,382.5	1,131.5	5.01	-0.09
	LEVAN	0.41	0.11	0.52	1,045.5	1,160.9	115.4	0.51	-0.01
	LITTLEFIELD EL COOP	0.15	0.06	0.21	382.5	424.7	42.2	0.19	-0.02
	LOGAN	18.50	4.97	23.47	47,175.0	52,382.2	5,207.2	23.04	-0.43
	MANTI	1.62	0.43	2.05	4,131.0	4,587.0	456.0	2.02	-0.03
	MEADOW	0.22	0.06	0.28	561.0	622.9	61.9	0.27	-0.01
	MONROE CITY	1.14	0.31	1.45	2,907.0	3,227.9	320.9	1.42	-0.03
	MOON LAKE E.A.	47.50	12.77	60.27	121,125.0	134,494.9	13,369.9	59.15	-1.12
	MORGAN	1.98	0.53	2.51	5,049.0	5,606.3	557.3	2.47	-0.04
	MT. PLEASANT	1.49	0.40	1.89	3,799.5	4,218.9	419.4	1.86	-0.03
	MT. WHEELER POWER	12.80	3.44	16.24	32,640.0	36,242.9	3,602.9	15.94	-0.30
	MURRAY	29.10	7.82	36.92	74,205.0	82,395.8	8,190.8	36.24	-0.68
	NAVAJO TRIBAL UT ATH	18.00	8.36	26.36	45,900.0	50,966.5	5,066.5	22.42	-3.94
	NEPHI	2.70	1.23	3.93	6,885.0	7,645.0	760.0	3.36	-0.57
	OAK CITY	0.26	0.07	0.33	663.0	736.2	73.2	0.32	-0.01
	OAK CREEK	0.36	0.15	0.51	918.0	1,019.3	101.3	0.45	-0.06
	PAGE	6.40	1.72	8.12	16,320.0	18,121.4	1,801.4	7.97	-0.15
	PARAGONAH	0.19	0.00	0.19	484.5	538.0	53.5	0.24	0.05
	PAROWAN	1.34	0.41	1.75	3,417.0	3,794.2	377.2	1.67	-0.08
	PAYSON	4.10	0.00	4.10	10,455.0	11,609.0	1,154.0	5.11	1.01
	PLAINS G&T	133.00	50.00	183.00	339,150.0	376,585.8	37,435.8	165.63	-17.37
	PLAINS G&T RG	0.00	0.00	0.00	0.0	0.0	0.0	0.00	0.00
	PROVO	65.60	0.00	65.60	167,280.0	185,744.6	18,464.6	81.70	16.10
	S. DE CRISTO- COLB	0.26	0.00	0.26	339.4	736.2	396.8	0.26	0.00
	SALEM	0.77	0.00	0.77	1,963.5	2,180.2	216.7	0.96	0.19
	SAN ISABEL- COLB	0.60	0.00	0.60	788.5	1,698.9	910.4	0.60	0.00
	SAN LUIS VALLY- COLB	0.37	0.00	0.37	482.0	1,047.7	565.7	0.37	0.00
	SAN MIGUEL-COLB	0.64	0.00	0.64	832.2	1,812.1	979.9	0.64	0.00
	SOUTH EAST- COLB	0.50	0.00	0.50	657.1	1,415.7	758.6	0.50	0.00
	SPANISH FORK	5.65	0.00	5.65	14,407.5	15,997.8	1,590.3	7.04	1.39
	SPRING CITY	0.22	0.06	0.28	561.0	622.9	61.9	0.27	-0.01
	SPRINGVILLE	6.50	0.00	6.50	16,575.0	18,404.6	1,829.6	8.09	1.59
	ST. GEORGE	24.00	6.45	30.45	61,200.0	67,955.3	6,755.3	29.89	-0.56
	STRAWBERRY WTR USERS	1.75	0.00	1.75	4,462.5	4,955.1	492.6	2.18	0.43
	TRUTH OR CONSEQ RG	0.00	0.00	0.00	0.0	0.0	0.0	0.00	0.00
	TRUTH OR CONSEQ.	5.50	2.55	8.05	14,025.0	15,573.1	1,548.1	6.85	-1.20
	WEBER BASIN CONS DST	0.00	0.00	0.00	0.0	0.0	0.0	0.00	0.00
	WHITE RIVER-COLB	0.34	0.00	0.34	438.0	962.7	524.7	0.34	0.00
	YAMPA VALLEY-COLB	1.98	0.00	1.98	2,573.5	5,606.3	3,032.8	1.98	0.00
SL		577.35	145.90	723.25	1454,840.5	1634,750.4	179,909.9	715.60	-7.65
		966.31	234.39	1200.70	2446,681.5	2736,080.0	289,398.5	1200.00	-0.70

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HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 4 — EXISTING N. D. CUSTOMERS

		EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
AREA	ENTITY	FIRM CROD (MW)	PEAK CROD * (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
LF	CENTER	1.00	0.00	1.00	2,550.0	2,418.8	-131.2	1.06	0.06
	CODY	2.75	0.20	2.95	7,012.5	6,651.8	-360.7	2.92	-0.03
	COLORADO SPRINGS	15.00	0.00	15.00	38,250.0	36,282.5	-1,967.5	15.93	0.93
	FLEMING, TOWN OF	0.08	0.01	0.09	204.0	193.5	-10.5	0.08	-0.01
	FORT MORGAN, CITY OF	7.90	0.59	8.49	20,145.0	19,108.8	-1,036.2	8.39	-0.10
	FREDERICK	0.04	0.01	0.05	102.0	96.8	-5.2	0.04	-0.01
	FT. LARAMIE	0.04	0.01	0.05	102.0	96.8	-5.2	0.04	-0.01
	GUERNSEY	0.36	0.03	0.39	918.0	870.8	-47.2	0.38	-0.01
	HAXTON, TOWN OF	0.52	0.04	0.56	1,326.0	1,257.8	-68.2	0.55	-0.01
	HOLYOKE, CITY OF	1.47	0.12	1.59	3,748.5	3,555.7	-192.8	1.56	-0.03
	LAMAR, CITY OF	2.00	0.15	2.15	5,100.0	4,837.7	-262.3	2.12	-0.03
	LINGLE	0.08	0.01	0.09	204.0	193.5	-10.5	0.08	-0.01
	LUSK	0.32	0.02	0.34	816.0	774.0	-42.0	0.34	0.00
	PINE BLUFFS	0.08	0.01	0.09	216.7	193.5	-23.2	0.08	-0.01
	PLATTE RVR PWR AUTH	116.80	9.14	125.94	297,840.0	282,519.8	-15,320.2	124.01	-1.93
	PUEBLO ARMY DEPOT	4.00	0.00	4.00	10,200.0	9,675.3	-524.7	4.25	0.25
	TORRINGTON	1.76	0.14	1.90	4,488.0	4,257.1	-230.9	1.87	-0.03
	TRI STATE (CO-WY)	252.00	0.00	252.00	642,600.0	609,546.1	-33,053.9	267.55	15.55
	WHEATLAND	0.96	0.07	1.03	2,448.0	2,322.1	-125.9	1.02	-0.01
	WILLWOOD LIGHT & PWR	0.05	0.01	0.06	127.5	120.9	-6.6	0.05	-0.01
	WRAY, CITY OF	0.47	0.04	0.51	1,198.5	1,136.9	-61.6	0.50	-0.01
	YUMA	1.12	0.08	1.20	2,868.0	2,709.1	-158.9	1.19	-0.01
LF		408.80	10.68	419.48	1042,464.7	988,819.3	-53,645.[illegible]	434.01	14.53

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HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 4 — EXISTING N. D. CUSTOMERS

		EXISTING COMMITMENTS				HYPOTHETICAL ALLOCATIONS			
AREA	ENTITY	FIRM CROD (MW)	PEAK CROD (MW)	TOTAL CROD (MW)	ENERGY (MWH)	ENERGY (MWH)	DIFFERENCE (MWH)	POWER (MW)	DIFF. (MW)
SL	AZTEC	1.92	0.14	2.06	4,896.0	4,644.2	-251.8	2.04	-0.02
	BEAVER CITY	1.29	0.10	1.39	3,289.0	3,120.3	-168.7	1.37	-0.02
	BOUNTIFUL	24.91	1.95	26.86	63,520.0	60,253.1	-3,266.9	26.45	-0.41
	BRIDGER VALLEY	8.00	0.63	8.63	20,400.0	19,350.7	-1,049.3	8.49	-0.14
	BRIGHAM CITY	7.70	0.58	8.28	19,635.0	18,625.0	-1,010.0	8.18	-0.10
	DEFENSE DEPOT-OGDEN	3.90	0.29	4.19	9,945.0	9,433.5	-511.5	4.14	-0.05
	DELTA	1.00	0.00	1.00	2,550.0	2,418.8	-131.2	1.06	0.06
	DELTA-MONTROSE-COLB	1.27	0.00	1.27	2,641.7	3,071.9	430.2	1.27	0.00
	DIXIE-ESCALANTE	17.25	1.36	18.61	43,987.0	41,724.9	-2,262.1	18.31	-0.30
	DOE ALBUQ. OP. OFF.	14.60	15.05	29.65	37,230.0	35,315.0	-1,915.0	15.50	-14.15
	EMPIRE ELECTRIC-COLB	0.58	0.00	0.58	1,200.8	1,402.9	202.1	0.58	0.00
	EPHRAIM	1.66	0.12	1.78	4,233.0	4,015.3	-217.7	1.76	-0.02
	FAIRVIEW	0.48	0.04	0.52	1,224.0	1,161.0	-63.0	0.51	-0.01
	FARMINGTON	15.00	1.18	16.18	38,250.0	36,282.5	-1,967.5	15.93	-0.25
	FILLMORE	1.70	0.14	1.84	4,335.0	4,112.0	-223.0	1.80	-0.04
	FLOWELL E.A.	4.11	0.32	4.43	10,480.0	9,941.4	-538.6	4.36	-0.07
	GARKANE PWR ASSN.	13.33	1.04	14.37	33,991.0	32,243.1	-1,747.9	14.15	-0.22
	GRAND VALLEY-COLB	0.39	0.00	0.39	820.7	943.3	122.6	0.39	0.00
	GUNNISON	4.55	0.00	4.55	11,602.0	11,005.7	-596.3	4.83	0.28
	GUNNISON-CNTY-COLB	0.39	0.00	0.39	820.7	943.3	122.6	0.39	0.00
	HEBER CITY	3.00	0.24	3.24	7,650.0	7,256.5	-393.5	3.19	-0.05
	HOLDEN	0.22	0.02	0.24	561.0	532.1	-28.9	0.23	-0.01
	HOLY CROSS-COLB	1.96	0.00	1.96	4,062.9	4,740.9	678.0	1.96	0.00
	HYRUM	1.95	0.16	2.11	4,972.0	4,716.7	-255.3	2.07	-0.04
	IREA -	17.35	0.00	17.35	44,242.5	41,966.8	-2,275.7	18.42	1.07
	IREA- COLB	2.27	0.00	2.27	4,723.3	5,490.8	767.5	2.27	0.00
	KANOSH	0.24	0.02	0.26	612.0	580.5	-31.5	0.25	-0.01
	KAYSVILLE	1.64	0.13	1.77	4,182.0	3,966.9	-215.1	1.74	-0.03
	LA PLATA-COLB	0.99	0.00	0.99	2,061.2	2,394.6	333.4	0.99	0.00
	LEHI	2.70	0.21	2.91	6,885.0	6,530.9	-354.1	2.87	-0.04
	LEVAN	0.41	0.03	0.44	1,045.5	991.7	-53.8	0.44	0.00
	LITTLEFIELD EL COOP	0.25	0.08	0.33	637.5	604.7	-32.8	0.27	-0.06
	LOGAN	15.00	1.18	16.18	38,250.0	36,282.5	-1,967.5	15.93	-0.25
	MANTI	1.32	0.10	1.42	3,366.0	3,192.9	-173.1	1.40	-0.02
	MEADOW	0.29	0.02	0.31	739.5	701.5	-38.0	0.31	0.00
	MONROE CITY	0.70	0.05	0.75	1,785.0	1,693.2	-91.8	0.74	-0.01
	MOON LAKE E.A.	46.00	3.61	49.61	117,300.0	111,266.3	-6,033.7	48.84	-0.77
	MORGAN	1.64	0.13	1.77	4,182.0	3,966.9	-215.1	1.74	-0.03
	MT. PLEASANT	1.08	0.08	1.16	2,754.0	2,612.3	-141.7	1.15	-0.01
	MT. WHEELER POWER	22.00	1.72	23.72	56,100.0	53,214.3	-2,885.7	23.36	-0.36
	MURRAY	25.50	2.00	27.50	65,025.0	61,680.3	-3,344.7	27.07	-0.43
	NAVAJO TRIBAL UT ATH	18.00	1.40	19.40	45,900.0	43,539.0	-2,361.0	19.11	-0.29
	NEPHI	3.40	0.27	3.67	8,670.0	8,224.0	-446.0	3.61	-0.06
	OAK CITY	0.20	0.02	0.22	510.0	483.8	-26.2	0.21	-0.01
	OAK CREEK	0.30	0.02	0.32	765.0	725.6	-39.4	0.32	0.00
	PAGE	6.30	0.47	6.77	16,065.0	15,238.7	-826.3	6.69	-0.08
	PARAGONAH	0.12	0.00	0.12	306.0	290.3	-15.7	0.13	0.01
	PAROWAN	0.93	0.08	1.01	2,371.5	2,249.5	-122.0	0.99	-0.02
	PAYSON	3.10	0.24	3.34	7,905.0	7,498.4	-406.6	3.29	-0.05
	PLAINS G&T	113.40	8.88	122.28	289,170.0	274,295.7	-14,874.3	120.40	-1.88
	PLAINS G&T RG	21.88	0.00	21.88	55,794.0	52,924.1	-2,869.9	21.88	0.00
	PROVO	65.60	0.00	65.60	167,280.0	158,675.5	-8,604.5	69.65	4.05
	S. DE CRISTO- COLB	0.24	0.00	0.24	500.1	580.5	80.4	0.24	0.00
	SALEM	0.57	0.04	0.61	1,453.5	1,378.7	-74.8	0.61	0.00
	SAN ISABEL- COLB	0.54	0.00	0.54	1,120.9	1,306.2	185.3	0.54	0.00
	SAN LUIS VALLY- COLB	1.82	0.00	1.82	3,782.5	4,402.3	619.8	1.82	0.00
	SAN MIGUEL-COLB	0.61	0.00	0.61	1,260.8	1,475.5	214.7	0.61	0.00
	SOUTH EAST- COLB	0.94	0.00	0.94	1,961.6	2,273.7	312.1	0.94	0.00
	SPANISH FORK	4.20	0.33	4.53	10,710.0	10,159.1	-550.9	4.46	-0.07
	SPRING CITY	0.21	0.02	0.23	535.0	508.0	-27.0	0.22	-0.01
	SPRINGVILLE	5.15	0.41	5.56	13,132.5	12,457.0	-675.5	5.47	-0.09
	ST. GEORGE	18.00	1.35	19.35	45,900.0	43,539.0	-2,361.0	19.11	-0.24
	STRAWBERRY WTR USERS	1.50	0.11	1.61	3,825.0	3,628.2	-196.8	1.59	-0.02
	TRUTH OR CONSEQ RG	2.12	0.00	2.12	5,406.0	5,127.9	-278.1	2.12	0.00
	TRUTH OR CONSEQ.	3.60	0.28	3.88	9,180.0	8,707.8	-472.2	3.82	-0.06
	WEBER BASIN CONS DST	0.39	0.00	0.39	994.5	943.3	-51.2	0.41	0.02
	WHITE RIVER-COLB	0.34	0.00	0.34	700.7	822.4	121.7	0.34	0.00
	YAMPA VALLEY-COLB	1.66	0.00	1.66	3,442.1	4,015.3	573.2	1.66	0.00
SL		545.66	46.64	592.30	1384,829.0	1319,860.7	-64,968.3	576.99	-15.31
		954.46	57.32	1011.78	2427,293.7	2308,680.0	-118,613.7	1011.00	-0.78

HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects

DISTRIBUTION OF RESOURCE POOLS 5 & 6
(Participating Customers)

	WINTER	SUMMER	RESOURCE POOL NO. 5 WINTER)	RESOURCE POOL NO. 6 (SUMMER)
POWER				
Marketable Firm Power for Participating Customers (from Appendix B)			75,000 kW	75,000 kW
Tentative Special Allocations:				
DOE/Los Alamos 1/	15,000 kW	15,000 kW		
Enterprise 1/	646	496		
Hurricane 1/	1,941	858		
TOTAL	17,587 kW	16,354 kW	-17,587	- 16,354
Resultant Resource Amounts For Distribution by Formula			57,413 kW	58,646 kW
ENERGY				
Marketable Firm Energy for Participating Customers (from Appendix B)			171,010,000 kWh	171,270,000 kWh
Tentative Special Allocations:				
DOE/Los Alamos 1/	-0- kWh	-0- kWh		
Enterprise 1/	1,472,945	1,132,616		
Hurricane 1/	4,425,674	1,959,243		
TOTAL	5,898,619 kWh	3,091,859 kWh	- 5,898,619	- 3,091,859
Resultant Resource Amounts For Distribution by Formula			165,111,381 kWh	168,178,141 kWh

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1/ For discussion, refer to Special Allocation Issues section of this FEDERAL REGISTER notice.

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HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 5 AND TOTALS — PARTICIPATING CUSTOMERS

		1980-82 AVERAGE LOAD		HYPOTHETICAL ALLOCATIONS					
AREA	ENTITY	PEAK POWER (MW)	AVERAGE ENERGY (MWH)	RES POOL 5 ALLOCATION (MWH)	RES POOL 3 ALLOCATION (MWH)	TOTAL ENERGY (MWH)	RES POOL 5 ALLOCATION (MW)	RES POOL 3 ALLOCATION (MW)	TOTAL POWER (MW)
SL	ASPEN	9.72	23,743.7	2178.4	0.0	2178.4	0.76	0.00	0.76
	BLANDING	4.42	10,113.7	990.6	0.0	990.6	0.34	0.00	0.34
	CANNON AFB	8.20	17,996.0	1837.8	0.0	1837.8	0.64	0.00	0.64
	CEDAR CITY	19.86	53,855.3	4451.0	0.0	4451.0	1.55	0.00	1.55
	CENTRAL VALLEY EL CP	33.54	86,928.4	7516.9	0.0	7516.9	2.61	0.00	2.61
	COUNTY OF LOS ALAMOS	9.07	24,763.0	2032.8	0.0	2032.8	0.71	0.00	0.71
	CUMD	0.21	427.4	47.1	0.0	47.1	0.02	0.00	0.02
	DELTA	5.69	15,742.1	1104.0	2831.5	3935.5	0.38	1.25	1.63
	DELTA-MONTROSE-COLB	53.00	156,529.3	10066.0	3765.9	13831.9	3.50	1.33	4.83
	DOE ALBUQ. OP. OFF.	61.60	182,341.0	4245.8	41339.5	45585.3	1.48	18.19	19.67*
	EMPIRE ELECTRIC-COLB	24.33	71,027.7	5452.8	1727.2	7180.0	1.90	0.61	2.51
	FARMERS ELEC CO-OP	15.80	37,343.9	3541.1	0.0	3541.1	1.23	0.00	1.23
	FARMINGTON	59.25	183,724.0	3458.9	42472.1	45931.0	1.20	18.69	19.89
	GALLUP	26.27	80,136.7	5887.6	0.0	5887.6	2.04	0.00	2.04
	GLENWOOD SPRINGS	9.74	28,372.5	2182.9	0.0	2182.9	0.76	0.00	0.76
	GRAND VALLEY-COLB	16.67	43,647.3	3736.1	1189.2	4925.3	1.30	0.42	1.72
	GSA #15	0.09	94.3	20.2	0.0	20.2	0.01	0.00	0.01
	GSA #16	0.50	682.0	112.1	0.0	112.1	0.04	0.00	0.04
	GSA #18	2.33	5,336.4	522.2	0.0	522.2	0.18	0.00	0.18
	GSA #20	0.15	199.4	33.6	0.0	33.6	0.01	0.00	0.01
	GSA #21	0.16	60.9	15.2	0.0	15.2	0.01	0.00	0.01
	GSA #28	1.88	2,919.7	421.3	0.0	421.3	0.15	0.00	0.15
	GSA #29	0.09	94.2	20.2	0.0	20.2	0.01	0.00	0.01
	GUNNISON-CNTY-COLB	20.00	46,847.0	4482.4	1415.7	5898.1	1.56	0.50	2.06
	HELPER	2.71	7,363.6	607.4	0.0	607.4	0.21	0.00	0.21
	HILL AFB	27.87	75,304.0	6246.2	0.0	6246.2	2.17	0.00	2.17
	HOLLOMAN AFB	12.36	29,658.7	2770.1	0.0	2770.1	0.95	0.00	0.95
	HOLY CROSS-COLB	97.67	238,597.3	10066.0	6937.1	17003.1	3.50	2.45	5.95
	IVINS	0.75	1,695.0	168.1	0.0	168.1	0.06	0.00	0.06
	KANAB	3.53	9,644.0	791.1	0.0	791.1	0.28	0.00	0.28
	LA PLATA-COLB	47.00	127,704.7	10066.0	3341.1	13407.1	3.50	1.18	4.68
	LA VERKIN	1.42	3,261.3	318.2	0.0	318.2	0.11	0.00	0.11
	LEA CNTY ELEC CO-OP	63.00	219,812.7	10066.0	0.0	10066.0	3.50	0.00	3.50
	LEEDS	0.28	864.0	62.8	0.0	62.8	0.02	0.00	0.02
	LITTLEFIELD EL COOP	15.98	34,335.7	3581.4	424.7	4006.1	1.25	0.19	1.44
	MAPLETON	0.27	4,302.4	60.5	0.0	60.5	0.02	0.00	0.02
	NAVAJO TRIBAL UT ATH	88.15	247,760.7	10066.0	50966.5	61032.5	3.50	22.43	25.93
	NEW HARMONY	0.14	273.0	31.4	0.0	31.4	0.01	0.00	0.01
	PRICE	9.84	28,170.0	2205.3	0.0	2205.3	0.77	0.00	0.77
	RATON	9.36	22,931.0	2097.8	0.0	2097.8	0.73	0.00	0.73
	RICHFIELD	1.42	22,176.4	318.2	0.0	318.2	0.11	0.00	0.11
	ROOSEVELT CNTY EL CP	17.83	40,357.7	3996.0	0.0	3996.0	1.39	0.00	1.39
	SAN MIGUEL-COLB	25.33	71,523.3	5676.9	1812.1	7489.0	1.97	0.64	2.61
	SANDIA/KIRTLAND	35.57	89,616.0	7971.9	0.0	7971.9	2.76	0.00	2.76
	SANTA CLARA	1.90	3,926.3	425.8	0.0	425.8	0.15	0.00	0.15
	SPRINGDALE	0.17	393.7	38.1	0.0	38.1	0.01	0.00	0.01
	TOOELE ARMY DEPOT	7.55	13,952.5	1692.1	0.0	1692.1	0.59	0.00	0.59
	UNIVERSITY OF UTAH	20.52	58,174.1	4598.9	0.0	4598.9	1.60	0.00	1.60
	USDI F&W-DEXTER	0.09	164.7	20.2	0.0	20.2	0.01	0.00	0.01
	UTAH ST. UNIVERSITY	6.92	17,724.6	1550.9	0.0	1550.9	0.54	0.00	0.54
	VIRGIN	0.15	358.0	33.6	0.0	33.6	0.01	0.00	0.01
	WASHINGTON	3.97	9,232.3	889.8	0.0	889.8	0.31	0.00	0.31
	WEBER BASIN CONS DST	3.05	3,836.3	683.6	0.0	683.6	0.24	0.00	0.24
	WEST BOUNTIFUL	2.68	6,741.3	600.6	0.0	600.6	0.21	0.00	0.21
	WHITE RIVER-COLB	13.33	42,817.7	2987.5	962.7	3950.2	1.04	0.34	1.38
	YAMPA VALLEY-COLB	78.33	208,090.0	10066.0	5606.3	15672.3	3.50	1.98	5.48
SL		981.69	2,713,688.9	165,111.4	164,791.6	329,903.0	57.41	70.20	127.61
		981.69	2,713,688.9	165,111.4	164,791.6	329,903.0	57.41	70.20	127.61

* In addition to the hypothetical allocations above, DOE could receive the tentative special winter allocation of 15.00 mw for a total of 34.67 mw and 45,585.3 mwh.

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HYPOTHETICAL POST-1989 ALLOCATIONS
SLCA Integrated Projects
DISTRIBUTION OF RESOURCE POOL 6 AND TOTALS — PARTICIPATING CUSTOMERS

		1980-82 AVERAGE LOAD		HYPOTHETICAL ALLOCATIONS					
AREA	ENTITY	PEAK POWER (MW)	AVERAGE ENERGY (MWH)	RES POOL 5 ALLOCATION (MWH)	RES POOL 3 ALLOCATION (MWH)	TOTAL ENERGY (MWH)	RES POOL 5 ALLOCATION (MW)	RES POOL 3 ALLOCATION (MW)	TOTAL POWER (MW)
SL	ASPEN	7.87	16,684.8	1610.6	0.0	1610.6	0.56	0.00	0.56
	BLANDING	3.71	7,500.3	759.2	0.0	759.2	0.26	0.00	0.26
	CANNON AFB	10.28	23,629.6	2103.8	0.0	2103.8	0.73	0.00	0.73
	CEDAR CITY	20.26	52,842.0	4146.1	0.0	4146.1	1.45	0.00	1.45
	CENTRAL VALLEY EL CP	39.12	120,793.1	8005.7	0.0	8005.7	2.79	0.00	2.79
	COUNTY OF LOS ALAMOS	7.83	22,209.0	1602.4	0.0	1602.4	0.56	0.00	0.56
	CUMCO	0.45	953.3	92.1	0.0	92.1	0.03	0.00	0.03
	DELTA	5.24	13,947.0	1072.3	2418.8	3491.1	0.37	1.06	1.43
	DELTA-MONTROSE-COLB	44.00	129,128.0	9004.4	3071.9	12076.3	3.14	1.27	4.41
	DOE ALBUQ. OP. OFF.	67.47	201,902.0	10036.2	35315.0	45351.2	3.50	15.51	19.01*
	EMPIRE ELECTRIC-COLB	20.00	61,030.0	4092.9	1402.9	5495.8	1.43	0.58	2.01
	FARMERS ELEC CO-OP	23.15	50,698.4	4737.6	0.0	4737.6	1.65	0.00	1.65
	FARMINGTON	63.73	270,683.5	10036.2	36282.5	46318.7	3.50	15.94	19.44
	GALLUP	25.50	76,014.0	5218.5	0.0	5218.5	1.82	0.00	1.82
	GLENWOOD SPRINGS	9.23	26,403.3	1888.9	0.0	1888.9	0.66	0.00	0.66
	GRAND VALLEY-COLB	13.67	37,873.0	2797.5	943.3	3740.8	0.98	0.39	1.37
	GSA #15	0.13	110.4	26.6	0.0	26.6	0.01	0.00	0.01
	GSA #16	0.53	728.8	108.5	0.0	108.5	0.04	0.00	0.04
	GSA #18	2.58	5,973.6	528.0	0.0	528.0	0.18	0.00	0.18
	GSA #20	0.15	165.6	30.7	0.0	30.7	0.01	0.00	0.01
	GSA #21	0.05	39.7	10.2	0.0	10.2	0.00	0.00	0.00
	GSA #28	2.12	3,345.4	433.8	0.0	433.8	0.15	0.00	0.15
	GSA #29	0.13	110.4	26.6	0.0	26.6	0.01	0.00	0.01
	GUNNISON-CNTY-COLB	13.67	29,106.0	2797.5	943.3	3740.8	0.98	0.39	1.37
	HELPER	2.24	5,911.2	458.4	0.0	458.4	0.16	0.00	0.16
	HILL AFB	31.37	78,344.0	6419.7	0.0	6419.7	2.24	0.00	2.24
	HOLLOMAN AFB	14.30	34,683.3	2926.4	0.0	2926.4	1.02	0.00	1.02
	HOLY CROSS-COLB	67.67	132,877.7	10036.2	4740.9	14777.1	3.50	1.96	5.46
	IVINS	0.87	1,744.3	178.0	0.0	178.0	0.06	0.00	0.06
	KANAB	3.53	8,891.0	722.4	0.0	722.4	0.25	0.00	0.25
	LA PLATA-COLB	34.33	99,351.3	7025.5	2394.6	9420.1	2.45	0.99	3.44
	LA VERKIN	1.56	3,527.0	319.2	0.0	319.2	0.11	0.00	0.11
	LEA CNTY ELEC CO-OP	72.00	238,570.2	10036.2	0.0	10036.2	3.50	0.00	3.50
	LEEDS	0.27	726.0	55.3	0.0	55.3	0.02	0.00	0.02
	LITTLEFIELD EL COOP	21.06	55,349.1	4309.8	604.7	4914.5	1.50	0.27	1.77
	MAPLETON	0.26	4,089.6	53.2	0.0	53.2	0.03	0.00	0.03
	NAVAJO TRIBAL UT ATH	83.63	228,136.3	10036.2	43539.0	53575.2	3.50	19.13	22.63
	NEW HARMONY	0.15	256.7	30.7	0.0	30.7	0.01	0.00	0.01
	PRICE	8.30	23,722.7	1698.6	0.0	1698.6	0.59	0.00	0.59
	RATON	7.94	21,363.9	1624.9	0.0	1624.9	0.57	0.00	0.57
	RICHFIELD	1.36	21,080.4	278.3	0.0	278.3	0.10	0.00	0.10
	ROOSEVELT CNTY EL CP	25.48	65,543.1	5214.4	0.0	5214.4	1.82	0.00	1.82
	SAN MIGUEL-COLB	21.00	55,460.3	4297.6	1475.5	5773.1	1.50	0.61	2.11
	SANDIA/KIRTLAND	38.13	94,888.0	7803.1	0.0	7803.1	2.72	0.00	2.72
	SANTA CLARA	2.22	4,392.3	454.3	0.0	454.3	0.16	0.00	0.16
	SPRINGDALE	0.18	391.0	36.8	0.0	36.8	0.01	0.00	0.01
	TOOELE ARMY DEPOT	6.82	13,654.0	1395.7	0.0	1395.7	0.49	0.00	0.49
	UNIVERSITY OF UTAH	23.26	62,185.9	4760.1	0.0	4760.1	1.66	0.00	1.66
	USDI F&W-DEXTER	0.06	196.4	12.3	0.0	12.3	0.00	0.00	0.00
	UTAH ST. UNIVERSITY	8.35	17,634.0	1708.8	0.0	1708.8	0.60	0.00	0.60
	VIRGIN	0.17	379.0	34.8	0.0	34.8	0.01	0.00	0.01
	WASHINGTON	4.11	9,117.7	841.1	0.0	841.1	0.29	0.00	0.29
	WEBER BASIN CONS DST	5.62	11,332.3	1150.1	943.3	2093.4	0.40	0.41	0.81
	WEST BOUNTIFUL	3.27	7,212.0	669.3	0.0	669.3	0.24	0.00	0.24
	WHITE RIVER-COLB	11.67	38,976.0	2388.2	822.4	3210.6	0.83	0.34	1.17
	YAMPA VALLEY-COLB	57.33	140,163.0	10036.2	4015.3	14051.5	3.50	1.66	5.16
SL		939.38	2,632,020.9	168,178.1	138,913.4	307,091.5	58.65	60.51	119.16
		939.38	2,632,020.9	168,178.1	138,913.4	307,091.5	58.65	60.51	119.16

* In addition to the hypothetical allocations above, DOE could receive the tentative special summer allocation of 15.00 mw for a total of 34.01 mw and 45,351.2 mwh.

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Appendix D—Alternative Methods for Adjustment of Southern Division CRSP Energy Allocations

Alternative No. 1—Proportional Adjustment Based on CRSP Firm CROD

This alternative would generate the amounts of long-term firm energy available to each existing CRSP Southern Division customer based on the proportion of each customer's existing CRSP firm contract rate of delivery (CROD) to the existing total CRSP Southern Division firm CROD, excluding peaking power.

For the summer season, the method is detailed, as follows:

—The ratio of existing CRSP summer season firm power (CRSP, F(i)) to the total existing CRSP Southern Division summer season firm power (CRSP, F(T)) is first determined.

—This ratio is then applied to the total proposed summer season adjustment (ADJ.s) to determine the adjustment in summer season power.

—The power adjustment is then subtracted from existing CRSP firm power to generate an adjusted CRSP firm power amount.

—The total marketable firm power and energy available for allocation to Southern Division customers (refer to Appendix B) is then used to determine the equivalent amount of CRSP energy associated with each megawatt of CRSP power, referred to as the seasonal energy factor.

—This seasonal (summer) energy factor is then applied to the adjusted CRSP firm power amount to generate the CRSP firm energy available for allocation.

For the winter season, the same ratio of existing CRSP summer season firm power to the total CRSP Southern Division summer season firm power is applied to the total proposed winter season adjustment (ADJ.w) to determine the adjustment in winter season power. However, a slight adjustment (0.18577%) is required in the summer season percentage to account for those customers without a winter CRSP CROD. Similarly, a seasonal (winter) energy factor is determined, and the CRSP firm energy available for allocation is then computed.

This alternative is similar to the method used in the Northern Division for existing CRSP customers.

1. $$\underset{\text{(MW)}}{\text{Power Adjustment}} = \underset{\text{(MW)}}{\text{ADJ.s}} \times \frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}} \qquad \text{[summer]}$$

-or-

$$\text{ADJ.w} \times \left(\frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}} + 0.18577\right) \qquad \text{[winter]}$$

Where
ADJ.s = - 30.00 MW
ADJ.w = + 35.00 MW
CRSP, F = Individual (i) or Total (t) CRSP summer season firm CROD, excl. peaking power

2. $$\underset{\text{(MW)}}{\text{Adjusted Power}} = \underset{\text{(MW)}}{\text{Exist. CRSP Firm Power}} - \underset{\text{(MW)}}{\text{Power Adjustment}}$$

3. $$\underset{\text{(MWh)}}{\text{Adjusted CRSP Energy}} = \underset{\text{(MW)}}{\text{Adjusted CRSP Power}} \times \underset{\text{(MWh/MW)}}{\text{Seasonal Energy Factor}}$$

Where
Seasonal Energy Factor = 2384 MWh/MW (summer)
= 2365 MWh/MW (winter)

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ALTERNATIVE NO. 1 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,F	=	84.000 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD	=	119.000 MW	281.480 GWh
TOTAL ADJ. S.D. CRSP FIRM	=	35.000 MW	67.280 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F (I) /CRSP,F (t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(I) or Total(t) CRSP Summer Firm CROD
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP	WINTER	CROD	POWER ADJUSTMENT		ADJ. CRSP POWER (MW)	ADJ.CRSP ENERGY (MWh)
		FIRM	PEAKING	F+P	(MW)	(%) 1/		
ARIZONA	Ak-Chin	3.300	0.000	3.300	0.722	2.063	4.029	9529.527
	APPA	8.450	0.880	9.330	4.510	12.886	12.967	30672.028
	Chandler Heights	0.200	0.020	0.220	0.131	0.373	0.338	798.348
	Colorado River Irr./Power	0.400	0.040	0.440	0.175	0.499	0.581	1375.017
	Electrical District #3	1.650	0.000	1.650	1.445	4.127	3.101	7335.959
	Electrical District #4	2.450	0.000	2.450	0.904	2.584	3.361	7950.594
	Electrical District #5-M	0.800	0.000	0.800	0.335	0.957	1.142	2701.009
	Electrical District #5-P	1.750	0.000	1.750	0.583	1.666	2.340	5535.146
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	0.000	0.800	0.853	2.438	1.660	3926.861
	Littlefield Elec. Coop.	0.150	0.062	0.212	0.000	0.000	0.000	0.000 2/
	Maricopa County MWCD No.1	1.500	0.000	1.500	0.992	2.834	2.499	5910.671
	NTUA	1.150	0.447	1.597	0.459	1.312	1.616	3822.406
	Ocotillo WCD	0.600	0.000	0.600	0.255	0.728	0.862	2038.013
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	0.000	1.150	0.890	2.542	2.047	4841.071
	Roosevelt Water Cons. Dist.	1.100	0.000	1.100	0.459	1.312	1.566	3704.137
	Safford	0.400	0.090	0.490	0.255	0.728	0.662	1564.937
	Salt River Project	38.250	0.000	38.250	16.306	46.588	54.563	129061.372
	San Carlos Irr. Project	1.000	0.000	1.000	0.342	0.978	1.349	3191.351
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.030	0.280	0.153	0.436	0.409	968.413
	Wellton-Mohawk Irr. Dist.	0.150	0.020	0.170	0.109	0.311	0.266	628.283
	Williams AFB	0.650	0.256	0.906	0.415	1.187	1.072	2536.123
	Yuma Proving Grounds	0.250	0.030	0.280	0.131	0.373	0.388	916.617
NEVADA	Colorado River Commission	17.600	6.825	24.425	4.576	13.074	22.183	52470.628
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	8.700	92.700	34.9998 (35.000)	99.999 (100.00)	118.999 (119.000)	281478.490 (281480.000)

1/ % Adjustment (Resource Pool No.1) = % Adjustment (Resource Pool No.2) + 0.18577%
0.18577% = Adjustment to account or customers with no winter CROD
ED #6, QCID, and STID.

2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO. 1 – RESOURCE POOL NO.2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,F	=	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD	=	210.000 MW	500.760 GWh
TOTAL REDUCTION IN CROD, F	=	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * (CRSP,F (I) /CRSP,F (T))
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(I) or Total(T) CRSP Summer Firm CROD
ENERGY MULTIPLIER = 500.760 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP FIRM	SUMMER PEAKING	CROD F+P	POWER ADJUSTMENT (MW)	POWER ADJUSTMENT (%)	ADJ. CRSP POWER (MW)	ADJ.CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	4.500	0.460	4.960	-0.563	-1.877	3.947	9411.697
	APPA	30.450	9.983	40.433	-3.810	-12.701	26.650	63548.306
	Chandler Heights	0.450	0.050	0.500	-0.056	-0.188	0.404	962.631
	Colorado River Irr./Power	0.750	0.080	0.830	-0.094	-0.313	0.666	1588.488
	Electrical District #3	9.450	0.000	9.450	-1.182	-3.942	8.278	19738.334
	Electrical District #4	5.750	1.882	7.632	-0.719	-2.398	5.041	12019.434
	Electrical District #5-M	1.850	0.000	1.850	-0.231	-0.772	1.629	3883.296
	Electrical District #5-P	3.550	0.000	3.550	-0.444	-1.481	3.116	7429.817
	Electrical District #6	6.850	2.249	9.099	-0.857	-2.857	6.003	14314.242
	Electrical District #7	5.400	0.000	5.400	-0.676	-2.252	4.734	11289.267
	Littlefield Elec. Coop.	0.250	0.086	0.336	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	6.350	0.000	6.350	-0.795	-2.649	5.565	13271.147
	NTUA	2.700	0.886	3.586	-0.338	-1.126	2.372	5656.557
	Ocotillo WCD	1.300	0.000	1.300	-0.163	-0.542	1.147	2735.892
	Queen Creek Irr. Dist.	2.000	0.659	2.659	-0.250	-0.834	1.760	4196.224
	Roosevelt Irr. Dist.	5.650	1.100	6.750	-0.707	-2.357	4.953	11810.815
	Roosevelt Water Cons. Dist.	2.700	0.886	3.586	-0.338	-1.126	2.372	5656.557
	Safford	1.300	0.280	1.580	-0.163	-0.542	1.147	2735.892
	Salt River Project	111.250	0.000	111.250	-13.921	-46.402	97.339	232112.393
	San Carlos Irr. Project	1.900	0.000	1.900	-0.238	-0.792	1.672	3987.605
	San Tan Irr. District	0.950	0.100	1.050	-0.119	-0.396	0.841	2005.725
	Thatcher	0.600	0.060	0.660	-0.075	-0.250	0.535	1275.559
	Wellton-Mohawk Irr. Dist.	0.300	0.098	0.398	-0.038	-0.125	0.272	649.702
	Williams AFB	2.400	0.790	3.190	-0.300	-1.001	2.110	5030.700
	Yuma Proving Grounds	0.450	0.151	0.601	-0.056	-0.188	0.404	962.631
NEVADA	Colorado River Commission	30.900	5.000	35.900	-3.867	-12.888	27.043	64487.092
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	24.800	264.800	-30.000	-100.000	210.000	500760.000

Alternative No. 2—Proportional Adjustment Based on CRSP Firm and Peaking Power

This alternative is similar to Alternative No. 1, but includes peaking power in the determination of the ratio of each customer's existing CFSP summer season CROD to the total existing CRSP Southern Division summer season firm and peaking power commitments. The ratio, increased by 0.22054% in the winter season to account for those customers without a winter CRSP CROD, is then applied to the total seasonal adjustment in CRSP (ADJ.s or ADK.w) to determine whether the equivalent seasonal adjustment to each customer's existing CRSP firm CROD. The same seasonal energy factors determined in Alternative No. 1 were then applied to the adjusted CFSP CROD to generate the CRSP firm energy available for allocation.

1.
$$\underset{\text{(MW)}}{\text{CRSP Power Adjustment}} = \text{ADJ.s} \times \frac{\text{CRSP, F+P(i)}}{\text{CRSP, F+P(t)}} \quad \text{[summer]}$$

-or-

$$\text{ADJ.w} \times \frac{(\text{CRSP, F+P(i)}}{(\text{CRSP, F+P(i)}} + 0.22054) \quad \text{[winter]}$$

Where ADJ.s = Total Summer Season CRSP S.D. Adjustment
= - 30.00 MW

ADJ.w = Total Winter Season CRSP S.D. Adjustment
= + 35.00 MW

CRSP, F+P = Individual (i) or Total (t) CRSP summer season CROD, firm + peaking power

2.
$$\underset{\text{(MW)}}{\text{Adjusted CRSP Power}} = \underset{\text{(MW)}}{\text{Existing CRSP Firm \& Peaking Power}} - \underset{\text{(MW)}}{\text{CRSP Power Adjustment}}$$

3.
$$\underset{\text{(MWh)}}{\text{Adjusted CRSP Energy}} = \underset{\text{(MW)}}{\text{Adjusted CRSP Power}} \times \underset{\text{(MWh/MW)}}{\text{Seasonal Energy Factor}}$$

Where Seasonal Energy Factor (MWh/MW) = 2384 MWh/MW (Summer)
= 2365 MWh/MW (Winter)

ALTERNATIVE NO. 2 – RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,F+P	=	92.700 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD	=	119.000 MW	281.480 GWh
TOTAL ADJ. S.D. CRSP FIRM	=	35.000 MW	67.280 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F+P(i)/CRSP,F+P(t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F+P = Individual(i) or Total(t) CRSP Summer Firm and Peaking CROD
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP	WINTER	CROD	POWER ADJUSTMENT		ADJ. CRSP POWER (MW)	ADJ.CRSP ENERGY (MWh)
		FIRM	PEAKING	F+P	(MW)	($) 1/		
ARIZONA	Ak-Chin	3.300	0.000	3.300	0.735	2.099	4.041	9558.493
	APPA	8.450	0.880	9.330	5.423	15.495	13.880	32831.449
	Chandler Heights	0.200	0.020	0.220	0.145	0.414	0.352	832.613
	Colorado River Irr./Power	0.400	0.040	0.440	0.189	0.539	0.595	1407.400
	Electrical District #3	1.650	0.000	1.650	1.328	3.794	2.985	7060.654
	Electrical District #4	2.450	0.000	2.450	1.088	3.108	3.545	8385.266
	Electrical District #5-M	0.800	0.000	0.800	0.323	0.924	1.130	2672.877
	Electrical District #5-P	1.750	0.000	1.750	0.548	1.566	2.305	5452.197
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	0.000	0.800	0.793	2.265	1.600	3784.605
	Littlefield Elec. Coop.	0.150	0.062	0.212	0.000	0.000	0.000	0.000 2/
	Maricopa County MWCD No.1	1.500	0.000	1.500	0.918	2.624	2.425	5736.042
	NTUA	1.150	0.447	1.597	0.553	1.580	1.710	4044.797
	Ocotillo WCD	0.600	0.000	0.600	0.251	0.717	0.858	2029.494
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	0.000	1.150	0.971	2.775	2.128	5033.525
	Roosevelt Water Cons. Dist.	1.100	0.000	1.100	0.553	1.580	1.660	3926.528
	Safford	0.400	0.090	0.490	0.288	0.822	0.695	1643.938
	Salt River Project	38.250	0.000	38.250	14.783	42.238	53.040	125459.657
	San Carlos Irr. Project	1.000	0.000	1.000	0.330	0.943	1.337	3162.511
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.030	0.280	0.166	0.475	0.423	1000.555
	Wellton-Mohawk Irr. Dist.	0.150	0.020	0.170	0.132	0.376	0.288	681.229
	Williams AFB	0.650	0.256	0.906	0.501	1.430	1.157	2736.743
	Yuma Proving Grounds	0.250	0.030	0.280	0.158	0.453	0.415	981.632
NEVADA	Colorado River Commission	17.600	6.825	24.425	4.824	13.783	22.431	53057.797
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	8.700	92.700	35.0000	100.000	119.000	281480.000

1/ % Adjustment (Resource Pool No.1) = % Adjustment (Resource Pool No.2) + 0.015318%
0.015318% = Adjustment to account for customers with no winter CROD
ED #6, QCID, and STID.

2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO. 2 - RESOURCE POOL NO. 2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,F+P	=	264.800 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD	=	210.000 MW	500.760 GWh
TOTAL REDUCTION IN CROD, F	=	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F+P(I)/CRSP,F+P(T)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F+P = Individual(I) or Total(T) CRSP Summer Firm and Peaking CROD
ENERGY MULTIPLIER = 500.760 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP	SUMMER	CROD	F+P,	POWER	ADJUSTMENT	ADJ. CRSP	ADJ.CRSP
		FIRM	PEAKING	F+P	% OF TOTAL	(MW)	(%)	POWER (MW)	ENERGY (MWh)
ARIZONA	Ak-Chin	4.500	0.460	4.960	1.873	-0.563	-1.878	3.947	9411.903
	APPA	30.450	9.983	40.433	15.269	-4.582	-15.274	25.878	61707.939
	Chandler Heights	0.450	0.050	0.500	0.189	-0.058	-0.194	0.402	958.598
	Colorado River Irr./Power	0.750	0.080	0.830	0.313	-0.096	-0.319	0.664	1583.355
	Electrical District #3	9.450	0.000	9.450	3.569	-1.072	-3.574	8.388	20001.785
	Electrical District #4	5.750	1.882	7.632	2.882	-0.866	-2.887	4.894	11670.093
	Electrical District #5-M	1.850	0.000	1.850	0.699	-0.211	-0.704	1.649	3932.158
	Electrical District #5-P	3.550	0.000	3.550	1.341	-0.404	-1.346	3.156	7525.707
	Electrical District #6	6.850	2.249	9.099	3.436	-1.032	-3.441	5.828	13897.282
	Electrical District #7	5.400	0.000	5.400	2.039	-0.613	-2.044	4.797	11438.789
	Littlefield Elec. Coop.	0.250	0.086	0.336	0.127	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	6.350	0.000	6.350	2.398	-0.721	-2.403	5.639	13446.598
	NTUA	2.700	0.886	3.586	1.354	-0.408	-1.359	2.302	5489.283
	Ocotillo WCD	1.300	0.000	1.300	0.491	-0.149	-0.496	1.161	2768.487
	Queen Creek Irr. Dist.	2.000	0.659	2.659	1.004	-0.303	-1.009	1.707	4070.463
	Roosevelt Irr. Dist.	5.650	1.100	6.750	2.549	-0.766	-2.554	4.894	11670.093
	Roosevelt Water Cons. Dist.	2.700	0.886	3.586	1.354	-0.408	-1.359	2.302	5489.283
	Safford	1.300	0.280	1.580	0.597	-0.181	-0.602	1.129	2692.181
	Salt River Project	111.250	0.000	111.250	42.013	-12.605	-42.018	98.655	235249.894
	San Carlos Irr. Project	1.900	0.000	1.900	0.718	-0.217	-0.723	1.693	4037.079
	San Tan Irr. District	0.950	0.100	1.050	0.397	-0.120	-0.402	0.840	2003.040
	Thatcher	0.600	0.060	0.660	0.249	-0.076	-0.254	0.534	1273.361
	Wellton-Mohawk Irr. Dist.	0.300	0.098	0.398	0.150	-0.047	-0.155	0.263	627.142
	Williams AFB	2.400	0.790	3.190	1.205	-0.363	-1.210	2.047	4881.218
	Yuma Proving Grounds	0.450	0.151	0.601	0.227	-0.070	-0.232	0.390	929.983
NEVADA	Colorado River Commission	30.900	5.000	35.900	13.557	-4.069	-13.562	26.841	64004.282
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	24.800	264.800	100.000	-30.000	-100.000	210.000	500760.000

1/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

BILLING CODE 6450-01-C

Alternative No. 3—Adjustment Based on Proportion of CRSP and Other Federal Resources, Excluding Boulder Canyon Uprates

This alternative would generate the amounts of long-term energy available to each existing CRSP Southern Division customer based on the proportion of each customer's existing CRSP summer season firm CROD to total Southern Division summer season CRSP CROD and on the proportion of each customer's existing other Federal summer season entitlements to total other Federal resources.

The magnitude of the adjustment to each customer's existing CRSP seasonal firm CROD would be determined by applying fifty percent of the total CRSP seasonal adjustment (0.50 ADJ.s or 0.50 AADJ.w) first to the proportion of CRSP summer season resources, CRSP(i) / CRSP(t), and then to the proportion of other Federal summer season resources, OF(i) / OF(t). Other Federal resources include either Parker-Davis or Boulder Canyon Project resources, and exclude Boulder Canyon uprates. An adjustment is required in the winter season (0.26132%) to account for those customers without a winter CRSP CROD. The power adjustment is then subtracted from existing CRSP firm power to generate an adjusted CRSP firm power amount.

Similar seasonal energy factors, as in Alternatives Nos. 1 and 2, are then applied to the adjusted CRSP firm power amounts to determine the CRSP energy available for allocation.

Alternative 3 Cont.

1. Power Adj. (MW) $= \text{ADJ.s} \times 0.50\,\frac{\text{CRSP(i)}}{\text{CRSP(t)}} + 0.50\,\frac{\text{OF(i)}}{\text{OF(t)}}$ [summer]

-or-

$\text{ADJ.w} \times 0.50\,\frac{\text{CRSP(i)}}{\text{CRSP(t)}} + 0.50\,\frac{\text{OF(i)}}{\text{OF(t)}} + 0.26132$ [winter]

where ADJ.s = Total Summer Season CRSP S. D. Adjustment
= -30.00 MW

ADJ.w = Total Winter Season CRSP S. D. Adjustment
= +35.00 MW

CRSP = Individual(i) or Total(t) CRSP Firm CROD excl. peaking.

OF = Individual(i) or Total(t) Other Federal resources, excl. Boulder Canyon Uprates.

2. Adjusted CRSP Power (MW) = Existing CRSP Firm Power (MW) - CRSP Power Adjustment (MW)

3. Adjusted CRSP Energy (MWh) = Adjusted CRSP Power (MW) X Seasonal Energy Factor (MWh/MW)

Where Seasonal Energy Factor (MWh/MW) = 2384 MWh/MW (Summer)
= 2365 MWh/MW (Winter)

BILLING CODE 6450-01-M

ALTERNATIVE NO.3 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP FIRM CROD =	84.000 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD =	119.000 MW	281.480 GWh
TOTAL ADJUSTMENT, FIRM CROD =	35.000 MW	67.280 GWh

POWER ADJUSTMENT = 0.5ADJ * (CRSPI / CRSPt + OFIlwo/BCPI / OFtlwo/BCPI)
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(I) or Total(t) RSP Summer Firm CROD
OF = Individual(I) or Total(t) Summer Season
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh / MW

STATE	CUSTOMER	CRSP FIRM (MW)	CRSP + OF, SUMMER (%) 1/	POWER ADJUSTMENT		ADJ.CRSP POWER (MW)	ADJ. CRSP ENERGY (MWh)
				(MW)	(%)		
ARIZONA	Ak-Chin	3.300	2.136	0.374	1.068	3.681	8708.120
	APPA	8.450	23.707	4.149	11.853	12.606	29818.707
	Chandler Heights	0.200	0.632	0.111	0.316	0.318	752.613
	Colorado River Irr./Power	0.400	2.382	0.417	1.191	0.824	1950.240
	Electrical District #3	1.650	6.886	1.205	3.443	2.863	6771.236
	Electrical District #4	2.450	6.456	1.130	3.228	3.588	8485.833
	Electrical District #5-M	0.800	1.235	0.216	0.618	1.024	2421.716
	Electrical District #5-P	1.750	4.626	0.809	2.313	2.567	6072.167
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	4.563	0.799	2.282	1.606	3799.323
	Littlefield Elec. Coop.	0.150	0.000	0.000	0.000	0.000	0.000 2/
	Maricopa County MWCD No.1	1.500	4.634	0.811	2.317	2.319	5484.378
	NTUA	1.150	1.386	0.243	0.693	1.400	3312.101
	Ocotillo WCD	0.600	1.270	0.222	0.635	0.830	1963.110
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	3.245	0.568	1.623	1.726	4081.617
	Roosevelt Water Cons. Dist.	1.100	2.707	0.474	1.353	1.581	3740.489
	Safford	0.400	0.803	0.141	0.401	0.548	1296.602
	Salt River Project	38.250	60.634	10.611	30.317	48.869	115592.818
	San Carlos Irr. Project	1.000	4.544	0.795	2.272	1.803	4264.591
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.582	0.102	0.291	0.360	850.498
	Wellton-Mohawk Irr. Dist.	0.150	1.585	0.277	0.793	0.435	1028.978
	Williams AFB	0.650	1.261	0.221	0.631	0.878	2077.669
	Yuma Proving Grounds	0.250	1.512	0.265	0.756	0.522	1235.460
NEVADA	Colorado River Commission	17.600	63.106	11.044	31.553	28.651	67771.034
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	199.895	34.982 (35.000)	99.948 (100.000)	119.000	281479.298 (281480.000)

1/ % Adjustment (Resource Pool No. 1) = % Adjustment (Resource Pool No. 2) + 0.261318%
0.261318% = Adjustment to account for customers with no winter CROD

2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO.3 – RESOURCE POOL NO. 2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP FIRM CROD =	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD =	210.000 MW	500.760 GWh
TOTAL ADJUSTMENT, FIRM CROD =	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = 0.5ADJ * (CRSPI / CRSPt + OFI(wo/BCP) / OFt(wo/BCP))
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(I) or Total( ) CRSP Summer Firm CROD
OF = Individual(I) or Total(t)
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER = 500.76 GWh / 210.000 MW = 2.384 GWh / MW

STATE	CUSTOMER	CRSP FIRM (MW)	OTHER FED. RESOURCES (MW)	CRSP + OF, % of TOTAL	POWER ADJUSTMENT (MW)	($)	ADJ.CRSP POWER (MW)	ADJ. CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	4.500	0.000	1.875	–0.282	–6.514	4.228	10082.230
	APPA	30.450	52.950	23.445	–3.517	–11.802	26.943	64246.435
	Chandler Heights	0.450	0.900	0.370	–0.056	–12.737	0.404	962.914
	Colorado River Irr./Power	0.750	8.900	2.121	–0.319	–42.750	0.441	1052.192
	Electrical District #3	9.450	13.225	6.624	–0.994	–10.772	8.466	20187.042
	Electrical District #4	5.750	18.700	6.195	–0.930	–16.422	4.830	11517.695
	Electrical District #5-M	1.850	1.000	0.974	–0.147	–8.182	1.713	4085.391
	Electrical District #5-P	3.550	14.200	4.364	–0.655	–18.708	2.905	6926.536
	Electrical District #6	6.850	7.700	4.419	–0.663	–9.935	6.197	14776.164
	Electrical District #7	5.400	10.100	4.302	–0.646	–12.212	4.764	11360.241
	Littlefield Elec. Coop.	0.250	0.000	0.104	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	6.350	8.500	4.373	–0.657	–10.590	5.703	13600.260
	NTUA	2.700	0.000	1.125	–0.169	–6.524	2.541	6058.266
	Ocotillo WCD	1.300	2.300	1.009	–0.152	–11.941	1.158	2761.381
	Queen Creek Irr. Dist.	2.000	0.000	0.833	–0.126	–6.532	1.884	4493.391
	Roosevelt Irr. Dist.	5.650	3.100	2.984	–0.448	–8.183	5.212	12427.814
	Roosevelt Water Cons. Dist.	2.700	6.500	2.446	–0.367	–13.860	2.343	5585.906
	Safford	1.300	0.000	0.542	–0.082	–6.549	1.228	2928.516
	Salt River Project	111.250	69.000	60.373	–9.057	–8.391	102.203	243711.331
	San Carlos Irr. Project	1.900	17.185	4.283	–0.643	–34.098	1.267	3020.966
	San Tan Irr. District	0.950	0.500	0.497	–0.075	–8.171	0.885	2109.750
	Thatcher	0.600	0.350	0.321	–0.049	–8.384	0.561	1338.198
	Wellton-Mohawk Irr. Dist.	0.300	5.900	1.324	–0.199	–66.649	0.111	264.211
	Williams AFB	2.400	0.000	1.000	–0.151	–6.527	2.259	5387.605
	Yuma Proving Grounds	0.450	5.235	1.251	–0.188	–42.096	0.272	647.864
NEVADA	Colorado River Commission	30.900	245.950	62.845	–9.427	–30.759	21.483	51226.818
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	492.195	200.000	–30.000		210.000	500759.118 (500760.000)

1/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

BILLING CODE 6450-01-C

Alternative No. 4—Adjustment Based on Proportion of Total Federal Resources

This alternative would generate the amounts of long-term energy available to each existing CRSP Southern Division customer based on the ratio of each customer's existing summer season total Federal Resources to the summer season total. Total Federal Resources would include CRSP, Parker-Davis and Boulder Canyon Project resources, excluding CRSP peaking power and Boulder Canyon uprate allocations. The summer season ratio is applied to the proposed total seasonal adjustment in CRSP firm power (ADJ.s or ADJ.w) to determine the seasonal adjustment to each customer's existing CRSP firm CROD. An adjustment is required in the winter season (0.11195%) to account for those customers without a winter CRSP CROD. Adjusted seasonal power is then translated to CRSP firm energy available for allocation.

1\.
$$\text{Power Adjustment (MW)} = \text{ADJ.s (MW)} \times \frac{\text{Total Fed.(i)}}{\text{Total Fed.(t)}} \qquad \text{[summer]}$$

-or-

$$\text{ADJ.w} \times \left(\frac{\text{Total Fed.(i)}}{\text{Total Fed.(t)}} + 0.11195\right) \qquad \text{[winter]}$$

Where ADJ.s = Total Summer Season CRSP S.D. Adjustment
= - 30.00 MW

ADJ.w = Total Winter Season CRSP S.D. Adjustment
= + 35.00 MW

Total Fed. = Individual (i) or Total (t) Federal Resources, excl. CRSP peaking and BCP uprates.

2\.
$$\text{Adjusted CRSP Power (MW)} = \text{Existing CRSP Firm Power (MW)} - \text{CRSP Power Adjustment (MW)}$$

3\.
$$\text{Adjusted CRSP Energy (MWh)} = \text{Adjusted CRSP Power (MW)} \times \text{Seasonal Energy Factor (MWh/MW)}$$

Where Seasonal Energy Factor (MWh/MW) = 2384 MWh/MW (Summer)
= 2365 MWh/MW (Winter)

ALTERNATIVE NO.4 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

	POWER	ENERGY
EXISTING S.D. CRSP FIRM CROD =	84.000	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD =	119.000	281.480 GWh
TOTAL ADJ. CRSP FIRM CROD =	35.000	67.280 GWh

ADJUSTMENT = ADJ * (CRSPI + OFIwo/BCPII / CRSPt + OFIwo/BCPIt)
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(I) or Total(t) CRSP Summer Firm CROD
OFIwo/BCPI = Individual(I) or Total(t) Summer Season
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER= 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP FIRM (MW)	% OF TOTAL FED. RES. (%) 1/	POWER ADJUSTMENT (MW)	POWER ADJUSTMENT (%)	ADJ. CRSP POWER (MW)	ADJ.CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	3.300	0.728	0.255	7.827	3.562	8424.476
	APPA	8.450	11.504	4.026	47.755	12.483	29527.283
	Chandler Heights	0.200	0.298	0.104	52.203	0.311	735.638
	Colorado River Irr./Power	0.400	1.431	0.501	125.343	0.908	2147.182
	Electrical District #3	1.650	3.210	1.124	68.201	2.780	6576.623
	Electrical District #4	2.450	3.453	1.208	49.430	3.665	8669.622
	Electrical District #5-M	0.800	0.503	0.176	22.094	0.983	2324.467
	Electrical District #5-P	1.750	2.538	0.888	50.858	2.645	6256.298
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	2.230	0.781	97.680	1.587	3754.785
	Littlefield Elec. Coop.	0.150	0.000	0.000	0.000	0.000	0.000 2/
	Maricopa County MWD No.1	1.500	2.141	0.750	50.074	2.256	5337.055
	NTUA	1.150	0.482	0.169	14.779	1.326	3135.389
	Ocotillo WCD	0.600	0.605	0.212	35.398	0.819	1936.193
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	1.308	0.458	39.926	1.615	3819.454
	Roosevelt Water Cons. Dist.	1.100	1.370	0.479	43.692	1.586	3752.066
	Safford	0.400	0.291	0.102	25.557	0.509	1203.060
	Salt River Project	38.250	24.731	8.656	22.737	46.913	110966.242
	San Carlos Irr. Project	1.000	2.720	0.952	95.302	1.959	4633.211
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.243	0.085	34.135	0.342	808.679
	Wellton-Mohawk Irr. Dist.	0.150	0.960	0.336	224.126	0.493	1165.751
	Williams AFB	0.650	0.441	0.154	23.858	0.811	1918.780
	Yuma Proving Grounds	0.250	0.890	0.311	124.671	0.568	1344.059
NEVADA	Colorado River Commission	17.600	37.924	13.273	75.524	30.880	73043.606
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	100.000	35.000		119.000	281479.918 (281480.000)

1/ % Total Fed. Resources(Resource Pool No.1) = % Total Fed. Resources (Resource Pool No. 2) + 0.1119%
0.1119% = Adjustment to account for customers with no winter CROD
ED #6, QCID, and STID.

2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO.4 - RESOURCE POOL NO. 2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

	POWER	ENERGY
EXISTING S.D. CRSP FIRM CROD =	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD =	210.000 MW	500.760 GWh
TOTAL ADJ. CRSP FIRM CROD =	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * (CRSPi + OFIwo/BCPIi / CRSPt + OFIwo/BCPIt)
ADJ = Total Adjustment to S.D. Customers
CRSP = Individual(i) or Total(t) CRSP Summer Firm CROD
OFIwo/BCPI = Individual(i) or Total(t) Summer Season
Other Federal Resources, Excl. BCP Uprates
ENERGY MULTIPLIER = 500.76 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP FIRM (MW)	OTHER FED. RESOURCES (MW)	TOTAL FED. RESOURCES (MW)	% OF TOTAL FED. RES. (%) 1/	POWER ADJUSTMENT (MW)	POWER ADJUSTMENT (%)	ADJ. CRSP POWER (MW)	ADJ.CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	4.500	0.000	4.500	0.616	-0.185	-4.270	4.325	10313.784
	APPA	30.450	52.950	83.400	11.392	-3.418	-11.387	27.042	64484.700
	Chandler Heights	0.450	0.900	1.350	0.186	-0.056	-12.546	0.404	964.032
	Colorado River Irr./Power	0.750	8.900	9.650	1.319	-0.396	-52.936	0.364	868.474
	Electrical District #3	9.450	13.225	22.675	3.098	-0.929	-9.999	8.531	20341.673
	Electrical District #4	5.750	18.700	24.450	3.341	-1.002	-17.593	4.758	11345.337
	Electrical District #5-M	1.850	1.000	2.850	0.391	-0.117	-6.498	1.743	4155.878
	Electrical District #5-P	3.550	14.200	17.750	2.426	-0.728	-20.662	2.832	6753.885
	Electrical District #6	6.850	7.700	14.550	1.989	-0.597	-8.873	6.263	14935.618
	Electrical District #7	5.400	10.100	15.500	2.118	-0.635	-11.932	4.775	11385.173
	Littlefield Elec. Coop.	0.250	0.000	0.250	0.000	0.000	0.000	0.000	0.000
	Maricopa County MWCD No.1	6.350	8.500	14.850	2.030	-0.609	-9.752	5.751	13714.022
	NTUA	2.700	0.000	2.700	0.370	-0.111	-4.276	2.599	6197.419
	Ocotillo WCD	1.300	2.300	3.600	0.493	-0.148	-11.542	1.162	2771.087
	Queen Creek Irr. Dist.	2.000	0.000	2.000	0.275	-0.082	-4.282	1.928	4596.611
	Roosevelt Irr. Dist.	5.650	3.100	8.750	1.196	-0.359	-6.516	5.301	12640.806
	Roosevelt Water Cons. Dist.	2.700	6.500	9.200	1.258	-0.377	-14.140	2.333	5562.354
	Safford	1.300	0.000	1.300	0.179	-0.054	-4.293	1.256	2995.803
	Salt River Project	111.250	69.000	180.250	24.619	-7.386	-6.803	103.874	247695.603
	San Carlos Irr. Project	1.900	17.185	19.085	2.608	-0.782	-41.341	1.128	2688.910
	San Tan Irr. District	0.950	0.500	1.450	0.199	-0.060	-6.461	0.900	2146.547
	Thatcher	0.600	0.350	0.950	0.131	-0.039	-6.719	0.571	1360.798
	Wellton-Mohawk Irr. Dist.	0.300	5.900	6.200	0.848	-0.254	-84.977	0.056	132.490
	Williams AFB	2.400	0.000	2.400	0.329	-0.099	-4.278	2.311	5511.359
	Yuma Proving Grounds	0.450	5.235	5.685	0.778	-0.233	-52.017	0.227	540.492
NEVADA	Colorado River Commission	30.900	245.950	276.850	37.812	-11.344	-36.875	19.566	46657.245
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	492.195	732.195	100.000	-30.000		210.000	500760.103 (500760.000)

1/ Adjustment made to (CRSP + OF)% to account for deletion of Littlefield Electric Cooperative.
Adjustment = 0.00034/25 = 0.0000136 = 0.00136%

2/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

Alternative No. 5—Proportional Adjustment Based on CRSP Firm CROD

This alternative is a variation on Alternative No. 1. The procedure for determination of the summer season adjustment is the same. However, the winter season adjustment (ADJ.w) is determined as follows:

—The ratio of existing CRSP winter season firm power (CRSP, F(i)) to the total existing CRSP Southern Division winter season firm power (CRSP, F(T)) is determined.

—This ratio is then applied to the total proposed winter season adjustment (ADJ.w) to determine the adjustment in winter season power.

—The power adjustment is then subtracted from existing CRSP firm power to generate an adjusted CRSP firm power amount.

—The total marketable firm power and energy available for allocation to Southern Division customers (refer to Appendix B) is then used to determine the equivalent amount of CRSP energy associated with each megawatt of CRSP power, referred to as the seasonal energy factor.

—This seasonal energy factor is then applied to the adjusted CRSP firm power amount to generate the CRSP firm energy available for allocation.

1. $$\text{Power Adjustment (MW)} = \text{ADJ.s (MW)} \times \frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}} \qquad \text{[summer]}$$

-or-

$$\text{ADJ.w} \times \frac{(\text{CRSP, F(i)}}{(\text{CRSP, F(t)}} \qquad \text{[winter]}$$

Where
ADJ.s = - 30.00 MW
ADJ.w = + 35.00 MW
CRSP, F = Individual (i) or Total (t) CRSP CROD, excl. peaking power

2. $$\text{Adjusted Power (MW)} = \text{Exist. CRSP Firm Power (MW)} - \text{Power Adjustment (MW)}$$

3. $$\text{Adjusted CRSP Energy (MWh)} = \text{Adjusted CRSP Power (MW)} \times \text{Seasonal Energy Factor (MWh/MW)}$$

Where
Seasonal Energy Factor = 2384 MWh/MW (summer)
= 2365 MWh/MW (winter)

ALTERNATIVE NO. 5 - RESOURCE POOL NO. 1
SOUTHERN DIVISION ADJUSTMENT
(WINTER SEASON)

	POWER	ENERGY
EXISTING S.D CRSP CROD,FIRM =	84.000 MW	214.200 GWh
PROPOSED S.D. CRSP FIRM CROD =	119.000 MW	281.480 GWh
TOTAL ADJ IN CRSP FIRM =	35.000 MW	67.280 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F(I)/CRSP,F(t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(I) or Total(t) CRSP Winter Firm CROD
ENERGY MULTIPLIER = 281.48 GWh / 119.00 MW = 2.365 GWh/MW

STATE	CUSTOMER	CRSP	WINTER	CROD	POWER	ADJUSTMENT	ADJ. CRSP POWER (MW)	ADJ. CRSP ENERGY (MWh)
		FIRM	PEAKING	F+P	(MW)	(%)		
ARIZONA	Ak-Chin	3.300	0.000	3.300	1.378	3.936	4.685	11080.951
	APPA	8.450	0.880	9.330	3.523	10.067	11.980	28338.355
	Chandler Heights	0.200	0.020	0.220	0.086	0.245	0.293	692.998
	Colorado River Irr./Power	0.400	0.040	0.440	0.169	0.483	0.576	1363.189
	Electrical District #3	1.650	0.000	1.650	0.690	1.971	2.347	5551.879
	Electrical District #4	2.450	0.000	2.450	1.023	2.924	3.480	8232.641
	Electrical District #5-M	0.800	0.000	0.800	0.336	0.960	1.143	2703.570
	Electrical District #5-P	1.750	0.000	1.750	0.732	2.090	2.489	5886.974
	Electrical District #6	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Electrical District #7	0.800	0.000	0.800	0.336	0.960	1.143	2703.570
	Littlefield Elec. Coop.	0.150	0.062	0.212	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	1.500	0.000	1.500	0.628	1.793	2.135	5049.236
	NTUA	1.150	0.447	1.597	0.482	1.376	1.639	3876.403
	Ocotillo WCD	0.600	0.000	0.600	0.253	0.721	0.860	2033.379
	Queen Creek Irr. Dist.	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Roosevelt Irr. Dist.	1.150	0.000	1.150	0.482	1.376	1.639	3876.403
	Roosevelt Water Cons. Dist.	1.100	0.000	1.100	0.461	1.317	1.568	3708.855
	Safford	0.400	0.090	0.490	0.169	0.483	0.576	1363.189
	Salt River Project	38.250	0.000	38.250	15.940	45.543	54.197	128196.736
	San Carlos Irr. Project	1.000	0.000	1.000	0.419	1.198	1.426	3373.760
	San Tan Irr. District	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	Thatcher	0.250	0.030	0.280	0.107	0.305	0.364	860.546
	Wellton-Mohawk Irr. Dist.	0.150	0.020	0.170	0.065	0.186	0.222	525.451
	Williams AFB	0.650	0.256	0.906	0.273	0.781	0.930	2200.927
	Yuma Proving Grounds	0.250	0.030	0.280	0.107	0.305	0.364	860.546
NEVADA	Colorado River Commission	17.600	6.825	24.425	7.336	20.960	24.943	58999.570
	TOTAL SOUTHERN DIVISION CUSTOMERS	84.000	8.700	92.700	34.993 (35.000)	99.979 (100.000)	119.000	281479.129 (281480.000)

1/ Littlefield Electric Cooperative i Included in Resource Pools Nos. 3 & 4.

ALTERNATIVE NO. 5 - RESOURCE POOL NO.2
SOUTHERN DIVISION ADJUSTMENT
(SUMMER SEASON)

		POWER	ENERGY
EXISTING S.D CRSP CROD,FIRM	=	240.000 MW	612.000 GWh
PROPOSED S.D. CRSP FIRM CROD	=	210.000 MW	500.760 GWh
TOTAL ADJ IN CRSP FIRM	=	-30.000 MW	-111.240 GWh

POWER ADJUSTMENT = ADJ * [CRSP,F(I)/CRSP,F(t)]
ADJ = Total Adjustment to Southern Division Customers
CRSP,F = Individual(I) or Total(t) CRSP Summer Firm CROD
ENERGY MULTIPLIER = 500.760 GWh / 210.00 MW = 2.384 GWh/MW

STATE	CUSTOMER	CRSP FIRM	SUMMER PEAKING	CROD F+P	POWER (MW)	ADJUSTMENT (%)	ADJ. CRSP POWER (MW)	ADJ. CRSP ENERGY (MWh)
ARIZONA	Ak-Chin	4.500	0.460	4.960	-0.564	1.879	3.946	9410.114
	APPA	30.450	9.983	40.433	-3.807	12.692	26.653	63554.757
	Chandler Heights	0.450	0.050	0.500	-0.057	0.192	0.403	959.794
	Colorado River Irr./Power	0.750	0.080	0.830	-0.095	0.317	0.665	1585.744
	Electrical District #3	9.450	0.000	9.450	-1.182	3.942	8.278	19738.283
	Electrical District #4	5.750	1.882	7.632	-0.720	2.400	5.040	12018.238
	Electrical District #5-M	1.850	0.000	1.850	-0.232	0.775	1.628	3880.892
	Electrical District #5-P	3.550	0.000	3.550	-0.445	1.483	3.115	7427.940
	Electrical District #6	6.850	2.249	9.099	-0.857	2.858	6.003	14313.386
	Electrical District #7	5.400	0.000	5.400	-0.676	2.254	4.734	11287.963
	Littlefield Elec. Coop.	0.250	0.086	0.336	0.000	0.000	0.000	0.000 1/
	Maricopa County MWCD No.1	6.350	0.000	6.350	-0.795	2.650	5.565	13270.137
	NTUA	2.700	0.886	3.586	-0.339	1.129	2.371	5654.416
	Ocotillo WCD	1.300	0.000	1.300	-0.164	0.546	1.146	2733.318
	Queen Creek Irr. Dist.	2.000	0.659	2.659	-0.251	0.837	1.759	4193.867
	Roosevelt Irr. Dist.	5.650	1.100	6.750	-0.707	2.358	4.953	11809.588
	Roosevelt Water Cons. Dist.	2.700	0.886	3.586	-0.339	1.129	2.371	5654.416
	Safford	1.300	0.280	1.580	-0.164	0.546	1.146	2733.318
	Salt River Project	111.250	0.000	111.250	-13.907	46.358	97.353	232143.856
	San Carlos Irr. Project	1.900	0.000	1.900	-0.239	0.796	1.671	3985.217
	San Tan Irr. District	0.950	0.100	1.050	-0.120	0.400	0.840	2003.044
	Thatcher	0.600	0.060	0.660	-0.076	0.254	0.534	1272.769
	Wellton-Mohawk Irr. Dist.	0.300	0.098	0.398	-0.039	0.129	0.271	646.819
	Williams AFB	2.400	0.790	3.190	-0.301	1.004	2.109	5028.467
	Yuma Proving Grounds	0.450	0.151	0.601	-0.057	0.192	0.403	959.794
NEVADA	Colorado River Commission	30.900	5.000	35.900	-3.864	12.879	27.046	64493.681
	TOTAL SOUTHERN DIVISION CUSTOMERS	240.000	24.800	264.800	-30.000	100.000	210.000	500759.819 (500760.000)

1/ Littlefield Electric Cooperative is included in Resource Pools Nos. 3 & 4.

[FR Doc. 84-23335 Filed 8-31-84; 8:45 am]

BILLING CODE 8450-01-C

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2654-2]

Transfer of Air and Water Permit and Monitoring Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's intent to transfer air and water permit monitoring data to contractor. EPA has contracted with Putnam, Hayes and Bartlett, Inc. (PHB) to assemble plant specific data for the pulp and paper and iron and steel industries in EPA regional and state air and water files collected under sections 308 and 402 of the CWA and Section 114 of the CAA. Our objective is to expand and improve our estimates of the costs of carrying out the Clean Air and Clean Water Acts. Some of the information PHB will collect may contain confidential business information.

DATE: The transfer of data submitted to EPA and claimed to be confidential will occur no sooner than Sept. 11, 1984.

FOR FURTHER INFORMATION CONTACT: Ralph Luken, Chief, Benefits Branch, Economic Analysis Division, Office of Policy Planning and Evaluation, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202/382-5490.

SUPPLEMENTARY INFORMATION: As required by Congress, EPA periodically estimates and reports the costs of carrying out the Clean Air (section 312(c)) and Clean Water Acts (section 516(b)). The latest report is *The Cost and Clean Air and Water: Report to Congress,* May 1984, EPA 230-05-84-008. EPA is currently updating its estimates of both the costs and reductions in pollutant discharges mandated by these two acts. Our objective is to markedly improve the accuracy of the estimates by making full use of EPA's computerized data bases and other up-to-date information sources. While the methodology developed in this effort will be a general one, it will be implemented on an industry-specific basis. The first two prototype industries to which the methodology will be applied are pulp and paper (SIC 26), and iron and steel (SIC 331).

EPA will require the assistance of outside experts to carry out this effort. We have hired Putnam, Hayes & Bartlett, Inc. (PHB) (Contract #68-01-6543), a consulting firm with extensive EPA experience. Part of its initial effort is directed toward augmenting and updating information on the pulp and paper and iron and steel industries contained in various EPA data bases with information from the regional and state air and water files collected under sections 308 and 402 of the CWA and section 114 of th CAA. At present it appears they will want to visit Regions I, II, IV, V, IX, and X during September.

The types of data PHB is interested in seeing include plant-specific data regarding:

- Pollutant discharge limitations;
- Status of compliance with various guidelines or standards (e.g., BPT, BAT, and NSPS);
- In-place and required control equipment (including any additional equipment or control measures required to bring plants into compliance);
- Pollution control performance or monitoring results; and
- Production levels and product mix.

Pursuant to 40 CFR 2.301(h) and 2.302(h) EPA has determined that it may need to disclose confidential business information to PHB. Under the terms of the contract, EPA will provide PHB with information in its files on production level and product mix and other data described in the previous paragraph.

If any of the information is claimed to be confidential, reports prepared by PHB will be treated as confidential. After preparing these reports, PHB will return the confidential business information and any reports, prepared by PHB, to EPA. Since PHB will collect and utilized information claimed to be confidential, EPA is publishing this notice to inform all submitters of permit and monitoring information that PHB will receive confidential business information from EPA.

PHB is legally required under the terms of its contract to safeguard from any unauthorized disclosure the confidential business information and any other information generated during PHB's analysis. PHB's contract specifically prohibits disclosure of any of this information to any third party in any form without prior written authorization from EPA.

Dated: August 29, 1984.

Frederick W. Allen,

Acting Office Director, Office of Policy Analysis, Office of Policy Planning and Evaluation.

[FR Doc. 84-23348 Filed 8-31-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1476]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

August 24, 1984.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: amendment of § 73.202(b), Table of Assignments, Television Broadcast Stations. (Dover and Seaford, Delaware; Asbury Park, Atlantic City, New Brunswick, Newton, Vineland, West Milford and Wildwood, New Jersey; Kingston and Syracuse, New York; and Bethlehem, Lebanon and State College, Pennsylvania) (BC Docket No. 79-269, RM's 3392 & 3398)

Filed by: James A. Gammon, Atty., for Delaware Valley Broadcasters, Limited Partnership on 8-15-84.

Subject: Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services. (Second Computer Inquiry) (CC Docket No. 81-893)

Filed by: James A. DeBois & Terry L. Trantina, Attorneys for AT&T Information Systems Inc., on 8-6-84.

Subject: Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Murray, Kentucky) (MM Docket No. 83-1122, RM-4342)

Filed By: Harry F. Cole, Attorney for Local Power Television, Inc., on 8-13-84.

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Longmont, Colorado) (MM Docket No. 83-1325, RM-4584)

Filed by: Michael L. Glaser, Attorney for Saint Vrain Broadcasting Company on 8-14-84.

Subject: American Telephone & Telegraph Co. Provision of Basic Services Via Resale by Separate Subsidiary. (CC Docket No. 83-1375)

Filed by: Daniel A. Huber, Assistant General Counsel for U.S. Telephone, Inc., on 8-10-84.

David W. Matson, General Attorney & Carolyn C. Hill, Assistant Washington Counsel for United Telephone System, Inc. on 8-16-84.

Leo I. George, Attorney for Telesphere Network, Inc., on 8-16-84.

David D. Kardell, Vice President and General Counsel & James T. Roche, Senior Attorney for ISACOMM, Inc., on 8–16–84.

Robert F. Heath for RCA Communications, Inc., on 8–16–84.

John F. Beasley, Vincent L. Sgrosso & Francis B. Semmes for BellSouth Corporation on behalf of South Central Bell Telephone Company & Southern Bell Telephone and Telegraph Company on 8–16–84.

Peter Tannenwald & Vonya B. McCann, Attorneys for Teltec Saving Communications Co. & Satelco Incorporated on 8–16–84.

Kay Yarnevic, Assistant Director Federal Regulatory & Diane M. Bieneman, Robert L. Barada & Stanley J. Moore, Attorneys for Pacific Bell & Nevada Bell on 8–16–84.

Richard C. Schramm, Daniel P. Behuniak & Lawrence W. Katz, Attorneys for The Bell Atlantic Companies on 8–16–84.

Philip M. Walker & Donald E. Ward, Attorneys for GTE Service Corporation on 8–17–84.

Thomas J. O'Reilly, Attorney for United States Telephone Association on 8–13–84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–23343 Filed 8–31–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–721–DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Pennsylvania (FEMA–721–DR), dated August 27, 1984, and related determinations.

DATED: August 27, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0501.

Notice: Notice is hereby given that, in a letter of August 27, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

> I have determined that the damage in certain areas of the State of Pennsylvania, resulting from severe storms, and flooding, beginning on or about August 3, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Pennsylvania.
>
> In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Alfred A. Hahn of the Federal Emergency Management Agency to act as the Federal Coordinating Office for this declared disaster.

I do hereby determine the following areas of the State of Pennsylvania to have been affected adversely by this declared major disaster:

Bedford and Somerset Counties for Individual Assistance and Public Assistance.

Armstrong, Allegheny, Blair, McKean, and Westmoreland Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–23310 Filed 8–31–84; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOME LOAN BANK BOARD

[No. 84–471]

Application for Insurance of Accounts

August 28, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request," Application for Insurance of Accounts", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

COMMENTS: Comments on the information collection request are welcome and are due by September 18, 1984. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy Odea, Office of District Banks, Federal Home Loan Bank Board. Phone: 202–377–6789.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84–23306 Filed 8–31–84; 8:45 am]

BILLING CODE 6720–01–M

Fidelity Federal Savings and Loan Association, Baltimore, MD; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Sec. 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Fidelity Federal Savings and Loan Association, Baltimore, Maryland, on August 27, 1984.

Dated: August 29, 1984.

J.J. Finn,

Secretary.

[FR Doc. 84–2338 Filed 8–31–84; 8:45 am]

BILLING CODE 6720–01–M

[No. 84–472]

Application for Permission To Organize

Date: August 28, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request," Application for Permission to Organize", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and are due by September 18, 1984. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy Odea, Office of District Banks, Federal Home Loan Bank Board, Phone 202–377–6789.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary

[FR Doc. 84-23361 Filed 8-31-84; 8:45 am]

BILLING CODE 6720-01-M

[No. 84–462]

Claim of Insurance and Assignment of Insured Account

Dated: August 28, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

The public is advised that the Federal Home Loan Bank Board has submitted a request for extension, without revision, of its information collection request, "Claim of Insurance and Assignment of Insured Account", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments on the information collection request are welcome and should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Gail Padgett, Federal Savings and Loan Insurance Corporation. Phone 202–377–6620.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary

[FR Doc. 84-23362 Filed 8-31-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 231–002206–002.

Title: California Association of Port Authorities and Northwest Marine Terminal Association Marine Terminal Conference Agreement.

Parties:

Port of Anacortes
Port of Astoria
Port of Everett
Port of Grays Harbor
Port of Longview
Port of Olympia
Port of Port Angeles
Port of Portland
Port of Seattle
Port of Tacoma
Port of Vancouver
Encinal Terminals
Port of Long Beach
Port of Los Angeles
Port of Oakland
Port of Hueneme
Port of Redwood City
Port of Sacramento
Port of San Diego
Port of San Francisco
Port of Stockton

Synopsis: This amendment modifies the basic agreement by allowing the two associations to confer, discuss, and make recommendations on rates and charges and other tariff matters, in addition to their present authority to discuss and make recommendations on practices.

Agreement No. 224–003596–001.

Title: San Juan Marine Terminal Agreement.

Parties: Puerto Rico Ports Authority (Authority) Agencias Intermares, Inc. (AII).

Synopsis: This amendment modifies the basic agreement by renewing the agreement to January 14, 1988; changes to open space of the leased premises at Pier No. 12 (San Juan) to 13,891.80 sq. ft; changes the rental fees; changes the charges for utilities; reduces the security for payments of rentals and other charges; and reduces the termination penalty charges.

Agreement No. 224–003957–004.

Title: Oakland Marine Terminal Agreement.

Parties: The Port of Oakland (Port) Neptune Orient Lines, Ltd. (NOL).

Synopsis: The amendment modifies the basic agreement between the parties whereby the Port preferentially assigns certain marine terminal facilities in the Port's Outer Harbor Terminal to NOL. Amendment No. 4 extends the time in which NOL may exercise its right to terminate the agreement to the 31st day of December 1984, and reduces the minimum notice period for such termination from 24 months to 20 months.

Agreement No. 221–004049–001.

Title: Seattle Marine Terminal Agreement.

Parties: The Port of Seattle Matson Terminals, Inc.

Synopsis: This amendment modifies the basic agreement between the parties by adding two acres to the leased premises at Terminal 18, Seattle, with a corresponding increase in rent. The two acres are being deleted from Seattle International Terminal, Inc., lease covered by Agreement No. T–4042.

Agreement No. 203–010633.

Title: Flota Mercante Grancolombiana/Adino Chemical Shipping Company Bulk Liquid Cooperative Working Agreement.

Parties: Flota Mercante Grancolombiana, S.A. Andino Chemical Shipping Company, Inc.

Synopsis: The proposed agreement would establish a corporation which would transport liquid bulk parcels between ports in the United States and ports on the Atlantic Coast of Colombia.

Agreement No. 221-010634.

Title: San Juan Foreign Marine Terminal Agreement.

Parties: Puerto Rico Port Authority Luis A. Ayala Colon, Sucrs., Inc.

Synopsis: The Puerto Rico Ports Authority will grant to Luis A. Ayala Colon, Sucrs., Inc., preferential and exclusive use of premises at Pier B, Puerto Nuevo, San Juan, Puerto Rico, for the docketing and mooring of vessels, and the loading and unloading of cargo from such vessels. The term of the agreement shall be for three years commencing on the effective date as determined by the Commission.

Dated: August 28, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney

Secretary

[FR Doc. 84-23336 Filed 8-31-84; 8:45 am]

BILLING CODE 6730-01-M

Inactive Tariffs—Bureau of Tariffs; Order

By Notice published in the **Federal Register** on July 19, 1984, the Commission notified the carriers named therein of its intent to cancel certain of their tariffs which appeared to be inactive. Carriers were given 30 days to show cause why such tariffs should not be cancelled.

The Notice was served on 166 carriers by certified mail, July 16, 1984. Of the 166, eight (8) carriers responded requesting that their tariffs remain active; three (3) requested cancellation of the tariff(s). Other carriers acknowledged receipt of the Notice but did not respond. The Notice could not be delivered to some carriers because they were no longer at the address shown in the Commission's files.

It is misleading to the public, potentially unfair to competing carriers, and an administrative burden on the Commission's staff for inactive tariffs to be kept on file. Inactive tariffs contravene the implicit requirements of section 8(a)(1) of the Shipping Act of 1984 (46 U.S.C. app. § 1707) which necessitate the prompt submission of accurate information concerning the services offered by a common carrier including the suspension of all or any part of the operations described in its published tariffs.

Therefore, it is ordered, that pursuant to section 8(a)(1) of the Shipping Act of 1984 (46 U.S.C. app. § 1707), the tariffs identified on the attached list are cancelled.

It is further ordered, that this Order be published in the **Federal Register** and a copy thereof filed with the tariffs.

By the Commission pursuant to authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Tariffs.

Tariffs Cancelled

A.A.C. International Freight Forwarders Co., Inc..	FMC 1.
ACE Lines Limited	FMC 1.
ACL Trading Co.	FMC 2.
Action Container Co	FMC 1.
Alfa Steamship Company	FMC 4.
Allied Transport Service	FMC 1.
American Container Line	FMC 1.
American Industrial Carriers, Inc	FMC 31 and 32.
American Pacific Shipping Co	FMC 1.
American Shipping Co. Inc	FMC 4 and 5.
The Americus Shipping Lines, Inc	FMC 1 and 2.
Aniara Lines, Inc	FMC 2.
Associated North American	FMC 1.
Associated Trade Development, Inc	FMC 1.
Bermuda Ocean Shipping Services Ltd	FMC 1.
Bailey Shipping Ltd	FMC 1.
J.E. Bernard & Co	FMC 10, 11, 12, 13 and 14.
Benedict Shipping International, Inc	FMC 1.
Blue Bay Shipping Corp	FMC 1.
B.W.I Shippers and Movers, Ltd	FMC 1.
California Freight Specialists	FMC 1.
Cal-Latin Lines, Inc	FMC 1.
Cargo Lift, Inc	FMC 1.
Cargo International Freight Service Corp.	FMC 1.
Carg-O-Matic Express, Inc	FMC 1 and 2.
Carbbean Container Services, Inc	FMC 1.
Carbbean Sea Carriers, Ltd	FMC 1.
Caribe Cargo Express, Inc	FMC 1.
C.C. Line	FMC 2.
Celadon Shipping Co., Inc	FMC 1.
Celtic Bulk Carriers	FMC 4 and 5.
Chalship Lines, Ltd	FMC 1.
Clipper Intermodal Lines	FMC 1 and 2.
Coloship Inc	FMC 1.
Combines Maritime (America) Container Line.	FMC 1.
Compagnie D'Affretement Et De Transport, S.A.	FMC 1.
Compagnie Nationale Haitienne De Navigation S.A M.	FMC 1 and 2.
Compania Maritima Ecuatoriana Clamare S.A.	FMC 1.
Consolidation Atlantic Transportation Lines, Inc. (C.A.T. Line).	FMC 4, 7, 8, 9 and 10.
Conveca, Inc	FMC 1.
CTO Lines, Inc	FMC 1, 2, 3, and 4.
Cylanco, S.A	FMC 3.
Damco-Baltimore, Inc	FMC 3.
Damco-Boston, Inc	FMC 5.
Dart Containerline	FMC 30.
Delval Transatlantic Service, Inc	FMC 2.
Diamond Shipping Ltd	FMC 1.
Dongsu Shipping Co., Ltd	FMC 1.
Eastern Car Liner, Ltd	FMC 1.
Eastern Container Lines, Ltd	FMC 3.
Egyptian National Line	FMC 6.
Emerald Lines, Inc	FMC 1.
Emery Ocean Freight	FMC 4.
Empacadora Del Norte S.A	FMC 2.
Euro-Baltic Line, Inc	FMC 1.
Euro-Con International of Georgia, Inc	FMC 1.
Euro-Con International of Pennsylvania, Inc.	FMC 1.
Euro-Con International, Inc	FMC 4.
Eurolines Spa	FMC 1.
European-Middle East Shipping	FMC 2.
F.A.K. Inc	FMC 1.
The A.W. Fenton Co., Inc	FMC 1.
Finsec Export, Inc	FMC 1.
First International Shipping Co	FMC 1.
Flonec Line	FMC 1.
Franco Express Lines, S.A	FMC 1 and 2.
Frans Maas Container Services	FMC 1 and 2.
Freight-Base, Inc	FMC 1.
G.M.S International Corp	FMC 2.
Galapagos Line S.A.	FMC 1.

Tariffs Cancelled—Continued

National Galleon Shipping Corp	FMC 66, 72, 74 and 75.
Gemini Shipping, Inc	FMC 1.
Genact Cargo Lines, Inc	FMC 1.
General Maritime Enterprise	FMC 1 and 2.
Golden Bear Trading Co., Inc	FMC 1.
Gulf Ports Shipping Company	FMC 1.
Hellenic Lines, Ltd	FMC 1, 3, 4, 5, 7, 16, 26, 31, 32, 33, 34, 35, 36, 37, 39, 40, 42, 44, 45, 53, 54, 55 and 58.
Inovative Freighting, Inc	FMC 1.
Inter-American Moving Service, Inc	FMC 1.
Interconex, Inc	FMC 1.
Interconex Transport International, Inc	FMC 1.
Intercontinental Export Services, Inc	FMC 1.
International Navigation Services, Corp	FMC 1.
Islander Freight & Supply Ltd	FMC 1.
Islands Freight Transportation, Inc	FMC 1.
Italian Line	FMC 30.
I.W. Transport, Inc	FMC 1.
Japan Pacific Service	FMC 14.
Jeco Shipping Line International, N.V	FMC 1, 2 and 3.
Jugobrod Group-Yugoslavia	FMC 1.
Kambara Kisen Company, Ltd	FMC 5.
Kenron Container Lines, Ltd	FMC 1.
Koplamar Line, Inc	FMC 1.
Kyowa Shipping Co. Ltd	FMC 4.
Latte Corporation	FMC 1.
Logistics Transport, Ltd	FMC 1.
Marine Overseas, Inc	FMC 1.
Marine Fleet, Inc	FMC 1.
Maritime Commercial Carriers, Ltd	FMC 1.
Maritime Company of the Philippines	FMC 19 and 20.
Mayan Lines	FMC 2.
Meridian Marine Lines	FMC 1.
Merit Container Express, Inc	FMC 1.
Meteor Lines	FMC 1.
Michael Davis (Shipping) Inc	FMC 1.
Mid-Atlantic Lines	FMC 1.
Multi-Sea Maritime, Inc	FMC 1.
Nanica Line	FMC 27, 28 and 29.
The National Shipping Co. of Saudi Arabia.	FMC 4 and 5.
Navieras Atlanticas, Inc	FMC 1.
Navieras Caribe Ltd	FMC 1.
Navinsa, S.A	FMC 2.
Nautical Shipping Agencies, Inc	FMC 1.
Navieracontinental S.A	FMC 1.
Negocios Amazonicos Peruanos, S.A. (Napesa).	FMC 1.
Pacific Common Carrier Line	FMC 2.
Pan Africa Line, Inc	FMC 1.
Pelican Cargo Services, Inc	FMC 1.
Peninsula Express Line.	FMC 1.
Pac Transport	FMC 1.
Pharaonic Shipping Company	FMC 2.
Pikes Arm Shipping Ltd	FMC 1.
P & O Lines	FMC 11.
Pracht Shipping	FMC 2.
Prexco Marine Lines	FMC 1.
Pro Cargo Services, Inc	FMC 1.
Radix Group International, Inc	FMC 1.
Rivergate Shipping Inc	FMC 1.
Rolland International (U.K.) Ltd	FMC 1.
Royal African Steamship & Navigation Co.	FMC 1.
Scan Tropic Line, Ltd	FMC 1.
Scott Line, A.S	FMC 1.
Seal	FMC 1.
Sealax Container Lines	FMC 1.
Sea Freight Corp	FMC 1.
Sea Freight, Inc	FMC 1.
Sea Mar Consolidators Corp	FMC 1.
Seaply Carriers	FMC 1.
Sea Span International, Ltd	FMC 2.
Sea Star Line	FMC 2.
Seatrade Container Services, Inc	FMC 1.
Seatrade Transport, Inc	FMC 20.
Seatrade Welgrow, Inc	FMC 1.
Seatransport Service, Inc	FMC 1.
Seaward Ocean Lines, Ltd	FMC 1 and 2.
Texas Gulf Iberia Navigation Company	FMC 1.
Uiterwyk Lines, C.A	FMC 7, 8, 10, 11, 12, 13, 14 and 16.
Uiterwyk Lines (West Africa Ltd.	FMC 3, 5, 6 and 8.

Tariffs Cancelled—Continued

Xebec Maritime Corp.	FMC 1.

[FR Doc. 84-23337 Filed 8-31-84; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Stena Cargo Line Ltd. and Imperial Ocean Services Ltd. (BAHAMAS), c/o Fiesta Cruise Line, Inc., 400 Comercio Street, San Juan, Puerto Rico 00903.

Dated: August 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23334 Filed 8-31-84; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Stena Cargo Line Ltd., Imperial Ocean Service Ltd. (BAHAMAS) and Fiesta Cruise Line, Inc., c/o Fiesta Cruise Line, Inc., 400 Comercio Street, San Juan, Puerto Rico 00903.

Dated: August 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23333 Filed 8-31-84; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate Agreement No. 203-009856

Agreement No.: 203-009856
Title: International Passenger Association Passenger Ship Conference.
Parties:

Bahama Cruise Line
Costa Cruises
Cunard Line, Ltd.
Holland America Line
Cunard/NAC
Home Lines Cruises
Norwegian Carib. Lines
Royal Viking Line
Sun Line Cruises

Synopsis: The parties to the referenced agreement having provided notice of the termination of the agreement, the Commission hereby gives notice of its intent to terminate its previously granted approval of the agreement effective August 17, 1984, the date the Commission received the parties' termination notice.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23360 Filed 8-31-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000057-137.
Title: Pacific Westbound Conference.
Parties:

American President Lines, Ltd.
Japan Line Ltd.
Kawasaki Kisen Kaisha Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit a party who has adopted another carrier's independent action proposal to maintain the proposal for its own account, should the initiating carrier withdraw the proposal prior to its effective date.

Agreement No.: 202-010491-001.
Title: North Europe—U.S. South Atlantic Rate Agreement.
Parties:

Atlantic Container Line G.I.E.
Dart—ML Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would permit any member organized under Agreement No. 203-009498 to charter space to Wallenius Line and modifies previously adopted model language relating to independent action.

Agreement No.: 202-010492-001.
Title: U.S. South Atlantic—Europe Rate Agreement.
Parties:

Atlantic Container Line G.I.E.
Dart—ML Ltd.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would permit any member organized under Agreement No. 203-009498 to charter space to Wallenius Line and modifies previously adopted model language relating to independent action.

Dated: August 29, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23370 Filed 8-31-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Norstar Bancorp Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 24, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp Inc.*, Albany, New York, through its wholly-owned subsidiary Northeast Bankshare Association, Portland, Maine; to merge with Banc of Maine Corporation, Augusta, Maine, thereby indirectly acquiring Bank of Maine, N.A., Augusta, Maine.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Seneca Bancshares, Inc.*, Fairlea, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The Ronceverte National Bank, Fairlea, West Virginia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *RBDC Corporation*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Bancorp, Co., Chicago, Illinois, thereby indirectly acquiring Republic Bank of Chicago, Chicago, Illinois.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lismore Financial Services, Inc.*, Lismore, Minnesota; to become a bank holding company by acquiring 86.02 percent of the voting shares of State Bank of Lismore, Lismore, Minnesota. Comments on this application must be received not later than September 18, 1984.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Oak Park Bancshares, Inc.*, Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Oak Park National Bank, Overland Park, Kansas.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Citadel Bancorp, Inc.*, Burleson, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Burleson, Burleson, Texas.

2. *Overton Bancshares, Inc.*, Fort Worth, Texas; to acquire 80 percent of the voting shares of each of the following banks; Ridglea National Bank, Fort Worth, Texas; and First National Mansfield, Mansfield, Texas.

3. *Tyler Bancshares, Inc.*, Tyler, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Tyler National Bank, Tyler, Texas.

4. *United Bankers, Inc.*, Waco, Texas; to acquire 100 percent of the voting shares of Texas Southwest Bancorp, Inc., Mesquite, Texas, thereby indirectly acquiring Southwest Bank, Mesquite, Texas, and Southwest Bank-Garland, Garland, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 28, 1984.

James McAffee,

Associate Secretary of the Board.

[FR Doc. 84-23286 Filed 8-31-84; 8:45 am]

BILLING CODE 6210-01-M

Sunrise Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Sunrise Bancorp*, Citrus Heights, California; to engage *de novo* through its subsidiary, Western Sunrise Mortgage Corporation, Citrus Heights, California, in providing mortgage banking services including originating, making, acquiring and brokering, for its own account and for sale to others, residential, commercial and construction loans and other extensions of credit such as would be made by a mortgage company and servicing such loans and extensions of credit.

Board of Governors of the Federal Reserve System, August 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23287 Filed 8-31-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Occupational Health Survey of Mining; Objective Evaluation of Low Back Injuries, Particle Size Distribution in Underground Coal Mines (Diesel and Non-Diesel) for Compliance and Assessment of Control Technology; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

National Occupational Health Survey of Mining

Date: September 18, 1984
Time: 9:00 a.m. to 5:00 p.m.

Place: Room 800, Hubert H. Humphrey (HHH) Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

Purpose: To discuss the field work conducted during the first months of the National Occupational Health Survey of Mining and to obtain comments on the plans for reporting the survey results. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited. Formal presentations should be accompanied by written text. Informal comments and questions also will be entertained during the meeting.

Additional information and copies of the research protocol and proposed report format may be obtained from: Mr. Wallace Carr, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4498, Commercial: 304/291-4498.

The following meetings will be held in Room 138, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505:

Objective Evaluation of Low Back Injuries

Date: September 20, 1984
Time: 9:00 a.m. to 5:00 p.m.

Purpose: To review the NIOSH project protocol concerned with the refinement of the objective evaluation clinical instrument for industrial low back injuries.

Additional information may be obtained from: Roger M. Nelson, Ph.D., Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4454, Commercial: 304/291-4454.

Particle Size Distribution in Underground Coal Mines (Diesel and Non-Diesel) for Compliance and Assessment of Control Technology

Date: September 28, 1984
Time: 9:00 a.m. to 12 noon

Purpose: To discuss the research protocol of a two-part project involving development of techniques for separating diesel particulate from coal mine dust.

Additional information and copies of research protocols may be obtained from: Mr. Frank J. Hearl, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4421, Commercial: 304/291/4421.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: August 23, 1984.

William C. Watson,

Acting Director, Centers for Disease Control.

[FR Doc. 84-22303 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket Nos. 84V-0035 et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH), for certain specified sunlamp and sunlamp products manufactured or imported by six organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below under "**SUPPLEMENTARY INFORMATION.**"

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the six organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted for the listed products to vary as specified from that portion of § 1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for the nominally ultraviolet-A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wavelengths shorter than 320 nanometers. FDA's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturer does not result in severe, acute skin burns or corneal injury. Therefore, some of the requirements of § 1040.20 are not appropriate for these UVA products. Even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk to chemically sensitized lenses or of cornea damage or of long-term development of lens opacities.

CDRH has determined that, in lieu of the requirements of § 1040.20(c)(2)(ii), suitable or alternate means of radiation safety and protection are provided by constraints on the physical and optical design and by warning in the user manual and on the products. Therefore, on the dates specified in the table below, FDA approved the requested variances by letter to each manufacturer or importer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date/termination date
84V-0046	Ten Body Sun Systems, Mfg. Inc., 1423 Prospect Street, Flint, MI 48503.	Hexagon 40 Suntan booth	Mar. 19, 1984 to Mar. 19, 1989.
84V-0074	Eurotan International, 3701 Montrose Bldv., Houston, TE 77006.	Waldmann Suntanning Equipment Models 550000.00, \300 and Qualle imported from Waldmann Solarien.	May 7, 1984 to May 7, 1989.
84V-0104	Tanning Systems Int., Inc., 14804 S. Drexel Avenue, Dolton, IL 60419.	Midas Hexagon UVA Tanning Boothe	Apr. 25, 1984 to Apr. 25, 1989.
84V-0110	SUNN-TEK, 11740 S.W. Berkshire, Portland, OR 97225.	UVA suntanning beds with or without a canopy manufactured by SUNN-TEK.	May 7, 1984 to May 7, 1989.
84V-0139	Deavilin Company, P.O. Box 626, Bryan, OH 43506.	UVA Sunlamp products manufactured by Deavlin Company.	June 8, 1984 to June 8, 1989.
84V-0140	Grantan, 355 S.W. Madison, Corvallis, OR 97333	Grantan Salon Model Tanning Bed manufactured by Grantan.	June 8, 1984 to June 8, 1989.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23294 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84V-0149]

Baystate Medical Center; Availability of Approved Variance for Diagnostic X-Ray Systems

AGENCY: Food and Drug Administation.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for diagnostic x-ray systems and their major components has been approved for the Baystate Medical Center by FDA's Center for Devices and Radiological Health (CDRH) for a special procedures medical x-ray unit with Fluoricon II Image Intensifier and DXR 1250 Generator.

DATES: The variance became effective June 20, 1984, and ends June 20, 1989, or after the manufacture of one unit of the product, whichever occurs first.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn Conklin, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Baystate Medical Center, Department of Radiology, Springfield, MA 01199, a variance from § 1020.30(p)(1) (21 CFR 1020.30(p)(1)) of the performance standard for diagnostic x-ray systems and their major components for a special procedures medical x-ray unit with Fluoricon II Image Intensifier and DXR 1250 Generator.

The specific requirement of the standard for which a variance has been granted pertains to the provision of § 1020.30(p)(1) that requires components which are assembled into x-ray systems that contain one or more previously certified components be those which have themselves been so certified. All other provisions of the performance standard remain applicable to the product.

The variance will be applicable to 21 CFR 1020.30(p)(1)(ii), in that is will permit, for a limited time, the installation and use of uncertified replacement components into an existing diagnostic x-ray system containing one or more certified components.

CDRH has determined that: (a) The requirement of § 1020.30(p)(1) is not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by constraints on the physical and optical design and on the labeling of the product. Furthermore, CDRH recognizes that the replacement components will provide an improved image at a decreased radiation exposure to the patient and that Baystate Medical Center will be conserving their resources by using uncertified components already in their possession. Therefore, on June 20, 1984, FDA approved the requested variance by letter to the manufacturer from the Deputy Director of CDRH.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23295 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0262]

Grated Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Trumpy Cheese Co., Inc., to market test grated cheese containing powdered cellulose as an anticaking agent. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Trumpy Cheese Co., Inc., Monroe, WI 53566.

The permit covers limited interstate marketing tests of grated cheese that deviates from the standard of identity for grated cheeses (21 CFR 133.146). Powdered cellulose, an ingredient not currently permitted for use in grated cheese, will be used as an anticaking agent, either alone or in combination with other anticaking agents listed in § 133.146(b)(2) in an amount not to exceed 2 percent by weight of the finished food. The test product meets all requirements of § 133.146, with the exception of this deviation. The permit provides for the temporary marketing of 3 million pounds of grated cheese. The test product will be distributed throughout the United States.

The test product is to be manufactured at the Trumpy Cheese Co., Inc., plant located in Blanchardville, WI 53516.

Each of the ingredients used in the food, including the powdered cellulose, is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-23293 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0264]

Grated Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Sargento Cheese Co., Inc., to market test grated cheese containing powdered cellulose as an anticaking agent. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Sargento Cheese Co., Inc., Plymouth, WI 53073.

The permit covers limited interstate marketing tests of grated cheese that deviates from the standard of identity for grated cheeses (21 CFR 133.146). Powdered cellulose, an ingredient not currently permitted for use in grated cheese, will be used as an anticaking agent, either alone or in combination with other anticaking agents listed in § 133.146(b)(2) in an amount not to exceed 2 percent by weight of the finished food. The test product meets all requirements of § 133.146, with the exception of the deviation. The permit provides for the temporary marketing of 39 million pounds of grated cheese. The test product will be distributed throughout the United States and in Pureto Rico.

The test product is to be manufactured at the Sargento Cheese Co., Inc., plant located in Plymouth, WI 53073.

Each of the ingredients used in the food, including the powdered cellulose, is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 3, 1984.

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-23292 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0232, NADA Nos. 6-395, 8-142, 8-989, 9-415, and 10-741]

Hess & Clark, et al.; Nitrofurazone (NF-7); Notice of Hearing on a Proposal To Withdraw Approval of Certain New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's). On August 17, 1976, the Director of FDA's Center for Veterinary Medicine) (the Center) (formerly the Bureau of Veterinary Medicine) issued a notice of opportunity for hearing (41 FR 34899) proposing to withdraw approval of the NADA's for nitrofurazone. Norwich-Eaton Pharmaceuticals (formerly Norwich Pharmacal Co. and Eaton Laboratories), Division of Morton-Norwich Products, Inc. (Norwich), and Hess & Clark, Inc. (Hess & Clark), responded by filing requests for a hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Acting Commissioner of Food and Drugs announced that a formal evidentiary hearing would be held on the proposal to withdraw approval of NADA's 6-395, 8-142, 8-989, 9-415, and 10-741, for the use of nitrofurazone (NF-7) in food-producing animals. This notice of hearing provides additional factual and legal information concerning the proposal to withdraw approval of the NADA's, and identifies the factual issues that will be the subject of the evidentiary hearing.

DATES: Prehearing conference on Monday, November 19, 1984, beginning at 10 a.m.; written notices of participation due by October 4, 1984; disclosure of data and information due by November 5, 1984.

ADDRESSES: The prehearing conference will be held in Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857; written notices of participation and disclosure of data and information are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3460.

SUPPLEMENTARY INFORMATION:

I. Background

Nitrofurazone (NF-7) is a member of a class of chemicals called "nitrofurans," which are used in animals for therapeutic purposes. The initial NADA for nitrofurazone was approved by FDA in 1948 for use in food-producing animals. It is currently approved for use in mastitis products for dairy cattle (dry cow treatment only), for the treatment of genital tract infections in large female animals, for the prevention and treatment of surface bacterial infections (all animals), as a medication in feed for swine, for chickens and turkeys for treatment and control of fecal and intestinal coccidiosis, and for chickens for prevention of pullorum. There are several regulations in effect relating to the use of nitrofurazone in food-producing animals (21 CFR 510.515, 558.15(g)(1), and 558.370).

In a notice of opportunity for hearing published in the **Federal Register** of August 17, 1976 (41 FR 34899), the Center proposed to withdraw approval of the NADA's for nitrofurazone under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act). The Center based this proposal on new evidence that nitrofurazone, when fed to laboratory animals, produced tumors. Section 512(e)(1)(B) of the act, often referred to as the "Safety Clause," provides that:

> (e)(1) The Secretary shall, after due notice and opportunity for hearing to the application, issue an order withdrawing approval of the application filed pursuant to subsection (b) with respect to any new animal drug if the Secretary finds—
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> * * * * *
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> (B) that the new evidence not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved. * * *

21 U.S.C. 360b(e)(1)(B).

The notice of opportunity for hearing failed inadvertently to list nitrofurazone NADA No. 8-989 which is owned by SmithKline Animal Health Products, 1600 Paoli Pike, West Chester, PA 19380. Because NADA 8-989 permits the use of nitrofurazone in food-producing animals, it will also be subject to this notice of hearing.

Norwich-Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815, and Hess & Clark, Inc., 7th & Orange Sts., Ashland, OH 44805, the NADA-holders, filed requests for hearing in response to the notice of opportunity for hearing. Subsequently, SmithKline purchased from Norwich NADA's 8-989 and 9-415 for nitrofurazone.

In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Commissioner announced that a formal evidentiary public hearing would be held on the Center's proposal to withdraw approval of the NADA's for nitrofurazone. This notice provides additional information concerning the proposed withdrawal of the NADA's for nitrofurazone. Elsewhere in this issue of the **Federal Register**, the Commissioner is issuing a notice of hearing on two related drugs, furaltadone and furazolidone. Because these drugs raise safety issues similar to those raised by nitrofurazone, the agency will hold one hearing for all three drugs.

II. Statutory Grounds Proposed for Withdrawal of the NADA's for Nitrofurazone

Under the Safety Clause, "the [Center] must provide a reasonable basis from which serious questions about the ultimate safety of [nitrofurazone] and the residues that may result from its use may be inferred" (44 FR 54852, 54861; September 21, 1979). The necessary "serious questions" about nitrofurazone's safety can be raised from evidence about either the parent drug or its metabolites. Any substance that enters an animal's body can be metabolized (changed) by being transformed into other molecules (metabolites), by the drug and/or its metabolites binding to other molecules already present in the body, and/or by a combination of transformation and binding. Residues of an animal drug in edible tissues will, therefore, be made up not only of the parent drug, but also of its metabolites. Accordingly, when considering the safety of a new animal drug, all drug-related residues, including metabolites, are to be taken into account. This principle complies with the statutory directive that FDA, before approving a new animal drug, evaluate the safety of both the drug and "any substance formed in or on food" because of the use of the drug (21 U.S.C. 360b(d)(2)(A)).

"Serious questions" can be raised where the evidence is not conclusive, but merely suggestive of an adverse effect. The "serious questions" can also relate to adverse effects other than carcinogenicity, such as tumorigenicity or other toxicological endpoints. Thus, the Center is not required to demonstrate that nitrofurazone, or its metabolites, are carcinogenic to invoke the Safety Clause. Assuming the Center does provide a basis for questioning nitrofurazone's safety, the sponsors will have the ultimate burden of showing the drug's safety (44 FR 54861).

III. Summary of the Evidence

In accordance with FDA's procedural regulations (21 CFR 12.85) the Center has placed on file with the Dockets Management Branch (address above), copies of all documents in the Center's files containing information that is relevant to issues in the hearing and a narrative statement summarizing the evidence the Center plans to introduce at the hearing. For the benefit of those who are unable to inspect these documents, the information placed on file by the Center is summarized below.

The primary factual issue at the hearing will be whether the evidence raises serious questions about the potential carcinogenicity of nitrofurazone that must be resolved by more definitive testing. The 1976 notice of opportunity for hearing discussed in detail feeding studies in rats conducted by Norwich (41 FR 34901-08). The Center believed that these studies showed that nitrofurazone caused an increase in mammary tumors in female rats as compared with control rats maintained on drug-free diets (41 FR 34901). The Center concluded that nitrofurazone is tumorigenic in rats, and that the data raise questions about the potential carcinogenicity of nitrofurazone. The Center also pointed to evidence concerning the carcinogenicity of furazolidone as raising serious questions about the potential carcinogenicity of nitrofurazone because the two compounds share similar structural and biological properties.

The Center concluded that the sponsor's studies are not adequate to assess the cumulative effects of exposure to nitrofurazone and its potential carcinogenicity and other toxicity because the studies were not of sufficient duration, not enough animals were tested, and only one dose level was tested (41 FR 34899-34904). Thus, a safe concentration for total residues of nitrofurazone cannot be established.

The Center states that nitrofurazone is mutagenic in the reverse mutation assay using various strains of *E. coli WP 2.* Nitrofurazone has also been found to be mutagenic for *Salmonella typhimurium* in tester strains TA 1535, TA 98, and TA 100. In addition, numerous scientific studies have shown that other nitrofurans are mutagenic in several test systems. The Center concludes that these results also raise "serious questions" about the safety of nitrofurazone.

Finally, the Center states that residues of nitrofurazone are present in edible animal tissue (41 FR 34907).

In its request for a hearing, Norwich argues that FDA cannot proceed to a hearing without issuing an environmental impact statement. The Center has prepared a comprehensive document entitled "Finding of No Significant Impact and Environmental Assessment for the Prohibition of Use of Three Nitrofuran Compounds in Food-Producing Animals." This document carefuly examines the possible environmental consequences of withdrawing approval of nitrofurazone and two other nitrofuran compounds, and concludes that the impact is not sufficient to warrant an environmental impact statement. The environmental assessment is available at the Dockets Management Branch (address above).

Because the Commissioner believes that the Center's document adequately considers the possible environmental consequences of the proposed withdrawals, ther is not reason to delay a hearing on the proposed withdrawals. The agency has fulfilled its obligation under the National Environmental Policy Act to take a close look at the environmental consequences of withdrawing approval of the NADA's for nitrofurazone. Although environmental factors will not be an issue in the hearing, the Commissioner will review the environmental assessment as part of the agency's final decision.

IV. Conclusion

Upon review of the sponsors' responses to the notice of opportunity for hearing, the Commissioner concludes that a hearing is appropriate with respect to the proposal to withdraw the approval of the new animal drug applications for nitrofurazone. The issues in the hearing will be as follows:

(1) Whether new evidence shows that nitrofurazone or its metabolites are not now shown to be safe for use under the conditions of use upon the basis of which the applications were approved. This issue includes:

(a) Whether there is a reasonable basis from which serious questions about the safety of nitrofurazone and the residues that may result from its use may be inferred;

(b) Whether nitrofurazone-related residues are likely to occur in edible tissues when conditions of use approved in the NADA's are followed;

(c) Whether the residues in edible tissues resulting from the use of nitrofurazone have been identified, or evaluated, and shown to be safe; and

(d) Whether a safe concentration can be established for total residues of nitrofurazone.

The hearing on these issues will take place in FDA Hearing Rm. 4A-35. Administrative Law Judge Daniel J. Davidson will preside. Parties to the hearing will be the Center and the sponsors of the NADA's for nitrofurazone. Any other interested person may participate in the hearing and be accorded the rights granted to participants by FDA regulations. Participants are required to assume the obligations of participation as set forth in FDA regulations. Written notices of participation shall be filed with the Dockets Management Branch no later than October 4, 1984. (See 21 CFR 12.45.) A notice of participation shall be identified with the docket number found in brackets in the heading of this document and clearly labeled "Nitrofurazone Hearing."

A prehearing conference will be held on November 19, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92 which sets forth the procedure and matters to be considered at such conference.

As discussed above, the Center has filed with the Dockets Management Branch a narrative statement setting forth its position on the hearing issues and a detailed factual description of the evidentiary background upon which it intends to rely at the hearing. The Center has also filed with the Dockets Management Branch the other documents required by 21 CFR 12.85, including copies of the NADA's, published studies, and other data bearing on the question of whether nitrofurazone has not been shown to be safe. Interested persons may obtain a copy of the narrative statement from the Dockets Managment Branch. The data described above (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) may also be examined at the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

The other parties to the hearing shall submit all the written data, information, and views required by 21 CFR 12.85(b) by November 5, 1984. Any request to extend the period for submission of the required materials or for a postponement of the prehearing conference scheduled, shall be addressed to the Administrative Law Judge.

The prehearing conference and hearing session will be open to the public. Any participants may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on relevant matters.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceedings. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 24, 1984.

Frank E. Young,

Comissioner of Food and Drugs.

[FR Doc. 84-23300 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0231, NADA Nos. 12-738 and 65-059]

Norwich-Eaton Pharmaceuticals; Furaltadone (NF-260); Notice of Hearing on a Proposal to withdraw Approval of Certain New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's). On August 17, 1976, the Director of FDA's Center for Veterinary Medicine (the Center) (formerly the Bureau of Veterinary Medicine) issued a notice of opportunity for hearing (41 FR 34891) proposing to withdraw approval of the NADA's for furaltadone. Norwich-Eaton Pharmaceuticals (formerly Norwich Pharmacal Co. and Eaton Laboratories), Division of Morton-Norwich Products, Inc. (Norwich), responded by filing requests for a hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Acting Commissioner of Food and Drugs announced that a formal evidentiary hearing would be held on the proposal to withdraw approval of NADA's 12-738 and 65-059, for the use of furaltadone (NF-260) in food-producing animals. This notice of hearing provides additional factual and legal information concerning the proposal to withdraw approval of the NADA's, and identifies the factual issues that will be the subject of the evidentiary hearing.

DATES: Prehearing conference on Monday, November 19, 1984, beginning at 10 a.m.; written notices of participation due by October 4, 1984; disclosure of data and information due by November 5, 1984.

ADDRESSES: The prehearing conference will be held in Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857; written notices of participation and disclosure of data and information are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION:

I. Background

Furaltadone (NF-260) is a member of a class of chemicals called "nitrofurans," which are used in animals for therapeutic purposes. The initial new animal drug application for furaltadone was approved by FDA in 1962 for treating mastitis in dairy cows via infusion into the mammary gland. There are several regulations in effect relating to the use of furaltadone (21 CFR 526.1014, 540.874g, and 556.280).

In a notice of opportunity for hearing published in the **Federal Register** of

August 17, 1976 (41 FR 34891), the Center proposed to withdraw approval of the NADA's for furaltadone under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act). The Center based this proposal on new evidence that furaltadone, when fed to laboratory animals, produced tumors. Section 512(e)(1)(B) of the act, often referred to as the "Safety Clause," provides that:

> (e)(1) The Secretary shall, after due notice and opportunity for hearing to the applicant, issue an order withdrawing approval of an application filed pursuant to subsection (b) with respect to any new animal drug if the Secretary finds—
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> (B) that new evidence not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved * * *.

21 U.S.C. 360b(e)(1)(B).

Norwich-Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815, the sponsor, filed a request for hearing in response to the notice of opportunity for hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Commissioner announced that a formal evidentiary public hearing would be held on the Center's proposal to withdraw approval of the NADA's for furaltadone. This notice provides additional information concerning the proposed withdrawal of the NADA's for furaltadone. Elsewhere in this issue of the **Federal Register**, the Commissioner is issuing a notice of hearing on two related drugs, nitrofurazone and furazolidone. Because these drugs raise safety issues similar to those raised by furaltadone, the agency will hold one hearing for all three drugs.

II. Statutory Grounds Proposed for Withdrawal of the NADA's for Furaltadone

Under the Safety Clause, "the Bureau [Center] must provide a reasonable basis from which serious questions about the ultimate safety of [furaltadone] and the residues that may result from its use may be inferred" (44 FR 54852, 54861; September 21, 1979). The necessary "serious questions" about furaltadone's safety can be raised from evidence about either the parent drug or its metabolites. Any substance that enters an animal's body can be metabolized (changed) by being transformed into other molecules (metabolites), by the drug and/or its metabolites binding to other molecules already present in the body, and/or by a combination of transformation and binding. Residues of an animal drug in edible tissues will, therefore, be made up not only of the parent drug, but also of its metabolites. Accordingly, when considering the safety of a new animal drug, all drug-related residues, including metabolites, are to be taken into account. This principle complies with the statutory directive that FDA, before approving a new animal drug, evaluate the safety of both the drug and "any substance formed in or on food" because of the use of the drug (21 U.S.C. 360b(d)(2)(A)).

"Serious questions" can be raised where the evidence is not conclusive, but merely suggestive of an adverse effect. The "serious questions" can also related to adverse effects other than carcinogenicity, such as tumorigenicity or other toxicological endpoints. Thus, the Center is not required to demonstrate that furaltadone, or its metabolites, are carcinogenic to invoke the Safety Clause. Assuming the Center does provide a basis for questioning furaltadone's safety, the sponsors will have the ultimate burden of showing the drug's safety (44 FR 54861).

III. Summary of the Evidence

In accordance with FDA's procedural regulations (21 CFR 12.85) the Center has placed on file with the Dockets Management Branch (address above), copies of all documents in the Center's files containing information that is relevant to issues in the hearing and a narrative statement summarizing the evidence the Center plans to introduce at the hearing. For the benefit of those who are unable to inspect these documents, the information placed on file by the Center is summarized below.

The primary factual issue at the hearing will be whether the evidence raises serious questions about the potential carcinogenicity of furaltadone that must be resolved by more definitive testing. The 1976 notice of opportunity for hearing discussed in detail feeding studies in rats conducted by Norwich (41 FR 34892). The Center believed that these studies showed that furaltadone induced mammary tumors in female rats, that furaltadone caused an increase in the number of mammary adenocarcinomas (cancers) which developed in female rats compared with control rats maintained on drug-free diets, and that furaltadone may be a more potent tumor inducer than furazolidone (41 FR 34892). The Center concluded that furaltadone is tumorigenic in rats, and that the data raise questions about the potential carcinogenicity of furaltadone. The Center also pointed to evidence concerning the carcinogenicity of furaltadone as raising serious questions about the potential carcinogenicity of furaltadone because the two compounds share similar structural and biological properties.

The Center concluded that the sponsor's studies are not adequate to assess the cumulative effects of exposure to furaltadone and its potential carcinogenicity and other toxicity because the studies were not of sufficient duration, not enough animals were tested, and only one dose level was tested (41 FR 34844, 34892–34985). Thus, a safe concentration for total residues of furaltadone cannot be established.

The Center states that furaltadone is mutagenic in the reverse mutation assay using various strains of *E. coli WP 2* and that numerous scientific studies have shown that other nitrofurans are mutagenic in several test systems. The Center concludes that these results also raise "serious questions" about the safety of furaltadone.

Finally, the Center states that residues of furaltadone are present in edible animal tissue (41 FR 34898).

In its request for a hearing, Norwich argues that FDA cannot proceed to a hearing without issuing an environmental impact statement. The Center has prepared a comprehensive document entitled "Finding of No Significant Impact and Environmental Assessment for the Prohibition of Use of Three Nitrofuran Compounds in Food-Producing Animals." This document carefully examines the possible environmental consequences of withdrawing approval of furaltadone and two other nitrofuran compounds, and concludes that the impact is not sufficient to warrant an environmental impact statement. The environmental assessment is available at the Dockets Management Branch.

Because the Commissioner believes the the Center's document adequately considers the possible environmental consequences of the proposed withdrawals, there is no reason to delay a hearing on the proposed withdrawals. The agency has fulfilled its obligation under the National Environmental Policy Act to take a close look at the environmental consequences of withdrawing approval of the NADA's for furaltadone. Although environmental factors will not be an issue in the hearing, the Commissioner will review the environmental assessment as part of the agency's final decision.

IV. Conclusion

Upon review of the sponsor's responses to the notice of opportunity for hearing, the Commissioner concludes that a hearing is appropriate with respect to the proposal to withdraw the approval of the new animal drug applications for furaltadone. The issues in the hearing will be as follows:

(1) Whether new evidence shows that furaltadone or its metabolites are not now shown to be safe for use under the conditions of use upon the basis of which the applications were approved. This issue includes:

(a) Whether there is a reasonable basis from which serious questions about the safety of furaltadone and the residues that may result from its use may be inferred;

(b) Whether furaltadone-related residues are likely to occur in edible tissues when conditions of use approved in the NADA's are followed;

(c) Whether the residues in edible tissue resulting from the use of furaltadone have been identified, or evaluated, and shown to be safe; and

(d) Whether a safe concentration can be established for total residues of furaltadone.

The hearing on these issues will take place in FDA Hearing Rm. 4A-35. Administrative Law Judge Daniel J. Davidson will preside. Parties to the hearing will be the Center and the sponsors of the NADA's for furaltadone. Any other interested person may participate in the hearing and be accorded the rights granted to participants by FDA regulations. Participants are required to assume the obligations of participation as set forth in FDA regulations. Written notices of participation shall be filed with the Dockets Management Branch no later than November 5, 1984. A notice of participation shall be identified with the docket number found in brackets in the heading of this document and clearly labeled "Furaltadone Hearing."

A prehearing conference will be held on November 19, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92 which sets forth the procedure and matters to be considered at such conference.

As discussed above, the Center has filed with the Dockets Management Branch a narrative statement setting forth its position on the hearing issues and a detailed factual description of the evidentiary background upon which it intends to rely at the hearing. The Center has also filed with the Dockets Management Branch the other documents required by 21 CFR 12.85, including copies of the NADA's, published studies, and other data bearing on the question of whether furaltadone has not been shown to be safe. Interested persons may obtain a copy of the narrative statement from the Dockets Management Branch. The data described above may also be examined (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

The other parties to the hearing shall submit all the written data, information, and views required by 21 CFR 12.85(b) by November 5, 1984. Any request to extend the period for submission of the required materials or for a postponement of the prehearing conference scheduled, shall be addressed to the Administrative Law Judge.

The prehearing conference and hearing session will be open to the public. Any participants may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on relevant matters.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administration proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 24, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-22901 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 80P-0100 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for six organizations that manufacture and produce laser light shows, light show projectors, or both. The projector provides a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "SUPPLEMENTARY INFORMATION."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the six organizations listed in the table below a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Manufacturing organization	Demonstration laser product	Effective date/termination date
80P-0100 (extension)	Coherent Innovations, Inc., 2799 152 Avenue, N.E., Redmond, Washington 98052.	Coherent Innovations, Class IV "Rainbow" projectors and the laser light shows manufactured, assembled, and produced by Coherent Innovations, Inc., incorporating these projectors.	June 6, 1984–June 6, 1988.
80P-0157 (extension)	Image Engineering Corp., 10 Beacon Street, Somerville, Mass. 02143.	Laser light shows and the Model Series 300 laser projectors manufactured, assembled, and produced by Image Engineering Corp.	June 11, 1984–June 11, 1988.
81P-0001 (extension)	Lighting Systems Design, Inc.; 4301 Walbridge Street, Orlando, Florida 32809.	Lighting Systems Design laser light shows and the incorporated Lighting Systems Design Model PM2500AD Lumia Projection System which contains a Class IV ion laser.	May 31, 1984–May 31, 1988.
84V-0142	Walt Disney Productions, dba Walt Disney World, Sunbank Suite 405, P.O. Box 40, Lake Buena Vista, Florida 32830.	Walt Disney Productions laser light show, "A New World Fantasy"	June 8, 1984–June 8, 1989.
84V-0160	Advanced Dimensional Displays, Inc., 16472 Staff Avenue, No. 102, Van Nuys, California 91406.	Advanced Dimensional Displays, Inc. laser light shows and the Large Format Holographic Displays and Display Devices incorporated into these laser light show.	June 8, 1984–June 8, 1988.
84V-0163	Laser Media, Inc., 2046 Armacost Avenue, Los Angeles, California 90025.	Manufacture of the Laser Media Chrome Ray and Sting Ray Models I and II laser projectors. This variance does not cover the production of laser light shows.	June 8, 1984–June 8, 1988.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23297 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0274]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl for use as an antioxidant/stabilizer for polystyrene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3813) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 20532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR § 178.2010) be amended to provide for the safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl for use as an antioxidant/stabilizer for polystyrene and rubber-modified polystrene complying with 21 CFR 177.1640.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: August 27, 1984.

Taylor M. Quinn,

Acting Director, Center Food Safety and Applied Nutrition.

[FR Doc. 84-23296 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84V-0143]

Elscint, Inc.; Availability of Approved Variance for Computed Tomography X Ray Systems

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for computed tomography x-ray (CT) systems manufactured by Elscint, Inc. The electronic product employs lasers to provide a pattern of alignment lines for proper positioning of the patient prior to a CT scan.

DATES: The variance became effective June 11, 1984, and ends June 11, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under §1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Elscint, Inc., 930 Commonwealth Ave., Boston, MA 02215, a variance from § 1040.10(f)(6) (21 CFR 1040.10(f)(6)) of the performance standard for laser products for its CT systems.

The specific requirements of the standard for which a variance has been granted pertain to the provision of § 1040.10(f)(6) that otherwise would require the CT systems to be equipped with beam attenuators to reduce the laser radiation output of the laser for patient alignment to below Class I limits. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that: (a) The requirement of § 1040.10(f)(6) is not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by constraints on the physical and optical design by warnings in the user manual and on the product and by procedures for personnel who will operate the product. Therefore, on June 11, 1984, FDA approved the requested variance by letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the CT systems shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) any may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs..

[FR Doc. 84–23206 Filed 8–31–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 76N–0172, NADA Nos. 9–073, 9–393, 11–698, 12–061, and 13–805]

Hess & Clark, et al.; Furazolidone (NF–180); Hearing on a Proposal To Withdraw Approval of Certain New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a hearing on a proposal to withdraw approval of certain new animal drug applications (NADA's). On May 13, 1976, the Director of FDA's Center for Veterinary Medicine (the Center) (formerly the Bureau of Veterinary Medicine) issued a notice of opportunity for hearing (41 FR 19907) proposing to withdraw approval of the NADA's for furazolidone. Norwich-Eaton Pharmaceuticals (formerly Norwich Pharmacal Co. and Eaton Laboratories), Division of Morton-Norwich Products, Inc. (Norwich), and Hess & Clark, Inc. (Hess & Clark), responded by filing requests for a hearing. In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Acting Commissioner of Food and Drugs announced that a formal evidentiary hearing would be held on the Director's proposal to withdraw approval of NADA's 9–073, 9–393, 11–698, 12–061, and 13–805, for the use of furazolidone (NF–180) in food-producing animals. This notice of hearing provides additional factual and legal information concerning the proposal to withdraw approval of the NADA's, and identifies the factual issues that will be the subject of the evidentiary hearing.

DATES: Prehearing conference on Monday, November 19, 1984, beginning at 10 a.m.; written notices of participation due by October 4, 1984; disclosure of data and information due by November 5, 1984.

ADDRESSES: The prehearing conference will be held in Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857; written notices of participation and disclosure of data and information are to be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

I. Background

Furazolidone (NF–180) is a member of a class of chemicals called "nitrofurans," which are used in animals for therapeutic purposes. The initial NADA for furazolidone was approved by FDA in 1953. Furazolidone is marketed under several NADA's for use in poultry and swine as an antibacterial and antiprotozoan agent. There are several regulations in effect relating to the use of furazolidone (21 CFR 510.515, 556.290, 558.15(g)(1), and 558.262).

In a notice of opportunity for hearing published in the **Federal Register** of August 4, 1971 (36 FR 14343), the Center proposed to withdraw approval of the NADA's for furazolidone under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act). The Center based this proposal on new evidence that furazolidone, when fed to laboratory animals, produced tumors. Section 512(e)(1)(B) of the act, often referred to as the "Safety Clause," provides that:

> (e)(1) The Secretary shall, after due notice and opportunity for hearing to the applicant, issue an order withdrawing approval of an application filed pursuant to subsection (b) with respet to any new animal drug if the Secretary finds—
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> * * * * *
>
> (B) that new evidence not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved * * *.

2 U.S.C. 360b(e)(1)(B).

Norwich and Hess & Clark, the sponsors, filed requests for hearing in response to the notice of opportunity for hearing.

The agency did not, however, hold a hearing. After reviewing additional evidence, including long-term feeding studies submitted after publication of the 1971 notice, the Center concluded that furazolidone was carcinogenic, and not just tumorigenic. The Center withdrew the original notice and published a second notice of opportunity for hearing in the **Federal Register** of May 13, 1976 (41 FR 19907). The 1976 notice cited only 21 U.S.C. 360b(d)(1))(H) as the basis for proposing to withdraw approval of the NADA's. This provision, known as the "Delaney Clause," requires the Secretary of Health and Human Services (the Secretary) to refuse approval of an NADA if:

> Such drug induces cancer when ingested by man or animal or, after tests which are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal * * * [unless] the Secretary finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice, (i) such drug will not adversely affect the animals for which it is intended, and (ii) no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary * * *) in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals.

The 1976 notice of opportunity for hearing said that evidence showed furazolidone to be carcinogenic, and noted that the Delaney Clause bars the use of carcinogenic animal drugs unless a method of analysis has been approved that can assure that "no residue" of the drug is found in edible tissue (41 FR 19913).

Norwich-Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815, and Hess & Clark, Inc., 7th and Orange Sts., Ashland, OH 44805, responded to the 1976 notice of opportunity for hearing by filing requests for hearing. Subsequently, SmithKline Animal Health Products, 1600 Paoli Pike, West Chester, PA 19380, purchased from Norwich furazolidone NADA's 9-393 and 13-805.

In an advance notice of hearing published on April 8, 1977 (42 FR 18660), the Commissioner announced that a formal evidentiary public hearing would be held on the Center's proposal to withdraw approval of the NADA's for furazolidone. This notice provides additional information concerning the proposed withdrawal of the furazolidone NADA's. Elsewhere in this issue of the **Federal Register**, the Commissioner is issuing notices of hearing on two related new animal drugs, nitrofurazone and furaltadone. Because these drugs raise safety issues similar to those raised by furazolidone, the agency will hold one hearing for all three drugs.

II. Statutory Grounds Now Proposed for Withdrawal of the NADA's for Furazolidone

The agency has, in the two notices of opportunity for hearing described above, proposed to withdraw approval of the NADA's for furazolidone under the Safety Clause (in the 1971 notice) and the Delaney Clause (in the 1976 notice). This notice of hearing is based on both of these provisions of the act. The act requires withdrawal of an approved NADA if new evidence shows either that the approved drug is "not shown to be safe * * * *or* that [the Delaney Clause] applies to such drug." (Emphasis added). See *Rhone-Poulenc, Inc.* v. *Food and Drug Administration*, 636 F.2d 750 (D.C. Cir. 1980). The statutory language thus clearly permits reliance on the Safety Clause and the Delaney Clause as independent grounds for withdrawal of the NADA's for furazolidone.

The legislative history surrounding enactment of the anti-cancer provisions of the act likewise shows that approved NADA's, even when subject to the Delaney Clause, are also subject to the Safety Clause. From the enactment of section 409 of the act (Food Additives Amendment of 1958; Pub. L. 85-929), the first provision of the act to contain an anti-cancer clause, through passage of the Animal Drug Amendments of 1968 (Pub. L. 90-399), which consolidated various provisions of the act governing the premarketing approval of animal drugs, Congress always intended that all regulated compounds would be subject both to their respective anti-cancer clauses and to their general safety provisions. For a full discussion of the relevant legislative history, see FDA's proposal on "Chemical Compounds in Food-Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues," published in the **Federal Register** of March 20, 1979; 44 FR 17071-73.

In sum, the evidence that furazolidone is carcinogenic is relevant to the question of whether the NADA's for the drug should be withdrawn under the Safety Clause, as well as the Delaney Clause. Therefore, the Commissioner concludes that both the Delaney Clause and the Safety Clause may serve as potential bases for withdrawing approval of the NADA's for the use of furazolidone in food-producing animals. Including the Safety Clause as an independent ground for the proposed action is consistent with the 1971 notice of opportunity for hearing and the NADA-holders will not be prejudiced by the citation of this provision in the notice of hearing. See, e.g., 44 FR 11835-36; March 2, 1979, where the notice of opportunity for hearing for Alevaire raised only effectiveness as an issue, while the notice of hearing added safety of the drug as an additional issue. Since 1976, the sponsors have known the basic facts upon which the Center will rely; invoking the Safety Clause has the primary effect in this proceeding of providing a separate statutory ground against which the available evidence must be measured to determine if approval should be withdrawn.

A. The Delaney Clause

Under the Delaney Clause, the Center is required to establish that furazolidone has been shown to cause cancer in laboratory animals. As originally enacted, the Delaney Clause banned all animal drugs that induced cancer in man or laboratory animals. This provision was amended in 1962 to allow approval of carcinogenic animal drugs, provided that "no residue" of the drug is found in animal tissue when an approved analytical method is used. This amendment is known as the "DES exception." It provides that the agency can approve a carcinogenic animal drug if, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice, the drug "will not adversely affect the animals for which it is intended" and that "no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary * * *), in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals" (21 U.S.C. 360b(d)(1)(H)).

If applied literally, the "no residue" requirements of the DES exception would be unworkable, largely because the development of a more sensitive analytical method for detecting residues of a compound would result in the identification of residues in animal tissue, thereby requiring withdrawal of the compound's approval. As a result of this dilemma, FDA has attempted to reconcile the purpose and language of the exception with the statutory objective of minimizing public exposure to carcinogenic compounds in the edible portions of food-producing animals. In the mid-1970's, FDA began to develop procedures and criteria designed to permit the identification of that concentration of residue of a carcinogenic compound in edible animal tissue that is of no carcinogenic concern. (See, e.g., 38 FR 19226; July 9, 1973, 42 FR 10411; Feb. 22, 1977, and 44 FR 17070; March 20, 1979.) The procedures call for a quantitative estimate of the risk of cancer presented by the residues of a carcinogenic compound used in food-producing animals. Before a carcinogenic compound can be shown to be safe for use in food-producing animals, a practicable analytical method must be available that can measure the carcinogenic residues of the compound at concentrations equal to or below that estimated to be of no carcinogenic concern. FDA defines the concentration that is of no carcinogenic concern as "no residue" and thereby implements the DES exception.

Therefore, if the Center in this hearing establishes the carcinogenicity of furazolidone in laboratory animals, furazolidone coud still be marketed under the DES exception to the Delaney Clause if the sponsor of the drug can demonstrate the existence of a practicable method of analysis that can measure the total residue of the animal drug at a concentration low enough to be of no carcinogenic concern, and that the residue concentration under conditions of use reasonably certain to be followed in practice is at or below that concentration (44 FR 17070; March 20, 1979).

The "total residue" of the drug under the DES exception includes residues of both the parent drug, and of its metabolites. Any substance that enters an animal's body can be metabolized (changed) by being transformed into other molecules (metabolites), by the drug and/or its metabolites binding to other molecules already present in the body, and/or by a combination of transformation and binding. Residues of a carcinogenic animal drug in edible tissues will, therefore, be made up not only of the parent drug, but also of its metabolites. Accordingly, when considering the safety of a carcinogenic new animal drug, in the absence of information to the contrary, all drug-related residues, including metabolities, are assumed to be potential carcinogens, and must be taken into account in determining if there is "no residue." This principle complies with the statutory directive that FDA, before approving a new animal drug, evaluate the safety of both the drug and "any substance formed in or on food" because of the use of the drug (21 U.S.C. 360b(d)(2)(A)). It also conforms to the Delaney Clause's prohibition against the presence of any "residue" of the carcinogenic parent drug in any edible portion of the animals.

In their requests for a hearing, both sponsors contended that the Delaney Clause applied only to the parent drug, and not to metabolites. For the reasons stated above, the agency concludes that the sponsors have misinterpreted the meaning of that Clause. The question of whether metabolites are included in the Delaney clause's ban on "residue" was decided in the affirmative in the decision withdrawing approval of the NADA for diethylstilbestrol (DES) (44 FR 54852, 54856; Sept. 21, 1979). Because this issue is strictly a legal and policy one and already the subject of a well-established agency policy, the Commissioner has concluded that the issue should not be a subject of the administrative hearing. The parties will be free, of course, to raise this issue in their exceptions to any adverse decision.

In its hearing request, Hess & Clark also argued that the DES exception can apply even if no official method for detecting a residue has been approved. According to Hess & Clark, Congress did not intend that an official method exist for a carcinogenic animal drug to be approved; rather, the amendment simply gave FDA the authority to prescribe an approved method. Hess & Clark's interpretation of the DES exception was considered, and rejected, in the Commissioner's decision to withdraw approval of DES (44 FR 54852). There, the Commissioner reassessed the approved analytical method for DES, found in inadequate, and revoked it. Because the approval of DES, a carcinogen, depended on the existence of an approved method, the Commissioner found that approval of the NADA had to be withdrawn (44 FR 54858–60). Thus, the availability of the DES exception for furazolidone is contingent upon approval of an official method for determining total residue concentration.

B. The Safety Clause

The Safety Clause presents a different evidentiary burden: "the Bureau [Center] must provide a reasonable basis from which serious questions about the ultimate safety of [furazolidone] and the residues that may result from its use may be inferred" (44 FR 54861). The necessary "serious questions" about furazolidone's safety can be raised from evidence about either the parent drug or its metabolites. "Serious questions" can also be raised where the evidence is not conclusive, but merely suggestive of an adverse effect. The "serious questions" can also relate to adverse effects other than carcinogenicity, such as tumorigenicity or other toxicological endpoints. Thus, even if the Center does not demonstrate that furazolidone, or its metabolites, are carcinogenic, the evidence could nevertheless raise a "serious question" about its safety. Assuming the Center does provide a basis for questioning furazolidone's safety, the sponsors will have the ultimate burden of showing the drug's safety (44 FR 54861).

III. Summary of the Evidence

In accordance with FDA's procedural regulations (21 CFR 12.85) the Center has placed on file with the Dockets Management Branch (address above) copies of all documents in the Center's files containing information that is relevant to issues in the hearing and a narrative statement summarizing the evidence the Center plans to introduce at the hearing. For the benefit of those who are unable to inspect these documents, the information placed on file by the Center is summarized below.

A. Evidence of Carcinogenicity

One factual issue at the hearing will be whether furazolidone is carcinogenic. The 1976 notice of opportunity for hearing discussed in detail four chronic toxicity studies conducted by Norwich to assess the carcinogenic and tumorigenic effects of furazolidone in laboratory animals. Only one of these studies involved lifetime exposure to furazolidone. The Center previously explained why it believed the studies showed furazolidone to be carcinogenic (41 FR 19908–11).

Since publication of the 1976 notice of opportunity for hearing, additional information has become available. In 1977, FDA furnished to the National Cancer Institute (NCI) the results of the four chronic studies. NCI was also provided with histopathological slides of skin tumors for certain of the male Fischer 344 rats used in one of the chronic toxicity studies. Based on its review of the biological and statistical data, NCI agreed with the Center's position that furazolidone is carcinogenic.

In a study involving less than lifetime feeding of furazolidone to Fishcher rats, NCI found that the drug induced statistically significant increases in the number of benign and malignant tumors of the mammary glands in females, and of thyroid adenomas of males and females. From its own review of histopathological slides, NCI also concluded that the drug significantly increased, in a dose-related manner, skin carcinomas and epitheliomas in males.

In a study involving less than lifetime feeding of high doses of furazolidone to Sprague-Dawley rats, NCI found that furazolidone caused a number of biologically significant malignant tumors including a dose-related increased incidence of malignant mammary neoplasms in females. Furazolidone also caused a statistically significant increased incidence and multiplicity and decreased onset time of both benign and malignant mammary neoplasms. NCI also found an increased incidence in male rats of neural astrocytomas, a relatively rare glioma.

In a study involving lifetime feeding of lower doses of furazolidone to Sprague-Dawley rats, after adjusting for differences in the tumor onset time between control and experimental animals, the Center found a significant increase in mammary neoplasms in the females.

In another of the Norwich studies, furazolidone was fed to MBR/ICR Swiss mice. NCI agreed with Norwich's conclusion that furazolidone induced an increased incidence of bronchial adenocarcinoma in these mice.

Based on its review of the data from the feeding studies, NCI concluded that furazolidone causes cancer in rodents.

B. Determining a Safe Concentration of Residues

If the Center shows that furazolidone is carcinogenic, the sponsors of the drug are required to show that no residue of carcinogenic concern will appear in edible tissue. The agency uses a statistical extrapolation procedure to calculate from the tumor data the concentration of residue causing no more than one in a million additional cancers over a lifetime in the test species.

In the case of furazolidone, the Center has concluded that three of the chronic feeding studies in rodents submitted by the sponsors do not provide an adequate basis for statistical extrapolation of the concentration of drug residue that is of no carcinogenic concern because they involved less than lifetime exposure of the test animals to the drug. Therefore, these three studies permit only a determination of an upper bound of the residue concentration of no carcinogenic concern. The Center has concluded that statistical extrapolation based on tumor data from these three studies indicates that the upper bound on the amount of total furazolidone residue that is of no carcinogenic concern is in the range of 0.3–8.2 parts per billion (ppb) in the diet of the test animals, depending upon the species and tumor type used. Statistical extrapolation from the one study involving lifetime feeding of furazolidone gives a concentration of no carcinogenic concern of 1 ppb in the diet of the test animal.

In order to determine a safe concentration in the diet of people, the agency uses the "one in a million" level of risk which represents a policy decision that reflects the agency's best judgment about what constitutes an insignificant risk of cancer to people and also corrects for the amount of the diet of people derived from food-producing animals (44 FR 17086–93). The agency has also decided that it will use the lowest extrapolated value from the tumor data in the test species to determine what constitutes an insignificant risk to people (44 FR 17086–93). The agency then corrects this value to account for the fact that only a portion of the diet of people is derived from the food-producing animals (44 FR 17086–93). In the case of furazolidone, the Center concluded that the lowest extrapolated value is 0.3 ppb. After adjusting this value for consumption of meat, the upper bound on the total residue concentration of no carcinogenic concern is approximately 0.9 ppb.

Among the information submitted by the sponsors in support of their NADA's are data concerning the concentration of actual residues of furazolidone in edible tissue. According to the Center's interpretation of these data, total furazolidone residues are in the parts per million (ppm) range. For example, a sponsor submitted two studies in which chickens were administered radiolabeled furazolidone. Residues in edible tissue after the 5-day withdrawal period called for in current labeling of the drug were reported to be in the low ppm range. Data submitted by the sponsors are also said to show that pigs fed furazolidone have similar total residue concentrations in the low ppm range. The Center therefore has found that the residues derived from furazolidone in edible tissue exceed the concentration of furazolidone that is of no carcinogenic concern.

In an attempt to meet its burden of showing that the concentration of furazolidone in edible tissue is safe, Norwich contends that the bulk of the radiolabel does not represent radiolabeled furazolidone or its metabolites, but rather radiolabeled carbon that has become incorporated into naturally occurring substances within the body of the animal. One of the issues in the hearing will be whether Norwich can establish its endogenous incorporation hypothesis; this burden includes showing what proportion of the total residues, if any, is radiolabeled carbon that has become endogenously incorporated.

The Center has proposed several pathways by which furazolidone may be metabolized in the target animals. If the Center demonstrates the carcinogenicity of furazolidone, the sponsors have the burden of identifying the metabolites of furazolidone in each of the target animals, the concentration of each metabolite, and the safety of these metabolites.

The sponsors have also submitted studies purporting to show that the metabolites present in swine liver and urine are not mutagenic. Because mutagenicity is believed to suggest carcinogenicity, the sponsors contend that these negative results show that the drug is not likely to be carcinogenic. Immature pigs were treated daily for 5 days with furazolidone. Urine and liver extracts were tested in the Ames mutagenicity assay. Based on the negative results in this assay, the sponsors contend that furazolidone's metabolites are not mutagenic.

The Center disagrees with the sponsors' conclusion. The Center says that the test dose of 5 mcg/g per plate of total metabolites was too small for a negative finding to be meaningful, and notes that no valid inferences can be drawn from a negative finding unless it can be shown that all significant metabolites of furazolidone in edible animal tissues have been tested at adequate concentration. According to the Center, this showing has not been made.

Whether the sponsors' data on mutagenicity show that metabolites of furazolidone are safe is an issue to be examined at the hearing.

C. Demonstrating the Existence of an Official Method

As noted earlier, the DES exception to the Delaney Clause is not available unless an official method for detecting residue has been approved (21 U.S.C. 360b(d)(1)(H)). The sponsors have submitted several methods which they believe measure the parent drug at or below the concentration considered to be of no carcinogenic concern. Whether the sponsors are correct will be an issue at the hearing.

For the DES exception to apply, the sponsors must provide a method that is capable of showing that the major edible tissues do not contain any drug-derived residue above the concentration considered to be of no carcinogenic concern.

The 1976 notice described, in detail, the methods then available and the reasons the Center believed they were unacceptable. Since then, the sponsors have submitted several new methods in an attempt to satisfy the requirement of having an approved analytical method for furazolidone. The Center believes that none of these methods is adequate. Two methods with claimed sensitivity in the low ppb range are discussed below.

With respect to the method based on measuring furazolidone using high pressure liquid chromatographic separation and ultraviolet detection submitted by Norwich and Hess & Clark, the Center contends that even if the method adequately measured the concentration of furazolidone in edible tissue, the total furazolidone-derived residue could still not be adequately monitored due to the absence of suitable metabolism studies demonstrating the quantitative relationship between furazolidone and the total drug residue, including metabolites.

Hess & Clark has also proposed an electron capture gas chromatographic method that measures 5-nitro-2-furaldehyde formed upon acid hydrolysis of furazolidone. Hess & Clark asserts that this method can detect furazolidone and all its metabolites that contain a furan ring with a 5-nitro group and a "-(H)C-N" structure in the 2 position, which, upon acid hydrolysis, forms 5-nitro-2-furaldehyde. The Center contends that not all postulated metabolites that may contain the 5-nitrofuran moiety can be hydrolyzed to 5-nitro-2-furaldehyde. The Center claims that Hess & Clark has not submitted data to show the percentage of total residue that this method measures, so that Hess & Clark has not satisfied the requirement of demonstrating that the method can measure the total furazolidone residues at the concentration that is of no carcinogenic concern.

Several other methods have been submitted since the 1976 notice. The

Center contends that these methods are deficient in several ways, e.g., inability to measure furazolidone at sufficiently low concentrations, incomplete reliability data, or inferior recovery and precision. Whether these methods, or any others, are practicable is an issue to be decided at the hearing, assuming that carcinogenicity is shown. The sponsors will have the burden of demonstrating that the methods they have proposed satisfy these requirements.

In its request for a hearing, Norwich argues that FDA cannot proceed to a hearing without issuing an environmental impact statement. The Center has prepared a comprehensive document entitled "Finding of No Significant Impact and Environmental Assessment for the Prohibitition of Use of Three Nitrofuran Compounds in Food-Producing Animals." This document carefully examines the possible environmental consequences of withdrawing approval of furazolidone and two other nitrofuran compounds, and concludes that the impact is not sufficient to warrant an environmetal impact statement. The environmental assessment is available at the Dockets Management Branch (address above).

Because the Commissioner believes that the Center's document adequately considers the possible environmental consequences of the proposed withdrawals, there is no reason to delay a hearing on the proposed withdrawals. The agency has fulfilled its obligation under the National Environmental Policy Act to take a close look at the environmental consequences of withdrawing approval of the NADA's for furazolidone. Although environmental factors will not be an issue in the hearing, the Commissioner will review the environmental assessment as part of the agency's final decision.

IV. Conclusion

Upon review of the sponsor's responses to the notice of opportunity for hearing, the Commissioner concludes that a hearing is appropriate with respect to the proposal to withdraw the approval of the new animal drug applications for furazolidone. The issues in the hearing will be as follows:

(1) Whether new evidence shows that furazolidone or its metabolites are not now shown to be safe for use under the conditions of use upon the basis of which the applications were approved. This issue will include:

(a) Whether there is a reasonable basis from which serious questions may be inferred about the safety of furazolidone and the residues that may result from its use;

(b) Whether furazolidone-related residues are likely to occur in edible tissues when conditions of use approved in the NADA's are followed; and

(c) Whether the residues in edible tissue resulting from the use of furazolidone have been identified, or evaluated, and shown to be safe.

(2) Whether furazolidone, or its metabolites, induces cancer when ingested by man or animal.

(3) If furazolidone does cause cancer in man or animals, what concentration of drug residue, consisting of both the parent drug and its metabolites, is of no carcinogenic concern.

(4) Whether the sponsors have demonstrated that a practicable method exists that is capable of detecting and identifying residues in edible tissue resulting from the use of furazolidone that are at or below the concentration determined to be of no carcinogenic concern.

(5) Whether under the conditions of use specified in the labeling, the actual concentration of drug residue is shown to be at or below the concentration of furazolidone residue which is determined to be of no carcinogenic concern.

The hearing on these issues will take place in FDA Hearing Rm. 4A-35. Administrative Law Judge Daniel J. Davidson will preside. Parties to the hearing will be the Center and the sponsors of the NADA's for furazolidone. Any other interested person may participate in the hearing and be accorded the rights granted to participants by FDA regulations. Participants are required to assume the obligations of participation as set forth in FDA regulations. Written notices of participation shall be filed with the Dockets Management Branch no later than October 4, 1984. (See 21 CFR 12.45.) A notice of participation should be identified with the docket number found in brackets in the heading of this document and clearly labeled "Furazolidone Hearing."

A prehearing conference will be held on November 19, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92 which sets forth the procedure and matters to be considered at such conference.

As discussed above, the Center has filed with the Dockets Management Branch a narrative statement setting forth its position on the hearing issues and a detailed factual description of the evidentiary background upon which it intends to rely at the hearing. The Center has also filed with the Dockets Management Branch the other documents required by 21 CFR 12.85, including copies of the NADA's, published studies, and other data bearing on the question of whether furazolidone has not been shown to be safe, and whether it may be exempted from the prohibition of carcinogenic animal drugs. Interested persons may obtain a copy of the narrative statement from the Dockets Management Branch. The data described above may also be examined (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The other parties to the hearing shall submit all the written data, information, and views required by 21 CFR 12.85(b) by November 5, 1984. Any request to extend the period for submission of the required materials or for a postponement of the scheduled prehearing conference, shall be addressed to the Administrative Law Judge.

The prehearing conference and hearing session will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on relevant matters.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for more complete explanation of the guideline's effect on this hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: August 24, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-23296 Filed 8-31-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0325; DESI 3265]

Drugs for Human Use; Pathilon Tablets; Final Order Denying Hearing Request and Withdrawing Approval of Less-Than-Effective Indication

Correction

In FR Doc. 84-19701 beginning on page 30128 in the issue of Thursday, July 26, 1984, make the following corrections.

1. On page 30130, column 1, second complete paragraph, line 10, insert a period after "Carter-Wallace" and begin a new sentence by inserting "Both Milpath 400, manufactured by Carter Wallace" before "and".

2. On page 30133, column 2, the second paragraph under the heading "V. Findings", line 4, "335(e)" should read "355(e)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Intent To Prepare a Supplement to the Coal Programmatic Environmental Impact Statement (EIS)

AGENCY: Interior.

ACTION: Notice of intent to prepare a supplement to an EIS.

SUMMARY: This notice advises the public that the Department of the Interior intends to prepare a supplement to the coal programmatic environmental impact statement, which was filed in April 1979. This notice is made in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4421 et. seq. (1970). Written comments are solicited.

DATES: Written commentsn will be received by October 4, 1984.

ADDRESS: Comments should be addressed to Director (650), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Tom Walker (202) 343-4636.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has determined that the purposes of the National Environmental Policy Act of 1969 (NEPA) would be furthered by the preparation of a supplement to the *Federal Coal Management Program Final Environmental Statement* (April 1979). This statement was prepared when the Federal Coal Management Program was instituted. Conditions forming the basis of the analysis in that document may have changed in the five years since then, and numerous changes have been made or proposed to the program since the initial rulemaking.

The supplement will analyze as its proposed action the potential impacts of the program identified as the preferred alternative in the 1979 EIS as revised to reflect rule changes promulgated in 1982 and 1983, changes in procedures resulting from recent program reviews, and current projections of national and regional needs for coal. Other alternatives will also be analyzed, such as no leasing and emergency and preference right leasing only. The draft is expected to be available for public comment in January 1985.

The recent program reviews being considered for implementation are the Department's response to recommendations made by the Linowes Commission on Fair Market Value Policy for Federal Coal Leasing and the options presented by the Office of Technology Assessment (OTA). The Secretary responded to the Linowes Commission recommendations in *Review of Federal Coal Leasing* (March 19, 1984) and to the OTA report in *Review of Planning Considerations in Federal Coal Leasing* (July 9, 1984). Both documents are available in single copies from the Office of Public Affairs, Bureau of Land Management, Room 5600, Main Interior Building, 18th and C Streets, NW., Washington D.C. 20240.

The public is invited to send written comments on the range of issues to be addressed and the significant environmental issues related to the proposed action. Comments will be received in Room 3610 of the Main Interior Building (address above) until Close of Business on the date specified above.

Dated: August 28, 1984.

Garrey E. Carruthers,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 84-23429 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held October 4, 1984.

On October 4, the meeting will be held at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

(1) A discussion of the Medford District's Supplemental Environmental Impact Statement on timber;

(2) A discussion on the disposition of logging residues; and

(3) The area of critical environmental concern (ACEC) decision record.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board between 9:00 a.m. and 9:30 a.m. on October 4, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by October 1, 1984. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date signed: August 24, 1984.

Hugh R. Shera,

District Manager.

[FR Doc. 84-23389 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 24, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 19, 1984.

Bruce MacDougal,

Acting Chief of Registration, National Register.

ALABAMA

Limestone County

Athens vicinity, *Blackburn House*, W of Athens

ARIZONA

Mojave County

Fort Mojave Anthropomorphic Figures, D–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuma County

Cibola Valley Figure, H–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Limekiln Wash Figure, E–15 (Earth Figures of California-Arizona Colorado River Basin TR),

Man in Circle, E–29 (Earth Figures of California-Arizona Colorado River Basin TR),

Parker Rattlesnake, E–26 (Earth Figures of California-Arizona Colorado River Basin TR),

Ripley Circles, F–5 (Earth Figures of California-Arizona Colorado River Basin TR),

Ripley Eagle Group, F–7 (Earth Figures of California-Arizona Colorado River Basin TR),

Ripley Giants, F–4 (Earth Figures of California-Arizona Colorado River Basin TR),

Ripley Lizard, F–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Sidewinder Road Figure, F–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Site E–28 (Earth Figures of California-Arizona Colorado River Basin TR),

Site F–3 (Earth Figures of California-Arizona Colorado River Basin TR),

Site F–6 (Earth Figures of California-Arizona Colorado River Basin TR),

Site F–8 (Earth Figures of California-Arizona Colorado River Basin TR),

Site H–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Thunderbird E–27 (Earth Figures of California-Arizona Colorado River Basin TR),

ARKANSAS

Howard County

Nashville, *Hold, Elbert W., House,* 902 N. Maine St.

Washington County

Fayetteville, *Guisinger Building,* E. Mountain St.

CALIFORNIA

Alameda County

Oakland, *Oakland YWCA Building,* 1515 Webster St.

Calaveras County

Angels Camp, *Choy, Sam, Brick Store,* Bird Way

Imperial County

Chocolate Drop Figure, N–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Coyote Valley Site, P–15 (Earth Figures of California-Arizona Colorado River Basin TR),

Hillside Figure, G–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Main Yuha Site, P–16 (Earth Figures of California-Arizona Colorado River Basin TR),

North Cargo Muchacho, L–3 (Earth Figures of California-Arizona Colorado Basin TR),

Ocotillo Wells 322B, P–13 (Earth Figures of California-Arizona Colorado River Basin TR),

Ogilby Site A, L–6 (Earth Figures of California-Arizona Colorado River Basin TR),

Palo Verde Circles and Arrow, G–4 (Earth Figures of California-Arizona Colorado River Basin TR),

Pilot Knob Anthropomorphic Figure, M–8 (Earth Figures of California-Arizona Colorado River Basin TR),

Pilot Knob Anthropomorphic Figure, M–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Pilot Knob Horse, M–4 (Earth Figures of California-Arizona Colorado River Basin TR),

Pilot Knob Lizard, M–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Pilot Knob Ring, M–3 (Earth Figures of California-Arizona Colorado River Basin TR),

Pinto Wash, P–17 (Earth Figures of California-Arizona Colorado River Basin TR),

Quail, The, L–5 (Earth Figures of California-Arizona Colorado River Basin TR),

Running Man, L–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–A, O–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–B, O–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–C, O–3 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–D, O–4 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–E, O–5 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–F, O–6 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–G, O–7 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–H, O–8 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–I, O–9 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–J, O–10 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–K, O–11 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–L, O–12 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 1–M, O–13 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 2–A, O–14 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 2–B, O–15 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element 2–C, O–16 (Earth Figures of California-Arizona Colorado River Basin TR),

Singer Element R–1, O–18 (Earth Figures of California-Arizona Colorado River Basin TR),

Site G–3 (Earth Figures of California-Arizona Colorado River Basin TR),

Site L–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Site L–4 (Earth Figures of California-Arizona Colorado River Basin TR),

Site M–11 (Earth Figures of California-Arizona Colorado River Basin TR),

Site M–9 (Earth Figures of California-Arizona Colorado River Basin TR),

Site P–14 (Earth Figures of California-Arizona Colorado River Basin TR),

Site P–8 (Earth Figures of California-Arizona Colorado River Basin TR),

Stonehead, L–7 (Earth Figures of California-Arizona Colorado River Basin TR),

Sweeney Pass Site, S–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Walter's Camp Anthro, I–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Walter's Camp Linear Figure, I–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Winterhaven Anthropomorth and Bowknot, L–9 (Earth Figures of California-Arizona Colorado River Basin TR),

Winterhaven Anthropomorth, L–8 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Schneider Site P–9 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Shrine P–12 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site A, P–1 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site B, P–2 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site C, P–3 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site E, P–4 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site F, P–5 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site G–1, P–6 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site H; 322E, P–10 (Earth Figures of California-Arizona Colorado River Basin TR),

Yuha Site I; 322–G, P–11 (Earth Figures of California-Arizona Colorado River Basin TR),

Los Angeles County

Claremont, *Scripps College for Women,* Columbia and 10th St.

Los Angeles, *Federal Reserve Bank of San Francisco*, 409 W. Olympic Blvd.
Los Angeles, *Heinsbergen Decorating Company Building*, 7415 Beverly Blvd.

Monterey County

Salinas, *Block, Samuel M., House*, 418 Pajaro St.

Orange County

Santa Ana, *Downtown Santa Ana Historic District*, Roughly bounded by Civic Center Dr., First, Ross, and Spurgeon Sts.

Riverside County

Aha Quien Lodge Circles, E–30 (Earth Figures of California-Arizona Colorado River Basin TR),
Black Point Group, E–7 (Earth Figures of California-Arizona Colorado River Basin TR),
Blythe Giants, E–18 (Earth Figures of California-Arizona Colorado River Basin TR),
Blythe Southern Boundary, E–13 (Earth Figures of California-Arizona Colorado River Basin TR),
Bones Site E–23 (Earth Figures of California-Arizona Colorado River Basin TR),
Dancing Shaman Group, E–5 (Earth Figures of California-Arizona Colorado River Basin TR),
Hook figure, E–45 (Earth Figures of California-Arizona Colorado River Basin TR),
Little Bird and 1,000 Seats, E–4a E–4b (Earth Figures of California-Arizona Colorado River Basin TR),
Military Site E–16 (Earth Figures of California-Arizona Colorado River Basin TR),
Quien Sabe 111, E–12 (Earth Figures of California-Arizona Colorado River Basin TR),
Quien Sabe Bird-Slaughter Tree Wash Dance Pattern, E–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Quien Sabe Group, E–10 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–1 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–11 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–19 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–20 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–22 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–24 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Site E–6 (Earth Figures of California-Arizona Colorado River Basin TR),

San Bernardino County

Beale Slough Figures, D–9 (Earth Figures of California-Arizona Colorado River Basin TR),
Lake Havasu Site, D–10 (Earth Figures of California-Arizona Colorado River Basin TR),
Park Moabi Site, D–11 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–12 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–3 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–6 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–7 (Earth Figures of California-Arizona Colorado River Basin TR),
Site D–21 (Earth Figures of California-Arizona Colorado River Basin TR),

San Diego County

Anza Borrego-Plao Verde Site, S–2 (Earth Figures of California-Arizona Colorado River Basin TR),
Anza Borrego-Sin Nombre, S–4 (Earth Figures of California-Arizona Colorado River Basin TR),
Anza Borrego-Split Mountain Site,, S–3 (Earth Figures of California-Arizona Colorado River Basin TR),

San Francisco County

San Francisco, *Chambord Apartments*, 1298 Sacramento St.

San Mateo County

San Carlos, *Southern Pacific Depot*, 559 El Camino Real

Santa Barbara County

Santa Maria, *Minerva Club of Santa Maria*, 127 W. Boone St.

Santa Cruz County

Aptos vicinity, *Valencia Hall*, Valencia Rd.

Sonoma County

Santa Rosa, *Gables, The*, 4257 Petaluma Hill Rd.

COLORADO

Delta County

Hotchkiss, *Hotchkiss Hotel*, 101 Bridge St.

Denver County

Denver, *Carter-Rice Building*, 1623–1631 Blake St.
Denver, *Dunning-Benedict House*, 1200 Pennsylvania St.
Denver, *McPhee and McGinnity Building*, 2301 Blake St.
Denver, *Midwest Steel and Iron Works Company Complex*, 25 Larimer St.
Denver, *Pacific Express Stable*, 2363 Blake St.
Denver, *Pierce-Haley House*, 857 Grant St.
Denver, *Smith, Pierce T., House*, 1751 Gilpin St.

Douglas County

Castle Rock, *Castle Rock Elementary School*, 3rd and Cantril Sts.

El Paso County

Colorado Springs, *Hagerman Mansion*, 610 N. Cascade Ave.

Kit Carson County

Burlington, *Burlington State Armory*, 191 14th St.

Pueblo County

Pueblo, *Streit, J.L., House*, 2201 Grand Ave.

IDAHO

Benewah County

St. Maries, *St. Maries 1910 Fire Memorial (North Idaho 1910 Fire Sites TR)*, St. Maries Cemetery

Shoshone County

Avery vicinity, *Bullion Tunnel (North Idaho 1910 Fire Sites TR)*, E of Avery
Avery vicinity, *Cedar Snags (St. Joe North Fork) (North Idaho 1910 Fire Sites TR)*, N of Avery
Avery vicinity, *Grand Forks (North Idaho 1910 Fire Sites TR)*, E of Avery
Avery, *Avery Depot*, Chicago, Milwaukee, St. Paul, and Pacific RR track
Red Ives vicinity, *Halm Creek, Bean Creek Fire (North Idaho 1910 Fire Sites TR)*, S of Red Ives
Wallace vicinity, *Pulaski, Edward, Tunnel and Placer Creek Escape Route (North Idaho 1910 Fire Sites TR)*, SW of Wallace
Wallace vicinity, *Wallace 1910 Fire Memorial (North Idaho 1910 Fire Sites TR)*, N of Wallace

INDIANA

Elkhart County

Goshen vicinity, *Violett, William N., House*, 3004 S. Main St.

Howard County

Kokomo, *Haynes, Elwood, House*, 1915 S. Webster St.
Kokomo, *Learner Building*, 107–111 E. Sycamore St.

Porter County

Hebron vicinity, *Gilson, Clinton D., Barn*, 522 W. 650 S.

Posey County

New Harmony, *Bentel, George, House*, Brewery and Granary St.

Putnam County

Greencastle, *Van Arsdel, William C., House*, 125 Wood St.

St. Joseph County

New Carlisle vicinity, *Studebaker Clubhouse and Tree Sign*, 32132 IN 2
South Bend, *Union Station*, 326 W. South St.

MASSACHUSETTS

Norfolk County

Canton, *Canton Viaduct*, Neponset and Walpole Sts.

MINNESOTA

Hennepin County

Minneapolis, *Hinkle-Murphy House*, 619 Tenth St. S.

Polk County

Crookston, *Crookston Commercial Historic District*, Roughly Main St. and Broadway between Fletcher and W. 2nd St.
East Grand Forks, *Hamm Brewing Company Beer Depot*, 401 DeMers Ave.

MISSOURI

Cape Girardeau County

Jackson vicinity, *McKendree Chapel*, Off I–55

Franklin County

Washington, *Thias, Henry C., House*, 304 Elm St.

PENNSYLVANIA

Philadelphia County

Philadelphia, *Washington Square West Historic District*, Roughly bounded by 8th, Locust, Broad, and Lombard Sts.

TEXAS

Bexar County

San Antonio, *Partee, Hiram, House*, 605 Belknap Pl.

Tom Green County

San Angelo, *Hilton Hotel (Hotel Cactus)*, 36 E. Twohig St.

WISCONSIN

Dane County

Madison, *Agricultural Dean's House*, 10 Babcock Dr.

[FR Doc. 84–23354 Filed 8–31–84; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Proposed NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, Washington, D.C. 20240, Attention: Chief of Registration (202) 343–9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Bruce MacDougal,

Acting Chief of Registration, National Register of Historic Places, Interagency Resources Division.

We are presently requesting comments on the proposed boundary for Mesilla Plaza Historic Landmark, located at Mesilla, Dona Ana County, New Mexico:

Beginning at the intersection of Calle de Principal and Calle de Parian the boundary runs south for about 200′ then proceeds east along the south side of Building 5 to Calle de Guadelupe for about 200′. The boundary then goes north for about 50 feet before going east again for about 150′ along the south side of Building 6. At this point the boundary goes north along the east side of Building 6, across Calle de Parian and along the east side of Building 7. From the northeast corner of Building 7 the boundary goes about 50′ east to Calle de Albino and runs north along this street for about 200′ before running west to Calle de Guadalupe a distance of about 200 feet. From this point the boundary runs north along Calle de Guadalupe for about 300′ before running west behind Building 9 to Calle de Principal a distance of about 200′. From this point the boundary runs south along Calle de Principal for about 280′ near the northwest corner of Building 1 before running west to Calle del Arroyo, a distance of about 300′. From this point the boundary runs south along Calle del Arroyo for about 200′ before running east to a point about 150′ into the block. From this point the boundary runs south for about 75′ to Calle de Parian and then east for a distance about 150′ to the point of origin.

We are presently requesting comments on the proposed boundary for Blood Run Site Historic Landmark, located at Larchwood, Lyon County, Iowa:

Point of Beginning: (Point A) A 1330 feet MSL monument at the center of Section 24, T 100 N, R 49 W. The boundary proceeds from this point of beginning 900 feet (274 m.) south to the edge of a headward eroding draw in the second terrace margin then about 250 feet (76 m.) down that draw onto the first terrace of Blood Run. It proceeds 1000 feet (305 m.) in a southeasterly direction across both first terraces as well as intervening floodplain and channel of Blood Run to the mouth of a secondary tributary and 1310 feet contour south southeast of the Chicago, Rock Island, and Pacific railroad bed (Point B). It follows the 1310 feet and the 1320 feet contours in a general southwestern vector for approximately 2000 feet (610 m.) as they constitute the toe of a northwest facing terrace slope. The boundary crosses a second northwest draining tributary to Blood Run at about 1310 feet elevation and follows thatr contour around the northern edge of a remnant ridge. It then proceeds 1000 feet (305 m.) south southwest up an unnamed draw to an elevation of 1350 feet south of a knoll with a midpoint elevation of 1410+ feet MSL. It then proceeds about 500 feet (152 m.) on a west northwest vector bisecting the low point of a saddle between the knoll and north facing high terrace slope south of the saddle. The boundary subsequently proceeds 600 feet (183 m.) south up a draw from 1350 to 1400 feet elevation. It then passes through a second saddle proceeding 300 feet (91 m.) southwest to a complimentary 1400 feet contour. It proceeds downslope in a southwest (area of Point C) then westerly direction for about 1200 feet (366 m.) and reaches the back of the second terrace above Big Sioux River at an elevation of 1340+—1350-feet MSL. The boundary then swings in a southwest, west (area of Point D), and northwest direction across the second and first terraces to the Big Sioux River in an arc with a general west northwest cord distance of 3500 feet (1067 m.) (Point E).

The boundary crosses the Big Sioux River and the Iowa-South Dakota State line at UTM Zone 14, 694210E, 4814170N. The boundary traverses the South Dakota floodplain and joins the first terrace at the point of initiation between a colluvial slope and laterally planned floodplain. It proceeds 1850 feet (564 m.) north northeast against the toe of the second terrace slope at a general elevation of 1270 feet to a point on tangent between that contour and the Chicago, Rock Island and Pacific Railroad bed. It follows railroad grade benching for about 400 feet (122 m.) in a northwesterly direction (to Point F) then swings north across Spring Creek at a vector distance of 1200 feet (366 m.) upstream from it confluence with Big Sioux River. The boundary ascends a steep terrace to the 1300 feet contour (Point G) and follows that elevation until the toe of the second terrace slope is defined by the 1280 and then 1270 feet contours down Spring Creek Canyon to its restricted north bank juncture with the Big Sioux River Valley. The boundary remains between 1270+—1280-feet MSL following the Western margin of the first terrace above Big Sioux River (passing through Point H) until reaching the mouth of an unnamed draw approximately 3000 feet (914 m.)

south of springdale Cemetery. It meanders up the draw flowline for a vector distance of 2800 feet (853 m.) north (area of Point I) and emerges onto the second (i.e. high) terrace by crossing a dirt road south and east of Springdale Cemetery that has been looped northeast around headward erosion of a minor draw. The boundary traverses that terrace in a northeasterly direction through a slight swale at an elevation of 1430+—1440-feet MSL. It then follows the second terrace (Point J) escarpment in a dramatically meandering southeast direction for a vector distance of 1200 feet (366 m.) (area of Point K). The boundary departs the second terrace proceeding east southeast down a steep draw and crosses the Big Sioux River as well as the South Dakota-Iowa State line at UTM Zone 14, 695340E, 4815735N. It proceeds 1500 feet (457 m.) east southeast across the first terrace and then climbs east northeast onto the second terrace at an escarpment elevation of 1320 feet. The boundary then arcs up grade east northeast, east, and southeast for a cord distance of about 800 (244 m.) feet to the 1330 feet MSL monument point of beginning (Point A).

We are presently requesting comments on the proposed boundary for Erie Canal Historic Landmark, located at Florida and Glen, Montgomery County, New York:

Beginning at Point A, the southeasternmost corner of Section 38 Block 1 Lot 1 in the north line of the New York, West Shore, and Buffalo Railroad right-of-way, then proceeding westerly along the north line of the railroad right-of-way, crossing Queen Ann Street, to the so-called Blue Line at the west side of Queen Ann Street; then proceeding westerly along the Blue Line to Point B, the easternmost point of Section 38 Block 1 Lot 2; then proceeding westerly along the Blue Line and the north line of Section 38 Block 1 Lot 2 approximately 1300′ to Point C, an angle in the said lines approximately 150′ east of the eastern edge of Wemp's Basin; then proceeding due south across Section 38 Block 1 Lot 2 to the north line of the New York, West Shore and Buffalo Railroad right-of-way; then proceeding westerly in the north line of the railroad right-of-way approximately 975′; then proceeding due north across Section 38 Block 1 Lot 2 to Point D, an angle in the said north line of said lot and the Blue Line; then proceeding westerly and southerly in the Blue Line, crossing the Voorhees Culvert, to Point E, approximately 710′ southwest of the Voorhees Culvert; then proceeding southeasterly, perpendicular to the Blue Line, approximately 80′, to Point F; then proceeding southwesterly, at right angles to the 80′ line approximately 890′, to Point G; then proceeding northwesterly, perpendicular to the Blue Line, approximately 90′ to Point H, on the Blue Line; then proceeding southwesterly in the Blue Line to Point I, approximately 50′ northeast of the Enders house (#5) and formerly the intersection with a property line; then proceeding southeasterly, perpendicular to the Blue Line, to the north side of Railroad Street; then proceeding southeasterly along and in the course of the north side of Railroad Street, and the extension of this line, to the mean low water mark in the east bank of Schoharie Creek; then proceeding northwesterly along the mean low water mark of the east bank to a point opposite a small outbuilding (identified as building #7 in the attached Description) approximately 100′ southeast of the Blue Line; then proceeding southwesterly across Schoharie Creek, parallel to the Blue Line, into the Town of Glen, and through Section 53 Block 1 Lot 3 approximately 875′ to Point J; then proceeding northwesterly, at a right angle to the 875′ line, through Section 53 Block 1 Lot 3 to the Blue Line; then proceeding northerly, westerly, and southerly in the Blue Line, crossing Hartley Lane, to the north line of the New York State Thruway; then proceeding westerly in the north line of the Thruway to the northernmost of the two Blue Lines of the 1820 canal; then proceeding easterly and northerly in the Blue Line, again crossing Hartley Lane, to the mean low water mark in the west bank of Schoharie Creek; then proceeding northeasterly across Schoharie Creek to the Blue Line at the mean low water mark in the east bank of Schoharie Creek; then proceeding northerly and easterly in the Blue Line, crossing Main Street and East Church Street, to Point K, approximately 1615′ northeast of the east side of East Church Street; then proceeding northwesterly perpendicular to the mid-line of the 1820 canal approximately 75′ to Point L; then proceeding northeasterly roughly parallel to the Blue Line approximately 875′ to Point M; then proceeding southeasterly, perpendicular to the Blue Line, approximately 100′ to the Blue Line; then proceeding northerly and easterly in the Blue Line and partially in the mean low water mark of the south banks of a small creek and the Mohawk River to Point N, approximately 225′ west of the west side of Emery's Culvert; then proceeding along the mean low water mark of the south bank of the Mohawk River to Point O, approximately 50′ east of the east side of Emery's Culvert; then proceeding due south through Section 38 Block 1 Lot 1 to the Blue Line; then proceeding easterly in the Blue Line and partially along the mean low water mark of the south bank of the Mohawk River (to include Putnam's Culvert) to Point P, approximately 125′ due north of Point A; then proceeding due south approximately 125′ to Point A, the place of beginning.

We are presently requesting comments on the proposed boundary for Arrow Rock Historic District located at Arrow Rock, Saline County, Missouri:

The boundaries are contiguous with those for Arrow Rock State Park and the town of Arrow Rock as they join to form a single, contiguous 260-acre area. Some of the few generally unobtrusive features which do not contribute to the national significance of the landmark include: a water tower, rudimentary picnic facilities, and a few modern structures in the town of Arrow Rock.

We are presently requesting comments on the proposed boundary for Leadville Historic District, located at Leadville, Lake County, Colorado:

Beginning at the point where Harrison Avenue meets the right-of-way of the Burlington Northern Railroad, follow the tracks northeast to the crossing of E 12th Street, then follow E 12th to Poplar Street. Follow Poplar south to the alley between E 10th and E 11th, and follow the alley one block to Hemlock. Go north ½ block on Hemlock to E 11th and follow this street northeast to where it crosses Evans Gulch. Follow Evans Gulch in an easterly direction to the point where it crosses the 12,000 foot contour line; follow the contour line as it curves in a southerly direction to a point on the SW slope of East Ball Mountain that is due east of the southern point of the 12,000 foot contour line around Ball Mountain; then in a straight line south to the North Fork of Iowa Gulch. Follow this gulch a short distance west to the point where it meets a dirt road running along the southern slop of Printer Boy Hill; then follow the road as it passes between Printer Boy and Rock Hills to a point 400′ west of the road's fork, and then in a straight line north to the 10,800 foot contour line. Follow this contour line as it curves west around Rock Hill to UTM point (F) 13/391349/4342660, and then in a straight line SW to the southern bank of California Gulch. Follow the gulch to and around the large tailings pile at the city limits, then in a straight line north to Harrison Avenue. Follow Harrison north to W 2nd Street, then turn west and go two blocks to Spruce Street. Turn south on Spruce and go 2½ blocks to the alley between Elm and Front Streets; then go west one block to Leiter Street. Turn north on Leiter to Elm and go one block west to Maple. Go south ½ block to the alley between Elm and Front Streets, and follow the alley one block to James Street. Go north on James ½ block to Elm, and go west on Elm to the intersection of Elm, Washington, and McWethy Drive. Cross the intersection and pass behind the structures on the south side of the road in a straight line to the edge to the motel parking lot. Go north along the edge of the parking lot to a point behind the structures on the north side of the road, then go east behind these buildings in a straight line to the intersection of Elm, Washington, and McWethy Drive. Turn northeast on Washington and follow the street to the alley between W 3rd and W 4th Streets; follow the alley east two blocks to Maple Street, then north on Maple to the alley between W 4th and W 5th Street. Follow the alley one block to Leiter, go north on Leiter ½ block to W 5th Street. Follow W 5th east one block to Spruce Street; go north on Spruce 1½ blocks to the alley between W 6th and W 7th. Go west along the alley 2½ blocks, then north along the property lines to W 8th, then west along W 8th to Maple and north to the alley between W 8th and W 9th. Follow the alley two blocks east to the homes on the northwest corner of Spruce and the alley; go north behind these homes to W 9th Street. Turn east on W 9th to Spruce, go north on Spruce to the alley between W 9th and W 10th; follow the alley to Harrison Avenue, then turn-north to the point of beginning.

[FR Doc. 84-23356 Filed 8-31-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension

Bureau/Office: Office of Compliance and Consumer Assistance

Title of Form: Financial Responsibility—Trucking and Freight Forwarders

OMB Form No.: 3120-0081, 82, 86, 87, 90, 91, 95 and 96

Agency Form No.: BMC-32, 34, 35, 36, 83, 84, 90 and 91

Frequency: Recordkeeping—on occasion

Respondents: ICC Regulated Transportation Entities

No. of Respondents: 43,704

Total Burden Hrs.: 10,926

James H. Bayne,

Secretary.

[FR Doc. 84-23315 Filed 8-31-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket AB-43 (Sub-120X)]

Illinois Central Gulf Railroad Co.; Abandonment Exemption in Jacksonville, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by the Illinois Central Gulf Railroad Company of 0.58 miles of track in Jacksonville, IL, subject to standard labor protective conditions.

DATES: This exemption shall be effective on October 3, 1984. Petitions to stay must be filed by September 14, 1984. Petitions for reconsideration must be filed by September 24, 1984.

ADDRESSES: Send pleadings referring to AB-43 (Sub-No. 120X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Richard M. Kamowski, 233 North Michigan Avenue, Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-23314 Filed 8-31-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, and the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 15, 1984, a proposed Consent Decree in *United States* v. *Fischer & Porter Company,* Civil Action No. 80-3900 (E.D.Pa.) was lodged with the United States District Court for the Eastern District of Pennsylvania. The complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act and the Safe Drinking Water Act by the Fischer & Porter Company at its Warminster, Pennsylvania facility. The alleged violation consisted of the contamination of groundwater with trichloroethylene (TCE) and perchloroethylene (PCE), two industrial degreasing agents. The complaint sought injunctive relief to require defendant to reduce TCE and PCE contamination in the groundwater to the lowest levels technologically feasible, and to provide alternative water supplies or water treatment systems to the two local municipal water supply authorities whose wells were contaminated. In the Consent Decree the Fischer & Porter Company has agreed to install and operate a groundwater recovery system, described in detail in the Decree, which will reduce TCE and PCE contamination to the lowest levels technologically achievable. In addition, the Fischer & Porter Company has agreed to pay the two municipal water supply authorities sums totalling $545,000, to be used specifically for water treatment systems.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Fischer & Porter Company,* D.J. Ref. 90-7-1-28.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of

Pennsylvania, Room 3310 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, at the Region III Office of the Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-23319 Filed 8-31-84; 8:45 am]

BILLING CODE 4410-01-M

MERIT SYSTEMS PROTECTION BOARD

Cancellation of Call for Riders for Board Decision; Volume 14

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Cancellation of Call for Riders for *Decisions of the United States Merit Systems Protection Board,* Volume 14.

SUMMARY: The purpose of this notice is to cancel the call for riders to Volume 14 of the Board decision volumes which was announced in the August 13 **Federal Register** (49 FR 32287).

DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Ada R. Kimsey, Information Services Division, Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653-8891.

SUPPLEMENTARY INFORMATION: Earlier decision volumes 5 through 12 are still in print and may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Ordering information is as follows: *Decisions of the United States Merit Systems Protection Board,* Volumes 5 through 7, covering the period January 1, 1981 through September 30, 1981 (stock number 062-000-00011-2; $40), and *Decisions of the United States Merit Systems Protection Board,* Volumes 8 through 11, covering the period October 1, 1981 through September 30, 1982 (stock number 062-000-00014-7; $53). Volume 12 (October 1, 1982 through December 31, 1982) and Volume 13 (January 1, 1983 through March 31, 1983) are being printed, and will be announced in the **Federal Register** when available for sale.

Dated: August 28, 1984.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 84-23302 Filed 8-31-84; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL SCIENCE FOUNDATION

Directorate for Science and Engineering Education

AGENCY: National Science Foundation.

ACTION: Notice of program announcement and guidelines.

SUMMARY: This notice sets forth the program announcement and guidelines for the National Science Foundation's College Science Instrumentation Program.

EFFECTIVE DATE: Proposals may be submitted at any time after the appearance of this announcement in the **Federal Register**, but they must be received in the Foundation by 5:00 p.m. January 11, 1985, to insure inclusion in the competitive review process established for this program.

FOR FURTHER INFORMATION CONTACT: Please address requests for further information to the National Science Foundation, Directorate for Science and Engineering Education, Washington, DC 20550, Attention: College Science Instrumentation Program.

SUPPLEMENTARY INFORMATION: The National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), authorizes the National Science Foundation to initiate and support programs to strengthen science education at all levels. Furthermore, the FY 1985 HUD-Independent Agencies Appropriations Act requires the Foundation to establish this program. This Program Announcement describes the Foundation's college science instrumentation program.

The Federal Domestic Assistance Catalog Number for this program is 47.063.

College Science Instrumentation Program

Program Description

Purpose and Scope

The predominantly undergraduate colleges in the United States make a vital contribution to the preparation of the Nation's future scientists and engineers, teachers, and leaders in business and government. The purpose of the College Science Instrumentation Program (CSIP) is to assist these institutions in achieving and maintaining strong, high quality undergraduate science and engineering instructional programs for all of their students.

Students in science and engineering courses—majors and non-majors alike—must have experience with suitable, up-to-date equipment in order to become involved in the work that is at the heart of scientific understanding and progress.

Through the College Science Instrumentation Program, the National Science Foundation provides matching support for purchase of laboratory and instructional equipment to implement new or improved undergraduate programs in the sciences and engineering.

The specific objectives of CSIP are to encourage and support the:

- Introduction of modern equipment to improve the experiences of undergraduate students in science and engineering courses, laboratories, and field work;
- Interfacing of computers with scientific instrumentation and other appropriate uses of current educational technology in science and engineering instruction;
- Development of new instrumentation that extends instructional capabilities;
- Establishment of equipment sharing capability via consortia or centers.

The program addresses these objectives by providing for the:

- Acquisition of new, state-of-the-art instructional scientific equipment
- Renovation, replacement, and upgrading of existing equipment.

CSIP seeks proposals which request funds for instructional scientific equipment. Up to $50,000 may be requested from NSF; grantee institutions must provide an equal or greater matching contribution to the project. The minimum grant request to NSF for CSIP is $5,000.

Grants in support of CSIP activities are normally made for a 2-year period. It is expected that the requested equipment will be acquired during this time.

Requirements for Matching Funds

A proposing institution must agree to provide matching funds in an amount equal to or greater than the funds provided by the Foundation. The proposal budget must detail the expenditure of the combined total of requested NSF funds and the institution's funds. Matching funds may be non-Federal or Federal (but not NSF) sources. However, funds from a CSIP grant, or the institutional matching contribution to it, cannot be counted as an institutional contribution to another Federally supported project. If a grantee receives a gift of equipment from non-Federal sources that is identical or equivalent to items listed in the proposal, the cash value of such gifts may be counted as institutional matching funds.

An institution may obligate or receive its matching funds or gifts at any time following the closing date under which the awarded proposal was submitted, but before the grant expiration date specified in the grant document. This normally provides a period of about 2½ years during which the institution must fulfill the agreement to match NSF funds as described in the award proposal. To count as matching, these funds must be used specifically for the equipment listed in the proposal unless prior approval is received from the NSF.

Eligibility Criteria and Limitations

Eligible Institutions

Proposals to the College Science Instrumentation Program will be accepted from:

a. Any 4-year college or university in the United States or its territories that offers instruction in the sciences leading to the baccalaureate degree, and *does not* offer the Ph.D. degree in any of the eligible fields of science and engineering listed below.

b. Any campus of a recognized "system" of institutions provided that it satisfies a. above and is separated geographically and is not administratively subordinate to any other campus in the system. A branch campus seeking separate eligibility should consult CSIP program staff before submitting a proposal, and be prepared to provide appropriate details to support its request.

c. Any formally organized consortium of institutions, the majority of which satisfy a. above, which has an established central office and approved fiscal management capability. Proposals from informal consortia of institutions are not eligible.

Number of Proposals Allowed

There are no limits to the number of proposals which may be submitted by an institution; however, only one proposal per department within an institution will be accepted.

A consortium may submit only one proposal per yearly closing date. Participation in a consortium proposal will not affect the eligibility of a member institution or a department within an institution.

Eligible Fields

The Foundation will consider proposals for support of projects in:

- Any field of science and engineering, including but not necessarily limited to: Astronomy, atmospheric sciences, biological and behavioral sciences, chemistry, computer sciences, earth sciences, information science, mathematical sciences, materials science, oceanography, physics, and the social sciences;
- Interdisciplinary fields composed of overlapping areas of two or more sciences;
- Multiple disciplines—in contrast to interdisciplinary fields—only in such instances in which several departments propose to make use of a single major piece of equipment or an assemblage of related pieces of equipment.

Specifically *excluded* from support are:

- Projects addressed to clinical fields associated with the sciences such as medicine, nursing, clinical psychology and physical education;
- Projects which primarily involve social work, home economics and the arts and humanities.

Eligible Activities

Although CSIP proposals are encouraged for formal courses and laboratories traditionally associated with undergraduate instruction, the program is not restricted to these activities. The following are other examples of eligible science activities.

- Projects to improve undergraduate honors programs, student research and independent study. (see also *Research in Undergraduate Institutions* Program Announcement, NSF 83-79);
- Projects aimed at acquainting nonscience majors with principles and methods of science and engineering or the impact of science and technology on society;
- Projects concerned with the undergraduate science education of prospective teachers, which emphasize science content or science teaching methods;
- Projects which seek to reduce the barriers to careers in science and engineering for women, minorities, and the physically handicapped;
- Projects directed at remediation or development of the science background of poorly prepared students;
- Projects which involve the teaching of fundamental science or engineering concepts within technical or professional programs.

Eligible Equipment

The types of equipment eligible for inclusion in a CSIP proposal are listed under the section "Detailed Budget" on page 00.

These restrictions apply to equipment to be purchased with institutional matching funds as well as the NSF grant. As previously noted, no proposal may request more than $50,000 from NSF which means that project costs in excess of $100,000 must be funded by overmatching. Because proposals requesting less than $5,000 from NSF are not eligible, the minimum project cost is expected to be $10,000.

The primary use of each of the equipment items to be acquired must be for the benefit of undergraduate science and engineering instruction. There is no objection to any items serving additional purposes in the department at those times when it is not being used for undergraduate instruction, but these ancillary uses neither form nor augment the justification required for its inclusion in the program.

Neither NSF funds nor institutional matching funds may be applied to any of the ineligible items listed below:

- Teaching Aids (e.g., films, slides, projectors), reference materials, and expendables (e.g., glassware, chemicals);
- Laboratory furnishings or general utility items such as office equipment, benches, tables, desks, chairs, laboratory carts, storage cases, routine supplies, and general expendables;
- Maintenance or service contracts—even though for equipment requested through the CSIP program;
- Salaries, honoraria, consulting fees, travel reimbursement, etc.
- Institutional indirect costs or overhead;
- Costs of building or laboratory modification, construction or equipment installation;
- A flat percentage inflation allowance. Requested funds should be based on the best available vendor's estimate of cost at the projected time of purchase during the grant period.

Preparation and Submission of Proposals

General Information

This announcement sets forth basic information needed to initiate planning for proposal submission. Proposers must also consult the publication *Grants for*

Scientific and Engineering Research (GSER), (NSF 83-57), for additional guidance and forms. This publication is available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550. Teh GSER should be used with the following understandings:

- For "research" substitute "science and engineering education" or "science and engineering education project" according to the context;
- The terms "new discoveries" or "fundamental advances" in science and engineering include the development of the science and engineering infrastructure toward those goals.

Except as modified by the guidelines set forth herein, standard NSF guidelines on proposal preparation, submission, evaluation, NSF awards (general information and highlights), declinations and withdrawals contained in GSER are applicable. CSIP proposers should use the cover sheet and project summary forms contained herein (pp. 00) and the budget construction described on page 00, not those in GSER.

More comprehensive information is contained in the NSF *Grant Policy Manual*, Revised, (NSF 77-47) available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

In the event that the submitting organization has never been the recipient of an NSF award, it is recommended that appropriate administrative officials become familiar with the NSF policies and procedures contained in the NSF *Grant Policy Manual*, Revised, which are applicable to most NSF awards. If a proposal is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are contained in Chapter III of the *Manual*.

Proposal Preparation

A successful proposal msut outline the way in which the planned project will improve the present program of undergraduate science instruction. Each proposal should demonstrate that:

- The plan is a logical step in developing the academic program in question;
- Informed, realistic planning has already taken place;
- The staff is competent to carry out the project;
- The improvements proposed lack only the requested equipment for full implementation.

It is important that the equipment requested be appropriate for the project's objectives. The Foundation aims to support projects with maximum potential for continuing impact. Each proposal should, therefore, clearly show how the equipment fits in with current institutional holdings, and should outline the institution's plans for extended care and maintenance of the equipment.

Proposal Format

A proposal to the CSIP program consists of the following parts:

- Cover Sheet
- Detailed Budget (Equipment List)
- Project Summary Form
- Narrative (Limited to 12 double-spaced pages)
- Information on Current and Pending Support (GSER p. 26)
- Appendices

Cover Sheet

The first page of the proposal will be the Cover Sheet prepared in the form found on page 00. This cover sheet should be duplicated and completed. The cover sheet must bear the signatures of the proposed principal investigator and the administative official who is empowered to commit the proposing organization to the conduct and prudent management of the project if NSF agrees to support it. Only one principal investigator may be designated for a CSIP project.

It is important that the Cover Sheet be completed with the full information requested. Most of the items are self-explanatory. Please make note of the following:

- Social Security Numbers are used by the Foundation to monitor and facilitate the receipt and processing of numerous proposals, as well as to maintain award data. The number is solicited pursuant to the general authority of the Foundation under the NSF Act of 1950, as amended. However, submission of social security numbers is voluntary and refusal to disclose a social security number will not affect any proposal's eligibility for an award;
- If funds for this project are being requested from another Federal agency or another Foundation program, this must be indicated in the upper right hand section of the Cover Sheet. If they are not being so requested at the time of proposal submission, but are requested subsequently (prior to Foundation's anticipated CSIP announcement date), a letter so stating should be sent at that time to the CSIP office. This letter should identify the proposal by its NSF number if one has been assigned.

Detailed Budget

A complete, detailed list of anticipated equipment acquisitions with both unit and total costs should immediately follow the cover sheet. It must be limited to the following categories with a subtotal shown for each:

a. Scientific Equipment
b. Computing Equipment
c. Construction of Equipment
d. Safety Equipment
e. Maintenance Equipment
f. Shipping Costs

It is important that reviewers be able to recognize the function of requested equipment. Therefore, the detailed budget should list all individual items by a descriptive name, and the probable brand, model, and price. Where there might still be ambiguity, a one-sentence description of the function of the equipment should be included.

Functional units consisting of a combination of items should be clearly grouped as such in the budget. The scientific equipment category should be subdivided by function or by course so as to correspond as closely as possible with the narrative which is to follow. Each item should be lettered to be consistent with the categories above, and to facilitate reference to and from the justification presented in the narrative.

Following the total amount of project costs, list the actual dollar amount requested from NSF. The amount requested from the National Science Foundation cannot exceed 50% of the total budget, or $50,000 and may not be less than $5,000.

Note.— Any unit of equipment must have a minimum acquisition cost of $500 and a life expectancy of more than 2 years.

See also GSER for details; page 5.

Guidelines for the selection and placement of eligible items within the six budget categories are as follows:

a. Scientific Equipment—to be used in any phase of undergraduate science and engineering education. An item eligible in this category must consist of either a single piece of equipment meeting the minimum cost requirement or a functional unit, where the sum of the components meets the minimum cost requirement. Examples of "functional units" would be an oscilloscope with appropriate probes, or a recording infrared spectrophotometer with a demountable cell assembly and appropriate window. A combination of independent instruments needed for a specific experiment, or for a single laboratory station, would not normally meet the definition of a functional unit.

Each component of a functional unit must be itemized, and the cost indicated; the subtotal for the entire unit should be entered as the unit cost (at least $500).

b. Computing Equipment—digital, analog, analog-digital hybrid computers, mini- or micro-computers, or ancillary equipment that provides remote access to central digital computing systems. The equipment must be for use in specific curricular improvements; for example, interfacing with scientific instruments to assist student data acquisition and interpretation.

Rental or lease-purchase of such equipment with grant funds will be considered (1) if it can be demonstrated that such arrangements offer clear advantages over outright purchases and (2) if the proposal contains assurances that the grantee is prepared to assume responsibility for the continuation of equivalent services after the grant expires.

Software essential to the scientific and educational objectives of the project is permitted. Each software package must be itemized, justified, and the cost indicated (functional unit at least $500).

c. Construction of Equipment—fabrication, including materials and labor where sufficient justification can be given. Since it is not the purpose of equipment grants to provide for design and development of scientific and educational equipment, a detailed explanation of the advantages of the proposed unit over commercially available items must accompany requests for equipment construction funds.

Requests for equipment construction must be supported by: drawings, diagrams or parts lists as appropriate.

d. Safety Equipment—such as fire control devices, fume hoods, etc., may be purchased under this program where necessary for the safe utilization of the equipment requested in the above categories.

e. Maintenance Equipment—unique items specifically required for calibration, repair and maintenance of the scientific equipment itemized in the categories a., b., and c. above (unit cost at least $500).

f. Shipping Costs—reasonable estimates should be used, as opposed to a flat percentage.

Project Summary Form

The Project Summary Form (page 00) should follow the Budget. The information provided on this form is used by the program staff for a variety of purposes, including the proper assignment of proposals to reviewers. Name of institution and project title must be written exactly as given on the Cover Sheet. Please note the following:

Line 4. Major Discipline Code. Choose 1 only, from among those listed on page 00.

Line 5. Field of Science and Engineering Code(s). Choose at least 1, but no more than 5 codes in descending order of importance, from those listed on page 00.

For example, if computer-related activities are being developed for an analytical chemistry laboratory, enter on Line 4, CH, and at line 5, CH 12, NE 55 (or MD21).

Line 10. Summary of Proposed work. This summary should be a concise description of the project (not of the proposal), limited to 22 pica or 18 elite lines. It should contain a statement of objectives, an outline of the project operations, and a description of anticipated outcomes. If the project is supported, the summary may be used by the Foundation to inform the general public about its programs. Therefore, it should be written with considerable care so that a lay person can understand the use of Federal funds in support of the project.

Narrative

The narrative presents most of the information that determines whether or not a grant will be awarded. In composing the narrative, the principal investigator is urged to bear in mind the criteria to be used by reviewers in judging the merits of the proposal. These criteria are discussed in the section on Proposal Evaluation, page 00.

The Narrative section must not exceed 12 numbered double-spaced pages. Reviewers will not be responsible for studying additional pages. Information applicable in more than one place may be referred to by page and paragraph. Appended information should be restricted to tabular presentations of items required to supplement the narrative (also see Item d. in the outline below). Use of tabular form for reporting details is encouraged. Such information should be cross-referenced to the appropriate portions of the narrative.

The narrative should be written to conform to the following outline:

a. The Present Situation. This section should answer the question: "What is currently missing from the curriculum or is not being done effectively in the course which needs to be developed?" It should provide a description of the academic context and the perceived deficiencies, and should include information about the institution, related courses, and the intended student audience. It cannot be assumed that the reviewers are acquainted with the submitting institution and its science education programs.

b. The Development Plan. This section should answer the question: "How is the course or curriculum to be developed through the new instrumentation?" It should consist of a detailed description of the specific developments intended. Specific experiments, student projects, or demonstrations that would be conducted with the new equipment must be presented in terms of the scientific principles or phenomena to be taught, and in terms of the didactic methodologies to be employed. This portion of the narrative must enable a group of colleagues to judge the suitability of the planned change for the intended student audience, in the academic setting described. Both the scientific and pedagogical aspects of the proposed project will be weighed in an effort to assess the relative impact in science education that would be realized through the funding of this project.

c. Equipment—(1) The Equipment Request. This section should answer the question: "Is each item of equipment requested actually needed to implement this development, and is it the right piece of equipment for the job?" It should consist of some brief indication as to exactly how each major equipment item requested will be used to effect what instructional development.

It is the purpose of this part of the proposal to establish the precise correlation between the subject-matter developments described in the previous sections, and the list of equipment requested. In the event of a grant, ineligible items, and those not germane or adequately justified, will be deleted from the authorized list of purchases.

Logical groupings of items should be made to minimize repetition, with each entry cross-referenced to the item numbers given in the Budget (Equipment List). Special arguments may be needed to explain such requests as those for apparatus of a quality or cost not usually encountered in undergraduate instruction, or which is to be fabricated rather than purchased as a unit, or which might appear to be at variance with the academic setting in which the project would operate. Such statements must be keyed to developments desired in undergraduate instruction. Therefore, proposers are cautioned against providing arguments based on enhancements of graduate-level courses, improvement of faculty research capabilities, replacement of equipment, or other activities outside the scope of CSIP. (But see *Research in Undergraduate Institutions* Program Announcement, NSF 83–79).

(2) The Equipment on Hand. This section should answer the question: "Has there been a thorough survey of the current equipment inventory and does the proposal plan to make full use of it?" It should consist of a list indicating existing or anticipated major equipment that will be available for the project, but is not included in this request.

(3) Equipment Maintenance. This section should answer the question: "Is a reasonable plan presented to ensure a maximum usable lifetime for the equipment?" This relates to the institutional commitment to this project. Each proposal should therefore briefly but clearly outline the institution's plan for extended care and maintenance of the equipment.

d. Personnel. (1) Faculty Expertise. This section should answer the question: "Does the department presently have the personnel and knowledge to complete the project successfully?" It should contain enough information about the present faculty of the academic unit seeking support to convince reviewers that the technical expertise to carry out the proposed project is already present. Special attention should be given to the individual named to direct the project. Since the effective operation of the project depends in large measure on the principal investigator's knowledge of the discipline, the curriculum, and the equipment, this person must be a member of the faculty of the disciplinary unit receiving support. A brief resume must indicate that the principal investigator is an appropriate person to direct this particular project. Only one person may be named as principal investigator for the proposal, but brief resumes of other faculty members involved in the project, emphasizing experience relevant to the project, should also be included. Curricula vitae should be placed in the appendix.

Information on Current and Pending Support

For instructions on completing this section see GSER pp. 7 and 26.

Forms on patterns of sex, race, or ethnicity of Principal Investigators (voluntary) see GSER p. 21.

Appendices

Material that is supplementary to the text of the proposal may be included in the appendices. Each appendix should be printed on colored paper or prepared in some manner to make it easily distinguishable from the body of the proposal.

Appropriate material includes tables of student enrollments, schematic diagrams of equipment to be fabricated, curricula vitae of project personnel, and the like. Voluminous appendices cannot be read by reviewers in the time available for proposal evaluation. It is inappropriate to include institutional catalogues, departmental curricula, whole lab manuals, or other general material.

Proposal Submission

Proposals must be received in the Foundation by 5:00 p.m. January 11, 1985, to insure inclusion in the competitive review process established for this program.

1. Materials Required:

Fifteen (15) legible copies of the complete proposal
Four (4) extra copies of the Cover Sheet
One (1) extra copy of the Budget (Equipment List)
Four (4) extra copies of the Project Summary Form

These materials should be submitted to:

Central Processing Section for College Science Instrumentation Program, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

The following requirements must also be met:

- All materials submitted to the Foundation must be contained in a single package. Secure packaging is mandatory. The Foundation cannot be responsible for the processing of proposals damaged in transit;
- Each copy of the proposal should be on standard size duplicating or mimeograph paper or regular weight. It should be stapled only in the upper left corner. The duplicating process should ensure legibility for at least 5 years. Typing must be double-spaced;
- One copy must be signed by the principal investigator and the administrative official who has been designated as the Authorized Institutional Representative.

Do Not:

- Staple the extra cover sheets, project summary forms, or equipment budget together, or to a proposal;
- Put covers on the proposals;
- Send separate "information" copies or several packages containing parts of a single proposal.

2. A check list of items to remember in preparing and submitting a proposal is located on page 00.

Proposal Evaluation and Award Selection

NSF evaluates proposals on the basis of four general criteria:

1. Performance competence—This criterion relates to the capability of the investigator(s), the technical soundness of the proposed approach, the adequacy of the institutional resources available, and the proposer's recent research/science education performance.

2. Intrinsic merit—This criterion is used to assess the quality, currency, and significance of the scientific content and related instructinal activity of the project within the context of undergraduate science, mathematics, and engineering education, generally.

3. Utility or relevance of the project—This criterion is used to assess the impact the project will have at the proposing institution, and the appropriateness of the project in the local context.

4. Effect on the infrastructure of science and engineering—This criterion relates to the potential of the proposed project to contribute to better understanding or improvement of the quality, distribution, or effectiveness of the Nation's scientific and engineering research, education, and manpower base.

See page 9 of GSER for additional discussion of these criteria.

CSIP grants are awarded on a competitive basis. In selecting proposals to be supported, the Foundation is assisted by peer reviewers, who are scientists/educators, primarily drawn from the academic community, but also from research organizations and professional scientific associations.

Announcement of Awards

The evaluation and processing of proposals will require approximately 7 months. All decisions will be announced simultaneously through notification of the institution and the principal investigator some time in September 1985. No information can be given concerning the probability of support for any proposal prior to this announcement.

Check List

The following check list of steps in completing a CSIP proposal is provided for the convenience of the proposal writer.

Eligibility Determined for:

- Institution
- Department
- Field and/or Project
- Equipment
- Civil Rights Compliance

Forms Completed:

- Cover Sheet
- Project Director' signature on one copy
- Authorized Organizational Representative's signature on same copy
- Project Summary Form
- Principal Investigator sex, race or ethnicity form (GSER p. 21)
- Principal Investigator other support form (GSER p. 26).

Budget (Equipment List) Completed:

- Contains no item with unit cost under $500 unless part of a functional unit with cost of $500 or more
- Equipment items numbered and categorized
- Parts list for instructional equipment
- Subtotals for categories indicated
- Total Cost for project indicated
- Addition accurate
- Amount of request from NSF indicated; request is lesser of 50% of the total project cost or $50,000, but not less than $5,000.

Narrative Completed:

- All points covered
- All required supporting data included
- Schematic diagrams of any equipment to be fabricated
- Equipment on hand discussed
- Personnel resumes
- Information on current or proposed projects
- Does not exceed 12, double-spaced pages.

Appendices:

- Appendices easily distinguished from body of proposal; easily referenced
- All promised material included
- Curriculum vitae.

Format Checked:

- Sections in proper order
- Correct number of copies of proposal and forms included

Submission:

- All materials forwarded in a single package
- Materials submitted in time to reach NSF on or before January 11, 1985.

Addendum

NSF-Required Material to be Inserted Where Appropriate

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is (202) 357-7492.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly reponsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women and minorities to complete fully in any of the research and research-related Programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or physical handicap shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

Catalog of Federal Domestic Assistance Number 47.063 (College Science Instrumentation Program, NSF 84-66).

Inquiries

Questions not addressed in this publication may be directed to the NSF staff by writing to: College Science Instrumentation Program, Directorate for Science and Engineering Education, National Science Foundation, Washington, D.C. 20550.

Dated: August 28, 1984.

Walter L. Gillespie,

Deputy Assistant Director, Directorate for Science and Engineering Education.

[FR Doc. 84-23284 Filed 8-31-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-247 and 50-286]

Consolidated Edison Co. and Power Authority of the State of New York (Indian Point, Units 2 and 3); Request for Action Under 10 CFR 2.206

On July 23, 1984, the Commission referred a petition dated April 6, 1984 and a supplement to the petition dated June 9, 1984, filed by the New York Public Interest Research Group to the Office of Inspection and Enforcement for appropriate action pursuant to 10 CFR 2.206. The petitioner seeks suspension of the operating licenses for Indian Point Units 2 and 3 in order to relieve an "unacceptable risk to the health and safety to school children in the vicinity of the plants." The petitioner alleges that planning for the evacuation of school age children within the Emergency Planning Zone around the Indian Point plans has not been adequately addressed in the radiological emergency response plans. As provided under 10 CFR 2.206, appropriate action will be taken on the petition within a reasonable time. Copies of the petition and its supplement are available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555 and in the Local Public Document Room for the Indian Point Station located at Elmer Holmes Bobst Library, 70 Washington Square South, New York, NY 10012.

Dated at Bethesda, Maryland this 23th day of August 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-23386 Filed 8-31-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corporation and Jersey Central Power & Light Company (Oyster Creek Nuclear Generating Station); Exemption

I

The GPU Nuclear Corporation and Jersey Central Power & Light Company (the licensees) are holders of Provisional Operating License No. DPR-16 which authorizes operation of the Oyster Creek Nuclear Generating Station. The license provides among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises one boiling water reactor located in Ocean County, New Jersey.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, subsection

III.G., is the subject of this exemption request. Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirement for separation and barriers could not be met in an area, reasonable interim compensatory measures and/or procedures must be provided in order to grant schedular exemptions from the implementation schedules of 10 CFR 50.48. The schedular requirements of 10 CFR 50.48(c)(4) call for the implementation of modifications before startup after the earliest of the following events commencing 180 days after Commission approval:

(1) The first refueling outage;

(2) Another planned outage that lasts for at least 60 days; or

(3) An unplanned outage that lasts for at least 120 days.

For Oyster Creek this would be the end of the current Cycle 10 refueling outage.

In a submittal dated July 11, 1984, the licensees requested that the implementation schedule for the proposed fire protection modifications in thirteen fire areas at Oyster Creek be extended until the end of the Cycle 11 refueling outage scheduled for the fall of 1985.

III

Reasonable interim post-fire safe shutdown capability or interim fire protection measures must be provided in order to grant schedular exemptions from the implementation schedules of 10 CFR 50.48. By letter dated July 11, 1984 the licensees requested an exemption from 10 CFR 50.48(c)(4) and provided interim measures for the thirteen involved fire areas of the Oyster Creek plant. The thirteen areas are the reactor building (elevation 51 and 23 feet), 1C4160V emergency switchgear vault, 480V switchgear room, MG set room (elevation 35 feet), A and B battery room, tunnel and tray room, office building, monitoring and change room area, turbine lube oil storage, pumping and purification area, switchgear room (west end of turbine building on mezzanine level), basement floor south end, condenser bay, and circulating water intake area. The areas and respective compensatory measures are identified in Appendix A of the July 11, 1984 submittal.

For those fire areas of the plant which require modifications that are affected by the schedular extension, the licensee verified that the following shutdown functions would be available following a fire: reactivity control, primary system make-up control, primary system pressure control, decay heat removal, process monitoring, and support services. If one of these shutdown functions could be potentially lost due to a fire, a procedure to restore the shutdown function was provided using alternate systems. These emergency shutdown procedures constitute the interim shutdown capability in the event of loss of shutdown functions in fire areas FA-3A, 1C4160V emergency switchgear vault, and FA-9, office building.

In the event of fire in FA-3A, controls for drywell cooling are subjected to degradation. As the alternate containment spray and emergency service water systems for cooling will be available, the reactor can be brought to cold shutdown conditions with the unaffected onsite powered systems by utilizing emergency operating procedures. A fire in this area will not affect the safe shutdown of the plant.

In the event of fire in FA-9, controls for two electro-motive relief valves (EMRV's) and the shutdown cooling system are subjected to degradation. A fire in this area will not affect the safe shutdown of the plant. If the two EMRV's stick open, the reactor make-up can be provided by the core spray system and cooling provided by the emergency service water system. If the two EMRV's remain closed, it will have no effect on the safe shutdown of the plant as the other three EMRV's will be available for depressurization. The reactor can be brought to cold shutdown conditions with the above unaffected onsite powered systems by utilizing emergency operating procedures.

In eleven of the areas interim shutdown procedures are not available; they are: (1) FZ-1E, reactor building, 23 foot level, (2) FA-6, 480V switchgear room, (3) FZ-8A, MG set room, 35 foot level, (4) FZ-8C, A and B battery room, tunnel and tray room, (5) FZ-10A, monitoring and change room areas, (6) FZ-11D, basement floor south end, (7) FZ-11E, condenser bay, (8) FA-14, circulating water intake, (9) FZ-1D, reactor building, 51 foot level, (10) FZ-11C, switchgear room, west end of turbine building on mezzanine level, and (11) FZ-11B, turbine lube oil storage, pumping and purification area. The licensees indicate that in each of these areas, the vulnerable systems will be protected by either a continuous fire watch or an automatic fire detection and suppression system.

In FA-14, FZ-1D, FZ-11C, and FZ-11B, a continuous fire watch will be provided until such time that supplemental procedures to the Emergency Operating Procedures (EOPs) are developed. The fire watch consists of the area being continuously monitored by security guards in addition to the area being monitored 24 hours a day by TV cameras. This provides reasonable assurance that a fire will be discovered in its initial stages before significant damage occurs and will be suppressed manually by either the fire watch or the plant fire brigade. Under these circumstances, fire damage will be limited, and no loss of safe shutdown capability should occur.

The remaining seven areas identified above are protected by automatic fire detection and suppression systems. It is the staff's opinion that fires in these areas would be discovered in their initial stage, and would be suppressed by the plant fire brigade. If the fire should propagate rapidly, the automatic fire suppression system should activate to protect the vulnerable systems until eventual extinguishment and no loss of shutdown capability should occur. The additional modifications to be made will ensure that safe shutdown capability will be protected if the suppression system should fail to activate.

For the considerations discussed above, the staff concludes that the licensees have provided reasonable and acceptable interim post-fire safe shutdown capability or interim fire protection measures to support the requested schedular exemptions for the areas identified. Therefore, based on our evaluation the staff has concluded that the requested schedular exemption from the requirements of 10 CFR 50.48(c)(4) should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the schedular exemption requested by the licensees' letter of July 11, 1984 is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensees an exemption from the schedular requirements of 10 CFR 50.48(c)(4) until prior to startup from the Cycle 11 refueling outage (1985).

Pursuant to 10 CFR 51.32 the Commission has determined that the issuance of the exemption will have no significant impact on the environment (August 23, 1984, 49 FR 33512).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 23 day of August 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23368 Filed 8-31-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co.: Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix E to 10 CFR Part 50 to the Northern States Power Company (the licensee) for the Monticello Nuclear Generating Plant at the licensee's site in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Action: The exemption would permit the extension of the emergency preparedness exercise at the Monticello Nuclear Generating Plant, from February to December 1984. The proposed exemption is in accordance with the licensee's request for exemption dated November 7, 1983.

The Need for the Proposed Action: 10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F of Appendix E requires each licensee to conduct emergency preparedness exercises at each site at least annually.

The licensee states that an extended outage is scheduled from February 3, 1984 until September 15, 1984, for the replacement of the recirculation piping, with additional time required for outage preparation and recovery. The licensee contends that the scope of the outage, personnel requirements, and its effect on the site precludes holding an emergency preparedness exercise concurrently. They further state that during this period the reactor will be shut down and defueled.

The licensee states that, in conjunction with State and local governments, they have participated in three previous successful exercises, including the one held on February 23, 1983. The licensee also participated in a small-scale exercise at their Prairie Island Nuclear Generating Plant on March 13, 1984. The licensee further states that the State of Minnesota and the Counties of Wright and Sherburne have agreed to participate in the December 5, 1984 exercise. The licensee contends that during the period between exercises the emergency plan will remain fully operational and the normally required training will continue throughout the period of exemption. The last full scale exercise held at Monticello was on February 23, 1983.

Environmental Impact of the Proposed Action: The proposed exemption affects only the scheduling of the annual emergency preparedness exercise and does not affect the risk of facility accidents. Thus, postaccident radiological releases will not differ from those determined previously, and the proposed relief does not otherwise affect facility radiological effluents, or any significant occupational exposure. Likewise, the relief does not affect facility non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radioligical or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require literal compliance with Section IV.F of Appendix E to 10 CFR Part 50. Such an action would not enhance the protection of the environment and would interfere with the scope of the outage.

Alternative Use of Resources: This action does not involve the use of resources not considered previously in connection with the Final Environmental Statement relating to this facility, *Final Environmental Statement Related to the Monticello Nuclear Generating Plant, Docket No. 50-263,* (November 1972).

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request, the FEMA Final Report of the 1983 exercise at the Monticello Nuclear Generating Plant, and a memorandum from FEMA to the NRC dated March 5, 1984, transmitting the Final Report of the exercise held in 1983 and which states that the exercise demonstrated an adequate level of offsite radiological emergency preparedness to ensure health and safety of the public in areas surrounding the Monticello Nuclear Generating Plant.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 29, 1983, as supplemented March 23, 1984 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., D.C. and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland, this 27th day of August, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23365 Filed 8-31-84; 8:45 am]

BILLING CODE 7590-01-M

[NRC Docket No. 50-338-OLA-1; 50-339-OLA-1 (ASLBP Docket No. 83-481-01 LA) NRC Docket No. 50-338-OLA-2, 50-339-OLA-2 (ASLBP Docket No. 83-482-02 LA)

Virginia Electric and Power Co. (North Anna Power Station, Units 1 & 2); Order (Scheduling Supplemental Special Prehearing Conference)

August 28, 1984.

Since oral argument upon proposed contentions was not heard at the initial special prehearing conference held on February 16, 1983, pursuant to 10 CFR 2.751a, the Board will conduct a supplemental special prehearing conference at the following location at 9:00 a.m. on September 7, 1984: NRC Public Hearing Room, East/West Towers Building, 5th Floor, 4350 East/West Highway, Bethesda, Maryland 20014.

Counsel for the Applicant, the NRC Staff and the petitioner, Concerned Citizens for Louisa County (CCLC), are directed to appear. This supplemental special prehearing conference is held in order to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider the contentions of petitioner, Concerned Citizens of Louisa County, as submitted on July 30, 1984 and amended on August 14, 1984, to allow the presiding officer to make an appropriate preliminary or final determination as to whether said petitioner shall be admitted as a party to this proceeding; and

(4) Establish a schedule for further actions in the proceeding.

The public is invited to attend the prehearing conference but members of the public may not participate in this conference. An opportunity will be provided for any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene. Any person may request permission to make a limited appearance pursuant to provisions of 10 CFR 2.715 of the Commission's "Rules of Practice." Subject to the conditions set forth in subsequent Orders, limited appearances will be permitted at the time a §2.752 prehearing conference is held and also at the beginning of the hearing, if any. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.[1]

Dated at Bethesda, Maryland, this 28th day of August, 1984.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman, Administrative Judge.

[FR Doc. 84–23307 Filed 8–31–84; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of information collection from the public submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), this notice announces submission to OMB for clearance of a proposed revision of a form that collects information from the public. Standard Form 172, Amendment to Application for Federal Employment—SF 171 (formerly Amendment to Personal Qualifications Statement), is used to update applicants' information for consideration for Federal employment. OPM is responsible for open competitive examinations for admission to the competitive service in accordance with section 3302, 5 U.S.C. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer,
U.S. Office of Personnel Management,
1900 E Street, NW, Room 6410,
Washington, D.C. 20416
and
Katie Lewin, Information Desk Officer,
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632–7720.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84–23275 Filed 8–31–84; 8:45 am]

BILLING CODE 6325–01–M

Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of information collection from the public submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), this notice announces a proposed extension of a form that collects information from the public. Standard Form 173, Job Qualifications Statement, is a shorter version of the SF 171, Application for Federal Employment, (formerly Personal Qualifications Statement) used for applying for positions that generally require less information than required on the SF 171. OPM is responsible for open competitive examinations for admission to the competitive service in accordance with 5 U.S.C. 3302. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer,
U.S. Office of Personnel Management,
1900 E Street, NW., Room 6410,
Washington, DC 20415, and
Katie Lewin, Information Desk Officer,
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632–7720.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84–23276 Filed 8–31–84; 8:45 am]

BILLING CODE 6325–01–M

Proposed Revision of a Form for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed revision of a form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction act of 1980, this notice announces a proposed revision of a form which collects information from the public. Standard Form 87, Fingerprint Chart, is completed by applicants for Federal positions throughout the Government. OPM uses the information to conduct checks of the FBI fingerprint files as required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or various public laws. These checks are part of background investigations conducted for the purpose of determining suitability for Federal employment/security clearance. For copies of this proposal call John P. Weld, Agency Clearance Office, on (202) 632–7720.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer,
U.S. Office of Personnel Management,
1900 E Street, NW., Room 6410,
Washington, DC 20415, and
Katie Lewin, Information Desk Officer,
Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632–7720.

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[1] During the course of a telephonic conference call on August 27, 1984, counsel for CCLC requested that this special prehearing conference be held in Louisa County in order that, as a matter of right, persons could make limited appearance statements at that time lest, if CCLC was not admitted as a party, such limited appearance statements would not be taken. The Chairman stated (a) that 10 CFR 2.715 provides that limited appearance statements may be permitted at the discretion of the presiding offier either at any session of the hearing or any prehearing conference, and b) that, as originally prescribed in the two Notices of Hearing dated December 3, 1982, such limited appearances would be taken at the times set forth in the last paragraph of this Order. All counsel agreed that the special prehearing conference should proceed on September 7, 1984.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-23212 Filed 8-31-84; 8:45 am]

BILLING CODE 6325-01-M

Renewal of the Federal Prevailing Rate Advisory Committee

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management is renewing the charter for the Federal Prevailing Rate Advisory Committee (the Committee). It takes this action in accordance with the Federal Advisory Committee Act, which requires rechartering advisory committees at least every 2 years to insure against continuing committees that no longer carry out their original purposes. The Committee will continue to advise the Director of the Office of Personnel Management in matters pertaining to establishing prevailing rates under 5 U.S.C., chapter 53, subchapter IV, as amended.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph P. Reid, (202) 632-4533.

Office of Personnel Management.

Donald J. Devine,

Director.

Federal Prevailing Rate Advisory Committee

CHARTER

A. *Official Designation.* The Federal Prevailing Rate Advisory Committee.

B. *Objectives and Scope.* The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under 5 U.S.C., chapter 53, subchapter IV, as amended.

C. *Duration.* There is no time limit set forth in 5 U.S.C., chapter 53, subchapter IV. The mandate of the Committee is one of a continuing nature, until amended or revoked by appropriate act of Congress.

D. *Responsible Agency and Official.* The Committee makes recommendations to the Office of Personnel Management. The Chairman of the Committee reports to the Director, Office of Personnel Management.

E. *Agency Providing Support.* United States Office of Personnel Management.

F. *Committee Responsibilities.* The Committee is advisory. Its primary responsibility is to study the prevailing rate system and from time to time advise the Office of Personnel Management thereon. The Committee shall submit an annual report to the Office of Personnel Management and the President, for transmittal to Congress, as required by section 5347(e) of 5 U.S.C.

G. *Estimated Annual Operating Costs in Dollars and Staff-Years.* Using current salary schedules, $160,000 and 3 staff-years.

H. *Estimated Number and Frequency of Meetings.* The meeting schedule contemplated for the Committee is one meeting each week throughout a calendar year; more frequent meetings shall be scheduled when deemed necessary.

I. *The Committee's Termination Date.* There is no statutory termination date. The Chairman of the Committee serves for a 4-year term, as set forth in section 5347(a)(1) of 5 U.S.C. Management members serve at the pleasure of the designating authority. Labor membership is reviewed every 2 years to assure entitlement under the criteria set forth in section 5347(b) of 5 U.S.C.

J. *Date Filed.* September 4, 1984.

[FR Doc. 84-23274 Filed 8-31-84; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14109; 812-5729]

In the Matter of Hartford Money Market Fund, Inc. et al. and HVA Stock Fund, Inc., et al.; Filing of Application

Notice is hereby given that Hartford Money Market Fund, Inc., Hartford Plaza, Hartford, Connecticut 06115, Hartford Advisers Fund, Inc., Hartford Government Securities Fund, Inc., Hartford Aggressive Growth Fund, Inc., (hereinafter collectively referred to as "Hartford Family of Funds" or "Applicants") and HVA Stock Fund, Inc., HVA Fixed Income Fund, Inc., HVA Money Market Fund, Inc., HVA Government Securities Fund, Inc., HVA Aggressive Growth Fund, Inc., and HVA Advisers Fund, Inc. (hereinafter collectively referred to as "HVA Family of Funds" or "Applicants") filed an application on December 20, 1983, and amendments thereto on March 15, 1984 and August 20, 1984, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants and any other similar investment company which may become a member of the Hartford Family of Funds or the HVA Family of Funds in the future from the provisions of Rule 20a-2(a)(9) under the Act to the extent indicated below. All interested persons are referred to the application on file with the Commission for the complete representations of the Applicants, which are summarized below, and are referred to the Act and the Rules thereunder for a statement of the relevant provisions.

Applicants represent that the Hartford Investment Management Company (hereinafter "HIMCO" or "Adviser"), a wholly-owned subsidiary of Hartford Variable Annuity Life Insurance Company (hereinafter "HVA"), serves as investment adviser to each member of the Hartford Family of Funds and HVA Family of Funds. HVA Advisers Fund, HVA Aggressive Growth Fund, HVA Stock Fund, and HVA Fixed Income Fund have also retained a sub-investment adviser. Certain of the Applicants intend to hold an annual meeting of shareholders on October 31, 1984 for the purpose of, among other things, electing nominees as directors of their funds and approving or disapproving the investment advisory agreements with HIMCO and the sub-adviser. In connection with this meeting, these Applicants intend to mail shareholders required proxy materials and request that they be allowed to omit from such materials the certified balance sheet of HIMCO.

In support of their application, Applicants state that the purpose of the Rule 20a-2(a)(9) requirement that a balance sheet of the adviser be included with proxy materials sent to fund shareholders is to enable fund shareholders to consider whether the adviser is financially able to perform the duties which it has agreed to perform, as set forth in the advisory agreement. Rule 20a-2(a)(9) provides, as here relevant, that the Commission may, upon a showing of good cause, permit the omission of the adviser's balance sheet if the adviser is primarily engaged in a business or businesses other than the underwriting or distribution of investment company securities or the performance of advisory services for registered investment companies. Because HIMCO is primarily engaged in the investment advisory business, it is not eligible for the discretionary relief set forth in Rule 20a-2(a)(9).

Applicants contend, however, that granting the relief requested would be consistent with the standards set forth in Section 6(c) of the Act because it is not necessary for shareholders to know the financial condition of HIMCO, as it may be from time to time, for two reasons.

First, Applicants assert that HIMCO is a wholly-owned subsidiary of HVA, a company with cash and investments totalling some $330,000,000 and assets totalling some $578,000,000 as of October 31, 1983. To ensure that the financial resources of HVA would be available to HIMCO if HIMCO experienced financial difficulties, HVA has guaranteed to provide sufficient capital if an when necessary to assure that HIMCO could meet all of its obligations as an investment adviser to Applicants until such time as a new investment adviser is selected.

Second, HIMCO renders only investment advice to the funds; the administrative management and distribution functions of the funds are performed by HVA and Hartford Equity Sales Company, Inc. ("HESCO"), respectively. Thus, even assuming HIMCO's financial failure, HVA and HESCO would continue to provide administrative management and distribution services to the funds and their operations would continue uninterrupted until a new adviser could be found.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 18, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23321 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23401; 70-7001]

Jersey Central Power & Light Co. et al.; Proposal To Issue and Sell Variable Rate First Mortgage Bonds

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Comapny ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania, 19605, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, wholly owned subsidiaries of General Public Utilities Corporation ("GPU"), a registered holding company, have proposed transactions subject to Sections 6(a), 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) thereunder.

JCP&L, Met-Ed, and Penelec ("Companies") propose to issue and sell for cash up to an aggregate of $20,000,000 principal amount of variable rate first mortgage bonds, to be dated the date of their issue and to mature serially at the rate of 5% of the aggregate original principal amount issued, beginning July 31, 1986, and quarterly thereafter until April 30, 1991 ("Bonds"). The Companies will issue and sell the Bonds to Mellon Bank, N.A., ("Millon"), pursuant to loan agreements between each Company and Mellon ("Agreement"). Of the aggregate $20,000,000 principal amount of Bonds, Met-Ed proposes to sell up to $10,000,000 principal amount of Bonds, and JCP&L and Penelec will issue $5,000,000 per Company. The Bonds are to be issued under the Companies' respective amended and supplemented first mortgage bond indentures, and will not be offered for resale to the public.

At certain times, the Bonds will be prepayable without penalty, and subject to mandatory repurchase by the issuer thereof under certain conditions, including the occurrence of a material adverse change in such issuer's financial condition or prospects. The principal amount of the Bonds will be payable in twenty equal quarterly installments commencing July 31, 1986. Interest on the unpaid principal amount will be payable at least quarterly, commencing October 31, 1984.

Each Company will pay interest on the unpaid principal based on its selection of one or more of three interest rate options, which may apply simultaneously to different portions of the loans for each of the three borrowing periods. The Companies' options are subject to limitations on the minimum principal and time terms, and rights to withdraw, suspend or convert rates reserved to Mellon under the Agreement.

The effective optional rates of interest will be determined on the date of issuance, and will be adjusted for closing fees of .375% of principal calculated annually from July 1, 1984 to the date of first issuance. From the first issuance until April 30, 1986, the Companies (based on rates in effect on August 24, 1984) may choose Mellon's prime rate (13%), a CD formula rate provided by the Agreement (14.7%), or a negotiated fixed rate not exceeding 16%. For the period from May 1, 1986 until April 30, 1989 the options (based on rates in effect on August 24, 1984) are .25% above prime (13.25%), the CD formula rate (15%), or a negotiated fixed rate not exceeding 16%. From May 1, 1989 until April 30, 1991 they (based on rates in effect on August 24, 1984) may select a rate of .5% above prime (13.5%), the CD formula rate (15.2%), or a negotiated fixed rate not exceeding 16%.

In the event that issued Bonds fail to receive an "investment grade" rating, the Companies must limit their payments on common and preferred stock according to a formula provided for each Company in the Agreements.

The proceeds from the sale of the Bonds will be used by the Companies to construct a Control Room Simulator Facility ("CRS") for Unit 1 of the Three Mile Island nuclear generating station, in which they own undivided interests as follows: Met-Ed—50%; JCP&L—25%, Penelec—25%. The Companies anticipate that contruction of the CRS will commence in 1984 and will be completed in the spring of 1986. Until the proceeds of the Bonds are needed for this purpose, they will be left on deposit in an interest bearing account with Mellon. The Companies expect to withdraw approximately $7,000,000 immediately after the issuance and sale of the Bonds and to withdraw the remainder (upon certifying the use to which such funds will be put) as and to the extent needed to meet the construction costs of the CRS.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specifed above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23323 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21268; SR-Amex-84-23]

American Stock Exchange, Inc.; Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 22, 1984, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, New York 10006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The rule change would permit Amex to introduce half-point (50 basis points) intervals in strike prices for its Treasury bill ("T-bills") options. Under existing rules, T-bill options have full point (100 basis points) intervals between strike prices. Amex states that the existing full point intervals do not provide adequate hedging opportunities during periods of low volatility. Accordingly, Amex believes the additional flexibility for hedgers, as well as traders, in T-bill options will be provided by narrowing strike prices to half-point intervals. In order to avoid the proliferation of strike prices by the addition of half-point intervals, Amex also proposes to eliminate certain outstanding T-bill options series which have no open interest when the half-point strike prices are introduced.[1]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days, from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to file No. SR-Amex-84-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the introduction of half-point strike pirces for T-bill options should enhance the utility of such options for market participants without resulting in an unnecessary proliferation of strike prices. In light of this fact, the Commission believes accelerated approval is appropriate.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23322 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21269; File No. SR-MSE-84-4]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Stock Exchange

The Midwest Stock Exchange, Inc. submitted on July 23, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Article XXX, Rule 1, Interpretations and Policies .01 of the MSE rules to increase the number of days the Committee on Specialist Assignment and Evaluation ("the Committee") or a designated subcommittee thereof has to deliberate on and respond to written agreements or proposals to exhcange existing assignments submitted by specialists before such proposals become effective. The proposed rule change would increase the ten day Committee deliberation period to thirty days. The MSE has stated in its filing that, in addition to providing a more adequate time period in which to shcedule a meeting of the Committee or a subcommittee, the proposed amendment will allow a sufficient time period in which to schedule personal appearances when necessary for individuals submitting a proposal to the Committee. According to the MSE, the proposed rule change is consistent with Section 6 of the Act in that it helps remove an impediment to a free and open market and, in general, protects investors and the public interest in that the Committee charged with the responsibility of allocating stocks and evaluating specialist performance is afforded a more reasonable time frame in which to perform certain of these duties.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-MSE-84-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Puclic Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

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[1] It is the Commission's understanding that the rule change will initially result in the following strike prices for the 13-week T-bill options traded on Amex: September expirations will have strike prices of 89, 89½, 90, 90½, and 91 (strike prices of 92 will be eliminated and 89½ and 90½ added); December and March expirations will both have strike prices of 89, 89½ and 90 (thus, strike prices of 91 will be eliminated and 89½ added).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23324 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21267; File No. SR-MSTC-84-6]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co. Relating to a Change in NIDS Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 14, 1984, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is MSTC's Price Revision Schedule, which modifies MSTC's NIDS Fees.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The proposed price modifications, effective with service beginning July 1, 1984, reflect fee increases imposed by the Depository Trust Company (DTC) in connection with the National Institutional Delivery System (NIDS). On June 15, 1984 DTC announced that it would impose a 15% surcharge on its monthly billing to Participants. Consequently, MSTC must pass through this surcharge to its Participants who receive DTC-generated reports through their NIDS activity. This increase is consistent with MSTC's policy that services' fees fairly cover their associated costs.

Additionally, MSTC is clarifying the other NIDS charges. The NIDS service fee previously imposed for a "deliver/receive ticket (for ineligible securities settlement)" is now described as an "ineligible trade report" line item; the service fee is unchanged. As described in the attached MST Administrative Bulletin, NIDS confirms are $0.25, which is the amount previously filed with the Commission (See SR-MSTC-83-20). A new optional service, receipt of a "T+4 cumulative trade report," has been added, with a fee of $0.09 per report. These changes will make MSTC's services consistent with the NIDS system as presently operated by the depositories.

The proposed fee schedule is consistent with Section 17A of the Securities Exchange Act of 1934, in that the fee schedule will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. In addition, the price changes provide for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed change in fees will have an impact on competition, but such impact will not impose a burden on competition, but will relieve a burden on or otherwise promote competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 23, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23327 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21270; File No. SR-MSE-84-5]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc., Relating to Committee Quorums

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1984, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article IV, Rule 9 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

Article IV—Committee Quorum

Rule 9. One half of its members, including ex-officio ones, shall constitute a quorum of each committee provided for in this Article, *except for the Committee on Specialist Assignment and Evaluation. For such Committee, one-half of its members, not including ex-officio members, shall constitute the number of committee members required for a quorum. Ex-officio members may be included for purposes of determining a quorum, provided that at least one half of those members present are not ex-officio ones.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article IV, Rule 9, which describes the Committee on Specialist Assignment and Evaluation, provides that the Committee shall be composed of not less than eight members, including ex-officio members. In order for the Committee to act in most instances (except for assignments of issues) a quorum of one-half of the Committee members, including ex-officio ones, is needed. Problems have arisen in the past in obtaining a quorum at any particular meeting due to schedule problems, etc.

The proposed change would continue to allow the Committee to be composed of eight or more members but would lower the required number of members for a quorum from one-half the total number of Committee members including the three ex-officio members to one-half the number of members, but excluding the number of ex-officio members. As presently constituted with ten members a quorum needed for the Committee to act under this proposal would be four. In counting for quorum purposes, ex-officio members in attendance could be included but a quorum would exist only if half of those present were non-ex-officio members of the Committee. For example, under this proposal a quorum for the ten member Committee would be four, two of which could not be ex-officio members.

This change would ensure that at least half or more of the members constituting a quorum which are not directly affiliated with the Exchange as officers would be present whenever any policy decision is needed to be made by the Committee. The change will also give the Committee more flexibility in scheduling meetings and making decisions.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it helps to remove an impediment to a free and open market and, in general, protects investors and the public interest in that the Committee charged with the responsibility of allocating stocks and evaluating specialist performance is given greater flexibility to perform these duties on a more timely basis.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 24, 1984.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23326 Filed 8-31-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21271; File No. SR-PSDTC-84-9]

Self-Regulatory Organizations; Filing of Proposed Rule Change of Pacific Securities Depository Trust Co.

August 28, 1984.

On August 13, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The Commission is publishing this notice to solicit comment on the proposal.

The proposal would establish PSDTC as a "qualified registered securities depository" for purposes of Securities Exchange Act Rule 17Ad-14, 17 CFR 240.17Ad-14. Rule 17Ad-14 requires registered transfer agents to open special accounts with qualified registered securities depositories when acting as tender agent or exchange agent in connection with tender or exchange offers for depository eligible securities. Currently, the only qualified registered securities depositories are Depository Trust Company and Midwest Securities Trust Company.

The proposal includes PSDTC procedures governing the special transfer agent accounts, particularly the processing of movements to and from the accounts to reflect tenders and withdrawals. More specifically, the proposal would establish PSDTC procedures for opening the special accounts, tender of shares by participants, withdrawals from tendered positions, delivery of physical certificates, and payment for tendered shares.

Under the proposal, a tender or exchange agent (the "agent") must contact PSDTC as soon as a tender or exchange offer is announced and must enter into a Letter of Agreement with PSDTC making PSDTC procedures binding on the agent. The special account must be established within two business days after commencement of the tender or exchange offer.

Once an offer commences, participants may tender their share positions by submitting letters of authorization to PSDTC. Each day, for all letters of authorization submitted by 3:00 Pacific time, PSDTC will make book-entry movements of shares from each tendering participant's account to a single PSDTC internal account. After that time, PSDTC will make a single book-entry movement to transfer those shares from the internal account to the agent's account. By 8:00 a.m. Pacific time each day, PSDTC will release to the agent a position report reflecting the prior day's activity and a grand total of all tendered shares since the beginning of the offer. Also, PSDTC will send a weekly letter of transmittal to the agent indicating all shares tendered that week, unless the agent requires letters of transmittal more frequently.[1]

The proposal also enables participants to continue tendering shares directly to the agent by sending the agent a letter of transmittal. Participants then "cover" such letters by sending a copy to PSDTC along with a letter of authorization. PSDTC then would make book-entry movement of the shares in the same manner as shares tendered through PSDTC, *i.e.*, first into the internal PSDTC account and then into the agent's account. The daily position reports to agents will indicate which letters of transmittal are covered by the prior day's movements.

Participants also may withdraw shares previously tendered by submitting withdrawal instructions to PSDTC. The proposal provides that withdrawal instructions must be submitted "timely." PSDTC will submit corresponding instructions to the agent the day after receiving the instructions, together with the daily position report. Upon confirmation of the instructions by the agent, which should be made by noon the same day, PSDTC will return withdrawn shares to participants' accounts by book-entry movement. These movements will be reflected the next day on the agent's position report.

Two business days after the expiration of the offer or any protect period, PSDTC generally will make physical delivery of tendered shares to the agent. These time frames, however, can be adjusted by agreement of PSDTC and the agent. The agent must confirm to PSDTC immediately the total number of shares delivered and verify that all shares are in good deliverable form.

Finally, the proposal provides that agents must inform PSDTC when a date for release of payment to tendering participants is determined. Agents also must provide the proration date for acceptance of shares, if applicable.

PSDTC believes that the proposal is consistent with the requirements of the Act in general, and Section 17A of the Act in particular. Specifically, PSDTC believes that the proposal would reduce processing costs for tender and exchange offers by increasing processing efficiencies. Also, PSDTC believes that the proposal would facilitate prompt and accurate clearance and settlement of securities transactions, and would improve safeguarding of securities and funds, by bringing additional tender and exchange offer activities within the automated securities processing environment.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, comments are invited within 21 days after this notice is published in the **Federal Register**. Please file six copies of comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–PSDTC–84–9.

Copies of the proposal, all subsequent amendments, all written statements with respect to the proposal which are filed with the Commission, and all written comments relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the proposal and any subsequent amendments also will be available for inspection and copying at the principal offices of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–23325 Filed 8–31–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB July 25–August 21, 1984

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, during the period July 25–August 21, 1984, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426–1887 or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. As needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

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[1] PSDTC will not collect any solicitation fees payable to eligible participants. Rather, PSDTC will identify eligible participants and will forward appropriate documentation of those claims to the agent at the same time letters of transmittal are forwarded to the agent. The agent must pay eligible participants directly.

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for, and uses to be made of, the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from July 25–Aug. 21, 1984:

DOT No. 2469
OMB No. 2133–0015
By: Maritime Administration
Title: Trustee's Annual Supplemental Certification
Forms: MA–580
Frequency: Annually
Respondents: U.S. Banks and Trust Companies.

Need/Use: Banks and trust companies which wish to serve as Trustees for certain ship financing trusts are required to furnish specified supplemental information annually in order to remain on the roster of approved trustees.

DOT No. 2470
OMB No. 2115–0017
By: U.S. Coast Guard
Title: Application for Approval for Marine Event
Forms: CG–4423
Frequency: On occasion
Respondents: Sponsors of a marine regatta, event, or parade.

Need/Use: This information collection is needed if the event is in navigable waters to provide effective navigational control over regattas and marine events performed on navigable waters of the U.S. It is also used to insure safety of life in the regatta or parade area. The information is used by the Coast Guard to determine the type and degree of supervision needed.

DOT No. 2471
OMB No. 2125–0080
By: Federal Highway Administration
Title: Medical Qualification Requirements
Forms: None
Frequency: Recordkeeping requirements 3 years
Respondents: Motor Carriers/Drivers.
Need/Use: To ensure that each driver regularly employed by a motor carrier is medically qualified to operate on the highways of the U.S. To qualify, a driver must have a physicians' medical certificate or waiver issued by FHWA. Where there is disagreement between physicians concerning a driver's qualifications, a driver or motor carrier must submit an application for the determination by FHWA of the driver's medical qualification.

DOT No. 2472
OMB No. 2133–0036
By: Maritime Administration
Title: Relative Cost of Shipbuilding in the Various Coastal Districts of the United States
Forms: MA–939
Frequency: Annually
Respondents: Shipyards.
Need/Use: To fulfill a Congressional requirement to annually survey the relative cost of building or reconditioning vessels in shipyards in all U.S. coastal districts and to offer recommendations on how shipyards may compete for work on an equal basis.

DOT No. 2473
OMB No. 2115–0016
By: U.S. Coast Guard
Title: Characteristic of Liquid Chemicals Proposed for Bulk Movement (by waterways and ports)
Forms: CG–4355
Frequency: On occasion
Respondents: Chemical manufacturers.
Need/Use: This information collection is needed to administer and enforce the laws and regulations for the safe transportation of hazardous materials by water. The Coast Guard evaluates the information to determine the kind and degree of precaution which must be taken to protect the vessel, operating personnel and those segments of the general public who reside along the proposed route.

DOT No. 2474
OMB No. 2115–0005
By: U.S. Coast Guard
Title: Applications for Waiver Order (Navigation and Vessel Inspection)
Forms: CG–2633
Frequency: On occasion
Respondents: U.S. Flag Merchant Ship Owners and Operators.
Need/Use: This information collection is needed and used to ensure safety of vessels at sea and in U.S. waters. The information collection allows owners and operators to apply for a waiver from the inspection laws based on the urgency of sailing and on national defense considerations.

DOT No. 2475
OMB No. 2125–0027
By: Federal Highway Administration
Title: Speed Monitoring Program Procedural Manual
Forms: None
Frequency: Quarterly and Annually
Respondents: State Highway Agencies.

Need/Use: Needed to provide reliable data to be included in the annual certification of 55 miles-per-hour speed limit enforcement by the States.

DOT No: 2476
OMB No: 2120–0506
By: Federal Aviation Administration
Title: Learning through Aviation—Writing Contest
Forms: None
Frequency: Annually
Respondents: School children—grades 4–12.

Need/Use: This collection of information is a public relations effort on the part of FAA to provide awareness and understanding of aviation.

DOT No: 2477
OMB No: New
By: Federal Highway Administration
Title: Motor Carrier Safety Assistance Program
Forms: None
Frequency: Quarterly
Respondents: State Highway agencies

Need/Use: For FHWA to determine that a State meets the statutory and administrative criteria to be eligible for a grant and to justify grants for succeeding years.

DOT No: 2478

OMB No: 2133–0017
By: Maritime Administration
Title: Application for Operating-Differential Subsidy
Forms: MA–632
Frequency: On occasion
Respondents: Shipowners or operators.

Need/Use: The application is used as an administrative control for the program and to ensure that adequate data is available to determine an applicant's fitness for subsidy.

DOT No: 2479
OMB No: 2115–0035
By: U.S. Coast Guard
Title: Defect/Compliance Report: Campaign Update Report
Forms: CG–4917, CG–4918
Frequency: On occasion
Respondents: Recreational Boat and associated equipment manufacturers.

Need/Use: This information collection is needed to determine if boat manufacturers are complying with 33 CFR Part 179. The Coast Guard uses the information to evaluate the severity of defects and failures to comply with regulations relative to safety of the boating public. Also, this information is used to monitor the progress of the manufacturers relative to recalls of affected products.

DOT No: 2480
OMB No: 2125–0519
By: Federal Highway Administration
Title: Developing and Recording Costs for Utility Adjustments
Forms: None
Frequency: As needed
Respondents: Utility Companies.

Need/Use: Utility companies are required to maintain adequate records to support costs incurred where movements of utilities are to be paid by Federal-aid highway projects along the rights-of-way.

DOT No: 2481
OMB No: 2125–0521
By: Federal Highway Administration
Title: Developing and Recording Costs for Railroad Adjustments
Forms: None
Frequency: As needed
Respondents: Railroad companies.

Need/Use: Railroad companies are required to maintain adequate records to support costs incurred for railroad movements which are required along Federal-aid highway projects in order to complete the highway. Such costs are reimbursable from highway funds.

DOT No: 2482
OMB No: 2115–0528 (combined with 0529, 0530, 0531, 0532)
By: U S. Coast Guard
Title: Financial Responsibility for Water Pollution
Forms: CG–5358–11, CG–5353–8, CGHQ 5358–10, CG–11
Frequency: On occasion
Respondents: Owners and Operators of Vessels over 300 tons.

Need/use: This information collection is needed and used to ensure that the statutory mandates of 33 USC regarding water pollution responsibility are complied with. It combines applications for and issuance of financial responsibility forms and certificates.

DOT No. 2483
OMB No. 2127–0021
By: National Highway Traffic Safety Administration
Title: National Accident Sampling System (NASS) Interview Forms
Forms: HS–428, 429 and 433
Frequency: On occasion
Respondents: Individuals/housholds and State and local governments.

Need/Use: NASS is a nationally representative sample of vehicle damage, occupant injury, and dynamics of accidents. The data is used to support motor vehcile and highway safety research. This revision will enhance the data relative to causes of accidents.

DOT No. 2484
OMB No. 2115–0042
By: U.S. Coast Guard
Title: Certificate of Discharge to Merchant Seamen
Forms: CG–718A
Frequency: On occasion
Respondents: Merchant Seamen.

Need/Use: This information collection is needed and used to establish evidence of sea service for merchant ratings and to establish proof of eligibility for certain union benefits. The information is also used by the Federal Government for merchant marine workload statistics.

DOT No. 2485
OMB No. 2127–0511
By: National Highway Traffic Safety Administration
Title: Child Restraint Systems (49 CFR 571.213, Riding in Vehicles)
Forms: None
Frequency: On occasion
Respondents: Manufacturers of Child Restraints (for riding in vehicles).

Need/Use: Manufacturers are required to provide each child restraint with a permanently attached label and an instruction brochure, giving the model, manufacturer's name, date of manufacture and certifying that the seat conforms with applicable standards.

DOT No. 2486
OMB No. 2120–0015
By: Federal Aviation Administration
Title: FAA Airport Master Record
Forms: FAA Forms 5010–1, 5010–2, 5010–3, 5010–5
Frequency: Annually and on occasion
Respondents: State or Local Governments and Businesses.

Need/Use: The FAA Act of 1958 directs the FAA to collect and disseminate information about civil aeronautics. The information is required to carry out the FAA missions related to safety, forecasting, and airport engineering. The data is the basic source of data for private, state and federal aeronautical charts.

Issued in Washington, D.C. On August 28, 1984.

Jon H. Seymour,

Deputy Assistant Secretary for Administration.

[FR Doc. 84–23389 Filed 8–31–84; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[AC No. 21–21]

Advisory Circular—Use of Automobile Gasoline in Agricultural Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circular (AC) No. 21–21, Use of Automobile Gasoline in Agricultural Aircraft.

On April 27, 1984, (49 FR 18206) proposed AC 21–DD was published in the **Federal Register** for public comment. Interested persons were given until June 26, 1984, to submit their views on the proposal. The comments were evaluated and it was determined that issuance of the AC, incorporating one clarifying change recommended by a commenter, would be in the public interest and safety would not be compromised.

Notice is hereby given that, after review of the comments and incorporation of the change based on comments, the FAA issued AC 21–21, Use of Automobile Gasoline in Agricultural Aircraft, on August 24, 1984.

Interested persons may obtain the AC from the U.S. Department of Transportation, Subsequent Distribution Section, M–494.3, Washington, D.C. 20590. A copy of the FAA discussion and disposition of comments may be obtained from the Federal Aviation Administration, Office of Airworthiness, Aircraft Manufacturing Division (AWS–200), 800 Independence Avenue, SW., Washington, D C. 20591.

Issued in Washington, D.C., on August 24, 1984.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 84–23277 Filed 8–31–84; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from October 22, at 9 a.m., through October 25, 1984, at 4 p.m., at FAA Headquarters, 800 Independence Avenue, SW., Washington D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than October 19, 1984, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Service, AAT-301, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426–3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is scheduled to be held from January 15 through January 18, 1985, in Miami, Florida.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on August 24, 1984.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 84–23280 Filed 8–31–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0682
Form Number: IRS Form 6893
Type of Review: Revision
Title: Tax Counseling for the Elderly (TCE) Test

OMB Number: 1545–0683
Form Number: IRS Form 6894
Type of Review: Revision
Title: Tax counseling for the Elderly (TCE) Retest

OMB Number: 1545–0550
Form Number: IRS Form 6744
Type of Review: Revision
Title: Volunteer Assistor's Test

OMB Number: 1545–0715
Form Number: IRS Form 1099–B
Type of Review: Revision
Title: Statement of Recipients of Broker and Barter Exchange Transactions

OMB Number: 1545–0172
Form Number: IRS Form 4562
Type of Review: Revision
Title: Depreciation or Amortization

OMB Number: 1545–0085
Form Number: IRS Form 1040A
Type of Review: Revision
Title: U.S. Individual Tax Return

Clearance Officer: Garrick Shear, (202) 566–6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Norman Frumkin, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Savings Bonds Division

OMB Number: 1535–0001
Form Number: SB–80 and SB–80A
Type of Review: Extension
Title: United States Savings Bonds Payroll Savings Report

Clearance Officer: William McCarney (202) 634–5295, Room 219, 1120—20th Street, NW., Washington, D.C. 20226

OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

James V. Nasche, Jr.,

Departmental Reports, Management Office.

[FR Doc. 84–23316 Filed 8–31–84; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 172
Tuesday, September 4, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:00 a.m., Friday, September 7, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: FY 86 Budget.

The staff and Commission will discuss issues related to the Fiscal Year 1986 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-68000.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84-23434 Filed 8-30-84; 2:25 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 6, 1984.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: *NEISS/Alternate Data Sources: Contractor Briefing*

The Contractor for the Hazard Data Systems Study will brief the Commission concerning their findings for available options for collecting injury data.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492—5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492—6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84-23434 Filed 8-30-84; 2:25 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 5, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Fiscal Year 1986 Budget

The staff and Commission will discuss issues related to the Fiscal Year 1986 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492-6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84-23435 Filed 8-30-84; 2:25 pm]

BILLING CODE 6355-01-M

Reader Aids

Federal Register

Vol. 49, No. 172

Tuesday, September 4, 1984

INFORMATION AND ASSISTANCE

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

34799-35000............................4

LIST OF PUBLIC LAWS

Last List August 31, 1984

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register**, but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 4214 / Pub. L. 98-409

To establish a State Mining and Mineral Resources Research Institute program, and for other purposes. (August 29, 1984; 98 Stat. 1536) Price: $1.75

H.J. Res. 452 / Pub. L. 98-410

Recognizing the important contributions of the arts to a complete education. (August 29, 1984; 98 Stat. 1543) Price: $1.50

TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
September 4	September 19	October 4	October 19	November 5	December 3
September 5	September 20	October 5	October 22	November 5	December 4
September 6	September 21	October 9	October 22	November 5	December 5
September 7	September 24	October 9	October 22	November 6	December 6
September 10	September 25	October 10	October 25	November 9	December 10
September 11	September 26	October 11	October 26	November 13	December 10
September 12	September 27	October 12	October 29	November 13	December 11
September 13	September 28	October 15	October 29	November 13	December 12
September 14	October 1	October 15	October 29	November 13	December 13
September 17	October 2	October 17	November 1	November 16	December 17
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September 25	October 10	October 25	November 9	November 26	December 24
September 26	October 11	October 26	November 13	November 26	December 26
September 27	October 12	October 29	November 13	November 26	December 26
September 28	October 15	October 29	November 13	November 27	December 27

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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Animal Biologics
Animal and Plant Health Inspection Service

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Pesticides and Pests
Environmental Protection Agency

Savings and Loan Associations
Federal Home Loan Bank Board

Trade Practices
Federal Trade Commission

Wine
Alcohol, Tobacco and Firearms Bureau

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The President

Memorandum of August 30, 1984

Memorandum for the United States Trade Representative

Pursuant to Section 6 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 10922(*l*) (1) and (2)), I hereby extend for an additional two years the moratorium imposed by that Section and all actions taken by me under that Section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1986, unless earlier revoked or modified. This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, August 30, 1984.

[FR Doc. 84-23539
Filed 8-31-84; 1:53 pm]
Billing code 3195-01-M

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 543 and 563

[Docket No. 84-461]

Amendments Regarding Corporate Titles of Federal Associations and Advertising of Insured Institutions

August 27, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending its regulations to require more informative corporate titles for federally chartered savings associations and, correspondingly, more specific identification of insured institutions in advertising. Corporate titles and certain forms of advertising in use on May 4, 1984, are exempt from the changes.

EFFECTIVE DATE: September 28, 1984.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Attorney, (202) 377-6962, Diane Menefee, Paralegal, (202) 377-7059, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 84-200, (49 FR 19029, May 4, 1984) the Federal Home Loan Bank Board ("Board") proposed to amend its corporate title regulations for federally chartered savings and loan associations and savings banks ("Federal associations"), and its advertising regulations for institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation and federal savings banks whose accounts are insured by the Federal Deposit Insurance Corporation ("insured institutions"). This action was proposed because of the Board's belief in the importance of distinguishing thrifts from other financial institutions. The proposed changes were intended to ensure that such institutions not adopt titles or advertising practices that would mislead the public by appearing to characterize them as commercial banks or other types of institutions.

In the Board's view, this distinction was particularly important in light of the passage of the Garn-St Germain Depository Institutions Act of 1982 ("Garn Act"), Pub. L. 97-320, October 15, 1982. The Garn Act authorized the Board to charter new federal savings banks and federal stock savings and loan associations, and permitted savings banks to convert to federal charter but retain Federal Deposit Insurance Corporation ("FDIC") insurance of accounts. Because of the proliferation of types of federal thrift institutions, the Board was concerned that there was an increased risk of public confusion as to the identity and nature of the institutions with which the public has dealings. In addition, certain institutions proposed corporate names which would not identify them as depository institutions of any kind. In the majority of states, savings banks were unknown before the Garn Act and a title which included the word "bank" without the word "savings" would evoke thoughts only of commercial or industrial banks in the minds of consumers. The proposed amendments were intended to prevent the adoption of corporate titles or advertising practices that create such public misperceptions, by, among other things, appearing to characterize thrift institutions as commercial banks or other types of institutions.

The comment period for the proposal ended on July 3, 1984. The Board received 60 public comment letters, of which 52 were from thrift institutions and their representatives, seven from commercial bank representatives, and one from an advertising agency.

The thrifts generally opposed adoption of the rule, with three of that group suggesting modifications. The commercial banks, with one exception, were supportive of the proposal on the grounds that the rules were needed and would help the public differentiate between thrifts and other financial institutions.

A summary of the comments received is set forth below.

I. General Comments

Comments which did not respond to any particular provision of the proposed rule, but rather focused on the need for the regulation, centered around the issue of consumer confusion.

Eleven respondents felt that consumers are not confused and are generally sophisticated and knowledgeable about the various types of financial institutions available to them. One commenter stated his belief that it was inappropriate for the Board to go beyond regulating to prevent misrepresentation and to begin regulating against possible confusion, while another commenter stated that the Board has not proved that any confusion exists. Another view held that the issue of confusion was unimportant since consumers perceive commercial banks and thrifts similarly already with no adverse effects. One thrift agreed that there probably is some need for direction, but felt that use of the word "savings" in the titles of associations was not the answer.

Two commenters cited a survey conducted in 1978 by the New York League of Savings Institutions which found that the vast majority of the public cannot differentiate among the various types of financial institutions no matter what the title. They cited this study to support their contention that the regulation would serve no useful purpose and that adding the word "savings" is not going to clear up the confusion.

II. Section 543.1—Corporate Titles

Section 543.1 of the proposed regulation would require a federal association's title to include the word "savings" and in some manner indicate that it is a federal association. The most frequently cited objection to this requirement, mentioned by 21 of the respondents, was that it would inhibit the ability of thrifts to communicate the availability of new services to the consumer and would undermine the efforts of thrifts to provide all the financial needs of their customers. Six of the comments received, including those from an industry-wide group, stated that the use of the word "savings" in the title of thrifts does not accurately describe the nature of the industry today or its expanded services. Many also felt that in order to survive, thrifts must be allowed to compete in the marketplace and emphasize their new services. They believe the proposed rule would put them at a disadvantage in developing the identity they need to compete successfully. Use of the word "savings" was perceived to be misleading, too restrictive, and counter to the spirit of the Garn Act, the intent of which was to allow thrifts to be more competitive and provide new services to consumers.

Nine of the comments received addressed the "grandfathering" provisions of § 543.1 which would exempt corporate titles in use on the date the proposed regulation was published. They felt that grandfathering titles already changed would give an unfair competitive advantage to these associations. One suggested that, rather than grandfathering these titles, the Board allow them a certain period of time, perhaps 24 months, within which to bring themselves into compliance with the new rule. Two respondents suggested that if the rule is adopted, all associations that have changed titles should be grandfathered completely and exempted from both the corporate title and the advertising provisions of the regulation.

Other commenters complained that competing state associations would not have to change their names and would have an unfair competitive advantage. One association stated it would suffer undue hardship if forced to change its short title because longer names are harder to remember and the change would confuse the public. Three commenters felt that current rules against misrepresentation are sufficient to ensure that thrifts do not hold themselves out to be what they are not, and that, in any event, use of the word "savings" would not necessarily clarify what type of institution it was. An industry trade group indicated its belief that associations converting to a federal charter should be exempted and not made to change their names beyond adding "FSB" or "FA" to their titles. This is particularly true, the organization asserted, for associations that have had a name for many years to which much consumer loyalty and goodwill is attached. Two responses questioned how using "savings" in their titles was going to emphasize the real estate lending role of thirfts. A suggestion was made by three of the responding associations that rather than using "savings" in their title thrifts instead be required to identify themselves as being insured by the FSLIC. Two associations felt that they would be unable to generate mortgage loan business if they called themselves "savings" institutions because the public would tend to think that the only services they provide are savings accounts.

III. Section 563.27—Advertising

The advertising provisions of the proposed regulation would require that (a) no insured institution shall use advertising that is inaccurate or in any way misrepresents its services, contracts, investments or financial condition; and (b) any advertising specifically indicate that an insured institution is a savings institution. Office signs existing on May 4, 1984, that depict the name of the insured institution would be grandfathered for as long as the institution chose to use its grandfathered corporate title.

Eight of the respondents felt strongly that additional financial hardship would result if the advertising regulations were adopted. They believed that changing their logos and signs would be prohibitively expensive and cause further damage to thrifts' already fragile condition. One thrift estimated that this rule could cost even a small institution with only ten branches a minimum of $50,000 for signs alone, and stated that costs would run much higher—to half a million dollars or more—for larger institutions with 20 or 30 branches.

Two thrifts wrote to say that they currently use "savings and loan association" as part of their corporate titles, and the titles would not, therefore, need to be grandfathered. However, they went on to explain that they have signs at existing offices that say only "X Federal," which would have to be redesigned according to the provisions of the advertising regulation. The associations asserted that costs to change the signs would be staggering and suggested that the Board allow existing signs to remain, provided that the associations place their full name on doors and windows. A group representing thrift institutions raised this same issue on behalf of its members who will find themselves in the same position as these two associations.

The issue of public confusion was mentioned by both those that opposed the advertising regulation and those that supported it. While a few commenters argued that there was no consumer confusion, at least eight believed that the advertising rule would add to any public confusion that already exists or, at the very least, not aid in clearing it up. One reason given for this was that some thrifts will now advertise themselves as "savings" institutions while other will not. They also believe that use of "disclaimer" language in advertising or use of the words "savings institution" will create the impression in the public eye that thrifts and savings banks are not eqaual to "real" banks, and cannot offer competitive services. An industry group expressed the view that use of the word "savings" may lead the public to believe that there is a difference between the rates being advertised by banks and those being advertised by savings institutions.

If an association with existing grandfathered signs opened a new branch or acquired additional offices through merger or bulk purchase of assets, the proposal would exempt any new sign to the extent it did not comply with the advertising rule. Two institutions felt that new branches should be allowed to display the grandfathered name also, apparently not realizing that this was what the proposal allowed. Two thrifts commented that the public perceives no real difference between thrifts, savings banks and commercial banks. In the view of these commenters, the public does not care so much about the type of institution as to cares about the type of services provided and the safety of its money.

A commercial banking industry representative was highly supportive of the advertising rule and enclosed copies of newspaper ads placed by a savings and loan association that the representative felt were misleading.

It was argued that it would be difficult to adapt a 30-second radio or TV ad to the required form because the additional language would be cumbersome, unnecessary and confusing. Two commenters suggested that the FDIC and the Board jointly adopt a bilaterial rule to clarify the differences between these institutions. They suggested that commercial banks be required to include "commercial" in their titles.

One institution requested that the Board distinguish between advertising and operational materials and limit the rule to TV, radio, newspaper ads and the like. It argued that stationery, memo paper, signature cards, account statements and similar items are intended for internal use or to communicate with existing customers who already know who and what they are.

Five commenters supported the advertising rule because they believed it would clarify the different types of institutions with which the public has dealings. One banking industry group requested that the Board limit the exemption for supplies of stationery and promotional materials for a one-year period, and also require that advertising comply with state laws.

A bankers' association wrote that misleading advertising was not in the public interest and thrifts who engage in such activities create public distrust and threaten the soundness of all financial institutions. This organization felt that no grandfathering should be allowed.

IV. The Final Regulation

After consideration of the public comments, the Board has determined to adopt the amendments substantially as proposed. The Board has considered carefully its concern that thrift institutions accurately convey in their corporate titles and advertising the type of institutions they are, and has weighted this concern against the comments received in response to the proposed regulation. The final regulation is intended to balance the concerns expressed by commenters against the need to clarify and keep distinct the identity of thrift institutions.

The issue of public confusion was discussed by many respondents. In considering this issue, the Board notes that, following the passage of the Garn Act, federal associatons have eagerly and aggressively begun marketing the new services they are now able to offer. Certain institutions have proposed corporate names which do not readily identify them as depository institutions of any kind. Savings banks, which did not exist in the majority of states prior to the Garn Act, are now becoming nore common. Because these institutions are relatively new, use of a title which contains the word "bank" without the modifying word "savings" may led the public to believe that they are commercial banks.

Studies conducted in the 1970s or earlier, and cited by some commenters to support their contention that the public does not or cannot differentiate between a savings institution and a commercial bank no matter what the title, do not convince the Board that this regulation lacks merit. First, the studies were conducted prior to the Garn Act and the advent of a much more complex financial environment. In the past, commercial banks and savings institutions were distinguished by the different services they offered. As savings institutions have acquired the ability to offer new services and restructure their corporate forms, these distinctions are in danger of becoming blurred. The Board believes it is incumbent upon it, and in the public interest, to keep the identity of different types of depository institutions as distinct as possible.

It never was the intent of the Garn Act to turn savings institutions into commercial banks. Indeed, the Garn Act emphasized the unique role of thrift institutions as primary lenders for the nation's residential real estate markets. The publicity given in recent years to the precarious financial state of many commercial banks and savings institutions, as well as the increased popularity and availability of high interest-bearing accounts and funds, has created a new awareness in some consumers of the variety of financial institutions and the services they offer. This does not mean, however, that all, or even most, consumers are sufficiently aware of these changes or readily distinguish among the various types of institutions, nor does it mean that there is no need to ensure that institutions do not use misleading titles or advertising. The retention of their special identity is important, both to preserve their role as primary lenders in the real estate mortgage market and to avoid confusing or misleading consumers as to their true identity.

The argument presented by some commenters, that use of the word "savings" in corporate titles will undermine their ability to attract loans for mortgages and therefore operate against the Board's expressed intent to preserve their role in this regard, the Board finds strained at best. Traditionally, titles of savings and loan institutions have included the word "savings." The identity of an association called, for example, First Federal Savings and Loan Assocaition, has been firmly established in the public mind as an institution that offered savings accounts and home mortgage loans. This was perceived to be their primary function. The Board does not, therefore, believe that use of the word "savings" in corporate titles will now lead the consumer to believe that savings accounts are the only function of any particular institution. The question then remains as to whether such public indentification will make it impossible for federal associations to relate their new and expanded services to the consumer. It is not the Board's design, in formulating this regulation, to hinder institutions in their attempts to sell their new services and compete in the marketplace. Indeed, it is and always has been of primary importance to the Boards that federal associations be able to compete succesfully in the marketplace and thus ensure their financial health and success. However, the Board must weight these concerns against the important need of institutions to maintain their identity as thrifts and not to mislead the consumer into believing that they are commercial banks. The Board believes that institutions are capable of making the services they offer known to the consumer without using corporate titles that are so vague as to be misleading. Certainly, it is not possible for any financial institution, commercial or otherwise, to identify, in its title alone, all the services it offers. Some of this must be left to the devices of advertising and promotion. The Board believes this to be an appropriate and reasonable approach.

The provision for "grandfathering" of titles in use on the publication date of the proposed rule was provided because it is not the Board's intention to require costly changes for those institutions that have recently converted or changed their titles in reliance upon then-existing regulations. Some commenters objected that this would give an unfair advantage to these grandfathered associations. After careful consideration of these comments, the Board feels that any advantage will be temporary and that the provisions of the advertising regulation will correct any imbalances. As indicated in the preamble of the proposal, it is estimated that only 21 associations and 39 savings banks have titles that will be grandfathered under the provisions of the new regulations, all other associations and savings banks already comply with the regulations; these 60 institutions will be required to comply with the Board's new advertising requirements. A savings bank, for example, could not simply use the phrase "bank" in advertising its name without indicating that it is a *savings* bank, even if its title is grandfathered and does not contain the word "savings."

The suggestion that institutions be allowed to comply with the regulation by simply adding "FSB" after their titles is not acceptable to the Board. Unless the words are spelled out clearly, the danger still exists that the titles will be misleading. It is also uncertian whether the majority of consumers are as yet aware of what the letters "FSB" stand for.

Additionally, it is possible that the letters "FSB" would be printed in so small a print as to be almost indiscernible. If the words "savings bank" are actually part of the title, this will not be possible.

With regard to the advertising rules, several commenters requested a modification to cure a situation peculiar to their associations and possibly others. These thrifts currently have corporate titles that do not need to be grandfathered because they already include the word "savings" in their titles (e.g., First Federal Savings and Loan Association). However, they are concerned that under the proposed advertising rule they would be forced to modify signs that now say only, for example, "First Federal," "Home Federal," or "First Fidelity," to include the word "savings." In order to address this concern, the final advertising rule has been modified to provide that if the word "bank" is not used in the advertising of institution's name, the word "savings" need not be used in such advertising. This will allow associations to continue using the above-described types of signs. It is the opinion of the Board that such signs are not misleading. These short-form titles have always signalled to the public that the institution is a thrift institution and it is not this type of advertising that the Board feels is misleading and is attempting to prevent.

The Board is aware of and has considered the arguments of some institutions that compliance with the provisions of this regulation might involve expenditure of substantial amounts of money for some institutions. However, the Board does not believe that it would be in the public interest to allow thrifts or savings banks to advertise themselves in misleading ways simply because not doing so might involve the expenditure of certain amounts of money. Therefore, the Board has minimized the impact of any financial burden by amending the reguatory language to make clear that the grandfathering of signs and materials applies to all insured institutions. Signs in existence or ordered on May 4, 1984, will be grandfathered as long as the institution continues to use the corporate titles it had at that date. Stationery and other promotional materials on hand as of that date may continue to be used until existing supplies are exhausted and the institution needs to reorder such materials.

Some institutions expressed a desire that all of their signs be exactly alike, and that new signs not be required to comply with the new regulation. As the Board indicated in the proposed regulation, all titles of federal associations in existence on May 4, 1984, may continue to be used. Should such an institution open a new office or acquire additional offices through merger or bulk purchase of assets, it could put up a new sign with that title or logo despite its noncompliance with the regulation. However, all other advertising would have to comply with the advertising regulations.

With regard to stationery, supplies and other such items, the Board does not feel it is appropriate to exempt these materials, as suggested by one respondent, from the advertising provisions of this regulation. The argument that these items are intended for internal use or are sent (as in the case of bills or statements of account) to those who already know the identity and type of association that they are dealing with, is not convincing. While part of what the respondent says is true, it is also true that an institution's stationery can be, and probably is, used to solicit new business and accounts. To require that some of these items must comply and other materials need not comply with the advertising provisions would put the Board in the untenable position of constantly ruling on each particular item, and inconsistency in advertising material may in itself create customer confusion. In addition, the Board believes institutions would find it to be to their advantage to have the information used in these items agree with the information presented in other forms of advertising. Indeed, this argument was put forward by the institutions themselves to support the idea that all signs should be grandfathered, regardless of when they came into being.

One of the industry representative groups indicated its belief that the Board does not have the authority to apply the rule to savings banks which are insured by the FDIC. Section 5(o) of the Home Owners' Loan Act was added by the Garn Act and allows state-chartered savings banks insured by the FDIC to convert into federal savings banks, if not in contravention of applicable state law. The Board was given statutory authority, and was directed by that section, to provide for the organization, incorporation, operation, examination, and regulation of such institutions. The Board therefore believes that applying its advertising rules to these institutions is an authorized and appropriate use of its statutory responsibilities.

In considering a final regulation, the Board did not lose sight of the fact that the majority of comments it received opposed the adoption of this regulation. The Board has endeavored, in adopting the final regulation, to meet as many of the concerns of the commenters as possible. The Board believes, however, that preserving the very distinct identity of thrift institutions is of paramount importance. Added to this is the weight that must be given to the need to protect the public interest and ensure that members of the public are not misled as to the nature of the institutions with which they may wish to do business.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives, and legal basis underlying this proposed rule.* These factors are discussed elsewhere in the supplementary information.

2. *Small entities to which the rule will apply.* The rule on corporate titles would apply only to savings and loan associations and savings banks that are federally chartered ("federal associations") including federal savings banks the accounts of which are insured by the Federal Deposit Insurance Corporation. The rule on advertising would apply to all institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation and to federal savings banks the accounts of which are insured by the Federal Deposit Insurance Corporation.

3. *Impact of the rule on small federal associations.* The rule would not have an adverse impact on small institutions. The changes are clarifying in nature, and thus would be expected to have a beneficial impact on large and small institutions alike.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap, or conflict with the rule.

5. *Alternatives to the rule.* The rule is intended to avoid possible confusion on the part of the public toward the regulated industry, and there are no alternative approaches that would have the intended result with a lesser impact on small entities.

List of Subjects in 12 CFR Parts 543 and 563

Savings and loan associations.

Accordingly, the Board hereby amends Part 543, Subchapter C, and Part 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 543—INCORPORATION, ORGANIZATION AND CONVERSION

1. Revise § 543.1(a) as follows:

§ 543.1 Corporate title.

(a) *General.* Except for corporate titles in existence or applied for as of May 4, 1984, a Federal association's title shall include the word "Savings" and in some manner indicate that it is a Federal association. A Federal association shall not adopt a title that misrepresents the nature of the institution or the services it offers.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

2. Revise § 563.27 as follows:

§ 563.27 Advertising.

(a) No insured institution shall use advertising (which includes print or broadcast media, displays and signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

(b) Any advertising shall specifically indicate that an insured institution is a *savings* institution, except that if the word "bank" is not used in the advertising of the institution's name, the word "savings" need not be used in such advertising. No insured institution shall advertise or hold itself out to the public as a commercial bank. Signs existing or ordered on May 4, 1984, depicting the name of the insured institution, may be used for as long as the institution chooses to continue to use the corporate title in existence on that date, and may also be used on offices established of acquired after that date for the same period. Stationery and other promotional materials on hand as of that date are exempt until such time as the insured institution needs to reorder such materials in the ordinary course of business.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464; secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726; Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-23357 Filed 9-4-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3138]

California-Texas Oil Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Glendale, Ca. company and its corporate president, among other things, to cease making mileage or emission improvement claims for the "AWECO Mileage Extender" or any gasoline additive or automotive device, unless the claims can be substantiated by competent and reliable scientific tests. The company must also prominently disclose any material limitations or inferences that can be drawn from test results used to substantiate mileage or emission reduction claims. The order further bars the company from making any fuel economy or automotive emissions performance claims using the phrase "up to" or words of similar import, unless a substantial number of consumers, driving under normal conditions, can achieve the level of performance claimed.

DATE: Complaint and Order issued July 16, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Paul R. Roark, 7R, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, Ca. 90024, (213) 209–7575.

SUPPLEMENTARY INFORMATION: On Tuesday, May 1, 1984, there was published in the **Federal Register**, 49 FR 18529, a proposed consent agreement with analysis In the Matter of California-Texas Oil Company, a California corporation, and Eileen M. Robertson, individually and as an officer of California-Texas Oil Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective action, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170–34 Economizing or saving; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitation of product; § 13.1865 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Automobile retrofit devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 84-23487 Filed 9-4-84; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket 7323]

Diamond Crystal Salt Company; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued February 4, 1960, by deleting the provision that required the company to give the Commission 90 days' notice of any acquisition of a salt producer or distributor.

DATES: Final Order issued February 4, 1960; Modified order issued July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, L–301, FTC, Washington, D.C. 20580 (202) 634–4604.

SUPPLEMENTARY INFORMATION: In the Matter of Diamond Crystal Salt Company, a corporation. Codification appearing at 25 FR 1873, remains unchanged.

List of Subjects in 16 CFR Part 13

Salt, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18)

Order Modifying Final Order in Docket No. 7323

Commissioners: James C. Miller III, Chairman, Michael Pertschuk, Patricia P. Bailey, George W. Douglas, Terry Calvani.

In the matter of Diamond Crystal Salt Company, a corporation.

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[1] Copies of the Complaint and the Decision and Order filed with the original document.

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On February 4, 1960, the Federal Trade Commission, pursuant to Section 7 of the Clayton Act, issued the Order in this case against Diamond Crystal Salt Company. The Commission has determined that the public interest would be served by deleting the provision of that Order that requires Diamond Crystal to give the Commission 90 days' notice of any acquisition of a salt producer or distributor. Respondent has no objection to this modification.

Accordingly,

It is ordered, that this matter be, and it hereby is, reopened and that the Order in Docket No. 7323 be modified so that the reporting requirement contained in Paragraph 5 terminates on the date of service of this order.

Issued: July 30, 1984.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-23460 Filed 9-4-84; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 8907]

General Motors Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commisson.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the Commission's 1975 cease and desist order which barred a motor vehicle manufacturer and its advertising agency from making superior handling claims for any automobile, unless these claims were substantiated by scientific tests [85 F.T.C. 27]. In response to petitions from both firms, the modifying order redefines the term "handling" as it relates to the control of a moving automobile; adds a paragraph defining the phrase "vehicle handling characteristics;" clarifies the meaning of "scientific tests" required for substantiating comparative claims; and permits respondents to make superiority claims regarding one or more specifically identified vehicle handling characteristics without having to raise substantiation requirements for other handling characteristics.

DATES: Cease and Desist Order issued January 10, 1975; Modifying Order issued August 16, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/B 417-1, Robert Barton, Washington, D.C. 20580, (202) 376-2863.

SUPPLEMENTARY INFORMATION: In the Matter of General Motors Corporation, et al. Codification appearing at 40 FR 15870, remains unchanged.

List of Subjects on 16 CFR Part 13

Automobiles, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: James C. Miller III, Chairman, Michael Pertschuk, Patricia P. Bailey, George W. Douglas, Terry Calvani.

In the matter of General Motors Corporation, et al.

Order Reopening Proceeding and Modifying Cease and Desist Order

On April 19, 1984 General Motors Corporation [hereinafter G.M.C.], a respondent in the above captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the above captioned proceeding and modify the order entered therein (85 F.T.C. 32). On May 7, 1984 Campbell-Ewald Company, an advertising agency for G.M.C. and also a respondent in the above matter, filed a petition to reopen and modify the order entered against Campbell-Ewald (85 F.T.C. 35).

The order, which was entered in 1975, prohibits the respondents from representing that any automobile is superior in handling to any other automobile or all other automobiles unless respondents have a reasonable basis for such representations. Handling is defined in terms of the response of the vehicle:

(a) Under conditions where rapid steering inputs in evasive or emergency maneuvers are necessary;

(b) Under cornering conditions at speeds in excess of 30 miles per hour in which levels of lateral acceleration in excess of .2g are attained; and

(c) In gusty crosswinds, on rough roads and under severe steering-braking conditions.

Respondents now seek to modify the order by, inter alia, substituting a new definition for handling, adding a new paragraph defining vehicle handling characteristics, and adding a further clarification to the definition of scientific test. The modified order would permit respondents to advertise specific aspects concerning the comparative handling of motor vehicles, without having to prove overall handling superiority.

The Commission has concluded that, to avoid any unintended restriction on the dissemination to the public of information material to purchasing decisions, the petitions are in the public interest and should be granted. The proposed modified order will continue to require that respondents have a reasnable basis for vehicle handling claims.

It is therefore ordered that the proceeding is hereby reopened and the Decision and Order issued January 10, 1975, in Docket No. 8907 is hereby modified to read as follows:

Decision and Order as to General Motors Corporation

I

It is ordered that respondent General Motors Corporation, a corporation, its successors and assigns, and its officers, agents, represenatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner including the use of any endorsement, testimonial, or statement made by any individual, group, or organization, that any automobile is superior to any other automobile or all other automobiles in handling or that any automobile exhibits one or more vehicle handling characteristics superior to the vehicle handling characteristics of any other automobile or all other automobiles, unless at the the time such representation is first disseminated:

(a) Respondent has a reasonable basis for such representation, which shall consist of a competent scientific test or tests that sustantiate such representation; and

(b) Respondent's agents, employees or representatives who are responsible for engineering approval of any advertisement containing such representation rely on such test or tests in approving such advertisement and provide to respondent's agents, employees or representatives who are responsible for approval of such advertisement a written statement that such reasonable basis exists which substantiates the representation.

2. Failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) Which consist of the documentation constituting the reasonable basis required by Paragraph I.1 of this Order and which demonstrate the respondent's representatives relied on such reasonable basis as required in Paragraph I.1(b); and

(b) Which shall be maintained for a period of three (3) years from the date on which any advertisements containing any such representation was last disseminated.

II

It is further ordered, that for the purposes of Paragraph I of this Order, the following definitions shall apply:

1. *Handling.* The term "handling" is defined as the interaction of the driver, automobile, road, and environment as it relates to the control of a moving automobile.

2. *Vehicle Handling Characteristics.* The term "vehicle handling characteristics" is defined as the separately identifiable vehicle attributes which influence the automobile's contribution to handling. Vehicle handling Characteristics include numerous vehicle attributes, such as, but not limited to, steering sensitivity, roll compliance, lateral acceleration response time, steering effort, maximum lateral acceleration, and task performance maneuvering capability.

3. *Scientific Test.* The term "scientific test" is defined and construed in accordance with the Federal Trade Commission's Order as stated in *Firestone Tire & Rubber Co.,* Docket No. 8818.

"In our view a scientific test is one in which persons with skill and expertise in the field conduct the test and evaluate its results in a disinterested manner using testing procedures generally accepted in the profession which best insure accurate results. This is not to say the respondent always must conduct laboratory tests. The appropriate test depends on the nature of the claim made. Thus a road or user test may be an adequate scientific test to substantiate one performance claim, whereas a laboratory test may be the proper test to substantiate another claim. Respondent's obligation is to assure that any claim it makes is adequately substantiated by the results of whatever constitutes a scientific test in those circumstances."

Scientific tests for claims of superiority in handling or vehicles handling characteristics shall include reliable measures to control the variable influences of the driver, road, and environment so that the contribution of the automobile or of a specific vehicle attibute, can be identified.

III

It is further ordered that for the purposes of Paragraph I of this Order a statement about handling or any vehicle handling characteristic implies superiority if the statement is phrased in the comparative or superlative degree, or if any advertising containing such statement conveys a net impression of comparative superiority; provided, however, that any statement or statements in such advertising phrased in the comparative or superlative degree regarding any subject other than handling or vehicle handling characteristics will not, for that reason alone and without a statistically valid consumer survey, render any statement in such advertising which does not relate to the handling or the vehicle handling characteristics of a vehicle and which is phrased in the positive degree to be deemed a representation that handling or vehicle handling characteristic of the vehicle are superior to any other vehicle or all other vehicles. A representation of superiority with respect to one or more specifically indentified vehicle handling characteristics shall not give rise to any substantiation requirements with respect to any other vehicle handling characteristic.

IV

It is further ordered that respondent General Motors Corporation shall forthwith distribute a copy of this Modified Order to each of its officers, agents, representatives, or employees who are engaged in the creation or approval of advertisements.

V

It is further ordered that respondent General Motors Corporation notify the Commission at least thirty (30) days prior to any proposed change in said corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Modified Order.

It is further ordered that respondent shall within sixty (60) days after service upon it of this Modified Order file with the Commission a report, in writing, setting forth in detail the manner and form in wich it has complied with this Modified Order.

Decision and Order as to Campbell-Ewald Company

I

It is ordered that respondent Campbell-Ewald Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile, in commerce, as "commeerce" is defined in the Federal Trade Commissin Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner including the use of any endorsement, testimonial, or statement made by any individual, group, or organization, that any automobile is superior to any other automobile or all other automobiles in handling or that any automobile exhibits one or more vehicle handling characteristics superior to the vehicle handling characteristics of any other automobile or all other automobiles, unless at the the time such representation is first disseminated:

(a) Respondent or its client has a reasonable basis for such representaton, which shall consist of a competent scientific test or tests that substantiate such representation; or

(b) Respondent has a reasonable basis for such representation which shall consist of an opinion in writing signed by a person qualified by education and experience to render such an opinion (who, if qualified by education and experience, may be a person retained or employed by respondent's client) that a competent scientific test or tests exist to substantiate such representation, provided that any such opinion also discloses the nature of such test or tests and provided further that respondent neither knows nor has reason to know that such test or tests do not in fact substantiate such representation or that any such opinion does not constitute a reasonable basis for such representation;

2. Failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) Which consist of the documentation constituting the reasonable basis required by Paragraph I.1 of this Order and which demonstrate that respondent's representatives relied on such reasonable basis as required in Paragraph I.1(b); and

(b) Which shall be maintained for a period of three (3) years from the date on which any advertisements containing any such representation was last disseminated by respondent.

II

It is further ordered that for the purposes of Paragraph I of the Order, the following definitions shall apply:

1. *Handling.* The term "handling" is defined as the interaction of the driver, automobile, road, and environment as it

relates to the control of a moving automobile.

2. *Vehicle Handling Characteristics.* The term "vehicle handling characteristics" is defined as the separately identifiable vehicle attributes which influence the automobile's contribution to handling. Vehicle handling Characteristics include numerous vehicle attributes, such as, but not limited to, steering sensitivity, roll compliance, lateral acceleration response time, steering effort, maximum lateral acceleration, and task performance maneuvering capability.

3. *Scientific Tests.* The term "scientific test" is defined and construed in accordance with the Federal Trade Commission's Order as stated in *Firestone Tire & Rubber Company.*, Docket No. 8818.

"In our view a scientific test is one in which persons with skill and expertise in the field conduct the test and evaluate its results in a disinterested manner using testing procedures generally accepted in the profession which best insure accurate results. This is not to say the respondent always must conduct laboratory tests.

"The appropriate test depends on the nature of the claim made. Thus a road or user test must be an adequate scientific test to substantiate one performance claim, whereas a laboratory test may be the proper test to substantiate another claim. Respondent's obligation is to assure that any claim it makes is adequately substantiated by the results of whatever constitutes a scientific test in those circumstances."

Scientific tests for claims of superiority in handling or vehicle handling characteristics shall include reliable measures to control the variable influences of the driver, road, and environment so that the contribution of the automobile or of a specific vehicle attribute, can be identified.

III

It is further ordered that for the purposes of Paragraph I of this Order, a statement about handling or any vehicle handling characteristic implies superiority if the statement is phrased in the comparative or superlative degree, or if any advertising containing such statement conveys a net impression of comparative superiority; provided, however, that any statement or statements in such advertising phrased in the comparative or superlative degree regarding any subject other than handling or vehicle handling characteristics will not, for that reason alone and without a statistically valid consumer survey, render any statement in such advertising which does relate to the handling or the vehicle handling characteristics of a vehicle and which is phrased in the positive degree to be deemed a representation that handling or vehicle handling characteristics of the vehicle are superior to any other vehicle or all other vehicles. A representation of superiority with respect to one or more specifically identified vehicle handling characteristics shall not give rise to any substantiation requirements with respect to any other vehicle handling characteristic.

IV

It is further ordered that respondent Campbell-Ewald Company shall forthwith distribute a copy of this Modified Order to each of its officers, agents, representatives, or employees who are engaged in the creation or approval of advertisements.

V

It is further ordered that respondent Campbell-Ewald Company notify the Commission at least thirty (30) days prior to any proposed change in said corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Modified Order.

VI

It is further ordered that respondent shall within sixty (60) days after service upon it of this Modified Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Modified Order.

Issued: August 16, 1984.

By direction of the Commission.

Emily H. Rock,
Secretary.

[FR Doc. 84-23459 Filed 9-4-84; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Expansion of Commodity Option Pilot Program

Correction

In FR Doc. 84-22491, beginning on page 33641, in the issue of Friday, August 24, 1984, on page 33644, in the second column, in § 33.4(a)(6)(i), in the first line, "not specifically" should read "specifically".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 1-84-9R]

Special Local Regulations: Peaks Island to Portland Swim; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction.

SUMMARY: This document corrects an incorrect section number which appeared in the **Federal Register** of August 13, 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Thomas E. Hobaica, (617) 223-3607.

Discussion of Correction

In the **Federal Register** of August 13, 1984, page 32176, the Coast Guard published a rule establishing a temporary section to Part 100 of Title 33 CFR. The part is improperly identified in the amendatory language as § 100.35-1-05. This document corrects that citation to read, § 100.35-1-9R.

Dated: August 29, 1984.

C.M. Holland,
Captain, USCG, Executive Secretary, Marine Safety Council.

[FR Doc. 84-23365 Filed 9-4-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[OA-FRL-2664-3]

General Regulation for Assistance Programs; Clarification

AGENCY: Environmental Protection Agency.

ACTION: Clarification of Provisions Implementing Circular A-122, as Revised.

SUMMARY: This Notice clarifies the Environmental Protection Agency's (EPA) implementation of the Office of Management and Budget's "Lobbying" revision to Circular A-122, "Cost Principles for Nonprofit Organizations." OMB published its revision in the **Federal Register** on April 27, 1984 (49 FR 18260), with an effective date of May 29, 1984.

FOR FURTHER INFORMATION CONTACT: John A. Gwynn, Chief, Grants Policy and Procedures Branch (PM-216), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-5268.

SUPPLEMENTARY INFORMATION: EPA implements the OMB Circulars and Federal regulations which establish cost principles for Federal assistance agreements through the EPA's "General Regulation for Assistance Programs" at 40 CFR 30.410. Section 30.410 lists the Circulars and regulations applicable to various types of recipient organizations. Section 30.410(c) applies OMB Circular A-122 to nonprofit recipient organizations, except educational institutions.

Section 30.410 does not list the dates that OMB Circulars and Federal regulations are issued or revised. Unless a circular or regulation indicates otherwise, EPA applies the version of the Circular or regulation that is in effect on the date an assistance agreement is awarded. The **Federal Register** preamble for the revised Circular A-122 issued on April 27, 1984 (49 FR 18620) specified that the revision would affect only agreements awarded after May 29, 1984, the effective date of the revised Circular. Accordingly, EPA will apply the revised Circular to all assistance agreements awarded after that date.

EPA's general regulation restricts using assistance funds for advocacy purposes at 40 CFR 30.601. Section 30.601 prohibits the use of assistance funds for "lobbying or influencing legislation before Congress" or "partisan or political advocacy purposes." For nonprofit recipient organizations other than educational institutions, EPA will implement this prohibition consistent with § 30.410(c) and the requirements of OMB Circular A-122 as revised.

Dated: August 22, 1984.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division.

[FR Doc. 84-23422 Filed 9-4-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50501A; FRL-2541-8]

Significant New Uses of Chemical Substances; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), to require persons to notify EPA at least 90 days before manufacturing, importing, or processing potassium N,N-bis (hydroxyethyl) cocoamine oxide phosphate and potassium N,N-bis (hydroxyethyl) tallowamine oxide phosphate for use in consumer product formulations containing greater than five percent by weight of these substances. These chemical substances were the subject of premanufacture notices (PMNs) P-82-400 and P-82-409 and a TSCA section 5(e) consent order prohibiting use of the substances in consumer products. Subpart A of the rule contains general procedural provisions applicable to all SNURs. Subpart B contains provisions unique to the two substances.

DATES: This rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on September 19, 1984. This rule is effective October 19, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0012.

I. Introduction

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is generally subject to the same statutory requirements and procedures as a PMN submitted under section 5(a)(1)(A). In particular, these include the information submission requirements of section 5 (b) and (d)(1), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5 (e) and (f). If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances covered by final SNURs are subject to TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127 and 127.28 published in the **Federal Register** of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appears at 40 CFR Part 707 published in the **Federal Register** of December 13, 1983 (48 FR 55462).

II. Organization of This Rule

A. General

This rule establishes a new Part 721 in Title 40 of the Code of Federal Regulations (CFR) which is structured into two major subparts. Subpart A contains procedural provisions that apply to this SNUR and will apply to all SNURs. Since these provisions would otherwise be repeated in each SNUR applying to specific chemical substances, the Agency decided to promulgate Subpart A. In future SNURs the provisions of Subpart A will apply unless modified in the particular SNUR at that time.

Subpart B will contain the specific chemical substances and significant new uses for those substances as each SNUR is promulgated, including modifications of the Subpart A provisions for specific substances for which the general provisions of Subpart A are inappropriate. At this time, Subpart B consists of § 721.575 which identifies two chemical substances and the significant new use of those substances discussed in Unit V of this preamble.

The structure of Part 721 in two subparts was originally proposed in the **Federal Register** of November 26, 1980 (45 FR 78970). Those sections which appear in Subpart A of Part 721 have been proposed either individually or collectively and discussed in the **Federal Register** as part of a number of individual SNUR proposals. In adopting Subpart A, EPA has considered public comments submitted on the procedural aspects of all SNURs proposed to date. However, the Agency will consider any further comments which are submitted regarding the provisions of Subpart A.

B. Organization of Subpart A

Subpart A codifies the general procedures for reporting on significant new uses. The subpart contains nine sections which are summarized below.

1. Section 721.1 describes the scope and applicability of Part 721. This section explains the interrelation of Subparts A and B and the relationship of Part 721 to the PMN rules in Part 720. The section also states that, where the

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provisions of Parts 721 and 720 conflict, Part 721 controls. Similarly, if Subparts A and B conflict, Subpart B will govern.

2. Section 721.3 contains definitions applicable to significant new use reporting. Generally, the definitions in section 3 of TSCA and those contained in the PMN rules will apply to SNUR reporting. Additional definitions have been provided in § 721.3 where no PMN definition exists or where the existing PMN definitions are inappropriate for SNUR reporting. As new definitions are considered for particular substances and significant new uses, they will be proposed as additions to Subpart A or B as required.

3. Section 721.5 contains the general scheme for determining who must report on significant new uses. EPA has chosen the most inclusive requirements for reporting consistent with section 5(a)(1)(B) of TSCA. There will be occasions, such as with the rule being codified here at § 721.575 in Subpart B, where the Agency will not require reporting from each of those persons specified in § 721.5. In cases such as these, EPA will promulgate specific language, such as is contained in § 721.575, to narrow the scope of the Subpart A requirements.

Section 5(a)(1)(B) of TSCA requires persons to submit a SNUR notice to EPA 90 days before they manufacture, import, or process a substance for a significant new use. Therefore, the language of § 721.5 makes clear that manufacturers, importers, and processors are subject to SNUR notice requirements.

Section 721.5 is designed to cover a variety of situations. Paragraph (a)(1) requires manufacturers, importers, and processors who intend to engage in a designated significant new use to report. Paragraph (a)(2) requires manufacturers, importers, and processors who are themselves not commencing a significant new use, but who intend to distribute a substance subject to a SNUR in commerce, to submit a significant new use notice unless: (1) They do not have a reasonable belief that their customers intend to engage in a significant new use without submitting the required notice and (2) they can document that they have notified their customers that the substance is subject to a SNUR. EPA adopted this provision because the Agency concluded that if a manufacturer, importer, or processor of a chemical substance subject to a SNUR distributes the substance in commerce (unless the manufacturer, importer, or processor has complied with the two provisions specified above), that person "intends" the significant new use to take place, even if it does not know whether its customers intend to engage in the significant new use. Therefore, EPA has provided, under § 721.5(a)(2), the means by which persons who manufacture, import, process, or distribute the substance in commerce but who do not intend to commence a significant new use may demonstrate that they lack this intent by compliance with the two provisions specified above. The term "customer" is defined in § 721.3.

Section 721.5(b) provides that a processor who engages in a significant new use is not required to report if it can document that it has a reasonable belief that the substance intended to be processed is not subject to a SNUR. Examples of such documentation include: (1) A letter from a supplier assuring the purchaser that the substance is not subject to a SNUR, (2) a written response from EPA to a *bona fide* inquiry made under § 721.6 indicating that the substance in question is not subject to a SNUR, and (3) written evidence (such as that which would be submitted with a *bona fide* inquiry under § 721.6) which demonstrates that the chemical structure of the substance in question would not be included in the specific or generic chemical name identified in Subpart B of Part 721. This provision is consistent with paragraph (a)(2) to ensure that a significant new use notice is submitted by a person who actually intends to engage in a significant new use before that use takes place.

Section 721.5(c) provides that if a manufacturer, importer, or processor later has a reasonable belief that a customer is processing the substance for a significant new use without submitting a significant new use notice, the manufacturer, importer, or processor must submit a notice unless it ceases supplying the substance to the processor, notifies EPA enforcement authorities, and does not resume supplying the substance to the processor until all required significant new use notices have been submitted to EPA and the notice review periods have run without regulatory action by EPA. This section ensures that there will be no intentional violations of SNURs after the manufacture, import, or processing of a substance identified in Subpart B of Part 721 has begun.

EPA believes that this approach will result in maximum compliance with SNURs because it clearly sets out the relative responsibilities of manufacturers, importers, and processors for reporting under section 5(a)(1)(B) of TSCA.

EPA has received comments on the issues of who should be required to submit a significant new use notice and who should be liable for failure to submit a notice. EPA believes section 5(a)(1)(B) of TSCA clearly provides that manufacturers, importers, and processors are liable for submission of notices when they manufacture, import, or process a substance for a significant new use. Some comments stated that manufacturers should not be held responsible for the failure of a processor to file a SNUR notice. Commenters also stated that EPA could not require manufacturers to inform their customers that their products are subject to SNUR reporting (or that they should be required to so so only when the chemical identity is confidential). Rather than make a manufacturer, importer, or processor liable when a customer processes a substance for a significant new use without submitting a significant new use notice to EPA, EPA is promulgating a scheme intended to ensure good faith compliance with SNURs by enabling those persons who distribute a substance subject to a SNUR in commerce (but who do not themselves commence a significant new use) either to submit a notice or to inform their customers of the SNUR.

Section 721.5(d) provides that any significant new use notice submitted by an importer must be submitted by the principal importer. The rationale for doing so is the same as for the requirement in the PMN rule. "Principal Importer" is defined in § 721.3 and is very similar to the definition in the PMN rule § 720.3(z). The definition has been modified for this rule to apply to SNURs rather than new chemical substances. For a detailed explanation of the principal importer concept and its application, see the preamble to the PMN rule published in the **Federal Register** of May 13, 1983 (48 FR 21726 and 21727).

4. Section 721.6 contains procedures for determining whether a chemical substance is subject to a SNUR when the substance is identified by a generic chemical name in Subpart B. This section allows any person who intends to manufacture, import, or process a chemical substance described by a generic chemical name in Subpart B to ask EPA whether their chemical substance is subject to a SNUR. The process for doing so is very similar to the process required for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(g)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules as published in the **Federal Register** of May 13, 1983 (48 FR 21722). In instances such as this SNUR, where the two chemical

substances are specifically identified, the provisions of § 721.6 will not apply.

Section 721.6 allows manufacturers, importers, and processors to determine whether they are subject to SNURs while protecting confidential business information (CBI) from unnecessary disclosure. EPA proposed several SNURs in which the specific chemical identities of the substances involved were claimed as confidential by the submitters of the PMNs for those substances. In the proposals, EPA identified the substances involved by generic chemical names and PMN numbers. After considering comments on these proposals, EPA has concluded that, in general, it will not be necessary to reveal the specific chemical identities of such substances during the rulemaking or in the final rules. However, in future SNURs, EPA will continue to consider on a case-by-case basis whether disclosure of specific chemical identity is necessary.

5. Section 721.7 explains the applicability of TSCA section 12 and section 13 requirements for exports and imports of substances subject to SNURs. These requirements are summarized in Unit I of this preamble.

6. As discussed in previously proposed SNURs, and as § 721.10 provides, SNUR notice submitters must use the PMN form and follow the PMN procedures which have been codified in Part 720. In specific SNURs, such as this one, EPA may modify the form requirements to avoid collecting information not relevant to review of the significant new use. The Agency will process the notice according to the procedures in Part 720 except to the extent these may be modified in specific additions to Subpart B.

EPA will issue a summary of each notice in the **Federal Register** under section 5(d)(2). The review period for the notice will run 90 days from EPA's receipt of the notice. Under section 5(c), this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substance for the significant new use until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for a chemical substance without information sufficient to judge the toxicity and exposure potential of the substance, EPA may issue a section 5(e) order limiting or prohibiting the use until sufficient information is developed. In addition, section 5(f) authorizes EPA to prohibit a significant new use that presents or will present an unreasonable risk to health or the environment. EPA may also refer information in a SNUR notice to other EPA offices and other Federal agencies. If EPA does not take action under section 5, 6, or 7 to control activities for which it has received a significant new use notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Section 721.10(b) allows two or more persons who are required to submit a notice for the same chemical substance and significant new use to submit a joint notice to EPA. EPA believes that in many cases a manufacturer and a processor may work together to develop a significant new use and that each would have information important to the assessment of the use. However, EPA does not want to receive duplicative information and wishes to avoid the burden on the submitters of such duplication. Accordingly, § 721.10(b) provides that a joint notice can be submitted as long as it contains all information that either person is required to report. A joint notice may be a single submission signed by both parties or coordinated separate submissions by both parties. Both parties would remain liable individually for failure to submit required information in the joint notice, including information which is known to or reasonably ascertainable by them and test data in their possession or control.

Section 721.10(d) makes clear that a person submitting a significant new use notice cannot manufacture, import, or process the substance for the significant new use until the notice review period, including all extensions and suspensions, has expired. As with PMNs, EPA expects that significant new use notice submitters may, on occasion, suspend the notice review period, in accordance with § 720.75(b) of the PMN rule which applies to SNURs under § 721.10(c), to give the submitter sufficient time to meet concerns raised by EPA during review.

7. Section 721.13 establishes enforcement and compliance provisions for SNURs which have been discussed in previous SNUR proposals.

It is unlawful for any person to fail or refuse to comply with any provision of section 5 of TSCA or any rule promulgated under section 5. Manufacture, import, or processing of a chemical substance for a significant new use without prior submission of a SNUR notice is a violation of section 15 of TSCA.

Section 15 also makes it unlawful for any person to:

a. Use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of a SNUR.

b. Fail or refuse to permit entry or inspection as required by section 11 of TSCA.

c. Fail or refuse to permit access to or copying of records, as required by TSCA.

Violators may be subject to various penalties and to both criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of a SNUR may be subject to penalties calculated as if they never filed their notices. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations of a SNUR could lead to the imposition of criminal penalties of up to one year of imprisonment. Other remedies are available to EPA under sections 7 and 17 of TSCA such as seeking an injunction to restrain violations of a SNUR and the seizure of chemical substances manufactured, imported, or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

8. Section 721.17 establishes general recordkeeping requirements for SNUR notice submitters. These provisions require the maintenance of documentation of the information contained in a SNUR notice for a period of five years following the date of the notice submission. These provisions are consistent with those required of PMN submitters in § 720.78 in the PMN rule, and the Agency believes they should apply to SNUR notice submitters to ensure compliance with the notice requirements.

9. Section 721.19 establishes general exemptions to significant new use reporting requirements. Under this approach, persons who manufacture, import, or process chemical substances identified in Subpart B will not be subject to the reporting requirements for significant new uses under the following circumstances:

a. The person has applied for and has been granted an exemption for test

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marketing the substance for the significant new use in accordance with section 5(h)(1) of the Act and § 720.38 of the PMN rule.

b. The person manufactures, imports, or processes the substance in small quantities solely for research and development in accordance with section 5(h)(3) of TSCA.

c. The person has applied for and been granted an exemption under section 5(h)(5) of TSCA.

d. The person manufactures, imports, or processes the substance only as an impurity.

e. The person manufactures, imports, or processes the substance only as a byproduct which is used only by public or private organizations that: (1) Burn it as a fuel, (2) dispose of it as a waste, including in a landfill or for enriching soil, or (3) extract component chemical substances from it for commercial purposes.

f. The person imports or processes the substance as part of an article.

g. The person manufactures or processes the substance solely for export and, when distributed in commerce, labels the substance in accordance with section 12(a)(1)(B) of TSCA.

The first three exemptions come directly from section 5(h) of TSCA. On May 13, 1983, EPA issued its final premanufacture notification rules (40 CFR Part 720), including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. In the **Federal Register** of September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Because § 720.36 is not in effect, EPA will rely on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether a manufacturer, importer, or processor qualifies under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19(b) to adopt the provisions of the revised § 720.36.

Section 721.19 also contains exemptions from reporting when the person manufactures, imports, or processes the specific substances as byproducts or impurities to conform to similar exemptions in the PMN rule (see § 720.30 (g) and (h)(1), respectively, of the PMN rule). Persons are also exempt when they import or process the specific substances as part of an article because EPA believes that people and the environment will generally not be exposed to substances in articles. However, for specific significant new uses of specific chemical substances, EPA may decide to eliminate one or all of these three exemptions if EPA decides that review under a SNUR is warranted for specific substances as impurities or byproducts or in articles.

EPA has also exempted persons from reporting when they manufacture or process the specific substances solely for export from the United States. While EPA might be concerned about worker exposure or environmental release during manufacture and processing of substances solely for export, section 12(a) of TSCA exempts substances manufactured, processed, or distributed in commerce solely for export from regulation under section 5(a)(2) unless EPA finds that the activities will present an unreasonable risk of injury to health or the environment in the United States. In most cases for SNURs, especially for PMN substances which have not been tested, EPA believes it will not have made a "will present an unreasonable risk" finding and, thus, could not overcome the section 12(a) bar. In cases where the significant new use of concern would involve activities which occur only outside the United States, EPA would not have jurisdiction.

The PMN rule defines the term "manufacture solely for export" in § 720.3(s) ("manufacture" includes import) which specifies that such a substance cannot be used in the United States. Section 721.3 of this rule defines the term "process solely for export" in a similar fashion. Processing must be performed at sites under the control of the processor, distribution in commerce is limited to purposes of export, and the substance may not be used by the processor other than in small quantities solely for research and development. In addition, for both manufacture and processing, the substance must be labeled in accordance with section 12(a)(1)(B) of TSCA when distributed in commerce. If a person manufactures or processes a substance both for export and for use in the United States, such manufacture or processing is not "solely for export" because the substance is manufactured or processed for use in the United States.

C. Organization of Subpart B

Subpart B of Part 721 will identify the specific chemical substances and significant new uses subject to reporting. In addition, this subpart will contain additional requirements or modifications of Subpart A requirements and procedures necessary for specific substances. At this time, Subpart B contains only § 721.575 which identifies two chemical substances and significant new uses which are the subject of this rulemaking, as well as provisions specifically applicable to the two substances.

The Agency believes that there may be circumstances that will lead to the modification of the significant new use descriptions contained in Subpart B. When a significant new use notice is submitted, EPA will review the use to determine whether any regulatory action is necessary. If following its review, EPA allows the use to occur, the Agency will consider amending the SNUR to modify or eliminate the significant new use description if it finds that a change is warranted or that further notice of that use under a SNUR is not warranted. EPA may also amend Subpart B to eliminate or modify other use descriptions if it determines, based on data available to EPA, that a substance no longer presents health or environmental concerns for those uses.

III. Background of Substances Subject to Specific SNUR

The two chemical substances covered by § 721.575 were the subject of PMNs. They are potassium N,N-bis (hydroxyethyl) cocamine oxide phosphate, which was the subject of P-82-400 and potassium N,N-bis (hydroxyethyl) tallowamine oxide phosphate, which was the subject of P-82-409. For convenience, the chemical substances will be referred to by their PMN numbers in this preamble.

On June 1 and 2, 1982, EPA received two PMNs which the Agency designated as P-82-400 and P-82-409. EPA announced receipt of the two PMNs in the **Federal Register** of June 11, 1982 (47 FR 25401). The notice submitter stated in the PMNs that the substances, which are amphoteric surfactants, will be used primarily in industrial cleaning products and could be used in general purpose cleaners and in personal care products. The PMN submissions included test data for acute oral toxicity and eye and skin irritation. The two substances were tested for skin and eye irritation potential at concentrations of 45 to 50 percent using rabbits. The reported primary skin irritation scores were 6.05 for P-82-400 and 6.12 for P-82-409 (with 8 the maximum possible score). The reported ocular irritation scores for the substances ranged from 5.8 to 42.2 for P-82-400 and 37.0 to 103.3 for P-82-409 (with 110 the maximum score). Based on these results, EPA concluded that both substances are severe primary skin and eye irritants at concentrations of 45 to 50 percent. In addition, the substances may be severe primary skin and eye irritants at lower concentrations. A more detailed analysis of the possible health hazard posed by the substances appears in the section 5(e) consent order for these substances which is included in the record for this rulemaking.

The PMNs contained no data for eye and skin irritation at lower concentrations that are likely to be found in consumer products. Since irritation effects of relatively low concentrations were not known and could not be reliably estimated from the available data, EPA concluded that information available to the Agency was insufficient to permit a fully reasoned evaluation of potential health effects of the two substances at the lower concentrations. EPA further determined that, in the absence of sufficient information to make such an evaluation, the two substances may present an unreasonable risk of injury to human health.

Based on these findings, EPA negotiated a section 5(e) consent order with the notice submitter. The order became effective on September 14, 1982, and prohibited the notice submitter from manufacturing, processing, or distributing either P–82–400 or P–82–409 for use as a "consumer chemical." The order defined "consumer chemical" as "any chemical which is (1) sold or made available directly to consumers for their use; or (2) present in a solution, mixture, suspension, or gelatin which is sold or made available to consumers for their use." In addition, the order prohibited the notice submitter from manufacturing, processing, or distributing either P–82–400 or P–82–409 unless a material safety data sheet (MSDS) was distributed to each vendee or other recipient of the substances. The order required that the MSDS state that the substances were not to be manufactured, processed, or distributed for use as consumer chemicals. In addition, the notice submitter stated that the MSDS would: (1) Warn that preliminary screening suggested that the substances may cause severe skin and eye irritation and (2) recommend the use of protective gloves and eye protection by workers who may be exposed to the substances.

IV. Reasons for Issuing This SNUR

As stated above, EPA issued a section 5(e) consent order to prohibit manufacture of the two substances for use as consumer chemicals pending development of further information on the substances' potential health effects; however, the terms of the order apply only to the notice submitter. Since the notice submitter commenced commercial manufacture of the substances for industrial use and submitted a notice of commencement of manufacture to EPA, the Agency added the substances to the TSCA Chemical Substance Inventory. Once a substance has been added to the Inventory, any person may manufacture, import, or process the substance for any use. For this reason, in the **Federal Register** of February 17, 1983 (48 FR 7142), EPA proposed designating use of the substances as consumer chemicals a significant new use so that the Agency could review such use before it occurs.

Since proposal of this SNUR, EPA received a second set of data from tests performed by the notice submitter on these substances. These data indicate that, when tested at concentrations of five percent by weight, the substances are minor eye irritants and not irritating to the skin of rabbits. The results of these studies have mitigated EPA's concerns for use of these substances in consumer products at concentrations less than or equal to five percent by weight. Accordingly, EPA is now adjusting the definition of significant new use to require reporting by processors only when these substances will be used in consumer products at concentrations greater than five percent by weight. These data submissions have been added to the record of this rulemaking.

EPA considered other possible approaches. One alternative approach was not to place the substances on the Inventory while the section 5(e) order was in effect. One commenter disagreed with this option. Under this approach, because the substances would not be on the Inventory, another person would have to submit a PMN if that person intended to manufacture the substances for any use, even an industrial use about which EPA has little concern. EPA rejected this alternative as being overly broad and inconsistent with its Inventory policies.

Another alternative was to promulgate a section 8(a) reporting rule for the substances. Under such a rule, EPA could have required any person to report to EPA before manufacturing, importing, or processing the substances for use as a consumer chemical. Because the substances were subject to a section 5(e) order, the small business exemption of section 8(a) would not have applied. However, if EPA received a report under section 8(a) indicating that a person intended to manufacture, import, or process the substances for use as a consumer chemical, the Agency could not take immediate action under section 5(e) as it can under a SNUR and thus would not be able to regulate the substances pending development of information of effects of the substances at concentrations being formulated. This approach would have allowed unnecessary risks to human health during the time needed for data development.

The Agency also considered withdrawing the proposed rule after receiving the data which indicated that these substances would present little or no risks to human health at concentrations of five percent or less. The Agency considered this alternative because the PMN submitter had indicated that it had no forseeable plans for use of these substances in consumer products at concentrations greater than five percent by weight. However, the Agency cannot be confident that other manufacturers or processors will not recommend the use of these substances in consumer products at higher concentrations. Therefore, the Agency believes the approach it has selected is more appropriate.

In response to the proposed SNUR, some commenters stated that other Federal agencies, namely the Food and Drug Administration and the Consumer Product Safety Commission, already effectively control the risks of concern in this instance. One commenter suggested that section 9 of TSCA needed to be invoked affirmatively to retain EPA's jurisdiction of cases such as these where a number of Federal agencies may share jurisdiction. The Agency disagrees with both of these comments. EPA believes that Congress intended TSCA to provide the Agency with the necessary authority to prevent or control risks posed by new chemical substances which have many useful applications not specifically excluded from TSCA jurisdiction by Congress, including uses in consumer products. In instances such as these, several Federal agencies may have complementary, not exclusive, roles. EPA believes this is consistent with Congress' intent and will continue to review new substances which may present unreasonable risks and act to control those risks when appropriate. In instances where EPA believes another agency is more properly suited to evaluate and control a specific risk, it may then refer that case to that Agency. Generally, section 9 of TSCA does not apply to SNURs. A referral under section 9 occurs only when the Agency makes a finding that an activity "presents or will present an unreasonable risk." The Agency does not make such a finding in a SNUR rulemaking.

V. Significant New Uses Subject to Reporting

To determine what would constitute a significant new use of these chemical substances, EPA considered relevant information about the toxicity of the substances and likely exposures associated with possible uses as well as the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses may affect human exposure. Based on these considerations, EPA has decided to define "use in a consumer product in formulations containing greater than five percent by weight" as a significant new use of P-82-400 and P-82-409.

The Agency has defined "consumer product" as "any chemical substance which is directly, or as part of a mixture, sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation." This definition of "consumer product" is consistent with the definition of "consumer product" in the Consumer Product Safety Act, 15 U.S.C. 2051. Because this definition is unique to the circumstances of these two substances, the Agency has included it in § 721.575 as a supplement to the definitions in § 721.3 of Subpart A. Examples of chemical substances present in a mixture which is sold or made available to consumers for their use include substances used as surfactants in household all-purpose cleaners, rug shampoos, or laundry detergents which are sold or made available to consumers. In this rule EPA defines "consumer" as a natural person who uses products for personal rather than business purposes.

In response to comments, the Agency has made slight changes in the significant new use description from the proposed language. These changes are not intended to alter the meaning or spirit of the proposed language, only to simplify the description. EPA's basis for this significant new use determination is explained below.

EPA believes that the use of P-82-400 or P-82-409 in a consumer product in concentrations greater than five percent by weight may change the duration and type of exposure relative to the likely exposures associated with the non-consumer uses allowed under the section 5(e) consent order. The largest identified market for the substances for which manufacture has been permitted under the section 5(e) order is use in industrial cleaners containing alkaline materials such as caustic (sodium hydroxide), ammonia, or metasilicates. Industrial workers are believed to have experience in the safe handling of substances of this nature. Because of the presence of alkaline material, these products will generally carry labeling which warns of potential skin and eye irritation. This labeling will further encourage the use of protective equipment to limit potential exposure to the substances during industrial use.

The PMN submitter indicated that P-82-400 and P-82-409 could be used in consumer products such as liquid soaps, household all-purpose cleaners, rug shampoos, scouring pads, oven and pot and pan cleaners, and laundry detergents. Use of may of these products would involve direct contact with the skin. Users of consumer products are not likely to expect products such as liquid soaps, household all-purpose cleaners, rug shampoos, and laundry detergents to cause severe eye or skin irritation. Thus, the likelihood of eye and skin exposures is greater since users of household products are unlikely to take the same precautions as do workers using industrial cleaners. In addition, any use of these substances in consumer products could expose far more people to the substances. Users of these consumer products would constitute a different, much larger segment of the general population than the workers potentially exposed to industrial cleaners. Therefore, EPA believes that use of the substances in a consumer product at concentrations greater than five percent by weight would increase potential human exposure.

Finally, EPA has already determined in the section 5(e) consent order that use of the substances as a consumer chemical may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it strongly supports the determination that this use of the substances would be significant.

VI. Persons Subject to SNUR Notice Requirements Under § 721.575

Section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA before they manufacture or process a substance subject to a SNUR for a significant new use. As previously explained, the language of TSCA and § 721.5 makes clear that manufacturers (including importers) and processors are subject to SNUR notice requirements. Under § 721.5(a)(2) a manufacturer, importer, or processor of a substance subject to a SNUR who does not intend to commence a significant new use but who intends to distribute the substance in commerce must submit a significant new use notice unless the person: (1) Has a reasonable belief at the time of distribution that its customers do not intend to engage in a significant new use without first submitting a significant new use notice and (2) can document that the person has notified its customers of the SNUR. As explained in Unit II.B.3 of this preamble, this ensures that EPA will receive a significant new use notice from that distributor who knows or has a reasonable belief that a customer intends to engage in the significant new use without submitting the required notice or does not notify its customers of the SNUR. For these substances and this significant new use, EPA believes that it will probably be processors who actually formulate consumer products containing either of the two substances at greater than five percent by weight and who most likely will trigger the reporting requirements of § 721.5.

EPA considered allowing manufacturers and processors to decide which party should submit what information to EPA so long as all appropriate information was submitted. Some commenters preferred this alternative. However, EPA believes that, in this case, the reporting scheme contained in § 721.5 is more likely to result in EPA receiving the most complete and accurate information on the particular substances and significant new use.

EPA has also concluded that if these two substances are distributed in commerce as part of a mixture in which they occur at concentrations of five percent or less by weight of the mixture, no customer is likely to reformulate the mixture in such a way that either P-82-400 and P-82-409 could occur in a consumer product at greater than five percent. Accordingly, § 721.575(b)(2) provides that, in this instance, § 721.5(a)(2) does not apply and such a distributor would not be required to submit a significant new use notice or notify customers of the SNUR.

VII. Uses Subject to SNUR Notice Requirements

EPA recognizes that when chemical substances identified in a proposed SNUR are listed on the Inventory, they may be manufactured, imported, or processed for "significant new uses" as defined in the proposal before promulgation of the final rule. The statute and its legislative history do not make clear whether uses commenced after proposal but before promulgation may be considered significant new uses subject to SNUR notification. However, EPA believes that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the SNUR proposal date. If uses commenced during the proposal period were not considered significant new uses it would be almost impossible for the Agency to establish SNUR notice requirements since any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B). One commenter supported EPA's interpretation on this issue; another disagreed. However, none of the commenters indicated that the significant new use established in this rule has occurred.

For the purposes of this rule, even if these substances were manufactured, imported, or processed between proposal and promulgation for the significant new use, such activities may not continue after the effective date of this rule. Any such person must cease such activity until the person has complied with all SNUR notice requirements. EPA recognizes that this interpretation could disrupt commercial activities of persons who commenced manufacture or processing for the significant new use during the proposal period; however, the Agency believes that these persons were given adequate notice of this interpretation by the terms of the proposal.

VIII. Procedures for Informing Persons of the Existence of This Significant New Use Rule

The rule will be codified in the CFR. While this **Federal Register** notice provides legal notice of the rule, EPA explored additional ways to inform potential SNUR notice submitters of the existence of the rule.

EPA will publish information concerning this and other final SNURs in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA will also use the TSCA Chemical Substance Inventory to inform persons of the existence of this and other final SNURs through footnotes referring to the chemical identities of the substances subject to SNURs. The footnotes will refer to an Inventory Appendix which will give a **Federal Register** and CFR citation for the SNUR. Commenters supported the use of all available means of informing persons of the existence of SNURs.

IX. Required Information

As discussed in the proposal, and consistent with other proposed SNURs, under § 721.10 the Agency will require SNUR notice submitters to use the PMN form published in the **Federal Register** of May 13, 1983 (48 FR 21722). However, for the purposes of reviewing these two substances, EPA is interested only in information concerning the formulation and use of the substances in consumer products. Because EPA does not wish to collect information about worker exposure during manufacture and processing, § 721.575(b)(3) specifies that submitters must complete only those sections of the form dealing with the chemical identity, the submitter, and the specific use. In addition, any health and safety data relating to these substances must be attached. Therefore, submitters must complete only Parts I and III of the form as it appears in Appendix A to 40 CFR Part 720.

X. Test Data

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a significant new use notice. Rather, a person is required only to submit test data in his possession or control and to describe any other data known to or reasonable ascertainable by that person. However, in view of the potential health risk that may be posed by the significant new use of P–82–400 and P–82–409, EPA encourages possible SNUR notice submitters to test the substances to evaluate the potential for skin and eye irritation at the concentrations the submitters propose to use in consumer products. If a SNUR notice is submitted for a significant new use involving consumer exposure without such test data, EPA would very likely take action under section 5(e).

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substances. Data should be developed and submitted in accordance with the TSCA good laboratory practices regulations under 40 CFR Part 792 published in the **Federal Register** of November 29, 1983 (48 FR 53922). EPA encourages persons to consult with the agency before selecting a protocol for testing the substances.

XI. Exemptions

Section 721.19 contains an exemption, not in the proposal, for substances manufactured, imported, or processed only as an impurity or as a byproduct for certain purposes. EPA has decided not to modify this general provision for these particular substances. Therefore, if the substances appear in a consumer product only as an impurity, or are produced as a byproduct, and meet the requirements of § 721.19, they are not subject to SNUR notice requirements. The Agency is adopting this policy because identification of the presence of the substances when used as an impurity can be very difficult and because the agency does not believe that these substances would give rise to significant exposures if they appear as an impurity. The limited byproduct exemption would not give rise to consumer exposure. The Agency has also decided to exempt these substances from significant new use reporting if they are imported or processed as part of an article. This decision was made in response to a comment received on this issue and because the identified risks from uses of these substances in articles are not likely to occur.

XII. Relationship of Section 5(e) Order and SNUR

The original PMN submitter for P–82–400 and P–82–409 is subject to a TSCA section 5(e) consent order which prohibits it from manufacturing, processing, or distributing these substances in commerce for use as a consumer chemical. Once this SNUR goes into effect, the submitter will also be subject to the SNUR. Since the SNUR prevents any manufacturer, importer, or processor from engaging in the significant new use without notice to EPA, EPA has determined that it is no longer necessary to continue the section 5(e) consent order. Accordingly, once the SNUR goes into effect, EPA will revoke the section 5(e) consent order thereby leaving the original submitter subject to the same requirements as other persons.

XIII. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for P–82–400 and P–82–409. This evaluation is summarized below.

Persons who intend to manufacture, import, or process the substances for the significant new use, as defined in this rule, would be required to submit a SNUR notice with the information required by statute and this rule. The cost of submitting a SNUR notice can be estimated from the cost of submitting a PMN, which has been estimated to range between $1,300 and $7,500 per substance. However, because this rule requires that only a portion of the PMN form be completed, costs may actually be lower.

Although the SNUR does not require that persons submitting notices perform additional testing, EPA expects that some additional test data will be developed. EPA recommends that the substances be tested to evaluate the potential for skin and eye irritation at the concentrations at which they will be found in consumer products. The direct costs of such tests would be about $1,600 per substance. The dermal irritation test would cost from $300 to $1,000, with a most likely cost of $700. The eye irritation test would cost from $450 to $1,350, with a most likely cost of $900.

The SNUR may also result in delay costs. The delay caused by the preparation of a SNUR notice and the statutory notice review period could reduce future profits. EPA estimates that these delay costs could range from zero to $6,128.

Total direct costs, including notification, testing, and delay, would range from $2,100 to $16,078 per substance. It the original PMN submitter also intends to undertake the significant new use, the direct costs could add from less than 0.1 percent to 3.5 percent to the estimated price of the substances.

EPA has not estimated any indirect costs that may result from this SNUR. Indirect costs may result from decisions not to manufacture or process these substances because of uncertainty about possible Agency regulatory action or due to the magnitude of the direct costs. The cost of this impact would be whatever profits or benefits to consumers that use of the substances would have generated. In addition, EPA has not estimated the potential public benefits gained through the avoidance of potential health and environmental problems. While the Agency acknowledges that indirect costs and benefits exist, it is impossible at this time to precisely estimate their extent.

A more complete economic analysis of this SNUR and other regulatory options is included in the rulemaking record and is available for public review.

XIV. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Courts of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has his/her principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judical review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "DATES" in this document. The effective date has, in turn, been calculated from the promulgation date.

XV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50501A). The complete record is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays in the OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C.

The record includes basic information considered by the Agency in developing this rule. The record includes the following:

1. The PMNs for these substances.
2. The **Federal Register** notice of receipt of the PMNs.
3. A copy of the section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. Test data received from the PMN submitter.
6. Public comments.
7. OMB comments.

XVI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it does not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes the cost will be low. Even if EPA receives 50 SNUR notices, the direct cost of the rule will be under $1 million. In addition, because of the nature of the rule and the substances subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. EPA recognizes that the submitter of PMNs P-82-400 and P-82-409, who is also a possible submitter of a SNUR notice, is a small business. The Agency cannot determine whether other parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all the potential significant new uses were developed by small companies. EPA expects to receive few SNUR notices for the substances. The Agency hopes that one of the first notice submitters will test the substances to determine their potential for skin and eye irritation at concentrations greater than five percent for which SNUR reporting is required. With these data, EPA would be able to evaluate the risks posed by the substances used in consumer products and, if necessary, take action to control those risks. If test results indicate that there are no risks at a certain concentration, EPA will likely alter the reporting triggers to reflect those results. As more test data become available, reporting triggers will continue to be refined to identify those levels at which acute effects are negligible. Because uses in consumer products above levels at which consumers would suffer effects will be discouraged by responsible manufacturers, fewer businesses will be directly affected by this rule. In addition, the cost of the testing that may be encouraged by this rule should not have a major impact on a small business that may want to use these substances as in consumer products.

C. Paperwork Reduction Act

The information reporting requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070-0012.

List of Subjects in 40 CFR Part 721

Intergovernmental relations, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 27, 1984.

William D. Ruckelshaus,

Administrator.

Therefore, a new Part 721 is added to 40 CFR Chapter I, to read as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

Subpart A—General Provisions

Sec.
721.1 Scope and applicability.
721.3 Definitions.
721.5 Persons who must report.
721.6 Applicability determination when the specific chemical identity is confidential.
721.7 Exports and imports.

721.10 Notice requirements and procedures.
721.13 Compliance and enforcement.
721.17 Recordkeeping.
721.19 Exemptions.

Subpart B—Significant New Uses of Specific Chemical Substances

721.575 Potassium N,N-bis (hydroxyethyl) cocoamine oxide phosphate and potassium N,N-bis (hydroxyethyl) tallowamine oxide phosphate.

Authority: Secs. 5, 8; Pub. L. 94–469; 90 Stat. 2003, 2027 (15 U.S.C. 2601 *et seq.*).

Subpart A—General Provisions

§ 721.1 Scope and applicability.

(a) This part identifies uses of chemical substances which EPA has determined are significant new uses under the authority of section 5(a)(2) of the Toxic Substances Control Act. In addition, it specifies procedures for manufacturers, importers, and processors to report on those significant new uses. This Subpart A contains general provisions applicable to this Part. The chemical substances and significant new uses subject to this Part are identified in Subpart B.

(b) This Subpart A contains provisions governing submission and review of notices for the chemical substances and significant new uses identified in Subpart B of this Part. The provisions of this Subpart A apply to the chemical substances and significant new uses identified in Subpart B of this Part except to the extent they are specifically modified or supplanted by specific requirements in Subpart B. In the event of a conflict between the provisions of this Subpart A and the provisions of Subpart B of this Part, the provisions of Subpart B shall govern.

(c) The provisions of Part 720 of this chapter apply to this Part 721. For purposes of this Part 721, wherever the phrase "new chemical substance" appears in Part 720 of this Chapter, it shall mean the chemical substance subject to this Part 721. In the event of a conflict between the provisions of Part 720 of this chapter and the provisions of this Part 721, the provisions of this Part 721 shall govern.

§ 721.3 Definitions.

The definitions in section 3 of the Act, 15 U.S.C. 2602, and § 720.3 of this chapter apply to this part. In addition, the following definitions apply to this Part:

"CAS Number" means Chemical Abstracts Service Registry Number assigned to a chemical substance on the Inventory.

"Customer" means any person to whom a manufacturer, importer, or processor distributes any quantity of a chemical substance, or of a mixture containing the chemical substance, whether or not a sale is involved.

"Principal importer" means the first importer who, knowing that a chemical substance will be imported for a significant new use rather than manufactured domestically, specifies the chemical substance and the amount to be imported. Only persons who are incorporated, licensed, or doing business in the United States may be principal importers.

"Process for commercial purposes" means the preparation of a chemical substance or mixture containing the chemical substance, after manufacture of the substance, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture containing the chemical substance is included in this definition. If a chemical substance or mixture containing impurities is processed for commercial purposes, then the impurities also are processed for commercial purposes.

"Process solely for export" means to process for commercial purposes solely for export from the United States under the following restriction on domestic activity: Processing must be performed at sites under the control of the processor; distribution in commerce is limited to purposes of export; and the processor may not use the chemical substance except in small quantities solely for research and development.

§ 721.5 Persons who must report.

(a) The following persons must submit a significant new use notice as specified under the provisions of section 5(a)(1)(B) of the Act, Part 720 of this chapter, and § 721.10.

(1) A person who intends to manufacture, import, or process for commercial purposes a chemical substance identified in Subpart B of this Part, and intends to engage in a significant new use of the substance identified in Subpart B.

(2) A person who intends to manufacture, import, or process for commercial purposes a chemical substance identified in Subpart B of this Part, and intends to distribute the substance in commerce. A person described in this paragraph is not required to submit a significant new use notice if that person (i) does not have a reasonable belief, at the time of commercial distribution of the chemical substance, that his/her customers intend to engage in a significant new use of that substance without submitting a notice under this Part, and (ii) can document that the person has notified all customers, in writing, of the specific section in Subpart B of this Part which identifies the substance and the significant new uses subject to this Part.

(b) A person who processes a chemical substance identified in Subpart B of this part for a significant new use of that substance is not required to submit a significant new use notice if that person can document that it has processed the chemical substance with a reasonable belief that the substance is not identified in Subpart B of this Part.

(c) If at any time after commencing distribution in commerce of a chemical substance identified in Subpart B of this part a person described in paragraph (a)(2) of this section has a reasonable belief that a customer is engaging in a significant new use of that substance identified in Subpart B without submitting a notice under this Part, the person is required to submit a significant new use notice for that chemical substance and significant new use, unless the person is able to document that it has done the following:

(1) Ceased supplying the chemical substance to the customer when the person has a reasonable belief that the customer is processing the substance for a significant new use without submitting a notice under this Part,

(2) Notified EPA enforcement authorities of the person's reasonable belief that the customer is processing the chemical substance for a significant new use without submitting a notice under this Part, promptly upon reaching that belief, and

(3) Not resumed supplying the chemical substance to the customer until all notices required under this Part have been submitted to EPA and the notice review periods have ended without regulatory action by EPA.

(d) Any notice of import must be submitted by the principal importer.

§ 721.8 Applicability determination when the specific chemical identity is confidential.

(a) A person who intends to manufacture, import, or process a chemical substance which is described by a generic chemical name in Subpart B of this Part may ask EPA whether the substance is subject to the requirements of this Part. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance for commercial purposes.

(b) To establish a *bona fide* intent to manufacture, import, of process a

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chemical substance, the person who intends to manufacture, import, or process the chemical substance must submit the following in writing to the Office of Toxic Substances, TS–799, 401 M St. SW., Washington, D.C. 20460:

(1) The specific chemical identity of the chemical substance that the person intends to manufacture, import, or process.

(2) A signed statement that the person intends to manufacture, import, or process the chemical substance for commercial purposes.

(3) A description of the research and development activities conducted to date, and the purpose for which the person will manufacture, import, or process the chemical substance.

(4) An elemental analysis.

(5) Either an X-ray diffraction pattern (for inorganic substances), a mass spectrum (for most other substances), or an infrared spectrum of the particular chemical substance, or, if such data do not resolve uncertainties with respect to the identity of the chemical substance, additional or alternative spectra or other data to identify the substance.

(c) If an importer or processor cannot provide all the information required in paragraph (b) of this section because it is claimed as confidential business information by the importer's or processor's manufacturer or supplier, the manufacturer or supplier may supply the information directly to EPA.

(d) EPA will review the information submitted by the manufacturer, importer, or processor under paragraph (b) of this section to determine whether that person has shown a *bona fide* intent to manufacture, import, or process the chemical substance. If necessary, EPA will compare this information either to the information requested for the confidential chemical substance under § 710.7(e)(2)(v) of this chapter or the information requested under § 720.85(b)(3)(iii) of this chapter.

(e) If the manufacturer, importer, or processor has shown a *bona fide* intent to manufacture, import, or process the substance and has provided sufficient unambiguous chemical identity information to enable EPA to make a conclusive determination as to the identity of the substance, EPA will inform the manufacturer, importer, or processor whether the chemical substance is subject to this Part and, if so, which section in Subpart B of this part applies.

(f) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a particular chemical substance that the substance is subject to this Part will not be considered public disclosure of confidential business information under section 14 of the Act.

(g) EPA will answer an inquiry on whether a particular chemical substance is subject to this part within 30 days after receipt of a complete submission under paragraph (b) of this section.

§ 721.7 Exports and imports.

The chemical substances identified in Subpart B of this Part are subject to the export notification requirements of section 12(b) of the Act and Part 707 of this chapter. The substances also are subject to import certification requirements in 19 CFR 12.118 through 12.127 and 127.28 under the authority of section 13 of the Act. The EPA policy in support of the import certification requirements is set forth in Part 707 of this chapter.

§ 721.10 Notice requirements and procedures.

(a) Each person who is required to submit a significant new use notice under this part must submit the notice at least 90 calendar days before commencing manufacture, import, or processing of a chemical substance identified in Subpart B of this Part for a significant new use. The submitter must comply with any applicable requirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1) of the Act. The notice must be submitted on the notice form in Appendix A to Part 720 of this chapter and must comply with the requirements of Part 720, except to the extent that they are inconsistent with this Part 721.

(b) If two or more persons are required to submit a significant new use notice for the same chemical substance and significant new use identified in Subpart B of this part, they may submit a joint notice to EPA. Persons submitting a joint notice must individually complete the certification section of Part I of the required notification form. Persons who are required to submit individually, but elect to submit jointly, remain individually liable for the failure to submit required information which is known to or reasonably ascertainable by them and test data in their possession or control.

(c) EPA will process the notice in accordance with the procedures of Part 720 of this chapter, except to the extent they are inconsistent with this Part 721.

(d) Any person submitting a significant new use notice in response to the requirements of this Part 721 shall not commence manufacture, import, or processing of a chemical substance identified in Subpart B of this Part for a significant new use until the notice review period, including all extensions and suspensions, has expired.

§ 721.13 Compliance and enforcement.

(a) Failure to comply with any provision of this Part is a violation of section 15(1) of the Act (15 U.S.C. 2614).

(b) Using for commercial purposes a chemical substance which a person knew or had reason to know was manufactured, imported, or processed in violation of this part is a violation of section 15(2) of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit access to or copying of records, as required by section 11 of the Act, is a violation of section 15(3) of the Act (15 U.S.C. 2614).

(d) Failure or refusal to permit entry or inspection, as required by section 11 of the Act, is a violation of section 15(4) of the Act (15 U.S.C. 2614).

(e) Violators of the Act or of this Part may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. The submission of false or misleading information in connection with the requirement of any provision of this Part may subject persons to penalties calculated as if they never filed a notice.

(f) Under the authority of sections 7 and 17 of TSCA, EPA may:

(1) Seek to enjoin the manufacture, import, or processing of a chemical substance in violation of this part.

(2) Act to seize any chemical substance which is being manufactured, imported, or processed in violation of this Part.

(3) Take any other appropriate action.

§ 721.17 Recordkeeping.

Any person subject to the requirements of this part must retain documentation of information contained in that person's significant new use notice. This documentation must be maintained for a period of five years from the date of the submission of the significant new use notice.

§ 721.19 Exemptions.

The persons identified in § 721.5 are not subject to the notification requirements of § 721.10 for a chemical substance identified in Subpart B of this part if:

(a) The person has applied for and has been granted an exemption for test marketing the substance for a significant new use identified in Subpart B in accordance with section 5(h)(1) of the Act and § 720.38 of this chapter.

(b) The person manufactures, imports, or processes the substance in small quantities solely for research and development in accordance with section 5(h)(3) of the Act.

(c) The person has applied for and been granted an exemption under section 5(h)(5) of the Act.

(d) The person manufactures, imports, or processes the substance only as an impurity.

(e) The person manufactures, imports, or processes the substance only as a byproduct which is used only by public or private organizations that (1) burn it as a fuel, (2) dispose of it as a waste, including in a landfill or for enriching soil, or (3) extract component chemical substances from it for commercial purposes.

(f) The person imports or processes the substance as part of an article.

(g) The person manufactures or processes the substance solely for export and, when distributing the substance in commerce, labels the substance in accordance with section 12(a)(1)(B) of the Act.

Subpart B—Significant New Uses for Specific Chemical Substances

§ 721.575 Potassium N,N-bis (hydroxyethyl) cocoamine oxide phosphate, and potassium N,N-bis (hydroxyethyl) tallowamine oxide phosphate.

(a) *Chemical substances and significant new use subject to reporting.* (1) The following chemical substances, identified by their chemical names and CAS Number are subject to reporting under this Part for the significant new use identified in paragraph (a)(2) of this section: Potassium N,N-bis (hydroxyethyl) cocoamine oxide phosphate (CAS Number 855712–26–1), and potassium N,N-bis (hydroxyethyl) tallowamine oxide phosphate (CAS Number 855712–27–2).

(2) The significant new use is: Use in a consumer product at concentrations greater than five percent by weight.

(b) *Specific Requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Definitions.* In addition to the definitions in § 721.3, the following definitions apply to this section:

"Consumer" means any natural person who uses products for personal rather than business purposes.

"Consumer product" means any chemical substance which is directly, or as part of a mixture, sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation.

(2) *Persons who must report.* The provisions of § 721.5 apply to determine persons who must report under this section, except § 721.5(a)(2) does not apply to a person who intends to distribute either of the substances in commerce as part of a mixture at concentrations of five percent or less by weight of the mixture.

(3) *Notice requirements and procedures.* Section 721.10 applies to this section, except a person submitting a notice must complete only Parts I and II of the notice form.

[FR Doc. 84–23423 Filed 9–4–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 31220–245]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Mid-Atlantic Area closure.

SUMMARY: NOAA issues this notice closing the mid-Atlantic surf clam fishery. The action is necessary because harvest from the fishery will exceed the quarterly quota for the third calender quarter. The intended effect of the closure is to prevent harvests from exceeding the annual quota for the fishery.

EFFECTIVE DATES: 0001 hours Eastern Daylight Time (EDT) September 16, 1984, through 2400 hours EDT September 29, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Surf Clam Management Coordinator, 617–281–2600, ext. 324.

SUPPLEMENTARY INFORMATION: The regulations implementing Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries were published on January 29, 1982 (47 FR 4268). The regulations contain at § 652.22(d) a provision requiring that, if the Regional Director determines the quota for surf clams for any time period will be exceeded, the Secretary of Commerce will publish a notice in the Federal Register stating the determination and setting a date and time for closure of the fishery.

Harvest of surf clams in the Mid-Atlantic Area has been significantly higher during 1984 than in previous years. This is probably because significant numbers of surf clams from the strong 1976 and 1977 year classes are now reaching the minimum legal size for harvest, thus elevating catch per hour fished. On February 26, 1984 (49 FR 6498, February 22, 1984), the Regional Director reduced allowable fishing time from 24 to 12 hours per week in an attempt to control harvest rates. Despite this reduction, and a two-week closure at the end of the second calendar quarter (49 FR 23355, June 6, 1984), rates continue to exceed quarterly quota guidelines. The Regional Director has determined that the Mid-Atlantic Area surf clam quota for the third calendar quarter of 1984 will be reached on or about August 31, 1984. Following consultation with industry spokespersons and the Mid-Atlantic Fishery Management Council, the regional Director has determined to close the mid-Atlantic fishery for the period from September 16, 1984, through September 29, 1984.

Closure of the fishery will commence at 0001 hours EDT on September 16, 1984. The fishery will remain closed until 2400 hours EDT on September 29, 1984. This closure applies only to surf clams taken in the fishery conservation zone in the Mid-Atlantic Area.

The fishery will reopen at 0001 hours EDT on September 30, 1984, with 12 hours fishing time per week. At that time, the Regional Director will evaluate the status of the fishery and quotas. If additional closure periods are required to bring harvests down to the level provided by the quotas, they will be considered for later in the year.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries.

Dated: August 29, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–23428 Filed 9–4–84; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 173
Wednesday, September 5, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO-83-1]

Kiwifruit Grown in California; Decision on Proposed Marketing Agreement and Order

Correction

In FR Doc. 84-22583 beginning on page 33670 in the issue of Friday, August 24, 1984, make the following corrections:

1. On page 33685, first column, first complete paragraph, line twelve, "agreed" should read "argued".

§ 920.12 [Corrected]

2. On page 33686, first column, § 920.12(b), first line, "District 1" should read "District 2".

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Parts 112 and 113

[Docket No. 84-046]

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling and Standard Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: A conference was held recently to review regulatory control over Rabies Vaccines. This conference included representatives of the animal industry, professional organizations, biologics manufacturers, and Federal and State agencies involved with rabies control. A number of changes in the parts of Title 9, Code of Federal Regulations, related to Rabies Vaccines were proposed. The Department agreed to consider many of these and to publish them as proposed rulemaking. Special label provisions for Rabies Vaccines as well as other products are prescribed in 9 CFR 112.7. In order to reduce the burden of preparing more than one proposal regarding revisions of that section, a complete review of the section was made. This action would amend the special labeling requirements for Rabies Vaccines as well as other products by deleting or revising various provisions which have been determined to be obsolete or unnecessary. The Standard Requirements in Part 113 of Title 9 for Rabies Vaccines would also be revised to eliminate certain restrictions and testing steps.

DATE: Comments must be received on or before November 5, 1984.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed rule would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing.

Background

At the time 9 CFR 112.7(b) was published, protection against specific serotypes of avian infectious bronchitis could only be achieved by including each specific serotype in the product. With the advent of new production methods, it may not be necessary in the future to use specific serotypes to ensure protection. It will remain essential to have label information to indicate the serotypes for which protection is claimed. Revision of 9 CFR 112.7(b) by changing from "serotypes used" to "serotypes for which protection is claimed" is proposed.

Presently, inactivated Rabies Vaccines labels and enclosures are required to contain recommendations for intramuscular administration at one site in the thigh. This requirement was thought to be necessary to ensure effectiveness and to guard against improper use of vaccines by providing for a single method of administration. New inactivated products are now available which are known to be equally effective when administered by other, more desirable routes. Adequate instructions and controls have been developed to ensure proper administration of Rabies Vaccine. Therefore, the proposed revision of 9 CFR 112.7(c)(1) would delete the requirement for the recommendation that inactivated Rabies Vaccines be administered intramuscularly at one site in the thigh.

Because of minor variations in conducting immunogenicity and duration of immunity tests on Rabies Vaccines and because of individual choices of language by licensees, variations in recommended dosage and immunization schedules have arisen.

These variations have resulted in difficulties for administrators of State and local regulatory programs for rabies control. In a conference involving licensed manufacturers, Federal, State, and local regulatory authorities, and interested scientists agreement was reached on uniform language which would result in more adequate label recommendations. As a result of such agreement, the Department proposes these revisions of 9 CFR 112.7 (c)(2) and (d)(6) which would provide for uniform age and repeat dose recommendations. In the Department's opinion this would not result in improper use of licensed Rabies Vaccines.

Label requirements in 9 CFR 112.7 (c)(4) and (d)(1) contain recommendations for annual revaccination with Rabies Vaccines in high risk areas. This recommendation is now considered unnecessary. Animals vaccinated with products shown to confer immunity for more than 1 year have not been shown to be more susceptible to rabies after 1 year than those revaccinated annually. Inclusion of this provision on the labels has been the source of considerable difficulty in areas where an increased incidence of rabies exists in wild species. Varying interpretations of "high risk areas" tended to interfere with rabies control by State and local health authorities. This proposed revision of 9 CFR 112.7 (c) and (d) would delete this recommendation.

The requirement for a label statement regarding accidental human exposure to modified live virus Rabies Vaccine in 9 CFR 112.7(d)(5) is probably insufficient to ensure that all users will be adequately warned. Although all currently approved labeling contains the warning, the regulation does not apply to cartons containing one multiple dose container where no enclosure is provided. This proposed revision would require prominent placement of the warning on all cartons and enclosures, regardless of size of the container.

The specific repeat dose requirements in 9 CFR 112.7(f) applicable to aqueous and adjuvanted inactivated bacterial products in general, as well as to specific fractions in 9 CFR 112.7(f) (1) and (3) have been found inappropriate in the case of certain products either prepared by advanced methods or from different ingredients, or both, and administered pursuant to new husbandry practices. This proposed revision would delete the requirements for a repeat dose at 7 days for aqueous products and at 14 days for adjuvanted products. The special requirements for *Clostridium chauvoei, septicum*, and *novyi* fractions would also be deleted. Appropriate recommendations would be required to be included on labels in accordance with specific characteristics of each product and conditions surrounding its use. Paragraphs would be renumbered accordingly.

Substantial concern for human safety existed when the restrictions on the route of administration for Marek's Disease Vaccine in 9 CFR 112.7(k) were introduced. Procedures using spray equipment were under investigation at several research institutions without adequate knowledge of public health implications. As a result, recommendations were limited to subcutaneous or intramuscular routes. Subsequently, substantial information has been obtained indicating that these viruses are not implicated in human disease. Newer methods of administration are being evaluated and should be approved if they are shown to be safe and effective. Therefore, this restriction is proposed to be deleted. The paragraph currently identified as (l) would be redesignated as (k).

The alternate statement regarding corneal opacity in 9 CFR 112.7(m) has resulted in frequent misunderstanding and is unnecessary. Corneal opacity may occur as an event not related to vaccination. When it occurs coincidentially with administration of vaccine, even though the vaccine is not at fault, the alternate statement may be misunderstood. This proposed revision would redesignate 9 CFR 112.7(m) as (l), would require a warning statement only where adequate data had not been filed, and would delete the requirement for the alternate statement in cases where adequate data were filed.

The immunogenicity and duration of immunity tests necessary for evaluation of Rabies Vaccine require 15 to 39 months to conclude. In some tests, even under excellent conditions and care, deaths of test animals occur during the prechallenge period. In order to ensure that a suitable number of test subjects are available for challenge, some manufacturers have found it necessary to include extra test animals at the time of vaccination. To prevent compromising the test results, it is essential that all animals be challenged. Proposed revision of 9 CFR 113.129(b)(3)(i) and 113.147(b)(3)(i) would remove the upper limit of 30 vaccinates. Revision of 9 CFR 113.129(b)(3)(ii) and 113.147(b)(3)(ii) would permit use of more than 10 controls. The basic number of vaccinates required to survive the challenge would remain at 22 of 25 or 26 of 30 but provisions for acceptance of equivalent result would be added. In order to ensure that other aspects of the studies are conducted and product evaluations made in a manner which will support licensure and acceptance for use in rabies control programs, it is essential that a protocol be approved before such tests of Rabies Vaccines are initiated. This proposed revision would change 9 CFR 113.129(b) and 113.147(b) to require submission of a protocol for each immunogenicity test of Rabies Vaccine.

Rabies Vaccines are vitally important to animal and public health. When in combination with other fractions, freedom from interference with the establishment of protection from rabies by presence of the other fractions is essential. These proposed revisions of 9 CFR 113.129(b) and 113.147(b) would codify the requirement that the Rabies Vaccine component in combination with other fractions provide the same protective value established for single fraction Rabies Vaccines.

Rabies Vaccine, Killed Virus, can be prepared so that administration by routes other than intramuscularly will provide protection which is at least equal to that obtained by intramuscular administration. These other routes are frequently less painful and less difficult to administer. Acceptance of vaccines administered by other routes in the past was resisted because of a desire on the part regulatory officials to have all vaccines administered by a single uniform method. This restriction has since been shown to be unnecessary because of better instructions, information, and controls. This proposed revision of 9 CFR 113.129(b)(3)(i) would permit administration by any method shown to safety provide adequate protection.

Measurement of serological response in test animals administered Rabies Vaccine is required six times during the prechallenge period. Adequate evaluation of serological response can be determined when this is reduced to five times. This proposed revision of 9 CFR 113.129(b)(3)(iii) and 113.147(b)(3)(iii) would delete the requirements for these determinations at 60 days postvaccination and would, therefore, eliminate one measurement of the present six.

The regulation in 9 CFR 113.129(b)(1) makes reference to the NIH Test in Chapter 33 of "Laboratory Techniques in Rabies." The test, as described in that publication, specifies that the challenge does contain between 5 and 50 LD_{50}. However, this is not clearly stated and, as a result, some manufacturers have failed to observe this restriction. This

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proposed revision would add clarifying language in 9 CFR 113.129(b)(1) to ensure that tests are run correctly.

The regulations in 9 CFR 113.129(b)(3)(iv) and 113.147(b)(3)(iii) require challenge using street virus and injection in the masseter muscles is recommended. These reqirements tend to preclude use of equally effective challenges which might not be considered to be street virus. These requirements also preclude equally effective and simpler methods of administration into muscles other than the Masseter. These proposed revisions would provide for use of challenge virus to be furnished or approved by Veterinary Services and would delete the Masseter muscle recommendation.

The requirement for observation of animals during the postchallenge period in accordance with 9 CFR 113.5(b) has been found to be inadequate. In order to ensure the validity of test results, specific tests to ascertain that deaths of test animals are due to rabies by examination of brain material for the presence of rabies virus is considered necessary. Therefore, this proposed revision would add a fluorescent antibody examination of brain tissue to ensure that deaths from challenge are due to rabies. Currently licensed products have been adequately evaluated and would not be affected by this revision.

The regulations in 9 CFR 113.129(b)(4) and 9 CFR 113.147(b)(4) provide for reduced numbers of certain species of animals to be challenged in immunogenicity tests. Reduction is permitted only for cattle, horses, sheep, and goats. Because of widespread need and interest in products to protect many species from rabies, it may become necessary to evaluate Rabies Vaccines in animals not considered at the time when this Standard Requirement was established. Some of these species present problems similar to those associated with challenge of those currently excluded. This proposed revision would allow for the reduction of test animals when domestic species other than dogs and cats are challenged. It would also allow for more adequate selection of vaccinates to be challenged by considering SN titers at the last two bleedings instead of restricting the selection only from those lowest at the last bleeding. This proposed revision would change the serological response considered to be sufficient to ensure protection from challenge. These proposed values are based on serology and challenge results involving over 900 animals. These studies demonstrated that titers of 1:10 by the mouse SN test or 1:16 by the rapid fluorescent focus inhibition test are necessary to ensure protection. The rapid fluorescent focus inhibition test, which was not available when present regulations were published, would be added as an alternative method for determining serological response. This method uses an *in vitro* test instead of mice in determining serological response with equal assurance of accuracy.

The regulations in 9 CFR 113.147(a)(5)(ii) specify a 1.0 ml volume of high titer virus for the nerve infiltration safety study. This could result in inadequate or in excessive virus being used because of variations in the titer inherent in various products. This revision would standardize the amount by specifying the equivalent of 10 doses for cats and dogs and to one dose per site in other species.

Alternatives

The alternatives considered are:

1. *Not amend the regulations.* This would result in retention of obsolete and unnecessary label restrictions. Unneeded restrictions and excess testing steps would continue in the Standard Requirements for Rabies Vaccines. Therefore, this alternative was not chosen.

2. *Amend the regulations.* This would result in more meaningful label requirements, deletion of unnecessary restrictions, and elimination of excessive testing steps. Therefore, this alternative was accepted.

List of Subjects in 39 CFR Part 113

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Transportation.

PART 112—PACKAGING AND LABELING

Section 112.7, paragraphs (c) (1) and (2), (d), (f), (k) and (l) would be revised to read:

§ 112.7 Special additional requirements.

* * * * *

(c) * * *

(1) That vaccine be administered to animals at 3 months of age or older, with a repeat dose 1 year later.

(2) Subsequent revaccination as determined from the results of duration of immunity studies conducted as prescribed in § 113.129 (b) or (c) or both.

(d) In the case of a biological product containing modified live rabies virus, the carton labels, enclosures, and all but very small final container labels shall include the recommendations provided in this paragraph.

(1) For low egg-passage (below the 180th egg-passage level) the statement "For Use In Dogs Only! Not For Use In Any Other Animal!"

(2) For other vaccines containing modified live rabies virus, the statement "For Use In (designate animal(s)) Only! Not For Use In Any Other Animal!"

(3) Intramuscular injection at one site in the thigh shall be recommended.

(4) The statement "In event of accidental exposure to the vaccine virus, the possible hazard to human health should be considered and State Public Health Officials should be consulted for specific recommendations "shall be prominently placed on all carton labels and on enclosures, if used.

(5) That vaccine be administered to animals at 3 months of age or older, with a repeat dose 1 year later.

(6) Subsequent revaccination as determined from the results of the duration of immunity studies conducted as prescribed in § 113.147 (b) or (c) or both.

* * * * *

(f) Unless otherwise authorized in a filed Outline of Production, labels for inactivated bacterial products shall contain an unqualified recommendation for a dose to accomplish primary immunization to be given at an appropriate time interval: *Provided,* That, repeat dose recommendations prescribed in paragraphs (f) (1) through (3) of this section are required for products containing the fractions listed.

(1) *Clostridium haemolyticum.* "Repeat the dose every 5 or 6 months in animals subject to reexposure."

(2) *Erysipelothrix rhusiopathiae.* "Swine: For breeding animals, repeat after 21 days and annually. Turkeys: Repeat dose every 3 months."

(3) *Clostridium botulinum Type C.* "Revaccinate breeders 1 month before breeding."

* * * * *

(k) In the case of normal serum, antiserum, or antiserum derivatives, the type of preservative used shall be indicated on all labels.

(l) Unless acceptable data has been filed with Veterinary Services, to show that developement or corneal opacity is not associated with the product, carton labels and enclosures used with biological products containing modified live canine hepatitis virus or modified live canine adenovirus Type 2 shall bear the following statement: "Occasionally, transient corneal opacity may occur following the administration of the product."

PART 113—STANDARD REQUIREMENTS

Section 113.129 introductory paragraph (b), (b)(1), (b)(3) (i) through (v), and (b)(4) would be revised to read:

§ 113.129 Rabies Vaccine, Killed Virus.

* * * * *

(b) The immunogenicity of vaccine prepared with virus at the highest passage from the Master Seed shall be established in each species for which the vaccine is recommended. Tests shall be conducted in accordance with a protocol filed with Veterinary Services before initiation of the tests. The vaccine shall be prepared using methods prescribed in the Outline of Production. If Rabies Vaccine is to be in combination with other fractions, the product to be tested shall include all fractions to be recommended.

(1) The preinactivation virus titer shall be established as soon as possible after harvest by at least five separate virus titrations. A mean relative potency value of the vaccine to be used in the host animal potency test shall be established by at least five replicated potency tests conducted in accordance with the NIH Test For Potency in Chapter 33 of "Laboratory Techniques in Rabies," Third Edition (1973), World Health Organization, Geneva. The volumetric method of calculation, as described in this publication, shall be used and the challenge dose shall contain between 5 and 50 LD_{50}. The provisions of "Laboratory Techniques in Rabies," Third Edition (1973), incorporate by reference and are the minimum standards for achieving compliance with this section.

* * * * *

(3) * * *

(i) Twenty-five or more animals shall be used as vaccinates. Each shall be administered a dose of vaccine at the proposed minimum potency level and by the method specified in the Outline of Production.

(ii) Ten or more additional animals shall be held as controls.

(iii) On or about 30, 90, 180, 270, and 365 days postvaccination, all test animals shall be bled and individual serum samples tested for neutralizing antibodies to rabies virus.

(iv) All surviving test animals shall be challenged intramuscularly with virulent rabies virus furnished or approved by Veterinary Services 1 year after vaccinations, except as provided in (b)(4) of this section. The challenged animals shall be observed each day for 90 days as prescribed in § 113.5(b). The brain of each test animal that dies following challenge shall be examined for rabies by the fluorescent antibody test.

(v) Requirements for acceptance in challenge tests shall be death due to rabies in at least 80 percent of the controls while at least 22 of 25 or 26 of 30 or a statistically equivalent number of the vaccinates remain well for a period of 90 days.

(4) When animals of domestic species other than dogs and cats are the test animals, the five vaccinates with the lowest SN titers at each of the last two bleedings may be challenged, except that all vaccinates with SN titers below 1:10 by the mouse SN test or below 1:16 by the rapid fluorescent focus inhibition test at any bleeding shall be challenged at 1 year postvaccination. At leat five SN-negative controls of each species shall be challenged at the same time as the vaccinates. All SN titers shall be determined to an endpoint. The unchallenged vaccinates shall be considered protected when evaluated for acceptance as specified in (b)(3)(v) of this section.

* * * * *

Section 113.147 paragraphs (a)(5)(ii), introductory paragraph (b), (b)(3) (i) through (v), and (b)(4) would be revised to read:

§ 113.147 Rabies Vaccine.

* * * * *

(a) * * *

(5) * * *

(ii) Infiltrate a major nerve of each of the animals in the other group of 5 with 10 doses of the same high titer virus. For all species except dogs and cats, multiple injections along the cervical spine in the proximity to the nerve trunks emerging from the spinal cord may be used: *Provided,* That a 1-dose volume shall be injected into each of four or more sites bilaterally.

* * * * *

(b) The immunogenicity of vaccine prepared with virus at the highest passage of the Master Seed shall be established in each species for which the vaccine is recommended. Tests shall be conducted in accordance with a protocol filed with Veterinary Services before initiation of the tests. The vaccine shall be prepared using methods prescribed in the Outline of Production. If Rabies Vaccine is to be in combination with other fractions, the product tested shall include all fractions to be recommended.

* * * * *

(3) * * *

(i) Twenty-five or more animals shall be used as vaccinates. Each shall be injected intramuscularly at one site in the thigh with a dose of vaccine at the proposed minimum virus titer as specified in the filed Outline of Production.

(ii) Ten or more additional animals shall be held as controls.

(iii) On or about days 30, 90, 180, 270, and 365 postvaccination, all animals shall be bled and individual serums tested for neutralizing antibodies to rabies virus.

(iv) All surviving test animals of each species shall be challenged intramuscularly with virulent rabies virus furnished or approved by Veterinary Services 1 year after vaccination, except as provided in paragraphs (b)(4), (b)(5), and (b)(6), of this section. The challenged animals shall be observed each day for 90 days as prescribed in § 113.5(b). The brain of each test animal that dies following challenge shall be examined for rabies by the fluorescent antibody test.

(v) Requirements for acceptance in challenge tests shall be death due to rabies in at least 80 percent of the controls while at least 22 of 25 or 26 of 30 or a statistically equivalent number of the vaccinates remain well for a period of 90 days.

(4) When animals of domestic species other than dogs and cats are the test animals, the five vaccinates with the lowest SN titers at each of the last two bleedings may be challenged, except that all vaccinates with SN titers below 1:10 by mouse SN test or below 1:16 by the rapid fluorescent focus inhibition test at any bleeding shall be challenged at 1 year postvaccination. At least five SN-negative controls of each species shall be challenged at the same time as the vaccinates. All SN titers shall be determined to an endpoint. The unchallenged vaccinates shall be considered protected when evaluated for acceptance as specified in (b)(3)(v) of this section.

* * * * *

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 30th day of August 1984.

N.L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-23465 Filed 9-4-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24206; Notice 84-14]

Elimination of Airport Delays

Correction

In FR Doc. 84-21984 beginning on page 33082 in the issue of Monday, August 20, 1984, make the following correction.

On page 33084, second column, last line, "LGA-0800-0595" should read "LGA-0800-0959".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Customs Regulations Amendment Relating to a Change in the Customs Service Field Organization—Hidalgo and Progreso, Texas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The document proposes to amend the Customs Regulations to change the Customs field organization by extending and redefining the geographical limits of the ports of entry of Hidalgo and Progreso, Texas. The proposed change would enable importers, now operating produce sheds outside the port limits, to apply for a special permit for the immediate delivery for the transportation of fresh fruits and vegetables arriving from Mexico for human consumption.

DATE: Comments must be received on or before November 5, 1984.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending and redefining the geographical limits of the ports of entry of Hidalgo and Progreso, Texas.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations, the ports of Hidalgo and Progreso, Texas, are listed in the Laredo, Texas, Customs District in the Southwest Region. Customs has been requested to extend the geographical limits of both ports so that importers, now operating produce sheds located outside the port limits, will be able to take advantage of the privileges of § 142.21(b), Customs Regulations (19 CFR 142.21(b)). Specifically, § 142.21(b) authorizes the filing of an application with Customs for a special permit for the immediate delivery for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises, if within the port of importation.

After a review of the matter, Customs is proposing expanding the port limits for both Hidalgo and Progreso. These proposed boundaries were designed to accommodate all active produce sheds and to simplify the descriptions of the port limits. Customs believes these proposed boundaries will be sufficient to allow all active produce sheds the privilege of operating under § 142.21(b), Customs Regulations, without the need for further expansion in the near future. Customs also believes the existing staffs at both ports will be sufficient to accommodate any additional workload.

If the proposed changes are adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations, will be amended accordingly.

Hidalgo

By E.O. 3609, dated January 9, 1922, and effective February 1, 1922, the port of Hidalgo, Texas, was established. However, the geographic limits of the port were undefined.

Under this proposal, the port limits of Hidalgo would include the following territory:

> On the south, the Rio Grande River; on the east, FM (Farm to Market)-1423 from the Rio Grande River north to State Highway 107, east on State Highway 107 to FM-493 and north on FM-493 to FM-2812; on the north, FM-2812 west to U.S. Highway 281 then south on U.S. Highway 281 to FM-1925 and west on FM-1925 to FM-881; on the west, south on FM-881 to FM-492 then west on FM-492 to FM-2894; south on FM-2894 to old U.S. Highway 83; west on old U.S. Highway 83 to FM-2062; south on FM-2062 to the Rio Grande River.

Progreso

By T.D. 76-339, published in the **Federal Register** on December 16, 1976 (41 FR 54927), the geographical limits of Progreso, Texas, included the following territory:

> Beginning at the intersection of Mile 9 North Road and the Cameron County and Hidalgo County line proceeding in a westerly direction along Mile 9 North Road to its intersection with Mile 6½ West Road, then proceeding in a southerly direction along Mile 6½ West Road and a continuation thereof to its intersection with the United States-Mexico international boundary, then proceeding in a easterly direction along the United States-Mexico international boundary to its intersection with the Cameron County and Hidalgo County Line, then proceeding in a northerly direction on the Cameron County and Hidalgo County Line, to its intersection with Mile 9 North Road.

The proposed change would extend the existing port limits of Progreso to include the following territory:

> On the south, the Rio Grande River; on the east, the county line separating Hidalgo and Cameron Counties from the Rio Grande River north to State Highway 107; on the north, State Highway 107 west from the county line to FM (Farm to Market)-1423; and on the west, FM-1423 south from State Highway 107 to the Rio Grande River.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Hidalgo and Progreso, Texas, areas, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the proposed amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291 this proposal is not subject to the Executive Order.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William Von Raab,
Commissioner of Customs.

Approved: August 17, 1984.

John M. Walker, Jr.
Assistant Secretary of the Treasury.

[FR Doc. 84-23436 Filed 9-4-84; 8:45 am]
BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 541]

Establishment of Sonoma Mountain Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Sonoma County, California, to be known as "Sonoma Mountain." This proposal is the result of a petition submitted by Mr. David Steiner, a grape grower in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

DATE: Written comments must be received by October 22, 1984.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 541).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origins.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on the United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area in Sonoma County, California, to be known as "Sonoma Mountain." The proposed Sonoma Mountain area is entirely included within the approved Sonoma Valley and North Coast areas. The proposed Sonoma Mountain area consists of approximately 5,000 acres containing 633 acres of grapevines.

Name

Sonoma Mountain is a prominent geographical feature which has been historically known by this name. The name "Sonoma" was first given to the area by General Mariano Guadalupe Vallejo, believing that it was the Indian word for Valley of the Moon, a name applied to Sonoma Valley by the Indians. General Vallejo established the town of Sonoma in 1835. The name "Sonoma," which applies to the valley, was also applied to the range on the western side of the valley, and to the most prominent peak of that range.

Geographical Features Which Affect Viticultural Features

The proposed Sonoma Mountain area is distinguished from surrounding areas by a "thermal belt" phenomenon common on the slopes of valleys in Mediterranean climate systems. The thermal belt phenomenon, characterized by drainage of cold air and fog from the slopes to lower elevations, is manifested by lower maximum temperatures and higher minimum temperatures, year-round, than lower elevations. In the Sonoma Valley, the lowest elevation of the thermal belt is generally considered to be around 400 feet above mean sea level. At a certain high elevation, the thermal belt phenomenon would be expected to dissipate, due to the overall lowering of temperatures common at higher elevations. The upper point at which the thermal belt climate phenomenon is overshadowed by the affect of higher elevation has not been accurately determined on Sonoma Mountain because the steep terrain of the higher elevations makes most agricultural activities impractical.

Location	Elevation (feet)	Temperature	
		Mean high temperature (°F)	Mean low temperature (°F)
Mountain Temperatures			
Steiner Vineyard	1,000	74.71	52.43
Laurel Glen	800	80.25	52.99
Sobre Vista	600	74.50	52.99
Averages		76.49	52.80
Valley Floor Temperatures			
Matanzas Creek Vineyard	500	77.60	49.10
Grand Cru Vineyards	250	80.82	48.71
Hill Rd. weather station	200	80.46	47.74
Averages		79.63	48.52

The petitioner claims that Laurel Glen is more remote from marine influences and this accounts for the higher mean high temperature. However, the mean low temperature is consistent with other mountain temperatures, in contrast to valley floor temperatures.

Boundaries

The eastern boundary of the proposed area is the 400-foot contour line, the lower elevation of the thermal belt phenomenon, as previously discussed. The petitioner's western boundary incorporated the boundary of the Sonoma Valley viticultural area. However, a simple examination of the Glen Ellen and Kenwood maps shows that the terrain is very steep beginning at elevations of about 1200 to 1600 feet above mean sea level. The steep terrain is a geographical feature which makes viticulture impractical. Moreover, the thermal belt phenomenon is dissipated at higher altitudes. Therefore, ATF has modified the peitioner's western boundary by using contour lines at elevations above which viticultural activities are impractical, and above which the thermal belt phenomenon is dissipated.

The proposed boundary of the Sonoma Mountain area is described in the proposed § 9.102.

Miscellaneous

ATF does not wish to give the impression by proposing Sonoma Mountain as a viticultural area that it is endorsing the quality of the wine from this area. ATF is proposing this area as being distinct and not better than other areas. By proposing this area, Sonoma Mountain wine producers would be allowed to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Sonoma Mountain wines.

Regulatory Flexibility Act

The provision of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

It is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

In compliance with Executive Order 12291 the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document propose possible boundaries for the Sonoma Mountain viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended by adding the heading of § 9.102 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.102 Sonoma Mountain.

* * * * *

Par. 2. Subpart C is amended by adding § 9.102 to read as follows:

§ 9.102 Sonoma Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Sonoma Mountain."

(b) *Approved maps.* The approved maps for determining the boundary of the Sonoma Mountain viticultural area are 2 U.S.G.S. topographic maps in the 7.5 minute series, as follows:

(1) Glen Ellen, Calif., dated 1954, photorevised 1980; and

(2) Kenwood, Calif., dated 1954, photorevised 1980.

(c) *Boundary.* The Sonoma Mountain viticultural area is located in Sonoma County, California. The boundary is as follows:

(1) The beginning point is the point at which the 1600-foot contour line crosses the section line dividing Section 22 from Section 23, in Township 6 North, Range 7 West.

(2) The boundary follows this section line north to the 800-foot contour line.

(3) The boundary follows the 800-foot contour line westerly, easterly, and northerly to Bennett Valley Road.

(4) The boundary follows Bennett Valley Road easterly to Enterprise Road.

(5) The boundary follows Enterprise Road southeasterly to an unnamed stream, in Section 7, Township 6 North, Range 7 West, which crosses Enterprise Road near the point at which the road turns from an easterly to a southerly direction.

(6) The boundary follows this stream easterly to the 400-foot contour line.

(7) The boundary follows the 400-foot contour line southerly to the township line dividing Township 6 North from Township 5 North.

(8) The boundary follows a straight line extension of this township line west to the 1200-foot contour line.

(9) The boundary follows the 1200-foot contour line northwesterly to the range line dividing Range 6 West from Range 7 West.

(10) The boundary follows this range line south to the 1600-foot contour line.

(11) The boundary follows this contour line westerly to the beginning point.

Signed: August 27, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-23407 Filed 9-4-84; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 53, and 58

[AD-FRL-2664-5]

National Ambient Air Quality Standards for Particulate Matter, Ambient Air Quality Surveillance for Particulate Matter, and Ambient Air Monitoring Reference and Equivalent Methods; Proposed Rules

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment periods.

SUMMARY: On March 20, 1984, EPA proposed revisons to the national ambient air quality standards for particulate matter in 40 CFR part 50 (49 FR 10408), and to EPA's regulations concerning ambient air quality surveillance in 40 CFR Part 58 (49 FR 10435) and ambient air monitoring reference and equivalent methods in 40 CFR Part 53 (49 FR 10454). On May 25, 1984, EPA extended the public comment periods on the three proposals and the deadlines for rebuttal and supplementary information submitted pursuant to section 307(d)(5)(iv) of the Clean Air Act regarding comments received at the April 30, 1984 public hearing to a common date of September 17, 1984 (49 FR 22109).

Today's notice extends the period for public comment on the Parts 50, 53, and 58 proposals and on the public hearing to November 16, 1984. This action is being taken in response to public requests for additional time to prepare comments on the March 20 proposals.

DATE: Written comments on these proposed rules must be received by November 16, 1984.

ADDRESSES: Submit comments (duplicate copies are preferred) on the proposed revisions to the national ambient air quality standards for particulate matter to: Central Docket Section (LE-131), Environmental Protection Agency, Attn: Docket No. A-82-37, 401 M Street, SW., Washington, D.C. 20460. Comments on the proposed revisions to EPA's regulations on ambient air quality surveillance for particulate matter should be sent to the same address, Attn: Docket No. A-83-13. Comments on the proposed revisions to the ambient air monitoring reference and equivalent methods should also be sent to the same address, Attn: Docket A-82-43. The dockets are located in the Central Docket Section of the Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD-12, Research Triangle Park, N.C. 27711. Telephone (919) 541-5531 (FTS: 629-5531).

SUPPLEMENTARY INFORMATION: EPA is further extending the public comment period in response to requests from the public. Furthermore, as announced in the March 20, 1984 Part 50 and Part 58 notices, EPA will provide an additional review period. This additional review will be for the limited purpose of allowing comment on the implications, if any, for the air quality standards and the air quality surveillance regulations of EPA's proposals concerning: (1) Requirements for preparation, adoption and submittal of implementation plans in 40 CFR Part 51 and associated guidelines, and (2) approval and promulgation of implementation plans in 40 CFR Part 52. This additional review period will be announced when the Part 51 and Part 52 requirements are proposed.

With today's extension the public will have been given some eight months to prepare comments on the proposed air quality standards and related monitoring and surveillance regulations. EPA, therefore, does not anticipate the need for further extensions of the comment period beyond November 16, 1984 for the Part 50, Part 53 and Part 58 proposals per se.

Dated: August 29, 1984.

John C. Topping,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-23424 Filed 9-4-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[EPA Action NE 1514; A-7-FRL-2664-6]

Revision to Attainment Status Designations; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On February 13, 1984, the Nebraska Department of Environmental Control submitted a request that the nonattainment area at 11th and Nicholas Streets in Omaha be redesignated to attainment of the primary total suspended particulate (TSP) standard. Supplementary information was submitted by the State on March 2, 1984. The purpose of today's notice is to discuss the State's submission, EPA's proposed action, and to invite the public to comment on the proposed action.

DATE: Comments must be received on or before October 5, 1984.

ADDRESSES: Comments should be addressed to Mary C. Carter, Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the State submission are available for inspection during normal business hours at the above address and at the following location: Nebraska Department of Environmental Control, Air Pollution Control Division, Box 94877, State House Station, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (816) 374–3791, FTS 758–3791.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act, as amended (Act) required each state to list all areas within the state as meeting or not meeting the National Ambient Air Quality Standards (NAAQS). Attainment status designations were initially promulgated on March 3, 1978, in the **Federal Register** at 43 FR 8962. The Act specified that these designations be based on air quality control regions (AQCRs) or any subportions of AQCRs. Section 107(d)(5) provides that the state may revise the list of AQCRs, or portions thereof, as appropriate, and submit such list to EPA for consideration.

In the March 3, 1978, **Federal Register** areas were classified as attainment, unclassified, nonattainment of the primary (and secondary) standards, or nonattainment of the secondary standard only (where the secondary standards differs from the primary standard). An attainment area is one in which the measured or predicted air quality does not exceed the ambient air quality standards. An unclassified area is one for which there are insufficient data to determine whether the area is attainment or nonattainment. A primary nonattainment area is one in which the air quality is worse than the primary or health-based standard. A secondary nonattainment area is one in which the air quality is attaining the primary standard, but not the secondary or welfare-based standard. For certain pollutants, secondary air quality standards are more stringent than primary standards.

To redesignate an area, the state must show that there were no violations of the standards during the most recent eight consecutive quarters of ambient air quality monitoring. Additionally, the state must demonstrate that the reductions in pollution levels are attributable to the implementation of a control strategy.

On February 13, 1984, the State of Nebraska submitted a request for redesignation of the 11th and Nicholas Streets nonattainment area in Omaha to attainment of the primary total suspended particulate (TSP) standard. The submission contained monitoring data showing no violations of the primary TSP standard for eight consecutive quarters in 1982 and 1983.

Material submitted by the State on March 2, 1984, referenced an RFP report which confirmed that the control strategy contained in the approved State Implementation Plan (SIP) had been implemented in accordance with the SIP.

Review of the information submitted by the State indicates that the area meets the requirements for redesignation from nonattainment of both the primary and secondary TSP standards to nonattainment of the secondary TSP standard only.

Final promulgation of this action at the close of the present public comment period would remove the construction ban on major stationary sources of TSP which is currently in effect in this area. See the **Federal Register** of March 28, 1983 (48 FR 12717), for a discussion of the construction ban.

Proposed Action

EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the TSP standards at the 11th and Nicholas Streets nonattainment site in Omaha.

EPA is soliciting comments on the State's submission and on EPA's action proposed in this document. The Administrator will consider comments recived in deciding to approve or disapprove this submission.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This notice is issued under the authority of Section 107(d) of the Clean Air Act, as amended, 42 U.S.C. 7407(d).

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: August 2, 1984.

Morris Kay,

Regional Administrator.

[FR Doc. 84-23420 Filed 9-4-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300095; FRL-2663-5]

Alpha-(P-Nonylphenyl)-Omega-Hydroxypoly(Oxypropylene) Block Polymer With Poly (Oxyethylene); Proposed Exemption From the Requirement of a Tolerance; Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to expand the exemption from the requirement of a tolerance for *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxypropylene) block polymer with poly (oxyethylene) when used as a surfactant in pesticide formulations. This proposed regulation was requested by Quaker Chemical Corp.

DATE: Written comments must be received on or before October 5, 1984.

ADDRESS: By mail, submit written comments identified by the document control number [OPP-300095] to:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, deliver comments to:

Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: N. Bhushan Mandava (703) 557-7700.

SUPPLEMENTARY INFORMATION: At the request of Quaker Chemical Corp., the Administrator proposes to amend 40 CFR 180.1001(c) by expanding the existing exemption from the requirement of a tolerance for *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxypropylene) block polymer with poly (oxyethylene) (the entry appears incorrectly in the CFR because of a typographical error—"*alpha*-(*p*-Nonylphenyl)-*alpha* * * *;" should read "*alpha*-(*p*-Nonylphenyl)-*omega* * * *"). The ingredient is listed for use as a surfactant in pesticide formulations, and the amendment would expand the polyoxypropylene content from 20–60 moles to 10–60 moles, the polyoxyethylene content from 30–80 moles to 10–80 moles, and the molecular weight from 2,100–7, 100 to 1,200–7,100. A separate entry is not necessary in order to reflect this change.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Alpha-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene).

Name and address of requestor. Quaker Chemical Corp., Conshohocken, PA 19428.

Bases for approval. The parent surfactant is already cleared under 40 CFR 180.1001(c) under the general heading "*alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene)"; the polyoxypropylene content is 20–60 moles; polyoxyethylene content is 30–80 moles; and molecular weight is 2,100–7,100. The present clearance can be amended to reflect this modest change in the moles of polyoxypropylene and polyoxyethylene. The Agency does not consider this change in the polyoxypropylene and polyoxyethylene content to be of toxicological significance. Accordingly, the present entry in 40 CFR 180.1001(c) should be amended to reflect the change in polyoxypropylene content from 20–60 moles to 10–60 moles, polyoxyethylene content from 30–80 moles to 10–80 moles, and molecular weight from 2,100–7,100 to 1,200–7,100.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP-300095]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 15, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(c) be amended by revising the entry *alpha*-(*p*-Nonylphenyl)-*alpha*-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene), to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Alpha-(*p*-Nonylphenyl)-*omega*-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); polyoxypropylene content of 10–60 moles; polyoxyethylene content of 10–80 moles; molecular weight 1,200–7,100.		Surfactants, related adjuvants of surfactants.
* * * * *		

* * * * *

[FR Doc. 84–23198 Filed 9–4–84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for the Interior Least Tern; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing, and reopening of comment period; correction.

SUMMARY: The Service gave notice in the **Federal Register** of August 22, 1984 (49 FR 33296), that a public hearing would be held in Omaha, Nebraska, on the proposed determination of endangered status for the interior least tern and that the comment period on the proposal was reopened. In the **"SUPPLEMENTARY INFORMATION"** section, middle paragraph, the meeting location of the hearing should be changed to read the Peter Kiewit Conference Center, Room 102, 1313 Farnam on the Mall, Omaha, Nebraska.

In the last paragraph of that section the date for receipt of written comments should read September 25, 1984. The other sections of that notice remain as published.

DATES: The comment period was reopened August 22, 1984. The public hearing will be held on September 11, 1984, from 6:30 p.m. to 10:00 p.m. in Omaha, Nebraska. Comments on the proposal must be received by September 25, 1984.

ADDRESSES: The public hearing will be held at the Peter Kiewit Conference Center, Room 102, 1313 Farnam on the Mall, Omaha, Nebraska. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing, contact Dr. James Miller, Staff Biologist, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/234–2496). For other information regarding the proposed rule, contact Mr. James M. Engel, Endangered Species Specialist, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725–3276 or FTS 725–3276).

Dated: August 28, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23382 Filed 9-4-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 49, No. 173

Wednesday, September 5, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Stillwater, Oklahoma, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on September 6, 1984, 2:00 p.m. to 4:00 p.m.

Comments must be received no later than October 6, 1984.

ADDRESSES: Meeting location at FmHA Conference Room, Agricultural Center Building, Stillwater, Oklahoma.

Written Comments and Further Information Will Be Addressed to: Larry E. Stephenson, State Director, Farmers Home Administration, Agricultural Center Building, Stillwater, Oklahoma 74074 (405/624–4329).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Oklahoma State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Oklahoma. The purpose of the meeting is to discusss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contract.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: August 30, 1984.

Michael E. Brunner,

Associate Administrator, Farmers Home Administration.

[FR Doc. 84–23404 Filed 9–4–84; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Statement by Foreign Importer on Vessel Repair Parts
Form Numbers: Agency—ITA 686–P EAR 373.8; OMB 0625–0137
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 50 respondents; 13 reporting hours
Needs and Uses: The Aircraft and Vessel Repair Station Procedures provides a blanket approval for supplying U.S. origin commodities to aircraft and vessels of friendly countries. If the application is approved, the foreign importer will not be required to send the usual documents to his U.S. exporter such as an Import Certificate, Consignee Purchaser Certificate, etc. Also, the U.S. exporter will not be requested to submit these documents
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Agency: International Trade Administration
Title: Statement by Ultimate Consignee and Purchaser
Form Numbers: Agency—ITA 629–P EAR 375.2; OMB—0625–0136
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 40,000 respondents; 20,000 reporting hours
Needs and Uses: Information provided by exporters on this form is used by licensing personnel in the Office of Export Administration as a basis for approving or rejecting applications for export licenses
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Agency: International Trade Administration
Title: Swedish Consignee's Letter of Assurance
Form Numbers: Agency—EAR 372.5; OMB—0625–0142
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 125 respondents; 63 reporting hours
Needs and Uses: Under this procedure, the U.S. exporter requests his Swedish customers to voluntarily submit a letter affirming that they will not knowingly divert U.S. imports contrary to U.S. law. When the letter is available, licensing proceeds on a more prompt basis. If the letter is not submitted, a Form—629P (Statement by Ultimate Consignee and Purchaser) is required for each export transaction authorized by the issuance of a validated export license
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Agency: International Trade Administration
Title: Statement by Foreign Consignee in Support of Special License Application
Form Numbers: Agency—ITA 6052–P OMB—0625–0135

Type of Request: Extension of the expiration date of a currently approved collection
Burden: 5,000 respondents; 2,500 reporting hours
Needs and Uses: When shipping commodities to certain overseas destinations, three special license procedures require foreign consignees of U.S. exporters to provide certain information. The information is used in determining whether or not the U.S. exporter is eligible to participate in the special licensing procedures—Project Distribution, and Services Supply
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Clearance of U.S. Exports
Form Numbers: Agency—EAR 386.2(d) EAR 386.3(j); OMB—0625-0051
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 200,000 respondents; 53,333 reporting hours
Needs and Uses: In order to ensure compliance with the Export Administration Regulations, the Office of Export Administration requires that shipping information be entered on the reverse of each export license and on the Shipper's Export Declarations. The information is used to determine when unauthorized shipments have been made
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Exception to Requirement of Order Party Signature
Form Numbers: Agency—EAR 372.6(c); OMB—0625-0024
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 12 respondents; 3 reporting hours
Needs and Uses: When a definite order for export has not been received for a shipment, an applicant for an export license may request a waiver of the order requirement. The information provided is used to decide whether or not the Department of Commerce is justified in granting an exception to the requirement that an exporter have a definite order before an export license is granted.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Capital Construction Fund Deposit/Withdrawal Report
Form Numbers: Agency—NOAA 34-82; OMB—0648-0041
Type of Request: Reinstatement of a previously approved collection for which approval has expired
Burden: 3,100 respondents; 775 reporting hours
Needs and Uses: The Fishing Vessel Capital Construction Fund program is a tax deferral program which allows participating fishermen to defer the tax on vessel income. This form is used to provide for an accounting of respondent's deposit/withdrawal activity. It is used to check for compliance with codified limitations and requirements of the program.
Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20203.

Dated: August 29, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-23409 Filed 9-4-84; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-351-401]

Preliminary Determination of Sales at Less Than Fair Value; Certain Large Diameter Carbon Steel Welded Pipes From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain large diameter carbon steel welded pipes from Brazil are being, or are likely to be, sold in the United States at less than fair value, and that "critical circumstances" do not exist in this case. We have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise, and to require a cash deposit or the posting of a bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by November 12, 1984.

EFFECTIVE DATE: September 5, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Aceto, Office of Invesitgations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that certain large diameter carbon steel welded pipes (large diameter pipes) from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We also determine that "critical circumstances" do not exist in this case.

We found that the foreign market value of large diameter pipes from Brazil exceeded the United States price on 33 percent of the U.S. sales compared. The weighted-average margin is 2.67 percent.

If this investigation proceeds normally, we will make our final determination by November 12, 1984.

Case History

On March 21, 1984, we received a petition from Berg Steel Pipe Corporation on behalf of the U.S. industry producing large diameter pipes. In accordance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of large diameter pipes from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry. The allegation of sales at less than fair value included an allegation that home market sales are being made at less than the cost of production in Brazil. Also, "critical circumstances" were alleged under section 733(e) of the Act.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We also undertook to determine whether "critical circumstances" exist in this case. Since petitioner provided no home market or third country prices to support its allegation of home market sales at less than cost of production, we decided at the time of initiation not to investigate this allegation. We notified the ITC of our action and initiated the investigation on April 10, 1984 (49 FR 15248). On May 7, 1984, we were informed by the ITC that there is a reasonable indication that imports of large diameter pipes are materially injuring a United States industry.

A questionnaire was presented to Confab Industrial S.A. (Confab) on April 16, 1984, and we received a response on June 1, 1984. On June 8, June 11, and August 10, 1984, we received Confab's revised responses. During the week of July 9, 1984, verification of Confab's response was conducted in Sao Paulo, Brazil.

On August 13, 1984, petitioner again alleged that the merchandise under investigation was being sold in the home market at less than the cost of production. This new allegation was supported by actual prices charged by Confab to its home market customers. We determined that an investigation of this allegation was warranted, and on August 24, 1984, we presented a cost of production questionnaire to Contab. Since the allegation of sales at less than the cost of production was received less than two weeks prior to the preliminary determination, we had insufficient time in which to obtain and analyze Confab's response to our questionnaire. That information will be considered for purposes of our final determination.

Petitioner also requested that the Department extend the date of its preliminary determination. Since petitioner's request was filed less than 25 days before the preliminary determination would otherwise be due, the extension was not granted pursuant to section 733(c) of the Act and § 353.39(b) of the Commerce Regulations.

Scope of Investigation

The merchandise covered by this investigation is "Certain Large Diameter Carbon Steel Welded Pipes" of circular cross section, with an outside diameter greater than 16 inches, not suitable for use in boilers, superheaters, heat exchangers, condensers, and feedwater heaters and not cold drawn. At the time this case was initiated, this merchandise was provided for in items number 610.3211 and 610.3251 of the *Tariff Schedules of the United States Annotated* (TSUSA). In April 1984, the TSUSA numbers were changed. Item number 610.3211 is now items number 610.3212 and 610.3213. Item numbers 610.3251 is now items number 610.3262 and 610.3264. This merchandise includes American Petroleum Institute (A.P.I.) and non-A.P.I. line pipe, but does not include A.P.I. nor non-A.P.I. welded carbon steel oil well casing.

This investigation covers the period from July 1, 1983, to March 31, 1984. Confab Industrial S.A. is the only known Brazilian producer who exports the subject merchandise to the United States. We examined over 50 percent of the dollar volume of United States sales made during the period of investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into United States. We calculated the purchase price based on the CIF or CIF duty paid price to United States purchasers. We made deductions, where appropriate, for brokerage and handling charges, foreign inland freight, inland and marine insurance, ocean freight, and U.S. customs duties. We also accounted for taxes imposed in Brazil which were not collected by reason of the exportation of the merchandise to the United States.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we used home market prices to determine foreign market value. The home market prices were based on ex-factory prices to unrelated home market purchasers. We made comparisons of "such or similar" merchandise based on product categories selected by Commerce Department industry experts in accordance with section 771(16)(B) of the Act. In calculating foreign market value, we made currency conversions from Brazilian cruzeiros to United States dollars in accordance with § 353.56(a)(1) of the Commerce Regulations using the certified daily exchange rates. We made adjustments, where appropriate, for credit expenses in accordance with § 353.15 of the Commerce Regulations. An adjustment was also made, where appropriate, for the difference between commissions on sales to the United States and indirect selling expenses in the home market, in accordance with § 353.15(c) of the Commerce Regulations.

The following claims for adjustments were disallowed. Confab claimed a "short-run adjustment", which it stated would adjust for the increased prices resulting from additional start-up and re-tooling costs it incurs on small quantity orders. In addition, Confab claimed adjustments for differences in grades of steel and product dimensions between the products sold in the United States and in the home market. These adjustments were disallowed because the company has not provided sufficient information supporting the bases for the claims. Confab also claimed circumstance of sale adjustments for pricing premiums charged to state-owned enterprises to compensate for: (1) Decree Law 2037, which limits Confab's price adjustments to 95 percent of the inflation rate, (2) "escalation losses" resulting from the time limits imposed by the government on calculating price adjustments, and (3) "penalty losses" resulting from the additional penalties the government may charge Confab for late deliveries. These premiums appear to constitute increases in revenue to Confab with no evidence of directly related corresponding costs. Therefore, we have determined that adjustments for these differences in circumstances of sale are not appropriate.

If additional verifiable information regarding the disallowed adjustments is provided, it will be considered for purposes of our final determination.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination.

Negative Preliminary Determination of Critical Circumstances

Petitioner alleged that imports of large diameter pipes present "critical circumstances". Under section 733(e) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1)(a) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the

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subject of the investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and (2) there have been massive imports of the class or kind of the merchandise which is the subject of the investigation over a relatively short period. In preliminarily determining whether there is a history of dumping of large diameter pipes from Brazil in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We found no past antidumping determinations on large diameter pipes from Brazil which covered the class or kind of merchandise which is the subject of this investigation. We also reviewed the antidumping actions of other countries and found no evidence of prior dumping of the merchandise under investigation in those countries.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have known that the exporters were selling this product at less than fair value. It is the Department's position that this test is met where margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below home market sales prices. Given the size of the margin found for this preliminary determination, we do not have reason to believe or suspect that the importer knew or should have known that this product was sold at less than fair value. Therefore, we preliminarily determine that "critical circumstances" do not exist with respect to large diameter pipes from Brazil.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of large diameter pipes from Brazil. This suspension of liquidation applies to all merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margin is 2.67 percent.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry, before the later of 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department makes final affirmative determination.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 3, 1984 at the United States Department of Commerce, Conference Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 26, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: August 28, 1984.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23408 Filed 9-4-84; 8:45 am]

BILLING CODE 3510-DS-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a Compliance Program for the Architectural Glazing Standard, with a requested expiration date of September 30, 1985.

The purpose of this program is to determine compliance with the requirements of the Safety Standard for Architectural Glazing Materials (16 CFR Part 1201) by manufacturers and fabricators of the architectual products which are subject to that standard.

The standard is intended to reduce or eliminate unreasonable risks of injury associated with accidental human-impact breakage of glazing materials used in doors, storm doors, bathtub doors and enclosures, shower doors and enclosures, and sliding glass (patio) doors. The standard prescribes performance requirements for glazing materials used in those products to assure that the glazing materials either will not break if impacted with a specified energy, or will break with characteristics which are less likely to present an unreasonable risk of injury.

The compliance program will be conducted by investigators from the Commission's field staff, who will inspect firms which manufacture or fabricate the five products subject to the architectural glazing standard at a plant or factory, or by on-site installation of new or replacement glazing. The investigators will inspect manufacturing establishments, examine records, question employees of the firms, and observe manufacturing operations.

Information about the Proposed Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Compliance Program—Architectural Glazing Materials.

Type of request: Approval of new plan.

Frequency of collection: Once a year.

General description of respondents: Firms which manufacture or fabricate doors, storm doors, bathtub doors and enclosures, shower doors and enclosures, and sliding glass (patio) doors at a plant or factory, or on-site by installation of new or replacement glazing.

Estimated number of respondents: 200.

Estimated average number of hours per response: 3.

Comments: Comments on this proposed collection of information should be addressed to Andy Valez Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395–7313, not later than September 20, 1984. Copies of the proposed collection of information are available from Francine Shacter, Office of Budget, Planning and Program Evaluation, Consumer Product Saftey Commission, Washington, D.C. 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 30, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84–23437 Filed 9–4–84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: Department of Defense Retirement Board of Actuaries will meet in open session September 19 and 20, 1984, at the Defense Logistics Agency Auditorium, Building 3 (3B105), Cameron Station, Alexandria, VA, 22314. The meeting will begin at 9:30 a.m.

The mission of the Board is to make acturial determinations concerning the DOD Military Retirement Fund.

A meeting of the Board has been scheduled for September 19 and 20, 1984 to implement the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1461 et. seq.). The Board shall review DOD actuarial methods and assumptions to be used in the valuation of the military retirement system.

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, (202) 696–5869.

Dated: August 30, 1984.

Patricia Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84–23448 Filed 9–4–84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Performance Review Boards; List of Members

Below is a listing of an additional individual who is eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Others

BG Kenneth R. Johnson.

Harry C. Waters,

Alternate Air Force, Federal Register Liaison Officer.

[FR Doc. 84–23440 Filed 9–4–84; 8:45 am]

BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

August 23, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet in the Pentagon on September 24 and 25, 1984 from 8:30 a.m. to 5:00 p.m. both days. The committee will meet to consider ways in which existing and programmed systems may be effectively applied to attack of mobile ballistic missiles. The briefings and discussions will be classified and closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Harry C. Waters,

Alternate Air Force, Federal Register Liaison Officer.

[FR Doc. 84–23441 Filed 9–4–84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Monday and Tuesday, September 24 and 25, 1984.

Time: 0900–1700 hours, both days (Open).

Place: Army Research Institute for the Behavioral and Social Sciences, Alexandria, Virginia.

Agenda: The Cohesion and the Army Family Subpanel of the ASB Ad Hoc Subgroup of Soldier Research Issues will meet for briefings and discussions reviewing the existing research program and plan for the next 2–3 years. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–23446 Filed 9–4–84; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Thursday, October 25, 1984.

Time: 1300–1600 hours (Open).

Place: The Pentagon, Washington, D.C.

Agenda: The ASB Chairman, Vice Chairman, and the Chairs of the Ad Hoc Subgroups on AVRADA (Avionics Research and Development. Activity) and TACOM (U.S. Army Tank Automotive Command) Effectiveness Reviews will meet for discussions on lessons learned during the conduct of these two studies on improving Army laboratories. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–23447 Filed 9–4–84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Applications for Review Accepted for Hearing by Education Appeal Board

AGENCY: Department of Education.

ACTION: Notice of Applications for Review Accepted for Hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review transferred to the Education Appeal Board from the Health, Education, and Welfare (HEW) Grant Appeals Board and accepted for hearing by the Education Appeal Board.

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FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW., (Room 1065, FOB–6), Washington, D.C. 20202. Telephone: (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdicition of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve a determination that a grant is void, the disapproval of a request for permission to incur an expenditure during the term of a grant, or determinations regarding cost allocation plans or special rates negotiated with specified grantees. Final regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981 (46 FR 27304), 34 CFR Part 78.

Applications Accepted

The following cases previously appealed to the HEW Grant Appeals Board have been accepted for hearing by the Education Appeal Board: *Appeal of D–Q University,* Docket No. 78–10, ACN 09–65171.

D–Q University, Davis, California, appealed a final audit determination made by the Acting Deputy Director for Operations, Grant and Procurement Management Division. The underlying audit reviewed several Federal programs at the University for fiscal years 1974 and 1975.

The Acting Deputy Director disallowed costs for salaries, fringe benefits, travel, and consultants because of allegedly inadequate documentation. D–Q was also directed to return unexpended funds.

The Department of Education seeks a refund of $49,519. *Appeal of the University of Northern Colorado,* Docket No. 78–157, ACN 08–77001.

The University of Northern Colorado, Greeley, Colorado, appealed a final audit determination by the Acting Director of the Grant and Procurement Management Division. The underlying audit reviewed Federal grants to the University for the period July 1, 1973, through June 30, 1976.

The Acting Director requested a refund of drawdowns from the letter of credit for overexpenditures. Costs for salaries and personal service agreements were disallowed. Cost transfers were also disallowed because such transfers were expressly prohibited by the terms of the grant.

The Department of Education seeks a refund of $63,933. *Appeal of Robeson County Board of Education,* Docket No. 79–61, ACN 04–80102.

Robeson County Board of Education, Lumberton, North Carolina, appealed a final audit determination made by the Deputy Commissioner of the Office of Indian Education. The audit reviewed Robeson's Indian Education Act Project for fiscal years 1974 through 1976.

Costs were disallowed because Robeson allegedly supplanted State and local funds, activities allegedly were not approved by the parents' committee, activities allegedly were not related to the special educational needs of Indian children, and costs allegedly were not supported with adequate documentation.

The Department of Education seeks a refund of $209,991. *Appeal of the Research Foundation of the City Univerity of New York,* Docket No. 79–91, ACN 02–67011.

The Research Foundation of the City University of New York requested review of a final audit determination of the Director of the Grant and Procurement Management Division. The audit reviewed grants under the TRIO program for fiscal years 1973 and 1974.

Expense transfers among grants were disallowed because such transfers allegedly violated the terms of the grant.

The Department of Education seeks a refund of $22,626. *Appeal of the Alaska Federation of Natives, Incorporated,* Docket No. 79–95 ACN 10–85300.

The Alaska Federation of Natives, Incorporated, Anchorage, Alaska, appealed a final audit determination by the Director of the Grant and Procurement Management Division. The underlying audit reviewed the TRIO program for fiscal year 1977.

Costs for tutoring services and stipends were disallowed because the documentation of the costs was allegedly inadequate. Indirect costs which exceeded eight percent were disallowed. Travel expenses claimed as a direct cost rather than an indirect cost were also disallowed.

The Department of Education seeks a refund of $3,269,92. The Alaska Federation contests $2,916.75 of the audit exception and accedes to the disallowance of the remaining $353.17.

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency, may upon application to the Board Chairman, intervene in appeals before the Education Appeal Board, including the above appeals.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

These applications to intervene, or questions, should be addressed to Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB–6), Washington, D.C. 20202. Telephone: (202) 245–7835.

(Catalog of Federal Domestic Assistance No. not applicable)

(20 U.S.C. 1234)

Dated: August 30, 1984.

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 84–23456 Filed 9–4–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Comments on Draft Mission Plan for the Civilian Radioactive Waste Management Program

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Availability of Comments on the Draft Mission Plan.

SUMMARY: The purpose of this notice is to announce that the comments received by the Department of Energy on the draft Mission Plan are available for public inspection.

Nearly 100 sets of comments were received from various individuals and organizations including State representatives, Indian Tribes, Federal agencies, industry, utilities and citizen organizations.

DATE: Copies of the comments received will be available on September 5, 1984, for inspection at the DOE Public Reading Rooms, Operations Offices and Information Offices, specified below, at the indicated times Monday through Friday, except Federal holidays.

ADDRESSES:

DOE Public Reading Room, Forrestal Building, Room 1F-090, 1000 Independence Avenue SW., Washington, D.C. 20585, 8:00 a.m.–4:30 p.m., (202) 252-6020

U.S Department of Energy, New York Support Office, 26 Federal Plaza, Room 3437, New York, New York 10278, 8:30 a.m.–5:00 p.m. (212) 264-1021

U.S. Department of Energy, Boston Support Office, Room 1002, 150 Causeway Street, Boston, Massachusetts 02114, 8:30 a.m.–5:30 p.m., (617) 223-5207

U.S. Department of Energy, Kansas City Support Office, 324 East Eleventh Street, Kansas City, Missouri 64106, 7:45 a.m.–4:30 p.m., (816) 374–5533

U.S. Department of Energy, Philadelphia Support Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102, 8:00 a.m.–4:30 p.m., (215) 597-9067

U.S. Department of Energy, Atlanta Support Office, 1655 Peachtree NE., 8th Floor, Atlanta, Georgia 30309, 7:30 a.m.–5:30 p.m., (404) 881-2837

U.S. Department of Energy, Chicago Operations Office, Office of Communications, 9800 South Cass Avenue, Argonne, Illinois 60439, (312) 972-2010. Must call and make arrangements for review

U.S. Department of Energy, Dallas Support Office, Room 227, 2626 West Mockingbird Lane, Dallas, Texas 75235, 7:30 a.m.–5:30 p.m., (214) 767-7741

U.S. Department of Energy, Nevada Operations Office, Public Document Room, 2753 South Highland Drive, Las Vegas, Nevada 89114-4100, 7:30 a.m.–4:30 p.m., (702) 295–3521

Western Area Power Administration, 1627 Cole Boulevard, Western Hqs. Reading Room, Bldg. 18, Golden, Colorado 80401, 8:00 a.m.–4:00 p.m., (303) 231–1557

U.S. Department of Energy, Denver Area Office, 1075 South Yukon Street, Room 203, Lakewood, Colorado 80226, U.S. Department of Energy, 7:30 a.m.–4:00 p.m., (303) 236–2000

U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Wells Fargo Bldg., Reading Room, Room 240, Oakland, California 94612, 8:30 a.m.–4:00 p.m., (415) 273-4358

U.S. Department of Energy, Albuquerque Operations Office, Kirkland Air Force Base, National Atomic Museum Library, Public Reading Room, Albuquerque, New Mexico 87115, 9:00 a.m.–5:00 p.m., (505) 844–8443

Richland Operations Office, Hanford Science Center—Rockwell Hanford Operations, 825 Jadwin Avenue, Fed. Bldg., Richland, Washington 99352, 9:00 a.m.–5:00 p.m., (509) 376–6374

Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, Georgia 30635, 8:00 a.m.–5:00 p.m., (404) 283–3261

Southwestern Power Administration, 333 W. 4th Street, Room 3408, Tulsa, Oklahoma 74101, 7:45 a.m.–4:30 p.m., (918) 581–7426

U.S. Department of Energy, Idaho Operations Office, 550 2nd Street Hqs. 173, Idaho Falls, Idaho 83401, 8:00 a.m.–5:00 p.m., (208) 526–0271

U.S. Department of Energy, Oak Ridge Operations Office, Federal Building, Room G–208, 200 Administration Road, Oak Ridge, Tennessee 37830

U.S. Department of Energy, National Waste Terminal Storage Program Office, 1375 Perry Street, Room 13-4-127, Columbus, Ohio 43201, 8:00 a.m.–5:00 p.m. (614) 424–7697

Richton Nuclear Waste Information Office, 103 Dogwood Avenue, Richton, Mississippi 39476, 8:00 a.m.–5:00 p.m. Thu. and Sat. 5:00–9:00 p.m. Mon. and Tue. (601) 788–6948

Minden Nuclear Waste Information Office, 221 Main Street, Minden, Louisiana 71055, 11:00 a.m.–3:00 p.m., (318) 371–0369

U.S. Department of Energy, Savannah River Operations Office, 211 York Street, NE., Federal Building, Aiken, South Carolina 29801

Moab Nuclear Waste Information Office, 471 South Main Street No. 3, Moab, Utah 84532, 8:00 a.m.–2:00 p.m., Tue. through Fri. (801) 259–8727

Monticello Nuclear Waste Information Office, 117 South Main Street, Room 12, Monticello, Utah 84535, 8:00 a.m.–12:00, (801) 587-2231, Ext. 28

FOR FURTHER INFORMATION CONTACT: Victor W. Trebules, Policy Division, Office of Radioactive Waste Management, U.S. Department of Energy, Washington, D.C. 20585, Telephone (202) 252–5392.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982, Pub. L. 97–425, (Act) was signed by the President on January 7, 1983. Section 301 of this Act requires the Secretary of Energy to prepare a comprehensive report know as the Mission Plan. The purpose of this report is to "provide an informational basis sufficent to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act."

Section 301 of the Act further requires the Secretary to:

1. Submit a draft Mission Plan to the States, the affected Indian Tribes, the Nuclear Regulatory Commission, and other Government agencies as the Secretary deems appropriate for their comments, and

2. Upon receipt of any comments of such agencies, publish a notice in the **Federal Register** of the availability of the comments for public inspection.

The draft Mission Plan was completed in April 1984 and distributed for review and comment. The availability of the draft Mission Plan was announced in the **Federal Register** (49 FR 19696) on May 9, 1984.

The Department will address the major areas of concern in the comments and publish a detailed statement in a separate Comment Response Document. The availability of the Comment Response Document will be announced in a future **Federal Register** Notice.

Issued in Washington, D.C., August 28, 1984.

Robert H. Bauer,

Acting Director, Civilian Radioactive Waste Management.

[FR Doc. 84-23463 Filed 9-4-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50623; FRL-2662-6]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-103. Extension. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 1,299 pounds of the insecticide [(±)-cyano (3-phenoxyphenyl)methyl(+)-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate] on corn to evaluate the control of various insects. A total of 9,740 acres are involved; the program is authorized only in the States of Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, and Wisconsin. The experimental use permit is effective from June 15, 1984 to June 15, 1985. Temporary tolerances for residues of the active ingredient in or on corn grain (except popcorn) and fresh corn including sweet corn have been established. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

49548-EUP-1. Extension. Bend Research, Inc., 64550 Research Road, Bend, OR 97701. This experimental use permit allows the use of nine pounds of the biological insecticides (Z,Z)-7,11-hexadecadien-1-ol acetate and (Z,E)-7,11-hexadecadien-1-ol acetate on cotton to evaluate the control of the pink bollworm. A total of 700 acres are involved; the program is authorized only in the State of Arizona. The experimental use permit is effective from July 6, 1984 to July 6, 1985. A permanent exemption from the requirement of a tolerance for residues of the active ingredients in or on cottonseed when applied to cotton from capillary fibers has been established (40 CFR 180.1043). (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

8730-EUP-15. Extension. Health-Chem Corporation, Hercon Division, 1107 Broadway, New York, NY 10010. This experimental use permit allows the use of 1,760.24 pounds of the insecticides (Z,Z)-7,11-hexadecadien-1-ol acetate, (Z,E)-7,11-hexadecadien-1-ol acetate and permethrin on cotton to evaluate the control of the pink bollworm. A total of 400 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from July 7, 1984 to July 7, 1985. A temporary tolerance for residues of permethrin has been established. A permanent exemption from the requirement of a tolerance for residues of (Z,Z)-7,11-hexadecadien-1-ol acetate and (Z,E)-7,11-hexadecadien-1-ol acetate in or on cottonseed when applied to cotton from capillary fibers has been established (40 CFR 180.1043). (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

8730-EUP-16. Extension. Health-Chem Corporation, 1107 Broadway, New York, NY 10010. This experimental use permit allows the use of 39.69 pounds of the biological insecticides (Z)-11-hexadecenal and (Z)-9-tetradecenal on tobacco to evaluate the control of the tobacco budworm. A total of 900 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from August 10, 1984 to August 10, 1985. A permanent exemption from the requirement of a tolerance for residues of (Z)-11-hexadecenal in or on tobacco has been established (40 CFR 180.1069). (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

35977-EUP-2. Renewal. Maag Agrochemicals research and Development, 5699 North King's Highway, P.O. Box X, Vero Beach, FL 32960. This experimental use permit allows the use of 60 pounds of the insect growth regulator ethyl [2-(p-phenoxyphenoxy) ethyl] carbamate on non-crop areas to evaluate the control of the fire ant. A total of 4,000 acres are involved; the program is authorized only in the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

3125-EUP-188. Issuance. Mobay Chemical Corporation, P.O. Box 4913, Hawthorn Road, Kansas, City, MO 64120. This experimental use permit allows the use of 8,944 pounds of the insecticide cyano (4-fluoro-3-phenoxyphenyl) methyl 3-(2,2-dichloroethenly)-2,2-dimethylcyclopropanecarboxylate on cotton, peanuts, and soybeans to evaluate the control of various insects. A total of 12,200 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. A temporary tolerance for residues of the active ingredient in or on cottonseed, peanuts, and soybeans has been established. A food additive regulation for residues of the active ingredient in or on cottonseed oil and soybean oil has been established (21 CFR 193.98). A feed additive regulation for residues of the active ingredient in or on cottonseed hulls and soybean hulls has been established (21 CFR 561.96). (Timothy Gardner, PM 17, Rm CM#2, (703-557-2690))

201-EUP-76. Issuance. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036. This experimental use permit allows the use of 28.8 pounds of the hybridizing agent azetidine-3-carboxylic acid on barley and wheat to evaluate its hybridizing ability. A total of 28 acres are involved; the program is authorized only in the States of Colorado, Kansas, North Dakota, and Texas. The experimental use permit is effective from August 1, 1984 to August 1, 1985. (Robert Taylor, PM 25, Rm. 251, CM#2, (703-557-1800))

2724-EUP-42. Issuance. Zoecon Industries, 1200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 1.2 pounds of the insecticide hydroprene and 1.9 pounds of the insecticide propetamphos in homes and apartments to evaluate the control of cockroaches. A total of 300 homes and apartments are involved; the program is authorized only in the States of California and Texas. The experimental use permit is effective from July 25, 1984 to July 25, 1985. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95-396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: August 22, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-23047 Filed 9-4-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00180; FRL-26622]

Nominations to the Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 *et seq.*). Public comment on the

nominations is invited. Comments will be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

ADDRESS: By mail, submit comments to:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, D.C. 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

DATE: Comments should be postmarked not later than October 5, 1984.

FOR FURTHER INFORMATION CONTACT: By mail:

Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel (TS-766C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1115, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION:

I. Background

FIFRA amendments enacted November 28, 1975, added, among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (5 U.S.C. App I). The qualifications as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under section 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 1 to 4 years. Panel members are subject to the provisions of Title 40, CFR, Part 3, Subpart F—Standards of Conduct for Special Government Employees, which include rules regarding conflicts-of-interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such an organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any, before being formally appointed.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their educational background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to issue for publication in the **Federal Register** the name, address, and professional affiliations of each nominee.

B. Applicability of Existing Regulations

With the respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special governmental employees (whch include advisory committee members) will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d), EPA, in March 1984, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill three vacancies occurring on the SAP. NIH responded by letter dated April 3, 1984, enclosing a list of 6 nominees; NSF responded by letter dated March 26, 1984, with a list of 14 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill three vacancies occuring during calendar year 1984.

Steven Douglas Aust, Professor, Department of Biochemistry, Michigan State University, and Associate Director, Environmental Toxicology Center, Michigan State University. Born: March 11, 1938. Educational background: Washington State University, BS, 1960, MS, 1962; University of Illinois, Ph.D (Dairy Science), 1965. Professional experience: Professor, Michigan State University 1967-present; Associate Director, Environmental Toxicology Center, 1980-present. Concurrent position: USPHS fellow, Karolinska Institute, Sweden, 1966; Ministry Agriculture and Fisheries NZ fellow Ruakura Agriculture Research Center, Hamilton, NZ, 1975-1976; consultant, National Center for Disease Control and Environmental Protection Agency Science Advisory Board; member toxicology study section, NIH 1979-June 1983; Commissioner, Michigan Toxic Substance Control Commission, 1970-1981, Chairman, 1981-present. Societies: Society of Toxicology; American Society Photobiology; AAAS; American Society Biological Chemists; American Society Pharmacology and Experimental Therapeutics. Research: Mixed function oxidation of drugs; the perioxidation of lipids; toxicity of halogenated aromatic hydrocarbons.

Harold Lee Bergman, Professor of Zoology and Physiology, Department of Zoology and Physiology, University of Wyoming, Laramie, Wyoming 82071. Born: Sault St. Marie, Mich. July 8, 1941. Education: Eastern Michigan University, BA 1968, MS, 1971; Michigan State University, PhD (fisheries biology), 1973. Professional experience: Fishery Biologist, Great Lakes Fishery Lab, US Fish and Wildlife Service, Ann Arbor, Michigan, 1968-1971; Research Assistant Fishery Biology, Department Fisheries and Wildlife, Michigan State University, East Lansing, 1971-1973; Research Associate, environmental physiology, Department of Physiology, 1974; Research Associate, properties of liver and lung microsomal mixed-function oxidases and their role in the metabolism of drugs and xenobiotics to toxic reactive intermediates; hepatic drug elimination in pregnancy, environmental impact, Environmental Science Division, Oak Ridge National Laboratory, Oak Ridge, Tennessee, 1974–1975; Assistant Professor, Zoology and Physiology, University of Wyoming, 1975-present. Concurrent Position: Editor, Black Thunder Study, Wyoming Environmental Institute, 1975. Societies: Sigma Xi; American Fisheries Society; AAAS; North American Benthological Society. Research: Physiological ecology of fishes and the effects of environmental perturbation on aquatic animals.

Murray Sheldon Blum, Research Professor, Entomology Department, University of Georgia, Athens, Georgia 30602. Born: Philadelphia, Pa., July 19, 1929. Education: University of Illinois, BS, 1952, MS, 1953, PhD (entomology). Education: Entomologist, USDA, 1957–1958; Associate Professor of Entomology, Louisiana State University, Baton Rouge, 1958–1967; Professor 1967–1978; Research Professor, Entomology, University of Georgia, 1978-present. Concurrent position: Editor, Insect Biochemistry Entomologia Experimentalis et Applicata J Chemical Ecology 1972; consultant NSF, 1974–1976. Societies: AAAS; Entomology Society of America. Research: Chemistry of insect pheromones and defensive secretions; biochemistry of the insect reproductive system; regulation of insect behavior by chemical releasers; chemistry and functions of arthropod natural products; biochemical strategies of insects feeding on toxic plants.

Richard Allan Griesemer, Director, Biology Division, Oak Ridge National Laboratory, Post Office Box Y, Oak Ridge, Tennessee 37831. Born: Andreas, Pa., May 8, 1929. Education: Ohio State University, DVM 1953, PhD (veterinary pathology), 1959. Professional experience: Instructor, Veterinary Pathology, Ohio State University 1953–1955; Jr. Pathologist, Viriology Branch, Armed Forces Institute of Pathology, 1955–1957; from instructor to professor Veterinary Pathology, Ohio State University, 1957–1971, Chairman of Department, 1967–1971; Associate Director, National Center Primate Biology, University of California, Davis, 1971–1973; senior resident staff member, Carcino/Genesis Program Oak Ridge National Laboratory, 1973–1975, Program Manager, Cancer and Toxicology Program, 1975–1977; Associate Director, Carcinogenesis Testing, National Cancer Institute, 1977–1980; Director, Biology Division, Oak Ridge National Laboratory, 1980-present. Concurrent Position: Memorial Animal Resources Advisory Committee, NIH 1969–1973. Honors and Awards: National Gaines Award, American Veterinary Medical Association. Societies: AAAS; American Veterinary Medical Association; American College of Veterinary Pathology; International Academy of Pathologists; American Association of Cancer Research. Research: Morphogenesis of cancer; environmental co-carcinogenesis.

Joe Wheeler Grisham, Professor and Chairman, Department of Pathology, School of Medicine, University of North Carolina, Chapel Hill, NC 27514. Born: Brush Creek, Tenn., December 5, 1931. Education: Vanderbilt University, AB 1953, MD 1957. Professional experience: Resident pathologist, School of Medicine, Washington University 1957–1960; from instructor to professor of pathology and anatomy, 1960–1973; Professor, and Chairman, Department of Pathology, School of Medicine, University of North Carolina, Chapel Hill, 1973-present. Concurrent Positions: National Cancer Institute fellow, 1958–1959; Life Insurance Medical Research Fund fellow, 1959–1961; Markle scholar, 1904–1969; member, board science counsellors, National Institute Environmental Health Science, 1974–1978. Societies: American Association Cancer Research, American Association Study Liver Disease; International Academy of Pathologists, American Society of Cell Blogists. Research: Liver diseases, especially cirrhosis; chemical carcinogenesis; regulation of cellular proliferation; DNA replication and repair.

Susan Goldhor, President, Center for Applied Regional Studies. Born: Brooklyn, N.Y., March 24, 1939. Expertise: Zoology. Education: Columbia University, BA 1960; Yale University, MS 1962; Yale University, PhD 1967. Experience: Dean of Natural Science and Associate Professor of Biology, Hampshire College, 1973–1977; Director, New England Farm Center, Hampshire College, 1978–1981; President, Center for Applied Regional Studies, Amherst, Massachusetts, 1981-present. Societies: American Society of Animal Science; British Society of Animal Production; Canadian Society of Animal Science; Council for Agricultural Science and Technology; International Biomass Association; Institute of Food Technologists.

John James Lech, Professor of Pharmacology, Medical College of Wisconsin, Milwaukee, Wisconsin 53213. Born: Passaic, N.J., June 21, 1940. Education: Rutgers University, Newark, BS 1962; Marquette University, PhD (pharmacology), 1967. Professional experience: From instructor to assistant professor, 1967–1974, Associate Professor, Pharmacology, 1974–1980; Professor of Pharmacology and Toxicology, Medical College of Wisconsin 1980-present. Concurrent Position: American Heart Association grant, Medical College of Wisconsin, 1972–1975; Sea grant, 1971–1975. Societies: AAAS; Society of Toxicology; American Fisheries Society; American Society of Pharmacology and Experimental Therapeutics. Research: Cardiac Triglyceride metabolism; metabolism of foreign compounds by fish.

Robert Lee Metcalf, Professor, Entomology, University of Illinois. Born: Columbus, Ohio, November 13, 1916. Expertise: Entomology. Education: University of Illinois, BA, 1939, MA, 1940; Cornell University PhD (entomology), 1943. Experience: assistant entomologist to associate entomologist, Tennessee Valley Authority, Alabama, 1943–1946; from Assistant Entomologist to Associate Entomologist, Citrus Experiment Station, University of California, Riverside, 1946–1953; Professor Entomology and Entomologist, 1953–1968; Professor of Entomology, University of Illinois, Urbanna-Champaign, 1968-present; Head, Department of Zoology, 1969-present. Concurrent positive: Vice Chancellor, University California, Riverside, 1962–1967; consultant, WHO; FIFRA Scientific Advisory Committee. Societies: National Academy of Science; American Chemical Society; Entomology Society of America. Research: Insect Physiology and toxicology; mosquito control.

Howard Harold Seliger, Professor, Biology Department, Johns Hopkins University. Born: New York, N.Y., December 1924. Expertise: Physics, photobiology. Education: City College, BA, 1943; Purdue University, MS, 1948; University of Maryland, PhD (physics), 1954. Experience: Assistant Instructor, Physics, Purdue University, 1948; Professor, leader-radioactivity, National Bureau of Standards, 1948–1958; Research Associate, Biophysics, 1958–1963, Associate Professor 1963–1968, Professor, Biology, Johns Hopkins University, 1968-present. Concurrent positions: Guggenheim fellow 1958–1959; consultant, Naval Research. Societies: AAAS; American Physics Society; Radiation Research Society; American Society of Biological Chemists; American Society Photobiology. Research: radioactivity standardization; bioluminescence: excited states of biological molecules; marine biology of bioluminescent dinoflagellates; photometry.

Fred Harold Tschirley, Professor and Chairman, Department of Botany and Plant Pathology, Michigan State University. Born: Ethan, S.D. December

19, 1925. Expertise: Ecology. Education: University of Colorado, BA, 1951, MA, 1954; University of Arizona, PhD, 1963. Experience: Research Assistant, University of Arizona, 1952–1953; Instructor, 1953–1954; Range Scientist, Crops Research Division, Agriculture Research Service, USDA, 1954–1968; Assistant Branch Chief, Crops Protection Research Branch, 1968–1971; Assistant Coordinator, Environmental Quality Active Science and Education, 1971–1973, Coordinator Environmental Quality Activity, Official Secretary, 1973–1974; Professor and Chairman, Department of Botany and Plant Pathology, Michigan State University, 1974-present. Societies: AAAS, Weed Science Society of America; Social Range Management; Ecology Society of America. Research: Woody plant control; physiological ecology.

Mary Edith Vore, Associate Professor of Pharmacology, College of Medicine, University of Kentucky, Lexington, Kentucky 40536. Born: Guatemala City, Guatemala, June 27, 1947; US citizen. Education: Asbury College, BA, 1968; Vanderbilt University, PhD (pharmacology) 1972. Professional experience: Fellow, Department of Biochemistry and Drug Metabolism, Hoffman-LaRoche Inc. 1972–1974; Assistant Professor of Toxicology, Department of Pharmacology, University of California, San Francisco, 1974–1978; Associate Professor, 1978–1981, Associate Professor of Pharmacology, College of Medicine, University of Kentucky, 1981-present. Societies: American Society of Pharmacologists and Experimental Therapeutics; Society of Toxicology. Research: The biochemical properties of liver and lung microsomal mixed-function oxidases and their role in the metabolism of drug and xenobiotics to toxic reactive intermediates; hepatic drug elimination in pregnancy.

Dated: August 16, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-23046 Filed 9-4-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

American Heritage Savings, F.A. Bloomingdale, IL; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in § 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for American Heritage Savings, F.A., Bloomingdale, Illinois, on August 27, 1984.

Dated: August 29, 1984.

J.J. Finn,

Secretary.

[FR Doc. 84-23442 Filed 9-4-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

NCNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 26, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation,* Charlotte, North Carolina; to acquire 100 percent of the voting shares of NCNB National Bank, Fairfax County, Virginia, a bank that will perform credit card and related activities in conformance with Va. Code §§ 6.1—392 and 393.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Busey Corporation,* Urbana, Illinois; to acquire 100 percent of the voting shares of Citizens Bank of Tolono, Tolono, Illinois.

2. *Omnibank Corp.,* Wyandotte, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Wyandotte Saving Bank, Wyandotte, Michigan.

C. *Federal Reserve Bank of Dallas* (Anthony J. Montelaro, Vice President) 400 South Akard Streed, Dallas, Texas 75222:

1. *Azle Bancshares, Inc.,* Azle, Texas; to become a bank holding company by acquiring 94.37 percent of the voting shares of First National Bank of Azle, Azle, Texas.

Board of Governors of the Federal Reserve System, August 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23406 Filed 9-4-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction and Waiting Period Terminated Effective

(1) 84-0717—ConAgra, Incorporated's proposed acquisition of assets of Northern State Beef Incorporated, August 13, 1984

(2) 84-0718—Michael Wilkinson's proposed acquisition of assets of Steel Processing Facilities at Fontana, California, (Kaiser Steel Corporation, UPE), August 13, 1984

(3) 84-0760—Tenneco, Incorporated's proposed acquisition of voting securities of Ekco Products Incorporated (American Home Products Corporation, UPE), August 16, 1984

(4) 84-0767—The Fulcrum Partnership's proposed acquisition of voting securities of The Houseware Group of American Home Products Corporation and other assets of American Home Products Corporation's Ekco Housewares Division, August 16, 1984

(5) 84-0772—The 1964 Simmons Trust's proposed acquisition of voting securities of Medford Corporation, August 16, 1984

(6) 84-0775—Baker, Fentress & Company's proposed acquisiton of voting securities of Medford Corporation, August 16, 1984

(7) 84-0781—Reliance Capital Group L.P.'s proposed acquisition of voting securities of Cecil B. Day Companies, Incorporated (Cecil B. Day Trust, UPE), August 16, 1984

(8) 84-0783—PacifiCorp's proposed acquisition of voting securities of MAPCO Incorporated, August 16, 1984

(9) 84-0757—United Financial Group Incorporated's proposed acquisition of voting securities of Weingarten Realty Incorporated, August 17, 1984

(10) 84-0726—Schnitzer Steel Products Company's proposed acquisition of voting securities of Cascade Steel Rolling Mills, Incorporated, August 20, 1984

(11) 84-0750—William Comrie, (The Brunton Company) proposed acquisition of voting securities of the voting trust of Cousins Home Furnishings, Incorporated, August 20, 1984

(12) 84-0761—Texaco Incorporated's proposed acquisition of voting securities of ACC Chemical Company, (American Can Company, UPE), August 20, 1984

(13) 84-0766—Capital Cities Communications Incorporated's proposed acquisition of voting securities of Institutional Investor Incorporated, (Gilbert E. Kaplan, UPE), August 20, 1984

(14) 84-0771—Fleming Companies, Incorporated's proposed acquisition of voting securities of United Grocers Ltd., August 20, 1984

(15) 84-0778—Lennar Corporation's proposed acquisition of voting securities of H. Miller and Sons Incorporated, August 20, 1984

(16) 84-0780—First Boston Incorporated's proposed acquisition of voting securities of Joyce Beverages Incorporated, August 20, 1984

(17) 84-0799—Chesebrough-Pond's Incorporated's proposed acquisition of voting securities of The Polymer Corporation, Harbison Industrial Products Incorporated, Polymer Hose and Coupling, Incorporated, (ACF Industries, Incorporated, UPE), August 20, 1984

(18) 84-0774—Prime Motor Inns, Incorporated's proposed acquisition of voting securities of American Motor Inns, Incorporated, August 23, 1984

(19) 84-0796—Laidlaw Transportation, Ltd.'s (Michael George Degroote, UPE) proposed acquisition of voting securities of ARA Transportation Incorporated, (ARA Services, Incorporated, UPE), August 23, 1984

(20) 84-0754—Gulf & Western Industries, Incorporated's proposed acquisition of assets of Shoppers Charge Card Service Division, (American Fletcher, Corporation, UPE), August 24, 1984

(21) 84-0792—Protective Corporation's proposed acquisition of voting securities of Columbia National Life Insurance Company, (Armco, Incorporated, UPE), August 24, 1984

(22) 84-0816—Ross Stores, Incorporated's proposed acquisition of assets of Edison Brother Stores, Incorporated, August 24, 1984

(23) 84-0822—The Parsons Corporation's proposed acquisition of voting securities of The Parsons Corporation, August 24, 1984

(24) 84-0823—The Parsons Corporation's proposed acquisition of voting securities of RMP International, Ltd., August 24, 1984

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By the direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-23458 Filed 9-4-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Open Meeting on Premature Thelarche

The Public Health Service and the University of Puerto Rico Medical Sciences Campus will hold a scientific meeting on premature thelarche. The purpose of this meeting will be to assess the data on premature thelarche in Puerto Rico.

The meeting will be held September 20-21, 1984, at the Palmas del Mar Hotel in Humacao, Puerto Rico, beginning at 8:00 a.m.

Additional information may be obtained from: Jose F. Cordero, M.D., Medical Epidemiologist, Birth Defects Branch, Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236-4090, Commerical: 404/452-4090.

Dated: August 29, 1984.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 84-23405 Filed 9-4-84; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 15661]

Disclaimer of Interest To Issue; Proposed Issuance of Recordable Disclaimer of Interest for Lands in Los Angeles County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Application has been filed by Southern California Savings and Loan Association, a Corporation, for a recordable disclaimer of Interest by the United States, involving 61.05 acres of land.

DATE: Comments should be received by December 4, 1984.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, California State Office (Room E-2841), Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Jerry Alendal, California State Office, (916) 484-4431.

SUPPLEMENTARY INFORMATION: Pursuant to section 315 of the (Federal Land Policy and Management Act of 1976 (90 Stat. 2770; 43 U.S.C. 1745), application number CA 15661 has been filed by Southern California Savings & Loan Association, a Corporation, for issuance of a recordable disclaimer of interest by the United States, affecting the following described land:

San Bernardino Meridian

T. 4 N., R. 16 W.,
Sec. 11, lots 1, 2, and 3.

The area described aggregate 61.05 acres in Los Angles County.

1. The Bureau of Land Management has reviewed the official records and has determined that the United States has no claim to or interest in the above described lands and that the issuance of

a recordable disclaimer of interest will help to remove a cloud on the title to the land.

2. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed disclaimer may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the California State Office.

3. Accordingly, the recordable disclaimer of interest will be issued no sooner than ninety days after the date of this publication.

Ed Hastey,

State Director.

[FR Doc. 84-23438 Filed 9-4-84; 8:45 am]

BILLING CODE 4310-40-M

Final Environmental Assessment and Management Framework Plan Amendment; Grand Junction Conversion Transmission Line Project, Grand Junction, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Assessment (FEA) and of the Beginning of the Protest Period on the Management Framework Plan (MFP) Amendment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, BLM has prepared a FEA on the Grand Junction Conversion Transmission Line Project. Pursuant to 43 CFR 1600, BLM proposes an amendment to the Roan Creek/Winter Flats MFP.

DATE: Comments on the FEA and protests on the MFP amendment will be accepted until October 10, 1984.

ADDRESS: Comments should be sent to: District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501.

Protests should be sent to: Director (202), Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Julie Dougan, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501, (303) 243-6552.

SUPPLEMENTARY INFORMATION: The final environmental assessment (FEA) on the Grand Junction Conversion Transmission Line Project analyzes the impact of a proposal by Public Service Company of Colorado (PSCC) to upgrade its existing 69,000 volt transmission system in the Grand Junction vicinity to 230,000 volts. The FEA contains a proposed amendment to the Management Framework Plan (MFP) for Roan Creek and Winter Flats, an area that includes the Little Book Cliffs Wild Horse Management Area. The amendment would permit granting a right-of-way to PSCC through the Wild Horse Management Area. The amendment is necessary because the existing MFP does not provide for new rights-of-way in that area where a portion of the new transmission line would cross.

The proposed MFP amendment may be protested. Any person who participated in the process by which the amendment was developed (the EA process) and has an interest which is or may be adversely affected by the approval of this amendment may protest such approval. A protest may raise only those issues which were submitted for the record during development of the FEA and the amendment. A protest must contain the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest;
2. A statement of the issue(s) being protested;
3. A statement of the part of the amendment being protested;
4. A copy of all documents or issues that were submitted during the EA and amendment process by the protesting party or an indication of the date the issue(s) were discussed for the record;
5. A concise statement explaining why the State Director's decision is believed to be wrong.

At the end of the 30 day protest period, the proposed amendment, excluding portions under protest, shall become final. Approval shall be withheld on any portion of the amendment under protest until action has been completed on the protest.

Availability

Single copies of the FEA may be obtained at the Grand Junction District Office.

Dated: August 28, 1984.

Kannon Richards,

State Director, Bureau of Land Management.

[FR Doc. 84-23439 Filed 9-4-84; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf North Atlantic Oil and Gas Lease Sale 82; Finding of No Significant Impact

Correction

In FR Doc. 84-22546, beginning on page 33731 in the issue of Friday, August 24, 1984, make the following correction on page 33736. In the third column, following the heading "*Conclusion*" insert the following paragraph:

In FEIS-82, the impact level on fish and fishery resources was determined to be Minor-Moderate for Alternative 10. Under the proposal, the level of impact is expected to be essentially the same: Minor-Moderate.

BILLING CODE 1505-01-M

National Park Service

National Register of Historic Places

The following districts have been determined to be eligible for inclusion in the National Register of Historic Places effective on this date. These state local historic districts were certified as substantially meeting National Register criteria for evaluation between 1976 and March 12, 1984. These determinations of eligibility are made under § 67.9(g) of 36 CFR Part 67, implementing the Tax Reform Act of 1976; the Revenue Act of 1978; the Tax Treatment Extension Act of 1980; and the Economic Recovery Tax Act of 1981. Additions to this will be published on an annual basis as part of the Annual Supplemental Listing of Historic Properties.

Bruce MacDougal,

Acting Chief of Registration, National Register of Historic Places.

CALIFORNIA

Alameda County

Oakland, *Preservation Park Historic District (CHD).* Bounded by Grove, 11th, Castro and 14th Sts.

Oakland, *Victorian Row-Old Oakland Historic District (CHD).* Bounded by 7th, Broadway, 10th and Clay Sts.

Contra Costa County

Pittsburg, *New York Landing Historic District (CHD).* E. 3rd, E. 4th and Railroad Ave.

Marin County

Sausalito, *Sausalito Central Business Historic District (CHD).* 558-789 Bridgeway, El Portal and Princess St., portions of Bulkley Ave.

Ventura County

San Buenaventura, *San Buenaventura Historic District (CHD).* Plaza Park and properties south of the park in the 600 blk of E. Thompson Blvd.

COLORADO

Boulder County

Boulder, *Mapleton Hill Historic District (CHD).* Roughly bounded by Mountain View Rd., 11th and Dewey Sts.

Pitkin County

Aspen, *Aspen Historic District (CHD)*, Roughly bounded by Durant Ave., Main, Monarch, and Hunter Sts.

CONNECTICUT

Fairfield County

New Canaan, *New Canaan Historic District (CHD)*, Roughly bounded by Oenoke Lane, Heritage Hill and the S side of Seminary St. containing properties on both sides of Oenoke Ridge, Main and Park Sts.

DELAWARE

New Castle County

Wilmington, *Delaware Avenue Historic District (CHD)*, Roughly bounded by N. Broom St. and Harrison St. on Delaware Ave.

FLORIDA

Dade County

Fort Lauderdale, *Fort Lauderdale Historic District (CHD)*, Roughly bounded by Broward Blvd., SW 2nd Ave., New River Dr., and SW 5th Ave.

Escambia County

Pensacola, *North Hill Historic District (CHD)*, Roughly bounded by Moreno, Gillemard, Wright, and De Villiers Sts.

Manatee County

Bradenton, *Downtown Bradenton Historic District (CHD)*, Roughly bounded by 3rd Ave., W., 9th St. W., 8th Ave. W., 14th St. W.

Bradenton, *Old Manatee Historic District (CHD)*, Roughly bounded by E. 3rd, 9th, 4th, Manatee Ave., 10th, 8th and 9th St. E.

Orange County

Orlando, *Downtown Historic District (CHD)*, Roughly bounded by Jefferson and South Sts., Rosaland, S. Byran and N. Gertrude Aves., and W. Central Blvd.

Orlando, *Lake Cherokee Historic District (CHD)*, Roughly bounded by East-West Exp., S. Sum merlin Ave., Lake Davis, E. Gore, Euclid, S. Delaney and S. Orange Aves.

Polk County

Lakeland, *Lake Munn Historic District (CHD)*, Roughly bounded by Bay and Orange Sts., Massachusetts, Iowa, and Missouri Aves., and Lake Mirroe Shoreline.

GEORGIA

Richmond County

Augusta, *Augusta Historic Preservation District (CHD)*.

Roughly bounded by 7th, Telfair, Walker Sts. and Gordon Hwy.

ILLINOIS

Cook County

Blue Island, *Blue Island Historic District (CHD)*, Roughly bounded by Western Ave. between Canal and 135th Sts.

Kane County

Aurora, *Near Eastside Historic District (CHD)*, Roughly bounded by Marve Ave., Anderson and LaSale

KANSAS

Pottawatomie County

Manhattan, *Manhattan Downtown Historic District (CHD)*, Roughly bounded by Anderson Ave., 7th and 3rd Sts. and Griffith Ball Park.

LOUISIANA

Orleans Parish

New Orleans, *Lafayette Square Historic District (CHD)*, Roughly bounded by O'Keefe and St. Joseph Aves., Poydras and Magazine Sts.

New Orleans, *Lower Garden Historic District (CHD)*, Roughly bounded by St. Charles Ave., US 10, Tchoupitoulas, Race and Philip Sts. and Mississippi River.

New Orleans, *Picayune Place Historic District (CHD)*, Roughly bounded by St. Charles Ave., and Common, Tchoupitoulas, and Poydras Sts.

New Orleans, *St. Charles Avenue Historic District (CHD)*, Roughly bounded by Carondolet, Prytania, Jena Sts. and Jackson Ave.

New Orleans, *Warehouse Historic District (CHD)*, Roughly bounded by Magazine, Poydras, and S. Front Sts., Howard Ave.

MAINE

Androscoggin County

Lewiston, *Kennedy Park (CHD)*, Roughly bounded by Pine, Blake, Birch and the alley of W of Park St.

Hampden County

Springfield, *Ridgewood Historic District (CHD)*, Roughly bounded by Union St., Mulberry St., and School St.

Penobscot County

Bangor, *Bangor Theological Seminary (CHD)*, Roughly bounded by Union St., Hammond St., and Cedar St.

Bangor, *Broadway Historic District (CHD)*, Roughly bounded by Garland St., Pine St., State St., and Broadway

Bangor, *High Street Historic District (CHD)*, Roughly bounded by Hammond St., N. High St., Union St., and High St.

Bangor, *Whitney Park Historic District (CHD)*, Roughly bounded by Eighth St., Union St., Pond St., and Hayford Rd.

MARYLAND

Baltimore (Independent City)

Eutaw Place/Madison Avenue Historic District (CHD), Properties on Eutaw Pl. and Madison Ave. between Druid Park Lake Dr. and North Ave.

Madison Park Historic District (CHD), Roughly bounded by North Ave., Morris St., Laurens St., and Tiffany St.

Mt. Royal Terrace Historic District (CHD), Roughly bounded by Reservoir St., Park Ave., North Ave. and Mt. Royal Terrace

Mt. Vernon Historic District (Expanded) (CHD), Roughly bounded by Mt. Royal Ave, Howard St., Gilford St., and Hamilton St.

Seton Hill Historic District (Expanded) (CHD), East side of 600 blk. of N. Eutaw St.

Sterling Street Historic District (CHD), Bounded by Monument, Ensor, and Mott Sts. and Flatiron Alley

Union Square Historic District (CHD), Roughly bounded by Fulton Ave., Baltimore, Schroder, Carey, and Pratt Sts.

Waverly Historic District (CHD), Roughly 600 Blk. of 34th St.

Frederick County

Federick, *Federick Historic District (South Addition) (CHD)*, Roughly bounded by E. 7th St., East St., Clarke Pl., E. South and North Bentz Sts.

Wicomico County

Salisbury, *Downtown Historic District (CHD)*, Roughly bounded by US Rt. 50, US Rt. 13, the Wicomico River, and Lake St.

Salisbury, *Newtown Historic District (CHD)*, Roughly bounded by Mill St., North St., Broad St., and Chestnut St.

MASSACHUSETTS

Berkshire County

Lenox, *Lenox Historic District (CHD)*, Properties along both sides of Main St. from Greenwood to West Sts., Franklin, Housatonic, Church and Walker Sts.

Bristol County

New Bedford, *Bedford Landing-Waterfront Historic District (CHD)*, Roughly bounded by Elm and Rodman Sts., Front St., Commercial St., Union St. and Acushnet Ave.

Hampden County

Springfield, *Forest Park Heights Historic District (CHD)*, Roughly bounded by Riverview and Westernview Sts., Fairfield St., Litchfield St., Sumner Ave., Forest Park Ave., Washington Blvd., and Longhill St.

Springfield, *Lower Maple Historic District (CHD)*, Roughly bounded by State St., School St., Union St., and Maple St.

Springfield, *Maple Hill Historic District (CHD)*, Roughly bounded by Cemetery Ave., Madison St., Pine St., Mill St., and Maple St. (Ames Hill and Crescent Hill)

Springfield, *Ridgewood Historic District (CHD)*, Roughly bounded by Union St., Mulberry St., and Schol St.

Middlesex County

Carlisle, *Carlisle Historic District (CHD)*, Properties extending out from the Monument junciure on Lowell and East Sts., Bedford Rd., School St., Concord and Westford Rds.

Suffolk County

Boston, *Bay State Road/Back Bay West Historic District (CHD)*, Bounded by W. Charlesgate, Newberry, Graham, alley S. of Bay State Rd., Bay State Rd., and Back St.

Boston, *St. Botolph Street Historic District (CHD)*, Bounded by Harcourt, Alley E of Huntington, Alley N of Mass Ave., and NY, NH & Hartford R.O.W.

MICHIGAN

Genesse County

Linden, *Linden Downtown Historic District,* Roughly bounded by the Shiawassee River, N. Main St., Hickory St., S. Bridge and N. Bridge Sts.

Kent County

Grand Rapids, *Heartside Historic District (CHD),* Roughly bounded by Louis St., Division Ave., Cherry St., and Ionia Ave.

Muskegon County

Muskegon, *Clay-Western Historic District (CHD),* Western Ave., 4th St., Clay Ave., 6th St., Webster St., and 7th St.

Oakland County

Holly, *Central Downtown Historic District (CHD),* Washington St., Martha St., S. Broad, E. Maple to N. Saginaw, Front St. to Railroad St.

Holly, *District #2 (CHD),* North and South lots on Maple St. between Cogshall and Washington St.; West lots on College between Main and Maple St.

Saginaw County

Saginaw, *Old Saginaw City Historic District (CHD),* S. Michigan to N. Michigan to Cleveland St. to Saginaw River to Van Buren St. to Michigan

Washtenaw County

Ypsilanti, *Ypsilanti Historic District (CHD),* Roughly bounded by Forest St., Prospect St., Michigan St., Buffalo St. and N. Hamilton St.

Wayne County

Detroit, *Berry Historic District (CHD),* Roughly bounded by E. Jefferson Ave., Parkview Dr., the Detroit River, and Fiske St.

Detroit, *New Center Historic District (CHD),* Roughly bounded by Euclid, Woodward, 2nd, Lothrop and 3rd Aves.

MINNESOTA

Goodhue County

Red Wing, *Downtown Historic District (CHD),* Roughly bounded by Bush, Main, and Broad Sts.

Hennepin County

Minneapolis, *Southeast Fifth Street Historic District (CHD),* Along 5th St. between 9th and 4th Ave.

Minneapolis, *Warehouse Historic District (CHD),* Roughly bounded by 1st., Washington, 6th and 3rd Aves.

Minneapolis, *Washburn Fair Oaks Historic District (CHD),* Roughly bounded by 26th St., Franklin, 4th and Lincoln Aves.

Rice County

Faribault, *Faribault Heritage Preservation District (CHD),* Roughly bounded by Central Ave., 4th and Division Sts. and 1st Ave.

MISSOURI

Clay County

Kansas City, *Nelle E. Peters Historic District (CHD),* 3600 Summit and portions of the 700 blk of W. 37th

Jackson County

Kansas City, *Armour/Gillham Historic District (CHD),* Roughly bounded by north side of East Blvd., between Warwick, and Locust St.

Kansas City, *Miller Plaza/Warner Plaza Historic District (CHD),* Roughly bounded by Main St., Walwick Blvd. on E. 32nd St.

Kansas City, *North Hyde Park Historic District (CHD),* Roughly bounded by 3300 blks. of Harrison and Campbell, the 3400 blk. of Campbell and the residence at 3402 Harrison

St. Louis County

St. Louis, *Central West End Historic District (CHD),* Roughly bounded by Boyle Ave., Lindall Blvd., Baleviere and Belmar

St. Louis, *Compton Hill Historic District (CHD),* Roughly bounded by Sidney, S. Grand Blvd., Coplin and Shenandoah

St. Louis, *Hyde Park Historic District (CHD),* Roughly bounded by Palm St., 11th Ave., Florissant and Grand Blvd.

St. Louis, *Lafayette Park Historic District (CHD),* Roughly bounded by Jefferson Ave., Simpon Pl. and Dolman St.

St. Louis, *Soulard Historic District (CHD),* Roughly bounded by Broadway, Compton Ave., Arsenal St. and Delaware Blvd.

St. Louis, *Visitation Park Historic District (CHD),* Roughly bounded by Union Blvd. from Delmar to Cabanne

NEBRASKA

Lancaster County

Lincoln, *Haymarket Historic District (CHD),* Roughly bounded by R and O Sts. and the Railroad

NEVADA

Carson City County

Carson City, *Carson City Historic District (CHD),* Roughly bounded by Curry St., John, 5th and Iris Sts.

NEW JERSEY

Burlington County

Burlington, *High Street Historic District (CHD),* High St. between Broad and Pearl; Broad St. between High and Stacy

Camden County

Camden, *Cooper Plaza Historic District (CHD),* Roughly bounded by S. Broadway, Benson, S. 7th, and Berkley, including Washington between 7th and Haddon and Haddon from Washington to Newton

Hudson County

Hoboken, *Southern Hoboken Historic District (CHD),* Roughly bounded by Fourth, Hudson, and First Sts., Erie-Lackawanna Train Yards, Washington St. and Bloomfield St.

Mercer County

Trenton, *Yard Avenue Historic District (CHD),* Properties along Yard Ave. and E. State St. between Ewing, S. Clinton and Fairview

Salem County

Salem, *Broadway Historic District (CHD),* Properties on E. and W. Broadway from Front St. to Keasbey and Yorke St.

Union County

Plainfield, *Van Wyck Brooks Historic District (CHD),* Roughly bounded by Park Ave., W. 7th, Plainfield Ave., Stelle Ave., Randolpf, and Arlington Ave.

NEW YORK

Albany County

Albany, *Capitol Hill Historic District (Center Sq./Hudson Park) (CHD),* Roughly bounded by Millet, Spring, and S. Swan Sts., Park, Ware and Madison Aves.

Albany, *Clinton Avenue/North Pearl Street Historic District (CHD),* Properties along Clinton Ave. between Quail St. and N. Pearl; and along N. Pearl between Clinton and Livington Ave.

Albany, *South End-Groesbeckville Historic District (CHD),* Roughly bounded by Elizabeth, Morton, Franklin, Basset, Vine, S. Pearl and Second

Albany, *South Pearl Street Commercial Row Historic District (CHD),* East side of S. Pearl St. between Hudson Ave. and Beaver St.

Albany, *The Mansions Historic District (CHD),* Roughly bounded by Eagle St., Madison Ave., S. Pearl St. and Park Ave.

Broome County

Binghamton, *Parlor City Center Historic District (CHD),* Roughly bounded by Court, State, and Hawley Sts.

Erie County

Buffalo, *Delaware Avenue Historic District (CHD),* Properties on W. Delaware Ave. between Bryant and North St.

Buffalo, *Linwood Historic District (CHD),* Rougly bounded by Delaware Ave. and Linwood Ave., North and W. Ferry Sts.

Buffalo, *West Village Historic District (CHD),* Roughly bounded by Tracy, S. Elmwood, Huron, Niagara and Carolina Sts.

Kings County

Brooklyn, *Fort Greene Historic District (CHD),* Roughly bounded by Ft. Greene Pl., Fulton St., Vanderbilt Ave., and Myrtle Ave.

Onondaga County

Syracuse, *Sedgwick-Highland-James Historic District (CHD),* Bounded roughly by Rugby St., Brattle Rd., Teall Ave., James, Graves, and Dewitt Sts.

Suffolk County

Huntington, *Cold Spring Harbor Historic District (CHD),* Properties on Harbor, Main and Hill between Saw Mill Rd. and Huntington Rd and along Shore Rd and Spring St.

Westchester County

Tarrytown, *Main Street Historic District (CHD),* Properties on Main St. between Windle Park and S. Broadway

NORTH CAROLINA

Guilford County

Greensboro, *College Hill Historic District (CHD),* Roughly bounded by W. Friendly

Ave., S. Spring, W. Lee, Tate and McIver Sts., Freeman Mill Rd.

Rockingham County

Madison, *Decatur-Hunter Historic District (CHD)*, Roughly bounded by Carter, Market, W. Academy and Wilson Sts., and US 220 (Business)

Wake County

Raleigh, *Blount Street Historic District (CHD)*, Roughly bounded by Franklin, Person, Jones, and Halifax Sts.

OHIO

Cuyahoga County

Cleveland, *Hessler Road/Hessler Court Historic District (CHD)*, Bounded by Ford, Bellflower, E. 115th and Euclid Ave.

Cleveland, *Market Square Historic District (CHD)*, Bridge Ave., W. 24th St., Lorain Ave., W. 25th St., United Ct., 26th St., to 28th St.

Hamilton County

Cincinnati, *Lincoln-Melrose Historic District (CHD)*, N side of Lincoln between 820 Lincoln and Gilbert Ave.; between Lincoln and Beecher

Cincinnati, *Northside Historic District (CHD)*, Hamilton Ave. between Cooper/Spring Grove and Hobart

PENNSYLVANIA

Allegheny County

Pittsburgh, *Manchester Historic District (CHD)*, Roughly bounded by Chateau, Franklin, Fulton, Hamlin, Fontella, Stedman, Bidwell and Faulsey

Pittsburgh, *Mexican War Streets Historic District (CHD)*, Bounded by Buena Vista, Sampsonia, Sherman and North

Berks County

Reading, *Callowhill Historic District (Extension) (CHD)*, Area at the intersection of Penn and 4th Sts.

Reading, *Centre Park Historic District (CHD)*, Roughly bounded by Church, Robeson, Center, 3rd and Greenwich

Reading, *Prince Street Historic District (CHD)*, Roughly bounded by 7th, Cherry, Pearl and Willow

Lancaster County

Strasburg, *Strasburg Historic District (CHD)*, Main St. from Clearview Dr. to Georgetown/Gap

Lehigh County

Allentown, *Old Allentown Historic District (CHD)*, Bounded by Hall, Turner, Fountain, Linden, Howard, Court, Blank, 12th and Liberty Sts.

Allentown, *Old Fairgrounds Historic District (CHD)*, Bounded by Tilghman, Levan, Gordon and Morris

TENNESSEE

Lincoln County

Fayetteville, *Fayetteville Historic District (CHD)*, Roughly bounded by Lincoln Ave., Edison, Franklin and Campbell Sts.

TEXAS

Bexar County

San Antonio, *Alamo Plaza Historic District (CHD)*, Roughly bounded by Houston, E. Commerce, Broadway and N. Presa

Wichita County

Wichita Falls, *Depot Square Historic District (CHD)*, Roughly bounded by the F.W.&D. Railroad, Indian Ave., 7th and 8th Sts.

VIRGINIA

Norfolk County

Norfolk, *Ghent Historic District (CHD)*, Roughly bounded by Dundaff, Olney, Duke, Grace, Virginia Beach Blvd., Brambleton and Yarmouth

Norfolk, *West Freemason Historic District (CHD)*, Roughly bounded by Brambleton Ave., Bousch St., W. Freemason St. and the Eastern Branch of the Elizabeth River

Petersburg (Independent City)

Old Town Historic District (CHD), Roughly bounded by the Appomattox River, Fifth St., West Bank St., Commerce St., and Canal St.

Roanoke (Independent City)

Market Area Historic District (CHD), Roughly bounded by Williamson, Church, Jefferson, and Norfolk

WISCONSIN

Dane County

Madison, *Mansion Hill Historic District (CHD)*, Roughly bounded by Lake Mendota, Butler, Gorham, Gilman, Henry, and Carroll Sts.

[FR Doc. 84-23353 Filed 9-4-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-4 (Sub. 3X)]

Cadillac & Lake City Railway Co.; Abandonment in Wexford and Missaukee Counties, MI; Exemption

The Cadillac & Lake City Railway Company (CLC) filed as notice of exemption on August 16, 1984, under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. The line to be abandoned is between milepost 0.0 at Missaukee Jct., in Wexford County, MI, and milepost 4.5 at Round Lake Jct., in Missaukee County, MI, a distance of 4.5 miles.

CLC has certified that (1) no local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line, and (2) no formal complaint filed by a user of rail service over the line (or by a State or local entity acting in behalf of such user) regarding cessation of service over the line is either pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Michigan Department of Transportation has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be affective October 5, 1984, unless stayed pending reconsideration. Petitions to stay the effective date of the exemption must be filed by September 17, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 25, 1984, with: Office of the Secretary, Interstate Commerce Commission, Case Control Branch; Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Clifford F. Lenten, Cadillac & Lake City Railway Company, 121 E. Pikes Peak Avenue, Suite 335; Colorado Springs, CO 80903.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if the exemption is conditioned upon environmental or public use conditions.

Decided: August 21, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-23427 Filed 9-4-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-167X)]

Chicago and North Western Transportation Co.; Abandonment Exemption Between De Kalb and Sycamore, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Chicago and North Western Transportation Company of 3.8 miles of track in De Kalb County, IL, subject to standard labor protection.

DATES: This exemption shall be effective on October 4, 1984. Petitions to stay must be filed by September 17, 1984, and petitions for reconsideration must be filed by September 25, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-No. 167X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Robert T. Opal, One Northwestern Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 28, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-23425 Filed 9-4-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-76)]

Southern Pacific Transportation Co.; Abandonment in Butte County, CA

The Commission has issued a certificate authorizing Southern Pacific Transportation Company to abandon 3.308 miles of rail line between milepost 185.692 at or near Chico and milepost 189.000 at or near Butte Creek, in Butte County, CA.

The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-23426 Filed 9-4-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 82-22]

Tilman J. Bentley, D.O.; Revocation of Registration

On August 16, 1982, the Drug Enforcement Administration [DEA] issued an Order to Show Cause initiating proceedings to revoke the DEA Certificate of Registration, AB3814666, of Tilman J. Bentley, D.O. [Respondent], of Farmington, Missouri. The Order to Show Cause was predicated upon Dr. Bentley's conviction, in the United States Distirct Court for the Eastern District of Missouri, on one count of conspiring to illegally manufacture methaqualone, then a Schedule II controlled substance, and one count of unlawfully possessing punches and dies designed to imprint tablets with the markings associated with the methaqualone product "Quaalude." These were felony offenses under 21 U.S.C. 841(a)(1), 843(a)(5) and 846. The Respondent filed a timely request for a hearing on the issues raised by the Order to Show Cause.

During the pendency of this matter, counsel for the Government and counsel for the Respondent entered into a stipulation whereby further proceedings would be stayed pending the outcome of the Respondent's appeal of his conviction. The parties agreed that in the event that the Respondent's conviction was affirmed, the Respondent would be deemed to have withdrawn his request for a hearing so that final aciton could be taken in this matter without the necessity of further administrative proceedings.

On April 15, 1983, the United States Court of Appeals for the Eighth Circuit affirmed the Respondent's conviction. See, *United States* v. *Bently*, 706 F.2d 1498. Subsequently, on May 21, 1984, the United States Supreme Court denied Dr. Bentley's petition for a writ of certiorari. 104 S. Ct. 2397. Accordingly, all appeals of the Respondent's conviction have been concluded and the conviction has been affirmed.

The Administrator finds that the Respondent, an osteopathic physician, participated in a conspiracy to clandestinely manufacture methaqualone and to produce counterfeit Quaalude tablets therefrom. These activities which led to Dr. Bentley's conviction demonstrated his willingness to disregard not only the law, but also his professional responsibility to advance and protect the public health. The Drug Enforcement Administration has consistently held that controlled substance felony offenses which are unrelated to a registrant's professional practice demand the same sanctions as those offenses which are so related. See, for example, *Aaron Moss, D.D.S.*, Docket No. 80-2, 45 FR 72850 (1980), where a dentist was denied registration after he was convicted of acting as a courier smuggling cocaine into this country, and *Raymond H. Wood, D.D.S.*, where a dentist's registration was revoked after he had been convicted of conspiring to possess with intent to distribute large quantities of marijuana. Such activities on the part of registrants who have a duty to see that controlled substances are used responsibly and strictly for medical purposes cannot be tolerated. There is a lawful basis for the revocation of the Respondent's DEA registration and that registration must be revoked. 21 U.S.C. 824(a)(2).

Accordingly, pursuant to the authority vested in the Attorney General by sections 303 and 304 of the Controlled Substances Act, 21 U.S.C. 823 and 824, as redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that DEA Certificate of Registraton AB3814666, previously issued to Tilman J. Bentley, D.O. be, and it hereby is, revoked, effective immediately. Any pending application for renewal of such registration is hereby denied.

Dated: August 28, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-23444 Filed 9-4-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-14]

Scott J. Loman, D.D.S., San Francisco, CA; Hearing

Notice is hereby given that on April 23, 1984, the Drug Enforcement Administration, Department of Justice, issued to Scott J. Loman, D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on December 12, 1983, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, September 11, 1984, in the U.S. Tax Court Courtroom, Federal Building, Room 2041, 450 Golden Gate Avenue, San Francisco, California.

Dated: August 29, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-23445 Filed 9-4-84; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Wyeth Laboratories, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 11, 1984, Wyeth Laboratories, Inc., 611 East Nield Street, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug and Schedule

Pethidine (meperidine) (9230)—II

Pethidine-Intermediate-A (9232)—II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than October 5, 1984.

Dated: August 27, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-23443 Filed 9-4-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-84-163-C]

A.A. & W. Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

A.A. & W. Coals, Inc., Box 392, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 12 (I.D. No. 15-07315) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.
2. The present height of coal is 47 to 50 inches, with irregularities in the roof and floor.
3. Petitioner states that the canopies could strike suspended trailing cables, creating the potential for an accident.
4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23402 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-177-C]

Barnes & Tucker Company; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Lancashire No. 20 Mine (I.D. No. 36-00836) located in Cambria County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be examined in their entirety on a weekly basis.
2. The petition concern all main return entries located between the F-1 area and the No. 1 fan in the Bakerton drift. These entries have deteriorated and are inaccessible. No active section return air passes through affected areas. Petitioner states that rehabilitation of these areas would expose miners to hazardous and dangerous working conditions, resulting in a diminution of safety.
3. As an alternate method, petitioner proposes to evaluate the air entering the affected area at inlet monitoring stations. The areas will be ventilated by inletting air at the inlet monitoring stations and by leakage along the track entry. The air exiting the affected area will be evaluated at the outlet monitoring station. This air will also be evaluated by examining the fan chart of the No. 1 fan to ensure proper ventilation. Examinations of the monitoring stations will be weekly.
4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23397 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-136-C]

Cedar Cities Energies, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cedar Cities Energies, Inc., c/o Progressive Training and Research, Star Route, P.O. Box 61, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-13606) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 3 Elkhorn seam and ranges from 40 to 50 inches in height with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the canopies can strike and dislodge roof supports, creating the potential of a roof fall. The canopies also limit the equipment operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23395 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-161-C]

Estep Coal Corporation; Petition for Modification of Application of Mandatory Safety Standard

Estep Coal Corporation, Route 4, Box 190, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-05059) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The seam height varies from 43 to 48 inches.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would severely limit the equipment operator's visibility and result in a cramped seating position, causing the operator to lean out from the cab or canopy, exposing body parts to potential injury from a fall of roof or rib. The cabs or canopies also could strike and dislodge roof supports and electrical cables, creating the potential of a roof fall or electrocution.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23401 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-164-C]

Freeman United Coal Mining Company; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Orient No. 4 Mine (I.D. No. 11-00628) located in Williamson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return air courses be separated from belt haulage entries and that belt haulage air not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to course intake air through the belt haulage entry of the south mains from the number 3 portal to ventilate active working places. In support of this request, petitioner states that:

a. The belt entry will be separated from the air course designated as the intake escapeway with permanent-type control measures;

b. An MSHA approved carbon monoxide (CO) fire detection system will be installed to monitor the main south belt haulage entry from the No. 3 Portal;

c. If the belt air velocity is greater than 50 feet per minute and does not exceed 200 feet per minute, carbon monoxide detectors will be located at the beginning and end of the belt flight, and at intervals not to exceed 2,500 feet along the belt. If the belt air velocity is greater than 200 feet per minute, carbon monoxide detectors will be located at the beginning and end of each belt flight, and at intervals not to exceed 3,000 feet along the belt;

d. Carbon monoxide detectors will be installed in accordance with manufacturer's specifications to monitor the air travelling in the belt entry and provide a warning at a manned location when the level of CO exceeds 10 ppm above ambient;

e. Carbon monoxide detectors will be calibrated in accordance with manufacturer's specifications at the time of initial installation and at intervals not to exceed 30 days thereafter. Detectors will be examined once every 24 hours when belts are operating;

f. Carbon monoxide detecting systems that remain energized when electrical power in the mine is de-energized will be approved by MSHA as permissible or intrinsically safe;

g. In the event that the monitoring system, or any other portion thereof is rendered inoperative, the belt in the affected area may continue to operate provided that the area is continuously patrolled and monitored by a qualified person testing at frequent intervals for the presence of CO;

h. In the event either a warning signal is transmitted to the manned location or CO is detected during the patrol, employees working in by the affected area will be notified immediately and an investigation conducted.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23398 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-140-C]

H.A.T. Coal Company; Petition for Modification of Application of Mandatory Safety Standard

H.A.T. Coal Company, 113 N. Oak Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its No. 3 Slope (I.D. No. 36-07363) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.
2. Ignition, explosion and mine fire history are non-existent for the mine.
3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.
4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.
5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.
6. High velocities and large air quantities causes extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.
7. As an alternate method, petitioner proposes that:
   a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;
   b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and
   c. The minimumn quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.
9. Petitioner states that the alternate method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23399 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-162-C]

Lovilia Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Lovilia Coal Company, R.R. #1, Box 90A, Junction, Illinois 62954 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 5 (I.D. No. 11-02774) located in Gallatin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that cabs or canopies be installed on the mine's electric face equipment.
2. Petitioner states that the use of canopies restricts the equipment operator's visibility, forcing the operator to lean out from the canopy, exposing body parts to potential injury. In addition, the canopy can strike and dislodge the roof support, increasing the chances of an accident.
3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23393 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-148-C]

Penelee Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Penelee Coal Company, Inc., General Delivery, Cranks, Kentucky 40820 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 3 Mine (I.D. No. 15-12324) located in Harlan County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible short firing units.
2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.
3. The unit will be used with not more than:
   a. Ten detonators with copper leg wires not over 30 feet long;
   b. Ten detonators with iron leg wires 6 and 7 feet long;
   c. Nine detonators with iron leg wires 8 and 9 feet long;
   d. Eight detonators with iron leg wires 10 feet long;
   e. Seven detonators with iron leg wires 12 feet long;
   f. six detonators with iron leg wires 14 feet long;
   g. Five detonators with iron leg wires 16 feet long;
4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:
   a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;
   b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;
   c. With a battery pack having an open circuit voltage of at least 120 volts when

installed. The pack will also be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23400 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-149-C]

SN & N Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

SN & N Coal Company, 10 East Main Street, Goodspring, Tremont, Pennsylvania 17981, has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its No. 1 Slope (I.D. No. 36-06061) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a failsafe ground check circuit to monitor continuously the grounding circuit.

2. The mine is presently abandoned and is being de-watered. There are no personnel in the mine while electrical circuits are energized. There is no high voltage at the mine. There is no portable or mobile equipment in the mine.

3. Water is pumped from the mine before or after personnel are in the mine. Pump repairs are made by outside contractors and not at the mine. Since there are no personnel in the mine during pumping, there is no chance of personnel contacting the energized frames of mining machinery which might become energized through failure of the insulation of the power conductors.

4. As an alternate method, petitioner proposes that:

a. No personnel will enter the mine while circuits are energized;

b. The pumps, which are controlled from the surface, will be locked out at the disconnect switch by the mine superintendent before personnel enter the mine; and

c. A warning sign of adequate size will be posted at the mine's entry.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 26, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23394 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-142-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Raccoon No. 3 Mine (I.D. No. 33-02308) located in Vinton County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device (harness snap) in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The metal locking device will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets. The locking device will be securely attached to the brackets to prevent accidental loss of the locking devices.

3. Petitioner states that the harness snaps will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, trained in the hazards of breaking battery-plug connections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at the address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23396 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-160-C]

T.A.G. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

T.A.G. Coal Company, 540 N. Market Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 11 Slope (I.D. No. 36-07018) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if a "makeshift" safety device were installed it would be activated on knuckles and curves, when no emergency existed, and cause a tumbling effect on the conveyance which would increase rather than decrease the hazard to the miners.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, which have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will at all times provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 5, 1984. Copies of the petition are available for inspection at that address.

Dated: August 27, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-23403 Filed 9-4-84; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: September 20-21, 1984.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Basic Research Program: Literature/Fine Arts Panel, Division of Research Programs, for projects beginning after January 1, 1985.

Date: September 27-28, 1984.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Humanities, Science, and Technology Program, Division of Research Progams, for projects beginning after January 1, 1985.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential, (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84-23461 Filed 9-4-84; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

Correction

In FR Doc. 84-21312 appearing on page 32133 in the issue of Friday, August 10, 1984, make the following correction in the "**DATES**" section:

1. The second meeting date reading "September 13" should read "September 14".

2. The Word "*Statue*" should read "*Status*".

BILLING CODE 1505-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Recommendation Responses

Responses from:

Aviation

Federal Aviation Administration

Apr. 29: A-83-8 and -9: Is developing mandatory corrective action which if adopted will require fuel drains in Piper PA-11, PA-12, PA-18, PA-18A, PA-20, and PA-22 airplanes. *Mar. 19: A-83-64:* Plans to issue an Airworthiness Directive concerning fuel selector installation in Cessna airplanes. *A-83-65:* Is preparing a General Aviation Airworthiness Alerts (Advisory Circular 43-16) that describes the problems with fuel selector valve linkages in Cessna airplanes. *Mar. 19: A-82-94:* Issued Advisory Circular No. 23.807-3, Emergency Exits Openable From Outside for Small Airplanes, on January 20, 1984. Mar. 22: A-83-45: Proposes to sponsor an Aircraft Cabin Safety Seminar to provide the aviation community with the latest knowledge and thinking about cabin occupant safety with respect to design, practice, and procedures, and is updating Advisory Circular No. 121-24, Passenger Safety Information Briefing and Briefing Cards. *Mar. 28: A-81-77 through -79:* Issued Airworthiness Directive 83-03-04 effective February 17, 1983, requiring that a determination be made whether the shear heads in the float inflation valve of Bell Helicopter 206L Series aircraft have been installed incorrectly. *Mar. 28: A-84-1 and -2:* Continues to investigate the wing root structure on certain Bellanca aircraft to determine that inspections can detect decay in the wing spars. *A-84-3:* Is developing an article for the General Aviation Airworthiness Alerts (Advisory Circular 43-16) regarding recognition of defects

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in wooden structures and coverings, general inspection procedures, and a bibliography of publications which will provide maintenance personnel with detailed information. *Apr. 5: A–82–158:* Has incorporated into the initial training program at the FAA Academy handbook changes concerning the importance of air traffic controllers transmitting contaminated runway condition information. *Apr. 5: A–79–72:* Issued Amendment 23–29, a final rule, on February 23, 1984, which added 14 CFR 23.995(g) specifying that fuel tank selector valves must take a separate and distinct action to place the selector in the "OFF" position and that the selector must not pass through the "OFF" position when changing from one tank to another. *Apr. 20: A–81 –90 and –91:* General Aviation Airworthiness Alerts, Alert No. 42 (Advisory Circular No. 43–16) of January 1982 emphasizes that maintenance personnel can assist their customers and other owners and operators of aircraft equipped with Emergency Locator Transmitter CIR–11–2 by requesting that they obtain and retain an updated owner's manual, Document No 950012, dated March 20, 1981, for use in the installation and operation of the units.

Railroad

Federal Railroad Administration

Apr. 30: R–83–102: Will commence a safety inquiry on issues of health and safety in the locomotive cab. *Apr. 9: R–71–6, R–72–26, R–72–32, R–72–33, R–73–30, R–75–3, R–75–38, R–76–21, R–76–24, R–76–28, R–77–13, R–79–38, R–79–39, R–80–31, R–81–69, R–83–76:* The initiatives described by the FRA's report "Railroad Passenger Equipment Safety" are responsive to these recommendations pertaining to rail passenger operations, most being related to equipment and including crashworthiness, interior design, and emergency procedures. *Apr. 5: R–83–106:* Landslide accidents are few in number and the current data reporting system accurately captures all of them. *R–83–107:* Will meet with the Federal Highway Administration to discuss the applicability of highway right-of-way construction and maintenance practices to railroad right-of-way stabilization programs and will disseminate to the railroad industry any meaningful information gleaned from the FHWA.

Association of American Railroads

Apr. 3: R–84–6: Train makeup is often difficult to control and there are several factors which inhibit the ability of the carriers to conform to guidelines which have been developed concerning the placement of loaded and empty cars. *R–84–7:* Will suggest to the chief operating officers of AAR member companies that the practices of train makeup recommended by Track Train Dynamics be followed. *Apr. 4: R–84 –13 and –14:* The AAR Tank Car Committee has appointed a special task force to investigate the installation and performance of excess flow valves on DOT Specification 105, 112, and 114 tank cars.

The American Short Line Railroad Association

Mar. 30: R–84–16: Notified its members of recommendation concerning improperly positioned excess flow valve seats.

Florida East Coast Railway Company

Apr. 24: R–84–20: Has no chrome-vanadium alloy, high-strength vacuum-treated rail.

Intermodal

Research and Special Programs Administration

Apr. 6: I–79–6: Has met with the Federal Emergency Management Administration to discuss a comprehensive range of issues involved in hazardous materials accident prevention and mitigation, including the command identification and scope of authority issue. Has funded a series of local demonstration projects on Hazardous Materials Accident Prevention and Emergency Response, and final reports from two of these studies are available.

Matlack, Inc.

Apr. 10: I–83–3: Issued to its drivers a bulletin reminding them that the bill of lading and other shipping documents for hazardous materials must be readily available and recognizable to authorities in the event of an accident, emergency occurrence, or inspection.

National Fire Protection Association

May 1: I–84 –1 through –3: Will inform its members of the recommendations regarding chemical protective suits, will gather information on the problem, and as a result forward a recommendation to the Standards Council for their decision.

International Association of Fire Chiefs

May 10: I–84–4: Will continue to work with the National Fire Protection Association, the International Association of Fire Fighters, the United States Fire Administration, and the American Society of Testing and Materials in the development of standards for the design and construction of chemical protective suits.

U.S. Environmental Protection Agency

May 23: I–84–5: Is working in cooperation with several Federal agencies on the issues of permeability of suit and glove materials from chemicals that would most likely be in contact with workers on waste sites or releases. Will raise this issue with the National Response Team, which has representatives from 12 Federal agencies that have responsibilities in responding to hazardous materials releases.

U.S. Department of Health and Human Services

Jun. 15: I–84–5: The National Institute for Occupational Safety and Health has been actively working with standards organizations, regulatory agencies, fire departments, and the firefighters union in efforts to develop standards and guidelines for chemical protective clothing. Has issued a worker bulletin on hazardous material incidents. A selection guide for chemical protective clothing and respirators for hazardous incidents is in final review. Is completing the developing of a chemical resistance data base.

Federal Emergency Management Agency

Aug. 16: I–84–5: Is working with several agencies and groups in the development of standards for design and construction of chemical protective suits.

Pipeline

Research and Special Programs Administration

May 26: P–82–12: Has emphasized to its regional field office personnel and State agents the importance of requiring all natural gas operators to establish hydrostatic test procedures to assure compliance with 49 CFR 192.781.

American Gas Association

Jun. 15: P–83–29: Believes that the standards committee responsible for the National Fuel Gas Code (ANSI Z223.1/NFPA No. 54) should be encouraged to develop inspection standards that could be used by local governments for buried gas piping not subject to 49 CFR Part 192. *Jul. 20: P–83–38:* Published an Operating Section Engineering Technical Note (CPR 83–4–1), Threaded Fasteners Torquing, pertaining to the proper selection, installation, and maintenance of threaded fasteners used to secure gas compressors. *P–83–39 and –40:* Advised its members to review 49 CFR 192.615, Emergency Plans, to ensure that proper procedures, both internally and with appropriate local fire and emergency agencies, are outlined and can be implemented effectively when required.

Gas Research Institute

Jun. 29: P–84–15: Will expand its continuing research on butt-fused, socket-fused, and saddle-fused joints of polyethylene gas pipes and fittings to determine allowable limits on bending radii. *P–84–16:* Has been studying the development of nondestructive quality assurance instruments for the field evaluation of butt-fused polyethylene gas distribution piping joints. Will initiate in 1986 research in the development of a nondestructive testing device for saddle-fused joints of polyethylene gas piping.

Boston Gas Company

May 16: P–84–7: Has revised its inspection standard and procedure by including a more rigorous and frequent leak check to insure that the vent piping and diaphragm chamber system of each regulator is watertight. *P–84–8:* Will discontinue the use of unsecured weights on the diaphragm plate to prevent the lateral movements which impede proper valve operation. *P–84–9:* Constantly monitors remote pressure-recording equipment and dispatchers initiate timely corrective action should a malfunction occur. Pressure crews check local pressure-recording equipment weekly and take corrective action should a malfunction be discovered.

Marine

Massachusetts Maritime Academy

Jun. 15: M–82–43 through –49: Action on the recommendations regarding training ship must await delivery of a vessel acquired by the Maritime Administration for use by the academy.

Federal Communications Commission

Jun. 14: M–84–12: Is continuing tests of the MARTECH Whaler EB–2BW Emergency Position Indicating Radiobeacon (EPIRB) to check the operation of the transmitter after being dropped into the water from a height of 50 to 60 feet.

Department of the Army, Corps of Engineers

Jun. 29: M–83–96: Would have to considerably expand in a comprehensive manner its knowledge of waterway conditions as they relate to vessel operations to be able to accumulate the data needed to develop an "inland navigation guide." Would support an initiative in pursuit of the goal of improving safety by the acquisition, accumulation, and publication of information that could assist pilots in navigating the inland waterways. *M–83–97:* Has instructed the North Central Division Engineer to include bridge profiles in the next revision of the Corps of Engineers publication of the Upper Mississippi River Navigation Charts.

State of Florida

Apr. 30: M–83–76 and –77: The Department of Natural Resources' Boating Safety Bill is being considered by the Florida legislature.

C.L. Dill Co., Inc.

May 4: M–80–49, –50, and –51: It is not normal procedure for a company supervisor or employee to be present at tank battery locations and other hazardous locations because of numerous job responsibilities. Has always had a program and does update its program of instruction and training in emergency procedures related to the work performed by the company for all waterborne employees who work in the oil fields. Holds regular safety meetings with open discussion. Procedures relating to working at tank batteries, oil or gas wells, high-pressure pipe and oil lines have been established.

International Association of Classification Societies

May 15: M–83–89 through –92: Four of its member societies report having ships in their class which are fitted with the Hydroster Model MS–800–TE–1 steering gear, and will advise the owners of these ships of the potential problems which may arise when operating the gear with both units running simultaneously, and request that emergency instructions covering such operation be provided on board as soon as possible. As it is possible that other makes of steering gear may be subject to the same type of failure, IACS is conducting a general review of steering gear design to determine if action on a broader scope may be warranted.

Prudential Lines, Inc.

May 17: M–82–17 and –18: Has amplified its operating instructions to ship's personnel regarding: The use of radar and plotting; use of VHF radio to avoid close quarters situations; and company policy with respect to safe navigation.

State of Georgia

May 18: M–83–76: Commissioner of Natural Resources will discuss the matter of alcohol involvement in recreational boating accidents with law enforcement personnel within his agency.

State of Colorado

May 23: M–83–76: Expects that legislation concerning operating vessels while under the influence of alcohol will be introduced in the Colorado legislature.

U.S. Navy

May 31: M–84–20 and –21: The recommended watch position of keeping the bell book is a specific position within the special sea and anchor detail under article 630.21 used for operations in restricted waters and entering or leaving port. Navy regulations states that "a pilot is merely an advisor to the commanding officer." The Commanding Officer may delegate the "conn" but not the responsibility for safe navigation and piloting.

State of Massachusetts

Jul. 25: M–83–76 and –77: A bill concerning the use of alcohol by recreational boaters will be refiled in the next session of the legislature.

U.S. Coast Guard

Jul. 11: M–83–56: A barge breakaway problem is best handled at the local level through mechanisms such as estalishing a regulated navigation area. The many variables from site to site virtually preclude the practicality of promulgating nationwide regulations. *M–83–57:* Intends to provide effective enforcement of its existing regulations and any new local regulations which could be expected through the use of regulated navigation areas. *May 18: M–83–93:* Have initiated a review of our casualty information to identify critical areas of the Western Rivers as recommended. Will place this as an agenda item for consideration by the Towing Safety Advisory Committee (TSAC). Is concerned that limiting the Operator of Uninspected Towing Vessels (OUTV) license to areas of a river corresponding to local knowledge might be contrary to Congressional intent associated with the Towing Vessel Operator Licensing Act. *M–83–94:* Will publish a Notice of Proposed Rulemaking concerning regulations for signals and retroreflective material on bridges. *M–83–95:* Will study the possibility of using flashing green and red lights in the navigation spans over designated main or auxiliary navigation channels. *Apr. 30: M–84–4:* Has initiated a regulatory project to update and expand the requirements in 33 CFR Subchapter N, Outer Continental Shelf Activities. One of the objectives of this project is to establish appropriate standards for all vessels engaged in OCS activities within the authority of the Act. The need to require operating manuals on lift boats will be considered as part of this project. *May 2: M–84–5:* Because present guidance in the Marine Safety Manual (MSM, Part 30–6–20B(3)) does not emphasize older vessels including vessels over 20 years of age, it will be revised to require closer scrutiny of all older vessels. *M–84–6:* Has initiated a regulatory project to consider changing the time interval between drydock examinations on certain vessels. A proposal to require structural gauging at specified intervals on older vessels will be included in the regulatory project. *M–84–7:* The revised Volume II of the MSM will provide additional written guidance to Coast Guard inspectors for the inspection of items that have been delegated to the American Bureau of Shipping under the Load Line Regulations. Sections 6.F.1 and 2 of Volume II have been changed to reiterate the need to conduct close inspection of hatch covers and other closures during routine hull or topside inspections by Coast Guard marine inspectors. *M–84–8:* Will evaluate the design of the bilge pumping systems in the cargo holds of U.S. flag bulk carriers to determine if the systems are compatible with the cargo. *May 15: M–84–13:* Is preparing a final rule that would require Class C emergency position indicating radiobeacons (EPIRB's) on small passenger vessels on the Great Lakes and will prepare a notice of proposed rulemaking that would extend the requirement to cover coastwise vessels. *M–84–14:* Revisions to 46 CFR Subchapter T will include implementing regulations requiring operators of small passenger vessels making an offshore trip to prepare a crew and passenger list to be deposited at a suitable location ashore before departure. *M–84–15:* Has directed inspectors of charter fishing boats to make a one-time verification during their next inspection that watertight hatch closures are equipped with adequate securing devices which are being properly maintained, and will remind the boat operators of the importance of keeping hatch covers secured to preserve the watertight integrity of the hull. *M–84–16:* Proposes to change 46 CFR 185.25–1(d) to require a safety orientation announcement rather than making it optional. A requirement for operators to advise passengers of certain safety precautions will also be considered.

Note.—Single copies of these response letters are available on written request to: Public Inquires Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

August 30, 1984.

[FR Doc. 84–23410 Filed 9–4–84; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," to Northeast Nuclear Energy Company, which would revise the inservice volumetric examination of Reactor Coolant Pump Casing Welds for the Millstone Nuclear Power Station, Unit No. 2, located at the licensee's site in the Town of Waterford, Connecticut. The ASME Code requirements are incorporated by reference into the Commission's Rules and Regulations in 10 CFR Part 50.

Environmental Assessment

Identification of Proposed Action

By letter of May 4, 1984 the Northeast Nuclear Energy Company (NNECo) proposed an updated relief request for the volumetric inservice examination of the Millstone Unit No. 2 reactor coolant pump (RCP) casing welds because of problems encountered in complying with Section XI of the ASME Boiler and Pressure Vessel Code.

The licensee also proposed alternative examination requirements to provide for the assurance of structural reliability of the pump casing welds. The licensee's proposals are:

Code Relief Request

Pursuant to 10 CFR 50.55(a)(g)(5)(iii), relief is requested from performing the volumetric examination of the pump casing welds and visual examination of the internal pressure boundary surfaces in the pump casing.

Proposed Alternative Examination

It is proposed that a surface examination of the accessible RCP casing welds on one pump be done at the end of the first inspection interval. Additionally a visual examination of the accessible internal pressure boundary will be done when the pump is disassembled for maintenance.

The Need for the Proposed Action

Volumetric examination of the RCP casing welds or visual examination of the internal casing surfaces requires complete disassembly and draining of the reactor coolant pump. The unnecessary personnel exposure and cost that would result from the limited exam which could be performed do not warrant pump disassembly solely for examination purposes.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed request for relief from the ASME Code requirements which are considered impractical and the implementation of the alternative examination indicates that these actions will give reasonable assurance that the acceptable level of quality and safety intended by the ASME Code will be satisfied.

Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief.

With regard to potential non-radiological impacts, the proposed relief involves equipment located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative to the Proposed Action

Since we have concluded that there is no measurable environmental impact associated with the proposed relief from the requirements of the ASME Code and imposition of an alternative examination, any alternatives to these actions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief. This would not reduce the environmental impacts of plant operation and would result in unnecessary personnel exposure and cost to completely disassemble and drain the reactor coolant pump.

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Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement Relating to Operation of Millstone Unit 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for relief dated May 4, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Waterford Public Library, Waterford, Connecticut.

Dated at Bethesda, Maryland this 28th day of August 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Division of Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 84-23454 Filed 9-4-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-275]

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1); Issuance of a Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning Petitions dated February 2, March 1, March 23, April 12, May 3, June 21, June 22, July 11, July 16, and July 23, 1984 filed by the Government Accountability Project on behalf of the San Luis Obispo Mothers for Peace. The Petitioner requested that the Commission defer all licensing decisions on the Diablo Canyon Nuclear Power Plant, Unit 1 until a number of specified actions were taken including, *inter alia*, a comprehensive third-party reinspection of all safety-related equipment, an independent management audit and a full investigation of questions of harassment. The Petitioner alleged numerous violations of Commission requirements as the basis for its request. The petitions were referred to the Director, Office of Nuclear Reactor Regulation for treatment pursuant to 10 CFR 2.206 of the Commission's regulations and a final Director's Decision has been issued by the Director denying the Petitioner's request. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206" (DD-84-20), which is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Local Public Document Room at the Robert E. Kennedy Library, California Polytechnic State University, San Luis Obispo, California 93407.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, takes review of the decision within that time.

Dated at Bethesda, Maryland, this 20th day of August 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23453 Filed 9-4-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2); Exemption

I

On July 20, 1973, the Texas Utilities Generating Company (the applicant) tendered an application for licenses to construct Comanche Peak Steam Electric Station, Units 1 and 2 (Comanche Peak or the facility) with the Atomic Energy Commission (currently the Nuclear Regulatory Commission or the Commission). Following a public hearing before the Atomic Safety and Licensing Board, the Commission issued Construction Permit Nos. CPPR-126 and CPPR-127 permitting the construction of Units 1 and 2, respectively, on December 19, 1974. Each Unit of the facility is a pressurized water reactor, combining a Westinghouse Electric Company nuclear steam supply system, located at the applicant's site in Somervell/Hood Counties, Texas, approximately 40 miles southwest of Fort Worth, Texas.

On February 27, 1978, the applicant tendered an application for Operating Licenses for each Unit of the facility, currently in the licensing review process, with Unit 1 licensing to occur in the near term.

II

The Construction Permits issued for constructing the facility provide, in pertinent part, that the facility Units are subject to all rules, regulations and Orders of the Commission. This includes General Design Criterion (GDC) 4 of Appendix A to 10 CFR 50. GDC 4 requires that structures, systems and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with the normal operation, maintenance, testing and postulated accidents, including loss-of-coolant accidents. These structures, systems and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, discharging fluids that may result from equipment failures, and from events and conditions outside the nuclear power unit.

By a submittal dated October 31, 1983, the applicant requested an exemption from a portion of the requirements of GDC 4 to: (1) Eliminate the need to postulate circumferential and longitudinal pipe breaks in the Reactor Coolant System (RCS) primary loop (hot leg, cold leg and cross-over leg piping); (2) eliminate the need to install pipe whip restraints and jet impingement shields associated with previously postulated breaks in the RCS primary loops and; (3) to eliminate the need to consider dynamic effects and loading conditions associated with previously postulated pipe breaks in the RCS primary loop, including jet impringement loads, cavity pressure loads, blowdown loads in the RCS and attached piping, and subcompartment pressure loads. In support of this exemption request, the applicant's submittal enclosed Westinghouse Report MT-SME-3135 (Reference 1) containing the technical basis for their request.

Based on its review of the applicant's submittal, the NRC staff requested additional information and provided comments on the reports (References 1 and 9) which were transmitted to the applicant in the form of questions by NRC letter dated March 2, 1984, (Reference 2).

By a submittal dated April 23, 1984, the applicant responded to the staff's questions (Reference 2) and provided a revision to the Reference 1 report identified as Westinghouse Report WCAP-10527 (Reference 3). In a separate submittal, also dated April 23, 1984, the applicant provided a value-impact analysis which, together with the technical information contained in the

Reference 3 report, provided a comprehensive justification for requesting a partial exemption from the requirements of GDC 4.

From the deterministic fracture mechanics analysis contained in the technical information furnished, the applicant stated that the postulated double-ended guillotine breaks (DEGB) of the primary loop coolant piping will not occur in Comanche Peak Units 1 and 2 and, therefore, need not be considered as a design basis for installing protective structures, such as pipe whip restraints and jet impingement shields, to guard against the dynamic effects associated with such postulated breaks.

By letter dated June 7, 1984 (Reference 10), the applicant clarified the scope of its request for exemption from GDC 4 requirements. Since the Westinghouse Report WCAP-10527 provided analyses encompassing other structures in both Comanche Peak Units 1 and 2, and seemed to be in conflict with the scope of the exemption requested in an earlier letter dated February 17, 1984 (Reference 11), the applicant stated in the Reference 10 letter that, although the analyses contained in the Report WCAP-10527 encompassed relief from the need to install pipe break protective devices in both Units 1 and 2, the exemption being requested pertained solely to the installation of jet impingement shields associated with such breaks in eight (8) locations per loop in Comanche Peak Unit 1, as specified in Section 4.0 of the value-impact analysis submitted by the applicant's letter dated April 23, 1984.

III

The Commission's regulations require that applicants provide protective measures against the dynamic effects of postulated pipe breaks in high energy fluid system piping. Protective measures include physical isolation from postulated pipe rupture locations if feasible or the installation of pipe whip restraints, jet impingement shields or compartments. In 1975, concerns arose as to the asymmetric loads on pressurized water reactor (PWR) vessels and their internals which could result from these large postulated breaks at discrete locations in the main primary coolant loop piping. This led to the establishment of Unresolved Safety Issue (USI) A-2, "Asymmetric Blowdown Loads on PWR Primary Systems."

The NRC staff, after several review meetings with the Advisory Committee on Reactor Safeguards (ACRS) and a meeting with the NRC Committee to Review Generic Requirements (CRGR), concluded that for certain facilities an exemption from the regulations would be acceptable as an alternative for resolution of USI A-2 for sixteen facilities owned by eleven licensees in the Westinghouse Owner's Group (one of these facilities, Fort Calhoun has a Combustion Engineering nuclear steam supply system). This NRC staff position was stated in Generic Letter 84-04, published on February 1, 1984 (Reference 4). The generic letter states that the affected licensees must justify an exemption to GDC 4 on a plant-specific basis. Other PWR applicants or licensees may request similar exemptions from the requirements of GDC 4 provided that they submit an acceptable technical basis for eliminating the need to postulate pipe breaks.

The acceptance of an exemption was made possible by the development of advanced fracture mechanics technology. These advanced fracture mechanics techniques deal with relatively small flaws in piping components (either postulated or real) and examine their behavior under various pipe loads. The objective is to demonstrate by deterministic analyses that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before the flaws can grow to critical or unstable sizes which could lead to large break areas such as the DEGB or its equivalent. The concept underlying such analyses is referred to as "leak-before-break" (LBB). There is no implication that piping failures cannot occur, but rather that improved knowledge of the failure modes of piping systems and the application of appropriate remedial measures, if indicated, can reduce the probability of catastrophic failure to insignificant values.

Advanced fracture mechanics technology was applied in topical reports (References 5, 6 and 7) submitted to the staff by Westinghouse on behalf of the licensees belonging to the USI A-2 Owners Group. Although the topical reports were intended to resolve the issue of asymmetric blowdown loads that resulted from a limited number of discrete break locations, the technology advanced in these topical reports demonstrated that the probability of breaks occurring in the primary coolant system main loop piping is sufficiently low such that these breaks need not be considered as a design basis for requiring installation of pipe whip restraints or jet impingement shields. The staff's Topical Report Evaluation is attached as Enclosure 1 to Reference 4.

Probabilistic fracture mechanics studies conducted by the Lawrence Livermore National Laboratories (LLNL) on both Westinghouse and Combustion Engineering nuclear steam supply system main loop piping (Reference 8) confirm that both the probability of leakage (e.g., undetected flaw growth through the pipe wall by fatigue) and the probability of a DEGB are very low. The results given in Reference 8 are that the best-estimate leak probabilities for Westinghouse nuclear steam supply system main loop piping range from 1.2 x 10^{-8} to 1.5 x 10^{-7} per plant year and the best-estimate DEGB probabilities range from 1 x 10^{-13} to 7 x 10^{-12} per plant year. Similarly, the best-estimate leak probabilities for Combustion Engineering nuclear steam supply system main loop piping range from 1 x 10^{-8} per plant year to 3 x 10^{-6} per plant year, and the best-estimate DEGB probabilities range from 5 x 10^{-14} to 5 x 10^{-13} per plant year. These results do not affect core melt probabilities in any significant way.

During the past few years it has also become apparent that the requirement for installation of large, massive pipe whip restraints and jet impingement shields is not necessarily the most cost effective way to achieve the desired level of safety, as indicated in Enclosure 2, Regulatory Analysis, to Reference 4. Even for new plants, these devices tend to restrict access for future inservice inspection of piping; or if they are removed and reinstalled for inspection, there is a potential risk of damaging the piping and other safety-related components in this process. If installed in operating plants, high occupational radiation exposure (ORE) would be incurred while public risk reduction would be very low. Removal and reinstallation for inservice inspection also entail significant ORE over the life of a plant.

IV

The primary coolant system of Comanche Peak Units 1 and 2, described in Reference 3, has four main loops each comprising a 33.9 inch diameter hot leg, a 36.2 inch diameter crossover leg and 32.14 inch diameter cold leg piping. The material in the primary loop piping is cast stainless steel (SA 351 CF8A). In its review of Reference 3, the staff evaluated the Westinghouse analyses with regard to:

—The location of maximum stresses in the piping, associated with the combined loads from normal operation and the SSE;

—Potential cracking mechanisms,

—Size of through-wall cracks that would leak a detectable amount under normal loads and pressure;

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—Stability of a "leakage-size crack" under normal plus SSE loads and the expected margin in terms of load;
—Margin based on crack size; and
—The fracture toughness properties of thermally-aged cast stainless steel piping and weld material.

The NRC staff's criteria for evaluation of the above parameters are delineated in its Topical Report Evaluation, Enclosure 1 to Reference 4, Section 4.1, "NRC Evaluation Criteria", and are as follows:

(1) The loading conditions should include the static forces and moments (pressure, deadweight and thermal expansion) due to normal operation, and the forces and moments associated with the safe shutdown earthquake (SSE). These forces and moments should be located where the highest stresses, coincident with the poorest material properties, are induced for base materials, weldments and safe-ends.

(2) For the piping run/systems under evaluation, all pertinent information which demonstrates that degradation or failure of the piping resulting from stress corrosion cracking, fatigue or water hammer is not likely, should be provided. Relevant operating history should be cited, which includes system operational procedures; system or component modification; water chemistry parameters, limits and controls; resistance of material to various forms of stress corrosion, and performance under cyclic loadings.

(3) A through-wall crack should be postulated at the highest stressed locations determined from (1) above. The size of the crack should be large enough so that the leakage is assured of detection with adequate margin using the minimum installed leak detection capability when the pipe is subjected to normal operational loads.

(4) It should be demonstrated that the postulated leakage crack is stable under normal plus SSE loads for long periods of time; that is, crack growth, if any, is minimal during an earthquake. The margin, in terms of applied loads, should be determined by a crack stability analysis, i.e., that the leakage-size crack will not experience unstable crack growth even if larger loads (larger than design loads) are applied. This analysis should demonstrate that crack growth is stable and the final crack size is limited, such that a double-ended pipe break will not occur.

(5) The crack size should be determined by comparing leakage-size cracks to critical-size cracks. Under normal plus SSE loads, it should be demonstrated that there is adequate margin between the leakage-size crack and the critical-size crack to account for the uncertainties inherent in the analyses, and leakage detection capability. A limit-load analysis may suffice for this prupose, however, an elastic-plastic fracture mechanics (tearing instability) analysis is preferable.

(6) The materials data provided should include types of materials and materials specificatons used for base metal, weldments and safe-ends, the materials properties including the J–R curve used in the analyses, and long-term effects such as thermal aging and other limitations to valid data (e.g. J maximum, maximum crack growth).

V

Based on its evaluation of the analysis contained in Westinghouse Report WCAP–10527 (Reference 3), the staff finds that the applicant has presented an acceptable technical justification, addressing the above criteria, for not installing protective devices to deal with the dynamic effects of large pipe ruptures in the main loop primary coolant system piping of Comanche Peak, Units 1 and 2. This finding is predicated on the fact that each of the parameters evaluated for Comanche Peak is *enveloped* by the generic analysis performed by Westinghouse in Reference (5), and accepted by the staff in Enclosure 1 to Reference 4. Specifically:

(1) The loads associated with the highest location in the main loop primary system piping are considerably lower than the bounding loads used by Westinghouse in Reference 5, or those established by the staff as limits (e.g., a moment of 42,000 in-kips in Enclosure 1 to Reference 4).

(2) For Westinghouse plants, there is no history of cracking failure in reactor primary coolant system loop piping. The Westinghouse reactor coolant system primary loop has an operating history which demonstrates its inherent stability. This includes a low susceptibility to cracking failure from the effects of corrosion (e.g. intergranular stress corrosion cracking), water hammer, or fatigue (low and high cycle). This operating history totals over 400 reactor-years, including five plants each having 15 years of operation and 15 other plants with over 10 years of operation.

(3) The results of the leak rate calculations performed for Comanche Peak, using an initial through-wall crack are identical to those of Enclosure 1 to Reference (4). the Comanche Peak plant has an RCS pressure boundary leak detection system which is consistent with the guidelines of Regulatory Guide 1.45, and it can detect leakage of one (1) gpm in one hour. The calculated leak rate through the postulated flaw is large relative to the sensitivity of the Comanche Peak plant leak detection system.

(4) The expected margin in terms of load for the leakage-size crack under normal plus SSE loads is within the bounds calculated by the staff in Section 4.2.3 of Enclosure (1) to Reference 4. In addition, the staff found a significant margin in terms of loads larger than normal plus SSE loads.

(5) The margin between the leakage-size crack and the critical-size crack was calculated. Again, the results demonstrated that a significant margin exists and is within the bounds of Section 4.2.3 of Enclosure 1 to Reference 4.

(6) As an integral part of its review, the staff's evaluation of the material properties data of Reference 9 is enclosed as Appendix 1 to this Exemption. In Reference 9, data for ten (10) plants, including the Comanche Peak Units, are presented, and lower bound or "worst case" materials properties were identified and used in the analysis performed in the Reference 3 report by Westinghouse. The staff's upper bound of 3000 in-lb/in^2 on the applied J (refer to Appendix 1, page 6) was not exceeded; the applied J for Comanche Peak in Reference 3 was substantially less than 3000 in-lb/in^2.

In view of the analytical results presented in the Westinghouse Report for Comanche Peak (Reference 3) and the staff's evaluation findings related above, the staff concludes that the probability or likelihood of large pipe breaks occurring in the primary coolant system loop of Comanche Peak Units 1 and 2 is sufficiently low so such that such pipe breaks need not be considered as a design basis for requiring protective devices. However, the pipe whip restraints have already been installed in Unit 1, and the applicant has limited the scope of its exemption request to the installation of jet impingement shields in Unit 1 only. The requested exemption from GDC 4 is limited to exemption from the need to install jet impingement shields at specified locations in Unit 1.

The staff also reviewed the value-impact analysis provided by the applicant for not providing protective structures against postulated reactor coolant system loop pipe breaks to assure as low as reasonably achievable (ALARA) exposure to plant personnel. Consideration was given to design features for reducing doses to personnel who must operate, service and maintain the Comanche Peak instrumentation.

controls, equipment, etc. Normally, facilities and equipment are designed to *save* person-rems; however, the Comanche Peak value-impact analysis shows that the addition of protective devices for RCS pipe breaks will *cost* about 2 person-rems annually due to the slowing down of normally anticipated work, and increasing the scope of routine maintenance in radiation areas that would be involved. The analysis provides a reasonable estimate for this additional radiological cost. In view of the very low probability of pipe breaks at the specified locations covered by this exemption, the reduction of occupational exposure resulting from this exemption outweighs the potential accident exposure reduction that might result from installation of the jet impingement barriers.

VI

In view of the staff's evaluation findings, conclusions, and recommendation above, the Commission has determined that, pursuant to 10 CFR 50.12(a), this Exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby approves the requested limited exemption from GDC 4 of Appendix A to 10 CFR Part 50, to permit the licensee not to install jet impingement shields associated with postulated pipe breaks of the eight (8) locations per loop in the Comanche Peak Unit 1 primary coolant system, as specified in Section 4.0 of the value-impact analysis submit by the applicant's letter dated April 23, 1984. This Exemption does not pertain to the installation of pipe whip restraints, already installed in Unit 1, or to the installation of pipe whip restraints and jet impingement shields in Comanche Peak Unit 2. The portion of the request Unit 2 will be dealt with in a separate NRC action.

The Commission has determined that the issuance of the exemption will have no significant environmental impact on the environment (49 FR 33945).

Dated at Bethesda, Maryland this 28th day of August 1984.

For the Nuclear Regulatory Commission.

Frank Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

References

(1) Westinghouse Report MT-SME-3135, "Technical Bases for Eliminating Large Primary Loop Pipe Ruptures as the Structural Design Basis for Comanche Peak Unit 1 and 2," October 1983, Westinghouse Class 2 proprietary.

(2) Letter to R.J. Gary of Texas Utilities Generating Company, "Request for Additional Information Concerning Leak-Before-Break Analysis for Comanche Peak Steam Electric Station (Units 1 and 2)," dated March 2, 1984.

(3) Westinghouse Report WCAP-10527, "Technical Bases for Eliminating Large Primary Loop Pipe Rupture as the Structural Design Basis for Comanche Peak Units 1 and 2," April 1984, Westinghouse Class 2 proprietary.

(4) NRC Generic Letter 84-04, "Safety Evaluation of Westinghouse Topical Reports Dealing with Elimination of Postulated Breaks in PWR Primary Main Loops," February 1, 1984.

(5) Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Throughwall Crack, WCAP-9558, Rev. 2, May 1981, Westinghouse Class 2 proprietary.

(6) Tensile and Toughness Properties of Primary Piping Weld Metal for Use in Mechanistic Fracture Evaluation, WCAP-9787, May 1981, Westinghouse Class 2 proprietary.

(7) Westinghouse Response to Questions and Comments Raised by Members of ACRS Subcommittee on Metal Component During the Westinghouse Presentation on September 25, 1981, Letter Report NS-EPR-2519, E.P. Rahe to Darrell G. Eisenhut, November 10, 1981, Westinghouse Class 2 proprietary.

(8) Lawrence Livermore National Laboratory Report, UCRL-86249, "Failure Probability of PWR Reactor Coolant Loop Piping," by T. Lo, H.H. Woo, G. S. Holman and C.K. Chou, February 1984 (Preprint of a paper intended for publication).

(9) Westinghouse Report WCAP-10456, "The Effects of Thermal Aging on the Structural Integrity of Cast Stainless Steel Piping for Westinghouse Nuclear Steam Supply Systems," November 1983, Westinghouse Class 2 proprietary.

(10) Texas Utilities Generating Company letter TXX-4197, "Request for Partial Exemption" (H.C. Schmidt to B.J. Youngblood) dated June 7, 1984.

(11) Texas Utilities Generating Company letter TXX-4118, "Request for Partial Exemption," (R.J. Gary to B.J. Youngblood) dated February 17, 1984.

References

Note.—Non-Proprietary versions of References 1, 3, 5, 6, 7 and 9 are available in the NRC Public Document Room as follows: (1) MT-SME-3136, (3) WCAP 10528, (5) WCAP 9570, (6) WCAP 9788, (7) Non-proprietary version attached to the Letter Report, (9) WCAP 10457.

[FR Doc. 84-23451 Filed 9-4-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-266]

Wisconsin Electric Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of relief from the requirements of Section XI of the ASME Boiler and Pressure Vessel Code as specified by the provisions of 10 CFR 50.55a(b) to Wisconsin Electric Power Company (the licensee), for the Point Beach Nuclear Plant Unit No. 1, located in the Town of Two Creeks, Manitowoc County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The action would provide relief from the requirement to perform surface examinations of the safety injection reducer-to-safe end welds as required by Section XI of the ASME Boiler and Pressure Vessel Code which has been incorporated by reference in the requirements of 51 CFR 50.55a relating to Inservice Inspection of Safety Related Components. Volumetric examinations of these welds would be performed every 10 years as required.

The Need for the Proposed Action

The proposed relief is required because surface examinations of these welds are not possible due to the inaccessibility of the weld surfaces. The welds are located between the reactor vessel and the biological shield wall.

Environmental Impacts of the Proposed Action

The proposed relief is allowed by the provisions of 10 CFR 50.55a(g)(6)(i) where the tests or examinations required by the code are determined impractical to perform. As the surfaces of the welds in question are inaccessible, a surface examination has been determined by the licensee and evaluated by the Commission as impractical to perform. The staff has determined that the required volumetric inspection of the welds once every 10 years will provide adequate assurance of the structural integrity of the welds. Identical relief to that requested for Unit 1 was provided for Point Beach Unit 2 by the Commission's Safety Evaluation and letter of March 29, 1984.

Consequently, as the Commission has determined that the welds will retain adequate structural integrity utilizing the licensee's proposed alternate examination (volumetric examination once every 10 years), the probability of weld failure has not been increased significantly and the consequences of post-weld failure radiological releases will not be greater than previously determined nor does the requested relief otherwise affect radiological plant effluents. Therefore, the Commission has determined that there are no significant radiological environmental impacts associated with the requested relief.

With regard to potential non-radiological impacts, the requested relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other non-radiological environmental impact. Therefore, the Commission has determined that there are no significant non-radiological environmental impacts associated with the requested relief.

Alternative Use of Resources

This action involves no use of resources not considered in the Final Environmental Statement (construction permit and operating license) for the Point Beach Nuclear Plant Unit No. 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the requested relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for relief dated January 13, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., and at the Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland, this 27th day of August 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23452 Filed 9-4-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on GESSAR II; Meeting

The ACRS Subcommittee on GESSAR II will hold a meeting on September 20 and 21, 1984, at the Bayview Plaza Holiday Inn (213/399-9344), 530 Pico Blvd., Santa Monica, CA.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, September 20, 1984—8:30 a.m. until the conclusion of business.

Friday, September 21, 1984—8:30 a.m. until the conclusion of business.

The Subcommittee will continue the review of the General Electric Standard Safety Analysis Report to extend the Final Design Approval so that it will be applicable to future plants. This meeting is expected to be the first in a series of meetings to review GESSAR II. This meeting will tentatively address deterministic/standard review plan type issues which will be covered in the Staff's August 1984 SER, Supplement 2 (NUREG-0979). Other topics to be discussed may include the GESSAR evolution, evaluations of unresolved safety issues, generic items, and new design features. Meetings to review the severe accident probabilistic risk assesment will be scheduled later.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS member, Mr. Richard Major (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: August 30, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-23450 Filed 9-4-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on September 19, 1984, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, Pennsylvania 17101. The meeting will be open to the public.

At this meeting the Panel will receive a presentation from the NRC staff on the staff's findings relative to the issue of alleged harassment by the licensee's management of specific individuals in the employment of GPUNC over issues of health and safety. The Panel will then hold a general discussion on alleged harassment of employees by management over issues of health and safety at TMI-2. The licensee will also provide the Panel with an update on anticipated funding of the cleanup effort for calendar year 1985 and beyond. The Panel will report on any issues relative to the TMI-2 cleanup effort contained in specific TMI-1 restart NRC Commission Meeting transcripts.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492-7466.

Dated: August 29, 1984

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-23449 Filed 9-4-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval: Form S-14, No. 270-65.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (35 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Form S-14, Securities Act of 1933 registration form for securities to be offered in certain transactions under Securities Act Rule 145. The form provides a basis for the Commission to fulfill its statutory responsibility of requiring the filing of a registration statement making publicly available information regarding such securities.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

August 23, 1984.

[FR Doc. 84-23413 Filed 9-4-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval: Form S-15, No. 270-66.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (35 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Form S-15, Securities Act of 1933 registration form for registration of securities to be offered in certain business combination transactions. The form provides a basis for the Commission to fulfill its statutory responsibility of requiring the filing of a registration statement making publicly available information regarding such securities.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

August 23, 1984.

[FR Doc. 84-23412 Filed 9-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14111; 812-5869]

Capital Investments, Inc.; Application for an Order

August 28, 1984.

Notice is hereby given that Capital Investments, Inc. ("Applicant"), 744 North Fourth Street, Suite 400, Milwaukee, Wisconsin 53203, a closed-end internally managed investment company, filed an application on June 8, 1984 for an order pursuant to section 23(c)(3) of the Investment Company Act of 1940 ("Act") permitting Applicant to repurchase certain of its shares from two shareholders. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of section 23(c)(3).

According to the application, Marshall & Ilsley Corporation ("M&I"), a bank holding company, and constituent bank corporations owned by it own 145,800 shares of Applicant's common stock (the "M&I Shares"), which constitutes 22% of Applicant's outstanding common stock. M&I has formed its own venture capital firm which will operate in the same general geographic market area as Applicant, and believes that its continued ownership of the M&I Shares may create conflict of interest situations. Accordingly, M&I has entered into an agreement with Applicant whereby Applicant will repurchase the M&I Shares at a price of $2.00 per share. Geuder, Paeschke & Frey Company ("GPF") is the owner of record of 56,648 shares of Applicant's common stock (the "GPF Shares") which constitutes 8.6% of the outstanding common stock. These shares were pledged by GPF to the Harris Trust & Savings Bank of Chicago, Illinois ("Harris Trust"). GPF, a Wisconsin corporation, is currently having its assets liquidated by a trustee under Chapter VII of the Federal bankruptcy laws. In connection with the liquidation proceedings, the trustee and Harris Trust advised Applicant that they were interested in disposing of the GPF Shares. Thereafter, the parties agreed that the Applicant would purchase the GPF Shares for $2.00 per share.

Applicant represents that no brokerage commission is being paid by Applicant in connection with the two proposed purchases; the proposed transactions have been approved by its directors, including a majority of the directors who are not interested in the transactions; and the proposed transactions are permitted under Wisconsin corporate law. Additionally, Applicant represents that it has sufficient idle funds to pay for the M&I Shares and the GPF Shares without in any way adversely affecting its business position.

Applicant submits that the proposed transactions are in the best interests of Applicant and its shareholders and that the proposed purchases are being made in a manner and on a basis which do not unfairly discriminate against any holders of its common stock. Applicant states that although its common stock is traded over-the-counter, the market is thin and there is actually little trading. It would be difficult for either M&I or GPF to dispose of Applicant's stock in the market, even over a period of time. Further, any such sales in the market could depress the market value of Applicant's stock for a considerable period of time. According to Applicant, during the 16 months ending April 30, 1984, the high bid price for its stock was $3.50, and the low bid price was $2.37. At December 31, 1983, the net asset value per share of the Applicant's Common Stock was $6.69, and at April 30, 1984, the net asset value per share of Applicant's common stock was $6.88. Accordingly, Applicant submits that it and its remaining shareholders will benefit from the proposed transactions because the purchase price will not cause the dilution of the interest of other shareholders, but will, instead, enhance their equity by the amount of the discount.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23419 Filed 9-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14114; 811-3184]

Continental Assurance Co.; CNA Variable Account; Filing of Application

August 28, 1984.

Notice is hereby given that Continental Assurance Company CNA Variable Account ("Applicant"), CNA Plaza, Chicago, Illinois, 60685, an open-end, diversified management company registered under the Investment Company Act of 1940 (the "Act"), filed an application on March 9, 1984, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that the Applicant filed a registration statement which became effective on October 22, 1982, but that no public offering of the contracts has commenced. The Applicant states that it has one security holder, Continental Assurance Company, and that final distribution of its assets will be made shortly after entry of a formal deregistration by the Commission. The Committee of the Applicant resolved on March 5, 1982 that the form be prepared and all other actions necessary or appropriate to obtain an order from the Commission declaring that the Applicant has ceased to be an investment company be taken.

Notice is further given that any interested person may, not later than September 21, 1984, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will received any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23415 Filed 9-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14117; 812-5917]

Great-West Life & Annuity Insurance Co., et al.; Filing of Application

August 29, 1984.

Notice is hereby given that Great-West Life and Annuity Insurance Company ("GWL&A"), 1675 Broadway, Denver, Colorado, 80202, and Maxim Series Account ("Series Account"), a separate account of GWL&A registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on August 14, 1984 for an order pursuant to section 6(c) of the Act granting exemptions from the above referenced provisions of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application for the complete representations of the Applicants, which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants propose that they be granted an exemption from sections 26(a) and 27(c)(2) to allow as a deduction from the contract value a daily charge for expense risks equal on an annual basis to .40% of daily net assets. Applicants were previously granted an order of exemption (Investment Company Act Release No. 12392, April 21, 1982) permitting a deduction from the contract value of a daily charge for expense risks equal on an annual basis to .25% of daily net assets. The purpose of this application is to obtain exemptive relief for the additional expense risk charge of .15%. Applicants represent that the increased expense risk charge is intended to compensate them for greater costs in administering the contracts due to two new features of the contracts which allow for additional purchase payments to be made throughout the accumulation period and which lower the minimum amount of any such additional payment. The higher expense risk charge will apply only to contracts issued after the effective date of a post-effective amendment to the Series Account's registration statement authorizing the higher charge.

Applicants assert that the mortality and expense risk charge (which would be equal on an annual basis to 1.40% of daily net assets) is consistent with the protection of investors standard set forth in section 6(c) as it is reasonable as determined by industry practice with respect to comparable annuity products. Applicants represent that they have reviewed publicly available information about similar industry practices, taking into account such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. They further represent that the data supporting and setting forth this conclusion will be maintained on file at GWL&A's administrative offices. Applicants acknowledge that some portion of the mortality and expense risk charge may be utilized to meet sales expenses which exceed the contingent deferred sales charge which may be imposed. In this connection, GWL&A represents that it has concluded that there is a reasonable likelihood that the Series Account's distribution financing arrangement will benefit the Account and contractowners and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation. The Series Account represents that it will invest only in open-end management which have undertaken to have a board of directors with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23411 Filed 9-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23402; 70-7007]

Vermont Yankee Nuclear Power Corp.; Proposal to Issue and Sell Short-Term Notes to Banks

Vermont Yankee Nuclear Power Corporation ("Company"), R.D. 5, Ferry Road, Box 169, Brattleboro, Vermont, 05301 a nuclear power generating subsidiary of New England Electric System and Northeast Utilities, registered holding companies, has proposed a transaction pursuant to sections 6 and 7 of the Public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

The Company currently maintains lines of credit with banks aggregating $16 million, which are authorized under the Commission's current order through August 31, 1984. As of June 30, 1984, the Company had $770,000 outstanding under those lines. As of that date, 5% of the principal amount and par value of the other securities of the Company equaled $7.3 million.

During the balance of 1984, 1985, and early 1986, the Company will be receiving shipments of uranium for ultimate fabrication into nuclear fuel for its reactor and will be making substantial capital improvements, which could necessitate payments exceeding the aggregate credit available under the Company's Nuclear Fuel Sale Agreement (HCAR No. 22255, October 30, 1981) and the Eurodollar Credit Facility (HCAR No. 23270, April 3, 1984). Therefore, it proposes to maintain with banks its lines at a maximum of $16 million. Borrowings under the lines of credit will be evidenced by the Company's promissory notes, maturing up to 360 days after their date of issue and bearing interest at a rate of interest not greater than each lender's prime rate plus 0.25%. Certain of the banks require the Company to maintain compensatory balances or pay commitment fees equal to not more than 7% or 0.75%, respectively, of the lines and other bank lenders may require similar arrangements. Assuming full borrowings under the lines and a prime rate of 13% per annum, the maximum effective costs of borrowings would be 13.98%.

Therefore, the Company is seeking Commission authorization for these short-term borrowings (which would exceed 5% of the principal amount and par value of other securities of the Company) During the period extending to February 28, 1986. The Company presently anticipates that these borrowings will be repaid during such period by internally generated funds or by permanent financing.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 21, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service by (affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-23416 Filed 9-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21277; File No. SR-Phlx-84-16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 17, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Phlx proposes to amend Regulation 4 of its Regulation and Assessment Schedule enacted under Phlx Rule 60 to include in the Exchange prohibition against fighting on the trading floor "any other form of physical abuse" which technically may not be considered fighting. In addition, the Exchange proposes to assess the $500 fine under the current regulation for all such disorderly conduct. Under the proposed amendment, members or employees of members would be subject to a $500 fine for every instance of fighting or any other form of physical abuse on the trading floor. According to the Exchange, the proposed rule change is based on Section 19(d) of the Act, and specifically on paragraph (c) of Rule 19d-1 thereunder, in that it amends a Phlx rule relating to personal decorum on the trading floor.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-84-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23414 Filed 9-4-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

August 28, 1984.

The above named national securities exchanges has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Adams-Millis Corporation
  Common Stock, Par Value (File No. 7-7817)
ALLTEL Corporation
  Common Stock, $1.00 Par Value (File No. 7-7818)
Bairnco Corporation
  Common Stock, $.10 Par Value (File No. 7-7819)

Buttes Gas & Oil Co.
  Common Stock, $.10 Par Value (File No. 7–7820)
Carter Hawley Hale Stores, Inc.
  Common Stock, $5.00 Par Value (File No. 7–7821)
Clevepak Corporation
  Common Stock, $1.00 Par Value (File No. 7–7822)
Commonwealth Energy System
  Common Stock, $4.00 Par Value (File No. 7–7823)
Compugraphic Corporation
  Common Stock, $.05 Par Value (File No. 7–7824)
CP National Corporation
  Common Stock, $2.50 Par Value (File No. 7–7825)
Crane Co.
  Common Stock, $6.25 Par Value (File No. 7–7826)
Dennision Manufacturing Company
  Common Stock, $1.00 Par Value (File No. 7–7827)
Financial Corporation of Santa Barbara
  Common Stock, $1.00 Par Value (File No. 7–7828)
First City Properties, Inc.
  Common Stock, $.10 Par Value (File No. 7–7829)
Hawaiian Electric Industries, Inc.
  Common Stock, $6–⅔ Par Value (File No. 7–7830)
Interstate Power Co.
  Common Stock, $3.50 Par Value (File No. 7–7831)
Measurex Corporation
  Common Stock, Par Value (File No. 7–7832)
Mohasco Corporation
  Common Stock, $5.00 Par Value (File No. 7–7833)
Moore McComack Resources, Inc.
  Common Stock, $2.50 Par Value (File No. 7–7834)
Outboard Marine Corporation
  Common Stock, $.30 Par Value (File No. 7–7835)
Plantronics, Inc.
  Common Stock, Par Value (File No. 7–7836)
Publicker Industries, Inc.
  Common Stock, $5.00 Par Value (File No. 7–7837)
Pueblo International, Inc.
  Common Stock, $1.00 Par Value (File No. 7–7838)
Purolator Courier
  Common Stock, $.22–2/9 Par Value (File No. 7–7839)
Reichhold Chemicals, Inc.
  Common Stock, $1.00 Par Value (File No. 7–7840)
RLC Corp.
  Common Stock, $1.00 Par Value (File No. 7–7841)
Ronson Corporation
  Common Stock, $1.00 Par Value (File No. 7–7842)
Tyler Corporation
  Common Stock, $.10 Par Value (File No. 7–7843)
Unitrode Corporation
  Common Stock, $.20 Par Value (File No. 7–7844)
Wheeling-Pittsburgh Steel Corporation
  Common Stock, $10.00 Par Value (File No. 7–7845)
Winn-Dixie Stores, Inc.
  Common Stock, $1.00 Par Value (File No. 7–7846)
Valley Industries, Inc.
  Common Stock, $.01 Par Value (File No. 7–7847)
Zurn Industries, Inc.
  Common Stock, $.50 Par Value (File No. 7–7848)
Aeronica, Inc.
  Common Stock, $1.00 Par Value (File No. 7–7849)
Audiotronics Corporation
  Common Stock, $1.00 Par Value (File No. 7–7850)
R.G. Barry Corporation
  Common Stock, $1.00 Par Value (File No. 7–7851)
Canadian Marconi Company
  Common Stock, Par Value (File No. 7–7852)
Custom Energy Services, Inc.
  Common Stock, $.01 Par Value (File No. 7–7853)
Kinark Corporation
  Common Stock, $.10 Par Value (File No. 7–7854)
Lake Shore Mines Ltd.
  Common Stock, $1.00 Par Value (File No. 7–7855)
Marshall Industries
  Common Stock, $1.00 Par Value (File No. 7–7856)
Restaurant Associates Industries, Inc.
  Common Stock, $1.00 Par Value (File No. 7–7857)
Teleflex Incorporated
  Common Stock, $1.00 Par Value (File No. 7–7858)
Total Petroleum (North America) Ltd.
  Common Stock, Par Value (File No. 7–7859)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 19, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–23418 Filed 9–4–84; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of:

Entex Energy Development, Ltd.
  Depositary Units (File No. 7–7815)
McLean Industries, Inc.
  Warrants to Purchase Common Stock (File No. 7–7816)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 19, 1984, written data, views and arguments concerning the above—referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–23417 Filed 9–4–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held September 27, 1984, at 9:30 a.m. until 1:00 p.m. in Room 8334 at the Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. The agenda for the meeting is as follows:

—Technical amendment to MBE rule on suspension and debarment
—Proposed changes in 49 CFR Part 23
—New transportation acquisition regulations

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Minority Business Resource Center, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426-2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on August 29, 1984.

Armando L. Mena,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 84-23432 Filed 9-4-84; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP84-8; Notice 2]

Isuzu Motors Limited; Grant Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Isuzu Motors Limited of Japan to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Paragraph §5.2 (a), (b), and (c) of Standard No. 120 require rims on vehicles other than passenger cars to be marked with the designation indicating the rim's published source of nominal dimensions, rim size designation, and the symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable Federal motor vehicle safety standards. Noncompliances with these requirements exist on 1173 Isuzu Trooper and Trooper II multi-purpose passenger vehicles and trucks, covering approximately 5,865 disc wheels. Specifically, the letter indicating the source of the rim size designation is missing as is the DOT symbol. The letter "J" should have been supplied indicating the Japanese Industrial Standard, a designation made under Standard JASO C603-80 Steel Disc Wheels for Automobiles, issued by the Japanese Automobile Standards Organization (JASO). In addition, the rim size is shown in the order "of width by diameter rather than diameter by width", i.e., 6JJ X 15 rather than 15 X 6JJ.

Isuzu argued that the noncompliances are inconsequential because the noncompliances do not affect the performance of the vehicle, the rim and tires are properly matched, and correct tire sizes which match the rim are stated on the label affixed pursuant to § 5.3 of Standard No. 120.

No comments were received on the petition.

With regard to the omission of the DOT symbol, it has been agency policy for many years to treat such omissions as failures to certify compliance, rather than the type of noncompliance with a safety standard requiring notification and remedy. As for the omission of the letter "J", the rims carry the lettering "TOPY" identifying Isuzu as the rim manufacturer; any interested person, therefore, could contact Isuzu to determine from which standardization organization the published nominal dimensions could be obtained. Finally, the reversal of diameter and width on the rim is likely to result in only minimal confusion.

Accordingly, petitioner has met its burden of persuasion that the noncompliance with Standard No. 120 herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

The engineer and lawyer primarily responsible for this notice are A.Y Casanova and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-42, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: August 29, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-23431 Filed 9-4-84; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that three additional objects to be included in the exhibit, "van Gogh in Arles" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. (See original notice published February 29, 1984, in Vol. 49, No. 41 of the **Federal Register**, page 7489.) These objects are imported pursuant to a loan agreement between The Metropolitan Museum of Art, New York, N.Y., and the Staatliche Museen zu Berlin. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about September 24, 1984, to on or about December 30, 1984, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 30, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-23484 Filed 9-4-84; 8:45 am]

BILLING CODE 8230-01-M

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[1] An itemized list of objects included in the exhibit is filed as part of the original document.

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Sunshine Act Meetings

Federal Register
Vol. 49, No. 173
Wednesday, September 5, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 11, 1984.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY 86 Budget

The Commission will consider issues related to the Fiscal Year 1986 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84-23547 Filed 8-31-84; 3:14 pm]
BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Monday, September 10, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY 86 Budget

The staff and the Commission will continue to discuss issues related to the Fiscal Year 1986 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84-23548 Filed 8-31-84; 3:15 pm]
BILLING CODE 6355-01-M

3

DEPARTMENT OF DEFENSE, UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 9:00 a.m., September 10, 1984.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

STATUS: Open.

MATTERS TO BE CONSIDERED:

9:00
Meeting—Board of Regents

(1) Oath of Office—New Board of Regents' Members; (2) Approval of Minutes—May 19, 1984; (3) Faculty Appointments; (4) Report—Admissions; (5) Report—Associate Dean for Operations: Budget; (6) Report—President, USUHS: (a) University Awards, (b) Graduate Students—Certification of Graduate Students, (c) F. Edward Hebert School of Medicine: (1) Discussion of Dedication (Dedication of the School will be held after the meeting), (2) Part III, National Board of Medical Examiners Examination Results, (d) Henry M. Jackson Foundation for the Advancement of Military Medicine, (e) Procedures and Delegations, (f) Informational Items: (1) Foreign Military Students, (2) Deployment Medicine; (7) Report—Assistant Dean for Student Affairs: USUHS Medical Student Counselling Program; (8) Comment by the Chairman of the Board of Regents.

New Business.

SCHEDULED MEETINGS: November 19, 1984.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295–3049.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-23521 Filed 8-31-84; 12:50 pm]
BILLING CODE 3810-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of September 3, 1984 and Weeks of September 10, 17, 24, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 3

Tuesday, September 4

2:00 p.m.
Discussion and Vote on Environmental Qualification of Electrical Equipment (Public Meeting)

Wednesday, September 5

10:00 a.m.
Discussion of Indian Point Probabilistic Risk Assessment (Public Meeting)
2:00 p.m.
Discussion of Commission Policy for Handling Last Minute Allegations (Public Meeting) (*Moved* from 9/6)
(Reexamination of Exemption Process meeting postponed)

Thursday, September 6

10:00 a.m.
Discussion/Possible Vote on Proposed Rule on Backfitting (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (New Item)
8:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Report of the Task Force on Investigations, Inspections and Adjudicatory Proceedings
b. Petition of Alabama Power Co. for Declaratory Order Interpreting Antitrust License Condition

Friday, September 7

10:00 a.m.
Affirmation/Discussion and Vote (Open Meeting/Portion may be Closed—Ex. 10)
a. Whether to Take Review of ALABs 772 & 738 (TMI–1)
b. Whether to Grant Licensee Request to Stay ALAB–772 & TMIA Requests to Lift Stay of ALAB–738

Week of September 10

Tentative

Monday, September 10

2:00 p.m.
Briefing on Steam Generator Generic Requirements (Public Meeting)

Tuesday, September 11

2:00 p.m.
Briefing on BWR Pipe Crack Report (Long Range Plan) (Public Meeting)

Thursday, September 13

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of September 17

Tentative

Wednesday, September 19

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Quarterly Progress Report on Safety Goal Evaluation Report (Public Meeting)

Thursday, September 20

10:00 a.m.
Industry Views on Decommissioning (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 21

(NUMARC Briefing postponed)

Week of September 24

Tentative

Thursday, September 27

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634–1410

Robert B. McOsker,

Office of the Secretary.

August 31, 1984.

[FR Doc. 84–23567 Filed 8–31–84; 3:26 pm]

BILLING CODE 7590–01–M

5

PAROLE COMMISSION

AGENCY HOLDING MEETING: U.S. Parole Commission, National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters).

TIME AND DATE: Thursday, September 13, 1984—10:00 a.m.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately two cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: August 30, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84–23462 Filed 8–30–84; 4:43 pm]

BILLING CODE 4410–01–M

6

LEGAL SERVICES CORPORATION

Board of Directors Meeting.

TIME AND DATE: It will commence at (9:30 A.M. continue until all offical business is completed; Friday, September 14, 1984

PLACE: Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia 22180.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, criminal, Litigation, investigatory matters under 45 CFR 1622.5 (a), (d), (e), (f), (g), and (h)).

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—July 9, 1984
3. Report from the President
4. Report from the Operations and Regulations Committee
5. Report from the Office of Field Services
—Budget and Reorganization
6. Report from the Office of Government Relations
7. Report from the Office of Comptroller
—1986 Budget Mark
1985 Preliminary Consolidated Operating Budget
—3rd Quarter Budget Review

CONTACT PERSONS FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272–4040.

Date issued: September 4, 1984.

Donald P. Bogard

President

[FR Doc. 84–23682 Filed 9–4–84; 8:45 am]

BILLING CODE 6820–35–M

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Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 5712/Pub. L. 98-411

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1985 (Aug. 30, 1984; 98 Stat. 1545) Price: $3.25

H.J. Res. 600/Pub. L. 98-412

To amend the Agriculture and Food Act of 1981 to provide for the establishment of a commission to study and make recommendations concerning agriculture-related trade and export policies, programs, and practices of the United States. (Aug. 30, 1984; 98 Stat. 1576) Price: $1.75

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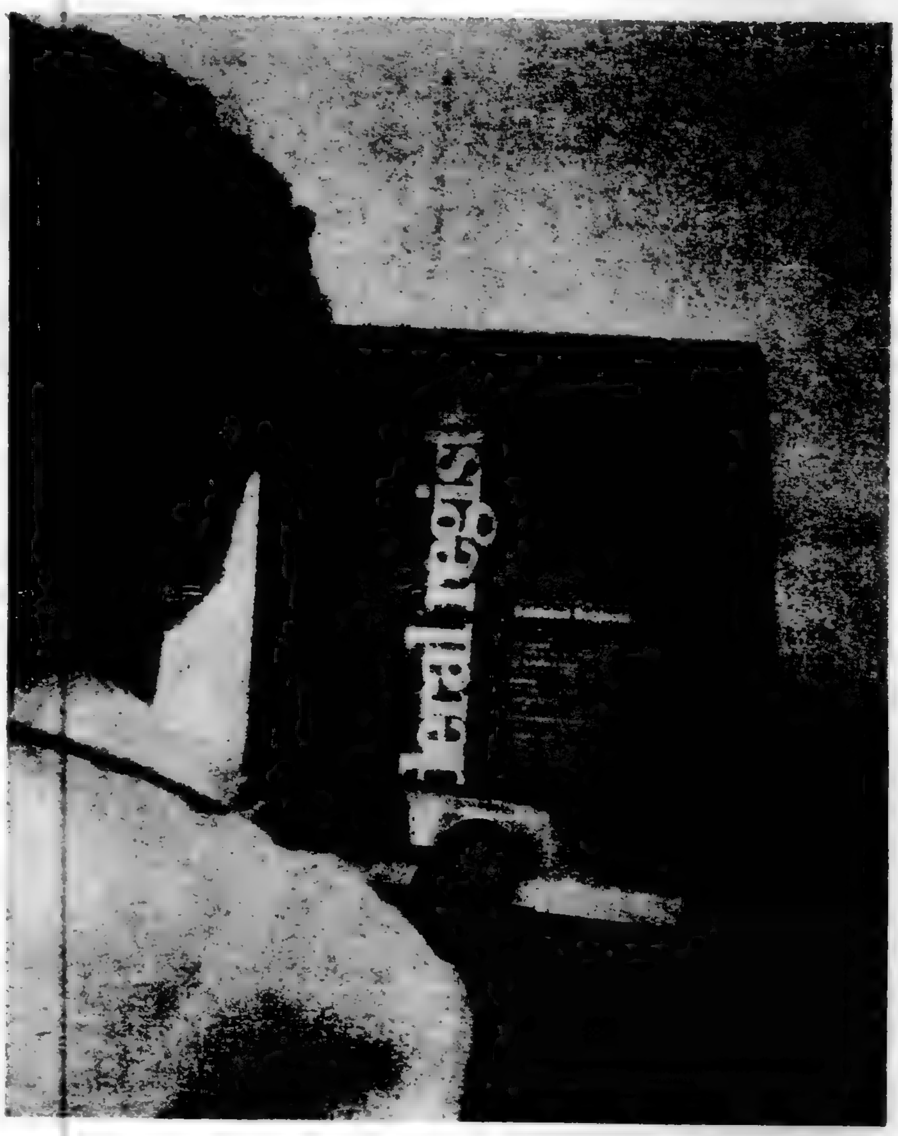

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Rules and Regulations

Federal Register
Vol. 49, No. 174
Thursday, September 6, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[**Docket No. 1323S**]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final a revision and reissuance of the Late Planting Agreement Option (7 CFR Part 400, Subpart A), effective for the 1984 crop year. The revision and reissuance was implemented by the Federal Crop Insurance Corporation (FCIC) on an interim basis to relieve a restriction by broadening the cause of late planting which had been limited to excess moisture, to cover adverse weather conditions and expand the list of crops to which this option applies. The intended effect of this action is to confirm the interim rule as amended by expanding the list of crops to which this rule is applicable.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Tuesday, February 21, 1984, FCIC published a final rule at 49 FR 6319, prescribing procedures for the implementation of a Late Planting Agreement Option for insurance on certain crops. The cause of late planting in the option was listed as "excess moisture." On Friday June 1, 1984, FCIC published an interim rule revising and reissuing the Late Planting Agreement Option at 49 FR 22757 to broaden the cause of late planting, for the 1984 and succeeding crop years, to cover "adverse weather conditions." This action permitted producers whose concerns over the conditions contributing to late planting were adverse weather conditions other than excess moisture, also to participate under the Late Planting Agreement Option.

Merritt W. Sprague, Manager, FCIC, determined that an emergency situation existed which warranted publication of this rule without a period for prior public comment because the producers who wished to participate under the Late Planting Agreement Option for the 1984 crop year were concerned with lack of moisture and other adverse weather conditions as well as excess moisture. In order to relieve this restriction, it was determined to broaden the reference of the cause of planting delay from "excess moisture" to "adverse weather conditions". This action relieved the restriction and provided a needed benefit. Public comment was solicited after publication of the interim rule and the rule was scheduled for review in order to provide any amendments made necessary by public comment. No comments were received. Therefore, the interim rule as amended is hereby adopted as final.

The interim rule also contained an expanded list of crops to which the Late Planting Agreement Option may be applicable. The Corporation has determined after further review that Hybrid Seed and Potatoes should be added to the list.

Since the added provisions represent changes which are either less restrictive with respect to producers or are only administrative in nature, it has been determined that no further public rulemaking is required.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined in Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) does not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action to promulgate regulations for the implementation of FCIC's Late Planting Agreement constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Departmental Regulation 1512–1 (December 15, 1983). The sunset review date established for these regulations is May 21, 1989.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 7 CFR Part 400

Crop insurance, Late planting agreement option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revised and reissues the Late Planting Agreement Option, Subpart A to Part 400 of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, as set forth below.

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart A—Late Planting Agreement Option; Regulations for the 1984 and Succeeding Crop Years

Sec.
400.1 Availability of the Late Planting Agreement Option.
400.2 Definitions.
400.3 Responsibilities of the insured.
400.4 Applicability to crops insured.
400.5 The Late Planting Agreement Option.

Authority: Sec 508, Pub. L. 75–430, 52 Stat. 73, as amended (7 U.S.C. 1508).

§ 400.1 Availability of the Late Planting Agreement Option.

The Late Planting Agreement Option shall be offered under the provisions contained in 7 CFR Parts 402 through 499 within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops indentified in § 400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this subpart.

§ 400.2 Definitions.

For the purposes of the Late Planting Agreement Option:

(a) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) "Late Planting Agreement Option" means that agreement between the FCIC and the insured whereby the insured elects and FCIC provides insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days or part thereof that the acreage is planted after the final planting date.

(c) "Production guarantee" means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§ 400.3 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Agreement Option Form and for the accuracy of the data provided on that form. The provisions of this subsection shall not relieve the insured of any responsibilities under the provisions of the insurance contract.

§ 400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops.

7 CFR Part 418	Wheat
7 CFR Part 419	Barley
7 CFR Part 420	Grain Sorghum
7 CFR Part 421	Cotton
7 CFR Part 422	Potatoes
7 CFR Part 423	Flax
7 CFR Part 424	Rice
7 CFR Part 425	Peanuts
7 CFR Part 427	Oats
7 CFR Part 428	Sunflowers
7 CFR Part 429	Rye
7 CFR Part 430	Sugar Beets
7 CFR Part 431	Soybeans
7 CFR Part 432	Corn
7 CFR Part 433	Dry Beans
7 CFR Part 434	Tobacco (Dollar Plan)
7 CFR Part 435	Tobacco (Quota Plan)
7 CFR Part 436	Tobacco (Guaranteed Production Plan)
7 CFR Part 438	Tomatoes
7 CFR Part 443	Hybrid Seed
7 CFR Part 447	Popcorn

The Late Planting Option shall be available in all counties listed in Appendix A to each of the regulations referenced in this section.

§ 400.5 The Late Planting Agreement Option.

The provisions of the Late Planting Agreement Option are as follows:

FCI–9

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Late Planting Agreement Option

Insured's Name ——————
Address ——————

Contract No. ——————
Crop Year ——————
Corp ——————

Notwithstanding the provisions of Section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date which delay in planting was caused by adverse weather conditions. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date. The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option. If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this option.

Insured's Signature ——————
Date ——————

Corporation Representative's Signature and Code Number ——————
Date ——————

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)).

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and regulations promulgated thereunder (7 CFR 400 *et seq.*). The information requested is necessary for FCIC to institute the Late Planting Agreement Option. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, processors, other U.S. Department of Agriculture agencies, the Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the information requested on this form is voluntary. However, failure to furnish the complete requested information may result in the Late Planting Agreement Option not being accepted by the Corporation.

Done in Washington, D.C., on August 1, 1984.

Dated: August 29, 1984.

Diana Moslak,
Acting Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,
Manager.

[FR Doc. 84–23537 Filed 9–5–84; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Stabilization and Conservation Service

7 CFR Part 781

Disclosure of Foreign Investment in Agricultural Land

AGENCY: Agricultural Stabilization and Conservation Service, Agriculture.

ACTION: Final rule.

SUMMARY: This final rule revises certain sections of the regulations implementing the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) (7 U.S.C. 3105 *et seq.).* The changes made by this

final rule will make the regulations easier to understand and administer. The final rule contains three principal changes: (1) It revises the definitions of "agricultural land" and "significant interest or substantial control." (2) It modifies the provisions regarding assessments of a penalty when a person contests a notice of apparent liability to make it clear that any final penalty imposed may not exceed the amount of the penalty stated in the notice of apparent liability. (3) It adds several new items to the information that must be included in the reports required by the regulations and imposes a requirement that certain information in the reports be kept current. The final rule also incorporates most of the interpretive material appearing in the regulation into substantive provisions of the regulations. There are also certain minor editorial changes in the definitions section of the regulations.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: William A. Brown, Emergency Operations and Livestock Programs Division, ASCS, USDA, Room 4095 South Building, P.O. Box 2415, Washington, D.C. 20013, telephone (202) 447-6833.

SUPPLEMENTARY INFORMATION: This final rule has been issued in accordance with procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified "non-major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

The final rule has also been reviewed with regard to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354). Pursuant to that review, Everett Rank, Administrator, Agricultural Stabilization and Conservation Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities because the rule merely requires reports to be filed by foreign persons owning U.S. agricultural land.

The Department has prepared a Final Regulatory Impact Analysis of this regulation. Copies of the analysis are available to the public by contacting the person named above.

This final rule will revise the regulation concerning the Disclosure of Foreign Investment in Agricultural Land published on February 6, 1979, as amended (44 FR 7115; 44 FR 29029; 45 FR 7775).

A notice of proposed rulemaking relating to this final rule was published in the **Federal Register** on October 11, 1983 (48 FR 46065). A 60-day comment period ending December 12, 1983, followed during which a total of six comments were received which included comments from a law firm, coal company, realtor association, farm organization, and the general public. Changes were made in the final rule based on comments received on the proposed rule and additional changes developed by the Department.

A. Section 781.2(b). Definition of Agricultural Land

No comments were received concerning the proposed replacement of the word "agricultural" in the definition of agricultural land with the words "farming" and "ranching". The definition of "agricultural land" in the final rule has been revised to include the interpretive material appearing in the proposed rule regarding certain agricultural activities set forth in the Standard Industrial Classification Manual issued by the Office of Management and Budget as illustrative of the types of activities which may cause the land used for the activity to be classified as agricultural land. The Manual is available at most public libraries and in State and County offices or from the ASCS office in Washington, D.C. at the address indicated herein.

The proposed rule also required a foreign person to report all land used for farming, ranching, forestry, and timber production which exceeds 10 acres in the aggregated unless the farming, ranching, forestry, and timber products grown on the land are sold and return more than $1,000 in annual gross sales receipts. Previously, only land in excess of one acre had to be reported. The change in the minimum reportable acreage was made because the Department believed that information about small amounts of land used for growing trees or agricultural products is not of significant value.

One commentor suggested that the 10 acre requirement in the proposed rule be increased to 50 acres. The commentor felt that a holding of less than 50 acres would not be a viable agricultural holding. This suggestion was rejected because there are numerous foreign investors who hold small acreages of agricultural land which are very valuable and would be a viable agricultural holding. Citrus, truck gardening, almonds, and vineyards are examples of concentrated, high priced, and intensive agricultural enterprises which can occur on small acreage plots.

B. Section 781.2(k). Significant Interest or Substantial Control

The proposed rule amended the definition of "significant interest or substantial control" to require an agricultural landowning person to file a report if a single foreign individual, or foreign individuals, persons, or governments acting in concert, hold a ten percent or greater interest in the landowning person and if foreign individuals, persons, or governments, even though not acting in concert, hold in the aggregate a 50 percent or greater interest in the landowning person. The AFIDA regulation previously required five percent or more as the level of interest constituting "significant interest or substantial control." The percentage was increased because the previous definition required business entities not normally considered foreign-dominated to file reports. This resulted in a serious distortion of the total figures on agricultural foreign investment by including land not normally considered foreign-owned or subject to foreign control. The Department believes that the use of these percentages will provide a more accurate indication of the amount of agricultural land over which foreign persons can exert influence.

One commentor suggested that the 10 percent or more interest requirement for significant interest or substantial control for single individuals, persons, or governments, or individuals, persons, or governments acting in concert be changed to 25 percent. The commentor felt that 10 percent does not represent a significant interest. This suggestion was rejected because in large corporations, a 10 percent ownership interest could be the largest stockholding of all stock owners. Therefore, one single foreign stockholders with a 10 percent interest or a number of foreign stockholders with a 10 percent interest or a number of foreign stockholders with a total of 10 percent interest, acting in concert, could control a corporation.

The interpretive material concerning the word "combination" appearing after § 781.2(g)(4)(ii)(D) in the proposed rule has been incorporated as part of § 781.2(g)(4)(ii)(D). The interpretative material concerning intervening persons has been deleted because it appears unnecessary.

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C. Section 781.3. Reporting Requirements

Section 781.3(e) of the final rule adds the following items to the information that must be included in the reports of foreign ownership of agricultural land: (i) The date the land was acquired or transferred, (ii) the amount of value of the purchase price yet to be paid, and (iii) the estimated value of the land.

The three paragraphs of interpretive material appearing after § 781.3(g)(2)(iii) in the proposed rule have been incorporated as substantive provisions in the final rule and appear as new § 781.3(h) (1), (2), and (3).

Section 781.3(h) of the proposed rule contained a new requirement that a foreign person must report to USDA when such person ceases to be a foreign person or if the agricultural land reported ceases to be agricultural. In the final rule these provisions have been divided into two subsections (§ 781.3 (i) and (j)). A new § 781.3(k) also has been added in the final rule to require that other changes in information in the report filed must be reported. The Department has found in the administration of AFIDA that changes in the names and addresses listed on the report forms are often not reported. These additional provisions are necessary in order for USDA to maintain accurate up-to-date information on foreign ownership of U.S. agricultural land as required by AFIDA.

Several commentors questioned the necessity of having a keep-current requirement. We agree that all of the information submitted on the ASCS-153 report form need not be updated, but we believe certain information must be kept current to enable the Department to prepare accurate periodic reports to Congress and the President as required by AFIDA, which reveal the effect of such holdings upon family farms and rural communities.

One commentor suggested that current investor information is available from other existing sources (e.g., real estate records, State corporation records, etc.). However, it would not be feasible or practical for the U.S. government to try to track down company stock transfers or changes of addresses.

One commentor noted that the keep-current requirement was discussed in the "Supplementary Information" of the proposed rule but not discussed in the formal part of the proposed rule. This perception is essentially correct. As a result, a new provision (§ 781.3(k)) was added to the final rule which requires specific information be kept current.

D. Section 781.5. Penalty Review Procedures

No comments were received regarding changes in the penalty review procedures. Section 781.5(f) was amended to provide that, if a foreign person contests the notice of apparent liability and the Administrator of ASCS ultimately determines that the foreign person is liable, the penalty finally imposed may not be greater than the amount stated in the notice of apparent liability.

E. Interpretations

Due to new **Federal Register** requirements, most of the interpretive material which previously appeared in the regulation has not been incorporated into substantive provisions of the regulations. The other has been deleted as unnecessary.

List of Subjects in 7 CFR Part 781

Administrative practice and procedure, Agriculture, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements.

Title 7 of the Code of Federal Regulations is amended by revising Part 781 to read as follows:

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.
781.1 General
781.2 Definitions.
781.3 Reporting requirements.
781.4 Assessment of penalties.
781.5 Penalty review procedure.
781.6 Paperwork Reduction Act assigned number.

Authority: Sec. 1-10, 92 Stat. 1266 (7 U.S.C. 3501 *et seq.*).

§ 781.1 General.

The purpose of these regulations is to set forth the requirements designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The regulations require that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the regulations establish a system for the collection of information by the Agricultural Stablization and Conservation Service (ASCS) pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by the Economic Research Service (ERS) concerning the effect of such holdings upon family farms and rural communities.

§ 781.2 Definitions.

In determining the meaning of the provisions of this Part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *AFIDA.* AFIDA means the Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural Land.* Agricultural land means land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, forestry, or timber production, except land not exceeding ten acres in the aggregate if the annual gross receipts from the sale of the farm, ranch, forestry, or timber products produced thereon do not exceed $1,000. Farming, ranching, forestry, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1972), Division A, exclusive of industry numbers 0711-0783, 0851, and 0912-0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise and wildlife management.

(c) *Any Interest.* Any interest means all interest acquired, transferred or held in agricultural lands by a foreign person, except:

(1) Security interests;

(2) Leaseholds of less than 10 years;

(3) Contingent future interests;

(4) Noncontingent future interests which do not become possessory upon the termination of the present possessory estate;

(5) Surface or subsurface easements and rights of way used for a purpose unrelated to agricultural production; and

(6) An interest solely in mineral rights.

(d) *County.* County means a political subdivision of a State identified as a County or parish. In Alaska, the term means an area so designated by the State Agricultural Stabilization and Conservation committee.

(e) *Foreign Government.* Foreign government means any government other than the United States government, the government of a State, or a political subdivision of a State.

(f) *Foreign Individual.* Foreign individual means foreign person as defined in paragraph (g)(1) of this section.

(g) *Foreign Person.* Foreign person means:

(1) Any individual:

(i) Who is not a citizen or national of the United States; or

(ii) Who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) Who is not lawfully admitted to the United States for permanent residence or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(3) Any foreign government;

(4) Any person, other than an individual or a government:

(i) Which is created or organized under the laws of any State; and

(ii) In which a significant interest or substantial control is directly or indirectly held:

(A) By any individual referred to in paragraph (g)(1) of this section; or

(B) By any person referred to in paragraph (g)(2) of this section; or

(C) By any foreign government referred to in paragraph (g)(3) of this section; or

(D) By any numerical combination of such individuals, persons, or governments, which combination need not have a common objective.

(h) *Person.* Person means any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary.* Secretary means the Secretary of Agriculture.

(j) *Security Interest.* Security interest means a mortgage or other debt securing instrument.

(k) *Significant Interest of Substantial Control.* Significant interest or substantial control means:

(1) An interest of 10 percent or more held by a person referred to in paragraph (g)(4), by a single individual referred to in paragraph (g)(1), by a single person referred to in paragraph (g)(2), by a single government referred to in paragraph (g)(3); or

(2) An interest of 10 percent or more held by persons referred to in paragraph (g)(4), by individuals referred to in paragraph (g)(1), by persons referred to in paragraph (g)(2), or by governments referred to in paragraph (g)(3), whenever such persons, individuals, or governments are acting in concert with respect to such interest even though no single individual, person, or government holds an interest of 10 percent or more; or

(3) An interest of 50 percent or more, in the aggregate, held by persons referred to in paragraph (g)(4), by individuals referred to in paragraph (g)(1), by persons referred to in paragraph (g)(2), or by governments referred to in paragraph (g)(3), even though such individuals, persons, or governments may not be acting in concert.

(l) *State.* State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

§ 781.3 Reporting requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the ASCS County office in the County where the land with respect to which such report must be filed is located or where the ASCS County office administering programs carried out on such land is located.

(b) Any foreign person who held, holds, acquires, or transfers any interest in United States agricultural land is subject to the requirement of filing a report on form ASCS–153 by the following dates:

(1) August 1, 1979, if the interest in the agricultural land was held on the day before February 2, 1979, or

(2) Ninety days after the date of acquisition or transfer of the interest in the agricultural land, if the interest was acquired or transferred on or after February 2, 1979.

(c) Any person who holds or acquires any interest in United States agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person must submit, not later than 90 days after the date on which such person becomes a foreign person, a report containing the information required to be submitted under paragraph (e) of this section.

(d) Any foreign person who holds or acquires any interest in United States land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report containing the information required to be submitted under paragraph (e) of this section.

(e) Any foreign person required to submit a report under this regulation, except under paragraph (g) of this section, shall file an ASCS–153 report containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature and name of the person holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest held by a foreign person who acquired or transferred an interest in agricultural land;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for, such interest; the amount of the purchase price or the value of the consideration yet to be given; the current estimated value of the land reported;

(7) In any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred; and

(i) In any case in which such transferee is an individual, the citizenship of such transferee; and

(ii) In any case in which such transferee is not an individual, or a government, the nature of the person holding the interest, the country in which such transferee is created or organized, and the principal place of business;

(8) The agricultural purposes for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land;

(9) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS–153 form for the foreign person;

(10) How the tract of land was acquired or transferred, the relationship of the foreign person to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement; and

(11) The date the interest in the land was acquired or transferred.

(f)(1) Any foreign person, other than an individual or government, required to submit a report under paragraphs (b), (c), and (d) of this Section, must submit, in addition to the report required under paragraph (e) of this Section, a report containing the following information:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

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(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of significant interest or substantial control in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) In addition, any such foreign person required to submit a report under paragraph (f)(1) of this Section may also be required, upon request, to submit a report containing:

(i) The legal name and the address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (f)(1) of this Section, if such individual or government holds any interest in such foreign person:

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or a government, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose legal name is contained on any report submitted in satisfaction of paragraph (f) of this Section may also be required, upon request, to:

(1) Submit a report containing:

(i) The legal name and the address of each foreign individual or government holding significant interest or substantial control in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest in such foreign person is not an individual or a government, the nature and name of the foreign person holding such interest, the country in which each holder is created or organized, and the principal place of business of such holder.

(2) Submit a report containing:

(i) The legal name and address of each individual or government whose legal name and address did not appear on the report required to be submitted under paragraph (g)(1) of this section if such individual or government holds any interest in such foreign person and, except in the case of a request which involves a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this section, disclosing information relating to nonforeign interest holders;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government and, except in a situation where the information is requested from a foreign person, a report was required to be submitted pursuant to paragraph (f)(2) of this Section disclosing information relating to nonforeign interest holders, the nature and name of the person holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(h)(1) Any person which has issued fewer than 100,000 shares of common and preferred stock and instruments convertible into equivalents thereof shall be considered to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that persons with foreign mailing addresses hold significant interest or substantial control in such person.

(2) Any person which has issued 100,000 or more shares of common and preferred stock and instruments convertible into equivalents thereof shall be considerd to have satisfactorily determined that it has no obligation to file a report pursuant to § 781.3 if, in addition to information within its knowledge, a quarterly examination of its business records fails to reveal that the percentage of shares held in such person both by persons with foreign mailing addresses and investment institutions which manage shares does not equal or exceed significant interest or substantial control in such person.

(3) If the person in paragraph 2 above determines that the percentage of shares, which is held in it both by persons with foreign mailing addresses and investment institutions which manage shares, equals or exceeds significant interest or substantial control in such persons, then such person shall be considered to have satisfactorily attempted to determine whether it has an obligation to file a report pursuant to § 781.3 if it sends questionnaires to each such investment institution holding an interest in it inquiring as to whether the persons for which they are investing are foreign persons and the percentage of shares reflected by the affirmative responses from each such investment institution plus the percentage of shares held by persons listed on the business records with foreign mailing addresses does not reveal that foreign persons hold significant interest or substantial control in such person.

(i) Any foreign person, who submitted a report under paragraphs (b), (c), or (d) of this section at a time when such land was agricultural, and such agricultural land later ceases to be agricultural, must submit, not later than 90 days after the date on which such land ceases being agricultural, a revised report from ASCS–153 or a written notification of the change of status of the land to the ASCS office where the report form was originally filed. The report form and notification must contain the following information:

(1) The legal name and the address of such foreign person;

(2) The legal description, which includes the State and county where the land is located, and the acreage of such land;

(3) The date the land ceases to be agricultural;

(4) The use of the land while agricultural.

(j) If any foreign person who submitted a report under paragraphs (b), (c), or (d) of this section ceases to be a foreign person, such person must submit, not later than 90 days after the date such person ceases being a foreign person, a written notification of the change of status of the person to the ASCS office where the report form ASCS–153 was originally filed. The notification must contain the following information:

(1) The legal name of such person;

(2) The legal description and acreage of such land;

(3) The date such person ceases to be foreign.

(k) Any foreign person who submitted a report under paragraphs (b), (c), or (d) of this section must submit, not later than 90 days after the change of information contained on the report, a written notification of the change to the ASCS office where the report form ASCS–153 was originally filed. The following information must be kept current on the report:

(1) The legal address of such foreign person;

(2) The legal name and the address required to be submitted under (f)(1);

(3) The legal name and the address required to be submitted under (g)(1).

§ 781.4 Assessment of penalties.

(a) Violation of the reporting obligations will consist of:

(1) Failure to submit any report in accordance with § 781.3;

(2) Failure to maintain any submitted report with accurate information; or

(3) Submission of a report which the foreign person knows:

(i) Does not contain, initially or within thirty days from the date of a letter returning for completion such incomplete report, all the information required to be in such report; or

(ii) Contains misleading or false information.

(b) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to the following penalties:

(1) Late-filed reports: One-tenth of one percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land, with respect to which such violation occurred, for each week or portion thereof that such violation continues, but the total penalty imposed shall not exceed 25 percent of the fair market value of the foreign person's interest in such land.

(2) Submission of an incomplete report or a report containing misleading or false information, failure to submit a report or failure to maintain a submitted report with accurate information: 25 percent of the fair market value, as determined by the Agricultural Stabilization and Conservation Service, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

(3) Penalties prescribed above are subject to downward adjustments based on factors including:

(i) Total time the violation existed.

(ii) Method of discovery of the violation.

(iii) Extenuating circumstances concerning the violation.

(iv) Nature of the information misstated or not reported.

(c) The fair market value for the land, with respect to which such violation occurred, shall be such value on the date the penalty is assessed, or if the land is no longer agricultural, on the date it was last used as agricultural land. The price or current estimated value reported by the foreign person, as verified and/or adjusted by the County Agricultural Stabilization and Conservation Committee for the County where the land is located, will be considered to be the fair market value.

§ 781.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of § 781.4, a written notice of apparent liability will be sent to the foreign person's last known address by the Agricultural Stabilization and Conservation Service. This notice will set forth the facts which indicate apparent liability, identify the type of violation listed in paragraph (a) of § 781.4 which is involved, state the amount of the penalty to be imposed, include a statement of fair market value of the foreign person's interest in the subject land, and summarize the courses of action available to the foreign person.

(b) The foreign person involved shall respond to a notice of apparent liability within 60 days after the notice is mailed. If a foreign person fails to respond to the notice of apparent liability, the proposed penalty shall become final. Any of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph.

(1) Payment of the proposed penalty in the amount specified in the notice of apparent liability and filing of a report, if required, in compliance with § 781.3. The amount shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(2) Submission of a written statement denying liability for the penalty in whole or in part. Allegations made in any such statement must be supported by detailed factual data. The statement should be mailed to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(3) Submission of a written request for a Hearing with the Administrator or with the Administrator's designee. The request should be submitted to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Submission of such a request does not preclude submission of the statement described in paragraph (b)(2) of this section; either or both may be submitted.

(c)(1) If a Hearing is requested, it will be held in Washington, D.C. at a place determined by the Administrator of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture or the Administrator's designee. The Administrator or the Administrator's designee will preside at the Hearing The appellant shall bear all personal costs connected with such a Hearing.

(2) The Hearing will be scheduled for any mutually convenient time within 30 days after the request is filed with the Administrator, or at a time designated by the Administrator or the Administrator's designee.

(3) At the Hearing, the foreign person may appear personally or be represented by a person of the foreign person's choice and will be afforded an opportunity to state a position and question the factual basis for the notice of apparent liability and the amount of the penalty to be imposed.

(4) A summary of the Hearing will be prepared by the presiding official and transmitted to the Administrator.

(5) The failure of the foreign person to appear at the time and place appointed for the Hearing shall constitute a waiver of the foreign person's right to such a Hearing.

(d) After the submission of a written statement and/or after the Hearing, as prescribed in paragraph (b) and (c) of this section, the Administrator will make a determination based on all relevant information available.

(e) Notice of the Administrator's determination, stating whether a report must be filed or amended in compliance with § 781.3, the amount of the penalty (if any), and the date by which it must be paid, will thereupon be mailed to the foreign person by the Administrator or the Administrator's designee. The foreign person shall file or amend the report as required by the Administrator. The penalty in the amount stated shall be paid by check or money order drawn to the Treasurer of the United States and shall be mailed to the U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(f) If the foreign person contests the notice of apparent liability by submitting a written statement or a request for a hearing thereon, the foreign person may elect either to pay the penalty or decline to pay the penalty pending resolution of the matter by the Administrator. If the Administrator determines that the foreign person is not liable for the penalty or is liable for less than the amount paid, the payment will be wholly or proportionally refunded. If the Administrator ultimately determines that the foreign person is liable, the penalty finally imposed shall not exceed the amount imposed in the notice of apparent liability.

(g) If a foreign person fails to respond to the notice of apparent liability as required by paragraph (b) of this section, or fails to pay the penalty imposed by the Administrator under paragraph (d) of this section, the case will, without further notice, be referred by the Department to the Department of Justice for prosecution in the appropriate District Court to recover the amount of the penalty.

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(h) Any amounts approved by the U.S. Department of Agriculture for disbursement to a foreign person under the programs administered by the Department may be setoff against penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR Part 13.

§ 781.6 Paper Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR Part 781) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0097.

Signed at Washington, D.C. on August 28, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-23542 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 1062, 1007, 1011, 1030, 1032, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1094, 1096, 1097, 1098, 1099, 1102, 1106, 1108, 1120, 1126, 1131, 1132, and 1138

Milk in the St. Louis-Ozarks Marketing Area, et al.; Determination of a Change in the Data Used for Computing the Basic Class II Formula Prices

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides for the use of selected monthly data instead of quarterly data in computing the basic Class II formula prices of the milk orders listed above. The change is necessary because the USDA Statistical Reporting Service, which altered selected portions of its crop and livestock estimating programs in 1982, has now reverted back of its previous estimating programs with respect to those data used in these milk orders.

In the matter of:

7 CFR Part and Marketing Area

1062—St. Louis-Ozarks
1007—Georgia
1011—Tennessee Valley
1030—Chicago Regional
1032—Southern Illinois
1046—Louisville-Lexington-Evansville
1049—Indiana
1050—Central Illinois
1064—Greater Kansas City
1065—Nebraska-Western Iowa
1068—Upper Midwest
1076—Eastern South Dakota
1079—Iowa
1094—New Orleans-Mississippi
1096—Greater Louisiana
1097—Memphis, Tennessee
1098—Nashville, Tennessee
1099—Paducah, Kentucky
1102—Fort Smith, Arkansas
1106—Southwest Plains
1108—Central Arkansas
1120—Lubbock-Plainview, Texas
1126—Texas
1131—Central Arizona
1132—Texas Panhandle
1138—Rio Grande Valley

DATE: The change set forth herein becomes effective September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6274.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable provisions of the respective orders, as amended, regulating the handling of milk in the aforesaid marketing areas, it is hereby found and determined with respect to these orders that:

(1) In a decision issued on July 8, 1981 (46 FR 36151) the Assistant Secretary found that the total American cheese production and nonfat dry milk production for the States of Minnesota and Wisconsin as reported by the USDA Statistical Reporting Service (SRS) for the third preceding month should be used in computing the basic Class II formula price for a month in the aforesaid milk orders. Accordingly, on August 25, 1981 (46 FR 43371), the Assistant Secretary amended each of the orders, effective September 1, 1981, to contain such a provision. For example, the basic Class II formula price for October would utilize the reported production data for July.

(2) In 1982 SRS announced to the public that it was cutting back or otherwise altering selected portions of its crop and livestock estimating programs. One of the reports affected was the *Dairy Products* report which previously had been issued monthly and in the future was to be issued quarterly. To accommodate these orders to this quarterly reporting of the total American cheese production and nonfat dry milk production for the States of Minnesota and Wisconsin a determination was issued on May 24, 1982 (47 FR 23417) substituting the use of the quarterly data for the monthly data in the computation of the basic Class II formula price. For example, the same production data for April, May and June combined would be used in computing the basic Class II formula prices for September, October and November.

(3) Now the SRS is again publishing the *Dairy Products* report on a monthly basis. Since the order provisions adopted on the basis of a hearing proceeding specify the use of monthly data, it is preferable to use such data in computing the basic Class II formula price.

(4) Notice of proposed rulemaking and public procedure thereon are impracticable, unnecessary, and contrary to the public interest in that:

(a) The production data of American cheese and nonfat dry milk on a monthly basis in available again for use in computing the basic Class II formula prices under the above listed orders. Thus, the use of quarterly data is no longer necessary;

(b) The above listed orders provide for the use of the monthly data; and

(c) This action does not require substantial or extensive preparation by any person.

Effective Date: The procedure set forth herein becomes effective upon publication of this determination in the **Federal Register.**

List of Subjects in 7 CFR Parts 1062 et al.

Milk marketing orders, Milk, Dairy products.

(Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674)

Signed at Washington, D.C., on August 30, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Add the following note to each of the paragraphs listed below:

Note.—The computation of the basic Class II formula price is affected by a determination document published on [1] at 49 FR [2].

7 CFR Section and Marketing Area

1062.51a(c) (1) and (2)—St. Louis-Ozarks
1007.51a(c) (1) and (2)—Georgia
1011.51a(c) (1) and (2)—Tennessee Valley
1030.51a(c) (1) and (2)—Chicago Regional
1032.51a(c) (1) and (2)—Southern Illinois
1046.51a(c) (1) and (2)—Louisville-Lexington-Evansville
1049.51a(c) (1) and (2)—Indiana
1050.51a(c) (1) and (2)—Central Illinois

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[1] The date this document is published in the Federal Register.

[2] The Federal Register page number.

1064.51a(c) (1) and (2)—Greater Kansas City
1065.51a(c) (1) and (2)—Nebraska-Western Iowa
1068.51a(c) (1) and (2)—Upper Midwest
1076.51a(c) (1) and (2)—Eastern South Dakota
1079.51a(c) (1) and (2)—Iowa
1094.51a(c) (1) and (2)—New Orleans-Mississippi
1096.51a(c) (1) and (2)—Greater Louisiana
1097.51a(c) (1) and (2)—Memphis, Tennessee
1098.51a(c) (1) and (2)—Nashville, Tennessee
1099.51a(c) (1) and (2)—Paducah, Kentucky
1102.51a(c) (1) and (2)—Fort Smith, Arkansas
1106.51a(c) (1) and (2)—Southwest Plains
1108.51a(c) (1) and (2)—Central Arkansas
1120.51a(c) (1) and (2)—Lubbock-Plainview, Texas
1126.51a(c) (1) and (2)—Texas
1131.51a(c) (1) and (2)—Central Arizona
1132.51a(c) (1) and (2)—Texas Panhandle
1138.51a(c) (1) and (2)—Rio Grande Valley

[FR Doc. 84-23530 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-121-AD; Amdt. 39-4902]

Airworthiness Directives; Gates Learjet Models 24 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Gates Learjet Model 24 airplanes which requires the hardware changes to correct safety of flight conditions identified by a Special Certification Review (SCR), and relieves certain limitations imposed by a prior AD. Specifically, this AD requires the installation of an improved pitch trim actuator, trim-in-motion warning, pitch axis master interrupt, autopilot roll rate limiter, autopilot roll monitor, autopilot G-limiter and several other associated alterations found necessary to prevent the hazard created by certain failures of these components in conjunction with the high response rate of the airplane. Airplanes which have complied with AD 81-16-08, Amendment 39-4546, to permit operation at 51,000 feet have met the requirements of this AD.

DATES: Effective October 5, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and modification kits may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 269-7008.

SUPPLEMENTARY INFORMATION: The Gates Learjet Special Certification Review (SCR) was initiated in June 1980, after several unexplained accidents occurred on the Model 25 series airplanes earlier that year. The SCR identified deficiencies in certain Model 20 series airplane systems and revealed inadequate operational procedures which could result in unsafe conditions in the event of system malfunction or aiplane upset. Airworthiness Directive (AD) 80-19-11, Amendment 39-3932 (45 FR 65999; October 6, 1980), provided an interim solution to the major deficiencies outlined in the SCR. To provide an acceptable interim level of safety, AD 80-19-11, through AFM operational limitations changes, shifted a large burden of responsibility to the pilot to assure that flight critical systems were properly preflighted and operated within an acceptable flight envelope. Since operational changes tend to lose their effectiveness if relied on for extended periods, these changes were envisioned to be used only until the manufacturer developed hardward changes that would provide the permanent improved level of safety required on the affected Learjet models. The initial effort in providing hardware changes was concentrated on the Model 25 series airplanes. Gates Learjet has now developed similar kits for the Model 24 series and this AD requires installation of these kits.

Since the issuance of AD 80-19-11, a high altitude accident has occurred on a Model 24 series airplane. The exact cause of this accident has not been determined; however, the accident profile was similar to accidents which have previously occurred on Model 25 airplanes. Other elements, such as pilot training and proficiency could have been contributing factors in this particular accident. Additionally, an incident occurred on a Model 24 involving an autopilot pitch synchronizer malfunction which the crew was able to overpower. The SCR modification would not have prevented the pitch synchronizer malfunction from occurring, but the addition of aural trim-in-motion and pitch axis interrupt could have resulted in earlier recognition and quicker pilot reaction to the malfunction.

The airplane modification kits, prescribed in the body of this AD, incorporate an improved pitch trim actuator, trim-in-motion warning, redesigned pitch axis master interrupt, autopilot roll rate limiter, autopilot roll monitor, G-limiter, and stick puller/Mach warning changes for all Gates Learjet Model 24 airplanes. The Airplane Flight Manual (AFM) changes, provided with the kits, remove the requirements imposed in paragraphs A.2., A.5., and A.6. of AD 80-19-11.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the above listed modification was published in the **Federal Register** on June 13, 1983 (48 FR 27087). The comment period closed August 1, 1983.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Twelve responses were received concerning the Notice of Proposed Rulemaking (NPRM). Eight responses opposed the proposed AD on the basis that proper pilot training and proficiency should be the thrust of FAA rulemaking. The FAA concurs with the responses which advocate proper pilot training and proficiency as mandatory for the operation of high performance airplanes; however, this training approach does not resolve the fact that SCR has identified safety of flight conditions which must be corrected by hardware modifications. Further, the FAA believes unsafe conditions may still exist on Gates Learjet Model 24 airplanes where there is not strict adherence to the procedural changes required by AD 80-19-11 and/or maintenance programs.

One of these eight responses stated that there was no conclusive proof that the system which the FAA proposes to modify are causal factors in the investigated Learjet accidents. This subject was discussed in previous rulemaking action, Amendment 39-3932 (45 FR 65999; October 6, 1980). AD 80-19-11, which imposed limitations on the affected systems. Two of the eight responses recommended that hardware should be provided as product improvement only (optional kits). The FAA disagrees for the reason given above. One respondent did not feel that parts of the SCR modification are necessary or desirable. This was covered in Amendment 39–3932 also. One respondent opposed the NPRM since he felt he was well aware of the effect of overspeed and underspeed as well as the need for continuous monitoring of stabilizer trim during flight. Our previous comments regarding pilot training apply to this comment also. One respondent supported the proposed AD.

The Gates Learjet Corporation disagreed with the SCR finding, stating that if an AD was issued, they recommended: (1) A mandatory kit consisting of trim-in-motion, pitch axis master interrupt, and autopilot roll and G-limiter, and (2) an optional kit consisting of the two-speed trim actuator modification be provided. The FAA advised Gates Learjet Corporation that this proposal had some possible merits and further advised them to provide a firm proposal on their recommendation. Gates Learjet Corporation subsequently investigated this "kit separation" approach for approximately six months and then notified the FAA that their recommended approach was not feasible. As a result, the FAA finds it necessary, in the interest of safety, to issue an AD which requires installation of a single kit that includes two-speed trim actuator, trim-in-motion indication, pitch axis master interrupt, and autopilot roll and G-limiters.

Approximately 243 U.S. registered airplanes will be affected by this AD. It will take approximately 400 manhours per airplane to accomplish the required action, and the average labor cost will be $37 per hour. Modification kit cost is estimated at $28,375 per airplane. The loss associated with three weeks of down time is estimated to be $7,000. Based on these figures, the total cost impact of this AD is estimated to be $12,192,525. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

After a careful review of all available data, including the comments above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Gates, Learjet: Applies to Gates Learjet Model 24 series airplanes certificated in all categories. Compliance required within eighteen (18) months after effective date unless previously accomplished or prior compliance with AD 81–16–08, Amendment 39–4546.

Accomplish the requirements of this AD at an FAA approved repair station. The modification and inspection of the horizontal stabilizer trim actuator must be performed by an FAA certificated repair agency authorized to overhaul and test the Gates Learjet Horizontal Stabilizer Trim Actuator. The necessary shop equipment or the equivalent, as referenced in Learjet Repair Manual Number 1711–9, is listed in Attachment I hereto.

A. Modify Learjet Model 24 airplane flight control systems, stall warning, and control wheel by incorporating the airplane modification kit listed in Table I.

TABLE I

Modification kit	Model
AMK 82–5	24, 24A
AMK 82–1	24B, 24B–A
AMK 81–18	24D, 24D–A
AMK 81–13	24E, 24F, 24F–A

Note.—Modification of JET Autopilot Controllers and Computers as required by the instructions in the above kits must be performed in an FAA approved facility for maintenance of the JET FC–110 autopilot.

B. Required Airplane Maintenance Record entry must be accomplished by the facility performing its portion of the AD as prescribed in paragraph A. of this AD.

C. After airplane modification, verify that the Airplane Flight Manual (AFM) contains the revision/change listed in Table II, below, or later FAA approved revision/change. Upon completion of the modifications required by paragraph A. of this AD, the more restrictive paragraphs A.2., A.5., and A.6. of AD 80–19–11 are no longer applicable.

TABLE II

Gates Learjet airplane flight manual/supplement	Revision/change	Modification kit
1. 24 AFM, FM–004	Revision 32	AMK82–5
2. 24 RAS AFM, WO159	Revision 4	AMK82–5
3. 24A AFM, FM–005	Revision 18	AMK82–5
4. 24ECR 736 AFM, FM–008	Revision 7	AMK82–5
5. FC–110 Autopilot, W1037	New	AMK82–5
6. 24B AFM, FM–006	Revision 21	AMK82–1
7. 24B–A AFM, FM–007	Revision 21 to 24B.	AMK82–1
8. 24B RAS AFM, WO157	Revision 3	AMK82–1
9. FC–110 Autopilot, W1041	New	AMK82–1
10. 24D AFM, FM–009	Change 18	AMK81–18
11. 24D–A AFM, FM–010	Change 18 to 24D.	AMK81–18
12 24D RAS AFM, W–0119	Change 3	AMK81–18
13. FC–110 Autopilot, W1030	New	AMK81–18
14. 24E AFM, FM–011	Change 9	AMK81–13
15. 24F AFM, FM–012	Change 7	AMK81–13
16. FC–110 Autopilot, W1018	New	AMK81–13

D. Prior to accomplishing the modification required by paragraph A. of this AD, contact the Wichita Aircraft Certification Office, FAA, Central Region, telephone (316) 269–7008, if any modification or alteration has been performed on the affected airplane systems, for further instruction relative to the compatibility of the modification and this AD.

E. Alternate methods of compliance with this AD may be used if they are approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

This amendment becomes effective October 5, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, small entities operate Learjet Model 24 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington on August 22, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

Attachment I

The stabilizer actuator test stand (P/N ST–00463) is used to functionally test the stabilizer actuator after overhaul. The physical structure of the test stand must be capable of withstanding a minimum load of 2500 lbs. without any bending or deformation.

The stabilizer actuator is vertically mounted on the test stand with one end stationary and the other end movable through a hydraulic actuator. The test stand consists of the following components:

a. *Hydraulic Actuator*—The hydraulic actuator is capable of applying a regulated load of 0 to 2500 lbs. on the stabilizer actuator during the entire extend or retract cycles.

b. *Hydraulic Pressure Regulator*—The pressure regulator is used to select hydraulic pressures applied to the stabilizer actuator during the functional test.

c. *Hydraulic Pressure Gauge*—The hydraulic pressure gauge is used to monitor hydraulic pressure applied to the stabilizer actuator. The gauge must be certified at least monthly.

d. *Digital Position Readout*—The digital position readout indicator is used to monitor the travel of the stabilizer actuator. Signals to the indicator are picked up from a rigid mounted linear potentiometer and movable wiper attached to the hydraulic actuator. The digital readout is accurate to 1/1000th of an inch.

e. *Linear Scale*—A linear scale, graduated in 100th of an inch, is permanently mounted on the test stand to verify the digital readout. A tool of known length is used to verify the linear scale and digital readout before the stabilizer actuator functional test is performed. The tool length must be certified at least yearly.

f. *Lapse Timer*—A lapse timer is coupled to the control switches and the stabilizer actuator to monitor travel time during the extend and retract cycles. The lapse timer must measure seconds to be accurate to 1/100th of a second.

g. *Trim Controller*—The trim controller is used to simulate two-speed input to the stabilizer actuator primary motor. The trim controller part number is EM 2079-6.

h. *Pre-Select Timer*—The pre-select timer is used to check stabilizer actuator travel vs. time, voltage, and amperage inputs in accordance with the functional test.

i. *Power Supply*—The power supply is variable through 0–30 volts DC and 0–30 amperes DC.

j. *DC Voltmeter*—The DC voltmeter must be capable of measuring 0–30 volts DC and must be certified at least yearly. The voltmeter is used to monitor the voltage inputs to the stabilizer actuator in accordance with the functional test.

k. *DC Ammeter*—The DC ammeter must be capable of measuring 0–30 amperes DC and must be certified at least yearly. The ammeter is used to monitor the amperes inputs to the stabilizer actuator in accordance with the functional test.

l. *Millivolt Meter*—The millivolt meter is used to monitor the stabilizer actuator linear potentiometer for a smooth and steady signal output. The meter is 0–50 volts graduated in 100 mv increments.

m. *Switches*—Necessary switches installed to operate the stabilizer actuator primary and secondary motors to extend or retract.

n. A digital or Simpson 260 meter, not a part of the test stand, is used to verify the resistance of the stabilizer actuator linear potentiometer. The digital or Simpson 260 meter must be certified at least every 90 working days.

[FR Doc. 84-23681 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-42-AD; Amdt. 39-4903]

Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On April 19, 1984, the FAA issued a telegraphic airworthiness directive (AD), T84-09-51, to all known operators of Lockheed-California Company Model L-1011-385 series airplanes. This action was prompted by a report of a rapid depressurization incident at 35,000 feet resulting from a fracture of the negative pressure relief valve adapter. This AD requires inspection and replacement or repair, if necessary, of the negative pressure relief valve adapter. This AD is hereby published in the **Federal Register** to make it effective to all persons.

EFFECTIVE DATES: September 11, 1984.

This AD was effective earlier to all recipients of Telegraphic AD T84-09-51, dated April 19, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A depressurization incident was reported by an operator which occurred shortly after the aircraft leveled off at FL350. The cabin altitude climbed rapidly and reached FL230 during the emergency descent. The passenger oxygen masks deployed and the aircraft was leveled at FL100 and returned to the point of departure where a normal landing was carried out. Subsequent investigation revealed that one of the two negative pressure relief valves, together with portions of its attachment adapter, had separated from the rear pressure bulkhead. The failure was due to an undersized wall thickness in the flange radius. It has been determined that all flanges, P/N 672870-117, manufactured by the spinning technique are suspect of having similar problems.

Since a situation existed and still exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent depressurization of the aircraft due to the failure of the negative pressure relief valve, accomplish the following:

A. Within 100 flight hours after the receipt of this AD, unless previously accomplished, inspect the negative pressure relief valve mounting adapters on each aircraft identified as follows:

1. Lockheed Serial Numbers 1175 through 1250.

2. Lockheed Serial Numbers 1001 through 1174. Aircraft which have had either of the two negative pressure relief valve adapters replaced by the operator.

B. Inspection and repair procedures:

1. After instituting all the preliminary safety precautions, gain access to aft side of the pressure bulkhead through fire bottle inspection panel 317 BB (see Lockheed Maintenance Manual MM6-40-00), and determine type of adapter installed. If adapter does not have circumferential spin marks and the serial number is 229 or lower, no further inspection is required. If serial number is 230 or higher, or spin marks are found, then additional inspection must be performed.

Note.—Adapter serial numbers are identified by the last three digits in the serial number block on the decal located at the 12 o'clock position aft of the pressure bulkhead. Spin marks are best determined by shining indirect light, such as flash light, on the adapter side wall.

2. On aircraft requiring further inspection:

a. Gain access to the forward side of the negative pressure relief valve, (see Lockheed Maintenance Manual MM25-42-00).

b. On the forward side of the pressure bulkhead, LBL/RBL20, WL300, visually inspect the adapter part of each negative pressure relief valve in the area of the flange radius. Clean the area with solvent prior to inspection.

3. If a crack is found, replace or repair the adapter before the next flight. Replacement adapter must be inspected prior to installation and is subject to the requirements of this AD.

4. Installation of repair or reinforcement clips for adapter: Install 300 series stainless steel clips, either 0.50 1/4 hard or 0.040 1/2 hard material. Dimensions are 0.95-inch wide with 0.89 and 1.50-inch flanges, and 85° bend, with 0.12-inch bend radius. Install clips using existing fastener holes through the aft pressure bulkhead and two additional fasteners through the side of the adapter, install one at minimum of 0.34 inches and the other at minimum of 0.95 inches from end of long leg of clip. Fasteners are to be

MS20470AD5 rivets, or NAS1398M5 rivets, or structural equivalent.

a. For repair of a cracked adapter, stop-drill crack ¼-inch diameter, and install a minimum quantity of 40 clips per adapter, using 2 of each 3 attachments through the pressure bulkhead.

b. For reinforcement of uncracked adapters, install a minimum quantity of 20 clips per adapter. Using 1 of each 3 attachments through pressure bulkhead.

5. If no cracks are found, repeat the inspection per B.1. through B.4., above, at intervals not to exceed 25 landings.

6. Replace or reinforce the adapter within 350 flight hours after the last inspection or after the receipt of this AD, whichever is later.

7. With adapter reinforced with the 20 clips per paragraph B.4.b., above, the reinspection intervals may be extended from 25 landings to 1000 landings.

8. For adapters repaired with the 40 clips per paragraph B.4.a., above, reinspect from the aft side for cracks at the aft fastener, common to the clip and adapter, every 500 landings.

9. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

This Amendment becomes effective September 11, 1984 and was effective earlier to those recipients of telegraphic AD T84–09–51, dated April 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington on August 22, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23482 Filed 9–5–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–ASW–36; Amdt. 39–4899]

Airworthiness Directives; Garlick Helicopters, Hawkins & Powers Aviation, Inc., Wilco Aviation (Bell) UH-1 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an inspection, and replacement if necessary, of each main rotor blade pitch change link clevis on military (Bell) UH–1 series helicopters. The AD is needed to detect an improperly repaired or cracked clevis. Failure of the clevis may result in loss of main rotor control.

DATES: Effective September 6, 1984.

Compliance required within the next 10 hours' time in service after the effective date of this AD unless already accomplished.

ADDRESSES: A copy of the service information message is contained in the Rules Docket in the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: J. H. Major, Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877–2549.

SUPPLEMENTARY INFORMATION: By message dated July 13, 1984, the Commander of (U.S. Army) AVSCOM, St. Louis, Missouri, issued a safety of flight message requiring an immediate inspection of each main rotor pitch change link clevis Part Number (P/N) 204–011–136–1 (FSN 5340–00–839–3934)) on UH–1 series helicopters. A fatigue fracture of the clevis reportedly occurred in a recent UH–1H helicopter accident. An analysis revealed the clevis had been replated and the fracture may be associated with the replating process. Fracture of a pitch change link clevis may result in loss of main rotor control.

Since this condition is likely to exist or develop on UH–1 series helicopters certificated in the restricted category for the civil market, an AD is being issued that requires, within 10 hours of service, a one-time inspection of each clevis for possible replating and for cracks in the threads. A replated or cracked part must be removed before further flight.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days. Each of the three restricted category type certificate owners was advised by FAA letter dated July 20, 1984, of the military safety of flight message. Only one type certificate owner responded by letter dated July 23, 1984, and he advised operators or customers of UH–1 aircraft to comply with the military message. Copies of these letters are in the docket file.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291 or significant under Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it applies to approximately 34 helicopters for an estimated cost of $5,000 or $150 per aircraft. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Garlick Helicopters, Hawkins & Powers Aviation, Inc., Wilco Aviation (Bell Helicopter Textron, Inc.): Applies to Model UH–1 series helicopters certificated in restricted category.

Compliance is required within 10 hours' time in service after the effective date of this AD, unless already accomplished.

To detect any improperly repaired or cracked main rotor pitch change link clevis and to prevent possible failure of a clevis, accomplish the following one-time inspection of each clevis, P/N 204–011–136–1 (FSN) 5340–00–839–3934).

(a) Visually inspect the exposed surfaces of the clevis using a 5-power or higher magnifying glass. If any surface with pits has a golden or silver color within a pit, the clevis has been replated and must be removed before further flight.

(b) Visually inspect the exposed threaded area of the clevis shank, above the jam nut, for crack indications. If a crack indication is found, the part must be removed and additionally inspected for cracks using magnetic particle or equivalent inspection method.

(c) If a clevis has been replated or has a crack, the clevis must be removed before further flight. Install a serviceable clevis as prescribed in the appropriate military model maintenance or overhaul manual.

(d) Compliance with UH-1 series aircraft military message dated July 13, 1984, from Commander AVSCOM satisfies this AD.

This amendment becomes effective September 6, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Issued in Fort Worth, Texas, on August 17 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-23480 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ANE-12; Amendment 39-4907]

Airworthiness Directives; Avco Lycoming

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Lycoming reciprocating engines and requires replacement with a new engine cylinder assembly. The AD is necessary to prevent cracking of cylinder heads which could lead to cylinder burn through, engine failure and potential engine fire. In order to reduce these risks, cylinders are to be replaced with cylinders which have improved fatigue properties.

DATES: *Effective*—September 20, 1984. Compliance is required as set forth in the AD. Comments related to the amendment must be received on or before October 9, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Office of Regional Counsel, Attn: Rules Docket No. 84-ANE-12, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be inspected weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Irving Mankuta, ANE-174, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Inspection of cylinder assemblies of an Avco Lycoming LTIO/TIO-540-V2AD engine in an airplane with 442 hours total time uncovered cracks in all intake valve seat areas. This inspection was prompted by findings of cylinder head cracks in the area of the intake valve seat during the 150-hour endurance test of a new series engine which was being tested with the same cylinder assemblies as the LTIO/TIO-540-V2AD. A second engine from the same airplane referenced above was removed and subjected to test stand operation. Total time on this engine at present is 600 hours without failure.

The inspection of the LTIO/TIO-540-V2AD engine was a precautionary measure unrelated to any service failure. Furthermore, this engine successfully passed a 150 hour endurance test during its certification. In addition, uncovering the cracks requires destructive testing since they are not detectable visually. Nevertheless, crack propagation could lead to cylinder burn through, engine failure and potential fire damage.

Since a situation exists that may result in the loss of an aircraft, immediate adoption of this regulation is required. It is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Request for Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedures, comments are invited on the rule.

When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Send comments to Federal Aviation Administration, Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

List of Subjects in 14 CFR Part 39

Engine, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Avco Lycoming: Applies to all Avco Lycoming LTIO-540-V2AD and TIO-540-V2AD model engines.

Compliance is required as indicated, unless already accomplished. Cracks have occurred in the area of the intake valve seat of the cylinder head in the above engine models.

To prevent possible failure of the engine cylinder assembly, P/N LW-18652, accomplish the following:

(a) Within the next 50 hours of time-in-service after the effective date of this AD, or prior to accumulating 550 hours time-in-service, whichever occurs later, replace all P/N LW-18852 cylinder assemblies with cylinder retrofit kit, P/N LW-19297-S. Cylinder part number identification is located on the cylinder head casting in the rocker box area.

(b) In accordance with FAR 21.197 and 21.199, the aircraft may be flown to a location where the inspections or alterations required by this AD can be performed.

This amendment becomes effective on September 20, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

Issued in Burlington, Massachusetts, on August 27, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-23524 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

Update of Location of Freedom of Information Act Reference Facilities; and Delegation of Initial Denial Authority

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce revises Appendices B and C of its Freedom of Information Act rules. Appendix B contains the names and addresses of the Department's Freedom of Information public facilities. Appendix C lists the officials authorized to make initial denials for Freedom of Information requests.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Geraldine P. LeBoo, U.S. Department of Commerce, Office of Information Resources Management, Washington, DC 20230, (202) 377-4217.

SUPPLEMENTARY INFORMATION: Appendices B and C are revised to reflect changes, due to reorganization, of officials authorized to make initial denials, and changes, due to relocation, of several Freedom of Information public facilities. Since these revisions involve internal agency procedures, the Administrative Procedure Act (5 U.S.C. 553) provisions requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are, inapplicable. Also, this regulation is not significant under Executive Order 12291. This revision does not require a change of burden or imposition of a new burden on the public as defined by the Paperwork Reduction Act of 1980, Pub. L. 96-511.

The revisions to the Department of Commerce Freedom of Information Act rules, Appendices B and C, are as follows:

All references to the Bureau of Industrial Economics are deleted as that agency was merged into another component of the Department, the International Trade Administration.

Revisions to Appendix B are: changes in address and/or telephone number of the public reference facilities of the Minority Business Development Agency, National Telecommunications and Information Administration, Patent and Trademark Office, Bureau of the Census, National Oceanic and Atmospheric Administration, Bureau of Economic Analysis, and the Economic Development Administration.

Revisions to Appendix C reflect organizational changes or the selection of different officials with initial denial authority in the following Departmental components: International Trade Administration, Minority Business Development Agency, National Telecommunications and Information Administration, United States Travel and Tourism Administration, Bureau of the Census, National Oceanic and Atmospheric Administration, and the Office of the Secretary.

List of Subjects in 15 CFR Part 4

Freedom of information.

For the reasons set out in the Preamble, 15 CFR Part 4 is amended as set forth below.

Appendix B is revised to read as follows:

Appendix B—Freedom of Information Public Facilities and Addresses for Requests for Records

The following public reference facilities have been established within the Department of Commerce (a) of the public inspection and copying of materials of particular units of the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C. 552(a)(3); (b) for furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) as addresses, in some instances, for the receipt and processing of requests for records under 5 U.S.C. 552(a)(3). Units having separate mailing addresses are noted below. Requests should be addressed to the unit which the requestor knows or has reason to believe has possession or control or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, Room 6628, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, D.C. 20230. Phone (202) 377-4217. This facility serves the Office of the Secretary and all other units of the Department not identified below as explained at 15 CFR 4.4 (c) and (d).

Bureau of the Census, Freedom of Information Request Control Desk, Room 2426, Federal Building 3, Washington, DC 20233.

Bureau of Economic Analysis, Public Reference Facility, Room 1115, Tower Building, 1401 K Street, NW., Washington, DC. Mailing address: Freedom of Information Control Desk, Office of Administration, Office of Economic Affairs, Room 4079 Herbert Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC 20230. Phone 377-3037.

Economic Development Administration, Freedom of Information Records Inspection Facility, Room 7001, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-4687. Mailing address of Regional EDA offices:

Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Federal Reserve Bank Building, Room 600, 105 North 7th Street, Philadelphia, Pennsylvania 19106.

Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 700, 1365 Peachtree Street, NE., Atlanta, Georgia 30309.

Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 300, 333 West Colfax, Denver, Colorado 80202.

Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, Suite A-1630, Chicago, Illinois 60604.

Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 1700 Westlake North, Suite 500, Seattle, Washington 98109.

Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, American Bank Tower, Suite 600, 221 West Sixth Street, Austin, TX 78701.

International Trade Administration, Freedom of Information Records Inspection Facility, Room 4001B, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-3031.

Minority Business Development Administration, Freedom of Information Office, Room 5089, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, D.C. 20230. Phone (202) 377-5045.

National Bureau of Standards, Freedom of Information Records Inspection Facility, Room E106, Administration Building, Gaithersburg, Maryland. Phone (301) 921-3444. Mailing address: National Bureau of Standards, Freedom of Information Request Control Desk, Room A1105, U.S. Department of Commerce, Washington, DC 20234 (Gaithersburg, Maryland).

National Oceanic and Atmospheric Administration, Public Reference Facility, Freedom of Information Office (MB/IMS33), Room 4225, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230

National Technical Information Service, Freedom of Information Request Control Desk, 5285 Port Royal Road, Springfield, Virginia 22161. Phone (703) 487-4634.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, Room 4717, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20504 Phone (202) 377-1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Room 12C08, Building ge a06se0.0662, Crystal Gateway, Arlington, Virginia. Phone (703) 557-4035. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 50, Washington, DC 20231.

United States Travel and Tourism Administration, Freedom of Information

Request Control Desk, Room 1524, Department of Commerce, Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377-3811.

Appendix C is revised to read as follows:

Appendix C—Officials Authorized To Make Initial Denials of Requests for Records

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations. Accordingly, the Chief, Information Management Division, is specifically authorized to amend or revise this Appendix from time to time in order to reflect such changes).

Office of the Secretary:

- Office of the Deputy Secretary:
  - Associate Deputy Secretary
- Office of Business Liaison:
  - Director
- Office of Consumer Affairs:
  - Director
- Office of the Assistant Secretary for Congressional and Intergovernmental Affairs:
  - Deputy Assistant Secretary for Congressional Affairs
- Office of the Inspector General:
  - Counsel to the Inspector General
  - Deputy Counsel to the Inspector General
- Office of the General Counsel:
  - Deputy General Counsel
  - Assistant General Counsel for Administration
  - Director, Office of Intelligence Liaison
- Office of Public Affairs:
  - Deputy Director
- Office of the Under Secretary for Economic Affairs:
  - Administrative Officer

Office of the Assistant Secretary for Administration:

- Office of the Administrative Law Judge:
  - Office Manager
- Office of Finance and Federal Assistance:
  - Director
- Office of Management Analysis and Control:
  - Director
- Office of the Director for Planning, Budget and Evaluation:
  - Director
- Office of Budget:
  - Director
- Office of Program Planning and Evaluation:
  - Director
- Office of the Director for Personnel and Civil Rights:
  - Director
- Office of Personnel:
  - Director
- Office of Personnel Operations:
  - Director
- Office of Civil Rights:
  - Director
- Office of the Director for Management and Information Systems:
  - Director
- Chief, Information Management Division
- Office of the Director for Procurement and Administration Services:
  - Director
- Office of Procurement Management:
  - Director
- Office of Procurement Operations:
  - Director
- Office of Administrative Services Operations:
  - Director
- Office of Buildings Management:
  - Director
- Office of Security:
  - Director
- Office of Small and Disadvantaged Business Utilization:
  - Director

Bureau of the Census:

Associate Director for Management Services

Bureau of Economic Analysis:

Deputy Director

Economic Development Administration:

- Chief Counsel
- Assistant Chief Counsel
- Regional Counsels

International Trade Administration:

- International Economic Policy:
  - Director, Office of Policy Coordination
  - Director, Office of Multilateral Affairs
  - Director, Office of the European Community
  - Director, Office of the Non-European Community Europe
  - Director, Office of the USSR and Eastern Europe
  - Director, Office of North America
  - Director, Office of Mexico and the Caribbean Basin
  - Director, Office of South America
  - Director, Office of the Peoples Republic of China and Hong Kong
  - Director, Office of Japan
  - Director, Office of the Pacific Basin
  - Director, Office of Africa
  - Director, Office of the Near East
  - Director, Office of South Asia
- Trade Administration:
  - Hearing Commissioner
  - Deputy to the Deputy Assistant Secretary for Import Administration (Policy)
  - Director, Office of Antiboycott Compliance
  - Director, Office of Export Enforcement
  - Director, Office of Industrial Resource Administration
  - Director, Office of Export Administration
  - Deputy Director, Office of Export Administration
  - Director, Foreign Trade Zones Staff
  - Director, Statutory Import Programs Staff
  - Director, Office of Investigations
  - Director, Office of Compliance
  - Director, Office of Policy
- Trade Development:
  - Deputy Assistant Secretary for Trade Adjustment Assistance
  - Director, Office of Planning and Coordination
  - Director, Office of World Fairs and International Expositions
  - Director, Office of Trade Finance
  - Director, Office of Industrial Assessment
  - Director, Office of Trade and Industrial Information
  - Director, Office of Program and Resource Management
  - Director, Office of Textiles and Apparel
  - Director, Office of Aerospace Policy and Analysis
  - Director, Office of Aerospace Market Development
  - Director, Office of Automotive Industry Affairs
  - Director, Office of Consumer Goods
  - Director, Office of Chemicals and Allied Products
  - Director, Office of Energy
  - Director, Office of Metals, Minerals and Primary Commodities
  - Director, Office of Forest Products and Domestic Construction
  - Director, Office of General Industrial Machinery
  - Director, Office of Special Industrial Machinery
  - Director, Office of International Major Projects
  - Director, Office of Computers and Business Equipment
  - Director, Office of Components and Related Equipment
  - Director, Office of Telecommunications
  - Director, Office of Instrumentation on Medical Sciences
  - Director, Office of Service Industries
  - Director, Office of Export Trading Company Affairs
- U.S. and Foreign Commercial Service:
  - Director, Office of Foreign Service Personnel
  - Director, Office of Planning and Management
  - Director, Office of Foreign Operations
  - Director, Office of Domestic Operations
  - Director, Office of Event Management and Support Services
  - Director, Office of Trade Information Services
  - Director, Office of Commercial Communications
- Administration:
  - Director, Office of Organization and Management Support
  - Director, Office of Personnel
  - Director, Office of Financial Management
  - Director, Office of Information Resources Management
- Deputy Under Secretary for International Trade:
  - Director, Office of Public Affairs

Minority Business Development Agency:

Freedom of Information Officer

National Bureau of Standards:

Deputy Director of Administration

National Oceanic and Atmospheric Administration:

- Deputy Administrator
- Associate Administrator
- Director, Office of Public Affairs
- Director, NOAA Corps
- Assistant Administrator for Ocean Services and Coastal Zone Management
- Assistant Administrator for Fisheries
- Assistant Administrator for Weather Service
- Assistant Administrator for Environmental Satellite, Data, and Information Service

Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Administrative and Technical Services
Director, Regional Administrative Support Center Operations Office
Director, National Capital Administrative Support Center
Director, Eastern Administrative Support Center
Director, Central Administrative Support Center
Director, Mountain Administrative Support Center
Director, Western Administrative Support Center

National Technical Information Services:

Director
Chief, Management Analysis Division

National Telecommunications and Information Administration:

Deputy Assistant Secretary
Chief Counsel

Patent and Trademark Office:

Solicitor of Patents
Deputy Solicitor of Patents

United States Travel and Tourism Administration:

Under Secretary
Director, Office of Management and Administration

(5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 94–409; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950)

Dated: August 30, 1984.

Marilyn S. McLennan,

Chief, Information Management Division, Office of the Information Resources Management.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5f

[T.D. 7975]

Temporary Regulations Relating to Elections and Miscellaneous Matters Under Section 338 of the Internal Revenue Code

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document redesignates and amends (as redesignated) temporary regulations relating to elections and miscellaneous matters under section 224 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), as amended by the Technical Corrections Act of 1982 (TCA) and the Tax Reform Act of 1984 (TRA). This document provides guidance to taxpayers primarily with respect to the amendments made by the TRA. The text of § 1.338–1T as redesignated and amended by this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The amendments made by these temporary regulations to § 1.338–1T (as redesignated by this document) apply to stock acquisitions made after August 31, 1982. The amendments made by these temporary regulations to § 1.338–2T (as redesignated by this document) apply to stock acquisitions made after August 31, 1980, and before September 1, 1982. The amendment made by these temporary regulations to § 1.338–3T(a) (as redesignated by this document) applies to acquisitions subject to section 338 that occur before 1983.

FOR FURTHER INFORMATION CONTACT: Duane H. Pellervo of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document redesignates and amends temporary regulations relating to elections and miscellaneous matters under section 338 of the Internal Revenue Code of 1954 (the "Code"), as added by section 224 of TEFRA (Pub. L. No. 97–248; 96 Stat. 485) and as amended by section 306(a)(8) of the TCA (Pub. L. No. 97–448; 96 Stat. 2402) and section 712(k) of the TRA (Pub. L. No. 98–369; 98 Stat. 494). Those temporary regulations were published in the **Federal Register** on February 8, 1984 (49 FR 4722), and are contained in 26 CFR Part 5f, Temporary Income Tax Regulations under TEFRA (§§ 5f.338–1, 5f.338–2, and 5f.338–3). This document redesignates those temporary regulations as temporary regulations under Part 1 of Title 26 of the Code of Federal Regulations (§§ 1.338–1T, 1.338–2T, and 1.338–3T). All subsequent references are to the redesignated sections. The amendments made by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

Temporary Extension of Time To Make Section 338 Elections Remains in Effect

The temporary regulations as published on February 8, 1984, provide that elections under section 338 for acquisitions occurring after August 31, 1982, need not be filed until the later of the 60th day after the date of publication of the next set of temporary regulations under section 338 or the otherwise applicable due date. The 60-day period also applies to several other provisions in the temporary regulations. Section 1.338–1T(f)(7)(ii) and 1.338–2T(e)(6) (time to select taxable year of new target); §§ 1.338–1T(h) and 1.338–2T(h) (waiver of certain additions and times to act); and § 1.338–1T(j)(2) (perfecting declaration relating to elections under section 338 made notwithstanding suspension applicable to certain corporations). The 60-day extension remains in effect under the temporary regulations as amended by this document. This document clarifies that the temporary regulations referred to in the 60-day extension will be contained in a new § 1.338–4T.

Summary of Amendments to the Temporary Regulations

Due Date for Filing Section 338 Elections for Qualified Stock Purchases Occurring After August 31, 1982

The TRA amends section 338(g)(1) of the Code to require that, except as otherwise provided in regulations, an election must be made on or before the 15th day of the 9th month beginning after the month in which the acquisition date occurs. (Section 338(g)(1) previously required elections to be made within 75 days after the acquisition date, except as otherwise provided in regulations.) This document conforms the temporary regulations to this change. Section 1.338–1T (c) and (k)(1).

Statement of Section 338 Election

This document makes several changes relating to the contents of the statement of election. Under section 338(f)(2), if a purchasing corporation makes a qualified stock purchase of a corporation (first target) and, within a specified period, makes a qualified stock purchase of another corporation (second target) that is the target affiliate of the first target, then a section 338 election generally cannot be made for the second target if an election is not made for the first target. Under new § 1.338–1T(d)(1)(iv), elections filed after October 9, 1984 must include a statement that a section 338 election is not barred by section 338(f)(2).

New § 1.338–1T(d)(2) clarifies that, if the purchasing corporation is included in a consolidated return for its taxable year in which the section 338 election is made, the common parent included in the consolidated return is its sole agent for purposes of making the section 338 election.

New section 338(h)(8) of the Code, as added by the TRA, provides for aggregation of stock purchases made by several members of an affiliated group, so that a qualified stock purchase may be made after August 31, 1982, by several corporations in the aggregate even if they do not join in a consolidated return. Accordingly, this document adds a new paragraph (d)(3) to § 1.339–1T, which provides guidance on filing the statement of election when several corporations constitute the "purchasing corporation."

Under amended § 1.338–1T(c), if a section 338(g) election for one target causes section 338(a) to apply to another target by reason of the consistency rule of section 338(f)(1), a statement of election is needed only for the first target. Under amended § 1.338–1T(e)(1), discussed in more detail below, a schedule attached to the statement of election provides information on all corporations subject to the statement of election by reason of section 338(f)(1).

Amendments to Waiver Rules

Section 1.338–1T(h)(1), as published on February 8, 1984, waives certain additions to tax that arise prior to the close of the 60th day after the date of publication of temporary regulations § 1.338–4T, provided that corrective action is taken on or before that day. In addition, those temporary regulations permit certain otherwise untimely actions to be taken before the close of that 60th day. Section 5f.338–1 (f)(7)(ii) and (h)(2). These rules were made inapplicable after the expiration of the 60-day extension because the then applicable 75-day period within which to file a section 338 election (under pre-TRA law) obviated the need for such rules. Because the TRA significantly lengthened the time within which section 338 elections may be filed, the waiver rules are made applicable to certain additions to tax arising on or before the later of the 60th day after the date of publication of temporary regulations § 1.338–4T or the last day for filing the section 338 election and to certain actions that are untimely as of the later of that 60th day or last day, provided that corrective action is taken on or before the later of that 60th day or last day.

Section 1.338–1T(h)(1) only waives additions that, by statute, are excusable upon a showing of reasonable cause. Thus, for example, the waiver does not apply to the addition for failure to pay estimated tax under section 6655. Under new section 338(h)(13) as added by the TRA, however, tax attributable to the deemed sale of assets under section 338(a) is not taken into account for purposes of section 6655.

It was called to the attention of the Treasury that § 1.338–1T(h)(2) (relating to elections made on a late-filed return) does not apply if there is no underpayment of tax with respect to a late-filed return and therefore no addition to tax for failure to file a return. This document amends § 1.338–1T(h)(2) so that it applies in such cases.

Filing of Schedule of Corporations and Related Materials; Consequence of Failure To Comply

Section 1.338–1T(e)(1), as revised by this document, requires that a schedule of corporations subject to a statement of election by reason of section 338(f)(1) must be attached to the statement of election. If an election filed on or before December 5, 1984, does not include the schedule, the requirement of this provision will be satisfied if the schedule is filed on or before [THAT DAY] (with a copy of the previously filed statement of election attached) with the Internal Revenue Service Center with which the purchasing corporation files its annual income tax return.

Section 1.338–1T(e)(2) is also revised by this document to clarify that the requirement therein under which the statement of election must be attached to the final return of old target and the first return of new target applies not only to a target for which a statement of election is expressly filed ("original target") but also to any corporation subject to that statement by reasons of section 338(f)(1). That statement, in addition, must include a schedule of corporations subject to the statement of election as of the time the return is filed. Finally, a copy of that schedule (with a copy of the statement of election attached) must be filed with the Internal Revenue Service Center with which the purchasing corporation files its annual income tax return and with which the original target's final return as "old target" is required to be filed. The schedule need not be filed with these Service Centers if they have already received the identical schedule. Special procedures for complying with these provisions apply during the period ending on December 5, 1984.

If the requirements of revised § 1.338–1T(e) (1) and (2) are not satisfied with respect to either a target for which an election is expressly made or any other corporation subject to that election by reason of section 338(f)(1), then the waiver rule of § 1.338–1T(h)(1) will apply to neither the target for which the election was expressly made nor any corporation subject to that election by reason of section 338(f)(1).

Extension of Time To File Transitional Rule Elections; Selection of Deemed Sale Date

Section 306(a)(8)(B)(i) of the TCA permits a transitional rule section 338 election under section 224(d)(2) of TEFRA to be made on or before February 28, 1983. A transitional rule election is an election with respect to an acquisition for which the acquisition date occurs after August 31, 1980, and before September 1, 1982. Section 712(k)(9)(B) of the TRA provides that such a transitional rule election may be made at any time up to the close of September 17, 1984. Accordingly, conforming changes are made to paragraphs (b) and (c)(2) of § 1.338–2T.

Several related changes are made to the rules relating to selection of a deemed sale date. Under § 1.338–2T(f)(2) as amended, a deemed sale date selected in either a statement of transitional rule election or deemed sale date statement cannot be a date later than February 28, 1983. A statement of transitional rule election filed after February 28, 1983, that does not specify a deemed sale date is deemed to specify February 28, 1983, as the deemed sale date. The time to file a deemed sale date statement under § 1.338–2T(f)(3), which expired on May 8, 1984, is extended to the close of September 17, 1984, if the previously filed statement of transitional rule election did not specify a deemed sale date.

A new paragraph (f)(2)(iii) is added by this document to require uniformity of deemed sale dates in certain cases in which, by reason of the qualified stock purchase of one corporation, the purchasing corporation is treated, under section 338(h)(3)(B) (prior to amendment by the TRA) as purchasing all or a part of the stock of another corporation with respect to which a qualified stock purchase is also made.

Applicability of Section 338 to Transitional Rule Elections

Section 1.338–2T(e)(3)(ii) is amended to reflect the fact that the amendments to section 338 made by the TRA do not apply to transitional rule elections subject to § 1.338–2T. See section 712(k)(9)(A). One of those amendments adds a new section 338(h)(3)(B), which provides that stock of a subsidiary acquired by "new" target in its deemed purchase of assets under section 338 is "purchased" stock for purposes of section 338. Thus, a target may be treated as having made a deemed qualified stock purchase of its subsidiary. A new paragraph (e)(7) is added to § 1.338–2T to clarify that such a result cannot occur in the transitional rule context.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB control number 1545–0702.

Drafting Information

The principal author of these temporary regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301–1—1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Adoption of Amendments to the Regulations

Accordingly, Parts 1 and 5f of Title 26 of the Code of Federal Regulations are amended as follows:

§§ 5f. 338–1, 5f.338–2 and 5f.338–3 [Redesignated as §§ 1.338–1T, 1.338–2T and 1.338–3T]

Paragraph 1. Sections 5f.338–1, 5f.338–2, and 5f.338–3 are redesignated as §§ 1.338–1T, 1.338–2T, and 1.338–3T, respectively.

Par. 2. Newly designated § 1.338–1T is amended as follows:

1. The section heading is revised.

2. Paragraph (a) is amended by adding to the end of the first sentence the words "and the Tax Reform Act of 1984."

3. Paragraph (b)(6) is amended by removing from the second sentence the words "§ 5f.338–1(f)(3) (i) and (ii)" and by adding in their place the words "paragraph (f)(3) (i) and (ii) of this section".

4. Paragraph (c) is revised.

5. Paragraph (d) is revised.

6. Paragraph (e) is revised.

7. Paragraph (f)(7)(ii) is revised.

8. Paragraph (h) is amended by—

a. Revising paragraph (h) (1) and (2),

b. Removing, from each place they appear in paragraph (h)(4) *Example (1),* the words "the next set of temporary regulations under section 338" and by adding in their place the words "temporary regulations § 1.338–4T",

c. Removing from the last sentence of paragraph (h)(4) *Example (1)* the words "§ 5f.338–1(h)" and by adding in their place the words "§ 1.338–1T(h)", and

d. Removing from the third sentence of paragraph (h)(4) *Example (2)* the words "the next set of temporary regulations under section 338" and by adding in their place the words "temporary regulations § 1.338–4T".

9. Paragraph (j)(2) is amended by—

a. Removing from the second sentence the words "§ 5f.338–(1)(j)(2)" and by adding in their place the words "§ 1.338–1T(j)(2)", and

b. Removing from the third sentence the words "the next set of temporary regulations under section 338" and by adding in their place the words "temporary regulations § 1.338–4T".

10. Paragraph (k) is amended by—

a. Revising paragraph (k)(1), and

b. Removing from the third sentence of paragraph (k)(4) the words "paragraph (d)(4)" and by adding in their place the words "paragraph (d)(1)(v)".

The revised provisions read as follows:

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(c) Time and manner of making election. The purchasing corporation makes an election under section 338(g) only by filing, not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs (or, if later, the 60th day after the date of publication of temporary regulations § 1.338–4T), a statement of election with the Internal Revenue Service Center with which it files its annual income tax return. If the statement of election for a target will cause section 338(a) to apply to other corporations by reason of section 338(f)(1), a separate statement of election need not be filed for such other corporations. See paragraph (e)(1) of this section for an attached schedule relating to such other corporations. For a special suspension of time to elect under section 338, see paragraph (j) of this section. For special rules applicable to certain foreign corporations and DISCs, see paragraph (k) of this section.

(d) *Statement of election*—(1) *General rule.* The statement of election under section 338 must be made by the purchasing corporation on Form 8023. If the form is not available, a statement prepared by the purchasing corporation will be satisfactory. (If Form 8023 is available but does not require all of the information required by this section to be included in the statement of election, the additional information must be added to the form or contained in an attachment.) The heading of the statement should prominently identify the statement as an election under section 338. Except as provided in this paragraph (d) or in paragraphs (j)(2) and (k) (4) and (5) of this section, the statement must—

(i) Contain the name, address, and employer identification number of the purchasing corporation and the target,

(ii) Identify the election as an election under section 338(g) of the Code.

(iii) For elections filed after May 8, 1984, specify the acquisition date,

(iv) For elections filed after October 9, 1984, state that the election is not barred by reason of section 338(f)(2), and

(v) Be signed by a person who states under penalties of perjury that he or she is authorized to make the election on behalf of the purchasing corporation.

(2) *Purchasing corporation included in consolidated return.* If the purchasing corporation is included in a consolidated return for the taxable year in which the statement of election is filed, see § 1.1502–77.

(3) *Qualified stock purchase made by several corporations in the aggregate.* Under section 338(h)(8), stock purchases made by members of an affiliated group (as defined in section 338(h)(5)) are treated as if made by one corporation. If two or more corporations make a qualified stock purchase in the aggregate under this rule, a single statement of election must include the name, address, and employer identification number of each such member and must be signed in accordance with paragraph (d)(1)(v) of this section by a person authorized to act on behalf of each such member. A copy of this single statement of election must be filed within the time specified in paragraph (c) of this section with the Internal Revenue Service Center with which each such member files its annual income tax return.

(e) *Schedule of corporations; attachments to target returns*—(1)

Schedule of corporations subject to election. If applicable, a schedule must be attached to the statement of election providing the following required data: the name, address, and employer identification number of each corporation subject to the statement of election by reason of section 338(f)(1) as of the day the statement of election is filed. If a statement of election filed on or before December 5, 1984, does not include the schedule, the requirement of the preceding sentence will be satisfied if, on or before December 5, 1984, the schedule (with a copy of the previously filed statement of election attached) is filed with each Internal Revenue Service Center with which the statement of election is required to be filed under paragraphs (c) and (d) of this section. That schedule must include the required data on all corporations subject to the statement of election by reason of section 338(f)(1) as of the day that schedule is filed.

(2) *Attachments to target returns.* A copy of the statement of election (including, if applicable, the schedule described in this paragraph (e)) must be attached to old target's final return and to the first return of new target. This requirement applies both to a corporation for which a statement of election is expressly made ("original target") and to a corporation subject to such a statement by reason of section 338(f)(1). If the statement is not attached to a return filed on or before December 5, 1984, or if it is attached to such a return but does not include the schedule described in this paragraph (e) (if applicable), this requirement will be satisfied if, on or before December 5, 1984 a copy of the statement of election (inlcuding the schedule if applicable) is filed with the Internal Revenue Service Center with which old target's final return and the first return of new target are required to be filed ("corrective statement"). The statement of election attached to the return, or a subsequently filed corrective statement, must include, if applicable, a schedule containing the required data described in paragraph (e)(1) of this section for each corporation subject to the statement of election by reason of section 338(f)(1) as of the day the particular return is filed or, if a corrective statement is subsequantly filed, as of the day the corrective statement is filed. In addition, a copy of the schedule (with a copy of the statement of election attached) must be filed with each Internal Revenue Service Center with which the statement of election is required to be filed under paragraphs (c) and (d) of this section (unless the schedule is identical to the one filed under paragraph (e)(1) of this section) and with the Internal Revenue Service Center with which the original target's final return as old target is required to be filed (unless that Service Center has already received the identical schedule). The filing described in the preceding sentence must occur on or before the later of the day on which the particular return is filed or December 5, 1984. If the target is a foreign corporation not subject to United States tax (as defined in paragraph (k)(3)(iii) of this section), a copy of the statement of election must be attached to the return(s) specified in paragraph (k)(6) of this section.

(3) *Consequence of failure to comply with requirements of paragraph (e) (1) and (2) of this section.* If the requirements of paragraph (e) (1) and (2) of this section are not satisfied with respect to a target for which a statement of election is expressly made or with respect to any other corporation subject to that statement of election by reason of section 338(f)(1), then the waiver rule of paragraph (h)(1) of this section will not apply to all of the following corporations: (i) the target for which a statement of election was expressly made, and (ii) all corporations subject to that statement of election by reason of section 338(f)(1). Failure to comply with the requirements of paragraph (e) (1) and (2) of this section, however, will not invalidate a statement of election and will have no effect on the applicability of section 338(f)(1).

(f) *Certain consequences of section 338 election*—(1) * * *

* * * * *

(7) *New target's taxable year and method of accounting*—(i) * * *

(ii) *First return due on or before certain time.* Notwithstanding § 1.441-1(b)(3), a new target may adopt a taxable year for which the first return is due (not including extensions of time) on or before the date that is the later of (A) the 60th day after the date of publication of temporary regulations § 1.338-4T or (B) the last day for making the election under section 338 by filing its first return as new target for the desired taxable year on or before that date.

* * * * *

(h) *Waiver: certain additions to tax and times to act, etc.*—*(1) Waiver of certain additions to tax.* An addition to tax or additional amount (addition) under Subchapter A of Chapter 68 arising on or before the later of the 60th day after the date of publication of temporary regulations § 1.338-4T or the last day for making the election under section 338, by reason of circumstances that would not exist but for an election under section 338, is waived if (i) under the particular statute the addition is excusable upon a showing of reasonable cause and (ii) corrective action is taken on or before the later of such 60th day or last day. For the nonapplication of this paragraph (h)(1) for failure to file certain materials, see paragraph (e)(3) of this section. The Service should be notified at the time of correction (*e.g.*, by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (h) is being asserted.

(2) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If the addition to tax for failure to file a return is waived under paragraph (h)(1) of this section, or if that addition would have been waived had there been an underpayment of tax or had paragraph (e)(3) of this section (under which paragraph (h)(1) of this section does not apply if certain materials are not filed) not applied, then any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in that paragraph (h)(1) will be considered timely if specified on that late-filed return (filed within the time prescribed in that paragraph (h)(1) for corrective action).

* * * * *

(ii) *New target in purchasing group's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the purchasing group on or before the later of the 60th day after the date of publication of temporary regulations § 1.338-4T or the last day for making the election under section 338, then any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) will be considered timely if specified in an amended return (or, if the contents of the return itself are not affected by the election or other action, a separate statement), filed on or before the later of such 60th day or last day, with the Internal Revenue Service Center with which the consolidated return was filed. If the election is made on a separate statement, such statement must cite this provision and must include the name, address, and EIN of the parent corporation of the purchasing group.

* * * * *

(k) *Special rules for foreign corporations or DISCs*—*(1) Election by foreign purchasing corporation not subject to U.S. tax.* A foreign purchasing corporation not subject to United States tax for its taxable year that includes the acquisition date must file the statement of election with the Philadelphia Service Center, Philadelphia, Pennsylvania 19255.

* * * * *

Par 3. Newly designated 1.338–2T is amended as follows:

1. The section heading is revised.
2. Paragraph (a) is amended by—
a. Adding immediately after the second sentence of paragraph (a)(1) the sentence "This section also reflects changes made by the Tax Reform Act of 1984.", and
b. Removing from paragraph (a)(2) the words "5f.338–1(b)" and by adding in their place the words "1.338–1T(b)".
3. Paragraph (b) is amended by removing the words "February 28, 1983" and by adding in their place the words "September 17, 1984".
4. Paragraph (c) is amended by—
a. Removing from paragraph (c)(2) the words "February 28, 1983" and by adding in their place the words "September 17, 1984", and
b. Adding a new paragraph (c)(3).
5. Paragraph (d) is revised.
6. Paragraph (e) is amended by—
a. Revising paragraph (e)(3)(ii),
b. Removing from the second sentence of paragraph (e)(5)(ii) the words "§ 5f.338–1(k)(7)" and by adding in their place the words "§ 1.338–1T(k)(7)",
c. Removing from paragraph (e)(6) the words "§ 5f.338–1(f)(7)" and by adding in their place the words "§ 1.338–1T(f)(7)", and
d. Adding a new paragraph (e)(7).
7. Paragraph (f) is amended by—
a. Revising paragraph (f)(2)(i)(B),
b. Revising paragraph (f)(2)(ii),
c. Redesignating paragraph (f)(2)(iii) as paragraph (f)(2)(iv) and adding a new paragraph (f)(2)(iii),
d. Removing from the first sentence of paragraph (f)(3)(i) the words "A purchasing corporation" and by adding in their place the words "Except as provided in paragraph (f)(3)(iii) of this section, a purchasing corporation", and
e. Adding a new paragraph (f)(3)(iii).
8. Paragraph (g) is amended by removing the words "§ 5f.338–1(g)" and by adding in their place the words "§ 1.338–1T(g)".
9. Paragraph (h) is amended by—
a. Removing, from each place they appear, the words "§ 5f.338–1" and by adding in their place the words "§ 1.338–1T", and
b. Adding at the end thereof the sentence "For the non-application of § 1.338–1T(h)(1) for failure to file certain materials, see paragraph (d)(2) of this section."
10. Paragraph (j) is amended by revising *Example (1)* and *Example (2)*.

The new and revised provisions read as follows:

§ 1.338–2T Transitional rule elections (temporary).

* * * * *

(c) *Statement of election*—(1) * * *

* * * * *

(3) *Purchasing corporation included in consolidated return.* If the purchasing corporation is included in a consolidated return for the taxable year in which the statement of election is filed, see § 1.1502–77.

(d) *Attachment to target returns; consequence of failure to attach*—(1) *Attachment.* A copy of the statement of transitional rule election must be attached to old target's final return and to the first return of new target. If the statement is not attached to a return filed on or before December 5, 1984, this requirement will be satisfied if, on or before December 5, 1984, a copy of the statement of transitional rule election is filed with the Internal Revenue Service Center with which old target's final return and the first return of new target are required to be filed. If the target is a foreign corporation not subject to United States tax (as defined in § 1.338–1T(k)(3)(iii)), a copy of the statement of election must be attached to the return(s) specified in § 1.338–1T(k)(6).

(2) *Consequence of failure to comply with the requirement of paragraph (d)(1) of this section.* If the requirement of paragraph (d)(1) of this section is not satisfied, then the waiver rule of § 1.338–1T)h) (1) as applied by paragraph (h) of this section will not apply. Failure to comply with the requirement of paragraph (d)(1) of this section, however, will not invalidate a statement of transitional rule election.

(e) *Certain consequences of transitional rule election*—(1) * * *

* * * * *

(3) *Rules similar to old section 334(b)(2); certain provisions of section 338 inapplicable.* * * *

(i) * * *

(ii) Section 338 has in effect on July 17, 1984, applies, except that subsections (e), (f), and (i) of section 338, and paragraphs (4), (6), (8), and (9) of section 338(h), as in effect on such date do not apply.

* * * * *

(7) *Deemed purchase of stock.* Stock acquired by "new" target in its deemed purchase of assets under section 338 (a)(2) does not constitute "purchased" stock for purposes of applying the qualified stock purchase rules of section 338(d)(3). See section 338(h)(3)(B) as in effect on July 17, 1984, and section 712(k)(9)(A) of the Tax Reform Act of 1984.

(f) *Selection of deemed sale date by purchasing corporation*—(1) *In general.* * * *

(2) *Date selected as deemed sale date*—(i) *In general.* * * *

(A) * * *

(B) Is not later than the earlier of February 28, 1983, or the date on which the statement of transitional rule election or deemed sale date statement is filed.

(ii) *Unspecified deemed sale date.* If a timely filed statement of transitional rule election does not specify a deemed sale date and a deemed sale date statement is not filed, the date of filing the election is considered the selected deemed sale date, except that February 28, 1983, will be treated as the deemed sale date if the statement of transitional rule of election is filed after that date.

(iii) *Conformity of deemed sale dates in certain cases.* If, by reason of the qualified stock purchase of one corporation, the purchasing corporation is treated, under section 338(h)(3)(B) (as in effect on July 17, 1984), as purchasing all or a part of the stock of a second corporation with respect to which a qualified stock purchase is also made, then a deemed sale date selected for the second corporation that is different from that selected for the first corporation will be disregarded and the second corporation will be assigned the first corporation's deemed sale date. This rule does not apply if the otherwise applicable rules on selection of a deemed sale would prohibit the selection of the first corporation's deemed sale date for the second corporation.

(iv) *Filing date.* * * *

(3) *Selecting deemed sale date after filing transitional rule election*—(i) * * *

* * * * *

(iii) *Limited extension of time to file deemed sale date statement.* If a timely filed statement of transitional rule election does not specify a deemed sale date, such a date may be specified in a deemed sale date statement filed on or before September 17, 1984.

* * * * *

(j) * * *

Example (1). (i) S is the common parent of an affiliated group that includes T. The S group files calendar year consolidated returns. At the close of May 31, 1982 S sells all of the stock of T to P, a calendar year corporation, and on November 10, 1982, P files a statement of transitional rule election with respect to T. The statement of election meets all the requirements of this section but does not specify a deemed sale date. P will file a separate return for the 1982 calendar year. Unless P takes action to specify a different date, the date of filing the statement of transitional rule election will be considered the selected deemed sale date. Thus, T's deemed sale occurs and its taxable year ends at the close of November 10, 1982. T's income from January 1, 1982, through May 31, 1982, is included in the consolidated return of the S group. Any income tax liability resulting from the deemed sale under section 338 is reported in old T's return for its final taxable period which begins on June 1, 1982, and ends on November 10, 1982. Under paragraph (e)(5)(i) of this section, this return is due on February 15, 1983. Assuming new T adopts the calendar year, another return will be required for the period from November 11, 1982, through December 31, 1982, which is T's first taxable period as "new target." Under paragraph (e)(6) of this section, new T may adopt the calendar year on its first income tax return if that return in filed on or before the 60th day after the date of publication of temporary regulations § 1.338–4T.

(ii) Because a return would not be due on February 15, 1983, but for the transitional rule election under section 338, additions to tax under section 6651(a) (1) and (2) are waived if that return is filed and the tax shown thereon paid on or before the 60th day after the date of publication of temporary regulations § 1.338–4T. See paragraph (h) of this section. If new T adopts the calendar year in accordance with paragraph (e)(6) of this section, these additions to tax are also waived with respect to the return of new T due on March 15, 1983. Interest on any underpayment of tax, however, runs from the due date of these returns.

(iii) If P files a consolidated return for the 1982 calendar year, T's income for its final taxable period as old target and for its first taxable period as new target will be included in P's consolidated return, to which a copy of the statement of transitional rule election must be attached. See paragraph (d) of this section. The waiver rule applies only to additions that would not arise but for the section 338 election.

Example (2). Assume the same facts as in Example (1)(i), except that P wishes to select a deemed sale date other than November 10, 1982. If P files a proper deemed sale date statement under paragraph (f) of this section after February 28, 1983, and on or before September 17, 1984 P may select as the deemed sale date any date after June 30, 1982, and before March 1, 1983. If July 1, 1982, is selected as the deemed sale date and P does not join with T in filing a consolidated return for 1982, any income tax liability resulting from the deemed sale of assets (occurring at the close of July 1, 1982) is reported in old T's final return for its taxable period beginning on June 1, 1982, and ending on July 1, 1982. Under paragraph (e)(5)(i) of this section, that return is due on October 15, 1982. If that return is filed on or before the 60th day after the date of publication of temporary regulations § 1.338–4T, additions to tax for failure to file a return and to pay tax shown on a return will be waived. Similarly, if new T adopts the calendar year in accordance with paragraph (e)(6) of this section, those additions will be waived with respect to its return due on March 15, 1983 (for its taxable period beginning on July 2, 1982, and ending on December 31, 1982). The return of old T which, had an election not been made, would have been due on March 15, 1983 (for the period from June 1, 1982, to December 31, 1982) need not be filed. See paragraph (h) of this section. If P acquired all of the stock of T at the close of June 30, 1982, and selected July 1, 1982, as the deemed sale date, old T's final return would consist of July 1, 1982 (*i.e.*, only one day).

Par. 4. Section 1.338–3T is amended by removing from the last sentence of paragraph (a)(2)(ii) the words "5f.338.2(f)", by adding in their place the words "§ 1.338–2T(f)", and by revising the heading to read as follows:

§ 1.338–3T Miscellaneous rules under section 224 of TEFRA (temporary).

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 324, 26 U.S.C. 338, 68A Stat. 917, 26 U.S.C. 7805, respectively). Approved by the Office of Management and Budget under Control Number 1545–0702.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 31, 1984.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 84–23613 Filed 9–4–84; 9:12 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

Editorial Amendment of the Commission's Rules for the Aviation Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action editorially amends the rules for the Aviation Services to delete unused terms, align rules with licensing practices, delete redundant rules, and correct errors. The purpose of this action is to improve the usefulness of the rules to the user.

EFFECTIVE DATE: August 14, 1984.

FOR FURTHER INFORMATION CONTACT: Charles D. Fisher, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 87

Aeronautical stations, Communications equipment, General aviation, Radio.

Order

In the matter of editorial amendment of Part 87 of the rules.

Adopted: August 14, 1984.
Released: August 21, 1984.

1. This order editorially amends a number of sections of Part 87, Aviation Services, of the Commission's rules. By this action unused terms are deleted, rules dealing with licensing practices in the aeronautical public service are brought in line with current aircraft station licensing practice, the rules for aeronautical metropolitan stations are deleted since those stations are one form of aeronautical enroute stations and do not warrant separate identification, typographic and other errors are corrected and out-of-date material is deleted. The affected sections are: 87.5, 87.123, 87.183, 87.195, 87.201, 87.235, 87.237, 87.239, 87.241, 87.277, 87.321, 87.323, 87.325, 87.327, 87.329, 87.331, 87.401, 87.432, 87.441, 87.455, 87.463, 87.467 and 87.501.

2. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 0.231(d) of the Commission's rules. Since the amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

3. Regarding questions on matters covered in this document contact Charles D. Fisher, telephone (202) 632–7175.

4. In view of the above, it is ordered, That the rule amendments set forth in the attached Appendix are adopted effective August 14, 1984.

Federal Communications Commission.

Thomas P. Campbell,

Associate Managing Director for Operations.

Appendix

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 87—[AMENDED]

§ 87.5 [Amended]

1. In § 87.5 the definitions for "Aeronautical metropolitan station", "Aeronautical public service station",

"Operational land station" and "Operational mobile station" are removed; in the definition of "Aeronautical public communications service" the words "land radio stations" are replaced with "maritime mobile public coast stations".

2. Section 87.123 is revised to read as follows:

§ 87.123 Permissible communications.

Ground stations in the Aviation Services shall transmit communications for the safe, expeditious, and economic operation of aircraft and the protection of life and property in the air. Each class of aeronautical station and Civil Air Patrol land stations may communicate additionally in accordance with the particular sections of this part which govern these classes. Ground stations in the Aviation Services in Alaska may transmit messages concerning sickness, death, weather, ice conditions or other matters relating to safety of life and property if there is no other established means of communication between the points in question and no charge is made for the communications service.

§ 87.163 [Amended]

3. In § 87.163 paragraph (g)(3) is removed.

4. Section 87.195 is amended by revising paragraph (i) to read as follows:

§ 87.195 Frequencies available.

* * * * *

(i) The frequencies available to aeronautical enroute stations are listed in §§ 87.293, 87.295, 87.297, 87.299, and 87.301.

§ 87.201 [Amended]

5. In § 87.201 paragraph (d) is amended by changing the first sentence to read as follows: "Private aircraft stations may utilize 122.850 and 122.900 MHz for communications with aeronautical multicom stations, and 122.925 MHz for communications with Federal and State natural resource agencies in accordance with Subpart D of this part."

6. In § 87.235 paragraph (a) is revised to read as follows:

§ 87.235 Frequencies available.

(a) The frequencies available for aeronautical public service are those maritime mobile and maritime mobile-satellite frequencies available for public correspondence radiotelephony or radiotelegraphy between ship and public coast stations. No maritime mobile frequencies in the band 156 MHz to 174 MHz are available for aeronautical public service. The aeronautical public service must not cause interference to maritime mobile communications.

* * * * *

7. Section 87.237 and its heading are revised to read as follows:

§ 87.237 Stations authorized for aeronautical public service.

Only those aircraft stations licensed for appropriate maritime mobile or maritime mobile-satellite frequencies may carry on an aeronautical public service. The rules applicable to the aeronautical public service are the same as for public correspondence between stations of the maritime mobile or maritime mobile-satellite service in Part 83 of this chapter. Transmitters used for aeronautical public service by aircraft stations must be type accepted or type approved by the Commission in conformity with Part 83 of this part for use in ship stations.

8. Section 87.239 is revised to read as follows:

§ 87.239 Scope of service.

(a) An aircraft station which provides an aeronautical public service must exchange radio communications without discrimination with any maritime mobile public coast station or maritime mobile-satellite earth station whenever necessary for the handling of traffic.

(b) An aircraft station which provides an aeronautical public service must make such service available to all persons without discrimination and on reasonable demand.

9. Section 87.241 and its heading are revised to read as follows:

§ 87.241 Requirement for aeronautical public service aircraft equipment.

A continuous effective listening watch must be maintained on the frequencies used for flight safety and flight regularity while aeronautical public service communications are being handled. The aircraft installation and system of operation must permit instantaneous interruption of aeronautical public service communications to transmit or receive flight safety and flight regularity messages.

§ 87.277 [Amended]

10. In § 87.277 paragraph (b)(1)(iii) is corrected by removing the figure "1" following the word "by".

Subpart F—[Removed]

§ 87.321 [Removed]

§ 87.323 [Removed]

§ 87.325 [Removed]

§ 87.327 [Removed]

§ 87.329 [Removed]

11. Subpart F and §§ 87.321, 87.323, 87.325, 87.327 and 87.329 are removed.

§ 87.331 [Amended]

12. In § 87.331 paragraph (c) is amended by correcting the spelling of "propagation" at the end of the first sentence, by removing the last sentence just before the table, and by removing the left and middle columns of the table, changing the heading over the remaining right column to read, "Frequencies available (carrier) kHz."

§ 87.401 [Amended]

13. In § 87.401 paragraph (a) the table is amended by replacing 123.000 with 123.600.

14. Section 87.432 is amended by combining the introductory paragraph and paragraph (a) to read as follows:

§ 87.432 Eligibility.

(a) Authorization to operate an aeronautical utility mobile station on the frequencies in § 87.431(c) will be issued only for operation at landing areas having an airdrome control tower or an FAA Flight service station.

* * * * *

§ 87.441 [Amended]

15. In § 87.441 paragraph (d) is amended by revising the last sentence to read, "Ship stations communicating with aircraft stations shall employ 2.8A3J emission."

§ 87.455 [Amended]

16. In § 87.455 paragraph (b)(1) is amended by removing from the first sentence, ". . . as defined by the Civil Aeronautics Board."

§ 87.463 [Amended]

17. In § 87.463 paragraph (a) the footnote is revised to read "[1] These frequencies are shared on a secondary basis, by the Radio Control Service until December 20, 1987, at which time authorization for that service is withdrawn," and charts referenced in paragraph (a)(5) are added to follow paragraph (b) to read as follows:

BILLING CODE 6712-01-M

FOR CHANNEL 4

CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station	100 kw
Television Transmitting Antenna Height	500 ft

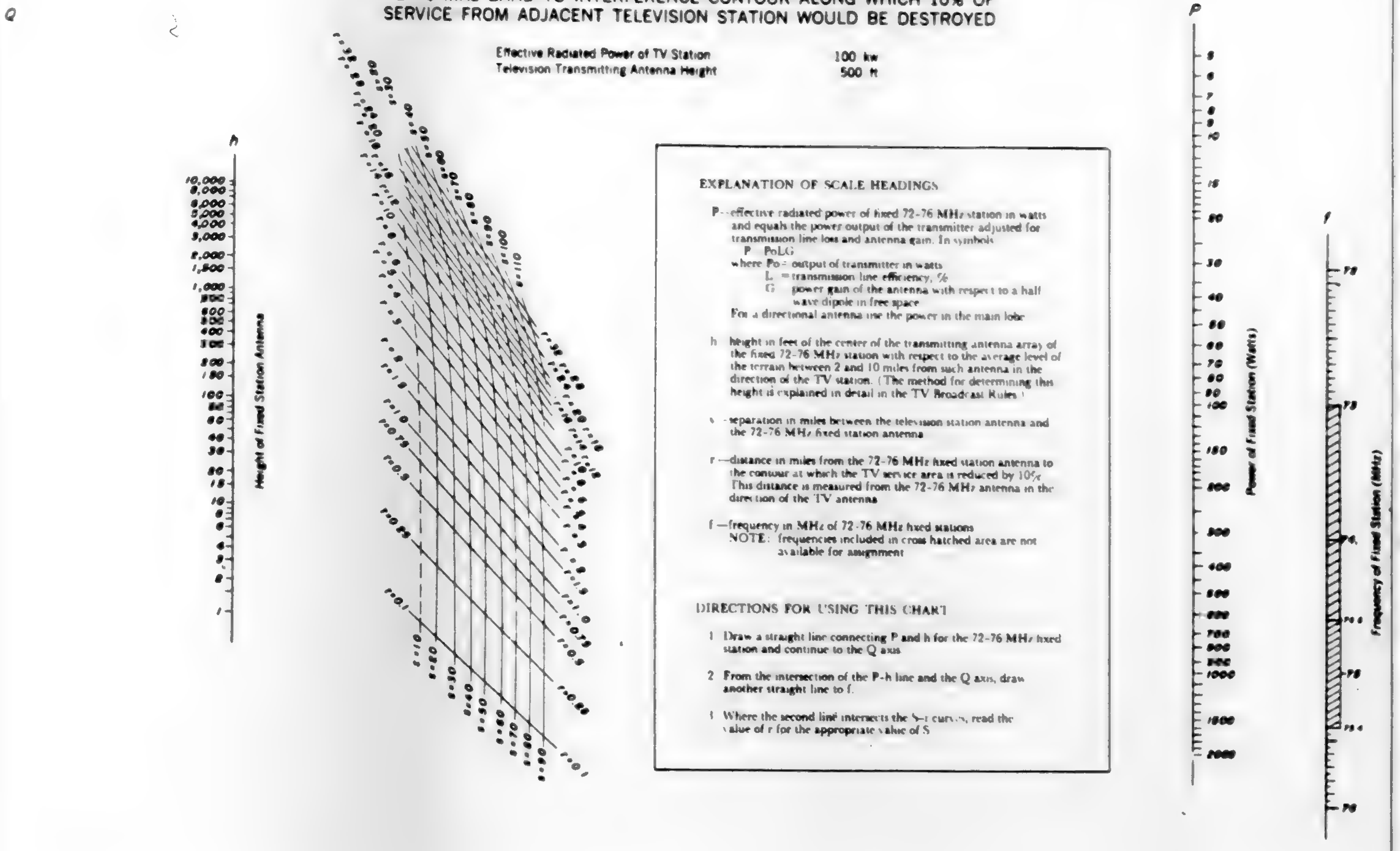

EXPLANATION OF SCALE HEADINGS

P—effective radiated power of fixed 72-76 MHz station in watts and equals the power output of the transmitter adjusted for transmission line loss and antenna gain. In symbols

P = PoLG

where Po = output of transmitter in watts

L = transmission line efficiency, %

G = power gain of the antenna with respect to a half wave dipole in free space

For a directional antenna use the power in the main lobe

h—height in feet of the center of the transmitting antenna array of the fixed 72-76 MHz station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules.)

s—separation in miles between the television station antenna and the 72-76 MHz fixed station antenna

r—distance in miles from the 72-76 MHz fixed station antenna to the contour at which the TV service area is reduced by 10%. This distance is measured from the 72-76 MHz antenna in the direction of the TV antenna

f—frequency in MHz of 72-76 MHz fixed stations

NOTE: frequencies included in cross hatched area are not available for assignment

DIRECTIONS FOR USING THIS CHART

1. Draw a straight line connecting P and h for the 72-76 MHz fixed station and continue to the Q axis.
2. From the intersection of the P-h line and the Q axis, draw another straight line to f.
3. Where the second line intersects the S–r curves, read the value of r for the appropriate value of S.

REVISED JANUARY 1963

FOR CHANNEL 5

CHART FOR DETERMINING RADIUS FROM FIXED STATION IN 72–76 MHz BAND TO INTERFERENCE CONTOUR ALONG WHICH 10% OF SERVICE FROM ADJACENT TELEVISION STATION WOULD BE DESTROYED

Effective Radiated Power of TV Station	100 kw.
Television Transmitting Antenna Height	500 ft.

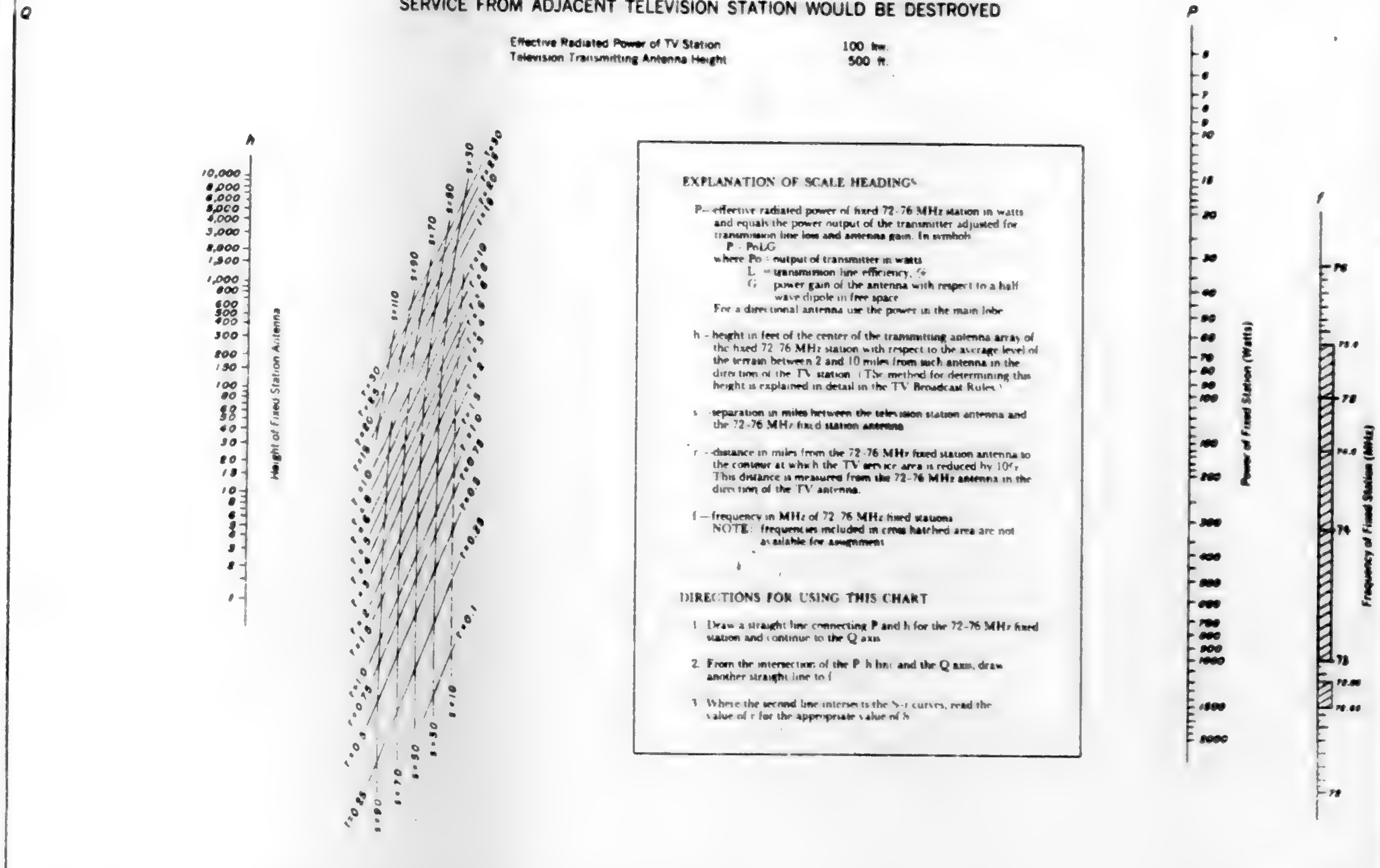

EXPLANATION OF SCALE HEADINGS

P—effective radiated power of fixed 72-76 MHz station in watts and equals the power output of the transmitter adjusted for transmission line loss and antenna gain. In symbols

P = PoLG

where Po = output of transmitter in watts

L = transmission line efficiency, %

G = power gain of the antenna with respect to a half wave dipole in free space

For a directional antenna use the power in the main lobe

h—height in feet of the center of the transmitting antenna array of the fixed 72-76 MHz station with respect to the average level of the terrain between 2 and 10 miles from such antenna in the direction of the TV station. (The method for determining this height is explained in detail in the TV Broadcast Rules.)

s—separation in miles between the television station antenna and the 72-76 MHz fixed station antenna

r—distance in miles from the 72-76 MHz fixed station antenna to the contour at which the TV service area is reduced by 10%. This distance is measured from the 72-76 MHz antenna in the direction of the TV antenna.

f—frequency in MHz of 72-76 MHz fixed stations

NOTE: frequencies included in cross hatched area are not available for assignment

DIRECTIONS FOR USING THIS CHART

1. Draw a straight line connecting P and h for the 72-76 MHz fixed station and continue to the Q axis
2. From the intersection of the P-h line and the Q axis, draw another straight line to f
3. Where the second line intersects the S-r curves, read the value of r for the appropriate value of S

REVISED JANUARY 1983

BILLING CODE 6712-01-C

§ 87.467 [Amended]

18. In § 87.467 paragraph (a) is amended by removing the comma after "operational fixed" and by removing the words "operational land, or operational mobile".

§ 87.501 [Amended]

19. In § 87.501 paragraph (h)(3) note 2 and paragraph (h)(5) note 3 are revised to read as follows:

[2] Radio altimeters are permitted to use the band 1600–1660 kHz only until such time as international standardization of other aeronautical radionavigation systems or devices requires the discontinuance of radio altimeters in this band. No new authorizations or applications for type acceptance of altimeters will be accepted.

[3] The band 5.0–5.25 GHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. The requirements of this system shall take precedence over other uses of this band.

[FR Doc. 84–23028 Filed 9–5–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 4030 2–21]

Groundfish of the Gulf of Alaska; Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum yield of sablefish will be achieved in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska, and that a closure of this district to fishing for sablefish by vessels of the United States is necessary to prevent overfishing of sablefish. This action is intended to promote the conservation of sablefish.

DATES: This notice is effective at noon, Alaska Daylight Time (ADT), September 1, 1984, until noon, Alaska Standard Time, December 31, 1984. Public comments are invited on this closure until September 16, 1984.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. ADT weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP), which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of fishing seasons and areas. Implementing rules at § 672.20 specify that these adjustments will be made by the Secretary of Commerce (Secretary) by notice in the **Federal Register** under § 672.22(a).

Three regulatory areas of the Gulf of Alaska are defined in § 672.2. One of these is the Eastern Regulatory Area, which is further divided into four regulatory districts for the purpose of better managing sablefish: West Yakutat, East Yakutat, Southeast Outside, and Southeast Inside. The optimum yield (OY) for sablefish for the West Yakutat District is 1,680 metric tons (mt). Of this amount, 15 mt is currently apportioned to foreign nations to account for sablefish that will be taken as operational bycatch in their trawl fisheries during the remainder of the fishing year. Through August 16, 1984, U.S. fishermen harvested 1,186 mt. The balance of the OY available to domestic fishermen, or 479 mt, will be harvested by September 1, 1984. The Regional Director has determined that the total OY for sablefish will be taken by domestic and foreign fishermen during the 1984 fishing year and that further fishing for sablefish by U.S. fishermen beyond September 1, 1984, would cause the OY to be exceeded.

Therefore, the Secretary issues this notice prohibiting further fishing for sablefish by vessels of the United States in the West Yakutat District after noon on September 1, 1984. This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

The sablefish stock in the affected area will be subject to harm unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order is contrary to the public interest and that the effective date should not be delayed.

This action is taken under the authority of § 672.22(a), and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It requires no collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 31, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–23545 Filed 8–31–84; 2:42 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 174
Thursday, September 6, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing of Cases

AGENCY: Federal Labor Relations Authority.

ACTION: Request for comments; extension of comment period.

SUMMARY: In order to assure agencies, unions and interested persons ample opportunity to submit written proposals concerning possible modifications to the Federal Labor Relations Authority's case processing procedures, it has been decided to extend to September 21, 1984 the period for written comments.

COMMENT DATE: Written comments must be received by the Authority on or before September 21, 1984..

ADDRESS: Comments should be submitted to Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, D.C. 20424

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, D.C. 20424; (202) 382-0711.

SUPPLEMENTARY INFORMATION: Questions raised relating to the immediacy of the review of case processing procedures and subsequent open meetings in view of recent Authority changes at the Member level prompt us to reiterate our June 20, 1984 notice published in the proposed rules section of the **Federal Register** (49 FR 25243). The Authority fully intends to move forward on the review of case processing procedures. Accordingly, in order to assure that all parties have ample opportunity to submit written proposals concerning possible modifications to the Authority's case processing procedures, it has been decided to extend to September 21, 1984 the period for written comments.

List of Subjects in 5 CFR Ch. XIV

Administrative practice and procedure, Government employees, Labor-management relations.

Dated: August 31, 1984.

Barbara J. Mahone,
Chairman.
Ronald W. Haughton,
Member.
Henry B. Frazier III,
Member.
Federal Labor Relations Authority.

[FR Doc. 84-23623 Filed 9-5-84; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO-99-A4]

Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California; Decision on Proposed Further Amendment of Marketing Agreement and Order 927, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule and Referendum Order.

SUMMARY: This decision would amend the Federal marketing agreement and order, which covers Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears (winter pears) grown in Oregon, Washington, and California. The amendment would authorize marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears.

DATE: The voting period for the purposes of the referendum herein ordered is September 17 through September 29, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued April 20, 1984, and published in the April 26, 1984, issue of the **Federal Register** (49 FR 17950); and Notice of Recommended Decision issued July 19, 1984, and published in the July 25, 1984, issue of the **Federal Register** (49 FR 29960).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Small Businesses. The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence at a hearing on the probable regulatory and informational impact of the proposed rule on small business.

During the fiscal year ending June 30, 1983, 92 handlers regulated under M.O. 927 handled winter pears for fresh market with an estimated crop value of $70.9 million. The average value per handler was approximately $770,000. Given the applicable definition of a small business concern (i.e., for purposes of qualifying for a Small Business Administration loan, a small business has average annual receipts which do not exceed $2,000,000), almost all of the handlers of winter pears would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 927 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses.

Further, while the amendment recommended herein would impose some requirements on affected small businesses and the number of such may be substantial, any added burden should not be significant in light of the potential benefits that should be derived by such small businesses.

The testimony presented at the hearing on the proposed amendment indicated that the burden of financing and implementing the amendment—should it be ratified by growers in a referendum—would be less than the burden of the current voluntary promotion program. Rather than reporting and sending assessments to two organizations, under the amendment handlers would report and send assessments only to the Winter Pear Control Committee which operates under the marketing order. This economy of operation would be equally advantageous to large and small businesses, with small business perhaps benefitting to a greater degree in that their operating margins may be smaller.

Additionally, the concept of the amendment itself is particularly beneficial to small businesses. It would authorize large numbers of small businesses to pool their resources to mount a promotional campaign to benefit all growers and handlers of winter pears. Small businesses are the least likely to be in a position to initiate and maintain the magnitude of a marketing expansion program as foreseen by the proponents of the amendment.

With respect to small businesses that are not winter pear growers or handlers, the impact of the proposed amendment would be different. Some such businesses, including retail food stores, restaurants, and others that sell winter pears to the public in various forms, could experience increased costs due to the proposed amendments. However, the magnitude of such added costs is difficult to quantify and is speculative. Moreover, these hypothetical added costs would be counterbalanced by the advantages to small businesses that are winter pear growers who will benefit from the proposed amendment and by the likelihood that small businesses that are not winter pear growers will benefit from the proposal due to increased public awareness and demand for winter pears as the result of promotion and paid advertising projects conducted by the Control Committee.

Preliminary Statement

A public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 927, as amended (7 CFR Part 927), regulating the handling of winter pears grown in Oregon, Washington, and California. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), in Portland, Oregon, on May 30, 1984, pursuant to notice thereof.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on July 19, 1984, filed with the Hearing Clerk, U.S. Department of Agriculture, the recommended decision containing the notice of the opportunity to file written exceptions thereto. An exception was received from the Washington Fruit and Produce Company, Yakima, Washington.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision set forth in the July 25, 1984, issue of the **Federal Register** (49 FR 29960) are hereby approved and adopted and are hereby set forth in full herein.

Material Issues

The material issues presented on the record of the hearing are: (1) Whether under Marketing Order 927 authority should be added for the Winter Pear Control Committee to engage in marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears; and (2) whether conforming changes to the order would be necessary if this program were to go into effect.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and record thereof, are as follows:

(1) It is recommended that the order be amended, as hereinafter set forth, to include authority for marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears. Such authority is authorized under section 608c(6) of the act.

Marketing promotion and paid advertising to promote winter pears has been conducted for approximately 50 years by the Washington-Oregon-California Pear Bureau. This is an organization of pear handlers who administer a voluntary promotional program. Winter pear handlers voluntarily pay an assessment to the Bureau to finance this activity. The hearing record indicates that such assessments are customarily deducted from payments to growers at the time of the financial settlement between growers and handlers. Historically, about 92 percent of the industry has participated.

Promotion programs to date have been highly successful in increasing the marketing, distribution, and consumption of winter pears. For example, between the 1970–71 season and the 1981–82 season, per capita consumption of D'Anjou variety pears increased 61 percent. During the same period, the number of cities in the U.S. receiving 5,000 boxes or more annually increased by 61 percent. Testimony presented at the hearing attributes a large portion of this market expansion to the promotion program.

However, a significant number of new handlers are not electing to participate in the voluntary program, and some handlers are offering inducements to encourage growers to deliver to them by not deducting the voluntary assessment at the time of settlement. Income lost last season on the D'Anjou variety in one of the largest production districts alone amounted to approximately $146,000.

Continued promotion activities are imperative for this $70 million industry. Competition from other products has increased in recent years. At one time, winter pears were among the few fresh fruits available between summer harvests. Now, winter pears face substantial competition from early and late season shipments of plums, peaches, and nectarines, from increased fresh shipments of Bartlett pears that are being diverted from processing, and from increasing quantities of fresh fruits from South America. Thus, maintaining an effective promotion program is essential not only to preserve the markets that exist, but to continue the industry's current aggressive marketing activities to facilitate the expansion of existing markets and the development of new markets to assure outlets for the even larger winter pear crops expected in the future.

Permitting the industry to administer the promotion program with funds collected under the authority of the marketing order would insure full and proportionate participation by all handlers in the industry. It would also eliminate the disruptive practice of undercutting the market by the amount paid in assessments to the voluntary program.

If the authority to collect assessments and conduct promotion activities is not made available to the committee under the Federal marketing order for the 1984 crop, lost assessment revenue under the voluntary program threatens to seriously undermine the existing promotion program and the foothold the industry now has in the marketplace as well. Testimony indicated that if the mandatory assessment is not implemented, it is expected that participation in the voluntary programs will continue to decline and within two or three years could likely be as low as 60 percent.

It was also pointed out at the hearing that the committee has the experience and the administrative machinery necessary to collect assessments. The committee has recommended research projects for 10 years using procedures similar to those that would be necessary to administer promotion and paid advertising projects.

The evidence of record indicates a desire on the part of some segments of the industry to have assessment levels vary by pear variety and assessments and advertising programs voted on by variety. For example, if the Bosc industry desires additional promotion to market an unusually large crop, the assessment for Bosc pears could be raised without raising the assessment for the other varieties. By the same token, the assessment for any variety could be lowered without lowering the assessment of any other variety. Assessment rates would be recommended at the beginning of each season by a vote of the Control Committee, at the same time decisions would be made for the season's promotion efforts. Varied assessment rates, however, would not be permissable under current order authority. Section 927.41 of the order requires each handler to pay a pro rata share of the expenses incurred by the Control Committee for the maintenance and function of the Control Committee during each fiscal period.

Under the current order, voting on the assessment rate must be conducted in conformance with § 927.33. That section requires that a quorum of nine (9) out of the 12 members must be present in order for a vote to be valid, and that no fewer than seven (7) affirmative votes must be cast for the committee to take action on an issue. This procedure is required for voting on all matters except those with respect to issuing, modifying, suspending, or terminating grade and size regulations. Section 927.52 prescribes the manner in which voting on grade and size regulations must occur. Under this section, each member has one vote as an individual and, in addition, one vote for each 25,000 boxes of the average quantity of each variety of pears produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods to destinations outside the state in which produced. Members vote on grade and size regulations by varieties, and an affirmative vote of not less than 80 percent of the applicable total number of votes is required to recommend that the Secretary put a regulation into effect.

Testimony presented at the hearing demonstrated some value in voting on promotion assessments and projects by variety in that the marketing conditions could vary by variety. However, the notice of hearing did not contain a proposal to authorize such a method of voting. Therefore, voting procedures cannot be amended in the course of this rulemaking proceeding.

In the event that the Control Committee determines that voting on promotion assessments and projects would be more equitably or effectively accomplished utilizing the procedures outlined in § 927.52, the Control Committee may conduct preliminary voting in that manner for a period of time sufficient to evaluate its effectiveness. It is stipulated, however, that any recommendation to the Secretary would be arrived at in accordance with § 927.33. After a sufficient evaluation period, a hearing may be requested on the issue of amending the voting procedures.

Spending promotion assessment revenues was another administrative issue raised at the hearing. The record indicates that the committee intends to spend the money to the extent practicable in proportion to the amount of funds generated by each variety. For example, roughly the dollar amount collected on the Comice variety would be allocated to promote Comice pears. However, this would not preclude the committee from sponsoring promotions covering all varieties of winter pears in the same program. In fact, in the peak season, the industry has found it to be appropriate and economical to promote every available variety in a combined campaign.

In formulating promotion and paid advertising projects, the Control Committee should be authorized to secure the advice and service of persons or organizations knowledgeable in this type of activity. The committee may establish subcommittees to assist it in the efficient and expeditious planning of promotion projects or programs. Such subcommittees could develop preliminary projects and programs and make recommendations to the Control Committee with respect to any such activities. Subcommittees could also perform evaluations of activities at any stage of completion. Final decisions on any such recommendations would be the perogative of the committee subject to approval of the Secretary. In carrying out the order provision for promotion and paid advertising for pears, the committee should be authorized to conduct promotion of paid advertising projects directly, or to contract for the conduct of such projects with persons or organizations that specialize in this field of activity.

Promotion and paid advertising projects could be local, regional, national, or international in scope. They could be oriented toward the wholesale, or retail trade or toward the consuming public. The projects could be accomplished through the electronic or print media or by a field staff making direct contacts with retail, wholesale, or institutional purchasing agents.

In submitting projects to the Secretary for approval, the committee should include recommendations as to the funds expected to be obtained from assessments under the order. The committee should fully consider the cost of any such activities when developing its budget, both as to additional items of expense and the applicable assessment rate. Committee expenditures for the costs of planning such programs should be authorized on the basis of budgetary approval since planning and project development necessarily precede recommendation of a project to the Secretary for his approval. The committee should review its promotion program annually to appraise its effectiveness.

Based on the foregoing, the order should be amended, as hereinafter set forth, to include authority for marketing promotion and paid advertising to promote the marketing, distribution, and consumption of winter pears. The expense of any promotion or paid advertising projects are to be paid from funds collected under the order. All Control Committee votes regarding assessment and expenditures are to be conducted in compliance with § 927.33 of the order.

(2) No conforming changes are necessary.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed June 15, 1984, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing.

Briefs and proposed findings and conclusions were filed by: The Washington Fruit and Produce Company; Dan Hull, pear handler and five proponent witnesses and the Pear Bureau. The three briefs supported the inclusion of authority to conduct marketing promotion and paid advertising under the marketing order.

These briefs, proposed findings, and conclusions and the evidence in the record were considered in making the findings and conclusions set forth herein. To the extent that any suggested findings or conclusions by interested persons are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied.

A peripheral issue introduced at the hearing related to redistricting the production area covered under the marketing order. The committee or any person may request a hearing on that issue if it finds merit in this suggestion. Any change in designated districts would mean a substantive change in the order and could not procedurally be discussed at this hearing because such a change was not included in the issues set forth in the notice of hearing.

Ruling on Exception

The Washington Fruit and Produce Company filed an exception supporting adoption of the proposed amendment with modifications. The exception recommended that assessment rates and recommendations for market promotion projects be determined on a varietal type basis and that these modifications be made as conforming changes. The exception was accompanied by a petition signed by a number of winter pear growers supporting the conclusions expressed in the exception.

However, as indicated in the recommended decision, voting on promotion assessments based on varietal considerations was not within the scope of the hearing as set forth in the notice of hearing, and it would be inconsistent with the evidence to mandate such a change in voting procedures. In addition, as stated earlier, the Winter Pear Control Committee may conduct preliminary voting on a varietal basis in order to evaluate the effectiveness of this voting method as long as any recommendation to the Secretary is arrived at in accordance with the provisions of § 927.33 of the order. Also as indicated, promotional funds can be expended on a varietal basis at the discretion of the committee. However, there should be no order-imposed requirement to do so. Provisions of the marketing order regarding assessment rates and voting procedures cannot be amended in this rulemaking proceeding as conforming changes.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Further Amended, Regulating the Handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California" and "Order Amending the Order, as Amended, Regulating the Handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum order

It is hereby directed that a referendum be conducted from September 17 through 29, 1984, in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order as amended, and as hereby proposed to be further amended, regulating the handling of winter pears grown in Oregon, Washington, and California, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production area in the production of the regulated commodity for market.

The representative period is hereby determined to be July 1, 1983, through June 30, 1984.

If the proposed amendment is not favored by two-thirds of the growers voting or by growers of two-thirds of the tonnage of pears represented in the referendum, the existing order will continue in effect.

The agent of the Secretary to conduct such referendum is hereby designated to be Joseph C. Perrin, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Room 369 Green/Wyatt Federal Building, 1220 SW. Third Avenue, Portland, Oregon 97204.

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Oregon, Washington, California, pears, Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, Beurre Clairgeau.

Signed at Washington, D.C., on August 30, 1984.

C.W. McMillan

Assistant Secretary, Marketing and Inspection Services.

Order amending the order, as amended, regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears (winter pears) grown in Oregon, Washington, and California.[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement as amended, and Order No. 927, as amended (7 CFR Part 927) regulating the handling of winter pears grown in Oregon, Washington, and California.

Upon the basis of the record, it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California in the same manner as, and is applicable only to persons in the respective classes of commercial and industry activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(4) There are no differences in the production and marketing of said varieties of pears grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of said varieties of pears grown inthe production area defined in the order, as amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator on July 19, 1984, and published in the **Federal Register** on July 25, 1984, (49 FR 29960), shall be and are the terms and provisions of this order amending the order, and are set forth in full herein.

Section 927.47 is revised to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to § 927.41.

[FR Doc. 84-23529 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1004

[Docket No. AO-160-A62-RO3]

Milk in the Middle Atlantic Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider two industry proposals to amend the Middle Atlantic Federal milk marketing order. One proposal would allow a producer's milk, which is normally associated with the market, to shift to other Federal order markets without adversely affecting the dairy farmer's base during the August-December, 1984 base-forming period. The other proposal would relax the pool qualification requirements of a reserve processing plant operated by a federation of cooperatives. Proponents contend that these changes are needed to reflect current marketing conditions and promote efficient milk handling practices. It has been requested that the proposals be considered for adoption on an expedited basis.

DATE: The hearing will convene at 10:00 a.m. on September 13, 1984.

ADDRESS: The hearing will be held the TransPotomac Plaza Conference Center, 1199 North Fairfax Street, Alexandria, Virginia 22314, (703) 549-1160.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the TransPotomac Plaza Conference Center, 1199 North Fairfax Street, Alexandia, Virginia 22314, beginning at 10:00 a.m., on September 13, 1984, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area.

Since the 1984 base-forming period (August-December) has already begun, dairy farmers should be informed as soon as possible as to which deliveries will count toward the establishment of their bases in such period. For that reasons, the Department has concluded that less than 15 days' notice of the hearing is warranted in this proceeding.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

This hearing is a reopening of a hearing held July 19-October 26, 1983, which principally involved consideration of the expansion of the marketing area. The hearing is reopened for the limited purpose of receiving evidence with respect to the economic and marketing conditions which relate to the computation of base for each producer and the pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small business. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

PART 1004—[AMENDED]

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Maryland and Virginia Milk Producers Association, Inc.: Proposal No. 1

Revise paragraph (a) of § 1004.92 to read as follows:

§ 1004.92 Computation of base for each producer.

* * * * *

(a) For any producer, except as provided in paragraphs (b) through (f) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the preceding months of August through December. However, during the August–December, 1984 base-forming period only, the quantity of milk receipts shall include the total pounds of milk received from such producer: (1) As producer milk by pool handlers; and (2) as dairy farmer milk pooled on some other Federal order(s), which was reported and eligible to be diverted as producer milk pursuant to § 1004.12(d) but is subject to the classification and pricing provisions of such other order(s) issued pursuant to the Act and § 1004.12(f)(4).

* * * * *

Proposed by Atlantic Processing, Inc.: Proposal No. 2

Revise paragraph (d)(2) of § 1004.7 to read as follows:

§ 1004.7 Pool plant.

* * * * *

(d) * * *

(2) A reserve processing plant operated by a federation of cooperative associations at which milk of member producers of the cooperatives is received if the total of fluid milk products (except filled milk) transferred from such federation plant(s) to, and the milk of member producers of the cooperatives physically received at, pool plants pursuant to § 1004.7(a) is not less than 30 percent of the combined milk of member producers of the cooperatives during the month: *Provided*, That if a pipeline is maintained between the pool plant and the nonpool plant, the market administrator shall determine such plant's eligibility for pool status on the basis of receipts and disposition of milk at the plant. If the market administrator determines that the pipeline was used to transfer producer milk to the nonpool plant, the plant shall not be a pool plant.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Joseph D. Shine, P.O. Box 710, Alexandria, Virginia 22313, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Middle Atlantic Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C., on August 30, 1984.

William T. Manley,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 84-23576 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1033

[Docket No. AO-166-A52]

Milk in the Ohio Valley Marketing Area; Partial Decision on Proposed Amendments to Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts several changes in the Ohio Valley milk marketing order based on proposals considered at a public hearing held in October 1983. The changes adopted herein will: (1) Eliminate minus location adjustments at plants located outside the marketing area and generally to the south and east of such area; (2) impose a charge on handler payment obligations that are overdue; (3) reduce the qualification requirements for pool plants; (4) adopt less-restrictive diversion provisions; and (5) revise certain handler reporting requirements. Also, the decision revises the method of payment for bulk fluid milk products received from a pool plant operated by a cooperative association. These amendments are necessary to reflect current marketing conditions and to assure orderly marketing in the area.

Cooperation associations supplying milk for the market during June 1984 will be polled to determine whether producers favor the issuance of the proposed amended order. The amended order must be approved by at least two-thirds of the producers supplying the milk for the marketing area or by producers supplying at least two-thirds of the volume produced for the market to become effective.

FOR FURTHER INFORMATIN CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued September 26, 1983; published September 29, 1983 (48 FR 44565).

Suspension Order: Issued December 6, 1983; published December 12, 1983 (48 FR 55275).

Suspension Order: Issued December 12, 1983; published December 16, 1983 (48 FR 55829).

Suspension Order: Issued January 12, 1984; published January 17, 1984 (49 FR 1980).

Termination Order: Issued February 24, 1984; published February 29, 1984 (49 FR 7353).

Suspension Order: Issued March 16, 1984; published March 22, 1984 (49 FR 10656).

Partial Recommended Decision: Issued July 11, 1984; published July 16, 1984 (49 FR 28721).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Columbus, Ohio, on October 12–13, 1983. Notice of such hearing was issued on September 26, 1983 and published September 29, 1983 (48 FR 44565).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on July 11, 1983 filed with the Hearing Clerk, United States Department of Agriculture, his partial recommended decision containing notice of the opportunity to file writtem exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the partial recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under issue 1—*Pool plant qualification requirements.*

(a) *Distributing plant.* Three new paragraphs are added at the end of the discussion.

(b) *Supply plant.* Two new paragraphs are added after paragraph 10.

2. Under issue 3—*Location adjustments.* Two new paragraphs are added after paragraph 19; and one new paragraph is added after paragraph 22.

The material issues on the record of the hearing relate to:

1. Pool plant qualification requirements.
   (a) Distributing plant.
   (b) Supply plant.
   (c) Balancing plant operated by a cooperative association.
2. Diversion of producer milk.
   (a) Diversions between pool plants.
   (b) Producer delivery requirement.
   (c) Diversions from a pool plant to a nonpool plant
   (d) Limitation on diversions to nonpool plant
3. Location adjustments.
4. Elimination of the "take out/pay back" producer payment plan.
5. Adoption of an advertising and promotion program.
6. Administrative provisions.
   (a) Charges on overdue accounts.
   (b) Payments by handlers for milk received from a pool plant operated by a cooperative association.
   (c) Other reports.

This decision deals with all of the aforementioned issues except issues 4 and 5. A prior action dealt with issue 4 in which a termination order was issued on February 24, 1984 (49 FR 7353). The remaining issue 5 is reserved for a later decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pool plant qualification requirements.* In connection with the issue of pool plant qualification requirements, several proposals were considered at the hearing. The pool plant qualification requirements for distributing plants, supply plants, and balancing plants operated by cooperatives are discussed in the following findings.

(a) *Distributing plant.* The total route disposition requirement, which varies seasonally and must be met by distributing plants to qualify for pool status under the order, should be reduced by ten percentage points each month. The minimum requirement should be lowered from 50 to 40 percent of a plant's receipts for the months of September through February and from 45 to 35 percent of such receipts in the months of March through August.

Beatrice Foods Company (Beatrice) and Defiance Milk Products Company (Defiance) proposed that the minimum route disposition requirement be reduced by 10 percentage points each month. Beatrice operates four distributing plants that are fully regulated under the order. Defiance operates a nonpool manufacturing plant at Defiance, Ohio. Until September 1983, this plant had been a pool supply plant under the order for many years.

The Beatrice witness testified that it qualifies its four distributing plants as a unit. Under this pooling arrangement, the receipts and disposition of each distributing plant in the unit are combined and treated as a single plant for the purpose of meeting the total route disposition requirement. However, he indicated that it has been extremely difficult for the handler to meet this requirement even on a unit basis in certain months without depooling some of the milk of dairy farmers and/or making uneconomic milk movements. This is evidenced by the numerous requests by the handler that the requirements be suspended.

For instance, these requirements were suspended for certain spring and summer months of 1982 and 1983 at the request of the handler. Also, since the hearing, these requirements were further suspended, for December 1983 through August 1984 at the request of Beatrice.[1]

The witness for Beatrice testified that the supply-demand conditions justifying his company's past suspension requests can no longer be considered temporary. He stated that the market's producer receipts have risen gradually over the past few years, while at the same time Class I sales have declined dramatically. This trend has been even more pronounced lately and a year-round reduction in the route disposition standards is warranted now, in the handler's opinion.

A witness for the other proponent, Defiance, also testified in support of reducing the minimum route disposition requirement. He testified that adoption of a lower pooling standard for a distributing plant would assist him in maintaining a supply arrangement that has existed for many years between his supply plant and the local pool distributing plant of Arps Jersey Farms (Arps) during the period that his supply plant is not a fully regulated pool plant under the order.

A witness for Arps also testified in support of the proposal to lower the route disposition requirement. The handler witness testified that additional flexibility is needed to accommodate the recent changes in marketing conditions. Since the distributing plant's source of supplemental supplies (the former pool supply plant of Defiance) is no longer a pool plant, the only practical means for such handler to continue his relationship with such plant is for him to associate the milk of producers who were formerly shipping to the Defiance supply plant with his distributing plant and divert any excess seasonal supplies to the nonpool manufacturing plant of Defiance. In view of these circumstances, the distributing plant operator contends that the lower minimum pooling requirements will be needed to safely assure pool status for all of the milk supplies associated with his distributing plant. He further testified that since the Defiance supply plant is no longer a pool plant, supplemental milk received at his pool distributing plant from such supply plant is considered a receipt from an unregulated supply plant under the order and any such milk assigned to Class I at his pool distributing plant is subject to a compensatory charge.

The National Farmers Organization (NFO) also supported the joint proposal of Beatrice and Defiance to lower the route disposition requirements for distributing plants. NFO took the position that the proposed change is warranted to accommodate the pooling of milk of producers who have been historically associated with the market in the most efficient manner.

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[1] Official notice is taken of the issuance of three suspension orders by the Department on December 12, 1983, January 12, 1984, and March 19, 1984, respectively.

The Ohio Valley order became effective with the merger of five Federal milk orders in 1970. The current total route disposition precentages for distributing plants were adopted at that time.

Record data indicate that Class I use of the market's producer milk averaged 68 percent during 1971, which was the first full year's operation of the order. In contrast, fluid use represented only 58 percent (10 percentage points lower) of producer milk during 1982. Moreover, the relationship between producer receipts and Class I sales has deteriorated further. For instance, producer receipts in the first eight months of 1983 were up nine percent from the same months a year earlier while producer milk used in Class I was down five percent during the period. Class I use represented less than 50 percent of the market's producer milk during the first eight months of 1983. With a supply-demand balance considerably different now from when the minimum route disposition requirement was adopted, it is appropriate that the requirement be adjusted downward to reflect current marketing conditions.

Milk Marketing Inc. (MMI), the market's principal cooperative, opposed the proposal at the hearing primarily on the basis that, if the lower requirements are adopted, milk which is eligible for pool status could be pre-committed to manufacturing uses and not be available to meet the market's fluid needs. The association was also concerned that additional milk supplies could be attached to the Ohio Valley market.

The cooperative's opposition is purely speculation. There is no evidence on this record that the marketing practices which concern the association are likely to take place. Furthermore, there is no basis to conclude that the lower pooling requirements for distributing plants would jeopardize the milk supply for bottling plants in this market.

Also, the change should not result in additional milk becoming associated with this market, because essentially all of the milk eligible for fluid uses in this general area is already pooled under this or another order. Rather, this change should enable more efficient pooling of the market's current milk supplies under existing marketing conditions. Accordingly, the objections of MMI of the adoption of the proposal must be overruled.

In its exception, MMI repeated its opposition to the proposed lower route disposition requirements for distributing plants. In the cooperative's opinion, the adoption of such lower standards would make less milk available for fluid needs. Further, exceptor stated that the market's supply-demand situation has tightened since the hearing.

We are aware that the relationship between the market's producer supplies and Class I use has improved somewhat in recent months. However, the change has not been dramatic. There is no basis to conclude that the lower pooling requirements for distributing plants adopted herein will jeopardize the availability of milk at such plants in light of the market's slightly improved supply-demand balance. Also, if the present downward trend in milk production continues this issue could be explored at another hearing.

Accordingly, for the reasons set forth previously there should be no departure from the recommended decision with respect to lower route disposition requirements for distributing plants.

(b) *Supply Plant.* The minimum delivery requirement to qualify a supply plant for pool status under the order each month should be reduced 15 percentage points from 50 percent to 35 percent of such plant's receipts. Also, the order should provide that a supply plant may qualify for pool status on the basis of both transfers and diversions of milk from the supply plant to pool distributing plants. However, such qualification credit for diversions should be limited to not more than one-half of the required deliveries.

A proposal to lower the monthly delivery requirement for supply plants from 50 percent to 35 percent was made by Defiance Milk Products Company. Beatrice supported the proposal. Arps, the Defiance, Ohio, pool distributing plant operator who has relied on the former pool supply plant of Defiance to furnish it with milk in the past, also supported the lower pooling requirement for supply plants.

Proponent stated that the lower delivery requirement is warranted because of changes in marketing conditions. In this connection, proponent cited several changes in marketing conditions that justify a downward adjustment in the order's supply plant performance requirement. He testified that generally the market's milk production is up and fluid sales are down.

He also testified about how the closing of the Babcock Dairy Company (Babcock) pool distributing plant located at Toledo, Ohio in April 1983 impacted on his operations. Proponent pointed out that his supply plant had been pooled under the orders for many years, based in large part on its shipments to this distributing plant. Consequently, when that handler ceased fluid milk operations, the supply plant lost a significant outlet for its milk. He was unable to make arrangements with other distributing plants to buy his milk. Hence, when the new qualifying period for supply plants began on September 1, 1983, his supply plant could not meet the 50-percent requirement to qualify as a pool plant. Thus, the producers who had shipped their milk to the Defiance supply plant for may years had to find another outlet for their milk because the nonpool plant operator was not in a position to pay a competitive price to such dairy farmers when their milk was not pooled.

As was the case with the minimum route disposition requirement for distributing plants, the minimum shipping requirements (50 percent) for supply plants was adopted for this market when the merged Ohio Valley order became effective in 1970. This market's supply-demand balance has changed significantly since that time.

For instance, during 1971 producer milk used in Class I represented 68 percent of producer deliveries. In contrast, Class I utilization of producer milk for the market was more than 18 percentage points lower and averaged less than 50 percent during the first eight months of 1983.

It should be noted that the trend to fewer and larger milk processing plants in addition to the increase in milk production and decrease of fluid milk sales has had a significant impact on the method of marketing milk under the Ohio Valley order. For instance, the record shows that nineteen distributing plants that were pooled under the order in January 1978 were not pool plants for August 1983.

In view of the foregoing, supply plant operators should be afforded as much flexibility as is prudent and practical under the order to deal with these changes in marketing conditions. Accordingly, it is appropriate that the delivery requirement for supply plants be reduced at this time to more nearly reflect prevailing marketing conditions. The 35-percent delivery requirement adopted herein effectively places such minimum requirement at about the same level of performance now with respect to the marketwide Class I utilization as it was when the 50-percent requirement was adopted.

The 35-percent delivery requirement is a reasonable and realistic standard for supply plants. It will continue to insure a substantial association of a plant's milk supplies with the market's fluid needs but at a level that will not impede the pooling of plants regularly supplying the marketing area. At the same time, it will tend to avoid the possibility of supply plant operators engaging in unnecessary and uneconomic milk movements simply for pool qualification purposes as has been the case in some instances.

MMI opposed the proposal to lower the delivery requirement for supply plants for the same reasons that the cooperative opposed the proposal to reduce the route disposition requirements for distributing plants. It would burden this decision to reiterate the same positions and rulings in connection with this issue since those arguments have already been dealt with in earlier findings of this decision. Accordingly, the cooperative's objections are overruled for the same reasons they were with respect to the lower requirements for distributing plants.

In its exceptions, MMI claimed that the lower pooling requirements for distributing plants and supply plants adopted herein would allow the distributing plant of Arps and the supply plant of Defiance to operate in concert, if they wish, and thereby qualify considerably more milk for pool status under the order. In the cooperative's opinion, under the lower pooling standards these two plant operators could attach significantly more milk with their plants and could dispose of the excess supplies for manufacturing purposes rather than making it available to the fluid market. For that reason, the cooperative contended that the pooling requirements for distributing plants and supply plants should be maintained at the current levels.

It is true that the lower pooling requirements for such plants theoretically would permit the same amount of route disposition by a distributing plant to qualify more milk for pool status under the order. However, there is no evidence on this record that the hypothetical pyramiding effects posed by MMI at the hearing and in its exceptions will in fact actually take place in this market. As a matter of fact, it should be noted that the Defiance supply plant has not been able to meet the present 50-percent shipping standard to qualify as a pool plant. Accordingly, the position of the exceptor is not supportable and there is no basis for reaching a different conclusion on this issue.

In connection with the issue of appropriate pooling requirements for supply plants, MMI proposed that a supply plant operator be permitted to deliver milk directly from the farms of producers and count such deliveries for qualification purposes. The witness for the cooperative testified that the adoption of this proposal would encourage efficiency in moving milk supplies to distributing plants when needed. In this regard, he indicated that while supply plants may be needed to meet daily variations in demand for fluid milk at distributing plants, much of the milk that goes through supply plants in this market could be moved more efficiently directly from the farm to such processing plants. In such cases, he claimed, it would be appropriate to accommodate such direct movements of milk under the order by crediting the supply plant with the delivery for qualification purposes.

As the proposal appeared in the hearing notice, a supply plant could qualify entirely on diversions of milk from the supply plant to pool distributing plants. However, MMI modified its proposal at the hearing to allow only up to one-half of the required deliveries to be met by diversion from the farms of producers. The cooperative considered such a limit necessary to insure that any supply plant qualified under the order has a "bona fide" association with this market.

A witness for MMI testified that the cooperative operates a supply plant located at Sardinia, Ohio. Some of the farms of producers associated with this plant are situated between Sardinia and Cincinnati where the pool distributing plants serviced by the Sardinia operation are located. Under the MMI proposal, milk could be moved directly from the farms of producers to a distributing plant in Cincinnati and be counted as a qualifying delivery from the Sardinia supply plant.

Under current order provisions, only the milk received at a supply plant and then transferred to a distributing plant counts toward a supply plant's qualification as a pool plant. This requirement, however, in some cases results in milk movements and milk handling practices that are other than the most economical and efficient. Allowing up to one-half of the required deliveries to be made by diversion, will give supply plant operators more flexibility in moving their milk supplies.

Defiance supported the proposal of MMI as contained in the hearing notice allowing all qualifying deliveries from supply plants to be diverted to pool distributing plants. The handler spokeman considered MMI's modification of its initial proposal to be unnecessary. However, the spokesman for Defiance recognized that some limit on using diversions for the purpose of qualifying supply plants may be needed to prevent a distant plant having no association with this market from becoming pooled under the order.

To the extent possible, the order should promote efficient milk handling practices. By permitting a supply plant operator to move at least part of the milk supplies associated with such plant directly from farms to distributing plants and to count such movements as part of the supply plant's qualifying deliveries promotes economic and efficient milk movements. As indicated, there are obvious savings in hauling costs that could be achieved in this market under such an arrangement. In addition, extra pumping of milk in reloading operations could be avoided, which would help preserve the high quality of the milk that distributors demand.

Allowing the milk to move directly from the farm and recieve partial credit toward pool plant qualification would not lessen in any way the effectiveness of the delivery requirement. A supply plant would still have to make available to pool distributing plants not less than 35 percent of the milk received from dairy farmers that is associated with the supply plant. It should, however, promote less costly milk handling practices by supplying plant operators in certain cases.

Although the order should recognize a supply plant operator's deliveries of milk directly from producers' farms to pool distributing plants, a supply plant should not be able to qualify for pooling solely on the basis of such deliveries. Otherwise, there would be little discernable difference from an operational standpoint between a supply plant and a balancing plant operated by a cooperative association. Yet, the pooling standards for the two types of plants would be considerably different.

Adoption of this concept without any limitation on diversions would enable a supply plant to qualify as a pool plant without being required to transfer any milk from the supply plant to distributing plants. Pooling status could be achieved as long as the supply plant operator delivered at least 35 percent of its milk supply to pool distributing plants, which could be entirely by deliveries directly from the farms of producers. A similar method of pooling is now available to a cooperative association in the case of its balancing plant. However, the cooperative must deliver ar least 50 percent each month (or 50 percent during the most recent 12-month period) of its member producer milk to pool distributing plants. No automatic pooling is provided for such plants during the heavy production months, as is the case for supply plants.

Since there presumably would be little difference in the supply arrangements of the two types of handlers, the question arises as to whether any difference in the method of qualification for a cooperative's balancing plant and for a handler's supply plant can be justified. The record does not totally support the use of the pooling concept for balancing plants in connection with the pooling standards applicable to supply plants.

Accordingly, to maintain some distinction between the two types of plant operations, the order should not permit more than one-half of the required milk deliveries by a supply plant operator to be in the form of diversions to distributing plants. Under the current operating situation, this would allow more flexibility to supply plant operators serving the market. At the same time, the order would continue to base a supply plant's eligibility for pooling to a significant degree on transfers of milk from the supply plant to distributing plants.

(c) *Balancing plant operated by a cooperative association.* The order should continue to afford pool status to a plant operated by a cooperative on the basis of the association's overall marketwide performance. However, pool status for such plants should not be limited to plants that manufacture dairy products.

The current order limits the pooling of a so-called "balancing plant" to plants operated by a cooperative association at which dairy products are manufactured. Hence, the lack of manufacturing operations at a cooperative's plant precludes the plant from qualifying as a balancing plant under the order even though the association meets the other performance requirements.

NFO proposed that a cooperative's supply plant that is not involved in manufacturing be permitted to qualify on the same basis as a balancing plant operated by a cooperative that manufactures dairy products. Proponent contended that the additional flexibility is needed to accommodate plants without manufacturing facilities that perform a comparable supply function for the market. There was no opposition to the proposal either at the hearing or in briefs.

Pool status should be afforded to a cooperative's plant even though manufacturing operations are not conducted at the plant, if the association otherwise meets the requirements for pool status. The most important consideration concerning such a plant's pool status is the cooperative's overall supply function for the market rather than whether the plant is manufacturing dairy products. Hence, the manufacturing requirement most appropriately should be eliminated.

The order would continue the monthly 50-percent delivery requirement presently imposed on a cooperative to qualify its balancing plant(s). However, the percentage could be met on the basis of the cooperative's deliveries to pool distributing plants during the current month or it could be met on the basis of such deliveries during the preceding 12-month period ending with the current month. The 12-month rolling average concept was proposed by NFO. This modification is needed to temper the effect of a dramatic change in marketing conditions from one month to the next, many of which are beyond the control of the cooperative. For instance, if a major fluid milk outlet of the cooperative unexpectedly goes out of business, the cooperative's balancing plant might lose its pool status. Allowing the association the flexibility to use a rolling average of its deliveries to distributing plants over the preceding 12 months, would lessen the impact of any dramatic change in marketing conditions.

As proposed by NFO and adopted herein, pool status for a balancing plant would be conditioned on a request by the association that its plant be so considered. Under the present order provisions, the cooperative must file a written request for nonpool status for its balancing plant. The positive and more straightforward approach whereby the cooperative requests pool rather than nonpool status for its plant is more appropriate and accomplishes the same intent. Accordingly, that procedure is adopted herein.

As the order currently provides, a balancing plant must be approved by the appropriate authorities to handle milk for fluid consumption. Such approval would be vested in the duly constituted regulatory agency having jurisdiction over the health standards for such milk and plants supplying the marketing area. Such a condition is needed because part of the justification for providing pool status to such plants is that they are available to make spot shipments on request to the market's pool distributing plants when the milk is needed there. If such approval is not included as a condition for pool status, the plant might let its approval lapse. In that event, the plant could not be called upon as a source of supplemental milk for the market's distributing plants.

The final condition imposed on the cooperative to pool its balancing plant would be that such plant does not qualify as a pool distributing plant or a pool supply plant under this or any other Federal milk marketing order. Any plant which meets the pool plant qualification requirements on the basis of performance as a distributing plant or a supply plant of any Federal order should not be afforded pool status on a request basis as a balancing plant pursuant to the provisions of this order. Such pooling procedures will insure the integrity of regulation under Federal milk orders in that plants will be pooled on the basis of their performance in the markets involved rather than on the basis of their request.

In connection with its proposal to provide pool status to a cooperative's supply plant as a balancing plant, the NFO representative testified that the delivery requirement for balancing plants be set at no higher level than the delivery requirement for supply plants. As already indicated, there are basic differences in the marketing operations of supply plants and balancing plants of cooperatives. For example, a cooperative's total milk deliveries (by transfer, diversion or as a bulk tank handler) to the market's pool distributing plants may count to qualify its balancing plant and all such deliveries may be made directly from the farms of producers. On the other hand, a supply plant qualifies as a pool plant on the basis of deliveries from such a plant either by transfer or diversion and, as is recommended herein at least one-half of the required deliveries must be by transfer. Thus, the differences in the pooling requirements for these two types of pool plants (supply and balancing) were designed specifically to accommodate the operational differences of these handlers in supplying the market's distributing plants.

In certain respects, it may seem that a supply plant operator will have an advantage in qualifying such a plant for pool status under the order over a cooperative in qualifying its balancing plant in that the cooperative must deliver 50 percent of its member producer milk to distributing plants each month while a supply plant must furnish only 35 percent of its receipts to distributing plants during the month. However, if any cooperative considers that to be the case, there is nothing in the order to prevent the association from modifying its operations to the extent necessary to qualify such plant as a supply plant.

2. *Diversions of producer milk.* Several proposals to change the rules pertaining to the diversion of producer milk were considered at the hearing. They relate to the following material issues: (a) Diversions between pool plants; (b) producer delivery requirement; (c) diversions from a pool plant to a nonpool plant; and (d) limitation on diversions to nonpool

plants. The ensuing discussion covers each of these issues.

(a) *Diversions between pool plants.* The order should be amended to allow milk to be diverted from any pool plant (by the plant operator) to another pool plant. Such movements should not be limited.

Under the current order provisions, milk may be diverted from a pool distributing plant to another pool plant. However, milk may not be diverted from a pool supply plant or from a cooperative's pool balancing plant to another pool plant. In certain instances, such limits do not encourage the most efficient movement of the market's milk supplies.

MMI proposed that the order be revised to allow diversions from any pool plant (distributing, supply or balancing) to another pool plant. NFO supported the proposal. There was no opposition to it.

In support of its proposal, a witness for the association testified that the order provisions should facilitate efficient milk marketing practices. He indicated that the association has experienced marketing problems in certain instances because the order does not permit the association to divert milk from its balancing plants to other pool plants.

The MMI witness testified that certain of its producers are assigned to its balancing plant at Goshen, Indiana and, thus, their milk is received at such plant on a regular basis. Occasionally, such milk is needed at a distributing plant. However, the milk may not be diverted from the Goshen plant to the pool distributing plant because the current order does not accommodate such movements. The only way for the cooperative to maintain pool accountability for such milk at the Goshen plant is to physically receive the milk at such plant and then transfer it to the distributing plant. These milk handling practices are costly.

As an alternative pooling arrangement, the cooperative could deliver the milk to the distributing plant directly from the farms of producers and pool it as a bulk tank handler under § 1033.16(c). However, in such cases, the milk of certain producers would be included on two reports (the report for the Goshen plant and the report for the cooperative as a bulk tank handler). Proponent insisted that including part of an individual producer's milk on two different handler reports for the same month is cumbersome.

The proposal should be adopted. The order should recognize the need for occasional movements of milk associated with balancing plants of cooperatives to other pool plants. As adopted herein, a cooperative could divert milk from its balancing plant to other pool plants when the milk is needed there and maintain pool accountability for the milk at the balancing plant. This change will allow the milk to move to the pool plant where it is needed directly from the farm rather than through an intermediate plant.

There is no reason to limit diversions between pool plants. Since any milk of a producer that is received at a pool is eligible to be pooled, limiting diversions between such plants would serve no purpose.

Allowing diversions between pool plants, also provides the technical means under the order for milk to be delivered by a supply plant operator directly from producers' farms to pool distributing plants and to be counted as qualifying delivery from the supply plant. Also, it will allow the operator of any pool to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk.

(b) *Producer delivery requirement.* The order's producer delivery requirement, commonly referred to as a "touch-base" requirement, should be relaxed. In this regard, only one day's milk production rather than two days' as now, of an individual dairy farmer should be required to be physically received at a pool plant during the month to qualify such producer's milk for diversion to nonpool plants in such month. Also, the touch-base requirement should apply only during the three months of September through November rather than in each month of the year as the order now provides.

NFO proposed the changes adopted herein with respect to the touch-base requirement. Proponent's witness testified that requiring a producer's milk to be physically received at a pool plant in each of three months when the market's fluid needs are greatest adequately demonstrates a dairy farmer's association with the market and the farmer's eligibility to share in the marketwide pool. The witness also suggested that one day's production instead of two days' milk production of a dairy farmer be required to be received at pool plants during such months to demonstrate a producer's association with the market. He argued that this change is needed because many of its producers are picked up every day. In some instances, the milk of such farmers is picked up on routes with other producers whose milk is picked up every other day. This results in four days' milk production of certain dairy farmers being received at pool plants solely to insure that all of NFO's producers meet the minimum touch-base requirement for the month.

In its brief, MMI supported NFO's proposal to relax the touch-base requirement. The cooperative agreed with the arguments presented by proponent at the hearing. In the association's opinion, these two changes are needed to give handlers greater flexibility to accommodate the efficient pooling of the market's milk supplies that are in excess of fluid needed. It claimed that the less stringent requirement should be adequate to assure that each dairy farmer's milk has a bona fide association with the market.

Following the October hearing, the touch-base provisions were suspended at the request of MMI.[2] The action was taken on the basis of the record and applied to the months of December 1983 through August 1984. The suspension was granted to assist handlers with the efficient and orderly disposition of the market's reserve milk supplies pending completion of the rule-making proceeding on this issue.

As noted previously, the requirements to qualify distributing plants, supply plants and cooperative balancing plants for pool status under the order are relaxed in this decision. Also, less-restrictive diversion provisions are adopted. These changes make it easier to qualify milk for pool status under the order. They also promote efficient milk marketing practices by handlers. To be consistent with such changes, the producer touch-base requirement should be relaxed also.

Requiring one day's production of a dairy farmer to be received at a pool plant during each of the months of September–November is sufficient to demonstrate that a producer is genuinely associated with the fluid market. The September–November period represents a time when the market's fluid needs are greatest. The minimum requirement adopted herein should adequately serve this market because it will continue to assure that the milk of each individual producer is available for the fluid needs of the market and yet it will recognize the changes that have resulted in the relationship between milk production and fluid demand.

Also, it will allow a handler who diverts on an aggregate basis greater flexibility in that he may pick and choose which producers to divert. By so doing, the handler may divert the milk of those dairy farmers that can most efficiently be diverted. Although this change would not increase the total amount a handler may divert, it would allow such person to divert the milk of those producers whose farms are so located in relation to the nonpool plant that their milk is the least costly to divert.

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[2] Official notice is taken of the issuance of a suspension order by the Department on December 6, 1983 (48 FR 55275).

In connection with its touch-base proposal, NFO requested that a pool plant operator be permitted to divert the milk of a producer who is a member of a cooperative. The current order accommodates this situation. Accordingly, the order should continue to permit the operator of a pool plant to divert the milk of any member-producer during the month unless the cooperative is diverting such person's milk.

(c) *Diversions from a pool plant to a nonpool plant.* The order also should be amended to allow milk to be diverted from any pool plant to a nonpool plant.

Under the current order provisions, milk may be diverted from a pool distributing plant or a pool supply plant to a nonpool plant. However, milk may not be diverted from a cooperative's pool balancing plant to a nonpool plant.

MMI proposed that the order be revised to allow milk to be diverted from any pool plant to a nonpool plant. NFO supported the proposal. No one opposed it.

The witness for the proponent association testified that this change is needed to promote efficient milk handling practices. He contended that not permitting milk to be diverted from a balancing plant to a nonpool plant has resulted in inefficient movements of reserve milk supplies to manufacturing outlets. In support of that contention, the witness for the proponent cooperative testified that processing capacity at its balancing plants has not kept pace with the market's milk production increases. Thus, the cooperative at times must move reserve milk that is regularly assigned to these plants to other manufacturing outlets. The cooperative's witness indicated that such milk could be moved more efficiently directly from the farms of the producers involved to a nonpool manufacturing plant. However, the current order does not permit milk to be diverted from a balancing plant to a nonpool plant.

The record shows that the milk moving to MMI's balancing plant at Goshen, Indiana, incurs high hauling costs because of the plant's location outside the marketing area. Because of its location, certain producers are assigned to such plant on a regular basis. At times, there are alternative manufacturing outlets closer to where the milk is produced. However, dairy farmers whose milk is regularly associated with the Goshen plant could not be delivered to the nonpool plant directly from the farm and be pooled as diverted producer milk from the balancing plant under the current order provisions.

MMI could maintain pool status for milk of such producers by receiving the milk at Goshen and transferring it to the nonpool plant. However, such milk handling practices are costly. This is an example where the order provisions do not provide adequate flexibility for handlers to market the order's reserve milk supplies in the most efficient manner

The order should facilitate the movement of milk in excess of the market's fluid needs by permitting the milk to move directly from the farms of producers to a nonpool plant to the extent possible. No purpose is served when milk is moved to and received at an intermediate plant simply to qualify it for pool status under the order.

Allowing milk to be diverted from any pool plant to a nonpool plant is consistent with the other pooling changes adopted in this decision which makes it easier to qualify milk for pool status under the order. Accordingly, the orders should be modified to allow milk to be diverted from the balancing plant of a cooperative to a nonpool plant. This change provides a cooperative more flexibility to move its milk more freely among various outlets in balancing supplies for the fluid market.

(d) *Limitation on diversions to nonpool plants.* The limit on the quantity of milk that may be diverted to nonpool plants by handlers during the months of September through February should be increased by 10 percentage points from 40 to 50 percent. Also, the quantity of milk to which the limit applies should be expanded to include all of the handler's producer milk, i.e., the amount physically received at or diverted from the pool plant(s) rather than only the quantity physically received at such pool plant(s).

The current order limits the total amount of milk that a handler (cooperative or pool plant opertor) may divert to nonpool plants to 40 percent of the producer milk physically received at the pool plant(s) during the month. Under the 40-percent limit, handlers, in effect, may divert only about 29 percent of their producer milk.

NFO proposed that the limitation on the amount of milk a cooperative may divert to nonpool plants be increased. The witness for proponent maintained that the order's present limit on such diversions no longer reflects prevailing marketing conditions. There was no opposition to the proposal either at the hearing or in post-hearing briefs.

Proponent cited numerous changes in marketing conditions that have occurred since the present limitation was adopted. For example, the number of pool plants has decreased (19 less than in 1978) and those remaining are located at or near the major population centers. Also, the number of nonpool plants available for surplus disposal has decreased (18 less than in 1978) and most of those remaining are located at great distances from the pool plants. Transportation costs have risen substantially. In addition, the portion of the market's producer receipts needed to meet its fluid requirements has declined dramatically.

The witness for NFO argued that these changes indicate that a higher diversion allowance for handlers is now warranted. Such changes, he pointed out, have resulted in uneconomic milk movements solely for the purpose of qualifying milk for pool status under the order. These movements also have resulted in a loss of income to dairy farmers, he added.

The present limit is too stringent in view of the market's Class I use of producer milk. For instance, during the first eight months of 1983, such utilization ranged from a high of 54 percent to a low of 44 percent and averaged below 50 percent.

The record shows that during September 1982-February 1983, NFO moved substantial quantities of milk to pool plants solely for the purpose of qualifying its milk that has been historically associated with this market. In this regard, the milk was moved to a pool plant, where is was unloaded, then reloaded, and moved to a nonpool manufacturing plant. The milk was delivered to such pool plant rather than directly to the nonpool plant simply to increase the handler's deliveries to pool plants, because the diversion allowance is based on such deliveries, i.e., the more the handler delivers to pool plants the more it may divert. By following this procedure the handler increased the amount of milk it could qualify for pool status under the order. However, such milk handling practices are costly and should be eliminated to the extent possible. Also, the quality of the milk deteriorates when such handling procedures are followed.

The record also indicates that the NFO used the same procedures to pool its milk in September and October, 1983. Most likely, if the supply-sales balance does not improve considerably, more uneconomic movements will need to be made by handlers to maintain pool status for their milk supplies in the future.

In view of these changes in marketing conditions, the current allowance on diversions to nonpool plants should be increased. The higher allowance should enable handlers to pool their available milk supplies without the need to move milk back and forth between plants solely for the purpose of maintaining its pool status under the order.

As noted previously, in computing a handler's diversion allowance, the base to which the diversion percentage applies should include the amount of producer milk delivered to the pool plants plus the amount diverted from such plants. This change together with increasing the amount of milk that may be diverted by 10 percentage points will increase the amount of milk a handler may divert to nonpool plants from about 29 to 50 percent of a handler's total receipts of producer milk. Such an increase should permit handlers adequate flexibility to operate more efficiently. They will be able to move milk which is not needed for fluid purposes directly from the farm to a nonpool manufacturing plant rather than delivering the milk to an intermediate pool plant and then transferring it to the manufacturing plant. Allowing the market's milk supplies that are in excess of the needs at distributing plants to be moved in the most efficient manner possible promotes orderly marketing. Accordingly, the two changes to allow increased diversions are adopted.

NFO proposed that the limit be raised for cooperatives only. However, it is appropriate to relax the corresponding diversion limit for pool plant operations also. In view of the market's supply-sales situation, it would appear that proprietary operators may have a similar need for less-restrictive diversion provisions. Under the provisions adopted herein, pool plant operators will continue to be subject to the same limitation on diversions to nonpool plants as cooperatives. Hence, both handlers (pool plant operators and cooperatives) would be treated equally with respect to the amount of milk they may divert to nonpool plants under the order.

The present provisions allow a handler to divert milk on an individual producer basis. Although proponent acknowledged that it is generally more efficient to divert on an aggregate percentage basis, the witness testified that the order should continue to provide both methods. However, with the higher aggregate diversion allowances for handler adopted herein, which are equal to those currently provided on an individual producer basis, there is no longer a need to allow for handlers to divert milk on an individual basis. Accordingly, these provisions are removed.

3. *Location adjustments.* The application of location adjustments at plants situated outside the marketing area should be revised. In this regard, no minus adjustments should apply at plants located in the Louisville-Lexington-Evansville (Order 46) marketing area or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia. At other unspecified plant locations outside the marketing area, the present application of such adjustments would be retained. Presently, the order provides that minus location adjustments apply at plants located outside the marketing area and 60 miles or more in any direction from the nearest of 10 basing points specified in the order.

MMI proposed that the application of minus location adjustments at plants outside the marketing area be change. Under the cooperative's proposal, a plant so situated would be subject to such an adjustment only if it was 130 miles or more from the nearest of the 10 basing points.

MMI operates a pool balancing plant a Goshen, Indiana and moves substantial quantities of milk to this facility for manufacturing. As proposed, this would be the only pool plant that would be affected by the cooperative's proposal. Consequently, most of the discussion at the hearing in connection with this issue focused on the appropriate prices (Class I and uniform) at the Goshen location.

Goshen is located in Elkhart County, Indiana. This county is part of the Indiana marketing area. It is in the minus 8-cent location adjustment area under that order.

In applying the current location adjustment provisions of the order to the Goshen plant, the nearest basing point is Lima, Ohio. Lima is in the Northwestern Zone where minus 5-cent location adjustment applies. Also, since Goshen is more than 60 miles from Lima, an additional minus location adjustment applies. In total, a location adjustment of minus 23.5 cents applies at Goshen.

Under the cooperative's proposal, the additional minus location adjustment, of 18.5 cents would not apply since Goshen is less than 130 miles from Lima. Thus, the same location adjustment applicable at plants in the Northwestern Zone (minus 5 cents) would apply at Goshen. The cooperative contended that milk diverted to the Goshen plant should not be priced lower than producer milk deliverd to Northwestern Zone distributing plants since such milk is a part of the fluid market's total supply.

In support of its position, proponent's witness testified that the trend to fewer and larger processing plants in addition to changes in the market's supply-sales balance has had a significant impact on the way milk is marketed under this order. He pointed out that nineteen distributing plants that were listed as pool handlers for January 1978 did not appear on such list for August 1983. Also, the amount of milk pooled under the order during the January-August 1983 period increased by more than 300 million pounds from the same eight-month period in 1978. On the other hand, the quantity used in Class I during those comparable periods decreased by almost 60 million pounds.

The spokesman for MMI, also pointed out that milk manufacturing plants have become fewer and larger. He indicated that in the past, most of the milk in excess of the market's fluid requirements was processed in nearby plants, primarily located in the marketing area. Now it must be transported longer distances as manufacturing facilities in the marketing area have closed. He further indicated that several manufacturing plants located in Ohio that were outlets for surplus milk in 1978 did not serve that purpose in 1983.

Because of these changes, the cooperative's witness stated that the MMI plant at Goshen, Indiana, now processes more of the market's reserve milk than any other manufacturing facility. Due to plant closing, the Goshen plant was expended recently to provide a market for producers whose milk is pooled under this order. Milk of producers located throughout central and western Ohio now is regularly received at Goshen for manufacturing purposes. Nearly three times the amount of milk was processed at that plant during January-August 1983 compared with the same eight months of 1978.

Proponent's witness, also, testified that most of the milk that is associated with the Goshen plant comes from the farms of producers located in the marketing area or from producers who formerly shipped to plants located in the marketing area. Also cited by the spokesman for MMI was that in April 1983, a major distributing plant located in Toledo, Ohio, which handled about 10 million pounds of milk each month, ceased operation. Such plant's Class I sales accounts were taken over by a handler regulated under the Southern Michigan order. However, the milk of producers who were associated with the plant now is being moved to Goshen for processing.

Proponent maintained that it is inequitable and unfair for producers to be paid a lower price for milk delivered to the Goshen plant than when it is delivered to distributing plants in the northwestern segment of the marketing area. Since all producers in a marketwide pool share in the higher-valued Class I sales, it is only fair that the cost of disposing of the market's reserve milk supplies be distributed equally among all of the market's producers, in the cooperative's opinion. For that reason the cooperative submitted the proposal.

In addition, the spokesman for MMI testified that the minus location adjustment applicable at Goshen should be reduced to cover a portion of the cooperative's transportation costs involved in hauling milk historically associated with the market to its Goshen plant for surplus disposal. By disposing of the market's reserve milk supplies, proponent's spokesman argued, the cooperative is performing a marketwide service which benefits all producers supplying the market. In the association's opinion, it should be compensated for providing this service.

Further MMI's witness indicated that during May 1983, milk marketings priced under the order from farms located in Indiana, Michigan and the Northwestern Zone of the marketing area were about 10 percent higher than in May 1978. Yet, the amount of milk priced at Goshen under the Ohio Valley order was up about 400 percent over a comparable time period.

It was MMI's contention that these data indicate that Goshen is a primary reserve processing plant for the milk of all producers on the market, not just those located outside the marketing area. During May 1983, MMI spent an additional $80,000 hauling milk that is normally delivered to nearby plants in the marketing area to its Goshen facility for manufacturing. In addition to the extra transportation cost, producers were penalized further because the uniform price for milk of producers received at Goshen was reduced by 23½ cents. MMI believes that from an equity standpoint some of the cost of disposing of the market's reserve supplies should be borne by all producers on the market rather than only those producers whose milk is priced at the reserve plant.

Proponent's witness also testified that a majority of the milk associated with the Goshen plant is obtained from farms of producers who are located in the marketing area in close proximity to distributing plants or who formerly shipped to pool plants that are so located. In either case, such milk is part of the market's reserve supply and must be moved to the more-distant Goshen plant for processing. There simply is not an alternative market for all of the milk produced within the marketing area. Because of this, the witness maintained that the normal justification for minus location adjustments does not fit the marketing situation. Hence, in proponent's opinion, the location adjustment provisions should be revised to more appropriately recognize how milk is marketed under the Ohio Valley order. The witness contended that adoption of its proposal will offset in part the costs involved in performing the balancing function for the market.

A representative of the Indiana Division of Associated Milk Producers, Inc. (AMPI), opposed the higher Class I and uniform prices at Goshen, Indiana as proposed by MMI. AMPI supplies two distributing plants near Goshen and it also operates a pool supply plant at Warsaw, Indiana. These plants, which are pool plants under the Indiana order, are located in the minus 8-cent location pricing area of that order. The spokesman for AMPI contended that adoption of higher prices at Goshen would cause procurement problems for the cooperative he represents in northcentral Indiana. For this reason, AMPI asked that the proposal be denied.

The Milk Foundation of Indiana (MFI) also opposed higher prices at Goshen. The handler group is made up of 13 members, each of which operates a pool distributing plant under the Indiana order. The group accounts for about 40 percent of the market's total fluid disposition.

The representative of MFI testified that the major production area for the Indiana market is located in northeast and northcentral Indiana where the Goshen plant is located. He contended that the price change that would be applicable at the Goshen plant under the proposal would result in serious misalignment of prices between the Ohio Valley and Indiana orders at that location.

A representative of the Kroger Company (Kroger) expressed concern about increasing prices under the Ohio Valley order at a plant location within the marketing area of the Indiana order. The handler spokesman suggested that some type of temporary relief might be more appropriate to accommodate the milk that lost its market as a result of the closing of the distributing plant of Babcock. In this regard, he suggested that the milk moving from the Northwestern Zone of the marketing area to Goshen for surplus disposal be priced at the Northwestern Zone price where the milk would be deemed to have been received for a limited period of time—say 12 months. This would give the association one year to make the necessary marketing adjustments and accommodate to such institutional change.

In its exceptions, MMI embraced the Kroger suggestion discussed in the preceding paragraph. Since the handler's recommendation would have alleviated temporarily the cooperative's surplus milk marketing problems, MMI urged its adoption as an appropriate alternative to its hearing notice proposal. The cooperative indicated that the findings and conclusions of the recommended decision failed to appropriately consider the handler's suggestion.

The Kroger recommendation was offered as a modification at the hearing. No information was presented by Kroger in support of its recommendation. Moreover, no mention of it was advanced by interested parties in their briefs. Hence, there is no basis to adequately evaluate the merits of Kroger's suggestion.

A representative of the Dean Foods Company (Dean) questioned the timing of making such a change in the location adjustment provisions. Dean operates a distributing plant under the Indiana order. He testified that the current oversupply situation may be corrected with the adoption of the legislation that the Congress had under consideration. If that becomes law, he indicated that the marketing problems of proponent might disappear.

The current location pricing provisions, which are based on zoning in the marketing area and on mileage in the outlying territory surrounding such area, were designed to encourage the movement of milk from supply areas to the main population centers of the market where it is processed for fluid uses. In this regard, higher prices are provided at locations where milk is needed for fluid use. They reflect the higher utility value of milk at that particular point. Lower prices are provided at plants located in outlying procurement areas as a transportation allowance to encourage the milk to move to the city plants for higher-valued fluid uses. If the prices at plants in the outlying supply area were the same as the city price, there would be no monetary incentive under the order to move the milk.

Higher location prices at Goshen should not be provided under the order for the purpose contemplated by proponent, i.e., to help compensate the cooperative for the cost of handling the market's reserve milk supply.

MMI excepted to the preceding paragraph on the basis that it implies that (1) "the change would more than offset the actual cost of transporting reserve supplies of milk to Goshen; and (2) the cooperative should perform marketwide services without compensation". The exception is without foundation. Location adjustments were never intended to compensate a handler for performing the services referred to by the exceptor. Rather, they serve to encourage the movement of milk from supply areas to the principal population centers where it is processed for fluid use. Additionally, they assist in maintaining a reasonable alignment of prices with nearby markets.

While the disposition of the market's reserve milk supplies is definitely a problem for proponent at this time because of abundant supplies and lower fluid use, the cooperative's solution to the problem should not be adopted. Such a solution would provide relief in the form of a higher uniform price to the proponent cooperative for milk received at Goshen, but it could cause serious procurement problems for other handlers operating under the Ohio Valley order in addition to those operating under nearby Federal milk orders, particularly the Indiana order.

If the proposed prices (Class I and uniform) at Goshen were the same as prices at plants in the Northwestern Zone, milk produced near the manufacturing plant could be committed for manufacturing uses at Goshen and not be available to the distributing plants in the Northwestern Zone of the marketing area. This could happen even though the milk is needed for fluid purposes at the distributing plants. In certain cases, because of the lower farm to plant hauling cost, the cooperative could realize a higher net return by moving the milk to Goshen for surplus disposal rather than moving it to such distributing plants for fluid use.

As indicated, the Goshen plant is located in the heart of the Indiana market's milk production area. The record shows that about 15 to 25 million pounds of milk is obtained by Indiana order distributing plants located in the order's no location adjustment zone each month from the general procurement area of the Goshen plant. If higher prices were applicable at the Goshen plant as proposed, the milk would most likely not be available to Indiana regulated plants in the no location adjustment zone unless they were willing to pay higher prices for it. This could result in increasing the total handling and transportation costs for some Indiana handlers as opposed to others in obtaining adequate milk supplies. Revising the location pricing structure in the manner proposed would be inappropriate and could culminate in disorderly marketing conditions in the northern and northcentral Indiana procurement areas.

Since the Goshen plant is located in a common supply area for the Indiana and Ohio Valley markets, the present location pricing structures of the two orders were designed to encourage the movement of milk from supply areas to the principal population centers of each market where it is processed for fluid use. Additionally, they were developed to maintain a reasonable price alignment with nearby markets, which is essential to the attraction of milk supplies to various locations where it is needed.

It should be noted that under the present pricing provisions of the Indiana and Ohio Valley orders, Class I prices at Goshen, Indiana are closely aligned. For instance, under the Ohio Valley order, the Class I differential is $1.465 at Goshen ($1.70−$.235=$1.465). Under the Indiana order the Class I differential is $1.45 (1.53−.08=$1.45). Under the cooperative's proposal, the Class I differential at Goshen under this order would be $1.65 or 20 cents more than the differential which is applicable at such location under the Indiana order. A difference of this magnitude could have an adverse impact on the procurement practices of handlers operating under the Indiana order.

There was considerable discussion at the hearing about the alignment of uniform prices at Goshen under the Indiana and Ohio Valley orders. However, such prices vary from month to month depending on the utilization of the market's milk supplies by handlers. Conversely, the market's Class I differential is the same each month. For this reason, the primary emphasis on alignment of prices between orders must be on a Class I basis.

The record evidence does not demonstrate that the present location pricing structures for the Indiana and Ohio Valley markets at the Goshen location are inappropriate or are contributing to disorderly marketing conditions. To the contrary, it appears that the present location pricing structure under each order is providing adequate milk supplies at all locations at which milk is delivered by producers. It also is providing a reasonable alignment of prices not only with other markets but among the various segments within each market. Accordingly, the location price structure now applicable at Goshen under the Ohio Valley order should be retained.

Dairymen, Inc. (DI), a cooperative supplying milk for the market, proposed that the application of minus location adjustments be eliminated at plants located outside the marketing area and generally to the south and east of such area.

There was no opposition to this concept either at the hearing or in briefs. The Kroger representative supported DI's proposal.

DI's proposal should be adopted. Specifically, the order would provide that no minus location adjustments shall apply at any plant located in the marketing area covered by the Louisville-Lexington-Evansville order or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia.

This change is warranted because of the operation of Kroger's distributing plant at Winchester, Kentucky. this plant is located in the Louisville marketing area. A majority of the plant's milk supply is obtained from producers located in the same geographic area as producers shipping to handlers regulated under the Louisville order.

The Winchester plant began operating in November 1982 and was regulated under the Ohio Valley Order in such month. For the months of December 1982 through March 1983, the plant was regulated under the Louisville order.[3] In April 1983, it once again became regulated under the Ohio Valley order. It has been a pool plant under this order since that time.

The record shows that a common procurement area exists for the Winchester plant and for Louisville handlers. Such evidence indicates that there are producers located in a number of Kentucky counties who are supplying the Kroger plant at Winchester and others located in the same counties who are supplying plants regulated under the Louisville order.

When the milk of producers is not needed at Winchester, it is normally diverted to nonpool manufacturing plants located in the marketing area covered by the Louisville order. An exhibit was presented by DI at the hearing showing the location of such manufacturing facilities that regularly process the reserve milk which is associated with the Kroger plant. It also shows that such plants are subject to location adjustments ranging from minus

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[3] Official notice is taken of the "List of Pool Handlers under Federal Order No. 46" published by the Market Administrator for the months of December 1982 through March 1983.

14 cents to minus 20 cents under the Ohio Valley order. However, if the milk is diverted to the same manufacturing plant from a producer's farm in the same general area but is priced under the Louisville order, no minus location adjustment applies. Such pricing differences could lead to disorderly marketing and is inconsistent with the objective of providing stable marketing conditions under Federal milk orders.

Also, in some recent months the weighted average price under the Louisville order has been higher than the comparable Ohio Valley price. The higher price is an incentive for producers to pool their milk under the Louisville order when it is not needed at Winchester. The minus location adjustment which applies under the Ohio Valley order for milk diverted to nonpool plants in the Louisville marketing area only compounds the problem. Providing that no minus location adjustments apply at Ohio Valley order plants that are located in the Louisville order's marketing area will align producer pay-prices under these two orders more reasonably and therefore should be adopted.

Customarily, Class I prices under the Ohio Valley order have been reduced at distant plants irrespective of their direction from the marketing area. However, downward adjustments should be applicable only in those areas from which milk supplies logically would be drawn for this market. Milk supplies in areas to the north and west generally are heavier and Class I prices are lower than in the Ohio Valley market. In the territory south and east of the market, supplies are less ample and Class I prices are generally higher than in the Ohio Valley market. Ohio Valley handlers should not be encouraged to procure milk from plants in these tighter-supply areas through the application of minus location adjustments. In the interest of marketing efficiency, any available milk supplies in the areas south and east of this market should be encouraged to move to those markets that are more distant from the heavy production areas than is the Ohio Valley market.

Hence, the location adjustment provisions of the order should be modified to provide that no minus adjustments apply at plants that are east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia. In effect, minus location adjustments would not apply in a 10-state where prices are generally higher.

6. *Administrative provisions.* Certain administrative proposals were considered at the hearing. They involved charges on the overdue accounts of handlers, payments by handlers for fluid milk products received from a pool plant operated by a cooperative association, and handler reports concerning certain payroll information.

(a) Charges on overdue accounts. The order should impose a charge on handler payment obligations that are overdue. Such charge should be 1 percent per month and should apply on the first day after the due date and the same day of each succeeding month until the obligation is paid. Overdue accounts of handlers that would be subject to the charge would be those due the market administrator for the producer-settlement fund and the administrative expense fund in addition to any adjustments needed to correct errors in payment obligations discovered on audit. The order should also provide that all late-payment charges shall accrue to the administrative expense fund.

A late-payment charge was proposed jointly by MMI and Defiance. Proponents stated that their proposal would provide handlers an incentive to pay their order obligations on time.

The MMI spokeman cited the market's payment record and indicated that handlers are using producer monies for a number of days with no monetary penalty. In addition, he indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of its proposed late-payment charge, MMI contended that the charge should be at least as much as the cost of obtaining a loan from commercial sources since delinquent handlers are, in effect, borrowing money from producers. The cooperative's spokesmen indicated that based on experience gained in other markets, the proposed charge of 1 percent per month would encourage more timely payments of order obligations.

Two proprietary distribution plant operators (Kroger and Beatrice) serving the market supported the joint-proposal of MMI and Defiance to impose a charge on handler payments that are late. No one opposed the charge at the hearing or in post-hearing briefs. However, Beatrice proposed that the late-payment charge not apply until 10 days after the due date.

The record evidence indicates that the incidence of late payments by pool handlers to the market administrator is a serious problem in this market. Data submitted into evidence by the market administrator's office demonstrated the severity of the problem. For example, during the 8-month period of January through August 1983, only 163 or 61 percent of the final payments made by pool handlers were received by the market administrator by the 16th of the month. This allows two days for the payments to have been received by the market administrator assuming they were mailed on the due date (14th). With respect to partial payments, the experience during the same 8-month period was only slightly better. For this period, 193 or 74 percent of all partial payments were received by the market administrator by the 2nd day after the due date.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. This is of particular importance in this market since the Ohio Valley order provides that a handler pay all order obligations for milk to the market administrator who, in turn, distributes such monies, in terms of the partial and uniform prices, to producers, cooperative associations, or handlers who elect to pay their producers. Payments to the market administrator must be made on a timely basis in order that he will be able to make the required payments to producers on time. Producers should not be expected to wait beyond the scheduled time for their payments. Delayed payments not only foster uncertainty and discontent among producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

The prompt payment of accounts due the administrative expense fund by handlers is essential to the effective operation of the order also. Delinquent payments to this fund could impair the ability of the market administrator to perform his various administrative duties prescribed by the order on a timely basis and in the most efficient manner.

Payment delinquency results in an inequitable situation among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers who make timely payments.

Because of the late-payment problem that presently exists in the market, it is appropriate to adopt, as proposed, a charge of 1 percent per month on handler obligations that are overdue. Without such a charge handlers have little incentive to make their payments on time. While the 1 percent charge may not be high enough to encourage strict compliance by all handlers, it should provide handlers substantial inducement to make their payments on time.

As provided and adopted herein, those unpaid handler obligations specified herein would be increased by 1 percent on the 1st day after the due date. Any unpaid balance on each such overdue account would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed.

In order to remove any uncertainty as to when an order payment obligation is late, the order should provide that a handler's payments must be received by the market administrator by the prescribed dates to be considered to have been made on time. Such dates would be the 26th day of the month for the partial payment and the 15th day after the end of the month for the final payment. Payments not received by these dates would be considered late and subject to the charge on overdue accounts.

Under the current order, partial payments by handlers are due on or before the 25th day of the month and final payments are due by the 14th of the following month. Since this decision changes due dates from postmark dates to receipt dates in deciding whether payments have been made on time, it is appropriate to allow handlers one additional day to pay their obligations to the market administrator.

Even though the handler payments to the market administrator would be delayed by one day, sufficient time remains (2 days) for the market administrator to pay the money due producers, cooperatives or handlers who elect to pay their producers by the dates specified in the current order. Two days should be adequate time for him to complete such payments. Hence, no amendatory action is needed in this regard.

It is appropriate to delay the date handlers must pay their assessments for administration of the order by one day also. Under the provisions adopted herein, handlers would be required to pay such amounts to the market administrator by the 15th rather than the 14th as provided under the current order. This change will permit handlers to pay their final settlement obligations and their administrative assessments to the market administrator at the same time. This change will maintain the present coordination in the due date for such payments.

Recognition should be given, however, to the occasional conflicts between scheduled payment dates and weekends or holidays. Accordingly, if the payment date should fall on a Saturday, Sunday, or national holiday, payments should not be due until the next day on which the market administrator's office is open for public business. Further, the order should provide that when the partial or final payments are so delayed, the corresponding payments by the market administrator to handlers, cooperatives or producers, as well as the subsequent payments by handlers to their producers, may be delayed by the same number of days.

The application of a late-payment charge on the day following the date when payment is due may require some adjustment in the procedures of the market administrator when billing handlers. In this connection, the market administrator may need to reduce the period customarily taken to notify a handler of his payment obligations so that the handler, in turn, will have sufficient time to insure that the payment is received by the market administrator not later than the due date. This adjustment can be accomplished administratively within the framework of the existing order provisions and, thus, requires no amendatory action.

The MMI proposal made at the hearing that all late-payment charges accrue to the administrative expense fund maintained by the market administrator should be adopted. The money spent by the market administrator in collecting delinquent handler obligations comes from such fund. Thus, the competitors of a noncomplying handler who pay their assessments to the fund are bearing the administrative costs associated with collecting the money from a delinquent handler. Therefore, it is appropriate that the late-payment charges assessed on such noncomplying handlers be deposited in the administrative expense fund. This money will offset the additional administrative costs associated with collecting money from such handlers.

The Beatrice modification to delay the application of the late-payment charge for 10 days is denied. Adopting such a grace-period would not assure prompt payments by handlers to the market administrator because the late-payment charge would not be imposed until 10 days after the due date. If handlers paid their obligations 10 days late, it would make it impossible for the market administrator to get the money to producers on a timely basis. Imposing the late payment charge on the 1st day after the due date will provide greater assurance of prompt payments by handlers and therefore should be provided.

Defiance also proposed that interest accrue on any refund of a handler's pool obligation that is due such person. At the hearing and in its post-hearing brief, the handler modified its proposal. The handler representative pointed out two specific overpayment situations where interest should accrue on refunds which are due and payable to a handler. In the first instance, if during an audit of a handler's records the market administrator discovers that a handler has overpaid an obligation, interest should accrue on the amount of the overpayment that is due such person. Also, if a handler successfully challenges a payment obligation in a 15(A) proceeding (i.e., brought under 608c(15)(A) of the Act) which results in money due the handler, interest should accrue on the refund due such person. The handler proposed that interest not begin to accure on the amount that is to be refunded to such a handler until six months after the date of such overpaymentin either situation. This six-month period was suggested as a reasonable amount of time for the market administrator to audit a handler's records and verify such person's payment obligations. Proponent claimed that, from an equity standpoint, there is little difference between a handler who overpays an obligation from one who pays an obligation late. Hence, monetary adjustments are needed in both situations to equalize the handler payments.

The Defiance proposal to require the market administrator to pay interest on refunds due a handler should not be adopted. Such overpayments discovered on audit are required to be paid promptly by the market administrator under the terms of the current order. There is no evidence on this record to indicate that this has not been done.

The other situation covered by the proposal dealt with contested obligations in a 15(a) proceeding. The record does not warrant changing the order to accommodate this situation either. In fact, where order obligations are in dispute in a 15(A) proceeding, at times it might be appropriate to escrow disputed amounts to protect the parties of interest.

The only purpose of adopting a late-payment charge under the order is to encourage handlers to pay their obligations on time and not to provide for payment of interest on outstanding obligations. This is essential so that the market administrator can make the required payments to producers, cooperative associations, or handlers who elect to pay their producers at the time specified in the order. If interest were to apply on certain refunds due handlers, as Defiance urges, the order would represent a banking service for handlers. That is not the purpose of a Federal milk order. Hence, the handler proposal most appropriately should be denied.

(b) *Payments by handlers for bulk fluid milk products received from a pool plant operated by a cooperative association.* MMI proposed that the operator of a pool plant who receives bulk fluid milk products from a cooperative association pool plant should be required to pay for such milk in essentially the same manner as now applies for cooperative bulk tank milk received directly from the farm. The proposal should be adopted.

As proposed and adopted herein, any pool, plant operator who receives bulk fluid milk products from a cooperative association's pool plant during the month shall make a partial and final payment to the market administrator for such purchases. Under this method of payment, the handler would be required to make such payments to the market administrator for such plant milk by the same dates as the order now requires of a handler to pay for milk received directly from a cooperative acting as a bulk tank handler. In this regard, the partial payment, which would apply to such receipts during the first 15 days of the month, would be at the basic formula price for the preceding month. Final payments for such milk by the purchasing handler to the market administrator would be based on its classified use value less the amount of the partial payment. The purchase of such milk would be treated as a transfer between pool plants and classified accordingly. The class prices applicable at the location of the buying handler's plant where the milk is received and processed would be used to compute the transferee-plant's obligation to the market administrator for such milk. Also, such handler would be responsible for paying the administrative assessment applicable for such milk.

Under this adopted payment procedure, the cooperative association in turn would receive from the market administrator partial and final payments at the same rates and on the same dates that now apply with respect to payments to a cooperative association as the handler for farm bulk tank milk.

Presently, the order does not prescribe a schedule of payment dates that a handler must comply with for purchases of fluid milk products from a cooperative's pool plant. Rather, such milk is a receipt of producer milk by the cooperative at the location of its pool plant and is treated for classification purposes as an interplant movement under the order. The cooperative is held accountable to the market administrator at such milk's class use value. The payments by the pool plant operator to the cooperative is outside the terms of the order. Under this accounting and payment arrangement, the cooperative is burdened with collecting the minimum classified use value of such milk and could be placed in a serious financial bind, unless prompt payment is received from the buying handler.

In support of its proposal, MMI's witness testified that the present order does not provide adequate assurance of prompt payment by a pool plant operator to a cooperative association for milk sold from its pool plant. The witness contended that the cooperative should have the same payment protection under the order on that milk received by a handler from a pool plant operated by a cooperative as is now applicable on farm bulk tank milk that is received at a pool plant from a cooperative association. Proponent took the position that its proposed payment procedure whereby the pool plant operator who receives bulk fluid milk products from a cooperative's pool plant is accountable to the market administrator on such milk would provide handlers with a stronger incentive for making prompt payment for such milk purchases. There was no opposition to the proposal at the hearing or in post-hearing briefs.

The record establishes that most of the milk marketed by cooperatives in this market is moved to pool plants directly from the farm. However, to a limited extent, some milk is shipped to such plants, either on a regular or supplemental basis, from pool plants operated by cooperatives. Three such plants of MMI are located at Dayton and Sardinia, Ohio, and Goshen, Indiana. NFO also operates a supply plant located at Bryan, Ohio, which is regulated under the order and serves the market similarly.

Irrespective of the supply arrangements used, the producers involved are supplying milk for the fluid market and should be assured of receiving payment for their milk on a timely basis. Such assurance is essential to orderly marketing. Moreover, requiring handlers to channel all payments for milk purchases from a cooperative operated pool plant through the market administrator comports with the Act. In this regard, the Act provides that no cooperative association may sell milk to any handler at less than the prescribed class prices and retain its reblending privilege. By placing the obligation for such milk on the buying handler who receives, processes and disposes of it, the order will provide greater assurance that timely payments at minimum prices will be applicable on such milk.

Further, the revised payment procedure for such milk will facilitate the administration of the order with respect to matters of financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual utilization of such milk reflects the use of the milk at the receiving pool plant, it is reasonable, therefore, that the responsibility for its accounting and payment be placed directly on such pool plant operator.

As indicated previously, the order also should provide that the buying handler for milk purchased from a pool plant operated by a cooperative be responsible for paying the administrative assessment applicable to such milk. Presently, the cooperative association pays the administrative assessment on such milk. It is reasonable, however, that the handler processing the milk, rather than the cooperative, be the handler obligated under the order for the administrative assessment. This procedure is appropriate because much of the time and money expended in administering the order involves the verification of receipts and utilization of such milk by handlers. In contrast, the cooperative's role for such milk as a "handler" is merely that of moving the milk through its supply plant to the processing plant.

Applying the administrative assessment on such milk in the manner described herein also would be consistent with the intent of the Act that prices be uniform among handlers. The record establishes that it is a general practice in this market for cooperatives to pass on to the buying handler the administrative assessment on such milk. Otherwise, competitive pressures could develop that might tempt a cooperative to sell the milk at the class price and pay the related administrative assessment on the milk itself.

In connection with its proposal relating to payments for cooperative plant milk, MMI proposed offsetting the payments due from a cooperative to the market administrator with payments due the cooperative from the market administrator. The proposal should be adopted.

The order provisions now require that a cooperative association handler pay the market administrator the class use value of milk for which the cooperative is the handler. In turn, the market administrator pays the cooperative an amount equal to the value of such milk at the uniform prices payable to producers.

Cooperative associations in this market are handlers with respect to producer milk processed in their own pool plants or moved to nonpool plants. MMI operates three pool plants under the order in which, as the responsible handler, it is obligated to the market administrator at the class use value of the producer milk involved. On the milk so handled, the cooperative receives from the market administrator a payment at its uniform price value. Additionally, the cooperative receives payment at the uniform price from the market administrator on milk received by a pool plant operator from the cooperative as the handler for farm bulk tank milk. For such milk, the pool plant operator is obligated to the market administrator at its class use value. In these circumstances, the market administrator's payments due the cooperative for its overall handler operations in the market during the month normally far exceed the cooperative's payments due the market administrator for its milk at the classified use value. In such cases, the market administrator should be permitted to offset payments due from a cooperative association against payments due such handler. This payment procedure will eliminate the need for a cooperative to make payments to the market administrator for its milk when the amount due the handler from the market administrator for milk is greater.

(c) *Other reports.* The order should specify in detail the reporting requirements of handlers with respect to the various types of payroll data and the frequency when such data must be reported to the market administrator. This information is essential to the effective operation of the order's payment procedure to producers.

The current order does not prescribe the specific information that must be reported by handlers in this regard. Rather, the order provides that each handler shall report payroll data to the market administrator in the detail and on forms prescribed by him.

NFO proposed that the order prescribe more specifically the payroll information that handlers must report to the market administrator in connection with the order's payment procedure. Essentially, the proposal embraces the payroll data reporting procedure that is presently required of handlers under the Eastern Ohio-Western Pennsylvania Federal milk order.

In support of its proposal, NFO's witness testified that the market administrator requires basically two different types of payroll information from handlers, depending on whether a handler elects to pay producers. He pointed out that in those cases where the market administrator pays a handler's producers, such handler is required to report detailed receipts from each individual producer. This information is necessary for the market administrator to make the partial and final payments to the producers involved. Conversely, he stated that the market administrator requires only aggregate payroll data from handlers (including cooperative associations) who elect to pay producers.

The spokesman indicated that NFO pays some of its members supplying milk for the Ohio Valley market and elects to have the market administrator pay others. Because of this, he testified that the market administrator requires NFO to report payroll information for each of its producer members in the same manner as is required of handlers who choose to have the market administrator pay the producers from whom they receive milk.

The witness for NFO contended that reporting individual dairy farmer information for those producers the handler pays directly is an unnecessary burden. He contended that such reporting requirements are inappropriate because they involve too much time and considerably more information than is necessary to carry out the order's payment plan. In this regard, NFO proposed that the order provide different reporting requirements for handlers who pay their producers from those handlers who do not pay dairy farmers from whom they receive milk.

As adopted herein, the order should specify that different payroll information shall be reported by a handler depending on whether the handler pays the partial and final payments to producers from whom milk is received. In this regard, when a handler elects to pay such producers, only the aggregate receipts from producers must be reported prior to the handler's making the partial and final payments to such dairy farmers. The total receipts from and payments to each individual producer would be reported on such handler's payroll report after the end of each month.

Alternatively, if a handler elects to have the market administrator make the partial and final payments to producers from whom he receives milk, the handler must furnish sufficient payroll information for each producer to the market administrator prior to the partial and final payment dates so that he can follow through and make such payments to each producer for his milk deliveries. In such cases, however, these handlers would not be required to submit payroll reports after the end of each month because the market administrator would have made the payments to the individual producers.

As noted previously, similar payroll reporting requirements are applicable under the adjacent Eastern Ohio-Western Pennsylvania order. This order provides under certain conditions for similar payment procedures whereby producer money is channelled through the market administrator. From an administrative standpoint, it is in the best interest of the order program to provide handler reporting requirements which are uniform to the extent possible under Federal orders that have similar payment procedures, and particularly those which are in this general region. For that reason, the cooperative's proposal should be and hereby is adopted.

Contrary to MMI's position, adoption of the NFO proposal will not limit the authority of the market administrator to obtain any additional information from handlers he deems necessary in administering the terms and provisions of the order. Such authority is specifically provided in the order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT[4] regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Ohio Valley marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, execpt the marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are indentical with those contained in the order as hereby proposed to be ammended by the attached order which is published with this decision.

Determination Of Producer Approval and Representative Period

June 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley marketing area in approved or favored by producers, as defined under the terms of the order (as amended amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1033

Milk marketing orders, Milk, Dairy products.

(Secs.1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on August 30, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order[5] amending the order, regulating the handling of milk in the Ohio Valley marketing area.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et. seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Ohio Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the partial recommended decision issued by the Deputy Administrator, Marketing Program Operations, on July 11, 1984 and published in the **Federal Register** on July 16, 1984 (49 FR 28721), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

§ 1033.11 [Amended]

1. In § 1033.11, the word "transferred" is changed to "delivered".

2. Section 1033.12 is revised to read as follows:

§ 1033.12 Pool plant.

"Pool plant" means a plant described in paragraph (a), (b), or (c) of this section that is not a producer-handler plant or a plant that is subject to another Federal order as set forth in § 1033.56.

(a) A distributing plant with:

(1) Route disposition in the marketing area during each month of not less than 15 percent of its total disposition; and

(2) Route disposition of not less than 40 percent during each of the months of September through February, and 35 percent during each of the months of March through August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products

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[4] Marketing agreement filed at the office of the **Federal Register** as part of the original document.

[5] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraph (a) (1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products priced as Class I milk under this or any other Federal order;

(ii) A distributing plant (except a plant that met the route disposition percentage on a unit basis under paragraph (a)(2)(iii) of this section) that does not meet the minimum route disposition percentage specified in paragraph (a)(2) of this section to qualify for pool status in the current month shall be deemed to have met such qualifying percentage in such month, if the plant met the applicable percentage in each of the three immediately preceding months; and

(iii) Two or more plants operated by the same handler may be considerd as a unit for the purpose of meeting the total route disposition percentage specified in paragraph (a)(2) of this section if such handler requests that the plants be so considered and each plant in the unit meets the in-area route disposition percentage specified in paragraph (a)(1) of this section.

(b) A supply plant from which during the month 35 percent or more of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk divereted to such plant) and from handlers described in § 1033.16(c) is delivered by transfer or diversion as fluid milk products, except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries.

(2) A supply plant that does not meet the minimum delivery requirement specified in paragraph (b) of this section to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months.

(3) A supply plant that qualified as a pool plant in each of the immediately preceding months of September through February on the basis of its deliveries to pool distributing plants shall be a pool plant for each of the following months of March through August, unless the plant operator files a written request with the market administrator asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

(c) A plant operated by a cooperative association if, during the month, 50 percent or more of the producer milk of members of the association is delivered to a pool distributing plant(s) either directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 50-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approve by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the similar provisions of another Federal order applicable to a distributing plant or a supply plant.

3. Section 1033.14 is revised to read as follows:

§ 1033.14 Producer.

(a) Except as provided in paragraph (b) of this section, "Producer" means any person who produces milk approved by a duly constituted health authority for fluid consumption, whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received at a pool plant from a handler described in § 1033.16(c); or

(3) Diverted from a pool plant in accordance with § 1033.15.

(b) "Producer" shall not include:

(1) Any person defined as a producer-handler under a Federal milk order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such dairy farmer which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1033.46(a)(8)(ii) and the corresponding step of § 1033.46(b); or

(3) Any person with respect to milk produced by such dairy farmer which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

4. Section 1033.15 is revised to read as follows:

§ 1033.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1033.16(c) under the conditions set forth therein;

(c) Received by an handler described in § 1033.16(c) from producers in excess of the quantity delivered to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1033.16(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) In any month of September through February, the operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent of the producer milk physically received at or diverted from such pool plant during the month;

(3) In any month of September through February, a cooperative association may divert an aggregate quantity of milk not exceeding 50 percent of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

(4) Any milk diverted in excess of the limit set forth in paragraph (e) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received.

5. In § 1033.16, paragraphs (b) and (c) are revised to read as follows:

§ 1033.16 Handler.

* * * * *

(b) A cooperative association with respect to the producer milk which is diverted to nonpool plants for the account of such association pursuant to § 1033.15, excluding producer milk diverted by the association as the operator of a pool plant pursuant to paragraph (a) of this section;

(c) A cooperative association with respect to producer milk which is delivered for its account from the farm to a pool plant in a tank truck owned and operated by, or under contract to such cooperative association. Milk delivered pursuant to this paragraph shall not include producer milk diverted to another pool plant by the association as the operator of a pool plant pursuant to paragraph (a) of this section. Milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by such cooperative association at the location of the pool plant to which such milk was delivered;

* * * * *

§ 1033.30 [Amended]

6. In § 1033.30(b)(2), the reference "§ 1033.15(a)(2)" is changed to "§ 1033.15(b)".

7. In § 1033.31, paragraphs (c), (d), and (e) are revised and two new paragraphs (f) and (g) are added to read as follows:

§ 1033.31 Other reports.

* * * * *

(c) On or before the 26th day of the month, each handler who receives milk from a producer and does not make payment to such producer shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The identity of each such producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(d) On or before the 26th day of the month, each handler who receives milk from a producer and makes payment to such producer, shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The total pounds of producer milk received from such producers;

(2) The total deductions authorized by such producers to be made from the partial payments for such milk;

(3) The total pounds of milk received from a handler described in § 1033.16(c); and

(4) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(e) On or before the 6th day after the end of the month, each handler who receives milk from a producer and does not make payment to such producer shall report to the market administrator the following information with respect to the receipts of milk by such handler during such month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat reveived from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fliud milk products reveived from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred or diverted from each such plant.

(g) In addition to the reports required pursuant to paragraphs (a) through (f) of this section and §§ 1033.30 and 1033.32, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(8) A new Section 1033.32 is added to read as follows:

§ 1033.32 Payroll reports.

(a) On or before the 20th day after the end of the month, each handler who elects to pay producers pursuant to § 1033.72(d) shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer;

(5) The net amount of payment to the producer; and

(6) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments to § 1033.57(a) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his payroll for such month for dairy farmers from whom he received bottling grade milk. Such payroll shall show for each dairy farmer the total pounds of milk received from him, the average butterfat content thereof, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat content thereof, and the rate and net amount of payment, together with the amount and nature of any deductions involved.

9. In § 1033.45, a new paragraph (d) is added to read as follows:

§ 1033.45 Computation of skim milk and butterfat in each class.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.43(a) and the value thereof at class prices (applicable at the location of the transferee-plant) shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60.

10. In § 1033.53, the section title is changed, paragraph (a) is revised, and a new paragraph (c) is added to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers that is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1033.51(a) shall be adjusted on the basis of where the plant receiving the milk is located, as follows:

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows:

Zone and Adjustment Per Hundredweight

Northwestern Zone—minus 5 cents
Central Zone—no adjustment
Southeastern Zone—plus 5 cents

(2) At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, no minus location adjustment shall apply at any plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia; and

(4) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * *

(c) The Class I price applicable to other source milk shall be adusted at the rates set forth in paragraph (a) of this section.

§ 1033.57 [Amended]

11. In the introductory text and in paragraph (a)(1)(ii) of § 1033.57, the references to "1033.31(d)" should read "1033.32(b)" in both places.

12. In § 1033.60, paragraph (a) is revised to read as follows:

§ 1033.60 Computation of the net pool obligation of each handler.

* * * * *

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1033.46(c) and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.45(d) in each class as determined pursuant to § 1033.43(a) by the applicable class price and add the resulting amounts;

* * * * *

13. Section 1033.71 is revised as read follows:

§ 1033.71 Payments to the market administrator.

(a) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 26th day of each month an amount determined by multiplying the hundredweight of producer milk and bulk fluid milk products from a pool plant operated by a cooperative association received by such handler during the first 15 days of the month by the basic formula price for the preceding month less proper deductions and charges authorized in writing by such producers.

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60(a) adjusted by the butterfat differential specified in § 1033.73 plus the amounts computed pursuant to § 1033.60 (b) through (g), less:

(1) The amount obtained from multiplying the weighted average price applicable at the location of the plants from which the other source milk is received (not to be less than the Class III price) by the hunderdweight of other source milk for which a value is computed pursuant to § 1033.60(g);

(2) Partial payments made pursuant to paragraph (a) of this section for such month; and

(3) Proper deductions and charges authorized in writing by producers from whom the handler received milk, except that the total deductions and charges made under this section for the month for each producer shall not be greater than the total value of the milk received from such producer during the month.

(c) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) and (b) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator;

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall be considered to have been received by the due date if they are received not later than the next day on which the market administrator's office is open for public business; and

(3) Payments due the market administrator from a cooperative association as a handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1033.72.

14. In § 1033.72, the section title is changed and the section is revised to read as follows:

§ 1033.72 Payments to producers and to cooperative associations.

(a) On or before the 28th day of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the first 15 days of the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(a) at rate per hundreweight equal to the basic formula price for the preceding month, less the deductions authorized in writing by producers and charges made by handlers with respect to such milk.

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to pararaphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) at the uniform price per hundredweight as adjusted pursuant to §§ 1033.73 and 1033.74 less:

(1) Partial payments made pursuant to paragraph (a) of this section with respect to such milk;

(2) Deductions for marketing services pursuant to § 1033.75; and .

(3) Other deductions authorized in writing by producers and made by handlers with respect to such milk.

(c) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator as having authorized the cooperative association to receive such payment and amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraph (a) and (b) of this section.

(d) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to the individual producers pursuant to this paragraph, the handler shall furnish the following information to each producer:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if it is other than the applicable minimum rate;

(4) The amount and nature of any deductions subtracted from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(e) The following conditions shall apply with respect to the payments by the market administrator prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1033.71(c)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to producers or cooperative associations, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to § 1033.71, he shall reduce uniformly per hundredweight the payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

(g) If the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, except those payments due producers as described in paragraph (f) of this section, the market administrator shall reduce uniformly per hundredweight the payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.

15. Section 1033.76 is revised to read as follows:

§ 1033.76 Expense of administration.

As a pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own farm production and milk received from a handler described in § 1033.16(c) but excluding bulk fluid milk products delivered from a pool plant operated by a cooperative association to another pool plant pursuant to § 1033.45(d));

(b) Receipts of bulk fluid milk products from a pool plant operated by a cooperative association pursuant to § 1033.45(d);

(c) Receipts of other source milk allocated to Class I pursuant to § 1033.46(a) (6), (7), and (11) and the corresponding steps of § 1033.46(b), except such other source milk on which no handler obligation applies pursuant to § 1033.60(g); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1033.57(b)(2)(ii).

16. A new section 1033.78 is added to read as follows:

§ 1033.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1033.57, 1033.71, 1033.72(d), 1033.76, 1033.77 or 1033.78 shall be increased on (1) percent beginning on the first day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) Charges on overdue accounts collected pursuant to this section shall be deposited into the administrative assessment fund maintained by the market administrator;

(b) Amounts payable pursuant to this section shall be computed by the market administrator monthly on the unpaid balance (including any unpaid charges previously assessed pursuant to this section) remaining on each overdue obligation on such date; and

(c) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[FR Doc. 84-23601 Filed 9-5-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1097

[Docket No. AO-219-A40]

Milk in the Memphis, Tennessee, Marketing Area; Referendum Order; Determinaiton of Representative Period; and Designation of Referendum Agent

AGENCY: Agricultural Marketing Service, USDA.

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ACTION: Referendum order.

SUMMARY: This document orders that a referendum be conducted to determine whether producers favor issuance of the amended order regulating the handling of milk in the Memphis, Tennessee, marketing area, as proposed in the emergency final decision issued by the Assistant Secretary on August, 22, 1984.

DATE: The referendum is to be completed on or before September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued August 1, 1984; published August 3, 1984 (49 FR 31072).

Emergency Final Decision: Issued August 22, 1984; published August 28, 1984 (49 FR 34028).

It is hereby directed that a referendum be conducted to determine whether the issuance of the order, as amended, and as proposed to be amended, regulating the handling of milk in the Memphis, Tennessee, marketing area, which was attached to the decision of the Assistant Secretary issued August 22, 1984, is approved by producers, as defined under the terms of the order (as amended and as proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The month of June 1984 is hereby determined to be the representative period for the conduct of such referendum.

Richard E. Arnold is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of such referenda. (7 CFR 900.300 *et seq.*).

Such referendum shall be completed on or before September 21, 1984.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, D.C. on: August 30, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–23528 Filed 9–5–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-84-8]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, November 6, 1984.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ———————, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION:

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB–10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on August 30, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the Petition
24139	Aeromar, C. par A.	Description of Petition: To permit operations in foreign air transportation after January 1, 1985, aircraft whose measured or estimated noise levels satisfy the certification requirements set forth in Part 36 (including the use of applicable trade-off provisions) for the noisiest Stage 2 airplane which is permitted to operate under Subpart E. Regulations Affected: 14 CFR 91.303. Petitioner's Reason for Rule: This is needed to comply with the Dominican and certain other bilateral agreements and to eliminate discrimination among the operators of certain aircraft types without regard to their noise levels.
24153	Belize Air Int'l., Ltd	Description of Petition: To permit operations in foreign air transportation after January 1, 1985, aircraft whose measured or estimated noise levels satisfy the certification requirements set forth in Part 36 (including the use of applicable trade-off provisions) for the noisiest Stage 2 airplane which is permitted to operate under Subpart E. Regulation Affected: 14 CFR 91.303. Petitioner's Reason for Rule: This is needed to provide the airlines of Belize a fair and equal opportunity to compete with the airlines of the U.S. in accordance with Article II of Bermuda II, and to eliminate discrimination among airlines by aircraft type without regard to their noise levels.
24178	Air Transport Assocation (ATA).	Description of Petitions: To consider a pilot initially qualifying or upgrading as pilot-in-command as having satisfied the operating experience requirements after the appropriate number of hours whether or not those pilots have had a flight leg observed by an FAA inspector. Regulation Affected: 14 CFR 121.434(c)(1)(ii).
24076	Tennessee	Description of Petitions: Airways To allow a maximum seating capacity of 60 seats or less or a maximum payload capacity of 20,000 pounds or less. Regulations Affected: 14 CFR 135 1(a)(3). Petitioner's Reason for Rule: The reasons are: (1) Many short haul carriers are acquiring aircraft of 30- to 60-seat capacity; (2) the public interest would be served by conservation of funds expended to satisfy Part 121 rules that do not serve a purpose for short haul carriers; and (3) safety would not be affected since more seat capacity does not alter the operation or system of short haul carriers.

[FR Doc. 84–23479 Filed 9–5–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 21

[Docket No. 24216; Notice No. 23-ACE-9]

Special Conditions; British Aerospace Jetstream Model 3101 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This notice proposes Special Conditions for the British Aerospace (BAe) Jetstream Series 3100, Model 3101 airplane. The airplane will have novel or unusual design features associated with turbopropeller engine installations incorporating Automatic Power Reserve Systems (APR) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the Jetstream Model 3101 airplane.

DATES: Comments must be received by October 8, 1984.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 24216, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 24216. Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Oscar E. Ball, Aerospace Engineer, Regulations & Policy Office, Room 1656, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for documents specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after the closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. The certification basis for the BAe Jetstream Model 3101 airplane is as follows: Federal Aviation Regulations (FAR) § 21.29 and Part 23, effective February 1, 1965, including Amendments 23-1 through 23-3; Special Conditions in FAA letter of October 30, 1967; Special Federal Aviation Regulations (SFAR) No. 41, effective October 17, 1079, including Amendments 41-A and 41-C; FAA Exemption No. 3548, issued on June 10, 1982; SFAR No. 27, effective February 1, 1974, including Amendments 27-1 through 27-4; Part 36, effective December 1, 1969, including Amendments 36-1 through 36-12; and any Special Conditions which may result from this proposal.

Special Conditions may be issued, and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features. Special Conditions, as appropriate, are issued in accordance with §§ 21.16 and 21.101(b)(2), and become part of the type certification basis in accordance with § 21.17(a)(2).

Background

On February 20, 1984, the British Civil Aviation Authority (CAA), on behalf of British Aerospace Scottish Division, requested amendment to Type Certificate Data Sheet A21EU for Jetstream Series 3100 airplane Model 3101. BAe plans to incorporate certain modifications into the airplane, including more powerful turbopropeller engines with an integral Automatic Power Reserve System (APR) built into the fuel control of each engine. The APR is designed to increase the power on the operating engine automatically in the event of engine power loss during takeoff.

Discussion

Engine systems which automatically affect the power output of other engines were not considered when the regulations were promulgated. When such systems are incorporated into the airplane design, they allow operation of the airplane under certain conditions which would not otherwise be permitted if the systems were not installed. When the airplane is operated under such conditions, where that operation is dependent upon the continued function of a system, that system then becomes critical to the safe operation of the airplane. That is, if the system fails to perform its intended function, an unsafe condition would exist. Accordingly, under the existing small airplane requirements, which did not envision the use of such a critical system, the FAA would have *no* provisions for the approval of the system and denial of certification would be required.

To deny the approval of newly designed systems that have grown from modern technology is not in the interest of manufacturers, or the aviation community when such systems maintain or increase the level of safety intended by the applicable requirements. Accordingly, when such a system is presented for approval, all possible procedures are examined to determine how an approval may be granted and still retain the level of safety which has been established by the regulations in effect. Such a procedure has been developed and successfully used in the certification of critical systems on transport category airplanes for almost fifteen years. This procedure, found in the transport category airplane reliability requirements, is based on the theory that if the airplane manufacturer can show that the function of his system is so reliable that a failure of it is never expected to occur, the unsafe circumstance that would result from the systems failure does not need to be considered.

Under the reliability requirements of the transport category, extremely low level of failures have been identified as failures which are extremely improbable. When the transport category airplane manufacturer has found it necessary, the FAA has accepted numerical analysis procedures as a means of showing that these critical failures will not occur.

Part 23 rules applicable to small airplanes also contain reliability requirements. These requirements are based on the possible use of systems whose failure could be a hazard to the airplane, but did not envision a failure that would be catastrophic.

In the case of an APR system used during takeoff, the airplane may not satisfactorily complete its takeoff at the reduced power at which both engines are permitted to operate, if one engine fails during a critical time period and the APR system fails to advance the power on the remaining engine. Accordingly, the airplane would not meet the level of safety presently in the small airplane requirements. This failure and the airplane's ensuing inability to continue its climb over obstacles in the flight path would result in an unsafe condition. Under the provisions of the requirements of Part 21 of the Federal Aviation Regulations, Section 21.21, this unsafe condition would require the FAA to deny the airplane certification approval.

As stated above, the addition of procedures which will permit the system's approval while retaining the currently established level of safety is in the best interests of the aviation community. Accordingly, this proposal contains requirements which identify failures which are not acceptable for the approval of an APR system. In addition, the proposed Special Conditions extend the provisions which have been used for transport category airplanes as an optional means of compliance and thereby permit the manufacturer to use those procedures to show that certain hazardous or critical failures will not occur. In the interest of clarity and understanding, the proposed Special Conditions identify these failures as those which are "improbable" or "extremely improbable." These terms have been used and understood in U.S. and foreign certification projects; therefore, the meaning of the term is clear to those who are concerned.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, and Safety.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following Special Conditions applicable to the British Aerospace Jetstream Model 3101 airplane equipped with an Automatic Power Reserve System (APR).

1. General

All references in these Special Conditions to specific sections of Parts 23 and 135 and to SFAR 41 are to those in effect as defined in the Certification Basis for Jetstream Model 3101 (Type Certificate Data Sheet No. A21EU).

2. Definitions

A. Automatic Power Reserve System

An Automatic Power Reserve (APR) System is defined as the entire automatic system used only during takeoff, including all devices both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines, including power sources, to achieve scheduled power increase and furnish cockpit information on system operation.

B. Selected Takeoff Power

Notwithstanding the definition of "Takeoff Power" in Part 1 of the Federal Aviation Regulations, "Selected Takeoff Power" means each power obtained from each initial power setting approved for takeoff under these Special Conditions.

C. Critical Time Interval

The critical time interval is that period starting at V_1 minus one second and ending at the intersection of the "engine and APR failure flight path" line with the "minimum performance all engine flight path" lines. The "engine and APR failure flight path" line intersects the "one engine inoperative flight path" line at 400 feet above the takeoff surface. The "engine and APR failure flight path" is based on the airplane's performance and must have a positive gradient of at least 0.5% at 400 feet above the takeoff surface. The critical time interval is illustrated in the following figure:

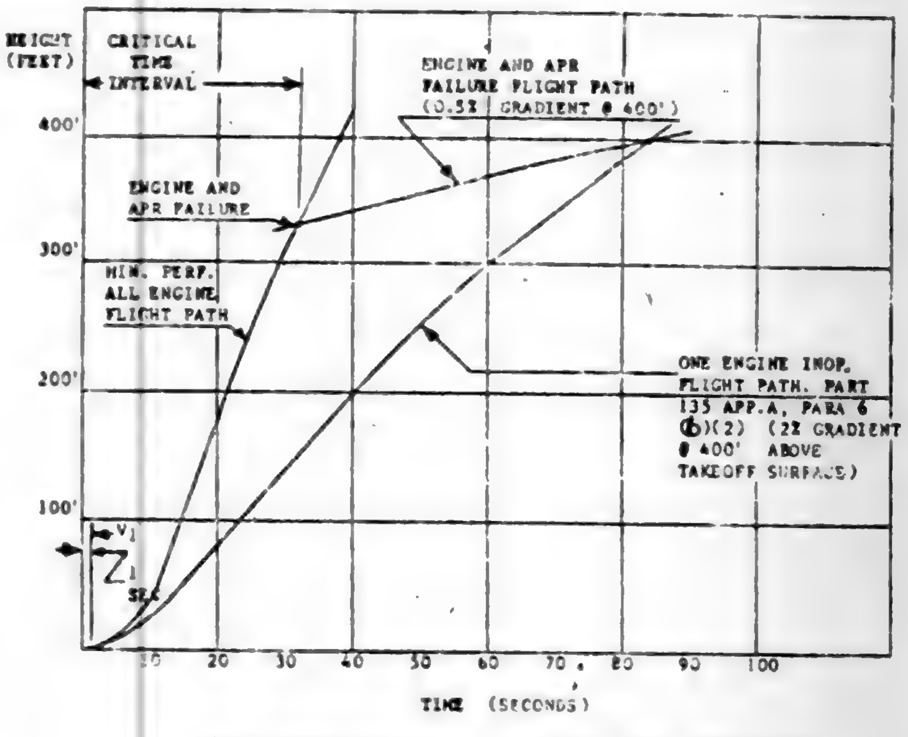

(For Illustration only - typical for 120K climb speed)

3. Reliability and Performance Requirements

With the APR System and associated systems functioning normally, all applicable requirements of the certification basis previously established, except as provided in these Special Conditions, must be met without requiring any action by the crew to increase power. In addition:

A. It must be shown that, during the critical time interval, an APR failure which increases or does not effect power on either engine will not create a hazard to the airplane; or it must be shown that such failures are improbable.

B. It must be shown that, during the critical time interval, there are no failure modes of the APR system that would result in a failure that will decrease the power on either engine; or it must be shown that such failures are extremely improbable.

C. It must be shown that, during the critical time interval, there will be no failure of the APR system, in combination with an engine failure; or it must be shown that such failures are extremely improbable.

D. All applicable performance requirements of SFAR 41 must be met with an engine failure occurring at the most critical point during takeoff with the APR system functioning normally.

4. Power Setting

The selected takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

A. The power necessary to attain, at V_1, ninety (90) percent of the maximum takeoff power approved for the airplane for the existing conditions;

B. That required to permit normal operation of all safety-related systems and equipment that are dependent upon engine power or power lever position; and

C. That shown to be free of hazardous engine response characteristics when power is advanced from the selected takeoff power level to the maximum approved takeoff power.

5. Powerplant Controls—General

A. In addition to the requirements of § 23.1141, no single failure or malfunction or probable combination thereof, of the APR, including associated systems, may cause the failure of any powerplant function necessary for safety.

B. The APR must be designed to:

(1) Provide a means to verify to the flight crew before takeoff that the APR is in a condition to perform its intended function;

(2) Apply power on the operating engine following an engine failure during takeoff to achieve the maximum attainable takeoff power without exceeding engine operating limits;

(3) Provide that, following an engine failure with the APR operating normally, manual adjustments of the power levers by the crew shall not deactivate the APR;

(4) Provide a means for the flight crew to deactivate the automatic function. This means must be designed to preserve inadvertent deactivation; and

(5) Allow normal manual decrease or increase in power up to the maximum takeoff power approved for the airplane under the existing conditions through the use of power levers, as stated in § 23.1141(c), except as provided under paragraph C below.

C. For airplanes equipped with limiters which automatically prevent engine operating limits from being exceeded, other means may be used to increase the maximum level of power controlled by the power levers in the event of an APR failure. In this case, the means must be located on or forward of the power levers, it must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 23.777 (a), (b), and (c).

6. Powerplant Instruments

In addition to the requirements of § 23.1305 and paragraph 58 of Part 135, Appendix A, which is incorporated by reference in SFAR 41—

A. A means must be provided to indicate when the APR system is in the armed or ready condition.

B. If the inherent flight characteristics of the airplane do not provide warning that an engine has failed, a warning system that is independent of the APR must be provided to give the pilot a clear warning of any engine failure during takeoff.

C. Following an engine failure at V_1 or above, there must be means for the crew to readily and quickly verify that the APR system has operated satisfactorily.

Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.28 and 11.29(b).

Issued in Kansas City, Missouri on August 28, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-23526 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 21

[Docket No. 23682; Notice No. 23-ACE-6]

Special Conditions; Fairchild Model SA227 Series Airplanes to Type Certificate No. A8SW

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of Proposed Special Conditions; Amendment to Special Conditions No. 23-ACE-6.

SUMMARY: This notice proposes to amend Special Conditions, No. 23-ACE-6, for Fairchild Aircraft Corporation (FAC) Model SA227-PC series airplanes. The airplane will have novel or unusual design features associated with turbopropeller engine installations incorporating Automatic Power Reserve Systems (APR) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the SA227-PC airplane.

DATES: Comments must be received by October 8, 1984.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 23682, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 23682. Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Oscar E. Ball, Aerospace Engineer, Regulations & Policy Office, Room 1656, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation (FAC) Model SA227 series airplanes on Type Certificate No. A8SW is as follows: Part 23 of the Federal Aviation Regulations, effective Feburary 1, 1965, as amended by Amendments 23-1 through 23-6; Special Federal Aviation Regulations (SFAR) No. 23; § 23.175(d) of Amendment 23-14 of the FAR, effective December 20, 1973; Amendment C of Special Federal Aviation Regulations (SFAR) No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b-1), (b-2), and (b-3) of the FAR in effect on September 26, 1978; Part 36 of the FAR, Appendix F, as amended by Amendments 36-1 through 36-6; SFAR No. 27, effective February 1, 1974, as amended by Amendments 27-1 through 27-4; Special Conditions SC No. 23-ACE-6; and any additional special conditions that may result from this proposal.

Special Conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) of the FAR do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special Conditions, as appropriate, are issued in accordance with §§ 21.16 and 21.101(b)(2) and become part of the type certification basis in accordance with § 21.17(a) of the FAR.

Background

On October 31, 1980, Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, submitted an application to amend Type Certificate No. A8SW to include a model of the SA227 with more powerful turbopropeller engines incorporating an Automatic Power Reserve System.

Type Certificate No. A8SW covers the FAC Model SA227–AC airplane, approved May 8, 1981, and other similar airplanes. The FAC Model SA227–PC is a derivative of the FAC Model SA227–AC airplane and differs from the Fairchild Model SA227–AC only with respect to the make and model of turbopropeller engines installed.

The FAC Model SA227–AC is a pressurized, low wing, twin turbopropeller-powered airplane type certificated in the normal category and limited to 12,500 pounds maximum certificated takeoff weight and a maximum seating capacity of 22 occupants. The FAC Model SA227–AC airplane also has an authorized increase in maximum takeoff weight to 14,500 pounds when compliance with SFAR No. 41, as amended, is shown.

The FAC Model SA227–AC airplane included novel or unusual design features for an airplane type certificated to the airworthiness standards of Part 23 of the FAR. The airworthiness standards of Part 23, which are the type certification basis for the FAC Model SA227–AC airplane, did not contain adequate or appropriate safety standards for a turbopropeller-powered, normal category airplane. Subsequently, Special Conditions applicable to other previous models were applied to the Model SA227–AC to assure a level of safety for the Fairchild Model SA227–AC airplane equivalent to that provided by the airworthiness standards of Part 23 of the FAR. The Special Conditions were added as a part of the type certification basis for the FAC Model SA227–AC airplane.

Since the FAC Model SA227 series airplanes to be added to Type Certificate No. A8SW are derivative models of the FAC Model SA227–AC airplane and differ only in the make and model of turbopropeller engine and other airplane improvements, the FAA issued Special Conditions SC No. 23–ACE–6 (48 FR 43166; September 22, 1983) to become a part of the type certification basis for the FAC Model SA227 series airplanes to be added to Type Certificate No. A8SW.

Fairchild now plans to incorporate certain modifications into the FAC Model SA227 airplanes, including turbopropeller engines with an integral Automatic Power Reserve System (APR) built into the fuel control of each engine. The APR is designed to increase the power automatically on the operating engine in the event of engine power loss during takeoff.

Discussion

Engine systems which automatically affect the power output of other engines were not considered when the regulations were promulgated. When such systems are incorporated into the airplane designs, they allow operation of the airplane under certain conditions which would not otherwise be permitted if the systems were not installed. When the airplane is operated under such conditions, where that operation is dependent upon the continued function of a system, that system then becomes critical to the safe operation of the airplane. That is, if the system fails to perform its intended function, an unsafe condition would exist. Accordingly, under the existing small airplane requirements, which did not envision the use of such a critical system, the FAA would have *no* provisions for the approval of the system and denial of certification would be required.

To deny the approval of newly designed systems that have grown from modern technology is not in the interest of manufacturers or the aviation community when such systems maintain or increase the level of safety intended by the applicable requirements. Accordingly, when such a system is presented for approval, all possible procedures are examined to determine how an approval may be granted and still retain the level of safety which has been established by the regulations in effect. Such a procedure has been developed and successfully used in the certification of critical systems on transport category airplanes for almost fifteen years. This procedure, found in the transport category airplane reliability requirements, is based on the theory that if the airplane manufacturer can show that the function of his system is so reliable that a failure of it is never expected to occur, the unsafe circumstance that would result from the systems failure does not need to be considered.

Under the reliability requirements of the transport category, extremely low level of failures have been identified as failures which are extremely improbable. When the transport category airplane manufacturer has found it necessary, the FAA has accepted numerical analysis procedures as a means of showing that these critical failures will not occur.

Part 23 rules applicable to small airplanes also contain reliability requirements. These requirements are based on the possible use of systems whose failure could be a hazard to the airplane, but did not envision a failure that would be catastrophic.

In the case of an APR system used during takeoff, the airplane may not satisfactorily complete its takeoff at the reduced power at which both engines are permitted to operate, if one engine fails during a critical time period and the APR system fails to advance the power on the remaining engine. Accordingly, the airplane would not meet the level of safety presently in the small airplane requirements. This failure and the airplane's ensuring inability to continue its climb over obstacles in the flight path would result in an unsafe condition. Under the provisions of the requirements of Part 21 of the Federal Aviation Regulations, § 21.21, this unsafe condition would require the FAA to deny the airplane certification approval.

As stated above, the addition of procedures which will permit the system's approval while retaining the currently established level of safety is in the best interests of the aviation community. Accordingly, this proposal to amend Special Conditions No. 23–A–6, contains requirements which identify failures which are not acceptable for the approval of an APR system. In addition, the proposed Special Conditions extend the provisions which have been used for transport category airplanes as an optional means of compliance and thereby permit the manufacturer to use those procedures to show that certain hazardous or critical failures will not occur. In the interest of clarity and understanding, the proposed Special Conditions identify these failures as those which are "improbable" or "extremely improbable." These terms have been used and understood in U.S. and foreign certification projects; therefore, the meaning of the term is clear to those who are concerned.

List of Subjects in 14 CFR Part 21

Aviation safety, Aircraft, Air transportation, Safety.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, The Federal Aviation Administration proposes the following special conditions as an amendment to SC No. 23–ACE–6 applicable to Fairchild Model SA227 Series airplanes equipped with an automatic power reserve system (APR).

Automatic Power Reserve System Items

Item No.:

42. General

All references in these Special Conditions relative to APR to specific sections of Parts 23 and 135 and to SFAR 41 are those in effect as defined in the certification basis for FAC Model SA227–PC (Type Certificate Data Sheet No. A8SW).

43. Definitions

A. Automatic Power Reserve System. An Automatic Power Reserve (APR) System is defined as the entire automatic system used only during takeoff, including all devices both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines, including power sources, to achieve the scheduled power increase and furnish cockpit information on system operation.

B. Selected Takeoff power. Notwithstanding the definitions of "Takeoff Power" in Part 1 of the Federal Aviation Regulations, "Selected Takeoff Power" means each power obtained from each initial power setting approved for takeoff under these Special Conditions.

C. Critical Time Interval. The critical time interval is that period starting at V_1 minus one second and ending at the intersection of the "engine and APR failure flight path" line with the "minimum performance all engine flight path" line. The "engine and APR failure flight path" line intersects the "one engine inoperative flight path" line at 400 feet above the takeoff surface. The "engine and APR failure flight path" is based on the airplane's performance and must have a positive gradient of at least 0.5% at 400 feet above the takeoff surface. The critical time interval is illustrated in the following figure:

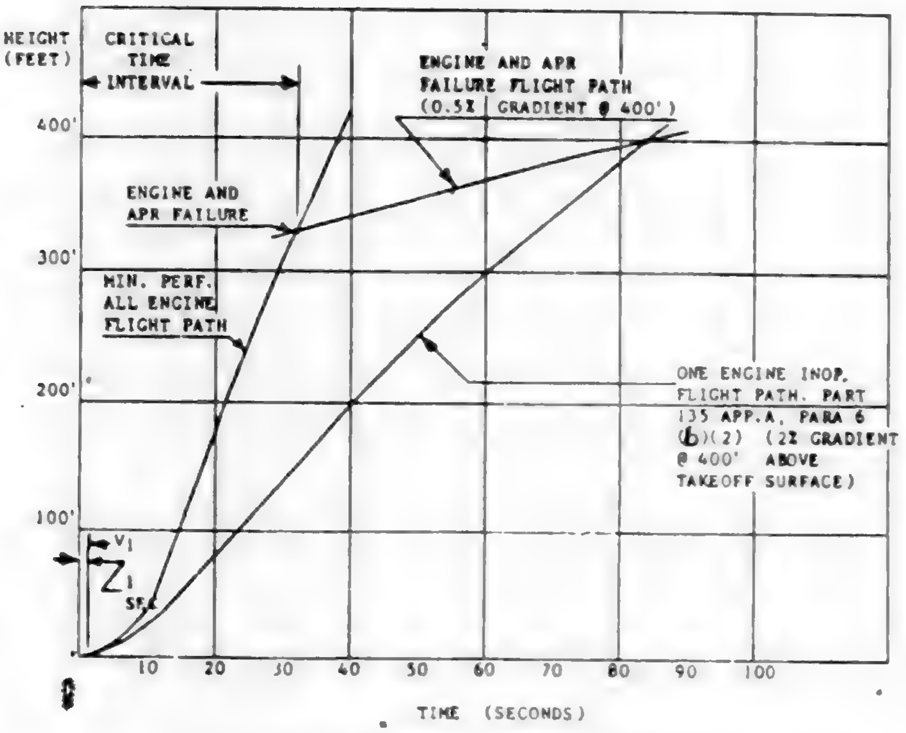

(For Illustration only – typical for 120K climb speed)

44. Reliability and Performance Requirements

With the Automatic Power Reserve (APR) System and associated systems functioning normally, all applicable requirements of the certification basis previously established, except as provided in these Special Conditions, must be met without requiring any action by the crew to increase power. In addition:

A. It must be shown that, during the critical time interval, an APR failure which increases or does not effect power on either engine will not create a hazard to the airplane; or it must be shown that such failures are improbable.

B. It must be shown that, during the critical time interval, there are no failure modes of the APR system that would result in a failure that will decrease the power on either engine; or it must be shown that such failures are extremely improbable.

C. It must be shown that, during the critical time interval, there will be no failure of the APR system, in combination with an engine failure; or it must be shown that such failures are extremely improbable.

D. All applicable performance requirements of SFAR 41 must be set with an engine failure occurring at the most critical point during takeoff with the APR system functioning normally.

45. Power Setting

The selected takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

A. The power necessary to attain, at V_1, ninety (90) percent of the maximum takeoff power approved for the airplane for the existing conditions;

B. That required to permit normal operation of all safety-related systems and equipment that are dependent upon engine power or power lever position; and

C. That shown to be free of hazardous engine response characteristics when power is advanced from the selected takeoff power level to the maximum approved takeoff power.

46. Powerplant Controls—General

A. In addition to the requirements of § 23.1141, no single failure or malfunction or probable combination thereof, of the APR including associated systems, may cause the failure of any powerplant function necessary for safety.

B. The APR must be designed to:

(1) Provide a means to verify to the flight crew before takeoff that the APR is in a condition to perform its intended function;

(2) Apply power on the operating engine following an engine failure during takeoff to achieve the maximum attainable takeoff power without exceeding engine operating limits;

(3) Provide that, following an engine failure with the APR operating normally, manual adjustments of the power levers by the crew must not deactivate the APR;

(4) Provide a means for the flight crew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation; and

(5) Allow normal manual decrease or increase in power up to the maximum takeoff power approved for the airplane under the existing conditions through the use of power levers, as stated in § 23.1141(c), except as provided under paragraph C below.

C. For airplanes equipped with limiters which automatically prevent engine operating limits from being exceeded, other means may be used to increase the maximum level of power controlled by the power levers in the event of an APR failure. In this case, the means must be located on or forward of the power levers, it must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 23.777 (a), (b), and (c).

47. Powerplant Instruments

In addition to the requirements of § 23.1305 and paragraph 58 of Part 135, Appendix A, which is incorporated by reference in SFAR 41—

A. A means must be provided to indicate when the automatic power reserve system is in the armed or ready condition.

B. If the inherent flight characteristics of the airplane do not provide warning that an engine has failed, a warning system that is independent of the APR must be provided to give the pilot a clear warning of any engine failure during takeoff.

C. Following an engine failure at V_1 or above, there must be means for the crew to readily and quickly verify that the APR System has operated satisfactorily.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1423); Section 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.28 and 11.29(b).

Issued in Kansas City, Missouri, on August 28, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-23527 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84–NM–68–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require structural inspections and repair as necessary, of the wing-to-body drag angle. The AD is prompted by numerous reports of cracking of these angles. Continued operation with failed angles could lead to progressive cracking of adjacent structure and rapid decompression.

DATES: Comments must be received on or before October 22, 1984.

ADDRESSES: The service documents may be obtained upon request from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION, CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S, telephone (206) 431-2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NW–68–AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a supplemental structural inspection document (SSID) for the airplane. In conducting this reassessment, Boeing used advance analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation (FAR) 25.571, Amendment 46. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details must receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The wing-to-body drag angle is in this category of details.

The FAA issued Advisory Circular AC 91-56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental structural inspection programs for large transport category airplanes. As a result of a structural reassessment of the airplane conducted in accordance with FAA Advisory Circular AC 91-56, the wing-to-body drag angle has been determined to be critical to the structural integrity of the airplane. The FAA issued a notice of proposed rulemaking (49 FR 12276, March 29, 1984) proposing mandatory inspections per the Boeing 737 Supplemental Structural Inspection Document D6-37089. The wing-to-body drag angle is referenced in that document as a critical detail, with a known service history, which requires continuing inspections in accordance with a flight safety addendum to the manufacturer's service bulletin. This notice incorporates those continuing inspection requirements. Failure to detect cracks in this vicinity prior to their reaching critical length could result in rapid decompression and inability to carry failsafe loads required under FAR 25.571(b). Consequently, this proposed AD, if adopted, would require inspection and, if necessary, replacement or modification of the affected structure.

Boeing issued Service Bulletin 737-53-1031 on July 20, 1973, advising operators to inspect wing-to-body drag angles. Nine operators have reported 55 cracked or broken upper and lower drag angles on 33 airplanes with 5600 to 10,000 flight hours. On October 28, 1983, Revision 3 to Service Bulletin 737-53-1031 was issued and established a flight safety addendum which provides minimum inspection requirements. This proposed AD embraces those requirements.

It is estimated that 178 airplanes of U.S. registry would be affected by this AD, and that approximately 2 manhours per airplane would be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections would be $14,240. Therefore, the proposed rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive.

Boeing: Applies to all Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737–53–1031, Revision 3, or later FAA approved revisions. To prevent raid decompression resulting from undetected cracking of the wing-to-body drag angle, accomplish the following upon the accumulation of 8,000 landings on Group I airplanes, or 35,000 landings on Group II airplanes, or within 90 days from the effective date of this AD, whichever occurs later, unless previously accomplished.

A. Visually inspect the upper drag angles for cracks in accordance with Boeing Service Bulletin 737–53–1031, Revision 3, or later FAA approved revisions. Repeat the visual inspections at intervals not to exceed 4000 landings.

B. Repair or replace the upper drag angles before further flight in accordance with Boeing Service Bulletin 737–53–1031, Revision 3, or later FAA approved revisions, if cracks are detected. Repeat the visual inspections at intervals not to exceed 4000 landings.

C. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with the AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplanes's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

F. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for the operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Reguatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on August 22, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23483 Filed 9–5–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–75–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (Military) series airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection, and modification if necessary, of the main landing gear (MLG) attach fittings on certain McDonnell Douglas DC–9 series airplanes. This proposed AD would require repetitive inspections of the MLG attach fittings fabricated from 7075–T73 forging alloy. This proposal is prompted by reports of MLG fitting cracks, the failure of which could result in significant damage to the wing MLG supporting/fitting structures and subsequent collapse of the landing gear.

DATES: Comments must be received on or before October 26, 1984.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2824.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "AVAILABILITY OF NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–75–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Two operators have reported four cracks in the main landing gear attach fitting fabricated from 7075–T73 forging alloy. One crack was discovered during an inspection after a hard landing and the other three were found during routine inspections. The aircraft involved had accumulated between 22,056 and 27,147 landings. Results of analysis conducted by the manufacturer attribute the cracks to metal fatigue. If not corrected, this condition could result in significant damage to the wing MLG supporting/fitting structures and subsequent loss of the landing gear. Increasing the counterbore radius of the 1⅛ inch diameter bolt holes at the lower rear spar-to-fitting attachment, and shotpeening selected areas will reduce the effects of a stress riser. Also, bushing the 1⅛ inch diameter holes down to ⅞ inch diameter, and installing interference fit fasteners in the lower flange will reduce the load transfer in the lower forward flange area. These changes will increase the service life of the fitting.

Operators of DC–9 aircraft who have accomplished Option 1 of DC–9 Service Bulletin 57–125, Revision 2, or prior issues, and have installed a MLG attach fitting fabricated from forging alloy 7075–T73, must accomplish Service Bulletin 57–148.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require the modification of the auxiliary spar web and inspection of the MLG attach fitting for cracks, as described in McDonnell Douglas Service Bulletin 57–148, Revision 1, dated June 8, 1983.

It is estimated that 120 airplanes (2 units per aircraft) of U.S. registry would be affected by this AD and it would require approximately 40 manhours per airplane to accomplish the required modification, and 13 manhours per airplane to accomplish the required repetitive/inspections. Average labor charge is $40 per hour. Based on these figures, the total cost impact of this AD is estimated to be $62,400. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subject in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (Military) series airplanes, certificated in all categories, equiped with main landing gear (MLG) attach fittings fabricated from forging alloy 7075–T73 installed in production or by accomplishment of Option I of McDonnell Douglas DC–9 Service Bulletin 57–125, Revision 2, or prior issues.

Specific corresponding factory serial numbers for the production effectivity are listed in McDonnell Douglas DC–9 Service Bulletin 57–148, Revision 1, dated June 8, 1983, hereinafter referred to as SB 57–148, R1. Compliance required as indicated, unless previously accomplished. To detect cracks and prevent failure of the MLG attach fitting and its interrelated structure, accomplish the following:

A. For aircraft with fittings having 15,000 to 19,999 landings, inspect the affected MLG attach fittings for cracks within 3,600 additional landings in accordance with SB 57–148, R1.

B. For aircraft with fittings having 20,000 or more landings, inspect the affected MLG attach fittings for cracks within 1,800 additional landings in accordance with SB 57–148, R1.

C. Repeat the inspections at intervals not to exceed 3,600 landings until replaced with a new fitting or the preventative modification is accomplished in accordance with SB 57–148, R1.

D. If a MLG attach fitting is found cracked, it must be reworked in accordance with SB 57–148, R1, or later FAA approved revisions, prior to further flight.

E. If cracks are found in locations in the fitting(s) other than those identified in SB 57–148, R1, replace the fitting(s) before further flight in accordance with SB 57–125, R4, Option 1, or rework in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Preventative modification in accordance with SB 57–148, R1, must be accomplished before the MLG attach fitting(s) accumulates 37,000 landings.

G. Completion of the preventative modification in accordance with SB 57–148 or replacement of cracked fitting(s) in accordance with SB 57–125 constitutes terminating action for this AD.

H. Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

I. Upon request of operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 27, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

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14 CFR Part 39

[Docket No. 84–CE–21–AD]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI), Models MU-2B, –10, –15, –20, –25, –26, –30, –35, –36 Airplanes and Mitsubishi Aircraft International, Inc. (MAI), Models MU-2B, –25, –26, –26A, –35, –36A, –40, and –60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain serial numbered Mitsubishi Models MU–2B, –10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 airplanes manufactured by Mitsubishi Heavy Industries, Ltd. (MHI), and Mitsubishi Aircraft International, Inc. (MAI) which would require modifying the pitot system by installing an improved pitot head with a higher heat capacity and mast heater. Since 1975, 18 pitot/airspeed malfunctions

have occurred in either severe icing or extreme cold conditions. The modification will preclude these occurrences by providing more heat in these locations.

DATES: Comments must be received on or before October 5, 1984.

ADDRESSES: Mitsubishi Heavy Industries, Ltd., MU-2 Service Recommendation No. 053 dated January 19, 1979, applicable to this AD, may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aircraft Works, 10, Oye-cho, Minato-ku, Nagoya, Japan, or Mitsubishi Aircraft International, Inc., P.O. Box 3848, San Angelo, Texas 76901.

Mitsubishi Aircraft International, Inc., MU-2 Service Recommendation No. SR020/34-005, Revision A dated July 31, 1979, applicable to this AD, may be obtained from Mitsubishi Aircraft International, Inc., P.O. Box 3848, San Angelo, Texas 76901.

Copies of these service bulletins are also contained in the Rules Docket and comments should be submitted to Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For the MHI Series airplanes manufactured in Japan: John G. Sullivan, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, Telephone: (213) 536-6166. For the MAI Series airplanes manufactured in the U.S.: Mark R. Schilling, Systems Engineer, Airplane Certification Branch, ASW-150, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, Telephone: (817) 877-2598.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket at the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NRPM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-21-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been at least 18 documented instances, during heavy icing or extreme cold conditions when the airspeed indicator has given erroneous readings or has dropped to no indicated airspeed. The erroneous readings of the airspeed indicator have been linked to the pitot tube (P/N PH506) icing over and/or accumulated moisture freezing within the mast casting. There have been no accidents directly attributable to the pitot icing; however, FAA has determined that pitot icing could lead to hazardous conditions in certain flight regimes.

MHI issued Service Recommendation No. 053, dated January 19, 1979, and MAI issued Service Recommendation SR 020/34-005, dated July 31, 1979, that gave operators of MU-2 aircraft the option of changing to an improved pitot head. The improved pitot head (P/N PH 1100) utilizes a higher heat on the pitot probe and incorporates a mast heater in the mast casting. Since these service recommendations were issued, there have been no additional documented pitot icing problems. However, it cannot be determined how many airplanes in the field have been modified with the improved pitot tube. Because FAA has determined that there may be airplanes in the field with the unmodified pitot system, and that in certain circumstances the unmodified pitot system could cause a hazardous condition by allowing the pitot probe to ice over or allow moisture within the mast casting to freeze, FAA is proposing an AD that would make compliance with MHI Service Recommendation No. 053 and MAI Service Recommendation SR 020/34-005 mandatory on or before December 1, 1984. The proposed AD is applicable to all MHI and MAI Model MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, -60 airplanes. Approximately 322 MHI and 120 MAI Model MU-2 airplanes could be affected by the proposal. Estimated costs of $734 for parts and $1,400 for labor are expected to accrue for a total of $2,134 per airplane ($943,228 for the fleet). However, as many as half of the fleet may have already complied with the Service Recommendation. Few, if any, small entities operate the affected airplane and any that may would operate only one airplane. Therefore, the possible cost to any small entity will not exceed the significant threshold cost level for small entities.

For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under the provisions of Executive Order 12291; (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3), I certify under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Mitsubishi: Applies to Models MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 Serial Numbers 1 up to and including 753, with or without the SA suffix, airplanes certificated in any category.

Note.—The serial numbers of airplanes manufactured in the United States by Mitsubishi Aircraft International, Inc. (MAI) are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Ltd. (MHI) have no suffix.

Compliance: Required as indicated, unless already accomplished.

To assure anti-ice capability of the pitot tubes accomplish the following:

(a) On or before December 1, 1984, modify the pitot system of the affected model and serial numbered airplanes in accordance with MHI Service Recommendation No. 053, dated January 19, 1979, or MAI Service Recommendation SR 020/34-005, Revision A, dated July 31, 1979, as applicable.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170W, Federal Aviation Administration, P.O.

Box 92007, Worldway Postal Center, Los Angeles, California 90009, and on the MAI airplanes, if approved by the Manager, Airplane Certification Branch, ASW-150, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); sec. 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on August 27, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-23525 Filed 9-5-84; 8:45 am]

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14 CFR Part 198

[Docket No. 24223; Notice No. 84-15]

Aviation Insurance; Proposed Comprehensive Revision of Current War Risk Insurance Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes rules which would amend the provisions of the Federal Aviation Regulations dealing with the Federal aviation insurance program. The proposed revisions are necessary to reflect certain amendments to the Federal Aviation Act which broadened the scope of risks which may be insured by the Administrator. This proposal would implement those legislative changes and, in addition, would extensively revise the current aviation insurance regulations to better reflect current air carrier insurance needs and commercial insurance practice.

DATES: Comments must be received on or before: January 9, 1985.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24223, Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert C. Toenniessen, Office of Aviation Policy and Plans, APO-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone 202-426-3420.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. In addition, commenters are encouraged to address the environmental, energy, economic, or social impact that might result from adoption of the proposals contained in this notice. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24223." The postcard will be date/time stamped and returned to the commenter.

The FAA requests that interested persons, when submitting comments, fully identify the proposal to which the comment relates.

Availability of NPRMS

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

In 1951, the Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the Federal Government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue in the event of war. This was needed because of several factors: Commercial war risk insurance policies contained automatic cancellation clauses in the event of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The aviation insurance program was incorporated in Title XIII of the Federal Aviation Act of 1958 (Act). Statutory responsibility for the program was transferred by the Department of Transportation Act to the Secretary of Transportation who delegated this authority to the Federal Aviation Administrator (49 CFR 1.47 (b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters, and, as a matter of policy, the FAA had always conservatively interpreted the definition.

In the early 1970's this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijacking and terrorist acts. Due to a combination of the progressive exclusion of these new risks from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred with the potential result of termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad discretionary authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1977. These amendments, included in Pub. L. 95-163, removed from title XIII all references to risk categories. It authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. Such insurance can only be issued if commercial insurance for those operations is not available on reasonable terms.

The Aviation Insurance Program

Title XIII authorizes the Administrator to issue two forms of insurance: insurance with premium and insurance without premium. The two forms of insurance do not differ in the scope of coverage, only in the charge for protection. In the case of premium insurance, the Administrator accepts financial liability for claims payable and charges applicants a premium commensurate with the risks covered. In the case of non-premium insurance, coverage is provided to applicants performing contract services for other Federal Departments and Agencies which have entered into indemnity agreements with the FAA. Under the terms of these agreements, the FAA would be reimbursed for the costs of any payable insurance claims. Therefore, because the FAA does not assume any financial liability in the provision of this insurance, no premium fees are charged. Applicants are charged only a small aircraft registration fee to recover the administrative costs of providing the insurance. The fundamental policy underlying both programs is that the Government should not provide insurance on a regular or routine basis; rather, commercial problems should be resolved by commercial entities.

Currently, the Administrator may issue aviation insurance for aircraft registered either in the United States or in a foreign country against damage or loss resulting from any risk with regard to aircraft and persons and property on board provided the following conditions are met:

(1) The President has determined that the continuation of specified air services is in the foreign policy interests of the United States;

(2) The operation of the aircraft is either in foreign air commerce or between two points outside the United States; and

(3) The Administrator has found that insurance for the particular operation cannot be obtained on reasonable terms from the commercial insurance market.

In order for the first condition to be satisfied, the Administrator must consult with other interested Federal agencies as the President may require to establish a basis for determination by the President that foreign policy reasons mandate providing insurance so that air service can continue. This condition is a significant determinant of whether the issuance of Federal insurance is warranted. Before Title XIII was amended, the key question was whether the risk to be insured fell within the category of "war risks" as defined in the Act.

The foreign policy consideration is linked to the second qualifications: the only risks insurable are those arising from the operation of an aircraft between two points outside the United States or in foreign air commerce. Hence, an international flight originating in the United States with an intermediate stop in the United States before continuing to a destination abroad is not fully insurable by the FAA. Only that portion of the flight commencing with the last stop in the United States comes within the purview of the aviation insurance program.

For the third condition to be satisfied, the Administrator must determine that commercial insurance is unavailable on reasonable terms and conditions. Establishing the unavailability of coverage requires an investigation of several facets or commercial coverage. Specifically, the Administrator must determine whether certain risks are being excluded and for which operations. An investigation also must be made as to whether the applicant for insurance can obtain commercial coverage in amounts sufficient to cover the full reasonable value of aircraft and associated liability. Finally, if adequate commercial coverage is available, the Administrator must ascertain whether that insurance is available at reasonable permium rates.

Premium Program

In accordance with the provisions of Title XIII, premiums for premium insurance are based, insofar as is practicable, upon consideration of the risk involved. Rates charged for the premium program have been geared to the most recent charges for coverage purchased from the commercial insurers plus an increase judged necessary to reflect the additional hazard which caused the commercial insurers to terminate coverage or increase its cost to an unreasonable level. Recognizing the purpose of Title XIII, an effort is made to arrive at a rate which is fair, reasonable and nondiscriminatory. The amount of the premium ordinarily includes a deductible and a factor for claims adjustment expenses. Furthermore, the rate is set at a level high enough to encourage commercial insurance companies to reenter the market after a crisis has passed.

Nonpremium Program

In addition to the premium program, the Administrator may, in accordance with Section 1304 of the Act, provide insurance for air carriers under contract to other Federal departments or agencies without premium, in consideration of an indemnity agreement between the Department of Transportation and the department or agency seeking insurance. At present, indemnity agreements exist between the Department of Transportation and the Departments of Defense (DOD) and State (DOS) respectively. Under the terms of those agreements, if DOD or DOS requests insurance coverage for aircraft operations in support of its departmental activities, and commercial insurance is unavailable, the FAA will provide the necessary insurance. The insurance is provided without a premium cost to the air carriers concerned; however, a $200 per aircraft registration fee is required to recover the administrative costs of providing this insurance. In the event of loss or damage due to a risk covered by nonpermium insurance, DOD or DOS, under the terms of the agreements, will indemnify the FAA for payment of claims.

At the present time, Title XIII nonpremium insurance provides the insurance basis for contract operations which would be performed during periods of activation of the Civil Reserve Air Fleet (CRAF). DOD requires each air carrier participant in the CRAF program to apply to the FAA for nonpremium hull and liability war risk insurance. Commercial war risk aviation insurance is unavailable for aircraft operations performed pursuant to CRAF activation.

Explanation of Proposed Changes

Part 198 must be amended to reflect the statutory changes with regard to eligibility for Title XIII insurance and the scope of insurance risks and to reflect the current needs of air carriers and evolving commercial aviation insurance practice.

At the time Part 198 was originally promulgated, commercial war risk insurance policies contained a 24-hour automatic cancellation clause in the event of outbreak of war between any of the five post World War II "great powers." This clause created a special problem concerning the availability of commercial insurance coverage. Since notification 24 hours prior to cancellation may not have provided sufficient time for air carriers to remove their aircraft from high risk environments or for the FAA to process an application for Title XIII premium insurance, a potential gap in war risk insurance coverage existed.

In recognition that this potential gap in coverage could seriously constrain the growth of international civil aviation, Part 198 provides for the issuance of interim coverage to bridge this gap This is accomplished by issuing to air carriers interim binder policies, of three years in duration, in consideration of a $200 per aircraft binding fee. Interim binders incorporate by reference all the terms of the standard premium war risk insurance policy. Coverage provided by the iterim binders automatically comes into force following activation of the 24-hour cancellation clause in commercial war risk insurance policies. The interim binders remain in force until the FAA either issues a premium war risk policy or notifies the insured of its intent to cancel the interim binder policy and the notice period has passed. Because the FAA must give five days advance notice of its intent to cancel an interim binder policy, ample time is provided for the insured to remove its aircraft from a high risk environment.

To an extent, technological innovations in aviation have eliminated the need for the interim binder policies. The introduction of long range jet aircraft and the establishment of instantaneous global communications systems currently enable air carriers to move aircraft to insurance "safe-havens" from any point on the globe on 24-hours notice.

The introduction of the CRAF program eliminated any residual need for the interim binders. By providing a mechanism whereby Title XIII nonpremium insurance automatically is substituted for commercial war risk insurance in the event of major war, the CRAF program has bridged the potential gap which previously existed between commercial and Title XIII war risk insurance coverage. In the event of major war, commercial war risk insurance would be automatically terminated, CRAF would be activated and that portion of the United States civil aircraft fleet required to fulfill United States foreign policy needs thus would come under the control of DOD, and Title XIII nonpremium war risk insurance coverage would become effective, thereby precluding a need for interim binder coverage.

Accordingly, the interim binder policies have fallen into disuse. Because no air carrier continues to have active interim binder policies, the continued availability of these policies apparently serves no useful purpose. Therefore, this proposal would delete all references to interim binder policies.

The principal statutory changes to Title XIII enacted by Pub. L. 95–163 were two-fold and complementary. On one hand, Congress greatly expanded the scope of insurable risks for which the Administrator may provide insurance coverage. On the other hand, Congress strengthened the requirement for Presidential review of the exercise of this expanded authority The statutory changes are incorporated in proposed §§ 198.1, 198.3, 198.5, and 198.7. These sections present a revised and consolidated statement of aircraft operations eligible for insurance and the scope of insurance coverage available. Section 198.1 would contain a specific reference to the requirement for Presidential approval of the insurance. Similarly, §§ 198.3, 198.5, and 198.7 would reflect the fact that the Administrator has broad discretionary authority in extraordinary circumstances to accept applications for any aviation insurance customarily available from commercial sources. This is accomplished by deleting from Part 198 all references to categories of insurable risks or types of insurance. In addition, all references to nationality of aircraft would be deleted. Even prior to the enactment of Pub. L. 95–163, the Administrator possessed authority to insure the operations of foreign-registered aircraft, and retention in Part 198 of a distinction between United States and foreign-registered aircraft would serve no purpose.

The reporting requirements and responsibilities of applicants for insurance have been consolidated in §§ 198.9, 198.11, 198.13, and 198.15. Section 198.9 is a restatement of the documentation an applicant must provide to demonstrate that commercial insurance is not available on reasonable terms and conditions. Section 198.11 emphasizes the responsibility of air carriers to promptly notify the Administrator of any changes in the status of insured aircraft. Sections 198.13 and 198.15 restate the payment procedures for Title XIII insurance.

The Appendices to Part 198 would be substantially revised and consolidated. Whereas the current Appendices to Part 198 contain a separate application form and standard policy format for nearly every type and form of insurance the Administrator was authorized to issue prior to 1977, the proposed Part 198 contains a single Appendix which presents a standard application form for insurance. This form has been designed to enable an applicant to apply for any type, form or amount of insurance coverage. All standard policies have been deleted from Part 198. The Administrator now possesses authority to provide insurance coverage against any risk or peril from specified aircraft operations, and it is, therefore, no longer possible to anticipate all the risk(s) or peril(s) for which insurance may be requested. Rather than attempt to prepare a separate standard policy for every conceivable risk or peril for which an application for insurance may be anticipated, it is proposed that preparation of policies occur after an application has been accepted and the risks or perils for which coverage is requested can be precisley identified. Although all such policy provisions are, therefore, technically negotiable, the agency has attempted to describe the principal provisions which would be commonly included in premium policies issued by the agency These principal provisions would include:

- An identification of the insurer and insured parties.
- A description of the amounts of insurance provided.

—Insurance will be provided in any amount requested, provided:

- The amounts do not exceed the corresponding amounts by which the insured is or was insuring or self-insuring applicable aircraft or itself against loss, damage or liability from the risks covered.
- The amount of hull insurance may not exceed the fair and reasonable value of the aircraft covered.
- A description of any deductibles.
- A single catastrophe limit.
- A statement of the time of effectiveness of the insurance.
- A description of the coverage, including:

—A enumeration of the risks or perils covered (coverage may be provided against any risk or peril customarily covered by commercial insurance companies authorized to conduct business in the United States).

—Any geographical or other operational limitations.

- An enumeration of exclusions.
- A statement of premium rates, including:

—Any requirement for deposit premiums.

—Payment schedules and related requirements.

—Any procedures for revision of premium rates.

- A description of termination, voidance and cancellation procedures.

—Termination will occur:

- Upon expiration of the statutory authority to issue insurance.
- Upon expiration of a Presidential determination of foreign policy need for continuation of air services covered by the insurance.
- If there is a change in the status (ownership, registration, operational mission) of aircraft covered.

- After notice of termination or cancellation.
- Upon request of the insured.

—Voidance shall occur in the event of:

- Assignment or transfer of insurance without written consent.
- Concealment, misrepresentation of information, or fraud.

—Cancellation shall occur if:

- Comparable insurance becomes available on reasonable terms and conditions.
- Requested by the insured.
- A statement of general obligations of the insured to:

—Defend itself against loss claims.
—Promptly notify the agency of any event which may result in a claim for compensation.
—Assist the agency in securing all relevant information and evidence concerning loss claims.
—Subrogate to the agency all rights against any other person or entity regarding loss claims.

Regulatory Evaluation

As stated in the preamble to this notice, the FAA proposes: (1) to consolidate and simplify the regulatory procedures and requirements applicable to the provision of aviation insurance and (2) editorially align these procedures and requirements with changes in the FAA's statutory authority to issue aviation insurance. Because applicants for aviation insurance currently are complying with the statutory requirements for issuance of aviation insurance, the FAA does not contemplate applicants having to incur any additional costs in securing insurance. Rather, the proposed simplification of the regulations may enable applicants to realize a small administrative cost saving. Therefore, the proposed amendment will have no net adverse economic impact on the public and a full regulatory evaluation pursuant to Department of Transportation Order 2100.5 is not required.

Regulatory Flexibility Determination

This proposal would not impose any new requirements on small entities. Because it simplifies the regulatory procedures and requirements for applying for aviation insurance, any applicant, small or large, may realize a small administrative cost saving. Therefore, the FAA has determined that the proposed amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

This rule will not significantly influence international trade involving aviation products or services. This rule implements changes in statutory authority to provide Title XIII aviation insurance. The changes did not change the fundamental policy underlying the administration of Title XIII; i.e., commercial problems should be resolved to the maximum extent possible by commercial entities and the Government should provide aviation insurance only in extraordinary circumstances. Rather, these statutory changes sought only to bring admninistration of Title XIII into conformity with current insurance practices. FAA believes that the net impact on international trade in aviation services of the regulatory implementation of these changes through this rule will be insignificant. Therefore, the FAA believes that this amendment will not eliminate existing, or create additional, barriers to the sale of foreign aviation products or services in the United States and will not eliminate existing, or create additional, barriers to the sale of U.S. aviation products and services in foreign countries.

Paperwork Reduction Act

Information collection requirements contained in this regulation (Appendix A) have been forwarded to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503; Attention: FAA Desk Officer (Telephone: 202–395–7313). A copy should be submitted to the FAA Docket.

Note.—For the reasons set forth the FAA has determined that the proposal: (1) Does not involve a major proposal under Executive Order 12291, (2) is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11043; February 26, 1979); and (3) does not warrant preparing a regulatory evaluation; For reasons set forth previously I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 198

Transportation, Air transportation, War risk insurance, Aviation insurance.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to revise Part 198 of the Federal Aviation Regulations (14 CFR Part 198) to read as follows:

PART 198—AVIATION INSURANCE

Sec.
198.1 Eligibility of aircraft for insurance.
198.3 Basis of insurance.
198.5 Types of insurance coverage available.
198.7 Amount of insurance coverage available.
198.9 Application for insurance.
198.11 Change in status of aircraft.
198.13 Premium insurance—payment of premiums.
198.15 Nonpremium insurance—payment of registration fees.

Appendix A—Form of Application Named in § 198.9.

Authority: Sec. 1307 Pub. L. 85–726, 72 Stat. 803; Sec. 6(a) Pub. L. 89–670, 80 Stat. 937; Pub. L. 95–173, 91 Stat. 1278 [49 U.S.C. 1537]; sec. 1.4(b)(1) 32 FR 5606, April 5, 1967; Amdt. 1–31, 35 FR 4959, March 21, 1970; Amdt. 1–113, 40 FR 43901, Sept 24, 1975 [49 CFR 1.47(b)]

§ 198.1 Eligibility of aircraft for insurance.

An aircraft operation is eligible for insurance if:

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States,

(b) The aircraft operation is in foreign air commerce or between two or more points all of which are outside the United States; and

(c) The Administrator finds that commercial insurance against loss of damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms and conditions from any company authorized to engage in an insurance business in a State of the United States.

§ 198.3 Basis of insurance.

(a) Application for insurance with premium may be made if the eligibility criteria in § 198.1 are met. Premiums charged for insurance shall be based, insofar as practicable, upon consideration of the risk involved.

(b) Applications for insurance without premium may be made if the eligibility criteria in § 198.1 are met and air services are to be performed under contract to a Federal agency which has agreed to indemnify the Administrator, acting for the Secretary of Transportation, against all losses covered by such insurance.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage with respect to the following persons, property or interests:

(a) Aircraft engaged in operations which are eligible for insurance, as defined in § 198.1;

(b) Any person employed or transported on the aircraft referred to in paragraph (a) of this section;

(c) The baggage of persons referred to in paragraph (b) of this section;

(d) Cargoes transported or to be transported on the aircraft referred to in paragraph (a) of this section;

(e) Any other liability of the aircraft referred to in paragraph (a) or of its owner or operator of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft the amount insured may not exceed the amount by which the applicant has otherwise insured or self-insured the aircraft or itself against damage or liability arising from any risk. In the case of hull insurance, the amount insured shall not exceed the fair and reasonable market value of the aircraft.

(b) Policies issued without premium may be revised from time to time, by agreement of the Federal Aviation Administrator and the insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or contracts, or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Application for insurance.

(a) Application for premium or nonpremium insurance shall be made in accordance with the applicable form set forth in Appendix A of this part. Application for hull and liability insurance shall be filed on the same form.

(b) Each applicant for insurance with premium under this part also shall submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought.

§ 198.11 Change is status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or any other change in the status of an aircraft covered by insurance under this part, notice shall be given to the Administrator within 10 working days after the change in status.

§ 198.13 Premium insurance—payment of premiums.

The premium for insurance issued under this part shall be paid within 10 days after receipt, by the insured, of notice that premium payment is due. Premiums shall be sent to the Federal Aviation Administrator by check made payable to the Federal Aviation Administration.

§ 198.15 Nonpremium insurance—payment of registration fees.

(a) The registration fee for each aircraft to be covered by nonpremium insurance shall be $200. The fee shall cover the cost of hull and liability insurance.

(b) An application for nonpremium insurance shall be accompanied by the proper fee, payable by check to the order of the Federal Aviation Administration. Registration fees are not returnable unless applications are rejected.

(c) Requests made after issuance of a nonpremium policy for the addition of aircraft shall be accompanied by the registration fee for each aircraft.

APPENDIX A—FORM OF APPLICATION NAMED IN § 198.9

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Application for Aviation Insurance

Application is made for Aviation Insurance, pursuant to Title XIII of the Federal Aviation Act of 1958, as amended, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached "Schedule of Aircraft," with the understanding that this application does not commit the Government to any liability or make the applicant liable for any premium or fees unless insurance is effected by the Federal Aviation Administrator.

Name of applicant ______
Address ______
Basis of Insurance
(——) insurance with premium
(——) insurance without premium:
Contracting Federal Agency ______
Date and Number of Contract ______

Hull

Amounts set forth in the attached "Schedule of Aircraft" as representing the amount of hull insurance desired for each such aircraft shall not exceed the amount in effect on the date of this application, by which the applicant has insured, or self-insured, that aircraft.

Liability, Exclusive of Cargo

The type and amounts of coverage required for the aircraft described in the attached "Schedule of Aircraft" shall be indicated and the limits of liability for each such coverage shall be specified in the schedule, but such limits shall not exceed the corresponding amounts in effect on the date of this application by which the applicant has insured, or self-insured, against liability.

Liability of Cargo

Limits of liability desired for each of the aircraft described in the attached "Schedule of Aircraft" shall be specified.

General

Insurance shall attach no earlier than the commercial insurance terminates or at such time as may be specified in the policy.

If application is for insurance with premium, the rate of premium and the amount of any deductible shall be fixed by the Federal Aviation Administrator, acting for the Secretary of Transportation. The registration fee for insurance without premium is $200 per aircraft listed on the Schedule of Aircraft and is not returnable unless application is rejected. Registration fees are due upon application or revision of the Schedule of Aircraft adding aircraft and are payable by check to Federal Aviation Administration.

The application shall be accompanied by copies of any commercial insurance policy and any company plan of self-insurance applicable to the aircraft listed in the "Schedule of Aircraft."

The Schedule of Aircraft attached to policies without premium may be revised from time to time by agreement of the Federal Aviation Administrator and the Insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or to add contracts.

The application also shall be accompanied by a statement which shall be considered to be incorporated in the application and to form a part thereof, and which shall be signed by the same corporate official who signs the application on behalf of the applicant. The statement shall show that the applicant:

(a) Controls and operates the aircraft listed in the attached "Schedule of Aircraft," and if application is for insurance without premium, has committed such aircraft to the above indicated contract(s);

(b) Is maintaining and has maintained during the 6-month period preceding this application (or since the aircraft was acquired if acquired during the 6-month period) insurance, including demonstrable self-insurance, covering possible injury, loss or damage in amounts which equal or exceed the insurance coverages requested in the application; and

(c) Cannot obtain insurance of the type requested on reasonable terms and conditions from companies authorized to engage in an insurance business in a State of the United States or the District of Columbia, or has partial commercial insurance coverage, but is unable to obtain the additional needed insurance of the type requested on reasonable terms and conditions from such commercial sources;

Verification shall include evidence of premium rate history, the names of the commercial insurance carriers which have been contacted and the premium rates quoted by such carriers which applicant considers not reasonable, and any conditions or limitations which those carriers would impose or have imposed, such as evidence of cancellation or notice of cancellation, which would cause their insurance to be inapplicable to some or all of the operations by aircraft listed in the "Schedule of Aircraft".

If this application is for insurance with respect to a foreign-flag aircraft, it shall be accompanied by the statement setting forth the registration number(s) of the aircraft, the nationality of registration and the name of the owner or lessee.

The insurance applied for hereunder shall not cover risks to persons or property engaged or transported exclusively in operations between two points in the United States as defined in Section 101 (41)a of the Federal Aviation Act of 1958, as amended (49 USC 1301 (41)).

Applicant warrants that the particulars herein are true and complete to the best of his or her knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application, including all attachments hereto and all revisions of the Schedule of Aircraft hereinafter accepted by the Government and the terms and conditionns of the form of policy prescribed by the Federal Aviation Administrator, acting for the Secretary of Transportation, will constitute the basis of any contract between him or her and the United States of America.

Applicant ____________________

By ____________________

(Name and Title)

Date ____________________

Schedule of Aircraft

HULL INSURANCE

Make, model, and configuration (passenger, cargo, or convertible)	FAA identification No. or equivalent	Amount of hull insurance desired for each aircraft	Amount for which each aircraft is currently insured (including self-insurance)	Loss payee

LIABILITY INSURANCE

[Exclusive of cargo]

Amount requested per occurrence	Amount of insurance (including self-insurance) in effect per occurrence

LIABILITY TO CARGO

Amount requested	Amount of insurance (including self-insurance) in effect

Dated: July 19, 1984.

Harvey B. Safeer,

Director of Aviation Policy and Plans, APO-1.

[FR Doc. 84-23478 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157 and 284

[Docket No. RM83-31-000]

Emergency Natural Gas Sale, Transportation, and Exchange Transactions

Issued August 30, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations pertaining to emergency natural gas transactions that are exempt from the certificate requirements of section 7(c) of the Natural Gas Act. The rule would eliminate outdated or unnecessary regulations, transfer the emergency transaction regulations from Part 157 to Part 284 with other non-certificate transactions, and update and clarify the emergency transaction regulations in light of the Commission's experience with the regulations since passage of the Natural Gas Policy Act.

DATE: Written comments must be received on or before November 5, 1984.

ADDRESS: Comments must be sent to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All comments must refer to Docket No. RM83-31-000.

FOR FURTHER INFORMATION CONTACT: Cathy Ciaglo, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise and update the Commission's regulations on the emergency sale, transportation, and exchange of natural gas. These regulations exempt certain types of emergency transactions from the requirement for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act.[1] This rulemaking has three overall objectives—to eliminate out-of-date or unnecessary regulations, to clarify the kinds of emergency transactions that will be exempt from the certificate requirement, and to consolidate the non-certificate transaction regulations in one place.

More specifically, this rule would:

(1) Eliminate 18 CFR 2.68, 157.22, and 157.29 because they concern temporary emergency transactions under contracts executed prior to December 1, 1976, that are no longer taking place;

(2) Eliminate Subpart C of 18 CFR Part 157 (exemption of emergency sale arrangements), and add emergency transaction regulations to Part 284 which covers the other types of transactions for which certificates are not required;

(3) Adopt a new Subpart I in Part 284 (18 CFR 284.261–284.267) that would contain all emergency transaction regulations, better define "emergency," better describe the types of transactions covered, state all limitations on emergency transactions, and specify the terms, conditions, and applicable rates and charges for such transactions; and

(4) Revise the emergency transaction reporting requirements to ensure a

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[1] 15 U.S.C. 717f(c) (1982). *See infra* note 2 and accompanying text for a discussion of the section 7(c) requirements.

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concise and timely flow of information and to eliminate quarterly reports that are no longer required.

The elimination of unnecessary regulations and the addition of emergency transaction regulations to Subpart I will have several positive impacts. First, companies seeking to engage in non-certificated transactions will benefit from having to consult only one unified portion of the Commission's regulations. Second, litigation time and expense should be reduced for pipelines and their customers because the consolidation and clarification of the emergency transaction regulations should reduce uncertainty and ambiguity. Third, the unified regulations should simplify the Commission's administration responsibilities and reduce the need to expend agency resources on litigation over the application of the emergency transaction rules.

II. Background

A. Natural Gas Act

Section 7 (c) of the Natural Gas Act (NGA)[2] provides that every jurisdictional natural gas company must obtain a certificate of public convenience and necessity before transporting or selling gas or constructing or operating facilities for those purposes. However, section 7(c)(1)(B) provides two exceptions to this certificate requirement: one authorizing the issuance of a temporary certificate during emergencies pending a determination on a regular application,[3] and one exempting from certificate requirements "temporary acts or operations for which the issuance of a certificate will not be required in the public interest." The latter exception is the subject of this rulemaking.

Prior to the enactment of the NGPA, section 7(c)(1)(B) was the only authority for the sale for resale of surplus intrastate gas into the interstate market without jurisdictional consequences to the seller. Over time, the Commission has used this authority under section 7(c)(1)(B) to promulgate implementing regulations (§§ 2.68, 157.22 and 157.29). These regulations set forth the Commission's policy of encouraging non-jurisdictional local distribution companies and intrastate pipelines (including Hinshaw pipelines)[4] to provide temporary emergency gas in interstate commerce for up to 60 days.[5] They also authorize for 60 days the construction and operation of facilities or the sale or transportation of natural gas without a certificate in certain circumstances of emergency or other special need. The regulations require reports to be filed with the Commission describing the emergency and the transaction involved.[6]

B. Natural Gas Policy Act

The Natural Gas Policy Act of 1978 (NGPA)[7] had several impacts on the emergency provisions of the Natural Gas Act. The most significant impacts were that sections 311 and 312 of the NGPA[8] provide an alternative to section 7(c) of the NGA for the following transactions in interstate commerce: the interstate and intrastate pipeline transportation of gas, intrastate pipeline sale of gas, and intrastate pipeline assignment of gas to interstate pipelines and local distribution companies. As a result of the NGPA, therefore, these transactions no longer must be subject to the certificate requirements of the NGA. These provisions provide express statutory authority for the sale of surplus intrastate gas in the interstate market without subjecting the seller to NGA jurisdiction.

The Commission's interim regulations[9] implementing the NGPA effected several relevant changes. First, the interim regulations phased out the Natural Gas Act emergency program covered by §§ 2.68, 157.22 and 157.29; these three sections were preserved only to the extent that they applied to *then-existing* contracts for emergency transactions.[10]

Second, the interim NGPA regulations established new rules for the emergency transactions that were designed to be transitional provisions until the Commission gained greater experience with the NGPA regulatory structure.[11] Among other aspects, these rules defined the emergency transactions that were exempt from the certificate requirements of section 7 of the NGA, described the nature of specific exemptions allowed, provided the terms and conditions applicable to the emergency transactions, and established the applicable rates and charges.[12]

Third, the interim regulations contained the reporting requirements for all of the emergency transactions under Subpart C of 18 CFR Part 157[13] and under the NGA regulations retained in 18 CFR 2.68, 157.22 and 157.29.[14] Under the Subpart C provisions, the participating interstate pipeline must file an initial report within 48 hours of delivering the gas, describing the emergency and resulting transaction. The regulations also contained a requirement for a report at the end of each quarter for only 1979, regarding details of emergency transactions that were either completed or in progress in that year.

Finally, the interim regulations promulgated rules for certain types of "self-executing" transactions in both routine and emergency situations.[15]

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[2] 15 U.S.C. 717f(c)(1)(A) provides in relevant part:

No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.

. . .

Clause 7(c)(1)(B) provides in relevant part:

. . . the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirement of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

[3] *See* 18 CFR 157.17 (1983) (requirements for a temporary emergency certificate).

[4] *See* sections 1(b) and 1(c) of the Natural Gas Act, 15 U.S.C. 717 (b) and (c) (1982). Generally speaking, these sections exempt intrastate transportation or sale of natural gas, the local distribution of natural gas, the facilities used for such distribution, and the production or gathering of natural gas.

[5] 18 CFR 2.68 (1983).

[6] 18 CFR 157.22, 157.29 (1983).

[7] 15 U.S.C. 3301–3342 (1982).

[8] 15 U.S.C. 3371, 3372 (1982).

[9] 47 FR 56448 (Dec. 1, 1978) (Docket No. RM79-3-000).

[10] 18 CFR 157.46(i) (1983) defines an "existing emergency transaction" as a transaction under §§ 2.68, 157.22, or 157.29 pursuant to a contract executed:

(1) Before November 9, 1978, in the case of a sale which is a first sale within the meaning of the Natural Gas Policy Act of 1978; or

(2) Before December 1, 1978, in any other case.

[11] *See* Subpart C in 18 CFR Part 157 (1983).

[12] *See* CFR 157.45–157.52 (1983).

[13] *See* 18 CFR 157.51 (1983).

[14] Section 2.68 requires a written statement 10 days after the emergency commences, and another written statement within 10 days after the termination of the emergency concerning details about the emergency and the transaction. Section 157.22 requires an annual report describing the transactions and § 157.29 requires an immediate telegram or letter describing the circumstances of the transaction, followed by a written statement within ten days providing the details of the transaction. Because the transactions covered by these sections ceased sometime after the NGPA was enacted, these reporting requirements have not been used for several years.

[15] *See* Subparts B, C, and E of 18 CFR Part 284 (1983). Although Subpart C of Part 157 and Part 284 both permit emergency transportation and sale arrangements, each set of provisions is implemented under different statutory authority: Subpart C (which specifically requires that an emergency exist) under the Natural Gas Act and Part 284 under the NGPA. (*See* § 157.45 and § 284.3.)

These self-executing transactions require no prior Commission approval and may be performed for a period of up to two years.[16]

After issuing these interim NGPA regulations, the Commission established two "blanket certificate" programs in Subpart G of Part 284 covering the transportation, sale, and assignment of gas for periods of up to two years.[17] A blanket certificate under Part 284 allows an interstate pipeline to transport gas for another interstate pipeline, or a local distribution company or Hinshaw pipeline to transport, sell, or assign natural gas in interstate commerce. These transactions may be conducted without prior individual authorization by the Commission. The promulgation of the additional self-executing provisions of Subpart D and the blanket certificate regulations of Subpart G is not reflected in the current emergency provisions.

The Commission intends this Notice of Proposed Rulemaking to be a step toward making final the interim NGPA regulations pertaining to emergency natural gas transactions. These proposed revisions should correct and clarify the regulations in response to the problems the Commission has encountered in administering the emergency program established in the interim rule.

III. Discussion and Summary of Proposed Changes

A. Elimination of Outdated Regulations

The Commission proposes to eliminate §§ 2.68, 157.22, and 157.29. These provisions apply to contracts for emergency transactions under the NGA that were executed either before November 9, 1978 in the case of a first sale of gas, or before December 1, 1978, for all other emergency sales. These contracts governing NGA transactions were essentially superseded by passage of the NGPA, and are no longer in use because no pre-NGPA emergency transactions are still taking place. Therefore, the provisions pertaining to them may be deleted from the regulations.

B. Addition of Emergency Transaction Regulations to New Subpart I of Part 284

The Commission also proposes to eliminate §§ 157.45–157.52 from Subpart C and replace them with a new Subpart I (§§ 284.261–284.268) in Part 284, entitled "Emergency Natural Gas Sale, Transportation, and Exchange Transactions." The new Subpart I would revise and update the current provisions in Subpart C of Part 157 relating to emergency transactions that involve construction and operation of facilities, the sale or transportation of natural gas in interstate commerce, or exchange of gas for emergency purposes. Following is a section-by-section discussion of the proposed emergency provisions in new Subpart I of Part 284.

(1) § 284.261—Purpose

This section clarifies that Subpart I prescribes the conditions under which a participant who engages in an emergency natural gas transaction in interstate commerce is exempt from the certificate requirements of section 7 of the Natural Gas Act. This provision is similar to § 157.45, the corresponding section in Subpart C that would be deleted by this rule.[18]

(2) § 284.262—Definitions

This section more narrowly defines the "emergency" that would trigger an exemption from certificate requirements. Under the current definition in § 157.46(a), there need only exist a situation in which (a) the gas supply that is available or expected to be available would require an affected entity to curtail gas on its system, (b) there is a sudden unanticipated loss of gas supply or increase in demand, or (c) a qualified purchaser, in good faith, needs gas immediately for the protection of life, health, or maintenance of physical property.

The Commission has found that the current definition of emergency is too broad and has prompted the use of the exemption provisions under Subpart C of Part 157 for transactions which should be conducted as certificated transactions.[19]

The proposed definition of emergency would have a narrower application to help curb abuse of the exemption. The definition is divided into "pipeline emergency" and "curtailment emergency." Only two types of pipeline emergencies would be recognized—first, a "sudden, unanticipated loss of a recipient's gas supply" (similar to the current definition), but only if the loss is due to a "failure of facilities," and second, an "unanticipated situation" in which a participant determines, in good faith, that immediate action is necessary to protect life or health, to maintain physical property, or to maintain scheduled levels of storage inventories. This second type of pipeline emergency is similar to the current Subpart C definition except that the proposed provision is more restrictive with regard to storage. The proposed rule allows an emergency to be claimed only to maintain scheduled levels of gas inventory, rather than to maintain deliverability from storage or to replenish storage volumes, as does the current rule.

A "curtailment emergency" under the proposed rule would be limited to situations in which a pipeline or distributor experiences actual or imminent curtailment to high priority end-users or to persons who are unable to use alternative fuels and whose operations would be impaired without purchase of emergency gas. The Commission stresses that economic emergencies are not recognized under the proposed definition of emergency. Therefore, the price of alternative fuel is not a relevant consideration. This more functionally-related definition is narrower than the current definition which does not limit the emergency requirements by categories of end-users.

A new definition would be added for "alternative fuel." It would be any fuel other than natural gas, including propane. In the case of an electric utility, alternative fuels would include power purchased from another utility.

"Participants" are defined as the entities that are eligible to use these emergency provisions. They include first sellers, interstate and intrastate pipelines, and local distribution companies (including Hinshaw pipelines). This simplified definition encompasses the current Subpart C definitions of "qualified seller," "qualified purchaser," "interstate pipeline," and "distribution pipeline."

The proposed definition of "emergency natural gas" is revised to include exchanges. This will allow elimination of the current definition for "sale of emergency natural gas," which addresses exchanges. However, the requirement that exchanges be paid back within 180 days after termination of deliveries of natural gas is retained in § 284.264(b)(2) of the proposed regulations.

Three new definitions would be added to clarify the regulations. First, "emergency natural gas transactions" is defined as the sale, transportation, or exchange of natural gas (including construction and operation of required facilities) that is needed to alleviate an emergency and that is not anticipated to extend more than 60 days. "Emergency costs" means all costs paid by a recipient for emergency gas, including transportation costs. "Recipient" is defined to include both a purchaser when a sale of emergency gas under Subpart I is involved and a participant who receives gas that is transported or exchanged whenever an actual sale is not involved.

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[16] In a later rule, the Commission promulgated in Subpart D of Part 284 self-executing regulations for intrastate sales of gas. *See* 44 FR 12406 (Mar. 7, 1979) (Docket No. RM79–20).

[17] 44 FR 68819 (Nov. 30, 1979) (Docket No. RM79–74, Order No. 60); 45 FR 1,872 (Jan. 9, 1980) (Docket No. RM79–24, Order No. 63).

[18] Section 157.45 provides a breakdown of transactions according to whether they are covered in Part 284 or some other part of the regulations. Because the emergency gas provisions would be in Part 284 under this proposed rule, there would no longer be a need for a breakdown.

[19] For example, under the current regulations, instead of using other, more appropriate provisions, an entity may use the emergency provisions to purchase emergency gas for interruptible-type curtailment simply because that gas is cheaper than an alternative fuel.

(3) § 284.263—Emergency transactions authorized by this subpart

Paragraph (a) of this section states the statutory basis for the certificate exemption—section 7(c) of the NGA—and provides that these Subpart I regulations will not themselves extend the Commission's NGA jurisdiction regarding emergency transactions beyond that specified in the subpart. This limitations section is similar to provisions in § 157.47 (a) and (c) of the current regulations. This paragraph also provides the statutory bases for the certificate exemption: section 7(c)(1)(B) of the NGA for first sellers, interstate pipelines and local distribution companies (including Hinshaw pipelines), and section 311 of the NGPA for intrastate pipelines.

Paragraph (b) includes a special provision for any participant who may conduct an emergency natural gas transaction under this subpart and who is also eligible to conduct the same transaction under the self-executing or blanket certificate authorizations of Part 284 (which do not require an emergency). The participant may choose to complete the transaction under whichever set of regulations the participant finds most appropriate. However, the proposed rule also ensures that participants do not obtain any rate advantage in using one or another set of regulations in Part 284. (The rate implications are discussed in greater detail below, under § 284.266.) Participants are to be allowed flexibility in complying with non-certificate requirements as long as they follow an appropriate set of regulations to effect the transactions.

Paragraph (c) combines the current provisions in paragraphs (a) and (b) of § 157.47 in describing eligible transactions under this subpart. However, the proposed rule provides a more general description of the transactions. These transactional descriptions are revised from the current provisions to account for the implementation of the more comprehensive self-executing provisions in Subparts B through E of Part 284 and the blanket certificate provisions of Subpart G of Part 284.

As a matter of format, this section clarifies the emergency regulations by including in one part references to all of the provisions by which a participant could be exempt from NGA certificate requirements. This should assist participants in an emergency situation because they would not have to consult several parts of the regulations to ensure that they are complying with all of the applicable requirements.

(4) § 284.264—Terms and conditions of emergency transactions

Paragraph (a) of this section is similar to § 157.48(a) in that both provide that participants should try to avoid reliance on the emergency gas transactions, if possible. Both provisions also require the recipient to have available data showing that an emergency exists or is imminent.[30]

The proposal also adds three clarifying provisions to paragraph (a). The first would prohibit a participant from engaging in an emergency transaction if this participation will render the participant unable to provide adequate service to its existing customers. The second would prohibit a participant from selling emergency gas under this subpart if the participant is simultaneously purchasing emergency gas. The third outlines the Commission's enforcement procedures. These clarifications will enable potential participants to more easily determine the limitations on their participation, and will indicate the types of enforcement responses to be expected if these limitations are violated.

Also, three provisions would be transferred to this section from § 157.48(d)(2). One provides that gas acquired inadvertently in excess of that needed for a curtailment emergency may be used for general system supply transactions. The second would prohibit an interstate pipeline from receiving compensation for acting as a broker or agent in an emergency transaction. Third, the regulations would require that the recipient of emergency gas provide the line loss and fuel volumes required to transport the emergency gas and pay for facilities needed to be constructed to effect the emergency gas transportation.[31] This provision is more comprehensive than the current provision, which requires a customer to pay for the compressor station fuel and lost or unaccounted-for gas. This is to clarify that the recipient is responsible for all costs associated with acquiring the gas.

Paragraph (b) of § 284.264, regarding the duration of the emergency gas transaction, is essentially the same as § 157.48(b). Both provisions limit the emergency transaction period to 60 days, with the possibility of one 60-day extension. However, if a transaction is likely to extend beyond the initial 60 days, the Commission emphasizes that the buyer and seller should use authority other than Subpart I as a basis for the transaction.[32]

Paragraph (b) also provides a pay-back provision for gas that is received in an emergency exchange. Like § 157.48(b), the pay-back period is limited to 180 days following termination of delivery of the exchange gas.

(5) § 284.265—Rate treatment by recipient

This section addresses how purchasers of emergency natural gas may treat the costs of that gas, and is similar to § 157.48(d) of the current regulations. The proposed rule provides that an interstate pipeline that purchases emergency gas for a *pipeline* emergency may roll-in the costs of that gas to its general system supply. This clarifies the regulations, which currently provide only that a pipeline may purchase emergency gas for general system supply, but does not state how the gas costs may be treated. (*See* § 157.48(d)(1).)

In a *curtailment* emergency, however, a pipeline will generally not be able to roll-in the cost of emergency gas to all on-line customers. This is to permit normal market signals to flow from the incremental gas customers, who would otherwise face curtailments to their supplies of emergency gas. The sole exception to this rule is for minimal amounts of gas which have been inadvertently purchased in excess of the volumes needed to address the curtailment emergency. Because such volumes would automatically enter the system supply of the pipeline, their costs could be recoverable through the rolled-in method.[23]

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[30] The current provisions require that the recipient provide the data to the interstate pipeline delivering the gas in time for the pipeline to make reports required by the Commission in § 157.51. The proposed rule does not key this information to any reports by the interstate pipeline; instead it provides that the data be sufficient "to enable another participant to form a good faith belief that an emergency exists or is imminent."

[31] Line loss and fuel volumes may be sold by the provider of the service.

[32] The 60-day emergency period coincides with the holding in Consumers Federation of America v. F.P.C., 515 F.2d 347, 352–353 (D.C. Cir. 1975). The court prohibited, as too long, a 180-day certificate exemption period under section 7(c) of the NGA and stated that section 7(c) allows only a narrow exception to the certificate requirement to deal with temporary emergencies.

Like the current rule, the proposed section provides that a purchasing interstate pipeline either may directly assign costs to customers who receive the emergency gas or may establish a separate account to cover costs of all emergency gas and allocate the gas on a weighted, average-cost basis.

The proposed rule would also provide that local distribution companies that purchase gas under Subpart I may directly assign the gas to specific customers. This provision clarifies the Commission's intent to exclude end-users as eligible purchasers of emergency gas. Because end-users are served by pipelines or distributors that may assign emergency volumes to specific customers, it is unnecessary to include end-users as eligible purchasers under this rule. Moreover, "emergency" is defined with respect to pipelines and distributors, and not end-users. This exclusion does not require local distribution companies to roll-in emergency gas costs when they resell gas to end-users. Rather, it merely requires that the distributors participate in a comprehensive effort to respond to the emergency within the context of their on-going relationship with the end-users.

(6) § 284.266—Rates and charges

This proposed section parallels current §§ 157.49 and 157.50. However, when possible, the Commission proposes to adopt the same methodology for determining rates and charges in emergency transactions that is applied under the self-implementing or blanket certificate procedures of Part 284. Thus, the following provisions would apply: for transportation of emergency gas, an interstate pipeline would apply the rate provisions in § 284.103, and an intrastate pipeline would apply the rate provisions in § 284.123. A local distribution company (including a Hinshaw pipeline) would apply the rate provisions of § 284.123 if it has an existing rate on file with an appropriate state regulatory agency for city-gate transportation services, or the rate provisions in § 284.222(e)(2)(ii) if it has no such rate on file. The Commission proposes this methodology for transportation by a local distribution company because many distributors do not have an approved rate that recovers only transmission costs without also recovering distribution costs.

Interstate pipelines (who sales are not covered by blanket certificate regulations) would base their rates for sales of emergency gas on applicable or comparable tariff rates. If there is no tariff, rates would be based on the methodology used in designing rates to recover its transmission and storage costs and its current purchased gas adjustment. This is similar to the current methodology. Finally, intrastate pipelines and local distribution companies (including Hinshaw pipelines) would set sale rates according to the provisions in § 284.144, the self-implementing provisions for gas sales by intrastate pipelines.

Aside from the reasonableness of being consistent in using the rates and charges provisions from the blanket certificate and self-executing provisions for emergency transactions under Subpart I, the Commission is also doing so because many of these transactions could satisfy the requirements for all of these programs. Use of the same rates and charges would avoid confusion. Moreover, the Commission has already made its "just and reasonable" determination for the blanket certificate program. The Commission stresses that implementing the new emergency regulations is not meant either to alter any current rates or charges or to provide an incentive for using Subpart I to attain a rate advantage not found in the other types of authorization for the transaction.

Paragraph (c) is virtually identical to the current § 157.48(c). It prohibits an interstate pipeline from including in its jurisdictional rate base, costs associated with facilities installed and operated in connection with an emergency transportation unless the pipeline obtains a section 7 certificate for the facilities. This is intended to prevent the emergency provisions from being used to circumvent the normal certificate requirements.

The Commission proposes to delete § 157.49(b), which provides a rebuttable presumption of prudence for emergency purchases to the extent that the rates do not exceed the maximum lawful price specified under section 102 of the NGPA.[24] The Commission believes that there is no longer a significant reason why a rebuttable presumption of prudence should apply to section 102 price levels (which may, in fact, set too high a standard in today's market) as opposed to the level for another type of gas. Moreover, as the Commission stated in its interim rule promulgating § 157.48, "nothing in this section will operate to preclude an interstate pipeline from availing itself of the opportunity to establish that a rate in excess of the new natural gas price was prudent in the circumstances." (43 FR 56532.) To the extent that an emergency purchase is a first sale or an NGPA section 311(b) sale, it is already governed by the statutory guarantee of cost pass-through in NGPA section 601(c)(2). Given these other statutory guarantees and the absence of record support for a section 102 price, the presumption of prudence can be removed from the regulations without significant effect.

(7) § 284.267—Reporting requirements

The reporting requirements now found in § 157.51 would be reorganized and clarified. The Commission would continue to require a report within 48 hours after the deliveries of emergency gas commence, but the proposed rule would require a 48-hour telegraphic report rather than the written report now allowed. The Commission believes that it would be more effective and less burdensome for a participant to send a telegram under emergency conditions than to prepare and send a written report.

The Commission would also make the reporting requirements clearer by dividing them into sales requirements, transportation requirements, and exchange requirements. The Commission would request much of the same data about each transaction that it currently requests under § 157.51. These data include the specific nature and anticipated duration of the emergency, the amount of gas to be purchased or transported on a daily basis, the names of the sellers, transporters, and any assignee, and the price.

The proposed rule would also require the following additional data for each type of transaction: a statement that the report is made under § 284.267, the date the transaction began, the total amount of emergency gas expected to be moved in the transaction, and the identity of all participants involved. The proposed rule would also require similar data pertaining to exchanges (except that, instead of the price for the gas, the regulations would require data on whether the exchange is simultaneous or deferred). The rule would require a statement of the redelivery schedule and any imbalances in the volumes, whether the exchange is on a thermal or volumetric basis, and the rates or charges for the exchange service.

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[23] Any pipeline that rolls-in the costs of gas purchased in a curtailment emergency must be prepared to document the reason for the excess purchases. The pipeline could not, therefore, purchase any significant volumes of emergency gas on a rolled-in basis in response to a curtailment emergency.

[24] Section 102 gas includes new natural gas and certain gas produced from old leases on the Outer Continental Shelf. *See* 15 U.S.C. 3312 (1982).

The additional data should not significantly increase the reporting burden of the affected participants. All of this information is readily available to the recipient of the gas and can be reported quickly and without undue detail.

The termination report under proposed § 284.267(b) would be a new requirement.[25] Three sworn copies of the termination report would be required 30 days after the emergency transaction ends and should include the following information: a description of the emergency transaction, including whether it was a pipeline or curtailment emergency; the date it began and ended; the date of the 48-hour report; the way the emergency was resolved; any corrections to the initial telegraphic report or a statement that it is correct; the volumes delivered and compensation received for the emergency gas; how the compensation was determined; the volumes of natural gas that were assigned; the total volume in system supply; any information supplied to other participants that an emergency existed or was imminent; and a statement that the circumstances demonstrated that the emergency existed or was imminent so as to qualify as an emergency transaction, and that the emergency was carried out under Subpart I.

Like the telegraphic report, the 30-day termination report would require data that should be readily available to a participant, because it is essentially a final version of the data previously sent in the 48-hour telegraphic report. The 30-day report also does not mandate any considerable amount of detail. Most of the information could be provided in a few phrases or lines. The Commission believes that the termination report is necessary to its effective administration of Part 284 in light of incidents where emergency transactions may have been used improperly to circumvent NGA certificate requirements. The small burden associated with this report is considerabily outweighed by the Commission's administrative and enforcement needs.

(8) § 284.268—Waiver

This provision is identical to § 157.52, which allows the Commission the flexibility to waive any of the emergency transaction requirements "to the extent required by the public interest."

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act, section 3, 5 U.S.C. 601–612 (Supp. V 1981), requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that, if promulgated, would have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a proposed rule would not have such an impact.

Most of the pipeline companies affected by this rule do not fall within the RFA's definition of small entity.[26] Some local distribution companies may meet the small entity definition. However, the accounting, filing, and reporting burdens on all of the entities affected by the rule would either remain about the same or would be increased by a very small degree. The associated costs that would be incurred by participants to emergency transactions are likely to be insignificant. Conversely, the reporting requirements should be easier to understand and complete. The Commission is revising these reporting requirements only where its administrative and enforcement experience has shown a need to do so. In addition, any increased compliance burden should be offset by the clarifications and consolidations made in this rule. For example, the substitution of a brief 48-hour telegraphic report for a more burdensome written report will probably reduce the overall time and resources that must be spent by transaction participants.

For these reasons, the Commission does not believe that the impact of this rule will be economically "significant," at least within the meaning of the RFA. Pursuant to section 605(b) of the RFA, therefore the Commission certifies that this rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520s (Supp. IV 1980) and the Office of Management and Budget's (OMB) regulations, to be codified at 5 CFR 1320.13 (1983), require that OMB approve certain information collection requirements imposed by agency rule. The proposed information collection requirements of this rule are being submitted to OMB for its approval. Interested persons can obtain information on these provisions by contacting the Office of the General Counsel, Rulemaking and Legislative Analysis Division, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Cathy Ciaglo, (202) 257–8033). Comments on the information collection provisions of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Written Comment Procedure

The Commission invites interested persons to submit written data, views, and other information concerning the matters set out in this notice. An original and 14 copies of such comments should be filed with the Commission by November 5, 1984. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM83–31–000.

All written submissions in this rulemaking will be placed in the Commission's public files and will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

List of Subjects

18 CFR Part 2

Pipelines.

18 CFR Part 157

Natural gas.

18 CFR Part 284

Natural gas.

In consideration of the foregoing, the Commission proposes to amend Parts 2, 157 and 284, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.68 [Removed]

1. Part 2 is amended by removing § 2.68.

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[25] The quarterly report prescribed under § 157.51(b) was required to be filed only at the end of each calendar quarter in 1979. This report is still prescribed in the regulations.

[26] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to the codified 13 CFR Part 121).

(Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978))

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

2. Part 157 is amended as follows:

(a) The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

§§ 157.22, 157.29 and §§157.45—157.52 [Removed]

(b) Sections 157.22, 157.29, and §§157.45 through 157.52 are removed.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. Part 284 is amended as follows:

(a) The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

(b) A new Subpart I is added to read as follows:

Subpart I—Emergency Natural Gas Sale, Transportation, and Exchange Transactions

Sec.
284.261 Purpose.
284.262 Definitions.
284.263 Emergency transactions authorized by this subpart.
284.264 Terms and conditions.
284.265 Rate treatment by recipient.
284.266 Rates and charges.
284.267 Reporting requirements.
284.268 Waiver.

Subpart I—Emergency Natural Gas Sale, Transporation, and Exchange Transactions

§ 284.261 Purpose.

This subpart prescribes the conditions under which a participant who engages in an emergency natural gas transaction in interstate commerce is exempt from the certificate requirements of section 7 of the Natural Gas Act.

§ 284.262 Definitions.

For purposes of this subpart:

(a) "Emergency" means a pipeline emergency or curtailment emergency.

(1) "Pipeline emergency" means (i) a sudden, unanticipated loss of a recipient's natural gas supply caused by a failure of facilities; or (ii) an unanticipated situation in which a participant, in good faith, determines that immediate action is required to protect life or health, to maintain physical property, or to maintain scheduled levels of natural gas storage inventories.

(2) "Curtailment emergency" means a situation experienced by a pipeline or distributor in which there is an actual or imminent threat of a curtailment of natural gas deliveries to any person who uses natural gas:

(i) In a residence;

(ii) In a commercial establishment in amounts less than 50 Mcf of natural gas on a peak day, as defined in 18 CFR § 281.203(a)(9);

(iii) In any hospital or school, as defined in 18 CFR § 281.203(a) (10) and (11); or

(iv) In any other use if this person:

(A) Does not have installed facilities for using alternative fuels, or adequate supplies of alternative fuels are not available, and

(B) Has operations that would be impaired but for the receipt of emergency natural gas.

(b) "Alternative fuel" means any fuel (including propane), other than natural gas, regardless of price. In the case of an electric utility, power that is purchased from another utility shall be considered an alternative fuel.

(c) "Emergency natural gas" means natural gas sold, transported, or exchanged in an emergency natural gas transaction.

(d) "Emergency natural gas transaction" means the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to this subpart which is:

(1) Necessary to alleviate an emergency, and

(2) Not anticipated to extend for more than 60 days in duration.

(e) "Emergency costs" means the amount paid by a recipient for emergency natural gas and all associated costs, including all transportation costs.

(f) "Participant" means any first seller, interstate pipeline, intrastate pipeline, or local distribution company (including a Hinshaw pipeline) that participates in an emergency natural gas transaction under this subpart.

(g) "Recipient" means:

(1) In the case of the sale of emergency natural gas, the purchaser of such gas, or

(2) In the case of a transportation or exchange of emergency natural gas when there is no sale of emergency natural gas under this subpart, the participant who receives the transported gas.

(h) "Hinshaw pipeline" means a pipeline that is exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act.

§ 284.263 Emergency transactions authorized by this subpart.

(a) *Exemption from section 7 of Natural Gas Act.* Any participant who engages in an emergency natural gas transaction is exempt from the requirements of section 7 of the Natural Gas Act if the transaction is conducted in accordance with this subpart. Participation in any emergency natural gas transaction shall not subject any participant to the jurisdiction of the Commission under section 7 of the Natural Gas Act except to the extent such transaction is provided for in this subpart.

(1) A first seller, interstate pipeline or local distribution company is exempt from section 7 of the Natural Gas Act by authority of section 7(c)(1)(B) of the Natural Gas Act.

(2) An intrastate pipeline is exempt from section 7 of the Natural Gas Act by authority of section 311 of the NGPA.

(b) *Election by participant.* If any participant in an emergency natural gas transaction is also authorized to conduct the transaction under any other subpart under which to conduct the transaction.

(c) *Covered transactions*—(1) *Sales.* Any first seller, interstate pipeline, intrastate pipeline, or local distribution company (including a Hinshaw pipeline) may sell emergency natural gas to any interstate pipeline or local distribution company for a period not to exceed 60 days.

(2) *Transportation.* Any interstate pipeline, intrastate pipeline, or local distribution company (including a Hinshaw pipeline) may transport natural gas for any participant for a period not to exceed 60 days. For purposes of this subpart, transportation includes exchange, except as otherwise provided.

§ 284.264 Terms and conditions.

(a) *General conditions.* (1) Participants should make every reasonable attempt to minimize or, if possible, to avoid reliance upon emergency natural gas transactions.

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(2) Before deliveries of emergency natural gas commence, a responsible official of the recipient shall supply any other participants in the emergency natural gas transaction with sufficient information to enable the participant to form a good faith belief that an emergency exists or is imminent.

(3) No participant may engage in an emergency natural gas transaction if its participation will render the participant unable to provide adequate service to its existing customers.

(4) A participant may not sell emergency natural gas if, during the term of the sale, the participant is also purchasing emergency natural gas from another participant under this subpart.

(5) If the Commission determines that a participant has engaged in an emergency natural gas transaction but has failed to comply with the conditions of this subpart, the Commission shall provide notice and opportunity for hearing and then may take appropriate action to ensure compliance. In addition to any other remedies for a failure to comply, the Commission may declare such participant ineligible to engage in further emergency natural gas transactions under this subpart.

(6) If a purchasing interstate pipeline acquires emergency natural gas that exceeds the volumes necessary to avoid a curtailment emergency of its direct assignment customers, the balance may be used for general system supply. It is expected that such excess emergency natural gas volumes will be small and that purchasing participants will make every reasonable attempt to balance assignments with supplies.

(7) An interstate pipeline shall not receive compensation from any person when acting as a broker or agent for another participant or customer in an emergency natural gas transaction.

(8) The recipient of emergency natural gas shall:

(i) Provide line loss and the fuel volumes required to transport the emergency natural gas; and

(ii) Pay the facilities required to be constructed to conduct the emergency natural gas transaction.

(b) *Duration*—(1) *Emergency sale or transportation.* An emergency natural gas transaction shall be limited to a period of not more than 60 consecutive calendar days, except that such transaction may be continued for an additional period of not more than 60 consecutive days if:

(i) Fifteen days prior to the end of the initial 60-day period, the recipient of emergency natural gas files a petition that:

(A) Describes fully the continued emergency,

(B) Requests a waiver of the initial 60-day limitation and permission for an extension of the transaction for an additional 60 days; and

(ii) Within the 15-day period, the Commission does not, by order, prohibit continuation of the emergency natural gas transaction for the additional 60-day period. If a transaction is likely to extend beyond 60 days, the participants should use authority other than this subpart to effect the transaction.

(2) *Redelivery in emergency exchange.* The redelivery of emergency natural gas in an exchange shall occur within 180 consecutive days following the termination of deliveries of the emergency natural gas.

§ 284.265 Rate treatment by recipient.

(a) *Interstate pipeline.* An interstate pipeline that purchases emergency natural gas shall:

(1) Treat the cost of such purchases as a natural gas cost and roll it into the cost of the pipeline's general system supply (except that the pipelines may only roll-in those costs from a curtailment emergency that are associated with the volumes acquired in excess of the amount needed for the emergency),

(2) Directly assign the costs to the customer that receives the emergency natural gas, or

(3) Establish a separate account to cover the emergency costs for all of its customers that receive emergency natural gas and allocate costs in that account to the individual assignment customers on a weighted, average-cost basis.

(b) *Local distribution company.* A local distribution company that purchases emergency natural gas may directly assign the costs of such purchase to the customer that receives the emergency natural gas.

§ 284.266 Rates and charges.

(a) *Transportation rates*—(1) *Interstate pipeline.* Rates and charges for the transportation of emergency natural gas by interstate pipelines shall be determined in accordance with § 284.103.

(2) *Intrastate pipeline.* Rates and charges for the transportation of emergency natural gas by an intrastate pipeline company shall be determined in accordance with § 284.123.

(3) *Local distribution company.* (i) A local distribution company that has an existing rate on file with an appropriate state regulatory agency for city-gate transportation services shall determine its rates and charges in accordance with § 284.123.

(ii) A local distribution company that does not have an existing rate on file with an appropriate state regulatory agency for city-gate transportation services shall determine its rates and charges (per unit volume of emergency natural gas transported) in accordance with § 284.222(e)(2)(ii).

(b) *Sale rates*—(1) *Interstate pipelines.* An interstate pipeline shall determine its rates for sales under this subpart according to a tariff that covers this type of service. If no rate is on file in a tariff for this type of service, the interstate pipeline shall determine its rates according to the methodology used in designing rates to recover its transmission and storage costs and its current purchased gas cost.

(2) *Intrastate pipelines and local distribution companies.* An intrastate pipeline or local distribution company shall determine its rates for sales under this subpart in accordance with § 284.144.

(c) *Costs excluded from rate base.* No interstate pipeline shall include in its jurisdictional rate base any cost associated with facilities installed and operated in connection with an emergency natural gas transaction unless a certificate of public convenience and necessity has been issued authorizing the costs. Absent a certificate, these facilities may only be used to conduct emergency natural gas transactions or transactions authorized under section 311 of the NGPA.

§ 284.267 Reporting requirements.

(a) *Forty-eight hour report*—(1) *Sales.* Within 48 hours after deliveries of emergency natural gas commence, the purchasing participant shall notify the Commission by telegram of the sale, stating, in the following sequence:

(i) That the telegram is for an emergency transaction under § 284.267;

(ii) The date deliveries commenced;

(iii) The specific nature (*i.e.*, pipeline or curtailment) and anticipated duration of the emergency;

(iv) The total amount and average daily amount of emergency natural gas to be purchased during the term of the transaction;

(v) The purchase price of the gas;

(vi) The transportation rate; and

(vii) The identity of all participants involved in the transaction, including any customers to whom the emergency natural gas is to be assigned.

(2) *Transportation (excluding exchanges).* Within 48 hours after deliveries commence in an emergency natural gas transaction which does not involve the sale of emergency natural gas, the recipient of emergency natural

gas shall notify the Commission by telegram of the transportation, stating, in the following sequence:

(i) That the telegram is for an emergency transaction under § 284.267;

(ii) The date deliveries commenced;

(iii) The specific nature (*i.e.*, pipeline or curtailment) and anticipated duration of the emergency;

(iv) The total amount and average daily amount of emergency natural gas to be transported during the term of the transaction;

(v) The transportation rate; and

(vi) The identity of all the participants involved in the transaction.

(3) *Exchanges.* Within 48 hours after an exchange transaction for emergency natural gas commences, the initial recipient of the exchange volumes shall notify the Commission by telegram of the exchange, stating, in the following sequence:

(i) That the telegram is for an emergency transaction under § 284.267;

(ii) The date the exchange commenced;

(iii) The specific nature (*i.e.*, pipeline or curtailment) and anticipated duration of the emergency;

(iv) The total amount and average amount of emergency natural gas to be exchanged during the term of the transaction;

(v) The identity of all participants involved in the transaction;

(vi) Whether the exchange is simultaneous or deferred; the redelivery schedule of the volumes, or any imbalances in the volumes;

(vii) Whether the exchange is on a thermal or volumetric basis; and

(viii) The rates or charges, if any, for the exchange service.

(b) *Termination report.* Within thirty days after the emergency transaction ends, the participant who received the emergency natural gas shall file with the Commission a sworn statement and two conformed copies thereof, which shall include the following information in the following sequence:

(1) A description of the emergency transaction, including whether it was a pipeline or curtailment emergency transaction; the commencement and termination date; the date of the 48-hour report, and the method of resolving the emergency;

(2) Any corrections to the 48-hour report information supplied to the Commission under paragraph (a) of this section or a statement that the information was correct;

(3) The volumes of the emergency natural gas delivered during the transaction;

(4) The total compensation received by the seller for the emergency sale;

(5) The total compensation paid for the emergency natural gas transportation or exchange service, if any;

(6) The methods by which such compensation was derived;

(7) The volumes of natural gas assigned and the total volumes included in system supply;

(8) The information supplied to any other participant pursuant to § 284.264(a)(2); and

(9) A statement that the emergency natural gas transaction was carried out in accordance with this subpart, and that identifies the circumstances demonstrating an emergency existed or was imminent so as to require an emergency natural gas transaction.

§ 284.268 Waiver.

The Commission may, by order, waive the requirements of this subpart in connection with any emergency natural gas transaction to the extent required by the public interest.

[FR Doc. 84-23465 Filed 9-5-84; 8:45 am]

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18 CFR Part 271

[Docket No. RM79-76-232; Texas—40]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Strawn Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on October 15, 1984.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 14, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Issued: August 30, 1984.

I. Background

On July 11, 1984, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Strawn Formation located in the western part of the state of Texas be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Strawn Formation in the Whitehead (Strawn) Field be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Strawn Formation located in portions of Sutton, Schleicher and Crockett Counties, Texas, Railroad Commission District 7c, be designated as a tight formation. The recommended area lies primarily in the extreme western portion of Sutton County, and extends north into the southwest part of Schleicher County, and to the west into the eastern part of Crockett County. The area includes approximately 250,000 contiguous acres and includes three fields; the Aldwell Ranch (Canyon), Sawyer (Canyon), and Whitehead (Strawn).

The top part of the Strawn Formation is a brown finely crystalline, fossiliferous limestone, the mid-section of the formation is a shaly limestone, and the low part of the formation is a grey to white fossiliferous limestone. The Strawn Formation underlies the Canyon sandstones and shales and overlies the Atoka Formation.

The formation dips to the southwest over the recommended area. The shallowest formation top is approximately 7,383 feet in the northeast while the deepest formation top is 9,856 feet in the southwest. The approximate

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average depth to the top of the Strawn Formation is 8,300 feet.

A type log for the area is the Amoco Production Company, Edwin S. Mayer, Jr. No. C–8 well located in the northern part of the recommended area in Section 5, McMullen County School Land Survey A–500. In this well, the thickness of the Strawn Formation is 306 feet. A gradual thickening of the Strawn Formation occurs towards the south part of the recommended area.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of the formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, under the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Texas that the Strawn Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before October 12, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–232 (Texas—40), and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street N.E., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than September 14, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event the Commission adopts Texas' recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulations.

PART 271—[AMENDED]—

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(204) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(176) —(203) [Reserved]

(204) *Strawn Formation in Texas.* RM79–76–232 (Texas—40)

(i) *Delineation of formation.* The Strawn Formation is found in the western part of the State of Texas. The designated area lies primarily in the extreme western part of Sutton County, and extends north into the southwest part of Schleicher County, and to the west into the eastern part of Crockett County.

(ii) *Depth.* The vertical limits of the Strawn Formation are defined by the Canyon sand and shale Formations above and the Atoka Formation below. The depth to the top of the formation is approximately 7,383 feet in the northeast part of the designated area and dips to 9,858 feet in the southwest, having an average depth of 8,300 feet to the top of the formation. In a type log, the Amoco Production Company, Edwin, S. Mayer, Jr. No. C–8 well, located in the northern part of the designated area, the thickness of the Strawn Formation is 306 feet. A gradual thickening of the formation occurs toward the south part of the designated area.

[FR Doc. 84–23470 Filed 9–5–84; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–26–83]

Elections and Miscellaneous Procedural Matters Under Section 338 of the Internal Revenue Code

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that redesignate and amend (as redesignated) temporary income tax regulations relating in part to elections and miscellaneous procedural matters under section 338 of the Internal Revenue Code of 1954. The text of the revisions to § 1.338–1T of the redesignated temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed effective date. The regulations are proposed to be effective, generally, for stock acquisitions made after August 31, 1982.

Date for comments and requests for a public hearing. Written comments and requests for a public hearing must be delivered or mailed by November 5, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–26–83) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Duane H. Pellervo of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** redesignate and amend temporary regulations published in the **Federal Register** on February 8, 1984 (49 FR 4722). The final regulations that are proposed to be based on temporary regulations § 1.338-1T, as redesignated and amended in the Rules and Regulations portion of this issue of the **Federal Register**, would be added to Part 1 ot Title 26 of the Code of Federal Regulations. Those final regulations would provide rules for making elections under section 338(g) (other than elections subject to section 224(d)(2) of TEFRA) and would provide guidance relating to miscellaneous procedural matters. For the text of the amendments to the temporary regulations, see T.D. 7975, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301-1—1.385-6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

These regulations are proposed to be issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 485, 26 U.S.C. 338; 68A Stat. 917, 26 U.S.C. 7805, respectively).

Roscoe L Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23597 Filed 9-4-84; 9:13 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 301

[LR-200-82]

Returns of Foreign Personal Holding Companies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the amendments made to the Internal Revenue Code of 1954 by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) which concern returns of officers, directors and shareholders of foreign personal holding companies. While the changes expanded the number of persons required to file information returns for foreign personal holding companies, they also simplified the reporting requirements with respect to foreign personal holding companies and gave the Secretary the authority to set the return due dates and to waive duplicative filings. TEFRA also provides a new $1,000 civil penalty for failure to file a proper and timely foreign personal holding company information return.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 5, 1984. The amendments are proposed to be effective 30 days after their publication as a Treasury decision in the **Federal Register** for taxable years of foreign corporations beginning after September 3, 1982. Taxpayers who are required to file under section 340 of TEFRA and who have compiled information based on the old Forms 957 and 958, which were replaced by Form 5471, may file the old forms instead of Form 5471 for taxable years ending on or before November 30, 1983. (See announcement 83-56, 1983-13 I.R.B. 92).

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-200-82], Washington, D.C. 20224.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (LR-200-82) (202-566-3289, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6035 and the Regulations on Procedure and Administration under section 6679 (26 CFR Part 301). These amendments are proposed to conform the regulations to changes made to sections 6035 and 6679 by section 340 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 633) (TEFRA). The amendments are proposed under the authority contained in Code sections 6035 (a), (d) and (e) (96 Stat. 633, 634; 26

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U.S.C. 6035 (a), (d), and (e)) and 7805 (68A Stat. 917, 26 U.S.C. 7805).

Discussion

TEFRA simplified the reporting requirements that section 6035 imposes with respect to foreign personal holding companies. Prior to its amendment, section 6035 and the regulations thereunder required U.S. officers and directors of foreign personal holding companies to file two annual returns. The first information return was filed on Form 957 and concerned the stock structure and identity of the shareholders of the corporation. This information return was originally intended by statute to be filed monthly but was made an annual filing requirement by the regulations.

The second information return was filed on Form 958 and concerned the foreign personal holding company's income and deductions for the taxable year, as well as undistributed foreign personal holding company income. Form 958 had to be filed on the 60th day after the close of the taxable year of the foreign personal holding company, which was a different filing date than that required for Form 957.

In addition, any U.S. shareholder who had not already filed as a director or officer and who held 50% or more of the corporation's stock was required to file Form 957. The result in many cases was that duplicative and overlapping returns were filed.

Because the various returns of officers, directors, and 50% shareholders suffered from overlapping coverage, as well as inconveniently staggered filing dates, TEFRA combined the filing requirements and gave the Service flexibility in setting return due dates and waiving duplicative filings. Forms 957 and 958 have now been incorporated into Form 5471.

TEFRA also expands its reporting requirements to each United States citizen or resident who is a 10-percent (rather than 50-percent) shareholder of a foreign personal holding company as well as to officers and directors who are U.S. citizens or residents. The reason for the change is two-fold. First, foreign personal holding company income is subject to U.S. tax when five or fewer U.S. individuals own more than 50-percent in value of the corporation's stock (sec. 552(a)(2)). The 10-percent shareholder reporting requirement conforms more closely to underlying tax liability. Second, when the reporting requirements applied to 50-percent shareholders and officers and directors, the reporting requirement could be avoided altogether, since U.S. shareholders who held less than 50 percent of the stock but were still controlling shareholders could arrange for only foreign individuals to serve as officers and directors.

The proposed regulations require that shareholder and income information be filed on the same date that the individual's income tax return is due. The person required to supply the information will attach the information return for the annual accounting period of the foreign corporation that ends with or within the individual's income tax year to his or her income tax return.

Whether an individual is considered an officer, director, or 10-percent shareholder is determined on the date that the information return is required to be filed. If no individual qualifies as of that date, the determination is made on the last day of the foreign corporation's taxable year on which a U.S. citizen or resident was an officer, director, or 10-percent shareholder.

The proposed regulations provide that one person may file Form 5471 and the applicable schedules for other persons who have the same filing requirements. This rule is proposed because it is similar to the rules under existing § 1.6038–2(k) and proposed § 1.6038–2(j) (published in the **Federal Register** on December 19, 1983, 48 FR 56076) which allow for joint returns to be filed and is also similar to the rule under the pre-TEFRA section 6035 regulations dealing with duplicative filing of officers and directors (see § 1.6035–1(b)). A person who does not file Form 5471 because another person has agreed to file the information on his behalf still remains liable under the penalty provisions if that other person fails to file a proper return.

Information required by the proposed regulation includes corporate, shareholder and income information. The required shareholder information includes the names and addresses of all persons who held shares, options, and convertible securities during the taxable year; a description of each class of shares and the total number of shares of each class outstanding at the beginning and end of the taxable year; the number of shares of each class, option, or convertible security held by each person; and any changes in the holdings of shares, options, or convertible securities during the year. Required income information includes the foreign personal holding company's gross income, deductions, credits, taxable income, and undistributed foreign personal holding company income for the year.

In addition to the criminal penalties imposed by existing law for failure to file a return and filing a false or fraudulent return, TEFRA imposed by an amendment under section 6679 a $1,000 civil penalty for failure to file a proper foreign personal holding company information return. This penalty does not apply, however, if the failure is shown to be due to reasonable cause.

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (Preferably six copies) to the Commissioner of Internal Revenue. All comments will be hearing available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Regulatory Flexibility Act of 1980 and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major regulation subject to Executive Order 12291.

Drafting Information

The principal author of these regulations is Mary Frances Pearson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects

26 CFR §§ 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of Information, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Parts 1 and 301 are as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. Section 1.6035-1 is revised to read as follows:

§ 1.6035-1 Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.

(a) *Requirement of returns—(1) In general.* For taxable years of a foreign personal holding company beginning after September 3, 1982, each United States citizen or resident who is an officer, director, or 10-percent shareholder of the foreign personal holding company (as defined in section 552) shall file with his income tax return, on or before the date that return is due, Form 5471 and the applicable schedules to be completed in accordance with the instructions setting forth corporate, shareholder, and income information for the foreign personal holding company's annual accounting period that ends with or within the officer's, director's, or shareholder's taxable year.

(2) *General corporate information.* The general foreign personal holding company information required by this section with respect to each taxable year is as follows:

(i) The name and address and employer identification number (if any) of the corporation;

(ii) The kind of business in which the corporation is engaged;

(iii) The date of its incorporation;

(iv) The country under the laws of which the corporation is incorporated;

(iv) A description of each class of stock issued and outstanding by the corporation for the beginning and end of the annual accounting period;

(vi) The number of shares and par value of common stock of the corporation issued and outstanding as of the beginning and end of the taxable year;

(viii) The number of shares and par value of preferred stock of the corporation issued and outstanding as of the beginning and end of the taxable year, the rate of dividend on such stock and whether such dividend is cumulative or noncumulative; and

(viii) Any other information required by the appropriate form and its instructions. For purposes of this paragraph, the term "share" includes any security convertible into a share in the corporation and any option granted by the corporation with respect to any share in the corporation.

(3) *Shareholder information.* The shareholder information required by this section is as follows:

(i) The name, address and taxpayer identification number (if any) of each person, whether foreign or U.S., who was a shareholder during the taxable year and the class and number of shares held by each, together with an explanation of any changes in stock holdings during the taxable year;

(ii) The name and address of each holder during the taxable year of securities convertible into stock of the corporation and the class, number, and face value of the securities held by each, together with an explanation of any changes in the holdings of such securities during the taxable year;

(iii) The name and address of each holder during the taxable year of any option granted by the corporation with respect to any share in the corporation, and a full description of the options held by each, together with an explanation of any changes in the holdings of such options during the taxable year, and

(iv) Any other information required by the appropriate form and its instructions.

(4) *Income information.* The income information required by this section is the gross income, deductions and credits, taxable income, foreign personal holding company income, and undistributed foreign personal holding company income for the taxable year and other information required by the approriate form and its instructions.

(b) *Persons required to file return*—(1) *In general.* The determination of whether a United States citizen or resident is a person who is an officer, director, or 10-percent shareholder required to file a return with respect to any foreign corporation is made as of the date that Form 5471 is required to be filed. If there is no such person required to file on that date (because, for example, the corporation has been dissolved), then filing is required of the persons who were officers, directors or 10-percent shareholders on the last day of the most recent taxable year of the corporation for which there was such a person who was a United States citizen or resident.

(2) *10-percent shareholder.* (i) The term "10-percent shareholder" means any individual who owns directly or indirectly (within the meaning of section 554) 10 percent or more in value of the outstanding stock of a foreign corporation.

(ii) An individual who does not own 10 percent or more in value of the outstanding stock directly but is required to file solely by attribution of another United States person's stock ownership is excused from filing if the direct owner that is an individual furnishes all the information required.

(3) *Two or more persons required to submit the same information.* If two or more persons are required to furnish the information for the same foreign personal holding company for the same period, one person may make one return on Form 5471. The single Form 5471 may be filed with the income tax return of any one of the persons and shall disclose the name, address, and identifying number of each other person or persons on whose behalf the return is filed. Each person on whose behalf the return is filed remains liable for any penalties imposed under sections 6679, 7203, 7206, and 7207.

(4) *Statement required.* Any United States citizen or resident required to furnish information under this section with his return who does not do so by reason of the provisions of subparagraph (2)(ii) or (3) of this paragraph shall file a statement with his return indicating that such requirement has been or will be satisfied and identifying the return with which the information was or will be filed and the place of filing.

(c) *Separate returns for each corporation.* If a person is required to file returns under section 6035 and this section with respect to more than one foreign personal holding company, separate returns must be filed with respect to each company.

(d) *Corrective filing.* If an information return with respect to a taxable year of a foreign personal holding company beginning after September 3, 1982, is filed before [date which is 30 days after the date of publication of a Treasury decision in the **Federal Register**] and that return does not contain all of the information required by this section, then the filer of the return shall file an amended information return containing all of such information within 60 days after [date which is 30 days after the date of publication of a Treasury decision in the **Federal Register**].

(e) *Penalties*—(1) *Criminal penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(2) *Civil penalties.* For civil penalties for failure to file a proper foreign personal holding company information

return, see section 6679 and the regulations thereunder.

Par. 2. Section 1.6035-2 is revised to read as follows:

§ 1.6035-2 Returns of U.S. officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by officers and directors of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(a) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035-1 (Rev. as of April 1, 1981).

Par. 3. Section 1.6035-3 is revised to read as follows:

§ 1.6035-3 Returns of 50-percent U.S. shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982.

For rules relating to information returns required to be filed by shareholders of foreign personal holding companies for taxable years beginning before September 4, 1982, see section 6035(b) (as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 26 CFR 1.6035-2 (Rev. as of April 1, 1981).

PART 301—[AMENDED]

Regulations on Procedure and Administration

Par. 4. Section 301.6679-1 is amended as follows:

1. The section heading is revised to read as follows: "Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 3, 1982".

2. Paragraph (a)(1) is revised as set forth below.

3. Paragraph (a)(2) is amended by removing "section 6046 and § 1.6046-1," and adding in its place "section 6035, 6046, or 6046A,".

4. The third sentence of paragraph (a)(3) is amended by removing "section 6046" and adding in its place "section 6035, 6046, or 6046A".

§ 301.6679-1 Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 31, 1982.

(a) *Civil penalty*—(1) *In general.* In addition to any criminal penalty provided by law, each United States citizen, resident or person filing a separate or joint return, or on whose behalf a return is filed, pursuant to sections 6035, 6046, or 6046A, and the regulations thereunder, who fails to file such a return within the time provided, or who files a return which does not show the required information, shall pay a penalty of $1,000, unless such failure is shown to be due to reasonable cause.

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Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23593 Filed 9-5-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 90

[DoD Instruction 7045.xx]

Collection of Indebtedness From DoD Employees

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule will be issued to implement, within the Department of Defense, the Debt Collection Act of 1982, and other statutory authorities available to DoD regarding the collection of debts. This proposed rule provides specific guidance to all heads of DoD Components on the conduct and management of debts. It also provides advice to other federal agencies on how to request offset from debtors who are DoD military members or employees.

DATES: Written comments must be received October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Adam T. Shaw, (202) 697-0585.

ADDRESS: Office of the Assistant Secretary of Defense (Management Systems), the Pentagon, Room 3E825, Washington, D.C. 20301.

SUPPLEMENTARY INFORMATION:

1. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

2. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

3. Although exempt under section 1.(a)(2) of E.O. 12291, the Department of Defense does not consider this rule to be a major rule under section 1.(b), E.O. 12291.

List of Subjects in 32 CFR Part 90

Debt collection.

Accordingly, 32 CFR Chapter 1, is amended by adding a new Part 90, reading as follows:

PART 90—COLLECTION OF INDEBTEDNESS FROM DoD EMPLOYEES

Sec.
90.1 Purpose.
90.2 Applicability and Scope.
90.3 Definitions.
90.4 Policy.
90.5 Responsibilities.
90.6 Procedures.

Authority: 5 U.S.C. 5514.

§ 90.1 Purpose.

Under DoD Directive 7045.13 this part provides policy, prescribes uniform procedures to implement 5 U.S.C. 5514, section 3716 and portions of section 3711 of 31 U.S.C. as modified by Pub. L. 97-365 and the Federal Claims Collections Standards (FCCS); and assigns responsibilities.

§ 90.2 Applicability and Scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereinafter referred to collectively as "DoD Components").

(b) It includes all civil and military functions under the direct supervision of a DoD Component.

§ 90.3 Definitions.

In addition to the definitions below, other definitions, concepts, and terminology used herein may be found in the FCCS.

(a) *Debt.* An amount owed to the United States from sources that include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other claims and similar sources. However, it does not include overpayments from normal processing delays arising from the conditions below and if adjustment is made by the Department of Defense or the individual Military Departments within four pay periods.

(1) An employee elects coverage or a change in the coverage under a federal benefits program requiring periodic deductions from pay; or

(2) A ministerial adjustment in pay rates or allowances cannot be placed into effect immediately.

(b) *Delinquent Debt.* A debt that has not been paid by the date specified in the DoD Component's initial written notification or as specified in 4 CFR 101.2(b).

(c) *Disposable Pay.* The amount that remains from an employee's federal pay after required deductions for federal, state, and local income taxes; social security taxes, including medicare taxes; federal retirement programs; premiums for life and health insurance benefits; and other deductions that are required by law to be withheld.

(d) *Employee.* A current or retired civilian employee; a member or retiree of the Armed Forces or Reserves of the United States; an employee of the U.S. Postal Services or a member of the Postal Rate Commission

(e) *Ministerial Adjustment.* Any adjustment that is nondiscretionary, such as an adjustment prescribed by statue or regulation.

(f) *Pay.* Basic pay, special pay, incentive pay, retired pay, retainer pay, or, in case of employees not entitled to pay, other authorized payments. Allowances are *not* "pay."

(g) *Pay Period in the Department of Defense.* Biweekly for working civilians. Monthly for active duty military and all retirees.

(h) *Person.* An individual, employee, or contractor.

(i) *Salary Offset.* The collection of a debt to the government by deduction from the pay account of an employee. Deductions may be by lump sum or by installment.

§ 90.4 Policy.

It is DoD policy that each Component shall manage credit properly and pursue vigorously timely and economical debt collection. Credit management and debt collection programs shall be established to comply with collection standards.

§ 90.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* (ASD(C)) under DoD Directive 5118.3 shall oversee the administration of the debt collection and credit management program in the Department of Defense.

(b) The *Heads of DoD Components* shall: (1) Develop and implement procedures to comply with this part and the FCCS.

(2) Carry out involuntary salary offsets and transfer resultant funds to appropriate federal agencies, as required.

(3) Participate in the internal DoD data exchange program for delinquent debtors.

(4) Report to the Defense Manpower Data Center (which operates under the policy guidance of the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L)) activities on internal matching and salary offsets for other federal agencies under Pub. L. 97–365.

(c) The *Director, Defense Logistics Agency (DLA),* through the DMDC, shall conduct the data exchange program for debt collection, which shall include: (1) Conducting computer matching programs within the Department of Defense and with other federal agencies for the purpose of identifying current or former employees in default or in debt to either DoD Components or other Federal agencies.

(2) Ensuring that federal agencies requesting salary offsets of DoD employees include certificates of due process with their requests.

(3) Providing appropriate offices within DoD Components with requests for offsets that have been certified by other federal agencies.

(4) Ensuring that appropriate steps are taken to safeguard all information as required by the Privacy Act, such as notification in the **Federal Register**, or the preparation and submission of any required reports, or both.

(5) Providing necessary guidance to DoD Components on reporting formats and data elements to be considered to ensure uniformity.

(6) Identifying all federal agencies involved in performing the matches and the roles to be performed by each agency.

(7) Providing periodic progress and summary reports to the ASD(C), the ASD (MI&L), and other DoD Components on activities under Pub. L. 97–365 such as the number of employees and associated dollar amounts entering into voluntary repayments as a result of DoD efforts and assistance to other federal agencies, amounts withheld involuntarily from DoD employees, and the amounts recovered by DoD Components.

§ 90.6 Procedures.

All DoD Components shall follow the procedures as prescribed below.

(a) *Governing Regulations.* (1) The authorities under which the following procedures have been developed are:

(i) 5 U.S.C. 5705, Advancements and Deductions

(ii) 37 U.S.C. 1007, Deductions from Pay

(iii) 10 U.S.C. 9837, Settlement of Accounts: Deductions from Pay

(iv) 10 U.S.C. 4837, Settlement of Accounts: Deductions from Pay

(v) 5 U.S.C. 5513, Withholding Pay; Credit Disallowed or Charge Raised for Payment

(vi) Pub. L. 97–365

(2) The above authorities are separate and distinct and should be treated as such. Collections under these authorities shall be made as prescribed.

(b) *Collections Under 5 U.S.C. 5705.* (1) A DoD Component may advance, through the proper disbursing official, to an employee entitled to per diem or mileage allowances under 5 U.S.C. 5705, a sum considered advisable with regard to the character and probable duration of the travel to be performed. A sum advanced and not used for allowable travel expenses is recoverable from the employee or the estate by:

(i) Offset against accrued pay, retirement credit, or other amount due the employee;

(ii) Deduction from an amount due from the United States; and

(iii) Such other methods as provided by law.

(2) *Debtor Entitlement.* Under this law, the debtor may be given an opportunity to repay the amount due or the amount may be deducted automatically from the next pay due the debtor. If the offset is initiated automatically, notice will be given the debtor when the amount is deducted. DoD Components may elect to explain the procedure to the debtor before disbursing the advance.

(3) *Formal Notification Process.* DoD Components are free to choose the method by which a debtor shall be advised of the debt or implementation of the procedures described in § 90.6(b)(2) of this section.

(c) *Collections Under 37 U.S.C. 1007* (applies only to the Army and the Air Force). (1) This law generally authorizes the deduction of amounts due the United States from the pay or other sources of officers and enlisted members of the Army and the Air Force, when amounts due have been reported or an administrative determination has been made that a debt is due the United States. This law provides specific circumstances under which involuntary deductions may or may not be made and should be cited when collections are made under this authority.

(2) *Debtor Entitlements.* Under 37 U.S.C 1007, deductions can be made from the pay of an officer only for an indebtedness to the United States that is admitted to by the officer or established by a court judgment or a special order issued by the Secretary of the Military Department concerned or a designee. There is no requirement for enlisted members of the Army or the Air Force to admit to a debt. Implementing regulations of appropriate DoD Components shall provide for notification to debtors when collections are made under this authority.

(d) *Collections Under 10 U.S.C. 9837* (applicable to Air Force only). (1) This law authorizes the deduction from the next pay of an officer or enlisted member of the Air Force. Amounts due the United States for articles sold to the debtor on credit; amounts administratively determined to be owed by an enlisted member to the United States to cover the cost of lost articles or the cost to repair damaged articles. The Air Force should cite this section when making collections under this authority.

(2) *Debtor Entitlements.* The Secretary of the Air Force shall issue implementing regulations to provide for those debtor entitlements considered to be appropriate in the circumstances.

(e) *Collections under 10 U.S.C. 4837* (applicable to Army only). (1) This law authorizes collections from officers or enlisted members of the Army under the same conditions as those provided for the Air Force in § 90.6(d), above. The Army shall cite this section when making collections under this authority.

(2) *Debtor Entitlements.* The Secretary of the Army shall issue implementing regulations to provide for those debtor entitlements considered to be appropriate in the circumstances.

(f) *Collections under Pub. L. 97–365 and 5 U.S.C. 5514.* The salary offset provisions of Pub. L. 97–365 generally provide that when the Secretary of Defense, a designee, or the head of another federal agency determines that an employee is indebted to the United States, the amount of the indebtedness may be collected by deduction from the current pay of the employee. The offset will be made either in the total amount of the debt or, if the total debt exceeds 15 percent of disposable pay, in increments approximating the 15 percent amount over a number of pay periods.

(1) *Debtor's Entitlement.* (i) A minimum of 30 days written notification of the circumstances under which the debt occurred, the amount owed, the intent to collect by deduction from pay, and an explanation of other rights of the employee.

(ii) An opportunity to inspect and copy the records of the DoD Component related to the debt.

(iii) An opportunity to enter into a written agreement to establish a schedule for repayment of the debt.

(iv) An opportunity for a hearing on the determination of the DoD Component concerning the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement, concerning the terms of the repayment schedule.

(A) If the employee requests the Department of Defense to reconsider the determination concerning the existence or amount of the debt, the employee shall submit to the Department of Defense a statement, with supporting documents, indicating why the employee believes he or she is not so indebted.

(B) If the employee requests the Department of Defense to reconsider the proposed offset schedule, the employee shall file an alternative proposed offset schedule that explains clearly why reconsideration is requested. If the current offset schedule imposes a financial hardship, the alternative proposed offset schedule shall include a statement with supporting documents, showing why the DOD schedule would produce an extreme financial hardship for the employee. The supporting documents must show, for the employee and his or her spouse and dependents for 1 year preceding the DOD notice and for the repayment period proposed by the employee in his or her offset schedule, specific details on income and the family's financial position.

(2) *Formal Notification Process.* (i) Appropriate written demand shall be made promptly upon a debtor in terms that inform the debtor of the consequence of failing to cooperate. As prescribed in § 90.6(f)(1)(i) of this section, only one written demand is required. However, DOD Components must be satisfied that the debtor has received the demand letter and has been advised of the entitlements also identified in § 90.6(f)(1) (i) through (iv). In addition, the notification letter shall advise the debtor of the following:

(A) The date by which payment is to be made, which normally should be no more than 30 days from the date that the demand letter is mailed or hand-delivered. DOD Components shall exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated.

(B) The amount, frequency, approximate beginning date, and duration of the intended deduction if payment is not made on the due date.

(C) The DOD Component's requirements concerning interest, penalties, and administrative costs, unless such payment are excused in accordance with the FCCS.

(D) The method and time period for requesting a hearing.

(E) The fact that the timely filing of a petition for the hearing will stay the commencement of collection proceedings.

(F) The fact that a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(G) Any other rights and remedies available to the employee such as the possibility of a waiver under provisions of statutes or regulations governing the claim for which the collection is being made, or the possibility of an appeal if the eventual hearing decision is not in the employee's favor.

(H) The fact that amounts paid or deducted for the debt that are later waived or found not owned to the United States will be refunded promptly to the employee, unless there are applicable statutes or regulations to the contrary.

(I) The specific address to which all correspondence shall be directed regarding the debt.

(3) *Hearings*—(i) *Petitions.* Debtors who petition for hearings under this Part are entitled to an oral hearing unless such hearing is waived specifically in the petition letter.

(A) An employee must file a petition with the DOD Component concerned for a hearing not later than 15 days from the date the employee receives the notice described in § 90.6(f)(2), of this section, if an employee wants a hearing concerning the existence of the debt or the proposed DOD offset schedule.

(B) The employee's petition or statement shall identify and explain with reasonable specificity and brevity the facts, evidence, and witness that the employee believes support his or her position.

(C) The employee also must indicate whether he or she wishes the hearing to consist solely of written submissions or whether the hearing is to be oral. If an employee elects an oral hearing, this election may be changed to written submissions only if made 3 days before the original hearing date.

(D) If an employee files a petition for a hearing under § 90.6(f)(3)(i)(A) of this section, the DOD Component shall:

(*1*) Notify the employee of the time, date, and location of the hearing if the employee does not request a hearing consisting solely of written submissions.

(*2*) Provide the employee and the hearing official with a copy of the records in the DoD Component's possession relating to the employee's debt.

(E) Not later than 15 days from the date the employee receives the records described in § 90.6(f)(3)(i)(D) of this section, or not later than 25 days from the date the employee receives the notice described in § 90.6(f)(2) of this section, if he or she has received records, the employee shall file the following with the DoD Component concerned and the hearing official:

(*1*) The items listed in § 90.6(f)(3)(i)(F) of this section, if the employee contests the DoD Component's determination of the existence or the amount of the debt; or

(*2*) The items listed in § 90.6(f)(3)(i)(H) of this section, if the employee contests the DoD Component's offset schedule.

(F) An employee contesting the Department of Defense's determination of the existence or amount of the debt shall file the following:

(*1*) A statement of the reasons that caused the employee to believe that the Department of Defense's determination of the existence or amount of the debt was clearly erroneous. The statement shall include all facts on which the employee bases his or her belief and any legal arguments supporting the belief.

(*2*) A list of witnesses the employee will call at the hearing and a summary of their anticipated testimony.

(*3*) A copy of any records the employee intends to introduce at the hearing if they differ from the records provided by the DoD Component.

(G) However, the employee may not raise any issue that he or she has not raised previously with the DoD Component concerning the existence or the amount of the debt or introduce any facts or records that he or she has not submitted previously to the DoD Component concerning the existence or amount of the debt.

(H) If an employee contests the DoD Component's proposed offset schedule, the employee shall file the following:

(*1*) A proposed alternative offset schedule.

(*2*) A statement of the reasons why the DoD Component's proposed offset against disposable pay will produce an extreme financial hardship.

(*3*) The information required in § 90.6(f)(1)(iv)(B) of this section.

(*4*) A list of witnesses the employee intends to call at the hearing and a summary of their anticipated testimony; and

(*5*) A copy of the records the employee intends to introduce at the hearing if they differ from the ones provided by the DoD Component.

(I) As applicable, not later than 15 days from the date the DoD Component receives the materials submitted under § 90.6(f)(3)(i)(A) of this section, the DoD Component shall provide the employee and the hearing official with the following:

(*1*) A statement supporting the DoD Component's determination regarding the existence and amount of the debt.

(*2*) A statement setting forth the reasons why the DoD Component's proposed offset schedule does not produce an extreme financial hardship for the employee under § 90.6(f)(4) of this section.

(*3*) A list of witnesses that the DoD Component intends to call at the hearing.

(*4*) A summary of their anticipated testimony.

(ii) *Scheduling.* (A) The DoD Component shall select the time, date, and location for the hearing. To the extent feasible, a location convenient for the employee shall be selected. DoD Components shall establish and publish specific sites at which hearings will be conducted.

(B) Expenses incident to inspection and copying of government records or transportation to attend oral hearings shall be borne by the employee requesting the hearing.

(C) An employee forfeits or waives his or her right to a hearing and will have his or her pay offset in accordance with the DoD Component's offset schedule, if the employee:

(*1*) Fails to file a petition for a hearing before the deadline date prescribed in § 90.6(f)(3)(i) of this section.

(*2*) Is scheduled to appear and fails to appear on time at the hearing.

(*3*) Fails to file the required submissions under § 90.6(f)(3)(i) (F) and (H) of this section within 5 days after the deadline date established under § 90.6(f)(3)(iv) of this section.

(D) If the employee files his or her required submissions within 5 days after the established deadline date and the hearing official finds that the employee has shown good cause for the failure to comply with the established deadline date, the hearing official may find that the employee has not waived his or her right to a hearing. However, in making this determination, the hearing official shall take into account that the employee was provided 45 days to respond to the DoD Component's position on the same issues under § 90.6(f)(3)(iv) of this section.

(iii) *Procedures.* (A) The hearing shall be conducted by a hearing official who is not an employee of the DoD Component to which the debt is owed (creditor component) and is not otherwise under the supervision or control of the creditor component. When collection action is being taken by the Department of the Army (DA) and a hearing is granted to a DA employee, the hearing official cannot be employed or supervised by the DA.

(B) The hearing normally will consist of informal conferences before a hearing official in which the employee and creditor component will be given a full opportunity to present evidence, witnesses, and arguments. The employee may represent him or herself or be represented by a person of his or her choice. However, the hearing official will permit only the introduction of such evidence as described in the prehearing submissions under § 90.6(f)(3)(i) (F) and (H) of this section.

(C) The creditor component shall provide for maintaining a summary record of the hearing.

(D) The hearing officiel shall provide a written decision on the merits of the hearing that discusses the basic facts offered to document the nature and origin of the debt; the hearing official's findings and conclusions whether the DoD Component or the employee has best supported its or his or her positions on which the hearing was conducted.

(iv) *Time Limitations.* (A) Time limitations for employee requests are as follows:

(*1*) Requests for copies of the records relating to the debt will be made no later than 10 days from receipt by the debtor of the notice of indebtedness.

(*2*) Requests for reconsideration of existence of the debt or the proposed offset schedule will be made within 45 days of the debtor's receipt of the notice of indebtedness, or if records were requested 45 days from the debtor's receipt of the records.

(B) Upon timely receipt of the appropriate statements and documents, the DoD Component will reconsider whether the employee is indebted to the Department of Defense, the amount of the indebtedness, or the appropriateness of the offset schedule.

(C) If the review of statements and documents provided so warrants, the DoD Component will notify the employee that:

(*1*) The employee is not indebted to the Department of Defense, or

(*2*) The employee's proposed alternative offset schedule is approved.

(D) If, after considering the statement and supporting documents, the DoD Component determines that the employee is indebted to the Department of Defense, the Component will send the employee the following:

(*1*) A statement indicating the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for reducing the amount of the indebtedness.

(*2*) The formal notice.

(E) If, after considering the statement and supporting documents, the DoD Component determines that the original offset schedule, or a modification to that schedule, will not impose an extreme financial hardship for the employee, the Component will send the employee a statement indicating the reason it concluded that the original or modified offset schedule will not impose an exteme financial hardship under

§ 90.6(f)(4) of this section, and the notice described in § 90.6(f)(2) of this section.

(v) *Exceptions to Entitlements.* (A) Exceptions to the provisions of § 90.6(f)(1) of this section, are limited to the following intra-agency adjustments of four pay periods or less that are not considered debts:

(*1*) An employee's election of coverage or of a change in coverage under a DoD benefit program that requires periodic deductions from pay and that cannot be placed into effect immediately because of normal processing delays.

(*2*) A ministerial adjustment in pay rates or allowances that cannot be placed into effect immediately because of normal processing delays.

(B) In the above cases, the DoD Component shall issue in advance of the collection a notice that:

(*1*) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying (an official to be specified by each Component) to be responsible for resolving the dispute; or

(*2*) On account of a normal ministerial adjustment in pay or allowances that could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowance received by the employee, and that the employee may dispute the amount of the retroactive collection by notifying the disbursing officer responsible for making the adjusted payment.

(C) If normal processing delays exceed four pay periods, the full procedures prescribed under 5 U.S.C. 5514 and § 90.6(f)(2) of this section, shall be extended to the employee.

(4) *Standards For Determining Extreme Financial Hardship.* (i) An offset produces an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistance expense of the employee and his or her spouse and dependents.

(ii) These essential subsistence expenses include only costs incurred for food, housing, clothing, transportation, and medical care.

(iii) In determining whether the offset would prevent the employee from meeting the essential subsistence expense described above, the DoD Component and the hearing official shall consider the following:

(A) The income from all sources of the employee, his or her spouse, and dependents.

(B) The extent to which the assets of the employee and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses.

(C) Whether these essential subsistence expenses have been minimized to the greatest extent possible.

(D) The extent to which the employee or his or her spouse can borrow money to meet the offset and other essential expenses.

(E) The extent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account and whether these expenses have been minimized.

(5) *Collections in Installments.* (i) The amount deducted involuntarily for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated active duty or employment. Deductions shall be reasonable in terms of the employee's ability to pay after considering necessary living expenses, including recurring legal debts (required by law) and deductions being made from disposable pay at the time the erroneous payment is discovered. If possible, the installment payments should be sufficient in size and frequency to liquidate the government's claim in not more than 3 years.

(A) If the repayment extends over a period of years, provisions shall be made for increasing the deduction when conditions so warrant. The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. For military members, the definition for disposable pay may be found in the Military Pay and Allowances Entitlement Manual.

(B) While the amount deducted involuntarily for any pay period may not exceed 15 percent of disposable pay, a greater amount may be deducted upon the written consent of the employee involved. The employee should be encouraged to consent to payment of more than 15 percent in order to liquidate the indebtedness as soon as possible. Installment payments of less than $50 per month should be accepted only if justified on the grounds of financial hardship or some other reasonable cause.

(ii) If the employee retires or resigns, or if his or her employment or period of active duty ends before collection of the debt is completed, offset from subsequent payments of any nature (such as, final salary payment, lump-sum leave, and bonuses) may be effected under 31 U.S.C. 3716.

(iii) Payroll deduction shall begin on the next expedient payday after expiration of the full time provided in the notification, unless other appeals have been registered by the employee to stay the commencement of collection proceedings.

(6) *Refunds.* (i) The DoD Component shall refund promptly to the employee amounts paid or deducted under this Part when one of the following incurs:

(A) A debt is waived or otherwise found not owing to the Department of Defense (unless expressly prohibited by statute or regulation).

(B) The employee's paying office is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(ii) Unless there are statutory, regulatory, or contractual provisions to the contrary, such refunds do not bear interest.

(7) *Requests from other Federal Agencies.* (i) If a determination has been made by a federal agency that a debtor is employed by the Department of Defense, a request for salary or administrative offset shall be addressed to the Secretary of Defense and a copy of all documentation shall be forwarded to the Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940. Such request shall include the following:

(A) A statement that the due process provisions of 5 U.S.C. 5514, 31 U.S.C. 3716 or other applicable law have been completed.

(B) Details of the debt, including the amount and reason for the debt, the payment due date, the date the federal agency determined the debt was due, a statement that the federal agency's regulations have been approved by the Office of Personnel Management (OPM).

(C) Unless the debtor has given a signed statement acknowledging receipt of the required procedures under 5 U.S.C. 5514 or other applicable law, an indication of the actions taken under 5 U.S.C. 5514 or other applicable law and the dates on which they were taken.

(ii) DoD Components may not honor requests to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 or other applicable law more than 10 years after the government's right to collect the debt first accrued except as provided in the FCCS.

(8) *Requests To Other Federal Agencies.* (i) If a determination has been made that the debtor is employed by another DoD Component or federal agency, a request for salary or administrative offset shall be forwarded

to the employing agency. Such request shall include the following:

(A) A statement that the due process provisions of 5 U.S.C. 5514 or 31 U.S.C. 3716 have been completed.

(B) A certified debt claim form (to be provided by OPM).

(C) Details of the debt including the amount and reason for the debt; the payment due date; the date the DoD Component determined the debt was due; a statement that the DoD regulations have been approved by OPM.

(D) Unless the debtor has given a signed statement acknowledging receipt of the required procedures under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 the requesting Component shall indicate the actions taken under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 and the dates on which they were taken.

(ii) DoD Components may not initiate offset to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 and 3711 more than 10 years after the government's right to collect the debt first accrued, except as provided in the FCCS.

(9) *Request For Waiver.* (i) An employee may address a written request for waiver under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716 to the official designated in the notification letter. The request should state the reasons that a waiver under the standards cited in the notice should be made. To delay further collection action, a former employee's request for waiver must be received within 30 days of the date of the notification letter if the former employee is in the United States, or 45 days if the former employee is in a foreign country. While the request for waiver is pending, interest on the amount due shall not accrue.

(ii) The DoD Component shall notify the debtor in writing of the designated official's final decision. This decision shall be final and conclusive as far as the Component is concerned. Unless the debtor makes direct payment of the amount due, further collection actions shall be initiated. If the decision is to the advantage of the debtor, the accounts shall be adjusted as appropriate. The Component's determination that a payment was erroneous in no way restricts the debtor from disputing the validity of the administrative determination and asserting a subsequent claim against the government either to the GAO or in the courts.

(10) *Compromise Of Claims.* (i) Claims may be compromised under Chapter II, Part 103, FCCS for the following reasons:

(A) Inability to pay within a reasonable time.

(B) A doubt concerning the government's ability to prove its case in court.

(C) Cost of collecting the claim does not justify enforced collection.

(D) Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised if the DoD Component's enforcement policy in terms of deterrence and securing compliance, both present and future, will be served adequately by acceptance of the sum to be agreed upon. Accidental or technical violations may be dealt with less severely than willful and substantial violations.

(E) When two or more debtors are jointly and severally liable, collection action may not be withheld against one such debtor until the other or others pay their proportionate shares. Care shall be taken that compromise with one such debtor will not be considered a precedent or as morally binding in determining the amount that shall be required from other debtors jointly and severally liable on the claim.

(F) A combination of one or more of the above reasons.

(ii) The head of a DoD Component or a designee may exercise the compromise authority with respect to claims for money or property arising out of the activities of the Component when the difference between the amount offered in settlement by the debtor and the amount owed, exclusive of interest, penalties, and administrative costs, does not exceed $20,000. Amounts exceeding $20,000 shall be referred to the Department of Justice or GAO, as appropriate. Only the Comptroller General or a designee may compromise a claim that arises out of an exception made by the GAO in the account of an accountable officer.

(g) *Collections under Pub. L. 97-365* and *31 U.S.C. 3716.* This law provides that "After trying to collect a claim from a person under 5 U.S.C. section 3711(a), the head of an executive or legislative agency may collect the claim by administrative offset." Unlike salary offset, which applies to basic pay, special pay, incentive pay, retired pay, and so forth, administrative offset applies to monies due an employee that are not considered to be pay, such as amounts due for accrued leave, certain bonuses, stipends, refunds, or other. Debts owed the United States may be collected by administrative offset only after affording the debtor certain rights. Before initiating the collection of a claim by means of administrative offset, the DOD Component shall establish detailed procedures for providing a debtor, before the offset is made, with procedural rights as described here.

(1) *Debtor's Entitlement.* (i) Except for the mandatory hearing if requested by the debtor, a debtor shall be entitled to the same basic rights as defined in § 90.6(f)(1), above, before collection of a claim by administrative offset. Although on a oral hearing is not required, the debtor shall be entitled to an opportunity for the review, within the DOD Component, of the determination of the Component with respect to the claim.

(ii) Before collecting a debt under § 90.6(g), the DOD Components shall prescribe regulations on such collections that are consistent with this Part and the FCCS.

(A) The DOD Component as the cerditor agency shall make a determination to collect debt by administrative offset on a case-by-case basis using sound judgment. A Component shall not only consider whether administrative offset is feasible from a practical and legal standpoint, but also whether such offset is in the best interest of the Department of Defense and the United States. A DOD Component may give due consideration to the debtor's financial condition, but is not required to use administrative offset in every instance in which there is an available source of funds.

(B) DOD Components are not authorized by 31 U.S.C. 3716 to use administrative offset with respect to one of the following:

(*1*) Debts owed by any state or local government.

(*2*) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(*3*) Any case in which collection of the type of debt by administrative offset is explicitly provided for or prohibited by another statute.

(C) However, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 and 3711 still may be collected by administative offset under some other statute or common law. Components shall pursue collection under whatever authorities are available.

(2) *Formal Notification Process.* (i) After appropriate written demand has been made promptly upon a debtor of the Department of Defense as prescribed in § 90.6(f)(2) of this section a total of two progressively stronger letters at not more than 30-day intervals normally will be made unless a response to the first or second letter indicates that a further letter would be futile and the debtor's response does not require rebuttal. In

determining the timing of the demand letters, DOD Components shall give due regard to the need to act promptly so that, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within 1 year of the Component's final determination of the fact and amount of the debt. When necessary to protect the government's interest (for example, to prevent the statute of limitations 28 U.S.C. 2415 from expiring) written demand may be preceded by other appropriate actions. Subsequent demand letters shall be progressively stronger and advise the debtor of the following:

(A) The Component's intent to collect the debt by administrative offset.

(B) An opportunity to obtain review within the Component of the determination of the indebtedness.

(ii) If a determination has been made that a debtor is working for another federal agency, the procedures provided in § 90.6(g)(2)(i) of this section, will apply. However, after all debtor entitlements have been offered, the Component shall forward the request for offset to the employing agency. The request shall include a written statement that the debtor owes the debt (including the amount and basis of the debt and the date on which payment was due) and that the debtor was so notified as required by 31 U.S.C. 3716.

(iii) DoD Components may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 and 3711 more than 10 years after the government's right to collect the debt first accrued, unless facts material to the government's right to collect the debt were not known and could not reasonably have been known by the officials of the Department of Defense who were charged with the responsibility to discover and collect the debt. The date the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as 28 U.S.C. 2415.

(iv) DoD Components may effect administrative offset against a payment to be made to a debtor before the completion date of procedures required by § 90.6(g)(1)(ii) of this section, if failure to take the offset would prejudice substantially the Department of Defense's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such offset must be followed promptly by the completion of those procedures. Amounts recovered by offset but later found not to be owed the Department of Defense shall be refunded promptly.

(3) *Hearings.* (i) The provisions of § 90.6(g) do not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the DoD Component has determined that review of the written record ordinarily is an adequate means to correct past mistakes. When an oral hearing is not required, a Component nevertheless shall afford the debtor a "paper hearing." That is, the Component will make its determination on the request for waiver or reconsideration based upon a review of the written record.

(ii) When a DoD Component is required to afford a debtor with a hearing or review within the Component, the Component shall provide the debtor with a reasonable opportunity for an oral hearing when one of the following occurs:

(A) An applicable statute authorizes or requires the Department of Defense to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity.

(B) The debtor requests reconsideration of the debt and the Component determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under § 90.6(g) is not required to be a formal evidentiary-type hearing, although the Component always shall document carefully all significant matters discussed at the hearing.

(iii) The filing of petitions, the scheduling and procedural conduct of hearings shall be accomplished as outlined in § 90.6(f)(3) of this section.

(iv) A DoD Component shall not initiate a request for offset until the procedures in § 90.6(f)(7) of this section, have been carried out and such action has been evidenced.

(h) *Collections of Out of Service Debts.* The collection of amounts under § 90.6(h) shall be in accordance with the standards promulgated pursuant to the Federal Claims Collection Act of 1966, as amended by Pub. L. 97-365 and implemented by the FCCS.

(1) *Debtor Entitlements.* An out-of-service debtor has the same basic entitlements as an in-service debtor except for entitlement to mandatory hearings (see § 90.6 (f) and (g) of this section).

(2) *Formal Notification Process.* In addition to the notification requirements provided in § 90.6 (f) and (g) of this section, subsequent notification letters shall advise the debtor of (i) the possible notification of commercial credit bureaus if payment is not made on time; (ii) the possible use of commercial collection agencies, and (iii) the possible referral of the claim to the Department of Justice for prosecution.

(i) *Data Exchange Program.* (1) *General.* DoD Components periodically shall conduct exchanges of records on delinquent debts for the purpose of locating debtors and initiating offset collection action. Components operating within the provisions of this Instruction shall ensure that actions prescribed for aggressive debt collection complies with the policy promulgated by the Attorney General and Comptroller General before the match. A determination shall be made that all other alternatives either are less effective, more expensive, or would present a greater threat to personal privacy.

(2) This guidance is intended to aid DoD Components in balancing the government's need to maintain the integrity of federal programs with the employee's right to personal privacy. It does not authorize activities that are not permitted by law, nor does it prohibit activities expressly required to be performed by law. The procedures and limitations set forth herein apply, even when a statute authorizes or requires a matching program to be carried out, to the extent that these procedures and limitations would not inhibit the legislative purposes of that statute. Compliance with these guidelines does not relieve a Component from the obligation to comply with the provisions of Part 286 of this Title, including any provisions not cited herein.

(3) DoD Components are expected to cooperate with one another and with other federal agencies in their debt collection activities.

(4) DoD Components shall establish necessary procedures to ensure that the establishment and maintenance of debtor records are compatible for matching and referred programs.

(j) *Use of Private Collection Agencies*—(1) *General.* As a means of enhancing the DoD debt collection program DoD Components shall use commercial collection agencies for collection services to supplement their collection programs. This conforms with FCCS and Pub. L. 97-365 and 95-109.

(2) *DoD Component's Responsibilities.* When a Component uses commercial collection services the following conditions must be met:

(i) All actions required by the Federal Claims Collection Standards shall be accomplished before release to the commercial collection agency.

(ii) The DoD Component will establish procedures covering the transfer of accounts, the review and approval of formats of letters and bills and a system for repayment processing.

(iii) The DoD Component must retain ultimate responsibility for collections. Thus, the Component head must retain the authority to resolve disputes, compromise claims, terminate collection action, and initiate legal action under the jurisdiction of the Department of Justice (28 U.S.C. 516).

(3) *Contractural Procedure.* Contracts for commercial collection services must meet the following conditions:

(i) The contract will be in compliance with the Federal Acquisition Regulations (FAR).

(ii) the contract will provide a mechanism to ensure that any substantive issues relating to the underlying merits of the claims are referred to the originating DoD Component for resolution, at which time the contractor shall relinquish to the Component its complete file of information on an account.

(iii) The Contract will list the minimum collection activities to be performed and the minimum documentation to be obtained for various categories of accounts such as:

(A) Locating and contacting debtor.
(B) Repayment schedules.
(C) Suspension of collection activity.
(D) Resolution of complaints.
(E) Unlocatable accounts.
(F) Inability to pay.
(G) Refusal to pay.

(iv) The contract will require the contractor to record all collection actions taken on each account and provide a report of such actions to the Department of Defense monthly, or as requested.

(v) The contract will require the contractor to calculate up-to-date accrued interest, using the rate tables supplied by the Department of Defense.

(vi) The contract will define clearly the procedures for billing debtors, receiving and processing repayments.

(vii) The contractor shall be subject to the Privacy Act of 1974, 5 U.S.C. 552a and, when applicable, to federal state and local laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act.

(k) *Reporting debts to commercial credit bureaus*—(1) *General.* As a means of further enhancing the debt collection program of the Department of Defense, Components authorized to terminate or write-off individual debts may report to commercial credit bureaus those delinquent debts that have been terminated (no further collection action is economically feasible) or have been referred to the GAO or the Department of Justice for further collection effort.

(2) *Component Responsibility.* Each DoD Component that is authorized to terminate or write-off individual debts will be responsible for reporting debts in compliance with Pub. L. 97–365 and the OMB Bulletin No. 83–21. Before reporting an employee's debt to a commercial credit bureau, a Component must provide public notice in the **Federal Register** identifying those systems of records from which it intends to disclose information. Chapter 4, Subsection B.13. of Part 286a of this title authorizes such disclosure. A disclosure under Chapter 4, subsection B.13 is *not* a routine use disclosure. Each DoD Component also shall ensure that an individual debtor is afforded the due process protection prescribed by Pub. L. 97–365 before any disclosure of information is made on that debtor.

(3) *Reporting of Referrals.* Each DoD Component shall maintain an accurate account of all names reported to credit bureaus.

Dated: August 31, 1984.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23494 Filed 9–5–84; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-2665-2]

Approval and Promulgation of State Implementation Plans; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment deadline.

SUMMARY: By this notice, EPA is extending the deadline for receiving written comments on the Agency's proposed promulgation of a Federal Implementation Plan for attainment of National Ambient Air Quality Standards for lead for the portion of Shoshone County surrounding and including the Bunker Limited Partnership primary lead smelter. The extension will permit more time for public comment.

DATE: Comments must be received or postmarked on or before September 7, 1984.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4016, FTS: 399–4016.

SUPPLEMENTARY INFORMATION: EPA is in the process of soliciting public comment on its proposed promulgation of a Federal Implementation Plan for attainment of National Ambient Air Quality Standards for lead for the portion of Shoshone County surrounding and including the Bunker Limited Partnership primary lead smelter. This notice extends the deadline for receiving written comments from August 20 to September 7, 1984 to comply with statutory requirements.

EPA is seeking comment on all aspects of its proposal. Copies of the proposal and supporting documents are available to anyone who wants to become familiar with them. They may be inspected at the following locations:

Kellogg Library, 16 West Market Avenue, Kellogg, Idaho
EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Lead, Particulate matter; Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: August 27, 1984.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 84–23506 Filed 9–5–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A-5-FRL-2665-5]

Illinois; Approval and Promulgation of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking to disapprove a revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to the incorporation of a source specific variance for Acme Barrel Company in the Illinois SIP. USEPA's action to

propose disapproval of the SIP revision is based upon the failure of the State to demonstrate that the variance would not jeopardize attainment and maintenance of the TSP National Ambient Air Quality Standards (NAAQS).

DATE: Comments on this revision and on the proposed USEPA action must be received by October 9, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: In a September 8, 1983, Final Order (PCB 82-135), the Illinois Pollution Control Board (IPCB) granted Acme Barrel Company a variance from Rules 105(a), 105(d), 202(b), 203(e)(3), and 502 until March 6, 1984, for the operation of its gas fired drum incinerator which is located in Chicago, Cook County, Illinois, a primary nonattainment area for total suspended particulates (TSP). On October 31, 1983, the Illinois Environmental Protection Agency (IEPA) submitted this Final Order to USEPA as a proposed revision to the Illinois SIP. The following presents a summary of IPCB regulations involved in this variance.

Rule 105(a)—Prohibition on operation during breakdown

Rule 105(d)—Report of operation during breakdown or start-up

Rule 202(b)—Prohibition of visible emissions greater than 30%

Rule 203(e)(3)—Particulate emission standard of 0.2 grains per standard cubic foot corrected to 12% CO_2, applicable to existing incinerators burning less than 2000 pounds of refuse per hour

Rule 502—Prohibition of open burning

Rule 502 is not part of the Illinois SIP for TSP. USEPA can take no action on this variance as it pertains to Rule 502.

USEPA's analysis of this proposed SIP revision was completed in conformance with the provisions of a July 20, 1983, memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, to the Directors of the regional Air and Waste Management Divisions and the regional Air Management Divisions. This policy requires the State to show that the SIP, as a whole despite the relaxation, will continue to provide for the attainment of the TSP national ambient air quality standards (NAAQS) by the end of 1982 prior to securing USEPA's approval of TSP source specific relaxation that would maintain the overall approval status of the Part D SIP in a nonattainment area. For TSP, a modeling demonstration using USEPA reference modeling techniques and the best available information are required.

The State's submission contained no modeling demonstration. USEPA, therefore, proposes disapproval of this variance as it pertains to IPCB Rules 105(a), 105(b), 202(b), and 203(e)(3). As stated above, USEPA takes no action on this variance as it pertains to Rule 502, because Rule 502 is not part of the Illinois SIP.

All interested persons are invited to submit written comments on the proposed SIP revision and on USEPA's proposed disapproval. Written comments received by the date specified above will be considered in USEPA's final rulemaking action.

Under 5 U.S.C. 605(b), USEPA has determined that this proposed action, if finally disapproved, will not have a significant economic impact on a substantial number of small entities. Only a single entity, Acme Barrel Company, is affected by this action.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

(Secs. 110, 172, and 301(a) of the Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

List of Subjects in 40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Dated: June 27, 1984.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 84-23509 Filed 9-5-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2620-8]

Proposed Amendment and Proposed Innovative Technology Waiver for New Source Performance Standards for Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to amend the standards of performance for kraft pulp mills by adding a provision for determining compliance on a mass equivalent basis for digester systems and to grant, subject to concurrence by the Governor of the State of Georgia, an innovative technology waiver for operation of a new batch digester at the Owens-Illinois, Incorporated (O-I) kraft pulp mill in Clyattville, Georgia, pursuant to section 111(j) of the Clean Air Act, as amended (the Act), 42 U.S.C. 7411(j).

This amendment is necessary because the standards on a concentration basis preclude process systems which may have larger emissions on a concentration basis because of lower air flow rates but at the same time have equal or lesser emissions on a mass basis.

This waiver would provide an opportunity to demonstrate the capability of a batch digesting displacement heating system to achieve equal or greater emission reductions than required by the existing standards of performance for digester systems at kraft pulp mills at lower costs. Considerable energy and environmental benefits would also be achieved with this technology.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the proposed amendment and the proposed innovative technology waiver.

DATES: *Comments.* Comments must be received on or before October 18, 1984.

Public Hearing. A public hearing will be held if requested. Persons wishing to request a public hearing must contact EPA by September 19, 1984. If a hearing is requested, an announcement of the date and place will appear in a separate **Federal Register** notice.

ADDRESSES: *Comments.* Under section 307(d)(2), 42 U.S.C. 7607(d)(2), the Administrator is required to establish two separate rulemaking dockets for each rule that would apply only within the boundaries of one state. One copy of the docket is located in Washington, D.C., and a second copy is located at the

EPA Regional Office in Atlanta, Georgia. Therefore, copies of all comments on the waiver should be submitted to both the Washington, D.C., and the Atlanta, Georgia, dockets.

One copy of each comment should be sent to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-84-16.

A second copy of each comment on the waiver should be sent to: U.S. Environmental Protection Agency, Region IV, Attention: Mr. Brian Beals, Docket No. A-84-16, 345 Courtland Street, Atlanta, Georgia 30365.

The docket may be inspected at the listed addresses between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying.

Public Hearing. Persons wishing to present oral testimony should notify Ms. Shelby Jornigan, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (929) 541-5578.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5595.

SUPPLEMENTARY INFORMATION:

Background

Current Regulations

On September 24, 1976, standards of performance were proposed to limit emissions of particulate matter and total reduced sulfur compounds (TRS) from new, modified, and reconstructed kraft pulp mills (41 FR 42012). Final standards were published in the **Federal Register** on February 23, 1978 (43 FR 7568). Proposed revisions to the standards were published in the **Federal Register** on January 19, 1984 (49 FR 2448).

Section 111 of the Clean Air Act, as amended, requires that standards of performance be established at levels that reflect the performance of best demonstrated technology (BDT) for emission control. For digester systems, BDT for TRS emission control was determined to be incineration of exhaust gases. The digester TRS emission standard reflecting the performance of well-designed and well-operated incinerators was determined to be 5 parts per million (ppm).

Requirements of Section 111(j)

Section 111(j) of the Clean Air Act sets forth provisions for the issuance of waivers for the development of innovative technology. In the 1977 Amendments to the Clean Air Act, Congress added this provision to encourage the use of innovative technological systems of continuous emision reduction for the control of air pollutants. The intent in doing so was to provide a statutory incentive for the improvement of emission control technology and for reducing costs, environmental impacts, and energy usage of such technology.

Under section 111(j) of the Act, upon request by the owner or operator of a new source and with the consent of the Governor of the State in which the source is located, the Administrator is authorized to grant a waiver from the requirements of Section 111 for a limited time period and under specific terms and conditions provided certain statutory prerequisites are satisfied. The Administrator must determine that:

a. The proposed system or systems have not been adequately demonstrated;

b. The proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction that that required to be achieved under the standard of performance which would otherwise apply, or achieve at least an equivalent reduction at lower costs in terms of energy, economic, or nonair quality environmental impact;

c. The owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute unreasonable risk to public health, welfare, or safety in its operation, function or malfunction; and

d. The number of waivers granted under section 111(j) with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such a system will achieve the conditions specified in "b" and "c" immediately above.

In making any determinations under "b", the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards (NSPS). In determining whether an unreasonable risk exists under "c", the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under Section 111 without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out "c". Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

Waiver Request

On March 11, 1984, Owens-Illinois, Incorporated (O-I) submitted a request for an innovative technology waiver for the batch digester and multiple effect evaporator system at its Valdosta kraft pulp mill in Clyattville, Georgia. O-I indicates that a waiver would permit it to install and operate a digester displacement heating systemn that eventually would enable the digester system to comply with the mass equivalent of the NSPS TRS emission limit of 5 ppm. Additionally, O-I indicates that the displacement heating system (DHS) would achieve emission reductions at least equivalent to those of the control technology on which the standard is based, but at lower cost. In support of their request, O-I submitted a report (Docket No. A-84-16/II-D-I) which describes the DHS and the environmental and energy impacts that may result from its use.

Analysis of Information and Data

The report indicates that O-I plans to install DHS on its 9 existing batch digesters late in 1984. A new digester with a DHS will be installed first to maintain production capacity as each of the 9 existing digesters are removed from operation singly to retrofit the DHS. It is the new digester system which would be subject to the NSPS. Neither the existing digesters nor the multiple effect evaporators are, or would be, subject to NSPS.

Installation of the DHS on the mill's digesters will reduce significantly mill energy requirements and enable an existing 200 million Btu per hour oil-fired boiler to be shut down. This will result in annual energy savings of about 6.1 $\times 10^{11}$ Btu's; emissions of particulate matter, sulfur dioxide, and nitrogen oxides will be reduced by 11, 137, and 235 tons per year, respectively. This energy savings is possible because the

DHS utilizes heat generated for the wood cooking process. Essentially, spent liquor chemicals (known as black liquor) at 350°F are displaced from the digester with washer filtrate at 200°F at the end of the cooking process, and the heat content of the displaced liquor is used to preheat the wood chips, fresh pulping solution (known as white liquor), and digester vessel for the next cook.

After displacement of the spent liquor, the digester contents (pulp and washer filtrate) are transferred to a blow tank by using compressed air to empty the vessel through an opening in the digester's bottom. The elevated pressure and "cold" conditions in the digester forces the contents into the unpressurized blow tank without steam release and with much less gaseous volatile compounds such as methanol and ethanol, and gaseous reduced sulfur compounds (known as total reduced sulfur compounds, or TRS). By contrast, in a conventional batch digester, the uncontrolled TRS emission concentration is about 9,500 ppm, and the equivalent uncontrolled mass emission rate is about 1.5 lb TRS/ton of air dried pulp (TADP). In addition, steam is dissipated in the "hot" blow. The NSPS for a digester system is 5 ppm, which is achievable by incineration of the noncondensable gases.

The concentration format was selected over the mass per unit of production format, lb TRS/TADP, because the concentration rate is obtained directly from the reference test method and the continuous monitor. The mass format, which is the most common format used by the industry, would require the control agency to obtain a measurement of the equivalent pulp production rate. The mass format would prevent circumvention of the standard by the addition of dilution air or the use of excessive amount of air in process operation. However, the selection of the concentration format was appropriate because incineration is the only control option capable of providing high efficiency TRS reduction and will achieve 5 ppm TRS regardless of the process air flow. The equivalent mass rate for the 5 ppm concentration standard, in terms of lbs TRS/TADP, will depend on the air volume from the particular digester system. Available data indicate that the air flow can vary from digester to digester. Based on the calculated average flow rate for a typical batch digester system presented in the document entitled "Kraft Pulping: Control of TRS Emissions from Existing Mills" (EPA-450/2-78-003b), the equivalent mass emission of the 5 ppm TRS standard would be 0.01 lb/TADP.

No emission test data for a complete DHS such as the one planned by O–I are available to quantify the system's emissions. This is because the O–I system will be the first complete system installed in a U.S. kraft pulp mill. However, the O–I report presents data from a partial DHS at a kraft mill in the Southeastern U.S. This partial system had higher blow temperatures and exhaust gas rates than would be encountered with the O–I systems which would increase emissions above levels that would be expected from a complete DHS. Emission tests from seven cooks indicate that the digester with the partial DHS had an average uncontrolled TRS emission concentration of 460 ppm. While this concentration is a factor of 92 above the NSPS limit, the equivalent uncontrolled mass emission rate of 0.03 lb/TADP for the partial DHS would be only a factor of three above the NSPS limit expressed on a mass emission basis. These test data indicate that the partial DHS achieved a TRS emission reduction of 98 percent over the typical uncontrolled rate of 1.5 lb/TADP, compared to a 99.3 percent reduction resulting from the NSPS. the O–I report indicates that the DHS vendor guarantees that the planned digester system will achieve an emission rate of 0.02 lb/TADP, or about a 99 percent TRS emission reduction. Moreover, O–I will optimize the system as necessary to achieve the mass equivalent of the NSPS by lowering the blow temperatures and exhaust gas rates. Based on discussions with O–I, it is the Agency judgment that this optimization will reduce the TRS emissions to the mass equivalent (0.01 lb/TADP) of the NSPS.

Testing of the digester with the partial DHS also included collection of black liquor samples from the digester during five cooks. These samples were collected to provide an indication of the extent to which TRS emissions are displaced from digester exhaust gases to the multiple effect evaporator exhaust gases or condensate. Evaporating the samples under laboratory conditions simulated condensates that would be generated in the multiple effect evaporator. Analysis of the simulated condensates indicates an average increase of biological oxygen demand (BOD) beyond levels found in evaporator condensate from conventional batch digester cooks of about 3.2 lb BOD/TADP. This represents a 60 percent increase in evaporator condensate BOD. This analysis suggests that TRS emissions from digesters with DHS may be displaced to evaporator condensate and exhaust gases. O–I expects that the BOD content of the overall mill effluent will be reduced, or be at least the same, by the use of the DHS because the displacement feature of the system will result in a corresponding reduction in the BOD content of the effluent from the present pulp washing system. The displacement stage can be considered as a stage of the mill's pulp washing system. This expectation needs verification upon installation but it is the Agency judgment that it would equal any increase in BOD in the evaporator condensate.

O–I also submitted confidential information on the capital costs of the planned digester displacement heating system. While information on annualized costs was not provided and cannot be obtained from other sources, annualized costs are expected to consists primarily of capital recovery charges. Based on the O–I cost information, it is evident that the capital costs of the DHS are more than capital costs for incineration control of conventional batch digester TRS emissions. However, in addition to DHS capital costs, there are energy savings associated with shutting down the oil-fired boiler of more than $500,000 annually (assuming $1.10/gal. of oil). Thus, it can be concluded that the overall cost impact of the DHS would be a significant annualized cost saving.

Conclusion

Based on an analysis of the information contained in the O–I report, the Administrator has determined that the DHS has not been adequately demonstrated and that there is a substantial likelihood that the DHS system will achieve greater continuous emission reduction than that required to be achieved under the standard of performance which would otherwise apply, or achieve at least an equivalent reduction at lower costs in terms of energy, economic, or nonair quality environmental impact. However, the emission reduction achieved will not be sufficient to achieve the NSPS of 5 ppm TRS but there is substantial likelihood that the emission reduction will achieve an equivalent TRS mass level to that achieved by the NSPS. As discussed earlier, there will be substantial reductions in particulate matter, SO_2, and NO_X emissions resulting from shutting down one 200 million Btu/hr oil-fired boiler. Moreover, this emission reduction will be achieved at a significantly lower cost than that of the conventional batch digester, considering both energy and economic impacts. While there may be some interim displacement of some TRS emissions from the digester and DHS to the mill's multiple effect evaporators, the granting of the waiver will be contingent upon O–I preventing an increase in TRS emissions from the multiple effect evaporator system beyond the present emission level. Therefore, there will be a net improvement in ambient air quality as a result of granting the requested waiver and no risk to public health or welfare. Therefore, the Administrator proposes to grant, subjects to compliance with the conditions outlined below and to the concurrence of the Governor of Georgia, an innovative technology waiver for the construction and operation of a new digester and displacement heating system at the O–I Valdosta, Georgia, kraft pulp mill. Since with optimizing of the exhaust rate and temperature from the DHS, it is believed capable of acheving the NSPS on a mass equivalent basis, the Administrator, in order to grant such a waiver, proposes to amend the standard of performance for the digester system to provide an equivalent mass TRS standard which reflects the mass level achieved by the best system of emission reduction which is incineration.

The waiver will cover the new batch digester system and the multiple-effect evaporator system. Since the TRS emissions from the multiple-effect evaporation system may temporarily increase due to the DHS, the waiver will require that O–I prevent any increases in the TRS emissions above existing levels. Furthermore, since the fixed capital cost of the new components for each of the existing nine batch digesters does not exceed 50 percent of the fixed capital cost of the entire new digester system, the existing nine digesters will not become subject to the NSPS.

The waiver will cover a period of 2 years from the startup date (fall 1984) of the No. 10 digester. O–I has an agreement with the vendor to achieve the guarantees of the DHS within 1 year. Since the guaranteed TRS is above the NSPS, O–I will need additional time to optimize the DHS to achieve the mass equivalent of the NSPS.

The Administrator has considered the possibility that, if the DHS is applied to other mills in the future, the TRS emission reduction attributed to the innovative system may be achieved by displacement of the TRS emissions from the digester system to the multiple effect evaporator system. However, in new installations there will be no displacement of TRS emissions because the evaporator system is an affected facility with an NSPS of 5 ppm. Furthermore, since TRS has been designated a non-criteria pollutant, section 111(d) of the Act requires the States to develop standards for existing affected facilities. Therefore, the Administrator will consider the DHS system adequately demonstrated if it achieves the mass NSPS of 0.01 lb/TADP.

Proposed Waiver

The waiver is propose to be granted under the following general conditions. The waiver will cover only the No. 10 batch digester. Reports of progress on the performance of the displacement heating system must be made to EPA within 60 days of startup and at least once each 6 month period. Tests will be conducted prior to and after the digester modifications for TRS emissions and air flow rates on all vents to the atmosphere from the No. 10 digester system, the multiple effect evaporator system, and at the existing batch digester system. In addition, tests will be performed to determine the BOD content of the effluents from the multiple effect evaporator system, the brown stock washing system, and the mill prior to and after the digester modifications. The digester standard of performance must be achieved as soon as possible. The waiver will not exceed a period of 2 years from the startup date of the No. 10 digester nor will it go beyond December 31, 1986.

The company is required, consistent with section 173 of the Clean Air Act, to obtain a permit to operate from the State. The permit will assure that the mill granted the waiver will not prevent attainment and maintenance of any national abient air quality standard. The condition of the proposed waiver would also require proper operation of the displacement hearing system.

By virtue of section 111(j)(1)(B) of the Act, 42 U.S.C. 7411(j)(1)(B), the terms and conditions of Section 111(j) waiver would be federally promulgated standards of performance legally applicable during the waiver period. Violations of the terms and conditions of the section 111(j) waiver would subject the owner and operator of the mill granted a waiver to Federal enforcement under section 113 (b) and (c), 42 U.S.C. 7413 (b) and (c), and 120, 42 U.S.C. 7420 of the Act, as well as possible citizen enforcement under section 304 of the Act, 42 U.S.C. 7604.

State Concurrence

Pursuant to section 111(j)(1)(A) of the Act, 42 U.S.C. 7411(j)(1)(A), if after review and consideration of comments submitted in response to this rulemaking, the Administrator decides to issue a waiver to the Federal NSPS to the O–I Valdosta, Georgia mill, the Administrator shall request the concurrence of the Governor of the State of Georgia. Receipt of such concurrence is a prerequisite for a waiver under section 111(j) of the Act.

Docket

The docket for the proposed waiver is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and located documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated waiver of EPA's responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review material [section 307(d)(A)].

Miscellaneous

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information".

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291. This proposed rule was submitted to OMB for review under E.O. 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fixed steam generators, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation; Synthetic fibers.

Dated: August 27, 1984.

Alvin L. Alm,

Deputy Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Title 40 Part 60, Subpart BB of the Code of Federal Regulations is proposed to be amended to read as follows:

§ 60.283 [Amended]

1. In § 60.283, paragraph (a)(1) is amended by adding paragraph (vi) to read as follows:

(vi) The uncontrolled exhaust gases from a new, modified, or reconstructed digester system contain TRS less than 0.005 g/kg ADP (0.01 lb/ton ADP).

2. Section 60.286 is added to read as follows:

§ 60.286 Innovative technology waiver.

(a) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), the No. 10 batch digester at O–I Valdosta kraft pulp mill in Clyattville, Georgia, shall comply with the following conditions:

(1) O–I shall obtain the necessary permits as required by section 173 of the Clean Air Act, as amended August 1977, to operate the No. 10 batch digester at the Valdosta mill.

(2) Commencing on ———— [date of promulgation in **Federal Register**] and continuing for 2 years or to December 31, 1986, or until the displacement heating system that can achieve the standard specified in 40 CFR 60.283 is demonstrated to the Administrator's satisfaction, whichever comes first, O–I shall limit the discharge of TRS emissions to the atmosphere:

(i) From the No. 10 batch digester at the Valdosta mill to 0.02 lb. of TRS per ton of air-dried pulp.

(ii) From the existing multiple-effect evaporators at the Valdosta mill to the TRS level existing prior to the modifications.

(3) Commencing the day after the expiration of the period described in (a)(2) of this section, and continuing thereafter, emissions of TRS from the No. 10 batch digester shall not exceed the TRS level of 0.005 g/kg ADP (0.01 lb/ton ADP) as specified in 40 CFR 60.283.

(4) The No. 10 batch digester system shall comply with the provisions of § 60.284 and § 60.285.

(5) A technology development report shall be sent to EPA, Emission Standards and Engineering Division (MD–13), Research Triangle Park, North Carolina 27711 and EPA Region IV, 345 Courtland, NE, Atlanta, Georgia 30365, postmarked before 60 days after the promulgation of this waiver and every 6 months thereafter while this waiver is in effect. The technology development report shall summarize the displacement heating system work including the results of tests of the various emission points being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.283 based on the most current information.

(b) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for O–I to operate the No. 10 batch digester or the multiple-effect evaporators in violation of the requirements established in this waiver. Violations of the terms and conditions of this waiver shall subject O–I to enforcement under section 113 (b) and (c), 42 U.S.C. 7412 (b) and (c), and section 120, 42 U.S.C. 7420, of the Act as well as possible citizen enforcement under section 304 of the Act, 42 U.S.C. 7604.

§ 60.285 [Amended]

3. In § 60.285, paragraph (d) is amended by adding a new paragraph (5) to read as follows:

(5) When determining compliance with § 60.283(a)(1)(vi), use the results of Method 2, Method 16, and the pulp production rate in the equation specified in § 60.285(d)(3), except substitute the pulp production rate (PPR) [(kg/hr (tons/hr)] for the black liquor solids feed rate (BLS).

(Secs. 111 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7411 and 7601(a))

[FR Doc. 84–23421 Filed 9–5–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

48 CFR Part 230

Federal Acquisition Regulations System; Availability and Request for Comment on Proposed Implementation Plan for Maintenance of Cost Accounting Standards

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability and request for comment, proposed implementation plan for maintenance of Cost Accounting Standards.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has developed a proposed implementation plan for the maintenance and promulgation of Cost Accounting Standards Rules and Regulations. This implementation plan will be the basic structure for incorporating the maintenance and promulgation of Cost Accounting Standards into the Federal Acquisition Regulations System.

DATE: Any comments on the proposed implementation plan must be received by the DAR Council no later than October 1, 1984.

ADDRESS: Interested parties may contact the following to obtain copies of the proposed implementation plan and to submit comments: Defense Acquisition Regulatory Council, ATTN: Executive Secretary OUSDRE(AM)DARS, c/o 3D139, Pentagon, Washington, D.C. 20301–3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7267.

SUPPLEMENTARY INFORMATION: The Defense Acquisition Regulatory (DAR) Council has developed a proposed implementation plan for the maintenance and promulgation of Cost Accounting Standards Rules and Regulations. Basically, the DAR Council intends to use the existing DAR Subcommittee structure with the addition of a proposed new Cost Accounting Standards (CAS) Policy Group. This Policy Group would provide suggested coverage to the DAR Council regarding revisions/changes to present Standards, proposed new Standards, and waivers of, and exceptions from existing Standards. The CAS Policy Group will consist of voting members from Army, Navy, Air Force, DLA and NASA. Designated consultants from GSA, DCAA, the OSD (Comptroller) and OUSDRE(AM) Cost, Pricing and Finance will participate. The DAR Council will consider additional consultants, when requested, on a case-by-case basis. The new Policy Group will be augmented with public advisors from the professional accounting and academic communities on an as needed and as required basis.

List of Subjects in 48 CFR Part 230

Government procurement.

Dated: August 30, 1984.

James T. Brannan,

Director, DAR Council.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84–23499 Filed 9–5–84; 8:45 am]

BILLING CODE 3810–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 507

[GSAR Notice No. 5-7]

Acquisition Planning

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to Part 507, Acquisition Planning, of the General Services Administration Acquisition Regulation (GSAR). The proposed change will implement and supplement FAR Subpart 7.1 and prescribe policies and procedures for acquisition planning. The policies and procedures will be applicable to all elements of GSA with respect to the acquisition of personal property, nonpersonal service (including construction) and to leases of real property. The intended effect is to provide policies and procedures to be followed in the acquisition planning process.

DATES: Comments are due in writing not later than October 18, 1984.

ADDRESS: Requests for a copy of the proposal or your comments should be addressed to Ms. Carol A. Farrell, Office of GAS Acquisition Policy and Regulations, Office of Acquisition Policy, 18th & F Sts., NW., Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Harry Rosinski, Office of GSA Acquisition Policy and Regulations, (202) 523-4766.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Service Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 507

Government procurement.

Dated: August 27, 1984.

Richard H. Hopf III,

Director, GSA Acquisition Policy and Regulations.

[FR Doc. 84-23516 Filed 9-5-84; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register
Vol. 49, No. 174
Thursday, September 6, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Review of the United States Sugar Import Quota System

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice reviews the U.S. sugar import quota system established by Presidential Proclamation 4941 of May 5, 1982. (47 FR 19661.)

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION:

I. Introduction

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS), the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies on the operation of the sugar import quota system established under the authority of Headnotes 2 and 3 of subpart A of part 10 of schedule 1 of the TSUS, the International Sugar Agreement, 1977, Implementation Act, and Section 201 of the Trade Expansion Act of 1962. After reviewing the operation of the sugar import quota system, the Secretary of Agriculture has determined that the system should be continued in effect in order to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). The rationale for this decision is based on the following analysis.

A. Current World and U.S. Sugar Market Situation

A fundamental imblance between world sugar supplies and demand continued during 1983/84. World output of centrifugal sugar in 1983/84 is estimated at 95.7 million metric tons, while consumption is projected at around 94.7 million metric tons. Ending stocks should decline slightly, to 44.4 million metric tons, but still constitute a price depressing 46 percent of consumption. U.S. centrifugal sugar production is estimated at 5.6 million short tons (5.1 million metric tons), and domestic utilization is expected to be 8.67 million short tons (7.86 million metric tons).

During the period September 26, 1983 through August 17, 1984, 2.73 million short tons were charged against the quotas for the 39 countries which have allocations totalling 3,173,150 short tons. The domestic price of raw sugar (c.i.f., duty and fee paid, No. 12 contract as published by the New York Coffee, Sugar and Cocoa Exchange) averaged 21.85 cents per pound for the first eleven months of the quota year. The world price (f.o.b.s., Caribbean, No. 11 contract as published by the New York Coffee, Sugar and Cocoa Exchange) has dropped since the beginning of the 1983/84 quota year to its lowest level since 1970.

B. Outlook for World and U.S. Sugar Market

After the slight drawdown in stocks in 1983/84, world contrifugal sugar production will exceed consumption in 1984/85, leading to a further increase in stocks. Prospects for 1984/85 world contrifugal sugar production point to an increase in putput to around 99.8 million metric tons and an increase in global consumption to around 97.3 million metric tons. 1984/85 ending stocks are expected to increase to a record 46.9 million metic tons, or about 48 percent of consumption. Large world sugar stocks are having an extremely depressing effect on prices. This is reflected in world sugar futures prices which currently range between 4 cents per pound for countracts due in September 1984 and 6 cents per pound for contracts due to mature in September 1985.

Given these factors, we anticipate that world prices will remain at levels that make it impossible to achieve, even after accounting for duties and fees on imported sugar, market conditions that give due consideration to the interests of domestic producers in the U.S. sugar market.

II. Modification of Quota

Paragraph (d) of Headnote 3 authorizes the Secretary, after appropriate consultations, to amend the quantitative limitations established by paragraph (c) if he determines that such amendments are appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Accordingly, on March 15, 1984, after appropriate consultations, the Secretary announced an increase of 100,000 short tons, raw value, in the total base sugar import quota. This raised the base quota for the period September 26, 1983 through September 30, 1984 from 2,950,000 short tons, raw value, to 3,050,000 short tons, raw value. The increase was effective on April 5, 1984 and was designed to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT. The U.S. Trade Representative gave notice, effective April 4, 1984, that 92,000 tons of the increase would be allocated according to paragraph (c) of Headnote 3, with the remaining 8,000 tons distributed to Malawi in order to remedy an original miscalculation of quota percentage over the life of the quota program.

Notice

In accordance with paragraph (f) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that the continued operation of paragraphs (b), (c), (d) and (e) of Headnote 3 give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT, and that paragraph (g) of that headnote, which would allow for entry of sugar into the United States not to exceed 6.90 million short tons, would not give due consideration to such interests.

Signed at Washington, D.C. on August 31, 1984.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 84–23598 Filed 8–31–84; 4:54 pm]

BILLING CODE 3410–10–M

Forms Under Review by Office of Management and Budget

August 31, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Federal Grain Inspection Service

Reporting and Recordkeeping Requirement (USGSA and AMA of '46)
CP–357 and FGIS 922
Recordkeeping; Monthly
State or local governments; Businesses or other for-profit; 2,707 responses; 8,938 hours; not applicable under 3504(h)
Lewis Lebakken, Jr. (202) 382–1738

- Rural Electrification Administration

Loans for Telephone System Improvements and Extensions
REA 490, 491, 494, 495, and 569
On occasion
Small businesses or organization; 2500 responses; 4,950 hours; not applicable under 3504(h)
John N. Rose (202) 382–8532

Extension

- Animal and Plant Health Inspection Service

Record of Acquisition, Disposition, or Transport of Animals and Continuation Sheet
VS Form 18–20 and VS Form 18–20A Continuation Sheet
Recordkeeping
Businesses or other for-profit; Small businesses or organizations; 4,800 responses; 8,160 hours; not applicable under 3504(h)
Dr. W. C. Stewart (301) 436–7833

- Food and Nutrition Service

Child Care Food Program Regulations (Part 226) and Related Forms
FNS 341, 342, 343, 344, 345, 345–1, 430, 431, 433 and 82
Monthly, Annually, As needed
State and local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; 356,187 responses; 1,074,447 hours; not applicable under 3504(h)
Albert V. Perna (703) 756–3600

Jane A. Benoit,

Acting Department Clearance Officer.

[FR Doc. 84–23575 Filed 9–5–84; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Toiyabe National Forest Grazing Advisory Board; Meeting

The Toiyabe National Forest Grazing Advisory Board will meet on October 17, 1984, at 10:00 a.m. in the Lander County Courthouse, Austin, Nevada.

The meeting will be open to the public.

The purpose of the meeting is to discuss:

1. Allotment Management Planning.
2. Utilization of Range Betterment Fund.

James A. Lawrence,

Deputy Forest Supervisor.

[FR Doc. 84–23538 Filed 9–5–84; 8:45 am]

BILLING CODE 3410–11–M

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Final Rate Base Determination

Issued: August 30, 1984.

AGENCY: Office of the Federal Inspector (OFI) for the Alaska Natural Gas Transportation System.

ACTION: Final Determination.

FOR FURTHER INFORMATION CONTACT: J. Richard Berman (202) 275–1100.

SUPPLEMENTARY INFORMATION: The Federal Inspector has issued a Final Determination on the expenditures incurred by Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest) and the Cooperative Agreement for Design and Engineering of Alaskan Gas Pipeline and Conditioning Plant (Cooperative Agreement) related to the Alaskan segment of the Alaska Natural Gas Transportation System (ANGTS) during the period October 1, 1981 through June 30, 1983. The Final Determination affirms a Tentative Determination issued by the Office of Audit and Cost Analysis on April 27, 1984.

This is a final OFI action under section 202(a) of Reorganization Plan No. 1 of 1979.

Dated: August 31, 1984.

John T. Rhett,

Federal Inspector.

[FR Doc. 84–23592 Filed 9–5–84; 8:45 am]

BILLING CODE 6119–01–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Architectural and Transportation Barriers Compliance Board; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 PM to 5:00 PM, Tuesday, September 11, 1984, to take place in the Hubert Humphrey Building, Rooms 503A–529A, 200 Independence Avenue, SW, Washington, D.C. Please note the change in location from previous ATBCB meetings.

Items on the agenda: showing of video tape regarding attitudinal barriers toward disabled people; discussion of ATBCB research and technical assistance program (a portion of this agenda item may be closed to non-federal employees due to the possibility of future contracting); approval of the ATBCB FY 1986 budget request to OMB; approval of proposed compliance regulation and notice of existing standards concerning the accessibility of public conveyances; proposed ATBCB regulation for implementation of the Privacy Act of 1974; proposed change of the ATBCB Statement of Organization and Procedures to hold four meetings per year instead of six; a resolution from the American Coalition of Citizens with Disabilities (ACCD) calling for legislation to authorize the Board to enforce nondiscrimination on the basis of handicap with respect to air transportation.

DATE: September 11, 1984—1:00 PM–5:00 PM.

ADDRESS: Hubert Humphrey Building, Rooms 503A–529A, 200 Independence Avenue, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245-1591 (voice or TDD)

Committee meetings of the ATBCB will be held on Monday, September 10, in the Hubert Humphrey Building, 200 Independence Avenue, SW, and the HHS North Building, 330 Independence Avenue, SW, Washington, D.C.

Robert M. Johnson,

Executive Director.

[FR Doc. 84-23552 Filed 9-5-84; 8:45 am]

BILLING CODE 6820-BP-M

CIVIL AERONAUTICS BOARD

Exemptions for Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval to extend the collection of air carrier traffic data on CAB Form 298–C "Report of Scheduled Passenger Operations of Commuter Air Carriers." OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell, (202) 673–5922

How Often the Collection of Information Must Be Filed: Quarterly

Who is Asked or Required to Report: Commuter Air Carriers

Estimate of Number of Annual Responses: 740

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 5,180

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23631 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

Uniform System of Accounts and Reports for Certificated Air Carriers; Report of Financial and Operating Statistics for Certificated Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of CAB Form 41, "Report of Financial and Operating Statistics for Certificated Air Carriers," filed pursuant to Part 241 of the Board's Economic Regulations. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922.

How Often the Collection of Information Must Be Filed: Monthly, Quarterly, Semiannually and Annually.

Who is Asked or Required to Report: U.S. Certificated Air Carriers.

Estimate of Number of Annual Responses: 10,840.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 43,257.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-23632 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

Uniform System of Accounts and Reports for Certificated Air Carriers; Service Segment Data

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of the collection of service segment data filed pursuant to section 19–3 of Part 241 of the Board's Economic Regulations. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922.

How Often the Collection of Information Must Be Filed: Monthly.

Who is Asked or Required to Report: U.S. Certificated Air Carriers.

Estimate of Number of Annual Responses: 540

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 27,000.

Phyllis T. Kaylor.

Secretary.

[FR Doc. 84-23633 Filed 9-5-84; 8:45 am]

BILLING CODE 6320-01-M

Uniform System of Accounts and Reports for Certificated Air Carriers; Passenger Origin-Destination Survey

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed collection of information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of CAB Form 2787, "Passenger Origin-Destination Survey Report," (O&D) filed pursuant to section 19–7 of Part 241 of the Board's Economic Regulations. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus, Data Requirements Section, Information Management Division, Office of Comptroller, Civil

Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, DC 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673-5922.

How Often the Collection of Information Must Be Filed: Quarterly.

Who is Asked or Required to Report: U.S. Certificated Air Carriers.

Estimate of Number of Annual Responses: 180.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 70,200.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–23634 Filed 9–5–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42185]

Jetpass Airlines Fitness Investigation; Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to be held on September 4, 1984, will be held on Wednesday, September 5, 1984, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., NW, Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., August 31, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–23635 Filed 9–5–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness; Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of Meetings.

SUMMARY: This notice announces the forthcoming meetings of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and Place

September 17, 1984, 10:00 a.m.–3:00 p.m., the Capital Resources Committee will meet at the Data Resources, Inc., 24 Hartwell Avenue, Lexington, Massachusetts 02173. The agenda will include a presentation by Data Resources, Inc. on causes and effects of the high U.S. dollar and a discussion of the draft report to be submitted to the full President's Commission on Industrial Competitiveness in October.

September 18, 1984, 9:30 a.m.–4:00, the Research, Development and Manufacturing Committee will meet at AT&T, 1120–20th Street, NW., 10th floor, Washington, DC 20036. The agenda will include continued discussion of research, development and manufacturing issues to identify final recommendations.

September 18, 1984, 9:00 a.m.–5:00 p.m., the International Trade Committee will meet at the Sheraton International, 6810 N. Manneheim Road, Rosemont, Illinois 60018. The agenda will include discussion of recommendations concerning export control, antitrust and the trading environment.

September 19, 1984, 9:00 a.m.–5:00 p.m., the Human Resource Committee will meet at the Overhead Door Corporation, 6750 L.B.J. Freeway, Dallas, Texas 75380. The agenda will include a discussion on government/industry/labor collaboration and retraining the workforce and discussion of the overview paper.

Public Participation

The meetings will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone: 202–395–4527.

Dated: August 31, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–23606 Filed 9–5–84; 8:45 am]

BILLING CODE 3510–18–M

International Trade Administration

[A–475–404]

Tubular Metal Framed Stacking Chairs from Italy; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether tubular metal framed stacking chairs (stacking chairs) from Italy are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 24, 1984, and we will make ours on or before January 17, 1985.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–2613.

SUPPLEMENTARY INFORMATION:

The Petition

On August 10, 1984, we received a petition in proper form filed on behalf of Frazier Engineering, Inc., and the United States industry producing stacking chairs. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that the imports of the subject merchandise from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based U.S. sales prices on f.o.b. Italian quotes from Italian stacking chair producers, less ocean freight and import duty.

The petitioner based foreign market value on its own costs of production adjusted for differences in estimated Italian input costs.

Using this comparison, petitioner alleged dumping margins ranging from 23 to 40 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on stacking chairs, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether stacking chairs from Italy are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 17, 1985.

Scope of Investigation

The products covered by this investigation are "tubular metal framed stacking chairs", including stacking chairs with plastic slats or expanded metal mesh instead of wire grid, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item 727.7065.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 24, 1984, whether there is a reasonable indication that imports of stacking chairs from Italy are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 30, 1984.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23600 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-402]

Tubular Metal Framed Stacking Chairs From Taiwan; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether tubular metal framed stacking chairs (stacking chairs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 24, 1984, and we will make ours on or before January 17, 1985.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Ken Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

The Petition

On August 10, 1984, we received a petition in proper form filed on behalf of Frazier Engineering, Inc., and the United States industry producing stacking chairs. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that the imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based U.S. sales prices on f.o.b. Taiwan quotes from Taiwan stacking chair producers, less ocean freight and import duty.

The petitioner based foreign market value on its own costs of production adjusted for differences in estimated Taiwan input costs, discounted to reflect the lighter gauge tubing and shorter arms used in Taiwan stacking chairs, and the possible use of less expensive coatings.

Using this comparison, petitioner alleged dumping margins ranging from 32 to 48 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on stacking chairs, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether stacking chairs from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 17, 1985.

Scope of Investigation

The products covered by this investigation are "tubular metal framed stacking chairs", including stacking chairs with plastic slats or expanded metal mesh instead of wire grid, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item 727.7065.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 24, 1984, whether there is a reasonable indication that imports of stacking chairs from Taiwan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: August 30, 1984.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23610 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-DS-M

Applications; for Duty-Free Entry of Scientific Instruments; Carnegie Institute of Washington, et al.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-236. Applicant: Carnegie Institution of Washington, Department of Terrestrial Magnetism, 5241 Broad Branch Road, NW., Washington, DC 20015. Instrument: Mass Spectrometer, Model VG MM354 with Accessories. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended use: Isotopic analysis of a wide variety of elements extracted from geologic specimens, including meteorites and lunar rocks, for the purpose of research in the fields of geochronology, geochemistry, isotope geology, cosmochronology, cosmochemistry, and astrophysics. Materials to be analysed will be individual elements, such as salts, chemically isolated from natural rock and mineral samples. Experiments to be conducted on the instrument include, but are not limited to:

1. Geochronological studies using Rb-Sr, Sm-Nd, Lu-Hf, and U-Th-Pb radioactive systems on rocks from southern Africa, Canada, India, and the U.S.A.
2. Isotope geological studies using Sr, Nd, Hf, and Pb isotopic systematics coupled with major and trace element determinations for recent volcanic rocks from island arcs, oceanic islands, mid-ocean ridges, and continental regions world wide.
3. Chronological studies of chondritic and differentiated meteorites and lunar rocks.
4. Search for isotopic anomalies in Mg, Ca, Ti, Cr, Sm, and Nd in meteoritic materials.
5. ^{230}Th/^{232}Th and ^{234}U^{238}U measurements as a means of dating recent geologic events.

Application received by Commissioner of Customs: June 25, 1984.

Docket No. 84-238. Applicant: Institute for Cancer Research, 7701 Burholme Avenue, Philadelphia, PA 1911. Instrument: X-ray Rotating Anode Generator with Accessories. Manufacturer: Rigaku Corporation, Japan. Intended use: Studies of various enzymes such as xylose isomerase and ATP citrate lyase. Nucleic acid-drug complexes, polycyclic carcinogens and mutagens and polycyclic antitumor agents will also be investigated. The experiments to be conducted will be X-ray diffraction studies using crystals of the molecules of interest. The aim of the investigations is to increase the understanding of the stereochemistries and modes of intermolecular interactions in certain key reactions of biological importance. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84-241. Applicant: The Veterans Administration Medical Center, 5000 W. National Avenue, Wood, WI 53193. Instrument: Rotating anode X-Ray generator System, Model RU-200VP. Manufacturer: Rigaku, Japan. Intended use: X-ray crystallographic investigations, specifically analysis of crystal-containing Veteran patient and research samples derived or synthesized in VA and NIH research programs. The research samples are related to crystals which induce human diseases such as gout arthritis, calcium pyrophosphate dihydrate crystal deposition arthritis, hydroxyapatite crystal deposition arthritis, calcium oxalate induced arthritis, kidney stone disease, and pulmonary diseases such as silicosis and asbestosis. The scientific data obtained with the instrument will be presented in numerous course. These courses will include: Medical Biochemistry, Introduction to Biophysics, The Physical Chemistry of Biologic Macromolecules and numerous Medical Grand Rounds. Application received by Commissioner of Customs: June 25, 1984.

Docket No. 84-254. Applicant: Northwestern University Medical School, Department of Pharmacology, Room 8-477, 303 E. Chicago Avenue, Chicago, IL 60611. Instrument: Micromanipulator and Microdrive, Models MK-2-R and MO-103-R. Manufacturer: Narishige Scientific Instruments Laboratory, Japan. Intended use: Perform experiments that have long term objectives of understanding the nature of channel grating, ion permeation, and the molecular mechanisms by which drugs and blocking ions interact with the sodium and potassium channels in nerve tissue. To achieve these objectives, recently developed gigaseal patch clamp techniques will be used which permit direct measurement of individual channel current, along with the suction pipette technique which permits measurement of macroscopic channel currents. Application received by Commissioner of Customs: July 25, 1984.

Docket No, 84-255. Applicant: The Regents of the University of California, Materiel Management Department, Riverside, CA 92521. Instrument: Root Length Scanner. Manufacturer: Commonwealth Aircraft Corporation, Ltd., Australia. Intended use: Numerous experiments conducted with sugarbeets, beans, cotton, tomatoes and other annual crops—some with nematodes, some with soil fungi and some healthy. The objectives of these experiments are to better define the relationship between solid populations of plant pathogenic nematodes and plant growth. Educational purposes—Introduce students to advanced level study in nematology as well as new techniques/instrumentation in the course Nematology 250. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84-257. Applicant: Yale University, Department of Chemistry, P.O. Box 6666, New Haven, CT 06511. Instrument: Gas Chromatograph Mass Spectrometer System, Model MS-80. Manufacturer: Kratos Scientific Instruments, United Kingdom. Intended use: Study of materials from several areas of chemical and biochemical research, including newly synthesized compounds, reaction byproducts, and natural product isolated from various sources. Chemists involved in synthesis of various types of compounds will use mass spectral data to confirm the identities of final products and of intermediates produced at various stages of the synthesis process. Mass spectral data will be used to identify unknown compounds which may be present as reaction byproducts, primary products of new reactions, and impurities in reagents and synthetic products. Researchers in the areas of biological, analytical, and natural products chemistry will use mass spectroscopy to assign structures to compounds found in very small quantities, often in very complex mixtures. Researchers concerned with the chemical and physical properties of compounds will use mass spectroscopy as a tool for determining those properties. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–258. Applicant: Los Alamos National Laboratory, P.O. Box 1663, Los Alamos, NM 87545. Instrument: Laboratory Interferometric Spectrophotometer, Model IZMO5. Manufacturer: Bomem, Inc., Canada. Intended use: Continued studies of the guest-host interactions for molecules trapped in low concentration (0.1 to 0.001 mole per cent) in low temperature solids. Results of these studies have yielded some very important information on the site structure of these molecules in the host lattice and on a dynamic energy transfer induced by vibrational dephasing involving a local site phonon mode (a libration of the guest molecule in its host lattice cage). Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–259. Applicant: Los Alamos National Laboratory, P.O. Box 1663, Los Alamos, NM, 87545. Instrument: Laser System. Manufacturer: Lumonics, Inc., Canada. Intended use: Study of laser produced plasmas, x-ray emission from such plasmas, fast temporal characteristics of the x-ray emission and resolution and timing features of x-ray streak image-converter tubes used to observe the x-ray emission. Laser will be used to drive a laser amplifier chain with high energy stability (7 percent), pulse reliability (98 percent) and short (100 ps) pulse lengths. The laser pulses will be used to heat heavy metal foils generating a plasma and x-rays. This source will be used to calibrate fast x-ray detectors and will be studied for its own characteristics. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–261. Applicant: Arizona State University, Tempe, AZ 85287. Instrument: Electron Microscope, Model JEM–4000EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The advancement and further application of the techniques of high resolution imaging, particularly of crystals. Other materials to be studied include many metals, alloys, semiconductors and ceramics. Application received by Commissioner of Customs: July 25, 1984.

Docket No. 84–263. Applicant: Brown University, 182 Hope Street, Providence, RI 02912. Instrument: Electron Microscope, Model EM 420 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used to obtain images, diffraction information and elemental composition analysis on a wide range of materials, including metals and alloys, ceramics, composites, semiconductors and polymers. This information concerning the chemistry and microstructure of materials will be used to understand the behavior of these materials on a basic scientific level. Specific projects include (i) studies of the relationship of chemistry and microstructure of metals and mechanical behavior, e.g., plastic deformation and fracture; (ii) studies of the effects of chemistry and thermal history on the microstructure and physical properties of ceramics, (iii) correlations of microstructure and electronic properties in metallic glasses; and (iv) analysis of the chemistry and structure of very fine precipitates in alloys and ceramics. Application received by Commissioner of Customs: August 3, 1984.

Docket No. 84–264. Applicant: University of Arizona, Department of Biochemistry/Biological Sciences West, Tucson, AZ 85721. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Studies of the following materials:

DNA from bacteriophage
DNA helix destabilizing protein from T4 bacteriophage
DNA helix destabilizing protein from E. coli
RecA protein from E. coli
Crotoxin complex protein from rattlesnake venom
Tetanus toxin from bacterial cell
Antibody protein from rabbit serum
Lysozyme protein from fungus
Muscle proteins from insect

High resolution images and diffraction patterns will be recorded from these protein molecules at different tilt angles with the electron microscope. Application received by Commissioner of Customs: August 3, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–23607 Filed 9–5–84; 8:45 am]

BILLING CODE 3510–DS–M

Oregon State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–104. Applicant: Oregon State University, Corvallis, OR 97330. Instrument: Liquid Nitrogen Shielded Magnetometer, Model GM 400A with Accessories. Manufacturer: Cryogenic Consultants Ltd., United Kingdom. Intended Use: See notice at 49 FR 10323.

Comments: None received.

Decision: Denied. Instruments of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, are being manufactured in the United States.

Reasons: The National Bureau of Standards (NBS) advises in its memorandum dated April 23, 1984, that domestic instruments are available which meet the pertinent specifications given in the application and are therefore scientifically equivalent to the foreign instrument for the applicant's intended use. (See § 301.5(d)(1)(i) of the regulations.) Formal bids were extended to the applicant by two domestic manufacturers of comparable instruments (United Scientific Corporation and 2G Enterprises, both located in Mountain View, California).

As the applicant acknowledges, the specification of a liquid helium dewar capacity and design to allow continuous operation without refilling more than every seven days is related to cost and convenience and therefore not pertinent to determining scientific equivalency. Section 301.2(s) states that:

> Specifications or features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent.

The applicant's response to Question 8 (justification for duty-free entry) is almost entirely concerned with considerations such as the cost of liquid helium, its consumption rate (boil-off), its local non-availability, and the depleting effects of such costs on research funding. These considerations are not allowable under § 301.2(s).

The applicant states in the application that the foreign instrument provides an option for an automated sample handling system "to be purchased at a later date." Section 301.2(s) rules out "ease of operation" and "productivity" as pertinent considerations for determining scientific equivalency. Section 301.5(d)(1)(ii), in any event, states: "The Director shall not consider the planned purchase of additional accessories or the planned conversion of the article at some unspecified future time."

With regard to the applicant's statement that the foreign instrument provides a dedicated computer, we note that both domestic instruments are amendable to automatic data processing through appropriate interfacing.

We find, therefore, that magnetometers scientifically equivalent to the foriegn article for the applicant's purposes are being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-23606 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Modification To Letter of Exemption

Notice is hereby given that pursuant to section 101(a)(4) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and Special Condition 4 of the Letter of Exemption, the Letter of Exemption issued on February 7, 1984, to the New England groundfish gillnetters, is hereby modified as detailed below.

1. Condition 2 is deleted and replaced by:

"2. The taking by killing or serious injury of marine mammals is limited annually to:

"180 harbor porpoise (*Phocoena phocoena*), 50 harbor seals (*Phoca vitulina*) and a total of 50 marine mammals of the following species:

"Grey seal (*Halichoerus grypus*)
"White-sided dolphin (*Lagenorhynchus acutus*)
"Common dolphin (*Delphinus delphis*)
"White-beaked dolphin (*Lagenorhynchus albirostris*)
"Pilot whale (*Globicephala melaena*)"

The Letter of Exemption as modified and supporting documentation pertaining to the modification are available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Dated: August 31, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23604 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Proposed Modification to Permit No. 404 (P77 No. 6)

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Services, P.O. Box 271, La Jolla, California 92038, has requested a modification of Permit No. 404 issued on January 5, 1984 (48 FR 478) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to take by tagging, elephant seals on Santa Barbara Island, Channel Islands, California in addition to the locality described in the original application.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in the modification are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 30, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23612 Filed 9-5-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

The Department of Defense (DOD) has requested a three year extension for the use of the DD Form 1630 entitled "Research and Development Capability Index—Scientific and Technological Fields of Interest." This form enables a business firm to apply to be placed on the bidders' mailing list of those DOD contracting activities which procure Research and Development products and services. When completed, it also provides the contracting activities a profile of a firm's specific R&D capabilities and the information necessary to determine which firms should be solicited.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DOD Clearance Office, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Stanley Tesko, OPI, Room 2A340, The Pentagon, Washington, D.C. 20301–3061, telephone (202) 697–4912.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-23498 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-01-M

National Advisory Panel on the Education of Handicapped Dependents; Meeting

AGENCY: Department of Defense Dependents Schools, Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Committee Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the ODS coordinator.

DATE: October 16, 1984, 9:00 a.m. to 4:00 p.m.; October 17, 1984, 9:00 a.m. to 4:00 p.m.; October 18, 1984, 9:00 a.m. to 4:00 p.m.

ADDRESS: Office of Dependents Schools (ODS), 2461 Eisenhower Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Goltz, Chief, Special Education, DODDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, (202/325–7810).

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under section 613 of the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401, Pub. L. 94–142). The Panel is directed to advise the Director, DODDS, of unmet needs within the system for the education of handicapped children, to comment publicly on rules and regulations proposed for issuance by ODS concerning education for the handicapped and on procedures for distribution of funds, and to assist ODS in developing and reporting all data and evaluation as may assist the Director in performance of her responsibilities under section 613 of Pub. L. 94–142. The Panel will review the following areas: related services, personnel development, program development, administration, budget, and communication.

Dated: August 30, 1984.

Darlene C. Scott,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23493 Filed 9–5–84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Peacekeeper Contractor Monitoring Survey

Contractor data is required to verify Peacekeeper Final Environmental Impact Statement conclusions and validate associated assumptions, multipliers and proposed mitigation measures. The collected information will be incorporated in summary fashion into an annual *Monitoring Report* and early warning communiques. The federal government and state and local units of government are expected to tailor Peacekeeper project mitigation measures to findings in the Monitoring Report.

Peacekeeper-related contractors: 3200 responses; 640 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Mr. David McPhee, AFRCE–BMS/DEVE, Norton AFB, CA 92409.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23497 Filed 9–5–84; 8:45 am]

BILLING CODE 3910-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of information collection and form number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondent; (5) An estimate of the total number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

Air Force Academy Precandidate Questionnaire (USAFA Form 149)

USAFA Form 149 will be used to collect information from prospective candidates for admission to the Air Force Academy. The information will be used to conduct a preliminary assessment of the candidates' prospects, qualifications, and eligibility status for application and selection for entry into the Academy.

Sixteen to twenty-one year old youths: 50,000 responses; 20,000 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington DC 20503, and Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Lt. Col. Lynn B. Ralston, Office of the Registrar, USAF Academy, CO 80840, telephone (303) 472–3072.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23498 Filed 9–5–84; 8:45 am]

BILLING CODE 3910-01-M

Privacy Act of 1974; New System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice for a new system of records.

SUMMARY: The Department of the Air Force proposes to add a notice for a new system of records subject to the Privacy Act of 1974. The system notice is set forth below.

DATES: The new system will be effective October 9, 1984, unless public comments are received which result in a contrary determination.

ADDRESS: Send comments to the System Manager named in the notice for the system of records set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAAD(S), Room 4A-1088, The Pentagon, Washington, DC 20330. Telephone: (202)694–3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been previously published in the **Federal Register**.

A new system report as required by 5 U.S.C. 552a(o) was submitted on July 24, 1984.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

F030 SAC A

SYSTEM NAME:

Automated Command and Control Executive Support System.

SYSTEM LOCATION:

Headquarters Strategic Air Command (SAC), Executive Systems Program Management Officer (ADUC), Offutt Air Force Base, NE 68113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel of all services, civilian employees, and contractor personnel assigned to SAC after 1 September 1984.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data extracted from the Personnel Data System (F030 AF MP A) plus 100 characters of locally generated information. Record includes name, grade, SSN, unit of assignment, security clearance, supervisor's name, duty title, office telephone, home address and telephone number, dependents, education and training, specialty or job qualification, performance/effectiveness reports, awards/decorations, promotions, duty assignment history and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: powers and duties; delegation by.

PURPOSE(S):

Used by HQ SAC for locating and administering assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer and computer output products, and on microfiche.

RETRIEVABILITY:

By Social Security Number or name.

SAFEGUARDS:

Records are accessed by the custodian of the system and by persons servicing the records who are properly cleared for need-to-know. Records are portected by computer software and the system is operated in a secure area.

RETENTION AND DISPOSAL:

Computer record is retained until individual is no longer assigned to or attached to SAC. Records will be destroyed not later than 2 years after last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Executive Systems Program Management Office (HQ SAC/ADUC), Offutt AFB, NE 68113.

NOTIFICATION PROCEDURE:

Requests from individuals should be sent to the System Manager. Full name, military or civilian status, grade and SSN are needed to determine if the system contains a record. Visitors must provide indentification such as a military ID card, driving license, or some information contained in the record.

RECORDS ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager:

CONTESTING RECORDS PROCEDURE:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation (AFR) 12–35.

RECORDS SOURCE CATEGORIES:

Information obtained from the Air Force Personnel Data System, personnel records or the individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–23301 Filed 9–5–84; 8:45 am]

BILLING CODE 3910-01-M

Privacy Act of 1974; New System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice for a new system of records.

SUMMARY: The Department of the Air Force proposes to add a notice for a new system of records subject to the Privacy Act of 1974. The system notice is set forth below.

DATES: The new system will be effective October 9, 1984, unless public comments are received which result in a contrary determination.

ADDRESS: Send comments to Mr. Jon Updike, HQ USAF/DAAD(S), Room 4A-1088, The Pentagon, Washington, DC 20330. Telephone: (202) 694–3431.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAAD(S), Room 4A-1088, The Pentagon, Washington, DC 20330. Telephone: (202) 694–3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been previously published in the **Federal Register**.

A new system report as required by 5 U.S.C. 552a(o) was submitted on July 17, 1984.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

F030 AF A

SYSTEM NAME:

Automated Personnel Management System.

SYSTEM LOCATION:

Unit or offices at all levels within the Air Force who implement the system under a specific authorizing local or higher level directive.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military and civilian personnel assigned to the office or unit as specified in the governing directive for the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data obtained from existing personnel or training records or from the individual. Record includes name, grade, SSN, unit of assignment, security clearance, supervisor, duty title, office and telephone number, home address and telephone number, dependents, education and training, specialty or job qualifications, performance/effectiveness reports, awards/decorations, promotions, duty assignment history and similar information listed in the governing directive for the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: powers and duties; delegation by; as implemented by a specific governing directive. The system cannot be operated until a directive is published listing authorized locations, subjects, categories of records, safeguards, and management procedures. A copy of the directive will be provided to the command Privacy Act Officer.

PURPOSE(S):

Used to locate, manage and train assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer or word processor and output products as lsited in the governing directive.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

Records are accessed by the custodian of the system and by persons servicing the records who are properly cleared for need-to-know. Records are protected in accordance with Air Force Regulation 300-13, Safeguarding Personal Information in Automatic Data Processing Systems.

RETENTION AND DISPOSAL:

Computer record is retained until no longer needed. Records will be destroyed not later than 2 years after last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of office or unit as specified in governing directive.

NOTIFICATION PROCEDURE:

Requests from individuals should be sent to the System Manager.

RECORDS ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURE:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation (AFR) 12-35.

RECORDS SOURCE CATEGORIES:

Information obtained from personnel records, training records or the individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-23500 Filed 9-5-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Privacy Act of 1974; Amendment to the Notice for a System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Amendment to the notice for a system of records.

SUMMARY: The Department of the Navy proposes to amend the notice for a system of records subject to the Privacy Act of 1974. The system notice as amended is set forth below.

DATES: The new notice will be effective October 9, 1984, unless public comments are received which result in a contrary determination.

ADDRESS: Send comments to the System Manager named in the notice for the system of records set forth below.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op-09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697-1459.

SUPPLEMENTARY INFORMATION: The Department of Navy notices for systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been previously published in the **Federal Register**.

An altered system report as required by 5 U.S.C. 552a(o) was submitted on July 9, 1984.

Dated: August 30, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

N05801-1

SYSTEM NAME:

Legal Assistance Card Files (48 FR 26105) June 6, 1983.

CHANGES:

SYSTEM NAME:

Delete the entire entry and substitute with the following: "Legal Services Management Information System."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entire entry and substitute with the following: Servicemembers who are pending courts-martials. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any Command with a legal assistance office."

CATEGORIES OF RECORDS IN THE SYSTEM:

At the beginning of the entry, add: "(1) *Legal Assistance Card Files.*" At the end of the entry, add the following two paragraphs: "(2) *Case Analysis and Tracking System (CATS):* CATS records contain identification information about the individual being courts-martialled, such as name; rank/rate; service number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges alleged, charges of which convicted if any, sentence adjudged; and other information describing overall case management and processing. (3) *Legal Assistance and Personal Representation Client Records:* File contains ID information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and the attorney time expended."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

In the second line, delete the number: "1914. . ."

PURPOSE(S):

Add the following entry: "Attorneys and clerical personnel directly involved in processing courts-martials, and rendering legal assistace and advice within the Naval Legal Service Offices and Detachments and legal assistance offices establishes within the Department of the Navy. Data will be used for the internal management of the Navy Legal Service Offices and legal assistance offices such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Add the following at the end of the entry: ". . . case files are stored on magnetic disk. Reports extracted from this data may be stored temporarily in paper files."

RETRIEVABILITY:

Delete the entire entry and substitute with the following: "Card files maintained by the legal assistance offices are retrieved by name of client. Case files maintained by the Naval Legal Service Offices are retrieved by an internal case number and secondarily, by name of individual."

SAFEGUARDS:

At the beginning of the entry, add the words: 'Manual records/. . ."

Add the following paragraph at the end of the entry: "Data disks are secured in areas accessible only by authorized personnel. Additional, data disks are unreadable without the program disks, as an added security precaution."

RETENTION AND DISPOSAL:

Delete the entire entry and substitute with the following: "Records are retained for two years after completion of the case, then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

At the end of the entry, add the following phrase:: ". . . for legal assistance card files."

Add a new second paragraph as follows: "Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, Virginia 22332, for case files."

RECORD SOURCE CATEGORIES:

Delete the entire entry and substitute with the following: "Basic information contained in the card files is provided by the client. Basic information contained in the courts-maritial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service."

NO5801-1

SYSTEM NAME:

Legal Services Management Information System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Servicemembers who are pending courts-martials. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any Command with a legal assistance office.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) *Legal Assistance Card Files.* Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expanded.

(2) *Case Analysis and Tracking System (CATS):* CATS records contain identification information about the individual being courts-martialled, such as name; rank/rate; service number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges alleged, charges of which convicted if any, sentence adjudged; and other information describing overall case management and processing. (3) *Legal Assistance and Personal Representation Client Records:* File contains ID information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Manual of the Judge Advocate General; 44 U.S.C. 3101.

PURPOSE(S):

Attorneys and clerical personnel directly involved in processing courts-martials, and rendering legal assistance and advice within the Naval Legal Service Offices and Detachments and legal assistance offices established within the Department of the Navy. Data will be used for the internal management of the Naval Legal Service Offices and legal assistance offices such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pre-printed cards stored in file cabinets; case files are stored on magnetic disk. Reports extracted from this data may be stored temporarily in paper files.

RETRIEVABILITY:

Card files maintained by the legal assistance offices are retrieved by name of client. Case files maintained by the Naval Legal Service Offices are retrieved by an internal case number and scendarily, by name of individual.

SAFEGUARDS:

Manual records/cards are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Data disks are secured in areas accessible only by authorized personnel. Additionally, data disks are unreadable without the program disks, as an added security precaution.

RETENTION AND DISPOSAL:

Records are retained for two years after completon of the case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332, for legal assistance card files.

Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, Virginia 22332, for case files.

* * * * *

RECORD SOURCE CATEGORIES:

Basic information contained in the card files is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.

* * * * *

[FR Doc. 84-23495 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-01-M

Performance of Commercial Activities; Announcement of Program Cost Studies

Department of the Navy intends to conduct OMB Circular A-76 (48 FR 37110, August 16, 1983) cost studies of various functions at listed activities commencing 9 October 1984. Cost study process is rigorous, time-consuming procedure and, depending upon size of functions involved, can take several months to several years to complete. Since studies not yet begun, specifications not yet prepared. When bids/proposals desired, appropriate advertisements will be placed. No consolidated bidders' list being maintained since solicitations will be processed by various contracting offices throughout U.S.

Naval Hospital, Camp Pendleton, CA

Medical Records Transcription

Naval Facility Centerville Beach, Ferndale, CA

BOQ/BEQ
Food Services and Administration
Motor Vehicle Operations
Motor Vehicle Maintenance
Heating Plants and Systems
Water Plants and Systems
Sewage/Waste Plants and Systems
Other Services and Utilities
Storage and Warehousing
Administrative Telephone Services
Buildings and Structures (Family Housing)
Buildings and Structures (Non-Family Housing)
Grounds (Improved)
Surfaces areas

Naval Hospital, Lemoore, CA

Medical Records Transcription
Clinical Nutrition

Naval Air Station, Lemoore, CA

Recreational Library Services
Motor Vehicle Maintenance
Electrical Plants and Systems
Heating Plants and Systems
Water Plants and Systems
Sewage and Waste Plants and Systems
Air Conditioning and Refrigeration Plants
Other Services or Utilities
Receipts
Care/Rewarehousing and Support of Material
Packing and Crating
Storage and Warehousing (Other)
Operation of Bulk Liquid Storage
Air Transportation Services
Fueling Service (Aircraft)
Preparation and Disposal of Excess and Surplus Property
Buildings and Structures
Other Maintenance

Naval Station, Long Beach, CA

Supply Operations
Data Processing Services

Naval Hospital, Long Beach, CA

Medical Records Transcription

Naval Air Station, Miramar, CA

Recreational Library Services
Dining Facility Equipment
Other Maintenance and/or Repair of Equipment
Bus Service
Motor Vehicle Operations and Maintenance
Electrical Plants and Systems
Water Plants and Systems
Air Conditioning and Refrigeration Plants
Air Transportation Services
Buildings and Structures (Family Housing)
Buildings and Structures (Other than Family Housing)
Other Maintenance, Repairs, Alteration, and Minor Construction of Real Property

Naval Air Station, Moffett Field, CA

Recreational Library Services
Crane Operations (Including Rigging)
Heavy Truck Operation
Construction Equipment Operation
Street Sweeping
Airfield Sweeping
Other Vehicle Operation (Light Truck and Automobile)
Heating Plants and Systems
Air Conditioning and Refrigeration
Supply Operations
Storage and Warehousing (Receipt)
Storage and Warehousing (Care, Rewarehousing and Support of Material)
Storage and Warehousing (Preservation and Packaging)
Storage and Warehousing (Packing and Crating)
Operations of Bulk Liquid Storage
Fueling Services (Aircraft)
Buildings and Structures (Other than Family Housing)

Naval Hospital, Oakland, CA

Medical Records Transcription
Orthopedic Appliances

Military Sealift Command, Pacific, Oakland, CA

Storage and Warehousing
Administrative Support Services
System Design, Development, and Programming Services

Naval Medical Clinic, Port Hueneme, CA

Medical Records Transcription

Naval Air Landing Facility, San Clemente Island, CA

Unaccompanied Personnel Housing
Electronics and Communications Equipment
Storage and Warehousing
Operation of Bulk Liquid Storage
Air Transportation Services
Water Transportation Services

Naval Air Station, North Island, San Diego, CA

Recreational Library Service
Other Installation Services
Supply Operations
Material Division
Operation of Bulk Liquid Storage
Air Transportation Services
Material Division

Fleet Area Control and Surveillance Facility, San Diego, CA

Custodial Services
Data Transcription/Data Entry Services

Naval Hospital, San Diego, CA

Medical Records Transcription
Veterinary Services

Naval Hospital, Groton, CT

Medical Records Transcription

Military Sealift Command, Command Information System Office, Washington, D.C.

Data Processing Services
System Design, Development and Programming Services

Naval Hospital, Jacksonville, FL

Medical Records Transcription

Naval Hospital, Orlando, FL

Medical Records Transcription

Naval Aerospace Medical Research Laboratory, Naval Air Station, Pensacola, FL

Veterinary Services

Naval Air Station, Pensacola, FL

Training Devices and Simulators

Naval Aerospace Medical Institute, Pensacola, FL

Medical Records Transcription

Naval Hospital, Pensacola, FL

Medical Records Transcription

Naval Ocean Processing Facility, Ford Island, Pearl Harbor, HI

Communications Center

Naval Logistics Command, Pearl Harbor, HI

Word Processing Center

Naval Hospital, Great Lakes, IL

Medical Records Transcription

Navy Data Automation Facility, Great Lakes, IL

Operation of ADP Media Library

Naval Air Station, Brunswick, ME

Operation of ADP Equipment, Production Control and Customer Services, ADP Magnetic Media Library, Other ADP Operations and Support
System Design, Development and Programming

Naval Medical Research Institute, Bethesda, MD

Veterinary Services

Naval Air Test Center, Patuxent River, MD

Other Non-Manufacturing Operations

Military Sealift Command, Atlantic, Bayonne, NJ

Storage and Warehousing
Operation of ADP Equipment
Production Control and Customer Services
Keypunch Services
Development and Maintenance of Applications Software
Other Automatic Data Processing Services

Naval Hospital, Camp Lejeune, NC

Medical Records Transcription
Veterinary Services

Naval Hospital, Cherry Point, NC

Medical Records Transcription

Naval Hospital, Philadelphia, PA

Medical Records Transcription
Orthopedic Appliances

Naval Hospital, Roosevelt Roads, PR

Medical Records Transcription

Naval Hospital, Beaufort, SC

Medical Records Transcription

Charleston Naval Shipyard, Charleston, SC

Motor Vehicle Operation and Maintenance

Naval Hospital, Charleston, SC

Medical Records Transcription

Naval Hospital, Millington, TN

Medical Records Transcription

Naval Air Station, Chase Field, Beeville, TX

Buildings and Structures (Chase Park Family Housing)

Naval Hospital, Corpus Christi, TX

Medical Records Transcription

Naval Air Station, Kingsville, TX

Insect and Rodent Control

Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA

Administrative Support
ADP Operations and Support
System Design, Development and Programming Services
Provide Technical Support Services

Surface Warfare Development Group, Norfolk, VA

Custodial Services
Graphic Art
Data Processing Services
Grounds and Surfaced Areas

Naval Hospital, Portsmouth, VA

Medical Records Transcription

Naval Hospital, Bremerton, WA

Medical Records Transcription

Naval Undersea Warfare Engineering Station, Keyport, WA

Administrative Support Services

Naval Medical Clinic, Seattle, WA

Medical Records Transcription

Naval Hospital, Whidbey Island, WA

Medical Records Transcription

Dated: August 20, 1984.

T.H. Upton,

Captain, SC, USN, Head Commercial Retail/ Activities Branch.

[FR Doc. 84-22824 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. (App.), notice is hereby given that the Naval Research Advisory Committee Panel on OT&E Requirements and Facilities will meet on September 20, 1984, at Nellis Air Force Base, Nevada. Sessions of the meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on September 20, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to determine the adequacy of the Navy's ability to test new systems and equipment. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: August 30, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 84-23553 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Air Development Center (NADC) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on September 20, 1984, at the Naval Air Systems Command, Jefferson Plaza #1, Crystal City, Arlington, Va. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on September 20, 1984. The entire meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NADC. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: August 30, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 84-23554 Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Environmental Support will meet on September 20, 1984, at the U.S. Naval Observatory, Washington, D.C.; and on September 21, 1984, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The first session of the meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on September 20, 1984. The second session will commence at 8:30 a.m. and terminate at 4:30 p.m. on September 21, 1984. All sessions will be closed to the public.

The purpose of the meeting is to receive various briefings relating to an assessment of the Navy's environmental support in the design, development, test, operational planning, and employment of naval systems. All sessions of the meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The Secretary of the Navy therefore has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because it will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100n), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: August 30, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve Alternate Federal Register Liaison Officer.

[FR Doc. 84-23555, Filed 9-5-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of the Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Egypt; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of the Arab Republic of Egypt Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the conversion of uranium enrichment services agreements to the new utility services contract form, for the EFAPP Sidi Krier 1, the El Dabaa, the Egypt 3, and the Egypt 4 power stations.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1984.

John Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23518 Filed 9-5-84 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-JA-351, to the Power Reactor and Nuclear Fuel Development Corp., Japan, 212 grams of natural uranium oxide, 519.9 grams of natural uranium metal, 43.68 grams of uranium enriched to 1.349% in U-235, and 49.13 grams of uranium enriched to 1.71% in U-235, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1984.

John Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23520 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the assignment of uranium enriching services totaling 18,000 separative work units in Fiscal Year 1986 from a domestic utility to the Chugoku Electric Power Company, Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 29, 1984.

John Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23519 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community and Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Norway Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the folllowing retransfer: RTD/EU(NO)–38, from the Institutt for Energiteknikk, Halden, Norway to the Atomic Energy Research Institute, Harwell, England, five irradiated test fuel rods, containing approximately 2.21 Kilograms of uranium, enriched to 7.24% in U-235, and 18 grams of plutonium, for post-irradiation examination, and final disposal as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 30, 1984.

John R. Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23505 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No. WP-85]

Proposed Wholesale Power Rate Adjustment; Public Hearings and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Review and Comment.

BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP-85.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), enacted on December 5, 1980, confirms BPA's obligation to establish and periodically revise BPA's rates so that they are adequate to recover, in accord with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS).

BPA is proposing to revise its wholesale power rate schedules in order to produce sufficient revenue to fulfill its statutory requirements. Section 7 of the Northwest Power Act controls the establishment of rates applicable to all power sales provided for in the Northwest Power Act.

Opportunities will be available for interested persons to review the proposed rates and the supporting studies, to participate in hearings, and to submit written comments. While BPA welcomes public comment on its entire proposal, it particularly requests comments on Section IV of the notice that deals with revenue levels and rate design issues. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rates proposal differing from the rate proposed in this Notice.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The notification must be received by September 24, 1984, and should be addressed as follows: Hon. Seymour Wenner, Hearing Officer, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Customers of BPA who provide notice are parties of right. Others may become parties by demonstrating in their notice and at the Prehearing Conference that they would represent a significant and otherwise unrepresented interest. The notice should contain: (1) The name of the person or entity claiming status as a party; (2) the person who will be representing the party; (3) whether the person or entity claiming status as a party has a contractual relationship with BPA that could be affected by the proposed rates; and (4) if no contractual interest exists, the interest the person believes would be served by the person or entity being a party. All timely applications will be ruled on by the Hearing Officer.

A Prehearing Conference, required by the rate procedures, will be held before the Hearing Officer at 9 a.m. on September 24, 1984, in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the Prehearing Conference will begin at 8:30 a.m.

It is expected that during the Prehearing Conference dates will be set for presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearings will be mailed to all parties of record. All formal hearing sessions will be held in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon.

Two series of public field hearings regarding BPA's proposal will be held at various regional locations. At the first series, BPA will provide information concerning the ratemaking process and the issues in this rate case, and a synopsis of the rate proposal. Both the public's comments contained in a verbatim transcript of the hearings and all written comments received will be made a part of the Official Record. The public oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings.

Registration for the field hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

October 16—Holiday Inn at the Coliseum, XJS Room, 10 N. Weidler, Portland, Oregon.
October 17—Seattle Center, Shaw Room, North Court, Seattle, Washington.
October 18—City Council Chambers, 777 Pearl Street, Eugene, Oregon.
October 22—Burley Inn, 800 N. Overland Avenue, Burley, Idaho.

October 23—Red Lion Village Inn, 100 Madison Street, Missoula, Montana.
October 24—Cavanaugh's River Inn, Clearwater Room, N. 700 Division Street, Spokane, Washington.
October 25—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington.
October 29—Virginia Motel, Buffalo Room, 750 W. Broadway, Jackson, Wyoming.

A second series of field hearings will be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment, based on their review of the evidence presented in the formal hearings. BPA will consider the public's comments in the evaluation of the Record. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice (currently expected to be published in February 1985).

ADDRESSES: Written comments not submitted at the hearings should be summitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Written comments submitted by the close of the hearing will be made part of the record.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212; 503–230–3478. BPA maintains toll-free lines for the use of persons within the region. Oregon callers outside of Portland may use 800–452–8429; callers in Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California may use 800–547–6048. Additional information is available from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Earl C. Schoer, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

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SUPPLEMENTARY INFORMATION: BPA published in the **Federal Register** a notice of "Intent to Revise Wholesale Power Rates to Become Effective July 1, 1985; Request for Recommendations and Suggestions" (49 FR 30007) on July 25, 1984. The notice of intent indicated that, based on contract provisions presently in force and proposed with BPA's customers, the revised rates are expected to become effective on July 1, 1985.

BPA developed a study of its financial situation to determine the amount of revenue required to meet these obligations. The total revenue requirement for FY 1987 is $3.33 billion. This revenue requirement translates into an increase of 10 percent in the Priority Firm Power rate, a 1 percent increase in the Industrial Firm Power rate, a 7 percent decrease in the Surplus Firm Power rate, a 5 percent decrease in the New Resources Firm Power rate, and an 11 percent increase in the average Nonfirm Energy Standard rate over the proposed rate period.

The proposed wholesale power rates have been prepared in accord with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C., Section 832 e and f (1976); the Flood Control Act of 1944, 16 U.S.C., Section 825 *et seq* (1976); the Regional Preference Act, 16 U.S.C., Section 837 *et seq* (1976); the Federal Columbia River Transmission System Act, 16 U.S.C., Section 838g and h (1976); and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C., Section 839 *et seq* (Supp. V., 1981).

In developing the proposed wholesale power rates, BPA considered revenue requirements, costs of service, marginal costs, conservation, environmental impacts, ease of administration, revenue stability, rate continuity, ease of comprehension, economic efficiency, and statutory obligations. The major studies that have been prepared to support the proposed wholesale rates will be available for examination on September 7, 1984, at BPA's Public Involvement office, BPA Headquarters Building, 1002 NE. Holladay Street, Portland, Oregon. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The studies are:

1. Revenue Requirement Study
2. Loads and Resources Study
3. Cost of Service Analysis
4. Marginal Cost Analysis
5. Sec. 7(b)(2) Rate Test Study
6. Sec. 7(c)(2) Industrial Margin Study
7. Wholesale Power Rate Design Study

In developing these studies, consideration was given to the comments and recommendations received from BPA's customers and the public in response to BPA's Notice of Intent.

The environmental impacts of the proposed rates will be considered. An environmental assessment documenting the impacts of the proposed rates and alternatives will be available for examination at a later date. Its availability will be announced by a separate notice published in the **Federal Register.**

I. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act provides procedures for encouraging the participation of the public in the development of BPA's rates. In order to give the public notice of how it could participate in BPA's rate adjustments and to elaborate on the procedures set out in Section 7(i), BPA published "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" by **Federal Register** notice (46 FR 6240, February 10, 1982). These procedures were used in the 1983 wholesale power and transmission rate filings. On March 23, 1934, BPA published its Interim Amendment of Procedures Governing BPA Rate Adjustments (49 FR 1090), and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the *ex parte* communication restrictions found in section 557(d) of the Administrative Procedures Act. BPA is in the process of evaluating comments on the Interim Amendment and will finalize the Interim Amendment as soon as possible. BPA's procedures, as amended, will be applicable to the section 7(i) hearings on BPA's 1985 rate case. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

The Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the record developed during the hearings process. BPA's procedures expand these requirements. They provide for publication of a ntoice of intent to revise rates followed by a notice of the proposed rates, a prehearing conference, hearing, receipt of written comment, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission (FERC).

The process begins with publication of the notice of intent to revise rates. This is followed by publication of this notice of the proposed rates, which includes the proposed rates; a discussion of the research, studies, analyses, and other available information in support of the proposed rates; the deadline for claiming status as a "party"; and the beginning date for the hearing.

The procedures further provide for a Prehearing Conference if scheduled by the Hearing Office. A Prehearing Conference has been scheduled before the Hearing Officer at 9 a.m. on September 24, 1984, in the cafeteria at Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m., and the conference will commence at 9 a.m. with the Honorable Seymour Wenner presiding.

Issues for discussion at the Prehearing Conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at or before the Prehearing Conference.

BPA will also convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal and to receive comments, views, and opinions from the general public. The public's oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at these sessions. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, and 1983 rate proceedings. BPA staff will present a synopsis of the proposed rates followed by comments from the public. The public will have an opportunity to present their comments, views, and opinions about the proposed rates.

BPA finds it necessary to distinguish between "participants in" and "parties to" the hearings. During the field hearings, BPA will receive comments, views, opinions, and information form "participants," who are defined in the procedures as interested persons who may express their views at a hearing, but who may not cross-examine other witnesses, participate in the Prehearing Conference, or serve or be served with documents. Participants, however, will be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon the "parties."

The second category of interest is that of a "party." A party may be either a party of right because of its legal and/or contractual relationship with BPA, and hence, its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in prehearing conferences, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interests and positions, the Hearing Officer may, to expedite the hearing, order appropriate limitations on the number of attorneys (or parties appearing *pro se*) who will be permitted to cross-examine witnesses as well as file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. BPA expects that the clarification sessions will be followed by the presentation of the parties' direct cases, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the law through briefs. The Evaluation of the Record will provide a written evaluation of the Record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the Record. Written comments may be included in the Record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Manager.

The Record will include, among other things, the transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the Record by the Hearing Officer. The Hearing Officer then will review the Record, will supplement it if necessary, and will certify the Record to the Administrator for decision.

The Administrator will develop the fiscal proposed rates based on the entire Record, including the Record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the Record with FERC for confirmation and approval.

II. Elements of the Northwest Power Act

The rate schedules contained in this publication are proposed in accord with the Northwest Power Act, which was signed into law on December 5, 1980. BPA's 1981, 1982, and 1983 rate schedules were also proposed in accord with the Northwest Power Act. Prior to the Northwest Power Act, BPA allocated costs of resources from a single block, the Federal Columbia River Power System (FCRPS), and designed rates to recover those costs from limited classes of customers. Now there are two additional distinct blocks of resources costs, and BPA's services extend to all classes of customers within the Pacific Northwest. Accordingly, the proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (Section 7), as well as the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (Section 5).

Most importantly, the Northwest Power Act places on BPA a responsibility to all the electric power consumers in the region. While protecting the historical preference and priorities of public bodies and cooperatives, the Northwest Power Act authorizes BPA to extend the benefits of low-cost Federal power to residential and small farm consumers; to share the burdens, risks, and benefits of meeting the load growth requirements of all requesting utilities; to provide a positive inducement to individual utilities to accept the responsibility for achieving conservation and developing renewable resources; to accept the risks and costs of meeting the entire region's power supply deficits; and to provide access for all of BPA's regional firm loads to the reserves provided by BPA's rights to restrict deliveries to industrial customers served directly by BPA.

A. Services

BPA's public body, cooperative and Federal agency customers will be able to have their current and future requirements met by BPA. In addition, the residential and small farm consumers of investor-owned utilities (IOUs) will share in the benefits of what are now BPA's lowest cost resources.

The IOU's net firm power requirements in the region (in excess of their own firm resources in the year prior to the Northwest Power Act) also can be served by BPA if the utility seeks such service. These loads would be served at a different rate as described below, but would retain the benefits of system integration, reserves, risk sharing, and nonfirm energy supplies.

BPA's existing direct-service industrial (DSI) customers have received 20-year contracts for industrial power. These contracts include significant BPA rights to restrict service to the DISs. These rights provide the region with a major portion of the planning and operating reserves that help to keep costs lower to all of the region's consumers.

B. Costs

The Act identifies three distinct resource pools, commonly referred to as the Federal base system resources (FBS), the exchange resources under section 5(c) of the Northwest Power Act (Exchange), and new resources.

The first pool, the FBS, is defined by section 3(10) of the Northwest Power Act as (1) the FCRPS hydroelectric projects; (2) the resources acquired by the Administrator under long-term contracts in force on the effective date of the Northwest Power Act; and (3) the resources acquired as necessary to replace any reductions in capability of the components of (1) and (2). For the test year FY 1987, the FBS used in developing rates includes the existing hydroelectric system, 30 percent of the output of the Trojan nuclear plant, 72 percent of the output from Hanford Generating Project, and the net-billed portions of the Washington Public Power Supply System plants 1, 2, and 3.

The second resource pool, Exchange, consists of the power that BPA purchases from utilities, primarily IOUs, under the provisions of Sec. 5(c), for the direct benefit of their residential and small farm consumers. Beginning on October 1, 1981, the amount of power purchased was equal to 60 percent of the residential and small farm loads of the individual utility, increasing by 10 percentage points each July 1 through 1985. For the 1987 test year, the power eligible for exchange purchase is equal to 100 percent of the residential and small farm loads of the individual utilities in the region. BPA is directed to acquire the power at the offering utility's average system cost. The average system cost is determined using a methodology developed by BPA, pursuant to section 5 of the Northwest Power Act, in consultation with its customers, State regulatory bodies in the region, and the Pacific Northwest Electric Power and Conservation Planning Council (Regional Council). (FERC approved BPA's methodology on a final basis on October 17, 1983 (48 FR 46,970). A revision of BPA's methodology has been filed with FERC. In the development of the rate schedules contained herein, it was assumed that this revision would be approved by the FERC for implementation on October 1, 1984.) BPA must then sell an equivalent amount of power to the utility under the rate schedule that is in effect for sales of wholesale firm power to BPA's public body, cooperative, and Federal agency customers. The benefits of this "exchange" are to be passed through to the participating utility's residential and small farm loads within that region.

While the exchange provisions of the Northwest Power Act were presumed to benefit primarily investor-owned utility residential ratepayers, the average system cost methodology now in effect on an interim basis permits publicly owned utilities to exchange. Thus, a portion of the projected exchange resource, exchange cost, and exchange load in this proposal is attributable to this public agency exchange.

The third resource pool is the "new resource" pool. It will include all new resources developed, purchased, or otherwise acquired by BPA other than Exchange resources and FBS replacements.

C. Rates

The costs of the various resource pools described above, plus the other costs incurred by the Administrator, must be recovered in a manner described in section 7 of the Northwest Power Act, including provisions of other applicable law.

Section 7(b) directs the Administrator to establish a rate or rates for power sold to meet the general requirements of the public body, cooperative, and Federal agency customers within the region as well as power sold to utilities participating in the residential power exchange to serve their residential and small farm consumers. The 7(b) rate is to be based on FBS costs and, to the extent that the loads exceed the capability of the FBS, exchange resource costs. In addition, section 7(b)(2) of the Northwest Power Act directs the Administrator to ensure that rates charged the public agency customers do not exceed a level determined by certain assumptions contained in section 7(b)(2). BPA has conducted a separate study based on a section 7(b)(2) methodology developed in a separate 7(i) proceeding, which determined that no adjustment is required for the proposed rates. For test year 1987, 7(b) loads exceed the capability of the FBS. Consequently, a portion of BPA's exchange resources is allocated to the 7(b) rate class.

For test year 1987, the DSIs are basically served by exchange resources remaining after serving 7(b) load. However, section 7(c)(2) of the Northwest Power Act directs that the rates charged the DSI customers beginning July 1, 1985 are to be based on the wholesale rates charged the preference customers plus a margin typical of those chared by the region's public utilities for electricity sold to retail industrial consumers. In addition, BPA must ensure that the rates charged DSI customers beginning July 1, 1985 are not lower than those in effect in the year ending June 30, 1985. These statutory directives cause potential reallocations of costs and credits among customer classes. The overall DSI rate is also adjusted pursuant to section 7(c)(3) of the Northwest Power Act in recognition of the value of the forced outage, stability, and plant delay reserves provided through restriction rights on delivery of power to meet the DSI loads.

Section 7(f) of the Northwest Power Act directs the establishment of rates that will be charged for all other firm power sales made within the region by the Administrator. Loads served under these rates may be the load growth or firm deficits of the IOUs, which BPA is obligated to serve under the Northwest Power Act, if requested to do so by the individual IOUs. Section 7(f) rates also apply to service to preference customers' new large single loads as defined in the Northwest Power Act, which are excluded from service under the section 7(b) rate. Exchange resources and new resources will be used to serve the IOU load growth and new large single loads provided for in section 7(f).

Finally, section 7(k) of the Northwest Power Act governs FERC review of BPA rates for sale of nonfirm energy outside the Pacific Northwest, but within the United States. Section 7(k) directs the Administrator to develop such rates in accordance with section 7(i) and with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. These statutes, however, provide no additional or different statutory standards than those which BPA meets in developing all of its rates.

III. Wholesale Power Rate Schedules and General Rate Schedule Provisions

Schedule PF-85—Priority Firm Power Rate

Section I: Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest.

Priority Firm Power may be purchased for resale to ultimate consumers, direct consumption, construction, test and start-up, and station service by public bodies, cooperatives, and Federal agencies.

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, BPA may make Priority Firm Power available to those parties participating in exchange agreements which use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule PF-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

1. $5.99 kilowatt of billing demand occurring during Peak Period hours in the billing months December through April.
2. $2.56 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November.
3. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 17.2 mills per kilowatthour of billing energy for the billing months September through March;
2. 14.2 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

In this section billing factors are listed for each of the following types of purchasers: computed requirements purchasers (section III.A), purchasers of residential exchange power pursuant to the Residential Purchase and Sale Agreements (section III.B), and metered requirements purchasers and those Priority Firm Power purchasers not covered by sections III.A and III.B (section III.C).

A. Computed Requirements Purchasers

Purchasers designated by the Bonneville Power Administration (BPA) as computed requirements purchasers, either pursuant to section IV.B.1.b of the General Rate Schedule Provisions (GRSPs) or pursuant to power sales contracts executed after December 5, 1980, shall be billed in accordance with the provisions of this subsection.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b", below:

a. The lower of:

(1) The Measured Demand, before adjustment for power factor; or

(2) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement, and

b. The lower of:

(1) The Computed Peak Requirement; or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. For the months September through March, the sum of:

(1) 61 percent of the Measured Energy (excluding unauthorized increase), and

(2) 39 percent of the Computed Energy Maximum;

b. For the months April through August, the sum of:

(1) 56 percent of the Measured Energy (excluding unauthorized increase), and

(2) 44 percent of the Computed Energy Maximum.

B. Purchasers of Residential Exchange Power

Purchasers buying Priority Firm Power under the terms of a Residential Purchase and Sale Agreement shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the demand calculated by applying the load factor, determined as specified in the Residential Purchase and Sale Agreement, to the billing energy for each billing period.
2. *Billing Energy.* The billing energy shall be the energy associated with the utility's residential load for each billing period. Residential load shall be computed in accordance with the provisions of the purchaser's Residential Purchase and Sale Agreement.

C. Metered Requirements Purchasers and Other Purchasers Not Covered by Sections III.A and III.B, Above

Purchasers designated as metered requirements customers and purchasers taking power under this rate schedule who are not otherwise covered by sections III.A and III.B shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract.
2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. Low Density Discount (LDD)

BPA shall apply a discount to the charges for all Priority Firm Power sold to purchasers who are eligible for an LDD. Eligibility for the LDD and the amount of the discount (3, 5, or 7 percent) shall be determined pursuant to section III.C.3 of the GRSPs.

C. Conservation Surcharge

The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The conservation surcharge shall be applied monthly and shall equal ten percent of the customer's total monthly charge for all power purchased under this rate schedule. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal ten percent of the total charge for all power purchases multiplied by the ratio of (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (d) the customer's total retail load.

D. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5 of the GRSPs and shall be applied to all power purchases under this rate schedule.

For this rate schedule, the variable ECP in the Exchange Adjustment calculation shall have a value of .7212.

E. Supply System Adjustment

The Supply System Adjustment shall be calculated pursuant to section III.C.6 of the GRSPs. The adjustment shall be applied to the energy component of the Priority Firm Power Rate and shall be in effect from October 1, 1986, through the end of the rate period

For this rate schedule, the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.7397, and
2. BD=78,972.

F. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Priority Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

G. Unauthorized Increase

BPA shall apply the charge for Unauthorized Increase to any purchaser of Priority Firm Power taking demand and/or energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Calculation of the Amount of Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount which may be considered an unauthorized increase. BPA shall first determine the amount of unauthorized increase related to demand and shall treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, which exceeds the demand which the purchaser is contractually entitled to take during the billing month and which cannot be assigned:

(1) To a class of power which BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such hour,

Shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) If such exhibit does not apply or is not a part of the purhaser's power sales contract, at the Rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month which exceeds the amount of energy which the purchaser is contractually entitled to take during that month and which cannot be assigned:

(1) To a class of power which BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such month,

Shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) As unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

H. Coincidental Billing Adjustment

Purchasers of Priority Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.4 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

I. Energy Returns

Any purchaser who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's computed peak requirement and computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.93 mills per kilowatthour for the months of April through November, and
2. 1.66 mills per kilowatthour for the months of December through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the PF–85 rate is 86.5 percent FBS and 13.5 percent Exchange.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule IP-85—Industrial Firm Power Rate

Section I. Availability

This schedule is available to direct-service industrial (DSI) customers for both the contract purchase of Industrial Firm Power and the purchase of Auxiliary Power if requested by the DSI customer and made available by BPA. This rate schedule supersedes Schedule IP-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

This rate schedule includes three possible rates for Industrial Firm Power: the Standard Industrial Rate, the Premium Industrial Rate, and the Industrial Incentive Rate. Under the Standard Industrial Rate, first quartile service is provided by BPA with nonfirm energy and/or provisional drafts. Under the Premium Industrial Rate, first quartile service with surplus firm energy load carrying capability (surplus FELCC) is requested by the customer and provided by BPA. The Industrial Incentive Rate is for the same quality of service as that provided under the Standard Industrial Power Rate, but the Industrial Incentive Rate will be offered at the discretion of the Administrator and shall be applied to consenting DSIs on a take-or-pay basis. The procedures for determining when the Industrial Incentive Rate will be offered are specified in section V.E of the General Rate Schedule Provisions (GRSPs).

A. Standard Industrial Rate

The following rate shall apply to purchases of Industrial Firm Power under the Standard Industrial Rate:

1. *Customer Charge.* a. For large IP plants, $5.18 per kilowatt of Customer Charge Demand during all billing months;

b. For small IP plants, $5.26 per kilowatt of Customer Charge Demand during all billing months.

2. *Demand Charge.* a. $3.47 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April;

b. $1.92 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November;

c. No demand charge during Offpeak Period hours.

3. *Energy Charge.* a. 17.2 mills per kilowatthour of billing energy for the billing months September through March;

b. 14.2 mills per kilowatthour of billing energy for the billing months April through August.

B. Premium Industrial Rate

The following rate shall apply to purchases of Industrial Firm Power under the Premium Industrial Rate:

1. *Customer Charge.* a. For large IP plants, $5.18 per kilowatt of Customer Charge Demand during all billing months;

b. For small IP plants, $5.26 per kilowatt of Customer Charge Demand during all billing months.

2. *Demand Charge.* a. $3.69 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April;

b. $2.05 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November;

c. No demand charge during Offpeak Period hours.

3. *Energy Charge.* a. 18.3 mills per kilowatthour of billing for the billing months September through March;

b. 15.1 mills per kilowatthour of billing energy for the billing months April through August.

C. Industrial Incentive Rate

If BPA elects to implement the Industrial Incentive Rate, the rate shall be specified by BPA. In setting the rate, BPA shall adhere to the provisions and/or procedures set forth in section V.E of the GRSPs.

1. *Customer Charge.* a. For large IP plants, $5.18 per kilowatt of Customer Charge Demand during all billing months;

b. For small IP plants, $5.26 per kilowatt of Customer Charge Demand occurring all billing months.

2. *Demand Charge.* The demand charge for power purchased under the Industrial Incentive Rate shall be specified by BPA at the time that the Administrator adopts the Industrial Incentive Rate.

3. *Energy Charge.* The energy charge for power purchased under the Industrial Incentive Rate shall be specified by BPA at the time that the Administrator adopts the Industrial Incentive Rate.

Section III. Billing Factors

A. Customer Charge Demand

The customer charge shall be applied on a monthly basis to all purchases of Industrial Firm Power under the Standard Industrial Rate, the Premium Industrial Rate, and the Industrial Incentive Rate. The Customer Charge Demand is defined in Section III.A.11. of the GRSPs.

1. *Customer Charge Demand for Large Direct-Service Industrial Plants.* The Customer Charge Demand for large direct-service industrial plants for the billing month shall be the weighted average of:

a. Restricted Demand(s), if any, during the billing month,

b. Curtailed Demand(s), if any, during the billing month, resulting from Uncontrollable Forces as defined in the power sales contract, and

c. Plant Capacity Demand.

2. *Customer Charge Demand for Small Direct-Service Industrial Plants.* The Customer Charge Demand for small direct-service industrial plants for the billing month shall be the greater of:

a. The weighted average of:

(1) Restricted Demand(s), if any, during the billing month,

(2) Curtailed Demand(s), if any, during the billing month, resulting from Uncontrollable Forces as defined in the power sales contract, and

3. The Distributed DSI Demand, or

b. The level of demand to which the demand charge is applied.

3. The weighted average in both III.A.1 and III.A.2 above shall be based on the number of hours in the month of:

(a) Restriction, and/or (b) curtailment resulting from Uncontrollable Forces.

B. Billing Demand

1. *Standard Industrial Rate and Premium Industrial Rate.* The billing demand for power purchased under either the Standard Industrial Rate or the Premimum Industrial Rate shall be the BPA Operating Level as adjusted for power factor. If there is more than one BPA Operating Level during the billing month, the billing demand shall be a weighted average of the BPA Operating Levels for the billing month. The BPA Operating Level is the lowest of the following billing factors for the period(s) during which each applies:

a. Operating Demand Plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C. of the GRSPs.

2. *Industrial Incentive Rate.* For customers purchasing under the Industrial Incentive Rate, the billing demand for Industrial Firm Power shall be the greater of billing factors "a" or "b", as adjusted for power factor:

a. The weighted average BPA Operating Level for the billing month; or

b. The lower of:

(1) Committed Demand; or

(2) The weighted average of Committed Demand and Restricted Demand, based on the number of hours of restriction during the month.

C. Billing Energy

1. *Standard Industrial Rate and Premium Industrial Rate.* The billing energy for power purchased under either the Standard Industrial Rate or the Premium Industrial Rate shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

2. *Industrial Incentive Rate.* The billing energy for the billing month shall be the higher of:

a. The Measured Energy minus any kilowatthours on which BPA assesses the charge for unauthorized increase, or

b. The Committed Energy.

The kilowatthours of billing energy shall be prorated among the respective billing demands for the billing month.

Section IV. Selection of the IP-85 Rate

All sales of Industrial Firm Power for which there is no agreement between BPA and the DSI specifying use of the Premium Industrial Rate or the Industrial Incentive Rate shall be made at the Standard Industrial Rate.

If the DSI elects to purchase Industrial Firm Power under the Premium Industrial Rate and if BPA agrees to supply Surplus FELCC to the requesting purchaser, BPA and the DSI shall agree to the period of time for which the Premium Industrial Rate shall be effective.

The Industrial Incentive Rate shall be applied to sales of Industrial Firm Power only when the Administrator and the DSI have agreed to the use of such rate. Prior to applying the Industrial Incentive Rate, BPA and the DSI shall agree to the terms and conditions under which the Incentive Rate shall apply. The agreement with the DSI shall specify:

A. The Committed Demand;

B. The Committed Energy;

C. The level of the demand and energy charges in the Industrial Incentive Rate;

D. The period of time for which the Industrial Incentive Rate is to be applied.

Section V. Adjustments and Special Provisions

A. Curtailments

BPA shall charge the DSI for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract. BPA shall apply the demand charge in effect at the time of the curtailment in the computation of the amount of the curtailment charge.

B. Unauthorized Increase

1. *Rate for Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Application of the Charge.* BPA may assess the unauthorized increase charge on the number of kilowatthours associated with all DSI Measured Demands during the billing month that exceed the BPA Operating Level.

C. Value of Reserves Credit

1. *Amount of the Value Reserves Credit.* The monthly billing credit for the value of the reserves provided by purchasers of Industrial Firm Power shall be:

a. $0.33 per kilowatt of billing demand; and

b. 1.1. mills per kilowatthour of billing energy.

2. *Application of the Value of Reserves Credit.* The value of reserves credit shall be applied to the same billing factors that are used to determine the billing for power purchased under sections III.B.1. and III.C.1. of this rate schedule. No value of reserves credit shall be applied to:

a. That portion of the DSI's demand curtailed under section 9(c) of the power sales contract;

b. Unauthorized increases under section V.B. above; and

c. Purchases of Industrial Firm Power under the Industrial Incentive Rate.

D. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1. of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5. or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

E. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5. of the GRSPs and shall be applied to all power purchases under the Standard Industrial Rate and the Premium Industrial Rate.

For this rate schedule, the variable ECP in the Exchange Adjustment calculation shall have a value of .2426.

F. Supply System Adjustment

The Supply System Adjustment shall be calculated pursuant to section III.C.6. of the GRSPs. The Adjustment shall be applied to the energy component of the Industrial Firm Power Rate and shall be in effect from October 1, 1986, through the end of the rate period.

For this rate schedule, the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.2489, and

2. BD=26,733.

G. Outage Credit

Pursuant to the conditions specified in section 7 of the GRSPs, BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the General Rate Schedule Provisions.

Section VI. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the IP-85 rate is 100 percent Exchange.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 milles per kilowatthour.

C. The forecased cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville

Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule SI–85. Special Industrial Power Rate

Section I. Availability

This rate schedule is available to any direct-service industrial (DSI) purchaser using raw materials indigenous to the region as its primary resource and qualifying for this special power pursuant to the procedures established in section 7(d)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). This schedule is available for the contract purchase of this special class of Industrial Power and also for the purchase of Auxiliary Power if requested by the DSI and made available by BPA. Schedule SI–85 supersedes Schedule IH–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

This rate schedule includes two possible rates for Special Industrial Power service: the Standard Special Industrial Power Rate and the Offpeak Special Industrial Power Rate. The Standard Special Industrial Power Rate is available for full service provided during all hours of the day. The Offpeak Special Industrial Power Rate is a lower rate available to the purchaser for service during periods specified by BPA.

A. Standard Special Industrial Power Rate

1. *Demand Charge.* a. $5.99 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April;

b. $2.56 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November;

c. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 17.2 mills per kilowatthour of billing energy for the billing months of September through March;

b. 14.2 mills per kilowatthour of billing energy for the billing month April through August.

B. Offpeak Special Industrial Power Rate

1. *Demand Charge.* a. No demand charge in any hour of the day.

2. *Energy Charge.* a. 7 mills per kilowatthour of billing energy during all billing months.

Section III. Billing Factors

A. Billing Demand

1. *Standard Special Industrial Power Rate.* The billing demand for power purchased under the Standard Special Industrial Power Rate shall be the BPA Operating Level as adjusted for power factor. If there is more than one BPA Operating Level during the billing month, the billing demand shall be a weighted average of the BPA Operating Levels for the billing month. The BPA Operating Level is the lowest of the following billing factors for the period(s) during which each applies:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Special Industrial Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C of the GRSPs.

2. *Offpeak Special Industrial Power Rate.* There is no billing demand for purchases under the Offpeak Special Industrial Power Rate.

B. Billing Energy

The billing energy under both the Standard and Offpeak Special Industrial Power Rates shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

The kilowatthours of billing energy shall be prorated among the respective billing demands for the billing month.

Section IV. Selection of the SI–85 Rate

The purchaser may select one of two service options, standard or offpeak service. BPA will provide standard service under the Standard Special Industrial Power Rate and offpeak service under the Offpeak Special Industrial Power Rate. Unless BPA receives a formal request for service under the Offpeak Special Industrial Power Rate, all service will be standard service provided under the Standard Special Industrial Power Rate. To change the type of service provided and the associated rate, the DSI shall submit a formal request for service under the preferred rate option in accordance with the terms of the DSI's power sales contract. Once a DSI has elected to purchase under one of the two options, all purchases of Special Industrial Power shall be subject to the terms and conditions of that rate option until such time that the DSI requests the other type of service.

Section V. Service Under the Offpeak Special Industrial Power Rate

BPA shall designate the hours during which offpeak service will be available, and shall provide the DSI with at least 2 weeks notice before changing those designated hours. BPA shall identify at least 10 and up to 13 hours on each day Monday through Friday, 15 hours on Saturday, and 24 hours on Sunday, during which offpeak service will be available to the purchaser.

If the DSI has elected to be served under the Offpeak Special Industrial Power Rate, the DSI may request, during the designated offpeak periods, service in an amount not to exceed the purchaser's Contract Demand. During all other hours the purchaser shall curtail service to a level not to exceed 10 percent of Contract Demand.

Section VI. Adjustments and Special Provisions

A. Curtailments

BPA shall charge the DSI for curtailments in accordance with the provisions of the DSI's power sales contract as amended. BPA shall apply the Standard Special Industrial Power Rate in the computation of any curtailment charge.

B. Unauthorized Increase Charge

1. *Rate for Unauthorized Increases.* 82.2 mills per kilowatthour.

2. *Application of the charge.* BPA may assess the unauthorized increase charge on the number of kilowatthours associated with all DSI Measured Demands during the billing month that exceed the BPA Operating Level. If BPA is providing service to the DSI under the Offpeak Special Industrial Power Rate, the amount by which the DSI's Measured Demand exceeds 10 percent of its Contract Demand during any hour other than the specified special hours shall be considered unauthorized increase.

C. Value of Reserves Credit

1. *Amount of the Value of Reserves Credit.* The monthly billing credit for the value of the reserves provided by purchasers of Special Industrial Firm Power shall be:

a. $0.33 per kilowatt of billing demand; and

b. 1.1 mills per kilowatthour of billing energy.

2. *Application of the Value of Reserves Credit.* The value of reserves credit shall be applied to the same billing factors which are used to

determine the billing for power purchased under sections III.A.1, III.B of this rate schedule. No value of reserves credit shall be applied to:

a. That portion of the purchaser's demand subject to curtailment charges under section VI.A of this rate schedule;

b. Those purchases subject to unauthorized increase charges under section VI.B, above; and

c. Purchases of Special Industrial Power under the Offpeak Special Industrial Power Rate.

D. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment for service under the Standard Special Industrial Power Rate, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. For service under the Offpeak Special Industrial Power rate, BPA shall increase the billing energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

E. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to delivery Special Industrial Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. In addition, no credit shall be applied to purchases under the Offpeak Special Industrial Power Rate. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the General Rate Schedule Provisions.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The SI–85 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: The Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule CF–85. Firm Capacity Rate

Section I. Availability

This schedule is available for the purchase of Firm Capacity without energy on a Contract Demand basis. The schedule is available only to those purchasers holding Firm Capacity contracts executed prior to July 1, 1985. BPA may supply Firm Capacity to those purchasers.

A. On a contract year basis (all 12 months of the year); or

B. On a contract season basis (June 1 through October 31).

This schedule supersedes Schedule CF–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Contract Year Service

$47.88 per kilowatt per year of Contract Demand, billed monthly at the rate of $3.99 per kilowatt of Contract Demand.

B. Contract Season Service

$12.80 per kilowatt per season of Contract Demand, billed monthly during the contract season at the rate of $2.56 per kilowatt of Contract Demand.

Section III. Billing Factors

The billing demand shall be the Contract Demand.

Section IV. Adjustments and Special Provisions

A. Intertie Service Adjustment

The monthly capacity rate specified in sections II.A. and II.B., above, shall be increased by $0.18 per kilowatt for capacity made available at the Oregon-California or the Oregon–Nevada border for delivery over the Pacific Northwest-Pacific Southwest (Southern) Intertie.

B. Conservation Surcharge

The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The conservation surcharge shall be applied monthly and shall equal ten percent of the customer's total monthly charge for all power purchased under this rate schedule. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal ten percent of the total charge for all power purchases multiplied by the ratio of (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (b) the customer's total retail load.

C. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5 of the General Rate Schedule Provisions (GRSPs) and shall be applied to all power purchases under this rate schedule.

For contract year service, the variable ECP in the Exchange Adjustment calculation shall have a value of .0235.

For contract season service, the variable ECP in the Exchange Adjustment calculation shall have a value of .0022.

D. Supply System Adjustment

The Supply System Adjustment shall be calculated pursuant to section III.C.6 of the GRSPs. The Adjustment shall be applied to the demand component of the Firm Capacity Rate, and shall be in effect from October 1, 1986 through the end of the rate period.

For contract year service the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.0113, and
2. BD=18,024.

For contract season service, the variables SS and BD in the Supply System calculation shall have the following values:

1. SS=.0001, and
2. BD=1,800.

E. Extended Peaking Surcharge

The monthly capacity rate specified in sections II.A. and II.B., above, shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours.

1. $0.1023 per kilowatt per hour of extended peaking for the months April through November, and

2. $0.0577 per kilowatt per hour of extended peaking for the months December through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

The purchaser's monthly demand duration shall be determined by dividing:

1. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

2. The purchaser's Contract Demand for such month.

The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds eight hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

F. Energy Return Surcharge

Contracts for the purchase of Firm Capacity under this schedule shall include provisions for the purchaser to replace the energy accompanying the delivery of such capacity. Unless waived by BPA, any purchaser whose energy returns exceed 60 percent of the purchaser's Contract Demand during a single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.93 mills per kilowatthour for the months April through November, and

Section V. Resource Cost Contribution

2. 1.66 Mills per kilowatthour for the Months December through March.

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CF–85 rate is 87.8 percent FBS and 12.2 percent Exchange for contract year service, and 100.0 per cent Exchange for contract season service.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule CE–85—Emergency Capacity Rate

Section I. Availability

This schedule is available for the purchase of capacity:

A. When an emergency exists on the purchaser's system, or

B. When the purchaser wishes to displace higher cost firm capacity resources which are otherwise available to meet the purchaser's load, provided the purchaser requests such capacity and BPA has capacity available for such purpose.

This schedule supersedes Schedule CE–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

$1.20 per kilowatt of demand per calendar week or portion thereof.

B. Intertie Charge

The demand charge specified above shall be increased by $0.04 per kilowatt per week for capacity made available at the Oregon-California or Oregon-Nevada border for delivery over the Pacific Northwest-Pacific Southwest (Southern) Intertie.

Section III. Billing Factors

The billing demand shall be the maximum amount requested by the purchaser and made available by BPA during a calendar week. If BPA is unable to meet subsequent requests by a purchaser at the demand previously established during such week, the billing demand for that week shall be the lower demand which BPA is able to supply.

Section IV. Billing Period

Bills shall be rendered monthly.

Section V. Special Provision

Energy delivered with such capacity shall be returned to BPA within 7 days of the date of delivery and shall be returned at times and rates of delivery agreed to by both the purchaser and BPA prior to delivery. BPA may agree to accept the return energy after the normal 7 day return period provided that such delay has been mutually agreed upon prior to delivery.

Section VI. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CE–85 rate is 87.8 percent FBS and 12.2 percent Exchange.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule NR–85—New Resource Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest.

New Resource Firm Power is available to those investor-owned utilities under net requirements contracts purchasing firm power for resale to ultimate consumers, direct consumption, or use in construction, test and start up, and station service.

New Resource Firm Power is also available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any increase in energy consumption of a load as defined in section 3.(13) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) as interpreted in Notice of Final Action (46 FR 44353) (September 3, 1981).

In addition, BPA may make this rate available to those parties participating in exchange agreements which use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule NR–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

1. $5.99 per kilowatt of billing demand occurring during Peak Period hours in

the billing months December through April.

2. $2.56 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November.

3. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 23.5 mills per kilowatthour of billing energy for the billing months September through March;

2. 20.4 mills per kilowatthour of billing energy for the billing months April through August;

Section III. Billing Factors

In this section billing factors are listed for each of the following types of purchasers: computed requirements purchasers (section III.A), metered requirements purchasers and those New Resource Firm Power purchasers not covered by section III.A (section III.B).

A. Computed Requirements Purchasers

Purchasers designated by the Bonneville Power Administration (BPA) as computed requirements purchasers pursuant to power sales contracts executed after December 5, 1980, shall be billed in accordance with the provisions of this section.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b", below:

a. The lower of:

(1) The Measured Demand, before adjustment for power factor; or

(2) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement; and

b. The lower of:

(1) The Computed Peak Requirement; or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be the lesser of:

a. The Computed Energy Maximum; or

b. For the months September through March, the sum of: 44 percent of the Measured Energy, and 56 percent of the Computed Energy Maximum;

c. For the months April through August, the sum, of: 39 percent of the Measured Energy, and 61 percent of the Computed Energy Maximum.

B. Metered Requirements Purchasers and Other Purchasers Not Covered By Section III.A, Above

Purchasers designated as metered requirements customers and purchasers taking power under this rate schedule who are not otherwise covered by section III.A shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract. However, purchasers who previously used the Firm Energy Rate Schedule FE-2, either in the computation of their power bills or in the determination of the value of an exchange account, shall not be charged for demand under this rate schedule.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. Conservation Surcharge

The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The conservation surcharge shall be applied monthly and shall equal ten percent of the customer's total monthly charge for all power purchased under this rate schedule. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal ten percent of the total charge for all power purchases multiplied by the ratio of (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (b) the customer's total retail load.

C. Exchange Adjustment

The Exchange Adjustment shall be calculated pursuant to section III.C.5 of the GRSPs and shall be applied to all power purchases under this rate schedule.

For this rate schedule, the variable EC in the Exchange Adjustment calculation shall have a value of .0105.

D. Unauthorized Increase

BPA shall apply the charge for Unauthorized Increase to any purchaser of Priority Firm Power taking demand and/or energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Calculation of the Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount which may be considered an unauthorized increase. BPA shall first determine the amount of unauthorized increase related to demand and shall then treat any remaining unauthorized increases as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, that exceeds the demand which the purchaser is contractually entitled to take during the billing month and that cannot be assigned:

(1) To a class of power which BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) To a type of power which the purchaser acquires from sources other then BPA and which BPA delivers during such hour, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) If such exhibit does not apply or is not a part of the purchaser's power sales contract, at the Rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month that exceeds the amount of energy which the purchaser is contractually entitled to take during that month and that cannot be assigned:

(1) To a class of power that BPA delivers such month pursuant to contracts between BPA and the purchaser; or

(2) To a type of power that the purchaser acquires from sources other

than BPA and that BPA delivers during such month, shall be billed:

(1) In accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) As unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

E. Coincidental Billing Adjustment

Purchasers of New Resource Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.4 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

F. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver New Resource Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

G. Energy Returns

Any purchaser who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's estimated computed peak requirement and estimated computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.93 mills per kilowatthour for the months of April through November, and
2. 1.66 mills per kilowatthour for the months of December through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the NR-85 rate is 97.9 percent Exchange and 2.1 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule SP-85—Surplus Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of Surplus Firm Power or Capacity to be used either for release or direct consumption. Surplus Firm Power or Capacity may be sold to entities inside and outside the Pacific Northwest as well as outside the United States. This rate schedule shall not apply to contracts for which rates have been negotiated pursuant to section 7(1) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). In addition, this schedule is not available to any direct-service industrial purchaser who buys power under either Schedule IP-85 or Schedule SI-85. Schedule SP-85 supersedes Schedule SP-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

The rate for Surplus Firm Power shall be mutually agreed upon and contractually specified by the parties prior to delivery of the power. Purchasers buying under a contract that establishes a price of power and a quantity of power to be purchased for a term of less than a year and ending on or before September 30, 1987, may buy at either the Resource Rate or the Contract Rate. Purchasers buying under a contract that establishes a price of power and a quantity of power to be purchased for a term of at least 1 year or terminating after September 30, 1987, shall buy at the Contract Rate.

A. Resource Rate

A Surplus Firm Power rate based on the cost of resources shall use one of the following as the basis of the charge:

1. The generation and transmission costs associated with providing power from one or more Federal system thermal resources to the contractually specified point of delivery. A rate based on the costs of thermal resources shall include all the variable costs and up to 100 percent of the fixes costs associated with generating and transmitting such thermal power.

The following variable costs, if applicable, shall be included in the determination of a rate based on the cost of thermal resources: (a) Total fuel costs; (b) incremental costs of labor and supplies required for operation and maintenance of the thermal plant(s) providing such power; (c) incremental administrative and general expenses; (d) taxes; (e) transmission network losses (to be priced at the incremental cost of the fuel required to generate the lost power); and (f) any other related costs associated with production and transmission of such thermal power.

The fixed costs associated with the generation and transmission of such thermal power shall include, if applicable: (a) Debt service; (b) capital additions; (c) taxes; (d) fixed administrative and general expenses; (e) fixed operation and maintenance expenses; (f) insurance for the facilities used in the production and transmission of this thermal power; and (g) any other fixed costs associated with the generation and transmission of such thermal power.

Prior to delivery of this thermal power, BPA shall determine what portion of the fixed costs listed above shall be included in the rate.

2. The average cost of exchange resources of one or more utilities participating in the residential exchange plus up to 100% of the associated transmission expense;

3. The average costs to BPA of one or more power purchases plus up to 100% of the associated transmission expense;

4. The average costs of one or more types of resources (thermal, exchange, purchased power) plus up to 100% of the associated transmission expense.

B. Contract Rate

For contracts that refer to the Contract Rate in this rate schedule in determining the rate for Surplus Firm Power, the following rate shall apply:

1. *Demand Charge.* a. $6.76 per kilowatt of billing demand occurring during Peak Period hours in each billing month.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 19.7 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. Escalation Factor

The SP–85 Contract Rate shall be subject to change each October 1, beginning October 1, 1987, for all contracts that extend beyond September 30, 1987. The effective rate for each rate component of the Contract Rate shall be determined according to one of the two formulas below. Formula 1 shall apply unless otherwise contractually specified.

1. $Rate_n = Rate_{n-1} * (1 + ARG_{-1})$

where:

$Rate_n$ = the rate in the fiscal year (October 1 through September 30) for which the SP–85 Contract Rate is being calculated;

$Rate_{n-1}$ = the rate for the demand component and energy component of the SP–85 Contract Rate in the previous fiscal year (year $n-1$);

ARG_{n-1} = the weighted average annual rate of growth (ARG) in the cost of exchange resources in year $n-1$ as calculated on October 1 in year n. The average cost of exchange resources shall be based on the average system costs of C.P. National Corporation, Idaho Power Company, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company, and Washington Water Power Company. If any of the eight utilities equalizes rates in year n–1, pursuant to section 10 of the Residential Purchase and Sale Agreement, the calculation of ARG shall not reflect the average system cost of such utility.

2. $Rate_n = Rate_{n-1} * 1.071$

where:

$Rate_n$ = the rate in the fiscal year (October 1 through September 30) for which the SP–85 Contract Rate is being calculated; and

$Rate_{n-1}$ = the rate for the demand component and energy component of the SP–85 Contract Rate in the previous fiscal year (year $n-1$);

B. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the contract shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

C. Extended Peaking and Returned Energy Surcharge

Surcharges for extended peaking and returned energy (similar to those listed in sections IV.E. and IV.F. of the CF–85 rate schedule) will be established pursuant to contract, unless BPA determines that appropriate service provisions established in the contract make these unnecessary. Billing factors for these surcharges will be established in the contract.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SP–85 rate is 0.1 percent FBS, 98.5 percent Exchange and 1.4 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule SE–85—Surplus Firm Energy Rate

Section I. Availability

This schedule is available for the contract purchase of Surplus Firm Energy to be used either for resale or direct consumption. Surplus Firm Energy may be sold to entities inside and outside the Pacific Northwest as well as outside the United States. This rate schedule shall not apply to contracts for which rates have been negotiated pursuant to section 7(l) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). In addition, this schedule is not available to any direct-service industrial purchaser who buys power either under Schedule IP–85 or Schedule SI–85. Schedule SE–85 supersedes Schedule SE–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

29 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing energy shall be determined as provided in the purchaser's power sales contract. If BPA does not have a power sales contract in force with a purchaser or if the contract does not specify how to calculate the billing energy, the billing energy shall be the Measured Energy.

Section IV. Adjustments and Special Provisions

A. Escalation Factor

Schedule SE–85 shall be subject to change each October 1, beginning October 1, 1987, for all contracts that extend beyond September 30, 1987. The change in the SE–85 rate shall be determined according to one of the two formulas below. Formula 1 shall apply unless otherwise contractually specified.

1. $Rate_n = Rate_{n-1} * (1 + ARG_{n-1})$

where:

$Rate_n$ = the rate in the fiscal year (October 1 through September 30) for which the SE–85 rate is being calcualated;

$Rate_{n-1}$ = the SE–85 rate in the previous year $n-1$);

ARG_{n-1} = the weighted average annual rate of growth (ARG) in the cost of exchange resources in year $n-1$ as calculated on October 1 in year n. The average cost of exchange resources shall be based on the average system costs of C. P. National Corporation, Idaho Power Company, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company, and Washington Power Company. If any of the eight utilities equalizes rates in year n–1 pursuant to Section 10 of the Residential Purchase and Sale Agreement, the calculation of ARG shall not reflect the average system cost of such utility.

2. $Rate = Rate_{n-1} * 1.071$

where:

$Rate_{n-1}$ = the rate is the fiscal year (October 1–September 30) for which the SE–85 rate is being calculated; and

$Rate_{n-1}$ = the SE–85 rate in the previous year (year n–1).

B. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is suuplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing energy by one percentage point of each percentage point or major fraction therefor (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SE–85 rate is 0.1 percent FBS, 98.5 percent Exchange and 1.4 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule FD–85—Firm Displacement Power Rate

Section I. Availability

This schedule is available for the contract purchase of Firm Displacement Power and Capacity by Pacific Northwest utilities. Firm Displacement Power and Capacity may be used either for resale or direct consumption within the Pacific Northwest, to replace the output of firm resources exported from the region on a firm basis for a period of at least 3 years. The amount of Firm Displacement Power or Capacity may not exceed the planned output of resource(s) identified by the purchaser available to serve extra-regional load. BPA may limit the amount of Firm Displacement Power or Capacity available for sale under this rate schedule to the amount specified as actually serving extra-regional load in the contract between BPA and the utility.

Section II. Rate

The following rate shall apply to sales of Firm Displacement Power and Capacity through June 30, 1990:

A. Demand Charge

1. $5.92 per kilowatt of billing demand occurring during Peak Period hours in all billing months.

2. No demand charge during Offpeak Period hours.

B. Energy Charge

22.2 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. Escalation Factor

The FD–85 rate shall be subject to change each July 1, beginning July 1, 1986. The effective rate for each rate component of the FD–85 Rate shall be calculated as follows:

1. $\text{Rate}_n = \text{Rate}_{n-1} * 1.025$

where:

Rate_n = the rate in the year (July 1 through June 30) for which the SE–85 rate is being calculated; and

Rate_{n-1} = the demand component and energy component of the FD–85 rate in the previous year (year n-1).

B. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the contract shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs.). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing energy by one percentage point of each percentage point or major fraction therefor (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

C. Outage Credit

Pursuant to the conditions specified in section 7 of the General Contract Provisions to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Firm Displacement. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternate facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

D. Extended Peaking and Returned Energy Surcharges

Surcharges for extended peaking and returned energy (similar to those listed in sections IV.E and IV.F of the CF–85 rate schedule) will be established pursuant to contract unless BPA determines that appropriate service provisions established in the contract make these unnecessary. Billing factors for these surcharges will be established in the contract.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FD–85 rate is 97.9 percent Exchange and 2.1 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule NF–85—Nonfirm Energy Rate

Section I. Availability

This schedule is available for the contract purchase of Nonfirm Energy to be used both inside and outside the Pacific Northwest as well as outside the United States. This schedule also applies to energy delivered for emergency use under the conditions set forth in section V.A. of the General Rate Schedule Provisions (GRSPs). This rate schedule is not available for the purchase of energy that BPA has a firm obligation to supply except to the extent that short-term guarantees are agreed to, nor is this schedule applicable to contracts for which rates have been negotiated pursuant to Sec. 7(l) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The availability of Nonfirm Energy under this rate schedule shall be determined by BPA. This rate schedule supersedes Schedule NF–83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Market Rates

1. *Standard Rate.* a. 21.0 mills per kilowatthour of billing energy during Offpeak Period hours; and

b. 19.3 mills per kilowatthour of billing energy during Offpeak Period hours.

2. *Displacement Rates—a. Variable Displacement Rate.* The rate shall be the greater of:

(1) 75 percent of either:

(a) The decremental costs in mills per kilowatthour of the displaceable thermal resource or end-user load with alternate fuel sources, or

(b) The rate in mills per kilowatthour associated with the displaceable purchase of energy; and

(2) 11 mills per kilowatthour.

b. *Fixed Displacement Rate.* (1) 7 mills per kilowatthour of billing energy for displacement of coal-fired resources and end-user load with alternate fuel sources; or

(2) 3 mills per kilowatthour of billing energy for displacement of nuclear resources.

3. *Incremental Rate.* The Incremental Rate is equal to the Incremental Cost of power plus 2.0 mills per kilowatthour, where the Incremental Cost is defined as all identifiable costs (expressed in mills per kilowatthour) that BPA would not have incurred had it not chosen to produce or purchase the power being sold under this rate.

B. Contract Rate

The Contract Rate is 16.6 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing energy for power purchased under this rate schedule shall be in the Measured Energy unless otherwise specified in the power sales contract.

Section IV. Selection of the NF-85 Rate

Any time that BPA has Nonfirm Energy for sale, either the Standard Rate, the Variable Displacement Rate, the Fixed Displacement Rate, the Incremental Rate, or a combination of these rates may be in effect. The Contract Rate may apply to a particular sale, but only if the conditions of service are consistent with all the provisions of this section.

A. Market Rates

1. *Standard Rate.* The Standard Rate shall apply:

a. Unless the purchaser is able to demonstrate that its Decremental Cost is less than the applicable Standard Rate plus 2 mills per kilowatthour;

b. When BPA does not seek to expand its market beyond sales being made at the Standard Rate; or

c. To nonfirm energy purchased pursuant to the Relief from Overrun Exhibit to the power sales contract.

2. *Displacement Rates—a. Variable Displacement Rate.* The Variable Displacement Rate shall apply to purchasers who qualify for the rate when all markets have been satisfied at the Standard Rate and BPA seeks to expand its sales beyond those being made at the Standard Rate.

To qualify for the Variable Displacement Rate, the displaceable resource or displaceable purchase of energy must have Decremental Costs lower than the applicable Standard Rate plus 2.0 mills per kilowatthour. To qualify for the Variable Displacement Rate, the end-user load with alternate fuel source must have Decremental Costs lower than the applicable Standard Rate plus 4.0 mills per kilowatthour. End-user loads with alternate fuel sources may not use the Decremental Cost of a displaceable purchase of electricity to qualify for this rate.

Decremental Cost of a displaced thermal resource or end-user load with alternate fuel source is defined as all identifiable costs (expressed in mills per kilowatthour) that the purchaser is able to avoid by purchasing power at this rate, rather than generating the power itself, or using the alternate fuel.

Decremental Cost of a displaced purchase of energy is defined as all identifiable costs to serve load (expressed in mills per kilowatthour) that the purchased is able to avoid by choosing not to purchase the energy.

When displacing a resource, purchasers at the Variable Displacement Rate must shut down or reduce the output of the identified displaceable resource in an amount equal to the amount of Variable Displacement Rate energy purchased.

When displacing a purchase, purchasers must demonstrate that the purchase has been reduced and that the output of the resource being purchased has been reduced in an amount equal to the amount of Variable Displacement Rate energy purchased.

b. *Fixed Displacement Rate.* When all markets have been satisfied at the Variable Displacement Rate, BPA may make additional energy available at the Fixed Displacement Rate to displace coal-fired and nuclear resources and end-user alternate fuel sources. To qualify for the Fixed Displacement Rate:

(1) Coal-fired and nuclear resources must have Decremental Costs lower than 13 mills per kilowatthour; and

(2) End-user loads with alternate fuel sources must have Decremental Costs lower than 15 mills per kilowatthour.

Energy will be made available at 3 mills per kilowatthour to displace nuclear resources only after all markets have been satisfied at the 7 mills per kilowatthour rate.

Decremental Cost is defined as all identifiable costs (expressed in mills per kilowatthour) that the purchaser is able to avoid by choosing not to produce the power being purchased at this rate.

When displacing coal-fired and nuclear resources, purchasers and/or end-users of energy at the Fixed Displacement Rate must shut down or reduce the output of the identified displaceable resource in an amount equal to the amount of Fixed Displacement Rate energy purchased. The purchaser and/or end-user must own and operate the identified resource or be able to control the generation level of the resource through purchase of the resource's variable output.

BPA will offer Nonfirm Energy for sale at the Fixed Displacement Rate only to displace identified qualified resources and end-user alternate fuel sources.

3. *Incremental Rate.* The Incremental Rate shall be applied to sales of power:

a. That is produced or purchased by BPA concurrently with the nonfirm sale;

b. That BPA may at its option not produce or purchase; and

c. That has an Incremental Cost greater than the Standard rate less 2.0 mills per kilowatthour.

B. Contract Rate

The Contract Rate shall apply to sales of Nonfirm Energy pursuant to contracts (except the 20-year utility power sales contracts) that:

1. Refer to this rate schedule to determine the value of energy; and

2. Do not specify that a different nonfirm rate (Standard, Variable Displacement, Fixed Displacement, or Incremental) will apply.

Section V. Delivery

A. Rate of Delivery

BPA shall determine the rate of delivery for Nonfirm Energy made available by BPA under this rate schedule.

B. Guaranteed Delivery

A surcharge of 3.4 mills per kilowatthour shall be applied for guaranteed delivery of Nonfirm Energy at the Standard Rate and the Fixed Displacement Rate, except that the Fixed Displacement Rate for displacement of nuclear resources shall not include this surcharge.

On the second and last working day of each week, or more often if BPA determines that it is appropriate, BPA will indicate the amounts of Nonfirm Energy available for delivery, normally for the next three or four days, on a guaranteed basis. On the second working day of each week BPA will indicate the daily or hourly amounts that it is willing to guarantee through at least the Friday immediately following. On the last working day of each week BPA will indicate the amounts it is willing to guarantee through at least the Tuesday immediately following. Such daily or hourly amounts may be as small as zero or as much as all the Nonfirm Energy that BPA plans to offer for sale on such days.

Scheduled amounts of guaranteed Nonfirm Energy may not be changed except:

1. When BPA and the purchaser mutually agree to increase or decrease the scheduled amounts; or
2. When BPA must reduce Nonfirm Energy deliveries in order to serve firm loads because of unexpected generation loss in the Pacific Northwest.

Section VI. Unauthorized Increase Adjustment

BPA may apply the charge for Unauthorized Increase to any purchaser of Nonfirm Energy who continues to take nonfirm energy from BPA after having been notified by BPA that nonfirm service is no longer available.

A. Rate for Unauthorized Increase

82.2 mills per kilowatthour.

B. Calculation of the Amount of Unauthorized Increase

The amount of unauthorized increase is equal to the number of kilowatthours that are delivered to a purchaser for use by the nonfirm load following notification that BPA is no longer able to supply Nonfirm Energy.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the NF-85 Standard Rate is 99.2 percent FBS and 0.8 percent New Resources.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule EB-85—Energy Broker Rate

Section I. Availability

This rate schedule may be applied to both sales and purchases of nonfirm energy among those participants in the Western Systems Coordinating Council (WSCC) Energy Broker System between whom agreements for energy transmission have been transacted. BPA shall determine the availability of energy to be provided under this rate schedule. This schedule supersedes Schedule EB-83, which went into effect on an interim basis on November 1, 1983.

Section II. Rate

The following formula shall be used in determining the rate at which power will be sold or purchased on the energy broker:

$$\text{EB-85} = \frac{BP+SP}{2}$$

where:
EB-85 = Energy Broker Rate,
BP = Quoted Buy Price, and
SP = Quoted Sell Price.

The Energy Broker will identify potential transactions when the Sell Price is at least 4.0 mills per kilowatthour less than the Buy Price. The final transaction rate for brokered nonfirm energy will be based on splitting the difference between the quoted Buy and Sell Prices, with the settlement for wheeling charges and energy losses determined in accordance with Exhibit A of the WSCC Broker Transmission Service Agreement. When a transaction involving BPA takes place on the Energy Broker System, the BPA Buy Price and BPA Sell Price, respectively, shall be defined as follows:

A. The BPA Buy Price is the estimated decremental or equivalent expense per kilowatthour that would otherwise have been incurred by BPA in generating or purchasing power from alternative sources in lieu of brokered energy scheduled for delivery to BPA during that hour.

B. The BPA Sell Price is the estimated incremental or equivalent expense per kilowatthour that would be incurred by BPA in supplying broker identified energy scheduled for delivery during such hour to the buyer from resources that are available to supply power during that hour as determined by BPA.

Section III. Billing Factors

The billing energy for power purchased under this rate schedule shall be the Measured Energy unless otherwise specified in the power sales contract.

Section IV. Delivery

BPA shall determine the rate of delivery for Energy Broker energy made available by BPA under this rate schedule.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The cost contribution of different resource categories to the EB-85 rate is based upon the specific resource(s) offered during the scheduled time of sale.

B. The forecasted average cost of resources available to BPA under less than average water conditions is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour after the displacement by BPA's available secondary energy.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Schedule RP-85—Reserve Power Rate

Section I. Availability

This schedule is available for the purchase of power:

A. In cases where a purchaser's power sales contract states that the rate for Reserve Power shall be applied;

B. For which BPA determines no other rate schedule is applicable; and/or

C. To serve a purchaser's firm power loads in circumstances where BPA does not have a power sales contract in force with such purchaser, and BPA determines that this rate should be applied. This rate schedule may be applied to power purchased by entities outside the United States.

This rate schedule supersedes Schedule RP-83 which went into effect on an interim basis on November 1, 1983.

Section II. Rate

A. Demand Charge

1. $7.87 per kilowatt of billing demand occurring during Peak Period hours in the billing months December through April.

2. $2.16 per kilowatt of billing demand occurring during Peak Period hours in the billing months May through November.

3. No demand charge during Offpeak Period hours.

B. Energy Charge

1. 25.3 mills per kilowatthour of billing energy.

Section III. Billing Factors

The factors to be used in determining the billing for power purchased under this rate schedule are as follows:

A. Billing Demand

If applicable, the billing demand shall be the Contract Demand as specified in the power sales contract. Otherwise the billing demand shall be the Measured Demand as adjusted for power factor.

B. Billing Energy

The billing energy shall be the Contract Demand multiplied by the number of hours in the billing month, if use of the Contract Demand for determining billing energy is specified in the power sales contract. Otherwise the billing energy for such purchasers shall be the Measured Energy.

Section IV. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent. To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The RP–85 rate is not based on the embedded cost of resources

B. The forecasted average cost of resources available to BPA under less than average water conditioins is 19.5 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 30.8 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

Outline for General Rate Schedule Provisions

I. Adoption of Revised Schedules and General Rate Schedule Provisions
  A. Approval of Rates
  B. General Provisions
  C. Reorganization of the Wholesale Power Rate Schedules and General Rate Schedule Provisions
    1. Reorganization of the Wholesale Power Rate Schedules
    2. Reorganization of the General Rate Schedule Provisions (GRSPs)
II. Types of BPA Service
  A. Priority Firm Power
  B. New Resource Firm Power
  C. Industrial Firm Power
  D. Special Industrial Power
  E. Auxiliary Power
  F. Firm Capacity
  G. Surplus Firm Power
  H. Surplus Firm Energy
  I. Firm Displacement Power
  J. Nonfirm Energy
  K. Energy Broker Energy
  L. Reserve Power
III. Billing Factors and Billing Adjustments
  A. Billing Factors for Demand
    1. Measured Demand
      a. Metered Demand
      b. Scheduled Demand
    2. Ratchet Demand
    3. Contract Demand
    4. Computed Peak Requirement
    5. Computed Average Energy Requirement
    6. Operating Demand
    7. Curtailed Demand
    8. Restricted Demand
    9. Auxiliary Demand
    10. BPA Operating Level
    11. Customer Charge Demand
    12. Plant Capacity Demand
    13. Forecasted Demand
    14. Distributed Demand
    15. Committed Demand
  B. Billing Factors for Energy
    1. Measured Energy
      a. Metered Energy
      b. Scheduled Energy
    2. Computed Energy Maximum
    3. Commited Energy
    4. Contract Energy
  C. Billing Adjustments
    1. Power Factor Adjustment
    2. Outage Adjustment
    3. Low Density Discount
      a. Basic LDD Principles
      b. Eligibility Criteria
      c. Discounts
    4. Coincidental Billing Adjustment
    5. Exchange Adjustment Clause
      a. Calculation of the Exchange Adjustments
      b. Implementation of the Exchange Adjustment
      c. Provisions for Final Adjustment
    6. Supply System Adjustment Clause
      a. Calculation of the Supply System Adjustment
      b. Implementation of the Supply System Adjustment
  D. Billing-Related Definitions
    1. Peak Period
    2. Offpeak Period
IV. Other Definitions
  A. Restriction of Deliveries
  B. Computed Requirements Purchasers
    1. Designation as a Computed Requirements Purchaser
    2. Purpose of the Computed Requirements Designation
    3. Definitions and Terms Relating to Computed Requirements Purchasers with Power Sales Contracts Executed Prior to December 5, 1980
      a. General Principles
      b. Determination of Assured Capability
V. Application of Rates Under Special Circumstances
  A. Energy Supplied for Emergency Use
  B. Construction, Test and Start-up, and Station Service
  C. Application of Rates During Initial Operation Period—Transitional Service
    1. Eligibility for Transitional Services
    2. Calculation of the Daily Demand
    3. Billing for Transitional Services
  D. Changes in DSI's Operating Level
  E. Application of the Industrial Incentive Rate
    1. Industrial Incentive Rate Feasibility Study
    2. Contractual Arrangements Relating to Implementation of the Industrial Incentive Rate.
    3. Industrial Incentive Rate Implementation Procedure
VI. Billing Information
  A. Determination of Estimated Billing Data
  B. Billing for New Large Single Loads

C. Adjustment of Measured Demand to Arrive at Billing Demand
D. Billing Month
E. Payment of Bills
1. Computation of Bills
2. Estimated Bills
3. Due Date
4. Late Payment
5. Disputed Billings

General Rate Schedule Provisions

Section I. Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. Approval of Rates

These rate schedules and General Rate Schedule Provisions GRSPs) shall become effective following confirmation and approval by the Federal Energy Regulatory Commission (FERC). If the rates and GRSPs are first approved on an interim basis, they shall not be considered final until the FERC has issued an order confirming and approving them on a final basis.

B. General Provisions

BPA's Wholesale Power Rate Schedules and associated General Rate Schedule Provisions (GRSPs) that are effective July 1, 1985, supersede in their entirety BPA's Wholesale Power Rate Schedules and GRSPs effective November 1, 1983. The revised schedules and provisions shall be applicable to every BPA contract, including contracts executed prior to and subsequent to enactment of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).

C. Reorganization of the Wholesale Power Rate Schedules and General Rate Schedule Provisions (GRSPs)

1. *Reorganization of the Wholesale Power Rate Schedules.* All references in the industrial power sales contract to section 4 of the rate schedules for Industrial Firm Power shall be deemed to refer to the section in such schedules entitled "Billing Factors."

2. *Reorganization of the General Rate Schedule Provisions (GRSPs).* A major restructuring of the GRSPs took place effective with BPA's 1983 wholesale power rates. Contractual and other references to sections in GRSPs associated with earlier BPA rates deemed to be changed to the new organization and numbering system as of November 1, 1983, when the 1983 rates were adopted. Those changes are not reiterated herein. Only those changes effective with these new GRSPs are indicated in the table below.

References to sections in those GRSPs that were in effect between November 1, 1983, and July 1, 1985, are deemed to refer to the section in these revised GRSPs indicated in the listing below.

Title	Old GRSPs Section No.	New GRSPs Section No.
Priority Firm Power	II.A	II.A
New Resource Firm Power	II.B	II.B
Industrial Firm Power	II.C	II.C
Special Industrial Power	N/A	II.D
Auxiliary Power	II.D	II.E
Firm Capacity	II.E	II.F
Surplus Firm Power	II.F	II.G
Surplus Firm Energy	II.G	II.H
Firm Displacement Power	N/A	II.I
Nonfirm Energy	II.H	II.J
Energy Broker Energy	II.I	II.K
Reserve Power	II.J	II.L
Measured Demand	III.A.1	III.A.1
Ratchet Demand	N/A	III.A.2
Contract Demand	III.A.2	III.A.3
Computed Peak Requirement	III.A.3	III.A.4
Computed Average Energy Requirement.	III.A.4	IIIA.5
Operating Demand	III.A.6	III.A.6
Curtailed Demand	III.A.7	IIIA.7
Restricted Demand	III.A.8	III.A.8
Auxiliary Demand	III.A.9	III.A.9
BPA Operating Level	N/A	III.A.10
Customer Charge Demand	N/A	III.A.11
Plant Capacity Demand	N/A	III.A.12
Forecasted Demand	N/A	III.A.13
Distributed Demand	N/A	III.A.14
Committed Demand	III.A.10	III.A.15
Measured Energy	III.B.1	III.B.1
Computed Energy Maximum	III.B.2	III.B.2
Committed Energy	III.B.3	III.B.3
Contract Energy	N/A	III.B.4
Power Factor Adjustment	III.C.1	III.C.1
Outage Adjustment	N/A	III.C.2
Low Density Discount	N/A	III.C.3
Coincidental Billing Adjustment	VI.A	III.C.4
Exchange Adjustment Clause	III.C.2	III.C.5
Supply System Adjustment Clause	III.C.3	III.C.6
Conservation Charge	III.C.4	N/A
Peak Period	N/A	III.D.1
Offpeak Period	N/A	III.D.2
Restriction of Deliveries	IV.A	IV.A
Computed Requirements Purchasers.	IV.B	IV.B
Application of Rates Under Special Circumstances.	V.	V.
Changes in a DSI's Operating Level	N/A	V.D
Application of the Industrial Incentive Rate.	V.D	V.E
Determination of Estimated Billing Data.	VI.B	VI.A
Billing for New Large Single Loads	N/A	VI.B
Adjustment of Measured Demand to Arrive at Billing Demand.	N/A	VI.C
Billing Month	VI.C	VI.D
Payment of Bills	VI.D	VI.E
Computation of Bills	VI.D	VI.E.1
Estimated Bills	VI.D	VI.E.2
Due Date	VI.D	VI.E.3
Late Payment	VI.DVI.E.4	
Disputed Billings	VI.D	VI.D.5

Section II. Types of BPA Service

A. Priority Firm Power

Priority Firm Power is electric power that BPA will make continuously available for resale to ultimate consumers, direct consumption, construction, test and start-up, and station service by public bodies, cooperatives, and Federal agencies. (Construction, test and start-up, and station service are defined in section V.B of these GRSPs.)

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, BPA may make Priority Firm Power available to those parties participating in exchange agreements specifying use of the Priority Firm Rate for determining the amount or value of power to be exchanged.

Power purchased under the Priority Firm Power Rate Schedule is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section IV.A). However, BPA shall not restrict Priority Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

Any increase in energy consumption of a load as defined in:

1. Section 3.(13) of the Northwest Power Act, or

2. Section 8 of any BPA utility power sales contract executed after December 5, 1980,

shall be considered New Resource Firm Power and shall be served under the New Resource Firm Power Rate.

B. New Resource Firm Power

New Resource Firm Power is electric power that BPA will make continuously available:

1. For any new large single load as defined in Sec. 3.(13) of the Northwest Power Act and as described in section 8 of any BPA utility power sales contract executed after December 5, 1980,

2. For firm power purchased by investor-owned utilities pursuant to power sales contracts with BPA, and/or

3. For construction, test and start-up, and station service for facilities owned and/or operated by investor-owned utilities.

New Resource Firm Power is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section IV.A). However, BPA shall not restrict New Resource Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

C. Industrial Firm Power

Industrial Firm Power is electric power that BPA will make continuously available to a direct-service industrial purchaser (DSI) pursuant to the DSI's power sales contract and subject to:

1. The restriction applicable to deliveries of all firm power pursuant to the Uncontrollable Forces and Continuity of Service provisions of the General Contract Provisions of the power sales contract, and

2. The restrictions given in the Restriction of Deliveries section of the power sales contract.

D. Special Industrial Power

Special Industrial Power is electric power which BPA will make continuously available to any DSI purchaser that qualifies for the Special Industrial Power Rate pursuant to section 7(d)(2) of the Northwest Power Act. This power is similar in nature to Industrial Firm Power, but is subject to greater restriction by BPA. Special Industrial Power is made available to the qualifying DSI upon adoption of and subject to an agreement modifying their power sales contract.

E. Auxiliary Power

Auxiliary Power is that power which a DSI purchaser requests and which BPA agrees to make available to serve that portion of the DSI's load which is in excess of the DSI's Operating Demand for Industrial Firm Power or Special Industrial Power.

F. Firm Capacity

Firm Capacity is capacity that BPA assures a purchaser will be available in the amount(s) and during the period(s) specified in the power sales contract. The energy associated with this capacity msut be returned to BPA. Firm Capacity may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section IV.A).

G. Surplus Firm Power

Surplus Firm Power is firm power that BPA assures a purchaser will be available in the amount(s) and during the period(s) specified in the power sales contract. BPA will make Surplus Firm Power available only to the extent that BPA determines that it has firm power in excess of the amount required to meet BPA's existing contractual obligations to provide firm service. Surplus Firm Power may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such power may, however, be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section IV.A).

H. Surplus Firm Energy

Surplus Firm Energy is firm energy that BPA assures a purchaser will be available in the amount(s) and during the period(s) specified in the power sales contract. BPA will make Surplus Firm Energy available only to the extent that BPA determines that it has firm energy in excess of the amount required to meet BPA's existing contractual obligations to provide firm service. Surplus Firm Energy may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such energy may, however, be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section IV.A).

I. Firm Displacement Power

Firm Displacement Power is power (capacity, or capacity and energy) that is sold by BPA for displacement of firm resources on a planning basis by Pacific Northwest utilities to allow the sale of those resources to extra regional customers for at least 3 years, consistent with Pub. L. 88-552 and Pub. L. 96-501. Capacity-only Firm Displacement sales may include energy return provisions.

J. Nonfirm Energy

Nonfirm Energy is energy that BPA supplies or makes available to a purchaser under an arrangement that does not have the guaranteed continuous availability feature of firm power. However, Nonfirm Energy that has been purchased under a guarantee provision in the Nonfirm Energy Rate Schedule shall be provided to the purchaser in accordance with the provisions of that schedule and the applicable power sales contract. BPA may make Nonfirm Energy available to purchasers both inside and outside the Pacific Northwest. Purchasers may be located outside the United States as well.

K. Energy Broker Energy

Energy Broker Energy, as used in BPA's EB-85 rate schedule, is nonfirm energy that:

1. BPA purchases from the Western Systems Coordinating Council (WSCC) Energy Broker System under the Energy Broker Rate Schedule, or

2. BPA makes available to the WSCC for sale to WSCC participants. Power that BPA sells to WSCC participants is subject to the Restrictions of Deliveries section of these GRSP (section IV.A).

L. Reserve Power

Reserve Power is power sold to a purchaser:

1. in cases where the purchaser's power sales contracts states that the rate for Reserve Power shall be applied;

2. to provide service when no other type of power is deemed applicable; and/or

3. to serve the purchaser's firm power loads under circumstances where BPA does not have a power sales contract in force with the purchaser.

Sales of Reserve Power are subject to the Restriction of Deliveries section of these GRSPs (section IV.A).

Section III. Billing Factors and Billing Adjustments

A. Billing Factors for Demand

1. *Measured Demand.* The purchaser's Measured Demand shall be determined in the manner described in this section unless the terms of a power sales contract executed after December 5, 1980, provide otherwise. Measured Demand shall be that portion of the metered and/or scheduled demand that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The portion of the total Measured Demand so assigned shall constitute the Measured Demand for each such class of power.

The Measured Demand shall be determined from the metered demand and/or the scheduled demand, as hereinafter defined. The Measured Demand shall be determined either on a concidental or a noncoincidental basis, as provided in the purchaser's power sales contract.

a. *Metered Demand.* The metered demand in kilowatts shall be the largest of the 60-minute cock-hour integrated demands, adjusted as specified in the power sales contract, at which electric energy is delivered to a purchaser:

(1) At each point of delivery for which the metered demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Such largest integrated demand shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section IV.A of these GRSPs. In determining the metered demand, BPA shall exclude any abnormal integrated demands due to or resulting from:

(1) Emergencies or breakdowns on, or maintenance of, the Federal system facilities, and/or

(2) Emergencies on the purchaser's facilities, provided that such facilities have been adequately maintained and prudently operated, as determined by BPA.

b. *Scheduled Demand.* The scheduled demand in kilowatts shall be the largest of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) To each system for which scheduled demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing demand.

2. *Ratchet Demand.* The Ratchet Demand in kilowatts shall be the maximum demand established during a specified period of time either during or prior to the current billing period. The demand on which the ratchet is based is specified in the relevant rate schedule or in these GRSPs. For utility purchasers purchasing under the PF or NR rate schedules, the Ratchet Demand is based on the highest demand during prior billing months. For the purpose of daily demand billing for DSI and utility purchasers (see section V.C of these GRSPs), the Ratchet Demand is based on the demand during the period in which BPA supplies transitional service. When the Ratchet Demand is used as a billing factor, BPA shall have specified in the appropriate schedules and/or GRSPs:

a. The period of time over which the ratchet shall be calculated,

b. The type of demand (Measured Demand, Computed Peak Requirement, etc.) to be used in the calculation, and

c. The percentage (if any) of that demand which will be used to calculate the Ratchet Demand.

3. *Contract Demand.* The Contract Demand shall be the maximum number of kilowatts that the purchaser (utility, DSI, or other entity) agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract. BPA may agree to make deliveries at a rate in excess of the Contract Demand at the request of the purchaser, but shall not be obligated to continue such excess deliveries. Any contractual or other reference to Contract Demand as expressed in kilowatthours shall be deemed, for the purpose of these GRSPs, to refer to the term "Contract Energy."

4. *Computed Peak Requirement.* For purchasers designated to purchase on the basis of computed requirements under power sales contracts executed after December 5, 1980, the Computed Peak Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers,

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers, and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

For computed requirements purchasers with power sales contracts executed prior to December 5, 1980, the purchaser's Computed Peak Requirement for each billing month shall be the largest amount during such month by which the purchaser's actual hourly system demand, excluding any loads otherwise provided for in the contract, exceeds its assured peaking capability for such month, as determined pursuant to section IV.B.3 of these General Rate Schedule Provisions.

5. *Computed Average Energy Requirement.* For computed requirements purchasers with power sales contracts executed after December 5, 1980, the Computed Average Energy Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers,

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers, and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

For computed requirements purchasers with power sales comtracts executed prior to December 5, 1980, the purchaser's Computed Average Energy Requirement for each billing month shall be the amount during such month by which the purchaser's actual system average load exceeds its assured average energy capability, as determined pursuant to section IV.B.3 of these General Rate Schedule Provisions.

6. *Operating Demand.* The Operating Demand is that demand which is established by the DSI purchaser in accordance with section 5(b) of the DSI's power sales contract. Unless the DSI has requested, and BPA has granted, an Auxiliary Demand, the Operating Demand establishes a limit with respect to:

a. The demand which the purchaser may impose on BPA during Peak Period hours; and

b. The total amount of energy during a billing month which the DSI is entitled to purchase from BPA under the Standard and Premium Industrial Power Rates.

Any DSI whose Measured Demand during Peak Period hours exceeds the Operating Demand plus the Auxiliary Demand (if any) for the billing month shall be subject to unauthorized increase charges for each kilowatt of unauthorized increase associated with each overrun. Likewise, a DSI shall be subject to unauthorized increase charges to the extent that the DSI's energy purchases for the billing month exceeds the quantity equal to the number of hours in the billing month multiplied by the sum of the Operating Demand and the Auxiliary Demand.

7. *Curtailed Demand.* A Curtailed Demand shall be the number of kilowatts of industrial power (Industrial Firm Power or Special Industrial Power) during the billing month which results from the DSI purchaser's request for such power in amounts less than the Operating Demand therefor. Each purchaser of industrial power may curtail its demand according to the terms of its power sales contract (which permits up to 3 levels of Curtailed Demand each month). However, for the purpose of applying either the Industrial Firm Power Rate or the Special Industrial Power Rate, BPA shall permit each DSI to submit three additional Curtailed Demands applicable solely to purchases of industrial power during the Offpeak Period hours during the billing month. If the DSI does not specifically designate any Curtailed Demands for the Offpeak Period hours, the submitted Curtailed Demands shall be applied to all hours of the day. BPA shall base its curtailment charges on a weighted average for all Curtailed Demands during the billing month.

8. *Restricted Demand.* Restricted Demand shall be the number of kilowatts of industrial power (either Industrial Firm Power or Special Industrial Power) that results when BPA has restricted delivery of such power for one (1) clock-hour or more. BPA shall make such restrictions according to the terms of the purchasing DSI's power sales contract. In a given billing month, there are as many possible levels of Restricted Demand for a DSI as there are number of restrictions.

9. *Auxiliary Demand.* Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. The DSI may request up to three levels

of Auxiliary Demand for Peak Period hours and three additional levels for the Offpeak Period hours during a billing month. Except during a period of restriction, BPA will automatically approve any Auxiliary Demand if the weighted average of the DSI's Peak Period and Offpeak Period use in a given day is equal to or less than the purchaser's Operating Demand.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power shall be deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's power sales contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers at the Standard Industrial Rate, except that the Industrial Incentive Rate shall apply if the DSI is making its purchases under the IP-85 Industrial Incentive Rate. Auxiliary Power sales to DSIs purchasing under the Special Industrial Rate will be made only at the Standard Special Industrial Power Rate.

10. *BPA Operating Level.* The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power (Industrial Firm Power or Special Industrial Power) for a DSI purchaser that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

The weighted average BPA Operating Level for the DSI can be determined by summing all those hourly BPA Operating Levels and dividing by the number of hours in the billing month

Each DSI must request service from BPA for each billing month in accordance with the terms of the power sales contract. The requested level of service will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary Demand. The BPA Operating Level is the basis for determining if a DSI has incurred an unauthorized increase.

During Peak Period hours the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the requisite Auxiliary Demand.

11. *Customer Charge Demand.* The Customer Charge Demand is established for purposes of collecting the customer charge in the IP-85 rate schedule (Sections II.A.1., II.B.1., II.C.1.). A Customer Charge Demand is determined on an individual industrial plant basis. For the direct-service industrial purchasers operating more than one plant, the total amount billed for the customer charge will be determined by summing the amount of the customer charge computed for each plant. For purposes of levying the customer charge, the direct-service industrial plants have been separated into two rate subclasses based on plant capacity. Those plants with a plant capacity greater than 100 megawatts are large direct-service industrial plants. Those plants with a plant capacity of 100 megawatts or less are small direct-service industrial plants.

12. *Plant Capacity Demand.* Plant Capacity Demand is the highest level of demand an industrial plant is capable of using under normal operations. The current Plant Capacity Demand for large direct-service industrial plants is published herein:

	Plant capacity demand(MW)
a. Aluminum Company of America	
(1) Vancouver	248
(2) Wenatchee	222
b. Arco Metals Company	325
c. Intalco Aluminum Company	450
d. Kaiser Alumunum and Chemical Corporation	
(1) Mead	466
(2) Tacoma	154
e. Martin Marietta Aluminum, Inc.	
(1) The Dalles	154
(2) Goldendale	293
f. Reynolds Metals Company	
(1) Longview	419
(2) Troutdale	267

13. *Forecasted Demand.* Forecasted Demand is the demand level forecasted in the development of BPA's rates. The Forecasted Demands for small direct-service industrial plants have been established herein for Period A (July 1, 1985 through Sept. 30, 1986), Period B (Oct. 1, 1986 through Sept. 30, 1987), and Period C (Oct. 1, 1987 through the next Rate Adjustment Date).

	Forecasted demands	
	Period A (MW)	Periods B + C (MW)
a. The Carborundum Company	0.0	0.0
b. Georgia-Pacific Corporation	25.4	25.3
c. Gilmore Steel Corporation	16.7	16.7
d. Oregon Metallurgical Corporation	7.2	8.1
e. Pacific Carbide and Alloys Company	8.0	8.0
f. Pennwalt Corporation	53.0	52.6
g. Port Townsend Paper Corporation	13.7	14.0
h. Aluminum Company of America (1) Northwest Alloys	50.0	52.8
i. Kaiser Aluminum & Chemical Company (1) Kaiser Rolling	66.7	66.7

14. *Distributed Demand.* The Distributed Demand shall be equal to the Forecasted Demand in each month, unless BPA receives by the following dates a schedule of Distributed Demand preferred by the DSI for each month: July 1, 1985, for Period A, and September 30, 1986, for Period B.

The determination of the Distributed Demand for each month of each subperiod must be such that the average of the Distributed Demands equals the Forecasted Demand for the subperiod. If the rate period extends beyond October 1, 1987, BPA shall permit the DSI to submit Distributed Demands for the additional months of the rate period, provided that the average of those demands is equal to the Forecasted Demand for subperiod B. During each subperiod, BPA will permit the DSI to make one adjustment to the submitted Distributed Demand schedule for the subperiod. Such adjustment, which shall be effective no sooner than 30 days from the date of its submission to BPA, may not be retroactive and must also comport with the requirement that the average of all Distributed Demands for the subperiod equal the Forecasted Demand.

15. *Committed Demand.* Committed Demand is the number of kilowatts of Industrial Firm Power that BPA agrees to supply and that a DSI customer agrees to purchase on a take-or-pay basis under the Industrial Incentive Rate. The Committed Demand must be established at a level greater than or equal to 90% of the purchaser's BPA Operating Level on the day that BPA first publishes its feasibility study regarding implementation of the Industrial Incentive Rate. The Committed Demand shall be established by written agreement with each DSI electing to purchase on this basis. A purchaser may specify up to three levels of Committed Demand for each billing month for Peak Period hours and three additional levels of Offpeak Period hours.

B. Billing Factors for Energy

1. *Measured Energy.* The purchaser's Measured Energy shall be determined in the manner described in this section unless the terms of a power sales contract executed after December 5, 1980, provide otherwise. Measured Energy shall be that portion of the metered and/or scheduled energy that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant

to the power sales contract. The sum of the portions of the demands so assigned shall constitute the Measured Energy for each such class of power.

The Measured Energy shall be determined from the metered energy and/or the scheduled energy, as hereinafter defined.

a. *Metered Energy.* The metered energy for a purchaser shall be the number of kilowatthours that are recorded on the appropriate metering equipment, adjusted as specified in the power sales contract, and delivered to a purchaser:

(1) At all points of delivery for which metered energy is the basis for determination of the Measured Energy and

(2) During any billing period.

The metered energy shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A herein.

b. *Scheduled Energy.* The scheduled energy in kilowatthours shall be the sum of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) For each system for which scheduled energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing energy.

2. *Computed Energy Maximum.* The Computed Energy Maximum equals the product of the number of hours in the billing month and the Computed Average Energy Requirement.

3. *Committed Energy.* Committed Energy is the number of kilowatthours of Industrial Firm Power that BPA agrees to supply and that a DSI purchaser agrees to purchase on a take-or-pay basis under the Industrial Incentive Rate. The Committed Energy shall be established by written agreement with each DSI electing to purchase on this basis. In lieu of providing a kilowatthour figure, BPA may permit a customer to contractually specify the load factor at which the Committed Demand will be purchased. Such load factor must be set at a level no less than 85%.

4. *Contract Energy.* The Contract Energy shall be the maximum number of kilowatthours that the purchaser (utility, DSI, or other entity) agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract.

C. Billing Adjustments

1. *Power Factor Adjustment.* The formula for determining average power factor is as follows:

$$\text{Average Power Factor} = \frac{\text{Kilowatthours}}{\sqrt{(\text{Kilowatthours})^2 + (\text{Reactive Kilovoltamperehours})^2}}$$

The data used in the above formula shall be obtained from meters that are ratcheted to prevent reverse registration.

When deliveries to a purchaser at any point of delivery either:

a. Include more than one class of power, or

b. Are provided under more than one rate schedule and it is impracticable to meter the kilowatthours and reactive kilovoltamperehours for each class or rate schedule separately, the average power factor of the total deliveries for the month will be used, where applicable, as the power factor for all power delivered to such point of delivery.

To maintain acceptable operating conditions on the Federal system, BPA may, unless specifically otherwise agreed, restrict deliveries of power to a purchaser with a poor power factor. Such restriction may be made to a point of delivery or to a purchaser's system at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 75 percent.

2. *Outage Adjustment.* To the extent that BPA is unable to provide full service to a purchaser during the billing month as a result of interruptions in service due to reasons cited in the General Contract Provisions, BPA shall adjust the charges for billing demand for such purchaser ot reflect BPA's inability to provide full service, provided such adjustment is mandated by the purchaser's power sales contract. The adjustment is mandated on a point of delivery basis and is not, therefore, applied to coincidentally-billed points of delivery unless the outage occurs over all points on the purchaser's system which are coincidentally billed.

To compute the adjustment, BPA shall determine the monthly demand charge(s) for the point(s) of delivery where the outage(s) occurred, multiply by the number of hours of outage, and divide by the total number of hours in the billing month. For partial outages (such as an outage on one feeder in a substation with several feeders), BPA shall determine an equivalent interruption in order to arrive at the number of hours to be used in the calculation of the credit.

3. *Low Density Discount*—a. *Basic LDD Principles.* A predetermined discount shall be applied each billing month to the charges for all power purchased under the Priority Firm Power Rate Schedule by eligible purchasers as defined in section b. below. The discount shall be calculated on an annual basis and shall become effective with the first billing period in the calendar year. The level of the discount shall be determined from the following ratios:

(1) The purchaser's total electric energy requirements during the previous calendar year (the purchaser's firm sales, nonfirm sales, sales for resale, and associated losses) divided by the value of the purchaser's depreciated electric plant (excluding generation plant) at the end of such year, and

(2) The average number of residential consumers during the previous calendar year divided by the number of pole miles of distribution line at the end of such year.

These calculations shall be based on data provided in the purchaser's December financial and operating report. "Residential consumers" shall include both annual and seasonal consumers, but non-residential consumers (such as barns, sheds, and pumps) reported in the residential category for accounting purposes may be excluded, providing the purchaser submits a listing of all non-residential account numbers to BPA at the time that the annual submission is first made.

In calculating these ratios BPA shall use data pertaining to the purchaser's entire electric utility system within the region. Results of the calculations shall not be rounded.

Customers who have not provided BPA with all four requisite pieces of annual data (see a.(1) and a.(2) above) by June 30 of each year shall be assumed to be ineligible for the LDD effective with their first complete billing period of following June 1 of that year. (BPA shall continue to use LDD data from the previous year up to June 30 and shall make any necessary retroactive adjustments once the new data have been processed.) Data received after June 30 shall be used to calculate an LDD to be applied only to power bills computed and issued for months subsequent to receipt and processing of the initial data and to power bills for the previous January through June period, unless the purchaser has requested, and BPA has agreed to, a waiver of this provision. Revisions to the data used to calculate the amount of the LDD may be made by the purchaser for a period of up to two years from the first day to which the data applies. However, such revisions shall not apply to periods when the customer was ineligible for a discount due to late data submission.

b. *Eligibility Criteria.* To quality for a discount, the purchaser must meet all five of the following eligibility criteria:

(1) The purchaser must serve as an electric utility offering power for sale to ultimate consumers;

(2) The purchaser must agree to pass the benefits of the discount through to the purchaser's consumers within the region served by BPA;

(3) The purchaser's kilowatthour to investment ratio (Ration 3.a.(1)) must be less than 100;

(4) The purchaser's consumers per mile ratio (Ratio 3.a.(2)) must be less than 10; and

(5) The purchaser must qualify for a discount based on the criteria in section c, below.

c. *Discounts.* The purchaser shall be awarded the greatest discount for which that purchaser qualifies. The discounts and the qualifying criteria for those discounts are listed below.

(1) Three percent

For any purchaser for whom:

(a) The kilowatthour to investment ratio is equal to or greater than 25 but less than 35; or

(b) The consumers per mile ratio is equal to or greater than 4 but less than 6.

(2) Five percent

For any purchaser for whom:

(a) The kilowatthour to investment ratio is equal to or greater than 15 but less than 25; or

(b) The consumers per mile ratio is equal to or greater than 2 but less than 4.

(3) Seven percent

For any purchaser for whom:

(a) The kilowatt to investment ratio is less than 15; or

(b) The consumers per mile ratio is less than 2.

4. *Coincidental Billing Adjustment.* Purchasers of Priority Firm Power and New Resource Firm Power shall be billed on a noncoincidental demand basis for power purchased at each point of delivery under the applicable rate schedule(s) unless the power sales contract specifically provides for coincidental demand billing among particular points of delivery. For the purpose of these rate schedules and GRSPs, the purchaser's noncoincidental demand is the sum of the highest hourly peak demands during the billing month for each of the purchaser's noncoincidentally billed points of delivery. The purchaser's coincidental demand is the highest demand for the billing month calculated by summing, for each hour of every day, the purchaser's demands for power purchased under the applicable rate schedule at all coincidentally-billed points of delivery. Computed requirements customers for whom power is "scheduled" from BPA are not subject to a diversity charge for scheduled power.

When the purchaser's contract provides for billing on a coincidental demand basis, a charge shall be assessed for the diversity among the purchaser's conicidentally-billed points of delivery unless BPA elects to waive such charge in whole or in part. The purpose of charging the customer for diversity is to compensate BPA for lost revenue due to coincidentally combining demands from multiple points of delivery. BPA may calculate the charge by applying an existing methodology or by specifying a diversity factor in the power sales contract.

Diversity factors will be specified in the power sales contract for coincidentally-billed points of delivery of customers who are not currently assessed a diversity charge and who, by BPA's criteria, should be assessed the charge. Any changes to existing diversity charges shall be likewise reflected in the power sales contract. The diversity factor(s) specified in the power sales contract shall be multiplied by the respective coincidental demands for the coincidentally-billed points of delivery in order to determine the billing demand for those points of delivery.

The diversity factor(s) specified in the power sales contract shall be no greater than:

$$1+\frac{\text{Noncoincidental Demand—Coincidental Demand}}{\text{Coincidental Demand}}$$

Where the Noncoincidental and Coincidental Demands used in the calculation are the sum of the monthly demands for 12 months prior to the computation of the diversity factor for each of the purchaser's coincidentally-billed points of delivery. BPA shall revise the contractually-specified diversity factor(s) according to the terms of the power sales contract.

5. *Exchange Adjustment Clause.* To the extent that the accounting net cost of exchange resources (the cost of BPA of the exchange resources minus the revenue collected from the exchange loads) differs from that forecast for the development of rates, a rebate shall be given or a surcharge assessed to all those purchasing under rate schedules that include this adjustment (PF-85, IP-85, CF-85, and NR-85).

An Exchange Adjustment shall be applied for the period July 1, 1985, through September 30, 1986 (period A), another such adjustment for the period October 1, 1986 through September 30, 1987 (period B), and a third adjustment for the period October 1, 1987 until the next Rate Adjustment Date (Period C) provided BPA does not adjust its wholesale power rates on October 1, 1987.

a. *Calculation of the Exchange Adjustment.* The total amount of revenue that must be rebated or recovered in order for BPA to adjust for changes in the net accounting cost of the exchange shall be calculated for each exchange adjustment period according to the formula below.

$$TAR=(AEC-AER)—(FEC-FER)$$

where:

TAR = total amount of revenue underrecovery (if TAR is negative) or overrecovery (if TAR is positive) of the accounting net cost of the exchange for the exchange adjustment period;

AEC = actual total exchange cost for the exchange adjustment period; AEC includes exchange costs from the utilities whose average system cost (ASC) is deemed equal to the Priority Firm Power Rate (deeming utilities);

AER = actual exchange revenue for the exchange adjustment period; both AEC and AER will be calculated without considering the effect of the Exchange Adjustment Clause, but including the effect of the Supply System Adjustment Clause; AER includes exchange revenue from deeming utilities;

FEC = forecasted exchange cost; for period A, the value of FEC is equal to $1,388,669,000; for period B, the value of FEC is equal to $1,165,686,000; and for period C, the value of FEC shall be calculated after BPA has determined the number of months in period C;

FER = forecasted exchange revenue; for period A, the value of FER is equal to $1,141,844,000; for period B, the value of FER is equal to $959,021,000; and for period C, the value of FER shall be calculated after BPA has determined the number of months in period C.

Next, the rebate or surcharge for each customer class for each period shall be calculated.

CCEA=TAR * ECP

where:

CCEA=rebate or surcharge for each customer class for the exchange adjustment period; two values of CCEA shall be calculated for Firm Capacity service, one value for contract year service and another for contract season service.

ECP=exchange cost percentage for the customer class; the value of "ECP" is provided in the rate schedule for each class of service subject to the Exchange Adjustment Clause; different values are given in the Firm Capacity Rate Schedule for the different types of Firm Capacity service.

Finally, BPA shall apply the following formula in order to calculate the exchange adjustment for an individual customer:

$$\text{ICEA} = \frac{(\text{CCEA}^*\text{ICB})}{\text{SCB}} + \left[1 + \frac{(\text{INT}^*\text{MO})}{24}\right]$$

where:

ICEA=individual customer's exchange adjustment (in dollars) for the exchange adjustment period;

ICB=sum of the individual customer's bills (in dollars and net of the LDD) associated with a given ECP for the class of power in question during the exchange adjustment period; ICB shall exclude purchases under the Industrial Incentive Rate;

SCB=sum of all the customer's bills (in dollars and net of the LDD) for the class of power in question during the exchange adjustment period; the computation of SCB for the Industrial Firm Power rate (IP-85) shall include purchases under the Industrial Incentive rate;

INT=average interest rate charged to BPA by the U.S. Treasury during the exchange adjustment period.

MO=number of months in the subperiod.

No exchange adjustment will be made to any rate schedule if the absolute value of:

$$\frac{\text{CCEA}}{\text{SCB}}$$ is less than .01 for that rate class.

b. *Implementation of the Exchange Adjustment.* The rebate or surcharge shall be calculated as soon as possible after:

(1) October 1, 1986, for period A,

(2) October 1, 1987, for period B, and

(3) The end of period C.

BPA shall notify affected purchasers of the impending adjustment as soon as the amount of the adjustment has been calculated. Payment of the adjustment (either the rebate or the surcharge) shall be made within 30 days of the date on the adjustment notice provided to the purchaser. Late payment shall be subject to late payment charges as described in section VI.E of these GRSPs. The Due Date for the Exchange Adjustment, as defined in section VI.E, shall be 30 days from the date on the adjustment notice.

c. *Provisions for Final Adjustment.* Approximately one year from the end of each exchange adjustment period, BPA shall recalculate the exchange adjustment rebate or surcharge for each customer. The recalculation shall be based on the most current values of the variables used in the adjustment formula. This recalculation shall be final and not subject to later modification, except pursuant to orders of FERC or the United States Court of Appeals for the Ninth Circuit.

BPA shall calculate the difference between the amount of the initial adjustment and the amount of the final adjustment. That difference shall be subject to an interest charge for the period beginning 30 days from the date of the initial adjustment notice and ending on the date of the final adjustment notice. The interest rate used in the computation of the interest charge shall be the average interest rate charged to BPA by the U.S. Treasury for the period in question.

BPA shall then notify affected customers of the amount to be rebated or surcharged. Payment shall be made within 30 days of the date on the adjustment notice provided to the purchaser. Late payment shall be subject to late payment charges as described in section VI.E.4 of these GRSPs. The Due Date, ad defined in section VI.E.3, for the Exchange Adjustment shall be 30 days from the date on the adjustment notice.

Where necessary, BPA shall later modify the recalculation to reflect any changes in average system cost determination ordered by FERC or the United States Court of Appeals for the Ninth Circuit. In making such additional adjustment, BPA shall adhere to the procedures outlined above.

6. *Supply System Adjustment Clause.* BPA shall adjust the energy charges in those rate schedules which include the Supply System Adjustment Clause (SSAC) beginning on October 1, 1986, if the SSAC is triggered as determined herein. The SSAC adjusts for differences between the total cost of Supply System ownership shares of Plants 1, 2, and 3 and the cost that was forecast for the development of the rates.

a. *Calculation of the Supply System Adjustment.* The adjustment for each rate schedule shall be calculated as follows:

$$\frac{\text{SS}^*[(\text{ACT}—\$789{,}180{,}000) + (\text{BUD1}—\$894{,}800{,}000) + (\text{BUD2}—\$251{,}875{,}000)]}{\text{BD}}$$

where:

SS=the percentage of total Supply System costs allocable to the specified class of service for fiscal year (FY) 1987; the value for "SS" is provided in the rate schedule for the class of service in question;

ACT=The Net Funding Requirements (in thousands of dollars) in the Supply System Annual Budgets or amendments thereto for operating year (OY) 1986 as of June 1, 1986;

BUD1=the Net Funding Requirements (in thousands of dollars) in the Supply System Annual Budgets or amendments thereto for OY 1987, as of June 1, 1986;

BUD2=one quarter of the estimated Net Funding Requirements (in thousands of dollars) for OY 1988, as of June 1, 1986;

BD=for the Priority Firm Power Rate Schedule, PF-85, the sum of the winter and summer energy billing determinants (in gigawatthours) for Priority Firm service as forecasted in the Wholesale Power Rate Design Study; for the Industrial Power Rate Schedule, IP-85, the sum of the total winter and summer energy billing determinants (in gigawatthours) for Industrial Power service as forecasted in the Wholesale Power Rate Design Study; and for the CF-85 Firm Capacity Rate Schedule, the sum of the winter and summer generation capacity billing determinants (in megawattmonths); the value of "BD" is provided in the rate schedule for each class of service subject to the SSAC.

Should BPA become liable for payment of additional funds loaned to BPA or another organization created for the purpose of funding construction of Supply System projects 1, 2, or 3, the cost of BPA associated with repayment

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of such funds will be included in ACT and BUD.

$$\frac{[(ACT - \$789{,}180{,}000) + (BUD1 - \$894{,}800{,}000) + (BUD2 - \$251{,}875{,}000)]}{\$1{,}935{,}855{,}000}$$

is less than 0.01.

b. *Implementation of the Supply System Adjustment.* During the month of August 1986, BPA shall identify:

(1) The difference between ACT and $789,180,000.

(2) The difference between BUD1 and $894,800,000, and

(3) The difference between BUD2 and $251,875,000.

If BPA determines that the Supply System Adjustment Clause will not trigger, BPA shall notify customers on or before August 15, 1986, that the SSAC will not be triggered.

If BPA expects to implement the SSAC, shall notify interested parties on or before August 15, 1986, of its findings concerning the changes in Supply System costs and the unit adjustment caused by those changes. In the notice, BPA shall request written comments regarding its fundings. Parties shall notify BPA by September 8, 1986, if they have comments regarding the calculation of the adjustment. BPA shall then evaluate all comments received and make a determination as to the appropriate calculation of the Supply System Adjustment. Purchasers affected by the Adjustment shall be notified on or before October 1, 1986 of the change in rate level due to the implementation of the SSAC.

D. Billing-Related Definitions

1. *Peak Period.* The Peak Period includes the hours from 7 a.m. to 10 p.m. on any day Monday through Saturday inclusive. There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday. Any charges based on Peak Period hours shall be computed starting with the 8 a.m. meter reading since this reading applies to the 7 o'clock hour (i.e., 7 a.m. to 8 a.m.). The 10 p.m. meter reading (for the 9 p.m. to 10 p.m. period) is the last meter reading of the day applicable to the Peak Period.

2. *Offpeak Period.* The Offpeak Period includes all hours which do not occur during the Peak Period. Thus, the Offpeak Period consists of the hours from 10 p.m. to 7 a.m., Monday through Saturday and all hours on Sunday.

Section IV. Other Definitions

A. Restriction of Deliveries

Deliveries of capacity and/or energy to any purchaser may be restricted

No Supply System Adjustment shall be made if:

when operation of the facilities used by BPA to service such purchaser is: 1. Suspended, 2. Interrupted, 3. Interfered with, 4. Curtailed, or 5. Restricted by the occurrence of any condition described in the Uncontrollable Forces or Continuity of Service sections of the General Contract Provisions of the power sales contract.

B. Computed Requirements Purchasers

1. *Designation as a Computed Requirements Purchaser.* A purchaser shall be designated as a computed requirements purchaser if:

a. It is so designated in its power sales contract executed after December 5, 1980, or

b. If it meets one or more of the following conditions as described in paragraphs (1) and (2) below:

(1) Such purchaser has generation of its own which can be sold in such a way as to increase BPA's obligation to deliver firm power to that purchaser because of such sale or,

(2) Such purchaser has the ability to redistribute generation from its resources over time in such a manner as to cause losses of power or revenue on the Federal system.

When a purchaser operates two or more separate systems, only those systems designated by BPA will be covered by this section.

2. *Purpose of the Computed Requirements Designation.* Use of the computed requirements designation is intended to assure that each purchaser who purchases power from BPA to supplement its own firm resources will purchase amounts of firm capacity and firm energy substantially equal to that which the purchaser would otherwise have to provide on the basis of normal and prudent operations.

The amount of capacity and energy required for normal and prudent operations shall be determined pursuant to the purchaser's power sales contract for all computed requirements purchasers with power sales contracts executed after December 5, 1980.

For computed requirements purchasers with power sales contracts executed before December 5, 1980, the amount of capacity and energy required for normal and prudent operations is that which would be sufficient to meet the load and provide adequate reserves through the most critical water or other conditions which might reasonably be expected to occur. Purchase on a computed requirements basis for a purchaser with a power sales contract executed before December 5, 1980, depends on the relationship of the purchaser's resource capability to the purchaser's system requirements. Thus, the billing factors to be applied to such a computed requirements purchaser for any month cannot be determined until after the end of the month. As each such purchaser must estimate its own load and is in the best position to follow that load from day to day, it is the purchaser's responsibility to request scheduling of power from BPA.

3. *Definitions and Terms to Computed Requirements Purchasers with Power Sales Contracts Executed Prior to December 5, 1980.* Those purchasers whose power sales contracts were executed prior to December 5, 1980, and who are designated as computed requirements purchasers based on the abilities listed in section IV.B.1.b, above, shall be governed by the terms of this subsection.

a. *General Principles.* (1) The assured peaking capability and assured average energy capability of each of the purchaser's systems shall be determined and applied separately.

(2) As used in this section, "year" or "operating year" shall mean the 12-month period commencing July 1.

(3) The Critical period is that period, described below, during which the purchaser would have the maximum requirement for peaking or energy from BPA. That period would be determined for the purchaser's system under adverse streamflow conditions and adjusted for:

(a) Current water uses,

(b) Assured storage operation, and

(c) Appropriate operating agreements.

In determining the maximum requirement for peaking or energy from BPA, the firm capability of all resources available to the purchaser shall be utilized in such a manner as to place the least requirement on BPA.

(4) Critical water conditions are those conditions of streamflow in the operating year or years which would result in the minimum capability of the purchaser's firm resources during the critical period. These conditions of streamflow are based on historical records as adjusted for:

(a) Current water uses,

(b) Assured storage operation, and

(c) Appropriate operating agreements.

(5) Prior to the beginning of each operating year, the purchaser shall determine the assured capability of each of the purchaser's systems in terms of peaking and average energy for each month of each year or years within the critical period. The firm capability of all

resources available to the purchaser's system shall be utilized in such a manner as to place the least requirement for capacity and energy on BPA. Such assured capability shall be effective after review and approval by BPA.

(6) The pruchaser's assured average energy capability shall be determined by shaping its firm resources to its firm load in a manner which places a uniform requirement on BPA within each year of the critical period. The requirement placed on BPA may increase each year, but by no more than the sum of:

(a) The purchaser's annual load growth, and

(b) Any reductions in assured average energy capability caused by retirement or loss of one of the purchaser's firm resources.

(7) As used herein, the capability of a firm resource shall include only that portion of the total capability of such resource which the purchaser can deliver to its load on a firm basis. The capabilities of all generating facilities which are claimed as part of the purchaser's assured capability shall be determined by test or other substantiating data acceptable to BPA. BPA may require verification of the capabilities of any or all of the purchaser's generating facilities. Such verification shall not be required more often than once each year for operating plants, or more often than once each third year for thermal plants in cold standby status, if BPA determines that adequate annual preventive maintenance is performed and the plant is capable of operating at its claimed capability.

(8) In determining assured capability, the aggregate capability of the purchaser's firm resources shall be appropriately reduced to provide adequate reserves.

b. *Determination of Assured Capability.* The purchaser's assured peaking and assured energy capabilities shall be the respective sums of:

(1) The capabilities of its hydroelectric generating plants based on the most critical water conditions experienced to date on the purchaser's system,

(2) The capabilities of its thermal generating plants based on such adverse fuel or other conditions which might reasonably be expected to occur, and

(3) the firm capabilities of other resources made available to the purchaser under contracts executed prior to the beginning of the operating year. The firm capabilities of these acquired resources will be based on the capabilities after adjustment for reserves.

Assured capabilities shall be determined for each month if the purchaser has seasonal storage. The capabilities of the purchaser's firm resources shall be determined as follows:

(1) *Hydroelectric Generating Facilities.* The capability of each of the purchaser's hydroelectric generating plants shall be determined in terms of both peaking and average energy using critical water conditions. The average energy capability shall be that capability which would be available under the conditions necessary to produce the claimed peaking capability.

Seasonal storage shall mean storage sufficient to regulate all the purchaser's hydroelectric resources in such a manner that, when combined with the purchaser's thermal generating facilities, if any, and with firm capacity and energy available to the purchaser under contracts, a uniform energy requirement on BPA for a period of one (1) month or more would result.

A purchaser having seasonal storage shall, within 10 days after the end of each month in the critical period, notify BPA in writing of the assured average energy capability to be applied tentatively to the preceding month. Such notice shall also specify the purchaser's best estimate of its average system energy load for such month. If such notice is not submitted, or is submitted later than 10 days after the end of the month to which it applies, subject to the limitations stated herein, the assured average energy capability determined for such month prior to the beginning of the year shall be applied to such month and may not be changed thereafter.

If notice has been submitted pursuant to the preceding paragraph, the purchaser shall, within 30 days after the end of the month, submit final specification of the assured average energy capability to be applied to the preceding month, provided that the assured energy capability so specified shall not differ from the amount shown in the original notice by more than the amount by which the purchaser's actual average system energy load for such month differs from the estimate of that load shown in the original notice. If the assured average energy capability for such month differs from that determined prior to the beginning of the year for such month, the purchaser, if required by BPA, shall demonstrate by a suitable regulation study based on critical water conditions:

(a) That such change could actually be accomplished, and

(b) That the remaining balance of its total critical period assured average energy capability could be developed without adversely affecting the firm capability of other purchaser's resources.

The algebraic sum of all such changes in the purchaser's assured average energy capability shall be zero at the end of the critical period or year, whichever is earlier. Appropriate adjustments in the assured peaking capability shall be made if required by any change in reservoir operation as indicated by revisions in the monthly distribution of critical period energy capability.

(2) *Thermal Generating Facilities.* The capability of each of the purchaser's thermal generating plants shall be determined in terms of both peaking and average energy. Such peaking and average energy capabilities shall be based on those adverse fuel or other conditions that might reasonably be expected to occur. The effect of limitations on fuel supply due to war or other extraordinary situations will be evaluated at the time, should any such situation arise.

(3) *Other Sources of Power.* The peaking and average energy assured capability of other firm resources available under contracts to the purchaser shall be determined prior to each operating year.

Section V. Application of Rates Under Special Circumstances

A. Energy Supplied for Emergency Use

A purchaser taking Priority Firm and/or New Resource Firm Power shall pay in accordance with the Nonfirm Energy rate Schedule, NF-85, and Emergency Capacity Rate Schedule, CE-85, for any electric energy or capacity which has been supplied:

1. For use during an emergency on the purchaser's system, or

2. Following an emergency to replace energy secured from sources other than BPA during such emergency.

Mutual emergency assistance may, however, be provided and payment therefor settled under exchange agreements.

B. Construction, Test and Start-up, and Station Service

Power for the purpose of construction, test and start-up, and station service shall be made available to eligible purchasers under the Priority Firm and New Resource Firm Power Rate Schedules. Such power must be used in the manner specified below:

1. Power sold for construction is to be used in the construction of the project.

2. Power sold for test and start-up may be used prior to commercial operation both to bring the project on

line and to ensure that the project is working properly.

3. Power sold for station service may be purchased at any time following commercial operation of the project. Station service power may be used for project start-up, project shut-down, normal plant operations, and operations during a plant shut-down period.

C. Application of Rates During Initial Operation Period-Transitional Service

1. *Eligibility for Transitional Service.* For an initial operating period, as specified in the power sales contract, beginning with the commencement of operation of a new industrial plant, a major addition to an existing plant, or reactivation of an existing plant or important part thereof, BPA may agree to bill the purchaser in accordance with the provisions of this section. This section shall apply to both:

a. DSIs having new, additional or reactivated plant facilities, and

b. Utility purchasers serving industrial purchasers with power purchased from BPA. BPA will provide transitional service to utilities only for those industrial loads for which the demand can be separately metered by the utility and recorded on a daily basis.

2. *Calculation of the Daily Demand.* If BPA agrees to provide transitional service, the billing demand for the industrial load for the billing month shall be the average of the daily Ratchet Demands, as adjusted for power factor. The Ratchet Demand for each day shall be the higher of factors "a" and "b" below:

a. 100 percent of the Measured Demand for the day (regardless of whether such Measured Demand occurs during the Peak Period or the Offpeak Period), or

b. The highest daily Ractchet Demand which has occurred during the period of restoration as defined in section 4(e) of the power sales contract.

3. *Billing for Transitional Service.* Utilities receiving transitional service shall provide BPA with daily demand information for the industrial consumer for whom transitional service is provided. To compute the power bill for the point of delivery which includes the load being served with transitional service, BPA shall, at its discretion, either:

a. Determine the demand for the pertinent point of delivery without the industrial load and then add the average daily demand for such industrial load, or

b. Bill the entire point of delivery on a daily demand basis. Daily demand billing shall not affect the level of any customer charge, curtailment charge, or energy charge assessed by BPA.

For DSIs purchasing Industrial Firm Power, transitional service may be purchased only under the Standard Industrial Rate or the Premium Rate. BPA will provide transitional service to purchasers of Special Industrial Power only under the Standard Special Industrial Power Rate.

D. Charges in a DSI's BPA Operating Level

If a DSI requests a waiver regarding the notice requirements specified in the DSI's power sales contract for a voluntary change in its requested Operating Level, and if BPA does not grant the waiver, or if the DSI fails to give notice of such a change and does not request a waiver, the DSI shall be billed as if no notice has been provided until such time as the number of days in the notice period have passed. If, however, BPA agrees to waive the notice requirement, the power bill shall reflect the requested changes as of the requested effective date specified in the notice or, at BPA's discretion, a date of BPA 's choosing within the notice period.

E. Application of the Industrial Incentive Rate

The Industrial Incentive Rate shall apply solely to those DSI's purchasing under the IP–85 wholesale power rate and consenting to purchase under this special rate. BPA shall determine when and if the Industrial Incentive Rate shall be offered to purchasers of Industrial Firm Power. In order to make that determination, BPA shall use the following procedure:

1. *Industrial Incentive Rate Feasibility Study.* a. If BPA anticipates that the Industrial Incentive Rate might trigger, BPA shall conduct an Industrial Incentive Rate Feasibility Study (Study). In addition, BPA may (but is not obligated to) conduct the Study if so requested by one or more of BPA's customers.

b. BPA shall first consider the period of time for which the Industrial Incentive Rate would be effective. Such period shall be for no less than 6 months and no more than 12 months or the end of the rate period, whichever comes first. If BPA wishes to have the flexibility to extend the Industrial Incentive Rate period beyond the proposed period (but not beyond 12 months) without further public involvement, BPA shall include scenarios in its Study which use data for both the proposed period and for the projected extension.

c. To conduct the Study, BPA may use the Aluminum Smelter Model (ASM) to determine potential DSI load under the Industrial Incentive Rate. BPA may also elect to ask DSIs to provide estimates of their Committed Demand and Committed Energy levels. BPA may use information from both sources to conduct the revenue impact analysis.

d. BPA shall then analyze the effect of using different average discount levels (1 mill, 2 mills, etc.) as the basis for determining the Industrial Incentive Rate level. In forecasting DSI loads at each discount level, BPA shall take into account the risk premium associated with a take-or-pay contract for each DSI customer. The discount shall be determined by reducing the Standard Industrial Rate by X mills/kWh over the months for which the Incentive Rate is proposed to be in effect. In its Study, BPA shall use the discount level which appears to BPA to be most likely to result in triggering the Incentive Rate and maximizing BPA 's revenues.

e. BPA shall then determine if total BPA revenue would increase as a result of implementation of the Industrial Incentive Rate, using the Nonfirm Revenue Analysis program (NFRAP) and the Revenue Forecasting Model (REFORM). The Incentive Rate period determined in step b, the load information gathered in step c, the rate level selected in step d, and BPA's forecasts for Nonfirm Energy and Surplus Firm Power sales shall be used as inputs to the Study. The Study will indicate the level of DSI load required in order for BPA to break even by implementing the Incentive Rate at the specified discount.

f. BPA may then set a minimum commitment level above the "break-even" point, to ensure, to the extent possible, that the results of implementing the Incentive Rate will be an increase in total BPA revenues given that actual conditions are likely to differ from those assumed in the preparation of BPA 's studies.

2. *Contractual Arrangements Relating to Implementation of the Industrial Incentive Rate.* BPA and each interested DSI customer shall negotiate and execute a generic contract regarding the sale of Industrial Firm Power under the Industrial Incentive Rate. The information specified in (a), (b), and (c), below, shall be specified in an exhibit to the contract. Because this information will not be available until an Industrial Incentive Rate is offered to the DSIs, this exhibit shall be attached to the contract only after BPA adopts an Incentive Rate:

a. The demand and energy charges for the Industrial Incentive Rate,

b. The Committed Demand and Committed Energy for each direct-service industrial customer electing to purchase under the Industrial Incentive Rate, and

c. The time period for which the rate is to be effective.

3. *Industrial Incentive Rate Implementation Procedure.* a. If the results of the Study indicate that the Industrial Incentive Rate might reasonably be expected to trigger given appropriate commitment levels from the DSIs, BPA shall notify its customers that it is proposing to offer the DSIs the opportunity to purchase Industrial Firm Power under the Industrial Incentive Rate providing the minimum commitment level is met. BPA shall provide a copy of the Study to all of its customers and shall make supporting documentation available to interested parties.

b. BPA shall accept comments on the proposed rate and supporting Study for a period of no less than 3 weeks (21 days) from the date of the notice to the customers. BPA may elect to seek comments on its draft contract as well.

c. BPA shall evaluate the comments received and revise its Study (if necessary) to reflect the comments. If the updated Study supports implementation of an Incentive Rate, BPA shall solicit, from each DSI, its Committed Demand and Committed Energy at the specified rate. In the solicitation, BPA shall notify the DSIs of the period for which the Industrial Incentive Rate is proposed to be effective and the level of each of the charges comprising the Industrial Incentive Rate. The DSI response to this solicitation shall be contractually binding, and the response shall be attached as an exhibit to the generic contract upon adoption of the proposed Industrial Incentive Rate.

d. If BPA receives a commitment level from the DSIs equal to or greater than the commitment level determined to be the minimum acceptable level, BPA shall implement the Industrial Incentive Rate.

e. BPA shall publish a Record of Decision regarding any decision to implement the Industrial Incentive Rate. That Record shall be made available to interested parties.

Section VI. Billing Information

A. Determination of Estimated Billing Data

If the amounts of capacity, energy, or the 60-minute integrated demands for energy purchased from BPA must be estimated from data other than metered or scheduled quantities, BPA and the purchaser will agree on billing data to be used in preparing the bill. If the parties cannot agree on estimated billing quantities, a determination binding on both parties shall be made in accordance with the arbitration provisions of the power sales contract.

B. Billing for New Large Single Loads

Any BPA customer whose total load includes one or more New Large Single Loads (NLSL) as defined by section 3.(13) of the Northwest Power Act or as determined by section 8 of the purchaser's power sales contract shall be billed for the NLSL(s) at the New Resource Firm Power Rate. The amount of power requirements associated with the NLSL shall be established in a manner consistent with the provisions of this section.

The purchaser shall warrant to BPA that NLSLs are separately metered. The metering must include provisions for determining:

1. The NLSL demand during BPA's diurnal capacity billing periods,
2. The NLSL energy during BPA's energy billing periods, and
3. The NLSL reactive energy for the billing month.

The design for the metering equipment for the NLSL must be approved by BPA. Testing and inspections of such metering installations shall be as provided in the General Contract Provisions.

On a monthly basis, each purchaser of New Resource Firm Power shall report to BPA the quantity of power used by the NLSL during the *purchaser's* billing period. Data provided to BPA by the purchaser must be submitted to BPA within 2 normal working days of the date the purchaser reads the meters. BPA may elect to adjust the NLSL data for losses from the point of metering to the closest BPA point of delivery for the purchaser.

C. Adjustment of Measured Demand to Arrive at Billing Demand

Measured demand shall be adjusted to arrive at billing demand by adjusting all measured quantities back to the most recent day on which there is a 2400 hour reading on the demand meter.

D. Billing Month

Meters normally will be read and bills computed at intervals of 1 month. A month is defined as the interval between meter-reading dates which normally will be approximately 30 days. If, for any reason, service is for less than or more than the normal billing month, the monthly charges stated in the applicable rate schedule shall be adjusted appropriately.

The calendar month in which the purchaser's meter is scheduled to be read determines the billing month. (Thus, a bill associated with a meter scheduled to be read on April 10th would be an April bill.) The charges for the winter and summer periods identified in the rate schedules apply to the purchaser's billing months. Annual changes in a purchaser's low density discounts take effect with the January billing month. (Retroactive billing for the LDD may be required if the data are not available by the January billing date.)

E. Payment of Bills

Bills for power shall be rendered monthly by BPA. Failure to receive a bill shall not release the purchaser from liability for payment. Bills for amounts of $50,000 or more must be paid by direct wire transfer. Bills for amounts under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by BPA's Office of Financial Management and updated as necessary.

1. *Computation of Bills.* Demand and energy billings for power purchased under each rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amount from 50 cents through 99 cents to the next higher dollar.

2. *Estimated Bills.* At its option, BPA may elect to render an estimated bill for that month to be followed at a subsequent billing date by a final bill. Such estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. *Due Date.* Bill shall be due by close of business on the 20th day after the date of the bill (Due Date). Should the 20th day be a Saturday, Sunday, or major holiday (celebrated by the purchaser), the Due Date shall be the next following business day.

4. *Late Payment.* Bills not paid in full on or before close of business on the Due Date shall be subject to a penalty charge which shall be the greater of one-fourth percent (0.25%) of the Unpaid Amount or $50. In addition, an interest charge of one-twentieth percent (0.50%) shall be applied each day to the sum of the Unpaid Amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the Unpaid Amount and Penalty Charge are paid in full. BPA will bill the customer for the late payment interest charge on the purchaser's next power bill.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the Due Date. In order to avoid assessment of late payment charges for metered mail received subsequent to the Due Date, the payment must bear a postal department cancellation which demonstrates that payment was mailed on or before the Due Date.

Whenever a power bill or a portion thereof remains unpaid subsequent to the Due Date and after giving 30 days advance notice in writing, BPA may cancel the contract for service to the purchaser. However, such cancellation shall not affect the purchaser's liability for any charges accrued prior thereto under such contract.

5. *Disputed Billings.* In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the purchaser is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

IV. Major Issues

A. Major Studies

1. Revenue Requirement Study.

The Bonneville Project Act, the Flood Control Act, the Transmission System Act, and the Northwest Power Act require BPA to design rates that are projected to return revenue sufficient to recover the cost of producing, acquiring, conserving, and transmitting the electric power that BPA markets; to recover the cost of transmitting power for other parties; and to repay with interest the Federal investment in transmission and generation facilities. The Revenue Requirement Study determines the minimum amount of revenues necessary to recover all the costs of the FCRPS over the repayment period in accordance with sound business principles. It also determines whether current rates will produce enough revenue to satisfy BPA's repayment obligation.

In an order dated January 27, 1984 (49 FR 4130), the Federal Energy Regulatory Commission (FERC) set forth a number of requirements that would enable FERC to fulfill its obligations under the Northwest Power Act and the Transmission System Act. Section 7 of the Northwest Power Act requires that transmission rates provided an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. Consequently, the January 27 order requested the development of separate repayment studies for the generation and transmission portions of the FCRPS. Pursuant to the Commmission's order this Revenue Requirement Study incorporates separate repayment studies for the generation and transmission components of the FCRPS for FY 1986 and FY 1987.

The Revenue Requirement Study for the initial rate proposal is based on revenue and cost estimates for FY 1986 and FY 1987. If actual loads and costs differ from projected loads and costs, BPA may experience a revenue surplus or deficit. The repayment methodology employed by BPA provides sufficient flexibility that small revenue deficits can be dealt with by deferring interest and amortization payments on appropriated funds, but sound business principles that this be only a temporary means of satisfying cash deficits.

It is a common utility practice for projects to be partially financed from internally generated funds or current revenue. As a self-supporting agency of the Federal Government, BPA is only able to generate funds from debt or rates. To continue its efforts to be fiscally sound, BPA has decided to raise the amount of investment service coverage financed through the application of rates from 5 percent to 7.5 percent of the BPA capital projects scheduled for completion during the rate period.

In order to meet its fiscal responsibilities (which include eliminating deficits and making planned amortization payments), BPA's Revenue Requirement Study reflects actual historical cash amortization, and assumes repayment of deferrals plus all normal schedule amortization by September 30, 1985. In addition, it reflects all of BPA's obligations under the Northwest Power Act, including exchange costs. To assist BPA in meeting its cash repayment obligations, a cash lag adjustment has been made to the revenue requirement.

BPA's total revenue requirement is determined directly from the Revenue Requirement Study. The study used for this proposal demonstrates that for the test year FY 1987, BPA's revenue requirement is $3.33 billion. The following table shows a breakdown of the revenue requirement.

TEST YEAR FY 1987 PROJECTIONS

[$000]

	Generation	Transmission
Annual Obligations	235,609	167,683
Purchase Power, Exchange	2,232,577	0
Interest	218,608	223,081
Amortization	161,602	88,729
Total	2,848,396	479,493

2. Loads and Resources Study

The Loads and Resources Study represents the preparation and accumulation of all load and resource data necessary for developing BPA's wholesale power rates. It is one of the first steps in preparing rates. This study incorporates results from load forecasts, resource analyses, and BPA's Resource Strategy.

For this rate filing, BPA developed econometric forecasts of public utility loads. These forecasts used employment data for Washington, Oregon, and Idaho as an input. A Direct-Service Industry (DSI) load forecast was also prepared using econometric models and detailed economic analyses for nonaluminum loads and a simulation model for aluminum loads. The latter model simulates the operations of each aluminum plant in the Pacific Northwest based on projections of operating costs and the price these plants received for their product. Forecasted investor-owned utility (IOU) system and residential exchange loads are as submitted to BPA by the respective utilities.

BPA's conservation savings estimates and budget estimates are developed in several stages using a variety of assumptions. This multipart process is designed to reflect expected conditions in the region regarding loads, resource expenses, contracts, and concepts of flexibility. The determination of estimates begins with the development of conservation supply curves that identify conservation availability as a function of cost, timing, current contracts, and technology. These curves then are used in BPA's least-cost mix model (LCMM), from which a least-cost schedule of year-by-year conservation targets is determined through 2002. These targets are used as a first step in developing actual program levels. The targets, in combination with contractual considerations, penetration rates, and decisions about initiation and implementation rates, determine final conservation savings and budget estimates.

The determination of conservation acquisitions reflects concepts of capability and flexibility encouraged by the Northwest Power Planning Council's Power Plan. Use of these concepts allows BPA to plan for a variety of circumstances and uncertainties.

The load/resource balance is developed to determine the Administrator's obligation during the test year and the 42-month critical period, and to determine the magnitude of surplus firm power in the region and on the Federal system in the critical period. This entails performing a hydro regulation study that incorporates system constraints such as the Water Budget for fish operations, the operation and maintenance cycles for various thermal plants in the region, and projected resource acquisitions. For this rate filing, two 42-month (critical) hydro studies and two 40-year hydro studies are made. The first set of studies starts in July 1985, and the second set starts in July 1986. The studies are then used to determine the critical period surplus firm power and nonfirm energy for the region.

Pacific Northwest regional resources are classified as either dedicated or nondedicated to the firm loads of their respective owners. The Federal system is required to meet that portion of the load, placed on the Federal system, which is not served by dedicated resources. Using information on dedicated resources, the uniform Federal firm surplus for the two critical periods is computed. The amount of the firm surplus is used for cost allocation, rate design, and revenue forecasting.

Capacity has been analyzed relative to 1930 water conditions and results of that study are incorporated in the capacity rate development.

3. Cost of Service Analysis

The Cost of Service Analysis (COSA) apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. The following steps are used to determine the allocated cost to serve each customer class.

a. *Functionalization.* Functionalization is the identification of revenue requirements with functions performed by the power system. These functions are defined as generation and transmission. All costs are assigned to one of these two functions:

In prior rate filings, the functionalization step was performed in the Cost of Service Analysis. In this rate filing, costs are functionalized prior to the preparation of the repayment studies. The results of the functionalized repayment studies are used in the functionalization step performed in the COSA.

In the COSA, the net repayment requirement for generation is divided into two portions—one relating to conservation investments, and the other related to all other generation investments. This is done so that a separate allocation method may be used to apportion the costs of conservation programs among the various customer classes.

b. *Classification.* BPA classifies costs to the energy and capacity components of electric power. In this rate proposal, generation costs are uniformly classified to capacity and energy in the proportions of 72 percent to energy and 28 percent to capacity. This uniform classification method adopted for the COSA is based on the results of BPA's Marginal Cost Study and reflects the relative costs of acquiring additional energy and capacity resources in both the long and the short run. Transmission costs are classified entirely to capacity.

c. *Segmentation.* Although BPA operates a regionwide transmission system, some segments of the system are not needed to provide some services. In order to identify more closely the types of service provided by the transmission system with various customer classes, the system is divided into nine segments, each providing a distinct type of service. The nine transmission system segments are: integrated network, Pacific Northwest-Southwest Intertie, Canadian Intertie, Montana Intertie, generation integration, fringe area, and delivery segment for public agency, direct service industrial and investor owned utility customers.

d. *Seasonal Differentiation.* When costs of providing electric service vary substantially, whether by time of day or season of the year, it is appropriate to reflect this variation when allocating costs among rate classes and in the subsequent rate design. The COSA includes seasonal differentiation of energy and capacity costs. Transmission costs do not vary substantially throughout the year, and are therefore not seasonally differentiated.

Generation capacity costs are seasonally differentiated on the basis of an analysis of Loss of Load Probabilities (LOLP) contained in the Marginal Cost Analysis. Energy costs are seasonally differentiated on the basis of the costs of hydroelectric storage and of the characteristics of the Federal generating system.

e. *Allocation.* The final major step in the COSA is to allocate the functionalized, segmented, classified and seasonally differentiated costs to classes of service.

Costs are allocated to classes of service on the basis of relative use of services. Costs classified to energy are allocated to customer classes on the basis of relative kilowatthour use by each class, and on the proportion of total load in each resource pool. The measure for use of peaking capacity is the monthly coincidental peak megawatt. Seasonal capacity is measured by averaging the monthly use of each class within the season. Because the power system is constructed to meet coincidental peak demand, the coincidental peak (relative to the system peak) is used as a measure for each customer's contribution to BPA's need to acquire peaking resources.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peak loads that are not seasonally differentiated. The average of all 12 monthly coincidental peaks is used to allocate transmission system costs. Costs are allocated to customer classes on the basis of deemed use of the transmission system for power customers, and on the basis of actual use of the transmission system for wheeling (non-Federal transmission) customers.

BPA proposes to allocate and recover costs of conservation program funding entirely through BPA's rates applicable to users of Federal resource pools: The Federal base system and the new resources pool.

Costs not associated with resource pools, other than conservation costs, are allocated to customer classes on the basis of total use of services without regard to the resource pool that provided that power.

4. Marginal Cost Analysis (MCA)

A Marginal Cost Analysis (MCA) is conducted by BPA to identify the marginal costs BPA incurs for new generation and transmission loads on seasonal, daily, and hourly bases. The MCA provides a basis for developing rates that promote economic efficiency. Questions relating to the measurement of marginal cost, application of marginal costs to rates, and the adjustment of such rates to the revenue requirement are considered in developing the MCA.

The marginal cost of generation is based on results from BPA's resource planning models: the Least Cost Mix Model (LCMM) and the System Analysis Model (SAM). The LCMM provides information concerning the types of resources and the annual cost of those resources acquired to meet load growth. The SAM provides information on the cost of operating those resources in conjunction with the existing system and the level of secondary revenues experienced under expected water conditions. Combining the information from these two models produces the total system cost associated with any given resource and load scenario. Taking the difference in total system cost between a base load case and a case with increased load produces the marginal cost of meeting load growth on an annual basis during the period FY 1987–FY 2004. Levelizing the annual costs over the 18-year period creates a marginal cost of generation that incorporates the short-run effects of the surplus power situation and the long-run effects of future resource acquisitions.

The marginal resources selected by the LCMM and the existing resource system analyzed by the SAM provide both generation capacity and energy. The division of the marginal cost of generation into capacity and energy components is achieved by crediting the total marginal cost with the cost of the least-cost source of capacity. A generic combustion turbine serves as the least-cost source of capacity. The marginal cost of producing energy is the amount of the total marginal cost of generation remaining after the crediting process, plus the incremental generation operation and maintenance expense and generation-integration expense associated with energy.

Two transmission segments, network and generation-integration, are considered in the MCA. The marginal cost of transmission network is based on projected transmission investments for the fiscal years 1987–1994. The marginal cost of transmission network investment and the associated operation and maintenance expense are classified to capacity and energy. The classification percentages of 76 percent to capacity and 24 percent to energy are developed from an analysis of the reasons causing the transmission network investment.

The marginal cost of generation-integration is based on the cost of integrating a generic baseload thermal plant into BPA's transmission system. The marginal cost of generation-integration and the associated operation and maintenance expense are classified to capacity and energy. The classification percentages of 28 percent to capacity and 72 percent to energy are based on the ratios of (a) the marginal cost of generation capacity and (b) the marginal cost of generation energy to (c) the total marginal cost of generation.

The marginal cost of generation energy is seasonally, but not diurnally, differentiated. The MCA incorporates and energy differential which assigns zero costs to May and spreads the marginal energy costs over the remaining 11 months. The marginal cost of transmission network energy is neither seasonally or diurnally differentiated.

Marginal capacity cost variations occur seasonally and diurnally. Based on the seasonal, hourly, and day-of-week analysis, the winter peak period for generation capacity is defined as December through April, Monday through September, 7 a.m. to 10 p.m. The summer peak period consists of the same hours of the days and days of the week during the months of May through November. The offpeak capacity hours are all other hours of the year.

There is no seasonal differentiation of the marginal cost of transmission. On a diurnal basis, however, all factors except load level are approximately constant. Therefore, the diurnal load analysis developed for generation capacity is a reasonable proxy for the transmission system. Then, the peak period for transmission network costs is Monday through Saturday, 7 a.m. to 10 p.m., and the offpeak period is all other hours for all months of the year.

After selecting the seasonal periods, cost allocation factors are developed, which indicate that 79 percent of capacity costs should be assigned to December through April and 21 percent should be assigned to May through November. Transmission capacity costs are assigned to the peak period for all months of the year.

5. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their firm power requirements for 5-year period are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the Northwest Power Act. The rate test could result in a reallocation of costs from the 7(b)(2) customers to BPA's other rate classes. The purpose of the Sec. 7(b)(2) Rate Test Study is to describe the rationale, process, application, and results of the Sec. 7(b)(2) rate test implementation methodology.

The rate projections and the actual rate test itself are performed by BPA's Supply Pricing Model (SPM). The SPM simulates BPA's ratesetting process, using load and resource data and additional cost data consistent with that used in this rate proposal. The assumptions and ratesetting processes such as load/resource balancing, cost allocation, and rate design are also consistent with this rate proposal. The SPM calculates two sets of wholesale power rates for BPA's preference customers: (1) A set of rates for each year of the section 7(b)(2) 5-year test period (the rate case test year plus the ensuing 4 years) assuming that section 7(b)(2) is not in effect program case rates); and (2) a set for the same 5-year period considering the five assumptions listed in section 7(b)(2) (7(b)(2) case rates). Certain specified section 7(g) costs are subtracted from the program case rates. The SPM then discounts each year's rates to the test year of the relevant rate case, averages each set of discounted rates, and compares the two resulting averages rounded to the nearest tenth of a mill. If the average of the discounted program case rates less the 7(g) cost is larger than the average discounted 7(b)(2) case rates, the rate test triggers. If the rate test triggers, the amount of dollars to be reallocated in the test year is calculated by multiplying the difference between the discounted program case and discounted 7(b)(2) case rates by the general requirements loads of the preference customers. This dollar amount is used in the Wholesale Power Rate Design Study as an adjustment to the allocated costs in the rate case test year.

The rate test does not trigger for the rates calculated for 1987–1991, so no costs will be reallocated in the FY 1987 rate case test year.

6. Section 7(c)(2) Industrial Margin Study

Section 7(c)(2) of the Northwest Power Act directs the Administrator to base the rates for service to BPA's DSI customers, beginning July 1, 1985, on rates charged BPA's public agency and cooperative customers and the typical margins included by those public agency and cooperative customers in rates to their retail industrial consumers. The Northwest Power Act also provides that the Administrator shall take into account comparative load, cost, and character of service factors identified in subsections 7(c)(2) (A), (B), and (C).

BPA relied on financial and operating data submitted by its public agency and cooperative customers to quantify a historical typical margin for calendar years 1982 an 1983. Typical margins for individual utilities were derived by subtracting each utility's average power and transmission cost per kilowatthour from its average industrial revenue per kilowatthour for the historical period.

Each utility's industrial margin was then weighted by the amount of its industrial energy sales for each of the base years to derive an aggregated historical typical margin. BPA then applied an inflation factor, based on historical and forecast GNP implicit price deflators, to the aggregate typical margin to obtain a FY 1987 typical margin, unadjusted for subsections (A), (B), and (C).

BPA developed two adjustments to the FY 1987 unadjusted typical margin. The first of these adjustments was made to account for the larger size and higher load factor of the DSI loads relative to retail industrial loads. The margin for the IP–85 Premium rate was derived by subtracting this character of load adjustment from the unadjusted FY 1987 typical margin. The IP–85 Premium rate provides for firm service to all four quartiles of the DSI load. However, BPA provides nonfirm service to the first quartile of the DSI load under the IP Standard rate. Therefore, BPA made a second adjustment to derive the margin for the IP–85 Standard rate. This second adjustment recognizes the "character of service."

The character of service adjustment recognizes the degree to which the expected quality of service provided under the IP–85 Premium rate exceeds the expected quality of service provided under the IP–85 Standard rate. BPA quantified this difference by first subtracting the projected NF–85 Nonfirm Energy Standard rate from the average IP–85 Premium Rate. This difference was then reduced to reflect the fact that only first quartile service, and in fact only a portion of the first quartile service, is actually subject to the availability of nonfirm energy and that the first quartile service represents only a portion of the total expected service. This reduced amount represents the character of service adjustment by which the margin for Premium service was reduced to arrive at a margin for Standard service.

B. Wholesale Power Rates

Issues directly related to individual rate schedules are discussed in section 1, below. Issues related to more than one schedule are presented in section 2.

1. Issues Related to Individual Rate Schedules

a. *Priority Firm Power Rate, PF–85.* BPA sells Priority Firm power to public bodies, cooperatives, Federal agencies, and utilities participating in the exchange under section 5(c) of the Northwest Power Act. BPA also proposes that this rate schedule be available for the purchase of capacity, which will require the return of associated energy. This power must be used to meet firm loads within the Pacific Northwest.

The Priority Firm load is served with FBS and exchange resources. The PF–85 rate consists of a demand charge that is time-differentiated on both seasonal and diurnal bases and an energy charge that is seasonally differentiated. A low density discount is available to qualifying utilities. The rate also includes the Exchange and Supply System Adjustment Clauses and a new feature, the Council-recommended Conservation Surcharge. The billing factors for computed requirements customers taking Priority Firm power continue to be designed to enhance BPA's revenue stability.

b. *Industrial Firm Power Rate, IP–85.* The IP–85 rate schedule applies to sales of Federal power to BPA's direct-service industrial (DSI) customers. The IP–85 rate is based on two elements: the Administrator's "applicable wholesale rates" to public agency customers and the "typical margins" charged by those public agency customers to their retail industrial consumers. Customers requesting service to the first quartile with surplus firm energy load carrying capability (FELCC) will pay a higher rate, which is based on the higher costs associated with providing such service. The IP–85 rate schedule also includes an Incentive rate, designed to allow BPA to increase sales to DSI customers during periods of low economic activity without jeopardizing BPA's overall revenue collection.

Power sales contracts with the DSIs grant BPA the right to restrict the DSI loads under certain conditions. As a result, the Federal system can use these restriction rights as part of its reserve requirement. A value of reserves analysis was performed to measure the benefit resulting from the ability to restrict the DSI load and to comply with section (7)(c)(3) of the Northwest Power Act. The Federal system reserves provided by the DSI restriction rights are separated into forced outage reserves, stability reserves, and plant delay reserves. In determining the value of reserves proivided by BPA's restriction rights, BPA looked at the most feasible, least cost alternative to providing these reserves.

The IP–85 rate includes a credit for the value of reserves. This credit is based on a share-the-savings concept. First, the cost of the outages to the DSIs was determined. Then, the value of BPA of the reserves provided by the DSIs was calculated. These two figures were added and divided in half to arrive at the revenue, $45,417,000, that is credited to the DSIs for the reserves they provide. To determine the actual credit, the revenue was divided by the appropriate billing determinants. The credit is in the form of a reduction in the monthly demand and energy charges, in the same manner as in the IP–83 rate.

The industrial class has contributed significantly to BPA's revenue instability due to IP load underruns. In order to promote revenue stability, the proposed IP–85 rate includes a customer charge based on plant capacity for the larger aluminum plants, and based on forecasted operating demand for the remaining smaller DSI customers. The customer charge is set at a level that recovers approximately 29 percent of the total IP–85 expected revenues.

As with the existing rates, the demand charges for the IP–85 rate are time differentiated on both daily and seasonal bases. There is no demand charge for deliveries during offpeak hours. The energy charge is seasonally differentiated. The IP–85 rate also includes the Exchange Adjustment Clause, the Supply System Adjustment Clause, a power factor penalty, and a charge for unauthorized increase.

c. *Special Industrial Power Rate, SI–85.* This rate schedule is available to purchasers qualifying for a special class of industrial power as provided for in section 7(d)(2) of the Northwest Power Act. Section 7(d)(2) authorizes BPA to establish a special rate for any DSI using, as its primary resource, raw materials indigenous to the region.

The only customer that qualifies for this Special Industrial rate is the Hanna Nickel Smelting Company. The SI–85 Standard rate is set equal to the PF–85 rate less the value of reserves, to approximate the rate Hanna would have paid without the Northwest Power Act. The SI–85 Standard rate has seasonally and diurnally time-differentiated demand charges and seasonally differentiated energy charges. The rate includes adjustments for power factor, value of reserves, and unauthorized increase.

BPA is also proposing an SI–85 Offpeak rate if the purchaser requests special offpeak service. The Offpeak rate has a 7 mill per kilowatthour energy charge and no demand charge. BPA expects that Hanna will purchase power at this special Offpeak rate throughout the rate period.

d. *Firm Capacity Rate, CF–85.* The CF–85 rate applies to utilities purchasing firm capacity from BPA on either an annual or a seasonal basis. Annual capacity is delivered throughout the year as requested by the customer and seasonal capacity is delivered over the 5-month period of June 1 through October 31. Energy associated with this capacity is to be returned to BPA. CF-85 loads are served with FBS and exchange resources. The rate includes the Exchange Adjustment Clause, the Supply System Adjustment Clause, the Council-recommended Conservation Surcharge, a seasonally differentiated, extended peaking surcharge for capacity taken in excess of 8 hours per day, and a seasonally differentiated surcharge for high rates of energy return (in excess of 60 percent of Contract Demand). This rate schedule will be available only to purchasers executing appropriate contracts before July 1, 1985.

The extended peaking surcharge is based on the seasonal reduction in hydro peaking capacity due to sustaining generation for an additional 10 hours per week. The returned energy surcharge is based on the reduction in seasonal hydro peaking capability due to high rates of energy being returned in any given hour, which causes a risk of spilled firm energy.

e. *Emergency Capacity Rate, DE-85.* The CE-85 rate schedule is applied to capacity used either to meet emergencies on the purchaser's system or to displace non-BPA resources. BPA provides such capacity to utilities on a weekly basis if it is requested and if excess capacity is available. The energy associated with the delivery of this capacity must be returned to BPA.

To determine the CE-85 rate, the Firm Capacity rate for a contract year was divided by the number of weeks in a year and then increased by 30 percent to cover additional administrative and general costs. Because costs associated with deliveries over the Pacific Northwest-Pacific Southwest (Southern) Intertie have not been allocated to this service category in the COSA, such deliveries are subject to an additional charge.

f. *New Resource Rate, NR-85.* The NR-85 rate is available for the purchase of firm power by investor-owned utilities under net requirements contracts for resale, direct consumption, or for use in construction, test and start-up, and station service. It is also available for service to new large single loads of public bodies, cooperatives, or Federal agencies. BPA also proposes that this rate schedule be available for the purchase of capacity, which will require the return of associated energy.

Exchange energy costs are allocated to this class of service to serve the small amount of energy load forecasted during the test year. However, the NR-85 rate is set to approximate a rate based on both allocated exchange capacity and energy costs so that is can be applied to any load that qualifies for NR-85 service. The energy charges for the NR-85 rate reflect the increased cost to be collected through the energy charges due to setting the demand charge equal to the equalized demand charge. The demand charges are set equal to the equalized Priority Firm power demand charges and are therefore seasonally and diurnally time-differentiated.

g. *Firm Displacement Power Rate, FD-85.* As part of efforts to market its firm surplus power, BPA is exploring arrangements in which BPA would sell its surplus to Pacific Northwest generating utilities to serve their firm loads. These utilities would then sell their resources that have been displaced by the BRA purchase, as well as their current surplus, to California. This strategy would have the advantage of allowing longer term guarantees concerning availability and price than BPA would be able to give for a Surplus Power sale to California.

The FD-85 rate is available for the contract purchase of Firm Displacement Power or Capacity by utilities in the Pacific Northwest, for the purpose of displacing the output of resources owned by those utilities and allowing the export of the displaced output of the resources to Pacific Southwest customers. The FD-85 rate has demand and energy charges, effective through June 30, 1990. The demand charges of FD-85 are diurnally differentiated.

The FD-85 rate is calculated based on the demand and energy components of the NR-85 rate. However, an additional amount is included in the demand component to reflect the projected rate of increase of the NR rate from 1987 through 1990. In addition, a small escalation rate will be applied to both the demand and energy charges of FD-85, beginning July 1, 1986, to represent unknow risk factors associated with a long-term firm sale.

h. *Surplus Firm Power Rate, SP-85.* The SP-85 rate is available for the purchase of Surplus Firm Power for resale or for direct consumption by purchasers other than DSI customers. SP-85 power is available for purchase inside and outside the Pacific Northwest and outside the United States. BPA also proposes that this rate schedule be available for the purchase of capacity, which will require the return of associated energy.

The SP-85 rate consists of two components: a Resource rate and a Contract rate. Both rates may be applied to contract purchases of Surplus Firm power provided the contracts are of a duration of less than 1 year and terminate on or before September 30, 1987. The Contract rate will be applied to purchases pursuant to contracts having an effective term of more than 1 year or terminating after September 30, 1987. The Contract rate consists of energy and demand charges.

The Resource rate is based on the cost of power from specified resources. These resources may be Federal system thermal resources, exchange resources, purchased power, or some combination of all three. Resource rates will be calculated to recover the costs associated with an individual contractual sale.

The Contract rate is based on the fully allocated cost of surplus resouces: Exchange resources and new resources. Demand charges are diurnally differentiated. An escalation factor is included under the contract rate in order to adjust for cost increases in contracts that are in effect for more than 1 year or extend past September 30, 1987. The Contract rate shall be adjusted each October 1 beginning October 1, 1986. Purchasers are given two options in the choice of an escalation factor.

i. *Surplus Firm Energy Rate, SE-85.* The SE-85 rate is available for the purchase of Surplus Firm energy for resale or direct consumption by purchasers other than direct-service industrial customers. As with the Surplus Firm Power rate, the SE-85 rate is available for the purchase of Surplus Firm Energy by parties inside and outside the Pacific Northwest as well as outside the United States.

The SE-85 rate is set at the same level as the SP-85 rate assuming a 100 percent load factor. Thus, the Surplus Firm Energy rate is based on the costs of surplus exchange resources and new resources that have been allocated to the Surplus Firm Power rate. The rate includes a power factor adjustment.

j. *Nonfirm Energy Rate, NF-85.* The NF-85 rate is available for the purchase of nonfirm energy both inside and outside the Pacific Northwest and outside the United States. The proposed NF-85 rate structure contains rates that are applicable under varying operating and marketing conditions. There are a Contract rate and four rates that can be applied depending on market conditions. BPA may sell nonfirm energy at one or more of the rates at the same time.

First, the Standard rate is based on the average cost of service with FBS and new resource power. The Standard rate is diurnally differentiated. BPA will attempt to market all nonfirm energy at the Standard rate. A guaranteed delivery option is available for the Standard rate. Whenever BPA determines that nonfirm energy can be sold on that basis, guaranteed delivery nonfirm energy normally will be offered for a period of 4 days. Available guaranteed energy may be as small as zero or as much as all the nonfirm energy BPA plans to offer for sale on such days. Any energy scheduled under the guaranteed delivery provision shall be delivered except when BPA and the purchaser mutually agree to change the scheduled amounts or when BPA must reduce NF–85 deliveries to serve firm loads because of unexpected generation loss in the Pacific Northwest.

Second, sales will be made at the Variable Displacement rate when BPA is unable to sell all available FCRPS energy at the Standard rate. To qualify for the rate, the purchaser must demonstrate that purchases under the Standard rate would not be economic. The Variable Displacement rate will help ensure that BPA displaces the greatest possible amount of thermal generation and will allow BPA to increase NF–85 revenues. The rate is flexible and equals 75 percent of the purchaser's decremental cost. It is available whenever the decremental cost of the displaced resource or purchase is less than the applicable Standard rate (peak or offpeak) plus 2.0 mills per kilowatthour. The Variable Displacement rate has a minimum of 11.0 mills per kilowatthour.

Third, the Fixed Displacement rate will be effective when the available energy exceeds available markets at the Standard and Variable Displacement rates. This rate is similar to the NF–83 Displacement rate, and will help ensure that BPA displaces the greatest possible amount of thermal generation.

Fourth, the NF–85 Incremental rate shall be applied to sales of power produced or purchased concurrently with the nonfirm sale which BPA may, at its option, not produce or purchase, and when the incremental cost is greater than the average Standard rate less 2.0 mills. The rate shall be equal to the incremental cost of the power plus 2.0 mills per kilowatthour.

k. *Energy Broker Rate, EB–85.* In October 1981, BPa entered into an agreement with the Western Systems Coordinating Council (WSCC) to participate in WSCC's Energy Broker Program. The Broker Program offered by WSCC is a communication and scheduling procedure for matching potential sellers of electric energy with potential buyers. The proposed EB–85 rate offered by BPA is available for both sale and purchase of nonfirm energy among participants in the WSCC Energy Broker System, between whom agreements for energy transmission have been transacted.

l. *Reserve Power Rate, RP–85.* The proposed RP–85 rate schedule is available for the purchase of:

(1) Firm power to met a purchaser's unanticipated load growth as provided in a purchaser's power sales contract; (2) power for which BPA determines no other rate schedule is applicable; or (3) power to serve a purchaser's firm power loads in circumstances where BPA does not have a power sales contract in force with such a purchaser, and BPA determines that the rate should be applicable.

This rate schedule applies to purchasers inside and outside the United States BPA expects that the RP–85 rate schedule will be used primarily to meet emergency power shortages on a purchaser's system and to charge, pursuant to the power sales contract, for unauthorized increases in the case of minimal power overruns.

The Reserve Power rate is based directly on the results of the Marginal Cost Analysis. The proposed RP–85 rate will provide BPA's customers with price signals that reflect the cost of producing additional kilowatts and kilowatthours, regardless of BPA's revenue requirement. An adjustment for power factor and a charge for unauthorized increase are also included in the RP–85 rate schedule.

2. *Other Rate Issues*—a. *Sequencing.* Because of new provisions of the Northwest Power Act, the sequence of rate design adjustments, calculations, and comparisons has become an issue. The rate schedules contained herein are based on the following sequence of adjustments to costs allocated in the COSA. First, excess revenues are detemined and allocated. Second, the revenue deficiencies associated with the value of reserves credit, surplus firm power sales, fized contract rates, and the Special Industrial (Hanna) rates are determined and allocated. Third, the DSI "markup rate" is calculated. This rate is the sum of the average PF–85 rate at this point in the rate design process and the "typical industrial margin," which is determined in the section 7(c)(2) Industrial Margin Study. The cost allocated to the IP class differs from the revenue that would be received from the DSIs under the DSI markup rate. This difference, the 7(c)(2) delta, is allocated to firm power classes of service. Fourth, any adjustment required by the results of the section 7(b)(2A) Rate Test Study is performed. If the 7(b)(2) test had triggered, the full amount of the adjustment would have been credited to the general requirements loads of public body, cooperative and Federal agency customers, and the 7(b)(2) cost would have been allocated to power sold to all other customers. Fifth, the demand charges for PF–85 and CF–85 are equalized by dividing the total allocated capacity and transmission costs for these classes by the total billing determinants. Sixth, the DIS rate is compared with the OY 1985 "floor rate," pursuant to section 7(c)(2) of the Northwest Power Act. This ensures that the DSI rate does not fall below the level in effect for the year ending June 30, 1985. Had the DIS rate been less than the floor rate at this point, it would have been raised to the floor, and the excess revenues thus generated would have been allocated to other customers, thus reducing their rates. Seventh, the resulting FY 1987 rates are scaled to ensure that neither a surplus nor a deficit occurs for the 27-month rate period. The DSI floor rate is checked again after scaling.

b. *Scaling Factor.* A 1987 test year (fiscal year 1987) is used in the development of the rates. The resulting rates will provide revenues sufficient to meet BPA's test year repayment obligation. However, if these rates were also applied to forecasted sales for the 15-month period extending from July 1, 1985, until the beginning of the test year, BPA would recover more revenue than required to meet the total 27-month repayment requirement. Consequently, BPA applies a scaling factor to the test year rates to adjust the rates downward. This scaling factor is based on costs and revenues from all of BPA's rates, both wholesale power and transmission. The factor is applied to each test year 1987 rate to yield a rate applicable to the entire 27-month rate period. Because BPA must account separately for FCRTS cost, two scaling factors are developed: one for FCRTS costs and one for all other (referred to as "generation") costs. These scaling factors are applied to the transmission and generation components of the scaleable rates developed for the 1987 test year.

c. *Adjustment Clauses.* BPA has studied different forms of automatic adjustment clauses as a means of alleviating its cash flow problems and recovering sufficient revenue to cover uncontrollable expenses. In the rate proposal, BPA is including an Exchange Adjustment Clause and a Supply System Adjustment Clause in the applicable rates.

An Exchange Adjustment Clause (EAC) is included in the Priority Firm, Industrial Firm, Firm Capacity, and New Resource Firm rate schedules. Exchange resources are assigned to loads served under these rates. The adjustment is in form of a rebate or surcharge if the actual average cost of selected exchange resources during the period July 1, 1985, through September 30, 1987, differs from that forecast. The EAC is based on the average cost of exchange resources acquired by BPA from the region's publicly-owned and investor-owned utilities whose individual average system costs are greater than the Priority Firm Power rate. The EAC will be implemented on two dates during the 27-month rate period: October 1, 1986, and October 1, 1987. Each of these adjustments shall be subject to a final recalculation approximately 1 year later to reflect modifications in the data used in the adjustment formula.

A Supply System Adjustment Clause has been included in the Priority Firm Power and Firm Capacity rate schedules, which are based in part on the costs of Federal base system resources. Also subject to the Supply System Adjustment Clause is the Industrial Power rate schedule, because of its relationship to the Priority Firm Power rate schedule, as defined by section 7(c)(2) of the Northwest Power Act. Any adjustment will be made to the Priority Firm Power and Industrial Firm Power energy charges and the Firm Capacity demand charges effective October 1, 1986, based on the sum of:

(1) The difference between the actual operating year (OY) 1986 Supply System net funding requirement for WNP-1, -2, and 70 percent of -3 and the costs in the revenue requirement for FY 1986; and

(2) The difference between the OY 1987 Supply System Annual Budget for WNP-1, -2, and 70 percent of -3 and the costs in the revenue requirement for FY 1987.

For each customer, the adjustment will be the product of the percentage of Supply System costs allocable to that customer class and the changes in Supply System costs for FY 1986 and FY 1987, divided by the class's energy or capacity billing determinants for FY 1987. No adjustment will be calculated if the change in Supply System costs for FY 1986 and FY 1987 is less than or equal to 1 percent.

d. *Revenue Deficiencies From Surplus Sales.* It was assumed for purposes of the rate filing that 850 average megawatts of Surplus Firm Power will be sold at the SP-85 contract rate, of a total surplus of 1152 average megawatts. The remaining 302 average megawatts are assumed to be sold under the NF-85 rate, which is less than the fully allocated cost of the surplus firm power. BPA differentiates between revenue from nonfirm energy sales resulting from the presence of surplus firm power resources that cannot be sold at their fully allocated costs and revenue from nonfirm energy sales resulting from better-than-critical water conditions.

To calculate the revenue deficiency, BPA assumed that the power that cannot be sold at the fully allocated cost of surplus firm power resources is sold at the Nonfirm Energy rates. This sale results in a revenue deficiency that is allocated to firm classes of service.

e. *Excess Revenue Determination and Revenue Uncertainty.* BPA's projected revenues are subject to significant variations due to both individual customer load variations and variations in hydrological conditions. To measure these variations, BPA performed a Revenue Uncertainty Analysis for this filing. The Analysis indicated that the probability of underrecovery is greater than that of overrecovery. To reflect this revenue uncertainty, the excess revenues from nonfirm energy were determined based on the assumption of 1939 water conditions instead of the average of the 40 water years 1929 to 1978, as has been assumed in previous years.

f. *Revenue Stability.* BPA has in the past experienced a significant revenue volatility from the DSIs and computed requirements purchasers. In order to enhance revenue stability and promote equity of cost recovery, BPA continues to reflect in the IP-85 customer charge and in the billing determinants for computed requirements purchasers (in both the PF-85 and NR-85 rate schedules) the costs that BPA incurs in being ready to serve a specified load.

These rate components are designed to share the risks of load variations between BPA and the above customer groups in a manner that is equitable in relation to the risk assumed for other customers. The IP-85 customer charge billing factor for large direct-service industrial plants has been changed from the forecasted operating demand to plant capacity. The Priority Firm Power rate schedule, PF-85, and the New Resource Firm Power rate schedule, NR-85, contain the billing factors for computed requirements customers that reflect BPA's readiness to serve. The effect of the billing factor is to compensate BPA for costs incurred in being ready to meet loads under critical water planning. The implementation of the billing factor ameliorates the problem of revenue underrecovery due to displacement and resolves the inequity between computed requirements customers and those customers with fewer options under the power sales contract.

For customers designed by BPA to purchase energy on a computed requirements basis, the energy billing factor is a weighted average of the customer's monthly Computed Energy Maximum and its measured energy. The weighting factor is calculated on a seasonal basis and is based on changes in nonfirm energy revenues, with and without displaced purchases, compared to the projected amount of displaced BPA Priority Firm Power. The monthly Computed Energy Maximum is the amount of energy equal to the product of the number of hours in the month and the purchaser's Computed Average Energy Requirement, i.e., the amount by which the purchaser's actual firm energy load for the month exceeds its assured energy capability for the month.

Issued in Portland, Oregon, August 28, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84-23507 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Proposed Transmission Rate Adjustment, Public Hearings, and Opportunities For Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Proposed Transmission Rate Adjustment, Notice of Public Hearings, and Opportunities for Review and Comment. *BPA File No:* TR-85.

SUMMARY: On July 25, 1984, BPA published in the **Federal Register** (49 FR 30009) a "Notice of Intent to Revise Transmission Rates" because revenue from the current rates is insufficient to recover increased costs of the Federal Columbia River Transmission System (FCRTS). BPA's proposed transmission rates are expected to produce an overall revenue increase of 1.0 percent. BPA anticipates filing the final transmission rate proposal with the Federal Energy Regulatory Commission (FERC) on or about May 1, 1985. It is anticipated that BPA's new transmission rates will become effective on an interim basis on July 1, 1985.

The current 1983 transmission rates were approved by FERC on an interim basis, effective February 1, 1984, through such additional time as is required by FERC to review the information filed by BPA on its separate accounting of costs, and for FERC to issue a further order. BPA's separate accounting of the transmission component of the FCRTS was filed in a Compliance Report with FERC on May 29, 1984. The Compliance Report is required by FERC's order approving the 1983 transmission rates on an interim basis. The revenues now being collected under these rates are subject to refund, pending a final ruling by FERC.

The process of developing transmission rates provides

opportunities for interested persons to make recommendations and to participate in public hearings. Any written comments or recommendations received until the end of the hearings will become part of the Official Record. The final rate proposal will be developed after consideration of the Official Record, and it therefore may differ substantially from the rates proposed in this notice.

Responsible Officials: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The notification must be received by September 21, 1984, and should be addressed as follows: Hon. Seymour Wenner, Hearing Officer, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Customers of BPA who provide notice are parties of right. Others may become parties by demonstrating in their notice and at the Prehearing Conference that they would represent a significant and otherwise unrepresented interest. The notice should contain: (1) The name of the person or entity claiming status as a party; (2) the person who will be representing the party; (3) whether the person or entity claiming status as a party has a contractual relationship with BPA that could be affected by the proposed rates; and (4) if no contractual interest exists, the interest the person believes would be served by their being a party. All timely applications will be ruled on by the Hearing Officer.

A Prehearing Conference, required by the rate procedures, will be held before the hearing Officer at 9 a.m. on September 24, 1984, in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m.

It is expected during the Prehearing Conference that hearing dates will be set for the presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearings will be mailed to all parties of record. All formal hearing sessions will be held in the Cafeteria, Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon.

Two series of public field hearings regarding BPA's proposal will be held at various regional locations. At the first series, BPA will provide information concerning the ratemaking process and the issues in this rate case, and a synopsis of the rate proposal. Both the public's comments contained in a verbatim transcript of the hearings and all written comments received will be made a part of the official record. The public's oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings. Registration for the hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

October 16—Holiday Inn at the Coliseum, XJS Room, 10 N. Weidler, Portland, Oregon
October 17—Seattle Center, Shaw Room, North Court, Seattle, Washington
October 18—City Council Chambers, 777 Pearl Street, Eugene, Oregon
October 22—Burley Inn, 800 N. Overland Avenue, Burley, Idaho
October 23—Red Lion Village Inn, 100 Madison Street, Missoula, Montana
October 24—Cavanaugh's River Inn, Clearwater Room, N. 700 Division Street, Spokane, Washington
October 25—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington
October 29—Virginian Motel, Buffalo Room, 750 W. Broadway, Jackson, Wyoming

A second series of field hearings will be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment based on their review of the evidence presented in the formal hearings. BPA will consider the public's comments in the evaluation of the Record. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Written comments submitted by the close of the hearing will be made part of the record.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, Public Involvement Office, at the address listed above, 503–230–3478. Oregon callers outside of Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.
Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.
Mr. Earl C. Schoer, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.
Mr. Geoerge E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.
Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.
Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.
Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.
Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Applicable Legislation

BPA operates and maintains the FCRTS in order to (a) integrate and transmit electric power from existing or additional Federal or non-Federal generating units; (b) provide service to BPA customers; (c0 provide interregional transmission facilities; and (d) maintain the electrical stability and electrical reliability of the Federal system. BPA is required by law to establish rates having regard to the recovery, in accordance with sound business principles, of the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment (with interest) in the transmission and generation facilities of the Federal system over a reasonable number of years and the Administrator's other costs and expenses. Such rates are to be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act, sec. 5 of the Flood Control Act of 1944, and the provisions of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). Pursuant to sec. 7(a)(2) of the Northwest Power Act, authority to confirm and approve BPA's transmission rates is vested in the Federal Energy Regulatory Commission (FERC).

In 1974, the Federal Columbia River Transmission System Act (Transmission Act) was passed. This legislation placed BPA on a "self-financing" basis by authorizing the use of sale receipts and the proceeds of revenue bonds to finance the operation, maintenance, and construction of transmission facilities. Section 6 of the Transmission Act requires the Administrator to make available to all utilities on a fair and nondiscriminatory basis any capacity of the Federal transmission system which he determines to be in excess of capacity required to meet Federal requirements.

Section 9 of the Transmission Act requires that schedules of rates and charges for transmission of non-Federal power shall be established with a view to: (a) Encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles; (b) recovering the cost (based upon the application of rate schedules to the capacity of project electric facilities) of producing and transmitting electric power, including the amortization of the capital investment allocated to power over a reasonable period of years; and (c) producing additional revenue to cover the cost of bonds sold to the Treasury. Section 10 of the Northwest Power Act allows for uniform rates and further requires that "recovery of the cost of the Federal Transmission System shall be equitably allocated between Federal and non-Federal power utilizing such system." Section 7(a)(2)(c) of the Northwest Power Act also requires that BPA rates "equitably allocate the costs of the Federal Transmission System between Federal and non-Federal power utilizing such system."

With regard to transmission lines connecting the Pacific Northwest with Canada or any area outside the Northwest, the Regional Preference Act (Pub. L. 88-552) provides that capacity not required for the transmission of Federal or other specified energy shall be made available for transmission of other energy between such areas. Section 9 of the Northwest Power Act provides further criteria for non-Federal wheeling. Transmission rates for such wheeling transactions shall be equitable.

B. Contracts

Many transmission agreements were negotiated prior to the 1974 Transmission Act and reflect conditions and policies prevalent at the time of negotiation. Provisions differ in agreements include type of facilities available, type of service, frequency of rate adjustments, determination of losses, and calculation of billing determinants. Some agreements, for example, specify that transmission rates can be changed annually while other agreements limit rate adjustments to once every 3 years.

Many agreements prescribe the method and factors to be used in determining the cost of providing service and in the designing of rates. Many are "formula power" agreements and the factors specified in these agreements are the forerunners of the current FPT rate schedules. Applicable legislation requires transmission system costs to be equitably allocated between Federal and non-Federal power utilizing the system. BPA's Cost of Service Analysis (COSA) determines the equitable allocation of costs. Contractual provisions that stipulate methods to be used in determining cost of service in formula power agreements do not address the equitable allocation methodology. In cases where BPA is required by contractual provisions to use a specific rate design method, such methods are used in this rate proposal. This approach is similar to the 1983 transmission rate filing wherein formula power transmission tariffs were scaled back to match the COSA revenue requirements (COSA level rates).

Some transmission agreements do not permit changes in rate methodology. In some cases, the rates proposed in this notice will not be applicable to such agreements. BPA intends to apply its historical rate schedules to these agreements, as required.

C. Transmission Policy

Concurrent with the 1981 transmission rate filing, BPA announced its intent to revise its intraregional transmission policy. That effort continued through the 1982 rate filing. After extensive public comment was received and considered by BPA, an initial proposed transmission policy was published in the **Federal Register** on June 1, 1983 (48 FR 24421). That policy has not yet been made final. However, extensive comment has been received and generic agreements have been drafted and reviewed. The transmission rates proposed herein are developed taking into account the comments received on the proposed policy and generic agreement drafts.

The proposed policy is consistent with several key principles relevant to transmission rate development, including the following:

1. BPA's goal is that the region's transmission system be planned and constructed to achieve as nearly as possible the maximum efficiency, reliability, economy and other benefits, as if the region's system were owned by a single utility. The short distance demand charge, available with the IR-83 rate schedule, and continued in the IR-85 rate schedule for certain connection points which use specific FCRTS facilities for a distance of less than 75 miles, is intended to serve the "one-utility standard."

2. The proposed policy considers equity among customers within a customer class by recognizing that revenue responsibility should correspond to the relative degree of use made of the FCRTS. This is reflected in the choice of demand and energy as IR-85 billing factors. Use of these billing factors tends to shift revenue responsibility toward the wheeling customers that make the heaviest sustained use of FCRTS facilities.

D. Intertie Access Policy

BPA has developed a proposed Near Term Intertie Access Policy which will govern allocation and use of the Southern Intertie. The intended effective period for the policy is approximately 2 years, with initial adoption for approximately 6 months of that 2-year period. During the effective period, development of a long-term policy will proceed.

The near-term policy proposes to provide assured access to the Intertie for certain firm power sales contracts between Northwest sellers and Southwest purchasers. It also proposes to provide nonfirm access to the remaining Southern Intertie capacity under three different conditions.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act provides procedures for encouraging the participation of the public in the development of BPA's rates. In order to give the public notice of how it could participate in BPA's rate adjustments and to elaborate on the procedures set out in section 7(i), BPA published "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" by **Federal Register** notice (46 FR 6240, February 10, 1982). These procedures were used in the 1983 wholesale power and transmission rate filings. On March 23, 1984, BPA published its Interim Amendment of procedures Governing BPA Rate Adjustments (49 FR 1090) and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the *ex parte* communication restrictions found in section 557(d) of the Administrative Procedure Act. BPA is in the process of evaluating comments on the Interim Amendment and will finalize the Interim Amendment as soon as possible. BPA's procedures, as amended, will be applicable to the section 7(i) hearings on BPA's 1985 rate case. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

The Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the record developed during the rate process. BPA procedures expand these requirements. They provide for publication of a notice of intent to revise rates followed by a Notice of the proposed rates, a prehearing conference, hearing, receipt of written comments, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to the FERC.

The process begins with publication of the notice of intent to revise rates. This is followed by publication of this notice of the proposed rates, which includes the proposed rates, a discussion of the research, studies, analyses, and other available information in support of the proposed rates, the deadline for claiming status as a "party," and the beginning date for the hearing.

The procedures further provide for a Prehearing Conference if scheduled by the Hearing Officer. A Prehearing Conference has been scheduled before the Hearing Officer at 9 a.m. on September 24, 1984, in the cafeteria at Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m., and the conference will commence at 9 a.m. with the Honorable Seymour Wenner presiding.

Issues for discussion at the prehearing conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at the prehearing conference.

BPA will also convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal and to receive comments, views, and opinions from the general public. The public's oral comments will be subject to cross-examination by the parties and BPA. Presentation of testimony and evidence from formal parties will not be allowed at these sessions. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, and 1983 rate proceedings. BPA staff will present a synopsis of the proposed rates followed by comments from the public. The public will have an opportunity to present their comments, views, and opinions about the proposed rates.

BPA finds it necessary to distinguish between "participants in" and "parties to" the hearings. During the field hearings, PBA will receive comments, views, opinions, and information from "participants," category of interest in the procedures as interested persons who may express their views at a hearing, but who may not cross-examine other witnesses, participate in the prehearing conference, or serve or be served with documents. Participants, however, will be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon the "parties."

The second category of interest is that of a "party." A party may be either a party of right because of its legal and/or contractual relationship with BPA, and hence, its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in prehearing conferences, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interests and positions, the Hearing Officer may, to expedite the hearing, order appropriate limitations on the number of attorneys (or parties appearing *pro se*) who will be permitted to cross-examine witnesses as well as file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. BPA expects that the clarification sessions will be followed by the presentation of the parties' direct cases, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the law through briefs. The Evaluation of the Record will provide a written evaluation of the Record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the Record. Written comments may be included in the Record if they are submitted before the close of the hearings. Written views, supporting information, question, and arguments should be submitted to BPA's Public Involvement Manager.

The Record will include, among other things, the transcripts of the hearings, wirtten material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the Record by the Hearing Officer. The Hearing Officer then will review the Record, will supplement it if necessary, and will certify the Record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire Record, including the Record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the Record with FERC for confirmation and approval.

III. Rate Schedules

Schedule FPT-85.1. Formula Power Transmission

Section I. Availability

This schedule supersedes schedule FPT-83.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of electric power and energy using the FCRTS. This schedule is for full-year and partial-year service and for either continuous service or intermittent service so long as firm availability of service is required.

Section II. Rate

A. Full-Year Service

The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. *Main Grid Charge.* The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor—The amount computed by multiplying the Main Grid Distance by $0.0275 per mile;

b. Main Grid Interconnection Terminal Factor: $.32;

c. Main Grid Terminal Factor: $.28;

d. Main Grid Miscellaneous Facilities Factor: $1.24.

2. *Secondary System Charge.* The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor—The amount determined by multiplying the Secondary System Distance by $.1923 per mile;

b. Secondary Transformation Factor: $2.15;

c. Secondary System Intermediate Terminal Factor: $.91;

d. Secondary System Interconnection Terminal Factor: $.52.

3. *Intertie Charge.* For use of Pacific Northwest—Pacific Southwest Intertie facilities: $4.87.

B. Partial-Year Service

The monthly charge per kilowatt of billing demand shall be as specified in section II.A for all months of the year except:

1. For unplanned firm service, such as emergency station service when a generating unit is down, the yearly charge shall be equal to one monthly charge as defined in section II.A so long as the use during each year does not exceed 730 hours. If the use during each year exceeds 730 hours, the yearly charge shall be as specified in section II.A.

2. For agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the charge shall be:

a. during months for which service is specified, the monthly charge defined in section II.A, and

b. during other months, the monthly charge defined in section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. the Transmission Demand;

B. the highest hourly Scheduled Demand for the month; or

C. the Ratchet Demand.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule IR-85. Integration of Resources

Section I. Availability

This schedule supersedes IR-85 and is available for firm transmission service for electric power and energy using the FCRTS, exclusive of the Eastern, Northern, and Southern Intertie segments.

Section II. Rate

The monthly charge shall be the sum of A and B where:

A. The Demand Charge is

1. $0.3003 per kilowatt of billing demand; or

2. for Points of Integration (POI) specified in the Agreement as being short distance POI, for which FCRTS facilities are used for a distance of less than 75 circuit miles, the demand charge shall be:

[.2+.8/75 (transmission distance) ($0.3003 per kW of billing demand)],

Where: The billing demand for a short distance POI is the demand level specified in the Agreement for such POI, and the transmission distance is the circuit miles between the POI for a generating resource of the customer and a designated Point of Delivery (POD) serving load of the customer.

B. The Energy Charge is

1.09 mills/kWh of billing energy.

Section III. Billing Factors

To the extent that the Agreement provides an option for the customer to be billed for transmission in excess of the Total Transmission Demand, as defined in the Agreement, at the nonfirm transmission rate (currently ET-85), such service *shall not* contribute to either the Billing Demand or the Billing Energy for the IR rate, *provided that* the customer exercises the option in accordance with the prescribed scheduling provisions in the Agreement.

All other nonfirm service which is not scheduled in advance as nonfirm service and which is not otherwise covered by a signed agreement *shall* contribute to both the Billing Demand and the Billing Energy for the IR rate.

A. Billing Demand

The billing demand shall be the largest of:

1. the Transmission Demand, except under General Transmission Agreements where a Total Transmission Demand is defined;

2. the highest hourly Scheduled Demand for the month; or

3. the Ratched Demand.

B. Billing Energy

The billing energy shall be the monthly sum of scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule IS–85. Southern Intertie Transmission

Section I. Availability

This schedule supersedes IS–83 and is available for all transmission on the Southern Intertie.

Section II. Rate

The charge for transmission of non-Federal power on the Southern Intertie shall be 2.34 mills/kWh.

Section III. Billing Factors

A. Billing Energy

1. The billing energy shall be the monthly sum of scheduled kilowatthours; except
2. For deliveries qualifying for assured access as defined by the Intertie Access Policy, the billing energy shall be the monthly sum of kiolowatthours allocated for Assured Delivery.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended, and as interpreted by BPA in its policies: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to aggreements.

Schedule IN–85. Northern Intertie Transmission

Section I. Availability

This schedule supersedes IN–83 and is available for all transmission on the Northern Intertie.

Section II. Rate

The charge for transmission of non-Federal power on the Northern Intertie shall be 1.59 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule IE–85. Eastern Intertie Transmission

Section I. Availability

This schedule supersedes IE–83 and is available for all nonfirm transmission on the Eastern Intertie.

Section II. Rate

The charge for transmission of nonfirm energy on the Eastern Intertie shall be 1.88 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Tranmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the tranmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

Schedule ET–85. Energy Transmission

Section I. Availability

This schedule supersedes Schedule ET–83, unless otherwise specified in the Agreement, with respect to delivery using FCRTS facilities other than the Southern Intertie, Eastern Intertie, or the Northern Intertie, and is available for nonfirm transmission between points within the Pacific Northwest upon BPA's determination of available capacity. BPA may interrupt service which is provided under this rate schedule.

Section II. Rate

The charge for such nonfirm transmission of non-Federal electric energy shall be 2.12 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or as in any of the above acts or provisions which are attached to agreements.

IV. General Transmission Rate Schedule Provisions

Section I. Adoption of Revised Transmission Rate Schedule Provisions General Transmission Rate Schedule Provisions

A. Approval of Rates. These rate schedules and General Transmission Rate Schedule Provisions (GTRSP) shall become effective following confirmation and approval by the Federal Energy Regulatory Commission. If the rates and GTRSP are first approved on an interim basis, they shall not be considered final until the Commission has issued an order confirming and approving them on a final basis.

B. General Provisions. BPA's Transmission Rate Schedules and associated GTRSP, effective July 1, 1985, supersede in their entirety through adjustment or extension BPA's Transmission Rate Schedules and GTRSP effective February 1, 1984; however, they do not supercede prior rate schedules required by agreement to remain in force.

C. Interpretation. If a provision in the executed Agreement is in conflict with a provision contained herein, the former shall prevail.

Section II. Availability of Transmission Service

Any capacity in the Federal Columbia River Transmission System (FCRTS) which BPA determines to be in excess of required capacity to transmit Federal obligations will be made available to all utilities by application of schedules identified in the 1985 Transmission Rate Schedules, or as subsequently revised.

Section III. Billing Factor Definitions and Billing Adjustments

A. Billing Factors

1. Scheduled Demand. The largest of hourly amounts wheeled which are scheduled by the customer during the time period specified in the rate schedules.
2. Metered Demand. The Metered Demand in kilowatts shall be largest of the 60-minute clock-hour integrated demands measured by meters installed at each POD during each time period specified in the applicable rate schedule. Such measurements shall be made as specified in the Agreement. BPA, in determining the Metered Demand, will exclude any abnormal readings due to or resulting from (a) emergencies or breakdowns on, or maintenance of, the FCRTS; or (b) emergencies on the customer's facilities, provided that such facilities have been adequately maintained and prudently operated as determined by BPA. If more than one class of power is delivered to any POD, the portion of the metered quantities assigned to any class of power shall be as agreed to by the parties. The amount so assigned shall constitute the Metered Demand for such class of power.
3. Transmission Demand. The demand, as defined in the Agreement.
4. Total Transmission Demand. The demand, as defined in the General Transmission Agreement.
5. Ratchet Demand. The maximum demand established during the previous 11 billing months.

B. Billing Adjustments

Average Power Factor. The adjustment for average power factor, when specified in a transmission rate schedule or in the Agreement, shall be made in accordance with the average power factor section of the General Wheeling Provisions.

To maintain acceptable operating conditions on the Federal system, BPA mayt restrict deliveries of power at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 85 percent.

Section IV. Other Definitions

Definitions of the terms below shall be applied to these provisions and the Transmission Rate Schedules, unless otherwise defined in the Agreement.

A. Agreement

An agreement between BPA and a customer to which these rate schedules and provisions may be applied.

B. Eastern Intertie

The segment of the FCRTS for which the transmission facilities consist of the Townsend-Garrison double-circuit 500-kV transmission line segment including terminals and, prior to extention of the 500-kV portion of the Federal Transmission System to Garrison, the 500/230 kV transformer and related terminals at Garrison.

C. Electric Power

Electric peaking capacity (kW) and/or electric energy (kWh).

D. Firm Transmission Service

Transmission service which BPA provides for any non-BPA power, as specified in the Agreement, except for transmission service which is scheduled as nonfirm.

E. Integrated Network

The segment of the FCRTS for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest, excluding facilities not segmented to the network in the Cost of Service Analysis used in BPA's rate development.

F. Main Grid

As used in the FPT rate schedules, that portion of the FCRTS with facilities rated 230-kV and higher, exclusive of those designated as Interties.

G. Main Grid Distance

As used in the FPT rate schedules, the distance in airline miles on the Main Grid between the POI and the POD, multiplied by 1.15.

H. Main Grid Interconnection Terminal

As used in the FPT rate schedules, Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

I. Main Grid Miscellaneous Facilities

As used in the FPT rate schedules, switching, transformation, and other facilities of the Main Grid not included in other components.

J. Main Grid Terminal

As used in the FPT rate schedules, the Main Grid terminal facilities located at the sending and/or receiving end of a line exclusive of the Interconnection terminals.

K. Nonfirm Transmission Service

Interruptable transmission service which BPA will provide for non-BPA power, if and when BPA determines that capacity is available.

L. Northern Intertie

The segment of the FCRTS for which the transmission facilities consist of two 500-kV lines between Custer substation and the United States-Canadian border, one 500-kV line between Custer and Monroe substations, and two 230-kV lines from Boundary substation to the United States-Canadian border, and the Associated substation facilities.

M. Point of Integration (POI)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

N. Point of Delivery (POD)

Connection points between the FCRTS and non-BPA facilities where non-Federal power is delivered to a customer by BPA.

O. Pacific Northwest—Pacific Southwest Intertie

The segment of the FCRTS for which the major transmission facilities consist of two 500-kV AC lines from John Day Substation to the Oregon-California border, a portion of the 500-kV AC line from Buckley Substation to Summer Lake Substation, and one 800-kV DC line between Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

P. Secondary System

As used in the FPT rate schedules, that portion of the FCRTS facilities with operating voltage of 115-kV of 69-kV, exclusive of Main Grid facilities, Intertie facilities, and all FCRTS facilities which are recovered on a use-of-facility basis.

Q. Secondary System Distance

As used in the FPT rate schedules, the number of cricuit miles of Secondary System transmission lines between the secondary POI or the Main Grid and the POD or the lower voltage FCRTS facilities which may be used on a use-or-facility basis.

R. Secondary System Interconnection Terminal

As used in the FPT rate schedules, the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

S. Secondary System Intermediate Terminal

As used in the FPT rate schedules, the First and final terminal facilities in the Secondary System transmission path exclusive of the Secondary System Interconnection terminals.

T. Secondary Transformation

As used in the FPT rate schedules, transformation from Main Grid to Secondary System facilities.

Section V. Billing Information

A. Computation of Bills

The Transmission Billing Determinant is the electric power quantified by the method specified in the Transmission Agreement or Transmission Rate Schedule. Schedules power or metered power will be used.

The transmission customer shall furnish BPA necessary information for making any computation required for the purposes of determining the proper charges for the use of the FCRTS and shall cooperate with BPA in exchanging such additional information as may be reasonably useful for respective operations.

Billings under each rate schedule application will be rounded to whole dollar amounts by eliminating any amount less than 50 cents and increasing any amount from 50 cents through 99 cents to the next higher dollar.

B. Payment of Bills

Bills for transmission service will normally be computed and rendered monthly, generally on a calendar month basis. Failure to receive a bill shall not release the purchaser from liability for payment. Bills for amounts of $50,000 or more must be paid by direct wire transfer. Bills for amounts under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or other location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

C. Estimated Bills

At its option, BPA may elect to render an estimated bill for that month to be followed at a subsequent billing date by a final bill. Such estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

D. Late Payment

Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge which shall be the greater of one-fourth (0.25) percent of the unpaid amount or $50.00. In addition, an interest charge of one-twentieth (0.05) percent shall be applied each day to the sum of the unpaid amount and penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. In order to avoid assessment of late payment charges for metered mail received subsequent to the due date, the payment must bear a postal department cancellation which demonstrates that the payment was mailed on or before the due date.

Whenever a bill or a portion thereof remains unpaid subsequent to the Due Date and after giving 30 days advance notice in writing, BPA may canel the contract for service to the purchaser. However, such cancellation shall not affect the purchaser's liability for any charges accrued prior thereto under such contract.

E. Disputed Billings

In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the purchaser is entitled to the disputed amount, BPA shall refund the disputed amount with interest.

V. Major Concepts and Issues

BPA has prepared several studies in the process of developing the transmission rates presented in this Notice. They are the Load and Resource Study, Marginal Cost Analysis, Revenue Requirements Study, Cost of Service Analysis, and the Transmission Rate Design Study. The three latter studies have the most direct bearing on the rates filed in this Notice and are described in some detail below. Also described are the scaling factor and BPA Separate Accounting Compliance Report.

A. Revenue Requirement Study

Adequacy of revenue from existing power and transmission rates to meet the repayment criteria is determined by preparing a power system Revenue Requirement Study. This study compares projected revenue with projected costs over the entire repayment period to determine whether there will be enough revenue to recover all costs. The generation system and the transmission system are treated separately in this filing.

In order to meet its fiscal reponsibility, which includes making planned amortization payments, BPA's Revenue Requirement Study reflects actual historic cash amortization, and all amortization scheduled due by September 30, 1987. In addition, it reflects all of BPA's obligations under the Northwest Power Act, including exchange costs. To assure that BPA will meet its repayment obligations, a cash lag has continued to be added to the revenue requirement.

B. Cost of Service Analysis

The Cost of Service Analysis (COSA) apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. The COSA is the principal mechanism used to equitably allocate FCRTS costs between Federal and non-Federal power utilizing the FCRTS.

The following steps are used to determine the allocated cost to serve each customer class.

1. Functionalization

Functionalization is the identification of revenue requirements with functions performed by the power system. These functions are defined as generation and transmission. All costs are assigned to one of these functions.

In prior rate filings, the functionalization step was performed in the Cost of Service Analysis. In this rate filing, costs are functionalized prior to the preparation of the repayment studies. The separate repayment studies determine the net repayment requirement (NRR) of generation and transmission. The results of the functionalized repayment studies are used in the COSA.

2. Classification

BPA classifies costs to energy and capacity components of electric power. Transmission costs are classified entirely to capacity.

3. Segmentation

Although BPA operates a regionwide transmission system, some segments of the system are not needed to provide some services. In order to more closely identify the types of service provided by the transmission system with various customer classes, the system is divided into nine segments, each providing a distinct type of service. The nine transmission system segments are: integrated network, Pacific Northwest-Southwest Intertie, Canadian Intertie, Montana Intertie, generation integration, fringe area, and delivery segments for public agency, direct service industrial and investor owned utility customers.

4. Allocation

The final major step in the COSA is to allocate the functionalized and segmented costs to service classes.

Costs are allocated to service classes on the basis of relative use of services. The measure for use of peaking capacity is the monthly coincidental peak megawatt. Because the power system is constructed to meet coincidental peak demand, the coincidental peak (relative to the system peak) is used as a measure for each customer's contribution to BPA's need to acquire peaking resources.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peakloads. The average of all 12 monthly coincidental peaks is used to allocate transmission system costs. Costs are allocated to customer classes on the basis of deemed use of the transmission system for power customers, and on the basis of actual use of the transmission system for wheeling (non-Federal transmission) customers. For wheeling service, costs are allocated from the Integrated Network, Southern Intertie, and Northern Intertie segments. Costs of the Eastern Intertie are paid by users of that segment through contractual agreements.

C. Scaling Factor

This rate filing develops rates for a 27-month period ending on September 30, 1987. The FY 1987 test year used in the rate documents develops costs for the final 12 months of the period. To adjust rates to reflect differences between the test year and the rate period revenue requirement, a scaling factor for the FCRTS revenues is developed. The factor is calculated as the ratio of the combined FY 1986 and FY 1987 COSA revenue requirement from adjustable rates to the revenues from the test year rates over the same period. Revenues from the FCRTS components of all the adjustable power and wheeling rates are scaled to recover the combined 2-year requirements from adjustable rates. Adjustable wheeling rates are FPT/IR, ET-85, IS-85, IN-85, and IE-85. For the wheeling customer class, the calculated factor (.99) is multiplied by each of the FY 1987 adjustable rates to yield rates applicable to the entire rate period.

D. Separate Accounting Compliance Report

As required by the FERC order of January 27, 1984, which approved BPA's proposed 1983 transmission rates on an interim basis, BPA submitted a Compliane Report to FERC demonstrating the development of a separate accounting of the transmission component of the FCRTS.

The Compliance Report explains the following:

1. BPA's development of, and plan to maintain, separate books of account for the FCRTS,

2. BPA's accounting for surpluses and deficits for Federal and non-Federal usage of the FCRTS, and

3. BPA's assignment of surpluses and deficits to Federal and non-Federal usage of the FCRTS.

The report addresses all concerns the FERC raised in its orders on separate accounting. Those concerns are also reflected by BPA's preparation of separate repayment studies for the FCRTS and the generation system in this rate filing.

E. Transmission Rate Design Study

1. Transmission System Revenue Requirement Adjustment

Prior to the design of transmission rates, the COSA-derived network wheeling (IR and FPT) revenue requirement must be adjusted to account for revenue in excess of allocated costs. Revenue received from the ET-85 and the Nonfirm Energy rate (NF-85) are credited against the allocated costs of service derived in the COSA. The credit from the NF-85 rate is functionalized between generation and transmission by considering the transmission portion of the rate as the average cost per kilowatthour of transmitting energy for wholesale power services. The transmission credit is obtained by multiplying this average cost by the estimated nonfirm energy sales. It is then divided among those segments of the transmission system which carry nonfirm energy sales, except the three interties, in proportion to their allocated costs. The anticipated revenue associated with the ET-85 rates are credited against Network costs.

2. Proposed Wheeling Rate Schedules

a. Formula Power Transmission (FPT). The FPT-85 rate schedule is available for the firm wheeling of power. The form of this rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula which has been prescribed historically by contract provisions.

In the design of the FPT-85 rate, the first step is to quantify cost for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a power flow of the projected peakload period for the test year. The power flow study assumes certain resource and load conditions that BPA believes are reasonable for normal hydro conditions. Unit costs for the FPT rate components are derived by dividing facility cost by power flow facility use. The FPT tariffs are then scaled back to match the COSA revenue requirements (COSA level rates).

b. Integration of Resources (IR). The IR-85 rate involves a more flexible and comprehensive transmission service designed to reflect BPA's transmission policy. The IR service does not recognize specific contract paths, but rather provides Network-wide access to the FCRTS.

The IR-85 rate is calculated by dividing the adjusted revenue requirement for the class into two equal parts to reflect a 50-50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs and total energy usage for energy) yields the rates.

While the IR rate schedule is meant to effectuate BPA's policy for future firm wheeling service, FPT contracts are still abundant and many remain in effect for some time. Utilities, therefore, may choose to remain on the FPT service or enter into long-term contracts which incorporate the concepts included in the IR-85 schedule. It is anticipated that this process could result in a revenue deficiency, since utilities may choose the rate schedule which yields the lower total charge for transmission service. BPA has estimated the amount of this revenue deficiency and adjusted the firm wheeling revenue requirement to recover those costs.

Another potential contributor to a revenue deficiency is the short distance discount, which is described as a part of the IR-85 rate schedule. Utilization of this discount would cause an underrecovery of costs which must be adjusted for in the firm wheeling revenue requirement.

c. Incidental Energy Transmission (ET) and Intertie (IN, IE, IS) Transmission. For this rate filing, rate schedules are again offered on the Northern, Eastern, and Southern Interties which apply to all wheeled power on these segments, whatever the characteristics of the power. The ET rate will be limited to intraregional FCRTS facilities which excludes the interties.

Since the schedule for Energy Transmission (ET–85) class of service is not allocated costs in the COSA, it is necessary to determine the level of the rate by other means. The ET–85 rate is designed to approximate the rate level of firm wheeling charges on the network by dividing the COSA revenue requirement for the firm wheeling class by expected energy usage of firm wheeling on the system. This rate level is approximately equal to twice the energy rate under IR–85.

In the 1983 rate filing, the IS rate was developed using an indirect calculation because costs were not allocated to nonfirm wheeling in the COSA. Revenues from this rate were distributed among other classes of customers that use the Southern Intertie to reduce their revenue requirement.

Recognizing that nonfirm wheeling has become a significant portion of Southern Intertie use, BPA has allocated Southern Intertie costs to this class of service in the current COSA. The IS–85 rate development is now simplified. Allocated costs are divided by the projected nonfirm wheeling energy to determine a rate in mills per kilowatthour. Two adjustments are made. Transactions under the Exportable agreement are contractually limited to the ET–2 rate during the test period, and PP&L receives a 0.5 mill credit for a portion of its wheeling. Several other changes have been made in this proposal which increase the IS–85 rate. Segmentation of the Buckley-Summer Lake line to the Southern Intertie was increased from 30 percent to 57 percent. Additionally, the full cost of the DC line uprating is included in the COSA for the first time. Wheeling projections on the Southern Intertie are reduced due to the assumption of less than average water conditions. One other major change reduces the rate, allocation of cost to nonfirm wheeling in conjunction with the new rate calculation results in a significantly lower rate than if the 1983 methodology were retained. All of the above factors contribute to increasing the IS–85 rate 51 percent above the IS–83 rate. For transactions qualifying for assured access to the Intertie, as defined by the Intertie access Policy, BPA has proposed that the IS rate be utilized on a take-or-pay basis.

The Northern Intertie (IN–85) rate schedule is calculated by dividing segment costs by projected wheeling energy. The return of obligation energy for the account of California utilities is now treated as being subject to the rate.

The Eastern Intertie (IE–85) rate is developed by dividing total costs by estimated generation of Colstrip energy.

Other Issues. BPA is examining the environmental impacts of the proposed transmission rate increase. An appropriate environmental review under DOE's NEPA guidelines will be prepared and integrated into the development of transmission rates, and will be made available at least 30 days before the effective date of this year's final rate proposal.

Issued in Portland, Oregon, August 28, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84–23506 Filed 9–5–84; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–84–011; OFC Case No. 64010–9248–20–24]

Acceptance of Petition for Exemption and Availability of Certification by CoGen Lynchburg, Inc. for Its La Porte TX, Facility

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by CoGen Lynchburg, Inc. for its La Porte, Texas, Facility.

SUMMARY: On April 20, 1984, CoGen Lynchburg, Inc. (CGL) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for a new cogeneration facility to be located 15 miles East of Houston near the city of La Porte, Harris County, Texas. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed electric power and steam plant facility (hereafter referred to as La Porte) will consist of four 75MW combustion gas turbine generators, four unfired waste heat boilers, and one extraction-induction-condensing steam turbine generator. La Porte is designed to burn natural gas or oil. La Porte's electric capacity will be 425.0 mega-watts at a system heat rate of 7595 Btu per kWh (74° F) Approximately 374,000 pounds per hour of process steam from the waste heat boilers will be delivered to chemical plants in the Upjohn La Porte, Texas, Chemical Complex. And, approximately 410MW of electric power from the gas and steam generators will be delivered to the Houston Lighting & Power Company (HL&P); HL&P is interconnected with the Electric Reliability Council of Texas regional grid. Accordingly, La Porte will be selling more than 50 percent of the annual electric power generation of the turbine generators to HL&P making the cogeneration facility an electric powerplant in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2.

Within thirty days of the receipt of the petition, ERA found it to be incomplete due to minor deficiencies and so notified CGL. CGL was granted ninety days to satisfy the defects. On June 13, 1984, additional data and information addressing the deficiencies were received from CGL. ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent cogeneration exemption as adequate for filing. ERA retains the right to request additional relevant information from CGL at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below:

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, from 8:00

a.m. to 4:00 p.m. Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any such extension, together with a statement of reasons for such extension will be published in the **Federal Register**.

DATES: Written comments are due on or before October 22, 1984. A request for a public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-011 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Robert A. McCann, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-1649

Steven E. Ferguson, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW.,
Room 6D-033,
Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: CGL's proposed La Porte power complex will occupy approximately 15 acres and will consist of the following major equipment and systems: Two buildings to be used for administrative, maintenance, and system control purposes; one electrical substation, including power transformers; one boiler water, compressed air, lube oil system; one steam delivery and condensate return piping system; one cooling tower, one steam surface condenser; one condensing steam turbine generator; four combustion gas turbine generators; and four heat recovery steam generators. The CGL La Porte project construction is scheduled to begin in 1984, with the first gas turbine generator unit start-up slated in August 1985; start-up of additional units will follow at one month intervals. Start of the entire La Porte complex for commercial operation is scheduled for December 1985. Accordingly, CGL has petitioned ERA for a cogeneration exemption that would permit La Porte to operate with natural gas or oil as its primary energy source.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of §503.37(a)(1), CGL has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of La Porte, where the calculation of savings is in accordance with 20 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in La Porte, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of §503.37(c) [and in addition to the certifications discussed above], CGL has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.3.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that CGL is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on August 29, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-23620 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-013; OFP Case No. 55393-9247-01-12]

Order Granting to Owens-Illinois, Inc. an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to Owens-Illinois, Inc. an Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to Owens-Illinois, Inc. (Owens-Illinois) a permanent emergency purposes exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") for a new package emergency standby natural gas-fired boiler, a major fuel burning installation (MFBI), to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas. The exemption granted permits the use of natural gas as the primary energy source for the emergency standby unit.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on November 5, 1984.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Bldg., Room GA-093, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6002

Steve E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On June 1, 1984, Owens-Illinois filed a petition with ERA requesting a permanent emergency purpose exemption for a new boiler from the prohibitions of Title II of FUA.[1] The petition requests an exemption to permit the use of natural gas as the primary energy source in the proposed new package, emergency standby boiler to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas. The new emergency standby unit will operate during periods when any of the four boilers at the existing facility are shutdown or turned down in order to ensure continued facility production which would otherwise be reduced due to interruption of alternate fuel supplies, equipment failures, imminent equipment failures, temporary environmental restrictions, and other qualifying emergency conditions. The unit will generate 170,000 lbs/hr steam at 850 psig.

Basis for Exemption Order

The permanent exemption granted by ERA to the new boiler is based upon Owens-Illinois' certification, pursuant to section 212(e) of FUA and 10 CFR § 503.39(a), that:

1. It will operate and maintain the proposed unit for emergency purposes only; and
2. The use of mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR § 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.39(c) (and in addition to the certifications discussed above), Owens-Illinois has included as part of its petition:

1. Exhibits containing the basis for the certifications described above, and
2. Environmental certifications, as required under 10 CFR 503.13(b).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed unit in the **Federal Register** on June 21, 1984 (49 FR 25514), commencing a 45 day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on August 6, 1984. No comments were received and no hearing was requested.

NEPA Compliance

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for emergency purposes, is among the classes of actions the DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Owens-Illinois has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. ERA has reviewed the completed environmental checklist submitted by Owens-Illinois pursuant to 10 CFR 501.15(b), together with other relevant information, and has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Order Granting Permanent Emergency Purposes Exemption

Based upon the entire record of this proceeding, ERA has determined that Owens-Illinois has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.39(a). Therefore, pursuant to section 212(e) of FUA, ERA hereby grants a permanent emergency purposes exemption to Owens-Illinois to permit the use of natural gas as the primary energy source for its new emergency standby boiler to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C., August 29, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–23621 Filed 9–5–84; 8:45 am]

BILLING CODE 6450–01–M

Application for Presidential Permit PP–82: Vermont Electric Power Company, Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Presidential Permit for a 345 kV International Transmission Line (to be operated at 120 kV) which has been filed by Vermont Electric Power Company, Inc.

SUMMARY: Vermont Electric Power Company, Inc., has filed an application for a Presidential Permit, PP–82, to construct, connect, operate and maintain a 345 kV international interconnection (to be operated at 120 kV) at the United States-Canadian Boundary.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Division of Coal and Electricity, Economic Regulatory Administration, Room GA–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–5935

Lise Courtney M. Howe, Office of General Counsel, Department of Energy, Room 6A–141, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: On August 6, 1984, Vermont Electric Power Company, Inc. (VELCO), filed an application with the Economic Regulatory Administration (ERA) for a Presidential Permit, pursuant to Executive Order No. 10485, as amended. VELCO requests authority to construct, connect, operate and maintain a 345 kilovolt interconnection at the United States-Canadian border which will be operated at 120 kV. In addition, VELCO proposes to construct 7.5 miles of overhead transmission line from a 200 megawatt back-to-back converter station facility in Highgate, Vermont, to interconnect with a similar line owned and operated by Hydro-Quebec.

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[1] Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the emergency purposes exemption are found at 10 CFR § 503.39.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Economic Regulatory Administration, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with section 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed on or before September 28, 1984. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the ERA Division of Coal and Electricity, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C., 20585.

Issued in Washington, D.C. on August 28, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-23622 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EL84-37-000]

Aquenergy Systems, Inc.; Petition for Declaratory Order

August 30, 1984.

Take notice that on August 16, 1984, Aquenergy Systems, Inc. (Aquenergy) submitted for filing its declaratory order petition pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure.

Aquenergy requests that this Commission issue an order declaring that (1) its Apalache hydroelectric generating facility (Project) will not involve the construction of any dam or project works across, along, over, in or on a "navigable water of the United States" as defined in the Federal Power Act (Act) and (2) Aquenergy will not be engaged in any "post-1935 construction" as that term has been defined by the Commission and the courts and/or the Project will not "affect the interests of interstate or foreign commerce" within the meaning of Act.

Therefore, Aquenergy states that it is not subject to the Commission's jurisdiction under the Act and is not required to file a declaration of intention with the Commission or to obtain a license or exemption before Aquenergy may restore, operate and maintain the project.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 7, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23472 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-481-011]

Arizona Public Service Co.; Filing

August 30, 1984.

The filing Company submits the following:

Take notice that on August 13, 1984, Arizona Public Service Company (Arizona) tendered for filing revised rate schedules, revised cost-of-service study, and associated workpapers in compliance with the Federal Energy Regulatory Commission's (Commission) Opinion No. 219 in FERC Docket No. ER82-481-000.

This filing was made in accordance with the findings and conclusions expressed in Opinion No. 219 issued by the Commission as a result of the proceedings in this Docket.

Copies of this filing have been served upon all parties to the above docketed rate proceeding and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23472 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-128-005]

Colorado Interstate Gas Co.; Petition To Amend

August 30, 1984

Take notice that on August 14, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP79-128-005 a petition to amend the Commission's order issued June 15, 1979, in Docket No. CP79-128, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the continued development of the Flank Storage Field in Baca County, Colorado, until November 30, 1989, and to authorize an increase in the number of observation wells in the storage field, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

By Commission order issued in Docket No. CP79-128, CIG was authorized among other things to acquire the working interests in the Flank Field of Baca County, Colorado, together with 37[1] existing wells and convert the field to storage. It was indicated that development of the Flank Field for the storage of natural gas involved the reentry of 12 producing or shut-in wells and converting them to injection/withdrawal use and the drilling of 21 wells for injection/withdrawal. The abandoned and dry holes were intended to be converted to observation wells, it is submitted. CIG indicates that of the original 12 producing wells, 5 wells have continued to produce oil and gas, 4 wells were converted to observation wells and 3 wells were converted to injection/withdrawal use. CIG states that it has drilled 19 wells intended for the injection/withdrawal of gas; however, one well encountered oil and has not been used for storage uses. In addition, it is stated, one dry hole originally intended as an observation well was converted to injection/withdrawal use. It is explained that currently CIG has 22 injection/withdrawal wells, rather than the 33 originally authorized, and 25 observation wells operating in the Flank

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[1] These wells consisted of 12 producing or shut-in, 8 abandoned and 17 dry holes.

Field. Also, it is submitted operating in the storage area are 10 oil wells of which 3 are CIG wells and 7 wells are owned and operated by Horizon Oil and Gas Company (Horizon). CIG states that additional oil wells would be drilled in the Flank Field as the pressure of the gas in storage is a driving force that would continue to produce the oil reserves in the rock formation that is used to store the gas. CIG explains that when the oil reserves are depleted or when the storage gas breaks through into the well bores of the oil wells indicating the oil has migrated past a particular well, these wells would then be converted to either injection/withdrawal wells or observation wells depending upon the physical need of the geographic area. The estimated number of oil wells to be drilled at this time is unknown. CIG requests authority to convert up to 11 oil wells to injection/withdrawal use and 10 oil wells to observation use. CIG states that these conversions would bring the total injection/withdrawal wells to the originally certificated number of 33 and increase the observation wells to 35, ten more than originally certificated. To provide sufficient time to deplete the remaining oil reserves and complete the full development of the Flank Storage Field, CIG requests the Commission further amend its order in Docket No. CP79-128 and extend the period for development to November 30, 1989.

CIG estimates the cost of the 10 additional observation wells would be $659,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23473 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-609-000]

Dayton Power and Light Co.; Filing

August 30, 1984.

Take notice that on August 20, 1984, Dayton Power and Light Company (DP&L) submitted for filing (1) an executed "Service Agreement for Partial Requirements and/or Transmission Wheeling Service to Municipalities for Resale" (Service Agreement) between DP&L and the Village of Mendon (Mendon) dated as of October 1, 1984, (2) "Tenth Revised Sheet No. 13" to DP&L's FERC Electric Tariff, Original Volume No. 1, and (3) "Tenth Revised Sheet No. 26" to DP&L's FERC Electric Tariff, Original Volume No. 2.

The purpose of the proposed Service Agreement is to permit Mendon to receive service under DP&L's FERC Electric Tariff, Original Volume No. 2 (Volume No. 2) instead of its FERC Electric Tariff, Original No. 1 (Volume No. 1). Volume No. 2 provides for full-requirements or partial requirements and/or transmission wheeling service, whereas Volume No. 1 is essentially a full requirements tariff.

By its section 8, the new Service Agreements for Mendon supercedes and cancels as of October 1, 1984 the previous Service Agreement dated October 6, 1971. The previous Service Agreement had provided for service under Volume No. 1.

Implementation of the proposed Service Agreement is reflected in changes to the Index of Purchasers contained in DP&L's FERC Electric Tariffs. "Tenth Revised Sheet No. 13" to Volume No. 1 reflects the discontinuance of service to Mendon under Volume No. 1. "Tenth Revised Sheet No. 26" to Volume No. 2 reflects the commencement of service to Mendon under Volume No. 2.

Pursuant to the terms of the Service Agreement, service to Mendon under Volume No. 2 will commence on October 1, 1984, as mutually agreed upon by the parties. Accordingly, DP&L requests waiver of the Commission's notice and filing requirement to permit the effective date of October 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23474 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-605-000]

Iowa Power and Light Co.; Filing

August 30, 1984.

The filing company submits the following:

Take notice that Iowa Power and Light Company ("Iowa Power") on August 7, 1984, tendered for filing a Rate Schedule ("Schedule"), between Iowa Power, Iowa Southern Utilities Company ("ISU") and Associated Electric Cooperative, Inc. ("AEC"), dated June 1, 1984.

The Schedule provides for the sale of participation power and energy from Iowa Power to AEC between June 1, 1984, and May 31, 1985. The Schedule also provides for Iowa Power and ISU to provide transmission capacity for the sale of such power and energy.

Iowa Power and ISU request that the Commission waive its prior notice requirements and accept the Schedule for filing with an effective date of June 1, 1984.

Copies of this filing were served upon each affected party and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23475 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-607-000]

Public Service Electric and Gas Co.; Filing

August 28, 1984.

The filing Company submits the following:

Take notice that Public Service Electric and Gas Company of New Jersey, on August 21, 1984, tendered for filing proposed changes in its FERC Electric Tariff, Original Vol. No. 1. The proposed changes would increase revenues from jurisdictional sales and service by $921,744 based on year ended December 31, 1983 (Period I). In addition, the proposed filing also modified Public Service Electric and Gas Company's existing fuel adjustment clause in the above tariff to conform to Section 35.14 of the Commission's Regulations.

Public Service states that despite all efforts by it to combat increased costs, the underlying effect of inflation has affected practically all its operations. Due to these increased costs, Public Service states that it is becoming increasingly difficult for it to provide adequate and reliable service for the growing needs of its customers. The Company also contends that the rate increase is necessary to assure continued confidence in its financial integrity to provide earnings which will attract additional capital at reasonable cost to enable the Company to finance its electrical construction program.

Copies of the filing were served upon the public utility's jurisdictional customers, Atlantic Electric and the Boroughs of Milltown, South River, Park Ridge, and the New Jersey Board of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23466 Filed 9-5-84 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-604-000]

Southwestern Public Service Co., Filing

August 30, 1984.

The filing Company submits the following:

The notice that Southwestern Public Service Company (Southwestern), on August 16, 1984, tendered for filing proposed changes in its FERC Electric Service Tariffs to all full requirements customers and all partial requirements customers as follows:

Names of customer	Rate schedule FERC No.
Full Requirements Customers	
Bailey County Electric Cooperative	86
Central Valley Electric Cooperative	87
Deaf Smith Electric Cooperative	88
Farmers Electric Cooperative	89
Greenbelt Electric Cooperative	90
Lamb County Electric Cooperative	91
Lea County Electric Cooperative	103
Lighthouse Electric Cooperative	92
Lyntegar Electric Cooperative	93
Midwest Electric Cooperative	105
Northfork Electric Cooperative	94
Roosevelt County Electric Cooperative	95
South Plains Electric Cooperative	96
Swisher Electric Cooperative	97
Rita Blanca Electric Cooperative	98
North Plains Electric Cooperative	99
Tri County Electric Cooperative	100
Texas-New Mexico Power Co	75
Public Service Co. of New Mexico (Clayton)	58
Partial Requirements Customers	
City of Brownfield, TX	81
City of Floydada, TX	83
Lubbock Power & Light Co	85
City of Tulia, TX	101
Texas-New Mexico Power Co	N/A

Southwestern proposes a two step increase for their full requirements customers and a single step increase for their partial requirements customers. The proposed full requirements customer changes would result in an increase of $8,292,235 under the Phase I rate and an additional $3,944,939 under the Phase II rate for Period II year ended August 31, 1985, resulting in a 5.24 percent increase and a 2.50 percent increase, respectively, above the existing full requirements rate.

Copies of the filing were served on the affected customers, the Public Utility Commission of Texas, The Public Service Commission of New Mexico, and the Oklahoma Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23476 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-564-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

August 28, 1984.

Take notice that on July 11, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-564-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to exchange natural gas with Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to exchange natural gas with Northern pursuant to the terms of a gas exchange agreement between Applicant and Northern dated May 11, 1984 (Agreement).

Applicant states that, pursuant to the Agreement, it has the right to make available to Northern at the existing point of interconnection between the pipeline systems of Northern and Trailblazer Pipeline Company (Trailblazer) in Gage County, Nebraska, a quantity of natural gas, not to exceed 25,000 Mcf per day, as exchange gas. It is stated that, to the extent Applicant makes volumes of natural gas available, Northern would, on a firm basis, make thermally equivalent volumes of natural gas available to Applicant, or for the account of Applicant, at (1) Applicant's existing Compressor Station No. 47 in

West Monroe, Ouachita Parish, Louisiana, (2) Applicant's Muskrat line near Bayou Sale, St. Mary Parish, Louisiana, (3) Applicant's line in Jefferson Davis Parish, Louisiana, and (4) Applicant's line in Newton County, Texas. Additionally, it is stated that Applicant has the right to tender, at the Tennessee Exchange Point, volumes of gas in excess of 25,000 Mcf per day and that Northern has agreed to make available, on a best efforts basis, at the Northern exchange points, a thermally equivalent volume of such gas.

It is stated that the exchange would be performed on a no fee basis. Applicant states that the proposed exchange would be beneficial to it in that it would provide, at no cost to Applicant's customers, a means of moving a portion of Applicant's gas from the terminus of the Trailblazer system to Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23467 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-633-000]

Tuscaloosa Pipeline Co.; Application

August 28, 1984.

Take notice that on August 6, 1984, Tuscaloosa Pipeline Company (Applicant), P.O. Box 1352, Alexandria, Louisiana 71301, filed in Docket No. CP84-633-000 an application pursuant to section 1(c) of the Natural Gas Act for a declaration of exemption from the provisions of the Natural Gas Act and the Regulations of the Commission thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant has entered into a transportation agreement with Trans Louisiana Gas Company, Inc. (Trans La), dated May 1, 1984, to transport natural gas for Trans La which Trans La purchases for resale from United Gas Pipe Line Company (United). It is further stated that the gas would be received by Applicant within the State of Louisiana and would be wholly consumed within the State of Louisiana.

Applicant asserts that it owns and operates approximately 30 miles of pipeline within the State of Louisiana, comprised primarily of 3, 4, 6 and 8-inch diameters, a major part of which was acquired from Louisiana Intrastate Gas Corporation (LIG). It is further asserted that on May 14, 1984, the Louisiana Public Service Commission expressed its non-opposition to the transfer of certain facilities of LIG to Applicant and certified that with the transfer of these facilities, the Louisiana Public Service Commission would regulate the rates and services of Applicant in conjunction with its sales for resale.

It is stated that by letter dated June 15, 1984, the Commissioner of Conservation of the Office of Conservation of the State of Louisiana certified that the Commissioner has the power to regulate the facilities, rates and services of Applicant and that such regulatory jurisdiction is being exercised.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23468 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-655-002]

Wisconsin Public Service Corp.; Refund Compliance Filing

August 30, 1984.

Take notice that on August 9, 1984, Wisconsin Public Service Corporation (WPSC) submitted for filing its refund report pursuant to the Commission's letter order issued July 3, 1984.

WPSC states that the refunds were made to three partial requirements W-Z customers: Consolidated Water Power Corporation and the Cities of Manitowoc and Marshfield; two W-1 all requirements tariff customers, the City of Wisconsin Rapids and Wisconsin Public Power Inc., SYSTEM; and five all requirements W-1 customers who are served under individually applicable rate schedules: Alger Delta Electric Association, Village of Daggett, City of Stephenson, Village of Stratford and Washington Island Electric. The Alger Delta Association, the Village of Daggett and the City of Stephenson are located in Michigan. Each of the other customers is located in Wisconsin.

WPSC states that it has refunded amounts collected in excess of the settlement rate levels.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 13, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23477 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS84-81-000, et al.]

Wytex Production Corporation, et al.; Applications for "Small Producer" Certificates[1]

August 28, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 13, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385. 211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS84-81-000	July 16, 1984	Wytex Production Corp., P.O. Box 3632, Fort Smith, AR 73913.
CS84-97-000	July 5, 1984	Lyco Acquisition 1983-I Ltd., 12700 Park Central Dr., #1201. Dallas, TX 75251.
CS84-105-000	July 26, 1984	Calvert Drilling Co., P.O. Box 54589, Oklahoma City, OK 73154.
CS84-106-000	July 30, 1984	Cinco, Ltd., P.O. Box 461, Albuquerque, NM 87103.
CS84-109-000	August 8, 1984	Plains Resources Inc., 1601 Northwest Expressway, Citizens Plaza, Oklahoma City, OK 73118.
CS84-110-000	August 19, 1984	Bengall, Inc., 1049 Harrison, Corpus Christi, TX 78404.
CS84-111-000	August 20, 1984	Lakeside Exploration Corp., P.O. Drawer 56328, Houston, TX 77256.
CS84-98-000	August 9, 1984	Guide Exploration, Inc., 519 South Broadway, Suite 201, Wichita, KS 67202.

[FR Doc. 84-23469 Filed 9-5-84 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6827-001]

Jackson Falls Hydroelectric Power Co.; Surrender of Preliminary Permit

August 31, 1984.

Take notice that Jackson Falls Hydroelectric Power Company, Permittee for the Jackson Falls Project No. 6827 has requested that its preliminary permit be terminated. The Permittee has stated that the project is not economically feasible. The preliminary permit for Project No. 6827 was issued on July 29, 1983, and would have expired on December 31, 1984. The project would have been located on Wildcat Brook, in Carroll County, New Hampshire.

The Permittee filed the request on July 5, 1984, and the surrender of the preliminary permit for Project No. 6827 is deemed accepted as of July 5, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23571 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST81-79-002, et al.]

Mississippi River Transmission Corp., et al.; Extension Reports

August 29, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before September 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-79-002	Mississippi River Transmission Corp., 9900 Clayton Rd., St. Louis, MO 63124	El Paso Natural Gas Co	08-15-84	G	11-15-84
ST81-105-002	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	El Paso Natural Gas Co	08-01-84	D	10-24-84
ST81-129-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Panhandle Eastern Pipe Line Co	08-01-84	G	10-31-84
ST83-69-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Northern Natural Gas Co	08-01-84	G	11-01-84
ST83-86-001	......do	Mississippi River Transmission Corp	08-10-84	G	11-10-84
ST83-91-001	......do	Transcontinental Gas Pipe Line Corp	08-01-84	G	11-01-84
ST83-96-001	Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790	Dow Pipeline Co	08-06-84	B	11-19-84
ST83-97-001[1]	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Esperanza Transmission Co	08-07-84	B	11-04-84
ST83-98-001	Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	08-13-84	C	11-19-84
ST83-100-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	South Carolina Electric and Gas Co	08-10-84	B	11-08-84
ST83-117-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Northern Natural Gas Co	08-02-84	G	11-05-84
ST83-122-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	United Gas Pipe Line Co	08-13-84	G	11-11-84
ST83-125-001[1]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77002	Texas Eastern Transmission Co	08-14-84	G	11-11-84
ST83-127-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Houston Pipe Line Co	08-06-84	B	11-04-84
ST83-151-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Acadian Gas Pipeline System	08-10-84	B	11-08-84
ST83-199-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Louisiana Intrastate Gas Corp	08-15-84	B	12-21-84
ST83-260-001	Acadian Gas Pipeline System, 1200 Milam, Suite 2700, Houston, TX 77002	Columbia Gas Transmission Corp., *et al*	08-03-84	C	12-23-84
ST83-303-001	Tennessee Gas Pipeline Co., P.O Box 2511, Houston, TX 77001	Natural Gas Pipeline Co. of America	08-01-84	G	11-01-84
ST83-306-001	Natural Gas Pipeline Co of America, P.O. Box 1208, Lombard, IL 60148	Tennessee Gas Pipeline Co	08-01-84	G	11-01-84
ST84-1162-001[1]	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Tennessee Gas Pipeline Co	08-15-84	G	12-10-83

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-23572 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST84-901-000]

Northwest Pipeline Corp.; Filing

August 29, 1984.

Take notice that on August 20, 1984, Southwest Gas Corporation (Southwest) filed a "Motion To Intervene, Protest To Certain Part 284 Transportation Activity, And Request For Hearing."

Southwest is questioning Northwest Pipeline Corporation's (Northwest) Initial Full Report (report) filed on June 8, 1984 in the above-captioned docket. The report concerns Northwest's transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle) pusuant to Section 284.221 of the Federal Energy Regulatory Commission's (Commission) regulations and the blanket certificate issued to Northwest in Docket No. CP80-163. Southwest questions, *inter alia*, whether Northwest and its customers are providing Panhandle with volume of gas to replace those volumes of Panhandle's gas consumed or lost as fuel and shrinkage gas during processing at Northwest's Opal plant. Southwest indicates that Northwest assumes that the gathering portion of its transportation service to Panhandle is non-jurisdictional, which Southwest would assert is erroneous. Southwest further states that the report is unclear as to how Northwest will treat the revenues derived from the transportation and gathering service. Because of Commission regulations and because Northwest has not offered any out-of-pocket cost information in connection with the Panhandle service, Southwest believes that the Commission should require Northwest to credit to its Account No. 191 all revenues derived from the Part 284 service in excess of one cent per MMBtu. For the above reasons, Southwest feels compelled to protest and request a hearing.

Southwest, being dependent upon Northwest for supplies of natural gas and being subject to the rates the Commission authorizes Northwest to collect, requests that it be permitted to intervene in the above-captioned proceeding with full rights of a party.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-23573 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST84-967-000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Self-Implementing Transactions

August 29, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Kenneth F. Plumb,

Secretary.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST84-967	Transcontinental Gas Pipe Line Corp	Celanese Fibers Operations, et al	07-02-84	F(157)		
ST84-968	Mid Louisiana Gas Co	Louisiana Intrastate Gas Corp	07-02-84	B		
ST84-969	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	07-02-84	B		
ST84-970	Mountain Fuel Resources, Inc	Reichhold Chemicals, Inc	07-02-84	F(157)		
ST84-971	do	Northwest Pipeline Corp	07-02-84	G		
ST84-972	do	United Gas Pipe Line Co	07-02-84	G		
ST84-973	do	Northern Natural Gas Co	07-02-84	G		
ST84-975	do	Utah Gas Service Co	07-02-84	B		
ST84-976	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	07-02-84	B		
ST84-977	Oklahoma Natural Gas Co	Northern Natural Gas Co	07-03-84	G		
ST84-978	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	07-03-84	C	11-30-84	24.32
ST84-979	Tennessee Gas Pipeline Co	Eastern Shore Natural Gas Co	07-03-84	G		
ST84-980	Mountain Fuel Resources, Inc	Pacific Gas and Electric Co	07-05-84	G		
ST84-981	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	07-02-84	B		
ST84-982	Delhi Gas Pipeline Corp	Louisiana Indust. Gas Supply System	07-06-84	G		
ST84-983	do	Natural Gas Pipeline Co. of America	07-05-84	C		
ST84-984	ANR Pipeline Co	Lukens Steel Co	07-05-84	C		
ST84-985	Northern Natural Gas Co	Pantera Energy Corp	07-05-84	F(157)		
ST84-986	Northern Utilities, Inc	Montana-Dakota Utilities Co	07-05-84	B		
ST84-987	K N Energy, Inc	Northern Utilities, Inc	07-05-84	C		
ST84-988	Northern Natural Gas Co	Panhandle Eastern Pipe Line Co	07-05-84	B		
ST84-989	Mountain Fuel Resources, Inc	Northwest Pipeline Corp	07-05-84	G		
ST84-990	do	NGL Production Co	07-02-84	G		
ST84-992	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	07-02-84	F(157)		
ST84-994	Tennessee Gas Pipeline Co	Esperanza Transmission Co	07-18-84	B		
ST84-995	National Fuel Gas Supply Corp	UGI Corp. Gas Utility Division	07-02-84	B		
ST84-996	Louisiana Intrastate Gas Corp	Faustina Pipe Line Co	07-02-84	B		
ST84-997	United Gas Pipe Line Co	Tennessee Gas Pipeline Co	07-06-84	C	12-03-84	20.00
ST84-998	Tennessee Gas Pipeline Co	Cincinnati Gas & Electric Co	07-06-84	G		
ST84-999	do	THC Pipeline Co	07-09-84	B		
ST84-1000	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp., et al	07-09-84	B		
ST84-1001	Northern Natural Gas Co	Esperanza Transmission Co	07-09-84	B		
ST84-1002	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	07-09-84	B		
ST84-1003	do	United States Steel Corp	07-09-84	B		
ST84-1004	National Fuel Gas Supply Corp	Wheatland Tube Co	07-16-84	F(157)		
ST84-1005	Dow Intrastate Gas Co	Louisiana Indust. Gas Supply System	07-09-84	F(157)		
ST84-1006	Equitable Gas Co	Columbia Gas Transmission Corp	07-09-84	C		
ST84-1007	Consolidated Gas Transmission Corp	American Refining Group	07-09-84	G		
ST84-1008	Texas Gas Transmission Corp	Georgia-Pacific Corp	07-09-84	F(157)		
ST84-1009	do	Cincinnati Gas & Electric Co	07-09-84	F(157)		
ST84-1010	Valero Transmission Co	Valero Interstate Transmission Co	07-10-84	B		
ST84-1011	Northern Natural Gas Co	Public Service Electric And Gas Co	06-29-84	C		
ST84-1012	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	07-10-84	B		
ST84-1013	Acadian Gas Pipeline System	ANR Pipeline Co	07-11-84	B		
ST84-1014	Mississippi River Transmission Corp	Western Gas Corp	07-11-84	C		
ST84-1015	Oklahoma Natural Gas Co	Bridgeline Gas Distribution Co	07-11-84	B		
ST84-1016	Channel Industries Gas Co	Tennessee Gas Pipeline Co	07-11-84	C	12-08-84	10.00
ST84-1017	Transcontinental Gas Pipe Line Corp	Baltimore Gas & Electric Co	07-12-84	C		
ST84-1018	Natural Gas Pipeline Co. of America	Western Gas Corp	07-12-84	B		
ST84-1019	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	07-12-84	B		
ST84-1020	Consumers Power Co	Panhandle Eastern Pipe Line Co	07-12-84	G		
ST84-1021	Michigan Gas Storage Co	Consumers Power Co	07-13-84	G/F(157)		
ST84-1022	Northern Utilities, Inc	K N Energy, Inc	07-13-84	B		
ST84-1023	United Gas Pipe Line Co	IMC Pipeline Co	07-13-84	E		
ST84-1024	do	Acadian Gas Pipeline System	07-13-84	B		
ST84-1025	Valero Transmission Co	El Paso Natural Gas Co	07-13-84	B		
ST84-1026	Arkansas Louisiana Gas Co	International Paper Co	07-13-84	C		
ST84-1027	Transcontinental Gas Pipe Line Corp	Valero Transmission Co	07-13-84	F(157)		
ST84-1028	National Fuel Gas Supply Corp	Special Metals Corp	07-13-84	B		
ST84-1029	United Gas Pipe Line Co	Shell Oil Co	06-29-84	F(157)		
ST84-1031	Northern Natural Gas Co	Center Plains Industries, Inc	07-16-84	F(157)		
ST84-1032	ANR Pipeline Co	Faustina Pipe Line Co	07-16-84	F(157)		
ST84-1033	Tennessee Gas Pipeline Co	Louisiana State Gas Corp	07-17-84	B		
ST84-1034	Transcontinental Gas Pipe Line Corp	James River-Norwalk, Inc	07-17-84	B		
ST84-1035	Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	07-19-84	F(157)		
ST84-1036	ANR Pipeline Co	Trunkline Gas Co	07-19-84	G		
ST84-1037	ANR Pipeline Co	Spindletop Gas Distribution System	07-19-84	G		
ST84-1038	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	07-19-84	B		
ST84-1039	ANR Pipeline Co	Faustina Pipe Line Co	07-18-84	G		
ST84-1040	Panhandle Eastern Pipe Line Co	Anchor Glass Container Corp	07-19-84	B		
ST84-1041	Columbia Gas Transmission Corp	Wheeling-Pittsburgh Steel Corp	07-19-84	F(157)		
ST84-1042	Trunkline Gas Co	Panhandle Eastern Pipe Line Co	07-24-84	F(157)		
			07-23-84	G		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBtu)
ST84-1043	Northern Natural Gas Co	Termac Gathering Co	07-19-84	B		
ST84-1044	Panhandle Eastern Pipe Line Co	Western Gas Supply Co	07-19-84	B		
ST84-1045	Colorado Interstate Gas Co	St. Luke's Hospital, et al	07-23-84	F(157)		
ST84-1046	Columbia Gas Transmission Corp	Allied Corp., Fiber and Plastics Co	07-24-84	F(157)		
ST84-1047	do	Glass Containers Corp	07-24-84	F(157)		
ST84-1048	do	Newport Steel Corp	07-24-84	F(157)		
ST84-1049	do	PPG Industries, Inc	07-24-84	F(157)		
ST84-1050	do	Ohio Brass Co	07-24-84	F(157)		
ST84-1051	do	Jim Walter Corp	07-24-84	F(157)		
ST84-1052	do	Cincinnati Gas & Electric Co	07-24-84	B		
ST84-1054	do	Baltimore Gas & Electric Co	07-24-84	B		
ST84-1055	do	Columbia Gas of New York, Inc	07-24-84	B		
ST84-1056	do	Columbia Gas of Ohio, Inc	07-24-84	B		
ST84-1057	do	Columbia Gas of Pennsylvania, Inc	07-24-84	B		
ST84-1058	Natural Gas Pipeline Co. of America	Pioneer Transmission Corp	07-27-84	B		
ST84-1059	Columbia Gas Transmission Corp	Columbia Gas of Virginia, Inc	07-24-84	B		
ST84-1060	do	Roanoke Gas Co	07-24-84	B		
ST84-1061	do	UGI Corp	07-24-84	B		
ST84-1062	do	do	07-24-84	B		
ST84-1063	do	do	07-24-84	B		
ST84-1064	do	Washington Gas Light Co	07-24-84	B		
ST84-1065	Northwest Central Pipeline Corp	Cities Service Oil & Gas Corp.	07-24-84	F(157)		
ST84-1066	Tennessee Gas Pipeline Co	Laurel Fuel Co	07-24-84	B		
ST84-1067	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	07-24-84	B		
ST84-1068	Northwest Central Pipeline Corp	National By-Products, Inc	07-24-84	F(157)		
ST84-1069	Natural Gas Pipeline Co. of America	Louisiana Indust. Gas Supply System, et al	07-27-84	B		
ST84-1070	Delhi Gas Pipeline Corp	UGI Corp	07-27-84	D		
ST84-1071	ANR Pipeline Co	Pioneer Transmission Corp	07-27-84	B		
ST84-1072	Consumers Power Co	Panhandle Eastern Pipe Line Co	07-30-84	G/F(157)		
ST84-1073	Michigan Gas Storage Co	Consumers Power Co	07-30-84	B		
ST84-1074	Panhandle Eastern Pipe Line Co	Illinois Power, et al	07-30-84	F(157)		
ST84-1075	United Gas Pipe Line Co	First Chemical Corp	07-30-84	F(157)		
ST84-1076	Columbia Gulf Transmission Co	Mountain Fuel Resources, Inc	07-30-84	G		
ST84-1077	do	United Gas Pipe Line Co	07-30-84	G		
ST84-1078	Northern Natural Gas Co	Endevco Pipeline Co	08-01-84	B		
ST84-1079	El Paso Hydrocarbons Co	El Paso Natural Gas Co	07-31-84	C		
ST84-1080	Natural Gas Pipeline Co. of America	Archer-Daniels-Midland Co	07-31-84	F(157)		
ST84-1081	Panhandle Eastern Pipe Line Co	UGI Corp	07-31-84	B		
ST84-1082	do	Simpson Paper Co	07-31-84	F(157)		
ST84-1083	do	B.F. Goodrich Co	07-31-84	F(157)		
ST84-1084	do	PPG Industries, Inc	07-31-84	F(157)		
ST84-1085	Northern Border Pipeline Co	Natural Gas Pipeline Co. of America	07-31-84	G		
ST84-1086	El Paso Natural Gas Co	El Paso Hydrocarbons Co	07-31-84	B		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 84-23574 Filed 9-5-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 10 through August 17, 1984

During the Week of August 10 through August 17, 1984, the applications listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 30, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED WEEK OF AUGUST 10 TO AUGUST 17, 1984

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
8/13/84	Gulf/Jim's Gulf Service Stations, Inc.	RF40-44
8/13/84	Gulf/Jim's Gulf Service Stations, Inc.	RF40-45
8/13/84	Gulf/Jim's Gulf Service Stations, Inc.	RF40-46
8/13/84	Gulf/Kelis Corp.	RF40-47
8/13/84	Gulf/Greyhound Lines, Inc.	RF40-48
8/13/84	Amoco/Raymond H. Dreifuss	RF21-12354
8/13/84	Willis/Whipple-Allen Construction Co.	RF41-1
8/14/84	Amoco/Blackie's Amoco	RF21-12355
8/14/84	Gulf/Ed Dunston	RF40-49
8/14/84	Gulf/American Fabrics Co.	RF40-50
8/14/84	Willis/Gene's Transmission Service.	RF41-2
8/14/84	Gulf/W.L. Angerer	RF40-51
8/14/84	Gulf/Jay D. Moss	RF40-52
8/15/84	Gulf/James L. Gohlston	RF40-53
8/16/84	Gulf/Joe's Gulf Service	RF40-54
8/16/84	Gulf/Kenneth Veselak	RF40-55
8/17/84	Gulf/Bill F. Gardner	RF40-56
8/17/84	Gulf/Dallee Oil Co., Inc.	RF40-57

NOTICE OF OBJECTION RECEIVED WEEK OF AUGUST 10 TO AUGUST 17, 1984

Date	Name and location of applicant	Case No
8/16/84	Otis Ainsworth	HEE-0066

[FR Doc. 84-23624 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 3 Through August 10, 1984

During the Week of August 3 through August 10, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 3 through Aug. 10, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 1, 1984	Economic Regulatory Administration/Clark Oil & Refining Corporation & Apex Oil Company, Washington, D.C.	HRX-0105	Supplemental Order. If granted: The November 5, 1979 Decision and Order (Case No. DRS-0235) staying the Proposed Remedial Order proceeding involving Clark Oil & Refining Corporation would be lifted and the firm would be afforded the opportunity to contest the Proposed Remedial Order issued to it.
Aug. 6, 1984	Casson, Calligaro & Mutryn, Washington, D.C.	HFA-0237	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Office of Fuels Programs would be rescinded, and Casson, Calligaro & Mutryn would receive access to a Department of Energy document relating to legislation on newly discovered crude oil.
Aug. 6, 1984	Norge, Herrin, Illinois	HEE-0099, HEL-0099	Exception from the Energy Conservation Program for Consumer Products. If granted: Norge would receive a temporary exception and an exception from the provisions of 10 CFR Part 430 which would permit the firm to modify the energy efficiency test procedures applicable to Magic Chef Model W20DN-4.
Aug. 8, 1984	International Systems Marketing, Inc., Washington, D.C.	HFA-0238	Appeal of an Information Request Denial. If granted: The July 25, 1984 Freedom of Information Request Denial issued by the Office of Procurement Operations would be rescinded, and International Systems Marketing, Inc. would receive access to a memorandum entitled "Analysis of Response to IFB No. DE-FB01-84MA32572."
Aug. 6, 1984	Kalama Chemical, Inc., Washington, D.C	HEF-0507	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with a March 12, 1984 Consent Order issued to Kalama Chemical, Inc.
Aug. 8, 1984	Sutherland, Asbill & Brennan, Washington, D.C.	HFA-0239	Appeal of an Information Request Denial. If granted: The July 9, 1984 Freedom of Information Request Denial issued by the Office of Special Counsel would be rescinded, and Sutherland, Asbill & Brennan would receive access to the firm names on 24 ERA-69 forms entitled "Crude Oil Reseller's Self-Reporting Form."
Aug. 8, 1984	Traco Petroleum Company, Houston, Texas	HRS-0044	Request for Stay and Temporary Stay. If granted: Traco Petroleum Company would be granted a stay and temporary stay pursuant to the provisions of 10 CFR 205.120 pending a final determination on the Statement of Objections (Case No. HRO-0212) which the firm intends to file.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 3 to Aug. 10, 1984]

Date	Name of refund proceeding and name of refund applicant	Case No.
8/6/84	Gulf/Paul B. Bergeron	RF40-24
8/6/84	Palo Pinto, Belridge, Amoco, Northeast Pet./Maine.	RQ5-110, RQ6-111, RQ21-112, RQ25-113
8/6/84	Gulf/Gas-N-Glo No. 7, Inc	RF40-25
8/6/84	Gulf/Davis W. Jones	RF40-26
8/6/84	Gulf/Hamilton Taxi & Baggage Co.	RF40-27
8/6/84	Gulf/Storey Oil Company, Inc	RF40-28
8/6/84	Gulf/Eckstein Company	RF40-29
8/6/84	Marion/Conoco, Inc	RF37-13
8/7/84	Gulf/Schmidt Baking Co., Inc.	RF40-30
8/7/84	Gulf/William W. Stevenson	RF40-31
8/7/84	Marion/Joes Seafood, Inc	RF37-14
8/8/84	Gulf/Hilltop Auto Laundry	RF40-32
8/8/84	Gulf/Hilltop Auto Laundry	RF40-33
8/8/84	Gulf/Farmers Co-Operative Grain Co.	RF40-34
8/6/84	Gulf/Marshall E. Matteson	RF40-35
8/8/84	Gulf/Calco MFG Co., Inc	RF40-36
8/8/84	Marion/Chevron, USA, Inc	RF37-16
8/8/84	Marion/Defense Logistics Agency	RF37-15
8/9/84	Gulf/Anthony Pierulla	RF40-38
8/9/84	Gulf/Martyn M. Jackson	RF40-37
8/10/84	Gulf/Reedy Creek Utilities Co., Inc.	RF40-39
8/10/84	Gulf/Joe's Gulfland	RF40-40
8/10/84	Gulf/Lewis L. Klabin	RF40-41
8/10/84	Gulf/Marc A. Vogel	RF40-42
8/10/84	Gulf/Jack Feinstein	RF40-43

[FR Doc. 84-23514 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed; Week of August 6 Through August 10, 1984

During the week of August 6 through August 10, 1984, the notice of objection to proposed remedial order listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Apex Oil Company, St. Louis, MO, HRO-0241 Crude Oil

On August 10, 1984, Apex Oil Company of St. Louis, Missouri, filed a Notice of Objection to a Proposed Remedial Order which the DOE Tulsa, Oklahoma Office of the Economic Regulatory Administration issued to the firm on July 5, 1984. In the PRO, the ERA found that during the period from April 1978 through January 1979, Apex resold crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart L.

According to the PRO the Apex violation resulted in $3,520,819.79 of overcharges.

[FR Doc. 84-23515 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding $45,475.06 in

consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc. These affiliated firms were reseller-retailers of refined petroleum products with their main office located in Springfield, Missouri.

DATE AND ADDRESS: Applications for refund must be postmarked by December 5, 1984, should conspicuously display a reference to case number HEF-0195, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Suggested formats for refund may be obtained by writing to:

Mrs. Margaret A. Slattery, Public Docket Room Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Other information may be obtained by contacting:

Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the Webster Oil Company, Inc. which settled possible pricing violations in the sales of propane, motor gasoline, and Nos. 1 and 2 fuel oils by Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc. to their customers during the period November 1, 1973 (October 1, 1973 for propane) through May 20, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by December 5, 1984, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made availabe for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: August 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Webster Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0195.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Deparment of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Webster Oil Company, Inc.

Webster Oil Company, Inc. and its affiliated companies were marketers of petroleum products to resellers and end-users during the period of federal price controls, and were therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. Their main office was in Springfield, Missouri. A DOE audit of Webster's records revealed possible violations of DOE price regulations with respect to sales of propane, motor gasoline, and Nos. 1 and 2 fuel oils by Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc., during the period commencing November 1, 1973 (October 1, 1973 for propane) and ending for each product on May 20, 1974 (hereinafter referred to as the audit period). These five corporate entities (hereinafter referred to as the Webster companies) were each under the common control of Ernest Jack Webster, Jr.

In order to settle all claims and disputes between the Webster companies and DOE regarding the firms' sales of propane, motor gasoline and fuel oils during the audit period, Webster Oil Company, Inc. and DOE entered into a consent order on January 19, 1981. Under the terms of the consent order Webster Oil Company, Inc. agreed to remit $110,304 plus accrued interest to DOE in five installments. To date, Webster Oil Company, Inc. has paid only $40,000 of the $110,304 which it agreed to pay to DOE, and is in arrears in its payments. The $40,000, together with $566.30 in late payment fees which Webster Oil Company, Inc. has paid DOE, is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of July 31, 1984, the Webster escrow account had earned $5,318.28 in interest.(*1*)

On June 15, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by the Webster companies' alleged violations. 49 FR 28101 (July 10, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the Webster consent order. In the first stage, we will refund money to identifiable purchasers of the propane, motor gasoline and Nos. 1 and 2 fuel oils who were injured by the Webster companies' pricing practices during the audit period. After meritorious claims are paid in the first stage, a second stage of the refund procedure may be necessary if funds remain. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

This decision establishes procedures for filing claims in the first stage of the Webster refund proceeding. We will describe the information that a claimant should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the June 15 decision. We will not, however, determine procedures for a second stage of the refund process in this decision. Our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund. It is therefore premature for us to address the issues raised by commenters regarding the disposition of funds remaining after all the first-stage claims have been paid.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Webster consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Webster consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers. The Webster consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by the Webster companies' alleged violations. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of propane, motor gasoline and Nos. 1 and 2 fuel oils for the period November 1 (October 1, 1973 for propane) through May 20, 1974. If the product was not purchased directly from a Webster company, the claimant must include a statement setting forth the reasons for believing the product originated with one of the Webster companies. In addition, a reseller or retailer of motor gasoline that files a claim will be required to establish that it absorbed the alleged overcharges and was thereby injured. A demonstration of injury can be made in two ways. First, each claimant that is a reseller or a retailer must show as an initial matter that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. (*2*) *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). These two groups of claimants will also have to demonstrate that, at the time they purchased the product from a Webster company, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges.

Second, a reseller or retailer may rely on a presumption of injury and supply no further proof of injury. As in many prior special refund cases, we will adopt a presumption that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). A reseller or retailer claimant will not be required to submit any further proof of injury if its refund claim is based on a monthly purchase level below a threshold level of 200,000 gallons. (*3*) The adoption of a particular level of purchases below which a claimant need not submit any additional evidence of injury is based on several considerations. First, the cost of compiling information sufficient to show injury may be expensive. Second, our experience indicates that many refund applicants will be small businesses, such as single outlet retailers, who generally maintain a less sophisticated record keeping system than larger firms. The threshold level is set to minimize unnecessary burdens on small businesses who might otherwise be precluded from receiving refunds to redress their injuries. We considered these factors in setting the threshold level at 200,000 gallons per month, as well as the per-gallon refund amount in conjunction with the length of the audit period, that is, the amount a successful claimant would be entitled to receive if it purchased the threshold amount each month of the audit period. A successful claimant who purchased 200,000 gallons of Webster motor gasoline during each of the seven months of the audit period will receive a refund of $2,898 excluding interest.

A reseller or retailer which made only spot purchases from a Webster company probably sustained no injury, and must clearly demonstrate injury if it files a refund application. We have previously noted that spot purchasers "tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases * * * at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers." *Vickers* at 85,396–97. We believe that this rationale holds true in the present case. A spot purchaser therefore should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for the Webster petroleum products it purchased during the audit period. *See Amoco* at 88,200.

Claimants who were ultimate consumers of Webster petroleum products had no opportunity to pass on the costs associated with the alleged overcharges, and therefore will not be required to submit any further proof of injury in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various documented purchase volumes). Therefore, in this proceeding an end-user consumer need only document the specific quantities of Webster petroleum products it purchased during the audit period in order to receive a refund.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by ERA's estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.0020697 per gallon ($40,566.30 received from Webster Oil Company, Inc., divided by 19,600,000 gallons, which is ERA's estimate of the volume of petroleum products sold by the Webster companies during the audit period), exclusive of interest. Successful claimants, refunds will be calculated by multiplying their eligible pruchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrured on the consent order fund since it was remitted to DOE.

As in prevrious cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *See also* 10 CFR 205.286(b).

B. Application for Refund. After having considered all the comments received concerning the first-stage proceedings tentatively adopted in our June 15 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased propane, motor gasoline, and Nos. 1 and 2 fuel oils from the Webster companies during the audit period. An application must be in writing, signed by the applicant, and specify that it pertains to the Webster Consent Order Fund, Case Number HEF–0195.

An applicant should indicate from whom the product was purchased and, if the applicant was not a direct purchaser from a Webster company, it should also indicate the basis for its belief that the product which it purchased originated from a Webster company. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Webster product, such as whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1, 1973 (October 1, 1973 for propane), through January 27, 1981. (4) The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Buildings, Room IE-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Webster Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the Webster consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It is therefore ordered that:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF-0195 be granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Webster Oil Company pursuant to the consent order executed on January 19, 1981, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: August 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

1. If DOE receives additional funds from Webster Oil Company, successful refund applicants in this proceeding will receive a pro rata increase in the amount of their refund.

2. The price rules applicable to sales of motor gasoline by retailers were amended effective July 16, 1979. 44 FR 42542 (July 19, 1979). The amended regulation, 10 CFR 212.93(a)(2), provided for a fixed per-gallon markup of 15.4 cents (later increased) for retail sales of motor gasoline, and eliminated the "banking" provisions formerly in effect. The use of banking remained optional for larger resellers of motor gasoline. Therefore, no showing of cost banks will be required of motor gasoline retailers after July 16, 1979. Resellers of motor gasoline that elected to continue cost banking will be required to submit this information throughout the audit period if they apply for refunds based on purchases greater than 200,000 gallons per month.

3. Claimants whose purchases exceed 200,000 gallons per month during the period for which a refund is claimed, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 200,000 gallons-per-month threshold amount without being required to submit evidence of injury. *See* Office of Enforcement, 8 DOE ¶82,597 at 85,396 (1981) (hereinafter *Vickers); see also Ada* at 88,122.

4. *See* note 1 *supra*.

[FR Doc. 84-23513 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $400,000.00 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Richards Oil Company, a reseller-retailer of refined petroleum products located in Savage, Minnesota.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0165.

FOR FURTHER INFORMATION CONTACT: Gary Comstock, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Richards Oil Company, which settled possible pricing violations in the firm's sales of refined petroleum products to customers during the period November 1, 1973, through January 31, 1976.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Richards pursuant to the consent order. The DOE has tentatively decided that the consent order funds should be distributed to thirty-two first purchasers which a DOE audit indicated may have been overcharged. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Ave., SW., Washington, D.C. 20585.

Dated: August 20, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Richards Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF–0165.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process is typically used in situations where DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *See Office of Enforcement,* 9 DOE ¶ 82,508 (1982), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, ERA, on October 13, 1983, filed a Petition for the Implementation of Special Refund Proceedings in connection with a consent order entered into with Richards Oil Company (Richards). Richards is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Savage, Minnesota. A DOE audit of the firm's records revealed possible pricing violations amounting to $1,026,222.50 with respect to sales of No. 2 fuel oil and Nos. 4, 5, and 6 residual fuel oil, during the period November 1, 1973 through January 31, 1976. In order to settle all claims and disputes between Richards and the DOE regarding the firm's sales of these refined petroleum products during the audit period, Richards and the DOE entered into a consent order on June 15, 1979 (modified on March 17, 1980). According to the Richards consent order, the firm agreed to deposit $400,000, plus interest, into an interest bearing escrow account for ultimate distribution by DOE. This decision concerns the distribution of the consent order amount plus accrued interest to date. *(1)*

II. Proposed Refund Procedures

The basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have determined to rely substantially on the information contained in the ERA audit file. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of the firm's products are identified in the audit file, *see, e.g., Marion Corp.,* 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination with respect to the identity of the allegedly overcharged parties and the amount of the alleged overcharges which they bore is possible.

During DOE's audit of Richards, 34 first purchasers were identified by ERA as having allegedly been overcharged. While the DOE audit file represents only preliminary determinations, does not necessarily reflect actual overcharges, nor provide conclusive evidence as to the identity of possible refund recipients or the amount of money that they should receive in a Subpart V proceeding, it is reasonable to use the information contained in the audit file for guidance. *See Armstrong and Associates/City of San Antonio,* 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion,* we stated that "the information contained in the * * * audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit. *See e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Brown Oil Co.,* 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.,* Case No. HEF–0163 (July 13, 1984) (proposed decision). It would seem that the most efficient method of accomplishing restitution in this proceeding would be simply to distribute the escrow funds to those firms identified by the audit as injured by Richard's pricing practices. The 34 first purchasers identified by the audit, along with the share of the settlement amount allotted to each, are listed in the Appendix. On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to 32 of the first purchasers identified by ERA.

We are not prepared, however, based on the information now available to us, to distribute any of the Richards consent order funds to Boswell Oil (Boswell) or Midwest Industrial Fuels (Midwest). Since the purpose of a Subpart V proceeding is to make restitution for alleged injuries, in previous refund proceedings we have determined that firms which made only spot purchases of petroleum products are generally not eligible for refunds from consent order funds. *See Tenneco Oil Co./Imperial Oil,* 10 DOE ¶ 85,002 (1982); *Tenneco Oil Co./Eastern of New Jersey, Inc.,* 10 DOE ¶ 85,028 (1982); *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). Those determinations were based on the rationale that spot purchasers are presumed not to have been injured by a particular supplier's pricing violations. *See Vickers* at 85,396–97.

The record in this proceeding reveals that Boswell and Midwest made what appear to be only spot purchases of No. 6 residual fuel oil from Richards during the consent order period. Based on our previous experience in similar cases, it would appear that both of these firms were in a position to purchase this product from other suppliers, and, presumably, passed the full amount of the alleged overcharge through to their own customers. We have therefore tentatively determined that the Richards consent order funds should not be distributed to Boswell or Midwest. We propose, however, to give Boswell and Midwest an opportunity to present evidence to rebut this presumption by establishing the extent to which each was injured as a result of its purchase of No. 6 residual fuel oil from Richards during the consent order period.

On the basis of the information in the record at this time, refunds will be authorized to the purchasers listed in the Appendix (with the exceptions of Boswell and Midwest) for the shares of the settlement amount indicated, plus accrued interest to date. *(2)* Since the record indicates that these purchasers are the parties most likely to have been injured by Richards' pricing practices, we have tentatively decided that this would be the most equitable and administratively efficient method of accomplishing restitution. This approach is consistent with our experience in previous Subpart V cases. Purchasers who appear to be end users of Richards products (*e.g.,* Duluth Air Force Base, Ford Motor Company, Munsingwear, Inc., St. Paul-Ramsey Hospital, and the State of Minnesota, etc.) will not be required to make a special showing of injury in order to qualify for a refund. *See, e.g., Standard Oil Co.* (*Indiana*)/ *Union Camp Corp.*, 11 DOE ¶ 85,007 (1983), *and Standard Oil Co.* (*Indiana*)/ *Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983). In addition, in many special refund cases, we have presumed that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order. *See, e.g., Uban Oil Co.*, (Uban) 9 DOE ¶ 82,541 (1982). We have also determined that applications for refund based on purchases below an average of 50,000 gallons per month typically come from firms which are small, independent retailers and resellers. *Uban* at 85,223. We have, therefore, exempted small firms from making a further demonstration of injury since the cost of compiling the data required, if such data even exists, could exceed the refund to be gained. *See, e.g., Webster Oil Co., Inc.*, Case No. HEF-0195 (June 5, 1984) (proposed decision). In the present case, the audit indicates that all of the purchases made by the 34 first purchasers (with the exception of the State of Minnesota) were below an average of 50,000 gallons per month (or 1,350,000 gallons for the entire consent order period). While Minnesota made larger average monthly purchases, as we stated above, the state appears to be an end user. We therefore will not require that any of these purchasers demonstrate that they absorbed the alleged overcharges in order to receive a refund.

We recognize, however, that there may have been other first purchasers not identified by the ERA audit, as well as downstream purchasers, who may have been injured as a result of Richards' pricing practices during the audit period and who would therefore be entitled to a portion of the consent order funds. If additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims. (*3*) Finally, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban* at 85,225. *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases from Richards of No. 2 fuel oil, and Nos. 4, 5 and 6 residual fuel oil, or to submit a statement verifying that it purchased petroleum products from the consent order firm during the audit period and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. *Distribution of the Remainder of the Consent Order Funds*

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Richards Oil Company, pursuant to the consent order executed on June 15, 1979, and modified on March 17, 1980, will be distributed in accordance with the foregoing determination.

Footnotes

1. Richards paid $444,412.22, including interest, to the DOE. The escrow account, along with accrued interest, totaled approximately $625,163.10 as of August 1, 1984.

2. The share of the escrow fund which the listed purchasers are to receive represents 39% of the amount each was allegedly overcharged, and is consistent with the terms of the consent order, which settled for 39% of the total amount of alleged overcharges identified by the audit.

3. Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive larger refunds than those indicated in the Appendix.

APPENDIX

First purchasers	Portion of settlement amount [1]
A & L Laboratories, 1001 Glenwood Avenue, Minneapolis, MN 55405	$86.22
American Linen Services, 700 Industrial Blvd., N.E., Minneapolis, MN 55413	2,676.69
Armour Food Company, 236 Chester Street, St. Paul, MN 55107	315.53
Boswell Oil, Central Trust Tower, Cincinnati, OH 45202	6,866.39
Brown Company, Post Office Box 330, Eau Claire, WI 54701	15,211.79
Cargill, Inc., Post Office Box 1139, Burnsville, MN 55337	10,033.94
Dayton's, 7th Nicollet Mall, Minneapolis, MN 55402	5,819.13
Donaldson's 621 Nicollet Mall, Minneapolis, MN 55402	3,016.67
Duluth AFB (Defense Fuel Supply Center), Cameron Station, Alexandria, VA 22314	35,065.46
Farmers Co-op, Eyota, MN 55934	1,125.25
Flour City Architectural Metals, 2637 27 Ave. South, Minneapolis, MN	1,844.76
Ford Motor Company, 966 S. Mississippi River Blvd., ST. Paul, MN 55116	14,571.83
Fremont Creamery, Utica, MN 55979	1,593.22
Honeymead Products, 704 Minneapolis Road, Mankato, MN 56001	11,471.17
Hyatt Lodge, 41 North 10th, Minneapolis, MN 55429	80.44
Joslyn Man. Co., 49th & France North, Minneapolis, MN 55429	339.09
Local Roofing, Eau Claire, WI 54703	8,298.06
MN and S Railway, 911 Hennepin Avenue, Minneapolis, MN 55414	174.21
A.Y. McDonald Co., 8225 3rd Street, Minneapolis, MN 55415	2,034.07
Mid American Dairy, 2424 Territorial Road, Winsted, MN 55395	13,447.02
Midwest Industrial Fuels, 614 Summer Street, La Cross, WI 54601	563.51
Munsingwear, Inc., 718 Glenwood Avenue, Minneapolis, MN 55440	13,898.55
New London Concrete, New London, MN 56273	1,020.37
Owatonna Public Utilities, 208 S. Walnut Street, Owatonna, MN 55060	2,159.84
Owens Illinois, Shakopee, MN 55379	1,523.00
Paper Calmenson, Highway 280 & Highway 36, St. Paul, MN 55165	3,060.67
St. Francis Campus Service, 8th Avenue & 2nd Street, Little Falls, MN 56345	6,621.30
St. Paul-Ramsey Hospital, c/o Ramsey County Attorney, 40 Jackson, St. Paul, MN 55101	8,828.69
Sears, 2929 Elliot Avenue South, Department 206, Minneapolis, MN 55407	6,463.39
State of Minnesota, 50 Sherburne Avenue, St. Paul, MN 51555	258,879.89
Stevens County Court House, Morris, MN 56207	2,823.37
Waste Research, Eau Claire, WI 54703	339.09
Western Electric, 3100 East 28th Street, Minneapolis, MN 55406	1,102.59
Ziegler, Inc., 901 W. 94th Street, Minneapolis, MN 55420	1,223.02

[1] Includes both principal and interest as of January 2, 1982. Actual refunds will also include the additional interest which has accrued on these amounts since DOE received the Richards consent order funds

[FR Doc. 84-23512 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Rio Grande Project; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a Rate Order—Rio Grande Project.

SUMMARY: Notice is given Rate Order No. WAPA-25 of the Deputy Secretary of the Department of Energy (DOE) for placing increased power rates into effect on an interim basis for Rio Grande Project power marketed by the Western Area Power Administration (Western).

The wholesale firm power rate consists of a demand charge of $6.545 per kW-month and an energy charge of 15.45 mills per kWh. This represents a composite rate of 30.85 mills per kWh. The wholesale nonfirm excess energy rate consists of an energy charge of 22.0 mills per kWh for excess winter generation. The rates are being put into effect on an interim basis beginning on the first day of the October 1984 billing period.

The rate order further explains the rate adjustment and discusses the principal factors leading to the decisions on the rate increase and responds to the major comments, criticisms, and alternatives offered during the rate adjustment proceeding.

EFFECTIVE DATE: The rates will become effective on the first day of the October 1984 billing period.

FOR FURTHER INFORMATION CONTACT:

Ms. Marlene Moody, Assistant Area Manager for Power Marketing, Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite #2, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493

Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Forrestal Building, Room 8G061, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5581

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664, December 14, 1983), the Secretary of Energy delegated to the Administrator of Western the authority to develop power and transmission rates; to the Deputy Secretary of DOE the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates.

The proceeding on a proposed rate adjustment and a 30-day customer consultation and comment period was initiated on November 10, 1983, with an announcement of the proposed rate adjustment published in the **Federal Register** at 48 FR 51680. The November 10 notice also announced a public meeting on December 6, 1983. A November 14, 1983, press release also announced the proposed rate adjustment and the public meeting. On November 16, 1983, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the meeting, and to transmit copies of the rate brochure dated November 1983. On November 25, 1983, letters were sent to customers and other interested parties with copies of the November 10, 1983, **Federal Register** notice and the December 6, 1983, meeting agenda. Written comments were accepted through December 28, 1983.

Public comments received have been considered in the preparation of the rate order.

Rate Order No. WAPA–25 confirming and approving increased power rates on an interim basis is hereby issued, and the rates will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued at Washington, D.C., August 28, 1984.

Danny J. Boggs,
Deputy Secretary.

Department of Energy Deputy Secretary

[Rate Order No. WAPA–25]

Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

August 28, 1984.

In the matter of Western Area Power Administration—Rio Grande Project Power Rates.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act (42 U.S.C. 7101 et seq.), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation (BuRec) under the Reclamation Act of 1902 (43 U.S.C. 372 et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Rio Grande Project (RGP), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664, December 14, 1983), the Secretary of Energy delegated the authority to: (1) The Administration of the Western Area Power Administration (Western) to develop power and transmission rates; (2) the Deputy Secretary of Energy to confirm, approve, and place in effect such rates on an interim basis; and (3) the Federal Energy Regulatory Commission (FERC) to confirm, approve and place in effect on a final basis, to remand or to disapprove rates developed by the Administrator under the delegation. This rate order is issued pursuant to the delegation to the Administrator and the Deputy Secretary and the rate adjustment procedures at 10 CFR Part 903 (1984).

Background

Existing and Increased Rates

The existing firm power Rate Schedule RGP–F1 established new rates in two phases. The first phase, at a composite rate of 21.4 mills per kWh, assuming a 58.2 percent seasonal load factor, became effective September 1, 1982, and the second phase, at a composite rate of 27.0 mills per kWh, assuming a 58.2-percent seasonal load factor, became effective September 1, 1983.

The rates which are the subject of this order will supersede the rates specified in Rate Schedule RGP–F1 and in contract documents.

The increased rate of 15.45 mills per kWh for energy and $6.545 per kW-month for capacity (30.85 mills per kWh composite rate at a seasonal load factor of 58.2 percent) will become effective the first day of the October 1984 billing period as specified in Rate Schedule RGP–F2.

When excess water is available at the Elephant Butte Reservoir during the winter season (October through March), the excess energy generated is sold as nonfirm energy. A rate of 22.0 mills per kWh for excess nonfirm winter season energy will become effective the first day of the October 1984 billing period as specified in Rate Schedule RGP–EE1. The existing 5-percent discount to customers who had the capability to receive power and energy at transmission voltage has been eliminated because both RGP customers are receiving the discount.

Project History

The RGP initially was authorized as an irrigation project by the Act of February 25, 1905 (Ch. 798, 33 Stat. 814). Elephant Butte Dam was completed in 1916. The construction of Caballo Dam, a flood control and reregulating structure located downstream from Elephant Butte, took place in accordance with the Convention of Rectification of the Rio Grande, February 1, 1933 (48 Stat. 1621), and the Acts of August 29, 1935 (Ch. 805, 48 Stat. 961), and June 4, 1936 (Ch. 500, 49 Stat. 1463). The Caballo Dam was completed in 1938.

The Act of August 9, 1937 (Ch. 570, 50 Stat. 564), allowed for power facility construction and provided for the application of power revenues toward repayment of the project. The Elephant Butte Powerplant and a 115-kV transmission system were constructed between 1938 and 1940. Additional transmission features were added between 1941 and 1952. Parts of the transmission system were sold in FYs 1973, 1979, and 1983 so that now the power system consists of the Elephant Butte Switchyard and the Elephant Butte Powerplant. The project is operated primarily as an irrigation water supply project, and power generation is incidental and secondary in priority.

The project power system is connected to the system of Plains Electric Generation and Transmission Cooperative (Plains) at the Elephant Butte Switchyard.

Present customers for the project power are Plains and the City of Truth or Consequences, New Mexico (T or C).

During the first 10 years of operation (1941–1950), when the water supply was adequate, the project repaid $1,696,207 of the power investment and $1,004,680 in interest on the investment. Beginning in 1951 and continuing through 1979, the project has had annual deficits mainly due to a long-term shortage of water supply for generation.

The project power system was designed to operate year-round; however, due to the low water from 1950 through 1979, generation was confined to about 8 months a year, from February through September. In the mid-1960's, Colorado River Storage Project (CRSP) power became available for sale in New Mexico. Joint RGP and CRSP power sales contracts were negotiated with the RGP preference customers, and agreements between the projects were made. As a result of these agreements, RGP power has been firmed up by CRSP power during the summer season. This has made it possible for RGP to sell 24 MW of power during the summer season at firm rates, compared to roughly 9 MW previously. Through seasonal agreements, about 51,345,000 kWh have been sold to Plains as excess nonfirm winter season energy during the past 3 years at rates from 20–22 mills per kWh.

Power Repayment Studies

The power repayment studies for the RGP are prepared by Western with the cooperation of the BuRec. These studies are prepared in accordance with applicable Federal laws and regulations and DOE Order No. RA 6120.2. The studies array historic income, expense, and investment to be repaid from power revenues, along with estimates for future years, and portray the annual repayment of power production and transmission costs of a power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project facilities. The studies show, among other items, estimated revenues and expenses year-by-year through FY 2034, the estimated amount of Federal investment repaid during each year, and the total estimated amount of Federal investment remaining to be repaid each year. The studies do not deal with rate design.

The FY 1983 power repayment study (PRS) using current rates indicated that the current rates are not sufficient to meet repayment requirements. A preliminary revised FY 1983 PRS was prepared using estimated revenues and expenses and, due to computer program limitations, a prior year interest rate on deficits. This study was used to initiate the rate adjustment and was included in the rate brochure. A revised FY 1983 PRS, dated January 5, 1984, included actual figures for FY 1983 revenues and expenses and current interest rates on deficits and is the basis for this rate adjustment.

Basis of Rates

Western has not conducted a rate design study. Western has continued the practice of collecting approximately 50 percent of firm revenue from the demand charge and approximately 50 percent from the energy charge. The excess nonfirm energy rate is based on the customer's alternative costs. Rate Schedule RGP-EE1 formalizes the 22.0 mills/kWh rate that has been in effect the past two winter seasons. The firm power rate recognizes the revenues derived from sales of excess nonfirm energy.

Public Notice and Comments

Published "Procedures for Public Participation in Power and Transmission Rate Adjustments" for power marketed by Western and other power marketing administrations have been followed in the development of this rate. The following discussion summarizes the steps Western took to assure involvement of interested parties in the rate process:

1. A **Federal Register** notice (48 FR 51680, November 10, 1983) announced the proposed power rate adjustment and the public meeting.

2. A press release was issued on November 14, 1983, to announce the proposed rate adjustment and the public meeting.

3. On November 16, 1983, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the meeting and to transmit copies of the rate brochure dated November 1983.

4. On November 25, 1983, letters were sent to customers and other interested parties with copies of the November 10, 1983, **Federal Register** notice and the December 6, 1983, meeting agenda.

5. A public meeting was held on December 6, 1983, in Albuquerque, New Mexico. Western explained the need for a rate increase and presented the results of power repayment studies reflecting the needed rate increase at that meeting. Representatives from Plains and T or C asked questions and made some comments. Some questions were answered later in writing.

6. Written comments were accepted through December 28, 1983.

Certification of Rates

In accordance with power marketing law, Western transmits and disposes of power and energy in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. With the new rates in effect, the Administrator has certified that RGP power will be sold at the lowest possible rates consistent with sound business principles. Rates have been developed in accordance with administrative policy and statutory requirements.

Discussion

The discussion below relates to PRS Issued, several customer requests, and to procedural matters. No changes in the PRS were made as the result of comments received. However, the effective date of the rate adjustment was changed.

Operation and Maintenance Expenses

The power customers expressed concern about the large increase in operation and maintenance (O&M) expenses, particularly in FY 1983. The FY 1980 PRS projected O&M and other expenses for the period FY 1981–1983 at $2,284,000 which was $459,716 less than the actual, for an increase of 20 percent.

The FY 1981 PRS Projection for future years FY 1984–1988 was $3,675,000 compared to the FY 1983 PRS projection for those years of $4,208,000, for an increase of 14.5 percent.

There was a significant increase in actual O&M expense in FY 1983 over the amount projected ($276,376 or 32 percent), primarily due to the BuRec taking advantage of the money that was appropriated for the Government's Jobs Bill program. By doing this, the BuRec was able to accelerate $433,626 of the future years 1984–1988 equipment purchases and O&M repairs. Western has given the customers breakdowns of the Jobs Bill funds and the related O&M expenses. The BuRec did not make any unnecessary repairs or purchases.

Annual Expense Deficits

Power customers expressed a desire to have the repayment of accumulatd annual expense deficits pushed out beyond the repayment period for the project, which would be inconsistent with the policy stated in RA 6120.2. Paragraphs 8c (2) and (3) state that annual expenses are to be paid each year, and any deficit amount not paid is accumulated with interest and must be paid before revenues are available for repayment of investment. The RGP has accrued $3,055,000 of such deficits, and interest on this deficit during FY 1983 amounted to $143,025. Annual expenses have first call on operating revenue, and under normal circumstances must be paid when they occur. Deferring payment of the deficits beyond the repayment period for original project investments has the effect of extending the payout period. Since project payout requirements are not met, the suggestion was not considered to be appropriate. The PRS establishing revenue requirements on which the new rates are based, inadvertently applied some revenues to repayment of investment prior to complete repayment of the deficit. This inadvertent revenue application will be corrected in the FY 1984 PRS, but was not considered to be significant enough to warrant a delay in implementing this rate adjustment.

Methods of Calculating Administrative and General Expenses

Power customers requested a clarification on the methodology used to calculate administrative and general expenses (A&GE). The customers' concern centers on the high A&GE for 1983 and the rate at which A&GE are increasing. Western provided the customers with available A&GE calculations. The BuRec charges were based on the percentage of their work that was done for the project, plus charges for specific work performed. Western charges were based on a flat rate of $20,000 for FY 1980, FY 1981, and FY 1982. FY 1983 charges were based on direct labor hours used.

A&GE are proportionally higher in a project with a relatively small investment because of certain base costs that occur regardless of the size of the project. Western thinks the A&GE are justified. These expenses have increased due to expanded work on the RGP by both BuRec and Western for automation of the powerplant, post-1989 marketing studies, and rate adjustment studies and meetings. In addition, better methods of keeping track of actual time expended on each project have been established which have resulted in a more accurate reflection of the expenses that should be charged to the project.

Automation of RGP Powerplant

The power customers asked general questions about the automation of the powerplant, such as when will it be completed, how will it be operated when completed and, more specifically, how much will it reduce the operating expenses due to reduction of personnel costs. The customers also requested that the O&M be reduced by $70,000 after FY 1987 due to the reduction of personnel resulting from the automation.

The BuRec informally estimated that they will realize a savings of that magnitude through reduction of from two to three persons, but the savings have not yet been reflected in BuRec budget documents. Western has not made this reduction in the PRS because: (1) It is less than 10 percent of the projected O&M and could easily be within the margin of error of the estimate; (2) there is a potential for unforeseen events in the completion of the automation which is still 3 years away from estimated completion; and (3) the BuRec will reflect any expected savings in their budget documents when there is sufficient assurance they will materialize, which in turn will be reflected in the PRS.

Increase in Project Additions and Replacements

The power customers requested further categorization of plant additions for the period 1981–1990 that relates major expenditures with the purpose of the addition and an itemization of the additions to the project that were accelerated due to the Jobs Bill. They also requested that the total expenditures accelerated because of the Jobs Bill (including installation and overhead costs that will be capitalized) be classified in a manner consistent with the categories of the PRS, and indicate the amount and year in which reductions were made, if any, in estimates of future expense or investment (by PRS category).

Western has submitted all of the above information that is available to the customers, and the BuRec intends to maintain records in the future that will provide this type of information in more detail.

Request for Change in Effective Date

Western initially proposed April 1, 1984, as the effective date for the proposed rate adjustment. The power customers requested that the effective date of the proposed increase be delayed until September 1, 1984, or 12 months after the second step of the previous rate adjustment to permit the second phase of the existing rate schedule to actually be applied for one season.

Western concurs that this is a reasonable request and has set the first day of the October 1984 billing period as the effective date for the proposed rate adjustment, which is also the beginning of the winter season. The customers are aware that this short delay resulted in a slight increase in the rate.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969 and section D of the DOE Guidelines (45 FR 20693) and as amended of February 23, 1982 (47 FR 7975), Western conducted an environmental evaluation of the rate adjustment.

DOE guidelines relate the size of the rate increase and the rate of inflation to the level of NEPA documentation required. The Consumer Price Index (published by the Department of Labor) was used to determine the rate of inflation from the date of the last rate increase to the planned date of the new increase. That rate is expected to be 9.8 percent. The power rate increase is 14.26 percent. However, from analysis of residential power rates of RGP customers and the effect of "passing through" the RGP rate increase, it was determined that the effect on the ultimate consumer will be approximately a .32-percent increase for Plains' customers and approximately a 2.31-percent increase for customers of T or C.

The rate increase will have no effect on the hydrologic operation of the Rio Grande River. Consequently, there will be no change in reservoir fluctuations and river flows. Air quality, flora, and fauna will not be affected, nor will there be any effect on the cultural and/or recreational resources of the Rio Grande River Basin. Since the RGP rate is below the cost of the wholesale or self-generated firm capacity and energy in the RGP market area or any other alternative sources of energy, it is unlikely that either of the customers will switch to another source of energy.

Section D of the DOE Guidelines states that the level of documentation required under NEPA for rate increases which exceed the rate of inflation in the period since the last increase normally requires the preparation of an environmental assessment. However, based on the above and consultation with the DOE Office of Environmental Compliance, Western has determined that the proposed rate adjustment is not a major Federal action significantly affecting the quality of the human environment and; therefore, an environmental assessment is not required. This determination is on file in Western's offices.

Request for Integration of Projects

The power customers requested that the RGP be integrated with other projects in the Salt Lake City Area (CRSP, Collbran, and Provo River Projects) for marketing and rate purposes. This is a topic of consideration in the development of the Salt Lake City Area Post-1989 Marketing Plan, but the customers are requesting that it be done as early as 1985, if possible. Western will give this request consideration in the proper forum, but it is not an issue directly relevant to this rate adjustment.

Executive Order 12291

The DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of that order. In addition, Western has received an exemption from sections 3, 4, and 7 of Executive Order 12291 and, therefore, will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, and other supporting material, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and Office of Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Submission to the FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective with the beginning of the October 1984 billing period, Rate Schedules RGP-F2 and RGP-EE1. These rates shall remain in effect pending the FERC confirmation and approval of them or substitute rates, on a final basis, or until they are superseded.

Issued in Washington, D.C. August 28, 1984.

Danny J. Boggs,

Deputy Secretary.

[Schedule RGP-F2 (Supersedes Schedule RGP-F1)]

Schedule of Rates for Wholesale Firm Power Service

Effective

Beginning on the first day of the October 1984 billing period.

Available

In the area served by the Rio Grande Project.

Applicable

To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the points and voltages established by contract.

Monthly Rate

Demand Charge: $6.545 per kilowatt of billing demand.

Energy Charge: 15.45 mills per kilowatthour of use.

Billing Demand: The billing demand will be the greater of: (1) The highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustments

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[Schedule RGP-EE1]

Rate Schedule for Excess Nonfirm Winter Season Energy

Effective

Beginning on the first day of the October 1984 billing period.

Available

In the area served by the Rio Grande Project.

Applicable

To Plains Electric Generation and Transmission Cooperative under the terms of Contract No. 14-06-500-1120 dated May 17, 1985, as amended, and any others supplied excess winter season energy service.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the points and voltages established by contract.

Monthly Rate

Energy Charge: 22.00 mills per kilowatthour of use.

Adjustments

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[FR Doc. 84-23511 Filed 9-5-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-47002B and 42050; FRL-2665-3]

Chlorinated Benzenes; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting.

SUMMARY: The EPA will hold a public meeting to announce and discuss its preliminary findings regarding the need to require further testing of the chlorinated benzenes under section 4(a) of the Toxic Substances Control Act (TSCA). Specifically, the Agency will address oncogenicity testing of 1,2,4-trichlorobenzene (1,2,4-TCB) and health and environmental effects testing of

1,2,4,5-tetrachlorobenzene (1,2,4,5-TCB) and other tetrachlorobenzene isomers.

DATE: The meeting will be held on Tuesday, September 25, 1984, from 9:30 a.m. to noon.

Meeting: The location of the meeting will be: Rm. S-355 WSM, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404). Outside the USA: (Operator—202-554-1404).

COMMENTS: Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such materials will become part of EPA's record for these test rule actions.

Written comments should bear the document control numbers [OPTS-47002B if addressing health concerns and OPTS-42050 for environmental concerns] and be submitted in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: EPA will hold a public meeting to discuss the health and environmental effects testing needs of some of the chlorinated benzenes.

I. Background

In the **Federal Register** of December 7, 1983 (48 FR 54836), EPA issued a **Federal Register** notice that proposed an approach for determining the need for 1,2,4-trichlorobenzene oncogenicity testing based on test data soon to be received. Also, in this and a later **Federal Register** notice (January 13, 1984; 49 FR 1760), the Agency requested information and comment on the production, use, chemical fate, and health and environmental effects of 1,2,4,5-tetrachlorobenzene and other tetrachlorobenzene isomers. EPA announced that it planned to hold a public meeting to discuss these testing concerns.

The Agency has now scheduled a public meeting to announce its preliminary findings regarding the need to require oncogenicity testing of 1,2,4-TCB, and health and environmental effects testing of 1,2,4,5-tetrachlorobenzene and other tetrachlorobenzene isomers. Attendees will be encouraged to comment and discuss EPA's preliminary findings at that time or present their comments for consideration by that Agency.

The Agency will transcribe the meeting and will include the written transcript in the public record for the chlorinated benzenes (i.e., docket numbers OPTS-47002B and OPTS-42050).

II. Public Record

EPA established a public record for these test rule decisions under section 4 of TSCA [docket numbers OPTS-47002B (health) and OPTS-42050 (environmental)]. At this time EPA is supplementing these records with one additional piece of information.

Health Assessment Document for Chlorinated Benzenes—Parts 1 and 2. External Review Draft prepared by EPA's Office of Health and Environmental Assessment of the Office of Research and Development. EPA-600/8-84-0154. April 1984.

These records, which include the basic information considered by the Agency in developing these decisions, are available for inspection from 8 a.m. to 4 p.m., Monday through Friday except legal holidays, in Rm. E-107, 401 M St. SW., Washington, D.C. 20460. The Agency will supplement the record with additional relevant information as it is received.

(Pub. L. 94-469, Sec. 4, 90 Stat. 2003; 15 U.S.C. 2601)

Dated: August 20, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-23502 Filed 9-5-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2665-4]

Pretreatment Implementation Review Task Force; Open Meeting

August 29, 1984.

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Pretreatment Implementation Review Task Force (PIRT) will be held on September 24, 25 and 26, 1984, in Washington, D.C. On September 24 the Task Force will meet as separate subcommittees at the Waterside Mall, 401 M Street, SW. The Technical Implementation Subcommittee will meet from 10:30 a.m. to 5:00 p.m. in Room 2123. The Program Development and Approval Subcommittee will meet from 1:00 p.m. to 5:00 p.m. in Room S-355. The Reporting and Monitorng Subcommittee will meet from 10:30 a.m. to 5:00 p.m. in Room S-359. The agenda for the subcommittees involves the completion of work begun during the July and August subcommittee meetings. (See **Federal Register**, 6/25/84, p. 25904.)

The full Task Force will meet on September 25 and 26 from 9:00 a.m. to 5:00 p.m. each day in The Hall of States, Best Western Skyline Inn, South Capitol and I Streets, SW. The agenda involves a consideration of the subcommittee reports as well as a report from the Agency concerning its assessment and implementation of the PIRT Interim Report.

Any member of the public wishing to make comments is invited to submit them in writing to Mr. Richard Kinch no later than October 1, 1984. All sessions will be open to the public. Any member of the public wishing additional information should contact Mr. Richard Kinch or Dr. Jerry Parker (EN-336), U.S. EPA, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0750.

FOR FURTHER INFORMATION CONTACT Dr. Jerry Parker (202) 755-0750.

Dated: August 28, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-23503 Filed 9-5-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-30]

Inquiry Concerning Interpretation of Section 18(a)(4) of the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission solicits comment on the interpretation to be given to the requirement of section 18(a)(4) of the Shipping Act of 1984 which requires the Commission to report to Congress the "cost" of major regulatory proceedings. Specifically, the Commission solicits comment as to the meaning and extent of the term "cost."

DATES: Comments (original and twenty copies) on or before October 9, 1984.

ADDRESS: Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUMMARY: Section 18(a)(4)[1] of the Shipping Act of 1984 requires the

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[1] Sections 18(a)(1), 18(a)(2) and 18(a)(3) of the Act may be the subject of a separate proceeding.

Commission to collect and analyze data on ". . . the length of time, frequency, and cost of major types of regulatory proceedings. . . ." The length and frequency of proceedings are, of course, readily ascertainable by the Commission. The term "major regulatory proceeding" will be defined in a policy statement to be issued by the Commission.

There remains the question of what constitutes "cost." The term obviously includes costs expended by the Commission in the conduct of its proceedings, e.g., salaries, travel and transcripts. However, it is not clear whether the term encompasses costs of all parties to proceedings before the Commission. For example, would it include attorneys' fees, travel of witnesses, etc?

There is no legislative history upon which to rely to resolve this question. Accordingly, the Commission is soliciting comments on the following questions:

1. Does the term "cost" as used in section 18(a)(4) of the Shipping Act of 1984 encompass costs to all parties to the proceeding or just costs to the Federal Government?

2. If the answer to question 1., above, is to the effect that the term "cost" applies to all parties, in what manner should the Commission obtain this data?

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23550 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Cimpex Ltda. Co., 8347 N.W. 36th Street, Miami, FL 33166. Officers: Melquised Martinez, President, Gilma Forrero de Martinez, Vice President, Alfonso Rojas, Treasurer, Augustin Goytisolo, Secretary.

Sunrise International Co., Inc., 155-06 South Conduit Avenue, Jamaica, NY 11434. Officers: Tahir S. Ashraf, President, Sarah Reynolds.

Intrepid Shipping Corporation, 32 Broadway, Room, 1210, New York, NY 10004. Officer: Alex Oshinsky, President.

By the Federal Maritime Commission.

Dated: August 31, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23522 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
2301	Universal Air Freight, Inc., d.b.a. Universal Ocean Freight Forwarders, 7356 N.W. 12th Street, Miami, FL 33126.	Aug. 22, 1984.
885	Master Shipping Agency, Inc., 170 Broadway, Suite 1010, New York, NY 10038.	Aug. 23, 1984.
2677	International Service Associates, Inc., 6960 Martin Drive, Suite L, New Orleans, LA 70126.	Aug. 25, 1984.
118	Halperin Shipping Co., Inc., 93 Nassau Street, New York, NY 10038.	Aug. 28, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-23523 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010420-001.

Title: American Flag Common Carrier Charter Agreement.

Parties:

American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.
Waterman Steamship Corporation

Synopsis: The proposed amendment would expand the capacity-available chartering under the agreement to allow parties to reserve or dedicate vessel capacity for charter to other agreement parties, extend the agreement indefinitely and eliminate its semi-annual reporting requirement. The amendment would also make other non-substantive changes in wording and organization.

Agreement No.: 217-010635.

Title: Space Charter and Sailing Agreement by and Between Compagnie Generale Maritime, Hapag-Lloyd AG and Intercontinental Transport (ICT) B.V.

Parties:

Compagnie Generale Maritime
Hapag-Lloyd AG
Intercontinental Transport (ICT) B.V.

Synopsis: The proposed agreement would permit the parties to cross charter space to and from each other and to agree on the number and frequency of sailings in the trade between United States South Atlantic and Gulf Ports and ports in Europe and the East Coast of Mexico including inland points served via such ports. The proposed agreement would also allow the interchange of equipment and joint terminal and stevedoring contracts.

By Order of the Federal Maritime Commission.

Dated: August 31, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23580 Filed 9-5-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Northern Neck Bankshares Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1342(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 27, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Northern Neck Bankshares Corporation*, Warsaw, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of successor by merger to Northern Neck State Bank, Warsaw, Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW, Atlanta, Georgia 30303:

1. *First American Bancshares, Inc.*, New Orleans, Louisiana; to become a bank holding company by acquiring 95.07 percent of the voting shares of American Bank & Trust Company, New Orleans, Louisiana.

2. *First National Bankshares, Inc.*, Houma, Louisiana; to become a bank holding company by acquiring 50 percent of the voting shares of First American Bancshares, Inc., New Orleans, Louisiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Kentucky National Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of the Third National Bank of Ashland, Ashland, Kentucky.

2. *Meade Bancorp, Inc.*, Brandenburg, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Meade County Bank, Brandenburg, Kentucky.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Allied Bank Austin, Austin, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–23536 Filed 9–5–84; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 155; 4–D–VA–624 D&E]

Cape Charles Air Force Station and Communications Facility Annex and Family Housing, Northampton County, VA

Transfer of Property

Pursuant to section 2 of the Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By transfer letter from the General Services Administration dated July 31, 1984, the property, consisting of 162.15 fee acres and 6.68 easement acres improved with 54 buildings of the Communications Facility Annex and 11.77 fee acres improved with 27 buildings of the Family Housing, known as the Cape Charles Air Force Station, Northampton County, Virginia (4–D–VA–624 D&E), has been transferred to the Department of the Interior, U.S. Fish and Wildlife Service.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: August 20, 1984.

Earl E. Jones,

Acting Commissioner.

[FR Doc. 84–23517 Filed 9–5–84; 8:45 am]

BILLING CODE 6820–96–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

Correction

In FR Doc. 84–20237, beginning on page 30798, in the issue of Wednesday, August 1, 1984, make the following corrections:

1. On page 30799, in the first column, in the **ADDRESS** paragraph, in the fourth line, "(HEN–32)" should read "(HFN–32)".

2. Also in the first column, in the **SUPPLEMENTARY INFORMATION** section, in the eleventh line, "allergic or" should read "allergies or".

3. On page 30799, in the second column, the FR Doc. number should read "84–20237".

BILLING CODE 1505–01–M

[Docket No. 84F–0246]

Nuodex, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nuodex, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, and 5-hydroxypoly[methyleneoxy]methyl-1-aza-3,7-dioxabicyclo[3.3.0]-octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard that contact food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–344), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3799) has been filed by Nuodex, Inc., Turner Place, P.O. Box 365, Piscataway, NJ 08854, proposing that § 176.170 (21 CFR 176.170) components of paper and paperboard in contact with aqueous and fatty foods be amended to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane, 5-hydroxypoly[methyleneoxy]methyl-1-aza-3,7-dioxabicyclo[3.3.0]-octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard articles that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21

CFR 25.40(c) (proposed Dec. 11, 1979; 44 FR 71742).

Dated: August 29, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–23486 Filed 9–5–84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N–0057; DESI 1626]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Combination Prescription Drug Products Containing a Xanthine Derivative; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug applications (NDA's) for Amodrine Tablets and Phedorine Tablets and declaring Asminyl Tablets unlawful. FDA is withdrawing approval because there is a lack of substantial evidence that these combination drugs are effective for controlling bronchospastic disorders.

EFFECTIVE DATE: October 9, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with Docket No. 76N–0057 and reference number DESI 1626 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Margery Erickson, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 29, 1984 (49 FR 7454), the Director of the Center for Drugs and Biologics revoked a temporary exemption for the three drug products described below which permitted these products to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. The notice also offered an opportunity to request a hearing on a proposal to withdraw approval of the NDA's for two of these products and declare the third product with no approved NDA unlawful. The proposal was based on the lack of substantial evidence that these combination drugs are effective as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.111(a)(5) and 300.50. The three products are as follows:

1. Amodrine Tablets containing 100 milligrams (mg) aminophylline, 8 mg phenobarbital, and 25 mg racephedrine hydrochloride (NDA 2–384); G.D. Searle & Co., P.O. Box 5110, Chicago, IL 60080 (Searle).
2. Phedorine Tablets (formerly Thephedrine with Phenobarbital) containing 130 mg theophylline, 3 mg phenobarbital, and 24 mg ephedrine hydrochloride (NDA 1–626); Cooper Laboratories, Inc., 2900 North 17th St., Philadelphia, PA 19132 (Cooper).
3. Asminyl Tablets containing 2 grains (gr) theophylline, 8 mg sodium phenobarbital, and ⅛ gr ephedrine sulfate (no NDA); O'Neal, Jones & Feldman, Inc., 2510 Metro Blvd., Maryland Heights, MO 63043 (O'Neal).

Searle, Cooper, and O'Neal did not submit a hearing request for these three products. Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing. Accordingly, FDA is now withdrawing approval of NDA 2–384 for Amodrine Tablets and NDA 1–626 for Phedorine Tablets and declaring Asminyl Tablets unlawful.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). This notice does not apply, however, to those products that are the subjects of hearing requests submitted in accordance with the February 29, 1984 notice. These hearing requests may be the subject of future **Federal Register** notices. Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the combination products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 2–384 for Amodrine Tablets and NDA 1–626 for Phedorine Tablets and all their amendments and supplements is withdrawn, and Asminyl Tablets is hereby declared unlawful. The effective date of this announcement is October 9, 1984. Shipment in interstate commerce of the products above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 29, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–23487 Filed 9–5–84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of Three Mississippi State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on October 16, 1984 in Atlanta, Georgia, to reconsider our decision to disapprove Mississippi State Plan Amendments 84–6, 84–7 and 84–8.

DATE: Closing Date: Requests to participate in the hearing as a party must be received by September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove three Mississippi State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Mississippi's request to eliminate Medicaid coverage of SNF and ICF care for one day each full calendar month for each recipient is in violation of Medicaid regulations at 42 CFR 440.230(b). The amendments would apply to skilled nursing facility (SNF) services for patients age 21 and older, SNF services for patients under 21 years of age and intermediate care facility (ICF) services. Under these amendments, when a patient is in a SNF or ICF for an entire calendar month, the State would eliminate coverage of the patient's last day of care for that month. Medicaid coverage would be limited to one day less than the number of days in each full calendar month.

Regulations at 42 CFR 440.230(b) require that each service be "sufficient in amount, duration and scope to reasonably achieve its purpose." This requirement prohibits States from imposing limitations on a covered service before it has been provided in sufficient amount, duration and scope to reasonably achieve its purpose. In order to be sufficient, the number of covered days must meet the *full* needs of most Medicaid SNF or ICF recipients. Recipients requiring SNF or ICF services usually need the benefit continuously for an extended period of time. By allowing the State to limit the number of covered days after providing a patient with SNF or ICF services for only one calendar month, the proposal would permit the State to restrict coverage before providing the service in sufficient amount, duration and scope to reasonably achieve its purpose for most patients. Therefore, HCFA has determined that the proposed amendment would be in violaton of the comparability of services requirement in Medicaid regulations at 42 CFR 440.240.

The notice to Mississippi announcing an administrative hearing to reconsider our disapproval of its State Plan Amendments reads as follows:

Mr. B. F. Simmons,
Director, Mississippi Medicaid Commission, P.O. Box 16786, Jackson, MS

Dear Mr. Simmons: This is to advise you that your request for reconsideration of Mississippi State Plan Amendments 84-6, 84-7, and 84-8 was received on August 7, 1984. You have requested a reconsideration of whether these plan amendments conform to the requirements for approval under the Social Security Act and pertinent Federal regulations.

I am scheduling a hearing on your request to be held on October 16, 1984, at 10 a.m., in the 5th Floor Conference Room, 101 Marietta Tower Spring and Marietta Streets, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis,
Ph.D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: August 31, 1984.

Carolyne K. Davis,
Administrator, Health Care Financing Administration.

[FR Doc. 84-23561 Filed 9-5-84; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 46, No. 223, pp. 56911-56934, dated Thursday, November 19, 1981, **Federal Register**, Vol. 48, No. 3, pp. 512-518, dated Wednesday, January 5, 1983, **Federal Register**, Vol. 48, No. 198, pp. 46434-46448, dated Wednesday, October 12, 1983, and **Federal Register**, Vol. 49, pp. 28112-28122, dated Tuesday, July 10, 1984) is amended to reflect the organizational changes described below:

- Abolish the Office of Management Services (OMS) including the Offices' three subordinate divisions.

All organizational changes shown below are within the Office of Management and Budget, Office of the Associate Administrator for Management and Support Services.

- Abolish the Office of Human Resources and Administrative Services (OHRAS) including the Offices' four subordinate divisions.
- Abolish the Performance Management Staff (PMS).
- Establish the Office of Management and Human Resources (OMHR). OMHR will be organizationally structured with two divisions, the Division of Personnel and the Division of Management, Organizational Analysis, and Planning. Functions formerly assigned to the abolished OMS, OHRAS, and PMS are transferred to OMHR.
- Establish the Office of Administrative Services (OAS). OAS will also be structured with two divisions, the Division of General Services and the Division of Procurement Services. Both divisions are responsible for functions formally assigned to the abolished OHRAS.

Functional statements have been changed to reflect the changes noted above.

The specific amendments to the **Federal Register** are as follows:

- Section FH.20.The Office of the Associate Administrator for Management and Support Services (FH) (Functions) is amended by the following actions:
- Section FH.20.A. Office of Management and Budget (FHA) is amended by deleting Section FH.20.A.1. Performance Management Staff (FHA-1), including the organizational title, functional statement, and administrative code, in its entirety.
- Section FH.20.A.1. will then be retitled Office of Management and Human Resources (FHA4). The organizational titles, functional statements, and administrative codes for the new office and subordinate divisions are presented below:

1. Office of Management and Human Resources (FHA4)

Provides HCFA-wide policy direction, coordination, and control in the areas of personnel, performance management, management planning, management analysis, management evaluation, paperwork reduction, and public-use data collection. Develops and promulgates HCFA policy in these functional areas and executes these policies throughout HCFA.

a. Division of Personnel (FHA41)

Provides services, leadership, direction, and control with respect to personnel and related services within HCFA. Serves as the principle advisor to the Director of the Office of Management and Budget on the operation of HCFA's personnel system, including recruitment and placement, position classification, personnel management evaluation, performance appraisal, employee development and training, employee relations, and labor relations. Administers the Agency special emphasis placement and executive personnel programs. Serves in a leadership role in providing authoritative advice and assistance to management officials in carrying out their position management responsibilities. Provides for an employee counseling service for employees in HCFA central office.

b. Division of Management, Organizational Analysis, and Planning (FHA42)

Provides services, policy direction, and coordination with respect to HCFA's management program, including the planning and execution of management planning and analysis, management processes, workplanning, organizational analysis, position management, management control systems, consultant contracting, Commercial-Industrial activities, paperwork reduction, clearance of public use data collections. Develops HCFA policy in these areas and assures the implementation of these policies throughout HCFA.

- Section FH.20.A Office of Management and Budget (FHA) is amended by deleting section FH.20.A.3. Office of Management Services, including organizational titles, functional statements, and administrative codes, in their entirety. The deletion of this office includes deleting the three subordinate divisions in their entirety; Division of Management Analysis and Review (FHA21), Division of Organizational Analysis (FHA22), and Division of Public Information Collection (FHA23).

Section FH.20.A.3. will then be retitled Office of Administrative Services (FHA5). The organizational titles, functional statements, and administrative codes for the new office and subordinate divisions are presented below:

3. Office of Administrative Services (FHA5)

Provides services, policy direction, coordination, and broad operational control of HCFA's voice telecommunication policies, administrative services, printing and distribution services, records and mail services, telecommunications services, procurement (excluding Medicare contractors and Medicaid State Agencies), facilities management, and related support services. Develops and promulgates HCFA-Side policy for these areas, and coordinates with the Bureau of Data Management and Strategy (BDMS) on the relationship of voice and data telecommunication policies.

a. Divison of General Services (FHA51)

Provides direct service and establishes policy for other HCFA components with respect to facilities and property management, supply, security and personal services, including space acquisition, management, and maintenance; conference facilities; occupational safety and health; emergency preparedness planning; parking; and other activities related to environmental and health matters. Provides or secures labor, warehouse, shipping, moving services, equipment loans, machine repairs, rentals, etc. Develop comprehensive budget estimates for and management of centralized facilities management funds. Provides general administrative support to Washington, D.C. components. Provides service, leadership, direction, and control of HCFA's publications, printing, records management, mail management and services, library services, forms management, in-house graphic, reprographics, and telecommunications and the operation of the Baltimore teleconferencing room. Responsible for the direction, control, and maintenance of centralized publications, including storage, distribution, printing and reproduction of publications; processing, control, and distribution of incoming and outgoing mail. Manages the national Medicare forms printing and distribution program.

b. Division of Procurement Services (FHA52)

Provides procurement services for other HCFA components including project grant, contract, and small purchase solicitation, award, and administration; cost and advisory function; and procurement-related training. Monitors annual HCFA contract plan and prepares and submits required reports. Solicits, negotiates, analyzes, and coordinates proposal evaluation and prepares and awards contracts. Provides HCFA cost advisory and audit services on pre-award and post-award grant and procurement actions to ensure conformance to legal and regulatory requirements. Performs all HCFA cost/price analysis and evaluation required for the review, negotiation, award administration, and close-out of grants and contracts. Provides field audit capability during the pre-award and close-out phases on contract and grant activities. Coordinates and acts as liaison with Defense Contract Audit Agency, Department of Health and Human Services (HHS) Audit Agency, Office of the General Counsel, and other HHS offices and agencies to obtain required audit support and resolution. Coordinates and/or conducts training for contract and grant personnel and project officers in HCFA components.

- Section FH.20.A. Office of Management and Budget is amended by deleting Section FH.20.A.4. Office of Human Resources and Administrative Services (FHA3), including organizational titles, functional statements, and administrative codes, in their entirety. The deletion of this office includes deleting the four subordinate divisons in their entirety; Division of Human Resources (FHA31), Division of Procurement Services(FHA32), Divison of General Services (FHA33), and Division of Communication Services (FHA34). There will be no replacement for Section FH.20.A.4.

The revised numerical order and organizational title designation for the office structure under Section FH.20.A. Office of Management and Budget is as follows:

1.FH.20.A.1. Office of Management and Human Resources
2.FH.20.A.2. Office of Financial Management Services (no change)
3.FH.20.A.3. Office of Administrative Services

Dated: August 24, 1984.

Carolyne K. Davis, Ph.D.,

Administrator, Health Care Financing Administration.

[FR Doc. 84-23535 Filed 9-5-84; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Sections F.30., 40., 50., 60., and 70. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA) (42 FR 57351, November 2, 1977 and 43 FR 26350, June 19, 1978) are hereby replaced by these new Sections, which update the delegations of authority to the Administrator, HCFA, and the HCFA Order of Succession. These revisions are necessary to reflect changes in the statutes which have obsoleted various provisions in the current sections F.30. thru 60., as well as to add new authorities that have been delegated. The new authorities, for example, include: authority pertaining to the licensure of clinical laboratories engaged in interstate commerce; authority to conduct demonstration projects for the training and employment of eligible AFDC recipients as home health aides; authority to make disallowance, penalty, and waiver

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determinations under the Medicaid Quality Control system; authority to determine that an organization is an alternative health maintenance organization; and authority to conduct demonstration of physician-directed clinics in urban medically uderserved areas. Also, references to fraud and abuse activities which have been transferred to the Office of the Inspector General have been deleted. Any previous actions taken which are consistent with the delegations contained herein are hereby affirmed and ratified. The Order of Succession (F.70.) is being updated to reflect HCFA's current organizational structure. The new Sections read as follows:

F.30. Delegations of Authority

Except as provided in Sections AA.3., F.40., and F.50. of this Statement, the Administrator, Health Care Financing Administration, shall exercise:

A. The authority vested in the Secretary under sections 226 and 226A of the Social Security Act (42 U.S.C. 426 and 426-1) pertaining to the determination of entitlement to hospital insurance benefits, and in the case of certain individuals medically determined to have End-Stage Renal Disease, to the determination of entitlement to supplementary medical insurance benefits.

B. The authority vested in the Secretary under Title VII of the Social Security Act (42 U.S.C. 902 et seq.) insofar as such title pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

C. The authority vested in the Secretary under Part A of Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) insofar as such provisions pertain to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement including, but not limited to:

1. The authority under section 1106 (42 U.S.C. 1306) pertaining to disclosure of information.

2. The authority under section 1110 (42 U.S.C. 1310) to make grants to States and public and private nonprofit organizations and agencies for payment of part of the cost of research and demonstration projects as they pertain to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement, and to enter into agreements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters. (See also F.40.3.a.)

3. The authority under section 1112 (42 U.S.C. 1312) to develop guides and recommend standards regarding the level, content, and quality of general medical care and services for the use of the States in evaluating and improving public assistance medical care programs and the State programs of medical assistance.

4. The authority under section 1115 (42 U.S.C. 1315) to approve and make grants for experimental, pilot, or demonstration projects as they pertain to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement, to waive compliance with any of the requirements of section 1902 (42 U.S.C. 1396a) to the extent and for the period he or she finds necessary to enable a State or States to carry out such projects, and to specify the extent of and the period during which costs of such projects which would not otherwise be included as expenditures under section 1903 (42 U.S.C. 1396b), shall be regarded as expenditures under the State's or States' Title XIX plan(s) or for the administration of such plan(s). (See also F.40.3.a.)

5. The authority under section 1116 (a), (b), and (c) (42 U.S.C. 1316 (a), (b), and (c)) to approve or disapprove (subject to the limitations contained at F.50.3.a.) State plans or amendments thereto under Title XIX.

6. The authority under section 1121 (42 U.S.C. 1320a) pertaining to uniform reporting systems for health services facilities and organizations.

7. The authority under sections 1122 (d) and (e) (42 U.S.C. 1320a-1 (d) and (e)) to identify and deny payment of those amounts to be excluded from reimbursement to health care facilities under Titles XVIII and XIX when such exclusions have been found necessary under section 1122.

8. The authority under section 1122(f) (42 U.S.C. 1320a-1(f)) to reconsider determinations made under sections 1122 (d) and (e) (see also regulations at 42 CFR 405.1890).

9. The authority under section 1123 (42 U.S.C. 1320a-2) to develop and conduct a program for determining qualifications for certain health care personnel. (See also F.50.1.a.)

10. The authority under section 1124 (42 U.S.C. 1320a-3) pertaining to disclosure of ownership and related information by providers, carriers, intermediaries, and similar organizations as it pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

11. The authority under section 1126 (42 U.S.C. 1320a-5) pertaining to disclosure by institutions, organizations, and agencies of owners and certain other individuals who have been convicted of certain offenses.

12. The authority under section 1129(a) (42 U.S.C. 1320a-8(a)) to require coordinated audits and authority to reduce payments otherwise due under Title XIX to States that decline to participate in coordinated audits.

13. The authority under section 1131(a)(1)(C) (42 U.S.C. 1320b-1(a)(1)(C)) to transmit Part A entitlement information regarding deferred vested benefits (see also F.50.1.d.).

14. The authority under section 1132 (42 U.S.C. 1320b-2) which prescribes the period during which States may submit claims for Federal payments and which permits late claims to be paid, as it pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

15. The authority under section 1134 (42 U.S.C. 1320b-4) pertaining to determinations of whether gifts to nonprofit hospitals are to be deducted from the operating costs of such hospitals.

D. The authority vested in the Secretary under Part B of Title XI of the Social Security Act (42 U.S.C. 1320c et seq.) and in section 150 of Pub. L. 97-248 (42 U.S.C. 1320c note) to administer the Professional Standards Review program and the Utilization and Quality Control Peer Review program.

E. The authority vested in the Secretary under Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

F. The authority vested in the Secretary under section 103 of Pub. L. 89-97 (42 U.S.C. 426a) pertaining to the transitional provision concerning the eligibility of certain individuals otherwise uninsured to become entitled to hospital insurance benefits (Part A of the Medicare program).

G. The authority vested in the Secretary under section 104(b)(1) of Pub. L. 89-97 (42 U.S.C. 13951 note) pertaining to the suspension of payments of Supplementary Medical Insurance benefits under Part B of Title XVIII of the Social Security Act, otherwise payable to or on behalf of individuals whose benefits under Title II of the Social Security Act are suspended by reason of section 202(t) of that Act (42 U.S.C. 402(t)).

H. The authority vested in the Secretary under section 104(b)(2) of Pub. L. 89-97 (42 U.S.C. 1395o note) pertaining to the denial of enrollment under Title XVIII of the Social Security Act to individuals convicted of certain subversive activities.

I. The authority to conduct experiments and demonstration projects and authority to waive compliance with the requirements of Title XVIII and XIX of the Social Security Act, under section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248, as amended by section 222(b) of Pub. L. 92–603, and as subsequently amended), under sections 222(a) and 245 of Pub. L. 92–603, and under section 3 of Pub. L. 95–210, as they pertain to Titles XVIII and XIX of the Social Security Act. (42 U.S.C. 1395b–1, 1395b–1 note, 1395x note.) (See also F.40.3.a.)

J. The authority in section 21(b) of Pub. L. 95–142 (42 U.S.C. 1395x note), and in section 8(c) of Pub. L. 95–292 (42 U.S.C. 1396d note) to define those costs which may be charged to the personal funds of patients in skilled nursing facilities or intermediate care facilities who are individuals receiving benefits under Title XVIII, or medical assistance under a State plan approved under Title XIX of the Social Security Act, and authority to define those costs which are to be included in the reasonable cost or reasonable charges for extended care services, skilled nursing services, and intermeidate care facility services, as determined under the appropriate provisions of such Titles.

K. The authority vested in the Secretary under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

L. The authority to administer the Maximum Allowable Costs of Drugs Program for the Department, including responsibility for administrative support to the Pharmaceutical Reimbursement Board. (See also F.50.4.a.)

M. The authority vested in the Secretary under the Federal Claims Collection Act (31 U.S.C. 3711) to collect claims in any amount; to compromise, suspend, or terminate collection action on claims of $20,000 or less, exclusive of interest; and to refer claims to the General Accounting Office or the Department of Justice for further collection action, insofar as such authority pertains to the Mission of the Health Care Financing Administration, as described in section F.00. of this Statement.

N. The authority vested in the Secretary under section 7(c)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(2)) to certify to the Secretary of the Treasury amounts to be transferred to or subtracted from the Railroad Retirement Account from the Federal Hospital Insurance Trust Fund for the purpose of equalizing the proportion of funds used from that Trust Fund and the Railroad Retirement Account to pay benefits to certain individuals who have completed less than 10 years of service under the Railroad Retirement Act.

O. The authority vested in the Secretary under section 7(d)(5) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d)(5)) to exchange with the Railroad Retirement Board such information, records, and documents as may be necessary to the administration of the Railroad Retirement Act (45 U.S.C. 231 et seq.).

P. The authority vested in the Secretary under section 353 of the Public Health Service Act (42 U.S.C. 263a) pertaining to the licensure of clinical laboratories in interstate commerce. (See also F.50.5.a.)

Q. The authority under section 1526 of the Public Health Service Act (42 U.S.C. 300m–5) to provide grants to State agencies to demonstrate the effectiveness of having the States regulate rates for the provision of health care, and the authority under section 1533(d) of that Act (42 U.S.C. 300n–2) to establish various uniform systems for institutional providers of health care, and the authority under Section 1533(a) of that Act (42 U.S.C. 300n–2) to make grants for the establishment of such uniform systems.

R. The authority under section 966 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) (42 U.S.C. 632a) pertaining to the conduct of demonstration projects for the training and employment of eligible AFDC participants as homemakers of home health aides.

S. The authority vested in the Secretary under sections 1902(a)(4) and 1903(u) of the Social Security Act (42 U.S.C. 1396a(a)(4) and 1396b(u)) to make disallowance, penalty, and waiver determinations under the Medicaid Quality Control system (in a manner specified in regulations at 42 CFR Part 431, Subpart P) (42 CFR 431.800 et seq.).

T. The authority under section 6(e) of the Orphan Drug Act (Pub. L. 97–414) (42 U.S.C. 255 note) pertaining to demonstration projects related to home health services.

U. The authority under section 1903(m)(1)(B) of the Social Security Act (42 U.S.C. 1396b(m)(1)(B)) to determine that an organization, which is not qualified as defined in section 1310(d) of the Public Health Service Act, is a Health Maintenance Organization because it meets the following conditions (as established by sections 1903(m)(1)(A) (i) and (ii) of the Social Security Act (42 U.S.C. 1396b(m)(1)(A) (i) and (ii)):

1. Makes services it provides to individuals eligible for benefits under this Title accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and

2. Has made adequate provision against the risk of insolvency, which provision is satisfactory to the State and which assures that individuals eligible for benefits under this Title are in no case held liable for debts of the organization in case of the organization's insolvency (see also F.50.3.b.)

V. The authority under section 3 (a) and (b) of Pub. L. 95–210 (42 U.S.C. 1395b–1 note) to conduct demonstrations, on a cost reimbursement basis, for services provided by physician-directed clinics in urban medically underserved areas. Such projects may include reimbursement for services of physician assistants or nurse practitioners employed by such clinics, if such services would otherwise be covered under Title XVIII if provided by a physician.

F.40. Reservations of Authority

1. Under Part B of Title XI of the Social Security Act (42 U.S.C. 1320c et seq.)

The Secretary shall exercise the authority in section 1161 of the Social Security Act (42 U.S.C. 1320c–10) pertaining to reports to Congress.

2. Under Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)

a. The Secretary shall serve as a member of the Board of Trustees of the Federal Hospital Insurance Trust Fund pursuant to section 1817(b) of the Social Security Act (42 U.S.C. 1395i(b)). During the absence of the Secretary, the Under Secretary or the Assistant Secretary for Legislation shall serve. During the absence of the Secretary, the Under Secretary, and the Assistant Secretary for Legislation, the Administrator, Health Care Financing Administration shall serve.

b. The Secretary shall serve as a member of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund pursuant to section 1841(b) of the Social Security Act (42 U.S.C. 1395t(b)). During the absence of the Secretary, the Under Secretary or the Assistant Secretary for Legislation shall serve. During the absence of the Secretary, the Under Secretary, and the Assistant Secretary for Legislation, the Administrator, Health Care Financing Administration shall serve.

c. The Secretary shall exercise the authority in section 1813(b)(2) of the Social Security Act (42 U.S.C.

1395e(b)(2)) pertaining to the annual determining and promulgation of the inpatient hospital deductible.

d. The Secretary shall exercise the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)) pertaining to the annual determining and promulgation of the amount of monthly premiums for hospital insurance.

e. The Secretary shall exercise the authority in section 1839(a) of the Social Security Act (42 U.S.C. 1395r(a)) pertaining to the annual determining of monthly actuarial rates for the aged and disabled, and to the annual determination and promulgation of the amount of monthly premjums for supplementary medical insurance.

f. The Secretary shall exercise the authority to terminate agreements entered into pursuant to section 1864 of the Social Security Act (42 U.S.C. 1395aa).

3. General Reservations

a. Any experiment, pilot, demonstration, or other project, all or any part of which is wholly financed with Federal funds made available under the Social Security Act (without any State, local, or other non-Federal financial participation), must be personally approved by the Secretary or the Under Secretary. (Section 1120 of the Act (42 U.S.C. 1320).)

b. The Secretary shall exercise, in accordance with the provisions of section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and the Federal Advisory Committee Act (5 U.S.C. App. I), the authority to establish and appoint advisory councils and other advisory groups.

c. Nothing in sections F.30., F.40., F.50. (except 1.b. and 2.a.), or F.60. shall be construed as limiting the Secretary's right to exercise the authorities otherwise delegated.

F.50. Limitations of Authority

1. Under Parts A and B of Title XI of the Social Security Act (42 U.S.C. 1320a et seq.)

a. The authority under section 1123 (42 U.S.C. 1320a–2) to develop and conduct a program for determining qualifications for certain health care personnel shall be exercised exclusively by the Administrator, Health Care Financing Administration (or his or her delegate).

b. The hearings and review under section 205(b) of the Social Security Act (42 U.S.C. 405(b)) as incorporated by sections 1155 and 1156(b)(4) of the Social Security Act (42 U.S.C. 1320c–4 and 1320c–5(b)(4)) shall be conducted by the Appeals Council, its members, and the Administrative Law Judges located in the Office of Hearings and Appeals of the Social Security Administration in accordance with the delegations of authority found in Section S.D.3. of this Statement.

c. The authorities for controlling fraud and abuse in the health care financing programs under sections 1128, 1128A, 1156(b), and 1160(b) of the Social Security Act (42 U.S.C. 1320a–7, 1320–7a, 1320c–5(b), and 1320c–9(b)) shall be exercised by the Office of the Inspector General.

d. The authority under section 1131(a)(1)(C) (42 U.S.C. 1320b–1(a)(1)(C)) to transmit Part A entitlement information regarding deferred vested benefits shall be exercised exclusively by the Administrator, Health Care Financing Administration (or his or her delegate).

2. Under Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)

a. The hearings and review under section 205(b) of the Social Security Act (42 U.S.C. 405(b)) as incorporated by sections 1862(d)(3), 1869 (b) and (c), 1876(c)(5)(B), and 1879(d) of the Social Security Act (42 U.S.C. 1395y(d)(3), 1395ff (b) and (c), 1395mm(c)(5)(B), and 1395pp(d)) shall be conducted by the Appeals Council, its members, and the Administrative Law Judges located in the Office of Hearings and Appeals of the Social Security Administration in accordance with the delegations of authority found in Section S.D.2. of this Statement.

b. The authorities for controlling fraud and abuse in the health care financing programs under sections 1862(d) (1) and (2); 1866(b)(2) (D), (E), and (F); and 1866(c)(1) with respect to termination actions only under sections 1866(b)(2) (D), (E), and (F) of the Social Security Act (42 U.S.C. 1395y(d) (1) and (2); 1395cc(b)(2) (D), (E), and (F); and 1395cc(c)(1)) shall be exercised by the Office of the Inspector General.

Note.—The Administrator of HCFA retains the authority under sections 1866(b)(2) and 1866(c)(1) (42 U.S.C. 1395cc(b)(2) and 1395cc(c)(1)) to terminate provider agreements for nonfraud and abuse reasons.

c. The authority conferred by sections 1816(g)(2) and 1842(b)(4) of the Social Security Act (42 U.S.C. 1395h(g)(2) and 1395u(b)(4)) to terminate an agreement or contract with an intermediary or carrier shall be exercised only by the Administrator or the Deputy Administrator, Health Care Financing Administration. [Note: This limitation does not apply to the authority under sections 1816 and 1842 to nonrenew existing agreements and contracts with organizations serving as intermediaries and carriers.] This authority may be exercised only after:

i. Such intermediary or carrier has been given an opportunity to request (within such time as is provided for by regulations) the Secretary to review the Administrator's conclusions and findings; and

ii. If such a request has been made, the Secretary has declined to review or has concurred in the Administrator's proposal to terminate such agreement or contract.

d. The Assistant Secretary for Health shall exercise the authority to determine whether an entity is an "eligible organization" within the meaning of section 1876(b) of the Social Security Act (42 U.S.C. 1395mm(b)) (See 48 FR 17395, 4/22/83 and 48 FR 19081, 4/27/83.)

e. The Assistant Secretary for Health shall exercise the authority pertaining to facilities of the Indian Health Service contained in sections 1880 (c) and (d) of the Act (42 U.S.C. 1395qq (c) and (d)).

3. Under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)

a. No State plan or amendment thereto submitted pursuant to any statute administered by the Health Care Financing Administration shall be finally disapproved without prior consultation and discussion by the Administrator with the Secretary.

b. Except as provided in section F.30.V. above, the Assistant Secretary for Health shall exercise the authority contained in sections 1903(m) (1)(B) and (2)(C) of the Social Security Act (42 U.S.C. 1396b(m) (1)(B) and (2)(C)) to determine whether an organization qualifies as a Health Maintenance Organization.

c. The authority under sections 1903 (a)(6), (b)(3), and (q) (42 U.S.C. 1396b (a)(6), (b)(3), and (q)) of the Social Security Act pertaining to the certification, recertification, and funding of State Medicaid fraud control units shall be exercised by the Inspector General.

4. Under the Maximum Allowable Costs of Drugs Program for the Department

a. This authority shall be exercised consistent with the authority of the Pharmaceutical Reimbursement Board.

5. Under the Public Health Service Act

a. The Public Health Service shall exercise those authorities under section 353 of the Public Health Service Act (42 U.S.C. 263a) (the Clinical Laboratories Improvement Act of 1967) pertaining to matters specifically assigned to it under interagency agreements with HCFA, such as developing and interpreting regulations dealing with technical and scientific standards (including personnel standards); developing and administering laboratory proficiency testing programs; conducting proficiency examinations for clinical laboratory personnel; monitoring the clinical laboratory standards of the States and nongovernmental organizations; and holding hearings on such matters.

F.60. Redelegation of Authority

Authority contained in Part F.30. of this Statement may be redelegated by the Administrator to such officers and employees of the Health Care Financing Administration and other such officers and employees of the Department as he or she may deem appropriate, except as otherwise provided therein, and as follows:

a. The authority in sections 1816(g)(2) and 1842(b)(4) (42 U.S.C. 1395h(g)(2) and 1395u(b)(4)) pertaining to the termination of agreements and contracts with intermediaries and carriers may not be redelegated. (Note: This restriction does not apply to the authority under sections 1816 and 1842 to nonrenew existing agreements and contracts with organizations serving as intermediaries and carriers.)

b. The authority in section 1878(f) (42 U.S.C. 1395oo(f)) may only be redelegated to the Deputy Administrator, Health Care Financing Administration.

F.70. Order of Succession

During the absence or disability of the Administrator of the Health Care Financing Administration, or if that position becomes vacant, the first available official listed below will act as Administrator. However, during a period of planned absence, the Administrator may choose to designate a different order. The order of succession is as follows:

a. Deputy Administrator;

b. Associate Administrator for Operations;

c. Associate Administrator for Policy;

d. Associate Administrator for Management and Support Services;

e. Associate Administrator for External Affairs; and

f. Deputy Associate Administrator for Operations.

The above order of succession also applies upon the activation of the Emergency Health and Human Services Plan upon the order of the Secretary.

Dated: June 28, 1984.

Margaret Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-23562 Filed 9-5-84; 8:45 am]

BILLING CODE 4120-03-M

Public Health Services

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to reflect revisions in Chapter HA (Office of the Assistant Secretary for Health), Chapter HD (Public Health Service Regional Offices), and Chapter HB (Health Resources and Services Administration). Specifically:

(1) The statement for the office of the Assistant Secretary for Health (42 FR 61318, December 2, 1977, as amended most recently at 49 FR 18625, May 1, 1984), is amended to reflect a new functional statement for the Division of Health Facilities Planning/Office of Resource Management/Office of Management to include responsibility of management oversight for nationwide architectural and engineering activities for direct Federal construction for PHS.

(2) The statement for the Public Health Service Regional Offices (HD1-HDX), (44 FR 21711, April 11, 1979, as amended most recently at 49 FR 20377, May 14, 1984), is revised to reflect a new Mission, Organization and Functions. These revisions include provisions for a nationwide responsibility of assigned facilities engineering, construction and management carried out in three regional office locations (Region II—New York, Region VI—Dallas, and Region X—Seattle); the deletion of the Office of Regional Health Maintenance Organizations (HD*G), the deletion of the Division of Alcoholism, Drug Abuse, and Mental Health Programs (HD*T), and the addition of a Division of Federal Employee Occupational Health (HD*H).

(3) The statement for the Health Resources and Services Administration (47 FR 38409-24, August 31, 1982, as amended most recently at 49 FR 30938, January 30, 1984), is amended to revise the functional statement for the Office of Operations and Management (HBA4), Office of the Administrator, to reflect responsibility for its facilities engineering, construction and management activities performed by the PHS Regional Offices.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, Section HA-20 Functions, delete the statement for the *Division of Health Facilities Planning (HAU43),* Office of Management, and insert a new statement as follows:

Division of Health Facilities Planning (HAU43). The Director of the Division of Health Facilities Planning serves as the principal advisor for, and establishes policies related to facilities-planning, acquisition, operation, maintenance and disposal; assures development of long-range plans and the annual review of facilities plans for the construction, maintenance, repair, improvement, and disposal of real property; manages or provides oversight in the design and construction of PHS facilities; provides technical assistance in planning, design, and construction of facilities projects, and in the acquisition, management, and disposition of PHS owned or leased real property; operates the safety management program for the PHS; operates the Federal Real Property assistance program on behalf of the Department; administers the Federal Buildings Fund for all the General Services Administration (GSA) assigned space; administers an integrated facilities engineering management system nationwide; and in PHS facilities related matters serves as the principal liaison with the Office of the Assistance Secretary for Management and Budget, GSA, other Federal agencies, and organizations outside the Government.

Public Health Service Regional Offices

Under Part H, Chapter HD, Public Health Service (PHS) Regional Offices, delete in its entirety *Sections HD-00 Mission, HD-10 Organization, and HD-20 Functions* and substitute the following:

Section HD-00 Mission. The Public Health Service (PHS) Regional Offices support the PHS mission of improving the health of the Nation's population by administering regional health programs and activities to assure a coordinated regional effort in support of national health policies and State and local needs within each region including: Assessing regional health requirements, assuring integration of health programs, and addressing cross-cutting program issues and initiatives to achieve program goals and meet overall regional health needs; providing a PHS focal point for responding to the needs of State and local governments, community agencies, and others involved in the planning or provision of general health and mental health services; providing a PHS focal point for emergency preparedness and emergency medical services in the regions; supporting the Department of Health and Human Services (DHHS) intergovernmental relations activities and responding to health issues emanating from State and local concerns; and administering health activities and programs to provide for prevention of health problems, improved systems and capacity for providing health care, and assuring access to and quality of general health services.

Section HD-10 Organization. The Public Health Service Regional Offices (HD1-HDX) consist of:

Office of Regional Health Administrator (HD1-HDX)
  Office of Engineering Services (HD*E)[1]
  Office of Grants Management (HD*J)
Division of Preventive Health Services (HD*U)
Division of Health Services Delivery (HD*V)
Division of Health Resources Development (DH*W)
Division of Federal Employee Occupational Health (HD*H)

Section HD-20 Functions. Public Health Service (PHS) Regional Office (HD1-HDX). The Public Health Service (PHS) Regional Offices are headed by a Regional Health Administrator (RHA) who serves as the regional representative of the Assistant Secretary for Health (ASH), directs and administers Regional Office activities, and is responsible for integrating health and medical expertise with regional program efforts. The RHA and principal staff comprise the immediate Office of the Regional Health Aministrator which: (1) Directs PHS Regional Office programs and activities in order to assure a coordinated regional effort in accordance with national policies and State and local needs within the region; (2) establishes regional priorities, consistent with ASH and agency guidance, for the development of a coordinated regional work program; (3) administers all PHS program authorities delegated to the RHAs including award of grants, assignment of personnel, provision of services, monitoring program performance, promoting the quality of services, evaluation of the impact of PHS program, and provision of professional and technical assistance; (4) assures the accomplishment of priority PHS and DHHS initiatives; (5) provides regional input to formulation and analysis of national policies, program priorities and plans, and PHS budget and staffing allocation processes; (6) serves as the regional focal point for health liaison with State, territorial and local health officials as well as private and professional organizations in the region, providing assistance on improving State and local health plans and programs, providing information and guidance on PHS health policies and programs which may impact upon local programs, and facilitating access to and receipt of services from PHS programs; (7) provides management direction and control of all resources allocated to the region including appointment and supervision of regional staff, allocation of funds within the region, directing systems for controlling and accounting for use of regional resources, implementation of EEO and provision of administrative services, in coordination with the Office of the Regional Director, necessary to support PHS regional programs; (8) serves as the regional focal point for regional emergency preparedness activities; (9) provides expertise and leadership to regional program efforts as the principal coordinator for medical representation of PHS in the region; (10) cooperates with the Regional Director in coordinating health programs with other DHHS programs and with representatives of other Federal agencies with programs impacting on the health needs within the regions; (11) coordinates activities as required with programs administered by the Food and Drug Administration; and (12) for Regional Office IX and II, conducts activities and monitors liaison with the Department of the Interior and other Federal agencies in promoting health programs in the U.S. Insular areas.

*Office of Engineering Services (HD*E).*[2] (1) Administers regional facilities engineering and construction; (2) assures the delivery of total architectural and engineering services in support of assigned federally assisted and direct Federal construction programs; (3) carries out property management activities relating to PHS owned and utilized facilities; (4) serves as the source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS Headquarters on technical programmatic areas; (5) provides for development, implementation and monitoring of the annual work plan related to assigned program areas including setting objectives responsive to national and regional priorities and assigning offices resources required to attain these objectives; and (6) coordinates with other staff within the regional office to develop and consolidate objectives which cross program, division and office lines.

*Office of Grants Management (HD*J).* The Office of Grants Management: (1) Serves as the focus for grants management activites in the PHS Regional Office; (2) receives and refers grant applications to the appropriate program; (3) maintains a control record of review process; (4) reviews grant applications from a management point of view for conformity to laws, regulations, and policies; (5) identifies problem areas and collaborates with other staff in their resolution; (6) maintains central grant files for the PHS Regional Office; (7) issues grant awards, negotiates, computes, prepares, and signs award notices; (8) secures necessary clearances and distributes grant award statements; (9) provides continuing surveillance of financial and administrative aspects of grant supported activities through site visits to assure compliance with appropriate DHHS and PHS policies; (10) gives technical assistance, where indicated, to improve the mangement of grant supported activities; (11) develops, implements, and manages regional grants management procedures and policies; (12) provides for the collection, accurancy and reporting of business management data and analyzes and monitors business management data on grants; (13) provides for development, implementation, and monitoring of the annual regional work plan related to responsibilities assigned to the office, including setting objectives responsive to national and regional priorities and assignment of office resources required to attain these objectives; (14) conducts studies and provides assistance to improve the operation of grantee management systems and grant review procedures; (15) responds to requests for grants management information from headquarters and regional staffs and from the public; (16) develops business management methods to improve cost effectiveness and financial systems of PHS regional project grants; and (17) implements business management principles and financial plans in all appropriate projects.

*Division of Preventive Health Services (HD*U).* The Division of Preventive Health Services: (1) Directs and coordinates programs and activities designed to improve health by preventing or controlling diseases, including environmentally induced health problems; (2) provides liaison with special national impact programs, such as childhood immunization and venereal disease control, and assures access to headquarters epidemiologic and laboratory specialists and other specialized assistance; (3) provides or arranges professional consultation, guidance, and technical assistance to State and local health departments and agencies, communities and industries on disease prevention, preventive health services, health education, environmental and occupational health services; (4) verifies accuracy and analyzes programmatic data with respect to preventive health services; (5) reviews and recommends action on grant applications and contract proposals, and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (6) provides a locus of responsibility for supervision of personnel assigned from the Centers for Disease Control to State and local health departments; (7) provides for development, implementation, and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to national and regional priorities and assignment of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS Headquarters on technical programmatic areas; (10) establishes effective communication and working relationships with health related organizations of the States and other jurisdictions; and (11) serves as a focal point for information on health promotion and related efforts within the region, including voluntary, professional and other private sector activities.

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[1] Offices located in Regions II, VI, and X.

[2] Regions II, VI and X.

Division of Health Services Delivery (HD*V). The Division of Health Services Delivery: (1) Directs and coordinates program and activities designed to promote and provide quality health services within the region; (2) provides or arranges professional consultation, guidance, and technical assistance in assigned program areas, including interpretation of national policies and guidelines to contractors and applicants for Federal assistance; (3) promotes and directs activities designed to increase health care capacity and to increase access to quality health services for the medically underserved; (4) serves as regional focal point for promoting and directing efforts to integrate services delivery projects in a more comprehensive manner to maximize services available in health scarcity areas; (5) verifies accuracy and analyzes programmatic data with respect to health service programs; (6) reviews and recommends action on grant applications and contract proposals, and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (7) provides for development, implementation, and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to national and regional priorities and assignments of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS headquarters on technical programmatic areas; (10) establishes effective communication and working relationships with health related organizations of States and other jurisdictions; and (11) serves as a focal point for information on health service programs and related efforts within the region including voluntary, professional and other private sector activities.

Division of Health Resources Development (HD*W). The Division of Health Resources Development: (1) Directs and coordinates regional implementation of programs and activities designed to increase the capacity and capability of health care systems in the region; (2) reviews and recommends action on grant and loan applications and contract proposals providing continuous programmatic monitoring of division grants, contracts and loans for compliance with applicable laws, regulations, policies and performance standards; (3) reviews and recommends appropriate action on project applications and State plans based on compliance with laws and regulations, technical adequacy of proposal, and effectiveness of project and plans in meeting specific programmatic objectives; (4) verifies accuracy and analyzes programmatic data with respect to health resources, program impact and costs; (5) assures the implementation of all loan officer functions for division loan programs; (6) provides or arranges professional consultation, guidance, and technical assistance in assigned program areas, including the interpretation and explanation of national policies and guidelines; (7) provides for the development, implementation and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to regional and national priorities and assignment of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) serves as source of expertise in the PHS Regional Office on specific program areas, and as regional program liaison with PHS headquarters on technical programmatic matters; and (10) establishes effective communication and working relationships with health related organizations of States and other jurisdictions; and (11) serves as a focal point for information on health resource development and related efforts within the region, including voluntary, professional and other private sector activities.

Division of Federal Employee Occupational Health (HD*H). The Division of Federal employee Occupational Health: (1) Directs and coordinates programs and activities designed to improve Federal employee occupational health and safety programs in the region; (2) administers employee occupational health programs, including employee assistance programs, for other Federal agencies on a reimbursable basis; (3) promotes activities designed to protect the working health and safety of Federal employees in the region in order to maximize their productivity; (4) provides or arranges professional consultation, guidance and technical assistance in assigned program areas, including interpretation of national policies and guidelines; (5) verifies accuracy and analyzes programmatic data with respect to Federal employees health programs; (6) takes action as necessary on contrat proposals, and provides continuous programmatic monitoring of Division contracts for compliance with applicable laws, regulations, policies and performance standards; (7) provides for development, implementation and monitoring of the annual work plan related to assigned program areas including setting objectives responsive to national and regional priorities and assigning office resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program, division and office lines; and (9) serves as the source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS headquarters on technical programmatic areas.

Health Resources and Services Administration

Under Part H, Chapter HB, Health Resources and Services Administration, Section HB–20, Functions, revise the statement for *Office of Operations and Management (HBA4),* Office of the Administrator, to delete the "and" after item (4), change the period after item (5) to a semicolon, and add the following:

and (6) administers regional facilities engineering and construction activities performed by PHS Regional Offices.

These revisions are effective September 1, 1984.

Dated: August 21, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 84–23534 Filed 9–5–84; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. N–84–1443; FR–2024]

Inventory of Commercial Activities

AGENCY: Office of the Assistant Secretary for Administration, Department of Housing and Urban Development (HUD).

ACTION: Notice of OMB Circular No. A–76 schedule for cost comparison studies.

SUMMARY: Notice is hereby given that under Office of Management and Budget (OMB) Circular No. A–76, the Department of Housing and Urban Development (HUD) is publishing its schedule for conducting cost comparison studies of commercial activities currently performed by the Department.

The location of activities to be studied is identified in the table below as follows: "HQ" if the activity is performed only at HUD headquarters in Washington, D.C.; "F" if the activity is located in Field Offices throughout the United States; or "HQ/F" if the Activity is both a headquarters and field office function.

Contracts may or may not result from the review of each activity. Results of the review of an activity will be made available upon request to all interested parties.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755–5294. (This is not a toll-free number.)

Dated: August 17, 1984.

Judith L. Tardy,

Assistant Secretary for Administration.

Activity	Estimated start date	Estimated completion date	Location
1. Computer Operations Support	5/84	11/84	HQ.
2. Production & Data Control	5/84	3/85	HQ.
3. ADP Systems Development and Maintenance	1.85	8/85	HQ.
4. Distribution Management	8/84	FY '85	HQ.
5. Property	6/84	FY '85	HQ.
6. Warehouse	6/84	FY '85	HQ.
7. Mail Operations	3/85	FY '86	HQ.
8. Motor pool	12/86	FY '87	HQ.
9. Visual Arts	FY '86	FY '87	HQ.
10. Space Management	FY '86	FY '87	HQ.
11. Telecommunications	FY '85	FY '87	HQ.
12. Photocopying Center	FY '87		HQ.
13. Single-Family Property Disposition	11/82	9/84	HQ/F.
14. Multifamily Property Disposition	FY '86	FY '87	HQ/F.

[FR Doc. 84–23540 Filed 9–5–84; 8:45 am]

BILLING CODE 4210–01–M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–84–1442; FR–2031]

National Manufactured Home Advisory Council

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Meeting of the National Manufactured Home Advisory Council.

SUMMARY: This Notice announces the next meeting of the National Manufactured Home Advisory Council. The meeting will be held October 10–12, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Worthy, Office of Manufactured Housing and Regulatory Functions, HUD, 451 7th Street SW., Room 9158, Washington, D.C. 20410; telepone (202) 755–5210. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), 42 U.S.C. 5401 et seq., requires the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for manufactured homes. The Act also requires that the Secretary appoint a National Manufactured Home Advisory Council composed of 24 members. The membership of the Council is selected equally from each of the following categories: (a) The manufactured home industry and related groups, including at least one representative of small business; (b) consumer organizations, community organizations, and recognized consumer leaders; and (c) government agencies including, Federal, State and local governments. The purpose of the National Manufactured Home Advisory Council is to advise the Department, t the extent feasible, prior to the establishment, amendment or revocation of any manufactured home construction and safety standard.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a)(2), announcement is made of the following meeting:

The National Manufactured Home Advisory Council will meet on October 10 and 12, 1984, in the HUD Building, 451 7th Street SW., Departmental Conference Room, Room 10233, Washington, D.C. 20410. On October 11 the Subcommittees of the Advisory Council will meet at the Channel Inn, 650 Water Street SW., Washington, D.C. 20024. The meetings are open to the pulic and will convene at 9 a.m. each day.

The Advisory Council will primarily discuss the energy issues involved in the Manufactured Home Construction and Safety Standards.

The final agenda will be available at the meeting. Inquiries concerning the agenda may be made after September 10, 1984, by contacting the Office of Manufactured Housing and Regulatory Functions, HUD, at (202) 755–5210. (This is not a toll-free number.)

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5404; and Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a)(2).

Dated: August 7, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–23541 Filed 9–5–84; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet Tuesday and Wednesday, September 18 and 19, 1984. The September 18 meeting will be held at the National Defense University, Fort Lesley J. McNair, Washington, D.C. This meeting will consist of briefings on certain national security and emergency mobilization topics that Committee members need to consider to discharge their responsibilities. Briefings will be classified SECRET and higher. Under the provisions of 5 U.S.C. 552b this meeting will be closed to the public for national security reasons, and only members of the Committee and other authorized observers with validated security clearances will be admitted.

The September 19 meeting will convene from 9:00 a.m. to 2:30 p.m. in the first-floor auditorium of the Main Interior Building (C Street entrance) at 18th and C Streets, NW., Washington, D.C. This meeting will be open to the public.

The proposed agenda for the September 19 meeting is:

9:00–12:00: Reports from the members on their assessments of materials and minerals priorities, and recommendations for consideration by the full Committee.

1:00–2:00: Evaluation by the Committee of members' recommendations and discussion of which recommendations, if any, are sufficiently well-developed for submission to the Secretary; discussion and planning for future efforts.

FOR FURTHER INFORMATION CONTACT: Wayne Marchant, Department of the Interior, Washington, D.C., Room 6649, (202) 343–5791.

Dated: August 31, 1984.

Wayne N. Marchant,

Executive Director.

[FR Doc. 84–23489 Filed 9–5–84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

New Mexico; Filing of Plat of Survey

August 23, 1984.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on August 22, 1984.

New Mexico Principal Meridian

The survey of lots 40 through 45 in section 23, T. 1 S., R. 1 W., NMPM, under Group 768 NM, and was accepted August 9, 1984.

This survey was executed to meet certain administrative needs of this Bureau.

The plat will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 84–23492 Filed 9–5–84; 8:45 am]

BILLING CODE 4310-FB-M

Office of the Secretary

Garrison Diversion Unit Commission; Revised Notice of Meeting

Procedures for witnesses giving testimony at the first public hearing of the Garrison Diversion Unit Commission, scheduled for September 10–11, 1984, in Bismarck, North Dakota, have been modified. The length of time permitted for individual oral testimony will not necessarily be limited to 5 minutes but will be set at the discretion of the Commission Chairman.

Time and place of the hearing, published in FR Doc. 84–22653, appearing on pages 33728–33729 in the issue of Friday, August 24, 1984, remain unchanged.

Dated: August 31, 1984

Robert N. Broadbent,

Federal Representative.

[FR Doc. 84–23504 Filed 9–5–84; 8:45 am]

BILLING CODE 4310-08-M

Minerals Management Service

Development Operations Coordination Document; Diamond Shamrock Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Diamond Shamrock Exploration Company has submitted a DOCD describing the activities it proposes to conduct on lease OCS–G 4757, Block 192, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 28, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in § 250.34 of Title 30 of the CFR.

Dated: August 28, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23557 Filed 9-5-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Superior Oil Co.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Superior Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0797, Block 105, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 27, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: August 27, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23544 Filed 9-5-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Service clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Pretest of the 1985-86 Federal Estate Visitor Survey (FEVS).

Abstract: The proposed collection is a pretest of the 1985-86 FEVS—a detailed on-site survey of a representative sample of recreation visitors to Federal lands. Visitors are asked about their activities, experiences and expenditures; and invited to suggest improvements. The results are reported to Congress and used in planning.

Service Form No. (None).

Frequency: On occasion.

Description of Respondents: Individuals visiting Federal lands for recreation purposes.

Annual Responses: 375.

Annual Burden Hours: 158.

Service clearance officer: Russell K. Olsen, 202-523-5133.

Dated: August 27, 1984.

Russell K. Olsen,

Chief, Administrative Services Division.

[FR Doc. 84-23543 Filed 9-5-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[TA-503(a)-12 and 332-187]

President's List of Articles Which May Be Designated or Modified As Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Expansion of scope of investigation to include hot air popcorn poppers provided for in item 684.20 of the Tariff Schedules of the United States.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT:

(1) Mr. Aaron Chesser (202-523-0353) of the Commission's Office of Industries.

(2) Mr. William Gearhart (202-523-0487) of the Commission's Office of the General Counsel.

Background and Scope of Investigation

On August 2, 1984, the Commission initiated investigation No. TA-503(a)-12 and 332-187 at the request of the USTR to provide advice with respect to certain articles as to the probable economic effect on U.S. industries and consumers of the modification of the list of articles eligible for duty-free treatment under the United States Generalized System of Preferences (GSP), set forth in Title V of the Trade Act of 1974 (hereinafter referred to as "the Act"). The initial notice of the investigation, including information on contact persons, a public hearing, and written submissions from interested parties, was contained in the **Federal Register** of August 8, 1984 (49 FR 31780).

On August 13, 1984, the Commission received a request from the USTR to expand the scope of the investigation to provide advice with respect to whether products like or directly competitive with hot air popcorn poppers provided for in item 684.20 of the Tariff Schedules of the United States were produced in the United States on January 3, 1975. The President must consider whether this item should be eligible for an exemption from the 50 percent competitive need limit in section 504(c) of the Act, pursuant to section 504(d), as ordered by the U.S. Court of International Trade. This item is currently eligible for GSP duty-free treatment from all GSP beneficiary countries. Imports of the item from Hong Kong were denied GSP treatment from March 30, 1980 to March 30, 1981.

Issued: August 27, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23606 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-162]

Certain Cardiac Pacemakers and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) by the Commission's presiding officer (ALJ) to terminate the above-captioned investigation as to all remaining respondents and issues.

SUPPLEMENTARY INFORMATION: On July 23, 1984, complainant Medtronic Inc. moved (Motion No. 162-95) to terminate the investigation as to all remaining issues and respondents. The motion was supported by the Biotroniks respondents and the Commission investigative attorney (IA) and was not opposed by the Telectronics respondents. All respondents and the IA urged that the investigation be terminated with prejudice.

On July 26, 1984, the ALJ issued an ID (Order No. 78) granting the motion and terminating the investigation with prejudice. He found that terminating the investigation was in the public interest. He further found that since the parties had expended considerable time and effort in litigation and since termination was sought on the eve of trial, termination with prejudice is appropriate. He further found that all remaining undecided motions (including a motion by the Telectronics respondents to terminate the investigation for inequitable conduct on the part of complainant) were rendered moot.

A petition for review of the ID was timely filed by the Telectronics respondents urging that the Commission review the ID to the extent that it did not rule on their motion to terminate for inequitable conduct. However, the Telectronics respondents did not oppose the complainant's motion to terminate all remaining issues in this investigation before the ALJ. The Commission having determined not to review the ALJ's initial determination terminating all remaining issues in this investigation, the Commission also determines not to review the ID to the extent that it found respondents' motion moot. Accordingly, the ID has become the opinion of the Commission pursuant to 19 CFR § 210.53(h).

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons III, Office of the General Counsel, telephone 202-523-0493.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (c) and (h).

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23619 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

Request for Public Comment on Termination of Countervailing Duty Investigation Concerning Ferroalloys From Spain

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone 202-523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On April 23, 1982, the Commission received a request from the Government of Spain for the review of the countervailing duty order on ferroalloys from Spain (T.D. 80-11), notice of which was published on January 2, 1980, in the **Federal Register** (45 FR 25).

The Commission received a letter on August 16, 1984 from the Ferroalloys Association, the original petitioner for the countervailing duty order, stating that it withdraws its request for the imposition of countervailing duties under the above-referenced countervailing duty order.

The legislative history of section 704(a) of the Tariff Act of 1930, as amended by the Trade Agreements Act, indicates that the Commission should solicit public comment prior to termination of an investigation and approve the termination only if it is in the public interest. In light of the Commission's duty to consider the public interest, the Commission requests written comments from persons concerning the proposed termination of the investigation on ferroalloys from Spain. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the **Federal Register.**

Issued: August 27, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23618 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-203]

Certain Floppy Disk Drives and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on August 1, 1984, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Tandon Corporation, 20320 Prairie Street, Chatsworth, California 91311. A supplement to the complaint was filed on August 13, 1984. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain floppy disk drives and components thereof into the United States, or in their sale, by reason of alleged (1) breach of fiduciary duty and conspiracy to breach fiduciary duty; (2) misappropriation of trade secrets and proprietary information; (3) violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961-68; (4) industrial espionage and sabotage of equipment and property; (5) fraud, conspiracy to defraud and constructive fraud; (6) breach of contract, tortious breach of implied covenant of good faith and fair dealing and interference with contract and prospective advantage; and (7) theft of property and conversion. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an efficiently and economically operated domestic industry and to prevent the establishment of an industry in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanant exclusion order and permanent cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 27, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain floppy disk drives and components thereof into the United States, or in their sale, by reason of alleged (1) breach of fiduciary duty and conspiracy to breach fiduciary duty; (2) misappropriation of trade secrets and proprietary information; (3) industrial espionage and sabotage of equipment and property; (4) fraud, conspiracy to defraud and constructive fraud; (5) breach of contract, tortious breach of implied covenant of good faith and fair dealing and interference with contract and prospective advantage; and (6) theft of property and conversion, the effect or tendency of which is to destroy or substantially injure an efficiently and economically operated domestic industry and/or to prevent the establishment of an industry in the United States.

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on August 1, 1984, shall be forwarded to the presiding officer for an initial determination pursuant to § 210.53(b) of the rules.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Tandon Corporation, 20320 Prairie Street, Chatsworth, California 91311.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

The Lucky-Goldstar Group, 537 Namdaemun-ro 5-ga, Jung-gu, Seoul 100, Korea.
Gold Star Tele-Electric Co., Ltd., 60-1 Chungmu-ro 3-ga, Jung-gu, Seoul 100, Korea.
Gold Star Co., Ltd., 537 Namdaemun-ro 5-ga, Jung-gu, Seoul 100, Korea.
Lucky-Goldstar International Corp. (formerly known as Bando Sangsa Co., Ltd.), 537 Namdaemun-ro 5-ga, Jung-gu, Seoul 100, Korea
Lucky-Goldstar International (Pacific), Inc. (formerly known as Bando California, Inc.), 13013 East 166th Street, Cerritos, California 90701
Lucky-Goldstar International, Inc. (formerly known as Bando International, Inc.), 1050 Wall Street West, Lyndhurst, New Jersey 07071
Format Corporation, 2630 Townsgate Road, Building A, Westlake Village, California 91307
Felix Markhovsky, 23447 Mobile Street, Canoga Park, California 91307
Mikhail Anisimov (a.k.a. Michael Anisimov), 22345 Hackney Street, Canoga Park, California 91304
Herbert Berger, 766 East Lakefield Road, Westlake Village, California 91361
G. Edward Wilka, 3480 Brokenhill, Newbury Park, California 91320
Jay J. Ahn, c/o Lucky Goldstar Imports/Exports, 1281 Oakmead Parkway, Sunnyvale, California 94086

(c) Victoria L. Partner, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding officer shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, telephone 202/523-0471.

FOR FURTHER INFORMATION CONTACT: Victoria L. Partner, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202/523-1088.

By order of the Commission.

Issued: August 30, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-23600 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-184]

Certain Foam Earplugs; Commission Decision Not To Review Initial Determination Terminating Inoue MTP

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (I.D.) to terminate Inoue MTP as a respondent in the above-captioned investigation based on a settlement agreement.

Authority: 19 U.S.C.1337; 19 CFR 210.53(a), (c) and (h).

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the **Federal Register** of August 8, 1984, 49 FR 31782. No petition for review was filed, nor were any comments from Government agencies or the public received.

Copies of the I.D. and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23546 Filed 9-5-84; 8:45 am]

BILLING CODE 2020-02-M

[332-191]

Nonrubber Footwear Quarterly Statistical Reports

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing quarterly reports on nonrubber footwear.

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT: Reuben Schwartz (202-523-0114) or Gail Burns (202-523-0200), Textiles, Leather Products, and Apparel Division, U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

In a letter dated August 8, 1984, the Senate Committee on Finance requested that the Commission, pursuant to section 332 of the Tariff Act of 1930, prepare and publish quarterly reports containing the following statistical information with respect to nonrubber footwear: (1) production and/or shipments; (2) imports; (3) exports; (4) apparent consumption; (5) market share; (6) employment; and (7) unemployment. In addition, data on plant closings will be provided on an annual basis.

Pursuant to the request, the Commission will submit the first quarterly report to the Committee on Finance by October 15, 1984.

Issued: August 29, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23606 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-201]

Certain Products With Gremlin Character Depictions; Erratum to Notice of Investigation

In the Notice of Investigation in the above-captioned investigation issued by the Commission on August 24, 1984, on the first page under the section entitled "**SUMMARY:**", in line 7, the August 14, 1984 date should be changed to August 17, 1984 so that the sentence, as corrected, reads as follows:

Supplemental information was also filed on August 17, 1984.

Issued: August 29, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23618 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-148/169]

Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product; Extension of Time for Commission Decision on Whether To Order Review of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the date by which the Commission must decide whether to review the initial determination (ID) finding a violation of sections 337 and 337a of the Tariff Act of 1930 in the above-captioned investigation has been changed from August 31, 1984, to September 21, 1984.

SUPPLEMENTARY INFORMATION: The presiding officer's ID finding a violation of sections 337 and 337a in these consolidated investigations was filed on August 1, 1984. Under § 210.53(h) of the Commission's rules, the ID becomes the determination of the Commission within 30 days after the date of filing of the ID unless the Commission orders a review or extends the deadline for deciding whether to review. The 30-day deadline prescribed by the rules would have been August 31, 1984. The Commission has determined to change the deadline to September 21, 1984, in order to allow time for the parties and interested Government agencies to respond to petitions for review and to allow the Commission adequate opportunity to consider the issues raised therein.

Copies of the nonconfidential version of the initial determination, petitions for review, any responses thereto (when received), and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-3395.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in sections 210.53-.57 of the Commission's Rules of Practice and Procedure (19 CFR 210.53-57 as amended, 48 FR 20226, 21115).

Issued: August 28, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23602 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-202]

Certain Telephone Base Housings and Related Packaging and Printed Materials; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 26, 1984, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of GTE Communication Systems Corp., 2500 West Utopia Road, Phoenix, Arizona 85027. A supplemental complaint was filed on August 14, 1984. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain telephone base housings and related packaging and printed materials into the United States, or in their sale, by reason of alleged (1) infringement of the claim of U.S. Letters Patent Des. 267,716; (2) misappropriation of trade dress; (3) passing off; and (4) false marking. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 22, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain telephone base housings and related packaging and printed materials into the United States, or in their sale, by reason of alleged (1) infringement of the claim of U.S. Letters Patent Des. 267,716; (2) misappropriation of trade dress; (3) passing off; and (4) false marking, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

GTE Communications Systems Corp., 2500 West Utopia Road, Phoenix, Arizona 85027.

(b) The respondent is the following company, alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Keytronics, Inc., 13620 Gramercy Place, Gardena, California 90249.

(c) Robert D. Litowitz, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondent in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Robert D. Litowitz, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4693.

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23599 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-161]

Certain Trolley Wheel Assemblies; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

SUPPLEMENTARY INFORMATION: The presiding officer issued an initial determination on May 31, 1984, in which he determined that there has been a violation of section 337 of the Trade Act of 1930 (19 U.S.C. 1337) in the unauthorized importation or sale of certain trolley wheel assemblies. As a result of its review of that initial determination, a majority of the Commission on August 13, 1984, determined that a violation of section 337 exists in the unauthorized importation or sale of certain trolley wheel assemblies which infringe U.S. Letters Patent 4,109,343, owned by complainant C.L. Frost & Son, Inc., the tendency of which unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Copies of the Commission's Action and Order, its Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Authority: 19 U.S.C. 1337.

Issued: August 29, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23603 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: American Machine & Tool Co.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 30, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: August 30, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23601 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to Serve as members of Performance Review Boards.

SUPPLEMENTARY INFORMATION: The Chairwoman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board.

Chairman of PRB—Susan W. Liebeler, Vice Chairman
Member—Commissioner Alfred Eckes
Member—Commissioner Seeley G. Lodwick
Member—Commissioner David B. Rohr
Member—Charles W. Ervin
Member—E. William Fry
Member—Lorin L. Goodrich
Member—Norris A. Lynch
Member—Eugune A. Rosengarden
Member—Michael H. Stein
Member—John Suomela

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Terry P. McGowan, Director of Personnel, U.S. International Trade Commission (202) 523-0182.

Issued: August 29, 1984.

By Order of the Chairwoman.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23617 Filed 9-5-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Attorney General

Certification of the Attorney General

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners are necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Monroe County, Alabama. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: August 31, 1984.

Theodore B. Olson,

Acting Attorney General of the United States.

[FR Doc. 84-23614 Filed 9-4-84; 9:00 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Application No. D-3335 et al.]

Proposed Exemptions; Alaska National Bank of the North (ANBN)

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The application contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Alaska National Bank of the North (ANBN) Located in Fairbanks, Alaska

[Application Nos. D-3335, D-3336 and D-3337]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) as follows:

(I) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the past and proposed sale, exchange or transfer between ANBN and certain employee benefit plans (the Plans) of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by ANBN provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of ANBN who has authority to manage or control those Plan assets being invested in Mortgages or Participation Interests;

B. The terms of all transactions between the Plans and ANBN involving the Mortgages or Participation Interests are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to ANBN with regard to such sale, exchange or transfer;

D. The decision to invest in a Mortgage or Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of ANBN, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan; and

E. ANBN shall maintain for the duration of any Mortgage or Participation Interest which is sold to a Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

(II) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act) solely because of the ownership of a Mortgage or Participation Interest by such Plan.

Summary of Facts and Representations

1. ANBN is a federally chartered commercial bank with its principal offices in Anchorage and Fairbanks, Alaska. It maintains branch offices throughout the State of Alaska in smaller communities. ANBN is engaged in the type of banking activities customarily transacted by national commercial banks as authorized under federal law and regulations pertaining to such institutions. ANBN is regulated by the Office of the Comptroller of the Currency and is a member of the Federal Reserve System. It is insured and also regulated by the Federal Deposit Insurance Corporation.

Since January 1, 1975, ANBN has sold Participation Interests and Mortgages to the Plans and other investors. The past sales of Participation Interests and Mortgages involving employee benefit plans were to the Alaska Teamsters Employer Pension Trust and the Alaska Electrical Pension Fund. With respect to prospective transactions, sales between ANBN and the Plans include the above-mentioned multiemployer pension funds and other interested plan investors. The Mortgages consist of multi-family residential or commercial permanent first mortgages loans originated by ANBN in the ordinary course of its business.

ANBN has also requested an exemption for transactions involving the past and proposed sale of single family residential first mortgage loans and participation interests there in by ANBN to the Plans. On May 18, 1982, the Department issued a class exemption involving residential mortgage financing arrangements (Prohibited Transaction Exemption (PTE) 82-87, 47 FR 21331). PTE 82-87 provides retroactive and prospective relief for the acquisition of residential mortgages and participation interests therein by employee benefit plans. Accordingly, no relief is provided by this exemption for the past or proposed sale of single family first mortgage loans or participation interests therein by ANBN to the Plans.

2. ANBN sells either the entire Mortgage or a Participation Interest therein. ANBN had no pre-existing relationships with any of the Plans to which it initially sold a Participation Interest or Mortgage. However, by virtue of ANBN servicing the Mortgages and Participation Interests, it becomes a party in interest with respect to the Plans, so that any subsequent sale of Mortgages or Participation Interests becomes a prohibited transaction under section 406(a) of the Act. The applicant represents that the transactions do not involve a conflict of interest or present a situation where advantage could be taken of the Plans or the trustees of the Plans because all decisions regarding investment in the Mortgages or Participation Interests are made by Plan fiduciaries who are independent of ANBN.[1]

3. ANBN, concurrent with or after issuing a commitment to, or actually consummating a loan to a borrower, submits a formal proposal to a Plan fiduciary or investment manager to sell a Participation Interest in the loan or the whole Mortgage to the Plan. ANBN only orginates those loans that meet its strict underwriting guidelines. The proposal includes terms and conditions such as interest rate, loan duration, interest and principal payment schedule, commitment fee, security, and all other documentation necessary to meet accepted national banking standards. In all loan purchases, Plans are only bound upon signing the Participation Agreement. The Plan fiduciary or investment manager, who has exclusive discretion as to the placement of Plan assets, agrees to the loan participation, making a commitment and agreeing to all relevant specifications, terms and conditions.[2]

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[1] While stating affirmatively that ANBN would not make investment decisions regarding the Mortgages or Participation Interests, the applicant was silent about who would make such decisions. In some situations it is possible that investment decisions have been or will be made by trustees of the Plans. The Department notes that where the construction on the property which secures the Mortgage was by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the Mortgage, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this exemption. See also condition D of Part I of this exemption which has the effect of precluding relief under section 406(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[2] The Department notes that the application does not address the seperate prohibited transactions under section 406(a) (1) (B) of the Act which would exist should any of the Mortgages originated by ANBN and subsequently purchased by the Plans involve loans to any party in interest with respect to the purchasing Plan. Accordingly, no relief is afforded by this proposed exemption for such transactions. However, ANBN will request from the date of the grant of this excemption potential borrowers to list in their loan application their relationship to any pension plan in an effort to assist a potential purchasing plan in determining whether the borrower may be a party in interest.

4. The proposal will generally provide that ANBN will service the loan under the provisions of a Service Agreement entered into by ANBN and the Plan.[3] The Service Agreement will be combined with or work in conjunction with a Participation Agreement made between ANBN (as seller) and the Plan (as buyer) covering the terms of the Plan's purchase of the Participation Interest or the Mortgage. The Participation/Service Agreements are subject to full Plan review prior to any Plan decision to purchase a loan. The sales proposal, the commitment, and the Participation/Service Agreements will provide that the yield on the loan to the extent of the Plan's interest will be at the then prevailing market interest rates. The warranties and representations made by ANBN regarding the Mortgages and Participation Interests are standard for these types of transactions. ANBN will be able, if it so chooses and with the concurrence of the Plan, to retain some percentage of participation in the Mortgage.

5. The Plans pay no investment management, investment advisory, sales commission or underwriting fee to ANBN with respect to the acquisition or sale of the Mortgages or Participation Interests. The applicant represents that the Plans have paid and will pay no more for the Mortgages or the Participation Interests than have been or would be paid by an unrelated party in an arm's-length transaction.

6. ANBN's role as servicer and administrator of the loan will be remunerated via a servicing fee established in the Participation/Servicing Agreements. The fee shall be at the standard rate applied for such service, generally ¼ of one percent. The servicing functions shall include receipt of all principal and interest payments and processing thereof; remittance of such payments promptly after receipt; insuring that all conditions of the loan are met; and, in the event of default, institution of such legal proceedings as are necessary and appropriate to collect the indebtedness due on the loan and enforce the security therefor, and to fully protect the respective rights and interests of the parties to the Participation Agreement.[4]

7. With respect to past transactions, the Participation Agreements provided that ANBN would have discretion only in the event the loan were to go into default. In such instances, ANBN would be empowered to take those steps it deemed necessary to collect the indebtedness due on the loan. ANBN could, under the Agreements, act on its own initiative or upon written request of the purchaser of the Mortgage in event of default. However, ANBN represents that in all past transactions, whenever loans went into default, ANBN notified the Plans and made recommendations, but took no action without first obtaining the approval of the Plans. ANBN represents that in its opinion, it never exercised discretion over Plan assets nor acted as a fiduciary with respect to the Plans. ANBN, despite its apparent authority in the Participation Agreements, never initiated foreclosure proceedings or took other related actions to collect indebtedness on loans in default without prior knowledge and direction from the Plans. With respect to prospective transactions, decisions regarding foreclosure options and determinations as to property management during foreclosure and until disposition, and related asset-significant decisions, shall be made by the Plans. ANBN shall have no discretion in default to take any actions that will generate fees for ANBN, such as property management fees.

8. ANBN represents that as a result of being a party in interest with respect to a Plan by virtue of servicing the Mortgages it would be prohibited from engaging in other commercial transactions with a Plan, such as the making of loans, which have nothing to do with the Mortgages or Participation Interests held by the Plan. The Department has considered ANBN's request for relief for such transactions and has decided that because the servicing relationship is established as a necessary result of the purchase of a Mortgage or Participation Interest by a Plan, subsequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department has determined it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

9. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The transactions were and will be between the Plans and ANBN (a federally regulated institution) and are transactions made in the regular course of ANBN's business; (b) all Plan decisions to invest in Mortgages and Participation Interests were and will be made by Plan fiduciaries who are independent of ANBN; (c) the Plans have paid and will pay no more for the Mortgages or Participation Interests than would be paid by an unrelated party in an arm's-length transaction; (d) ANBN's servicing fee has been and will continue to be similar to fees charged other investors in the Mortgages or Participation Interests and have been and will be consistent with that charged in the open market; (e) the Mortgages were and will at all first liens on commercial and multi-family residential property; and (f) the warranties and representations made by ANBN regarding the Mortgages and Participation Interests are standard for these type transactions.

Notice to Interested Persons: In addition to the notice requirement outlined in the general provisions of this notice, ANBN agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom ANBN may contract in the future to provide services as described herein. Such notification will be provided prior to ANBN entering into a contract to provide such services.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Calvert Group, Ltd, Employee Stock Ownership Plan and Trust (the Plan) Located in Washington, D.C.

[Application No. D-5064]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan on January 3, 1984, to Acacia Financial Corporation (Acaia), a party in interest with respect to the Plan, of shares of stock of the Calvert Group, Ltd. (Calvert), the employer of Plan participants, in exchange for an initial cash payment and subsequent contingent payments, provided the terms of the transaction are at least as favorable to the Plan as those obtainable in a similar transaction between unrelated parties.

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[3] No exemption from section 406 of the Act is being granted for transactions pursuant to the Service Agreement beyond that which is provided by the statutory exemption pursuant to section 408(b) (2) of the Act.

[4] The Department notes that the application does not address the separate prohibited transaction under section 406(a)(1)(A) of the Act which would exist where upon foreclosure the Plan acquires title to real property and such property or a portion thereof is leased to a party in interest with respect to a Plan. Moreover, if the party in interest under such lease is an employer of employees covered by the Plan, the acquisition of real property by the Plan would result in the acquisition of employer real property which may violate the provisions of sections 406(a)(2) and 407 of the Act. Accordingly, no relief is afforded by this proposed exemption for such transactions.

Effective Date: If the proposed exemption is granted, the exemption will be effective January 3, 1984.

Summary of Facts and Representations

1. Calvert is a Delaware corporation which, through its various subsidiaries, operates five registered investment companies (the Funds) and offers transfer agency, shareholder services, portfolio evaluation and accounting with respect to each Fund. Calvert has established three registered investment advisers which manage the Funds: Government Services Management Company, Inc., and Calvert Asset Management Company, Inc. (CAMC) are Delaware Corporations, and Calvert Municipal Management Company (CMMC) is a partnership in which CAMC is a 50% general partner. Mr. Wayne B. Bardsley, Calvert's general counsel, and Mr. David R. Rochat were both 25% general partners of CMMC. Calvert's authorized capital stock consists of 2,000,000 shares of common stock, each with a par value of one cent per share, of which 796,046 shares were outstanding on January 3, 1984 (including 376,146 shares issued during the period June 1, 1983 to January 3, 1984).

2. The Plan is an individual account plan designed to invest primarily in employer securities. As of December 9, 1983, the Plan's assets consisted of 46,300 shares of common stock of Calvert and cash assets of approximately $1,925. The Plan is administered by a Plan Committee consisting of Messrs. D. Wayne Silby, John G. Guffey, Jr., and James C. Howard, and by the Trustees, Messrs. Silby and Guffey, who were also controlling shareholders of Calvert and directors and officers of Calvert and its affiliates. Mr. Howard was also an officer of Calvert and its affiliates and a shareholder of Calvert. The Plan Committee is responsible for supervising the investments of the Plan and authorizing investments by the Trustees. As of November 1, 1983, there were approximately 95 participants in the Plan.

3. Acacia is a District of Columbia corporation and a wholly owned subsidiary of the Acacia Mutual Life Insurance Company, a mutual life insurance company organized in the District of Columbia by special act of Congress. Prior to the sale described below, Acacia and its affiliates were not related to Calvert and its stockholders, including the Plan.

4. On August 24, 1983, an Acquisition Agreement between Acacia and all of the stockholders of Calvert (the Sellers) was executed whereby Acacia would purchase a controlling interest in the issued and outstanding stock of Calvert. The Acquisition Agreement provides that, upon the closing, Acacia will purchase all of the outstanding stock of Calvert other than shares issued pursuant to the exercise of options granted under the Calvert Group, Ltd. 1982 Incentive Stock Option Plan (93,628 shares) and the Calvert Group, Ltd. Non-Qualified Stock Option Plan (80,000 shares). Each of the holders of these 173,628 shares (the Option Stockholders) has entered into an agreement with Acacia giving Acacia the right to purchase the Option Stockholder's shares at any time during the period September 11, 1984 through November 30, 1984, and giving each Option Stockholder the right to sell his or her shares to Acacia at any time during the period December 1, 1984 through February 28, 1985.

5. The date of closing was January 3, 1984. On that date the Sellers received an initial price of $13.50424287 per share for each share of stock sold pursuant to the Acquisition Agreement. The Acquisition Agreement further provides for three additional contingent payments for each such share, determined in accordance with specified formulae, if, during the years ending May 31, 1984 and May 31, 1985, Calvert and its subsidiaries accrue advisory fees exceeding $5,500,000 and $6,500,000, respectively, and if the aggregate operating profit of Calvert and its subsidiaries for the two-year period ending May 31, 1985 exceeds $1,000,000. The Acquisition Agreement also provides that if Acacia or any Seller disputes the amount of advisory fees or operating profit, or both, Acacia will pay the Sellers the undisputed amount and will submit the disputed matter for resolution to an independent certified public accountant to be mutually agreed upon by Acacia and Messrs. Silby and Guffey (see 2, above). Resolution of the disputed matters will be accomplished within 60 days of referral to such accountant, and such resolution will be binding upon the parties. Any controversy or claim relating to the Acquisition Agreement will be settled by arbitration in accordance with the rules of the American Arbitration Association.

The price to be paid by Acacia upon its purchase of shares issued to the Option Stockholders pursuant to the stock option plans mentioned in 4, above, is the same as that described in the preceding paragraph, which, according to the applicant, resulted from arm's-length negotiation between Acacia and the Sellers. The closing date of such purchases shall be within 30 days of notice from Acacia of its intention to purchase such shares or within 30 days of notice from an Option Stockholder of his/her intention to sell such shares, whichever is applicable. The initial payment of $13.50424287 per share and any portion of the contingent payments that is determinable on such closing date will be paid on said date. Payment of the remainder of the purchase price will be made within 92 days after the amount of such payment is determinable.

6. The Acquisition Agreement further provides that each Seller will reimburse Acacia on demand for all damages resulting from any misrepresentation contained in the Acquisition Agreement or from any breach of the Acquisition Agreement and will, at his/her own expense, defend Acacia against and hold Acacia harmless from the after-tax expense and damage arising out of any alleged or threatened misrepresentation or breach of any of the terms of the Acquisition Agreement. In addition to any other remedy it might have, Acacia may reduce any of the additional contingent payments to the Sellers by the amount of any such expense or damage incurred. Any such reduction will be allocated among the Sellers in the same manner in which additional payments are to be allocated (i.e., in proportion to the number of shares sold by each Seller). Messrs. Silby and Guffey (see 2, above) have agreed to assume any liability which the Plan might otherwise incur pursuant to the terms of the Acquisition Agreement and to hold the Plan harmless against any such liability, except for any liability regarding any misrepresentation contained in the Acquisition Agreement concerning the Plan's ownership of stock transferred by it.[6]

7. As a Seller under the Acquisition Agreement, the Plan transferred all of its Calvert shares to Acacia on January 3, 1984. The Plan will share pro rata with all of the Sellers in the receipt of contingent payments and has received cash for the initial price described in 5,

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[6] Please note that in their capacities as Plan trustees, Messrs. Silby and Guffey will also be liable under the Acquisition Agreement for any misrepresentation thereunder concerning the Plan's ownership of stock transferred by it.

above. No notes or other evidence of indebtedness will be issued obligating Acacia to make future payments to the Sellers as such obligations exist solely in the Acquisition Agreement. It is anticipated that the Plan will be operated as a "frozen" plan until all possible contingent payments have been made. After all contingent payments are made, the Plan will be terminated and the assets distributed to its participants.

8. The Riggs National Bank of Washington, D.C. (the Bank) has been appointed to serve as the fiduciary for the Plan with regard to the subject transaction. The Bank is a full-service commercial bank and trust company incorporated under the national banking laws of the United States and, as of June 30, 1983, served as trustees for employee benefit plan assets totalling over $785,325,000, of which the Bank had discretionary management responsibility for funds totalling over $566,604,000. It is represented that the Bank is independent of Calvert and Acacia. The average balances of deposits of Calvert, Acacia, and their affiliates in the Bank represent, with respect to each party, no more than 1% of the total deposits of the Bank. The Bank serves as the custodian of the assets of the Funds (see 1, above) and the prototype IRA and Keogh plans sponsored by one of the Funds. For the year ended December 31, 1983, the Bank received custodial fees from the Funds amounting to approximately 0.05% of the Bank's total gross income. The Bank has extended a $50,000 line of credit to Calvert, representing less than 0.1% of the total lines of credit extended by the Bank. The Bank has extended no line of credit to Acacia or any of its other affiliates. There are three common directors among the parties: Messrs. Vincent C. Burke, Jr., of counsel, Steptoe & Johnson Chartered; W. Reid Thompson, Chairman of the Board and President, Potomac Electric Power Company; and Mandell J. Ourisman, Chairman of the Board, Ourisman Chevrolet Co., Inc.—each of whom serves as an outside director of Acacia and of the Bank's parent company, Riggs National Corporation. Mr. Burke also serves as an outside director of the Bank. Messrs. Burke, Thompson, and Ourisman had no role in the Bank's determination regarding the subject transaction, according to the applicant.

9. Before January 3, 1984, the Bank, in its capacity as fiduciary to the Plan with respect to the subject transaction, reviewed, among other items: the Acquisition Agreement; Calvert's consolidated financial statements as of June 1, 1982, and as of May 31, 1983; valuations of Calvert as of September 21, 1982, and as of May 31, 1983; certain additional internal information provided by Calvert's management; and the Plan and its related trust documents. The Bank had compared the proposed financial terms of the sale of Calvert stock with the financial terms of certain other sales of stock. The Bank specifically considered, among other matters, the fixed component of the purchase price payable upon closing and the contingent payment components of the purchase price of Calvert stock. Based upon its review, the Bank found, before the closing date, that the proposed sale of Calvert stock by the Plan would be appropriate and in the best interests of Plan participants and beneficiaries because (a) the sale of Calvert stock, including the stock held by the Plan, was negotiated on an arm's-length basis between unrelated parties; (b) the Plan will receive the same consideration for its Calvert stock as all other stockholders will receive for selling their Calvert stock; and (c) the proposed financial terms of the sale of Calvert stock compared favorably with the financial terms of certain other sales of stock reviewed by the Bank.

10. The Bank has also considered the 376,146 shares of Calvert stock issued during the period June 1, 1983 to January 3, 1984, comprised of the following:

22,500 shares purchased by the Plan with the contributions made by its participating employers for the plan year ended May 31, 1982;

173,628 shares issued to the Option Stockholders upon the exercise of their respective options granted pursuant to the stock option plans mentioned in 4, above;

180,018 shares issued in conversion of Calvert's outstanding convertible debentures which had been issued upon the organization of Calvert on May 31, 1982; and

50,000 shares issued to Acacia in exchange for $675,212.14 which was then transferred to Mr. Bardsley and Mr. Rochat as partial payment for their partnership interests in CMMC (see 1, above).

It is the Bank's understanding that adequate consideration was given for all these shares, that Calvert has been authorized to issue a total of 2,000,000 shares of stock since its inception, and that there were no restrictions on Calvert's ability to issue these additional authorized shares. Accordingly, the Bank states that it does not believe the Plan's interest in Calvert was improperly diluted by the issuance of shares between June 1, 1983 and the closing date.

11. It is represented that the Bank will monitor the subject transaction for compliance under the Acquisition Agreement on behalf of the Plan and will take appropriate action to protect the Plan's interest.

12. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the sale of the Calvert stock, including the stock held by the Plan, was negotiated on an arm's-length basis between unrelated parties; (b) the Plan will receive the same consideration for its stock as all other stockholders will receive for selling their stock; (c) the Bank, an independent fiduciary to the Plan and an experienced manager of employee benefit plan assets, had reviewed the subject transaction and determined that it is appropriate and in the best interests of the Plan participants and beneficiaries; and (d) the Bank will monitor the subject transaction for compliance under the Acquisition Agreement on behalf of the Plan and will take appropriate action to protect the Plan's interests thereunder.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Helene Curtis Industries, Inc. Employees' Profit Sharing Retirement Plan (the Plan) Located in Chicago, Illinois

[Application No. D-5195]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continuation past June 30, 1984 of a lease of certain improved real property by the Plan to Helene Curtis Industries, Inc. (the Employer), the sponsor of the Plan; provided that the terms and conditions of such lease are at least equivalent to those which the Plan could expect in an arm's-length transaction with an unrelated party.

Effective Date: This exemption, if granted, will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with 837 participants and total assets of $15,271,585 as of December 31, 1983. Investment decisions on behalf of the Plan are made by

trustees (the Trustees) who are employees and/or directors of the Employer. The Employer is a public corporation engaged in the manufacture and marketing of cosmetics, hair care products, adhesives and sealants.

2. Among the Plan's assets is a parcel of improved real property (the Property) located at 3123 North Pulaski Road in an industrial district of Chicago, Illinois. The Property is improved with a 55,000 square foot building which is utilized by the Employer as a facility for manufacturing, storage and office space. As of December 31, 1983, the Property had a fair market value of $411,044, according to an update of an appraisal performed by Mr. Morris Yanoff (Yanoff), an independent licensed real estate broker whose office is located in Chicago, Illinois. The Employer has leased the Property from the Plan continuously since June 30, 1984. The Employer represents that the Lease met the requirements of section 414(c)(2) of the Act and therefore was statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act.[6] The Employer is requesting an exemption to permit the Plan to continue leasing the Property to the Employer beyond June 30, 1984 pursuant to a six-month extension of the Lease effective July 1, 1984.

3. The Lease is a triple net lease under which the Employer pays all costs of repairs and maintenance and all taxes related to the Property. For the duration of the extension of the Lease beyond June 30, 1984, the Employer will provide that the Property is fully protected with fire, extended coverage and public liability insurance with the Plan named as an additional insured. Under the Lease the Employer is required to indemnify the Plan and hold the Plan harmless against all claims, demands, and liabilities arising from the Employer's use of the Property.

4. Yanoff has appraised the Property for its fair market rental value and represents that for the period of January 1, 1984 to December 31, 1984, the Property's annual fair market rental value is $59,796 or $4,983 a month. Pursuant to Yanoff's appraisal and a determination of prevailing conditions affecting the Property's fair market rental value by an independent fiduciary (see 5 below) immediately prior to June 30, 1984, the rental under the Lease during its extension to December 31, 1984 is set at $4,983 per month. The Lease will not be subject to further extension or renewal beyond December 31, 1984, at which time the Employer intends to relocate its manufacturing operations currently conducted within the Property.

5. The interests of the Plan for all purposes under the Lease during its extension will be represented by an independent fiduciary, B.P. Pai (Pai), president of Institutional Portfolio Services of Chicago, Illinois, to whom the Trustees have delegated total management discretion with respect to the Property. Pai represents that he has substantial fiduciary experience under the Act, he has performed investment advisory services for the Plan for fifteen years, and his only relationship with the Employer is that of fiduciary with respect to the Plan.

6. Pai will represent the Plan in the enforcement of all terms and conditions of the Lease and on behalf of the Plan will monitor the Employer's performance thereunder for the duration of the Lease's extension to December 31, 1984. After a review and analysis of the proposed extension of the Lease, Pai represents that it is and will remain in the best interests of the participants and beneficiaries of the Plan. Pai has determined that the Lease provides a favorable rate of return in comparison to the returns on other Plan assets and that the rental under the Lease will provide the Plan with a return as high or higher than could be expected in renting the Property to an unrelated party. Pai notes that the Property constitutes only 2.7 percent of the assets of the Plan as of December 31, 1983 and that the Plan's return on the Property will be net of all expenses. Pai represents that in light of the Employer's intention to relocate its manufacturing operations elsewhere, the Lease extension benefits the Plan by providing an additional six-month period under the Lease to secure a new tenant or possible purchaser for the Property.

7. In summary, the applicant represents that the extension of the Lease satisfies the criteria of section 408(a) of the Act because: (1) The interests of the Plan under the Lease are represented by Pai, a qualified independent fiduciary; (2) the Lease is a triple net lease under which the Employer will pay all expenses related to the Property and will protect the Plan's investment in the Property with fire and extended coverage insurance; (3) during the extension of the Lease the Plan will receive the Property's fair market rental value; (4) Pai has determined that the extension of the Lease will provide the Plan with an additional six-month period in which to secure future arrangements for the Property while receiving income under the Lease.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Winchester Optical Company Pension Plan (the Winchester Plan); Winchester Optical Company of Geneva, New York, Inc. Pension Plan (the Geneva Plan); Winchester Optical Company of Rochester, New York, Inc. Pension Plan (the Rochester Plan); and Winchester Optical Company of Williamsport, Pennsylvania, Inc. Pension Plan (the Williamsport Plan, collectively, the Plans) Located in Elmira, New York; Geneva, New York; Rochester, New York; and Williamsport, Pennsylvania

[Application No. D-5307]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loans (the Loans) of 25% of the assets of each Plan to Winchester Optical Company (the Employer), a party in interest with respect to the Plans provided that the terms and conditions of the Loans are no less favorable to the Plans than those obtainable in a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined benefit pension plans maintained separately by the Employer and three subsidiaries. As of May 31, 1984, the Winchester Plan, which is the Plan sponsored by the Employer, had 127 participants and assets of $481,048.23. As of May 31, 1984, the Geneva Plan had 31 participants and assets of $150,022.72. As of May 31, 1984, the Rochester Plan had 19 participants and assets of $60,492.02. As of May 31, 1984, the Williamsport Plan had 50 participants and assets of $443,055.08. The trustee of the Plans is Chemung Canal Trust Company (the Bank). The Bank is solely responsible for the investment decisions of the Plans.

2. On February 28, 1974, the Employer executed a mortgage (the Mortgage),

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[6] The Department expresses no opinion as to whether the Lease met the requirements of section 414(c)(2) of the Act.

which was recorded, covering a parcel of improved real property located in Elmira, New York (the Property) in the amount of $438,000 to secure a loan of like amount from the Marine Midland Bank (Marine Midland). The face amount of the Mortgage became due on March 1, 1984. Pursuant to an agreement between the Employer and Marine Midland, the Mortgage has been continued. As of August 1, 1984, the balance due on the Mortgage was $304,590.07.

3. It is proposed that the Plans loan 25% of the value of each Plan's assets to the Employer. The Employer shall use the proceeds of the Loans to repay its debt to Marine Midland. In the event that the sum total of the Loans is less than the balance due Marine Midland, the Employer shall pay any such difference from its own assets. The Loans will be represented by four promissory notes (the Notes) and will be secured by the Mortgage, which will be assigned to the Plans by Marine Midland contemporaneously with the making of the Loans. The assignment will be duly recorded in the Chemung County Clerk's office.

4. The Notes require that the Loans be repaid over a ten year term in 120 monthly installments of principal and interest. For the first five years of the Loan, the interest rate will be 13.5% per annum. On the fifth anniversary of the making of the Loans, the Bank shall adjust the interest rate to the then prevailing rate for five year fixed rate mortgages in Chemung County, New York, or if there is no such rate, to the most nearly equivalent commercial mortgage rate then afforded by the Bank in its separate corporate capacity at its main office in Elmira, New York.

5. On May 15, 1984, Clayton A. Ambrose, a licensed real estate broker appraised the Property and determined that it had a fair market value of $660,000 as of that date. The Mortgage contains warranties by the Employer to the effect that it has full right, title and interest to the property and that the Employer shall procure and maintain insurance against loss or damage to the Property, for the benefit of the Plans, until the Loans are repaid in full.

6. The Bank, acting as trustee of the Plans represents that it reviewed the terms and conditions of the Loans, including the Notes, the Mortgage and assignment documents, the annual reports for the Plans, the financial statements of the Employer for 1982 and 1983, the appraisal of the Property and loan proposals from two local banks. The Bank further represents that based upon its review and evaluation of this information, it believes that the Loans are in the best interests and protective of the Plans and their participants and beneficiaries. The Bank represents that it has no relationship with the Employer other than as trustee of the Plans and that it has no relationships with any of the principals of the Employer.

7. The Bank represents that (a) it will monitor and enforce the terms and conditions of the Loans and foreclose on the Loans in case of default; (b) it will require additional collateral if at any time the value of the Property falls below 150% of the balance due on the Loans; (c) it will not liquidate any assets of the Plans that are earning a 13.5% or greater annual rate of return in order to fund the Loans; (d) the Bank has reviewed the liquidity demands of each Plan and determined that for each Plan there are more than sufficient assets available following the proposed Loans to meet any foreseeable pension payments and the Bank can envision no liquidity problems after said transactions; (e) the Notes are structured with a renegotiation of the interest rate after five years rather than a ten year fixed rate based on the Bank's investment philosophy and its belief that a locked in interest rate for ten years is not prudent given the interest markets in the recent past; and (f) a comparison of the loan proposals from the two local banks with the terms of the proposed Loans and Mortgage demonstrate that the terms of the Loans and Mortgage are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

8. In summary, the applicant represents that the Loans meet the statutory criteria of section 408(a) of the Act because (a) the Loans are secured by the Property, whose appraised fair market value is more than 150% of the amount of Loans; (b) the Loans will at all times be secured by property with a value of at least 150% of the balances of the Loans; (c) the Bank, acting as independent fiduciary of the Plans, has reviewed the terms and conditions of the Loans and determined that the Loans are in the best interest and protective of the Plans and their participants and beneficiaries; and (d) the Bank will monitor and enforce the terms and conditions of the Loans on behalf of the Plans.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Thermo Industries, Inc. and Affiliated Companies Profit Sharing Plan and Trust (the Plan) Located in Charlotte, North Carolina

[Application No. D–5321]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (B)(1) and (b)(2), and 407 (a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code shall not apply to the continued leasing, beyond June 30, 1984, of certain improved real property by the Plan to Thermo Industries, Inc. and Affiliated Companies (the Employer), provided the terms of the transaction are no less favorable to the Plan than those available in an arm's length transaction with an unrelated third party.

Effective Date: If granted, the exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which had 89 participants and net assets of approximately $3,754,032 as of September 30, 1983. The trustee (the Trustee) of the Plan and the decision-maker with respect to Plan investments is Mr. E.C. Hunt, Jr., who is also an officer and shareholder of the Employer. The Employer is a wholesale distributor of air conditioner products.

2. Among the Plan's assets is a parcel of improved real property (the Property) located at 1424 South Bloodworth Street, Raleigh, North Carolina. The Property consists of approximately 125,000 square feet of land improved by an offfice building and warehouse. The Property is currently leased to the Employer pursuant to renewals of a binding written lease agreement which was executed on February 23, 1970 (the 1970 Lease). The applicants represent that the 1970 Lease and its subsequent renewals have been provided relief by the transitional rules of section 414 (c) (2) of the Act. The applicants state that rent under the lease renewals since July, 1976, has been adjusted periodically so that the net annual rental payable to the Plan has been ten percent of the appraised fair market value of the Property. The Employer is currently

paying rent to the Plan of $5,875 per month.[7]

3. In December, 1983, Messrs. Martin Winfree, Jr., M.A.I. and Neil C. Gustafson of Worthy & Wachtel, an independent appraisal, consulting, construction and brokerage firm in Raleigh, North Carolina, determined that the fair market value of the Property as of September 30, 1983, was $705,000. This amount represents approximately 19% of the Plan's current assets. On June 22, 1984, Mr. Winfree and an associate determined that the fair market rental value of the Property, as of July 1, 1984, would be $78,716 per annum, or about $6,559.66 per month, assuming that the Property was leased under an absolute net lease.

4. The Plan has entered into a new lease (the New Lease) with the Employer which took effect on July 1, 1984. The New Lease is for a five-year term ending on June 30, 1989, and provides for rental of $78,720 per annum or $6,560 per month for the year commencing July 1, 1984 and ending June 30, 1985. For each year thereafter the rental will be adjusted upward, but not downward, to reflect any increase in the fair market rental value of the Property as determined annually by an M.A.I. appraiser selected by an independent fiduciary (see below) on behalf of the Plan. The terms of the New Lease are absolute net, providing that the Employer, as lessee, will pay for all utilities, maintenance, taxes and insurance on the Property.

5. Mr. John D. Richards (Mr. Richards) of E.F. Hutton & Company, Inc. (E.F. Hutton), with offfices in Charlotte, North Carolina, has been appointed to act as an independent fiduciary for the Plan with respect to the New Lease. Mr. Richards, who is also the president and chief executive officer of Plan Administration, Inc., a corporation whose principal business is the administration of qualified retirement plans, states that he has been involved with the administration of retirement plans under the Act since the Act's passage in 1974,. As an employee of E.F. Hutton, he is currently involved with the investment of assets of qualified employee benefit plans totaling approximately $100,000,000. Mr. Richards represents that he is independent of the Employer and is well acquainted with the liabilities and responsibilities of an independent fiduciary under the Act. Prior to the July 1, 1984 effective date of the New Lease, Mr. Richards reviewed the Plan's investment portfolio, the appraisals of the Property, the terms and conditions of the New Lease and the Property itself, and determined that the retention of the Property by the Plan and the leasing of the Property to the Employer under the terms and conditions of the New Lease are in the best interest of the Plan's participants and beneficiaries. Mr. Richards notes specifically that the Property is the only real estate owned by the Plan, that all other investments of the Plan are very liquid, that the New Lease will provide the Plan with a fair rate of return based upon annual independent appraisals and that the Property constitutes an excellent investment for the Plan with substantial opportunity for capital appreciation as well as continued rental. Mr. Richards will monitor all terms and conditions of the New Lease and make any decisions for the Plan with respect to the New Lease, including supervising the retention of an independent appraiser to provide appraisals of the fair market rental value of the Property annually, and will take any enforcement actions necessary to protect the rights of the Plan with respect to the Property.

6. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act have been satisfied because: (1) The New Lease was approved prior to its execution and will be monitored and enforced by Mr. Richards, the independent fiduciary for the Plan; (2) the terms of the New Lease ensure that the Plan will receive at least the fair market rental value of the Property as determined annually by an M.A.I. appraiser selected under the supervision of the independent fiduciary for the Plan; (3) the current fair market value of the Property represents approximately 19% of Plan assets and the Property is the only real estate investment held by the Plan; and (4) the independent fiduciary for the Plan has represented that the retention of the Property by the Plan and the leasing of the Property to the Employer under the terms of the New Lease are in the best interests of the Plan's participants and beneficiaries and will allow the Plan to maintain a sufficiently liquid and diversified investment portfolio.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (this is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 31st day of August, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23626 Filed 9-5-84; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 84-131; Exemption Application No. D-4994 et al.]

Grant of Individual Exemptions; Stove Plumbers Supplies Co.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

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[7] The Department expresses no opinion as to the applicability of the transitional rules of section 414 (c) (2) of the Act to the 1970 Lease and its renewals.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Stove Plumbers Supplies Co. Profit Sharing Plan (the Plan) Located in Oakland, California

[Prohibited Transaction Exemption 84-131; Application No. D-4994]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of five years, to the proposed loans by the Plan of up to 25% of its assets to Stove Plumbers Supplies Co. and to the guarantee of repayment by Mr. Jack N. Soloman, Sr., provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27849.

Temporary Nature of Exemption

This exemption is temporary and will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this five year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

The Martin Sprocket & Gear, Inc. Employees Profit Sharing Trust (the Plan) Located in Arlington, Texas

[Prohibited Transaction Exemption 84-132; Exemption Application No. D-5121]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the continued leasing of certain real property (the Property) by the Plan to Martin Sprocket & Gear, Inc. (the Employer), a party in interest with respect to the Plan, and (2) the possible future cash sale of the Property by the Plan to the Employer if, upon termination of the lease, the Employer exercises its option under the lease to purchase the Property, provided the terms of each transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; and that any purchase by the Employer is at the then fair market value of the Property and fully paid in cash on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27851.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Hastings Construction Co., Inc. Profit Sharing Plan (the Plan) Located in Hastings, Minnesota

[Prohibited Transaction Exemption 84-133; Exemption Application No. D-5205]

Exemption

The restrictions of section 406(a), 406 (b)(1) and 406 (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of six years to: (1) The proposed sales by Hastings Construction Co., Inc. (the Employer), the sponsor of the Plan, of its interests in contracts for deed or residential first mortgage loans (collectively, the Contracts) to the Plan, provided that the terms and conditions of such sales are at least as favorable to the Plan as those which the Plan could receive in similar transactions with an unrelated party; and (2) the guarantee of the Contracts by the Employer, Donald Gustafson and his wife and Paul W. Lawrence and his wife.

Effective Date: The effective date of this exemption is May 15, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27855.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

George Kadian, M.D. and Herbert W. Rossin, M.D., P.C. Employees' Pension and Profit Sharing Plans (the Plans) Located in Birmingham, Michigan

[Prohibited Transaction Exemption 84-134; Exemption Application Nos. D-5221 and D-5222]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of sections 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of an unimproved parcel of real property in which each of the Plans has an ownership interest to a partnership, as described in the notice of proposed exemption, which will be a party in interest with respect to the Plans; provided that the price paid for the property is no less than its fair market value at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27856.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Bell, Orr, Ayers and Moore P.S.C. Profit Sharing Plan (the Plan) Located in Bowling Green, Kentucky

[Prohibited Transaction Exemption 84-135; Exemption Application Nos. D-5221 and D-5237]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of sections 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1984, to the lease of space in an office building by the Plan to Bell, Orr, Ayers, and Moore, P.S.C., the sponsor of the Plan, provided that the terms and conditions of the lease are on terms not less favorable than those terms available with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27857.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive or whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject or the exemption.

Signed at Washington, D.C., this 31st day of August, 1984.

Elliott I. Daniel,

Acting Assistant Adminstrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23625 Filed 9-5-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Committee Management Technical Review Committee for Advanced Scientific Computing; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Technical Review Committee for Advanced Scientific Computing is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of committee: Technical Review Committee for Advanced Scientific Computing.

Purpose: To provide technical assistance in reviewing proposals for the establishment of and access to advanced scientific computing centers that will be available to university based scientists and engineers in the United States. The Committee or Committee members may also be called upon to advise the Foundation on overall management and operation of Foundation supported advanced computing centers.

Effective date of establishment and duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will operate for an initial period of one year.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be chosen so as to be reasonably representative of the advanced computing center community. Due consideration will be given to achieving representation from women and minority scholars, the handicapped, and different geographical regions of the country.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Foundation policy and procedures, GSA Interim Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Dated: August 31, 1984.

Richard Nicholson,

Acting Director.

[FR Doc. 84-23577 Filed 9-5-84; 8:45 am]

BILLING CODE 7555-01-M

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date, time and place:

September 24, 1984, 2:00 pm-6:00 pm
September 25, 1984, 9:00 am-12:00 noon, 1:30 pm-4:40 pm
National Science Foundation, 1800 G Street, N.W., Room 642, Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. Harvey B. Willard, Head, Nuclear Science Section, National Science Foundation, Washington, D.C. 20550, 202/357-7993.

Summary minutes: May be obtained from: Mrs. Shirley Goulart, National Science Foundation, 1800 G Street, N.W., Room 341, Washington, D.C. 20550.

Purpose of committee: To provide advice on a continuing basis to both DOE and NSF on the management of and long range planning for basic nuclear science in the United States.

Agenda:

Monday, September 24, 1984, 2:00 pm-6:00 pm: Discussion of the report from the special subcommittee addressing scientific issues connected with the construction of a

4 GeV continuous beam electron accelerator.

Tuesday, September 25, 1984, 9:00 am–12:00 noon: Discussion of the Long Range Plan for Nuclear Science.

1:30 pm–4:30 pm: Report on the DOE and NSF Budgets for FY 1985, discussion of stable isotopes production, reports from subcommittees, and other business.

Dated: August 31, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–23578 Filed 9–5–84; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Recommendation Responses

Responses From

Aviation—*Federal Aviation Administration: May 5: A–82–75:* Change 33 to FAA Order 8440.5A, General Aviation Operations Inspector's Handbook, issued January 9, 1984, transmits Operations Bulletin No. 84–1 which addresses the operation of flaps when landing on very wet or slush covered runways with specific models of the Hawker Siddeley HS–125. *May 5: A–84–4:* Cessna has elected to replace all rod ends in the field with new New Hampshire Ball Bearing (NHB) parts designed to MIL–B–81935 specification with the 35-degree bearing head angle, in order to catch all the discrepant Nippon Micro Bearing (NMB) rod ends. Cessna has eliminated all P/N 9910139 actuators with the NMB rod ends from their parts inventory. *A–84–5:* Is preparing an Airworthiness Directive that will require installation of the rod end kits as provided by Cessna Service Letters and Service Kits PJ–84–10 and SK–441–76 dated March 2, 1984, and NE–84–10, and SK–421–121 dated March 9, 1984. *A–84–6:* The operational load requirements of the Cessna Model 400 series flap actuators, flap control rod assemblies, and landing gear doors are significantly below the nose landing gear actuator loads. *May 7: A–84–10:* Is preparing a General Aviation Airworthiness Alert (Advisory Circular 43–16) to encourage all owners and operators of Piper PA–28 series aircraft that are being operated in extremely cold weather conditions to immediately protect the engine oil breather tube from icing. *A–84–11:* Evaluated the design of crankcase breather line installations of all Piper model 28 airplanes and Piper models with similar engine installations and found that the design of the installation is adequate for all but abnormal accumulation of water or ice blockage. *May 7: A–82–168:* Has completed the first half of the expanded FAA and NASA research program to correlate runway friction measuring devices with airplane stopping performance. *A–82–169:* The Society of Automotive Engineers has established an ad hoc committee charged with providing technical documentation and criteria including minimum performance standards for takeoff acceleration monitoring systems. The committee will be composed of representatives of the aviation industry and of the FAA. *May 14: A–84–7:* Rolls-Royce Modification 1719 is not an acceptable modification at this time due to flame tube buckling and distress experienced by high time engines incorporating this design change. Airworthiness Directive 77–18–02 needs to be revised to clarify flame tube suspension system inspection requirements and incorporate the manufacturer's most current service instructions to eliminate this potential source of operator confusion. *May 14: A–82–57:* The November 1983 issue of the General Aviation Airworthiness Alerts, Alert No. 64 (Advisory Circular 43–16) calls attention to concerns relative to isopropyl alcohol deice systems. Has reviewed and evaluated the design of all isopropyl alcohol windshield deicing systems on aircraft to verify compliance with FAA regulations pertaining to flammable fluid fire protection. *May 24: A–81–23, A–76–36, and A–74–14:* Change 7 to the FAA Air Traffic Control Handbook 7110.65C, effective March 15, 1984, outlines the procedures for the handling of Center Weather Advisories. *May 24: A–78–35:* On January 12, 1981, revised 14 CFR 21.23, the regulatory basis for the certification of gliders, so that an applicant may comply with those airworthiness requirements (14 CFR Part 23 or 14 CFR Part 27) that the FAA considers appropriate and applicable to the specific type design or with such other airworthiness requirements that the FAA may find to provide an equivalent level of safety to those parts. *May 24: A–82–118:* Has prepared a draft Advisory Circular, "Ice Protection for Small Airplanes" which will stress that pilots should be provided with appropriate flight precautions for flight during icing conditions. *Jun. 4: A–84–12:* A special requirement in paragraph (d) of the Technical Standard Order C69a establishes December 3, 1984, as a cutoff date which is intended to promote the introduction of new heat-resistant slides into service. Is conducting a survey of slides intended for installation on new airplanes to determine if the cutoff date will produce the desired results and whether or not regulatory action is necessary. *A–84–13:* The cost estimate for replacement of the nearly 14,000 slides in the fleet was $74 million. *Jun. 4: A–84–16:* Change 28 to FAA Order 8440.5A, General Aviation Operations Inspector's Handbook, Section 5, Waiver of Section 91.79 (b) & (c) for Motion Picture and Television Filming Production, which was issued on March 23, 1982, specifically addresses all types of aircraft. Will amend Order 8440.5A, Chapter 14, Section 5 to clarify and emphasize that helicopter low-level movie-making operations do require a Certificate of Waiver. *Jun. 6: A–81–162:* Is amending the appropriate flight test guides to reflect that a person will be required to demonstrate pilot competency in instrument procedures in the class of airplane for which the privileges are sought. If the applicant elects not to demonstrate competency in instrument flight, the applicant's multiengine privileges will be limited to visual flight only. *Jun. 12: A–82–130 and –131:* The Engine and Propeller Certification Directorate is working with the small Airplane Certification Directorate and various airplane manufacturers to study the requirement for a means of assuring that a carburetor mixture control lever will move automatically to the full-rich position in the event it becomes disconnected from the mixture control linkage. *Jun. 12: A–84–14:* Will issue a Notice to reemphasize the requirements of the Code of Federal Regulations regarding air carrier maintenance/inspection functions and duties. *A–84–15:* Will issue a Notice to emphasize the importance of aircraft maintenance logbook and records inspections. *Jun. 21: A–83–66:* Issued Airworthiness Directive 84–09–07 on April 27, 1984, applicable to certain models of Maule M–4 and M–5 series airplanes, requiring the replacement of the plugs installed in the sumps of the main and auxiliary fuel tanks with quick drain valves, and must be accomplished within the next 50 hours time-in-service. *Jul. 2: A–84–10:* A General Aviation Airworthiness Alert (Advisory Circular 43–16) has been prepared to encourage owners/operators of Piper PA–28 series airplanes operating in extremely cold weather conditions to immediately protect the engine oil breather tube from icing. *Jul. 2: A–83–50 and –51:* Piper Aircraft Corporation expects to issue shortly Service Bulletin No. 771, which will affect approximately 29,000 airplanes of nine different model number series, to provide for a placard to be installed near the parking break control and will state the proper sequence for operation of the parking brake. *Jul. 2: A–83–54:* Is developing an article for the *FAA General Aviation News* that will contain and stress information on the visual scan techniques contained in Advisory Circular 90–48C, Pilots' Role in Collision Avoidance, and also information extracted from the Aircraft Owners and Pilots Association's film titled, "Take Two and See." *A–83–55:* As of March 1, 1984, the FAA published a new series of written test question books for which the FAA written tests are administered. In each of the appropriate series of tests are questions and multiple choice answers pertaining to visual scanning and collision avoidance. *Jul. 9: A–83–3 through –7:* Issued on May 4, 1984, Airworthiness Directive 84–10–01 applicable to certain models and series of Cessna airplanes which requires inspection and modification of the fuel system. *Jul. 9: A–83–61:* FAA and Fairchild are finalizing a service bulletin to be used in a Notice of Proposed Rulemaking that, if adopted, will require certain hydraulic tube assemblies be replaced in Fairchild SA 226 airplanes. *Jul. 16: A–83–34:* Will reexamine the data of its investigation and its decision not to issue an Airworthiness Directive to make compliance with Cessna Service Letter SE69–16 compulsory. *Jul. 23: A–84–8:* Is developing a service difficulty reporting program under the Aviation Safety Analysis System (ASAS), which will improve its data gathering, trend forecasting, and communicating capabilities. *A–84–9:* Will issue a Notice to emphasize the importance of FAA Order 8320.12, Section 28, Special Field Reporting Requirements, pages 915 through 924, and to stress the need for followup action to ensure the effectiveness of corrective actions taken. *A–84–17:* Will review Eastern Air Lines manuals and take appropriate action to ensure consistency of its procedures and checklists in regard to emergencies. *A–84–18:* Is drafting an air carrier operations bulletin which addresses emergency procedures and communications between the flightcrew and the cabin crew during emergency situations. *A–84–19:* Is initiating a research and development project regarding means of improving specifications for life preserver donning characteristics. *A–84–20:* Is completing a comprehensive water survival research and development program, the final report of which will be published for public comment. The report will address the merits of life vests and flotation cushions. *Jul. 31: A–83–44:* Will issue a General Aviation Airworthiness Alerts (Advisory Circular No. 43–16) article describing the incident of a cracked main landing gear trunnion on Cessna N6866C. *Jul. 31: A–77–16:* Is developing a Notice of Proposed Rulemaking to amend 14 CFR Part 139 in which the subject of runway safety areas will be addressed. *Aug. 6: A–84–21:* Pertinent wording in 14 CFR 139.65 will be revised to read ". . . appropriate safeguards against entry of nonessential persons or large animals on to the airport operations area . . . ." In addition, words will be added to the paragraph to state clearly that Part 139 will be applicable where Part 107 requires no control measures. *A–84–22:* Believes that FAA Order 5280.5, paragraph 203, gives sufficient criteria for the types of fencing and other restrictive measures which are considered acceptable to satisfy 14 CFR Part 139. *A–84–23:* Will revise FAA Order 5280.5 to include specific criteria for monitoring ground vehicle activities to be used during the certification inspection of the airport. *A–84–24:* Believes the concept of an airport directorate having technical resources and authority to provide leadership for the airport certification program and consistent application of 14 CFR Part 139 has considerable merit. *A–84–25 and –26:* Will issue a Notice of Proposed Rulemaking concerning certificating fueling personnel at certified airports and establishing designated fueler certification examiners. *A–84–27 and –28:* Will revise FAA Order 5280.5, paragraph 110j to provide appropriate guidance concerning training of fueling personnel, fuel storage area inspections, and facility acceptability criteria, and will include a reference to Advisory Circular 150/5230–4, Aircraft Fuel Storage, Handling and Dispensing on Airports. *A–84–29:* Advisory Circular 150/5200–18, Airport Safety Self-Inspection, will be amended to include fuel facility inspections. *A–84–30:* Will amend Advisory Circular 150/5300–4B, Utility Airports-Air Access to National Transportation, and/or Advisory Circular 150/5300–12, Airport Design Standards-Transport Airports concerning design and construction standards for fuel storage area site selection and safety devices at airport fuel storage facilities. *A–84–31:* Plans to amend 14 CFR Part 139 to substitute aqueous film forming foam in lieu of the currently specified protein foam agent in 14 CFR 139.49(b) crash-fire-rescue index requirements for water and extinguishing agents without changing the required quantity. *A–84–32:* Will continue to accept the number of operators for which a crash-fire-rescue vehicle is designed. *A–84–33:* Is studying clothing standards for crash-fire-rescue personnel. *A–84–34:* Plans to revise 14 CFR Part 139 to require full-scale demonstration of emergency plans and procedures where practicable. FAA Order 5280.5, paragraph 184, will be revised to include means for handling situation where demonstration is not practicable. *A–84–35:* Will incorporate in a 14 CFR Part 139 rulemaking proposal calling for a reduction in crash-fire-rescue capability at index A and B airports a list of affected airports, a list of types and schedules of air carrier aircraft serving these airports, and a description of the effect of such a reduction on the firefighting posture of the airports. *A–84–36:* Is planning a project to develop a computer analytical model for predicting behavior and evaluating low-impact resistance structures. ICAO's Frangible Aids Study Group is working on the revision and updating of Annex 14. *A–84–37:* Will study the interrelationships of several factors in determining the feasibility of an aircraft arresting system using soft ground or a layer of uncompacted sand or gravel at the end of runways bordering water. *A–84–38 through –40:* Is continuing to study the recommendations concerning obstructions on aircraft operations. *A–84–41:* Cognizant FAA management is maintaining a close and continuing surveillance to assure that maintenance services for existing navigational facilities will continue during the period of transition to the new generation of equipment. *Aug. 6: A–79–103:* The FAA and a task force of aviation industry groups have reviewed regulations regarding major repairs and have concluded that present regulations are adequate. *Aug. 13: A–77–63:* Provided current status of FAA's efforts designed to improve weather detection and display, including remoting color weather radar data to air traffic control centers and en route flight advisory service locations, doppler weather radar, color weather radar in terminal facilities, meteorologist/center weather service units, and weather radar displays for ARTCC sector controllers. *Aug. 14: A–84–52:* Has examined the operating procedures of commercial sightseeing tours in the Grand Canyon, and has initiated discussions with tour operators to establish standardized procedures for the use of tour operators and for public dissemination. *Aug. 21: A–79–93:* The manufacturer has revised the Beech Model 99 Airplane Flight Manual, Procedures Before Takeoff Section, to include a stabilizer out-of-trim warning system check. The Model 100 Pilot's Operating Manual is being revised to move the stabilizer out-of-trim warning system check from Section

10, Systems, to Section 2, Normal Procedures.

Department of Defense: Aug. 8: A–82–159: DOD controllers comply with FAA Handbook 7110.65, paragraph 943, which encompasses the recommendation to require that Automatic Terminal Information Service broadcasts be updated promptly after receipt of reports of braking conditions worse than those reported in the current broadcast, and when conditions are conducive to deteriorating braking action, include a statement that braking action advisories are in effect. *A–84–61:* DOD installations meet or exceed requirements of 14 CFR 139.69. *A–84–62:* Will distribute copies of NTSB Special Investigation Report—"Large Airplane Operations on Contaminated Runways" to appropriate DOD airport facilities. *A–82–157:* Current DOD regulations, in accordance with FAA handbook 7110.65, require personnel to relay runway braking action reports to base operations and arriving/departing aircraft when reports indicate braking action is less than good. DOD air traffic controllers are required to issue braking action advisories (good, fair, poor, nil) to arriving aircraft whenever "advisories" are in effect. Advisories are required whenever weather conditions are conducive to deteriorating or rapidly changing runway conditions, or a pilot report of "poor" or "nil" has been received. *A–82–158:* The requirements to disseminate "poor" and "nil" braking action reports in a timely fashion is stressed in initial and recurring air traffic controller training. FAA Handbook 7110.65 now requires appending braking action reports where the "type of aircraft or vehicle from which the report is received." Considers informing departing and arriving pilots when no recent landing by a comparable aircraft has been made to be an extraneous transmission and subject to excessive interpretation.

Aircraft Owners and Pilots Association: Jun. 6: A–84–51: AOPA has disseminated information on the dangers of alcohol use in connection with flying for many years through articles in *AOPA Pilot* magazine, and in the monthly newsletter to more than 265,000 members. The topic has been included in many of the training courses and seminars conducted for pilots throughout the country.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Dated: August 31, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84–23551 Filed 9–5–84; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Ad Hoc Advisory Committee for Review of Enforcement Policy; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Administrator, General Services Administration, the Nuclear Regulatory Commission has determined that the establishment of the Ad Hoc Committee for Review of Enforcement Policy is necessary and in the public interest in order to obtain independent advice and recommendations concerning NRC enforcement policy and practice.

The purpose of the Committee is to review NRC's current enforcement policy, which was promulgated in March 1982 (47 FR 9978), to determine whether it achieved defined purposes and provide the Commission with recommendations on any changes it believes advisable. The present policy provides a range of strong enforcement measures to encourage licensee compliance and dissuade violations of safety and environmental requirements.

The Committee will operate for a period of four to six months.

Dated at Washington, DC, this 31st day of August 1984.

[FR Doc. 84–23568 Filed 9–5–84; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Written Comments on the Harmonized Commodity Description and Coding System

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting public comments on changes which it has made in the draft conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System), which was prepared by the U.S. International Trade Commission and submitted to the President on June 30, 1983. Comments must be filed with the TPSC by the close of business, November 5, 1984.

SUPPLEMENTARY INFORMATION:

1. Background

The Harmonized System is a new international product nomenclature which has been developed under the auspices of the Customs Cooperation Council and is being proposed for world-wide use in the classification, description, and coding of goods for customs purposes, the collection of statistical data on imports and exports, and the documentation of transactions in international trade. The Harmonized System will be implemented by an international convention that obligates Contracting Parties to use the six-digit Harmonized System nomenclature as the basis for their national customs tariff and statistical nomenclatures for imports and exports.

The United States participated in the technical work of developing the Harmonized System in accordance with section 608(c) of the Trade Act of 1974. As requested by the President on August 24, 1981, the U.S. International Trade Commission prepared a draft conversion of the TSUS into the nomenclature structure of the Harmonized System and submitted its draft to the President on June 30, 1983 (USITC Publication 1400). After giving public notice in the **Federal Register** (Vol. 48, No. 148, August 1, 1983, pages 34822 and 34823), the Trade Policy Staff Committee held public hearings on the draft conversion on November 15–16, 1983 in New York, and on November 21–23, 1983 in Washington. After considering the information presented in connection with the public hearings, the TPSC made appropriate changes in the Commission's draft conversion as summarized in the next section.

2. Summary of Changes

In general, the TPSC made the types of changes described below throughout the draft conversion:

(1) Editorial amendments and corrections of typographical errors;

(2) Changes in rates of duty for technical reasons;

(3) Insertion of additional tariff rate lines in order to preserve existing rate treatment;

(4) Elimination of all classification provisions based on the component material in chief value;

(5) Substitution of a single flat rate (or, in some cases, two or three flat rates) for all rate provisions based on the

highest rate applicable to any component material;

(6) Deletion of additional U.S. notes which were throught to be unnecessary;

(7) Elimination of certain textual adaptations in order to better align the conversion on the internationally agreed legal text;

(8) Other changes designed to shorten or clarify the text or to simplify the application of the tariff.

In the individual sectors of the draft conversion, the TPSC made some additional changes as outlined below:

Agriculture—reinstatement of most seasonal distinctions, of most tariff/quota provisions, and of the distinction between fish imported in bulk and not in bulk.

Chemicals—reinstatement of the Chemical Appendix and elimination of the automatic penalty provision in additional U.S. note 3 to Section VI.

Textiles—reinstatement of most of the end-use provisions for wool and elimination of all of the distinctions between ornamented and non-ornamented wearing apparel.

Footwear—substitution of a new text defining "unfinished footwear" for the present test of additional U.S. Note 5, insertion of new subheadings in heading 6405 to provide for unfinished footwear, and deletion of additional U.S. note 6, requiring that rubber and plastics be treated as a single material for the prupose of determining chief value (consequent upon elimination of the "chief value" concept from heading 6404).

Watches—simplification of the special marking requirements and simplification of certain rates of duty in headings 9101 and 9102.

3. Publication of Draft Conversion

The TPSC is publishing the draft conversion in order to reflect the changes which it made as outlined above plus additional changes which were necessary to reflect legal changes made to the TSUS through December 31, 1983. Such changes are indicated by the number one in white on a black circle appearing next to each tariff item in which a change was made.

Respondents should be aware that the TPSC did not act on requests for new statistical breakouts unless such breakouts were incidental to other changes made to the tariff structure. All requests for breakouts which were not approved will be referred to the Committee for the Statistical Annotation of the Tariff Schedules (the 484(e) Committee) for its consideration. The revised pages therefore show only those statistical breakouts which were included in the current TSUSA or which were included in the Commission's draft conversion, plus those few new breakouts made by the TPSC.

4. Copies of Revised Conversion

Copies of the revised draft of the proposed new U.S. Tariff Schedule will be mailed automatically to all persons who received copies of the ITC's draft conversion (ITC Publication 1400, June 1983). Others may obtain copies from the Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (701 E Street, NW., Washington, D.C. 20436, telephone (202) 523–5764).

Submission or Written Comments

Interested persons are invited to submit written comments on the revised text of the draft conversion. Such comments must be submitted in twenty copies by November 5, 1984 to Carolyn Frank, Secretary, Trade Policy Staff Committee (Office of the U.S. Trade Representative, Room 500, 600 17th Street, NW., Washington, D.C. 20506).

FOR FURTHER INFORMATION CONTACT: Sandra J. Kristoff, Director, Tariff Affairs, Office of the U.S. Trade Representative, Room 509, 600 17th Street, NW., Washington, D.C. 20506; telephone: (202) 395–3063.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84–23491 Filed 9–5–84; 8:45 am]

BILLING CODE 3190–01–M

PENSION BENEFIT GUARANTY CORPORATION

Approval of Special Withdrawal Liability Rules; Maryland Race Track Employees Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has granted the request of the Maryland Race Track Employees Pension Fund for approval of a plan amendment providing for special withdrawal liability rules under sections 4203(f) and 4208(e)(3) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for approval was published on March 19, 1984 (49 FR 10208). The purpose of this notice is to advise the public of the decision on the request.

ADDRESS: The request for approval and the PBGC's response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Steven Rothenberg, Attorney, Corporate Policy and Regulations Department (611), 2020 K Street NW., Washington, D.C. 20006; (202) 254–4860. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1383(f), the Pension Benefit Guaranty Corporation ("PBGC") may authorize plans in industries other than construction and entertainment to adopt special complete withdrawal rules similar to those in sections 4203 (b) and (c) for the construction and entertainment industries. ERISA section 4208(e)(3) provides that the PBGC may permit plans to adopt special partial withdrawal liability rules upon a finding by the PBGC that the rules are consistent with the purposes of Title IV of ERISA. Under ERISA section 4203(f) and § 2645.4(a) of the PBGC's regulation on procedures for the extension of special withdrawal liability rules (29 CFR Part 2645), the PBGC will approve a plan amendment establishing special withdrawal rules if the PBGC determines that the plan amendment—

(A) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(B) Will not pose a significant risk to the insurance system.

The statute provides that the characteristics necessary for appropriateness must be "clearly shown." In order for the PBGC to determine whether a special withdrawal rule is appropriate, § 2645.3(d)(7) of the regulation requires that plans provide information on the industry which is the subject of the rule. This includes information on the effects of withdrawals on the plan's contribution base, as well as information sufficient to demonstrate the existence of industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base.

Under § 2645.2(a) of the regulation, a special partial withdrawal rule must be consistent with the rule the plan has adopted on complete withdrawals. The regulation also requires that a plan indicate how its special rules will operate in the event of a sale of assets by a contributing employer or the withdrawal from the plan of all employers [§ 2645.3(d)(4)]. Finally, § 2645.4(b) requires the PBGC to publish a notice of the pendency of a request for approval of special withdrawal rules in the **Federal Register** and to provide interested parties with an opportunity to comment on the request.

The Request

On March 19, 1984 (49 FR 10208), the PBGC published a notice soliciting public comment on a request from the Maryland Race Track Employees Pension Fund (the "Fund") for approval of a plan amendment providing for special withdrawal liability rules. The comment period ended on May 3, 1984. No comments were received in response to the notice.

The Fund is a multiemployer pension plan that is maintained pursuant to collective bargaining agreements between employers operating thoroughbred racetracks in the state of Maryland and the United Food and Commercial Workers Union, Local 27 ("Local 27"). A total of five employers contribute to the Fund: Laurel Race Course, Inc. ("Laurel"), the Maryland Jockey Club of Baltimore City ("Pimlico"), the Southern Maryland Agricultural Association ("Bowie"), the Maryland State Fair and Agricultural Association ("Timonium"), and Local 27. Fund trustees establish the level of benefits. The Fund covers all persons employed by thoroughbred racetracks in Maryland, including pari-mutuel clerks, admissions and security personnel and members of the jockeys' room and the starting gate crew. The Fund does not cover trainers or jockeys who are not employees of the racetrack. Furthermore, the Fund does not cover employees involved in standardbred racing (or "trotting", as it is commonly known).

During the plan year ending December 31, 1982, the Fund had 913 active participants, 281 retirees and beneficiaries and 53 terminated participants with vested benefits. At the end of that year, the Fund had assets of about $9.7 million.

Thoroughbred racing in Maryland is highly regulated. Race track operators must obtain licenses from the Maryland Racing Commission, and the total number of racing dates in a year is set by law, with each racetrack getting a share of those dates as determined by a statutory scheme of allocation and the Maryland Racing Commission. Approximately 306 racing days are licensed to be run each year. The schedule of racing dates for 1982 ranged from seven weeks for Timonium to 18 weeks for Laurel.

Under Maryland Law, each racetrack is required to pay 0.25% of the mutuel betting (*i.e.*, the daily amount wagered at the racetrack) to the Fund. That amount constitutes the employer's contribution to the Fund.

A thoroughbred racetrack is in operation for only a portion of a year, noramlly 7 to 18 weeks. According to the request, most employees covered under the Fund work for a particular racetrack for only the duration of the track's racing meet, then become employees of the next track on the racing schedule. Because thoroughbred races are held on almost every weekday and Saturday of the year, employees work continuously, albeit for different employers. During its racing meet, a track employs a full complement of personnel (*e.g.*, pari-mutuel clerks, admissions personnel, ushers, and parking attendants). When the meet ends, employment at that track ceases for the vast majority of employees, and they move on to next track. Only a small number of maintenance and office personnel are retained throughout the year.

According to the Fund, the cessation of contributions by a race track operator, which under the regulatory system can occur only if the operator closes its racetrack, would have virtually no effect on the Fund's contribution base. The closed track's racing dates would be reallocated to other Maryland tracks, and contributions would continue to be made for those dates. Thus, the contribution base of the Fund is not dependent on the existence of any one employer, but instead is a function of the number of racing dates allocated and the pari-mutuel handle. Over the 1978–1982 period, both the number of racing dates and pari-mutuel handle have been stable. The number of racing dates ranged from a low of 297 in 1979 to a high of 308 in 1980; the pari-mutuel handle ranged from $284 million in 1979 to $309 million in 1981.

The request states "there has been no consistent pattern of entry and withdrawals by employers in the industry . . . the number of employers in this industry is fixed by law; approval of the State Legislature is required to change the number."

As part of its request, the Fund submitted Form 5500's for five years 1978–1982, the January 1, 1982 actuarial valuation report and a certification report for the January 1, 1980 valuation. Pertinent participant and financial data are summarized in Table 1.

Plan costs for minimum funding purposes are calculated using the entry age normal level dollar method. As reported in the 1982 valuation report, investment and decrement experience each contributed to the Fund's net actuarial gain for the year, relative to the pertinent assumptions.

The plan's normal retirement age is 65, with a reduced benefit payable at 62 with 15 years of service. Under plan provisions in effect during 1982, a participant's monthly retirement benefit is equal to $5.50 times credited service before 1971 (20-year maximum) plus $16 times service after 1970. Effective January 1, 1983, those units were increased to $7.50 and $17.50, respectively; a five percent increase to retirees' benefits was also granted. Those changes increased the minimum contribution requirement by 15 to 20 percent.

As summarized in Table 1, plan participation has been relatively stable. Moreover, assets exceed the liability for vested benefits, and plan contributions have consistently been well in excess of benefit and expense outflow.

TABLE 1.—SUMMARY OF DATA FROM FORM 5500's [1]

	1982	1981	1980	1979	1978
A. Number of participants:					
1. Active	913	849	900	900	911
2. Retirees and beneficiaries	281	277	264	257	187
3. Terminated vested	53	71	52	52	52
B. Financial (000's)					
1. Employer contributions	$752	$775	$762	$713	$656
2. Benefits paid	454	405	329	237	222
3. Administrative expenses	90	78	73	54	57
4. Market value of assets [2]	9,686	7,880	7,146	5,944	4,928
5. Liability for vested benefits [3]	8,022	6,704	(4)	6,009	(4)

[1] Reported data is for year ending December 31.

[2] Assets at year-end.

[3] Based on 6% interest assumption as reported in the January 1, 1982 report and January 1, 1980 certification.

[4] Unavailable.

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Complete and Partial Withdrawal Rules

On May 2, 1983, the Fund adopted an amendment prescribing special withdrawal rules to take effect as of January 1, 1983. The amendment was subsequently modified twice by the Fund. The second modification was made after notice of the request was published in the **Federal Register**. That modification revised the partial withdrawal rule to make it consistent with the complete withdrawal rule. The amendment would apply to any contributing employer under the Fund. The proposed complete and partial withdrawal rules read as follows:

"(a)(1) A complete withdrawal occurs under the same conditions and as a result of the same events as it does under the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), except that if the number of thoroughbred racing dates awarded by the Maryland Racing Commission in the State of Maryland for the year following the year in which such conditions or events occurred is equal to at least ninety-five percent (95%) of the number of thoroughbred racing dates awarded for the year of the occurrence of such conditions or events, then notwithstanding any other provision of this Plan or of MPPAA, a complete withdrawal occurs only if an Employer ceases to have an obligation to contribute to the Fund and either:

"(A) Continues to conduct thoroughbred race meetings in the State of Maryland; or,

"(B) Resumes the conduct of thoroughbred race meetings in the State of Maryland within five (5) years after the date the Employer's contribution obligation ceased without renewing or becoming bound by the obligation to contribute to the Fund at that time.

"(2) If a complete withdrawal of an Employer occurs, the date of such complete withdrawal is the date the Employer's obligation to contribute permanently ceases.

(b)(1) Nothwithstanding any other provision of this Plan, a partial withdrawal occurs under the same conditions and as a result of the same events as it does under MPPAA, except that no partial withdrawal shall be deemed to occur with respect to an Employer if:

(A) The number of thoroughbred racing dates awarded by the Maryland Racing Commission in the State of Maryland for the year following the year in which such conditions or events occurred is equal to at least ninety-five percent (95%) of the number of thoroughbred racing dates awarded for the year of the occurrence of such conditions or events; and

(B) The Employer continues to have an obligation to contribute to the Fund for all work of the type for which it was formerly obligated to contribute for all thoroughbred race meetings it conducts in the State of Maryland for a period of five (5) years after the year of such conditions or events.

"(2) If a partial withdrawal of an Employer occurs, the date of such partial withdrawal is the last day of the calendar year during which the partial withdrawal occurs."

The Fund's amendment does not contain rules specifically pertaining to sales of assets or withdrawal by all employers. The Fund has acknowledged that a withdrawal would not occur as a result of a sale of assets that complies with ERISA section 4204. The request states that a mass withdrawal rule is not necessary due to the nature of the industry that is covered by the Fund.

Decision

In order to approve a request for special withdrawal liability rules, the PBGC must make two independent determinations, as provided in ERISA section 4203(f)(2) and § 2645.4(a) of its regulations. First, on the basis of a clear showing by the plan, the PBGC must determine that the plan amendment will apply only to an industry that has characteristics that would make use of the special rules appropriate. Second, the PBGC must determine that the plan amendment will not pose a significant risk to the insurance system.

The legislative history of the Multiemployer Act indicates that the basic consideration in determining the appropriateness of special rules is the effect of cessations of contributions by employers on the plan's contribution base. The PBGC believes that the withdrawal of employers from this industry will not typically have an adverse effect on the Fund's contribution base. This conclusion is based on the unique regulatory structure governing the industry.

Maryland law, which controls the operations of employers in the industry, guarantees that employers will continue to contribute a fixed percentage of their revenues to the Fund. State law also ensures that total revenue, and thus total contributions to the Fund, will be relatively unaffected by the withdrawal of one or more employers from the industry. This is accomplished by fixing a relatively constant number of days during which the industry will operate and allocating those days among the employers in the industry. If an employer or employers withdraw from the industry, their days of operation will be reallocated to the remaining employers, insuring that the number of racing dates for the industry will remain virtually constant from year to year, regardless of the number of employers conducting operations and changes in the number of dates operated by particular employers. Contributions to the Fund will vary only with changes in the amount wagered, which result primarily from changes in the number of days operated by the industry as a whole.

The Fund's request provides evidence of the stability provided by this regulatory scheme. During the period from 1978 to 1982, the number of days operated by the industry ranged from 297 to 308, a variation of less than 4 percent. During that same period, operations by individual employers varied as much as 83%, with three of the four employers experiencing changes of at least 67% in the number of days they operated from their least active to most active year. In spite of these fluctuations in the number of days that individual employers operated from year to year, the amount bet per year, and thus contributions to the Fund, remained almost constant during this period. The annual parimutuel handle varied by less than 9 percent between the year of the least betting and the year in which the most was wagered.

The regulatory system governing this industry clearly gives it characteristics that would make the use of special withdrawal rules appropriate, because the cessation of a particular employer's obligation to contribute will normally have no significant adverse effect on the plan's contribution base. The Corporation therefore need not determine whether the industry also possesses the characteristics set forth in § 2645.3(d)(7) as indicative that withdrawals in an industry do not typically have an adverse effect on the plan's contribution base. The PBGC has in the past noted that the existence or non-existence of one or even several of those characteristics is not necessarily determinative of appropriateness. (Notice of Approval of Special Withdrawal Liability Rules: International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan, 49 FR 6043 at 6047). Indeed, the request makes no expres assertion regarding the existence of most of those characteristics.

To determine whether the use of the special rules will pose a significant risk to the insurance system, the PBGC has reviewed the financial and actuarial information submitted by the Fund. That information suggests that the Fund is in healthy financial condition. With liabilities valued at six percent, assets valued at market exceeded vested liabilities by more than twenty percent ($9.7 million vesus $8.0 million) as of December 31, 1982. Moreover, active and retired participant levels have remained relatively stable and plan contributions continue to exceed benefit and expense payout by a comfortable margin. With the added protection provided by the State regulatory system, this information indicates that use of the special rules will not pose a significant risk to the insurance system.

The plan amendment also includes special rules which protect the Fund against changes in State regulatory policy eliminating the requirement that employers contribute to the Fund. They do this by providing that a complete withdrawal occurs if an employer continues to conduct thoroughbred race meetings in the State of Maryland without an obligation to contribute to the Fund or resumes such operations within five years after its obligation ceased without renewing or becoming bound by the obligation to contribute to the Fund at that time and that a partial withdrawal occurs if an employer ceases to contribute for a type of work which was previously covered by the Fund while continuing to perform that type of work within a five year period. This protection further reduces the risk to the insurance system posed by the special rules.

In conclusion, based on the facts of this case and the representations and statements made in connection with the request for approval, the PBGC has determined that the Fund amendment (i) will apply only to an industry that has characteristics that would make the use of special withdrawal rules appropriate and (ii) will not pose a significant risk to the insurance system. The PBGC also finds that the proposed partial withdrawal rule is consistent with the rule that the Fund proposes for complete withdrawals. Therefore, the PBGC hereby grants the Fund's request for approval of the special withdrawal liability rules set forth above. Should the Fund later wish to amend these rules at any time, PBGC approval of the amendment will be required.

Issued at Washington, D.C. on this 28th day of August 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-23540 Filed 9-5-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 23406; 70-7011]

Middle South Utilities, Inc. and Middle South Services, Inc.; Proposed Guaranty by Holding Company of Subsidiary Service Company's Performance Under Computer Leasing Agreement

August 30, 1984.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and Middle South Services, Inc. ("Services"), a subsidiary service company of Middle South, have filed a proposal with this Commission pursuant to section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By prior orders in File No. 70-6806 dated December 21, 1982, and January 19, 1983 (HCAR Nos. 22793 and 22822), Middle South was authorized to guarantee the performance by Services of obligations under computer equipment leasing arrangements between Services and Comdisco, Inc. ("Comdisco"), a nonaffiliated corporation. Services now intends to enter into new computer equipment leasing arrangements with Comdisco with respect to certain model upgrading ("Model Upgrading") for the IBM 3081 computer system and related equipment ("Computer System") currently being used by Services at its data processing center in Gretna, Louisiana. In order to effectuate these transactions, Middle South proposed to guarantee the performance by Services of its lease obligations without recourse to Services first being required.

Comdisco will purchase the Model Upgrading for the Computer System from International Business Machines Corporation ("IBM") at the IBM purchase price therefor (estimated at approximately $4,285,887 and, concurrently therewith, lease the Model Upgrading to Services under leasing arrangements coterminous with the lease of the existing Computer System (the initial term of which expires on December 31, 1986), except that the commencement date of the leasing arrangements for the Model Upgrading will be approximately October 1984, which is when the Model Upgrading is expected to be installed. The Lease will be a net lease conferring responsibility for operation, maintenance, and various expenses upon Services. The Lease will be non-cancellable through the initial term ending December 31, 1986 ("Initial Term") except in the event of: (a) irreparable damage, loss, or destruction of the Model Upgrading or (b) default by Services thereunder. Monthly rental payments by Services for the Model Upgrading during the Initial Term will be approximately $157,000, with payments beginning in November 1984. Rental payments may be adjusted in the event that, under certain circumstances, the lessor loses certain tax benefits incident to its ownership and leasing of the Model Upgrading. Services intends to charge the payments under the Lease to operating expense. The rental payments are such that Services will not acquire any equity in the Model Upgrading, and, consequently, the Lease will be accounted for by Services as a lease.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 24, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service by (affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23596 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 23405; 70-6999]

The Southern Co.; Proposal To Issue Common Stock to Employee Stock Ownership Plan; Exception From Competitive Bidding

August 30, 1984.

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has proposed a transaction subject to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and rule 50(a)(5) thereunder.

Southern proposes to issue up to a maximum of $8,000,000 of its unissued shares of common stock, $5 par value, authorized by prior Commission Order (HCAR No. 23253, March 29, 1984). The purpose of the issuance is to provide common stock funding by Southern's subsidiaries for The Employee Stock Ownership Plan of The Southern Company System ("Plan"), approved on September 8, 1977 (HCAR No. 20165). Funding is for the 1983 Plan year, and includes reinvestments of cash dividends on such stock, by direct purchases of common stock from Southern. The exact number of shares to be issued by Southern will be determined by the trust established pursuant to the Plan ("Trust") in respect to the Plan year and the purchase price per share of Southern's common stock determined as set forth below. Southern proposes to apply the proceeds it receives from the sale of the common stock for further equity investments, and for other corporate purposes.

The Plan was amended effective January 1, 1983 to qualify contributions made to it for payroll-based tax credit treatment under the Economic Recovery Tax Act of 1981. Common stock contributions are limited to one-half of one percent of aggregate compensation paid or accrued in 1983, unless the subsidiaries of Southern as purchasers of such stock for the Plan, elect an investment-based tax credit basis of one and one-half percent. The purchase price per share of common stock acquired from Southern by the Trust will be the fair market value as of the date of acquisition. Southern common stock had a market value of $16.37 at the close of 1983, representing 95% of book value.

Under the Plan, the Trust is required to reinvest cash dividends paid on shares of Southern's common stock allocated to a participant's account in additional shares of common stock, unless the participant elects to have such cash dividends distributed currently. In reinvesting these cash dividends, the Trust may purchase common stock under Southern's Dividend Reinvestment and Stock Purchase Plan (at the price provided for in such plan), on the open market or by private purchase, including purchases directly from Southern (at the stock's fair market value).

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 24, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specificaly the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23596 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form SR
No. 270-120

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of clearance Form SR under the Securities Act of 1933. Form SR is the report of sales of securities and use of proceeds required to be filed by issuers with respect to their first effective registration statement. A copy of this submission is available for inspection and copying at the Commission's Public Reference Room, 450 5th St. NW., Washington, D.C. 20549. Interested parties should refer to File No. 270-120.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23627 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a-10
No. 270-154

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a-10 (17 CFR 240.17a-10) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which generally requires all brokers and dealers to file a report of revenue and expenses with the Commission on an annual basis.

Submit comments to OMB Desk Officer: Ms. Katie Lewin (202) 395-7321, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23628 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 12d1-3
No. 270-116

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Rule 12d1-3 under the Securities Exchange Act of 1934. This rule relates to procedures to be followed for certification for listing of securities on national securities exchanges. A copy of this submission is available for inspection and copying at the Commission's Public Reference Room, 450 5th St. NW., Washington, D.C. 20549. Interested parties should refer to File No. 270-116.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23629 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 15c1-7
No. 270-146

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c1-7 (17 CFR 240.15c1-7) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*) (the "Act") which requires broker-dealers to record certain information with respect to transactions occurring within discretionary accounts. Rule 15c1-7 also states that the terms "manipulative, deceptive, or other fraudulent device or contrivance" in section 15(c) of the Act apply to transactions occurring in discretionary accounts.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23630 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form 12b-25
No. 270-71

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Form 12b-25 (17 CFR 249.322) under the Securities Exchange Act of 1934. Form 12b-25 provides notice to the Commission and to the marketplace that a public company will be unable to file timely a required periodic report. If certain conditions are met, the public company will be granted an automatic extension of time for filing.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23582 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form 8-K
No. 270-50

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchanges Commission has submitted for extension of clearance Form 8-K under the Securities Exchange Act of 1934. Form 8-K provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly-traded securities provde to investors and the marketplace adequate current information about certain material events and developments. A copy of this submission is available for public inspection and copying at the Commission's Public Reference Room, 450 5th St., NW., Washington, D.C. 20549. Inquiring parties should refer to File No. 270-50.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23583 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Form 8-A
No. 270-54

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Form 8-A under the Securities Exchange Act of 1934. Form 8-A provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers subject to the periodic reporting requirements of the Exchange Act that are proposing to register additional classes of securities on a national securities exchange or otherwise pursuant to section 12 of the Exchange Act provide investors and the marketplace with adequate information concerning those securities.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23584 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Regulation 14C
No. 270-57

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of clearance Regulation 14C under the Securities Exchange Act of 1934. Regulation 14C provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of securities registered pursuant to section 12 of the Exchange Act provide to security holders who are entitled to vote on, or give an authorization in regard to, any matter to be acted upon at an annual or other meetings, adequate information to make an informed voting decision or decision to give an authorization.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

Dated: August 30, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23585 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17Ad–2 (c), (d) and (h)
No. 270–149

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ad–2 (c), (d) and (h) (17 CFR 240.17Ad–2 (c), (d) and (h)) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which generally requires transfer agents to file certain notices of non-compliance with the Commission and other appropriate regulatory authority, if any, within 10 days after the end of any month in which they fail to meet the minimum performance standards of Rule 17Ad–2 (a).

Submit comments to OMB desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23586 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a–19 and Form X–17A–19
No. 270–148

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–19 and Form X–17A–19 (17 CFR 240.17a–19 and 17 CFR 249.635) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires reports by National Securities Exchanges and Registered National Securities Associations of changes in membership status of any of their members.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7321, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23587 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17Ac–1 and Form TA–W
No. 270–96

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ac3–1 and Form TA–W (17 CFR 240.17Ac3–1(a) and 17 CFR 249b.101 respectively) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which generally require transfer agents seeking to withdraw from registration with the Commission as transfer agents to complete and file with the Commission Form TA–W.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

Dated: August 29, 1984.

[FR Doc. 84-23588 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a–7
No. 270–147

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–7 (17 CFR 240.17a–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*) which generally requires brokers and dealers registered or registering with the Commission to maintain copies of their books and records in the United States or to file an undertaking agreeing to make them available upon request.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7321, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: August 29, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23589 Filed 9-5-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0239]

Brentwood Capital Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Brentwood Capital Corporation (BCC), 11661 San Vicente Boulevard, Los Angeles, California 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*), has filed an application with the Small Business Administration pursuant to § 107.903 (b)(1) of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of a conflict of interest transaction falling within the scope of the above Sections of the Act and Regulations.

BCC intends to provide financing up to $200,100 to Protype Corporation, 8655 Tamarack Avenue, Sun Valley, California 91352. Other Brentwood entities ("Associates") have prior investments in this small business concern. SBA's prior written approval is required pursuant to § 107.903 of SBA Regulations because Associates own 10 or more percent of the small concern's equity securities and these are not initial joint financings with Associates.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Sun Valley, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 28, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-23565 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0349]

Camden Investments, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR § 107.102 (1984)), for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

Applicant Address: Camden Investments, Inc., 9560 Wilshire Boulevard, Suite 310, Beverly Hills, California 90212.

The proposed officers, directors and stockholders of the Applicant are as follows:

Edward G. Victor—President & Director, 134 N. Carmelina, Los Angeles, CA 90049.
Richard A. German—Chief Financial Officer, Officer & Director, 2793 Woodwardia Drive, Los Angeles, CA 90077.
Craig M. Cogut—Vice President, Secretary and Director, 1835½ Beverly Glen, Los Angeles, CA 90025.
Cambrent Financial Group, Inc.—Investment Advisor.
Camden Investment Associates, Inc.—100% Stockholder.

The Applicant, a California corporation, with its principal place of business at 9560 Wilshire Boulevard, Suite 301, Beverly Hills, California 90212 will begin operations with $1,210,000 paid-in surplus. Both the Investment Advisor and the stockholder are located at the above address.

The applicant will conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice should be published in a newspaper of general circulation in the Beverly Hills, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-23563 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2166]

California; Declaration of Disaster Loan Area

Kern County and the adjacent Counties of Inyo and San Bernardino in the State of California constitute a disaster area because of damage caused by thunderstorms, heavy rainfall, and flash flooding which occurred July 13, 1984 through August 23, 1984. Applications for loans for physical damage may be filed until the close of business on October 29, 1984, and for economic injury until the close of business on May 29, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Sacramento, CA 95825, or other locally announced locations.

Interest rates are:

Homeowners with credit available elsewhere—8.000%
Homeowners without credit available elsewhere—4.000%
Businesses with credit available elsewhere—8.000%
Businesses without credit available elsewhere—4.000%
Businesses (EIDL) without credit available elsewhere—4.000%
Other (non-profit organizations including charitable and religious organizations)—10.500%

The number assigned to this disaster is 216606 for physical damage and for economic injury the number is 620300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 29, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-23566 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2167]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 27, 1984, I find that the Counties of Bedford, Somerset, Armstrong, Allegheny, Blair, McKean, and Westmoreland constitute a disaster loan area because of damage from severe storms and flooding beginning on August 3, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on October 26, 1984, and for economic injury until May 27, 1985, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell, Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are:

Homeowners with credit available elsewhere—8.000%
Homeowners without credit available elsewhere—4.000%
Businesses with credit available elsewhere—8.000%
Businessse without credit available elsewhere—4.000%
Businessse (EIDL) without credit available elsewhere—4.000%
Other (non-profit organizations including charitable and religious organizations)—10.500%

The number assigned to this disaster is 216706 for physical damage and for economic injury the number is 620400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 28, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-23564 Filed 9-5-84; 8:45 am]

BILLING CODE 8025-01-M

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing; Proposed Comprehensive Plan Additions, Pennsylvania; Department of Environmental Resources (DER) Local Flood Protection Projects

The Susquehanna River Basin Commission (SRBC) will hold a public hearing to receive comments from citizens, government agencies and others on the proposed addition of three Pennsylvania Department of Environmental Resources (DER) local flood protection projects to its *Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin.* The three projects are located respectively at Moosic, Huntingdon and Cherry Tree, Pa. The hearing has been schedule for Thursday, October 11, 1984 at the Commission Headquarters Building, 1721 North Front Street, Harrisburg, Pa. following the regular business meeting of the Commission which begins at 9:00 a.m.

The Susquehanna River Basin Compact, Pub. L. 91–575, 84 Stat. 1509 et seq., requires the Commission to maintain a Comprehensive Plan for the immediate and long-range use, management and development of the water and related resources of the basin. Section 12.2 (2) of the Compact requires that all projects of a signatory state affecting water resources of the basin be included in that Plan. Initially adopted in December 1973, the Plan provides a basinwide strategy to guide the Commission and others in the management, use and conservation of the basin's resources. The Plan is also used to evaluate proposed water resource developments that the Commission must, by law, approve.

The Huntingdon Project will include approximately 1700 lineal feet of earthen levee construction. It will provide 100-year flood protection to the Borough of Huntingdon for high stages on the Juniata River and subsequent interior flooding from Muddy Run. Estimated cost of the project is $1,700,000.

The Moosic Project will include improvements along Spring Brook at Spike Island and levee construction at Belian Village. The purpose of this project is to provide flood protection to the communities of Spike Island and Belian Village, located along Spring Brook in the Borough of Moosic. The project will provide protection for a flood equal in magnitude to the 1955 flood, which is equal to the estimated 100-year flood. Estimated cost of the project is $1,500,000.

The Cherry Tree Project will consist of raising approximately 3,600 feet of existing levee along the West Branch Susquehanna River and construction of a combined levee-concrete wall system totalling approximately 1,800 feet along Cush Creek to replace the existing spoil levee. The purpose of this project is to provide flood protection from the river to the community of Cherry Tree and improve interior drainage. The project will provide protection to the estimated 100-year flood level.

At its regular meeting on July 12, 1984, the Commission agreed to consider these projects for adoption into the SRBC Comprehensive Plan. Adoption into the Comprehensive Plan will affirm the projects' compliance with the goals and objectives of the Comprehensive Plan, thus clearing the way for implementation by the Commonwealth of Pennsylvania.

The October 11th hearing will be informal in nature. Interested parties are invited to attend the hearing and to participate by making oral or written statements presenting their data, views and comments on the proposed additions. Those wishing to personally appear to present their views are urged to notify the Commission in advance that they desire to do so. However, any person who wishes to be heard will be given opportunity to be heard, whether or not they have given such notice. After the hearing, the Commission will evaluate all relevant material and decide whether to adopt the project into the Comprehensive Plan.

More detailed descriptions of these projects are available upon request to Richard A. Cairo, Secretary, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102–2391, 717–238–0423. Additional information on the projects may also be obtained from Mr. Jim McNaney, Bureau of Water Projects, Pennsylvania Dept. of Environmental Resources, P.O. Box 1467, Harrisburg, Pa., 717–783–7917.

Dated: August 29, 1984.

Robert J. Bielo,

Executive Director.

[FR Doc. 84–23558 Filed 9–5–84; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Grant Assurance and Agreement for Airport Improvement Program

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of grant assurances to be used in the Airport Improvement Program.

SUMMARY: This notice provides copies of the grant assurances and grant agreement which will be used in the Airport Improvement Program after September 30, 1984.

DATE: These grant assurances and agreement will be used on and after October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. David, APP–3, Office of Airport Planning and Programming (Room 619), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, Telephone (202) 426–8248.

Background

Under the provisions of the Airport and Airway Improvement Act of 1982, as a condition to approval of a grant application, the Secretary must receive certain assurances from the sponsor (applicant). These assurances are submitted as Part V of the application for Federal assistance. The FAA has reviewed the assurances currently being used and updated them to reflect the requirements of current law. The assurances have also been revised to reflect that under the Airport Improvement Program grants can be made for the improvement of privately owned airports and for noise program implementation.

Two sets of assurances are included in this notice. The first set (FAA Form 5100–100) contains assurances to be made by airport sponsors in their applications requesting funds for airport development, airport planning and noise program implementation and by planning agencies in their applications requesting funds for integrated airport system planning. The second set (FAA Form 5100/100.1) be made by sponsors in their application requesting funds for noise program implementation when the sponsor does not own or operate the airport.

The assurances submitted with the application are incorporated into the grant agreement by reference. For this reason, the grant agreement (FAA Form 5100–37) is also included as part of this notice. The assurances published herein, or as amended to, reflect the individual contractual circumstances at particular airports, or to reflect problems arising in the grant program are made a part of the grant agreement and must submitted with all applications for assistance under the Airport Improvement Program beginning in Fiscal Year 1985 (October 1, 1984). Similar assurances have been applied to sponsors prior to that date under the terms of the 1982 Act and related laws.

Issued is Washington, DC, on August 22, 1984.

Paul L. Galis,

Acting Associate Administrator for Airports.

Part V—Assurances

Airport and Planning Agency Sponsors

A. General

1. These assurances shall be complied with in the performance of the following grant agreements:

a. Airport development, airport planning, and noise program implementation grants to airport sponsors.

b. Integrated airport system planning grants to planning agencies.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 or the Aviation Safety and Noise Abatement Act of 1979. A sponsor may be a public agency with control of a public-use airport or it may be a private owner of a public-use airport (hereinafter referred to as "private sponsor".)

3. These assurances also are required to be submitted as part of the project application by a sponsor which is both a public agency and a planning agency requesting funds for integrated airport system planning under the provisions of the Airport and Airway Improvement Act of 1982.

4. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability

1. *Airport Development or Noise Program Implementation Projects undertaken by a public agency (airport sponsor).* The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise program implementation project, or throughout the useful life of the project items installed within a facility under a noise program implementation project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurance against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

2. *Airport Development or Noise Program Implementation Projects undertaken by a private sponsor.* The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of facilities developed or equipment acquired under an airport development or noise program implementation project shall be no less than 10 years from the date of the acceptance of Federal aid for the project.

3. *Airport Planning undertaken by a sponsor.* Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, and 30 in Section C apply to planning projects. The terms, conditons and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification

The sponsor hereby assures and certifies, with respect to the grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Hatch Act—15 U.S.C. 1501, *et seq.*[2]

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*[1]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—Titles II and III, 42 U.S.C. 4621–4655.[1] [2]

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).[1]

g. Archeological and Historic Preservation Act of 1961—16 U.S.C. 461, *et seq.*[1]

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4001, note.[1]

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d, *et seq.*

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*[1]

n. Airport and Airway Improvement Act of 1982—49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.[1]

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*[1]

q. Copeland Kickback Act—18 U.S.C. 874.[1]

r. National Environmental Policy Act of 1969—42 U.S.C. 4321, *et seq.*[1]

s. Endangered Species Act—16 U.S.C. 668(a), *et seq.*[1]

Executive Orders

Executive Order 12372, Intergovernmental Review of Federal Programs.

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs.

d. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

e. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

f. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

g. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

h. 41 CFR Part 60—Office of Federal Contract Compliance Programs. Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

i. 14 CFR Part 150—Airport Noise Compatibility Planning.

j. Reserved.

Office of Management and Budget Circulars

a. A–87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.[*]

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[1] These laws do not apply to planning projects.

[2] These laws do not apply to private sponsors.

[*] OMB Circulars A–87 and A–102 contain requirements for state and local governments receiving Federal assistance. Any requirement levied upon state and local governments by those

Continued

b. A-102—**Uniform Requirements for Assistance to State and Local Governments.***

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor*—a. *Public Agency Sponsor:* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. *Private Sponsor:* It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative, and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with the application; and to provide such additional information as may be required.

3. *Sponsor Fund Availability.* It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* It holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

For noise program implementation projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers*—a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise program implementation project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise program implementation project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government there is substantial non-compliance with the terms of the agreement.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangment is made for management and operation of the airport by an agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance with the Airport and Airway Improvement Act of 1982, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects, other than land acquisition, to be carried out on property not owned by the airport and over which property another public agency has land use control or authority, the sponsor shall obtain from each such agency a written declaration that such agency supports the project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Consultation with Users.* In making a decision to undertake any airport development project under the Airport and Airway Improvement Act of 1982, it has undertaken reasonable consultations with affected parties using the airport at which the project is proposed.

9. *Public Hearings.* In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with the goals and objectives of such planning as has been carried out by the community. It shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary.

10. *Air and Water Quality Standards.* In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and

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two circulars shall also be applicable to private sponsors receiving Federal assistance under the Airport and Airway Improvement Act of 1982.

operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. *Local Approval.* In projects involving the construction or extension of any runway at any general aviation airport located astride a line separating two counties within a single state, it has received approval for the project from the governing body of all villages incorporated under the laws of that state which are located entirely within five miles of the nearest boundary of the airport.

12. *Terminal Development Prerequisites.* For projects which include terminal development at a public airport, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 612 of the Federal Aviation Act of 1958 and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning or deplaning from aircraft other than air carrier aircraft.

13. *Accounting System, Audit, and Recordkeeping Requirements*—a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

14. *Minimum Wage Rates.* It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c) (1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporated into the grant agreement.

17. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. *Planning Projects.* In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.

b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. *Operation and Maintenance.* a. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local

agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interefere with its use for airport purposes.

In furtherance of this assurance, the sponsor will have in effect at all times arrangements for—

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interefere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

20. *Hazard Removal and Mitigation.* It will adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. *Economic Nondiscrimination.* a. It will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses.

b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor—

(1) To furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants, and combined passenger and cargo flights or all cargo flights. Classification or status as tenant shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on tenant air carriers.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the sponsor under these provisions.

h. The sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. *Exclusive Rights.* It will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply: (1) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and (2) if allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.

24. *Fee and Rental Structure.* It will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport

development, airport planning or noise compatibility project for which a grant is made under the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate base in establishing fees, rates, and charges for users of that airport.

25. *Airport Revenue.* If the airport is under the control of a public agency, all revenues generated by the airport will be expended by it for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. Provided, however, that if covenants or assurances in debt obligations previously issued by the owner or operator of the airport, or provisions in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport shall not apply.

26. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the secretary may reasonably request. For airport development and airport planning projects, it will also make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request. For noise program implementation projects, it will also make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

27. *Use of Government Aircraft.* It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that—

a. Five (5) or more government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of government aircraft is 300 or more, or the gross accumulative weight of government aircraft using the airport (the total movements of government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. *Airport Layout Plan.* It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or in any of its facilities other than in conformity with the airport layout plan as so approved by the Secretary if such changes or alterations might adversely affect the safety, utility, or efficiency of the airport.

30. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

Part V—Assurances

Noise Program Implementation Projects Undertaken By Non Airport Sponsors

A. General

1. These assurances shall be complied with in the performance of grant agreements for noise program implementation projects undertaken by sponsors that are not proprietors of the airport which is the subject of the noise compatibility program.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 and the Aviation Safety and Noise Abatement Act of 1979. Sponsors are units of local government in the area around the airport which is the subject of the noise compatibility program.

3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration

The terms, conditions, and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired or throughout the useful life of the items installed within a facility under this project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no time limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Futhermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

C. Sponsor Certification

The sponsor hereby assures and certifies, with respect to this grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Hatch Act—15 U.S.C 1501, *et seq.*

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—Titles II and III, 42 U.S.C. 4621-4655.

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).

g. Archeological and Historic Preservation Act of 1961—16 U.S.C. 461, *et seq.*

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4001, note.

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d, *et seq.*

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*

n. Airport and Airway Improvement Act of 1982—49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*

q. Copeland Kickback Act—18 U.S.C. 874.

r. National Environmental Policy Act of 1969—42 U.S.C. 4321, *et seq.*

s. Endangered Species Act—16 U.S.C. 668(a), *et seq.*

Executive Orders

Executive Order 12372, Intergovernmental Review of Federal Programs.

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs.

d. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

e. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

f. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

g. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

h. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

i. 14 CFR Part 150—Airport Noise Compatibility Planning.

j. Reserved.

Office of Management and Budget Circulars

a. A-87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.

b. A-102—Uniform Requirements for Assistance to State and Local Governments.

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor.* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. *Sponsor Fund Availability.* a. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

b. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* For projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers.* a. It will not enter into any transaction, or change thereto, or take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of all or any part of its title or other interests in that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise program implementation project. That agreement and changes thereto must be approved in advance by the Secretary.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects to be carried out on property which is not owned by the sponsor and which is under the land use control or authority of a public agency other than the sponsor, the sponsor shall obtain from each such agency a written declaration that such agency supports the project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Accounting System, Audit, and Recordkeeping Requirements.* a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grants. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant of relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

9. *Minimum Wage Rates.* It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

10. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

11. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the appoved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporation into the grant agreement.

12. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

13. *Operation and Maintenance.* It will suitably operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

14. *Hazard Prevention.* It will protect the aerial approaches to the airport by preventing the establishment or creation of future airport hazards on property owned or controlled by it or over which it has land use jurisdication.

15. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise program implementation measures upon which Federal funds have been expended.

16. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. It will also make records and documents relating to the project, and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

17. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land purchased under this grant agreement as the Secretary considers necessary or desirable for construction, operation and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

18. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of personal

property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possesson of the property.

Department of Transportation

Federal Aviation Administration

Grant Agreement

Part 1—Offer

Date of Offer

Airport/Planning Area

Project No.

Contract No.

To:
(herein called the "Sponsor")
From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated , for a grant of Federal funds for a project at or associated with the Airport/Planning Area which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for the Airport of Planning Area (herein called the "Project") consisting of the following:

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of the Airport and Airway Improvement Act of 1982, herein called the "Act," and/or the Aviation Safety and Noise Abatement Act of 1979, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project,

This Offer is made on and subject to the following terms and conditions:

Conditions

1. The maximum Obligation of the United States payable under this offer shall be $. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of section 512(b) of the Act, the following amounts are being specified for this purpose:

$, for planning
$, for land acquisition
$, for airport development or noise program implementation (other than land acquisition).

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.

3. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Unless otherwise stated in this grant agreement, any program income earned by the sponsor during the grant period shall be deducted from the total allowable project costs prior to making the final determination of the United States share. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

4. The sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurance which were made part of the project applications.

5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the sponsor.

6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the sponsor on or before ———— or such subsequent date as may be prescribed in writing by the FAA.

7. The sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, or der or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amont of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement, and the sponsor shall hold the United States harmless from all claims arising from, or related to, completion of the project or the sponsor's continuing compliance with the terms, conditions, and assurances in this grant agreement.

The Sponsor's acceptance of this Offer and ratification and adopting of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA

FEDERAL AVIATION ADMINISTRATION

(Name) ————————
(Title) ————————

Part II—Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this day of , 19 .

____

(Name of Sponsor)

(SEAL)

By ______________________________
(Sponsor's Designated Official Representative)
Title ______________________________
Attest: ______________________________
Title: ______________________________

Certificate of Sponsor's Attorney

I, , acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant agreement under the laws of the State of ———————. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor relating thereto, and find that the acceptance thereof by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at ———————— this ——— day ————— of —————, 19 .————————————

____

Signature of Sponsor's Attorney

[FR Doc. 84-23486 filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Logan County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, in cooperation with the Kentucky Transportation Cabinet, intends to prepare an EIS for a proposed highway project bypassing the city of Russellville, Kentucky. The proposed alternatives under consideration at this time consists of four (4) major corridors which include various design schemes, as well as the "do-nothing" alternative. The alternate corridors are essentially construction on new alignments, except for two locations, where a small portion of an existing county road and a city street would be utilized.

The alternate corridors presently being considered encircle the northern half of Russellville from US 68 on the west to US 68 on the east. The alternatives vary from four (4) to six (6) miles in length. The roadway will be two-lane with twenty-four foot pavement and twelve foot shoulders. The facility is designed for a 50 mph speed with partial control of access. The proposed action will relieve congestion on downtown streets and supply industry on the north side of the city with better connections to the existing highway network.

Proposed Scoping Process

An early public information meeting was held on March 8, 1984, in the area of the proposed project. The input received at that meeting is under consideration, at this point. An opportunity for a formal location/design public hearing will be advertised and held, as appropriate.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, P.O. Box 536, Frankfort, Kentucky 40602, Phone (502) 227-7321, FTS 352-5468. To ensure that a full range of issues related to this proposed action are addressed and all significant impacts are identified, suggestions are invited from all interested parties. Comments or questions should be directed to the above person.

Issued on: August 27, 1984.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 84-23559 Filed 9-5-84; 8:45 am]

BILLING CODE 4910-22-M

Federal Aviation Administration

Advisory Circular on Substantiating Flow Rates and Pressures in Fuel Systems of Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This proposed draft AC provides an acceptable method of conducting fuel flow tests with small airplanes, as required by FAR 23.955.

DATE: Commenters must identify File AC 23.955-X; Subject: Substantiating Flow Rates and Pressures in Fuel Systems of Small Airplanes, and comments must be received on or before November 6, 1984.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yotter, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Commercial Telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

Background

Section 23.955 requires that fuel flow rates and pressures be established to assure satisfactory engine operation during the original type certification program. At some later time, owners may petition to modify their airplanes in such a way as to have a major effect on the originally approved fuel system. This normally requires reconducting the fuel flow tests in order to substantiate continued compliance of the fuel system with applicable requirements. Fuels of the physical properties and octane rating to be used in service should flow at not less than the rate specified by regulations and at the pressure established in accordance with Section 33.7. Test conditions, such as critical airplane attitude and when pertinent the pressure differential between the fuel tank vent airspace and carburetor float bowl airspace, are equally important to the demonstration.

Issued in Kansas City, Missouri, on August 24, 1984.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 84-23485, Filed 9-5-84; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 174
Thursday, September 6, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, September 11, 1984.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 84–06–FOIA–101–MK, concerning a request for an investigator's report from a closed ADEA charge file.
4. Freedom of Information Act Appeal No. 84–6–FOIA–77–DA, concerning a request for documents from an ADEA file.
5. Freedom of Information Act Appeal No. 84–6–FOIA–154–CL, concerning a request for information from a closed ADEA file.
6. Freedom of Information Act Appeal No. 84–06–FOIA–56–DT, concerning a request for access to a closed ADEA file.
7. Issuance of Opinion Letter Concerning Disclosure of Settlement Agreements to Charging Parties.
8. Proposed Semiannual Regulatory Agenda.
9. Proposed EEO Management Directive 707–Revising and Updating the Statistical Bases to be Used by Federal Agencies in Making Determinations of Underrepresentation for Affirmative Action Planning Purposes.

Closed

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: September 4, 1984.

Cynthia C. Matthews,
Executive Officer.

This Notice Issued September 4, 1984.

[FR Doc. 84–23704 Filed 9–4–84; 1:10 pm]

BILLING CODE 6750-06-M

2

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Meeting

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of October 1984, as specified in 12 CFR 604.325(a).

DATE AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held on October 1, 1984, 8:30 a.m. to 4:30 p.m.; October 2, 1984, 8:30 a.m. to 4:30 p.m.; and October 3, 1984, 8:30 a.m. to 12:00 noon.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Portions Open to the Public:
- Board Member Reports
- Governor's Report
- Economic Report
- Legislative Report
- Proposed Regulations—Revisions to Conflict of Interest Regulations
- Draft Policy Statement on Farm Credit System Directors
- Other Subjects to be Determined

Portions Closed to the Public:
- Executive Session(s)
- FCA Supervisory Reports

Any request for information about the meeting should be directed to Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, at 1501 Farm Credit Drive, McLean, VA 22102–5090, telephone (703) 883–4010.

Dated: September 7, 1984.

Donald E. Wilkinson,
Governor.

[FR Doc. 84–23686 Filed 9–4–84; 2:38 pm]

BILLING CODE 6705-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Friday, August 31, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider recommendations with respect to administrative enforcement proceedings against insured banks (names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii))).

At that same meeting, the Board also considered the application of The Dollar Savings Bank, Pittsburgh, Pennsylvania, for consent to convert into a non-FDIC-insured institution.

In calling the meeting, the Board determined, on motion of Chairman William M. Issac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: August 31, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-23697 Filed 9-4-84; 2:38 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Friday, August 31, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of the Northwest, Eugene, Oregon, which was closed by the Superintendent of Banks for the State of Oregon on Friday, August 31, 1984; (2) accept the bid for the transaction submitted by First Interstate Bank of Oregon, National Association, Portland, Oregon; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 4, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-23729 Filed 9-4-84; 2:40 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 11, 1984.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, September 13, 1984.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1983-48 (Partial Reconsideration)
  Robert S. Lemle, Associate GC, Cablevision Systems Corp.
Draft Advisory Opinion #1984-39
  Mike Synar, Member of Congress
Draft Advisory Opinion #1984-43
  Edgar Vanneman, Jr., on behalf of Congressman Jim Jones of Oklahoma
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-23731 Filed 9-4-84; 3:41 pm]

BILLING CODE 6715-01-M

6

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 2:30 p.m., Thursday, September 13, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6677).

MATTERS TO BE CONSIDERED:

Settlement of Insurance, Appeal Procedure
Priorities in Receiverships

J. J. Finn,

Secretary.

No. 95, September 4, 1984.

[FR Doc. 84-23696 Filed 9-4-84; 2:39 pm]

BILLING CODE 6720-01-M

7

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 10, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed conceptual design and target budget preparation for the Charlotte Branch of the Federal Reserve Bank of Richmond.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23611 Filed 8-31-84; 5:05 pm]

BILLING CODE 6210-01-M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-42]

TIME AND DATE: 3:30 p.m., Wednesday, September 12, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-201 [Preliminary] (Egg Filler Flats from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 84-23591 Filed 8-31-84; 4:28 pm]

BILLING CODE 7020-02-M

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federal register

Thursday
September 6, 1984

Part II

Department of the Interior

Bureau of Land Management

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43 CFR Parts 1820 and 1860

Public Administrative Procedures; Recordable Disclaimers of Interest in Lands; Correction of Conveyancing Documents; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1820 and 1860

[Circular No. 2552]

Public Administrative Procedures; Recordable Disclaimers of Interest in Lands; Correction of Conveyancing Documents

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Secretary of the Interior is authorized by section 315 of the Federal Land Policy and Management Act of 1976 to issue a document of disclaimer of interest or interests in any lands in a form suitable for recordation where the disclaimer will help remove a cloud on the title of such lands. The Secretary also is authorized by section 316 of that Act to correct patents or documents of conveyance where necessary to eliminate errors. This final rulemaking sets forth the procedures for carrying out these authority.

EFFECTIVE DATE: October 9, 1984.

ADDRESS: Any suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mark D. Etchart, (202) 343–8693; or Robert C. Bruce, (202) 343–8735

SUPPLEMENTARY INFORMATION: A proposed rulemaking providing the procedures for implementing the Secretary of the Interior's authority to issue documents of disclaimers and to correct patents and other conveyance documents was published in the **Federal Register** on May 3, 1982 (47 FR 10960). Comments were invited for a 60-day period ending on July 2, 1982. During the comment period, ten comments were received; five from corporations, including Alaska Native Corporations; two from attorneys; and three from Federal agencies. The comments commended the Department of the Interior for setting up the procedures contained in the proposed rulemaking, but recommended a number of changes that they hoped would be included in the final rulemaking. One provision that was objected to in the comments was the requirement for recovery of costs connected with the issuance of corrections of patents or other documents of conveyance. The comments argued that since the Federal Government made the error, the holder of the flawed patent or document of conveyance should not bear the cost of making the correction. This comment was considered and after careful consideration, was accepted. However, the study of this question involved a close examination of the Bureau of Land Management's costs for initial handling of applications for either a disclaimer or a correction. Those studies showed that the initial costs run approximately $100. Therefore, the fee that must accompany such applications has been raised to $100 by changes in §§ 1864.1–2 and 1865.1–2 of the final rulemaking. This increased fee is in keeping with the provisions of section 304 of the Federal Land Policy and Management Act that authorizes the collection of reasonable costs with respect to applications relating to the public lands.

A couple of the comments raised questions about the language in the final paragraph of § 1864.0–2, the objectives section, and expressed the view that the language was not clear. The language has been reviewed and rewritten in the final rulemaking to clarify what an instrument of disclaimer is intended to be and what it is intended to accomplish.

Section 1864.0–5(e) has been amended by the addition of the phrase "seaward boundary of the State to bring it into compliance with section 4 of the Submerged Lands Act (43 U.S.C. 1312).

A comment suggested that the term "prospective owner" in § 1864.0–5(g) of the proposed rulemaking should be changed to expand and clarify those instruments which can be used to acquire title and the extent of the title that may be acquired. After careful consideration of the comment, the final rulemaking deletes all reference to prospective purchaser in order to simplify the application process.

As a result of a comment recommending a clarification of the phrase "(A)ny present or prospective owner" in § 1864.1–1 of the proposed rulemaking, the phrase has been amended in the final rulemaking to limit it to "any present owner of record". This section has also been clarified in the final rulemaking to require a showing that the lands are no longer subject to a claim or potential claim of the United States.

Section 1864.1–2(a) of the proposed rulemaking has been amended and moved to § 1864.1–1(c) by the final rulemaking because it is more appropriate in its new location. As a result of the movement of paragraph (a), the subsequent paragraphs have been renumbered by the final rulemaking. In addition, § 1864.1–3(d) has been added by the final rulemaking to clarify the differences between a disclaimer of interest in regular lands and an application for omitted or possibly omitted lands under Part 9180 of this title. A new paragraph (c)(8) has been added to § 1864.1–2 by the final rulemaking allowing the authorized officer to waive certain requirements if they have been satisfied through prior consultation.

Section 1864.1–2(d)(1) of the proposed rulemaking has been rewritten and renumbered § 1864.1–2(c)(1) by the final rulemaking to clarify the requirements for a legal description of the lands for which a disclaimer is sought.

Section 1864.1–3 has been amended by the final rulemaking to include a provision for denial of an application when: (1) 12 or more years have elapsed since the applicant or his/her predecessor in interest knew or should have known of such an error; (2) the application pertains to water or security rights; or (3) the application pertains to trust or Indian lands.

A comment recommended that § 1864.1–4 of the proposed rulemaking be amended to clarify when the Bureau of Land Management would be required to consult with other Federal agencies on the issuance of a disclaimer document. The comment pointed out that the section should make it clear that the Bureau should only consult when it had knowledge that the issuance of the disclaimer document would directly affect another Federal agency. This clarification has been adopted by the final rulemaking.

Another area of general concern in the comments on the proposed rulemaking was the lack of a requirement that adverse claimants be notified when a decision to issue a disclaimer document or a document of correction has been made. The comments expressed the view that those affected by the decision should be given notice and an opportunity to take whatever action they deem appropriate. In response to these comments, the final rulemaking contains changes to § 1864.2 which makes it clear that persons other than the applicant will be notified of the decision of the authorized officer to issue the appropriate document. In connection with this change, the provisions of the appeals section, § 1864.4, has been amended by the final rulemaking to make it clear that claimants adversely affected by a decision of the authorized officer can appeal that decision. Section 1864.2 of the proposed rulemaking has been amended by the final rulemaking to include publication of the notice of disclaimer application in a local newspaper.

As the result of a comment suggesting a need to clarify § 1864.3 of the proposed rulemaking as it relates to the form of the instrument of disclaimer that is issued, and in keeping with the clarifying amendment made by the final rulemaking to § 1864.0–2, the final rulemaking amends the language of § 1864.3.

Section 1864.4 of the proposed rulemaking has been deleted by the final rulemaking because its contents have been covered by § 1864.0–2(b) of the final rulemaking. As a result of this deletion, § 1864.5 has been renumbered § 1864.4 by the final rulemaking.

Section 1865.1–3 of the proposed rulemaking has been totally revised by the final rulemaking. This revision was necessitated by the deletion of the requirement for cost reimbursement for the issuance of correction documents, a change that was discussed earlier in this preamble.

Finally, the Alaska Native Corporations that commented on the proposed rulemaking were concerned that language was needed in the final rulemaking to make it clear that corrections could be made to the interim conveyances that are being issued under the provisions of the Alaska Native Claims Settlement Act until such time as work is completed and patents can be issued. After careful study, this suggestion has been adopted in the final rulemaking by adding a new term "conveyances documents" to the § 1865.0–5, definitions. The new definition makes it clear that interim conveyances issued under the provisions of the Alaska Native Claims Settlement Act and approvals and tentative approvals issued to the State of Alaska under the Alaska Statehood Act are, for the purposes of this subpart, considered conveyance documents that can be corrected by the Bureau of Land Management. This final rulemaking will also permit a correction if an error is discovered in a final patent issued under the provisions of the Alaska Native Claims Settlement Act or Alaska Statehood Act.

Editorial and grammatical corrections as needed have been made.

The principal author of this final rulemaking is Henry B. Beauchamp, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in 43 CFR Subparts 1864 and 1865 do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

List of Subjects

43 CFR Part 1820

Administrative practice and procedure, Alaska, Archives and records, Public lands.

43 CFR Part 1860

Administrative practice and procedure, Public lands.

Under the authority of sections 315 and 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745, 1746), Part 1860, Group 1800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: August 16, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 1860—[AMENDED]

1. Part 1860 is amended by:

A. Revising the title to read:

"PART 1860—CONVEYANCES, DISCLAIMERS AND CORRECTION DOCUMENTS"

B. Adding a new Subpart 1864 to read:

Subpart 1864—Recordable Disclaimers of Interest in Land

Sec.

1864.0–1 Purpose.
1864.0–2 Objectives.
1864.0–3 Authority.
1864.0–5 Definitions.
1864.1 Application for issuance of a document of disclaimer.
1864.1–1 Filing of application.
1864.1–2 Form of application.
1864.1–3 Action on application.
1864.1–4 Consultation with other Federal agencies.
1864.2 Decision on application.
1864.3 Issuance of document of disclaimer.
1864.4 Appeals.

Subpart 1864—Recordable Disclaimers of Interest in Land

§ 1864.0–1 Purpose.

The Secretary of the Interior has been granted discretionary authority by section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745) to issue recordable disclaimers of interests in lands. In general, a disclaimer may be issued if the disclaimer will help remove a cloud on the title to lands and there is a determination that such lands are not lands of the United States or that the United States does not hold a valid interest in the lands. These regulations implement this statutory authority of the Secretary.

§ 1864.0–2 Objectives.

(a) The objective of the disclaimer is to eliminate the necessity for court action or private legislation in those instances where the United States asserts no ownership or record interest, based upon a determination by the Secretary of the Interior that there is a cloud on the title to the lands, attributable to the United States, and that:

(1) A record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or

(2) The lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or

(3) Accreted, relicted, or avulsed lands are not lands of the United States.

(b) A disclaimer has the same effect as a quitclaim deed in that it operates to estop the United States from asserting a claim to an interest in or the ownership of lands that are being disclaimed. However, a disclaimer does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in lands, nor does it operate to release or discharge any tax, judgement or other lien, or any other mortgage, deed or trust or other security interest in lands that are held by or for the benefit of the United States or any instrumentality of the United States.

(c) The regulations in this subpart do not apply to any disclaimer, release, quitclaim or other similar instrument or declaration, that may be issued pursuant to any provision of law other than section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745).

§ 1864.0–3 Authority.

Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), authorizes the Secretary of the Interior to issue a recordable disclaimer, where the disclaimer will help remove a cloud on the title of such lands, if certain determinations are made and conditions are met.

§ 1864.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Accreted lands" have the meaning imparted to them by applicable law. In general, they are lands that have been gradually and imperceptibly formed along the banks of a body of water by deposition of water-borne soil.

(c) "Avulsed lands" have the meaning imparted to them by applicable law. In general, they are lands that have been uncovered by a relatively sudden change in alignment of the channel of a river, or by a comparable change in some other body of water, or that remain as uplands following such a change, or that are located in the bed of the new channel.

(d) "Actual shoreline" means the line which is washed by the water wherever it covers the bed of a body of water at its mean high water level.

(e) "Lands" means lands and interests in lands now or formerly forming a part of the reserved or unreserved public lands of the contiguous 48 States and Alaska and as to any coastal State, includes submerged lands inside of the seaward boundary of the State.

(f) "Meander line" means a survey line established for the purpose of representing the location of the actual shoreline of a permanent natural body of water, without showing all the details of its windings and irregularities. A meander line rarely runs straight for any substantial distance. It is established not as a boundary line but in order to permit calculation of the quantity of lands in the fractional sections remaining after segregation of the water area.

(g) "Relicted lands" have the meaning imparted that term by applicable law. In general, they are lands gradually uncovered when water recedes permanently.

§ 1864.1 Application for issuance of a document of disclaimer.

§ 1864.1-1 Filing of application.

(a) Any present owner of record may file an application to have a disclaimer of interest issued if there is reason to believe that a cloud exists on the title to the lands as a result of a claim or potential claim by the United States and that such lands are not subject to any valid claim of the United States.

(b) Prior to the acceptance for filing of an application under this subpart, the authorized officer should discuss the proposal with the proposed applicant to determine if the regulations in this subpart apply.

(c) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2-1(d) of this title.

§ 1864.1-2 Form of application.

(a) No specific form of application is required.

(b) A nonrefundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) A legal description of the lands for which a disclaimer is sought. The legal description shall be based on either an official United States public land survey or, in the absence of or inappropriateness (irregularly shaped tracts) of an offical public land survey, a metes and bounds survey (whenever practicable, tied to the nearest corner of an official public land survey), duly certified in accordance with State law, by the licensed civil engineer or surveyor who executed or supervised the execution of the metes and bounds survey. A true copy of the field notes and plat of survey shall be attached to and made a part of the application. If reliance is placed in whole or in part on an official United States public land survey, such survey shall be adequately identified for record retrieval purposes;

(2) The applicant's name, mailing address, and telephone number and the names addresses and telephone numbers of others known or believed to have or claim an interest in the lands;

(3) All documents which show to the satisfaction of the authorized officer the applicant's title to the lands;

(4) As complete a statement as possible concerning:

(i) The nature and extent of the cloud on the title, and

(ii) The reasons the applicant believes:

(A) The record title interest of the United States in the lands included in the application has terminated by operation of law or is otherwise invalid, including a copy or legal citation of relevant provisions of law; or

(B) The lands between the meander line shown on the plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States, including as documentation an official plat of survey or a reference to a date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue; or

(C) The lands are accreted, relicted or avulsed and are no longer lands of the United States, including submission for the uplands portion of the body of water affected a copy of an official plat of survey or a reference to it by date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue;

(5) Any available documents or title evidence, such as historical and current maps, photographs, and water movement data, that support the application;

(6) The name, mailing address, and telephone number of any known adverse claimant or occupant of the lands included in the application;

(7) Any request the applicant may have that the disclaimer be issued in a particular form suitable for use in the jurisdiction in which it will be recorded; and

(d) Based on prior discussions with the applicant, the authorized officer may waive any or all of the aforementioned items if in his/her opinion they are not needed to properly adjudicate that application.

§ 1864.1-3 Action on application.

(a) An application shall be denied by the authorized officer if:

(1) More than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States;

(2) The application pertains to a security interest or water rights; or

(3) The application pertains to trust or restricted Indian lands:

(b) The authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit needed to cover the administrative costs of processing the application and issuing a disclaimer.

(c) The applicant shall submit a deposit in an amount determined by authorized officer.

(d) If the application is concerned with what may be omitted lands, it shall be processed in accordance with the applicable provisions of Part 9180 of this title. If the application is determined by the authorized officer to involve omitted lands, the applicant shall be so notified in writing.

§ 1864.1-4 Consultation with other Federal agencies.

If the lands included in the application are under the administrative jurisdiction of a Federal agency other than the Department of the Interior or if the issuance of a disclaimer for the lands would, to the Bureau of Land Management's knowledge, directly affect another Federal agency, the authorized officer shall refer the application to that Federal agency for comment.

§ 1864.2 Decision on application.

(a) The authorized officer shall notify the applicant and any party adverse to the application, in writing, on the determination of the authorized officer on whether or not to issue a disclaimer. Prior to such notification, the authorized officer shall issue to the applicant a billing that includes a full and complete statement of the cost incurred in reaching such determination, including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs exceed the amount of the deposit required of the applicant under this subpart, the applicant shall be informed that a payment is required for the difference between the actual costs and the deposit. The notification shall also require that payment be made within 120 days from the date of mailing of the notice. If the deposit exceeds the administrative costs of issuing the disclaimer, the applicant shall be informed that a credit for or a refund of the excess will be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application. Before the authorized officer makes a determination to issue a disclaimer, he/she shall publish notice of the application, including the grounds supporting it, in the **Federal Register**. Publication in the **Federal Register** shall be made at least 90 days preceding the issuance of a decision on the disclaimer. Notice shall be published in a newspaper located in the vicinity of the lands covered by the application once a week for 3 consecutive weeks during the 90-day period set out herein. Neither publication shall be made until the applicant has paid the administrative costs.

§ 1864.3 Issuance of document of disclaimer.

Upon receipt of the payment required by §§ 1864.1–2(b), 1864.1–3(c) and 1864.2 of this title and following, by not less than 90 days, the publication required by § 1864.2 of this title, the authorized officer shall make a decision upon the application, and if the application is allowed, shall issued to the applicant an instrument of disclaimer.

§ 1864.4 Appeals.

An applicant or claimant adversely affected by a written decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

2. Part 1860 is amended by adding a new subpart 1865 as follows:

Subpart 1865—Correction of Conveyancing Documents

Sec.
1865.0–1 Purpose.
1865.0–2 Objective.
1865.0–3 Authority.
1865.0–5 Definitions.
1865.1–1 Application for correction of conveyancing documents.
1865.1–1 Filing of application.
1865.1–2 Form of application.
1865.1–3 Action on application.
1865.2 Issuance of corrected patent or document of conveyance.
1865.3 Issuance of patent or document of conveyance on motion of authorized officer.
1865.4 Appeals.

Subpart 1865—Correction of Conveyancing Documents

§ 1865.0–1 Purpose.

The purpose of these regulations is to implement section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746), which affords to the Secretary of the Interior discretionary authority to correct errors in patents and other documents of conveyance pertaining to the disposal of the public lands of the United States under laws administered through the Bureau of Land Management or its predecessors.

§ 1865.0–2 Objective.

The objective of a correction document is to eliminate from the chain of title errors in patents or other documents of conveyance that have been issued by the United States under laws administered by the Bureau of Land Management or its predecessors and that pertain to the disposal of the public lands or of an interest therein.

§ 1865.0–3 Authority.

Section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746) authorizes the Secretary of the Interior to correct patents and other documents of conveyance issued at any time pursuant to the laws relating to the disposal of the public lands where the Secretary of the Interior deems it necessary or appropriate to do so in order to eliminate errors.

§ 1865.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(b) "Error" means the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law.

(c) "Patents or other documents of conveyance" means a land patent, a deed or some other similar instrument in the chain of title to realty that has been issued by the United States under laws administered by the Bureau of Land Management or its predecessors pertaining to the disposal of the public lands of the United States or of an interest therein. It also includes interim conveyances issued under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), and approvals and tentative approvals issued under the Act of July 7, 1958, as amended (72 Stat. 339).

(d) "Lands" mean lands or interest in lands.

§ 1865.1 Application for correction of conveyancing documents.

§ 1865.1–1 Filing of application.

(a) Any claimant asserting ownership of lands described in and based upon a patent or other document of conveyance containing an alleged error may file an application to correct the alleged error.

(b) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2–1(d) of this title.

§ 1865.1–2 Form of application.

(a) No specific form of application is required.

(b) A non-refundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) The name, mailing address, and telephone number of the applicant and any others known to the applicant that hold or purport to hold any title or other interest in, lien on or claim to the lands described in the patent or other document of conveyance containing the alleged error as to which the corrective action is requested, and if the error involves a misdescription, the land that would be affected by the corrective action requested;

(2) All documents which show the applicant's title to the lands included in the application;

(3) A certified copy of any patent or other document conveying any lands included in the application to the applicant or predecessor(s) in interest; and

(4) As complete a statement as possible concerning:

(i) The nature and extent of the error;

(ii) The manner in which the error can be corrected or eliminated; and

(iii) The form in which it is recommended the corrected patent or document of conveyance be issued.

§ 1865.1-3 Action on application.

The authorized officer, upon review of the factual data and information submitted with the application, and upon a finding that an error was made in the patent or document of conveyance and that the requested relief is warranted and appropriate, shall give written notification to the applicant and make a reasonable effort to give written notification to any others known to have or believed to have or claim an interest in the lands that a corrected patent or document of conveyance shall be issued. The notification shall include a description of how the error is to be corrected or eliminated in the patent or document of conveyance. The notice shall require the applicant to surrender the original patent or other document of conveyance to be corrected. Where such original document is unavailable, a statement setting forth the reasons for its unavailability shall be submitted in lieu of the original document. The notice may include a requirement for quitclaiming to the United States the lands erroneously included, and shall specify any terms and conditions required for the quitclaim.

§ 1865.2 Issuance of corrected patent or document of conveyance.

Upon the authorized officer's determination that all of the requirements of the Act for issuance of a corrected patent or document of conveyance have been met, the authorized officer shall issue a corrected patent or document of conveyance.

§ 1865.3 Issuance of patent or document of conveyance on motion of authorized officer.

The authorized officer may initiate and make corrections in patents or other documents of conveyance on his/her own motion, if all existing owners agree.

§ 1865.4 Appeals.

An applicant or claimant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

PART 1820—APPLICATION PROCEDURES

§§ 1821.6—1821.6-6 [Removed]

§§ 1821.7—1821.7-2 [Redesignated as §§ 1821.6 through 1821.6-2]

3. Part 1820 is revised by removing §§ 1821.6 through 1821.6-6 in their entirety and by redesignating §§ 1821.7 through 1821.7-2 as §§ 1821.6 through 1821.6-2.

[FR Doc. 84-23400 Filed 9-5-84; 8:45 am]

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Thursday
September 6, 1984

Part III

Department of Energy

Economic Regulatory Administration

10 CFR Parts 205 and 590

Import and Export of Natural Gas; New Administrative Procedures; Publication of Final Rule

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 205 and 590

[Docket No. ERA-R-81-05]

Import and Export of Natural Gas; New Administrative Procedures

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Publication of Final Rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has adopted new administrative procedures applicable to its natural gas import and export proceedings. These procedures replace those of the Federal Power Commission (FPC) that were in effect on September 30, 1977, and that have been used by the ERA since October 1, 1977. They also supersede the ERA's existing procedural rules governing off-the-record communications in import and export proceedings.

These final adminstrative procedures reflect the policy and regulatory responsibilities of this agency. ERA proceedings generally will be conducted in an informal manner, with records developed and parties heard through written comments and oral presentations. Trial-type hearings will be reserved for resolution of genuine disputes of material issues of fact when they are necessary for a full and true disclosure of those facts.

Moreover, these procedures are designed to expedite the government's review of import or export applications, while protecting the full rights of all parties.

EFFECTIVE DATE: September 6, 1984.

FOR FURTHER INFORMATION CONTACT:

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Jane Register (Public Affairs, Office of the Administrator), Economic Regulatory Administration, Forrestal Building, Room 5B-148, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2972

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I. Background

A. Authorities and Responsibilities

The authority to regulate imports and exports of natural gas derives from section 3 of the Natural Gas Act (NGA).[1] Until the passage of the Department of Energy Organization Act of 1977 (DOE Act),[2] this authority was exercised by the Federal Power Commission. Sections 301(b) and 402(f) of the DOE Act transferred the responsibility in this area to the Secretary of Energy who in turn delegated it to the Administrator of the ERA.[3] The ERA has been administering this function since October 1, 1977, under the FPC rules in place on September 30, 1977 (except for the *ex parte* rules which the ERA adopted on August 24, 1978 (10 CFR Part 205, Subpart U).

Under Section 3 of the NGA, a proposed import or export of natural gas is to be authorized "upon application" unless it is determined that authorization "will not be consistent with the public interest." The NGA does not specify how such determinations are to be made except to indicate that an application may not be found inconsistent with the public interest without the agency first having provided "opportunity for hearing." There is broad discretion for the agency to adopt the particular procedures to be followed in the authorization process.

In addition to NGA Section 3 responsibilities, the Secretary of Energy is authorized under section 102(10) of the DOE Act to undertake activities involving the integration of domestic and foreign energy policy, which includes engaging in discussions with foreign governments and their representatives concerning international cooperation on energy matters and the establishment of a framework for individual energy arrangements of direct benefit to the United States. The procedures by which the Secretary's delegate, the ERA Administrator, makes regulatory decisions on applications to import or export natural gas have been crafted to take into account DOE consultations with other agencies (such as the State Department) and foreign governments in carrying out these broader domestic and international energy policy responsibilities.

These rules also have been developed with the goal of minimizing the regulatory burden on all parties and assuring efficiency of the proceedings. They provide the Administrator with the ability to expedite the regulatory process, as necessary, to respond to international and energy policy concerns of the U.S. Government.

B. Proposed Rule

On November 30, 1977,[4] the ERA gave notice that it would utilize the regulations of the Federal Power Commission contained in 18 CFR Chapter 1, until issuing its own regulations. On August 24, 1978,[5] the ERA issued its own rule of practice on off-the-record communications between DOE decision-making employees and "interested persons."

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[1] Act of June 21, 1938, C. 556, 52 Stat. 821-833, 15 U.S.C. 717-717W.

[2] Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*

[3] "New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas," Delegation Order No. 0204-111, 49 FR 6684, February 22, 1984.

[4] 42 FR 61856, December 7, 1977.

On August 26, 1981, the agency proposed new administrative procedures[6] under which natural gas import and export applications would be processed. The proposal set out the various procedures that would be available to the Administrator in a particular case. They include written comments and responses, oral presentations, conferences, and trial-type adjudicatory procedures. The Administrator could use any or all of these procedures in a case. However, as explained in the preamble to the proposal, the agency contemplates development of the issues and gathering of the facts generally through written and reply comments, supplemented as necessary by oral presentations.[7] The formal adjudicatory process would be reserved for resolving genuine disputes of material issues of fact when a trial-type hearing is necessary to obtain a full and true disclosure of those facts.

II. Final Rule

A. Introduction

After consideration of the comments received on the proposed rule, the ERA has adopted the administrative procedures essentially as proposed. The procedures are designed to accommodate both the agency's broader natural gas policy responsibilities and its institutional structure. They also will ensure that the due process rights of the parties are protected while achieving a full and fair disclosure of the facts and issues in an efficient and timely manner. There is flexibility to tailor procedures to the needs of a particular case and the nature and complexity of the issues. A discussion below of how the procedures will operate is followed by a discussion of changes from the proposed rule, primarily in response to the comments received.

B. Overall Operating Concept

Most applications or other requests for action will be processed by developing a decisional record through written responses and comments and oral presentations. Other additional procedures for presenting evidence and obtaining information will be granted as necessary to achieve a complete understanding of the facts and issues. In a particular case, the agency may direct that supplemental written filings be made before determining whether any other additional procedures are necessary.

A proceeding will normally be initiated with the filing of an application for authorization to import or export natural gas (§ 590.201). After a **Federal Register** notice is published summarizing the application, 30 days normally will be allowed for the filing of motions to intervene, protests, or comments on the application (§ 590.205).

The applicant or any intervenor may file an answer to any motion to intervene or to protest within 15 days of the filing of the motion (§ 590.303 and § 590.304). The Administrator, however, may issue a final opinion and order pursuant to provision that is made for shortened proceedings (§ 590.316) prior to the expiration of the 15-day answer period. This can be done if no party requests additional procedures or if the Administrator determines that additional procedures are not required pursuant to § 590.310, § 590.311, § 590.312, and § 590.313. Further, this time period might be shortened under emergency conditions with the issuance of an emergency interim order under § 590.403.

After the close of the comment period, or after the close of the 15-day period for responding to motions to intervene and protest, the Administrator will determine whether additional procedures are required. Any party may request additional procedures based on issues raised in the response of any intervenor to the notice of application or in the answers filed to intervenor responses (§ 590.310). If no time limit is established, additional procedures may be requested at any time prior to the issuance of a final opinion and order (§ 590.310). If the Administrator determines that additional procedures are not required, either a conditional order or a final order will be issued based upon the record in the shortened proceeding (§ 590.316). If the order under the shortened proceeding denies the authorization sought, or attaches material conditions to it, the parties will be advised of the reasons for denial or material conditions and will be provided an opportunity to request additional procedures before the issuance of the final decision (§ 590.316).

While a party is not automatically entitled to additional procedures, it is the Administrator's intention to issue a notice of procedures pursuant to § 590.206 when additional procedures are requested unless the Administrator determines that the request is frivolous or is not relevant to matters before the ERA for decision. The notice of procedures may identify and request comments on specific issues of fact, law or policy relevant to the proceeding and may establish a time limit for requesting additional procedures.

The agency has a number of approaches available to it for advancing a proceeding, building a record, and resolving disputed issues of fact, law and policy. They include the filing of written comments and replies, conferences (§ 590.311), oral presentations (§ 590.312), and trial-type hearings (§ 590.313). The Administrator shall decide which of these, singly or in combination, are necessary to advance a proceeding in response to a motion by a party or on the Administrator's own initiative. A party requesting an additional procedure must meet the requirements for obtaining the particular procedures.

A party requesting a conference should identify the reason for holding the conference and the issues to be discussed (§ 590.311). The request will normally be granted if a conference will materially advance the proceeding.

A party requesting an oral presentation (§ 590.312) should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. A request for an oral presentation will ordinarily be granted if the Administrator determines that a substantial question of fact, law, or policy is at issue.

A party requesting a trial-type hearing should identify the issues and demonstrate that they are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts (§ 590.313). The Administrator will grant a trial-type hearing if it is determined that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

The Administrator may preside personally at a trial-type hearing or during any other procedure, or may designate another employee as the presiding official to conduct a proceeding while retaining decision-making authority (§ 590.301). The employee designated to act as presiding official on behalf of the Administrator need not be an Administrative Law Judge (§ 590.102(n)).

The Administrator or presiding official will make any decisions necessary to regulate the conduct of a trial-type hearing in an efficient manner and to keep the record free of irrelevant, immaterial, and unduly repetitious evidence (§ 590.313). These decisions may include limiting the scope of a hearing to consideration of the disputed factual issue or denying or limiting cross-examination of witnesses and the admission of depositions into the record. In the event that additional procedures are needed, a procedural notice will be issued announcing the procedures to be followed (§ 590.208).

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[5] 43 FR 39060, September 1, 1978.

[6] 46 FR 44696, September 4, 1981.

[7] *Ibid*, at 44696 and 44697.

C. Discussion of Comments and Other Matters

1. General

A public hearing was held on the proposed administrative procedures rule on November 12, 1981. Comments were received from 23 parties in response to the proposal and at the hearing. Most of the commenters favored adoption of the proposed procedures on the grounds that they would facilitate expeditious handling of noncontroversial cases and would result in considerable savings of time and costs inherent in adjudicatory procedures. Approximately 100 suggested amendments were considered. The technical changes proposed by many commenters were particularly helpful and were adopted in many instances.

Those commenters who opposed adoption of the proposed rule asserted that proceedings under section 3 of the NGA were required to conform to the adjudicatory "hearing" requirements of the Administrative Procedure Act (APA). The final rule would not significantly alter parties' existing procedural rights and would be similar to those conferred by the APA in general "on-the-record" adjudications. The rule fully meets the requirement of section 3 of the NGA that "opportunity for hearing" be provided. The formal adjudicatory procedures of sections 556 and 557 of the APA are not applicable to natural gas import and export proceedings, since the NGA does not require that decisions be "determined on the record after opportunity for an agency hearing," as provided by section 554(a) of the APA.[8] For Section 3 import and export proceedings, which are known as "hybrid" proceedings combining aspects of rulemaking and adjudication, or as "informal" adjudications, an agency has considerable flexibility in conducting the proceeding in reference to the facts, law, and policy at issue in a particular case.[9]

2. Significant Issues

(a) *Off-the-Record Communications—Separation of Functions and Other Matters* (§ 590.108; § 590.102(c)). The final rule adopts, with some minor revisions, the proposed rule prohibiting *ex parte*, off-the-record communications between an "interested person" and any DOE decisional employee regarding the merits of a contested natural gas import or export proceeding pending before the ERA. Under this rule, all DOE employees who are or may reasonably be expected to be involved in the decision making process in a natural gas import or export proceeding are treated as decisional employees. This includes DOE staff assisting the Administrator in the conduct of trial-type hearings. The off-the-record communications rule is designed to avoid all possibilities of prejudice, real or apparent, to the public interest and to persons involved in a natural gas import/export authorization proceeding.

Most of the commenters who opposed the off-the-record communications rule did so because they were concerned that separation of investigative and trial-type functions from decision-making was essential to impartial decisions. They believed that combining trial and investigative functions with activities directly supporting the decision process would compromise the objectivity of agency decisions. The final rule adopts the provision essentially as proposed, in recognition of the fact that there is no separate independent staff performing prosecutorial or investigative functions at the DOE. All DOE employees involved in a natural gas import/export proceeding operate solely on behalf of the Administrator or presiding official; none operates in an independent, adversarial role.

In response to comments, the ERA has made some modifications to help assure that all parties to a proceeding know when the prohibition against off-the-record communications has been triggered. The *ex parte* rules go into effect when a proceeding is contested. The definition of "contested proceeding" in § 590.102(b) has been clarified by requiring that all notices of opposition to an action be in writing. § 590.108(b), which describes when the *ex parte* rules go into effect, was also amended to provide that opposition and the reasons for opposition be expressly stated in a motion to intervene, notice of intervention, protest, or in some other written form.

Further, some commenters stated it was not clear in the proposed rule that a party must be given both reasonable prior notice and the opportunity to respond to an off-the-record communication. Accordingly, the definition of "off-the-record communication" in § 590.102(k) has been amended to provide that both notice and opportunity to respond are required by the rule. Thus, for example, if a party was given reasonable prior notice, but not the opportunity to be present at an off-the-record communication made at a conference on the merits of a contested proceeding, then that communication constitutes a prohibited off-the-record communication.

Section 590.102(k) has been amended to clarify that certain discussions are exempted from the prohibition against off-the-record communications even though relevant to the merits of a proceeding. Section 590.102(k) now provides that general background discussions about an entire industry or market are exempted from the prohibition even though they may relate to the merits of specific contested cases.

(b) *Off-the-Record Communications; Foreign Governments* (§ 590.102(h)).The final rule adopts, with one minor modification, the proposed rule excluding discussions and negotiations with foreign governments from the prohibition against off-the-record communications.

Several of the commenters opposed this exclusion. Generally, the concern was that off-the-record discussions with foreign governments on energy policy and the framework for commercial trade would involve negotiation of terms of individual agreements without the participation of affected parties.

The agency has concluded that, to be effective, DOE officials must be able to conduct sensitive, international discussions on energy matters in private. These discussions characteristically provide avenues for information transmission and foster a free and open exchange of ideas on energy problems that are only possible when confidentiality is maintained.

Discussions with foreign governments and their representatives will generally deal with overall policy. However, should any discussions lead to a formal statement or agreement affecting an application for the import or export of natural gas, the formal agreement or statement shall be identified in a **Federal Register** notice of the application. Further, § 590.205(c) is being amended to provide that if a formal agreement is concluded after publication of the notice of application in the **Federal Register**, a description of the agreement or statement shall be placed in the official record of the proceeding. The parties will then be given opportunity to comment. This amendment to § 590.205(c) will ensure that opportunity for public comment, consistent with due process requirements, is provided at the earliest practical stage of the proceeding consistent with the need for confidentiality in international discussions.

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[8] See *American Public Gas Assn v. F.P.C.*, 567 F. 2d 1016 (D.C. Cir. 1977), cert. denied, 435 U.S. 907 (1978); *Phillips Petroleum Corp.* v. *F.P.C.*, 475 F. 2d 842 (10th Cir. 1973), cert. denied, 414 U.S. 1146 (1974).

[9] *Ibid.; Costle* v. *Pacific Legal Foundation*, 445 U.S. 198 (1980); *Vermont Yankee Nuclear Power Corp.* v. *N.R.D.C.*, 435 U.S. 519 (1978); *Mathews* v. *Eldridge*, 424 U.S. 319 (1976); *West Chicago, Ill.* v. *U.S. N.R.C.*, 701 F. 2d 632 (7th Cir. 1983); *Izaac Walton League* v. *Marsh*, 655 F. 2d 346 (D.C. Cir. 1981), cert. denied, 454 U.S. 1092 (1981); *The Bell Telephone Co.* v. *F.C.C.*, 503 F. 2d 1250 (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

3. Other Issues

A number of technical revisions have been made in response to comments received on the proposed rule to enhance the clarity and effectiveness of the rule.

(a) *Computation of Time* (§ 590.105(c)). Section 590.105(c) has been clarified to provide that an order is effective at the time stamped on it by the agency after the order has been signed, unless another effective date is specified in the order.

(b) *Service* (§ 590.107). As proposed, § 590.107(a) could be read to require that documents served upon the parties had to be a copy of the documents filed with the ERA and stamped with the time and date of receipt. Some commenters said this could require personal delivery of documents filed near the end of a filing period in order for parties to meet service and filing requirements. Section 590.107(a) now permits parties to serve a true copy of the document filed which does not have to be a "stamped" copy. A provision has also been added to § 590.103(b) expressly requiring that service of documents be made not later than the filing date of the documents. These changes should give the parties more flexibility in meeting service and filing requirements.

(c) *Good Cause* (§ 590.108(a)(5); § 590.201(b); § 590.204; § 590.303; § 590.304; § 590.310). The final rule adopts "good cause" as the standard the Administrator or presiding official will apply in exercising his or her discretion whether or not to grant certain actions requested. For example, the Administrator or presiding official will determine whether good cause exists for allowing late interventions (§ 590.303(a)), after considering whether the party filing late (1) had reason for failure to file on time, (2) would provide information material to the proceeding, and (3) had an interest which may be directly affected by the outcome of the proceeding. The Administrator or presiding official will also take into account any disruption of the proceedings or prejudice to any existing party or intervenor which might result from the late filing.

(d) *Filing of Applications or Other Requests (§ 590.201).* Section 590.201 as proposed provided only for the filing of applications to import or export natural gas and related amendments. Section 590.201 has been revised to include the phrase "or any other requested action." This change was made to identify a method by which parties could request other actions by the agency, such as the issuance of an order or information letter to remove an ambiguity as to the meaning or effect of a previously issued decision.

(e) *Contents of Applications* (§ 590.202). Section 590.202 as proposed did not make any provision for safeguarding confidential information filed with the ERA. A few commenters urged that some specific provision should be included for this propose. Section 590.202(e) now permits parties confidential treatment of proprietary information.

Further, § 590.202 has been revised to include the requirement that the applicants demonstrate that the proposed import is competitive, and is consistent with the criteria established in the Secretary of Energy's policy guidelines issued February 15, 1984, for evaluating applications for authorization to import or export natural gas.[10]

(f) *Amendment or Withdrawal of Application* (§ 590.204). Proposed § 590.103(c) (general filing requirements) was deleted to eliminate duplication of the responsibilities placed on an applicant by § 590.204(a) (amendment or withdrawal of application). Section 590.103(c) would have required an applicant continually to update the record in a proceeding with any new or newly discovered information relevant thereto, a responsibility already covered by § 590.204(a), which requires an applicant to amend the application whenever a material change in facts or conditions occurs.

(g) *Notice of Applications* (§ 590.205). Section 590.205(a) as proposed allowed 15 days for responding to a notice of application. Several commenters stated that this did not allow enough time for evaluation and response. Accordingly, § 590.205(a) now provides 30 days for responding to notices of application. This change should help assure that all interested parties receive the notice and have ample opportunity to comment. The exception to this is found under § 590.403 where, under emergency conditions, emergency interim orders may be issued in less than 30 days.

(h) *Small Volume Exports* (§ 590.208). The ERA has adopted as proposed a provision which permits exports of up to 100,000 cubic feet of natural gas for scientific, experimental, or other non-utility use without prior authorization. In a change from the proposed rule, the final rule eliminates the requirement for reports to the ERA on these *de minimus* exports. This will accomplish significant savings in administrative burden to those making such small volume exports and to the agency in processing the reports.

(i) *Exchanges By Displacement* (§ 590.209). A provision has been added to clarify that, as long as there is no net effect on authorized imports or exports, and no actual gas flow across the border under the terms of the deferred exchange, no prior authorization is required for exchanges by displacement of imported gas with other gas for the purpose of storage. For example, in one type of exchange allowed under this provision, an importer would place imported gas into seasonal storage for the account of a third party rather than deliver it into his system supply. Withdrawal would subsequently be accomplished by displacement, with stored volumes being delivered into system supply concurrently with delivery of equivalent volumes by the exporter to the third party and a corresponding reduction in volumes delivered by the exporter to the importer. This provision provides additional flexibility to importers and exporters to meet market conditions.

(j) *Interventions and Answers* (§ 590.303). As proposed, § 590.303(e) required answers to motions to intervene to be under oath. There were no corresponding requirements with respect to other filings with the ERA. Some commenters suggested that the under oath requirement should either be deleted or made applicable to all allegations of fact in documents filed with the ERA. Section 590.103(b) (general filing requirements) now requires all documents filed with the ERA to be verified under oath or affirmation. The general application of the under oath requirement may also reduce the need for trial-type hearings to resolve issues of fact. Section 590.303(c) as proposed required intervenors to state their position and the legal and factual basis underlying it in responding to a notice of application. A few

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[10] 49 FR 6684, February 22, 1984.

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commenters indicated that intervenors may not have an established position in the early stages of a proceeding. Section 590.303(c) now permits intervenors to state their positions "to the extent known." This allows the parties to modify positions as facts and issues are developed in the proceeding.

(k) *Informal Discovery* (§ 590.305). A new § 590.305 has been added to clarify the implicit right of the parties to engage in discovery through procedures such as written interrogatories or production of documents. Under new § 590.305, if the parties cannot agree on discovery procedures, then the Administrator or presiding official will determine what discovery procedures are to be conducted.

(l) *Settlements* (§ 590.309). A new § 590.309 has been added to clarify the implicit right of parties to engage in settlement negotiations. Under new § 590.309, the Administrator or presiding official may order that off-the-record negotiations be conducted. No offer of settlement, comment, or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

(m) *Additional Procedures* (§ 590.310, § 590.311, § 590.312, § 590.313). The comments on the proposed section for additional procedures reflected some confusion over the test to be applied for obtaining procedures in § 590.311 (conferences), in § 590.312 (oral presentations), and in § 590.313 (trial-type hearings). Accordingly, the rule has been clarified (§ 590.310) to indicate that the Administrator on his or her own initiative may determine at his or her discretion to hold additional procedures. Also, § 590.312(a) was revised to provide that an oral presentation ordinarily will be granted in response to a request by a party if the Administrator or presiding official determines that a substantial question of fact, law or policy is at issue and if illumination of that issue will be aided materially by an oral presentation. The criteria for granting a conference or a trial-type hearing have not been changed. As under the proposed rule, the requesting party has a burden of showing the need for the additional procedure requested and the Administrator has the responsibility for determining which of the procedures, singly or in combination, are most appropriate for a particular proceeding.

(n) *Trial-type Hearings* (§ 590.313). The term "evidentiary" hearing used throughout the proposed rule has been replaced with the term "trial-type" hearing in order to make it clear that a formal adjudicatory hearing with cross-examination is the type of hearing referred to. The purpose of this change was to eliminate any confusion that evidence could only be gathered in an adjudicatory hearing.

(o) *Complaints* (§ 590.317). In order to clarify certain existing practices, the agency has added § 590.317 to describe the procedures by which interested parties may file complaints. A complaint may be filed by any person about an existing import or export authorization over which the agency has jurisdiction. The complaint may be based on changed circumstances, improper conduct of the holder of the import or export authorization, or on any other facts that have a significant bearing on continuation or manner of continuation of the import or export authorization. The Administrator shall determine whether a complaint merits any action and what the appropriate action should be. If the Administrator determines that action on a complaint is appropriate, the Administrator may issue a show cause order under § 590.401 to frame the issues for consideration.

(p) *Reports of Contract Amendments* (§ 590.407). Proposed § 590.407 (reports of changed circumstances) is now designated "reports of contract amendments" and has been revised to require parties filing such amendments to specifically identify the ERA dockets to which they relate. This will facilitate expeditious processing of the documents.

(q) *Conditional Orders* (§ 590.402). Conditional orders will generally be issued to announce a final decision subject to completion of actions required by the National Environmental Policy Act [11] or to grant an authorization subject to subsequent showing by the applicant that an import project meets certain conditions. For example, a conditional order may authorize an import of natural gas provided that the pricing provisions in place when the gas begins to flow will assure that the imported gas will remain competitive over the term of the project.

(r) *Reopening of the Record.* The agency has deleted proposed § 590.315 (reopening of the record). The agency will keep the records open in its proceedings until final opinions and orders are issued to ensure consideration of any new or newly discovered evidence of a material nature during the latter stages of a proceeding. Information received after a final order has been issued and after the opportunity for rehearing has expired which has a material bearing on continuation of the import or export will be considered in any new proceeding the Administrator elects to open for the purpose of reviewing that project. Accordingly, the provision for reopening the record in a proceeding where a final order has been issued is not needed and has been deleted.

4. Filing and Processing Fees (§ 590.207)

In the preamble of the proposed rule, there was a request for comments on whether application fees should be sufficient to cover the direct costs associated with the filing and processing of import and export applications. Very few comments were received in response to this request. However, the agency did not propose specific filing and processing fees. Further, on February 7, 1984, the FERC issued the first two of a series of rules concerning changes in its filing and processing fees [12] which involve many of the issues that would be raised by any change in filing and processing fees that the ERA might propose. Accordingly, the agency has decided to make filing and processing fees the subject of a separate rulemaking to be initiated at a later time. This will permit a review of the FERC experience under its new rules.

III. Additional Matters

A. Environmental Review

After reviewing this rule pursuant to DOE's responsibilities under the National Environmental Policy Act (NEPA), the DOE has determined that it is procedural in nature and does not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of an environmental impact statement is not required.

B. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires the agencies subject to it to prepare a regulatory impact analysis for all major rules, as defined in the Order. This agency has determined that this procedural rule is not a major rule and therefore that a regulatory impact analysis is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 93–354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (September 19, 1980)), requires federal agencies to consider the impact of proposed regulations on small businesses, small governments, and other small entities. The DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

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[11] NEPA, Pub. L. 91–190, 83 Stat. 852, 42 U.S.C. 4321.

[12] 49 FR 5074–5091, February 10, 1984.

D. Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et. seq.*). They have been assigned OMB control number 1903–0081.

E. Index of Subjects in Part 590 and Part 205

List of Subjects in 10 CFR Parts 205 and 590

Administrative practice and procedure, Exports, Imports, Filing fees, Natural gas, Environmental protection, Electric power.

F. Amendment of Part 205

At present the only ERA rules applicable to natural gas import and export proceedings are those contained in 10 CFR Part 205, Subpart U—Procedures for Natual Gas and Electricity Import and Export Cases. Because this rulemaking is not applicable to Subpart U as it relates to electricity export proceedings, this rule only amends Subpart U to the extent necessary to eliminate all applicability to natural gas import and export proceedings. The substance of the rule will remain the same with respect to electricity export cases.

Authority: Department of Energy Orgainzation Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101, *et. seq.*); Natural Gas Act, Act of June 21, 1938, c. 556, 52 Stat. 821 (42 U.S.C. 717, *et. seq.*); E.O. 12009, 42 FR 46267, September 15, 1977; DOE Delegation Order No. 02 04–111 (49 FR 6684, February 22, 1984).

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by adding a Part 590 to Subchapter G, and by revising Part 205, as set forth below.

Issued in Washington, D.C., on August 29, 1984.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

1. Subchapter G of Chapter II of Title 10, Code of Federal Regulations, is hereby amended by adding a new Part 590, to read as follows:

PART 590—ADMINISTRATIVE PROCEDURES WITH RESPECT TO THE IMPORT AND EXPORT OF NATURAL GAS

Subpart A—General Provisions

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590.100 OMB Control Numbers.
590.101 Purpose and scope.
590.102 Definitions.
590.103 General requirements for filing documents with ERA.
590.104 Address for filing documents.
590.105 Computation of time.
590.106 Dockets.
590.107 Service.
590.108 Off-the-record communications.
590.109 ERA investigations.

Subpart B—Applications for Authorization to Import or Export Natural Gas

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590.203 Deficient applications.
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590.301 General.
590.302 Motions and answers.
590.303 Intervention and answers.
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590.305 Informal discovery.
590.306 Subpoenas.
590.307 Depositions.
590.308 Admissions of facts.
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590.310 Opportunity for additional procedures.
590.311 Conferences.
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590.314 Presiding official.
590.315 Witnesses.
590.316 Shortened proceedings.
590.317 Complaints.

Subpart D—Opinions and Orders

590.401 Orders to show cause.
590.402 Conditional orders.
590.403 Emergency interim orders.
590.404 Final opinions and orders.
590.405 Transferability.
590.406 Compliance with orders.
590.407 Reports of contract amendments.

Subpart E—Applications for Rehearing

590.501 Filing.
590.502 Application is not a stay.
590.503 Opinion and order on rehearing.
590.504 Denial by operation of law.
590.505 Answers to applications for rehearing.

Authority: Sec. 301(b), Sec. 402(f), and Sec. 644, Pub. L. 95–91, 91 Stat. 578, 585, and 599 (42 U.S.C. 7151(b), 7172(f), and 7254), Sec. 3, Act of June 21, 1938, c. 556 52 Stat. 822 (15 U.S.C. 717b); E.O. 12009 (42 FR 46267, September 15, 1977; DOE Delegation Order No. 0204–111 (49 FR 6684, February 22, 1984).

Subpart A—General Provisions

§ 590.100 OMB Control Numbers.

The information collection requirements contained in this Part have been approved by the Office of Management and Budget under Control No. 1903–0081.

§ 590.101 Purpose and scope.

The purpose of this Part is to establish the rules and procedures required to be followed by persons to obtain authorizations from the Administrator of the Economic Regulatory Administration (ERA) to import or export natural gas under the Natural Gas Act and by all other persons interested in participating in a natural gas import or export proceeding before the agency.

This Part establishes the procedural rules necessary to implement the authorities vested in the Secretary of Energy by sections 301(b) and 402(f) of the DOE Act, which have been delegated to the Administrator.

§ 590.102 Definitions.

As used in this Part:

(a) "Administrator" means the Administrator of the ERA or any employee of the DOE who has been delegated final decisional authority.

(b) "Contested proceeding" means a proceeding (1) where a protest or a motion to intervene, or a notice of intervention, in opposition to an application or other requested action has been filed, or (2) where a party otherwise notifies the Administrator and the other parties to a proceeding in writing that it opposes an application or other requested action.

(c) "Decisional employee" means the Administrator, presiding officials at conferences, oral presentations or trial-type hearings, and any other employee of the DOE, including consultants and contractors, who are, or may reasonably be expected to be, involved in the decision-making process, including advising the Administrator on the resolution of issues involved in a proceeding. The term includes those employees of the DOE assisting in the conduct of trial-type hearings by performing functions on behalf of the Administrator or presiding official.

(d) "DOE" means the Department of Energy, of which the ERA is a part.

(e) "DOE Act" means the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

(f) "ERA" means the Economic Regulatory Administration.

(g) "FERC" means the Federal Energy Regulatory Commission.

(h) "Interested person" means a person, other than a decisional employee, whose interest in a proceeding goes beyond the general interest of the public as a whole and includes applicants, intervenors, competitors of applicants, and other individuals and organizations, including non-profit and public interest organizations, and state, local, and other public officials, with a proprietary, financial or other special interest in the outcome of a proceeding. The term does not include other federal agencies or foreign governments and their representatives, unless the agency, foreign government, or representative of a foreign government is a party to the proceeding.

(i) "Natural gas" means natural gas and mixtures of natural gas and synthetic natural gas, regardless of physical form or phase, including liquefied natural gas and gels primarily composed of natural gas.

(j) "NGA" means the Natural Gas Act of June 21, 1938, c. 556, 52 Stat. 821 (15 U.S.C. 717 *et seq.*).

(k) "Off-the-record communication" means a written or oral communication not on the record which is relevent to the merits of a proceeding, and about which the parties have not been given reasonable prior notice of the nature and purpose of the communication and an opportunity to be present during such communication or, in the case of a written communication, an opportunity to respond to the communication. It does not include communications concerned solely with procedures which are not relevant to the merits of a proceeding. It also does not include general background discussions about an entire industry or natural gas markets or communications of a general nature made in the course of developing agency policy for future general application, even though these discussions may relate to the merits of a particular proceeding.

(l) "Party" means an applicant, any person who has filed a motion for and been granted intervenor status or whose motion to intervene is pending, and any state commission which has intervened by notice pursuant to § 590.303(a).

(m) "Person" means any individual, firm, estate, trust, partnership, association, company, joint-venture, corporation, United States local, state and federal governmental unit or instrumentality thereof, charitable, educational or other institution, and others, including any officer, director, owner, employee, or duly authorized representative of any of the foregoing.

(n) "Presiding official" means any employee of the DOE who has been designated by the Administrator to conduct any stage of a proceeding, which may include presiding at a conference, oral presentation, or trial-type hearing, and who has been delegated the authority of the Administrator to make rulings and issue orders in the conduct of such proceeding, other than final opinions and orders, orders to show cause, emergency interim orders, or conditional decisions under Subpart D and orders on rehearing under Subpart E.

(o) "Proceeding" means the process and activity, and any part thereof, instituted by the ERA either in response to an application, petition, motion or other filing under this Part, or on its own initiative, by which the ERA develops and considers the relevant facts, policy and applicable law concerning the importation or exportation of natural gas and which may lead to the issuance of an order by the Administrator under Subparts D and E.

(p) "State commission" means the regulatory body of a state or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the state or municipality.

§ 590.103 General requirements for filing documents with the ERA.

(a) Any document, including but not limited to an application, amendment of an application, request, petition, motion, answer, comment, protest, complaint, and any exhibit submitted in connection with such documents, shall be filed with the ERA under this Part. Such document shall be considered officially filed with the ERA when it has been received and stamped with the time and date of receipt by the Natural Gas Division, ERA. Documents transmitted to the ERA must be addressed as provided in § 590.104. All documents and exhibits become part of the record in the official ERA docket file and will not be returned. An original and fifteen (15) copies of all applications, filings and submittals shall be provided to the ERA. No specific format is required.

(b) Upon receipt by the ERA, each application or other initial request for action shall be assigned a docket number. Any petition, motion, answer, request, comment, protest, complaint or other document filed subsequently in a docketed proceeding with the ERA shall refer to the assigned docket number. All documents shall be signed either by the person upon whose behalf the document is filed or by an authorized representative. Documents signed by an authorized representative shall contain a certified statement that the representative is a duly authorized representative unless the representative has a certified statement already on file in the ERA docket of the proceeding. All documents shall also be verified under oath or affirmation by the person filing, or by an officer or authorized representative of the firm having knowledge of the facts alleged. Each document filed with the ERA shall contain a certification that a copy has been served as required by § 590.107 and indicate the date of service. Service of each document must be made not later than the date of the filing of the document.

(c) A person who files an application shall state whether, to the best knowledge of that person, the same or a related matter is being considered by any other part of the DOE, including the FERC, or any other Federal agency or department and, if so, shall identify the matter and the agency or department.

§ 590.104 Address for filing documents.

All documents filed under this part shall be addressed to: Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-033, RG-43, 1000 Independence Avenue, SW., Washington, D.C. 20585.

All hand delivered documents shall be filed at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

§ 590.105 Computation of time.

(a) In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The period of time begins to run the next day after the day of the act or event. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal Federal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal Federal holiday, unless otherwise provided by this Part or by the terms of an ERA order. Documents received after the regular business hours are deemed filed on the next regular business day.

(b) When a document is required to be filed with the ERA within a prescribed time, an extension of time to file may be granted for good cause shown.

(c) An order is issued and effective when date stamped by the Natural Gas Division after the order has been signed unless another effective date is specified in the order.

§ 590.106 Dockets.

The ERA shall maintain a docket file of each proceeding under this Part, which shall contain the official record upon which all orders provided for in Subparts A and E shall be based. The official record in a particular proceeding shall include the official service list, all documents filed under § 590.103, the official transcripts of any procedures held under Subpart C, any opinions and orders issued by the ERA under Subparts D and E, and reports of contract amendments under § 590.407. All dockets shall be available for inspection and copying by the public during regular business hours between 8:00 a.m. and 4:30 p.m. Dockets are located in the: Natural Gas Division, Forrestal Building, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585.

§ 590.107 Service.

(a) An applicant, any other party to a proceeding, or a person filing a protest shall serve a copy of all documents filed with the ERA upon all parties unless otherwise provided in this Part. The copy of a document served upon parties shall be a true copy of the document filed with the ERA, but does not have to be a copy stamped with the time and date of receipt by the ERA. The ERA shall maintain an official service list for each proceeding which shall be provided upon request.

(b) When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements under paragraph (a) of this section may be met by serving a copy of all documents on the applicant and on the ERA for inclusion in the ERA docket in the proceeding.

(c) All documents required to be served under this Part may be served by hand, certified mail, registered mail, or regular mail. It shall be the responsibility of the serving party to ensure that service is effected in a timely manner. Service is deemed complete upon delivery or upon mailing, whichever occurs first.

(d) Service upon a person's duly authorized representatives on the official service list shall constitute service upon that person.

(e) All ERA orders, notices, or other ERA documents shall be served on the parties by ERA either by hand, registered mail, certified mail, or regular mail, except as otherwise provided in this Part.

§ 590.108 Off-the-record communications.

(a) In any contested proceeding under this Part:

(1) No interested person shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any decisional employee.

(2) No decisional employee shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any interested person.

(3) A decisional employee who receives, makes, or knowingly causes to be made an oral off-the-record communication prohibited by this section shall prepare a memorandum stating the substance of the communication and any responses made to it.

(4) Within forty-eight (48) hours of the off-the-record communication, a copy of all written of-the-record communications or memoranda prepared in compliance with paragraph (a)(3) of this section shall be delivered by the decisional employee to the Administrator and to the Director of the Natural Gas Division. The materials will then be made available for public inspection by placing them in the docket associated with the proceeding.

(5) Requests by a party for an opportunity to rebut, on the record, any facts or contentions in an off-the-record communication may be filed in writing with the Administrator. The Administrator shall grant such requests only for good cause.

(6) Upon being notified of an off-the-record communication made by a party in violation of this section, the Administrator may, to the extent consistent with the interests of justice and the policies of the NGA and the DOE Act, require the party to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(b) The prohibitions of paragraph (a) of this section shall apply only to contested proceedings and begin at the time either a protest or a motion to intervene or notice of intervention in opposition to the application or other requested action is filed with the ERA, or a party otherwise specifically notifies the Administrator and the other parties in writing of its opposition to the application or other requested action, whichever occur first.

§ 590.109 ERA investigations.

The Administrator or the Administrator's delegate may investigate any facts, conditions, practices, or other matters within the scope of this Part in order to determine whether any person has violated or is about to violate any provisions of the NGA or other statutes or any rules, regulations, or orders within the Administrator's jurisdiction. In conducting such investigations, the Administrator or the Administrator's delegate may, among other things, subpoena witnesses to testify, subpoena or otherwise require the submission of documents, and order testimony to be taken by deposition.

Subpart B—Applications for Authorization to Import or Export Natural Gas

§ 590.201 General.

(a) Any person seeking authorization to import or export natural gas into or from the United States, to amend an existing import or export authorization, or seeking any other requested action, shall file an application with the ERA under the provisions of this Part.

(b) Applications shall be filed at least sixty (60) days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown.

§ 590.202 Contents of applications.

(a) Each application filed under § 590.201 shall contain the exact legal name of the applicant, the names, titles, and mailing addresses of a maximum of two persons for the official service list, a statement describing the action sought from the ERA, the justification for such action, including why the proposed action is not inconsistent with the public interest, and the ERA docket number, if applicable.

(b) Each application shall include the matters listed below to the extent applicable. All factual matters shall be supported to the extent practicable by the necessary data or documents. Copies of relevant documents filed or intended to be filed with FERC may be submitted to satisfy the requirements of this section. Topics to be addressed or described shall include:

(1) The scope of the project, including the volumes of natural gas involved, the dates of commencement and completion of the proposed import or export, and the facilities to be utilized or constructed;

(2) The source and security of the natural gas supply to be imported or exported, including contract volumes and a description of the gas reserves supporting the project during the term of the requested authorization;

(3) Identification of all the participants in the transaction, including the parent company, if any, and identification of

any corporate or other affiliations among the participants;

(4) The terms of the transaction, such as take-or-pay obligations, make-up provisions, and other terms that affect the marketability of the gas;

(5) The provisions of the import arrangement which establish the base price, volume requirements, transportation and other costs, and allow adjustments during the life of the project, and a demonstration as to why the import arrangement is and will remain competitive over the life of the project and is otherwise not inconsistent with the public interest;

(6) For proposed imports, the need for the natural gas by the applicant or applicant's prospective customers, including a description of the persons who are expected to purchase the natural gas; and for proposed exports, the lack of a national or regional need for the gas; and

(7) The potential environmental impact of the project.

(c) The application shall also have attached a statement, including a signed opinion or legal counsel, showing that a proposed import or export of natural gas is within the corporate powers of the applicant and a copy of all relevant contracts and purchase agreements.

(d) The Administrator or the Administrator's delegate may at any time require the applicant and other parties to make supplemental filings of additional information necessary to resolve issues raised by the application..

(e) All information and data filed in support of or against an application will be placed in the official ERA docket file of the proceeding and will not be afforded confidential treatment, unless the party shows why the information or data should be exempted from public disclosure and the Administrator or Administrator's delegate determines that such information or data shall be afforded confidential treatment.

§ 590.203 Deficient application.

If an application is incomplete or otherwise deemed deficient, the Administrator or the Administrator's delegate may require the applicant to submit additional information or exhibits to remedy the deficiency. If the applicant does not remedy the deficiency within the time specified by the Administrator or the Administrator's delegate, the application may be dismissed without prejudice to refiling at another time.

§ 590.204 Amendment or withdrawal of applications.

(a) The applicant may amend or supplement the application at any time prior to issuance of the Administrator's final opinion and order resolving the application, and shall amend or supplement the application whenever there are changes in material facts or conditions upon which the proposal is based.

(b) The Administrator may for good cause shown by motion of a party or upon the Administrator's own initiative decline to act on, in whole or in part, an amendment or supplement requested by an applicant under paragraph (a) of this section.

(c) After written notice to the ERA and service upon the parties of that notice an applicant may withdraw an application. Such withdrawal shall be effective thirty (30) days after notice to ERA if the Administrator does not issue an order to the contrary within that time period.

§ 590.205 Notice of applications.

(a) Upon receipt of an application, the ERA shall publish a notice of application in the **Federal Register**. The notice shall summarize the proposal. Except in emergency circumstances, generally the notice shall provide a time limit of not less than thirty (30) days from the notice's date of publication in the **Federal Register** for persons to file protests, comments, or a motion to intervene or notice of intervention, as applicable. The notice may also request comments on specific issues or matters of fact, law, or policy raised by the application.

(b) The notice of application shall advise the parties of their right to request additional procedures, including the opportunity to file written comments and to request that a conference, oral presentation, or trial-type hearing be convened. Failure to request additional procedures at this time shall be deemed a waiver of any right to additional procedures should the Administrator decide to grant the application and authorize the import or export by issuing a final opinion and order in accordance with § 590.316.

(c) Where negotiations between the DOE, including the ERA, and a foreign government have resulted in a formal policy agreement or statement affecting a particular import or export proceeding, the ERA shall include in the notice of application a description of the terms or policy positions of that agreement or statement to the extent they apply to the proceeding, and invite comment. A formal policy agreement or statement affecting a particular import or export proceeding that is arrived at after publication of the notice of application shall be placed on the record in that proceeding and the parties given an opportunity to comment thereon.

§ 590.206 Notice of procedures.

In all proceedings where, following a notice of application and the time specified in the notice for the filing or response thereto, the Administrator determined to have additional procedures, which may consist of the filing of supplemental written comments, written interrogatories or other discovery procedures, a conference, oral presentation, or trial-type hearing, the Administrator shall provide the parties with notice of the procedures the Administrator has determined to follow in the proceeding and advise the parties of their right to request any additional procedures in accordance with the provisions of § 590.310. The notice of procedures may identify and request comments on specific issues of fact, law, of policy relevant to the proceeding and may establish a time limit for requesting additional procedures.

§ 590.207 Filing fees.

A non-refundable filing fee of fifty dollars ($50) shall accompany each application filed under § 590.201.

§ 590.208 Small volume exports.

(a) Any person may export up to 100,000 cubic feet of natural gas (14.73 pounds per square inch at 60 °F) or the liquefied or compressed equivalent thereof, in a single shipment for scientific, experimental, or other non-utility gas use without prior authorization of the Administrator.

§ 590.209 Exchanges by displacement.

Any importer of natural gas may enter into an exchange by displacement agreement without the prior authorization of the Administrator when the net effect of the exchange is no different than under the importer's existing authorization. An exchange by displacement is an arrangement whereby authorized imported volumes are displaced by other gas for purposes of storage or flexibility. The term of the exchange agreement may not exceed five (5) years, the volumes imported may not exceed the importer's existing import authorization, and no actual natural gas may flow across the United States border under the terms of the exchange agreement. Any importer who enters into an exchange agreement pursuant to this section shall file with ERA within fifteen (15) days after the start up of the exchange, a written description of the transaction, the exact volume of natural gas to be displaced, the name of the purchaser, and the import authorization under which the exchange is being carried out.

Subpart C—Procedures

§ 590.301 General.

The procedures of this Subpart are applicable to proceedings conducted on all applications or other requested actions filed under this Part. The Administrator may conduct all aspects of the procedures of this Subpart or may designate a presiding official pursuant to § 590.314.

§ 590.302 Motions and answers.

(a) Motions for any procedural or interlocutory ruling shall set forth the ruling or relief requested and state the grounds and the statutory or other authority relied upon. All written motions shall comply with the filing requirements of § 590.103. Motions made during conferences, oral presentations or trial-type hearings may be stated orally upon the record, unless the Administrator or the presiding official determines otherwise.

(b) Any party may file an answer to any written motion within fifteen (15) days after the motion is filed, unless another period of time is established by the Administrator or the presiding official. Answers shall be in writing and shall detail each material allegation of the motion being answered. Answers shall state clearly and concisely the facts and legal authorities relied upon.

(c) Any motion, except for motions seeking intervention or requesting that a conference, oral presentation or trial-type hearing be held, shall be deemed to have been denied, unless the Administrator or presiding official acts within thirty (30) days after the motion is filed.

§ 590.303 Interventions and answers.

(a) A state commission may intervene in a proceeding under this Part as a matter of right and become a party to the proceeding by filing a notice of intervention no later than the date fixed for filing motions to intervene in the applicable ERA notice or order. If the period for filing the notice has expired, a state commission may be permitted to intervene by complying with the filing and other requirements applicable to any other person seeking to become a party to the proceeding as provided in this section.

(b) Any other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner's claim of interest is based.

(c) A motion to intervene shall state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Administrator as to the specific issues of policy, fact, or law to be raised or controverted.

(d) Motions to intervene may be filed at any time following the filing of an application, but no later than the date fixed for filing such motions or notices in the applicable ERA notice or order, unless a later date is permitted by the Administrator for good cause shown and after considering the impact of granting the late motion on the proceeding. Each motion or notice shall list the names, titles, and mailing addresses of a maximum of two persons for the official service list.

(e) Any party may file an answer to a motion to intervene, but such answer shall be made within fifteen (15) days after the motion to intervene was filed, unless a later date is permitted by the Administrator for good cause shown. Answers shall be in writing. Answers shall detail each material allegation of the motion to intervene being answered and state clearly and concisely the facts and legal authorities relied upon. Failure to answer is deemed a waiver of any objection to the intervention. This paragraph does not prevent the Administrator from ruling on a motion to intervene and issuing a final opinion and order in accordance with § 590.316 prior to the expiration of the fifteen (15) days in which a party has to answer a motion to intervene.

(f) If an answer in opposition to a motion to intervene is timely filed or if the motion to intervene is not timely filed, then the movant becomes a party only after the motion to intervene is expressly granted.

(g) If no answer in opposition to a motion to intervene is filed within the period of time prescribed in paragraph (e) of this section, the motion to intervene shall be deemed to be granted, unless the Administrator denies the motion in whole or in part or otherwise limits the intervention prior to the expiration of the time allowed in paragraph (e) for filing an answer to the motion to intervene. Where the motion to intervene is deemed granted, the participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene, and the admission of such intervenor to party status shall not be construed as recognition by the ERA that the intervenor might be aggrieved because of any order issued.

(h) In the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention.

§ 590.304 Protests and answers.

(a) Any person objecting to an application filed under § 590.201 of this Part or to any action taken by the ERA under this Part may file a protest. No particular form is required. The protest shall identify the person filing the protest, the application or action being objected to, and provide a concise statement of the reasons for the protest.

(b) The filing of a protest, without also filing a motion to intervene or a notice of intervention, shall not make the person filing the protest a party to the proceeding.

(c) A protest shall be made part of the the official ERA docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

(d) Protests shall be served on the applicant and all parties by the person filing the protest. If the person filing the protest is unable to provide service on any person identified as a party to the proceeding after a good faith effort, then the ERA shall effect service. However, when the parties are not known, service requirements may be met by serving a copy on the applicant and on the ERA as provided in § 590.107(b).

(e) Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable ERA notice or order, unless a later date is permitted by the Administrator for good cause shown.

(f) Any party may file an answer to a protest but such answer must be filed within fifteen (15) days after the protest was filed, unless a later date is permitted by the Administrator for good cause shown.

§ 590.305 Informal discovery.

The parties to a proceeding may conduct discovery through use of procedures such as written interrogatories or protection of documents. In response to a motion by a party, the Administrator or presiding official may determine the procedures to be utilized for discovery if the parties cannot agree on such procedures.

§ 590.306 Subpoenas.

(a) Subpoenas for the attendance of witnesses at a trial-type hearing or for the production of documentary evidence may be issued upon the initiative of the Administrator or presiding official, or upon written motion of a party or oral motion of a party during a conference, oral presentation, or trial-type hearing, if the Administrator or presiding official determines that the evidence sought is relevant and material.

(b) Motions for the issuance of a subpoena shall specify the relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification to the extent possible of the documents sought and the facts to be proven by them, the issues to which they relate, and why the information or evidence was not obtainable through discovery procedures agreed upon by the parties.

(c) If service of a subpoena is made by a United States Marshall or a Deputy United States Marshall, service shall be evidenced by their return. If made by another person, that person shall affirm that service has occurred and file an affidavit to that effect with the original subpoena. A witness who is subpoenaed shall be entitled to witness fees as provided in § 590.315(c).

§ 590.307 Depositions.

(a) Upon motion filed by a party, the Administrator or presiding official may authorize the taking of testimony of any witness by deposition. Unless otherwise directed in the authorization issued, a witness being deposed may be examined regarding any matter which is relevant to the issues involved in the pending proceeding.

(b) Parties authorized to take a deposition shall provide written notice to the witness and all other parties at least ten (10) days in advance of the deposition unless such advance notice is waived by mutual agreement of the parties.

(c) The requesting motion and notice shall state the name and mailing address of the witness, delineate the subject matters on which the witness is expected to testify, state the reason why the deposition should be taken, indicate the time and place of the deposition, and provide the name and mailing address of the person taking the deposition.

(d) A witness whose testimony is taken by deposition shall be sworn in or shall affirm concerning the matter about which the witness has been called to testify before any questions are asked or testimony given. A witness deposed shall be entitled to witness fees as provided in § 590.315(c).

(e) The moving party shall file the entire deposition with ERA after it has been subscribed and certified. No portion of the deposition shall constitute a part of the record in the proceedings unless received in evidence, in whole or in part, by the Administrator or presiding official.

§ 590.308 Admissions of facts.

(a) At any time prior to the end of a trial-type hearing, or, if there is no trial-type hearing, prior to the issuance of a final opinion and order under § 590.404, any party, the Administrator, or the presiding official may serve on any party a written request for admission of the truth of any matters at issue in the proceeding that relate to statements or opinions of fact or of the application of law to fact.

(b) A matter shall be considered admitted and conclusively established for the purposes of any proceeding in which a request for admission is served unless, within fifteen (15) days or such time limit established by the Administrator or presiding official, the party to whom the request is directed answers or objects to the request. Any answer shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the answering party states that, after reasonable inquiry, the answering party has been unable to obtain sufficient information to admit or deny. If an objection is made, the answering party shall state the reasons for the objection.

(c) If the Administrator or presiding official determines that an answer to a request for admission does not comply with the requirements of this section, the Administrator or presiding official may order either that the matter is admitted or that an amended answer be served.

(d) A copy of all requests for admission and answers thereto shall be filed with the ERA in accordance with § 590.103. Copies of any documents referenced in the request shall be served with the request unless they are known to be in the possession of the other parties.

(e) The Administrator or presiding official may limit the number of requests for admission of facts in order to expedite a proceeding through elimination of duplicative requests.

§ 590.309 Settlements.

The parties may conduct settlement negotiations. If settlement negotiations are conducted during a conference, at the request of one of the parties, the Administrator or presiding official may order that the discussions be off-the-record with no transcript of such settlement negotiations being prepared for inclusion in the official record of the proceeding. No offer of settlement, comment or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

§ 590.310 Opportunity for additional procedures.

Any party may file a motion requesting additional procedures, including the opportunity to file written comments, request written interrogatories or other discovery procedures, or request that a conference, oral presentation or trial-type hearing be held. The motion shall describe what type of procedure is requested and include the information required by § 590.311, § 590.312 and § 590.313, as appropriate. Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Administrator for good cause shown grants additional time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final decision and order. At any time during a proceeding, the Administrator or presiding official may on his or her own initiative determine to provide additional procedures.

§ 590.311 Conferences.

(a) Upon motion by a party, a conference of the parties may be convened to adjust or settle the proceedings, set schedules, delineate issues, stipulate certain issues of fact or law, set procedures, and consider other relevant matters where it appears that a conference will materially advance the proceeding. The Administrator or presiding official may delineate the issues which are to be considered and may place appropriate limitations on the number of intervenors who may participate, if two or more intervenors have substantially like interests.

(b) A motion by a party for a conference shall include a specific showing why a conference will materially advance the proceeding.

(c) Conferences shall be recorded, unless otherwise ordered by the Administrator or presiding official, and the transcript shall be made a part of the official record of the proceeding and available to the public.

§ 590.312 Oral presentations.

(a) Any party may file a motion requesting an opportunity to make an oral presentation of views, arguments, including arguments of counsel, and data on any aspect of the proceeding. The motion shall identify the substantial question of fact, law or policy at issue and demonstrate that it is material and relevant to the merits of the proceeding. The party may submit material supporting the existence of substantial issues. The Administrator or presiding official ordinarily will grant a party's motion for an oral presentation, if the Administrator or presiding official determines that a substantial question of fact, law, or policy is at issue in the proceeding and illumination of that question will be aided materially by such an oral presentation.

(b) The Administrator or presiding official may require parties making oral presentations to file briefs or other documents prior to the oral presentation. The Administrator or presiding official also may delineate the issues that are to be considered at the oral presentation and place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(c) Oral presentations shall be conducted in an informal manner with the Administrator or the presiding official and other decisional employees presiding as a panel. The panel may question those parties making an oral presentation. Cross-examination by the parties and other more formal procedures used in trial-type hearings will not be available in oral presentations. The oral presentation may be, but need not be, made by legal counsel.

(d) Oral presentations shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.313 Trial-type hearings.

(a) Any party may file a motion for a trial-type hearing for the purpose of taking evidence on relevant and material issues of fact genuinely in dispute in the proceeding. The motion shall identify the factual issues in dispute and the evidence that will be presented. The party must demonstrate that the issues are genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. The Administrator or presiding official shall grant a party's motion for a trial-type hearing, if the Administrator or presiding official determines that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

(b) In trial-type hearings, the parties shall have the right to be represented by counsel, to request discovery, to present the direct and rebuttal testimony of witnesses, to cross-examine witnesses under oath, and to present documentary evidence.

(c) The Administrator or presiding official upon his or her own initiative or upon the motion of any party may consolidate any proceedings involving common questions of fact in whole or in part for a trial-type hearing. The Administrator or presiding official may also place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(d) The Administrator or presiding official may make such rulings for trial-type hearings, including delineation of the issues and limitation of cross-examination of a witness, as are necessary to obtain a full and true disclosure of the facts and to limit irrelevant, immaterial, or unduly repetitious evidence.

(e) At trial-type hearings, the Administrator or presiding official, or any other decisional employee directed by the Administrator or presiding official, may call witnesses for testimony or presenting exhibits that directly relate to a particular issue of fact to be considered at the hearing. The Administrator or presiding official, or any other decisional employee directed by the Administrator or presiding official, may also question witnesses offered by the parties concerning their testimony.

(f) Trial-type hearings shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.314 Presiding official.

(a) The Administrator may designate a presiding official to conduct any stage of the proceeding, including officiating at a conference, oral presentation, or trial-type hearing. The presiding official shall have the full authority of the Administrator during such proceedings.

(b) A presiding official at a conference, oral presentation, or trial-type hearing shall have the authority to regulate the conduct of the proceeding including, but not limited to, determination of the issues to be raised during the course of the conference, oral presentation, or trial-type hearing, administering oaths or affirmations, directing discovery, ruling on objections to the presentation of testimony or exhibits, receiving relevant and material evidence, requiring the advance submission of written testimony and exhibits, ruling on motions, determining the format, directing that briefs be filed with respect to issues raised or to be raised during the course of the conference, oral presentation or trail-type hearing, questioning witnesses, taking reasonable measures to exclude duplicative material, and placing limitations on the number of witnesses to be called by a party.

§ 590.315 Witnesses.

(a) The Administrator or presiding official may require that the direct testimony of witnesses in trial-type hearings be submitted in advance of the hearing and be under oath, and in written form.

(b) Witnesses who testify in trial-type hearing shall be under oath or affirmation before being allowed to testify.

(c) Witnesses subpoenaed pursuant to § 590.306 shall be paid the same fees and mileage as paid for like services in the District Courts of the United States.

(d) Witnesses deposed pursuant to § 590.307 shall be entitled to the same fees as paid for like services in the District Courts of the United States.

§ 590.316 Shortened proceedings.

In any proceeding where, in response to a notice of application or notice of procedures, if applicable, no party files a motion requesting additional procedures, including the right to file written comments, or the holding of a conference, oral presentation, or trial-type hearing, or where the Administrator determines that such requested additional procedures are not required pursuant to § 590.310, § 590.311, § 590.312 and § 590.313, the Administrator may issue a final opinion and order on the basis of the official record, including the application and all other filings. In any proceeding in which the Administrator intends to deny the application or grant the application with the attachment of material conditions unknown to, or likely to be opposed by, the applicant, solely on the basis of the application and responses to the notice of application or notice of procedures, if applicable, without additional procedures, the Administrator shall advise the parties in writing generally of the issues of concern to the Administrator upon which the denial or material conditions would be based and provide them with an opportunity to request additional procedures pursuant to § 590.310, § 590.311, § 590.312 and § 590.313.

§ 590.317 Complaints.

(a) Any person may file a complaint objecting to the actions by any other person under any statute, rule, order or authorization applicable to an existing import or export authorization over which the ERA has jurisdiction. No particular form is required. The complaint must be filed with the ERA in writing and must contain the name and address of the complainant and the respondent and state the facts forming the basis of the complaint.

(b) A complaint concerning an existing import or export authorization shall be served on all parties to the original import or export authorization proceeding either by the complainant or by the ERA if the complainant has made a good faith effort but has been unable to effect service.

(c) The Administrator may issue an order to show cause under section § 590.401, or may provide opportunity for additional procedures pursuant to § 590.310, § 590.311, § 590.312, or § 590.313, in order to determine what action should be taken in response to the complaint.

Subpart D—Opinions and Orders

§ 590.401 Orders to show cause.

A proceeding under this Part may commence upon the initiative of the Administrator or in response to an application by any person requesting ERA action against any other person alleged to be in contravention or violation of any authorization, statute, rule, order, or law administered by the ERA applicable to the import or export of natural gas, or for any other alleged wrong involving importation or exportation of natural gas over which the ERA has jurisdiction. Any show cause order issued shall identify the matters of interest or the matters complained of that the Administrator is inquiring about, and shall be deemed to be tentative and for the purpose of framing issues for consideration and decision. The respondent named in the order shall respond orally or in writing, or both, as required by the order. A show cause order is not a final opinion and order.

§ 590.402 Conditional orders.

The Administrator may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final decision and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.

§ 590.403 Emergency interim orders.

Where consistent with the public interest, the Administrator may waive further procedures and issue an emergency interim order authorizing the import or export of natural gas. After issuance of the emergency interim order, the proceeding shall be continued until the record is complete, at which time a final opinion and order shall be issued. The Administrator may attach necessary or appropriate terms and conditions to the emergency interim order to ensure that the authorized action will be consistent with the public interest.

§ 590.404 Final opinions and orders.

The Administrator shall issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the record. The final opinion and order shall be based solely on the official record of the proceeding and include a statement of findings and conclusions, as well as the reasons or basis for them, and the appropriate order, condition, sanction, relief or denial.

§ 590.405 Transferability.

Authorizations by the Administrator to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Administrator.

§ 590.406 Compliance with orders.

Any person required or authorized to take any action by a final opinion and order of the Administrator shall file with ERA, within thirty (30) days after the requirement or authorization becomes effective, a notice, under oath, that such requirement has been complied with or such authorization accepted or otherwise acted upon, unless otherwise specified in the order.

§ 590.407 Reports of contract amendments.

Any person authorized to import or export natural gas has a continuing obligation to give the Administrator written notification, as soon as practicable, of any prospective or actual changes of a substantive nature in the circumstances upon which the authorization was based, including, but not limited to, amendments or other changes in the terms and conditions of any natural gas purchase contract, in volumes accepted or offered, or the import or export price paid. Any notification filed under this section shall contain the ERA docket number(s) to which it relates. Compliance with this section does not relieve an importer or exporter from responsibility to file the appropriate application to amend a previous import or export authorization under this Part whenever such changes are contrary to or otherwise not permitted by the existing authorization.

Subpart E—Applications for Rehearing

§ 590.501 Filing.

(a) An application for rehearing of a final opinion and order, conditional order, or emergency interim order may be filed by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance. The application shall be served on all parties.

(b) The application shall state concisely the alleged errrors in the final opinion and order, conditional order, or emergency interim order and must set forth specifically the ground or grounds upon which the application is based. If an order is sought to be vacated, reversed, or modified by reason of matters that have arisen since the issuance of the final opinion and order, conditional order, or emergency interim order, the matters relied upon shall be set forth with specificity in the application. The application shall also comply with the filing requirements of § 590.103.

§ 590.502 Application is not a stay.

The filing of an application for rehearing does not operate as a stay of the Administrator's order, unless specifically ordered by the Administrator.

§ 590.503 Opinion and order on rehearing.

Upon application for rehearing, the Administrator may grant or deny rehearing or may abrogate or modify the final opinion and order, conditional order, or emergency interim order with or without further proceedings.

§ 590.504 Denial by operation of law.

Unless the Administrator acts upon the application for rehearing within thirty (30) days after it is filed, it is deemed to the denied. Such denial shall constitute final agency action for the purpose of judicial review.

§ 590.505 Answers to applications for rehearing.

No answers to applications for rehearing shall be entertained. Prior to the issuance of any final opinion and order on rehearing, however, the Administrator may afford the parties an opportunity to file briefs or answers and may order that a conference, oral presentation, or trial-type hearings be held on some or all of the issues presented by an application for rehearing.

2. Subpart U of Part 205, Chapter II of Title 10, Code of Federal Regulations is

amended to eliminate its applicability to natural gas import and export cases. Subpart U is revised to read as follows:

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart U—Procedures for Electricity Export Cases

Sec.
205.260 Purpose and scope.
205.261 through 205.269 [Reserved]
205.270 Off-the-record communications.

Authority: Federal Power Act, 41 Stat. 1063, as amended; Executive Order No. 10485 as amended by Executive Order No. 12038; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended; Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.

Subpart U—Procedures for Electricity Export Cases

§ 205.260 Purpose and scope.

(a) The purpose of this section is to state the procedures that will be followed by the Economic Regulatory Administration of the Department of Energy in electricity export adjudications.

(b) *Definitions.*

As used in this subpart—

"Administrator" means the Administrator of the Economic Regulatory Administration.

"Decisional employees" means the Administrator, presiding officers at adjudicatory hearings, and other employees of the Department, including consultants and contractors, who are, or may reasonably be expected to be, involved in the decision-making process, which includes advising the Administrator in resolving the issues in an adjudication. The term does not include those employees of the Department performing investigative or trial functions in an adjudication, unless they are specifically requested by the Administrator or his delegate to participate in the decision-making process.

"Department" means the Department of Energy.

"Off-the-record communication" means an *ex parte* communication, which is an oral or written communication relevant to the merits of an adjudication and not on the record and with respect to which reasonable prior notice to all participants and opportunity to be present at, or respond to, the communication is not given, but does not include a communication relating solely to procedures which are not relevant to the merits of the adjudication.

"Interested person" means a person outside the Department whose interest in the adjudication goes beyond the general interest of the public as a whole and includes applicants, intervenors, competitors of applicants, non-profit and public interest organizations, and other individuals and organizations, including state, local and other public officials, with a proprietary, financial or other special interest in the outcome of the adjudication. The term does not include other federal agencies, unless an agency is a participant in the adjudication.

"Participant" means any applicant or intervenor participating in the adjudication.

"Adjudication" means a formal proceeding employing procedures identical or similar to those required by the Administrative Procedure Act, as codified in 5 U.S.C. 551, 556, and 557, to consider an application to export electricity.

"Reasonable prior notice" means 7 days' written notice stating the nature and purpose of the communication.

"Relevant to the merits" means a communication directly related to the merits of a specific adjudication but does not include general background discussions about an entire industry or communications of a general nature made in the course of developing agency policy for future general application.

(Federal Power Act, 41 Stat. 1063, as amended; Executive Order No. 10485, as amended by Executive Order 12038; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended; Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

§§ 205.261–205.269 [Reserved]

§ 205.270 Off-the-record communications.

(a) In any proceeding which is subject to this subpart—

(1) No interested person shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any decisional employee.

(2) No decisional employee shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any interested person.

(3) A decisional employee who receives, makes, or knowingly causes to be made an oral communication prohibited by this section shall prepare a memorandum stating the substance of the communication and any responses made to it.

(4) With 48 hours of receiving, making or knowingly causing to be made a communication prohibited by this section, a decisional employee shall deliver all written off-the-record communications and all memoranda prepared in compliance with paragraph (a)(3) of this section to the Director of the Coal and Electricity Division, ERA, who will immediately place the materials described above in the public record associated with the adjudication, available for public inspection.

(5) Upon receipt of a communication knowingly made or knowingly caused to be made by a participant in violation of this section, the Administrator or presiding officer may, to the extent consistent with the interests of justice and the applicable statutory policy, require the participant to show cause why his or her claim or interest in the adjudication should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(6) The prohibitions of this section shall apply beginning at the time an adjudication is noticed for hearing (or the person responsible for the communication acquires knowledge that it will be noticed), a protest is filed, or a petition or notice to intervene in opposition to the requested Department action is filed, whichever occurs first.

(b) The prohibition, cited at 18 CFR 1.30(f), against participation in the decision-making process by Department employees who perform investigative or trial functions in an adjudication, shall no longer be applicable to ERA.

(Federal Power Act, 41 Stat. 1063, as amended; Executive Order No. 10485, as amended by Executive Order 12038; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended; Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

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Part IV

Department of Education

34 CFR Parts 75, 76, and 98

Student Rights in Research, Experimental Activities, and Testing; Final Rules With Invitation To Comment

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, and 98

Student Rights in Research, Experimental Activities, and Testing

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary issues final regulations to implement a procedure for the handling of complaints under section 439 (a) and (b) of the General Education Provisions Act (GEPA). Section 439(a) of GEPA requires that, under most programs administered by the Department of Education, an award recipient or contractor make all instructional material used in connection with any research or experimental program or project available to parents of children involved in the program or project. Section 439(b) of GEPA requires a recipient of funds under these programs to obtain permission before requiring a child to submit to certain kinds of psychiatric or psychological examination, testing, or treatment.

DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments.

If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments should be submitted on or before November 5, 1984.

ADDRESS: Submit comments to Monika Edwards Harrison, Room 3021, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Monika Edwards Harrison, Special Advisor to the Deputy Under Secretary for Management, United States Department of Education, Rm. 3021 FOB-6, 400 Maryland Avenue SW., Washington, D.C. 20202, Telephone (202) 472-5123.

SUPPLEMENTARY INFORMATION:

Background

The Secretary issues final regulations to further implement section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h). Under subsection (a) of section 439, all instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

Under subsection (b) of section 439 no student shall be required as part of any applicable program to submit to psychiatric examination, testing, or treatment, or psychological examination, testing or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom respondents have close family relationships;

(6) Legally recognized privileged and analogous relationships such as those of lawyers, physicians, and ministers; or

(7) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

The Department currently has regulations that essentially restate section 439 of GEPA. These regulations are codified at 34 CFR 75.741 and 34 CFR 76.741. However, these rules do not establish procedures for the handling of complaints that arise under section 439. To establish such procedures, the Secretary issues these final regulations.

Significant Differences Between the NPRM and These Final Regulations

On February 22, 1984, the Secretary published in the **Federal Register** at 49 FR 6646 a Notice of Proposed Rulemaking (NPRM) for Student Rights in Research, Experimental Activities and Testing (34 CFR Parts 75, 76, and 98). Following the publication of the NPRM, the Department of Education conducted hearings in seven cities to accept testimony on the procedures proposed in the NPRM. A total of 183 persons testified at those hearings; all but 2 persons urged speedy publication of final regulations. Persons testifying were from 29 States. In addition, the Department has received more than 1900 comments in response to the NPRM. Of the total number of comments received, approximately 1625 persons wrote in favor of these regulations, approximately 270 persons wrote against them, and approximately 25 persons provided general comments. Comments were received from residents of each State and the District of Columbia.

The major provisions of these regulations are substantially the same as those contained in the NPRM. However, after consideration of the public comments on the proposed regulations, the Secretary has made some changes.

Several commenters expressed concern that the NPRM did not require a complainant to attempt initial resolution at the local and State levels before filing a complaint with the Department. In response to this public comment, paragraph (b)(2) has been added to § 98.7. Paragraph (b)(2) requires evidence of an initial attempt at resolution with local and State officials (where there is a State process) and requires the complainant to provide the name of local and/or State officals contacted, as well as significant dates in the attempted resolution process.

Some commenters questioned whether persons other than parents or guardians of students could file a complaint under the procedure established in the NPRM. To clarify that the complaint procedure applies only to parents or guardians of students directly affected and directly affected students who are adults or emancipated minors, § 98.7(a) has been rewritten.

Commenters requested that definitions of statutory terms be included in the final regulations to ensure that complaints are limited to applicable programs and activities requiring prior consent. To respond to these comments, the final regulations provide clarifying interpretations of the terms "psychiatric or psychological testing and examination" and "psychiatric or psychological treatment." The Secretary has decided to seek additional comments on these definitions. Please read the Invitation to Comment at the end of this preamble for additional information on the opportunity to comment.

Finally, commenters requested that programs funded by the National Institute of Education (NIE) and the National Center for Education Statistics (NCES) be included as applicable programs under these regulations. After careful consideration of these comments and review of section 439 and its history and intent, the Secretary has determined that these programs should be covered.

Comments and Responses

The following is a summary of the public comments received on the proposed regulations published in the **Federal Register** on February 22, 1984 (49 FR 6646) and the Secretary's responses to those comments. The comments, responses, and changes are organized in the same order as the referenced sections in these final regulations.

Section 98.1 Applicability of Part

Comment. Many commenters requested that the provisions of the final regulations be extended to cover the National Institute of Education and the National Center for Education Statistics.

Response. A change has been made. Since the National Institute of Education and the National Center for Education Statistics fund research and data-gathering activities, it is extremely unlikely that Congress intended to exclude them from coverage under section 439, which is specifically directed at "research or experimentation" programs and projects and psychiatric or psychological "examination, testing, or treatment." By its terms, section 439 applies to all "applicable programs," which is defined in GEPA to include all programs administered by the former Education Division of the Department of Health, Education, and Welfare, including programs of NIE and NCES. Further, protections provided under section 439 are just as applicable to NIE and NCES as to other education programs, and the Secretary has broad rulemaking authority transferred to him under section 408 of GEPA and under section 414 of the Department of Education Organization Act (DEOA). These final regulations therefore apply section 439 to all programs that were administered within the former Education Division of the Department of Health, Education, and Welfare and to new programs enacted after the effective date of the DEOA and administered by the Secretary of Education.

Comment. A number of commenters requested that the provisions of these regulations apply to all experimental programs regardless of their funding source. They asked that locally, State or Federally funded programs be treated in the same way under the proposed complaint procedure.

Response. No change has been made. Section 439 applies only to activities that are part of an "applicable program." As broadly interpreted in these regulations, "applicable program" includes most programs administered by the Department of Education. The Secretary has no authority to extend these regulations to activities funded by other Federal agencies or from State or local sources.

Comment. Two commenters requested that the regulations clarify the relationship of section 439 to Part B of the Education of the Handicapped Act.

Response. No change has been made. If further clarification becomes necessary, the Secretary would consider the possibility of addressing this matter in a separate notice of proposed rulemaking.

Section 98.3(b) Access to Instructional Material Used in a Research or Experimental Program

Comment. A number of commenters indicated that the definition of "research or experimentation program or project" was "vague." They expressed concern that the definition in the NPRM would lead to "frivolous complaints" and that the resources of local school officials would be unnecessarily used to resolve unwarranted complaints.

Response. No change has been made. It is not the Secretary's intent that these regulations encourage the filing of "frivolous complaints." However, section 439(a), to which this definition applies, requires only that instructional materials be made available for inspection by the parents or guardians of students enrolled in research or experimental programs. In the interest of providing parents the opportunity to review the materials used in educating their children, no change has been made. With regard to the burden this places on local school officials, the Secretary believes that each school district will devise methods of inspection of materials which are appropriate for the local community the schools serve.

Section 98.4 Protection of Students' Privacy in Examination, Testing, or Treatment

Comment. Many commenters requested that this section include definitions of "psychological or psychiatric examination, testing, and treatment." Commenters suggested that, without these definitions, parents would not be able to determine under which circumstances the requirements of section 439(b) of GEPA would apply. Other commenters indicated that the absence of definitions would place an undue burden on school officials because parents or students would file complaints against classroom activities for which no prior consent is required.

Response. A change has been made. The Secretary intends to provide the maximum opportunity for parents to be informed of the activities conducted in their children's classroom, while at the same time not intruding on school district's authority to select curricula which enhance academic achievement. The definitions included in the final regulations at § 98.4(c) are intended to clarify the types of activities which require prior consent. These definitions will clarify the intent of the final regulations to establish a procedure for the handling of complaints which relate to the probing of individual students' personal lives in areas which require prior consent, while at the same time clarifying that it is not the purpose of these regulations to resolve complaints which are focused on academic subject areas selected by the school district.

The Secretary has decided to seek further comments on these definitions. For more information on the opportunity to comment, please read the Invitation to Comment at the end of this preamble.

Comment. Commenters requested that the term "primary purpose" be removed from § 98.4(a). They requested that the requirement for prior consent be triggered any time a student is asked to reveal information in any of the designated areas, for any reason.

Response. No change has been made. Section 98.4(a) is consistent with section 439(b) of the General Education Provisions Act and the Secretary does not have the authority to delete this term.

Section 98.5 Information and Investigation Office

The words "violations and" have been removed from paragraph (a) to clarify the Department's intent by these regulations to investigate complaints and not independently initiate investigations.

Section 98.6 Reports and Records

Paragraphs (a) and (b) of this section have been removed as unnecessary. GEPA requires a recipient or contractor under an applicable program to maintain records and to permit access to the Secretary and the Comptroller General. These requirements are already implemented in the Education Department General Administrative Regulations (EDGAR) §§ 75.730–75.734 and 76.730–76.734. In addition, Part 74, of EDGAR provides general rules about maintenance of records.

Paragraph (c) has been revised to remove its paragraph designation and to indicate that, under these regulations, the Secretary only requires reports necessary to resolve complaints. The Secretary wants to ensure that any burden in preparing reports is kept to a minimum.

Comment. Some commenters requested that the final regulations require school districts to notify parents annually of the provisions of section 439.

Response. No change has been made. The Secretary defers to local practice in informing parents of these Federal requirements. However, section 439(b) of GEPA requires that students or parents provide consent prior to psychiatric or psychological examinations, tests or treatment whose primary purpose is to ask the student to reveal information listed in § 98.4.

Section 98.7 Filing a Complaint

Comment. Many of the commenters opposing the provisions of the NPRM indicated that the NPRM allowed any individual to file a complaint. School officials expressed concern that this would lead to frivolous complaints that could take local resources to resolve as well as providing a way for interest groups to reject curricula selected by local school officials.

Response. A change has been made. This section has been rewritten to make clear that these regulations limit the right to file a complaint under section 439 to students—or parents or guardians of students—who allege violations under section 439. Standing to bring a complaint is limited to students—or parents or guardians of students—who have been directly affected by such violations.

Comment. A number of State and local officials commented that the NPRM bypassed State and local officials by allowing the initial filing of complaints at the Federal level.

Response. A change has been made. It is not the Secretary's intent to encourage potential complainants to bypass local and State officials in resolving their complaints. A new paragraph (b)(2) has been added to § 98.7 that requires complainants to provide evidence of attempted resolution with the local and State officials, including providing the names of State and/or local officials contacted as well as significant dates in the attempted resolution process.

Section 98.9 Investigation and Findings

Comment. A number of commenters requested that the final regulations impose a limit on the time available to a recipient or contractor to correct a violation of Section 439.

Response. No change has been made. The complexity of a complaint, the recipient's resources, and the remedy proposed will affect the length of time it may take to resolve a complaint. The regulations specify that a "* * * reasonable period of time, given all of the circumstances of the * * *" is available to the recipient or contractor for voluntary compliance. Consideration of "all of the circumstances" will include the interests of the complainant as well as the resources of the recipient or contractor.

Section 98.10 Enforcement of the Findings

Comment. Some commenters asked that the final regulations include a provision to make individuals working for a recipient or contractor, against which there is a finding, personally liable for any psychological damages to the affected student.

Response. No change has been made. Section 439 does not include such a provision, and the Secretary has no authority to impose such a requirement.

Other Changes

Paragraph (a)(2) has been revised as a technical matter to make the remedies against contractors consistent with the remedies against grantees, as permitted by the Federal Acquisition Regulations, 48 CFR 12.5 and 49.1.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will affect small entities that are recipients of funds under applicable programs of the Department of Education. However, the regulations will not have a significant economic impact on these entities because the regulations do not establish prescriptive reporting or recordkeeping requirements or impose other regulatory burdens in excess of statutory requirements.

Assessment of Educational Impact

Based on the comments received in response to the Notice of Proposed Rulemaking and his own review, the Secretary has determined that these regulations do not require the transmission of any information that is already gathered by or is available from any other agency or authority of the United States.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the definitions contained in § 98.4(c) of these final regulations. Written comments and recommedations may be sent to Monika Edwards Harrison, Room 3021, 400 Maryland Avenue SW., Washington, DC 20202. All comments should be submitted on or before November 5, 1984 to be assured consideration by the Secretary. If an amendment to the definitions is necessary, the Secretary will publish the amendment in the **Federal Register.**

All comments submitted in response to this request for comments will be available for public inspection, during and after the comment period, in the room specified in the preceding paragraph between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects

34 CFR Parts 75 and 76

Grant programs-Education, Education.

34 CFR Part 98

Educational research, Privacy, Students, Notice of complaint, Complaints, Consent, examination, Experimental programs, Family, Notice of findings, Inspection, Instructional material, Political affiliations, Psychiatric, Psychological, Reporting and recordkeeping requirements, Research, Sex, Teaching methods, Teaching techniques, Testing, Treatment.

Citation of Legal Authority

A citation of statutory or legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: August 31, 1984.

T.H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Parts 75 and 76 and adds a new Part 98 to Subtitle A of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

§ 75.741 [Removed]

1. Section 75.741 is removed.

PART 76—STATE-ADMINISTERED PROGRAMS

§ 76.741 [Removed]

2. Section 76.741 is removed.

3. A new Part 98 is added, to read as follows:

PART 98—STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

Sec.
98.1 Applicability of part.
98.2 Definitions.
98.3 Access to instructional material used in a research or experimentation program.
98.4 Protection of students' privacy in examination, testing or treatment.
98.5 Information and investigation office.
98.6 Reports.
98.7 Filing a complaint.
98.8 Notice of the complaint.
98.9 Investigation and findings.
98.10 Enforcement of findings.

Authority: Sec. 514(a) of Pub. L. 93–380, 88 Stat. 574 (20 U.S.C. 1232h(a)); Sec. 1250 of Pub. L. 95–561, 92 Stat. 2355–2356 (20 U.S.C. 1232h(b)); and Sec. 408(a)(1) of Pub. L. 90–247, 88 Stat. 559–560, as amended (20 U.S.C. 1221e–3(a)(1)); sec. 414(a) of Pub. L. 96–88, 93 Stat. 685 (20 U.S.C. 3474(a)).

§ 98.1 Applicability of part.

This part applies to any program administered by the Secretary of Education that—

(a)(1) Was transferred to the Department by the Department of Education Organization Act (DEOA); and

(2) Was administered by the Education Division of the Department of Health, Education, and Welfare on the day before the effective date of the DEOA; or

(b) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 439 of the General Education Provisions Act inapplicable.

(c) The following chart lists the funded programs to which Part 98 does not apply as of February 16, 1984.

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program.	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96–374) 20 U.S.C. 1070d–2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitative Services Administration.	The Rehabilitation Act of 1973 as amended by Pub. L. 95–602 (29 U.S.C. 700, et seq.).	Parts 351–356, 361, 362, 365, 366, 369–375, 378, 379, 385–390, and 395.
3. College housing	Title IV of the Housing Act of 1950 as amended (12 U.S.C. 1749, et seq.).	Part 614.

(20 U.S.C. 1221e–3(a)(1), 1230, 1232h, 3487, 3507)

§ 98.2 Definitions.

(a) The following terms used in this part are defined in 34 CFR Part 77: "Department," "Recipient," "Secretary."

(b) The following definitions apply to this part: "Act" means the General Education Provisions Act.

"Office" means the information and investigation office specified in § 98.5.

(20 U.S.C. 1221e–3(a)(1))

§ 98.3 Access to instructional material used in a research or experimentation program.

(a) All instructional material—including teachers' manuals, films, tapes, or other supplementary instructional material—which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project.

(b) For the purpose of this part "research or experimentation program or project" means any program or project in any program under § 98.1 (a) or (b) that is designed to explore or develop new or unproven teaching methods or techniques.

(c) For the purpose of the section "children" means persons not above age 21 who are enrolled in a program under § 98.1 (a) or (b) not above the elementary or secondary education level, as determined under State law.

(20 U.S.C. 1221e–3(a)(1), 1232h(a))

§ 98.4 Protection of students' privacy in examination, testing, or treatment.

(a) No student shall be required, as part of any program specified in § 98.1 (a) or (b), to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following—

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his or her family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom the student has close family relationships;

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b) As used in paragraph (a) of this section, "prior consent" means—

(1) Prior consent of the student, if the student is an adult or emancipated minor; or

(2) Prior written consent of the parent or guardian, if the student is an unemancipated minor.

(c) As used in paragraph (a) of this section—

(1) "Psychiatric or psychological examination or test" means a method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings; and

(2) "Psychiatric or psychological treatment" means an activity involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group.

(20 U.S.C. 1232h(b))

§ 98.5 Information and investigation office.

(a) The Secretary has designated an office to provide information about the requirements of section 439 of the Act, and to investigate, process, and review complaints that may be filed concerning alleged violations of the provisions of the section.

(b) The following is the name and address of the office designated under paragraph (a) of this section: Family Educational Rights and Privacy Act Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

(20 U.S.C. 1231e–3(a)(1), 1232h)

§ 98.6 Reports.

The Secretary may require the recipient to submit reports containing information necessary to resolve complaints under section 439 of the Act and the regulations in this part.

(20 U.S.C. 1221e–3(a)(1), 1232h)

§ 98.7 Filing a complaint.

(a) Only a student or a parent or guardian of a student directly affected by a violation under Section 439 of the Act may file a complaint under this part. The complaint must be submitted in writing to the Office.

(b) The complaint filed under paragraph (a) of this section must—(1) Contain specific allegations of fact giving reasonable cause to believe that a violation of either § 98.3 or § 98.4 exists; and

(2) Include evidence of attempted resolution of the complaint at the local level (and at the State level if a State complaint resolution process exists), including the names of local and State officials contacted and significant dates in the attempted resolution process.

(c) The Office investigates each complaint which the Office receives that meets the requirements of this section to determine whether the recipient or contractor failed to comply with the provisions of section 439 of the Act.

(20 U.S.C. 1221e–3(a)(1), 1232h)

(Approved under OMB control number 1880–0507)

§ 98.8 Notice of the complaint.

(a) If the Office receives a complaint that meets the requirements of § 98.7, it provides written notification to the complainant and the recipient or contractor against which the violation has been alleged that the complaint has been received.

(b) The notice to the recipient or contractor under paragraph (a) of this section must—

(1) Include the substance of the alleged violation; and

(2) Inform the recipient or contractor that the Office will investigate the complaint and that the recipient or contractor may submit a written response to the complaint.

(20 U.S.C. 1221e–3(A)(1), 1232h)

§ 98.9 Investigation and findings.

(a) The Office may permit the parties to submit further written or oral arguments or information.

(b) Following its investigations, the Office provides to the complainant and recipient or contractor written notice of its findings and the basis for its findings.

(c) If the Office finds that the recipient or contractor has not complied with section 439 of the Act, the Office includes in its notice under paragraph (b) of this section—

(1) A statement of the specific steps that the Secretary recommends the recipient or contractor take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the recipient or contractor may comply voluntarily.

(20 U.S.C. 1221e–3(a)(1), 1232h)

§ 98.10 Enforcement of the findings.

(a) If the recipient or contractor does not comply during the period of time set under § 98.9(c), the Secretary may either—

(1) For a recipient, take an action authorized under 34 CFR Part 78, including—

(i) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(ii) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b), or 298.45(b), depending upon the applicable program under which the notice is issued; or

(iii) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued; or

(2) For a contractor, direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulations, including either—

(i) Issuing a notice to suspend operations under 48 CFR 12.5; or

(ii) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(b) If, after an investigation under § 98.9, the Secretary finds that a recipient or contractor has complied voluntarily with section 439 of the Act, the Secretary provides the complainant and the recipient or contractor written notice of the decision and the basis for the decision.

(20 U.S.C. 1221e–3(a)(1), 1232h)

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Thursday
September 6, 1984

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57
Health Professions Student Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service (PHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would revise existing regulations governing the Health Professions Student Loan (HPSL) program. These revisions would impose more detailed requirements concerning the exercise of due diligence by schools in loan collections and would specify a penalty for failure to comply with reporting requirements.

DATES: Comments on this proposal are invited. To be considered, comments must be submitted by October 22, 1984.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7-74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, 301 443-4540.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 3, 1983, (48 FR 25064) the Department issued amendments to the regulations governing the HPSL program. These amendments strengthened the requirements regarding recordkeeping and collections procedures and established performance standards for health professions schools' delinquency rates. Since the publication of these amendments, health professions schools and associations have expressed concern about the absence of detail in the provision of the HPSL regulations which requires that schools exercise due diligence in the loan collections process. Many schools have been uncertain of the procedures they should follow in order to comply with the due diligence requirement. In response to this concern, the Secretary is proposing to specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement. The Secretary is also proposing to clarify the requirements relating to proper execution and safeguarding of promissory notes, and the penalty for failure to comply with reporting requirements.

The proposed changes are summarized below according to the section numbers and titles of the regulations.

Section 57.208 Health Professions Student Loan Promissory Note

Section 57.208(a) of the existing regulations requires that each health professions student loan must be evidenced by a promissory note signed by the borrower. The Secretary proposes to amend this section to specify that the notes must be properly executed and safeguarded. In addition, the Secretary is proposing to amend § 57.208(b) of the existing regulations to require that, where state law permits individuals to void contracts entered during minority, schools must obtain security or endorsements on promissory notes with minors. The Secretary is proposing these revisions to more adequately protect the financial interests of the HPSL program.

Section 57.210 Repayment and Collection of Health Professions Student Loans

Section 57.210(b) of the existing regulations states that a school "must use the collection practices which are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school." This section of the regulations also requires that a school carry out three specific activities—use of collection agents, litigation, and credit bureaus—as part of its due diligence procedures, but does not mention other collection activities which a school must perform to satisfy the requirement.

In response to requests from schools and professional associations, the Department is proposing to expand § 57.210(b) to specifyprocedures that a school must follow in order to satisfy the due diligence requirement. These procedures are as follows:

(1) Conduct and document an entrance interview with the borrower;

(2) Conduct and document an exit interview with the borrower, or, if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(3) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(4) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(5) Perform regular billing;

(6) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(7) Perform address searches when necessary;

(8) Use collection agents, which may include the use of an internal collection agent;

(9) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate; and

(10) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

Although compliance with these 10 steps would constitute an adequate minimum for due diligence, the Department is also proposing to retain the existing general language in § 57.210(b) as part of the due diligence requirement, in order to assure that the loan collection procedures that a school follows in the collection of health professions student loans would not exclude any additional procedures that might be followed routinely in the collection of the school's other loan accounts. The general language would also assure that the 10 steps which the Department is proposing to add to this section would be followed in accordance with generally accepted collected practices. For example, step (6) of the proposed due diligence procedures requires that a borrower who is past due be contacted in writing five times prior to the loan becoming 120 days past due, but does not specify time intervals for these five contacts. The requirement to follow generally accepted collection practices will assure that the time intervals are reasonable and will preclude the possibility of a school sending five letters in the same week and then asserting that it is in compliance with this requirement. At the same time, schools will have greater flexibility than if specific time intervals were required as part of step (6). The general due diligence language would not give the Department the right to impose additional required steps that are not specifically defined in the regulations.

Although we expect that the great majority of schools would follow the series of procedures outlined above, it is not our intention, in making these particular practices into regulatory requirements, to prevent adoption of innovations which are more effective or preclude schools from tailoring practices to unique circumstances. Therefore, we have created a provision which would allow schools to substitute more effective collection techniques in place of those outlined above, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary. This would protect both parties from misunderstandings and assure that due diligence is followed.

The series of procedures outlined above in (1) through (7) would become required steps of the due diligence process as of the date of publication of these proposed regulations in final form. These are in addition to the procedures outlined in (8) through (10), which are already in effect under the existing regulations. For any loan made on or after the publication date of the final regulations, the Department would require that a school follow each of these steps (1) through (10) in order to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of the amended regulations, the Department would require that a school apply the new due diligence requirement prospectively to the extent that it would be possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the publication of the amended regulations must be in conformance with "generally accepted collection practices," as required by the current regulations, and the procedures followed after publication of the amended regulations must include all steps of the new requirement that can be followed prospectively.

The Department also requests comments on the degree of detail in steps (3) through (6) of the proposed due diligence requirements. The Department specifically invites alternate suggestions, if it is felt that the proposed due diligence requirements are overly restrictive. In addressing this issue, the Department requests that respondents consider proposed § 57.210(b)(1), which would permit a school to substitute alternative collection techniques in place of those directed in the regulations, provided that advance approval has been received. In evaluating alternative procedures, the Department would consider whether those procedures are at least as effective in collecting loans as those currently proposed in the regulations.

The Secretary also proposes to add a new subparagraph (b)(4) regarding the Department's policy for the write-off of uncollectible loans to § 57.210. This provision would clarify the process by explaining that when the Secretary determines that a school has exercised due diligence in its attempts to collect an uncollectible loan, the Federal Government will approve the write-off of the unpaid balance on the loan, with the Federal Government and the school each sustaining its proportionate loss of the unpaid balance. This provision would also explain that when the school has failed to exercise due diligence it will not be permitted to "write off" the loan, and must therefore reimburse the fund for the unpaid balance of the loan.

The Secretary reviews each request for write-off approval on a case-by-case basis and makes a determination based on the due diligence procedures that the school was required to follow in attempting to collect that particular loan.

Section 57.215 Records, Reports, Inspection, and Audit

The Secretary proposes to amend paragraph (a) of § 57.215 to clarify the penalty for failure to submit required reports within 45 days of the close of the reporting period. This provision explains that the Secretary would place a school in suspended status for failure to comply with reporting requirements, requiring the school to make no new loan disbursements and to place the loan fund and all subsequent collections in an insured interest-bearing account. This provision would also prohibit a school in suspended status from receiving any new Federal capital contributions. The school would remain in suspended status until notified that the Bureau has received the overdue report. If the Bureau did not receive a required report within six months of the close of the reporting period, the school would be terminated from the program and would be required to return all Federal funds in the loan account to the Department. A terminated school would be required to continue to pursue collections, and could reapply for participation in the program upon the submission of the overdue report.

Regulatory Impact

There are two areas of potential impact resulting from this regulation. First, the new requirements may impose some administrative costs on schools. This cost will be minor because for the most part the regulations merely codify existing due diligence practices. A few schools may be required, as a result of these rules, to expand their due diligence practices. However, these schools are likely, as a result of the new provisions, to also improve the administration of their loan programs, so that any added net administrative costs would be small. Further, although there are new recordkeeping and reporting requirements, they are minor, imposing an average burden of only 48.6 hours on each school.

Second, the rules will have some effect on each school's loan fund. We presume that most schools will comply with the new due diligence requirements, and as a result their loan collections may be somewhat increased. A few schools may not comply with the new requirements, in which case they would be required to reimburse the fund for the unpaid balance of the loan. However, since most schools are already performing the required procedures, effects on individual schools' loan funds are not expected to be significant.

For the reasons described above, the Secretary certifies that this proposed regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. Further the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

Paperwork Reduction Act

Sections 57.208, 57.210, and 57.215 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements contained in §§ 57.208 and 57.210. Other organizations and individuals desiring to comment on the information collection requirements should send them to Peggy Washburn at the address listed earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS. The information collection requirements contained in § 57.215 have been cleared by OMB and given approval numbers 0915-0044 and 0915-0046.

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List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services proposes to amend Subpart C of 42 CFR Part 57 as follows.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

Dated: June 2, 1984.

Edward N. Brandt, Jr.,
Assistant Secretary for Health.

Approved: June 26, 1984.

Margaret M. Heckler,
Secretary.

PART 57—[AMENDED]

Subpart C—Health Professions Student Loans

1. Section 57.208 is amended by revising paragraph (a) introductory text and paragraph (b) as follows:

§ 57.208 Health professions student loan promissory note.

(a) *Promissory note form.* Each health professions student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

* * * * *

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

2. Section 57.210 is amended by revising paragraph (b)(1) and adding (b)(4) to read as follows:

§57.210 Repayment and collection of health professions student loans.

* * * * *

(b) * * *

(1) Each school at which a fund is established must exercise due diligence in the collection of health professions student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview with the borrower;

(ii) Conduct and document an exit interview with the borrower, or if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate;

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary.

* * * * *

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determined that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, the Federal Government will permit the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

3. Section 57.215 is amended by revising paragraph (a) and adding the OMB control number at the end of the section to read as follows:

§ 57.215 Records, reports, inspection, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period. A school which fails to submit a required report within 45 days of the close of the reporting period:

(1) Shall be prohibited from receiving new Federal capital contributions;

(2) Must place the revolving fund and all subsequent collections into an insured interest-bearing account; and

(3) May make no new loans.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement. A school that fails to submit a complete and timely report within six months of the close of the reporting period shall be terminated from participation in the program and shall be required to return the Federal share of the revolving fund to the Department. A School terminated for this reason may reapply for participation in the program once it has submitted the overdue report. The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915-0044 and 0915-0046)

(Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 740-744 of the Public Health Service Act, 77 Stat. 170-173, 90 Stat. 2266-2268, 91 Stat. 390-391, 95 Stat. 920 (42 U.S.C. 294m-q))

[FR Doc. 84-23532 Filed 9-5-84; 8:45 am]

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federal register

Thursday
September 6, 1984

Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 57

Nursing Student Loan Program

AGENCY: Public Health Service (PHS), HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would revise existing regulations governing the Nursing Student Loan (NSL) program. These revisions would impose more detailed requirements concerning the exercise of due diligence by schools in loan collections.

DATES: Comments on this proposal are invited. To be considered, comments must be submitted by October 22, 1984.

ADDRESSES: Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7-74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, 301 443-4540.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1983, (48 FR 25072) the Department issued a Notice of Proposed Rulemaking (NPRM) to amend the regulations governing the NSL program. The June 3, 1983 NPRM proposed amendments to strengthen the requirements regarding recordkeeping and collections procedures and to establish performance standards for nursing school's delinquency rates. Since the publication of the June 3, 1983 NPRM, nursing schools and associations have expressed concern about the absence of detail in the provision of the existing NSL regulations which requires that schools exercise due diligence in the loan collections process. Many schools have been uncertain of the procedures they should follow in order to comply with the due diligence requirement. In response to this concern, the Secretary is proposing in this NPRM to specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement. The Secretary is also proposing to clarify the requirements relating to proper execution and safeguarding of promissory notes.

The proposed changes are summarized below according to the section numbers and titles of the existing NSL regulations. However, it should be noted that the June 3, 1983 NPRM proposes to revise the index (section numbers and titles) of the existing regulations. If the revisions to the index proposed in the June 3, 1983 NPRM are adopted as final regulations prior to the date that this proposed rule is finalized, the Department will change the section numbers and titles indicated in this NPRM accordingly.

Section 57.312 Evidence of Student Indebtedness—Promissory Note; Security

Section 57.312(a) of the existing regulations requires that each nursing student loan must be evidenced by a promissory note signed by the borrower. The Secretary proposes to amend this section to specify that the notes must be properly executed and safeguarded. In addition, the Secretary is proposing to amend § 57.312(b) of the existing regulations to require that, where state law permits individuals to void contracts entered during minority, schools must obtain security or endorsement on promissory notes with minors. The Secretary is proposing these revisions to more adequately protect the financial interests of the NSL program.

Section 57.314 Repayment and Collection of Nursing Student Loans

Section 57.314(b) of the existing regulations states that a school "shall use such collection practices as are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school." The June 3, 1983 NPRM has proposed to amend this section of the regulations to require that a school carry out three specific activities—use of collection agents, litigation, and credit bureaus—as part of its due diligence procedures, but does not mention other collection activities which a school would be required to perform to satisfy the requirement.

In response to requests from schools and professional associations, the Department is proposing to expand § 57.314(b) to specify procedures that a school must follow in order to satisfy the due diligence requirement. These procedures are as follows:

(1) Conduct and document an entrance interview with the borrow;

(2) Conduct and document an exit interview with the borrower, or, if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(3) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(4) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(5) Perform regular billing;

(6) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(7) Perform address searches when necessary;

(8) Use collection agents, which may include the use of an internal collection agent;

(9) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate; and

(10) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

Although compliance with these 10 steps would constitute an adequate minimum for due diligence, the Department is also proposing to retain the existing general language in § 57.314(b) as part of the due diligence requirement, in order to assure that the loan collection procedures that a school follows in the collection of nursing student loans would not exclude any additional procedures that might be followed routinely in the collection of the school's other loan accounts. The general language would also assure that the 10 steps which the Department is proposing to add to this section would be followed in accordance with generally accepted collection practices. For example, step (6) of the proposed due diligence procedures requires that a borrower who is past due be contacted in writing five times prior to the loan becoming 120 days past due, but does not specify time intervals for these five contacts. The requirement to follow generally accepted collection practices will assure that the time intervals are reasonable and will preclude the possibility of a school sending five letters in the same week and then asserting that it is in compliance with this requirement. At the same time, schools will have greater flexibility than if specific time intervals were required as part of step (6). The general due diligence language would not give the

Department the right to impose additional required steps that are not specifically defined in the regulations.

Although we expect that the great majority of schools would follow the series of procedures outlined above, it is not our intention, in making these particular practices into regulatory requirements, to prevent adoption of innovations which are more effective or preclude schools from tailoring practices to unique circumstances. Therefore, we have created a provision which would allow schools to substitute more effective collection techniques in place of those outlined above, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary. This would protect both parties from misunderstandings and assure that due diligence is followed.

The series of procedures outlined above in (1) through (7) would become required steps of the due diligence process as of the date of publication of these proposed regulations in final form. These would be in addition to the procedures outlined in (8) through (10), which are proposed to become effective as of the date that the June 3, 1983 NPRM is finalized. For any loan made on or after the publication date of final regulations which include all ten steps indicated above, the Department would require that a school follow each of these steps (1) through (10) in order to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of the amended regulations, the Department would require that a school apply the new due diligence requirement prospectively to the extent that it would be possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the publication of the amended regulations must be in conformance with "generally accepted collection practices," as required by the current regulations, and the procedures followed after publication of the amended regulations must include all steps of the new requirement that can be followed prospectively.

The Department also requests comments on the degree of detail in steps (3) through (6) of the proposed due diligence requirements. The Department specifically invites alternate suggestions, if it is felt that the proposed due diligence requirements are overly restrictive. In addressing this issue, the Department requests that respondents consider proposed § 57.314(b)(1), which would permit a school to substitute alternative collection techniques in place of those directed in the regulations, provided that advance approval has been received. In evaluating alternative procedures, the Department would consider whether those procedures are at least as effective in collecting loans as those currently proposed in the regulations.

The Secretary also proposed to add a new subparagraph (b)(4) regarding the Department's policy for the write-off of uncollectible loans to § 57.314. This provision would clarify the process by explaining that when the Secretary determines that a school has exercised due diligence in its attempts to collect an uncollectible loan, the Federal Government will approve the write-off of the unpaid balance on the loan, with the Federal Government and the school each sustaining its proportionate loss of the unpaid balance. This provision would also explain that when the school has failed to exercise due diligence it will not be permitted to "write off" the loan, and must therefore reimburse the fund for the unpaid balance of the loan.

The Secretary reviews each request for write-off approval on a case-by-case basis and makes a determination based on the due diligence procedures that the school was required to follow in attempting to collect that particular loan.

Regulatory Impact

There are two areas of potential impact resulting from this regulation. First, the new requirements may impose some administrative cost on schools. This cost will be minor because for the most part the regulations merely codify existing due diligence practices. A few schools may be required, as a result of these rules, to expand their due diligence practices. However, these schools are likely, as a result of the new provisions, to also improve the administration of their loan programs, so that any added net administrative cost would be small. Further, although there are new recordkeeping and reporting requirements, they are minor, imposing an average burden of only 18.4 hours on each school.

Second, the rules will have some effect on each school's loan fund. We presume that most schools will comply with the new due diligence requirements, and as a result their loan collections may be somewhat increased. A few schools may not comply with the new requirements, in which case they would be required to reimburse the fund for the unpaid balance of the loan. However, since most schools are already performing the required procedures, effects on individual schools' loan funds are not expected to be significant.

For the reasons described above, the Secretary certifies that this proposed regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. Further the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

Paperwork Reduction Act

Sections 57.312 and 57.314 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to comment on the information collection requirements should send them to Peggy Washburn at the address listed earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services proposes to amend Subpart D of 42 CFR Part 57 as follows.

(*Catalog of Federal Domestic Assistance*, No. 13.364, Nursing Student Loan Program)

Dated: June 2, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: June 28, 1984.

Margaret M. Heckler,

Secretary.

PART 57—[AMENDED]

Subpart D—Nursing Student Loan

1. Section 57.312 is amended by revising paragraph (a) introductory text and paragraph (b) as follows:

§ 57.312 Evidence of student indebtedness—promissory note; security.

(a) *Promissory note form.* Each nursing student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

* * * * *

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

2. Section 57.314 is amended by revising paragraph (b)(1) and adding (b)(4) to read as follows:

§ 57.314 Repayment and collection of nursing student loans.

* * * * *

(b) * * *

(1) Each school at which a fund is established must exercise due diligence in the collection of nursing student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview with the borrower;

(ii) Conduct and document an exit interview with the borrower, or if the borrower terminates studies without advance notice, document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail;

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation approximately one month prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least five attempts to contact the borrower in writing prior to the loan becoming 120 days past due;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate;

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days, when appropriate.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the technique and obtained written approval from the Secretary.

* * * * *

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, the Federal Government will permit the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

* * * * *

(Sec. 215 of the Public Health Service Act, 58 Stat. 170, as amended (42 U.S.C. 216); sections 835–841 of the Public Health Service Act, 78 Stat. 913–916, as amended (42 U.S.C. 297 a–h))

[FR Doc. 84-23533 Filed 9-5-84; 8:45 am]

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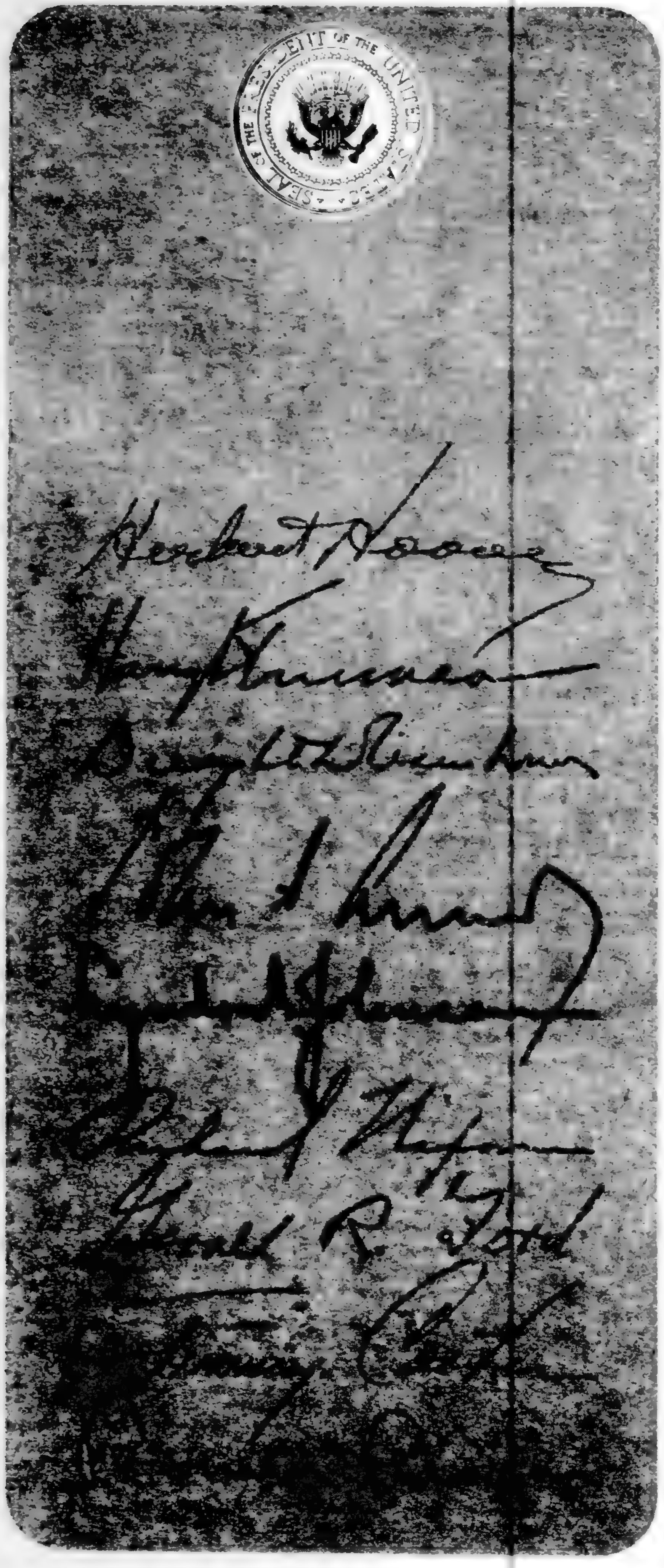

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Motor Vehicle Safety
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Organization and Functions (Government Agencies)
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1200, 1201, 1203, 1204, 1205, and 1206

Change in Organizational Title

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The former Office of the Secretary, Merit Systems Protection Board, has been redesignated as the Office of the Clerk of the Board, and the head of that office will be titled Clerk of the Board, rather than Secretary. This action is taken in order to more accurately describe the functional responsibilities of this MSPB staff office.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen E. Manrose, Acting Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419, (202) 653-7200.

SUPPLEMENTARY INFORMATION: In the performance of its statutory functions as an independent quasi-judicial agency, the Merit Systems Protection Board deals with legal processes and procedures, case management operations, and litigation activities which are greatly similar and related to adjudicative functions of the Federal courts. Following establishment of the Board on January 1, 1979, by Reorganization Plan No. 2 and the Civil Service Reform Act of 1978, the original organization structure which was adopted by the Board included the Office of the Secretary, responsible for the performance of centralized case control, records maintenance, and information management functions for the Board.

The Board has now determined that the functions performed by this staff office, given the quasi-judicial nature of the adjudicative processes of the Merit Systems Protection Board, are fundamentally similar to like functions which are assigned to Clerk of the Court offices within the Federal Court system. Accordingly, to more accurately reflect the role of this staff office of the Board, the title "Office of the Secretary" is changed to read "Office of the Clerk of the Board" at all points of reference in the Board's regulations.

In its general effect, this means that all correspondence previously designated for mailing to the Secretary now should be addressed to the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

List of Subjects in 5 CFR Parts 1200, 1201, 1203, 1204, 1205 and 1206

Organization and functions, Government agencies.

PART 1200—BOARD ORGANIZATION

§ 1200.10 [Amended]

1. 5 CFR Part 1200 is amended by removing the words "Office of the Secretary" and inserting in their place the words "Office of the Clerk of the Board," at the following place:

(a) § 1200.10(f).

PART 1201—PRACTICES AND PROCEDURES

§§ 1201.111 and 1201.114 [Amended]

2. 5 CFR Part 1201 is amended by removing the word "Secretary" and inserting in its place the word "Clerk" in the following places:

(a) § 1201.111(a); and
(b) § 1201.114(c).

§§ 1201.122, 1201.129, and 1201.181 [Amended]

3. 5 CFR Part 1201 is amended by removing the words "Office of the Secretary" and inserting in their place the words "Office of the Clerk of the Board" in the following places:

(a) § 1201.122(a);
(b) § 1201.129(b); and
(c) § 1201.181(b).

PART 1203—HEARING PROCEDURES FOR ORIGINAL JURISDICTION CASES

§ 1203.18 [Amended]

4. 5 CFR Part 1203 is amended by removing the words "Secretary of the Board" and inserting in their place the words "Clerk of the Board," in the following place:

(a) § 1203.18(a).

PART 1204—FREEDOM OF INFORMATION ACT

§ 1204.11 [Amended]

5. 5 CFR Part 1204 is amended by removing the words "Office of the Secretary" and inserting in their place the words "Office of the Clerk of the Board," in the following place:

(a) § 1204.11(a).

§§ 1204.12 and 1204.13 [Amended]

6. In addition, 5 CFR Part 1204 is amended by removing the words "Secretary of the Board" and inserting in their place the words "Clerk of the Board," in the following places:

(a) § 1204.12(d); and
(b) § 1204.13(b).

PART 1205—PRIVACY ACT

§ 1205.11 [Amended]

7. 5 CFR Part 1205 is amended by removing the words "Office of the Secretary" and inserting in their place the words "Office of the Clerk of the Board," in the following place:

(a) § 1205.11(a).

§§ 1205.12 and 1205.21 [Amended]

8. In addition, 5 CFR Part 1205 is amended by removing the word "Secretary" and inserting in its place the words "Clerk of the Board," in the following places:

(a) § 1205.12(d); and
(b) § 1205.21.

PART 1206—OPEN MEETINGS

§ 1206.8 [Amended]

9. 5 CFR 1206 is amended by removing the words "Office of the Secretary" and inserting in their place the words "Office of the Clerk of the Board," in the following place:

(a) § 1206.8.

(5 U.S.C. 1101 et seq., 1205 (a) (4), (e) (g), 552, 552a, 552b)

Dated: September 4, 1984.

For the Board.

Herbert E. Ellingwood,
Chairman.

[FR Doc. 84-23712 Filed 9-6-84; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-340]

Oriental Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Domestic Quarantine Notices" by adding a new subpart, captioned "Oriental Fruit Fly." The new Subpart quarantines the State of California and establishes regulations restricting the interstate movement of regulated articles from a portion of Los Angeles County in California. This document is necessary on an emergency basis to prevent the artificial spread of Oriental fruit fly into noninfested areas of the United States.

DATES: Effective date of this amendment August 31, 1984. Written comments concerning this interim rule must be received on or before November 6, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728 Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glenn Lee, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. Due to the possibility that Oriental fruit fly could be spread artifically to certain noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

This document amends the "Domestic Quarantine Regulations" in Part 301 of Title 7, Code of Federal Regulations (7 CFR Part 301) by adding a new subpart, captioned "Oriental Fruit Fly (§§ 301.93—301.93-10.)." The new subpart quarantines the State of California, designates areas in California as "regulated areas", designates certain articles as "regulated articles", and imposes conditions on the interstate movement of regulated articles from regulated areas.

The Oriental fruit Fly, *Dacus dorsalis* (Hendl), is a very destructive pest of numerous fruits and vegetables, especially citrus fruits. The Oriental fruit fly can cause serious economic losses and heavy infestations can cause complete loss of crops. It's short life cycle permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of Los Angeles County, California Department of Food and Agriculture, and Plant Protection and Quarantine (PPQ), a unit within the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that portions of Los Angeles County in California are infested with Oriental fruit fly. Three male Oriental fruit flies were collected by inspectors from Jackson traps in lemon trees in the Silver Lake area of Los Angeles County on June 28, 1984. Since then, at least 20 other Oriental fruit flies have been found in other areas of Los Angeles County. The Oriental fruit fly is not known to occur anywhere else in the mainland of the United States.

Officials of USDA and State agencies of California are involved in an intensive trapping and surveying, and the State of California has undertaken an eradication program in the infested areas in California. Also, as explained below, California has taken action to impose restrictions on the intrastate movement of certain articles from the regulated areas in order to prevent the artificial spread of the Oriental fruit fly within California. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the regulated area in order to prevent the artificial spread of the Oriental fruit fly to noninfested areas in other States. Accordingly, it is necessary as a emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Oriental fruit fly. These regulations are described below by section.

Quarantine and Regulations (Section 301.93)

Section 301.93(a) reflects a finding by the Secretary of Agriculture that it is necessary to quarantine the State of California and impose regulations on the interstate movement of certain articles designated as regulated articles in order to prevent the artificial spread of Oriental fruit fly. Section 301.93(b) prohibits any common carrier or other person from moving interstate from any regulated area any regulated article except in accordance with conditions prescribed in section 301.93-4. A footnote has been added for informational purposes. This footnote (footnote 1) references the authority of an inspector to stop and inspect, seize, quarantine, treat and otherwise dispose of regulated articles in accordance with the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Definitions (Section 301.93-1)

Section 301.93-1 contains, for informational purposes, definitions of the following terms: "Certificate," "Compliance Agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved," "Oriental fruit fly," "Person," "Plant Protection and Quarantine," "Regulated area," "Regulated article" and "State." These terms are defined in accordance with definitions and authority set forth in the Plant Quarantine Act (7 U.S.C. 161, 162) and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

Regulated Articles (Section 301.93-2)

The regulations impose conditions on the interstate movement of articles which present a significant risk of spreading Oriental fruit fly if moved without restrictions from areas regulated for Oriental fruit fly into or through noninfested areas. These conditions are necessary to prevent the artificial spread interstate of Oriental fruit fly by the movement of these articles. Such articles are designated as regulated articles and are prohibited from moving interstate from regulated areas, except in accordance with conditions specified in §§ 301.93–4 through 301.93–10.

Section 301.93–2 designates the following articles as regulated articles:

(a) The following fruits, nuts, vegetables and berries:

Akiav (*Wikstroemia phyllyraefolia*)
Alexander laurel (*Calophyllum inophyllum*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Banana (*Musa paradisiaca* var. *sapientum*) (*Musa x paradisiaca*)
Banana, dwarf (*Musa nana*)
Barbados cherry (*Malpighia glabra*)
Bell pepper (*Capsicum frutescens grossum*)
Brazil cherry (*Eugenia dombeyi*)
Breadfruit (*Artocarpus altilis*)
Caimitillo (*Chrysophyllum oliviforme*)
Cashew (*Anacardium occidentale*)
Cactus (*Cereus coerulescens*)
Cherimoya (*Anonna cherimola*)
Cherry, Catalina (*Prunus ilicifolia*)
Cherry, Portuguese (*P. lusitanica*)
Chili (*Capsicum frutescens var. longum*)
Coffee, Arabian (*Coffea arabica*)
Country gooseberry (*Averrhoa carambola*)
Cucumber (*Cucumis sativas*)
Custard apple (*Annona reticulata*)
Date palm (*Phoenix dactylifera*)
Dragon tree (*Dracena draco*)
Eggfruit tree (*Pouteria campechiana*)
Elengi tree (*Mimusops elengi*)
Fig (*Ficus carica*)
Gourka (*Garcinia celebica*)
Granadilla, sweet (*Passiflora ligularis*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*), *P. Littorale, P. cattleianum*
Imbu (*Spondias tuberosa*)
Jackfruit (*Artocarpus heterophyllus*)
Jerusalem cherry (*Solanum pseudocapsicum*)
Kitembilla (*Dovyalis hebecarpa*)
Kumquat (*Fortunella japonica*)
Laurel (*Calophyllum inophyllum*)
Lemon (*Citrus limon*)
Lime (*Citrus aurantifolia*)
Longan (*Euphoria longan*)
Loquat (*Eriobotrya japonica*)
Lychee nut (*Lychee chinensis*)
Malay apple (*Eugenia malaccensis*)
Mammee apple (*Mammea americana*)
Mandarin orange (*Citrus reticulata*) (*tangerine*)
Mango (*Mangifera indica*)
Mangosteen (*Garcinia mangostana*)
Mock orange (*Murraya exotica*)
Mulberry (*Morus nigra*)
Myrtle, downy rose (*Rhodomyrtus tomentosa*)
Natal plum (*Carissa grandiflora*)
Nectarine (*Prunus persica* var. *nectarina*)
Oleander, yellow (*Thevetia peruviana*)
Orange, calamondin (*Citrus mitis* and *C. japonica*)
Orange, Chinese (*Citrus japonica hazara*)
Orange, king (*Citrus nobilis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus unshu*)
Oriental bush red pepper (*Capsicum frutescens abbreviatum*)
Otaheite apple (*Spondias dulcis*)
Palm, syrup (*Jubaea spectabilis*)
Papaya (*Carica papaya*)
Passionflower (*Passiflora edulis*)
Passionflower, softleaf (*Passiflora mollissima*)
Passionfruit (yellow (*Passiflora edulis flavicarpa*) lilikoi)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepino (*Solanum muricatum*)
Pepper, sweet (*Capsicum frutescens* var. *grossum*)
Persimmon, Japanese (*Diospyros kaki*)
Pineapple guava (*Feijola sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Prickly pear (*Opuntia megacantha*) (*Opuntia ficus indica*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Quince (*Cydonia oblonga*)
Rose apple (*Eugenia jambos*)
Sandalwood (*Santalum paniculatum*)
Sandalwood, white (*Santalum album*)
Santol (*Sandericum koetjape*)
Sapodilla (*Manilkara zapota*)
Sapodilla, chiku (*Achras zapota*)
Sapota, white (*Casimiroa edulis*)
Seagrape (*Coccoloba uvifera*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona muricata*)
Star apple (*Chrysophyllum cainito*)
Surinam cherry (*Eugenia uniflora*)
Tomato (*Lycopersicon esculentum*)
Tropical almond (*Terminalia catappa*) (*Terminalia chebula*)
Velvet apple (*Diospyros discolor*)
Walnut (*Juglans hindsii*)
Walnut, English (*Juglans regia*)
Wampi (*Citrus lansium*)
West Indian cherry (*Malpighia punicifolia*)
Ylang-Ylang (*Cananga odorata*)

Except that the list does not include any fruits, nuts, vegetables, or berries which have been canned or frozen below −17.8 °C (0 °F);

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a); and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) when it is determined by an inspector that it presents a risk of spread of the Oriental fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions in the regulations.

Articles that are canned or frozen below −17.8 °C (0 °F) are not included as regulated articles since the Oriental fruit fly could not survive under such conditions. Otherwise, based on research and experience, the articles listed in § 301.93–2 (a) and (b) as regulated articles are articles that are likely to cause the artificial spread of the Oriental fruit fly. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the Oriental fruit fly, these articles are regulated by paragraph (c). These articles would have to be determined to present a risk by an inspector on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present such a risk. There is authority to regulate nonlisted products, articles, or means of conveyance as set forth in § 301.93–2(c) on an emergency basis in sections 105 and 106 of the Federal Plant Pest Act. If it appears that these additional products, articles, or means of conveyance generally present a risk of spreading Oriental fruit fly an amendment to this rule to include such items in the list of regulated articles will be considered.

Regulated Areas (Section 301.93–3)

It is necessary to designate as regulated areas, areas in which the Oriental fruit fly has been found, areas in which the Deputy Administrator has reason to believe the Oriental fruit fly is present, areas deemed necessary to regulate because of their proximity to the Oriental fruit fly or their inseparability for quarantine enforcement purposes from localities where Oriental fruit fly has been found.

In accordance with this criteria, it is necessary to designate as regulated areas the following portion of Los Angeles County in California:

Los Angeles County

That portion of Los Angeles County beginning at a point where Marine Place intersects the Pacific Ocean; then easterly along Marine Place to its intersection with Marine Avenue; then easterly along Marine Avenue to its intersection with Compton Boulevard; then east along Compton Boulevard to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with Interstate 10; then westerly along Interstate 10 to its intersection with Pico Boulevard; then westerly along Pico Boulevard to its intersection with the Pacific Ocean; then southerly along the Pacific Ocean to the point of beginning.

Section 301.93–3(b) allows the Deputy Administrator or an inspector to temporarily designate any non-regulated area in a quarantine state as a regulated area in accordance with this same criteria when such temporary designation is necessary, as an emergency measure to prevent the interstate spread of Oriental Fruit Fly.

Conditions Governing the Interstate Movement of Regulated Articles from Regulated Areas (Sections 301.93–4 through 301.93–10)

Section 301.93–4

Section 301.93–4(a) requires regulated articles moved interstate from regulated areas to be accompanied by a certificate issued and attached as prescribed by §§ 301.93–5 through 301.93–10 or unless moved as prescribed in § 301.93–4(b).

Section 301.93–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a regulated area, if it is moved directly through the regulated area in an enclosed vehicle or is completely enclosed by a covering adequate to present the introduction of Oriental fruit fly (such as canvas, plastic or closely woven cloth), if the point of origin is clearly indicated by shipping documents, and if the identity of the article is maintained.

In § 301.93–4, a footnote (number 2) is added to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met during an interstate movement.

Section 301.93–5

Section 301.93–5 explains the conditions for issuing a certificate or limited permit. Under Federal domestic plant quarantine programs there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by the Department that, because of certain conditions (e.g. the article is free of Oriental fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when the Department has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, e.g., movement to limited areas and movement for limited purposes.

Section 301.93–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if: (1) The inspector determines that the article has been treated under the direction of an inspector in accordance with § 301.93–10, or if it comes from a premises of origin which is free from Oriental fruit fly or the inspector determines that the regulated article is free of the Oriental fruit fly; and (2) the inspector determines that it will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

A footnote (number 3) is added which explains that USDA can, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions against any article moving into or through the United States or interstate which are believed to be infested or infected by plant pests.

Section 301.93–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if, after consultation with the Deputy Administrator, it is determined that such article is to be moved to a specified destination for specified handling, utilization or processing, and upon evaluation of all of the circumstances involved, the movement will not result in the spread of Oriental fruit fly.

Section 301.93–5(c) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate or limited permit for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate or limited permit in accordance with § 301.93–5 (a) or (b). These initial determinations concerning the eligibility of regulated articles for issuance of a certificate or limited permit are limited to inspectors because of their nature and complexity.

Also, § 301.93–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

Section 301.93–6

Section 301.93–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart Oriental Fruit Fly (§§ 301.93–301.93–10) and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from regulated areas and are designated to insure that persons issuing certificates and limited permits are knowledgeable with respect to the requirements of this subpart and have agreed to comply with them.

Section 301.93–6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of this subpart or any conditions imposed pursuant thereto. This section also contains provisions for notifying the holder of the compliance agreement of the reasons for cancellation and to provide such holder with an opportunity for a hearing to resolve any conflict as to any material fact. Two footnotes (number 4 and 5) are added for informational purposes. Footnote 4 indicates how to contact the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine and footnote 5 explains where compliance agreement forms can be obtained.

Sections 301.93–7, 301.93–8 and 301.93–9

Section 301.93–7 provides that any person who desires a certificate or limited permit to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement).

Section 301.93–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can arrange for them before the intended movement date.

Section 301.93–9 explains the Department's policy that services of an inspector needed in order for a person to comply with the provisions of the quarantine and regulations in this subpart are provided without cost during normal business hours, but that any other incidental costs or charges shall not be the responsibility of the Department.

Section 301.93–10

Section 301.93–10 sets forth treatment schedules for certain regulated articles that must be met if such articles are to be certified prior to movement as provided in § 301.93–4. These treatments are recommended because research has determined that these treatments would be adequate to destroy the Oriental fruit fly with little or no effect on the regulated article. Treatment schedules have not been developed for all regulated articles. However, § 301.93–5 provides alternatives to treatment by cold storage, methyl bromide, or diazinon that can be used if an individual wishes to obtain a certificate or limited permit for the interstate movement of the regulated article from a regulated area.

The treatment schedules for regulated articles in § 301.93–10 are as follows:

(1) Avocado: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21 °C. (70 °F.) or above followed by refrigeration for 7 days at 7.22 °C. (45 °F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(2) Tomato: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(3) Papaya, pepper and tomato: Heat the article by saturated water vapor at 44.44 °C. (112 °F.) until approximate center of article reaches 44.44 °C. (112 °F.), and maintain at 44.44 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44 °C.

(112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning. For example, it is the practice to condition eggplant at 43.30 °C. (110 °F.) at 40 percent relative humidity for 6 to 8 hours.

(4) Apple, apricot, cherry, fig, grape, grapefruit, lemon, nectarine, peach, pear, plum, pomegranate and prickly pear: Fumigation with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55–2.7 °C. (33–37 °F.); or 11 days at 3.33–8.3 °C. (38–47 °F.).
2½ hours	4 days at 3.33–4.44 °C. (38–40 °F.); or 6 days at 5.0–8.33 °C. (41–47 °F.); or 10 days at 8.88–13.33 °C. (48–56 °F.).
3 hours	3 days at 6.11–8.33 °C. (43–47 °F.); or 6 days at 8.88–13.33 °C. (48–56 °F.).

Minimum concentrations for above fumigations.

(25 g minimum gas concentration at ½ hr.)

(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

Note.—Some varieties of fruit may be injured by methyl bromide. Shippers should test treat before making commercial shipments.

(5) Soil: Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables and berries listed in § 301.93–2(a): Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip line with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This amendment affects the interstate movement of regulated articles from a portion of Los Angeles County in California which is about 100 square miles in size. It appears that very little or no commercial activity occurs in this area because it is an urban area comprised primarily of private residences. The only commercial activity stems from local street vendors, two or three local nurseries and activity at the Los Angeles International Airport. The street vendors and nurseries sell regulated articles primarily for intrastate not interstate movement. Further, the only commercial activity at the Los Angeles International Airport affected by this regulation appears to be approximately 100 entities that ship regulated articles originating outside the regulated area to the Los Angeles International Airport for movement interstate or internationally. None of these entities are small entities within the meaning of the Regulatory Flexibility Act. Further, it appears that this quarantine and regulation would have very little or no impact on the procedures normally followed by these entities (e.g., packing, marking and transporting) for transporting such articles, since these procedures are consistent with the requirements imposed by § 301.93–4(b)(1).

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Oriental fruit fly.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended by adding a new "Subpart—Oriental Fruit Fly" consisting of §§ 301.93–301.93–10, to read as follows:

Subpart—Oriental Fruit Fly

Quarantine and Regulations

Sec.
301.93 Quarantine and regulations; restrictions on interstate movement of regulated articles.
301.93–1 Definitions.
301.93–2 Regulated articles.
301.93–3 Regulated areas.
301.93–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.
301.93–5 Issuance and cancellation of certificates and limited permits.
301.93–6 Compliance agreement and cancellation thereof.
301.93–7 Assembly and inspection of regulated articles.
301.93–8 Attachment and disposition of certificates and limited permits.
301.93–9 Costs and charges.
301.93–10 Treatments.

Authority: Secs. 105 and 106, 71 Stat. 32, 71 Stat. 33 (7 U.S.C. 150dd, 150ee); (secs. 8 and 9, 37 Stat 318, as amended (7 U.S.C. 161, 162); (7 CFR 2.17, 2.51, and 371.2(c)).

Subpart—Oriental Fruit Fly

Quarantine and Regulations

§ 301.93 Quarantine and regulations; restrictions on interstate movement of regulated articles.[1]

(a) *Quarantine and regulations.* The Secretary of Agriculture hereby quarantines the State of California in order to prevent the artificial spread of the Oriental fruit fly, a dangerous plant pest not heretofore widely prevalent or distributed within and throughout the United States; and hereby establishes regulations governing the interstate movement of regulated articles specified in § 301.93–2.

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

§ 301.93-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

(a) *Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.93–5(c).

(b) *Compliance agreements.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(c) *Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

(d) *Infestation.* The presence of the Oriental fruit fly or the existence of circumstances that make it reasonable to believe that the Oriental fruit fly is present.

(e) *Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantines and regulations in this subpart.

(f) *Interstate.* From any State into or through any other State.

(g) *Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.93–5(b).

(h) *Moved.* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

(i) *Movement or move.* The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

(j) *Oriental fruit fly.* The insect known as Oriental fruit fly (*Dacus dorsalis* (Hendl) in any stage of development.

(k) *Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

(l) *Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

(m) *Regulated area.* Any State, or any portion thereof, listed in § 301.93–3(c) or otherwise designated as a regulated area in accordance with § 301.93–3(b).

(n) *Regulated article.* Any article listed in § 301.93–2 or otherwise designated as a regulated article in accordance with § 301.93–2(c).

(o) *State.* Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

§ 301.93.2 Regulated Articles.

(a) The following fruits, nuts, vegetables and berries:

Akiav (*Wikstroemia phyllyraefolia*)
Alexander laurel (*Calophyllum inophyllum*)
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Avocado (*Persea americana*)
Banana (*Musa paradisiaca* var. *sapientum*) (*Musa x paradisiaca*)
Banana, dwarf (*Musa nana*)
Barbados cherry (*Malpighia glabra*)
Bell pepper (*Capsicum frutescens grossum*)
Brazil cherry (*Eugenia dombeyi*)
Breadfruit (*Artocarpus altilis*)
Caimitillo *(Chrysophyllum oliviforme)*
Cashsew *(Anacardium occidentale)*
Cactus *(Cereus coerulescens)*
Cherimoya *(Anonna cherimola)*
Cherry, Catalina *(Prunus ilicifolia)*
Cherry, Portuguese *(P. lusitanica)*
Chili *(Capsicum frutescens var. longum)*
Coffee, Arabian *(Coffee arabica)*
Country gooseberry *(Averrhoa carambola)*
Cucumber *(Cucumis sativas)*
Custard apple *(Annona reticulata)*
Date palm *(Phoenix dactylifera)*
Dragon tree *(Dracena draco)*
Eggfruit tree *(Pouteria campechiana)*
Elengi tree *(Mimusops elengi)*
Fig *(Ficus carica)*
Gourka *(Garcinia celebica)*
Granadilla, sweet *(Passiflora ligularis)*
Grape *(Vitis* spp.*)*
Grapefruit *(Citrus paradisi)*
Guava *(Psidium guajava), P. Littorale, P. cattleianum)*
Imbu *(Spondias tuberosa)*
Jackfruit *(Artocarpus heterophyllus)*
Jerusalem cherry *(Solanum pseudocapsicum)*
Kitembilla *(Dovyalis hebecarpa)*
Kumquat *(Fortunella japonica)*
Laurel *(Calophyllum inophyllum)*
Lemon *(Citrus limon)*
Lime *(Citrus aurantifolia)*
Longan *(Euphoria longan)*
Loquat *(Eriobotrya japonica)*
Lychee nut *(Lychee chinensis)*
Malay apple *(Eugenia malaccensis)*
Mammee apple *(Mammea americana)*
Mandarin orange *(Citrus reticulata)* (tangerine)
Mango *(Mangifera indica)*
Mangosteen *(Garcinia mangostana)*
Mock orange *(Murraya exotica)*
Mulberry *(Morus nigra)*
Myrtle, downy rose *(Rhodomyrtus tomentosa)*
Natal plum *(Carissa grandiflora)*
Nectarine *(Prunus persica* var. *nectarina)*
Oleander, yellow *(Thevetia peruviana)*
Orange, calamondin *(Citrus mitis* and *C. japonica)*
Orange, Chinese *(Citrus japonica hazara)*
Orange, king *(Citrus nobilis)*
Orange sweet *(Citrus sinensis)*
Orange, Unshu *(Citrus unshu)*
Oriental bush red pepper *(Capsicum frutescens abbreviatum)*
Otaheite apple *(Spondias dulcis)*
Palm, syrup *(Jubaea spectabilis)*
Papaya *(Carica papaya)*
Passionflower *(Passiflora edulis)*
Passionflower, softleaf *(Passiflora mollissima)*
Passionfruit (yellow *(Passiflora edulis flavicarpa)* lilikoi)
Peach *(Prunus persica)*
Pear *(Pyrus communis)*
Pepino *(Solanum muricatum)*
Pepper, sweet *(Capsicum frutescens* var. *grossum)*
Persimmon, Japanese *(Diospyros kaki)*

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[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

Pineapple guava *(Feijola sellowiana)*
Plum *(Prunus americana)*
Pomergranate *(Punica granatum)*
Prickly pear *(Opuntia megacantha) (Opuntia ficus indica)*
Prune *(Prunus domestica)*
Pummelo *(Citrus grandis)*
Quince *(Cydonia oblonga)*
Rose apple *(Eugenia jambos)*
Sandalwood *(Santalum paniculatum)*
Sandalwood, white *(Santalum album)*
Santol *(Sandericum koetjape)*
Sapodilla *(Manilkara zapota)*
Sapodilla, chiku *(Achras zapota)*
Sapota, white *(Casimiroa edulis)*
Seagrape *(Coccoloba uvifera)*
Sour orange *(Citrus aurantium)*
Soursop *(Annona muricata)*
Star apple *(Chrysophyllum cainito)*
Surinam cherry *(Eugenia uniflora)*
Tomato *(Lycopersicon esculentum)*
Tropical almond *(Terminalia catappa) (Terminalia chebula)*
Velvet apple *(Diospyros discolor)*
Walnut *(Juglans hindsii)*
Walnut, English *(Juglans regia)*
Wampi *(Citrus lansium)*
West Indian cherry *(Malpighia punicifolia)*
Ylang-Ylang *(Canango odorata)*

Except that the list does not include any fruits, nuts, vegetables, or berries which have been canned or frozen below—17.8 °C (0 °F);

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables or berries listed in paragraph (a); and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) when it is determined by an inspector that it presents a risk of spread of the Oriental fruit fly and the person in possession thereof thas actual notice that the product, article, or means of conveyance is subject to the restrictions in the regulations.

§ 301.93-3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each quarantined State, or each portion thereof, in which the Oriental fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Oriental fruit fly is present, or each portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Oriental fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such areea. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

California

Los Angeles County

That portion of Los Angeles County beginning at a point where Marine Place intersects the Pacific Ocean; then easterly along Marine Place to its intersection with Marine Avenue; then easterly along Marine Avenue to its intersection with Compton Boulevard; then east along Compton Boulevard to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with Interstate 10; then westerly along Interstate 10 to its intersection with Pico Boulevard; then westerly along Pico Boulevard to its intersection with the Pacific Ocean; then southerly along the Pacific Ocean to the point of beginning.

§301.93-4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.[2]

Any regulated article may be moved interstate from any regulated area in a quarantined State only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.93-5 and 301.93-10;

(b) Without a certificate or limited permit, if

(1)(i) The article originated outside of any regulated area, and

(ii) Moved directly through (moved without stopping except under normal traffic conditions, such as for traffic lights or stop signs) any regulated area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent the introduction of Oriental fruit fly (such as canvas, plastic, or closely woven cloth), and

(iii) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

§ 301.93-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector for the movement of a regulated article if such inspector:

(1)(i) Determines that it has been treated under the direction of an inspector in accordance with § 301.93-10; or

(ii) Determines, based on inspection of the premises of origin, that the premises are free from Oriental fruit fly and the article has not been exposed to Oriental fruit fly; or

(iii) Determines, based on inspection of the article, that it is free of Oriental fruit fly; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);[3] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector[4] for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, or processing (such destination and other conditions to be specified in the limited

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[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest.

[4] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection Quarantine, Animal and Plant Health Inspector Service, Federal Building, Hyattsville, MD 20782.

permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Oriental fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, or processing;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Oriental fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits for use for movement of regulated articles may be issued by an inspector [4] or person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.93–6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[5] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant to. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongful cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

§ 301.93–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.93–5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 301.93–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at the times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided however*, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.93–9 Costs and charges.

The service of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

§ 301.93–10 Treatments.

The treatment schedules for regulated articles are as follows:

(a) Avocado: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 2½ hours at 21 °C. (70 °F.) or above followed by refrigeration for 7 days at 7.22 °C. (45 °F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) Tomato: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21 °C. (70 °F.) or above.

(c) Papaya, pepper and tomato: Heat the article by saturated water vapor at 44.44 °C. (112 °F.) until approximate center of article reaches 44.44 °C. (112 °F.), and maintain at 44.44 °C. (112 °F.) for 8¾ hours, then immediately cool.

Note.—Commodities should be tested by the shipper at the 44.44 °C. (112 °F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning. For example, it is the practice to condition eggplant at 43.30 °C. (110 °F.) at 40 percent relative humidity for 6 to 8 hours.

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[5] Compliance Agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

(d) Apple, apricot, cherry, fig, grape, grapefruit, lemon, nectarine, peach, pear, plum, pomegranite and prickly pear: Fumigation with 32 g/m³ methyl bromide at 21 °C. (70 °F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55–2.7 °C. (33–37 °F.); or 11 days at 3.33–8.3 °C. (38–47 °F.).
2½ hours	4 days at 3.33–4.44 °C. (38–40 °F.); or 6 days at 5.0–8.33 °C. (41–47 °F.); or 10 days at 8.88–13.33 °C. (48–56 °F.).
3 hours	3 days at 6.11–8.33 °C. (43–47 °F.); or 6 days at 8.88–13.33 °C. (48–56 °F.).

Minimum concentrations for above fumigations.

(25 g minimum gas concentration at ½ hr.)

(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

Note.—Some varieties of fruit may be injured by methyl bromide. Shippers should test treat before commercial shipments.

(e) Soil: Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables and berries listed in § 301.93–2(a): Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip line with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

Done at Washington, D.C., this 31st day of August, 1984.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84–23677 Filed 9–6–84; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Corn

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the requirement for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Corn. FGIS has determined that the standards will be revised to clarify the Sample grade requirements for corn and the definition of distinctly low quality. These changes do not, however, alter the present grades or grade requirements for corn.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 348–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. The action has been classified as "nonmajor" because it does not meet the criteria for major regulation as established in the Order.

Regulatory Flexibilty Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most potential users of corn inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Final Action

In conformance with the requirements for the periodic review of existing regulations, FGIS published a Request for Comment on the U.S. Standards for Corn, Soybeans, and Mixed Grain in the May 8, 1980, **Federal Register** (45 FR 30446). This notice addressed specific areas of the standards for consideration, including need for the standards; improvement thereof; clarification or simplification of language; and the usefulness of moisture, test weight, and broken corn and foreign material (BCFM) as grade determining factors.

Fifty-nine comments, the majority of which were on the corn and/or soybean standards, were received as a result of the notice.

A majority of the commenters to the May 8, 1980 notice and request for comments who addressed the adequacy of the corn standards favored some form of revision of the standards; however, there was no consensus of opinion on the need to change one or more particular elements in the standards. Changes which were recommended included: (1) Separation of BCFM into two distinct factors, (2) removal of test weight and moisture as grading factors, (3) revision of the moisture limits, and (4) the inclusion of a hardness test in the standards. After reviewing available information, FGIS determined that further study is necessary to properly evaluate the separation of BCFM and the use of a hardness test. Also, it was determined that additional information is needed to determine if revision or deletion of the moisture and/or test weight limits would facilitate corn marketing.

FGIS proposed, in the June 24, 1983, **Federal Register** (48 FR 28998), that changes be made to the corn standards to incorporate information presently included in the Grain Inspection Handbook on the determination of distinctly low quality (DLQ)and other Sample grade conditions. These changes clarify the determination DLQ and the Sample grade definition in the grade chart. These proposed changes would make the standards uniform in format and structure with the majority of the other standards under the U.S. Grain Standards Act (7 U.S.C. 71, *et seq.*, the Act), but do not change the present grades or grade requirements for corn.

Several comments were submitted on the proposed rulemaking. One commenter concurred with the proposal and indicated the proposed changes would make the corn standards more easily applied and understood. One commenter opposed the proposal and indicated a definition of "distinctly low quality" is not needed in the standards because the proposal would create the new grade. However, the proposed rule did not create a new grade but merely added a definition for DLQ. The rest of the commenters expressed no objection to the proposal but commented on the determination of odor after removal of BCFM, the separation of BCFM into two distinct factors, or the removal of test weight and moisture as grade determining factors.

The basis of determination of odor in the corn standards was addressed in a proposal published in the March 4, 1983, **Federal Register** (48 FR 9282), and in a final rule published in the September 28, 1983, **Federal Register** (48 FR 44165). This final rule provided that the determination of odor may be performed prior to or after the mechanical cleaning of samples of grain. Also, as indicated in the proposed rulemaking, additional study and/or information is needed to evaluate the separation of BCFM into two distinct factors and the revision or deletion of the factors for moisture and test weight.

Based on these comments and available information, FGIS is revising the corn standards by: (1) Including a definition of distinctly low quality in the standards, (2) deleting § 810.901 *Interpretation with respect to the term "distinctly low quality,"* and (3) expanding the Sample grade definition to include additional information.

To provide a better understanding of the DLQ condition in corn, FGIS proposed that § 810.351 *Terms defined* be expanded to include a definition of distinctly low quality. Accordingly, § 810.901 *Interpretation with respect to the term "distinctly low quality,"* which states the limit for crotalaria seed, is revised by deleting corn from this section and including these limits in the Sample grade definition in § 810.353(a) *Grades and grade requirements for Corn.* In addition, the Sample grade definition is expanded to include the limits for stones, glass, castor beans, cocklebururs, unknown foreign substance(s), and animal filth. Inclusion of this information in the definition would clarify the Sample grade requirements for corn and achieve uniformity in format and structure with the majority of the other standards covered under the Act. Also, in the April 5, 1983 **Federal Register** (48 FR 14601) FGIS proposed to revise § 810.901 to apply only to the standards for corn, rye, soybeans, and flaxseed, and delete the reference to mixed grain. It was stated that as these four standard are reviewed, the provisions of § 810.901 would be incorporated elsewhere in the standards with the intention of eventually eliminating § 810.901 from all standards. This change is made in this final rule for corn and § 810.901 is amended accordingly.

In addition, by this final action, FGIS is amending the footnote 1 to paragraph C of § 810.353 so as to delete obsolete references to the Grain Inspection Manual and the Agricultural Marketing Service. References will be made to the Grain Inspection Handbook and FGIS, as appropriate. While this revision did not appear in the proposal, it has been determined that it is a rule of agency organization, procedure and practice and as such is excepted from the general notice of proposed rulemaking requirements in 5 U.S.C. 553. Except for this additional minor non-substantive change, this final rule contains all of the revisions as those published in the proposed rule of June 24, 1983 (48 FR 28998).

Pursuant to section 4(b) of the U.S. Grain Standard Act, no standards established or amendments or revocations of standards under this Act are to become effective less than one calendar year after promulgation thereof, unless in the judgement of the Administrator, the health interest or safety require that they become effective sooner. These revisions are made effective one calendar year after publication of this final rule.

List of Subjects in 7 CFR Part 810

Exports, Grain.

PART 810—UNITED STATES STANDARDS FOR CORN

Accordingly, 7 CFR Part 810 of the regulations is amended as follows:

1. Section 810.351 is amended by adding paragraph (l) to read as follows:

§ 810.351 Terms defined.

* * * * *

(l) *Distinctly low quality.* Corn which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device; i.e., large stones, wreckage, etc.

2. Section 810.353 is amended by revising paragraph (a) and footnote 4 to paragraph (c) to read as follows:

§ 810.353 Grades, grade requirements and grade designations.

* * * * *

(a) *Grades and grade requirements for corn. (See also paragraph (d) of this section.)*

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—			
		Moisture (percent)	Broken corn and foreign material (percent)	Damaged kernels	
				Total (percent)	Heat damaged kernels (percent)
U.S. No. 1	56.0	14.0	2.0	3.0	0.1
U.S. No. 2	54.0	15.5	3.0	5.0	0.2
U.S. No. 3	52.0	17.5	4.0	7.0	0.5
U.S. No. 4	49.0	20.0	5.0	10.0	1.0
U.S. No. 5	46.0	23.0	7.0	15.0	3.0

U.S. Sample Grade: U.S. Sample grade shall be corn which—

(1) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(2) In a 1000 gram sample, contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 8 or more cockleburs, 4 or more particles of an unknown substance(s) or a commonly recognized harmful or toxic substance(s), or animal filth in excess of 0.20 percent; or

(3) Has a musty, sour, or commercially objectionable foreign odor; or

(4) Is heating or otherwise of distinctly low quality.

* * * * *

(c) * * *[4]

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

3. Section 810.901 is revised to read as follows:

§ 810.901 Interpretation with respect to the term distinctly low quality.

The term distinctly low quality when used in the United States Standards for Soybeans, and Flaxseed, shall be construed to include gain which contains three or more crotalaria seeds (*Crotalaria* spp.) in 1,000 grams of grain.

Authority: (Secs. 5, 18, Pub. L. 94–582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)).

Dated: August 22, 1984.

D.R. Galliart,

Acting Administrator.

[FR Doc. 84–23676 Filed 9–6–84; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 480]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at

235,500 cartons during the period September 9-15, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 9, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on September 4, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.780 is added as follows:

§ 910.780 Lemon Regulation 480.

The quantity of lemons grown in California and Arizona which may be handled during the period September 9, 1984, through September 15, 1984, is established at 235,500 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: September 5, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-23826 Filed 9-6-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 918

[Georgia Peach Reg. 3, Amdt. 1]

Fresh Peaches Grown in Georgia; Grade and Size Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of the amended interim rule.

SUMMARY: The Department of Agriculture (USDA) issued an interim rule (Georgia Peach Regulation 3) on April 30, 1984, (49 FR 18281) and a revised interim rule (Georgia Peach Regulation 3, Amendment 1) on June 14, 1984, (49 FR 24509). Both rules revised minimum grade requirements currently in effect for peaches grown in Georgia shipped fresh to markets outside the state to assure orderly marketing of the 1984 crop of Georgia peaches. The revised interim rule also made certain nonsubstantive format changes in the regulation for clarification purposes. This document adopts the June 14, 1984 interim rule as final.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This action has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim rule (Georgia Peach Regulation 3) required that the minimum grade requirement be 85 percent U.S. No. 1 quality, with additional allowances for hail damage, split pits, and decay. The rule also established a minimum size requirement of 1⅞ inches in diameter, except that peaches could be shipped as small as 1¾ inches if they graded at least U.S. Extra No. 1. Peaches shipped to adjacent markets in closed containers marked "For Sale in Adjacent Markets Only" being at least 1¾ inches in diameter were exempted from the above grade and size requirements. Bulk peaches shipped to adjacent markets were also exempted from those requirements.

The amended interim rule (Georgia Peach Regulation 3, Amendment 1) continued the grade and size requirements previously stated, but it also allowed for shipments of peaches damaged with bacterial spots and sprayburn not scored as serious damage.

The amended interim rule provided that interested persons could file public comments through July 16, 1984, none of which were received. Accordingly, the USDA has decided to leave § 918.326 in effect as previously issued in the amended interim rule.

The Georgia peach regulation and amended regulation were based upon the recommendation of the Georgia peach Industry Committee comprised of grower members and a public representative, and was issued under the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918), regulating the handling of fresh peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Secretary finds that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 918

Marketing Agreements and Orders, Fresh Peaches, Georgia.

Accordingly, the interim rule published at 49 FR 24509, June 14, 1984 is adopted as final.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: August 31, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-23743 Filed 9-6-84; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3143]

Estes Park Accommodations Association, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires an association composed of operators of motels, hotels, cabins, and campgrounds in the area of Estes Park, Colorado, to cease inhibiting competition by restricting, impeding or advising its members and others against the truthful advertising of the terms and conditions of their accommodations; and by declaring such activities unethical. The association is precluded from taking any action against a person charged with violating an ethical standard without first providing that person with reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. The order further requires the association to remove from its membership application, policy statement or guidelines, any provision which is inconsistent with the prohibitions contained in the order.

DATE: Complaint and Order issued August 21, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Claude C. Wild, Director, 6R, Denver Regional Office, Federal Trade Commission, Suite 2900, 1405 Curtis St., Denver, CO 80202, (303) 837–2271.

SUPPLEMENTARY INFORMATION: On Wednesday, June 13, 1984, there was published in the **Federal Register**, 49 FR 24385, a proposed consent agreement with analysis In the Matter of The Estes Park Accommodations Association, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions/or requirements; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Advertising, Trade practices, Travelers' accommodations.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 84–23670 Filed 9–6–84; 8:45 am]

BILLING CODE 6750–01–M

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[1] Copies of the Complaint and the Decision and Order filed with the original document.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–6546; IC–14120; S7–14–84]

Amendments to the Offering Exemption Under Regulation E of the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to Regulation E, an exemption from registration under the Securities Act of 1933 for small offerings by small business investment companies registered under the Investment Company Act of 1940, and an amendment to Regulation A, an exemption from registration under the Securities Act of 1933 for small offerings by certain other issuers. The Commission is adopting amendments to Regulation E that (1) increase the size of offerings that may be made under the regulation, (2) expand the base of potential issuers by permitting certain investment companies that elect to be treated as business development companies under the Investment Company Act of 1940 to use the exemption, (3) permit the use of a preliminary offering circular in certain underwritten offerings, and (4) provide updated schedules of disclosure for small business investment companies and business development companies that would be clearer and easier to use. The purpose of the amendments is to increase the ability of small business investment companies and business development companies to raise capital utilizing the offering exemption under Regulation E by expanding the companies eligible to use the exemption and by removing unnecessary regulatory requirements that previously restricted its use.

EFFECTIVE DATE: September 7, 1984.

FOR FURTHER INFORMATION CONTACT: Anthony A. Vertuno, Chief of Office, (202) 272–2107, or Stephen C. Beach, Esq., (202) 272–3040, Office of Disclosure Legal Services, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Discussion

The Commission is adopting amendments to Regulation E [1] and Regulation A [2] under the Securities Act of 1933 ("Securities Act") [3] substantially as they were proposed for comment.[4] Specifically, the Commission is adopting amendments to: (1) Increase the aggregate offering price of all securities of an issuer that may be sold within a twelve month period under Regulation E from $500,000 to $5,000,000; (ii) increase the aggregate offering price of all securities of an issuer that may be sold under Regulation E without the use of an offering circular from $50,000 to $100,000; (iii) permit the use of a preliminary offering circular in certain underwritten public offerings under Regulation E between the date of filing the notification and the date on which the company's securities may be sold; (iv) permit certain investment companies which elect to be treated as business development companies ("BDCs") under the Investment Company Act of 1940 ("1940 Act") [5] to use Regulation E, and preclude BDCs from using Regulation A; and (v) revise Schedule A of Regulation E for small business investment companies ("SBICs") and add Schedule B to that regulation for use by BDCs. The Commission's Proposing Release contains a more detailed discussion of the background and purpose of the amendments.

The Commission received five letters of comment, all of which generally supported the proposed revisions and the Commission's efforts to revise

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[1] 17 CFR 230.601–230.610a.

[2] 17 CFR 230.251–230.264.

[3] 15 CFR 77a *et seq.*

[4] Investment Company Act Release No. 13903 (April 25, 1984) [49 FR 18532 (May 1, 1984)] ("Proposing Release").

[5] 15 U.S.C. 80a–1 *et seq.*

Regulation E. Two commentators,[6] while approving the Commission's efforts, stated, however, that the aggregate offering price of all securities of an issuer that may be sold within a twelve month period under Regulation E should be raised to $5,000,000 (the statutory limit provided by section 3(b) of the Securities Act)[7] instead of the $2,500,000 proposed by the Commission. These two commentators also recommended that the Commission develop a short form registration statement for the initial public offerings of SBICs and BDCs similar to Form S–18.[8] Another commentator suggested a modification of Item 5 of Schedule B for BDCs that would change the item to require certain information about a portfolio company of a BDC only if the BDC owns 5% or more of a class of securities of the portfolio company or if the company constitutes 5% or more of the assets of the BDC.

The Commission has decided to increase the aggregate offering price of all securities of an issuer that may be sold within a twelve month period under Regulation E to $5,000,000. In supporting their recommendation for a $5,000,000 ceiling under Regulation E, two commentators stated that the capital needs of SBICs and BDCs are generally greater than other types of companies (which may use Regulation A or Form S-18). While small operating companies are generally structured in one line of business, SBICs and BDCs use their capitalization to invest in a number of portfolio companies, often with follow-up investments at a later date. The multiple portfolio investments, together with the marketplace level for investment dollars committed to each transaction, the commentators argued, requires a substantially higher aggregate offering price ceiling under Regulation E than under Regulation A, and specifically requires $5,000,000 as a realistic minimum ceiling under Regulation E.[9] The Commission believes that a $5,000,000 ceiling under Regulation E reflects an offering level that would facilitate capital formation by SBICs and BDCs consistent with the Congressional intent to foster this capital formation under the Small Business Investment Act of 1958 and the Small Business Investment Incentive Act of 1980,[10] while maintaining a level of investor protection traditionally afforded smaller offerings.

In light of the increase of the aggregate offering price limit under Regulation E to $5,000,000, the Commission has reviewed the items specifying required disclosures under proposed Schedules A and B of Regulation E pertaining to portfolio companies. The Commission has decided to modify slightly Item 5 of Schedule B for BDCs and add a corresponding Item 5 of Schedule A for SBICs requiring certain information about the portfolio companies held by the issuer. Disclosure of certain information about portfolio companies presented in tabular form is useful and material to investors particularly since SBICs and BDCs generally will invest in a relatively small number of companies with only limited turnover in their portfolio. The addition of the item for SBICs would require no additional expense or time to prepare because SBICs are required to include this information in the financial reports filed with the SBA. The modification of Item 5 of Schedule B would add columns to reflect the value as of the balance sheet date of the BDC's investment in each portfolio company and the percentage of the total value of the BDC's portfolio of each portfolio company. This information would also be included in Item 5 of Schedule A for SBICs. The Commission has decided not to adopt a 5% threshold test for disclosure of portfolio companies as recommended by one commentator. Investments not meeting the proposed threshold are potentially significant in the aggregate, and the additional burden on issuers is extremely minimal.

Finally, as noted above, two commentators suggested that the Commission consider adoption of a short form registration statement for the initial public offerings of SBICs and BDCs similar in concept to Form S–18. The commentators' suggestion for a short form registration statement could be achieved by developing a simplified prospectus within a form that would integrate registration and disclosure requirements under the Securities Act and the 1940 Act for SBICs and BDCs.[11] Since the Commission did not propose a single registration form that would satisfy the registration requirement of both the Securities Act and the 1940 Act, it is not feasible at this time to adopt an integrated registration form for the initial public offerings of SBICs.[12] The Commission believes, however, that this is a good suggestion and plans to develop either a simplified registration statement and prospectus for SBICs and BDCs that would satisfy Securities Act and 1940 Act requirements, or a short form that could be used in conjunction with Regulation E to satisfy 1940 Act registration requirements for SBICs.

List of Subjects

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

Text of Amendments

The Commission is publishing amendments to Part 230 and Part 239 of Chapter II, title 17 of the Code of Federal Regulations as follows:

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[6] The U.S. Small Business Administration ("SBA") and the National Association of Small Business Investment Companies ("NASBIC").

[7] These rule amendments are promulgated pursuant to sections 3(b) and 3(c) of the Securities Act [15 U.S.C. 77c(b), (c)]. Section 3(b) has a statutory limit of $5,000,000 for offering exemptions; section 3(c) (which provides statutory authority for an offering exemption for SBICs) has no statutory limit.

[8] Form S–18 [17 CFR 239.28] is a simplified registration statement form under the Securities Act that is designed to facilitate the entry of small businesses into the public capital markets. *See* Securities Act Release No. 33–6489 (September 23, 1983) [48 FR 45386 (October 5, 1983)]. Form S–18 is not available to SBICs and BDCs.

[9] While Regulation A and Regulation E are both small offerings exemptions, Regulation E, as amended, is available only to SBICs and BDCs, and, as such, is directed to the distinctive characteristics and regulatory aspects under the 1940 Act of these kinds of investment companies. They do not, of course, effect the disclosure requirements or offering ceiling provided under Regulation A for operating companies.

[10] Section 102 of the Small Business Investment Act [15 U.S.C. 661] (1958); H.R. Rep. No. 1341, 96th Cong., 2d Sess. 20–21 (1980). *See also* S. Rep. No. 958, 96th Cong., 2d Sess. 4 (1980).

[11] If a BDC is making its initial public offering as a Securities Act registration, it may register its securities under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a *et seq.*] on Form 8-A, which is basically a wrap-around form.

[12] Two of the commentators remarked on the use of Regulation E for the initial public offerings of SBICs and BDCs. The offering exemption under Regulation E would be available for the initial public offerings of SBICs and BDCs so long as those companies complied with their other registration requirements with the Commission under the 1940 Act and the Exchange Act respectively. SBICs register under the 1940 Act on Form N–5, an integrated form enabling SBICs also to register their securities under the Securities Act, if they so desire. Because of the need to register an SBIC under the 1940 Act on Form N–5, as a practical matter, an SBIC would probably not use Regulation E for its initial public offering. BDCs may register their securities under section 12 of the Exchange Act on Form 8–A (if the company is already filing reports pursuant to section 13 or 15(d) of the Exchange Act) or on Form 10. If a BDC is making an initial public offering as a Securities Act registration, it may register its securities under the Exchange Act on Form 8–A. If a BDC is making its initial public offering under the Regulation E offering exemption and has not registered other securities under the Exchange Act, it may register its securities under the Exchange Act on Form 10.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. Paragraph (a) of § 230.602 is revised to read as follows:

§ 230.602 Securities exempted.

(a) Except as hereinafter provided in this rule, securities issued by any small business investment company which is registered under the Investment Company Act of 1940, or any closed-end investment company that has elected to be regulated as a business development company under the Investment Company Act of 1940 or has notified the Commission that it intends to elect to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940, will be exempt from registration under the Securities Act of 1933, subject to the terms and conditions of §§ 230.601 to 230.610a. As used in this paragraph, the term "small business investment company" means any company which is licensed as a small business investment company under the Small Business Investment Act of 1958 or which has received the preliminary approval of the Small Business Administration and has been notified by the Administration that it may submit a license application. As used in this paragraph, the term "business development company" means any closed-end investment company which meets the definitional requirements of section 2(a)(48) (A) and (B) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(48)].

* * * * *

2. Introductory text to paragraph (a) of § 230.603 is revised to read as follows:

§ 230.603 Amount of securities exempted.

(a) The aggregate offering price of all of the following securities of the issuer shall not exceed $5,000,000:

* * * * *

3. Paragraphs (a) and (c) of § 230.604 are revised as follows:

§ 230.604 Filing of notification on Form 1-E.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under §§ 230.601 to 230.610a, there shall be filed with the Commission four copies of a notification on Form 1-E. The Commission may, however, in its discretion, authorize the commencement of the offering or sale prior to the expiration of such 10-day period upon a written request for such authorization. At the time of filing the notification, the applicant shall pay to the Commission a fee of $100, no part of which shall be refunded.

* * * * *

(c) Any amendment to the notification shall be signed in the same manner as the original notification. Four copies of such amendment shall be filed with the Commission at least 10 days prior to any offering or sale of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

* * * * *

4. Introductory text to paragraph (a) and paragraph (a)(1) are revised and paragraph (f) is added to § 230.605 as follows:

§ 230.605 Filing and use of the offering circular.

(a) Except as provided in paragraphs (b) or (f) of this rule and in § 230.606:

(1) No written offer of securities of any issuer shall be made under §§ 230.601 to 230.610a unless an offering circular containing the information specified in Schedule A or Schedule B, as appropriate, is concurrently given or has previously been given to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the time of such written offer; and

* * * * *

(f) An offering circular filed pursuant to paragraph (e) may be distributed prior to the expiration of the 10-day waiting periods for offerings provided for in § 230.604 (a) and (c) and paragraph (e) of this section and such distribution may be accompanied or followed by oral offers related thereto, provided the conditions in paragraphs (f)(1) through (f)(4) are met. For the purposes of this section, any offering circular distributed prior to the expiration of the ten day waiting period is called a Preliminary Offering Circular. Such Preliminary Offering Circular may be used to meet the requirements of paragraph (a)(2) of § 230.605, provided that if a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or an offering circular of the type referred to in paragraph (f)(4) shall be furnished to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(1) Such Preliminary Offering Circular contains substantially the information required by this section to be included in an offering circular, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price.

(2) The outside front cover page of the Preliminary Offering Circular shall bear the caption "Preliminary Offering Circular," the date of its issuance, and the following statement which shall run along the left hand margin of the page and printed perpendicular to the text, in boldface type at least as large as that used generally in the body of such offering circular:

> A notification pursuant to Regulation E relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

(3) The Preliminary Offering Circular relates to a proposed public offering of securities that is to be sold by or through one or more underwriters which are broker-dealers registered under Section 15 of the Securities Exchange Act of 1934, each of which has furnished a signed Consent and Certification in the form prescribed as a condition to the use of such offering circular;

(4) An offering circular contains all of the information specified in Schedule A or Schedule B (17 CFR 230.610a) and which is not designated as a Preliminary Offering Circular is furnished with or prior to delivery of the confirmation of sale to any person who has been furnished with a Preliminary Offering Circular pursuant to this paragraph.

5. The section heading the introductory paragraph and paragraph (a) of §230.606 are revised to read as follows:

§ 230.606 Offering not in excess of $100,000.

No offering circular need be filed or used in connection with an offering of securities under §§ 230.601 to 230.610a if the aggregate offering price of all securites of the issuer offered or sold without the use of such an offering circular does not exceed $100,000 computed in accordance with § 230.603, provided the following conditions are met:

(a) There shall be filed as an exhibit to the notification four copies of a statement setting forth the information (other than financial statements) required by Schedule A or Schedule B to be set forth in an offering circular.

* * * * *

6. § 230.610a is revised to read as follows:

§ 230.610a Schedule A: Contents of offering circular for small business investment companies; Schedule B: Contents of offering circular for business development companies.

Schedule A—Contents of offering circular for small business investment companies.

General Instructions

1. The information in the offering circular should be organized to make it easier to understand the organization and operation of the company. The required information need not be in any particular order, except that Items 1 and 2 must be the first and second items in the offering circular.

2. The offering circular, including the cover page, may contain more information than is called for by this Schedule, provided that it is not incomplete, inaccurate, or misleading. Also, the additional information should not, by its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

(a) The name of the issuer;

(b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;

(c) The date of the offering circular;

(d) A list of the type and amount of securities offered (e.g., if the securities offered include redemption or conversion features, so state);

(e) The following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

"THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES BEING OFFERED ARE EXEMPT FROM REGISTRATION. THE SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE."

(f) The name of the underwriter or underwriters, if applicable;

(g) A cross-reference to the place in the offering circular discussing the material risks involved in purchasing the securities, printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded;

(h) The approximate date when the proposed sale to the public will begin; and

(i) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary):

	Offering price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per share or other unit basis			
Total			

If the securities are to be offered on a best efforts basis, the cover page should set forth the termination date, if any, of the offering, any minimum required sale, and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Offering price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total Minimum			
Total Maximum			

Instructions

1. The term "commissions" shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation shall be briefly identified in a note to the table with a cross-reference to a more complete description elsewhere in the offering circular.

3. If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

4. (a) If it is impracticable to state the price to the public, briefly state the method by which the price is to be determined.

(b) Any "finder's fees" or similar payments must be disclosed in a note to the table with a reference to a more complete discussion in the offering circular.

(c) The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, should be disclosed in a note to the table.

5. If any of the securities are to be offered for the account of any security holder, state the identity of each selling security holder, the amount owned by him, the amount offered for his account and the amount to be owned after the offering.

Item 2. General Description of Issuer

(a) Concisely discuss the organization and operation or proposed operation of the issuer. Include the following:

(i) Basic identifying information, including:

(A) The date and form of organization of the issuer and the name of the state under whose laws it is organized;

(B) A brief description of the nature of a small business investment company; and

(C) The classification and subclassification of the issuer as specified in sections 4 and 5 of the Investment Company Act of 1940.

(ii) A concise description of the investment objectives and policies of the issuer, including:

(A) If those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement to that effect; and

(B) A brief discussion of how the issuer proposes to achieve its objectives, including:

(1) The types of securities (for example, bonds, convertible debentures, preferred stocks, common stocks) in which it may invest, and the proportion of the assets which may be invested in each such type of security;

(2) If the issuer proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries. (Concentration, for purposes of this item, is deemed to be 25% or more of the value of the issuer's total assets invested or proposed to be invested in a particular industry or group of industries).

(C) A concise description of any other policies of the issuer that may not be changed without the vote of the majority of the outstanding voting securities, including those policies which the issuer deems to be fundamental within the meaning of Section 8(b) of the Investment Company Act of 1940.

(D) A concise description of those significant investment policies or techniques (such as investing for control or management or investing in other investment companies) that are not described pursuant to subparagraphs (B) or (C) above that issuer employs or has the current intention of employing in the foreseeable future.

Note.—If the effect of a policy is to prohibit a particular practice, or, if the policy permits a particular practice but the issuer has not employed that practice within the past year and has no current intention of doing so in the foreseeable future, do not include disclosure as to that policy.

(b) Discuss briefly the principal risk factors associated with investment in the issuer, including factors peculiar to the issuer as well as those generally attendant to investment in a small business investment company with investment policies and objectives similar to the issuer.

Item 3. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the amounts underwritten by each. Identify each underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) If "finder's fees" are to be paid, identify the "finder," the nature of the services rendered and the nature of any relationship between the "finder" and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates thereof). If a "finder" is not registered with the Commission as a broker or dealer, disclose that fact.

(d) Outline briefly the plan of distribution of any securities being issued which are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(e)(1) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

(2) If there will be material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the nature of the delay and the effects on the issuer should be briefly described.

Item 4. Management and Certain Security Holders of the Issuer

(a) Give the full names and complete addresses of all directors, officers, members of any advisory board of the issuer and any person who owns more than 5 percent of any class of securities of the issuer (other than the Small Business Administration if the issuer is a small business investment company as defined in § 230.602(a) of this chapter).

(b) Identify each person who as of a specified date no more than 30 days prior to the date of filing of this registration statement, controls the issuer as specified in section 2(a)(9) of the Investment Company Act of 1940.

(c) Give the business experience over the last five years of any person named in (a) above who is or is expected to be significantly involved in the investment decisions of the issuer or in providing advisory services, direction or control of portfolio companies of the issuer.

(d) State the aggregate annual remuneration of each of the three highest-paid persons who are officers or directors of the issuer and all officers and directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

(e) Describe all direct and indirect interests (by security holdings or otherwise) of each person named in (a) above (i) in the issuer and (ii) in any material transactions within the past two years or in any material proposed transaction to which the issuer was or is to be a party. Include the cost to such persons of any assets or services for which any payment by or for the account of the issuer has been or is to be made.

(f) Provide, if applicable, for each investment adviser of the issuer as defined in section 2(a)(20) of the Investment Company Act of 1940:

(i) The name and address of the investment adviser and a brief description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business. (If the investment adviser is subject to more than one level of control, it is sufficient to give the name of the ultimate control person.)

(ii) A brief description of the services provided by the investment adviser. (If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are, subject to the authority of the board of directors, responsible for overall management of issuer's business affairs, it is sufficient to state that fact in lieu of listing all services provided.)

(iii) A brief description of the investment adviser's compensation. (If the issuer has been in operation for a full fiscal year, provide the compensation paid to the adviser for the most recent fiscal year as a percentage of average net assets. No further information is required in response to this Item if the adviser is paid on the basis of a percentage of net assets and if the issuer has neither changed investment advisers nor changed the basis on which the adviser was compensated during the most recent fiscal year. If the fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment. If the registrant has not been in operation for a full fiscal year, state generally what the investment adviser's fee will be as a percentage of average net assets, including any breakpoints, but it is not necessary to include precise details as to how the fee is computed or paid.)

Item 5. Portfolio Companies

Furnish the following information, in the tabular form indicated, with respect to the portfolio companies of the issuer, as of a specified date within 90 days prior to the date of filing the notification with the Commission pursuant to an offering of securities under Regulation E.

Name and address of portfolio companies	Nature of its principal business	Title of securities owned, controlled or held by issuer	Number of shares or amount of loan to portfolio companies

Percentage of class of securities owned, controlled or held by issuer	Value	Percentage of total value of portfolio companies

Instructions

1. Provide the city and state for address of portfolio companies.

2. State the value as of date of balance sheet required under Item 7.

Item 6. Capital Stock and Other Securities

(a) Describe concisely the nature and most significant attributes of the security being offered, including: (i) a brief discussion of voting rights; (ii) restrictions, if any, on the right freely to retain or dispose of such security; (iii) conversion rights, if applicable; and (iv) and any material obligations or potential liability associated with ownership of such security (not including risks).

(b) If the rights of holders of such security may be modified otherwise than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) If issuer has any other classes of securities outstanding (other than bank borrowings or borrowings that are not senior securities under Section 18(g) of the Investment Company Act of 1940 identify them and state whether they have any preference over the security being offered.

(d) Describe briefly the issuer's policy with respect to dividends and distributions, including any options shareholders may have as to the receipt of such dividends and distributions.

(e) Describe briefly the tax consequences to investors of an investment in the securities being offered. Such description should not include detailed discussions of applicable law. If the issuer intends to qualify for treatment under Subchapter M, it is sufficient, in the absence of special circumstances, to state briefly that in that case: (1) the issuer will distribute all of its net income and gains to shareholders and that such distributions are taxable income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the issuer but that shareholders not subject to tax on their income will not be required to pay tax on amounts distributed to them; and that (iii) the issuer will inform shareholders of the amount and nature of such income or gains.

(f) Where there is a material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (1) the net tangible book value per share before and after the distribution; (2) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (3) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 7. Financial Statements

Furnish appropriate financial statements of the issuer as required below. Such statements shall be prepared in accordance with generally accepted accounting principles and practices. The statements required for the issuer's latest fiscal year shall be certified by an independent public accountant or certified public accountant in accordance with Regulation S-X if the issuer has filed or is required to file with the Commission certified financial statements for such fiscal year; the statements filed for the period or periods preceding such latest year need not be certified.

(a) A blance sheet as of a date within 90 days prior to the date of filing the notification with the Commission.

(b) A profit and loss or income statement for each of the last two fiscal years and for any subsequent period up to the date of the balance sheet furnished pursuant to (a) above.

Schedule B: Contents of offering circular for business development companies.

General Instructions. Same as General Instructions to Schedule A.

Item 1. Same as Item 1 of Schedule A.

Item 2. General Description of Issuer

(a) Concisely discuss the organization and operation or proposed operation of the issuer. Include the following:

(i) Basic identifying information, including:

(A) The date and form of organization of the issuer and the name of the state under the laws of which it is organized; and

(B) A brief description of the nature of a business development company.

Note.—A business development company having a wholly-owned small business investment company subsidiary should disclose how the subsidiary is regulated, e.g., as an investment company registered under the Investment Company Act of 1940, and what percentage of the parent company's assets are, or are expected to be, invested in the subsidiary. The business development company should also describe the small business investment company's operations, including any material difference in investment policies between the business development company and its small business investment company subsidiary.

(ii) A concise description of the investment objectives and policies of the issuer, including:

(A) If those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement to that effect; and

(B) A brief discussion of how the issuer proposes to achieve such objectives, including:

(1) The types of securities (for example, bonds, convertible debentures, preferred stocks, common stock) in which it may invest, indicating the proportion of the assets which may be invested in each such type of security;

(2) The issuer proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries. (Concentration, for purposes of this item, is deemed to be 25% or more of the value of the issuer's total assets invested or proposed to be invested in a particular industry or group of industries).

(3) In companies for the purpose of exercising control or management;

(4) The policy with respect to any assets that are not required to be invested in eligible portfolio companies or other companies qualifying under section 55 of the Investment Company Act of 1940;

(5) The policy with respect to rendering significant managerial assistance to eligible portfolio companies or other companies qualifying under section 55 of the Investment Company Act of 1940;

(6) The policy with respect to investing as part of a group.

(C) Identification of any other policies of the issuer that may not be changed without the vote of the majority of the outstanding voting securities, including the policy not to withdraw its election as a business development company without approval by the majority of the outstanding voting securities.

(D) A concise description of those significant investment policies or techniques (such as investing for control or management) that are not described pursuant to subparagraphs (B) or (C) above that the issuer employs or has the current intention of employing in the forseeable future.

(b) Discuss briefly the principal risk factors associated with investment in the issuer, including factors peculiar to the issuer as well as those generally attendant to investment in a business development company with investment policies and objectives similar to the issuer.

Item 3. Same as Item 3 of Schedule A.

Item 4. Same as Item 4 of Schedule A.

Item 5. Same as Item 5 of Schedule A.

Item 6. Same as Item 6 of Schedule A.

Item 7. Same as Item 7 of Schedule A.

7. Paragraph (b)(2) of § 230.252 of Regulation A is revised to read as follows:

§ 230.252 Securities exempted.

* * * * *

(b) * * *

(2) Securities of any investment company registered or required to be registered under the Investment Company Act of 1940, or any company which has elected to be regulated as a business development company under the Investment Company Act of 1940 or has notified the Commission that it intends to elect to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. Section 239.200 is revised and paragraph (e)(3) is added and paragraph (f) is revised of Item 9 of Form 1-E described in § 239.200 as follows:

§ 239.200 Form 1-E, notification under Regulation E.

This form shall be used for notification pursuant to Rule 604 (§ 230.604 of this chapter) of Regulation E (§§ 230.601–230.610a of this chapter) by a small business investment company or business development company described in Rule 602 (§ 230.602 of this chapter).

Form 1-E—Notification Under Regulation E

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Item 9. Exhibits

* * * * *

(e) * * *

(3) If a Preliminary Offering Circular will be distributed as permitted by Rule 605(f), the Consent and Certification by Underwriter shall include the following additional paragraph:

The undersigned hereby undertakes, in connection with any distribution of the Preliminary Offering Circular as permitted by Rule 605(f), (a) to keep an accurate and complete record of the name and address of each person furnished such Preliminary Offering Circular and (b) if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or an offering circular of the type referred to in Rule 605(f)(4) to all persons to which the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(f) If the issuer is a small business investment company as defined in § 230.602(a) of this chapter and has not yet obtained a license from the Small Business Administration, copies of any contract or arrangement made to assure that the funds paid in by investors for the securities to be offered will be returned to them in the event such license is not obtained.

* * * * *

Availability of Final Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis with regard to amendments to Regulation E and Regulation A under the Securities Act. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing those amendments to Regulation E and Regulation A at 49 FR 18532 (May 1, 1984). Anyone who wishes to obtain copies of the Final Regulatory Flexibility Analysis of the amendments to Regulation E and Regulation A should contact Stephen C. Beach, Esq., (202) 272-3040, Office of Disclosure Legal Services, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Statutory Authority

The Commission is proposing these amendments to Regulation E and Regulation A under the Securities Act of 1933 pursuant to sections 3(b) and 3(c) of the Securities Act of 1933 [15 U.S.C. 77c(b), (c)] and section 38 of the Investment Company Act of 1940 [15 U.S.C. 80a–37].

By the Commission.

Dated: August 30, 1984.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-23615 Filed 9-6-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 375, 381, 385, and 389

[Docket No. RM82-35-000; Order No. 395]

Fees Applicable to General Activities

Issued August 31, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish fees for certain general activities of the Commission, including petitions for declaratory orders, requests for interpretation from the Office of the Chief Accountant, review of Department of Energy denials (DOE) of adjustments, review of DOE remedial orders, and search time for Freedom of Information Act requests. This is the third of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriation Act, which provides for the collection of fees to make agencies self-sustaining to the extent possible.

EFFECTIVE DATE: This rule is effective October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Oliver G. Richard III.

I. Introduction

By this rule, the Federal Energy Regulatory Commission amends Part 381 of its regulations to establish fees for the general activities of the Commission. In an earlier rulemaking, the Commission adopted the methodology for establishing fees with respect to services and benefits provided by the Commission as well as the procedures for billing, collecting, waiving, and updating fees.[1] This rule primarily applies this methodology to establish the following fees:

(1) $4,900 for a petition for issuance of a declaratory order other than one solely concerned with matters arising under Part I of the Federal Power Act;

(2) $100 for a request for interpretation from the Office of Chief Accountant;

(3) $3,700 for a petition for review of a Department of Energy (DOE) denial of adjustment if the amount in controversy exceeds $30,000; $600 if the amount in controversy is $10,000 up to and including $29,999; and $100 if the amount in controversy is $0 up to and including $9,999;

(4) $2,900 for review of a DOE remedial order if the amount in controversy exceeds $30,000; $600 if the amount in controversy is $10,000 up to and including $29,999; and $100 if the amount in controversy is $0 up to and including $9,999; and

(5) $5.60 per quarter hour for professional employees, and $2.40 per quarter hour for clerical employees for search time performed while responding to Freedom of Information Act requests.

II. Background

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for services and benefits it provides.[2] The principal interpretation of the IOAA is Bureau of the Budget Circular A–25,[3] which states that a fee should be assessed for each measurable unit or amount of Government service or property from which an identifiable recipient derives a special benefit.

In accordance with the IOAA and authoritative interpretations of that statute,[4] the Commission, in establishing any fee, must:

(a) Identify the service for which the fee is being assessed;

(b) Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(c) Base the fee on as small a category of service as practical;

(d) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule for general activities of the Commission meet these requirements.

III. Summary and Analysis of Comments

This rule establishes fees for four general activities of the Commission: reviewing petitions for issuance of declaratory orders, reviewing requests for interpretations by the Office of Chief Accountant, reviewing DOE denials of adjustments, and reviewing DOE remedial orders.

Under Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1983), a person may file a petition for issuance of a declaratory order to terminate a controversy or remove uncertainty concerning matters under the Natural Gas Policy Act of 1978; the Public Utility Regulatory Policies Act of 1978; the functions delegated to the Commission by the Department of Energy Organization Act and the Secretary of Energy; and the Commission's regulations. For these types of declaratory orders a filing fee of $4,900 has been set. However, the Commission has excluded declaratory orders that solely concern hydroelectric matters under Part I of the Federal Power Act (FPA) because these costs are included in calculating annual charges under section 10(e) of the FPA, 16 U.S.C. 803(e) (1982). (See Section III.F.3 below).

A person can also request an interpretation from the Office of Chief Accountant in accordance with § 3.8 of the Commission's regulations, 18 CFR 3.8 (1983). An interpretation states a staff opinion of the proper application of the Commission's reporting and record retention requirements and Uniform

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[1] Final Rule, Fees Applicable to Producer Matters under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984) (Docket No. RM82-25-000). *See also*, Final Rule, Fees Applicable to Natural Gas Pipeline Rate Matters, 49 FR 5083 (Feb. 10, 1984) (Docket No. RM83-2-000).

[2] Act of Aug. 31, 1951, Ch. 376, Title V, section 501, 65 Stat. 290, *as codified*, 31 U.S.C. 9701 (1982).

[3] Bureau of the Budget Circular A–25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." FPC v. New England Power Co., 415 U.S. 345, 351 (1974).

[4] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Mississippi Power & Light Co. v. NRC, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

Systems of Accounts in light of the particular facts or circumstances raised by the applicant. This fee is $100.

The Commission reviews a Department of Energy (DOE) denial of adjustment under Subpart J of its regulations, 18 CFR Part 385, Subpart J (1983). Review provides appellants with another opportunity to seek relief from DOE rules and orders. Appellants initiate review and must, by statute, do so before seeking judicial review. Similarly, the Commission reviews DOE remedial orders under Subpart I of its regulations, 18 CFR Part 385, Subpart I (1983). Review may result in the Commission's revocation or modification of a DOE remedial order. As with DOE denials of adjustments, appellants initiate review and must do so before seeking judicial review. The fees for these two types of reviews range from $100 to $3,700 depending on the amount in controversy.

The Commission is adopting in this rule a procedure to update fees for Freedom of Information Act (FOIA) requests. This rule also applies that procedure to update FOIA fees and establish fees of $5.60 per quarter hour of search time performed by a professional employee and $2.40 per quarter hour for search time performed by a clerical employee. The fees for duplication will remain the same.

The Commission has decided not to establish a fee for filing a petition for rehearing at this time. In those cases where an applicant's petition for rehearing seeks a private benefit, the Commission believes it could charge a fee for reviewing that petition. However, there are also cases where a petition for rehearing raises matters that, on balance, address more general public interest issues. In those cases, the Commission does not believe it would be reasonable to impose a fee. Because of the large administrative burden involved in trying to segregate which rehearing petitions could be subject to a fee, the Commission has decided not to set a fee for a petition for rehearing at this time.

One commenter states that the Commission should not charge a fee for rulemakings. The Commission is not charging a fee for rulemakings in this rule. The Commission is also not charging a fee for a number of other actions it takes relating to its jurisdictional statutes. Those actions include Commission preliminary and formal enforcement investigations, Commission enforcement-related settlements and litigation, news releases, and litigation in the courts. As for these activities, the Commission believes that these actions generally do not manifest the necessary, identifiable benefit to an individual entity. As for rulemakings, while the Commission believes that these actions might warrant fees, the Commission has decided not to establish a separate fee category for these items at this time.[5]

A. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A–25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.[6] In addition, the Circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values * * * than those which accrue to the general public."[7]

A number of commenters state that to be classified as an allowable "fee" under the IOAA, a particular charge must be incident to a voluntary act. Seeking guidance on the proper application of jurisdictional statutes or Commission regulations, they say, are not voluntary acts but are required because violations of Commission statutes and regulations may carry heavy penaltites. Likewise, review of DOE actions, they say, are not voluntary acts, but are required by the Department of Energy Organization Act before initiating judicial review. This type of argument has previously been rejected in *National Cable Television Association, Inc.* v *FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); and *Electronic Industries Association* v. *FCC*, 554 F.2d 1109 (D.C. Cir. 1976).

In response to the argument put forth by cable television operators that they receive no benefit from an FCC license because the cable television industry would have developed better without FCC regulation, the D.C. Circuit in *National Cable Television* said "[a]ll that may be true, but these distinctions have not relevance here. The fact is that the FCC has undertaken to regulate this industry and has so far been sustained by the Supreme Court in this endeavor, with the result that a certificate of compliance *has* become a necessary and therefore valuable license."[8] The Fifth Circuit in *Mississippi Power & Light* similarly held that since a license from the NRC is an absolute prerequisite to operating a nuclear facility, that license is a benefit not shared by other members of society.[9] In addition, the D.C. circuit held in *Electronic Industries Association* that agencies can charge for services which assist a person in complying with his statutory duties because these services create an independent private benefit.[10] Hence, the Commission believes this issue has been settled by the courts and need not be the subject of further discussion in this rule.

Many commenters argue that the proposed rule fails to explain how requesters of these services receive a greater benefit from the Commission's regulations than the general public. They claim that the Commission's regulations offer no greater benefit than the authorization to carry out activities in interstate commerce in conformity with a regulatory scheme which benefits only the general public. Other commenters raise related arguments: that Commission regulation is not a benefit but a detriment to those regulated; that the courts have held that the Commission's activities are primarily for the benefit of the general public, and that the Commission itself has recognized that its functions primarily benefit the general public.

While consumers may be ultimate beneficiaries from Commission regulation, that is not determinative of the Commission's right to charge fees under the IOAA. The IOAA provides for the collection of fees for each service or thing of value provided by the agency.[11] Commission review of DOE actions and interpretations of its enabling statutes and regulations are the types of services for which the IOAA expressly authorizes the collection of fees. Not only is the statute clear on its face, but the D.C. Circuit has held that a fee otherwise authorized by the IOAA is not rendered invalid because the public may also enjoy downstream benefits.[12] In

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[5] The Commission is considering, in other rulemakings, fees to recover the costs of certain rulemakings. In those cases, the Commission believes that there are special benefits provided to identifiable recipients.

[6] Budget Circular A–25, at 1–2.

[7] *Id.* at 2.

[8] 554 F.2d at 1101–02 (footnotes omitted, emphasis in original).

[9] 601 F.2d at 229.

[10] 554 F.2d at 1115.

[11] 31 U.S.C. 9701 (1982).

[12] Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976). In that case, petitioners argued that fees should not be assessed for tariff filings or equipment testing and approval. The court answered that even though both activities were required by statute, the FCC was entitled to charge for services which assisted a person in complying with his statutory duties. Such services, the court said, create an independent private benefit

Continued

addition, the fact that the Federal Power Commission (FPC) took an opposite approach toward fees in 1965 does not prevent this successor Commission from adopting a different policy. Not until the 1970's did the courts begin reviewing fee structures of various agencies. It was after those cases were decided that the law became clear, and the Commission now believes that it can charge the fees established by this rule.

Commenters also assert that the imposition of a substantial fee to review DOE remedial orders and denials of adjustments are barred by due process considerations because the fee may have a chilling effect on the exercise of the right to judicial review due to economic hardship or indigency. The Commission disagrees with these assertions because we believe that the reduced fees and the case-by-case waiver procedures will prevent economic hardships and adequately protect the rights of indigents.

B. Smallest Practical Unit

In designing a fee schedule, the Commission has established fees on the smallest unit or category of service that is practical. In remanding fees established by the FCC, the United States Court of Appeals for the D.C. Circuit set forth the most authoritative interpretation of this IOAA requirement as follows:

> [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees or services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[13]

Further, Budget Circulars A–25 states that "[c]osts shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose."[14]

Commenters argue that fees for declaratory orders should be determined based on subject area because the time spent on requests in one area of the Commission's jurisdiction may differ from the time spent on another area. The Commission understands these concerns, but one fee for declaratory orders is necessary because of administrative limitations. Specifically, the Commission, in keeping with Budget Circular A–25, classifies its fees by types of applications or proceedings (*i.e.* declaratory orders). The Commission has calculated its fees from its Management Information System (MIS). The MIS is an agency system established to track workload. The MIS tracks time by work-months based on types of applications or proceedings. The Commission is establishing one fee for an entire application or proceeding because that application or proceeding is the smallest unit practical for which the Commission can develop fees.[15]

C. Basis of Cost Recovery

1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of the specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include these direct salary costs as well as the substantial amount of indirect costs which the Commission expends in its reviews. As the Fifth Circuit has stated, employees

> * * * must be supplied [with] working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that * * * [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.[16]

Accordingly, the Commission has included in its fee calculations a proportionate share of the following items: salaries and benefits; travel; rents; communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology

(a) *Underlying Considerations.* The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's Management Information System (MIS), which provides the amount of time spent on all Commission functions. The functions are grouped into categories which represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric power regulation. The MIS workload data are recorded on a monthly basis.

With respect to each function, the supervisor records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities." The supervisor in each organizational unit reports to the MIS the amount of time spent by staff on each functional category in terms of work-months. A "work-month" is the unit of work represented by one employee's devotion of 100% of his or her time for one month. In addition, time sheets are coded by functional categories and are filled out Commission-wide every two weeks. Supervisors check employee time sheets for accuracy in coding.

Support functions regularly undertaken, with respect to any program, are not docketed and may not be measured in terms of receipts and completions. The nature of these functions makes impractical any measurements in terms of receipts and completions, but these functions are nevertheless essential to the completion of any docketed activity. This time is also allotted and reported by unit supervisors in terms of work-months.

Only those support functions that are related to providing a benefit are included in the calculations. These support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and

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since they provide a means for the carrier to obtain its revenues and to regulate subscriber use of its facilities. The court concluded that although the statute was enacted in order to protect the public against excessive or unreasonably discriminatory or preferential charges, that result is only an incidental benefit from the service which is rendered by the agency, *i.e.*, providing the means for carriers to comply with the statute.

[13] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116 (D.C. Cir. 1976).

[14] Budget Circular A–25, at 3.

[15] The Commission has recently updated the MIS by starting to track its workload on a new system (Time Distribution Reporting System) which may provide an even greater degree of accuracy of Commission workload. At this time, however, the Commission does not have sufficient data to develop actual fees from this system.

[16] Mississippi Power & Light Co. v. NRC, 601 F.2d at 232.

routine administrative functions such as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. This category can be labeled as "administrative services" and is included in the fee structure because it is essential to the Commission's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications" because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the Commission budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

The comments indicate confusion as to the difference between indirect costs and support functions. While both are types of indirect costs, they are channeled into the cost calculation at different times. Direct and indirect costs (such as physical plant overhead) are added together to come up with an average monthly cost per Commission employee of $4,770.67. That figure is multiplied by the time (in work-months) taken to review a type of application. Support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of application and also a pro-rata share of the time spent on support activities associated with reviewing that type of application.

(b) *Calculation of Fee Amounts.* For purposes of this rule, the Commission has used the same methodology to determine the cost of providing any service or benefit as it has used in the other final fees rules. First, the work-months reported for a class of docketed activity are added to a pro-rata share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY 1983 actual costs.

Salaries and benefits	$46,228
Based on year and payroll data and benefits at 26%	
Travel	726
Transportation of things	7
Rents, communications & utilities	3,185
Printing	1,899
Other services—excludes direct program contracts	4,684
Supplies	477
Equipment	42
Total	$57,248

The total was divided by 12 to yield an average work-month cost of $4,770.67.

Third, in order to determine the cost of an activity, the Commission multiplied the average work-month cost by the average number of work-months required to complete the activity.[17]

There were numerous complaints about the cost methodology proposed in the Notice of Proposed Rulemaking (NOPR), 47 FR 27375 (June 24, 1982), such as inadequate information to verify the costs, calculations based on salary and overhead from one year and time per project from another year, use of budgeted figures as opposed to actual figures, use of average work-month costs rather than median or mode, and use of only one year for determining fees.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the Government. Thus, there is no reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. Second, in devising its fee schedule, the Commission is authorized to determine or estimate its costs "from the best available records in the agency."[18] For this Commission, that means the MIS.

The NOPR proposed to use 1982 budgeted figures to determine its costs, and 1981 actual completions and work-months to determine the fees. In addition, the method of updating the fees was tied to 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. Many commenters argue that 1981 may not be a typical year for completions and work-months, and thus, should not be the base year. The Commission agrees with this argument, and believes it is more accurate to calculate fees from actual completions and work-months, as well as actual costs. Consistent with its decision in the other final fees rule, the Commission is using actual fiscal year figures in this rule as well as in updating the fees in subsequent years (see section III D. below). The fees in this rule are based upon actual fiscal year 1983 direct and indirect costs, completions, and work-months. This approach eliminates any inaccuracies which could arise from using budgeted figures and will keep data current.

One commenter claims that the Commission gives no consideration to the number of staff personnel actually involved in a specific activity, but rather the commenter says the Commission assumes it will operate with a full staff. The Commission's MIS calculates work-months for every office at the end of each month, based on the number of full time employees actually working at the time of calculation. Thus, no assumptions are made regarding staffing levels.

Finally, a number of commenters claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the salary of only those employees processing particular filings. As permitted under the requirements of Budget Circular A-25, the Commission's accounting system employs an agency-wide figure so the Commission is entitled to use an agency-wide figure as the basis for its costs.

D. Actual Fees Established and Procedure for Updating Fees

The following table summarizes for 1983 the total number of work-months, completions, and average cost per completion in rendering the services for which the Commission is establishing fees in this final rule. (FOIA search fees are subject to a different methodology, as discussed below).

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[17] Updated data sheets have been placed in the Commission's Public File Room detailing the calculations.

[18] Budget Circular A-25, at 3.

Service	Total WM's in 1983	Total completions in 1983	Average number WM's per completion in 1983	Average cost per completion in 1983
Interpretations by Office of Chief Accountant	26.02	653	.04	$190.82
Petitions for issuance of declaratory orders (except under Part I of FPA)	129.87	50	2.59	12,356.03
Review of DOE denials of adjustments	39.76	20	1.98	9,445.92
Review of DOE remedial orders	36.1	23	1.57	7,489.95

The Commission believes that the average cost per completion for petitions for issuance of declaratory orders, review of DOE denials of adjustments, and review of DOE remedial orders is such that to recover these costs fully would substantially discourage the use of these services. In addition, these services may be requested by a broad spectrum of regulated entities, and there are a substantial number of small businesses and other organizations within this class. In keeping with its obligation to consider inequitable burdens on small entities and as a matter of administrative fairness, the Commission believes that a categorical reduction for each of these three categories of general activities is in the best interest of the public and of the Commission. The categorical reductions are policy judgments by the Commission representing its best estimate of the magnitude of reduction that may be necessary to avoid discouraging the use of these services. It is possible that higher percentages could be necessary, but more experience under this fee structure is needed before that judgment can be made. Accordingly, the fees for each of these services have been reduced by approximately sixty percent. The issue of categorical fee reductions is discussed generally in section III.E.1 below.

In addition, the Commission is particularly concerned with the inequitable burden on small entities from seeking review of DOE denials of adjustments and DOE remedial orders. Consequently, these two fees have been categorically reduced further when the amounts in controversy are below $30,000. Specifically, if the amount in controversy is $10,000–$29,999 then the fee is $600. Similarly, if the amount in controversy is less than $10,000, then the fee is $100. The Commission believes these additional fee reductions will prevent inequities and undue burdens on small entities that, by their size, generally have lesser amounts in controversy.

The following fees are therefore established:[19]

Services	Fee
Interpretations by Office of Chief Accountant	$100
Petitions for issuance of declaratory orders (except under Part I of the FPA)	4,900
Review of DOE denials of adjustments	
Amount in controversy:	
$0 to $9,999	100
$10,000 to $29,999	600
$30,000 or above	3,700
Review of DOE remedial orders	
Amount in controversy:	
$0 to $9,999	100
$10,000 to $29,999	600
$30,000 or above	2,900

The Commission will update its fees under Part 381 each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register** after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months, and costs from the preceding fiscal year. In this way, the fees will reflect, using the most current data available, the benefits to the recipients.

The NOPR also stated that the Commission's fees under the Freedom of Information Act (FOIA), 5 U.S.C. 552 (1982), would also be updated annually based on these procedures. However, only the direct cost for search and duplication of documents may be recovered under FOIA.[20] Specifically, the fees for FOIA requests under the Commission's regulations, 18 CFR 3.8(k) (1983), are based on the average cost for professional employees (GS–10 or above) and clerical employees (GS–9 or below) and the average cost of duplication. So, the Commission will update FOIA fees each year based on the average cost per quarter hour of professional employees, and clerical employees, and the average cost of agency record duplication for the previous fiscal year, as required by the FOIA. The Executive Director will publish the updated fees in the **Federal Register**.

Based on this methodology, this rule updates the FOIA fees based on fiscal year 1983 costs. Those fees are set at (1) $5.60 per quarter hour for search services performed by a professional employee; and (2) $2.40 per quarter hour for search services performed by a clerical employee. The fees for duplication are unchanged.

E. Exceptions to Full Cost Recovery

1. Reductions in Fee Amounts by Category

The Commission has established in this rule a certain fee which includes all the recoverable costs associated with the particular benefits and services provided, and has categorically reduced other fees. The Commission, based on its expertise, recognizes that there may continue to be instances in which establishing full cost recovery fees would have an adverse effect on applicants, or would undermine Commission activities. In such cases, the Commission may again exercise its discretion to reduce fees to less than full cost recovery in order to prevent a disproportionate economic impact or for other good cause. Good cause would include situations where the Commission wishes to encourage use of a service, where less Commission time is required than staff time, or where there is a reduction in the amount of time required to process a filing. Any new reduction in a fee would be initiated only by the Commission by rulemaking. The same percentage of reduction will carry over to subsequent years for any categorical reduction unless further notice is given that the Commission is altering that reduction.

Commenters argue that the Commission needs more specific guidelines in this area, particularly to include undue economic hardship as a standard. The Commission believes that the standards enumerated are sufficiently specific, particularly since any categorical reductions in fee amounts is done in the context of a rulemaking. Moreover, any determination on whether to establish a fee at less than full cost recovery amount takes into account economic hardship, as discussed above, if it applies to a class of applicants. This is to be distinguished from the situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

2. Case-by-Case Waiver Procedure

The Commission also realizes that a different situation could arise in which a person is unable to pay fees as set by the Commission due to severe economic hardship. If a person is suffering from a period of severe economic hardship, he will have the burden of presenting evidence to the Commission, such as a financial statement, showing that he is either economically unable to pay the fee or that, if he does the pay the fee, it will place him in a state of financial distress or emergency. As stated by the D.C. Circuit:

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[19] Fees are established by taking actual costs and rounding down to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

[20] 5 U.S.C. 552(a)(4)(A) (1982). *See* Final Rule, Fees Relating to Freedom of Information Act Requests, 47 FR 23148 (May 27, 1982); 47 FR 24961 (June 8, 1982) (Docket No. RM81–40–000).

> The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary.[21]

This material must be included with the petition for waiver at the time of filing. The Commission, or its designee, will analyze petitions for waiver to determine whether the standards for waiver have been met. The Commission will notify the petitioner as to whether the petition for waiver has been denied or accepted.

3. Exempt Classes

One commenter asserts that States and municipalities are exempt from fees collected under IOAA. The Commission agrees when a State or municipality uses a Commission service to serve the general public,[22] but this may not be the case every time the Commission acts upon a filng from a State or municipality. However, because of the large administrative burden involved in trying to segregate which services and benefits rendered to States and municipalities could be subject to fees, the Commission has decided to exempt States and municipalities from fees collected under the IOAA. The IOAA also exempts any person engaged in the transaction of official business of the Federal government. So, the Commission has provided an exemption for this situation as well.

The Commission is permitted under section 10(e) of the FPA to assess licensees an annual charge for the purpose of reimbursing the United States for the cost of administering Part I of the FPA. Consequently, the Commission has decided to make petitions for the issuance of declaratory orders that solely concern matters under Part I of the FPA exempt from the fee normally charged for declaratory orders because these costs will be used to determine the annual charges assessed to licensees. A petitioner should file a petition for exemption that summarizes the issues raised in its petition for issuance of a declaratory order and explains why the exemption is applicable. If the petition is denied, the petitioner will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission. The Commission will not use the time spent processing petitions for which a fee has been paid to calculate annual charges.

F. Procedures for Paying Fees

The Commission's notice states that fees must be submitted by certified check, made payable to the United States Treasury. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has decided to delete the certified check requirement. However, a check made payable to the United States Treasury must still be included with the filing or application unless a petition for waiver or exemption is submitted in lieu of the fee. The check must indicate for what the fee is being submitted, *e.g.*, review of a Department of Energy remedial order. This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver or exemption, it will be considered deficient and will not be processed.

Commenters complain of the Commission's decision to exclude the possibility of fee refunds. They argue that the Commission should include a provision in the final rule whereby a person could receive a refund if his filing was rejected on grounds other than nonpayment of fees, or if the Commission did not respond within a reasonable amount of time. One commenter also argues that the Commission must provide for refunds so that Commission business can continue while the proposed fees are undergoing judicial review.

The Commission's decision not to allow refunds is consistent with the policy behind the IOAA. That statute authorizes and orders Government agencies to become self-sustaining to the extent possible. To do so, the agency is to collect fees for services and benefits it provides. The Congress gave this commission the duty of carrying out functions under a number of statutes. These functions are the basis of the services for which the IOAA authorizes the collection of fees. These services are performed by reviewing the petition, application or answer, not guaranteeing the issuance of a declaratory order, interpretation, or order. The Commission reviews every petition, request, or answer. Some petitions and requests are accepted, some are not, but the vast majority are accepted. The Commission's fees cover the time and cost of providing these services. It does not cost the Commission any less when it rejects a petition or request or upholds an action by DOE.

In addition, the Commission's decision not to allow refunds is consistent with its current policy of no refunds of fees charged for services in other areas of Commission activity and of annual charges under the FPA.

G. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time of processing filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. That figure is then multiplied by the average cost per work-month to arrive at the fee.

However, the Commission occasionally receives filings which are not average. These filings may be extensive in scope and present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. The standard fees established in this rule bear no reasonable relationship to the actual cost of processing those extraordinay filings. Moreover, if the costs of processing extraordinay filings are included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. So, in the case of an extraordinary filing, the Commission reserves the option of ordering a direct billing procedure when the processing of the filing begins, or at any time up to one year after receiving a complete filing.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. If the decision to bill a lesser amount is based upon the presence of intervenors in a proceeding, the Commission is retaining the discretion to determine whether some of the costs not directly billed to an applicant should instead by billed to the intervenors. The Commission doubts this will occur frequently since intervention usually does not occur in the general activities covered by this final rule or, if it does, the intervenors are raising issues oriented toward protecting the public interest as opposed to a private interest. Any decision to directly bill intervenors will be made on a case-by-case basis.

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[21] United Gas Pipe Line Company v. FERC, 707 F.2d 1507, 1511 (D.C. Cir. 1983).

[22] Beaver, Bountiful, Enterprise v. Andrus, 637 F.2d 749 (10th Cir. 1980).

Commenters state that the direct billing procedure is entirely too vague. These commenters object to this direct billing method because they claim that the complexity of a filing might result simply from the participation of intervenors, that it is impossible to know beforehand if a matter will be complex, and that a proceeding may be complex because it contains important public policy issues where the potential benefit to the applicant is secondary to that of the public or to other industry members. A suggestion has been made that if the Commission does require direct billings in complex cases, it should allocate the fees among the intervenors as well as the applicant since the intervenors receive the same benefit as the original applicant. The Commission recognizes the points made by these commenters. Consequently, the possible allocation of some costs to intervenors in direct billing situations will be handled on a case-by-case basis.

Also, a commenter requests that the Commission itemize all direct billings so that there will be a means of appealing the billed amount. Finally, one commenter suggests that, in the case of unsuccessful staff contests of filings, there be no additional direct billing costs. Where there is a direct billing, the Commission will itemize, to the best degree of accuracy under the MIS, the costs involved in the direct billing. There is no way the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter. In addition, the staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. Moreover, the Commission will credit a person whose filing becomes subject to direct billing with any fee paid under this fee system.

IV. Summary of Final Rule

This final rule establishes fees for services and benefits provided by the Commission in new Part 381 of Chapter 1, Title 18 of the Code of Federal Regulations.

Section 3.8 is amended to update search fees to $5.60 per quarter hour for professional employees and $2.40 per quarter hour for clerical employees. The fees for duplication are unchanged.

Section 381.301 establishes a $100.00 fee payable upon the submission of a written request for an interpretation by the Office of Chief Accountant.

Section 381.302 establishes a $4,900 fee payable upon submission of a petition for a declaratory order.

Section 381.303 establishes fees ranging from $100 to $2,900 based on the amount in controversy. These fees are payable upon filing of an answer in a proceeding to review DOE remedial orders.[23]

Section 381.304 establishes fees ranging from $100 to $3,700 based on the amount in controversy. These fees are payable upon the filing of a petition for review of a DOE denial of an adjustment request.

In addition, this rule makes a number of technical, conforming amendments to the Commission's regulations. These conforming amendments: (1) Provide the appropriate delegations to Commission staff to implement the procedures for waiving fees, updating fees, and exempting persons; (2) address the above-mentioned categories of service; and (3) ensure that the requirement that the proper fees are filed with each request, petition, or appeal (except FOIA requests) is clearly stated in the appropriate sections of Parts 3 and 385. In addition, section 3.8(k) requires the publication of an updated fee schedule each year for Freedom of Information Act requests to reflect the most current Commission costs.

V. Final Regulatory Flexibility Analysis

When an agency promulgates a final rule under the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980. Each final regulatory flexibility analysis must contain (1) a statement of need for and objective of the rule, (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A–25.

During the past year, approximately 54 petitions for declaratory orders, 653 requests for interpretations of the Uniform Systems of Accounts, 17 requests for review of DOE remedial orders, and 13 requests for review of DOE denials of adjustments were filed with (as distinct from completed by) the Commission. These requests, petitions, and answers have been submitted by all types of entities, some of which are regulated by the Commission and some of which are not.

The Small Business Administration's (SBA) regulations do not establish specific size standards for each of the entities regulated by the Commission that would be subject to this rule.[24] Most natural gas and oil pipelines and electric utilities are large businesses, yet a portion of this group would probably be considered small. A greater number of natural gas producers and hydroelectric facility licensees, however, might be classified as small businesses. In addition, within the class of individuals and entities not regulated by the Commission but which could be expected to seek the services covered by this proposal, there may be many small businesses. For instance, this proposal will also affect those individuals and entities which seek Commission review of DOE denials of adjustments and DOE remedial orders. These entities include retailers, resellers, refiners, and oil producers and within these various classes of entities, the Commission believes there may be some small businesses. Therefore, the Commission believes this rule may have an economic impact on a certain, but not necessarily substantial, number of small entities, primarily natural gas producers, hydroelectric licensees, and permittees, retailers, resellers, and oil and gas refiners.

Where a rule will have a significant economic impact on a substantial number of small entities, section 604(a)(3) of the RFA requires the Commmission to discuss significant alternatives to the proposal. The Commission has already fully detailed its attempt to minimize and disproportionate burden the proposal would have on a small entity. For example, the fees for petitions for issuance of a declaratory order, review of DOE denials of adjustments, and review of DOE remedial order have been categorically reduced by approximately sixty percent to avoid discouraging use of these services, particularly by smaller entities. In addition, the fees for review of DOE denials of adjustments and DOE remedial orders have been further reduced when the amount in controversy is below $30,000. This additional tiered system of reductions is expected to ease any undue burden on small entities. The rule also contains a provision for individual waiver of those fees to further protect any individuals or entities from economic hardship. The Commission could, of course, consider reducing the fees further, or even eliminating the fees, with respect to small businesses. However, in proposing the present fee schedule, the Commission is also attempting to satisfy the statutory directive of the IOAA to be "self-sustaining to the extent possible." The Commission believes the rule, as adopted, represents a fair balance which will satisfy the purposes of both the IOAA and the FRA.

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[23] The fee accompanies an answer because the proceeding may be initiated by a filing with the Secretary of Energy. *See* 18 CFR 385.904 (1983).

[24] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR part 121).

Three commenters discuss the Initial Regulatory Flexibility Analysis. Two commenters argue that the Commission's analysis is inadequate, and that the Commission did not consider the possibility of not imposing fees. Another commenter complains that the effects on non-profit public interest organizations are not discussed.

The Commission believes it followed the requirements of the Regulatory Flexibility Act in its notice of proposed rulemaking and in this final rule. Further, while the Commission has operated for a long time without charging fees for these categories of services, its adoption of this fee schedule is authorized by statute.

Paperwork Reduction Act Statement and Effective Date

The information collection provisions of this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1984). OMB issued Control Number 19020132 for these sections. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Joseph Hartsoe (202) 357–8033). This rule will become effective October 9, 1984.

List of Subjects

18 CFR Part 3

Organization, Operation, Information and requests.

18 CFR Part 375

The Commission.

18 CFR Part 381

General fees.

18 CFR Part 385

Rules of practice and procedure.

19 CFR Part 389

Paperwork Reduction Act, OMB control numbers.

In consideration of the foregoing, the Commission is amending Parts 3, 375, 381, 385, and 389 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 3—[AMENDED]

1. Part 3 is amended as follows:

a. The authority citation for 18 CFR Part 3 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 552 and 553 (1982), unless otherwise noted.

b. In § 3.8(k)(2)(i), by removing the number "$5.75" and adding, in its place, the number "$5.60";

c. In § 3.8(k)(2)(ii), by removing the number "$2.50" and adding, in its place, the number "$2.40"; and

d. By adding a sentence at the end of paragraph (h) and by adding a new paragraph (k)(7) to read as follows:

§ 3.8 Public information and submittals.

* * * * *

(h) * * * Each inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed by § 381.301 of this chapter.

* * * * *

(k) *Fees for Freedom of Information Act requests.*

* * * * *

(7) *Annual adjustment of fees*—(i) *Update and publication.* The Commission, by its designee the Executive Director, will update the fees established in this section each fiscal year according to the formula in paragraph (k)(7)(iii) of this section. The Executive Director will publish the fees in the **Federal Register.**

(ii) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received for purposes of section 388.107, 18 CFR 388.107 (FOIA timetables and procedures).

(iii) *Formula.* The fee for each quarter-hour of professional employee search time will be the approximate average hourly cost (including the cost of fringe benefits) to the Commission for professional employees (GS–10 or above) for the previous fiscal year. The fee for each quarter hour of clerical employee search time will be the approximate quarter-hour cost (including the cost of fringe benefits) for clerical employees (GS–9 or below) for the previous fiscal year. Duplication costs will be determined by estimating the cost to copy each type of agency record, and will be based on the cost of supplies used and the machine leased.

(iv) *Effective date of fee.* Any fee updated under this section is effective on the thirtieth day after publication in the **Federal Register,** unless otherwise specified in the **Federal Register** notice.

PART 375—[AMENDED]

2. Part 375 is amended as follows:

a. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

b. In § 375.303, by adding a new paragraph (g) to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(g) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in § 381.301 of this chapter in accordance with § 381.106(b) of this chapter.

c. In § 375.310, by adding a new paragraph (b) to read as follows:

§ 375.310 Delegations to the Director of the Office of Opinions and Review.

* * * * *

(b) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303 and 381.304 of this chapter in accordance with § 381.106(b) of this chapter.

d. By revising § 375.313 to read as follows:

§ 375.313 Delegations to the Executive Director.

The Commission authorizes the Executive Director or the Executive Director's designee to:

(a) Prescribe the updated fees for Part 381 of this chapter in accordance with § 381.104 of this chapter.

(b) Prescribe the updated fees for Part 381 of this chapter in accordance with § 3.8(k)(7) of this chapter.

(c) Deny or grant, in whole or in part, petitions for waiver of fees prescribed in § 381.302 of this chapter in accordance with § 381.106(b) of this chapter.

(d) Deny or grant, in whole or in part, petitions for exemption from fees prescribed in Part 381 of this chapter in accordance with § 381.108 of this chapter.

e. In § 375.314, by adding a new paragraph (gg) to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(gg) Deny or grant, in whole or in part, petitions for exemption from the fee for declaratory order petitions prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter.

PART 381—[AMENDED]

e. Part 381 is amended as follows:

a. The authority citation for Part 381 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Independent Offices Appropriation Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

§ 381.106 [Amended]

b. In § 381.106(a), by removing the words "submit a" in the first sentence and adding, in their place, the words "submit an original and two copies of a";

c. By adding a new § 381.108 to Subpart A, General Provisions, to read as follows:

§ 381.108 Exemptions.

(a) *Filing of Petition.* States, municipalities and anyone who is engaged in the official business of the Federal government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee.

(b) *Decision on petition.* A petitioner may claim this exemption by filing an original and two copies of a petition for exemption that includes evidence that the petitioner is a State or municipality, or is engaged in the official business of the Federal government. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the petitioner whether it is granted or denied. If the petition is denied, the person will have thirty days from the date of notification of the denial to submit the appropriate fee to the Commission.

d. By adding a new Subpart C to read as follows:

Subpart C—Fees Applicable to General Activities

Sec.

381.301 Requests for interpretations by the Office of Chief Accountant.
381.302 Petitions for issuance of a declaratory order (except under part I of Federal Power Act).
381.303 Review of Department of Energy remedial order.
381.304 Review of Department of Energy denial of adjustment.

Subpart C—Fees Applicable to General Activities

§ 381.301 Request for interpretation by the Office of Chief Accountant.

The fee established for a request for an interpretation by the Chief Accountant under § 3.8 of the Commission Rules of Practice and Procedure, 18 CFR 3.8 (1983), that requires a written response is $100. The fee must be submitted in accordance with Subpart A of this part.

§ 381.302 Petition for issuance of a declaratory order (except under part I of the Federal Power Act).

(a) Except as provided in § 381.302(b), the fee established for filing a petition for issuance of a declaratory order under § 385.207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1983), is $4,900. The fee must be submitted in accordance with Subpart A of this part.

(b) No fee is necessary to file a petition for issuance of a declaratory order that solely concerns the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with its petition for issuance of a declaratory order. The petition for exemption should summarize the issues raised in the petition for issuance of a declaratory order and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the petitioner will have thirty days from the date of notification of the denial to submit the appropriate fee to the Commission.

§ 381.303 Review of a Department of Energy remedial order.

(a) *Except as provided § 381.303(b),* the fee established for filing a petition for review of a Department of Energy remedial order under Subpart I of the Commission's Rules of Practice and Procedure, 18 CFR Part 385, Subpart I (1983), is $2,900. The fee must be submitted in accordance with Subpart A of this part.

(b) If the amount in controversy is below $30,000, then the fee to file a petition for review of a DOE remedial order is reduced as follows:

	Fee
Amount in controversy:	
$0 to $9,999	$100
$10,000 to $29,999	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit by the petitioner that states the amount in controversy.

§ 381.304 Review of a Department of Energy denial of adjustment.

(a) *Except as provided in § 381.304(b),* the fee established for review of a Department of Energy denial of an adjustment request under Subpart J of the Commission's Rules of Practice and Procedure, 18 CFR Part 385, Subpart J (1983), is $3,700. The fee must be submitted in accordance with Subpart A of this part.

(b) If the amount in controversy is below $30,000, then the fee to file a petition for review of a DOE denial of an adjustment is reduced as follows:

	Fee
Amount in controversy:	
$0 to $9,999	$100
$10,000 to $29,999	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit by the petitioner that states the amount in controversy.

PART 385—[AMENDED]

4. Part 385 is amended as follows:

a. The authority citation for Part 385 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

b. In § 385.207, by adding a new paragraph (c) to read as follows:

§ 385.207 Petitions (Rule 207).

* * * * *

(c) Except as provided in § 381.302(b), each petition for issuance of a declaratory order must be accompanied by the fee prescribed in § 381.302(a).

c. In § 385.906, by adding a new sentence at the end of paragraph (b)(1) to read as follows:

§ 385.906 Pleadings (Rule 906).

* * * * *

(b) *By the petitioner.* (1) * * * Each answer filed with the Secretary of the Commission by the petitioner, in accordance with this paragraph, must be accompanied by the fee prescribed by § 381.303 of this chapter.

* * * * *

d. By amending § 385.1004 as follows:

a. In paragraph (c), by adding the words "and the fee required by paragraph (c) of this section" following the words "petition for review"; and then redesignating paragraph (c) as paragraph (d).

b. By adding a new paragraph (c) to read as follows:

§ 385.1004 Commencement of proceedings (Rule 1004).

* * * * *

(c) Each petition for review filed with the Secretary of the Commission must be accompanied by the fee prescribed by § 381.304 of this chapter.

* * * * *

PART 389—[AMENDED]

5. Part 389 is amended as follows:

a. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 389.101 [Amended]

b. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "381.106" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

c. The Table of OMB Control Numbers in § 389.101(b) is further amended by adding "381.302" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

d. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "381.303" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

e. The Table of OMB Control Numbers in § 389.101(b) is further amended by adding "381.304" in the numerical order in the Section column, and "0132" in the corresponding position in the OMB Control Number Column.

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18 CFR Parts 157, 274, 284, 375, 381, and 385

[Docket No. RM82-30-000; Order No. 394]

Fees Applicable to the Natural Gas Policy Act

Issued: August 31, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish fees for services and benefits it provides under the Natural Gas Policy Act. The rule establishes fees for applications for adjustment under the NGPA, Commission review of well-category determinations by jurisdictional agencies, reports for transactions authorized under Title III of the NGPA, and requests for interpretation of the NGPA from the Office of the General Counsel. These fees are authorized by the Independent Offices Appropriations Act, which provides for the collection of fees to make agencies self-sustaining to the extent possible.

EFFECTIVE DATE: This rule will become effective October 9, 1984.

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Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

I. Introduction

By this rule, the Federal Energy Regulatory Commission (Commission) amends Part 381 of its regulations to establish fees for services and benefits provided under the Natural Gas Policy Act (NGPA).[1] In an earlier rulemaking, the Commission adopted its basic methodology for establishing fees with respect to services and benefits provided by the Commission, as well as the procedures for billing, collecting, waiving, and updating fees.[2] This rule applies the basic methodology to establish the following fees:

(1) Application for adjustment under section 502(c) of the NGPA, including exemptions from incremental pricing under section 206(d) of the NGPA, $6,000;

(2) Commission review of a jurisdictional agency determination, $25;

(3) Petition for approval of rates and charges for transportation of natural gas under 18 CFR 284.123(b)(2), $2,000;

(4) Initial or extension reports filed in accordance with 18 CFR 284.106, 284.126, 284.148 and 284.163 for transactions authorized under Title III of the NGPA, $800; and

(5) Request for interpretation of the NGPA by the Office of the General Counsel, $1,200.

II. Background

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for services and benefits it provides.[3] The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,[4] which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit.

In accordance with the IOAA and authoritative interpretations of that statute,[5] the Commission, is establishing any fee, must:

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[1] 15 U.S.C. 3301–3432 (1982).

[2] Final Rule, Fees Applicable to Producer Matters under the Natural Gas Act, 49 FR 5074 (Feb. 10 1984) (Docket No. RM 82-25-000), *reh'g denied and rule clarified,* 49 FR 17436 (Apr. 24, 1984), *appeal pending,* No. 84-1068 (10th Cir. June 2, 1984).

[3] Act of Aug. 31, 1951, Ch. 376, Title V, Section 501, 65 Stat. 290, *as codified,* 31 U.S.C. 9701 (1982).

[4] Bureau of the Budget Circular A-25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." FPC v. New England Power Co., 415 U.S. 345, 351 (1974).

(a) Identify the service for which the fee is to be assessed;

(b) Explain why the particular service benefits an identifiable recipient more than it benefits the general public;

(c) Base the fee on as small a category of service as practical;

(d) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet these requirements.

III. Summary and Analysis of Comments

On June 2, 1982, the Commission issued its notice of proposed rulemaking (NOPR) in this docket.[6] The NOPR proposed fees for certain services and benefits provided under the NGPA. As indicated above, this final rule establishes fees for the following services and benefits provided under the NGPA:

(1) Adjustments requested under section 502(c) of the NGPA, including exemptions from incremental pricing under section 206(d), and filed in accordance with Subpart K of 18 CFR Part 385;

(2) Review of jurisdictional agency determinations under section 503 of the NGPA filed in accordance with 18 CFR 274.104;

(3) Approval of rates and charges for transportation of natural gas under 18 CFR 284.123(b)(2);

(4) Review of initial or extension reports filed in accordance with 18 CFR 284.106, 284.126, 284.148, and 284.163 for transactions authorized under Title III of the NGPA; and

(5) Interpretations of the NGPA rendered by the Office of the General Counsel, requested in accordance with 18 CFR Part 1901.

A. Identification of Services

Under section 502(c) of the NGPA, the Commission has established rules for the making of such adjustments as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. The rules governing applications for adjustment are set forth in Subpart K of 18 CFR Part 385 of the Commission's regulations. Under § 385.1104(a), an applicant must show, among other things, "how the denial of relief will cause the applicant to suffer special hardship, inequity, or unfair distribution of burdens." These adjustment procedures enable an applicant to obtain relief from an order or rule issued by the Commission that implements the requirements of the NGPA. The category of adjustments include the granting of exemptions under section 206(d), in whole or in part, from incremental pricing.

Federal and state "jurisdictional agency" determinations under section 503 of the NGPA establish the NGPA maximum lawful price applicable to the sale of natural gas from particular wells. If producers wish to sell gas at the prices authorized by sections 102, 103, 107 and 108 of the NGPA, they must submit an application to the jurisdictional agency for a well-category determination. The Commission reviews the initial determination made by the jurisdictional agency. If the Commission does not reverse the jurisdictional agency's determination, the producer is allowed to receive the applicable maximum lawful price. As a practical matter, that price may be higher than the price the producer could have obtained in the absence of the determination.

Under sections 311 and 312 in Title III of the NGPA, the Commission authorizes several types of transactions on a self-implementing basis without subjecting these transactions to the Commission's jurisdiction under the Natural Gas Act (NGA). These types of transactions include: (1) Transportation of natural gas by an interstate pipeline on behalf of any intrastate pipeline or local distribution company for a period up to two years; (2) sale or transportation of gas by an intrastate pipeline to, or on behalf of, any interstate pipeline or local distribution company served by any interstate pipeline for a period of up to two years; and (3) assignment of an intrastate pipeline's contractual right to receive surplus gas to any interstate pipeline or local distribution company. Pipelines benefit from this program by being able to carry on the designated transactions without the need for prior Commission approval. However, pipelines that utilize the program and engage in these specific transactions are required to submit reports as specified in Part 284 of the Commission's regulations describing which transactions have been undertaken.[7]

Under § 385.1901 of the Commission's regulations, the Office of the General Counsel provides, at the request of any person, interpretations of the NGPA. The information and analysis provide guidance that may be used by the recipient to assist its decision making and planning of transactions or activities affected by the NGPA.

As proposed in the NOPR, the Commission has decided not to establish fees for certain other actions it takes relating to the NGPA. These actions include preliminary and formal enforcement investigations, Commission enforcement-related settlements and administrative litigation, news releases, and litigation in the courts. The Commission believes that these actions generally do not manifest the necessary identifiable benefit to an individual entity.

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge fees under the terms of the IOAA, Budget Circular A–25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.[8] In addition, the Circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values than those which accrue to the general public." [9]

Many commenters argue that the benefits under the proposed rules inure primarily to the public or to consumers. Commenters claim that no special benefit is conferred on an identifiable recipient, as is required by the IOAA. Some commenters argue that it is unfair to charge a fee for complying with the regulations and that the purpose of obtaining an interpretation is to avoid a penalty, not to receive a special benefit.

While consumers may be ultimate beneficiaries from the regulation of natural gas under the NGPA, that is not determinative of the Commission's right to charge fees under the IOAA. The IOAA provides for the collection of fees for a "service or thing of value provided by the agency.[10] Commission review of

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[5] *See Nat'l Cable Television Ass'n Inc. v. United States,* 415 U.S. 336 (1974); *FPC v. New England Power Co.,* 415 U.S. 345 (1974); *Mississippi Power & Light Co. v. NRC,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980); *Nat'l Cable Television Ass'n Inc. v. FCC,* 554 F.2d 1094 (D.C. Cir. 1976); *Electronic Indus. Ass'n v. FCC,* 554 F.2d 1109 (D.C. Cir. 1976); *Nat'l Ass'n of Broadcasters, v. FCC,* F.2d 1118 (D.C. Cir. 1976); *Capital Cities Communications, Inc. v. FCC,* 554 F.2d 1135 (D.C. Cir. 1976).

[6] Fees Applicable to the Natural Gas Policy Act, 47 FR 24736 (June 8, 1982). The Commission received fifty-five comments in response to the NOPR.

[7] *See* 18 CFR 284.106, 284.126, 284.148.

[8] Budget Circular A–25, at 1–2.

[9] *Id.* at 2.

[10] 31 U.S.C. 9701 (1982). This phrase was changed in 1982 from "any work, service, publication, report,

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requests for adjustments under, or interpretations of, the NGPA and Commission regulations and review of well category determinations and Title III transactions are the types of services for which the IOAA contemplates the collection of fees. The Court of Appeals for the D.C. Circuit has held that a fee otherwise authorized is not rendered invalid even where the benefit to the public is greater than the benefit to the applicant.[11] The court also held that an agency is entitled to charge a fee for services which assist a person in complying with a statute.[12]

Commenters also assert that it is unfair to impose fees on entities that are suffering hardship and are seeking relief therefrom. One commenter asserts that it is illegal to do so. Another commenter argues that the fee will foreclose use of the "safety value" established in section 502(c) of the NGPA. The Commission disagrees with these assertions. The case-by-case waiver procedures in 18 CFR 381.106 should adequately protect those entities from suffering economic hardship as a result of the filing fees imposed.

C. Smallest Practical Unit

In designing a fee schedule, the IOAA requires the Commission to base fees on the smallest unit or category of service that is practical. The Court of Appeals for the D.C. Circuit set forth the general rule:

> * * * [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees of services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[13]

Further, Budget Circular A-25 states that "costs shall be determined or established from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose."[14]

The Commission, in keeping with Budget Circular A-25, is classifying its fees by types of applications or filings, which are the smallest practical unit. The Commission has calculated its fees from its Management Information Systems (MIS). The MIS is an agency system established to track workload. The MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for an entire filing or proceeding because that filing or proceeding is the smallest unit practical for the Commission to develop fees.[15] In the NOPR in this docket, the Commission stated that it anticipated establishing two separate fee categories for initial Title III reports and for extension reports under Title III. After calculating the time spent on these two areas and the resulting fees, the Commission has found the fees to be so nearly identical that, for logical and administrative efficiency reasons, only one fee category for both activities is being established.

However, the Commission has also determined that the time spent on processing one type of Title III application differs significantly from the time spent on all other Title III activities. These applications involve the transportation of gas by intrastate pipelines on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline under 18 CFR 284.123(b)(2). Under § 284.123(b)(1), an intrastate pipeline in certain circumstances may elect to use a rate methodology already on file with the appropriate state public utility commission (PUC), and such rates are presumed to be fair and equitable. Alternatively, under § 284.123(b)(2), an intrastate pipeline may petition the Commission for approval of its proposed rates and charges for such transportation, and file information purporting to show that the proposed rates and charges are fair and equitable. If the pipeline makes the election under § 284.123(b)(2), the Commission must establish a rate rather than simply review an existing rate on file with a state PUC. The average costs for such determinations are substantially higher than for all other transportation transactions pursuant to Title III of the Act.

Accordingly, the final rule separates out applications under § 284.123(b)(2) from other Title III activities and establishes a separate fee based on the substantially higher processing costs for these applications.

D. Basis of Cost Recovery

1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include the direct salary costs as well as the substantial amount of indirect salary costs which the Commission expends in its reviews. As the Fifth Circuit has stated, employees

> * * * must be supplied working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that * * * [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.[16]

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; travel; transportation of things; rents; communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology

(a) *Underlying Considerations*. The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's Management Information System (MIS), which provides the amount of time spent on all Commission functions. The functions are grouped into categories which represent the Commission's various programs,

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document, benefit, privilege, authority, or similar thing of value or utility" for consistency and to eliminate unnecessary words. H.R. Rep. No. 651, 97th Cong., 2d Sess. 226 (1982).

[11] The court discussed the FCC's implementation of language in Budget Circular A-25 that precludes fees for activities when the "identification of the ultimate beneficiary is obscure and the service can be *primarily* considered as benefitting broadly the general public" (emphasis added):

The term "primarily" is misleading, and we reject any suggestion that the Commission should be limited to charging fees for those services where the benefit to the private party is greater than the benefit to the public; but with that word eliminated, we endorse the agency's language.

Electronics Indus. Ass'n v. *FCC*, 554 F.2d 1109, 1114 n. 12 (D.C. Cir. 1976).

[12] *Id.* at 1115.

[13] *Electronic Indus. Ass'n* v. *FCC*, *supra* note 5, at 1116-17.

[14] Budget Circular A-25, at 3.

[15] The Commission has recently updated the MIS by starting to track its workload on a new system (Time Distribution Reporting System), which may provide an even greater degree of accuracy of Commission workload. At this time, however, the Commission does not have a year's worth of complete data to develop actual fees from the new system.

[16] *Mississippi Power & Light Co.* v. *NRC*, *supra* note 5, at 232.

including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric power regulation. The MIS workload data is recorded on a monthly basis.

With respect to each function, the supervisor records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities." The supervisor in each organization unit reports to the MIS the amount of time spent by staff on each functional category in terms of work-months. A "work-month" is the unit of work represented by one employee's devotion of 100% of his or her time for one month. In addition, time sheets are coded by functional categories and are filled out Commission-wide every two weeks. Supervisors check employee time sheets for accuracy in coding.

Many non-docketed support functions are essential to the completion of any docketed activity. However, they cannot be measured in terms of receipts and completions because the nature of these functions makes it impractical to do so. Like other functions, the time spent on support activities is reported by unit supervisors in terms of work-months.

Only those support functions that are related to providing a benefit are included in the fee calculations. These support functions will be referred to as "support activities' and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions. Routine administrative functions include such activities as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. The entire cateogry is labeled as "administrative services" and is included in the fee structure because it is essential to the FERC's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications" because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the FERC budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

Support activities represent a type of indirect cost, but are channeled into the cost calculations separately from all other indirect costs (such as physical plant overhead). These other indirect costs are added together with direct costs to come up with an average monthly cost per Commission employee of $4,770.67. That figure is multiplied by the time (in work-months) taken to review a type of application. Support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of application and also a pro-rata share of the time spent on support activities associated with reviewing that type of application.

(b) *Calculation of Fee Amounts.* For purposes of this rule, the Commission has used the following methodology to determine the cost of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to a pro-rata share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for the year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY (Fiscal Year) 1983 actual costs.

Salaries and benefits (Based on year-end payroll data and benefits)	$46,228
Travel	726
Transportation of things	7
Rents, communications & utilities	3,185
Printing	1,899
Other services—excludes direct program contracts	4,684
Supplies	477
Equipment	42
Total	$57,248

The total was divided by 12 to yield an average work-month cost of $4,770.67.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity.[17]

Commenters provide many different reasons for why they believe that the Commission's cost methodology is either severely flawed or excessively vague. Some of these reasons include use of actual salaries from one year and the time figures from another year, use of mean work-month costs rather than the median or mode, use of only one year's data for determining fees, inadequate explanation of support costs calculations, and inclusion of costs that do not benefit an identifiable recipient or are not actually incurred by the Commission in rendering a particular service.

Several commenters claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the average salary of only those employees processing particular filings. As permitted under Budget Circular A-25, the Commission's accounting system employs an agency-wide figure for salaries and therefore the Commission has used an agency-wide figure as the basis for its costs.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs of the Government. Thus, there is no reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. All other support activities are an integral part of completing docketed activities and therefore are included in the calculations. Second, in devising its fee schedule, the Commission is authorized to determine or estimate its costs "from the best available records in the agency." [18] For this Commission, that means the MIS.

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[17] Updated data sheets are being placed in the Commission's Public File Room detailing the calculations.

[18] Budget Circular A-25, at 3.

The proposed rule used FY 1982 budgeted figures to determine its costs, and FY 1981 actual completions and work-months in the fee calculation. The method of updating the fees was tied to FY 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. Under the proposed rule, the number of completions and work-months would not be changed from the FY 1981 base-year numbers. The Commission now believes it is more accurate to calculate fees from actual completions and work-months, as well as actual costs. Consistent with its other final fees rules, the Commission has decided to use actual fiscal year figures in this rule as well as in updating the fees in subsequent years (see section III.E. below). Accordingly, the Commission has calculated the fees in this rule from actual fiscal year 1983 direct and indirect costs, completions, and work-months. This approach will keep data more current. This approach also eliminates any inaccuracies which could arise from using budgeted figures. In addition, by updating completions and work-months with the most recently available data, the fees will reflect any improvements that may occur in the average number of work-months per completion.

E. Actual Fees Established and Procedure for Updating Fees

The following table summarizes for FY 1983 the total number of work-months, completions, and the average cost per completion in rendering the services for which the Commission is establishing fees in this final rule.

Service	Total WM's in 1983	Total completions in 1983	Average number WM's per completion in 1983	Average cost per completion in 1983
Adjustment under NGPA § 502(c)	127.93	35	3.65	$17,412.94
Jurisdictional agency determination	295.11	59,429	.00496	[19] 29.59
Petitions for rate approval pursuant to § 284.123(b)(2)	58.33	138	.4226	2,016.08
All other initial and extension reports under title III	135.95	804	.1690	806.24
OGC interpretations of the NGPA	35.84	47	.762	3,635.25

[19] The average cost per completion for review of jurisdictional agency determinations also includes computer costs incurred by the Energy Information Administration and reimbursed by the Commission, equivalent to approximately $5.93 per determination.

The Commission believes the costs associated with petitions for adjustment and OGC interpretations are such that to fully recover these costs through fees would substantially discourage the use of these services. In addition, these services may be requested by a broad spectrum of regulated entities, and there are a substantial number of small businesses, such as small gas producers, within this class. The Commission, therefore, has reduced the fees for requests for adjustments to $6,000. This represents a sixty percent reduction of the full-cost recovery amount plus an additional five percent reduction because the Commission itself is not normally involved in issuing any order. This total sixty-five percent reduction is the same percentage proposed in the NOPR. The fee for requests for OGC interpretations has been reduced to $1,200. This is also a sixty-five percent reduction from full-cost recovery, consistent with the Commission's reduction policy for adjustments.

These categorical reductions are policy judgments by the Commission representing its best estimate of the magnitude of reductions that may be necessary to avoid discouraging the use of these services. It is possible that higher percentages could be necessary, but more experience under this fee structure is needed before that judgment can be made. Therefore, unless subsequently modified, these same percentages of reduction from full-cost recovery will carry over to future years as costs are updated.

The following fees are therefore established: [20]

Services	Fees
Adjustments under NGPA section 502(c)	$6,000
Jurisdictional agency determination reviews	25
Petitions for rate approval pursuant to § 284 123(b)(2)	2,000
All other initial or extension reports under title III	800
OGC interpretatios of the NGPA	1,200

The Commission will update its fees under Part 381 each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register**, after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months and costs from the preceding fiscal year. In this way, the fees will reflect, using the most current data available, the benefits to the recipients.

With regard to fees for Title III transactions, if an intrastate pipeline seeks to establish a new rate for six on-going transportation arrangements under § 284.123(b)(2), it would accompany that petition with a single $2,000 fee. In contrast, if the intrastate pipeline later seeks to extend the six transportation arrangements, a total of $4,800 (six times $800) is due. Note that the $800 fee is due for an initial full report or extension report irrespective of whether or not that transaction is subject to a § 284.123(b)(2) rate approval proceeding.

F. Exceptions to Full Cost Recovery

1. Reduction in Fee Amounts by Category

As outlined above, the Commission has established in this rule fees which include all the recoverable costs associated with the particular benefits and services provided. In doing so, the Commission has categorically reduced the fees for adjustments under the NGPA by approximately 65 percent, and requests for OGC interpretations by approximately 65 percent. The Commission recognizes that there may be other instances in the future where the Commission determines that full-cost recovery fees would have an adverse effect on applicants, or would undermine Commission activities. In such cases, the Commission may again exercise discretion to reduce fees to less than full-cost recovery in order to prevent a disproportionate economic impact or for other good cause. Good cause would include situations where the Commission wishes to encourage use of a service, where less Commission time is required than staff time, or where there is a reduction in the amount of time required to process a filing. Any new, future reduction in a fee would be initiated only by rulemaking. The same percentage of reduction would carry over to subsequent years unless further notice was given by the Commission that it was altering that reduction.

Some commenters argue that the standards for exceptions to full cost recovery are vague, and that the Commission should adopt regulations setting forth specific standards for waiver from full-cost recovery. The Commission believes that the standards enumerated above are sufficiently specific for parties to be apprised of the circumstances under which the Commission may reduce fees to less than full cost recovery. However, the Commission emphasizes that even where these standards may apply, a decision to reduce fees to less than their full cost for a class of applicants involves policy judgments as well as the Commission's expertise. Any categorical reductions in fee amounts will be done by rulemaking. If a rulemaking is developed, the Commission will take into account economic hardship to the class of applicants. This is as specific as is possible given the degree of flexibility the Commission needs in determining good cause for a categorial reduction. This is to be distinguished from a situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

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[20] Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

2. Case-by-Case Waiver Procedures

The Commission also realizes that a different situation could arise in which an individual applicant is unable to pay fees as set by the Commission due to severe economic hardship. The Commission recently promulgated a rule establishing the general procedures for case-by-case waiver determinations.[21] If an applicant is suffering from a period of severe economic hardship, the applicant will have the burden of presenting evidence to the Commission, such as a financial statement, showing that the applicant is either economically unable to pay the fee, or that if the applicant does pay the fee, it will place the applicant in a state of financial distress or emergency. The material must be included with the petition for waiver at the time of filing the application. The Commission, or its designee will analyze petitions for waiver to determine whether the standards for waiver have been met. The Commission will notify the applicant as to whether the petition for waiver has been denied or accepted.

G. Procedures for Paying Fees

The Commission's notice stated that fees must be submitted by certified check, made payable to the United States Treasury. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has already deleted the certified check requirement in establishing its general fee procedures (*see* 18 CFR 381.105). In all cases except for review of jurisdictional agency determinations, a check made payable to the United States Treasury must still be included with the filing or application unless a petition for waiver is submitted in lieu of the fee. The check must indicate for what the fee is being submitted, *e.g.*, request for adjustment under section 502(c). This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver, it will be considered deficient and will not be processed until remedied by the company.

Many commenters, including several jurisdictional agencies, strongly oppose the Commission's proposed procedure of using the jurisdictional agencies to collect the fees for well-category determinations on behalf of the Commission, for eventual forwarding to the Commission. The commenters raise three arguments: (1) The jurisdictional agencies would have to shoulder the additional costs of handling and accounting for the checks, (2) the extent of liability for the theft, loss, or embezzlement is unclear, and (3) the jurisdictional agencies do not have authority to make collections on behalf of the Federal government.

The Commission has decided that it will collect this fee directly from applicants through an annual billing procedure at the end of each calendar year. Under 18 CFR 274.104, the Commission receives a notice of determination from the jurisdictional agency. Following receipt of that notice, the Commission notifies the applicant that it has received the jurisdictional agency determination. At the end of each calendar year, the Commission will mail bills to each producer for all jurisdictional agency determinations received by the Commission in that year related to that producer's wells, beginning with jurisdictional agency determinations received by the Commission after the effective date of this rule. The producer will be required to submit the fee to the Commission within thirty days of the billing date.

Commenters complain of the Commission's decision to exclude the possibility of fee refunds. They argue that the Commission should include a provision in the final rule whereby an applicant could receive a refund if the application were rejected on grounds other than nonpayment of fees, or if the Commission did not respond within a reasonable amount of time.

The Commission's decision not to allow refunds is consistent with the policy behind the IOAA. The statute authorizes Goverment agencies to become self-sustaining to the fullest extent possible. To do so, the agency is to collect fees for services and benefits it provides. The Congress gave this Commission the duty of carrying out functions under the NGPA, the services for which involve reviewing each petition or application, not guaranteeing the issuance of an order or interpretation. The Commission reviews every petition, filing, or request. Some petitions and requests are accepted, some are not. The Commission's fees cover the time and cost of providing these services, as authorized by the IOAA. It does not necessarily cost the Commission any less when it rejects a petition or request. In addition, the Commission's decision not to allow refunds is consistent with its current policy of no refunds of fees under the NGA under Part 159 of the Commission's regulations.

H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time of processing filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. The figure is then multiplied by the average cost per work-month to arrive at the fee.

However, the Commission occasionally receives filings which are not average. These filings may be extensive in scope and present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. The standard fees established in this rule bear no reasonable relationship to the actual cost of processing extraordinary filings. Moreover, if the costs of processing extraordinary filings are included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. So, in the case of an extraordinary filings, the Commission reserves the option of ordering a direct billing procedure when the processing of the filing begins, or at any time up to one year after receiving a complete filing. While the Commission does not expect direct billings to be used often in the fee areas covered by this rule, it is necessary to allow the degree of flexibility.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing unless a lesser amount is determined to be fair and equitable. The staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. If the decision to bill a lesser amount is based upon the presence of intervenors in a proceeding, the Commission is retaining the discretion to determine whether some of the costs not directly billed to an applicant should instead be billed to the intervenors. Any decision to directly bill intervenors will be made on a case-by-case basis.

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[21] Final Rule, Fee Applicable to Producer Matters Under the Natural Gas Act, *supra* note 2.

Commenters state that the direct billing procedure is too vague. Commenters also object to the direct billing method because they claim that the complexity of a filing might result from the participation of intervenors and that intervenors should be assessed some of the fee. One commenter states that a proceeding may be complex because it contains public policy issues where the potential benefit to the applicant is secondary to that of the public. As noted above, the Commission agrees that it may be appropriate to allocate some of the costs to intervenors in direct billing situations and that this will be determined on a case-by-case basis.

Also, one commenter requests that an applicant be given an advance estimate of costs, especially since the Commission can prevent an applicant from withdrawing a filing. Finally, one commenter suggests that, in the case of unsuccessful staff contests of filings, there should be no direct billing of additional costs. Where there is a direct billing, the Commission will itemize, to the best degree of accuracy under the MIS, the costs involved in the direct billing. There is no way the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter in the filed application. Moreover, the Commission will credit an applicant whose filing becomes subject to direct billing with any fee paid under this fee system.

IV. Other Minor and Conforming Amendments

A number of minor and conforming amendments are necessary to implement the fees for services and benefits provided by the Commission under the NGPA.

This rule adds a requirement in 18 CFR 385.1104(a)(6) that the applicant must send to the Commission, along with an application for adjustment, the fee prescribed in Part 381 or a petition for waiver of the fee.

This rule adds a requirement in 18 CFR 385.1901(d)(6) that the requester must send to the Commission, along with a request for an interpretation, the fee prescribed in Part 381 or a petition for waiver of the fee.

As discussed earlier in Section III.G., *supra*, this rule adds a requirement to Subpart B of Part 274 (in § 274.201) that those producers seeking review of a jurisdictional agency determination must pay annually to the Commission the fee prescribed in Part 381 or submit a petition for waiver of the fee.

This rule adds a requirement in Part 284 (in §§ 284.106 and 284.126) that pipelines filing Title III transaction reports with the Commission are required to send with their filings the fee prescribed in part 381 or a petition for waiver of the fee. Conforming amendments in other sections of Part 284 have been made where necessary to add appropriate cross-references.

This rule makes conforming amendments in Part 375 to provide the appropriate delegations to Commission staff to implement the procedures for waiving or reducing the fees prescribed in Part 381.

V. Regulatory Flexibility Act Statement

When an agency promulgates a final rule under the Administrative Procedure Act (APA), 5 U.S.C. 553, after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980, Section 3, 5 U.S.C. 601–612 (1982). Each final regulatory flexibility analysis must contain (1) a statement of need for, objectives of, and legal basis for the rule, (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A–25.

This rule affects natural gas producers, natural gas pipelines, and industrial end-users of natural gas subject to incremental pricing. There are approximately 10,000 natural gas producers, 300 pipelines, and 1,500 industrial end-users subject to incremental pricing in the United States.

Application for well-category determinations are received almost entirely from producers. Of the 10,000 producers in the United States, a substantial majority will eventually require well-category determinations.

During the course of implementing the NGPA section 502(c) adjustment procedures, the Commission has received approximately 300 applications. Slightly more than 50 percent of those requests come from producers pursuant to Title I. Approximately a third are received from pipelines seeking either an adjustment from the Title III regulations or an adjustment from curtailment priority regulations under Title I. Less than 15 percent come from incrementally-priced end-users pursuant to Title II of the NGPA.

Approximately 400 applications for interpretations have been received. Most of those requests have been received from producers and pipelines seeking interpretations of Title I of the NGPA.

Initial and extension reports for transportation transactions are filed by pipelines. Approximately 100 pipelines have participated in such transactions under Title III of the Act.

The Small Business Administration's (SBA) regulations do not establish specific size standards for gas pipelines or producers.[22] Most pipelines, especially interstate pipelines, are large businesses and few of the pipelines subject to Title IV curtailment priorities or engaging in Title III transactions would be small.

The industrial end-users subject to incremental pricing are large users of natural gas. A few of these large users may qualify as small businesses; however, the Commission does not believe they would represent a substantial number based on a sample review of the filings received to date.

While the SBA has not established size standards for producers, a significant proportion of this country's 10,000 natural gas producers would probably be classified as small businesses. Therefore, this rule may have some degree of economic impact on a number of small producers. However, the Commission does not believe that this impact will be significant for a substantial number of these small producers. The fees established in this final rule for well-category determination are much lower than the fees proposed in the notice of proposed rulemaking, and are so minimal ($25 per application) that the Commission does not believe that they will impose a significant economic burden on any natural gas producer, no matter how small.

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[22] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concerns" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

With regard to the fees for requests for adjustments and requests for interpretations, the Commission has categorically reduced these fees by approximately sixty-five percent. The Commission has also previously adopted rules (18 CFR 381.106) providing for a waiver of fees for an individual applicant where such applicant can show economic hardship. These reductions and waiver provisions should prevent these fees from causing severe economic hardship to a producer, or to any other small entity subject to the fees. In this regard, it is important to note that the Commission is also required to satisfy the IOAA's statutory directive to be "self-sustaining to the full extent possible." Hence, there is no blanket exemption for small entities. The Commission believes the rule as now promulgated represents a fair balance between the purposes of both the IOAA and the Regulatory Flexibility Act.

VI. Effective Date

The amendments made by this final rule will be effective on October 9, 1984.

List of Subjects

18 CFR Part 157

Natural gas.

18 CFR Part 274

Natural gas, Wage and price controls.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

General fees.

18 CFR Part 385

Administrative procedures and practice.

In consideration of the foregoing, the Commission amends Parts 157, 274, 284, 375, 381, and 385 of Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,
Secretary.

PART 157—[AMENDED]

1. Part 157 is amended as follows:

a. The authority citation for 18 CFR Part 157, Subpart F reads as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1978) unless otherwise noted.

b. A new paragraph (d)(3) is added to § 157.209 to read as follows:

§ 157.209 Transportation.

* * * * *

(d) *Special conditions.*

* * * * *

(3) Each initial report required by paragraph (g)(1) of this section must be accompanied by the fee set forth in § 381.404 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

PART 274—[AMENDED]

2. Part 274 is amended as follows:

a. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

b. In § 274.201, a new paragraph (e) is added to read as follows:

§ 274.201 General requirements.

* * * * *

(e) *Filing fees.* Each applicant must pay the fee prescribed in § 381.402 of this chapter. The applicant will be billed annually by the Commission for each jurisdictional agency determination received by the Commission. The applicant shall submit the fee, or petition for waiver pursuant to § 381.106, within 30 days following the billing date.

PART 284—[AMENDED]

3. Part 284 is amended as follows:

a. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12009, 3 CFR 142 (1978).

b. In § 284.105, paragraphs (a) and (b) are revised to read as follows:

§ 284.105 Extensions.

(a) *General rule.* An interstate pipeline seeking to extend a transportation arrangement (1) initially authorized under § 284.102(a), (2) subsequently extended under this section, or (3) extended for an additional two-year term under § 284.107 shall file an extension report as required in a § 284.106 (c) and (e).

(b) *Approval.* If an extension report as required in § 284.106 (c) and (e) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, and after opportunity for written comments, determines, by order, that the proposed extension is not authorized. If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

* * * * *

c. In § 284.106, a new paragraph (e) is added to read as follows:

§ 284.106 Reporting requirements.

* * * * *

(e) *Filing fees.* Each initial full report required by paragraph (a) of this section and each extension report required by paragraph (c) of this section must be accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

d. In § 284.123, paragraph (b)(2)(i) is revised to read as follows:

§ 284.123 Rates and charges.

* * * * *

(b) * * *

(2)(i) If an intrastate pipeline does not choose to make any election under paragraph (b)(1) of this section, it shall apply for Commission approval, by order, of the proposed rates and charges by filing with the Commission the proposed rates and charges, and information showing the proposed rates and charges are fair and equitable. Each petition for approval filed under this paragraph must be accompanied by the fee set forth in § 381.403 or by a petition for waiver pursuant to § 384.106 of this chapter. Upon filing the petition for approval, the intrastate pipeline may commence the transportation service and charge and collect the proposed rate, subject to refund.

* * * * *

e. In § 284.125, paragraph (a) is revised to read as follows:

§ 274.125 Extensions.

(a) *General rule.* An intrastate pipeline seeking to extend a transportation arrangement (1) initially authorized under § 274.122(a), (2) subsequently extended under this section, or (3) extended for an additional two year term under § 284.127 shall file an extension report as required in § 284.126(c) and (e).

* * * * *

f. In § 284.126, a new paragraph (e) is added to read as follows:

§ 284.126 Reporting requirements.

* * * * *

(e) *Filing fees.* Each initial report required by paragraph (a) of this section and each extension report required by paragraph (c) of this section must be accompanied by the fee set forth in § 381.404 of this chapter, or a petition for waiver pursuant to § 381.106 of this chapter.

g. In § 284.148, a new paragraph (e) is added to read as follows:

§ 284.148 Reporting requirements.

* * * * *

(e) *Filing fees.* Each initial report required by paragraph (a) of this section and each extension report required by paragraph (c) of this section must be accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

h. In § 284.163, a new paragraph (d) is added to read as follows:

§ 284.163 Special rule.

* * * * *

(d) *Filing Fees.* The reports required under §§ 284.4(b) and 284.165(d) are accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

PART 375—[AMENDED]

4. Part 375 is amended as follows:

a. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

b. In § 375.307, paragraph (u) is revised to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(u) Deny or accept, in whole or in part, petitions for waivers of the fees prescribed in §§ 381.201, 381.202, 381.203, 381.204, 381.205, 381.206, 381.401, 381.402, 381.403, and 381.404 of this chapter in accordance with § 381.106(b) of this chapter.

c. In § 375.309, a new paragraph (e) is added to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(e) Deny or accept, in whole or in part, petitions for waivers of the fees prescribed in § 381.405 in accordance with § 381.106 of this chapter.

PART 381—[AMENDED]

5. Part 381 is amended as follows:

a. The authority citation for Part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

b. In § 381.103, paragraph (a) is revised to read as follows:

§ 381.103 Filings.

(a) *Submittal of fees.* Except as provided in §§ 274.201(e) and 381.106, a fee in the amount set forth in this part shall accompany each filing for which a fee has been established.

* * * * *

c. A new Subpart D is added to read as follows:

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

Sec.
381.401 Adjustments.
381.402 Review of jurisdictional agency determinations.
381.403 Petitions for rate approval pursuant to section 284.123(b)(2).
381.404 Initial or extension reports for Title III transactions.
381.405 Interpretations by the Office of the General Counsel.

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

§ 381.401 Adjustments.

The fee established for an application for adjustment under section 502(c) of the NGPA, including a request for exemption from incremental pricing under section 206(d) of the NGPA, is $6,000. Such fee must be submitted in accordance with Subpart A of this part and § 385.1104.

§ 381.402 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is $25. Such fee must be submitted in accordance with Subpart A of this part and § 274.201(e).

§ 381.403 Petitions for rate approval pursuant to § 284.123(b)(2).

The fee established for a petition for rate approval pursuant to § 284.123(b)(2) is $2,000. Such fee must be submitted in accordance with Subpart A of this part and § 284.123(b)(2).

§ 381.404 Initial or extension reports for Title III transactions.

The fee established for an initial or extension report is $800. Such fee must be submitted in accordance with Subpart A of this part and §§ 157.209(d), 284.105(a), 284.106(e), 284.126(e), 284.148(e), and 284.165(d).

§ 381.405 Interpretations by the Office of the General Counsel.

The fee established for an OGC interpretation of the NGPA is $1,200. Such fee must be submitted in accordance with Subpart A of this part and § 385.1901.

PART 385—[AMENDED]

6. Part 385 is amended as follows:

a. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1970); Natural Gas Act, 15 U.S.C. 717–717z (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

b. In § 385.1104, a new paragraph (a)(6) is added to read as follows:

§ 385.1104 Initial petition (Rule 1104).

(a) * * *

(6) The petition must be accompanied by the fee prescribed in § 381.401 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

c. In § 385.1901, a new paragraph (d)(6) is added to read as follows:

§ 385.1901 Interpretations and interpretative rules under the NGPA (Rule 1901).

* * * * *

(d) * * *

(6) The request must be accompanied by the fee prescribed in § 381.405 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

[FR Doc. 84-23570 Filed 9-6-84; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 79N-0371]

GRAS Status of Lactic Acid and Calcium Lactate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that lactic acid and calcium lactate are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective October 9, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1061 and 184.1207 effective on October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1980 (45 FR 32324), FDA published a proposal to affirm that lactic acid and calcium lactate are GRAS for use as direct human food ingredients. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

Subsequently, the agency published in the **Federal Register** of February 25, 1983 (48 FR 8086), a tentative final rule that omitted the listing of the use levels and food categories that appeared in the proposal. The tentative final rule also modified the specifications paragraph of the regulation on each substance to reference the third edition of the Food Chemicals Codex (1981). The agency made these modifications in an effort to make these regulations consistent with a proposal that the agency had issued on September 7, 1982 (47 FR 39199), to include conditions of use for substances affirmed as GRAS under 21 CFR 184.1(b)(1) only when appropriate. (FDA finalized this rule on Oct. 19, 1983 (48 FR 48457).)

The agency also modified the proposed regulations to include a method for synthesizing lactic acid in § 184.1061(a) and to include calcium hydroxide in § 184.1207(a) as a substance that could be used in the production of calcium lactate. FDA made these modifications in response to comments on the proposed rule.

In the preamble to the tentative final rule, FDA stated that it would review any comments it received within the 60-day comment period that were relevant to the omission of the use levels and food categories. The agency did not receive any comments on these issues, but it did receive two comments that addressed other issues.

1. The tentative final rule excluded the use of calcium lactate and lactic acid in infant foods and infant formulas from the uses of these ingredients that the agency proposed to affirm as GRAS. One comment requested that FDA exclude only the use of the DL and D forms of lactic acid and calcium lactate in infant foods and infant formulas from GRAS affirmation. The comment cited opinions of both the Select Committee on GRAS Substances (the Select Committee) of the Federation of American Societies for Experimental Biology and the 10th, 17th, and 18th meetings of the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Expert Committee on Food Additives in support of its claim that use of the L-isomers of these ingredients should not be restricted on the basis of safety. The comment stated that the L-isomers of these ingredients are used in Europe in infant milk products of the acid-tasting type and reported that they are used in the United States as well.

FDA agrees that neither the Select Committee report on lactic acid and calcium lactate nor the FAO reports cited in the comment present evidence that L-lactic acid or L-calcium lactate produce toxic effects in infants. The agency also is not aware of any evidence that would raise questions about the safety of these substances for consumption by infants. Nevertheless, the agency believes that adequate evidence does not exist to affirm as GRAS the general use of these ingredients in infant foods and infant formulas. Neither the comment nor the Select Committee report contained information or safety data on the general use of these ingredients in infant foods and formulas. On the contrary, the Select Committee reported that it was not aware of any use of these ingredients in infant formulas except in products designed for special dietary or therapeutic purposes, and it did not evaluate these specialty uses. Moreover, in both Europe and the United States, the only current uses of these ingredients in infant formulas are in specialty products. Thus, no evidence exists that these ingredients are in common use in infant formulas. Based on this fact and on the current lack of safety data on the use of the L-isomers in infant foods, FDA has concluded that an appropriate basis on which to affirm that the general use of these ingredients in infant formulas and infant foods in GRAS does not exist. As the agency pointed out in the proposal on lactic acid and calcium lactate, published in the **Federal Register** of May 16, 1980, the reported use of these substances in acidified infant products in Europe and in special dietary and therapeutic infant products in the United States are outside the scope of the GRAS review. Therefore, FDA has not modified the tentative final rule in response to this comment.

2. One comment noted an error in the description of the chemical synthesis of lactic acid that appeared in the preamble to the tentative final rule (48 FR 8087). The comment noted that lactic acid may be synthesized by a process involving reaction of acetaldehyde and hydrogen cyanide, but that it is not prepared with acetonitrile and hydrogen cyanide as described in the preamble.

The agency agrees with the comment that the description of this process in the preamble was incorrect. However, the agency finds that the description of the process in paragraph (a) of § 184.1061 in the tentative final rule was correct. Therefore, the agency has not modified the tentative final rule in response to this comment.

FDA has made a minor editorial change in the regulation on lactic acid.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed Dec. 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economnic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.1061 [Removed]

1. In Part 182:

a. By removing § 182.1061 *Lactic acid.*

§ 182.1207 [Removed]

b. By removing § 182.1207 *Calcium lactate.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In Part 184:

a. By adding new § 184.1061 to read as follows:

§ 184.1061 Lactic acid.

(a) Lactic acid ($C_3H_6O_3$, CAS Reg. Nos.: DL mixture, 598-82-3; L-isomer, 79-33-4; D-isomer, 10326-41-7), the chemical 2-hydroxypropanoic acid, occurs naturally in several foods. It is produced commercially either by fermentation of carbohydrates such as glucose, sucrose, or lactose, or by a procedure involving formation of lactonitrile from acetaldehyde and hydrogen cyanide and subsequent hydrolysis to lactic acid.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 159, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an antimicrobial agent as defined in § 170.3(o)(2) of this chapter; a curing and pickling agent as defined in § 170.3(o)(5) of this chapter; a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter; a pH control agent as defined in § 170.3(o)(23) of this chapter; and a solvent and vehicle as defined in § 170.3(o)(27) of this chapter.

(2) The ingredient is used in food, except in infant foods and infant formulas, at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1207 to read as follows:

§ 184.1207 Calcium lactate.

(a) Calcium lactate ($C_6H_{10}CaO_6.xH_2O$), where x is any integer up to 5, CAS Reg. No. 814-80-2) is prepared commercially by the neutralization of lactic acid with calcium carbonate or calcium hydroxide.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 53, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a firming agent as defined in § 170.3(o)(10) of this chapter; a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent or adjuvant as defined in § 170.3(o)(12) of this chapter; a leavening agent as defined in § 170.3(o)(17) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a stabilizer and thickener as defined in § 170.3(o)(28) of this chapter.

(2) The ingredient is used in food, except in infant foods and infant formulas, at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective October 9, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: August 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-84-1030; FR-1612]

Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the regulations governing the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. Some revisions have been made to the previously published interim rule by this final rule. These revisions are intended to continue efforts to simplify the regulations' text and the application process.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marcia A.B. Brown, 7134, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6092 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This final rule was published as an interim rule in the **Federal Register** of March 18, 1983 (48 FR 11648). The interim rule became effective on March 18, 1983, and invited public comments for a sixty-day period ending May 17, 1983. The publication of an interim rule after publication of a proposed rule (47 FR 55868) followed by the publication of an interim rule on December 13, 1982 (48 FR 55868) was to allow a more lengthy public comment period.

Public Comment

Three public comments were received on the interim rule. The first comment discussed three concerns. First was the concern that the Department was sharply reducing the consultation requirement. The commenter states that "consultation is no longer required for program or policy changes, or changes in the regulations generally." The Department disagrees with the commenter's conclusion, for the following reasons. The entire regulation process, which begins with oral or written discussions with constituents to be affected, requires that constituents' views on policy changes be gathered throughout the process. The Department continues to solicit and welcome the views of the public, and Indian Tribes in particular, before making changes, as is evident in this instance from the publication of a predecessor proposed rule (47 FR 55868) followed by the publication of an interim rule (48 FR 11648), both of which invited public comment. In addition, the Department earlier held discussions with advocates of issues that required policy changes. Accordingly, this rule's reference to the consultation process for the annual competition for funds should not be read as negating the Department's policy of consulting with affected parties before rulemaking.

The second part of this comment recommended a noncompetitive distribution of funds. The commenter states that noncompetitive distribution has apparently worked in some regions satisfactorily, and that where there is a consensus among the Tribes for such a distribution, it should be permitted. The Department knows of no instance in which a noncompetitive distribution was used. There has been one instance in one region where all the Tribes that *applied* for funds and met the threshold requirements received funding. This is considerably different from a noncompetitive distribution, which would mean that all Tribes eligible in a region, irrespective of their capabilities, would be funded. The Department rejects the recommendation because in no one region administering the program are there sufficient funds for all eligible Tribes. Moreover, the best way to ensure an equitable allocation of funds among applicants with the capacity to perform adequately is a competitive program.

The last part of the comment suggested that § 571.703 be eliminated, or that the procedural protections of § 571.704 be incorporated into it. The commenter's concern that the reduction or withdrawal provisions of § 571.703 will apply to any deficiency of performance fails to consider that § 571.703 will not be used "until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and then only if the recipient has not made an appropriate and timely response." § 571.703(a). It is not the intent under § 571.703 that a grant would be unilaterally withdrawn or reduced for minor performance problems without first exhausting all other possible remedies through cooperative effort. However, the sanctions under § 571.704 will only be invoked for more serious violations under the Housing and Community Development Act of 1974.

The second comment had no specific recommendations. Essentially, the comment expressed support for the Indian CDBG Program and appreciation for past assistance.

The last comment raised several concerns. The first addressed the revision in § 571.5, which sets the date by which a tribe must establish eligibility (as an Indian tribe under applicable law and regulations) before the tribe can qualify to apply for funding. The date was formerly 90 days before the beginning of the fiscal year (or July 1). The commenter prefers the July 1 eligibility date rather than an eligibility date of March 21—the former application submission date in the commenter's jurisdiction.

The Department rejects this comment. Neither date is applicable under the relevant section—§ 571.5. Under this section, to qualify for funding an applicant must be eligible as an Indian tribe not by 90 days before the fiscal year (the date fixed under the former regulations), but by the application submission date. The application submission date will vary from region to region, but in all cases will fall after October 1—the start of the fiscal year.

A further reason for the Department's rejection of this comment is that when the eligibility date was set as July 1 (i.e., 90 days before the start of the fiscal year), those tribes that were not eligible (i.e., not yet legally considered an Indian tribe) by that date could not qualify for funding in the immediately following fiscal year, but had to wait until the next following fiscal year. Under this rule, however, these Tribes may have a better chance of becoming eligible, and thus qualify to apply for funding by a much earlier date.

The second part of this comment asserted, in referring to § 571.302, that the determination of managerial, technical, and administrative capability is subjective when made by an outside agency. The comment argued that the Tribe has the capability of determining deficiencies in these areas that it may later report to HUD. The Department does not think that as a matter of policy it is prudent to award a grant and then assess the capacity of a tribe to undertake the grant. This determination must be made before the grant is awarded. Moreover, the Department's view is that under § 571.302 the process is sufficiently insulated from nonobjective considerations to ensure that all applicants are treated fairly.

The third part of the comment commended the Department for reducing administrative red tape through the simplification of the citizen participation requirements.

Another concern mentioned in this comment was that a distinction should be made between *needs* and *population size* in determining funding. The commenter expressed a preference for needs, rather than for population size, as a basis for determining priority in funding. Both the number and the percentage of persons in poverty and unemployment are used in the rating process. This method will minimize the incidence of those Tribes with the largest populations receiving the highest number of points solely for that reason.

The final comment objected to holding a Tribe responsible for an Indian Housing Authority's (IHA) performance even though that authority is responsible for its own actions. The Department does not intend to hold the applicant responsible for the actions of its IHA. Rather, the intent is to hold the applicant responsible for compliance with its own resolution of support for the IHA, which is required by 24 CFR Part 905 (formerly Part 805). (See Article VIII of the Model Tribal Ordinance, published at 24 CFR Part 905, Subpart A, Appendix I.)

Revisions to the Regulations

Some nonsubstantive changes were made to these regulations to improve its clarity and to correct omissions.

Subpart A—General Provisions

In § 571.2, language has been added to make the program objective of the CDBG Program consistent with the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983 (1983 Act). The 1983 Act amended the primary objective of the Housing and Community Development Act of 1974 to make clear that each grantee's program must have the same objective as the CDBG Program.

Section 571.3, which describes the nature of the program, now emphasizes that, in addition to having the administrative capacity to undertake the proposed community development activities, grantees must have systems of internal control to prevent fraud, waste, and mismanagement.

In § 571.4, the definition of "low- and moderate-income families/persons" has been modified to be consistent with changes required by section 102(c) of the 1983 Act. The new definition substitutes the word household for family. The terms are now defined in two separate paragraphs, § 571.4 (h) and (i), resulting in a redesignation of the existing paragraphs.

Section 571.4(m) is reproduced here in the identical language in which it was published in the final rule issued on May 7, 1984 at 49 FR 19302.

Section 571.6(a) has been revised to further clarify the subject matter areas of field office proposals on which applicants will have an opportunity to comment during the annual consultation.

"Or" has been changed to "and" in § 571.7, to be consistent with a similar provision in 24 CFR Part 570 governing the other CDBG programs.

Subpart B—Allocation of Funds

Section 571.101 reflects changes already implemented in the final rule separately published on May 7, 1984 (49 FR 19300). It is republished in this rule without change.

Subpart C—Eligible Activities

In § 571.203, a definition of technical assistance has been added.

Subpart D—Single Purpose Grant Application and Selection Process

Language has been added to § 571.300(a) to clarify that applicants should submit only one application, which may include several projects, each of which will be rated separately.

Paragraph f(4) in § 571.300 clarifies that the resolution to be submitted in the application certifying that the citizen participation requirements have been met must be "an official tribal resolution," meaning it must be properly numbered, signed, and dated.

New paragraphs (e) and (g) have been added to § 571.302, with the old paragraph (e) being redesignated as paragraph (f). The new paragraph (e) makes it clear that applicants shall have the opportunity to review the documentation pertaining to each fiscal year's competition for a period of time to be set by the Field Office (which can not be less than 30 days). Paragraph (g) provides that different criteria may govern the selection of projects to be funded from monies set aside by statute for a specific purpose.

Section 571.304 has been reworded to simplify the program amendment process. Amendments of $10,000 or more must address the rating factors of the last rating cycle, since these amendments will be rated as part of the approval process. Amendments of less than $10,000 need not address the rating factors. In approving these latter amendments, HUD Field Offices will examine grantees' capability and compliance with citizen participation and environmental requirements. Amendments of either size that address imminent threats to health and safety will be reviewed and approved in accordance with Subpart E—Imminent Threat Grants.

Paragraph (c) has been added to § 571.304 to give notice that if a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for the amendment must be returned to HUD.

Subpart F—Grant Administration

Section 571.500 has been revised to indicate that the reference to 24 CFR Part 570, Subpart J—Grant Administration does not require Indian CDBG grantees to conform to requirements that are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs.

Section 571.503 contains several revisions to the Indian preference requirements to clarify that grantees, to the greatest extent feasible, shall give preference to Indian bidders when awarding contracts. The first revision is the addition of language of § 571.503(d)(1) which clarifies that the grantee must select one of three methods described in paragraphs (i) to (iii). If the selected method produces fewer than two qualified statements of intent, bids, or proposals submitted by Indian organizations, the grantee cannot award the contract, but must choose one of three options. The first option is to rebid the contract, using one of the Indian preference methods described in § 571.503(d)(1). The interim rule did not make clear that the methods of awarding Indian preference could be reused. This rule corrects that ambiguity. A grantee may select the rebid option because it knows that qualified Indian bidders are available, but circumstances may have prevented their bidding the first time, resulting in fewer than two Indian bids.

The second option is to use the open competition method of the new paragraph (d)(2) (formerly paragraph (iv) in § 571.503(d)(1) of the interim rule). This method does not provide Indian preference. By selecting this method, a grantee would have determined that Indian preference is not feasible even after providing for Indian preference in accordance with § 571.503(d)(1) i.e., no qualified Indian bidder(s) responded, or the bid(s) received from the Indian organization(s) responding was not approvable under this rule.

In the case of a grantee that receives only one Indian bid, the grantee may use a third option of awarding the contract to the single bidder, provided the grantee first submits the proposed contract and related procurement documents to the Field Office for review and approval. This provision, which is contained in OMB Circular A-102, has been added to this final rule to clarify that HUD did not intend that grantees incur additional expense to rebid a contract, when one approvable Indian bid had previously been received.

Former paragraph (2) of § 571.503(d) has been redesignated as paragraph (4) in order to add a new paragraph (3) that clarifies that the formal bid procedures of paragraph (1) or (2) do not apply to procurements of $10,000 or less. Procurements of this size are governed by the small purchase procedures of Attachment O of OMB Circular A-102. To the greatest extent feasible, small purchase procurement shall provide for Indian preference.

Redesignated paragraph (4) adds language which indicates that preferences shall be announced in the advertisement and bidding solicitation, as well as in the bidding documents.

Subpart G—Other Program Requirements

Section 571.600 has been rewritten specifically to reference the sections in 24 CFR Part 570, Subpart K—Other

Program Requirements—that apply to grantees under Part 571.

Paragraph (a) of § 571.603 has been rewritten to clarify that Section 110 (Labor Standards) of the Housing and Community Development Act of 1974 (Act) has been waived with respect to 24 CFR Part 571, including the Davis-Bacon wage requirement.

Paragraph (b) of § 571.603 has been deleted. With the waiver of Section 110 of the Act (Labor Standards) for Indian CDBG projects, the requirements of the Contract Work Hours and Safety Standards Act (Contract Work Hours), 40 U.S.C. 327–333, are not applicable on their own terms. Since the application of Contract Work Hours is not required by law, the Department believes it should not be administratively imposed. Former paragraph (c) of § 571.603 is now redesignated as paragraph (b).

Section 571.604(b) adds language to ensure that applicants know that an official tribal resolution is required to show that citizen participation requirements have been met.

Subpart H—Program Performance

In section 571.700, the status report requirement described in paragraph (c) has been shortened. Grant recipients no longer have to report on the status of environmental assessments and environmental impact statements that they have prepared, since this information is available to Field Offices from other sources.

Section 571.702 has new language added to clarify what is intended by two corrective actions specified in paragraph (b). The first action now requires the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this Part. The second action has been clarified to require that the letter of warning to a recipient describe the corrective actions to be taken. This letter of warning can address housing assistance deficiencies as well as other deficiencies.

Section 571.703(b) has been revised by the deletion of the phrase "or deducted from future grants" in the last sentence. Inclusion of this phrase was an oversight, since it applies strictly to the Entitlement Cities CDBG Program.

Other Information

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule will simplify and reduce the requirements for applicants and grantees. Additionally, in making grants the program provides ample funds to cover those expenditures related to the administrative costs of the program.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Finding of No Significant Impact with respect to the environment, made in conjunction with the Interim Rule published March 17, 1983, remains applicable, and is in no way altered by this rule. It was made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule is listed at 49 FR 15949 as RIN:2506–AA09 (CPD–18–79, FR–1612) in the Department's Semiannual Agenda of Regulations published on April 19, 1984 under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance number is 14.223.

Information collection requirements contained in these regulations (§§ 571.300, 571.303, 571.502, and 571.700) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2506–0043.

List of Subjects in 24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

Accordingly, 24 CFR Part 571 is revised to read as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Subpart A—General Provisions

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571.6 Consultations.
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Subpart B—Allocation of Funds

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571.400 Criteria for funding.
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571.402 Environmental review.
571.403 Availability of funds.

Subpart F—Grant Administration

571.500 General.
571.501 Designation of public agency.
571.502 Force account construction.
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Subpart G—Other Program Requirements

571.600 General.
571.601 Nondiscrimination.
571.602 Relocation and acquisition.
571.603 Labor standards.
571.604 Citizen participation.
571.605 Environment.
571.606 Housing assistance.

Subpart H—Program Performance

571.700 Reports to be submitted by grantee.
571.701 Review of recipient's performance.
571.702 Corrective and remedial actions.
571.703 Reduction or withdrawal of grant.
571.704 Other remedies for noncompliance.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 571.1 Applicability and scope.

The policies and procedures described in this Part apply only to grants to eligible Indian Tribes and Alaskan Native Villages under the Community Development Block Grant (CDBG)

Program for Indian Tribes and Alaskan Natives Villages.

§ 571.2 Program objectives.

The primary objective of the Indian CDBG Program and of the community development program of each grantee covered under this Act is the development of viable Indian and Alaskan Native communities, including decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income. The Federal assistance provided in this Part is for the support of community development activities which further this objective. This assistance is not to be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of this assistance.

§ 571.3 Nature of program.

The Indian CDBG Program is competitive in nature. The demand for funds far exceeds the amount of funds available. Therefore, selection of eligible applicants for funding will reflect consideration of relative need among applicants, and relative adequacy of applications in addressing locally-determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 571.4 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.).

(b) "Chief executive officer" means the elected official or legally-designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe or Alaskan Native Village.

(c) "Eligible Indian populations" means the most accurate and uniform population data available from reliable sources for Indian Tribes and Alaskan Native Villages eligible under this Part.

(d) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

(e) "Field offices" means the HUD Offices of Indian Programs or Field Office having responsibility for the Indian CDBG Program.

(f) "HUD" means the Department of Housing and Urban Development.

(g) "Identified service area" means (1) a geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a service area; (2) the BIA service area, including residents of areas outside the geographical jurisdiction of the Tribe; or (3) the entire area under the jurisdiction of a Tribe which has a population of members under 10,000.

(h) "Low and moderate-income household" or "lower income household" means a household whose income does not exceed 80 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(i) "Low and moderate income person" or "lower income person" means a member of a family having a family income within the limits determined in accordance with paragraph (h) of this section or any unrelated individual whose income does not exceed the one-person limit determined in accordance with paragraph (h).

(j) "Secretary" means the Secretary of HUD.

(k) "Tribal Government," "Tribal governing body" or "Tribal Council" means the recognized governing body of an Indian Tribe or Alaskan Native Village.

(l) "Tribal resolution" means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to Tribal practices will be acceptable.

(m) "Extent of overcrowded housing" means the number of housing units with 1.01 or more persons per room based on data compiled and published by the United States Bureau of the Census available from the latest census referrable to the same point or period of time.

(n) "Unemployment" means the number of persons 16 years old and over who are out of work, but are willing and able to work.

§ 571.5 Eligible applicants.

(a) Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 will be determined by the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan Native Village eligible under that Act for funds under this Part when one or more of these entities have authorized the tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year an applicant must be eligible as an Indian tribe or Alaskan Native Village, as provided in paragraph (a) of this section, or as a tribal organization, as provided in paragraph (b) of this section by the application submission date.

§ 571.6 Consultations.

On an annual basis, written or oral consultations will be held with eligible applicants by each Field Office, for these purposes:

(a) To allow eligible applicants an opportunity to comment on Field Office proposals affecting that fiscal year's rating process, including the determination of grant ceilings, competitions by tribal size, and definitions of rating factors;

(b) To provide eligible applicants with information on how to apply for funds and how grants will be selected and awarded; and

(c) To inform eligible applicants of changes in the program.

§ 571.7 Waivers.

The Secretary may waive any requirement of this Part not required by law whenever it is determined that undue hardship will result from applying the requirement, and where application of the requirement would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 571.100 General.

(a) Types of grants. Two types of grants are available under the Indian CDBG Program.

(1) *Single Purpose grants* provide funds for one or more single purpose projects each consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent Threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a Field Office determines that such conditions exist and if funds are available for such grants.

(b) Size of Grants.

(1) *Ceilings.* Each Field Office may establish grant ceilings for Single Purpose and Imminent Threat Grant applications

(2) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, the Field Office may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, and the administrative capacity of the applicant to complete the activities in a timely manner.

§ 571.101 Regional allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the Field Offices responsible for the program on the following basis:

(1) Each Field Office will be allocated $500,000 as a base amount, to which will be added a formula share of the balance of the Indian CDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated will be allocated to each Field Office based on the most recent data available from reliable sources referrable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each Field Office's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each Field Office's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each Field Office's share of the total extent of overcrowded housing among the eligible Indian population.

(b) If funds are set aside by statute for a specific purpose in any fiscal year, the formula in paragraph (a) of this section will apply unless otherwise specified in the law, or unless it is determined that the formula is inappropriate to accomplish the purpose, in which case other criteria may be established by the Secretary in determining an allocation formula to be used to distribute funds to the Field Offices.

(c) Data used for the allocation of funds will be based upon the eligible Indian population of those Tribes and Villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

Subpart C—Eligible Activities

§ 571.200 General.

The eligibility requirements of Part 570, Subpart C of this title—Eligible Activities—apply to grants under this part except for those provisions which are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.201 Facilities.

(a) Neighborhood facilities are synonomous with tribal or village facilities.

(b) Fire protection facilities, solid waste disposal facilities and parking facilities defined in 24 CFR 570, Subpart C must be located in or serve identified service areas.

§ 571.202 Non-profit organizations.

Tribal-based non-profit organizations replace neighborhood-based non-profit organizations under 24 CFR Part 570, Subpart C. A Tribal-based Non-profit Organization is an association or corporation duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

§ 571.203 Administrative costs.

(a) For purposes of this Part, technical assistance costs associated with the development of a capacity to undertake a specific funded program activity are not considered administrative costs. Therefore, these costs are not included in the twenty percent limitation on planning and administration stated in Part 570, Subpart C.

(b) Technical assistance costs cannot exceed ten percent of the total grant award.

(c) Technical assistance is defined as the transfer of skills and knowledge in planning, developing, and administering the CDBG program to eligible Indian CDBG recipients who need them in order to undertake a specific funded program activity.

Subpart D—Single Purpose Grant Application and Selection Process

§ 571.300 Application requirements.

(a) *General.* Applications are required for assistance under this Part. An applicant shall submit only one application, which may include any number of eligible projects. Single Purpose grant applications will have each project rated separately. Applications shall include projects which can be completed within a reasonable period of time, generally not more than two years.

(b) *Submission dates.* Each Field Office will establish deadlines for the submission of applications. Submission dates will be published by HUD as a notice in the **Federal Register**.

(c) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations when applicable.

(d) *Costs incurred by applicant.* (1) Notwithstanding any provision in Part 570 of this title, HUD will not reimburse or recognize any costs incurred before submission of the Single Purpose grant application to HUD.

(2) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances the Field Office may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue or unreasonable hardship on the applicant. Such authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in

accordance with 24 CFR 58.22, and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(e) *Publication of community development statement.* Applicants for Single Purpose grants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 571.604.

(f) *Application components.* Applicants for Single Purpose grants shall submit an application to the appropriate Field Office in a form prescribed by HUD. Components of the application shall include the following:

(1) Standard form 424;

(2) Community development statement, which includes:

(i) Brief description of community development needs;

(ii) Brief description of proposed projects to address needs, including scope, magnitude, and method of implementing project; and

(iii) Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share, and amount of other funds by source.

(3) Map showing project location, if appropriate; and

(4) Certification in the form of an official tribal resolution that citizen participation requirements of § 571.604 have been met.

(Approved by the Office of Management and Budget under OMB control number 2506-0043)

§ 571.301 Screening and review of applications.

(a) *Criteria for acceptance.* Applications for Single Purpose grants will be initially screened by each Field Office and accepted if:

(1) They have been received or postmarked on or before the submission date;

(2) The applicant is eligible;

(3) The proposed activities are eligible; and

(4) They contain substantially all the components specified in § 571.300(f). Applications failing this initial screening shall be rejected and returned to the applicants unrated.

(b) *Demographic data.* HUD will review and accept demographic data provided by an applicant if in HUD's determination the data are of the quality described in § 571.300(c). Where demographic data provided by an applicant are unacceptable, HUD will use the best available data at HUD's disposal.

(c) *Grant ceiling.* Where Field Offices have established grant ceilings, applications will be reviewed for compliance.

§ 571.302 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests of § 571.301 to be rated and ranked, Field Offices must determine that the following threshold requirements have been met:

(1) *Community development need and appropriateness:*

(i) The applicant's project(s) directly impacts on its community development needs;

(ii) The costs are reasonable;

(iii) The project(s) is appropriate for the intended use; and

(iv) The project(s) is usable or achievable generally within a two year period. If available data, in the judgment of the Field Office, indicate that the proposed project(s) is inconsistent with the applicant's community development needs, its costs are unreasonable, it is inappropriate for the intended use, or not usable generally within two years, the Field Office shall determine that the applicant has not met this threshold requirement, and reject the application from further consideration.

(2) *Capacity and performance.* The applicant has the capacity to undertake the proposed program. Additionally, applicants that have previously participated in the Indian CDBG Program must have performed adequately or, in cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance.

(i) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed projects. If the Field Office determines that the applicant does not have or cannot obtain the capacity to undertake the grant, the application will be rejected from further consideration.

(ii) *Performance.*

(A) *Community development.* Performance determinations are made through the Field Office's normal monitoring process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(B) *Housing assistance.* Actions have been taken by the applicant within its control to facilitate the provision of housing assistance for low- and moderate-income members of the Tribe or Alaskan Village. Any action to prevent the provision or operation of assisted housing for low- and moderate-income persons shall also be evaluated in terms of whether it constitutes inadequate performance by the applicant. If inadequate performance is found, the applicant shall be rejected from further consideration. Subsequent applications will also be similarly disqualified in subsequent competitions unless the applicant has taken corrective actions within its control.

(C) *Previous audit finding and outstanding monetary obligations.* An applicant that has an outstanding Community Development Block Grant obligation to HUD that is in arrears, or for which a repayment schedule has not been agreed to, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding(s) is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The Field Office Director may provide waivers of this disqualification in those cases where the applicant has made a good faith effort to clear the audit finding(s). In no instance, however, shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Information submitted on request.* A Field Office may, in its discretion, request that an applicant submit information that may help to clarify an application that in the Field Office's view contains information that is inconsistent with known facts or data; or inadequate in substance to make a threshold or rating determination, or a determination of compliance with the requirements of this part. Applicants shall only submit the information in response to inquiries made by HUD. A new project(s) may not be substituted for one(s) proposed in the original application. Applicants failing to meet the information request shall be disqualified from the competition if the Field Office determines that the applicant fails to meet the threshold requirements; or that information is lacking to make rating determinations, or to show compliance with requirements of this part.

(c) *Rating factors and criteria.* Applications which meet the threshold requirements established in paragraph (a) of this section will be rated competitively. Each project proposed in the application will be rated separately against others addressing the same impact factor.

(1) All projects will be rated against these specific factors:

(i) Relative needs of the applicant as measured by the extent of poverty or unemployment as represented by both numbers and percentages of persons living in this condition; and

(ii) Degree of benefit of the proposed projects as measured by the number and percentage of low- and moderate-income persons to be served by the project.

(2) Additional rating factors will be developed by each Field Office to address these rating criteria:

(i) The impact of the proposed project on the applicant's community development need as measured by factors which may include, but are not limited to the following:

(A) The degree of impact of the proposed project on the provision of basic community facilities and services;

(B) The importance of the project to the provision of more or better housing for low- and moderate-income households;

(C) The direct impact of the project on the economic development of the applicant's community; or

(D) The degree to which the project will alleviate or remove a serious threat to health or safety; and/or

(E) The degree to which the project develops renewable energy resource systems and/or promotes energy efficiency.

(ii) The quality of the proposed project as measured by factors which may include, but are not limited to the following:

(A) Per capita cost when compared to other similar projects by similar size applicants;

(B) Cost effectiveness through joint tribal or Tribal/community facilities;

(C) Maximum use of existing services, facilities, and resources; or

(D) Retention, expansion, or creation of job opportunities; and/or

(E) Use of national or comparable tribal standards appropriate for the locale.

(3) Rating factors developed in accordance with paragraph (c)(2) of this section shall not result in additional information beyond what is required in the application.

(d) *Final ranking.* The points received for each rating factor by a project are totaled and the projects ranked according to the point totals. Projects are selected for funding based on this final ranking to the extent that funds are available. HUD may select additional projects for funding should one of the higher ranking projects not be funded, or if additional funds become available.

(e) *Competition documentation.* Documentation pertaining to each fiscal year's competition shall be available at each Field Office for applicant review for a period of time to be set by the Field Office (which cannot be less than 30 days).

(f) *Procedural error.* If a Field Office makes a procedural error in the application and selection process that, when corrected, will result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant in the next fiscal year without further competition.

(g) *Set aside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the set aside may be used to select projects for funding from the set aside. The selection of projects for set aside funding may be competitive or non-competitive.

§ 571.303 Funding process.

(a) *Notification.* Field Offices will notify applicants of the actions taken regarding their applications. Grant amounts offered may reflect adjustments made by the Field Offices in accordance with § 571.100(b).

(b) *Pre-award requirements.*

(1) Upon notification by HUD of successfully competing for a grant, the applicant shall submit on forms prescribed by HUD the following:

(i) Implementation schedule;

(ii) Certification; and

(iii) Cost information, if changes have occurred or if the Field Office has adjusted the original grant request.

(Approved by the Office of Management and Budget under OMB control number 2506–0043)

(2) Successful applicants may also be required to provide supporting documentation concerning the management, maintenance, operation or financing of proposed projects before a grant agreement can be executed. Applicants will be given at least thirty (30) days to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the Field Office shall determine that the applicant has not met the requirements and the grant offer will be withdrawn. The Field Offices shall require supporting documentation in those instances where:

(i) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; and/or

(ii) The applicant has not provided information verifying the commitment of other resources required to complete, operate or maintain the proposed project.

(Approved by the Office of Management and Budget under OMB control number 2506–0043)

(3) Grant amounts allocated for applicants unable to meet preaward requirements will be offered to the next highest ranking unfunded project.

(4) New projects may not be substituted for those originally proposed in the application.

(c) *Grant award.*

(1) As soon as HUD determines that the applicant has complied with the preaward requirements and nothing has come to the attention of the Field Office which would alter the threshold determinations under § 571.302, the grant will be awarded. These regulations, 24 CFR Part 571, become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of Part 58 of this title and, in particular, Subpart J; except as otherwise provided in:

(i) Section 58.33 Emergencies;

(ii) Section 58.34 Exempt activities; or

(iii) Section 58.22 Activities excepted from limitations on the commitment of funds and which are reimbursable under Subpart C of Part 570.

(3) HUD may place other conditions on a grant in which case the grant agreement will be approved, but the obligation and utilization of funds may be restricted in whole or in part. The reasons for the conditional approval and the actions necessary to remove the conditions shall be specified in the grant agreement. Failure to satisfy the conditions may result in a termination of the grant. Conditional approval may be made:

(i) Where the requirements of Part 570, Subpart C, of this title regarding the provision of public services and flood or drainage facilities have not yet been satisfied;

(ii) Pending site and neighborhood standards approval for a proposed housing project, if applicable;

(iii) Pending HUD's approval of the use of Tribal work forces for construction or renovation activities in accordance with § 571.502; or

(iv) Pending resolution of problems with specific projects or of the capability of the grantee to obtain resources needed to carry out, operate or maintain the project.

§ 571.304 Program amendments.

(a) Grantees shall request prior HUD approval for all program amendments involving the alteration of existing activities that will significantly change the scope, location, objective, or class of beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests shall include the information required under §§ 571.300(f) and 571.303)(b)(1).

(1) Amendments of $10,000 or more shall address all the rating factors of the last rating cycle. Approval is subject to the following:

(i) A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle;

(ii) Capability to promptly complete the modified or new activities;

(iii) Compliance with the requirements of § 571.604 of this title for citizen participation; and

(iv) The preparation of an amended or new environmental review in accordance with Part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Amendments of less than $10,000 shall be approved subject to meeting the requirements of paragraphs (b)(1)(ii), (iii), and (iv) of this section.

(3) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of Subpart E of this Part.

(c) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for the amendment shall be returned to HUD.

Subpart E—Imminent Threat Grants

§ 571.400 Criteria for funding.

The following criteria apply to requests for assistance under this Subpart:

(a) In response to requests for assistance, the Field Office may make funds available under this Subpart to applicants to alleviate or remove imminent threats to health or safety that require an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to the acceptance of an application. Funds to alleviate imminent threats to health and safety may only be used to deal with threats that are not of a recurring nature, which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or federal funding sources cannot be made available to alleviate the threat.

§ 571.401 Application process.

(a) *Letter to proceed.* The Field Office may only issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall be submitted in accordance with § 571.300(f) and § 571.303(b). Applications which meet the requirements of these sections may be approved by the Field Office without competition.

§ 571.402 Environmental review.

Pursuant to § 58.34(a)(8) of this title, grants for imminent threats to health or safety are exempt from some or all of the environmental review requirements of Part 58 to the extent provided therein.

§ 571.403 Availability of funds.

Field Offices may set aside up to 15 percent of their allocation of funds under this Part for imminent threat grants. The only funds reserved for imminent threat are those set aside by the Field Office each year. Imminent threat funds which are not awarded before the award of the last Single Purpose grant shall be used for the next highest ranking Single Purpose project. After these funds are depleted, HUD shall not consider further requests for imminent threat grants during that fiscal year.

Subpart F—Grant Administration

§ 571.500 General.

The requirements of Part 570, Subpart J of this title—Grant Administration—apply to grants under this Part except for those provisions that are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.501 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe or Alaskan Native Village as the operating agency to undertake activities assisted under this Part. The Indian Tribe or Alaskan Native Village itself, however, shall be the applicant. Designation of an operating agency does not relieve the Indian Tribe or Alaskan Native Village of its responsibility in assuring that the program will be administered in accordance with all HUD requirements, including these regulations.

§ 571.502 Force account construction.

(a) The utilization of Tribal work forces for construction or renovation activities performed as part of the activities funded under this Part shall be approved by HUD before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, HUD may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) Information showing that the workers to be utilized are, or will be, listed on the Tribal payroll and are employed directly by an arm, department or other governmental instrumentality of the Tribe or Alaskan Native Village. (Approved by the Office of Management and Budget under OMB control number 2506-0043).

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this Part in accordance with § 571.304 or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in OMB Circular A-102 apply to material, equipment, and supply procurements from outside vendors under this section, but not to other activities undertaken by force account.

§ 571.503 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this Part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that to the greatest extent feasible: (1) Preference and opportunities for training and employment shall be given to Indians, and (2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include both:

(1) Any "economic enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any "tribal organizations" as defined in Section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this Part shall be given to Indians and Alaskan Natives.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this Part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) Stage 1: Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian-owned firms.

(B) Stage 2: If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD Field Office one-time approval, the grantee's own method of providing preference.

(2) If the method of providing preference selected by the grantee results in fewer than two qualified Indian organizations or Indian-owned enterprises submitting a statement of intent, bid or proposal, then the grantee shall:

(i) rebid the contract, using any of the methods described in paragraph (1) above; or

(ii) rebid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) if one approvable bid is received, request Field Office review and approval of the proposed contract and related procurement documents, in accordance with Attachment O of OMB Circular A–102, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under Attachment O of OMB Circular A–102 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of Attachment O. However, a grantee's small purchase procurements shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding solicitation and the bidding documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises; however, this information need not be submitted to HUD. Thus, prospective contractors may be required by grantees to submit with or prior to submission of a bid or proposal:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as a section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible (A) preferences and opportunities for training and employment shall be given to Indians and (B) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan Natives.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* A grantee may, with prior HUD approval, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this Part. The additional Indian preference requirements shall be consistent with the objectives of the section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of non-performance or longer period of performance.

Subpart G—Other Program Requirements

§ 571.600 General.

The following requirements of Part 570, Subpart K, of this title—Other Program Requirements—apply to grants under this Part.

(a) Section 570.605 National Flood Insurance Program.

(b) Section 570.608 Lead-based paint.

(c) Section 570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

(d) Section 570.610 Uniform administrative requirements and cost principles.

(e) Section 570.611 Conflict of interest.

§ 571.601 Nondiscrimination.

(a) Under the authority of section 107(a)(2) of the Act, the Secretary waives the requirement that recipients comply with Section 109 of the Act except with respect to the prohibition of discrimination based on age or against an otherwise qualified handicapped individual.

(b) A recipient shall comply with the provisions of Title II of Pub. L. 90–284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this Part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient; and "Funded in whole or in part with funds made available under this Part" means that community development funds in any amount have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 571.602 Relocation and acquisition.

(a) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), hereinafter referred to as the Uniform Act, and HUD implementing regulations at Part 42 of this title apply to any acquisition of real property by a State agency (defined at 24 CFR 42.85) that is carried out for an activity assisted under this Part and to the displacement of any family, individual, business, non-profit organization, or farm that results from such acquisition.

(b)(1) Any acquisition of real property by a "State agency" and any displacement resulting from such acquisition of real property shall be considered to be an activity assisted under the Community Development Block Grant program and be subject to the regulations at Part 42 of this title if the acquisition occurs on or after the date of the submission of the application requesting federal financial assistance which is granted. However, if the grantee determines that an acquisition or displacement was not carried out for an assisted activity, and the Field Office concurs in the determination, such acquisition or displacement shall not be subject to these regulations. The grantee's request for HUD concurrence shall include its certification that at the time of the acquisition it did not intend to use the property for an assisted activity along with appropriate documentation to establish that fact.

(2) With respect to acquisitions for projects assisted under this Part that are not within the purview of the Uniform Act, the grantee shall:

(i) Provide each property owner a written offer of the amount determined to be just compensation for the property. Just compensation shall be based upon one or more appraisals of the fair market value of the property as prepared by a qualified appraiser. However, this provision shall not prevent a person from donating real property if, prior to the donation, he/she has been fully informed of his/her right to receive just compensation;

(ii) Provide HUD the opportunity to review any acquisition price established pursuant to Paragraph (b)(2)(i) of this section prior to compensation being paid to the seller;

(iii) Include in the applicable case file a justification for the acquisition payment in any case in which such payment exceeds the fair market value of the property.

(c)(1) The cost of relocation payments and assistance under Title II of the Uniform Act shall be paid from funds provided by this Part and/or such other funds as may be available to the grantee from any other source.

(2) With respect to other displacement-causing activities that are assisted under this Part but are not within the purview of the Uniform Act, the grantee shall adopt a uniform written policy for providing relocation payments and other assistance to ensure that displaced families and individuals obtain a safe and habitable replacement dwelling and that all persons, including families, individuals, business, nonprofit organizations and farm operations, are reimbursed for all moving and related expenses, including utility hook-up and storage costs. That policy shall also provide that:

(i) No occupant of a dwelling shall be required to move permanently from the dwelling, unless first given reasonable opportunity to relocate to a safe and habitable replacement dwelling at a monthly housing cost, including utilities, that does not exceed 30 percent of his/her gross income;

(ii) All families, individuals, business, nonprofit organizations, and farm operations to be displaced shall be provided advance information sufficient to enable them to fully understand the reason for their displacement and the relocation payments and other assistance to which they are entitled under these regulations;

(iii) In any case in which the occupant of a dwelling is required to relocate for a temporary period in order to permit rehabilitation or demolition, the temporary relocation shall not exceed 12 months in duration, a safe and habitable dwelling shall be available to the person for the period of the temporary relocation, and the grantee shall pay actual reasonable out-of-pocket expenses, including any moving costs or increase in monthly housing costs, incurred by the person in connection with the temporary relocation.

§ 571.603 Labor standards.

(a) In accordance with the authority under section 107(d)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this Part, including the requirement that laborers and mechanics employed by the contractor or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Part be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

(b) This waiver does not permit the grantee to set wage rates for projects funded under this part which would be considered excessive for other similar projects funded by the Tribe or another federal entity. HUD will periodically review wage rates and take appropriate corrective action should wage rates be found to be excessive.

§ 571.604 Citizen participation.

(a) In order to permit members of Indian Tribes and Alaskan Native Villages to examine and appraise the applicant's application for funds under this Part, the applicant shall follow traditional means of citizen involvement which, at the least, include the following:

(1) Furnishing members information concerning amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken;

(2) Holding one or more meetings to obtain the views of members on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by members.

(3) Developing and publishing or posting the community development statement in such a manner as to afford affected members an opportunity to examine its contents and to submit comments;

(4) Affording members an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official tribal resolution that it has met the requirements of paragraph (a) of this section, and

(1) Considered any comments and views expressed by members and, if it deems appropriate, modified the application accordingly.

(2) Made the modified application available to members.

(c) No part of this requirement shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this paragraph do not include concurrence by any person or group in making final determinations on the contents of the application.

§ 571.605 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of such Act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall comply with the Environment Review Procedures for the Community Development Block Grant Program (24 CFR Part 58). Upon completion of the environmental review, the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR Part 58.

§ 571.606 Housing assistance.

In those instances where a Tribe has established an Indian Housing Authority and has obtained housing assistance from HUD, its compliance with the resolution set out in 24 CFR 805, Subpart A, Appendix I, Article VIII will be a performance consideration under the Indian CDBG program.

Subpart H—Program Performance

§ 571.700 Reports to be submitted by grantee.

Grant recipients shall submit an annual status report of progress made on previously funded open grants at a time determined by the Field Office. The status report shall be in narrative form addressing three areas:

(a) *Progress.* The progress in completing activities, the work remaining, changes in the implementation schedule and a breakdown of funds expended on each approved project;

(b) *Grantee assessment.* Description of the effectiveness of funded activities in meeting the recipient's community development need; and

(c) *Environment.*

(1) Compliance with the conditions under § 58.34 of this title for exempt projects; and

(2) If appropriate, environmental reviews of emergency projects under § 58.33 of this title.

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§ 571.701 Review of recipient's performance.

(a) *Objective.* HUD will review each recipient's performance to determine whether the recipient has achieved the following:

(1) Complied with the requirements of the Act, this Part, and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this Part.

(b) *Basis for review.* In reviewing each recipient's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the recipient;

(3) Records maintained by the recipient;

(4) Results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the Letter of Credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 571.702 Corrective and remedial actions.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, one the basis of the performance review, HUD determines that the recipient has not achieved the following:

(1) Complied with the requirements of the Act, this Part, and other applicable laws and regulations, including the environmental responsibilities assumed under Section 104(f) of Title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the recipient of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the recipient on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the recipient that a certification of compliance will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend, discontinue, or not incur costs for the affected activity;

(5) Advise the recipient to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of Part 58 and provided that such reprogramming is subjected to the environmental review procedures of Part 58 of this title;

(6) Advise the recipient to reimburse the recipient's program account or Letter of Credit in any amounts improperly expended;

(7) Change the method of payment from a Letter of Credit basis to a reimbursement basis; and/or

(8) Suspend the Letter of Credit until corrective actions are taken.

§ 571.703 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and only then if the recipient has not made an appropriate and timely response. Prior to making such grant reduction or withdrawal, the recipient shall also be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the Field Office determines, on the basis of a review of the grant recipient's performance that the objectives set forth in § 571.701(a) have not been met, the Field Office may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 571.704 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a recipient has failed to comply substantially with any provision of this Part even after corrective actions authorized under § 571.702 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the recipient. (The Administrative Procedure Act (5 U.S.C. § 551. et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for hearing.)

(1) Terminate the grant to the recipient;

(2) Reduce the grant to the recipient by an amount equal to the amount which was not expended in accordance with this Part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the recipient's Letter of Credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a recipient has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this Part which was not expended in accordance with it, or for mandatory or injunctive relief.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 30, 1984.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84-23667 Filed 9-6-84; 8:45 am]

BILLING CODE 4210-29-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures Payments for Acquisition of Improvements

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Final rule.

SUMMARY: This notice adopts regulations to allow payment, under limited circumstances, for habitations and other improvements acquired by the Commission pursuant to 25 U.S.C. 640d–14. This action is necessary because Pub. L. 93-531, the Navajo and Hopi Indian Relocation Act, makes no provision for any payments other than moving expenses and incentive bonuses. The adoption of these regulations will allow the Commission to take final action on certain unresolved claims for relocation benefits which cannot be closed within the current regulatory structure.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002. Telephone No.: (602) 779–2721.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is E. Susan Crystal, Attorney at Law, of the Navajo and Hopi Indian Relocation Commission.

The following is an analysis of the comment received.

Comment was received from the Hopi Tribe questioning the Commission's legislative authority to pay for improvements and also indicating that no payments should be made to persons who moved into the disputed area after December 22, 1973. The portion of the comment which suggested no payments to persons who moved into the area after December 22, 1973 was incorporated into the final rule.

Comment was received from the Navajo Tribe's Department of Justice generally stating that the Commission should pay for all properties owned by individual Navajos regardless of whether or not they are eligible for relocation. This was not incorporated into the final rule. The Justice Department suggested that District Six evictees be paid for improvements. This comment was not incorporated into the final rule. The Justice Department also suggested that ownership disputes be resolved by Tribal Courts. This comment was not appropriate to incorporate into this final rule, however, it has and will be Commission policy to refer such disputes to Tribal Court.

The Navajo-Hopi Legal Services Program commented that the Commission should pay for improvements without requiring the owners to go through the application and denial process. This was not incorporated into the final rule. This commentor made several other suggestions, which were irrelevant to the proposed rule.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interests, Freedom of information, Grant program—Indians, Indian claims, Privacy, Real property acquisition, Relocation assistance.

PART 700—[AMENDED]

Accordingly, the Commission amends Subpart B of Part 700 by adding § 700.127 to read as follows:

Subpart B—Acquisition and Disposal of Habitation and/or Improvement

§ 700.127 Payments for Acquisition of Improvements.

Payments for acquisition of improvements shall be made in the following situations:

(a) To individuals who have been denied benefits under these rules and who can prove ownership of habitations and improvements on land partitioned to the tribe of which they are not members. If the owner is deceased the payment shall be made to his or her estate. Payments under this subsection are further limited by 25 U.S.C. 640d–14(c), Pub. L. 93-531, section 15(c).

(b) To individuals who have been certified as eligible for relocation benefits but who at the time of certification, own a decent, safe and sanitary dwelling as determined by the Commission pursuant to Section 700.187 and who own habitation and improvements on land partitioned to the tribe of which they are not members. Ownership shall be determined on the basis of Commission appraisal records at the time of the initial eligibility determination.

(25 U.S.C. 640d, Pub. L. 93–531, 25 U.S.C. 640d–14, Pub. L. 96–305)

Ralph A. Watkins, Jr.,

Chairman, Navajo Hopi Indian Relocation Commission.

[FR Doc. 84–23680 Filed 9–6–84; 8:45 am]

BILLING CODE 7580–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83–13; Notice 2]

Federal Motor Vehicle Safety Standards; Motorcycle Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Safety Standard No. 123, *Motorcycle Controls and Displays,* to allow greater flexibility in mounting the manual fuel control shut off valve. This action is taken pursuant to a grant of a petition for rulemaking and a notice of proposed rulemaking published on September 6, 1983 (48 FR 40286). Its primary benefit is that it will relieve a current design restriction which is deemed no longer necessary for motor vehicle safety.

EFFECTIVE DATE: Effective October 9, 1984.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ken Rutland, Office of Vehicle Safety Standards, NHTSA, Washington, D.C. 20590 (202–426–2154).

SUPPLEMENTARY INFORMATION: Table 1 of Standard No. 123 specifies that the manual fuel shut off control have the following modes of operation: "Off", with the control forward, "On", with the control downward, and "Reserve" (if provided), with the control upward. No requirements are specified for the location of the control. However, Standard No. 123 has generally been interpreted as requiring control rotation around a transverse axis.

In March 1981 Bajaj Auto Ltd. asked NHTSA for an "exemption" from this requirement in order to mount its fuel shut off control so that it could be rotated around a longitudinal axis. In establishing the original operational modes, NHTSA had justified them by stating that in the event of a crash there was a greater likelihood that the control would be carried forward by inertia to the "off" position, thereby shutting off the fuel. In Bajaj's opinion, this effect would be unlikely except in the most severe collisions because of the low weight of the operating control lever, and the tightness of the control valve necessary to guard against inadvertent closure of the control in normal operation. After deliberation, and its own informal investigation, the agency concurred with Bajaj's reasoning and decided to treat Bajaj's request as a petition for rulemaking. Bajaj was informed of this decision in 1982.

The agency tentatively decided that motor vehicle safety through standardization of controls is best served in this instance by retaining the relationships of the control positions to each other while allowing the manufacturer to place the control so that it may operate in its required positions around either a longitudinal or transverse axis. It was proposed that when the control is rotated around a longitudinal axis, the "off" position shall be "horizontal" with the other positions downward for "on" and upward for "reserve on". In the horizontal position, the control can be pointing either to the right or left.

Comments were received from American Honda Motor Co., Japan Automobile Manufacturer's Association (JAMA), Kawasaki Motors Corp., USA, and BMW Bikers of Metropolitan Washington. The manufacturers supported the proposal, and requested further amendments responsive to rotation about a vertical axis. BMW Bikers urged the agency to consider the potential hazards that might result were the control relocated so far inboard as to be difficult to reach and manipulate.

More specifically, a request was made that Standard No. 123 be amended to allow future designs of manual shut-off valves that would be rotational around a vertical axis. Kawasaki recommended that rotation be allowed around any axis. It was also recommended that the rotational axis be allowed to vary by plus or minus 30 degrees, as the exact axis of rotation (zero degrees) may be difficult to achieve because of the shape of the fuel tank and other vehicle components.

The agency has reviewed these requests and believes that they have merit as relief of design restrictions. However, the proposal did not ask for comments on the advisability of rotation around a vertical axis, or on a 30 degree tolerance. Therefore, the standard is being amended in the manner specified in the proposal.

With respect to the concern expressed by BMW Bikers, it is true that mounting the control around the longitudinal axis might make it awkward to reach and difficult to operate, but the agency does not believe that any manufacturer will change its current design in a manner that would make it less appealing to the consumer. The new location does represent a convenient location for motorscooters such as are manufactured by the petitioner.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The rule imposes no additional requirements but permits manufacturers greater flexibility in locating the control concerned.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will have no effect on the human environment since the weight and quantity of materials used in the manufacture of motorcycles is not changed. No impact on safety is anticipated.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities, and no initial regulatory flexibility analysis has been prepared. Manufacturers of motorcycles, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new motorcycles will be minimally impacted.

Because the amendment relieves a restriction, is optional in nature, and furthers international harmonization, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest, and the amendment is effective 30 days after publication in the **Federal Register**.

The engineer and lawyer primarily responsible for the development of this rule are Ken Rutland and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

§ 571.123 [Amended]

In consideration of the foregoing, the operation requirements for the manual fuel shut off control (item 7) in Column 3 of Table 1 of 49 CFR 571.123, Motor Vehicle Safety Standard No. 123, are revised to read as follows:

"On"—Control downward.

"Off"—Control forward (if control rotates around a transverse axis) or Horizontal—Left or Right (if control rotates around a longitudinal axis).

"Reserve On"—(if provided) Control upward.

(Secs. 103, 119, Pub. L. 87-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on August 31, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-23719 Filed 9-6-84; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 49, No. 175
Friday, September 7, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Administrative Rules and Regulations Concerning the Definition of "Inedible Kernel" and Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to: (1) Add a new section to the administrative rules and regulations established under the Federal marketing order for California almonds to modify the definition of "inedible kernel" contained in the order, and (2) change the quality control provisions of the administrative rules and regulations by lowering the tolerance for inedible almonds from one percent to zero percent. These changes would improve the quality of California almond shipments.

DATE: Comments must be received by September 24, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Frank M. Grasberger has determined that this proposal should be published with less than a 30-day comment period. The changes in this proposal should apply to 1984 crop almonds which handlers will be receiving and processing soon. Therefore, handlers need to know as soon as possible what the basis will be for determining their inedible disposition obligations so that they can plan their processing and marketing operations accordingly.

This proposal would add a § 981.408 to Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 49 FR 19798), and revise § 981.442(a)(4) of the Subpart—Administrative Rules and Regulations. Section 981.408 would be issued pursuant to § 981.8 of the marketing agreement and Order No. 981 (7 CFR 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on three unanimous recommendations of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

Section 981.8 of the order defines "inedible kernel" as a "kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt not easily removed by washing." The term "inedible kernel" is used in the quality control provisions of the order. The objective of these provisions is to separate "inedible kernels" from "edible kernels" and dispose of the inedible kernels for use in products such as almond oil and animal feed. Section 981.8 also provides that the definition of "inedible kernels" "may be modified by the Board with the approval of the Secretary: *Provided,* That the Board shall submit any recommendation for modification to the Secretary not later than August 1." The recommendations were made by the Board at its July 25, 1984, meeting and submitted to the Secretary of Agriculture's authorized representative on July 30, 1984.

It is proposed to add § 981.408 to the administrative rules and regulations established under the order to modify the definition of "inedible kernels" in § 981.8 in two ways. First, the words "or other foreign material" would be added after "embedded dirt." This proposed change is intended chiefly to eliminate the problem of embedded shell in almond kernels. The second change would add the words "or has internal discoloration" after "not easily removed by washing." Discoloration is a darkening of an almond kernel's interior, and usually results when almond lots have excessive moisture and are subject to high temperatures, such as during storage or drying. the interior of an almond kernel normally is cream-colored, whereas a discolored kernel would be yellowish-brown, or brown in serious cases.

Section 981.442(a)(4) of the administrative rules and regulations currently requires the weight of inedible kernels in each variety in excess of one percent of the kernel weight received by handlers to be reported to the Board. This weight must be accumulated during processing and delivered to the Board or Board-accepted crushers, feed manufacturers, or feeders.

It is proposed to revise § 981.442(a)(4) by lowering the tolerance for calculating a handler's disposition obligation from one percent to zero percent. Therefore, a handler's disposition obligation would be equal to the weight of inedible kernels in each variety of almonds received by such handler.

All of the changes proposed by this action are intended to provide a higher quality product to almond users and consumers. This action would allow for stricter quality control while still maintaining ample supplies of almonds to meet trade demand. The industry has the capability of implementing such stricter control due to improvements in crop quality and in almond processing equipment.

List of Subjects in 7 CFR Part 981

Marketing Agreements and Orders, Almonds, California.

PART 981—[AMENDED]

Therefore, it is proposed to add § 981.408 and amend § 981.442(a)(4) of

Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 49 FR 19798) as follows:

1. Add a new § 981.408 reading as follows:

§ 981.408 Inedible kernel.

Pursuant to § 981.8, the definition of "inedible kernel" is modified to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing, or has internal discoloration.

§ 981.442 [AMENDED]

2. Amend § 981.442(a)(4) by changing "one percent" to "zero percent."

(Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674)

Dated: September 4, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–23742 Filed 9–6–84; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1079

Milk in the Iowa Marketing Area; Termination of Proceeding on Proposed Temporary Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed temporary revision of rule.

SUMMARY: This action terminates a proceeding on a proposal to reduce temporarily the pooling standards for supply plants regulated by the Iowa Federal milk order. The proposal, which would reduce the shipping requirement for the months of September, October, and November 1984 from 35 percent to 25 percent, was made by the operator of a pool supply plant. A cooperative association representing a substantial number of the producers on the market submitted views and arguments opposing the temporary revision, and in addition, submitted a proposal to temporarily increase the supply plant shipping requirement by 10 percentage points for the same period. The Department has concluded that it will not temporarily reduce the shipping requirement for supply plants as proposed.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Temporary Revision of Shipping Percentage: Issued August 9, 1984; published August 15, 1984 (49 FR 32598).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** (49 FR 32598) concerning a proposed decrease in the shipping requirement for pool supply plants for the months of September, October, and November 1984. Interested parties were afforded 7 days in which to comment on the proposal by submitting written data, views, or arguments. Comments were received from two interested parties.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1079.7(b) should not be revised and shall remain at 35 percent for the months of September, October, and November 1984.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese which operates a supply plant regulated by the Iowa order, requested a temporary reduction in the supply plant shipping requirement of 10 percentage points. Beatrice stated that producer receipts under the Iowa order since January 1, 1984, are practically unchanged from the previous year, when a similar action was taken, and that Class I utilization has remained fairly constant. Because the distributing plants that Beatrice supplies anticipate having a sufficient supply of milk for their Class I needs this fall without increased shipments, Beatrice said that there will be no need to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement, to a 25 percent shipping standard, is needed to prevent uneconomic shipments of fluid milk during September, October, and November 1984.

The Farmers Union Milk Marketing Cooperative (FUMMC) submitted a letter supporting the temporary revision of the supply plant shipping percentage provision as proposed by Beatrice. FUMMC represents about 9.5 percent of the producers under the Iowa order, and is a marketing and bargaining association. FUMMC does not operate any pool plants under the order.

Mid-America Dairymen, Inc. (Mid-Am), the second largest cooperative in the Iowa order market, representing about 18 percent of the Iowa order producers, opposed the reduction. Mid-Am stated that the supply-demand relationship in 1984 is greatly different from that which existed a year ago. Mid-Am cited lower uniform prices, larger milk production costs, and the Milk Diversion Program as primary contributors to the decrease in the Iowa order producer milk supply. Concerning demand, Mid-Am stated that producer milk in Class I has been increasing since January 1984, and that a continual improvement in Class I sales for the remainder of 1984 most likely will result due to the National Research and Promotion Program and an improved economy. Mid-Am, therefore, argued that the supply-demand conditions this fall will justify an increase in the shipping requirements instead of the decrease proposed by Beatrice.

In addition, Mid-Am said that if milk is not available from Iowa pool supply plants due to reduced shipping requirements, then Iowa distributing plants may have to rely on Federal order milk from Minnesota and Wisconsin, and thus be subject to, along with the class prices of the milk, over-order prices and freight costs to the Iowa distributing plants, which collectively are considerably higher than Iowa class prices. Mid-Am contends that Iowa distributing plants should not have to incur these costs, because without a reduction in the shipping requirement, as proposed by Beatrice, Iowa pool milk would be available in sufficient amounts to meet the fluid needs of the market.

Certain factors have affected the supply-demand relationship in the Iowa market since the beginning of 1984, which make this year different from past years. In an effort to reduce the dairy surplus on a national level, Congress, on December 1, 1983, authorized a 50 cent per hundredweight reduction of the price support level for milk. The result of the 50 cent cut for producers under the Iowa order has been a lower uniform price, which for January through June 1984 was 38 cents per hunderedweight below that of the same period in 1983.

Also contributing to the downward pressure on the supply of milk this year are production costs, which have been greater in 1984 than in 1983, (the price of 16-percent-feed has been increased 10.5 percent in the January–July 1984 period over the 1983 cost).

One further factor affecting the supply of milk on the market has been the Dairy Diversion Program, which involves 22 percent of the dairy operations in Iowa.

The result of the reduced producer receipts, the increased costs of production, and the Diversion program has been a downward trend in producer milk under the Iowa order in 1984 as compared to 1983, as well as a decrease in total milk production (down 4.9 percent) for the State of Iowa. In February, producer milk was 1.5 percent below February 1983 production on a daily basis, and down 2.0 percent in March, 0.5 percent in April, 2.5 percent in June, and 3.6 percent in July. These decreases ocurred while the number of producers under the Iowa order increased over 1983 figures, (in April 1984 there was one less producer, and in May 1984 an increase in producer numbers of 234 caused a disruption in the downward trend).

On the demand-side, Class I disposition under the Iowa order increased in each of the first seven months of 1984 as compared to the same months in 1983. In January 1984, the increase in pounds of milk for Class I use was 5.6 percent, in February up 7.4 percent, up 9.4 percent in March, 0.8 percent in April, 8.3 percent in May, 7.6 percent in June, and 4.8 percent in July. For the first six months of 1984, Class I disposition was 29.9 percent, and this figure will most likely increase for the remainder of 1984.

In September, October, and November 1983, when a temporary downward revision of the supply plant shipping requirement was granted, (from 35 percent to 25 percent), Class I disposition under the Iowa order was 33.6 percent, 33.5 percent, and 33.8 percent, respectively. And, the requesting supply plant, Beatrice, in September through November 1983, shipped more than the required percentage of their producer receipts to pool distributing plants.

If Class I disposition continues to be greater in 1984 than it was in 1983, while at the same time milk production decreases, then a reduction in the supply plant shipping percentage for September, October, and November 1984 would not appear to be warranted. It is not clear that the current supply plant shipping percentage will cause uneconomic shipments of milk.

In view of the above circumstances, it is concluded that the supply plant shipping requirement should not be revised for the months of September, October, and November 1984. Accordingly, the proceeding begun on this matter on August 9, 1984, is hereby terminated.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on September 4, 1984.

Edward T. Coughlin,

Dairy Division.

[FR Doc. 84-23744 Filed 9-6-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-1]

Proposed Alteration of VOR Federal Airways; Montgomery, AL

Correction

In FR Doc. 84–22186 beginning on page 33274 of the issue of August 22, 1984, make the following correction on page 33275.

In the first column, fourth line of the first paragraph "(323° M)" should be "(324° M)".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-235 (Colorado-39)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulations contains the recommendations of the State of Colorado that the Niobrara Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on October 19, 1984.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 19, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

Proposed Rulemaking By Director, OPPR

High-Cost Gas Produced from Tight Formations; (Docket No. RM79–76–235 (Colorado–39)).

Issued: September 4, 1984.

I. Background

On August 22, 1984, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Niobrara Formation located in Larimer and Weld Counties, Colorado, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Colorado's recommendation that the Niobrara Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended area is located within the Denver-Julesberg Basin and surrounds the city of Greeley, Colorado, to the north, east and west. The recommended formation underlies approximately 135,040 acres in Larimer and Weld Counties, Colorado, and has an average gross thickness of 300 feet. The average depth to the top of the Niobrara Formation is 6,900 feet.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–44, Order No

NG-44-1 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingy, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977-1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Colorado that the Niobrara Formation as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 19, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-235 (Colorado-39), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than September 19, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Colorado's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(205) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(205) *Niobrara Formation in Colorado.* RM79-76-235 (Colorado-39).

(i) *Delineation of formation.* The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 66 West, 6th P.M., Sections 2 through 10, and 15 through 18, Township 5 North, Range 64 West, 6th P.M., Sections 1 through 24, Township 5 North, Range 65 West, 6th P.M., Section 1; Township 5 North, Range 66 West, 6th P.M., Sections 2 through 11, and 14 through 35; Township 5 North, Range 67 West, 6th P.M., Sections 1 through 3, 11 through 14, 23 and 24; Township 6 North, Range 64 West, 6th P.M., Sections 7, and 13 through 36; Township 6 North, Range 65 West, 6th P.M., Sections 7 through 31, and 34 through 36; Township 6 North, Range 66 West, 6th P.M., Sections 6 through 36; Township 6 North, Range 67 West, 6th P.M., all Sections; and in Larimer County, Colorado, in Township 6 North, Range 68 West, 6th P.M., Sections 1 and 2, 11 through 14, 23 through 26, 35 and 36.

(ii) *Depth.* The Niobrara Formation is defined as that interval which begins at a depth of approximately 6,900 feet and varies in thickness from 280 feet to 320 feet.

[FR Doc. 84-23786 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Federal Information Resources Management Regulation (FIRMR); Publication of Integrated Provisions

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking and availability of drafts of Block "B" segments.

SUMMARY: This notice announces the availability of the Block B portion of the proposed integrated text to be published as Amendment 1 to the FIRMR. No changes will be made in authorities, policies, or procedures from those contained in codified portions of the Federal Procurement Regulations (FPR) and Federal Property Management Regulations (FPMR) from which the provisions are derived. Nevertheless, users may desire to become acquainted with the manner in which the integration is made. While comment and review is not solicited, all comments and suggestions received will be considered.

DATES: Any comments on the proposed provisions should be submitted in writing to the Policy Branch, OIRM at the address shown below within 30 days of the publication date of this notice in the **Federal Register**. FIRMR Block B and the applicable FIRMR Part number must be cited in all correspondence related to this notice.

ADDRESS: Comments should be submitted to the General Services Administration, KMPP, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Leticia Boddie, Policy Branch, Office of Information Resources Management, telephone 202 566-0194 or FTS, 566-0194. A single copy of any of the parts comprising Block B are available upon request; please specify the part(s) desired.

SUPPLEMENTARY INFORMATION: GSA has established (49 FR 20994, May 17, 1984) the FIRMR to provide a single regulation for use by Federal agencies governing certain of their information activities. Text was published for only Part 201-1. An amendment to the FIRMR is under development to publish an integrated FIRMR text for codified Federal Procurement Regulations (41 CFR Subparts 1-4.11, 1-4.12, and 1-4.13) and Federal Property Management Regulations (41 CFR Parts 101-35, 101-36, 101-37). The second of four blocks of integrated FIRMR text has been drafted. Block B consists of four FIRMR parts.

Each part includes derivation and distribution tables relating FIRMR sections to FPR/FPMR sources. Block B also includes four temporary regulation actions to present temporary provisions changed to be consistent with the integrated text.

The parts in Block B are—

Part 201-20—ADP Management Programs
Part 201-24—Acquisition Policies
Part 201-30—Management of ADP Resources
Part 201-32—Contracting for ADP Resources

The proposed temporary regulations in Block B are—

Proposed Supp. 1 to Temp. Reg. 1
Proposed Temp. Reg. *1CITE* (Reissue of FPMR Temp. Reg. F-499 provisions)
Proposed Temp. Reg. *6CITE* (Reissue of FPR Temp. Reg. 71 provisions)
Proposed Temp. Reg. *2CITE* (Reissue of FPMR Temp. Reg. F-500 provisions)

List of Subjects in 41 CFR Chapter 201

Government information resources activities, Government procurement.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: August 30, 1984.

Francis A. McDonough,
Deputy Assistant Administrator, for Federal Information Resources Management.

[FR Doc. 84-23723 Filed 9-6-84; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPO-040-P]

Medicare Program; Forms Used for Claiming Payment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Medicare regulations to include provisions pertaining to various forms used in requesting enrollment in and payment for services under the Medicare program. This rule also would provide an up-to-date listing and discussion of procedures for providers of services and other practitioners to obtain billing forms that meet Medicare requirements and those of other insurers. In addition, the rule would require that hospitals, other institutional providers and physicians/suppliers obtain the new billing form HCFA-1450 and form HCFA-1500 respectively by commercial purchase.

DATE: To assure consideration, comments should be received by November 6, 1984.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, ATTENTION: BPO-40-P, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BPO-40-P.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Daniel Baker, (301) 594-1999.

SUPPLEMENTARY INFORMATION:

I. Background

Under Medicare, title XVIII of the Social Security Act (the Act), forms are required to establish or document entitlement and to file a claim for payment. Upon enactment of title XVIII, the administration of the Medicare program was delegated to the Social Security Administration (SSA) which established the procedures and forms. By Reorganization Order of March 9, 1977 (42 FR 13262), a new agency was created, the Health Care Financing Administration (HCFA). Under the Reorganization Order, the Medicare program was separated from SSA and placed under HCFA, which became responsible for the administration of the program.

Applications and related forms prescribed by SSA were identified using SSA form numbers (e.g. SSA-1453), and were printed free-of-charge and distributed to the public, organizations, and providers. HCFA substituted its identification in establishing form numbers (e.g. SSA-1483 became HCFA-1483) but otherwise continued use of the forms and distribution policies begun by SSA. A listing of application and claiming of payment forms appears in the regulations at 20 CFR 422.510 and 422.525. A cross-reference at 42 CFR 405.1662 states that these forms are used for claiming Medicare payment. It was intended that the pertinent forms eventually would be incorporated in Chapter IV of Title 42 (Public Health), of the Code of Federal Regulations where HCFA's regulations are codified.

In the past, the Medicare program provided billing forms at no cost to physicians and institutional providers because the Medicare billing forms were single purpose forms, usable only for Medicare reimbursement. However, in 1978, while the HCFA UB (Uniform Bill)-16 form (subsequently superseded by the UB-82 or HCFA-1450) was in its test phase, the National Uniform Billing Committee chaired by the American Hospital Association (AHA) voted to have hospitals purchase the form. From the hospitals' perspective, it is simpler to allocate costs among all payers rather than to use individual forms furnished by multiple payers. From the payers' perspective, this approach provides a more accurate way of sharing the cost of the forms. Effective on July 1, 1983, some Medicare providers began using a new form, the HCFA-1450 (Uniform Institutional Provider Bill). In addition to Medicare, this form can be used to bill many insurers. Therefore, we believe it is inappropriate to furnish these forms free-of-charge to providers. Although there is general agreement that Medicare will not furnish multiple use forms, we expect that some providers will question the absence of a specific regulation on this subject since current regulations at 20 CFR 422.525 state that Medicare forms are free-of-charge.

With the introduction of several new or revised forms, such as the HCFA-1500 (Health Insurance Claim Form) and HCFA-1450 (Uniform Institutional Provider Bill), the question has been raised of how best to allocate printing costs among multiple users of a single form. We adopted the approach recommended by the Uniform Billing Committee to have providers purchase forms. Hospitals in several States have already implemented this procedure. HCFA plans to implement the HCFA-1450 for all Medicare billing by institutional providers, other than hospitals, by the end of 1985, at which time forms HCFA-1453, HCFA-1453-A, HCFA-1486, and HCFA-1487 will no longer be used.

When the HCFA-1500 (Health Insurance Claim Form) was introduced nationally, we made a strong effort to secure the cooperation of all major third party payers in entering into local agreements for the joint use of this form by major payers. Our efforts were successful in securing local agreements in one-half of the States and local jurisdictions. Under these local agreements provisions were made for printing the form locally and sharing the costs among the participating third party payers. However, participants to these agreements are not required to provide the form free-of-charge.

In States where there are no local agreements, HCFA is now supplying the HCFA-1500 to Medicare carriers who will make the forms available to physicians and suppliers. Upon the effective date of the final regulation we will require that this form be obtained by commercial purchase.

II. Provisions of the Proposed Regulations

A. HCFA Designation and SSA Designation

We propose to revise regulations located at 42 CFR 405.1662 to include the listing of all applications and forms for applying for Medicare entitlement and requesting payment for services provided under the Medicare program. We also propose to make technical changes to update designations or numbers used and other information on the forms, and to delete cross references to 20 CFR 422.510 and 422.525. The language included in the proposed regulations is similar to that in 20 CFR Part 422, Subpart F, and has been updated to include references to automatic enrollment in Medicare.

B. Listing of Applications and Related Forms

The following prescribed forms are used in applying for entitlement under the Medicare program; we propose to change the call letters and numbers from SSA to HCFA: HCFA-18-F-Application for Hospital Insurance Entitlement; HCFA-4040-Application for Enrollment in Supplementary Medical Insurance Program; HCFA-40-B-Application for Medical Insurance; HCFA-40-D-Application for Enrollment in the Supplementary Medical Insurance Program; HCFA-40-F-Application for Medical Insurance; and HCFA-43-Application for Health Insurance Benefits under Medicare for Individuals with End-Stage Renal Disease.

We also propose to add to the list of related forms, two new forms, the HCFA-1450 (also known as the UB-82), a uniform institutional provider billing form for inpatient and/or outpatient services printed under the specifications of the American Hospital Association sponsored National Uniform Bill Committee and the HCFA-1500, Health Insurance Claim Form, a uniform physician and supplier request for payment.

C. Changes in Distribution Provisions

We propose to add information about where applications and other forms can be obtained. this includes a statement that the HCFA-1450 and the HCFA-1500 must be obtained by commercial purchase. The following prescribed forms would continue to be made available free-of-charge where used, and the call letters changed from SSA to HCFA: HCFA-43-Application for Health Insurance under Medicare for Individuals with End-Stage Renal Disease; HCFA-4040-Application for Enrollment in Supplementary Medical Insurance Program; HCFA-40-B-Application for Medical Insurance; HCFA-40-D-Application for Enrollment in the Supplementary Medical Insurance Program; HCFA-40-F-Application for Medical Insurance; HCFA-1453-Inpatient Hospital and Skilled Nursing Admission and Billing; HCFA-1483-Provider Billing for Medical and Other Health Services; HCFA-18-F-5-Application for Hospital Insurance Entitlement; HCFA-1484-Explanation of Accommodation Furnished; HCFA-1486-Inpatient Admission and Billing-Christian Science Sanatorium; HCFA-1487-Home Health Agency Report and Billing; HCFA-1490S-Request for Medicare Payment; HCFA-1491-Request for Medicare Payment-Ambulance; HCFA-1490U-Request for Medicare Payment by Organization; HCFA-1660-Request for Information-Medicare Payment for Services to a Patient Now Deceased; HCFA-1739-Request for Enrollment Card and Information by Foreign Beneficiary; HCFA-1966-Health Insurance Card; HCFA-1980-Carrier or Intermediary Request for SSA Assistance; and HCFA-2384-Third Party Premium Billing Request.

III. Information Collection and Reporting Requirements

Section 405.1662 of this proposed rule prescribes and lists several forms which are for optional use. As required by the Paperwork Reduction Act of 1980, we will be submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for approval.

Some of the HCFA forms that we propose to list in § 405.1662 required approval by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. The OMB has granted approval of these forms under the following OMB control numbers and dates:

HCFA form No.	OMB control No.	OMB approval date	Expiration date
HCFA-43	0938-0060	08-02-82	05-31-85
HCFA-18-F-5	0938-0251	12-15-83	10-31-86
HCFA-4040	0938-0245	01-22-82	07-31-84
HCFA-1450	0938-0279	01-17-83	11-30-85
HCFA-1453	0938-0010	05-10-83	05-31-84
HCFA-1483	0938-0013	06-07-83	05-31-85
HCFA-1486	0938-0015	05-18-83	02-29-85
HCFA-1487	0938-0012	05-18-83	04-30-85
HCFA-1490S	0938-0008	08-11-83	06-30-85
HCFA-1490U	0938-0006	08-11-83	06-30-85
HCFA-1491	0938-0042	05-18-83	02-28-85
HCFA-1500	0938-0080	08-11-83	06-30-85
HCFA-1660	0938-0020	02-14-84	12-31-86
HCFA-2384	0938-0041	11-18-81	11-30-84

IV. Impact Analyses

A. Executive Order 12291

We have determined that these proposed regulations do not meet criteria for a "major rule" as defined by section (b) of Executive Order 12291, that is, these regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprise in domestic or import markets.

We are only proposing to add a list of existing billing forms used in requesting payment for services under the Medicare program. We are also proposing to introduce two new billing forms, the HCFA-1450 which providers will obtain by commercial purchase and the HCFA-1500 which is now available free-of-charge, but in the future will be available by commercial purchase. We estimate an annual cost for the HCFA-1450 of $2 million to providers for the printing of these new forms. Further, we anticipate implementation costs of about $6.2 million to intermediaries, and about $20 million to hospitals for the HCFA-1450 claims form. Some of these implementation costs will be reduced by estimated hospital savings of $8 million resulting from simplified recordkeeping, billing efficiencies and savings in staff time associated with previous billing requirements. As this estimated annual effect is significantly less than the $100 million threshold, and as no other threshold criteria are met by the effects of these provisions, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory

Flexibility Act (Pub. L. 96–354) that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

As noted in the Executive Order analysis, we propose to add a list of existing billing forms used in requesting payment for services under Medicare. These revisions will not have a significant impact on providers.

The implementation and use of the HCFA–1450 will impact providers in several ways. First, the approximately 6,500 hospitals will experience aggregate one-time implementation costs of about $20 million. A specific hospital's costs should vary depending on its own claims volume experience. We do not anticipate a significant impact on any hospital as the average cost would be $3,100 per hospital.

Second, as mentioned earlier, these one-time costs should be offset by simplified recordkeeping and other billing efficiencies inherent in the use of the HCFA–1450. We estimate annual hospital savings of about $8 million from these benefits. As with the implementation costs, the savings should be relative to the volume of claims generated by a hospital. As the savings will offset incurred costs, thus minimizing the impact of those provisions, we believe that the implementation and use of the HCFA–1450 will not result in a significant impact on affected providers. We estimate a negligible impact from the use of the HCFA–1500.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatients providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 405 would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The table of contents for Part 405, Subpart P is amended by revising the title of § 405.1662 to read as follows:

* * * * *

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

* * * * *

Sec.
405.1662 Forms used for applying for entitlement or enrolled and claiming payments.

* * * * *

Authority: Secs. 1102, 1814, 1835, 1871, and 1883, 49 Stat. 647 as amended; 79 Stat. 294; 79 Stat. 303; 79 Stat. 331; 42 U.S.C. 1302, 1395f, 1395n, 1395hh, 1395tt, unless otherwise noted.

2. Section 405.1662 is revised to read as follows:

§ 405.1662 Forms used for applying for entitlement or enrollment and claiming payment.

(a) *General.* The Health Care Financing Administration (HCFA) has designated specific forms to be used by the public in applying for entitlement to benefits under the hospital insurance and supplementary medical insurance program. In addition, HCFA has prescribed forms for claiming payment for services provided to enrollees. A claim for payment under the hospital insurance benefits program or the supplementary medical insurance plan must be submitted by a participating provider of services or a hospital which has elected to claim payment of emergency services or certain services outside the United States on a form designated by HCFA and executed in accordance with such instructions as are prescribed by HCFA. Provisions for the use of each prescribed application and payment form are described in paragraph (b) or (c) of this application.

(b) *Application forms.* The following forms are used in applying for entitlement under the hospital insurance program or the supplementary medical insurance program:

HCFA–18–F–5—Application for Hospital Insurance Entitlement. (For use by individuals who are not eligible for retirement benefits under Title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance program.)

HCFA–4040—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is used for enrollment by individuals who are not eligible for monthly benefits or for hospital insurance.)

HCFA–40–B—Application for Medical Insurance. (For general use by the SSA District Office in requesting medical insurance protection during the general enrollment period or during the initial enrollment period if the enrollee is not subject to automatic enrollment in SMI.)

HCFA–40–D—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is mailed to individuals who do not have current supplementary medical insurance because of prior refusals, voluntary withdrawal, or premium default from prior coverage. It is used during the annual general enrollment period.)

HCFA–40–F—Application for Medical Insurance. (For use by beneficiaries residing outside the United States.)

HCFA–43—Application for Health Insurance Benefits under Medicare for Individuals with End Stage Renal Disease (ESRD). (An initial application for entitlement by individuals with ESRD).

An individual who upon attainment of age 65 is entitled to monthly social security or railroad retirement benefits or has filed and established eligibility for such benefits is automatically entitled to hospital insurance protection. (For conditions of entitlement to hospital insurance benefits, see Part 408, Subpart A, of this chapter.) Except for individuals residing in Puerto Rico or outside the United States, an individual who is entitled to hospital insurance protection based on age 65, disability, or ESRD is automatically enrolled in the supplementary medical insurance program, unless the individual refuses such enrollment. An individual who is not entitled to hospital insurance is not subject to automatic enrollment in the supplementary medical insurance program. Also, an individual who refuses automatic enrollment must subsequently request supplementary medical insurance coverage to become enrolled (see Forms HCFA–4040, HCFA–40–B, HCFA–40–D, and HCFA–40–F under § 405.1662(b)). (For conditions of entitlement to supplementary medical insurance benefits, see Part 408, Subpart B, of this chapter.)

(c) *Related forms.* The following forms are prescribed for use in requesting payment for services under the hospital insurance benefits program and the supplementary medical insurance benefits program and for other related purposes:

HCFA–1450—Uniform Institutional Provider Bill. (This form is for institutional provider billing for Medicare inpatient, outpatient and home health services. Initial hospital implementation on a phase-in-basis, is to be completed by October 1, 1984.)

HCFA–1453—Inpatient Hospital and Skilled Nursing Admission and Billing. (To be completed by a hospital or skilled nursing facility for payment of hospital or skilled nursing facility expenses for treatment of a patient confined in a hospital or skilled nursing facility.)

HCFA–1483—Provider Billing for Medical and Other Health Services. (To be completed by a hospital for payment for treatment of a patient who is not confined to an institution or has no Medicare Part A benefits available during a confinement.)

HCFA-1486—Inpatient Admission and Billing—Christian Science Sanatorium. (To be completed by a Christian Science sanatorium for payments for treatment of a patient confined in the sanatorium.)

HCFA-1487—Home Health Agency Report and Billing. (For use by an organization providing home health services.)

HCFA-1490S—Request for Medicare Payment. (For use by a patient to request payment for medical expenses.)

HCFA-1490U—Request for Medicare Payment by Organization. (For use by an organization requesting payment for medical services.)

HCFA-1491—Request for Medicare Payment-Ambulance. (For use by an organization requesting payment for ambulance services.)

HCFA-1500—Health Insurance Claim Form. (For use by physicians and suppliers to request payment for medical services.)

HCFA-1660—Request for Information-Medicare Payment for Services to a Patient now Deceased. (For use in requesting amounts payable under title XVIII to a deceased beneficiary.)

HCFA-1739—Request for Enrollment Card and Information by Foreign Beneficiary. (Used to notify beneficiaries approaching age 65 who reside in foreign countries that they are eligible to enroll for SMI. They return this form if they wish additional information and an application, HCFA-40-F.

HCFA-1966—Health Insurance Card. (This card is issued to all individuals entitled to hospital insurance benefits or supplementary medical insurance benefits, or both, whether the entitlement is based on age, disability or end-stage renal disease.)

HCFA-2384—Third Party Premium Billing Request. (For use by an enrollee who must pay premiums by direct remittance and is having his or her premium notices sent to a third party.)

(d) *Where applications and forms are available.* Excluding forms HCFA 1450 and HCFA 1500, all applications and related forms prescribed for use in the programs administered by HCFA under the provisions of title XVIII of the Social Security Act are printed under the specifications of HCFA and distributed free-of-charge to the public, institutions, or organizations for purposes described in paragraph (b) of this section. The HCFA-1450 and HCFA 1500 may be obtained only by commercial purchase. All other prescribed application forms can be obtained upon request from HCFA or any Social Security branch or district office. The HCFA-1490S is also available at local Social Security Offices. Forms, other than the HCFA-1450 and HCFA-1500, appropriate for use in requesting payment for services provided under the Medicare program can also be obtained from the intermediaries or carriers (organizations under contract with HCFA to make payment for such services). HCFA is not required to provide the HCFA-1450 and HCFA-1500 forms free-of-charge.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance and Supplementary Medical Insurance)

Dated: July 17, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 8, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-23748 Filed 9-6-84; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 14

Wildlife Import/Export License Fees: Inspection Fees Whenever Wildlife Is Imported Into or Exported From the United States by Persons Engaged in Business as an Importer or Exporter of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of the comment period on the proposed rule.

SUMMARY: The Service published a proposed rule June 18, 1984 (49 FR 24898-24903) dealing with import/export license fees and inspection fees for wildlife imported into or exported from the United States. Comments have been received requesting additional time for comments. The Service therefore is re-opening the comment period on the proposed rule to allow the public an opportunity to comment fully.

DATE: Comments on the proposed rule are due on or before October 9, 1984.

ADDRESSES: Comments may be mailed to Director (LE), U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, U.S. Fish and Wildlife Service, 3rd Floor, 1375 K Street NW., Washington, D.C. between 7:45 a.m. and 4:15 p.m. Comments should bear the identifying notation REG 14-02-002069. Comments received may be inspected weekdays during normal business hours at the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

SUPPLEMENTARY INFORMATION: On June 18, 1984 (49 FR 24898-24903) the Service published a proposed rule raising the biannual fee for wildlife import/export licenses from $50 to $250 and to charge a new inspection fee for each wildlife shipment imported into or exported from the United States as "user" fees. This action is authorized by the Endangered Species Act of 1973 and general statutory authority. For details consult the **Federal Register** of June 18, 1984.

Comment period ended August 17, 1984, on the proposed rulemaking. Requests have been received from foreign governments for an extension of the comment period in order to allow persons or businesses affected by the proposed rule and residents outside the United States an opportunity to comment and respond.

The Service is giving notice that the comment period on the proposed rule has been reopened. Comments on the proposed rule must be received on or before the date indicated above under the caption **DATES**.

Determinations of Effects of Rules

The Department of the Interior has determined that the proposed rule is not a major rule under Executive Order 12291. The Department has also certified that the rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

These determinations are discussed in more detail in a "Determinations of Effects" which has been prepared by the Service. A copy of that document may be obtained by contacting the person identified above under the caption **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

The proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with the proposed rule. It is on file in the Service's Division of Law Enforcement, 1375 K Street NW., Suite 300, Washington, D.C. 20005, and may be examined during regular business hours. Single copies are also available upon request by contacting the person identified above under the caption **FOR FURTHER INFORMATION CONTACT.**

Public Comments Invited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Interested persons are invited to submit written comments regarding the proposed rule. Those comments and any additional information received will be considered by the Department in adopting a final rule. Correspondence should be mailed or delivered to the address given at the beginning of this notice.

The primary author of this notice is Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service.

Dated: August 30, 1984.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23713 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 23

Changes To Be Proposed in Appendices to the Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species, which are listed in appendices to this treaty. The United States, as a Party to CITES, may propose amendments to Appendix I or II for consideration by the other Parties.

This notice invites comments and information from the public on species that have been identified as candidates for U.S. proposals to amend Appendix I or II at the next biennial meeting of Party nations. The meeting is now planned for April 1985 in Buenos Aires, Argentina.

DATE: The Service will consider all comments received by October 9, 1984 on proposals described in this notice.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 537, 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Jachowski, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653-5948.

SUPPLEMENTARY INFORMATION: In its previous notice on this subject (49 FR 6951, February 24, 1984) the Service requested information on plant or animal species that might lead it to develop proposed amendments for consideration at the fifth regular meeting of the Conference of the Parties. That notice described the provisions of CITES for listing species in the appendices and set forth information requirements for proposals. The present notice responds to comments and information received, and describes tentative U.S. proposals for which the Service seeks additional comments and information.

1. Psittacine birds—Currently, all species in the order Psittaciformes (parrots, macaws, cockatoos) are included in CITES Appendix II except for 32 species or subspecies that are in Appendix I, the rosy-ringed parakeet (*Psittacula krameri*) in Appendix III, and two unlisted species (budgerigar, *Melopsittacus undulatus*, and cockatiel, *Nymphicus hollandicus*). This order was added to Appendix II in 1981 when an overwhelming majority of the Parties accepted a proposal from the United Kingdom of Great Britain and Northern Ireland.

The Service received 67 letters from individual aviculturists recommending that the United States now propose removal of the majority of psittacine birds from Appendix II, and removal of the scarlet-chested parakeet (*Neophema splendida*) from Appendix I. The American Federation of Aviculture and the Kansas Avicultural Society also urged removal of the order Psittaciformes from Appendix II, although the Federation noted that the current listing "has not interfered with bird imports." The main argument given in support of these recommendations is that breeding of large numbers of these birds in captivity has eliminated the threat of extinction.

Although aviculturists have bred many psittacines, wild populations of the birds may still be at risk, as noted in the dissenting comments of one aviculturist. Genetic differences between wild and captive populations as a result of artificial selection can render the latter unsuited for release in the wild. Also it is not clear whether many captive populations have become self-sustaining. Existing information about the population status of wild populations is generally too poor to satisify the rigorous criteria used by Parties in evaluating proposals to remove species from Appendix I or II. For these reasons, the Service has decided not to develop proposed amendments on psittacines for the next meeting of the Parites, and does not request further comment on such proposals at this time.

Several of the persons who commented on psittacines expressed opposition to controls on interstate commerce or other activities within the United States. Because CITES regulates only international shipment, such comments probably relate instead to the Endangered Species Act of 1973, which does regulate interstate commerce in Endangered and Threatened species, and under which 26 species or subspecies of psittacines are listed as endangered. The Service has issued regulations to simplify compliance with the Act by persons involved in breeding Endangered species in captivity (see 50 CFR 17.21(g)).

2. Lesser florican (*Sypheotides indica*)— Inclusion of this species, a bustard endemic to India, in the appendices to CITES was suggested by Ms. Marie C. Peronne of Clarence, N.Y. Ms. Peronne supplied little supporting information. The Bustard Group of the International Council for Bird Preservation recently surveyed populations of the bird (Magrath, R.D., M.W. Ridley and J.Z. Woinarski. 1983. Status and habitat requirements of lesser floricans *Sypheotides indica* in Kathiawar, Western India. Report of Project 9.220. ICBP). Their conclusions were that floricans were still abundant in areas of ungrazed grassland, and that the conversion of grassland to cultivation or its degradation from overgrazing were the main causes of population decline since about 1950. Because international trade does not appear to be implicated, the Service does not now intend to develop a proposal to add this species to Appendix I or II.

3. Northern elephant seal (*Mirounga angustirostris*)—This species was transferred from Appendix I to Appendix II in 1979, on the basis of information supplied by the U.S. National Marine Fisheries Service (NMFS). Biological evidence showed that the species has recovered from near extinction by commercial hunting in the 1800's, to the point where it occupies and breeds in most of its former known range. NMFS recently suggested that the species might appropriately be removed from Apendix II on the grounds that it is not potentially threatened and is not in trade.

The Service is contemplating a proposal to remove the northern elephant seal from Appendix II, and invites comments and information on such action. Aside from biological and trade data, the Service will seek the views of Mexico, where the species also occurs, and consider the effect of delisting on efforts to regulate trade—if any might occur—in the southern elephant seal (*M. leonina*), which also is listed in Appendix II.

4. Naiad mussels (family Unionidae)—There presently are 26 species or subspecies of naiad mussels in Appendix I and 6 species or subspecies of them in Appendix II. Although these listings have been in effect since CITES entered into force in 1975, there has been almost no recorded international trade in the taxa, most of which are protected under the Endangered Species Act of 1973. The complex taxonomy and extreme difficulty in identifying these animals to species or subspecies render the CITES listings ineffective, and it is uncertain whether these CITES listings are needed to supplement the protection conferred by the Act.

Some unlisted naiads are common enough to be commercially harvested in rivers of the Mississippi drainage for export of shells to Japan. Such harvest is regulated by the individual states. The Service does not have information to indicate that naiads subject to this harvest deserve protection under CITES, except perhaps because of similarity in appearance to listed forms. Therefore, the Service invites information and comments on whether any of the individual taxa of naiads now listed should be proposed for removal from the appendices or whether the entire family Unionidae should be added to Appendix II. Please note that either change under CITES would not alter protection afforded under the Endangered Species Act.

If it is decided not to propose removal of certain naiads from Appendix I, the Service will consider a proposal to annote the current listing of Sampson's pearly mussel (*Epioblasma sampsoni*) as possibly extinct, for reasons given in support of its delisting under the Act (49 FR 1057, January 9, 1984).

5. Red-knee tarantula spider (*Brachypelma smithi*)—This large groundwelling spider occurs in semi-desert habitats in Western Mexico. It is collected for trade as a pet in the United States and Western Europe. The IUCN Invertebrate Red Data Book (Wells, S.M., R.M. Pyle and N.M. Collins, 1983) includes this species but indicates that its status is insufficiently known to determine if it might be at risk because of such trade. Wells *et al.* recommend that studies be conducted, and that if they show population declines due to trade, then listing under CITES should be considered.

The Environmental Defense Fund suggested a proposal to include this species in Appendix II. The Service is considering such a proposal, and invites comments and information on such action. In addition to biological and trade data, as mentioned by Wells *et al.*, the Service will seek the views of Mexico and consider the practicality of distinguishing this species from other spiders in trade.

6. Parts and derivatives of Appendix II plants—Article I of CITES states that in the case of species listed in Appendix I, all readily recognizable parts and derivatives are subject to regulation. However, in the case of plant species listed in Appendix II or III, only those parts and derivatives specified in the Appendices in relation to the species are subject to regulation. This provision causes problems in implementing CITES for plants: (a) There are difficulties in distinguishing whole specimens from parts, resulting in the question of how much an intact plant may be modified before it loses its legal identity as a "specimen"; (b) the need to specify parts and derivatives results in plants being treated differently from animals, which might not be biologically justified, and (c) it is difficult for Parties to adjust their controls on trade in response to changes in the forms in which Appendix II or III plants are normally traded, so as to cover those parts and derivatives that should be subject to regulation from a conservation standpoint.

A recent resolution on this subject adopted by the Parties in Botswana (Conf. 4.24) recommended among other things: That trade in all Appendix II or III plant parts and derivatives should be regulated unless particular ones are specified as being exempt; that cut flowers of artificially propagated orchids, and seeds, spores, and tissue cultures not be regulated; and that trade in other parts and derivatives not be regulated if this is agreed upon by the Conference of the Parties. In order for the recommendations in Conf. 4.24 to be implemented properly, a proposal must be submitted to amend the listing of plants in Appendix II in accordance with CITES Article XV. In doing so, it is necessary to consider whether any plant parts or derivatives should be excluded from CITES, paying particular attention to those parts and derivatives that frequently enter trade without detriment to the species involved. The question of whether parts or derivatives are "readily recognizable" also would have to be considered.

The Service seeks information and comments on those parts or derivatives that should be proposed for exclusion with respect to plants now listed in Appendix II. As noted above, Conf. 4.24 already suggests the exclusion of cut flowers of artificially propagated orchids, as well as seeds, spores and tissue cultures of all Appendix II plants.

7. American ginseng (*Panax quinquefolius*)—This herb, native to Eastern North America, is listed in Appendix II and its roots are specified as subject to CITES. The species is extensively exploited, mainly for export to the Orient. Wild populations in certain states have become depleted, but in other states they continue to sustain a regulated harvest without apparent detriment to their survival. In addition to collection from the wild, ginseng is grown under cultivation or under seminatural conditions.

The Honorable Albert Gore, Jr., Member of Congress from Tennessee, recommended that the species be proposed for removal from Appendix II on the grounds that it appears to be plentiful in Tennessee and that regulation of export penalizes honest ginseng diggers and dealers by stimulating a black market and creating economic hardship.

In response, the Service has reviewed the status of ginseng throughout its range and determined that the species as a whole is appropriately listed in Appendix II. Tennessee is one of several states for which the Service did not grant approval of ginseng export for the 1983 season, because the state's inspection and certification system was not adequate to meet the Service's Management Authority requirements under CITES (see 48 FR 45775, October 7, 1983). The Service would prefer to resolve problems with that system rather than to jeopardize any conservation benefits that CITES might offer for wild ginseng throughout its range.

For reasons given above, the Service does not intend to consider a proposal to delist ginseng, and does not request further comment on such a proposal at this time.

8. Cycads (*Ceratozamia* spp.)—The living genera of cycad plants are treated as belonging to either one, two, or three families; all taxa in the three families are listed in CITES Appendix I or II. TRAFFIC (U.S.A.), a program of World Wildlife Fund—U.S., suggested a proposal to transfer the genus *Ceratozamia* of the family Zamiaceae from Appendix II to Appendix I. About eight species are recognized in this genus, all but one confined to Mexico. TRAFFIC (U.S.A.) indicated that a Mexican authority on these plants reported that large portions of certain populations were destroyed by collection activities, and that the species of this genus were threatened with extinction by collection and habitat destruction.

The Service is considering a proposal to transfer *Ceratozamia* spp. to Appendix I, and invites comments and information on such action. The comments of Mexico and Guatemala, where these species occur, also will be sought.

Future Actions

The Service plans to publish a further **Federal Register** notice in October 1984, announcing its decisions on the species proposals discussed above, prior to submitting U.S. proposals to the CITES Secretariat for consideration at the fifth regular meeting of the Conference of the Parties. For species that occur outside the United States, the countries of origin will be contacted and consulted before a decision is made on submittal of a proposal by the United States.

Persons having current information about these species are invited to contact the Service's Office of Scientific Authority at the above address. The Service also requests information on environmental impacts of such proposed actions and their potential economic effects on state and local governments, persons, businesses, and organizations.

This notice was prepared by Dr. Richard L. Jachowski, Office of Scientific Authority, under the authority of 16 U.S.C. 1531–43.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Dated: August 29, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23693 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 175
Friday, September 7, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest Timber Sales; Control of Skewed Bidding Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of public comment period.

SUMMARY: On July 16, 1984, the Forest Service published a notice of proposed policy to limit skewed bidding (49 FR 28748). Comments on the proposed policy were to be received by September 14, 1984, in order to be considered. The proposal, upon adoption, would revise agency procedures for establishing bid rates for National Forest timber sale contracts. The primary purpose in revising these procedures is to reduce the Government's revenue losses associated with skewed bidding, the practice in which a bidder on a multispecies timber sale attributes most of the total bid value to one species and bids the minimum price on the others. The proposal would limit bidding on species that represent a minor proportion of the total sale volume. The proposed procedures would better protect the Government's earnings on timber sales as well as preserve competition among prospective purchasers. Summer is the busiest season for most timber sale operations. Because most contractors have been working in the field since publication of the notice of revised policy, many have not had adequate time to consider the policy and provide comments. Therefore, the public comment period is extended until October 15, 1984.

DATE: Comments must be received on or before October 15, 1984.

ADDRESS: Send written comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

All written submissions made pursuant to this notice will be available for public inspection during regular business hours in the office of the Director, Timber Management Staff, Forest Service, USDA, South Agriculture Building, Room 3207, 12th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Olson, Timber Management Staff, (202) 447-4051.

Dated: August 30, 1984.

J. Lamar Beasley,
Acting Chief, FS.

[FR Doc. 84-23746 Filed 9-6-84; 8:45 am]

BILLING CODE 3410-01-M

Scientific Advisory Board, Mount St. Helens National Volcanic Monument, Gifford Pinchot National Forest, Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., September 25, 1984, at the Gifford Pinchot National Forest Supervisor's Office, 500 West 12th Street, Vancouver, Washington 98660, to develop scientific recommendations for the National Volcanic Monument relative to:

1. A review of the Draft Comprehensive Management Plan for the Mount St. Helens National Volcanic Monument.
2. A possible Board statement to the fisheries science community encouraging a proposal to the National Science Foundation for support of a study on natural recovery of National Volcanic Mounument lakes.
3. Open discussion of topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, WA 98660, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: August 29, 1984.

Claude R. Elton,
Acting Regional Forester.

[FR Doc. 84-23649 Filed 9-6-84; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Paw Paw Schools Natural Area—Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Paw Paw Schools Natural Area RC&D Measure, Van Buren County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for the critical area treatment. The planned works of improvement for the critical area treatment include the following items: shaping, grading, topsoil, seed, fertilizer, and mulch of about 0.5 acre and three sets of access stairs. Total construction cost is estimated to be $8,900; $5,800 RC&D funds and $3,100 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: August 30, 1984.

Homer R. Hilner,

State Conservationist.

[FR Doc. 84-23669 Filed 9-6-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 5:00 p.m. and will end at 7:00 p.m., on September 25, 1984, at the Connecticut Education Association, 21 Oak Street, Hartford, Connecticut 06106. The purpose of the meeting is to discuss the draft report on a followup study of civil rights issues related to battered women.

Persons desiring additional information, or planning a presentation to the Committee, should contact the New England Regional Office at (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-23641 Filed 9-6-84; 8:45 am]

BILLING CODE 6335-01-M

Delaware Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 5:00 p.m., on September 25, 1984, at the Boggs Federal Courthouse, Room 3207, 844 King Street, Wilmington, Delaware 19801. The purpose of the meeting is to discuss the current status and program plans of the Advisory Committee.

Persons desiring additional information, or planning a presentation to the Commiteee, should contact the Mid-Atlantic Regional Office at (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-23638 Filed 9-6-84; 8:45 am]

BILLING CODE 6335-01-M

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 2:30 p.m. and will end at 4:30 p.m., on October 18, 1984, at the U.S. Commission on Civil Rights Headquarters, Conference Room, 1121 Vermont Avenue, NW., Washington, D.C. 20425. The purpose of the meeting is to discuss plans for upcoming Advisory Committeee activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Mid-Atlantic Regional Office at (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-23639 Filed 9-6-84; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advirory Committee to the Commission will convene at 6:00 p.m. and will end at 8:00 p.m., on October 9, 1984, at the Montgomery County Human Relations Commission, Conference Room, 164 Rollins Avenue, Rockville, Maryland 20850. The purpose of the meeting is to discuss plans for upcoming Advisory Committee activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Mid-Atlantic Regional Office at (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-23637 Filed 9-6-84; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda and Notice of Pubic Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 7:00 p.m., on September 27, 1984, at the Walthum Hotel, Van Dorn Room, 225 East Capitol, Jackson, Mississippi 39205. The purpose of the meeting is to dicuss the joint regional advisory committee conference, the national advisory committee chairperson's conference, and future program plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-23636 Filed 9-6-84; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of Public Workshop

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a workshop of the Oklahoma

Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 5:00 p.m., on September 29, 1984, at the Sheraton Inn-Skyline East, Cherokee/Chicksaw Rooms, 6333 E. Skelly Drive, Tulsa, Oklahoma 74135. The purpose of the workshop is to study issues regarding equal access of minorities to the electoral process in Oklahoma.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Southwestern Regional Office at (512) 229–5570.

The workshop will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–23640 Filed 9–6–84; 8:45 am]

BILLING CODE 6335–01–M

Oklahoma Advisory Committee; Agenda and Notice of Public Workshop

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a workshop of the Oklahoma Advisory Committee to the Commission will convene at 8:00 a.m. and will end at 5:00 p.m., on September 26, 1984, at the Holiday Inn West, Beachcomber Room, 801 South Meridian, Interstate 40 at Meridian, Oklahoma City, Oklahoma 73108. The purpose of the workshop is to study issues regarding equal access of minorities to the electoral process in Oklahoma.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Southwestern Regional Office at (512) 229–5570.

The workshop will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–23642 Filed 9–6–84; 8:45 am]

BILLING CODE 6335–01–M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and will end at 1:30 p.m., on September 24, 1984, at the Department of Economic Development, Conference Room A, 7 Jackson Walkway, Providence, Rhode Island 02940. The purpose of the meeting is to plan Advisory Committee activities for fiscal year 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact the New England Regional Office at (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 31, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–23643 Filed 9–6–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 272]

Resolution and Order Approving the Application of the Metropolitan Nashville-Davidson County Port Authority To Expand the Scope of Operations at Subzone 78A To Include Auto Manufacturing

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone 78, and Subzone 78A approved for the truck manufacturing operations of Nissan Motor Manufacturing, U.S.A. in Smyrna, Tennessee, filed with the Foreign-Trade Zones Board (the Board) on May 25, 1984, requesting authority to expand the scope of operations conducted under zone procedures at Subzone 78A to include automobile manufacturing, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Authority for Auto Manufacturing Operations at Foreign-Trade Subzone 78A, Smyrna, Tennessee

Whereas, the Metropolitan Nashville-Davidson County Port Authority, grantee of Foreign-Trade Zone No. 78 and of Subzone 78A at the truck manufacturing plant of Nissan Motor Manufacturing Corporation U.S.A. in Smyrna, Tennessee, has made application (filed May 17, 1984, Docket No. 27–84, 49 FR 22120) to the Foreign-Trade Zones Board (the Board) for authority to expand the scope of operations conducted under zone procedures at Subzone 78A to include automobile manufacturing;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the operation is in the public interest, and that the requirements of the Act and the Board's regulations are otherwise satisfied;

Now, therefore, in accordance with the application filed May 17, 1984, the Board hereby authorizes the manufacture of automobiles at Subzone 78A, subject to the provisions and restrictions of the Foreign-Trade Zones Act and Regulations issued thereunder. Operational approval of the District Director of Customs shall be obtained before zone procedures are used.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 30th day of August 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84–23762 Filed 9–6–84; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–583–023]

Clear Sheet Glass From Taiwan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On June 29, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on clear sheet glass from Taiwan. The review covers three time periods. The first involves two of the three known manufacturers and/or exporters and one known third-country reseller of this merchandise to the United States for the period July 1, 1976, through July 31, 1980. The second and third cover all four firms generally for consecutive periods from August 1, 1981, through July 31, 1983. We are covering the period July 1, 1976, through July 31, 1980, because of a remand from the Court of International Trade for reconsideration of the results of the first administrative review.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results.

EFFECTIVE DATE: September 7, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 26772) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on clear sheet glass from Taiwan (36 FR 16508, August 21, 1971). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of clear sheet glass, currently classifiable under items 542.3120 through 542.4835 of the Tariff Schedules of the United States Annotated.

The review covers three time periods. The first involves two of the three known manufactures and/or exporters and one known third-country reseller of Taiwanese clear sheet glass to the United States for the period July 1, 1976, through July 31, 1980. The second and third cover all four firms generally for consecutive periods from August 1, 1981, through July 31, 1983. We are covering the period July 1, 1976, through July 31, 1980, because of a remand from the Court of International Trade for reconsideration of the results of the first administrative review.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as the preliminary results, and we determine that the following margins exist:

Manufactuter/exporter	Time period	Margin (percent)
Hsinchu Glass Works, Inc	7/1/76-7/31/80	14.88
	8/1/81-7/31/82	[1] 14.88
	8/1/82-7/31/83	[1] 14.88
Taiwan Glass Corporation	7/1/76-7/31/80	[1] 1.6
	8/1/81-7/31/82	[1] 1.6
	8/1/82-7/31/83	[1] 1.6
Yotak Trading Company	8/1/81-7/31/82	[1] 7.0
	8/1/82-7/31/83	[1] 7.0
Third-Country Reseller (Country)		
Israeli International Trade Co., Ltd. (Israel)	7/1/76-7/31/80	[1] 14.88
	8/1/80-7/31/82	[1] 14.88
	8/1/82-7/31/83	[1] 14.88

[1] No shipments during the period.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based on the above margins for those firms. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after July 31, 1983, and who is unrelated to any reviewed firm, a cash deposit of 14.88 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese clear sheet glass entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information. The Department intends to begin immediately the next administrative review.

We will examine exports of this merchandise manufactured and exported by Hsinchu Glass Works, Inc. during the period August 1, 1983, through June 29, 1984, the date of our tentative determination to revoke with regard to this firm, in our next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

August 31, 1984.

[FR Doc. 84-23758 Filed 9-6-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-076]

Perchlorethylene From Italy; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of administrative review and revocation of antidumping finding.

SUMMARY: On May 29, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on perchlorethylene from Italy. The review covered the two known exporters of this merchandise to the United States, Montipede and Enichem Polimeri, and the period May 1, 1982, through May 18, 1983. There were no known shipments of this merchandise during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit written or oral comments on the preliminary results and tentative determination to revoke. We received no comments. We also determined that there were no shipments of this merchandise to the United States from Italy during the period May 19, 1983, through the date of the tentative determination to revoke. We advised all interested parties that there were no shipments and we provided an additional opportunity to comment. Again we received no comments.

Accordingly, these final results cover up to the date of our tentative determination to revoke and we revoke

the antidumping finding on perchlorethylene from Italy.

EFFECTIVE DATE: September 7, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 22367) the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on perchlorethylene from Italy (44 FR 29046, May 18, 1979). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Italian perchlorethylene, including technical grade and purified grade perchlorethylene. Perchlorethylene is a clear water-white liquid at ordinary temperature with a sweet odor and is completely capable of being mixed with organic liquids. It is a chlorinated solvent mainly for drycleaning of clothing, but is also used in other applications such as vapor degreasing of metals. Such merchandise is currently classifiable under item 429.3400 of the Tariff Schedules of the United States Annotated.

The review covered the two known exporters of this merchandise to the United States, Montipede and Enichem Polimeri, and the period May 1, 1982, through May 18, 1983. The Department has also determined that there were no shipments of this merchandise to the United States during the period May 19, 1983, through the date of publication of the tentative determination to revoke the finding.

Final Results of Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The Department provided all interested parties further preliminary results for the period up to the date of the tentative determination, and gave interested parties additional opportunity to comment. Again we received no comments.

Based on our analysis, the final results of our review are the same as those presented in the preliminary results. For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value.

Accordingly, we revoke the antidumping finding on perchlorethylene from Italy. This revocation applies to all unliquidated entries of Italian perchlorethylene entered, or withdrawn from warehouse, for consumption on or after May 29, 1984.

This administrative review, revocation, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

August 31, 1984.

[FR Doc. 84-23757 Filed 9-6-84; 8:45 am]

BILLING CODE 3510-DS-M

University of California, et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84-266. Applicant: University of California, Lawrence Berkeley Laboratory, One Cyclotron Road, Berkeley CA 94720. Instrument: FTIR Spectrometer System, Model IZM03. Manufacturer: Bomem, Inc., Canada. Intended use: The instrument will be used for a variety of experiments in solid state and molecular physics. Among the systems to be studied are the solid/vacuum interface, for example, nickel and silver surfaces; semiconductors, including germanium, silicon, and gallium arsenide; quasi-one-dimensional materials such as $(TaSe_4)_2I$ and $K_{.3}MoO_3$ ("blue bronze"); and short-lived molecular species generated in arc sources. Educational purposes—Training students in the techniques of modern infrared spectroscopy and solid state physics and preparing them for individual research careers. Application Received by Commissioner of Customs: August 3, 1984.

Docket No. 84-268. Applicant: National Institute of Mental Health, Laboratory of Preclinical Pharmacology, St. Elizabeth's Hospital, WAW Bldg., Washington, D.C. 20232. Instrument: Electron Microscope, Model 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Study of the brain and peripheral neuronal function. Specifically the instrument will be used to localize neuropeptides at the ultrastructural level in nervous tissue. In addition the instrument will be used to train visiting researchers in techniques and applications of electron microscopy currently in use at NIH. Application received by Commissioner of Customs: August 6, 1984.

Docket No. 84-270. Applicant: State University of New York, Stony Brook Campus, Stony Brook, NY 11794. Instrument: Klystron, Type VRB2113A. Manufacturer: Varian Canada, Ltd., Canada. Intended use: Basic research to determine man's influence on the stratospheric ozone layer and related stratospheric phenomena. Experiments will involve measurement of molecular emission lines from various stratospheric trace gases, such as ClO, ozone, N_2O, HO_2, etc. The experiments will be conducted to determine the extent to which release of cholorfluorocarbons alters the earth's stratospheric chemistry. Application received by Commissioner of Customs: August 6, 1984.

Docket No. 84-272. Applicant: Massachusetts Institute of Technology, Department of Earth, Atmospheric and Planetary Sciences, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: X-Ray Microanalyzer, Model Superprobe 733. Manufacturer: Jeol, Ltd., Japan. Intended use: X-ray analysis of material surfaces using wavelength dispersive and energy dispersive methods with a spatial resolution of 1 to 2 microns. High resolution observation of surface topology and qualitative determination of element distributions. Quantitative chemical analyses of crystalline and amorphous solids to determine element distributions in multiphase materials. Materials to be studied include: volcanic rocks of the ocean floor, volcanic products of continental margins, plutonic rocks of the oceanic crust and mantle and metamorphic rocks of the continental crust and ocean floor. The instrument will also be used to obtain chemical analyses of the crystalline and glass products of experimental phase equilibrium, kinetic studies and rock deformation studies. Educational purposes—Teach students how to obtain chemical analyses of geological materials. Application received by Commissioner of Customs: August 6, 1984.

Docket No. 84–277. Applicant: University of Minnesota, Department of Geology and Geophysics, 310 Pillsbury Drive SE., Minneapolis, MN 55455. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: Studies of the following phenomena: (1) isotope exchange rates as functions of parameters such as grain size, bulk chemistry and mineralology, fracture density, and volatile species; (2) modifications of crustal and mantle rocks through interaction with the earth's fluid envelope; and (3) interaction between crustal and mantle reservoirs. In most of the research projects, oxygen isotope composition of separated minerals or whole-rocks is analyzed. The instrument will also be used as an integral part of the graduate program in the Department of Geology and Geophysics and in the Department of Physics. Application received by Commissioner of Customs: August 6, 1984.

Docket No. 84–279. Applicant: Western Research Institute, 9th and Lewis, Laramie, WY 82070. Instrument: Data System, Pyrolysis Probe and Desorption Chemical Ionization Probe. Manufacturer: VG Instruments, United Kingdom. Intended use: The instruments are accessories to an existing mass spectrometer system. The pyrolysis probe will be used in the analysis of highly associated materials, such as polymers. The desorption chemical ionization probe will be used in the high resolution mass spectral analysis of involatile sample materials derived from shale oil and other fossil fuel sources. The data system will be an integral part of the mass spectrometer system and will be universally used with all experiments. Application received by Commissioner of Customs: August 6, 1984.

Docket No. 84–280. Applicant: U.S. Geological Survey, Water Resources Division, National Research Program, 5293 Ward Road, Arvada, CO 80002. Instrument: Inductively-Coupled Plasma/Mass Spectrometer, Model ELAN 250. Manufacturer: Sciex, Inc., Canada. Intended use: Scientific research in the inorganic trace element chemistry of hydrologic systems, including surface water, ground water, atmospheric precipitation (rain and snow) and related materials. This includes measurement of trace elements and each of their stable isotopes at ultra high sensitivity directly in aqueous media with preconcentration or separation. In addition, by measuring the isotope ratios of selected elements, experiments can be performed to age date the hydrologic systems and function as conservative tracers to follow the movement and mixing of systems and determine the origin of pollutants and contaminants. Application received by Commissioner of Customs: August 6, 1984.

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 84–23756 Filed 9–6–84; 8:45 am]

BILLING CODE 3510–DS–M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held September 24, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, D.C.

The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export control applicable to automated manufacturing equipment or technology.

Agenda: *General Session*—will begin with an open meeting to invite public comments with regards to existing commodity or technology controls. The commodities and technologies that fall under the responsibilities of the Committee are those relating to the following Commodity Control List (CCL) entries; 1091, 1532, 1370, 1093, 1312, 1080, 1081, 1086, 1357, 1371, 1354.

In addition the Committee also is concerned with robots, automatic industrial control systems and process controllers. Invited comments will be restricted to these or substantially related items.

In particular the Committee would like to invite public evidence of foreign available equipment (or technology) falling within the above mentioned CCL entries. Information is desired relating to equipment (or technologies) produced or available in the following country groups:

a. Proscribed countries (East Bloc Countries),

b. Non-COCOM free world countries.

Specific information is needed on:

1. Manufactures and country of origin,
2. Product's capabilities and features,
3. Product availability, and
4. Proof of delivery of products in sufficient quantity and quality.

The Committee is generally concerned with future regulatory levels and changes needed to existing commodity or technology control level. Request specifically oriented to individual license application should not be presented at this time.

Executive Session—Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meeting of the Committee to the public on the basis of 5 U.S.C. 522b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated: September 4, 1984.

James K. Pont,

Deputy Director, Office of Export Administration.

[FR Doc. 84–23752 Filed 9–6–84; 8:45 am]

BILLING CODE 3510–25–M

[C–201–401]

Bars and Shapes From Mexico; Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders

Correction

In FR Doc. 84–21958 beginning on page 32887 in the issue of Friday, August 17, 1984, make the following correction.

On page 32892, column three, "Appendix A—Product Description" and the file line were inadvertently omitted and should appear as follows after the signature:

Appendix A—Product Description

1. the term "certain deformed concrete reinforcing bars" covers hot-rolled steel bars, of solid cross-section, having deformations of various patterns on their surfaces; as currently provided for in items 608.7900 and 606.8100 of the *Tariff Schedules of the United States Annotated* (TSUSA).

2. the term "hot-rolled carbon steel bars" covers hot-rolled carbon steel products of solid section not conforming completely to the respective specifications given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet pads, wire rods, plates, sheets, strip, wire, rails, joint bars or tie plates which have cross-sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons; as currently provided for in items 606.8310, 606.8330, 606.8350, and 606.8600 of the TSUSA. Includes flat hot-rolled carbon steel products in coils or cut to length with a width of 8 inches or less and a thickness of 0.1875 inch or more.

3. the term "hot-rolled carbon steel bar-size shapes" covers hot-rolled carbon steel angles, shapes and sections, not drilled, not punched and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates or any tubular products set forth in the TSUSA having a maximum cross-sectional dimension of less than 3 inches, as currently provided for in items 609.8050, 609.8070 or 609.8090. This definition includes carbon steel angles, channels, special sections and other assorted carbon steel shapes with a maximum cross sectional dimension of less than 3 inches.

[FR Doc. 84-21956 Filed 8-16-84; 8:45 am]

BILLING CODE 1505-01-M

Minority Business Development Agency

Financial Assistance Application Announcement; Illinois

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its competitive Minority Business Development Center (MBDC) Program to operate a MBDC for a 12-month period, from January 1, 1985 to December 31, 1985 in the Chicago Standard Metropolitan Statistical Area (SMSA). The total cost for the MBDC will be $556,524 which will consist of a maximum of $473,045 Federal funds and a minimum of $83,479 non-Federal funds (which can be a combination of cash, in-kind contribution and fees for service).

The funding instrument for the MBDC will be a cooperative agreement and is open to all individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients in areas related to the establishment and operation of business. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from information and assistance to and about minority businesses are funneled.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 12-month period with a two-year noncompeting continuation option. MBDCs shall be required to contribute at least 25% of the total program costs through non-Federal funds during each of the two option years. The noncompeting continuation application kit will be sent to an MBDC (who is performing at a satisfactory level or better) approximately 120 days prior to the last day of the initial award period. The MBDC should fill out and mail the continuation application to their approximate MBDA regional office. After receipt of the continuation application kit by MBDA, the MBDC's option will be reviewed and awarded each year at the direction of MBDA based on its needs, availability of funds and the applicant's satisfactory performance.

DATE: *Closing date:* The closing date for applications is October 26, 1984. Any applications must be postmarked on or before October 26, 1984.

ADDRESS: Chicago Regional Office, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: Richard H. Sewing, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-application conference to assist all interested applicants, will be held at the Federal Building—219 South Dearborn Street—Room 1221—Chicago, Illinois on October 1, 1984, at 10:00 a.m.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Dated: August 31, 1984.

Edward Bryant,

Acting Regional Director.

[FR Doc. 84-23871 Filed 9-6-84; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council will meet in Anchorage, Alaska, September 25–28, 1984. The agenda includes the election of Council officers, setting preliminary harvest levels for groundfish and their apportionments to domestic and foreign fishermen for 1985, extension of an emergency closure for sablefish in Southeast Alaska Federal cul-de-sacs, emergency regulations to raise the bycatch limit on halibut by domestic trawlers, a ban on using pots for sablefish in Southeast Alaska, and various analyses of the incidental catches in the trawl fisheries. They will discuss joint venture permit restrictions and adopt policies governing review of foreign vessel permit applications and allocations. The Council will review Portugese permits for directed fishing and joint ventures in 1984.

Other agenda topics are a discussion of halibut management, comprehensive management goals for Council-managed fisheries, groundfish data programs, Advisory Panel operations, responses to a request for proposals for offshore herring research, and an industry request for a Secretarial plan for herring management.

On September 26, the Council will meet with the Alaska Board of Fisheries to review proposals for Tanner crab regulations including exclusive areas and pot limits. The Council will review

Tanner crab Amendment 9 to decide if further action is needed.

The Council's Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will meet in Anchorage September 24–25 to discuss the same subjects. Plan team and workgroup meetings may be held on short notice during the Council meeting, and will be announced at the Council offices. A detailed agenda for the Council meeting will be available about September 10.

The Council and its SSC may announce closed sessions during the week to discuss personnel matters. All meetings will be held at the Old Federal Building, 605 W 4th Avenue in Anchorage, and are open to the public, except for closed sessions. For further information, contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, telephone: (907) 274–4563.

Dated: August 29, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–23790 Filed 9–6–84; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council's Plan Team for Tanner crab will meet in Kodiak on September 6, 1984 at 1 p.m. The meeting will be held at the Alaska Department of Fish and Game office. The team will discuss a draft report on exclusive registration areas and pot limits in the Tanner crab fishery being prepared for discussion at the joint meeting of the North Pacific Council and Alaska Board of Fisheries September 26, in Anchorage. For further information contact Raymond E. Baglin, Jr., National Marine Fisheries Service, c/o Alaska Department of Fish and Game, P.O. Box 686, Kodiak, AK 99615, telephone: (907) 486–4791.

Dated: August 31, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–23789 Filed 9–6–84; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Pacific Fishery Management Council's Plan Development Team will meet in Rancho Cordova, California, on September 24–26, 1984 to critically review and improve the form and content of their annual data report, establish a schedule and responsibilities for the development and completion of the 1985 report, and discuss team responsibilities under the Framework Amendnemt. The meeting is open to the public. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill St., Portland, OR 97201, telephone: (503) 221–6352.

Dated: August 31, 1984.

Roland Finch,

Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–23788 Filed 9–6–84; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Wool Textile Products Produced or Manufactured in Macau

September 4, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 10, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984, between the Governments of the United States and Macau provides for percentage increases in certain limits during an agreement year (swing). Under the terms of the bilateral agreement, the restraint limit previously established for wool textile products in Category 445/446 is being adjusted for swing, increasing the limit from 70,672 dozen to 74,206 dozen for the agreement year which began on January 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 4, 1984.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On January 18, 1984, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of certain cotton, wool and man-made fiber textile products exported during the twelve-month period beginning on January 1, 1984 and extending through December 31, 1984, produced or manufactured in Macau, in excess of designated restraint limits. The Chairman further advised you that limits are subject to adjustment.[1]

Effective on September 10, 1984, paragraph 1 of the directive of January 18, 1984 is hereby amended to include an adjusted restraint of 74,206 dozen[2] for wool textile products in Category 445/446.

The action taken with respect to the Government of Macau and with respect to imports of wool textile products from Macau has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–23754 Filed 9–6–84; 8:45 am]

BILLING CODE 3510–DR–M

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984, between the Governments of the United States and Macau which provide, in part, that: (1) within the aggregate and applicable group limits, specific limits may be exceeded by designated percentages; (2) specific limits may be increased for carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to account for any imports after December 31, 1983.

Increasing the Import Limits for Certain Cotton Textile Products Produced or Manufactured in Egypt

September 4, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 10, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated July 19, 1984 established specific restraint limits for certain categories of cotton textiles and textile products, including Categories 301 (cotton yarn) and 313 (cotton sheeting), produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1984. (See 49 FR 30005). In the CITA directive published below the limit for Category 301 is being increased to 1,240,000 pounds by the application of swing provided under the terms of the Bilateral Cotton Textile Agreement of December 7 and 28, 1977, as extended, between the Governments of the United States and the Arab Republic of Egypt. Also according to the terms of the bilateral agreement, the limit for Category 313 is being reduced from 12,500,000 square yards to 12,257,120 square yards to account for the increase applied to Category 301.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 4, 1984.

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of July 19, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textiles and textile products, produced or manufactured in Egypt.

Effective on September 10, 1984, you are directed to increase the restraint limit established for Category 301 in the directive of July 19, 1984 to 1,240,000 pounds and to decrease the restraint limit established for Category 313 to 12,257,120 square yards[1] according to the terms of the Bilateral Cotton Textile Agreement of December 7 and 28, 1977, as extended, between the Governments of the United States and the Arab Republic of Egypt.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls with the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-23753 Filed 9-6-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Unsolicited Mass Mailings

Notice is hereby given that the Air Force intends to establish new policy for the delivery of unsolicited mass mailings sent to the Air Force military personnel and civilian employees at their duty address on Air Force installations in the United States, Hawaii and Alaska (excluding APOs). Unsolicited mass mailings to Air Force installations overseas will not be accepted. A mass mailing is defined as twenty or more pieces received from the same mailer on any one day. To be eligible to receive delivery service by the Air Force, mailers must first obtain appropriate personnel lists in accordance with published policies on release of those lists under the Freedom of Information Act (FOIA). Upon release of the requested listing, the mailer must contact the Chief, Base Administration at each installation targeted for delivery and request authorization to forward a mass mailing to that base. The request must be in writing and state the approximate time frame of delivery, number of pieces to be mailed, and documented evidence that the listing was officially released to the mailer. Mail must be properly addressed to include a valid organization and Functional Address Symbol. The Chief, Base Administration will respond to the mailer's request in writing with mailing and/or processing instructions. Mass mailings of twenty or more pieces will be returned to the servicing post office as "Undeliverable" if any one of the following conditions is not satisfied by the mailer: provide documented evidence of FOIA release; properly address mail pieces; obtain authority for delivery from Chief, Base Administration.

It has been Air Force policy that correspondence of a personal nature, not related to an individual's official duties, was not deliverable at their duty address. While, in general, this policy still applies, exceptions may be made for correspondence of such nature that is not merely advertising or soliciting, but offers a clear benefit to the individual. On a test basis delivery of unsolicited mass mail was made at certain Air Force installations for one year. The recently concluded test revealed there was some impact on Air Force resources including increased cost where mail processing and delivery systems were operated by contractors. The Air Force is still studying the possibility of assessing a user charge for providing the service.

For Further Information Contact: Steven M. Fried, HQ USAF/DAQA, Bolling AFB DC 20332. Telephone (202) 767–4197.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84-23749 Filed 9-6-84; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board, Ad Hoc Committee on Terminal Guidance Technology Options; Meeting

August 24, 1984.

The USAF Scientific Advisory Board Air Force Ad Hoc Committee on Terminal Guidance Technology Options will meet on the 26th and 27th of September in Johnson Hall at Eglin AFB Florida. On 26 September the meeting will begin at 8:30 a.m. and end at 5:00 p.m. On 27 September the meeting will begin at 8:30 a.m. and end at 3:30 p.m.

kThe purpose of the meeting will be to assess to technical maturity of several weapons guidance programs.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically, subparagraph (1) thereof, and accordingly, will be closed to the public.

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[1] The levels have not been adjusted to account for any imports exported after December 31, 1983.

[2] The agreement provides, in part, that (1) except in Categories 300/301 and 300 and 301, among which no swing is available, during any agreement year specific limits may be exceeded by not more than six percent; provided that a corresponding reduction in square yards equivalent is made in another specific limit during the same agreement year; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

For further information, contact the Scientific Advisory Board Secretariat at 202/697–8404.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84–23646 Filed 9–6–84; 8:45 am]

BILLING CODE 3910–01–M

Performance Review Boards List of Members

Below is a listing of an additional individual who is eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Others

BG Robert B. Plowden, Jr.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84–23647 Filed 9–6–84; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Meeting Changes

The following changes have occurred for the meeting of the Army Science Board Ad Hoc Subgroup on Nondevelopmental C3I, which was originally announced in the **Federal Register** issue of Thursday, August 23, 1984 (49 FR 33474), FR Doc. No. 84–22351:

Meeting Dates: Tuesday and Wednesday, 25 and 26 September 1984 (instead of Tuesday and Wednesday, 18 and 19 September 1984).

Place: Science & Technologies Associates, Inc., 1700 N. Moore Street, Arlington, VA instead of at the Pentagon, Washington, D.C.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–23703 Filed 9–4–84; 1:32 pm]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Tuesday and Wednesday, 16 and 17 October 1984.

Times of Meeting: 0830–1700 hours, both days (Closed).

Place: Science & Technologies Associates, Inc., 1700 N. Moore Street, Arlington, VA.

Agenda: The Army Science Board Ad Hoc Subgroup on Non-developmental C3I Items will meet in an Executive Session to write its final report. The purpose of the study is to effect an increase in the purchase of "off the shelf" equipment for the Army. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contact for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–23702 Filed 9–6–84; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Corps of Engineers, Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Shorelands Project, Regulatory Permit Application No. 15283E59, Alameda County, CA

AGENCY: San Francisco District, Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY:

1. *Proposed Action:* The Shorelands Corporation, Hayward, California has applied for a Department of the Army permit under section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and under section 404 of the Clean Water Act (33 U.S.C. 1344) to construct a horse racing facility, recreation or theme park, and other commercial development at the Baumberg Tract in the city of Hayward, Alameda County, California. The overall project involves 1218.8 acres, including 708.8 acres to be developed for commercial uses and 510 acres to be dedicated by The Shorelands Corporation for public parks and open space. The San Francisco District, Corps of Engineers and the City of Hayward will prepare a joint federal/state environmental impact document (Environmental Impact Report/Environmental Impact Statement) for the proposed project pursuant to the National Environmental Policy Act and the California Environmental Quality Act.

2. *Alternatives:* The alternatives being considered by the Corps of Engineers at this time are:

a. Permit denial (No Corps of Engineers action)
  (1). No project
  (2). Alternative location(s) for proposed project or project components
b. Proposed project with racetrack and theme park
c. Proposed alternate land use plan with research and development complex in place of racetrack and theme park
d. Reduced project at proposed location

Additional alternatives identified during the scoping process will also be considered in the EIR/EIS.

3. *Scoping Process:*

a. Two scoping meetings will be held on Thursday, Septemnber 27, 1984 at the City Council Chambers, Hayward City Center Buiding, 22300 Foothill Boulevard, Haward, California. The first meeting will be held at 2:30 P.M. and the second at 7:00 PM. Two sessions are being held in order to facilitate participation by both agency personnel and members of the public. Government agencies, public and private interest groups, and the public are invited to participate in the scoping process by attending one of the scoping meetings. The purpose of the scoping meetings is to identify significant issues and alternatives to be considered in depth in the Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

Any person may also participate in the scoping process by submitting written comments to the Corps of Engineers. Comments should be addressed to the District Engineer, San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California, 94105 and received within 30 days of the date of this notice.

b. The significant issues which have been identified to date and which will be analyzed in the EIR/EIS include impacts on:

(1). Water quality and hydrology
(2). Air quality
(3). Energy use
(4). Noise conditions
(5). Wildlife and habitat
(6). Aesthetics
(7). Traffic conditions
(8). Geological and seismological hazards
(9). Land use
(10). Employment and commercial activity
(11). Public services and utilities
(12). Local government finance
(13). Recreation
(14). Cultural resources
(15). Social conditions
(16). Growth inducement

Additional significant issues identified during the scoping process will also be analyzed in the EIR/EIS.

c. Environmental review and consultation as required by sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); section 307 of the Coastal Zone Managment Act of 1972, as amended (16 U.S.C. 1456(c)); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order 11988, "Floodplain Management", 24 May 1977; Executive Order 11990, "Protection of Wetlands", 24 May 1977; and other applicable statutes or regulations will be conducted concurrently with the EIR/EIS process.

4. It is estimated that the draft EIR/EIS will be made available to the public on or about February 11, 1985.

5. Questions regarding the scoping process or preparation of the EIR/EIS may be directed to Scott Miner, Environmental Branch (Telephone: (415) 974–0446). General questions concerning the processing of the permit application may be directed to Bernard Lewis, Regulatory Functions Branch (Telephone: (415) 974–0424).

Dated: August 29, 1984.

Melvin M. Watanabe,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 84–23652 Filed 9–6–84; 8:45 am]

BILLING CODE 3710–FS–M

Intent To Prepare a Draft Final Environmental Impact Statement (DEIS) for the Muscatine Island Levee District and Muscatine-Louisa Drainage District No. 13, Iowa, Local Flood Protection Project

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: .

1. *Description of Proposed Action.* Raising approximately 15 miles of existing levee and constructing approximately ½ mile of concrete floodwall to reduce flood damages to the Muscatine Island Levee District and the Muscatine-Louisa County Drainage District No. 13 in southeastern Iowa is being considered. The project site is located immediately south of Muscatine, Iowa, in Muscatine and Louisa Counties from approximate Mississippi River Mile 455 to River Mile 442. If feasible, approximately 1,000,000 cubic yards of hydraulic borrow will be obtained from Mississippi River main channel and backwater areas. When practical, extension of the levee base will be landward. Approximately 30,000 acres of commercial/industrial, residential, and agricultural land will receive increased protection.

2. *Alternatives for the Proposed Action.* Alternatives which have been considered include No Federal Action, Evacuation, Floodproofing, two plans to direct portions of floodflows to the Illinois side of the river, levee raises on both the Iowa and Illinois sides of the river, and three plans to protect subsections of the study area with ring levees.

3. *Public Involvement.* Seven meetings and hearings to determine needs and concerns have been held over the course of the study involving the general public and local sponsors. In addition, prior circulation of environmental documentation has resulted in numerous comments on the study. The Draft Environmental Impact Statement will be sent to Federal, State, and local government agencies, as well as private groups and individuals for comment. Coordination with interested agencies, groups, and individuals will be maintained during preparation of environmental documents.

4. *Elements to be Addressed in the Draft and Final Environmental Impact Statement (EIS).* The Draft and Final EIS will address raising the existing levee with extension of the levee base landward when practical. The project is subject to the Fish and Wildlife Coordination Act, the Historical Preservation Act, the Endangered Species Act, Executive Order 11988 on Flood Plain Management, and Executive Order 11990 on Wetlands. If required under section 404 of the Clean Water Act, an evaluation report will be prepared and public notices issued. Requirements under section 401 of the Act will be met.

5. *Estimated Release Date.* The Draft EIS will be released for public review on or about 15 October 1984.

6. *Correspondence.* Questions about the proposed action and the Draft Environmental Impact Statement should be sent to the following address: District Engineer, U.S. Army Engineer District, Rock Island, Atten: Planning Division, Clock Tower Building—P.O. Box 2004, Rock Island, Illinois 61204–2004.

• Dated: August 30, 1984.

Arthur E. Miller,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 84–23672 Filed 9–6–84; 8:45 am]

BILLING CODE 3710–HV–M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for Operation and Maintenance of the Pearl River Waterway, LA and MS, Project

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY:

1. *Proposed Action:* The proposed action includes developing alternative plans for resumption of operation and maintenance activities on the West Pearl River in Louisiana and Mississippi.

2. Several alternatives are being considered for resumption of the operation and maintenance activities. The DEIS will include an evaluation of the environmental, social, economic, and engineering impacts associated with each alternative plan. The following alternatives are being considered:

a. *No Action.* This alternative will be the without-project condition as determined by the most probable future in the absence of a Federal project and from which impacts of other alternatives will be measured.

b. *Dredging and Clearing and Snagging.* Various channel alignments and dredging and disposal options will be considered as well as snagging alternatives during the study.

3. *Scoping Process:*

a. The scoping process as defined in the National Environmental Policy Act regulations contained in the 29 November 1978 **Federal Register** is being used throughout the study.

b. The DEIS will contain evaluations concerning project effects on bottom-land hardwood forests; wildlife resources; fishery resources; prime and unique farmlands; threatened, endangered, or uncommon species; businesses; residences; and other cultural resources.

4. *DEIS Publication Date:* The current study schedule estimates that the DEIS will be available to the public in November 1984.

ADDRESS: Questions concerning the proposed action and DEIS can be answered by: Mr. Marvin Cannon, U.S. Army Corps of Engineers, Vicksburg District, ATTN: LMKPD–Q, P.O. Box 60, Vicksburg, Mississippi 39180–0060, Telephone: FTS 542–5437, Commercial (601) 634–5437.

Dennis J. York,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84–23726 Filed 9–6–84; 8:45 am]

BILLING CODE 3710–PU–M

Defense Logistics Agency

Privacy Act of 1974; Republication of System Notices

Correction

In FR Doc. 84–20097 beginning on page 30834 in the issue of Wednesday, August 1, 1984, make the following corrections:

1. On page 30836, in the first column, immediately above the heading "SYSTEM NAME:", insert **"S111.11DLA–KS"**.
2. On page 30840, in the first column, immediately above the heading "SYSTEM NAME:", insert **"S160.50DLA–T"**.
3. On page 30842, in the middle column, immediately above the heading "SYSTEM NAME:", insert **S164.40DLA–T"**.
4. On page 30845, in the middle column, under "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:", in the third line, "somed" should read "some".
5. On page 30851, in the middle column, under "PURPOSE(S):", in the fourth line, "othewise" should read "otherwise". In the seventh line "perparing" should read "preparing".
6. On page 30857, in the middle column, immediately above the heading "SYSTEM NAME:", insert **"S322.53DLA–LZ"**.
7. On page 30861, in the third column, under "CATEGORIES OF RECORDS IN THE SYSTEM:", in the ninth line, "apeal" should read "appeal".
8. On page 30862, in the first column, under "RETENTION AND DISPOSAL:", in the third line, "precident" should read "precedent". In the eighth line, "yeas" should read "years".
9. On page 30868, in the middle column, **"S308.01 DLA–K"** should read **"S380.01DLA–K"**.
10. On page 30869, in the first column, immediately above the heading "SYSTEM NAME:", insert **"S380.20DLA–K"**.
11. On page 30871, in the middle column, under "CATEGORIES OF RECORDS IN THE SYSTEM:", in the third paragraph, in the fifth line, "chranological" should read "chronological".
12. On page 30873, in the middle column, immediately above the heading "SYSTEM NAME:", insert **"S491.10DLA–K"**.
13. On page 30874, in the middle column, under "RECORD SOURCE CATEGORIES:", in the seventh line, "bccharacteristics" should read "characteristics".
14. On the same page, in the third column, under "CATEGORIES OF RECORDS IN THE SYSTEM:", in the eighth line, "vevocations" should read "revocations".

BILLING CODE 1505–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

National Petroleum Council; Marine Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Marine Task Group of the Committee on the Strategic Petroleum Reserve will meet in September 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Marine Task Group will hold its fifth meeting on Tuesday, September 11, 1984, starting at 9:00 a.m., in Room 3013, Chevron Corporation, 555 Market Street, San Francisco, California.

The tentative agenda for the Marine Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review NPC Strategic Petroleum Reserve draft report.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Marine Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Marine Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washisngton, D.C., on August 29, 1984.

William A. Vaughan,

Assistant Secretary, Fosil Energy.

[FR Doc. 84–23759 Filed 9–6–84; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve will meet in September 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee will hold its fifth meeting on Monday, September 17, 1984, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of writing assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading

Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Firday, except Federal holidays.

Issued at Washington, D.C., on August 29, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84–23760 Filed 9–6–84; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve will meet in October 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee will hold its sixth meeting on Thursday, October 11, 1984, starting at 9:00 a.m., in Suite Two of Suite 66 of the Pier 66 Hotel and Marina, 2301 SE. Seventeenth Street, Fort Lauderdale, Florida.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of writing assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on August 29, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy

[FR Doc. 84–23761 Filed 9–6–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP84-119-000]

Algonquin Gas Transmission Co.; Rate Schedule F-1: Increase in Maximum Annual Quantity

August 31, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on August 24, 1984 tendered for filing Second Revised Sheet No. 306 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Second Revised Sheet No. 306 increases the Maximum Annual Quantity for Rate Schedule F-1 from the long-established 270 day use of the contract demand to 275 days. The presently effective provision of 280 days represents a one-year limited term increase established on an experimental basis in settlement of the rate proceeding at Docket No. RP83-44. The temporary provision expires on August 31, 1984.

Algonquin Gas proposes the effective date of Second Revised Sheet No. 306 to be September 1, 1984.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–23791 Filed 9–6–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–660–000]

Arkansas Louisiana Gas Co.; Request Under Blanket Authorization

August 31, 1984.

Take notice that on August 23, 1984, Arkansas Louisiana Gas Company (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP84–660–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Arkla proposes to transport natural gas on behalf of International Paper Company (IPC) under the authorization issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Arkla proposes to transport up to 9,120 Mcf of gas per day for use in IPC's industrial plant in Camden, Arkansas, until the earlier of the following dates occurs: (1) One year from the date of commencement of transportation service; (2) June 19, 1985; or (3) the date that Arkla receives and accepts certificate authorization for the long-term transportation of gas for IPC as requested in Docket No. CP84–580–000. It is stated that the gas to be transported would be purchased from Vesta Energy Company (Vesta) and would be used for the production of paper products and plant protection. It is indicated that Arkla would receive the gas at existing interconnections with Vesta in Johnson, Franklin and Pope Counties, Arkansas, and Pittsburg County, Oklahoma.

Arkla states that it would charge the currently applicable transportation rate in accordance with its ECOSHARE Transportation Rate Schedule, FERC Gas Tariff, First Revised Volume No. 2.

Arkla also requests flexible authority to add and/or delete sources of gas and/or receipt or delivery points. With respect to such flexible authority Arkla states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and the end-user;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement as to whether the gas is committed or dedicated within the meaning of NGPA Section 2(18);

(5) If the new source of supply involves release gas which is committed or dedicated as defined in No. 4, reference the suppliers' Natural Gas Act Section 7(b) abandonment authorization is required, explain;

(6) Location of the receipt/delivery points being added or deleted;

(7) Identity of any other pipeline involved in the transportation.

Arkla submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the daily and annual volumes levels proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23792 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-118-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Filing of Rate Schedule

August 31, 1984.

Take notice that on August 23, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla) tendered for refiling its Rate Schedule No. ECOSHARE-AIC. Arkla states that this refiling is in response to the Director letter of July 30, 1984, which rejected a prior version of this rate schedule filed on July 6, 1984. This refiled rate schedule includes the added incentive charge permitted under § 157.209(f) of the Federal Energy Regulatory Commission's (Commission) regulations.

This filing includes: Original Sheet Nos. 223 and 224 to be a part of Arkla's FERC Gas Tariff, First Revised Volume No. 2; a statement of reasons for the rate schedule; a statement showing estimated revenues; and a statement showing the basis of the rate or charge.

Arkla proposes that the effective date be the date of the filing, or if this is not possible, then 30 days thereafter. Arkla requests any waivers necessary to put this filing into effect as soon as possible.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23793 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-15-000; Docket No. ER84-525-000]

Boston Edison Co. et al.; Order Authorizing Sale of Facilities and Terminating Docket, Accepting for Filing and Suspending Notice of Cancellation and Related Termination Payments, Granting Waiver of Notice, Granting Interventions, and Establishing Hearing Procedures

Issued August 31, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On April 9, 1984, in Docket No. EC84-15-000, Boston Edison Company (Boston Edison), together with Public Service Company of New Hampshire, United Illuminating Company, and New England Power Company (Joint Applicants) filed an application, pursuant to section 203 of the Federal Power Act, seeking authorization for the Joint Applicants to sell to Boston Edison certain switchyard facilities associated with the cancelled Pilgrim Nuclear Unit No. 2 project. These facilities were originally sold by Boston Edison to the various sponsors of Pilgrim Unit No. 2 [1] in 1975, and are now being reconveyed to Boston Edison because the switchyard facilities are of no continuing use to the sponsors of Pilgrim No. 2, given the November 1, 1982 cancellation of that unit. The reconveyance of the switchyard facilities is part of an overall agreement among the unit sponsors to reconvey all land and common facilities [2] associated with Pilgrim No. 2 to Boston Edison. Under the agreement, Boston Edison is to pay each sponsor its respective share of the depreciated cost of the switchyard facilities plus 50 percent of the local property taxes and carrying charges related to the facilities, plus interest at the weighted average interest rate of 90-day Treasury Bills from November 1, 1982, until the closing date of the sale.[3] The filing parties request that the facility sale and purchase be made effective as of November 1, 1982. This effective date has been requested in order to provide for project determination on an internally consistent basis, the parties having agreed that all elements of the agreement for reconveyance will be made effective as of that date.

On July 2, 1984, in Docket No. ER84-525-000, Boston Edison tendered for filing a notice of cancellation terminating its transmission agreement among the sponsors of the Pilgrim No. 2 project.[4] The agreement provided for the sharing of costs associated with certain Boston Edison-owned transmission facilities constructed for the Pilgrim No. 2 project.[5] Under the agreement, each of the sponsors was responsible for a proportion of the transmission facility costs equal to its ownership share of Pilgrim No. 2. With the cancellation of the unit, the need for the associated transmission agreement no longer exists. Boston Edison states that, in consideration for its investment in the Pilgrim No. 2 transmission facilities, the sponsors are to make proportionate lump-sum termination payments to Boston Edison, totalling $2,939,735, which represents the unamortized cost of the non-energized portion of the Pilgrim No. 2 transmission facilities as of November 1, 1982. Since the termination payment related to the cancellation is contained in the Agreement for Reconveyance submitted in Docket No. EC84-15-000, Boston Edison has incorporated the relevant portions of that agreement by reference into its submittal in Docket No. ER84-525-000. Boston Edison has also requested an effective date of November 1, 1982, in Docket No. ER84-525-000, coincident with the effective date requested in Docket No. EC84-15-000.

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[1] In addition to the Joint Applicants, there were ten other owner/sponsors of Pilgrim No. 2: Massachusetts Municipal Wholesale Electric Company; Town of Hudson, Massachusetts; City of Burlington, Vermont; Fitchburg Gas and Electric Light Company; Taunton Municipal Lighting Plant; Vermont Electric Generation and Transmission Cooperative, Inc. (formerly Vermont Electric Cooperative, Inc.); Montaup Electric Company; Commonwealth Electric Company (formerly New Bedford Gas and Edison Light Company); Central Maine Power Company; and Central Vermont Public Service Company. These other sponsors are not parties to the application in this docket, either because they are exempt from Commission jurisdiction or because the value of the switchyard facilities attributable to them is less than $50,000, the threshold amount for an application to sell facilities under section 203.

[2] Common facilities are defined in the Pilgrim Unit No. 2 Agreement as those facilities owned by Boston Edison and constructed in connection with Pilgrim Unit No. 1 which will also serve Pilgrim No. 2. Besides the switchyard facilities, the common facilities include facilities such as the seawall and related waterfront construction, the station water supply and fire protection systems, waste processing systems and offices. However, under sections 201(b) and 203 of the Federal Power Act, only that portion of the transaction relating to the transmission facilities is subject to the Commission's jurisdiction.

[3] The reconveyance payment for switchyard facilities, exclusive of interest, totals $748,752 for all of the owner/sponsors, and $327,650 for the Joint Applicants in this case.

Notice of the application in Docket No. EC84-15-000 was published in the **Federal Register** with comments due on or before May 1, 1984. On June 20, 1984, the Attorney General of the Commonwealth of Massachusetts (Attorney General) moved to intervene out of time, asserting that that office had only recently determined that intervention was possible in terms of its available resources. The Attorney General questions the reasonableness of the proposed termination payments for the Pilgrim No. 2 transmission facilities, in light of regulatory proceedings in which the prudence of Pilgrim No. 2 costs has been at issue.[6] On June 25, 1984, the Massachusetts Department of Public Utilities (MDPU) moved to intervene out of time in the same docket, claiming that it had only recently become aware of the proceeding. The MDPU also alleges that the proposed purchase price for the switchyard facilities improperly includes costs which the MDPU has found to have been imprudently incurred. Boston Edison filed separate answers to the pleadings of the Attorney General and the MDPU, opposing their late interventions and denying their allegations.

Notice of the cancellation notice filed in Docket No. ER84-525-000 was published in the **Federal Register**, with comments due on or before July 26, 1984. No additional pleadings have been filed in that docket.

Discussion

Initially, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), we shall grant the untimely interventions of the Attorney General and the MDPU. Although we agree with Boston Edison that neither the Attorney General nor the MDPU has presented a particularly compelling reason for its late filing, we find that good cause exists to grant them intervenor status, given the interests of the constituencies which they represent, as well as the very early stages of these proceedings and our belief that no undue prejudice or delay should result.

While no interventions have been received in Docket No. ER84-525-000, we note that the Attorney General's intervention in Docket No. EC84-15-000 deals exclusively with the propriety of the proposed termination payments for the cancelled transmission agreement, rather than the sale of the switchyard facilities. Since both dockets appear to be inextricably interrelated and in view of the fact that portions of the filing in Docket No. EC84-15-000 have been incorporated by reference in Docket No. ER84-525-000, we shall consider the Attorney General's pleading to request intervention in both dockets and we shall grant intervenor status in each.[7]

The MDPU objects to the reconveyance of the switchyard facilities on the basis that the purchase price includes costs which it found to have been imprudently incurred, *i.e.*, costs incurred after June 30, 1980, after which further investment in the Pilgrim No. 2 project was deemed imprudent by the MDPU. However, our examination reveals that the purchase price is not based upon any construction costs or expenses incurred after June 30, 1980; rather, the basis for reconveyance is the same as that used for the original sale, the net book cost plus carrying charges and property taxes[8] to the date of conveyance. Therefore, the MDPU has not raised a valid objection to the proposed purchase price of the switchyard facilities.

Furthermore, the facilities in question were built prior to 1975 as part of the original Pilgrim site which is owned by Boston Edison. The sponsor utilities have no need for these facilities now that Pilgrim No. 2 has been cancelled. Thus, the application merely returns the facilities to the original owner and sole operator of the remaining facilities at the Pilgrim site. In addition, we find that the proposed accounting treatment for the reconveyance of the switchyard facilities conforms with the Commission's Uniform System of Accounts. In light of these considerations, we find that the proposed sale is consistent with the public interest and we shall approve the application pursuant to section 203 of the Federal Power Act.

With respect to Docket No. ER84-525-000, we note that the Attorney General's particular concerns with the transmission termination payments are unclear from his pleading. However, insofar as he references the MDPU decision discussed above, it appears likely that he is contending that the termination payments are unreasonable to the extent that they reflect any investments related to Pilgrim No. 2 after June 30, 1980. Inasmuch as the transmission facilities were built by Boston Edison for the benefit and use of the project sponsors, a termination payment equal to Boston Edison's unamortized investment appears to be reasonable as a general matter, and no party has disputed the general basis for determining the termination payment here. Nonetheless, we are unable to determine whether the proposed termination payments (effective as of November 1, 1982) reflect any costs incurred after June 30, 1980, as objected to by the Attorney General. We shall therefore set this matter for hearing to determine, among other things, whether the termination payments include or reflect investments incurred after June 30, 1980; whether such investments were prudently incurred; the extent to which prudence or imprudence is to be applied to all joint participants; and whether the termination proposal is reasonable.

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[4] The rate schedule designation for Docket No. ER84-525-000 is: *Boston Edison Company*, Supplement No. 9 to Rate Schedule FPC No. 105 (Cancels Rate Schedule FPC No. 105, as supplemented).

[5] The transmission facilities subject to the transmission agreement include: One 345 kV circuit, the right of way allocable to such circuit, terminal facilities at the Holbrook Station, and one-half of the investment in supporting structures for the 345 kV circuit.

[6] The Attorney General notes that the Massachusetts Department of Public Utilities has disallowed certain Pilgrim No. 2 costs based on imprudence in *Boston Edison Company* (D.P.U. 906 (1982)) and that the issue of imprudence is currently before this Commission in *New England Power Company*, Docket Nos. ER82-703-000, *et al.* (Initial Decision issued May 5, 1984, 27 FERC ¶ 63,037).

[7] We shall also construe the MDPU's pleading to be a request for intervention in both dockets in the interest of avoiding another round of pleadings requesting and objecting to later interventions.

[8] The original transfer by Boston Edison to the sponsor utilities was authorized by the Commission by order issued on July 18, 1975, in Docket No. E-9340. We note that, by agreement among the parties, Boston Edison will reimburse the sponsor utilities for only one-half of the applicable property taxes and carrying charges.

Our preliminary review of Boston Edison's submittal and the pleadings in Docket No. ER84-525-000 indicates that the proposed termination charge has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Boston Edison's notice of cancellation and associated termination charge for filing and suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for a nominal period where preliminary review indicates that the proposed charges may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our examination of Boston Edison's proposed termination charge indicates that it may not yield substantially excessive revenues. Further, although generally the Commission has suspended notices of cancellation for the full five months allowed by statute in order to provide for the continuation of service, no service has ever been provided under Boston Edison's transmission agreement and none is required. Consequently, suspension will serve the singular purpose of establishing refund protection concerning the termination payments. We shall, therefore, waive the notice requirements and suspend the notice of cancellation and associated termination charge for a nominal period, to become effective on November 2, 1982, subject to refund.

The Commission orders

(A) The interventions of the Attorney General and the MDPU in Docket Nos. EC84-15-000 and ER84-525-000 are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The application for authorization to sell certain switchyard facilities filed in Docket No. EC84-15-000 is hereby approved upon the terms and conditions set forth in the application and subject to the provisions of the Commission's Uniform System of Accounts.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost or any other matter whatsoever now pending or which may come before the Commission.

(D) Docket No. EC84-15-000 is hereby terminated.

(E) Boston Edison's notice of cancellation and associated termination charges in Docket No. ER84-525-000 are hereby accepted for filing and waiver of the notice requirements is hereby granted. The submittal is suspended for a nominal period, to become effective, subject to refund, on November 2, 1982.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of the transmission agreement cancellation and the termination charge.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23794 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-32-000 and TA85-1-32-001]

Colorado Interstate Gas Co.; Proposed Change in Rates Under Purchased Gas Adjustment Clause Provisions

August 31, 1984.

Take notice that Colorado Interstate Gas Company (CIG), on August 15, 1984, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1984. The decreased jurisdictional cost to CIG of purchased gas proposed by the filing amounts to approximately $19.8 million below the rates which were effective on January 1, 1984, in Docket No. TA84-1-32-003. Due to the absence of any projected maximum surcharge absorption capability on CIG's system, no reduction in CIG's Estimated Actual Cost of Purchased Gas for incremental pricing purposes is reflected in the filing.

Copies of this filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23795 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-117-000]

Southwest Gas Corp.; Filing

August 30, 1984.

Take notice that on August 20, 1984, Southwest Gas Corporation (Southwest) filed a letter with the Federal Energy Regulatory Commission (Commission) requesting Commission authorization to continue its current purchased gas cost adjustment (PGA) applicable to northern Nevada schedules for one additional month and to file and place into effect its next PGA adjustment concurrently with Northwest Pipeline Corporation's (Northwest) PGA filing. An effective date of November 1, 1984 is requested. Northwest is the sole pipeline supplier to Southwest's northern Nevada service area.

Southwest states that it has discussed this with its FERC jurisdictional customers and they support Southwest's requests.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23796 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-120-000]

West Texas Gas, Inc.; Motion for Extension of Time and Waiver of Notice Requirements

August 31, 1984.

Take notice that on August 24, 1984, West Texas Gas, Inc. (WTG) filed a Motion For Extension Of Time And Waiver Of Notice Requirements. WTG requests a 45-day extension of time until October 1, 1984 within which to submit its annual purchased gas adjustment (PGA) filing, originally due August 15, 1984. WTG also requests that its PGA filing be made effective on less than 30 days notice.

WTG states that for the past several months its employees have had to focus all their efforts in transferring the Dalhart System from Peoples Natural Gas Company, a Division of InterNorth, Inc., to WTG. Because of this, WTG has not been able to compile the necessary information required for the August 15th filing date. WTG asserts that this should not be a recurring problem, thus permitting timely PGA filings in the future.

WTG indicates that it may be necessary to increase its current rates. However, this proposed increase is not expected to be greater than 5% of WTG's current rates. An effective date of October 1, 1984 is requested. WTG submits that this will not harm its two jurisdictional customers, Southern Union Gas Company and Felt Water Development Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23797 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-437-005]

Colorado Interstate Gas Co.; Petition To Amend

September 4, 1984.

Take notice that on August 13, 1984, Colorado Interstate Gas Company (Petitioner), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP80-437-005 a petition to amend the order issued March 4, 1981, in Docket No. CP80-437 pursuant to section 7(c) of the Natural Gas Act so as to permit Petitioner to transport released gas for Sinclair Oil Corporation (Sinclair), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP80-437 it is authorized to transport 35 percent of the average daily production of certain gas supplies in Carbon County, Wyoming, which were reserved by Sinclair. Petitioner proposes to transport gas released by Petitioner, for the same wells, for Sinclair. Petitioner further proposes to transport gas it has released to Sinclair for five wells from which it was not authorized to transport. It is said that the released gas would be used by Sinclair in its Sinclair, Wyoming, refinery.

Petitioner also seeks to revise the quality specifications of the gas and to revise the transportation charge to 35.88 cents per Mcf, which is said to be based on Petitioner's rate settlement in Docket No. RP82-54

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 25, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary

[FR Doc. 84-23773 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-193-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 4, 1984.

Take notice that on August 10, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314 filed in Docket No. CP84-193-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Empire Detroit Steel, Division of Cyclops Corporation (Empire), under authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 7.5 billion Btu of natural gas per day for Empire until June 30, 1985. It is stated that the gas to be transported would be purchased from Ohio Gas Marketing (OGM) and would be used for boiler fuel and space heating in Empire's Mansfield, Ohio, plant.

It is indicated that Columbia has released certain gas supplies of OGM and that these supplies are subject to the ceiling provisions of sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Empire has made arrangements to purchase this released gas from OGM. Columbia states that it would receive the gas from OGM and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distributor serving Empire in Mansfield, Ohio. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission, and gathering charge, currently 44.93 cents per dt equivalent, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

The proposed service is a continuation of the authorization obtained previously in Docket No. CP84-193-000 which authorization will terminate September 22, 1984.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23774 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-636-000]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Request Under Blanket Authorization

September 4, 1984.

Take notice that on August 8, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf) 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP84-636-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia and Columbia Gulf propose to transport natural gas on behalf of Newport Steel Corporation (Newport) under the authorization issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia and Columbia Gulf propose to transport up to 3 billion Btu of natural gas per day for Newport through June 30, 1985. It is stated that the gas to be transported would be purchased from The Wiser Oil Company (Wiser) and would be used as process gas in Newport's plant in Wilder, Kentucky. It is indicated that Columbia would receive the gas from Wiser at Columbia's Greenbriar Station, near Manchester, Kentucky, and redeliver the gas to Columbia Gulf at Columbia's Bybie Measuring Station, also in Kentucky. It is further indicated that Columbia Gulf would then transport the gas to Columbia's Means Measuring Station and redeliver the gas to Columbia for transportation and ultimate redelivery to the Union Light, Heat & Power Company, the distributor serving Newport Steel near Wilder, Kentucky. It is asserted that the transportation would take place entirely in Kentucky.

For its part of the transportation, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) 40.11 cents per dt equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas. Columbia states further that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

For its part of the transportation, Columbia Gulf states that it would charge 11.16 cents per dt equivalent, excusive of company-use and unaccounted-for gas. Columbia Gulf states further that it would retain 2.58 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23775 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-65-000]

Commonwealth Edison Co.; Application

September 4, 1984.

Take notice that on August 24, 1984, Commonwealth Edison Company filed on application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $900 million of short-term promissory notes on or before December 31, 1986, with final maturities of not later than December 31, 1987.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before September 24, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23776 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-62-000]

Kansas Gas & Electric Co.; Application

September 4, 1984.

Take notice that on August 13, 1984, Kansas Gas and Electric Company (Applicant), filed on application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance of up to 1,000,000 shares of its authorized but unissued Common Stock, without par value pursuant to the Applicant's Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before September 12, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23777 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-449-000]

McGrew & Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 4, 1984.

On August 17, 1984, McGrew & Associates, P.O. Box 31359, 1914 North 34th Street, Seattle, Washington 98103 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal consititutes a complete filing.

The hydroelectric facility will be located near North Fork Nooksack River on Glacier Creek in Whatcom County, Washington. The electric power production capacity of the facility will be approximately 5.8 megawatts.

Any person desiring to be heard or objecting to the granting of qualifing status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 or the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken will not not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23778 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-443-000]

OLS Energy-Chino; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 4, 1984.

On August 9, 1984 OLS Energy-Chino (Applicant) of 450 Sansome-Suite 210, San Francisco, California 94111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the California Institue for Men (CIM) in Chino, California. The primary energy source will be natural gas. The facility will consist of a combustion turbine generator unit rated 19,900 kilowatts, and a heat recovery steam generator supplying an extraction turbine generator unit rated 6,500 kilowatts. The extracted steam will be used to supply the CIM's process heating load. The facility is planned for mid-1986 operation.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23779 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-447-000]

OLS Energy-Camarillo; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 4, 1984.

On August 16, 1984 OLS Energy-Camarillo (Applicant) of 450 Sansome-Suite 210, San Francisco, California 94111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Camarillo State Hospital (CSH) in Camarillo, California. The primary energy source will be natural gas. The facility will consist of a combustion turbine generator unit rated 20,600 kilowatts, and a heat recovery steam generator supplying an extraction turbine generator unit rated 6,700 kilowatts. The extracted steam will be used to supply the CSH's process heating load. The facility is planned for mid-1986 operation.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protects must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23780 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-448-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 4, 1984.

On August 17, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility to be located in The Hamlet of Kings Park, Suffolk County, New York, will use as its primary energy source biomass, in the form of biomethane obtained from a landfill. The electric power production capacity of the facility will be 1,000 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23781 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-450-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 4, 1984.

On August 17, 1984, Pacific Lighting Energy Systems (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility to be located at the landfill that is a portion of Rancho Bolsa Nueva Y Moro Cojo in Monterey County, California, will use as its primary energy source biomass, in the form of biomethane obtained from the landfill. The electric power production capacity of the facility will be 1,400 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23782 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-451-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 4, 1984.

On August 17, 1984, Pacific Lighting Energy Systems, (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility to be located at the landfill on 5401 Lafayette Street, Santa Clara, California, will use as its primary energy source biomass, in the form of biomethane obtained from the landfill. The electric power production capacity of the facility will be 2,000 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23783 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-453-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 4, 1984.

On August 17, 1984, Pacific Lighting Energy Systems, (Applicant), 6055 East Washington Boulevard, Suite 830, Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility to be located at the Landfill on Smoral Road, adjacent to Cedarvale Road, in Onondaga, New York, will use at its primary energy source biomass, in the form of biomethane obtained from the landfill. The electric power production capacity of the facility will be 1,700 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23784 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-64-000]

Pennsylvania Power & Light Co.; Application

September 4, 1984.

Take notice that on August 22, 1984, Pennsylvania Power & Light Company (Applicant), filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act seeking authority to issue up to $400 million of short-term unsecured promissory notes to be issued from time to time, prior to September 30, 1987, with a final maturity one year from date of issuance.

Any person desiring to be heard or to make any protest with reference to said application should, on or before September 21, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23785 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-28-000; FERC Nos. JD83-30112 and JD83-30113]

Sonat Exploration Co., et al.; Protest To Negative Well Determinations

Issued September 4, 1984.

On May 11, 1983, Sonat Exploration Company (Sonat) filed with the Federal Energy Regulatory Commission (Commission) a protest against the negative section 102(d) Natural Gas Policy Act (NGPA)[1] determinations issued by the Minerals Management Services (MMS) for the Chevron USA Inc. OCS-G 3020 Well Nos. 4 and 4D in Mustang Island Block 758. Sonat states that the negative determinations by MMS will cause Sonat to receive the lesser of the NGPA section 104 or 109 price for production attributable to the two wells.

Sonat argues that MMS relied on a well log of a well owned and operated by the Atlantic Richfield Company (Arco) in making its determinations on the subject wells. Based upon the well log provided by Arco, the MMS found that the reservoir underlying the 4 and 4d wells had been penetrated prior to July 27, 1976. If an OSC reservoir was penetrated prior to July 27, 1976, natural gas produced therefrom does not qualify for the new natural gas ceiling price under section 102(d). Sonat claims that it has not been afforded the opportunity to review the well log, or in other words, "to confront the evidence * * *" which Sonat claims "is a denial of due process within the meaning of the Fifth Amendment of the United States Constitution * * *."

Within 15 days of publication in the **Federal Register** of this Notice, any person may file a protest or a petition to intervene in this docket with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. If you wish to become a party to this proceeding, you must file a petition to intervene. See Rules 214 or 211.[2]

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23786 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-444-000]

Whitefield Power & Light Associates—New Hampshire; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 4, 1984.

On August 10, 1984, Whitefield Power & Light Associates, (Applicant) of P.O. Box 120, Nashua, New Hampshire, 03061, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 12.5 MW facility located in Whitefield, New Hampshire, will generate electric power from biomass in the form of wood chips, bark and fines as a primary energy source. The project power is expected to be sold to Public Service Company of New Hampshire. The Applicant owns no other facility located within one mile of the proposed facility. No electric utility or electric utility holding company has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23787 Filed 9-6-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-266-6]

Availability of Environmental Impact Statements Filed August 27, 1984 Through August 31, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840388, Final FHW, OR, Mission Street Widening, 12th to 24th Streets, Marion County, Due: October 9, 1984, Contact: Dale Wilken (503) 399-5749

EIS No. 840389, Draft, EPA, LA, Southwest Pass Channel, Mississippi River, Ocean Dredged Material Disposal Site, Designation Jefferson and Plaquemines Parish, Due: October 22, 1984, Contact: William Shilling (202) 245-3036

EIS No. 840390, Draft, FHW, AK, Knik Arm Bridge Crossing Construction, Anchorage to Matanuska-Susitna Borough, Cook Inlet, Due: October 22, 1984, Contact: Tom Neunaber (907) 586-7427

EIS No. 840391, Draft, FWS, AK, Alaska Peninsula National Wildlife Refuge Management Plan, Due: November 19, 1984, Contact: William Knauer (907) 786-3399

EIS No. 840392, Draft, FS, UT, WY, Wasatch-Cache National Forest Land and Resource Management Plan, Due: December 14, 1984, Contact: Neil Hudson (801) 524-5030

EIS No. 840393, Draft, FWS, HI, Hawaiian Islands National Wildlife Refuge Management Plan, Due: October 30, 1984, Contact: Harvey Lee (503) 231-6164

EIS No. 840394, Draft, EPA, OR, Coos Bay, Ocean Dredged Material Disposal Sites, Designation, Coos County, Due: October 22, 1984, Contact: William Shilling (202) 245-3036

EIS No. 840395, Draft, EPA, LA, Calcasieu River and Pass, Ocean Dredged Material Disposal Site, Designation, Cameron County, Due: October 22, 1984, Contact: William Shilling (202) 245-3036

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[1] 15 U.S.C. 3301-3432 (1982).

[2] 18 CFR 385.211 or .214 (1983).

EIS No. 840396, Draft, BLM, CO, UT, WY, Rangely Carbon Dioxide Pipeline Project, C/O, Approval, Moffat and Rio Blanco Counties, Colorado, Daggett and Uintah Counties, Utah, and Lincoln and Sweetwater Counties, Wyoming, Due: October 30, 1984, Contact: Janis Van Wyhe (303) 234–6737

EIS No. 840397, Final, NOAA, PR, La Parguera National Marine Sanctuary, Designation, Due: Edward Lindelof (202) 634–4236.

EIS No. 840398, DSuppl, HUD, WA, Gem Heights Planned Development District, Mortgage Insurance, Pierce County, Due: October 22, 1984, Contact: Roz Glasser (206) 591–7210

Amended Notices

EIS No. 840124, DSuppl, FHW, AL, Appalachian Corridor X Construction, AL–19 to US 78, Walker and Marion Counties, Notice of Availability should have appeared in the FR dated 1–13–84 with a due date of 2–27–84.

Dated: September 4, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84–23769 Filed 9–6–84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59170; TSH-FRL-2666-4]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: September 24, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-59170]" and the specific TME number should be sent to: Document Control Officer (TS-793), Information Management Divison, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hammett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

TME 84-80

Close of Review Period. October 17, 1984.

Manufacturer. Confidential.

Chemical. (G) Fatty Acid ester.

Use/Production. (G) Obtain consumer acceptance of a new laundry product. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

TME 84-81

Manufacturer. Confidential.

Chemical. (G) Tris aryl phosphite.

Use/Production. (G) An additive for oils, lubricants, fuels and/or plastics. Prod. range: Confidential.

Toxicity Data. Acute oral: <5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Minor, Eye—Slight; Ames Test: Negative.

Exposure. Manufacture: dermal and inhalation, a total of 70 workers, up to <1 hr/da, up to six months.

Environmental Release/Disposal. 10 to 2,000 kg/batch released to land. Disposal by POTW.

Dated: August 31, 1984.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 84–23705 Filed 9–6–84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51535, TSH-FRL 2666-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-two PMNs and provides a summary of each.

DATES: Close of Review Period: PMN 84–1100, 84–1101, 84–1102, 84–1103, 84–1104 and 84–1105—November 21, 1984.

PMN 84–1106 and 84–1107—November 24, 1984.

PMN 84–1108, 84–1109, 84–1110 and 84–1111—November 25, 1984.

PMN 84–1112, 84–1113, 84–1114, 84–1115, 84–1116, 84–1117, 84–1118, 84–1119, 84–1120, 84–1121 and 84–1122—November 26, 1984.

PMN 84–1123, 84–1124, 84–1125, 84–1126, 84–1127, 84–1128, 84–1129, 84–1130 and 84–1131—November 27, 1984.

Written comments by: PMN 84–1100, 84–1101, 84–1102, 84–1103, 84–1104 and 84–1105—October 22, 1984.

PMN 84–1106 and 84–1107—October 25, 1984.

PMN 84–1108, 84–1109, 84–1110 and 84–1111—October 26, 1984.

PMN 84–1112, 84–1113, 84–1114, 84–1115, 84–1116, 84–1117, 84–1118, 84–1119, 84–1120, 84–1121 and 84–1122—October 27, 1984.

PMN 84–1123, 84–1124, 84–1125, 84–1126, 84–1127, 84–1128, 84–1129, 84–1130 and 84–1131—October 28, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51535]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public

Reading Room E-107 at the above address.

PMN 84-1100

Manufacturer. Polyvinyl Chemical Industries.

Chemical. (G) Aliphatic polyurethane aqueous dispersion.

Use/Production. (S) Industrial, commercial and consumer general purpose end modifier for coatings. Prod. range: 50,000-300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. No release.

PMN 84-1101

Manufacturer. The Dow Chemical Company.

Chemical. (G) Type 1 anion exchange resin, bicarbonate/carbonate form.

Use/Production. (S) Industrial water demineralization and condensate polishing. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to water. Disposal by navigable waterway after treatment.

PMN 84-1102

Manufacturer. Confidential.

Chemical. (G) Modified polymer of acrylates and methacrylates.

Use/Production. (G) Industrial coating (open use). Prod. range: 10,000-40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 31 workers, up to 8 hrs/da, up to 52 da/yr.

Environmental Release/Disposal. 5 to 45 kg/batch released to land. Disposal by incineration and landfill.

PMN 84-1103

Manufacturer. Confidential.

Chemical. (G) Terpolymer of acrylate and methacrylates.

Use/Production. (G) Formulation of coatings having a highly dispersive use. Prod. range: 212,000-248,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 36 workers, up to 8 hrs/da, up to 177 da/yr.

Environmental Release/Disposal. 5 to 60 kg/batch released to land. Disposal by incineration and landfill.

PMN 84-1104

Manufacturer. The Minnesota Mining and Manufacturing Company.

Chemical. (G) Substituted triazines.

Use/Production. (S) Industrial process aid. Prod. range: Confidential.

Toxicity Data. Acute oral: Between 100 and 500 mg/kg; Irritation: Skin—Non-irritant, Eye—Minimal; Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Less than 1 to 5 kg released to air with 50 kg to water. Disposal by incineration and navigable waterway.

PMN 84-1105

Manufacturer. Confidential.

Chemical. (G) Tetra amino di-substituted metal complex.

Use/Production. (S) Industrial catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: < 2.0 g/kg; Irritation: Skin—Non-irritant; Eye—Minimal; Ames Test: Not mutagenic; Skin sensitization: Non-sensitizer.

Exposure. Manufacture: dermal, a total of 2 workers, up to 3 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No release.

PMN 84-1106

Manufacturer. Texaco Chemical Company.

Chemical. (G) Alkoxylated poly (oxyalkylene)diamine.

Use/Production. (S) Industrial and commercial polyurethanes. Prod. range: Confidential.

Toxicity Data. Actue oral: Male—2,930 mg/kg, Female—2,582 mg/kg, Combined—2,773 mg/kg; Acute dermal: > 8.0 gm/kg; Irritation: Skin—Very slight to moderate, Eye—Positive responses.

Exposure. Manufacture: dermal, a total of 40 workers, up to 5.45 hrs/da, up to 3.96 da/yr.

Environmental Release/Disposal. 6 to 12 kg/batch released to land. Disposal by underground injection.

PMN 84-1107

Importer. Confidential.

Chemical. (G) Copper complex of a substituted biphenyl sulfonated salt.

Use/Import. (S) Industrial direct dye for paper. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 1 worker/shift, up to ¼ hr/da.

Environmental Release/Disposal. Minimal release. Disposal by on-site biological treatment plants.

PMN 84-1108

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Polyurethane polymer.

Use/Production. (S) Polyurethane polymer for use in compounded sealants. Prod. range: 50,000-250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal and ocular.

Environmental Release/Disposal. No release.

PMN 84-1109

Manufacturer. Confidential.

Chemical. (G) Modified rosin.

Use/Production. (G) Ingredient in inks for commercial printing. Prod. range: 20,000-251,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 66 workers, up to 8 hrs/da, up to 120 da/yr.

Environmental Release/Disposal. 0.2 to 110 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 84-1110

Manufacturer. General Electric Company.

Chemical. (G) Terephthalic acid, polymer with polytetramethylene ether glycol, 2-oxepanone, and an alkane diol.

Use/Production. (G) Thermoplastic molding resin. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 130 workers, up to 10 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Less than 10 kg/batch released to land. Disposal by landfill.

PMN 84-1111

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Reacted brominated epoxy resin.

Use/Production. (G) Size ingredient. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: A total of 50 workers, up to 24 hrs/da, up to 350 da/yr.

Environmental Release/Disposal. Release to air. Disposal by publicly owned treatment works (POTW) and on-site treatment plant.

PMN 84-1112

Manufacturer. General Electric Company.

Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.

Use/Production. (S) Polymer intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 10 kg/batch burned. Disposal by local, state and federal regulations.

PMN 84–1113

Manufacturer. The Dow Chemical Company.

Chemical. (G) Acid form of sulfonated, alkylated diphenyl oxide.

Use/Production. (S) Site-limited intermediate to make sodium salt form of this surfactant. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: Dermal.

Environmental Release/Disposal. Release to air.

PMN 84–1114

Manufacturer. The Dow Chemical Company.

Chemical. (G) Sodium salt of sulfonated, alkylated diphenyl oxide.

Use/Production. (G) Surfactant. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/L; Irritation: Skin—Essentially no irritation: Eye—Slight; LC_{50} 48 hr (Daphnia magna): 47 mg/L; LC_{50} 96 hr—(Fathead minnow): 13 mg/L.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. No release to air.

PMN 84–1115

Manufacturer. Confidential

Chemical. (G) Phenolic modified rosin ester.

Use/Production. (G) Resinous substance having an open use. Prod. range: 900,000–1,500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 106 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. 0.05 to 60 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–1116

Manufacturer. Emery Industries.

Chemical. (S) Adipic acid and phthalic anhydride polymers with ethylene glycol and neopentyl glycol terminated with 2-ethyl hexanol.

Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 450,000–640,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 3–5 workers, up to 4 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. Negligible release to water and land. Disposal by POTW.

PMN 84–1117

Manufacturer. Emery Industries.

Chemical. (S) Adipic acid, azelaic acid, phthalic anhydride, polymers with ethylene gylcol neopentyl glycol and 2-ethyl hexanol.

Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 459,000–640,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 3–5 workers, up to 4 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. Negligible release to water and land. Disposal by POTW.

PMN 84–1118

Manufacturer. S. C. Johnson and Son, Inc.

Chemical. (G) Carboxyl functional acrylic copolymer.

Use/Production. (G) Coating—open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to air.

PMN 84–1119

Manufacturer. Morflex Chemical Company, Inc.

Chemical. (S) 1,2,3-Propanetricarboxylic acid, 2-(acetoxy)-tri-n-hexyl ester.

Use/Production. (S) Polyvinly chloride plasticizer. Prod. range: Confidential.

Toxicity Data. Acute oral: Mice— > 48 g/kg, Rats— > 20 g/kg; Acute dermal: > 2 g/kg; Irritation: Skin—Not an irritant, Eye—Not an irritant; Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1120

Manufacturer. Morflex Chemical Company, Inc.

Chemical. (S) 1,2,3-Propanetricarboxylic acid, 2-(butoxy)-tri-n-hexyl ester.

Use/Production. (S) Polyvinyl chloride plasticizer. Prod. range: Confidential.

Toxicity Data. Acute oral: Mice— > 48 g/kg, Rats— > 20 g/kg; Acute dermal: > 2 g/kg; Irritation: Skin—Not an irritant, Eye—Not an irritant; Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1121

Manufacturer. Morflex Chemical Company, Inc.

Chemical. (S) 1,2,3-Propanetricarboxylic acid, 2-(acetoxy)-tri-n-(octyl/decyl) ester.

Use/Production. (S) Polyvinyl chloride plasticizer. Prod. range: Confidential.

Toxicity Data. Acute oral: Mice— > 48 g/kg, Rats— > 20 g/kg; Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1122

Manufacturer. Confidential.

Chemical. (G) Silicone glycol.

Use/Production. (G) Textile finish. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: No evidence of genetic activity.

Exposure. Manufacture: Dermal, a total of 3 workers, up to 3 hrs/da.

Environmental Release/Disposal. 1 kg released to land. Disposal incineration.

PMN 84–1123

Importer. Confidential.

Chemical. (G) Substituted sulfonated naphthalene.

Use/Import. (S) Industrial direct dye for paper. Import range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 1 worker/shift, up to ¼ hr/shift.

Environmental Release/Disposal. Minimal release. Disposal by on-site biological waste treatment plants.

PMN 84–1124

Manufacturer. Confidential.

Chemical. (G) Modified styrene—divinyl benzene polymer.

Use/Production. (G) For use with aqueous solutions in a contained use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 70 da/yr.

Environmental Release/Disposal. No release.

PMN 84–1125

Manufacturer. American Hoechst Corporation.

Chemical. (G) Methanone, alkyl-aryl.

Use/Prod. (S) Site-limited intermediate, captive use. Prod. range: 400–450 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 1.5 hr/da, up to 10 da/yr.

Environmental Release/Disposal. 9 to 12 kg released to water. Disposal by navigable waterway.

PMN 84–1126

Manufacturer. Confidential.
Chemical. (G) Methanone, alkyl—substituted phenyl.
Use/Prod. (G) Open-non dispersive. Prod. range: 1,300–1,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 8 workers, up to 1 hr/da, up to 25 da/yr.
Environmental Release/Disposal. 30 to 45 kg released to water. Disposal by navigable waterway.

PMN 84–1127

Importer. American Hoechst Corporation.
Chemical. (G) Sulfamic acid, substituted amine salt.
Use/Import. (G) Open-non dispersive. Import range: 4,500–7,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 5–10 workers, up to 10–15 manhours/yr.
Environmental Release/Disposal. No data submitted.

PMN 84–1128

Manufacturer. Confidential.
Chemical. (G) Isoalkyleneoxy alkanol.
Use/Production. (G) Solvent/chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Essentially no irritation, Eye—Moderate; LC_{50} 48 hr (Daphnia magna): 6,800 mg/L; LC_{50} 96 hr (Fathead minnow): 6,700 mg/L.
Exposure. Manufacture and use: dermal, a total of 3 workers.
Environmental Release/Disposal. Release to air. Disposal by incineration.

PMN 84–1129

Manufacturer. Confidential.
Chemical. (S) Acetid acid, ester with C_8–C_{11} is alcohols, C_{10}—rich.
Use/Production. (S) General industrial solvent for such potential uses as pesticides, adhesives/sealants metal working fluids, textiles coating and inks. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 g./kg; Acute dermal: > 3.16 g/kg; Irritation: Skin—Mild, Eye—Slight.
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Release to air, water and land. Disposal by navigable waterway.

PMN 84–1130

Manufacturer. Confidential.
Chemical. (S) Acetic acid, ester with C_8C_{10} alcohols, C_8—rich
Use/Production. (S) General industrial solvent for such potential uses as pesticides, adhesives/sealants metal working fluids, textiles coating and inks. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: > 3.16 g/kg; Irritation: Skin—Mild, Eye—Slight.
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Release to air, water and land. Disposal by navigable waterway.

PMN 84–1131

Manufacturer. Confidential.
Chemical. (S) Acetic acid, ester with C_{11}–C_{14} iso alcohols, C_{13}—rich.
Use/Production. (S) General industrial solvent for such potential uses as pesticides, adhesives/sealants metal working fluids, textiles coating and inks. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: > 3.16 g/kg; Irritation: Skin—Mild, Eye—Slight.
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Release to air, water and land. Disposal by navigable waterway.

Dated: August 31, 1984.

Linda K. Smith,
Acting Director, Information Management Division.

[FR Doc. 84–23711 Filed 9–6–84; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The promposed report form under review is listed below.

DATE: Comments must be received on or before October 22, 1984. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments proptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Liaison Officer: Margaret P. Ulmer, Administrative Management Services, Room 386, 2401 E. Street, NW., Washington, D.C. 20507; Telephone (202) 634–9726.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–6880.

Type of Request: Extension (No change)
Title: Local Union Report EEO–3
Form Number: EEOC FORM 274
Frequency of Report: Annually
Type of Respondent: Business/other institutions
Standard Industrial Classification (SIC) Code: 863
Description of Affected Public: Referral Unions with 100 or more members
Responses: 3,000
Reporting Hours: 4,500
Federal Cost: 19,100
Applicable under Section 350(h) of Pub. L. 96–511: Not applicable
Number of Forms: 1
Abstract-Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and apprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

For the Commission.

John Seal,
Management Director, Equal Employment Opportunity Commission.

[FR Doc. 84–23730 Filed 9–6–84; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010636.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed agreement would establish a conference with authority to fix rates and practices covering the movement of cargo from U.S. Atlantic ports in the Eastport, Main/Key West, Florida range, and from Continental U.S. interior and coastal points via such ports (but not from motor, rail and ocean carrier facilities at points located within the ICC-defined commerical zones of U.S. Gulf ports for cargo moving in minibridge service from such facilities via U.S. Atlantic ports south of Cape Hatteras), to North European ports and points in Europe via such ports. By its own terms the proposed agreement will not be implemented until sixty days after it is allowed to become effective, at which time other conference agreements in this trade in which the parties currently participate will terminate.

Agreement No.: 202–010637.

Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed agreement would establish a conference with authority to fix rates and practices covering movement of cargo from North European ports and points in Europe via such ports to U.S. Atlantic ports in the Eastport, Maine/Key West, Florida range, and to Continental U.S. interior and coastal points via such ports (but not to motor, rail and ocean carrier facilities at points located within the ICC-defined commerical zones of U.S. Gulf ports for cargo moving in minibridge service from such facilities via U.S. Atlantic ports south of Cape Hatteras). By its own terms the proposed agreement will not be implemented until sixty days after it is allowed to become effective, at which time other conference agreements in this trade in which the parties currently participate will terminate.

Dated: September 4, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–23716 Filed 9–6–84; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000017–049.

Title: Far East Conference.

Parties:

Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller—Maersk Line
Nippon Yusen Kaisha
United States Lines, Inc.
Yamashita—Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would broaden the scope of permissible independent action to include all conference rates or service items, except those in service contracts, regardless of whether the rate or service item is required to be published in a tariff pursuant to section 8(a) of the Shipping Act of 1984. The parties have requested a shortened review period.

Agreement No.: 221–002260–006, 221–002261–007, 221–002794–004, 221–003386–004, 221–003513–005.

Title: City of Milwaukee Marine Terminal Agreement.

Parties:

City of Milwaukee (City)
Meehan Seaway Service, Ltd. (Meehan)

Synopsis: The agreements provide for the termination of a portion of a lease agreement between the City and Meehan pertaining to an oil packaging facility located at 1900 S. Harbor Drive. All other sections of the agreement are to remain in full force and effect. The parties have requested a shortened review period.

Agreement No.: 202–005850–041.

Title: North Atlantic Westbound Freight Association.

Parties:

Atlantic Countainer Line (G.I.E.)
Compagnie Generale Maritime
Dart ML Limited
Hapag-Lloyd
Intercontinental Transport (ICT) B.V.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the North Europe-U.S. Atlantic Conference (Agreement No. 202–010637) becomes effective.

Agreement No.: 202–007100–028.

Title: North Atlantic United Kingdom Freight Conference.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the U.S. Atlantic-North Europe Conference (Agreement No. 202–010636) becomes effective.

Agreement No.: 202–007670–024.

Title: North Atlantic Baltic Freight Conference.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the U.S. Atlantic-North Europe Conference (Agreement No. 202–010636) becomes effective.

Agreement No.: 202–007770–024.

Title: North Atlantic French Atlantic Freight Conference.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the U.S. Atlantic-North Europe Conference (Agreement No. 202–010636) becomes effective.

Agreement No.: 202–008210–049.

Title: Continental North Atlantic Westbound Freight Conference.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the North Europe-U.S. Atlantic Conference (Agreement No. 202–010637) becomes effective.

Agreement No.: 202–009214–027.

Title: North Atlantic Continental Freight Conference

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the U.S. Atlantic-North Europe Conference (Agreement No. 202–010636) becomes effective.

Agreement No.: 206–009978–017

Title: Cooperative Self-Policing Arrangement Associated North Atlantic Freight Conferences

Parties:

North Atlantic United Kingdom Freight Conference, FMC Agreement No. 7100
North Atlantic Baltic Freight Conference, FMC Agreement No. 7670
North Atlantic French Atlantic Freight Conference, FMC Agreement No. 7770
North Atlantic Continental Freight Conference, FMC Agreement No. 9214
North Atlantic Westbound Freight Association, FMC Agreement No. 5850
Continental North Atlantic Westbound Freight Conference, FMC Agreement No. 8210
Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference, FMC Agreement No. 9982

Synopsis: The proposed amendment would terminate the agreement 60 days after the first date when both the North Europe-U.S. Atlantic Conference (Agreement No. 202–010637) and the U.S. Atlantic-North Europe Conference (Agreement No. 202–010636) become effective.

Agreement No.: 202–009982–020

Title: Scandanavia Baltic/U.S. North Atlantic Westbound Freight Conference

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the North Europe-U.S. Atlantic Conference (Agreement No. 202–010637) becomes effective.

Agreement No.: 217–010118–007.

Title: Atlantic Steamship Emergency Chartering Agreement.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the first date when both the North Europe-U.S. Atlantic Conference (Agreement No. 202–010637) and the U.S. Atlantic-North Europe Conference (Agreement No. 202–010636) become effective.

Agreement No.: 202–010491–002.

Title: North Europe-U.S. South Atlantic Rate Agreement.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the North Europe-U.S. Atlantic Conference (Agreement No. 202–010637) becomes effective.

Agreement No.: 202–010492–002.

Title: South Atlantic-Europe Rate Agreement.

Parties:

Atlantic Container Line (G.I.E.)
Dart ML Limited
Hapag-Lloyd A.G.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would terminate the agreement 60 days after the U.S. Atlantic-North Europe Conference (Agreement No. 202–010636) becomes effective.

Agreement No.: 221–010638.

Title: City of Milwaukee Marine Terminal Agreement.

Parties:

City of Milwaukee (City).
Cal-Western Packaging Corp. (Cal-Western).

Synopsis: The agreement provides for the leasing by the City to Cal-Western of a one and one-half acre parcel of land with warehouse area, office area and spur tracks at 1900 S. Harbor Drive, on the South Harbor Tract in the Port of Milwaukee, Wisconsin for the receipt, storage, preparation, processing, handling and shipping of edible oil products. The parties have requested a shortened review period.

Dated: September 4, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–23717 Filed 9–6–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 31, 1984.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under delegated OMB authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Desk Officer—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–69880).

Request for New Collection

1. Report title: Annual and Quarterly Reports of Repurchase Agreements on U.S. Government and Federal Agency Securities.
1. Report form No.: FR 2090a and FR 2090q

OMB Docket No.: 7100–0205
Frequency: Annually; Quarterly
Reporters: Depository institutions
Small businesses are affected
General description of report:
Respondent's obligation to reply is voluntary (12 U.S.C. 248(a) and

3105(b)); a pledge of confidentiality is promised (5 U.S.C. 552(b)(4)). These reports provide information on repurchase agreement transactions involving U.S. government and federal agency securities with certain specified holders. The information will be used by the Federal Reserve System in computing the RP component of the monetary aggregates.

2. Report title: Survey of Federal Funds Sold and Securities Purchased Under Agreement to Resell
Agency form No.: FR 3032
OMB Docket No.: 7100-2006
Frequency: One-time
Reporters: Commercial Banks
Small businesses are affected
General description of report:
Respondent's obligation to reply is voluntary (12 U.S.C. 225(a) and 263(c)); a pledge of confidentiality is not promised.

This survey provides a breakdown of federal funds sold and resale agreements into three components. These data will be used by the Federal Reserve System to compute customer breakdowns used in the estimation of bank credit. These data would also be used in constructing an aggregate bank balance sheet. In addition, data from this survey would aid in the reconciliation of bank credit and deposits in the broader money stock measures.

Request for Extension With Revisions

1. Report title: Monthly Survey of Eligible Bankers Acceptances
Agency form No.: FR 1006
OMB Docket No.: 7100-0055
Frequency: Monthly
Reporters: U.S.-chartered commercial banks, U.S. branches and agencies of foreign banks, Edge and Agreement Corporations, and Bank Holding Companies.
Small businesses are not affected
General description of report:
Respondent's obligation to reply is voluntary (12 U.S.C. 248(a), 625, and 3105(b)); a pledge of confidentiality is promised (5 U.S.C. 552 (b)(4) and (b)(8)).

This survey, which is submitted by commercial banks in the U.S., provides the only source of information on eligible dollar bankers acceptances that are legally payable in the United States. The data are used in constructing measures of monetary and credit aggregates. Two memoranda items have been added to collect data: (1) On participations in acceptances; and (2) on the amount of acceptances reported that are refinanced by the creation of an acceptance at another bank in the U.S.

2. Report title: Notice of Proposed Stock Redemption
Agency form No.: FR 4008
OMB Docket No.: 7100-0131
Frequency: On Occasion
Reporters: Bank holding companies (BHC)
Small businesses are not affected
General description of report:
Respondent's obligation to reply is mandatory (12 CFR 225.4); a pledge of confidentiality is not promised.

The filing of the notice is required of a BHC proposing to purchase or redeem its shares when the gross consideration to be paid for the purchase or redemption is equal to 10 percent or more of the company's consolidated net worth over any 12 month period of time.

3. Report title: Mortgage Loan Disclosure Statement
Agency form No.: HMDA-1
OMB Docket No.: 7100-0090
Frequency: Annual
Reporters: Depository institutions
Small businesses are not affected
General description of report:
Respondent's obligation to reply is mandatory (12 U.S.C. 2801-2811); a pledge of confidentiality is not promised.

State member banks subject to the Act annually disclose by census tract or county originated and purchased residential mortgage loans. Disclosures publicly available at the bank for 5 years and at the MSA central data repository. Public officials, examiners, and the public use the disclosure to determine lending patterns in home financing and to detect discrimination among other things.

4. Report title: Membership Application Forms
Agency form No.: FR 2083-2083E
OMB Docket No.: 7100-0046
Frequency: On occasion
Reporters: New and existing banks who wish to become members of the Federal Reserve System
Small businesses are not affected
General description of report:
Respondent's obligation to reply is mandatory (12 U.S.C. 321-328); a pledge of confidentiality is not promised.

The application provides managerial, financial, and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H).

5. Report title: Report of Other Demand Deposits
Agency form No.: FR 2019
OMB Docket No.: 7100-0059
Frequency: Weekly
Reporters: Selected foreign-related institutions in New York
Small businesses are not affected
General description of report:
Respondent's obligation to reply is voluntary; a pledge of confidentiality is not promised (5 U.S.C. 552(b)(4)).

Report collects data on selected demand deposits outstanding from selected foreign-related institutions for use in constructing the monetary aggregates. Also provides data for early estimates of the aggregates.

Board of Governors of the Federal Reserve System, August 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23683 Filed 9-6-84; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on August 21, 1984, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $4 billion to $6 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately for the period ending with the close of business on October 2, 1984.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697.

By order of the Federal Open Market Committee, August 31, 1984.

Stephen H. Axilrod,

Secretary.

[FR Doc. 84-23678 Filed 9-6-84; 8:45 am]

BILLING CODE 6210-01-M

Cape Coral Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 28, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Cape Coral Financial Corporation*, Cape Coral, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Cape Coral, Florida.

2. *Public Financial Corporation*, St. Cloud, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Public Bank of St. Cloud, St. Cloud, Florida.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Investark Bankshares, Inc.*, Stuttgart, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank in Stuttgart, Stuttgart, Arkansas.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Waldorf Bancshares*, Waldorf, Minnesota; to become a bank holding company by acquiring 82 percent of the voting shares of Waldorf State Bank, Waldorf, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Harvard Bancshares, Inc.*, Tulsa, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Harvard Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, August 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23679 Filed 9-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Virginia Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to engage *de novo* through its subsidiary, First Virginia Software, Inc., Falls Church, Virginia, in providing to others data processing and data transmission services and facilities (including data processing and data transmission software, hardware, documentation or operating personnel), as well as data bases, or access to such services, facilities, or data bases. Comments on this application must be received not later than September 27, 1984.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank of Montana System*, Great Falls, Montana; to engage *de novo* through its subsidiary, BMS Mortgage Corporation, Great Falls, Montana, in the activities of a mortagage company. These activities would be conducted in the State of Montana. Comments on this application must be received not later than September 25, 1984.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells Fargo & Company*, San Francisco, California; to engage *de novo* through its subsidiary, Central Western Insurance Company, Phoenix, Arizona, to underwrite, as reinsurer, single premium reducing term credit life insurance and single premium reducing term joint credit life insurance through an existing subsidary, Central Western Insurance Company.

Board of Governors of the Federal Reserve System, August 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-[illegible] Filed 9-6-84; 8:45 am]

BILLING CODE 6210-01-M

State First Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) of the § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outwegth possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *State First Financial Corporation,* Texarkana, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of The State First National Bank of Texarkana, Texarkana, Arkansas and 89.9 percent of the voting shares of First National Bank in Ashdown, Ashdown, Arkansas, to be acquired indirectly through the acquisition of the Bank's parent, Commercial Investment Company, Texarkana, Arkansas.

State First Financial Corporation, Texarkana, Arkansas has also applied to acquire Commercial Investment Company, Texarkana, Arkansas and thereby engage in making and servicing loans, primarily to the officers and directors of the organization; and leasing personal or real property.

Board of Governors of the Federal Reserve System, August 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23681 Filed 9-6-84; 8:45 am]

BILLING CODE 6210-01-M

First Bank System, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 13, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Utah FBS Corporation,* Salt Lake City, Utah; to acquire 100 percent of the voting shares of Golden Spike State Bank, Tremonton, Utah.

Additionally, Montana First Bancorporation, Helena, Montana, has applied to become a bank holding company by acquiring 99.7 percent of the voting shares of First National Bank of Great Falls, Great Falls, Montana, an existing subsidiary of First Bank System, Inc., Minneapolis, Minnesota, and 100 percent of the voting shares of Utah FBS Corporation, Salt Lake City, Utah, thereby indirectly acquiring Golden Spike State Bank, Tremonton, Utah. First Bank System, Inc., Minneapolis, Minnesota, has applied to acquire Montana First Bancorporation, Helena, Montana, thereby indirectly acquiring First Golden Spike State Bank, Tremonton, Utah, a newly formed State bank that will purchase certain assets and assume all deposits and liabilities of Golden Spike State Bank, Tremonton, Utah.

Board of Governors of the Federal Reserve System, September 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23915 Filed 9-6-84; 12:23 pm]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 31.

Public Health Service

Health Resources and Services Administration

Subject: Application—Scholarship Program for First Year Students of Exceptional Financial Need (0915-0020)—EXTENSION/NO CHANGE.

Respondents: Educational institutions.

Subject: Health Systems Agency Application Guidelines for Designation and Related Reporting Requirements (0915-0085)—EXTENSION/NO CHANGE.

Respondents: State and local governments.

Subject: Pub. L. 93-638 Application for Contract Law Waiver (0915-0042)—EXTENSION/NO CHANGE.

Respondents: American Indian and Alaskan Native tribal organizations.

Subject: Pub. L. 93-638 Initial Contract Application (0915-0041)—EXTENSION/NO CHANGE.

Respondents: American Indian and Alaskan Native tribal organizations.

Subject: Pub. L. 93-638 Tribal Clearances of Initial and Renewal Contracts (0915-0040)—EXTENSION/NO CHANGE.

Respondents: American Indian and Alaskan Native tribal organizations.

OMB Desk Officer: Fay S. Iudicello.

National Institutes of Health

Subject: A Feasibility Study of Cancer Risk Among Persons with Scolosis—NEW COLLECTION.

Respondents: Individuals.

Subject: Evaluation of Selected Oral Health Education and Promotion Activities of National Institutes of Dental Research—NEW COLLECTION.

Respondents: Faculty of educational institutions.

OMB Desk Officer: Fay S. Iudicello.

Centers for Disease Control

Subject: Neonatal Herpes Simplex Surveillance (0920–0139)—EXTENSION/NO CHANGE.

Respondents: Individuals—state and local governments.

OMB Desk Officer: Fay S. Iudicello.

Food and Drug Administration

Subject: Good Manufacturing Practices for Blood and Blood Components (0910–0116)—EXTENSION/NO CHANGE.

Respondents: Blood banks, plasmapheresis centers, facilities providing transfusion services.

Subject: Drug Experience Report (0910–0002)—REINSTATEMENT.

Respondents: Drug Manufacturers.

OMB Desk Officer: Bruce Artim.

Office of the Assistant Secretary for Health

Subject: Status Assessment of Inactive Reserve Officer Availability (0937–0034)—REVISION.

Respondents: PHS Inactive Reserve Officers.

OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

Subject: Application for Mother's or Father's Insurance Benefits (0960–0003)—REVISION.

Respondents: Applicants for Mother's or Father's Insurance Benefits.

Subject: Statement of Agricultural Employer (0960–0036)—EXTENSION/NO CHANGE.

Respondents: Certain agricultural employers.

Subject: Black Lung Student's Statement Regarding Resumption of School Attendance (0960–0314)—REVISION.

Respondents: Students who are children of deceased coal miners.

Subject: Questionnaire about Employment or Self Employment Outside the United States (0960–0050)—EXTENSION/NO CHANGE.

Respondents: Certain Beneficiaries Residing Outside the United States.

OMB Desk Officer: Robert J. Fishman.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: August 28, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–23581 Filed 9–6–84; 8:45 am]

BILLING CODE 4150–04–M

Statement of Organization, Functions and Delegations of Authority

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services; Chapter AMM (Office of Management Analysis and Systems) last amended at 48 FR 3657 (January 26, 1983), Chapter AMN (Office of Finance) last amended at 44 FR 56989 (October 3, 1979), Chapter AMS last amended at 49 FR 13751 (April 6, 1984) and Chapter AHP last amended at 49 FR 13751 (April 6, 1984) are amended. The following organizational changes are made to reflect a streamlining of the Office of the Secretary, consolidating similar functions, reassigning functions more efficiently performed by the Operating Divisions of the Department, and eliminating functions no longer required. The changes reduce organizational overlap and duplication, creating a more efficient organization.

The changes are as follows:

1. Amend Chapter AM as follows:

a. Amend subsection AMM.00 B by deleting the word "and" after sentence (10), substituting a semicolon after sentence (11), and adding the following after (11): and, (12) providing as required administrative support to Special Project Officers appointed by and reporting to the Assistant Secretary for Management and Budget.

b. Amend section AMM.10 Organization by inserting on a new line below the Office of Public and State Data Systems, Project Management Staff.

c. Substitute the following at subsection AMM.20 B:

B. Office of Computer and Information Systems

The Office of Computer and Information Systems is responsible for:

1. Developing and overseeing the policies and procedures by which the Department plans, acquires, and manages its information systems;

2. Managing HHS computer information system activities in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511);

3. Managing the provision of automated information system services to components within the Office of the Secretary; and,

4. Representing the Department in interactions with the Office of Management and Budget, the General Services Administration, and other external entities regarding the management of HHS information systems.

(a) *Division of Management Information Systems Planning and Evaluation* is responsible for:

(1) Establishing information systems policies which govern the development and operation of information systems throughout the Department;

(2) Developing and establishing a Departmental planning process for relating information system requirements to HHS programmatic and administrative needs;

(3) Establishing policies covering the use of information processing standards throughout the Department;

(4) Establishing and maintaining the Department's inventory of information systems resources;

(5) Providing policy guidance, management planning, technical assistance, evaluation, and oversight for the implementation of systems security processes and procedures for automated information systems and computer facilities throughout the Department;

(6) Providing technical advice, systems analysis, and programming and operational support for designated Departmental automated systems.

(b) *Division of Automatic Data Processing (ADP) and Telecommunications Resources* is responsible for:

(1) Establishing and overseeing a Departmental voice and data telecommunications management program;

(2) Establishing procedures for ensuring the proper management and cost effectiveness of existing ADP and telecommunications equipment within HHS component organizations;

(3) Evaluating the management and cost effectiveness of existing ADP and telecommunications equipment within HHS component organizations; and,

(4) Providing technical and management evaluations of the Department's long-range ADP and telecommunications financial plans.

(c) *Division of OS Information Resources Systems Management* is responsible for:

(1) Establishing policies and procedures governing the acquisition and efficient utilization of ADP and telecommunications resources for the Office of the Secretary's headquarter and regional components, including appropriate oversight and evaluation;

(2) Serving as a coordinating and oversight organization which assures the availability of computer time and related data processing and software services to the Office of the Secretary;

(3) Managing the development of the automated information systems serving the internal needs of Office of the Secretary components; and,

(4) Providing technical assistance for the electronic mail system for the Office of the Secretary.

d. Amend subsection AMM.20 C, paragraph (a) by deleting item (4) in its entirety and renumbering items (5), (6), and (7) as items (4), (5), and (6).

e. Amend subsection AMM.20 F by adding the following paragraph 10:

(10) Managing the Department's printing and copying activities by:

(a) Providing policy guidance to and oversight over the printing and copying management programs carried out by the Department's Operating Divisions; and

(b) Providing Departmental liaison with the Congressional Joint Committee on Printing, the Government Printing Office, and other governmental entities concerned with printing and copying management matters.

f. Add new subsection AMM.20 G to read:

G. Project Management Staff

The Project Management Staff is responsibile for implementing Departmentwide management improvement initiatives designated for special managerial attention, and for providing day-to-day leadership to implement governmentwide management improvement initiatives when this Department is requested by Senior Executive Branch officials to serve as the head of interagency task forces, work groups, etc. which are devoted to implementing major initiatives. Individuals on the staff function as project managers with responsibility for: (1) preparing specific implementation strategies and plans to guide the implementation process; (2) directing the day-to-day activities required to implement these strategies and plans; (3) identifying, mediating and resolving implementation-related policy issues, and (4) providing periodic progress reports to the Assistant Secretary for Management and Budget and other senior government officials charged with overseeing major management initiatives.

Individual project managers form and direct implementation teams. These teams are composed of specialists in such areas as grants and contracts, personnel, budgeting, management information systems, and evaluation. These specialists assist the project managers on technical matters related to implementation of individual projects.

Individual project managers are responsible for all the day-to-day aspects of major management initiatives which involve several Departmental components, or in the case of interagency initiatives, involve several Departments or independent agencies. As such, individual project managers interact with senior Departmental officials and senior officials from other Departments and agencies, as well as the Office of Management and Budget and other Executive Branch oversight organizations.

2. Amend Chapter AMN by deleting the Chapter in its entirety and substituting the following:

AMN.00 *Mission.* The Office of Finance provides guidance on budget execution, accounting systems, financing, financial and cost reporting, cash management, debt and credit management, and travel management. Serves as advisor to the Assistant Secretary for Management and Budget in these areas.

AMN.10 *Organization.* The Office of Finance is headed by the Deputy Assistant Secretary, Finance who reports to the Assistant Secretary for Management and Budget. Its organization includes:

Immediate Office.
Division of Accounting Operations (AMN1).
Division of Accounting Systems and Procedures (AMN2).
Division of Financial Policy and Operations (AMN3).
Division of Financial Systems Applications (AMN4).

AMN.20 *Functions.* The Office of Finance:

A. Develops and executes, in coordination with the Office of Budget, spending policies and procedures for continuing resolutions and appropriations. Makes specific studies and appraisals of financial aspects of program operations in areas identified by the Secretary or the Assistant Secretary for Management and Budget.

B. Establishes and maintains a Departmental system of financial operating plans.

C. Develops and manages a Departmentwide system for estimating and controlling outlays. Assists the Office of Budget in presentation of budget outlay estimates to the Office of Management and Budget and the Congress.

D. Recommends and issues Departmentwide policies and procedures relating to fiscal, cost, travel, and accounting activities.

E. Recommends and executes policies and procedures relating to the expenditure and collection of funds administered by the Department.

F. Establishes uniform standards, policies, classifications, and terminologies to be used throughout the Department in budget execution and financial and cost reporting.

G. Develops and maintains financial management data collection and reporting systems on programs, activities, and operations of the Department.

H. Develops and executes policies and procedures relating to (1) implementation and management of internal controls, and (2) evaluation of accounting and related systems for conformance with the Comptroller General's principles and standards.

I. Develops and executes policies and procedures relating to cash management and financing of recipient organizations that receive program funding from HHS.

J. Develops, coordinates, and issues ADP policy related to the development, implementation, and maintenance of Departmentwide financial systems.

K. In its areas of responsibility, represents the Department in its relationships with the Office of Management and Budget, the Treasury Department, the General Accounting Office, the General Services Administration, and other Federal agencies. Oversees Departmental implementation of central agency directives relating to budget execution, fiscal policy, accounting internal controls, debt and credit management, cash management, and travel management.

L. Operates and maintains Departmentwide financial systems.

M. Provides fiscal, accounting, and financial reporting services for the Office of the Secretary, the Office of Human Development Services, and other Departmental components as determined by the Assistant Secretary for Management and Budget.

1. *The Division of Accounting Operations:*

a. Develops and maintains the accounting manual for the Office of the Secretary in conformance with the Departmental Accounting Manual.

b. Maintains official records and documents for the Office of the Secretary, the Office of Human Development Services, and other Departmental components as determined by the Assistant Secretary for Management and Budget.

c. In cooperation with the Division of Financial Systems Applications, maintains computerized appropriation and obligation records and accounts for the Office of the Secretary, the Office of Human Development Services, and other Departmental components as determined by the Assistant Secretary for Management and Budget.

d. Establishes and maintains financial controls over cash, accounts receivable, property, and other assets.

e. In cooperation with the Division of Financial Systems Applications, develops reporting systems and prepares financial and cost reports covering activities of the Office of the Secretary, the Office of Human Development Services, and other Departmental components as determined by the Assistant Secretary for Management and Budget.

f. Examines and pays vendors invoices, transportation, and other bills.

g. Examines and pays travel vouchers for employees.

h. Provides cashier services.

i. Provides billing services for the Department Working Capital Fund and reimbursable activities.

2. *The Division of Accounting Systems and Procedures:*

a. Develops fiscal and accounting policy and procedures for Departmentwide application; promulgates these procedures as well as other Governmentwide financial procedures through the Department Staff Manual System.

b. Conducts financial management studies and surveys and assists Staff Divisions and Operating Divisions in the design, installation, and improvement of their accounting systems and operations.

c. Develops and executes policies and procedures relating to implementation and management of internal controls.

d. Develops and issues policies and procedures relating to evaluation of accounting and related systems for conformance with the Comptroller General's principles and standards.

e. Provides advice and assistance to Staff Divisions and Operating Divisions on accounting and related fiscal matters.

f. Serves as principal staff adviser to the Office of Finance on accounting and related fiscal matters.

g. Reviews and drafts Departmental reports on Congressional bills affecting financial management.

h. In cooperation with the Division of Financial Systems Applications, operates and maintains the Departmental Payment Management System. Assures timely payments to grantees and contractors and prescribes requirements for grantee and contractor reporting of expenditures and accountability of Federal cash received.

i. Provides technical assistance for development of financial management information systems and other central systems.

j. Maintains liaison with the Office of Management and Budget, the Treasury Department, the General Accounting Office, and other agencies on matters involving accounting policy and procedures, internal controls, and grantee and contractor expenditure reporting and accountability of Federal cash received.

3. *The Division of Financial Policy and Operations:*

a. Establishes and maintains a Departmental budget execution system based on uniform standards, classification, and procedures so as to apply resources consistent with Department policy and budget. Resolves questions regarding financial issues and proper authority and application of funds.

b. Establishes and maintains a Departmentwide system of outlay estimates in support of formulation and execution of the budget, including a tracking process for identifying variances and preparing reports.

c. In cooperation with the Office of Budget and other staff offices, recommends policy for activities and services authorized to continue in the absence of appropriations and for continuing Departmental operations during periods of continuing resolutions.

d. Reviews agency Treasury warrant requests and apportionment requests and develops recommendations in cooperation with the Office of Budget for approval before submission to the Treasury Department and the Office of Management and Budget.

e. Maintains the Catalog of Federal Domestic Assistance and develops State tables of projected obligations for selected programs.

f. Recommends policy and maintains a system for tracking and improving cash and credit management and debt collection throughout the Department.

g. Develops financial policy and maintains a system of fiscal reporting to meet requirements of the General Accounting Office, Office of Management and Budget, the Treasury Department, and the General Services Administration that also includes (1) development and maintenance of the reports aspects of the Departmental Accounting Manual, and (2) preparation of periodic reports.

h. Develops and maintains travel and fiscal voucher examination policies for Departmentwide application and publishes policies and procedures through the Department Staff Manual System.

i. In cooperation with the Division of Financial Systems Applications, develops and maintains a system for tracking and reporting awards and other obligations to meet the needs of the Financial Assistance Awards Data System reports and for preparing other geographical-based domestic assistance reports.

j. Develops policies and procedures and, in cooperation with the Division of Financial System Applications operates the Central Registry System used throughout the Department in other data systems as a source of recipient identity, address, and related information.

k. In cooperation with the Division of Financial Systems Applications, operates and maintains the automated Regional Accounting System and insures proper exchange of data with other automated systems; provides technical assistance to regional personnel for operating the system.

l. Performs studies or analyses in any of these or related subjects both singly or with outside organizations. Maintains continuous contact when necessary with the General Accounting Office, the Office of Management and Budget, the Treasury Department, the General Services Administration, or other agencies.

4. *The Division of Financial Systems Applications:*

a. Intercepts financial management policy, requirements, and specifications for user organizations; designs, develops, implements, and maintains all Office of Finance systems applications including, for example, the Departmental accounting system, the Departmental Payment Management System, and related sub-systems, software and procedures for Departmentwide use and operation on HHS or equivalent computers.

b. Assures that applications are properly integrated where feasible to improve timeliness and accuracy of financial information and promote efficient and effective use of resources.

c. Develops and recommends the policy for managing the design, development, modification, acquisition of resources, and maintenance of Office of Finance computer-based systems.

d. Develops and maintains systems specifications and software, and acquires hardware to meet Departmental financial management reporting requirements.

e. Performs all data base management functions for the Office of Finance, including Data Base Administration.

f. Assures the physical and data security of all Office of Finance systems applications and conducts risk analyses as necessary.

g. Serves as the Office of Finance's technical expert and adviser to the Operating Divisions, the Staff Divisions, and the Regions on the computer aspects (hardware, data base systems, software, telecommunications) of financial management systems.

h. Develops, recommends, and maintains immediate, intermediate, and long-range ADP plans for the development and operation of financial management systems; assures that the planning identifies the Department's ADP needs for support of financial management in the Department.

3. Delete in their entirety Chapters AMN1, AMN2, AMN3, AMN4, AMN5 and AMN6.

4. Amend Chapter AMS as follows:

a. Delete section AMS.10 Organization in its entirety and substitute the following:

AMS.10 Organization. The Office of Facilities and Management Services, under a Director who reports to the Assistant Secretary for Management and Budget, consists of the following components:

Office of the Director
Office of Special Programs Coordination
Division of Contract Operations
Washington Facilities Division
Division of Administrative Services

b. Amend section AMS.20 Functions as follows:

1. Delete subsection B in its entirety and substitute the following:

B. Office of Special Programs Coordination

Acts as the Department's focal point with other Federal agencies and HHS Operating Divisions on policy and regulatory issues involving Real Property, Space Management, Occupational Safety and health, and Emergency Preparedness activities.

1. Coordinates the Department's real property program through the promulgation of essential policies and administrative procedures. Recommends changes in procedures, budgeting, acquisition, and utilization policies for all real property owned or leased by HHS.

2. Establishes and monitors guidelines for the utilization of GSA assigned space and facilities owned or leased by HHS. Prepares and monitors guidelines for the space reduction program effort in HHS on behalf of the Secretary.

3. Establishes and maintains standards and guidelines for transfers of real property as required in the Federal Property Assistance Program. Maintains necessary records to discharge the HHS responsibilities. Coordinates as necessary with the General Services Administration's Property Review Board and other Federal agencies in effecting property transfers and in monitoring each transfer through the period of restrictions outlined in the conveyances.

4. Develops policies and procedures related to the HHS Safety and Occupational Health Program. Provides technical guidance to the components of HHS. Coordinates the gathering of data necessary for mandated reports and prepares the reports on behalf of the Secretary.

5. Establishes information and reporting standards for these programs. Collects, assembles, coordinates, and analyzes required information for mandated reporting to Congress, the Office of Management and Budget, the General Services Administration, and other Federal agencies.

6. Oversees the development of departmentwide and governmentwide contingency plans and programs for the Federal health and human services response to the full range of potential natural disasters and emergencies including nuclear attack. Such plans specify responsibilities and procedures for the Department of Health and Human Services, the Department of Defense, the Veterans Administration, the American Red Cross, and related health and human services organizations to provide assistance to the States when called upon under the overall coordination of the Federal Emergency Management Agency.

7. Keeps the Secretary and senior staff of the Department informed of all major governmentwide developments in readiness planning and establishes a program for developing and maintaining HHS readiness capability. Oversees development and maintenance of the Department's emergency planning and operations.

8. Oversees the review and updating of classified interagency plans maintained by the Federal Emergency Management Agency with respect to the health and human services portions of the nation's response plans for a nuclear attack. Coordinates with Staff Divisions, Operating Divisions, the Regions and with other Federal agencies as required to update and upgrade the HHS input to these plans.

9. Provides leadership to the Regions in reviewing and assessing the health and human services aspcts of State emergency plans. Assures that the HHS role in assisting the States in disasters is clear; that adequate plans are in place to respond when called upon; and, that HHS officials are informed of the plans and are prepared to implement them.

10. Serve as the focal point and principal contact in the Department for the While House Emergency Mobilization Preparedness Board and related working groups.

11. Oversees the design and conduct of inter-agency readiness exercises to test HHS plans at national and regional levels. Such exercises are designed so that plans are evaluated, problems identified, and corrective action taken.

2. Change AMS.20 subsection C as follows: delete "and Grant" from the title Division of Contract and Grant Operations; change the phrase "and carries out the centralized contracting, purchasing and grant program for" to read: "and carries out the centralized contracting and purchasing program for" in the first sentence of subparagraph C.

3. Delete AMS.20 subsection D. Division of Administrative Services, and substitute the following:

D. Division of Administrative Services

Provides centralized common and general administrative services and staff support to the Office of the Secretary and Departmental Operating Divisions at Headquarters. These services include Postal

Services, Printing Procurement and Reprographics, Materiel Operations, Staff Audio and Visual Presentation Support, and the HHS Library. Serves as the focal point for guidance and assistance for the HHS regional administrative services activities.

4. Delete AMS.20 subsection F. Division of Emergency Coordination in its entirety.

5. Amend Section AHP.20 Functions in Chapter AHP as follows:

a. Amend subsection E by deleting the last sentence which reads Establishes and manages field staff units supporting these systems.

b. Amend subsection E by deleting item (7) in its entirety and renumbering item (8) as item (7).

Dated: August 31, 1984.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 84-23745 Filed 9-6-84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84M-0275]

Coburn Optical Industries, Inc.; Premarket Approval of Meditec Model OPL-3 Nd:YAG Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Meditec Model OPL-3 Nd:YAG [neodymium:yttrium-aluminum-garnet] Ophthalmic Laser sponsored by Coburn Optical Industries, Inc., Clearwater, FL. After reviewing the recommendation of the Ophthalmic Devices Panel (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel), FDA notified the sponsor that the application was approved because the device has been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by October 9, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-443-7445.

SUPPLEMENTARY INFORMATION: On October 4, 1983, Coburn Optical Industries, Inc., Clearwater, FL 33516, submitted to FDA an application for premarket approval of the Meditec Model OPL-3 Nd:YAG Ophthalmic Laser. The Meditec Model OPL-3 Nd:YAG Ophthalmic Laser, is a neodymium:yttrium-aluminum-garnet ophthalmic laser with a helium-neon (He-Ne) aiming beam that is indicated for discussion of the posterior capsule of the eye (posterior capsulotomy). The application was reviewed on November 17, 1983, by the then Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA Advisory committee, which recommended approval of the application. (On April 14, 1984, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel was terminated. Concurrently, FDA established the Ophthalmic Devices Panel (see 49 FR 17446; April 24, 1984).) On July 26, 1984, FDA approved the application by letter to the sponsor from the Director of the Office of Device Evaluation of the Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decison to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 9, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23658 Filed 9-6-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83V-0399]

Spectra-Physics, Inc., Availability of Approved Variance for Hand Held UPC Laser Scanners

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for various models of hand held universal product code (UPC) laser scanners manufactured by Spectra-Physics. The laser scanners are used to read UPC bar code labels.

DATES: The variance became effective June 25, 1984, and ends June 25, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-433-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Spectra-Physics, Inc., 959 Terry St., Eugene, OR 97402, a variance from § 1040.10(f)(6) (21 CFR 1040.10(f)(6)) of the performance standard for laser products for their Class II hand held UPC laser scanners.

The specific requirements of the standard for which a variance has been granted pertain to the provisions of § 1040.10(f)(6) that otherwise would require the laser scanners to be equipped with beam attenuators to reduce the laser radiation output of the lasers to below Class I limits. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that: (a) The requirement of § 1040(f)(6) is not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by the existing equipment design, by the requirement that the laser system be turned on only by using a normally off momentary switch and by the requirement that the product be of either Class I or Class II. Therefore, on June 25, 1984, FDA approved the requested variance by letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the laser scanners shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 1984

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23657 Filed 9-6-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators—Oral Nitroglycerin; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption for single-entity coronary vasodilator drug products containing controlled-release nitroglycerin because the drug has been shown to be effective for the prevention of angina pectoris. Under the exemption, the drug products have been allowed to remain on the market for continued study beyond the time limit scheduled for implementation of the Drug Efficacy Study. This notice also announces the marketing and labeling conditions for the products.

DATES: The revocation of exemption is effective September 7, 1984; bioavailability supplements to approved or conditionally approved new drug applications are due on or before March 6, 1985; other supplements are due on or before November 6, 1984.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 77N-0240 (DESI 1786), directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, except requests for opinion of applicability are to be sent to the address listed below.

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFN-110), Rm. 16B-45, Center for Drugs and Biologics.

Supplements to the conditionally approved abbreviated new drug applications (identify with ANDA number): Division of Generic Drugs (HFN-230), Rm. 16-70, Center for Drugs and Biologics.

Original abbreviated new drug applications (identify with ANDA number): Division of Generic Drugs (HFN-230), Rm. 16-70, Center for Drugs and Biologics.

Requests for information on conducting bioavailability/bioequivalence tests: Division of Biopharmaceutics (HFN-220), Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Rm. 216, Center for Drugs and Biologics, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 1786) published in the **Federal Register** of February 25, 1972 (37 FR 4001), FDA announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, on certain coronary vasodilator drugs. FDA classified controlled-release tablets of nitroglycerin as possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks.

Notices published in the **Federal Register** of August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), amended earlier notices (37 FR 26623, December 14, 1972; and 38 FR 18477, July 11, 1973) by temporarily exempting nitroglycerin in controlled-release forms from the time limits established for completing certain phases of the Drug Efficacy Study Implementation (DESI) program. The temporary exemption also applied to nitroglycerin in topical ointment and conventional oral forms. The amending notices established conditions for marketing these products, including requirements for both bioavailability and clinical studies. The availability of guides and methods for conducting bioavailability and clinical effectiveness studies and the specific conditions under which the products could be marketed were published in the August 26, 1977 notice. Conditions were established for marketing of identical, similar, or related products (21 CFR 310.6) whether or not they had been marketed or whether or not they were subjects of approved new drug applications (NDA's). An abbreviated NDA (ANDA) was required for marketing of products not the subject of an NDA. The conditions provided for such products to be conditionally approved, pending the results of ongoing studies.

In the September 15, 1978 notice, FDA announced a change in the previously published conditions for testing and marketing single-entity coronary vasodilators. The change eliminated the requirement that each manufacturer conduct or participate in effectiveness studies and allowed a drug to remain on or enter the market even though its manufacturer was not conducting clinical studies of effectiveness, provided that some other manufacturer was conducting such studies on a product containing the same chemical entity in a similar dosage form. The notice also extended the dates for completing ongoing studies.

In response to the exempting notices, two firms submitted data and information to support effectiveness of controlled-release nitroglycerin.

The agency has completed its review of the data submitted for oral controlled-release nitroglycerin and found that the data provide substantial evidence of effectiveness. This notice announces that conclusion and the conditions under which the products may be marketed.

Accordingly, the temporary exemption as it pertains to oral controlled-release nitroglycerin is hereby revoked.

Certain other nitroglycerin products remain exempt under Category I and will be the subjects of future **Federal Register** notices.

Efficacy Review

Marion Laboratories, Inc., and Wharton Laboratories, Inc., submitted data to support the effectiveness of controlled-release nitroglycerin capsules and tablets for their indications relating to the prophylaxis, treatment, and management of angina pectoris. The data submitted were evaluated and determined to support effectiveness for prevention of angina pectoris. The data also suggest that tolerance develops with sustained use of nitrates but do not define the extent to which such tolerance may occur. The controlled-release form of nitroglycerin reviewed here is not recommended for aborting an acute attack of angina pectoris because of the length of time required for onset of effect of a swallowed formulation. The following studies provide substantial evidence that controlled-release nitroglycerin is effective for the prevention of angina pectoris.

1. Steele, P.P., "The Effect of Sustained Release Nitroglycerin Capsules vs. Placebo Capsules on the Exercise Tolerance of Patients with Angina Pectoris," Marion Laboratories, Inc., 1984.

2. Winsor, T., "Effect of Nitroglycerin on Exercise Performance in Patients with Angina Pectoris: A Double-Blind Cross-Over Study Using Multistage Treadmill Exercise Tests," *American Heart Journal*, 90:611, 1975.

List of NDA's and ANDA's

The following NDA's and ANDA's previously approved or conditionally approved on the basis of safety, but not effectiveness, are subject to the finding and conditions stated in this notice:

1. NDA 9–599; Nitroglyn Sustained Action Tablets containing 2.6 milligrams (mg) or 6.5 mg nitroglycerin per tablet; Key Pharmaceuticals, Inc., 18425 NW. 2d Ave., P.O. Box 694307, Miami, FL 33169–1307.

2 NDA 16–447; Nitrospan (controlled-release) Capsules containing 2.5 mg nitroglycerin per capsule; USV Laboratories, Division USV Pharmaceutical Corp., 1 Scarsdale Rd., Tuckahoe, NY 10707.

3. NDA 16–518; Nitro-Bid (controlled-release) Capsules containing 2.5 mg nitroglycerin per capsule; Marion Laboratories, Inc., 10236 Bunker Ridge Rd., Kansas City, MO 64137.

4. NDA 16–975; Nitro-Bid (controlled-release) Capsules containing 6.5 mg nitroglycerin per capsule; Marion Laboratories.

5. NDA 17–384; Nitrong (controlled-release) Tablets containing 2.6 mg nitroglycerin per tablet, Wharton Laboratories, Inc., Division U.S. Ethicals, Inc., 37–02 48th Ave., Long Island City, NY 11101.

6. ANDA 86–110; Sustachron (controlled-release) Tablets containing 6.5 mg nitroglycerin per tablet; Forest Laboratories, 300 Prospect St., Inwood, NY 11696.

7. ANDA 86–112; Sustachron (controlled-release) Tablets containing 2.6 mg nitroglycerin per tablet; Forest Laboratories.

8. ANDA 86–126; Nitrong (controlled-release) Tablets containing 6.5 mg nitroglycerin per tablet; Wharton Laboratories, Inc.

9. ANDA 86–132; Nitro-Bid (controlled-release) Capsules containing 2.5 mg nitroglycerin per capsule; Marion Laboratories.

10. ANDA 86–133; Nitro-Bid (controlled-release) Capsules containing 6.5 mg nitroglycerin per capsule; Marion Laboratories.

11. ANDA 86–138; Nitrong (controlled-release) Tablets containing 2.6 mg nitroglycerin per tablet; Wharton Laboratories.

12. ANDA 86–214; Nitrospan (controlled-release) Capsules containing 2.5 mg nitroglycerin per capsule; USV Laboratories.

13. ANDA 86–228; Nitroglycerin Controlled-Release Capsules containing 2.5 mg of the drug per capsule; Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.

14. ANDA 86–230 Nitroglycerin Controlled-Release Capsules containing 6.5 mg of the drug per capsule; Cord Laboratories.

15. ANDA 86–425; Nitro-Bid (controlled-release) Capsules containing 9 mg nitroglycerin per capsule; Marion Laboratories.

16. ANDA 86–426; Nitro-Bid (controlled-release) Capsules containing 13 mg nitroglycerin per capsule; Marion Laboratories.

17. ANDA 86–537; Nitroglycerin Controlled-Release Capsules containing 6.5 mg of the drug per capsule; KV Pharmaceutical Co., 2530 South Hanley Rd., St. Louis, MO 63144.

18. ANDA 86–538; Nitroglycerin Controlled-Release Capsules containing 2.5 mg of the drug per capsule; KV Pharmaceutical.

19. ANDA 86–649; Sustachron (controlled-release) Tablets containing 10 mg nitroglycerin per tablet; Forest Laboratories.

20. ANDA 86–787; Sustac (controlled-release) Tablets containing 10 mg nitroglycerin per tablet; Forest Laboratories.

21. ANDA 86–869; Nitrospan (controlled-release) Capsules containing 6.5 mg of nitroglycerin per capsule; USV Laboratories.

22. ANDA 86–891; Nitroglycerin Controlled-Release Capsules containing 2.5 mg of the drug per capsule; Lederle Laboratories, Division of American Cyanamid Co., North Middletown Rd., P.O. Box 500, Pearl River, NY 10965.

23. ANDA 86–894; Nitroglycerin Controlled-Release Capsules containing 6.4 mg of the drug per capsule; Lederle Laboratories.

24. ANDA 87–109; Nitroglycerin Controlled-Release Capsules containing 9 mg of the drug per capsule; KV Pharmaceuticals.

25. ANDA 87–110; Nitroglycerin Controlled-Release Capsules containing 13 mg of the drug per capsule; KV Pharmaceuticals.

26. ANDA 87–229; Nitrobon (controlled-release) Capsules containing 2.5 mg nitroglycerin per capsule; Inwood Laboratories, Inc., Division of Forest Laboratories, Inc., 300 Prospect St., Inwood, NY 11696.

27. ANDA 87–484; Nitroglycerin Controlled-Release Capsules containing 6.5 mg of the drug per capsule; Ascot Hospital Pharmaceuticals, Inc., 8055 North Ridgeway Ave., Skokie, IL 60076.

28. ANDA 87–485; Nitroglycerin Controlled-Release Capsules containing 6.5 mg of the drug per capsule; Ascot Hospital Pharmaceuticals.

29. ANDA 87–544; Nitrobon (controlled-release) Capsules containing 6.5 mg nitroglycerin per capsule; Ascot Hospital Pharmaceuticals.

30. ANDA 87–715; Nitrong (controlled-release) Tablets containing 9 mg nitroglycerin per tablet; Wharton Laboratories.

31. ANDA 87–814; Nitro-Time (controlled-release) Capsules containing 2.5 mg nitroglycerin per capsule; Time Cap Laboratories, 36 New York Ave., Westbury, NY 11590.

32. ANDA 87–815; Nitro-Time (controlled-release) Capsules containing 6.5 mg nitroglycerin per capsule; Time Cap Laboratories.

33. ANDA 87–816; Nitro-Time (controlled-release) Capsules containing 9 mg nitroglycerin per capsule; Time Cap Laboratories.

34. ANDA 87–975; Nitroglycerin Controlled-Release Capsules containing 2.5 mg of the drug per capsule; The Vitarine Co., Division of Phoenix Pharmaceutical, Inc., 227–15 North Conduit Ave., Springfield Gardens, NY 11413.

35. ANDA 87–976; Nitroglycerin Controlled-Release Capsules containing 6.5 mg of the drug per capsule; The Vitarine Co., Inc.

36. ANDA 88–220; Nitroglycerin Controlled Release Capsules containing 9 mg of the drug per capsule; Cord Laboratories.

37. ANDA 88–509; Nitroglycerin Controlled Release Capsules containing 9 mg of the drug capsule; Phoenix Pharmaceutical, Inc., 227–15 North Conduit Ave., Springfield Gardens, NY 11413.

New Drug Status

A drug product that contains oral nitroglycerin (controlled-release) is regarded as a new drug (21 U.S.C. 321(p)) and an approved new drug application is required for marketing it. The new drug applications listed above represent (1) NDA's approved on the basis of safety before effectiveness studies were required and (2) ANDA's conditionally approved under the temporary exemption that allowed these products to be marketed while effectiveness studies were conducted. None of these applications is approved on the basis of effectiveness of the drug product. Therefore, supplemental new drug applications are now required to revise the labeling and to provide additional information necessary for full approval of the NDA's and ANDA's on the basis of effectiveness, as well as safety.

In addition to the holders of the applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Marketing

The Food and Drug Administration has reviewed all available evidence and concludes that single-entity oral controlled-release nitroglycerin is effective for the indications in the labeling conditions below. The agency is prepared to approve abbreviated new drug applications for products containing oral controlled-release nitroglycerin as a single-entity and supplements to previously approved new drug applications and conditionally approved abbreviated new drug applications under the conditions described in this notice.

A. *Form of drug.* The drug is in controlled-release tablet or capsule form suitable for oral administration.

B. *Labeling conditions.* 1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drug is labled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The general outline of the labeling is as follows:

Product Name (Nitroglycerin) Package Insert

Description

Nitroglycerin, and organic nitrate, is a vasodilator which has effects on both arteries and veins. The chemical name for nitroglycerin is 1,2,3 propanetriol trinitrate ($C_3H_5N_3O_9$). The compound has a molecular weight of 227.09. The chemical structure is: (To ber inserted by manufacturer or distributor)

Each [Product Name] controlled-release (capsule or tablet) contains: [ ] mg nitroglycerin (description of capsule or tablet).

Clinical Pharmacology

The principal pharmacological action of nitroglycerin is relaxation of vascular smooth muscle, producing a vasodilator effect on both peripheral arteries and veins with more predominant effects on the latter. Dilation of the post-capillary vessels, includings large veins, promotes peripheral pooling of blood and decreases venous return to the heart, thereby reducing left ventricular end-diastolic pressure (pre-load). Arteriolar relaxation reduces systemic vascular resistance and arterial pressure (after-load).

The mechanism by which nitroglycerin relieves angina pectoris is not fully understood. Myocardial oxygen consumption or demand (as measured by the pressure-rate product, tension-time index, and stroke work index) is decreased by both the arterial and venous effects of nitroglycerin and, presumably, a more favorable supply-demand ratio is achieved. While the large epicardial coronary arteries are also dilated by nitroglycerin, the extent to which this actions contributes to relief of exertional angina is unclear.

Nitroglycerin is rapidly metabolized in vivo, with a liver reductase enzyme having primary importance in the formation of glycerol nitrate metabolites and inorganic nitrate. Two active major metabolites, 1–2 and 1–3 dinitroglycerols, the products of hydrolysis, although less potent as vasodilators, have longer plasma half-lives than the parent compound, and appear in substantial concentration. The dinitrates are further metabolized to mononitrates (considered biologically inactive with respect to cardiovascular effects) and ultimately glycerol and carbon dioxide. There is extensive first-pass deactivation by the liver of nitroglycerin following gastrointestinal absorption, but the hepatic reductase activity may be saturated by some doses of oral nitroglycerin, resulting in prolonged pharmacologic effects. Hemodynamic studies employing plethysmographic methods in human volunteers have demonstrated that oral nitroglycerin (single dose 6.5 mg) has biologic effects significantly different from placebo for up to 8 hours.

Adequate studies defining the pharmacokinetics of [Product Name] have not been reported. The clinical relevance of nitroglycerin blood levels has not been established, since therapeutic levels of the drug and metabolites have not been defined. Therapeutic doses of nitroglycerin reduce systolic and mean arterial blood pressures, expecially when the patient assumes upright posture. Systolic blood pressure is decreased for up to 4 hours after a single dose of 6.5 mg of swallowed controlled release nitroglycerin.

Clinical studies indicate that oral controlled-release nitroglycerin may reduce abnormally elevated left ventricular end-diastolic pressure (LVEDP), a hemodynamic occurrence during acute episodes of angina pectoris. Although there have been no reported, invasively measured, hemodynamic studies of [Product Name] in patients with angina pectoris, controlled clinical trials in patients with congestive heart failure have shown significant decreases in mean LVEDP for as long as 4 hours after a single dose (6.5–19.5 mg) of oral nitroglycerin. The onset of hemodynamic effect from the swallowed form of nitroglycerin is not sufficiently rapid to be of use in aborting an acute episode of angina pectoris.

Indications and Usage

[Product Name] is indicated for the prevention of angina pectoris due to coronary artery disease. Controlled clinical trials have demonstrated that this form of nitroglycerin is effective in improving exercise tolerance in patients with exertional angina pectoris. Controlled clinical studies of 2.6 mg and larger (6.5–26 mg) does in patients with angina pectoris have shown improvement in treadmill exercise time for at least 4 hours after dosing.

Contraindications

Nitroglycerin is contraindicated in patients who have shown purported hypersensitivity or idiosyncracy to it or other nitrates or nitrites.

Warnings

The use of any form of nitroglycerin during the early days of acute myocardial infarction requires particular attention to hemodynamic monitoring and clinical status. In general a long-acting dosage form such as [ ] should not be used because its effects are difficult to terminate rapidly should excesive hypotension or tachycardia develop.

Precautions

General

Severe hypotension, particularly with upright posture, may occur even with small doses of nitroglycerin. The drug therefore should be used with caution in subjects who may have volume depletion from diuretic therapy or in patients who have low systolic blood pressure (e.g., below 90 mm Hg). Paradoxical bradycardia and increased angina pectoris may accompany nitroglycerin-induced hypotension.

Nitrate therapy may aggravate the angina caused by hypertrophic cardiomyopathy.

Tolerance to this drug and cross-tolerance to other nitrates and nitrites may occur. Tolerance to the vascular and antianginal effects of nitrates has been demonstrated in clinical trials, experience through occupational exposure, and in isolated tissue experiments in the Laboratory.

The importance of tolerance to the use of nitroglycerin in the management of patients with angina pectoris has not been determined. In controlled clinical trials in patients with angina pectoris, sustained therapy with some nitrate preparations resulted in significantly less and shorter duration of improvement in exercise time on stress testing than did acute therapy. However, a controlled study of repetitive doses of oral nitroglycerin showed treadmill performance to be significantly better with drug than with placebo in 18 patients with angina pectoris after 2 weeks of therapy.

In industrial workers continuously exposed to nitroglycerin, tolerance clearly occurs. Moreover, physical dependence also occurs since chest pain, acute myocardial infarction, and even sudden death have occurred during temporary withdrawal of nitroglycerin from the workers. In various clinical trials in angina patients, there are reports of anginal attacks being more easily provoked and of rebound in the hemodynamic effects soon after nitrate withdrawal. The relative importance of these observations to the routine, clinical use of nitroglycerin are not known. However, it seems prudent to gradually withdraw patients from nitroglycerin when the therapy is being terminated, rather than stopping the drug abruptly.

Drug Interactions

Alcohol may enhance sensitivity to the hypotensive effects of nitrates.

Nitroglycerin acts directly on vascular muscle. Therefore, any other agents that depend on vascular smooth muscle as the final common path can be expected to have decreased or increased effect depending upon the agent.

Marked symptomatic orthostatic hypotension has been reported when calcium channel blockers and oral controlled-release nitroglycerin were used in combination. Dose adjustments of either class of agents may be necessary.

Carcinogenesis, Mutagenesis, Impairment of Fertility

No long-term studies in animals have been performed to evaluate carcinogenic potential of [Product Name].

Pregnancy

Pregnancy Category C. Animal reproduction studies have not been conducted with [Product Name]. It is also not known whether nitroglycerin can cause fetal harm when administered to a pregnant woman or can affect reproduction capacity. Nitroglycerin should be given to a pregnant woman only if clearly needed.

Nursing Mothers

It is not known whether nitroglycerin is excreted in human milk. Because many drugs are excreted in human milk, caution should be exercised when [Product Name] is administered to a nursing woman.

Pediatric Use

Safety and effectiveness in children have not been established.

Adverse Reactions

Adverse reactions to [Product Name], particularly headache and hypotension, are generally dose-related. In clinical trials at various doses of nitroglycerin, the following adverse effects have been observed:

Headache, which may be severe and persistent, is the most commonly reported side effect of nitroglycerin, with an incidence in the order of about 50% in some studies. Cutaneous vasodilation with flushing may occur. Transient episodes of dizziness and weakness, as well as other signs of cerebral ischemia associated with postural hypotension, may occasionally develop. An occasional individual may exhibit marked sensitivity to the hypotensive effects of nitrates and severe responses (nausea, vomiting, weakness, restlessness, pallor, perspiration, and collapse) may occur even with therapeutic doses of nitrates. Drug rash and/or exfoliative dermatitis have been reported in patients receiving nitrate therapy. Nausea and vomiting appear to be uncommon.

Overdosage

Signs and Symptoms

Nitrate overdosage may result in: Severe hypotension, persistent throbbing headache, vertigo, palpitation, visual disturbance, flushing and perspiring skin (later becoming cold and cyanotic), nausea and vomiting (possibly with colic and even bloody diarrhea), syncope (especially in the upright posture), methemoglobinemia with cyanosis and anorexia, initial hypernea, dyspnea and slow breathing, slow pulse (dicrotic and intermittent), heart block, increased intracranial pressure with cerebral symptoms of confusion and moderate fever, paralysis and coma followed by clonic convulsions, and possibly death due to circulatory collapse.

Treatment of Overdosage

Keep the patient recumbent in a shock position and comfortably warm. Gastric lavage may be of use if the medication has only recently been swallowed. Passive movement of the extremities may aid venous return. Administer oxygen and artificial ventilation if necessary. If methemoglobinemia is present, administration of methylene blue (1% solution), 1-2 mg/kg intravenously, may be required.

Methemoglobin

Case reports of clinically significant methemoglobinemia are rare at conventional doses of organic nitrates. The formation of methemoglobin is dose-related and in the case of genetic abnormalities of hemoglobin that favor methemoglobin formation, even conventional doses of organic nitrates could produce harmful concentrations of methemoglobin.

WARNING: Epinephrine is ineffective in reversing the severe hypotensive events associated with overdose. It and related compounds are contraindicated in this situation.

Dosage and Administration

The usual starting dose for [Product Name] is [2.5 mg or 2.6 mg] taken 3 or 4 times daily. Controlled trials have been carried out to 5 hours after dosing; therefore, it is not known whether the drug is effective in prevention of exertional angina beyond 5 hours after dosing.

[Product Name] should be TITRATED upward until a dose effective in controlling angina is determined or until side effects limit the dose. The dose generally may be increased by [2.5 or

2.6] mg increments 2 to 4 times daily over a period of days or weeks. Doses as high as 26 mg given 4 times daily have been reported effective in angina pectoris patients.

Administer the smallest effective dose 3 to 4 times daily unless clinical response suggests a different regimen. At initiation of therapy or change in dosage, the blood pressure (patient standing) should be monitored.

[Product Name] (tablets or capsules) must be swallowed. They are NOT FOR CHEWING OR FOR SUBLINGUAL USE. [Product Name] (tablets or capsules) are not intended for immediate relief of anginal attacks.

How Supplied

(To be inserted by manufacturer or distributor)

C. *Marketing status.* 1. Marketing a drug product that is now the subject of an approved or effective new drug application or conditionally approved abbreviated application may be continued provided that, on or before November 6, 1984, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) or new drug application FD–356H (21 CFR 314.1(c)).

2. In addition, to permit full approval on the basis of effectiveness, as well as safety, of the new drug applications and abbreviated applications that are now approved, effective, or conditionally approved on the basis of safety only, the holder of each such application is required to supplement its application to provide acceptable in vitro dissolution tests and in vivo bioavailability/bioequivalence (measuring plasma or serum concentrations of parent compound and its principal metabolites) studies on the drug product in accord with item D below. To furnish adequate time for review, bioavailability data should be submitted on or before March 6, 1985. For any application not fully approved by September 3, 1985, the agency will begin proceedings to withdraw the previous approval based only on safety and to remove those products from the market.

3. Approval of an abbreviated new drug application (21 CFR 314.2) containing full information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) or new drug application form FD–356H (21 CFR 314.1(c)) must be obtained before marketing such products. Such an abbreviated new drug application is required to contain evidence from in vivo bioavailability studies as described in item D below. Evidence from in vitro dissolution testing is also required. Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

D. *Bioavailability requirements.* 1. As stated in the **Federal Register** of August 23, 1977 (42 FR 42311), the provision of 21 CFR 320.22(c) waiving bioavailability data for certain drugs does not necessarily apply to drug products first announced as effective in DESI notices published after January 7, 1977. This is the first notice announcing that oral nitroglycerin (controlled release) is effective, and the agency has determined that because of actual or potential bioavailability data are not waived.

2. Under the exempting notices, manufacturers were allowed to demonstrate bioavailability via an acceptable bio-screen, e.g., the digital plethysmography (DPG) method, and, as a condition for marketing, could show only that sufficient drug had been absorbed to elicit a positive measurable indication of pharmacologic activity. At that time, sensitive methodology for determination of blood levels of the various organic nitrate coronary vasodilators had not been fully developed. Suitable methodology is now available for assessing bioavailability and defining the pharmacokinetics of oral nitroglycerin through blood level determinations.

3. Studies are currently underway that are intended to establish the absolute and relative bioavailability for oral nitroglycerin. The products used in these studies have been selected as standards because acceptable clinical efficacy data are available for them. Manufacturers that submit new applications or that hold previously approved or conditionally approved applications for other formulations will be required to match these standards by performing bioavailability/bioequivalence studies (blood level versus time for parent drug and major metabolites). Failure of a product to match may require clinical dose ranging studies as a condition for marketing. Requests for guidance on conducting dissolution tests and bioavailability/bioequivalence studies are to be addressed to the Division of Biopharmaceutics at the address given above.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: August 30, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–23655 Filed 9–6–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Izembek National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review, Availability and Public Hearings, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a draft comprehensive conservation plan, wilderness review, and environmental impact statement (CCP/EIS) for the Izembek National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, and section 102(2)(c) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes two strategies for long-term management of the 321,000-acre refuge. Both proposals retain for the National Wilderness Preservation System, approximately 300,000 acres (93% of the refuge) of previously designated wilderness.

DATES: Comments of the draft CCP/EIS must be submitted on or before December 7, 1984, to receive consideration in the preparation of the final CCP/EIS.

One formal public hearing and five public meetings will be held as scheduled below to receive comments on the draft CCP/EIS:

PUBLIC HEARING

Date	Time	Place
Nov 2, 1984	7 p.m.	Fairview Community Center, 1121 East 10th Ave. Anchorage, Ak

PUBLIC MEETINGS

Date	Time	Place
Nov 5, 1984	7 p.m.	Cold Bay Community Service Facility Bldg
Nov 6, 1984	2 p.m.	False Pass, Mess Hall.
Nov 7, 1984	10 a.m.	King Cove, Corporation Office Bldg
Nov 8, 1984	10:30 a.m.	Nelson Lagoon Community Bldg.
Do	7 p.m.	Sand Point Municipal Bldg.

Written and oral testimony will be accepted at the public hearing and will be transcribed for the official record. Written and oral comments will also be accepted at the public meetings. All comments and testimony, both oral and written, received prior to the above date will be considered in preparation of the final CCP/EIS.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

A summary of the draft CCP/EIS has been prepared for general distribution. Copies of this summary will be sent to all persons and organizations who participated in scoping or received editions of the planning bulletin. The summary is available upon request from Mr. William Knauer.

Copies of the draft CCP/EIS have been sent to all agencies that participated in the scoping process and to agencies and persons that have already requested copies. Those wishing to review the full technical draft may obtain a copy by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the above location, at the Izembek National Wildlife Refuge Office, Cold Bay, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Street, NW, Department of the Interior, Washington, D.C. 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Izembek National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317 of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include fish and wildlife management: disturbance of migratory bird populations; development and use of adjacent state and private lands; public use; and wilderness management. The draft CCP/EIS addresses two strategies for long-range management of the refuge including one that would continue current management (the preferred proposal). The other strategy emphasizes maintenance of fish and wildlife populations in their present state while creating an enhanced public use area; wilderness and cooperative management area designations would not change.

The plan also describes the general wilderness suitability of up to 300,000 acres of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1985.

Other government agencies and the general public contributed to the development of this draft CCP/EIS. The Notice of Intent to prepare the draft CCP/EIS was published in the October 29, 1981, **Federal Register**. Public meetings were held during November 1981 in Cold Bay, Sand Point, and Anchorage, and during January, 1983, in Nelson Lagoon, King Cove, and False Pass, Alaska. Several editions of a planning bulletin were sent to more than 500 persons and organizations. During August 24–25, 1982, a series of workshops was held in Anchorage to help define issues involving refuge resources.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the final EIS.

Dated: August 23, 1984.

Jon M. Nelson,

Acting Regional Director.

[FR Doc. 84–23141 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Public Land Sale in Bingham and Franklin Counties, Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, Competitive Sale of Public Lands in Bingham and Franklin Counties, Idaho.

SUMMARY: Based on public support land use plans, the following lands have been examined and identified for disposal under section 203(a) of the Federal Land Policy and Management Act of 1976, for no less than appraised fair market value (FMV).

Tract	Legal description	Acres	FMV
I–19693	T. 4 S., R. 40 E., B.M. Section 19: Lot 2	45.3	$3,400
I–20351	T. 14 S., R. 38 E., B.M. Section 34: SE¼NW¼	40	3,000

Sealed bids only are solicited for each tract offered. Acceptable bids must meet the FMV or higher and include a deposit of one-fifth of the full price bid. In addition, a bid on I–19693, will constitute an application for conveyance of all minerals, except oil and gas. The declared high bidder will be required to deposit a $50 non-refundable filing fee to process the conveyance. Failure to do so will result in disqualification as high bidder.

The lands will be subject to the following reservations and conditions when patented:

I–19693

1. Ditches and canals.
2. Oil and gas.
3. All valid existing rights and reservations of record.

I–20351

1. Ditches and canals.
2. All minerals.
3. All valid existing rights and reservations of record.

As a condition of sale, both tracts will be subject to continued use of existing livestock grazing privileges which will expire 2/28/1989. Upon publication in the **Federal Register** the tracts are segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of 270 days, or until patent is issued.

Dates and Addresses: Bids should be submitted to the area manager, Pocatello Resource Area Office, 250 South 4th Ave., Pocatello, Idaho, 83201, prior to the sale time. Bids will be opened on November 27, 1984, at 1:00 p.m. in the basement meeting room B-43 in the Federal Building, 250 South 4th Avenue, Pocatello, Idaho. If no bids are received by this date, bids will be accepted until, and opened on, December 18, 1984, at 11:00 a.m. at the Idaho Falls District BLM, 940 Lincoln Road, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning reservations, conditions, terms, bidding procedures and other items should be obtained by contacting Wallace Evans, Area Manager, Pocatello Resource Area, 250 South 4th Avenue, Pocatello, Idaho 83201, or by calling (208) 236-6860 during office hours.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Area manager at the above address.

Dated: August 31, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84-23661 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-84-M

[NM 1582]

New Mexico; Notice of Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Defense proposes that a 4,106.61 acre withdrawal for the Air Force continue for an additional 25 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received on or before December 6, 1984.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, New Mexico State Office, 505-988-6659.

SUPPLEMENTARY INFORMATION: The Department of Defense proposes that the existing land withdrawal made by Public Land Order 4627 of April 14, 1969, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 17 S., R. 10 E.,
  Sec. 29, NW¼, NE¼SW¼ and S½SW¼;
  Sec. 30, SE¼SE¼;
  Sec. 31, N½N½;
T. 18 S., R. 10 E.,
  Sec. 5, lots 1 to 4, inclusive, and S½S½;
  Sec. 8, N½ and SE¼SE¼;
  Sec. 9, W½W½ and SE¼SW¼;
  Sec. 16, W½SE¼ and W½E½SE¼;
  Sec. 17, NE¼NE¼, S½NE¼ and N½SE¼;
  Sec. 21, NE¼, N½NW¼ and NE¼SE¼;
  Sec. 22, SW¼ and SW¼NW¼;
  Sec. 26, W½SW¼ and SE¼SW¼;
  Sec. 27, SW¼NE¼, W½ and SE¼;
  Sec. 28, E½SE¼;
  Sec. 33, E½NE¼;
  Sec. 34, N½ and E½SE¼;
  Sec. 35, SW¼NE¼, W½ and SE¼;
T. 19 S., R. 10 E.,
  Sec. 2, NE¼;
  Sec. 3, lot 1.

The areas described aggregate approximately 4,106.61 acres.

The purpose of the withdrawal is in connection with Holloman Air Force Base. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 31, 1984.

Charles W. Luscher,

State Director.

[FR Doc. 84-23663 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 012072]

New Mexico; Notice of Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Defense proposes that a 611.78 acre withdrawal for the Air Force continue for an additional 25 years. The lands will remain closed to surface entry and mining and will be opened to mineral leasing.

DATE: Comments should be received on or before December 6, 1984.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, New Mexico State Office, 505-988-6659.

SUPPLEMENTARY INFORMATION: The Department of Defense proposes that the existing land withdrawal made by Public Land Order 1157 of June 1, 1955, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 17 S., R. 8 E.,
  Sec. 22, E½SE¼, that portion lying north of U.S. Highway 70;
  Sec. 23, E½, E½W½, W½SW¼, those portions lying north of U.S. Highway 70;

T. 17 S., R. 8 E.,
  Sec. 24, that portion lying north of U.S. Highway 70;
  Sec. 26, NW¼NW¼NW¼, that portion lying north of U.S. Highway 70;
  Sec. 27, E½,NE¼, that portion lying north of U.S. Highway 70;
T., 17 S., R. 9 E.,
  Sec. 6, lots 1, 2, 3, and 4.

The areas described aggregate approximately 611.78 acres.

The purpose of the withdrawal is for use in connection with Holloman Air Force Base. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, and the mineral leasing laws. The lands will be opened to the mineral leasing laws to the extent consistent and compatible with military operations.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 30, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-23664 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-FB-M

NM 0450603

New Mexico; Notice of Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: The Department of Defense proposes that a 80.00 acre withdrawal for the Air Force continue for an additional 25 years. The lands will remain closed to surface entry and mining but will be open to mineral leasing.

DATE: Comments should be received on or before December 6, 1984.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, New Mexico State Office, 505-988-6659.

SUPPLEMENTARY INFORMATION: The Department of Defense proposes that the existing land withdrawal made by Public Land Order 3434 of August 14, 1964, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 17 S., R. 10 E.,
  Sec. 31, NE¼SE¼;
  Sec. 31, NW¼NW¼.

The area described contains 80.00 acres.

The purpose of the withdrawal is for use in connection with Holloman Air Force Base. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, and the mineral leasing laws. The lands will be opened to the mineral leasing laws to the extent consistent and compatible with military operations.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 30, 1984.

Monte G. Jordan,

State Director.

[FR Doc. 84-23665 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM 056374]

New Mexico; Notice of Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Defense proposes that a 100.00 acre withdrawal for the Air Force continue for an additional 25 years. The lands will remain closed to surface entry and mining but will be opened to mineral leasing.

DATE: Comments should be received on or before December 6, 1984.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, New Mexico State Office, 505-988-6659.

SUPPLEMENTARY INFORMATION: The Department of Defense proposes that the existing land withdrawal made by Public Land Order 2091 of May 17, 1960, be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 17 S., R. 8 E.,
  Sec. 21, N½NW¼ and W½NW¼NE¼.

The area described contains 100.00 acres.

The purpose of the withdrawal is for use in connection with Holloman Air Force Base. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, and the mineral leasing laws. The land will be opened to the mineral leasing laws to the extent consistent and compatible with military operations.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 30, 1984.

Monte G. Jordan,

Associate State Director.

[FR Doc. 84-23666 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-FB-M

Combined Hydrocarbon Development; Intent to Prepare an Environmental Assessment for the Sunnyside Special Tar Sand Area in the Diamond Mountain Resource Area, Vernal District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Assessment for the Sunnyside Special Tar Sand Area in the Diamond Mountain Resource Area, Vernal District, Utah.

SUMMARY: This notice announces the intent of the Utah, Vernal District, Bureau of Land Management Office, to prepare an Environmental Assessment for potential combined hydrocarbon (tar sand) development. The potential tar sand production would occur in the Sunnyside Special Tar Sand Area located in portions of Townships 11 and 12 South, Ranges 14 to 16 East, Salt Lake Base and Meridian, in the Nine Mile Canyon vicinity of Duchesne and Carbon Counties, Utah.

The possible effects of the proposal upon the following resources will be analyzed: Wildlife, including threatened and endangered fauna; soils; watershed; cultural resources; paleontology; vegetation, including threatened and endangered flora; air quality; minerals; visual resources; and socioeconomics.

The above constitutes a tentative list of the general issues that need to be addressed.

Written comments, including those involving additional general or specific issues will be received through October 15, 1984. The address for comments or information is as follows: Bureau of Land Management, Ralph Heft, Area Manager, 170 South 500 East, Vernal, Utah 84078, (801) 789-1362.

The Draft Environmental Assessment is scheduled for publication on March 21, 1985. Copies available upon request.

Dated: August 29, 1984.

Donald C. Alvord,

Acting District Manager.

[FR Doc. 84-23862 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-DQ-M

[C-37808 and C-37779]

Colorado; Realty Action Sale of Public Lands in Rio Blanco County, Colorado; Serial Number C-37808 (Parcels 1 Through 9), and C-37779

The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than fair market value of each parcel.

Land Disposal

Parcel No	Location	Acreage	Minimum bid price
C-37808-1	Township 1 North, Range 92 West. Section 17: NW¼SW¼ 6th P.M., Rio Blanco County, CO	40	$4,000
C-37808-2 Township 1 North, Range 92 West. Section 17: TR40-2 (5.18 acres) TR40-4 (1.36 acres) 6th P.M., Rio Blanco County, CO.		6.54	650
C-37808-3	Township 1 North, Range 92 West. Section 18: SE¼SW¼ 6th P.M., Rio Blanco County, CO	40	4,000
C-37808-4	Township 1 North, Range 92 West. Section 19: TR40-6 (5.18 acres) Section 20: TR40-6 (6.54 acres) 6th P.M., Rio Blanco County, CO	11.72	1,170
C-37808-5	Township 1 North, Range 92 West. Section 30: Lot (2.19 acres) Lot 3 (12.38 acres) Lot 25 (1.12 acres) 6th P.M., Rio Blanco County, CO.	14.69	1,470
C-37808-6	Township 1 North, Range 93 West. Section 11: Lot 7 6th P.M., Rio Blanco County, CO	2.00	200
C-37808-7	Township 1 North, Range 93 West Section 15: Lot 5 6th P.M., Rio Blanco County, CO	4.54	450
C-37808-8	Township 1 North, Range 93 West Section 21: Lot 10 (0.12 acres) Lot 14 (2.82 acres) Lot 27 (4.13 acres) 6th P.M., Rio Blanco County, CO	7.07	700
C-37808-9	Township 1 North, Range 93 West Section 34: Lot 29 (3.94 acres) Lot 31 (3.03 acres) 6th P.M., Rio Blanco County, CO	6.97	520
C-37779	Township 2 North, Range 102 West. Section 34: Lot 7 6th P.M., Rio Blanco County, CO	6.01	15,000

The lands have not been used for and are not required for any Federal purpose. The location and physical characteristics of each parcel make it difficult and uneconomical to manage as public lands. Disposal would not have any significant effect on resource values and would best serve the public interest. The proposed sale will be consistent with the Bureau of Land Management land use plans, and would not conflict with local planning and zoning. The sale would enhance land use compatibility with adjoining private lands.

Each patent issued as a result of the proposed sale will be subject to:

1. All valid existing rights and reservations of record including oil and gas leases;
2. Will contain a reservation to the Unied States for right-of-way for ditches and canals constructed by the United States under the Act of August 30, 1890 (26 Stat. 391: 43 U.S.C. 945);
3. All minerals will be reserved to the United States as required by Section 209(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).
4. Patent issued for parcel number C-37779 will also be subject to those rights for:

a. A 69 kV electric transmission line as has been granted to Moon Lake Electric Assoc., Inc. under right-of-way Colorador 084045(50');

b. A buried natural gas pipeline (4 inches) servicing the Rangely Power Plant as has been granted to Moon Lake Electric Assoc., Inc. under right-of-way Colorado 0111155 (20');

c. A 69 kV electric transmission line as has been granted to Moon Lake Electric Assoc., Inc. under right-of-way Colorado 014640 (25');

d. A telephone line known as the Rangely Branch Pole Line as has been granted to Mountain States Telephone and Telegraph Company under right-of-way Denver (Land Office) 051953 (8').

As a condition of sale of parcels number C-37808-1 and C-37808-3, the successful high bidders must enter into an agreement with Mr. Tom Theos of Meeker, Colorado 81641, the terms and conditions of which must be comparable to those conditions contained in grazing lease no. CO-016-1512 which will preserve his privilege to use the land for grazing purposes for the duration of his term lease.

Also as a condition of sale of parcels number C-37808-1 and C-37808-3, the successful high bidder will be required to reasonably compensate Mr. Tom Theos for his interest in the range improvement known as the Swallow Fork Fence #1818 which is under a Range Improvement Permit with the BLM.

Parcel numbers C-37808-1, C-37808-3, C-37808-5 and C-37808-8 will be offered by modified competitive bidding to contiguous landowners only. Parcel numbers C-37808-2 and C-37808-4 will be offered by direct sale to Mr. Tom Theos of Meeker, Colorado 81641, owner of all adjacent property. Parcel numbers C-37808-6 and C-37808-9 will be offered by competitive bidding. A condition to the sale of parcel number C-37808-9 requires the successful high bidder to apply for all minerals—except oil, gas and coal—beneath the parcel within 30 days from the date of sale; and pursuant to 43 CFR 2711.5-1, must submit a $50.00 non-refundable filing fee with the application. Parcel C-37808-7 will be offered by modified competitive bidding, and Mr. W. C. Moore of Meeker, Colorado 81641, owner of all adjacent property, will have a preference right to purchase the land by meeting the highest bid within a 30 day period following the date of sale. Parcel C-37779 will be offered by direct sale to W. C. Striegel, Inc. of Rangely, Colorado 81648, adjacent land owner.

The public sale will be held at the Bureau of Land Management, White River Resource Area Office, 73544 Highway 64, west of Meeker, Colorado 81641, at 1:00 p.m. on December 5, 1984. Sealed bids will be accepted until 11:00 a.m. on the date of the sale; the sealed bids willbe opened at 1:00 p.m.

The law requires all bidders be citizens of the United States, 18 years of age or older; or, in the case of a corporation, be subject to the laws of any state or of the United States. Entities such as corporations and partnerships must be capable of holding lands or interest therein under the laws of Colorado. Bids may be made by a principle or his duly qualified agent. Each bid must be for all the land in the desired parcel, and for no less than the minimum bid price. Bids for more than one parcel must be contained in separate envelopes. Each envelop must be sealed and the lower left corner market "Sealed Bid, Public Land Sale C———— Parcel No. ————, Sale—December 5, 1984". The sealed bid must be accompanied by a certified check, money order, bank draft or cashiers check made payable to the "Dept. of the Interior—BLM" for no less than 20% of the bid. If two or more envelopes containing valid bids of the same amount for the same parcel are received, the determination of highest bidder shall be determined by supplemental biddings. The successfully highest bidder will be required to submit the remainder of the bid offer prior to the expiration of 180 days from the date of sale. If final payment is not received within the 180 days allowed above, the high bid will be forfeited and the land will be offered to the next highest qualified bidder subject to these same conditions. All unsuccessful bids shall be retureened within 30 days following the sales dates. If valid bids are not received for any parcel described herein on the date of the sale, the unsold parcels will remain available for sale on the first Wednesday of every month for the 8 months succeeding this sale beginning on January 2, 1985 and ending on August 7, 1985 at 12 noon.

Detailed information concerning this sale, including bidder qualifications, bid standards, bidding procedures, payment requirements, and final details is explained in the sales prospects which is available at the White River Resource Area Office, Bureau of Land Management, at 73544 Highway 64, west of Meeker, Colorado 81641. The planning documents and environmental assessments are also available for review at the White River Resource Area Office at the above address.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will becom a final determination of the Department of the Interior.

Terry L. Plummer,

District Manager.

[FR Doc. 84-23873 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-JB-M

[CA-15731]

California: Realty Action Sale of Public Lands in San Bernardino, San Diego and Riverside Counties; Modification

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Sale of public lands in San Bernardino, San Diego and Riverside counties—CA 15731—Modification of bidding procedures.

SUMMARY: This document modifies the competitive bidding procedures detailed in the Notice of Realty Action published on pages 25529 and 25530 in the **Federal Register** of Thursday, June 21, 1984 (Vol. 49, No. 121). The Board of Water Commissioners for the City of San Bernardino, California will be given the opportunity to match the highest sealed bid for Parcel No. 3—CA 15367. If no sealed bids are received for the aforementioned parcel of land, the Board of Water Commissioners will purchase the subject parcel at the appraised market value. This action affects bidding for Parcel No. 3—CA 15367 only.

Background Information: On august 8, 1984, the Board of Water Commissioner's for the City of San Bernardino requested an opportunity to match the highest sealed bid for Parcel No. 3—CA 15367. The Water Department owns property adjoining the subject parcel and wishes to acquire the additional acreage for future public water development.

Dated: August 28, 1984.

Hugo W. Riecken,

Associate District Manager.

[FR Doc. 84-23725 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-40-M

Prineville District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held October 2, 1984.

The meeting will take place at 10:00 a.m. in the conference room of the Bureau of Land Management office located at 185 East 4th Street, P.O. Box 550, Prineville, OR 97754.

The agenda will center on the following items:

1. Two Rivers RMP update.
2. 1984 Annual Work Plan.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address prior to September 25, 1984.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: August 28, 1984.

Maurice Ziegler,

Acting District Manager.

[FR Doc. 84-23737 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-33-M

Anchorage District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Hearing.

SUMMARY: The advisory council of the Bureau of Land Management's Anchorage District Office will meet 9 a.m., October 30, 1984, to discuss a number of topics related to the management of Federal public lands.

As required by regulation, time will be scheduled during the meeting for any member of the public wishing to address the council. Individuals requesting time on the agenda are asked to notify Joette

Storm, Public Affairs Specialist, before October 25, 1984, by calling 267-1200.

DATE: Tuesday, October 30, 1984.

TIME: 9 a.m.

PLACE: Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska.

SUPPLEMENTARY INFORMATION: Agenda.

9:00	Call to order and reading of the minutes
9:15	Election of Officers for the coming year
10:00	Update on district budget, settlement program, Iditarod trail use permits, and National Wild and Scenic River plans
Noon	Break for lunch
1:00	Implementation of recreation permit regulations
2:30	Break
3:00	Public comment period
4:00	Adjournment

Wayne A. Boden,

District Manager.

[FR Doc. 84-23686 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-JA-M

[A-18634]

Arizona; Conveyance of Public Land; Reconveyed Land Opened to Entry

August 29, 1984.

Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following described lands were transferred out of Federal ownership in exchange for privately-owned land. The lands transferred into private ownership are described as follows:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 18 W.,
  Section 6, lots 1, 2, 3, 5, 6, 8, 10 S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼, W½SE¼SE¼SE¼, SW¼SE¼SE¼, N½SE¼SE¼;
  Section 8, E½NW¼NW¼NE¼, NE¼NW¼NE¼, S½NW¼NE¼, NE¼NE¼, S½NE¼, NW¼, S½;
  Section 18, lots 2, 3, 4, 5, E½W½, E½;
  Section 20, all;
  Section 28, all;
  Section 30, lots 1 thru 4, incl., E½W½, E½;
  Section 32, all.
T. 20 N., R. 19 W.,
  Section 2, lots 1 thru 4, incl., S½N½, S½;
  Section 12, all;
  Section 14, all;
  Section 24, all;
  Section 26, all;
  Section 36, all.
T. 21 N., R. 19 W.,
  Section 22, all;
  Section 28, all.

Comprising 9,571.01 acres in Mohave County.

Lands acquired by the United States are described as:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 14 W.,
  Section 1, lots 1 thru 4, incl., S½N½, S½;
  Section 3, lots 1 thru 4, incl., S½N½, S½;
  Section 5, lots 1 thru 4, incl., S½N½, S½;
T. 15 N., R. 14 W.,
  Section 5, Lots 2, 3, 4, S½NW¼;
  Section 7, lots 1 thru 4, incl., E½W½, E½;
  Section 15, all;
  Section 17, N½, SW¼, NE¼SE¼, W½SE¼;
  Section 19, lots 1 thru 4, incl., E½W½, E½;
  Section 21, all;
  Section 23, E½, E½W½, N½NW¼NW¼, S½SW¼NW¼, W½SW¼;
  Section 25, all;
  Section 27, all;
  Section 29, all;
  Section 31, lots 1 thru 4, incl., E½W½, E½;
  Section 33, all;
  Section 35, all.
T. 14 N., R. 15 W.,
  Section 1, lots 1 thru 4, incl., S½N½, S½.
T. 15 N., R. 15 W.,
  Section 1, lots 1 thru 4, incl., S½NE¼, SW¼NW¼, S½;
  Section 13, all;
  Section 25, E½, W½NW¼, SW¼.

Comprising 12,127.23 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land along with certain mineral interests, and the acquisition of private land by the Federal Government.

The surface of the land acquired by the Federal Government in this exchange will be open to entry under the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, at 10:00 a.m. on October 15, 1984. The mineral estate is owned by the Santa Fe Railroad Company and, therefore, will not be subject to entry under the United States mining or Mineral Leasing Laws.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-23651 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-32-M

[A-18822]

Public Land Sale; Mohave County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; amendment—sale; public lands in Mohave County, Arizona.

SUPPLEMENTARY INFORMATION: On June 28, 1984, a Notice of Realty Action, describing the proposed sale of 3,283.80 acres of public land near Kingman, Arizona, was published in **Federal Register** Volume 49, No. 126, pages 26641 and 26642. Whereas, the sales regulations, 43 CFR Part 2710, were amended per Circular No. 2548 effective August 6, 1984, the Notice of Realty Action of June 28, 1984, shall be amended as follows:

As provided in 43 CFR 2711.1-2(d), the public lands described in the notice referenced herein shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever occurs first.

Dated: August 29, 1984.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 84-23648 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-32-M

[OR-37205]

Realty Action Noncompetitive Sale of Public Land in Deschutes County, OR

The following described parcel of land has been examined and identified as suitable for disposal by sale under 43 CFR Part 2740 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value.

Legal description	Acreage	Fair market value
T. 17 S., R. 12 E., W.M. Section 7: Lot 5..	3.75	$10,125

The development of a home on this parcel occurred as a result of a faulty survey. Although the parcel is a part of a larger tract considered valuable for public purposes when it was conveyed from Federal ownership, it is above the rim of the river canyon and does not have recreational or scenic values.

Lot 5 is uneconomic to manage by itself, and is not suitable for management by another Federal department or agency. Likewise, it is no longer needed for the purpose that it was acquired.

The sale of this tract is consistent with the rationale of the Bureau Planning System for disposal of isolated tracts having low public values and not needed for other resource activities.

The parcel is being offered noncompetitively to avoid disruption of the adjacent land ownership pattern, and to meet Deschutes County Zoning Goals which require a lot line adjustment to consolidate this parcel with the adjacent tax lot. The parcel will be offered at the appraised fair market value to H. M. Kemple, the adjacent landowner. Physical access to the parcel is available through property of the prospective buyer, which is situated adjacent to the subject.

The sale shall be made subject to a reservation for ditches and canals, all minerals and the existing powersite withdrawal.

The parcel will not be offered for sale for at least 60 days after the date of this notice. Upon notification of sale date, the purchaser will be given 30 days to pay the full amount of the appraised fair market value.

Detailed information concerning the sale, including the planning documents, land report, and environmental assessment is available for review at the Prineville District Office, 185 E. Fourth Street, Prineville, Oregon 97754.

Dated: August 28, 1984.

Maurice Ziegler,

Acting District Manager.

[FR Doc. 84–23690 Filed 9–6–84; 8:45 am]

BILLING CODE 4310-33-M

[OR 9605; OR 20183]

Oregon; Termination of Proiposed Withdrawal and Reservation of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service has cancelled two separate applications to withdraw 6,198.60 acres of national forest land for protection of the Rock Mesa Geologic Area. This action will open 30 acres to surface entry and mining. The balance of 6,168.60 acres remains withdrawn as part of the Three Sisters Wilderness Area.

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. (Telephone 503–231–6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION:

1. Notices of Forest Service, U.S. Department of Agriculture, applications OR 9605 and OR 20183 for withdrawal and reservation of lands were published as FR Doc. 77–4310 on page 8434 of the issue of February 10, 1977, and as FR Doc. 79–4202 on page 7819 of the issue of February 7, 1979. The purpose of the proposed withdrawals was to protect the obsidian flows and dacite domes of the Rock Mesa Geologic Area, and the following described lands were temporarily segregated from all forms of appropriation under the public land laws, including the United States mining laws, but not the mineral leasing laws:

Willamette Meridian

Deschutes and Willamette National Forests

T. 17 S., R. 8 E., unsurveyed,
  Sec. 22, S½;
  Sec. 23, S½;
  Secs. 26 and 27;
  Sec. 28, W½, including part of Mineral Survey 983;
  Sec. 29, including part of Mineral Survey 983;
  Sec. 30, E½, including part of Mineral Survey 983;
  Sec. 31, E½, including part of Mineral Survey 983;
  Sec. 32, including part of Mineral Survey 983;
  Sec. 33, W½, including part of Mineral Survey 983;
  Sec. 34;
  Sec. 35, N½.
T. 18 S., R. 8 E.,
  Sec. 3, lots 1, 2, 3, and 4, S½N½, and S½, except that parcel of land containing approximately 10 acres and identified as the Cascade Lakes Road Zone.
  Sec. 10, NE¼, except that parcel of land containing approximately 30 acres and identified as the Cascade Lakes Road Zone.

The areas described aggregate approximately 6,198.60 acres in Deschutes and Lane Counties, Oregon.

2. The Forest Service has cancelled both applications in their entirety; therefore, pursuant to the regulations contained in 43 CFR 2310.2–1(c), at 8:30 a.m., on October 15, 1984, that portion of the NE¼ of Sec. 10 T. 18 S., R. 8 E., W.M., located south of the Cascade Lakes Road Zone will be open to such forms of disposition that may by law be made of national forest lands, including location under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

3. The lands described in paragraph 1, except as provided in paragraph 2, remain withrawn from all forms of appropriation under the public land laws, including the United States mining laws, by the Three Sisters Wilderness Area designation.

Dated: August 29, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–23691 Filed 9–6–84; 8:45 am]

BILLING CODE 4310-33-M

Two Rivers Resource Management Plan and Environmental Impact Statement; Proposed Alternatives to Facilitate Scoping

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Two Rivers Document.

SUMMARY: Pursuant to Section 43, CFR 1610.3 and 1610.4–5 of the Regulations for Resource Management Planning, the Department of Interior, Bureau of Land Management, Prineville District Office has developed proposed alternatives to facilitate scoping of the Two Rivers Resource Management Plan (RMP) and Environmental Impact Statement (EIS).

SUPPLEMENTARY INFORMATION: The plan will result in land use allocations and resource management directions for approximately 294,000 acres of public land in the Two Rivers Planning Area. The Two Rivers Planning Area is located in Gilliam, Hood River, Jefferson, Sherman, Wasco and Wheeler Counties. Major resource management issues including grazing, riparian, wildlife, forest management, land tenure, minerals, recreation and special management areas.

The draft plan and EIS will be available for public review in the spring of 1985. The final statement is scheduled to be completed in September of 1985. Decisionmaking will take place in the fall of 1985 and include publication of a record of decision and rangeland program summary in the spring of 1986. The original Notice of Intent to prepare the Two Rivers RMP EIS was published in the **Federal Register** and local news media on April 9, 1984. Four proposed alternatives have been developed to address the major resource management and allocation issues. Copies of the Two Rivers RMP Summary of Proposed Land Use Alternatives have been sent to the District's current mailing list. Copies are also available for review at BLM Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754, BLM Oregon State Office, 825 NE Multnomah Street, Portland, OR.

The public is invited to submit written comments by October 9, 1984, on (1) the elements which should be in the preferred alternative plan or proposed action, (2) ideas on the formulation of other alternatives that should be addressed in the EIS, (3) ideas on issues which should be addressed in the EIS, and (4) criteria which should be used in the development or selection of a preferred alternative plan. Written public comments will be available for review in the District Office. Additional information may be obtained at the Prineville District Office during regular business hours, 7:45 a.m. to 4:30 p.m.

DATE: Comments must be received by October 9, 1984.

ADDRESS: Written comments, requests for copies of the summary document or request for further information should be directed to: Bureau of Land Management, Prineville District, ATTN: Brian Cunninghame, 185 East Fourth Street, P.O. Box 550, Prineville, Oregon 97754, Telephone: (503) 447-4115.

Dated: August 31, 1984.

Gerald E. Magnuson,

District Manager.

[FR Doc. 84-23650 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of Grand Isle Block 16 Field Federal Unit Agreement No. 14-08-0001-2932, submitted on August 27, 1984, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle Block 16 Field Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 31, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-23686 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1182, Block 11, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD, and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 31, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23724 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Gulf Oil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3543, Block 24, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Patterson, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 31, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-23728 Filed 9-6-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 337-TA-182/188]

Certain Fluidized Supporting Apparatus and Components Thereof; Suspension of Investigations

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has suspended the above-captioned consolidated investigations.

SUPPLEMENTARY INFORMATION: On August 22, 1984, the presiding officer certified a joint motion to the Commission which, *inter alia*, requested suspension of the above-captioned investigations under 19 U.S.C. 1337(b)(1). He also filed a recommended determination (RD) that, *inter alia*, the investigations be so suspended. Having reviewed the record, the joint motion and the RD, the Commission determined to suspend these consolidated investigations under 19 U.S.C. 1337(b)(1).

Copies of the nonconfidential version of the Commission'a Action and Order and all other nonconfidential documents filed in connection with these investigations are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel,U.S. Intenational Trade Commission, telephone 202-523-0480.

Authority: 19 U.S.C. 1337(b)(1) and 19 CFR 210.15.

Issued: August 31, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23685 Filed 9-6-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Harbor Freight and Salvage Co., d/b/a Central Purchasing, Inc. (hereafter "Harbor Freight").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on September 4, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: September 4, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-23684 Filed 9-6-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30539]

Rail Carriers; Ashtabula, Carson & Jefferson Railroad Co., Inc.—Operation—In Ashtabula County, OH; Modified Rail Certificate

August 27, 1984.

On July 9, 1984, notice was filed by the Ashtabula, Carson & Jefferson Railroad Co., Inc., (ACJ) for a modified certificate of public convenience and necessity under 49 CFR Part 1150 (Subpart C). As of that date, ACJ is authorized to provide service over the former line of the Consolidated Rail Corporation, in Ashtabula County, OH, known as the Jefferson Industrial Track, from the Carson-Clearance point of connection with the Youngstown Branch (approximately milepost 5.38) to Jefferson, OH, (milepost 11.63), a distance of approximately 6.25 miles. See Docket No. AB-167 (Sub-No. 513N), *Conrail Abandonment in Ashtabula County, OH* (not printed), served April 6, 1984.

The State of Ohio owns the subject line. ACJ will operate the line under an agreement with the State of Ohio Department of Transportation.

This notice shall be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-23674 Filed 9-6-84; 8:45 am]

BILLING CODE 7035-01-M

Railroad Operation, Acquisition, Construction, etc.; Tenneco, Inc., and Packaging Corp. of America—Control Exemption—Ekco Products, Inc. and Lake States Carriers, Inc.

[Finance Docket No. 30542]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the acquisition of control of Ekco Products, Inc. and Lake States Carriers, Inc., by Tenneco, Inc. and Packaging Corporation of America.

DATES: This exemption is effective on August 31, 1984. Petitions to reopen must be filed by September 27, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30542 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' Representative: Daniel C. Sullivan, Sullivan & Associates, Ltd., 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area) or toll free (800) 424-5403.

Decided: August 30, 1984.

By the Commission: Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,
Secretary.

[FR Doc. 84-23675 Filed 9-6-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15,319]

Trojan Industries, Inc. Batavia, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 30, 1984 in response to a worker petition received on April 27, 1984 which was filed by the International Brotherhood of Boilermakers on behalf of workers at Trojan Industries, Inc, Batavia, New York.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 29th day of August 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-23788 Filed 9-6-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistant

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 17, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 17, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 27th day of August 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of)	Location	Date received	Date of petition	Petition No.	Articles produced
Antietam Footwear, Inc. (company)	Hagerstown, MD.	8/22/84	8/20/84	TA-W-15,433	Footwear.
Bath Iron Works Corp. (IUMSWA)	Bath, ME	8/22/84	8/16/84	TA-W-15,434	Ships, commercial, Navy, repair, overall new construction.
Brown Shoe Co., plant AA (wrkrs)	Booneville, MS	8/22/84	8/20/84	TA-W-15,435	Shoes, women's dress.
Casey Mfg. Co. (company)	Casey, IL	8/21/84	8/17/84	TA-W-15,436	Shoes, children's & infants.
Cowden Mena Co. (workers)	Mena, Ark	8/15/84	8/13/84	TA-W-15,437	Jeans, blue, denum—men & women.
Ettelbrick Shoe Co. (company)	Greenup, IL	8/22/84	8/13/84	TA-W-15,438	Shoes, children's.
F.M. Weaver, Inc. (USWA)	Lansdale, PA	8/20/84	8/16/84	TA-W-15,439	Beams, structural
Greenup Mfg Co. (company)	Greenup, IL	8/22/84	8/13/84	TA-W-15,440	Shoes—children's & infants
Gorham China, Div. of Textron (wrkrs)	San Dimas, CA	8/22/84	8/17/84	TA-W-15,441	China—dinnerware & other items.
International Hat Co. (workers)	Oran, MO	8/22/84	8/15/84	TA-W-15,442	Visors, tennis, hats, painters, cloth.
Margee Sportswear, Inc. (workers)	Miami, FL	8/22/84	8/16/84	TA-W-15,443	Sportswear, tennis.
Noyo Pride, Inc. (company)	Fort Bragg, CA	8/20/84	8/15/84	TA-W-15,444	Fish—fillets, dress, process.
Robinson Mfg Co. (company)	Robinson, IL	8/21/84	8/17/84	TA-W-15,445	Shoes, children's.
CMS Shoes (company)	Greenup, IL	8/21/84	8/17/84	TA-W-15,446	Corporate offices.

[FR Doc. 84-2376 Filed 9-6-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,381]

General Motors Corp., General Motors Assembly Division, Fremont, CA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 16, 1984 in response to a worker petition received on June 22, 1984 which was filed on behalf of office workers engaged in closing down office operations at the Fremont, California plant of General Motors Assembly Division, General Motors Corporation.

The petitioning of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-15,328). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of August 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-23764 Filed 9-6-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,377]

Trojan Luggage Co.; East Bodley Street; Memphis, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was intitiated on June 29, 1984 in response to a petition received on June 25, 1984 which was filed by the United Furniture Workers of America Local 282, on behalf of workers producing footlockers at the East Bodley Street facility of Trojan Luggage Company, Memphis, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 29th day of August 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-23765 Filed 9-6-84; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15.234, et al]

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Pybus Steel Co., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 20, 1984–August 24, 1984

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15, 234; Pybus Steel Co., Wenatchee, WA

TA-W-15, 288; Columbia Match Co., Cleveland, OH

The investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15, 255; Maryland Shipbuilding & Drydock Co., Baltimore, MD

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-15,301; United States Steel Corp., South Plant, Chicago, IL

The investigation revealed that criterion (2) has not been met. Sales or production, or both, of the firm or subdivision did not decrease as equired for certification.

TA-W-15,352; Chem-Fleur International, Newark, NJ

The investigation revealed that criterion (2) has not been met. Sales and production, or both, did not decrease as required for certification.

TA-W-15,254; General Electric Indicating Devices, Inc., Caguas, PR

Employment declines resulting from the transfer of production to a foreign firm have not yet occurred.

TA-W-15,339; National Steel Corp., Great Lakes Steel Div., Ecorse, MI

The investigation revealed that criterion (2) has not been met. Sales and production, or both, did not decrease as required for certification.

TA-W-15,262; Bucyrus-Erie Co. (Foundry), South Milwaukee, WI

The affiliated plant that used the castings has replaced them with castings procduced at other domestic foundries.

Affirmative Determinations

TA-W-15,268; M & E Sportswear, New York, NY

A certification was issued covering all workers separated on or after February 29, 1983 and before April 15, 1983.

TA-W-15,297; Bethlehem Steel Corp., Buffalo Tank Div., Buffalo NY

A certification was issued covering all workers separated on or after April 5, 1983 and before June 30, 1984.

TA-W-15,272; Scotts Run Manufacturing Co., Radford, VA

A certification was issued covering all workers separated on or after January 1, 1984 and before April 30, 1984.

TA-W-15,407; Weyerhaeuser Co., Columbia River Lumber Corp., Longview, WA

A certification was issued covering all workers separated on or after July 24, 1983.

TA-W-15,232; Hubler Shoe Co., Division Miller, Hess & Co., Auburn, PA

A certification was issued covering all workers separated on or after October 1, 1983 and before February 1, 1984.

TA-W-15,217; Worthington Division, McGraw-Edison Co., East Orange, NJ

A certification was issued covering all workers separated on or after February 14, 1983.

TA-W-15,271; Reed & Barton Corp., Taunton, MA

A certification was issued covering all workers engaged in employment related to the production of flatware and jewelry/gift items separated on or after January 1, 1984 and all workers engaged in employment related to the production or sterling silver or silver-plated holloware separated on or after March 13, 1983.

TA-W-15,295; American Watch Case Corp., Providence, RI

A certification was issued covering all workers separated on or after April 6, 1983.

TA-W-15,275; Utica Cutlery Co., New York Mills, NY

A certification was issued covering all workers separated on or after March 14, 1983.

TA-W-15,276; Utica Cutlery Co., Utica, NY

A certifications was issued covering all workers separated on or after March 14, 1983.

TA-W-15,305; G.H. Bass & Co., Berlin, NH

A certification was issued covering all workers separated on or after February 29, 1984.

TA-W-15,280; International Shoe Co., Salem, MO

A certification was issued covering all workers separated on or after March 19, 1983.

TA-W-15,260; American Hoist & Derrick Co., Mobile Crane Div., Fort Wayne, IN

A certification was issued covering all workers separated on or after March 12, 1983 and before June 30, 1984.

TA-W-15,281; Penn-Tran Corp. Wingate, PA

A certification was issued covering all workers separated on or after March 21, 1983.

TA-W-15,394; UMETCO Minerals Corp., Uravan Mill, Uravan, Co

A certification was issued covering all workers separated on or after May 16, 1983.

TA-W-15,395; UMETCO Minerals Corp., Uravan Mines, Uravan Co

A certification was issued covering all workers separated on or after May 16, 1983.

TA-W-15,396; UMETCO Minerals Corp., La Sal Mines, La Sal, UT

A certification was issued covering all workers separated on or after May 16, 1983.

TA-W-15,397; UMETCO Minerals Corp., Gas Hills Mill, Gas Hills, WY

A certification was issued covering all workers separated on or after May 16, 1983.

TA-W-15,398; UMETCO Minerals Corp., Gas Hills Mines, Gas Hills, WY

A certification was issued covering all workers separated on or after May 16, 1983.

TA-W-15,399; UMETCO Minerals Corp., Rifle Mill, Rifle, Co

A certification was issued covering all workers separated on or after May 16, 1983.

TA-W-15,258; Xerox Corp., Reprographics Group, Washington Central Refurbishing Center, Springfield, VA

A certification was issued covering all workers at the Washington Central Refurbishing Center, Springfield, VA separated on or after January 1, 1984.

TA-W-15,259, Xerox Corp., Reprographics Group, Washington Regional Distribution Center, Springfield, VA

A certification was issued covering all workers of the Equipment Logistics Center of the Washington Regional Distribution Center, Springfield, VA separated on or after January 1, 1984.

I hereby certify that the aforementioned determinations were issued during the period August 20, 1984 p August 24, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 28, 1984.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-23763 Filed 9-6-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Technical Review Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Technical Review Committee for Advanced Scientific Computing.

Date and Time: Friday and Saturday, September 21 and 22, 1984 from 9:00 a.m. to 5:00 p.m.

Place: Room 520, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence Lee, Program Director for Supercomputing Centers, Room 510, Telephone: (202) 357-9717.

Purpose of Committee: To review proposals received in response to a Project Solicitation for Advanced Scientific Computing Resources.

Agenda: To review and evaluate research proposals as one of four parts of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

August 31, 1984.

M.R. Winkler,

Committee Management Coordinator.

[FR Doc. 84-23645 Filed 9-6-84; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports and Recommendations

Reports Issued

Aircraft Accident Report—Midair Collision, McDonnell Douglas F-4C/Beech D-55 Baron, Cherry Point, North Carolina, January 9, 1983 (NTSB/AAR-84/07) (NTIS Order No. PB84-910407).

Highway Accident Report—Trailways Lines, Inc., Bus/E.A. Holder, Inc., Truck, Rear End Collision and Bus Run-Off-Bridge, U.S. Route 59, near Livingston, Texas, November 30, 1983 (NTSB/HAR-84/04) (NTIS Order No. PB84-916204).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703-487-4650 and to order subscriptions to reports call 703-487-4630.

Recommendations To

Aviation—*Department of Transportation: Aug. 15: A-84-96:* Review the existing research and literature in this area and institute research to: (1) determine the potential effects of both licit and illicit drugs, especially marijuana, in both therapeutic and abnormal levels, on human performance; (2) obtain correlations between toxicological findings of drug levels and blood, urine, and other specimens and various behavioral measurements; and (3) assess the effects of various drugs on the specific tasks performed by the operator in all transportation modes.

Highway—*Federal Highway Administration: Aug. 8: H-84-59:* Issue an "On-Guard" notice to carriers and drivers advising them of the circumstances of the bus accident near Livingston, Texas, on November 30, 1983, and of the research findings of the

Bureau of Motor Carrier Safety on fatigue and the degradation of driver performance and alertness during early morning hours. *H–84–60:* Determine practical methods and means to prevent or minimize dozing at the wheel by drivers of carriers in interstate commerce, and advise the Safety Board of its findings. *Aug. 29: H–84–66:* Issue an On Guard Bulletin alerting motor carriers of the hazards of railroad/highway grade crossings with high surface hump profiles. *H–84–67:* Provide each Bureau of Motor Carrier Safety division office with access to the automated management information system (MIS) to facilitate identification of all motor carriers engaged in interstate commerce in their respective jurisdictions. *H–84–68:* Develop additional information sources through which motor carriers engaged in interstate commerce can be identified and placed expeditiously into the automated management information system (MIS).

Trailways Lines, Inc.: Aug. 8: H–84–61: Regularly monitor the compliance of Trailways Lines, Inc., busdrivers with posted speed limits, and take corrective action as necessary to enforce the stated policy of the company that all drivers comply with posted speed limits. *H–84–62:* Regularly monitor the compliance of Trailways Lines, Inc., busdrivers with seatbelt use requirements, and take corrective action as necessary to enforce the stated policy of the company that all drivers comply with Federal regulations requiring the use of seatbelts. *H–84–63:* Determine practical methods and means to prevent or minimize dozing at the wheel by drivers employed by Trailways Lines, Inc., and advise the Safety Board of its findings.

Texas State Department of Highways and Public Transportation: Aug. 8: H–84–64: As part of any major pavement improvement project, provide, wherever feasible, for the lengthening of marked acceleration and deceleration lanes that do not meet recommended design standards of the American Association of State Highway and Transportation Officials. *H–84–65:* As part of any major pavement improvement project, provide wherever feasible for the installation of advanced barrier systems on and approaching bridges in the State of Texas.

American Association of State Highway and Transportation Officials: Aug. 29: H–84–69: Review the State safety program dealing with hazardous grade crossing profile conditions now underway in Florida, and promote the adoption within each State of this program or a comparable program developed by an appropriate AASHTO committee.

Marine—*U.S. Coast Guard: Aug. 23: M–84–24:* Require passenger vessels subject to 46 CFR Subchapter H and small passenger vessels subject to 46 CFR Subchapter T which carry more than 150 passengers, engaged in coastwise, bays, sounds, or offshore service on extended routes, to be equipped with a gyrostabilized radar suitable for rapid plotting of radar contacts and for navigation. *M–84–25:* Require that passenger vessels with more than one passenger deck have installed an adequate loudspeaker system suitable for announcing passenger advisories, instructions, and emergency alerts from the navigation bridge. *M–84–26:* Require that passenger vessels subject to 46 CFR Subchapter H incorporate in Station Bills the details of actions to be taken by the crew to prepare the passengers for various shipboard emergency conditions. *M–84–27:* Require that all passenger vessels post conspicuously in passenger spaces passenger safety bills or equivalent instructions for emergencies. Written in language understandable to nonmariners. *M–84–28:* Require operators of all passenger vessels in coastwise, bays, sounds, or offshore service on extended routes to prepare an accurate list or count of embarked passengers, including non-revenue adults and children, and to have the list or count reported or delivered to a place ashore prior to a vessel's departure. *M–84–29:* Reevaluate 46 CFR 75.10–20(a) to determine whether the primary lifesaving equipment required is adequate to safely support the entire crew and maximum embarked passengers in the water pending arrival of search and rescue assistance and amend the regulations, as necessary, to eliminate deficiencies in prescribed primary lifesaving equipment.

Pipeline—*Washington Gas Light Company: Aug. 23: P–84–31:* Develop written procedures detailing the sequence of actions to be taken for safely bypassing gas facilities, for isolating segments of pipeline from gas under pressure, and for testing the adequacy of isolation actions before any work is performed on the isolated segment. Incorporate within these procedures requirements for conducting prework meetings to explain the work to be performed by each employee. *P–84–32:* Assess departmental training activity to identify improvements necessary to adequately prepare employees to carry out safely all assigned responsibilities, correct deficiencies found, and evaluate the appropriateness of the policy which makes employee training a departmental responsibility rather than an integrated company activity. *P–84–33:* Require that a supervisor trained in the company procedures for the work being conducted be present to direct all operations which, through employee error, would pose substantial threats to the safety of employees or the public. *P–84–34:* Develop and implement the use of checklists of all work projects in which actions must be taken in an ordered sequence to avert safety hazards.

American Gas Association, the American Public Gas Association, and the Interstate Natural Gas Association of America: Aug. 24: P–84–35: Advise its member companies of the circumstances of the pipeline accident on October 13, 1983, and urge them to include within their written procedures the sequence of steps to be taken for safely isolating segments of gas facilities from gas under pressure and for testing the adequacy of the isolation action before other work is performed on the isolated segment.

American Society of Mechanical Engineers Gas Piping Standards Committee: Aug. 23: P–84–36: Develop and issue guidelines for safely bypassing and isolating segments of pipelines or control equipment from gas under pressure.

Railroad—*Association of American Railroads: Aug. 29: R–84–35:* Establish the specifications stated in Section 1.2, "Profile and Alignment of Crossings and Approaches," of the "Manual for Railway Engineering" of the American Railway Engineering Association as the minimum acceptable specifications for railroad/highway grade crossings for compliance by all member railroads. *R–84–36:* Encourage all member railroads to participate fully with local and State governments in all efforts to assure the integrity of the profiles at railroad/highway grade crossings.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a cost of 14 cents per page ($1 million charge.)

Dated: September 4, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84–[illegible] Filed 9–6–84; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Certificate of Compliance Nos. 5957, 6346, 5926, 9044, 5971, 5980, 6003, 9781, 9103, 5607, 9132; Docket Nos. 71-5957, 71-6346, 71-5926, 71-9044, 71-5971, 71-5980, 71-6003, 71-9781, 71-9103, 71-5607, 71-9132]

Spent Fuel Shipping Casks; Request for Action Under 10 CFR 2.206

By petition dated July 30, 1984, Mr. Lindsay Audin requested that certain actions be taken with respect to spent fuel shipping casks. The petitioner requests that limitations to inert casks or "can" failed fuel be placed on research and submarine reactor spent fuel casks and that certain accident scenarios involving spent fuel casks be reanalyzed and appropriate action taken based on the results. As provided under 10 CFR 2.206, appropriate action will be taken on the petition within a reasonable time. Copies of the petition are available for public inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555.

Dated at Silver Spring, Maryland, this 31st day of August 1984.

For the Nuclear Regulatory Commission.

Donald B. Mausshardt,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 84-23737 Filed 9-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Order Confirming Licensee Commitments on Pipe Crack Related Issues

I

The Vermont Yankee Nuclear Power Corporation (VYNPC or the licensee) is the holder of Facility Operating License No. DPR-28 which authorizes operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee or the facility) at steady state reactor power levels not in excess of 1593 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Windham County, Vermont.

II

During the 1984 refueling outage at Vermont Yankee, augmented inservice inspection was performed on the recirculation and residual heat removal system piping. The original sample size, in accordance with Generic Letter 84-11, covered 55 welds and was expanded to 69 welds after ultrasonic indications were reported on welds in the original sampling. Welds most likely to crack were selected for inspection. Overall, a total of 17 welds were found to show reportable linear indications.

One defective weld containing a short axial crack was repaired by weld overlay. Five welds reported to be cracked during the last refueling outage were determined to be not cracked by using advanced ultrasonic testing methods. The 17 previously overlay repaired welds were reexamined and the results of the reexamination showed that the structural and bond integrity of these overlays was maintained. The cracks in the 16 unrepaired defective welds were relatively shallow (12-27% of wall thickness). Crack growth calculations based on fracture mechanics analysis have shown that the cracks in the unrepaired defective welds will not grow to a size beyond the limits based on limit-load analysis during the next 12-month fuel cycle.

The staff reviewed the licensee's submittals and performed its own independent evaluations. The staff's review included the ultrasonic examination results, and the weld overlay design and the flaw evaluation to support the continuing service for one fuel cycle of 23 overlay repaired welds and 16 unrepaired defective welds. The staff also reviewed the personnel qualifications, test methods and equipment used in the inspection, and concluded that the licensee has used experienced personnel to perform the examination of the clad weld metal, and that the examinations performed by the licensee could detect lack of clad bond and could identify flaws in the clad weld metal that would affect the structural integrity of the clad overlay.

The staff, therefore, concluded on the basis of the results of the IGSCC inspection and repairs that the Vermont Yankee plant could be safely returned to operation for a 12-month fuel cycle of operation.

III

Although the conservative calculations performed by the licensee and reviewed by the staff indicate that the cracks will not progress to the point of leakage during the next fuel cycle, and very wide margins are expected to be maintained over crack growth which could compromise safety, some redisual uncertainties in the identification of cracks and in crack sizing and growth rate still remain.

Because of these uncertainties, we have determined that Technical Specification monitoring requirements in the containment for unidentified leakage should be modified to reflect new limiting conditions for operation and surveillance requirements. These enhanced surveillance measures will provide adequate assurance that possible cracks in pipes will be detected before growing to a size that will compromise the safety of the plant

In order to provide additional assurance that leakage from the eight uninspected 28-inch recirculation pipe welds will be promptly identified, the licensee will install six local leakage detectors (moisture sensitive tapes), to monitor the potential leakage from these locations, and to inform the NRC promptly of any significant changes in the moisture sensitive tape status.

By letter dated March 13, 1984, the licensee expressed its intent to replace, during the 1985 outage, piping susceptible to intergranular stress corrosion cracking (IGSCC). Because the staff acceptance of the repairs was based on consideration of only a single additional cycle of operation, (See Staff Safety Evaluation, dated Aughst 28, 1984) the staff concluded that 1985 piping replacement should be a firm commitment.

By letters dated July 30, 1984 and July 31, 1984, the licensee committed to the above described conditions on leakage monitoring, notification of changed moisture sensitive tape status, which will provide substantial assurance of prompt detection of leakage, and to 1985 piping replacement. I have determined that the public health, safety and interest require that the licensee's commitments be formalized by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

1. The licensee shall operate the reactor in accordance with requirements on coolant leakage in Attachment A in lieu of the present requirements in Section 3.6.C of the Technical Specifications.

2. The licensee will orally notify the NRC Project Manager before the close of the next working day in the case of any significant changes in the status of the moisture sensitive tape.

3. The Vermont Yankee facility will remain shutdown following the current 12-month fuel cycle until the reactor recirculation and residual heat removal system stainless steel piping are replaced.

V

The licensee, or any other adversely affectred person, may request a hearing within twenty days of the date of publication of this Order in the **Federal Register**. A request of hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 28th day of August, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Note.—Vermont Yankee Reactor Coolant Leakage Limits is available for public inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Local Public Document Room located at Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont.

[FR Doc. 84-23732 Filed 9-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-219, 50-289, 50-320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Units 1 and 2, Oyster Creek Nuclear Generating Station); Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by Petition dated August 13, 1984, as supplemented August 22, 1984, Three Mile Island Alert, Inc., and other requested that an order be issued revoking the operating licenses of the General Public Utilities Nuclear Corporation for Three Mile Island Nuclear Station Units 1 and 2 and for the Oyster Creek Nuclear Generating Station. As the basis for the Petition, the Petitioners allege a number of factual circumstances which they believe demonstrate that general Public Utilities Nuclear Corporation lacks the requisite charactoer to safely operate a nuclear reactor. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and in the local public document room for the Three Mile Island Nuclear Station located in the Government Publications Section of the State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126, and for the Oyster Creek Facility located at 101 Washington Street, Toms River, New Jersey 08653.

Dated at Bethesda, Maryland, this 31st day of August 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23738 Filed 9-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Grand Gulf Nuclear Station, Unit 1; Issuance of Amendment to Facility Operating License

On June 16, 1982, the U.S. Nuclear Regulatory Commission (the Commission) issued Facility Operating License No. NPF-13 to the Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees) authorizing operation of the Grand Nuclear Station, Unit 1 (the facility) at reactor core power levels not in excess of 191 megawatts thermal (five percent of full power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan.

The Commission has now issued Amendment No. 13 to Facility Operating License No. NPF-13 which authorizes operation of the Grand Gulf Nuclear Station, Unit 1, at reactor core power levels not in excess of 3833 megawatts thermal in accordance with the provisions of the amended liecense. As part of this authorization, the amendment also changes the license conditions related to dynamic testing, dynamic qualification, environmental qualifications, inservice inspections program, containment purge, interplant communication systems, reliability of diesel generators, advisor to Vice President, partial feedwater heating, control room design review, post accident sampling, hydrogen control, and modification of automatic depressurization system logic. Further, the amendment adds license conditions relating to qualification of ADS accumulators, emergency response facilities, evaluation of Technical Specification problem sheets, control room leak rate, and antitrust. The amendment is effective as of the date of issuance.

The Grand Gulf Nuclear Station, Unit 1, is a boiling water reactor located at the licensees' site in Claiborne County, Mississippi.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and Commission's regulations in 10 CFR Chapter 1, which are set forth in the amended license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 28, 1978 (43 FR 32903). The increase in power level authorized by this amendment and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this amendment will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

In a related action the staff has granted exemptions to Appendix A (General Design Criterion 17) and Appendix J to 10 CFR Part 50.

For further details in respect to this action, see (1) Amendment No. 13 to License NPF-13; (2) the Commission's Safety Evaluation Report, dated September 1981 (NUREG-0831), and Supplements 1 through 6; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Final Environmental Statement, dated September 1981 (NUREG-0777); (5) the Evaluation of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Grand Gulf Nuclear Station Units 1 and 2 (dated September 1981); (6) Exemption to Appendices A and J to 10 CFR Part 50 dated August 31, 1984; and (7) the Commission's Memorandum dated August 1, 1984.

These items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the George McLendon Library, Hinds Junior College, Raymond, Mississippi 39154. A copy of Amendment No. 13 to Facility Operating

License NPF-13 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0831) and the Final Environmental Statement (NUREG-0777) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call (301) 492-9530.

Dated at Bethesda, Maryland, this 31st day of August 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-23734 Filed 9-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Co., et al. (Grand Gulf Nuclear Station, Unit 1); Exemptions for Full Power Operation

I

Mississippi Power & Light Company (MP&L), Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensee) are the holders of Facility Operating License No. NPF-13, which authorizes the operation of the Grand Gulf Nuclear Station, Unit 1 (the facility) at steady state reactor power levels not in excess of 191 megawatts thermal. The facility consists of a boiling water reactor (BWR/6) with a Mark III containment located in Claiborne County, Mississippi.

II

A. Appendix J—Containment Airlock Testing

Testing of primary reactor containment leakage at Grand Gulf, Unit 1, is required by Appendix J, 10 CFR Part 50 and by the plant's Technical Specifications. Paragraph III.D.2(b) of Appendix J details three explicit airlock testing requirements which are to be included in the Technical Specifications.

Paragraph III.D. 2(b)(ii) of Appendix J requires that airlocks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than the peak containment internal accident pressure, P_a. Technical Specification 4.6.1.3.b.2 requires only that an overall airlock leakage test be conducted at P_a when maintenance has been performed on the airlock that could affect the airlock sealing capability. Thus, this specification does not fully comply with the testing specified in Appendix J.

The other two explicit airlock tests required by paragraph III.D.2(b) of Appendix J are met by the licensee. Paragraph III.D.2.(b)(i) requires that containment airlocks be demonstrated operable by conducting a leak test every 6 months when containment integrity is required by pressurizing the interior of the airlock to P_a (the calculated peak containment internal pressure under design basis accident conditions, 11.5 psig for Grand Gulf) and verifying the leakage rate is within its limit. Technical Specification 4.6.1.3.b.1 corresponds to and complies with this portion of Appendix J. Paragraph III.D.2(b)(iii) requires an airlock test within 3 days after the airlock has been opened (or at least once every 3 days for openings more frequently than every 3 days) and specifies that an airlock seal test fulfills the 3 day test requirements. Technical Specification 4.6.1.3.a corresponds to and complies with this portion of Appendix J.

By letters dated July 28 and August 7, 1984, the licensee requested an exemption from paragraph III.D.2(b)(ii) of Appendix J for the operating term of the plant. The licensee provided information to support the request and concludes that it is advantageous to allow operation of the plant without performing the full pressure test required by paragraph III.D.2(b)(ii) because the testing would extend the duration of plant outages by half a day or more several times a year.

The staff has evaluated the licensee's requested exemption from paragraph III.D.2(b)(ii). Whenever the plant is in cold shutdown (Mode 4) or refueling (Mode 5), containment integrity is not required. However, if an airlock is opened during Modes 4 and 5, paragraph III.D.2(b)(ii) of Appendix J requires that an overall airlock leakage test at not less than P_a be conducted prior to plant heatup and startup (i.e., entering Mode 3). The existing airlock doors are so designed that a full pressure test, i.e., P_a (11.5 psig), of an entire airlock can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to the accident pressure.

If the periodic 6-month test of paragraph III.D.2(b)(i) and the test required by paragraph III.D.2(b)(iii) are current, no maintenance has been performed on the airlock and the airlock is properly sealed, there should be no reason to expect the airlock to leak excessively just because it has been opened in Mode 4 or Mode 5.

However, the staff also concludes that to assure the airlock is properly sealed, the licensee shall substitute a seal leakage test which satisfies the requirements of paragraph III.D.2(b)(iii) of Appendix J for the full pressure test of paragraph III.D.2(b)(ii) before entering Mode 3 if the door has been opened while in Mode 4 or 5, provided no maintenance has been performed on an airlock that has been opened in Mode 4 or Mode 5. Whenever maintenance has been performed on an airlock, the requirements of paragraph III.D.2(b)(ii) shall be met by the licensee. Therefore, under the foregoing conditions, an exemption from the requirements of paragraph III.D.2(b)(ii) of Appendix J following normal door opening, is justified and acceptable for Grand Gulf, Unit 1.

B. GDC 17, Diesel Engine/Generator Electrical Protection Systems

The requirements for the onsite electric power supply system are specified in GDC-17 of Appendix A, 10 CFR 50. This requires, in part, that these systems shall have sufficient independence, redundancy and testability to perform their safety functions assuming a single failure. GDC-17 further requires that the onsite electric power system, without benefit of the offsite system, provide sufficient capacity and capability to assure that certain specified vital functions are maintained in the event of postulated accidents. The onsite power system at Grand Gulf includes three separate diesel generators designated as supplying power for Division 1, 2 and 3 emergency busses. Three components of the diesel engines at Grand Gulf, Unit 1, do not fully comply with the requirements of GDC-17. These are: (1) The emergency override of the test mode for the Division 3 (High Pressure Core Spray System (HPCS)) diesel engine, (2) the second level of undervoltage protection for the Division 3 (HPCS) diesel engine and (3) the generator ground overcurrent trip function for the Division 1 and 2 (Standby) diesel generators. These will be discussed separately in the subsequent sections.

(1) Division 3 (HPCS) Emergency Generator Test Mode Emergency Override

The diesel generator design is required to include an emergency override of the test mode permit response to bona fide emergency signals and to return the control of the diesel generator to the emergency standby mode. The emergency override feature required to assure availability of the diesel generators should a LOCA signal occur during the periodic testing. This has its basis in the requirements of GDC-17 for redundant available onsite emergency power sources for postulated accidents. The licensee did not provide this design feature on the Division 3 (HPCS) diesel generator. The licensee has committed to provide this design feature for the Division 3 diesel generator at the first refueling outage.

In the interim, by letters dated July 28 and August 2 and 7, 1984, the licensee requested a partial exemption from GDC-17 permitting it to defer meeting the reliability requirements for the Division 3 (HPCS) diesel generator test mode emergency override until startup following the first refueling outage. The licensee provided the following information to support the request.

The design of Division 3 does not incorporate the test mode emergency override feature. Division 3 is dedicated soley to the HPCS system, 90% of the load from which is consumed by the HPCS motor. In the event of an ECCS actuation signal coincident with a loss of the preferred power source, the Division 3 diesel generator would start and accelerate to rated voltage and frequency, tie to the bus, and accept the entire HPCS load at once by block sequencing (the diesel generator would then be in isochronous mode). If the diesel generator were tied to the bus in parallel with the preferred source (droop mode) when these events occurred, the diesel generator would still respond as required.

The HPCS pump is a high pressure system required for reactor coolant makeup for small break loss of coolant accidents (LOCA) where reactor pressure is maintained. The licensee indicates in the submittals that substantial protective features currently exist for Division 3 diesel generator protection. The likelihood of a small break LOCA coincident with loss of offsite power and failure of the Division 3 diesel generator due to a lack of these additional protective features during the first cycle of operation is extremely small. If the HPCS system should fail (due to a postulated single failure or due to a failure associated with a lack of the additional protective features), the RCIC system is available for such small breaks to provide high pressure core makeup and, if necessary, the automatic depressurization system would reduce reactor pressure to allow the low pressure Emergency Core Cooling System to provide makeup. Therefore, the licensee believes this exemption can be granted without endangering life and property.

(2) Division 3 (HPCS) Diesel Generator Undervoltage Protection

The Division 3 power supply which provides power for the High Pressure Core Spray System (HPCS) is required to have two levels of undervoltage protection similar to the Division 1 and 2 power supplies. The second level of undervoltage protection (degraded voltage) is to assure protection against degraded offsite power to prevent damage to safety related equipment and to assure quality power by switching to diesel generator under degraded offsite power conditions. The basis for this level of undervoltage protection is derived from the requirement of GDC-17 that the onsite power systems have adequate capacity and capability to provide power for systems necessary to accommodate postulated events.

In the as-built design for the Division 3 bus, only one level of protection is provided (loss of voltage at 72%); degraded voltage protection is not provided. The licensee has committed to provide the second level undervoltage protection for Division 3 by the first refueling outage.

In the interim, by letters dated July 28, and August 2 and 7, 1984, the licensee requested a partial exemption from GDC-17 permitting it to defer meeting the reliability requirement for the Division 3 (HPCS) diesel generator undervoltage protection until startup following the first refueling outage. To support the request the licensee states that, although Grand Gulf is equipped with a third division of electrical power, Division 3 is dedicated to the High Pressure Core Spray (HPCS) System. The HPCS motor and all HPCS auxiliaries, except motor operated valves (MOVs), have overcurrent protection which will prevent damage from persistent undervoltage. The MOVs have a minimum 75% voltage operating capability by design specification. Considering design margin that is typically included, the licensee believes MOV operation in the 72% to 75% voltage range will occur with a high degree of confidence. The licensee further considers the likelihood of the undervoltage being between 72% and 75% for a period long enough to damage the valve motors extremely small.

The licensee states that the only other equipment connected to the Division 3 bus that will be adversely affected by undervoltage is the Division 3 battery charger which is affected at less than 85% of nominal voltage. The Division 3 batteries will handle the DC load for at least four hours which the licensee believes will provide ample time to recognize undervoltage conditions.

The HPCS pump is a high pressure system required for reactor coolant makeup for small LOCA where reactor pressure is maintained. The licensee indicates in the submittals that substantial protective features currently exist for Division 3 diesel generator protection. In addition, the likelihood of a small break LOCA coincident with loss of offsite power and failure of the Division 3 diesel generator due to a lack of these additional protective features during the first cycle of operation is extremely small. If the HPCS system should fail (due to a postulated single failure or due to a failure associated with a lack of the additional protective features), the RCIC system is available for such small breaks to provide high pressure core makeup and, if necessary, the automatic depressurization system would reduce reactor pressure to allow the low pressure Emergency Core Cooling Systems to provide makeup. Therefore, the licensee concludes this exemption can be granted without endangering life and property.

The staff has evaluated the consequences of deferring the implementation of this design feature for the first operating cycle. The staff finds that there is little likelihood of a degraded grid event requiring the HPCS concurrent with a single failure of one of the other diesel generators and a failure of the operator to take action to trip the offsite breaker to the HPCS bus manually (which allows the HPCS diesel generator to start and load) during the first operating cycle. The staff thus concludes that the lack of second level (degraded grid) undervoltage protection does not represent a significant hazard to the health and safety of the public over the first operating cycle. Therefore, until startup following the first refueling outage, the requested exemption from GDC-17 should be granted.

(3) Standby Diesel Generator Trip Functions

All diesel generator protective trips are arequired to be bypassed except for diesel engine overspeed and generator differential current. Any other trips retained must utilize coincident logic in order to avoid spurious trips. The basis for this feature is derived from the GDC-17 requirement to minimize loss of emergency power concurrent with loss of offsite power. Bypassing diesel generator trips which are comparatively of lesser importance than the functioning of the emergency power source under accident conditions meets this requirement. The Division 1 and 2 (Standby) diesels at Grand Gulf do not have this design feature for generator ground overcurrent that either provides coincident logic or bypases this trip under accident conditions.

The licensee has committed to implement this design change with regard to bypassing or providing coincident logic for the ground overcurrent generator trip. This commitment is to be completed prior to restart following the first refueling outage.

In the interim, by letters dated July 28, and August 2 and 7, 1984, the licensee requested a partial exemption from GDC-17 permitting it to defer meeting the reliability requirements for the Division 1 and 2 (Standby) diesel generator trip functions until startup following the first refueling outage. To support the request, the licensee provided the following information.

The licensee states that the design of the Grand Gulf diesel generator trip system for Division 1 and 2 (Standby) incorporates four trips that remain in effect during emergency operation. They are:

a. Engine overspeed—single channel trip;

b. Generator differential—single channel trip;

c. Generator ground overcurrent—single channel trip; and

d. Low lube oil pressure—(2) out of (3) logic.

The licensee recognizes that the design for Division 1 and 2 diesel generators is not in compliance with the latest version of Regulatory Guide 1.9. Regulatory Guide 1.9 allows only engine overspeed and generator differential current trips. All other trips should be addressed in one of two ways: Either, (1) a trip should be implemented with two or more independent measurements for each trip parameter with coincident logic provisions for trip actuation, or (2) a trip should be bypassed under accident conditions. The Grand Gulf design for Division 1 and 2 diesel generators incorporates a generator ground over current trip without coincident logic.

The licensee states that the ground overcurrent trip function responds to slowly developing, relatively low magnitude ground fault conditions whereas the generator differential current trip function responds to fairly high levels of ground current within the differential protective zone. Outside the differential protective zone, ground relays associated with feeder breakers will actuate and isolate the ground overcurrent fault before the generator ground relay actuates. The ESF 4160 to 480 volt transformers are delta-wye and therefore will not pass a low voltage ground fault (less than 5 Kv) to the generator ground overcurrent protective system. The licensee considers the likelihood of a failure of the generator ground overcurrent trip function which would cause a trip of the diesel generator when it is required is small. The licensee also states that the likelihood of such a trip coincident with a loss of offsite power and a loss of coolant accident during the first cycle of operation is extermely small. Therefore, the licensee believes this exemption can be granted without endangering life and property.

The staff has evaluated the consequences of deferring the implementation of this design feature for the first operating cycle. The staff finds that there is little likelihood of a LOCA coincident with the loss of offsite power and both Division 1 and 2 diesel generators to spurious trip on this trip function during the first operating cycle. The staff, thus, concludes that the lack of this feature on diesel generators for Divisions 1 and 2 does not represent a significant hazard to the health and safety of the public over the first operating cycle. Therefore, until startup following the first refueling outage, the requested exemption from GDC-17 should be granted.

The licensee considers the requested exemptions to GDC 17 to be in the public interest in that any delay in commencement of the power ascension program would cause a day-for-day delay in the attainment of commercial operation and as shown above, the health and safety of the public will be adequately protected. Grand Gulf Unit 1 is physically complete in all essential respects and is ready for power ascension to full power. Upon satisfactory completion of the power ascension program in accordance with the license and Technical Specifications, the licensee will place the facility in commercial operation. The requested exemption discussed above is for a limited period. The delay associated with implementing this design change now ranges from several weeks to several months. Thus, the licensee concludes that such delays are unwarranted inasmuch as the public health and safety are adequately protected.

The staff agrees that, because granting the exemptions will not endanger life or property or the common defense and security, the delays that would be encountered to meet the regulation at this time are unwarranted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, the Commission hereby grants the exemptions as follows:

A. An exemption is granted from the requirements of Paragraph III.D.2(b)(ii), Appendix J, 10 CFR Part 50, for the containment airlock testing following normal door opening during periods when containment integrity is not required for the term of the operating license, provided that in lieu of the full pressure test required by III.D.2(b)(ii), the licensee shall, before entering operating modes requiring containment integrity, perform a seal leakage test which satisifies the requirements of III.D.2(b)(iii), and provided that no maintenance has been performed on the airlock.

B. Until startup following the first refueling outage, a partial exemption is granted from the requirements of GDC-17, Appendix A, 10 CFR Part 50 for:

(1) The energency override of the test mode for the Division 3 (HPCS) diesel engine,

(2) The second level undervoltage protection for the Division 3 (HPCS) diesel engine, and

(3) The generator ground overcurrent trip function for the Division 1 and 2 (Standby) diesel generators.

These Exemptions are effective upon publication of a finding of no significant impact.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 31st day of August 1984.

Gus C. Lainas,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-23733 Filed 9-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power and Light Co.; Middle South Energy, Inc., South Mississippi Electric Power Association (Grand Gulf Nuclear Station, Unit 1), Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation has denied the Petition filed under 10 CFR 2.206 by the Jacksonians United for Livable Energy Policies regarding the Grand Gulf Nuclear Station, Unit 1 (the facility).

The Petitioner requested that the Nuclear Regulatory Commission issue an order to Mississippi Power and Light Company to show cause why the license for the facility should not be revoked and a stay of operation should not be issued. The Petitioner also requested that the operating license be modified to remove responsible management personnel and ensure implementation and verification of corrective actions associated with techncial specification discrepancies. The Commission has taken actions to resolve these problems and Grand Gulf has taken corrective actions for the identified problems. Because appropriate corrective measures have been initiated, institution of further proceedings to implement these actions is unnecessary.

The reasons for the above conclusions are fully described in a "Director's Decision Under 10 CFR 2.206," dated August 31, 1984 which is available for public inspection in the Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C. 20555, and the Hinds Jr. College, George M. McLendon Library, Raymond, Mississippi 39154.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 31st day of August 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-237356 Filed 9-6-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244 OLA (ASLBP No. 79-427-07 OLA)]

Rochester Gas & Electric Corp. (R. E. Ginna Nuclear Plant, Unit No. 1); Memorandum and Order (Terminating Proceeding)

Memorandum

By Memorandum and Order dated May 25, 1984, the Licensing Board directed that discovery commence in the proceeding which had, in effect, been suspended during the lengthy Staff review under the Systematic Evaluation Program. It also directed that the parties file status reports by August 15, 1984 containing their proposed prehearing and hearing schedule. On July 13, 1984, Rochester Gas and Electric Corporation (Applicant) served its first set of interrogatories on the sole intervenor, Michael A. Slade.

By a pleading dated July 24, 1984, Mr. Slade withdrew all of his outstanding contentions in this proceeding. To date, two intervenors have been admitted to this proceeding: Mr. Slade and the Rochester Committee for Scientific Information (RCSI). RCSI subsequently withdrew from the proceeding pursuant to stipulation with Applicant. The withdrawal of RCSI was accepted by the Licensing Board. The State of New York became, and still remains, a participant in this proceeding, but only as an interested State pursuant to 10 CFR 2.715(c). On March 12, 1974, Counsel for the State of New York appeared at the only prehearing conference convened to date and indicated that the State was not intervening in this proceeding with contentions and that the State had no position on the licensing of the plant at that time. The State has filed no contentions since that time. Nor, since Michael Slade's notification to the Board that he intends to withdraw his contentions, has New York State indicated that it wishes to file any.

The withdrawal of the only intervenor removes both the need and the occasion for evidentiary hearings in this proceeding. There are no longer any matters which the parties wish to resolve in this proceeding and, consequently, there is no issue to be heard by the Board.

Dismissal of this proceeding would be consistent with the Commission's requirements which do not contemplate a hearing on a application for an operating license in the absence of any matters in controversy or any request for hearing by interested persons (*see* 10 CFR 2.104, 2.105, 2.714, 50.58(b) and 50.91) and is consistent with the general powers of the presiding officer under 10 CFR 2.718.

Order

For all of the foregoing reasons and based upon the entire record in this proceeding, it is, this 30th day of August, 1984.

Ordered, that this proceeding, begun with the issuance of a notice of opportunity for hearing on December 6, 1972, published at 37 FR 26144, is hereby terminated.

The Atomic Safety and Licensing Board.

Richard F. Cole,

Administrative Judge.

Emmeth A. Luebke,

Administrative Judge.

Herbert Grossman,

Chairman, Administrative Judge.

[FR Doc. 84-23736 Filed 9-6-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on September 20 and 21, 1984, in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on September 20, recess and reconvene at 8:00 a.m. on September 21. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The September 20 session and a portion of the September 21 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin at 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on September 18. Ms. Boyd is also available to provide further information regarding this meeting.

Dated: August 29, 1984.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 84-23714 Filed 9-6-84; 8:45 am]

BILLING CODE 3170-01-M

White House Science Council; University Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: University Panel of the White House Science Council.

Date & Time: September 20, 1984 from 8:30 a.m. to 12:00 p.m.

Place: Room 5104, New Executive Office Building, Washington, D.C.

Purpose of the Parent Board: To advise the Director, Office of Science and Technology Policy, on science and technology issues.

Tentative Agenda:

- Presentations on education issues by presidents of universities and university associations.
- Presentations on education issues by representatives from the research community.
- Public comment (5 minute rule).

Public Attendance and Participation: The meeting is open to the public. Because of Security in the New Executive Office Building, persons wishing to attend the meeting should notify Annie L. Boyd, Secretary, White House Science Council, at (202) 456–7740, prior to 3:00 p.m. on September 18.

Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Andrew Pettifor, Office of Science and Technology Policy, NEOB Room 5026, Washington, D.C. 20506, (202) 395–3902. Requests must be received 5 days prior to the meeting. Reasonable provisions will be made to include the presentation on the agenda. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 84-23715 Filed 9-6-84; 8:45 am]

BILLING CODE 3170-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments: Certain Trolley Wheel Assemblies

On August 29, 1984, the United States International Trade Commission referred to the President for review its determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, and in the sale, of certain trolley wheel assemblies that infringe a United States patent the tendency of which is to injure substantially an efficiently and economically operated United States industry. The Commission directed the U.S. Customs Service to exclude the infringing products from entry into the United States.

Under section 337(g), the President, for policy reasons, may disapprove the Commission's determination within sixty days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the determination, making it, and any order issued under its authority, final on the date the Commission receives notice. The determination and related orders become final automatically following the sixty day review period, if the President has not disapproved.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this case. Parties commenting on domestic policy issues should refer to the portion of the Commission's record related to that issue. Parties should provide a rationale if the domestic policy issue was not raised before the Commission.

Comments may not exceed 15 letter-sized pages, including attachments. Twenty copies of the submission must be provided. Comments must be delivered by the close of business, Friday, September 28, 1984, to the Secretary, Trade Policy Staff Committee, 600 17th Street, NW., Washington, D.C. 20506. For further information, call Alice Zalik (202) 395–3432.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84-23653 Filed 9-6-84; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 21282; File No. SR-PSDTC-84-12]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Pacific Securities Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 24, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change establishes a 15% surcharge on PSDTC fees beginning September 1, 1984.[1] The surcharge will be applied to all depository charges except participant terminal charges, specialist charges, and dividend interest adjustments.[2] The 15% surcharge will be effective as of September 1, 1984, and will continue indefinitely.

PSDTC states in its filing that the 15% surcharge is intended to offset anticipated losses caused by the overall decrease in trading volume during 1984. PSDTC believes that the proposal is consistent with Section 17A of the Act in that it provides for the equitable allocation of reasonable charges among PSDTC participants.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days for the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[1] In an attachment to its filing, PSDTC states that the 15% surcharge is not applicable to Pacific Clearing Corporation fees.

[2] The Depository Trust Company ("DTC") implemented a 15% surcharge on its monthly billings to DTC participants. *See* Securities Exchange Act Release No. 21187 (July 31, 1984), 49 FR 31357 (August 6, 1984). In addition, Midwest Securities Trust Company increased certain fees by 15% to pass through to its participants the DTC surcharge. *See* Securities Exchange Act Release No. 21267 (August 23, 1984).

Written comments on the proposal may be submitted within 21 days from the date this notice is published in the **Federal Register.** Six copies should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to file No. SR-PSDTC-84-12. Copies of all documents relating to the proposed rule change, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room in Washington, D.C. or at PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23896 Filed 9-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14121 (812-5779)]

Pruco Life Insurance Co., et al.; Application for an Order Exempting Applicants and Approving the Terms of an Exchange Offer

August 31, 1984.

Notice is hereby given that Pruco Life Insurance Company ("Pruco Life"), 213 Washington Street, Newark, New Jersey 07102, on its own behalf and as sponsor and depositor of the Pruco Life Variable Appreciable Account (the "Arizona Account"), Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey"), on its own behalf and as sponsor and depositor of the Pruco Life of New Jersey Variable Appreciable Account (the "New Jersey Account"), Pruco Life Series Fund, Inc. (the "Series Fund"), The Prudential Insurance Company of America ("Prudential"), and Pruco Securities Corporation (referred to collectively as "Applicant") filed an application on February 27, 1984, and amendments thereto on June 12, 1984, and August 23, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), requesting exemption from the provisions of section 2(a)(32), 2(a)(35), 12(b), 18(i), 22(c), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the Act and Rules 6e-2(b)(1), (b)(10), (b)(12), (b)(13), and 12b-1(a)(1), 22c-1 and 27f-1 thereunder, all to the extent indicated below, and, pursuant to section 11 of the Act, approving the terms of an exchange offer. All interested persons are referred to the application on file with the Commission for a statement of the representations of the Applicants, which are summarized below, and are referred to the Act and the rules thereunder for the text of the relevant provisions.

Applicants intend to offer certain variable appreciable life insurance contracts in two forms, designated the Form A contract and the Form B contract. The Form B contract provides for a death benefit and cash value, both of which vary with the investment experience of the Arizona Account or New Jersey Account, as applicable (hereinafter referred to as the "Account" or the "Accounts"), although the death benefit will never be less than a guaranteed minimum amount set forth on the cover page of the contract (the "face amount") if the contract is not in default and there is no contract debt. The Form A contract provides for a death benefit that generally remains fixed in the face amount set forth in the contract and a cash value that varies with the investment experience of the Account. The death benefit of a Form A as well as a Form B contract will vary with investment experience once it becomes paid-up. Under both forms of the contract, the payment of scheduled premium payments guarantees continuation of the face amount of insurance and a contract owner may elect to pay higher than scheduled premiums.

1. Definition of Variable Life Insurance

Applicants request an exemption from Rule 6e-2 to the extent necessary to treat the contract as a "variable life insurance contract" within the definition contained in Rule 6e-2(c)(1). Applicants state that the Form A contract does not meet all the requirements of that definition because, except under limited circumstances, the death benefit will remain fixed in the face amount and will not vary with the investment results of the separate account as Rule 6e-2(c)(1) contemplates. Applicants also state that the Form B contract may not meet the definition because an optional benefit under that contract provides that if the contract lapses because of default, the contract owner may choose, as one of several options, to have the variable life insurance continued in force, but in a reduced amount; and the guarantee that the death benefit which otherwise varies to reflect investment results will not be reduced below a stated amount continues to apply to such reduced amount. Also, under both Form A and Form B contracts, it is possible, under certain circumstances, for a contract owner to fail to make a minimum scheduled premium payment and the contract will not lapse. Applicants point out, however, that Rule 6e-2(c)(1) provides that the required guaranteed minimum death benefit must be provided only "so long as payments are duly paid."

Applicants submit that the considerations which led the Commission to adopt Rule 6e-2 apply equally to the Accounts and the contracts. Under both forms of contract, favorable investment experience emerges in the form of increased values; under Form B, cash values and death benefits increase while under Form A only cash values increase. Applicants contend that, so far as the protection of investors is concerned, both forms of contract are acceptable insurance and investment vehicles, and that satisfactory disclosure will provide the necessary protection. Finally, Applicants represent that the design of the contracts satisfies the definition of life insurance in section 7702 of the Internal Revenue Code.

2. Deferred Sales Load

Applicants request exemption from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rules 6e-2 (b)(1), (b)(12), (b)(13), (c)(4), and 22c-1 thereunder to the extent necessary to permit part of the sales load imposed in connection with the sale of the contracts to be deducted from each premium payment made under the contract and the remainder to be in the form of a contingent deferred sales load to be deducted, to the extent available, from the amount otherwise payable upon surrender, partial surrender, or lapse of the contract. Specifically, the front-end sales load charge will be equal to 5% of each "basic premium." The maximum deferred sales load charge equals 25% of the first year's scheduled premium payments and 5% of the scheduled premium payments for the next four contract years (or 9% of the total scheduled premium payments for the first five contract years).

Applicants state that relief is appropriate because imposition of part of the sales load charge in the form of a contingent deferred charge is, for several reasons, more favorable to the owner than a charge that is deducted entirely from the premium. In this regard, Applicants assert that, among other things, under the deferred load the amount of investors' money available for investment is not reduced as in the case of a front-end sales load, the total amount of sales load charged to any contractowner under Applicants' proposed sales load structure is lower than that permitted by Rule 6e–2(b)(13), and the sales load structure of the contract provides greater equity between both surrendering and persisting contractowners. Applicants represent that they will inform registered representatives selling the contracts of applicable suitability requirements with respect thereto and that they will, upon request, provide the Commission with statistical information, compiled in the normal course of business, regarding lapses of the contracts during the early policy years.

3. Use of 1980 Commissioner's Standard Ordinary Mortality Table

Applicants also request from section 27(a) and Rule 6e–2(b)(1), (b)(13), (c)(4) on the same terms specified in Rule 6e–2(b)(13) and (c)(4) except that the deduction for the cost of insurance in determining what is deemed to be sales load shall be based upon the 1980 Commissioners' Standard Ordinary Mortality Table ("1980 CSO Table") instead of the 1958 Commissioners' Standard Ordinary Mortality Table ("1958 CSO Table"). Applicants state that Pruco Life and Pruco Life of New Jersey will use the 1980 CSO Table in establishing premium rates and reserve liabilities for the contracts and that it would therefore be appropriate, in determining what sales load is deemed to be charged under these contracts, to base the deduction for cost of insurance on the 1980 CSO Table. Applicants state that, for the most part, the use of the 1980 CSO Table results in higher contract values and lower cost of insurance deductions than the use of the 1958 CSO Table.

4. Contingent Deferred Administrative Charge

Applicants request exemption from sections 2(e)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) and Rules 6e–2(b)(12), (b)(13) and 22c–1 to the extent necessary to permit an administrative charge for expenses incurred, other than sales expenses, in connection with issuance of a contract to be deducted on a contingent deferred basis upon surrender or lapse of the contract.

Applicants state that Pruco Life and Pruco Life of New Jersey intend to charge $5.00 for each $1,000 of face amount of insurance to compensate for expenses incurred in connection with the issuance of the contract, other than sales expenses. This charge is made to cover the costs of processing applications, conducting medical examinations, determining insurability and the insured's risk class, and establishing records relating to the contract. However, this charge will not be assessed upon issuance of the contract, nor will it be deducted from any death benefit under the contract. Rather, it will be deducted only if the contract is surrendered or lapses when it is in default past its days of grace, and even then it will not be deducted at all for contracts that stay in force on a premium paying or fully paid up basis through the end of the contract's tenth year. The charge will be reduced for contracts that lapse or are surrendered before then but after the contract's fifth anniversary.

Applicants state that imposition of the administrative charge in this form is, for several reasons, more favorable to contractowners than a charge that is deducted entirely from premiums in the first contract year, which is the conventional way of making this charge. First, the amount of the owner's investment in the separate account is not reduced as it is when this charge is taken in full from the first year premium payments. Second, the total amount charged to any contractowner is no greater than if this charge were taken in full in the first contract year, and it is less for contractowners who do not lapse or surrender during the first five contract years. Third, contractowners who lapse or surrender within the first five years, like all others, are advantaged because the cost of insurance charges deducted monthly from the amounts credited to them in the Account will be lower than they would have been had the administrative charge for issuance expenses been deducted in full from premium payments during the first year. Finally, every contractowner receives the primary benefit of the contracts—insurance protection—without incurring this administrative charge prior to surrender or lapse and no such charge is deducted from the death benefit payable under the contracts.

5. Investment Experience During "Free Look" Period

Applicants request exemption from the provisions of section 27(f) of the Act and Rules 6e–2(b)(13)(viii) and 27f–1 on the terms specified in Rule 6e–2(b)(13)(viii) except that the amount payable to the contractowner pursuant to exercise of the short-term cancellation right provided in Rule 6e–2(b)(13)(viii) may be adjusted to reflect appreciation or depreciation in the value of the assets in the Account relating to the contract prior to the date on which the cancelled contract is received by the issuer. Applicants state that it is consistent with the policies of section 27(f) to have the contractowner bear the risk and enjoy the benefit of investment experience during the "free-look" period. In this regard, Applicants note that the fact that Rule 6e–2(b)(13)(viii) requires a return of premium payments is not significant in a context in which, because of scheduled premium payments and high first year charges, the amount invested on behalf of the contractholder is very small. For that reason, the appreciation or depreciation of that amount is not significant. By contrast, under these contracts, larger than scheduled premium payments may be made and there is only a relatively small front-end load. Therefore, material appreciation or depreciation in the contractowner's account could occur during the "free-look" period.

6. Transfers Among Subaccounts

Applicants request an order under section 11 of the Act, to the extent provided by Rule 11a–2(b) for contracts that do not involve both a front-end sales load and deferred sales load, approving transfers of the assets related to the contracts among the various subaccounts of the Accounts. Applicants state that such transfers will be made without charge and that such transfers do not affect a contractowner's cash values.

7. Sale of Series Fund Shares Without an Underwriter

Applicants request exemption from section 12(b) of the Act and Rule 12b–1(a)(1) thereunder to the extent necessary to permit the Series Fund to sell its capital stock to the Accounts without the use of an underwriter, on the condition that Applicants not use the Series Fund's assets for distribution expenses unless the Series Fund complies with Rule 12b–1(b). Applicants state that the only sales of the capital stock of the Series Fund will be to the Accounts and to other separate accounts of Pruco Life and Pruco Life of New Jersey. The stock will be sold at its net asset value without any sales charge or underwriting spread. Pursuant to its investment advisory agreement with the Series Fund, Prudential has agreed to bear all expenses of the Series Fund except for interest, brokerage commissions, taxes, extraordinary expenses, and its investment management fee. Applicants submit that, in view of the foregoing facts, no useful purpose would be served by requiring the Series Fund to use an underwriter for the sale of its capital stock to the Account. Direct sales of the capital stock of the Series Fund to the Account would not expose the Series

Fund to any underwriting risks, since such shares are issued only when requests for their purchase are received from the Accounts. Nor would the direct sales to the Accounts create any expenses for the Series Fund, since Prudential has agreed to bear all the expenses of the Series fund, except for those enumerated above.

8. Partial Withdrawal of Cash Value

Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), 27(d) and Rules 6e–2(b)(12), (13) and 22c–1 to the extent necessary to permit a contractowner, prior to the contract becoming paid-up, to withdraw a portion of his cash surrender value without surrendering the contract, subject to certain conditions and an administrative charge of $15. Applicants assert that relief is appropriate because this withdrawal procedure is a fair and reasonable form of partial redemption and the $15 administrative fee is reasonable in relation to expenses incurred.

9. Conversion of Contract

Applicants request exemption from section 27(d) and Rule 6e–2(b)(13)(v)(B) on the same terms specified in Rule 6e–2(b)(13)(v)(B) except that a contractowner who exercises his right to exchange his contract for a fixed-benefit contract within the first 24 months after issuance will receive a Pruco Life or Pruco Life of New Jersey Appreciable Life contract, a general account universal-life type of policy with guaranteed minimum values, instead of a conventional whole-life policy. Applicants state that the purpose of the conversion right of Rule 6e–2(b)(13)(v)(b) is fully satisfied by Applicants' proposed exchange right since the owner will be able to convent to a policy with guaranteed minimum benefits without providing evidence of current insurability, and the new contract's premium and death benefit will be the same as the original contract's on the date of exchange. The new contract will also have the same issue date and risk classification as the original contract.

10. Voting Rights

Applicants request exemption from sections 18(i) and Rule 6e–2(b)(10) on the same terms provided in Rule 6e–2(b)(10) except that voting rights will be based upon the value of the assets in the account relating to a contractowner's contract rather than the cash surrender value of the contract. Applicants submit that basing voting rights upon the investment amount of a contract is the most appropriate way to allocate voting rights because it reflects the contractowner's participation in the investment experience of the Account, whereas, the cash surrender value is subject to deferred sales and administrative charges upon surrender or lapse within the first 10 contract years. Thus, the investment amount of a contract will often be higher than its cash surrender value.

11. Mortality and Expense Risk Charge

Applicants request exemption from sections 26(a) and 27(c)(2) of the Act and Rule 6e–2 to the extent necessary to impose a charge against the Account for mortality and expense risks equal to an effective annual rate of .60% of the assets of each of the subaccounts of the Accounts. Applicants represent that the charge is reasonable in relation to industry practice with respect to comparable products. Applicants further represent that the data supporting and setting forth this conclusion will be maintained at the home offices of Pruco Life and Pruco Life of New Jersey, and will be available to the Commission. Applicants represent that the explicit sales load charges are designed, to the extent permitted by the Act and Rule 6e–2, to recover the sales and distribution expenses incurred in the sale of the contracts, but that in some cases such charges may be insufficient to cover such expenses. Applicants state that the shortfall, if any, will be made up from the surplus of Pruco Life and Pruco Life of New Jersey, which may include amounts attributable to charges deducted from the assets of the Accounts, including the mortality and expense risk charge. In this connection, Pruco Life and Pruco Life of New Jersey represent that they have concluded that there is a reasonable likelihood that the Accounts' distribution financing arrangement will benefit the Accounts and contractowners and that they will maintain and make available to the Commission upon request a memorandum setting forth the basis for their respective representations. The Accounts represent that they will invest only in open-end management companies which have undertaken to have a board of directors with a disinterested majority formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

12. Other

Finally, Applicants represent in connection with the relief requested that, if Rule 6e–2 is amended, they either will continue to comply with the rule or seek additional appropriate exemptive relief.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request shoould be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23700 Filed 9-6-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21261; File No. SR–PSDTC–84–11]

Self-Regulatory Organizations; Filing of a Proposed Rule Change and Pilot Project of Pacific Securities Depository Trust Co.

August 31, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 17, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Recent changes in Municipal Securities Rulemaking Board ("MSRB") rules require certain municipal securities brokers and dealers to use an automated system to confirm and affirm certain municipal securities transactions.[1]

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[1] *See* Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52331 (November 18, 1983), which approved proposed changes to MSRB Rules G–12 and G–15 to establish a two-phased timetable for integrating municipal securities brokers and dealers into the National Clearance and Settlement System. *As of* August 1, 1984, municipal securities brokers and dealers who are, or whose agents are, registered clearing agency participants must use clearing agency facilities, among other things, to confirm and affirm certain delivery vs. payment or receipt vs. payment

Continued

PSDTC's proposed rule change creates a new membership class, Municipal Comparison Only ("MCO") Participants, for municipal securities brokers and dealers who exclusively want to use PSDTC's National Institutional Delivery ("NID") System [2] for confirmation and affirmation of institutional trades in eligible municipal securities.[3] Only members or MCO participants of Pacific Clearing Corporation ("PCC") [4] may become MCO participants of PSDTC.

Under PSDTC's proposal, all affirmed transactions submitted by MCO participants will be processed on a trade-for-trade basis through the use of receive and deliver tickets. MCO participants would not be entitled to use any other service provided by PSDTC, including PSDTC's book-entry and envelope services. Accordingly, MCO participants must settle their trades outside of PSDTC's facilities, in accordance with applicable MSRB rules.

PSDTC also will not guarantee settlement of affirmed trades submitted by MCO participants. Because this activity poses no financial risk to PSDTC, MCO participants will not be required to contribute to PSDTC's Participants Fund. Nevertheless, PSDTC is reserving the right to subject MCO participants to applicable PSDTC rules, including those relating to financial condition, operational capability, experience, and competency.

PSDTC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that it is intended to promote the prompt and accurate clearance and settlement of securities transactions. In addition, PSDTC believes the proposal will facilitate municipal securities broker and dealer compliance with MSRB Rule G–15 which requires automated confirmation and affirmation of certain municipal securities trades.

PSDTC requested accelerated approval of the proposal because of the August 1, 1984 deadline for the use of an automated comparison system by municipal securities brokers and dealers. However, the Commission is not the appropriate regulatory agency ("ARA") for PSDTC under section 3(a)(34) of the Act and, consequently, the Commission is precluded under section 19(b)(4)(A) of the Act from approving PSDTC's proposal on an accelerated basis unless PSDTC's ARA notifies the Commission of its determination that the proposal is consistent with the safeguarding of funds and securities. Such notice has not been received. However, because the Commission seeks to maximize the use of automated clearing agency services for municipal securities and because PSDTC's proposal facilitates the use of such services, the Commission, after consultation with PSDTC's ARA, has authorized PSDTC to implement its proposal on a pilot basis pending final Commission determination.

Written comments on the proposal may be submitted within 21 days from the date this notice is published in the **Federal Register**. Six copies should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Reference should be made to file No. SR–PSDTC–84–11. Copies of all documents relating to the proposed rule change, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room in Washington, D.C. or at PSDTC.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–23609 Filed 9–6–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21279; File No. SR–DTC–84–3]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change of Depository Trust Co.

August 31, 1984.

The Depository Trust Company ("DTC") on July 11, 1984, submitted a proposed rule change to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). Notice of the proposal was published in Securities Exchange Act Release No. 21164 (July 23, 1984), 49 FR 30267 (July 27, 1984). The Commission received no letters of comment on the proposal.

DTC's proposal is one of several recent proposed rule changes designed to facilitate access to a National Securities Clearing Corporation ("NSCC") system that provides centralized, automated comparison services to municipal securities brokers and dealers. Through the NSCC system, NSCC processes municipal securities trade data submitted to NSCC by NSCC members and also by other registered clearing agencies on behalf of municipal securities brokers and dealers that are not NSCC members.[1]

DTC's proposal would enable DTC to act as a trade comparison data conduit to NSCC for: (1) Municipal securities brokers and dealers that are DTC participants but not NSCC participants;

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transactions. Each of those municipal securities brokers and dealers must use those clearing agency facilities if its customers or the customer's agent is a clearing agency participant or participates in a clearing agency linked to a clearing agency providing those services.

[2] *See* Securities Exchange Act Release No. 21264 (August 23, 1984), 49 FR 34321 (August 29, 1984), which approved modifications to PSDTC's NID System to facilitate the automated confirmation, affirmation and settlement of municipal securities transactions. For a description of PSDTC's NID System, *see* Securities Exchange Act Release No. 19437 (January 18, 1983), 48 FR 3441 (January 25, 1983), which approved implementation of the NID System.

[3] PSDTC's proposal is the first MCO program established for automated confirmation and affirmation of municipal securities. Several other registered clearing agencies have implemented MCO programs for the automated comparison of municipal securities. *See* Securities Exchange Act Release No. 20976 (May 18, 1984), 49 FR 22426 (May 29, 1984) (National Securities Clearing Corporation) and Securities Exchange Act Release No. 21120 (July 6, 1984), 49 FR 28490 (July 12, 1984) (Midwest Clearing Corporation and Pacific Clearing Corporation).

[4] PCC is PSDTC's affiliated clearing corporation. *See* Securities Exchange Act Release No. 21120 (July 6, 1984), 49 FR 28490 (July 12, 1984), which authorized PCC to link its automated municipal securities comparison system to National Securities Clearing Corporation's ("NSCC") Municipal Bond Processing System, including its Municipal Bond Comparison Only ("MBCO") program.

[1] For a detailed description of NSCC's Municipal Bond Processing System, including its "municipal comparison only membership" ("MCOM") feature, *see* Securities Exchange Act Release No. 20976 (May 18, 1984), 49 FR 22426 (May 29, 1984). Midwest Clearing Corporation and Pacific Clearing Corporation also have established municipal securities comparison systems that are linked to NSCC's system. *See* Securities Exchange Act Release No. 21120 (July 6, 1984), 49 FR 28490 (July 12, 1984), approving Files Nos. SR–MCC–84–4 and SR–PCC–84–4. Stock Clearing Corporation of Philadelphia also recently filed with the Commission a similar proposed rule change. *See* File No. SR–SCCP–84–6. These rule changes are intended to assist the municipal securities industry in complying with changes in Municipal Securities Rulemaking Board ("MSRB") rules requiring use of automated clearance and settlement systems for certain municipal securities transactions. *See* Securities Exchange Act Release No. 20365 (Nov. 14, 1983), 48 FR 52531 (November 18, 1983), approving changes to MSRB Rules G–12 and G–15 that establish a two-phased timetable for integrating municipal securities brokers and dealers into the National Clearance and Settlement System. These rules require, by August 1, 1984, every municipal securities broker and dealer that participates in a registered clearing agency that offers automated municipal securities comparison services, or clears transactions through an agent that is a member of such clearing agency, to use those services to compare certain municipal securities transactions. By February 1, 1985, those municipal securities brokers and dealers or their agents also will be required to book-entry settle through a registered clearing agency certain transactions in depository-eligible securities.

and (2) municipal securities brokers and dealers that are NSCC MCOMs but not DTC participants.[2] Under the proposal, DTC would become an NSCC MCOM and would be subject to the limited NSCC financial responsibility and operational standards applicable to MCOMs.[3] As an MCOM, DTC would not be eligible to participate in NSCC's Continuous Net Settlement or other settlement systems, and therefore would have no financial responsibilities stemming from settlement through those systems. Instead, municipal securities brokers and dealers using DTC's communications facilities for MCOM activity would be solely responsible for settlement of submitted transactions.[4]

Pursuant to an agreement concluded with NSCC, DTC, on behalf of municipal securities brokers and dealers, would transmit trade input to NSCC and would forward NSCC comparison output back to submitting brokers and dealers.[5] Operationally, DTC would receive initial and supplemental trade data from brokers and dealers either on computer tape, via a direct computer-to-computer connection, or via a dial-up computer connection, and would transmit that data to NSCC. NSCC would enter the data into comparison operation of its Municipal Bond Processing System. NSCC would produce comparison reports for each broker or dealer and would transmit those reports to DTC. DTC then woud forward the reports to the submitting brokers and dealers, using the same computer communication mode used for the inputs. DTC also would forward to NSCC responses to advisories and other supplemental trade comparison notices.

DTC believes that the proposal will help the municipal securities industry comply with the recent changes in MSRB Rule G–12 requiring automated comparison for certain trades. In particular, DTC believes that municipal securities brokers and dealers that are NSCC MCOM's but not DTC participants may find it more convenient to use DTC's "dial-up" communication capabilities to communicate with NSCC than to communicate directly with NSCC.[6] Therefore, DTC believes that the proposal would make automated comparison services more easily available to many municipal securities brokers and dealers. DTC thus believes that the proposal is consistent with the requirements of the Act because it promotes the prompt and accurate clearance and settlement of municipal securities transactions.

For the following reasons, the Commission agrees with DTC that the proposal is consistent with section 17A of the Act and should be approved. First, the Commission believes that use of DTC's communication system as a conduit for access to NSCC's Municipal Bond Processing System is an efficient and economical method of supplying required automated comparison services to the municipal securities industry. Through DTC's communication system, many municipal securities brokers and dealers for the first time will be able to access easily NSCC's highly automated, efficient trade comparison services. In particular, more remotely located municipal securities brokers and dealers will be able to use DTC's dial-up feature to forward to, and receive trade comparison data from, NSCC. Those brokers and dealers otherwise would need to deliver trade data directly to NSCC in New York City or through NSCC branch offices in several major U.S. cities. Second, the Commission believes that by providing the municipal securities industry with additional methods of access to NSCC's automated comparison services, the proposal should provide flexibility to municipal securities brokers and dealers in complying with MSRB rules. To comply with MSRB Rules G–12, a municipal securities broker or dealer can choose to become an NSCC MCOM or an NSCC full member. It also can choose to use DTC's communications link with NSCC or to become a DTC participant. Finally, the broker or dealer can choose to become an MCOM or full member of one of several non-New York City clearing agencies providing municipal securities comparison services through a link with NSCC. Third, the Commission believes that the proposal should not adversely affect DTC's ability to safeguard securities and funds. As an NSCC MCOM, DTC simply will be acting as an intermediary in the processing of municipal securities trade data; DTC will not use NSCC's settlement systems, will not be required to contribute to NSCC's clearing funds, and will not be exposed to financial losses incurred by NSCC or its members. Consistent with current industry practice, municipal securities brokers and dealers using the DTC conduit will continue to be solely responsible for settling of compared transactions in accordance with applicable MSRB rules. As a result, the Commission concludes that DTC's proposal enhances municipal securities transaction processing efficiency and promotes compliance with MSRB rules without exposing DTC or its participants to any additional risks of financial loss.

DTC requested accelerated approval of the proposal because of the then impending August 1, 1984 deadline for municipal securities brokers and dealers to use automated clearing agency comparison systems. However, because the Commission is not the appropriate regulatory agency ("ARA") for DTC under section 3(a)(34) of the Act, section 19(b)(4)(A) of the Act prohibited the Commission from approving DTC's proposal on an accelerated basis without notification by DTC's ARA of its determination that the proposal is consistent with the safeguarding of funds and securities. Such notice was not received. Nonetheless, because the Commission seeks to maximize the use of automated comparison services by municipal securities brokers and dealers, the Commission authorized DTC to implement its proposal on a pilot basis pending final Commission determination.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23791 Filed 9-6-84; 8:45 am]

BILLING CODE 8010-01-M

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[2] DTC on August 2, 1984, filed with the Commission under section 19(b)(3)(A) of the Act a fee schedule for the services provided under this proposal. *See* Securities Exchange Act Release No. 21263 (August 23, 1984, 49 FR 34322 (Aug. 29, 1984), publishing File No. SR–DTC–84–7 for comment. As discussed in that filing, DTC will charge fees directly to non-DTC members.

[3] *See* Securities Exchange Act Release No. 20976 (May 18, 1984), 49 FR 22426 (May 29, 1984).

[4] For some municipal securities transactions compared by NSCC via DTC's communications facilities, settlement may be made by book-entry at DTC. Until February 1, 1985, DTC participants using DTC's communication facilities to submit trades to NSCC for comparison may settle trades in depository eligible securities either by book-entry movement or by physical delivery outside of depository facilities. After February 1, 1985, municipal securities trades compared by NSCC for depository eligible securities must be settled by book-entry delivery at a registered securities depository. *See* note 1, *supra*.

[5] Municipal securities brokers and dealers submitting trade data will be required to adhere to NSCC's trade comparison and uncompared trade resolution rules. *See* Part II of NSCC Procedures.

[6] NSCC does not have a dial-up communication capability. Some NSCC MCOMs are located far away from the NSCC branch office to which they physically would have to bring daily trade data if they were required to input data into NSCC's system directly.

[7] Securities Exchange Act Release No. 21164 (July 23, 1984), 49 FR 30207 (July 27, 1984).

[Rel. No. 21280; SR-NYSE-84-30]

Self-Regulatory Organizations; New York Stock Exchange; Filing and Order Granting Accelerated Approval of Proposed Rule Change

August 31, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1984, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The NYSE is proposing to extend its pilot program [1] relating to implementation of a system for the execution, processing and reporting of standard odd-lot market orders to purchase or sell shares in American Telephone & Telegraph Co. ("AT&T") and the equity shares created as a result of the AT&T divestiture [2] from its scheduled expiration date of August 21, 1984 to February 21, 1985.

In its original filing implementing the pilot, the NYSE noted that in light of the increase in odd-lot order volume anticipated as a result of the divestiture, the Exchange was implementing procedures to ensure maximum capacity for odd-lot order processing as well as to provide for efficient clearance and settlement of these transactions. The Exchange has stated in its filing that the procedures detailed in its original filing (SR-NYSE-83-49) will remain in effect, without change for the duration of the extended pilot program.

Under the NYSE procedures, standard odd-lot market orders to purchase or sell shares of AT&T and the equity issues created as a result of the divestiture which are received prior to the opening of trading are processed through the Exchange's Opening Automated Report Services ("OARS") and executed at the opening price. No odd-lot differential is charged on these orders. Standard odd-lot market orders which are received after the opening are routed to the NYSE's Designated Order Turnaround ("DOT") System. Execution prices of these orders are based on the prevailing NYSE quotation in the stock in which the order is entered at the time the order reaches the system. No odd-lot differential is charged on these orders. In the event of a DOT system failure, standard odd-lot market orders in the AT&T issues may be routed to the Exchange's Pricing and Reporting System ("APARS") which is the system presently used for the pricing and reporting of all odd-lot orders executed on the Exchange. The orders will be executed at the price of the next round-lot sale which occurs after the order is received, plus or minus any differential.

The Exchange has stated in its filing that its experience to date currently has indicated that member firms are generally satisfied with the quality and timeliness of odd-lot executions as well as with the timeliness of reports in the AT&T divestiture issues. According to the NYSE, extension of the pilot program will provide the Exchange with an opportunity to further evaluate the efficiencies achieved by the program before making a determination as to what formal codifications are appropriate in this area. The NYSE states that, in providing for efficient execution, reporting, clearance and settlement of odd-lot orders, the proposed rule change is consistent with sections 11(a)(1) and 17(A)(1) of the Act which encourage the use of new data processing and communications techniques, creating the opportunity for more efficient and effective market operations.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549. Reference should be made to File No. SR-NYSE-84-30.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commissions Public Reference Room, 450 5th Street NW, Washington, DC. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot program was scheduled to expire on August 21, 1984. An extension of the pilot program will provide the Exchange with the additional time necessary to study and evaluate the efficiencies achieved by the pilot program as well as to determine whether to submit a formal codification of procedures under the pilot. Therefore, the Commission believes it is appropriate to extend the pilot program until February 21, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23750 Filed 9-6-84; 8:45 am]

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[1] The Commission approved the adoption of the pilot program (SR-NYSE-83-49) on November 18, 1983 (Securities Exchange Act No. 20400; 48 FR 53627, Nov. 28, 1983).

[2] The following issues are affected by the pilot procedures under the pilot program: American Information Technologies Corporation, American Telephone & Telegraph Co.; Bell Atlantic Corporation, Bell South Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, and U.S. West Inc.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2168]

Declaration of Disaster Loan Area; Arizona

Yuma County and the adjacent County of Maricopa in the State of Arizona constitute a disaster area because of damage caused by heavy rainfall and strong winds which occurred on July 12-22, 1984. Applications for loans for physical damage may be filed until the close of business of November 2, 1984, and for economic injury until the close of business on May 31, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, CA 95825 or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000

	Percent
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 216806 for physical damage and for economic injury the number is 620500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 31, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–23739 Filed 9–6–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2164; Amdt. #1]

Declaration of Disaster Loan Area; Nevada

The above numbered Declaration (49 FR 32703) is hereby amended to include the adjacent County of Nye and to change the incidence period to July 22, 1984, through August 19, 1984. All other information remains the same, i.e. the termination date for filing applications for physical damage is the close of business on October 9, 1984, and for economic injury until the close of business on May 8, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 28, 1984.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 84–23740 Filed 9–6–84; 8:45 am]

BILLING CODE 8025–01–M

National Advisory Council; Meeting

The Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, D.C. will hold its semiannual National Advisory Council meeting from 3:00 p.m., Sunday, September 23, 1984, to 12:00 noon Tuesday, September 25, 1984, at the Washington Plaza Hotel, Massachusetts and Vermont Avenues NW., Washington, D.C. 20005 to discuss such matters as may be presented by members staff of the Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, Office of Advisory Councils, 1441 L Street NW., Washington, D.C. 20416, (202) 653–6748.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1984.

[FR Doc. 84–23741 Filed 9–6–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 915]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted two collections of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the information collection proposals submitted to OMB:

1. Form number—DSP–23.
Title—Retail Price Schedule.
Purpose—Used to establish and justify temporary lodging, travel per diem, and cost of living allowances for all Federal civilian employees assigned to foreign service locations.
Type of request—Extension.
Origin—Bureau of Administration, Allowances Staff.
Frequency—Annual.
Respondents—Federal employees, agencies and businesses.
Estimated number of responses—16.
Estimated number of hours needed to respond—320.

2. Form number—DSP–64.
Title—Statement Regarding Lost or Stolen Passport.
Purpose—Used to document circumstances surrounding a passport applicant's inability to present a previously issued passport.
Type of request—Extension.
Origin—Bureau of Consular Affairs, Passport Services.
Frequency—On occasion.
Respondents—Passport applicants.
Estimated number of responses—35,000.
Estimated number of hours needed to respond—8,500.

Section 3504(h) of Pub. L. 96–511 does not apply.

Additional Information or Comments: Copies of the forms and supporting documents may be obtained from Gail J. Cook, (202) 632–3602. Comments and questions should be directed to (OMB), Francine Picoult, (202) 365–7231.

Dated: August 28, 1984.

Robert E. Lamb,

Assistant Secretary for Administration.

[FR Doc. 84–23686 Filed 9–6–84; 8:45 am]

BILLING CODE 4710–22–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–84–16]

Petitions for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 27, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the

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Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 31, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24202	Bangor Int'l. Airport	14 CFR 91 303	To permit the continued operation of Stage 1 aircraft at Bangor Int'l. Airport.
24174	Air Transport Assn. of America	14 CFR 121 434(c)(1)	To allow member carriers to consider a pilot initially qualifying or upgrading as pilot in command as having satisfied the operating experience requirements after the appropriate number of hours whether or not those pilots had a flight leg observed by an FAA inspector.
24195	Mid Pacific Airlines, Inc	14 CFR 121.371(a), and 121.378	To allow petitioner to utilize Air New Zealand for the inspection, repair, and overhaul of Rolls Royce Dart 542-10 engines.
[illegible]	Scandinavian Airlines Systems	14 CFR Parts 21 and 91	To extend the January 1, 1985, termination date of Exemption 3113A which allows the operation of leased B-747-283B aircraft using the provisions of a minimum equipment list.
24175	Barken Int'l., Inc	14 CFR 135.89(b)(3)	To allow operation of Learjet 24 and 35 series aircraft up to 41,000 feet without one pilot at the controls wearing, secured and sealed, an oxygen mask supplying oxygen.
24129	Larry Leverett Lupton	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization without having held a Mechanics Certificate with Airframe and Powerplant ratings for 3 uninterrupted years immediately before application.
24143	United Airlines	14 CFR Part 121, Appendix H	To allow petitioner to conduct a test program during which initial training and checking for 50 pilots would be accomplished in an FAA-approved Phase II B-727 simulator, using the existing Phase III FAA-approved training program.
24161	Joseph D. Zwack	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization without having held a Mechanic's Certificate with both Airframe and Powerplant ratings for the 3-year period immediately before the application date.
24164	Royale Airlines	14 CFR 135 157(b)(2)	To allow petitioner to operate Grumman Gulfstream G-159 airplanes up to 25,000 feet mean sea level with an oxygen system providing oxygen to both pilots plus 10 percent of the passengers.
24100	Minerve Company	14 CFR 61.77	To allow Roger Leveque to obtain a Special Purpose U.S. Airmen Certificate after reaching his 60th birthday.
19475	Flight Safety Int'l	14 CFR 61.63(d), and 61.175(e), and Part 121, Appendix H.	To extend and amend Exemption 2054B, which expires October 31, 1984. The exemption allows trainees to complete a practical test for an Airline Transport Pilot certificate or the practical test for an added type rating in an FAA-approved simulator.
24181	The University of North Dakota	14 CFR Part 141, Appendix H	To allow training in specific maneuvers and procedures to a specific performance level rather than the minimum time requirements.
24157	Chiri Shrimp, S.A	14 CFR Part 91	To allow petitioner to operate a Douglas C–54–B–DC aircraft utilizing the provisions of a minimum equipment list.
24166	Arrow Air, Inc	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 and DC–8 aircraft in noncompliance with the operating noise limits until compliance with the Part 36 noise standards can be achieved by installation of "hush kits."
24209	Air Caribbean Cargo, Inc	14 CFR 91.303	To allow Stage 1 aircraft to utilize Borinquen Field, PR, for international cargo and passenger flights.
23939	Kellogg Co	14 CFR Parts 21 and 91	To allow petitioner to operate Falcon 20 and Falcon 50 aircraft utilizing the provisions of minimum equipment list.
23939	Kellogg Co	14 CFR Parts 21 and 91	To allow petitioner to operate Falcon 20 and Falcon 50 aircraft utilizing the provisions of minimum equipment list.

DISPOSITION OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23947	Pacific Southwest Airlines	14 CFR 91.191	To allow petitioner to conduct a series of one-time ferry flights from the delivery of BA–146–200A aircraft without meeting the radio equipment requirements for overwater operations. *Cancelled 8/14/84.*
24086	Capitol Air, Inc	14 CFR 121.411 and 121.413	To allow petitioners' crew to be trained in the operation of certain aircraft by instructors who do not meet the requirements of these sections. *Withdrawn 7/24/84.*
23946	First Security Bank of Boise, ID	14 CFR 91.181	To allow petitioner to conduct operations under § 91.181 in aircraft having a gross weight under 12,500 pounds. *Denied 7/31/84*
22695	Air Transport Association of America	14 CFR Part 61 and 121	To waive the required oral or written equipment examination for Part 121 qualifying certificate holders if the applicant has satisfactorily completed the approved training program. The program would be completed within the preceding 60 days of the flight maneuvers portion of the practical test. *Denied 8/20/84.*
23995	TAMPA Airlines, S.A	14 CFR 91.303	To allow petitioner to operate two Boeing 707 Stage 1 aircraft until December 31, 1987, in noncompliance with the operating noise limits. *Denied 8/14/84.*
23973	Lloyd Aereo Boliviano, S.A	14 CFR 91.303	To allow petitioner to operate two Boeing 707 aircraft until January 1, 1988, in noncompliance with the operating noise limits. *Denied 8/14/84.*
24000	LACSA	14 CFR 91.303	To allow petitioner to operate two DC–8 aircraft until December 31, 1987, in noncompliance with the operating noise limits. *Denied 8/14/84.*
[illegible]	"Faucett"	14 CFR 91.303	To allow petitioner to operate six DC–8 Stage 1 aircraft until the aircraft can be replaced or modified to comply with Stage 2 noise levels. *Denied 8/14/84.*
23846	Northeastern Int'l. Airways, Inc	14 CFR 121.291(a)	To permit petitioner to operate four B–727–100 aircraft in a 128-seat configuration without conducting an actual demonstration of emergency evacuation procedures. *Denied 7/24/84.*
23862	Tobin Surveys, Inc	14 CFR 91.109 (a) and (b)	To allow deviation from the VFR Hemispherical Rule while conducting aerial photography. *Denied 7/20/84.*
23732	Air North	14 CFR 135.181(a)(2)	To allow petitioner to operate Britten-Norman aircraft using alternate means of compliance with the performance requirements for a multiengine airplane carrying passengers over-the-top or in IFR conditions. *Denied 7/24/84.*

DISPOSITION OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23802	Boeing Commercial Airplane Company	14 CFR 121.579(a)	To permit operators of Boeing 757 and 767 aircraft to engage the autopilot during take-off climb at the minimum engagement altitude contained in the FAA-approved Airplane Flight Manual. *Denied 8/24/84.*
23994	Atlantic Richfield Co	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 in noncompliance with the operating noise limits until "hush kits" are installed. *Denied 8/29/84.*
23953	Caribbean Air Cargo Co., Ltd	14 CFR 91.303	To allow petitioner to operate two Boeing 707 aircraft until December 31, 1987, in noncompliance with the operating noise limits. *Denied 8/29/84.*
23988	Air Haiti, S.A	14 CFR 91.303	To allow petitioner to operate, under wet or dry lease, one Stage 1 four-engine aircraft until December 31, 1987, in noncompliance with the operating noise limits. *Denied 8/29/84.*
24001	TAP Air Portugal	14 CFR 91.303	To allow petitioner to operate Boeing 707 aircraft until December 31, 1987, in noncompliance with the operating noise limits. *Denied 8/27/84.*
23999	Aerotransportes Entre Rios S.R.L	14 CFR 91.303	To allow petitioner to operate two Boeing 707 aircraft until January 1, 1988, in noncompliance with the operating noise limits. *Denied 8/27/84.*
23984	Transportes Aero Rioplatense, S.A.C.e.I	14 CFR 91.303	To allow petitioner to operate two Boeing 707 until January 1, 1988, in noncompliance with the operating noise limits. *Denied 8/27/84.*
23760	Alaska, State of, Div. of Forestry	14 CFR 91.79 (b) and (c)	To allow relief for accomplishment of fire suppression and natural resources missions and for the purpose of dropping aerial retardant or water in congested areas. *Partial Grant 7/13/84.*
23653	The University of North Dakota	14 CFR Part 141, Appendixes A, C, D, and F	To amend Exemption 3825 which allows aviation students of the University to graduate from the appropriate courses when they have been trained to a specific performance level rather than the minimum flight time requirements of this Part. *Partial Grant 7/18/84.*
24098	Alaska Helicopters, Inc	14 CFR Part 121 and SFAR 38	To allow petitioner to operate Boeing Vertol 234 helicopter under Part 135. *Partial Grant 8/27/84.*
23805	U.S. Dept. of Interior	14 CFR 91.79 (b) and (c)	To amend Exemption 3012A to permit low-level operations below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet from the aircraft, and closer than 500 feet to persons, vehicles, and structures in other than congested areas. This exemption would apply to all departmental aircraft which includes, Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), Bureau of Reclamation, National Park Service (NPS), Geological Survey (GS), Mineral Management Service (MMS), Fish and Wildlife Service (FWS), and Office of Surface Mining (OSM). Such operations are necessary for aerial suppression of wild fires by retardant dropping, paracargo drops, search and rescue, enforcement of Federal game and trespass regulations, volcano monitoring and eruption documentation, and environmental protection surveys throughout the Nation. *Partial Grant 7/13/84.*
24036	Bar Harbor Airlines	14 CFR 135.157	To allow petitioner to operate its Beech Model 1900 airplanes at 25,000 feet mean sea level with an oxygen system providing oxygen to both crewmembers plus 10 percent of the passengers. *Partial Grant 8/22/84.*
24188	Sharon Steel Corp	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988. 1 BAC 1-11: N756B. *Granted 8/14/84.*
23725	Purolator Courier Corp	14 CFR 121.3(e), and 135.5	To amend Exemption 4064 to allow petitioner to file information at the Des Plaines, IL, ACDO instead of the Columbus GADO. This is necessary due to a change in the petitioner's headquarters and the fact that it is attempting to obtain Part 121 certification. *Granted 7/18/84.*
23970	Atkins Aviation, Inc	14 CFR 91.31(a)	To allow petitioner to operate a DC-6B aircraft with a 5 percent increase in zero fuel weight and landing weight. *Granted 7/23/84.*
23268	Aero Union Corp	14 CFR 91.27(a)(1) and 91.29(a)	To permit petitioner's pilots to ferry its McDonnell Douglas DC-4 and DC-6 aircraft to a maintenance base with one engine inoperative without obtaining a special flight permit. *Granted 7/25/84.*
24005	Tenneco, Inc	14 CFR 91.45	To allow petitioner to conduct ferry flights with one engine inoperative without having to obtain a ferry permit for each flight. *Granted 7/23/84.*
23607	Herman Miller, Inc	14 CFR 21.181	To amend and extend Exemption 3808 to permit petitioner to obtain a supplemental type certificate covering the operation of Lear 35A aircraft in accordance with the FAA-approved minimum equipment list. The amendment would add a Lear 55 aircraft to that exemption. *Granted 8/16/84.*
24048	Pakistan Int'l Airlines	14 CFR 21.181	To permit petitioner to operate a leased Boeing 747 aircraft using an FAA-approved master minimum equipment list and an FAA-approved continuous airworthiness maintenance program. *Granted 7/30/84.*
16784	Houston Helicopters, Inc	14 CFR 43.3(h)	To extend Exemption 2448C to permit petitioner's appropriately trained and certificated pilots to remove check, and reinstall magnetic chip detector plugs on its Allison 250-C series turbine engines, installed on Bell Model 206 helicopters. *Granted 8/14/84.*
23703	Republic Airlines	14 CFR 121.434(d)(3)	To amend Exemption 3907 to revise condition 4 of the exemption to require each flight engineer to acquire 12 hours rather than 25 hours of operating experience under the supervision of a check airman. *Granted 8/10/84.*
16955	American Airlines Training Corp	14 CFR 61.58(a)	To extend Exemption 2473E to allow petitioner's trainees to complete their entire 24-month pilot-in-command check in an approved flight simulator. *Granted 8/7/84.*
24065	Transair, Inc	14 CFR 141.5(b)	To permit petitioner to be issued a pilot school certificate even though it has not trained and recommended at least 10 applicants for pilot certification and rating tests within the preceding 24 months. *Granted 8/10/84.*
24180	HCI Helicopters, Inc	14 CFR 43.3(h)	To allow petitioner's appropriately trained and certified pilots to remove, check, and reinstall magnetic chip detector plugs. *Granted 8/9/84.*
23776	Semco Instruments, Inc	14 CFR 21.195(b)	To renew Exemption 3647 to allow petitioner to apply for experimental certificates for market surveys or sales demonstrations for two helicopters incorporating a helicopter whistler system developed by petitioner. *Granted 8/17/84.*
24149	Air Logistics	14 CFR 135.261(b)	To allow petitioner to operate its helicopters in a helicopter emergency medical evacuation service (HEMES) without complying with the duty time limitations. *Granted 8/20/84.*
24198	Connie Kalitta Services	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1 DC-9-15F: N8353 *Granted 8/24/84.*

DISPOSITION OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24133	Dominicana De Aviacion	14 CFR 21.181	To allow petitioner to operate two U.S.-registered DC-10-40 airplanes utilizing an FAA-approved minimum equipment list. *Granted 8/24/84.*

[FR Doc. 84-23682 Filed 9-6-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Supplemental Environmental Impact Statement; Chittenden County, VT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Vermont Agency of Transportation is issuing this notice to advise the public that a Supplemental Environmental Impact Statement will be prepared for a proposed highway project in Chittenden County, Vermont.

FOR FURTHER INFORMATION CONTACT: George Jensen, Assistant Division Administrator, Federal Highway Administration, Federal Building, Montpelier, VT 05602. Telephone (802) 223-5294. Arthur J. Goss, Chief of Design, Vermont Agency of Transportation, State Administration Building, Montpelier, VT 05602. Telephone (802) 828-2663.

SUPPLEMENTARY INFORMATION: The Vermont Agency of Transportation (VAOT) in cooperation with the Federal Highway Administration (FHWA) is in the process of preparing a Supplemental Environmental Impact Statement (SEIS) for the Burlington Southern Connector Highway, between Interstate I 189 and Battery Street in Burlington, Vermont.

This Supplemental Statement will address the environmental impacts of highway construction in a wetland contaminated by wastes from a coal gasification plant.

Construction of this project will increase safety and convenience and improve travel quality in Burlington. It will also stabilize an uncontrolled hazardous waste area and improve wetland habitat conditions. No significant adverse impact is anticipated.

The proposed construction, including the associated remediation of a hazardous waste area and mitigation of wetland encroachment is being coordinated with the U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; U.S. Department of Interior, Fish and Wildlife Service; and Vermont Agency of Environmental Conservation. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the Supplemental EIS should be directed to the FHWA or the VAOT at the addresses provided.

Issued on August 29, 1984.

George A. Jensen,

Assistant Division Administrator, Montpelier, Vermont.

[FR Doc. 84-23701 Filed 9-6-84; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP84-13; Notice 1]

Union City Body Company, Inc.; Receipt of Petition for Inconsequential Noncompliance

Union City Body Company, Inc. of Union City, Indiana, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, *Controls and Displays.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

Union City Body Company produces "package cars" for United Parcel Service (UPS). In the period beginning apparently in 1981 and ending August 17, 1983, the petitioner manufactured 3411 such vehicles that did not comply with two requirements of Standard No. 101 that became effective September 1, 1980. The symbol shown in Table 1 of the standard for turn signals, and required by paragraph S5.2.1(a), is a pair of arrows, one pointing left and the other to the right; Union City's vehicles simply have circular indicators. The heater controls lack the fan symbol required but have "illuminated verbage." [sic]

The company argues that the noncompliances are inconsequential as the drivers of UPS vehicles have found the panel controls to be "adequately identified." The uniformity of UPS vehicles insures that drivers will not be confused if they shift to another vehicle.

Interested persons are invited to submit written data, views and arguments on the petition of Union City Body Company described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 9, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8))

Issued on August 31, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-23718 Filed 9-6-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 30, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub.

L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB No. 1512-0189
Form No. ATF F 5100.8
Type of Review: Revision
Title: Distilled Spirits Plant Records and Report of Stamps and Alternative Devices (REC 5110/07-F 5100.8).
OMB No. 1512-0215
Form No. ATF F 5110.75
Type of Review: Revision
Title: Alcohol Fuel Plants (AFP) Records, Reports and Notices (REC 5110/10-F 5110.75).
OMB No. 1512-0270
Form No. ATF F 5110.40
Type of Review: Revision
Title: Distilled Spirits Plants (DSP) Production Records and Reports (REC 5110/01-F 5110.40).
OMB No. 1512-0198
Form No. ATF F 5110.28
Type of Review: Revision
Title: Distilled Spirits Plants (DSP) Production Records and Reports (REC 5110/03-F 5110.28).
OMB No. 1512-0207
Form No. ATF F 5110.43
Type of Review: Revision
Title: Distilled Spirits Plants (DSP) Denaturation Records and Reports (REC 5110/04-F 5110.43).
OMB No. 1512-0206
Form No. ATF F 5110.41
Type of Review: Revision
Title: Applications, Miscellaneous Requests and Notices for Distilled Spirits Plants (REC 5110/00-F 5110.41).
OMB No. 1512-0192
Form No. ATF F 5110.11
Type of Review: Revision
Title: Distilled Spirits Plants Warehousing Records and Reports (REC 5110/02-F 5110.11).
OMB No. 1512-0203
Form No. ATF F 5110.32 and ATF 5110.35
Type of Review: Revision
Title: Distilled Spirits Plants—Excise Taxes (REC 5110/06-F 5110.35).
OMB No. 1512-0298
Form No. ATF F 5120.30, ATF F 5120.26 and ATF REC 5120/01
Type of Review: Reinstatement
Title: Usual and Customary Business Records Relating to Wine (REC 5120/01).
OMB No. 1512-0250
Form No. REC 5110/05
Type of Review: Revision
Title: Distilled Spirits Plants (DSP) Transaction and Supporting Records (REC 5110/05).

Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, 1200 Pennsylvania Avenue NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

James V. Nasche, Jr.,
Departmental Reports Management Office.

[FR Doc. 84-23755 Filed 9-6-84; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: UNITED STATES INFORMATION AGENCY.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. USIA is requesting approval of an information collection for a new form IAP-94, Supplementary Information—Travelers Funded by USIA.

DATE: Comments must be received by October 15, 1984.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C., 20547, telephone (202) 485-8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C., telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: American Participant Travel Log. Abstract: A report is required for submission to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee listing all individuals, with their organizations, who in the preceding five years, made two of more trips involving foreign travel financed in whole or substantial part by grants from USIA's Office of Private Sector Programs. The information must be obtained from grantees, which necessitates the information collection.

Dated: September 4, 1984.

Charles N. Canestro,
Federal Register Liaison.

[FR Doc. 84-23771 Filed 9-6-84; 8:45 am]

BILLING CODE 8230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held September 12, 1984 in Room 600, 301 4th Street, SW., Washington, D.C. From 10:00 a.m.-11:00 a.m. USIA's Comptroller will discuss the Agency's budget. From 11:00 a.m.-12 noon the Acting Director of the Voice of America will discuss VOA programs and activities. The Commission will meet from 1:00 p.m.-2:30 p.m. with USIA's Inspector General and Chief Inspector.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since entrance to the building is controlled.

Dated: August 31, 1984.

Charles Canestro,
Management Analyst, Federal Register Liaison.

[FR Doc. 84-23684 Filed 9-6-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of the meetings of the following Merit Review Boards.

Merit review Board	Date	Time	Location
Alcoholism and drug dependence	Sept. 25, 1984	8 a.m. to 5 p.m.	Room 119, VA Central Office.[1]
Immunology	Oct. 2, 1984	do	Cabinet Room, The Governor's House.[2]
Infectious diseases	Oct. 7, 1984	do	Roosevelt Room, Sheraton Washington Hotel.[3]
Do	Oct. 8, 1984	do	
Oncology	Oct. 9, 1984	do	Room 119, VA Central Office.[1]
Endocrinology	Oct. 10, 1984	do	Cabinet Room, The Governor's House.[2]
Do	Oct. 11, 1984	do	Do.
Hematology	Oct. 16, 1984	do	Room 119, VA Central Office.[1]
Mental health and behavioral sciences	Oct. 17, 1984	do	Gramercy Hotel.[4]
Do	Oct. 18, 1984	do	Do.
Do	Oct. 19, 1984	do	Do.
Gastroenterology	Oct. 22, 1984	do	Room 817, VA Central Office.[1]
Respiration	Oct. 22, 1984	7 p.m. to 11 p.m.	Gramercy Hotel.[4]
Do	Oct. 23, 1984	8 a.m. to 5 p.m.	Do.
Surgery	Oct. 25, 1984	8 a.m. to 5 p.m.	Windsor Room, Westin St. Francis Hotel.[5]
Cardiovascular studies	Oct. 25, 1984	do	Cabinet Room, The Governor's House.[2]
Do	Oct. 26, 1984	do	Do.
Basic sciences	Oct. 29, 1984	do	Gramercy Hotel[4]
Do	Oct. 30, 1984	do	Do.
Neurobiology	Nov. 1, 1984	do	Cabinet Room, The Governor's House[2]
Do	Nov. 2, 1984	do	Do.
Do	Nov. 3, 1984	do	Do.
Nephrology	Nov. 5, 1984	do	Room 119, VA Central Office.[1]

[1] Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.
[2] The Governor's House, Rhode Island Avenue at 17th Street, NW., Washington, DC 20036
[3] Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008.
[4] Gramercy Hotel, 1616 Rhode Island Avenue, NW., Washington, DC 20036.
[5] Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

These meetings will be for the purpose of evaluating scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, closing portions of these meetings are in accordance with 5 U.S.C., 552b(c) (6) and (9)(b). Because of the limited seating capacity of the rooms, those who plan to attend should contact Mr. Howard M. Berman, Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 389-5065 at least five days prior to each meeting. Minutes of the meeting and rosters of the members of the Boards may be obtained from this source.

Dated: August 31, 1984.

By direction of the Administrator.

Stratton M. Appleman,

Executive Assistant to the Associate Deputy Administrator for Public and Consumer Affairs.

[FR Doc. 84-23660 Filed 9-6-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center, Dallas, Texas; Clinical Addition/Renovation of Building No. 2 and Spinal Cord Injury Center; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the "Clinical Addition/Renovation of Building No. 2 and Spinal Cord Injury Center" project at the Veterans Administration Medical Center (VAMC) Dallas, Texas, and has determined that the potential environmental impacts will be minimal from the development of this project.

The most significant element of the project is a multi-storied addition to be constructed onto the front of the main hospital building (Building No. 2).

New construction will accommodate expansion or relocation space from approximately 30 services including surgery, nursing wards, Medical Intensive Care Unit/Coronary Care Unit/Supply Processing and Distribution, laboratory, dietetics, rehabilitating medicine, canteen, etc. Renovated space will include most of the nursing units within Building No. 2, and the backfilling of spaces vacated by functions which are to be relocated into new construction.

Two 30-bed Spinal Cord Injury Units (SCIU's)—one chronic (long-term) and one acute (short-term)—are included in the project.

Several non-psychiatric functions, presently housed in Building No. 1, will be relocated to new construction or renovated areas within Building No. 2. The vacated space will allow existing psychiatric services to be expanded and concentrated within Building No. 1.

Site improvements will include redesigned vehicular entrance drives, the development of a station loop road, new parking areas realigned with new building entrances, new utility services, site lighting, signage, and landscaping.

New construction will total approximately 500,000 square feet; renovated areas will include approximately 500,000 square feet.

Development of the project will cause minor impacts on the human and natural environment affecting noise levels, onsite and offsite traffic, onsite parking, solid waste disposal, water quality, and visual impacts. Temporary impacts from minor air quality degradation (dust & fumes), soil erosion, traffic congestion, and noise levels will occur during construction operations.

Temporary impacts by construction noise will be mitigated by using mufflers on all equipment and scheduling noisy activities to create the least amount of disturbance. Air quality degradation, erosion, sedimentation, and other impacts associated with construction activities will be mitigated through the enforcement of Section 01568 (Environmental Protection) of the VA Construction Specifications.

Furthermore, impacts will be minimized by responding to the regulations or control measures of all applicable Federal, State, and local regulatory agencies (i.e., OSHA, USDA/SCS, etc.).

Permanent impacts associated with the alteration of views into the site from adjacent properties and roadways will be mitigated by designing an addition to the main hospital building which respects the scale and architectural intent of Building No. 2. The installation of landscape planting and berms will further mitigate views. Losses in open space (particularly in front of the hospital) will be compensated by additional landscaping and the dedication of shrubbery and lawn areas throughout the peripheral zones of the project site.

Increases in medical center generated traffic will be offset by improved traffic flows created by retiming lights, redesigning entrances, extending the station loop road, and redesigning parking lots.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is available for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: August 29, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84-23850 Filed 9-6-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 175
Friday, September 7, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

Item
Consumer Product Safety Commission 1
Federal Maritime Commission 2
Federal Reserve System 3

1

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: VOL. 49 NO. 172-35000.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Thursday, September 6, 1984.

CHANGES IN THE MEETING: Agenda meeting scheduled for Thursday, September 6, 1984 has been cancelled. The item of business, NEISS/Alternate Data Sources, to be discussed on September 6 has been moved up to the first item of business scheduled for September 10. Listed below is the revised Agenda.

Commission Meeting, Monday, September 10, 10:00 a.m.

Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

Open to the Public

1. NEISS/Alternate Data Sources: Contractor Briefing

The Contractor for the Hazard Data Systems Study will brief the Commission concerning their findings for available options for collecting injury data.

2. FY 86 Budget

The staff and the Commission will continue to discuss issues related to the Fiscal Year 1986 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84–23864 Filed 9–5–84; 3:51 pm]

BILLING CODE 6355-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—September 12, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Proposed Rulemaking Proceeding: Electronic Tariff Filing.
2. Docket No. 84–25: Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States—Consideration of comments and proposed final rule.

Portion Closed to the public:

1. Docket No. 83–39: Agreement No. 10464—Review of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

Francis C. Hurney,
Secretary.

[FR Doc. 84–23814 Filed 9–5–84; 12:07 pm]

BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 12, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Eligibility issues regarding Federal Reserve Bank and Branch directors.
3. Proposed acquisition of computer and check processing equipment within the Federal Reserve System.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,
Associate Secretary of the Board.

Dated: September 4, 1984

[FR Doc. 84–23770 Filed 9–4–84; 5:06 pm]

BILLING CODE 6210-01-M

federal register

Friday
September 7, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

District of Columbia: DC84-3009	Apr. 6, 1984.
Indiana: IN83-2072	Sept. 2, 1983.
Kentucky:	
KY84-1006	Mar. 16, 1984.
KY84-1007	Do.
Maryland: MD83-3010	June 3, 1983.
Massachusetts: MA84-3007	Apr. 6, 1984.
Missouri:	
MO84-4044	Aug. 3, 1984.
MO84-4025	Apr. 27, 1984.
Nebraska: NE84-4029	May 4, 1984.
Nevada: NV84-5014	June 8, 1984.
New Hampshire:	
NH84-3014	May 11, 1984.
NH84-3022	July 6, 1984.
New Jersey:	
NJ84-3019	Do.
NJ84-3020	July 27, 1984.
New York: NY83-3027	July 22, 1984.
North Dakota: ND81-5131	July 6, 1981.
Pennsylvania: PA83-3001	Aug. 19, 1983.

Supersedeas Decision to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Kentucky: KY83-1064 (KY84-1029)	Sept. 23, 1983.
Oklahoma:	
OK84-4033 (OK84-4049)	May 18, 1984.
OK83-4068 (OK84-4050)	Do.

Signed at Washington, D.C. this 31st day of August 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. DC84-3009-MOD. #4
(49 FR 13800-April 6,1984)
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PAINTERS/DRYWALL FINISHERS		
WASHINGTON D.C.		
NEW CONSTRUCTION	$15.25	2.74
REPAINT/REMODELING	14.25	2.74
DRYWALL SANDERS $1.00 LESS		
MONTGOMERY & PRINCE GEORGES COUNTIES, MARYLAND & ARLINGTON COUNTY, VIRGINIA		
NEW CONSTRUCTION	13.50	2.74
REPAINT/REMODELING	12.50	2.74
DRYWALL SANDERS $1.00 LESS		

DECISION NO. IN83-2072
Mod. #2
(48 FR 40079 - September 2, 1983)
LAKE, LAPORTE, PORTER & ST. JOSEPH COS., INDIANA

	Basic Hourly Rates	Fringe Benefits
OMIT:		
CARPENTERS:		
HEAVY AND HIGHWAY CONSTRUCTION:		
Area 1		
ADD:		
CARPENTERS:		
HEAVY AND HIGHWAY CONSTRUCTION:		
Area 2	$14.76	$2.65

DECISION NO. KY84-1006
Mod # 2
(49 FR 9997 - March 16, 1984)

Warren County, Kentucky

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS:		
Contracts $100,000.00 or Less	$10.68	3.65
Contracts over $100,000.00	16.01	3.65

DECISION NO. KY84-1007
Mod # 3
(49 FR 9999 - March 16, 1984)

Hardin, Jefferson & Meade Cos., Kentucky

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS & PIPEFITTERS:		
Area 1:		
Plumbers:		
Contracts $100,000.00 or Less	$10.68	3.65
Contracts over $100,000.00	16.01	3.65
Area 2:		
Plumbers:		
Contracts $100,000.00 or Less	10.68	3.65
Contacts over $100,000.00	16.01	3.65
Area 3:		
Plumbers:		
Contracts $100,000.00 or Less	10.68	3.65
Contracts over $100,000.00	16.01	3.65

MODIFICATIONS P. 2

DECISION NO. MD83-3010-MOD. #6
(48 FR 25100-June 3,1983)
ANNE ARUNDREL (EXCLUDING THE D.C. TRAINING SCHOOL) BALTIMORE & BALTIMORE CITY MARYLAND, & FOR HEAVY CONSTRUCTION IN HARFORD & HOWARD COUNTIES, MARYLAND

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PAINTERS:		
ANNE ARUNDREL COUNTY NORTH OF THE PATUXENT RIVER:		
Brush, roller, spackling taping, & wallcovering	$13.30	2.29
Steel, spray, swinging stages, boatswain chair sand & waterblasting, steam cleaning, & epoxies	14.05	2.29
Ames tool-bazooka	14.30	2.29
ANNE ARUNDREL COUNTY SOUTH OF THE PATUXENT RIVER:		
Painters/Drywall Finishers:		
New construction	11.50	2.74
Repaint/Remodeling	10.50	2.74
Drywall Sanders $1.00 less		

DECISION NO. MA84-3007
MOD. NO. 2
(49 FR 13804 - April 6, 1984)
Berkshire, Franklin, Hampden, and Hampshire Counties, Massachusetts

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS, SOFT FLOOR LAYERS; DRYWALL CARPENTERS:		
AREA 1	$14.29	2.99
AREA 3	15.40	3.07

DECISION #MO84-4044 - Mod. #1
(49 FR 31198 - August 3, 1984)
Statewide, Missouri

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & PILEDRIVER-MEN:		
Zone 6A	$16.22	1.31

DECISION #NE84-4029-Mod. #1
(49 FR 19199-May 4, 1984)
Cass, Douglas, Sarpy, and Washington Counties, and that portion of Saunders County east of Highway #109, Nebraska

	Basic Hourly Rates	Fringe Benefits
Add:		
Painters:		
Brush	$13.42	1.05
Spray; swing stage and sandblasting	14.02	1.05
Steel	13.77	1.05

DECISION NO. NV84-5014 - MOD. #3
(49 FR 23988 - June 8, 1984,
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway construction in Douglas Co., Nevada

	Basic Hourly Rates	Fringe Benefits
Change:		
In Modification No. 2 published on August 24, 1984, all Power Equipment Operator changes apply to all counties except for Clark, Esmeralda, Lincoln, and Nye Cos.		

MODIFICATIONS P. 3

DECISION NO. NH84-3014 - MOD. #1
(49 FR 20226 - May 11, 1984)
Rockingham and Strafford Counties, New Hampshire

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Area 2:		
Carpenters	$13.86	1.80
Piledrivers, Wharf and Dock Builders and Millwrights	14.71	1.80
Area 3:		
Carpenters	13.86	1.80
Dock Builders and Millwrights	14.71	1.80

DECISION NO. NJ84-3019 - MOD. #2
(49 FR 27883 - July 6, 1984)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians and Cable Splicers:		
Zone 8	$20.77	10%+ 2.50
Laborers:		
Zone 11:		
Group 1	12.55	3.10
Line Construction:		
Zone 1	18.78	27.75%
Zone 5	20.77	10%+ 2.54
Zone 10:		
Linemen, Cable Splicers	19.44	32.75%
Groundmen & Winch Op.	19.44	32.75%
Power Equipment Operators:		
Tank Erection:		
Class A	24.41	5.80+ a

DECISION NO. NJ84-3020 - MOD. #2
(49 FR 30280 - July 27, 1984)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters, Millwrights and Insulators:		
Zone 2:		
Millwrights	$19.56	15.5%
Zone 4:		
Carpenters, Insulators and Millwrights	16.97	5.28
Zone 5:		
Carpenters & Insulators	18.50	20.5%
Millwrights	19.00	20.5%
Dock Builders and Piledrivermen:		
Zone 1	15.97	6.71
Ironworkers:		
Zone 2	19.43	4.20

DECISION #MO84-4025-Mod. #3
(49 FR 18220-April 27,1984)
Cass, Clay, Jackson, Platte, Ray, Henry, Johnson and Lafayette Counties, Missouri; Johnson and Wyandotte Counties, Kansas.

	Basic Hourly Rates	Fringe Benefits
Omit:		
Plumbers	$17.96	2.70
Add:		
Plumbers:		
Zone 1 - Cass, Clay, Jackson, and Platte Counties, Missouri; Johnson and Wyandotte Counties, Kansas	18.46	2.70
Zone 2 - Johnson, Henry, Lafayette, and Ray Counties, Missouri	16.02	2.70

MODIFICATIONS P. 4

DECISION NO. NJ84-3020 (CONT'D)

	Basic Hourly Rates	Fringe Benefits
Ironworkers (Cont'd)		
Zone 3	$18.35	4.30
Power Equipment Operators:		
Tank Erection:		
Class A	24.41	5.80+ a
Soft Floor Layers:		
Zone 2	16.77	16%

Zone Descriptions:
Carpenters:
Zone 2:
Burlington County
Zone 4:
Remainder of Mercer County

DECISION NO. NH84-3022 - MOD. #1
(49 FR 27880 - July 6, 1984)
Hillsborough and Merrimack Cos., New Hampshire

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Area 1:		
Carpenters and Soft Floor Layers	$16.86	4.32
Area 2:		
Carpenters and Soft Floor Layers	15.91	4.47
Laborers:		
Group 2	8.75	2.80+ d

DECISION NO. NY83-3027 - MOD. #4
(49 FR 33622 - July 22, 1983)
NASSAU & SUFFOLK COUNTIES, NEW YORK

	Basic Hourly Rates	Fringe Benefits
OMIT:		
PAINTERS:		
Nassau County (Inwood, Lawrence, Cedarhurst, Woodmere, Wewlett, Hewlett Bay, East Rockaway, part of Rockville Center, Atlantic Beach, Long Beach, Lido Beach, Point Lookout, Gibmen, and part of Valley Stream		
ADD:		
PAINTERS:		
Nassau County (Lakeville Road north from Union Tpke. to Northern Blvd., all areas on north side of Northern Blvd. east to Roslyn Bridge and Hempstead Harbor, bounded by Hempstead Harbor, east, and Long Island Sound, north; all areas south of Sunrise Hwy. going east to Long Beach Rd., then south on Long Beach Rd. to Foxhurst Ave, east on Foxhurst Ave. to Baldwin Road sign; all areas south of Baldwin Road sign, including Point Lookout and all areas west back to New York City limits)		
Painters	15.16	.01+30%
Spray	18.41	.01+30%
Fire Escapes	17.33	.01+30%

MODIFICATIONS P. 5

DECISION NO. PA83-3001 - MOD. #8
(48 FR 37805 - August 19, 1983)
Adams, Berks, Bradford, Carbon, Columbia, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, Dauphin, Cumberland, York Counties, Pennsylvania

CHANGE

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Adams, Cumberland, Dauphin, Lancaster, Lebanon, Juniata, Perry & York Counties Pennsylvania:		
Linemen	15.06	.80+3 3/8%
Winch Truck Operators	10.54	.80+3 3/8%
Truck Driver	9.79	.80+3 3/8%
Groundman	9.04	.80+3 3/8%
MILLWRIGHTS:		
Adams, Bradford, Cumberland, Columbia, Dauphin, Juniata, Lebanon, Luzerne, Lycoming, Montour, Northumberland, Perry, Schuylkill, Snyder, Sullivan, Tioga, Union & Lancaster Counties & Townships in Carbon County:		
Bank, Lausanna, Lehigh & Northern part of Packer Wyoming County, York County, New Cumberland Army Depot & Harrisburg-York State Airport	16.57	2.55
POWER EQUIPMENT OPERATORS		
Zone I (Heavy Construction)		
Group 1	15.89	26.6% +a
Group 2	15.60	26.6% +a
Group 3	14.72	26.6% +a
Group 4	13.95	26.6% +a
Group 5	13.47	26.6% +a
Group 6	12.55	26.6% +a
Group 7	16.14	26.6% +a
Group 7-A	16.41	26.6% +a
Group 7-B	16.64	26.6% +a

DECISION NO. ND81-5131 - Mod. #9
(46 FR 35008 - July 6, 1981)
Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh and Ward Counties, North Dakota

Change:

	Basic Hourly Rates	Fringe Benefits
Ironworkers:		
Structural, Ornamental and Reinforcing	$14.63	$3.96

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: Boone, Campbell, Kenton and Pendleton
DECISION NUMBER: KY84-1029
DATE: Date of Publication
Supersedes Decision Number KY83-1064 dated September 23, 1983 in 48 FR 43520.
DESCRIPTION OF WORK: HEAVY and HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$17.00	2.625
CEMENT MASONS	15.38	2.12
ELECTRICIANS:		
Linemen	18.75	3-1/4% +3.30
Groundmen	14.06	3-1/4% 3.30
IRONWORKERS:		
Reinforcing	15.93	4.27
Structural	16.03	4.33
LABORERS:		
Group 1	13.57	3.00
Group 2	13.695	3.00
Group 3	13.77	3.00
Group 4	13.92	3.00
Group 5	14.22	3.00
PAINTERS:		
Brush	16.90	1.00
Spray	17.40	1.00
Sandblast, waterblast, and hopper tender	17.65	1.00
PAINTERS - on Bridges when highest point of clearance is sixty (60 feet or more:		
Brush	17.65	1.00
Spray	18.15	1.00
Sandblast, waterblast, and hopper tender	18.65	1.00
PILEDRIVERMEN	17.00	2.625
PLUMBERS	15.97	3.42
TRUCK DRIVERS:		
Drivers - Single axle dump truck, flat bed truck, semi-trailer or pole trailer when used to pull building materials & equipment, Dump truck tandem axle, driver of distributors	13.17	78.50a
TRUCK DRIVERS (CONT'D):		
Drivers - Euclid and other heavy earth moving equipment and low boy, winch truck and A-Frame truck when used in transporting materials and Ross Carrier, fork lift truck when used to transport building materials, driver on pavement breakers	13.27	78.50a
Truck mechanic	13.17	78.50a
Truck helper & Mobile Batch Truck Helper	12.88	78.50a
Greaser, tirechanger & mechanic helper	12.99	78.50a
Driver - on mixer trucks (all types)	13.20	78.50a
POWER EQUIPMENT OPERATORS		
CLASS A	16.89	3.61
CLASS B	16.77	3.61
CLASS C	15.73	3.61
CLASS D	15.30	3.61
CLASS E	11.44	3.61

WELDERS: Receive rate for craft performing operation to which welding is incidental.

CLASSIFICATION DEFINITIONS

LABORERS:

Group 1 - Laborers (construction), plant laborers or yardmen, right-of-way laborers, landscape laborer, utility man or handyman, joint setter, carpenter helper, waterproofing laborer, slurry seal, seal coating, surface treatment or road mix laborer, rip-rap laborer or grouter, asphalt laborer, dump man (batch trucks), guard rail and fence installer, mesh handler and placers, concrete curing applicator, scaffold erector.

Group 2 - Asphalt raker, concrete puddler, kettleman (pipeline), all machine driven tools (gas, electric, air), mason tenders, mortar mixer, sheeting and shoring man, surface grindor man, power buggy and wheelbarrow (power).

Group 3 - Form setter, bottom man, welder helper (pipeline), concrete saw man, cutting with burning torch, pipe layer, hand spiker (railroad), car pusher (without air), underground man (working in sewer and water line, cleaning and repairing and reconditioning), tunnel laborer (without air), and caisson, cofferdam (below 25 ft. deep), air track and wagon drill.

Group 4 - Blaster and powder man, muckers, wrencher (mechanical joint and utility pipeline), yarner, top lander.

Group 5 - Curb setter and cutter, miner (without air), concrete crew in tunnels, utility pipeline tapper, gunnite nozzleman, waterline caulker.

POWER EQUIPMENT OPERATORS:

CLASS A - Air compressor on steel erection, boiler operator on compressor or generator when mounted on a rig, cableways, combination concrete mixer and tower, concrete plants (over 4 yd. capacity), concrete pumps, cranes (all types, including A-Frame, boom trucks, cherry pickers), derricks, draglines, dredge (dipper, clam or suction), elevating grader or euclid loader, floating equipment (all types), helicopter crew (operator - hoist or winch), hoes (all types), hoisting engines on shaft or tunnel work, hoisting engines, industrial type tractors, jet engine dryer (D8 or D9), diesel tractor, locomotives (standard guage), maintenance operator Class A, mixer, paving (single or double drum), mucking machine, multiple scraper, piledriving machines (all types), power shovels, Quad 9 (double pusher), refrigerating machine (freezer operation), rotary drill on caisson work, slip-form paver, tower derricks, tree shredder, trench machines (over 24" wide), truck mounted concrete pumps, tug boat, tunnel machine, wheel excavator.

CLASS B - Aspahlt paver, automatic subgrade machine, self-propelled (CMI type), bulldozer, endloader, Kolman Loader (production type-dirt), lead grease man, maintenance operators Class B, power grader, power scoops and scrapers, push cat, trench machines (24" wide and under), boring machine operator (more than 48").

CLASS C - Air compressor on tunnel work (low pressure), asphalt plant, locomotive engineer (narrow gauge), mixers, concrete (more than one bag capacity), mixers (one bag capacity), side loader, power boilers over 15 lb. pressure, pump operator installing and operating well points, pumps (4" and over discharge), rollers (asphalt), utility operator (small equipment), welding machines and generators.

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS (CONT'D):

CLASS D - Back fillers, bar joint and mesh installing machine, batch plant, bullfloats, burlap and curing machine, compressors (portable, sewer, heavy, and highway), concrete plant (capacity 4 yds. and under), concrete saw (multiple), conveyors (highway), crushers, deckhand, drill (highway - with integral power), farm type tractors with attachments (highway), finishing machines,fireman, floating equipment (all types), fork lift (highway), form trenchers, hydro seeders, plant mixers, post drivers, post hole diggers (power auger), power brush burner, power form handling equipment, road widening trenchers, rollers (brick,grade, macadam), self-propelled power spreaders, self-propelled power subgraders, steam fireman, tractor (pulling sheepfoot roller or grader), vibratory compactors (with integral power), boring machine operators (48" or less), hydro hammer, pavement breakers.

CLASS E - Drum fireman (asphalt plant), tenders, inboard-outboard motor boat launch, oil heaters (asphalt plant), oilers, power driven heaters, pumps (under 4" discharge), signalman, tire repairmen.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Adair,Atoka,Bryan,Cherokee, Coal,Craig,Creek,Delaware,Haskell, Hughes,Latimer,LeFlore,McIntosh, Mayes,Muskogee,Nowata,Okfuskee, Okmulgee,Osage,Ottawa,Pawnee, Pittsburg,Pushmataha,Rogers,Sequoyah, Tulsa,Wagoner,Washington

DECISION NO.: OK84-4049

DATE: Date of Publication

SUPERSEDES DECISION NO. OK84-4033, dated May 18, 1984 in FR 21257.

DESCRIPTION OF WORK: BUILDING PROJECTS (excluding single family homes and apartments up to and including 4 stories); Water and Sewer Treatment Plant Construction in Tulsa County, Oklahoma; and Heavy Construction within the city of Muskogee.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area I	$17.16	$2.76
Area II	17.76	2.33
BOILERMAKERS	16.125	2.95
BRICKLAYERS, STONEMASONS:		
Area I	16.00	2.35
Area II	15.31	2.25
Area III	14.84	2.04
Area IV	15.31	1.54
Area V	16.90	
Area VI	14.50	1.40
CARPENTERS - AREA I		
Carpenters	11.85	1.70
Millwrights, Piledrivermen	13.20	1.70
CARPENTERS - AREA II		
Carpenters	12.88	.85
Millwrights, Piledrivermen	14.33	.85
CARPENTERS - AREA III		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25
CARPENTERS - AREA IV		
Carpenters	14.08	1.72
Millwrights	14.38	1.72
Piledrivermen	14.38	1.72
CARPENTERS - AREA V		
Carpenters	13.50	
Millwrights	16.40	
Piledrivermen	16.10	
CARPENTERS - AREA IV		
Carpenters	12.19	1.57
Millwrights, Piledrivermen	12.69	1.57

	Basic Hourly Rates	Fringe Benefits
CARPENTERS - AREA VII		
Carpenters	$12.70	$1.10
Millwrights, Piledriverman	14.38	1.10
Power Saw Operator	12.95	1.10
CARPENTERS - AREA VIII		
Carpenters	12.62	1.50
Millwrights, Piledriverman	12.87	1.50
CEMENT MASONS:		
Area I	10.80	
Area II	13.83	.85
Area III	15.14	.76
POWER TOOL OPERATOR:		
Area I	11.05	
Area II	14.08	.85
Area III	15.54	.76
ELECTRICIANS:		
Area I - Zone I	14.55	3-1/4% +.80
Zone II	14.95	3-1/4% +.80
Area II	14.90	3.5%+ 2.20
Area III	17.10	9%+.80
Area IV	15.90	3%+ 1.77
CABLE SPLICERS:		
Area I - Zone I	14.95	3-1/4% +.80
Zone II	15.35	3-1/4% +.80
Area II	15.15	3.5% +2.20
Area III	18.81	9%+.80

DECISION NO.: OK84-4049 Page 2

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Area I		
Journeymen	$15.34	3.00+a
Helpers	70%JR	3.00+a
Probationary Helper	50%JR	
Area II		
Journeymen	14.665	2.465 +a
Helpers	70%JR	2.465 +a
Probationary Helper	50%JR	
GLAZIERS		
Area I	15.72	.30
Area II	15.04	
Area III	14.68	1.96
IRONWORKERS:		
Area I	16.19	2.92
Area II	14.60	2.67
LABORERS - AREA I		
Group I	10.65	1.00
Group II	10.95	1.00
LABORERS - AREA II		
Group I	9.65	1.00
Group II	9.95	1.00
LABORERS - AREA III		
Group I	9.25	1.00
Group II	9.55	1.00
LABORERS - AREA IV		
Group I	9.30	1.00
Group II	9.55	1.00
PAINTERS - AREA I		
Brush,Sheetrock handtools	14.70	.90
Highwork & Stage	15.10	.90
Spray, & Sandblasting, Sheetrock Power Tools	15.70	.90
Hot & Bituminous	16.00	.90
PAINTERS - AREA II		
Brush & Roller	9.90	1.03
Brush, Roller (Strl. Steel)	10.15	1.03
Spray	10.55	1.03
Swing Stage, Bosun Chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA III		
Brush,Roller,Tapers & Paperhangers	13.02	.60
Spray,Steamclean,Sandblast & Pot Tenders	13.52	.60
PLASTERERS - AREA I	15.45	.01
AREA II	13.45	

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS:		
AREA I	$16.62	$2.93
AREA II	17.25	2.35
AREA III	16.64	2.27
AREA IV		
Mechanical Contracts under $150,000.00	14.00	2.475
Mechanical Contracts $150,000.00 & over	15.50	2.475
AREA V	15.20	2.25
ROOFERS	12.40	1.39
SHEET METAL WORKERS:		
AREA I	16.15	2.66
AREA II	16.58	3%+ 1.89
SOFT FLOOR LAYERS:		
AREA I	13.95	2.03
AREA II	13.47	1.88 +b
SPRINKLER FITTERS	16.17	3.23
LATHERS - AREA I	14.25	2.04
AREA II	12.62	1.50
TILE LAYERS, TERRAZZO WORKERS & MARBLE MASONS:		
AREA I	16.25	1.50
AREA II	15.09	3.10
TILE & MARBLE FINISHERS:		
AREA I	13.35	
AREA II	12.72	2.00
TERRAZZO FINISHERS:		
AREA I	14.20	
AREA II	12.72	2.00
TERRAZZO FLOOR MACHINE:		
AREA I	14.50	
AREA II	12.92	2.00
TERRAZZO BASE MACHINE:		
AREA I	14.90	
AREA II	13.26	2.00
LINE CONSTRUCTION (except Braden, Pocola & Spiro Townships in LeFlore Co.):		
Linemen	16.24	3-1/2% +1.00
Cable Splicers	17.54	3-1/2% +1.00
Hole Digger Operator & Heavy Equipment Op. (pole or cat equivalent)	14.41	3-1/2% +1.00
Jack Hammerman	11.50	3-1/2% +1.00

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Braden, Pocola, and Spiro Townships in LeFlore Co.: that portion east of Brent, Prices Chapel, Rocky Mountain & Sallisaw Townships in Sequoyah Co.:		
Lineman, Heavy Equipment Operator	14.54	1.30+ 3-3/4%
Cable Splicer	14.79	1.30+ 3-3/4%
Powderman	90%JR	1.30+ 3-3/4%
Truck Driver	75%JR	1.30+ 3-3/4%
Groundman	75%JR	1.30+ 3-3/4%
POWER EQUIPMENT OPERATORS:		
Group I	$15.75	$2.18
Group II	15.25	2.18
Group III	14.75	2.18
Group IV	14.50	2.18
Group V	14.25	2.18
Group VI	14.00	2.18
Group VII	13.75	2.18
Group VIII	12.75	2.18
Group IX	13.35	2.18
TRUCK DRIVERS:		
AREA I		
Group I	12.80	
Group II	12.85	
Group III	12.95	
AREA II		
Group I	10.43	
Group II	10.53	
Group III	10.63	
Group IV	10.58	
Group V	10.73	

Basic Hourly Rates	Fringe Benefits

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:
AREA I - Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

BRICKLAYERS - STONEMANSONS:
AREA I - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Haskell, LeFlore, Latimer and Pushmataha Counties
AREA II - Hughes, Coal, Atoka and Bryan Counties
AREA III - Creek, Tulsa, Rogers, Mayes, Craign, Ottawa and Delaware Counties
AREA IV - Okfuskee, Okmulgee, McIntosh and Pittsburg Counties
AREA V - Osage, Washington and Nowata Counties
AREA VI - Pawnee County

CARPENTERS - MILLWRIGHTS & PILEDRIVERMEN:
AREA I - Okmulgee, Okfuskee, Pittsburg, Latimer, LeFlore, the western part of McIntosh County - the line running straight south from the east line of Okmulgee County, Haskell County south of Highway #9 and north one-half of Atoka County
AREA II - Pushmataha, Bryan and south one-half of Atoka County
AREA III - Coal and Hughes County
AREA IV - Tulsa, Rogers, Mayes, Creek, Craig and Delaware Counties
AREA V - Washington, Nowata and Eastern two-thirds of Osage County
AREA VI - Muskogee, Wagoner, Adair, Cherokee, Sequoyah, Eastern part of McIntosh and Haskell County north of Highway #9
AREA VII - Pawnee and western one-third of Osage County
AREA VIII - Ottawa County

CEMENT MASONS - POWER TOOL OPERATORS:
AREA I - Western one-third of Osage County
AREA II - Pawnee County west of a line running due north from the western boundary of Creek County
AREA III - Remaining Counties

ELECTRICIANS - CABLE SPLICERS:
AREA I - Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, LeFlore, Latimer, Atoka and Pushmataha Counties
ZONE I - 30-mile radius from Post Office of the City of Muskogee
ZONE II - Area outside Zone 1.
AREA II - Osage and Pawnee Counties west of Highway #18
AREA III - Bryan County
AREA IV - Washington, Nowata, Craign, Ottawa, Rogers, Mayes, Delaware, Creek, Tulsa, Wagoner, Okmulgee, Okfuskee, Hughes, Pittsburg, Coal, Osage and Pawnee east of Highway #18

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELEVATOR CONSTRUCTORS:
AREA I - Osage, Washington, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Pawnee, Creek, Tulsa, Wagoner, Cherokee, Adair, Okmulgee, Muskogee, and Sequoyah Counties
AREA II - Remaining Counties

GLAZIERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Ottawa and that portion of Craig County east of Vineta
AREA III - Remaining Counties

IRONWORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

LABORERS:
AREA I - Creek, Tulsa, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Washington and Okmulgee Counties
AREA II - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Okfuskee, McIntosh, Haskell, LeFlore Counties
AREA III - Hughes, Pittsburg, Latimer, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage, and Pawnee Counties

GROUP I - All digging and dirt work, firing of salamanders and portable space heaters; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning of windows; wrecking and razing of building and all structures; cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending lathers, masons, or plasterers; water boys, when used; carpenter tender.

GROUP II - All machine tool operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; oprs. of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers; mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finisher laborer; work on swinging scaffold; all kettle & potmen, tank cleaning, all pipe doping treating & wrapping, including all men working with dope; mortar & plaster mixing machine, pump-crete machines, and gunite mixing machines including placing of concrete; handling creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies; all laborers screening sand, running sand drier, and feeding oper. sandblasterer, except nozzle; and cutting torch oprs. in connection with laborers work; concrete greader.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LATHERS:
AREA I - Atoka, Coal and Hughes
AREA II - Ottawa County

PAINTERS:
AREA I - Pawnee, Osage, Washington, Nowata, Rogers, Mayes, Creek, Tulsa, Okfuskee, Okmulgee, Wagoner, Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, Pittsburg, Latimer, LeFlore, and Pushmataha
AREA II -Hughes, Coal, Atoka and Bryan Counties
AREA III - Craig, Ottawa and Delaware Counties

PLASTERERS:
AREA I - Adair, Cherokee, Craig, Creek, Delaware, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Rogers,Tulsa, Wagoner, Washington, and the northern and western portions of Sequoyah County north and west of a line running southwesterly from the northeastern corner of Sequoyah County including the town of Sallisaw.
AREA II - LeFlore County and the southern and eastern portions south and east of a line sunning wouthwesterly from the northeast corner of Sequoyah County

PLUMBERS - PIPEFITTERS:
AREA I - Ottawa, Delaware, Craig, Mayes, Nowata, Rogers, Tulsa, Creek and Osage and Pawnee Counties east of Highway #18
AREA II - Adair, Cherokee, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Sequoyah and Wagoner Counties
AREA III - Hughes, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage and Pawnee Counties west of Highway #18
AREA V - Washington County

SHEET METAL WORKERS:
AREA I - Hughes and Coal Counties
AREA II - Remaining Counties

SOFT FLOOR LAYERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

TILE LAYERS & TERRAZZO WORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

TILE & TERRAZZO FINISHERS - TERRAZZO FLOOR MACHINE - TERRAZZO BASE MACHINE:
AREA I - Bryan County
AREA II - Remaining Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:

GROUP I - All crane type equipment with 300' of boom or over (including jib).

GROUP II - All crane type equipment with 200-300' of boom (including jib).

GROUP III - All crane type equipment with 100-200' of boom (including jib, all tower cranes and all crane type equipment of 3 cu. yards or more).

GROUP IV - Side boom (booms 30' and over); Guy Derrick

GROUP V - Heavy duty mechanic, welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer, dragline, shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane, cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30').

GROUP VI - Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade.

GROUP VII - Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment, generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator, crushing plants; oiler distributor; pulvimixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man or large whirleys when and if required; operator for rotary drilling machines when operated from console or machines.

GROUP VIII - Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

GROUP IX - Greaser and tilt top trailer operator.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'd):

TRUCK DRIVERS:

AREA I - Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Rogers, Creek, Tulsa, Okmulgee, Okfuskee and Mayes and Wagoner Counties west of Highway #69.

GROUP I - Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver.

GROUP II - 3 tons or 4 yards up to but not including 4 tons or 6 yards.

GROUP III - Ready mix concrete truck; tractor-trailer and similar equipment.

AREA II - Bryan, Atoka, Pushmataha, Coal, Hughes, Pittsburg, Latimer, LeFlore, McIntosh, Haskell, Sequoyah, Muskogee, Cherokee, Adair, Delaware, and Mayes and Wagoner Counties east of Highway #69.

GROUP I - Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses.

GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards.

GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready-mix concrete trucks up to but not including 3 yards.

GROUP V - Ready-mix concrete trucks up to but not including 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

a - 6 months to 5 years 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

b - 6 paid holidays - A through E plus G

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Alfalfa,Beckham,Blain,Caddo, Canadian,Carter,Cleveland,Comanche, Cotton,Custer,Dewey,Ellis,Garfield, Garvin,Grady,Grant,Greer,Harmon,Harper, Jackson,Jefferson,Johnston,Kay,Kingfisher,Kiowa,Lincoln,Logan,Love, McClain,Major,Marshall,Murray,Noble, Oklahoma,Payne,Pontotoc,Pottawatomie, Roger Mills,Seminole,Stephens,Tillman, Washita,Woods and Woodward.

DECISION NO. OK84-4050

DATE: Date of Publication

SUPERSEDES DECISION NO. OK83-4068, dated May 18, 1984 in FR 21252.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories); water and sewage treatment plants and water sewage utility lines on the plant site in Canadian, Cleveland and Oklahoma Counties, Oklahoma.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
AREA I	$15.20	2.37
AREA II	17.76	2.33
AREA III	17.16	2.76
BOILERMAKERS	16.125	2.95
BRICKLAYERS,STONEMASONS:		
AREA I	15.48	2.23
AREA II	15.65	
AREA III	13.18	2.17
AREA IV	15.31	2.25
AREA V	14.50	1.40
AREA VI	14.74	2.15
AREA VII	15.48	1.67
CARPENTERS - AREA I		
Carpenters	13.75	2.04
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
Power saw operator	14.25	2.04
CARPENTERS - AREA II		
Carpenters	10.95	2.04
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
Power saw operator	14.25	2.04
CARPENTERS - AREA III		
Carpenters	11.25	1.74
Millwrights	11.50	1.74
Piledrivermen	11.50	1.74
CARPENTERS - AREA IV		
Carpenters	12.15	1.80
Millwrights	14.25	2.04
Piledrivermen	14.25	2.04
CARPENTERS - AREA V		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25

	Basic Hourly Rates	Fringe Benefits
CARPENTERS - AREA VI		
Carpenters	12.35	1.59
Piledrivermen	12.85	1.59
Power saw operator	12.475	1.59
CARPENTERS - AREA VII		
Carpenters	12.45	1.37
Millwrights	12.95	1.37
Piledrivermen	12.95	1.37
Power saw operator	12.80	1.37
CARPENTERS - AREA VIII		
Carpenters	11.60	1.10
Millwrights	12.425	1.10
Piledrivermen	12.425	1.10
Power saw operator	11.85	1.10
CARPENTERS - AREA IX		
Carpenters	12.70	1.10
Millwrights	14.38	1.10
Piledrivermen	14.38	1.10
Power saw operator	12.95	1.10
CARPENTERS - AREA X		
Carpenters	12.88	.85
Millwrights	14.33	.85
Piledrivermen	14.33	.85
CEMENT MASONS - AREA I		
Cement Masons	$10.80	
Power tool operator	11.50	
CEMENT MASONS - AREA II		
Cement Masons	15.14	.76
Power tool operator	15.54	.76
CEMENT MASONS - AREA III		
Cement Masons	13.83	.85
Power tool operator	14.08	.85

DECISION NO.; OK84- 4050

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	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
AREA I - ZONE I	$15.60	9%+ 1.05
ZONE II	15.85	9%+ 1.05
ZONE III	16.10	9%+ 1.05
AREA II	14.90	3.5%+ 2.20
AREA III	14.05	3-1/4% +1.30
AREA IV	17.10	9%+.80
AREA V	15.90	3%+ 1.77
CABLE SPLICERS:		
AREA I - ZONE I	15.85	9%+ 1.05
ZONE II	16.10	9%+ 1.05
ZONE III	16.35	9%+ 1.05
AREA II	15.15	3.5%+ 2.20
AREA IV	18.81	9%+.80
ELEVATOR CONSTRUCTORS:		
Journeymen	14.665	2.465 +a
Helpers	70%JR	2.465 +a
Probationary Helper	50%JR	
GLAZIERS	15.72	.30
IRONWORKERS:		
AREA I	14.60	2.67
AREA II	13.625	2.95
AREA III	14.30	3.00
AREA IV	16.19	2.92
AREA V	15.29	1.14
LABORERS - AREA I:		
GROUP I	10.65	1.00
GROUP II	10.90	1.00
LABORERS - AREA II:		
GROUP I	8.95	1.00
GROUP II	9.20	1.00
LABORERS - AREA III:		
GROUP I	9.10	1.00
GROUP II	9.35	1.00
LABORERS - AREA IV:		
GROUP I	9.30	1.00
GROUP II	9.55	1.00
LABORERS - AREA V:		
GROUP I	9.25	1.00
GROUP II	9.55	1.00
LABORERS - AREA IV:		
GROUP I	5.35	
GROUP II	6.59	

	Basic Hourly Rates	Fringe Benefits
LATHERS:		
AREA I	$14.25	1.74
AREA II	12.15	1.80
MARBLE MASONS, TILE SETTERS & TERRAZZO WORKERS	16.25	
MARBLE & TILE FINISHERS:		
AREA I	13.35	
TERRAZZO FINISHERS:		
AREA I	14.20	
TERRAZZO FLOOR MACHINE MAN:		
AREA I	14.50	
TERRAZZO BASE MACHINE MAN:		
AREA I	14.90	
PAINTERS - AREA I:		
Brush & Roller	9.90	1.03
Brush & Roller (Strl. steel)	10.15	1.03
PAINTERS - AREA I:		
Spray	10.55	1.03
Swing, stage, bosun chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA II:		
Brush	13.55	2.53
Spray under 30 ft.	14.05	2.53
Spray over 30 ft.	14.55	2.53
Paper hanging	14.55	2.53
Tapers using machine tools	14.05	2.53
PLASTERERS:		
AREA I	15.60	.95
AREA II	14.20	
PLUMBERS - AREA I:		
Mechanical contracts under $150,000.00	14.00	2.475
Mechanical contracts of $150,000.00 & over	15.50	2.475
PLUMBERS - AREA II	16.64	2.27
ROOFERS	12.40	1.39
SHEET METAL WORKERS	16.15	2.65
SOFT FLOOR LAYERS	13.95	2.03
SPRINKLER FITTERS	16.17	3.22
LINE CONSTRUCTION:		
Linemen	16.24	3-1/2 +1.00
Cable splicers	17.54	"
Hole digger operator, heavy equipment opr.	14.41	"
Line truck driver (winch operator)	12.69	"
Jackhammerman	11.50	"

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Powderman	$13.99	3-1/2+ 1.00
Groundman	10.31	*
Truck driver (flat bed, ton-half & under)	10.96	*
POWER EQUIPMENT OPERATORS		
GROUP I	15.75	2.18
GROUP II	15.25	2.18
GROUP III	14.75	2.18
GROUP IV	14.50	2.18
GROUP V	14.25	2.18
GROUP VI	14.00	2.18
GROUP VII	13.75	2.18
GROUP VIII	12.75	2.18
GROUP IX	13.35	2.18
TRUCK DRIVERS - AREA I		
GROUP I	9.70	
GROUP II	9.40	
AREA II		
GROUP I	12.80	
GROUP II	12.85	
GROUP III	12.95	
AREA III		
GROUP I	10.43	
GROUP II	10.53	
GROUP III	10.63	
GROUP IV	10.58	
GROUP V	10.73	

	Basic Hourly Rates	Fringe Benefits

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:

AREA I	Harper, Ellis, Roger Mills, Beckham, Greer and Harmon Counties
AREA II	Kay County
AREA III	Remaining Counties

BRICKLAYERS - STONEMASONS:

AREA I	Logan, Payne, Canadian, Oklahoma, Cleveland and McClain Counties
AREA II	Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Blaine and Kingfisher Counties
AREA III	Harmon, Jackson, Tillman, Comanche, Cotton and Jefferson Counties
AREA IV	Lincoln, Pottawatomie, Seminole, Pontotoc, Johnston and Marshall Counties
AREA V	Kay and Noble Counties
AREA VI	Caddo, Grady, Stephens, Garvin, Murray, Carter and Love Counties
AREA VII	Roger Mills, Beckham, Greer, Dewey, Custer, Washita and Kiowa Counties

CARPENTERS - MILLWRIGHTS - PILEDRIVERMEN - POWER SAW OPERATORS:

AREA I	Oklahoma, Logan, Canadian, Kingfisher, Pottawatomie, McClain, Cleveland, and Lincoln County south of the Turner Turnpike
AREA II	Dewey, Custer, Washita and Blaine Counties
AREA III	Caddo and Grady Counties
AREA IV	Alfalfa, Grant, Major and Garfield Counties
AREA V	Love, Murray, Carter, Pontotoc, Seminole, Johnston, Garvin and Marshall County west of highway #99
AREA VI	Beckham, Jefferson, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa, Stephens and Tillman Counties
AREA VII	Payne County, Northern Half of Lincoln County and Noble County east of Interstate 35 and south of Black Bear Creek
AREA VIII	Woodward, Woods, Harper, Ellis and Roger Mills Counties
AREA IX	Kay and Noble Counties north of Black Bear Creek and west of Interstate #35
AREA X	Marshall County east of highway #99

CEMENT MASONS - POWER TOOL OPERATOR:

AREA I	Kay County
AREA II	Johnston and Marshall Counties
AREA III	Ellis, Roger Mills, Beckham, Dewey, Custer, Grady, Carter, Oklahoma, Logan McClain, Washita, Blaine, Caddo, Kingfisher, Canadian, Cleveland, Garvin, Lincoln, Payne, Noble, Woodward Murray, Harper, Major, Woods, Alfalfa, Grant Garfield, Harmon, Greer, Kiowa, Jackson, Tillmon, Comanche, Cotton, Stephens, Jefferson and Love Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELECTRICIANS - CABLE SPLICERS:

AREA I	Oklahoma, Cleveland, Canadian, Grady, McClain, Garvin, Carter, Murray, Johnston, Pontotoc, Seminole, Pottawatomie, Lincoln, Logan, Kingfisher, Garfield, Grant, Alfalfa, Major, Blaine, Caddo, Washita, Custer, Dewey, Woodward, Woods, Harper, Ellis, Roger Mills, Beckham, Love and that portion of Payne County which is closer to Oklahoma City than Tulsa
ZONE I	The area within the twelve mile radius of the Main Post Office located in one of the cities listed as follows: Ada, Alva, El Reno, Enid, Moore, Arapahoe, Tecumseh, Norman, Midwest City, Ardmore, Oklahoma City, Stillwater, Sulphur and Tuttle Counties
ZONE II	The area between the twelve mile radius of the Zone I Post Office, except where Zone II intercepts another Zone I area
ZONE III	The area outside Zone I and Zone II
AREA II	Kay and Noble Counties
AREA III:	Comanche, Jackson Stephens, Harmon, Greer, Kiowa, Tillman, Cotton and Jefferson
AREA IV	Marshall County
AREA V	That portion of Payne County closer to Tulsa than Oklahoma City

IRONWORKERS:

AREA I	Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Custer, Dewey, Garfield, Garvin, Grady, Johnston, Kingfisher, Kiowa, Lincoln, Major, Logan, McClain, Murray, Noble, Oklahoma, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Washita, Woodward, and western Payne County to a line due north of state highway #177 and #33
AREA II	Beckham, Greer, Harmon, Jackson, Tillman, Cotton, Jefferson and Love Counties
AREA III	Harper and Ellis Counties
AREA IV	Marshall County
AREA V	Alfalfa, Grant, Kay, and Woods Counties

LABORERS:

AREA I	Logan, Canadian, Oklahoma, Lincoln, Cleveland and Pottawatomie Counties
AREA II	Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Dewey, Blaine and Kingfisher Counties
AREA III	Roger Mills, Custer, Beckham, Washita, Caddo, Grady, McClain, Harmon, Greer, Kiowa, Comanche, Stephens, Garvin, Tillman, Cotton, Jefferson, Murray, Carter, Love and Marshall Counties
AREA IV	Kay, Noble and Payne Counties
AREA V	Seminole, Pontotoc and Johnston Counties
AREA VI	Jackson County

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LABORERS (CONT'D):

GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages of stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning windows; wrecking and razing of building and all structures; cleaning when the manis directly tendering, lathers, masons or plasters; common laborers.

GROUP II _ All machine tools operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finishers laborer; work on swinging scaffold; all kettle and potmen, tank cleaning, all pipe doping treating and wrapping, including all men working with dope; mortar and plaster mixing machine, pump-crete machines, and gunite mixing machines including concrete, creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or plants; all laborers screening sand, running sand drier, and feeding operator sand blasterer, except nozzle; and cutting torch operators in connection with laborers' work; concrete grader.

LATHERS:

AREA I	Oklahoma, Logan, Canadian, Kingfisher, Custer, Washita, Blaine, Pottawatomie, Dewey, Beckham, Caddo, Cleveland, Ellis, Garvin, Grady, Johnston, McClain, Murray, Noble, Pontotoc, Roger Mills, Seminole, Woodward, Lincoln County south of Turner Turnpike and Payne County up to and including the city of Cushing.
AREA II	Alfalfa, Grant, Garfield and Major Counties

PAINTERS:

AREA I	Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson, Carter, Love, Pontotoc, Johnston and Marshall Counties
AREA II	Remaining Counties

PLASTERERS:

AREA I	Ellis, Roger Mills, Beckham, Greer, Harmon, Jackson, Dewey, Custer, Washita, Kiowa, Tillman, Blaine, Caddo, Comanche, Cotton, Kingfisher, Canadian, Grady, Stephens, Jefferson, Logan, Oklahoma, Cleveland, McClain, Gargin, Murray, Carter, Love, Payne, Lincoln, Johnston and Marshall Counties
AREA II	Pontotoc, Pottawatomie and Seminole Counties

PLUMBERS - PIPEFITTERS

AREA I	Kay County
AREA II	Remaining Counties

MARBLE & TILE FINISHERS, TERRAZZO FINISHERS, TERRAZZO FLOOR MACHINE MAN, TERRAZZO BASE MACHINE MAN:

AREA I	Kay, Noble, Payne, Lincoln, Pottawatomie, Seminole, Pontotoc and Johnston

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:

GROUP I	All crane type equipment with 300' of boom or over (including jib)
GROUP II	All crane type equipment with 200-300' of boom (including jib)
GROUP III	All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more
GROUP IV	Side boom (booms 30' and over); Guy Derrick
GROUP V	Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer; dragline, shovel; clamshell; backhoe (3/4 yd. and over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' and longer mast); motor patrol (blade); side boom (under 30')
GROUP VI	Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller and compactors with dozer blade
GROUP VII	Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator; crushing plants, oiler distributor, pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed operator; concrete pump; form grader; screening plant; well point pump operator; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS CONT'D):

GROUP VIII	Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man
GROUP IX	Greaser and tilt top trailer operator

TRUCK DRIVERS:

AREA I	Alfalfa, Beckham, Blaine, Caddo, Carter, Canadian, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson Johnston, Kingfisher, Kiowa, Logan, Love, Major, McLain, Murray, Oklahoma, Pontotoc, Pottawatomie, Payne, Roger Mills, Seminole, Stephens, Tillman, Washita, Wood and Woodward Counties
GROUP I	Truck drivers for heavy equipment such as lowboys, heavy winch and floats, heavy earth moving equipment such as dump trucks and euclids
GROUP II	Truck drivers and swampers, such as dump trucks, flat beds, stakebodies, and 3/4 and ½ ton pick-up trucks
AREA II	Kay, Noble and Lincoln Counties
GROUP I	Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver
GROUP II	3 tons or 4 yards up to but not including 4 tons or 6 yards
GROUP III	Ready mix concrete truck; tractor trailer and similar equipment
AREA III	Marshall County
GROUP I	Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, state bodies and buses
GROUP II	3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III	5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV	Ready-mix concrete trucks up to but not including 3 yards
GROUP V	Ready-mix concrete trucks 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES

a - 6 mos. to 5 yrs. 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day.

SUPERSEDEAS DECISION

STATE: ALABAMA

COUNTIES: Blount, Cherokee, Clay, Cleburne, Colbert, Cullman, DeKalb, Fayette Franklin, Jackson, Lamar, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, Randolph and Winston

DECISION NUMBER AL84-1030

DATE: Date of Publication

Supersedes Decision Numbers AL81-1130 dated December 30, 1980 in 45 FR 86188, & AL82-1087 dated December 10, 1982 in 47 FR 55588.

DESCRIPTION OF WORK: HEAVY CONSTRUCTION PROJECTS (Includes SEWER & WATER LINE CONSTRUCTION)

	Basic Hourly Rates	Fringe Benefits
Boilermakers	$16.20	3.375
Carpenters	8.25	
Cement Mason	6.48	
Ironworkers	6.82	
Electricians	8.75	.69
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Piledrivermen	8.00	
Pipelayer	5.28	
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Driller Operator	9.20	
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Motor Grader/Patrol	$7.50	
Mechanic	6.25	
Trencher	7.00	
Truck Drivers	4.50	
Wagon Drill	5.83	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 84-23590 Filed 9-6-84; 8:45 am]

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There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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  Environmental Protection Agency

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1030

Revision to Regulations on Ethics Counselor

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is revising its regulation concerning the agency's Ethics Counselor to show that the Assistant General Counsel for General Law is the agency's Ethics Counselor and also serves as the designated ethics official under the Ethics in Government Act. The regulation now states that these functions are performed by the Deputy General Counsel, a position that no longer exists in the Office of General Counsel.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Beatrice Pitkin, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: Subpart F of Part 1030 of Title 16 of the Code of Federal Regulations contains the Commission's regulations pertaining to employee standards of conduct and conflicts of interest. Section 1030.104 states that the official who serves as the Commission's Ethics Counselor for matters pertaining to standards of conduct for Commission employees, and as the designated ethics official under the Ethics in Government Act, is the Deputy General Counsel. However, the position of Deputy General Counsel has recently been eliminated. Therefore, the head of the agency has appointed the Assistant General Counsel for General Law as the Commission's Ethics Counselor and the designated agency ethics official under the Ethics in Government Act. In addition, the Assistant General Counsel for Regulatory Affairs is to function as alternate designated ethics official under the Ethics in Government Act and as alternate Ethics Counselor in the absence of the Ethics Counselor.

Therefore, § 1030.104(a) has been revised to show that the Assistant General Counsel for General Law has assumed responsibilities as Ethics Counselor for all matters pertaining to standards of conduct for Commission employees and is the designated agency ethics official under the Ethics in Government Act.

Section 1030.104(b) has been revised to show that the Assistant General Counsel for Regulatory Affairs is the alternate Ethics Counselor and alternate designated agency ethics official and will act in these capacities in the absence of the Ethics Counselor.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553, the agency finds that notice and other public procedures with respect to this rule are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and thus is exempt from the provisions of that act.

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Government employees, Conflict of interest.

PART 1030—[AMENDED]

Accordingly, Part 1030 of Title 16 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 1030 is as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1964-1965 Comp., p. 306; 5 CFR Part 735; Pub. L. 95-521, 92 Stat. 1824, as amended by Pub. L. 96-19, 93 Stat. 37 (5 U.S.C. App.).

§ 1030.104 [Amended]

2. Section 1030.104(a) is amended by removing the words, "The Deputy General Counsel for Regulatory Affairs and General Law", and inserting in their place, "The Assistant General Counsel for General Law".

3. Section 1030.104(b) is amended by removing the words, "The Assistant General Counsel for General Law" and inserting in their place, "The Assistant General Counsel for Regulatory Affairs".

Dated: September 4, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-23813 Filed 9-7-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 84-193]

Outward Cargo Declarations and Shippers' Export Declarations

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to outward cargo declarations used in connection with the clearance of vessels. The amendments delete references to Customs Form 1302 (Cargo Declaration), and specify precisely the information required on Customs Form 1302-A (Cargo Declaration Outward With Commercial Forms), or on the attached copies of bills of lading or equivalent commercial documents.

These amendments are being made to conform the regulations to statute, and to improve procedures for providing necessary information to Customs.

EFFECTIVE DATE: October 10, 1984.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 96-275, an Act "to protect the confidentiality of Shippers' Export Declarations, and to standardize export data submission and disclosure requirements," amended 46 U.S.C. 93 to provide that copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the vessel manifest shall be attached to the manifest and delivered to the appropriate Customs officer at the time the manifest is delivered.

Section 4.63(a), Customs Regulations (19 CFR 4.63(a)), currently provides, in part, that no vessel shall be cleared directly for a foreign port, or for a foreign port by way of another domestic port or other domestic ports, unless there has been filed with the district director of Customs at the port from which clearance is being obtained: (1) A Cargo Declaration (Customs Form 1302), or a Cargo Declaration Outward with Commercial Forms (Customs Form 1302–A), either form with copies of bills of lading or equivalent commercial forms; or (2) an incomplete Cargo Declaration as provided for in § 4.75, Customs Regulations (19 CFR 4.75).

While existing procedures are satisfactory for many carriers, certain carriers advised Customs that they would like to use the Customs Form 1302 as an "equivalent commercial document or form" instead of submitting copies of bills of lading. It was contended that, because of the advent of computerized print-outs and the automated data processing of outward manifests, it is much easier for many of the carriers to present a completed Customs Form 1302 as an equivalent commercial document or form, than to assemble copies of bills of lading. The National Committee on International Trade Documentation, on behalf of a group of carriers, requested that a completed Customs Form 1302 be accepted as an equivalent commercial document.

Customs determined that while a Customs form (1302) is not an equivalent commercial document, a facsimile thereof might be acceptable. Accordingly, by notice published in the **Federal Register** on October 14, 1983 (48 FR 46810), Customs proposed to amended § 4.63 to provide, among other things, that a cargo list in a format similar to Customs Form 1302 would be acceptable as an equivalent commercial document.

Customs proposed to add a new paragraph (d) to § 4.63, which would pertain to the information submitted on Customs Form 1302–A and the bills of lading or equivalent commercial documents. Existing § 4.63 (d) and (e) would be redesignated as § 4.63 (e) and (f), respectively.

Customs also proposed to delete reference to Customs Form 1302 from § 4.63, except for the provision of proposed § 4.63(c) with respect to an equivalent commercial document, in order to simplify § 4.63, and to simplify procedures for providing necessary information to Customs. It was also proposed to delete reference to Customs Form 1302 from §§ 4.62, 4.75 (a), (b), and (c), 4.82(a), 4.87 (b), (f), and (g), 4.88(c), and 4.89(a), Customs Regulations (19 CFR 4.62, 4.75 (a), (b), and (c), 4.82(a), 4.87 (b), (f), and (g), 4.88(c), 4.89(a)).

Pub. L. 96–275 further amended 46 U.S.C. 93 to provide that certain information shall be included on the manifest, or on the attached copies of bills of lading or equivalent commercial documents. These requirements were listed in proposed § 4.63(c).

Discussion of Comments and Decision

Twenty-three comments were received in response to the notice.

Two of the commenters favored the proposal as being practical, efficient, and a money saving practice. Another expressed general support, subject to various conditions with which it would be practically impossible to comply.

The remaining twenty comments were opposed to the proposal. They based their objections primarily on grounds that the in-house cargo lists do not have the legal attributes of a bill of lading and would not, therefore, set forth information as accurately as a bill of lading. One of them contended that a bill of lading is (1) a receipt for the cargo, (2) a contract of carriage, and (3) when it is in negotiable form, an indicia of title to the cargo. Prior to publication of the proposal, Customs had been informed that it would be in the interest of the maritime industry if a cargo list was considered equivalent to a bill of lading for the purpose for which the statute was enacted, i.e., to furnish interested parties with the six specified items of information, which can be found on the cargo list as well as on a bill of lading. There is no definition of the term "equivalent commercial documents" in the statute or in the legislative history.

Although we had been assured by the parties in favor of the proposed amendment that the information on the cargo lists would contain accurate descriptions, shortly after Customs began accepting them, at least one vessel line presented cargo lists describing the cargo, "F.A.K." (Freight All Kinds). This is not a description of merchandise but merely a statement that merchandise is being shipped. Such a listing is not in compliance with the statute.

In view of the comments against the proposal, plus Customs experience which would appear to substantiate these comments, and in view of the ambiguity of the term "equivalent commercial documents", we have decided to modify the proposal by deleting reference to cargo lists as acceptable "equivalent commercial documents."

E.O. 12291 and Regulatory Flexibility Act

It has been determined that the amendments are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.), it is hereby certified that the regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis, or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Imports, Cargo vessels, Reporting and recordkeeping requirements.

Amendments To the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Section 4.63, Customs Regulations, is revised to read as follows:

§ 4.63 Outward Cargo Declaration; shippers' export declarations.

(a) No vessel shall be cleared directly for a foreign port, or for a foreign port by way of another domestic port or other domestic ports (see § 4.87(b)), unless there has been filed with the appropriate Customs officer at the port from which clearance is being sought:

(1) A Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A. Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest must be attached in such manner as to constitute one document, together with a properly executed Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300, and export declarations as are required by pertinent regulations of the Bureau of the Census, Department of Commerce; or

(2) An incomplete Cargo Declaration as provided for in §4.75.

(b) Except as hereafter stated, the number of the export declaration covering each shipment for which an authenticated export declaration is required shall be shown on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, in the marginal column headed "B/L No." If an export declaration is not required for a shipment, a notation shall be made on the Cargo Declaration Outward With Commercial Forms (Customs Form 1302–A) describing the basis for the exemption with a reference to the number of the section in the Census Regulations (see 15 CFR 30.39, 30.50–30.57) where the particular exemption is provided. If shipments are exempt on the basis of value and destination, the appearance of the value and destination on a bill of lading or other commercial documents is acceptable as evidence of the exemption and reference to the applicable section in the Census Regulations is not required.

(c) The following minimal information shall be included on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (other information required to be on a Customs Form 1302–A as shown on the form itself must also be included thereon) or on attached copies of bills of lading or equivalent commercial documents:

(1) Name and address of shipper;

(2) Description of the cargo (see paragraph (d) of this section);

(3) Number of packages and gross weight (see paragraph (d) of this section);

(4) Name of vessel or carrier;

(5) Port of exit (this shall be the port where the merchandise is loaded on the vessel); and

(6) Port of destination (this shall be the foreign port of discharge of the merchandise).

(d) If the bills of lading or equivalent commercial documents attached to the Customs Form 1302–A show on their face the cargo information required by columns 6, 7, and either column 8 or 9, of the Customs Form 1302–A, that information need not be shown again on the Customs Form 1302–A. However, in that case, the cargo information must be incorporated by a suitable reference on the face of the Customs Form 1302–A such as "Cargo as per attached commercial documents."

(e) For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, or commercial document attached to the Cargo Declaration and made a part thereof in accordance with paragraph (a)(1) of this section, shall clearly show for such shipment the number, date, and class of such Customs entry or withdrawal (i.e., T. & E., Wd. T. & E., I. E., Wd. Ex., or Wd. T., as applicable) and the name of the port where the merchandise is laden for exportation.

(f) Customs officers shall accept a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, covering containerized or palletized cargo which indicates by the use of appropriate words of qualification (see 4.7a(c)(3)) that the declaration has been prepared on the basis of information furnished by the shipper.

§ 4.62 [Amended]

2. Section 4.62, Customs Regulations, is amended by removing the words "Cargo Declaration, Customs Form 1302" and inserting, in their place, the words "Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A."

§§ 4.75, 4.82, 4.87, 4.88 and 4.89 [Amended]

3. Sections 4.75 (a), (b), and (c), § 4.82(a), § 4.87 (b), (f), and (g), § 4.88(c), and § 4.89(a), Customs Regulations, are amended by removing the words "Cargo Declaration, Customs Form 1302 or 1302–A" and inserting, in their place, the words "Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A."

(R.S. 251, as amended, 4197, as amended, 4199, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1624; 46 U.S.C. 91, as amended, 93 as amended)).

William von Raab,

Commissioner of Customs.

Approved: August 17, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84–23840 Filed 9–7–84; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 141

[T.D. 84–192]

Customs Regulations Amendment Relating to Identification of Merchandise Subject to Antidumping or Countervailing Duty Orders.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: To facilitate and upgrade the compilation and retrieval of antidumping and countervailing duty collection data, this document amends the Customs Regulations relating to presentation of entry papers to require importers of merchandise subject to an antidumping or countervailing duty order to include with the entry summary a unique identifying number assigned by the International Trade Administration of the Department of Commerce.

EFFECTIVE DATE: October 10, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Bujnicki, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–8121).

SUPPLEMENTARY INFORMATION:

Background

The International Trade Administration, Department of Commerce, and the Customs Service have received increasing numbers of requests for accurate data concerning the imposition of antidumping and countervailing duties. Presently, this data is collected by Customs from information provided by the importer during the entry process. Due to the fact that antidumping and countervailing duty case numbers are not always provided on entry documents, attempts to collect accurate data have been unsuccessful. To facilitate and upgrade the compilation and retrieval of antidumping and countervailing duty collection data, each antidumping and countervailing duty case or, where appropriate, each manufacturer or exporter subject to a particular antidumping or countervailing duty order, is assigned a unique identifying number by the International Trade Administration. To collect accurate data, it is essential that the importer or the importer's representative be required to provide the identifying number on the entry summary documents at the time of filing them with Customs for any merchandise subject to an antidumping or countervailing duty order.

Accordingly, by notice published in the **Federal Register** on November 21, 1983 (48 FR 52596), Customs proposed to amend § 141.61, Customs Regulations (19 CFR 141.61), by adding a new paragraph (c) to require importers of merchandise subject to an antidumping or countervailing duty order to include with the entry summary a unique identifying number assigned by the International Trade Administration.

Discussion of Comments

Seven comments were received in response to the notice. The commenters' concern focused primarily on two major issues, namely, when will the identifying number be required on the entry document, and how, or by what method, will the public obtain the necessary numbers.

With regard to the first issue, as stated in the notice, it is Customs intent to require the number at the time the entry summary is filed. However, this requirement will change once Customs automated enhancements such as Automated Broker Interface (ABI) are fully implemented throughout the country. It will then be necessary to require the number at the time of a preliminary affirmative finding.

As far as the second issue is concerned, the case numbers as well as case status are readily available at the entry control section of each port via certain quarterly listings and updates. Since most ports have already set up local methods of notification, Customs does not see the need to issue any detailed procedures to the ports, nor describe them in future notices.

The commenters raised several minor issues. One questioned the need for a case number on the Customs Form 7501 if the rate is "zero." The number will be required in this instance since the Department of Commerce needs other data related to the number such as value. As far as the location of the number is concerned, it must appear in the TSUSA column of the Customs Form 7501. Customs will advise brokers who are not already making use of the number that this is the requirement.

One commenter stated that he was advised by the International Trade Administration that a current listing of cases does not exist. This is incorrect. This information is available at the Customs entry control section of each port.

After further review of the matter, Customs has determined to adopt the proposal as described in the notice. Failure to provide the identifying number at the time the entry summary is filed will result in rejection of the entry summary documents by Customs. Concerned parties will be administratively advised of the identifying number required for merchandise they are importing.

Executive Order 12291

This document will not result in a regulation which is a "major rule" as defined by section 1(b), of Executive Order 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment because it will not have a significant economic impact on a substantial number of small entities.

Of the approximately 42,000 entries filed under final dumping and countervailing duty orders, most importers or their representatives voluntarily provide an identifying number. Customs estimates that 8,000 to 11,000 entries will be subject to the rule's requirements. In order to provide the identifying number on the entry documents for these 8,000 to 11,000 entries, a slightly greater clerical input will be required. Customs estimates that the total dollar impact for all affected entries will require increased clerical input costing $3,000 or less. Further, Customs expects the dollar burden to decrease as more small entities acquire small business computers to automate their operations.

In light of present data available, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Imports.

Amendment to the Regulations

Part 141, Customs Regulations (19 CFR Part 141), is amended as set forth below.

George C. Corcoran, Jr.,
Acting Commissioner of Customs.

Approved: August 17, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 141—ENTRY OF MERCHANDISE

Section 141.61 is amended by adding a new paragraph (c) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

* * * * *

(c) *Identification number for merchandise subject to an antidumping or countervailing duty order.* The entry summary filed for merchandise subject to an antidumping or countervailing duty order shall include the unique identifying number assigned by the Department of Commerce, International Trade Administration. Any entry summary filed for merchandise subject to an antidumping or countervailing duty order not containing the identifying number shall be rejected.

* * * * *

(R.S. 251, as amended (19 U.S.C. 66), sections 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624))

[FR Doc. 84-23841 Filed 9-7-84; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

Correction

In FR Doc. 84-20857 appearing on page 31280 in the issue of Monday, August 6, 1984, make the following correction:

§ 558.625 [Corrected]

On page 31280, column two, in § 558.625(b)(83), on the second line, "(F)" should read "(f)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 5h and 18

[T.D. 7976]

Certain Elections Under the Deficit Reduction Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the time and manner of making certain elections under the Deficit Reduction Act of 1984. These regulations provide guidance to persons making these elections.

DATES: These regulations are effective September 10, 1984. Except as provided otherwise, the regulations apply to elections made after July 18, 1984.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Attention: CC:LR:T (LR-132-84), (202) 566-3297, not a toll free call.

Cynthia E. Grigsby of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Attention:

CC:LR:T (LR-132-84), (202) 566-3935, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to certain elections under various sections of the Internal Revenue Code of 1954 and the Deficit Reduction Act of 1984 (the Act) (98 Stat. 494). These regulations are included in Part 5h, Temporary Elections Under Various Public Laws, and Part 18, Temporary Elections Under the Subchapter S Revision Act of 1982. The temporary regulations provided by this document will remain in effect until superseded by later temporary or final regulations relating to these elections.

Explanation of Provisions

Section 5h.4(a) provides a list of election provisions with similar time and manner requirements. The general rules and exceptions thereto for those provisions regarding the time for making the elections are provided in § 5h.4(a)(2). The general rules and exceptions thereto regarding the manner for making the elections set forth in § 5h.4(a)(1) are provided in § 5h.4(a)(3). Rules with respect to the time and manner for elections in the Deficit Reduction Act not listed in § 5h.4(a)(1) are contained in § 5h.4 (b) through (l), and § 18.1362-1, § 18.1362-4, § 18.1362-5, and § 18.1271-1. Election provisions provided by the Act, but not contained in this regulation, are contained in other regulation projects.

Section 5h.4(m) provides general rules regarding the election to be an S corporation by certain calendar year commodities dealers and options dealers that were small business corporations on January 1, 1984. Guidance on how to make the election by other commodities dealers and options dealers will be forthcoming.

Section 5h.4(r) provides the rule that no election may be made for a taxable year, the period for claiming a credit or refund with respect to which has expired. An exception is provided for the election under section 1078 of the Act, with respect to certain payments received from the U.S. Forest Service.

Section 5h.4(s) provides that additional information may be required from taxpayers after an election has been filed.

Special Analysis

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal authors of these regulations are Gail H. Morse and Cynthia E. Grigsby of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 5h

Income taxes, Elections under various Public Laws, Deficit Reduction Act of 1984.

26 CFR Part 18

Income taxes, Subchapter S Revision Act of 1982.

Adoption of Amendments to the Regulations

Accordingly, the following temporary regulations are adopted under Parts 5h and 18:

Paragraph 1. A new Part 5h is added to read as follows:

PART 5h—TEMPORARY REGULATIONS—ELECTIONS UNDER VARIOUS PUBLIC LAWS

§ 5h.4 Time and manner of making certain elections under the Deficit Reduction Act of 1984

(a) *Miscellaneous elections*—(1) *Elections to which this paragraph applies.* This paragraph applies to the following elections provided under the Deficit Reduction Act of 1984 (the Act):

Section of act	Section of code	Description of election	Availability of election
31(a) and 31(g)(16)	168(j)(4)(E)(ii)	Election by certain 501(c)(12) organizations to be treated as taxable organizations and to have certain arbitrage profits taxed.	Generally for property placed in service after May 23, 1983, or leased after such date.
31(f)	46(e)(4)(C)	Election by section 593 organizations not to apply section 46(e)(4)(A).	Generally for property placed in service after Nov. 5, 1983, or leased after such date.
41(a)	1282(b)(2)	Election to have section 1281 apply to all short-term obligations acquired on or after the 1 day of the first taxable year to which the election relates (but not to obligations acquired before July 19, 1984).	Taxable years ending after July 18, 1984, with respect to obligations acquired after such date.
41(a)	1283(c)(2)	Election to have section 1283(c)(1) not apply to all obligations acquired on or after the first day of the first taxable year to which the election relates (but not to obligations acquired before July 19, 1984)	Do.
113	46(r)	Election by all persons having an ownership interest in a sound recording to treat such recording as 3-yr. recovery property.	Property placed in service after Mar. 15, 1984.
211	806(d)(4)	Election with respect to loss from operations of member of group.	Taxable years beginning after Dec. 31, 1983.
211	807(d)(4)(C)	Election to use preceding year's interest rate for nonannuity reserves.	Taxable years beginning after Dec. 31, 1983.
211	810(b)(3)	Election to forgo carryback period by life insurance companies.	Losses from operations for taxable years beginning after Dec 31, 1983
216(c)(1)		Election not to have reserves recomputed	First taxable year beginning after Dec. 31, 1983
216(c)(2)		Election to use adjusted statutory reserves for certain contracts	Generally for contracts issued after 1983 and before 1989 by certain companies that make an election under sec. 216(c)(1) of the act
217(i)		Election to treat individual noncancellable accident and health contracts as cancellable.	First taxable year beginning after Dec. 31, 1983
217(l)(2)(b)		Treatment of losses from certain guaranteed interest contracts	Taxable years beginning after Dec. 31, 1983, and before Jan. 1, 1988

Section of act	Section of code	Description of election	Availability of election
431(e)(2)	46(c) (8) and (9), 48(d)(6), 47(d) (1) and (2).	Election to apply the investment tax credit at risk rules as modified by the Tax Reform Act of 1984 to all transactions covered by sec. 211(f) of the Economic Recovery Tax Act of 1981.	Generally to property placed in service between Feb. 18, 1981, and July 19, 1984.
712(l)(7)(B)	304	Election to apply certain technical corrections of sec. 304 to all transfers covered by the changes made to sec. 304 by the Tax Equity and Fiscal Responsibility Act of 1982.	Stock acquired after Aug. 31, 1982, and before June 19, 1984.
712(l)(7)(C)(ii)	304	Election with respect to bank holding companies to apply certain technical corrections of sec. 304 to stock acquired after June 18, 1984.	Generally to transfers to bank holding companies formed pursuant to application filed with Federal Reserve Board before June 18, 1984.
1066	163(d)	Elections to treat certain income from S corporations, for purposes of sec. 163(d), as such income would have been treated prior to the Subchapter S Revision Act of 1982.	With respect to S corporation taxable years beginning in 1983 or 1984.
1078		Election to exclude from gross income payments from U.S. Forest Service as result of restricting motorized traffic in the boundary waters canoe area.	Payments in taxable years beginning after Dec. 31, 1979.

(2) *Time for making elections*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2), the elections specified in paragraph (a)(1) of this section shall be made by the later of—

(A) The due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective, or

(B) April 15, 1985 (in which case the election generally must be made by amended return).

(ii) *No extension of time for payment.* Payments of tax due shall be made in accordance with chapter 62 of the Code.

(iii) *Time for making certain life insurance company elections*—(A) *Election to use preceding year's interest rate for non-annuity reserves.* The election under section 807(d)(4)(C) to use the preceding year's interest rate for non-annuity reserves applies on a contract-by-contract basis. For contracts issued before the first day of the first taxable year beginning after December 31, 1983, the election shall be made by the due date (including extensions) of the income tax return for the first taxable year beginning after December 31, 1983. For contracts issued on or after the first day of the first taxable year beginning after December 31, 1983, the election shall be made by the due date (including extensions) of the income tax return for the taxable year in which the contract is issued.

(B) *Election not to have reserves recomputed.* The election under section 216(c)(1) of the Act not to have reserves recomputed shall be made by the due date (including extensions) of the income tax return for the taxable year beginning after December 31, 1983.

(C) *Election to use adjusted statutory reserves for certain contracts.* The election under section 216(c)(2) of the Act to use adjusted statutory reserves for certain contracts may be made only by life insurance companies that make an election under section 216(c)(1) of the Act and that meet the other requirements of section 216(c)(2). The election, if made, applies to all contracts issued on or after the first day of the first taxable year beginning after December 31, 1983, and before January 1, 1989. The election shall be made by the due date (including extensions) of the income tax return for the taxable year beginning after December 31, 1983.

(D) *Election to treat individual non-cancellable accident and health contracts as cancellable.* The election under section 217(i) of the Act to treat individual non-cancellable accident and health contracts as cancellable shall be made by the due date (including extensions) of the income tax return for the taxable year beginning after December 31, 1983.

(E) *Treatment of losses from certain guaranteed interest contracts.* The election under section 217(l)(2)(B) of the Act with respect to the treatment of losses from certain guaranteed interest contracts shall be made by the due date (including extensions) of the income tax return for the taxable year beginning after December 31, 1983.

(iv) *Time for making the election to exclude from gross income payments received from the U.S. Forest Service as a result of the restriction of motorized traffic in the Boundary Waters Canoe Area.* Elections under section 1078 of the Act shall be made by the later of the expiration of the period for making a claim for credit or refund of the tax imposed by chapter 1 of the Code for the taxable year in which the reinvestment of the payment occurred, or July 18, 1985. Amended returns for years after the year for which the election is made must be filed if making this election affects the tax liability for such years.

(3) *Manner of making elections*—(i) *In general.* The elections specified in paragraph (a)(1) of this section shall be made by attaching a statement to the tax return for the taxable year in which the election is made. If because of paragraph (a)(2)(i)(B) the election may be filed after the due date of the tax return for the first taxable year for which the election is to be effective, such election must be attached to a tax return or amended return for the taxable year to which the election relates. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall—

(A) Contain the name, address, and taxpayer identification number of the electing taxpayer,

(B) Identify the election,

(C) Indicate the section of the Code (or, if the provision is not codified, the section of the Act) under which the election is made,

(D) Specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and

(E) Provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

(ii) *Special rules for making the election with respect to sound recordings.* The election under section 48(r), as amended by section 113 of the Act, shall be made separately for each sound recording and must be made by all persons having an ownership interest in the sound recording. In the case of an ownership interest held by a partnership or an S corporation, the partnership or S corporation shall make the election. Each person making the election shall do so in accordance with paragraph (a)(2) and (3) of this section, and shall identify in the statement described in paragraph (a)(3) of this section the persons with ownership interests in the sound recording, and shall state that each such person is making the election with respect to that sound recording.

(iii) *Special rules for making the election with respect to redemption through use of related corporations.* For either election available under section 712(l)(7) of the Act (relating to redemptions through related corporations) to be effective, such election must be made jointly by both the issuing and acquiring corporations.

The election is made jointly when both the issuing and acquiring corporations make the election in accordance with paragraph (a) (2) and (3) of this section.

(iv) *Special rules for making the election for investment tax credit at risk rules.* The election under section 431(e)(2) of the Act is made by filing an amended return for the first taxable year ending after February 18, 1981, during which taxable year property, to which the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981 apply, was placed in service. If that taxable year is a closed year, the election is made by filing an amended return for the first succeeding open taxable year, but in such event this election can be made only if the aggregate amount of the investment tax credit that would have been allowable in the closed years had the election been effective for those years is greater than or equal to the amount of the investment tax credits actually claimed in the closed years. In the case of partnerships and S corporations, the election under section 431(e) is made, respectively, at the partner or the shareholder level. Any election made under section 431(e) shall apply to all property of the taxpayer to which the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981 apply. Amended returns must be filed for any year the tax liability for which is affected by making this election.

(v) *Special rules for certain elections by life insurance companies*—(A) *Election with respect to loss from operations of member of group.* Any life insurance company that makes an election under section 806(d)(4) must include on the statement described in paragraph (a)(3) of this section the name, address and taxpayer identification number of the members of the controlled group that did not file a consolidated return with the life insurance company for the taxable year to which the election applies, the amount of loss subject to the limitation provided by section 806(d)(4)(B), and a computation showing how such amount was derived.

(B) *Election to use preceding year's interest rate for non-annuity reserves.* If the election under section 807(d)(4)(C) is not made for all non-annuity contracts issued by the life insurance company before the end of the taxable year in which the election is made, the company must reasonably identify, in the statement described in paragraph (a)(3) of this section, the contracts or groups of contracts for which the election is made. The statement, however, need not specify each individual contract for which the election is made.

(4) *Revocation.* The elections under Act sections 31(a), 31(g)(16), 31(f), 41(a) (Code section 1283(b)(2)), 113, 211 (Code section 810(b)(3)), 216(c) (1) and (2), 217(l), 431(e)(2), and 712(l)(7) (B) and (C)(ii) are irrevocable. Elections under Act sections 41(a) (Code sections 1282(b)(2) and 1283(c)(2)), 211 (Code sections 806(d)(4), and 807(d)(4)(C)), 217(i), 1066, and 1078 are revocable only with the consent of the Commissioner. A revocation under Act section 211 (Code section 807(d)(4)(C)) shall be treated as a change in basis of computing reserves that is subject to the adjustment provided in section 807(f) of the Code.

(b) *Election of an alternate valuation of an estate.* This paragraph applies to the election of alternate valuation of the estate of a decedent under section 2032(d) of the Code, as amended by section 1024 of the Act.

(1) *Time and manner of making election.* For decedents dying after July 18, 1984, the election specified in this paragraph (b) shall be made on the estate tax return required to be filed under section 6018(a). However, no election shall be allowed unless made on a return filed within one year of the due date (including extensions) of such return. Once a return that fails to make the election is filed, this election may not be made on a subsequent return unless the subsequent return is filed by the due date (including extensions) of the original return.

(2) *Transition rule for decedents dying before July 19, 1984*—(i) *In general.* In the case of a decedent dying before July 19, 1984, the provisions of paragraph (b)(1) of this section shall apply if:

(A) The period of limitations for claiming a refund of the tax imposed by chapter 11 of the Code remained open on July 18, 1984,

(B) The estate of the decedent would have been eligible to elect alternate valuation under section 2032 had the decedent died after July 18, 1984, and

(C) The executor files a claim for refund before October 17, 1984

(ii) *Special rule where tax has not been paid.* For cases in which the estate tax attributable to the failure to make a section 2032 election on a timely filed return has not been paid, the executor may meet the requirements of paragraph (b)(2)(i)(C) of this section—

(A) For cases pending in the Tax Court, by requesting the benefits of this transition rule either in a motion or other appropriate document filed with the Tax Court or by incorporation of such benefits into a decision document before October 17, 1984.

(B) For other cases where the executor filed a return (other than a timely filed return) making a section 2032 election, by notifying the district director of the office where such return was filed before October 17, 1984; and

(C) Where the executor has not filed an estate tax return making the section 2032 election, by filing such an estate tax return and making the election thereon before October 17, 1984.

(iii) *Election treated as if made on a timely filed return.* In any case in which this transition rule applies, the estate shall be treated as if it had made a section 2032 election on a timely filed estate tax return.

(c) *Church or qualified church-controlled organization's election of exemption from social security taxes under chapter 21*—(1) *In general.* This paragraph applies to the election under section 3121(w) of the Code, as added by section 2603(b) of the Act, by a church or qualified church-controlled organization (as defined in section 3121(w)(3)) that service performed in the employ of such church or organization shall be excluded from employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code. Any election made under section 3121(w) shall apply to all services performed on or after January 1, 1984, by employees of such church or organization (whether or not they were employees on that date or on the date the election is made). Employees of the electing church or organization are subject to the provisions of chapter 2 of the Code (relating to the tax on self-employment income) as amended by section 2603 (c)(2) and (d)(2) of the Act for service performed for such church or organization on or after January 1, 1984.

(2) *Time for making the election.* Any election under section 3121(w) by a church or qualified church-controlled organization for which a quarterly employment tax return for the tax imposed under section 3111 is due (or would be due but for the election) on October 31, 1984, must be made on or before October 30, 1984. Any election under section 3121(w) by a church or organization for which the first quarterly employment tax return for the tax imposed under section 3111 is due (or would be due but for this election) after October 31, 1984, must be made on or before the day before the first date that such tax return would be due from the church or organization (disregarding any extension of such due date). A purported election filed after the date prescribed in this paragraph (c)(2) shall be void.

(3) *Manner of making the election.* To make an election under section 3121(w),

a church or qualified church-controlled organization must certify that it is opposed for religious reasons to the payment of the tax imposed by section 3111 (relating to the employer tax) of the Code. The election and certification are made by executing and filing Form 8274 in accordance with the form and its instructions. The form shall be signed by an official authorized to sign tax returns for the church or organization. Where tax imposed by section 3111 is reported (or would be reported but for this election) with respect to more than one church or organization on a single quarterly employment tax return, and the election under section 3121(w) is made, then all of the churches and organizations covered by the last such return filed before such election was made for which the time for making the election has not expired shall be covered by the election unless specifically excluded by stating such exclusion in the election.

(4) *Refunds of FICA taxes paid.* Where a church or qualified church-controlled organization makes a timely election under section 3121(w), a refund, without interest, shall be made to such church or organization of any taxes paid under sections 3101 and 3111 with respect to service performed after December 31, 1983, covered by the election. However, the refund will be made only if the church or organization agrees on its claim for the refund to pay to each employee covered by the election the portion of the refund attributable to the tax imposed on the wages of the employee by section 3101. The employee may not receive any other refund of such taxes. The claim for refund shall be made by the church or organization by filing Form 843 with the service center where the Form 941 on which the taxes subject to refund was filed. Form 843 shall be executed in accordance with the form and its instructions, and also in accordance with the instructions to Form 8274 that relate to Form 843.

(5) *Irrevocability of election except by Commissioner.* An election under section 3121 shall be irrevocable by the electing church or organization. The Commissioner, however, shall permanently revoke the election if the church or organization fails to furnish the information required under section 6051 to the Internal Revenue Service for a period of 2 years or more and also fails to furnish such information within 60 days after a written request therefor is made by the Internal Revenue Service.

(d) *Election to issue taxable student loan bonds.* This paragraph applies to the election by an issuer to issue taxable student loan bonds under section 625(c) of the Act. The election is available for obligations issued after December 31, 1983, and is made by filing a statement and necessary attachments with the Internal Revenue Service Center, Philadelphia, PA 19255, prior to the issuance of such taxable bonds. The statement shall identify the election as made under section 625(c) of the Tax Reform Act of 1984 and shall contain the name, address and taxpayer identification number of the issuer, and the total purchase price, face amount and interest rate of the issue, bond issuance costs, amounts allocated to reasonably required reserve or replacement funds, and the date of issue. The issuer shall attach to the statement of election a copy of previous Internal Revenue Service correspondence relating to the tax exempt status of the issuing authority and a statement containing the total purchase price, face amount, interest rate, bond issuance costs, amounts allocated to reasonably required reserve or replacement funds, and the date of issuance of outstanding tax exempt issues of student loan bonds of the issuer. With respect to outstanding tax exempt issues of student loan bonds of the issuer issued after December 31, 1982, the issuer may alternatively attach copies of the Form 8038 filed with respect to such issues. Each taxable student loan bond must state on its face that the interest paid on such bond is subject to federal income taxation. An election with respect to an issue is irrevocable once made.

(e) *Election not to claim the targeted jobs credit.* The election under section 51(j) (as added by section 474(p) of the Act) not to claim the targeted jobs credit is available for taxable years beginning after December 31, 1983, and shall be made for the taxable year in which such credit is determined by not claiming such credit on an original return or amended return at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for the taxable year (determined without regard to extensions). The election may be revoked within the 3-year period by filing an amended return and claiming the credit on the return.

(f) *Election not to claim the credit for alcohol used as fuel.* The election under section 40(f) (as added by section 474(k) of the Act) not to claim the alcohol fuels credit is available for taxable years beginning after December 31, 1983, and shall be made for the taxable year in which such credit is determined by not claiming such credit on an original return or amended return at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for the taxable year (determined without regard for extensions). The election may be revoked within the 3-year period by filing an amended return and claiming the credit on the return.

(g) *Protective election to adopt LIFO method*—(1) *Time for making the election.* A protective election in connection with the enactment of section 95 of the Act to adopt the LIFO method of accounting for inventory under section 472 of the Code can only be made for the taxpayer's first taxable year beginning after July 18, 1984, and must be made on or before the due date (including extensions) of the tax return for such taxable year. Once made, the election is irrevocable unless the Commissioner authorizes the use of another inventory method (see § 1.472–5).

(2) *Manner for making a protective election.* The protective election is made by completing all line items on a current Form 970 and indicating that the election is a protective election filed in connection with the enactment of section 95 of the Tax Reform Act of 1984. The Form 970 must be attached to the taxpayer's income tax return for the taxable year for which the protective election is made. The LIFO method adopted under the protective election must be consistent in all respects with the taxpayer's LIFO method used in the taxpayer's most recently completed taxable year for which the LIFO method was used. In completing the current Form 970, the taxpayer shall specify the method of inventory valuation that the taxpayer would have used, the opening LIFO inventory for the taxable year for which the protective election is made, and the section 481 adjustment that would be required, as if the taxpayer were not on the LIFO method for the taxable year immediately preceding the taxable year for which the protective election is made.

(h) *Election by an estate or trust to recognize gain or loss on the distribution of property (other than cash) to a beneficiary.* This paragraph applies to the election made by a trust or estate to recognize gain or loss on the distribution of property (other than cash) to a beneficiary under section 643(d) of the Code as amended by section 81 of the Act. The election is available for distributions made after June 1, 1984, in taxable years ending after such date. The election must be made by the fiduciary who is required to make the return of the estate or trust under section 641 and § 1.641(b)–2. The election shall be made by such fiduciary on the tax return of the estate or trust for the taxable year with respect to which the distribution of property was made and must be filed by the due date (including extensions) of such return. Until the Form 1041, U.S. Fiduciary Income Tax Return is revised, the election should be made by including the gain or loss on the Schedule D (or other appropriate schedule, if applicable) of the Form 1041 and attaching the statement described in paragraph (a)(3) of this section to the tax return on which the election is made and including on that statement the name and taxpayer identification number of the distributee. For distributions made after June 1, 1984, and before July 18, 1984, the election must be filed by the later of the due date (including extentions) of the tax return of the estate or trust for the taxable year with respect to which the distribution was made or January 1, 1985. For those distributions, the fiduciary may make the election in the manner described above on a tax return, or amended return, for the year with respect to which the distribution was made. An election under section 643(d) may be revoked only with the consent of the Commissioner. The request for revocation of an election should be made by the fiduciary in the form of a ruling request and must contain the information required by regulations and revenue procedures pertaining thereto.

(i) *Election to treat a stapled foreign entity as a subsidiary.* This paragraph applies to the election, provided under section 136(c)(6) of the Act, to treat a foreign corporation which was a stapled entity with a domestic corporation as of June 30, 1983, as being owned (to the extent of its stapled interests) by the domestic corporation with which it is stapled. This treatment, if so elected, is in lieu of the treatment prescribed in section 269B(a)(1) of the Code, as added by the Act. This election may be made by the domestic corporation with which the foreign entity is stapled. The election may not be made by the foreign entity or by shareholders of the domestic corporation. This election must be made no later than January 14, 1985, and may be revoked only with the consent of the Commissioner. This election shall be effective after December 31, 1986. The domestic corporation shall make this election by filing with the service center with which the domestic corporation files its income tax return a statement that—

(1) Contains the name, address, and taxpayer identification number of the domestic corporation,

(2) Identifies the election as made under section 136(c)(6) of the Tax Reform Act of 1984, and,

(3) Identifies the foreign entity and the interests in the foreign entity which constitute stapled interests with respect to the stock of the domestic corporation, and specifies the date on which those interests became stapled interests.

If this election is not made, the foreign corporation (interests in which were stapled interests as of June 30, 1983) will be treated as a domestic corporation, effective January 1, 1987, under section 269B(a)(1) of the Code.

(j) *Election to treat certain section 1248 amounts as included in gross income under section 951(a)(1)(A).* This paragraph applies to the elections, provided under section 133(d)(3) of the Act, to treat amounts included in the gross income of any person as a dividend by reason of section 1248 (a) or (f) after October 9, 1975, and before July 19, 1985, as an amount included in the gross income of such person under section 951(a)(1)(A). The election with respect to transactions to which section 1248(a) applies may be made by the foreign corporation described in section 1248(a) (or its successor in interest). The election with respect to transactions to which secton 1248(f) applies may be made by the domestic corporation described in section 1248(f)(1) (or its successor in interest). Neither election may be made by an affected shareholder of any such corporation (unless the shareholder is the successor in interest). This election must be made no later than January 14, 1985, and shall apply with respect to all transactions to which section 1248 (a) or (f) applies that occurred after October 9, 1975, and before July 19, 1984. Once made, the election may be revoked only with the consent of the Commissioner. A foreign corporation shall make this election by filing the statement described in this paragraph with the Internal Revenue Service Center, Philadelphia, PA 19255. A domestic corporation shall make this election by filing the statement described in this paragraph with the service center with which the domestic corporation files its income tax return. In either case, the statement shall—

(1) Contain the name, address, and taxpayer identification number (if any) of the corporation making the election,

(2) Identify the election as made under section 133(d)(3) of the Tax Reform Act of 1984, and

(3) Identify all of the transactions (including the date of each transaction), shareholders involved in those transactions, and amounts to which the election applies.

(k) *Special election for computing investment company taxable income.* This paragraph applies to the election by a regulated investment company provided under section 1071(b) of the Act, which added section 852(b)(2)(F) to the Code. Under section 852(b)(2)(F), the taxable income of a regulated investment company shall be computed without regard to section 454(b) (relating to short-term obligations issued on a discount basis) if the company so elects. The election may be made only for taxable years beginning after December 31, 1978. A regulated investment company shall make the election by computing taxable income without regard to section 454(b) on its return for the first taxable year for which it desires the election to apply and shall attach the statement described in paragraph (a)(3) of this section to the return on which the election is made. A regulated investment company shall make the election by the time set forth in paragraph (a)(2) of this section. Once made, the election applies to the first taxable year for which it is made and to all subsequent taxable years and cannot be revoked without the consent of the Commissioner.

(l) *Election of extension of time for payment of estate tax for interests in certain holding companies.* An election under section 6166(b)(8), as added by section 1021(a) of the Act, or under section 1021(d)(2) of the Act, shall be made by including on the notice of election under section 6166 required by § 20.6166–1(b) a statement that an election is being made under section 6166(b)(8) or section 1021(d)(2) of the Act (whichever is applicable) and the facts which formed the basis for the executor's conclusion that the estate qualified for such election. If a taxpayer makes an election described in this paragraph (l), then the special 4-percent interest rate of section 6601(j) and the 5-year deferral of principal payments of section 6166(a)(3) are not available. Thus, the first installment of tax is due on the date prescribed by section 6151(a) and subsequent installments bear interest at the rate determined under section 6621. If the executor makes an election described in this paragraph (l) and the notice of election under section 6166 fails to state the amount of tax to be paid in installments or the number of installments, then the election is presumed to be for the maximum amount so payable and for payment thereof in 10 equal annual installments, beginning on the date prescribed in section 6151(a). The elections described under this paragraph (l) are available for estates of decedents dying after July 18, 1984.

(m) *Subchapter S election by commodities dealers and options dealers.* This paragraph applies to a commodities dealer or options dealer referred to in section 102(d)(3) of the Act (relating to the election by such a dealer to be an S corporation) whose taxable year is the calendar year and that was a small business corporation (as defined in section 1361(b) of the Code) as of January 1, 1984. The election by such a dealer under section 102(d)(3) of the Act shall be made in the manner prescribed by section 1362 and the regulations thereunder, except that the election under section 102(d)(3) must be made before October 2, 1984. In addition to making the election in the manner prescribed under such section 1362 and the regulations thereunder, the commodities dealer or options dealer must indicate on Form 2553 that the election is made under section 102(d)(3) of the Act. Although section 102(d)(3) of the Act applies to dealers not covered by this paragraph, and such dealers may make an election under such section 102(d)(3), guidelines for making such an election are not provided in this paragraph and are forthcoming.

(n) *Election with respect to treatment of S termination year.* For the election provided under section 1362(e)(3), as amended by section 721(h) of the Act, see § 18.1362-4 of this chapter.

(o) *Election to be an S corporation; certain short taxable years.* For the election provided under section 1362(b), as amended by section 721(l) of the Act, see § 18.1362-1(b) of this chapter.

(p) *Election with respect to subchapter S passive investment income rules.* For the election provided under 721(i) of the Act which amends section 6(b) of the Subchapter S Revision Act of 1982, see § 18.1362-5 of this chapter.

(q) *Election with respect to subchapter S distributions during certain post-termination transition periods.* For the election provided under section 1371(e), as amended by section 721(o) of the Act, see § 18.1371-1 of this chapter.

(r) *No elections for closed year.* Any election under this section which is allowed to be made by filing an amended return may only be made if the period for making a claim for refund or credit with respect to the taxable year for which such election is to be effective has not expired. This paragraph shall not apply to the election under paragraph (a)(2)(iv) of this section with respect to the election under section 1078 of the Act.

(s) *Additional information required.* Later regulations or revenue procedures issued under provisions of the Code or Act covered by this section may require the furnishing of information in addition to that which was furnished with the statement of election described herein. In such event the later regulations or revenue procedures will provide guidance with respect to the furnishing of such additional information.

(26 U.S.C. 7805)

PART 18—[AMENDED]

Par. 2. Section 18.0 is revised to read as follows:

§ 18.0 Effective date of temporary regulations under the Subchapter S Revision Act of 1982.

The temporary regulations provided under §§ 18.1361-1, 18.1362-1 through 18.1362-4, 18.1377-1, 18.1379-1, and 18.1379-2 are, except as provided below for § 18.1362-1(b), effective with respect to taxable years beginning after 1982, and the temporary regulations provided under § 18.1362-1(b) (with respect to taxable years of 2½ months or less) and § 18.1378-1 are effective with respect to elections made after October 19, 1982.

Par. 3. Paragraph (b) of § 18.1362-1 is revised to read as follows:

§ 18.1362-1 Election to be an S corporation.

* * * * *

(b) *Time of making the election.* The election must be filed either at any time during the taxable year that immediately precedes the first taxable year for which the election is to be effective, or at any time during that portion of the first taxable year for which the election is to be effective which occurs before the 16th day of the third month of that year. For taxable years of 2½ months or less, an election for such taxable year made before the 16th day of the third month after the first day of the taxable year shall be treated as made during such year. For example, if a corporation begins its first taxable year on January 5, 1983, an election will be effective beginning with the corporation's first taxable year only if the election is made within the period beginning after January 4, 1983, and ending before March 20, 1983. If a corporation makes an election for a taxable year that meets all the requirements provided in this section except that—

(1) The election is made at any time during the period beginning after the 15th day of the third month of that year and ending before the 16th day of the third month of the following year, or

(2) Any person who held stock at any time during that portion of that year which occurs before the time the election is made, and who does not hold stock at the time the election is made, does not consent to the election,

The election is treated as being made for that following taxable year. In addition, if a corporation makes an election for a taxable year that meets all the requirements provided in this section, but if the corporation does not meet all the requirements provided in section 1361(b) at any time during that portion of that year which occurs before the time the election is made, the election is treated as being made for the next taxable year provided that the corporation meets all the requirements provided in section 1361(b) at the time the election is made.

§ 18.1362-4 [Amended]

Par. 4. Section 18.1362-4 is amended as follows:

1. By removing the second sentence thereof and adding the following sentence in its place: "The election can be made only with the consent of all persons who are or were shareholders in the corporation at any time during the S short year and all persons who are or were shareholders in the corporation on the first day of the C short year."

2. By removing the last sentence thereof and adding the following sentence in its place: "In addition, there shall be attached to the statement of election a statement of consent, signed by each person who is or was a shareholder in the corporation during the S short year and each person who is or was a shareholder of the corporation on the first day of the C short year."

Par. 5. A new § 18.1362-5 is added immediately after § 18.1362-4 to read as follows:

§ 18.1362-5 Election not to have new passive income rules apply during 1982.

(a) *In general.* For taxable years beginning during 1982, an electing small business corporation may make an election not to have the passive investment income rules of sections 1362(d)(3), 1366(f)(3), and 1375 apply to the corporation. When such an election is made, the passive investment income rules of section 1372(e)(5) (as in effect before the enactment of the Subchapter S Revision Act of 1982) will be applicable for the taxable year which begins in 1982.

(b) *Time and manner of making the election.* The election must be filed no later than March 11, 1985. The corporation makes the election by attaching a statement to an amended return for the taxable year which began during 1982 stating that the corporation is electing to have the passive investment income rules of section 1372(e)(5) (as in effect before the enactment of the Subchapter S Revision Act of 1982) apply for its taxable year which began during 1982 as provided in section 6(b)(3) of the Subchapter S Revision Act of 1982 as amended by the Tax Reform Act of 1984.

Par. 6. A new § 18.1371-1 is added immediately before § 18.1377-1 to read as follows:

§ 18.1371-1 Election to treat distributions as dividends during certain post-termination transition periods.

A corporation may make an election under section 1371(e) (as amended by section 721(o) of the Act) to treat all distributions of money made during the post-termination transition period described in section 1377(b)(1)(A) as coming out of the corporation's earnings and profits (after earnings and profits have been eliminated, the distributions are applied against and reduce the adjusted basis of the stock). The election may be made only with the consent of each shareholder to whom the corporation makes a distribution (whether or not it is a cash distribution) during such post-termination transition period. Any such election shall be made by the corporation by attaching to its income tax return for the C year in which such post-termination transition period ends a statement which clearly indicates that the corporation elects to have section 1371(e)(1) not apply to all distributions made during such post-termination transition period. The election shall not be effective unless such statement is signed by a person authorized to sign the return required to be filed under section 6012 and by each shareholder required to consent to the election.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

The Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Approved by the Office of Management and Budget under control number 1545-0872.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 31, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Teasury.

[FR Doc. 84-23870 Filed 9-5-84; 5:08 pm]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy: (1) Has determined that USS VANDERGRIFT (FFG 48), USS TAYLOR (FFG 50), and USS GARY (FFG 51) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval frigates and (2) has found that USS VANDERGRIFT (FFG 48), USS TAYLOR (FFG 50), and USS GARY (FFG 51) are members of the FFG 7 class of ships, certain exemptions for which have been previously granted under 72 COLREGS, Rule 38. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS VANDERGRIFT (FFG 48), USS TAYLOR (FFG 50), and USS GARY (FFG 51) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a) regarding the arcs of visibility of their forward masthead lights; Annex I, section 2(a)(i), regarding the height above the hull of their forward masthead lights; and Annex I, section 3(b), regarding the horizontal relationship of their sidelights to their forward masthead lights, without interfering with their special functions as Navy frigates. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS VANDERGRIFT (FFG 48), USS TAYLOR (FFG 50), and USS GARY (FFG 51) are members of the FFG 7 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to these three ships.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' abilities to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following vessels for which navigational light certifications are being herewith issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I
USS VANDERGRIFT	FFG 48	1.6
USS TAYLOR	FFG 50	1.6
USS GARY	FFG 51	1.6

2. Table Four of § 706.2 is amended by adding to the existing paragraph 8 the following vessels for which navigational light certifications are being issued herewith by the Secretary of the Navy:

On the following ships the arc of visibility of the forward masthead light required by Rule 23(a)(i) may be obstructed through 1.6° arc of visibility at the points 021° and 339° relative to the ship's head.

Vessel	Number
USS VANDERGRIFT	FFG 48
USS TAYLOR	FFG 50
USS GARY	FFG 51

3. Table Four of § 706.2 is amended by adding to the existing paragraph 9 the following vessels for which navigational light certifications are herewith issued by the Secretary of the Navy:

Sidelights on the following ships do not comply with Annex I, Section 3(b):

Vessel	Number	Distance of sidelights forward of masthead lights in meters
USS VANDERGRIFT	FFG 48	2.75
USS TAYLOR	FFG 50	2.75
USS GARY	FFG 51	2.75

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: August 9, 1984.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 84-23821 Filed 9-7-84; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy: (1) Has determined that USS HONOLULU (SSN 718) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine and (2) has found that USS HONOLULU (SSN 718) is a member of the SSN 688 class of ships, certain exemptions for which have been previously granted under 72 COLREGS, Rule 38. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR 706. This amendment provides notice that the Secretary of the Navy has certified that USS HONOLULU (SSN 718) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), requiring that the sternlight show an unbroken light over an arc of the horizon of 135 degrees and be so fixed as to show the light 67.5 degrees from right aft on each side of the vessel; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS HONOLULU (SSN 718) is a member of the SSN 688 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3 are equally applicable to USS HONOLULU (SSN 718).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table One of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by insertion of the following entry:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), annex I
USS HONOLULU	SSN 718	3.5

2. Table Three of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by inserting the following entry:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side lights, distance inboard of ship's sides in meters; section 3(b), annex I	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; section 2(k), annex I	Anchor lights, relationship of aft light to forward light in meters; section 2(k), annex I
USS HONOLULU	SSN 718			209°	4.2	6.1	3.4	1.7 below.

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: August 9, 1984.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 84-23624 Filed 9-7-84; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy: (1) Has determined that USS HYMAN G. RICKOVER (SSN 709) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine and (2) has found that USS HYMAN G. RICKOVER (SSN 709) is a member of the SSN 688 class of ships, certain exemptions for which have been previously granted under 72 COLREGS, Rule 38. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS HYMAN G. RICKOVER (SSN 709) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), requiring that the sternlight show an unbroken light over an arc of the horizon of 135 degrees and be so fixed as to show the light 67.5 degrees from right aft on each side of the vessel; Annex I, Section 2(a)(i), pertaining to the height of the masthead light; Annex I, Section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, Section 3(b), pertaining to the locations of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS HYMAN G. RICKOVER (SSN 709) is a member of the SSN 688 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3 are equally applicable to USS HYMAN G. RICKOVER (SSN 709).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table One of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by insertion of the following entry:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), annex I
USS HYMAN G. RICKOVER	SSN 709	3.5

2. Table Three of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by inserting the following entry:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Sidelights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Sidelights, distance inboard of ship's sides in meters, section 3(b), annex I	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; section 2(k), annex I	Anchor lights, relationship of aft light to forward light in meters; section 2(k), annex I
USS HYMAN G. RICKOVER	SSN 709			209°	4.2	6.1	3.4	1.7 below.

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: August 9, 1984.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 84–23825 Filed 9–7–84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 84–52]

Regatta; Head of the Connecticut Regatta, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Head of the Connecticut Regatta being sponsored by the City of Middletown, Connecticut. This event will be held on October 7, 1984 between the hours of 9:30 a.m. and 6:00 p.m. This regulation is needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective on October 7, 1984 at 9:00 a.m. and terminates the same day at 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: On July 30, 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (49 FR 30335). Interested persons were requested to submit comments and no comments were received, accordingly no changes are made to the regulation as proposed.

Drafting Information

The drafters of this regulation are LTJG D. R. Cilley, Project Officer, Boating Safety Office and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Tenth Annual Head of the Connecticut Regatta sponsored by the City of Middletown, Connecticut is well known to the boaters and residents of this area. In the past few years it has grown to become one of the largest crew shell race events of its type on the East Coast. Approximately 410 crew shells will race against the clock in 18 heats during the day. The sponsor will provide 6–8 vessels to help the Coast Guard, State of Connecticut and local authorities in patrolling this event. Several of the sponsor's vessels will assist in controlling the spectator fleet which has been growing larger in the past few years despite the late date of this event. Although the race course has not been altered, several changes to this Special Local Regulation have been made as a result of a Coast Guard review of last year's event. The Coast Guard will restrict vessel movement within this section of the Connecticut River during this event to provide for the safety of the participants and spectators on navigable waters. The Coast Guard will escort vessels less than 20 meters in length through the regulated area after each race heat or as directed by the Patrol Commander. Larger vessels will be allowed to transit the regulated area only during the 12:30 p.m.–1:45 p.m. period in the afternoon. The Coast Guard Captain of the Port, New London has asked for the cooperation of the oil facilities along the Connecticut River in scheduling any vessel transits to coincide with the scheduled break so as not to interfere with this event. This will allow "commercial" traffic to transit the area during a break in the race heats while maintaining a safe area for participants and spectators during the races. Mariners are urged to use extreme caution when transiting the regulated area. The Coast Guard will issue a safety voice broadcast and this regulation will be published in the Local Notice to Mariners to advise the general public and commercial users of the Connecticut River of the event.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should easily compensate area merchants for the slight inconvenience of having navigation restricted. Larger commercial vessels are being given an opportunity to transit the area during the afternoon break (12:30 p.m. to 1:45 p.m.). There is minimal commercial traffic this far up the Connecticut River, at this time of the year. On the average, fewer than 2 fuel barges transit this section of the river on any given day enroute oil facilities along the river. The Captain of the Port, New London has made efforts to seek the cooperation of these facilities to not schedule trips on the river during the effective period. What little traffic that must go through can easily be accommodated during the 1¼ hour break in the race schedule.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–310 to read as follows:

§ 100.35–310 Head of the Connecticut Regatta, Middletown, CT.

(a) *Effective Dates.* This regulation will be effective from 9:00 a.m. to 6:00 p.m. on October 7, 1984.

(b) *Regulated Area.* That section of the Connecticut River between the southern tip of Gildersleeve Island and Light Number 87.

(c) *Special Local Regulations.* (1) The regulated area shall be intermittently closed to all vessel traffic from 9:00 a.m. to 6:00 p.m. on October 7, 1984 except as specified below or as directed by the Coast Guard Patrol Commander.

(2) No person or vessel shall enter or remain in the regulated area unless participating in the event or authorized by the event sponsor or Coast Guard patrol personnel.

(3) Vessels of less than 20 meters in length shall be escorted through the regulated area after each race heat or as directed by the Coast Guard Patrol Commander. Vessels of 20 meters or more in length shall be allowed to transit the regulated area, under Coast Guard escort, from 12:30 p.m. to 1:45 p.m. as directed by the Coast Guard Patrol Commander.

(4) Vessels awaiting passage through the regulated area will be held in the vicinity of the southern tip of Gildersleeve Island, if southbound and at Light Number 87 if northbound, until they are escorted at no wake speeds by Coast Guard patrol personnel through the race course.

(5) The sponsor shall ensure that all races are completed by 6:00 p.m. on October 7, 1984.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108(b); 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: August 31, 1984.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84–23847 Filed 9–7–84; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD7 84-05]

Drawbridge Operation Regulations: Savannah River, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is changing the regulations governing the railroad bridge at Clyo by requiring that openings be requested three hours in advance. This change is being made because of a substantial decrease in the requests to open the draw. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 10, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone (305) 350-4108.

SUPPLEMENTARY INFORMATION: On March 19, 1984, the Coast Guard published proposed rule 49 FR 10125 concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated 10 April 1984. In each notice interested persons were given until 3 May 1984 to submit comments.

Drafting information

The drafters of these regulations are Bridge Administration Specialist, Mr. Walt Paskowsky, project officer, and Lieutenant Commander K. E. Gray, project attorney.

Discussion of comments

The State of Georgia advised that the proposed rule does not conflict with the objectives or plans of the Georgia Department of Transportation. No comments were received from navigational interests.

Economic assessment and certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the major commercial user of the waterway ceased operations in April 1981 and the bridge logs reflect a reduction of draw openings from 68 openings in 1980 to 13 openings in 1982, to finally no openings in 1983. The resumption of commercial operations along the waterway is not forecasted. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising paragraph (a) of 117.371 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.371 Savannah River.

(a) The draw of the Seaboard System Railroad bridge, mile 60.9, shall open on signal if at least three hours advance notice is given. VHF radiotelephone communications will be maintained at the dispatcher's office in Savannah, Georgia.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: August 17, 1984.

R. P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 84-23849 Filed 9-7-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD13 84-14]

Drawbridge Operation Regulations; Chehalis River, WA; Duwamish Waterway, WA; South Slough, OR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations governing the following bridges: (1) Union Pacific railroad bridge across Chehalis River, mile 0.0, at Aberdeen, Washington, (2) US101 highway bridge across Chehalis River, mile 0.1, at Aberdeen, Washington, (3) Fourteenth Avenue South highway bridge across Duwamish Waterway, mile 3.8, at Seattle, Washington, and (4) Oregon State highway bridge across South Slough, mile 0.7, at Charleston, Oregon. This change is being made because current operating regulations, as published in 33 CFR Part 117, do not reflect either common usage operation or the desired operation of the bridges. Past amendments to Part 117 included changes which had the unintended effect of changing the regulations governing the operation of these bridges. Since these changes were not planned or anticipated, they were not recognized by the owners of the bridges or waterway users, and, consequently, have never been put into effect. These discrepancies were recently brought to the Coast Guard's attention.

EFFECTIVE DATE: This rule becomes effective on September 10, 1984.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174.

The comments will be available for inspection and copying in room 3564 at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for these regulations and they are being made effective in less than 30 days after publication. Following normal rulemaking procedures would have been unnecessary and contrary to the public interest, because they merely correct errors in existing regulations which occurred as a result of administrative oversight. Therefore, the Coast Guard has determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days after publication.

Although these regulations are published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to insure that the regulations are both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESS** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. Based upon comments received, the regulations may be changed.

Drafting information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Aubrey W. Bogle, project attorney.

Discussion of regulations

Distinctive opening signals for the Union Pacific railroad bridge across the Chehalis River, mile 0.0, and the US101 highway bridge, mile 0.1, both at Aberdeen, Washington were inadvertently deleted from the published operating regulations for Chehalis River bridges. Common practice by both bridge and vessel operators has continued the use of the previously authorized signals which are necessary to avoid confusion as to which bridge is being signalled to open. This change merely recognizes the need and restores the distinctive opening signals.

Authorized closed periods for the Fourteenth Avenue South highway bridge across the Duwamish Waterway, mile 3.8, at Seattle, Washington, were inadvertently deleted from the published operating regulations for Duwamish Waterway bridges. Common practice by both bridge and vessel operators has continued the use of the previously authorized closed periods to ease the flow of peak hour vehicular traffic. This change merely recognizes the need and restores the morning and afternoon closed periods.

Special summer restrictions to the operation of the Oregon State highway bridge across South Slough, at Charleston, Oregon, were inadvertently deleted from the published operating regulations. Common practice by both bridge and vessel operators has continued the use of the previously authorized summer operating schedule to ease the flow of vehicular traffic during the peak tourist season. This change merely recognizes the need and restores the summer schedule.

Some minor editorial changes also have been made to accommodate restoration of the deleted provisions.

Economic assessment and certification

These regulations have no appreciable economic consequences. They merely reinstate operating procedures which have been inadvertently deleted through administrative oversight. Since these deletions were never recognized, the operating practices provided for in previous regulations have continued in use. Consequently, this action cannot be considered to be a major rule under Executive Order 12291. Furthermore, they have been found to be nonsignificant under the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). Accordingly, they do not warrant the preparation of an economic evaluation. In accordance with § 605(d) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by adding a new § 117.892, and revising § 117.1031 and § 117.1041(a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.892 South Slough.

The draw of the Oregon State highway bridge across South Slough at Charleston shall open on signal for the passage of vessels, except that between the hours of 7 a.m. and 7 p.m., from June 1 through September 30, the draw need be opened only on the hour and half-hour. This exception shall not apply to vessels in distress, commercial tugs and/or tows, or public vessels of the United States.

§ 117.1031 Chehalis River.

(a) The draws of each bridge across the Chehalis River at Aberdeen shall open on signal, except that from 7:15 a.m. to 8:15 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the draw of the US101 highway bridge at mile 0.1 need not open for vessels of less than 5,000 gross tons.

(b) Opening signals are as follows:

(1) Union Pacific railroad bridge, mile 0.0, three prolonged blasts.

(2) US101 highway bridge, mile 0.1, two short blasts followed by one prolonged blast.

(c) The draw of the Union Pacific railroad bridge, mile 13.1, at South Montesano, shall be maintained in the fully open position, except for the crossing of trains or for maintenance.

§ 117.1041 Duwamish Waterway.

(a) The draws of each bridge across the Duwamish Waterway shall open on signal, except as follows:

(1) The draws of the Southwest Spokane Street highway bridge, mile 0.3, and the First Avenue South highway bridge, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and from 3:45 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays.

(2) The draws of the Fourteenth Avenue South highway bridge, mile 3.8, need not be opened for the passage of vessels from 7 a.m. to 8 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: August 28, 1984.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 84–23850 Filed 9–7–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD8–83–09]

Regulated Navigation Area; Sabine Neches and Calcasieu Waterways

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The United States Coast Guard (USCG) is amending the regulations in 33 CFR Part 165 to prohibit vessels with tows on a hawser transiting the Sabine-Neches Water near Port Arthur, TX and the Calcasieu Waterway near Lake Charles, LA unless they have a tug made up to the tow so as to provide complete and effective control of the tow at all times. This requirement is necessary to enhance the safety of navigation and to protect the safety of structures in and along the waterway.

EFFECTIVE DATE: October 10, 1984.

FOR FURTHER INFORMATION CONTACT: CDR J.L. Robinson, USCG Marine Safety Office, Federal Building, 2875 75th St. & Hwy. 69, Port Arthur, TX 77640, (409) 724–4339, or LCDR M.W. Brown, c/o Commander, Eighth Coast Guard District (mps), Rm. 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA, 70130, (504) 589–6901.

SUPPLEMENTARY INFORMATION: On 1 March 1984, the Coast Guard published a Notice of Proposed Rulemaking for these regulations 49 FR 7606. Interested persons were requested to submit comments and four comments were received.

Drafting Information

The drafters of this notice are LCDR M.W. Brown, USCG, project officer, c/o Commander, Eighth Coast Guard District (mps), and LCDR W.B. Thomas, USCG, project attorney, c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130.

Discussion of Comments

Of the four comments received, one was in favor of the proposed regulations and three were opposed. One commenter felt that the regulations would significantly enhance safety. The primary thrust of those comments opposing the proposed regulations was that they were unnecessary. One commenter felt that the amount of hawser towing was small and that therefore, the risk of accident was small. The Coast Guard feels that risk of accidents, either collisions with other vessels, or allisions with aids to navigation or other structures, is largely independent of the number of transits. The risk is due to the lack of maneuverability of vessels being towed on a hawser. Two of the commenters felt that there was insufficient justification for the proposed regulations. In addition, one of the commenters questioned whether or not the regulations would have prevented any of the casualties involving tows on a hawser. The Coast Guard has identified eleven casualties over a three year period involving tows on a hawser, and believes all of those casualties would have been prevented had these regulations been in place. The Coast Guard believes 11 casualties is sufficient justification for the regulations. Two of the commenters opposed the regulations on philosophical grounds. These commenters felt that the problem was operational in nature and that operational problems should not be corrected by rulemaking. The Coast Guard acknowledges that the problem is operational in nature but does not agree that such problems should not be corrected by rulemaking. Regardless of the nature of the problem, it should be corrected by whatever means are effective. The Coast Guard has identified a serious navigational safety problem and believes that regulatory action is the most effective way to correct that problem. Two of the commenters felt that operators would voluntarily provide an assist tug when necessary, and therefore regulation was not required. The Coast Guard believes this is partially true, but the past casualty history indicates that dependence on voluntary measures by itself was not sufficient to ensure safety. Two of the commenters believed that the proposed regulations were too broad in scope as they would apply to all vessels towed on a hawser. The Coast Guard agrees. It is the intention of the regulations to only apply to situations in which a vessel towed on a hawser presents a serious hazard. The casualty history indicates that towed vessels of less than 100 gross tons do not pose a problem and the regulations will not apply to such vessels. The Final Rule has been modified to reflect that change. Two of the commenters indicated that a survey of users in the waterways should be conducted as to the need for such regulations. A survey was conducted in 1982. It is largely because of that survey that this rulemaking action is being taken. One commenter pointed out that neither waterway had been classified as congested or especially hazardous under the authority of the Ports and Waterway Act as amended, and because of that, no regulations were warranted. The Coast Guard does not agree.

Under the Port and Tanker Safety Act, the Coast Guard has the authority and the responsibility to take action to insure the safety of waterways. The fact that the two waterways have not been classified as congested or especially hazardous does not mean that a particular hazard does not exist. The proposed regulations are designated to correct a specific hazardous condition on two waterways. In fact, the Coast Guard has not designated any waterway as congested or especially hazardous, but has established several Regulated Navigation Areas. The two are not necessarily related. Two of the commenters, pointed out that the two waterways are similar to other waterways and they questioned the need for regulations on these two waterways as opposed to others. The commenters also questioned the validity of basing regulations on potential casualties. The Coast Guard feels that the casualty history indicates a need for regulation on the Calsasieu and Sabine Neches Waterways. This history also indicates what the Coast Guard believes to be a higher than normal potential for a serious accident on those waterways. The Coast Guard feels that it would be irresponsible to wait for a catastrophic accident to justify rulemaking.

Two of the commenters felt that the potential costs of $2,000,000.00 was excessive. The purpose of the regulations is to prevent casualties due to uncontrolled hawser tows. Tows transiting the waterway can comply with the regulation in two ways. They can provide a second towing vessel to make up alongside the tow, or, in the vast majority of cases, the original towing vessel can change the configuration of the tow by making up alongside. The method of compliance is left strictly up to the operator. Should the operator choose the latter, no additional towboat is required and there is no additional cost other than a brief delay to change the configuration. The $2,000,000.00 cost to industry will only occur if industry *chooses* the most expensive means of compliance. The Coast Guard does not anticipate any situation where a towing vessel would be *required* to leave the tow on the hawser *and* pick up a second towboat. The wording of the regulation in the Final Rule (§§ 165.806(b) and 165.807(b)) has been changed to clarify exactly what is required. The new wording prohibits tows on a hawser unless a second towboat is provided. There is no change in the intent of the regulation or what is required for compliance.

The Final Rule has also been modified by eliminating the deviation provision because the Coast Guard feels that a specific, separate provision is unnecessary. It is the intent of the Coast Guard to allow the Captain of the Port the discretion to permit tows on a hawser without a second towboat on a case by case basis. The wording of §§ 165.806(b) and 165.807(b) has been changed to reflect that he has that discretion. As a result, §§ 165.806(c) and 165.807(c) have been eliminated.

Economic Assessment and Certification

This regulation is considered to be non-significant and, accordingly, a final evaluation has been prepared and placed in the public docket as required by the DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). It may be inspected and copied at Room 1341, Hale Boggs Federal Bldg., 500 Camp Street, New Orleans, LA. As explained in the evaluation, the cost to industry of this regulation varies from approximately $165,000 to $2,000,000 per year depending on whether or not a second towboat is provided and the distance of the transit. Since the cost, however, of a catastrophic accident could be over 8 million dollars, as well as human lives, the Coast Guard feels the cost is justified. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order. No alternative involving less net cost to society is available.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water) Vessels, Waterways.

PART 165—[AMENDED]

Final Regulation

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations by adding new §§ 165.806 and 165.807 to read as follows:

§ 165.806 Sabine Neches Waterway, Texas—Regulated Navigation Area.

(a) The following is a regulated navigation area—The Sabine Neches Waterway which includes the following waters: Sabine Pass Channel, Port Arthur Canal, Sabine Neches Canal, Neches River, Sabine River and all navigable waterways tributary thereto.

(b) Unless otherwise authorized by the Captain of the Port, Port Arthur, Texas, tows on a hawser of 1000 gross tons or greater transiting the Sabine-Neches Waterway are prohibited unless such tows have a tug of sufficient horsepower made up to the tow in such a manner as to insure that complete and effective control is maintained throughout the transit. Inbound vessels only, may shift the tow or pick up an additional tug within 100 yards inside the entrance jetties provided that such action is necessary for reasons of prudent seamanship.

§ 165.807 Calcasieu River, Louisiana—Regulated Navigation Area.

(a) The following is a regulated navigation area—The Calcasieu River from the Calcasieu jetties up to and including the Port of Lake Charles.

(b) Unless otherwise authorized by the Captain of the Port, Port Arthur, Texas, tows on a hawser of 1000 gross tons or greater transiting the Calcasieu River are prohibited unless such tows have a tug of sufficient horsepower made up to the tow in such a manner as to insure that complete and effective control is maintained at all times. Inbound vessels only, may shift the tow or pick up an additional tug within 100 yards inside the entrance jetties provided that such action is necessary for reasons for prudent seamanship.

(Sec. 2, Pub. L. 95–474, 9 Stat. 1475, 1477 (33 U.S.C. 1225, 1231); 49 CFR 146(n)(4))

Dated: September 5, 1984.

T.T. Matteson,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 84–23846 Filed 9–7–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM048MD; A-3-FRL-2667-1]

Approval and Promulgation of Implementation Plans Approval of Revisions of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA announces approval of a revision to the Maryland State Implementation Plan (SIP). The revision consists of several amendments to the State's existing Volatile Organic Compound (VOC) regulations. The amendments reorganize some regulations, delete discontinued terms and compliance schedules relating to Group (Round) I and II control technique guideline type sources, and make changes relating to emission standards, VOC disposal, architectural coatings, and household dry-cleaning solvents.

EFFECTIVE DATE: This action is effective September 10, 1984.

ADDRESSES: Copies of the revision and accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management Division (3AM10), Curtis Building, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: James B. Topsale, P.E.

Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, Maryland 21201, Attn: George P. Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW. (Waterside Mall), Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale P.E. (3AM13) at the address indicated above or by phone at 215/597–4553. Please reference the EPA docket number in all correspondence.

SUPPLEMENTARY INFORMATION: EPA proposed approval of these amendments in a Notice appearing in the **Federal Register** (FR 10129) on March 19, 1984.

The amended VOC regulations apply to State air quality control Areas III and IV. Area III is the Baltimore metropolitan area of the State comprising Baltimore City and the counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard. Area IV is the Washington metropolitan area of the State comprising the counties of Montgomery and Prince Georges. No comments on the March 19, 1984 proposed Rulemaking (FR 10129) Notice were received which would preclude this final action by EPA today.

EPA Evaluation/Approval: Based on EPA's evaluation that the amendments will have no adverse impact on air quality, EPA approves the following Code of Maryland Regulation (COMAR) amendments which involve the following actions:

A. *COMAR 10.18.01 "General Administration Provisions"*—Amend Regulation .01 to relocate and organize definitions.

B. *COMAR 10.18.02 "Permits, Approvals, and Registration"*—Amend Regulation .03 by deleting discontinued terms and replacing them with the term VOC.

C. *COMAR 10.18.06 "General Emission Standards, Prohibitions, and Restrictions"*—Repeal Regulation .01 to delete discontinued terms and move certain terms into COMAR 10.18.01; repeal existing Regulation .06 and adopt a new Regulation .06 which contains general emission standards for VOC sources not subject to COMAR 10.18.21; repeal and not readopt Sections B(4) Drycleaning Solvent and B(5) Architectural Coating; adjust slightly the existing emission standards under COMAR 10.18.06.06.B(1), B(2) and C; add Section D to limit the disposal of VOC by evaporation, replacing COMAR 10.18.21.11 Solvent Disposal; and amend Sections .06E and 11D by replacing terms, only.

D. *COMAR 10.18.11 "Control of Petroleum Production and Petroleum Products Installations, including Asphalt Paving, Asphalt Concrete Plants, Motor Vehicle Fuel Storage, and Use of Waste Oils"*—Amend Regulations .02 and .04 by deleting discontinued terms and replacing them with the term VOC.

E. *COMAR 10.18.13 "Control of Gasoline and VOC Storage and Handling"*—Amend Regulation .01 by deleting terms moved to COMAR 10.18.01; amend Regulations .02 and .03 to relocate, with no substantive change, the exemption for large storage tanks; and amend Sections .03B(5) and .05F to delete compliance schedules.

F. *COMAR 10.18.21 "Organic Materials from Specific Processes"*—Amend Sections .01B and .01E by moving definitions to Section .02; delete "VOC" definition from Section .01G and relocate to COMAR 10.18.01; change the title of Regulation .02 from "Applicability" to "Applicability, Determining Compliance, and Reporting"; expand Regulation .02 to include Section B, "Method of Compliance", which is removed from each individual regulation, Section C, "Method of Assessing Compliance", which is removed from each individual regulation, Section D, "Test Method", referencing the Air Management Administration Technical Memorandum 78-012 test methods from each regulation, Section E, "Computations", which is removed from the definitions portion, and Section F, "Reporting", which is removed from each regulation; repeal Regulation .11 which is replaced by COMAR 10.18.06.06D; remove the term "perchloroethylene" from Regulation .12; restate Regulation .13, Section B, to clarify intent; and delete compliance schedules from Regulation .03-08, .10, .12, and .13.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1982.

(42 U.S.C. 7401-642)

Dated: September 5, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52, Subpart V of the Code of Federal Regulations is revised to read as follows:

Subpart V—Maryland

Section 52.1070 is amended by adding paragraph (c)(72) as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(72) Amendments to Code of Maryland Regulations (COMAR) 10.18.01, .02, .06, .11, .13, and .21 which apply to air quality control areas III and IV, submitted on August 22, 1983.

[FR Doc. 84-23817 Filed 9-7-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL-2666-8]

Approval and Promulgation of Revisions to the New Mexico Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action approves revisions to schedules for developing and submitting revisions to permit regulations for nonattainment areas in New Mexico. This action is taken based on the revised commitments from the State of New Mexico and City of Albuquerque. The intended effect of the action is to allow additional time for nonattainment permit regulations to be adopted and included in the New Mexico State Implementation Plan (SIP).

EFFECTIVE DATE: This rulemaking will be effective on November 9, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to John Hepola of the EPA Region 6 Air Branch (address below). Copies of the State's submittal may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270
U.S. Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460
The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Tim Glasco, State Implementation Plan Section, Air and Waste Management Division, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION: On April 10, 1980 (45 FR 24509) EPA approved the New Mexico Part D SIP with a condition that revisions to permit regulations be submitted to EPA by March 1, 1980. The schedule was later revised on August 27, 1981 (46 FR 43152) to require the revised state permit regulation be submitted by September 1, 1981. In addition, the Bernalillo County carbon monoxide (CO) plan was conditionally approved on March 28, 1981 (46 FR 6892) on the basis that revised Albuquerque-Bernalillo County permit regulations be submitted by December 1, 1981. The Governor committed in the meantime to continue the policy of not issuing permits to new or modified major sources in all New Mexico nonattainment areas in a letter dated May 20, 1980.

The revised permit regulations have not been submitted to EPA. The State was notified by EPA of these deficiencies on February 24, 1984. The New Mexico Environmental Improvement Division, in a letter dated February 16, 1984, and City of Albuquerque, in a letter dated February 13, 1984, committed to new schedules for submission of the revised permit regulations. The revised schedules call for the State to submit proposed permit regulations in September 1984 and adopted regulations by February 1984. The Albuquerque permit regulations will be submitted in October 1984.

The Agency has reviewed the proposed schedule revisions in view of the Agency policy on "Compliance with the Statutory Provisions of Part D of the Clean Air Act" published on November 2, 1983 (48 FR 50694). The conditions for permit regulation revision are considered to be germane to attainment and maintenance of air standards, but the deficiencies are not considered serious due to the self-imposed construction ban in New Mexico. Under such circumstances, the policy allows up to one additional year for the conditions to be met, before EPA proceeds to impose restrictions on construction or funding provided in the Clean Air Act. The revised schedules meet these requirements and therefore are approved. EPA understands the State will continue the construction ban specified in the Governor's letter of May 20, 1980 until EPA approval of the permit regulations is secured.

The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

Pursuant to the provisions to 5 U.S.C. 605(b), I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of sections 110(a) and 172 of the Clean Air Act, 42 U.S.C. 7410(a) and 7520.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: September 5, 1984.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart GG—New Mexico

1. Section 52.1628, is revised to read as follows:

§ 52.1628 Review of new sources and modifications.

(a) *Part D Conditional Approval.* The New Mexico plan is conditionally approved on the conditions specified below:

(1) Proposed amendments to permit regulations prepared for EPA and public review—September, 1984.

(2) Hold public hearing—November, 1984.

(3) Submit final adopted regulation—February, 1985.

(4) The State must continue their policy of not issuing permits to new or modified stationary sources, as specified in the Governor's letter of May 20, 1980.

(b) *Part D Conditional Approval.* The Bernalillo County carbon monoxide plan is conditionally approved on the condition that a revised section 20, "Permits" are submitted to EPA by October 1, 1984. In addition the Albuquerque-Bernalillo County Air Quality Control Board must continue their policy of not issuing permits to new or modified stationary sources, as specified in the Governor's letter of May 20, 1980, to fulfill the requirements of Part D.

[FR Doc. 84-23818 Filed 9-7-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 62

[Region II Docket No. 37; A-2-FRL-2666-7]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; New York Plan for Controlling Fluoride Emissions from Primary Aluminum Plants

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule.

SUMMARY: On April 13, 1984 (49 FR 14741), the Environmental Protection Agency (EPA) gave approval, without prior proposal, to a New York State plan for controlling fluoride emissions from existing primary aluminum reduction plants. The plan was submitted to fulfill the requirements of section 111(d) of the Clean Air Act, and the regulations promulgated thereunder. In its April 13, 1984 **Federal Register** notice, EPA indicated that, if it received notice by May 14, 1984 that someone wished to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking initiated to provide an opportunity for public comment. EPA did receive such notice of pending adverse or critical comments on the plan. Therefore, EPA is withdrawing the final action on the plan and will replace it with new rulemaking at a later date.

DATE: This action is effective on June 12, 1984.

ADDRESSES: Copies of the State's submittal and the comment received are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On July 25, 1983, the State of New York submitted to the Environmental Protection Agency (EPA) an adopted regulation, Part 209, "Primary Aluminum Reduction Plants," of Title 6 of the New York Code of Rules and Regulations. The State's submittal also included a Certificate of Adoption, a Notice of Agency Action and a document entitled "Potroom Emission Measurement Methodology as used by Reynolds Metals Company St. Lawrence Reduction Plant, Massena, New York 13662," dated June 16, 1983. On September 2, 1983, the State submitted additional information.

Based on the information submitted, on April 13, 1984 (49 FR 14741), without prior proposal of its action, EPA approved the plan. The approval, however, did not apply to a detailed emission test measurement protocol on which action was being deferred pending receipt from the State of additional information.

In the notice of final rulemaking, EPA advised the public that the effective date of the action was deferred for 60 days (until June 12, 1984) to provide an opportunity to submit comments on it. EPA announced that if notice was received within 30 days of publication of the final rule that someone wanted to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking initiated proposing a 30-day comment period. EPA has earlier published a general notice explaining this special procedure (46 FR 44477; September 4, 1981).

EPA has received notice of pending adverse or critical comments on this plan from the Reynolds Metals Company. Accordingly, EPA is today announcing withdrawal of its approval.

EPA is withdrawing its action to approve the plan without providing prior notice and opportunity for comment. EPA finds that it has good cause within the meaning of 5 U.S.C. 553(b) to proceed without notice and comment. Notice and comment would be impractical in this case because EPA needs to withdraw its approval as quickly as possible in order to consider the comments which the public has submitted or may wish to submit. Moreover, further notice is not necessary because EPA has already informed the public that it would follow this procedure if it received a request for an opportunity to comment. For the same reasons, EPA finds that it has good cause under 5 U.S.C. 553(d) to make this withdrawal effective as of June 12, 1984. It was this date that the original approval action would have become effective.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting requirements.

Dated: September 5, 1984.

William D. Ruckelshaus,

Administrator, Environmental Protection Agency.

(Section 111(d) of the Clean Air Act, as amended [42 U.S.C. 7411(d)])

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart HH—New York

§ 62.8101 [Removed and Reserved]

Section 62.8101 is removed and reserved.

[FR Doc. 84-23819 Filed 9-7-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83-14; Notice 2]

Motorcycle Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: Standard No. 123, *Motorcycle Controls and Displays*, specifies requirements for the location, operation, identification and illumination of controls and displays in two- and three-wheeled motor vehicles. This notice amends Standard No. 123 by adding symbols as an option to the words which are presently required to identify motorcycle controls and displays. This amendment brings the standard into harmony with latest documents promulgated by the International Standards Organization. The changes should reduce compliance costs by promoting international harmonization. This action results in part from a petition for rulemaking submitted by BMW of North America.

A notice of proposed rulemaking on this subject was published on September 6, 1983 (48 FR 40282).

DATE: Effective date: October 10, 1984.

ADDRESS: Petitions for reconsideration should refer to the docket and notice number and be addressed to: Administrator, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2154).

SUPPLEMENTARY INFORMATION: Standard No. 123 *Motorcycle Controls and Displays*, specifies requirements for the location, operation, identification and illumination of controls and displays in motorcycles. The purpose of the standard is to ensure the accessibility and visibility of controls and displays and to facilitate their quick and proper identification and selection by a driver in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

Among its requirements, Standard No. 123 specifies the use of certain words for the identification of several controls and displays. The standard is silent as to the use of symbols in addition to or in place of words. BMW of North America petitioned for rulemaking to amend the standard so that symbols may be used. Its petition was granted on August 30, 1983, and a notice of proposed rulemaking implementing the grant was published on September 6, 1983 (48 FR 40282).

The symbols proposed were those developed by the International Standards Organization (ISO). Certain ISO symbols have also been adopted by the United Nations Economic Commission for Europe (ECE) and the European Economic Community (EEC).

Costs would be reduced by facilitating international harmonization. Manufacturers which produce vehicles for sale in both this nation and abroad would not have to produce separate dashboards or controls and displays to meet conflicting identification requirements.

NHTSA proposed that Table 3 be amended by adding a new column containing ISO symbols for supplemental engine stop, manual choke, electric starter, headlamp upper-lower beam control, horn, turn signals, neutral indicator, upper beam indicator, and fuel tank shut off valve. These symbols could be used in addition to, or in lieu of, the words presently required. A footnote was added to clarify that the framed area of certain symbols may be filled in.

There are issues associated with the use of symbols for which NHTSA was especially interested in soliciting comments.

The first of these issues was the number and type of symbols that can be used to greatest effect. The ISO is a nonregulatory body. The European regulatory body (ECE) has additional, and in some instances different, symbols. There are potential safety and cost savings advantages to reaching consensus on the most effective symbols. In NHTSA's opinion, symbols should identify only the most important controls and displays. The proposal listed symbols covering only 9 controls and displays included in Table 3; the ISO standard for motorcycles (ISO 6727) has 22. NHTSA solicited comments on the number of those symbols that should be required or permitted, with attention to the question whether a proliferation of symbols contributes to confusion rather than providing clarification.

Another issue was whether, if the required words are used, a manufacturer should be allowed to supplement those words with symbols which it has developed on its own. Some of the ISO-approved symbols may have an unclear relationship to the function concerned, and in these instances manufacturers may have developed a more relevant symbol.

A further issue was the permissibility of deviation from exact replication of a symbol, such as use of a light symbol with four rays rather than the five depicted. The agency proposed that the symbols specified shall be "substantially in the form" shown in the new table to cover minor errors that have an inconsequential relationship to motor vehicle safety. NHTSA was interested in comments on this issue as well. A final issue was whether all symbols, including those in Standard No. 101, should be placed in a separate regulation that is not a Federal motor vehicle safety standard.

Comments on the notice were received from Japan Automobile Manufacturers Association (JAMA), Kawasaki Motors Corp. U.S.A., Yamaha Motor Corp. U.S.A., Chrysler Corp., General Motors Corp., Suzuki Motor Co. Ltd., and BMW Bikers of Washington.

The use of ISO symbols was unanimously supported, Kawasaki commenting that this is a step toward harmonization of American requirements with those of other nations. Several commenters suggested, however, that the proposed revision of Table 3 appeared redundant in requiring use of words to identify control operation (Column 4) if a symbol were also used. The agency agrees with this comment and the final rule allows several options for control and control position function identification: by only the symbol (Column 3), by wording (Column 2 and Column 4), or by both symbol and wording (Column 2, Column

3, and Column 4). In addition, a manufacturer may provide symbols and words where none are shown in the Columns. Although expressed in rewritten form, previous specifications of paragraph S5.2.3 continue to apply: permission to spell out control identification abbreviations, placement of identification on or adjacent to the control, position, and appearance of identification to the operator in an upright position.

Kawasaki pointed out to the agency that most modern motorcycles do not rely on a "choke" device but incorporate an enrichening circuit in the carburetor. It asked that amendments be made to Columns 1 and 2 to reflect this fact, allowing "Mixture Enrichment" in addition to "Manual Choke", and "Enrichener" as well as "Choke". While the agency believes that most operators will continue to use the word "choke" to describe the system that enriches the fuel-air mixture, the agency has decided to extend the terminology associated with this control to acknowledge the existence of alternative technology to aid in cold starting. Table 3, Column 1 will therefore contain the equipment designation "Manual Choke or Mixture Enrichment" and Table 3, Column 2 will contain the control and display identification "Choke or Enrichener".

NHTSA's request for comments on the issue of the number and types of symbols that could be used to greatest effect was addressed only inferentially with the comment that the agency had not proposed use of all ISO symbols for motorcycles. NHTSA had also asked whether if the required words were used, a manufacturer should be allowed to supplement those words with symbols other than those of the ISO which may have an unclear relationship to the function concerned. Those who commented felt that only ISO symbols should be permitted, and some asked that the entire list be provided. The amendment that is the subject of this notice allows a manufacturer to apply its own symbols for ignition, tachometer, and speedometer as none are specified for these displays and controls in Column 3. It was brought to the agency's attention that the electric starter symbol may not be the one currently approved by the ISO. The agency has been able to substantiate that the symbol proposed (adopted by the ISO in 1981 and also the symbol specified by ECE Regulation No. 60) is the current ISO symbol and the final rule thus adopts the symbol of the proposal.

Manufacturers supported the concept of the permissibility of minor deviations from exact replication of the ISO symbols, which may be occasioned by space limitations on small vehicles such as motorcycles. Accordingly, the standard is amended as proposed, requiring only that a symbol be "substantially in the form" shown in Column 3.

Finally, there was general agreement that symbols in Standard No. 123 and Standard No. 101, *Controls and Displays*, should be joined in a separate regulation that is not a Federal motor vehicle safety standard. The agency shall consider these comments in future rulemaking.

The agency has assessed the economic and other impacts of these amendments and determined that the amendment is neither a major rule within the meaning of Executive Order 12291 nor a significant rule under the Department of Transportation's regulatory policies and procedures. Further, the agency concludes that the economic and other consequences of these amendents are so minimal as not to require preparation of a full regulatory evaluation. The impact is minimal because the cost difference between using words and symbols is negligible and because use of symbols instead of words is optional.

The agency has analyzed these amendments for purposes of the Regulatory Flexibility Act. Since they will not impose any significant new requirements or result in significant cost impacts, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. Motorcycle manufacturers, those affected by the amendments, are generally not small businesses within the meaning of that Act. Small organizations and small governmental jurisdictions will be only affected by the amendment to the extent that they purchase vehicles which must comply with the standard. Since the amendments would not impose any significant new requirements or result in significant cost impacts for manufacturers, the agency concludes that the amendments will not significantly affect small organizations or small governmental jursdictions.

Similarly, the agency has analyzed these amendments for the purposes of the National Environmental Policy Act. The agency has concluded that the amendments will not have a significant effect on the human environment.

Because the amendment relieves a restriction, is optional in nature, and furthers international harmonization, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest, and the amendment is effective 30 days after publication in the **Federal Register.**

The engineer and attorney primarily responsible for this rulemaking action are Ken Rutland and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, the following amendments are made in § 571.123 and Chapter V of Title 49, Code of Federal Regulations:

1. Section S5.2.3 is revised to read:

§ 571.123 Standard No. 123; motorcycle controls and displays.

* * * * *

S5.2.3 *Control and display identification.* If an item of equipment in Table 3, Column 1, is provided, the item and its operational function shall be identified by:

(a) A symbol substantially in the form shown in Column 3; or

(b) Wording shown in both Column 2 and Column 4; or

(c) A symbol substantially in the form shown in Column 3 and wording shown in both Column 2 and Column 4.

The abbreviations "M.P.H.", "r/min", "Hi", "Lo", "L", "R", and "Res" appearing in Column 2 and Column 4 may be spelled in full. Symbols and words may be provided for equipment items where none are shown in Column 2, Column 3, and Column 4. Any identification provided shall be placed on or adjacent to the control or display position, and shall appear upright to the operator.

* * * * *

2. Table 3 is revised to read:

Table 3

Motorcycle Control and Display Identification Requirements

No	Column 1	Column 2	Column 3	Column 4
	Equipment	Control and Display Identification Word	Control and Display Identification Symbol	Identification at Appropriate Position of Control or Display
1	Ignition	Ignition		Off
2	Supplemental Engine Stop (Off, Run)	Engine Stop	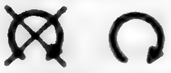	Off, Run
3	Manual Choke or Mixture Enrichment	Choke or Enrichener	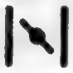	
4	Electric Starter		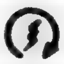	Start[1]
5	Headlamp Upper-Lower Beam Control	Lights	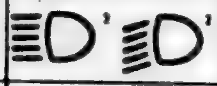 [2] [2]	Hi, Lo
6	Horn	Horn	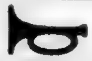	
7	Turn Signal	Turn	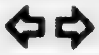 [3]	L, R
8	Speedometer	M.P.H.		M.P.H.[4]
9	Neutral Indicator	Neutral	N	
10	Upper Beam Indicator	High Beam	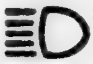 [2]	
11	Tachometer	R.P.M. or r/min.		
12	Fuel Tank Shutoff Valve (Off, On, Res.)	Fuel	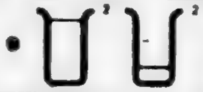 [2] [2]	Off, On, Res

[1] Required only if electric starter is separate from ignition switch.

[2] Framed areas may be filled.

[3] The pair of arrows is a single symbol. When the indicators for left and right turn operate independently however, the two arrows will be considered separate symbols and may be spaced accordingly.

[4] M.P.H. increase in a clockwise direction. Major graduations and numerals appear at 10 mph intervals, minor graduations at the 5 mph intervals. (37 F.R. 17474—August 29, 1972. Effective: 9/1/74)

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on August 31, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84–23720 Filed 9–7–84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Thirteen National Wildlife Refuges to the Lists of Open Areas for Migratory Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

Correction

In FR Doc. 84–14633 beginning on page 22819 in the issue of Friday, June 1, 1984, make the following correction:

On page 22822, in the third column, in the fifth paragraph the last sentence should read, "We are not aware of evidence of the above situation at Tensas River NWR."

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 40302-21]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum yield of sablefish will be achieved in part of the Eastern Regulatory Area of the Gulf of Alaska in waters of the Southeast Outside District which intrude as culs-de-sac into Alaska's coastal waters. Closure of these intrusions to fishing for sablefish by vessels of the United States is necessary to prevent overfishing of sablefish. This action is intended to promote the conservation of sablefish.

DATES: Closure of the culs-de-sac in the Southeast Outside District is effective at noon, Alaska Daylight Time (ADT), September 5, 1984, until noon, Alaska Standard Time, December 31, 1984. Public comments are invited on these closures until September 16, 1984.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. ADT weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP), which governs the groundfish fishery in the fishery conservation zone (FCZ) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of fishing seasons and areas. Implementing rules at § 672.20 specify that these adjustments will be made by the Secretary of Commerce (Secretary) by notice in the **Federal Register** under § 672.22(a).

Three regulatory areas of the Gulf of Alaska are defined in § 672.2. One of these is the Eastern Regulatory Area, which is further divided into four regulatory districts for the purpose of better managing sablefish: West Yakutat, East Yakutat, Southeast Outside, and Southeast Inside.

Parts of the FCZ of the Southeast Outside District intrude as culs-de-sac (described at 49 FR 8931, March 9, 1984), into the inner coastal waters of the southeast Alaska archipelago within the Southeast Inside District which is administered by the State of Alaska. The fishing season for sablefish opened in the Southeast Inside District, including the culs-de-sac, on January 1, 1984. It was closed in the culs-de-sac on March 6, 1984, by emergency interim rule (49 FR 8931, March 9, 1984), and the closure was extended (49 FR 24142, June 12, 1984) to noon, September 1, 1984, under § 305(e) of the Magnuson Act. The opening on September 1, 1984, coincided with Alaska's season in the Southeast Inside District, which lies within the territorial sea. While this fishery was open (January 1 to March 6, 1984), 88 mt of sablefish was harvested. Except for the culs-de-sac the Southeast Outside District remained open for sablefish fishing by notice in the **Federal Register** until June 29, 1984 (49 FR 27521, July 5, 1984). That notice made clear the North Pacific Fishery Management Council's policy that the groundfish fisheries in the intrusions should be managed in close coordination with the State of Alaska's management of groundfish in the Southeast Inside District. The notice also stated that sablefish harvested in the intrusions before the closure on March 6, 1984 (88 mt), would be counted as part of the OY for the Southeast Inside District, which is specified in the FMP to be 500 mt. The balance of this amount will be harvested on and after September 1, 1984, by approximately 90 vessels which are expected to participate in the fishery. At this effort level, it is anticipated that the remaining OY will be taken by September 5, 1984.

Therefore, the Secretary issues this notice prohibiting further fishing for sablefish by vessels of the United States in the culs-de-sac of the Southeast Outside District after noon on September 5, 1984. This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

The sablefish stock in the affected area will be subject to harm unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order are contrary to the public interest and that the effective date should not be delayed.

This action is taken under the authority of § 672.22(a), and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It requires no collection of information for purpose of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: September 4, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23816 Filed 9-5-84; 1:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 176
Monday, September 10, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320, 327, and 381

[Docket No. 81-013E]

Canning of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 12, 1984, the Food Safety and Inspection Service (FSIS) published a proposal to amend the Federal meat and poultry products inspection regulations by adding a number of provisions covering thermally (heat) processed meat and poultry products packed in hermetically sealed containers. On July 11, 1984, the FSIS extended the initial 60-day comment period to September 10, 1984. Recently, however, two national trade associations have requested that the comment period be extended an additional 30 days. Therefore, FSIS is extending the comments period to October 10, 1984.

DATE: Comments must be received on or before October 10, 1984.

ADDRESSES: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to Mr. Bill Dennis, (202) 447-3840.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION: On April 12, 1984, the Food Safety and Inspection Service published a proposed rule in the **Federal Register** (49 FR 14636) to amend the Federal meat and poultry products inspection regulations by adding a number of provisions covering those thermally (heat) processed meat and poultry products packed in hermetically sealed containers that are currently regulated as "canned" products. The comment period was orignially scheduled to end Juy 11, 1984. However, because of the proposal's length and complexity, several trade associations requested additional time to study the proposal and submit comments. Therefore, the FSIS determined that there was sufficient justification for extending the comments period. On July 11, 1984, FSIS published a notice in the **Federal Register** (49 FR 28252) granting an extension until September 10, 1984. The July 11, 1984, notice contained some additional information clarifying the types of products covered by the proposed rule. As a result, the National Food Processors Association and the Can Manufacturer's Institute have requested an additional 30 days to study the proposal and submit comments. The FSIS has determined that there is sufficient justification for extending the comments period to October 10, 1984.

Done at Washington, DC on: September 6, 1984.

Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 84-24006 Filed 9-7-84; 8:45 am]

BILLING CODE 3410-DM-M

CIVIL AERONAUTICS BOARD

14 CFR Part 255

[Economic Regulations Docket 41686]

Carrier-Owned Computer Reservations Systems

Dated: August 21, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to adopt rules that would forbid release of computer-generated sales data on any U.S. air carrier to foreign carriers without the consent of the U.S. air carrier. The CAB also proposes to adopt rules that would require airline computer reservations system vendors to disclose current display and edit criteria and weights, connect points, and data base update procedures and formats to all interested persons. The CAB is proposing these changes to the CRS rule at its own initiative.

DATES: Comments by: September 25, 1984. Reply comments by: October 5, 1984.

Comments received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 41686, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Robert D. Young (202) 673-6060, Samuel E. Whitehorn (202) 673-5450, Paul Samuel Smith (202) 673-5450, Barry L. Molar (202) 673-5205 or George S. Baranko (202) 673-6011, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: In late 1982, Congress directed us to investigate the competitive and consumer protection ramifications of computer reservations systems (CRS's) used by travel agents in marketing air transportation services. On June 1, 1983, we submitted, in consultation with the Justice Department, a *Report to Congress on Airline Computer Reservations Systems.*

Before and after release of the *Report,* we received petitions from airlines and travel agents seeking regulation of various practices of airline CRS owners. Following additional investigation and issuance of an Advance Notice of Proposed Rulemaking (EDR-466), Dockets 41663 and 41686, we concluded that rules were necessary to eliminate competitive and consumer injury, and we proposed such rules in EDR-466C, 49 FR 11644, March 27, 1984. With some adjustments, we adopted these rules on July 27, 1984. Among other things, the rules preclude use of carrier identity factors (bias) to order flight displays, forbid unjustly discriminatory CRS access prices, and require distribution of all sales data generated by a CRS to all carriers participating in that system.

After reviewing the comments filed in these proceedings and carefully considering the ramifications of our proposed rules we decided that the rules' operation might be improved by certain modifications. In EDR-475, 49 FR 31436, August 7, 1984, we proposed revisions that address the particular problem of bias in connecting flight displays. But this notice, we propose to amend the disclosure requirements of Part 255 in two respects: First, to require vendors to disclose criteria for selection and display of information to any interested person, not just airlines and agents, and second, to require CRS vendors to withhold CRS-generated information on U.S. participating carriers from foreign airlines.

Proposed Rules

I. Public Disclosure

Our decision to eliminate bias in the main rulemaking was an effort to ensure that flights are presented to travel agents, and in turn, to passengers on the basis of objective service considerations and thus to enhance air transport competition. To facilitate enforcement of those rules, we also required that CRS vendors disclose the criteria used in ordering flight displays and the weights assigned each, the connect points selected for building connecting flights in each city-pair market in which connecting flights are displayed, and the formats and procedures used to update data in their systems. Subsections 4(b)(2), (c)(3), and (d)(2) of Part 255. By the terms of our rule all participating carriers and travel agent subscribers in each CRS are entitled to this information upon request. Limiting the dissemination requirement to these persons seemed adequate to our purpose of enforcement assistance.

We now believe that any interested person should be able to request this information. This modification of our rule would have several benefits. First, it will expand the universe of persons monitoring CRS practices and who might bring possible abuses of CRS power to our attention. Second it would enable non-participating carriers to weigh the effects of entering into a contract with a CRS vendor. Third, our proposal would permit consumer groups to compare the services of the various CRS's and to recommend to travel agents and consumers which system offers the best information on flights and fares. Broader availability of this information may also enhance public familiarity with these systems and improve consumers' ability to judge the quality of service received.

Greater dissemination should not be a significant additional burden to CRS vendors. We do not expect that this modification will result in a substantial increase in information requests, although we seek comment on this point.

To implement this proposal, we would delete the phrase "to all subscribers and participating carriers," where it appears in subsections (b)(2), (c)(3) and (d)(2) of § 255.4 of our CRS rules.

We are also requesting comments on an alternative modification to our disclosure requirement. It would require CRS vendors to distribute information on display criteria and format rules to participating carriers and subscribing agents automatically, rather than upon request as our rules currently provide. In addition, CRS vendors would be obligated to give this information to third parties on request. We are concerned, however, that this proposal may impose a substantial burden on CRS vendors. Consequently, we are particularly interested in comments on the costs of this alternative and on ways CRS vendors may be able to comply with it without substantial cost. For example, CRS vendors may be able to construct a file in their systems for this information and make it accessible to all subscribers. While this would not satisfy any obligation to those without access to a terminal, it could greatly reduce compliance-related expenses.

II. Disclosure of Market Data to Foreign Carriers

Another provision of our rules on CRS practices deals with computer generated information. Each CRS generates detailed reports on the transactions between each agent and air carrier participating in that system. These reports appear to be very useful to CRS vendors in competing with other carriers. Given the nature of the information, and the fact that it was not available to the CRS vendors' air carrier competitors, we decided to require vendors to distribute whatever market data they generate to all participating carriers, upon request. EDR-466C, 49 FR 11644, March 27, 1984.

Some commenters have urged us to limit CRS vendors' obligations to distribute CRS generated information to include distribution to U.S. carriers only. In their view, absent such a limitation, foreign air carriers may be able to obtain an unwarranted advantage over U.S. carriers because foreign airlines do not disclose similar data to U.S. carriers.

We tentatively conclude that these concerns are justified. In fact, similar considerations have led us to restrict foreign carrier access to information U.S. carriers are obligated to submit to us. Existing regulations—14 CFR 241.19-6 and 399.100—forclose access to certain marketing data obtained from U.S. carriers because comparable information on foreign airlines is not available. Similarly, foreign carriers that own or operate CRS's that discriminate against U.S. airlines are not entitled to the protection of our rules, including sales data. Section 255.9(b). Consequently, we are proposing modifications to our rules to further these policies.

We propose to limit our rule to require that CRS-generated sales information be distributed only to domestic airlines. In addition, we are proposing a rule that specifically prohibits the release of computer generated marketing information to foreign carriers, unless the release is specifically authorized by the U.S. carrier to whom the data relates. This prohibition would apply both to CRS vendors and to U.S. carriers that receive such data from the vendors.

Paperwork Reduction Act

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. Those requirements have been submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Office for Civil Aeronautics Board, Office of Management and Budget, Washington, D.C. 20503.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

The Board tentatively finds that these rules will not have a significant economic impact on a substantial number of small entities. The proposal to expand the duty of CRS vendors to disclose criteria, formats, etc. should directly benefit only a small number of individuals and organizations relative to the thousands of entities to whom this information is now available. None of the CRS owners subject to the proposed rules is a small business within the meaning of the Regulatory Flexibility Act. Our reciprocal denial of marketing data to foreign carriers would only benefit U.S. airlines (of any size) with whom they compete. Neither amendment contains any direct reporting, recordkeeping, or other compliance requirements.

There are other federal rules that duplicate, overlap, or conflict with these proposed rules.

Regulatory Impact Analysis Review

Executive Order 12291, dated February 17, 1981, requires every executive agency to prepare a Regulatory Impact Analysis for every "major rule." Major rule is defined in the order as any that is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As an independent agency, the Civil Aeronautics Board is not required to comply with E.O. 12291. Because of the importance of this rule and its expected transfer to the Department of Transportation in connection with the sunset of the Board, we have voluntarily examined whether the proposed rules constitute major rules, and we have determined that they do not.

The rules represent only slight modifications of an existing rule. Neither is likely to have an annual effect on the economy of $100 million. The potential denial of commercially sensitive information to competing foreign airlines can only favorably affect U.S. carriers. At the same time keeping market data from foreign competitors is consistent with existing regulations designed to prevent competitive imbalance. There should be only minor incremental costs to CRS vendors, the nation's largest air carriers, attributable to disclosure of system criteria, *etc.* to more people. On the other hand, the ability to obtain more information on the operation of the single most important airline ticket distribution mechanism can only benefit consumers.

Comment Period

In light of our conclusions about the significant potential for competitive harm and consumer injury from CRS practices, comments on this notice of proposed rulemaking will be due 15 days after publication in the **Federal Register** and reply comments will be due 10 days after the comments. Our investigation of CRS practices began eighteen months ago. In that time, CRS vendors, participating carriers, travel agents, federal agencies, and others have had multiple opportunities to comment and otherwise contribute to the record. Part 255, which the proposed rule supplements, will be made effective in the fall of this year. So as to avoid additional programming and operational changes, we hope to put into force the ultimate rules at the same time as Part 255.

List of Subjects in 14 CFR Part 255

Air carriers, Air transportation—foreign, Consumer protection, Travel agents.

PART 255—[AMENDED]

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 255, *Carrier-Owned Computer Reservations Systems,* as follows:

1. Section 255.4, *Display of Information,* would be amended by revising paragraphs (b)(2), (c)(3), and (d)(2) to read as follows:

§ 255.4 Display of information.

* * * * *

(b) * * *

(2) System vendors shall provide upon request the current criteria used in order flights for the primary displays and the weight given to each criterion.

(c) * * *

(3) System vendors shall provide upon request current information on:

(i) All connecting points used for each market;

(ii) All criteria used to select connecting points;

(iii) All criteria used to "edit" connecting points; and

(iv) The weight given to each criterion in paragraphs (c)(3) (ii) and (iii) of this section.

(d) * * *

(2) Each system vendor shall provide upon request all current data base update procedures and data formats.

2. Section 255.8, *Marketing Information,* would be revised to read as follows:

§ 255.8 Marketing information.

(a) Each system vendor shall make available to all U.S. participating carriers on non-discriminatory terms all marketing, booking and sales data relating to U.S. carriers that it elects to generate from its system.

(b) Except as required in § 255.8(a) system vendors and participating carriers shall not release marketing, booking and sales data they generate or receive relating to international operations of any carrier, absent authorization to do so by the carrier.

(Secs. 102, 204, 404, 411, 419, 1102, Pub. L. 85-726 as amended, 72 Stat. 740, 743, 760, 769, 797; Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-22855 Filed 9-7-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

Proposed Customs Regulations Amendments Relating to Waiver of Certificate of Registration for Articles Exported for Repairs, Alterations, or Processing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide for waiver of the Certificate of Registration required for entry of articles exported for repair, alteration, or processing abroad, upon payment of duty on only the value of the work done abroad, when the importer satisfies Customs that exportation of the articles occurred. These amendments are necessary because, in many instances, the carrier or shipper of the exported articles fails to properly register them with Customs before exportation. This must be done for the importer to claim entry of the articles under special tariff provisions subjecting them to duty only on the work done abroad, not on the value of the articles.

DATE: Comments must be received on or before November 9, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Leo Wells, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-2957).

SUPPLEMENTARY INFORMATION:

Background

Section 10.8(a), Customs Regulations (19 CFR 10.8(a)), provides that before exporting articles which are subject on return to the United States to duty on the value of repairs or alterations performed abroad, as provided for in item 806.20, Tariff Schedules of the

United States (TSUS, Tariff Act of 1930, as amended, 19 U.S.C. 1202), a Certificate of Registration (the top portion of Customs Form 4455) shall be filed (in an original only) by the owner or exporter with the district director of Customs before the departure of the exporting conveyance. Section 10.9(a), Customs Regulations, sets forth similar requirements for articles exported for processing and later returned to the United States under item 806.30, TSUS, except that Customs Form 4455 must include a statement by the exporter or owner on the reverse side, containing the name and address of the U.S. manufacturer and other U.S. processing details. The requirements for supervision by Customs before exportation of the articles are intended to aid Customs officials in determining what repairs, alterations, or processing were done abroad and what their cost or value was, and to ensure that the returned articles are the same articles that were exported.

Waiver of the Certificate of Registration is provided for by both §§ 10.8(k) and 10.9(k), Customs Regulations, provided the district director is satisfied that the returned articles are entitled to entry under either item 806.20 or 806.30, TSUS, *and* that the failure to comply with registration requirements was due to inadvertence, mistake, or inexperience, and not to negligence or bad faith.

Customhouse brokers along the U.S./Canadian border claim that they, acting on behalf of the importer and/or exporter, are often unable to comply with the registration requirements because the carrier or shipper of the articles exported for work abroad fails to present the registration form to Customs at the border crossing station before exportation. Thus, there is no record of Customs supervision or approved waiver of this supervision before exportation. Therefore, the importer's subsequent claim for entry under item 806.20 or 806.30, TSUS, and duty only on the foreign work performed, is not allowed unless the failure to register with Customs is attributed to inadvertence, mistake, or inexperience, and not to negligence or bad faith. Since, in many cases, it is the shipper's or carrier's negligence which caused the failure to register with Customs, the registration form may not be waived and the requested entry under item 806.20 or item 806.30, TSUS, is denied.

In order to relieve the importer of the consequences of the negligence of the carrier or shipper, over whom the importer may have no control, it is proposed that other documents, in lieu of Customs Form 4455, be acceptable to Customs as proof of exportation of articles entered under item 806.20 or 806.30, TSUS. Examples of such documents may include Canadian Landing Certificates, Canadian Temporary Admission Permits and Canadian Customs Invoices.

It is therefore proposed to amend the Customs Regulations to allow for more latitude in the waiver of Customs Form 4455. Specifically, it is proposed that §§ 10.8(k) and 10.9(k) be amended to allow for waiver of Customs Form 4455 in instances where the importer provides sufficient documentation to Customs to prove actual exportation of the articles from the United States, such as a Canadian Landing Certificate, or similar acceptable documentary proof.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Authority: This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 1, 19 Stat. 247, 249 (19 U.S.C. 197); section 1, 36 Stat. 965 (19 U.S.C. 198), section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759, as amended (19 U.S.C. 1641), section 648, 46 Stat. 762 (19 U.S.C. 1648).

List of Subjects in 19 CFR Part 10

Exports, Imports, Repairs, Alterations, Processing abroad.

Proposed Amendments

It is proposed to amend Part 10, Customs Regulations (19 CFR Part 10), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. It is proposed to amend § 10.8(k), Customs Regulations (19 CFR 10.8(k)), by revising the first sentence to read as follows:

§ 10.8 Articles exported for repairs or alterations.

* * * * *

(k) In any case where an imported article was exported for repairs or alterations without compliance with the registration requirements of this section, the district director may waive the production of Customs Form 4455 if he is satisfied that the returned article is entitled to entry under item 806.20, TSUS, and (1) the failure to comply with the registration requirements was due to inadvertence, mistake, or inexperience, and not to negligence or bad faith; or (2) the importer provides sufficient documentation to Customs to prove actual exportation of the article from the United States, such as a Canadian Landing Certificate or other acceptable documentary proof. * * *

* * * * *

2. It is proposed to amend § 10.9(k), Customs Regulations (19 CFR 10.9(k)), by revising the first sentence to read as follows:

§ 10.9 Articles exported for processing.

* * * * *

(k) In any case where an imported article was exported for processing without compliance with the registration requirements of this section, the district director may waive the Customs Form 4455 if he is satisfied that the returned article is entitled to entry under item 806.30, TSUS, and (1) the failure to comply with the registration requirements was due to inadvertence, mistake, or inexperience, and not to negligence or bad faith; or (2) the importer provides additional documentation to Customs to prove actual exportation of the article from the United States, such as a Canadian

Landing Certificate or other acceptable documentary proof. * * *

*   *   *   *   *

William von Raab,
Commissioner of Customs.

Approved:

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-23842 Filed 9-7-84; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[LR-153-84]

Treatment of Transfer of Property Between Spouses, Tax Treatment of Alimony and Separate Maintenance Payments, and Dependency Exemption in the Case of Child of Divorced Parents; Proposed Rulemaking

Correction

In FR Doc. 84-23128 appearing on page 34528 in the issue of Friday, August 31, 1984, the date for delivering or mailing written comments and requests for a public hearing is October 30, 1984. It appeared incorrectly as October 20, 1984.

BILLING CODE 1505-01-M

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26 CFR Parts 1 and 301

[LR-271-83]

Withholding on Items of Income Covered by an Income Tax Convention

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to withholding on certain items of income subject to a reduced rate of, or exemption from U.S. tax under an income tax convention to which the United States is a party. These regulations would amend the existing regulations to provide a certification requirement for obtaining reduced rates of, or exemptions from, U.S. withholding tax on payments of fixed or determinable annual or periodical income and certain other income. These regulations would provide withholding agents and recipients of such income with guidance needed to comply with sections 1441, 1461, and 6402 of the Internal Revenue Code.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 9, 1984. The amendments are proposed to be effective for payments made after [Date which is 120 days after the publication of a Treasury Decision in the **Federal Register** in this matter].

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-271-83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (LR-271-83) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and Regulations on Procedure and Administration (26 CFR Part 301) under sections 1441, 1461, and 6402 of the Internal Revenue Code of 1954. The proposed amendments are issued under the authority contained in section 342 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 635) and section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Explanation of Provisions

Existing Rules

Under sections 871 and 881 of the Internal Revenue Code, a tax of 30 percent is generally imposed on U.S. source fixed or determinable annual or periodical gains, profits, and income of nonresident alien individuals, foreign corporations, and foreign partnerships, trusts, and estates if such amounts are not effectively connected with a trade or business in the United States. (It should be noted, however, that section 127 of the Tax Reform Act of 1984 has repealed this 30 percent tax on interest paid to foreign persons on certain portfolio obligations issued after July 18, 1984.)

Sections 1441 and 1442 require withholding agents to deduct and withhold this tax at source (*i.e.*, at the time the payment is made). United States income tax conventions generally provide for a reduction of, or exemption from, tax on certain types of income paid to residents of the country which is the other party to the tax convention. Under § 1.1441-6 of the existing regulations, nonresident alien individuals, foreign corporations, and foreign partnerships, trusts, and estates receiving U.S. source income subject to withholding under sections 1441 and 1442 of the Code are allowed to claim the income tax convention benefits at source. Thus, the amount of withholding is reduced from the statutory rate to the applicable tax convention rate at the time the income is paid.

In the case of all items of income other than dividends, a foreign person may obtain the tax convention reductions of, or exemptions from, tax at source by filing Form 1001 with the withholding agent. This form contains a statement that the owner of the income is entitled to the tax convention benefits.

In the case of dividends, a foreign person with an address in a country which is a party to an income tax convention with the United States is presumed to be a resident of such country. Such a person is, therefore, entitled to withholding at the applicable tax convention rate without having to file a form to establish eligibility. Under most income tax conventions, dividends paid to a foreign corporation by its United States subsidiary are entitled to a greater reduction in U.S. tax. Under some of these tax conventions, such greater reduction in withholding of tax is allowed if the United States subsidiary receives a ruling from the Commissioner that its dividends qualify for the special rate.

Rationale for Changes

Section 342 of the Tax Equity and Fiscal Responsibility Act of 1982 (the "Act") requires the Secretary of the Treasury to prescribe regulations establishing a new procedure to ensure that any benefit of any tax convention relating to the reduction or elimination of tax withheld at the source is available only to persons entitled to such benefits.

Section 342 was enacted because of concern on the part of Congress that the present system utilized to reduce or eliminate source basis taxation with respect to certain items of income is insufficient to ensure that only persons entitled to such tax convention benefits are able to obtain them. Specifically, the concern is that the address method (described above) of determining rates of withholding on dividends has permitted significant avoidance of U.S. tax. Nonresident aliens who are not actually residents of countries having income tax conventions with the United States (or who are residents of countries having "less favorable" income tax conventions with the United States) are believed to have established nominee accounts and post office boxes in countries having such an income tax convention (or a more favorable income tax convention) for the sole purpose of qualifying for tax convention benefits under this method. A few of these countries collect and remit additional amounts of U.S. tax on payments to persons who are not actually their residents; however, most countries do not. As a consequence, the United States loses substantial amounts of tax on payments made to persons not entitled to reduced tax convention rates. In addition, the United States does not receive interest on additional U.S. tax collected by foreign competent authorities during the period of delay between foreign collection and remittance of the tax. Although United States withholding agents must receive a Form 1001 before withholding at a reduced rate on nondividend income, the form does not contain an independent verification of eligibility and is, therefore, subject to abuse.

The Internal Revenue Service believes that stricter requirements for obtaining reduced tax convention rates on all types of income should be implemented to ensure that tax convention benefits are enjoyed only by intended beneficiaries.

Dividend Income, and Form 1001 in General

The proposed regulations extend the Form 1001 requirements to dividend income and provide that to secure the reduced rate of, or exemption from, United States income tax at source in the case of dividends, the recipient shall, if entitled to such treatment pursuant to a tax convention, file Form 1001 with the withholding agent. The Form 1001 will be effective for the successive 3-calendar-year period during which the dividend income is paid and must be retained by the withholding agent for at least 4 years after the end of the last calendar year in which income subject to the form is paid. In addition, the proposed regulations provide that each Form 1001 filed with a withholding agent shall be executed under the penalties of perjury.

Certification System

The proposed regulations provide, in general, that in the case of payments of fixed or determinable annual or periodical income and certain other income subject to a reduced rate of, or an exemption from, withholding pursuant to an income tax convention to which the United States is a party, nonresident alien individuals, foreign corporations, and foreign partnerships, trusts, and estates entitled to such tax convention benefits must file a Certificate of Residence (Form 8306) (or, in lieu of Form 8306, a statement which meets the certification requirements) with the withholding agent prior to or on the date of payment of such income to receive such tax convention benefits at the time the payment is made. This requirement is in addition to any other requirements which must be met by the beneficial owner to secure income tax convention benefits, such as the filing of a Form 1001 with the withholding agent. If the withholding agent has received a valid Certificate of Residence, the withholding agent may rely upon the Certificate of Residence as evidence that the beneficial owner has complied with all requirements of residence to qualify for the reduced or exempt rate of tax and shall then determine the applicable rate of withholding pursuant to the relevant tax convention and any regulations issued thereunder unless (1) the withholding agent has reason to know that the beneficial owner is not entitled to such benefit, or (2) taking into account among other factors the representations made on the Certificate of Residence, such certificate fails to comply with the certification requirements. The term "beneficial owner" means the person who is ultimately entitled to control the income. Thus, for example, a nominee or any person acting in a similar capacity is not the beneficial owner. A Certificate of Residence would not be required if payments from the withholding agent do not exceed, or are not expected to exceed, in the aggregate, $50 per calendar quarter per withholding agent made to a nonresident alien individual. In such a case, the withholding agent may, unless it has reason to know that the nonresident alien individual does not qualify for the reduced rate of, or exemption from, tax, determine the applicable rate pursuant to the relevant tax convention and any regulations thereunder without the certificate. However, the Form 1001, executed under the penalties of perjury, is still required to be filed.

A valid Certificate of Residence shall be effective for all subject payments for the three successive calendar years beginning with the calendar year in which the Certificate of Residence is received by the withholding agent. Once a valid Certificate of Residence has been filed with respect to such period, the Certificate of Residence will remain effective with respect to such period unless or until the withholding agent has reason to know that the beneficial owner is not a resident of the foreign country, or the Commissioner of Internal Revenue notifies the withholding agent of such status. If there is a change in the beneficial ownership of the income, the Certificate of Residence shall no longer be effective for such income.

The proposed regulations also provide that the Certificate of Residence (Form 8306) will contain a certification of residency by the Competent Authority of the tax convention partner, as defined in the income tax convention between the foreign country and the United States (or such other governmental office of the tax convention partner that customarily provides statements of residence in lieu of the Competent Authority). Such certification will indicate that the beneficial owner of the income is a resident of such foreign country for purposes of its tax laws. The proposed regulations further provide that residence (and the residence of partners and beneficiaries) shall be determined in accordance with the terms of the appropriate U.S. income tax convention to which foreign country is a party, any applicable regulations thereunder or technical explanation thereof, and any revenue procedure issued by the Internal Revenue Service with respect to such determinations or the proper method of certifying residence of such persons under particular income tax conventions. If the United States Competent Authority has reason to believe that Certificates of Residence from a particular foreign country are not acceptable for purposes of verifying the residence of the beneficial owner of the income, the Internal Revenue Service may provide prospectively by revenue procedure for additional certification requirements for beneficial owners claiming in the future to be residents of such a country. The Certificate of Residence on file with the withholding agent as of any date before the effective date of such revenue procedure, however, shall remain in effect for the period for which it is otherwise effective.

In the event that the tax convention partner has not established a certification procedure to provide certificates of residence as of [Date which is 120 Days After the Publication Of A Treasury Decision In The **Federal Register** In This Matter], the withholding agent shall withhold at the statutory rate on items of income subject to reduction of, or exemption from, tax under the income tax convention. The Competent Authority of the United States and the Competent Authority of such foreign country may agree to interim procedures with respect to the manner in which a nonresident alien individual, foreign corporation, or foreign partnership, trust, or estate entitled to such benefits may establish residency in the foreign country for purposes of reduction of, or exemption from, withholding by the withholding agent and claims for refund of excess amounts of tax withheld. To the extent that there is such an agreement, it shall be published by the Internal Revenue Service as a revenue procedure.

Finally, the proposed regulations provide a procedure for filing the Certificate of Residence (Form 8306).

Other Information Supporting Claim

The proposed regulations provide that if the taxpayer is a foreign corporation claiming a special income tax convention rate on dividends from its U.S. subsidiary and the subsidiary is required to obtain an advance ruling that the special rate is applicable, the foreign corporation must also attach a copy of the ruling to its Certificate of Residence (Form 8306). Further, if the provisions of a specific tax convention require additional verification in order to obtain the tax convention benefits, such as, certificates of status under the Netherlands Antilles income tax convention, such verification shall also be attached to the Certificate of Residence (Form 8306).

Information To Be Furnished by the Withholding Agent

The proposed regulations provide that if a Form 1042S is prepared in respect to payments of items of income subject to the certification of residence requirement, a copy of the Certificate of Residence (Form 8306) and, if applicable, a ruling or other required verification must be attached to each original copy of the corresponding Form 1042S.

Adjustments for Overwithholding of Tax

The proposed regulations provide that for purposes of § 1.1461–4, which provides rules for the repayment of erroneously withheld tax after payment of tax by the withholding agent, a withholding agent is not considered to have withheld more than the correct amount of tax if any alleged overwithholding arose by reason of the failure of the recipient of the payment to furnish a valid Certificate of Residence (Form 8306).

Refunds

The proposed regulations provide that if overpayment has resulted from the withholding of tax at source under chapter 3 of the Code, the nonresident alien individual or the foreign corporation entitled to a reduced rate of, or exemption from, withholding pursuant to an income tax convention to which the United States is a party must file a claim for a refund annually in accordance with the regulations under section 6402 to receive the amount withheld in excess of the tax convention rate.

The proposed regulations also provide that a claim for a refund of an amount withheld in excess of the applicable tax convention rate must be accompanied by a valid Certificate of Residence (Form 8306) and such other evidence required by the Director of the Foreign Operations District or District Director to substantiate the refund claim.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. Accordingly, a Regulatory Impact Analysis is not required.

The Secretary of the Treasury has certified that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, these proposed regulations do not consititute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Nerman Dobynes Hubbard of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.1441–1—1.1465–1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate Taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 and 26 CFR Part 301 are as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. Section 1.1441–6 is amended by revising the heading, by revising paragraphs (a), (b), and (c), and by adding new paragraphs (e), (f), and (g) to read as follows:

§ 1.1441–6 Withholding pursuant to the application of an income tax convention which confers a reduced rate of, or an exemption from, United States income tax.

(a) *In general.* The rate of 30 percent or 14 percent shall be reduced as may be provided by an income tax convention with any country. In the case of payments of any of the items specified in § 1.1441–2 (other than dividends) made on or before December 31, 1971, and in the case of payments of dividends made on or before [Date Which Is 120 Days After The Publication Of A Treasury Decision In The **Federal Register** In This Matter], the withholding agent shall determine the applicable rate pursuant to the appropriate income tax convention and the regulations thereunder. In the case of payment on or after January 1, 1972, of any of the items specified in § 1.1441–2 (other than dividends), the requirements of paragraphs (b)(1) and (c) of this section shall apply in lieu of the ownership certificate or the exemption (or reduced rate) certificate (or corresponding letter) required by the regulations under the various income tax conventions in effect to which the United States is a party. In the case of payment of dividends made after [Date Which Is 120 Days After The Publication Of A Treasury Decision In The **Federal Register** In This Matter], the requirements of paragraph (b)(2) shall apply. In the case of payments made after [Date Which Is 120 Days After The Publication Of A Treasury Decision In the **Federal Register** In This Matter] of any item of income (including dividends) specified in § 1.1441–2 which is subject to a reduced rate of, or an exemption from, withholding pursuant to a tax convention, the requirements of paragraph (e), and if applicable, the requirements of paragraphs (f) and (g) shall apply in addition to any other requirement of this section. This section does not apply to payments of income for personal services.

(b) *Coupon bond interest and dividends*—(1) *Coupon bond interest.* To secure the reduced rate of, or exemption from, United States income tax at source in the case of coupon bond interest, the recipient shall, if entitled to such treatment pursuant to a tax convention, for each issue of bonds file Form 1001 (Ownership, Exemption, or Reduced Rate Certificate) with the withholding agent when presenting the interest coupons for payment. This form shall be completed and signed by either the owner of the interest, his trustee, or his agent, and shall include such information as is required by the form and accompanying instructions. The form shall also contain a statement that the owner of the income is entitled to a reduced rate of, or an exemption from, tax pursuant to a tax convention. In the case of payments made after [Date Which Is 120 Days After The Publication Of A Treasury Decision In The **Federal Register** In This Matter], the statement shall be signed by the beneficial owner (or his agent) under penalties of perjury. In addition, the form shall contain a statement that the beneficial owner of the income is concurrently filing a valid Certificate or Residence (Form 8306) with the withholding agent, has previously filed a valid Certificate of Residence with the withholding agent with respect to the payment of coupon bond interest which is effective for the period in which the income is paid, or is not required to file a Certificate of Residence with the withholding agent with respect to the payment because he qualifies for the *de minimis* payment exception. See paragraph (e) of this section for rules governing the filing of a Certificate of Residence. The Form 1001 and the Certificate of Residence (Form 8306) shall be retained by the withholding agent for at least 4 years after the close of the calendar year in which the coupon bond interest is paid.

(2) *Dividends.* To secure the reduced rate of, or exemption from, United States income tax at source in the case of dividends the payments of which is made after [Date Which Is 120 Days After The Publication Of A Treasury Decision In The **Federal Register** In This Matter], the beneficial owner shall, if entitled to such treatment pursuant to a tax convention, file Form 1001 (Ownership, Exemption, or Reduced Rate Certificate) with the withholding agent. This form shall be completed and signed by the beneficial owner of the dividend (or his agent) under penalties of perjury, and shall include such information as is required by the form and accompanying instructions. The form shall also contain a statement that the beneficial owner of dividend income is entitled to a reduced rate of, or exemption from, tax pursuant to a tax convention. If, after filing such form, the beneficial owner ceases to be eligible for the benefits of the tax convention, he shall promptly notify the withholding agent by letter. The Form 1001 shall further contain a statement that the beneficial owner of the income is concurrently filing a valid Certificate of Residence (Form 8306) with the withholding agent, has previously filed a valid Certificate of Residence with the withholding agent with respect to the dividend payment which is effective for the period in which the income is paid, or is not required to file a Certificate of Residence with the withholding agent with respect to the payment because he qualifies for the *de minimis* payment exception. See paragraph (e) of this section for the rules governing the filing of a Certificate of Residence. The Form 1001 shall be effective for the successive 3-calendar-year period during which the dividend income is paid and no additional Form 1001 for such income need be filed with respect to such period unless or until the withholding agent has reason to know that the Form 1001 is invalid, or the Commissioner of Internal Revenue notifies the withholding agent that the taxpayer must file another form. If any change occurs in the ownership of dividend income subject to a Form 1001 recorded on the books of the withholding agent, the Form 1001 shall no longer be effective. The Form 1001 and the Certificate of Residence (Form 8306) shall be retained by the withholding agent for at least 4 years after the end of the last calendar year in which income subject to the form is paid.

(c) *Income other than coupon bond interest or dividends.* (1) To secure the reduced rate of, or exemption from, United States income tax at source in case of items of income specified in § 1.1441–2 other than coupon bond interest and dividends, the recipient shall, if entitled to such treatment pursuant to a tax convention, file Form 1001 (Ownership, Exemption, or Reduced Rate Certificate) with the withholding agent. This form shall be completed and signed by either the owner of the income, his trustee, or his agent and shall include such information as is required by the form and accompanying instructions. A separate Form 1001 shall be used for each type of income. For this purpose, all income from a trust, estate, or investment account shall be considered as a single type of income. If, after filing such form, the owner ceases to be eligible for the benefits of the tax convention for such income, he shall promptly notify the withholding agent by letter. Each form shall also contain a statement that the owner of the income is entitled to a reduced rate of, or exemption from, tax pursuant to a tax convention. In the case where Form 1001 is filed with the withholding agent after [Date Which Is 120 Days After The Publication Of A Treasury Decision In The **Federal Register** In This Matter], the statement shall be signed by the beneficial owner (or his agent) under penalties of perjury. In addition, each form shall contain a statement that the beneficial owner of the income is concurrently filing a valid Certificate of Residence (Form 8306) with the withholding agent, has previously filed a valid Certificate of Residence with the withholding agent with respect to the payment of income which is effective for the period in which the income is paid, or is not required to file a Certificate of Residence with the withholding agent with respect to the payment because he qualifies for the *de minimis* payment exception. See paragraph (e) of this section for the rules governing the filing of a Certificate of Residence.

(2) Form 1001 shall be effective for the successive 3-calendar-year period during which the income to which the form applies is paid. Each such form filed with any withholding agent shall be filed as soon as practicable. Once a form has been filed for a type of income (other than coupon bond interest and dividends) with respect to such a 3-year period, no additional Form 1001 for such income need be filed with respect to such period unless or until the Commissioner of Internal Revenue notifies the withholding agent that the taxpayer shall file another form, or the withholding agent has reason to know

that the Form 1001 is invalid. If any change occurs in the ownership of income subject to a Form 1001 recorded on the books of the withholding agent, the Form 1001 shall no longer be effective. The Form 1001 and the Certificate of Residence (Form 8306) shall be retained by the withholding agent for at least 4 years after the end of the last calendar year in which income subject to the form is paid.

* * * * *

(e) *Certificate of Residence*—(1) *In general.* Except as otherwise provided in paragraph (e)(2) of this section, to secure a reduced rate of, or an exemption from, withholding at source on items of income specified in § 1.1441-2, subject to a tax convention to which the United States is a party, and paid after [Date Which Is 120 Days After The Publication Of A Treasury Decision In The **Federal Register** In This Matter], the beneficial owner shall, if entitled to such treatment pursuant to such tax convention, file a Certificate of Residence (Form 8306) (or in lieu of Form 8306, a statement which meets the requirements of § 1.1441-6(e)(3)) with the withholding agent on or before the date of payment of such income. If the withholding agent has received a valid Certificate of Residence, the withholding agent may rely upon the Certificate of Residence as evidence that the beneficial owner has complied with all requirements of residence to qualify for the reduced rate of, or exemption from, tax and shall determine the applicable rate of withholding pursuant to the relevant tax convention and any regulations issued thereunder unless—

(i) The withholding agent has reason to know that the beneficial owner is not entitled such benefit; or

(ii) Taking into account among other factors the representations made on the Certificate of Residence, such certificate fails to comply with the requirements of paragraph (e) of this section.

For purposes of paragraph (e) of this section, the term "beneficial owner" shall mean the person who is ultimately entitled to control the income. Thus, for example, a nominee or any person acting in a similar capacity is not the beneficial owner.

(2) *Exception for small payments made to nonresident alien individuals.* The requirements of paragraph (e)(1) of this section shall not apply if payments from the withholding agent do not exceed, or are not expected to exceed, in the aggregate, $50 per calendar quarter made to a nonresident alien individual. In such a case, the withholding agent may, unless it has reason to know that the nonresident alien individual does not qualify for the reduced rate of, or exemption from, tax, determine the applicable rate pursuant to the relevant tax convention and the regulations issued thereunder without a certificate of residence. See paragraphs (b) and (c) for the requirements concerning the filing of Form 1001.

(3) Certification requirements—(i) *In general.* A valid Certificate of Residence (Form 8306) shall contain the following information provided by the—

(A) Beneficial owner (or his agent):

(*1*) The full name of the beneficial owner of the income,

(*2*) The beneficial owner's address in the foreign country of which such owner claims to be a resident,

(*3*) A statement that the beneficial owner is a resident of the foreign country (named in (*2*)) for purposes of its tax laws and is entitled to a reduced rate of, or an exemption from, tax under the tax convention between the named foreign country and the United States, and

(*4*) A declaration, signed by the beneficial owner (or his agent) under penalties of perjury, that he has examined the information in the Certificate of Residence and, to the best of his knowledge and belief, the statements contained therein are true, correct, and complete,

(B) Named foreign country:

(*1*) A statement of the Competent Authority of the named foreign country, as defined in the income tax convention between the named foreign country and the United States, (or such other governmental office of the named foreign country that customarily provides statements of residence in lieu of the Competent Authority) that the beneficial owner is a resident of the named foreign country for purposes of its tax laws, and

(*2*) An official seal of the Competent Authority (or such other governmental office of the named foreign country that customarily provides statements of residence in lieu of the Competent Authority) if it generally affixes such a seal to official documents.

(ii) *Who shall sign the declaration.* In the case where the beneficial owner is a foreign corporation, the declaration shall be signed by an authorized officer of the corporation (or the equivalent thereof under applicable foreign law); in the case where the beneficial owner is a foreign partnership, the declaration shall be signed by a general partner of the partnership (or the equivalent thereof under applicable foreign law); in the case where the beneficial owner is a trust, the declaration shall be signed by the trustee (or the equivalent thereof under applicable law); and in the case where the beneficial owner is an estate, the declaration shall be signed by the personal representative (or the equivalent thereof under applicable foreign law). In the case where the agent of a beneficial owner signs the declaration on behalf of the beneficial owner, the agent must have personal knowledge of the facts as set forth in the Certificate of Residence.

(iii) *Determination of residence.* Residence (and the residence of partners and beneficiaries) shall be determined in accordance with the terms of the appropriate U.S. income tax convention to which the named foreign country is a party, any applicable regulations thereunder or technical explanations thereof, and any revenue procedures issued by the Internal Revenue Service with respect to such determinations or the proper method of certifying residence of such persons under particular income tax conventions. A foreign partnership, trust, or estate shall not be used to secure a reduced rate of, or an exemption from, United States income tax at source for persons who are not entitled to such treatment pursuant to a tax convention.

(iv) *Additional certification requirements.* If the United States Competent Authority has reason to believe that Certificates of Residence from a particular foreign country are not acceptable for purposes of verifying the residence of the beneficial owner of income, the Internal Revenue Service may provide prospectively by revenue procedure for additional certification requirements for beneficial owners claiming to be residents of such a country. The Certificate of Residence on file with the withholding agent as of any date before the effective date of such revenue procedure, however, shall remain in effect in accordance with provisions of paragraph (e)(6) of this section.

(4) *Certification unavailable.* In the case where the foreign country of which the beneficial owner of income claims to be a resident is a party to an income tax convention with the United States but does not provide, as a general rule, certifications of residency as of [Date Which Is 120 Days After The Treasury Decision In The **Federal Register** In This Matter], the withholding agent shall, pursuant to § 1.1441-1, withhold at the statutory rate on items of income subject to reduction or exemption under the income tax convention. The Competent Authority of the United States and the Competent Authority of such foreign country may agree to interim procedures with respect to the manner in which a nonresident alien individual, foreign

corporation, or foreign partnership, trust, or estate entitled to such benefits may establish residency in the foreign country for purposes of reduction of, or exemption from, withholding by the withholding agent and claims for refund of excess amounts of tax withheld. To the extent that there is such an agreement, it shall be published by the Internal Revenue Service as a revenue procedure.

(5) *Procedure for filing Certificate of Residence.* The beneficial owner (or his agent) shall complete its portion of the Certificate of Residence (Form 8306) and furnish it to the Competent Authority of the named foreign country (or such other governmental office of the named foreign country that customarily provides statements of residence in lieu of the Competent Authority) for certification. The beneficial owner (or his agent) shall forward the original and one copy of the completed Certificate of Residence to the withholding agent.

(6) *Effective period.* A valid Certificate of Residence shall be effective for all subject payments made on or after its receipt by the withholding agent and until the close of the second calendar year following the calendar year in which the Certificate of Residence is received by the withholding agent. Once a valid Certificate of Residence has been filed with respect to any such period, the Certificate of Residence will remain effective with respect to such period unless or until the withholding agent has reason to know that the beneficial owner is not a resident of the foreign country, or the Commissioner of Internal Revenue notifies the withholding agent of such status. If there is a change in the beneficial owner of the income, the Certificate of Residence shall no longer be effective for such income.

(f) *Ruling of eligiblity for a 5% rate of tax.* Certain U.S. income tax conventions allow a 5% rate of tax on dividends paid by a U.S. subsidiary to its foreign parent if the relationship between the two corporations was not arranged or maintained primarily with the intention of securing such reduced rate. If the tax convention contains such a provision, the domestic corporation must obtain an advance ruling from the Commissioner that its dividends qualify for the 5% rate of tax. A copy of such ruling shall be attached to the Certificate of Residence (Form 8306) filed with the withholding agent in accordance with paragraph (e) of this section.

(g) *Other verifications required by income tax convention.* In the event that an income tax convention requires verification of additional information prior to receipt of tax convention benefits, such verification shall be attached to the Certificate of Residence (Form 8306) filed with the withholding agent in accordance with paragraph (e) of this section.

Par. 2. Section 1.1461–2 is amended by adding a new subdivision (v) in paragraph (c)(2) to read as follows:

§ 1.1461–2 Return of tax withheld.

* * * * *

(c) *Form 1042S.* * * *

(2) *Information to be furnished.* * * *

(v) If a Form 1042S is prepared in respect of payments made after [Date Which Is 120 Days After The Publication Of A Treasury Decision In the **Federal Register** In This Matter] of items of income subject to the certificate of residence requirement pursuant to paragraph (e) of § 1.1441–6, a copy of the Certificate of Residence (Form 8306) received by the withholding agent and if applicable, a copy of a ruling or other verification as required in paragraph (f) or (g) of § 1.1441–6 received by the withholding agent shall be attached to each original copy of the corresponding Form 1042S.

* * * * *

Par. 3. Section 1.1461–4 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 1.1461–4 Adjustments for over withholding of tax.

(a) *Repayment of erroneously withheld tax after payment of tax by withholding agent*—(1) *Repayment of tax to payee.* * * * For purposes of this section, a withholding agent is not considered to have withheld more than the correct amount of tax if any alleged overwithholding arose by reason of the failure of the recipient of the payment to furnish a valid Certificate of Residence (Form 8306) required by paragraph (e) of § 1.1441–6 in the case of payments made after [Date Which Is 120 Days After The Publication Of A Treasury Decision In The **Federal Register** In This Matter].

* * * * *

PART 301—[AMENDED]

Regulations on Procedure and Administration

Par. 4. Section 301.6402–3 is amended by revising paragraph (e) to read as follows:

§ 301.6402–3 Special rules applicable for income tax.

* * * * *

(e) A nonresident alien individual or a foreign corporation making a claim for a refund must file the appropriate annual income tax return or amended return (Form 1040 NR or Form 1120 F). The claim for refund must show the taxpayer's entire income subject to tax for the taxable year, whether or not the tax has been fully satisfied at the source upon a portion of such income. If the overpayment has resulted from the withholding of tax at source under chapter 3 of the Code, a statement shall be attached to the claim for refund declaring that the person making the claim is the beneficial owner of the income and showing (1) the amounts of tax withheld during the taxable year, with the names and addresses of withholding agents, (2) the name in which the tax was withheld if other than that of the taxpayer, if applicable, (3) facts sufficient to show that, at the time the income was derived, the taxpayer was entitled to the benefit of a reduced rate of, or exemption from, tax with respect to that income under the provisions of an income tax convention to which the United States is a party, and (4) any other information deemed necessary by the Commissioner. In addition, a taxpayer claiming eligibility for a reduced rate of, or an exemption from, tax on items of income specified in § 1.1441–2, subject to a tax convention to which the United States is a party, and paid after [Date Which Is 120 Days After The Publication of A Treasury Decision In The **Federal Register** In This Matter], must attach a Certificate of Residence (Form 8306) as described in paragraph (e) of § 1.1441–6, a copy of Form 1042S, and, if applicable, a ruling or other verification as required in paragraph (f) or (g) of § 1.1441–6 to his claim for refund. Upon request of the Director of the Foreign Operations District, or District Director, the taxpayer shall also submit such other evidence as may be required to substantiate the refund claim, such as to establish that the taxpayer is the beneficial owner of income and not the nominee or agent of another person. In no case may a claim for refund of an amount of overwithheld tax be made by a nonresident alien individual or foreign corporation if the taxpayer has received a repayment or reimbursement of that same amount of tax in accordane with paragraph (a) of § 1461–4.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–23800 Filed 9–6–84; 5:12 pm]

BILLING CODE 4830-01-M

26 CFR Part 51

[LR-67-80]

Incremental Tertiary Oil; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to incremental tertiary oil under section 4993 of the Internal Revenue Code of 1954, which was added by section 101(a)(1) of the Crude Oil Windfall Profit Tax Act of 1980 and amended by section 201(e) of the Technical Corrections Act of 1982. The regulations would provide the public with the guidance needed to comply with the applicable tax laws.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 9, 1984. Except as otherwise provided, the regulations are proposed to be effective for taxable periods beginning after February 29, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-67-80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Donald W. Stevenson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Excise Tax Regulations (26 CFR Part 51) under section 4993 of the Internal Revenue Code of 1954, which was added by section 101(a)(1) of the Crude Oil Windfall Profit Tax Act of 1980 (94 Stat. 239) and amended by section 201(e) of the Technical Corrections Act of 1982 (96 Stat. 2392). Several issues relating to incremental tertiary oil were addressed in final regulations relating to the windfall profit tax promulgated by Treasury Decision 7844 published in the **Federal Register** for November 5, 1982 (47 FR 50215). The amendments contained in this document would clarify the remaining issues with respect to incremental tertiary oil.

The regulations are proposed to be issued under the authority contained in 4993(c), 4993(d), 4997(b) and 7805(b) of the Internal Revenue Code of 1954 (26 U.S.C. 4993(c), 4993(d), 4997(b), 7805(b)).

Explanation of Provisions

In General

Section 4993(a) defines incremental tertiary oil as that amount of crude oil removed from the property during any month for which a qualified tertiary recovery project is in effect in excess of the base level of production for the month.

Project is in Effect

The project is in effect during the period beginning with the project beginning date and ending with the project termination date (unless the operator requests, and the Service consents, not to treat such project as having terminated). The project, however, is not in effect for any period for which the requirements of § 51.4993-1(c)(2) are not met. For example, a project is not in effect during the period in which the operator fails to comply with the requirement to notify the Service of continuing tertiary qualification. The startup of a project that has been terminated (as distinguished from the continuation of a project that has been suspended for failure to meet the requirements of § 51.4993-1(c)(2)) is treated as a new project requiring a new project beginning date.

Base Level

The base level of production for any month is determined by first computing the average monthly amount of crude oil removed from the property during the six-month period ending March 31, 1979. (If no crude oil was removed from the property during the 6-month period ending March 31, 1979, the base level is zero.) Then, this amount is reduced (but not below zero) by one percent of that amount for each month beginning after 1978 and before the first month beginning after the project beginning date and by 2½ percent of that amount for each month beginning after the project beginning date and before the month for which the base level is being determined.

The proposed regulations provide that the average monthly amount is determined by dividing the total number of barrels of crude oil removed from the property during the 6-month period ending March 31, 1979 by six. If the project is expected to significantly increase the ultimate recovery of crude oil from only a portion of the property, the base level for that portion (which is a separate property under section 4993(d)(3)) is determined with reference to the actual production of crude oil from only that portion of the property. If available data are insufficient to determine the actual production from only that portion of the property, it is presumed that the actual production from that portion is that amount that equals the total number of barrels of crude oil removed during the base period from the entire property multiplied by a fraction based on the number of oil producing wells. The numerator of the fraction is the number of oil producing wells located on that portion during that 6-month period ending March 31, 1979, and the denominator is the number of oil producing wells on the entire property during the same period. This presumption may be rebutted by either the Service or the taxpayer by clear and convincing evidence that the actual production from that portion can be more accurately determined by some other allocation method. If a project affects more than one property, the base level is computed by adding the base levels of all the affected properties (or portions or properties).

Projects Which By-Pass the Secondary Process

Section 4993(c)(2) requires that the recovery method be applied in accordance with sound engineering principles. Because sound engineering principles generally require implementation of the secondary process (*e.g.*, waterflood, immiscible natural gas injection) prior to the initiation of a tertiary recovery project, tertiary projects that by-pass the secondary stage generally will not meet the tests for qualified tertiary recovery projects. S. Rep. No. 96-394, 96th Cong. 1st Sess. 48 (1979). The proposed regulations provide, however, that such a project could qualify if undertaking a secondary process on the property is infeasible either because of peculiar characteristics of the reservoir or oil or because of economic reasons and if the reason for not undertaking the secondary project is adequately explained.

Qualified Tertiary Methods

Section 4993(d)(1) provides that the term "tertiary recovery method" means any method described in paragraph (c)(1) through (9) of § 212.78 of the June 1979 energy regulations or any other method approved by the Secretary. The proposed regulations provide that the Associate Chief Counsel (Technical) may, in his or her discretion, approve other methods which meet the following three conditions. First, the method must be one other than waterflooding or immiscible natural gas injection. These two secondary methods were specifically excluded by the legislative history of the Act, S. Rep. No. 96–394, 96th Cong. 1st Sess. 50 (1979). Second, the method must reasonably be expected to result in the recovery of crude oil which could not have been recovered through the use of a primary or secondary method. The second criterion requires a petroleum engineer to determine the amount of crude oil that could be (or could have been) recovered by using a primary or secondary method. (The amount of crude oil that could have been recovered through a secondary method from a property or a portion of a property on which it is infeasible (in accordance with sound engineering principles) to undertake a secondary project is zero.) This rule disqualifies a method that yields virtually the same quantity of recovery of oil as a secondary method from being treated as a tertiary method.

Third, in the case of an immiscible nonhydrocarbon gas displacement method, such method must involve the injection of the gas into the oil zone, rather than the gas zone, of the reservoir to obtain a chemical or physical reaction (other than the mere application of pressure) between the oil and the injectant.

A request for approval of a tertiary method must contain a detailed description of the proposed method and its application and a statement, signed by a petroleum engineer under penalties of perjury, to the effect that the proposed method is reasonably expected to result in the recovery of crude oil that could not have been recovered through a primary or secondary method. If a secondary project is not undertaken on the property, the request must explain fully the reasons for not undertaking a secondary project.

Preflush Chemicals

Section 4993(d)(2) provides that the "project beginning date" is the later of the date on which the injection of liquids, gases, or other matter begins, or the date on which the project is certified by a petroleum engineer or a jurisdictional agency. Mere preparation for injection, however, would not be sufficient to determine the project beginning date.

It is recognized in connection with the use of certain augmented waterflooding methods that the presence of multivalent ions, such as calcium, magnesium, barium, and iron, in the reservoir may have a deleterious effect upon the waterflood solution system. If present in the reservoir in sufficient quantities, these multivalent ions can ultimately break down the solution causing a resultant loss in the efficiency of the process. Several studies have been conducted to determine the effectiveness of injecting sacrificially absorbed agents ahead of the waterflood solution to wash away or to otherwise tie up the multivalent ions. These studies have generally shown that a marked improvement in the efficiency of oil recovery occurs when preflush solutions are used.

Arguably, since the purpose of injecting preflush chemicals is to prepare the reservoir for the injection of the augmented waterflooding solution rather than to initiate the tertiary recovery itself, the date of injection of preflush chemicals should not determine the project beginning date. Alternatively, since the use of preflush chemicals enhances the recovery of crude oil by neutralizing multivalent ions, it can be argued that they should be treated as "liquids, gases, or other matters" for purposes of determining the project beginning date.

The proposed amendments would treat a preflush chemical, including processed or chemically treated water, as a tertiary injectant for purposes of determining the project beginning date if two conditions are met. First, the amount of crude oil which could be recovered by use of the chemical must be significantly greater than the amount which can reasonably be expected to be recovered without the use of the chemical. Second, the injection of the preflush chemical into the reservoir must be followed within 180 days (or longer, if a longer period is approved by the Service) by the injection of significant amounts of a surfactant system, organic polymer, alkali metal, carbonated water, carbon dioxide, or any other injectant approved in writing by the Associate Chief Counsel (Technical), for employment in an augmented waterflooding tertiary recovery method.

Dual Certification

Section 4993(c)(2)(D) requires the operator to submit a certification from either a petroleum engineer or a jurisdictional agency to the effect that the project meets the requirements of subparagraphs (A), (B), and (C) of section 4993(c)(2). If an operator submits certifications from both a petroleum engineer and a jurisdictional agency with respect to the same project, the date used for purposes of determining the project beginning date is the date the first certification is received by the Internal Revenue Service.

Significant Expansion

Section 4993(d)(4) provides that a significant expansion of a project shall be treated as a separate project. The proposed regulations provide that a project may be significantly expanded in either of two ways. First, a project may be geographically expanded by undertaking tertiary activities to recover crude oil from an area not substantially affected by the project's previous tertiary activities. Second, in the case of a project that was begun before June 1, 1979 and was significantly curtailed before January 1, 1980, the project may be significantly expanded by increasing the level of tertiary activities to at least the highest level of tertiary activities prior to the curtailment period. The determination of what was the highest level of tertiary activites or whether a project has been significantly curtailed shall be made on a casse-by-case basis and in light of all the facts and circumstances.

Comments and Requests for a Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written requests to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Services, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue

Service has concluded that the regulations proposed herein are interpretative and that the notice and public comment requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Donald W. Stevenson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 51

Crude Oil Windfall Profit Tax Act of 1980, Excise tax, Incremental tertiary oil, Petroleum, Project beginning date, Tertiary injectant, Tertiary recovery method.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 51 are as follows:

PART 51—[AMENDED]

Paragraph 1. Section 51.4993–1 is added to read as follows:

§ 51.4993–1 Incremental tertiary oil.

(a) *In general*—(1) *Incremental tertiary oil.* The term "incremental tertiary oil" means the excess of—

(i) The amount of crude oil which is produced and removed from a property during the period for which a qualified tertiary recovery project is in effect on the property (see paragraph (a)(2) of this section), over

(ii) The base level for the property for that month.

(2) *Period for which project is in effect*—(i) *General rule.* Except as provided in paragraph (a)(2)(ii) of this section, a qualified tertiary recovery project (as defined in paragraph (c) of this section) is in effect during the period which—

(A) Begins on the project beginning date (as defined in paragraph (d)(2) of this section) and

(B) Ends on the project termination date (as defined in paragraph (a)(3) of this section).

(ii) *Exception.* A project shall not be in effect during any period for which the operator is not in compliance with the requirements of paragraph (c)(2) of this section. However, the months during this period are taken into account under section 4993(b)(2), (relating to the reduction of the average monthly amount by 2½ percent) for the purpose of determining the base level of the property for months after that period.

(3) *Project termination date*—(i) *General rule.* Except as provided in paragraph (b)(3)(ii) of this section, the project termination date is the date on which the last injection made in connection with the project ceases to significantly affect the reservoir. The determination of which injection is the last injection made in connection with the project (in a case in which there has been a substantial period of inactivity) and when an injection ceases to significantly affect the reservoir shall be made on the basis of all of the facts and circumstances, including such factors as the size of the project, the characteristics of the reservoir, the frequency of injections, and the nature of the recovery method. The startup of tertiary activities on a property or a portion of a property on which a tertiary recovery project requiring a new project beginning date.

(ii) *Exception.* The date described in paragraph (b)(3)(i) of this section shall not be treated as the project termination date if the operator requests, and the Associate Chief Counsel (Technical) consents, that the project not be treated as having terminated. The startup of tertiary activities in connection with a teritary recovery project, which but for this paragraph (a)(3)(ii) would have been treated as having terminated, shall be treated as a continuation of the project. Generally, the Associate Chief Counsel (Technical) will consent to treat the project as not having terminated only where the continuation of the project was made impossible by such factors as the unavailability of operating funds or an equipment failure.

(iii) *Request that project not be treated as terminated.* The request described in paragraph (a)(3)(ii) shall be submitted in writing to the Commissioner of Internal Revenue: Attention: Associate Chief Counsel (Technical), Washington, D.C. 20224. The request shall state reasons why the project should not be treated as having terminated.

(b) *Determination of amount*—(1) *Base level*—(i) *Computation of base level.* The base level for any property for any month is determined in two steps. First, the average monthly amount of crude oil removed from the property during the 6-month period ending March 31, 1979, is ascertained. Second, that average monthly amount is reduced (but not below zero) by the sum of 1 percent of that amount for each month which begins after 1978 and before the first calendar month beginning after the project beginning date, and 2½ percent of the amount for each month which begins after the project beginning date (or after 1978 if the project beginning date is before 1979) and before the month for which the base level is being determined. The average monthly amount is determined by dividing the total number of barrels of crude oil removed from the property during the 6-month period ending March 31, 1979 by six. If no crude oil was removed from the property during the 6-month period ending March 31, 1979, the base level is zero.

(ii) *Base level for project which affects only a portion of the property.* If the project is expected to increase the ultimate recovery of crude oil from only a portion of the property, the base level of that portion (which is a separate property under paragraph (e)(4) of this section) is determined with reference to the actual production of crude oil during the 6-month period from only that portion of the property. If available data are insufficient to determine the actual production during that period from only that portion of the property, it shall be presumed that the actual production from that portion was that amount that equals the total number of barrels of crude oil removed during that period from the entire property multiplied by a fraction, the numerator of which is the number of oil producing wells (as defined in § 51.4991–1(b)(4)) located on that portion during that period and the denominator of which is the number of oil producing wells located on the entire property during that period. This presumption may be rebutted by either the Service or the taxpayer by clear and convincing evidence that the actual production from that portion of the property can be more accurately determined by some other allocation method.

(iii) *Base level of project that involves unitized properties.* In the case of a project on a unitized property, the base level for the project is computed by adding the base levels of all the areas included in the unitization.

Example. X Corporation conducts an enhanced tertiary recovery project on a unitized property formed from two properties, A and B. The tertiary project affects only a portion of A and a portion of B. The base level of the project is computed by first determining the base levels for the portions of A and B affected by the project and then combining those base levels.

(iv) *Base level not reduced for computing incremental oil.* The base level is not reduced for purposes of determining the amount of incremental oil for any month during which less than a full month's production of crude oil is obtained. For example, the base level determined under paragraph (b)(2)(i) of this section for the month in which a project begins or ends is not reduced to take into account the fact that the project began or ended on a day other than the first or last day of the month and that less than a full month's production was attained.

(2) *Minimum amount.* If a qualified tertiary recovery project has been certified under the June 1979 energy regulations and the certification is in effect, the amount of the incremental tertiary oil with respect to that project shall not be less than the incremental production determined under the June 1979 energy regulations.

(3) *Allocation rules.* The determination of which barrels of crude oil removed during any calendar month are incremental tertiary oil shall be made—

(i) First by allocating the amount of incremental tertiary oil between oil which (but for this paragraph) would be tier 1 oil, and oil which (but for this paragraph) would be tier 2 oil, in proportion to the respective amounts of each such oil removed from the property during such month, and

(ii) Then by taking into account barrels of crude oil so removed in the order of their respective removal prices, beginning with the highest of such prices.

(c) *Qualified tertiary recovery project*—(1) *In general.* A "qualified tertiary recovery project" is either a qualified tertiary enhanced recovery project with respect to which a certification as such has been approved and is in effect under the June 1979 energy regulations or any project for enhancing recovery of crude oil which meets the requirements of paragraph (c)(2) of this section. A project certified by a petroleum engineer pursuant to a subsequent amendment to the June 1979 energy regulations is not a project that has been approved and is in effect under the June 1979 energy regulations and such project must meet the requirements of paragraph (c)(2) of this section to be a "qualified tertiary recovery project".

(2) *Requirements.* A project meets the requirements referred to in paragraph (c)(1) of this section if it satisifies all of the following requirements:

(i) The project must involve the application (in accordance with sound engineering principles) of one or more tertiary recovery methods which can reasonably be expected to result in more than an insignificant increase (determined in light of all the facts and circumstances) in the amount of crude oil which will ultimately be recovered;

(ii) The date on which the injection of liquids, gases, or other matter begins must be after May 31, 1979;

(iii) The portion of the property to be affected by the project must be adequately delineated;

(iv) The operator must submit either—

(A) A certification from a petroleum engineer that the project meets the requirements of subdivisions (i), (ii), and (iii), or

(B) A certification that a jurisdictional agency (as defined in section 4993(d)(5)) has approved the project as meeting those requirements, and that such approval is still in effect; and

(v) The operator must comply with the requirement set forth in paragraph (e)(6) of this section. For the standard of review by the Internal Revenue Service of jurisdictional agency certified projects, see section 4993(d)(6) of the Code.

(3) *Projects which by-pass the secondary process.* Because sound engineering principles generally require implementing a secondary recovery process prior to the undertaking of an enhanced tertiary recovery method, a project ordinarily will not satisfy the requirement of paragraph (c)(2)(i) of this section if the project is not preceded by a secondary process (*e.g.*, waterflooding or immiscible natural gas injection). However, such a project could meet the requirement of paragraph (c)(2)(i) if a secondary project is not undertaken because of the economic infeasibility of such project or because of peculiar characteristics of the reservoir or oil, and if the reason for not undertaking the secondary process is fully explained in the project's certification.

(d) *Definitions.* For purposes of section 4993 and this section—

(1) *Tertiary recovery method.* The term "tertiary recovery method" means any method which is described in paragraph (c) (1) through (9) of § 212.78 of the June 1979 energy regulations, or any other method to provide tertiary enhanced recovery which is approved in writing by the Associate Chief Counsel (Technical). Standards for approval and procedures for requesting approval of other methods are set forth in paragraph (e)(5) of this section.

(2) *Project beginning date.* The "project beginning date" is the later of—

(i) The first date on which a tertiary injectant (as defined in paragraph (d)(3) of this section) is injected into the reservoir, or

(ii) The date on which—

(A) The project is certified as a qualified tertiary enhanced recovery project under the June 1979 energy regulations, or

(B) The Internal Revenue Service Center (Austin) receives a petroleum engineer's certification of the qualified tertiary recovery project, or a certification of jurisdictional agency approval, which meets all of the requirements of §§ 51.4993-2 or 51.4993-3 (see paragraph (e)(7) of this section). However, for purposes of the preceding sentence only, in the case of a submission received by an Internal Revenue Service Center on or before May 1, 1980, such submission shall be considered to have been received on the later of March 1, 1980, or the date on which the petroleum engineer executed the certification or the jurisdictional agency issued its approval.

(3) *Tertiary injectant.* A tertiary injectant is any liquid, gas, or other matter the injection of which is critical to the tertiary method applied in the project. The injection of a primary injectant is critical to the tertiary recovery method if the amount of crude oil which could be recovered by use of the injectant is significantly greater than the amount which can reasonably be expected to be recovered without the use of the injectant. The injection of any liquid, gas, or other matter, which is not a primary injectant and which is injected into the reservoir prior to the injection of a primary injectant to preflush or treat the reservoir or to enhance the oil recovery efficiency of the primary injectant, is critical to the tertiary recovery method and, therefore, is a tertiary injectant if—

(i) The amount of crude oil which could be recovered by use of that liquid, gas, or other matter is significantly greater than the amount which can reasonably be expected to be recovered without its use, and

(ii) The injection of that liquid, gas, or other matter into the reservoir is followed within 180 days (or more, if a longer period is approved in writing by the Associate Chief Counsel (Technical) as necessary or appropriate under all of the facts and circumstances) by the injection of the primary injectant.

For purposes of this paragraph only, the term "primary injectant" means any injectant described in paragraph (c) (1) through (9) of § 212.78 of the June 1979 energy regulations, or any other injectant approved for employment in a tertiary recovery method approved by the Associate Chief Counsel (Technical). See paragraph (e)(5) of this section for procedures for requesting approval of other methods.

(4) *Petroleum engineer.* For purposes of this section and § 51.4993-2, the term "petroleum engineer" refers to any professional engineer who has been

duly registered or certified by any state and has experience or educational background that qualifies him or her as an expert in the petroleum industry.

(e) *Special rules*—(1) *Pilot projects.* The injection of tertiary injectants in connection with a pilot or experimental program shall be considered injection for purposes of determining a project beginning date for only the portion of the property affected by the pilot or experimental program.

(2) *Planning and preparation for tertiary project.* Mere planning or preparation for the tertiary recovery project, such as drilling an injection well or injecting an injectant other than a tertiary injectant, is not sufficient to establish a project beginning date.

(3) *Oil reservior.* The term "oil reservoir", as used in the definitions of the tertiary recovery methods described in the June 1979 energy regulations, includes reservoirs that produce gas containing crude oil (*i.e.*, condensate).

(4) *Project only affects portion of property.* If a qualified tertiary recovery project can reasonably be expected to significantly increase the ultimate recovery of crude oil from only a portion of a property, the portion so affected by the project shall be treated as a separate property. However, the preceding sentences shall apply only for purposes of this section. For example, the determination of whether the oil produced from either the unaffected or affected property qualifies as stripper, newly discovered, or heavy oil shall be made with reference to both the affected and unaffected portions of the property.

(5) *Requests for approval of other tertiary methods*—(i) *In general.* The Associate Chief Counsel (Technical) may, in his or her discretion, approve tertiary recovery methods other than those specified in paragraph (c) (1) through (9) of § 121.78 of the June 1979 energy regulations which satisfy the following criteria:

(A) The method is some method other than immiscible natural gas injection or waterflooding,

(B) The method is reasonably expected to result in the recovery of crude oil from the property (or portion thereof) which could have not been recovered through any primary or secondary method and

(C) In the case of an immiscible nonhydrocarbon gas displacement method, the method involves the injection of such gas into the oil zone of the reservoir to obtain a chemical or Physical reaction (other than mere pressure) between the oil and the injectant.

Any certification by a petroleum engineer or a jurisdictional agency pursuant to section 499(c)(2)(D) (i) or (ii) which is based upon a tertiary method not specified in paragraph (c) (1) through (9) of § 212.78 of the June 1979 energy regulations is ineffective in the absence of approval of the method pursuant to this subparagraph.

(ii) *Manner of requesting approval.* A request for approval of a tertiary recovery method shall be submitted to the Commissioner of Internal Revenue, Attention: Associate Chief Counsel (Technical), Washington, D.C. 20224. The request shall contain a detailed description of the proposed method and a statement, signed by a petroleum engineer under penalties of perjury, to the effect that the proposed method is reasonably expected to result in the recovery of crude oil that could not have been recovered through a primary or secondary method. The amount of crude oil that could have been recovered through a secondary method from a property or a portion of a property on which it is infeasible (in accordance with sound engineering priciples) to undertake a secondary project is zero.

(6) *Requirement for continuing tertiary qualification.* The operator shall submit to the Internal Revenue Service Center (Austin) a statement signed by a petroleum engineer indicating whether the project continues to meet the requirements set forth in paragraph (c)(2) (i)–(iii) of this section no later than 6 months after the petroleum engineer's or jurisdictional agency's certification of the qualified tertiary recovery project is submitted and shall submit such a statement every 6 months thereafter for the duration of the project. However, such statement is not required to be sent before the date that is 60 days after the date of publication in the **Federal Register** of this subparagraph as a final regulation. If during any 6-month period the actual application of any tertiary recovery method employed in the project differs in any significant manner (including timing differences) from the application of the tertiary method upon which the certification submitted by the operator pursuant to §§ 51.4993–2 or 51.4993–3 was based or if any other significant fact on which the project's certification was based has changed (*e.g.*, the revocation of the jurisdictional agency certification), the operator shall describe the difference and set forth the reasons for the difference in the statement submitted for the period during which such difference occurs. If the operator fails to submit the statement described in this paragraph by the 30th day after the date the statement is due, the operator shall be treated as not complying with the requirements of this paragraph for the period beginning on the due date of the statement and ending on the date the statement is submitted.

(7) *Dual certification.* An operator may certify a tertiary recovery project by submitting a certification from a petroleum engineer pursuant to section 4993(c)(2)(D)(i) or by submitting a certification pursuant to section 4993(c)(2)(D)(ii). If an operator submits both certifications with respect to the same project, the date used for purposes of section 4993(d)(2)(B)(ii) shall be the date the first certification is received by the Internal Revenue Service Center (Austin).

(f) *Significant expansion of tertiary projects*—(1) *In general.* A significant expansion of a tertiary project shall be treated as a separate project (*i.e.*, a new project in the case of a project that was significantly curtailed before June 1, 1979). To qualify as a qualified tertiary recovery project, the expansion must satisfy the requirements of paragraph (c)(2) of this section independently of the original project.

(2) *Methods of significantly expanding a project.* A project is significantly expanded by undertaking tertiary activities to recover crude oil from an area not substantially affected by the project's previous tertiary activities, or in the case of a project that was begun before June 1, 1979 and significantly curtailed before January 1, 1980, by increasing the level of tertiary activities to at least the highest level of tertiary activities prior to the curtailment period. For purposes of this paragraph, the determination of what was the highest level of tertiary activities or whether a project has been significantly curtailed shall be made on a case-by-case basis and in light of all the facts and circumstances.

Example. In 1982 X Corporation initiated an enhanced recovery project to be conducted in three phases on a 20,000-acre property. The tertiary activities conducted on the property during that year were expected to affect only 2,000 acres. During phase II of the project which is expected to begin in 1984, X Corporation plans to drill additional injection wells and to inject injectants to increase recovery of crude oil from only one-half of the remaining 18,000 acres. During phase III, which is expected to begin in 1986, X Corporation plans to drill additional injection wells and to inject injectants to recover oil from only the remaining 9,000 acres. Since the portions of the property affected during phases II and III were not affected by the initial tertiary activities on the property, phases II and III will be treated as substantial expansions of an existing project in 1984 and 1986, respectively, and each will be treated as a separate project beginning in those years.

Par. 2 Section 51.4993–2 is amended by revising paragraph (a) introductory text; by revising paragraph (a) (11) and (12); by adding a new paragraph (a)(13); by removing paragraphs (b) and (d), and by redesignating paragraph (c) as paragraph (b). These revised and added provisions read as follows:

§ 51.4993–2 Self-certification of tertiary recovery projects.

(a) *Certification of petroleum engineer.* In order to qualify under section 4993(c)(2)(D)(i), relating to the self-certification of a qualified tertiary recovery project, the operator shall submit a certification (attached to Form 6458), signed under penalties of perjury by a petroleum engineer, to the Internal Revenue Service Center, Austin, Texas. The certification shall contain the following:

* * * * *

(11) Projected future income and expenses,

(12) The operator's employer identification number, and

(13) In the case of a project that is a significant expansion of an existing project—

(i) The same information required in paragraph (a) (1)–(12) with respect to the existing project (or a copy of a petroleum engineer's certification of the existing project), and

(ii) A statement explaining the manner in which the project is significantly expanded.

* * * * *

Par. 3. Section 51.4993–3 is amended by revising the second sentence in paragraph (a) to read as set forth below.

§ 51.4993–3 Jurisdictional agency certification of tertiary recovery projects.

(a) *Initial certification.* * * * The certification shall state that the appropriate jurisdictional agency has approved the project (or significant expansion of a project) as a project (or expansion) that meets the requirements set forth in section 4993(c)(2) (A), (B), and (C), and the operator shall attach the approving document or a ceritified copy thereof.* * *

* * * * *

Par. 4. Section 51.4993–4 is amended as follows:

1. Paragraph (a) is revised by inserting in the first sentence the phrase "(including a significant expansion thereof)" after the phrase "any tertiary recovery projct."

2. Paragraph (b) is amended by revising the first sentence in paragraph (b), by redesignating paragraphs (b) (9) and (10) as (b) (10) and (11), respectively, by inserting a new paragraph (b)(9) immediatly after paragraph (b)(8), by revising newly redesignated paragraph (11), and by adding a new paragraph (b)(12). These revised and added provisions read as set forth below:

§ 51.4993–4 Internal Revenue Service rulings relating to qualified tertiary recovery projects.

* * * * *

(b) *Manner of requesting ruling.* The request for a ruling described in paragraph (a) of this section shall be made by submitting the request to the Commissioner of Internal Revenue, Attention: Associate Chief Counsel (Technical), Washington, D.C. 20224.* * *

* * * * *

(9) If a secondary project has not been (or will not be) conducted on the property (or portion of the property affected by the project), a statement explaining why the commencement of the tertiary project, in the absence of any secondary project, was (or is) in accord with sound engineering principles,

(10) * * *

(11) A complete description of the geological and engineering factors taken into consideration, together with sufficient data to support the conclusion that the project meets the requirements of section 4993(c) for a "qualified tertiary recovery project," and

(12) In the case of a project that is a significant expansion of an existing project—

(i) The information described in paragraph (b) (1)–(11) with respect to the existing project (or a copy of a petroleum engineer's certification of the existing project), and

(ii) A statement explaining the manner in which the existing project is expanded.

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 84–23594 Filed 9–7–84; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Reopening and Extension of Public Comment Period on Proposed Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: On March 9, 1984, the Ohio Division of Reclamation (the Division) submitted to OSM a proposed program amendment to revise the surface water information requirements in an underground mining permit application. OSM published a notice in the **Federal Register** on April 3, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 13159). The public comment period ended May 3, 1984.

OSM's review of Ohio's proposed amendment identified concerns relating to information on surface water usage and omission of the term "baseline". OSM notified the Division about its concerns on May 25, 1984, and on August 8, 1984, the Division responded by submitting an explanation regarding its regulations on water usage and the reasons why the term "baseline" is not used.

Accordingly, OSM is reopening and extending the comment period on Ohio's March 9, 1984 proposed amendment as modified on August 8, 1984. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. September 25, 1984 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to: Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227.

Copies of the Ohio program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Administrative Record, Room 5124, 1100 L Street, NW., Washington, D.C. 20240

Ohio Division of Reclamation, Building B-3, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION: The Ohio State program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

By letter dated March 9, 1984, Ohio submitted proposed regulations to revise the surface water information requirements in an underground mining permit application. OSM announced receipt of the amendment and initiated a public comment period on April 3, 1984 (49 FR 13159). The comment period ended May 3, 1984.

During review of the amendment, OSM identified a concern in that Ohio rule 1501:13-4-13(E)(2) did not require, as does 30 CFR 784.14(b)(2), that the surface water information submitted be sufficient to demonstrate water usage. Such information is necessary in order for the regulatory authority to have as complete a picture of the existing conditions as possible. OSM also noted that the Ohio rule did not use the term "baseline" to refer to the water information required in the application.

OSM notified Ohio about these concerns by letter dated May 25, 1984, and Ohio responded by submitting clarifying information on August 8, 1984. The clarifying information identifies all of the information requirements regarding surface water usage already contained in the Ohio rules, and explains why use of the term "baseline" is unnecessary.

The full text of the proposed program amendment and of the subsequent material is available for review at the locations listed above under **ADDRESSES.** Accordingly, OSM is now seeking public comment on the adequacy of Ohio's March 9, 1984 amendment in light of the State's August 8, 1984 modification.

Dated: September 3, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 84-23852 Filed 9-7-84; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 162

[CGD12 84-07]

Anchorage Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Noticed of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to amend its Anchorage Regulations by requiring a manned radio watch on all vessels greater than 300 gross tons anchored in San Francisco Bay when winds exceed 25 knots. Vessels anchored in San Francisco Bay frequently experience periods of strong winds which can cause them to drag anchor, often without their crew's knowledge. This rule would minimize the hazard in these situations by requiring a manned radio watch during periods of heavy winds to receive position fixing information from Vessel Traffic Service, San Francisco (VTS).

The Coast Guard also proposes to make editorial changes to 33 CFR 110.224 to make the regulations easier to read and understand.

DATES: Comments must be received on or before October 25, 1984.

ADDRESS: Comments should be mailed or hand-delivered to Marine Safety Division, Twelfth Coast Guard District, Government Island, Building 54-B, Room 250, Alameda, CA 94501. The comments will be available for inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR William F. Walker (415) 437-3465.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD12 84-07] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The proposed rules may be revised in light of comments received. All comments submitted before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR William F. Walker, project officer, Twelfth Coast Guard District Marine Safety Division, and CDR William Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Regulation

Movements of commercial vessels greater than 300 gross tons in the San Francisco Bay area are monitored by the Coast Guard's Vessel Traffic Service (VTS) through radar observations and radio communications. Channel 13 VHF (156.65 MHz) is the designated working frequency on which VTS communicates with vessel operators. Positions of anchored vessels are monitored by VTS radar watchstanders to detect if they are dragging anchor.

Vessels anchored in San Francisco Bay often experience periods of strong winds. These vessels have dragged anchor without their crew's knowledge. A vessel dragging anchor presents a potentially serious hazard to the vessel's crew, the surrounding ports, the environment and to other vessels. Upon detecting that a vessel is dragging anchor, VTS watchstanders attempt to notify the vessel's crew on VHF radio. Often they are unsuccessful because the vessel does not have a manned radio watch. In such a case, a Coast Guard vessel is dispatched to directly notify the vessel's crew. This delay in notifying the vessel's operators, and other vessels in the vicinity, of the developing hazard is considered unacceptable in light of the potential for a major marine casualty.

To insure rapid notification of vessel operators via VHF radio communications, the Coast Guard proposes to amend 33 CFR 110.224 to require a manned radio watch on vessels over 300 gross tons when anchored in San Francisco Bay during periods of sustained winds in excess of 25 knots. The Coast Guard also proposes to make editorial changes to the organization of 33 CFR 110.224 to make it more readily understood by the public. No new regulations are being placed on the public by these changes and several provisions represent a relaxation of existing rules. A summary of the significant changes is as follows:

a. The format has been revised so that general rules applicable to all anchorages appear at the beginning rather than at the very end.

b. The general rules are followed by rules applicable to naval anchorages and to explosives anchorages.

c. Individual anchorages and specific rules applicable to them are shown in a tabular format.

d. The technical boundary descriptions of these anchorages are relegated to the very end of the regulations. They remain unchanged except that names of aids to navigation have been corrected.

e. The general prohibition against anchoring outside anchorage areas has been extended to include the Sacramento Deep Water Ship Channel and turning basin. This is already prohibited by 33 CFR 162.205(c)(3)(ii) but is not found in the anchorage regulations, presumably because the Sacramento Channel did not exist when the anchorage regulations were written.

f. The prohibition of anchoring outside anchorage areas "except when unforeseen circumstances create conditions of imminent peril" has been relaxed to "except when required for safety".

g. The operation of explosives anchorages has been standardized to provide maximum availability for other uses when not required for explosives use. Currently there are four different sets of rules for the explosives anchorages.

h. Existing regulations that prohibit other vessels from using an explosives anchorage are clarified to prohibit "entry" rather than "use".

i. The use of naval anchorages by other vessels is authorized when not required for public vessels. This legitimizes existing practice in Anchorage 21; it is already authorized in Anchorage 10.

j. The regulations acknowledge that reports made to VTS are considered to have been made to COTP.

k. The regulations for Decker Island Restricted Anchorage found in 33 CFR 110.224(f) would be relocated without change and redesignated as 33 CFR 162.205(d). This item is more properly a navigation regulation than an anchorage regulation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. It is expected that the only economic impact would be a slight increase in radio operator salary costs to the individual shipping companies which pales by comparison to the enormous costs of the threatened hazard. In addition, the affected vessels normally spend a minimum amount of time at anchor and this requirement would apply only part of the time. Based upon this assessment it is certified in accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(B)) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Chapter 1 of Title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

1. By revising § 110.224 to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.

(a) *General Regulations.* (1) Within the navigable waters of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, New York Slough, San Joaquin River Deep Water Channel, the Stockton Turning Basin, and the Sacramento River Deep Water Ship Channel between Suisun Bay and the east end of the West Sacramento Turning Basin, anchoring is prohibited outside of designated anchorages except when required for safety or with the written permission of the Captain of the Port. Each vessel anchoring outside an established anchorage area shall immediately notify the Captain of the Port of her position and reason for anchoring.

(2) No vessel may permanently moor in areas adjacent to the San Joaquin River Deep Water Channel except with the written permission of the Captain of the Port.

(3) Each vessel anchoring for safety reasons in the San Joaquin River Deep Water Channel, the Sacramento River Deep Water Ship Channel, or the Stockton or West Sacramento Turning Basins shall be positioned as near to the edge of the channel or turning basin as possible so as not to interfere with navigation, or obstruct the approach to any pier, wharf, slip, or boat harbor and shall move as soon as the reason for anchoring no longer exists or when notified to move by the Captain of the Port.

(4) No vessel may anchor within a tunnel, cable, or pipeline area shown on a Government chart.

(5) No vessel may moor, anchor, or tie up to any pier, wharf, or other vessel in such a manner as to extend into an adjacent channel or fairway.

(6) No vessel in such a condition that it is likely to sink or otherwise become a menace or obstruction to navigation or anchorage of other vessels may occupy an anchorage, except when unforeseen circumstances create conditions of imminent peril to personnel and then only for such period as may be authorized by the Captain of the Port.

(7) No vessel carrying explosives may anchor in other than an explosives anchorage except as authorized by paragraph (a)(1) or (c)(8) of this section.

(8) No vessel other than a vessel under Federal supervision may go alongside or in any manner moor to any Government-owned vessel, mooring buoy, or pontoon boom, their anchor cables, or any of their appendages. No vessel other than a vessel under Federal supervision may obstruct or interfere in any manner with the mooring, unmooring, or servicing of vessels owned by the United States.

(9) The Captain of the Port may require any vessel in a designated anchorage area to moor with two or more anchors.

(10) Each vessel that will not have sufficient personnel on board to weigh anchor at any time shall anchor with two anchors with mooring swivel, unless otherwise authorized by the Captain of the Port.

(11) Deep-draft vessels will take precedence over vessels of lighter draft in the deeper portions of all anchorages. Light-draft barges and vessels shall anchor away from the deeper portions of the anchorage so as not to interfere with the anchoring of deep-draft vessels. Should circumstances warrant, the Captain of the Port will require lighter draft vessels to move to provide safe anchorage, particularly in Anchorages 7 and 9, for deep-draft vessels.

(12) Barges towed in tandem to any anchorage shall nest together when anchoring.

(13) Each vessel that is notified by the Captain of the Port or his authorized representative to shift her position shall promptly shift her position.

(14) No person may use these anchorages for any purpose other than the purpose stated in these anchorage regulations.

(15) Where these regulations require that a vessel notify the Captain of the Port, such report shall be transmitted to the San Francisco Vessel Traffic Service.

Note.—Vessel Traffic Service guards VHF-FM Channel 13 (156.65 MHz) and Channel 16 (156.8 MHz).

(16) Nothing in this section may be construed as relieving any vessel or the owner or person in charge of any vessel from the penalties of law for obstructing or interfering with range lights or for not complying with the laws relating to lights, day signals, and fog signals and other navigation laws and regulations.

(b) *Naval Anchorages.* The following regulations apply to each naval anchorage described in this section.

(1) Naval anchorages are intended for public vessels of the United States, but may be used by other vessels when not required for use by public vessels.

(2) Private vessels using a naval anchorage shall notify the Captain of the Port upon anchoring and upon departure and shall be prepared to move within one hour upon notice should the anchorage be required for public vessels.

(c) *Explosive Anchorages.* The following regulations apply to each explosives anchorage described in this section.

(1) Explosives anchorages and, where established, surrounding forbidden anchorage zones, are temporarily activated as need by the Captain of the Port. When not activated, explosives anchorages and surrounding forbidden anchorage zones become part of the general anchorage which encompasses them or, if not located within the boundaries of a general anchorage, become available for general navigation.

(2) Notice of activation and deactivation of explosives anchorages will be disseminated by Coast Guard Broadcast Notice to Mariners.

(3) Vessels which anchor in an explosives anchorage or surrounding forbidding anchorage zone while such anchorage is not activated shall be prepared to move within one hour if the anchorage is activated.

(4) Unless otherwise authorized by the Captain of the Port:

(i) No vessel may anchor in an activated explosives anchorage except vessels loaded with, loading, or unloading explosives.

(ii) No vessel may enter or remain in an activated explosives anchorage except vessels loaded with, loading or unloading explosives and lighters or barges delivering cargo to or from such vessels.

(iii) No vessel carrying explosives or on which explosives are to be loaded may enter or remain in an explosives anchorage without written permission from the Captain of the Port. Such a permit must be obtained before entering the anchorage and may be revoked at any time.

(iv) No vessel may anchor in the forbidden anchorage zone surrounding an activated explosives anchorage.

(5) Each vessel loading, unloading, or laden with explosives, while within an explosives anchorage, shall display by day at her masthead, or at least 10 feet above the upper deck if the vessel has no mast, a red flag at least 16 square feet in area.

(6) Passing vessels shall reduce speed as necessary so as to insure that their wake does not interfere with cargo transfer operations aboard any vessel displaying a red flag in an explosives anchorage.

(7) The Captain of the Port may:

(i) Issue permission to vessels carrying flammable solids, oxidizing materials, corrosive liquids, flammable liquids, compressed gases, and poisonous substances to occupy a berth in an explosives anchorage. Such a permit must be obtained before entering the anchorage and may be revoked at any time.

(ii) Require any person having business on board a vessel which is laden or being on-loaded or off-loaded with explosives to have a document that is acceptable to the Coast Guard for identification purposes and to show that document to the Captain of the Port.

(iii) Require a non-self-propelled vessel, or a self-propelled vessel that is unable to maneuver under its own power, that occupies an explosives anchorage to be attended by a tug.

(8) The District Engineer, Corps of Engineers, may issue written permission for anchoring a single barge carrying explosives in quantities considered by him as safe and necessary in the vicinity of work being done directly under his supervision or under a Department of the Army permit. When issuing such a permit, the District Engineer shall prescribe the conditions under which the explosives must be stored and handled and shall furnish a copy of the permit and a copy of the rules and regulations for storing and handling to the Captain of the Port.

(d) *Anchorage Grounds.* (1) Table 110.224(d)(1) lists anchorage grounds, identifies the purpose of each anchorage, and contains specific regulations applicable to certain anchorages.

(2) The geographic boundaries of each anchorage are contained in paragraph (e) of this section.

TABLE 110.224(d)(1)

Anchorage No.	General location	Purpose	Specific regulations
3	San Francisco Bay.	General	Note a.
4	do	do	Note a,b.
5	do	do	Notes a,b.
6	do	do	Notes Note a.
7	do	do	Notes a,b,c,d,e.
8	do	do	Notes a,b.
9	do	do	Notes a,b.
10	do	Naval	Notes a,f.
12	do	Explosive	Notes a,g.
13	do	do	Notes a,e,h.
14	do	do	Notes a,g,i.
18	San Pablo Bay.	General	
19	do	do	Notes b,j.
20	do	do	
21	do	Naval	
24	Carquinez Strait.	General	Note k.
25	do	do	Note k.
26	Suisun Bay	do	Note l.
27	do	do	
28	San Joaquin River.	do	
30	do	Explosives	

NOTES.—a. When sustained winds are in excess of 25 knots all vessels greater than 300 gross tons using the anchorage are required to maintain a continuous radio watch on VHF channel 13 (156.65 MHz) or, if unavailable, VHF channel 16 (156.80 MHz). This radio watch must be maintained by a person who fluently speaks the English language.

b. Anchored vessels may not project into adjacent channels or fairways.

c. This anchorage is primarily for use by vessels requiring a temporary anchorage waiting to proceed to pier facilities or other anchorage grounds. This anchorage may not be used by vessels for the purpose of loading any dangerous cargoes or combustible liquids unless authorized by the Captain of the Port.

d. Each vessel using this anchorage may not remain for more than 12 hours unless authorized by the Captain of the Port.

e. The master of every vessel using this anchorage shall maintain his vessel in such condition that the vessel can move within 1 hour upon notification by the Captain of the Port.

f. The Captain of the Port may issue written permission to place permanent yacht moorings not more than 300 yards from the shore within this anchorage.

g. The maximum total quantity of explosives that may be on board a vessel using this anchorage shall be limited to 3,000 tons.

h. The maximum total quantity of explosives that may be onboard a vessel using this anchorage shall be limited to 50 tons except that, with the written permission of the Captain of the Port, vessels in transit, loaded with explosives in excess of this limitation, may anchor temporarily in this anchorage provided that the hatches to the holds containing explosives are not opened.

i. Each vessel using this anchorage will be assigned a berth by the Captain of the Port on the basis of the maximum quantity of explosives that will be on board the vessel.

j. See § 204.215 of this title establishing a target area in San Pablo Bay adjacent to the westerly shore of Mare Island for use of the Mare Island Navy Yard.

k. Each vessel using this anchorage shall promptly notify the Captain of the Port, upon anchoring and upon departure.

l. A portion of Anchorage 26 is occupied by the Suisun Bay Reserve Fleet of the Maritime Administration and § 162.270 of this title establishes a restricted area in the vicinity of the Reserve Fleet.

(e) *Boundaries.*—(1) *Anchorage No. 3.* That portion of Belvedere Cove bounded by the shore and a line beginning at latitude 37°52′20″ N., longitude

122°27′02″ W.; thence southwesterly to latitude 37°51′43″ N., and longitude 122°27′25″ W.

(2) *Anchorage No. 4.* Bounded by the west shore of San Francisco Bay and the following lines: Beginning on the shore southwest of Point San Quentin at latitude 37°56′28″ N., longitude 122°28′54″ W.; thence east-southeasterly to latitude 37°55′55″ N., longitude 122°26′49″ W., thence southwesterly to latitude 37°54′13″ N., longitude 122°27′24″ W., thence southeasterly to the shore of Tiburon Peninsula at Point Chauncey at latitude 37°53′40.5″ N., longitude 122°26′55″ W. When Explosives Anchorage No. 13 is activated by the Captain of the Port, it and the forbidden anchorage zone surrounding it are excluded from Anchorage No. 4.

(3) *Anchorage No. 5.* In San Francisco Bay beginning on the northwest shore of Red Rock at latitude 37°55′48″ N., longitude 122°25′52″ W.; thence westerly to San Francisco Bay Channel Lighted Buoy 12 at latitude 37°55′50″ N., longitude 122°26′32.4″ W.; thence southerly to San Francisco Bay North Channel Lighted Buoy 10 at latitude 37°54′49″ N., longitude 122°26′39″ W.; thence southeasterly to latitude 37°53′23″ N., longitude 122°25′09″ W.; thence northerly to Southhampton Shoal Channel Light 5 at latitude 37°55′19″ N., longitude 122°25′33″ W.; thence to the southeast shore of Red Rock at latitude 37°55′42″ N., longitude 122°25′45″ W.; thence along the shoreline to the point of beginning.

(4) *Anchorage No. 6.* Bounded by the east shore of San Francisco Bay and the following lines: Beginning at the shore of the southernmost extremity of Point Isabel at latitude 37°53′46″ N., longitude 122°19′19″ W.; thence westerly along the north shore of Brooks Island to the jetty extending westerly therefrom; thence westerly along the jetty to its bayward end at latitude 37°54′13″ N., longitude 122°23′27″ W.; thence south-southeasterly to latitude 37°49′53″ N., longitude 122°21′39″ W.; thence southeasterly to latitude 37°49′32.5″ N., longitude 122°21′20.5″ W.; thence easterly to latitude 37°49′34″ N., longitude 122°20′13″ W.; thence east-southeasterly to latitude 37°49′30″ N., longitude 122°19′45.5″ W.; thence east-northeasterly to the shore of Emeryville at latitude 37°50′04″ N., longitude 122°17′41″ W.; excluding from this area, however, the channel to Berkeley Marina delineated by lines joining the following points:

Latitude and Longitude

37°52′06″ N., 122°19′07″ W.
37°52′03″ N., 122°19′17.5″ W.
37°52′00″ N., 122°19′15.5″ W.
37°51′01″ N., 122°22′07″ W.
37°50′43″ N., 122°22′00″ W.
37°50′53″ N., 122°21′32″ W.
37°51′47″ N., 122°18′59″ W.

(5) *Anchorage No. 7.* In San Francisco Bay bounded by the west shore of Treasure Island and the following lines: Beginning at the westernmost point of Treasure Island at latitude 37°49′36″ N., longitude 122°22′40″ W.; thence northwesterly to latitude 37°50′00″ N., longitude 122°22′57″ W.; thence westerly to San Francisco Bay North Channel Lighted Buoy 2 at latitude 37°50′50″ N., longitude 122°23′44″ W.; thence southerly to latitude 37°49′22.5″ N., longitude 122°23′44″ W.; thence southeasterly to latitude 37°48′40.5″ N., longitude 122°23′38″ W.; thence to the shore of Treasure Island at latitude 37°48′51.1″ N., longitude 122°22′13″ W.

(6) *Anchorage No. 8.* In San Francisco Bay bounded by the west shore of the Naval Air Station, Alameda, and the following lines; Beginning at Oakland Inner Harbor Light 2 at latitude 37°47′52″ N., longitude 122°19′54″ W.; thence west-northwesterly to latitude 37°48′03″ N., longitude 122°20′57.5″ W.; thence south-southwesterly to latitude 37°47′56″ N., longitude 122°21′22.5″ W.; thence southwesterly to latitude 37°47′26″ N., longitude 122°21′41″ W.; thence south-southeasterly to latitude 37°47′00″ N., longitude 122°21′30″ W.; thence southeasterly to Alameda Naval Air Station Channel Lighted Bell Buoy 1 at latitude 37°46′38″ N., longitude 122°20′24″ W.; thence easterly to latitude 37°46′37″ N., longitude 122°19′56″ W.; thence northerly to the shore of the Naval Air Station, Alameda, at latitude 37°46′57″ N., longitude 122°19′52.5″ W.

(7) *Anchorage No. 9.* In San Francisco Bay bounded on the north by the shore, the breakwater and turning basin at the Alameda Naval Air Station and a line beginning at the Alameda Naval Air Station Channel Lighted Buoy 6 at latitude 37°46′23″ N., longitude 122°19′01″ W.; thence westerly to the Alameda Naval Air Station Channel Entrance Lighted Buoy 2 at latitude 37°46′27″ N., longitude 122°20′24.5″ W.; thence west-southwesterly to latitude 37°46′08″ N., longitude 122°21′45″ W.; thence south-southeasterly to San Bruno Shoal Channel Light 1 at latitude 37°41′44″ N., longitude 122°20′17.5″ W.; thence south-southeasterly to San Bruno Shoal Channel Light 5 at latitude 37°38′37″ N., longitude 122°18′43″ W.; thence southeasterly to latitude 37°36′05″ N., longitude 122°14′13.5″ W.; thence east-northeasterly to the shore at latitude 37°37′38.5″ N., longitude 122°09′02″ W., and bounded on the east by the shore; including all of San Leandro Bay excluding the pipeline areas therein. When Explosives Anchorage No. 12 or No. 14 is activated by the Captain of the Port, that anchorage and the forbidden anchorage zone surrounding it are excluded from Anchorage No. 9.

(8) *Anchorage No. 10.* In San Francisco Bay bounded by the east shore of Sausalito and the following lines: Beginning on the shore of Sausalito at latitude 37°51′20″ N., longitude 122°28′38″ W.; thence southeasterly to latitude 37°50′57.5″ N., longitude 122°27′57″ W.; thence southwesterly to the shore of Sausalito at latitude 37°50′36″ N., longitude 122°28′34″ W.

(9) *Anchorage No. 12.* In San Francisco Bay east of the city of San Francisco a circular area having a radius of 500 yards centered at latitude 37°44′32.5″ N., longitude 122°20′27.5″ W. A 667-yard-wide forbidden anchorage zone surrounds this anchorage.

(10) *Anchorage No. 13.* In San Francisco Bay east of the Tiburon Peninsula a circular area having a radius of 333 yards centered at latitude 37°55′26″ N., longitude 122°27′27″ W. A 667-yard-wide forbidden anchorage zone surrounds this anchorage except where such zone would extend beyond the limits of Anchorage No. 4.

Note.—See § 110.224(e)(2) for a description of Anchorage No. 4.

(11) *Anchorage No. 14.* In San Francisco Bay east of Hunters Point an area 1,000 yards wide and 2,760 yards long, the end boundaries of which are semicircles, with radii of 500 yards and center, respectively at latitude 37°42′52″ N., longitude 122°19′32.5″ W., and latitude 37°42′14″ N., longitude 122°18′47″ W.; and the side boundaries of which are parallel tangents joining the semicircles. A 667-yard-wide forbidden anchorage zone surrounds this anchorage.

(12) *Anchorage No. 18.* In San Pablo Bay bounded by the west shore of San Pablo Bay and the following lines: Beginning at the shore at Point San Pedro at latitude 37°59′16″ N., longitude 122°26′47″ W.; thence easterly to latitude 37°59′16″ N., longitude 122°26′26″ W.; thence northerly to latitude 38°03′46″ N., longitude 122°25′52.5″ W.; thence northwesterly to the shore south of the entrance to Novato Creek at latitude 38°05′13.5″ N., longitude 122°29′04″ W.; excluding from this area, however, the channel to Hamilton Field and the extension of this channel easterly to the boundary of the

anchorage, and the pipeline area therein.

(13) *Anchorage No. 19.* In San Pablo Bay bounded by the northeast shore of San Pablo Bay and the following lines: Beginning at the shore of Tubbs Island at latitude 38°07′39″ N., longitude 122°25′18″ W.; thence southerly to latitude 38°00′36″ N., longitude 122°25′20″ W.; thence northeasterly to latitude 38°03′13″ N., longitude 122°19′46″ W.; thence east-northeasterly to latitude 38°03′37″ N., longitude 122°17′13″ W.; thence northerly to the long dike extending southwesterly from Mare Island at latitude 38°03′52.5″ N., longitude 122°17′10″ W.; thence along the long dike to the shore at Mare Island.

(14) *Anchorage No. 20.* In San Pablo Bay bounded by the southeast shore of San Pablo Bay and the following lines: Beginning at the northeast corner of Parr Terminal No. 4 at Point San Pablo at latitude 37°57′59″ N., longitude 122°25′35″ W., thence northeasterly to latitude 38°01′27.5″ N., longitude 122°21′33″ W.; thence east-northeasterly to the Union Oil Co. pier at Oleum at latitude 38°03′18″ N., longitude 122°15′37″ W.; and thence along this pier to the shore.

(15) *Anchorage No. 21.* In San Pablo Bay south of Mare Island a rectangular area beginning at latitude 38°03′56″ N., longitude 122°15′56″ W.; thence easterly to latitude 38°04′02″ N., longitude 122°15′20″ W.; thence southerly to latitude 38°03′48″ N., longitude 122°15′16″ W.; thence westerly to latitude 38°03′42″ N., longitude 122°15′52″ W.; thence northerly to the point of beginning.

(16) *Anchorage No. 24.* Bounded by the north shore of Carquinez Strait and the following lines: Beginning on the shore at Dillon Point at latitude 38°03′44″ N., longitude 122°11′29″ W.; thence southeasterly to latitude 38°03′34″ N., longitude 122°11′10″ W.; thence south-southeasterly to latitude 38°03′17″ N., longitude 122°11′04″ W.; thence southeasterly to the shore of Benicia at latitude 38°02′37.5″ N., longitude 122°09′55″ W.

(17) *Anchorage No. 25.* Bounded by the south shore of Carquinez Strait and the following lines: Beginning on the shore at Point Carquinez at latitude 38°02′09″ N., longitude 122°10′22″ W.; thence east-southeasterly to latitude 38°01′47″ N., longitude 122°08′57″ W.; thence southeasterly to the shore of Martinez at latitude 38°01′20″ N., longitude 122°08′42″ W.

(18) *Anchorage No. 26.* On the west side of Suisun Bay, adjacent to and northeast of the city of Benicia within the following boundaries: Beginning on the shore northeast of Army Point at latitude 38°02′54″ N., longitude 122°07′37″ W.; thence south-southeasterly along the Southern Pacific bridge to latitude 38°02′38″ N., longitude 122°07′24″ W.; thence easterly to latitude 38°02′42″ N., longitude 122°07′07.5″ W.; thence northeasterly to Suisun Bay Anchorage 26 Lighted Buoy B at latitude 38°06′42″ N., longitude 122°04′06″ W.; thence northwesterly to the shore at latitude 38°05′58″ N., longitude 122°04′28″ W.; thence along the shore to the point of beginning.

(19) *Anchorage No. 27.* In the northeast portion of Suisun Bay bounded by the north shore and the following lines: Beginning on the shore of Grizzly Island at latitude 38°08′13″ N., longitude 122°02′42.5″ W.; thence southerly to tripod at Preston Point on Roe Island at latitude 38°04′16″ N., longitude 122°02′42″ W.; thence along the south shore of Roe Island to latitude 38°04′05″ N., longitude 122°01′35″ W.; thence east-southeasterly to latitude 38°03′42.5″ N., longitude 121°58′54″ W.; thence easterly to the shore of Chipps Island at latitude 38°03′42.5″ N., longitude 121°55′05″ W.

(20) *Anchorage No. 28.* The area bounded on the east by the shore of Lower Sherman Island and the following lines: Beginning at Point Sacramento on Lower Sherman Island at latitude 38°03′45″ N., longitude 121°50′17.5″ W.; thence southwesterly to latitude 38°03′37.5″ N., longitude 121°50′31″ W.; thence south-southeasterly to latitude 38°02′11″ N., longitude 121°49′58″ W.; thence to the shore of Lower Sherman Island at latitude 38°02′23″ N., longitude 121°49′49″ W.

(21) *Anchorage No. 30.* The portion of the Old San Joaquin River Channel bounded on the west by the shore of Mandeville Point and the following lines: Beginning on the shore of Mandeville Point at latitude 38°04′01″ N., longitude 121°32′05″ W.; thence northeasterly to latitude 38°04′07.5″ N., longitude 121°31′58″ W.; thence southeasterly to latitude 38°03′47″N., longitude 121°31′42.5″ W.; thence westerly to the shore of Mandeville Point at latitude 38°03′47.5″ N., longitude 121°31′56″ W.

(33 U.S.C. 471; 49 CFR 1.46; and 33 CFR 1.05-1(g))

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

2. By adding paragraph (d) to § 162.205 to read as follows:

§ 162.205 San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, Sacramento River and connecting Waters, Calif.

* * * * *

(d) Sacramento River, Decker Island Restricted Anchorage for Vessels of the U.S. Government—(1) *The anchorage ground.* An elongated area in the Sacramento River bounded on the west by the shore of Decker Island and the following lines: Beginning on the shore at Decker Island North End Light at latitude 38°06′16″ N., longitude 121°42′32.5″ W.; thence easterly to latitude 38°06′15″ N., longitude 121°42′27″ W.; thence southerly to latitude 38°05′22″ N., longitude 121°42′30″ W.; thence southwesterly to latitude 38°05′08″ N., longitude 121°42′40″ W.; thence west-southwesterly to latitude 38°05′02″ N., longitude 121°42′50″ W.; thence northwesterly to the shore of Decker Island at latitude 38°05′04″ N., longitude 121°42′52.5″ W.

(2) *Special Regulation.* No vessel or other craft except those owned by or operating under contract with the United States may navigate or anchor within 50 feet of any moored Government vessel in the area. Commercial and pleasure craft shall not moor to buoys or chains of Government vessels, nor may they, while moored or underway, reasonably obstruct the passage of Government or other vessels through the area.

(Sec. 12, Pub. L. 95-474, 92 Stat. 1477 (33 U.S.C. 1231); 49 CFR 1.46(n)(4))

Dated: July 30, 1984.

C.E. Larkin,

Vice Admiral, U.S. Coast Guard Commander, Twelfth Coast Guard District.

[FR Doc. 84-23861 Filed 9-7-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 40785-4085]

Trademark Automated Search System Fees; Extension of Comment Period

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On August 7, 1984, the Patent and Trademark Office published in the **Federal Register** a Notice of Proposed Rulemaking to establish fees to be charged to users of a new automated trademark search system. See 49 FR 31460. The Notice provided that

comments must be submitted on or before September 5, 1984. Requests to extend the comment period have been received. In response to those requests, the comment period is being extended.

DATES: Comments must be received by September 25, 1984.

ADDRESS: Address written comments to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: J. Howard Bryant, Administrator for Automation, Room CP6–1108.

FOR FURTHER INFORMATION CONTACT: J. Howard Bryant by telephone at (703) 557–6000 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Dated: September 5, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84–23845 Filed 9–7–84; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Alligators Taken in 1984–85 Harvest Seasons in Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of CITES may occur only if a Scientific Authority (SA) has advised a permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if the MA is satisfied that the animals or plants were not obtained in violation of laws for their protection. This notice announces proposed findings by the SA and MA of the United States on the export of American alligators harvested in Texas. The Service intends to make these findings to span a period of two harvest seasons (1984–85). The Service now requests comments on these proposed findings, and current information on the species involved. The Service also requests information on environmental and economic impacts that might result from the findings, and information on possible alternative approaches to meet CITES requirements.

DATE: The Service will consider comments received by October 10, 1984, in making its final findings and rule.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C., 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Scientific Authority, room 537, 1717 H Street, NW, Washington, D.C. or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Jachowski, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

Management Authority Finding—Mr. Thomas J. Parisot, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2418.

Export Permits—Mr. Richard K. Robinson, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–1903.

SUPPLEMENTARY INFORMATION: Beginning in 1977, the Service as SA and MA for the United States has employed the rulemaking process to develop and issue decisions on the export of certain species under CITES. The reason for this approach is that it is more effective to issue general decisions on the export of all specimens harvested in a given state and season than to issue such decisions separately for each export permit application. This is true especially for a few CITES Appendix II species that are frequently exported, including the American alligator *(Alligator mississippiensis).* This notice concerns proposed export findings on American alligators harvested in 1984–85 from the State of Texas.

On October 12, 1983 (48 FR 46332), the Service reclassified the American alligator throughout Texas, where the species was previously classified as Endangered or Threatened, to Threatened due to Similarity of Appearance as provided for by the Endangered Species Act of 1973, as amended. This change was based on evidence that the species is no longer biologically Endangered or Threatened in Texas and has recovered from former low numbers in response to complete protection afforded by effective enforcement of laws and regulations by the State of Texas and the Service. With the biological recovery of the alligator in the state, the Texas Parks and Wildlife Department instituted a management plan and research program that will ensure the conservation of the species as a renewable resource (Status of the American Alligator in Texas, 1981; Management Plan for the American Alligator in Texas, 1983). The state intends to initiate a restricted legal harvest of American alligators in September 1984.

Scientific Authority (SA) Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the SA and MA of the exporting country. The SA must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted.

The SA for the United States must develop such advice in accordance with Section 8A of the Endangered Species Act of 1973, as amended in 1982. The Act states that the Secretary of the Interior "shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

The American alligator is considered to be listed in Appendix II to respond both to problems of potential threat to the survival of American alligators (CITES Article II.2(a)) and similarity in appearance to other crocodilians that are threatened with extinction (CITES Article II.2(b)). The recently concluded 10-year review of the appendices confirmed the suitability of this treatment, as set forth in the proposal that the Conference of the Parties adopted in 1979 to place this species in Appendix II. The Service will address the issue of similarity in appearance through tagging of hides and documentation of shipments, as it does with furbearers. Because the alligator is listed partly because of a potential threat to its survival (based on previous population declines that have been reversed in certain parts of the United States), the Service also must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for SA advice on exports of alligators under the provisions of CITES Article II.2(a) have been revised to conform with the 1982 amendments to the Endangered Species Act (see 48 FR 16494, April 18, 1983). They are as follows:

A. Minimum Requirements for Biological Information

(1) Information on the condition of the population, including trends (the method of determination to be a matter of state choice), and population estimates where such information is available.

(2) Information on anticipated harvest of the species.

(3) Information on distribution of harvest.

(4) Habitat evaluation.

B. Minimum Requirements for a Management Program

(1) There should be a controlled harvest, methods and seasons to be a matter of state choice.

(2) All hides should be registered and marked.

(3) Harvest level objectives should be determined annually by the states.

In applying these guidelines, the Service considers the following types of information on the condition of the population: (a) A current estimate (if such information is available) of the total number of animals in the preharvest population derived by extrapolating the number of animals per unit area in each of the major habitat types to obtain an estimate of the total number of animals, where the number of animals per unit area is determined by direct count, by indirect indications of abundance in the state, or by population modeling; (b) a description of ongoing research being conducted to assess the distribution, abundance, or general condition of the species in the state, summarizing results so far obtained, including results of any analyses of age structure or reproductive parameters, and (c) an assessment of long-term population trends of the species in the state, and the relationship of these trends to habitat condition, management practices, harvest pressure, and/or other factors.

Information on anticipated harvest considered by the service should include: (a) The number of animals (by county or game management unit, if data are available at these local levels) to be harvested; and (d) the number of alligator hunters expected to be licensed.

In the case of the alligator, as with most other wild animals, the resource is monitored by a variety of techniques that yield information used in evaluating the condition of a population. As these data are accumulated over time, they reflect trends and call attention to changes in the populations. Habitat information, indices of population size, age and sex structure, and harvest information are all used to evaluate population status. Although the Endangered Species Act Amendments of 1982 provide that population estimates are not to be required for the approval of export of Appendix II wildlife, if estimates are provided by the states or are available from other sources, the Act requires the Service to consider them. If available, population estimates will be considered together with information of the types listed above in making findings on nondetriment.

Based on information accumulated during reclassification of the species under the Endangered Species Act (48 FR 46332; October 12, 1983), population data contained in a special report "Status of the American Alligator in Texas," and alligator management plans submitted by the state for management and regulation of take of the species, the Service proposes to issue SA advice in favor of export from Texas. Due to their length details of these documents are not published in the **Federal Register**; they are available for public inspection at the Office of Scientific Authority (address given above).

Management Authority (MA) Findings

Exports of Appendix II species are to be allowed under CITES only if the MA is satisfied that the specimens were not obtained in contravention of laws for the protection of wildlife or plants. The Service, therefore, must be satisfied that alligator hides or products were not obtained in violation of state or Federal law in order to allow export. Evidence of legal taking for alligators is provided by state tagging systems. The Service requries the use of locking nylon strip tags with embossed legends.

The Service will supply suitable tags free of charge to Texas for alligators harvested during the period covered by these proposed findings, or Texas may use its own tags if they meet the requirements below. The Service has adopted the following MA export guidelines (49 FR 1058; January 9, 1984):

(1) Current state hunting, trapping and tagging regulations and sample tags much be on file with the Service (Federal Wildlife Permit Office);

(2) The tags must be durable and permanently locking, and must show state of origin, year of take, species and be serially unique;

(3) The tag must be applied to all hides taken within a minimum time after take, as specified by the state, and such time should be as short as possible to minimize movement of untagged hides;

(4) The Tag must be permanently attached as authorized and prescribed by the state;

(5) State-registered dealers or state-licensed takers allowed by the state to attach tags must account for tags received and must return unused tags to the state within a specified time after taking season closes; and

(6) Fully manufactured products may be exported from the U.S. when accompanied by state tags removed from the hides contained in the products; such tags must be surrendered to the service prior to export.

Proposed Export Decisions

The Service proposes to approve exports of alligators harvested in the 1984 and 1985 taking seasons in Texas on the grounds that both SA and MA guidelines are satisfied.

Comments Solicited

The Service requests comments on these proposed findings. Final findings will take into consideration the comments and any additional information received, and such consideration might lead to final findings that differ from this proposal.

This proposal is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884 as amended). The primary author is Dr. Richard M. Mitchell, Office of Scientific Authority.

Note.—The Department has determined that these proposed findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. (A determination on whether final findings are a major Federal action significantly affecting the quality of the human environment will be made before the final findings are published.) The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because this rule treats exports on a state-by-state basis and proposes to approve export in accordance with a state management program, this rule will have little effect on small entities in and of itself. This proposed rule does not contain any recordkeeping or information collection requirements as defined by the Paperwork Reduction Act of 1980.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

Subpart F—Export of Certain Species

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531–43.2.

2. In § 23.57, add new paragraph (f) to read as follows:

§ 23.57 American alligator (Alligator mississippiensis).

* * * * *

(f) 1984–85 harvests: Texas.

Condition on export: Each hide must be clearly identified as to species, state of origin and season of taking and must be tagged by a permanently attached, serially numbered tag of a type approved by the Service that is attached under conditions established by the Service.

Dated: August 14, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23884 Filed 9-7-84; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

Refuge Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements **Federal Register** document 49 FR 27334 published on July 3, 1984, that proposed refuge specific hunting regulations for national wildlife refuges. The Service proposes hunting regulations for Great Dismal Swamp, Horicon, Merced, Minnesota Valley and Muscatatuck National Wildlife Refuges. The Service also proposes to amend the migratory game bird regulations for Hillside, Mathews Brake, Morgan Brake, Panther Swamp, Sherburne and Tamarac National Wildlife Refuges, by listing in those regulations the requirement for use of only steel shot on these refuges.

DATE: Comments must be received on or before September 25, 1984.

ADDRESS: Comments may be addressed to Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Gillett, (202) 343–4311.

SUPPLEMENTARY INFORMATION: On July 3, 1984, the Service published in the **Federal Register** (40 FR 27334) refuge specific hunting regulations for most of the national wildlife refuges that require them. Migratory game bird regulations for Horicon, Merced and Minnesota Valley National Wildlife Refuges, upland game regulations for Minnesota Valley National Wildlife Refuge (NWR) and big game regulations for Minnesota Valley NWR, Muscatatuck NWR and the North Carolina portion of Great Dismal Swamp NWR were inadvertently omitted from July 3, 1984, publication and are proposed herein.

The July 3, 1984, proposed rule contained the migratory game bird hunting regulations for Hillside, Mathews Brake, Morgan Brake, Panther Swamp, Sherburne and Tamarac National Widlife Refuges. These regulations did not list the requirement for the use of steel shot on these refuges because they were inadvertently omitted from the proposed rule. The use of steel shot for migratory waterfowl hunting has been required at those refuges for several years, including the 1983–84 season, and the Service intends to list this steel shot requirement in 50 CFR by adding the requirement to the regulations for each of these refuges in § 32.12.

These proposed amendments to 50 CFR would not establish any new hunting programs or require the use of steel shot at any refuge where it was not required during the 1983–84 waterfowl hunting season.

Request for Comments

It is the policy of the Fish and Wildlife Service, whenever practicable, to afford the public an opportunity to participate in the Service's rulemaking process. Normally the Service gives the public 30 or more days to comment on proposed rules, but the Service requests that the public respond to this supplemental proposed rule on or before 15 days after the date of this publication. The Service has shortened the comment period because of the need to issue a final rule prior to the beginning of the rapidly approaching hunting seasons. At this time it would be impracticable to have a longer comment period than noted above, and the absence of refuge specific regulations for these hunting programs would be contrary to the public interest.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act authorizes the Secretary of the Interior to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. In some cases, refuge specific regulations are included as a part of the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the affected national wildlife refuges were established. Compliance with the Refuge Administration and Refuge Recreation Acts is ensured when the hunting plans are developed and the determinations required by these acts are made prior to the addition of the refuge to the lists of areas open to hunting in 50 CFR.

Economic Effect

Executive Order 12291, "Federal Regulation" of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs of prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small businesses, organization or governmental jurisdictions.

These proposed actions will not significantly alter existing refuge hunting programs and, therefore, are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No
Hunter surveys	1018–0044
Special use permits	1018–0046
Hunter reservation/application/blind/assignment	1018–0047
Weapon qualification	1018–0050

The proposed regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76–59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1977 (41 FR 51131). Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331(c) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when the hunting plans are developed, and the determinations required by these acts are made prior to the addition of the refuge to lists of areas open to hunting in 50 CFR. Also, refuge specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of the refuge. The refuge specific hunting regulations that are proposed in this rulemaking do not significantly alter the existing use of national wildlife refuges.

Richard Frietsche, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C., is the primary author of this proposed rulemaking document.

Information regarding the conditions that apply to individual refuge hunts and a map of the hunt area are available at refuge headquarters.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

PART 32—[AMENDED]

For the reasons set out in the preamble, Part 32, Subchapter C, Chapter 1 of Title 50, Code of Federal Regulations, is amended as set forth below.

1. Section 32.12 is amended by redesignating paragraphs (e)(7) through (e)(13) as paragraphs (e)(8) through (e)(14); by adding a new paragraph (e)(7); by redesignating paragraphs (t)(1) and (t)(2) as paragraphs (t)(2) and (t)(3); by adding new paragraphs (t)(1), (t)(2)(iv) and (t)(3)(iii); by adding new paragraph (u)(1)(iii); by revising paragraphs (u)(2), (u)(3), and (u)(5); by redesignating paragraph (pp) as paragraph (qq); and by adding a new paragraph (pp) as follows:

§ 32.12 Refuge specific regulations; migratory game birds.

* * * * *

(e) * * *

(7) *Merced National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Firearms must be unloaded while being transported between parking areas and blind sites.

(ii) Snipe hunting is not permitted in the spaced blind unit.

(iii) Hunting assigned to the spaced blind unit are restricted to their assigned blind except for retrieving downed birds, placing decoys or traveling to and from the parking area.

(iv) Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

* * * * *

(t)(1) *Minnesota Valley National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only participants in the refuge's Young Wild Fowlers program are permitted to hunt.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(2) * * *

(iv) Hunters must use and be in possession only of shells containing steel shot.

(3) * * *

(iii) Hunters must use and be in possession only of shells containing steel shot.

(u) * * *

(1) * * *

(iii) Hunters must use and be in possession only of shells containing steel shot.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permited until noon each day.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permited until noon each day.

(ii) Hunters must use and be in possession only of shells containing steel shot.

* * * * *

(5) *Panther Swamp National Wildlife Refuge.* Hunting of ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permited until noon each day.

(ii) Hunters must use and be in possession only of shells containing steel shot.

* * * * *

(pp) *Wisconsin—Horicon National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Only participants in the refuge's Young Wild Fowlers program are permitted to hunt.

(3) Hunters must use and be in possession only of shells containing steel shot.

2. Section 32.22 is amended by redesignating paragraphs (u)(2) through (u)(4) as paragraphs (u)(3) through (u)(5) and by adding a new paragraph (u)(2) as follows:

§ 32.22 Refuge specific regulations; upland game.

* * * * *

(u) * * *

(2) *Minnesota Valley National Wildlife Refuge.* Hunting of pheasant, gray and fox squirrel and cottontail rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

3. Section 32.32 is amended by redesignating paragraphs (o) through (qq) as paragraphs (p) through (ss), respectively; by adding a new paragraph (o), by redesignating newly designated paragraphs (v)(3) through (v)(5) as (v)(4) through (v)(6), and adding a new paragraph (v)(3). Also, newly designated paragraphs (ee)(1) through (ee)(3) are redesignated as (ee)(2) through (ee)(4), respectively and a new paragraph (ee)(1) is added to read as follows:

§ 32.32 Refuge specific regulations; big game.

* * * * *

(o) *Indiana—Muscatatuck National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Only bow and arrow and muzzleloaders are permitted.

(3) The construction and use of permanent blinds, platforms or loaders is not permitted.

* * * * *

(v) * * *

(2) * * *

(3) *Minnesota Valley National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(ee) * * *

(1) *Great Dismal Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(16 U.S.C. 460k, 668dd)

Dated: August 22, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23722 Filed 9-7-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 178
Monday, September 10, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. (770–776), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 15–16, 1984.

Time: 9:00 a.m.–4:30 p.m., Oct. 15; 9:00 a.m.–3:00 p.m., Oct. 16.

Place: U.S. National Arboretum, 24th and R Streets, NW., Washington, D.C.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, Room 236, Bg–005, BARC–W, Beltsville, MD 20705. Telephone: AC 301/344–3912.

Done at Beltsville, Maryland, this 27th day of August 1984.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 84–23805 Filed 9–7–84; 8:45 am]

BILLING CODE 3410-03-M

Forest Service

Coal Leasing Within White River National Forest, Eagle, Garfield, Gunnison, Mesa, Moffat, Pitkin, Rio Blanco, Routt, and Summit Counties, CO; Application of Coal Unsuitability Criteria

Pursuant to the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092) and Title 43, Subpart 3461 of the Code of Federal Regulations (43 CFR 3461), the Forest Service, Department of Agriculture, has applied unsuitability criteria to lands within a Known Recoverable Coal Resource Area (KRCRA) on the White River National Forest. These criteria were applied as part of the White River National Forest land and resource planning process to identify lands suitable for further consideration for coal leasing. If and when the Bureau of Land Management proposes to lease specific tracts which are suitable, mineral leasing direction in the Forest Plan will be applied.

The coal unsuitability criteria were applied to a total of 135,300 acres of KRCRA. Included were three areas located in the Garfield, Gunnison, Mesa and Pitkin Counties in the Crystal River, Thompson Creek and Divide Creek Drainages.

A coal unsuitability assessment is in Appendix E of the Draft and Final (available in late September) Environmental Impact Statements on the White River National Forest Land and Resource Management Plan. Copies of the assessment are available for public review at Forest Service offices in Aspen, Carbondale, Dillon, Eagle, Meeker, Minturn, and Rifle, Colorado. Detailed maps and information are available at the Forest Supervisor's Office, P.O. Box 948, Glenwood Springs, Colorado 81602.

Comments on the coal unsuitability assessment are invited and must be sent to the Forest Supervisor, White River National Forest, Box 948, Glenwood Springs, Colorado 81601 within 30 days of the date of publication of this Notice.

For further information, contact John Nepp at the above address or call (303) 945–2521.

Dated: August 30, 1984.

Richard E. Woodrow,

Forest Supervisor, White River National Forest.

[FR Doc. 84–23837 Filed 9–7–84; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Posted Stockyards; Nashville Livestock Comm., Inc. et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definitions of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of Posting
AR–180 Nashville Livestock Comm., Inc., Nashville, Arkansas.	Apr. 5, 1984.
GA–191 Taylor County Livestock, Inc., Reynolds, Georgia.	July 7, 1984.
MO–256 I–70 Farmers Livestock Market, Higginsville, Missouri.	Nov. 10, 1983.
MO–257 Oregon Livestock Sales Co., Oregon, Missouri.	Nov. 1, 1983.
MO–258 Uder Brothers Livestock Auction Co., Lebanon, Missouri.	Oct. 19, 1983.

Done at Washington, D.C., this 4th day of September, 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84–23866 Filed 9–7–84; 8:45 am]

BILLING CODE 3410-02-M

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; Systems of Records

AGENCY: Central Intelligence Agency.

ACTION: Proposed amendment of the statement of general routine uses of the systems of records.

SUMMARY: This proposal amends and renumbers one general routine use and is applicable to all of the CIA systems of records (last published in full text in the **Federal Register**, Vol. 42, No. 184, p. 48269). The other six routine uses remain unchanged except for being renumbered.

DATES: Written comments should be submitted at the earliest possible date, but no later than October 10, 1984, in order to enable the Agency to have an opportunity to review them. The routine uses will become effective November 9, 1984, unless the Agency publishes a notice to the contrary.

ADDRESS: Send written comments to: Chief, Information and Privacy Division, Central Intelligence Agency, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: George LaPlante, Phone: (703) 351-6046.

SUPPLEMENTARY INFORMATION: The seventh routine use (formerly number 1) has been amended to more clearly identify the specific legal authorities which govern the conduct of CIA activities. In order to eliminate any confusion that might be engendered by the general nature of the language used, the Privacy Act requirement that disclosure be "compatible with the purpose for which the record was collected" has been included in the amended text. The statement that "[t]his routine use is not intended to supplant the other routine uses published by the Central Intelligence Agency" was included in order to indicate that the general routine use does not apply under circumstances when any of the other published uses apply.

For the reasons set out in th preamble and pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), this Agency proposes to amend the statement of general routine uses as stated below.

The following routine uses apply to, and are incorporated by reference into, each system of records maintained by the CIA:

1. In the event that a system of records maintained by the Central Intelligence Agency to carry out its functions indicates, or relates to, a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be disclosed, as a routine use, to the appropriate agency whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation, or charged with the responsibility to take appropriate administrative action, or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Central Intelligence Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance or special access, or the performance of the Agency's acquisition functions.

3. A record from this system of records may be disclosed, as a routine use, to a federal, state, or local agency, or other appropriate entities, or individuals, in connection with the hiring or retention of an employee, the issuance of a security clearance or special access, the reporting or an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the entity's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing parties or their counsel or other representatives in the course of settlement negotiations, and disclosures made pursuant to statutes or regulations governing the conduct of such proceedings.

5. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation, as set forth in OMB Circular No. A-19, at any stage of the legislative coordination and clearance process as set forth in the Circular.

6. A record from a system of records may be disclosed, as a routine use, the NARS (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

7. A record from this system of records may be disclosed, as a routine use, to a federal, state, or local agency, other appropriate entities or individuals, or, through established liaison channels, to selected foreign governments, provided such disclosure is compatible with the purpose for which the purpose for which the record was collected and is undertaken to enable the Central Intelligence Agency to carry out its responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, national security directives applicable to the Agency and classified implementing procedures approved by the Attorney General promulgated pursuant to such orders and directives, as well as statutes, Executive Orders and directives of general applicability. This routine use is not intended to supplant the other routine uses published by the Central Intelligence Agency.

Harry E. Fitzwater,

Deputy Director for Administration.

[FR Doc. 84-23834 Filed 9-7-84; 8:45 am]

BILLING CODE 6310-02-M

CIVIL AERONAUTICS BOARD

[Docket 42458]

Miami-London Competitive Service Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to him.

Dated: Washington, DC, September 5, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-23854 Filed 9-7-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 37-84]

Foreign-Trade Zone 50, Long Beach, CA; Application for Zone Site in Ontario, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach (BHC), grantee of Foreign-Trade Zone 50, requesting authority to expand its zone to include a site in Ontario, California, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 24, 1984. The applicant is authorized to make this proposal under Sections 6300-6305 of the Government Code of California.

In September 1979, the Board authorized BHC to establish a foreign-trade zone in the Los Angeles-Long Beach area (Board Order 147, 44 FR 55919, 9/28/79). The general-purpose zone is on a 10-acre industrial park site in Northwest Long Beach. BHC is also grantee of subzones for a Toyota truck bed plant in Long Beach and the National Steel and Shipbuilding Company shipyard in San Diego.

The proposed site is located in Ontario, San Bernadino County, adjacent to the Ontario International Airport some 40 miles from the Port of Long Beach. The new facility covers 1350 acres within a planned industrial-commercial park owned and operated by Ontario International Partners.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Alice Rigdon, District Director, U.S. Customs Service, Pacific Region, 300 S. Ferry St., Terminal Island, San Pedro, CA 90731; and Colonel Paul W. Taylor, District Engineer, U.S. Army Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, CA 90053.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 5, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Room 800, 11777 San Vicente Blvd., Los Angeles, CA 90049

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: September 5, 1984.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 84-23876 Filed 9-7-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 38-84]

Foreign-Trade Zone 23, Erie County, NY; Application for Subzone for Buffalo Specialty Products

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Erie County, New York, grantee of Foreign-Trade 23, requesting a special-purpose subzone for export manufacturing at the facilities of Buffalo Specialty Products, Inc. (BSP) in Hamburg, New York, adjacent to the Buffalo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 28, 1984. The applicant is authorized to make this proposal under Chapter 201 of the Laws of New York (Act of April 16, 1974).

The proposed subzone will be located at BSP's steel products manufacturing facility, 3100 S. Lakeshore Road in Hamburg. The 19-acre facility employs some 100 workers producing customized specialty steel products for heavy industry and construction, and a variety of other steel products such as highway guardrails, rail car roof sections, and steel stampings and underframes for buses. The company supplies the domestic market using domestic steel raw materials, a practice it plans to continue. It is now planning to enter export markets, and states that lower-priced raw materials are needed.

Subzone status is being requested for the processing of foreign steel raw materials into products for export markets only. Zone procedures would exempt BSP from duty payments on the raw materials used in these exports. The savings will help the company compete in foreign markets and expand production and employment at its domestic plant.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Robert R. Hardiman, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, N.Y. 14207.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 8, 1984.

Copies of the applications are available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 1312 Federal Bldg., 111 W. Huron Street, Buffalo, N.Y. 14202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: September 5, 1984.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 84-23877 Filed 9-7-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held September 25, 1984, 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Update from DOC on the establishment of the Foreign Availability Division.
5. Discussion of the FAAD questions to DOC General Counsel.
6. Review of DOC written response to the Subcommittee's letter dated July 25, 1984 concerning deregulation of West-West trade based on foreign availability.
7. Discussion of the 1985 annual plan.
8. New Business.
9. Action items underway.
10. Action items due at next meeting.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: September 5, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84–23873 Filed 9–7–84; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 25, 1984, 3:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of progress on Committee's 1984 annual plan.
4. Report on current work program of the subcommittees:
   a. Foreign Availability,
   b. Hardware, and
   c. Licensing Procedures.
5. New Business.
6. Action items underway.
7. Action items due at mext meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 95–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: September 5, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84–23874 Filed 9–7–84; 8:45 am]

BILLING CODE 3510–DT–M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 5, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

TIME AND PLACE: September 26, 1984 at 9:30 a.m., Herbert C. Hoover Building, Room 7808, 14th Street and Constitution Ave. NW., Washington, D.C.

AGENDA

General Session

1. Opening remarks by the Chairmen.
2. Presentation of papers or comments by the public.
3. Subcommittee report:
   (a) Discrete Semiconductor Device,
   (b) Microcircuits and
   (c) Semiconductor Manufacturing Materials and Equipment.
4. New Business.
5. Action items underway.
6. Action items due at next meeting.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation: The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated: September 5, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84–23875 Filed 9–7–84; 8:45 am]

BILLING CODE 3510–DT–M

[A–351–025]

Antidumping Duty Order; Hot-rolled Carbon Steel Sheet From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations, the United States Department of Commerce (the Department) and the United States International Trade Commission (ITC) have determined that hot-rolled carbon steel sheet from Brazil is being sold as less than fair value and that these sales are materially injuring a United States industry. Additionally, although the Department found that "critical circumstances" existed with respect to hot-rolled carbon steel sheet from Brazil, the ITC found that "critical circumstances" did not exist in this case. Therefore, based on these findings, all entries, or withdrawals from warehouse, for consumption, of hot-rolled carbon steel sheet from Brazil except that produced by CSN made on or after April 26, 1984, the date on which the Department published its notice of "Preliminary Determination of Sales at Less Than Fair Value" in the **Federal Register**, will be liable for the possible assessment of antidumping duties. For hot-rolled carbon steel sheet produced by CSN, the effective date of the suspension of liquidation is July 11, 1984. Furthermore, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption, on or after the date of publication of this order in the **Federal Register.**

Since the ITC made a negative finding regarding "critical circumstances" under section 735(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673(b)((4)(A)), the suspension of liquidation, previously ordered 90 days retroactively from the effective dates of the suspension of liquidation for the individual producers, is no longer in effect. Therefore, Customs officials will be directed to terminate any retroactive suspension of liquidation, release any bond or other security, refund any cash deposit, and liquidate all entries, or withdrawals from warehouse, for consumption, of hot-rolled carbon sheet from Brazil made before April 26, 1984, for all producers except CSN and July 11, 1984 for CSN.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-2438.

Scope of Investigation

The merchandise covered by this order consists of hot-rolled carbon steel sheet. The term *"hot-rolled carbon steel sheet"* covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a flat-rolled carbon steel product, whether or not corrugated or crimped, not cold-rolled, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; 0.1875 inch or more in thickness, over 8 inches in width and pickled; as currently provided for in item 607.8320 of the Tariff Schedules of the United States Annotated *(TSUSA)*, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*. This description of hot-rolled carbon sheet includes some products classified as "plate" in the *TSUSA*.

In accordance with section 733 of the Act (19 U.S.C. 1673b), on April 26, 1984, the Department published its preliminary determination of sales at less than fair value of hot-rolled carbon steel sheet from Brazil. One producer, CSN, was excluded from that determination.

At that time, in accordance with section 733(e) of the Act (19 U.S.C. 1673b(e)), the Department found that "critical circumstances" did not exist with respect to imports of hot-rolled carbon steel sheet from Brazil. In accordance with section 735 of the Act (19 U.S.C. 1673d), on July 11, 1984, the Department published its final determinations that these imports are being sold at less than fair value and that "critical circumstances" exist with respect to these imports (49 FR 28298).

On August 23, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations are materially injuring a United States industry. The ITC made a negative determination regarding "critical circumstances." Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1763e(a)(1)), antidumping duties equal to the amount by which the foreign market value exceeds the United States price of hot-rolled carbon steel sheet from Brazil. These antidumping duties will be assessed on hot-rolled carbon steel sheet entered, or withdrawn from warehouse, for consumption, on or after April 26, 1984, the date on which the Department published its notice of "Preliminary Determination of Sales at Less Than Fair Value" in the **Federal Register** for all producers except CSN, and July 11, 1984, the date on which the Department published its notice of Final Determination of Sales at Less Than Fair Value for CSN.

The Department further directs United States Customs officers to terminate any retroactive suspension of liquidation, release any bond or other security, refund any cash deposit, and liquidate all entries, or withdrawals from warehouse, for consumption, of hot-rolled carbon steel sheet from Brazil made before April 26, 1984, for producers other than CSN, and July 11, 1984 for CSN.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated margin as listed in the table below:

Manufacturer/producer/exporter	Ad/valorem rate (percent)
Companhia Siderurgica Paulista (COSIPA)	16.03
Companhia Siderurgica Nacional (C.S.N.)	6.09
Usinas Siderurgica de Minas Gerais (USIMINAS)	18.15
All other manufacturers/producers/exporters	5.45

The amounts listed are expressed as a percentage of the FOB price.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. Accordingly, the level of export subsidies (as determined in the final affirmative countervailing duty determinations on certain carbon steel products from Brazil (49 FR 17988) has been subtracted from the dumping margin for deposit purposes.

This determination constitutes an antidumping duty order with respect to hot-rolled carbon steel sheet from Brazil, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

We have deleted from the Commerce Regulations Annex 1 to 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that it is commencing an administrative review of this order on September 10, 1984. For further information regarding this review, contact Mr. William Matthews (202) 377-5253.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Dated: August 30, 1984.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23872 Filed 9-7-84; 8:45 am]

BILLING CODE 3510-DS-M

[A–469–401]

Certain Stainless Steel Sheet and Strip Products From Spain; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain cold-rolled stainless steel sheet and strip products from Spain are being, or are likely to be, sold in the United States at less than fair value. Hot-rolled stainless steel sheet and strip products have been excluded from the investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or is threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: William D. Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–1766.

Final Determination

We have determined that certain cold-rolled stainless steel sheet and strip products from Spain are being, or are likely to be sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). We have found no sales of hot-rolled stainless steel strip to the U.S. by Compania Espanola para la Fabricacion de Acero Inoxidable, S.A. (Acerinox), the sole producer of the merchandise under investigation. The only sale of hot-rolled stainless steel sheet by Acerinox was a trial order purchased by a U.S. customer. The merchandise produced by Acerinox was steel slab which was processed to hot-rolled sheet in a third-country. We consider this sale to be out of the ordinary course of trade for purposes of this investigation. Accordingly, we have excluded hot-rolled stainless steel sheet and strip products from the scope of this investigation.

We have found that the foreign market value of cold-rolled stainless steel sheet exceeded the United States price on 100 percent of comparisons made. These margins range from 27.30 percent to 51.70 percent. The simple average margin on these comparisons is 39.56 percent. This margin is also being applied to cold-rolled stainless steel strip as the best information available.

Case History

On January 13, 1984, we received a petition from counsel for: Allegheny Ludlum Steel Corporation; Armco, Inc.; Carpenter Technology Corporation; Eastern Stainless Steel Company; J&L Specialty Steels, Inc.; Jessup Steel Company, Republic Steel Corporation; Universal-Cyclops Specialty Steel Division, Cyclops Corporation; Washington Steel Corporation; and United Steelworkers of America, AFL/CIO-CLC, on behalf of the domestic stainless steel sheet and strip industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that imports of certain stainless steel sheet and strip products from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 1, 1984 (49 FR 4959). On February 27, 1984, the ITC determined that there is reasonable indication that imports of certain stainless steel sheet and strip products from Spain are materially injuring a U.S. industry (49 FR 8505).

On February 22, 1984, we presented an antidumping questionnaire to counsel for Acerinox. An extension of time to respond was granted, and on April 9, 1984, we received Acerinox's response to the questionnaire. Based on information contained in that response we preliminarily determined that hot-rolled and cold-rolled stainless steel sheet were being sold at less than fair value. The estimated weighted-average dumping margin was 2.1 percent. We also preliminarily determined that stainless steel strip products were not being sold at less than fair value. As required by law, we conducted a verification of the correctness of the response through examination of source documents of the company in Madrid, Spain. Verification revealed major portions of the response to be incorrect or unsubstantiated.

A hearing was held on July 13, 1984, to allow the parties an opportunity to address the issues arising in this investigation.

Scope of the Investigation

For reasons outlined above hot-rolled stainless steel sheet and strip have been excluded from this investigation. The merchandise covered by this investigation is cold-rolled stainless steel sheet, currently provided for in item 607.9020 of the *Tariff Schedules of the United States (Annotated)* (TSUSA), and cold-rolled stainless steel strip, currently provided for under TSUSA item numbers 608.4300 and 608.5700.

Cold-rolled stainless steel sheet covers cold-rolled stainless steel sheet products whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; and under 0.1875 inch in thickness and over 12 inches in width.

Cold-rolled stainless steel strip is a flat-rolled stainless steel product whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; under 0.1875 inch in thickness and over 0.05 inch in width but not over 12 inches in width.

Cold-rolled stainless steel strip, including razor blade strip, not over 0.01 inch in thickness is not included in this investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we used the best information available as required by section 776(b) of the Act of make fair value comparisons. We used the best information available because U.S. and home market price data and certain claims for rebates and circumstance of sale adjustments were found to be incorrect or unsubstantiated at the time of verification of the Acerinox response. The best information available for purposes of this final determination is the information provided in the petition relative to alleged selling prices of cold-rolled stainless steel sheet in the United States and Spain. Amounts claimed by Acerinox as price adjustments and which were verified were applied to the prices, where applicable. The average margin resulting from our calculations for cold-rolled stainless steel sheet was also applied to cold-rolled stainless steel strip as the best information available.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Acerinox. As the prices submitted by Acerinox could not be verified, we used as best information available the offered price, CIF, duty paid, delivered to east coast ports, of the subject merchandise by a U.S. importer, as presented in the petition. A deduction was made to net back these prices to the prices of the producer to the U.S. importer in an amount provided in the petition. The resulting prices were further reduced by amounts, as verified in the Acerinox response, for ocean freight, marine insurance transportation, handling, and brokerage at the foreign port, and U.S. Customs duties. A deduction was made for U.S. Customs brokerage, as provided in the petition. Prices were increased by an amount for the IGTE final stage tax uncollected by virtue of exportation but included in the home market prices. Acerinox claimed an allowance for a DFE cascade tax imposed on the merchandise in both markets, but rebated upon exportation. We did not allow this claim because it could not be verified. Acerinox claimed an adjustment for exchange rate earnings engendered by a strengthening dollar from dates of shipment to dates of payment on dollar denominated sales. This claim was not allowed because it would have substituted for the price on the date of exportation, a price 60 days forward.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on Acerinox's home market prices. As the prices submitted by Acerinox could not be verified, we used as best information available petitioners' data on the ex-works home market prices of the subject merchandise by a Spanish steel service center, netted back by an amount provided in the petition to reflect the producer's price to the service center. The resulting prices were reduced by an amount for inland freight, as provided in the petition, and an amount for insurance, as verified in the Acerinox response. Claims for adjustment to prices for product specifications could not be entertained because prices used were not sufficiently product specific. Claims for adjustments for rebates could not be allowed because they were customer-specific and could not be verified. In accordance with § 353.15 of the Regulations (19 CFR 353.15), we made a circumstance of sale adjustment for differences in credit terms. In calculating this adjustment we used the verified credit terms of the Acerinox response, and the interest rate provided in the petition, as Acerinox refused to disclose information regarding their short-term interest rate experience. Claims for circumstance of sale adjustments for technical service, warranty, and bad debt expenses were not allowed because they could not be verified.

Petitioners Comments

Comment 1: Petitioner argued that the Department should base its final determination on the best information available, that contained in the petition.

DOC Position: We have based our final determination on the best information available because respondent's listings of sales for U.S. and home markets could not be corroborated at verification. For starting prices in both markets we have relied on information contained in the petition. However, we cannot ignore data submitted in the response which was verified. The information which was verified and utilized as best information available consisted of the ocean freight rate, insurance rates, transportation, handling and brokerage, U.S. Customs duties, and credit terms.

Comment 2: Petitioner argues that 100% of sales to the United States should be examined.

DOC Position: Section 353.38 of the Commerce Regulations requires that at least 60 percent of exports to the United States be examined. For purposes of the preliminary determination we examined 84 percent of sales to the U.S. In our final determination the question is moot, as respondent's listing of sales to the U.S. has not entered into our calculations.

Comment 3: Petitioner argues that the Department should reject respondent's claim for an adjustment for the difference in credit costs between the United States and home markets because of insufficient documentation of the claim.

DOC Position: While insufficient access to respondent's financial records precluded verification of precise costs of credit in each market, the credit terms adhered to in each market were verified and indicated an adjustment to the foreign market value was justified. This is buttressed by the fact that the petitioner's margin calculations included such an adjustment. For the purpose of calculating this adjustment we considered the best information available to be the respondent's verified credit terms applied to the prime rate in Spain during the period, as supplied in the petition.

Comment 4: Petitioner argued that respondent's claim to an upward adjustment to U.S. price, for exchange rate earnings during a period when the dollar strengthened continually between billing and collection dates, should be rejected.

DOC Position: We have not allowed this "exchange rate adjustment." The respondent's U.S. sales transactions are in dollars which would require no conversion to local currency for purposes of calculating margins under the Act or regulations. The effect of considering such an adjustment would be to construct a purchase price sixty days after the price on the date of purchase as required by the statute. Just as a company would not be penalized during a period of a weakening dollar, no allowance can be made for the windfall earnings in the instant case. In either scenario a company can be reasonably expected to allow for the steady exchange rate trends in their pricing policies.

Comment 5: Petitioner argued that respondent's claim of a deduction from foreign market value for an advertising rebate should be disallowed.

DOC Position: We have not allowed a deduction for an advertising rebate because documentation at the time of verification did not relate this rebate to advertising performed on behalf of respondent's customer. In any case such rebates would be customer specific, and could not be incorporated in the prices used as best information available.

Comment 6: Petitioner alleges that respondent's claim for home market warranty expenses is unsubstantiated.

DOC Position: The claim for a deduction for warranty expenses in the home market was not allowed because the figures could not be verified.

Comment 7: Petitioner argues that we should use the higher of the two ocean freight costs submitted by the respondent.

DOC Position: During verification it was determined that the average time between sale and shipment was four months. The best available information used for U.S. price was offers for sales in August, 1983. Allowing four month to shipment sales in August would not have incurred the higher freight rates which became effective in January, 1984. Therefore, we have deducted the lower ocean freight rate in our calculations.

Comment 8: Petitioner argued that we should disregard respondent's claims for various discounts and rebates.

DOC Position: The home market prices utilized as best information available were product specific only as to grade of the merchandise. As the discounts and rebates claimed were tied to product specifications beyond grade, or to individual customers, they were not taken into consideration in our calculations.

Comment 9: Petitioner argued that respondents should not be allowed to substitute "date of export" for "date of sale" in listing sales to the United States.

DOC Position: The use of best information available makes this a moot question.

Comment 10: Petitioner argued that we should not permit averaging of sales above and below fair value in calculating our margins, as suggested by the respondent.

DOC Position: The use of best information available makes this a moot question.

Respondent's Comments

Comment 1: Respondent argues that we should use as best information available all submitted data which was verified as accurate, including individual sales in which no discrepancies were found.

DOC Position: The purpose of testing selected sales is to verify, as a whole, the sales listing for each market. The respondent's listings for both markets were found deficient because they included improper sales and excluded proper sales. To use the few verified sales from the listings would be contrary to the intent of the statute. We did not use any of the respondent's sales price date in our calculations.

Other data submitted by the respondent, which were verified and were not tainted by the rejected sales price information, were used, where applicable, in our calculations.

Comment 2: Respondent argued that unverified sales data should be used as the best information available. It was alleged that the exclusion of sales renegotiated within the period of investigation and the inclusion of sales renegotiated after the period of investigation would have the effect of offsetting each other. It was also inferred that a complete revision of sales listings was made during the verification to capture all erroneously excluded sales and eliminate all sales erroneously included in the listings.

DOC Position: Section 776 of the Act requires that all information used in the final determination must be verified. We were not able to verify the sales price information because discrepancies were found. Furthermore, there is no evidence that the combined errors of inclusion and exclusion discovered in the data would have an equalizing effect. While respondent produced during verification a list of further sales incorrectly included in their submission, this was neither presented as, nor accepted as a new listing of sales which would have required a new verification.

Comment 3: Respondent argues that the credit terms verified for each market should be utilized in calculating a circumstance of sales adjustment for credit expense, and that they should be applied to a short term Spanish interest rate developed in previous countervailing duty investigations performed by the Department.

DOC Position: We used the credit terms verified for the U.S. and home markets in our calculation of the credit expense adjustment. During the verification documentation was requested to reflect the short term credit rates experienced by the company and respondent refused to provide that information. The company's refusal to provide information was taken into account in our decision to accept the rate presented by the petitioner for calculation of this adjustment.

Comment 4: Respondent argued that a circumstance of sale adjustment should be made for exchange rate earnings resulting from a continually strengthening dollar during the period of investigation.

DOC Position: No such adjustment was allowed for reasons stated above in response to petitioners comment number four.

Comment 5: Respondent argued that the DFE (Desgravacion Fiscal) indirect tax rebate is a matter of public record in a number of countervailing duty investigations by the Department, and that "no verification was sought or made with respect thereto."

DOC Position: Research of the public record has revealed that information available pertains only to the rebated amount of the DFE without confirmation that the amount is that which is actually imposed on the company, as required by § 353.10(D)(1)(iii) of the Regulations. Verification of the DFE was proposed on the first day of the verification visit but the respondent declined, prefering to deal with it later along with other "vertical" adjustments. At the conclusion of the final verification meeting we offered to extend the verification to permit examination of the DFE and any other data the respondent might wish to have verified. Respondent declined. No adjustment has been made for the DFE.

Verification

In accordance with section 776(a) of the Act, we verified the information provided by Acerinox by using standard verification procedures, including examination of relevant sales and financial records of the company. Only data considered verified were used in arriving at our final determination.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on certain stainless steel sheet and strip products from Spain entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we directed the United States Customs Service to suspend liquidation of all entries of the subject certain stainless steel sheet and strip products from Spain, which are entered, or withdrawn from warehouse, for consumption on or after June 26, 1984. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The average margin for Acerinox, the sole producer of the subject merchandise in Spain, as of the publication of this notice in the **Federal Register** is 39.56 percent.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: September 4, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-23871 Filed 9-7-84; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

[Docket No. 40814-4114]

Coastal Zone Management: Federal Consistency Study

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Federal Consistency Study.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management (OCRM), is conducting a comprehensive review of the Federal consistency process established by section 307 of the Coastal Zone Management Act of 1972 (the CZMA, Pub. L. 92-583, as amended). The Federal Consistency Study will document the experiences of states and Federal agencies, as well as affected parties, with the implementation of section 307 of the CZMA; will identify any issues surrounding the implementation of the Federal consistency process; and will document areas of successful implementation as well as any unresolved conflicts. NOAA invites the participation of all interested parties in providing comments, views and data on the implementation of the Federal consistency requirements of the CZMA.

DATE: Information should be submitted by October 15, 1984.

ADDRESS: Written information or requests to discuss any issues and information should be directed to: Nan Evans, Senior Policy Analyst, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634-4245.

SUPPLEMENTARY INFORMATION:

A. General Background

The Coastal Zone Management Act of 1972, as amended (CZMA), requires each Federal agency conducting or supporting activities directly affecting the coastal zone to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs (section 307(c)(1)). NOAA regulations implementing this section are found at 15 CFR Part 930 Subpart C. The CZMA also requires that federally licensed or permitted activities affecting land or water uses in the coastal zone, including activities described in detail in Outer Continental Shelf (OCS) exploration, development and production plans, be conducted in a manner consistent with federally approved state coastal management programs (section 307(c)(3)(A) and (B)). NOAA regulations implementing these sections are found at 15 CFR Part 930 Subparts D and E. Section 307(d) of the CZMA requires that Federal assistance be granted to State and local governments for activities affecting the coastal zone only when such activities are consistent with federally approved coastal zone management programs. NOAA regulations implementing this section are found at 15 CFR 930 Subpart F. NOAA's current regulations interpreting section 307 were promulgated in 1979 (44 FR 37142-37161, June 25, 1979).

In testimony on proposed amendments to the CZMA before the Senate Commerce Committee (S. 2324) and the House Merchant Marine and Fisheries Committee, Oceanography Subcommittee (H.R. 4589), the Administrator of NOAA stated that any changes to the complex and important Federal consistency system should be based on a full and thorough understanding of the system, its problems and successes. To support a thorough review of the Federal consistency process based on well-documented and accurate information, the NOAA Administrator promised Congress that NOAA would conduct a comprehensive study of the experience gained to date in applying the Federal consistency provisions of the CZMA. The study announced formally in this **Federal Register** notice will fulfill that commitment. NOAA anticipates that the results of this study will be useful to Congress when it considers reauthorization of the CZMA in 1985; to states and Federal agencies looking for administrative approaches to increasing the efficiency and effectiveness of government activities; to industry, public interest groups and others concerned with coastal zone management; and to NOAA in exercising its responsibilities to administer the CZMA.

B. Related Events

On January 11, 1984, the United States Supreme Court issued its decision in *Secretary of the Interior et al.* v. *California et al.* which held that the sale of Outer Continental Shelf (OCS) oil and gas leases is not an activity "directly affecting" the coastal zone within the meaning of section 307(c)(1) of the CZMA, and therefore, a determination of consistency with approved state coastal management programs is not required before such sale is made. In an Advance Notice of Proposed Rulemaking (ANPR) published on June 1, 1984 (49 FR 22825), NOAA announced that it would review its regulations to determine which existing regulations may need to be revised as a result of the Supreme Court's decision. NOAA also announced that it would determine whether new regulations applicable to section 307(c)(1) activities should be promulgated at the same time. NOAA held eight regional public meetings to discuss the issues raised in the ANPR and to gather information. NOAA also invited interested persons to submit written comments. The public comment period on the proposed rulemaking closed August 31, 1984. NOAA has not yet determined what regulatory changes, if any, are necessary.

The Federal Consistency Study will include information provided and developed on the issues under consideration in the proposed rulemaking, but the Study will be broader, more specific, and more comprehensive in scope.

C. Federal Consistency Study Information Base

The Federal Consistency Study will document the experiences of states and Federal agencies, as well as affected parties, with the implementation of section 307 of the CZMA; identify any issues surrounding the implementation of the Federal consistency process; and document areas of successful implementation as well as any unresolved conflicts. Information to be gathered will include: (1) Statistics for 1983 on the Federal consistency process, including numbers of concurrences and non-concurrences on consistency determinations and certifications by type of Federal activity, by state, by Federal agency, and by location (i.e., in the coastal zone, landward or seaward of the coastal zone, or in a Federal enclave within the coastal zone); (2) brief summaries of consistency cases which are considered especially significant by study participants; (3) compilation of information (to the extent it is available) regardiang the administration of the Federal consistency review process including, for example: average length of time for state consistency reviews, the use of pre-application conferences and early coordination mechanisms, the use of conditional and general concurrences, and experiences with using negotiation and/or mediation to resolve conflicts; and (4) brief summaries of major issue areas identified by the states, Federal agencies, industry groups and public interest groups.

Other subject areas which OCRM may examine, if there is sufficient information available, include: Process simplification initiatives, adequacy of information available for consistency reviews, sufficiency of consistency review time periods, conflict resolution machanisms, costs and benefits of consistency reviews, sufficiency of notification procedures, treatment of general permits (e.g., Corps of Engineers nationwide permits under Section 404 of the Clean Water Act, etc.), and the Secretarial mediation and appeals processes provided by the CZMA.

NOAA will be examining existing studies of the Federal consistency process, the legislative history of the CZMA and its amendments (including recent testimony on proposed amendments), and the information received in response to NOAA's Advance Notice of Proposed Rulemaking. Also, NOAA will review the consistency litigation brought under Section 307 of the CZMA.

NOAA invites any interested party, including states and Federal agencies, industry, public interest groups, academics and interested individuals, to provide information on any of the above topics or any other topic relevant to the implementation of Federal consistency. To gather statistics on Federal consistency reviews conducted by states and to avoid duplication of effort, NOAA is examining agency files and grant performance reports submitted by state coastal zone management agencies. After compiling these statistics, NOAA will provide the states with the opportunity to review these statistics to assure their accuracy, completeness and comparability. NOAA has also requested that affected Federal agencies examine their consistency records and provide statistical information.

To assure accuracy and completeness, NOAA will invite contributors to review the draft material. NOAA anticipates that a preliminary draft of the information base described above will be completed by spring 1985. The final inforamtion base will be made available to all interested parties.

NOAA intends that the Federal consistency study information base will provide a comprehensive and factual background for the consideration of administrative, regulatory and/or legislative approaches to resolving any identified problems and developing any needed improvements to the Federal consistency process.

Based on the information gathered in the Federal Consistency Study, NOAA will consider whether follow-up activities are advisable to discuss further Federal consistency issues with interested persons and/or to develop advice to NOAA regarding any needed revisions of the Federal consistency process. NOAA will specifically consider the feasibility and advisability of a number of possible alternative follow-up actions such as: An alternative dispute resolution task force, regulatory negotiations, a national consistency workshop, or other means for involving outside interests and/or obtaining the advice of parties likely to be affected by Federal consistency decisions.

D. Public Participation in Federal Consistency Study

All parties who have information to contribute to NOAA's information base on Federal consistency are invited and encouraged to do so. Written material should be submitted by October 15, 1984 to Nan Evans, Senior Policy Analyst, Office of Ocean and Coastal Resource Management, N/ORM4, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, DC. 20235.

Requests to receive copies of the Federal Consistency Study Information Base should be sent to the above address.

Dated: September 6, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-23960 Filed 9-7-84; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service; NOAA, Commerce.

The Pacific Fishery Management Council will meet in Portland, Oregon on September 19-20, 1984. On September 19, after a short closed session, the Council will elect officers for FY 85, appoint Scientific and Statistical Committee (SSC) and Salmon Advisory Subpanel (SAP) members; review the performance of the 1984 groundfish fishery and consider possible in-season changes in management measures; hear preliminary estimates of groundfish ABC, OY, and harvest guidelines for 1985; hear a summary of the 1984 salmon fishery and a report from its Steering Committee on a salmon economic study; and discuss various approaches to the development of a comprehensive salmon plan; and conduct a public comment period. On September 20, the Council will hear a report from its committee on comprehensive fishery management goals and adopt draft goals for public review.

The Council's Committee on comprehensive fishery management goals will meet September 5-6 in Portland to develop draft goals for Council consideration. The SSC will meet September 18-19 to discuss Council agenda items. The Groundfish Advisory Subpanel (GAP) and SAP will meet at the same time and place to discuss the same subjects. The Council Salmon Plan Development Team (SPDT) will meet on September 20 to participate in Council deliberations. A detailed agenda for Council, SSC, GAP, SAP, and SPDT will be available to the public about August 31. All meetings are open to the public except for the scheduled closed session of the Council on September 19. For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201; telephone: (503) 221-6352.

Dated: September 4, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-23881 Filed 9-7-84; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting: Toxicological Advisory Board.

SUMMARY: The Toxicological Advisory Board will meet on Tuesday, September 25, 1984, from 8:30 a.m. to 4:00 p.m. The meeting, which is open to the public, will be in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Ann L. Hamman, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6957.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is a nine-member advisory committee which advises the Commission on precautionary labeling for acutely toxic household substances and on instruction for first-aid treatment labeling. In addition, the Board reviews labeling requirements that have been issued under the Federal Hazardous Substances Act and recommends revisions it considers appropriate. The Toxicological Advisory Board was established on May 9, 1979, under the authority of 15 U.S.C. 1275 [Pub. L. 95-631, sec. 10].

The following is the agenda for the meeting of the Toxicological Advisory Board on September 25, 1984:

8:30–10:00
  Presentation on Symbolic Labeling and Board Member Discussion (Dr. Jay Young)
10:00–10:30
  Possible Labeling for Cyanuric Acid (Dr. Dagirmanjian)
10:30–11:00
  Additional Discussion of Biphenyl as Used in Toy Trains as a Smoke Generator
11:00–12:00
  Discussion of Sodium Hypochlorite Bleach (Board Members)
12:00–1:30
  Luncheon
1:30–4:00
  Chemicals Used in the Hobbies of Photography, Art, Stamp Collecting, Model Building, and Lapidary (Drs. Anstadt, Kimura, Gad, and Aronow respectively)

The meeting is open to the public; however, space is limited. Interested persons who wish to make oral or written presentations to the Board on the subjects described above should notify Dr. Fred Morozzi, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C., telephone (301) 492-6477, by September 18, 1984. The notification should state: the name, address, and phone number of the individual who will make an oral presentation or submit a written presentation; the person, company, group, or industry on whose behalf the presentation will be made; the subject matter of the presentation; and the approximate time requested for an oral presentation or the number of pages required for a written presentation. Time permitting, such presentations, and possibly other oral statements from the audience to members of the Board, may be allowed by the presiding officer. Persons who submit requests to make presentations by September 18, 1984, as described above, will be notified before the meeting of the presiding officer's decision concerning their request.

Dated: September 4, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-23812 Filed 9-7-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare a Draft Environmental Impact Statement; Distant Early Warning (DEW) Line

The United States Air Force proposes to upgrade the capability of the Distant Early Warning (DEW) Line. The Dew Line provides tactical warning of Airborne targets traveling into the Northern approaches to North America. A draft environmental impact statement will address five or six radar sites in Alaska.

The environmental analysis will include such topics as bio-physical effects, electromagnetic emissions, land use compatability, flora and fauna at new sites; socio-economic factors and additional topics raised during the scoping meetings.

The proposed upgrade, termed the North Warning System (NWS) would replace some of the existing long range radars, and add short range, unattended radars where needed to provide low altitude coverage.

The longe range replacements use less power, require fewer operating and maintenance personnel and in general will have a reduced environmental impact. The unattended short range radars will, in some cases, be placed in existing sites; new sites will be needed for the others. Each station will include an equipment tower, radar and communications equipment, personnel and equipment shelters, a station controller, power generators, fuel oil storage area, and a helicopter landing pad.

Our environmental analysis will be completed following scoping meetings to be held in Fairbanks, Alaska, September 24, Fort Yukon, Alaska, September 25, Barrow, Alaska, September 26, and Anchorage, Alaska, September 27. Participation in the environmental analysis process by interested private organizations and individuals is invited. Exact time and place of the scoping meeting will be announced in the local news media and by direct contact to organizations that have expressed an interest in attending.

It is estimated that draft EIS will be available for public review and comment in late 1985.

Questions concerning the proposed, scoping meetings or the draft EIS may be directed to: Mr. R. Raffa, HQ ESD/SCU-5A, Hanscom AFB MA 01731.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84-23835 Filed 9-7-84; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Education Appeal Board Hearing; Applications for Review

AGENCY: Department of Education.

ACTION: Notice of Applications for Review Accepted for Hearing by Education Appeal Board.

SUMMARY: This notice is a list of applications for review that were received and accepted for hearing by the Education Appeal Board between April 15, 1983, and June 30, 1984. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, D.C. 20202. Telephone: (202)-245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve a determination that a grant is void, the disapproval of a request for permission to incur an expenditure during the term of a grant, or determinations regarding cost allocation plans or special rates negotiated with specific grantees. Final regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981 (46 FR 27304, 34 CFR Part 78).

Applications Accepted

Title I of the Elementary and Secondary Education Act of 1965

A number of the appeals involve audits of local educational agency (LEA) basic grant programs conducted under Title I of the Elementary and Secondary Education Act of 1965, as amended:

Appeal of the State of Colorado, Docket No. 8–(118)–83, ACN 08–20000

The State appealed a final audit determination by the Assistant Secretary for Elementary and Secondary Education concerning Title I programs administered by the Colorado Department of Education during fiscal years 1979 and 1980. The final audit determination was based on an audit conducted by the U.S. Department of Education's Office of Inspector General (OIG).

The Assistant Secretary sustained the OIG finding that $6,000 for lease agreement payments was an unallowable charge because the payments were used to acquire property. The Assistant Secretary disallowed $15,534 for overclaimed indirect personnel costs, including the executive director's salary, because those costs represented compensation of the chief administrative officer. These findings involve expenditures made by the Weld County Board of Cooperative Educational Services.

The Assistant Secretary disallowed $10,554 in rental charges because the charges supplanted State and local funds that would have been expended in the absence of Title I. The Assistant Secretary sustained a finding that salary costs for a data base coordinator and a computer programmer in the amount of $17,669 had not been adequately documented. The Assistant Secretary also sustained the auditors' finding that transfers in the amount of $16,707 made from Title I accounts to the general administrative account on the last day of the program year were not shown by Colorado to be in support of allowable Title I activities. These findings concern expenditures made by the San Luis Valley Board of Cooperative Educational Services.

The Department seeks a total refund of $71,819 of which $66,464 is disputed by Colorado. Disallowance of $5,355 in unsupported costs and transfers by the Eagle County LEA is not being contested by Colorado.

Appeal of the State of California, Docket No. 12–(122)–83, ACN 09–20002

The State appealed a final audit determination by the Assistant Secretary for Elementary and Secondary Education concerning the reporting of Title I expenditures by the California State Department of Education for fiscal years 1976 through 1980. The final audit determination was based on an audit conducted by the U.S. Department of Education's Office of Inspector General (OIG).

The Assistant Secretary sustained the OIG finding that, because the State did not account for Title I funds by award year, $1,015,789 of FY 1978 Title I funds were not expended within the 27-month period of availability.

The State disputes the Assistant Secretary's findings. The Department of Education seeks a total refund of $1,015,789 from the State. This amount may be reduced by application of the statute of limitations.

Appeal of the State of California, Docket No. 21–(131)–83, ACN 09–30001

The State appealed a final audit determination of the Assistant Secretary for Elementary and Secondary Education concerning costs charged to Title I for attendance at certain conferences. The audit underlying the final audit determination was conducted by the U.S. Department of Education's Office of Inspector General (OIG).

The Assistant Secretary sustained the OIG finding that the conferences were not related to Title I objectives and so not reasonable and necessary expenditures of program funds.

The Department of Education seeks a total refund of $335,038. The State concedes $24,620. The balance of $310,418 may be further reduced by application of the statute of limitations.

Appeal of the State of California, Docket No. 22–(132)–83, ACN 09–30007

The State appealed a final audit determination of the Assistant Secretary for Elementary and Secondary Education which was based on an audit of Title I, ESEA, as implemented by the Compton Unified School District during fiscal years 1980 and 1981. The audit was conducted by the U.S. Department of Education's Office of Inspector General (OIG).

The Assistant Secretary sustained the OIG finding disallowing costs of conferences, field trips, and mileage allowances because the expenditures allegedly were not directly related to Title I purposes and so not reasonable and necessary expenditures of program funds.

The Department seeks a total refund of $390,851 from the State. The State disputes its liability.

Appeal of the State of Mississippi, Docket No. 2–(134)–84, ACN 04–30001

The State appealed a final audit determination by the Assistant Secretary for Elementary and Secondary Education concerning the administration of Title I programs for the period July 1, 1980, through February, 1982. The audit underlying the final audit determination was conducted by the U.S. Department of Education's Office of Inspector General (OIG).

The Assistant Secretary sustained findings disallowing consultant costs because the cost were not shown to be reasonable and necessary for the administration of the Title I program. The Assistant Secretary also disallowed excessive costs for purchasing weekly newspapers to be used in reading classes. These findings involve expenditures made by the Holmes County School District.

The Department of Education seeks a total refund of $17,289. The State concedes $9,664; $7,625 remains at issue.

Appeal of the State of Louisiana, Docket No. 8–(140)–84, ACN 06–30011

Louisiana requested review of a final audit determination made by the Assistant Secretary for Elementary and Secondary Education. The final audit determination was based on an audit of programs under Title I of the Elementary and Secondary Education Act of 1965 implemented by the East Baton Rouge Parish School Board during fiscal year 1982.

The Assistant Secretary disallowed duplicate costs for evaluation services and costs for services to ineligible students at three private schools.

The Department of Education seeks a refund of $124,703. Louisiana concedes $3,625 and disputes all liability for the remaining sum, $121,078.

Appeal of the State of Pennsylvania, Docket No. 9–(141)–84, ACN 03–30001

Pennsylvania appealed a final audit determination made by the Assistant Secretary for Elementary and Secondary Education. The final audit determination was based on an audit of the Title I program implemented by the School District of Philadelphia during the 1981–82 school year.

The Assistant Secretary disallowed $816,338 for bilingual services the district was allegedly required to provide under a voluntary civil rights compliance plan.

An additional $328,449 was disallowed because of alleged supplantation of State and local funds for English for Speakers of Other Languages.

The Department of Education seeks a total refund of $1,144,787. Pennsylvania disputes its liability.

Appeal of the State of Michigan, Docket No. 11–(143)–84, ACN 05–30021

Michigan appealed adverse audit findings made by the Assistant Secretary for Elementary and Secondary Education based on an audit of Title I administrative costs for fiscal years 1978–1980.

The Assistant Secretary disallowed costs charged to Title I program which allegedly should have been charged to State funds.

The Department of Education seeks a refund totalling $603,426. Michigan disputes all liability.

Appeal of the State of Colorado, Docket No. 12–(144)–84, ACN 08–20000

Colorado appealed a final audit determination by the Assistant Secretary for Elementary and Secondary Education based on an audit of Title I administrative costs during fiscal years 1979 and 1980.

The Assistant Secretary disallowed salary costs allocable to more than one grant program because of allegedly inadequate documentation to support the State's allocation of such costs.

The Department of Education seeks a refund of $117,784. Colorado concedes $640 and disputes $117,144.

Appeal of the State California, Docket No. 13–(145)–84, ACN 09–30006

California appealed a final audit determination by the Assistant Secretary for Elementary and Secondary Education involving the Title I, Migrant Education program administered by the Santa Clara County Office of Education during fiscal year 1982.

The Assistant Secretary disallowed $116,164 because of allegedly improper procurement practices. Stipends in the amount of $20,595 paid to migrant students who attended the summer session were disallowed because the expenditure allegedly was not necessary and reasonable for administration of the migrant education program.

Conference costs were disallowed because the conference allegedly was not directly related to the migrant education program. The Assistant Secretary also disallowed consultant costs because the rates allegedly were unreasonably high and the existing staff could have provided the services.

The Department of Education seeks a refund of $200,053. California disputes all liability.

Appeal of the Illinois State Board of Education, Docket No. 21–(153)–84, ACN 05–20001

Illinois appealed a final audit determination made by the Assistant Secretary for Elementary and Secondary Education. The underlying audit concerned Title I administrative costs for the period September 1, 1978, through September 30, 1980.

The Assistant Secretary disallowed salary, leasing, travel, and other central service costs because of allegedly inadequate documentation of the expenditures.

The Department of Education seeks a refund of $650,003. Illinois disputes all liability.

Vocational Education Act of 1963

A number of the appeals concern the Vocational Education Act of 1963, as amended.

Appeal of the State of Delaware, Docket No. 10–(120)–83, ACN 03–30002

The State requested a review of a final audit determination of the Assistant Secretary for Vocational and Adult Education which was based on an audit of programs conducted under the Vocational Education Act of 1965, as amended, during the period July 1, 1977, through June 30, 1980.

The Assistant Secretary found that the State overclaimed $10,281 in vocational education funds for fiscal year 1980 because its Financial Status Report was based on budget estimates of funds advanced to subrecipients rather than actual expenditures.

The State contends that it has already repaid the amount at issue by reverting that amount from a vocational education grant for the subsequent year.

Appeal of the State of Indiana, Docket No. 16–(126)–83, ACN 05–14202

The State appealed a final audit determination by the Assistant Secretary for Vocational and Adult Education concerning vocational education programs administered by the State of Indiana during July 1, 1976, through June 30, 1979. The audit on which the final audit determination was based was conducted by the Department of Health and Human Services Office of Inspector General Audit Agency.

The Assistant Secretary sustained the auditors' finding that $92,670 representing costs of personal services not pertaining to vocational education was unallowable. The Assistant Secretary disallowed $12,224 because 3 local educational agencies failed to adequately document the expenditures.

In addition, the Assistant Secretary disallowed $115,288 because obligations were made for equipment purchases prior to the State Board of Vocational and Technical Education approving such purchases. Finally, the Assistant Secretary disallowed $1,507 paid as work-study wages because the hours were not supported by daily time records.

The State contests all of these findings. The Department of Education seeks a total refund of $221,689. This amount may be reduced by application of the statute of limitations.

Appeal of the State of South Dakota, Docket No. 17–(127)–83, ACN 08–20104

The State requested review of a final audit determination by the Assistant Secretary for Vocational and Adult Education concerning vocational education programs conducted by the State during the period July 1, 1978 through June 30, 1980. The audit on which the final audit determination was based was performed by the Department of Education's Office of Inspector General (OIG).

The Assistant Secretary disallowed $208,850 of costs claimed under the disadvantaged set-aside program because the funds were used for general purpose activities including operating costs of student financial aid offices, a basic communications course, and guidance and counselling services.The Assistant Secretary substained the OIG's finding disallowing $2,511 representing the fiscal year 1982 Federal funds awarded to Wolsey School District which failed to maintain the required fiscal effort.

The State disputes both findings. The Department of Education seeks a total refund of $221,361. This amount may be reduced by application of the statute of limitations.

Appeal of the State of Vermont, Docket No. 18–(128)–83, ACN 01–20105

The State of Vermont appealed a final audit determination by the Assistant Secretary for Vocational and Adult Education concerning vocational education programs conducted by the State during the period July 1, 1977, through June 30, 1980.

The Assistant Secretary disallowed $55,011 because the Putnam Memorial School of Practical Nursing failed to comply with maintenance of effort requirements. The Assistant Secretary disallowed $20,011 of costs claimed by the Brattleboro local educational agency because Federal funds were commingled with non-Federal funds and thus, could not be accounted for.

The Assistant Secretary disallowed $1,077 used by the Joyal Vocational School and the University of Vermont for purposes that did not benefit vocational education programs. The Assistant Secretary also disallowed $418,547 awarded to licensed practical nursing programs without the use of required annual applications.

The State disputes all of the findings. The Department of Education seeks a total refund of $494,646. This amount may be reduced by application of the statute of limitations.

Appeal of the State of California, Docket No. 19–(129)–83, ACN 09–10100

The State requested review of a final audit determination by the Assistant Secretary for Vocational and Adult Education concerning vocational education programs for the period July 1, 1977, through June 30, 1980.

The Assistant Secretary sustained the auditors' finding that the State should refund $6,203,751 because the funds were not obligated within the 27-month period of availability. The State disputes the finding.

Appeal of Kawerak, Incorporated, Docket No. 6–(138)–84, Grant No. G008100835

Kawerak, Incorporated, Nome, Alaska, requested review of the termination of grant funds by the Department of Education's Assistance Management and Procurement Service (AMPS). Kawerak had been awarded a 3-year grant for a Fisheries Technical Training Program under the Vocational Education Act.

AMPS terminated the grant in its final year because Kawerak allegedly failed to meet approved objectives, hire necessary personnel, maintain the number of students specified in the grant application, and provide adequate instructional and training time.

Kawerak disputes the allegations and contends that it substantially complied with the grant requirements.

Appeal of the State of Iowa, Docket No. 23–(155)–84, ACN No. 07–30055

Iowa appealed a final audit determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying organization-wide audit was conducted by the Iowa State Auditor and covered fiscal year 1981.

The Assistant Secretary disallowed salary costs charged to vocational education programs because of allegedly inadequate time records to substantiate the costs.

The Department of Education seeks a refund of $159,220. Iowa disputes all liability.

Title VII of the Elementary and Secondary Education Act of 1965

A number of the appeals concern Title VII of the Elementary and Secondary Education Act of 1965:

Appeal of Edgewood Independent School District, Docket No. 5–(115)–83, ACN 06–20104

Edgewood Independent School District, San Antonio, Texas, appealed a final audit determination made by the Department of Education's Assistance Management and Procurement Service (AMPS). The final audit determination was based on an audit of Federal bilingual education programs during the period October 1, 1979, through April, 1981.

AMPS found that fewer than 60 percent of the project participants were limited English proficient in violation of applicable regulations.

The Department of Education seeks a refund of $50,841. The School District disputes its liability.

Appeal of Dallas Independent School District, Docket No. 11–(121)–83, ACN 06–20106

Dallas Independent School District, Dallas, Texas, requested a review of a final audit determination issued by the Department of Education's Assistance Management and Procurement Service (AMPS). The final audit determination was based on an audit of Federal bilingual education programs during the period September 1, 1976, through June 30, 1981.

AMPS found that the School District failed to serve the minimum required percentage (60 percent) of limited English proficient students.

The Department of Education seeks a refund of $62,011. The School District disputes its liability.

Appeal of St. Charles Parish Schools, Docket No. 15–(125)–83, ACN 06–20119

St. Charles Parish Schools, Luling, Louisiana, appealed a final audit determination made by the Department of Education's Assistance Management and Procurement Service (AMPS). The final audit determination was based on an audit of Federal bilingual education programs during the period October 1, 1979, through April 30, 1982.

AMPS found that the St. Charles Parish Schools failed to serve the minimum required percentage (60 percent) of limited English proficient students. Further, AMPS found that St. Charles Parish Schools did not conduct a bilingual education program but rather a foreign language instruction program.

The Department of Education seeks a refund of $477,100.29. St. Charles Parish disputes its liability.

Appeal of La Casa de Puerto Rico, Inc., Docket No. 19–(151)–84, ACN No. 01–30035

La Casa appealed a final audit determination issued by the Department's Assistance Management and Procurement Service (AMPS). The underlying audit concerned a Parent Training Project implemented during October 1, 1979, through September 30, 1981, under title VII of the Elementary and Secondary Education Act.

AMPS disallowed costs for salaries, consultants, postage, copying, travel, supplies, equipment, and publications because of allegedly inadequate documentation. AMPS also requested that unexpended funds be returned to the U.S. Department of Education.

The Department seeks a refund of $15,641. La Casa accepts the disallowance of $7,333 and contests the remaining disallowance of $8,308.

Miscellaneous Programs

The remaining appeals concern other programs administered by the U.S. Department of Education:

Apeal of the School District of Philadelphia, Docket No. 6–(116)–83, ACN 03–20003

The School District of Philadelphia, Pennsylvania, appealed a final audit determination made by the Department of Education's Assistance Management and Procurement Service (AMPS). The audit on which the final audit determination was based concerned Emergency School Aid Act projects administered by the District during the period July 1, 1978, to February 28, 1981.

AMPS found that the District had failed to return $184,959.86 in interest earned on advances of Federal funds as required by law. Costs were disallowed because several schools did not attain the required minority enrollment ratios, expenditures were not documented, expenditures were made without prior approval, expenditures for equipment were incurred on the last day of the grant or later, and surcharges were added to the costs of internally provided items.

The Department of Education seeks a refund totalling $2,077,056.02. The School District of Philadelphia concedes

$67,246.34 and contests the remaining liability of $2,009,809.68.

Appeal of the New Jersey Department of Labor, Docket No. 7–(117)–83, ACN 02–24000

The New Jersey Department of Labor appealed a final audit determination made by the Regional Commissioner of the Rehabilitation Services Administration. The final audit determination was based on an audit of the financial administration of the New Jersey vocational rehabilitation program conducted by the Department of Health and Human Services, Office of Inspector General Audit Agency.

The Regional Commissioner disallowed overcharged fringe benefits, administrative costs overcharged for the word processing center and the central office, and excess charges resulting from outstanding obligations.

The Department of Education seeks a refund of $1,104,306. New Jersey disputes all liability.

Appeal of the North Dakota Department of Human Services, Docket No. 9–(119)–83, ACN 08–00553

The North Dakota Department of Human Services requested a review of a final audit determination made by the Regional Commissioner of the Rehabilitation Services Administration. The final audit determination was based on an audit of cooperative program costs claimed under the Rehabilitation Act of 1973 for the period July 1, 1973, through June 30, 1976. The audit was conducted by the Department of Health, Education, and Welfare Audit Agency.

The Regional Commissioner disallowed expenditures at the Jamestown State Hospital because the vocational rehabilitation services provided allegedly were not "new services or new patterns of service" as required by regulation and the cooperative agreement.

The Department of Education seeks a refund of $95,420. North Dakota disputes its liability.

Appeal of the New Jersery Department of Labor, Docket No. 13–(123)–83, ACN 02–14005

The New Jersey Department of Labor appealed a final audit determination made by the Regional Commissioner or the Rehabilitation Services Administration. The final audit determination was based on an audit of New Jersey's vocational rehabilitation program for fiscal years 1976 through 1979 conducted by the Department of Health and Human Services Audit Agency.

The Regional Commissioner disallowed costs because reimbursement was made to sheltered workshops on a fixed fee basis rather than for actual costs.

The Department of Education seeks a refund of $413,072. New Jersey disputes its liability.

Appeal of the State of California, Docket No. 20–(130)–83, ACN 09–20005

California requested review of a final audit determination made by the Assistant Secretary for Special Education and Rehabilitative Services. The final audit determination was based on an audit of expenditures under Title VI–B of the Education of the Handicapped Act for fiscal years 1976 through 1980.

The Assistant Secretary disallowed funds which were not obligated or expended within the 27-month period of availability authorized by statute.

The Department of Education seeks a refund of $1,203,139. This amount may be reduced by application of the statute of limitation. California disputes its liability.

Appeal of the Albany Urban League, Docket No. 1–(133)–84, ACN 04–30026

Albany Urban League, Albany, Georgia, appealed a final audit determination made by the Department of Education's Assistance Management and Procurement Service (AMPS) concerning Fiscal Year 1981 Educational Talent Search and Emergency School Aid Act grants. The final audit determination was based on an audit conducted by the State of Georgia Department of Audits.

AMPS disallowed salary costs, interest expense, and travel costs. Indirect costs were recalculated after reducing the direct costs by the disallowances.

The Department of Education seeks a refund of $142,376.89. Albany Urban League contests its liability.

Appeal of the State of Indiana, Docket No. 4–(136)–84, ACN 05–23594

The State of Indiana requested a review of a final audit determination made by the Department of Education's Assistance Management and Procurement Service (AMPS). The final audit determination was based on an audit of an Ethnic Heritage Studies Program during the period October 1, 1978, through April 30, 1980.

AMPS disallowed salary costs, consultant costs, and travel expenses because of inadequate documentation and failure to obtain prior approval for consultant services.

AMPS also disallowed the remainder of the grant because the grantee's share of costs was undocumented, grant objectives were not attained, the Advisory Council was not fully utilized, and the grantor was not notified of the Advisory Council's recommendation to terminate the grant.

The Department of Education seeks a refund of $43,617. Indiana concedes $433 in salaries and fringe benefits but disputes the remaining liability of $43,184.

Appeal of State of California, Docket No. 5–(137)–84, ACN 09–20008

California appealed a final audit determination made by the Assistant Secretary for Elementary and Secondary Education. The final audit determination was based on a review of the eligibility of migrant children for whom funds were awarded under Tiltle I of the Elementary and Secondary Education Act for fiscal years 1980, 1981, and 1982.

The Assistant Secretary found that 50 out of a random sample of 500 cases had questionable or no documentation of eligibility.

The Department of Education seeks a refund of $10,432,500. California disputes all liability.

Appeal of the State of Mississippi, Docket No. 7–(139)–84, ACN 04–30004

Mississippi appealed a final audit determination by the Assistant Secretary for Vocational and Adult Education. The final audit determination was based on an audit of vocational programs for fiscal year 1981 and construction obligations during the period July 1, 1978, to June 30, 1981.

The Assistant Secretary found that funds for construction had lapsed because the funds were not obligated prior to the expiration of the period of availability.

The Department of Education seeks a refund of $1,375,345. Mississippi disputes its liability.

Appeal of Louisiana State Library, Docket No. 10–(142)–84, ACN 06–30003

Louisiana appealed a final audit determination made by the Acting Director of the Center for Libraries and Education Improvement. The underlying audit concerned administrative costs of Title I of the Library Services and Construction Act.

The Acting Director disallowed salary costs for employees transferred from the Library staff to other State departments during a reorganization of State government.

The Department of Education seeks a refund of $72,499. Louisiana contests its liability.

Appeal of Tennessee State University, Docket No. 14–(146)–84, ACN No. 04–30023

Tennessee State University appealed adverse audit findings made by the Department's Assistance Management and Procurement Service (AMPS) concerning Title III, Higher Education Act grants. The audit encompassed Federal financial transactions at the University during the period July 1, 1976, through January 31, 1982.

AMPS disallowed salary costs for two faculty members who allegedly did not work on Title III programs. Costs for establishing an interdisciplinary program in Urban Affairs were disallowed because of an alleged lack of documentation showing the funds were spent on this activity.

Costs were also disallowed because of alleged supplanting rather than supplementing of other funding.

The Department of Education seeks a refund of $188,801.91. The University disputes liability.

Appeal of Seattle Central Community College, Docket No. 15–(147)–84, ACN No. 10–30003

Seattle Central appealed a final audit determination made by the Department's Assistance Management and Procurement Service (AMPS). The underlying audit concerned Special Services funds granted to the College from July 1, 1978, through June 30, 1982.

AMPS disallowed costs because of allegedly inadequate documentation of student eligibility and the services provided. Costs for tutoring services were disallowed because the program allegedly supplanted a college-wide tutoring program.

The Department of Education seeks a refund of $165,982.13. Seattle Central accepts the disallowance of $1,919.32 and contests the remaining liability of $164,062.81.

Appeal of Northern Montana College, Docket No. 16–(148)–84, ACN No. 08–30904

Northern Montana College appealed adverse audit findings made by the Department's Assistance Management and Procurement Service (AMPS) concerning a Cooperative Education grant and two Special Services grants. The final audit determination was based on a systems audit for fiscal years 1980 and 1981 conducted by the Montana Legislative Auditor.

AMPS disallowed costs because the College allegedly failed to adequately document its matching share of funds through time and effort records.

The Department of Education seeks a refund of $41,863. Northern Montana College disputes its liability.

Appeal of Tennessee State University, Docket No. 18–(150)–84, ACN No. 04–30011

Tennessee State University appealed a final audit determination made by the Department's Assistance Management and Procurement Service (AMPS). The underlying audit concerned Federal financial transactions at the University during the period June 1, 1975, through September 30, 1981.

AMPS disallowed costs charged to a grant made pursuant to Title VI of the Education of the Handicapped Act. Labor, consultant, supply, and indirect costs were disallowed because of allegedly inadequate documentation of the expenditures.

Other costs were disallowed because the University allegedly failed to adequately document achievement of the grant goals. Consultant and travel costs were disallowed because such costs were allegedly unallowable under the terms of the grant.

The Department of Education seeks a refund of $130,087.92. Tennessee State University concedes $1,204.66 and disputes $128,883.26.

Appeal of PUSH for Excellence, Inc., Docket No. 20–(152)–84, ACN No. 05–30014

PUSH-Excel filed an application for review of a final audit determination made by the Department's Assistance Management and Procurement Service (AMPS). The underlying audit concerned a Special Grant for "Education Projects in Inner City Schools" implemented during March 1, 1981, through February 28, 1982.

AMPS disallowed salary costs for a community liaison because the liaison's time was allegedly spent on activities unrelated to the grant. Costs for printing, conferences, telephones, postage, supplies, equipment rental, travel, entertainment, training, and program development were disallowed because the documentation was allegedly inadequate to establish the necessity for and reasonableness to administration of the grant.

AMPS also requested the return of unexpended funds. Fringe benefits were disallowed because of an overcharge at a rate of 15 percent rather than 12.3 percent. Indirect costs were disallowed because of a discrepancy in indirect cost rates.

The Department of Education seeks a refund of $189,617. PUSH-Excel disputes all liability.

Appeal of American Samoa, Docket No. 22–(154)–84, ACN No. 09–30051

American Samoa appealed a final audit determination made by the Assistant Secretary for Elementary and Secondary Education. The underlying audit involved Parts B and C of Title IV of the Elementary and Secondary Education Act of 1965 administered by American Samoa during fiscal year 1981.

The Assistant Secretary disallowed travel and salary costs charged to Part C, Title IV because of allegedly inadequate documentation of the expenditures. Costs for travel, salaries, and supplies charged to Part B, Title IV were disallowed because such expenditures are unallowable charges to Part B programs.

The Assistant Secretary requested the return of funds which allegedly were not obligated within the statutory period of availability. Funds transferred to the American Samoa Community College were requested to be refunded as well because the funds allegedly were not used for elementary or secondary education as designated by statute.

The Department of Education seeks a refund of $3,839,140. American Samoa contests its liability.

Appeal of the State of Florida, Docket No. 24–(156)–84, ACN 04–30049

Florida appealed a final audit determination issued by the Director of the Department's Financial Management Service (FMS). The underlying audit concerned the State's management of Federal funds for the period October 1, through December 31, 1982.

The Director disallowed costs allegedly charged to Federal grants after expiration of the statutory period of availability.

The Department of Education seeks a refund of $10,400,000. Florida disputes all liability.

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency, may, upon application to the Board Chairman intervene in appeals before the Education Appeal Board, including the above appeals.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

These applications to intervene, or questions, should be addressed to Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB-6), Washington, D.C. 20202, telephone: (202) 245-7835.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: September 4, 1984.

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 84-23844 Filed 9-7-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Bilingual Education and Minority Languages Affairs

Direct Grants Program; Review of Applications

AGENCY: Office of Bilingual Education and Minority Languages Affairs, Department of Education.

ACTION: Notice for Individuals Interested in Reviewing Applications Submitted Under Direct Grant Programs Administered by the Office of Bilingual Education and Minority Languages Affairs.

SUMMARY: The Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), Department of Education (ED), invites interested individuals to apply to serve as field readers for programs administered by OBEMLA. These programs include the Bilingual Education Act programs, 20 U.S.C. 3221-3261 (covered by regulations in 34 CFR Parts 500-505, 510, 514, 515, 520) and the Bilingual Vocational Education programs, 20 U.S.C. 2411-2421 (covered by regulations in 34 CFR Parts 525-527).

Each year the Secretary selects field readers who have expertise in bilingual education and related fields to evaluate grant applications against criteria published in program regulations. Selection of qualified individuals is based on the experience and qualifications reported by prospective field readers in the general and specific areas related to bilingual education and bilingual vocational training, including the areas of evaluation, curriculum development, parent training, research, and English as a second language. The existence, characteristics, and use of this system of records (18-40-0079) were announced in a notice published in the **Federal Register** on June 2, 1981.

Individuals interested in serving as field readers for the Fiscal Year 1985 funding cycle should mail their resumes immediately to OBEMLA.

FOR FURTHER INFORMATION CONTACT: The Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245-2600.

(Catalog of Federal Domestic Assistance Program No 84.003, Bilingual Education; No. 84.077, Bilingual Vocational Training; 84.099, Bilingual Vocational Instructor Training; 84.100, Bilingual Vocational Instructional Materials, Methods, and Techniques)

Dated: September 5, 1984.

Jesse M. Soriano,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 84-23843 Filed 9-7-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Inventory of Commercial Activities

AGENCY: Department of Energy (DOE).

ACTION: Notice of DOE commercial activities scheduled for review in accordance with the OMB Circular A-76.

SUMMARY: Pursuant to the requirements of the revised OMB Circular A-76 (dated August 1983), the DOE developed and published a partial inventory of its commercial activities in Volume 49, No. 135 (July 12, 1984) of the **Federal Register**. The information contained in this Notice revises the dates for which the reviews will begin for four commercial activities.

Organization and commercial activity	Geographic location	Revised date of review
Chicago Operations Office:		
Computer operations	NY: New York	Sept. 1984
Facilities support	do	Aug. 1985.
Idaho Operations Office: Dosimetry, environmental science & chemical operations.	ID: Idaho Falls	Oct. 1984.
Oak Ridge Operations Office: Reproduction and distribution.	TN: Oak Ridge	Sept. 1984

In addition, the ADP support activity performed at Tulsa, Oklahoma by the Southwestern Power Administration is deleted from the inventory of commercial activities.

FOR FURTHER INFORMATION CONTACT: Ray S. Mayfield, Chief, Management Systems Development and Evaluation Branch, Department of Energy (MA-213.2), Room 4B-194, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C. August 29, 1984.

K. Dean Helms,

Acting Director of Administration.

[FR Doc. 84-23827 Filed 9-7-84; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Intent To Grant Exclusive Patent License; United Western Technologies Inc.

Notice is hereby given of an intent to grant to United Western Technologies Inc., a small business located in Richland, Washington, an exclusive license to practice in the United States the invention described in U.S. Patent No. 3,533,273, entitled "Thermal Surface Impedance Method and Means for Nondestructive Testing." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Signed at Washington, D.C. on this 30th day of August 1984.

Theodore J. Garrish,

General Counsel.

[FR Doc. 84-23832 Filed 9-7-84; 8:45 am]

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Intent To Grant Exclusive Patent License; University of Chicago

Notice is hereby given of an intent to grant to University of Chicago exclusive licenses to practice in the United States the inventions described in U.S. Patent No. 3,957,031, entitled "Light Collectors in Cylindrical Geometry"; U.S. Patent No. 4,114,592, entitled "Cylindrical Radiant Energy Direction Device with Refractive Medium"; U.S. Patent No. 4,230,095, entitled "Idala Light Concentrators with Reflector Gaps"; and U.S. Patent No. 4,237,332, entitled "Nonimaging Radiant Energy Directional Device." The patents are owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed licenses will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the licenses, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant any of the proposed licenses; or

(ii) An application for a nonexclusive license to practice any of the inventions in the United States, in which applicant states that he has already brought the particular invention to practical application or is likely to bring the particular invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the licenses if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the licenses are in the public interest.

Signed at Washington, D.C. on this 30th day of August 1984.

Theodore J. Garrish,

General Counsel.

[FR Doc. 84-23833 Filed 9-7-84; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it will award on a restricted eligibility basis, a grant by September 30, 1984, to assist in the design and development of an energy-related program for public housing residents. The grant is valued at $51,763 for an eight-month period.

The Department of Energy has selected the unsolicited proposal of The Assignment Group for grant funding. The Assignment Group, a minority business enterprise, has proposed to address the problem of how to minimize the energy costs associated with public housing by designing and developing an energy-related demonstration program that educates the tenants, facilitates supportive business development, and trains residents to provide needed services. The approach includes three phases that ascertain energy costs and tenant decision styles, design and develop a program to modify energy consumption patterns and provide corrective measues, and disseminate the results to other public housing authorities.

Through this effort, DOE will be carrying out its legislative mandate under section 211(d) of Pub. L. 95-619, whereby the Director of the Office of Minority Economic Impact (MI) may enter into agreements with minority business enterprises and organizations to assist in the development of minority communities. In addition, MI may develop technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and which can provide jobs to workers in such communites.

This program will enable DOE to provide technical energy savings support to minority communities. Furthermore, once a model is developed and the results disseminated, estimated future requirements to sustain the design are minimal—if anything. The cost savings to public housing authorities make it in their interest to adopt the model and its costs—if it demonstrates savings and meets the objective of modifying tenant energy consumption patterns.

Award No. DE-FG01-85MI10046.

FOR FURTHER INFORMATION CONTACT: Lynne C. Sendejo, MA-452.2, U.S. Department of Energy, Office of Procurement Operations, Washington, D.C. 20585.

Issued in Washington, D.C., on August 31, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 84-23830 Filed 9-7-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FR-84-016; OFC Case No. 65036-9251-21, 22-22]

Northern California Power Agency, Alameda Peaking Facility; Acceptance of Petition

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition from Northern California Power Agency, Alameda Peaking Facility, for Exemption and Availability of Certification.

SUMMARY: On July 30, 1984, the Northern California Power Agency, Alameda Peaking Facility (NCPA Alameda) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

NCPA Alameda requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of two 25.8 MW combustion turbine-generator systems and appurtenant equipment with a maximum heat input rate of 323 million Btu per hour per turbine. The proposed units are to be installed at the NCPA Alameda facility in Alameda, California. The powerplant will be capable of burning natural gas and petroleum.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA

retains the right to request additional relevant information from NCPA Alameda at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below:

As provided in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register**.

DATES: Written comments are due on or before October 25, 1984. A request for public hearing must also be made within this 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-016 should be printed on the outside of the envelope and the docket contained therein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-1730

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. NCPA Alameda has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Alameda California facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the NCPA Alameda petition.

NCPA Alameda submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gasfired combustion turbine generator will be operated solely as a peakload powerplant.

NCPA Alameda also certified that the maximum design capacity of the powerplant is 49.5 megawatts and that the maximum generation that will be allowed during any 12-month period for the combustion turbine is the design capacity times 1,500 hours or 74,250 megawatts.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. NCPA Alameda has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist submitted by NCPA Alameda pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on NCPA Alameda's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that NCPA Alameda is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, D.C. on August 29, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-23628 Filed 9-7-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FR-84-017; OFC Case No. 65036-9252-21-22]

Northern California Power Agency, Lodi Peaking Facility; Acceptance of Petition

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition from Northern California Power Agency, Lodi Peaking Facility, for Exemption and Availability of Certification.

SUMMARY: On July 30, 1984, the Northern California Power Agency, Lodi Peaking Facility (NCPA Lodi) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal**

Register at 46 FR 59872 (December 7, 1981).

NCPA Lodi requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of one 25.8 MW combustion turbine-generator system and appurtenant equipment with a maximum heat input rate of 323 million Btu per hour. The proposed unit is to be installed at the NCPA Lodi facility in Lodi, California. The powerplant will be capable of burning natural gas and petroleum.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from NCPA Lodi at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below:.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register**.

DATES: Written comments are due on or before October 25, 1984. A request for public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-017 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-1730

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. NCPA Lodi has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Lodi, California facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the NCPA Lodi petition.

NCPA Lodi submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine generator will be operated solely as a peakload powerplant.

NCPA Lodi also certified that the maximum design capacity of the powerplant is 24.7 megawatts and that the maximum generation that will be allowed during any 12-month period for the combustion turbine is the design capacity times 1,500 hours or 37,125 megawatts.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. NCPA Lodi has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist submitted by NCPA Lodi pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on NCPA Lodi's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that NCPA Lodi is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, D.C. on August 29, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-23829 Filed 9-7-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FR-84-018; OFC Case No. 65036-9253-21, 22-22]

Northern California Power Agency, Placer County Peaking Facility; Acceptance of Petition

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition from Northern California Power Agency, Placer County Peaking Facility, for

Exemption and Availability of Certification.

SUMMARY: On July 30, 1984, the Northern California Power Agency, Placer County Peaking Facility (NCPA Placer) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplant and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

NCPA Placer requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of two 25.8 MW combustion turbine-generator systems and appurtenant equipment with a maximum heat input rate of 323 million Btu per hour per turbine. The proposed units are to be installed at the NCPA Placer facility in Placer County, California. The powerplant will be capable of burning natural gas and petroleum.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from NCPA Placer at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below:

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register**.

DATES: Written comments are due on or before October 25, 1984. A request for public hearing must also be made within this 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-018 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-1730.

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. NCPA Placer has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Placer County, California facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the NCPA Placer petition.

NCPA Placer submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine generator will be operated soley as a peakload powerplant.

NCPA Placer also certified that the maximum design capacity of the powerplant is 49.5 megawatts and that the maximum generation that will be allowed during any 12-month period for the combustion turbine is the design capacity times 1,500 hours or 74,250 megawatts.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. NCPA Placer has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist submitted by NCPA Placer pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on NCPA Placer's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that NCPA Placer is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, D.C., on August 29, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-23831 Filed 9-7-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI84-332-000]

Cities Service Oil and Gas Corp., et al.; Petition To Amend

September 4, 1984.

Take notice that on August 14, 1984, Cities Service Oil and Gas Corporation, CanadianOxy Offshore Production Company,[1] and Oxy Petroleum, Inc. (Cities), filed in Docket No. CI84-332-000 a petition pursuant to sections 4 and 7 of the Natural Gas Act and the provisions of Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) asking the Commission to extend to December 31, 1985, and otherwise amend the terms and conditions of the June 29, 1984, order [2] issuing a certificate of public convenience and necessity authorizing Cities to implement a special marketing program called the Consumer-Oriented Gas Sales (COGS) Program, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The June 29, 1984, order granted (1) Cities blanket authorization to sell natural gas for resale in interstate commerce; (2) limited-term, partial abandonment authorization for certain natural gas sales; (3) abandonment authority for sales and transportation of natural gas under the certificate; and (4) authorization for transportation of natural gas by willing interstate pipeline companies. The certificate authorizing the COGS Program expires on October 31, 1984, the same date all of the SMP's authorized by the Commission are scheduled to expire.

Cities states that the delay between the filing of the COGS application and the issuance of the order authorizing the COGS Program left Cities with only three months within which to implement the program. Cities believes this is not enough time to market a successful alternative gas sales program and accurately assess its merits. Cities states that operation of the COGS Program for only three months cannot significantly reduce either the gas deliverability surplus or take-or-pay obligations. Cities therefore requests that the Commission extend the COGS certificate to December 31, 1985. Cities states that it recognizes the Commission's concern that gas under sections 102 and 103 of the Natural Gas Policy Act of 1978 (NGPA) will become deregulated on January 1, 1985, and that the effect of deregulation is uncertain. Cities believes the Commission cannot determine the effect of SMP's in the newly deregulated market if it allows the programs to expire on October 31, 1984, and states that Cities' reports on the prices and volumes of COGS transactions will enable the Commission to monitor the effect of deregulation.

In addition, Cities states that, although it recognizes that some reporting may be necessary to provide continuing information on the success of SMP's, a quarterly or semi-annual reporting period would be adequate to monitor the programs and would reduce costly administrative burdens on the Commission and the certificate holders.

Cities states that the disclosure of commercially sensitive information has made some otherwise eligible purchasers reluctant to enter into SMP transactions and that the reporting requirement should be confined to the volumes and prices of the COGS transaction and should not inquire into the details of alternative transactions. Cities believes that this modification of the reporting requirements would encourage wider participation in the COGS Program without significantly affecting the Commission's ability to monitor the program.

Finally, Cities requests that it be permitted to market all gas within the sections 102, 103 or 107 NGPA pricing categories, whether dedicated or undedicated, if the gas otherwise qualifies for sale under the COGS Program. Cities states that it has sold and will contine to sell undedicated gas in the spot market under self-implementing authorization.[3] Cities believes that the joint marketing of both dedicated and undedicated gas under COGS is preferable because this approach would increase purchaser acceptance of spot sales and reduce the overall gas deliverability surplus.

Cities states that it believes that a full evidentiary hearing is not called for and that an informational conference on the petition would be appropriate; however, Cities believes that any hearing held on this petition must be expedited or the certificate authorizing the COGS Program will expire before the end of the hearing and the many benefits of the program will be foregone.

If the Commission is unable to schedule this application for final disposition before the certificate authorizing the COGS Program expires, Cities requests that the Commission extend the term of the COGS Program for a temporary period sufficient to ensure that the program will not lapse while the Commission completes its review of the COGS Program. Cities states that it has found that many potential purchasers are reluctant to enter into COGS transactions because of their uncertainty over whether Cities will be allowed to continue supplying their needs after October 31, 1984. Cities believes that by granting a temporary extension, the Commission can alleviate those concerns and help to ensure the success of the COGS Program.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 12, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to pariticipate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

acting Secretary.

[FR Doc. 84-23857 Filed 9-7-84; 8:45 am]

BILLING CODE 6717-01-M

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[1] Cities Offshore Production Company, a co-applicant for the certificate authorizing the COGS Program, recently changed its name to CanadianOxy Offshore Production Company. *See* Application of Canadian Offshore Production Co. to Amend Certificates of Public Convenience and Necessity to Substitute CanadianOxy Offshore Production Co. for Cities Offshore Production Co. In such Certificates and In Any Other Related Proceedings, Docket No. G-10139 (filed July 18, 1984).

[2] *See* Cities Service Oil and Gas Corporation *et al.*, Docket No. CI84-332-000, 27 FERC ¶61.493 (1984).

[3] *See* Order No. 234-B, 48 FR 34,872 (July 20, 1983) (to be codified at 18 CFR 157.209(e); Order No. 319, 48 FR 34,875 (July 20, 1983) (to be codified in scattered sections of 18 CFR 157.202-10, 284.205-22, -.222)).

[Docket No. CP84-652-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 5, 1984.

Take notice that on August 15, 1984, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-652-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia Transmission proposes to construct one new delivery point for an existing wholesale customer and the construction and operation of certain related measuring and regulating facilities under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Transmission proposes to construct an emergency point of delivery to Auxier Road Gas Company (Auxier Road) for the account of Columbia Gas of Kentucky, Inc. (Columbia of Kentucky). The estimated cost of the proposed measuring and regulating facilities is $12,900. Columbia Transmission's deliveries to Columbia of Kentucky would be made under its Rate Schedule CDS and would be within Columbia Transmission's currently authorized level of sales to Columbia of Kentucky.

On July 6, 1984, the Commission issued an order approving an offer of settlement among the parties to the proceeding in Docket No. CP83-469-000, namely Kentucky West Virginia Gas Company (Kentucky West), Columbia Transmission, Columbia of Kentucky, and the Commission's staff. Said order provides for the establishment of an emergency interconnection between the pipeline facilities of Kentucky West and Auxier Road and Floyd County, Kentucky. It is explained that deliveries through the proposed interconnection would be considered as sales for resale by Kentucky West to Columbia Transmission and by Columbia Transmission to Columbia of Kentucky to Auxier Road. The emergency interconnection would help assure a stable source of supply for the consumers supplied from a certain portion of Auxier Road's distribution system, it is submitted.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23659 Filed 9-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-640-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

September 5, 1984.

Take notice that on August 10, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-640-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Panhandle proposes to transport natural gas on behalf of Anchor Glass Container Corporation (Shipper), under the authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 4,000 Mcf of natural gas per day and up to 1,460,000 Mcf of natural gas per year on behalf of Shipper. It is stated that Shipper is purchasing gas from Continental Natural Gas, Inc., at the tailgate of the Union Texas Petroleum plant which is attached to Panhandle's system in Major County, Oklahoma. Panhandle proposes to transport the gas (less four percent reduction for fuel) to Shipper in Randolph Country, Indiana. Panhandle attests that Shipper is an existing direct industrial sales customer of Panhandle.

Panhandle also requests flexible authority to add and delete sources of supply or receipt/delivery points. Panhandle would file additional information to ensure that any changes in sources or receipt/delivery points would be on behalf of Shipper at the same location and under the same terms and conditions as would be authorized in the instant docket.

Panhandle's proposal transportation charge would be based upon Panhandle's Schedule OST and there would be no 5-cent added incentive charge.

Shipper would utilize the gas transported for process heating, it is stated. Panhandle further states that it would not construct or add to its existing facilities to provide this transportation service. The term of the proposed service would be from the date automatic authorization expires until the earlier of (1) eighteen months from the May 16, 1984, date of the transportation agreement, (2) termination of the authorization as provided by Subpart F of 18 CFR Part 157, or (3) termination of the service by any of the parties.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23660 Filed 9-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-333-018, CP83-342-001, CP83-343-002, CP83-354-020, CP83-355-001]

PanMark Gas Co., et al., Petition To Amend

September 4, 1984.

Take notice that on August 24, 1984, PanMark Gas Company (PanMark), P.O. Box 1642, Houston, Texas 77001, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, (referred to jointly as Petitioners) filed in Docket Nos. CP83-333-018, CP83-342-001, CP83-343-002, CP83-354-020, and CP83-355-001 a petition to amend the order issued March 19, 1984, in Docket No. CP83-333-000, *et al.*, pursuant to Section 7 of the Natural Gas Act so as to authorize the extension of the term of the authorization from October 31, 1984, to December 31, 1985, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that on May 23, 1983, PanMark filed for authorization in Docket No. CP83–333–000 to implement a load retention program, the purpose of which was to retain or regain industrial load on the Panhandle and Trunkline systems which faced competition with residual fuel oil. It is further stated that on May 26, 1983, Panhandle and Trunkline filed in Docket No. CP83–343–000 and Docket No. CP83–342–000, respectively, seeking authority to provide a transporation service for PanMark supplies of natural gas, and that Trunkline and PanMark jointly filed on May 31, 1983, in Docket No. CP83–354–000 on behalf of Trunkline's producer-suppliers for partial abandonment of certificated producer sales to Trunkline and for a limited-term certificate with pregranted abandonment authorization authorizing the producers to make sales directly to PanMark. It is stated that also on May 31, 1983, Panhandle and PanMark jointly filed in Docket No. CP83–355–000 on behalf of Panhandle's producer-suppliers, seeking similar authority.

Petitioners state that by an order issued August 1, 1983, the proceedings in Docket Nos. CP83–333–000, CP83–342–000, CP83–343–000, CP83–354–000 and CP83–355–000 were consolidated. It is indicated that a stipulation and agreement in Docket No. CP83–333–000, *et al.*, was filed with the Commission on December 14, 1983. It is further stated that on March 19, 1984, the Commission issued its Order Modifying Stipulation and Agreement and Granting Certificates in Docket No. CP83–333–000, *et al.*, and that the Commission's order authorized the PanMark program to go into effect through October 31, 1984. Petitioners state it also provided for the limited-term blanket abandonment authorization on behalf of Panhandle's and Trunkline's producers and authorized the limited-term blanket transportation of PanMark gas by Panhandle and Trunkline.

It is claimed that at the time of the initial filing by PanMark both Panhandle and Trunkline were in worsening situations on their respective pipeline systems because the rising costs of natural gas supplies had forced the Panhandle and Trunkline sales price upward to the point where fuel switching was occurring. It is asserted that this, coupled with the economic downturn and warmer than normal winter weather, had created increasingly larger losses of sales load on the Panhandle and Trunkline systems. It is contended the results of this load loss were twofold: first, as customers left the system, those remaining customers were required to contribute more toward the recovery of costs; second, the decline in sales forced Panhandle and Trunkline to reduce purchases of natural gas from producers. It is asserted these cutbacks increased the take-or-pay liability facing the pipelines and further exacerbated the rising sales price problem.

Petitioners claim that faced with this deteriorating market, they responded with the development of the PanMark program. Petitioner's state PanMark supplies were allowed to compete with new loads not previously served by natural gas or to requirements which would otherwise be served by alternative fuels, producer direct sales arrangements, gas made available under industrial sales programs, or other similar programs, gas sold by pipelines under special discount rates or in off-system sales, propane or synthetic natural gas, or gas sold under interruptible sales rate schedules. It is further stated that the order granted authorization for a term ending October 31, 1984.

It is asserted that the PanMark program went into operation on June 1, 1984, and that at this time Petitioners have two months of historic data on the program. It is further stated the PanMark program has resulted in take-or-pay benefits to Panhandle and Trunkline and if extended would have the possibility of significantly reducing this future liability. The following table summarizes the take-or-pay relief which Panhandle and Trunkline claim to have received in these months.

Month	Company	Volume (Mcf)	Take-or-pay relief
June	Panhandle	419,458	$1,447,257
July	do	519,388	2,003,184
Total		938,846	3,450,441

Petitioners aver that ordering paragraph H of the March 19, 1984, order limited the sources of supply under the PanMark program to a producer or supplier who ". . . absolves Panhandle and/or Trunkline of take-or-pay liability for any volumes of gas sold by PanMark". Therefore, it is explained, any volume of gas sold by PanMark results in a one-to-one take-or-pay benefit to either Panhandle or Trunkline.

Petitioners indicated that the projected PanMark nominated sales volumes would be as follows:

Month	Volumes (million Btu)
August	566,654
September	2,473,745

Petitioners submit that the projected take-or-pay benefit to be received on the Panhandle and Trunkline systems would be $2.1 million for August and $9.1 million for September. It is asserted that if the September 1984 projection were used as a basis to estimate the take-or-pay benefit which Panhandle and Trunkline would receive for the proposed 14-month extension of the Panmark program, the benefit for this period would total $127.4 million.

Petitioners claim there is growing supplier involvement in the program. It is stated that in June three suppliers participated in the PanMark program and in July five suppliers participated in the program. Petitioners further state that in August there have been 14 packages of gas nominated by suppliers for a total nominated supply of 106,000 Mcf per day and that in September 20 packages of gas have been nominated for a total nominated supply of 116,000 Mcf per day.

Petitioners claim the PanMark program has resulted in a significant load retention on the Panhandle and Trunkline systems. The actual PanMark sales for June, estimated sales for July and projected sales for August and September are said to be as follows:

Month	Volume (million Btu)
June	408,246
July	455,431
August	566,654
September	2,473,745
Total	3,904,076

It is asserted that if the September projection were used to calculate the total load to be retained for the proposed 14-month extension of the PanMark program the retained load for this period would total 35,000,000 Mcf. The major percentage of this load, it is explained, would be sales for resale which Panhandle and Trunkline would make to their jurisdictional customers. Petitioners state these customers would derive a double benefit. First, they claim load retention results in a lower-fixed cost per unit on the Panhandle and Trunkline system and the distributor's system and second they claim all customers would reap the benefits of lower take-or-pay liabilities. In addition, it is stated PanMark volumes which would be transported for those customers, which have a minimum commodity bill in their service agreements, would have those volumes included for purposes of satisfying their minimum bill.

Petitioners believe that there is evidence that the demand for gas under the PanMark program is growing. It is claimed that in June five purchasers participated in the program and in July eleven purchasers participated in the program; it is projected that this would increase to thirteen in August and may be seventeen in September.

Petitioners state the PanMark program allows Panhandle and Trunkline to maximize both take-or-pay and load retention benefits. It is stated all PanMark gas sold would be gas for which either Panhandle or Trunkline receives a take-or-pay benefit. It is further stated Panhandle and Trunkline provide transportation service to their customers under Sections 157.205 and 157.209 of the Commission's Regulations. Petitioners aver that while this results in load continuing to remain on the pipelines' systems, this program has provided little take-or-pay benefit. It is claimed that during the month of July about 87 percent of these transportation arrangements involved off-system gas, whereas under the PanMark program, one hundred percent of the gas supplied would be on-system gas and therefore would provide maximum take-or-pay relief.

Petitioners state that despite the initial results of PanMark they still face difficult situations on their systems as a whole. It is said Panhandle's sales have fallen from 662,000,000 Mcf in 1981 to 455,000,000 Mcf in 1983 and that they are projected to decline to 416,000,000 Mcf in 1984 and 428,000,000 Mcf in 1985. Trunkline's sales have dropped from a level of 534,000,000 Mcf in 1981 to 311,000,000 Mcf in 1983, it is stated. Petitioners' projections for the years 1984 and 1985 are for sales of 293,000,000 Mcf and 277,000,000 Mcf, respectively. It is further stated that while the rate of increase in take-or-pay has been slowed by negotiations with producers and by the relief gained through the PanMark program, Panhandle's and Trunkline's joint take-or-pay liability could increase by $1.2 billion at the end of 1984, but that the extension of the PanMark program would assist Panhandle and Trunkline in controlling take-or-pay liability through 1985.

Petitioners claim the need for the PanMark program is still present and will exist into the foreseeable future. It is asserted PanMark was initially filed as an experimental program in response to a changing natural gas market environment where it was difficult to project what the marketplace would look like in 1985. It is stated that based on the declining sales and take-or-pay liabilty problems which Panhandle and Trunkline face today and given the benefits which the PanMark program has provided Panhandle and Trunkline, the PanMark program would provide one tool to work toward a solution to the problems which Panhandle and Trunkline face now and would be expected to continue to face in 1985. Petitioners therefore request that authorization for this program be extended until December 31, 1985.

It is stated that in its initial filing in Docket No. CP83–333–000, PanMark stated it would offer to purchase and sell its nominated requirements on a month-to-month basis, but that this has proved to be administratively burdensome to PanMark, producers and customers. Petitioners aver this has been a factor in the decision of many end-users to purchase off-system gas supplies that they can obtain for longer terms. PanMark requests authority to change this procedure so as to offer to purchase and sell its nominated requirements on a flexible basis for periods up to the full term of the requested extension. It is contended this would be an administrative change and in no way would it change the reporting requirements or eligibility requirements under the program.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Sept. 12, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–23861 Filed 9–7–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80–257–002]

Southern Natural Gas Co. and Florida Gas Transmission Co.; Petition To Amend

September 5, 1984.

Take notice that on August 13, 1984, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202 and Florida Gas Transmission Company (Petitioners), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP80–257–002 pursuant to sections 7(b) and (c) of the Natural Gas Act a petition to amend the Commission's order issued June 30, 1980, in Docket No. CP80–257–000 so as to reflect the acquisition by Shell Offshore Inc. (Shell) and operation of certain facilities and permission and approval to abandon by sale an interest in these certain facilities, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by Commission order issued June 30, 1980, they were authorized to construct and operate certain pipeline, compression and measurement facilities to attach natural gas reserves they contracted to purchase from Shell from the Mississippi Canyon Block 311 Field, offshore Louisiana. It is explained that Shell advised Petitioners that it has required the utilization of approximately 12 percent of the horsepower of the previously authorized compression facilities for certain production operations of Shell at the Mississippi Canyon Block 311 A Platform. Upon being advised of Shell's compression requirements, Petitioners determined that sufficient horsepower is available to permit Shell to utilize a portion of the compression facilities for its production operations.

Accordingly, Petitioners request authorization to abandon by sale to Shell a 12 percent ownership interest in the 4,000 horsepower unit located on the Mississippi Canyon Block 311 A Platform. Further, Petitioners request that their outstanding certificate be amended to reflect the utilization by Shell of 12 percent of the compression facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Sept. 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23862 Filed 9-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-374-000]

TXP Operating Co.; Petition To Amend

September 4, 1984.

Take notice that on August 24, 1984, TXP Operating Company (TXP), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CI84-374-000, pursuant to sections 4 and 7 of the Natural Gas Act, a petition to amend the Commission's order of July 24, 1984, authorizing TXP to implement a special marketing program called TransMart.[1] TXP requests the Commission to amend the July 24, 1984, order to extend the term of the certificate granted thereby to December 31, 1984, or to such date as the Commission may establish in any order of general applicability for special marketing programs (SMP's), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The July 24, 1984, order granted (1) limited-term partial abandonment authorization for certain presently certificated sales; (2) limited term certificate authority for the sale for resale of jurisdictional gas by TXP in interstate commerce from certain of its interests in the Outer Continental Shelf of the Gulf of Mexico; (3) abandonment authorization for those sales; (4) blanket transportation authorization for any interstate pipeline company able and willing to participate in TransMart; and (5) abandonment authorization for that transportation service. The certificate authorizing TransMart expires on October 31, 1984, the same date as all of the SMP's authorized by the Commission are scheduled to expire.

TXP states that actual sales under TransMart commenced on July 27, 1984, three days after the Commission issued its order authorizing the program. TXP states that it filed its monthly report for July showing that there was one TransMart sale for the month. TXP states that the sale was made to Consolidated Edison of New York, Inc., a local distribution company, and totalled 45, 037 MMBtu equivalent of gas at a price of $3.06 per MMBtu.

TXP states that a preview into August indicates that TransMart sales have increased substantially over July and that for August TXP received six nominations from four prospective purchasers for a total of 70,000 MMBtu per day. TXP expects to make these deliveries at prices ranging from $3.05 to $3.10 per MMBtu and expects sales under TransMart to continue to increase as the program matures.

Due to TransMart's brief existence, TXP states, it does not have the necessary historical data to prove unequivocally that its program is consistent with the Commission's objectives in authorizing TransMart. TXP believes that, unless extended, the program will be of too short a duration to be a meaningful experiment and that an extension would be worthwhile so that TXP could provide additional data to the Commission.

In addition, TXP states that its situation with respect to excess deliverability and reduced revenues still exists now as it did when TXP originally filed its TransMart application and that an extension of the program is necessary so that TXP can continue to generate additional revnues and cash flow and to decrease its present surplus of deliverability.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 12, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-23863 Filed 9-7-84; 8:45 am]

BILLING CODE 6717-01-M

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[1] *See* TXP Operating Company, Docket No. CI84-374-000, 28 FERC ¶ ——— (1984).

[Docket No. QF83-428-001]

Applied Energy Services, Inc.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

September 5, 1984.

On July 27, 1984, Applied Energy Services, Inc. (Applicant), 1925 N. Lynn Street, Suit 1200, Arlington, Virginia 22209 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. The original application was filed september 16, 1983, noticed by the Commission on October 20, 1983 and granted certification in an order issued on December 15, 1983.

The facility located in Beaver Valley Pennsylvania will use four steam boilers in the modified facility, instead of three enabling the project to generate additional steam and electricity. The electric power production capacity of the facility will increase from 90 megawatts to 117.5 megawatts. Other facility characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23856 Filed 9-7-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-257-002]

Cogentrix of North Carolina, Inc., Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

September 5, 1984.

On August 6, 1984, Cogentrix of North Carolina, Inc. (Applicant), Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. The original application was filed on September 12, 1983, was noticed by the Commission on October 12, 1983 and was granted certification in an order issued December 8, 1983.

Applicant wishes to modify the location of the facility, moving it from the Guilford Mills, Inc. Plant in Greensboro, North Carolina to the Burlington Industries Sheffield Plant in Rocky Mount, North Carolina. The characteristics of the facility are the same as described in the original application, except that the useful thermal energy output calculation has changed at the new location.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23858 Filed 9-7-84, 8:45 am]

BILLING CODE 6717-01-M

Oil Pipelines Tentative Valuations

September 6, 1984.

The Federal Energy Regulatory Commission by order issued February 10, 1978 established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that tentative valuations are under consideration for the common carriers by pipeline listed below:

1983 Reports

Valuation Docket No. PV—

1364-000—Acorn Pipe Line Company, 8441 Gulf Freeway, Houston, TX 77017
1414-000—Allegheny Pipeline Company, P.O. Box 2521, Houston, TX 77252
1440-000—American Petrofina Pipe Line Company, P.O. Box 2159, Dallas, TX 75221
1302-000—Amoco Pipeline Company, 200 E. Randolph Dr., Chicago, IL 60601
1329-000—ARCO Pipe Line Company, ARCO Building, Independence, KS 67301
1291-000—Ashland Pipe Line Company, 1000 Ashland Dr., Russell, KY 41169
1381-000—Badger Pipe Line Company, 3400 So. Badger Rd., Arlington Hghts., IL 60005
1430-000—Belle Fourche Pipeline Company, 895 West River Cross Rd., Casper, WY 82601
1425-000—Black Lake Pipe Line Company, 3500 Oceangate, Long Beach, CA 90802
1322-000—Buckeye Pipe Line Company, P.O. Box 368, Emmaus, PA 18049
1382-000—Butte Pipe Line Company, P.O. Box 2648, Houston, TX 77252
1404-000—Calnev Pipe Line Company, P.O. Box 7, Ft. Worth, TX 76101
1465-000—C & T Pipeline, Inc., P.O. Box 1396, Houston, TX 77001
1416-000—Chevron Pipe Line Company, 555 Market St., San Francisco, CA 94120
1427-000—Chicap Pipe Line Company, 1650 East Golf Road, Schaumburg, IL 60196
1481-000—Chisholm Pipeline Company, 1670 Broadway, Denver, CO 80202
1312-000—Citgo Pipe Line Company, P.O. Box 3758, Tulsa, OK 74102
1433-000—Collins Pipeline Company, P.O. Box 2511, Houston, TX 77001
1422-000—Colonial Pipeline Company, Lenox Towers, P.O. Box 18855, Atlanta, GA 30326
1316-000—Continental Pipeline Company, 3411 Richmond Ave., Houston, TX 77252
1426-000—Cook Inlet Pipe Line Company, 1201 Elm St., Dallas, TX 75270
1365-000—Crown-Rancho Pipe Line Corporation, 4747 Bellaire Blvd., Bellaire, TX 77401
1349-000—Diamond Shamrock Refining and Marketing Company, 3643 E. Commerce, San Antonio, TX 78220
1411-000—Dixie Pipeline Company, P.O. Box 42130, Houston, TX 77242
1385-000—Emerald Pipe Line Corporation, P.O. Box 631, Amarillo, TX 79173
1338-000—The Eureka Pipe Line Company, 963 Market Street, Parkersburg, WV 26101
1441-000—Explorer Pipeline Company, 2725 E. Skelly Dr., Tulsa, OK 74105
1394-000—Exxon Pipeline Company, P.O. Box 2220, Houston, TX 77252-2220
1341-000—Farmland Industries, Inc., 3315 N. Oak Trafficway, Kansas City, MO 64116
1389-000—Four Corners Pipe Line Company, 5900 Cherry Avenue, Long Beach, CA 90805
1402-000—Getty Pipeline, Inc., 1670 Broadway, Denver, CO 80217
1436-000—Gulf Central Pipeline Company, 907 S. Detroit Ave., Tulsa, OK 74120
1333-000—Gulf Pipeline Company, 1301 McKinney, Houston, TX 77010
1409-000—Hess Pipeline Company, 1185 Avenue of the Americas, New York, NY 10036
1431-000—Hydrocarbon Transportation, Inc., 2223 Dodge Street, Omaha, NE 68102
1406-000—Jayhawk Pipeline Corporation, P.O. Box 1030, Wichita, KS 67201
1413-000—Jet Lines, Inc., 522 Cottage Grove Road, Bloomfield, CT 06002
1375-000—Kaneb Pipe Line Company, 100 N. Broadway, Wichita, KS 67202
1299-000—Kaw Pipe Line Company, P.O. Box 42130, Houston, TX 77242
1429-000—Kerr-McGee Pipeline Corporation, Kerr-McGee Center, Oklahoma City, OK 73125
1435-000—Kiantone Pipeline Corporation, P.O. Box 780, Warren, PA 16365
1419-000—Lake Charles Pipe Line Company, P.O. Box 300, Tulsa, OK 74102
1354-000—Lakehead Pipe Line Company, Inc., 3025 Tower Avenue, Superior, WI 54880-0789
1403-000—Laurel Pipe Line Company, P.O. Box 426, Camp Hill, PA 17011
1392-000—Marathon Pipe Line Company, 231 E. Lincoln St., Findlay, OH 45840
1395-000—Mid-America Pipeline Company, 1800 South Baltimore Avenue, Tulsa, OK 74119
1353-000—Mid-Valley Pipeline Company, 907 S. Detroit Ave., Tulsa, OK 74120
1448-000—Mobile Eugene Island Pipeline Company, 1201 Elm St., Dallas, TX 75270
1311-000—Mobil Pipe Line Company, First International Building, 1201 Elm St., Dallas, TX 75270
1332-000—National Transit Company, 93 Bolivar Dr., Bradford, PA 16701
1455-000—Ohio Oil Gathering Corporation II, Suite 400, 201 King of Prussia Rd., Radnor, PA 19087
1292-000—Ohio River Pipe Line Company, 1000 Ashland Drive, Russell, KY 41169
1417-000—Olympic Pipe Line Company, 1000 Elm St., Dallas, TX 75270

1453-000—Osage Pipe Line Company, 1670 Broadway, Denver, CO 80217
1456-000—Owensboro-Ashland Company, 1000 Ashland Drive, Russell, KY 41169
1420-000—Paloma Pipe Line Company, 3900 Thanksgiving Tower, Dallas, TX 75201
1320-000—Phillips Pipe Line Company, 944 Adams Building, Bartlesville, OK 74004
1372-000—Pioneer Pipe Line Company, P.O. Box 2197, Houston, TX 77252
1343-000—Plantation Pipe Line Company, 3390 Peachtree Rd., N.E., Atlanta, GA 30326
1367-000—Platte Pipe Line Company, 231 E. Lincoln St., Findlay, OH 45840
1458-000—Pogo Offshore Pipeline Company, P.O. Box 61289, Houston, TX 77208
1410-000—Portal Pipe Line Company, 5613 DTC Parkway, Englewood, CO 80111
1347-000—Portland Pipe Line Corporation, 30 Hill Street, South Portland, ME 04106
1327-000—Pure Transportation Company, 1650 East Golf Road, Schaumburg, IL 60196
1428-000—Santa Fe Pipeline Company, 907 S. Detroit Ave., Tulsa, OK 74120
1450-000—Seaway Pipeline, Inc., 370 Adams Bldg., Bartlesville, OK 74004
1369-000—The Shamrock Pipe Line Corporation, P.O. Box 631, Amarillo, TX 79173
1326-000—Shell Pipe Line Corporation, 777 Walker St., Houston, TX 77002
1335-000—Sohio Pipe Line Company, P.O. Box 5774, Cleveland, OH 44101
1424-000—Southcap Pipe Line Company, 1650 East Golf Road, Schaumburg, IL 60196
1393-000—Southern Pacific Pipe Lines, Inc., 610 South Main Street, Los Angeles, CA 90014
1370-000—Sun Oil Line Company of Michigan, 907 S. Detroit Ave., Tulsa, OK 74120
1315-000—Sun Pipe Line Company, 907 S. Detroit Ave., Tulsa, OK 74120
1386-000—Tecumseh Pipe Line Company, 300 Oceangate, Long Beach, CA 90802-4341
1300-000—Texaco-Cities Service Pipe Line Company, P.O. Box 42130, Houston, TX 77242
1408-000—Texas Eastern Transmission Corporation-Little Big Inch Division, P.O. Box 2521, Houston, TX 77252
1293-000—Texas-New Mexico Pipe Line Company, P.O. Box 42130, Houston, TX 77242
1330-000—The Texas Pipe Line Company, P.O. Box 42130, Houston, TX 77242
1449-000—Texoma Pipe Line Company, 1210 Fourth National Bank Building, Tulsa, OK 74119
1466-000—Tomahawk Pipe Line Company, P.O. Box 376, Tulsa, OK 74101
1357-000—Total Pipeline Corporation, One Denver Place, Suite 2201, P.O. Box 500, Denver, CO 80201
1379-000—Trans Mountain Oil Pipe Line Corporation, No. 800-601 W. Broadway, Vancouver, British Columbia, Canada V5Z 4C5
1412-000—Trans-Ohio Pipeline Company, P.O. Box 2521, Houston, TX 77252
1388-000—West Emerald Pipe Line Corporation, P.O. Box 631, Amarillo, TX 79173
1463-000—Western Oil Transportation Company, Inc. 1509 West Wall, Midland, TX 79701
1396-000—West Shore Pipe Line Company, P.O. Box 6110-A, Chicago, IL 60680
1362-000—West Texas Gulf Pipe Line Company, P.O. Box 3706, Houston, TX 77253
1421-000—White Shoal Pipeline Corporation, Kerr-McGee Center, Oklahoma City, OK 73125
1423-000—Williams Pipe Line Company, P.O. Box 3448, Tulsa, OK 74101
1377-000—Wolverine Pipe Line Company, 1201 Elm St., Dallas, TX 75270
1477-000—Wood River Pipeline Company, P.O. Box 2256, Wichita, KS 67201
1355-000—Wyco Pipe Line Company, P.O. Box 6110-A, chicago, IL 60680
1373-000—Yellowstone Pipe Line Company, P.O. Box 2220, Houston, TX 77001

On or before October 15, 1984, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in these valuations may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. It is required that a copy of the petition to intervene be served on the individual company at the address shown above and that an appropriate certificate of service be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,
Administrative Officer, Oil Pipeline Board.

[FR Doc. 84-23796 Filed 9-7-84; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2666-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Research and Development Programs

- Title: Use of a DOD-Style System for Collecting Fiscal Status Information from IERL-RTP Contractors (EPA #1223).

Abstract: Firms conducting engineering research and development studies for EPA's Office of Research and Development will submit fiscal status information to EPA monthly. These reports will help Agency project officers monitor conformance with project plans.

Respondents: Certain EPA contractors doing R&D studies.

Agency PRA Clearance Requests Completed by OMB

EPA #0191, Manual Vent Valve Discharge and Relief Valve Discharge Reports and Records, was approved on 21 August 1984 (OMB #2060-0071).

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, S.W., Washington, D.C. 20460,

and

Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503.

Dated: August 31, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-23706 Filed 9-7-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: The purpose of this notice is to revise an existing system of records entitled, "FEMA/SEC-1, Security Management System" to add the collection of eye prints as a new category of records. The Federal Emergency Management Agency plans to enter into an agreement with EyeDentify, Inc., to test their EyeDentification System 7.5 ™. With just a quick look to compare a live retinal scan with an eye signature already on file, the EyeDentification System 7.5 grants access to secured areas or equipment while keeping unauthorized people out. Upon signature recognition, the system would automatically activate release of the security mechanism involved and allow authorized individual access to secure areas and sensitive data.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287-0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97-375), agencies are required to publish a notice of the systems of records they maintain that are subject to the act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular A-108, Transmittal Memorandum No. 1 and 3. Thus, a change to the system-notice that does not require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice. For the convenience of interested parties, we are publishing the sections of the system of records notice and the new information is being printed in italics.

On November 21, 1984 (48 FR 52637), the Federal Emergency Management Agency published the complete text of the system of records, "FEMA/SEC-1, Security Management System."

Dated: August 30, 1984.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/SEC-1

SYSTEM NAME:

Security Management System

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Security records include: Statement of personal history, personal data (e.g., name, address, telephone number and social security number) contained on security clearance forms, rosters, lists, non-disclosure statements, and forms for record container combinations and other related records. *Eye prints may be contained in this system to compare a live retinal scan with an eye signature already on file in the EyeDentification System or similar system to grant access to secured areas or equipment while keeping unauthorized people out.* Also, this system contains records concerning Personnel Security Program for positions associated with computer systems (Chapter 732 of Federal Personnel Manual). Records do not contain investigatory materials. Secondary System will also include forms for requests for access to FEMA Special Access Program, notification of disapproval for access to FEMA Special Access Program, inadvertent disclosure statements, and non-disclosure agreements. *Eye prints may be contained in the Secondary System to compare a live retinal scan with an eye signature already on file in the EyeDentification System or similar system to grant access to secured areas or equipment while keeping unauthorized people out.*

* * * * *

[FR Doc. 84-23802 Filed 9-7-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under section 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the pary commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, FNB Financial Company, Boston, Massachusetts, in making, acquiring and servicing of loans and other extensions of credit including, without limitation, the making of unsecured loans.

2. *Shawmut Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, Shawmut Life Insurance Co., Inc., in the underwriting, through reinsurance, of credit life and credit accident and health insurance. Such insurance would be written in connection with extensions of credit by banking subsidiaries of Shawmut Corporation.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alameda Bancorporation, Inc.*, Alameda, California; to engage *de novo* through its subsidiary, First Leasing Corporation, San Leandro, California, to expand the geographic scope of company to the State of Tennessee and within a 500 mile radius of Memphis, Tennessee.

Board of Governors of the Federal Reserve System, September 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23799 Filed 9-7-84; 8:45 am]

BILLING CODE 6210-01-M

First Charter Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Charter Corporation*, Concord, North Carolina; to acquire Carolina Finance Company, Charlotte, North Carolina and there engage in making consumer loans and acting as insurance agent with respect to the sale of life, accident, health, and property insurance directly related to such loans. All property insurance sales will provide only insurance which protects collateral securing loans made by the company.

Board of Governors of the Federal Reserve System, September 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23800 Filed 9-7-84; 8:45 am]

BILLING CODE 6210-01-M

FM Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842 and § 225.14 of the Board's Regulation Y (12 CFR 225.14 to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 26, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FM Bancorp, Inc.*, Paxton Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers-Merchants National Bank of Paxton, Paxton, Illinois.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Tate Financial Corporation*, Coldwater, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Coldwater, Mississippi.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bruce Bancshares, Inc.*, Bruce, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Dairyland State Bancorporation, Inc., Bruce, Wisconsin, which owns 93.33 percent of Dairyland State Bank, Bruce, Wisconsin.

Board of Governors of the Federal Reserve System, September 4, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23801 Filed 9-7-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Advisory Board, Subcommittee on Facilities and Buildings Management; Cancellation of Meeting

Notice is hereby given that the meeting of the General Services Administration (GSA) Advisory Board's subcommittee on Facilities and Buildings Management scheduled to meet on September 14, 1984 from 9:00 a.m. to 3:30 p.m. in Room 6120, 18th & F Streets, N.W., Washington, D.C., and previously announced in the Federal Register, (49 FR 34086, August 28, 1984)

Questions regarding this notice should be directed to Mr. James Dean on (202) 566-0382.

Dated: September 5, 1984.

Thomas J. Simon,

Director, Office Of Program Initiatives.

[FR Doc. 84-23958 Filed 9-7-84; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0252]

Antipyrine Test as an Index of Hepatic Drug-Metabolizing Capacity

Correction

In FR Doc. 84-22753 beginning on page 34086 in the issue of Tuesday, August 28, 1984, make the following corrections:

1. On page 34087, first column paragraph 9., fourth line, "Animal" should have read "Annals".

2. In the second column, insert the following before the sixth line from the bottom, "27. Almeyda, J. and H. Baker,".

3. On page 34088, second column, paragraph 65., fourth line, "17:-656," should have read "17:650-656,".

BILLING CODE 1505-01-M

[Docket No. 83F-0157]

Ciba-Geigy Corp.; Withdrawal of Petition for Food Additive

Correction

In FR Doc. 84-22754 appearing on page 34088 in the issue of Tuesday, August 28, 1984, make the following correction:

On page 34088, third column, under "Supplementary Information", second paragraph, fourth line, "1271.7" should have read "171.7".

BILLING CODE 1505-01-M

[Docket No. 80N-0012]

Ciba-Geigy Corp.; Iodochlorhydroxyquin and Hydrocortisone; Notice of Hearing

Correction

In FR Doc. 84-22036 beginning on page 33173 in the issue of Tuesday, August 21, 1984, make the following correction.

On page 33173, in the next to last line of the "**ADDRESSES**" section, "56" should read "5600".

BILLING CODE 1505-01-M

Public Health Service

National Toxicology Program; Availability of Report

The HHS' National Toxicology Program (NTP) today announces the availability of the *Report of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation.*

The *Ad Hoc Panel* was established in response to a request at the March 14, 1983, NTP Board of Scientific Counselors' Meeting that an expert group be named to review the basic biology of chemical carcinogenesis and to recommend methods that the NTP should use for the detection and evaluation of chemical carcinogens. Dr. John Doull, Professor, Department of Pharmacology and Toxicology, University of Kansas Medical Center, Kansas City, Kansas, was appointed Chairman of the 16-member *Ad Hoc Panel.*

The *Ad Hoc Panel* held four open meetings and its subpanels met four times to discuss their objectives and to receive public comments. On February 15, 1984, a draft report of the *Ad Hoc Panel* was published and extensive public comments were received. (To review the comments, contact the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Specify PB 84-225945.) Many of the comments received on the draft are reflected in this final document.

The Report contains three chapters: Report of the Subpanel on Short Term Tests, Report of the Subpanel on Subchronic Studies and Related Issues, and Report of the Subpanel on Design of Chronic Studies.

Copies of the *Report of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation* are available without charge from: NTP Public Information Office, MD B2-04, Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991. FTS: 629-3991.

Dated: August 30, 1984.

David P. Rall,

Director.

[FR Doc. 84-23809 Filed 9-7-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Advisory Council on Historic Preservation; SES Performance Review Board

AGENCY: Department of the Interior.

ACTION: Notice of SES Performance Review Board Appointments.

SUMMARY: This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES Performance Appraisal Plan for the Department has been adopted for use by the Council. The Performance Review Board will review the appraisal, award, and bonus recommendations for the SES members of the Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

DATE: These appointments are effective on September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mary D. Ellis, Personnel Officer, Office of the Secretary (PMO-P), Department of the Interior, Washington, D.C. 20240, Telephone number: 343-6702.

The names of the members of the SES Performance Review Board are:

Mr. Bruce Blanchard (Career), Director, Office of Environmental Project Review, Department of the Interior

Mr. Richard H. Broun (Career), Director, Office of Environmental Quality, Department of Housing and Urban Development

Mr. Elliott Carrol, FAIA (Career), Executive Assistant to the Architect of the Capitol

Dated: August 27, 1984.

Richard R. Hite,

Controller (Principal Deputy Assistant Secretary—Policy, Budget and Administration).

[FR Doc. 84-23805 Filed 9-7-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[A-19282]

Realty Action; Mineral Exchange; Gila County, AZ

Correction

In FR Doc. 84-18491 appearing on page 28477 in the issue of Thursday, July 12, 1984, make the following correction: In the second column, Gila and Salt River Meridian, Arizona, second line "Sec. 25" should read "Sec. 24".

BILLING CODE 1505-01-M

[F-448]

Termination of Segregative Effect of Power Project No. 2264; Lands Available for State Selection, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of Power Project No.

2264 which totals approximately 714.18 acres and makes land available for selection by the State of Alaska.

EFFECTIVE DATE: September 10, 1984.

ADDRESS: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271-5060.

1. Pursuant to the order the Federal Energy Regulatory Commission issued April 27, 1982, the lands formerly withdrawn for Power Project No. 2264 are hereby relieved of the segregative effect of the withdrawal created by the application for a power project license filed by the Chatanika Power Company, Inc., for construction of Power Project No. 2264 utilizing approximately 714.18 acres of the Davidson Ditch northeast of Fairbanks, Alaska.

2. As required by subsection 6(g) of the Alaska Statehood Act (72 Stat. 339), the State of Alaska is provided a preferred right of selection for those lands formerly within Power Project No. 2264, and not otherwise withdrawn, for a period of ninety (90) days from the date of publication of this order.

Michael J. Penfold,

State Director.

[FR Doc. 84-23804 Filed 9-7-84; 8:45 am]

BILLING CODE 4310-JA-M

[AA-50393]

Termination of Segregative Effect for Power Project No. 1196, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of Power Project Number 1196, which totals approximately 3.4 acres, and continues the terms and conditions of prior withdrawals of record.

EFFECTIVE DATE: September 10, 1984.

ADDRESS: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271-5060.

Pursuant to the order of the Federal Energy Regulatory Commission issued March 27, 1979, the lands formerly withdrawn for Power Project Number 1196 are hereby relieved of the segregative effect of the withdrawal created by the application for a power project license filed by Leora Roycroft for construction of Power Project Number 1196 utilizing approximately 3.4 acres in the area of Moose, Pass, Alaska.

The lands will continue to be withdrawn by, and be subject to the terms and conditions of prior withdrawals of record.

Michael J. Penfold,

State Director.

[FR Doc. 84-23807 Filed 9-7-84; 8:45 am]

BILLING CODE 4310-JA-M

Lakeview District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR 19780 that a meeting of the Lakeview District Advisory Council will be held on October 16, 1984. The meeting will begin at 10:00 a.m. at the Lakeview District office conference room at 1000 South Ninth Street, Lakeview, Oregon.

The agenda for the meeting will include:

1. Opening Remarks and General Topics.
2. Bombing Range.
3. Geothermal Exploration.
4. Volunteer Work Program.
5. Fire Rehabilitation.
6. Allocation of Additional Livestock Forage in Wilderness Study Areas.
7. Establishment of Forage Reserves.
8. Land Pattern Adjustments.
9. Subleasing of Grazing Privileges.
10. Other District Programs.
11. Public Comment Period—2:30-3:30 p.m.

Interested persons may make oral statements before the Council or file written statements for the Council's consideration.

Summary minutes of the Council meeting will be maintained in the District office and available for public inspection during regular business hours within 30 days following the meeting.

Dick Harlow,

Associate District Manager.

[FR Doc. 84-23838 Filed 9-7-84; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-221X)]

Burlington Northern Railroad Company—Abandonment—in Union County, IA; Exemption

Burlington Northern Railroad Company (BM) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* The line to be abandoned extends between milepost 0.0 near Talmadge Jct., and milepost 0.42 near Talmadge, a distance of 0.42 mile in Union County, IA.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Iowa Department of Transportation has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on October 10, 1984 (unless stayed pending reconsideration). Petitions to stay must be filed by September 20, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 1, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, Assistant General Solicitor, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 29, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-23809 Filed 9-7-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-8 (Sub-6X)]

The Denver and Rio Grande Western Railroad Company—Abandonment Exemption

The Denver and Rio Grande Western Railroad Company (DRGW) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments,* as amended by Ex Parte No. 274 (Sub-No. 8A), *Exemption of Out of Service Lines (Discontinuance of*

Service and Trackage Rights) (not printed), served April 20, 1984. DRGW will abandon its line of railroad known as the Richfield-Marysvale Branch extending from milepost 103.7 near Richfield to milepost 132.81 near Marysvale, a distance of 29.11 miles in Sevier and Piute Counties, UT.

DRGW has certified that (1) no local traffic has moved over the line for at least 2 years, (2) that all overhead traffic previously routed over the line has been rerouted over alternate lines, and (3) that no formal complaint, filed by a user of rail service on the line, or by a state or local governmental entity acting on behalf of a user, regarding cessation of service over the line, either is pending with the Commission or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Service Commission (or equivalent agency) in Utah has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment or discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 366 I.C.C. 91 (1979).

The exemption shall be effective on October 9, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 20, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 1, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to DRGW's representative: John S. Walker, Jr., P.O. Box 5482, Denver, CO 80217.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 30, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-23810 Filed 9-7-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-59 (Sub-16X); AB-19 (Sub-No. 84X)]

Western Maryland Railway Company—Abandonment—In Allegany County, MD and the Baltimore and Ohio Railroad Company—Discontinuance of Service—In Allegany County, MD; Exemption

Western Maryland Railroad Company (WM), owner of the line to be abandoned, and The Baltimore and Ohio Railroad Company (B&O), operator of the line, have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights.*[1] WM will abandon and B&O will discontinue service on a portion of the Frostburg Subdivision between milepost 180.12 and milepost 181.46 at end of line, a distance of approximately 1.34 miles, near Frostburg, in Allegany County, MD.

Applicants have certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line or by a State or local governmental entity acting on behalf of such user regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Maryland has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment or discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 366 I.C.C. 91 (1979).

The exemption will be effective on September 10, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by [10 days after the service date], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after the service date], with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Rene J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201
Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101

If the notice of exemption contains false or misleading information, the use of exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 31, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-23811 Filed 9-7-84; 8:45 am]

BILLING CODE 7035-01-M

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[1] Service and trackage rights discontinuances were added to the exemption provisions of 49 CFR Part 1152 Subpart F by Ex Parte No. 274 (Sub-No. 8A), *Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights*) (not printed), served April 20, 1984, to be printed at 1 I.C.C. 2d 55. A petition for reconsideration of that decision was filed May 10, 1984, and is pending.

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

September 4, 1984.

Changes have been made to the agenda for September 12-14, 1984 meeting published August 29, 1984 (49 FR 34316). The changes include speakers and time changes. The revised agenda is as follows:

Wednesday, September 12, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room B-100, Washington, DC.

Panel Meeting

8:30 a.m.—12:00 p.m.

- North Pacific Fur Seal Treaty Chairman: Charles Black

Topic: Interim Convention on Conservation of North Pacific Fur Seals
Speakers:
Carmen J. Blondin, National Marine Fisheries Service, National Oceanic and Atmospheric Administration
and
U.S. Commissioner to the North Pacific Fur Seal Commission
John Grandy, Vice-President, United States Humane Society
Ray Arnaudo, Bureau of Oceans, International Environment and Scientific Affairs, Department of State
John Phillips, Office of the Deputy Administrator, National Oceanic and Atmospheric Administration
Clement Tillion, Deputy U.S. Commissioner to the North Pacific Fur Seal Commission

Lunch

12:00 Noon—1:00 p.m.

1:00 p.m.—5:00 p.m.

- North Pacific Fur Seal Treaty, Chairman: Charles Black, Room B-100

Topic: Panel Work Session
Speakers: None

Adjourn

5:00 p.m.

Thursday, September 13, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 & B-100, Washington, DC.

Plenary

9:00 a.m.—12:00 Noon
Room 416
9:00 a.m.—9:30 a.m.

- Introductory Remarks
- Swearing-In Ceremony for Mary Ellen McCaffree

9:30 a.m.—12:00 Noon

- Guest Speakers:

Senator Edward M. Kennedy
John V. Byrne, Administrator, National Oceanic and Atmospheric Administration
Anne Dore McLaughlin, Under Secretary, Department of the Interior
Jack E. Ravan, Assistant Administrator for Water Environmental Protection Agency
(Other speakers to be announced)

Lunch

12:00 Noon—1:00 p.m.

Panel Meetings

1:00 p.m.—5:00 p.m.
1:00 p.m.—3:00 p.m.

- Underwater Vehicles, Chairman: Don Walsh

Room B-100
Topic: Panel Work Session
Speakers: None
2:00 p.m.—5:00 p.m.

- Outer Continental Shelf (OCS) and Coastal Zone Management (CZM), Acting Chairman: Judith Kildow

Room 416
Topic: OCS and CZM Issues
Speakers:
Thomas Kitsos, Staff, House Merchant Marine and Fisheries Committee
Peter Tweedt, Director, Office of Coastal Resource Management, National Oceanic and Atmospheric Administration
Paul Stang, Chief of OCS Program Development and Planning, Minerals Management Service, Department of the Interior
Gary Magnuson, Coastal States Organization

Recess

5:00 p.m.

Friday, September 14, 1984

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC.

Plenary

9:00 a.m.—10:00 a.m.

- Discussion of Future Agenda Items

Guest Speaker:
Congressman Carroll Hubbard, Jr., Chairman, Subcommittee on Panama Canal and Outer Continental Shelf, House Merchant Marine and Fisheries Committee

Panel Meeting

10:00 a.m.—12:00 Noon

- Shipbuilding, Chairman: Don Walsh

Topic: Panel Work Session
Speaker: Charles Bookman, Marine Board, National Research Council

Lunch

12:00 Noon—1:00 p.m.

Plenary

1:00 p.m.—4:00 p.m.

- North Pacific Fur Seal Treaty, Discussion of Panel Activities by Panel Chairman
- Panel Reports
- Other Business

Adjourn

4:00 p.m.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235.

Dated: September 6, 1984.

James A. Almazan,

Staff Physical Scientist.

[FR Doc. 84-23884 Filed 9-7-84; 8:45 am]

BILLING CODE 3510-12-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Fire Protection; Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on September 26, 1984, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows:

Wednesday, September 26, 1984—9:00 a.m. Until the Conclusion of Business

The Subcommittee will review the relationship of fire protection systems and their use to various safety systems throughout nuclear plants.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notifiy the ACRS staff member as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee members will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other invited persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 5, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-23867 Filed 9-7-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co. (Monticello Nuclear Generation Plant); Exemption

I

Northern States Power Company (the licensee) is the holder of Facility Operating License No. DPR-22 (the license) which authorizes operation of the Monticello Nuclear Generating Plant (the facility) at steady state reactor power levels not in excess of 1670 megawatts thermal (rated power). The facility consists of a boiling water reactor (BWR) located at the licensee's site in Wright County, Minnesota.

The license is subject to all rules, regulations and Orders of the Commission.

II

10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of § 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.1 of Appendix E requires each licensee to conduct a full-scale emergency preparedness exercise at least annually.

By letter dated November 7, 1983, the licensee requested an exemption from the schedular requirements of Section IV.F.1 of Appendix E. The last full-scale emergency preparedness exercise was conducted at the Monticello Nuclear Generating Plant on February 23, 1983. Although the next full-scale annual exercise would have been conducted in February of 1984, the licensee requested an exemption on a one-time basis to allow the next full-scale exercise to be conducted on December 5, 1984.

The licensee states that an extended outage is scheduled from February 3, 1984 until September 15, 1984, for the replacement of the recirculating piping, with additional time required for outage preparation and recovery. The licensee contends that the scope of the outage, personnel requirements, and its effect on the site precludes holding an emergency preparedness exercise concurrently. They further state that during this period the reactor will be shut down and defueled.

The licensee states that, in conjunction with state and local governments, they have participated in three previous successful exercises, including the one held on February 23, 1983. The licensee also participated in a small-scale exercise at their Prairie Island Nuclear Generating Plant on March 13, 1984. The licensee further states that the State of Minnesota and the Counties of Wright and Sherburne have agreed to participate in the December 5, 1984 exercise. The licensee contends that during the period between exercises the emergency plan will remain fully operational and the normally required training will continue throughout the period of exemption. It is the NRC staff's judgment that the most effective and beneficial annual exercises are those involving the full-scale participation of State and local government organizations.

In reviewing the licensee's requests for a one-time delay of the next full-scale emergency preparedness exercise at the Monticello Nuclear Generating Plant the staff has concluded that granting the exemption will not significantly affect the state of emergency preparedness at Monticello. The staff concludes that the licensee's request is reasonable and should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter of November 7, 1983, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The Commission hereby grants to the licensee an exemption from the schedular requirements of 10 CFR Part 50, Appendix E, Section IV.F.1.a, to allow the licensee's next emergency preparedness exercise to be conducted no later than December 31, 1984.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (49 FR 34989).

This exemption is effective upon issuance.

Dated at Bethesda, Md., this 4th day of September 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84–23888 Filed 9–7–84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–333]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59, issued to Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The amendment would change the limiting conditions for operation and surveillance requirements contained in Appendix A of the Technical Specifications for the instrumentation and components associated with the Automatic Depressurization System (ADS) logic system. In particular, a new Section 4.5.D.1.c has been added on page 119 that requires surveillance testing of the ADS override switches once per operating cycle. By letter dated June 3, 1983, the NRC staff specified that a surveillance plan for the manual inhibit switch (override) whould be included in the Technical Specifications.

Four changes were made to Table 3.2–2 ("Instrumentation That Initiates or Controls the Core and Containment Cooling Systems") on pages 66–69:

On page 66, Item No. 2 (Reactor Low-Low-Low Water Level Trip Function) Eliminates "* * * high drywell pressure * * *" from the remark associated with the ADS instrument channels and adds the phrase "if not inhibited by ADS override switches". The plant modification associated with NUREG–0737 Item II.K.3.18 removes the high drywell pressure permissive for ADS actuation.

On page 67, Item No. 6 (Confirmatory Low Level) the remarks entry is revised to clarify the remark. The phrase "in conjunction with reactor Low-Low-Low Water Level" has been added.

On page 68, Item No. 11 (High Drywell Pressure) has been deleted in its entirety since this signal has been eliminated as a permissive for ADS actuation.

On page 69, Item 14 (Auto Blowdown Timer) the phrase "* * * high drywell pressure * * *" was deleted from the remarks entry to reflect the elimination of high drywell pressure as an ADS actuation permissive. In addition, the phrase "* * * if not inhibited by the ADS override switches" has been added to the remark to reflect the addition of these new switches.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning determination of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. One of the examples (ii) relates to change which is an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed change adds to the surveillance requirements of the Technical Specifications and, therefore, constitutes a more stringent control. The removal of items from Table 3.2.2 no longer in the facility and the clarification of language of items in the Table are associated with the modification and, thereby, also encompassed in the change. Therefore, since this change is more restrictive it is similar to example (ii).

Therefore, since the application for amendment involves a change similar to examples for which a no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 10, 1984 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how the interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Rooom, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: Petitioner's name and telephone number: date petition was mailed: plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 25, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 4th day of September 1984.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 84–23669 Filed 9–7–84; 8:45 am]

BILLING CODE 7590–01–M

[NRC Docket Nos. 50-458-OL and 50-459-OL (ASLBP No. 82-468-01 OL)]

Gulf States Utilities Co., et al. (River Bend Station, Units 1 and 2); Hearing and Limited Appearance Statements

September 6, 1984

A. Hearing

An evidentiary hearing will be held in this operating license proceeding, commencing October 10, 1984. The hearing will be held pursuant to the Atomic Energy Act, as amended, 42 U.S.C. 2011, *et seq.*, and 10 CFR Part 2 to hear and decide issues concerning the impact of *corbicula leana* and the old river control structure on the safe operation of the River Bend Station. A prehearing conference will be held the day before, October 9, 1984, commencing at 2:00 p.m. in the Court of Appeals, First Circuit, Courtroom 905, Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana.

B. Limited Appearance Statements

Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene, may request in writing permission to make a limited appearance statement pursuant to the provisions of 10 CFR 2.715 of the Commission's Rules of Practice. A member of the public does not have a right to participate; limited appearance statements will be heard only at the discretion of the Board, at a time designated in order not to interfere with the taking of evidence in the formal hearing.

Oral limited appearance statements will be heard from 3:30 to 5:00 p.m. on Tuesday, October 9, 1984 at the Court of Appeals, First Circuit, Courtroom 905, Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana. Forms for requesting permission to present such statements will be available. Individual presentations must be germane to the issues under consideration by the Board, and may be no more than five minutes in length.

Written limited appearance statements may be submitted to the Board at any time prior to the closing of the record in this proceeding. Such statements may be of any length, and may be delivered to the Board at the hearing site, or mailed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Docketing and Service Division, Washington, D.C. 20555. Both oral and written statements will be made a part of the official record of this proceeding.

Dated at Bethesda, Maryland this 6th day of September, 1984.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr., Chairman

Chief Administrative Judge.

[FR Doc. 84-24011 Filed 9-7-84; 9:19 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee on Trade; Meeting and Determination of Closing of Meeting

The meeting of the Defense Policy Advisory Committee for Trade Policy Matters (the Advisory Committee) to be held Thursday, September 27, 1984, from 9:00 a.m. to 4:00 p.m. in Washington, D.C., will involve a review and discussion of trade negotiations and other matters involving the trade policy of the United States. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506

William E. Brock,

United States Trade Representative.

[FR Doc. 84-23853 Filed 9-7-84; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 12f-1
No. 270-139

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 12f-1 (17 CFR 240.12f-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which allows a national securities exchange to apply to the Commission for unlisted trading privileges in a security. The information required by Rule 12f-1, adopted in 1934, is designed to provide the Commission with information necessary for it to make the required statutory findings in order to approve the application.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulation Affairs, Room NEOB, Washington, D.C. 20503.

Dated: August 31, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-23878 Filed 9-7-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14124; 812-5795]

Acacia National Life Insurance Company, et al.; Application for an Order of Exemption

September 4, 1984.

Notice is hereby given that Acacia National Life Insurance Company ("Acacia National"), 51 Louisiana Avenue, Washington, D.C. 20001, Acacia National Variable Life Insurance Account B, a separate account of Acacia National registered under the Investment Company Act of 1940 ("Act") as a unit investment trust ("Variable Account"), and Calvert Securities Corporation (collectively, "Applicants"), filed an application on March 9, 1984, and amendments thereto on June 26, and August 15, 1984, for an order of the Commission, pursuant to section 6(c) of the Act, requesting exemption from the provisions of sections 9(a), 13(a), 15(a), 15(b), 22(c), 22(d), 22(e), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rules 6e-2 and 22c-1 thereunder, all to the extent indicated below. Interested persons are referred to the application on file with the Commission for a statement of Applicant's representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants propose to offer certain flexible premium variable life insurance contracts (a "contract"), which are designed to give the contractowner maximum flexibility by permitting him to vary the frequency and amount of premium payments and to increase or decrease the face amount of the contract. The death benefit will be either the greater of the face amount or a specified percentage or cash value ("Option A"), or the greater of the face amount plus cash value or a specified percentage of cash value ("Option B"), as the contractowner elects. Certain incidental insurance benefits also will be available, and the contract will provide for loans and partial or complete contract surrenders. The contract will remain in force, without regard to the contractowner making premium payments, unless indebtedness exceeds cash value of cash value less indebtedness is insufficient to satisfy certain charges, such as the cost of insurance, that will be deducted from cash value on each monthly contract anniversary. In addition, a 7% front-end sales load and a charge for premium taxes will be deducted from each premium payment, and other expenses will be reflected in the net earnings of Acacia Capital Corporation, the management investment company underlying the Variable Account (the "Fund") including a mortality and expense risk charge at an effective annual rate of .60% ("risk charge"). The cost of insurance deducted under the contracts will be based on the 1958 Commissioners Standard Ordinary Mortality Table.

Applicants believe that the reasons underlying the Commission's adoption of Rule 6e-2, the existing exemptive rule under the Act for separate accounts offering scheduled premium variable life insurance contracts, are generally applicable to the Variable Account and that the relief afforded by Rule 6e-2 should be available to the Variable Account. However, because Rule 6e-2 was drafted with specific reference to schedule premium contracts, Applicants request certain exemptions which they believe are necessary and appropriate to make the rule available to the Variable Account. The relief requested, and Applicants' arguments in support thereof pursuant to section 6(c) of the Act, are set forth below.

1. Definition of Variable Life Insurance Contract

Applicants request an exemption from Rule 6e-2 to the extent necessary to treat the contract as a "variable life insurance contract" within the definition contained in Rule 6e-2(c)(1). Applicants note that the contract may not meet all the requirements of that definition in that: (a) Its duration will depend on whether indebtedness exceeds cash value or cash value less indebtedness is sufficient to meet the monthly deductions and not on whether "payments are duly made" as Rule 6e-(2)(1) contemplates; (b) the amount of the death benefit will not vary to reflect the investment experience of the Variable Account, as Rule 6e-2(c)(1)(i) requires, if the contractowner elects death benefit Option A and the face amount exceeds the specified percentage of cash value; and (c) the death benefit may be less than the initial face amount of the contract, and thus may not conform to Rule 6e-2(c)(1)(ii), if the contractowner requests a decrease in face amount.

Applicants represent that any differences between the Rule 6e-2 definition and the contract result from innovative insurance features (*i.e.*, flexible premiums and death benefits) that are designed to benefit the contractowner. Applicants also represent that the contract is designed to be a "life insurance contract" within the meaning of section 7702 of the Internal Revenue Code.

2. Definition of Incidental Insurance Benefits

Applicants request an exemption from Rule 6e–2 to the extent necessary to treat the contract's optional insurance benefits as "incidental insurance benefits" within the meaning of Rule 6e–2(c)(2). Applicants assert that the definition in Rule 6e–2 apparently was intended to distinguish between variable and fixed insurance benefits, and that while the amount of each incidental insurance benefit under the contract does not vary with the investment performance of the Variable Account, these benefits arguably are not "fixed" because charges for these benefits will be deducted each month from cash value and, thus, their duration is indirectly dependent, in part, on investment performance. Applicants state that the requested relief is appropriate because this result is a consequence of the contract design and does not alter the "fixed" nature of these benefits in any material way.

3. Definition of Minimum Death Benefit

Applicants request an exemption from Rule 6e–2 to the extent necessary to treat the face amount of the contract as the "minimum death benefit" within the meaning of Rule 6e–2(c)(3). Applicants assert that the face amount satisfies the definition except for the fact that the payment of the face amount is dependent not on whether premium payments "are duly made," as required by the rule, but on whether cash value exceeds indebtedness or cash value less indebtedness is sufficient to meet the monthly cost of insurance deduction when due. This feature, Applicants assert, reflects the fundamental design of the contract and relief is appropriate because it does not in any material regard alter the essential nature the face amount as the minimum death benefit.

4. Mortality and Expense Risk Charge

Applicants request exemption from Rule 6e–2 and sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit Acacia National to deduct the risk charge. Applicants represent that the charge is reasonable in amount in relation to industry practice with respect to comparable products. Applicants further represent that the data supporting and setting forth this conclusion will be maintained at the home office of Acacia National and will be available to the Commission. Applicants also represent that the explicit sales load charges to be deducted under the contracts are designed to cover all sales and distribution expenses, but that in some cases such charges may be insufficient to cover such expenses. Applicants state that the shortfall, if any, will be made up from the surplus of Acacia National, which may include amounts attributable to charges deducted from the assets of the Variable Account, including the risk charge. In this connection, Acacia National represents that it has concluded that there is a reasonable likelihood that the Variable Account's distribution financing arrangement will benefit the Variable Account and contractowners and that it will maintain at its principal office, available to the Commission, a memorandum setting forth the basis for this representation. The Variable Account represents that it will invest only in open-end management companies which have undertaken to have a board of directors with a disinterested majority formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

5. Pricing

Applicants request exemptions from Rules 6e–2(b) (12)(i) and 22c–1 and sections 22(c), 22(d), 22(e), and 27(c)(1) of the Act to the extent necessary to permit the death benefit not to be determined on a valuation day if the provisions of the contract are such that the investment experience of the Fund would not increase or decrease the death benefit on that day, *i.e.*, if the contractowner has elected death benefit Option A and the face amount of the contract exceeds the specified percentage of cash value. Applicants state that this relief is appropriate because it is limited to circumstances where such recomputation would have no effect.

6. Contract Lapse

Applicants request exemption from Rule 6e–2(b)(13)(iv) and sections 27(c)(1) and 27(d) of the Act to the extent necessary to permit Acacia National to retain any cash value attributable to a lapsed contract. Applicants assert that this relief is appropriate because the contract design provides that a lapse can occur only when there is a relatively small amount of cash value (*i.e.*, an amount insufficient to meet the monthly deduction), and in this situation it is appropriate to permit Acacia National to retain that amount to offset, in part, the cost of providing the contractowner with insurance coverage during the 62-day grace period preceding lapse.

7. Mixed Funding

Applicants request an exemption from Rulel 6e–2 and sections 9(a), 13(a), 15(a), and 15(b) of the Act to the extent necessary to permit the "mixed funding" of variable life insurance contracts and variable annuity contracts from the Fund. Applicants note that Rule 6e–2(b)(15) requires the assets of a variable life separate account to consist of shares of one or more management investment companies which offer their shares "exclusively" to variable life separate accounts, and thus may not contemplate mixed funding. Applicants represent that granting the requested relief will not compromise the regulatory purposes of the above-cited provisions and will result in cost savings for purchasers and that they will comply with certain conditions set forth in the application, including: notifying the insurance department of each state where the contract is to be offered that the Fund will be used for mixed funding; monitoring of the Fund by Acacia National and by the Fund's board of directors, constituted with a majority of disinterested directors, for the existence of any irreconcilable material conflict between the interests of variable life and variable annuity contractowners; appropriate action by such board if such a conflict should arise; and making certain disclosures regarding mixed funding. Furthermore, Applicants represent that they believe that mixed funding will have no adverse federal income tax consequences either to variable life contractowners or to variable annuity contractowners.

8. Other

Finally, Applicants represent that if and to the extent that Rule 6e–2 is amended to provide relief on terms different from any relief granted to them by order, they shall take such steps as are necessary to comply with the amended rule.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 25, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request shall be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–23879 Filed 9–7–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8–/762]

Advisory Committee to United States Section, International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 29, 1984, at the Old Federal Building, (605 West Fourth Avenue) Anchorage, Alaska, at 9:00 a.m. This session will discuss the 1978 Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, particularly that for Dall porpoise, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet from 1:30 p.m. to 5:00 p.m. on September 29, 1984. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the 31st Annual Meeting of the International North Pacific Fisheries Commission to be held in Vancouver, Canada, during November 6–9, 1984. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee * * * shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section," the members of the Advisory Committee will examine various options for the negotiating position at the Annual Meeting, and these considerations must necessarily involve review of classified matters. Accordingly the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, § 10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Charles Walters, Pacific Fisheries Officer, Room 5806, (OES/OFA), U.S. Department of State, Washington, D.C. 20520. Mr. Walters can be reached by telephone on (202) 632–2009.

Dated: August 23, 1984.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 84–23806 Filed 9–7–84; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Vallejo, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Solano County, California.

FOR FURTHER INFORMATION CONTACT: David L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809. Telephone: (916) 440–3541.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the City of Vallejo will prepare an environmental impact statement (EIS) on a proposal to convert a city street (Route 141 in Vallejo) to a four lane thoroughfare, connecting Route 29 with Route 37.

Description of project: A need exists

to relieve auto congestion associated with Mare Island traffic and to provide safe bicycle facilities for commuters. The proposed project will satisfy the need by widening and straightening the current city street route and adding a bicycle lane. The EIS will cover the entire expanse of Route 141 between Route 29 and Route 37, a length of 2.5 miles. However, a one-mile segment of the route was constructed by the City of Vallejo in 1976.

Alternatives: Three action alternatives of differing alignments and a "do nothing" alternative will be explored for the proposed project.

Scoping: Notification of studies will be sent to appropriate agencies and individuals. Public neighborhood meetings and publicized formal meetings will be scheduled soon.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on August 27, 1984.

David L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 84-23839 Filed 9-7-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Cir. Public Debt Series—No. 26-84]

Treasury Notes; Series K-1989

August 30, 1984.

The Secretary announced on August 29, 1984, that the interest rate on the notes designated Series K-1989, described in Department Circular—Public Debt Series—No. 26-84 dated August 22, 1984, will be 12¾ percent. Interest on the notes will be payable at the rate of 12¾ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-23815 Filed 9-7-84; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 9, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0539
Form Number: IRS Form RC-C 1-583
Type of Review: Extension
Title: Supplemental Information for Internal Revenue Agents Applications

OMB Number: 1545-0520
Form Number: IRS Form SWR E-665
Type of Review: Revision
Title: Deduction for Depletion on Ground Water Used for Irrigation

OMB Number: New
Form Number: IRS Form RC-C 1-618
Type of Review: Existing Collection
Title: Supplemental Information for Treasury Enforcement Agent Applications

Clearance Officer: Garrick Shear (202) 566-6254, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph Maty,

Departmental Reports, Management Office.

[FR Doc. 84-23820 Filed 9-7-84; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the item on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Officer of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES; Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 4, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management

Extension

1. Department of Veterans Benefits
2. Statement of Marital Relationship
3. VA Form 21-4170
4. On occasion
5. Individuals or households
6. 6,000 responses
7. 3,000 hours
8. Not Applicable

[FR Doc. 84-23836 Filed 9-7-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 176
Monday, September 10, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMISSION ON CIVIL RIGHTS

PLACE: Nashville Marriott, One Marriott Drive, Nashville, Tennessee 37210.

DATE AND TIME: Friday, September 14, 1984, 1:30–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Approval of Project Proposal on Violence, Harassment and Intimidation Against Racial, Ethnic, and Religious Minorities, and Homosexuals
V. Feasibility of Third Major OGC Project
VI. Interim Appointment to Utah Advisory Committee

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Lawrence B. Glick,
Solicitor.

[FR Doc. 84–23936 Filed 9–6–84; 1:44 pm]

BILLING CODE 6335–01–M

2

FEDERAL COMMUNICATIONS COMMISSION

September 6, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 13, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Private Radio—1—Title: Petitions for Partial Reconsideration requesting that repeater subband frequencies 52–54 Mhz (6 meters) be made available for RACES in declared national emergencies. Summary: The Commission will consider whether to grant or deny the subject petitions and whether to amend the rules to include additional 6-meter repeater subband frequencies for RACES operations in wartime.

Private Radio—2—Title: *Memorandum Opinion and Order* in the Mater of Licenses issued to Reuters Limited for Operation of 2.5–2.69 GHz Private Operational-Fixed Microwave Service Stations. Summary: The FCC will consider Reuters Limited's Application for Review of the Private Radio's Bureau's order which set aside thirteen licenses granted to Reuters Limited and accorded Associated Information Services Corporation mutually exclusive status with the Reuters applications.

Private Radio—3—Title: Amendment of Section 90.81 of the Commission's Rules Regarding the Telephone Maintenance Radio Service. Summary: The FCC will consider whether to adopt a Notice of Inquiry into the rule governing eligibility and operations in the Telephone Maintenance Radio Service, one of the Commission's Private Land Mobile Radio Services.

Common Carrier—1—Title: Notice of Proposed Rulemaking to streamline Application Processing under Part 68 of the Rules and to eliminate unnecessary regulations. Summary: The Commission will consider whether to issue a NPRM to streamline applications processing under Part 68 and eliminate unecessary regulations.

Common Carrier—2—Title: In the Matter of Interconnection Arrangements Between and Among Domestic and International Record Carriers. Summary: The Commission will consider whether to institute a rulemaking proceeding to investigate the need to extend under Section 201(a) certain interconnection arrangements it presecribed in its Interim Order. These interconnection arrangements are tied to Sections of the Record Carrier Competition Act of 1981, that sunset on December 29, 1984.

Common Carrier—3—Title: Second Report and Order, General Docket No. 80–112. Summary: The Commission will consider adopting rules to allow the use of lotteries for the selection of Multichannel Multipoint Distribution Service licensees.

Common Carrier—4—Title: American Telephone and Telegraph Co., Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell and U.S. West—Accounting instructions for the judgment and other costs associated with the *Litton Systems* antitrust lawsuit. Summary: The Commission will consider the adoption of an Order to establish the proper accounting for an antitrust judgment and to clarify the accounting and disclosure requirements for litigation costs.

Mass Media—1—Title: "Supplement of Qunicy Cable" (CSR–1678) filed May 14, 1984, by Quincy Cable TV, Inc. Summary: On remand from the United States Court of Appeals for the District of Columbia Circuit, the Commission will consider its prior decisions culminating in Quincy Cable TV, Inc. (Quincy, Washington), 93 FCC 2d 412 (1983), in light of new facts.

Mass Media—2—Title: Petitions for reconsideration (CSC–229) filed April 25 and 26, 1984, respectively, by Continental Cablevision of New Hampshire, Inc. and by WNNE–TV, Inc. Summary: Petitioners seek reconsideration of the Commission's decision in *Continental Cablevision of New Hampshire, Inc.* (Concord, New Hampshire), —— FCC 2d —— (1984).

Mass Media—3—Title: Applications for review of the Mass Media Bureau's action denying the applications of Red Carpet Country Television Broadcasting Corporation and Great Plains Country Television Broadcasting Corporation for extension of time within which to construct stations KEQO(TV), Enid, Oklahoma, and KQOL–TV, Lawton, Oklahoma. Summary: The Commission will consider whether the Bureau properly determined that the applicants failed to demonstrate causes beyond their control in constructing the station.

Mass Media—4—Title: Application for review filed by the California Association of the Physically Handicapped, of an action of the Mass Media Bureau approving the application assigning the license of commercial television station KRHK–TV, San Francisco, California, from Field Communications Corporation to UTV of San Francisco, Inc. and denying the Association's objection that Field has not captioned sufficient amounts of programming; has not made the station accessible to the handicapped and has not hired handicapped persons, and that UTV will not improve on Field's record. Summary: The Commission will consider the California Association of the Physically Handicapped's application for review in which the Association contends that the Bureau erred in granting the KRHK–TV assignment application. The Association asserts that approval of the application should have been withheld until UTV gave adequate assurance that it will caption sufficient amounts of programming and that it will take affirmative action to hire qualified handicapped persons.

Mass Media—5—Title: Application for review of the Mass Media Bureau's action denying a petition for reconsideration and acceptance of application *nunc pro tunc* and returning the low power television application of American Christian Television System, Inc. Summary: The Commission will consider whether the Bureau properly returned the application of ACTS for a new low power television station as unacceptable for filing.

Mass Media—6—Title: Application for Review of Mass Media Bureau action filed by American Christian Television System, Inc. Summary: The Commission will consider an application for review of the Mass Media Bureau action returning both the low power television application and the amendment of American Christian Television System, Inc. as unacceptable for filing.

Mass Media—7—Title: A petition for reconsideration of the denial of the petition to deny filed against the renewal applications of WELR (AM & FM), Roanoke, Alabama, co-filed by the Concerned Citizens of Roanoke, Roy Terry, the National Black Media Coalition, and Puria W. Marshall and various related pleadings. Summary: The Commission considers a petition for reconsideration of the denial a petition to deny the license renewal applications of WELR (AM & FM), Roanoke, Alabama.

Mass Media—8—Petition for Reconsideration of the renewal of licenses of WVLK, Inc., licensee of stations WVLK and WVLK-FM, Lexington, Kentucky, filed by the National Black Media Coalition and the Lexington-Fayette Branch of the NAACP. Summary: Petitioner seeks reconsideration of the grant of the WVLK renewal applications because of its contention that licensee ignored the programming needs of the black community.

Mass Media—9—Title: Amendment of Part 78 of the Commission's Rules Concerning Licensing Procedures and Reporting Requirements in the Cable Television Relay Service. Summary: The Commission will consider recommendations by the Mass Media Bureau for a single-step licensing process and elimination of several reporting requirements for CARS licensees.

Mass Media—10—Title: Amendment of Subpart E, Part 73 of the Commission's Rules and Regulations to make technical changes in the FM rules. Summary: The Commission will consider whether to amend those rules pertaining to FM broadcast antenna systems.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: September 5, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–23955 Filed 9–6–84; 2:58 pm]

BILLING CODE 6712–01–M

3

FEDERAL COMMUNICATIONS COMMISSION

September 6, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, September 13, 1984, following the Open Meeting, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Application for Review of a Review Board Decision and related pleadings in the Tahoe City, California comparative FM proceeding (BC Docket Nos. 81–637 through 81–643).

This item is closed to the public because it concerns Adjudicatory Matters (See 47 CFR 0.603 (j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and Members of his staff
General Counsel and Members of his staff
Chief, Office of Public Affairs and Members of his staff

Action by the Commission September 5, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: September 5, 1984.

William J. Tricarico,

Secretary, FEDERAL COMMUNICATIONS COMMISSION.

[FR Doc. 84–23956 Filed 9–6–84; 2:58 p.m.]

BILLING CODE 6712–01–M

4

FEDERAL ENERGY REGULATORY COMMISSION

September 5, 1984.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: 10:00 a.m., September 12, 1984.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

797th Meeting—September 12, 1984

Regular Meeting (10:00 a.m.)

CAP–1: Project No. 8167–002, Synergics, Inc.
CAP–2: Project No. 6602–002, D.J. Pitman International Corporation
CAP–3: Project No. 5077–003, Roberta B. Weil
CAP–4: Project No. 5993–002, White Chuck Water Company
CAP–5: Omitted
CAP–6:
  Project No. 7512–002, Granite Associates
  Project No. 7562–002, Gale Associates
  Project Nos. 7643–002, 7644–002, 7834–002 and 7840–002, WP, Inc.
CAP–7:
  Project No. 6983–001, Thomas W. Weathers II, Wilson B. Humphries, Jr., and Roland M. Webb
  Project No. 7347–000, Tuolumne Regional Water District
CAP–8: Project No. 4657–004, Montana Department of Natural Resources and Conservation
CAP–9:
  (A) Project Nos. 7439–001, 7440–002 and 7441–001, Michael Arkoosh
  (B) Project Nos. 3878–003, Gregory Wilcox; Project No. 6707–001, Graves, Arkoosh and Arkoosh
CAP–10: Project No. 3878–004, Gregory Wilcox
CAP–11: Project No. 2861–008, Pontook Hydro Partners, Ltd.
CAP–12: Project No. 5147–003, Ralph and Raleigh Coppedge
CAP–13: Project Nos. 6720–001, 6721–000, 6722–001, 6723–000, 6738–000, 6739–000 and 6740–000, Northwest Resources Generating Company, Inc.
CAP–14: Project No. 7350–000, Cameron A. and Deanna E. Curtiss
CAP–15: Project Nos. 2628–006, 007, 008 and 009, Alabama Power Company
CAP–16: Omitted
CAP–17:
  Project No. 5068–000, MacLeod Falls Development Association
  Project No. 5878–000, Ithaca Falls Development Association
  Project No. 5928–000, Cornell University
  Project No. 6744–000, City of Ithaca, New York
CAP–18: Docket Nos. QF84–348–000, QF84–349–000 and QF84–399–000, John Baardson—Northumberland Facility, John Baardson—Lincoln Facility and John Baardson—McBain Facility
CAP–19: Docket Nos. QF84–367–000, QF84–368–000, QF84–369–000 and QF84–370–000, Energy Systems Division of Thermo Electron Corporation
CAP–20: Docket No. QF84—326–000, Adolph Coors Company
CAP–21: Docket No. QF84–250–000, Mitchell Energy Corporation

CAP-22: Docket No. QF84-379-000, CTI
CAP-23: Docket No. ER84-546-000, Pacific Power & Light Company
CAP-24: Docket No. ER84-344-002, Maine Yankee Atomic Power Company
CAP-25: Docket No. EL84-12-001 and Project Nos. 5-006 and 2776-001, Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Montana Power Company
CAP-26:
  Docket Nos. ER82-462-001, ER82-539-000, ER82-734-000, ER84-810-000, ER84-127-000, ER83-540-000, ER83-573-000, ER83-748-000, ER84-163-000, ER84-042-000, ER84-347-000 and ER84-403-000, Portland General Electric Company
  Docket Nos. ER82-448-001, ER82-715-000, ER83-044-000, ER83-045-000, ER83-046-000, ER83-187-000, ER83-334-000, ER83-541-000, ER83-567-000, ER83-706-000, ER84-040-000, ER84-198-000 and ER84-305-000, Puget Sound Power and Light Company
  Docket Nos. ER82-618-001, ER82-662-000, ER82-661-000, ER83-241-000, ER83-241-003, ER83-687-000 and ER83-712-000, Idaho Power Company
  Docket Nos. ER83-382-000, ER84-026-000 and ER84-156-000, Montana Power Company
CAP-27: Docket No. ER77-485-006, Carolina Power & Light Company
CAP-28: Docket No. ER80-259-005, Kansas Gas and Electric Company
CAP-29: Docket No. ER82-703-000, New England Power Company
CAP-30: Docket No. ER81-779-010, Pennsylvania Power Company
CAP-31: Docket No. ER84-236-001, El Paso Electric Company
CAP-32: Docket No. ER83-2-000, Wisconsin Electric Power Company
CAP-33: Docket No. ER84-286-000, Centel Corporation
CAP-34: Docket No. ER83-369-000, Alabama Power Company
CAP-35: Docket Nos. ER82-704-000, ER82-704-001, ER82-704-002, EL83-8-000 and EL83-8-001, Central Louisiana Electric Company, Inc.
CAP-36: Docket Nos. ER81-736-000, ER83-192-000 and ER83-248-000 (Phase II), Central Illinois Public Service Company

Consent Miscellaneous Agenda

CAM-1: Docket Nos. RM80-36-001, RM80-36-002 and RM80-36-003, Generic Determination of Rate of Return on Common Equity for Electric Utilities
CAM-2: Docket No. RM79-76-204 New Mexico-25), High-Cost Gas Produced From tight Formations
CAM-3: Docket No. RM79-76-218 (New Mexico-26), High-Cost Gas Produced From Tight Formations
CAM-4: Docket No. GP79-1-001, Mobil Oil Corporation
CAM-5: Docket No. GP82-56-000, Amoco Production Company
CAM-6: Docket No. RO82-72-001, Billy Bridewell, William J. Cobb, Burt E. Cobb, Eugene Jeffers, and G. Vernon Whyte
CAM-7: Docket No. RM84-20-000, Delegations To the General Counsel
CAM-8: Docket No. RM84-14-000, Deregulations under the NGPA

Consent Gas Agenda

CAG-1: Docket No. RP84-108-000, Texas Eastern Transmission Corporation
CAG-2: Docket No. RP84-112-000, Midwestern Gas Transmission Company
CAG-3: Docket No. RP84-117-000, Southwest Gas Corporation
CAG-4: Docket No. RP84-114-000, Northwest Pipeline Corporation
CAG-5: Docket Nos. RP83-137-008, TA83-2-29-001 (PGA83-2a, IPR83-2a), TA84-1-29-001 (PGA84-1, DCA84-1), and TA84-1-29-002 (PGA84-1a), Transcontinental Gas Pipe Line Corporation
CAG-6: Docket Nos. TA82-2-33-025, TA84-1-33-006, TA84-2-33-008 and RP82-33-007, El Paso Natural Gas Company
CAG-7: Docket Nos. RP77-19-005 and RP78-88-015, Transwestern Pipeline Company
CAG-8: Docket No. TA84-2-42-001, Transwestern Pipeline Company
CAG-9: Docket Nos. RP84-2-33-005 and TA82-2-33-024, et al., El Paso Natural Gas Company
CAG-10: Docket No. RP84-79-001, Gas Gathering Corporation
CAG-11:
  Docket No. RP84-74-002, Columbia Gulf Transmission Company
  Docket No. RP84-75-001, Columbia Gas Transmission Corporation
CAG-12: Docket No. TA84-2-49-000, Montana-Dakota Utilities Company
CAG-13: Docket Nos. TA84-2-6-000 and TA84-2-6-001, Sea Robin Pipeline Company
CAG-14: Docket Nos. ST84-773-000 and ST84-773-001, Delhi Gas Pipeline Corporation
CAG-15: Docket No. ST83-30-001, Producer's Gas Company
CAG-16: Docket No. ST82-296-001, Shreveport Intrastate Gas Transmission, Ltd.
CAG-17: Docket No. ST81-43-002, Rocky Mountain Natural Gas Company, Inc.
CAG-18:
  Docket No. RP83-8-000, Columbia Gas Transmission Corporation v. Tennessee Gas Pipeline Company
  Docket No. RP83-19-000, Tennessee Gas Pipeline Company v. Columbia Gas Transmission Corporation
  Docket No. RP83-10-000, the Inland Gas Company, Inc. v. Tennesee Gas Pipeline Company
  Docket No. RP83-20-000, Tennessee Gas Pipeline Company v. the Inland Gas Company, Inc.
  Docket No. RP84-17-000, Tennessee Gas Pipeline Company
CAG-19:
  Docket Nos. TA83-2-22-000 and RP83-126-000, Consolidated Gas Supply Corporation
  Docket No.a TA84-1-22-003, Consolidated Gas Transmission Corporation
CAG-20: Docket No. RP84-92-000, Texas Eastern Transmission Corporation
CAG-21: Docket Nos. CP83-410-002 and CP83-410-003, Consolidated Gas Supply Corporation
CAG-22:
  Docket No. CI84-421-001, Conoco Inc.
  Docket No. CI75-678-002, Texas Eastern Exploration Company
  Docket No. CI84-448-001, Odeca Oil & Gas Company, et al.
  Docket No. CI84-451-002 (CS77-383), Diamond Shamrock Exploration Company
  Docket No. CI84-435-001, Cities Service Oil & Gas Corporation
  Docket No. CI84-445-001, Mesa Petroleum Company
CAG-23 Docket No. CI84-354-002, Phillips Oil Company
CAG-24:
  Docket No. CI84-450-001, Diamond Shamrock Exploration Company
  Docket No. CI84-454-001, Pennzoil Oil & Gas, Inc.
CAG-25: Docket No. CI61-1557-002, Ladd Petroleum Corporation
CAG-26: Docket No. CS84-60-000, Britoil Ventures, Inc.
CAG-27: Docket No. CI84-374-002, TXP Operating Company
CAG-28: Docket No. CP79-291-004, Transcontinental Gas Pipe Line Corporation
CAG-29: Docket No. CP84-327-001, Transcontinental Gas Pipe Line Corporation
CAG-30: Docket Nos. CP83-381-003, Trancontinental Gas Pipe Line Corporation, Texas Eastern Transmission Corporation, Natural Gas Pipeline Company of America, ANR Pipeline Company and Gasdel Pipeline System Incorporated
CAG-31: Docket No. CP84-461-004, Columbia Gas Transmission Corporation
CAG-32: Docket No. CP79-79-004, Transcontinental Gas Pipe Line Corporation
CAG-33: Docket No. CP84-1-001, Natural Gas Pipeline Company of America
CAG-34: Docket No. CP83-210-002, Transcontinental Gas Pipe Line Corporation
CAG-35: Docket No. CP84-222-001, Texas Eastern Transmission Corporation
CAG-36:
  Docket No. CP66-269-004, et al., Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
  Docket No. CI66-910-002, Amoco Production Company
CAG-37: Docket Nos. CP82-542-007 and RP82-80-018, ANR Pipeline Company
CAG-38: Docket No. CP74-314-010, El Paso Natural Gas Company
CAG-39:
  Docket No. CP83-284-000, Southwest Gas Transmission Company
  Docket No. CP83-376-000, El Paso Natural Gas Company
CAG-40: Docket Nos. CP84-129-000 and CP84-215-000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG-41: Docket No. CP84-388-000, United Gas Pipe Line Company
CAG-42: Docket Nos. CP84-213-000 and CP84-214-000, United Gas Pipe Line Company
CAG-43: Docket No. CP84-424-000, United Gas Pipe Line Company
CAG-44: Docket No. CP84-233-000, Panhandle Eastern Pipe Line Company

I. Licensed Project Matters

P–1: Project No. 3686–000, Washington County Hydro Development Associates
P–2: Project Nos. 4229–000, 4893–000 and 001, city of Redding, California
P–3: Project Nos. 2930–004 and 005, Idaho Power Company
P–4: Project No. 2854–006, city of Vidalia, Louisiana

II. Electric Rate Matters

ER–1: Docket No. ER84–554–000, Holyoke Water Power Company and Holyoke Power & Electric Company
ER–2: Docket No. ER84–359–002, Montana Power Company
ER–3: Docket No. ER82–579–004, Southern Company Services, Inc.
ER–4: Docket No. EF84–2021–007, United States Department of Energy—Bonneville Power Administration

Miscellaneous Agenda

M–1: Reserved
M–2: Reserved
M–3: Docket Nos. RM84–6–000, RM84–6–001 and RM84–6–002, Refunds Resulting From BTU Measurement Adjustments

Gas Agenda

I. Pipeline Rate Matters

RP–1: Omitted
RP–2: Docket No. RP82–125–010, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
RP–3: Docket No. RP84–78–002, Bayou Interstate Pipeline System
RP–4: Docket No. CP84–343–001, Arkansas Louisiana Gas Company, a Division of Arkla, Inc.
RP–5: Docket No. RP84–76–001, Alabama-Tennessee Natural Gas Company
RP–6: Omitted
RP–7: Omitted

II. Producer Matters

CI–1. Reserved

III. Pipeline Certificate Matters

CP–1: Docket Nos. RP83–14–001, RP83–81–000, CP83–254–000, CP83–254–006, CP83–335–000 and CP83–335–006, Montana-Dakota Utilities Company
CP–2: Docket No. CP82–342–000, Consolidated Gas Company of Florida, Inc. v. Florida Gas Transmission Company
CP–3: Omitted
CP–4: Docket Nos. G–2569–001, G–2569–002, CI64–612–001 and CI64–612–002, Aminoil, Inc.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84–23906 Filed 9–6–84; 10:19 am]

BILLING CODE 6717–01–M

5

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: October 3 & 4, 1984, 9:00 a.m. to 5:00 p.m.

PLACE: Capitol Holiday Inn, Apollo Room (second floor), 550 C Street, SW., Washington, D.C.

STATUS: Closed. October 3, 1984, 9:00 a.m. to 10:00 a.m., Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703. Open.

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of Minutes
Executive Director's Report
NCLIS Summary Report FY 84
Guest Speakers, Warren J. Haas, Council on Library Resources
Discussion, Commission Programs for FY 1985 & FY 1986
Update, Networking Section of NCLIS National Program Document
Presentation, NABRIN Draft Report, Ernie Matthias, Dept. of Agriculture
Discussion, NCLIS Program on Information and Productivity
Progress Report, IFLA 1985 Committee and Model Information Center
Presentation, COSLA (Chief Officers of State Library Agencies)

CONTACT PERSON FOR MORE INFORMATION: Toni Carbo Bearman, *NCLIS Executive Director.*

August 21, 1984.

[FR Doc. 84–23837 Filed 9–6–84; 1:44 pm]

BILLING CODE 7527–01–M

6

NATIONAL SCIENCE BOARD

DATE AND TIME: September 20, 1984, 2:15 p.m., Closed Session; 2:30 p.m., Open Session.

PLACE: Cornell University, Ithaca, New York.

STATUS: This is primarily a site visit by the Board members to the facilities at Cornell University. A brief meeting, most of which will be open to the public, will be held to conduct standard Board business. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

Thursday, September 20, 1984—2:15 p.m.

1. Minutes—August 1984 Meeting
2. NSB and NSF Staff Nominees

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

Thursday, September 20, 1984—2:30 p.m. to 3:15 p.m.

3. Minutes—August 1984 Meeting
4. Chairman's Report
5. Director's Report
6. Other Business
7. Next Meetings

Margaret L. Windus,
Executive Officer.

[FR Doc. 84–23959 Filed 9–6–84; 2:57 pm]

BILLING Code 7555–01–M

7

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 9 a.m. (closed portion), 9:30 a.m. (open portion), Tuesday, September 18, 1984.

PLACE: Offices of the Corporation, seventh floor Board Room 1129 20th Street NW., Washington D.C.

MATTERS TO BE CONSIDERED: (Closed to the public 9 a.m. to 9:30 a.m.).

1. Finance Project in African Country.
2. Finance Project in East Asian Country.
3. Insurance Project in Middle East Country.
4. OPIC War Reinsurance.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 9:30 a.m.).

1. Confirmation of Scheduled Board Meetings.
2. General Policy and Guidelines: Insurance—Eligibility of Short Term Loans.
3. President's Report.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653–2925.

Elizabeth A. Burton,
Corporate Secretary.

September 6, 1984.

[FR Doc. 84–23803 Filed 9–6–84; 8:45 am]

BILLING CODE 3210–01–M

8

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1337)

TIME AND DATE: 10:15 a.m. (EDT), Wednesday, September 12, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda Items

Approval of minutes of meeting held on July 29, 1984.

Discussion Item

1. Results of Valley-wide groundwater assessment.

Action Items

A—Budget and Financing

A1. Short-term borrowing from the U.S. Treasury.

A2. Amendment to Fiscal Year 1985 Capital Budget for the Power Program—Interim office buildings at Browns Ferry Nuclear Plant.

C—Power Items

C1. Form agreement covering participation by distributors in TVA's expanded Energy Saver Home Program.

C2. Supplement to contract No. TV–61104A between TVA and Cottrell Environmental

Sciences for Spray Dryer/E-Beam Project at Shawnee Scrubber Test Facility.

C3. New power contract with The Mead Corporation, Stevenson, Alabama.

E—Real Property Transactions

E1. Modification of deed affecting 0.12 acre of Chickamauga Reservoir land in Rhea County, Tennessee, to permit construction of habitable structures—Tract No. XCR-170.

F—Unclassified

F1. Contribution rate to the TVA Retirement System for fiscal year 1985.

F2. Letter agreement No. TV-65062A with the Corps of Engineers, Memphis District, U.S. Department of the Army, providing for TVA to perform field surveys and laboratory analyses of selected aquatic habitats at specified sites within the floodplain areas of the Mississippi River.

F3. Memorandum of understanding between TVA and the U.S. Army Corps of Engineers providing for flood control operation of Kentucky Reservoir during floods on the lower Ohio and Mississippi Rivers.

F4. Supplement to interagency agreement between TVA and Agency for International Development (AID) covering arrangements for TVA's assistance to AID's Bioenergy Program.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: September 5, 1984.

W.F. Willis,

General Manager.

[FR Doc. 84-23938 Filed 9-6-84; 11:50 pm]

BILLING CODE 8120-01-M

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federal register

Monday
September 10, 1984

Part II

Federal Emergency Management Agency

44 CFR Part 9

Floodplain Management and Protection of Wetlands; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 9

Floodplain Management and Protection of Wetlands

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This regulation makes changes to the Federal Emergency Management Agency (FEMA) regulations implementing Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, 44 CFR Part 9. FEMA has decided to expand the categories of exclusions for these regulations. Certain disaster assistance actions will no longer be subject to the regulations. The changes will allow more effective and efficient use of the resources of FEMA and applicants for disaster assistance.

DATE: These regulations are effective October 10, 1984.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Associate General Counsel, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C. 20472, Telephone 202/287-0380.

SUPPLEMENTARY INFORMATION: On May 24, 1977, Executive Order 11988 was issued for the following purposes:

(a) To avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains; and

(b) To avoid direct or indirect support of floodplain development wherever there is a practicable alternative. This Executive Order applies to federal agencies for all actions involving:

(1) Acquiring, managing and disposing of Federal land and facilities;

(2) Providing federally undertaken, financed or assisted construction and improvements; and

(3) Conducting Federal activities and programs affecting land use, including resources planning, regulating, and licensing activities.

The United States Water Resources Council (WRC) published guidelines for implementing E.O. 11988 in the Federal Register on February 10, 1978 (43 FR 6030). These regulations follow closely the WRC guidelines in setting forth policy and procedures for floodplain management relating to disaster planning, response, recovery, and hazard mitigation for all actions taken by FEMA. The main emphasis of these regulations is on compliance with Executive Order 11988, Floodplain Management. However, in cases where Executive Order 11990, Protection of Wetlands, would apply, these regulations also set forth policy and procedures to implement that Executive Order.

FEMA recognizes floodplains and wetlands as unique and vital natural resources. Both ecological systems possess many natural values and carry on numerous functions that are of great benefit to all of us. Because wetlands frequently lie within floodplains, they constitute a natural and beneficial value of floodplains. Thus, where a wetland is in a floodplain, the more restrictive terms of Executive Order 11988 apply.

The rule previously contained a list of actions exempt from the regulation. Included in this list were those repairs to public facilities costing less than $5,000 performed on damaged structures or facilities. This exemption did not apply to actions in a floodway or coastal high hazard areas or to new or substantially improved structures and facilities. Statistical data was kept on FEMA's disaster assistance actions as a means of determining which projects offered meaningful opportunities for floodplain management and hazard mitigation.

In December 1981 after 15 months of operating experience with the final regulation, a study was undertaken by FEMA to evaluate the effectiveness of then current procedures for floodplain management. With the large number of public assistance actions being taken it was felt necessary to determine if the resources of FEMA were being used efficiently and effectively.

The study solicited comments from FEMA field personnel who had experience in applying the floodplain regulations to disaster assistance actions. The regional offices also relayed the comments of applicants and other Federal agencies who had concerns about the regulations. Although the period encompassed by the study had less disaster activity than normal, there were nearly 4,000 public assistance actions in the data base. The data base included one large disaster (California) and seven smaller disasters so that a cross section of different size and type disasters was obtained.

One underlying thought which came out in the responses to the questionnaire was that FEMA should concentrate its mitigation efforts on the more important projects which have the potential to impact floodplains and wetlands. Very frequently the small projects do not offer opportunities for mitigation measures. This is especially true for those which would relocate facilities outside the floodplain. The final disposition of the small projects is typically the performance of minor work on the facility to make it more resistant to damage (minimization). However, since the beginning of implementation of the Disaster Relief Act of 1974 there has been a means for such measures to be taken in the restoration of the facility. These measures, called disasterproofing, have been used frequently when the work can be made an integral part of the repair which is being federally funded. Therefore, it is anticipated that the recommended mitigation measures will be accomplished without application of the formal 8-step decision-making process.

In the period immediately following a disaster FEMA's efforts are directed toward assisting local governments to recover as quickly as possible. The great majority (65% to 70%) of projects for which assistance is requested are minor repairs to roads, utilities, drainage structures and a small number of buildings. The repairs typically involve only a small portion of a larger facility or system. For this reason it is usually not possible to make changes in the repair work for hazard mitigation purposes. Any measure incorporated into the repaired portion would not achieve meaningful mitigation for the facility as a whole. Further, each damage location must be inspected by a Federal inspector who makes a cost estimate of the needed repairs. The inspector's report must then be reviewed by FEMA personnel. The review of these small projects for compliance with the executive orders only serves to delay the delivery of disaster assistance without achieving the goals of the orders.

With the objective of making more effective use of the inspectors' and reviewers' time, the data was examined to detemine if the number of actions requiring review could be reduced. A parallel objective was to continue to achieve the goals of the executive orders—minimization of harm to and within floodplains and wetlands. These same objectives had been set and were partially achieved by the selective exemption of projects costing less than $5,000, a provision which was added to the final rule in September 1980. As noted earlier FEMA kept data on these exempted projects as well as other projects costing less than $5,000 which underwent the floodplain review. The following results were obtained.

Of the total number of actions in the floodplain costing less than $5,000, only 3% of them, accounting for 3.5% of the cost of all actions costing less than $5,000, had sufficient opportunity for mitigation for FEMA to make mitigation a requirement of the grant. This figure includes measures which were required not only as a result of the floodplain management review, but by compliance with existing hazard mitigation regulations as well (44 CFR Part 205, Subpart M). By demonstrating the very limited opportunities for applying hazard mitigation to these actions, especially in light of the effort necessary to process the other 97% of the actions, this information supports the proposal to exempt these small projects from the review process.

The 4,000 disaster recovery actions were categorized by dollar value, type of facility, location in floodplain, degree of damage and final disposition. Comparisons were made of the effect of modifying the applicability of the 8-step process to various categories of actions. The two most significant factors which were watched during these comparisons were workload on inspectors and applicants and the opportunities for mitigation measures. The opportunities for mitigation did not appear to depend upon the type of facility, i.e., roads, buildings or utilities. The location of a facility in the floodway or coastal high hazard area, however, did have an impact on opportunities for mitigation. The dollar value of the repairs and percentage of damages as related to the total value also affected the mitigation opportunities. There were more opportunities for mitigation on those projects located in a floodway or coastal high hazard area, especially relocation opportunities. The higher cost projects also had more opportunities for mitigation because the repairs involved a greater investment of Federal funds. In choosing those projects which would be reviewed, the above factors for enhanced mitigation opportunities were considered carefully.

It was therefore decided to exclude all those actions under section 402 of the Disaster Relief Act of 1974 costing less than $5,000 from the 8-step review process. Those actions which are in the 100 yr. floodplain (or 500 yr. floodplain for critical actions), costing between $5,000 and $25,000, will also be partially exempt except (1) those actions in a floodway or coastal high-hazard area, or (2) those actions which constitute new construction or substantial improvement (repairs cost more than 50% of the total value of the facility) or (3) when the facility or structure has previously sustained structural damage in a major flooding disaster. For those projects costing between $5,000 and $25,000 which will be partially exempt from review, FEMA will carry out the requirements of identifying the hazard and the risk to the structure or facility, and will minimize this risk (§§ 9.7, 9.10 and 9.11). This approach will significantly reduce the number of actions to be reviewed by applying the 8-step decision-making process for floodplain management. Fifty-six percent fewer actions will be reviewed than under the current policies. This will conserve the already strained personnel resources of FEMA. It will also expedite the delivery of disaster assistance, especially to the smaller applicants which are more severely impacted by the disaster. However, this alternative will have only a minor effect on the objective of minimizing harm to and within the floodplains and wetlands. As noted before, the policy of disasterproofing already results in significant hazard mitigation without the application of the 8-step decision-making process.

The list of exemptions also included several forms of assistance to individuals, such as unemployment assistance, certain disaster-related needs and expenses (i.e., medical), and certain forms of temporary housing for those whose homes have been made uninhabitable. This rule will add "use of existing resources for temporary housing, except that Step 1 shall be carried out" to the list of non-reviewable actions under § 9.5(c). The other steps will not be required prior to temporarily housing someone in a rental unit or government-owned (i.e., existing) undamaged housing unit. The work group examining this issue determined that the reviews delay the provision of temporary housing because of the difficulty of locating (in a timely way) resources which are suitable for family size and composition. Using other rental units already existing in the area, and which are not damaged, is appropriate, especially when the need for temporary housing is immediate.

Other reasons for excluding existing resources from the full eight-step process include:

1. The use of more expensive forms of housing (i.e., mobile homes) is forced if existing resources are determined impracticable, and if they are withdrawn from the resource pool while being reviewed.

2. FEMA's use of existing resources in a floodplain does not cause degradation of the floodplain. Any such condition was already present.

3. There is little justification for moving families into other forms of temporary housing if the existing resources are undamaged and are available for use in the community.

An argument against excluding existing resources from the review process is that FEMA may subject people to some additional flood risk if the resources used are in a floodplain. However, based on statistics from the Federal Insurance Administration concerning the risk of repeated flooding and on the short average stay of a family in an existing resource (approximately 9 months), that risk appears low.

Given the emergency nature of temporary housing, FEMA is making the following changes: Only Step 1 (determining the location of the resource in relation to the floodplain) is to be carried out; any housing unit (i.e., existing resource) located in a floodplain would be placed at the bottom of the existing resource list, to be used only when other forms of temporary housing were not available. A statement will be provided to each temporary housing occupant indicating that the resource is in the floodplain, and warning of possible risk.

Summarizing briefly, the exclusions will now exempt from the 8-step process public assistance actions costing less than $5,000. Those public assistance actions costing between $5,000 and $25,000 are exempt from the requirements to avoid the floodplain unless it is the only practicable location and to notify the public, provided: (1) They are not in a floodway or coastal high hazard area; (2) they do not constitute new construction or substantial improvement and (3) the structure or facility has not suffered structural damage from a prior major flooding disaster. Even if an action satisfies the three conditions, all necessary mitigation will be required for those excluded actions costing between $5,000 and $25,000. The use of existing resources for temporary housing will be excluded from the 8-step process except that existing resources in the floodplain will be used only when other existing resources were not available.

On October 28, 1983, FEMA published a proposed rule in the **Federal Register** (48 FR 49876–49879) proposing changes to 44 CFR Part 9. Comments were due on or before December 27, 1983, but were accepted after that date.

Comments

We received 11 comments on the proposed changes, including Federal, State and local government agencies and one conservation group. Two comments were made concerning subjects outside the scope of these regulation changes. One dealt with problems of obtaining flood maps and the other concerned requirements for flood insurance in the Temporary Housing Program. These questions will be handled directly with the commenting agency. Four of the respondents agreed that the changes will be beneficial to the goals of floodplain management and to the delivery of disaster assistance. Some of the other comments resulted from a misunderstanding concerning the requirements for those projects where repair costs will range between $5,000 and $25,000. Two comments expressed the view that exemption of these projects will result in continued damages that might have been prevented by mitigation measures. One suggested that the upper limit of the exemption be lowered and another suggested requiring floodproofing of all facilities to the base flood elevation.

In fact, these actions costing between $5,000 and $25,000 are not exempt from the floodplain management review process. First, those actions in the floodway or coastal high hazard area or where the repair constitutes new construction or substantial improvement, or where the structures or facility has suffered damage in a prior major flooding disaster, must undergo the floodplain management review as provided in § 9.5(d). This review considers alternative sites and actions and an evaluation of impacts and ways to minimize any adverse impacts. Second, except for those actions costing under $5,000, all other public assistance actions are subject to impact analysis and minimization as provided in §§ 9.10 and 9.11. Minimization for both sets of actions may include floodproofing.

Two comments suggested that FEMA consider the cumulative cost of repairs over past disasters for the determination of "substantial improvement." The commenters felt that this would better ensure that hazard mitigation measures would be required as a condition of disaster assistance. FEMA feels that facilities which have suffered structural damage from a prior major flooding disaster should undergo the full 8-step review and a provision is included to that effect.

By this provision, FEMA will require consideration of alternative sites and actions and no action and will require appropriate public notice for actions involving projects which have previously sustained structural damage from flooding due to a major disaster or emergency.

FEMA's Hazard Mitigation Regulations and the Eligibility Regulations also require consideration of other sites when a facility is subject to repetitive damages. The Hazard Mitigation Regulations, 44 CFR Part 205, Subpart M, require that hazards in the disaster area be evaluated and appropriate measures be taken by the applicant. Avoidance, or relocation, is one of the measures to be considered. The Eligibility Regulations, 44 CFR Part 205, Subpart E, permit the Regional Director to deny funding for reconstruction at the original site when the facility is subject to repetitive heavy damage. In such cases, reconstruction at an alternate site under a grant-in-lieu may be eligible. For those grants involving a critical action, the standards are higher. A critical action is one which involves a facility for which even a slight chance of flooding is too great. For critical actions, the review for mitigation measures will be based on the impact of the 500 year frequency flood. Although they are not subject to the full 8-step decision-making process, FEMA is nevertheless required to assess the impacts of the project and minimize harm to and within the floodplain.

Another comment took the opposite view from the previous suggestion. It noted that projects in the floodway which cost less than $5,000 were subject to the floodplain review and suggested that the threshold be raised to $25,000 for flood control facilities. First of all, no review is required for any project under $5,000 except in unusual circumstances. Secondly, FEMA's experience has shown that there are mitigation measures which often should be incorporated into the repair of projects costing between $5,000 and $25,000; and therefore the review required of these projects is appropriate.

One comment recommended that more emphasis be placed on floodproofing and existing procedures such as those contained in the Hazard Mitigation Regulations. The commenter expressed concern about threats which may accumulate slowly and may cause damages from small incidents which do not result in major disaster declarations. Disaster proofing measures such as floodproofing may be approved by the Regional Director under the eligibility regulations (44 CFR Part 205, Subpart E). These measures may also be required by the Regional Director as a condition for a grant under hazard mitigation regulations (44 CFR Part 205, Subpart M). For those problems which may accumulate slowly or may not be related to specific repair projects, Subpart M requires evaluation of all natural hazards and implementation of appropriate measures. FEMA feels that the subject is adequately treated and no further change to the Floodplain Management Regulations is needed.

One comment suggested that Step 7 of the decision-making process, Final Public Notice, should be retained for all actions. This rule change makes no change in the actions for which Step 7 is required. The basic regulation, 44 CFR Part 9, exempts certain actions from the requirements of Step 7 and the Supplementary Information section of the final regulation, published September 9, 1980, at 45 FR 59520-59537 explains the rationale for that provision.

A question was raised as to the effect on the executive orders of exempting those projects under $5,000 from the review process. These represent 67 percent of the total disaster assistance projects. The FEMA study examined those projects costing less than $5,000 which were still required to be reviewed through the eight-step process. It found that in only 3 percent of those projects was there an opportunity for mitigation measures. That group of projects represented only 3.5 percent of the value of all repair or replacement projects costing less than $5,000. Furthermore, at least half of those projects had mitigation required as a result of other regulations than Floodplain Management. Therefore, the proposed change will affect less than 1 percent of all disaster assistance projects.

The same commenter suggested that reduction of the workload for FEMA personnel should not be used as a criterion not to comply with the Executive Order. This was by no means the primary reason for the change. It is a byproduct of the determination that the opportunities for mitigation on the projects exempted from review are very few. For those few projects the Regional Director may still require completion of the eight-step decision-making process when he or she determines it appropriate.

One comment claimed that the specific exemptions in these regulations are tied to a statutory exemption from review under the National Environmental Policy Act of 1969. This is not the case. Section 405 of Pub. L. 93-288 does exempt most disaster assistance actions from the requirement for an environmental assessment or impact statement. However, the review under Executive Order 11988 is not a NEPA requirement and the justifications for exemptions contained in these regulations stand entirely on their own. The commenter also expressed concern that the natural values of floodplains and wetlands would not be protected in the granting of assistance for small projects. As explained above, there are almost no opportunities to take mitigation actions on repair projects costing less than $5,000. FEMA's other regulations contain adequate requirements for those projects where mitigation of any adverse impacts is practicable. Lastly, a comment was made that the Executive Order requires consideration of alternative sites for those projects between $5,000 and $25,000 and that the proposed rule will not require that. This class of projects is included in a larger group of projects which was exempted from the alternative site requirement when the original regulation was published on September 9, 1980. This exemption did not apply to projects in the floodway or coastal high hazard area or where substantial improvement was involved. Those same criteria still apply to the projects costing from $5,000 to $25,000.

Environmental Considerations. Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (49 CFR Parts 1500–1508), FEMA has prepared an environmental assessment of the issuance by FEMA of the proposed change to the regulations on Floodplain Management and Protection of Wetlands. A discussion of that assessment is contained in the Supplementary Information section of the proposed rule. A Finding of No Significant Impact resulted from that assessment.

Executive Order 12291, "Federal Regulations." This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

Authority: This rule is issued under authority of section 601 of the Disaster Relief Act of 1974 (Pub. L. 93–288), as amended by Pub. L. 96–446 and Executive Orders 11988, "Floodplain Management," and 11990, "Protection of Wetlands."

List of Subjects in 44 CFR Part 9

Floodplains.

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Accordingly, Part 9 of Title 44 is amended as follows:

1. In § 9.5 paragraph (c) is amended by revising the introductory paragraph and paragraphs (c)(10)–(12) and by adding a new paragraph (c)(13) to read as follows:

§ 9.5 Scope.

* * * * *

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this regulation are *not applicable* to the actions enumerated below except that the Regional Directors shall comply with the spirit of the Order to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (see § 9.6) (except as indicated at paragraphs (d), (f) and (g) of this section regarding other categories of partial or total exclusions). The provisions of these regulations do not apply to the following (all references are to the Disaster Relief Act of 1974, Pub. L. 93–288, as amended):

* * * * *

(10) Use of existing resources in the temporary housing assistance program [Section 404(a)], except that Step 1 (§ 9.7) shall be carried out;

(11) Minimal home repairs [Section 404(c)];

(12) Debris removal (Section 403), except those grants involving non-emergency disposal of debris within a floodplain or wetland;

(13) Repairs or replacements under Section 402, of less than $5,000 to damaged structures or facilities.

* * * * *

2. In § 9.5 the introductory text of paragraph (d) is revised as follows:

§ 9.5 Scope.

* * * * *

(d) For each action enumerated below, the Regional Director *shall apply steps 1, 2, 4, 5 and 8* of the decision-making process (§§ 9.7, 9.8, 9.10 and 9.11, see § 9.6). Steps 3 and 6 (§ 9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands and of the site on the proposed action, alternative actions to the proposed action, if any, and the "no action" alternative shall be considered. The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below, (except as indicated in paragraphs (c), (f) and (g) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (see § 9.6). The references are to the Disaster Relief Act of 1974, Pub. L. 93–288, as amended.

* * * * *

3. In § 9.5 paragraph (e) is revised as follows:

§ 9.5 Scope.

(e) Other categories of actions. Based upon the completion of the 8-step decision-making process (§ 9.6), the Director may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in § 9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in § 9.5(d), or has no practicable alternative actions or sites and shall be treated as those actions listed in § 9.5(g). This finding will be made in consultation with the Federal Insurance Administration and the Council on Environmental Quality as provided in section 2(d) of E.O. 11988. Public notice of each of these determinations shall include publication in the **Federal Register** and a 30-day comment period.

* * * * *

4. In § 9.5, a new paragraph (g) is added as follows:

§ 9.5 Scope.

* * * * *

(g) For the action listed below, the Regional Director *shall apply steps 1, 4, 5 and 8* of the decision-making process (§§ 9.7, 9.10 & 9.11). For any action which is excluded from the actions listed below, (except as indicated in paragraphs (c), (d) and (f) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (See § 9.6). The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. The references are to the Disaster Relief Act of 1974, Pub. L. 93–288. The above requirements apply to repairs, under Section 402, between $5,000 and $25,000 to damaged structures of facilities except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New or substantially improved structures or facilities; or

(3) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency.

5. In § 9.6, the introductory text of paragraph (b) is revised as follows:

§ 9.6 Decision-making process.

* * * * *

(b) Except as otherwise provided in § 9.5 (c), (d), (f), and (g) regarding categories of partial or total exclusion when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

* * * * *

6. In § 9.11, the introductory text of paragraph (d) is revised as follows:

§ 9.11 Mitigation.

* * * * *

(d) *Minimization Standards.* In its implementation of the Disaster Relief Act of 1974, the Agency shall apply at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c), of this section, (except as provided in §§ 9.5 (c), (d), and (g) regarding categories of partial or total exclusion). Any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (§ 9.6) including the general requirement to minimize harm to and within floodplains:

* * * * *

§ 9.13 [Amended]

7. In § 9.13 paragraph (c) is amended by removing and reserving paragraph (1).

Dated: July 17, 1984.

Louis O. Giuffrida,

Director.

[FR Doc. 84-23803 Filed 9-7-84; 8:45 am]

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federal register

Monday
September 10, 1984

Part III

Department of Health and Human Services

Social Security Administration
Office of Child Support Enforcement

45 CFR Parts 205, 206, 232, 233, 234, 238, 239, and 240
Aid to Families With Dependent Children; Interim Final Rules
45 CFR Part 302
Child Support Enforcement Program; Disregard of Child Support Payments; Interim Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 205, 206, 232, 233, 234, 238, 239, and 240

Aid to Families With Dependent Children

AGENCY: Social Security Administration, HHS.

ACTION: Interim final rules.

SUMMARY: These interim final regulations implement changes in the Aid to Families with Dependent Children (AFDC) program by the Deficit Reduction Act of 1984 (DRA), Pub. L. 98–369. The statutory changes are effective October 1, 1984, unless otherwise specified. The statutory changes implemented by these regulations fall within four basic categories:

(1) Eligibility.
(2) Countable income and resources.
(3) Work programs.
(4) Program administration.

For a detailed discussion of these categories see Supplementary Information.

DATES: The interim final rules are effective October 1, 1984, except § 233.20(a)(3) (xix), (xx), and (11)(vi) effective June 1, 1984; §§ 233.20(a)(3)(ii) (D) and (F) clarification of lump sum income, (6)(iii), (7)(ii), (11)(i), 238.18, 238.20, 238.50, 239.14, 239.24, 239.58, 239.82 effective September 10, 1984. Comments will be considered if we receive them no later than November 9, 1984.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Md. 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B–428, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara M. Levering, Room B–442, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, (202) 245–2637.

SUPPLEMENTARY INFORMATION: The following is a summary of the changes implemented by the regulations.

These interim final regulations implement changes in the Aid to Families with Dependent Children (AFDC) program by the Deficit Reduction Act of 1984 (DRA), Pub. L. 98–369. The statutory changes are effective October 1, 1984, unless otherwise specified. The statutory changes implemented by these regulations fall within four basic categories:

(1) *Eligibility:*

—Permits States to recalculate the period of ineligibility due to receipt of a lump sum under certain circumstances;

—Increases the gross income limit to 185 percent of the State's standard of need;

—Provides States greater flexibility in disregarding the earned income of a dependent child who is a full-fime student; and

—Makes aliens sponsored by an agency or organization ineligible for assistance for three years from the date of entry into the United States, unless the sponsoring agency is no longer in existence or has become unable to meet the alien's needs.

(2) *Countable income and resources:*

—Specifies that certain individuals living in the same household with the dependent child must file for assistance and have their income and resources considered;

—Requires States to consider the income of the parent(s) or legal guardian(s) of a minor parent or legal guardian available to the minor and the dependent child on whose behalf the minor files for assistance;

—Requires States to disregard the first $50 per month of the current monthly support obligation of any child support collected on the family's behalf or received directly by the family in determining AFDC eligibility and payment amounts;

—Continues a $30 earned income disregard after the expiration of the $30 and one-third earned income disregard for an additional 8 months (for a total of 12 months);

—Exempts from countable resources burial plots and funeral agreements for members of the assistance unit. Also, for a limited time, exempts real property the family is making a good-faith effort to sell, provided the family agrees to repay the AFDC benefits received during that time;

—Requires States to count the earned income credit (EIC) only when actually received;

—Extends the $75 standard work expense disregard to part-time workers;

—Provides Medicaid coverage for 9 months (with 6 additional months at State option) for families that become ineligible for AFDC due to loss of the $30 or the $30 and one-third earned income disregards; and

—Clarifies and reaffirms that the $75 standard work expense disregard is applied against gross earnings.

(3) *Work programs:*

—Permits States to operate grant diversion programs in all or part of the State;

—Permits Federal agencies to host Community Work Experience Program (CWEP) participants. The State must provide the same workers' compensation and tort claims protection to such participants as it provides to other CWEP participants in the State;

—Allows greater Federal financial participation (FFP) for expenses incurred by States in reimbursing CWEP participants for transportation and child care expenditures.

(4) *Program administration:*

—Requires monthly reporting and retrospective budgeting only for recipients with earned income or recent work histories, permits States to use prospective budgeting for non-monthly reporting cases, and allows the Secretary to grant no-cost waivers of these requirements for States to enable them to conform AFDC monthly reporting and retrospective budgeting requirements to those of the Food Stamp program;

—Permits States to continue to make payments on behalf of the remaining members of the assistance unit to a parent or other caretaker who fails to comply with certain work or child support requirements if, after all reasonable efforts have been made, the State is unable to identify a suitable protective payee;

—Allows States to not undertake the recovery of overpayments based on cost effective criteria and dollar limitations as established by the Secretary; and

—Permits States to disclose to State and local law enforcement officers the current address of AFDC recipients who are fugitive felons.

Regulatory Procedures

Justification for Dispensing With Notice of Proposed Rulemaking

Unless otherwise provided, these interim final regulations are effective October 1, 1984, the effective date required by DRA. This legislation was signed into law on July 18, 1984. One provision, section 2642, which concerns the disregard of certain income of full-time students, has an effective date of June 1, 1984. Five provisions are effective on enactment. These provisions are: Section 2624, work transition for families who lose AFDC because of earned income; section 2625, clarification of earned income; section

2632(b)(2), clarification of the lump sum provision; section 2638, modification of the requirements for the Work Supplementation Program; and section 2641, Community Work Experience Program work in Federal agencies. In order to provide uniform and essential guidance of States implementing these changes, rules must be issued as soon as possible and prior to the October 1, 1984, effective date. It would not have been possible to issue a Notice of Proposed Rulemaking, provide a public comment period, analyze the comments received, and publish a final regulation within the extremely short period of time between the date of enactment of the statute and the effective date of the provisions implemented by this regulation.

While Notice of Proposed Rulemaking is being waived, we are extremely interested in comments and advice regarding changes which should be made to these interim final rules. We will review any comments on these rules which we receive on or before November 9, 1984, and will publish final rules with any necessary changes.

Consultation

Prior to the publication of these interim final regulations, we solicited comments on the legislation and suggestions for the regulations from interested parties. These parties included governors and State legislative associations, State and county welfare administrators, legal services groups, professional and labor organizations, welfare advocacy groups, public assistance-related organizations, and other Federal agencies. The views of these parties were considered in the development of the regulations and will continue to be sought during the comment period.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any rule that is a major rule. A major rule is one that: Has an annual effect on the economy of $100 million or more; results in a major increase in costs or prices; or has significant adverse effects on competition, employment, investment, productivity, or innovation.

The legislation and regulations considered here may have an annual effect of more than $100 million. A number of provisions result in increased costs which total approximately $200 million. Three of the provisions account for about 80 percent of the total: (1) The $50 child support payment disregard; (2) the $75 standard work expense deduction; and (3) the continuation of medicaid benefits during the work transition period. Other provisions result in offsetting reductions which account for about 90 percent of the total: (1) The requirement that family members living together file as an AFDC unit; and (2) the requirement to count the income of parents of minor parents when determining AFDC eligibility and benefit level.

For the most part these program costs and savings are the direct result of the Deficit Reduction Act and not the discretionary latitude of the Secretary. Therefore these regulations do not constitute a "major rule" and an impact analysis describing potential benefits of the regulations and alternative approaches and their costs and benefits is not required.

Paperwork Reduction Act

The Office of Management and Budget has determined that the State Plan requirements are subject to review and approval under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The Office of Management and Budget has approved all information collection requirements and assigned OMB approval number 0960-0260.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each particular rule we must publish an initial analysis describing the rule's impact on small business. This analysis should indicate the purpose and reason for the rule, the number of small businesses to which it would apply, anticipated reporting and recordkeeping requirements, possible overlap and conflict with other Federal rules, and a description of possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

The primary impact of these regulations is on State governments and individuals. We certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations affect only benefits to individuals and payments to States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Discussion of Major Provisions

Five provisions of DRA which affect the AFDC program are not included in this regulation. Section 2630 of DRA permits the Secretary of Health and Human Services to fund three to five pilot projects to demonstrate the use of integrated service delivery systems for human services programs. Because this provision involves demonstration projects of limited duration and is self-implementing, no regulations will be published. However, a notice regarding how to apply for these grants will be published in the Federal Register. Section 2638 of DRA amends the Internal Revenue Code to clarify the eligibility of employers who participate in work supplementation or on-the-job training programs for the Targeted Jobs Tax Credit. Further information about this tax credit may be obtained from the Internal Revenue Service, the agency responsible for implementing the Internal Revenue Code. Section 2651 of DRA requires States to have in effect an income and eligibility verification system which includes the use of wage information reported to State unemployment compensation agencies and income information reported to the Social Security Administration and the Internal Revenue Service. This provision affects several programs in addition to AFDC and is effective April 1, 1985. It is not, therefore, included in this interim regulation. A Notice of Proposed Rulemaking concerning this provision will be published shortly. Section 2639 of DRA extends the disregard of support and maintenance under section 402(a)(36) of the Social Security Act until October 1, 1987. Because this section also amends section 1612(b)(13) of the Social Security Act (the Act) affecting the Supplemental Security Income Program, implementing regulations will be issued separately. Finally, section 2631 of DRA exempts pregnant women from work registration and participation beginning with the sixth month of pregnancy. Since the regulations implementing this provision are not within the jurisdiction of the Social Security Administration, regulations will be published by the Department of Labor and the Office of Human Development Services, Department of Health and Human Services.

Three of the provisions included in this regulation also require complementary amendments to regulations not within the jurisdiction of the Social Security Administration. Two of these provisions, section 2634 (exceptions to requirements for protective payments) and section 2638 (modification of requirements for work supplementation program), require revisions to regulations under the jurisdiction of the Department of Labor and the Office of Human Development Services, Department of Health and Human Services. An interim final rule concerning these provisions will be published shortly. The third provision, section 2640(b) (disregard of child support payments), affects regulations within the jurisdiction of the Office of Child Support Enforcement, Department of Health and Human Services. Regulations implementing this provision are being published concurrently with this regulation.

In response to the consultation request, we received several questions asking whether the new rules affecting eligibility and/or payment are effective with the budget month or the payment month. In order to facilitate the efficient implementation of these changes, we have decided that these changes are effective with respect to the payment for any payment months beginning on or after the effective date specified. For example, in a State using a calendar-month, two-month budgeting cycle, the standard $75 work expense disregard for part-time workers (as discussed below at § 233.20(a)(11)(i)(B)) will be applied to the October payment month both for eligibility (using October income) and for payment (using August income).

Provision by State Agencies of Information Regarding Fugitive Felons (§ 205.50 of Interim Regulations)

Under prior law, section 402(a)(9) of the Act prohibited disclosure by a State of information concerning applicants or recipients except under limited circumstances. Section 2636 of DRA adds a new provision to section 402(a)(9) of the Act to permit the State or local agency responsible for the administration of the State plan in the locality to disclose the current address of any recipient to a State or local law enforcement officer if such officer so requests and furnishes the agency with the recipient's name and social security number and demonstrates that: (1) Such recipient is a fugitive felon; (2) the location or apprehension of such felon is within the officer's official duties; and (3) the request is made in the proper exercise of those duties. For purposes of implementing this provision, a State must define a fugitive felon. The State may use the definition under State law or under Federal law (for example, the Fugitive Felon Act, 18 U.S.C. 1073) or a combination of both. This provision applies only to current AFDC recipients. A State need not enact legislation in order for this provision to be effective as is required under section 618 of the Revenue Act of 1951 (also known as the Jenner Amendment), which also is codified in § 205.50.

Individuals Who Must File for Assistance as a Unit (§ 206.10 of the Interim Regulations)

Under prior law, family members who lived together were not required to file for AFDC benefits as a unit; a parent filing for a dependent child could choose to include or exclude himself or herself and other potentially eligible children from the assistance unit. This allowed the family to maximize the AFDC benefit and family income. States were not able to count either income or resources of excluded individuals in determining need and payment for the eligible child, except that income of a parent was considered available to children under 21, and income of a spouse was considered available to the other spouse.

Section 2640 of DRA, which adds section 402(a)(38) to the Act, requires that an application on behalf of a dependent child must include as applicants certain eligible relatives living in the same household as the dependent child. Any income and resources of these relatives is counted in making the determination under section 402(a)(7).

Section 402(a)(38) of the Act requires that the following individuals, if living in the same household as the dependent child and otherwise eligible, be included in the assistance unit:

- The parent(s) of a dependent child;
- Brothers and sisters of the dependent child who are themselves dependent children within the age limit set by the State.

Notwithstanding the above, certain parents and siblings must be excluded from the assistance unit because they are not eligible for assistance under other provisions of the Act. For example:

- Individuals who receive SSI benefits;
- Aliens who would be included but for the citizenship and alienage requirements at section 233.50;
- Aliens who would be included but are ineligible due to the deemed income or resources of their sponsors, or due to sponsorship by an agency or organization pursuant to section 233.51;
- Sanctioned individuals; and
- Individuals ineligible due to receipt of lump sum income.

These provisions are discussed in detail below.

Individuals Who Must Be Included in the Assistance Unit

First, any parent who is living in the same household as the dependent child must be included in the unit. "Parent", as defined in § 233.90(a)(1), includes a natural or adoptive parent, and a stepparent in States with laws of general applicability holding them legally responsible to the same extent as a natural parent. In cases of eligibility due to incapacity or, in States with an AFDC–UP program, unemployment of the principal earner, both parents must be included in the assistance unit if otherwise eligible under the Act.

Second, blood-related or adoptive brothers and sisters who are living in the same household as the dependent child and who meet the age and deprivation requirements must also be included in the unit. We have not required stepbrothers and stepsisters to be included because the conference report in addressing the issue of "brothers and sisters" clearly indicates as intent to exclude stepbrothers and stepsisters. Moreover, in States without laws of general applicability, the income of a stepparent living in the household is counted as available to the assistance unit, after applying the disregards at § 233.20(a)(3)(xiv), which include amounts to meet the needs of his dependents living with them. Thus, the Act already accounts for the needs of stepbrothers and stepsisters of an AFDC child whenever the stepparent's income is counted. Finally, if stepbrothers and stepsisters were required to be included, it would also require the inclusion of the stepparent since section 402(a)(38) requires parents of dependent children to be included. Such a result would circumvent section 402(a)(31) which specifies a particular method of counting a stepparent's income.

As an example, in States without laws of general applicability, if a dependent child's household consists of his mother, stepfather and stepbrother, under the new law the assistance unit must include the dependent child and his mother. His stepfather's income would be considered available to the assistance unit after application of the stepparent income disregards (at § 233.20(a)(3)(xiv)), which would include an amount for the support of his child. Of course, if application is made on the stepbrother's behalf, he and his natural parent would be included in the assistance unit, if otherwise eligible. In states with laws of general applicability, the stepparent must be included in the assistance unit; however, stepbrothers and stepsisters of the dependent child need not be included in the assistance unit.

All of the income and resources of the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this connection, the statute specifically provides for the inclusion of title II benefits, notwithstanding section 205(j). When title II benefits are paid to a representative payee on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. Conforming changes in the title II regulations will be published shortly.

Current AFDC policy, as stated in State Letter 1088, which permits the exclusion of a child receiving title II benefits and his title II income, is no longer valid and is revoked.

Parents and Siblings Who Must Not Be Included in the Assistance Unit

Under the new statute, parents and siblings must be included in the assistance unit, unless they are ineligible to receive AFDC under another provision of the Act. Some examples of individuals in this group are:

- Parents and siblings who receive SSI benefits. Section 402(a)(24) of the Act provides that an individual who is receiving benefits under title XVI cannot be considered as a member of the assistance unit nor have his income or resources considered for purposes of determining need or payment;
- Parents and siblings who are aliens and are ineligible for AFDC because they have been sponsored by an agency or organization or because of the application of sponsor-to-alien deeming provisions in accordance with section 415 of the Act and § 233.51;
- Parents and siblings who are aliens and are ineligible for AFDC because they do not meet the citizenship and alienage requirements at section 402(a)(33) of the Act and § 233.50;
- Parents and siblings who are ineligible for AFDC as the result of the imposition of a sanction; and
- Parents and siblings previously entitled to AFDC who are ineligible due to receipt of lump sum income.

When any of the above individuals are no longer ineligible to receive AFDC, i.e., the sanction ends, the State must include them in the assistance unit in accordance with the budgetary methods specified in § 233.31.

Regulations implementing these requirements are contained in § 206.10.

Discussion of Other Changes Related to This Provision

The new rules regarding inclusion of family members require several revisions to past policy and procedures. Section 402(a)(10) of the Act, which provides that all individuals wishing to make application for AFDC shall have the opportunity to do so, had also been interpreted as granting caretaker relatives the right to include or exclude family members from the assistance unit as they chose. This interpretation, to the extent it conflicts with the new statutory provision on who must be included in the assistance unit, is no longer valid. With respect to persons not required to be included in the assistance unit under section 402(a)(38), the caretaker relative retains the right to choose who is included or excluded from the unit. Section 402(a)(10) continues to be interpreted to mean that State agencies may not deprive any individual of the opportunity to apply for assistance, for example, by establishing waiting lists or by setting up other barriers to application.

Under the new statutory provision, eligibility of the assistance unit is based on a review of the total income and resources of all the persons required to be included in the assistance unit. Therefore, the caretaker relative must submit an application for assistance which covers all the required persons. The failure to include an individual who is required to be in the assistance unit or to provide information necessary for determining eligibility and payment amount, except as provided in §§ 232.11 and 232.12, makes the entire assistance unit ineligible for assistance. Otherwise, the State will not have sufficient information to be able to determine the eligibility of the entire family as required by the statute. Any payment made to such an ineligible assistance unit is an overpayment and must be corrected in accordance with § 233.20(a)(13).

Parents and siblings now included in the assistance unit must also comply with all requirements of the Act. For example, these individuals are applicants or recipients for purposes of the WIN program. Thus, they must register for manpower services, training, employment, and employment-related activities unless exempt pursuant to section 402(a)(19)(A) and § 224.20.

The revised regulations at § 206.10(a)(1)(vii) are effective October 1, 1984 for all current recipients as well as for new applications made on or after that date. In addition, the income and resources of parents and siblings joining an assistance unit after the effective date of the legislation will be included effective with the month the individual begins living in the household.

Disregard of Child Support Payments §§ 232.20 and 233.20(a)(4) of Interim Regulations)

Under prior law, support collected periodically on the monthly support obligation was reported to the IV–A agency by the IV–D agency for the purpose of determining eligibility. Under section 2640 of DRA, section 457(b) of the Act is amended to require that the first $50 collected which represents monthly support payments is paid to the assistance unit. In addition, section 402(a)(8)(A) of the Act is amended to provide that this amount, not to exceed $50, be disregarded in determining need and the amount of the assistance payment.

Under regulations published concurrently with this regulation, § 302.51(b)(1) is reinstated and amended to provide that the first $50 per assistance unit per month of the support collected on the monthly support obligation for the assistance unit be paid to them. Section 232.20 has been amended to provide for payment of this amount to the family by the IV–A agency. A new § 232.20(a)(1) has been added to define the terms "support collection", "monthly collections", and "support amounts for a month" as used in that regulation. These three terms all mean the assigned amount that the support enforcement agency collects on behalf of an AFDC family as payment on the required support obligation in the month in which the support was collected, less the sum paid to the assistance unit under § 302.51(b)(1). Under this definition, the IV–A agency cannot count the sum paid under § 302.51(b)(1) in the determination of eligibility under § 232.20(b)(1) (formerly § 232.20(a)(1)). In addition, a new § 232.20(d) has been added to require the IV–A agency promptly to pay the family the sum under § 302.51(b)(1). The IV–A agency may either issue this payment as part of the monthly assistance payment or separately from it. In either case, the notice and hearing requirements at § 205.10 do not apply to this payment since it merely represents a pass-through of support collected by the IV–D agency.

For example, if the State chooses to make these payments as part of the monthly assistance payment and the amount of that combined payment is reduced solely because the IV–A agency did not receive notice of any amount collected by the IV–D agency, then the notice and hearing requirements do not apply. On the other hand, if the amount of the combined payment includes a reduction in the monthly assistance payment, the notice and hearing requirements at § 205.10 apply to that reduction. Any question from an assistance unit regarding the amount of child support collected on its behalf by the IV–D agency is to be referred to the IV–D agency.

In addition, we have determined that the cost of issuing these pass-through payments aids the proper and efficient administration of the IV–A program and therefore should be viewed as a IV–A administrative cost subject to Federal matching under section 403(a)(3)(C) of the Act.

Section 233.20 has been amended to revise § 233.20(a)(4)(ii)(j) to provide that the amount, not in excess of $50, that the IV–A agency sends to the AFDC recipient be disregarded as income and resources for purposes of determining eligibility and payment amount. That subparagraph provides that in States that count support received directly by the family as income (rather than make these payments subject to recovery by IV–D), the IV–A agency must disregard the first $50 which represents monthly support paid by the absent parent in the determination of need and the amount of need and the amount of the assistance payment. This policy also applies to voluntary support payments. However, the total amount of support that is disregarded cannot exceed $50 per month per assistance unit.

Exclusion of Burial Plots, Funeral Agreements, and Certain Real Property From Resource Test (§ 233.20(a)(3) of the Interim Regulations)

Under prior law, a family was considered ineligible for any month it had resources over $1,000 (or such lower amount set by the State). Excluded from consideration were only: the equity value of a car up to $1,500 (or a lower amount set by the State); the value of a home owned and occupied by the family; and, at State option basic items essential to day-to-day living, such as clothing, furniture, and other essential items of limited value.

Sections 26262 of DRA amended section 402(a)(7)(B) to require States to exclude from consideration as a resource, in accordance with regulations prescribed by the Secretary, funeral agreements covering family members, and one burial plot for each family member. To allow States flexibility to establish definitions and limits which conform to State laws and regulations, the Secretary has placed no limit on the type of funeral agreements to be excluded. However, consistent with the policy in the SSI program, we have established a maximum equity value of $1,500 per family member for bona fide funeral agreements. States may set a lower amount, just as they may with the basic resource limit or the equity value of a car as described above. In addition, the Secretary has delegated to the State the authority to define the term "burial plots" for purposes of this exclusion. Such definitions and limits must be specified in the State plan. For purposes of this discussion, "family member" means a member of the assistance unit.

Section 2626 of DRA also provides for the exclusion, for a period of time prescribed by the Secretary, of otherwise non-excludable real property which the family is making a good faith effort to sell. Elibility for assistance during this period is conditioned on disposal of such property. Any payments made during the period are considered overpayments at the time of disposal, to the extent that payments would not have been made had disposal occurred at the beginning of the period.

In determining the time period for disposal of non-excludable real property, we considered the committee report for this provision, which indicates that Congress intended AFDC policy to be similar to SSI policy. For this reason, we have determined that the time period for disposal is six months, with an additional three month extension at State option. In addition we have required that, as in SSI, the applicant must agree, in writing, to dispose of the property, and to make repayment of any AFDC benefits that would not have been received had disposal occurred at the beginning of the period.

After this agreement is executed, the excess resources to be disposed of are then excluded in determining eligibility for payments for up to the prescribed disposition period. At the time of disposal, any payments made since the agreement was entered into are overpayments to the extent they would not have been paid had disposal occurred at the beginning of the period. The amount to be recovered cannot exceed the amount of the net proceeds from the disposition of the property. However, if the net proceeds from the sale of the property, together with all other resources at the beginning of the disposal period, are under the State's resource limit, no overpayment would exist. If the family becomes ineligible for other reasons during the disposal period, or if disposal is not completed within the specified time period, eligibility for continuing payments ceases immediately and all payments made during the period are overpayments which the State must recover pursuant to § 233.20(a)(13) of the regulation. Under the regulation, the State is delegated the authority to define a "good faith effort" to sell property.

This provision applies to both applicants and current recipients. It does not change the longstanding policy to permit States to establish provisions governing transfer of assets prior to application and placement of liens on real property.

Earned Income of Full-Time Students (§ 233.20(a) (3) and (11) of Interim Regulations)

This regulation implements section 2642 of DRA which amended sections 402 (a)(18) and (a)(8) of the Act. Section 2642(a) amended section 402(a)(18) to permit States to exclude for up to six months all or any part of earned income of a dependent child who is a full-time student in the determination of whether the family's income exceeds 185 percent of the State's standard of need (150 percent of the State's standard of need from June 1 to September 30, 1984). Section 2642(b) of DRA amended section 402(a)(8)(A) of the Act by adding a new clause (vii) which permits States to disregard all or any part of the earned income of a dependent child who is a full-time student and is applying for AFDC in the determination of need under section 402(a)(7) of the Social Security Act, but only to the extent the State disregards such income in determining whether the family's gross income exceeds 185 percent of the State's need standard.

The legislative history of this provision indicates that Congress intended to allow States the authority to disregard, in the determination of eligibility under the gross income limit, earned income which is received by an AFDC child who is a full-time student but who is not participating in a program under the Job Training Partnership Act of 1982 (JTPA). As in the case of earnings derived from participation in a program under the JTPA, States may exclude all or a portion of the earned income of a dependent child for up to six months.

The regulation provides that States must specify in their State plans what portion, if any, of the earned income will be disregarded under this new disregard provision and the length of time the disregard will be applied (up to six months). Consistent with the JTPA regulations, the six month limitation is per calendar year (see interim final rules published July 15, 1983, 48 FR 32346–32350).

The full-time student disregard in section 2642(a) of DRA does not override the six month limitation on the disregard of earned income derived from participation in JTPA programs provided in section 402(a)(8)(A)(v). Thus, earned income of a dependent child who is a full-time student and who is participating in a JTPA program may be disregarded in the determination of eligibility under the gross income limit for a maximum of six months per calendar year, not for 12 months. However, if a full-time student secures employment unrelated to JTPA participation, a second six calendar month period could be established by the State under the new provision. Thus, up to 12 months of disregard are available, but no more than 6 months is for JTPA-related employment and another 6 months for non-JTPA related employment. Where the State disregards, under the JTPA disregard provision, only a portion of the dependent child's JTPA earnings received for a month or none of the JTPA income, any portion of the income which was not disregarded under the JTPA disregard provision for that month may be disregarded under the new full-time student disregard provision.

Application of the Disregard

The disregards in this regulation are applicable only to the earned income of dependent children who are full-time students. Earned income of other children is treated as any other earned income and disregarded to the extent required or permitted under other provisions of section 402(a)(8) of the Social Security Act, and regulations at § 233.20(a)(11).

The AFDC program has a two step process for determining financial eligibility—the 185 percent gross income limitation (150 percent until October 1, 1984) and the determination of need in accordance with the State standard of need. The amendment to section 402(a)(18) affects only the first step and the amendment to section 402(a)(8)(A) affects only the second.

Gross Income Limitation

First, the family's total income is measured against 185 percent of the State's standard of need. In making this determination, when a dependent child who is a full-time student has earned income which the State elects to disregard under this regulation, the amount to be disregarded is not counted in determining whether the family's total income (without benefit of other disregards in section 402(a)(8) of the Act except, at State option, section 402(a)(8)(A)(v)) is in excess of 185 percent of the standard of need for a family of the same size (including special needs). If the family's income exceeds that amount, the family is ineligible for assistance. If the family's total income does not exceed 185 percent of the standard of need, the eligibility process continues.

Determination of Need

The second step in the eligibility process is to measure the family's income, after appropriate disregards, against the standard of need. Currently, in determining need, only the earned income of full-time students who are recipients is disregarded. The new legislation adds a new clause 402(a)(8)(A)(vii) to the Act. This clause permits States also to disregard the earned income of a dependent child who is *applying* for AFDC in making the determination of need if the child is a full-time student. However, in order to elect to disregard this income in determining need, the State must also have elected to disregard it in determining whether the family's gross income exceeds 185 percent of the State's standard of need. If the family's income, after application of appropriate disregards, exceeds the State's standard of need, the family is ineligible for assistance. However, if the family's countable income does not exceed the standard of need, the process continues by determining the amount of the assistance payment. In making this determination, the earned income of a dependent child who is a full-time student is disregarded indefinitely in accordance with section 402(a)(8)(A)(i) of the Social Security Act and regulations at section 233.20(a)(11) (i)(A) and (ii)(A) which require that all the earned income of a dependent child who is a full-time student *receiving* AFDC be disregarded.

The regulations implementing these provisions are effective upon publication. The statutory provision was effective upon enactment.

Recalculation of Ineligibility Caused by Lump Sum Income (§ 233.20(a)(3)(ii)(F) of Interim Regulation)

The current provision at section 402(a)(17) of the Act requires non-recurring lump sum income received in a month to be considered available in the month it is received and also in future months. Thus, if such income, along with other income received in that month, exceeds the standard of need, the family is ineligible in that month, or at State option, ineligible not later than the corresponding payment month. In addition, any amount of the remaining income that exceed the initial month's need standard is divided by the monthly need standard, and the family is ineligible for aid for the number of additional months resulting from that calculation. The statute contained no specific provision for shortening the period of ineligibility.

The existing regulation at § 233.20(a)(3)(ii)(D) permits a State to shorten the period of ineligibility, but only of a life threatening circumstance, e.g., a medical emergency, fire, flood or other natural disaster, occurred prior to the expiration of the period of ineligibility which required the assistance unit to expend part or all of the lump sum income to meet such a circumstance. The period of ineligibility could be shortened under the following specified conditions: (1) The family must have used its lump sum money to meet essential needs, (2) the family must have had no other income or resources available, and (3) the family must have expended or would expend some of the remaining lump sum in connection with the life-threatening circumstance.

Section 2632 of DRA amends section 402(a)(17) of the Act to provide for three situations where the State may, at its option, shorten the period of ineligibility. The three situations are:

(1) *An event occurs which would have affected the amount payable if the family was receiving aid.* Although many events occur which can affect the amount payable, i.e., the grant, the period of ineligibility caused by the lump sum can only be recalculated when the event also affects the need standard. This is the case because the method of calculation of the period of ineligibility is not changed by DRA. Under section 402(a)(17) of the Act, in order to calculate the number of months of ineligibility, the total income is divided by the need standard. Thus, the only way the number of months can be reduced is if that divisor, i.e., the need standard, is increased. Therefore, a decrease in the income of the family would not in and of itself cause a recalculation. The need standard must also be affected.

Examples of events which could result in a recalculation include: an increase in family expenses, such as rent, in a State where a portion of the need standard, e.g., shelter, is based on actual costs; eligibility for a special need item; and any general increase in the need standard. As in the past, when a child is born to a family whose members are ineligible due to prior receipt of a lump sum, the child is treated as a separate assistance unit. We view the option in the statute of shortening the period of ineligibility as only applying to persons who are already ineligible due to a prior receipt of a lump sum.

(2) *The lump sum or a portion of the lump sum becomes unavailable to the family for a reason that is beyond the family's control.* In order to provide States with maximum flexibility in implementing this provision, we have left the definitions of "unavailable" and "beyond the family's control" to the States. Examples might include loss or theft of income, or a life-threatening circumstance. The recipient must show that the factors creating the need for the expenditure were beyond the family's control. States that elect this option must develop guidelines for determining when a lump sum becomes unavailable to a family for reasons beyond its control and must substantiate such a finding in the case record.

(3) *A family member incurs and pays for medical expenses, as approved by the State, in a month during the period of ineligibility caused by receipt of a lump sum.* A State choosing this option must specify in its plan which medical expenses are allowable under this provision. For recalculations due to medical expenses, States need not initiate the recalculation until the total medical expenses equal or exceed the amount of any remaining income left after determining the number of months of ineligibility. This is because the number of months of ineligibility will not change until income is reduced by that amount.

Based on the statutory language, the recalculation in the first situation above is done as of the month the event occurs. In doing the recalculation, the amount of funds that should be available in that month based on the previous calculation is divided by the standard of need applicable to that month. For example, assume a family with no other income receives a lump sum of $2,000 on April 1. The need standard is $400. The family is ineligible for 5 months, May through September (assuming the State elects to begin the period of ineligibility in May rather than April). In July, the need standard is increased to $500. The recalculation, done in July, would be done with the assumption that $1,200 of the lump sum was still available, since the family should have budgeted $400 for May and June. The $1,200 is divided by the increased standard of need of $500. The family is ineligible for July and August; $200 would be counted as income in September.

This provision is effective October 1, 1984. For periods of ineligibility arising from lump sum income received prior to that date, any recalculation resulting from this provision is effective no earlier than October 1, 1984.

Other Provisions

Section 2632 of DRA also amended section 402(a)(17) of the Act to make two clarifications. The legislative history (statement in the Congressional Record entitled "Clarification of Section 2632, Deficit Reduction Act of 1984", S 10644, August 10, 1984, by Senator Dole, Chairman of the Senate Finance Committee) shows that the purpose of this provision of DRA is to clarify the original intent of Congress as to the applicability of the lump sum provision. Senator Dole states that because some courts have interpreted the lump sum provision as enacted in the Omnibus Budget Reconciliation Act of 1981 to apply only to families that have earned income at the time they receive a lump sum, the intent of section 2632(b) of DRA is to clarify that the 1981 lump sum provision was always intended by Congress to apply to all families, not just those with earned income. Therefore, the statute now specifies that the lump sum provision applies to all applicants and recipients, and any person whose need a State considers in determining family income, regardless of whether they have any other income, or whether their other income is earned or unearned. This includes essential persons and stepparents in States with laws of general applicability. (This provision does not apply to stepparents in States without laws of general applicability who are not applying for or receiving AFDC. In these States, the lump sum income of a stepparent is counted in accordance with § 233.20(a)(3)(xiv) of the regulation.)

In addition, the statute specifies that the lump sum income may be either earned or unearned income. This last clarification was effective upon enactment of the legislation. Accordingly, the corresponding regulatory provision is effective upon publication.

Clarification of Earned Income Provision (§ 233.20(a) (3)(ii)(D), (6)(iii), (7)(ii), and (11)(i) of Interim Regulations)

In OBRA, section 402(a)(8) of the Act was amended to standardize the work expense disregard ($75 per month) and cap dependent care costs ($160 per month per dependent), for full-time employment and less for part-time employment. However, there have been conflicting court decisions concerning whether to apply that work expense disregard to gross income or income remaining after deduction of mandatory payroll expenses.

Section 2625 of DRA adds section 402(a)(8)(C) to the Act to clarify that the State agency shall apply the $75 work expense disregard against gross earned income and not to net income after deductions for taxes or for any other purposes.

Section 233.20(a)(6)(iii), which defines "earned income", is amended to clarify that earned income means gross earned income prior to any deductions for taxes or for any other purposes. Sections 233.20 (a)(7)(ii) and (a)(11)(i) are also amended to clarify that for AFDC the standard $75 work expense disregard is subtracted from gross earned income and is meant to recognize *all* work expenses (including tax deductions), other than dependent care, which the applicant or recipient may incur. In addition, since the term "net income" was misinterpreted to mean earned income remaining after mandatory payroll deductions, § 233.20(a)(3)(ii)(D) is further revised to delete the term "net income" and refer instead to "income after application of disregards" to more clearly reflect the statute. We have also clarified that the general provision on the availability of income and resources at § 233.20(a)(3)(ii)(D), which requires the taking into account of income and resources only when actually available, applies only where it is not inconsistent with another more specific provision governing the treatment of income or resources, such as the use of gross income or the deeming of stepparent income.

These regulatory changes affect the AFDC program only. The Territories, in administering the adult assistance programs, must still disregard all expenses reasonably attributable to the earning of income.

As Congress clearly indicated that this provision merely clarifies the statute, rather than changing it, this provision was effective on enactment (July 18, 1984). Therefore, this regulation is effective upon publication rather than on October 1, 1984.

Gross Income Limitation (§ 233.20(a)(3)(xiii) of Interim Regulations)

OBRA limited AFDC eligibility to families whose gross income was 150 percent or less of the State's need standard. This limit was established in order to target AFDC benefits to those most in need.

Section 2621 of DRA amends section 402(a)(18) of the Act to increase this limit on gross income to 185 percent of the State's standard of need. Accordingly, § 233.20(a)(3)(xiii) is amended to embody this change. We have also made a technical revision in this section to only reflect those disregards which are not applied in determining eligibility under this section.

Counting the Income of Parents of Minor Parents (§ 233.20(a)(3)(xviii) of Interim Regulations)

Under prior law, a minor could file for benefits solely on behalf of his needy child who then received aid without consideration of the income of the minor's parents. If the minor parent filed for benefits as well, his own parents' income could be considered under certain circumstances. Section 2640 of DRA requires that the minor parent must be part of the assistance unit. This section also adds section 402(a)(39) to the Act which requires that the income of a minor's parent(s) or legal guardian(s) be considered in determining eligibility and payment, subject to the stepparent disregards in section 402(a)(31), if such individual(s) lives in the same household as the assistance unit. For purposes of this section, a minor is one who is under the State's age limit for dependent children. For example, where a minor mother applies for AFDC for her child and both live with the minor's parents, the assistance unit would consist of the minor mother and her child. The income of the minor mother's parents would be considered available to the assistance unit, subject to applicable disregards described below. This provision also applies to the income of the parent(s) or legal guardian(s) of a minor legal guardian who files for assistance for a dependent child. Of course, if all these people file together (i.e., dependent child, his parent who is also a dependent child, and that child's parents) then all their need and income is considered as part of a single assistance unit.

Applying Disregards to This Income

The new section of the statute provides that the income of a minor parent's parent(s) or legal guardian(s) will be included only to the extent that the income of a stepparent would be included, pursuant to section 402(a)(31) of the Act. This means that in counting such parent's or legal guardian's income, the State must disregard all of the following income:

(a) $75 for work expenses for each parent or legal guardian working full-time (or a lesser amount in the case of an individual not engaged in full-time work or not employed throughout a month). Although the statutory provision is not specific as to whether there should be only one exclusion or one for each employed parent or legal guardian, we have determined that in the case of more than one working parent or legal guardian, each should be given the benefit of the disregard because if each has a job, each has such expenses. This is consistent with existing provisions which provide separate work expense disregards to each working member of the assistance unit.

(b) An amount equal to the State's standard of need for a group with the following members:

(1) The parent(s) or legal guardian(s) living in the home; and

(2) Any other individuals living in the home who are not in the assistance unit, but who are dependents of the parent(s) or legal guardian(s). Thus, if there are two adult parents and a sibling of the minor mother living in the same household as the minor mother and her dependent child, the State would disregard an amount equal to the State's standard of need for three people.

(c) Amounts paid by the parent(s) or legal guardian(s) to support individuals outside the home who could be claimed as dependents; and

(d) Payments by the parent(s) or legal guardian(s) of child support and alimony to individuals outside the home.

We had to consider three additional issues in writing these regulations:

First, whether the minor must meet the school attendance requirements in a State that provides assistance to dependent children through age 18 provided they are expected to graduate before age 19. Based on the language of the statute which refers only to age and not to the school attendance portion of the requirement, we have decided that in such States the provision applies to such minors up to age 19, regardless of school attendance.

Second, whether we should define legal guardian in the regulation. There is no standard Federal definition of legal guardian; therefore, we are requiring States to use appropriate State definitions.

Third, whether a legal guardian is a specified relative for purposes of establishing AFDC eligibility. Since the statute does not amend section 406(a)(1) of the Act, we do not believe Congress intended to broaden the definition of specified relative through this income provision.

Treatment of Earned Income Credit in Determining Countable Income (§ 233.20(a)(6)(ix) of Interim Regulations)

Under prior law, States were required to count as earned income the amount of earned income credit (EIC) advance payments an individual was eligible to receive, regardless of whether the individual actually received the payments. States were also required to make adjustments where the amount of EIC advance payments counted during the tax year was more or less than the actual amount of the credit. Section 2629 of DRA amended section 402(d)(1) of the Social Security Act to provide that only EIC payments actually received are counted as earned income. The requirement of counting the EIC that a recipient was eligible for, but did not receive, has been deleted. The regulation at § 233.20(a)(6)(ix) is amended accordingly.

States continue to be required to make adjustments where the amount of EIC advance payments a recipient received was more or less than the actual amount of the credit due that individual. Accordingly, if the recipient received EIC advance amounts in excess of the amount of the actual credit due, the State must return to the recipient the amount of any AFDC benefits lost. If the recipient received EIC advance amounts which were less than the amount of the actual credit, the additional EIC payment received at the end of the tax year is counted as earned income in the month received. If the individual does not file for advance payments but instead receives the EIC on an annual basis, the EIC payment is counted as earned income in the month received.

Work Expense Deduction (§ 233.20(a)(11)(i)(B) of Interim Regulations)

Under prior law, a $75 standard work expense disregard was subtracted from the gross earned income of full-time workers in lieu of actual work-related expenses. However, the statute specified that an amount less than $75 (as prescribed by the Secretary) would be subtracted for workers who were employed part-time or were not employed throughout the month.

Section 2622 of DRA extends the full $75 standard work expense disregard to all employed applicants or recipients whether working part-time or full-time. Section 233.20(a)(11)(i)(B) is amended accordingly.

Continuation of $30 Disregard from Earned Income (§ 233.20(a)(11) (i)(D) and (ii)(B) of Interim Regulations)

Under prior law, application of the $30 and one-third earned income disregard to a recipient's earned income was limited to four consecutive months. This disregard was not available again until 12 consecutive months had passed during which the individual had not received AFDC.

Under section 2623 of DRA, the application of the $30 and one-third disregard is still limited to four consecutive months. However, after the $30 and one-third disregard has been applied in four consecutive months, a $30 disregard continues to be available for eight additional months. After this time, the disregards are not available again until 12 consecutive months have passed during which the person did not receive AFDC. The amendments to section 402(a)(8) of the Act made by this section of DRA are extremely complex. After careful review, the position taken in these regulations is the only reasonable interpretation that gives effect to all parts of the provision.

Under the regulation, the $30 and one-third disregard is applied to a recipient's earned income for four consecutive months. If any part of this disregard is applied, the person is considered to have received the disregard for that month. After the fourth consecutive month that the $30 and one-third disregard has been applied, the person is eligible to receive the $30 disregard for eight additional months.

This eight month period begins with the month following the fourth consecutive month in which the $30 and one-third disregard was applied, and ends with the eighth consecutive month regardless of whether the $30 disregard is actually applied to the person's earned income. For example, if a recipient becomes employed in January and receives the $30 and one-third disregard for the income received in January, February, March and April, he would be entitled to a $30 disregard for income earned in May through December. However, even if the recipient loses his job in July and no longer has any earned income, the eight month period nonetheless continues to run. If the recipient becomes re-employed in September, the $30 disregard would be applied for September through December.

Where a person becomes ineligible for AFDC after receiving the $30 and one-third disregard for four consecutive months, but before eight additional months of the $30 disregard have been available, the person is eligible for the remaining months of the $30 disregard if he returns to the AFDC rolls during that time. This $30 disregard is available to recipients and even to individuals who lost eligibility because of the $30 and one-third disregard and become applicants during this eight month period, even if such applicants were not recipients during one of the four prior months. In the case of a person who does not receive assistance during the eight additional months, we believe that Congress did not intend that a family must be off the rolls for 20 months after the loss of the $30 and one-third disregard before being eligible again for the $30 and one-third disregard. Therefore, we have kept the rule at § 233.20(a)(11)(ii)(B) which provides that the $30 and one-third disregard is available after 12 consecutive months during which the individual is not a recipient of AFDC. Using the above example, if the recipient lost eligibility for May because with only the $30 disregard his income was too high and remained off the rolls for 12 consecutive months, the $30 and one-third disregard would be available to him in May of the following year, just as under prior law. If, however, he retained eligibility after April through use of the $30 disregard but lost eligibility for July and remained off the rolls for 12 consecutive months, the $30 and one-third disregard would be available to him in July of the following year. Finally, with respect to implementation on October 1, 1984, this provision only applies to recipients who have not already received the $30 and one-third disregard for four consecutive months prior to October 1, 1984 (unless they have been ineligible for AFDC for 12 consecutive months).

Waiver of Overpayment Recoupment When Cost of Collection Would Exceed Amount Due (§ 233.20(a)(13) (i) and (vi) of Interim Regulations)

Prior to the enactment of DRA, section 402(a)(22) of the Social Security Act required that States correct all overpayments made under the State's plan. Section 2633 of DRA amends this statute to permit States not to recover overpayments for individuals no longer receiving aid, except for cases involving fraud, when the cost to collect the overpayment would equal or exceed the amount of the overpayment based on the Secretary's criteria for determining cost-effectiveness and dollar limitations. The new statute also makes explicit that a State must recover from a current recipient the amount of an overpayment that the recipient received during a prior period of eligibility. The Secretary, for purposes of implementing this section, by regulation has established the following criteria and dollar limitations.

For individuals no longer receiving aid who have outstanding overpayments, States may elect not to take action to recover overpayments less than $35. Where the overpayments total is $35 or more, a reasonable effort by the State must be made to collect the overpayment. At a minimum, the State must attempt to notify the individual no longer receiving aid about the amount of and reason for the overpayment and request that repayment be made. After that effort, the State may elect at which point to no longer pursue recovery if it determines that such action would not be cost-effective. However, the State must currently maintain information for three years concerning former recipients who received overpayments, so that if one or more of those individuals begins receiving assistance again, the State agency would be required to make the recovery (including overpayments less than $35). Since States are already required under existing regulations to maintain case records, this is not a new recordkeeping requirement.

For two principal reasons, $35 was chosen as the amount below which a State, if it so chooses, can forego any recovery effort from former recipients for cost-effectiveness. First, this is the dollar amount currently being used to constitute cost-effectiveness of overpayment recovery action in the Food Stamp Program. Choosing the same standard promotes consistency and reduces administrative complexity between the two programs. Second, the $35 standard is consistent with congressional intent as expressed in the conference report. The Secretary will periodically review this figure to determine whether this amount should be adjusted.

Notwithstanding these criteria, the State must make every effort, including referral for prosecution, to recover overpayments caused by recipient fraud. The definition of fraud, for purposes of this section, will be determined in accordance with State law.

This provision is effective on October 1, 1984 and applies to overpayments which are uncollected or undiscovered as of that date as well as to overpayments made after the effective date.

Finally, the $35 amount does not represent a tolerance level for overpayments.

Work Transition in the Case of Certain Families Who Lose AFDC Benefits Because of Earned Income (§ 233.20(a)(14) of Interim Regulations)

Under prior law, if a family lost eligibility for AFDC solely because of the four-month limitation on the $30 and one-third disregard, the family also lost categorical Medicaid eligibility at the same time.

Section 2624 of DRA specifies that in any case where a family has ceased to receive AFDC solely because a member of the family is no longer eligible for either the $30 and one-third or $30 disregard, the family is deemed, but only for purposes of Medicaid eligibility, to be receiving AFDC for a period of nine months after the last month of AFDC benefits (regardless of whether the family continues to meet other eligibility conditions). Moreover, at State option, an additional period of up to six months of Medicaid coverage may be provided but only for so long as the family would be eligible for AFDC if the $30 and one-third or $30 disregards were applied.

This provision becomes effective October 1, 1984 for current recipients. However, under certain conditions, families which ceased to receive AFDC between October 1, 1981 (the effective date of the Omnibus Budget Reconciliation Act of 1981) and October 1, 1984 because a member of the family exhausted his or her eligibility for the $30 and one-third disregards are entitled to extended Medicaid coverage, beginning with the month in which they apply for such coverage. Medicaid coverage is available beginning with the month of application to these families that became ineligible for AFDC prior to October 1, 1984 under the following conditions:

- The family must apply for Medicaid no later than the end of the sixth month after the month in which these regulations implementing section 402(a)(37) of the Social Security Act are published;
- The family must be one that, if the $30 and one-third disregard had been applied, would have been continuously eligible for AFDC (without regard to section 402(a)(37) of the Act) from the time the family ceased to receive AFDC to the time the unit applies for Medicaid. In order to be continuously eligible, a family must demonstrate to the satisfaction of the State agency that it would have been eligible for each month beginning from the month in which the family lost eligibility. For example, after October 1, 1984, if the family would be ineligible because of the income of a sibling who had not previously been part of the assistance unit, based on section 2640 of DRA, the family would not be considered to be continuously eligible. In addition, both before and after October 1, 1984, a family would not be continuously eligible if, for example, the family's income exceeded the gross income limit or the only child reached the age limit set by the State; and
- The family must fully disclose in its application any health insurance coverage which is in effect for members of the family.

In implementing this provision, States should make all reasonable efforts to notify former recipients who may be eligible under this provision through contacts with local media, posters in public areas or other appropriate means.

Monthly Reporting and Retrospective Budgeting (§§ 233.20(b)(2), 233.31, 233.35, 233.36 and 233.38 of Interim Regulations)

Under prior law, States required all recipients, unless exempt under an approved State waiver, to submit monthly reports to the State agency. States were required to use these monthly reports to determine eligibility prospectively and the amount of the payment retrospectively. Section 2628 of DRA amends section 402(a)(14) of the Act to limit the categories of recipients who are subject to mandatory monthly reporting and amends section 402(a)(13) of the Act to eliminate mandatory retrospective budgeting for recipients who are not subject to monthly reporting. It also permits waivers, under certain circumstances, of AFDC monthly reporting requirements and retrospective budgeting to make requirements under the AFDC and Food Stamp programs compatible.

Monthly Reporting

Under the new law, the only categories of recipients for which the State must require monthly reports are recipients with earned income and recipients with a recent work history. Categories of recipients, for purposes of mandatory monthly reporting, include recipients who have earned income deemed to them from individuals living with them who have earned income or a recent work history. For purposes of this provision, we have amended § 233.31 to include a minimal definition of recent work history which covers recipients who received some earnings during at least one of the two months prior to the payment month. The State must continue to require applicants and recipients with recent work histories to file monthly reports for at least three months. For example, under this requirement a recipient with some earnings in March would be required to file a monthly report for March in April, for April in May, and for May in June.

In defining a minimal standard for recent work history, we considered the recommendations of a monthly reporting study funded by the Department of Health and Human Services, which proposed that a recipient be required to file a monthly report for the two months following the last month in which the case received earnings. Furthermore, the proposed definition is consistent with the definition used by most States. States may, of course, establish a longer period in defining recent work history, provided it is so specified in their State plan.

Section 2628 of DRA also provides that States may, with prior approval of the Secretary, exempt recipients with earned income or with a recent work history from monthly reporting.

The Secretary will approve exemptions for a period up to one year, at the end of which time the State may request a continuation of the exemption. Approval of these exemptions will be based on evidence provided by the State that not requiring these cases to file monthly reports is cost effective. Since Congress has given the Secretary the discretion to determine whether an exemption is appropriate, the Secretary's decision on a request for an exemption is not appealable.

Under the new law, States may continue to require all or other categories of recipients to report monthly.

Retrospective Budgeting

Section 233.31 is also amended to specify that, for recipients who are not required to file a monthly report, States have the option of computing payments either retrospectively or prospectively.

For those who are required either by Federal regulation or at State option to report monthly, the payment amount is determined using retrospective budgeting (except as provided in § 233.34 for their initial months of assistance).

For a State opting to compute payments prospectively for cases exempt from monthly reporting, a transition from prospective budgeting to retrospective budgeting and vice versa will be necessary when a case becomes required to report or is no longer required to report. Thus, the regulations provide that the question of whether to use prospective or retrospective budgeting for any payment month is dependent on whether the assistance unit was or should have been required to file a monthly report for the corresponding budget month used under retrospective budgeting. For example, if a recipient begins working and receives income in March in a two-month retrospective budgeting State, the payments for March and April will be computed prospectively since no monthly reports were required for the corresponding budget months of January and February. The payments for May, June and July will be computed retrospectively. Conversely, if the recipient's last earnings are received in March, prospective budgeting will begin with the August payment since the recipient, as a recent earner (under the Federal minimal definition), must file monthly reports for March, April, and May and no monthly report is required for June, the budget month corresponding to the August payment month. To avoid double-counting of income, the transition from prospective to retrospective budgeting should be treated as specified at § 233.35(b), i.e., as if the first month in which the recipient received earnings was the initial month of eligibility. In this situation, the State shall not count income from the budget month already considered for any month determined prospectively which is not of a continuous nature.

In any event, regardless of the method used to determine eligibility and payment amount, if the State subsequently receives information which alters the amount to which the assistance unit was entitled for a month, the payment made is an incorrect payment which the State must correct pursuant to § 233.20(a)(13).

Waivers for Compatibility with Food Stamps

These rules add a § 233.38 which provides that States may request waivers of Federal regulations on monthly reporting and retrospective budgeting methods in §§ 233.31–233.37 to make AFDC compatible with the reporting and budgeting requirements of the Food Stamp Act of 1977, as amended. Approval of waiver requests by the Secretary will be based on information provided by the State that documents the need for the waiver and explains how the waiver would simplify administration of both programs. In addition, the rules provide, consistent with congressional intent as expressed in the conference report, that the Secretary will not approve any waiver request that would result in a net cost to the Federal government. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver.

Congress has given the Secretary discretionary authority to determine whether any waivers should be granted. Therefore, a decision not to grant a waiver is not appealable.

Eligibility Requirements for Aliens (§§ 233.51, 233.52, and 233.20(a)(3)(xv) of the Interim Regulations)

Section 415 of the Social Security Act, which was added by OBRA, concerns the AFDC eligibility of aliens who are sponsored by an individual as a condition of entry into the United States. That legislation did not address the eligibility of aliens who were sponsored by public or private agencies or organizations. Section 2635 of DRA, however, amends section 415 of the Social Security Act to provide that any alien whose sponsor is a public or private agency or organization is ineligible for assistance for three years from the date of the alien's entry into the United States, unless the State agency determines that the sponsoring public or private agency or organization is either no longer in existence or has become unable to meet the alien's need. This determination is based on such criteria as the State specifies in the State plan. States may require aliens to submit such documentary evidence as is reasonably available to facilitate this determination. In such a case, as a condition of eligibility, the alien is required to cooperate with the State agency by providing necessary information and documentation pertaining to the sponsoring public or private agency or organization as is reasonably available.

Certain aliens who are refugees, parolees, political asylees, or Cuban/Haitian entrants are exempt from this provision. This provision is effective on October 1, 1984 and applies to aliens sponsored by private or public agencies or organizations who apply for or are currently receiving assistance within three years of the time they entered the United States for permanent residence. States must review the cases of aliens currently receiving assistance to determine whether they were sponsored by a public or private agency or organization and if so, whether such aliens are now ineligible as a result of the application of this section.

This regulation amends §§ 233.51 and 233.52 to implement the new provision. It also includes a technical amendment to § 233.20(a)(3)(xv) to reflect the statutory requirement at section 415(a) of the Social Security Act that both income and resources be considered for deeming to a sponsored alien pursuant to § 233.51.

Exceptions to Requirements for Protective Payments (§§ 234.60 (a)(12) and (a)(13); and 240.22 (a)(1) and (b)(1) of Interim Regulations)

Under prior law, States were required to provide for protective payments under the AFDC program when a caretaker relative was sanctioned for failure to meet program requirements in WIN, employment search, or CWEP, as well as for failure to assign rights to support or cooperate in establishing paternity and securing support. The caretaker relative who failed to fulfill these requirements not only had his/her needs removed from the grant, but was also replaced as the payee by a protective payee appointed by the State agency.

Section 2634 of DRA amends sections 402(a)(19)(F) and 402(a)(26)(B) of the Act to allow States to continue AFDC payments to the sanctioned caretaker relative for the remaining members of the assistance unit if, after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom such protective payments can be made. We are, therefore, amending the regulations at §§ 234.60 (a)(12) and (a)(13) and 240.22 (a)(1) and (b)(1) accordingly. In addition, the WIN regulations at 45 CFR 224.51 and 29 CFR 56.51 will be amended by publishing regulations shortly to reflect this new provision. These changes do not apply to mismanagement cases.

Federal Matching for Expenses Incurred by States in Reimbursing AFDC Recipients for Transportation and Day Care Costs Attributable to Participation in CWEP (§§ 238.01, 238.16, and 238.20 of Interim Regulations)

Under prior law, section 409(a)(1)(F) of the Act required that provision be made for transportation and other costs, not in excess of an amount established by the Secretary, which are reasonably necessary and directly related to participation in the CWEP program. Under regulations at section 238.16, States were required to reimburse participants for all necessary expenses which they incurred. However, Federal matching was only available for the first $25 per month of costs incurred by each participant.

Section 2627 of DRA amends section 409(a)(1)(F) to specify the terms under which the Federal government matches payments by States to AFDC recipients participating in CWEP for transportation and day care costs directly related to their CWEP participation, in cases where the State agency is unable to provide services directly to the participant. Reimbursement for transportation costs is limited to the amount it would cost to travel by the most appropriate means of transportation, as determined by the State. Day care costs are reimbursed in amounts that the State agency determines to be reasonable, necessary, and cost-effective, but cannot exceed the amount allowed as an earned income disregard for child care costs under section 402(a)(8)(A)(iii) of the Act. These changes are incorporated in § 238.16.

For expenses other than transportation and child care, the provisions of prior law are still in effect. Therefore, States are still required to provide full reimbursement for such other expenses. However, we have reduced the cap on Federal matching of these expenses from $25 to $10 because the two major expenses (transportation and day care) are now handled separately and experience has shown that other costs incurred are minimal.

In § 238.01, the language has been amended to clarify that States must furnish necessary transportation, day care and other related services or reimburse CWEP participants for those costs in accordance with § 238.16.

CWEP Work for Federal Agencies (§§ 238.18, 238.20 and 238.50 of Interim Regulations)

Under prior law, it was not clear whether Federal offices or agencies could serve as Community Work Experience Program (CWEP) sponsors in light of the Anti-Deficiency Act, 31 U.S.C. 1342, which prohibits Federal agencies from accepting voluntary services or services beyond those authorized by law. The services provided by CWEP participants to their sponsors could be viewed as voluntary since their sponsors do not pay for them. Also, since section 409 of the Social Security Act didn't specifically mention Federal sponsorship, it wasn't clear that section 409 contemplated placing CWEP participants with Federal agencies.

Section 2641 of DRA clarifies that Federal offices or agencies may act as sponsors for CWEP participants. The section also specifies that CWEP participants working for the Federal government will not be considered Federal employees, and that the State agency will be required to provide worker's compensation and tort claims protection to the same extent as available for other participants.

While not explicit in the statute, we believe that it is consistent with the intent of the statute to include the Federal courts and Congressional offices in the definition of Federal offices or agencies along with the Executive branch of government. Since Congress and the Federal courts are Federal entities, for purposes of this provision, they also may be viewed as Federal offices or agencies. This interpretation is also consistent with a General Accounting Office opinion in 1977 which concluded that the Anti-Deficiency Act applied to Congressional offices.

The regulations implementing this provision are at §§ 238.18, 238.20 and 238.50, and are effective upon publication.

Modification of Requirements for Work Supplementation Program (§§ 239.14, 239.24, 239.58, and 239.82 of Interim Regulations)

Under prior law, OBRA, States could operate Work Supplementation Programs (WSP), to provide jobs as an alternative to AFDC. Under WSP, AFDC funds could be spent on payments to employers who provided jobs to AFDC recipients. WSP jobs could be in the public sector, in private non-profit settings, or in proprietary day care centers. Acceptance of jobs was voluntary. The State could determine the categories of recipients eligible to participate in WSP and could establish different need standards for these categories. Also, WSP could be operated on a statewide basis or only in certain sections of the State. Individuals receiving AFDC grants were not excused from WIN or IV-A work requirements merely because the State elected such a program. The amount of Federal funds available for Federal financial participation (FFP) was limited based on the State's May 1981 AFDC plan and subsequent Federal law changes.

Section 2638 of DRA makes several significant modifications to the WSP. It expands the potential employment opportunities available under the program by authorizing placements with any employer. It excuses participants in WSP from WIN registration and participation and IV-A work program requirements while employed under the program.

In addition it provides States an option to extend the $30 and one-third and the $30 earned income disregards to participants for up to 9 months, notwithstanding the 4 and 12 month limitations which exist. It also makes some significant changes to the ceiling on Federal funding. It places a limit on Federal funding for payments made to individuals and employers under the program. This limit is calculated as the amount that would otherwise have been payable to the State if the family of each participant in the program was eligible to receive the maximum amount of aid payable to such a family with no income. This Federal funding would be available for a time period equal to the lesser of 9 months or the number of months employed under the program.

These changes in this section were effective upon the date of enactment (July 18, 1984). The regulations are effective on publication.

Earned Income Disregards for WSP Participants

Under DRA, States which decide to operate WSP retain the option whether or not to reduce or eliminate earned income disregards available to different categories of individuals. However, DRA amends section 414(b)(6) of the Act to give States a new option to exempt WSP participants from the limitations on receipt of the $30 and one-third and the $30 disregards at section 402(a)(8)(B)(ii)(II) during one or more of the first 9 months of employment in WSP. This change is incorporated in § 239.58.

Other Work Requirements

The statute at section 414(h) and regulations at § 239.24 still provide that individuals receiving grants shall not be excused from other work requirements by reason of the fact that States have chosen to operate a WSP. However, DRA amends section 414(h) to specify that individuals who are actually employed in such a program are excused from all work requirements of the AFDC program under parts A and C of title IV for so long as they remain employed in the program. This change is reflected in § 239.24. Under this regulation, participants in WSP would not have to register with WIN, or to meet WIN, Community Work Experience or Employment Search requirements.

Types of Jobs

We have revised § 239.14 to remove the restrictions on the types of employment which may be supported under this program. Prior to these changes, the only proprietary entity which could participate in the program was a provider of child or day care services.

Federal Funding

We have revised the regulations on the availability of Federal financial participation in the WSP (§ 239.82) to incorporate the changes provided in section 414(d) of the Act. First, the revised regulations clarify that the new ceiling applies only to payments to employers in the program and to individuals employed in the program. (The prior cap, based on expenditures under the May 1981 State plan, covered all WSP expenditures.) With the DRA changes, Federal funds for WSP payments to individuals and employers are based on the maximum amount the State could have paid if the family of each participant received the maximum amount of AFDC benefits payable to such a family with no income. Under these regulations States may use the amount which would have been payable for a month at the time of placement in the program rather than the amount payable during each month of participation (for up to 9 months). They do not have to recompute every month. Allowing States to freeze the amount available for payments to employers and individuals in WSP is consistent with the language at section 414(b)(2), which gives States very broad discretion in establishing the terms and conditions under which they operate WSP. Allowing States to freeze this amount also eases administration of the program. Section 414(c)(2) bases eligibility to participate in WSP upon the individual's eligibility at the time of placement. Especially in cases where WSP participants do not receive a residual grant, States may find it easier to freeze the amount available for a wage pool at the same time as they freeze eligibility to participate. Finally, it is consistent with the intent of Congress, as expressed in the conference committee report, that "a State would be permitted to develop its own method by which AFDC grants are converted to wages."

The regulations also specify that Federal matching is limited to expenditures actually made by the State on such payments to employers, WSP participants and their families. This policy is based upon the language in section 403 of the Act which provides Federal matching funds for State "expenditures." Also, expenditures or payments to employers are matchable only to the extent that they cover periods of actual employment in WSP by eligible individuals. Payments to employers for other individuals or for other periods of time are not considered payments to employers under the program.

Administrative costs are not included in the cap discussed above. The State may also claim matching for appropriate administrative costs under section 403 of the Act to WSP participants which are consistent with the proper and efficient administration of the plan. To meet this requirement, administrative costs for WSP claimed by the State must be reasonable, necessary and directly related to either the operation of a WSP or to employment under the WSP. Examples of acceptable administrative costs would be costs of developing contracts with WSP employers, costs of managing a wage pool, and costs of providing orientation to WSP participants. Also, as with other Title IV-A expenditures, claims for such costs must meet the requirements of Parts 74 and 95 of Title 45.

Additional Information

The following supplemental information addresses questions of interpretation which have arisen about provisions of WSP which were not directly affected by DRA. It is designed to assist States which are interested in implementing WSP, but want guidance in interpreting these provisions.

Section 414(a) provides that, under WSP, jobs may be made available "as an alternative to aid otherwise provided under the State plan approved under this part." Prior to the amendment which extends the $30 and one-third and $30 disregards to WSP participants, we had interpreted this language to mean that WSP participants could not receive aid and would therefore not be considered AFDC recipients. However, with this new amendment, the better view is to consider all WSP participants to be recipients of AFDC. WSP should be viewed as an alternative means of providing assistance under the AFDC program rather than as an alternative program to AFDC. This interpretation is strongly supported by two factors. First, payments for administrative costs made under the WSP program are matchable as AFDC administrative expenditures under section 403 of the Act. Also, the language in section 414(d) (regarding the cap on Federal matching for payments to individuals and employers in WSP) essentially equates the maximum amount payable under AFDC to the payments made to individuals and employers under WSP. Second, the new modifications clearly specify that earned income disregards are available to WSP participants. Under section 402(a)(8)(A), such disregards are only available to individuals who are "applying for or receiving AFDC." Unless otherwise provided, therefore, WSP participants should be treated as AFDC recipients. Their eligibility for residual AFDC grants should be based on the same considerations as other individuals receiving assistance, and they are subject to the same conditions for eligibility. For example, WSP participants must assign child support rights and cooperate in establishing paternity. However, in many situations, WSP provides or allows specific special treatment. Examples are the availability of the $30 and one-third and $30 disregards and the exemption from WIN and IV-A work program requirements. Also, States have discretion whether or not to apply the same need standards and earned income disregards to WSP participants as they do for other recipients. Finally, the statute at section 414(g) allows that any WSP participants "may be deemed eligible for AFDC for the purposes of establishing Medicaid eligibility." Since we have determined that all WSP participants should be viewed as AFDC recipients, we interpret this provision to mean that States have discretion to decide that WSP participants are not eligible for Medicaid, even though they are considered recipients for other purposes. One reason why States might wish to adopt such a policy would be to ensure that individuals accepting subsidized employment through WSP are not treated more favorably than those individuals accepting regular employment.

States have also asked for guidance in interpreting the existing requirements at section 414(a) of the Act and § 239.01 of the regulations that acceptance of WSP jobs must be voluntary. Specifically, they wanted to know if continuous participation in WSP following a decision to enter must also be voluntary. WSP rules do not require a completely voluntary program, they merely require that the decision to enter be voluntary. Consistent with our policies in CWEP and employment search, States may establish what the terms for participation by volunteers will be and what the penalties will be when voluntary participants fail to meet those terms, if any. States must inform eligible individuals of their rights and responsibilities under the program as well as the terms of participation.

In developing job opportunities with private sector employers, States should be careful to avoid entering into subsidies of job situations where the WSP participant is already an employee, since the goal of WSP is to create new job opportunities rather than to subsidize existing ones.

The asterisks used throughout the regulatory text represent material within a codified paragraph or section that is not being amended by these interim final regulations.

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family assistance, Grant programs-social programs.

45 CFR Part 233

Aid to families with dependent children, Aliens, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 234

Aid to families with dependent children, Family assistance, Grant programs-social programs, Health facilities, Public assistance, Public housing.

45 CFR Part 238

Aid to families with dependent children, Family assistance, Grant programs-social programs, manpower training programs.

45 CFR Part 239

Work supplementation program.

45 CFR Part 240

Employment search program.

These regulations are issued under the authority of Section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302.

[Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid)]

Dated: August 16, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: August 23, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. Section 205.50(a)(1) is amended by adding a new paragraph (v) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* * * *

(1) * * *

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

(A) The recipient is a fugitive felon (as defined by the State);

(B) The location or apprehension of such felon is within the law officer's official duties; and

(C) The request is made in the proper exercise of those duties.

* * * * *

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

2. Section 206.10 is amended by adding a new paragraph (a)(1)(vii) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(1) * * *

(vii) For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and

(B) Any blood-related or adoptive brother or sister.

* * * * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

3. Section 232.20 is amended by redesignating existing paragraphs (a) and (b) as (b) and (c), respectively; by revising newly redesignated paragraphs (b), introductory text, and (c); and adding new paragraphs (a) and (d), to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

(a) *Definition.* For purposes of this section, notwithstanding any other regulations in this chapter, support collections, monthly collections and support amounts for a month mean the assigned amount that the support enforcement agency collects from an absent parent or spouse on a monthly support obligation, less the disregarded sum under § 305.51(b)(1).

(b) The State plan must provide that in any case in which support payments are collected for a recipient of AFDC with respect to whom an assignment under § 232.11 is effective:

* * * * *

(c) From any amounts of assistance payments which are reimbursed by support collections made by the IV-D agency, the IV-A agency shall pay the Federal government its share of the collections made, after the incentive payments, if any, have been made pursuant to § 302.52 of Chapter III of this title.

(d) The State plan must provide that the IV-A agency, on behalf of the IV-D agency, will promptly pay to the family the sum disregarded under § 305.51(b)(1).

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

4. Section 233.20 is amended by revising paragraphs (a)(3)(i) (A) and (B), (a)(3)(ii)(D), (a)(3)(xiii), (a)(3)(xv), (a)(4)(ii) introductory text and (*j*), (a)(6)(iii), (a)(6)(ix), (a)(7)(ii), (a)(11)(i) introductory text, (a)(11)(i)(B), (a)(11)(i)(D), (a)(11)(ii)(B), (a)(13)(i)(A)(*1*), and (b)(2) and by adding new paragraphs (a)(3)(ii)(F), (a)(3)(xviii), (a)(3)(xix), (a)(3)(xx), (a)(11)(vi), (a)(13)(vi), and (a)(14) to read as follows:

§ 233.20 Need and Amount of Assistance.

(a) *Requirements for State Plans.* * * *

(3) *Income and resources.* (i) (A) *OAA, AB, APTD, AABD.* Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased; and (B) in AFDC—The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only:

(*1*) The home which is the usual residence of the assistance unit;

(*2*) One automobile, up to $1,500 of equity value or such lower limit as the State may specify in the State plan; (any excess equity value must be applied towards the general resource limit specified in the State plan);

(*3*) One burial plot (as defined in the State plan) for each member of the assistance unit;

(*4*) Bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of $1,500 of equity value or such lower limit as the State may specify in the State plan for each member of the assistance unit;

(*5*) Real property for a period of six months (or at the option of the State, nine months) which the family is making a good faith effort (as defined in the State plan) to sell subject to following provisions. The family must sign an agreement to dispose of the property and to repay the amount of aid received during such period that would not have been paid had the property been sold at the beginning of such period, but not to exceed the amount of the net proceeds of the sale. If the property has not been sold within the specified time period, or if eligibility stops for any other reason, the entire amount of aid paid during such period will be treated as an overpayment; and

(*6*) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value.

(ii) * * *

(D) Income after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(E) * * *

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment. A State may shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes; the lump sum income or a portion thereof becomes unavailable to the family for a reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(*1*) Identify which of the above situations are included;

(*2*) In the case of situations involving the increase in the need standard and changes in the amount that have been paid to the family, specify the types of circumstances which will be included;

(*3*) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons will be considered beyond the control of the family;

(*4*) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

* * * * *

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 185 percent of the State's need standard (including special needs) for a family of the same composition (including special needs), without application of the disregards in paragraph (a)(11)(i) (except to the extent provided for under paragraph (a)(3)(xix)) and (ii) of this section.

* * * * *

(xv) For AFDC, provide for the consideration of the income and resources of an alien's sponsor who is an individual as provided in § 233.51.

* * * * *

(xviii) For AFDC, in the case of a dependent child whose parent or legal guardian (as defined under State law) is a minor, i.e. under the age selected by the State pursuant to § 233.90(b) (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) or legal guardian(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent or legal guardian will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

(xix) In the case of AFDC, if the State chooses to disregard monthly earned income of dependent children who are full-time students in the determination of whether the family's income exceeds the limit under § 233.20(a)(3)(xiii) of this section, provide that the State plan shall specify what amounts will be disregarded and the length of time the disregard will be applicable (up to six months per calendar year) except that earned income derived from participation in a program under the JTPA may only be disregarded under this paragraph, paragraph (a)(3)(xvii) or a combination of both paragraphs for a total of 6 months per calendar year.

(xx) In the case of AFDC, if the State chooses to disregard in the determination of eligibility the monthly earned income of dependent children applying for AFDC who are full-time students, provided that the State plan shall:

(A) Specify the amount that will be disregarded, and

(B) Provide that the disregard shall only apply to the extent that the earned income is also disregarded pursuant to paragraph (a)(3)(xix) of this section.

(4) *Disregard of income in OAA, AFDC, AB, APTD, or AABD.* * * *

(ii) Provide that in determining eligibility for public assistance and the amount of the assistance payment, the following will be disregarded as income and resources: * * *

(*j*) For AFDC, the amount paid to the family by the IV-A agency under § 232.20(d) or, in a State that treats direct support payments as income under § 233.20(a)(3)(v)(B), the first $50 received by the assistance unit which represents a current monthly support obligation or a voluntary support payment: but in no case shall the total amount disregarded exceed $50.00 per month assistance unit;

* * * * *

(6) *Disregard of earned income; definition.* * * *

(iii) The term earned income encompasses income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. For AFDC, "earned income" means gross earned income prior to any deductions for taxes or for any other purposes, except as provided in paragraph (a)(6)(v). Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. For OAA, AB, APTD and AABD only, in considering income from farm operation, the option available for reporting under OASDI, namely the "cash receipts and disbursements" method, i.e., a record of actual gross, of expenses, and of net, is an individual determination and is acceptable also for these assistance programs.

* * * * *

(ix) In the case of an applicant or recipient of AFDC, "earned income" for any month shall include the amount of the earned income credit, including advance payments, which the individual receives in that month. In any case where the amount of the advance payments which a recipient received exceeds the amount of the credit due, the State agency shall adjust the benefits of an individual who is a current recipient to provide payment of the amount equal to the amount of AFDC benefits lost. Such adjustment shall be made with reasonable promptness. In any case where the amount of the advance payments a recipient received is less than the credit due, the State agency shall count as earned income in the month received any earned income credit payment received by the individual at the end of the taxable year.

(7) *Disregard of earned income; method.* * * *

(ii) In applying the disregard of income under paragraph (a)(11)(ii)(B) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit in which he or she is a member is eligible without the application of any AFDC provisions for the disregard in (a)(11)(ii)(B) by applying the unit's gross earnings (less the disregards in (a)(11)(i) and (a)(11)(iv)) and all other income to the State's standard of need. This preliminary step does not apply if the assistance unit received assistance in one of the four months prior to the month of application.

* * * * *

(11) *Disregard of income and resources applicable only to AFDC.* (i) For purposes of eligibility determination, the State must disregard from the monthly earned income, i.e., earned income as defined in § 233.20(a)(6)(iii), of each individual whose needs are included in the eligibility determination:

* * * * *

(B) The first $75.

* * * * *

(D) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11)(i), (a)(11)(v) and (a)(11)(vi) of this section of an individual who received assistance in one of the four prior months.

(ii) * * *

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i) (B) and (C) of this section, and $30 plus one-third of his earned income not already disregarded, under paragraphs (a)(11)(ii) and (a)(11)(v) of this section. However, the State may not provide the one-third portion of the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to his earned income and may not apply the $30 disregard after the eighth month following the fourth consecutive month (regardless of whether the $30 disregard was actually applied in those months) unless twelve consecutive months have passed during which he is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 and ⅓ disregard, nor does it count as one of the consecutive months.

* * * * *

(vi) At State option, disregard all or part of the monthly earned income of any dependent child applying for AFDC, if the child is a full-time student, and that income has been disregarded for purposes of paragraph (a)(3)(xiii) of this section.

* * * * *

(13) *Recovery of overpayments and correction of underpayments for AFDC.* * * *

(i) * * *

(A) * * *

(*1*) Any recovery of an overpayment to a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered through repayment (in part or in full) by the individual responsible for the overpayment or recovering the overpayment by reducing the amount of any aid payable to the assistance unit of which he or she is a member, or both.

* * * * *

(vi) The State may elect not to attempt recovery of an overpayment from an individual no longer receiving aid where the overpayment amount is less than $35. Where the overpayment amount owed by an individual no longer receiving aid is $35 or more, the State can determine when it is no longer cost-effective to continue overpayment recovery efforts, provided it has made reasonable efforts to recover the overpayment from the individual. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required. States must also maintain information regarding uncollected overpayments as provided under paragraph (a)(13)(v) of this section, to enable the State to recover those overpayments if the individual subsequently becomes a recipient. In cases involving fraud, States must make every effort to recover the overpayment, regardless of the amount.

(14) For Medicaid eligibility only, pursuant to section 402(a)(37) of the Act:

(i) An assistance unit will be deemed to be receiving AFDC, but only for the purposes of this paragraph, for a period of nine months after the last month the family actually received aid if the loss of AFDC eligibility was solely because a member of the unit was no longer eligible due to the 4 and 12 month time limitations to have the $30 and one-third or the $30 disregard in paragraph (a)(11)(ii)(B) applied to his or her earned income. At State option, an additional period of Medicaid coverage for up to six months may be provided when the assistance unit would be eligible during such additional period to receive AFDC if the $30 and one-third or the $30 disregards were applied to the assistance unit's earned income.

(ii) An assistance unit which ceased to receive AFDC prior to October 1, 1984 because a member of the unit was no longer eligible due to the 4 month time limitation for the $30 and one-third disregard is eligible to receive extended Medicaid coverage in accordance with paragraph (a)(14)(i) of this section beginning with the month of application under the following conditions:

(*A*) The unit applies for Medicaid no later than the end of the sixth month after the month in which final regulations implementing section 402(a)(37) of the Act are published;

(*B*) The unit demonstrates, to the satisfaction of the State that it is one that, if the $30 and one-third disregard had been applied, would have been continuously eligible for AFDC (without regard to section 402(a)(37) of the Act) from the time the unit ceased to receive AFDC to the time the unit applies for Medicaid; and

(*C*) The unit fully discloses in its application for Medicaid any health insurance coverage in effect for members of the assistance unit.

(iii) Medicaid coverage for an assistance unit which ceased to receive AFDC prior to October 1, 1984 will begin with the month the unit applies for Medicaid and meets the conditions set forth in paragraph (a)(14)(ii) of this section.

(b) * * *

(2) Federal participation is available within the maximums specified in the Federal law, when the payments do not exceed the amount determined to be needed under the statewide standard, and are made in accordance with the State method for determining the amount of the payments, as specified in § 233.31 for AFDC and in §§ 233.24 and 233.25 for OAA, AB, APTD, and AABD.

* * * * *

5. Section 233.31 is amended by revising paragraph (a) and by adding a new paragraph (b)(5) to read as follows:

§ 233.31 Budgeting methods for AFDC.

(a) *Requirements for State plans.* A State plan for AFDC shall specify that all factors of eligibility shall be determined prospectively and the amount of the assistance for any month for all assistance units required to file a monthly report for the month designated as the budget month under the State's retrospective budgeting procedures shall be determined using retrospective budgeting as provided in §§ 233.31–233.37 except as provided in § 233.34. The State plan shall specify whether the State uses prospective or retrospective budgeting to determine the amount of the assistance payments for recipients not required to report monthly. Budgeting methods for OAA, AB, APTD, and AABD are described in §§ 233.21–233.29.

(b) * * *

(5) "Recent work history" means the individual received earned income in any one of the two months prior to the payment month.

6. Section 233.35 is amended by revising the section title to read as follows:

§ 233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).

7. Section 233.36 is amended by revising introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 233.36 Monthly reporting (AFDC).

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require each assistance unit whose members have earned income or recent work history, each assistance unit which has income deemed to it from individuals living with the unit who have earned income or a recent work history and, at State option, other assistance units to submit a report form to the agency monthly on:

* * * * *

(b) A State may exempt categories of recipients otherwise required to report monthly from reporting each month with prior approval by the Secretary if the State can demonstrate that not requiring these cases to file monthly reports is cost effective. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver. A decision by the Secretary not to approve a request for an exemption is not appealable. The plan shall include criteria for assuring (1) that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility or amount of assistance and (2) that the administrative cost of requiring those categories to report monthly will be greater than the program savings which would accrue.

* * * * *

8. A new § 233.38 is added to read as follows:

§ 233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.

(a) States may request waivers of the requirements at §§ 233.31–233.37 to promote compatibility with monthly reporting and budgeting requirements of the Food Stamp Act of 1977 as amended.

(b) The Secretary will not approve requests for waivers unless the information documenting the need for the waiver shows that the waiver would simplify administration of both programs and would not result in a net cost to the Federal government. Approvals for waivers will be for periods up to one year, after which time the State may request an extension of the waiver.

(c) Any decision by the Secretary not to approve a request for a waiver is not appealable.

9. Section 233.51 is amended by revising the section title, the introductory text of paragraph (a), by revising paragraphs (a) and (b), by redesignating and revising paragraphs (e) and (f) as (g) and (h), and by adding new paragraphs (e) and (f) to read as follows:

§ 233.51 Eligibility of sponsored aliens.

Definition: Sponsor is any person who, or any public or private agency or organization that executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. Paragraphs (a) through (d) of this section apply only to aliens sponsored by individuals and who filed applications for the first time after September 30, 1981. Paragraphs (e) and (f) apply only to aliens sponsored by public or private agencies or organizations with respect to periods after October 1, 1984. A State plan under title IV–A of the Act shall provide that:

(a) For a period of three years following entry for permanent residence into the United States, a sponsored alien who is not exempt under paragraph (g) of this section, shall provide the State agency with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse (if applicable and if living with the sponsor) that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(b) The income and resources of a sponsor and the sponsor's spouse shall be deemed to be the unearned income and resources of an alien for three years following the alien's entry into the United States:

* * * * *

(e) For a period of three years following entry for permanent residence into the United States, any alien who is not exempt under paragraph (g) of this section and has been sponsored by a public or private agency or organization, shall be ineligible for assistance unless the State agency determines (in accordance with paragraph (f)) that the sponsor no longer exists or has become unable to meet the alien's needs.

(f) The State plan shall set forth the criteria the State agency will use in determining whether an agency or organization no longer exists or is unable to meet the alien's needs and the documentation the agency will require of the alien in making such determination. The sponsored alien shall provide the State agency with any information and documentation necessary for such determination and obtain any cooperation necessary from the sponsor.

(g) The provisions of this section shall not apply to any alien who is:

(1) Admitted as a conditional entrant refugee to the United States as a result of the application, of the provisions of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;

(2) Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;

(5) A Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); or

(6) The dependent child of the sponsor or sponsor's spouse.

(h) The Secretary shall make information necessary to make a determination under this section and supplied under agreement with the Secretary of State and the Attorney General, available upon request to a concerned State Agency.

10. Section 233.52 is amended by revising introductory text of section and introductory text of paragraph (c) to read as follows:

§ 233.52 Overpayment to aliens.

A State Plan under Title IV–A of the Social Security Act, shall provide that:

* * * * *

(c) An overpayment for which the alien or the sponsor and the alien are liable (as described in paragraphs (a) and (b) of this section) shall be repaid to the State or recovered in accordance with § 233.20(a)(13). If the agency is unable to recover the overpayment through this method, funds to reimburse the agency for the overpayment shall be withheld from future payments to which the alien or the alien and the individual sponsor are entitled under:

* * * * *

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Part 234 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

11. Section 234.60 is amended by revising paragraphs (a)(12) and (a)(13) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) *State plan requirements.* * * *

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, or CWEP, the State plan must provide that when protective or vendor payments are made pursuant to § 224.51(a)(1), § 238.22, § 240.22(a)(1), and § 240.22(b)(1) of this chapter, only paragraphs (a)(7), (9)(ii), and (11) (i) and (ii) of this section will be applicable. Under these circumstances, when protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, at least the greater part of the payment will be through this method. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative. Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, with return to money payment status when adults who refused training, employment, or participation in employment search without good cause either accept training, employment, or employment search or agree to do so. In the case of continuing refusal of the relative to participate, payments will be continued for the children in the home in accordance with this paragraph.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of § 232.11 or § 232.12 of this chapter by failing to assign rights to support or cooperate in determining paternity and securing support, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11 and 232.12 of this chapter. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

* * * * *

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

Part 238 of Chapter II, title 45, Code of Federal Regulations is amended as set forth below:

12. Section 238.01 is revised to read as follows:

§ 238.01 Scope of this part.

General. States may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies.

Subject to the conditions specified at § 238.16, States must provide necessary transportation, day care, and other related services or reimburse CWEP participants for costs directly related to participation in the program. Allowable costs to operate CWEP (see Subpart D) are matched by the Federal government at the AFDC administrative match level (50%).

13. Section 238.16 is revised to read as follows:

§ 238.16 Participant reimbursement.

The State plan shall specify the amount and types of participation costs the State will reimburse to recipients. Under this requirement:

(a) Participants may not be required to use their assistance or their income or resources to pay participation costs which are within the limits specified as allowable in paragraph (b).

(b) In cases where the State is unable to provide necessary services directly to participants or through a third party, States must provide reimbursement for necessary transportation and day care costs that are incurred by the recipient and directly related to participation in CWEP.

(1) Participants shall be reimbursed for transportation costs directly related to their participation in amounts equal to the cost of transportation by the most appropriate means (as determined by the State agency); and

(2) Participants shall be reimbursed for day care costs in such amounts as are determinedl by the State agency to be reasonable, necessary, and cost-effective. However, in no event shall the reimbursement exceed the amounts allowed to a recipient working the same number of hours under § 233.20(a)(11)(i)(C) as a disregard from earned income.

(c) States must provide reimbursement for costs other than transportation and day care that the State determines are necessary and directly related to participation in CWEP incurred by the participant. For FFP purposes, this amount shall not exceed $10 per month, per participant. (See Subpart D for FFP requirements.)

14. Section 238.18 is revised to read as follows:

§ 238.18 Participant protection.

States may provide worker's compensation or other comparable protection for their CWEP participants. The State agency shall provide such protection to those participants performing work for Federal offices or agencies, to the same extent as is provided to other CWEP participants in the State. The cost of this protection shall be considered an administrative expense and matched accordingly.

15. Section 238.20 is amended by adding a new paragraph (e) to read as follows:

§ 238.20 Participation requirements.

* * * * *

(e) CWEP participants who perform work in the public interest for a Federal office or agency shall not be considered for any purpose as Federal employees.

16. Section 238.50 is revised to read as follows:

§ 238.50 Sponsor requirements.

The State agency will designate a sponsor to operate each project or, at the agency's option, more than one project. Only public agencies, which includes Federal offices or agencies, and nonprofit organizations may be sponsors. For purposes of this provision Federal offices or agencies include agencies of the Executive branch of the Federal government, Congressional offices, and Federal courts.

17. Section 238.60 is revised to read as follows:

§ 238.60 Allowable administrative costs.

Federal financial participation is available for administrative costs of the AFDC program for Community Work Experience program expenditures, when CWEP has been approved as part of the State plan under Title IV-A of the Act. Such costs include amounts paid to participants which are:

(a) identified in the State plan; and

(b) within the limits specified under § 238.16.

PART 239—WORK SUPPLEMENTATION PROGRAM

Part 239 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

18. Section 239.14 is revised to read as follows:

§ 239.14 Types of jobs.

A State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary. The job positions which may be provided for recipients of aid must be of the following general types:

(a) A job position provided to an eligible individual by the State or local agency administering the State plan under this part;

(b) A job position provided to an eligible individual by any other employer for which all or part of the wages are paid by such State or local agency.

19. Section 239.24 is revised to read as follows:

§ 239.24 Participation in other work programs.

No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a Work Supplementation Program, from any requirement of title IV-A or title IV-C relating to work requirements. However, individuals actually employed in a Work Supplementation Program shall be excused from such requirements for so long as they remain employed in the program.

20. Section 239.58 is revised to read as follows:

§ 239.58 Earned income disregard.

(a) A State operating a Work Supplementation Program under this part may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the Work Supplementation Program.

(b) Notwithstanding the time limitations on the $30 and one-third and the $30 disregards in section 233.20(a)(11), a State may allow a participant employed under a Work Supplementation Program to receive the $30 and one-third or the $30 disregards for one or more of the first 9 months of such employment.

21. Section 239.82 is revised to read as follows:

§ 239.82 Availability of Federal financial participation.

Federal funds may be paid to a State under this part with respect to expenditures incurred in operating a Work Supplementation Program.

(a) The amount of payments to individuals and employers in the program subject to Federal matching as program expenditures shall not exceed:

(1) The monthly amount that would otherwise be payable under the State plan if the family of each individual employed in the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under subpart C of this part, and for each month of participation, may be based upon the maximum amount that would otherwise have been payable for a month at the time of placement in the program.)

(2) The amount expended on payments to employers and individuals employed under this program.

(b) The amount of administrative costs subject to Federal matching shall be those costs which are reasonable, necessary and directly related to the operation of a WSP or to employment under WSP.

PART 240—EMPLOYMENT SEARCH

Part 240 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

22. Section 240.22 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 240.22 Conditions of eligibility and sanctions.

(a) * * *

(1) If the individual is a caretaker relative receiving benefits (other than a principal earner), the State shall not take into account his needs in determining the assistance unit's need for assistance. The State shall provide assistance in the form of protective or vendor payments in accordance with § 234.60 of this chapter;

* * * * *

(b) * * *

(1) If the individual is a caretaker relative, the State shall not take into account his needs in determining the assistance unit's need for assistance. The State shall provide assistance in the form of protective or vendor payments in accordance with § 234.60 of this chapter;

* * * * *

[FR Doc. 84-23747 Filed 9-7-84; 8:45 am]

BILLING CODE 4190-11-M

Office of Child Support Enforcement

45 CFR Part 302

Child Support Enforcement Program; Disregard of Child Support Payments

AGENCY: Office of Child Support Enforcement (OCSE).

ACTION: Interim final rules.

SUMMARY: These interim rules implement the Deficit Reduction Act of 1984 (DRA) which amends the Social Security Act to require that the first $50 collected on a monthly support obligation be paid to the Aid to Families with Dependent Children (AFDC) family. This amount will not affect the family's AFDC eligibility or the amount of assistance to which they are entitled.

DATES: *Effective Date:* October 1, 1984. Comments due on or before November 9, 1984.

ADDRESSES: Address comments to Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Boulevard, Rockville, Maryland 20852. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's office at the address above.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, (301) 443-5350.

SUPPLEMENTARY INFORMATION:

Background

When title IV-D was originally enacted, section 457(a)(1) provided that 40 percent of the first $50 of support collected on the monthly support obligation would be paid to the family without affecting AFDC eligibility or payment. This provision expired September 30, 1976. There has been no such provision until the enactment of DRA; section 2640 establishes a similar provision which only changes the amount to be paid to the family.

Statutory Provision

Section 2640 of Pub. L. 98-369 amended section 457(b)(1) of the Act to require States to pay the first $50 of support collected on the monthly support obligation directly to the AFDC family. This statute also provides that this amount when paid to the AFDC family will not be counted in determining need and the amount of the assistance payment. The effect of this amendment is to provide AFDC families with $50 of disposable income that they would not have otherwise. The effective date of this amendment is October 1, 1984.

Regulatory Provisions

These regulations amend § 302.51(b)(1) and (2) to implement section 457(b)(1) of the Act as amended by Pub. L. 98-369. Before the statute expired, former regulations at § 302.51(b)(1) provided for the distribution of 40 percent of the first $50 of support collected on the monthly support obligation to the AFDC family. These regulations amend § 302.51(b)(1) to provide for the distribution of the first $50 of support collected on the monthly support obligation to the family. The former regulations remain the same except for the deletion of the words, "40 percent of" and the last sentence which states that the requirements of the previous paragraph (b)(1) were not applicable after September 30, 1976. As in the former regulations, these rules apply to collections of current support only, not to collections of arrearages and provide that if an AFDC family receives support from more than one absent parent, only the first $50 of the total amount collected for the family shall be paid to them.

Section 302.32(b) of current regulations requires the IV-D agency to inform the IV-A agency of the amount collected on the monthly support obligation as determined in § 302.51(a). We believe that IV-D agencies and IV-A agencies should consult on the best means of transmitting information on amounts collected and monthly support obligations so as to best facilitate the payment of amounts pursuant to § 302.51(b)(1) by the IV-A agencies to AFDC families.

Waiver of Proposed Rulemaking

Section 2640 of Pub. L. 98-369 is effective October 1, 1984. Since the legislation was not signed into law until July 18, 1984, it was not feasible to issue these regulations under a Notice of Proposed Rulemaking, as this would have delayed the issuance of final regulations until sometime after the effective date. Since the amendments made by Pub. L. 98-369 will require changes in State agency procedures, States must have some reasonable assurance that new Federal regulations under which these changes are to be implemented will not change in "mid-stream". The only way to assure States that significant changes in Federal policy will not be made after they have begun to implement the provisions of the new statute is to issue interim final regulations.

We believe that under 5 U.S.C. 553(b)(B) good cause exists for waiver of Notice of Proposed Rulemaking since issuance of proposed regulations would be impracticable and contrary to the public interest. While Notice of Proposed Rulemaking is being waived, we are interested in comments and advice regarding changes which should be made to these regulations. We will review any comments on these regulations which we receive within 60 days of the publication date of this rule and publish in the **Federal Register** response to comments and changes made to the regulation as a result of comments received.

Paperwork Reduction Act

This regulation contains no information collection requirements which require Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Lists of Subjects in 45 CFR Part 302

Child welfare, Grant programs/social programs.

Note.—The Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section I of the Executive Order. The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980.

(Sec. 1102 of the Social Security Act [42 U.S.C. 1302] and section 457(b)(1) of the Social Security Act [42 U.S.C. 657(b)(1)])

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: August 16, 1984.

Martha A. McSteen,

Acting Director, Office of Child Support Enforcement.

Approved: August 23, 1984.

Margaret M. Heckler,

Secretary.

PART 302—STATE PLAN REQUIREMENTS

Part 302 of Chapter III, Title 45, Code of Federal Regulations is amended as set forth below:

Section 302.51 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 302.51 Distribution of support collections.

* * * * *

(b) The amounts collected as support by the IV-D agency pursuant to the State plan for children and the parents of such children who are current recipients of aid under the State's title IV-A plan and for whom an assignment under § 232.11 of this title is effective shall be distributed as follows:

(1) Of any amount that is collected in a month which represents payment on the required support obligation for that month, the first $50 of such amount shall be paid to the family. This payment may not be used in determining the amount paid, if any, to the family in paragraph (b)(3) of this section. If the amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first $50 of the amount which represents the required support obligation for the month in which the support was collected. If amounts are collected for one family which represents support payments

from two or more absent parents, only the first $50 of the amount collected which represents the total required support obligation for the month in which the support was collected shall be paid to the family under this paragraph. No payment shall be made to a family under this paragraph for a month in which there is no child support collection.

(2) Any amount that is collected in a month which represents payment on the required support obligation for that month and is in excess of the amount paid to the family under paragraph (b)(1) of this section shall be retained by the State to reimburse, in whole or in part, the assistance payment for the month in which the support was collected or the next month. Of the amount retained by the State as reimbursement for that month's assistance payment, the IV-D agency shall determine the Federal Government's share of the amount so retained so the IV-A agency may reimburse the Federal Government to the extent of its participation in the financing of the assistance payment. From the Federal government's share, the State IV-D agency or political subdivision of the State pursuant to the title IV-D State plan shall deduct and pay the incentive payment, if any, prescribed in § 303.52.

* * * * *

[FR Doc. 84-23772 Filed 9-7-84; 8:45 am]

BILLING CODE 4190-11-M

federal register

Monday
September 10, 1984

Part IV

Environmental Protection Agency

40 CFR Part 271

Texas; Final Authorization of State Hazardous Waste Management Program; Tentative Determination; Public Hearing and Public Comment Period

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 271

[A-6-FRL-2668-2]

Texas; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Tentative Determination; Public Hearing and Public Comment Period.

SUMMARY: The State of Texas has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the State's application and has made the tentative determination that the State of Texas' hazardous waste program satisfies al of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant Final Authorization to the State to operate its program in lieu of the federal program in the State. The State of Texas' application for Final Authorization is available for public review and comment and a public hearing will be held to solicit comments on the state's program submittal and EPA's tentative decision.

DATES: A public hearing is scheduled for October 10, 1984 at 7:30 p.m. The State of Texas will participate in the public hearing held by EPA cn this subject. All comments on the State's application and EPA's tentative determination must be received by the close of the public hearing on October 10, 1984.

ADDRESSES: Copies of Texas' final authorization application are available during business hours at the following addresses for inspection and copying: Texas Department of Health, 1100 West 49th St, Austin, Texas 78756 and the Texas Department of Water Resources, 1700 North Congress, Austin, Texas 78711; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, D.C. 20460, Phone: (202) 382–5926; U.S. EPA Region VI Library, 1201 Elm St, Dallas, Texas 75270, Phone: (214) 767–7341. Written comments should be sent to H. J. Parr, Hazardous Materials Branch, Environmental Protection Agency, 1201 Elm St, Dallas, Texas 75270 phone (214) 767–2654. EPA will hold the public hearing on October 10, 1984 in Room 118 of the Stephen F. Austin Building, 1700 North Congress, Austin, Texas 78711.

FOR FURTHER INFORMATION CONTACT: H. J. Parr, Hazardous Materials Branch, U.S. EPA, 1201 Elm St, Dallas, Texas 75270, Phone: (214) 767–2645.

SUPPLEMENTARY INFORAMTION:

A Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA detemines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a two phased approach to iterim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II, Component A, covers general permitting procedures and technical standards for storage of hazardous waste in containers and tanks. Phase II, Component B, covers incinerator facilities, and Phase II, Component C, addresses facilities that dispose of hazardous waste in landfills, land treatment facilities, surface impoundments and waste piles. Bu statute, all interim authorizations expire on January 26, 1985. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

B. State of Texas

Texas received Phase I interim authorization on December 24, 1980, Phase II, Component A and B Interim Authorization on March 23, 1982, and Phase II, Component C, Interim Authorization on September 1, 1983. On June 22, 1984, Texas submitted a complete application for final authorization. Prior to its submission, Texas solicited public comment and held a public hearing on its draft application.

EPA has reviewed Texas' application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization to Texas. In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on the tentative decisions on October 10, 1984 at 7:30 p.m. in Room 118 of the Stephen F. Austin Building, 1700 North Congress, Austin, Texas. The public may also submit written comments on EPA's tentative determination and the State's submittal up until the close of the public hearing on October 10, 1984. Copies of Texas' application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Texas. EPA expects to make a final decision on whether or not to approve Texas' program by December 9, 1984 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: August 21, 1984.

Dick Whittington,

Regional Administrator.

[FR Doc. 84–23930 Filed 9–7–84; 11:21 am]

BILLING CODE 6560-50-M

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Monday, September 10, 1984

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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Federal Aviation Administration

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Federal Communications Commission

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Presidential Documents

Title 3—

The President

Memorandum of September 6, 1984

Copper Import Relief Determination

Memorandum for the United States Trade Representative

Pursuant to Section 202(b)(1) of the Trade Act of 1974 (P.L. 93–618), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC), transmitted to me on July 16 concerning the results of its investigation, on the merits of providing import relief to the copper industry.

In view of all relevant aspects of this case, I have determined that granting import relief is not consistent with our national economic interest. The imposition of import restrictions—either in the form of quotas, tariffs, or orderly marketing agreements—would create a differential between U.S. and world copper prices. Consequently, it would seriously disadvantage the copper-fabricating industry in the United States, which employed an estimated 106,000 workers in 1983, vis-a-vis foreign competitors. Such a result would, over time, shrink domestic demand for copper and add to the serious problems faced by U.S. copper producers.

Import relief would also adversely affect the export earnings of the foreign copper-producing countries, many of which are heavily indebted and highly dependent on copper exports. It would, therefore, complicate our efforts to maintain the stability of the international financial system and lessen the ability of foreign countries to import goods from the United States. Finally, there are encouraging signs that the economic recovery is beginning to have a favorable effect on world copper prices; stocks have fallen considerably this year and a significant price increase is expected in the near future. The denial of import relief on copper should act as a signal and as encouragement to our partners around the world to resist protectionist acts and, thus, will foster that recovery.

In order to help ease the difficult problems now faced by many workers in the U.S. copper industry, I have directed the Secretary of Labor to work with State and local officials to develop a plan of job retraining and relocation assistance for workers in affected industries. In addition, I have directed the Secretary of Commerce to actively monitor the domestic copper industry including inventories and the levels of copper imports.

Editorial note: The Office of the Federal Register was requested to print the memorandum in the **Federal Register** by the Executive Clerk at the White House, pursuant to Section 202(b)(1) of the Trade Act of 1974.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 6, 1984.

[FR Doc. 84-24066
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

Glass Enamel and Glass Enamel Frit Containing Small Amounts of Uranium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to delete an exemption from licensing requirements applicable to the possession and use of glass enamel and glass enamel frit containing small amounts of source material thereby preventing the future domestic manufacture or importation of these materials without a specific NRC license. These materials are used to produce brightly colored surfaces on consumer products such as cloisonne jewelry. The rule is intended to prevent unnecessary radiation exposure that may be received by artists who use these materials or by consumers who use the products containing these materials. On July 25, 1983, the NRC suspended the subject exemption until this rulemaking action was completed.

EFFECTIVE DATE: September 11, 1984.

ADDRESS: Copies of the Regulatory Analysis may be examined at the NRC Public Document Room, 1717 H Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7902.

SUPPLEMENTARY INFORMATION: On April 30, 1984, the Nuclear Regulatory Commission published in the **Federal Register** (49 FR 18308) a notice of proposed rulemaking that would amend 10 CFR Part 40 to delete an exemption from licensing requirements for the possession and use of source material contained in glass enamel and glass enamel frit. These materials are used to produce brightly colored surfaces on consumer products such as certain types of cloisonne jewelry. The proposed rule provided a period of 60 days for public comment. Six comments were received.

The exemption from licensing requirements for the receipt, possession, use, transfer or import of source material contained in glass enamel and glass enamel frit (not more than 10 percent by weight of source material) was adopted by the Atomic Energy Commission, the NRC's predecessor, on November 17, 1964. Following the identification, in late 1982 and early 1983, of some pieces of cloisonne jewelry being distributed throughout the United States that contained uranium, the NRC adopted a final rule (48 FR 33697, July 25, 1983) suspending this exemption. Because available information indicated that all the cloisonne jewelry found to contain uranium has been imported, the suspension has had the effect of prohibiting the further importation of this jewelry.

Six public comments were received on the proposed rule. Two comments were from the public, one from industry, two from State agencies, and the other from another Federal agency.

Five comments supported the proposed rule. Most commenters stated that the proposed rule, if adopted, will prevent unnecessary exposure to radiation. One commenter was pleased to note that the Commission has concurred with a report by the Federal Radiation Council (FRC) stating "There should not be any man-made radiation exposure without the expectation of benefit resulting from the exposure." Another commenter stated that he can find no reason to deliberately incorporate radioactive materials into items of marginal or questionable benefit to anyone even though the risk is shown to be miniscule.

One comment opposed the proposed rule. The commenter stated that: (1) there are no scientific, technical or regulatory justifications for eliminating the current exemption; (2) if indeed there were a real health risk consideration associated with manufactured goods from the material, the proposed amendment would be inadequate to address it, in that it does permit continued use of existing supplies and manufactured items; (3) furthermore, the NRC does not propose to remove the current exemption from licensing requirements for the possession, use, transfer or delivery of small quantities of source material or of goods containing various quantities of source material.

The NRC estimated that the radiological risk is expected to be 2 to 4 in a million for skin cancer incidence assuming an individual wearing the jewelry for about 520 hours per year. The NRC agrees that the use of the jewelry does not constitute an immediate or significant health hazard; thus the NRC did not prohibit the use, possession, or transfer of these materials or products that have already been distributed. However, the FRC guidelines approved by the President and the NRC's policy of making every reasonable effort to prevent unnecessary radiation exposures would provide sufficient justification to adopt the proposed rule even though the risk is small. On the comment concerning other exemptions currently provided in the regulations, each exemption was evaluated before it was adopted for exemption, except for certain long-standing uses of source material in products that antedate the atomic energy program. The NRC believes that the current regulations on consumer products are, in general, adequate to protect public health and safety. However, if any situations (such as the situation on cloisonne jewelry) arise that might cause NRC to reevaluate a specific exemption, the NRC will reevaluate that exemption. This will be done on a case-by-case basis.

One commenter asked: "Since the radiation consists mainly of beta particles, might not the metal mountings of the jewelry become radioactive, as well?" The metal mounting will not become radioactive from beta particles because beta particles cannot make other materials radioactive. The same commenter also suggested that the NRC issue a public statement to warn individuals of the presence of uranium in these enamels. The NRC did issue two public announcements on this subject: one on February 1, 1983 when the radioactive cloisonne jewelry was identified, and the other on July 25, 1983 when the exemption was suspended.

Since the final rule merely codifies the suspension announced in July 1983, the NRC does not believe any further public statement is needed beyond this final rule.

After careful consideration of the comments on the notice of proposed rulemaking, the NRC has adopted the rule in final form, which is the same as the proposed rule. The final rule, effective upon publication in the **Federal Register**, prohibits receipt, possession, use, transfer and importation of glass enamel or glass enamel frit containing uranium unless specifically authorized by NRC. However, the rule continues to allow persons to receive, use, or transfer, without a license, glass enamel and glass enamel frit, or products containing these materials, imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983, the date of the suspension of this exemption.

The NRC's jurisdiction extends only to the source material contained in glass enamel or glass enamel frit. Glass enamel or glass enamel frit which does not contain uranium may be imported, manufactured, and distributed in the normal course of business without a NRC license.

The effects of the rule on the industry and the public are expected to be very small. Because of the continuing exemption of the glass enamel or glass enamel frit containing uranium already manufactured or imported, and the fact that there are now no manufacturers of these materials in the U.S., the economic impact, including the impact on small entities would be negligible. The economic impact of this amendment for importers is also expected to be very small because nonradioactive alternatives to the use of uranium in producing the desired colors exist.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This amendment contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The NRC has prepared a regulatory analysis on this rule. The analysis examines the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7902. The Commission requested public comment on the draft regulatory analysis and no comment was received.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon substantial number of small entities. This final rule prohibits the future domestic manufacturing or importation of glass enamel or glass enamel frit containing uranium. Currently, no domestic manufacturer is producing glass enamel or glass enamel frit containing uranium. Furthermore, nonradioactive alternatives exist and are available to importers. As a result, the NRC believes that the economic impact of the rule on small entities or any other affected party will be negligible. The Commission requested public comment on the economic impact on small entities and one comment was received. The commenter stated that this rule would not affect any United States company since none currently make this product now.

List of Subjects in 10 CFR Part 40

Government contracts, hazardous materials-transportation, nuclear materials, penalty, reporting and recordkeeping requirements, source material, uranium.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the following amendment to 10 CFR Part 40 is published as a document subject to codification.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41 (b) and (c), 40.46, 50.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d) (3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

1. In § 40.13, footnote 1 to paragraph (c)(2)(iii) is removed, paragraph (c)(2)(iii) is revised, and paragraph (c)(2)(iv) is added to read as follows:

§ 40.13 Unimportant quantities of source material

* * * * *

(c) * * *

(2) * * *

(iii) glassware containing not more than 10 percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iv) glass enamel or glass enamel frit containing not more than 10 percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983.[1]

* * * * *

Dated at Bethesda, Maryland, this 23d day of August, 1984.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 84-24006 Filed 9-10-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ANE-7; Amdt. No. 39-4901]

Airworthiness Directives; Alexander Schleicher, Model ASW-19 and ASW-19B

AGENCY: Federal Aviation Administration (FAA), DOT.

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[1] On July 25, 1983, the exemption of glass enamel or glass enamel frit was suspended. The exemption was eliminated on September 11, 1984.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Alexander Schleicher Model ASW 19 and ASW 19B gliders by individual letters. The AD requires an airspeed limitation. The AD also provides for a modification which, when incorporated, will no longer require the airspeed limitation. The AD is needed to preclude the glider from entering into the airspeed range where tailplane flutter has been shown to occur.

EFFECTIVE DATE: September 13, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84–13–04 issued June 26, 1984, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1984.

Compliance Schedule—as prescribed in the body of the AD.

ADDRESS: The applicable technical note may be obtained from Alexander Schleicher Segelflugzeubau, D–6416 Poppenhausen, Federal Republic of Germany. A copy of the technical note is contained in the Rules Docket at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 or Cheryl McCabe, ANE–152, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7329.

SUPPLEMENTARY INFORMATION: On June 26, 1984, priority letter AD 84–13–04 was issued and made effective immediately as to all known U.S. owners and operators of Alexander Schleicher Model ASW 19 and ASW 19B gliders. The AD required a reduction in the airspeed limitation. The AD also provided for a modification which, when incorporated, will no longer require the airspeed limitation. AD action was necessary to prevent the gliders from entering into the airspeed range where tailplane flutter has been shown to occur.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued June 26, 1984, to all known U.S. owners and operators of certain Alexander Schleicher Model ASW 19 and ASW 19B gliders.

These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation of analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Alexander Schleicher: Applies to Model ASW 19 and ASW 19B gliders, serial numbers 19001 to 19402, except 19019 and 19210, certificated in all categories.

Compliance required prior to next flight unless already accomplished.

To prevent the occurrence of horizontal tailplane flutter, accomplish the following:

1. Apply a red radial line on the airspeed indicator at 108 Kts (200 km/h) to indicate the new Never Exceed Velocity (VNE).

2. Affix a placard stating "Maximum Speed 108 Kts (200 km/h)" placed next to the airspeed indicator.

3. Enter a notation in the glider flight manual in the airspeed limitations section to read as follows:

Max speed to 10,000' MSL	108 Kts. (200 km/h).
10,001 to 16,400' MSL	80 Kts. (150 km/h).
16,401 to 23,000' MSL	75 Kts. (140 km/h).
23,001 to 29,500' MSL	65 Kts. (120 km/h).

4. Compliance with this AD is not required when the elevator trailing edge contour change modification described in Alexander Scheicher Technical Note No. 17, dated March 27, 1984, is incorporated.

5. Alternate inspections, adjustment of the inspection interval, or other actions which provide an equivalent level of safety must be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 x2710.

The Alexander Schleicher Technical Note No. 17, dated March 27, 1984, identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Alexander Schleicher Segelflugzeubau, D–6414 Poppenhausen, Federal Republic of Germany. These documents may also be examined at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective September 13, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84–13–04, issued June 26, 1984, which contained this amendment.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Note.—The incorporation by reference provisions of this document were approved by the Director of the **Federal Register**, on September 13, 1984. The referenced technical notes are available at the **Federal Register**.

Issued in Burlington, Massachusetts, on August 10, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84–23866 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–27–AD; Amdt. 39–4910]

Airworthiness Directives; British Aerospace Model DH/HS/BH 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace Model DH/HS/BH 125 series airplanes which requires

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inspectio difications, or
replacem s necessary, of certain
landing g mponents. Cracks in the
attachm of the main landing gear
jack cyli ead and in components of
the land r emergency selector
shaft ass have been reported.
Also, ce ake control valves have
not been with new knife edges
during o . These conditions have
the pote leading to landing gear
or brake

DATE: Eff October 14, 1984.

ADDRESS pplicable service
informat y be obtained from
British A ce, Inc., Box 17414,
Dulles In onal Airport,
Washing C. 20041, or may also be
examine e address shown below.

FOR FURT **FORMATION CONTACT:**
Mr. Sulm iano, Foreign Aircraft
Certifica anch, ANM–150S, Seattle
Aircraft cation Office, FAA,
Northwes ntain Region, 9010 East
Marginal South, Seattle,
Washing lephone (206) 431–2979.
Mailing a : FAA, Northwest
Mountai n, 17900 Pacific Highway
South, C- Seattle, Washington
98168.

SUPPLEM **INFORMATION:** A
proposal nd Part 39 of the Federal
Aviation tions to include an
airworth rective requiring
inspectio difications, and
replacem certain landing gear
compone British Aerospace Model
DH/HS/B series airplanes was
published e **Federal Register** on
May 21, 1 9 FR 21346), and
interested ons have been afforded
an opport to participate in the
making of amendment. No
comments been received.

It is est d that 70 airplanes will
have to in rate modification No.
251714 [Se Bulletin 32–59–(1714)]; it
will take nhours per airplane to
accomplis work; and repair parts
are estima t $1,123 per airplane. It is
estimated 50 airplanes will have to
replace th e edges (Service Bulletin
32–193); i ake 5 manhours to
accompli work and repair parts
are estim $250 per airplane. It is
estimated 270 airplanes will require
inspection he attachment lugs
(Service B n 32–A197); it will take
one manho o accomplish the
inspection repair parts, if needed,
are estima at $2,700 per airplane. The
average la cost will be $40 per
manhour. B ed on these figures, the
total cost in act of this AD to U.S.
operators is timated to be $868,910.
For these r ons, this rule is not
considered be a major rule under the
criteria of utive Order 12291. Few, if
any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model DH/HS/BH 125 airplanes, series and serial numbers listed in the Planning Information section of the service bulletins referenced below, certificated in all categories. Compliance is required as indicated, unless previously accomplished.

To prevent landing gear and brake failure, within the next 90 days after the effective date of this AD, accomplish the following:

A. Incorporate British Aerospace modification No. 251714 to the landing gear emergency selector shaft assembly in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32–59–(1714), Revision 3, dated June 23, 1983.

B. Replace the knife edges of the brake control valves that have been overhauled by Dunlop Aviation Incorporated (California), with new parts in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32–193, Revision 1, dated July 26, 1983.

C. Inspect the main landing gear jacks for cracks, and replace the jacks if necessary, in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32–A197, dated August 29, 1983.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective October 14, 1984.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model DH/HS/BH 125 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 30, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23900 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–ANE–5; Amdt. 39–4900]

Airworthiness Directives; Garrett Turbine Engine Co., Engine Models ATF3–6–4C, –6A–3C, and –6A–4C

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Garrett Turbine Engine Company ATF3–6 and –6A series engines by individual telegrams. The AD requires an initial and interim inspections as well as eventual modification of certain exhaust deflector liner and seal assemblies to assure that they are not loose and have not made contact with the turbine rotor. The AD is needed to prevent detachment of the exhaust splitter labyrinth seal which could result in an uncontained engine failure.

DATES: Effective September 13, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD No. T84–11–51 issued May 25, 1984.

Compliance required as indicated in the body of this AD, unless already accomplished.

Incorporation by Reference—Approved by the Director of the **Federal Register** September 13, 1984.

ADDRESSES: The applicable service information and maintenance manuals may be obtained from Garrett Turbine Engine Company, P.O. Box 5217, Phoenix, Arizona 85010; telephone 602–231–1000.

A copy of these service documents are contained in the Rules Docket, New England Region, Office of the Regional Counsel, Attn: Docket No. 84–ANE–5, 12

New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Bill Moring, Aerospace Engineer, ANM-174W, Western Aircraft Certification Office, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone 213-535-6382.

SUPPLEMENTARY INFORMATION: On May 25, 1984, telegraphic AD No. T84-11-51 was issued and made effective immediately as to all known U.S. owners and operators of certain Garrett Turbine Engine Company Model ATF3-6-4C, -6A-3C, -6A-4C Engines. The AD requires an initial and interim inspections as well as eventual modification of certain exhaust deflector liner and seal assemblies to assure that they are not loose and have not made contact with the turbine rotor. AD action was necessary to prevent detachment of the exhaust splitter labyrinth seal which could result in an uncontained engine failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued May 25, 1984, to all known U.S. owners and operators of certain Garrett Turbine Engine Company Model ATF3-6-4C, -6A-3C, and -6A-4C Engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

Engines, Air Transporation, Aircraft, Aviation Safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Garrett Turbine Engine Company (GTEC, formerly AiResearch Manfacturing Company of Arizona): Applicable to all engine models ATF3-6-4C, -6A-3C and -6A-4C with exhaust deflector liner and seal assembly, Garrett Part Number (P/N) 3001313-11 thru -14 installed.

Compliance is required as indicated unless already accomplished.

To prevent the possibility of an uncontained engine failure, accomplish the following:

A. For engines with an exhaust deflector liner and seal assembly, Garrett P/N 3001313-11 through -14, with less than 295 operational hours since last installed in the engine, inspections required by paragraphs B, C, and E of this AD must be accomplished until incorporation of the exhaust deflector liner and seal assembly bolted flange system as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6092, dated May 25, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

B. Within the next five operational hours after the effective date of this AD, visually inspect the stationary seal/sixth stage low pressure turbine rotor assembly area of all ATF3-6-4C model engines for evidence of seal/rotor contact and/or seal looseness as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6089, dated April 16, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

C. Within the next five operational hours after the effective date of this AD, visually inspect the stationary seal/sixth stage low pressure turbine rotor assembly area of all ATF3-6A-3C and -6A-4C model engines for evidence of seal/rotor contact and/or seal looseness as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6090, dated April 16, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

D. Engines which successfully meet inspection requirements in paragraphs B. or C. above, may be continued in service under the provisions of paragraph E. of this AD.

E. Prior to the accumulation of an additional eight hours in service, after accomplishing the inpsection in paragraph B. or C. above, or within five operational hours after the effective date of this AD, whichever comes later, and at intervals not to exceed eight operational hours thereafter, until the exhaust deflector liner and seal assembly, P/N 3001313-11 through -14, has accumulated in excess of eighty hours operating time and service since last installed in the engine, visually inspect the stationary seal/sixth stage low pressure turbine rotor asssembly area of all affected engines for evidence of seal/rotor contact and/or seal looseness as specified in the following GTEC Light Maintenance Manual Revisions, or equivalent approved by the Manager, Western Aircraft Certification Office:

Engine model	Manual reference
ATF3-6-4C	Light Maintenance Manual Report No. 72-00-52, Revision 6, dated Nov. 15, 1983; Temporary Revision No. 72-90, 72-00-00, Inspection, dated May 25, 1984; Temporary Revision No. 72-88, 72-00-00, Trouble Shooting, dated Apr. 16, 1984; and Temporary Revision No. 72-89, 72-00-00, Trouble Shooting, dated Apr. 16, 1984.
ATF3-6A-3C	Light Maintenance Manual Report No. 72-03-32, Revision 3, dated Nov. 15, 1983; Temporary Revision No. 72-45, 72-00-00, Inspection, dated May 25, 1984; Temporary Revision No. 72-43, 72-00-00, Trouble Shooting, dated Apr. 16, 1984; and Temporary Revision No. 72-44, 72-00-00, Trouble Shooting, dated Apr. 16, 1984.
ATF3-6A-4C	Light Maintenance Manual Report No. 72-03-42, Revision 4, dated Nov. 15, 1983; Temporary Revision No. 72-46, 72-00-00, Inspection, dated May 25, 1984; Temporary Revision No. 72-44, 72-00-00, Trouble Shooting, dated Apr. 16, 1984; and Temporary Revision No. 72-45, 72-00-00, Trouble Shooting dated Apr. 15, 1984.

Note—Periodic measurements of the engine interstage turbine temperature (ITT) which are required to be recorded by an FAA approved revision to the limitations section of the flight manual of the airplane may be approved as an equivalent method to the interim inspections specified in paragraph E. of this AD.

F. Engines with unsuccessful inspection results found during the accomplishment of paragraphs B. C., or E., above, are to be disassembled as required to inspect, modify, or replace exhaust deflector liner and seal assembly and sixth stage low pressure turbine rotor assembly, prior to further flight.

G. Upon removal of the sixth stage low pressure turbine rotor assembly from an affected engine for any reason, incorporate the new exhaust deflector liner and seal assembly bolted flange system as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6092, dated May 25, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Western Aircraft Certification Office, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Garrett Turbine Engine Company, 111 South 34th St., P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 231-1000. These documents also may be examined at FAA Rules Docket 84-ANE-5, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective September 13, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD No. T84-11-51, issued May 25, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation only involves 28 aircraft and will cost approximately $40,000 per aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

Issued in Burlington, Massachusetts, on August 17, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-[illegible] Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-76-AD; Amdt. 39-4908]

Airworthiness Directive; Gates Learjet Model 23, 24, 25, 28, 29, 35, 36 and 55 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection of the flap sector mounting brackets for cracks, and inspection of the flap system for interference and proper rigging. This action is the result of several reports of the mounting brackets failing wherein two such failures resulted in an inflight asymmetric flap condition. The inspections and replacement of cracked brackets are necessary to preclude total bracket failures that may in turn affect the operation of the flaps and flap actuated switches.

DATE: Effective September 19, 1984.

Compliance schedule as prescribed in the body of the AD.

ADDRESSES: The following Gates Learjet Service Bulletins pertain to this matter: SB 23-331, SB 24/25-330A, SB 28/29-27-6A, SB 35/36-27-15A, and SB 55-27-4A, all dated June 20, 1984. These bulletins may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277; telephone (316) 946-2000.

FOR FURTHER INFORMATION CONTACT: Marvin D. Beene, Airframe Branch, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4408.

SUPPLEMENTARY INFORMATION: Two incidents have occurred on Learjet Model 55 airplanes in which both the upper and lower flap sector brackets in one wing failed in flight causing an asymmetric flap extension. In the first, the pilot selected flaps up and both flaps retracted fully, permitting the airplane to be landed flaps up. There was additional damage to a spoiler extension line fitting that resulted in loss of hydraulic fluid. In the second, the pilot was able to control a strong right roll, resulting from an estimated 20°/8° asymmetric flap, to effect the landing. Inspection on this airplane indicated failure of both brackets in the right wing and failure of the upper bracket in the left wing.

The primary causal factor in these bracket failures appears to be interference between the flap support brackets and the flap track. This interference, believed due to misrigging or assembly tolerance effects, creates excessive unsymmetric loads on the system that ultimately causes the bracket to fail. Besides impairing flap extension, bracket failures can cause the flap extension switch, located on the loose sector, to transmit a false gear warning horn signal or an incorrectly biased stall warning signal. This could cause the stall warning and stick pusher to operate at the wrong speed and cause the angle-of-attack system to give false indications. An asymmetric flap condition in combination with false indications could cause loss of an airplane.

Since the condition described herein is likely to exist or develop on other airplanes of the same type design, an AD is being issued, applicable to Gates Learjet Model 23, 24, 25, 28, 29, 35, 36 and 55 series airplanes. The AD requires a one-time inspection of the flap sector mounting brackets for cracks, the flap system for interference, and proper rigging in accordance with the instructions provided in Gates Learjet Service Bulletins SB 23-331, SB 24/25-330A, SB 28/29-27-6A, SB 35/36-27-15A, and SB 55-27-4A

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Gates Learjet: Applies to the following model/series airplanes certificated in all categories.

Model	Serial Numbers
23	003 through 099.
24	100 through 357.
25	003 through 369.
28	001 through 005.
29	001 through 004.
35	001 through 531.
36	001 through 063.
55	001 through 109.

Compliance required as indicated unless already accomplished. To prevent impairment of flap operation, an asymmetric flap condition, false gear warning horn signals, or incorrect biasing of the stall warning system due to flap sector bracket failures, accomplish the following:

A. Within the next 75 hours time in service, inspect the flap sector mounting brackets for cracks and flap system for interference and proper rigging in accordance with the instructions in Gates Learjet Corporation Service Bulletins SB 23-331, SB 24/25-330A, SB 28/29-27-6A, SB 35/36-27-15A, and SB 55-27-4A.

B. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4400.

This Amendment becomes effective September 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on August 30, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23601 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-19-AD; Amdt. 39-4909]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an existing airworthiness directive (AD) 80-06-04, applicable to certain McDonnell Douglas Model DC-9-10 through -40 and (Military) C-9 series airplanes, that requires inspection, and replacement if necessary, of the main landing gear (MLG) attach fittings. This amendment is prompted by additional reports of cracks found in the MLG fitting, the failure of which could result in significant damage to the MLG fitting support structure in the wing and possible collapse of the landing gear. This amendment requires inspections and treatment of the MLG attach fittings for stress corrosion cracks and also provides terminating action.

DATE: Effective October 14, 1984.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require repetitive inspections, and replacement if necessary, of the main landing gear (MLG) attach fittings on certain McDonnell Douglas Model DC-9 airplanes not previously modified in accordance with Option I of McDonnell Douglas Service Bulletin 57-125 was published in the **Federal Register** April 30, 1984 (49 FR 18311). The comment period for the proposal closed on June 15, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Two comments were received. One commenter felt that the compliance time for the final rule should be 18 months and not the September 1, 1985, date, as proposed in the NPRM. The FAA considers that the September 1, 1985, compliance date (18 months from the issuance of Service Bulletin 57-125, Revision 4) is appropriate. This is based upon the anticipated effective date of this rule, the manufacturer's recommendation, and a survey of operators, which indicate that this schedule can be reasonably accommodated within existing inspection intervals. The manufacturer, the other commenter, requested that Note (2), paragraph (c), of AD 80-06-04 be revised to correct the page number for View "G-G" of Service Bulletin 57-125, Revision 4. The FAA concurs and this change has been incorporated in this AD.

The estimated costs associated with this AD are as follows: 150 U.S. registered airplanes are affected which will require approximately 47 manhours per airplane to accomplish the required repetitive inspections. Average labor charge is $40 per manhour. Based on these figures, the inspection cost will be $282,000. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending AD 80-06-04, Amendment 39-3716 (45 FR 17944) dated March 8, 1980, as follows:

A. Revise applicability statement to read:

McDonnell Douglas: Applies to DC-9-10 through -40 and (Military) C-9 series aircraft, certificated in all categories, which correspond to the factory serial numbers listed in McDonnell Douglas DC-9 Service Bulletin 57-125, Revision 4, dated June 21, 1983 (hereinafter referred to as SB 57-125, R4), except those airplanes previously modified per Option I of McDonnell Douglas DC-9 Service Bulletin 57-125, original issue, or subsequent revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Throughout the AD, change "SB 57-125, Revision 2" to read "SB 57-125, R4".

C. Revise 3rd paragraph of AD to read as follows: "To detect cracks and prevent failure of the main landing gear attach fittings, made from 7079-T6 materials identified width basic part (P/Ns) 5911258, 5919289, and 5924841, accomplish the following:"

D. Amend NOTE (1) by deleting "and (c)." and adding "(c), and (d)."

E. Amend NOTE (2) by changing "page 26" to read "page 27."

F. Reidentify paragraphs (d) through (m) as (e) through (n). Add a new paragraph (d) to read as follows:

"(d) Prior to September 1, 1985, inspect the area of the MLG attach fitting under the lower inboard flange ends of the lower auxiliary spar cap end fitting (reference crack location 20) in accordance with SB 57-125, R4. Perform rework as outlined in SB 57-125, R4 (Option II; Phase I, II, or III), and repetitively inspect at intervals specifi;ed in SB 57-125 R4, page 15, until terminating action is acccomplished in accordance with paragraph (j), below."

G. Amend reidentified paragraphs (e) through (h) by replacing "(a), (b) or (c)" with "(a), (b), (c), or (d)."

H. Revise reidentified paragraph (j) to read as follows: "(j) Terminating Action: The repetitive requirements of this AD may be discontinued upon replacement of the existing 7079-T6 fitting with a new 7075-T73 fitting in accordance with Option I of SB 57-125, original issue, or subsequent revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

I. Change the FAA office listed in reidentified paragraphs (m) and (n) from "Chief, Aircraft Engineering Division, FAA Western Region" to "Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive, who have not already received these documents from the manufacturer, may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective October 14, 1984.

Secs. 313(a), 314(a), 601 through 610 and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be (1) major under Executive Order 12291 or (2) significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 and C-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on August 30, 1984.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 84-23888, Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 81-ANE-03; Amdt. 39-4817]

Airworthiness Directives; Pratt & Whitney Aircraft, Models JT8D-1, -1A, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17A, -17R, and -17AR TurboFan Engines; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In Docket No. 81-ANE-03, Amendment No. 39-4817, appearing in the **Federal Register** of February 29, 1984 at 49 FR 7361, an engine model number to which the Airworthiness Directive is applicable was erroneously omitted from the amendment. This correction amends the Airworthiness Directive to include the omitted engine model number "-7A."

FOR FURTHER INFORMATION CONTACT: Mr. Locke Easton, Transport Engine Section, ANE-141, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; Telephone (617) 273-7088.

Correction

In consideration of the foregoing, Amendment 39-4817 published in the **Federal Register** of February 29, 1984 at 49 FR 7361, is hereby amended by adding engine model "-7A" to the list of engine models to which the Airworthiness Directive applies.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.89)

Issued in Burlington, Massachusetts, on August 30, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-23904 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ASW-30; Amdt. 39-4904]

Airworthiness Directives; Westland Model 30 Series 100 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Westland Model 30 Series 100 helicopters by individual telegrams. The AD requires an initial and repetitive inspection of the main rotor blade both visually and by eddy current. The AD is needed to prevent failure of the spar which could result in rotor blade failure and subsequent loss of the helicopter.

DATES: Effective September 11, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T84-12-51 issued June 5, 1984, which contained this amendment.

Compliance required before next flight after the effective date of this AD (unless already accomplished).

ADDRESSES: The applicable service information may be obtained from Westland Helicopters Limited, Yeovil, Somerset, England BA20 2YB.

A copy of the service information is contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Samuel E. Brodie, Helicopter Policy and Procedures Staff, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 877-2577.

SUPPLEMENTARY INFORMATION: On June 5, 1984, telegraphic AD T84-12-51 was issued and made effective immediately as to all known U.S. owners and operators of certain Westland Model 30 Series 100 helicopters. The AD required an initial and repetitive inspection of the main rotor blade both visually and by eddy current. The AD action was necessary to prevent failure of the main rotor blade spar which could lead to rotor blade failure and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest and good cause existed to make the AD effective immediately by individual telegrams issued June 5, 1984, to all known U.S. owners and operators of certain Westland 30 Series 100 helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that the regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to the rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13 is amended by adding the following new airworthiness directive.

Westland Helicopters Limited: Applies to Westland Model 30 Series 100 helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent possible hazards in flight associated with cracking of the main rotor blades, accomplish the following:

(a) Before the next flight and thereafter before the first flight of each day, visually inspect the main rotor blades in accordance with Westland Service Bulletin W30-05-23 dated July 16, 1984, or FAA-approved equivalent.

(b) Within 15 hours after the effective date of this AD, unless already accomplished, conduct an eddy current inspection of the main rotor blades and thereafter at intervals not to exceed service since the last inspection in accordance with Westland Service Bulletin W30-05-23, or FAA-approved equivalent.

(c) Remove from service any main rotor blade where cracking is found and replace with a servicable part prior to next flight.

(d) An equivalent method of compliance with the AD may be used when approved by the Manager, Brussels Aircraft Certification Office, Federal Aviation Administration, c/o American Embassy, APO New York 09667.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

This amendment becomes effective September 11, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T84–12–51, issued June 5, 1984, which contained this amendment.

Issued in Fort Worth, Texas, on August 23, 1984.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84–23905 Filed 9–10–84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84–NM–12–AD; Amdt. 39–4912]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which requires inspection and repair, as necessary, of the front spar pressure bulkhead chord for cracks. This action is prompted by reports of numerous cracks on five airplanes. An undetected crack could result in loss of cabin pressurization and extensive structural damage.

DATE: Effective October 15, 1984.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Airframe Branch, ANM–120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM–120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and repair of cracks in the structure was published in the Federal Register on April 2, 1984 (49 FR 13055). The comment period for the proposal closed on May 21, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. A single comment was received from the Air Transport Association of America (ATA), on behalf of several operators, and requested that aircraft modified to earlier approved versions of Service Bulletin 747–53–2064 should fall into the category of operators who accomplish paragraph B. of the amendment. The FAA concurs, and paragraphs A. and B. of the AD have been revised accordingly.

It is estimated that 102 airplanes of U.S. operators will be affected by this AD, that it will take approximately 84 manhours per airplane to accomplish the required inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $343,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 747 series airplanes, certificated in all categories, listed in Boeing Service Bulletin 747–53–2064, Revision 4, or later FAA approved revisions.

To prevent failure of the front spar pressure bulkhead chord, accomplish the following unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747–53–2064, dated July 25, 1972, or later FAA approved revisions, within the next 1,000 landings after the effective date of this AD or prior to the accummulation of 10,000 landings, whichever occurs later, and thereafter at intervals not to exceed 7,000 landings, high frequency eddy current (HFEC) inspect the chord for cracks between stringers S–37 and S–39 at the chord radius, heel and flanges adjacent to the fastener holes identified for inspection in Service Bulletin 747–53–2064, Revision 4, or later FAA approved revisions. If cracks are found in the pressure bulkhead chord, accomplish the repair and modification in accordance with the service bulletin before further flight. Repair of cracks along the chord radius under five inches in length, or across a chord flange that have not severed the chord flange may be deferred 1,000 landings by stop drilling and reinspecting for crack progression every 200 landings using high frequency eddy current. If crack progression is found, repair in accordance with the service bulletin prior to further flight. Inspections are to continue after repair.

B. For airplanes that have been modified in accordance with Service Bulletin 747–53–2064, dated July 25, 1972, or later FAA approved revisions, within the next 1000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 10,000 landings, high frequency eddy current (HFEC) inspect for cracks in the front spar pressure bulkhead lower chord heel from stringers S–37 to S–39, and ultrasonically inspect for cracks in the fuselage skin originating at the indicated fastener holes beneath the forward drag splice fitting flanges, in accordance with the service bulletin. If any cracks are found, repair in accordance with Service Bulletin 747–53–2064, Revision 4, or later FAA approved revisions, before further flight. Inspections are to continue after repair.

C. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with Section 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This amendment becomes effective October 15, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 31, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23698 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-NM-73-AD; Amdt. 39-4911]

Airworthiness Directives; Fokker VFW B.V. F27 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Fokker VFW B.V. F27 airplanes that requires new airspeed limitation placards, Airplane Flight Manual (AFM) changes, and a maximum overspeed aural warning device modification. These changes are necessary to prevent potential overloading of the wing structure.

DATE: Effective October 15, 1984.

ADDRESS: The applicable service information may be obtained from Manager of Service Department, Fokker Aircraft, 2361 Jefferson Davis Highway, Arlington, Virginia 22202, or may also be examined at the Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Anderson, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Netherlands Civil Aviation Authority (RLD) has, in accordance with existing provisions of a bilateral agreement, notified the FAA that in order to avoid potential wing structural failure, the maximum operating speed (V_{MO}) on Fokker Model F27 airplanes must be reduced from 223 knots I.A.S. to 204 knots I.A.S. when the airplane's maximum certificated takeoff weight is above 41,000 pounds and the airplane is fitted with pylon tanks.

While the RLD requires only an airspeed reduction when weight is above 41,000 pounds, in accordance with Fokker Service Bulletin No. 11/3, the FAA has determined that this condition also requires changes to the airspeed indicators and overspeed aural warning devices.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring accomplishment of the previously mentioned modifications was published in the **Federal Register** on December 9, 1983 (48 FR 55135). The comment period closed on January 29, 1984. Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

No U.S. registered airplane will be affected by this AD at this time. Other airplanes of the specified series will be affected only if they are later entered on on U.S. Register or airplanes on the U.S. Register are fitted with pylon tanks. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Fokker VFW B.V.: Applies to all Model F27 Series airplanes, serial numbers 10102 to 10611, inclusive, that are equipped with pylon tanks and the maximum certificated takeoff weight is above 41,000 pounds, certificated in all categories. Compliance is required as indicated, unless already accomplished. To prevent wing structural failure, accomplish one of the following (A, B, or C):

A. Within the next 100 hours time in service after the effective date of this airworthiness directive (AD):

1. Remove the existing airspeed limitation placards and install new placards in accordance with paragraph 2.A and 2.B of the Accomplishment Instructions of Fokker Service Bulletin No. 11/3 dated October 1, 1981.

2. Incorporate changes to the FAA approved Airplane Flight Manual in accordance with paragraphs 1.C and 3 of Fokker Service Bulletin No. 11/3 dated October 1, 1981.

3. Modify the airspeed indicators and overspeed aural warning system to provide a switchable maximum operating speed (V_{MO}) that allows selecting a (V_{MO}) of 204 knots I.A.S. for operation when the maximum takeoff weight exceeds 41,000 pounds, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within the next 100 hours time in service after the effective date of this AD, modify as follows:

1. Revise the redline marking of the airspeed indicator or replace the airspeed indicator to reflect the new maximum airspeed limitation of 204 knots I.A.S.

2. Post a placard on the left and right hand instrument panel to read as follows: "MAXIMUM AIRSPEED, 204 KIAS."

3. Adjust the overspeed aural warning device or install a new device so as to comply with the new maximum airspeed limitation; i.e., 204 knots I.A.S., within the tolerances specified by FAR 25.1303(c)(1).

C. Apply for and obtain a supplement to the Airplane Flight Manual which will provide for an operating limitation of 41,000 pounds takeoff weight. Applications may be made to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

This amendment becomes effective October 15, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, F27 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 31, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23986 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-11-AD; Amdt. 39-4905]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which requires inspection and repair, as necessary, of the body station 1241 bulkhead splice strap and forging for cracks. Numerous cracks have been reported. An undetected crack may result in cracking of the station 1241 bulkhead frame forging, which could result in loss of cabin pressure.

EFFECTIVE DATE: October 8, 1984.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and subsequent repair of cracks in the structure was published in the **Federal Register** on April 2, 1984 (49 FR 13057). The comment period for the proposal closed on May 21, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. No adverse comments were received.

It is estimated that 142 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the inspection and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $568,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 747 series airplanes, certificated in all categories listed in Boeing Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions. To prevent failure of the body station (B.S.) 1241 bulkhead splice strap, accomplish the following unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747-53-2219, dated February 19, 1982, or later FAA approved revisions, perform the following inspections in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions:

(1) Perform an eddy current inspection for cracks in the B.S. 1241 bulkhead frame splice strap and other structure common to the aft large bolt hole in accordance with the Service Bulletin instructions within the next 1000 landings (1500 landings for Model 747-100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747-100SR), whichever occurs later.

(2) If no cracks are found at the aft large bolt hole common to the longeron fitting identified in the Service Bulletin, eddy current inspect thereafter at intervals not to exceed 7000 landings (10,500 landings for Model 747-100SR).

(3) If a crack is found in the bulkhead splice strap at the aft large bolt hole, perform an eddy current inspection for cracks in the bulkhead frame splice strap and frame forging and other structure common to the adjacent forward hole in accordance with the Service Bulletin instructions.

(4) If no cracks are found in the forward hole, or if cracks are found only in the bulkhead splice strap, reinspect with an eddy current procedure the bulkhead splice strap and frame forging for cracks at the forward hole at intervals not to exceed 3000 landings (4500 landings for Model 747-100SR).

(5) If cracks are found at the forward hole in the bulkhead frame forging, repair in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions, prior to next flight. Inspections are to continue after repairs.

B. For airplanes that have been modified in accordance with Service Bulletin 747-53-2219, dated February 19, 1982, or later FAA approved revisions, within the next 1000 landings (1500 landings for Model 747-100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747-100SR) after the modification, whichever occurs later, and thereafter at intervals not to exceed 10,000 landings (15,000 landings for Model 747-100SR), perform the following inspections in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions:

(1) Perform an ultrasonic inspection for bulkhead frame forging corner cracks at the forward fastener hole.

(2) Perform an ultrasonic inspection for bulkhead splice strap edge cracks extending through the aft hole.

(3) Perform a close visual inspection for fastener hole cracks in the external splice plate and the forward and aft internal splice straps.

If cracks are found, repair in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revision, prior to further flight.

Inspections are to continue after repair.

C. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This Amendment becomes effective October 8, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 24, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23866 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–13–AD; Amdt. 39–4906]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which requires inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. This action is prompted by reports from five operators that twelve cracks were found on nine airplanes. This action is necessary because an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage.

EFFECTIVE DATE: October 8, 1984.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM–120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and subsequent repair of cracks in the structure was published in the **Federal Register** on April 2, 1984 (49 FR 13054). The comment period for the proposal closed on May 21, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. Due consideration has been given to all comments received. Comments were received from one operator and the Air Transport Association of America (ATA).

The ATA requested, on behalf of its operators, that aircraft modified to earlier approved versions of Boeing Service Bulletin 747–53–2112 should fall into the category of operators who accomplish paragraph B. of the amendment. The FAA concurs, and paragraphs A. and B. of the AD have been revised accordingly.

The other commenter suggested that the Service Bulletin require stop drilling of the skin cracks. The FAA does not agree. In this case, stop drilling the skin crack would be ineffective and impractical because of the stack-up of skin, doubler, and chord.

It is estimated that 94 airplanes of U.S. operators will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required inspection and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $45,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 747 series airplanes, certificated in all categories listed in Boeing Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions. To prevent failure of the body skin and the canted pressure bulkhead structure accomplish the following, unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747–53–2112, Revision 1, or later FAA approved revisions:

(1) Within the next 250 landings for Group I airplanes and 500 landings for Group II airplanes after the effective date of this airworthiness directive (AD), or prior to the accumulation of 4,000 landings, whichever occurs later; and thereafter at intervals not to exceed 1000 landings for Group I airplanes and 2000 landings for Group II airplanes, visually inspect the nose gear wheel well lower forward corners exterior and interior area for cracks in accordance with the Service Bulletin 747–53–2112, Revision 3, or later FAA approved revision. Additionally, perform a high frequency eddy current (HFEC) inspection of the chord and doubler for cracks at the two forward hinge fairing attach bolt locations identified for inspection in Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions.

(2) For Group I airplanes, if a crack is visible only from outside the airplane and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of skin fasteners, repair may be deferred for 500 landings with inspection at 100 landing intervals. If the crack exceeds the above limits, repair in accordance with Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions, prior to next pressurized flight. Inspections are to continue after repair.

(3) If cracks are found on Group II airplanes, repair in accordance with Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions, prior to next pressurized flight. Inspections are to continue after repair.

B. For airplanes that have been modified in accordance with Service Bulletin 747–53–2112, Revision 1, or later FAA approved revisions, inspect the nose gear wheel well lower forward corners at the times and using the methods specified in Table I, below. Reinspect at intervals not to exceed those specified in Table I. If cracks are found, repair prior to further flight in accordance with Service Bulletin 747–53–2112, Revision 3, or later FAA approved revisions. Inspections are to continue after repair.

C. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

TABLE I—NOSE GEAR WHEEL WELL LOWER FORWARD CORNER INSPECTION FOR CRACKS (APPLICABLE ONLY FOR AIRPLANES MODIFIED PER BOEING SERVICE BULLETIN 747-53-2112 REVISION 1, OR LATEST REVISION)

Airplane and inspection	Inspection threshold landings	Repeat inspection interval landings
GROUP I		
Option I. External Inspection		
Perform an external visual inspection of the structure adjacent to the left and right forward corners of the nose gear wheel well forward bulkhead in accordance with Service Bulletin 747-53-2112, Rev. 3.	Within 200 landings from effective date of AD, or 1,000 landings after modification, whichever is later.	100
Option II. Internal Inspection		
Perform an internal visual inspection of the nose gear wheel well lower forward corner structure in accordance with Service Bulletin 747-53-2112, Rev. 3.	Within 500 landings from effective date of AD, or 1,000 landings after modification, whichever is later.	1,500
GROUP II		
Perform a low frequency eddy current inspection in the underskin doubler at the nose gear wheel well lower forward corners in accordance with Service Bulletin 747-53-212, Rev. 3.	Within 500 landings from effective date of AD, or 6,000 landings after modification, whichever is later.	2,000

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This Amendment becomes effective October 8, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 24, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23060 Filed 9–10–84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84–ASO–17]

Alteration of Control Zone, Ponce, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Ponce, Puerto Rico, control zone by revising the geographical coordinates of Mercedita Airport and realigning and reducing the size of the control zone arrival extension. The coordinates of the airport are improperly listed and this action will correct the deficiency. The instrument approach procedure serving the airport has been revised which requires the realignment and reduction in the size of the arrival extension.

DATES: Effective 0901 GMT, November 22, 1984. Comments must be received on or before October 10, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves revising the coordinates of Mercedita Airport as well as realigning and reducing the size of a control zone arrival extension, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Ponce control zone so that the coordinates of Mercedita Airport are properly listed and to reduce the size of the arrival extension so that only that airspace required for aeronautical activities is designated as controlled airspace. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984. Under the circumstances presented, the FAA concludes that there is a need to alter the control zone by revising geographical coordinates and realigning and reducing the size of the arrival extension. The changes are so minor and nonsubstantive, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Ponce, Puerto Rico, control zone under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, November 22, 1984, as follows:

Ponce, PR—[Revised]

Within a 5-mile radius of Mercedita Airport (Lat. 18°00′35″ N., Long. 66°33′41″ W.); within 3 miles each side of Ponce VOR/DME 120° radial, extending from the 5-mile radius zone to 8.5 miles east of the VOR/DME. This control zone is effective during the specific days and times established in advance by a Notice of Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

Acting Director, Southern Region.

[FR Doc. 84-23971 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-14]

Alteration of Transition Area, Columbia, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Columbia, South Carolina, transition area to accommodate Instrument Flight Rule (IFR) operations at Owens Field Airport. This action lowers the base of the additional controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the Columbia Airport Surveillance Radar (ASR), has been developed to serve the airport and the additional controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 GMT, October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Walter H. Wulff, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Friday, July 6, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by increasing the size of the Columbia, South Carolina, transition area. This action will provide additional controlled airspace for aircraft executing a new instrument approach procedure to Owens Field Airport (49 FR 27772). The operating status of the airport is changed from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. All comments received were favorable. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Columbia, South Carolina, transition area to accommodate IFR aeronautical operations in the vicinity of Owens Field Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Columbia, South Carolina, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, October 25, 1984, as follows:

Columbia, SC—[Amended]

By adding the following words to the end of the present text: ". . .; within a 6.5-mile radius of Owens Field Airport (Lat 33°58′28″ N., Long. 80°59′55″ W.). . .".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

Acting Director, Southern Region.

[FR Doc. 84-23970 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ANM-15]

Revise Transition Area; Fort Collins, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment revised the description of the Fort Collins, Colorado, Transition Area. The current description makes reference to the Fort Collins-Loveland NDB which has been renamed. This action corrects the description by deleting reference to the NDB and uses latitude and longitude as boundary description.

EFFECTIVE DATE: September 11, 1984.

FOR FURTHER INFORMATION CONTACT: Art Corwin, Airspace and Procedures Specialist, ANM-532, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2532.

SUPPLEMENTARY INFORMATION: The Fort Collins, Colorado, transition area was established to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions or instrument weather conditions. The description of the transition area will require new points of reference for accuracy. The geographical area and associated airspace encompassed by the transition area will remain unchanged.

Since this action involves only editorial changes in the description of the transition area and makes no substantive change, notice and public procedure herein are unnecessary and good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Transition areas, Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 GMT, when published, as follows:

Fort Collins, CO [Revised].

That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 40°41'30"N, longitude 105°13'35"W; to lat. 40°43'31"N, long. 104°52'03"W; to lat. 40°12'01"N, long. 104°47'05"W; to lat. 40°10'00"N, long. 105°08'27"W; thence to point of beginning.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)) (Sec. 1169 of the Federal Aviation Regulations and (14 CFR 11.69)))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory elevation as the anticipated impact is so minimal; and for the same reasons, (4) it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Seattle, Washington, September 10, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23893 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Salinomycin and Bacitracin Methylene Disalicylate

Correction

In FR Doc. 84-20656, beginning on page 31280 in the issue of Monday, August 6, 1984, make the following corrections:

On page 31280, column three, in the fourth complete paragraph, line three, insert "347" after the word "Stat" and in the same paragraph, last line, the first word should read "amended".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS PAUL F. FOSTER, et al.

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS PAUL F. FOSTER (DD 964), USS KINKAID (DD 965), USS HEWITT (DD 966), and USS OLDENDORF (DD 972) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notices that the Secretary of the Navy has certified that USS PAUL F. FOSTER (DD 964), USS KINKAID (DD 965), USS HEWITT (DD 966), and USS OLDENDORF (DD 972) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special functions as Navy ships. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ships' abilities to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

Table Five of section 706.2 is amended by adding the following Navy ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

TABLE 5

Vessel	Number	Forward masthead light not required; height above hull. Annex I, sec. 2 (a) (i) (ii), (c), (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3 (a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
*	*	*	*	*	*	*			
USS PAUL F. FOSTER.	DD 964						X	X	46.4

TABLE 5—Continued

Vessel	Number	Forward masthead light not required; height above hull. Annex I, sec. 2 (a) (i) (ii), (c), (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3 (a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS KINKAID	DD 965						X	X	46.4
USS HEWITT	DD 966						X	X	46.4
USS OLDENDORF	DD 972						X	X	46.4

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: August 9, 1984.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 84-23623 Filed 9-10-84; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS WHIDBEY ISLAND

AGENCY: Department of the Navy, DOD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS WHIDBEY ISLAND (LSD 41) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a dock landing ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 9, 1984.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS WHIDBEY ISLAND (LSD 41) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

§ 706.2 [Amended]

Table Five of section 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

TABLE 5

Vessel	Number	Forward masthead light not required; height above hull. Annex I, sec. 2 (a)(i), (ii), (c), (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
		•	•	•	•	•	•	•	
USS WHIDBEY ISLAND.	LSD 41							X	65.0

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: August 9, 1984.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 84-23622 Filed 9-10-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 84-13]

Drawbridge Operation Regulations; Navigable Waterways of the United States, Oregon and Washington

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes editorial changes and corrects errors and omissions in sections of Final Rule (CGD 82-025) dated March 29, 1984, which affect bridges in the States of Oregon and Washington.

EFFECTIVE DATE: This rule becomes effective on September 11, 1984.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98714. The comments will be available for inspection and copying in room 3504 at this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: On April 24, 1984, the Coast Guard published a Notice of Final Rulemaking in the **Federal Register** (49 FR 17487) revising 33 CFR Part 117—Drawbridge Operation Regulations. Errors and omissions in the operating regulations for certain bridges in Oregon and Washington make this rule necessary. A notice of proposed rulemaking was not published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been unnecessary since the regulations only correct errors and omissions found in the final rule published April 24, 1984. Therefore, the Coast Guard has determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days after publication.

Although these regulations are published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulations are both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. Based upon comments received, the regulations may be changed.

Description of Changes

Changes and corrections are enumerated as follows:

§ 117.887. Changes name to correctly identify the waterway.

§ 117.891. Replaced inadvertently deleted portion of text in first sentence.

§ 117.893. Deleted erroneously added portion of text restricting on call operation to May 1 through October.

§ 117.897. Replaced inadvertently deleted portion of text establishing advance notice for the Burnside and Morrison bridges.

§ 117.1033. Deleted and reserved section (section duplicated as § 117.869).

§ 117.1041. Corrected closed periods for Spokane Street and First Avenue South bridges to conform with final rule of 5 March 1984. Corrected waterway mile for Burlington Northern railroad bridge.

§ 117.1045. Deleted inadvertently added specific sound signals (signals are covered in § 117.15). Replaced inadvertently deleted section covering operation during unusual or emergency periods.

§ 117.1049. Corrected name of bridge and closed periods to conform with final rule of 27 December 1983. Deleted indvertently added specific sound signals (signals are covered in § 117.15).

§ 117.1051. Deleted inadvertently added specific sound signals (signals are covered in § 117.15).

§ 117.1054. Added specific section for Naselle River.

§ 117.1059. Deleted inadvertently added specific sound signals for Burlington Northern railroad bridge across Snohomish River, mile 3.5, at Everett, and SR2 highway bridge across Snohomish River, mile 6.9, at Everett (signals are covered in § 117.15). Corrected inadvertently changed sound signals for Burlington Northern railroad bridge across Steamboat Slough near Marysville.

§ 117.1061. Corrected waterway name to "City Waterway" instead of "Tacoma Harbor." Corrected contact point for emergency openings.

§ 117.1063. Deleted Naselle River (see § 117.1054). Corrected operation of the Burlington Northern railroad bridge across the South Fork Willapa River and the Washington State highway bridge across the North Fork Willapa River to conform with final rules of 22 February 1983 and 6 January 1984 respectively.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Aubrey W. Bogle, project attorney.

Economic Assessment and Certification

These regulations have no appreciable economic consequences. They merely correct errors and omissions in a previously published final rule. Consequently, these regulations are not a major rule under Executive Order 12291. Furthermore, they have been found to be nonsignificant under the guidelines set out in Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). Accordingly, they do not warrant preparation of an economic evaluation. In accordance with section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 605(b), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The heading for § 117.887 is revised to read as follows:

§ 117.887 Oregon Slough. (North Portland Harbor)

* * * * *

2. Section 117.891 is revised to read as follows:

§ 117.891 Skipanon River.

The draw of the Burlington Northern railroad bridge, mile 1.9, at Warrenton, shall be maintained in the fully open position, except for the crossing of trains or other railroad equipment, or when maintenance to the drawspan is being performed. When the draw is closed and visibility at the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is reopened, the drawtender shall sound one prolonged blast followed by one short blast.

3. In § 117.893, paragraph (a) is revised to read as follows:

§ 117.893 Umpqua River.

(a) The draw of the US 101 bridge, mile 11.1, at Reedsport, shall open on signal from 8 a.m. to 4 p.m. Monday through Friday. At all other times, the draw shall open on signal if at least four hours notice is given.

* * * * *

4. In § 117.897, the introductory text of (a)(1), (b) and (c) are revised as follows, and paragraphs (d) and (e) are removed.

§ 117.897 Willamette River.

(a) * * *

(1) The draws shall open on signal except that from 7 a.m. to 8:30 a.m. and 4 p.m. to 5:30 p.m. except Saturdays, Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or other days observed instead of these days under State law, the draws need not be opened for the passage of vessels. On weekdays, Monday through Friday, from 8 a.m. to 4:30 p.m., at least one hour notice shall be given for openings of the Burnside Bridge and Morrison Bridge. At all other times, at least two hours notice shall be given. Notice shall be given by marine radio, telephone, or other means to the drawtender at the Broadway Bridge for vessels bound upstream and to the drawtender at the Hawthorne Bridge for vessels bound downstream. During Rose Festival Week or when the water elevation reaches and remains above +12 feet, the draws will open on signal without advance notice, except during the normal closed periods identified above. Opening signals are as follows:

* * * * *

(b) The draws of the Southern Pacific railroad bridges, mile 84.3, at Salem; mile 119.6, at Albany; and mile 164.3, near Harrisburg, need not open for the passage of vessels. However the draws shall be returned to operable condition within six months after notification by the District Commander to do so.

(c) The draw of the Oregon State highway bridge, mile 132.1, at Corvallis, shall open on signal if at least seven days notice is given. However the draw need not be opened on Saturdays, Sundays, and Federal holidays.

§ 117.1033 [Removed and reserved]

5. Section 117.1033 is removed and reserved.

6. In § 117.1041, paragraphs (a) and (b)(1)s are revised to read as follows:

§ 117.1041 Duwamish Waterway.

* * * * *

(a) The draws shall open on signal, except that the draws of the Southwest Spokane Street bridge, mile 0.3, and the First Avenue South bridge, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and 3:45 p.m. to 6:45 p.m. Monday through Friday, except Federal holidays.

(b) * * *

(1) Burlington Northern railroad bridge, mile 0.4, and Southwest Spokane Street bridge, mile 0.3, one prolonged blast followed quickly by three short blasts.

* * * * *

7. In § 117.1045, paragraph (c) is revised as follows, and paragraphs (d) and (e) are removed.

§ 117.1045 Hood Canal.

* * * * *

(c) During unusual or emergency periods, the authorized representative of the owner of or agency controlling the bridge shall open the draw on a demand basis for specified periods of time, normally not exceeding 48 hours, when requested by the Department of the Navy. While on a demand basis, a drawtender shall be in attendance on the bridge with radio communication equipment in operation.

8. In § 117.1049, the introductory text and paragraphs (c) and (d) are revised as follows, and paragraph (e) is removed.

§ 117.1049 Lake Washington.

The draw of the Evergreen Point Floating Bridge between Seattle and Bellevue shall operate as follows:

* * * * *

(c) The draw need not be opened from 6 a.m. to 10 a.m. and 2 p.m. to 7 p.m. Monday through Friday, except Federal holidays for any vessel or other watercraft of less than 2,000 gross tons, unless the vessel has in tow a vessel of 2,000 gross tons or over or a vessel with a piledriver that is unable to pass under the fixed spans.

(d) All non-self-propelled vessels, crafts, and rafts navigating this waterway for which opening of any draw is necessary shall be towed by a suitable self-propelled vessel while passing the draw.

9. In § 117.1051, paragraphs (c) and (d) are revised to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(c) The draw of the Burlington Northern railroad bridge, mile 0.1, shall open on signal.

(d) The draws of the Ballard (15th Avenue) bridge, mile 1.1, Fremont Avenue Bridge, mile 2.6, University bridge, mile 4.3, and Montlake bridge, mile 5.2, shall open on signal. However the draws need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified. The draws shall open on signal from 11 p.m. to 7 a.m. if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue bridge.

10. Section 117.1054 is added to read as follows:

§ 117.1054 Naselle River.

The draw of the Washington State highway bridge across the Naselle River, mile 2.5 near Naselle, shall open on signal from 8 a.m. to 5 p.m. Monday through Friday, except Federal holidays if at least two hours notice is given, and at all other times if at least eight hours notice is given.

11. In § 17.1059, paragraphs (c) through (h) are revised as follows, and paragraph (i) is removed.

§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough.

* * * * *

(c) The draws of the twin SR99 highway bridges across the Snohomish River, mile 3.6, at Everett, shall open on signal if at least one hour notice is given. On weekdays Monday through Friday, notice for openings shall be given by marine radio, telephone, or other means to the drawtender at the SR99 highway bridge across Ebey Slough at Marysville, and at all other times to the drawtender at the SR99 bridges across the Snohomish River at Everett. The opening signal is three prolonged blasts followed by one short blast. One signal opens both draws. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

(d) The draw of the SR2 highway bridge across the Snohomish River, mile 6.9, at Everett, shall open on signal if at least four hours notice is given. During freshets, a drawtender shall be in constant attendance and the draw shall open on signal when so ordered by the District Commander.

(e) The draws of the Washington State highway bridge across the Snohomish River, mile 15.0, and the Burlington Northern railroad bridge across the Snohomish River, mile 15.5, both at Snohomish, need not be opened for the passage of vessels.

(f) The draw of the Burlington Northern railroad bridge across

Steamboat Slough, mile 1.0, near Marysville, shall open on signal if at least four hours notice is given. The opening signal is one prolonged blast followed by one short blast and one prolonged blast.

(g) The draws of the twin SR99 highway bridges across Steamboat Slough, miles 1.1 and 1.2 near Marysville, shall open on signal if at least one hour notice is given. On weekdays, Monday through Friday, notice for openings shall be given by marine radio, telephone, or other means to the drawtender at the SR99 highway bridge across Ebey Slough, at Marysville, and at all other times to the drawtender at the SR99 bridges across the Snohomish River at Everett. The opening signal is two prolonged blasts followed by one short blast. One signal opens both draws. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

(h) The draws of the SR99 highway bridge across Ebey Slough, mile 1.6, at Marysville, shall open on signal if at least one hours notice is given. On weekdays, Monday through Friday, notice for openings shall be given by marine radio, telephone, or other to the drawtender at this bridge, and at all other times to the drawtender at the SR99 bridges across the Snohomish River at Everett. The opening signal is three prolonged blasts followed by one short blast. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

12. In § 117.1061, paragraphs (b) through (d) are revised to read as follows:

§ 117.1061 Tacoma Harbor.

* * * * *

(b) The draw of the South 11th Street bridge across City Waterway, mile 0.6, at Tacoma, shall open on signal if at least two hours notice is given. However the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel 1,000 gross tons or over, or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.

(c) The draw of the East 11th Street bridge across Blair Waterway, at Tacoma, shall open on signal if at least two hours notice is given. However the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel 1,000 gross tons or over, or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.

(d) The draws of the East 11th Street bridge across Hylebos Waterway, at Tacoma, shall open on signal if at least two hours notice is given. However the draws need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel 1,000 gross tons or over, or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.

13. Section 117.1063 is revised to read as follows:

§ 117.1063 Willapa River.

(a) The draw of the US101 highway bridge across the North Fork Willapa River, mile 7.8, at Raymond need not be opened for the passage of vessels. However the draw shall be returned to an operable condition within six months after notification by the District Commander to do so.

(b) The draw of the Burlington Northern railroad bridge across the South Fork Willapa River, mile 0.3, at Raymond, shall open on signal if at least 24 hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: August 24, 1984.

H.W. Parker,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 84-23848 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Recovery of Overpayments

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: Educational institutions may be held liable under certain circumstances for overpayments of educational assistance allowance made to veterans and eligible persons. If an educational institution pays an amount for which it has been held liable and the money later is collected from veterans and eligible persons, the money is refunded to the educational institution. This regulation will better inform educational institutions of the effect the VA's (Veterans Administration's) recent policy of charging interest on veterans' education debts will have upon any refunds which may be due educational institutions.

EFFECTIVE DATE: August 20, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave., NW, Washington, D.C. 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On pages 3883 and 3884 of the **Federal Register** of January 31, 1984, there was published a notice of intent to amend Part 21 in order to state the effect charging interest on veterans' education debts will have upon any refunds which may be due educational institutions.

Interested people were given 30 days in which to submit comments, suggestions or objections. The VA received four letters containing several suggestions. Two were written by educational organizations; one was from an educational institution; one was from a community college district.

One writer requested that a standard cost formula be developed and published for the various items for which the VA may retain funds to offset costs. She also suggested that the method of computing interest costs be published. The VA has not adopted these suggestions, because this already has been done.

A discussion of charging interest on debts owed the VA, including education debts, appears in § 1.919. The items which the VA may use in computing administrative costs appear in § 1.919(g). Computation of interest costs by the VA appears in § 1.919(c). It is not necessary to repeat this information in other parts of the Code of Federal Regulations.

One person stated that she did not believe that the regulation is consistent with 38 U.S.C. 1785. She stated that any overpayment which a veteran repays should be refunded to the school if the school has been held liable for the overpayment and has made payment to the VA. Another writer stated that any interest collected should be given to the school.

The VA is certain that this regulation complies with the law. Section 1785, Title 38, United States Code, when taken in context, indicates that educational institutions should be repaid when overpayments are collected from veterans and eligible persons. Educational institutions are never held liable for the interest on a veteran's or eligible person's debt. They may be held liable only for the principal. Hence, they should be paid only when the veteran or eligible person begins to repay the principal.

The Code of Federal Regulations (4 CFR 102.12) requires Federal agencies to apply the money recovered from debtors first toward interest and administrative costs and then toward the principal. Consequently, the first monies collected from veterans and eligible persons should not be refunded to educational institutions, but must be applied toward interest and administrative costs.

One writer discussed issues which, while related to school liability, are not part of the regulation being amended. The agency will consider these issues separately.

The writer also suggested that educational institutions be compensated for the administrative costs they incur while waiting to be paid by the VA. The VA is unable to accept this suggestion.

A provision of law (38 U.S.C. 3115) authorizes the charging of administrative costs of collection on debts owed the United States. There is no provision of law which would allow the VA to make payments to educational institutions to cover their administrative costs while waiting to be repaid. Legislation would have to be enacted before the suggestion could be adopted.

One writer stated that this regulation would shift the emphasis on payment of debts from the veteran to the educational institution. He thought that this was unfair.

This regulatory change is not intended to shift the emphasis on repayment of debts. The VA intends to continue to pursue vigorously the collection of debts from veterans and eligible people.

One writer objected to the longstanding provision that provides for repayment to an educational institution when the total amount collected on principal from veterans at the educational institution exceeds the amount paid by the educational institution as a result of being held liable for the overpayments. Instead the writer suggested that as soon as any part of the principal of an overpayment is recovered from a veteran, that money should be refunded to the school.

If all educational institutions paid all the money for which they are originally held liable, this suggestion would have some merit. However, this is not the case, so this suggestion was not adopted.

For example, an educational institution, which has been held liable for overpayments, often will compromise with the Federal government and pay a smaller amount than the amount for which it originally was held liable. This compromise is not viewed as the sum of a series of small compromises on each of the debts for which the educational institution has been held liable. It is a compromise of the entire amount owed by the educational institution. Consequently, when veterans begin to repay their debts, it is impossible to determine if the repaid amount is part of the payment made by the educational institution or if it is part of the educational institution's liability which was eliminated through compromise.

In order to provide an efficient means of dealing with compromises, the VA has decided not to change this provision.

The VA has determined that this regulation is not a major rule as that term is defined by Executive Order 12291, entitled "Federal Regulation." The annual effect on the economy will be less than $100 million. The regulation will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the VA does not expect, based on past experience, that the economic impact of this regulation will be significant. Since March 8, 1979, the total amount of money refunded to schools under 38 CFR 21.4009 has been $51,232. If court costs, marshal fees and administrative costs had been collected, and if interest had been charged on debts of veterans and eligible persons during this entire period, the additional costs would have amounted to a few thousand dollars.

Furthermore, a majority of the educational institutions which have been found liable for overpayments of educational assistance are not small entities within the meaning of the RFA. This regulation, therefore, should have a total economic impact on all small entities of a few thousand dollars. The VA does not believe that this is significant. Consequently, the regulation will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 20, 1984.

By direction of the Administrator.

Dated: August 20, 1984.

Everett Alvarez, Jr.,
Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is amending Part 21 as set forth below:

In § 21.4009, paragraph (a)(4) is revised as follows:

§ 21.4009 Overpayments—waiver or recovery.

(a) *General.* * * *

(4) If the Veterans Administration recovers any part of the overpayment from the educational institution, it may reimburse the educational institution, if the Veterans Administration subsequently collects the overpayment from a veteran or eligible person. The reimbursement—

(i) Will be made when the total amount collected from the educational institution and from the veterans and eligible persons (less any amount applied toward marshal fees, court costs, administrative cost of collection and interest) exceeds the total amount for which the educational institution is liable, and

(ii) Will be equal to the excess. (38 U.S.C. 1785)

* * * * *

[FR Doc. 84-23957 Filed 9-10-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OAR-FRL-2622-2]

Disapproval and Promulgation of State Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this notice, EPA is finalizing the following actions on the Medford, Oregon, Carbon Monoxide State Implementation Plan (SIP) revision submitted to EPA on October 20, 1982: (1) Disapproving the inspection and maintenance (I/M) program and the attainment demonstration portion of the Plan; (2) approving the SIP elements pertaining to basic transportation needs, conformity and control measures other than I/M; (3) effective immediately upon publication of this notice, imposing a prohibition on construction or modification of major stationary sources of carbon monoxide (CO) located within or impacting the nonattainment area; and (4) revising the Medford CO nonattainment area boundary. EPA has already initiated the Federal Highway funding limitation process in accordance with the terms of the April 10, 1980 joint EPA/Department of Transportation (DOT) policy statement (45 FR 24692). Today's SIP disapproval may also result in limitations on Clean Air Act (CAA) program grant funds and Clean Water Act sewage treatment plant funding for the Jackson County area. An additional notice on these issues is located in another section of today's **Federal Register**. It provides an opportunity for a public hearing and comment prior to actually imposing any of these funding limitations.

EFFECTIVE DATE: September 11, 1984.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-82-8), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, Yeon Building, 522 S.W. Fifth, Portland, Oregon 97204

Copy of the State's submittal may be examined at:

The Office of the Federal Register, 1100 L Street, NW. Room 8401, Washington, D.C.

Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-7369, FTS 399-7369.

SUPPLEMENTARY INFORMATION:

I. Plan Review

A. Disapproval Elements of the SIP

On February 3, 1983 [48 FR 5131] EPA proposed to approve the Medford Carbon Monoxide (CO) attainment plan which was submitted to EPA on October 20, 1982. That plan called for the implementation of an I/M program in Jackson County in order to attain the standards prior to December 31, 1987. The proposal specified, however, that EPA would approve the I/M plan "only upon the passage of legal authority for the I/M [plan]. If the State fails to provide the needed authority EPA will disapprove the plan." (48 FR 5133). Since that time, the responsible Jackson County officials have abandoned the original schedules and commitments for implementation of an I/M program in Medford. Accordingly, on March 14, 1984 (48 FR 9582) EPA reversed its original proposal and reproposed its intent to disapprove the plan. On March 27, 1984 the residents in Jackson County, Oregon, voted against the establishment of an I/M program. The current CO attainment plan does not provide for attainment of the standards prior to December 31, 1987. According to the requirements of section 172(b)(10) of the Clean Air Act, EPA has no choice but to finalize disapproval of the I/M and attainment demonstration portions of the Medford CO Attainment SIP. Additional background information on today's rulemaking can be found in the March 14, 1984, **Federal Register** [49 FR 9582].

B. Approvable Elements of the SIP

EPA is approving the remaining control strategies, excluding the I/M portion, which were contained in the original SIP. The following is a list of control measures that still contain adequate commitments for implementation or continued implementation:

1. Improved public transit;
2. Parking control;
3. Traffic flow improvements;
4. Bicycle program.

The commitment to these measures ensures that the requirements for basic transportation needs are satisfied and that improved mobility will be emphasized. Therefore, EPA is approving the element pertaining to basic transportation needs as well as the four elements listed above.

Conformity of federal actions with the plan will be determined in accordance with the procedures set forth in the SIP. Existing State rules already ensure that federal actions will be reviewed for conformity with the SIP in a manner consistent with the criteria contained in the April 1, 1980 **Federal Register** (45 FR 21590). Procedures for specifically evaluating Department of Transportation plans, programs and projects are included in the SIP produced by Jackson County. As indicated in the CO plan, regardless of the initial conformity finding of the transportation plans and program, individual projects still must comply with all provisions and requirements of the SIP. Specifically this includes the provisions that a project must not cause new or exacerbate existing violations of the standards. Therefore, EPA is also approving the element of the plan regarding conformity of federal actions with the SIP.

II. CO Boundary Redesignation

On March 3, 1978 the entire Medford-Ashland Air Quality Maintenance Area was designated nonattainment for CO. However, actual CO nonattainment problems are confined to the Medford CBD. Thus, Jackson County has reduced the nonattainment area boundaries to include that area of Medford described as follows:

Beginning at the intersection of Crater Lake Highway (Highway 62) south of Biddle Road to the intersection of Fourth Street, west on Fourth Street to Riverside Avenue (Highway 99), south on Riverside Avenue to Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to Central Avenue, north on Central Avenue to Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east on Crater Lake Highway to the point of beginning.

This boundary revision was contained in the October 20, 1982 Medford, Oregon, CO State Implementation Plan, and was proposed for approval by EPA in the February 3, 1983 **Federal Register** (148 FR 51321). EPA is now taking final action to approve this revision.

III. Response to Comments

Due to an error in printing the proposed rulemaking notice, the original

30-day comment period was extended an extra 15 days to April 30, 1984. No comments were received.

IV. Construction Moratorium

Pursuant to the requirements in section 110(a)(2)(I) of the Clean Air Act, a construction moratorium is now in effect in the newly identified nonattainment area described in the previous section (Section V). This moratorium impacts all major stationary sources of carbon monoxide that would be constructed or modified within the nonattainment area. This restriction will be removed when any of the following conditions are met: (a) implementation of an I/M program under approvable regulations begins in Medford, (b) the area is formally redesignated by EPA to attainment for CO or (c) EPA approves a plan that demonstrates attainment by the end of 1987.

V. Final Action

With this notice EPA is: (1) Disapproving the Medford I/M program and the attainment demonstration portions of the plan; (2) approving the SIP elements contained in the Medford CO attainment plan, which was submitted to EPA on October 20, 1982 pertaining to basic transportation needs, conformity, and control measures other than I/M; (3) imposing, as required by section 110(a)(2)(I) of the Clean Air Act, a prohibition on construction or modification of major stationary sources of CO effective immediately; and (4) revising the CO nonattainment boundary for Medford.

This disapproval may also result in restriction of Federal funding pursuant to sections 176(a) and 316(b) of the Clean Air Act. Under section 176(a), EPA and the Department of Transportation must limit funds for air quality planning and transportation projects in any area where transportation control measures are necessary for attainment and where EPA finds that a state has not submitted, or made reasonable efforts to submit, a plan meeting the requirements of section 172.

Section 316(b) states that the Administrator may restrict grants for sewage treatment works if the State does not have in effect or is not carrying out an approved SIP which accommodates the direct and indirect air quality impacts from the new sewage treatment capacity.

EPA is publishing a separate notice of proposed rulemaking in another section of today's **Federal Register** which provides an opportunity for a public hearing and comment before imposing any of these funding restrictions. For more information on the scope of the restrictions and the procedures EPA will follow, see 45 FR 24692 (April 10, 1980) (air quality planning and transportation grants) and 45 FR 53382 (August 11, 1980) (sewage treatment grants).

Under Executive Order 12291, EPA must assess the economic impact of any proposed or final rule. Under the Regulatory Flexibility Act, 45 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities.

Upon publication of this notice to disapprove the Medford CO SIP, a moratorium on the construction and modification of major stationary sources of carbon monoxide will go into effect in the Medford nonattainment area. EPA has previously tried to quantify the impacts of Clean Air Act rules on the construction and modification of sources, but has been unable to do so because it cannot obtain reliable information on future plans for business growth. Consequently, EPA is making no quantified assessment of the potential impacts of this proposed action.

Additionally, even if this action were to have some impact, the Agency could not modify its action. Under the Clean Air Act the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that a plan for a nonattainment area fails to meet the requirements of Part D of the Act. Further information, including a statement on the Regulatory Flexibility Act, can be found in the General Preamble to proposed rulemakings published on February 3, 1983 (48 FR 5022).

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response are available for public inspection at the above listed address.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1984. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Secs. 107(d) and 171 through 173. Clean Air Act, as amended (42 U.S.C. 7407(d), 7410(a), 7501 through 7503, and 7601(a)))

Dated: September 4, 1984.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of the Federal Register in May 1984.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart MM—Oregon

1. In § 52.1970 paragraph (c)(66) is added as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(66) On October 20, 1982, the State of Oregon Department of Environmental Quality submitted a revision to the Medford, Oregon, Carbon Monoxide Attainment Plan which is contained in the Oregon State Implementation Plan. This plan builds upon the plan submitted in June 1979.

2. Section 52.1983 is added as follows:

§ 52.1983 Medford Carbon Monoxide Attainment Plan.

(a) *Part D—Approval.* All elements contained in the October 20, 1982 State Implementation Plan revision, except those pertaining to I/M and the attainment demonstration, are hereby approved, including but not limited to the following:

(1) Basic transportation needs,

(2) Conformity procedures, and

(3) Control measures other than inspection and maintenance of vehicles including improved public transit, parking controls traffic flow improvements, and a bicycle program.

(b) *Part D—Disapproval.* The following elements contained in the October 20, 1982 State Implementation Plan revision are hereby disapproved:

(1) The element pertaining to the inspection and maintenance program (Section 4.9.4.2.2), and

(2) The attainment demonstration (Sections 4.9.3.2 and 4.9.4.4).

(c) Because certain elements of the Part D plan are being disapproved, the construction moratorium pursuant to section 110(a)(2)(I) of the Clean Air Act is now in effect. This moratorium impacts all major stationary sources that would be constructed or modified within the nonattainment area or located close enough to the boundary in order to have a significant impact upon the area.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 Code of Federal Regulations is amended as follows:

Subpart C—Oregon

In § 81.338, the table entitled "Oregon CO" is revised to read as follows:

§ 81.338 Oregon.

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Portland-Vancouver AQMA (portion of the Oregon portion).	X	
Fugene-Springfield AQMA	X	
Medford—an area contained within the central commercial area of the city.	X	
City of Salem	X	
Remainder of State		X

[FR Doc. 84-23924 Filed 9-10-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[FCC 84-405]

Frequency Allocation To Provide for Non-Government Access to the Tracking and Data Relay Satellite System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Part 2 of its Rules to provide a non-Government allocation in the 2285–2290 MHz band for the space research, space operations and earth exploration-satellite services. This will allow non-Government users in these services to access the NASA Tracking and Data Relay Satellite System.

EFFECTIVE DATE: September 11, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 2025 "M" Street, NW. 20554, (202) 653-8171.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Order

In the Matter of Amendment of Part 2 of the Commission's Rules providing an allocation in the 2285–2290 MHz band to allow access for non-Government space operations to the Tracking and Data Relay Satellite System.

Adopted: August 27, 1984.

Released: August 30, 1984.

By the Commission.

1. The Tracking and Data Relay Satellite System (TDRSS), which relays data from space research, space operations and earth exploration-satellite systems to earth stations, is owned and operated by the National Aeronautics and Space Administration (NASA). TDRSS operates in the band 2200–2290 MHz, which is currently allocated exclusively for Government use. However, NASA, as a matter of policy, has offered use of TDRSS to non-Government space users (NASA Management Instruction 8410.3). NTIA has approved this non-Government use of the Government band. Therefore, the Commission is making a non-Government allocation in the 2285–2290 MHz band to provide non-Government space operations access to TDRSS. It is only necessary to allocate this one band as TDRSS is a complete system with all of the necessary space-to-earth links. Therefore, all that is needed by the non-Government user is the feeder link to TDRSS. To accomplish this we are adopting a footnote to the Table of Frequency Allocations, § 2.106 of the rules. The footnote has been coordinated with the Government sector through the Interdepartment Radio Advisory Committee. The footnote reads as follows:

> US303 In the band 2285–2290 MHz, non-Government space stations in the space research, space operations and earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Government stations. The power flux density at the Earth's surface from such non-Government stations shall not exceed −144 to −154 dBW/m²/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation 2557.

The appropriate modifications necessary to amend § 2.106 of the Commission's Rules are contained in the Appendix.

2. We find that good cause exists to excuse compliance with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553). This amendment will not affect existing FCC licensees and reflects an NTIA action regarding a Government band, which simply provides for a non-Government allocation in the band. Moreover, we would not expect such a Notice to generate adverse comments. In short, public notice and comment appears unnecessary. Furthermore, because this footnote provides additional opportunity for the non-Government sector and, thus relieves a restriction on the use of spectrum, we find good cause exists for making this action effective immediately.

3. Accordingly, it is ordered, that § 2.106 is amended as set forth in the Appendix. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended. These amendments become effective immediately upon publication of this order in the **Federal Register**.

4. Point of contact on this matter is Fred Thomas (202) 653-8171.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by adding footnote designator US303 at columns 4 and 5 in the 2200–2290 MHz band and by adding the text of footnote US303 to the list of footnotes following the Table of Frequency Allocations.

§ 2.106 Table of frequency allocations.

United States table		FCC use designators	
Government Allocation (MHz) (4)	Non-Government Allocation (MHz) (5)	Rule part(s) (6)	Special use frequencies (7)
2200–2290	2200–2290		
FIXED			
MOBILE			
SPACE RESEARCH			
(Space-to-Earth)			
(Space-to-space)			
US303 G101	US303		

* * * * *

US303 In the band 2285–2290 MHz, non-Government space stations in the space research, space operations and earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by case basis. Such transmissions shall not cause harmful interference to authorized Government stations. The power flux density at the Earth's surface from such non-Government stations shall not exceed −144 to −154 dBW/m²/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation 2557.

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[FR Doc. 84-23944 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 15

[Gen. Docket No. 82-827; RM-4120; FCC 84-406]

Amendment of the Commission's Rules to Permit the Operation of a Perimeter Protection System in the Band 40.66 to 40.70 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document establishes new rules to permit the operation of a new type of buried cable perimeter security system. The proceeding was initiated in response to a petition for rulemaking filed by Senstar Systems Corporation. It will permit the application of this new technology, subject to certain minimum technical and administrative constraints.

EFFECTIVE DATE: October 12, 1984.

FOR FURTHER INFORMATION CONTACT: Liliane M. Volcy, Office of Science and Technology, Telephone: (202) 653-8247.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, Security measures, Radio, Reporting and record keeping requirements.

Report and Order

In the matter of amendment of Part 15 to permit the operation of a perimeter protection system in the band 40.66 to 40.70 MHz.; Gen Docket No. 82-827, RM-4120.

Adopted: August 8-27-84.

Released: September 5, 1984.

By the Commission.

1. A Notice of Proposed Rule Making in this proceeding was adopted on December 22, 1982 (48 FR 2148, January 18, 1983). Initiated in response to petition for rulemaking filed by Senstar Security Systems Corporation (Senstar), it proposed to amend Part 15 of the Rules to permit the operation of a perimeter protection system at 40.68 MHz ± 20 kHz.

2. Control Data Canada, Ltd. (CDC) and Senstar were the only parties to file comments and reply comments in response to the *Notice.* Senstar supported, with a few minor changes, the proposal as adopted. CDC requested the adoption of additional technical parameters (increased power and frequency of operation) to permit greater flexibility in the design and development of perimeter protection systems. For the reasons discussed below, we are adopting the rules, as proposed in this proceeding, with a few minor changes which take the comments into consideration. We will also be initiating in the near future rulemaking in this proceeding as indicated in paragraph 9 below.

3. A perimeter protection system is a special type of field disturbance, sensor designed to detect unauthorized entry or exit at a secured facility.[1] Expected use of such systems would be at nuclear power plants, penal institutions, weapons and ammunition depots, chemical and explosive manufacturing plants, etc. It is composed of ported or leaky cables buried around the perimeter of a facility, on which a signal generates a surface wave and establishes a radio frequency field. When an intruder penetrates the field, a disturbances is detected by the system. A very desirable feature of surface wave phenomena, as noted by Senstar, is the extremely low radiation level into space. Most of the FR energy is contained around the cables. Two key aspects, target cross-section and cable performance, are involved in designing perimeter protection systems. Target cross-secton refers to the detection of human movement versus the rejection of small animals or objects which requires frequencies above 30 MHz. Cable performance depends on the attenuation and coupling factors which, in order to be cost effective and practical, must use frequencies between 10 and 100 MHz. The design criteria of perimeter protection systems, therefore, justify the need to operate in the VHF region.

4. In the *Notice,* we proposed the following technical specifications for a perimeter protection system: operation limited to the frequency band at 40.68 MHz ± 20 kHz with a field strength not to exceed 50 microvolts/meter measured at a distance of 30 meters from any part of the system; emissions outside the 40.68-40.70 MHz band limited to 5 microvolts/meter at 30 meters; and, a limit on power line conducted emissions of 250 microvolts. Operation is also conditioned on the system not interfering with any authorized radiocommunication operation and accepting any interference that may be received, in accordance with § 15.3 of the Rules. These are essentially the same parameters suggested by Senstar in its petition. Since this band is shared with the government, operation under these specifications was coordinated with, and received the concurrence of, the U.S. Department of Commerce, National Telecommunications and Information Agency (NTIA), which manages U.S. Government use of the radio spectrum.

5. The *Notice* cited the following reasons for the proposal: The rules do not currently provide any operation in the VHF region for field disturbance sensors; and the use of a band allocated to industrial, scientific and medical (ISM) equipment would minimize the potential of interference to radiocommunication services. The 40.66-40.70 band is part of the frequency spectrum designated in the Table of Frequency Allocations under § 2.106 of the Rules for ISM applications. Radiocommunication services operating within this band must accept harmful interference which may be caused by ISM applications.

6. In its comments, CDC described a perimeter protection system, called the Guidar System, that it has developed for use in Canada and other countries. The Guidar System is similar in principle to the Senstar system, but operates under slightly different technical parameters. Specifically, CDC commented on the need to operate on any frequency from 30 to 100 MHz due to differences in design. It contends that, to account for design variations and the growing development of perimeter protection systems, additional frequencies should be allowed. It argues that above 60 MHz, the detection zone is better confined than in the lower VHF region. The new rules, CDC sustains, should reflect the needs of other manufacturers and accommodate different designs such as the Guidar System, which is designed to operate in the frequency regions of 57 to 69 MHz. The firm supports the application of alternate methods to open-ported coaxial cables in designing perimeter systems, such as a two wire line, either open or cased in a high dielectric material, as in a 300 ohm TV twin lead.

7. CDC also argued that the radiated field strength levels for the fundamental and spurious emissions proposed in § 15.309 are unduly restrictive and as a result only accommodate systems similar to the one developed by Senstar. In lieu thereof, CDC believes the Commission should apply the limits developed for Class A computing devices in Subpart J of Part 15 of the rules, specifically § 15.810 for perimeter protection systems.[2] The limits for Class

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[1] A field disturbance sensor is defined in § 15.4(j) as "a restricted radiation device which establishes a radio frequency field in its vicinity and detects changes in that field resulting from movement of persons or objects within the radio frequency field". An intrusion detector is one example of a device operating under the provisions in Subpart F of Part 15.

[2] Subpart J of Part 15 was adopted in 1979 by the Commission to control the interference potential of computers and similar electronic devices, defined as computing devices. Section 15.810 of these rules specifies the radiated limit on emissons from

Continued

A computing devices are 30, 50 and 70 microvolts per meter measured at a distance of 30 meters from the device for the frequency ranges 30–88 MHZ, 88–216 MHz and 216 tro 1000 MHz, respectively. While these limits are slightly more liberal (4.5 dB) than the proposed limit for the fundamental frequency of a perimeter protection system, they are considerably more severe than the proposed 5 microvolt per meter limit for out-of-band emissions. The more liberal limits of § 15.810 would permit CDC to operate their Guidar System on any number of frequencies and at the same time not restrict the bandwidth of the system.

8. In its reply comments, Senstar opposed CDC's proposed changes on the grounds that a relaxation of the technical standards would increase the interference potential of such systems to VHF TV reception. Operation on the same frequencies as allocated to VHF television broadcasting, (54–72 MHz), according to Senstar, has a greater interference potential than operation on frequencies allocated for industrial purposes.[3] The firm also opposed any delay in this proceeding in order to allow interested parties an opportunity to comment on the expanded frequency and emission requirements proposed by CDC. Senstar claimed that to delay this proceeding would cause additional costs and delay in the marketing of this new technology.[4] CDC, on the other hand, argues that the limits in § 15.810 are already considered acceptable by the Commission of protecting VHF television broadcasting and to adopt more severe limits is unjustified. It recognized, however, that interested parties have not had an opportunity to comment on its suggested changes and therefore asks the Commission to immediately institute a further notice in this proceeding, if it is considered necessary.

9. We agree, in part, with Senstar. Interested parties should have an opportunity to comment on CDC's proposal. Also, while we believe that CDC's comments and proposals may have merit, additional testing and comments from interested and affected parties are needed to complete our evaluation of perimeter protection systems operating in the VHF spectrum. We are therefore adopting the rules as proposed in this proceeding with the exception of a few changes concerning the testing and administrative procedures, as discussed below. We will also initiate a Further Notice of Proposed Rule Making in this proceeding.

10. In the *Notice*, we requested comments on the suitability of using FCC measurement procedure, MP–1, as a guideline for testing a perimeter protection system.[5] MP–1 was developed to evaluate emanation levels from low power remote control and security devices and associated receivers, such as garage door openers. It specifies the use of an open field standard test site for measuring radiated emissions. CDC and Senstar both filed comments expressing a basic concern about the adaptability of MP–1 to buried coaxial cable systems.

11. The commenters state that they do not believe that any single test can adequately verify that a leaky coaxial cable motion detection system could comply with the Commission's regulations in all installations. Because of a number of complex technical considerations, the radiated fields produced by a specific type of cable are primarily location dependent and, to a minor degree, also equipment dependent. According to both firms, actual field measurements of typical sites are therefore important.

12. CDC also expressed a concern about measuring cables lying on the surface or above ground. Due to the additional production of mode of propagation caused by the interface between two dielectrics (air and soil), small changes in the position of the transmitting cable over the ground can cause significant changes in the coupling of energy out of it. Since the sensor is not designed to be sold with cables lying on the ground, CDC argues that this anomalous behavior should not be introduced in the testing procedure. The same applies to air mounted cables, the firm said. CDC also requests that the Commission not tie the measurement procedure for air mounted cables to any particular length of cable, for fear of biasing the results in favor of one operating frequency over another.

13. In making radiated measurements on a perimeter protection system, Senstar contends that it is necessary to take numerous measurements at a distance of 30 meters from the transmitting cable to determine an accurate measurement of the field strength. This, the commentator states, can be a very time consuming task particularly if the perimeter is several miles in length. Such testing would be extremely costly and an impractical burden if required at all installations. CDC agrees that measurement at each site would place an undue burden on the manufacturer. CDC proposes that the Commission adopt the following measurement procedure for radiated emissions:

> Each new device which a manufacturer wishes to market must be measured for radiated emissions at each of its first three sites. If these emissions fall within the allowed limits, the device can be marketed without further testing. (CDC comments, page 20.)

Senstar suggests a minimum of four installation sites, with both high-loss and low-loss mediums and various fence structures, should be measured to determine compliance of a different type of system.

14. We agree that it is impractical and perhaps unduly burdensome for the manufacturer to measure each installation. We also agree with the commenters that MP–1 is unsuitable for measuring radiated emissions from a perimeter protection system, since the procedure was primarily intended to measure radiated emissions on a standard test site from a low power communication device (e.g. garage door transmitter). The reason for proposing MP–1 is that there are parts of the procedure which are applicable in the general sense to all radiated emission measurements. For example, the specifications for the instrumentation and power line measurements may be used for perimeter protection systems. It was not our intent that these systems be measured at a standard test site in the same manner as a low power walkie-talkie.

15. In view of these comments, the test procedures have been revised somewhat in accordance with the suggestions of the commenters. Measurements will be made initially at each installation

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computing devices designed to operate in a commercial or industrial environment. The development of the limits in this section is based on protecting television broadcasting and other authorized radio services at a distance of 30 meters from the device. See Bulletin OST–62, "Understanding FCC Rules for Computing Devices", for a more complete explanation of these Rules. The Bulletin is available from the FCC Consumer Assistance Office.

[3] The frequency band 40.68 MHz ± 20 kHz is allocated for industrial, scientific and medical (ISM) purposes. Radio communication services operating within this band must accept any harmful interference that may be experienced from the operation of ISM equipment. 47 CFR 2.106 footnote 236.

[4] Senstar and others are currently marketing a perimeter protection system under the terms and conditions of a waiver (Order Granting Waiver, adopted December 22, 1982, released January 6, 1983, FCC 82–856). While the technical standards in the *Order* are the same as proposed in this proceeding, the firm argues that the waiver is unduly restrictive in terms of measurement of every system.

[5] MP–1, entitled "FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers," is available from the FCC Duplicating Contractor, International Transcription Services, 1919 M Street, NW., Room 246, Washington, D.C. 20554, telephone: (202) 296–7322.

following standard engineering practices in making radiated measurements on in-situ equipment. Once the installation has been tested and shown to comply, the system at that location may be labelled and thus operated without any further delay. After the system has been tested and shown to comply at three locations, the manufacturer may file an application for certification, pursuant to the procedures in Subpart J of Part 2 of the rules. Upon receipt of the grant of certification, no further testing will be required for that type of system, unless there is some change that would warrant further testing.

16. According to Senstar, there are four main potential configurations for a perimeter protection system:

(a) Cables buried in soils ranging from dry sand to heavy wet clay, with or without vegetation, or buried in man-made surfacing materials, such as gravel, concrete, reinforced concrete and asphalt;

(b) Cables laid on the surface of the materials mentioned in (1) above;

(c) Cables mounted on or in walls or rooftops composed of conventional materials;

(d) Cables suspended in air supported by posts or standoff brackets.

The information before us indicates that the radiation characteristics of these systems, and hence their interference potential, depend in part on where the cables are to be located. No information has been submitted about the interference potential of systems operating above ground, such as system configurations (b), (c), and (d), above. We are particularly concerned about this interference potential since there is a possibility that in the future these systems will be operated on a number of different frequencies. Accordingly, we have added a definition to the new rules, which for the present restricts a perimeter protection system to a buried cable system, such as system configuration (a), above. The question about an above ground perimeter protection system will be raised again in a further notice in this proceeding. Any refinements to the test procedure can also be addressed at that time.

17. As mentioned in footnote 4 above, the Commission granted a waiver to Senstar and others to permit the immediate marketing and use of this new technology, subject to certain conditions. According to one of these conditions, the waiver shall terminate 30 days after the effective date of any rules adopted in this proceeding. Since the equipment authorized under such a waiver is complying with essentially the same technical specifications adopted herein, that equipment will be grandfathered and subject to no further requirements, with exception of 47 CFR 15.3 and 15.311.

Final Regulatory Analysis

18. Pursuant to 5 U.S.C. 601 et seq. an Initial Regulatory Flexibility Analysis was incorporated in paragraph 11 of the Notice of Proposed Rule Making. In paragraph 13 of this NPRM, written comments on this Analysis were solicited with the same filing deadlines as comments on the rest of the Notice. No comments in response to this request were received.

A. Need for and Objective of Rule

The Commission is establishing rules for a perimeter protection system to operate in the 40.66 to 40.70 MHz band. The existing general rule provisions for operation in such a band are considered inadequate by manufacturers.

B. Summary of Issues Raised in Comments on Initial Analysis

No comments were received specifically on the Initial Regulatory Flexibility Analysis in the Notice in this proceeding. Since these rules do not impose any new reporting or record keeping requirement, there is no deleterious economic effect on manufacturers of a perimeter protection system (operating in the 40.66 to 40.70 MHz band) whether a small business or large. In fact, since these rules will facilitate continued growth of a new industry, the effects will be beneficial.

C. Significant Alternatives

The regulations adopted herein respond to a petition from the field disturbance sensor industry seeking special rule provisions for sensors operating in the 40.66–40.70 MHz band. This action is in line with the petition. No other significant alternatives are apparent.

19. Pursuant to the above and under the authority of sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended, it is ordered that Part 15 is amended as set out in the Appendix of this Order.

20. It is further ordered that this amendment shall become effective October 12, 1984. It is also ordered that perimeter protection systems authorized under the terms of the order referenced in footnote 4, above, are hereby grandfathered, subject only to compliance with 47 CFR 15.3 and 15.311.

21. For further information concerning this Order contact Office of Science and Technology, telephone (202) 653–8247.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 15—[AMENDED]

§ 15.4 [Amended]

A. Section 15.4(j) is amended by designating the current text as paragraph (1) and adding a new paragraph (2) as follows:

(j) *Field disturbance sensor.* (1) * * *

(2) A perimeter protection system is a field disturbance sensor which uses buried leaky cables installed around a facility to detect any unauthorized entry or exit. Its use is limited to commercial and industrial locations away from residential areas.

* * * * *

B. Part 15, Subpart F is amended as follows:

1. Section 15.305 is amended by adding a new paragraph (d) to read as follows:

§ 15.305 General technical specifications.

* * * * *

(d) Alternative to paragraph (a) of this section a perimeter protection system may be on a frequency of 40.68 MHz ± 20 kHz subject to the technical and administrative requirements in §§ 15.310 and 15.312 of this part.

2. A new § 15.310 is added to read as follows:

§ 15.310 Technical requirements for a perimeter protection system.

(a) A perimeter protection system may operate on a frequency of 40.68 MHz ± 20 kHz. The frequency tolerance of the carrier frequency of the system shall be ±0.01%. This tolerance shall be maintained over the temperature range of −20 °C to + 50 °C at normal supply voltage and for a variation in the primary supply voltage from 85 to 115 of the rated supply voltage at a temperature of 20 °C.

(b) The field strength of the radiated emission on the fundamental carrier frequency from any part of the system shall not exceed 50 microvolts per meter at distance of 30 meters when measured in accordance with the procedure in § 15.324, of this part.

(c) Harmonics and spurious emissions on frequencies outside the band 40.66 to 40.70 MHz from any part of the system shall not exceed 5 microvolts per meter at 30 meters.

(d) For a perimeter protection system designed to be connected to a low voltage public utility power line, the power line conducted emission shall not exceed 250 microvolts over the frequency range from 450 kHz to 30 MHz, when measured in accordance with the procedure specified in FCC Measurement Procedure MP-4 entitled "FCC Methods of Measurements of Radio Noise Emissions From Computing Devices."

3. The present title and text of § 15.312 is revised to read as follows:

§ 15.312 Authorization required.

(a) A field disturbance sensor shall be certificated prior to marketing, pursuant to Subpart B of this part.

(b) Certification for a perimeter protection system may be obtained from the Commission by filing an application for certification in accordance with Subpart B of this part, along with a statement that the system has been tested at three installations and found to comply. Until such time as certification is granted, a given installation of a perimeter protection system will be considered to be in compliance with the requirements of this part if tests at that installation show the system to be in compliance with the technical requirements in § 15.310. The equipment at that installation shall be labelled with the compliance statement described in § 15.314(a). Upon receipt of a grant of certification by the Commission, additional testing of the same or similar type of system or installation is not required.

4. A new § 15.324 is added to read as follows:

§ 15.324 Measurement requirements for a perimeter protection system.

The following procedure shall be used to measure radiated emissions from each installation of a perimeter protection system to show compliance with the technical requirements in § 15.310 of this part. An alternative test procedure may be used, provided that it is acceptable to the Commission in advance of the actual testing and that the procedure is detailed in the report of measurements of the system.

(a) The system shall be installed in accordance with the manufacturer's installation procedure and verified that it is operational. If user controls are provided, the maximum RF power setting shall be used.

(b) The measurements of the system shall be made with a spectrum analyzer, radio noise meter, or other appropriate instrument. The 6 dB bandwidth of the instrument shall be not less than 100 kHz over the frequency range of 30 to 1000 MHz. A peak detector circuit shall be used for these measurements.

(c) Measurements of the frequency stability, bandwidth, and RF power output shall be made at the transmitter and each repeater. The fundamental operating frequency, associated harmonics and spurious emissions within 30 dB of the level of the fundamental carrier shall be recorded. For measurement of radiated emissions a calibrated tuned dipole or an appropriate broadband antenna shall be used. The antenna shall be varied in height and rotated for the measurement of horizontally or vertically polarized waves to obtain the maximum radiated emission at each frequency.

(d) A search around the perimeter of the entire system shall be made for emissions at each of the frequencies recorded in paragraph (c) of this section. These measurements should be made at a distance of thirty meters or less from the cable perimeter. A calibrated tuned dipole or an appropriate broadband antenna shall be used for this search.

(e) At two or three locations on the perimeter at which radiated emissions are maximum, measurements shall be taken at closer distances from the cables. In the event that radiated emissions from the system fall below the ambient level before the measuring distance is reached, extrapolation can be done to determine the level at 30 meters. In the event that a metal fence must be crossed in measuring at various distances, the location of such a fence shall be recorded. Where a system encloses a protected area, measurements should only be made on the outside of the perimeter.

[FR Doc. 84-23940 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[Gen. Docket No. 83-1009]

Multiple Ownership of AM, FM, and TV Broadcast Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On August 9, 1984, the Commission published a Report and Order regarding Multiple Ownership of AM, FM, and TV Broadcast Stations (49 FR 31877). The FCC number was inadvertently referred to as 83-440 in the Preamble. This clarifies the FCC number as *84-350*.

FOR FURTHER INFORMATION CONTACT: Trevor Potter, Office of General Counsel (202) 632-6990.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-23945 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[AC-84-5]

Payment by Wire Transfer

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) to prescribe a Method of Payment clause for inclusion in contracts established by GSA for use by all agencies. This clause requires contractors to furnish banking information to enable agency paying offices to make payment by wire transfer.

DATES: *Effective:* August 31, 1984.

Expiration: This Acquisition Circular expires 6 months after issuance.

FOR FURTHER INFORMATION CONTACT: Richard Sanders, Office of GSA Acquisition Policy and Regulations, Washington, DC 20405 (202) 523-4740.

SUPPLEMENTARY INFORMATION:

Regulatory Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. All of the information collection requirements contained in the Acquisition Circular stem from Department of Treasury requirements which have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 532 and 552

Government procurement.

Authority: 40 U.S.C. 486(c).

In 48 CFR Ch. 5, the following Acquisition Circular is added in its entirety to Appendix C at the end of the chapter.

Dated: August 31, 1984.

William B. Ferguson,

Acting Assistant Administrator for Acquisition Policy.

General Services Administration Acquisition Regulation; Acquisition Circular (AC-84-5)

August 31, 1984.

To: All GSA contracting activities.

Subject: Payment by wire transfer and related clauses.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to prescribe a Method of Payment clause for inclusion in GSA contracts used by other agencies, and to make related changes.

2. *Background.*

a. Department of the Treasury Bulletin 83-14, dated February 9, 1983, required Federal agencies to implement ways and means of processing vendor payments by wire transfer. Most agencies are now capable of making payments by this method. However, there are a number of exceptions. In particular, the Department of Defense issues checks through its own disbursing offices, and does not make payments by wire transfer. In short, it is not practicable at this time to contractually require contractors to follow a uniform procedure with respect to the Government's options to make payment by check or wire transfer.

b. The Method of Payment clause in 552.232-73, which was originally prescribed in FPR Temporary Regulation 66, Supplement 1, is designed for use in contracts under which payments will be made only by the contracting agency, and is not appropriate for use in contracts under which orders are placed and payments made by numerous agencies. In developing a clause for inclusion in contracts of the latter type, it was determined that, to the extent practicable, contractors should be advised of known exceptions to the requirement for the submission of bank account information, and that other agencies should waive the submission requirements on a case-by-case basis.

3. *Effective date.* August 31, 1984.

4. *Expiration date.* This Acquisition Circular expires 6 months after issuance unless canceled earlier.

5. *Reference to regulation.* Sections 532.111, 552.232-72, and 552.232-73.

6. *Supplementary information.*

a. A memorandum signed by the Deputy Administrator dated October 31, 1983, subject: Payment by Wire Transfer—Treasury Bulletin 83-14, and FPR Temporary Regulation 66, Supplement 1, indicated that wire transfers by GSA/Treasury would not begin until at least June 1, 1984. Information has now been received from the GSA Office of Finance that the automated interface system between GSA and Treasury will not be operational until November 1, 1984, at the earliest.

b. The Office of Management and Budget (OMB) has assigned OMB Control Number 1510-0050 with respect to the information collection requirements under Treasury Bulletin 83-14. This number effectively supersedes OMB Control Number 3090-0141, which was assigned to GSA in connection with the issuance of FPR Temporary Regulation 66, Supplement 1. Accordingly, this Circular amends the clause shown in 552.232-73 to incorporate the OMB control number assigned to the Treasury Department. Solicitations containing this clause which have been issued or forwarded for printing and distribution need not be amended to reflect this change.

7. *Explanation of changes.*

a. Section 532.111 is revised to amplify the applicability statements, and to prescribe a new Method of Payment clause for use in contracts under which payments are made by GSA and other agencies, as follows:

532.111 Contract clauses.

(a) *Discounts for early (prompt) payment.* The contracting officer shall insert one of the clauses referenced below in solicitations and contracts under the conditions indicated, in lieu of the clause at FAR 52.232-8.

(1) The basic clause in 552.232-8(a) is for use in contracts for supplies other than multiple-award schedule contracts.

(2) The clause shown as Alternate I in 552.232-8(a) is for use in solicitations and contracts for nonpersonal services.

(3) The clause in 552.232-8(b) is for use in multiple-award schedule solicitations and resultant contracts. (See 515.605-70.)

(b) *Payment due date.* The contracting officer shall insert one of the clauses in 552.232-70 in solicitations and contracts under the conditions indicated. Additional clauses of a similar nature may be developed for use in situations not covered in 552.232-70.

(c) *Interest on overdue payments.* The contracting officer shall insert one of the clauses in 552.232-71 in all solicitations and contracts which are subject to the interest penalty requirements of the Prompt Payment Act. Applicability statements are included in the preface to the basic clause and each of the alternates.

(d) *Invoice requirements.* (1) The contracting officer shall insert the clause in 552.232-72, modified as appropriate, in all solicitations and contracts for supplies or services which require the submission of invoices as a prerequisite to payment by the Government.

(2) The first five entries shown in paragraph (a) of the clause are prescribed in OMB Circular A-125. Additional items of information or substantiating documentation shall be listed as appropriate. In this connection, all matters required to constitute a "proper invoice" shall be listed in the clause, notwithstanding that the requirement may also be indicated elsewhere in the solicitation/contract, because it is this clause, together with the Payment Due Date clause, which provides a basis for withholding payment (if necessary) without incurring a late payment penalty.

(3) Anything listed in paragraph (b) of the clause is requested for the convenience of the Government, but is not a "proper invoice" requirement. The use of this paragraph is optional.

(e) *Method of payment.* The contracting officer shall insert one of the clauses in 552.232-73 in solicitations and contracts when it is anticipated that payments of $25,000 or more may be made under any of the resultant contracts.

(1) The clause in 552.232-73(a) is for use when payments will be made solely by GSA. However, this clause shall also be used if other agencies are authorized to place orders and make payments under resultant contracts, provided that individual orders placed by such agencies will be for less than $25,000 (e.g., orders limited to $10,000 under indefinite quantity contracts for repairs and alterations).

(2) A clause substantially as shown in 552.232-73(b) shall be used when payments will be made by GSA and/or other agencies.

b. Section 552.232-72(a)(6) is amended as follows to reflect in the body of the clause that after the first five entries in the "proper invoice" portion of the clause, additional entries are to be inserted (if applicable) by the contracting officer.

552.232-72 Invoice requirements.

As prescribed in 532.111(d), insert the following clause in solicitations and contracts for supplies or services which require the submission of invoices.

Invoice Requirements (Aug 1984)

(a) * * *

(6) [**Note:** Continue listing other information or documentation necessary to effect payment under the contract. When the Method of Payment clause in 552.232-73(b) is used, insert a statement substantially as follows: "Information necessary to enable the Government to make payment by wire transfer shall be furnished in accordance with the Method of Payment clause of this contract."]

(b) * * *

(End of Clause)

c. Section 552.232-73 is amended to change the OMB control number currently shown in the clause, to add a new clause, and to arrange these clauses under paragraphs (a) and (b), respectively, as follows:

552.232-73 Method of payment.

(a) As prescribed in 532.111(e)(1), insert the following clause.

Method of Payment (Aug 1984)

* * * * *

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number. (OMB Control Number 1510-0050).

(End of Clause)

(b) As prescribed in 532.111(e)(2), insert the following clause.

Method of Payment (Aug 1984)

(a) *Payment options.* Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) *Information requirements to accomplish payment by wire transfer.* The Contractor shall include the following information on, or as an attachment to, each invoice showing an amount due of $25,000 or more (exclusive of discounts for early payment), except as provided in paragraph (c) of this clause. (OMB Control Number 1510-0050).

(1) Name, address, and telegraphic abbreviation of the receiving financial institution.

(2) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(3) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(4) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(i) Address and telegraphic abbreviation of the correspondent financial institution.

(ii) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) *Exceptions.* The banking information specified in Paragraph (b) of this clause is not required to be furnished to the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information furnished to the Veterans Administration shall be by special arrangement and in accordance with instructions received from that agency. Other agencies or departments thereof may waive the requirements of this clause by a notice on delivery orders, or by other means.

(End of Clause)

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 84-23960 Filed 9-10-84; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register
Vol. 49, No. 177
Tuesday, September 11, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-66-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require replacement of the existing ram air turbine (RAT) rotary actuator electric motor with an improved motor incorporating additional exterior sealing and breather hole modifications. During testing it was fund that moisture could accumulate in the motor and freeze. This kept the RAT from deploying. This action is necessary to ensure the RAT will deploy if needed.

DATES: Comments must be received on or before October 23, 1984. Compliance required within 90 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable Service Bulletin may be obtained from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84-NM-66-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During qualification testing of the RAT rotary actuator electric motor to verify satisfactory performance under icing conditions, the motor brake armature did not release and the RAT did not deploy. Investigation revealed moisture had accumulated on the brake rotor and had caused the brake armature to become frozen to the rotor when the motor was exposed to subzero temperatures. The RAT is present on the airplane to provide hydraulic power for the flight controls in the event of loss of both engines, and is automatically deployed during engine spin-down. It can also be manually deployed. The RAT is the only source of hydraulic power for primary flight controls in the failure condition. If the RAT cannot be deployed because the deployment motor is frozen, there will be no powered flight controls available if both engines are lost.

Since other Model 767 airplanes are equipped with RAT deployment motors which are subject to freezing, an airworthiness directive is being proposed which would require replacement of the existing motors with a new motor having improved exterior sealing and modified breather holes to prevent moisture from entering the rotor casing and to improve circulation around the motor and armature. The existing motors may be modified with a vendor-supplied kit to update the motor to the acceptable configuration.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD; that it will take approximately 5 manhours per airplane to accomplish the required removal, modification, and installation, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD would be $10,200. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR Part 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 767 airplanes noted in the Boeing Service Bulletin listed below. To prevent freezing of the ram air turbine (RAT) actuator motors and ensure deployment of the RAT when required, accomplish the following within 90 days after the effective date of this AD, unless already accomplished:

A. Replace the RAT rotary actuator electric motor P/N S258T711-3 with motor P/N S258T711-4, and operationally test the RAT deployment system in accordance with Boeing Service Bulletin 767-29-17, Revision 2 dated June 29, 1984, or later FAA approved revision. A -3 motor may be modified to a -4 configuration by accomplishing rework in accordance with EEMCO Service Bulletin 5076-29-1, Revision 1, dated June 25, 1984, or later FAA approved revision.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of replacements required by this AD.

All persons affected by this directive who have not already received the above specified service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or they may be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), and 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, since few, if any, Model 767 series airplanes are operated by small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington, on August 24, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23967 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–83–AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspection and repairs, as necessary, of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks on certain Airbus Industrie Model A300 B2 and B4 series airplanes. Several cases of bonding delamination in these components have been reported. If this condition is not corrected, it has the potential of leading to rapid decompression of the aircraft.

DATES: Comments must be received no later than October 29, 1984.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France, or may also be examined at the Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–83–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The French Civil Aviation Authority (DGAC) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of bonding delamination and corrosion on the fuselage structure of the Airbus Industrie A300 airplane. The DGAC has issued an airworthiness directive which has classified three Airbus Industrie service bulletins pertaining to this subject as mandatory. The problems are as follows:

A. During scheduled maintenance, several aircraft have been found to have bonding delamination of the fuselage longitudinal lap joints and circumferential joints. Laboratory investigations have shown that delamination is caused by bondline corrosion and by surface pretreatment problems. Additional investigations of delamination have indicated the presence of corrosion with a large amount of corrosion products and bulging of skin panels between the rivets. Intergranular cracks around the countersinks have also been detected. If left uncorrected, the damage mentioned above could lead to rapid decompression of the aircraft. Airbus Industrie Service Bulletin A300–53–148 prescribes repetitive inspections and repair, if necessary, of the fuselage structure for bonding delamination.

B. One operator has reported existence of severe corrosion and bonding delamination in the lap joint 31LH between frames 26 and 31. The aircraft concerned had logged approximately 10,400 flight hours and 6,940 flights. The most severely corroded area was about 8 inches in length and showed clear signs of bulging of the outer skin between the two rivet rows. The bulging found was almost 0.08-inch, caused by corrosion products. A specimen from the corroded area was subjected to a detailed laboratory examination. At some time after delamination, moisture had penetrated into the crevice, leading to the formation of corrosion and subsequent loss of aluminum cladding. Thereafter, pitting and intergranular corrosion continued, gradually forming corrosion products, which then caused deformation of the skin panel between the rivet rows. Since the skin panel and doubler are restricted in their movements by the rivets, high flexural stresses occur in the immediate vicinity of the countersinks and finally give rise to crack formation. The laboratory examination showed a number of small cracks around the rivet holes. Airbus Industrie Service Bulletin A300–53–178 prescribes repetitives inspections and repairs, if necessary, of the fuselage structure for corrosion and cracks.

C. Bonding delamination of stringers and doublers during scheduled maintenance was also found. Laboratory investigation showed that bonding separation was caused by local adhesion failures which occur because of problems with the pickling and rinsing treatment of skin panels prior to bonding. Uncontrolled debonding propagation in these components could lead to a significant reduction in static strength of the fuselage structure, leading to an inability of the structure to withstand limit loads. Airbus Industrie Service Bulletin A300–53–149 prescribes repetitive inspections and repairs, as necessary, of stringers and doublers for bonding delamination.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the actions mentioned above.

It is estimated that 27 U.S. registered airplanes would be affected by this AD, that it would take approximately 550 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $594,000.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156, certificated in all categories. To prevent rapid decompression of the aircraft, accomplish the following within the time schedules indicated below, unless previously accomplished:

A. Prior to the threshold limits specified in Table 1 of Airbus Industrie Service Bulletin A300–53–148, Revision 5, dated May 10, 1984, or within 6 months after the effective date of this AD, whichever is later, inspect the fuselage longitudinal lap joints and circumferential joints for bonding delamination in accordance with the accomplishment instructions of the service bulletin.

1. If no delamination is detected, repeat these inspections in accordance with the schedule shown in Table 1 of the service bulletin.

2. If delamination is detected in any of the inspections above, perform the actions indicated in Figure 3, Follow-up Action, of the service bulletin.

B. Prior to the threshold limits specified in Figure 1, Inspection Program, of Airbus Industrie Service Bulletin A300–53–178, Revision 3, dated April 9, 1984, or within 6 months after the effective date of this AD, whichever is later, visually inspect for corrosion and cracks, and repair if necessary, the bonded longitudinal lap joints and circumferential joints specified in Figure 1 of the service bulletin, in accordance with the accomplishment instructions of the service bulletin. Repeat the inspections in accordance with the schedule shown in Figure 1 of the service bulletin.

C. Prior to the threshold limits specified in Figure 1, Inspection Frequency, of Airbus Industrie Service Bulletin A300–53–149, Revision 5, dated April 19, 1984, or within 6 months after the effective date of this AD, whichever is later, inspect and repair, if necessary, all bonded stringers between frame 18 and frame 80 and all bonded doublers between frame 1 and frame 80, for bonding delamination in accordance with the accomplishment instructions of the service bulletin. These inspections must be repeated according to the schedule shown in Figure 1 of the service bulletin.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections, repairs, and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 28, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–[illegible] Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–96–AD]

Airworthiness Directives: Short Brothers Ltd. Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This amendment proposes an airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3–60 series airplanes which would require replacement of the existing pitot type oil cooler air intake scoop with a "D" type scoop. Several instances of icing of the existing scoop have been reported while operating in severe icing conditions. Partial blocking of the scoop by ice results in high oil temperatures which could require shutdown of an engine during flight.

DATES: Comments must be received no later than September 29, 1984.

ADDRESSES: The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–96–AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD260–71–05 as mandatory. Service experience and evaluation by the manufacturer has shown that the existing pitot type oil cooler air intake scoop fitted to the SD3–60 airplane tends to ice more easily than the "D" type scoop fitted to the SD3–30 airplane. Several reports of high oil temperatures have been reported while operating in severe icing conditions. Investigation revealed that this was caused by ice blocking the oil cooler air intake scoop.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of "D" type oil cooler air intake scoops in place of the existing pitot type scoops.

It is estimated that approximately 10 airplanes of U.S. Registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are provided by the manufacturer at no cost. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,400. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3–60 airplanes as listed in Short Brothers Service Bulletin SD360–71–05, dated March 1984, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent icing of the oil cooler air intake scoop, accomplish the following:

A. Within 60 days after the effective date of this airworthiness directive (AD), install the "D" type oil cooler air intake scoop on both intake cowls in accordance with Short Brothers Ltd. Service Bulletin SD360–71–05, dated March 1984.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Ltd. Model SD3–60 series airplanes are operated by entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 30, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23690 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–62–AD]

Airworthiness Directives; Boeing Model 767–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to add a new airworthiness directive (AD) applicable to Boeing Model 767–200 airplanes which requires a fuel tank low temperature limit of −35 °F (−37 °C) and replacement of the fuel boost pumps. There have been reports of fuel boost pumps seizing when exposed to low fuel temperatures in service. This action is necessary to preclude loss of all fuel boost pressure and subsequent potential for multiple engine flameout.

DATES: Comments must be received on or before October 1, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2964. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84–NM–62–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Background

There have been 19 reported occurrences of fuel boost pump circuit breaker trips on the Boeing Model 767–200 airplane. The circuit breaker tripping was found to be caused by an electrical overload due to the boost pump seizing when exposed to low temperature fuel. The boost pump seizures were due to differential shrinkage during cooling of the aluminum pump bearing housing and the steel armature shaft. To correct this condition, a new design pump with increased shaft-to-bearing clearance and a modified bearing housing is being made available.

Three Model 767 flights resulted in multiple boost pump seizures. On one flight, all four main pumps seized, resulting in suction feed to both engines. Operation of one pump restored, but the flight continued with one engine on suction feed. Suction feed operation has resulted in engine flameout under some conditions.

Since this condition may exist or develop on other airplanes of this type, a fule tank low temperature limit of −35 °F (−37 °C) is proposed to preclude fuel boost pump seizures in flight. It is further proposed that this fuel temperature limitation may be removed when at least one boost pump in each main fuel tank and at least one boost pump in the center auxiliary fuel tank (if activated) is replaced with improved pumps. This replacement would have to be accomplished within one year after the effective date of the AD. Within two years after the effective date of the AD, both boost pumps in each main fuel tank and both boost pumps in the auxiliary fuel tank (if activated) would have to be replaced with improved pumps.

It is estimated that 52 U.S. registered airplanes would be affected by this AD, that it would take approximately 8 manhours per airplane to replace all of the boost pumps and 0.5 manhour to install the required placard, and that the average labor cost would be $40 per manhour. The required placard would be provided without cost to the operators. The replacement pumps may be reworked from the existing stock at a cost of $2,000 per pump, or purchased new at approximately $9,600 each for main pumps and $12,000 each for override pumps. Based on these figures, the total cost impact of the proposed AD to the U.S. operators is $841,680 for reworked pumps or $3,262,480 for newly purchased pumps. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to the Model 767–200 series airplanes certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent boost pump seizures in flight, accomplish the following:

A. Within 30 days after the effective date of this AD, install a cockpit placard which limits fuel tank temperatures to −35 °F (−37 °C), in accordance with Boeing Service Bulletin 767–28–14 dated June 20, 1984, or later FAA approved revision.

B. Within one year after the effective date of this AD, replace at least one fuel boost pump in each main fuel tank and at least one fuel boost pump in each center auxiliary fuel tank (if activated) with an improved boost pump, in accordance with Boeing Service Bulletin 767–28–14 dated June 20, 1984, or later FAA approved revision.

C. Within two years after the effective date of this AD, replace all fuel boost pumps in each main tank and all fuel boost pumps in each center auxiliary tank (if activated) with improved fuel boost pumps, in accordance with Boeing Service Bulletin 767–28–14 dated June 20, 1984, or later FAA approved revision.

D. The fuel temperature limitation and cockpit placard required by paragraph A., above, may be removed after at least one improved fuel boost pump is installed in each tank location required by paragraph B., above.

Note.—The center auxiliary fuel tank boost pumps need not be replaced on airplanes with deactivated center auxiliary fuel tanks (i.e., those not able to be fueled); however, this deviation must be recorded in the permanent aircraft records. All center auxiliary fuel tank boost pumps must be replaced with the improved boost pumps identifed in Boeing Service Bulletin 767–82–14 prior to activation of the center auxiliary fuel tank.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–499, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**."

Issued in Seattle, Washington, on August 31, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23696 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–40–AD]

Airworthiness Directives; British Aerospace Model HS 748 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspections, modifications, and repairs as necessary, to passenger and cargo door components on certain British Aerospace Model HS 748 airplanes to correct improper door closing, jamming and false closing indications. Certain unsafe conditions have been discovered relative to doors jamming, improper latching indications, and locking mechanism failures. This action is necessary to ensure that all doors properly close and lock.

DATE: Comments must be received no later than October 29, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041 or may also be examined at the Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East

Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aricraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-40-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on the passenger and cargo door components of British Aerospace Model HS 748 airplanes. These may be corrected by incorporating ten (10) separate mandatory service bulletins. The unsafe conditions and corrective actions are described as follows:

A. Modification 6853 is designed to prevent locking of the baggage door from the outside of the airplane, thus insuring that the door is properly locked from the inside by a crew member. A wear indicator plate is also installed to show when cam replacement is necessary to prevent jamming. (Reference: British Aerospace HS 748 Service Bulletin 52/94)

B. Modification 6856 prescribes the installation of a wear indicator plate on passenger and crew/freight doors to show when cam replacement is necessary to prevent jamming. (Reference: British Aerospace HS 748 Service Bulletin 52/95)

C. Modification 6859 prescribes the installation of improved door aperture micro switch mountings and switches on baggage, passenger, and crew/freight doors for all airplanes except those equipped with the large freight door, or which have incorporated modifications 3133 or 3146, to prevent false door unsafe warnings. (Reference: British Aerospace HS 748 Service Bulletin 52/96)

D. Modification 6862 prescribes the installation of decal warning labels on passenger, baggage, and crew/freight doors to correctly llustrate the locking indications as given by the mechanical indication system. (Reference: British Aerospace HS 748 Service Bulletin 52/97)

E. Modification 6974 prescribes the installation of improved door aperture micro switch mountings and switches on baggage and crew/freight doors for all aircraft (except those incorporating modifications 3133 or 3146) equipped with a large freight door to prevent false door unsafe warnings. (Reference: British Aerospace HS 748 Service Bulletin 52/99)

F. Modification 6975 prescribes the installation of decal warning labels on the forward sliding position of the large freight door to correctly illustrate the locking indications as given by the mechanical indication system. (Reference: British Aerospace HS 748 Service Bulletin 52/100)

G. An inspection of the crew/freight door swivel level for cracks and a life limit on the lever is required to prevent failure of the crew/freight door locking mechanism. (Reference: British Aerospace HS 748 Service Bulletin 52/101.)

H. An inspection of the crew/freight, passenger, and baggage doors (including the large freight door) is required to ensure the integrity of the door sills and secondary locking mechanism micro switches and also to detect failure in the door closed position. (Reference: British Aeorspace HS 748 Service Bulletin 52/106.)

I. Modification 7112 prescribes the installation on doors on an aural warning system on all airplanes, except Model 235, to alert the crew if passenger, baggage, or crew/freight doors are not properly closed and locked. (Reference: British Aerospace HS 748 Service Bulletin 52/109.)

J. Modification 7113 prescribes the installation on doors of an aural warning system only on Model 235 airplanes to alert the crew if passengers, baggage, or crew/freight doors are not properly closed and locked. (Reference: British Aerospace HS 748 Service Bulletin 52/110.)

This airplane model is manufactured in the United Kingdom and type certificated in United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilaternal agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require accomplishment of the previously mentioned corrective actions.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $3,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $47,000. For these reasons, the proposed rule is not considerd to be $47,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to Model HS 748 airplanes certificated in all categories which are listed in the British Aerospace service bulletins specified below. Compliance is required within the time interval specified in each of the following paragraphs, unless previously accomplished:

A. To ensure the baggage door properly locks from the interior, within 180 days after the effective date of this airworthiness directive (AD), modify the baggage door in accordance with British Aerospace HS Service Bulletin 52/94, dated May 14, 1982.

B. To ensure the passenger and crew/freight doors properly lock, within 180 days after the effecive date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/95, dated May 14, 1982.

C. To prevent false door warnings on baggage, passenger, and crew/freight doors within 180 days after the effective date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/96, dated May 14, 1982.

D. To ensure passenger, baggage, and crew/freight doors properly lock, within 90 days after the effective date of this AD, install warning decals to the interior trim of the doors in accordance with British Aerospace HS 748 Service Bulletin 52/97, dated May 14, 1982.

E. To prevent false door warnings on baggage and crew/freight doors, within 180 days after the effective date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/99, dated May 14, 1982.

F. To ensure the large freight door properly locks, within 90 days after the effective date of this AD, install warning decals to the interior trim of the door in accordance with British Aerospace HS 748 Service Bulletin 52/100, dated May 14, 1982.

G. To prevent failure of the crew/freight door locking mechanism swivel lever, within 90 days after the effective date of this AD inspect the swivel levels in accordance with British Aerospace HS 748 Service Bulletin 52/101, Revision 1, dated December 1983. If necessary, replace parts in accordance with the service bulletin instructions. Repetitive inspections must be performed in accordance with the service bulletin instructions.

H. To ensure the integrity of door sills and secondary locking mechanisms, inspect the crew/freight, passenger and baggage doors (including the large freight door), within 180 days after the effective date of this AD, in accordance with British Aerospace HS 748 Service Bulletin 52/106, dated November 1982. If necessary, replace parts in accordance with the service bulletin instructions. Repetitive inspections must be performed in accordance with the service bulletin instructions.

I. To provide an audible door unsafe warning on all airplanes, except Model 235, within 180 days after the effective date of this AD, install an audible warning system in accordance with British Aerospace HS 748 Service Bulletin 52/109, dated October 13, 1982.

J. To provide an audible door unsafe warning on Model 235 airplanes, within 180 days after the effective date of this AD, install an audible warning system in accordance with British Aerospace HS 748 Service Bulletin 52/110, dated October 13, 1982.

K. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

L. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 1034; February 26, 1979): and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, British Aerospace Model HS 748 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 29, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-23897 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-69-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require structural inspections and repair, as necessary, of the frames adjacent to the forward airstair doorway cutout. The AD is prompted by numerous reports of cracking of these frames. Concurrent cracking of the frames and door cutout internal doubler can result in sudden loss of cabin pressure.

DATES: Comments must be received on or before October 29, 1984.

ADDRESSES: The service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2926. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-69-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a supplemental structural inspection document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation (FAR) § 25.571, Amendment 45. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details must receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The body frames at Body Stations (BS) 351.2 and 360 are in this category of details.

The FAA issued Advisory Circular AC 91-56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental inspection programs for large transport category airplanes. As a result of a structural reassessment of the airplane conducted in accordance with FAA Advisory Circular AC 91-56, the BS 351.2 and 360 frames have been determined to be critical to the structural integrity of the airplane. The FAA issued a notice of proposed rulemaking (49 FR 12276, March 29, 1984) proposing mandatory inspections in accordance with the Boeing 737 Supplemental Structural Inspection Document, DC-37089. The BS 351.2 and

360 forward airstair frames are referenced in that document as critical details, with a known service history, which require continuing inspections in accordance with a flight safety addendum to the manufacturer's service bulletin. This notice incorporates those continuing inspection requirements. Continued operation with cracks in this structure could result in sudden loss of cabin pressure, possible blowout of the airstair door, or the inability to carry failsafe loads required under FAR 25.571(b). Consequently, this proposed AD, if adopted, would require inspection and, if necessary, replacement or modification of the affected structure.

Boeing Service Bulletin 737–53A1064 was issued to advise operators to inspect the body frames at BS 351.2 and 360 in the area of the airstair. Ten operators reported 22 cracked frames at BS 360, and 11 cracked frames at BS 351.2 on a total of 30 aircraft. The cracks are attributed to fatigue.

It is estimated that 200 airplanes of U.S. registry would be affected by this AD, and that approximately 4 manhours per airplane would be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections would be $32,000. Therefore, the proposed rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to all Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737–5A1064, Revision 3, or later FAA approved revisions. To prevent sudden loss of cabin pressure resulting from undetected frame cracking, accomplish the following (unless previously accomplished) prior to the accumulation of 29,000 landings or within 90 days from the effective date of this AD, whichever occurs later:

A. Visually inspect the Body Station (BS) 351.2 and 360 body frames in accordance with Boeing Service Bulletin 737–53A1064, Revision 3, or later FAA approved revisions. Repeat the internal visual inspection at intervals not to exceed 3000 landings for Group 1 airplanes without external doublers installed in accordance with Boeing Service Bulletin 737–53–1058. For all other airplanes, repeat the inspection at intervals not to exceed 6000 landings.

B. If cracks are detected, repair before further flight in accordance with Service Bulletin 737–53A1064, Revision 3, or later FAA approved revisions, and continue the repetitive inspections of paragraph A., above.

C. As an alternative to the internal inspections required by paragraph A., above, operators may visually inspect the external skin in the area of the forward airstairs door cutout in accordance with Boeing Service Bulletin 737–53A1064, Revision 3, or later FAA approved revisions. Repeat external skin inspections at intervals not to exceed 300 landings.

D. If skin cracks are detected, inspect the frames in accordance with paragraph A., above. Repair cracks in accordance with the Structural Repair Manual or Boeing Service Bulletin 737–53–1058, as applicable.

E. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR §§ 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Modification of airplanes in accordance with Accomplishment Instructions Part II of Boeing Service Bulletin 737–53A1064, Revision 3, or later FAA approved revisions, constitutes terminating action for this AD.

G. For purposes of complying with the AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

H. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for the operator.

I. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document involves a proposed regulation which (1) is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 28, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23691 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–67–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require structural inspections and repair as necessary, of the side of body rib upper chord at Body Buttock Line (BBL) 70.85 and Body Station (BS) 663.75. This action has been prompted by numerous reports of cracking in this vicinity. Failure to detect cracks in the BBL 70.85 rib upper chord prior to their reaching critical length may result in severe reduction of load carrying capability and possible rapid loss of cabin pressure.

DATES: Comments must be received on or before October 29, 1984.

ADDRESSES: The service documents may be obtained upon request from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM–120S, telephone (206) 431–2926. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-67-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a supplemental structural inspection document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation (FAR) § 25.571, Amendment 45. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details must receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The BBL 70.85 upper rib chord at wing upper surface side-of-body joint is in this category of details.

The FAA issued Advisory Circular AC 91-56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental structural inspection programs for large transport category airplanes. As a result of the structural reassessment of the airplane conducted in accordance with FAA Advisory Circular AC 91-56, the BBL 70.85 rib upper chord has been determined to be critical to the structural integrity of the airplane. The FAA issued a notice of proposed rulemaking (49 FR 12276, March 29, 1984) proposing mandatory inspections per the Boeing 737 Supplemental Structural Inspection Document D6-37089. The BBL 70.85 rib upper chord is referenced in that document as a critical detail, with a known service history, which requires continuing inspections in accordance with a flight safety addendum to the manufacturer's service bulletin. This notice incorporates those continuing inspection requirements. Continued operation with cracks in this vicinity could result in rapid loss of cabin pressure and inability to carry failsafe loads required under FAR 25.571(b).

Boeing Service Bulletin 737-57-1087 was issued to advise operators to inspect the BBL 70.85 rib upper chord for cracks. Thirty five operators have reported 216 cases of cracked upper chords. There have also been reports of skin cracks and BS 663.75 bulkhead fitting cracks.

It is estimated that 250 airplanes of U.S. Registry would be affected by this AD, and that approximately 64 manhours per airplane would be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections would be $640,000. Therefore, the proposed rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737-57-1087, Revision 4, or later FAA approved revisions. Unless previously accomplished, upon the accumulation of 10,000 landings or within 90 days from the effective date of this AD, whichever occurs later, to detect cracking which may lead to failure of the BBL 70.85 rib upper chord, accomplish following:

A. Visually inspect the BBL 70.85 rib upper chords in accordance with Table I of the Flight Safety Addendum of Boeing Service Bulletin 737-57-1087, Revision 4, or later FAA approved revisions. Repeat the inspections at intervals not to exceed 5000 landings.

B. If cracks are detected, repair before further flight in accordance with Boeing Service Bulletin 737-57-1087, Revision 4, or later FAA approved revisions, and continue the repetitive inspections of paragraph A., above, at intervals not exceeding 5000 landings.

C. The requirements of this AD are terminated if the Preventative Modification of Part III or the Special Modification of Part IV of Boeing Service Bulletin 737-57-1087, Revision 4, is incorporated.

D. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR §§ 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. For purposes of complying with the AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

F. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

G. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for the operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 28, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–23892 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–NM–117–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) applicable to McDonnell Douglas Model DC–9 and Military C–9 Series airplanes that requires inspection and replacement, as necessary, of the spoiler drive link and attach fitting assemblies. Service history indicates that the new components installed as terminating action are subject to cracking and must be periodically inspected. The DC–9–50 and –80 series airplanes are added because they are equipped with these same parts. This action is necessary to detect fatigue cracks, and to prevent failures of either the links or fittings which may permit the spoiler to float, thereby degrading the controllability of the aircraft.

DATES: Comments must be received on or before October 29, 1984.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, Cl–750(54–60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2826.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83–NM–117–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Ten operators have reported twenty-four failures of the drive link aft fitting assemblies in the spoiler drive mechanism on aircraft which have logged between 1,713 and 21,912 flight-hours. In addition, operators have reported seven failures of the drive link assemblies in the spoiler drive mechanism on aircraft which have logged between 8,100 and 36,712 flight-hours. Failure of both the link and the fitting assemblies were attributed to metal fatigue. Failure of either the link or the fitting will permit the spoiler to float up, which may result in a sudden uncommanded roll. As a result of subsequent testing and evaluation by the manufacturer, the FAA has determined that replacing both the spoiler drive link and fitting assemblies with newly designed parts will reduce the potential for failure of the spoiler actuating mechanism. McDonnell Douglas DC–9 Service Bulletins 27–228 and 27–229, both dated August 19, 1982, were issued to provide instructions for repetitive inspection of the drive links and attach fittings.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require the inspection and replacement of the spoiler drive links and fittings, as described in McDonnell Douglas Service Bulletin 27–240, basic, or later FAA approved revisions.

It is estimated that 647 domestic airplanes (4 units per aircraft) would be affected by this AD. It would require approximately 6 manhours per airplane to accomplish the required repetitive inspections. The average labor charge would be $40 per manhour. Based on these figures, the total cost is estimated to be $155,280 per fleet inspection cycle. Replacement cost is not considered. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD which would supersede AD 74–16–02, Amendment 39–2213, dated May 27, 1975:

McDonnell Douglas: Applies to all McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes, manufacturer's fuselage numbers 1 through 1125, certificated in all categories.

Compliance required as indicated, unless previously accomplished.

To prevent failures of the spoiler drive link(s), P/N 3923250–1, –501 and/or –503; spoiler fitting(s), P/N 3923251–1 and/or –501; and/or flight spoiler actuator, P/N 5913418, accomplish the following:

Part I

A. For operators who have accomplished terminating action in accordance with Airworthiness Directive (AD) 74–16–02, Amendment 39–2213, dated May 27, 1975, within the next 3,000 flight hours or 3,000 cycles, whichever occurs first, from the effective date of this AD, and thereafter at intervals not to exceed 3,000 flight hours or 3,000 cycles, perform non-destructive inspection (NDI) in accordance with the instructions contained in McDonnell Douglas Non-Destructive Testing (NDT) Manual, TR 7–1 through 7–4, referenced in McDonnell Douglas DC–9 Service Bulletins 27–228 and/or 27–229, both service bulletins dated August 19, 1982, or later NDT Manual or service bulletin revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—McDonnell Douglas Service Bulletins 27–228 and 27–229, both dated August 19, 1982, and 27–240, dated June 30, 1983, are hereinafter referred to as SB 27–228, SB 27–229, and SB 27–240.

B. For operators who have instituted the program of visual/repetitive inspections in accordance with AD 74–16–02, Amendment 39–2213, dated May 27, 1975, at the next scheduled repetitive inspection, comply with

the instructions in accordance with this AD, as applicable.

C. For operators who have not implemented AD 74–16–02, Amendment 39–2213, dated May 27, 1975:

1. Within the next 300 flight hours or 300 cycles, whichever occurs first, and thereafter at intervals not to exceed 300 flight hours or 300 cycles from the effective date of this AD:

(a) Visually inspect the exposed surfaces on the forward and aft lugs, including the areas surrounding the grease fittings on the spoiler actuating link, and

(b) Visually inspect the exposed surface and areas surrounding the grease fitting on the spoiler fitting.

2. At or prior to the accumulation of an additional 1,000 flight hours or 1,000 cycles, whichever comes first, from first visual inspection on these parts, and thereafter at intervals not to exceed 3,000 flight hours or 3,000 cycles, whichever comes first, institute the program of NDI inspections as required by Part I, paragraph A., above, until terminating action in accordance with Part I, paragraph G., below, is accomplished.

Note.—The requirements for visual inspections may be terminated upon instituting the NDI program specified in Part I, paragraph A. of this AD.

D. If no cracks are found in the spoiler drive link or fitting assemblies in the areas identified by Figures 1 through 7 of NDT Manual TR 7–1 through TR 7–4 referenced in SB 27–228 and/or 27–229, continue repetitive inspections in accordance with paragraph A., above, until such time terminating action in accordance with paragraph G., below, is accomplished.

E. If cracks are found in the spoiler drive links or fittings in areas identified by paragraph C., above:

1. Replace with new flight spoiler components, in accordance with paragraph 2, Accomplishment Instructions, Figure 1, of SB 27–240.

2. Replace with spoiler drive link, or aft attach fitting, and continue repetitive inspection in accordance with paragraph A., above, until terminating action in accordance with paragraph G., below, is accomplished.

F. Inspect/modify the flight spoiler actuator assemblies for corrosion, cracking, and wear in accordance with paragraph 2, Accomplishment Instructions, Figure 1, of SB 27–240.

G. Replacement of the flight spoiler components with new components in accordance with SB 27–240, dated June 30, 1983, or later FAA approved revisions, constitutes terminating action for repetitive inspection requirements of this AD.

Note.—Accomplishment of the preventive modification in accordance with SB 27–240 will constitute terminating action for the repetitive inspection requirements specified in DC–9 SB 27–228 and SB 27–229, or later approved revisions.

Note.—Accomplishment of the applicable inspection (s) specified in this AD will satisfy the special inspection requirements listed in FAA approved McDonnell Douglas Report Number MDC–J8855, Parts III and IV, Revisions A through F, or later FAA approved revisions.

H. Special flight permits may be issued in acordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

I. Upon the request of an operator, an FAA Maintenance Inspector, subject to approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection intervals specified in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

J. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—For purposes of this AD, if the time in service hours of either the spoiler actuating link or the spoiler fitting cannot be established, the part will be considered to have the same number of time in service hours as the airplane on which it is installed.

Part II

Applies to all DC–9 series aircraft, fuselage numbers 1 through 1125, certificated in all categories, as indicated below:

To provide crews with operation information should spoiler float occur, evidenced by abrupt roll, and to provide for a permanent change in the "Emergency Procedures" Section of the FAA approved Airplane Flight Manual (AFM) (and appropriate AFM sections of the operator's manual required by FAR 121.133 and 121.141), accomplish the following:

A. Placard

Within 48 hours after effective date of this AD, unless already accomplished, install a placard as close as practicable to the flap position indicator, containing the following wording or an equivalent wording as approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, reading as follows:

DC–9–10

"Flap selection excess 20 degrees must be made prior to 1000 feet AGL. See Section I, AFM for alternate procedures." (The last sentence may be omitted from the placard if the use of alternate landing flap setting is not desired.)

DC–9–20, –30, –40, –50, and C–9 (Military Series)

"Flap selection excess 25 degrees must be made prior to 1000 feet AGL. See Section I, AFM for alternate procedures." (The last sentence may be omitted from the placard if the use of alternate landing flap setting is not desired.)

DC–9–80 Series

"Flap selection excess 28 degrees must be made prior to 1000 feet AGL. See Section I, AFM for alternative procedures." (The last sentence may be omitted from the placard if the use of alternate landing flap setting is not desired.)

B. Limitations

1. The limitations set forth below are effective as of June 14, 1975, for the models DC–9–10 through –40 series, and C–9A and C–9B airplanes; and are effective within 30 days after the effective date of this AD for the Models DC–9–50 and –80 series airplanes.

2. Within 30 days after the effective date of this AD, unless already accomplished, incorporate the "Limitations" set forth below into the Airplane Flight Manual (AFM). Operators shall initiate action to notify and ensure that the flight crewmembers are apprised of these limitations.

DC–9–10 Series

Sec. I Limitations: (New Title) "Flaps":

"Flap selection excess 20 degrees must be made prior to descending below 1000 feet above ground level except for the following:

Approach and landing may be made with a maximum of 30 degree flap when 15 percent is added to the 50 degree flap landing field length."

Sec. I Limitations: Performance and Operating Limitations.

Add a new paragraph as follows:

"When using the 30 degrees flaps for landing, the maximum permissible quick turn around landing weight shown on the plot 'Maximum Permissible Quick Turn Around Landing Weight Flaps Down' in Section IV must be reduced by 15 percent."

DC–9–20, –30, –40, –50, and C–9 (Military Series)

Sec. I Limitations: (New Title) "Flaps":

"Flap selection excess 25 degree must be made prior to descending below 1000 feet above ground level except for the following:

Approach and landing may be made with a maximum of 25 degrees flap when 20 percent is added to the 50 degree flap landing field length."

Sec. I Limitations: Performance and Operating Limitations.

Add a new paragraph as follows:

"When using the 25 degrees flap for landing, the maximum permissible quick turn around landing weight shown on the plot 'Maximum Permissible Quick Turn Around Landing Weight Flaps Full Down' in Section IV must be reduced by 20 percent."

3. The above "Limitations" may be terminated, and the "Placard" removed when operator(s) has implemented the repetitive inspections required by Part I of this AD.

C. Emergency Procedures.

1. The Emergency Procedures set forth below are effective as of June 14, 1974, for the Models DC–9–10 through –40 series, and C–9A and C–9B airplanes; and are effective within 30 days after the effective date of this AD for the Models DC–9–50 and –80 series airplanes.

2. Within 30 days after the effective date of this AD, unless already accomplished, incorporate the "Emergency Procedures" set forth below into the Airplane Flight Manual. These procedures shall constitute a permanent change to the manual. Operators shall initiate action to notify and ensure that flight crewmembers are apprised of this change.

DC-9-10, -20, -30, -33F, -40, and C-9 (Military Series)

Section II Emergency Procedure (New Title) "Spoiler Float":

"Should rapid roll develop during extension of flap at to 50°, retract immediately to single engine landing flap setting. Adjust speed as required."

DC-9-34, -50 Series

Section II Emergency Procedure (New Title) "Spoiler Float":

"Should rapid roll develop during extension of flap at to 25°, retract immediately to single engine landing flap setting. Adjust speed as required."

DC-9-80 Series

Section II Emergency Procedure (New Title) "Spoiler Float":

"Should rapid roll develop during extension of flap beyond 28°, retract immediately to single engine landing flap setting. Adjust speed as required."

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, small entities operate DC-9 airplanes. A regulatory evaluation has been prepared and has been placed in the public docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 30, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-[illegible] Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-25-AD]

Airworthiness Directives; Paper Induction Air Filters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) applicable to paper induction air filters. It would impose a life limit of 500 hours time-in-service on these filters. Use of induction air filters beyond the replacement times recommended by filter and airplane manufacturers increases the probability that partial or complete loss of engine power will occur when fragments from deteriorated filters are ingested. The proposed AD will preclude these occurrences. The proposal will not alter current maintenance procedures which require periodic inspection of filters and replacement thereof when necessary due to deteriorated filter condition.

DATES: Comments must be received on or before October 28, 1984.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-25-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ty Krolicki, FAA, Chicago Aircraft Certification Office, ACE-140C, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018; Telephone (312) 694-7032.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identfy the regulatory docket or notice number and be submitted in duplicate to the Rules Docket at the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-25-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that it is not uncommon for paper induction air filters to be retained in service for periods of time in excess of those recommended by the filter and small airplane manufacturers. Accidents and forced landings have been caused by fragments from disintegrating air filters being ingested into the carburetion system and causing engine stoppage or partial power loss. Since it is likely that this condition exists or will develop on other airplanes equipped with paper induction air filters, the proposed AD would require that all paper induction air filters be replaced at 500 hours time-in-service intervals. The proposal will not alter current maintenance procedures which require periodic inspection of filters and replacement when necessary due to deteriorated filter condition.

The FAA has determined that, although the proposed regulation applies to hundreds of thousands of aircraft, most operators already comply with manufacturers' recommendations regarding inspection and replacement of induction air filters. This AD will affect the relatively small number of operators who do not replace their induction air filters at the time intervals prescribed by the manufacturer, probably not fully appreciating the potentially dire consequences of induction air filter failure. The typical cost of a replacement induction air filter is $32. This cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes. For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under the provisions of Executive Order 12291; (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3), I certify under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Induction Air Filters: Applies to all paper induction air filters used in small airplanes.

Compliance: Required as indicated, unless already accomplished.

To prevent possible engine power loss or stoppage caused by engine ingestion of fragments of a deteriorated induction air filter, accomplish the following:

Within the next one hundred hours time-in-service after the effective date of this AD or prior to the accumulation of 500 hours time-in-service on the filter, whichever occurs later and thereafter at intervals not exceeding 500 hours time-in-service on the filter.

(1) Replace the air filter with a new filter that is FAA approved for the airplane installation.

(2) Use the airplane maintenance records to determine filter time-in-service. Replace within 100 hours time-in-service any filter on which the time-in-service cannot be determined.

Note.—This AD does not alter current maintenance procedures which require inspection of paper induction air filters at 100 hours time-in-service and annual inspections and replacement as necessary based on filter condition.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Sec. 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on August 29, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84–23888 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 65

[Docket No. 24233; Notice No. 84–16]

Issuance and Renewal of Inspection Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would allow persons who have had their mechanic certificate or rating suspended to be eligible for issuance or renewal of an inspection authorization (IA) if their mechanic certificate or ratings have been reinstated. It is needed to revise an unnecessarily strict requirement for original issuance of an IA and would reduce a double penalty imposed on those holders of an IA who became ineligible for renewal because their mechanic certificate or ratings were not continuously in effect during the 3-year period preceding the annual renewal date.

DATES: Comments must be received on or before October 11, 1984.

ADDRESS: Comments on this proposal may be delivered or sent in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–204), Docket No. 24233, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Charles W. Mayernik, General Aviation and Commercial Branch, AWS–340, Aircraft Maintenance Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426–8203.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such writtren data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impacts that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24233." The postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Section 65.93 of the Federal Aviation Regulations (FAR's) provides that to be eligible for the renewal of an IA an applicant must present evidence that, among other things, he or she still meets the requirements of § 65.91(c) (1) through (4) for the original issuance of an IA. Before Amendment 65–22 (42 FR 46278; September 15, 1977), § 65.91(c)(1) provided that to be eligible for an IA, an applicant had to be "a certificated mechanic who has held both an airframe and a powerplant rating for at least 3 years before the date he applies." Amendment 65–22 revised paragraph (c)(1) to require that the applicant hold "a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which is currently effective *and has been continuously in effect* for not less than the 3-year period immediately before the date of application." (Emphasis added.)

When renewal was sought under the old rule, the holder of an IA whose mechanic certificate or rating was suspended could still be said to have "held" that certificate during the time of suspension. However, the certificate could not be said to be "in effect" while it was suspended. Accordingly, after Amendment 65–22, the IA could not be renewed at the end of the year because at renewal time (authorization expires on March 31) the mechanic certificate or rating would not have been continuously in effect during the preceding 3 years. Therefore, the mechanic would not be eligible again for an IA until 3 years after the end of the suspension of the mechanic certificate. Moreover, because the eligibility requirements for issuance of a certificate are considered to be continuing requirements which must be met as long as a certificate is held, an IA does not "become effective" again under § 65.91 at the end of the suspension of the mechanic certificate.

At the time Amendment 65–22 was adopted, the FAA was aware that adding the words "continuously in effect" to § 65.91(c)(1) would have this result. It was considered appropriate because the privileges and responsibilities that a person is charged with while holding the IA are greater than those of a certificated mechanic. Under § 65.95 the holder of an IA may inspect and approve for return to service certain aircraft or related parts or appliances after a major repair or major alteration to it in accordance with Part 43 and perform annual and progressive inspections. Although a mechanic is authorized to perform much of the associated maintenance work underlying these functions, the IA holder is ultimately responsible for ensuring that the work is done in accordance with the FAR's.

This 3-year-long period of ineligibility, however, has had an unintended inhibiting effect on the FAA's enforcement program. Amendment 65–22 has had a significant impact on the action taken against a mechanic for relatively minor to moderate violations. As a result of Amendment 65–22, a short term suspension of a certificate or rating for a relatively minor offense effectively revokes an IA for a period of 3 years. Further, this creates the unusual situation where an action for revocation of an IA could have less of an impact on the mechanic involved than a 5-day suspension of a single rating on his or her mechanic certificate. (In most cases, a mechanic whose IA has been revoked may reapply after 1 year.) Not every action that warrants the suspension of a mechanic certificate evidences a lack of responsibility sufficient to justify such a long-term ineligibility for an IA. As a result, enforcement personnel have been reluctant in some cases to produce such results.

In attempting to resolve this problem, the FAA has reviewed the requirement of § 65.91(c)(1), and has determined that it is unnecessary as a means of ensuring that only responsible persons continue to exercise IA privileges during the period of suspension. First, the suspension or revocation of a mechanic certificate or rating does result in loss of IA privileges. Section 65.92(a) provides that the holder of an IA may exercise the privileges of that authorization only while he holds a currently effective mechanic certificate with both a currently effective airframe rating and a currently effective powerplant rating. In addition, the cause that gave rise to suspension of the IA holder's mechanic certificate or rating may also warrant suspension of an IA for a longer period of time and may even justify revocation of the IA. Revocation of the IA may be justified when the person's actions evidence a lack of responsibility indicating that the mechanic should not be allowed to exercise the inspection and other privileges prescribed by § 65.95.

Accordingly, the FAA proposes to return to the requirements which existed prior to Amendment 65–22 and clarify those requirements to provide that an otherwise eligible applicant need only hold a currently effective mechanic certificate with both an airframe and a powerplant rating which has been in effect for a total of at least 3 years. This revision would remove any inequity associated with the renewal process and provide a more flexible and fair enforcement program for IA holders, without derogation of original certification standards.

Economic Evaluation

This proposal would relax an unnecessary requirement for original issuance or renewal of an IA. It would reduce a double penalty currently imposed on IA holders who become ineligible for renewal, as a result of a suspension, solely because the mechanic certificate or rating(s) was not continuously in effect during the 3-year period preceding the annual renewal. The FAA finds that the anticipated economic impact is so minimal that an economic analysis is unwarranted. Moreover, the FAA finds that this proposal will not have a significant economic impact, positive or negative, on a substantial number of small entities. This is so because, although the enforcement impact of this proposal may be significant, the number of persons unable to renew their IA is small relative to the total number of IA holders.

Conclusion

This proposal would relax the requirements for initial issuance and renewal of an inspection authorization and would impose no additional burden on any person. Accordingly, it has been determined that: this action is not a major rule under Executive Order 12291, and it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For these reasons and because the number of persons who would be unable to renew their IA if the current rule is not changed is minimal in comparison to the total number of IA holders, I certify that under the criteria of the Regulatory Flexibility Act, this proposal would not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the FAA has determined that the expected economic impact of this proposal is so minimal that a full regulatory evaluation is not required.

List of Subjects in 14 CFR Part 65

Airmen other than flight crewmembers, Inspection authorization, Mechanic certification, Aircraft, Aviation safety.

Proposed Rule

Accordingly, it is proposed to amend § 65.91 of Part 65 of the Federal Aviation Regulations (14 CFR Part 65) as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

By revising § 65.91(c)(1) to read as follows:

§ 65.91 Inspection authorization.

* * * * *

(c) * * *

(1) Hold a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which is currently effective and has been in effect for a total of at least 3 years;

* * * * *

(Secs. 313(a), 314(a), 601 through 610 and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983))

Issued in Washington, DC, on August 15, 1984.

Joseph A. Pontacorvo,

Deputy Director of Airworthiness.

[FR Doc. 84–23900 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASW–39]

Proposed Alteration of Transition Area; Refugio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes alteration of the transition area at Refugio, TX. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Mellon Ranch Airport. This action is necessary since the nondirectional

radio beacon (NDB) SIAP is being revised to approach the airport in different direction than the current procedure, thereby requiring realignment of designated 700-foot transition area.

DATE: Comments must be received on or before October 26, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, contains the description of transition areas designed to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at Refugio, TX, will necessitate an amendment to this subpart. This amendment will be required at Refugio, TX, since there is a proposed revised SIAP to the Mellon Ranch Airport which approaches the airport in a different direction from the current procedure. In addition, the SIAP to the O'Conner Airport has been canceled, thereby eliminating the need for airspace designated for this airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASW-39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this MPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Refugio, TX Revised

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Mellon Ranch Airport (latitude 28°16'50" N., longitude 97°12'40" W.), and within 3 miles each side of the 345° and 145° bearing of the Mellon Ranch NDB (latitude 28°16'41" N., longitude 97°12'31" W.) extending from the 5-mile radius area to 8.5 miles north and south of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air naviation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Forth Worth, TX, on August 20, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-23972 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-18]

Proposed Designation of Transition Area; Palatka, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Platka, Florida, transition area to accommodate Instrument Flight Rule (IFR) operations at Kay Larkin Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Palatka Non-directional Radio Beacon (RBN), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

DATES: Comments must be received on or before October 10, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should idenfity the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Palatka, Florida, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Kay Larkin Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to designate the Palatka, Florida, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Palatka, FL—[New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Kay Larkin Airport (Lat. 29°39'30" N., Long. 81°41'20" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

Acting Director, Southern Region.

[FR Doc. 84-23974 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-19]

Proposed Alteration of Transition Area; Rome, GA

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Rome, Georgia, transition area by revising the coordinates of two airports and designating a transition area arrival extension. The coordinates of the airports are inaccurate and this action will correct the errors. The McDaniels radio beacon (RBN), which was previously located on Tom B. David Field, has been relocated to a new site three miles south of the airport. This relocation necessitates a change in instrument approach procedures which requires the designation of a transition area arrival extension. Thus, the floor of controlled airspace south of Tom B. David Field must be lowered from 1,200 to 700 feet above the surface for protection of Instrument Flight Rule (IFR) aeronautical activities.

DATE: Comments must be received on or before October 14, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisior, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will correct the coordinates to two airports and designate additional 700-foot transition area south of Tom B. David Field. The additional transition area will provide controlled airspace for aircraft executing new instrument approach procedures to David Field. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR 71

Aviation safety, Airspace, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend the Rome, Georgia, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Rome, GA—[Revised]

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Richard B. Russell Airport (Lat. 34°21′03″ N., Long. 85°09′30″ W.); within 5 miles each side of Rome VORTAC 350° radial, extending from the 12-mile radius area to the VORTAC; within a 9.5-mile radius of Tom B. David Field (Lat. 34°27′26″ N., Long. 84°56′23″ W.); within 3 miles each side of the 169° bearing from Calhoun RBN (Lat. 34°24′05″ N., Long. 84°55′36″ W.), extending from the 9.5-mile radius area to 11.5 miles south of the RBN; excluding those portions which coincide with the Dalton and Cartersville, GA, transition areas.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

Acting Director, Southern Region.

[FR Doc. 84-23973 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

Advance Notice of Proposed Customs Regulations Amendments Relating to Storage by Customhouse Brokers of Liquidated Entries

AGENCY: U.S. Customs Service, Treasury.

ACTION: Advance notice of proposed rulemaking and solicitation of comments.

SUMMARY: Customs has under review several initiatives regarding the retention and disposition of records as part of its goal of improving paperwork management procedures. The purpose of this advance notice is to inform the public that to reduce Customs storage costs for liquidated entries and improve service to customhouse brokers, Customs is considering an initiative to require brokers to store entry documents for a 1-year period after liquidation. Expenses incurred in transporting the documents to and from a broker, and broker storage expenses, would be borne by each broker.

Presently, entry documents are retained by Customs, normally at the customhouse in the port where filed, for a period of one year after liquidation. After that time, Customs transfers the entry documents to a Federal Records Center for an additional 7-year period.

Customs is considering the feasibility and desirability of transferring the entry documents from Customs to brokers immediately after liquidation for storage by brokers for a 1-year period and then returning the records to Customs to be transferred to a Federal Records Center.

The public is invited to comment on this initiative as well as suggest alternatives which will accomplish the objective of improving Customs paperwork management procedures. If it is determined to proceed with this initiative, amendments to the Customs Regulations will be necessary, and will be the subject of a notice of proposed rulemaking published in the **Federal Register**.

DATE: Comments must be received on or before November 13, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert B. Stenstron, Duty Assessment Division (202-566-5492), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Due to the ever increasing number of commercial transactions processed by Customs each year, and restrictions on personnel and resources, Customs is continually attempting to find new ways of improving service, reducing paper processing, and saving money. Maintenance and disposal of United States government records is governed by a series of laws codified by title 44, United States Code.

Customs has undertaken numerous initiatives relating to the processing of imported merchandise which are cost beneficial to the Government and provide improved service to the importing public. With a current annual volume of 5 million formal entries, alternatives to the traditional on-site storage of records by Customs at each port are being studied. The burden of handling and storing relatively inactive records is reaching a critical point. With increasing entry volume, and space and staff restrictions, it may not be possible for Customs to continue to provide a satisfactory level of service in the entry filing and retrieval activity. This would be detrimental to the Government and the importing public, and therefore, alternative procedures are needed.

Based on a 1983 survey of all Customs regions, direct storage costs for liquidated entries is approximately $1.7 million per year. Of this amount, 60 percent is for personnel who sort, file, and retrieve entries, and the remaining 40 percent covers storage space, purchase of filing cabinets, and related costs. Aside from transportation costs to a servicing Federal Records Center, there are no charges by the General Services Administration for the 7-year period of final storage.

Pursuant to § 159.1, Customs Regulations (19 CFR 159.1), liquidation means the final computation or ascertainment of duties accruing on an entry of merchandise. Entries are generally liquidated within one year from the date of entry of the merchandise.

The majority of all formal entries are filed with Customs by customhouse brokers. Section 111.1(b), Customs Regulations (19 CFR 111.1(b)), defines customhouse broker to mean a person who is licensed under Part 111, Customs Regulations, to transact Customs business on behalf of others.

Customs is considering an initiative to require customhouse brokers to store Customs entry documents for a 1-year period after liquidation.

Current Procedure

Entry documents are retained by Customs, normally at the customhouse in the port where filed for a period of one year after liquidation. During this period, a broker may request Customs to provide copies of entry documents (e.g., to file a fully documented protest within 90 days after a notice of liquidation or reliquidation). Approximately 4 percent of the stored liquidated entry documents are recalled during that 90-day period, decreasing to less than 2 percent after that time. Nearly all recalls in the 90-day period are requests from the trade community. Customs may have need to retrieve entry documents from its own files, but this usually occurs after the 90-day period and amounts to less than 1 percent of the stored liquidated entry documents.

After a period of one year after liquidation at a port, Customs transfers the liquidated entry documents to a Federal Records Center for an additional 7-year period.

Proposal

Customs is considering the feasibility and desirability of transferring entry documents from Customs to brokers immediately after liquidation for storage by brokers for a 1-year period and then returning the records to Customs to be transferred to a Federal Records Center.

Documents to be transferred to brokers include:

1. Customs Form 7501 (all types);
2. Customs Form 5101;
3. Customs Form 3461;
4. Customs Form 5106;
5. Single entry bonds;
6. Certifications;
7. Commercial invoices;
8. Packing slips; and
9. All other supporting papers which comprise the "Entry Summary" package.

Customs would retain one copy of Customs Form 7501 in its file.

Under the proposal, Customs would sort liquidated entry documents according to the name of a broker. Changed entries with refunds due would be kept separate for certification against a check listing. Each cycle of liquidated entries would be grouped. When the bulletin notice has been received, and check listing verified, the corresponding batch of liquidated entries and a copy of the pertinent part of the bulletin notice are prepared for the broker's messenger.

A broker's messenger would collect at the customhouse the prepared batch of liquidated entries and the notice covering those entries. A receipt, showing the cycle, date of liquidation, date of pick-up, and names of the broker and messenger, would be signed by the messenger.

Where possible, broker pick-up is encouraged to be scheduled on the Friday preceding the date of the liquidation cycle to provide brokers some advance notice of liquidation.

A broker would sort the entry documents by fiscal year and entry number. Missing entries would be brought to the attention of Customs and extraneous entries returned. Entries not found by either party would be reconstructed by the broker from the file.

Any entry needed by Customs for review because of a protest, petition, drawback, or other reason, would be returned to Customs under a weekly request procedure. A broker's file would show the "out" status of the entry, reason, and eventual date of return, so that file integrity would be maintained.

A broker would return each batch of entry documents one year after liquidation. A return receipt would indicate the names of the broker and messenger, date, date of liquidation, cycle number, and certifiction of bulletin notice for entries being returned.

Expenses incurred in transporting the documents to and from a broker, and broker storage expenses, woud be borne by each broker.

Customs would verify the contents of the returned batch of entry documents from each broker. A control report would be prepared monthly for use by Customs local management. The entry documents would be prepared as soon as possible for transportation to a Federal Records Center for final storage.

Customs believes that adoption of this initiative will reduce Customs storage costs for liquidated entries and improve service to brokers. Because a majority of retrievals of entry documents occur in the first 90-days after liquidation and most are initiated by brokers, retention of the entry records on a broker's premise would facilitate the broker's filing of a documented protest pursuant to 19 U.S.C. 1514, requests for reliquidation of an entry pursuant to 19 U.S.C. 1520(c), and drawback claims filed pursuant to 19 U.S.C. 1313. Additionally, brokers would receive some advance notice of liquidation.

If it is decided to proceed with this matter, amendments to the Customs Regulations will be necessary and will be the subject of a notice of proposed rulemaking published in the **Federal Register**.

Alternative

In the overall effort by Customs to improve service to the trade community and reduce storage costs at the same time, various alternatives to processing entry documents after liquidation are under study. For example, the use of micrographics for stored entries is being considered. Comments are solicited on the use of appropriate technologies for the storing of liquidated entries.

Comments

Customs invites written comments (preferably in triplicate) from all interested parties on this initiative as well as suggestions for alternatives which will accomplish the objective of improving Customs paperwork management procedures.

Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service, Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order

It does not appear that the initiative will result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

This initiative, if promulgated, may have a significant economic impact on a substantial number of small entities and thus require an initial regulatory flexibility analysis in accordance with the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). If it is decided to proceed with this matter, the notice of proposed rulemaking will (1) have as an attachment the initial regulatory flexibility analysis or (2) contain a certification by the Secretary that the analysis is not, in fact, required.

Paperwork Reduction Act

If it is determined to proceed with this initiative, the notice of proposed rulemaking will address the paperwork burden pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 and will be subject to review by the Office of Management and Budget (OMB).

Authority

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759 (19 U.S.C. 1641).

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Custom Service. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: August 17, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-23901 Filed 9-10-84; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 18, 24, 112, 141, 144, 146, and 191

Foreign Trade Zones; Proposed Specialized and General Provisions

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of extension of time for submissions of comments.

SUMMARY: This notice extends the period of time within which interested members of the public may sumit writtens comments concerning the proposed revision of the Customs Regulations relating to foreign trade zones, which were published in the **Federal Register** on July 17, 1984 (49 FR 28855). Comments were to have been received on or before October 15, 1984.

The National Association of Foreign Trade Zones has requested Customs to extend the comment period because of the complexity and extent of the proposed regulations, and the need of its members to analyze all of the provisions. They also note that the proposal was published at the height of the summer vacation season, and that their annual meeting will be held just after the expiration of the comment period. Customs believes that the request has merit. Accordingly, to give ample time to review and analyze the proposal and to prepared written responses, the period of time for the submission of comments is extended to November 30, 1984.

DATE: Comments are requested on or before November 30, 1984.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

All comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

General operational aspects: John Holl or Louis Razzino (202-566-8151).

Inventory control and recordkeeping system aspect: Matt Krimski (202-566-2812).

Appraisement and valuation aspect: Myles Flynn (202-566-5307).

Liquidated damages, penalty and suspension aspect: William Lawlor (202-566-5856).

Economic aspect: Daniel Norman (202-566-5307).

All of the above Customs personnel are located at U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Dated: September 4, 1984.

John P. Simpson,
Director, Office of Regulations and Rulings.

[FR Doc. 84-23902 Filed 9-10-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF EDUCATION

34 CFR Part 32

Salary Offset for Department of Education Employees To Recover Overpayments of Pay or Allowances

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The secretary proposes regulations that would establish rules for offsetting a debt against the Federal pay of a current or former employee of the Department of Education to recover an overpayment of pay or allowances. These regulations would implement the amendments required under the Debt Collection Act of 1982. An employee who has been overpaid will be given the opportunity to enter into a voluntary repayment agreement or to show that an offset of the statutory maximum of 15 percent of disposable pay will create an extreme financial hardship. The employee may request a hearing to contest the Secretary's determination of the existence or amount of the overpayment and an involuntary repayment schedule.

DATES: Comments must be received on or before October 11, 1984.

ADDRESSES: Comments should be addressed to Emma Mapp, Office of Personnel Resource Management, Room 1083, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245-3087.

SUPPLEMENTARY INFORMATION:

Background

Prior to passage of the Debt Collection Act of 1982, Pub. L. 97-365, the heads of agencies were authorized under section 5514 of Title 5, United States Code, to offset an erroneous overpayment of pay from the disposable pay of Federal employees. The amendments to 5 U.S.C. 5514 made by the Debt Collection Act of 1982 expand that authority to offset debts owed to the United States but impose new procedural requirements and limit the offset to 15 percent of the employee's disposable pay. Disposable pay is defined in the law as gross Federal pay minus deductions required by law to be withheld. The deductions include amounts withheld for Federal, State, and local income taxes, Social Security taxes, and Federal retirement programs.

The law establishes procedures to protect the interests of employees. Thus, at least 30 days before an offset may be initiated, the head of the agency which made the overpayment must notify the employee that he or she (1) is indebted to the United States, (2) may inspect and copy Government records relating to the overpayment, (3) may enter into an agreement with the head of the agency concerning a repayment schedule, and (4) may request a hearing contesting the existence or amount of the debt, or an involuntary repayment schedule.

The Secretary of Education is proposing regulations to implement the amendments to 5 U.S.C. 5514 made by the Debt Collection Act of 1982 with regard to employees of the Department who are overpaid pay or allowances.

The proposed regulations implement the new procedural requirements and protect the Government's interest in recovering overpayments of pay or allowances in a cost-effective and expeditious manner. They provide for the Secretary to notify the employee of the amount of the overpayment and give the employee an opportunity to arrange for voluntary repayment, request a waiver or submit a financial statement requesting a reduction of an involuntary offset.

In addition, the proposed regulations establish the procedures for requesting and holding a pre-offset hearing. An employee who desires a hearing must request a hearing in writing within 15 days of the notice of the overpayment or withing 5 days of a denial of a waiver. The additional time allowed when a waiver is requested is to avoid unnecessary hearings if a waiver is granted. Employees must state in their request all the reasons why they contest the overpayment and must also provide a copy of all documents on which they are relying on the allegations of an individual must supply a statement in the form of an affidavit from that individual. Employees submit a hearing request to the designated hearing official and to the Secretary.

The issues at a hearing are limited to a review of the existence or amount of the debt or an involuntary repayment schedule. The latter issue will be reviewable only at a hearing when the employee has timely submitted a prior response to the Secretary with a verified financial statement showing that an involuntary deduction of 15 percent of the employee's disposable pay will create extreme financial hardship. In passing this legislation amending 5 U.S.C. 5514, Congress intended to aid the Government in recovering amounts owed to the United States in a cost effective manner without the need to pursue relatively small claims through litigation. That purpose is served by giving the Secretary the opportunity to review an employee's claim of extreme financial hardship before the issue is raised at a hearing. If the Secretary agrees with the employee and reduces the rate of an involuntary deduction, unnecessary hearings can be avoided, and the goal of reducing the Agency's cost of recovery is served.

The Secretary's denieal of a waiver of the overpayment is not reviewable at the hearing. Under 4 CFR Part 91, the denieal of a waiver of an erroneous overpayment over $500 by the agency head is subject to review by the Comptroller General. Thus, it is beyond the authority of the hearing official to review this issue.

In most instances when an employee is overpaid, the existence and amount of the overpayment are established by documentary evidence from the Agency's Personnel and Payroll Offices. Thus, a determination and review of these matters rarely involve issues of credibility or veracity of an individual. Similarly, because these regulations would require the employee contesting the involuntary repayment schedule to document the alleged extreme financial hardship by a verified financial statement, issues of credibility or veracity should rarely arise with respect to an involuntary repayment schedule. Thus, it is generally unnecessary for the hearing official to weigh the credibility of witnesses in an oral hearing to review the issues of the existence or amount of the overpayment or the involuntary repayment schedule. Accordingly, the proposed regulations provide that the hearing is conducted on the written submissions. Where the statute does not require an oral hearing, as under 5 U.S.C. 5514, case law provides that a "paper hearing" may be sufficient to protect the interests of the employee. See, *Gray Panthers* v. *Schweiker*, 652 F. 2d 146, footnote 3 (D.C. Cir. 1981).

Where the Secretary, in his discretion, determines that a reviewable matter rests on an issue of credibility or veracity of an individual or cannot be resolved by a review of the documentary evidence, the Secretary notifies the employee of the right to elect an oral hearing. This limited exception to a hearing on the written submissions complies with the standard established under the General Accounting Office (GAO)/Department of Justice Joint Regulations on offset, 4 CFR 102.3(b), and case law. See, *Califano* v. *Yamasaki*, 442 U.S. 682 (1979).

When an oral hearing is provided, the hearing is informal in nature and is in the form of an oral argument. Employees may testify on their own behalf. Other witnesses may be called to testify only where the hearing official determines that their testimony is relevant and not redundant. The employee may represent himself or herself, or be represented by another person whose representation does not create an actual or apparent conflict of interest. The Secretary and the employee each argue their cases by reference to the documents previously submitted. The hearing can be conducted by conference call for all employees outside the Washington D.C. area, at the request of the employee or at the discretion of the hearing official.

When an employee requests an oral hearing but fails to appear as scheduled, the Secretary's decision is affirmed. The statute gives the employee the opportunity to request review of the Secretary's decision by an independent party. The employee who does not appear has been given the opportunity required by statute. No further rights are provided. While Congress granted employees certain procedural protections by allowing review rights, it also intended that the Government minimize the cost of recovery of the debts. The employee should not be allowed to increase those costs arbitrarily by his or her failure to follow up on a hearing request.

The hearing official is not an employee of the Department or under the supervision or control of the Secretary. The hearing official issues a written decision within 60 days of the request for the hearing. The hearing official may reverse the Secretary's determination on a reviewable matter only where the determination is clearly erroneous. A determination is "clearly erroneous" when although there is evidence to support it, the reviewing party considering the evidence as a whole is left with a definite and firm conviction that a mistake was made.

Paperwork Reduction Act of 1980

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to the Office of Management and Budget review and approval.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

These regulations do not affect small entities. They affect only current or former individual employees of the Department.

Invitation to Comment

The Secretary invites interested persons to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 30th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 1083, FOB–6, 400 Maryland Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., (EDST) Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 32

Administrative practices and procedures, Debt collection, Federal employees.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: September 5, 1984.

T.H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance number does not apply)

The secretary proposes to add a new Part 32 to Title 34 of the Code of Federal Regulations to read as follows:

PART 32—SALARY OFFSET FOR DEPARTMENT OF EDUCATION EMPLOYEES TO RECOVER OVERPAYMENTS OF PAY OR ALLOWANCES

Sec.

32.1 Scope.
32.2 Definitions.
32.3 Pre-offset notice.
32.4 Employee response.
32.5 Pre-offset hearing—general.
32.6 Request for a pre-offset hearing.
32.7 Pre-offset oral hearing.
32.8 Pre-offset hearing on the written submissions.
32.9 Written decision.
32.10 Deductions process.

Authority: 5 U.S.C. 5514, as amended by Sec. 5 of Pub. L. 97–365, 96 Stat. 1751–1752.

§ 32.1 Scope

(a) The Secretary establishes the standards and procedures in this part that apply to the deductions from disposable pay through offset of a current or former employee of the Department of Education to recover overpayments of pay or allowances.

(b) This part does not apply to—

(1) Recovery through offset of an indebtedness to the United States by an employee of the Department under a program administered by the Secretary of Education covered under 34 CFR Part 31;

(2) The offset of an indebtedness to the United States by a Federal employee to satisfy a judgment obtained by the United States against that employee in a court of the United States;

(3) The offset of any payment to an employee of the Department of Education which is expressly allowed under statutes other than 5 U.S.C. 5514; or

(4) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(5 U.S.C. 5514)

§ 32.2 Definitions.

The following definitions apply to this part:

"Disposable pay" means the amount that remains from an employee's Federal pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld.

"Employee" means a current or former employee of the Department of Education.

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay.

"Secretary" means the Secretary of Education or the Secretary's designee.

(5 U.S.C. 5514)

§ 32.3 Pre-offset notice.

At least 30 days before initiating a deduction from the disposable pay of an employee to recover an overpayment of pay or allowances, the Secretary sends a written notice to the employee stating—

(a) The origin, nature and amount of the overpayment;

(b) How interest is charged and administrative costs and penalties will be assessed, unless excused under 31 U.S.C. 3716;

(c) A demand for repayment, providing for an opportunity for the employee to enter into a written repayment agreement with the Department;

(d) Where a waiver of repayment is authorized by law, the employee's right to request a waiver;

(e) The Department's intention to deduct 15 percent of the employee's disposable pay to recover the overpayment if a waiver is not granted by the Secretary and the employee fails to repay the overpayment or enter into a written repayment agreement;

(f) The amount, frequency, approximate beginning date and duration of the intended deduction;

(g) If Government records on which the determination of overpayment are not attached, how those records will be made available to the employee for inspection and copying;

(h) The employee's right to request a pre-offset hearing concerning the existence or amount of the overpayment or an involuntary repayment schedule;

(i) The applicable hearing procedures and requirements, including a statement that a timely petition for hearing will stay commencement of collection proceedings and that a final decision on the hearing will be issued not later than 60 days after the hearing petition is filed, unless a delay is requested and granted;

(j) That any knowingly false or frivolous statements, representations or evidence may subject the employee to applicable disciplinary procedures, civil or criminal penalties; and

(k) That where amounts paid or deducted are later waived or found not owed, unless otherwise provided by law, they will be promptly refunded to the employee.

(5 U.S.C. 5514)

§ 32.4 Employment response.

(a) *Voluntary repayment agreement*—Within 7 days of receipt of the written notice under § 32.3, the employee may submit a request to the Secretary to arrange for a voluntary repayment schedule. To arrange for a voluntary repayment schedule, the employee shall submit a financial statement and sign a written repayment agreement. An employee who arranges for a voluntary repayment schedule may nonetheless request a waiver of the overpayment under parapraph (b) of this section.

(b) *Waiver*—An employee seeking a waiver of the overpayment that is authorized by law must request the waiver in writing to the Secretary within 7 days of receipt of the written notice under § 32.3 The employee must state why he or she believes a waiver should be granted.

(c) *Involuntary repayment schedule*—If the employee claims that an involuntary deduction of 15 percent of disposable pay will cause extreme financial hardship and should be reduced, he or she must submit a written explanation and a financial statement signed under oath or affirmation to the Secretary within 7 days of receipt of the written notice under §32.3. An employee who fails to submit this financial information in a timely manner waives the right to object to the involuntary repayment schedule at a hearing under § 32.5. The Secretary notifies the employee, in writing, whether the Secretary will reduce the rate of the involuntary deduction.

(5 U.S.C. 5514)

§ 32.5 Pre-offset hearing—general.

(a) An employee who wishes a review of the existence or amount of the overpayment or an involuntary repayment schedule may request a pre-offset hearing. The pre-offset hearing does not review—

(1) The denial of a waiver of repayment under 5 U.S.C 5584;

(2) The involuntary repayment schedule or financial hardship caused by deduction of 15 percent of the employee's disposable pay, unless the employee has submitted the financial statement and response required under § 32.4(c); and

(3) The determination under paragraph (b) of this section that the pre-offset hearing is on the written submissions.

(b) Unless the Secretary determines that a matter reviewable under paragraph (a) of this section turns on an issue of credibility or veracity or cannot be resolved by a review of the documentary evidence, the pre-offset hearing is on the written submissions.

(c) A pre-offset hearing is based on the written submissions for overpayments arising from—

(1) A termination of a temporary promotion;

(2) A cash award;

(3) An erroneous salary rate;

(4) Premature granting of a within-grade increase;

(5) A lump sum payment for annual leave;

(6) Unauthorized appointment to a position;

(7) An error on time and attendance records; or

(8) Other circumstances where the Secretary determines that an oral hearing is not required.

(d) The hearing is conducted by a hearing official who is not an employee on the United States Department of Education or under the supervision or control of the Secretary.

(e) Formal discovery between the parties is not provided.

(U.S.C. 5514)

§ 32.6 Request for a pre-offset hearing.

(a) Except for an employee who has requested a waiver of repayment under § 32.4(b), an employee who wishes a pre-offset hearing must request the hearing within 15 days of receipt of the written notice given under § 32.3. The Secretary waives the 15-days requirement if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive notice and lack of knowledge of the time limit.

(b) An employee who has requested a waiver under § 32.4(b) may request a hearing within 5 days of receipt of a determination by the Secretary denying a waiver.

(c) The request for a hearing must—

(1) Be in writing;

(2) State why the employee—

(i) Contests the existence or amount of the overpayment; or

(ii) Claims that the involuntary repayment schedule will cause extreme financial hardship;

(3) Include all documents on which the employee is relying, other than those provided by the Secretary under § 32.3; any document which is a statement of an individual must be in the form of an affidavit; and

(4) Be submitted to the designated hearing official with a copy to the Secretary.

(d) If the employee timely requests a pre-offset hearing or the timelines are waived under paragraph (a) of this section, the Secretary—

(1) Notifies the employee whether the employee may elect an oral hearing; and

(2) Provides the hearing official with a copy of all records on which the determination of the overpayment and any involuntary repayment schedule are based.

(e) An employee who has been given the opportunity to elect an oral hearing and who does elect an oral hearing must notify the hearing official and the Secretary of his or her election in writing within 5 days of receipt of the notice under paragraph (d)(1) of this section and must identify all proposed witnesses and all facts and evidence about which they will testify.

(f) Where an employee requests an oral hearing, the hearing official notifies the Secretary and the employee of the date, time, and location of the hearing. However—

(1) The employee subsequently may elect to have the hearing based only on the written submissions by notifying the hearing official and the Secretary at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-days requirement for good cause when the employee notifies the hearing official before the date of the hearing; and

(2) The request for a hearing of an employee who fails to appear at the oral hearing must be dismissed and the Secretary's decision affirmed.

(U.S.C 5514)

§ 32.7 Pre-offset oral hearing.

(a) Oral hearings are informal in nature. The Secretary and the employee, through their representatives, and by reference to the documentation submitted, explain their case. These presentations are in the form of an oral argument. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify only where the hearing official determines that their testimony is relevant and not redundant.

(b) The hearing official shall—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person whose representation creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing where to do so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call—

(1) When the employee is located in a city other than Washington, D.C.;

(2) At the request of the employee; or

(3) At the discretion of the hearing official.

(5 U.S.C. 5514)

§ 32.8 Pre-offset hearing on the written submissions.

If a hearing is to be held on the written submissions, the hearing examiner reviews the records and responses submitted by the Secretary and the employee under § 32.6.

(5 U.S.C. 5514)

§ 32.9 Written decision.

(a) The hearing official issues a written decision stating the facts supporting the nature and origin of the debt and the hearing official's analysis, findings and conclusions as to the amount of the debt and the repayment schedule within 60 days of filing of the employee's request for a pre-offset hearing.

(b) The hearing official decides whether the Secretary's determination of the existence and the amount of the overpayment or the extreme financial hardship caused by the involuntary repayment schedule is clearly erroneous. A determination is clearly erroneous if although there is evidence to support the determination, the hearing official, considering the record as a whole, is left with a definite and firm conviction that a mistake was made.

(c) In making the decision, the hearing official is governed by applicable Federal statutes, rules and regulations.

(d) The hearing official decides the issue of extreme financial hardship caused by the involuntary repayment schedule only where the employee has submitted the financial statement and response required under § 32.4(c). Where the hearing official determines that an involuntary repayment schedule creates extreme financial hardship, he or she must establish a schedule that alleviates the financial hardship but may not reduce the involuntary repayment schedule to a deduction of zero percent.

(5 U.S.C. 5514)

§ 32.10 Deductions process.

(a) Debts must be collected in one lump sum where possible. If the employee does not agree to a lump sum that exceeds 15 percent of disposable pay, the debt must be collected in installment deductions at officially established pay intervals in the amount established under a voluntary repayment agreement, an involuntary repayment schedule where no hearing is requested, or the schedule established under the written hearing decision. Installment deductions must be made over a period not greater than the anticipated period of employment, except as provided under paragraph (c) of this section. If possible, the installment payment must be sufficient in size and frequency to liquidate the debt in, at most, three years. Installment payments of less than $25 may be accepted only in the most unusual circumstances.

(b) Deductions must begin—

(1) After the employee has entered a voluntary repayment schedule;

(2) If a waiver is requested under § 32.4(b), after the employee has been denied a waiver by the Secretary; or

(3) If a hearing is requested under § 32.5, after a written decision.

(c) If the employee retires or resigns or his or her employment ends before collection of the debt is completed, the amount necessary to liquidate the debt must be offset from subsequent payments of any nature (for example, final salary payment or lump-sum leave) due the employee on the date of separation. If the debt cannot be liquidated by offset from any such final payment due the employee on the date of separation, the debt must be liquidated by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the employee, where appropriate.

(d) Interest, penalties and administrative costs on debts collected under this Part must be assessed, in accordance with the provisions of 4 CFR 102.13.

(e) An employee's payment, whether voluntary or involuntary, of all or any portion of an alleged debt collected pursuant to this Part may not be construed as a waiver of any rights which the employee may have under this Part or any other provision of law, except as otherwise provided by law.

(f) Amounts paid or deducted pursuant to this Part by an employee for a debt that is waived or otherwise found not owing to the United States or which the Secretary is ordered to refund must be promptly refunded to the employee.

(5 U.S.C. 5514)

[FR Doc. 84-23964 Filed 9-10-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-2668-1]

Federal Assistance Limitations; State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to limit certain federal funding assistance for Jackson County, Oregon. These limitations will apply to funds provided under the Clean Air Act, the Clean Water Act, and the Surface Transportation Assistance Act. EPA is taking this action pursuant to sections 176(a) and 316(b) of the Clean Air Act, because the State of Oregon failed to submit legally enforceable State Implementation Plan (SIP) revisions that would provide for attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide prior to December 31, 1987. If EPA takes final action, the funding limitations would apply to all of Jackson County.

DATE: Comments must be received on or before October 11, 1984.

ADDRESS: Comments should be addressed to: Laurie Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Loren McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (FTS) 399-7369.

SUPPLEMENTARY INFORMATION:

I. Background

On June 24, 1980 (45 FR 42278) EPA approved the first phase of the Medford Carbon Monoxide (CO) attainment plan. At that time an extension of the attainment date for the CO standard to a date beyond December 31, 1982, but before December 31, 1987, was also approved.

The second phase of the Medford CO Attainment Plan was submitted to EPA on October 20, 1982. That plan indicated that, in order to attain the CO standard by December 31, 1987, it would be necessary to implement an automobile inspection and maintenance (I/M) program prior to January 1984. On February 3, 1983 (48 FR 5131) EPA proposed to approve this second phase with the understanding that EPA would not finally approve the SIP until after I/M is officially adopted and resource commitments are obtained. Since that time, the responsible Jackson County officials have abandoned the original schedules and commitments for implementation of an I/M program in Medford.

Accordingly, on March 14, 1984 (49 FR 9582) EPA reversed its original proposal and proposed to disapprove the plan. On March 27, 1984 the residents in Jackson County, Oregon, voted against the establishment of an I/M program. Clearly the current CO attainment plan does not provide for attainment of the standards prior to December 31, 1987. EPA had no choice, according to the requirements of section 172(b)(10) of the Clean Air Act, but to finalize the disapproval and initiate the section 176(a) and 316(b) sanction process.

II. Funding Limitations

A. Section 176(a)

To ensure that Federal funds do not further contribute to the already serious air pollution problem and to encourage state cooperation, Congress adopted section 176(a) of the Clean Air Act. Section 176(a) requires withholding of certain federal assistance funds for highway construction and air quality planning grants if the EPA Administrator finds that a state has failed to submit, or is not making reasonable efforts to submit, a SIP which considers each of the elements of section 172 of the Act. This includes the requirement for I/M. On April 10, 1980, after prior notice and public comment, EPA and the Department of Transportation (DOT) published their final policies and procedures for imposing funding restrictions under section 176(a). (45 FR 24692.) This notice should be used as reference in reviewing today's notice.

B. Section 316(b)

EPA may also withold certain grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act. The EPA Regional Administrator may fund a specific project if she finds that it is needed for relief of an immediate public health hazard and will not expand usable treatment capacity by more than one million gallons per day. In addition, the EPA Regional Administrator may fund a project which will improve treatment capability, but will not expand capacity for future growth.

These sewage treatment funding limitations would apply to all of Jackson County and could impact over one million dollars in grant awards. The EPA policy for implementing section 316(b) was published in the **Federal Register** on August 11, 1980 (45 FR 53382).

III. Consultation Period

On April 18, 1984, EPA notified affected federal, state and local agencies and officials that it was initiating the EPA/DOT procedures for imposing the funding limitations under section 176(a). This notification started a 30-day consultation period in accordance with these procedures. Between April 18, 1984 and the date of this notice, EPA officials have consulted with several federal, state and local officials in an effort to resolve this issue. The following events have occurred since EPA initiated this consultation period:

April 18, 1984

EPA notified Federal Highway Administration (FHWA) by telephone and letter that the 30-day consultation period was being initiated. Key state, local and congressional contacts were informed of the action.

April 20, 1984

EPA discussed alternatives to I/M and other possible ways to implement I/M with staff of Oregon Department of Environmental Quality (ODEQ).

April 24, 1984

EPA met with FHWA to discuss the SIP status and sanction action.

April 27, 1984

Joe Cannon, Assistant Administrator for Office of Air and Radiation met with Oregon Congressman Bob Smith and the President of the Medford Chamber of Commerce to discuss sanctions.

May 8, 1984

EPA met with FHWA to develop regional criteria and procedures for implementing the section 176(a) sanction process. EPA also met with ODEQ to discuss the current SIP status and ongoing efforts to resolve the CO problem in Medford.

May 18, 1984

The consultation process with FHWA officially closed. Discussions continue on solutions to the CO problem.

IV. Proposed Action

Failure of the Jackson County Commissioners to adopt an I/M program has prevented ODEQ from submitting an approvable 1982 SIP for attainment of the NAAQS for CO. EPA therefore proposes the following actions:

1. EPA proposes to find that the State of Oregon has failed to submit, and is not making reasonable efforts to submit, an approvable 1982 SIP for Medford, Oregon which considers each of the elements required by section 172 and 110 of the Act; and
2. EPA proposes to impose federal funding restrictions on Jackson County, Oregon, pursuant to section 176(a) and 316(b) of the Act.

During the public comment period, EPA will consider any comments on this issue. If, prior to final EPA action on this matter, the Jackson County Commissioners or ODEQ adopts an enforceable I/M program or other program which demonstrates attainment of the CO standard prior to the December 31, 1987 deadline, EPA will withdraw this proposal. If the County and State fail to remedy this situation before EPA takes final action, the funding limitations will become effective on the date final rulemaking is published in the **Federal Register**.

Upon final rulemaking, the Secretary of Transportation shall not approve any projects or award any grants under the Transportation Assistance Act in Jackson County, except for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance. Furthermore, the Administrator of EPA shall not approve any projects or award any grants in Jackson County authorized by the Clean Air Act unless they qualify for the exemptions noted in the April 10, 1980 policy notice. Pursuant to section 316 of the Act, EPA will also withhold certain grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act (33 U.S.C. 1251 et. seq.). Once these funding limitations are finalized they can only be removed by a **Federal Register** notice, after ODEQ officially submits a SIP to EPA which corrects the deficiency identified in today's notice and EPA takes final action to approve it.

For more information on the scope and procedures for these restrictions, see 45 FR 53382 (August 11, 1980), and 45 FR 24692 (April 10, 1980).

V. Opportunity for Public Hearing

EPA Region 10 today is also announcing an opportunity for a public hearing before air planning grants are revoked for the Jackson County Area. If a hearing is required, it will be held as indicated below:

Date: October 26, 1984.
Time: 7:00 p.m.
Address: Conference Room 1400, 522 S.W. Fifth (Yeon Building), Portland, Oregon 97204.
For Further Information Contact: Michael Gearheard, U.S. Environmental Protection Agency, 552 S.W. Fifth Avenue, Yeon Building, 2nd Floor, Portland, Oregon 97204, Telephone (503) 221-3250.

This public hearing will be held if (and only if) a request for a public hearing is received at the office listed above by October 11, 1984. It is suggested that anyone wishing to verify whether the public hearing is to be held should call the above listed office.

VI. Request for Comments

Interested parties are invited to comment on all aspects of these proposed actions regarding the Oregon SIP. EPA will consider all comments received within 30-days of the publication of this notice. The comment deadline is October 11, 1984.

VII. Regulatory Impact

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposal or final rule on the small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If EPA takes final action to find that the State of Oregon is not making reasonable efforts to submit an approvable SIP for Medford, certain highway construction funds, air quality planning funds, and sewage treatment grants for Jackson County will be withheld. Thus some small entities may be affected by final EPA action.

EPA can not reliably predict the impacts of the Clean Air Act restrictions under section 176(a), because of the exemptions authorized for highway safety and air quality planning projects. Careful review and evaluation of each highway and sewage treatment project is necessary to determine whether or not a project is exempt. Consequently, EPA is making no quantified assessment of the potential economic impact on small entities that may result from today's proposal.

Furthermore, although EPA believes that a final action might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Clean Air Act, the imposition of the funding restrictions in section 176(a) are automatic and mandatory whenever the Agency determines that a State has not submitted, or is not making reasonable efforts to submit, a SIP which considers each of the elements of section 172.

Similarly, EPA can not reliably predict the impacts of the Clean Water Act restrictions under section 316(b), because growth projections specifically related to impacted projects are not available.

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. If this action is finalized, section 176(a) limitations will impact $65,000 to $150,000 of the Oregon State air grant per year and up to $20 million in highway funds. The section 316(b) sewage treatment grant restrictions could impact another $1 million. Clearly today's action is not major since it will not have an economic impact exceeding $100 million per year. Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

Authority: Secs. 110, 172, 176(a), 301 and 316 of the Clean Air Act, as amended; (42 U.S.C. 7410, 7502, 7506(a), 7601 and 7616).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbon, Intergovernmental relations.

Dated: June 8, 1984.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc. 84–23920 Filed 9–10–84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21323; RM-2836]

Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: Action corrects an error in the text of the *Second Further Notice of Proposed Rule Making* in Docket No. 21323. That *Further Notice* asked for comment and information on the issue of whether to require cable television systems to carry program-related aural subcarrier signals of broadcast television stations.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of the use of subcarrier frequencies in the aural baseband of television transmitters; Docket No. 21323, RM-2836.

Released: August 20, 1984.

1. On August 13, 1984, the Commission released a *Second Further Notice of Proposed Rule Making* (FCC 84–361) in the above captioned matter. In FR Doc. 84–21672, in the issue of Wednesday, August 15, 1984, beginning on page 32619, text was inadvertently omitted from the document. On page 32622, in the second column, in the first paragraph (4), after the fourth line insert the following:

"13. We invite comments on any aspect of this proposal. In particular, interested parties are invited to suggest threshold levels of "significant capital expenditures" and "material interference or degradation."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–23941 Filed 9–10–84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No. 83–523]

Instructional Television Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This action grants a request for extension of time for filing comments in response to the *Further Notice of Proposed Rulemaking* in MM Docket No. 83–523 (Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service). The National Association of State Universities and Land-Grant Colleges requested an extension of one month. The Media Access Project supported the request. The *Order* explains that colleges and universities, who represent a large class of ITFS licensees, need more time to prepare comments on the comprehensive matters raised in the *Further Notice* because they are currently preoccupied with starting a new school year.

DATES: Comments are now due by October 17, 1984 and replies by November 2, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Joel M. Margolis, Mass Media Bureau, (202) 632–6495.

Order Extending Time for Filing Comments and Reply Comments

In the matter of Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service; MM Docket No. 83–523.

Adopted: August 30, 1984.

Released: September 4, 1984.

By the Chief, Mass Media Bureau.

1. On July 26, 1984, a *Further Notice of Proposed Rulemaking* was adopted in the above-captioned proceeding, 49 FR 32610 (published August 15, 1984). The *Further Notice* provided that comments

be filed by September 17, 1984, and that reply comments be filed by October 2, 1984.

2. A request for an extension of these filing deadlines was filed by the National Association of State Universites and Land-Grant Colleges ("NASULGC") by letter of August 21, 1984. Comments in support of the request were filed by the Media Access Project ("MAP") on August 22, 1984. NASULGC requests that the comment date in the above-captioned proceeding be extended to October 17, 1984.

3. In support of NASULGC's request, both it and MAP contend that the present one-month comment period is not sufficient to respond to the serious, detailed and complex issues raised by the *Further Notice*. They point out that since the comment period falls on the "most hectic period" of the school year, many colleges and universities will not have enough time to prepare the materials they believe are necessary to incorporate in their comments. They claim that some of the data they hope to provide was notably lacking from prior Commission decisions concerning the Instructional Television Fixed Service.

4. We agree that the instant proceeding raises very fundamental issues in the Instructional Television Fixed Service, calling for detailed and comprehensive comments in a number of areas. We do not want to constrain colleges and universities, who comprise a large class of ITFS licensees, from supplying their much needed contribution to the rulemaking proceeding by requiring them to respond during the busiest time of the school year. An extension of one month, under the circumstances, appears appropriate. The parties did not request an extension of the reply comment deadline. We will therefore specify a reasonable date.

5. Accordingly, it is ordered that, the dates for filing comments and reply comments in the above-captioned proceeding are extended to and including October 17, 1984, and November 2, 1984, respectively. It is further ordered that, the request for extension of time filed by the National Association of State Universities and Land-Grant Colleges is granted. This action is taken by authority delegated by Section 0.283 of the Commission's Rules, 47 CFR 0.283.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 84-23949 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Bay Checkerspot Butterfly (Euphydryas Editha Bayensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the bay checkerspot butterfly as an endangered species. Historically known from the San Francisco Peninsula and outer Coast Range to the south and east of the peninsula, the bay checkerspot butterfly has suffered a tremendous reduction in number and range. Of the 16 known colonies, 11 colonies have been extirpated. Only five colonies remain and two of these are threatened with imminent loss, if they are not already gone. Critical habitat in San Mateo and Santa Clara Counties, California, is included with this proposed rule. The proposed rule would provide protection to remaining wild populations of this subspecies. The Service seeks data and comments from the public on this proposal. The Service is requesting information on environmental and economic impacts and effects upon small business entities that would result from designating critical habitat for the bay checkerspot butterfly.

DATES: Comments from all interested parties must be received by November 13, 1984. Public hearing requests must be received by October 26, 1984.

ADDRESS: Comments and materials concerning this proposal should be sent to Mr. Sanford Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford Wilbur, Endangered Species Coordinator, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, OR 97232 (503/231-6131); or Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, Washington, D.C. 20240, (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

Since 1960, the bay checkerspot butterfly (*Euphydryas editha bayensis*) has been the subject of extensive research by Dr. Paul R. Ehrlich and his associates at Stanford University. The presence of 16 populations or colonies of this butterfly on the San Francisco Peninsula as well as on the inner Coast Range to the south and east of the San Francisco Peninsula has been documented (Ehrlich and Murphy 1981, Murphy and Ehrlich 1980). The presence of additional colonies is indicated by museum records, but they were destroyed before the exact location of their habitat became known. The bay checkerspot butterfly is restricted to grassland areas on shallow Montara or other serpentine soils that support the butterfly's larval foodplants (Ehrlich *et al.* 1975). The annual plantain (*Plantago erecta*) is the primary larval foodplant and a hemiparasitic annual (*Orthocarpus densiflorus*) is the obligatory secondary larval foodplant (Singer 1971).

Of the 16 known colonies, 11 have been extirpated, two others are near extinction or possibly already extinct, and the remaining colonies face the likelihood of extinction. Colonies have been eliminated in the course of freeway construction (Hillsborough and San Mateo colonies and part of the Edgewood colony), subdivision construction and the introduction of exotic plants (Twin Peaks, Mt. Davidson, Brisbane, Joaquin Miller and San Leandro colonies), and overgrazing by livestock coupled with drought (Morgan Territory Road, Silver Creek, Coyote Reservoir and Uvas colonies) (Murphy and Ehrlich 1980). Four of the five remaining populations, San Bruno Mountain, Woodside, Jasper Ridge and Edgewood colonies, occur in San Mateo County. Because the San Bruno Mountain colony fluctuates greatly in numbers, it may be near extinction. The Woodside colony is also near extinction, if not already extinct, as no bay checkerspot butterflies were seen there during 1982. The largest and relatively most secure colony, Morgan Hill, occurs in Santa Clara County.

Most of the habitat of the Woodside Colony has recently been eliminated by condominium development, thereby greatly reducting the viability of this colony. The Jasper Ridge colony, consisting of two demographic units, is located on a biological preserve of Stanford University and although small, does not appear to face imminent extinction. One of two large colonies is located at Edgewood County Park and may be threatened by proposed construction of a golf course and other recreational facilities. The other, at Morgan Hill, is threatened by overgrazing and by a proposed sanitary landfill. Historically, several smaller populations apparently underwent natural extinction and subsequent recolonization from nearby colonies (Ehrlich 1965, Ehrlich *et al.* 1975). Therefore, for this butterfly to maintain itself in nature, preservation of several colonies in close proximity to each other may be necessary in order for dispersal and recolonization to proceed. Preservation of the two larger colonies, Edgewood and Morgan Hill, also appears necessary to insure that natural climatic fluctuations do not eliminate the depleted species.

On October 21, 1980, the Service was petitioned by Dr. Bruce O. Wilcox, Mr. Dennis D. Murphy, and Dr. Paul R. Ehrlich to list the bay checkerspot butterfly as an endangered species. The petition was supplemented by Dr. Wilcox and Mr. Murphy with a letter and other materials received on December 11, 1980. The Service included this taxon in a **Federal Register** Notice of Review on February 13, 1981 (46 FR 43709). A review of the status of the bay checkerspot was made to determine if it should be added to the U.S. List of Endangered and Threatened Wildlife. On October 13, 1983, the Service found this proposed listing to be warranted but precluded by other pending listing actions, and reported this finding in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires that a new one-year petition action deadline be established, pursuant to Section 4(b)(3)(C)(i) of the Endangered Species Act, as amended. This proposed rule reaffirms the finding that the petitioned action is warranted, and proposes to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; see proposed revisions to accommodate 1982 amendments in the **Federal Register** of August 8, 1983) set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the bay checkerspot butterfly (*Euphydryas editha bayensis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Only five of the sixteen known populations of the bay checkerspot butterfly are still extant and two of the five are near extinction. The construction of Interstate Highway 280 during 1970 eliminated colonies at Hillsborough and San Mateo, and bisected the Edgewood colony. Habitat alteration over the past decade or longer, primarily the result of subdivision construction and introduction of non-native plants, has resulted in the disappearance of colonies at Twin Peaks, Mt. Davidson, Brisbane, Joaquin Miller, and San Leandro. Drought in 1977 dealt a final blow to colonies at Morgan Territory Road, Silver Creek, Coyote Reservoir and Uvas Valley, where the habitat had been subjected to years of overgrazing by livestock.

One of the remaining populations, the Woodside colony, is close to extinction. Its population numbers have dropped from approximately 10,000 in 1979 to below 100 in 1982, after construction of a condominium complex removed all but one acre of the butterfly's habitat (D. Murphy, pers. comm.). No butterflies were observed at this site during 1983. The San Bruno Mountain colony, another of the remaining populations, is not secure because it is prone to large population fluctuations that occasionally bring it to the brink of extinction (D. Murphy, pers. comm.; Murphy and Ehrlich 1980). The Edgewood, Jasper Ridge, and Morgan Hill colonies are the only three remaining populations of the bay checkerspot butterfly that appear to be viable. However, the Edgewood colony is presently threatened with the construction of a golf course and other recreational facilities on San Mateo Regional Park District land. The Jasper Ridge colony is protected as a biological preserve, but is small enough to be susceptible to large fluctuations in population size. The Morgan Hill colony is the largest and relatively the most secure, but portions of this colony are threatened by overgrazing and a proposed sanitary fill.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Although specimens of the bay checkerspot butterfly are valuable to collectors, overcollecting has not been identified as a threat to any colony. To discourage unnecessary collecting, Stanford University offers old specimens from its museum on an exchange basis.

C. Disease or Predation.

Ninety to ninety-nine percent of the bay checkerspot butterfly larvae die of starvation while in prediapause instars. Three to twenty-four percent of the remaining postdiapause larvae at the Jasper Ridge Colony are killed by three species of parasitoids (Ehrlich *et al.* 1975). Because of high prediapause mortality and because the greatest parasitism only occurs during years of high butterfly numbers, the high rate of parasitism is not a major factor in determining the size of any bay checkerspot butterfly population. In years of large butterfly numbers, the majority of the butterflies still escape parasitism and provide recruitment in subsequent years.

D. The Inadequacy of Existing Regulatory Mechanisms

The bay checkerspot butterfly is not given protection under any State or local regulations. Federal listing of this butterfly would provide protection to wild populations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Habitat damage can reduce the size of a colony to a level at which natural climatic changes lead to extinction. The drought of 1976 and 1977 in association with overgrazing caused the disappearance of four colonies of the bay checkerspot butterfly (Murphy and Ehrlich 1980), and greatly reduced the Jasper Ridge population (Ehrlich *et al.* 1980) This drought also caused the extinction of some populations of another subspecies of *Euphydryas editha* (Ehrlich et al. 1980). It seems likely that a particularly severe or prolonged drought would be detrimental to most of the remaining colonies.

The bay checkerspot butterfly occurs on grasslands of Montara or other serpentine soils that are often surrounded by chaparral vegetation. Two of these disjunct colonies are small enough to be subject to periodic natural extinctions and subsequent recolonization by butterflies from a nearby colony. As habitat is lost and the number of colonies decreases, the distances among colonies become greater and the chance of recolonization becomes less.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act in Section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat for the bay checkerspot butterfly is proposed to include approximately 1,620 acres in San Mateo County and 6,678 acres in Santa Clara County, California. The proposed critical habitat area encompasses approximately 200 acres along the eastern one-half of San Bruno Mountain including portions of the County Park, upper slopes of Owl Canyon, and upper management units surrounding the Guadalupe Valley Quarry excavation area (County of San Mateo, 1982); approximately 600 acres in Edgewood County Park and adjacent State Fish and Game Refuge; approximately 60 acres along the Redwood City and Woodside City limits; approximately 760 acres in the Jasper Ridge Biological Preserve; and 6,678 acres in the Morgan Hill area. The area proposed does not include the entire historic habitat of this butterfly and modifications to critical habitat descriptions may be proposed in the future.

Section 4(b)(8) of the Act requires, for any proposed rule that includes critical habitat, a brief description and evaluation of those public or private activities which may adversely modify such habitat if undertaken or which may be affected by such designation. Such activities are identified for this subspecies as follows:

1. Grazing of livestock, which could destroy larval or adult food sources.
2. Introduction of exotic plants that might compete with larval or adult food sources.
3. Application of herbicides or insecticides.
4. Any other activity causing damage or removal of native vegetation.

Three activities involving Federal agencies are presently known that may have an impact on the habitat of the bay checkerspot butterfly. These three activities include the proposed golf course and recreational facilities at Edgewood Park, the habitat conservation plan for San Bruno Mountain and the proposed sanitary landfill at Morgan Hill. At Edgewood Park, the National Park Service maintains an easement and it may therefore be necessary to obtain Park Service permission prior to construction of new recreational facilities. Construction of the golf course could seriously jeopardize the Edgewood Colony by destroying significant habitat areas. The San Bruno Mountain Colony would undergo few direct effects as a result of residential development of the mountain, as addressed in the San Bruno Mountain Area Habitat Conservation Plan (County of San Mateo, 1982), because the colony is on county parkland that is designated as conserved habitat in the Plan and therefore is not scheduled for development. The habitat conservation plan requires the county to maintain the area utilized by the bay checkerspot butterfly on San Bruno Mountain as open-space with only limited development for hiking trails and vista points. At Morgan Hill, the Environmental Protection Agency must approve plans for development of the sanitary landfill.

The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will reevaluate the geographic critical habitat designation at the time of the final rule, after considering all additional information obtained.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and taking and harm prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an action may affect a listed species, the Federal agency must enter into consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. With respect to the bay checkerspot butterfly all the prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Services and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of the species or for incidental take. The permit issued to the County of San Mateo and the cities of South San Francisco, Brisbane and Daly City under Section 10(a) for incidental take of three endangered butterfly species does not cover the Bay checkerspot. As a result, listing of the Bay checkerspot may require issuance of a new or amended Section 10(a) permit. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or the lack thereof) to the by checkerspot butterfly;

(2) The location of any additional populations of the bay checkerspot butterfly and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject areas and their possible impacts on the bay checkerspot butterfly; and

(5) Any foreseeable economic and other impacts resulting from the designation of critical habitat.

Final promulgation of the regulations on the bay checkerspot butterfly will take into consideration the comments and any additional information received by the service, and such communication may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

County of San Mateo. 1982. San Bruno Mountain area habitat conservation plan. Two volumes, 409 pp.

Ehrlich, P.R. 1965. The population of the butterfly *Euphydryas editha*. The structure of the Jasper Ridge Colony. Evolution 19:327–336.

Ehrlich, P.R. and D.D. Murphy. 1981. The population biology of checkerspot butterflies (*Euphydryas*). Biol. Zentral 100:613–629.

Ehrlich, P.R., R.R. White, M.C. Singer, S.W. McKechnie and L.E. Gilbert. 1975. Checkerspot butterflies: a historical perspective. Science 188:221–228.

Ehrlich, P.R., D.D. Murphy, M.C. Singer, C.B. Sherwood, R.R. White and I.L. Brown. 1980. Extinction, reduction, stability and increase: the response of checkerspot butterfly (*Euphydryas*) populations to the California drought. Oecologia 46:101–105.

Murphy, D.D. and P.R. Enrlich. 1980. Two California checkerspot butterfly subspecies: one new, one on the verge of extinction. J. Lepidopterists' Soc. 34:316–320.

Author

The primary author of this proposed rule is Dr. Jack E. Williams, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814. Dr. George E. Drewry of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend Section 17.11(h) by adding the following in alphabetical order under Insects to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects							
*	*	*	*	*	*	*	
Butterfly, bay checkerspot	Euphydryas editha bayensis	U.S.A. (CA)	NA	E		17.95(i)	NA
*	*	*	*	*	*	*	

3. It is further proposed to amend § 17.95(i) by adding critical habitat of the bay checkerspot butterfly as follows: The position of this and any following critical habitat entries under § 17.95(i) will be determined at the time of publication of a final rule.

§ 17.95 Critical habitat—fish and wildlife

(i) Insects

* * * * *

Bay Checkerspot Butterfly

(Euphydryas editha bayensis) California, San Mateo County

1. San Bruno Mountain Zone—approximately 200 acres in T3S, R5W. Designated area consists of a strip 1,000 ft wide on each side of the Southwest Ridge Fire Road, as measured from the center of said road; limited on the east and west, respectively, by eastern and western transmission line corridors of Pacific Gas and Electric Company; but excluding the existing excavation area of Guadalupe Valley Quarry.

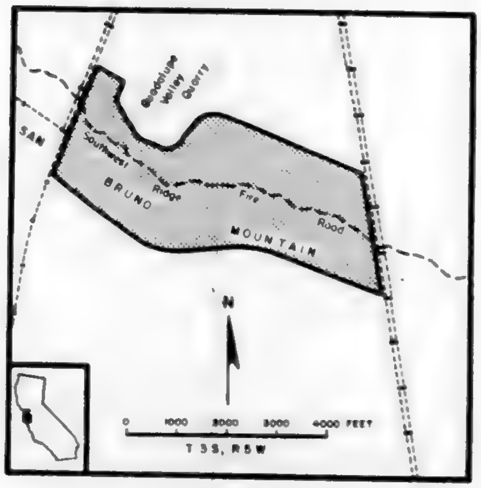
Guadalupe Valley Quarry
SAN
Southwest Ridge Fire Road
BRUNO
MOUNTAIN
N
0 1000 2000 3000 4000 FEET
T 3 S, R 5 W

2. Edgewood Park Zone—approximately 600 acres of T5S, R4W and bounded as follows: beginning at the intersection of Canada Road and Edgewood Road; thence continuing northeasterly, following Edgewood Road, to Edgewood County Park boundary at Cordilleras Creek; thence continuing southeasterly and southwesterly, following said Park boundary, to its intersection with Canada Road; thence continuing northwesterly, following Canada Road, to the point of origin.

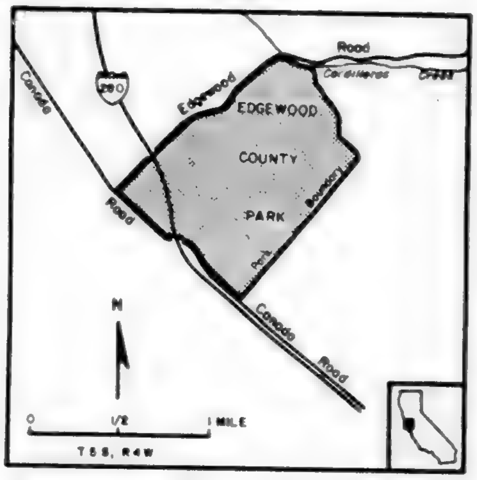
Road
Cordilleras Creek
280
Canada
Edgewood
EDGEWOOD
COUNTY
PARK
Boundary
Park
Road
Canada
Road
N
0 1/2 1 MILE
T 5 S, R 4 W

3. Woodside Zone—approximately 60 acres in T5S, R4W, bounded as follows: on the West by Farm Hill Boulevard, on the north and northeast by Eden Bower Lane, and on the southeast and southwest by the boundary between city limits of Woodside and Redwood City.

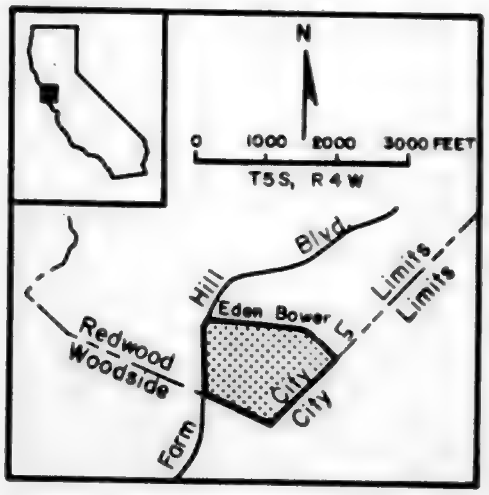
N
0 1000 2000 3000 FEET
T5S, R4W
Blvd
Hill
Farm
Eden Bower
Ln
Redwood
Woodside
City
City
Limits
Limits

4. Jasper Ridge Zone—approximately 780 acres in T6S, R3W, within the Jasper Ridge Biological Preserve; bounded on the north by San Francisquito Creek, on the west by a north-south line bisecting the spillway of the Searsville Lake Dam at San Francisquito Creek, on the south by the Jasper Ridge Biological Preserve boundary, and on the east by a line parallel to and 1.5 miles east of the west boundary.

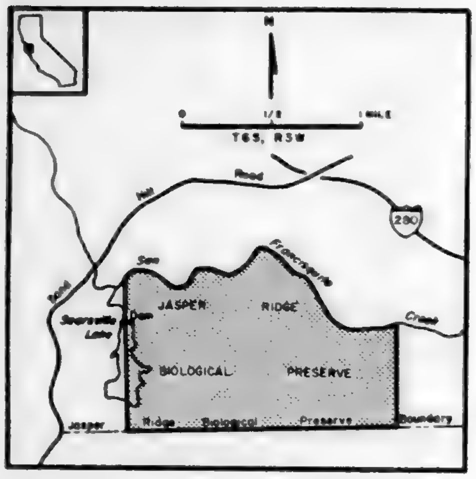
N
0
1/2
1 MILE
T6S, R3W
Hill
Road
280
Sand
San
Francisquito
Creek
Searsville
Lake
Dam
JASPER
RIDGE
BIOLOGICAL
PRESERVE
Jasper
Ridge
Biological
Preserve
Boundary

California, Santa Clara County

5. Morgan Hill Zone—approximately 6,678 acres in T9S, R3E; T8S, R3E; T9S, R2E; and T8S, R2E; bounded as follows: on the north by Metcalfe Road, on the west and south by Coyote Creek, and on the northeast by Anderson Lake and Shingle Creek.

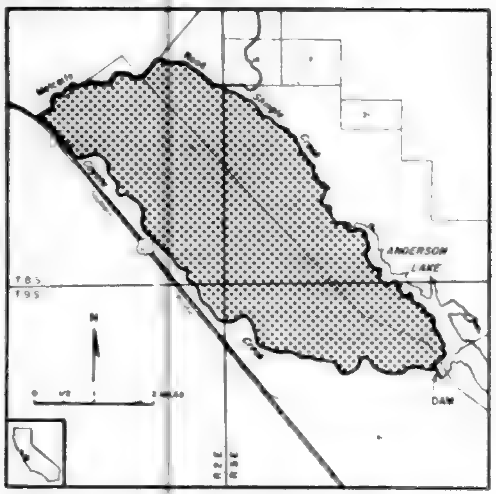
Metcalfe
Road
Shingle
Creek
ANDERSON
LAKE
T8S
T9S
Coyote
Creek
N
0
1/2
1
2 MILES
DAM
R2E
R3E

Known constituent elements of the designated areas include serpentine grassland with adequate populations of the foodplants *Plantago erecta* and *Orthocarpus densiflorus*.

* * * * *

Dated: August 14, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23980 Filed 9-10-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 49, No. 177

Tuesday, September 11, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determinaton of the Market Stabilization Price for Sugar for Fiscal Year 1985

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the market stabilization price for sugar for the period October 1, 1984–September 30, 1985. The market stabilization price was announced as 21.57 cents per pound on August 31, 1984 by the Secretary of Agriculture.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: Imports of raw and refined sugar into the United States are currently subject to import fees imposed under Presidential Proclamation No. 5164 of March 19, 1984. The fee for raw sugar consists of the difference, if any, between the U.S. domestic price for raw sugar and the minimum price at which it is more likely that sugar pledged as collateral to the Commodity Credit Corporation (CCC) for a price support loan will be sold into the market than forfeited to CCC. This latter price is called the market stabilization price. The market stabilization price is the sum of: (1) The price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cents. The adjusted average transportation costs are the weighted average costs of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs is the amount of interest, as determined or estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs are only applicable if a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral. Under the sugar price support program, a loan recipient is not required to pay interest upon forfeiture of the loan collateral.

Presidential Proclamation No. 5164 dated March 19, 1984 requires the Secretary of Agriculture to announce the market stabilization price applicable to each subsequent fiscal year not later than 30 days prior to the beginning of the fiscal year for which such market stabilization price is applicable. The Secretary made this announcement on August 31, 1984.

The Secretary of Agriculture has proposed that the applicable loan rate under the price support program for sugar, expressed in cents per pound for raw cane sugar, should be 17.75 cents per pound for loans disbursed during the period October 1, 1984–September 30, 1985. (49 FR 32244.) If the actual loan rate determined by the Secretary differs from 17.75 cents per pound, the Secretary may adjust the market stabilization price in accordance with paragraph (c)(iv) of Headnote 4 of part 3 of the Appendix to the Tariff Schedules of the United States.

Accordingly, after appropriate review, it has been determined that the market stabilization price for fiscal year 1985 shall be 21.57 cents per pound. This consists of the proposed 17.75 cent per pound loan rate; adjusted average transportation costs of 2.68 cents per pound; an interest cost of .94 cent per pound; and 0.2 cent per pound. The transportation factor represents data for the most recent year for which complete data are available, 1983, projected forward to 1985 by applying a projected increase in the Producer Price index for finished goods over this time. The interest factor is based on an estimated average interest of 10.625 percent over the year, and a six month loan maturity period.

Notice is hereby given that in conformity with the provisions of paragraph (c) of Headnote 4 of part 3 of the Appendix of the Tariff Schedules of the United States, the market stabilization price for sugar for fiscal year 1985 has been determined to be 21.57 cents per pound.

Signed at Washington, D.C. on August 31, 1984.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 84–23911 Filed 9–6–84; 11:55 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 39–84]

Foreign-Trade Zone 84—Harris County, TX (Houston Customs Port of Entry); Application To Amend Zone Plan

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority (PHA), grantee of Foreign-Trade Zone 84, requesting authority to amend the plan for Foreign-Trade Zone 84 in Harris County, Texas, within the Houston Customs port of entry, by replacing 8 of the originally approved sites with 10 new ones. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 29, 1984. The applicant is authorized to make this proposal under Article 1446.7 of Vernon's Annotated Civil Statutes.

The PHA received authority from the Board to establish a multi-site foreign-trade zone in Harris County, Texas on July 15, 1983 (Board Order 214, 48 FR 34792, 8/1/83). While 5 PHA sites were approved as conventional sites, the remaining sites were approved for 5 years subject to special conditions. The new sites in this application are non-PHA sites and would also be subject to these conditions.

The proposed ten new sites total 221 acres, replacing the 8 deleted sites which total 253 acres. The sites to be added involve 6 privately owned warehouse/distribution operations, and 4 manufacturing operations. The manufacturing sites are for Cleanese Chemical Company for the storage and blending of organic chemicals; Vetco Offshore, Inc., manufacturing oil and gas drillings equipment from steel tubular products and connectors; Landell Manufacturing, Inc., manufacturing steel pipe couplings for the petroleum industry; and United Steel Machinery Corporation, a steel service center levelling and cutting sheet and plate.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consist of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, Suite 500, 5850 San Felipe St., Houston, TX 77057; and Colonel Alan L. Laubscher, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553.

Comments concerning the proposed zone amendment are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 9, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office,
2625 Federal Bldg., 515 Rusk St.,
Houston, TX 77002

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 1529,
14th and Pennsylvania, NW.,
Washington, D.C. 20230.

Dated: September 5, 1984.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 84-23942 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held September 25, 1984, 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of:
    a. Distribution license rule,
    b. Automated processing system,
    c. Guidelines for licensing officers,
    d. Public rule-making recommendations.
4. Discussion of documentation to expedite cases to COCOM.
5. Report on cost benefit study.
6. Discussion with Department of Energy representatives.
7. 1985 Plan.
8. Action items underway.
9. Action items due at next meeting.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: September 5, 1984.

Milton M. Baltas,

Director of Technical Programs Office of Export Administration.

[FR Doc. 84-23882 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration, Import Administration

[C-201-402]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lime From Mexico

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of lime and are thus instituting a countervailing duty order. The net bounty or grant for each firm is listed in the "Suspension of Liquidation" section of this notice. The net bounty or grant on the products under investigation produced by Mexicana de Cobre, Productos Calizos de Baja California, Incalpa, Cales de Chiapas, Cal de Apasco, Cales de Puebla, and Materiales Titan is *de minimis*. With respect to these companies, the suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released with respect to imports of the products under investigation from the companies for which we have determined *de minimis* estimated net bounties or grants.

EFFECTIVE DATE: September 11, 1984

FOR FURTHER INFORMATION CONTACT: Kenneth Haldenstein or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4136 or 5414.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based upon our investigation, we determine that certain benefits that constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers or exporters in Mexico of lime as described in the "Scope of Investigations" section of this notice. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)
- Import Duty Reductions and Exemptions
- Fund for Industrial Development (FONEI)
- Preferential Federal Tax Incentives (CEPROFI)
- Guarantee and Development Fund for Medium and Small Industries (FOGAIN)
- Certain Equity Infusions
- Loans from Mexican Trust for Nonmetallic Minerals
- Delay of Payment of Fuel Charges
- Delay of Payment on Other Loans
- Loans from the Mexican National Bank for Foreign Trade (BANCOMEXT)

We determine the estimated bounty or grant to be the rate specified for each company in the "Suspension of Liquidation" section of this notice. The net bounty or grant on the products under investigation produced by seven companies is *de minimis*. With respect to these companies, the suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released with respect to imports of the products under investigation from the companies for which we have determined *de minimis* estimated net bounties or grants.

Case History

On March 21, 1984, we received a petition from the Paul Lime Division of

Can-Am Corporation, Chemical Lime Inc., Genstar Lime Company, and the United Cement, Lime, Gypsum and Allied Workers International Union, AFL-CIO/CLC, filed on behalf of the U.S. lime manufacturers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers or exporters in Mexico of lime receive bounties or grants within the meaning of section 303(a)(1) of the Tariff Act of 1930, as amended (the Act).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. Because the subject merchandise is nondutiable and there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require an injury determination for nondutiable merchandise from Mexico, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Mexico in Washington, D.C. on April 10, 1984. On May 21 and 29, 1984, we received responses to the questionnaire.

On June 14, 1984, we issued our preliminary determination in this investigation (49 FR 25656, June 22, 1984). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act are being provided to manufacturers, producers, or exporters in Mexico of lime.

We received a supplemental response from Sonocal on July 13, 1984, and from Mexicana De Cobre on July 25, 1984.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We received written views from interested parties and have taken them into consideration in this determination.

Scope of Investigation

The products covered by this investigation are calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide (Ca(OH)2), commonly called hydrated lime or hydrate. Hydrated lime is currently classified under 512.1100 of the *Tariff Schedules of the United States Annotated* (TSUSA) and lime, other than hydrated, is currently classified under TSUSA item number 512.1400.

There are three known manufacturers and exporters in Mexico of lime which export to the United States and eight other producers that have applied for exclusion from this investigation because they received either no benefits or benefits in *de minimus* amounts. We have received information from the government of Mexico regarding Sonocal, S.A., Mexicana de Cobre, S.A., Productos Calizos de Baja California, S.A. (PCBC), Incalpa, S.A., Materiales BYM, S.A. Cales de Chiapas, S.A., Cal de Apasco, S.A., Cales de Puebla, S.A. Materiales Titan, S.A., Industrias Quimicas de Yucatan, S.A. (IQY), and Calteco, S.A. Two other companies, Apex, S.A. and Refractarios Barrios, S.A., submitted responses that were too late to be considered in this investigation.

The period for which we are measuring benefits is the most recent fiscal or calendar year for which we have complete data, calendar year 1983. In their responses, the government of Mexico and respondents provided data for the applicable period.

Analysis of Programs

Throughout this notice, we have applied to the facts of the current investigation general principles described in detail in the Subsidies Appendix of the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina"; 49 F.R. 18006 (Apirl 26, 1984). As per the Subsidies Appendix, we have used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. For this purpose, we chose the nominal rate published monthly by the Banco de Mexico in the *Indicadores Economicos* (the "IE" rate). These rates are the weighted averages of the rates charged by commercial banks on peso loans. Because we lack information to construct company-specific long-term benchmarks, we have also used this benchmark on long-term benchmarks, we have also used this benchmark on long-term peso loans for 1982 and 1983 as the best information available. The "IE" rate is the representative benchmark for both short and long-term borrowing in the past 2 years because Mexico's recent inflationary experience has virtually eliminated all long-term fixed-rate financing. Long-term loans are generally provided at variable short-term interest rates. As the benchmark for long-term loans given prior to 1982 we are using the domestic corporate bond yield in Mexico, published in the "World Financial Markets" journal of the Morgan Guarantee Trust Company of New York. For loans provided in dollars, we used the U.S. domestic corporate bond yield as the long-term benchmark and the short-term commercial and industrical loan rate published under "Domestic Financial Statistics" in the *Federal Reserve Bulletin* as the short-term benchmark.

As specified in 19 CFR 355.28(a)(3), "if separate enterprises have received materially different benefits, such differences shall also be estimated and stated." Because the companies under investigation received materially different benefits, we have calculated company-specific rates.

We have consistently held that government provision of, or assistance in obtaining, capital or loans or credit does not *per se* constitute a subsidy. Government equity purchases and financial backing bestow a countervailable benefit only when they are carried out on terms inconsistent with commercial considerations. To determine if such actions are commercially unsound, we review and assess financial data for the company in question. With regard to whether a company was a reasonable equity investment (a condition we have termed "equityworthiness"), we examine the financial ratios, operating profits or losses and other relevant data to evaluate the company's current and future ability to earn a reasonable rate of return on equity investments.

Based upon our examination of these factors with respect to Sonocal, a company alleged to be unequityworthy, we determined that this company was unequityworthy as of 1982. Our examination of these factors for Mexicana de Cobre revealed that this company has been equityworthy.

Based upon our analysis of the petition and the responses to our questionnaire, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers or exporters in Mexico of lime under the following programs:

A. FOMEX

FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions that establish contracts for lines of credit with manufacturers and exporters. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade.

In order for a company to be eligible for FOMEX financing for exports, the following requirements have to be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the company must have majority Mexican capital; (3) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (4) loans granted for pre-export financing must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; (5) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate for FOMEX export financing is 6 percent.

Sonocal received short-term export financing from FOMEX for exports to the U.S. of the subject merchandise. Since FOMEX export financing provides loans for export-related purposes at interest rates significantly less than those for comparable commercially available loans, we determine that this program confers a bounty or grant upon the exportation of lime.

Sonocal has not paid either interest or principal on its FOMEX loans, which were due to be repaid in early 1983. We treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being asessed on them. We considered these loans to be rolled over each time a payment was missed. Since the penalty rate was above the benchmark, we found no benefit for the additional loans. We used as our benchmark, for purposes of calculating the bounty or grant, the IE rate, as described *supra*. We allocated the benefit from the FOMEX loans over the value of Sonocal's 1983 U.S. exports of lime and calculated a bounty or grant in the amount of 0.36 percent *ad valorem*

FOMEX loans to Mexicana de Cobre are described in the "Programs Found Not to Confer Bounties or Grants" section of this notice.

B. Fund for Industrial Development (FONEI)

FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term credit at below-market rates for the creation, expansion or modernization of enterprises in order to foster industrial decentralization and the efficient production of goods capable of competing in the international market. FONEI loans are available under various programs having different eligibility requirements.

Sonocal had one FONEI loan outstanding during the period for which we are measuring bounties or grants. It received the loan for plant expansion. Calteco had two loans outstanding, one for the purchase of capital equipment and the other an industrial mortgage loan.

We have evidence that these FONEI loans are only available to companies located outside of Zone IIIA (Mexico City and environs). Because such loans appear to be limited to particular geographic regions and are made at below-market rates, we determine that these FONEI loans confer a bounty or grant upon Sonocal and Calteco.

We have determined the benefits from these loans according to the methodology outlined in the Subsidies Appendix. We used as our benchmark the IE rate, as described *supra*. Since Sonocal has not paid either interest or principal on these loans, we treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered these loans to be rolled over each time a payment was missed. We allocated the benefit over Sonocal's total sales value of lime and determined a bounty or grant in the amount of 0.89 percent *ad valorem* for Sonocal and 1.25 percent *ad valorem* for Calteco.

C. CEPROFI

CEPROFIs are tax credits used to promote National Development Plan (NDO) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small and medium sized firms.

CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms.

Industrias Quimicas de Yucatan and Sonocal received CEPROFIs for carrying out investments in priority industrial activities. These CEPROFIs were for investment to increase productivity. Because this type of CEPROFI is limited to a specific group of industries or to companies located in specific regions, we determine that this program confers a bounty or grant.

Article 25 of the decree authorizing the issuance of CEPROFIs published in the *Diario Official de la Federacion (Diario Official)* on March 6, 1979, states that a 4 percent supervision fee must be "paid in order to qualify for, or to receive" the CEPROFIs. This is an allowable offset from the gross bounty or grant, as provided in section 771(6)(A) of the Act. Therefore, the benefit provided by CEPROFIs is the amount of the certificate received less the supervision fee.

We allocated the CEPROFI benefit over the total sales of each company and determined a bounty or grant in the amount of 1.37 percent *ad valorem* for Industrias Quimicas de Yucatan and 0.73 percent *ad valorem* for Sonocal.

D. Import Duty Reductions and Exemptions

Petitioner alleged that lime exporters receive import duty reductions or exemptions on equipment used in the production of lime. Mexicana de Cobre received reductions on import duties for equipment used in manufacturing lime under a special tax agreement between it and the government of Mexico. Because this reduction resulted in a benefit provided to a specific company, we determine that it conferred a bounty or grant on Mexicana de Cobre. We calculated the benefit by dividing the amount of the reduction in 1983 by total sales of lime of the company to calculate a bounty or grant of 0.07 percent *ad valorem.*

E. Certain Equity Infusions

Petitioner alleged that the government of Mexico has provided bounties or grants through equity infusions to Mexican companies on terms inconsistent with commercial considerations. NAFINSA, a government-owned development bank, purchased stock in Sonocal, a company whose stock is not publicly traded, between 1976 and 1983. Using the criteria described in the "Analysis of Programs" section of this notice, we determined that Sonocal became an unequityworthy company as of 1982. Therefore, we determine that the investments in 1982 and after confer a bounty or grant because they were made on terms inconsistent with commercial considerations.

We calculated the benefits from these purchases according to the methodology outlined in the Subsidies Appendix. We allocated the amount of Sonocal's benefit over its total sales value for 1983, using as our discount rate the "IE" rate, as described *supra*. We calcuated a bounty or grant of 40.49 percent *ad valorem*. Government equity infusions in another lime company are described in the "Programs Determined Not to Confer Bounties or Grants" section of this notice.

F. Loans From the Mexican Trust for Non-Metallic Minerals

Sonocal received loans from the Mexican Trust for Non-Metallic Minerals. Since these loans were provided at interest rates lower than those for comparable commercially available loans and were limited to a specific industry or group of industries, we determine that these loans conferred a bounty or grant on Sonocal.

Since neither interest nor principal was paid on these loans during 1983, we treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered these loans to be rolled over each time a payment was missed. For purposes of this determination, we are using as our benchmark the IE rate, as described *supra.* We allocated the amount of the benefit over Sonocal's total 1983 sales value and determined a bounty or grant of 2.22 percent *ad valorem.*

G. Guarantee and Development Fund for Medium and Small Industries (FOGAIN)

Productos Calizos de Baja California (PCBC), Materiales BYM, and Industrias Quimicas de Yucatan (IQY) received FOGAIN loans that had outstanding principal during the period of investigation. We determine that the FOGAIN program confers a benefit which constitutes a bounty or grant within the meaning of the countervailing duty law upon these respondent lime companies. The FOGAIN program provides preferential financing at interest rates below prevailing commercial rates to all small and medium sized firms in Mexico. However, interest rates will vary depending upon: (a) Whether a small or medium sized business has a designated priority status, and (b) the geographical location of the business. Small and medium sized business with priority designation and located in specific zones targeted for industrial growth receive the most preferential rate. Medium sized businesses, not designated as priority and located in an area of controlled industrial growth, may receive the least preferential FOGAIN interest rate. We determine this program to be countervailable because it provides preferential financing on the basis of priority status for designated industries and regional preferences within the program. Without these designations, FOGAIN would not be countervailable, since all small and medium sized firms in Mexico are at least eligible to receive FOGAIN loans at the least preferential rate of interest available under this program. Therefore, we determine the program is countervailable to the extent that the interest rate received by a particular company is below the least preferential rate that a company would have received under FOGAIN. All three companies obtained their loans at rates lower than the least preferential rates applicable.

Since the FOGAIN loans have variable interest rates, we treated the loans as a series of short-term loans and computed the difference in interest payments between the FOGAIN loans received by PCBC, Materiales BYM and IQY and those which would have been incurred had the loans been made at the least preferential rate of interest under this program. We allocated the amount of benefit from the loans over each company's total value of sales of all products during 1983. We determine the net amount of the bounty or grant to be 0.48 percent *ad valorem* for PCBC, and 0.70 percent *ad valorem* for Materiales BYM and 0.20 percent *ad valorem* for IQY.

H. Delay of Payment of Fuel Charges

Sonocal received fuel oil and diesel fuel during 1983 from PEMEX, a Mexican government entity, for which it has not yet made payments. We have evidence that other customers, including Mexican producers of lime and other products, pay for such fuel as received on a monthly basis. Therefore, we find the delay of payment to confer a bounty or grant on Sonocal. We treated the amounts owed by Sonocal to PEMEX as interest-free short-term loans.

We have determined the benefits from these loans according to the methodology outlined in the Subsidies Appendix. We used as our benchmark the IE rate, as described *supra.* We allocated the benefits over Sonocal's total sales value and determined a bounty or grant in the amount of 4.78 percent *ad valorem.*

I. Delay of Payment on Other Loans

Sonocal has four loans outstanding from "Banco Mexicano Somex," formerly a private bank that was nationalized during the Mexican banking industry reforms of 1982. Two are short-term loans in dollars which were due to be repaid prior to the review period but have not been repaid. The other two are long-term loans in pesos. Sonocal did not pay the principal and interest due on the loans during 1983. Since this delay in payments was provided to a specific industry or group of industries, we determine that these loans conferred a bounty or grant on Sonocal.

We treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered the loans to be rolled over each time a payment was missed. We used our peso and dollars benchmarks as appropriate, as described *supra.* We allocated the amount of the benefit over Sonocal's total 1983 sales value and determined a bounty or grant of 0.02 percent *ad valorem.*

J. Loans From the Mexican National Bank for Foreign Trade (BANCOMEXT)

Sonocal has several loans outstanding from BANCOMEXT. One of these loans was originally contracted as a guarantee, but it operates like a direct loan because BANCOMEXT has made all the principal and interest payments to the foreign lender on behalf of Sonocal. This loan is in dollars; the others are in pesos. These loans were provided at interest rates lower than those for comparable commercially available loans and we were not allowed to verify whether they were provided for exports or limited to a specific industry or group of industries. Therefore, as the best information available, we determine that these loans conferred a bounty or grant on Sonocal.

Since interest on these loans was not paid during 1983, we treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered the loans to be rolled over each time a payment was missed. For purposes of this determination, we are using as our benchmark for the peso loans the IE rate, as described *supra.* The benchmark for the dollar loan loans is the long-term U.S. corporate bond rate, also described *supra.* We allocated the amount of the benefit over Sonocal's total 1983, sales value and determined a bounty or grant of 0.40 percent *ad valorem.*

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grant are not being provided to manufacturers or exporters in Mexico of lime under the following programs:

A. Other Equity Infusions

Both NAFINSA and the Commission de Fomento Minero, a publicly-owned lending institution, purchased stock in Mexicana de Cobre. Private parties made purchases of the company's stock at comparable terms on approximately the same dates. Using the criteria described in the "Analysis of Programs" section of this notice, and considering the fact that government investments in this company were on the same terms and conditions as private investments, we determine that this government equity investment did not confer a bounty or grant on Mexicana de Cobre.

B. Dual Level Currency Exchange Rate System

Petitioner alleged that the dual level exchange rate system existing in Mexico constitutes a countervailable benefit to the lime industry.

Petitioner alleged that priority industries, including lime, when exchanging pesos for dollars to make foreign purchases, are allowed to convert currency at a "controlled" rate, but that other industries must make foreign purchases at the free market rate. Currently, the controlled rate is less than the "free" rate of exchange.

We have found that all industries in Mexico, including lime, obtain dollars from the government under the same terms to purchase imports. Therefore, we determine that the dual currency exchange rate system does not confer a bounty or grant to the manufacturers or exporters in Mexico of lime.

C. CEPROFIs for Salary Increases and Investment in Mexican-Made Equipment

Sonocal received certain CEPROFIs for salary increases and for investment in Mexican-made equipment. We determine that these types of CEPROFIs do not confer a bounty or grant because they are not limited to a specific industry, group of industries, or to companies located in specific regions of the country.

D. Loan Guarantees Provided by NAFINSA

Petitioner alleged that various Mexican government entities guaranteed loans to the lime industry. During the period of investigation, Mexicana de Cobre had several outstanding loans guaranteed by NAFINSA, a government-controlled institution which is a shareholder of Mexicana de Cobre. Mexicana de Cobre paid a guarantee fee to NAFINSA and provided security for the guarantees. Further, we have evidence that the provision of guarantees by major shareholders of companies is a normal commercial practice in Mexico. Therefore, the terms of the guarantees appear to be consistent with commercial considerations and do not confer a bounty or grant on Mexicana de Cobre.

E. Value-Added Tax Rate Reduction

Petitioner alleged that lime producers in border areas receive a countervailable benefit from a reduction in the rate of value-added tax (VAT) they pay on purchases in such areas. We have found that such reductions exist in border areas, but that under the value-added tax system, these reductions do not result in any benefit to lime producers. Only the final consumers of goods ultimately pay the VAT, not producers or suppliers such as the respondent companies. These companies act only as collection agents for the government. They file regular statements with the government in which they settle their value-added tax accounts. Since lime producers are reimbursed for the amount of tax they pay and have no liability for the VAT tax, the border reductions do not confer a bounty or grant on them.

F. Provision of Land to Sonocal

At verification we learned for the first time during this investigation that Sonocal received land free of charge from the Mining Development Commission and that the Commission had received the land at no cost from private parties. Based on this verification, we determine that the provision of this land at no cost was not inconsistent with commercial considerations and does not confer a bounty or grant on Sonocal.

G. Accelerated Depreciation Allowances

Petitioner alleged that the lime industry benefited from federal income tax reductions through accelerated depreciation. For purposes of economic development, the Income Tax Department may grant accelerated depreciation allowances to industries in certain geographical regions or for designated industrial activities. Mexicana de Cobre used accelerated depreciation in 1982 under an agreement with the government of Mexico. The program did not confer a bounty or grant on Mexicana de Cobre, however, because the registered losses for tax purposes exceeded the depreciation claimed by the company.

H. Waiver of Foreign Lender Tax

Foreign loans to Mexicana de Cobre are subject to an exemption on the Mexican interest tax paid by foreign lenders. This exemption is provided under an agreement with the Mexican Department of the Treasury. As a result of this exemption, the company could receive a countervailable benefit in the form of reduced rates of interest on foreign loans. Most of Mexicana de Cobre's foreign loans, however, were provided specifically for operations other than lime. Its other foreign loans were provided at rates above the benchmark for long-term dollar borrowings. Therefore, we determine that this program did not confer a bounty or grant on Mexicana de Cobre.

III. Programs Determined Not To Be Used

We determine that the following programs have not been used by manufacturers or exporters of lime.

A. Article 94 Loans

Under section II of Article 94 of the *General Law of Credit Institutions and Auxiliary Organizations* (the Banking Law), the Bank of Mexico establishes channels of credit to different sectors of economic activity. There are 12 categories of credit under section II.

Most categories carry their own maximum interest rate which is set by the Bank of Mexico. Loans granted under category 12 are targeted to exports of manufactured products. The maximum interest rate under this category is 8 percent. We have found that these loans were not used by the companies under investigation.

B. FOMEX and BANCOMEXT Loans to U.S. Importers

U.S. customers of lime were alleged to have received FOMEX and BANCOMEXT loans. We have found that no U.S. customers of Mexican lime producers received FOMEX or BANCOMEXT loans that has outstanding principal during the period of investigation.

C. National Preinvestment Fund for Studies and Projects (FONEP)

FONEP, administered by NAFINSA, finances economic, technical and feasibility studies, as well as basic and detailed engineering projects. We have found that this program was not used by the companies under investigation.

D. Trust for Industrial Parks, Cities, and Commercial Center (FIDEIN)

This program is aimed at developing industrial parks and cities. We have found that this program was not used by the companies under investigation.

E. Fondo National de Fomento Industrial (FOMIN)

FOMIN operates as a trust fund, providing assistance to certain small and medium sized companies by either buying stock or providing loans at rates below those of commercial lending institutions. We have found that this program was not used by the companies under investigation.

F. PROFIDE

PROFIDE has been established under the auspices of FOMEX to administer a new financing program to provide exporters with foreign currency needed for imports. We have found that this program was not used by the companies under investigation.

G. Preferential Prices for Natural Gas, Oil, Electricity, Diesel Fuel and Petrochemicals

Petitioner alleged that prices for natural gas, oil, diesel fuel, petrochemicals and electricity are set by the Mexican government and could include a 30 percent discount for respondents. The Mexican lime industry has not received price discounts for these items.

H. Other FOMEX Loans

Mexicana de Cobre received several FOMEX export and pre-export loans that had outstanding principal during the review period. We found at verification that these loans were used exclusively for operations of the company other than the production of lime. Therefore, we determine that these loans were not used for Mexicana de Cobre's production or exportation of lime.

I. Nacional Financiera, S.A., Loans

Mexicana de Cobre received loans from the Nacional Financiera, S.A. (NAFINSA), a government-owned development bank, during the last month of the period of investigation. Because we calculate benefits from variable interest rate loans on a date of payment basis, we find that these loans were not used by Mexicana de Cobre during the period of investigation.

J. Income Tax Rate Reductions

Mexicana de Cobre is eligible for an income tax rate reduction under an agreement with the Mexican Department of the Treasury. No benefits were realized in 1983 because the company did not have taxable income in tax year 1982.

Petitioner's Comments

Comment 1: Petitioner argues that logic, the statute and judicial authority all mandate the conclusion that the Mexican government's provision of fuel to Mexican lime producers at a price far below its international market value confers a subsidy that must be countervailed.

DOC Response: As stated in the "Notice of Initiation" of this case, we did not investigate this allegation because it has previously been found not to confer a bounty or grant, and petitioners did not allege new facts to justify a review of this finding.

Comment 2: Petitioner argues that because of Sonocal's poor economic performance, the equity infusions received by it in 1978 and all succeeding years conferred a bounty or grant that must be countervailed.

DOC Response: The Department's position is fully described in its response to respondent's comment 3.

Comment 3: Petitioner argues that the provision of free land and free mineral rights to Sonocal by the Mexican government is a countervailable subsidy and that the value of the property grant is the value of the property in October, 1983, when the grant to Sonocal was made. Petitioner suggests we calculate a benefit to Sonocal based on the value of land of U.S. lime companies across the border.

DOC Response: We based our determination on the evidence concerning the value of the land as measured in Mexico since we believe it is inappropriate to do cross-border comparisons. As a result of verification, we conclude that the provisions of the land at no cost was not inconsistent with commercial considerations in Mexico and did not confer a bounty or grant on Sonocal. We will reconsider this issue during the first review of this order.

Comment 4: Petitioner argues that plant and equipment CEPROFIs received in the years before 1983, when that plant and equipment were used to produce lime during the period of investigation, must be countervailed.

DOC Response: CEPROFIs constitute a tax deduction to recipient companies. It is the Department's consistent practice to recognize tax benefits as one-time benefits pertaining to the year in which they were realized.

Comment 5: Petitioner argues that due to its poor financial performance Sonocal should be found uncreditworthy as of 1978.

DOC Response: Counsel for petitioners had access to Sonocal's financial statements as of June 4, 1984. Using those statements as a basis, they alleged uncreditworthiness on July 25, 1984, roughly one month prior to the final determination. Considering the complexity of analysis necessary to investigate this allegation, we consider it to be too late to be considered in this investigation.

Comment 6: Petitioner argues that no lime manufacturer should be excluded from a final affirmative countervailing duty order. They state that those who have requested exclusion submitted certifications supporting their requests for exclusion that were incomplete.

DOC Response: Exclusions have been granted where the applications were made on a timely basis and we have found that the companies received either no benefits or benefits in *de minimis* amounts. Under these circumstances exclusions are consistent with Commerce Regulations (19 CFR 355.38).

Comment 7: Petitioner argues that, for loans on which Sonocal paid no principal or interest during 1983, the penalty rate of interest being assessed should be compared to the penalty that would be assessed in similar circumstances in a corresponding commercial loan rather than to normal commercial rates on sound loans.

DOC Response: Where Sonocal failed to meet its loan interest and principal repayments, we treated these as new loans taken out at the penalty interest rate on the date the original payments were due. We consider that any benefit from the new loans should be calculated under our normal loan methodology, using the IE rate as benchmark. For every missed payment, we rolled over the previous amount of principal and interest due and constructed a new loan at the penalty rate and compared it to the IE rate in effect at that time. We calculated the present value of the original amount of the loan as a grant and compared it to the subsidy amount calculated under the methodology above to ensure that we did not countervail more than if we treated the benefit as a grant.

Comment 8: Petitioner argues that Mexicana de Cobre received a countervailable subsidy by reason of accelerated depreciation it is permitted to take for income tax purposes. Petitioner contends that:

- Mexicana de Cobre's argument that it is not a benefit is based on a computation and data that are artificial constructs which do not in fact disclose the extent to which it actually applied accelerated depreciation on particular facilities in computing its taxes.
- Mexicana de Cobre's computation is methodologically unsound because it does not accurately state the depreciation the company would have been entitled to claim on its facilities for tax purposes.
- The company benefits from any such special depreciation even in a tax loss year; both to the extent that the special allowance helped to reduce or eliminate taxable earnings and to the extent that any resulting tax loss can be carried forward or back to other years.

DOC Response: Since the company incurred a tax loss during 1982 that exceeded the amount of depreciation taken by it, the company could not have benefitted from this program. Any future effects from loss carry forward will be considered in annual reviews of this determination.

Comment 9: Petitioner argues that loans and loan gurantees to Mexicana de Cobre should be considered to be either directly or indirectly related to Mexicana de Cobre's lime operations unless it is established that the loan authorization: (a) Expressly precludes the use of the proceeds for ancillary operations such as lime production; or (b) expressly required dedication of the proceeds exclusively to the acquisition and construction of specific facilities that are used only for production of products other than lime and it is clear that related, ancillary facilities are not covered.

DOC Response: For certain loans to Mexicana de Cobre, we found at verification that the loan contract specifically stated that the intended use of the proceeds is for operations of the company other than lime. We consider this sufficient evidence to establish that these loans did not benefit the company's lime production.

Comment 10: Petitioner argues that the waiver of the foreign lender tax on loans to Mexicana de Cobre is clearly preferential and is also clearly a countervailable benefit.

DOC Response: We find the tax exemption is not countervailable because the tax is normally paid by the foreign lender, not the Mexican company, and thus the foreign lender benefits from the tax savings. As stated above, we looked to see if Mexicana de Cobre benefitted from reduced interest rates on foreign loans as a result of this exemption and found that it did not.

Comment 11: Petitioner contends that Sonocal's CEPROFIs for salary adjustment may not have been granted under the Mexican Decree of April 16, 1982 as Sonocal claims. Petitioner also contends that Sonocal's CEPROFIs for investment in machinery and equipment are targeted to specific priority industries and/or regions of the country, and thus are countervailable.

DOC Response: The documents we examined at verification clearly established that Sonocal's CEPROFIs for salary adjustment were provided under the Decree of April 16, 1982. Further, two of the three CEPROFIs to Sonocal for investment in plant and equipment are not countervailable. They were provided under the Decree of March 6, 1979, which states that CEPROFIs of 5 percent of the investment in Mexican-made equipment are available to all industries in all regions of Mexico, and were shown to be provided for 5 percent of Sonocal's investment in Mexican-made machinery.

Respondents Comments

Comment 1: Counsel for Productos Calizos de Baja California, Materiales Titan, Industrias Quimicas de Yucatan, Apax and Refractarios Basicos ("The Five") contend that Apax and Refractarios Basicos did not receive any benefits and should be excluded from any final affirmative determination or, if exclusion is denied, receive a zero countervailing duty deposit rate.

DOC Response: Apax and Refractarios Basicos were not considered for exclusion because they did not submit responses or requests for exclusion on a timely basis.

Comment 2: Counsel for The Five argue that FONEP benefits are generally available and therefore FONEP should be found not to constitute a bounty or grant under Section 303 of the Act.

DOC Response: It was established that these benefits were not used by the companies under investigation, and therefore this issue is moot.

Comment 3: Counsel for Sonocal argues that Sonocal has been an equityworthy company thoughout its existence, based upon:

- favorable feasibility studies in 1977 and 1980
- increasing sales
- the context of Mexico's recent economic history

DOC Response: The evidence presented by Sonocal's counsel has been taken into account in our finding of unequityworthiness. Early feasibility studies projected success for the company, and the company did reflect a profit for 1978 and 1979. However, its later performance did not match these projections and while the company's sales increased, losses continued.

It was also pointed out that adverse economic conditions affected all companies in Mexico. Comparison of the rate of return on equity for Sonocal to that of other companies in Mexico was one of the factors considered by the Department in its equityworthy determination. We also note that comparisons of rates of return are performed when assessing the *ad valorem* subsidy rate. Therefore, if Sonocal's performance was average or better than the average return in Mexico during the review period, no subsidy rate would be found based upon equity infusions.

Comment 4: Counsel for Sonocal argues that it can be accountable only for the difference between what it owes the Mexican government in unpaid fuel bills and what the government owes it under the value-added tax regime and that this difference does not represent a subsidy because it is just a sales price PEMEX has not yet collected.

DOC Response: We find that the uncollected bills of PEMEX confer a bounty or grant on Sonocal because the delay in payment is a financial benefit to it which appears to be provided solely to that company. Further, we do not consider the amount owed Sonocal under the value-added tax regime an allowable offset under section 771(6)(A) of the Act.

Comment 5: Counsel for Sonocal argues that loans and equity received for use in connection with its unfinished Colima plant are not countervailable benefits because the plant has not yet produced any of the products under investigation.

DOC Response: The loans and equity received by Sonocal for its Colima plant, which will be used exclusively to produce lime, saved the company funds it would otherwise have had to spend on that project. This resulted in lower costs to the company for the production of lime. This benefit is similar to that of funds for research and development and grants for restructuring, which we have in the past found countervailable. Therefore, those loans and equity conferred benefits that consititute countervailable subsidies.

Comment 6: Counsel for Mexicana de Cobre argues that the Department should base its determination with respect to the use of accelerated depreciation upon the tax return for its 1983 fiscal year, not its 1982 fiscal year, because such a "lag" in quantification is inconsistent with generally accepted accounting principles.

DOC Response: The Department has a consistent policy of valuing income tax benefits at the time of the filing of the official tax return when the actual benefit to the company can be calculated, rather than simply estimated.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including meetings and inspection of documents with government officials and on-site inspection of the records and operation of the companies exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). Written views have been received and considered in reaching this final determination.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect with regard to Sonocal, IQY, Calteco and Materiales BYM, until further notice. The net bounty or grant for duty deposit purposes for each of these firms is as follows:

Manufacturer/exporters	Ad valorem rates
Sonocal	55.85
All other Manufacturers/Exporters	1.21

The net bounty or grant for PCBC is 0.48 percent; for Mexicana de Cobre is 0.07 percent; for Incalpa, Cales de Chiapas, Cal de Apasco, Cales de Puebla and Materiales Titan is zero. These are *de minimis.* Accordingly, the products subject to this investigation produced by these companies are being excluded from this determination. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated with respect to these firms. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released for entries of the products under investigation manufactured by these firms.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Costoms Service to require a cash deposit in the amount indicated above for each entry of lime from Mexico which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that it is commencing an administrative review of this order on September 11, 1984. For further information regarding this review, contact Richard Moreland at (202) 377-2786.

This notice is published pursuant to sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Christopher Parlin,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-23961 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Issuance

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Great Agassiz Basin Export Trading Company, Inc. ("Great Ag"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this amendment. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84-00022".

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202-377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate or review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Great Ag on June 11, 1984. The application was deemed submitted on June 14, 1984. A summary of the application was published in the **Federal Register** on June 27, 1984 (49 FR 26272-26273 (1984)).

Description of Certified Conduct

Based on analysis of the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Great Ag meet the four standards of the Act:

Great Agassiz Basin Export Trading Company, Inc.—Application No. 84-00022.

Members: International Enterprises, South Fargo, ND; Advisors, Inc., Fargo, ND; ECO-AG, Inc., Boise, ID; Uebergang-Williams Mineral and Proten Application Co., Fargo, ND; and Crary-Williams Attorneys, Walhalla, ND.

Export Trade

a. *Products.* Durum wheat, hard spring wheat, potatoes, millet, triticale, barley, sunflower seeds, and sunflower oil.

b. *Services.* Animal husbandry services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern

Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. Great Ag may determine its prices for Products and Services in the Export Markets.

2. Great Ag may enter into and terminate exclusive agreements with suppliers individually wherein:

a. Great Ag agrees not to represent any competitors of such supplier as an Export Intermediary unless authorized by the supplier; and/or

b. The supplier agrees not to sell, directly or indirectly through any other Export Intermediary, into the Export Markets in which Great Ag represents the Supplier as Export Intermediary.

3. Issuance of new stock and restrictions on transfer of stock of Great Ag may be at the discretion and/or approval of the board of directors of Great Ag.

4. For invitations to bid or sales opportunities in the Export Markets, Great Ag may

a. Contact separately suppliers of Products or Services specified in the invitation to bid or purchase specifications;

b. Distribute, subject to Term and Condition (a) below, to suppliers separately information about the bid, bid requirements, bidding dates, and any other information necessary for Great Ag to compile a responsive bid;

c. Solicit and receive independent quotations for the Products or Services from suppliers separately, provided that Great Ag does not reveal to any supplier the quotation of any other supplier or the identity of the supplier that provide the quotation;

d. Enter into independent agreements with suppliers individually whereby Great Ag will submit a response to the bid invitation or request for quotation; or

e. Any combination of (a) through (d) above.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c) which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202-377-3031.

Dated: September 6, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84-24004 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DR-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S. C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing; U.S. Department of Commerce; P.O. Box 1423; Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-391,065 (4,458,630)
Disease Control In Avian Species By Embryonal Vaccination
SN 6-456,930 (4,458,538)
Apparatus and Method of Measuring Edgewise Compressive Deformation
SN 6-527,894 (4,443,222)
Zinc Pyrithione Process to Impart Antimicrobial Properties to Textiles
SN 6-593,058
Visual-Olfactory Habitat Mimic for Assessment of Fruit Fly Response to Bahavior-Modifying Chemicals

Department of Health and Human Services

SN 6-267,538 (4,443,431)
Neisseria Gonorrhoeae Vaccine
SN 6-637,880
Hepatitus B Core Antigen Vaccine Made By Recombinant DNA

Department of the Army

SN 6-387,987 (4,459,567)
Dielectric Waveguide Ferrite Resonance Isolator
SN 6-472,793
Adaptive Multiple Interference Tracking and Cancelling Antenna
SN 6-582,648
Flexible Mat
SN 6-596,778
An Explosive Ordnance Disposal Protective Suit
SN 6-598,751
Voice Integrated Presentation System
SN 6-661,091
Monolitchic Amplifier

Environmental Protection Agency

SN 6-381,743 (4,459,126)
Catalytic Combustion Process and System With Wall Heat Loss Control

[FR Doc. 84-23979 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

September 6, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 12, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

A CITA directive was published in the **Federal Register** on July 2, 1984 (49 FR 27194) which established import restraint limits for certain specified categories of cotton and man-made fiber textile products, including women's, girls' and infants' woven cotton blouses in Category 341, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1984. During consultations held August 15 and 16, 1984 between the Governments of the United States and the Republic of Indonesia, agreement was reached to amend the Bilateral Cotton, Wool and

Man-Made Fiber Textile Agreement of November 9, 1982 to establish a new specific limit for Category 341 of 360,000 dozen for the agreement year which began on July 1, 1984. The new limit is being adjusted to account for 8,476 dozen in carryforward used in the previous agreement year. The new limit, as adjusted, will be 351,524 dozen.

During these same consultations agreement was also reached to establish a new specific limit for carded duck fabric in Category 319 of 4,383,304 square yards for the agreement year which began on July 1, 1984. Inasmuch as the U.S. Customs Service has already been instructed to control imports in this category at this limit, no further instructions concerning this category are included in the letter which follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 6, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 27, 1984 which established import restraint limits for certain categories of cotton and man-made fiber textile products, produced or manufactued in Indonesia and exported during the agreement year which began on July 1, 1984.

Effective on September 12, 1984, paragraph one of the directive of June 27, 1984 is hereby amended to include an adjusted twelve-month restraint limit for cotton textile products in Category 341 of 351,524 dozen.[1]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-23084 Filed 9-6-84; 4:30 pm]

BILLING CODE 3510-DR-M

Adjusting Import Charges for Certain Cotton Textile Products Produced or Manufactured in the Republic of Korea

September 6, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 12, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377-4212.

Background

A CITA directive was published in the **Federal Register** on January 4, 1984 (49 FR 492), which established import restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1984. Included in that directive was a restraint limit of 21,893,199 square yards for cotton printcloth in Category 315. That limit has been filled for the year and further entries are being prohibited. In reviewing the import data, it has been determined that shipments amounting to 1,825,445 square yards have been improperly charged to the limit for Category 315 from Korea. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commission of Customs to deduct 1,825,445 square yards from import charges made to the limit for Category 315.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 6, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, I request that, effective on September 12, 1984, you reduce charges to the restraint limit established in the directive of December 29, 1983 for cotton textile products in Category 315 by 1,825,445 square yards.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-23082 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of India To Review Trade in Category 359pt. (Vests)

September 6, 1984.

On July 31, 1984, the Government of the United States requested consultations with the Government of India with respect to vests in Category 359pt. (T.S.U.S.A. numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4200, and 383.4320). This request was made on the basis of Paragraph 16 of the Agreement between the Governments of the United States and India relating to trade in Cotton, Wool and Man-Made Textiles and Textile Products of December 21, 1982, which provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA may establish a prorated specific limit of 306,489 pounds for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 359pt., produced or manufactured in India and exported to the United States during the period which began on July 31, 1984 and extends through December 31, 1984.

The Government of the United States has decided, until such time as a mutually satisfactory solution is reached in consultations, to control imports in this category during the 90-day consultation period which began on July 31, 1984 and extends through October 28, 1984 at a level of 212,453 pounds.

In the event the level established for Category 359pt. during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter at the end of the restraint period, shall be charged to the prorated twelve-month level described below.

A summary market statement for this category follows this notice.

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[1] The restraint limit has not been adjusted to reflect any imports after June 30, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Effective Date: September 12, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of Category 359pt. under the Bilateral Cotton, Wool and Man-Made Fiber Agreement with the Government of India, or on any other aspects thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

SUPPLEMENTARY INFORMATION: On December 16, 1983 a letter was published in the **Federal Register** (48 FR 55891) to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1984. In the letter published below, pursuant to the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, pending agreement on a different solution, to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton textile products in Category 359pt., exported during the indicated ninety-day period, in excess of the designated level of restraint.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

India.—Market Statement

Category 359pt.—Cotton Vests

July 1984.

U.S. imports of cotton vests, Category 359 part, from India during the year ending May 1984 were 737,000 pounds. This compares with 71,000 pounds a year earlier and is a sharp and substantial increase in imports. Much of the increase occurred during the first five months of 1984 when 569,000 pounds were imported compared with only 14,000 pounds a year earlier. India was the third largest supplier of these vests, accounting for 18.5 percent of the total imports during the year ending May 1984. It was the largest supplier during January–May 1984 when it accounted for 24.8 percent of the total. These imports from India are entered at duty-paid landed values which are below the U.S. producer price for comparable vests. These and other factors lead the United States Government to conclude that imports from India are creating a real risk of market disruption in the United States for such vests.

U.S. production of cotton vests declined from 424,000 dozen in 1981 to 205,000 dozen in 1983. Imports increased from 194,000 dozen to 270,000 dozen over the same period. The ratio of imports to domestic production increased from 45.8 percent in 1981 to 131.2 percent in 1983. Imports were up sharply during the first five months of 1984 with the January–May 1984 imports at a level more than twice that of a year earlier. This substantial increase indicates a further increase in the import to production ratio and a further loss in market share by the U.S. producers.

September 6, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during 1984.

Effective on September 12, 1984, paragraph one of the directive of December 13, 1983 is hereby further amended to include a limit of 212,453 pounds [1] for cotton textile products in category 359pt.,[2] produced or manufactured in India and exported during the ninety-day period which began on July 31, 1984 and extends through October 28, 1984.

Textile products in Category 359pt.[2] which have been exported to the United States before July 31, 1984 shall not be subject to this directive.

Textile products in Category 359pt.[2] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The action taken with respect to the Government of India and with respect to imports of cotton textile products from India has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-23983 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

Information concerns certain equipments available to contractors in the performance of work required by statements of work, e.g. type and location of bulk petroleum storage facilities, pump capacities, and delivery systems.

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[1] The level has not been adjusted to reflect any imports exported after July 30, 1984.

[2] In Category 359, only TSUSA numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4200, and 383.4300.

Reporting is necessary to assure contractors ability to perform and to properly evaluate offers.

Businesses or others for profit/small businesses or organizations, 229 respondents, 2,519 hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone 694-0187.

A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301, telephone 697-8334. This is a revision of an existing collection.

Dated: September 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-23997 Filed 9-10-84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

1984 Post-Election Survey

Market Facts, Inc., under a Department of Defense contract, has designed the 1984 Post-Election Voting Survey forms which seek out, on a voluntary basis, 10,000 U.S. citizens not affiliated with the federal government and living overseas and 500 local election officials, who desire to participate in DoD's absentee voting survey. The survey forms are used by Market Facts, Inc., staff to obtain absentee voting statistical data from U.S. citizen's residing overseas and local election officials. These potential voters and election officials are requested to voluntarily complete the survey questionnaire form. The forms solicit information on procedural and problem areas encountered in the absentee voting process. This information is used by the Federal Voting Assistance Program to prepare the report to the President and Congress as required by 42 U.S.C. 1973cc-11. There will be a total of 10,500 survey forms distributed a maximum of 10,500 respondents; 1749.99 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Phyllis Taylor, FVAP, Room 1B457, Washington, D.C. 20301, telephone (202) 695-0663.

Dated: September 6, 1984.

Patricia Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-23998 Filed 9-10-84; 8:45 am]

BILLING CODE 3810-01-M

Establishing a Federally Funded Research and Development Center (FFRDC)

The Department of Defense, in compliance with the procedures of OFPP Policy letter No. 84-1, "Federally Funded Research and Development Centers" (April 4, 1984), announces its intention to designate the Logistics Management Institute an FFRDC to perform research, studies, and analyses in the areas of logistics and weapon systems acquisition. Such work includes research and analyses to: (1) Reduce costs and increase the effectiveness of military procurement, materiel management, logistics and manpower support activities and other related areas; (2) formulate and recommend changes in DOD policy relating to acquisitions and support of weapons systems and other defense resources requirements; (3) develop mathematical models and other management tools for the evaluation of logistics and manpower plans and materiel requirements, and (4) appraise the readiness of the Armed Forces.

Dated: September 6, 1984.

Patricia Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-23995 Filed 9-10-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondents; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Questionnaire for Contract Simplication Test

This information is needed to assess industry response to a DOD-wide test that simplifies government contracts. The test is designed to make government contracts easier for contractors to understand and require less administrative paperwork on their part.

All contractors, including small businesses, who sell supplies under $500,000 to the Department of Defense: 3,500 responses; 875 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, OASD, WHS, IRAD, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from Maj.

James Barager, HQ USAF/RDCL, Pentagon, Washington, D.C. 20330, telephone (202) 694–2471.

Dated: September 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23999 Filed 9–10–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

US Army Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Entomology.

Date of Meeting: October 2 and 3, 1984.

Time and Place: 0830 hours, Conference Room, Bldg. 1425, US Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD

Proposed Agenda: This meeting will be open to the public from 0830–0945 hours on 2 October for the administrative review and discussion of the scientific research program of the Medical Entomology Group, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), US Code, Title 5 and Sections 1–15 of Appendix, the meeting will be closed to the public from 1000–1630 hours on 2 October and from 0900–1200 hours on 3 October for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg. 40, Room 1111, Walter Reed Medical Center, Washington, DC 20307 (202/576–2436) will furnish summary minutes, roster of Subcommittee members and substantive program informaion.

Philip Z. Sobocinski,

Colonel, MSC Assistant Deputy Commander.

[FR Doc. 84–23931 Filed 9–10–84; 8:45 am]

BILLING CODE 3710–08–M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondents; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Terminal and Transfer Facilities Survey

Data complied into Port Series Reports used by the Army Corps of Engineers for navigation and planning functions, by Coast Guard for marine safety inspections, by Navy for guidance in providing safe passage and terminalling in time of National emergency by Army for mission deployment planning, and public for general reference, planning and various studies, WRSC Form 1 thru 9.

State or local governments, Business or Organizations: 1,341 respondents, 335 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20310, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

Dated: September 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–23996 Filed 9–10–84; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Confined Disposal of Polluted Sediments Dredged From Toledo Harbor Commercial Navigation Project at Toledo, OH

AGENCY: U.S. Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. *Description of Action.* The proposed action involves constructing an addition to the existing Federal confined disposal facility (CDF) at the mouth of the Maumee River adjacent to the Toledo Edison Company's Bay Shore Station. The existing facility is boot-shaped and covers an area of about 242 acreas. The proposed addition would extend from the northwest corner of the existing CDF to the northerly reach of the Toledo Edison water intake channel. This general southwestern expansion would cover an area of about 120–150 acres, depending on the final design and capacity requirements.

2. *Alternatives.* Potential alternatives to the proposed action consist of no-action, extending the life of the existing CDF, constructing a new CDF at another location, and expanding the Island 18 CDF which is presently filled to capacity.

3. *Scoping Process.* An initial scoping meeting was held with the Toledo-Lucas County Port Authority and concerned resource agencies on 16 August 1984. Additional coordination will be accomplished during preparation of the DEIS. The participation of concerned Federal, State, and local agencies, and other interested private organizations and parties is invited. Significant issues to be analyzed in the DEIS include sediment and water quality, fish and wildlife impacts, and commercial shipping.

4. *Scoping Meeting.* No additional scoping meeting is currently scheduled.

5. *Availability.* The DEIS is scheduled to be available for review in September 1985.

ADDRESS: Questions about the proposed action and DEIS can be answered by David W. Heicher, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207, telephone 716/876–5454 (FTS 473–2171).

Dated: September 4, 1984.

Robert R. Hardiman,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 84–23977 Filed 9–10–84; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Hearing

AGENCY: Department of Education.

ACTION: Notice of hearing.

SUMMARY: This notice sets forth the schedule of a hearing of the Intergovernmental Advisory Council on Education. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 5, 1984.

ADDRESS: U.S. Department of Education, 1200 Main Tower Building, Room 1130, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street SW., Room 513, Washington, D.C. 20202 (202) 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The Intergovernmental Advisory Council on Education will conduct a Public Hearing on October 5, 1984. The hearing schedule is as follows:

9:30 a.m.—Educational Partnerships
11:00 a.m.—Student Achievement and Discipline
2:00 p.m.—Higher Education Reauthorization Proposals
3:30 p.m.—Press Availability

Individuals, organizations, and associations need to register for the October 5 hearing. To register due to limited space and time, write or call Ms. Laverne Johnson, Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202, (202) 472-6464. (Testifiers will be limited to five (5) minutes. Each testifier must provide written comments. Those wishing to submit comments only may do so by mailing them to Ms. Johnson.)

Records are kept of all Council proceedings and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202.

Signed at Washington, D.C., on Wednesday, September 5, 1984.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 84-23978 Filed 9-10-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59165A; FRL-2667-5]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-71 and TME-84-72. The test marketing conditions are described below.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M Street SW., Washington, DC 20460 (202-382-3739).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-71 and TME-84-72. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection and copying by EPA in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of each TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 84-71

Date of Receipt: July 19, 1984.

Notice of Receipt: July 27, 1984 (49 FR 30241).

Applicant: Confidential.

Chemical: (G) Mixed polymer of acrylates and methacrylates.

Use: Industrial coating (open use).

Production Volume: 1540 kg.

Number of Customers: One.

Worker Exposure: Manufacturing will occur for 12 hours over a two day period, during which up to 10 workers may be dermally exposed to low levels of the TME substance over 2 hour periods. Up to 11 workers may process the substance for up to 8 hours per day. Dermal exposure to these workers is not expected to be significant. Use will occur over a 125 day period and involve 2 to 4 workers for 8 hours per day. These workers may be dermally exposed to low levels of the substance. They may also be exposed through inhalation to up to 12 mg/day. Workers in all operations are required to wear the protective equipment specified in the test market application.

Test Marketing Period: Six months.

Commencing on: August 30, 1984.

Risk Assessment: No significant health concerns were identified. Based on analogous chemicals, EPA has identified some concern for ecotoxicity. However, no significant releases of the substance to the environment are anticipated. The test marketing substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84-72

Date of Receipt: July 19, 1984.

Notice of Receipt: July 27, 1984 (49 FR 30241).

Applicant: Confidential.

Chemical: (G) Aklyl diamine.

Use: (G) Epoxy reactant.

Production Volume: Confidential.

Number of Customers: Two.

Worker Exposure: Confidential.

Test Marketing Period: Nine months.

Commencing on: August 30, 1984.

Risk Assessment: The TME substance is acutely toxic and severely irritating based on test data submitted in the test marketing application. Potential chronic health effects were identified based on observations in the acute toxicity study. The substance may also be toxic to some aquatic organisms based on analogy to substances of similar structure. However, human and environmental exposures are not expected to be significant under the test marketing conditions. Worker exposure during manufacturing and processing of the test market substance is expected to be low and of short duration. Workers are required to wear protective equipment including gloves, respirators, and eye goggles or fact shields, as specified in the test market application and the material safety data sheet. The type of use precludes significant worker exposure. No significant environmental releases of the substance are anticipated. The test marketing substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

The agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 30, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-23921 Filed 9-10-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59132D; FRL-2667-4]

Isocyanate-Reactive Prepolymers; Extension of Test Marketing Exemption Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the test marketing exemption periods for an additional one-year for test marketing exemptions (TMEs) TM-83-73 and 83-74 under the authority of section 5(h)(1) of the Toxic Substances Control Act (TSCA). The test marketing exemptions were granted for a one-year period commencing on August 26, 1983. A Notice of Approval was published in the **Federal Register** of September 7, 1983 (48 FR 40439).

EFFECTIVE DATE: August 23, 1984.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M Street SW., Washington, D.C. 20460 (202-382-3739).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA 90 days before manufacture or import begins. Section 5(h)(1) authorizes EPA, upon receipt of an application, to exempt any person from the notice requirements of section 5 and to permit them to manufacture a new chemical substance for test marketing purposes. EPA may impose restrictions on the test marketing activity, including a limit on the time period during which it may take place.

On August 26, 1983, EPA granted test marketing exemptions (TM-83-73 and 74) for isocyanate-reactive prepolymers (generic description). The specific chemical identity and specific use is confidential business information. Notice of approval of the TMEs was published in the **Federal Register** of September 7, 1983 (48 FR 40439). Approval was based on an Agency finding that, under the conditions set out in the application, the test market substances did not present an unreasonable risk of injury to health or to the environment. Overall concerns for health and environmental effects were low. Minimal human exposure and environmental release is expected. The test marketing activity was limited to one year. On June 5, 1984, EPA received a request from the submitter to extend the test marketing period for an additional one year. The applicant states that only small amounts of the anticipated test market materials have been sampled because the development and penetration of this market is a relatively long process. The applicant states that this is at least partly due to the fact that customers of the TME substances must make structural changes to equipment in order to test market the substances. The applicant further states that an additional year is needed in order to complete field trials. Field trial schedules depend on the customers' production schedules. Once field trials are completed the final products must be tested by the customer for improved performance.

EPA has decided to extend the exemption periods by an additional one year, provided that all other restrictions specified in the notice of approval of the test marketing exemptions remain unchanged. These include recordkeeping requirements, limit on production volumes as originally specified, and worker protection measures. This decision is based on a finding that the additional time will not affect the Agency's original conclusion that test marketing of these substances will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind its decision to grant these extensions should any new information come to its attention which casts significant doubt on this conclusion.

Dated: August 23, 1984.

Edwin F. Tinsworth,

Deputy Director, Office of Toxic Substances.

[FR Doc. 84-23922 Filed 9-10-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 84-841, et al.; File No. BPCT-830818KG, et al.]

Retherford Publications, Inc. et al.; Memorandum Opinion and Order

Adopted: August 30, 1984.

Released: September 6, 1984.

In re applications of Retherford Publications, Inc., (MM Docket No. 84-841; File No. BPCT-830818KG); Craig Fox, George and Russell Kimble, a partnership d/b/a Jamestown TV Associates (MM Docket No. 84-842; File No. BPCT-831018KM); for construction permit for new TV station, Channel 26, Jamestown, New York.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of Retherford Publications, Inc. (Retherford) and Craig Fox, George Kimble and Russell Kimble, a partnership dba Jamestown TV Associates (JTA) for authority to construct a new television station on Channel 26, Jamestown, New York; (2) petitions to deny the above applications filed by Western New York Public Broadcasting Association (Association), licensee of noncommercial educational Station WNED-TV, Channel 17, Buffalo, New York, and Board of Cooperative Educational Services of Chautauqua County, New York (BOCES), licensee of translator station W26AA, Jamestown, New York [1]; and (3) related pleadings.

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[1] Station W26AA operates on Channel 26, Jamestown, New York, and carries the programming originated by WNED-TV.

2. Association and BOCES claim standing as parties in interest on the basis that grant of either application would require modification or termination of the BOCES translator service because of the protection from electrical interference which must be accorded to television stations by television translators. Further, the petitioners claim standing on the basis that grant of either application will have an adverse economic impact upon the continued operations of WNED-TV, Buffalo, in that its programming is rebroadcast on the BOCES translator station serving Jamestown and vicinity. It is maintained that because its membership is relied upon for financial contributions, the loss of the translator service and viewership on Channel 26 will cause the Association to lose membership contributions. The petitioners' standing is not challenged and we find that they have standing to file the petitions to deny. *See International Broadcasting Co.*, 3 FCC 2d 449, 450 (1966).

The Pleadings

3. *The Petitions to Deny.* As an initial matter, the petitioners note that the same transmitter site was specified by each applicant and that neither has contacted the owner of that site to obtain permission for its use. Moreover, the petitioners contend that the engineering sections contained within these applications and calculated on the basis of the sites proposed are so technically deficient that any meaningful assessment of their technical proposals is prevented, thus raising additional questions as to whether the proposals constitute an inefficient use of the frequency. Specifically, it is alleged that Retherford proposes to locate its antenna at the same height on an existing tower that is occupied by the antenna of Station WWSE(FM), Jamestown, without addressing the probable deleterious effect that would result.[2] The petitioners further state that JTA's specified antenna location is at a site already occupied by the BOCES facilities pursuant to a long-term lease which it intends to retain and utilize. Moreover, it is alleged that JTA substantially exaggerates its proposed coverage and that to correct this inaccuracy would entail a major change in its proposal.[3] For these reasons alone, the petitioners urge that the applications be denied or designated for hearing.

4. Although the petitioners acknowledge that operation of a translator service on a commercial television channel is secondary in nature under the Commission's translator policies, they argue that the normal presumption favoring a full-service operation on that channel is unwarranted and contary to the public interest. Invocation of that presumption and the elimination of the existing translator service on Channel 26, they maintain, would not only have an adverse economic impact on WNED-TV and public broadcasting in the area, but also would deprive the citizens of Chautauqua County of their only source of in-state public broadcasting. Thus, the petitioners submit that it is incumbent upon these applicants to set forth a "realistic alternative" which would assure continuation of the program service currently offered by the Channel 26 translator operation. The absence of such a programming commitment, they argue, would be contrary to the public interest because a grant of either application would significantly reduce the diversity of local programming and eliminate public broadcasting programming for which there is no substitute.[4]

5. Both applicants filed oppositions to the petitions to deny. They maintain that they have reasonable assurances of obtaining the transmitter site specified in their applications. Retherford has attached to its pleading a copy of a memorandum of its consulting engineer to the effect that it received permission on October 21, 1983 from a Mr. Larson of WWSE(FM) to use that station's tower coordinates in its application. Thus, it contends that the petitioners' site availability allegations are moot. JTA has also submitted a letter from Mr. Larson to the effect that they also received his verbal permission to specify the WWSE(FM) transmitter site and maintains that the technical figures used in its application were those given them by WWSE(FM)'s Chief Engineer. Further, JTA states that if its transmitter site or antenna location should prove technically infeasible, it will promptly amend the application accordingly.

6. The applicants also disagree with the petitioner's assertions that grant of either application for a full-service commercial television station in Jamestown is contrary to the public interest. They essentially maintain that translator stations operating on allocated channels are secondary in nature and are subject to pre-emption upon the program test of a full-service television operation on such channels. JTA in particular stresses that in its desire to provide Jamestown with its first commercial television service, it has no choice but to apply for Channel 26. In so doing, it maintains that it does not intend to eliminate the public broadcasting service currently offered by the Channel 26 translator and, further, it disagrees that a grant of its application would preclude continuation of that service. JTA points out that other channels, including Channel 46 which is allocated to Jamestown and is reserved for educational use, are available for use as an independent full-service station or as a satellite operation similar to other educational stations in New York.[5]

7. *Discussion.* Section 74.702(b) of the Commission's Rules essentially requires the termination of a translator's operations or a change in the translator's output channel when a full-service station is activated on the allocated channel. The fact that a translator operation is secondary in nature and that the Commission has recognized that the public interest favors primary over secondary services is basically not in dispute here. Channel 26 was allocated to Jamestown in order to enable us to authorize that community's only local commercial television station. That allocation represents an implicit determination

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[2] The petitioners also assert that Retherford's technical showing: (1) Contains discrepancies in terrain data and questionable service contour calculations; (2) refers to exhibits purporting to contain topographic maps which are, in fact, not included in the application; and (3) omits the dated signature of its technical consultant.

[3] The petitioners maintain that JTA's coverage proposal is unreliable because: (1) The use of an erroneous proposed tower height resulted in a miscalculation of the proposed antenna's center of radiation and an incorrect projection of its Grade B signal contour; and (2) an incorrect antenna pattern was used in plotting its proposed signal contours.

[4] The petitioners observe that moving the translator operation to another channel allocated to Jamestown is unlikely. Channel 26 is the only channel allocated for commercial television use in Jamestown. Channel 46, which is reserved for educational use, is also allocated to Jamestown and is currently used by BOCES as a hub translator, rebroadcasting the programming of WNED-TV and retransmitting that programming to other translator stations throughout the area. That translator is located at Kelly Hill in Centralia, New York, outside the community intended to be served by the Channel 46 allocation. It is argued that because the outlying translator facilities licensed to BOCES are wholly dependent upon the rebroadcast of WNED-TV via the Channel 46 translator, utilization of that channel to replace the current Channel 26 translator operation is not feasible.

[5] The petitioners submitted a reply to Retherford's opposition alleging that it ignores the public interest questions raised in the petition. Further, they maintain that the memorandum of Retherford's consulting engineer stating that verbal assurances to specify the transmitter site were received by WWSE (FM) on October 21, 1983, approximately three months after the application was filed and subsequent to the filing of the petition to deny. Therefore, they argue that the allegations raised in this regard are not moot. The petitioners did not reply to JTA's pleading.

that the public interest is better served by a full-service television station than by a translator operating on the channel. The petitioners' assertions that the programming currently offered on the Channel 26 translator requires the denial of these competing applications or obligates these applicants to assure continuation of that program service is unpersuasive and, in any event, does not justify depriving Jamestown of its only local full-service commercial television station in order to permit a translator, at best a tenant at sufferance, to remain on the channel and rebroadcast a distant station. The petitioners' assertions that the operation of a full-service station on Channel 26 will effectively terminate public broadcasting to the citizens of Chautauqua County is not persuasive. The petitioners have not shown why the present Channel 26 translator operation cannot be moved to Channel 46, also allocated to Jamestown and reserved for educational use, either as a full-service or satellite operation.[6] Further, and more significantly, translator operations are not limited to allocated channels, and so long as it does not result in any prohibited interference, any channel may be used for a translator operation. Although the Commission has imposed a freeze on applications for new translators, as well as for major changes in existing translators, special temporary authority will be granted to continue a displaced translator service. The petitioners' contention that both channels allocated to Jamestown remain unchanged because of their present translator service would require that we allow both Jamestown allocations to be reserved for translators indefinitely, effectively precluding the operation of *any* full-service television operation as contemplated by the allocation of these channels. That this would be a grossly inefficient use of the broadcast spectrum is beyond dispute. It is obvious that either applicant's proposal would serve a vastly greater area and substantially more people than does the translator.[7]

8. With respect to the allegation that the loss of the Channel 26 translator will cause the Association's Buffalo station, WNED–TV, to lose thousands of dollars in membership contributions due to the loss of viewership in Jamestown, the petitioners have failed to make a *prima facie* showing that the economic consequences of a grant of either application will lead to an overall diminution of service to the public. *See WLVA, Inc.* v. *F.C.C.*, 459 F.2d 1286 (D.C. Cir. 1972). First, as previously noted, we disagree with the petitioners' fundamental premise that a grant of either application necessitates the termination of the translator service currently offered on Channel 26. The allegations to that effect are, nevertheless, speculative and unpersuasive. The petitioners have not offered any analysis relating any projected revenue loss to specific programming or operational expenses and they have otherwise failed to establish the nature of the purported derogation of service that would result from an unspecified loss of revenue. In short, no evidence has been presented to indicate that the economic viability of WNED–TV would be threatened and, in view of the alternatives available to continue the translator service currently operating on Channel 26, we believe no significant economic impact need result by a grant of either application.

9. As to the availability of the proposed transmitter site, each applicant proposes to mount its antenna on an existing tower which radio station WWSE(FM) now occupies and each applicant claims to have received that station's permission to specify that site. However, in the letter submitted by JTA evidencing that it did receive permission to specify the WWSE(FM) tower site, it is stated that WWSE(FM) is only a tenant on the tower, not the property owner. The Commission has held that although an applicant need not have a binding agreement or absolute assurance of the availability of a proposed site, an applicant must show that it has obtained reasonable assurance that its proposed site is available. Some indication by the *property owner* that he is favorably disposed toward making an arrangement is necessary. *William F. Wallace*, 49 FCC 2d 1424, 1427 (1974). Accordingly, an issue will be specified against each applicant as to the availability of a site.

10. Moreover, a misrepresentation issue will be added against each applicant. The specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. According to the letter from Mr. Larson of WWSE(FM), submitted with its pleading, JTA was informed by him at the time that permission was sought to use the transmitter site that the radio station was only a tenant on the tower and not the landlord. Therefore, although JTA received verbal permission to specify the WWSE(FM) tower site, it did not have reasonable assurance from the property owner that its proposed site was available. With regard to Retherford, there is nothing to indicate that it contacted the property owner to obtain reasonable assurance that its proposed site would be available. In fact, the memorandum of its consulting engineer stating that verbal assurance to specify the transmitter site was received on October 21, 1983 would only compound any misrepresentation. Even assuming that WWSE(FM) had the authority to give Retherford the requisite assurance of the availabiliy of the proposed site, that permission was not sought until after the filing of both its application and the petition to deny. A failure to inquire as to the availability of the site unit after the application is filed is inconsistent with the applicant's implied representation of site availability. *ID. See also Lake Erie Broadcasting Co.*, 31 FCC 2d 45, 46 (1971).

11. The specification of a site availability issue, however, does not lead to the conclusion that the applicant's technical showings are so flawed as to require dismissal of their applications. It is not necessary at this time to determine whether these applications are sufficient to demonstrate that either applicant is fully qualified; that an application may be acceptable for filing and yet not demonstrate the requisite qualifications to justify a grant is well established. Section 73.3564 of the Commission's Rules; *Central Florida Enterprises, Inc.*, 22 FCC 2d 260, 263 (1970). Alleged deficiencies of the nature set forth by the petitioners, and discussed *infra*, are fairly typical of the many applications for construction permits that are routinely accepted for filing and later corrected by amendment. Staff review of Retherford's application indicates that while some discrepancies do exist, see paragraphs 12, 13 and 14 *infra*, the applicant's technical showing contains the required terrain and topographic information with sufficient accuracy to enable us to determine, assuming the availability of the proposed site, that its

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[6] The petitioners' suggestion that it is not feasible to move to Channel 46 because of its current use as a hub translator is similarly unpersuasive. That analysis fails, for example, to take into account that the function of that hub translator, retransmitting the programming of WNED–TV to other translator stations in the area, can be achieved by the use of microwave relay stations.

[7] The petitioners knew, or should have known, when BOCES applied for a translator on Channel 26 in Jamestown, it could be displaced by a full-service station operating on the channel. With the realization of that possibility at hand, engineering studies should now be undertaken to make such changes in the BOCES translator system as may be necessary to vacate Channel 26 in Jamestown in the event that one of these applications is granted.

contour calculations are adequate.[8] With respect to JTA, and again assuming the availability of the proposed site, the proper antenna pattern was used to plot its proposed signal contours and there is no problem or discrepancy regarding the overall tower height. However, there is not enough information available for us to determine what height is available on the tower for mounting its antenna. See paragraph 14, *infra*. However, because these applications were substantially complete when filed and meet our criteria for acceptance, we find that dismissal based on these allegations is unwarranted.

Retherford's Application

12. If there are any FM or television stations within 200 feet of the proposed antenna which may be adversely affected by the proposed operation, Section V–C, item 14, FCC Form 301, requires an applicant to provide an exhibit addressing the expected effect, a description of remedial steps which may be pursued and a statement from the applicant accepting full responsibility for the elimination of any objectionable effect on existing stations. Assuming that Retherford's proposed site is available, its response to Section V–C, item 14 ("N/A") is inconsistent with its response to Section V–G, item 2, wherein it is stated that its proposed site is the same transmitter-antenna site of WWSE(FM). Accordingly, Retherford will be required to submit an amendment providing the exhibit and statement required by Section V–C, item 14, within 20 days after this Order is released, to the presiding Administrative Law Judge.

13. Section V–G, item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Retherford has not submitted figures for the population. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and pouplation that each applicant proposes to serve. Retherford will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding administrative Law Judge who will consider any significant difference in the areas and populations served under the standard comparative issue.

The Competing Applications

14. Section V–G, item 6, FCC Form 301, requires that an applicant provide a vertical plan sketch for the total structure of the proposed tower. Among other things, that sketch should include the heights above ground in feet for all significant features and distinguish between the skeletal structure and the antenna elements. In the vertical plan sketches submitted with their applications, neither applicant provided the height, location or mounting of the W26AA antenna on that tower. As a result, we are unable to determine whether there is space on that tower, assuming its availability, for the proposed antenna at the height indicated by each applicant. Moreover, if the W26AA antenna is top mounted on that tower, it appears that the indicated heights at which each applicant proposes to side mount its antenna may not be available. Therefore, each applicant will be required to submit a vertical plan sketch containing all the information called for, within 20 days after this Order is released, to the presiding Administrative Law Judge. If, in the preparation of this vertical plan sketch, it is determined that the height specified in their applications is unavailable, that amendment should include new height above average terrain and signal contour calculations as appropriate.

15. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

16. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, whether there is reasonable assurance that its specified transmitter site will be available.

2. To determine, with respect to each of the applicants, whether a misrepresentation was made proposing a transmitter site without having made adequate inquiries as to its availability, and if so, the effect upon that applicant's basic and/or comparative qualifications to be a broadcast licensee.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

17. It is further ordered, That Retherford Publications, Inc., shall submit an amendment providing the exhibit and statement required by Section V–G, item 2, FCC Form 301, and stating the population within its predicted Grade B contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

18. It is further ordered, That each applicant shall submit an amendment providing the information required by Section V–G, item 6, FCC Form 301, consistent with our discussion in paragraph 14, *supra*, within 20 days after this Order is released, to the presiding Administrative Law Judge.

19. It is further ordered, That the petitions to deny filed by Western New York Public Broadcasting Association, and Board of Cooperative Educational Services of Chautauqua County, New York, are granted to the extent indicated herein and otherwise are denied.

20. It is further ordered, That Western New York Public Broadcasting Association, and Board of Cooperative Educational Services of Chautauqua County, New York, are made parties respondent in this proceeding.

21. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

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[8] With respect to the petitioners' allegation that Retherford's technical showing did not include the dated signature of its technical consultant, we note that it did include the required signature and the application does not require that it be dated.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-23953 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-836, et al.; File No. BPCT-840406KE, et al.]

Darrel Silvey and Richard Towe, d/b/a Silvey-Towe Television, et al.; Hearing Designation Order

In re applications of Darrel Silvey and Richard Towe, d/b/a Silvey-Towe Television, (MM Docket No. 84-836, File No. BPCT-840406KE); Philip B. George, (MM Docket No. 84-837, File No. BPCT-840521KE); Cleveland Community Television, Ltd., (MM Docket No. 84-838, File No. BPCT-840524KE); Cleveland Television, Ltd., (MM Docket No. 84-839, File No. BPCT-840530KG); WFLI, Inc., MM Docket No. 84-840, File No. BPCT-840530KM; for construction permit for new television station, Cleveland, Tennessee.

Adopted: August 27, 1984.

Released: September 5, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 53, Cleveland, Tennessee.

2. Except with respect to Philip R. George, no determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation.[1] Accordingly, an issue regarding this matter will be specified.

3. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of 64 dBu (Grade B) or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Section 73.610 of the Commission's Rules requires a minimum separation of 175 miles between a station in Zone II and a station or city to which the same channel (co-channel) is allocated. Cleveland Community Television Ltd.'s (CCTL) proposed site would be 172 miles from co-channel educational television station WKGB (TV), Bowling Green, Kentucky. CCTL would, therefore, be short-spaced 3 miles and it has requested a waiver of the rule. An issue will be specified to determine whether circumstances exist warranting a waiver. In assessing those circumstances, the presiding Administrative Law Judge should consider the fact that the other applicants have specified sites which comply with the separation requirements.

5. In the pending rulemaking proceeding in Docket No. 84-713, the Commission proposes to allocate channel 53 to Macon, Georgia. The transmitter site proposed by WFLI, Inc. would be 147 miles northwest of the city reference coordinates in Macon, but the rulemaking proposal envisions a site-restricted Channel 53 reference point 9.5 miles southeast of Macon. If that proposal is adopted, WFLI's transmitter site would be 156 miles from the site-restricted reference point, whereas § 73.610 of the Commission's Rules requires a minimum separation of 175 miles between co-channel stations or a reference point in Zone II. WFLI would, therefore, be short-spaced 19 miles to the site-restricted reference point and would require any Macon applicant that meets the minimum separation requirement to be at least 28 miles outside of Macon. An issue would then be required to determine whether circumstances exist which would warrant a waiver of the rule. In assessing those circumstances to determine whether a waiver would be warranted, the presiding Administrative Law Judge would consider the fact that the other applicants have specified sites which would comply with the separation requirements. Accordingly, a contingent issue with respect to WFLI, Inc.'s possible short-spaced proposal will be specified. *Delaware Valley Television, Ltd.*, mimeo number 4088, released May 11, 1984 (Channel 48, Burlington, New Jersey). In the event of a grant of the application of WFLI prior to the termination of the rulemaking proceeding in Docket No. 84-713, the construction permit will be made subject to the outcome of the rulemaking proceeding.

6. Section 73.3555(b)(1) of the Commission's Rules states that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more AM broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community of license of the AM broadcast station. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities "* * * will by handled on a case-by-case basis in order to determine whether common ownership operation or control of the stations in question would be in the public interest." WFLI, Inc. is the licensee of radio station WFLI(AM), Lookout Mountain, Tennessee. Lookout Mountain would be within the Grade A contour of the proposed television station. Accordingly, an issue will be specified to determine whether WFLI, Inc.'s common ownership, operation and control of the AM station and the proposed television station would be consistent with the public interest.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants (except Philip R. George), whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Cleveland Community Television Ltd., whether the proposal is consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine with respect to WFLI, Inc.:

(a) In the event the Commission adopts the pending rulemaking proposal in Docket No. 84-713 and allocates Channel 53 to Macon, Georgia, whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's Rules; and

(b) whether common ownership, operation, or control of WFLI(AM), and the proposed television station would be in the public interest.

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[1] Philip B. George has recived a determination from FAA that the tower height and location proposed would not constitute a hazard to air navigation.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, That in the event of a grant of the application of WFLI, Inc. the construction permit will be subject to the following condition:

> Subject to the outcome of the rulemaking proceeding in Docket No. 84–713.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communication's Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart, Chief,

Video Services Division, Mass Media Bureau.

[FR Doc. 84–23954 Filed 9–10–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 84–830, et al.; File No. BRTT–830201IK, et al.]

Application for Construction Permits and Renewal of Licenses; Spanish International Communications Corp. and Seven Hills Television Co.

Order

Adopted: August 28, 1984.
Released: August 31, 1984.

By the Chief, Mass Media Bureau.

In re applications of Spanish International Communications Corp. for renewal of license of: W35AB, Philadelphia, Pennsylvania; MM Docket No. 84–830; File No. BRTT–830201IK; for license to operate: K39AB, Bakersfield, California; MM Docket No. 84–831; File No. BLTT–810209IM; for construction permit: K30AK, Austin, Texas; MM Docket No. 84–832; File No. BPTTL–830829IA; W47AD, Hartford, Connecticut; MM Docket No. 84–833; File No. BPTT–840308IL; K41AI, Denver, Colorado; MM Docket No. 84–834; File No. BPTTL–830519D8; The Seven Hills Television Co. for construction permit: K52AO, Tucson, Arizona; MM Docket No. 84–835; File No. BPTT–840308IQ.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-referenced television translator and low power television applications of Spanish International Communications Corporation (SICC) and The Seven Hills Television Company (Seven Hills).

2. On May 26, 1983, the Commission issued a *Memorandum Opinion and Order* designating for hearing the renewal applications of six full service television stations licensed to SICC or to corporations controlled by television stations licensed to SICC or to corporations controlled by principals of SICC. *Spanish International Communications Corporation*, MM Docket Nos. 83–540 to 83–545, FCC 83–263, released June 16, 1983. Subsequently, the Chief, Mass Media Bureau, designated for consolidated hearing with the above proceeding the renewal application of Seven Hills, licensee of full service television station KTVW–TV, Phoenix, Arizona, as Seven Hills is controlled by principals of SICC. *The Seven Hills Television Company*, MM Docket No. 83–657, Mimeo No. 5214, released July 12, 1983. Among the issues to be explored in that consolidated proceeding is whether SICC or its controlled licensees are in violation of the alien ownership proscriptions of section 310(b) of the Communications Act of 1934, as amended.

3. The Commission concluded in *Spanish International Communications Corporation, supra*, that the public interest would also be served by the designation for hearing of six television translators licensed to SICC (W35AB, Philadelphia, Pennsylvania; K39AB, Bakersfield, California; K42AB, Austin, Texas; W61AH, Hartford, Connecticut; KA2XEG, Denver, Colorado) and Seven Hills (K40AC, Tucson, Arizona). To that end, the Commission authorized the Chief, Mass Media Bureau, to designate those television translator applications for consolidated hearing with the other SICC and Seven Hills full service renewal applications in the aforementioned proceeding. *Id.*, at para. 7.

4. A clarification of the status of those stations follows. W35AB presently is licensed and has a renewal application pending before the Commission. SICC operates station K39AB as a construction permit under program test authority pursuant to § 74.14(b) of the Commission's Rules. A pending license application has not been granted because of the proceedings involving SICC. Stations K42AB, W61AH and K40AC were in the same posture as K39AB, operating under program test authority. However, SICC was compelled to apply for frequency changes for these three stations due to the commencement of full service television operations on their channels. These frequency changes were in each case a major change in facilities under § 73.3572(b) of the Commission's Rules, necessitating new file numbers and exposure to possible competing applications through our cut-off and lottery procedures. In order to preserve existing service to the public, SICC was granted special temporary authority (STA) to operate these stations on the new channels in accordance with their pending applications. Consequently, K42AB is now K30AK; W61AH is now W47AD; and K40AC is now K52AO, as referenced in the caption. Finally, KA2XEG was licensed to SICC as an experimental operation on June 30, 1980, and broadcast on Channel 31. SICC was also forced to seek a channel change for KA2XEG by the sign-on of a full service television station, and submitted the above-captioned application on May 19, 1983, proposing to operate on Channel 41 as a low power television station. SICC received an STA to operate on Channel 41 on June 8, 1983, and was assigned call sign K41AI. Although the underlying application was returned on October 21, 1983, and reconsideration was denied on May 7, 1984, by the Chief, Low Power Television Branch, for being untimely filed against a complex chain of cut-off applicants, K41AI continues to operate by STA pending disposition of its recent application for review by the Commission.[1]

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[1] The applications of K30AK, W47AD, and K52AO are mutually exclusive with a large number of other applications in daisy chains common in low power television and television translator application processing. They will continue to be routinely processed and evaluated under our strict application processing standards, since failure to process them would result in pointless delay to the processing of the chains with which they are involved. If a lottery is held with these and other mutually exclusive applications, and the SICC applications are not selected, the Administrative Law Judge will be informed of the result. Should any of these SICC applications become tentative selectees in a lottery, final grant of their construction permits will await the outcome of this proceeding. If the application for review of the dismissal of Station K41AI's underlying application is granted, it will be processed in the same manner.

5. Accordingly, it is ordered, That the captioned applications are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, at the time and place specified in the *Order*, FCC 84M–2775, released June 20, 1984, upon the issues set forth in *Spanish International Communications Corporation, supra*, and *The Seven Hills Television Company, supra*.[2]

6. It is further ordered, that the Secretary of the Commission send a copy of this Order by Certified Mail-Return Receipt Requested to Spanish International Communications Corporation, The Seven Hills Television Company, and the Spanish Radio Broadcasters Association.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84–23948 Filed 9–10–84; 8:45 am]

BILLING CODE 6712–01–M

Sunbelt Television, Inc., et al., Erratum

In re applications of Sunbelt Television, Inc. (MM Docket No. 84–810, File No. BPCT–840118KE) and William R. Stinchcomb and Greg S. Carpenter, A General Partnership, (MM Docket No. 84–811 File No. BPCT–840119KI) for construction permit for a new TV station Barstow, California.

Released: August 29, 1984.

The Hearing Designation Order in the above entitled proceeding released August 22, 1984, Mimeo #6141 (49 FR 34301, August 29, 1984) is corrected to change Channel 44 in Paragraph 1 to Channel 64.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84–23950 Filed 9–10–84; 8:45 am]

BILLING CODE 6712–01–M

Telecrafter Corp. and Raleigh Microwave Communications; Memorandum Opinion and Order

In re applications of Telecrafter Corp., (CC Docket No. 84–821 File No. 50160–CM–P–82) and, Raleigh Microwave Communications (CC Docket No. 84–822 File No. 50230–CM–P–82) for construction permits in the multipoint distribution service for a new station at Klamath Falls, Oregon.

Adopted August 21, 1984.

Released August 23, 1984.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Klamath Falls, Oregon. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications shoud be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Telecrafter Corporation, Raleigh Microwave Communications and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Division

[FR Doc. 84–23952 Filed 9–10–84; 8:45 am]

BILLING CODE 6712–01–M

Telecrafter Corp. and Mid-Nebraska Telecommunications, Inc.; Memorandum Opinion and Order

In re applications of Telecrafter Corp., (CC Docket No. 84–819 File No. 50181–CM–P–82) and Mid-Nebraska Telecommunications, Inc., (CC Docket No. 84–820 File No. 50282–CM–P–82) for construction permits in the multipoint distribution service for a new station at North Platte, Nebraska.

Adopted August 21, 1984.

Released August 23, 1984.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at North Platte, Nebraska. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

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[2] Since the captioned applicants have been served with a Bill of Particulars upon the identical issues in their full service renewal proceedings, additional service of a Bill of Particulars in this proceeding is unnecessary.

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Telecrafter Corporation, Mid-Nebraska Telecommunications, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Division.

[FR Doc. 84-23948 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

United Telespectrum, Inc. and St. John Cooperative Telephone & Telegraph Co.; Order Designation Applications for Hearing

In re applications of United Telespectrum, Inc., (CC Docket No. 84-823, File No. 20385-CD-P-84) for a construction permit for a new one-way station to operate on frequency 158.10 MHz for station KNKC 278 in the public land mobile radio service at Spokane, Washington and, St. John Cooperative Telephone & Telegraph Co., (CC Docket No. 84-824) File No. 21480-CD-P-84, for a construction permit for additional one-way facilities to operate on frequency 158.10 MHz for station KNKB442 in the public land mobile service near Spokane, Washington.

Adopted August 21, 1984.

Released August 24, 1984.

By the Common Carrier Bureau.

1. On November 1, 1983, United TeleSpectrum, Inc. (United) filed an application for a new one-way station to operate on frequency 158.10 MHz at Spokane, Washington. The application was accepted for filing by Public Notice of November 16, 1983. St. John Cooperative Telephone & Telegraph Company (St. John) filed an application on freqeuncy 158.10 MHz for an additional one-way location for Station KNKB442 near Spokane, Washington, within 60 days of the public notice date of the United application. The applications have not been protested. Since St. John's application is for an additional facility, these applications are not subject to selection by lottery.

2. We find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of United and St. John to use frequency 158.10 MHz in the same geographical area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest.

3. Accordingly, it is ordered that the applications of United TeleSpectrum, Inc. and St. John Cooperative Telephone and Telegraph Company, File No. 20385-CD-P-84 and 21480-CD-P-84, are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area with 43 dBu contours,[1] based upon the standards set forth in Section 22.504(a) of the Commission's Rules [2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the Commission's Rules within 30 days of the release date hereof a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

7. This order is issued under § 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Rule 1.4(b)(2)).

8. The Secretary shall cause a copy of this order to be published in the **Federal Register**.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 84-23881 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

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[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

FEDERAL HOME LOAN BANK BOARD

Mitchell Home Savings and Loan Association, Mitchell, SD; Appointemnt of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Mitchell Home Savings and Loan Association, Mitchell, South Dakota, on August 29, 1984.

Dated: September 6, 1984.

J.J. Finn,

Secretary.

[FR Doc. 23908 Filed 9-10-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007680-053.

Title: American West African Freight Conference.

Parties:

America—Africa Line
Barber West Africa Line
Cameroon Shipping Line
Companhia Nacional de Navegacao
Farrell Lines, Inc.
Medafrica Line
Nigeria America Line, Ltd.
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed amendment would establish uniform procedures for invoking independent action procedures.

Agreement No.: 202-007680-054.

Title: American West African Freight Conference.

Parties:

America—Africa Line
Barber West Africa Line
Cameroon Shipping Line
Companhia Nacional de Navegacao
Farrell Lines, Inc.
Medafrica Line
Nigeria America Line, Ltd.
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed amendment would clarify the agreement's prohibition of members or their agents representing non-conference vessels by defining an "associated or affiliated company" and would add operation of non-conference vessels to this restriction.

Agreement No.: 202-010045-012.

Title: U.S. South Atlantic & Gulf/Panama & Costa Rica Rate Agreement.

Parties:

Coordinated Caribbean Transport, Inc.
Concorde Lines
Seaboard Marine, Ltd.
Sea—Land Service, Inc.

Synopsis: The proposed amendment would prohibit any member, or anyone acting as its agent, from representing a competing carrier in the trade unless authorized by a majority vote of the parties and would prohibit any party from divulging the vote or content of discussions at meetings of the agreement except as required by law.

Agreement No.: 202-010105-010.

Title: U.S. South Atlantic & Gulf/Guatemala, Honduras & El Salvador Rate Agreement.

Parties:

Coordinated Caribbean Transport, Inc.
Concorde Lines
Seaboard Marine, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would prohibit any member, or anyone acting as its agent, from representing a competing carrier in the trade unless authorized by a majority vote of the parties and would prohibit any party from divulging the vote or content of discussions at meetings of the agreement except as required by law.

Agreement No.: 212-010286-003.

Title: Italy—U.S.A. North Atlantic Pool Agreement.

Parties:

Costa Line
Farrell Lines, Inc.
"Italia" S.p.A.
Jugolinija
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment provides that the pool period which began on September 1, 1983, shall terminate on April 30, 1985.

Dated: September 6, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23934 Filed 9-10-84; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573. Dietrich Forwarding Corp., 186 South Street, Suite 200, Boston, MA 02111, Officers: James P. Mnookin, Chairman, Cindra Zambo, President.

Dated: September 6, 1984.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-23932 Filed 9-10-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
2550	Johanna P. Linster, 14441 Cherrywood, Tustin, CA 92680.	Aug. 17, 1984.
1618	Gulf Coast Forwarding Co., Inc., 7601 Edna Street, Houston, TX 77087.	Aug. 26, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-23936 Filed 9-10-84; 8:45 am]

BILLING CODE 6730-01-M

[C.O. 1; Amdt. No. 6]

Organization, Functions and Delegations of Authority Bureau of Agreements and Trade Monitoring

The following delegation of authority is made to the Director, Bureau of Agreements and Trade Monitoring, to facilitate implementation of the Shipping Act of 1984.

Commission Order 1 is amended by adding the following new sub-sections 8.13 and 8.14 to Section 8 *Specific Authorities Delegated to the Director, Bureau of Agreements and Trade Monitoring:*

8.13 Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under section 6(c)(1) and to shorten the review period under section 6(e) of the Shipping Act of 1984 when the agreement or modification solely involves a restatement, clarification or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes for example the following: a restatement filed to conform an agreement to the format and organization requirements of 46 CFR Part 572; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an agreement; a change in the title of persons or committees designated in an agreement or a transfer of functions from one person or committee to another.

8.14 Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act of 1984 after publication of notice of intent to terminate in the **Federal Register** when such terminations are (1) requested by the parties to the agreement; (2) deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or (3) deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

Dated: August 24, 1984.

Alan Green, Jr.,

Chairman.

[FR Doc. 84-23933 Filed 9-10-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 5, 1984.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under delegated OMB authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Office—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Office—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880).

Request for Extension With Revisions

1. *Report title:* Change in Bank Control Form

Agency form number: FR 2081
OMB Docket number: 7100-0134
Frequency: On occasion
Reporters: State member banks
Small businesses are not affected.

General description of report: Respondent's obligation to reply is mandatory (12 U.S.C. 1817(j)); a pledge of confidentiality is not promised unless the respondent can justify an exemption as per 5 U.S.C. 552.

The form is required by statute and is completed by persons proposing to acquire control of a bank holding company or a state member bank.

2. *Report title:* Report of Condition for Foreign Organizations Controlled by Member Banks, Edge and Agreement Corporations, and Bank Holding Companies

Agency form number: FR 2314
OMB Docket number: 7100-0073
Frequency: Quarterly
Reporters: Members banks, Edge and Agreement Corporations, and Bank Holding Companies
Small businesses are not affected.

General description of report: Respondent's obligation to reply is mandatory (12 U.S.C. 324, 602, 605, and 1844(c)); a pledge of confidentiality is promised (5 U.S.C. 552(b)(8)).

This report provides the only source of comprehensive and systematic data on the assets and liabilities of foreign subsidiaries of U.S. banking institutions. The data are used to monitor the growth and activity of the subsidiaries and to supervise the overall operations of the parent institutions. The revisions made to this report are minor and reflect changes made to the U.S. commercial bank Reports of Condition and Income, which were effective beginning with the March 1984 reports.

Board of Governors of the Federal Reserve System, September 5, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23918 Filed 9-10-84; 8:45 am]

BILLING CODE 6210-01-M

Deutsche Bank, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Deutsche Bank,* Frankfurt (Main), Federal Republic of German; to engage *de novo* through its subsidiary, Atlantic Capital Corporation, New York, New York, in providing a securities custodial service primarily to foreign financial institutions not doing brokerage business through Atlantic.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Corporation,* Minneapolis, Minnesota; to engage *de novo* through Norwest Agencies, Inc., Minneapolis, Minnesota, in general insurance agency activities. It appears that these activities are permissible pursuant to sections 4(c)(8)(D) and 4(c)(8)(G) of the Bank Holding Company Act, as amended. These activities will be conducted in Two Harbors and Silver Bay, Minnesota, serving northeastern Minnesota.

Board of Governors of the Federal Reserve System, September 5, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23916 Filed 9-10-84; 8:45 am]

BILLING CODE 6210-01-M

United Mizrahi Overseas Holding Company B.V., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requires a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 1, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Mizrahi Overseas Holding Company B.V.*, Amsterdam, The Netherlands; to become a bank holding company by acquiring 51 percent of the voting shares of UMB Bank and Trust Company, New York, New York.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Bancshares of Nelsonville, Inc.*, Nelsonville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Huntington National Bank of Nelsonville, Nelsonville, Ohio.

2. *Peoples Financial Corp., Inc.*, Ford City, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Ford City, Pennsylvania, Ford City, Pennsylvania.

3. *The Sylvania BanCorp, Inc.*, Sylvania, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Sylvania Savings Company, Sylvania, Ohio.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank of Maringouin Holding Company, Inc.*, Maringouin, Louisiana; to become a bank holding company by acquiring 67 percent of the voting shares of Bank of Maringouin, Maringouin, Louisiana.

2. *B.B. Financial Corporation*, Boca Raton, Florida; to become a bank holding company by acquiring 90 percent of the voting shares of Boca Bank, Boca Raton, Florida.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Salem Bancorp, Inc.*, Salem, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Bank, Inc., Salem, Kentucky.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Chalfen Bankshares, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Chalfen-Holiday, Inc., an existing one-bank holding company which owns 80.2 percent of the voting shares of the First National Bank of Anoka, Anoka, Minnesota. Comments on this application must be received not later than September 28, 1984.

1. *Drummond Bancshares, Inc.*, Drummond, Wisconsin; to become a bank holding company by acquiring 91.5 percent of the voting shares of State Bank of Drummond, Drummond, Wisconsin.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Aurora Bancorporation, Inc.*, Aurora, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Aurora Bank, Aurora, Colorado.

2. *The Banking Group LTD.*, Castle Rock, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Castle Rock, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, September 5, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23817 Filed 9-10-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; Matching Program—Federal, State and Local Government Personnel Records/Social Security Beneficiary Records

AGENCY: The Department of Health and Human Services.

ACTION: Notification of a Matching Program—Federal State and Local Government Personnel Records/Social Security Beneficiary Records.

SUMMARY: The Department of Health and Human Services is providing notice that the Office of Inspector General intends to conduct matches of federal, state and local government personnel records with Social Security benefit records. A matching report is set forth below.

DATES: These matches will begin in September, 1984.

ADDRESS: Send any comments to Office of Public Affairs, Office of Inspector General, Department of Health and Human Services, Room 5640, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Richard McGowan, Public Affairs Officer, Office of Inspector General, Room 5640, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201 or call (202) 472-3142.

SUPPLEMENTARY INFORMATION: The Office of Inspector General has initiated a project to identify individuals receiving Social Security benefits who are subject to the government pension offset provisions of the Social Security Act. Set forth below is the information required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: August 31, 1984.

Richard P. Kusserow,

Inspector General.

Report of Matching Program: Federal, State and Local Government Personnel Records/Social Security Beneficiary Records

a. *Authority:* Pub. L. 94-505.

b. *Program Purpose and Description:* The Office of Inspector General plans to match Office of Personnel Management records identifying federal retirees who have retired since November 1977 and selected state and local government personnel records against records identifing Social Security beneficiaries who receive Social Security benefits under title II of the Social Security Act as a spouse or surviving spouse. Raw hits will then be reviewed to determine whether the title II benefits are subject to the pension offset required by the Social Security Act and, if so, whether the benefits are being offset. The resulting information will then be furnished to the Social Security Administration to make the appropriate offsets. This matching program will permit more timely action to detect and prevent overpayments of Social Security benefits.

c. *Records to be Matched:* Records from the SSA Master Beneficiary Record, 47 FR 45626 (October 13, 1982) will be matched against selected state and local government personnel records and the Civil Service Retirement and Insurance Records system, 47 FR 16474 (April 16, 1982).

d. *Period of the match:* The initial matches will begin in September 1984 and will be completed within one year. The matches will then be repeated with different selected state and local government personnel records over the next several years.

e. *Safeguards:* Records used in this match will be maintained under strict security. Access to the computer files and printed information is restricted to only those persons associated with the matching program on a "need-to-know" basis. The records will be kept in locked file cabinets and under the control of the Office of the Inspector General. We will return all of the computer source tapes to the respective sources within 60 days of the match. We will also degauss all computer work tapes at completion of the matching program. We protect all computer tapes by the use of passwords to prohibit unauthorized access. All computer files are safeguarded in accordance with the provisons of the National Bureau of Standards Federal Information Processing Standards 41 and HHS ADP Systems Manual, Part 6, "ADP Systems Security".

f. *Retention and Disposition of Records:* Only records on individuals identified as receiving both government pensions and Social Security benefits will be maintained. All records maintained will be destroyed within 6 months of each match except for those records which are necessary to the completion of pending law enforcement or administrative activities. The data will be verified to insure accuracy prior to any dissemination of records on individuals identified as potentially subject to the pension offset provision.

[FR Doc. 84-23920 Filed 9-10-84; 8:45 am]

BILLING CODE 4150-04-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency holding the meeting: President's Committee on Mental Retardation.

Time and date:

September 17, 1984 from 3:30 p.m. to 6:00 p.m.

September 18, 1984 from 9:00 a.m. to 4:30 p.m.,

September 19, 9:00 a.m. to 5:00 p.m.,

September 20, 9:00 a.m. to 3:00 p.m.

Place: Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, D.C.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered

Reports by the Steering Committee of the President's Committee on Mental Retardation (PCMR) will be given. The PCMR plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information

Linda L. Tarr, Ph.D., 330 Independence Avenue, Room 4061—North, Washington, D.C. 20201, (202) 245-7635.

Dated: September 5, 1984.

Linda L. Tarr,

Executive Director, PCMR.

[FR Doc. 84-23919 Filed 9-10-84; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial Nos. 1-1542, 1-2835]

Idaho; Termination of Classification for Multiple-Use Management

Correction

In a correction to FR Doc. 84-12630 appearing on page 32685 in the issue of Wednesday, August 15, 1984, make the following correction:

In column two, last line, "Sec. 91" should read "Sec. 19".

BILLING CODE 1505-01-M

Availability, Public Review Period; Recreation Area Management Plan; Pacific Crest National Scenic Trail; Owen Peak; Dove Springs, Cache Peak Segments

ACTION: Notice of Public Review Period and Availability of the Recreation Area Management Plan for the Pacific Crest National Scenic Trail—Owens Peak, Dove Springs, and Cache Peak Segments.

SUMMARY: A Recreation Area Management Plan for the Pacific Crest National Scenic Trail—Owens Peak, Dove Springs, and Cache Peak Segments, has been prepared and is available for public review for a 21-day period starting upon publication of this notice.

SUPPLEMENTARY INFORMATION: The Recreation Area Management Plan (RAMP) has been written to fulfill the requirements of the Pacific Crest National Scenic Trail (PCNST) Comprehensive Plan and Environmental Assessment mandated by Pub. L. 95-625, which required a second level of planning to be responsive to the specific issues, concerns, opportunities, and problems unique to the Owens Peak, Dove Springs, and Cache Peak Segments. These BLM-administered trail segments, located in Kern and Tulare counties in California, represent approximately 100 miles of the 2,560-mile PCNST that extends from Canada to Mexico. Fifteen management actions are addressed for each trail segment, including trailheads/points of access, trail camp development and spacing, water source development, trail camp sanitation, sanitation systems, user registration/permits/monitoring, spur/loop/feeder trails, signing and marking, litter disposal, interpretation and information, open fires, livestock feed, off-road vehicles, carrying capacity, and maintenance.

DATES AND ADDRESSES: Copies of the RAMP are available for public inspection and comment at the following BLM offices:

Caliente Resource Area Office, 520 Butte Street, Bakersfield, California 93305
Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301
Ridgecrest Resource Area Office, 112 East Dolphin Road, Ridgecrest, California 93555.

Comments on the RAMP must be received at the address below within 21 days following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Area Manager, Caliente Resource Area, Bureau of Land Management, 520 Butte Street, Bakersfield, California 93305; (805) 861-4236.

Dated: September 4, 1984.

Glenn A. Carpenter,

Area Manager.

[FR Doc. 84-23980 Filed 9-10-84; 8:45 am]

BILLING CODE 4310-40-M

[NM56609 (OK), NM-56612 (OK), and NM-56613 (OK)]

Public Land Sale in Coal, Latimer, and Pittsburg Counties, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Partial Sale Cancellation and Corrections.

SUMMARY: Tracts LT-2 and LT-3 have been eliminated from the sale for September 28, 1984, due to livestock grazing permit considerations. The identified lands will be reoffered for sale at a later date and are described as follows:

Tract	Legal description	Acres
LT-2 and 3....	T 6 N., R. 21 E., I.M., Sec. 31: Lot 3, NE¼SW¼.	77.82

Corrections to the terms and conditions of the sale are as follows:

1. The sale is for surface estate only. All minerals for Tracts PT-5 & 6 will be reserved to the United States.

2. The sale of Tracts PT-5 & 6 will be subject to a floodplain reservation.

Acreage Correction:

Tract	Legal description	Acres
CO-4 and 5...	T. 1 S., R. 10 E., I.M., Sec. 14: Lehigh Townsite Block 131, Lots 1 and 4.	.51

FOR FURTHER INFORMATION CONTRACT: Hans Sallani or Barron Bail, telephone (405) 231-5491.

Jim Sims,

District Manager.

[FR Doc. 84-23978 Filed 9-10-84; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 31, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 26, 1984.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Allen County

Craigville, *Craigville Depot,* Ryan and Edgerton Rds.

Delaware County

Muncie, *Jones, Margaret and George Riley, House,* 315 E. Charles St.
Muncie, *Masonic Temple,* 520 E. Main St.

Fulton County

Rochester, *Brackett, Lyman M., House,* 328 W. Ninth St.

Gibson County

Princeton, *Gibson County Courthouse,* Town Square

Lake County

Hammond, *State Bank of Hammond Building,* 5444-5446 Calumet Ave.

Marion County

Indianapolis, *Northside Historic District (Boundary Increase),* Pennsylvania and 16th Sts.
Indianapolis, *Rink's Womens Apparel Store,* 29 N. Illinois St.
Indianapolis, *Vera and The Olga,* 1440 and 1446 N. Illinois St.

Monroe County

Bloomington, *Nichols, J. L., House and Studio,* 820 N. College Ave.

Pulaski County

Winamac, *Thompson, Dr. George W., House,* 407 N. Market St.

Spencer County

Santa Claus vicinity, *Deutsch Evangelische St. Paul's Kirche,* S of Santa Claus on Sante Fe Rd.

Tippecanoe County

Lafayette, *Scott Street Pavilion,* Columbian Park

Wells County

Bluffton, *Villa North Historic District,* 706-780 and 707-731 N. Main St.

IOWA

Clay County

Spencer, *Adams-Higgins House,* 1215 N. Grand Ave.

Marion County

Knoxville, *Hays, E.R., House,* 301 N. 2nd St.

Page County

Shenandoah, *Women's Christian Temperance Union Public Fountain,* Clarinda and Sheridian Sts.

Pottawattamine County

Council Bluffs, *Cavin, Thomas E., House,* 150 Park Ave.
Council Bluffs, *Hughes, Martin, House,* 903 3rd St.

Woodbury County

Sioux City, *St. Thomas Episcopal Church,* 1200 Douglas St.

LOUISIANA

Caddo Parish

Shreveport, *Holy Trinity Catholic Church,* 315 Marshall St.

East Baton Rouge Parish

Baton Rouge, *Baton Rouge Junior High School,* 1100 Laurel St.

Orleans Parish

New Orleans, *Newberger House,* 1640 Palmer Ave.

MISSISSIPPI

Attala County

Kosciusko, *Jackson-Niles House,* 121 N. Wells St.

NEW JERSEY

Middlesex County

Kingstown, *Withington Estate,* Spruce Lane

NEW YORK

Bronx County

New York, *Public School 17,* 190 Fordham St.

Monroe County

Rochester, *Andrews Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA),* Andrews St. at Genesse River
Rochester, *Bridge Square Historic District (Inner Loop MRA),* Roughly bounded by Inner Loop, Centre Park, Washington and W. Main Sts.
Rochester, *Court Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA),* Court St. at Genesee River
Rochester, *Cox Building (Department Store TR) (Inner Loop MRA),* 36—48 St. Paul St.
Rochester, *Duffy-Powers Building (Department Store TR) (Inner Loop MRA),* 50 W. Main St.

Rochester, *Edwards Building (Department Store TR) (Inner Loop MRA)*, 28—34 St. Paul St.
Rochester, *Granite Building (Department Store TR) (Inner Loop MRA)*, 124 E. Main St.
Rochester, *Grove Place Historic District (Inner Loop MRA)*, Gibbs, Selden, Grove, and Windsor Sts.
Rochester, *Main Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA)*, Main St. at Genesee River
Rochester, *National Company Building (Department Store TR) (Inner Loop MRA)*, 159 E. Main St.
Rochester, *St. Paul-North Water Streets Historic District (Inner Loop MRA)*, St. Paul, N. Water, and Andrews Sts.
Rochester, *State Street Historic District (Inner Loop MRA)*, 109—173 State St.

New York County

New York, *Sofia Warehouse*, 43 W. 61st St.

Rockland County

West Haverstraw vicinity, *Commander*, Haverstraw Marina

Schenectady County

Delanson, *Jenkins House (Duanesburg MRA)*, 57 Main St.
Duanesburg, *Abrahams Farmhouse (Duanesburg MRA)*, Hardin Rd.
Duanesburg, *Avery Farmhouse (Boss Jones TR) (Duanesburg MRA)*, NY 30
Duanesburg, *Becker Farmhouse (Duanesburg MRA)*, Creek Rd.
Duanesburg, *Braman, Joseph, House (Duanesburg MRA)*, Braman's Corners Rd.
Duanesburg, *Chadwick Farmhouse (Duanesburg MRA)*, Schoharie Tpk.
Duanesburg, *Chapman Farmhouse (Duanesburg MRA)*, Miller's Corners Rd.
Duanesburg, *Christ Episcopal Church (Duane Family TR) (Duanesburg MRA)*, NY 20
Duanesburg, *Delanson Historic District (Duanesburg MRA)*, Main St.
Duanesburg, *Duane Mansion (Duane Family TR) (Duanesburg MRA)*, NY 20
Duanesburg, *Duanesburg-Florida Baptist Church (Duanesburg MRA)*, NY 30
Duanesburg, *Eatons Corners Historic District (Duanesburg MRA)*, Eatons Corners Rd.
Duanesburg, *Ferguson, Farm Complex (Duanesburg MRA)*, NY 20
Duanesburg, *Gaige Homestead (Duanesburg MRA)*, Weaver Rd.
Duanesburg, *Gilbert Farmhouse (Duanesburg MRA)*, Thousand Acre Rd.
Duanesburg, *Green, Joseph, Farmhouse (Duanesburg MRA)*, NY 159
Duanesburg, *Halloday Farmhouse (Duanesburg MRA)*, U.S. 20
Duanesburg, *Hawes Homestead (Duanesburg MRA)*, Herrick Rd.
Duanesburg, *Howard Homestead (Duanesburg MRA)*, McGuire School Rd.
Duanesburg, *Jenkins Octagon House (Boss Jones TR) (Duanesburg MRA)*, NY 395
Duanesburg, *Jones, A.D., (Boss), House (Boss Jones TR) (Duanesburg MRA)*, Mcguire School Rd.
Duanesburg, *Ladd Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Dare Rd.
Duanesburg, *Lasher George, House (Duanesburg MRA)*, Levey Rd.
Duanesburg, *Liddle, Alexander, Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Gamsey Rd.
Duanesburg, *Liddle, Robert, Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Little Dale Farm Rd.
Duanesburg, *Liddle, Thomas, Farm Complex (Duanesburg MRA)*, Eaton Corners Rd.
Duanesburg, *Macomber Stone House (Duanesburg MRA)*, Barton Hill Rd.
Duanesburg, *Mariaville Historic District (Duanesburg MRA)*, NY 159
Duanesburg, *North Mansion and Tenant House (Duane Family TR) (Duanesburg MRA)*, North Mansion Rd.
Duanesburg, *Quaker Street Historic District (Duanesburg MRA)*, Schoharie Tpk., Gallupville and Darby Hill Rds.
Duanesburg, *Reformed Presbyterian Church Parsonage (Duanesburg MRA)*, Duanesburg Churches Rd.
Duanesburg, *Sheldon Farmhouse (Duanesburg MRA)*, NY 7
Duanesburg, *Shute Octagon House (Boss Jones TR) (Duanesburg MRA)*, McGuire School Rd.
Duanesburg, *Wing, Joseph, Farm Complex (Duanesburg MRA)*, NY 30
Duanesburg, *Wing, William R., Farm Complex (Duanesburg MRA)*, U.S. 20

Westchester County

Mount Kisco vicinity, *Merestead (Sloane Estate)*, Byram Lake Rd.

OHIO

Lebanon, *Coffeen, Goldsmith, House (Lebanon MRA)*, 419 Cincinnati Ave.
Lebanon, *Corwin House (Lebanon MRA)*, 1255 OH 48
Lebanon, *Corwin-Bolin House (Lebanon MRA)*, 1443 OH 48
Lebanon, *East End Historic District (Lebanon MRA)*, Roughly bounded by South, Mound, Pleasant, and Cherry Sts.
Lebanon, *Ferney, John, House (Lebanon MRA)*, 475 Glosser Rd.
Lebanon, *Floraville Historic District (Lebanon MRA)*, Roughly bounded by Cincinnati and Orchard Aves., East and Keever Sts.
Lebanon, *Kaufman, Sam, House (Lebanon MRA)*, 448 S. Broadway
Lebanon, *Lebanon Academy (Lebanon MRA)*, 190 New St.
Lebanon, *Lebanon Cemetery Entrance Arch (Lebanon MRA)*, Hunter St.
Lebanon, *Lebanon Cemetery Superintendent's House (Lebanon MRA)*, 416 W. Silver St.
Lebanon, *Lebanon Commercial District (Lebanon MRA)*, Roughly Broadway, Mechanic, Silver, Mulberry, and Main Sts.
Lebanon, *Maplewood Sanitorium (Lebanon MRA)*, Maple and Deerfield Sts.
Lebanon, *Mohrman-Jack-Evans House (Lebanon MRA)*, 342 Columbus Ave.
Lebanon, *North Broadway Historic District (Lebanon MRA)*, Roughly Broadway, Warren, Pleasant, New and Mechanic Sts.
Lebanon, *Smith-Davis House (Lebanon MRA)*, 206 W. Silver St.
Lebanon, *West Baptist Church (Lebanon MRA)*, 500 W. Mulberry St.

TENNESSEE

Coffee County

Noah vicinity, *Farrar Distillery*, Noah Fork Rd.

Giles County

Pulaski vicinity, *Milky Way Farm*, U.S. 31

Lawrence County

Lawrenceburg, *Sacred Heart of Jesus Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Berger St.
Loretto, *Sacred Heart of Jesus Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Church St.
Rascal Town vicinity, *St. Mary's Cemetery (German Catholic Churches and Cemeteries of Lawrence County TR)*, Rascal Town Rd.
St. Joseph, *St. Joseph Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Spring St.

Williamson County

College Grove vicinity, *Parks Place*, Cox Rd.

TEXAS

Floyd County

Floyd County Stone Corral (New Mexican Pastor Sites in Texas Panhandle TR).

VERMONT

Orange County

Thetford vicinity, *Peabody Library*, VT 113

Orleans County

Westmore, *Fox Hall*, VT 58

WISCONSIN

Dane County

Black Earth, *Heiney's Meat Market*, 1221 Mills St.

Fond du Lac County

Ripon, *Horner, John Scott, House*, 336 Scott St.

Milwaukee County

Milwaukee, *Steinmeyer, William, Houses (Brewers' Hill MRA)*, 1716—1722 N. 5th St.

[FR Doc. 84-23880 Filed 9-10-84; 8:45 am]

BILLING CODE 4310-70-M

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice of hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold a public meeting on Tuesday, September 25, 1984 at 7:30 p.m. in the Visitor Center at Griffith Park, 4730 Crystal Springs Drive, Los Angeles.

The topics for discussion will include:

Superintendent's Status Report of the Santa Monica Mountains National Recreation Area.

Review of the Draft Cultural Resource Management Plan.

Review of the Draft Water Resources Management Plan.

Volunteerism During the Summer Olympics.

Status report on Resource Management Activities.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

The minutes of the meeting will be available by October 31, 1984.

Dated: August 22, 1984.

Daniel R. Kuehn,

Superintendent.

[FR Doc. 84-23691 Filed 9-10-84; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, WASHINGTON, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
CE Diary Research Questionnaires and Cover Letter, CE-802.2, CE-801, CE-801.1, CE-801.2, CE-803(L), CE-880
Daily
Individuals or households
6670 responses; 16897 hours; 6 forms.
The forms will be used to gather information on the reporting of expenditures by respondents in the CE Diary Survey. These data will be used to evaluate the quality of the information collected on consumer expenditures which is used in the Consumer Price Index.

Employment Standards Administration
Housing Occupancy Certificate
Annually
Individual or households; Farms; Businesses or other for-profit; Small businesses or organizations
400 responses; 3 hours; 1 form.

Section 203(b)(1) of the Migrant and Seasonal Agricultural Worker Protection Act requires any person owning or controlling any facility or real property to be occupied by any migrant agricultural worker to obtain a certificate of occupancy from a State or local health authority or other appropriate agency and keep it for three years.

Revision

Bureau of Labor Statistics
CPI Housing Survey—Housing Schedule and Segment Listing Form
1200-0034; BLS 2921C; 2921E 2922, 2922A
Semiannually; annually; other
Individuals or households; businesses or other for profit; small businesses or organizations
77,970 total responses; 18,970 hours; 4 forms

The data collected on the CPI Housing Survey provide the measures of monthly price change for renter and owner occupied housing costs, which compromise 20 percent of the current CPI weight. The respondents are the occupants and owners of 37,000 housing units surveyed once or twice a year. As part of current efforts to revise the CPI, field testing of alternative housing survey forms is required to resolve issues of wording, applicability across regions and types of housing, form layout, and collection procedures.

ES-202 State Operations Review
1220-0070; BLS-3030
Biannual
State or local governments
53—responses; 216 hours; 1 form

The ES-202 State Operations Review is the principal source of management information on quality and State conformance to BLS specified procedures in the collection and tabulation of the Quarterly Report on Employment, Wages and Contributions. The form is used by BLS Regional Office staff in their annual interview with employment security officials to assess the status of the program, note improvements that have been made, and discuss what other improvements, if any, should be made.

Employment Standards Administration
Preparation of Complaint Form by Individual Complainants
1251-0131; CC-4
Other
Individual or Households
3,120 responses; 3,619 hours.

These complaint forms are prepared by individual citizens who allege discrimination by Government contractors. The form is received by OFCCP, reviewed for coverage, and where appropriate, assigned for investigation. Form CC-4 is used for complaints under EO 11246 and complaints under Section 503 of the Rehabilitation Act and Section 2012 of the Vietnam Era Veterans' Readjustment Assistance Act.

Extension

Mine Safety and Health Administration
Gamma Radiation Exposure Records
1219-0039
Quarterly
Businesses or other for profit; small businesses or organizations

35 respondents; 560 hours.

Requires that gamma radiation surveys be conducted in underground metal and nonmetal mines where radioactive ores are mined and that records be kept of accumulative individual gamma radiation exposure.

Extension

Mine Safety and Health Administration
Safety Defects of Self-propelled Equipment
1219–0089
Other—each shift equipment is used
Businesses or other for profit; small businesses or organizations
13,272 respondents; 2,433,156 hours.

Requires operator before placing self-propelled equipment into operation to make a visual and operational check of various primary operating systems affecting safety, i.e., brakes, lights, tires, steering, and related items. Any safety defects found are reported to the responsible supervisor who is required to make a record of the reported defects and schedule repairs of same.

Signed at Washington, D.C. this 6th day of September, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-23992 Filed 9-10-84; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; American Thread Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 21, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Septemnber 21, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 31st day of August 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Thread Co., Tallapoosa Plant (company)	Tallapoosa, GA	8/27/84	8/21/84	TA-W-15,447	Thread, sewing—synthetic & cotton.
Lesnow Manufacturing Co., Inc. (wkrs)	Easthampton, MA	8/28/84	8/22/84	TA-W-15,448	Blazers—ladies'—tailored.
Majestic Mining, Inc. (wkrs)	Widen, WV	8/22/84	8/15/84	TA-W-15,449	Coal, mining.
Merrill & Ring, Inc. (IAW)	Port Angeles, WA	8/28/84	8/17/84	TA-W-15,450	Lumber.
Murray Ohio Manufacturing Co. (wkrs)	Lawrenceburg, TN	8/27/84	8/21/84	TA-W-15,451	Bicycles—light weight.
U.S. Steel Corp., Traffic International (workers)	New York, NY	8/28/84	8/21/84	TA-W-15,452	Planning ocean freight shipment—export for U.S. Steel Corp.

[FR Doc. 84-23993 Filed 9-10-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by March 7, 1984.

ADDRESSES: Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, D.C. 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endownment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506 (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506; (202–682–5464) from whom copies of the document are available.

SUPPLEMENTARY INFORMATION: This entry is a new form. The entry issued by the Endowment contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

New Form

Title: Economic Survey of Artists Organizations.

Form Number: N/A.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Collection of data provides a basis for agency planning, responses at budget hearings, and improvements of understanding of organizations on the state of their field.

Estimated Number of Respondents: 322.

Estimated Hours for Respondents to Provide Information: 161.

Peter J. Basso,

Director of Administration, National Endowment for the Arts.

[FR Doc. 84-23639 Filed 9-10-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Civil and Environmental Engineering; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Civil and Environmental Engineering.

Place: Rm. 1141, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: September 27, 1984—9:30 a.m. to 5:00 p.m. September 28, 1984—9:00 a.m. to 4:00 p.m.

Type of meeting: Open.

Contact person: Dr. William S. Butcher, Director, Division of Civil and Environmental Engineering, National Science Foundation, Rm. 1132, 1800 G Street, NW., Washington, D.C. 20550, Telephone: 202/357-9545.

Purpose of committee: To provide advice and recommendations concerning Civil and Environmental Engineering.

Summary minutes: May be obtained from the contact person at the above stated address.

Agenda

Thursday, September 27

9:30 a.m.—General Report by Division Director

10:30 a.m.—Briefing of Committee and Discussion of Programs of the Division
- (a) Geotechnical Engineering
- (b) Structural Mechanics
- (c) Hydraulics, Hydrology, and Water Resources Engineering
- (d) Environmental and Water Quality Engineering
- (e) Construction Engineering and Building Research
- (f) Earthquake Hazard Mitigation

12:30 Noon—Recess

2:00 p.m.—Research Needs in Civil and Environmental Engineering in the United States

5:00 p.m.—Adjourn

Friday, September 28

9:00 a.m.—Continuation of Discussion of Research Needs in Civil and Environmental Engineering in the United States and Other Countries

12:00 Noon—Recess

2:00 p.m.—Continuation of Morning Discussion

4:00 p.m.—Adjourn

M. Rebecca Winkler,

Committee Management Coordinator.

September 6, 1984.

[FR Doc. 84-23612 Filed 9-10-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Alabama Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-2 and NPF-8, issued to Alabama Power Company (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units Nos. 1 and 2 (the facilities) located in Houston County, Alabama.

The amendments would delete the words "during shutdown" in Technical Specification 4.7.1.2.2.b.1 to allow scheduling of the surveillance without requiring a plant shutdown on October 10, 1984. The surveillance involves verifying that each automatic valve in the auxiliary feed flow path actuates to its correct position on an automatic pump start signal.

The revisions to the Technical Specifications would be in accordance with the licensee's application for amendments dated August 17, 1984.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involve no signficant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee states that the change is an administrative change similar to Commission example "(i) A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." We tend to agree. Our preliminary review indicates that the surveillance test can be accomplished safety without a reactor shutdown and would not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 11, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, 1800 M Street, NW., Washington, D.C. 20036, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Dated at Bethesda, Maryland, this 4th day of September 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84-24008 Filed 9-10-84; 8:45 am]

BILLING CODE 7590-01-M

Abnormal Occurrence; Inoperable Containment Spray System

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). One of the general criteria notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, example II.A.3 under "For All Licensees" notes that loss of plant capability to perform essential safety functions such that a potential release of radioactivity in excess of 10 CFR Part 100 guidelines could result from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system) can be considered an abnormal occurrence. The following description of the incident also contains information on the remedial actions planned and taken.

Date and Place

On March 17, 1984, Southern California Edison Company (the licensee) discovered that both containment spray pump manual discharge isolation valves were locked shut, thus rendering both independent containment spray systems inoperable at the San Onofre Nuclear Generating Station, Unit 3. It was found that the condition had existed for about 13 days, during which the plant had operated at power levels up to full power. San Onofre Unit 3, which utilizes a Combustion Engineering-designed pressurized water reactor, is located in San Diego County, California.

Nature and Probable Consequences

The containment heat removal system (CHRS) at San Onofre Unit 3 is an engineered safety features system designed to remove heat from the containment atmosphere in the event of a loss of coolant accident (LOCA) or main steam line break (MSLB) inside containment. Removal of heat reduces the containment pressure and temperature, which reduces the leakage of airborne activity from the containment. The CHRS includes the containment spray system (CSS) and the containment emergency fan cooler system. The CSS also contains a chemical additive (sodium hydroxide) which reduces the concentration of radioactive iodine in the containment atmosphere following a postulated accident.

The CSS and the containment emergency fan cooler system constitute two 100% capacity systems in that each is designed to independently remove heat from the containment atmosphere, following a postulated accident inside containment, to maintain the containment atmosphere pressure below the containment design pressure of 60 psig. Each of the two trains of the CSS constitutes a 50% capacity system for required heat removal rate and a 100% capacity system for iodine reduction. Each of the two trains (each containing two fan coolers) of the containment emergency fan cooler system constitutes a 50% capacity system for required heat removal rate.

On March 17, 1984, with the unit in Mode 1 at approximately 100% power, manual isolation valves MU012 and MU014 were observed by a plant operator to be in the closed position. These valves are on the discharge side of the containment spray pumps and are located outside of containment. With both valves closed, both trains of the CSS were inoperable for automatic actuation. Investigation showed the following details associated with the event.

On February 27, 1984, the unit entered Mode 4 from Mode 5. Procedure SO23–3–2.9, "Containment Spray/Iodine Removal System Operation," Checklist 5.1 was performed to align the CSS in preparation for Mode 3 operation. MUO12 and MUO14 were verified to be in the locked open position. On February 28, 1984, preparations were being made to return to Mode 5 in order to repair a high pressure safety injection (HPSI) valve. Valves MUO12 and MUO14 were closed in accordance with procedures in order to return to shutdown cooling operation. On March 2, 1984 following repair of the HPSI valve, preparations were being made to return to Mode 3. The Control Room Supervisor developed a partial valve alignment checklist from Checklist 5.1 of Procedure SO23–3.2.9. to realign the CSS. Since the outage did not involve work on the CSS and the entire Checklist 5.1 had been performed four days earlier on February 28, 1984, the plant personnel agreed that a complete alignment checklist was unnecessary. CSS valves MUO12 and MUO14 were erroneously omitted from the partial checklist.

There was second opportunity on March 2, 1984 in which the licensee could have detected the valving error, but failed to do so. On March 2, 1984, a containment spray pump was operated to flush the spray header and the operator failed to verify flow from the flow-rate-meter in the control room.

At 9:55 a.m. on March 4, 1984, the unit entered Mode 3 with both trains of the CSS inoperable in violation of the technical specifications. The plant operated in Modes 3, 2, and 1 in this manner until the condition was corrected at 2:00 p.m. on March 17, 1984, a period of about 13 days.

During this period, another violation occurred which further degraded the CHRS. From about 4:20 a.m. on March 15, 1984, to about 5:35 p.m. on March 16, 1984, one of the two diesel generators was removed from service (placed in maintenance lockout); thus, the emergency power source (had there been a total loss of offsite power) for the associated train of the containment emergency fan cooler system was inoperable. This violation occurred since the licensee was unaware that the CSS was inoperable at the time.

Although there was no actual demand for the containment cooling systems to perform their accident mitigating functions during the 13 day period, substantial degradation of the capability of the systems to mitigate the consequences of a postulated loss of reactor coolant accident did exist. During the time in question, automatic actuation of the CSS would not have been possible. However, there are indications in the control room which could inform the reactor operators that spray injection was not taking place. Upon recognizing the situation, manual actuation of the CSS could have been made.

Although the reactor operators could be expected to take timely actions, the NRC staff has performed bounding calculations to predict worse case conditions in order to determine whether the containment design pressure or the post-accident off-site dose limitations would be exceeded after a design basis accident. For the staff's calculations, it was assumed that one diesel generator would be out of service whch would preclude operation of two out of four containment fan cooler units. This assumption was made because during part of the time is question, one of the diesel generatiors was taken out of service for maintenance a discussed above. The NRC findings were:

1. The containment design pressure (60 psig) would have been exceeded if a design basis LOCA had occured during the period of degraded containment cooling. The licensee calculated a peak pressure of 65 psig for the worst case LOCA, whereas the NRC analysis results in 62 psig. As noted by the licensee, however, the containment has been successfully tested to a pressure of 69 psig during preoperational testing. Therefore, containment integrity would not have been breached by the worst case LOCA, if it had occurred during the time when the containment sprays and one diesel generator train were disabled.

2. Given that containment intergrity would have been maintained, the licensee calculated a worst case dose at the exclusion area boundary of 240 rems to the thyroid, assuming a one hour delay in containment spray operation. The NRC analalysis of this case resulted in 420 rems (thyroid), which is above the 10 CFR part 100 limit of 300 rems. The difference in the two dose values appears to be the result of the use by the NRC of a meteorological analysis and model consistent with those used in the NRC's Safety Evaluation Report, NUREG–0712, while the licensee used the meteorological evaluation from its final safety analysis report (FSAR).

Cause or Causes

Thue apparent underlying causes of the event were: (1) Inadequate review and approval of changes made to a previously established valve aligment check list and (2) the existence of an administrative procedure (SO23–0–35), promulgated by management, which allowed such changes to be made without adequate review and approvals.

At San Onofre, administrative procedures provide authorization for an SRO Supervisor to designate only a portion of a checklist for use when circumstances warrant. This authorization was included to avoid errors resulting from development of special purpose checklists when conducting retests following correction of component failures within lengthy surveillance procedures, for example. Other objectives of this provision included ALARA (as low as reasonably achievable) exposure considerations, where complete system alignment checklists include vents and drains in high radiation areas which were not affected by a particular evolution, and secondary plant equipment alignments which usually involve only a portion of any one system checklist. This authorization was not intended for use in establishing a partial checklist of a main process valves when performing a system evolution such as leaving shutdown cooling alignment and establishing CSS operability. However, this intent was not clear. In this case, the authorization was used to, in effect, revise the procedure intended to establish CSS operability contrary to the intent.

The Control Room Supervisor (an SRO) did not recognize that the containment spray pump manual discharge isolation valves were closed when entering the shutdown cooling alignment. Therefore, in designating the subset of CSS valves to be repositioned and verified upon leaving the shutdown cooling alignment, valves MUO12 and MUO14 were omitted and remained closed until identified on March 17. No Piping and Instrumentation Diagram (P&ID) was provided to explicitly show the valve alignment for shutdown cooling. Also, no partial checklist was provided for the subset of CSS valves required to be repositioned when leaving shutdown cooling. Accordingly, there was no effective procedural means to ensure MUO12 and MUO14 would be opened, short of reperforming the entire CSS value aligment checklist. As described in the sequence of events above, since the entire checklist had been performed on February 28, 1984, the Control Room Supervisor and the Shift Superintendent considered that it did not need to be reperformed.

Actions Taken To Prevent Recurrence

Licensee

The licensee has revised written procedures to ensure the proper alignment of valves prior to entering a mode of operation for which the system is required to be operable. Steps have also been taken by the licensee to ensure more effective controls over the preparation of and changes to operating procedures. The licensee's training program is being revised to provide additional emphasis on operator recognition of proper system alignments during various plant evolutions.

NRC

An examination of the circumstances associated with the event was included in an inspection performed at the licensee during the period of March 17 through March 29, 1984. The report of the inspection was sent to the licensee on April 5, 1984. An enforcement conference was held between NRC Region V and licensee personnel on May 9, 1984.

On May 16, 1984, NRC Region V forwarded to the licensee a notice of violations and proposed imposition of civil penalties in the amount of $250,000. The forwarding letter expressed the NRC's serious concern that the event resulted in a significant degradation in the engineered safety features of the faculty, and that inadequate management controls contributed substantially as an underlying cause. The letter further noted that several other enforcement actions since January 1983 pertaining to the licensee's San Onofre Units 2 and 3 facilities indicate that management problems have not been adequately corrected.

The NRC will monitor the corrective actions taken by the licensee.

During the past several years, there have been several events at various nuclear power plants involving degradation of containment spray systems. On May 25, 1984, the NRC issued Inspection and Enforcement Information Notice No. 84–39 ("Inadvertent Isolation of Containment Spray Systems") to all facilities holding an operating license or construction permit.This may help to reduce the frequency of these types of events by heightening the industry's awareness of the potential for such events and the circumstances associated with their occurence.

Dated in Washington, D.C., this 5th day of September 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84–24007 Filed 9–10–84; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting from 9:30 a.m. to 3:30 p.m., Tuesday, October 23, 1984, in the Board Room at Sun Bank, N.A., Central Park Office, 6900 South Orange Blossom Trail, Orlando, Florida 32859, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Douglas E. McAllister, District Director, U.S. Small Business Administration, Box 35067, 400 West Bay Street, Jacksonville, Florida 32202; telephone (904) 791–3103.

Dated: September 5, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84–23986 Filed 9–10–84; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9:00 a.m. on Friday, October 19, 1984 in the Sheraton Inn Waco, 401 IH 35, Waco, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, Room 3C36, Dallas, Texas 75242—(214) 767–0600.

Dated: September 5, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84–23985 Filed 9–10–84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 914]

Foreign Assistance Determination; Peru

By virtue of the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended (the Act), and Executive Order 12163, as amended, I hereby determine that it is in the national interest to furnish assistance under the Act in Fiscal Year 1984 to Peru, notwithstanding that the Government of Peru is more than six months in default in payment to the United States of principal and interest on loans made under the Act.

This Determination with the justification therefor shall be reported to Congress. The Determination shall be published in the **Federal Register.**

Dated: December 6, 1984.

Kenneth Dam,

Acting Secretary of State.

[FR Doc. 84–23975 Filed 9–10–84; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Organization and Functions; Spokane, WA; Establishment and Name Change

Notice is hereby given that the following Flight Standards reorganization will occur on or about September 30, 1984. This information will be reflected in the Federal Aviation Administration (FAA) organization statement next time it is reissued. Services to the general public will continue to be provided without interruption by all offices except that services previously performed by the Grand Junction Satellite General Aviation District Office will be performed by the Denver and Salt Lake City Flight Standards District Offices.

Flight Standards District Office at 5620 East Rutter Avenue, Spokane, Washington 99206, will become a Flight Standards Field Office under the direction of the Seattle Flight Standards District Office at 7300 Perimeter Road South, Seattle, Washington 98108.

General Aviation District Office at 90606 Greenhill Road, Eugene, Oregon 97402, will become a flight Standards Field Office under the direction of the Portland Flight Standards District Office at 3355 NE Cornell Road, Hillsboro, Oregon 97123.

Flight Standards District Office in Room 216 Administration Building, Billings Logan International Airport, Billings, Montana 59101, will become a Flight Standards Field Office under the direction of the Helena Flight Standards District Office in Room 3, FAA Building, Helena Airport, Helena, Montana 89601.

General Aviation District Office at 3975 Rickenbacker, Boise, Idaho 83705, will become a Flight Standards Field Office under the direction of the Salt Lake City Flight Standards District Office at 116 North 2400 West, Salt Lake City, Utah 84116.

General Aviation District Office at Jefferson County Airport, Building #1, Broomfield, Colorado 80020, and the Broomfield General Aviation District Office Satellite at 2800 "H" Road, Grand Junction, Colorado 81501, will be consolidated with the Denver Air Carrier District Office and become the Denver Flight Standards District Office at 10455 E. 25th Avenue, Aurora, Colorado 80010.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Seattle, Washington, on August 27, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region

[FR Doc. 84-23902 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

Cessna Model 210 Airplanes; Availability of Special Certification Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of documentation.

SUMMARY: The Director of the FAA, Central Region, has conducted a review of the issues involved in the Cessna Model 210 Special Certification Review. He has also reviewed and discussed with has staff a document entitled "Cessna Model 210 Icing Special Certification Review, Final Report". Based on this review, the Director approves issuance of the Cessna 210 Special Certification Review. A copy of this document is on file in the FAA Rules Docket and is available for examination and copying at the Rules Docket, and also may be obtained from the Office of the Regional Counsel, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 28, 1984.

Murray E. Smith,

Director.

[FR Doc. 84-23894 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP84—14; Notice 1]

K mart Corp.; Petition for Determination of Inconsequential Noncompliance

K mart Corp. of Troy, Michigan has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for noncompliances with two Federal motor vehicle safety standards. The standards are 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars,* and 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliances ar inconsequential as they relate to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

K mart Corporation is the importer of certain heavy duty trailer kits manufactured by Long Chih Ind. Co. of Taiwan. As an importer for resale, K mart is a "manufacturer" as defined by 15 U.S.C. 1391(5), and accordingly, responsible for notification and remedy of noncompliances with the Federal motor vehicle safety standards in the products that it imports. K mart has discovered noncompliances with Motor Vehicle Safety Standards Nos. 119 and 120 in approximately 5,000 kits which have been sold to its customers.

Standard No. 119. The tires may not be marked with the maximum load rating and corresponding inflation pressure as required by paragraph S6.5(d).

Standard No. 120. The rims are not marked with any of the five items of information required by paragraph S5.2. These are a designation which indicates the source of the rim's published nominal dimensions, the rim size designation, the symbol DOT constituting a certification of compliance, a designation that identifies the manufacturer of the rim by name, trademark, or symbol, and the date of manufacture. In addition, the trailers have no label providing the three items of information required by paragraph S5.3: the tire size designation appropriate for the Gross Axle Weight Rating, the size designation and, if applicable, the type designation of rims appropriate for the tires, and the cold inflation pressure for the tires.

Petitioner argues that the noncompliances are inconsequential because the trailers otherwise comply with all applicable Federal motor vehicle safety standards, and that there is no indication that the trailer kits are inferior either in quality or any safety-related way.

Interested persons are invited to submit written data, views and arguments on the petition of K mart Corp. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are A.Y. Casanova and Taylor Vinson, respectively.

Comment closing date: October 11, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 6, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-23994 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Firearms; Granting of Relief

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of Granting of Relief from Disabilities Incurred by Conviction.

SUMMARY: The persons named in this notice have been granted relief by the Director, Bureau of Alcohol, Tobacco and Firearms, from their disabilities imposed by Federal laws. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Paul M. Durham, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026, (202-566-7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

The following persons have been granted relief:

ACREBACK, Gus Ray Route 2, Box 294-A, Buffalo, Missouri, convicted on July 21, 1977, in the Circuit Court, Buffalo, Missouri.

ADOMAVICH, Phillip Route 6, Golf Course Drive, Fond du Lac, Wisconsin, convicted on October 14, 1974, in the Sheboygan County Court, Sheboygan, Wisconsin.

ALTO, James Roger 2233 West 200 North, Provo, Utah, convicted on March 31, 1978, in the United States District Court, Western District, Seattle, Washington.

AMOS, Ray Bailey Route 2, Box 270, Altha, Florida, convicted on April 4, 1961 in the United States District Court, Middle District, Albany, Georgia; and on June 1, 1965 in the United States District Court, Northern District, Marianna, Florida.

BAKER, Dolph Rodman Ocean Reef Club Staff Housing, Key Largo, Florida, convicted on March 26, 1970, in the Erie County Court, Buffalo, New York.

BAXTER, David Bruce 1018 Ruble Street, New Port, Tennessee, convicted on June 20, 1969 in the United States District Court, Greenville, Tennessee.

BENSON, Thomas Lee Route 1, Box 128, Earlysville, Virginia, convicted on October 13, 1966, in the Albemarle County Circuit Court, Charlottesville, Virginia.

BENTZ, Larry Pierce 1220 West 33rd Street South, Wichita, Kansas, convicted on October 13, 1976, in the Sedgwick County District Court, Kansas.

BERNARD. Bobby C. Post Office Box 24, Highway 64-70, Icard, North Carolina, convicted on March 17, 1976, in the Catawba County Superior Court, Newton, North Carolina.

BOTTOM, Terry Box 12, Ardmore, Alabama, convicted on April 11, 1980, in the United States District Court, Northern District, Huntsville, Alabama.

BOURQUE, Carl James Post Office Box 485, Highway 31, Saint Martinville, Louisiana, convicted on April 22, 1976, in the 16th Judicial District Court, New Iberia, Louisiana.

BRITTAIN, Darrell Kent Route 1, Helen, Georgia, convicted on May 26, 1978, in the United States Superior Court, White County, Georgia.

CARRICARTE, Albert Louis 2491 NW. 7th Street, Miami, Florida, convicted on November 6, 1978, in the Dade County Circuit Court, Dade County, Florida.

CARTER, Susan De Lane Webb 4510 Beloxi, Apartment 4, Millington, Tennessee, convicted on May 2, 1978, in the United States District Court, Memphis, Tennessee.

CASTEEL, LaVern Keith Route 1, Box 228, Sharpsburg, Maryland, convicted on January 23, 1984, in the United States District Court, Southern District, Indiana.

CONNER, Richard Lee, Jr. 3909 SE. 214th Avenue, Camas, Washington, convicted on August 13, 1974 in the United States Superior Court, Clark County, Washington.

COURTNEY, Donald Ray 115 Brooke Place, Avondale, Arizona, convicted on October 20, 1976, in the Maricopa County Superior Court, Phoenix, Arizona.

DE JESUS-MANGUAL, Tomas Edificiao Condado Del Mar, Apartment 218, Santurce, Puerto Rico, convicted on July 21, 1972, in the Superior Court, San Juan, Puerto Rico; and on May 30, 1973 in the Superior Court, San Juan, Puerto Rico.

DE ROEUN, Pat Eugene 655 Holly, Duncanville, Texas, convicted on January 5, 1981, in the Federal Court, Eastern District, Texas.

DONNA, Lawrence Andrew 229 North Atlantic Avenue, Unit 104, Cocoa Beach, Florida, convicted on March 1, 1979, in the United States District Court, Middle District, Orlanda, Florida.

DOWNS, Phillip G. 2705 Canna Ridge Circle NE., Atlanta, Georgia, convicted on August 7, 1979, in the United States District Court, Atlanta, Georgia.

ECK, Orestes LaVern 320 Wind Rows, Goddard, Kansas, convicted on September 4, 1981, in the United States District Court, Wichita, Kansas.

ELIAS, Edward Salem 6764 Grace Circle North, Jacksonville, Florida, convicted on March 22, 1971, in the Duval County Circuit Court, Jacksonville, Florida.

ELLIOTT, Allen Francis 2763 Robin Drive, Saginaw, Michigan, convicted on December 5, 1969, in the Monroe County Circuit Court, Monroe, Michigan.

ESTES, Larry Wayne Route 4, Box 129, Somerville, Alabama, convicted on August 31, 1970, in the Cullman County Circuit Court, Cullman, Alabama.

FLECHER, Robert Joseph 4129 Devonshire, Detroit, Michigan, convicted on November 17, 1966, in the Wayne County Circuit Court, Detroit, Michigan.

FORD, John Walter 7209 John Ralston, Trailer A, Houston, Texas, convicted on March 24, 1976, in the 92nd District Court of Hildalgo County, Texas.

GARRETT, Byron Roland 2915 Arunah Avenue, Baltimore, Maryland, convicted on May 13, 1972, in the Maryland District Court, Northwestern District, Maryland.

GILBERT, Robert George 5106 Kenilworth Avenue, Apartment 9, Hyattsville, Maryland, convicted on October 3, 1980, in the Lynchburg Circuit Court, Virginia.

GILES, Tony Sylvester 3961 Rainbow Drive, Virginia Beach, Virginia, convicted on February 13, 1974; and on November 8, 1978, in the General Court of Justice, 23rd Judicial District Yadkin County, North Carolina.

GOLDMAN, Clinton Route 1, Washington, Georgia, convicted on August 5, 1953, in Wilkes County Superior Court, Washington, Georgia; and on November 19, 1975 in the

United States District Court, Augusta, Georgia.

HADDOCK, Danny J. Flying "G" Ranch, Jordon Valley, Oregon, convicted on February 8, 1978, in the First District Court of the Judicial District, Idaho.

HAMILTON, Larry Bruce 420 South Adams, Hugoton, Kansas, convicted on October 13, 1965, in the Butler County District Court, Kansas.

HANSON, Royce Eugene Post Office Box 126, Ashville, Alabama, convicted on December 12, 1966, in the Jefferson County District Court, Birmingham, Alabama.

HARRIS, David Edward 6729 New Britton Road, Mechanicsville, Virginia, convicted on February 11, 1955, in the Hustings County Court, Richmond, Virginia; and on August 11, 1958, in the Circuit Court, Goochland County, Virginia.

HARRIS, Russell Earl 6525 Cool Spring Road, Mechanicsville, Virginia, convicted on December 3, 1952, in the Circuit Court, City of Richmond, Virginia.

HENRY, John M. 2011 Citrus Avenue, Jessup, Maryland, convicted on December 30, 1971, in the Howard County Circuit Court, Maryland.

HERBES, Richard Leonard Route 1, Box 10–E, Haines, Oregon, convicted on January 2, 1980, in the Baker County Circuit Court, Oregon.

HIMES, Robert Wayne Rural Delivery #4, Kittanning, Pennsylvania, convicted on August 26, 1981, in the Common Pleas Court, Alleghany, Pennsylvania.

HOLT, William Lee 2334 Virginia Avenue, Apartment 103, Landover, Maryland, convicted on May 8, 1975, in the Prince Georges County District Court, Maryland.

HOY, Phillip 7260 South Elm Road, Swartz Creek, Michigan, convicted on June 9, 1981, in the United States District Court, Eastern District, Flint, Michigan.

HUTCHINSON, Susanne Marlene 4467 146th Avenue SW., Bellevue, Washington, convicted on November 30, 1972, in the United States District Court, Judicial District of Minnesota.

HUTCHINSON, Thomas W. 4467 146th Avenue SW., Bellevue, Washington, convicted on November 30, 1972, in the United States District Court, Judicial District of Minnesota.

JACKSON, Bryan Paul 10370 Faulkner Ridge Drive, Columbia, Maryland, convicted on August 29, 1973, in the Anne Arundel County District Court.

JOHNSON, Johnny Louis Route 9, Box 346, Johnson City, Tennessee, convicted on October 26, 1971, in the United States District Court, Middle District, Nashville, Tennessee.

JOHNSON, Michael Lee 220–C Irby Avenue, Laurens, South Carolina, convicted on March 22, 1977, in the Greenwood County Court of General Sessions, Columbia, South Carolina.

JONES, Barney William 758 East 22nd Street, Brooklyn, New York, convicted on October 1, 1963, in the United States District Court, Southern District, New York.

KEIM, Gregory Jon Box 124, Lakota, North Dakota, convicted on April 2, 1980, in the Northeast Central District Court, Grand Forks, North Dakota.

KOCH, Melvin Lynn Route 1, Box 4231, Twin Falls, Idaho, convicted on March 16, 1981, in the District Court of the Fifth Judicial District of Twin Falls, Idaho.

KOESTER, Thomas Herney Rural Delivery #1, Box 401–5, Slippery Rock, Pennsylvania, convicted on April 23, 1982, in the Common Pleas Court, Butler County, Pennsylvania.

KORNOFSKY, Joseph Paul 379 De Graw Street, Brooklyn, New York, convicted on September 8, 1977, in the Kings County Supreme Court, New York, New York.

KRAMER, Norbert August 1664 Randolph Avenue, Saint Paul, Minnesota, convicted on July 6, 1971, in the District Court, Ramsey County, Minnesota.

KROPP, Bradford Lee Alexander 20706–53rd Avenue West, Lynwood, Washington, convicted on September 13, 1973, in the Superior Court, King County, Washington.

KUYKENDALL, James Donald 810 West Second Street, Kuna, Idaho, convicted on November 4, 1976, in the Fourth Judicial District Court, Idaho.

LALE, Horace Edwin 7533 Melba Avenue, Canoga Park, California, convicted on July 2, 1951, in the Circuit Court, Kansas City, Missouri.

LANCASTER, Roger Vance 4533 Kirkman Road, Apartment 5, Orlando, Florida, convicted on March 1, 1966, in the Seminole County, Circuit Court, Sanford, Florida.

LAU, Eddie K. 10423 60th Avenue South, Seattle, Washington, convicted on December 12, 1969, in the Superior Court, King County, Seattle, Washington.

LEEP, Edward E. 1135 Lakeview Drive, Schereville, Indiana, on the November 18, 1980, in the United States District Court, Hammond, Indiana.

LEMERICH, Edwin J., Jr. Rural Delivery 1, Box 156–A, Forest City, Pennsylvania, convicted on March 1, 1976, in the New Jersey, Superior Court, Middlesex County.

LIUZZI, Anthony 5916 McKinley Street, Hollywood, Florida, on March 30, 1977, in the Broward County Circuit Court, Fort Lauderdale, Florida.

LOHR, Markwood Dewey 2507 East 7th Kennewick, Washington, convicted on January 13, 1961, in the Superior Court, Franklin County, Washington.

LUYCX, Henery Lawrence Route 1, Box 30, Wiemer, Texas, convicted on January 21, 1983, in the 228th District Court of Harris County, Houston, Texas.

MACKRELL, Paul 1420 Hitching Post Drive, Green River, Wyoming, convicted on December 13, 1978, in the Sweetwater County District Court, Wyoming.

MARSHALL, Bruce Henry 4440 Mount Brynion Road, Kelso, Washington, convicted on April 24, 1969, in the Cowlitz County Superior Court, Washington.

MARTIN, Eugene Collins 604 Main Street, Laurel, Maryland, convicted on March 13, 1962; and on December 18, 1963, in the Anne Arundel County Magistrate's Court, Odenton, Maryland.

MATTHEWS, Neal Gary 204 Greenbriar, Shelbyville, Tennessee, convicted on May 12, 1982, in the United States District Court, Middle District, Tennessee.

McGUINNOSS, John Thomas 347 First Avenue, New York, New York, convicted on February 8, 1982, in the Manhattan Supreme Court, Manhattan Country, New York.

McKENZIE, Billy Martin Post Office Box 36, Germantown, North Carolina, convicted on May 12, 1972, in the United States District Court, Greensboro, North Carolina.

McMILLAN, James Pioneer Circle, Miles City, Montana, convicted on October 24, 1977, in the 16th Judicial District, Miles City, Montana.

MILLER, Matthew Joseph 220 West Lindley Street, Philadelphia, Pennsylvania, convicted on August 24, 1979, in the City of Philadelphia District Court, Philadelphia, Pennsylvania.

MILLER, Joseph Steven 3649 Erato Street, New Orleans, Louisiana, on September 8, 1978, in the Orleans Parish Criminal District Court, New Orleans, Louisiana.

MINGLEDORFF, Jeremy C. 107–A Limoges, Duson, Louisiana, convicted in March 1980, in the Untied States District Court, Alexandria, Louisiana.

PHILLIPS, Robert Darrell Post Office Box 186, Lanett, Alabama, convicted on March 6, 1968, in the United States District Court of Alabama, Montgomery, Alabama.

PEEK, Raymond Ladean 243 North Welcome Slough, Cathlamet, Washington, convicted on November 13, 1978, in the Wahkiakum Superior Court, Washington.

PEIZL, Ronald Duane Rural Route 1, Box 9, Wahpeton, North Dakota, convicted on October 26, 1978, in the Richland County District Court, Wahpeton, North Dakota.

PLIMPER, John Robert 6601 Sivley, Houston, Texas, convicted on March 27, 1970, in the Dallas County Court, Dallas, Texas.

POOL, Billie Ross 1820 North East 96th Avenue, Norman, Oklahoma, convicted on October 7, 1982, in the United States District Court, Western Judicial District, Oklahoma City, Oklahoma.

POWERS, Stephen Ray 3634 West Potter, Phoenix, Arizona, convicted on July 20, 1981, in the Maricopa County Superior Court, Phoenix, Arizona.

PROCTOR, Kenneth David 127 Rice Avenue, Union, South Carolina, convicted on February 15, 1977, in the General Sessions Court, Union, South Carolina.

RILEY, Earl D. Post Office Box 94—Delaney Road, Plain Dealing, Louisiana, convicted on April 3, 1962, in the Logan County Circuit Court, Arkansas.

RINGUETTE, Thomas M. 1534 South 10th Street, Fargo, North Dakota, convicted in the First District Court, Cass County, North Dakota.

RUSSELL, Robert James 536 Onstott, Apartment #4, Yuba City, California, convicted on August 22, 1977, in Kitsap County Superior Court, Kitsap County, Washington.

SAILOR, Edward Allen 405 Alexander Street, Kingsville, Texas, convicted on April 28, 1980, in the Brooks County District Court, Texas.

SARTAIN, Aaron L. Route 1, Box 57-A, Detroit Michigan, convicted on June 19, 1981, in the United States District Court, Northern District, Decatur, Alabama.

SCHAEFFER, Johnnie Leroy 713 South C Street, Rupert, Idaho, convicted on December 15, 1861, in the 11th Judicial District, Idaho.

SELLE, Richard S. 1940 East County Road East, White Bear Lake, Minnesota, convicted on October 9, 1972, in the Ramsey County District Court, Saint Paul, Minnesota.

SHOOF, Roy E. 5415 Southern Court, Lot 41, Fort Wayne, Indiana, convicted on April 6, 1942, in the Allen County Circuit Court, Indiana.

SULLIVAN, Rex Stuart Rural Delivery #2, Box 328–A, Nashville, Indiana, convicted on April 3, 1973, in the 20th Judicial Circuit Court, Lee County, Florida.

SMITH, Darrell Otis 13935 216th Avenue East, Sumner, Washington, convicted on March 30, 1966, in the Superior Court, Yamhill, Oregon.

SPOONER, Irvin Bernard 129 Towne Square Drive, Newport News, Virginia, convicted on March 26, 1980, in the Eastern Judicial District Court of Virginia, Newport News, Virginia.

STEPHEN, Kenneth Lee 432 East Dartmoor Avenue, Cleveland, Ohio, convicted on November 12, 1980, in the United States District Court, Northern District of Ohio, Cleveland.

STEVENSON, Storm J. 714 North West 189th Lane, Seattle, Washington, convicted on August 15, 1979, in the King County Superior Court, Washington.

STEWART, Ernest Glading Route 4, Box 171, Thomasville, Georgia, convicted on March 12, 1975, in the Lowndes County Court, Valdosta, Georgia.

STOKESBERRY, Allen Lane Route 1 Box 422, Vanceboro, North Carolina, convicted on January 22, 1968, in the Beaufort County Superior Court, Washington, North Carolina.

STUBER, Richard Paul 1423 Lardner Street, Philadelphia, Pennsylvania, convicted on September 20, 1960, in the Seventh Police District Court, Philadelphia, Pennsylvania.

SWAN, Robert Anthony, Jr. 408 Red Pine Estates, Gilbert, Minnesota, convicted on January 25, 1980, in the Saint Louis County Superior Court, Virginia, Minnesota.

TAMARGO, Ray 5202 Neptune Way, Tampa, Florida, convicted on September 20, 1979, in the United States District Court, Middle Judicial District of Florida, Tampa, Florida.

TARR, Thomas 12451 76th Avenue, Allendale, Michigan, convicted on June 27, 1980, in the United States District Court, Grand Rapids, Michigan.

TIERCE, Richard A. 3005 Park Highway, Nenana, Alaska, convicted on June 14, 1979, in the Lincoln County Circuit Court, Oregon.

TRIMBLE, Milton 4437 Hall Park, San Antonio, Texas, convicted on November 25, 1957, in the 27th Judicial District Court, Bell County, Texas.

TWITE, David L. Rural Route 2, Caledonia, Minnesota, convicted on September 27, 1977, in the Houston County District Court, Caledonia, Minnesota.

VANOURNEY, Michael Robert Route 1, Filer, Idaho, convicted on November 30, 1978, in the Fifth Judicial District Court, Idaho.

VOYLES, Winburn Route 1, Garner Road, Homer, Georgia, convicted on January 28, 1968, in the De Kalb County Superior Court, Decatur, Georgia.

WALKER, Stephen Elvin Route 1, Box 1345, Wapato, Washington, convicted on April 27, 1977, in the Superior Court, Yakima County, Washington.

WARREN, Francis Randolph 550 Creek Road, Newport News, Virginia, convicted on March 2, 1966, in the Circuit Court, Hampton, Virginia.

WEADER, Eugene E. 3387 Hulberton Road, Halberton, New York, convicted on June 17, 1976, in the Orleans County Court, New York.

YORK, Jesse Carter Route 3, Box 563, Yadkinville, North Carolina, convicted on November 9, 1955; November 5, 1959; May 7, 1964; and on May 14, 1971, in the United States District Court, Winston Salem, North Carolina.

Compliance with Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: August 31, 1984.

Stephen E. Higgins,
Director.

[FR Doc. 84-[illegible] Filed 9-10-84; 8:45 am]

BILLING CODE 4810-31-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 177
Tuesday, September 11, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 12, 1984.

LOCATION: Third Floor Hearing Room, 1111–18th Street NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Comments to EPA on Formaldehyde ANPR

The Commission will consider a draft letter to the Environmental Protection Agency concerning thier *Federal Register* Notice, "Formaldehyde; Determination of Significant Risk; Advance Notice of Proposed Rulemaking and Notice."

2. Crib Corner Post Extension (Finials): Voluntary Standard Status

The staff will brief the Commission on the status of a Voluntary Standard for Crib Corner Post Extensions (finials).

3. FR Notice on Space Heater Revocation

The Commission will consider a revised *Federal Register* Notice which would revoke the Commission's mandatory standard requiring the oxygen depletion sensor on unvented gas-fired space heaters (16 CFR, Part 1212).

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-24026 Filed 9–7–84; 10:57 am]

BILLING CODE 6355-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 5, 1984

TIME AND DATE: 10:00 a.m., Wednesday, September 12, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider the following:

1. Disciplinary Proceeding (Getz Coal Sales), Docket No. D 84–1.

It was determined by a majority vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-23073 Filed 9–7–84; 3:18 pm]

BILLING CODE 6735-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 17, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24072 Filed 9–7–84; 3:12 pm]

BILLING CODE 6210-01-M

4

LEGAL SERVICES CORPORATION

Board of Directors Meeting

PREVIOUSLY ISSUED: September 4, 1984 (Published September 5, 1984, page 35069)

PREVIOUSLY ANNOUNCED TIME AND DATE: It will commence at 9:30 a.m. and continue unitl all official business is completed; Friday September 14, 1984.

CHANGE IN NOTICE: Deletion under **MATTERS TO BE CONSIDERED:**

Report from the Office of Field Services —Budget and Reorganization

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272–4040.

DATE ISSUED: September 7, 1984.

Donald P. Bogard

President.

[FR Doc. 84-24095 Filed 9–7–84; 4:36 pm]

BILLING CODE 6820-35-M

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NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-30]

TIME AND DATE: 9 a.m., Tuesday, September 18, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: The first six items are open to the public; the remaining two items is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—Air Canada Lockheed L-1011, CFTNJ, near Charleston, South Carolina, November 24, 1983.
2. *Marine Accident Report*—Capsizing of the U.S. Offshore Supply Vessel LAVERNE HEBERT, Gulf of Mexico, November 9, 1983.
3. *Safety Study*—The Drunk Driver as a Repeat Offender.
4. *Railroad Accident Report*—Collision of Amtrak Train No. 301 on Illinois Central Gulf Railroad with Marquette Motor Service Terminals, Inc., Delivery Truck, Wilmington, Illinois, July 28, 1983.
5. *Brief of Aviation Accident*—Lindale, Texas.

6. *Brief of Aviation Accident*—File No. 1928; Beech H35, N4687D, Tucson, Arizona, February 16, 1983.

7. *Opinion and Order:* Aministrator v. Buford, Docket SE-2555; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,
Federal Register Liaison Officer.

[FR Doc. 84-24056 Filed 9-7-84; 1:36 pm]
BILLING CODE 7533-01-M

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NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-29]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 34329, August 29, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Wednesday, September 5, 1984.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was discussed in open session:

Staff recommendation not to hold a public hearing or deposition proceeding on the rear-end collision involving an intercity bus and a tractor semitrailer near Cheyenne, Wyoming, on July 18, 1984.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,
Federal Register Liaison Officer.
September 7, 1984.

[FR Doc. 84-24057 Filed 9-7-84; 1:36 pm]
BILLING CODE 7533-01-M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 10, 17, 24, 1984 and Week of October 1, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 10

Monday, September 10

2:00 p.m.
Briefing on Steam Generator Generic Requirements (Public Meeting)

Tuesday, September 11

2:00 p.m.
Briefing on BWR Pipe Crack Report (Long Range Plan) (Public Meeting)

Thursday, September 13

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 17

Tentative

Wednesday, September 19

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, September 20

10:00 a.m.
Industry Views on Decommissioning (Public Meeting)
2:00 p.m.
Quarterly Progress Report on Safety Goal Evaluation Report (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 21

10:00 a.m.
Discussion of Board Order in Shoreham (Open/Closed to be determined)
2:00 p.m.
Discussion of Remaining Questions on Backfitting (Public Meeting)

Week of September 24

Tentative

Thursday, September 27

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 1

Tentative

Tuesday, October 2

10:00 a.m.
Briefing/Possible Vote on UCS 2.206 Petition on TMI-1 Emergency Feedwater (Public Meeting)
2:00 p.m.
Continuation of 9/5 Discussion of Indian Point Probabilistic Risk Assessment (Public Meeting)

Wednesday, October 3

2:00 p.m.
Discussion of Reexamination of Exemption Process (Public Meeting)

Thursday, October 4

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Callaway-1 (Public Meeting)
2:00 p.m.
Semi-Annual Briefing on Appraisal of Operating Experience (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

George [illegible],
Office of the Secretary.

[FR Doc. 84-[illegible] Filed 9-7-84; 3:47 pm]
BILLING CODE [illegible]-01-M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 10, 1984, at 450 Fifth Street, NW., Washington, D.C.

An open meeting will be held on Tuesday, September 11, 1984 at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, September 11, 1984, at 10:00 a.m., will be:

Consideration of an application filed by Vanguard Special Tax-Advantaged Retirement Fund, et al. requesting an order of the Commission, pursuant to Sections 6(c) and 17(d) of the Investment Company Act of 1940 and Rule 17d-1 thereunder, to permit the Vanguard Special Tax-Advantaged Retirement Fund to acquire shares of funds within the Vanguard Group of Investment Companies in excess of the limitations imposed by Section 12(d)(1) of the Act, and to permit certain affiliated transactions otherwise prohibited by Section 17. For further information, please contact Mary A. Cole at (202) 272-3023.

The subject matter of the closed meeting scheduled for Tuesday, September 11, 1984, following the 10:00 a.m. open meeting, will be:

Regulatory matter regarding self-regulatory organizations.

Formal orders of investigation.

Institution of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: William Fowler at (202) 272-3077.

Shirley E. Hollis,

Acting Secretary.

September 6, 1984.

[FR Doc. 84-24047 Filed 9-7-84; 12:25 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
September 11, 1984

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817, and 855

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817, and 855

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to revise its rules at 30 CFR Parts 816 and 817, and to add a new rule at 30 CFR Part 855. This proposed rule is needed to comply with 30 CFR 850.12, which requires that each regulatory authority promulgate a blaster certification program for surface coal mining operations.

The proposed rule would add identical provisions to 30 CFR 816.61(c)(4) and 817.61(c)(4), which currently impose similar requirements on surface and underground coal mining operations respectively. In each of these sections two new paragraphs would require that any person responsible for blasting operations at a blasting site: (1) Have a current blaster certificate; and (2) give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives. In addition, the proposed rule would revise § 817.61(c)(4) by deleting the existing requirement that persons responsible for blasting operations at a blasting site be familiar with "the blasting plan."

Proposed 30 CFR Part 855 would govern the training, examination and certification of blasters by OSM for surface coal mining operations in Federal Program States and on Indian lands. It would apply to the issuance, renewal, reissuance (recertification), suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity for a holder of a certificate issued by a State regulatory authority.

DATES: OSM will accept written comments on this proposed rule until 5 p.m. eastern time on October 11, 1984. Upon request, OSM will hold public hearings on this proposed rule at 9:30 a.m. eastern time on October 9, 1984.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC, Denver, Colorado, and Knoxville, Tennessee at 9:30 a.m. local time on November 13, 1984. Upon request, OSM also will hold public hearings in the State of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced. The deadline for requesting a hearing is 5:00 p.m. eastern time on October 23, 1984.

ADDRESS:

Written comments: Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The address for any hearing scheduled in the State of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, or Washington will be announced prior to the hearing.

FOR FURTHER INFORMATION CONTACT: James Kress, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: 202-343-5361 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on this proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change that is recommended. OSM requests that, where practicable, commenters submit five copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearing

OSM will hold public hearings on the proposed rule on request only. The times and locations scheduled for the hearings are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). Any person interested in making an oral or written presentation at a hearing should inform James Kress (see "**FOR FURTHER INFORMATION CONTACT**") of the desired hearing location by 5:00 p.m. eastern time four working days prior to the scheduled date of the hearing. If no one has contacted Mr. Kress to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The current OSM rules governing the training, examination and certification of blasters are codified at 30 CFR Chapter VII, Subchapter M. Part 850 of Subchapter M, 44 FR 9492 (March 4, 1983), establishes requirements and procedures applicable to the development of regulatory programs for such training, examination and certification. Section 850.5 defines the term "blaster" as "a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part."

Section 850.12 provides that "[t]he regulatory authority is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations." Subsequent sections of Part 850 require that such a program include specified procedures. OSM is the "regulatory authority" and thus is responsible for promulgating a blaster certification program in States with a Federal program for the regulation of surface coal mining operations, and on Indian lands. This rule is proposed by OSM to meet these requirements of Part 850.

The purview of the proposed rule is limited to Federal Program States and Indian lands. For Federal lands in a State with a State regulatory program, the training, examination and certification of blasters is governed by the State program, regardless of whether or not there is a Federal-State cooperative agreement. 30 CFR 740.11(a).

III. Discussion of Proposed Rule

Part 816—Permanent Program Performance Standards—Surface Mining Activities

Section 816.61 Use of Explosives: General Requirements

Section 850.12 of 30 CFR requires that the regulatory authority promulgate rules governing the enforcement of a blaster certification program. A prerequisite to such enforcement is a requirement that a person responsible for blasting operations at a blasting site have a current blaster certificate. This requirement currently is implicit in several provisions of 30 CFR 816.61, which contains general requirements for the use of explosives in surface mining activities, but is not explicitly stated. To eliminate any potential ambiguity, OSM proposes to revise § 816.61(c)(4)(ii) to explicitly require that any person responsible for blasting operations at a blasting site have a current blaster certificate.

Section 850.13 of 30 CFR requires that the regulatory authority establish procedures which require that persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster. Since the ultimate responsibility for safe blasting operations lies with the blaster responsible for operations at a blasting site, and since providing direction and on-the-job training to the blasting crew is necessary for safe operations, OSM proposes to impose the requirement of § 850.13 directly on the blaster at the blasting site. Accordingly, OSM proposes to revise § 816.61(c)(4)(iii) to require that any person responsible for blasting operations at a blasting site give direction and on the job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

Part 817—Permanent Program Performance Standards—Underground Mining Activities

Section 817.61 Use of Explosives: General Requirements

Section 817.61(c) of 30 CFR, which governs underground mining activities, currently contains provisions similar to those of 30 CFR 816.61(c), which governs surface mining activities. OSM proposes to revise § 817.61(c)(4) in the same way and for the same reasons as were stated in the preceding paragraph for § 816.61(c)(4).

In addition, OSM proposes to revise § 817.61(c)(4) by deleting the existing requirement that persons responsible for blasting operations at a blasting site be familiar with "the blasting plan." The reference to a blasting plan was included in § 817.61(c)(4) inadvertently when two similarly worded rules were promulgated concerning the use of explosives for surface and underground mining activities. 48 FR 9486 (March 4, 1983). However, as was explained in the preamble to the final rule at 30 CFR 780.13(a), which requires that an application for surface mining activites include a blasting plan, a blasting plan is not required for underground mining activities. 48 FR 9789 (March 8, 1983). Thus, the reference to a blasting plan in existing § 817.61(c)(4) is incorrect and should be deleted.

Part 855—Certification of Blasters in Federal Program States and on Indian Lands

Section 855.1 Scope

Proposed Part 855 would establish rules pursuant to 30 CFR Part 850 for the training, examination and certification of blasters by OSM for surface coal mining operations in Federal Program States and on Indian lands. It would govern the issuance, renewal, reissuance (recertification), suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity for a holder of a certificate issued by a State regulatory authority.

As explained previously (see: II. Background), Part 855 would apply to operations where OSM is the regulatory authority, specifically in Federal Program States and on Indian lands. For Federal lands in a State with a Federal program, Part 855 would govern the certification of blasters. For Federal lands in a State with a State program, and whether or not there were a Federal-State cooperative agreement, the State program would govern.

Part 850, on which this proposed part is based, provides in § 850.15(c) for the "recertification" of blasters. In drafting Part 855 it was found that the exclusive use of the word "recertification" would reduce the grammatical clarity of the rule. For this reason, the words "reissue" "reissuance" and "recertification" are used in the proposed rule with equivalent meaning.

Section 855.10 Information Collection

The information collection requirements in Part 855 are contained in §§ 855.12(a) and 855.13(b). The former requires that an applicant include with his or her application satisfactory evidence of having completed training in the use of explosives. The latter requires that an applicant provide on an OSM application form information pertinent to determining his or her qualifications for a blaster certificate, and ultimately to identifying him or her as the certificate holder. While the application form itself would require that an applicant state his or her training in the storage, use and transportation of explosives, for clarity and emphasis this same requirement is repeated in § 855.12(a).

Section 855.11 General Requirements

This section would list in one place the general requirements a person must meet to qualify for an OSM blaster certificate. To qualify, a person would have to: (1) Be at least 18 years old; (2) be qualified and have worked as a blaster for at least 2 of the 3 years prior to submitting an application; or have worked under the direction of and received on-the-job training, including practical field experience in blasting operations, from a blaster for at least 2 of the 3 years prior to submitting an application; (3) be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations; (4) complete blaster training as specified in § 855.12; (5) submit an application and pay a fee as specified in § 855.13; (6) pass a written and practical examination as specified in § 855.14; and (7) not be subject to suspension, revocation or other action under § 855.17.

Section 855.11(a) is intended to give a potential applicant an overview of what he or she must do to qualify for an OSM blaster certificate. Most of these qualifications are defined in greater detail elsewhere in this part. Section 855.11(b) informs the potential applicant that the specific procedures necessary to qualify depend on his or her current certification status, as specified in the subsequent sections of this part.

The specific requirements in § 855.11 derive primarily from Part 850. Two exceptions are the minimum age limit of § 855.11(a)(1) and the minimum experience requirement of § 855.11(a)(2). OSM proposes that 18 years is the minimum age at which a person reasonably might be expected to have the requisite experience, competence, training and knowledge consistent with the acceptance of responsibility for blasting operations.

Likewise, as the minimum qualifying experience OSM proposes to require that prior to applying for an OSM blaster certificate an applicant either have been qualified and worked for at least 2 of the 3 preceding years as a blaster, or have worked for a similar period under the direction of a blaster. Although the definition of "blaster" in § 850.5 includes only those persons certified under Part 850, in the transition period immediately following promulgation of this rule OSM would interpret the word "blaster" in this section broadly to include any person who is licensed, certified or otherwise authorized by OSM or a State to conduct blasting operations. This would give an applicant in the transition period credit for blasting experience gained prior to the availability of certification under this rule. OSM solicits comment on the specific types of authority to conduct blasting operations that should be recognized as qualifying an applicant in this transition period.

Section 855.12 Training

Section 855.12(a) would require that an applicant complete within 3 years prior to applying for an OSM blaster certificate OSM or equivalent training in the subjects specified in 30 CFR 850.13(b). It also would require that the applicant include with his or her application satisfactory evidence of having completed such training. The requirement for satisfactory evidence is included to impose on the applicant the burden of proof in cases where OSM has any reason to doubt either the equivalence or completion of such training.

Section 855.12(b)(1) would require that OSM provide courses or otherwise ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. This would implement the requirement of § 850.13(b) that "[t]he regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations." Such training would include all of the subjects specified in 30 CFR 850.13(b).

Section 855.12(b)(2) would allow OSM to modify the training required of an applicant for reissuance of a certificate in a way that would reflect the training the applicant previously had received. Under this provision, OSM would be able to design the training of an applicant for recertification to eliminate duplication and to reflect any developments that might have occurred since he or she last received blaster training. Where appropriate, OSM under this provision could waive the training requirement entirely.

Section 855.13 Application and fee

Section 855.13(a) would require that any person seeking an OSM blaster certificate: (1) Complete and submit to OSM an application on a prescribed form; (2) submit with the application a nonrefundable fee; and (3) for certificate issuance, renewal or reissuance, submit the application and fee at least 60 days in advance of the desired date of examination, certificate expiration, or a combination of both.

Section 855.13(b) would require that OSM make available to any person an application form on which each applicant would be required to provide specified information regarding his or her qualifications for an OSM blaster certificate, and such additional information as OSM may require. It also would require that OSM explain on the form any differences in the information required for certificate issuance, renewal or reissuance, replacement of a lost or destroyed certificate, or a certificate through reciprocity. The form would include a statement in accordance with law that the information provided is true and accurate in the best knowledge and belief of the applicant, and would require the signature of the applicant.

OSM proposes to use a prescribed application form to simplify the application process from the standpoint of both the applicant and OSM. The form would assist the applicant in determining and providing the information required for each of the various categories of certificate. It also would assist OSM by imposing on the application process a high degree of organization, uniformity and consistency. The information specified in the rule is the minimum required by OSM to review an applicant's qualifications and process an OSM blaster certificate.

The fee schedule in § 855.13(a)(2) is proposed under the authority of section 9701 of Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701), which prior to editorial revision and recodification was section 501 (31 U.S.C. 483(a)) of the Independent Offices Appropriation Act (IOAA). Section 9701 authorizes an agency to prescribe regulations establishing the charge for a service or thing of value provided by the agency. The charge shall be fair and based on the costs to the government, the value of the thing or service to the recipient, the public policy or interest served, and other relevant facts.

The fees in § 855.13(a)(2) were derived by calculating the direct and indirect costs OSM expects to incur in the certification process. For the issuance or reissuance of a certificate, the application fee includes the cost of an examination. For renewal or replacement of a certificate, or a certificate through reciprocity, the fee includes only the cost of processing the application and certificate, since no examination is required. There would be no additional fee for a temporary certificate, the cost of which would be covered by the underlying application fee. OSM is not proposing at this time a fee for the training of blasters, but may do so after the cost of providing such training is determined.

As shown by the following table, the proposed fee for the issuance or reissuance of an OSM blaster certificate is $122. This would include the cost OSM expects to incur in the clerical processing and technical review of the application; developing, administering, renting the facility for, and grading the examination; and processing the certificate.

FEE CALCULATION FOR CERTIFICATE ISSUANCE AND REISSUANCE

Activity	Time allotted (hours/appl.)	Clerical (GS–4) (per hour)	Technical (GS–9) (per hour)	Cost/applicant
Application				
Clerical processing	2	$7		$14
Technical review	3		$11	33
Examination				
Develop	[1] 3		11	33
Administer	[2] 0.2		11	2
Facility				[3] 4
Grading	2		11	22
Certification				
Process certificate	2	7		14
Total				122

[1] 300 hours/exam/year divided by 100 applicants/exam/year.

[2] 5 hours/exam divided by 25 applicants/exam.

[3] $100/exam divided by 25 applicants/exam.

The proposed fees for certificate renewal and for a certificate through reciprocity are each $61. The fee calculation for these certificates is similar to that for issuance and reissuance, except that examination is not included. For certificate replacement the proposed fee is $28, which includes only the cost of the clerical processing of the application and certificate.

OSM has proposed the deadlines for submission of an application in § 855.13(a)(3) to provide sufficient time for administrative processing of the application and examination of the applicant. Under this provision the applicant is responsible for submitting an application in sufficient time to prevent the lapse of his or her certification, to take an examination, or to obtain a certificate by a desired date. Unless a temporary certificate is issued, a person whose certificate has expired may not conduct blasting operations until the certificate is renewed or reissued, or a new certificate is issued. Thus, failure to file a timely application may result in the lapse of a blaster's certificate, and the inability to work as a blaster. The specified periods are the minimum needed by OSM to ensure timely processing of an application and examination of the applicant. The direct consequence of a failure to comply with these minimum periods would be limited to a potential delay in certificate issuance, renewal or reissuance.

While subsequent § 855.15(e) provides that OSM may issue a temporary certificate to an applicant who demonstrates that his or her OSM blaster certificate has expired for reasons beyond his or her control, OSM has not included in the proposed rule any general provision governing the renewal or reissuance of an expired certificate. However, it is foreseeable that a certificate holder may through oversight or otherwise apply for renewal or reissuance of an already expired certificate. OSM solicits comments on how to deal with this situation, and particularly whether there should be a deadline, such as one year, following certificate expiration after which an applicant would have to meet the qualifications and follow the procedures for initial certificate issuance.

Section 855.14 Examination

Section 855.14(a) would require that an applicant for the issuance or reissuance of an OSM blaster certificate pass, and § 855.14(b) would require that OSM schedule and hold, a written and practical examination on the subjects required by 30 CFR 850.14. Section 855.14(a) would require that the applicant pass the examination after submitting his or her application to clearly indicate that passing a previous examination does not fulfill this requirement. The examination at a minimum would include an objective question test, a blasting log simulation problem, and a practical wiring simulation problem.

An applicant who desired to take a scheduled examination would be required by proposed § 855.13(a)(3) to submit his or her application to OSM at least 60 days prior to the examination date. Under proposed § 855.13(b), the applicant would specify the desired examination date in the application itself. This filing deadline would enable OSM to process the application and determine in advance the personnel and facilities necessary to meet the demand for an examination. It is expected that OSM routinely would circulate an examination schedule for the information of prospective applicants.

Section 855.14(b)(3) would authorize OSM to modify the examination given to an applicant for certificate reissuance (recertification) to reflect previous examination. Under this provision, OSM would be able to design the examination for an applicant for recertification to eliminate duplication and to reflect any developments that might have occurred since he or she last was examined. Where appropriate, this would enable OSM to waive the examination requirement entirely.

Section 855.14(c) would allow an applicant who fails an examination to apply for reexamination. However, no person could take more than 2 examinations in one 12 month period. OSM has proposed this limit to ensure that candidates for reexamination allot sufficient time to study and gain the practical experience necessary to prevent repeated examination failures. Because a significant amount of time may elapse between failure and reexamination, with corresponding changes in the information provided by the applicant, a candidate for reexamination would be required to submit an entire new application. Because the costs associated with processing the new application and conducting the reexamination would be the same as for the original application, a new fee also would be required.

Section 855.14(d) would authorize OSM to reject the application of anyone who, without good cause, fails to attend an examination after OSM has granted his or her request for admission.

Section 855.15 Certification

Section 855.15(a) would require OSM to motify an applicant for certificae issuance or reissuance: (1) Either that his or her application is timely and complete, or of any deficiency; and (2) that his or her request for admission to a scheduled examination either is granted or denied. This requirement would not apply to applications for certificate renewal or replacement, or for a certificate through reciprocity, because they would not involve the long processing times required for certificate issuance and reissuance. For the former types of certification, the grant or denial of the certificate itself by OSM would give the applicant sufficient timely notice of the status of his or her application.

Section 855.15(b) would require OSM to: (1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the required training, passes the required examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations; (2) renew one time the OSM blaster certificate of any qualified applicant; (3) replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed; or (4) issue, renew, reissue or replace an OSM blaster certificate through reciprocity as provided in subsequent § 855.16. The term "qualified applicant" is included in this section to ensure that all of the requirements of this part are taken into consideration by OSM in the certification process.

The terms for which OSM would issue, renew, reissue or replace a blaster certificate are specified by § 855.15(c). OSM would issue an initial certificate for a term to expire 3 years from the date of issuance. OSM would renew or reissue a certificate for a term to expire 3 years from the expiration date of the applicant's current certificate. This would provide for continuity of certification without penalizing an applicant who seeks early renewal or reissuance, and without extending the certification of a later applicant. A replacement certificate would expire on the same date as the applicant's lost or destroyed certificate.

A certificate issued, renewed or reissued through reciprocity would expire 60 days after the expiration date of the corresponding State certificate. The 60 day extension would avoid a potential lapse of OSM certification in the period when OSM is processing a reciprocity application. Since an applicant could seek reciprocity only after the corresponding state certificate were renewed or reissued, the OSM renewal or reissuance process would necessarily lag behind that of the State. If the State and OSM certificates expired on the same date it might not be possible to apply to OSM for renewal or reissuance before the OSM certificate expired.

Section 855.15(d) would prohibit OSM from renewing a certificate more than one time. This limitation to a single renewal is necessary to ensure that at 6 year intervals blasters receive the training and examination required to maintain and establish the competence, knowledge and experience necessary to accept responsibility for blasting operations. A blaster who held a renewed certificate and desired to maintain his or her certification would be required to apply to OSM for recertification before his or her certificate expired.

Section 855.15(e) would authorize OSM to issue a temporary OSM blaster certificate for a maximum term of 90 days to an applicant who demonstrates that his or her current certificate is about to expire for reasons beyond his or her control.

Section 855.15(f) would require that the holder of an OSM blaster certificate comply with the conditions specified in 30 CFR 850.15(d) and 850.15(e). These conditions concern protection of a certificate, exhibiting a certificate upon request, and prohibitions against the assignment or transfer of a certificate and ther delegation of a blaster's responsibility.

Section 855.16 Reciprocity

Secion 855.16(a) would allow any person who holds a current blaster certificate issued by a State regulatory authority under an OSM-approved State blaster certification program with rules not less effective than proposed Part 855 to apply to OSM for a blaster certificate through reciprocity. The State must have an approved blaster certification program, and not merely an approved State Program, since in some instances the latter might exist without the former.

Section 855.16(b) would authorize OSM to issue, renew or reissue an OSM blaster certificate to a qualified applicant for a certificate through reciprocity who demonstrates that he or she, and whom OSM finds, has a current blaster certificate issued, renewed or reissued by a State regulatory authority under an OSM-approved State certification program with rules no less effective than proposed Part 855. The requirement that the State certification program be "no less effective" is intended to encompass all of the requirements of this proposed part, and particularly those governing the frequency and content of training and examination, and the term of certification. OSM proposes to grant reciprocity to qualified applicants to avoid unnecessary duplication of the certification process, but not at the expense of compromising any of these requirements.

The application and fee procedures for a certificate through reciprocity would be as specified in § 855.13, the term and conditions of certification would be as specified in §§ 855.15(c) and 855.15(f), and suspension and revocation would be governed by § 855.17.

Where the original certificate were issued through reciprocity, § 855.16(c) would allow renewal or reissuance only through reciprocity, and only if the corresponsing State certificate were renewed or reissued by the State regulatory authority. This provision would prevent an applicant from using reciprocity as the initial step toward full OSM certification. An applicant issued an OSM certificate through reciprocity would have to continue to rely on reciprocity unless he or she applied directly for full OSM certification.

Section 855.16(d) would authorize OSM to replace the OSM blaster certificate on any qualified applicant who presented satisfactory evidence that his or her certificate issued, renewed or reissued through reciprocity was lost or destroyed.

Section 855.17 Suspension and revocation

Section 855.17(a) would authorize, or upon a finding of willful conduct of the blaster require, OSM to suspend for a definite or indefinite period, revoke, or take other necessary action on the certificate of a blaster for any of the reasons stated in 30 CFR 850.15(b). These reasons include noncompliance with any order of the regulatory authority; unlawful use in the workplace of, or current addiction to, alcohol, narcotics or other dangerous drugs; violation of any provision of State of Federal explosives laws, or regulations; and providing false information or a misrepresentation to obtain certification. OSM would be required to make the nature and duration of the suspension, revocation or other action commensurate with the cause of the action and what the blaster does to correct it. Where OSM has reliable information which demonstrates that the storage, use or transportation of explosives by a blaster is likely to threaten public safety or the environment, OSM would be required to suspend the certificate of the blaster as soon as is practicable.

Section 855.17(b) would require that, when practicable, OSM provide to the affected blaster written notice and the opportunity for an informal hearing prior to suspending, revoking or taking other action on an OSM blaster certificate. It would require OSM to limit any action taken without such notice and opportunity to a temporary suspension pending a decision on final suspension, revocation or other action after such notice and opportunity have been provided.

Section 855.17(c) would require OSM to notify the affected blaster of its final decision on his or her OSM blaster certificate, including the reason for any suspension, revocation or other action, by certified mail within 30 days after written notice and the opportunity for an informal hearing. OSM seeks public comment suggesting specific procedures that might be included in the rule to facilitate the required informal hearing process. If the affected certificate were issued through reciprocity, OSM would be required to notify the State regulatory authority of its action. A person whose OSM blaster certificate is suspended, revoked or subjected to other action would have the right to appeal the decision of OSM to the Department of the Interior Board of Land Appeals.

Section 855.17(d) would require that upon receiving notice of suspension, revocation or other action a blaster immediately surrender to OSM his or her OSM blaster certificate.

Section 855.17(e)(1) would allow a person whose OSM blaster certificate is suspended for an indefinite term to seek reinstatement by submitting to OSM evidence that the cause of the suspension has been corrected.

Section 855.17(e)(2) would allow a person whose OSM blaster certificate was revoked to apply to OSM for recertification, and would require that he or she include in the application evidence that the cause of the revocation has been corrected.

Section 855.17(f)(1) would require that OSM reinstate a suspended OSM blaster certificate when the term of a definite suspension expires, or when OSM finds that the cause of an indefinite suspension has been corrected, by returning the certificate to the blaster with notice of reinstatement.

Section 855.17(f)(2) would authorize OSM to reissue an OSM blaster certificate to an applicant whose certificate was revoked if OSM finds that the cause of the revocation has been corrected, and that the applicant meets all other applicable requirements of this part.

Section 855.17(g) would require that OSM suspend, revoke or take other action on an OSM blaster certificate issued, renewed or reissued through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in the proposed rule have been submitted to the Office of Management and Budget under 44 U.S.C. 3507. The information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The proposed changes will not have an inimical effect on the investment or productivity of United States coal operators. Employment in the coal industry will not be adversely affected since the rule would not affect coal production procedures. There also would be no deleterious effect on the ability of United States coal operators to compete with foreign coal operators in the domestic or export markets.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because the cost to an operator or a blaster for a certificate is minimal.

National Environmental Policy Act

To the extent the proposed rule would govern the certification of blasters in Federal Program States it is part of a Federal program, the promulgation of which is exempt under section 702(d) of SMCRA, 30 U.S.C. 1292(d), from compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

To the extent the proposed rule would govern the certification of blasters on Indian lands, OSM has prepared a draft environmental assessment (EA) and has made interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed previously (see "ADDRESSES"). A final EA will be completed and a final finding made on the significance of any resulting impacts prior to issuance of the final rule.

List of Subjects

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 855

Coal mining, Explosives, Indian lands, Intergovernmental relations, Safety, Surface mining, Training program, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 816 and 817, and add Part 855 as follows:

Dated: June 28, 1984.

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. The authority citation for Part 816 reads as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

2. Paragraph (c)(4) of § 816.61 is revised to read as follows:

§ 816.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any person responsible for blasting operations at a blasting site shall—

(i) Be familiar with the blasting plan and site-specific performance standards;

(ii) Have a current blaster certificate; and

(iii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 reads as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

4. Paragraph (c)(4) of § 817.61 is revised to read as follows:

§ 817.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any person responsible for blasting operations at a blasting site shall—

(i) Be familiar with the site-specific performance standards;

(ii) Have a current blaster certificate; and

(iii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

SUBCHAPTER M—TRAINING, EXAMINATION, AND CERTIFICATION OF BLASTERS

5. In Subchapter M, Part 855 is added as follows:

PART 855—CERTIFICATION OF BLASTERS IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

Sec.

855.1 Scope.
855.10 Information collection.
855.11 General requirements.
855.12 Training.
855.13 Application and fee.
855.14 Examination.
855.15 Certification.
855.16 Reciprocity.
855.17 Suspension and revocation.

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*). Sec. 855.13 also issued under sec. 9701, Pub. L. 97–258 (31 U.S.C. 9701).

§ 855.1 Scope.

This part establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands. It governs the issuance, renewal, reissuance (recertification), suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, reciprocity for a holder of a certificate issued by a State regulatory authority.

§ 855.10 Information collection.

The information collection requirements in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number ———. This information is needed to meet the requirements of sections 504, 515 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

§ 855.11 General requirements.

(a) To qualify for an OSM blaster certificate, a person shall—

(1) Be at least 18 years old;

(2) Have been qualified and worked as a blaster for at least 2 of the 3 years prior to submitting an application; or have worked under the direction of and received on-the-job training, including practical field experience in blasting operations, from a blaster for at least 2 of the 3 years prior to submitting an application;

(3) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(4) Complete blaster training as specified in § 855.12;

(5) Submit an application and pay a fee as specified in § 855.13;

(6) Pass a written and practical examination as specified in § 855.14; and

(7) Not be subject to suspension, revocation or other action under § 885.17.

(b) The specific procedures by which an applicant shall qualify for an OSM blaster certificate under paragraph (a) of this section depend on his or her current certification status. These procedures are specified in the subsequent sections of this part.

§ 855.12 Training.

(a) Within 3 years prior to applying to OSM for the issuance or reissuance of an OSM blaster certificate a person shall complete OSM or equivalent training in the subjects specified in § 850.13(b) of this chapter. An applicant shall include in his or her application satisfactory evidence of having completed such training.

(b)(1) OSM shall provide courses or otherwise ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations in all of the subjects specified in § 850.13(b) of this chapter.

(2) OSM may modify the training required of an applicant for certificate reissuance (recertification) to reflect previous training.

§ 855.13 Application and fee.

(a) Any person seeking an OSM blaster certificate shall—

(1) Complete and submit to OSM an application on the form prescribed by paragraph (b) of this section;

(2) Submit with the application a nonrefundable fee as follows—

(i) Issuance or reissuance of certificate	$122
(ii) Renewal of certificate	$61
(iii) Replacement of certificate	$28
(iv) Certificate through reciprocity	$61

; and

(3) For certificate issuance, renewal or reissuance, submit the application and fee in advance of the date of examination or certificate expiration, as follows—

(i) For certificate issuance, not less than 60 days before the date on which the applicant desires to take a scheduled examination;

(ii) For certificate renewal, not less than 60 days before the expiration date of the applicant's current certificate; or

(iii) For certificate reissuance, not less than 60 days before the date on which the applicant desires to take a scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate.

(b) OSM shall make available to any person seeking an OSM blaster certificate an application form on which each applicant shall state his or her: name; address; date of birth; Social Security number; height; weight; color of hair and eyes; highest level of education; training in the storage, use and transportation of explosives; blasting experience; employment history; blaster license and certification history; desired date of examination; date of application; and such additional information as OSM may require. OSM shall explain on the form any differences in the information required for certificate issuance, renewal or reissuance, replacement of a lost or destroyed certificate, or a certificate through reciprocity. The form shall include a statement in accordance with law that the information provided is true and accurate in the best knowledge and belief of the applicant, and shall require the signature of the applicant.

§ 855.14 Examination.

(a) After submitting his or her application, each applicant for the issuance or reissuance of an OSM blaster certificate shall pass a written and practical examination, as specified in paragraph (b) of this section.

(b)(1) On a regular basis OSM shall schedule and hold a written and practical examination on the technical aspects of blasting, and State and Federal laws governing the storage, use and transportation of explosives, as specified in § 850.14 of this chapter.

(2) The examination at a minimum shall include—

(i) An objective question test;

(ii) A blasting log simulation problem; and

(iii) A practical wiring simulation problem.

(3) OSM may modify the examination given to an applicant for certificate reissuance (recertification) to reflect previous examination.

(c) An applicant who fails an examination may apply for reexamination, but no person may take an examination more than 2 times in one 12 month period. A person who seeks reexamination shall submit a new application and fee.

(d) Except where the applicant demonstrates and OSM finds good cause, OSM may reject the pending application of anyone who fails to attend an examination after OSM has granted his or her request for admission.

§ 855.15 Certification.

(a) *Acknowledgement of application.* Upon receiving an application for certificate issuance or reissuance, OSM shall notify the applicant either that his or her application is timely and complete, or of any deficiency, and that his or her request for admission to a scheduled examination either is granted or denied.

(b) *Certificate issuance, renewal, reissuance (recertification) and replacement.* OSM shall—

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the required training, passes the required examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed; or

(4) Issue, renew, reissue or replace an OSM blaster certificate through reciprocity as provided in § 885.16.

(c) *Term of certificate.* OSM shall issue, renew, reissue or replace a blaster certificate for a term to expire as follows—

(1) Issuance of certificate—3 years from issue date;

(2) Renewal of certificate—3 years from expiration date of applicant's current certificate;

(3) Reissuance of certificate (recertification)—3 years from expiration date of applicant's current certificate;

(4) Replacement of certificate—same expiration date as applicant's lost or destroyed certificate; or

(5) Certificate through reciprocity—60 days from expiration date of corresponding State certificate.

(d) *Limit on renewal.* OSM shall not renew an OSM blaster certificate more than one time. A blaster who holds a renewed certificate and desires to extend his or her certification shall apply to OSM for recertification.

(e) *Temporary certificate.* Upon request of an applicant who demonstrates that his or her current OSM blaster certificate is about to expire, or has expired, for reasons beyond his or her control, OSM may issue a temporary OSM blaster certificate for a maximum term of 90 days.

(f) *Conditions of certification.* Any person who holds an OSM blaster certificate shall comply with the conditions specified in §§ 850.15(d) and 850.15(e) of this chapter.

§ 855.16 Reciprocity.

(a) Any person who holds a current blaster certificate issued by a State regulatory authority under an OSM-approved State certification program with rules no less effective than this part may apply for an OSM blaster certificate through reciprocity.

(b) OSM shall issue, renew or reissue an OSM blaster certificate to a qualified applicant for a certificate through reciprocity who demonstrates that he or she, and whom OSM finds, has a current blaster certificate issued, renewed or reissued by a State regulatory authority under an OSM-approved State certification program with rules no less effective than this part.

(c) A person issued a OSM blaster certificate through reciprocity may apply to OSM for renewal or reissuance, and OSM shall renew or reissue such certificate, only through reciprocity and only if the corresponding State certificate was renewed or reissued by the State regulatory authority.

(d) OSM shall replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate issued, renewed or reissued through reciprocity was lost or destroyed.

§ 855.17 Suspension and revocation.

(a)(1) OSM may, and upon a finding of willful conduct of the blaster shall, suspend for a definite or indefinite period, revoke, or take other necessary action on the certificate of a blaster for any of the reasons stated in § 850.15(b) of this chapter. OSM shall make the nature and duration of the suspension, revocation or other action commensurate with the cause of the action and what the blaster does to correct it.

(2) Where OSM has reliable information which demonstrates that the storage, use or transportation of explosives by a blaster is likely to threaten public safety or the environment, OSM shall suspend the certificate of the blaster as soon as is practicable.

(b) When practicable, OSM shall provide to the affected blaster written notice and the opportunity for an informal hearing prior to suspending, revoking or taking other action on an OSM blaster certificate. OSM shall limit any action taken without such notice and opportunity to a temporary suspension pending a decision on final suspension, revocation or other action after such notice and opportunity have been provided.

(c) By certified mail within 30 days after written notice and the opportunity for an informal hearing, OSM shall notify the affected blaster of its final decision on his or her OSM blaster certificate, including the reasons for any suspension, revocation or other action. If the affected certificate were issued through reciprocity, OSM shall notify the State regulatory authority of its action. A person whose OSM blaster certificate is suspended, revoked or subjected to other action may appeal the decision of OSM to the Department of the Interior Board of Land Appeals.

(d) Upon receiving notice of suspension, revocation or other action, a blaster immediately shall surrender to OSM his or her OSM blaster certificate.

(e) (1) A person whose OSM blaster certificate is suspended for an indefinite term may seek reinstatement by submitting to OSM evidence that the cause of the suspension has been corrected.

(2) A person whose OSM blaster certificate is revoked may apply to OSM for recertification, and shall include in his or her application evidence that the cause of the revocation has been corrected.

(f) (1) OSM shall reinstate a suspended OSM blaster certificate when the term of a definite suspension expires, or when the suspended blaster demonstrates and OSM finds that he or she has corrected the cause of an indefinite suspension, by returning the certificate to the blaster with notice of reinstatement.

(2) OSM may reissue an OSM blaster certificate to an applicant whose certificate was revoked if OSM finds that—

(i) The cause of the revocation has been corrected; and

(ii) The applicant meets all other applicable requirements of this part.

(g) OSM shall suspend, revoke or take other action on an OSM blaster certificate issued, renewed or reissued through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

[FR Doc. 84-23913 Filed 9-10-84; 8:45 am]

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September 11, 1984

Part III

Department of Justice

28 CFR Part 39

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 39

[Order No. 1065–84]

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This regulation requires that the Department of Justice operate all of its programs and activities so that qualified handicapped persons are not subjected to discrimination by the Department. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a detailed complaint mechanism for resolving allegations of discrimination against the Department of Justice. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

EFFECTIVE DATE: October 11, 1984.

ADDRESS: Comments received on the Notice of Proposed Rulemaking will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, NW., Washington, D.C. from 9:00 a.m. to 5:30 p.m. Monday through Friday, except for legal holidays until November 13, 1984.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Deputy Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530; (202) 724–2227 (Voice) or 724–7678 (TDD); or L. Irene Bowen, Supervisory Attorney, Handicap Unit, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530; (202) 724–2245 (Voice) or 724–7678 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: On December 16, 1983, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of Justice. 48 FR 55996. Shortly after the NPRM was published, the Department received a number of preliminary comments from handicapped individuals and from organizations representing handicapped individuals. The tone and nature of these comments indicated to the Department that some of the regulatory provisions of the NPRM were being misunderstood. As a result, the Department, on March 1, 1984, published a Supplementary Notice further explaining the NPRM and requesting comments on possible revisions to the original NPRM. 49 FR 7792.

By April 16, 1984, close of the comment period, the Department received 1,194 comments. Two hundred and six of these comments also addressed the supplemental notice. Over 90% of the comments that the Department received came from individuals (908), most frequently handicapped persons, and from organizations representing the interests of handicapped persons (180). The Department received comments from all fifty states, the District of Columbia, Puerto Rico, Canada, and Denmark. Most of the comments that the Department received were general in nature. The Department received 721 comments based on a form letter. This form letter, written before issuance of the Supplemental Notice, expressed dismay at the inclusion of the regulation's "undue financial and administrative burdens" language, asserted that the Department was imposing a lesser requirement on the Federal government than on recipients of Federal assistance, and requested that the regulation be withdrawn. This form letter did not contain any substantive or detailed analysis. In fact, only 55 of the 1,194 comments contained specific, detailed analysis of the Department's proposal.

The Department read and analyzed each comment. Each comment was then subdivided according to one or more of over 90 issue categories. Because comments often addressed, even in general terms, more than one issue, the 1,194 comments were translated into 4,256 issue-specific comments. The decisions that the Department made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, N.W., Washington, D.C. from 9:00 a.m. to 5:30 p.m., Monday through Friday, except for legal holidays, until November 13, 1984.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Department has today submitted this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on October 11, 1984.

This rule applies to all programs and activities conducted by the Department of Justice. Thus, this rule regulates the activities of over 30 separate subunits in the Department, including, for example, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, Federal Prison Industries, and the United States Attorneys.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Justice (DOJ). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1984) *id.*, 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

Nine hundred and two comments that the Department received agreed that the obligations of section 504 for federally conducted programs should be identical to those developed by the Federal agencies over the past seven years for federally assisted programs. These commenters, however, objected to any language differences between the Department's proposed rule for federally conducted programs and the Department's section 504 coordination regulation for federally assisted programs (28 CFR Part 41). The commenters asserted that a number of language differences that the Department had proposed created less stringent standards for the Federal government than those applied to recipients of Federal assistance under section 504. They wrote that such a result could not be justified by Executive Order 12250, by the wording of the statute itself, nor by the legislative history of the 1978 amendments.

The commenters appear to have misunderstood the basis for inclusion of the new language in the DOJ regulation. The changes in this regulation are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

Some commenters questioned the use of *Davis* as justification for the inclusion of the new provisions in the federally conducted regulation. They noted that the Department had not included these changes when, subsequent to the *Davis* decision, it issued a regulation implementing section 504 in programs receiving Federal financial assistance from this Department. The Department's section 504 federally assisted regulation, however, was issued prior to the D.C. circuit's decision in *APTA*. In *APTA*, the Department had argued a position similar to that advocated by the commenters. Judge Abner Mikva's decision in *APTA* clearly rejected the Department's position in that case. Other circuit court decisions followed the *APTA* interpretation of *Davis*. Since these decisions, the Department has interpreted its section 504 regulation for federally assisted programs in a manner consistent with the language of this final rule. The Department believes that judicial interpretation of section 504 compels it to incorporate the new language in the federally conducted regulation.

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal government's section 504 federally assisted regulations. Because many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis* and its progeny, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Department believes that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis and Response To Comments

Section 39.101 Purpose

Section 39.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

The Department received no comments on this section and it remains unchanged from the Department's proposed rule.

Section 39.102 Application

The regulation applies to all programs or activities conducted by the Department of Justice. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the Department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Department's facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system). No comments were received on this section.

Section 39.103 Definitions

The Department received 469 comments on the definitions section. Most of the comment, however, concentrated on the definition of "qualified handicapped persons."

"Agency" is defined as the Department of Justice.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § 39.160(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § 39.170(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted.

Twenty commenters on the NPRM objected to the omission of the phrase "or interest in such property" from the definition of "facility." As explained in the Supplemental Notice, the term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. Sixty commenters supported the clarification of this issue in the Supplemental Notice.

"Handicapped person." The definition of "handicapped person" has been revised to make it identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). In its NPRM, the Department omitted the list of physical or mental impairments included in the definition of "handicapped persons." The Department received 19 negative comments on this omission, and, in the Supplemental Notice, requested comments on whether it should be re-inserted. On the basis of the comments received, we have included the list in the final rule.

"Qualified handicapped person" The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) of the definition states that a "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment is a handicapped person who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis*, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

The Department incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Two hundred and forty-four commenters objected to this revised definition for a veriety of reasons. Several commenters stated that the Department incorrectly used *Davis* as the justification for explaining the differences between the federally assisted and the federally conducted regulations because the Supreme Court upheld the validity of the existing regulations in *Consolidated Rail Corp.* v. *Darrone,* 104 S. Ct. 1248 (1984). This view misunderstands the Court's actions in *Darrone.* In that case the Court ruled on a series of issues, the most important of which was under what circumstances section 504 applied to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified handicapped person" or whether section 504 included limitations based on "undue financial and administrative burdens."

Many commenters stated that the proposal would change the difinition of qualified handicapped person for employment. "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 39.140. Nothing in this part changes existing regulations applicable to employment.

Many commenters assumed that the definition would have the effect of placing on the handicapped person the burden of proving that he or she is qualified. The definition has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§39.150(a)(2) and 39.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

Some commenters said that the definition of "qualified handicapped person" places handicapped persons in a "Catch-22" situation: because only qualified handicapped persons are protected by the statute, a determination that a person is not qualified would make enforcement remedies unavailable to that person. This concern is misplaced. If the Department determined that a handicapped person was not "qualified," the person could use the procedures established by § 39.170 to challenge that determination, just as he or she could challenge any other decision by the agency that he or she believed to be discriminatory.

Many commenters argued that the definition of "qualified handicapped person" confused what should be two separate inquiries: whether a person meets essential eligibility requirements and, if so, whether accommodation is required. They argued that the reference to "fundamental alteration" in the definition focuses attention on accommodations rather than on a handicapped person's abilities. As another commenter noted, however, the Supreme Court in *Davis* developed the "fundamental alteration" language in a decision that was determining the nature and scope of what constitutes a qualified handicapped person. The Department continues to believe that the concept of "qualified handicapped person" properly encompasses both the notion of "essential eligibility requirements" and the notion of program modifications that might fundamentally alter a program.

Some commenters argued that our analysis of *Davis* was inappropriate because *Davis* was decided on the basis of individual facts unique to that case or because *Davis* involved federally assisted and not federally conducted programs. While cases are decided on the basis of specific factual situations, courts, especially the Supreme Court, develop general principles of law for use in analyzing facts. The *Davis* decision was the Supreme Court's first comprehensive view of section 504, a major new civil rights statute. The *Davis* holding, that a person who cannot achieve the purpose of a program without fundamental changes in its nature is not a "qualified handicapped person," is a general principle, a statement by the Court on how it views section 504. It is therefore necessary to reflect it in the Department's regulation.

Subparagraph (2) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this part of the definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 39.110 Self-evaluation

This section requires that the agency conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

In response to preliminary comments that the proposed rule had no specific criteria for conducting a self-evaluation, we requested comment on a proposed alternative in our Supplemental Notice (49 FR 7792). We received 64 comments, 57 of which were positive. The comments generally favored adoption of the alternative section, instead of the proposed section. We agree.

With respect to the applicability of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) (FACA), several comments were received. They argued that the FACA is not intended to apply to meetings with a self-evaluation group comprised of private individuals because they are rather unstructured, ad hoc meetings.

Authority for interpreting FACA was delegated to the General Services Administration (GSA) by Executive Order 12024 in 1977. Regulations issued by GSA place specific limitations on the scope of the Act by delineating examples of meetings or groups *not* covered. 41 CFR Part 101–6. GSA identified a major issue in the promulgation of the regulations to be the extent of applicability of the Act

> Some commenters believe, as a matter of general policy, that advisory groups which are not formally structured, which do not have a continuing existence, which meet to deal with specific issues, and whose meetings do not constitute an established pattern of conduct should not be covered under the Act. * * * This rule reflects our judgment that the exclusion of certain non-recurring meetings from the Act's coverage is fully consistent with the statute, its legislative history, and judicial interpretation. * * * The interim rule provides guidance for those meetings between Federal officials and non-Federal individuals which do not fall within the scope of the Act, and for which a charter and consultation with GSA is not required.
>
> 48 FR 19324 (Preamble to interim rules).

The regulations define "advisory committee" in pertinent part as:

> Any committee, board, commission, council, conference, panel, task force or other similar group * * * established by * * * or *utilized by* * * * any agency official *for the purpose of obtaining advice or recommendations on issues or policy* which are within the scope of his or her responsibilities.
>
> 41 CFR 101–6. 1003 (emphasis added).

In turn, "utilized" is defined in pertinent part as a

> group * * * which * * * agency official(s) *adopts*, such as through institutional arrangements, *as a preferred source from which to obtain advice or recommendations on a specific issue* or policy within the scope of his or her responsibilities *in the same manner* as that *individual would obtain advice or recommendations from an established advisory committee.*
>
> 41 CFR 101–6.1003 (emphasis added).

The GSA regulation further provides that the Act does not apply to

> (g) Any meeting initiated by the President or one or more Federal official [sic] for the purpose of obtaining advice or recommendations from one individual;
>
> (h) Except with respect to established advisory committees:
>
> (1) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information; or
>
> (2) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;
>
> * * * * *
>
> (j) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations.
>
> 41 CFR 101–6.1004 (g), (h), and (j).

This final rule provides that the agency shall provide an opportunity for interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

Section 39.111 Notice

The Department received negative comments on its omission of a paragraph routinely used in section 504 regulations for federally assisted programs requiring recipients to inform interested persons of their rights under section 504. In the Department's Supplemental Notice, we requested comments on inclusion of specific regulatory language. Fifty-four positive comments were received. As a result, the Department has incorporated that new provision on notice into the final rule. It appears as § 39.111.

Section 39.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 of this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 39.111 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § 39.160(d)) that the agency provide handicapped persons with information concerning their rights. Because § 39.111 encompasses the requirements of proposed § 39.160(d), that latter paragraph has been deleted as duplicative.

Section 39.130 General prohibitions against discrimination

Section 39.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 39.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 39.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligiblity requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 39.149–39.151) and communications (§ 39.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, subparagraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § 39.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Subparagraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 39.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate in an impermissible manner against the employment of qualified handicapped persons.

Subparagraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of its operations.

Twenty-three commenters argued that the regulation should extend to the activities of licensees or certified entities, citing *Community Television of Southern California* v. *Gottfried*, 103 S. Ct. 885 (1983). In that case, the Court held that section 504 as applied to federally assisted programs did not require the Federal Communications Commission to prohibit discrimination on the basis of handicap by licensed broadcasters, but that "the policies underlying the Communications Act" might authorize the Commission to issue a regulation governing such discrimination. The Court did not, however, indicate that section 504 itself could serve as the source of such regulatory authority.

The Court has held that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather the words take meaning from the purposes of the regulatory legislation." *National Association for the Advancement of Colored People* v. *Federal Power Commission*, 425 U.S. 662, 669 (1976). In our view, section 504 does not of itself extend an agency's regulatory authority to the activities of licensees or certified entities. Where an agency has existing regulatory authority that is broad enough to enable it to establish a nondiscrimination requirement for its licensees or certified entities, section 504 may support the exercise of that authority. Because the Department of Justice has no such underlying authority, it cannot prohibit discrimination by licensees.

Twenty-two commenters objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Section 39.140 Employment

Section 39.140 prohibits discrimination on the basis of handicap in employment by the agency. Comments on proposed § 39.140 identified two types of problems. First, several commenters felt that the rule's treatment of employment was not sufficiently comprehensive. They pointed out that the rule does not enumerate the employment practices covered (*e.g.*, hiring, promotion, assignment); it does not say what must be done to avoid or correct possible discrimination (*e.g.*, reasonable accommodation, review of preemployment tests, limitations on preemployment inquiries and the use of medical examinations); nor does it define a "qualified handicapped person" with respect to employment.

Second, one commenter objected to the rule's adoption of "the definitions, requirements and procedures of section 501 of the Rehabilitation Act" as established in rules of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. This commenter argued that EEOC's rules on physical examinations were too restrictive and claimed that the proposed rule did not limit employment coverage to the program conducted by the Federal government in a manner similar to the "program or activity" limitation on coverage of programs receiving Federal financial assistance. Finally, the commenter asserted that reliance on section 501 was misplaced because that section of the Rehabilitation Act requires affirmative action whereas section 504, which the rule implements, contains only a nondiscrimination requirement.

The original notice of proposed rulemaking explained that the regulation is in accord with *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981), which held that Congress intended section 504 to cover the employment practices of Executive agencies. In *Prewitt*, the court also held that, in order to give effect to sections 501 and 504, both of which cover Federal employment, the administrative procedures of section 501 must be followed. Accordingly, the proposed rule adopted the definitions, requirements and procedures of section 501 as established in EEOC's rules.

The final rule has not been changed. The Department intends to avoid duplicative, competing or conflicting standards under the Rehabilitation Act with respect to Federal employment. While the rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, reference to the Government-wide rules of the Equal Employment Opportunity Commission is sufficient and avoids duplication. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 39.149 Program accessibility: Discrimination prohibited

The proposed regulation did not contain a general statement of the program accessibility requirement similar to that appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.56). The decision not to include this language in the proposed regulation created the misperception that a change in substance was intended. In order to remedy this misunderstanding, the Supplemental Notice requested comments on explicitly including it. Sixty-two commenters favored inclusion of the specific regulatory language that was published in the Supplemental Notice. Consequently, the final rule has been revised to include the language of the Supplemental Notice. The language appears at § 39.149.

Section 39.150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 39.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 39.150(a)(1)). However, § 39.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 39.150(a)(2)). This provision provoked 959 comments, the largest number received on any single issue. Most commenters sought the deletion of the "undue financial and administrative burdens" language from the regulation. On the basis of preliminary comments on this paragraph, the Department published clarifying language in its Supplemental Notice. The final version includes that clarification.

The "undue financial and administrative burdens" language (found at §§ 39.150(a)(2) and 39.160(d)) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis,* circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis, supra* (APTA). In *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation (DOT). The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of subparagraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that, in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Many commenters argued that the Supreme Court's decision in *Davis* did not require inclusion of an undue burdens defense in this regulation. These commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. These commenters overlook the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico,* 678 F.2d 847 (10th Cir. 1982).

Many commenters argued that inclusion of the undue burdens defense was inconsistent with the position taken by Vice President Bush in his letter of March 21, 1983, in which he announced the Administration's decision not to revise the coordination regulation for federally assisted programs. The decision to include the undue burdens defense represents no contradiction with the position taken by Vice President Bush on the guidelines for federally assisted programs. In his letter the Vice President stated that "extensive change of the existing 504 coordination regulations was not required, and that with respect to those few areas where clarification might be desirable, the courts are currently providing useful guidance and can be expected to continue to do so in the future." One element of that "useful guidance" obviously comes from interpretations of the *Davis* decision by the lower Federal courts.

The Department has carefully considered the comments on the process that the Department should follow in determining whether a program modification would result in undue financial and administrative burdens. The Department intends to be guided by six principles in its application of the "fundamental alteration" and "undue financial and administrative burdens" language.

First, because of the extensive resources and capabilities that could properly be drawn upon for section 504 purposes by a large Federal agency like the Department of Justice, the Department explicitly acknowledges that, in most cases, making a Department program accessible will likely not result in undue burdens. Second, the burden of proving that the accommodation request will result in a fundamental alteration or undue burdens has been placed squarely on the Department of Justice, not on the handicapped person. Third, in determining whether financial and administrative burdens are undue, the Department is to consider all Department resources available for use in the funding and operation of the conducted program. Fourth, the "fundamental alteration"/"undue burdens" decision is to be made by the Attorney General or his designee and must be accompanied by a written statement of reasons for reaching such a conclusion. Fifth, if a disabled person disagrees with the Attorney General's finding, he or she can file a complaint under the complaint procedures established by the final regulation. A significant feature of this complaint adjudication procedure is the availability of a hearing before an independent administrative law judge under the due process protections of the Administrative Procedure Act. Sixth and finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Department must still take action, short of that outer limit, that will open participation in the Department's program to disabled persons to the fullest extent possible.

One hundred and eighty-one commenters on the Supplemental Notice objected to the provision that the "undue burdens" decision would be based on consideration of "all agency resources available for use in the funding and operation of the conducted program," arguing that it should be based on the resources of the agency as a whole. Some argued that this formulation was required because all agency resources come from taxpayer monies and should not be used to support discrimination.

The Department's entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Many parts of the Department's budget are earmarked for specific purposes and are simply not available for use in making the Department's programs accessible to disabled persons. For example, funds for the operation of the Bureau of Prisons are unavailable for defraying the cost of a sign language interpreter at a deportation hearing conducted by the Immigration and Naturalization Service. There are extensive resources available to the Department and it is expected that the Department will, only on very rare occasions, be faced with "undue burdens" in meeting the program accessibility or communications sections of the regulation.

One commenter said that the term "undue hardship" used in regulations for federally assisted programs is more specific and less discriminatory than the term "undue burdens." The term "undue hardship" is a term of art used in connection with employment. The term "undue burdens" is taken from the Supreme Court's opinion in *Davis* and is appropriately included in this regulation.

Some commenters argued that section 504 creates an absolute right to access, and that cost cannot limit this right, although it may be a factor in determining timeframes for compliance. Section 504 does not create an absolute right to access. The Supreme Court stated in *Davis* that recipients need not undertake modifications to their programs to meet the requirements of section 504 that would result in "undue financial and administrative burdens." This understanding of section 504 and its implementing regulations for federally assisted programs is shared by the lower Federal courts, which have routinely applied the "undue burdens" limitation to accessibility issues. Congress suggested no different interpretation of section 504 when applying it to federally conducted programs. Spreading the cost of compliance over a period of time is, however, one way of avoiding undue financial and administrative burdens, and the Department will consider that as an option whenever it considers asserting that defense.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 39.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 39.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 39.150.

A commenter has recommended that the regulation should require that buildings leased after the effective date of the regulation should meet the new construction standards of § 39.151, rather than the program accessibility standard for existing facilities in § 39.150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Department believes the same program accessibility standard should apply to both owned and leased existing buildings.

Section 39.160 Communications

Section 39.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps include procedures for determining when auxiliary aids are necessary under § 39.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 39.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 39.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 39.150(a)(2)). Unless not required by § 39.160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids when several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency, *e.g.*, INS deportation proceedings. Auxiliary aids in these proceedings must be afforded where they are necessary to ensure effective communication at the proceedings. When sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 39.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Some commenters suggested that the Department's language in § 39.160(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use or study be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of the federal programs and those that are not and which parallels the requirements of the Federal government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Several comments suggested that the definition of auxiliary aids should include attendant services that may be needed to aid disabled persons to travel to meetings. Other comments recommended that in some cases attendant services may be an appropriate auxiliary aid to achieve program accessiblity.

The Department has not adopted the approach recommended by these comments.To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense. For example, the services of a sign language interpreter make a workshop as available to any deaf participant as it is to other participants. The need for services of interpreters arises directly out of the presentation of information in a form that can be understood by hearing persons. However, the Department views the services of an attendant for a disabled person as generally personal in nature and not directly related to the federally conducted program.

A different conclusion, however, might be reached for Federal employees or other persons traveling for the agency. Where a disabled person who is unable to travel without an attendant is required to perform official travel, the travel expenses of an attendant, including per diem and transportation expenses, may be paid by the Department. See 5 U.S.C. 3102(d) (1982).

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 39.170 Compliance procedures

Section 39.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in the Department of Justice's programs and activities. The 1978 amendments to section 504 failed to provide a specific statutory remedy for violations of section 504 in federally conducted programs. The amendment's legislative history suggesting parallelism between section 504 for federally conducted and federally assisted programs is unhelpful in this area because the fund termination mechanism used in section 504 federally assisted regulations depends on the legal relationship between a Federal funding agency and the recipients to which the Federal funding is extended. The Department has decided that the most effective and appropriate manner in which to enforce section 504 in the federally conducted area is through an equitable complaint resolution process. Section 39.170 establishes this process.

The complaint process in the final rule is substantially the same as the one that the Department proposed. The Department received 57 comments on this section. These comments did not question the use of a complaint-responsive enforcement scheme as appropriate for section 504 for federally conducted programs. The Department continues to view its specific proposal as satisfactory.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) vests in the Responsible Official the responsibility for the overall management of the 504 compliance program. "Responsible Official" or "Official," as defined in § 39.103, refers to the Director of Equal Employment Opportunity, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 39.170. The definition of "Official" includes other Department Officials to whom authority has been delegated by the Official. The Assistant Attorney General for Administration has been designated as the Director of Equal Employment Opportunity for the Department. *See* 28 CFR 42.2(a).

Although one person has responsibility both for administering the Equal Employment Opportunity Program for the Department and for coordinating implementation of the compliance procedures under this part, the procedures for carrying out these two responsibilities are different. The Official would follow the procedures for enforcing equal employment opportunity, as set forth in 29 CFR Part 1613, only for complaints alleging employment discrimination (see § 39.170(b)). Other complaints would be processed under the procedures in § 39.170. Authority for processing complaints of employment discrimination has been delegated to Equal Employment Opportunity Officers in some Department components, and it is expected that authority for enforcing this part will be similarly delegated.

Subparagraphs (d) (1) and (3) provide that any person who believes that he or she has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The Official may extend the time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) the complainant could not reasonably be expected to know of the act or event said to be discriminatory.

Several commenters argued that the proposed rule unnecessarily restricted the right to file a complaint by not allowing an individual victim of discrimination to authorize a representative to file on his or her behalf. The final rule permits filing by the authorized representative of an individual victim, or, in the case of class discrimination, of a member of the class, as well as by an individual victim or class member. The final rule has been revised to make it clear that complaints alleging that a specific class of persons has been discriminated against may only be filed by a member of that specific class or by a representative authorized to file the complaint by a member of that class (§ 39.170(d)(1)).

The Federal Bureau of Prisons has established an Administrative Remedy Procedure for handling grievances of inmates of Federal penal institutions (28 CFR Part 542). This procedure allows an inmate to file a formal written complaint with the Warden of the Institution or with the Regional Director. While these remedies are not a substitute for the right to an independent investigation by a civil rights office and appeal to the Complaint Adjudication Officer, the final rule requires inmates to exhaust these procedural remedies before filing a complaint with the Official. The time period for filing a complaint with the Official would be extended by the time spent exhausting these remedies. This requirement applies only to inmates and does not extend to visitors and employees.

The Department received several comments on how prisoners' complaints should be handled. Some of them suggested that both the discrimination procedure and the prison grievance procedures should be invoked simultaneously. The Department believes that this proposal would require the unnecessary duplication of efforts without materially enhancing results. The Bureau of Prisons reported that thousands of inmate complaints were filed in 1983 alone and that several court decisions have held that the inmate administrative remedy procedure must be exhausted before suit can be filed. Although the volume of complaints by prison inmates might be burdensome, it is not possible now to forecast the number that will be filed. The Department believes, however, that handicapped prisoners must be afforded the right to have their complaints investigated by an office that specializes in discrimination complaints, including section 504 complaints, as well as the right to appeal to the Complaint Adjudication Officer. It is expected that the requirement that inmates first exhaust prison administrative remedies will be effective in resolving most meritorious complaints. It may be necessary, of course, for the Department to provide additional resources to handle complaints filed under the new regulation.

Subparagraph (d)(2) requires that the name and identity of a complainant be held in confidence unless he or she waives that right in writing and except to the extent necessary for compliance purposes.

Complaints may be mailed or delivered to the Attorney General, the Responsible Official, or other agency officials. Complaints received by any agency official other than the Responsible Official must be forwarded immediately to the Responsible Official (subparagraph (d)(4)).

Paragraph (e) requires the agency to send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

The Official is required to accept all complete complaints over which the agency has jurisdiction (§ 39.170(f)(1)). If the Official determines that the agency does not have jurisdiction over a complaint, the Official shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 39.170(f)(3)).

If a complaint is not complete when it is filed, the Official must notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of subparagraph (d)(3), but the timeframes governing the Official's other obligations to process the complaint (*see, e.g.*, § 39.170(g)(1), § 39.170(h)) do not begin to operate until the Official receives a complete complaint.

Within 180 days of receipt of the complete complaint, the Official is to investigate the complaint, attempt an informal resolution, and, if informal resolution is not achieved, issue a letter of findings (§ 39.170(h)). Within the time limit, the Official should make every effort to achieve informal resolution whenever possible.

In response to a suggestion from a commenter, the Department no longer refers to the letter of findings as "preliminary." The word "preliminary" has been deleted because, if there is no appeal, the determination made in the letter of findings will constitute the final agency decision.

Paragraph (h) requires that the Official's letter be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if discrimination is found, and notice of the right to appeal. The regulation provides that a party may appeal the Official's letter or findings to the Complaint Adjudication Officer (CAO). If neither party files an appeal from the letter of findings within 30 days after receipt of the letter, the letter will constitute the final decision of the agency (§ 39.170(i)(4)).

The Department's final rule provides an opportunity for a hearing before an administrative law judge (ALJ). The ALJ would make a recommended decision to the CAO, who would make the final agency decision. The purpose of the hearing is to provide a forum in which the complainant or respondent can have an opportunity to be heard, confront witnesses, and present evidence so that an administrative law judge can issue a recommended decision that is well-reasoned and justified on the basis of the evidence presented.

The opportunity for a hearing before an ALJ assures more impartiality and the appearance of more impartiality than a decision made by one agency official concerning other officials of the same agency. The Department expects that agency decisions based on a hearing record would more likely survive later judicial review.

Under the regulation, another person or organization would be allowed to participate as a third party or amicus curiae if the ALJ determines that the petitioner has a legitimate interest in the proceedings, that participation will not duly delay the outcome, and that petitioner's participation may contribute materially to the disposition of the proceedings.

The Department received comments on the proposed opportunity for a hearing before an administrative law judge. Some commenters were primarily concerned that by invoking a hearing before the ALJ with the procedural safeguards adopted from the Administrative Procedure Act (APA) (5 U.S.C. 554–557), the complainant would lose the right to a *de novo* review of the agency's final decision, because the APA allows a Federal court only to determine if the agency's final decisions are "arbitrary and capricious" (5 U.S.C. 706(2)(A)). It is beyond our jurisdiction to specify that a *de novo* review is available to complaints seeking judicial review of final agency decisions. This issue is for the courts to decide. That is also true for the issue of the availability of a private right of action, either without invoking our compliance procedures or after the issuance of letters of findings.

Given the inherent conflicts of interest in situations where complaints allege discrimination on the part of the Department, it is critically important to ensure that a complaint be reviewed in a fair, independent process. The availability of a hearing before an independent ALJ would provide the appearance as well as the actuality of an impartial compliance mechanism. The Department has therefore included the provision for a hearing in the final regulation.

One comment requested the addition of a provision whereby the Department would award attorneys fees to complainants. Another comment suggested that the Equal Access to Justice Act (5 U.S.C. 504) might provide for the award of fees. Nothing contained in title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment. Nor does the EAJA and the Department's implementing regulations at 28 CFR Part 24 provide for such awards in hearings conducted under § 39.170(k). We have therefore included no attorneys fee provision in the current regulations.

Under paragraph (1), the CAO renders a final agency decision after appeal without a hearing or after a hearing. The CAO directs appropriate remedial action if discrimination is found. The CAO's decision will involve reviewing the entire file, including the investigation report, letter of findings, and, if a hearing was held, the hearing record and recommended decision of the administrative law judge. The decision shall be made within 60 days of receipt of the complaint file or the hearing record.

One commenter objected to the requirement in subparagraph (l)(1) that the CAO explain specifically a decision to reject or modify the ALJ's proposed findings, arguing that it would inappropriately limit the CAO's consideration of the issues. We have adopted the suggestion and eliminated the requirement.

In response to recommendations from the Department's CAO and the Drug Enforcement Administration's ALJ, some changes have been made in the compliance procedures. Among the changes are a new requirement that the ALJ provide findings to all parties, not just the CAO, an added provision for filing exceptions to an ALJ's recommended decision, a delineation of the authorities of the ALJ, and a clarification of the responsibility for supervising compliance with the final agency decision between the Responsible Official and the CAO.

The Department also received some comments on the appropriateness of providing for an appeal by either the complainant or respondent. Some commenters objected to allowing a respondent to obtain an administrative appeal because it could delay remedying discrimination. On the other hand, an impartial adjudicatory mechanism would require that opportunity is provided for both sides to appeal. For this reason, the Department finds it necessary and appropriate for both complainant and respondent to have the right to an administrative appeal.

List of Subjects in 28 CFR Part 39

Blind, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and for the reasons set forth in the preamble, Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

Part 39 is added to 28 CFR Chapter I to read as follows:

PART 39—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE

Sec.

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39.171–39.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 39.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 39.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 39.103 Definitions.

For purposes of this part, the term—

"Agency" means the Department of Justice.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complaint Adjudication Officer" means the Complaint Adjudication Officer appointed by the Assistant Attorney General for Civil Rights.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitorurinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or

has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Official" or "Responsible Official" means the Director of Equal Employment Opportunity of the Department of Justice or his or her designee.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Respondent" means the organizational unit in which a complainant alleges that discrimination occurred.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 39.104-39.109 [Reserved]

§ 39.110 Self-evaluation.

(a) The agency shall, by October 11, 1985, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until October 11, 1987, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 39.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the Attorney General finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 39.112-39.129 [Reserved]

§ 39.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activites in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 39.131–39.139 [Reserved]

§ 39.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 39.141–39.148 [Reserved]

§ 39.149 Program accessibility: Discrimination prohibited.

Except as othewise provided in § 39.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 39.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration on such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, at the time identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 39.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101.19–600 to 101.19–607, apply to buildings covered by this section.

§§ 39.152–39.159 [Reserved]

§ 39.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 39.161–39.169 [Reserved]

§ 39.170 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) *Employment complaints.* The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Responsible Official.* The Responsible Official shall coordinate implementation of this section.

(d) *Filing a complaint.* (1) *Who may file.* (i) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(ii) Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 CFR Part 542.

(2) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except that complaints by inmates of Federal penal institutions shall be filed within 180 days of the final administrative decision of the Bureau of Prisons under 28 CFR Part 542. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this subparagraph, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(4) *How to file.* Complaints may be delivered or mailed to the Attorney General, the Responsible Official, or agency officials. Complaints should be sent to the Director for Equal Employment Opportunity, U.S. Department of Justice, 10th and Pennsylvania Avenue, N.W., Room 1232, Washington, D.C. 20530. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

(e) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–5157), or section 502 of the Rehabilitation Act, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons. The agency shall delete the identity of the complainant from the copy of the complaint.

(f) *Acceptance of complaint.* (1) The Official shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Official receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(3) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(g) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings.

(2) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and respondent with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(h) *Letter of findings.* If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested, containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right of the complainant and respondent to appeal

to the Complaint Adjudication Officer; and

(4) A notice of the right of the complainant and respondent to request a hearing.

(i) *Filing an appeal.* (1) Notice of appeals to the Complaint Adjudication Officer, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt from the Official of the letter required by paragraph (h) of this section.

(2) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for hearing within the time limit specified in paragraph (i)(1) of this section or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(3) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Complaint Adjudication Officer.

(4) If neither party files an appeal within the time prescribed in paragraph (i)(1) of this section, the Responsible Official shall certify that the letter of findings is the final agency decision on the complaint at the expiration of that time.

(j) *Acceptance of appeal.* The Responsible Official shall accept and process any timely appeal. A party may appeal to the Complaint Adjudication Officer from a decision of the Official that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Official.

(k) *Hearing.* (1) Upon a timely request for a hearing, the Responsible Official shall appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The administrative law judge may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(3) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(i) Arrange and change the date, time, and place of hearings and prehearing conferences and issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing.

(iii) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties.

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551–559).

(4) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge whenever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(5) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Persons employed by the agency, shall, upon request to the agency by the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing shall, at the request of the administrative law judge and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(v) The respondent shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(6) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Complaint Adjudication Officer within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Complaint Adjudication Officer.

(7) Within 15 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the decision with the Complaint Adjudication Officer. Thereafter, each party will have ten days to file reply exceptions with the Officer.

(l) *Decision.* (1) The Complaint Adjudication Officer shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investigative record pursuant to § 39.170(i)(2)(ii) or after the period for filing exceptions ends, whichever is applicable. If the Complaint Adjudication Officer determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Complaint Adjudication Officer shall have 60 days from receipt of the additional information to render the decision on the appeal. The Complaint Adjudication Officer shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Complaint Adjudication Officer shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The Complaint Adjudication Officer may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not yet been taken; and

(iii) The steps being taken to ensure full compliance.

The Complaint Adjudication Officer may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision, or for specific adjudicatory decisions arising out of implementation.

§§ 39.171–999 [Reserved]

Dated: September 5, 1984.

William French Smith,

Attorney General.

[FR Doc. 84-24003 Filed 9-10-84; 8:45 am]

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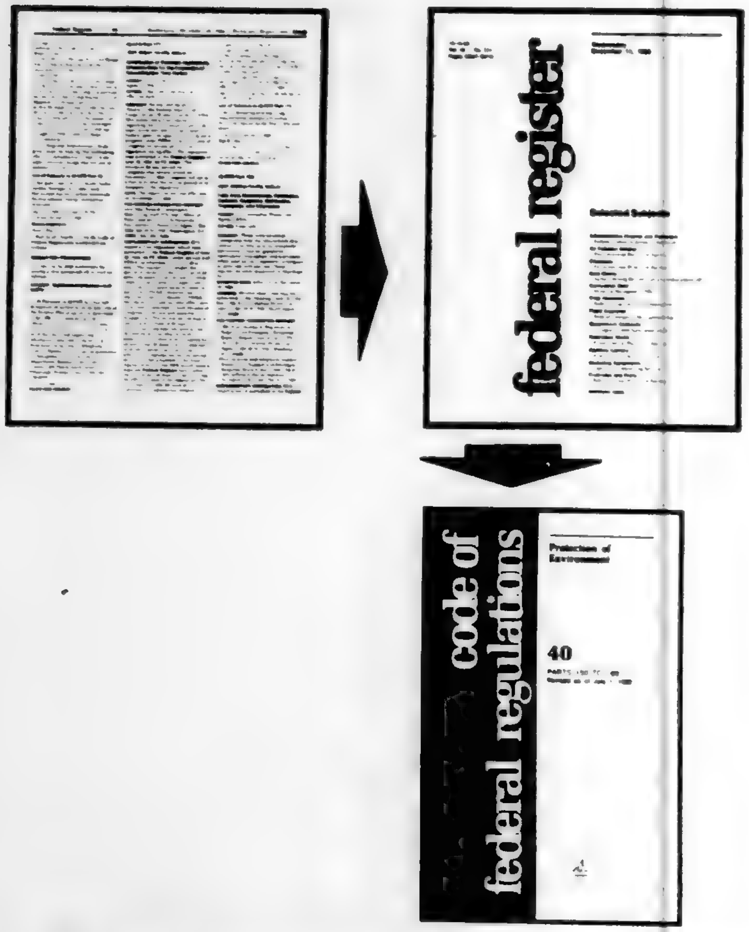

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9-12-84
Vol. 49 No. 178
Pages 35741-35926

federal register

Wednesday
September 12, 1984

Selected Subjects

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Nuclear Regulatory Commission

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Credit
Federal Reserve System

Electric Utilities
Rural Electrification Administration

Exports
International Trade Administration

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Labor Department

Reporting and Recordkeeping Requirements
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Presidential Documents

Title 3—

The President

Proclamation 5232 of September 10, 1984

National Hispanic Heritage Week, 1984

By the President of the United States of America

A Proclamation

One of the greatest strengths of our Nation is the rich mixture of people from various cultural backgrounds, and few groups have contributed more to our Nation than Americans of Hispanic heritage. In many communities across the land, Hispanics are a vital element in fostering America's achievements in the arts and industry, in agriculture and education, in religion and business, in science and politics, and in every other aspect of American life.

Hispanic Americans were among the first settlers in the New World, some arriving in America long before the United States became an independent Nation. They came in search of a better life for themselves and their children, and they have helped to create a richer life for all of us.

In our international relations, Hispanic Americans also contribute to our Nation's identity—our own perception of who we are and our role in the world, as well as others' perception of us. The strong family and cultural ties which bind Hispanics in the United States with our nearest neighbors are an important element of the strength of the Western Hemisphere. The freedom of our neighbors is our freedom. Their security is our security. We Americans seek economic progress and justice for mutual benefit throughout the hemisphere, and we look to Americans of Hispanic heritage for leadership as we work together toward these goals.

In recognition of the many achievements of the Hispanic American Community, the Congress, by Joint Resolution approved September 17, 1968, (Public Law 90–498), authorized and requested the President to issue annually a proclamation designating the week which includes September 15 and 16 as National Hispanic Heritage Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 10, 1984, as National Hispanic Heritage Week, in recognition of the Hispanic individuals, families, and communities that enrich our national life. I call upon the people of the United States, especially the educational community, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84–24330
Filed 9–11–84; 10:31 am]
Billing code 3195–01–M

Editorial Note: For the President's remarks of Sept. 10, 1984, on signing Proclamation 5232, see the *Weekly Compilation of Presidential Documents* (vol. 20, no. 37).

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Revision to the U.S. Standards for Corn, U.S. Standards for Sorghum, and U.S. Standards for Soybeans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is deleting moisture content as a grade-determining factor in the U.S. Standards for Corn, Sorghum, and Soybeans. The moisture content of corn, sorghum, and soybeans will continue to be shown on all official certificates as required by regulations under the U.S. Grain Standards Act (the Act). This would provide consistency among standards; treat moisture content as a condition of grain rather than a fixed measure of quality; and recognize current trade practices. Minor non-substantive changes are made for clarity and uniformity.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. The action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most potential users of corn, sorghum, and soybean inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Effective Date

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)) (the Act) no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. It is desirable that the revision become effective to coincide with the beginning of the 1985 crop year to facilitate domestic and export marketing. The waiting period is deemed necessary for all interested parties to prepare for implementation of the revised standards and would provide adequate time for the industry to make necessary marketing changes involving existing contracts and other documents. Secondly, the September 1, 1984 effective date considered in the proposal will not be adopted; instead, the revised standards will become effective September 9, 1985.

Final Action

In the current U.S. Standards for Corn (7 CFR 810.351–810.353 and 810.901, 810.904, 810.905), the U.S. Standards for Sorghum (7 CFR 810.551–810.560), and the U.S. Standards for Soybeans (7 CFR 810.601–810.603 and 810.901–810.903), a maximum allowable moisture content is stated for each numerical grade. The grade table for corn in § 810.353 contains the maximum moisture limits for grades U.S. Nos. 1, 2, 3, 4, and 5 as 14.0, 15.5, 17.5, 20.0, and 23.0 percent, respectively. The grade table for sorghum in § 810.557 contains the maximum moisture limits for grades U.S. Nos. 1, 2, 3, and 4 as 13.0, 14.0, 15.0, and 18.0 percent, respectively. The grade table for soybeans in § 810.603 contains the maximum moisture limits for grades U.S. Nos. 1, 2, 3, and 4 as 13.0, 14.0, 16.0, and 18.0 percent, respectively.

A proposed rule to delete moisture content as a grade-determining factor in the U.S. Standards for Corn, U.S. Standards for Sorghum, and U.S. Standards for Soybeans was published in the June 7, 1984, **Federal Register** (49 FR 23651), and comments were solicited during a 45-day period. A total of forty-nine comments was received. A correction docket was published in the June 19, 1984, **Federal Register** (49 FR 25004). On the basis of these comments and other available information, FGIS is deleting moisture content as a grade-determining factor in these standards.

The moisture content will continue to be shown on all official certificates which show the official grade determination as required under 7 CFR 800.162(a)(3) of the regulations.

Moisture content is not a grade-determining factor in the U.S. Standards for Wheat, Barley, Oats, Triticale, and Rye. Deletion of moisture content as a grade-determining factor in the remaining grain standards has been or will be proposed. Accordingly, this final rule will add consistency among the various grain standards. Moisture content is a contidion of the grain rather than a quality factor. Newly harvested corn, sorghum, or soybeans may be graded U.S. Sample grade due to high moisture content, but may equal a U.S. No. 1 quality on all other factors. The corn, sorghum, or soybeans may be dried to a moisture content equal to a U.S. No. 1 or 2 grade and graded accordingly. Under current trade practices, discounts for moisture generally are assessed on the actual moisture content rather than numerical grade to account for weight loss and drying costs of the handler. High moisture grain is a normal condition during movement from harvest into market channels or storage. Moisture content by itself does not imply an intrinsic quality, but rather measures the amount of dry matter and water content of the grain. Moreover, a maximum moisture content can be specified through contracting which is a common practice with corn. When moisture content is specified in contracts or used as the basis for discounts, the numerical grade limit in most instances does not serve a useful purpose.

Of the forty-nine official comments received on the proposed rule, about one-third were received from individuals associated with companies involved in feed manufacturing, feeding operations, or food processing; about one-fourth were from individuals representing trade or producer associations; and one-fifth were from foreign buyers. The remaining letters were from individuals representing exporters and grain inspection agencies. In terms of a simple count, more commenters opposed the proposal than supported it. However, organizations representing many members of the industry supported the proposal. Some commenters did not include all three grains in their response but corn was usually mentioned. Several commenters stated that they had no opposition to the proposal. Others agreed with and expressed general support with the proposal. Some commenters indicated that the present moisture ranges are not appropriate for maintaining quality; for example, the current maximum moisture limit for U.S. No. 2 Corn. As to those opposed both foreign and domestic buyers maintained that higher moisture corn would be marketed under the proposal. Some commenters indicated that moisture ranges in the current grades serve a useful purpose by providing a guide for storability and quality. Buyers went on to cite the possibility of increased storage problems with heating, mold, aflatoxin, shrinkage, and overall lower quality grain. However, these same commenters did not address or consider that moisture content would continue to be shown on all official certificates for grade, thereby providing a basis for discounting, or meeting a contract requirement.

Moisture discounts are based on actual moisture content, not the numerical grades. Therefore, if the current method of discounting remains unchanged, the present moisture level for grain storage should remain unchanged. Additionally, moisture content is not the only determinant of storability. Storability of grain is also dependent on other conditions such as temperature, cleanliness, aeration, condition, and absence of microorganisms, and insects. These conditions are not affected by the revision to the standards made herein.

Based upon the comments received and other information, FGIS is revising the U.S. Standards for Corn, Sorghum, and Soybeans to delete, as proposed, moisture content as a grade-determining factor.

Incorporated also into this revision are minor non-substantive changes as proposed to the table in § 810.603 to add .0 to all pounds and percents listed, as appropriate together with minor technical format changes made for clarity and uniformity among standards. Further, FGIS published on September 7, 1984, at 49 FR 35339, a final rule revising the U.S. Standards for Corn, effective September 9, 1985. In § 810.353(a), this final rule reflects these revisions to the Sample grade definition which include limits for stones, glass, castor beans, cocklebures, unknown foreign substance(s), and animal filth.

List of Subjects in 7 CFR 810

Exports, Grains.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, § 810.353(a), § 810.557, and § 810.603(a) are amended as set forth below:

1. Section 810.353 is amended by revising paragraph (a) to read as follows:

§ 810.353 Grades, grade requirements, and grade designations.

* * * * *

(a) *Grades and grade requirements for corn* (See also paragraph (d) of this section.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of —		
		Broken corn and foreign material (percent)	Damaged kernels	
			Total (percent)	Heat damaged kernels (percent)
U.S. No. 1	56.0	2.0	3.0	0.1
U.S. No. 2	54.0	3.0	5.0	0.2
U.S. No. 3	52.0	4.0	7.0	0.5
U.S. No. 4	49.0	5.0	10.0	1.0
U.S. No. 5	45.0	7.0	15.0	3.0

U.S. Sample grade:

U.S. Sample grade shall be corn which—

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) In a 1,000 gram sample, contains 8 or more stones which have an aggregated weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 8 or more cockleburs, 4 or more particles of an unknown substance(s) or a commonly recognized harmful or toxic substance(s), or animal filth in excess of 0.20 percent; or

(c) Has a musty, sour, or commercially objectionable foreign odor; or

(d) Is heating or otherwise of distinctly low quality.

* * * * * * *

2. Section 810.557 is revised to read as follows:

§ 810.557 Grades and grade requirements for all classes of sorghum. (see also § 810.559)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged Kernels		Broken kernels, foreign material, and other grains, (Percent)
		Total (percent)	Heat damaged (percent)	
U.S. No. 1	57.0	2.0	0.2	4.0
U.S. No. 2	55.0	5.0	0.5	8.0
U.S. No. 3[1]	53.0	10.0	1.0	12.0
U.S. No. 4	51.0	5.0	3.0	15.0

U.S. Sample grade:

U.S. Sample grade shall be sorghum which—

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4, or

(b) Contains more than 7 stones which have an aggregate weight in excess of 0.2 percent of the sample weight or more than 2 crotalaria seeds (Crotalaria spp.) per 1,000 grams of sorghum, or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut odor), or

(d) Is badly weathered, heating, or distinctly low quality [see § 810.552(d)].

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

3. Section 810.603 is amended by revising paragraph (a) to read as follows:

§ 810.603 Grades, grade requirements, and grade designations.

* * * * *

(a) *Grade and grade requirements for Soybeans.* (See also paragraph (d) of this section).

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—	Damaged kernels		Foreign material (percent)	Brown, black, and/or bicolored soybeans in yellow or green soybeans (percent)
		Splits (percent)	Total (percent)	Heat damage (percent)		
U.S. No. 1	56.0	10.0	2.0	0.2	1.0	1.0
U.S. No. 2	54.0	20.0	3.0	0.5	2.0	2.0
U.S. No. 3[1]	52.0	30.0	5.0	1.0	3.0	5.0
U.S. No. 4[2]	49.0	40.0	8.0	3.0	5.0	10.0
U.S. Sample grade:						

U.S. Sample grade shall be soybeans which do not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 4, inclusive; or which are musty, sour, or heating; or which have any commercially objectionable foreign odor; or which contain stones; or which are otherwise of distinctly low quality.

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[1] Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.

[2] Soybeans which are materially weathered shall be graded not higher than U.S. No. 4.

* * * * * * *

Authority: Secs. 5, 16, Pub. L. 94–582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e).

Dated: August 30, 1984.

D.R. Galliart,

Acting Administrator.

[FR Doc. 84-24082 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-EN-M

Commodity Credit Corporation

7 CFR Part 1421

CCC Grain Price Support Regulations Governing the Loan and Purchase Program for 1982 and Subsequent Crops Barley, Corn, Rye, Sorghum, and Wheat, Amendment 1

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The interim rule amending the Commodity Credit Corporation Grain Price Support Regulations Governing the Loan and Purchase Program for 1982 and Subsequent Crops Barley, Corn, Rye, Sorghum, and Wheat, which was published in the **Federal Register** on June 7, 1984 (49 FR 23597), is hereby adopted as a final rule without change. The interim rule amended the regulations at 7 CFR Part 1421 to provide for changes with respect to the price support loan rates for barley, corn, rye, sorghum, and wheat to reflect allowances for certain handling and transportation costs. Freight rate schedules for some of these commodities were also amended by the interim rule. All of the amendments were made to provide a more equitable treatment of producers participating in loan and purchase programs.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone (202) 447-8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0087.

This final rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1521-1 and Executive Order 12291 and has been classified "not major". It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

Interim Rule

An interim rule which amended the regulations at 7 CFR Part 1421 to provide for changes with respect to the loan and purchase programs for 1982 and subsequent crops barley, corn, rye, sorghum, and wheat was published in the **Federal Register** on June 7, 1984, at 49 FR 23597. A comment period was provided through August 6, 1984. No comments were received with respect to the provisions contained in the interim rule.

The interim rule amended the regulations at 7 CFR Part 1421 to provide: (1) That warehouse-stored loan rates shall reflect handling and transportation costs even though such commodities are transported less than 20 miles from a receiving warehouse by truck or truck-barge to a storing warehouse; (2) for increased truck freight rates for barley and wheat; (3) that basic county support rates and the schedule of discounts for barley will be available at the applicable county Agricultural Stabilization and Conservation Service (ASCS) office rather than being published in the **Federal Register**; (4) that the warehouse-stored reserve loan rate shall reflect handling and transportation costs when corn which is pledged as collateral for such loans is transported from a receiving warehouse by truck or truck-barge to a storing warehouse (transportation costs are limited to 25 cents per bushel); and (5) references to the numbers assigned by the Office of Management and Budget in accordance with the recordkeeping requirements of the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—Agriculture, Price support programs, Surety bonds, Warehouses.

Final Rule

Accordingly, the interim rule published at 49 FR 23597, which amended 7 CFR Part 1421, is hereby adopted as a final rule without change.

(7 U.S.C. 1441, 1444d, 1445b-1, 1446, 1447, 1421 and 1425)

Signed at Washington, D.C., on September 7, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-24081 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-05-M

Packers and Stockyards Administration

9 CFR Part 203

Review and Consolidation; Regulations and Policy Statements; Registrations, Rates, Brand Inspection and Stockyard Posting

Correction

In FR Doc. 84-21943 beginning on page 33001 in the issue of Monday, August 20, 1984, make the following corrections:

1. On page 33004, first column, the last line should have read as follows: "10. In Part 203, § 203.8 is removed."

§ 203.17 [Corrected]

2. On page 33004, second column, in the first line, "201.17" should have read "203.17". In the third line "public" should have read "policy".

BILLING CODE 1505-01-M

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket Number 83-024]

Acetic Acid, Citric Acid, Lactic Acid, Phosphoric Acid, and Tartaric Acid as Acidifiers in Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal mandatory meat and poultry products inspection regulations to permit the use of citric acid as an acidifier in processed meat and poultry products. The Department has also received numerous labeling requests to use acetic acid, lactic acid, phosphoric acid, and tartaric acid for the same purpose. The Administrator has determined that it is appropriate to add each of the above named acids to the tables of substances approved for use in the preparation of products. These substances are listed by the Food and Drug Administration (FDA) as "generally recognized as safe" (GRAS) for use in foods. This final rule amends the mandatory meat and poultry inspection regulations to permit the use of these substances as acidifiers in processed meat and poultry products.

EFFECTIVE DATE: November 13, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices to consumers; to individual industries; to Federal, State, or local government agencies; or to geographic regions. This final rule will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule provides for the use of acetic acid, citric acid, lactic acid, phosphoric acid, and tartaric acid as acidifiers in processed meat and poultry products. Current regulations under the Federal Meat and Poultry Products Inspection Acts do not provide for the use of these acids for that purpose. Industry will benefit from this action by gaining the ability to use a variety of acidifiers, and the public will benefit through the introduction of safe, functional ingredients into the food supply.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule will impose no new compliance or reporting requirements on industry. The promulgation of this rule will merely authorize the discretionary use of certain acidifiers in processed meat and poultry products.

Comments

This is a final rule consistent with the provisions of § 318.7 of the Federal mandatory meat inspection regulations and § 381.147 of the mandatory poultry products inspection regulations. As such, comments have not been solicited. However, interested persons should inform the Administrator of any facts which raise questions about this action within the 60 day period between the publication and effective date of this final rule.

Background

The Department has been petitioned by SCM Durkee Foods, Strongsville, Ohio to amend existing regulations to allow the use of citric acid as an acidifier in processed meat and poultry products. The petitioner asserts that this acid stabilizes the flavor and color of processed meat and poultry products by adjusting and stabilizing the pH of the product. The petitioner has supplied analytical data supporting the above claims and has indicated that product wholesomeness will not be affected when treated with this substance. Substantiating data are available from the Standards and Labeling Division at the address previously given.

Also, numerous label applications have been received for the use of acetic acid, lactic acid, phosphoric acid, and tartaric acid as acidifiers in processed meat and poultry products. These acids perform the same function as citric acid. Therefore, the Department is including those substances in this rule.

In the **Federal Register** of July 19, 1983 (48 FR 32749), the Administrator published a final rule announcing new procedures for the approval of substances to be used in the preparation of processed meat and poultry products. Under that rule and upon a showing that a substance has been listed as GRAS by the Food and Drug Administration, or as a food additive or color additive appropriate for the proposed use in processed meat and poultry products, that use of the substance will be permitted upon a further determination by the Administrator that the proposed use is compatible with recognized or regulated uses and is both suitable and functional for that particular product or class of product.

The substance for which approval has been requested and those which have been added are listed as GRAS by the FDA. Acetic acid was affirmed as GRAS and listed in 21 CFR 184.1005. Citric acid is listed as a multiple purpose GRAS food substance in 21 CFR 182.1033 and was proposed for GRAS affirmation in the **Federal Register** of January 7, 1983 (48 FR 834 as amended by 48 FR 5279). Lactic acid is listed as a multiple purpose GRAS food substance in 21 CFR 182.1061 and was tentatively affirmed as GRAS in the **Federal Register** of February 25, 1983 (48 FR 8086 as amended by 48 FR 11957). Phosphoric acid is listed as a multiple purpose GRAS food substance in 21 CFR 182.1073 and was proposed for GRAS affirmation in the **Federal Register** of December 18, 1979 (44 FR 74845). Tartaric acid was affirmed as GRAS and listed in 21 CFR 184.1099 pursuant to a final rule published in the **Federal Register** of November 18, 1983 (48 FR 52446).

Currently, acetic acid is permitted for use under 9 CFR 318.7(c)(4) as a refining agent to separate fatty acids and glycerol in rendered fats, provided it is eliminated in the process of manufacturing. Citric, lactic, L-tartaric, and phosphoric acids are all permitted for use as miscellaneous substances to acidify margarine or oleomargarine. Furthermore, citric acid is permitted as a flavoring agent in chili con carne.

Based upon available data, the Administrator finds that the use of these substances as acidifiers in processed meat and poultry products will not result in a product which is unwholesome, otherwise adulterated, or misbranded provided that these substances are added only in amounts sufficient to accomplish the stated technical effect and are indicated on the label. Prior to the preparation, sale or transportation of any meat or poultry product, the processor must obtain prior approval of the product label from FSIS. An essential element of the label approval process includes review and approval of the product's ingredient composition. Once a label is approved, the product so labeled must conform to the terms of the label approval in order to comply with the adulteration and misbranding provisions of the Meat and Poultry Products Inspection Acts. (21 U.S.C. 601 (m) and (n), 607(e), 610 (a) and (c), 453 (g) and (h), 457(d), 458(a) (1) and (2), 9 CFR 317.3, 317.4, 381,131 and 381.132). A new footnote is added in the charts under the heading "Amount" to indicate that specific determinations must be made for each product prior to label approval.

Therefore, the Administrator is amending the Federal mandatory meat and poultry products inspection regulations to include these substances classified as "Acidifiers" in the charts of approved substances in Parts 318 and 381 (9 CFR Parts 318 and 381). In addition, reference to a footnote (preexisting in Part 318 and added to Part 381) will be included in the charts under the heading "Products" informing interested persons where to write for information as to the specific products in which use of these substances is approved.

List of Subjects

9 CFR Part 318

Food additives, Food labeling, Meat and poultry products, Preparation of products.

9 CFR Part 381

Food additives, Food labeling, Poultry, Poultry products, Preparation of products.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 (9 CFR Part 318) reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 21 U.S.C. 601 *et seq.*, unless otherwise noted.

2. In § 318.7(c)(4) (9 CFR 318.7(c)(4)) a new class of substance entitled "Acidifiers" is added to the chart in alphabetical order. The descriptions of substance, purpose, products, and amount are added to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Acetic acid	To adjust acidity	Various [2]	Sufficient for purpose [3]
	Citric acid	do	do	Do.
	Lactic acid	do	do	Do.
	Phosphoric acid	do	do	Do.
	Tartaric acid	do	do	Do.

* * * * * * *

[2] Information as to the specific products for which use of this substance is approved may be obtained upon inquiry addressed to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[3] Provided, that its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases prior to label approval under § 317.4.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 (9 CFR 381) reads as follows:

Authority: 71 Stat. 441, 448, as amended, 21 U.S.C. 463, 466; 7 CFR 2.15(a), 2.92 (7 FR 9706, May 16, 1972), unless otherwise noted.

2. In § 381.147(f)(4) (9 CFR 381.147(f)(4)) a new class of substance entitled "Acidifiers" is added to Table 1 in alphabetical order. The descriptions of substance, purpose, products, and amount are added to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Acetic acid	To adjust acidity	Various [3]	Sufficient for purpose. [4]
	Citric acid	do	do	Do.
	Lactic acid	do	do	Do.
	Phosphoric acid	do	do	Do.
	Tartaric acid	do	do	Do.

* * * * * * *

[3] Information as to the specific products for which use of this substance is approved may be obtained upon inquiry addressed to the Standards and Labeling Division, Mean and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, South Building, 14th and Independence SW, Washington, DC 20250.

[4] Provided, that its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases prior to label approval under § 381.32.

* * * * *

Done at Washington, D.C. on: August 29, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-24028 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: In response to a remand by the U.S. Court of Appeals for the D.C. Circuit which declared invalid the Commission's March 31, 1982 rule eliminating financial qualification review and findings for electric utilities at all stages of the licensing proceeding, the Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to eliminate financial qualification review and findings for electric utilities that are applying for operating licenses for utilization facilities if the utility is a regulated

public utility or is authorized to set its own rates. The Commission is reinstating a requirement for financial qualification review and findings for electric utilities that are applying for construction permits.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Telephone: (202) 634–1493.

SUPPLEMENTARY INFORMATION:

I. Background

On April 2, 1984, the Commission published in the **Federal Register** (49 FR 13044) a notice of proposed rulemaking which would eliminate financial qualification review and findings for electric utilities applying for operating licenses for utilization facilities if the utility is a regulated public utility or is authorized to set its own rates. As detailed in the notice of proposed rulemaking, this action was taken in response to the decision of the District of Columbia Court of Appeals in *New England Coalition on Nuclear Pollution* v. *NRC*, 727 F.2d 1127 (D.C. Cir. 1984) which remanded the Commission's March 1982 rule (47 FR 13750) eliminating financial qualification review and findings for electric utilities applying for facility construction permits and operating licenses. The Court found the Commission's explanation of the final rule internally inconsistent because, in the Court's view, the reasons the Commission advanced for dispensing with the financial qualification review for electric utilities would, if supported by the facts, apply generally to all license applicants and would not support a rule that singled out utilities for special treatment.[1]

The proposed rule on remand was promulgated on the Commission's belief that case-by-case review of financial qualifications for all electric utilities at the operating license stage is unnecessary due to the ability of such utilities to recover, to a sufficient degree, all or a portion of the costs of construction and sufficient costs of safe operation through the ratemaking process. It is well established that public utility commissions (PUCs) are legally bound to set a utility's rates such that all reasonable costs of serving the public are recovered, assuming prudent management of the utility. *See, e.g., Federal Power Commission* v. *Hope Natural Gas Company*, 320 U.S. 519 (1944); *Bluefield Water Works and Improvement Company* v. *Public Service Commission of the State of West Virginia*, 262 U.S. 679 (1923). The Commission is reinstating financial qualification review for all construction permit applicants for the reasons stated in the notice of proposed rulemaking, (49 FR 13045).

The notice of proposed rulemaking solicited comments from interested persons. In order to provide additional information for the Commission's consideration in this rulemaking, NRC staff members visited with senior staff members of seven public utility commissions, two Federal agencies that regulate nuclear utilities and three publicly-owned[2] nuclear utilities. Telephone inteviews were conducted with two other State public utility commissions (New York and California) in response to concerns raised by commenters on the proposed rule. In addition, the staff analyzed data submitted by the National Association of Regulatory Utility Commissioners (NARUC) from its recent national survey of its member State public utility commissions and of publicly-owned nuclear utilities. This survey, referenced in the Notice of Proposed Rulemaking, was designed to determine whether, historically, utilities which have requested rate increases or rate provisions for operating safety requirements have regularly received them.

II. Analysis of Public Comment

A. Public Comment on the Proposed Rule

Forty-two comments were received on the proposed rulemaking. Slightly more than half of the commenters favored the proposed rule. Nearly all of these specifically endorsed the agency's conclusion that the regulated nature of public utilities assures adequate funding for safe operation through the ratemaking process. Most of these also indicated support for complete elimination of the financial qualification review requirement at all stages of the licensing process on the ground that there is no proven link between financial qualification reviews and safety. Two commenters espoused the view that Section 182 of the Atomic Energy Act does not mandate such reviews.

Several commenters expressed the view that the NRC's inspection and enforcement program is a more direct and efficient way of assuring operating safety than a review of a utility's finances. In addition, it was argued that the PUCs can more efficiently monitor the financial health of a utility on a continuing basis than can the NRC, whose expertise is in the health and safety area. The Commission, two commenters pointed out, can only judge the financial health of a utility based on prediction, while it can provide continual monitoring on health and safety issues.

Commenters opposing the proposed rule raised a number of issues. In the main, they disputed the premise that the ratemaking process provides reasonable assurance that utilities will be able to recover sufficient funds to safely operate a facility. Several grounds were offered for this attack:

- A utitity may not achieve an expected rate of return (i.e., profit) from the ratemaking process.
- Utilities may not recover every cost item requested from the PUCs.
- Portions of new plants are sometimes phased into the rate base over a period of time, so the utility will not immediately recover all necessary expenses.
- Costs may be disallowed if imprudently incurred.
- Some States are preempted by the NRC's licensing authority from judging the financial capabilities of the utilities they regulate.
- Publicly-owned utilities are not assured of funding through the ratemaking process.

Other objections raised by commenters to the proposed rule were that review at the construction permit stage only comes too early to judge the actual capability of a utility to finance a nuclear facility; that there is no assurance that utilities will apply monies obtained through the ratemaking process to operating plants, rather than to facilities under construction, and that utilities have an incentive to put plants on line too early in order to obtain rate base treatment.

The Commission believes that many of the concerns expressed about the proposed rule reflect a misunderstanding of the nature of the Commission's jurisdiction over, and prior reviews of, the financial qualifications of utility applicants. The origninal rule requiring financial qualification review, promulgated in 1968, required a finding, prior to operating license issuance, that the utility "possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated costs of operation for the period of the license or for five years, whichever is greater, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition." As can be seen, the focus of the rule was on the availability of funds, rather than on whether funds were properly spent.

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[1] In view of the limited applicability of the rationale expressed in the proposed rule and in this final rule, the concerns expressed by the Court no longer apply.

[2] "Publicly-owned utilities" are utilities owned by governmental units, governmentally-chartered units such as public utility districts, or by groups of consumers such as rural cooperatives, including associations of any of the foregoing.

Despite the longstanding nature of the financial qualification reviews under the original rule, their safety rationale seems never to have been clearly set out. A financial disability is not a safety hazard *per se* because the licensee can, and under the Commission's regulations would be obliged to, simply cease operations if necessary funds to operate safely were not available. At most, the Atomic Energy Commission, in drafting the rule, must have intuitively concluded that a licensee in financially straitened circumstances would be under more pressure to commit safety violations or take safety "shortcuts" than one in good financial shape. Accordingly, the drafters of the rule sought to achieve some level of assurance, prior to licensing, that licensees would not be forced by financial circumstances to choose between shutting down or taking shortcuts while the license was in effect.

The limited scope of this approach as it bears on safety is apparent. Having a reasonably assured source of funds does not assure that money intended or allocated for safety reasons will be so spent. Moreover, concerns regarding safety performance are not confined to those utilities with financial difficulties. A whole host of circumstances, including poor training, inattention to detail, poor management attitude, and lack of safety commitment, can conceivably lead to poor safety performace. Many of these other concerns are subsumed within the topic "managment integrity," which has been a focus of several pending licensing proceedings.

Given the inherent limitations of the rule, it must have been the rule drafters' intent that the question of potential misuse of available funds, like these other integrity concerns, be addressed elsewhere, either in the review of the applicant's technical qualifications, managment, and training prior to licensing, or by the Commission's post-licensing inspection and enforcement process.

This is confirmed by longstading practice under the original rule. Pre-licensing financial reviews under the rule were, as the rule itself suggests, confined to assuring a source of funds, and no effort was made at that stage to establish assurance that funds would be properly spent. Thus the concerns expressed by some commenters that the ratemaking bodies do not assure that funds received by a utility through the ratemaking process will actually be applied to meeting the requirements for safe operation are not relevant to consideration of the Commission's financial qualification rule. Even though the rate process does no more than assure that regulated utilities will have the financial resources needed to operate safely, this limited assurance is all that the financial qualification rule was intended to achieve. These commenters' concerns go not to the need to reinstate financial qualification reviews, but to other issues beyond the scope of this rulemaking that have been, and continue to be, addressed in pre-licensing review of applicant's technical qualifications, managment and training, and by the post-licensing inspection and enforcement process.

A second misunderstanding stems from the impression that a utility would have to be guaranteed a rate of recovery equal to every penny it requested from the rate commission in order to assure safe operation. This impression has led several commenters to object to the proposed rule on the basis that rate regulation does not ensure a fixed level of profitability.

Neither in this rule nor in its financial qualification review has the Commission made any assumption as to the rate of return or the level of profit to be allowed to utilities from the operation of nuclear plants. Its concern is that reasonable and prudent costs of safely maintaining and operating nuclear plants will be allowed to be recovered through rates. This concern does not extend to any level of profit or rate of return beyond those operating expenses. The Commission's concern is with safe operation, not profits.

The same misunderstanding underlies the comment that utilities do not recover every cost item requested from rate commissions. It is not uncommon for a rate commission to deny certain requested cost items or portions thereof. These disallowances, however, deny a utility only a small portion of its total revenues. The amount of the disallowance may be reflected in a smaller profit margin, but the costs denied by the ratemaking bodies are not so great that the amount of these disallowances would exceed operating costs. NRC conversations with ratemaking bodies as well as the results of the NARUC questionnaire confirm that it is standard practice among ratemaking bodies to factor in the amount of disallowances to ensure that utilities receive enough rate relief when a plant goes into operation to recover all resonable costs of safe operation.

The same reasoning applies to the comment that rate base phase-ins and disallowances (portion of new plants either not allowed into the rate base or phased in to the rate base over a period of time) affect the utility's recovery of operating expenses. Again, such phase-ins may affect short-term profits, but does not affect recovery of operating expenses.

No sound basis has been shown for the allegation raised by the State of Texas that a State may be preempted from judging the financial capabilities of the utilities it regulates, because only the NRC has the authority to issue licenses and order shutdowns, or for the allegation that publicly-owned utilities are not assured of funding through the ratemaking process. The NRC's analysis of the NARUC survey, discussed *infra*, has shown that all State public utility commissions have sufficient ratemaking authority to ensure sufficient utility revenues to meet the cost of NRC safety requirements. Similarly, it has been shown that publicly-owned utilities have independent rate-setting authority which is used to cover the costs of operation, including those of meeting NRC safety requirements.

B. Public Comments on the NARUC Study

As indicated above, the National Association of Regulatory Utility Commissioners (NARUC) submitted to the Commission the results of a national survey of its members regarding the provision for nuclear plant operating funds through a State commission's ratemaking process. The survey also included the Federal Energy Regulatory Commission and a broad sample of publicly-owned nuclear utilities. The NRC staff analyzed the survey, and the results of both the survey and the NRC's analysis were placed in the NRC Public Document Room. An extension of the comment period on the rule was provided in order to give the public an opportunity to comment both on the survey and on the NRC analysis.

The NRC staff found that the survey lends strong support to the proposed rule. The conclusion that emerged from the study was that ratemaking authorities had varying mechanisms to ensure sufficient utility revenues to meet the costs of NRC safety requirements, but that all had such mechanisms. Only one instance was identified (Arkansas) where a revenue request to enable a utility to meet what were purported to be nuclear safety costs was denied.[3]

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[3] In that situation, the dispute revolved around a single facility which was to serve both as a visitor's

Continued

That case is currently on appeal. Most ratemaking bodies indicated that no specific provision was made for NRC safety requirements, but that rates are established in general rate cases to produce sufficient overall revenues to assure sound functioning of the electric power systems, including nuclear plants. Some PUCs did indicate that their orders specifically allocate funds to meet NRC safety requirements. This question was a subject of particular focus during NRC staff visits to PUCs. The PUCs visited were unanimous in saying that safety-related operating expenses were *always* considered reasonable expenses when prudently incurred and were allowed to be recovered through rates.

Publicly-owned nuclear utilities were also surveyed. It was found that these have independent rate-setting authority that is used to recover costs of operation, including the costs of meeting NRC safety requirements. Exceptions were two cooperative utilities that, by State law, have their rates regulated by the State public utility commissions. Many publicly-owned and investor-owned nuclear plants are owned by groups of utilities, rather than solely-owned. Where this is the case, the respondents to the NARUC study indicated that they have contractual agreements with the other co-owners to increase their contributions to operating costs if total costs increase over time. The amount of any such increase is proportional to each utility's relative ownership share in the plant.

Those commenters who endorsed the Commission's conclusions on the NARUC study did so on the basis that the study shows that, no matter the regulatory mechanism, all PUCs and publicly-owned utilities have the authority to set rates in such a way that sufficient revenues to meet NRC safety requirements are assured.

One commenter stated that in one-quarter of the States regulators do not have the authority to assure adequate revenues to cover nuclear safety costs. This is incorrect. In those States, regulators do not have *specific* authority to treat nuclear safety costs as a separate case. They do, however, have a general grant of authority to allow recovery of all reasonable costs through rates. As previously indicated, reasonable costs of meeting NRC requirements are virtually automatically included within that definition.

The same commenter raised several objections to the conclusions drawn from the NARUC survey by the NRC. That commenter's primary argument is that the purpose of State utility regulation is not to assure the financial health of public utilities or to assure that utilities request funds for and devote funds to assure nuclear safety. The Commission understands the commenters's concern to be that State regulation will not assure the utility sufficient profits to allow it to safely operate a facility. This concern is unfounded. While the purpose of State utility regulations is not to assure profits, it is to set rates at such a level that the public is assured an adequate supply of power at the fairest possible price. In order to attain this goal, it is essential that the utility have the opportunity to earn a reasonable amount of profit. A financially unsound utility will not serve the goals of either the rate-regulating body or the public.

The Commission has never asserted that rate regulators assure that utilities devote a specific portion of their funds to nuclear safety. The commenter apparently believes that the NRC's past financial reviews monitored nuclear power plant expenditures to see where the funds went. As explained above, this has never been the case. The Commission examined a utility before a license was granted to assure that, in the Commission's judgment, the utility had sufficient *total* revenues to operate a facility. The Commission did not examine the books of facilities to assure that monies requested for safety expenditures were so spent, but relied on its inspection and enforcement program to ensure that each facility met all NRC safety regulations. This will remain unchanged under the present rule.

The Commission believes that the record of this rulemaking demonstrates generically that the rate process assures that funds needed for safe operation will be made available to regulated electric utilities. Since obtaining such assurance was the sole objective of the financial qualification rule the Commission concludes that, other than in exceptional cases, no case-by-case litigation of the financial qualification of such applicants is warranted. Some of the other concerns expressed by commenters, including concerns that available funds will not be spent properly for safety matters, will continue to be separately addressed by the Commission, either in pre-licensing reviews or in the post-licensing inspection and enforcement program.

C. Public Comment on the Link Between Financial Qualification Review and Assurance of Safety

The Commission also sought comment on the question of whether financial qualification reviews could be eliminated completely at both the construction permit and operating license stages on the basis that there is no connection between these reviews and health and safety. Nearly all commenters who wrote in support of the proposed rule also indicated that they would support such a proposal. The commenters relied on the fact that no correlation has been shown between financial qualification and safety, that the Commission's financial reviews are essentially predictive and cannot adequately anticipate what the actual costs of operation will be, that financial incentives do not favor reducing the operating and maintenance costs associated with nuclear power reactors, that the consequences of a serious incident at a nuclear power plant would be too severe to warrant cutting corners on safety, that the financial condition of a utility improves once a facility is operating and that the NRC's inspection and enforcement program is a more efficient method of insuring safety. One commenter[4] enclosed a May 31, 1984 report from National Economic Research Associates, Inc. (NERA) which studied investor-owned utilities and concluded that an examination of the financial condition of electric utilities at the operating license stage is unlikely to produce any useful insight into the safe operation of nuclear power reactors. NERA based its conclusions upon an analysis of the financial incentives associated with operating nuclear power reactors, the relationship between nuclear-related operation and maintenance costs and measures of utility financial health, and general considerations of what happens to the financial condition of electric utilities when a new reactor begins operation. NERA concluded that incentives to cut costs and increase profits by cutting corners are outweighed by the financial risks of cutting corners, that there is a greater chance of shutdown and removal from the rate base in case of accident in a nuclear facility, and that it is easier for a utility that operates both nuclear and non-nuclear facilities to

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center (non-safety-related expense) and as an emergency response center (safety-related expense). The issue was which portion of the costs of that facility should be defined as safety-related and, therefore, recoverable through rates.

[4] This commenter also suggested that, if the Commission were to reinstate financial qualification review for construction permit applicants, it should also reinstate that portion of Appendix C to 10 CFR Part 50 which provides guidance for such review. The Commission has done so in this final rule.

reduce non-nuclear rather than nuclear costs.

Most commenters who opposed the Commission's rule chose not to comment separately on this issue. Those that did cited the allegedly poor financial health of some utilities, but failed to identify any link between the NRC's financial qualification reviews and the safe operation of facilities owned by these utilities.[5]

The NRC has found strong indications in the public comments, and especially in the NERA report, that a rule eliminating financial qualification review at all stages of the licensing proceeding is supportable, at least for regulated utilities, on the basis of the lack of any proven link between financial qualification review and safety given the Commission's long experience in regulating utilities, the data in the NERA report, and the further public comment. Since the Commission has had less experience with and less information on the subject of non-utility licensees, and since the Commission has indicated that it would not issue a final rule on this basis without a further opportunity for public comment, the Commission is not relying on this premise for the current rule. The Commission does, however, note that there is some support for the proposition that, for electric utilities, there is no connection between the Commission's financial qualification review and safe operation of a facility.

III. Additional Information That Can Be Required

By this rule, the Commission does not intend to waive or relinquish its residual authority under Section 182a of the Atomic Energy Act of 1954, as amended, to require such additional information in individual cases as may be necessary for the Commission to determine whether an application should be granted or denied or whether a license should be modified or revoked. An exception to or waiver from the rule precluding consideration of financial qualification in an operating license proceeding will be made if, pursuant to 10 CFR 2.758, special circumstances are shown. For example, such an exception to permit financial qualification review for an operating license applicant might be appropriate where a threshold showing is made that, in a particular case, the local public utility commission will not allow the total cost of operating the facility to be recovered through rates.

IV. Practical Impacts

The rule will, in normal circumstances, reduce the time and effort which the applicants, licensees, the NRC staff and NRC adjudicatory boards devote to reviewing the applicant's or licensee's financial qualifications in comparison to the rule which existed before March 31, 1982. The rule eliminates staff review at the operating license stage in cases where the applicant is an electric utility presumed to be able to finance activities to be authorized under the license. The rule will be applied both to ongoing and future licensing reviews and proceedings and to past proceedings subject to the remanded rule. The rationale for the rule is in effect a generic determination that regulated or self-regulating public utilities are financially qualified to operate nuclear power plants. Accordingly, this rule amounts to a generic resolution of financial qualification issues that may be pending in operating license proceedings involving electric utilities. The NRC neither intends nor expects that the rule will affect the scope of any issues or contentions related to a cost/benefit analysis performed pursuant to the National Environmental Policy Act of 1969. Under NEPA, the issue is not whether the applicant can demonstrate reasonable assurance of covering certain projected costs, but what costs to the applicant of constructing and operating the plant are to be put into the cost-benefit balance. As is now the case, the rule of reason will continue to govern the scope of what costs are to be included in the balance, and the resulting determinations may still be the subject of litigation.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, OMB Approval No. 3150-0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule reduces certain minor information collection requirements on the owners and operators of nuclear power plants licensed pursuant to sections 103 and 104b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, 2134b. These electric utility companies are dominant in their service areas. Accordingly, the companies that own and operate nuclear power plants are not within the definition of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Classified information, Confidential information, Freedom of information, Hazardous materials, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Fire prevention, Classified information, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the NRC is adopting the following amendments to 10 CFR Parts 2 and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231), sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.300-2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Section 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and

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[5] It is important to note that, if such a link could be identified for any given facility, the Commission would not be precluded from examining the financial qualification of that facility under 10 CFR 2.758. *See* Section IV, *infra*.

5 U.S.C. 552. Section 2.800 and 2.806 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.4, paragraph (s) is revised to read as follows:

§ 2.4 Definitions.

As used in this part,

* * * * *

(s) "Electric utility" means any entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

3. In § 2.104, paragraph (c)(4) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(c) * * *

(4) Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the regulations in this chapter, except that the issue of financial qualification shall not be considered by the presiding officer in an operating license hearing if the applicant is an electric utility seeking a license to operate a utilization facility of the type described in § 50.21(b) of § 50.22;

* * * * *

4. In Appendix A to Part 2, paragraph (b)(4) of Section VIII is revised to read as follows:

Appendix A—Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189A of the Atomic Energy Act of 1954, as Amended

* * * * *

VIII. Procedures Applicable to Operating License Proceedings

* * * * *

(b) * * *

(4) Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the Commission's regulations, except that the issue of financial qualification shall not be considered by the board if the applicant is an electric utility seeking a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec, 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b), §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e) 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.2, paragraph (x) is revised to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

(x) "Electric utility" means any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

7. In § 50.33, paragraph (f) is revised to read as follows:

§ 50.33 Contents of applications; general information.

Each application shall state:

* * * * *

(f) Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

(1) If the application is for a construction permit, the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction costs of the facility and related fuel cycle costs, and shall indicate the source(s) of funds to cover these costs.

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility and estimates of the costs to permanently shut down the facility and maintain it in safe condition. The applicant shall also indicate the source(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as is required in an application for an initial license.

(3) Each application for a construction permit or an operating license submitted by a newly-formed entity organized for the primary purpose of constructing or operating a facility must also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) Its financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

(4) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a

licensee's ability to continue the conduct of the activities authorized by the license and to permanently shut down the facility and maintain it in a safe condition.

* * * * *

8. In § 50.40, paragraph (b) is revised to read as follows:

§ 50.40 Common standards.

* * * * *

(b) The applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter. However, no consideration of financial qualification is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

9. In § 50.57, footnote 1 is set out for the convenience of the reader, and paragraph (a)(4) is revised to read as follows:

§ 50.57 Issuance of operating license.[1]

(a) * * *

(4) The applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations in this chapter. However, no finding of financial qualification is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22.

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10. Appendix C to Part 50 is added as follows:

Appendix C—A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Facility Construction Permits

General Information

This appendix is intended to apprise applicants for licenses to construct production or utilization facilities of the types described in § 50.21(b) or § 50.22, or testing facilities, of the general kinds of financial data and other related information that will demonstrate the financial qualification of the applicant to carry out the activities for which the permit is sought. The kind and depth of information described in this guide is not intended to be a rigid absolute requirement. In some instances, additional pertinent material may be needed. In any case, the applicant should include information other than that specified, if such information is pertinent to establishing the applicant's financial ability to construct the proposed facility.

It is important to observe also that both § 50.33(f) and this appendix distinguish between applicants which are established organizations and those which are newly-formed entities organized primarily for the purpose of engaging in the activity for which the permit is sought. Those in the former category will normally have a history of operating experience and be able to submit financial statements reflecting the financial results of past operations. With respect, however, to the applicant which is a newly formed company established primarily for the purpose of carrying out the licensed activity, with little or no prior operating history, somewhat more detailed data and supporting documentation will generally be necessary. For this reason, the appendix describes separately the scope of information to be included in applications by each of these two classes of applicants.

In determining an applicant's financial qualification, the Commission will require the minimum amount of information necessary for that purpose. No special forms are prescribed for submitting the information. In many cases, the financial information usually contained in current annual financial reports, including summary data of prior years, will be sufficient for the Commission's needs. The Commission reserves the right, however, to require additional financial information at the construction permit stage, particularly in cases in which the proposed power generating facility will be commonly owned by two or more existing companies or in which financing depends upon long-term arrangements for sharing of the power from the facility by two or more electrical generating companies.

Applicants are encouraged to consult with the Commission with respect to any questions they may have relating to the requirements of the Commission's regulations or the information set forth in this appendix.

I. Applicants Which Are Established Organizations

A. Applications for construction permits

1. *Estimate of construction costs.* For electric utilities, each applicant's estimate of the total cost of the proposed facility should be broken down as follows and be accompanied by a statement describing the bases from which the estimate is derived:

(a) Total nuclear production plant costs	$
(b) Transmission, distribution, and general plant costs	$
(c) Nuclear fuel inventory cost for first core[1]	$
Total estimated cost	$

[1] Section 2.790 of 10 CFR Part 2 and § 9.5 of 10 CFR Part 9 indicate the circumstances under which information submitted by applicants may be withheld from public disclosure.

If the fuel is to be acquired by lease or other arrangement than purchase, the application should so state. The items to be included in these categories should be the same as those defined in the applicable electric plant and nuclear fuel inventory accounts prescribed by the Federal Energy Regulatory Commission or an explanation given as to any departure therefrom.

Since the composition of construction cost estimates for production and utilization facilities other than nuclear power reactors will vary according to the type of facility, no particular format is suggested for submitting such estimates. The estimate should, however, be itemized by categories of cost in sufficient detail to permit an evaluation of its reasonableness.

2. *Source of construction funds.* The application should include a brief statement of the applicant's general financial plant for financing the cost of the facility, identifying the source or sources upon which the applicant relies for the necessary construction funds, e.g., internal sources such as undistributed earnings and depreciation accruals, or external sources such as borrowings.

3. *Applicant's financial statements.* The application should also include the applicant's latest published annual financial report, together with any current interim financial statements that are pertinent. If an annual financial report is not published, the balance sheet and operating statement covering the latest complete accounting year together with all pertinent notes thereto and certification by a public accountant should be furnished.

II. Applicants Which Are Newly Formed Entities

A. Applications for construction permits

1. *Estimate of construction costs.* The information that will normally be required of applicants which are newly formed entities will not differ in scope from that required of established organizations. Accordingly, applicants should submit estimates as described above for established organizations.

2. *Source of construction funds.* The application should specifically identify the source or sources upon which the applicant relies for the funds necessary to pay the cost of constructing the facility, and the amount to be obtained from each. With respect to each source, the application should describe in detail the applicant's legal and financial relationships with its stockholders, corporate affiliates, or others (such as financial institutions) upon which the applicant is relying for financial assistance. If the sources of funds relied upon include parent companies or other corporate affiliates, information to support the financial capability of each such company or affiliate to meet its commitments to the applicant should be set forth in the application. This information should be of the same kind and scope as would be required if the parent companies or affiliates were in fact the applicant. Ordinarily, it will be necessary that copies of agreements or contracts among the companies be submitted.

As noted earlier in this appendix, an applicant which is a newly formed entity will normally not be in a position to submit the usual types of balance sheets and income statements reflecting the results of prior operations. The applicant should, however, include in its application a statement of its assets, liabilities, and capital structure as of the date of the application.

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[1] The Commission may issue a provisional operating license pursuant to the regulation in this part in effect on March 30, 1970, for any facility for which a notice of hearing on an application for a provisional operating license or a notice of proposed issuance of a provisional operating license has been published on or before that date.

11. In Appendix M to Part 50, paragraph 4. (b) is revised to read as follows:

Appendix M—Standardization of Design; Manufacture of Nuclear Power Reactors; Construction and Operation of Nuclear Power Reactors Manufactured Pursuant to Commission License

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4. * * *

(b) The financial information pursuant to § 50.33(f) shall be directed at a demonstration of the financial qualification of the applicant for the manufacturing license to carry out the manufacturing activity for which the license is sought.

* * * * *

The additional views of Commissioner Asselstine and the separate statement of Chairman Palladino follow.

Additional Views of Commissioner Asselstine

A majority of the Commission has concluded that in its consideration of an application for an operating license for a nuclear power plant, no review whatsoever of the utility applicant's financial qualifications to operate the facility is required and, other than in exceptional cases, no case-by-case litigation of the financial qualification of the applicant is warranted. The majority's conclusion appears to be based upon the judgment that the record of this rulemaking demonstrates generically that the rate process assures that funds needed for safe plant operation will be made available to regulated electric utilities.

Although the NRC should not return to performing the same types of financial qualification reviews required by the old rule, the majority has gone too far in excluding virtually all consideration of the utility applicant's financial qualification in nuclear power plant operating license proceedings. Such a sweeping exclusion is contrary to the requirements of the Atomic Energy Act, is unsupported by the facts and is unjustified on the basis of this rulemaking record.

Section 182 a. of the Atomic Energy Act of 1954 requires that each application for an operating license for a nuclear power plant "specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant . . . as the Commission may deem appropriate for the license." The plain language of the statute appears to require consideration of the financial qualification of the applicant as part of the Commission's decision on whether to issue an operating license for a nuclear power plant. Thus, at least absent clear and convincing evidence that the financial qualification of a regulated utility is wholly irrelevant to safe plant operation in all cases (evidence that is not to be found in this rulemaking record), the Commission is required to perform some type of financial qualification review and to consider financial qualification issues as part of the licensing proceeding for a nuclear power plant.

The majority points to a survey conducted by the National Association of Regulatory Utility Commissions (NARUC) which shows that public utility commissioners and publicly-owned utilities have the authority to set rates in such a way that sufficient revenues to meet NRC safety requirements are assured. However, the fact that regulated electric utilities can generally expect to be compensated for the cost of safety requirements does not provide a basis for eliminating all consideration of financial qualification issues in operating license proceedings.

As the NARUC study itself confirms, public utility commissions typically do not specify that funds to cover safety requirements must be spent on nuclear plant operations. Nor are nuclear plant operating costs the only element considered by public utility commissions in deciding on the amount of revenues to be provided to the utility. As some commenters noted, utility rate commission decisions can include elements such as rate base phase-ins or disallowances that affect the overall rate level allowed for the utility. Such factors, together with the cost of ongoing construction programs that frequently are not included in the rate base, inevitably require the utility to make choices regarding the allocation of rate returns among such competing priorities as nuclear and non-nuclear plant operating costs, plant improvements aimed at increasing plant capacity factors, increasingly costly construction programs and providing an adequate rate of return to investors. The difficult financial choices faced by some utilities, particularly smaller utilities with larger ongoing construction programs, are widely documented. There is simply no basis in this rulemaking record for concluding that in all instances a utility will resolve the conflicting financial priorities in favor of allocating full funding to nuclear plant operation. In the absence of such evidence, the fact that utility commissions typically provide rate relief sufficient to cover the cost of safety requirements does not, by itself, justify the total exclusion of all financial qualification issues and the elimination of all financial qualification reviews.

The majority also argues its conclusion is supported by the agency's long experience in regulating utilities, and that present inspection and enforcement efforts are a sufficient means for identifying and correcting financially motivated safety problems. The majority, although professing not to rely on this point, further attempts to bolster its position by asserting that there is some support for the proposition that there is no link between financial qualification reviews and safety. In support of this assertion, the majority points to a study by the National Economic Research Associates, Inc. (NERA), which finds that the financial risks to the utility associated with the consequences of a nuclear accident outweigh any financial gains that might be achieved by cutting corners on safety.

Although these arguments are superficially attractive, they are not supported by the facts. Unfortunately, financial considerations can and do lead to safety weaknesses in some instances. There have been instances, some recently, in which regulated utility licensees with operating power reactors have emphasized maximizing electricity generation over safety, have been unwilling to build a strong, technically capable nuclear plant operations organization, or have failed to move aggressively to satisfy new NRC safety requirements. In many instances, financial considerations appear to be a significant contributor to these utility decisions. Some of these safety weaknesses have been of continuing duration, and not all have been identified or corrected by our inspection and enforcement program. These examples would appear to indicate clearly that financial considerations can and do affect safety in some instances. Given this experience, I see no basis for the majority's conclusion that the NRC need not examine a utility's financial capability to operate the plant or consider financial qualification issues in our licensing proceedings. Nor does the Commission's reliance on 10 CFR 2.758 provide an effective means for identifying and correcting safety weaknesses caused by financial considerations. As it would apply here, 10 CFR 2.758 would require that a member of the public first identify the financial qualification issue, bring it to the Commission's attention and demonstrate that special circumstances exist in the case before *any* consideration of the issue will be permitted. This very restricted opportunity to raise the issue imposes a heavy burden on the party seeking to raise the issue, and the Commission's new rule, for all practical purposes, can be expected to eliminate virtually all consideration of financial qualification issues by the NRC staff and in operating license hearings. Finally, the majority argues that the elimination of the Commission's existing financial qualification reviews is justified on the ground that those reviews fail to consider how a utility actually spends the revenues provided by public utility commissions. However, if present financial qualification reviews are ineffective, that is an argument for restructuring, rather than eliminating, them.

Rather than seeking to eliminate virtually all consideration of financial qualification issues, the Commission should be restructuring its rules and regulatory programs to ensure that its financial qualification reviews identify any financial considerations that can affect the safety of plant operations. Such a restructured program could focus on five elements. The first element would be a required certification by the relevant public utility commission or commissions to the effect that revenues necessary to support the plant's prudent operation will be forthcoming. Such a certification would satisfy the purpose served by the Commission's previous financial qualification reviews. At the same time, unwillingness on the part of a utility commission to provide such a certification would indicate a potential financial qualification problem requiring further NRC review.

The second element would be to restore the opportunity for participants in NRC licensing proceedings to raise and litigate financial qualification issues, including questions regarding the utility's ability or unwillingness to apply the funds needed for safe plant operation, and questions involving regulatory or contractual commitments that could lead to unsafe operation. The third element would be to permit members of the public to raise financial qualification issues regarding operating plants and to have those issues considered pursuant to 10 CFR 2.206.

The fourth element would consist of an augmented NRC inspection program to consider the possible connection between financial considerations and identified plant safety weaknesses. The final element would consist of a required showing by the utility of how it intends to assure the availability of funds to pay the cost of plant decommissioning. This final element may best be considered as part of the Commission's decommissioning rule, but the Commission could commit to requiring such a showing now. It is worth noting that the majority was unwilling to indicate at this time a commitment to address the financial qualification issue for decommissioning in a subsequent decommissioning rule. Taken together, these elements or a restructured program would reflect the role and knowledge of the public utility commissions and would eliminate unnecessary duplication of effort. At the same time, this program would recognize the link between financial considerations and safety, and would provide for more effective consideration of financial qualification issues. Such an approach would demonstrate the Commission's desire to deal effectively with safety issues. Unfortunately, the Commission seems more inclined simply to avoid them.

Separate Statement of Chairman Palladino

Commissioner Asselstine's criticism of the Commission's approach is not justified by either the facts or the law in this rulemaking.

First, as the Court of Appeals observed in its decision remanding the Commission's March 1982 rule, even if the Atomic Energy Act of 1954 were interpreted as requiring financial qualification reviews, it would not preclude appropriate generalized criteria that would render some case-by-case evaluations unnecessary. *NECNP v. NRC,* Slip op. at 5 (February 7, 1984). The Commission rested its proposal of April 2, 1984 to eliminate financial qualifications reviews on the generic conclusion that the rate process assures for regulated electric utilities (or those utilities able to set their own rates) the funds needed for safe operation of a nuclear power facility. In the statement accompanying today's final rule, the Commission notes its belief that the rulemaking record supports this generic conclusion. It also notes that 10 CFR 2.758 provides an avenue for possible consideration of financial qualifications in a particular case where the generic conclusion appears not to apply. The Act does not require more.

Second, the Commission's financial qualification reviews have not, in the past, addressed questions about how a utility resolves conflicting financial priorities. The statement accompanying the final rule makes clear that the Commission relies on a number of regulatory means, including post-licensing inspection and enforcement, to protect against financial choices by a utility that are adverse to safe nuclear plant operation.

Third, I would point out that while the Commission requested comment on the question whether financial qualification reviews might be eliminated completely on the ground that no link has been shown between financial qualification reviews and assurance of safety, it did not base its proposed rule on that ground. The final rule's accompanying statement notes support for, but it does not seek to justify the final rule on, that ground. The accompanying statement also notes that, if a link can be identified in a particular case between financial qualification review and safe plant operation it could be addressed under 10 CFR 2.758.

Fourth, the matter of decommissioning costs is the subject of separate generic consideration within NRC. The fact that the Commission has chosen not to tie decommissioning costs to this financial qualifications rulemaking should not be interpreted as an indication that the Commission believes that decommissioning funding is unimportant to public health and safety. Rather, it recognizes that any action on decommissioning is more appropriate in the context of a separate generic rulemaking. See 47 F.R. 13750 (March 31, 1982).

Dated at Washington, DC this 6th day of September 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-24086 Filed 9-11-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket No. 84-30]

Description of Office, Procedures, and Public Information

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency has completed the reorganization of its field offices. This final rule changes the word "Regional" to "District" throughout the regulation to reflect the new title of the reorganized offices. The final rule also clarifies language relating to exceptions to required disclosure of information to make the regulation conform to existing

law and agency policy. In addition, the final rule directs certain information requests to the district offices instead of the Washington headquarters.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Mallinger, Senior Attorney, Legal Advisory Services Division (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: This final rule makes three changes. First, it replaces obsolete terms. The Office of the Comptroller of the Currency ("Office") is no longer organized in "regions," so it is necessary to replace the outdated references to "regions" with the word "districts" to correspond with the new organizational structure.

Second, the final rule clarifies ambiguous language contained in 12 CFR Part 4, which implements the Freedom of Information Act, 5 U.S.C. 552. This statute, which governs agency disclosure of information to the public, makes exceptions for certain sensitive information (national defense secrets, personal privacy, etc.). *See* 5 U.S.C. 552(b). The Office's implementing regulation distinguishes between required disclosure of certain information and exceptions to such disclosure. The wording of the current regulation has created some confusion over whether these exceptions actually apply to the information that is otherwise required to be disclosed. This final rule makes it clear that such statutory exceptions to disclosure do apply to information that agencies generally must make available to the public.

The final rule also indicates that certain information may be disclosed by a "district" office rather than the Washington headquarters of the agency. This is necessary because some duties have been delegated to the district offices and that is where the documents are located.

Notice and Comment and Delayed Effective Date

The Office has determined that notice and comment are unnecessary under 5 U.S.C. 553(b)(3)(A) since this final rule pertains to rules of agency organization and procedure. The Office has also determined that a 30-day delayed effective date is unnecessary under 5 U.S.C. 553(d)(3) because these amendments constitute technical changes in the wording of the regulation, provide updated information on the availability of material from the Office, and clarify ambiguous language in the regulation.

Regulatory Flexibility Act

A regulatory flexibility analysis is required only for rules issued for notice and comment. Because this final rule pertains to office organization and management and is therefore exempt from notice and comment procedures, no Regulatory Flexibility Analysis will be prepared.

Executive Order 12291

Because this rule relates to Agency organization and management, it is not subject to E.O. 12291.

List of Subjects in 12 CFR Part 4

National banks, Organization and functions (government agencies), Public information, Official forms, District offices, Field offices, Procedures, Delegation.

PART 4—DESCRIPTION OF OFFICE PROCEDURES, PUBLIC INFORMATION

For the reasons given in the preamble, Part 4 of Title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 4 is:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. Section 4.15 is amended by revising the introductory text to paragraph (a) as follows:

§ 4.15 Orders, opinions, etc. available to the public.

(a) Subject to the exceptions listed in § 4.16 of this part, the Comptroller of the Currency makes the following documents available to the public for inspection and/or copying:

* * * * *

3. Section 4.16 is amended by revising paragraph (a) as follows:

§ 4.16 Other records available to public; exceptions.

(a) All records of the Comptroller of the Currency, including those referred to in § 4.15 of this part, are available to any person for inspection and copying in accordance with §§ 4.17 and 4.17a, except as provided in paragraph (b) of this section.

* * * * *

4. Section 4.17 is amended by replacing the word "regional" wherever it appears in this section with the word "district," and by replacing the word "regions," wherever it appears in this section with the word "districts."

5. Section 4.17 is further amended by revising paragraph (c) as follows:

§ 4.17 Location of public reading rooms; requests for identifiable records; and service of process.

* * * * *

(c) Locations of certain records. All public records of the Comptroller of the Currency, except: (1) The public portions of applications by national banking associations to establish a branch or seasonal agency; (2) the public portions of applications to organize a national banking association during the period such applications are in the investigatory process in the respective districts, and (3) records concerning matters delegated to the district offices (such as those listed in 12 CFR 5.3(c)), are available in the central office listed in paragraph (b)(1) of this section. During this investigatory period, the public portions of the applications listed in paragraph (c)(2) of this section will be available in the respective districts as listed in § 4.1a(b).

* * * * *

Dated: August 29, 1984.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 84-24055 Filed 9-11-84; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

Regulations G, T and U; Securities Credit Transactions; Amendment to definitions of "margin security" and "margin stock" and related technical amendments

[Docket No. R-0512]

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending the definition of "margin security" in Regulation T and the definitions of "margin stock" in Regulations G and U to give automatic marginability to any over-the-counter security identified as a National Market System (NMS) security in accordance with a designation plan of the National Association of Securities Dealers (NASD) that has been approved by the Securities and Exchange Commission (SEC). The Board will publish the List of OTC Margin Stocks on a new quarterly schedule. The Board's List will include NMS and non-NMS securities that otherwise meet the criteria for marginability established by the Board. Regulations G and U are also being amended to provide protection for lenders who may not have notice of a stock's designation between the Board's quarterly publication dates.

EFFECTIVE DATE: November 13, 1984.

FOR FURTHER INFORMATION CONTACT: Robert S. Plotkin, Assistant Director, Laura Homer, Securities Credit Officer, or Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, (202) 452-2781.

SUPPLEMENTARY INFORMATION:

I. History of Amendment

In response to a petition of the NASD, the Board published a proposed amendment to the margin regulations for comment that would give automatic marginability to any over-the-counter security designated as a National Market System (NMS) security (49 FR 9741, March 15, 1984). The Board is adopting the amendment in substantially the same form as proposed. However, due to comments received, the amendment has been technically revised to address some of the concerns of the respondents. In particular, language has been added to Regulations G and U to provide protection against inadvertent violations by lenders covered by those regulations who may not have actual notice that a particular stock has been designated as an NMS security. A similar provision is not being added to Regulation T because a broker is prohibited by statute from extending credit on securities that are not marginable; therefore such a provision is unnecessary.

Determination of Status of OTC Stock's Marginability

An OTC stock can become marginable (1) by meeting the criteria specified by the Board in its margin regulations (Regulations G, T and U) and actual inclusion on the Board's List of OTC Margin Stocks, or (2) by being designated as an NMS security in accordance with the designation plan of the NASD that has been approved by the SEC. Under SEC Rule 11Aa2-1 (17 CFR 240.11Aa2-1), the qualification date for determining a "Tier 1" NMS security (which is a mandatory designation) is the last business day of the calendar quarter. To become a "Tier 2" NMS security (which is a voluntary designation) the issuer must meet "Tier 2" qualifying criteria and must apply for the NMS designation. Under the NASD's present procedures, it is contemplated that, in general, "Tier 2" NMS stocks will be added not more than once every other week. Notice will be given to the industry and regulators by the NASD at least one week prior to the effective date of the designation which, in the case of an initial public offering of a security, may be on a "when, as, and if issued" basis.

In order to keep the public fully aware of which OTC stocks are marginable, the Board will publish quarterly a complete List of OTC Margin Stocks. This hard-copy publication will be on file at the Federal Register and can be obtained from the Board or any Federal Reserve Bank. In addition, the Board will publish a Supplement of additions to and deletions from the List of OTC Margin Stocks on a quarterly basis in the **Federal Register**. This Supplement will include current NMS securities as well as those securities deemed marginable under the Board's margin criteria. The publication of these Supplements will be timed to coincide with the NASD's quarterly inclusion of Tier 1 NMS securities. Since the next designation of the Tier 1 NMS securities is expected to be effective on November 13, 1984, the Board's Supplement to the List, ordinarily effective in October, will be delayed to coincide with this November date. Future Supplements of additions to and deletions from the List will be published quarterly in the **Federal Register** at the end of January, April, July and October with the usual two-week delayed effective date. There will be no SEC publication of NMS securities in the **Federal Register** as contemplated in the Board's original proposal.

Additional OTC securities may be designated by the NASD as NMS securities in the interim between Board publications. These securities will be automatically marginable at broker-dealers upon the effective date of their designation. A list of these securities and the effective date of their designation will be available at the Public Reference Branch of the SEC and copies will be hand delivered to the Board and delivered by overnight express to each of the Reserve Banks. Banks, broker-dealers, Regulation G lenders and other persons can verify whether an OTC stock is an NMS security by calling the SEC at its Public Reference Branch, 450 5th Street, NW., Washington, D.C. 20549 ((202) 272-7450). The margin status of any OTC stock can be obtained by calling the Securities Regulation Section in the Board's Division of Banking Supervision and Regulation ((202) 452-2781) or by calling any Federal Reserve Bank.

Final Regulatory Flexibility Analysis

The Board is amending its regulations to give automatic marginability to securities that are designated as qualified for trading in the National Market System. The initial regulatory flexibility analysis indicated that the amendment was not expected to have any adverse impact on a substantial number of small entities.

A comment on the proposed change raised the question of whether the Board discriminated against small business by not adopting the original NASD proposal, which asked for automatic marginability to securities on the entire National List. The decision to permit National Market System securities to be marginable was based on staff analysis indicating that the liquidity and other characteristics of NMS securities compare favorably with those of exchange-traded securities. A major difference between NMS and other National List securities is that the latter do not have "last sale" reporting, deemed necessary by stock exchanges to assure the availability of reliable price information. In the absence of such information and in light of other evidence suggesting differences in liquidity among National List securities, the Board decided to give automatic marginability at the present time only to National List securities traded in the NMS.

There is no evidence indicating that the regulatory change will have a significant impact on a substantial number of small businesses. If stocks of small entities are traded in the National Market System, they will be marginable at a brokerage firm after the regulatory change becomes effective. Small entities and other companies comprising the approximately 800 National List firms that are not on the NMS and that are not on the Board's List of OTC Margin Stocks will not be automatically marginable but, of course, may become marginable subject to satisfying Board OTC criteria. From the individual corporation's perspective, the economic effect of marginability is mixed. When securities become eligible as collateral in a margin account at a brokerage firm, they also become subject to regulatory limitations on the amount of credit that may be extended against their value by banks and other lenders; such limitations do not apply to nonmarginable stocks at banks and other lenders.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), the Board amends Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively) in the following manner:

Section 207.2—"Definitions", is amended by adding a new paragraph (i)(3), and renumbering (i)(3), (4) and (5) to (i)(4), (5) and (6).

Section 207.3—"General Requirements", is amended by adding a new paragraph (q).

Section 220.2—"Definitions", is amended by inserting a new item in paragraph (o), between the second and third item and numbering the items (o)(1), (2), (3), (4) and (5).

Section 221.2—"Definitions", is amended by adding a new paragraph (h)(3) and renumbering (h)(3), (4) and (5) to (h)(4), (5) and (6).

Section 221.3—"General Requirements", is amended by adding a new paragraph (1).

The amended paragraphs in Regulations G, T and U read as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. Section 207.2—"Definitions", is amended by revising paragraph (i) to read as follows:

§ 207.2 Definitions

* * * * *

(i) "Margin stock" means:

(1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC margin stock;

(3) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS Security);

(4) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(5) Any warrant or right to subscribe to or purchase a margin stock; or

(6) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(12)).

2. Section 207.3—"General Requirements", is amended by adding a new paragraph (g).

§ 207.3 General Requirements

* * * * *

(q) *Lack of notice of NMS security designation.* Failure to treat an NMS security as a margin stock in connection with an extension of credit shall not be deemed a violation of this part if the designation is made between quarterly publications of the Board's List of OTC Margin Stocks and the lender does not have actual notice of the designation.

PART 220—CREDIT BY BROKERS AND DEALERS

1. Section 220.2—"Definitions", is amended by revising paragraph (o) to read as follows:

§ 220.2 Definitions.

* * * * *

(o) "Margin security" means:

(1) Any registered security;

(2) Any OTC margin stock;

(3) Any OTC margin bond;

(4) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security); or

(5) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

1. Section 221.2—"Definitions", is amended by revising paragraph (h) to read as follows:

§ 221.2 Definitions.

* * * * *

(h) "Margin stock" means:

(1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC margin stock;

(3) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(4) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(5) Any warrant or right to subscribe to or purchase a margin stock; or

(6) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(12)).

2. Section 221.3—"General Requirements", is amended by adding a new paragraph (l).

§ 221.3 General requirements.

* * * * *

(l) *Lack of notice of NMS security designation.* Failure to treat an NMS security as a margin stock in connection with an extension of credit shall not be deemed a violation of this part if the designation is made between quarterly publications of the Board's List of OTC Margin Stocks and the bank does not have actual notice of the designation.

By order of the Board of Governors of the Federal Reserve System, September 5, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-24010 Filed 9-11-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

Fair Housing

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending § 338.4 of its regulations to eliminate the current requirement that insured State nonmember banks collect and, in the case of banks with greater than $10 million in total assets and which have an office located in a relevant metropolitan statistical area, record in a log-sheet certain data concerning home loan inquiries while retaining the requirement that information on home loan applications be recorded and retained for 25 months. This amendment is being made because inquiry data and log-sheet inquiry entries have not been effective in identifying those banks needing special attention in the fair housing lending monitoring program. The final rule will bring about cost savings for both banks and regulatory authorities and possible

improvements in the quality of compliance examinations through the more efficient use of examiner time.

DATE: Effective October 12, 1984.

FOR FURTHER INFORMATION CONTACT: Rex J. Morthland, Director, Office of Consumer Programs, Division of Bank Supervision (202/389-4473), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

Insured State nonmember banks which have an office in a primary metropolitan statistical area ("PMSA"), metropolitan statistical area ("MSA"), or a consolidated metropolitan statistical area ("CMSA") that is not comprised of designated primary metropolitan statistical areas [1] *and* which had total assets exceeding $10 million on December 31 of the preceding calendar year are required to keep a log-sheet in accordance with the provisions of § 338.4(a)(2)(iv) of the FDIC's regulations. Specific information [2] is recorded by each bank office for all home loan inquiries and applications received. A sample form of the log-sheet is included in Appendix A of § 338.4. A bank with no office in a relevant MSA or with total assets of $10 million or less is required to request and retain the same information from inquirers and applicants but is not required to keep a log-sheet.

On February 14, 1984, the FDIC published for public comment a proposed rule to eliminate the requirement that data concerning home loan inquiries be collected (and recorded in the log-sheets in the case of banks with any office in a relevant MSA and total assets of more than $10 million) while retaining the requirement that information on all such applications, both approved and rejected, whether submitted in writing or orally, be recorded and retained for 25 months (see 49 FR 5623 (February 14, 1984)).

At the same time, the FDIC also requested comments on a possible reduction in the number of banks required to maintain log-sheets by raising from $10 million in total assets the size under which banks are exempt from maintaining log-sheets or by changing the exemption threshold to another measure more closely associated with home loan application activity.

The Board of Directors of the FDIC ("Board") has determined to take no action regarding any change in the exemption threshold at this time because the issue warrants further evaluation. With respect to the deletion of inquiry-related data from the log-sheets (and from the retention requirements, in the case of non-relevant MSA banks or small banks), the FDIC received 30 comments for consideration. Community/civil rights/consumer groups and individuals submitted 18 comments opposing the elimination of inquiry entries while ten banks and two major banking trade associations supported the elimination.

In addition to the foregoing comments received in response to the Federal Register Notice, comments by FDIC consumer affairs and civil rights compliance examiners have been received on three different occasions: In May of 1982, when suggestions for changes in Part 338 were solicited from them in a periodic review of a number of FDIC regulations, in the March 1984 Compliance Examiners' Conference, and in a June 1984 survey of compliance examiners' experiences in the collection and use of inquiry data. These comments and opinions were also considered in formulating the recommendation to adopt the proposed amendments.

Based on a consideration of the foregoing, the FDIC is amending Part 338 to eliminate the requirement that inquiry-related data be collected and retained by all banks and recorded on the log-sheets by banks with an office in a relevant MSA and total assets exceeding $10 million.

Discussion and Analysis of Issues Raised by Comments

Because the banks and banking trade association supported the deletion of the inquiry-related data, the focus of this analysis is on the comments submitted by those opposing the proposal.

Enforcement Problems

Fourteen of those respondents opposing the proposed amendments argued that the elimination of inquiry data would weaken fair housing enforcement efforts in detecting unlawful discrimination.

Seven respondents believe that such elimination will undermine FDIC's efforts to detect unlawful prescreening. They allege that the collection of inquiry data is essential since information on the initial loan inquiry cannot be obtained any other way. Underlying this view is the belief that, to detect unlawful prescreening, inquiry data is necessary and that the log-sheets are invaluable if their maintenance is properly enforced.

Compliance examiners have enforced the inquiry recordation requirement since 1978. However, it has been found to have limited practical utility because of problems concerning accuracy, adequacy, and reliability of the data. The following points illustrate some of the problems:

> Inquiry-related contact between bank staff and customers, as contrasted to application-related contact, often is brief, and attempts to gather personal information can be difficult. Banks report that customers sometimes resent request for such personal information. Also, co-borrowers frequently are not always present to provide the information required by the regulation.
>
> During the period 1981 through 1983, a total of 15,924 bank compliance examinations was performed by FDIC examiners. Over this period and the first half of 1984, while using inquiry data, examiners found no violations of section 805 of the Fair Housing Act (42 U.S.C. 3605) indicating that creditors had engaged in illegal discouragement (including unlawful prescreening) of an applicant or potential applicant from applying for a housing loan or had refused to receive and consider applications for housing loans. Neither did complaint investigations using inquiry data lead to discovery of discouragement/prescreening violations from 1981 through July of 1984 (records prior to this time are unavailable).

Seven of the non-bank respondents indicated that the requirements to collect and record inquiry data should be more properly administered, reviewed, and evaluated by FDIC.

These requirements have been appropriately implemented by FDIC and have been used in the determination of each bank's compliance rating. Such violations have been cited in memoranda of understanding issued to banks to correct compliance problems. Also, unsatisfactory compliance ratings which include inquiry recordation compliance continue to be used as tools to evaluate the granting of applications by banks for relocation and new bank requests.

Ten of the non-bank respondents suggest that FDIC work with bank staffs to see that they are adequately trained in recording loan information.

Bank examiners have worked on a continuing basis with banks to see that there is an understanding of Part 338 and that bank personnel are properly trained. The role of the examiner is to review performance and to assist in compliance activities. However, problems with accuracy, adequacy, and reliability continue.

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[1] The foregoing terms replace the phrase "standard metropolitan statistical area" wherever it appears in the current version of Part 338 in order to reflect new terminology being used by the United States Office of Management and Budget. They are hereinafter collectively referred to as "relevant MSAs."

[2] This information consists of the name, address, race/national origin, sex, marital status, and age of the inquirer or applicant and the address of the property being purchased, constructed, repaired, or maintained.

Role of Inquiry Data

Seven of those opposing the amendments indicated their belief that records of inquiry data might serve as a deterrent to unlawful prescreening in FDIC-supervised banks.

If this is so, the other regulatory agencies might detect some prescreening in the absence of that deterrent—the records of inquiries. However, no section 805 prescreening violations were found by any of the other federal financial institutions regulators, including the Board of Governors of the Federal Reserve System (FRS), the Office of the Comptroller of the Currency (OCC), and the Federal Home Loan Bank Board (FHLBB). Of these, only the OCC provides for recording any inquiry data, and then only on a selective basis in situations where discrimination is suspected. The FDIC could use a similar selective procedure under its supervisory authority without specific provisions in Part 338, i.e., require a log on inquiries to be maintained if possible unlawful discrimination were suspected or found in a bank. This could be done when believed to be necessary to ensure that violations do not recur and to correct the effects of violations discovered.

Use of Inquiry Data by Examiners

A majority (10 of 18) of those opposing the amendments indicated their belief that examiners need inquiry data and use such data in detecting discrimination.

In 1982, seven of the eleven FDIC regional compliance review examiners, who responded to a request for suggestions of desirable amendments of Part 338, stated that the rule either should be amended to eliminate inquiry data or altered to reduce the number of banks required to comply because of problems with data reliability and usefulness.

Identifying and citing technical violations for inadequate log-sheet entries (primarily inquiry data) consumes the time of compliance examiners which could be utilized more profitably in performing more complete Fair Housing and Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) examinations. In summary, the collecting of inquiry data has had little actual practical utility, and the dropping of the inquiry logging requirement will have little effect on FDIC's ability to enforce civil rights laws, regulations, and rules.

Uniformity in Compliance Enforcement

The only banks required to record inquiry-related data on log-sheets regularly are FDIC-supervised banks which are, because of this, under a competitive disadvantage. More importantly, however, it undermines efforts to move toward uniformity in compliance enforcement among federal financial institutions regulatory agencies. To impose even more negative sanctions on banks for violations, as suggested by two respondents, would place insured state nonmember banks at a further competitive disadvantage.

Tools To Detect Unlawful Prescreening

Seven respondents opposing the amendments suggested that the FDIC develop and implement a program of testing.

Other means of checking for possible unlawful prescreening exist. One public interest group has proposed that the public itself perform monitoring of possible unlawful prescreening. It suggested that persons who believe they are being unlawfully discouraged from filing a home loan application can ask acquaintances to stop by the bank to make a similar loan request.

If the bank response is different, apparently because of a difference in the protected group's characteristics of the applicant and acquaintances, a complaint can be filed with one of the federal financial institutions regulators, with the Department of Housing and Urban Development, or with others, including state government officials. The same public interest group also indicated that fair housing groups have begun to evaluate fairness practices in lending, as they have been doing in real estate rental for many years.

Alternative Sources of Information

Home Mortgage Disclosure Act

Twelve of the comments pointed out that Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*) data are designed to discover redlining.

The Home Mortgage Disclosure Act, which was enacted in 1975 and amended in 1980, is aimed at redlining. However, it can also provide other indicators of possible prescreening, which is one aspect of redlining. The HMDA and its implementing Regulation C of the regulations of the FRS (12 CFR Part 203) provide for disclosure of home loan data in order to determine if a depository institution is serving the housing needs of the communities and neighborhoods in its marketing area. Insured nonmember banks that are required to maintain fair housing lending log-sheets also are required to file HMDA reports. HMDA data on residential loan patterns of each regulated depository institution, as well as aggregate tables for all HMDA-reporting institutions in the same relevant metropolitan statistical area, are available for peer group comparisons in centalized repositories as a result of the 1980 amendments.

The staff of the Senate Committee on Banking, Housing, and Urban Affairs viewed the requirement of aggregation data as being highly significant. It believed that data aggregations would provide a broad picture of lending patterns in each relevant MSA, allowing for comparisons of one bank with those of all other regulated depository institutions in that same relevant MSA.[3] Moreover, it believed that HMDA aggregate data would be an important new tool to assist in Fair Housing Act enforcement and implementation of the CRA. Community groups also supported the 1980 amendment. They believed that the aggregate data would allow them to evaluate a particular institution's residential loan activity in the context of what other depository institutions were doing in selected neighborhoods.[4]

It is reasonable to assume that unlawful prescreening of applicants on the basis of race would result in fewer loans to minorities. HMDA Aggregation Table I provides for the analysis of possible differences in patterns of loan originations by individual banks based on minority status which correlate to census tracts. It summarizes by census tracts housing loans made within an individual relevant MSA. Demographics also are given. Included for each census tract are minority population as a percentage of total population and median family income as a percentage of median income in that relevant MSA. The public can now match an individual bank's record of the number of housing loans made in a census tract(s) by minority status and income against the record of all HMDA-reporting financial institutions to test for indications of possible discrimination against minorities.

Outside Contacts

Twelve non-bank respondents expressed their belief that outside contact information is an inadequate substitute for inquiry information.

However, outside contacts are another means of obtaining leads to possible prescreening. Since 1980 the

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[3] S. Rep. No. 936, 96th Cong., 2d Sess. 33 (1980).

[4] G. Canner, *Home Mortgage Disclosure Act Aggregation: Benefits, Assurance, and Costs,* Journal of Retail Banking 37 (1982).

FDIC has required field examiners to talk to individuals and groups outside of the bank being examined as a check on performance. The quarterly reports submitted to the Washington Office cover two types of contacts: (1) Those made for CRA assessment purposes and (2) those made for the purpose of discovering possible evidence of discrimination through possible prescreening in housing-related credit.

During 1983, 451 outside contacts were made for prescreening purposes; 389 were made for CRA purposes.

Complaints

The majority (12 of 18) of non-bank respondents believe that complaints are an inadequate alternative to inquiry information.

The investigation of complaints, of course, remains only one aspect of FDIC's comprehensive compliance enforcement program and is understood not to be a substitute for an overall compliance program, but it is an additional enforcement tool.

Internal Audits by Banks

Two consumer advocates suggested that inquiry information is used by banks to self-correct possible problems.

It could be. However, HMDA data also can help lenders who wish to audit their own performance, either to avoid possible discrimination problems or to avoid missing out on sound mortgage lending opportunities. Records of inquiries would not be needed for either of these, but application records (which are not available to the public) could continue to be a useful in-house tool to banks. Almost 15% of the banks surveyed in June 1984 indicated that log-sheets are used for one or more of those activities including internal review and control purposes (e.g., for determining the volume of new loans, pulling samples, tracing adverse action files, and complying with HMDA, etc.). No change is proposed in the requirement that application information be logged.

FDIC Efforts To Improve Effectiveness of Its Fair Housing Lending Monitoring Program

Nine commenters opposing the amendments indicated that adoption would signal an abandonment of FDIC's commitment to fair housing. One respondent believed that the elimination of inquiry data would be the first step in the dismantling of FDIC's fair housing system.

Such apprehensions are unfounded. FDIC is committed to enforcing effectively and fairly all laws for which Congress has delegated responsibility to it. Since 1977—when the Settlement Agreement (discussed in the next section) was signed—to the present, many positive and comprehensive changes have been made in the efforts of the Corporation to increase the effectiveness of its fair housing lending monitoring program. It has:

—Established an Office of Consumer Programs;

—Hired one Civil Rights Analyst and one Civil Rights Specialist;

—Implemented a compliance examination program in which all banks supervised by the FDIC are regularly examined, evaluated, and rated as to efforts and performance relative to compliance with protection laws;

—Developed and maintained a compliance Examination Statistical System to record and monitor violations found during compliance examinations and investigations;

—Conducted regular training programs for compliance examiners;

—Developed a comprehensive Complaint Examination Manual to assist examiners in performing uniform, high-quality compliance examinations, including fair housing lending examinations and investigations;

—Instituted a special review of branch applications by all banks which have received a less than satisfactory CRA or compliance rating (a 4 or 5—and some with a rating of 3);

—Developed and maintained an extensive and effective consumer complaint and inquiry handling and recordkeeping system. It provides for the specialized investigations of complaints including fair housing complaints, when needed. Such investigations are directed by regional offices and reviewed in the Washington Office;

—Established a toll-free telephone (hot-line) number, allowing anyone in the continental United States, Puerto Rico, and the Virgin Islands to call with questions and/or complaints. During 1982 and 1983, a total of 4,365 consumer complaints and 22,092 inquiries were received in writing and on the telephone hot line;

—Requires nondiscrimination in advertising with written, visual, or oral advertisements to include evidence that the bank is an "equal housing lender"; and

—Requires that each bank conspicuously display an Equal Housing Lending Poster.

The Settlement Agreement

Ten comments addressed the agreement signed on May 13, 1977, by FDIC ("Settlement Agreement" or "Agreement") in settlement of a lawsuit by the National Urban League and others against four of the federal financial institutions regulatory agencies. The commenters made the following arguments: (1) The expiration of the Agreement did not relieve FDCI of its "statutory" obligation; (2) the proposed amendments will undermine the Agreement; and (3) the log-sheet requirement with inquiry information was a part of the Agreement's data collection system.

Section 338.4 of the FDIC's regulations (12 CFR 338.4), entitled "Recordkeeping Requirements," requires the recording of the characteristics of *inquirers* as well as of applicants. When Part 338 was written in 1978, recordation of inquiry-related information was perceived as a helpful tool in the FDIC fair housing lending monitoring program to discover possible prescreening of potential home loan applicants on a prohibited basis. This went beyond the provisions of the Settlement Agreement. It also went beyond the requirements of the Fair Housing Act and the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) with its implementing Regulation B (12 CFR Part 202).

FDIC agreed, in section 1 of the Settlement Agreement, to establish a data collection system directed singularly to *written applications* for housing loans. This system was to make use of race/sex identification information voluntarily given by the *applicant* and collected by the bank pursuant to Regulation B, with additional financial information on the *applicant* and loan terms. It was intended to identify institutions for which indications of apparent discrimination warranted further investigation. A more detailed investigation was to be conducted when race or sex appeared to be a factor in the lending decision. The focus of the monitoring system outlined in the Settlement Agreement was on written *applications*, not on inquiries.

Technical Changes

Three minor technical changes are being made to correct oversights appearing in the proposal. First, despite the revamping of the Equal Housing Lending Poster required by § 338.3 to reflect a change in nomenclature of an FDIC office, continued use of the current Equal Housing Lending poster after the effective date of these amendments is permissible so long as the poster was displayed prior to that same date. Second, the phrase "on a log-sheet described in paragraph (a)(2)(iv) of this section" is deleted from § 338.4(a)(2) of the proposal because its presence calls for the inclusion of information not appearing on the log-sheet. Finally, an inadvertent reference in § 338.4(a)(iv) of the proposal to an "inquirer" is removed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board, in proposing the amendments, certified that the proposal would not have a significant economic impact on a substantial number of small entities. The Board based its conclusion on the belief that the proposed amendments would ease the existing collection of information requirements. The Board also indicated that the effect of the amendments is expected to be beneficial rather than adverse, and that small entities are generally expected to share the benefits of the amendments equally with larger institutions. The Board, in approving the final amendments, reiterates those conclusions.

Paperwork Reduction Act

The Office of Management and Budget filed a comment with the FDIC agreeing that the collection of inquiry-related information by banks should be discontinued but also suggesting additional reductions in burden hours contained in the collection of information requirements of the proposed rule. OMB believes that, based on information provided it by FDIC, the current threshold for determining the exemption from the log-sheet requirement is "too low and ineffective" and not closely enough related to home loan activity.

As stated above, the FDIC is not making any changes in the exemption threshold at this time because the advisability of changing it requires further evaluation. However, the Board intends to issue a notice of proposed rulemaking dealing with the latter issue in the near future.

The collection of information requirements contained in the final rule have been cleared by the Office of Management and Budget. The rule has been assigned OMB Control No. 3064-0046.

List of Subjects in 12 CFR Part 338

Advertising, Banks, Banking, Fair housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, State nonmember banks.

In consideration of the foregoing, the FDIC hereby amends Part 338 as follows:

PART 338—FAIR HOUSING

1. The authority for Part 338 is revised to read as follows:

Authority: Sec. 2, Pub. L. 86-671, 74 Stat. 547 (12 U.S.C. 1817); sec. 8, Pub. L. 797, 64 Stat. 879, as amended by secs. 202, 204, Pub. L. 89-695, 80 Stat. 1046, 1054, and sec. 110, Pub. L. 93-495, 88 Stat. 1506 (12 U.S.C. 1818); sec. 9, Pub. L. 797, 64 Stat. 881, as amended by sec. 205, Pub. L. 89-695, 80 Stat. 1055 (12 U.S.C. 1819); sec. 203, Pub. L. 89-695, 80 Stat. 1053 (12 U.S.C. 1820(b)); sec. 805, Pub. L. 90-284, 82 Stat. 83, 84, as amended by sec. 808, Pub. L. 93-383, 88 Stat. 729 (42 U.S.C. 3605, 3608); sec. 501, Pub. L. 93-495, 88 Stat. 1521, as amended by sec. 2, Pub. L. 94-239, 90 Stat, 251 (15 U.S.C. 1691, et seq.); 40 FR 49306, 12 CFR Part 202; 37 FR 3429, 24 CFR Part 110.

§ 338.1 [Amended]

2. Section 338.1 is amended by removing paragraphs (g) and (h).

3. In § 338.3, redesignate paragraph (b) as (b)(1), the term "The Office of Consumer Affairs and Civil Rights" found in the Equal Housing Lender Poster is changed to read "The Office of Consumer Programs," and a new paragraph (b)(2) is added to read as follows:

§ 338.3 Equal Housing Lending Poster.

* * * * *

(b) * * *

(2) Notwithstanding the foregoing, Equal Housing Lending Posters containing obsolete references to the FDIC's "Office of Consumer Affairs and Civil Rights" which were displayed prior to October 12, 1984 shall be deemed to be in compliance with subparagraph (1) of this paragraph (b).

* * * * *

4. In section 338.4, paragraphs (a)(1), (a)(2)(i), footnote 3 to paragraph (a)(2)(ii), (a)(2)(iii)(A), (a)(2)(iii)(B), and (a)(2)(iv), (b), (c), and (f) are revised to read as follows:

§ 338.4 Recordkeeping requirements.

(a) *Records to be retained.*[3] (1) A bank which has no office located in a primary metropolitan statistical area ("PMSA"), a metropolitan statistical area ("MSA"), or a consolidated metropolitan statistical area ("CMSA") that is not comprised of designated PMSAs, as defined by the Office of Management and Budget, or which has total assets as of December 31 of the preceding calendar year of $10 million or less is not required to keep a log-sheet described in paragraph (a)(2)(iv) of this § 338.4 but shall request and retain the following information:

(i) *Data on home loan applicants.*

(A) Date of application.

(B) Case identification.

(*1*) Name.

(*2*) Address.

(*3*) Location (street address, city, State, and zip code) of property being purchased, constructed, improved, repaired, or maintained.

(C) Sex.

(D) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; Hispanic; White; or other (specify).

(E) Age.

(F) Marital status, using the categories married, unmarried, and separated.

(ii) *Collection of data.* No bank shall engage in any activity which discourages an applicant from providing the information in paragraph (a)(1)(i) of this section. Each bank shall attempt to collect such information during the initial contact with the applicant. If the applicant refuses to furnish all or part of this information, the bank shall note the fact or have the applicant note the fact on the form used for recording the information. If the information regarding race and sex is not voluntarily furnished, the bank shall, on the basis of visual observations or surnames, separately note the information on the form or an attached document.

(2) A bank which has an office in a PMSA, MSA, or CMSA that is not comprised of designated PMSAs, and which had total assets exceeding $10 million as of December 31 of the preceding calendar year shall request and retain the following information:

(i) *Data on home loan applicants.*

(A) Date of application.

(B) Case identification:

(*1*) Name.

(*2*) Address.

(*3*) Location (street address, city, State, and zip code) of property being purchased, constructed, improved, repaired, or maintained.

(C) Sex.

(D) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; Hispanic; White; or other (specify).

(E) Age.

(F) Marital status, using the categories married, unmarried, and separated.

(G) Loan type, using the following categories: purchase of existing dwelling; refinancing of existing home loan; construction loan only; construction-permanent; home improvment, repair or maintenance; or other (specify).

(H) Case disposition (e.g., accepted, rejected).

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[3] These records are to be retained for the purpose of monitoring compliance and may not be used for the purpose of extending or denying credit or fixing terms where prohibited by law.

(ii) *Additional data on applications for home loans.*[3]

* * * * *

(iii) * * *

(A) Each bank shall attempt to collect that information in paragraph (a)(2)(i) of this section during the initial contact with the applicant. If the applicant refuses to furnish all or part of this information, the bank shall note the fact or have the applicant note the fact on the form used for recording the information. If the information regarding race and sex is not voluntarily furnished, the bank shall on the basis of visual observation or surnames, separately note the information on the form or an attached document.

(B) No bank shall engage in any activity which discourages an applicant from providing the information in paragraphs (a)(2)(i) and (a)(2)(ii) of this section. If the bank is unable to obtain any part of the information requested of the applicant under paragraph (a)(2)(ii) of this section, it shall note the reason in the application file. Also, if the bank rejects an application before it has had the opportunity to collect all of the information under paragraph (a)(2)(ii) of this section, it shall note the reason for the rejection in the application file and need not obtain the remaining information.

(iv) *Log-sheet.* In addition to the other recordkeeping requirements specified in this paragraph (a)(2) of this section, each bank covered by the provision shall keep a log-sheet on its home loan applications by bank office. The log-sheet shall contain the information reflected on the sample form in Appendix A. The bank shall be able to trace each entry on the log-sheet to the relevant application file, using the name of the applicant or unique case number assigned by the bank.

(b) *Disclosure to applicant.* The bank shall advise an applicant that:

(1) The information regarding race/national origin, marital status, age, and sex in paragraphs (a)(1) and (a)(2) of this section is being requested to enable the Federal Deposit Insurance Corporation to monitor compliance with the Fair Housing and Equal Credit Opportunity Acts which prohibit creditors from discriminating against applicants on these bases;

(2) The Federal Deposit Insurance Corporation encourages the applicant to provide the information requested; and

(3) If the applicant refuses to provide the information concerning race/national origin or sex, the bank is required, where possible, to note the information on the basis of visual observations or surnames.

(c) *Record retention.* Each bank shall retain the records required by § 338.4 for 25 months after the bank notifies an applicant of action taken on an application. This requirement applies to records of home loans which are originated by the bank and subsequently sold. The Federal Deposit Insurance Corporation may by written notice extend the retention period.

* * * * *

(f) *OMB review.* The Office of Management and Budget has reviewed and approved the collection of information requirements contained in this Part 338.

(OMB Control Number 3064-0046 has been assigned)

5. The sample form that appears after § 338.5 is revised and designated as Appendix A to § 338.4 as follows:

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[3] Except for census tract information in paragraph (a)(2)(ii)(B)(5), all information is listed on the Residential Loan Application Form contained in Appendix B of Regulation B of the Board of Governors of the Federal Reserve System (12 CFR Part 202, Appendix B). The information may be recorded on the Regulation B model Residential Loan Application Form or on one or more existing form or forms used by the bank.

Appendix A

Bank Name

FDIC Number

FAIR HOUSING LENDING
HOME LOAN APPLICATION
LOG SHEET

Branch or Office

Other Designation

Use the codes listed below in the appropriate columns. Indicate by an asterisk (*) if the information recorded is the bank officer's observation rather than borrower's statement.

RACE CODES
I American Indian or Alaskan Native
A Asian or Pacific Islander
B Black
H Hispanic
W White
O Other

MARITAL STATUS CODE
M Married
U Unmarried
S Separated

LOAN TYPE CODES
P Purchase of existing dwelling
R Refinancing of existing home loan
I Construction loan only
C Construction permanent
H Home improvement, repair or maintenance
O Other

CASE DISPOSITION CODES
A Accepted
R Rejected
O Other Action
D Other Adverse Action as defined in FRB Regulation B, Sec. 202.2

	Date of Application	CASE IDENTIFICATION a) Name b) Present Address c) Address of Property for Which Applied	BORROWER				CO BORROWER				Loan Type	Case Disposition	Examiner Use Only
			Sex (F or M)	Race	Age	Marital Status	Sex (F or M)	Race	Age	Marital Status			
1		a)											
		b)											
		c)											
2		a)											
		b)											
		c)											
3		a)											
		b)											
		c)											
4		a)											
		b)											
		c)											
5		a)											
		b)											
		c)											
6		a)											
		b)											
		c)											
7		a)											
		b)											
		c)											
8		a)											
		b)											
		c)											

FDIC 6500/70

6. Section 338.5 is revised to read as follows:

§ 338.5 Mortgage lending of a controlled entity.

Any bank which refers any applicants to a controlled entity and which purchases any home loans originated by the controlled entity, as a condition to transacting any business with the controlled entity, shall require the controlled entity to enter into a written agreement with the bank. The written agreement shall provide that the controlled entity (a) shall comply with the requirements of §§ 338.2, 338.3, and 338.4, (b) shall open its books and records to examination by the Federal Deposit Insurance Corporation, and (c) shall comply with all instructions and orders issued by the Federal Deposit Insurance Corporation with respect to its home loan practices.

By Order of the Board of Directors.

Dated: August 27, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-23963 Filed 9-11-84; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-23]

Revocation and Establishment of Compulsory Reporting Points; Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action reinstates seven Compulsory Reporting Points and revokes five others over the Pacific Ocean west and southwest of the state of Hawaii. This amendment complements the rule issued under Airspace Docket No. 84-AWA-22 which reinstates airspace associated with 13 VOR Federal Airways as it existed prior to August 30, 1984, due to the suspension of the relocation of the Honolulu, HI, very high frequency omni-directional radio range and tactical air navigation aid (VORTAC) facility.

DATES: Effective date—0901 GMT, October 25, 1984. Comments must be received on or before October 24, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-23, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves an emergency situation necessitated by a suspension of the relocation of the Honolulu, HI, VORTAC, and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.215 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to: (1) Reinstate BROMS, SILLS, MAKAI, VANDA, POTEN, DOGGY and PALMS Compulsory Reporting Points and (2) revoke Compulsory Reporting Points established along certain VOR Federal Airways that were effective August 30, 1984, and which are no longer appropriate since the Honolulu, HI, VORTAC relocation has been suspended. Section 71.215 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984. I find that notice or public procedure under 5 U.S.C. 553(b) is impractical and that good cause exists for making this amendment effective coincident with the next charting date because of the previously described emergency nature of the change.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Compulsory Reporting Points, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.215 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (49 FR 27741) is further amended, as follows:

Broms [New]

Lat. 21°19'11" N., long. 158°31'06" W. (INT Honolulu, HI, 269°, Lihue, HI, 130° radials).

Canon [Removed]

INT South Kauai, HI, 288° radial and long. 162°37'11" W.

Choko [Removed]

INT Honolulu, HI, 252° radial and long. 160°53'09" W.

Doggy [New]

Lat. 21°55'23" N., long. 161°19'31" W. (INT South Kauai, HI, 271° radial and the Honolulu CTA/FIR boundary).

Kaths [Removed]

INT South Kauai, HI, 245° radial and long. 161°23'22.6" W.

Nonni [Removed]

INT South Kauai, HI, 245° and Honolulu, HI, 269° radials.

Makai [New]

Lat. 21°01'54" N., long. 158°01'36" W. (INT Honolulu, HI, 179°, Molokai, HI, 262° radials).

Palms [New]

Lat. 21°05'15" N., long. 157°34'28" W. (INT Honolulu, HI, 119°, and Molokai, HI, 262° radials).

Poten [New]

Lat. 20°47'03" N., long. 159°28'01" W. (INT Koko Head, HI, 254°, Lihue, HI, 186° radials).

Sills [New]

Lat. 21°17'49" N., long. 159°31'53" W. (INT Honolulu, HI, 269°, Lihue, HI, 195° radials).

Silva [Removed]

INT South Kauai, HI, 271° radial and long. 162°45'28.6" W.

Vanda [New]

Lat. 22°24'00" N., long. 161°15'00" W. (INT South Kauai, HI, 288° radial, long. 161°15'00" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49

U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on September 5, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-24019 Filed 9-11-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-22]

Revisions to VOR Federal Airways, Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action effectively reinstates 13 VOR Federal Airways in the state of Hawaii as they existed prior to August 30, 1984, due to the suspended relocation of the Honolulu, HI, very high frequency omni-directional radio range and tactical air navigation aid (VORTAC) facility. Complementary action affecting compulsory reporting points associated with this rule are being accomplished by separate rulemaking in Airspace Docket No. 84-AWA-23.

DATES: Effective date—0901 GMT, October 25, 1984. Comments must be received on or before October 24, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-22, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves an emergency action to reinstate 13 VOR Federal Airways as they existed prior to August 30, 1984, and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.127 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to reinstate in the state of Hawaii, as they existed prior to August 30, 1984, VOR Federal Airways: V-11; V-12; V-13; V-14; V-15; V-16; V-2; V-20; V-21; V-22; V-4; V-8; and V-9; due to a suspension of the relocation of the Honolulu VORTAC. Section 71.127 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984. I find that notice or public procedure under 5 U.S.C. 553(b) is impractical and that good cause exists for making this amendment effective coincident with the next charting date because of the previously described emergency nature of the change.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal related to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdication of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.127 of Part 71 of the Federal Aviation Regulations (14

CFR Part 71) as amended (49 FR 27740), is further amended, as follows:

V–11 [Revised]

From INT Kona, HI, 323° and Upolu Point, HI 211° radials; Upolu Point; INT Upolu Point 349° and Maui, HI, 060° radials; Maui; INT Maui 331° and Molokai, HI, 091° radials; Molokai; INT Molokai 262° and Honolulu, HI, 179° radials.

V–12 [Revised]

From INT Lihue, HI, 195° and Honolulu, HI, 269° radials, 38 miles, 35 MSL, Honolulu; Koko Head, HI, 14 miles, 25 MSL INT Koko Head 050° and Maui, HI, 012° radials.

V–13 [Revised]

From Lihue, HI, INT Lihue 145° and Honolulu, HI, 269° radials; INT South Kauai, HI, 133° and Koko Head, HI, 254° radials; Koko Head, 14 miles, 25 MSL, INT Koko Head 050° and Molokai 015° radial and the Honolulu FIR/Oceanic CTA.

V–14 [New]

From INT South Kauai, HI, 271° radial and long. 161°20′00″ W.; 50 MSL long. 159°42′00″ W.; South Kauai; INT South Kauai 133° and Koko Head, HI, 254° radials; Koko Head.

V–15 [Revised]

From INT South Kauai, HI, 288° radial and long. 161°15′00″ W. 50 MSL long. 159°42′00″ W.; South Kauai; Honolulu, HI; Koko Head, HI; Molokai, HI; Maui, HI; INT Maui 095° and Hilo, HI, 336° radials; Hilo; to INT Hilo 099° radial and the Honolulu FIR/Oceanic CTA.

V–16 [Revised]

From Honolulu, HI, INT Honolulu 179° and Lanai, HI, 285° radial; Lanai; Upolu Point, HI; INT Upolu Point 108° and Hilo, HI, 336° radials; Hilo.

V–2 [Revised]

From South Kauai, HI, Lihue, INT Lihue 130° and Honolulu, HI, 269° radials; Honolulu; Lanai, HI; INT Lanai 106° and Upolu Point, HI, 305° radials; Upolu Point; INT Upolu Point 093° and Hilo, HI, 336° radials; Hilo. The airspace within R–3104A, R–3104B and R–3104C is excluded.

V–20 [Revised]

From Honolulu, HI, INT Honolulu 134° and Kona, HI, 308° radials; Kona.

V–21 [Revised]

From INT Honolulu, HI, 179° and Lanai, HI, 285° radials; Lanai; INT Lanai 106° and Hilo, HI, 033° radials; to INT Upolu Point 093° radial and the Honolulu FIR/Oceanic CTA. The airspace within R–3104 is excluded.

V–22 [Revised]

From Maui, HI, INT Maui 095° and Hilo, HI, 321° radials; Hilo; to INT Hilo 078° radial and the Honolulu FIR/Oceanic CTA.

V–4 [Revised]

From INT Lihue, HI, 186° and Koko Head, HI, 254° radials, Koko Head.

V–8 [Revised]

From INT Honolulu, HI, 179° and Molokai, HI, 262° radials, Molokai; 30 miles, 25 MSL INT Molokai 067° and Upolu Point, HI, 010° radials.

V–9 [New]

From INT Lanai, HI, 223° and Honolulu, HI, 179° radials, 78 miles, 35 MSL, Honolulu. The airspace above FL 300 within W–321B is excluded.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on September 4, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–24022 Filed 9–11–84; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 3H5412/R689; OPP–FRL–2665–7]

Animal Drugs, Feeds, and Related Products; Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; 3,6-Bis(2-Chlorophenyl)-1,2,4,5-Tetrazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit the residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace in accordance with an experimental program. This regulation to establish a maximum permissible level of the acaricide in apple pomace was requested in a petition by NOR–AM Chemical Co.

EFFECTIVE DATE: Effective on September 12, 1984.

ADDRESS: Written objections, identified by the document control number [FAP 3H5412/R689], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 1, 1984 (49 FR 30791), which announced that NOR AM Chemical Co., Wilmington, DE 19803, had submitted a feed additive petition proposing to amend 21 CFR Part 561 by establishing a regulation to permit residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace at 20.0 parts per million (ppm) resulting from application of 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine to apples in connection with an experimental use permit.

There were no comments received in response to the notice of filing.

The pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) *et seq.*). It has further been determined that since residues of the pesticide may result in apple pomace from the agricultural use provided for in the experimental use permit, the feed additive regulation should be established and should include a tolerance limitation.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include a 90-day rat feeding study with a no-observed-effect level (NOEL) of 2.8 milligrams (mg)/kilogram (kg)/day (40 ppm); a 26-week feeding study in dogs with a no-observed-effect level (NOEL) of 1.25 mg/kg/day (50 ppm); a rat teratology study with a NOEL of 1,280 mg/kg/day for maternal toxicity and teratogenic and fetotoxic NOEL of 3,200 mg/kg/day (highest dose tested); and a rabbit teratogenicity study with a NOEL of 1,000 mg/kg/day for fetotoxicity and maternal toxicity. Studies on mutagenicity demonstrated negative potential.

Based on the 26-week dog feeding study with a 1.25 mg/kg/day NOEL and using a safety factor of 2,000, the acceptable daily intake (ADI) for man is 0.000625 mg/kg/day. The theoretical maximum residue contribution (TMRC) resulting from the established temporary tolerance of 1.0 ppm for residues in or on apples and the proposed tolerance for residues in milk, fat, meat and meat byproducts of cattle (except liver and kidney) at 0.01 ppm, in cattle liver at 0.1 ppm and in cattle kidney at 0.05 ppm is 0.0434 mg/day for a 60-kg person. The resulting percent Acceptable Daily Intake (ADI) occupied is 115.70.

The Agency is concerned when the percent ADI occupied for a given product exceeds 100; however, in this instance, the NOEL from which the ADI was determined is based on effects found to be reversible after subchronic feeding of test animals at dose levels substantially higher than the NOEL. In addition, toxic doses are difficult to obtain in animal studies because of low solubility and relatively low absorption of orally administered doses. The 2,000-fold safety factor is a provisional safety factor used when a 1-year dog feeding study is not available. Based on these considerations and available toxicology data, the Agency believes that the use of this chemical on apples is acceptable.

The metabolism of 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine is adequately understood for this use, and an adequate analytical method, liquid chromatography, is available for enforcement purposes. No actions are currently pending against registration of this acaricide.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135(a) *et seq.*) and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: August 22, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended by adding new § 561.92, to read as follows:

§ 561.92 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine.

A tolerance of 20.0 parts per million is established for residues of the acaricide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace resulting from application of the acaricide to apples. Such residues may be present therein only as a result of the application of the acaricide in accordance with the provisions of the experimental use permit number 45639–EUP–14 that expires March 15, 1985.

[FR Doc. 84–23709 Filed 9–11–84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[T.D. ATF-180; Ref: Notice Nos. 313, 362, 375, 394, and 407]

Labeling and Advertising Regulations Under the Federal Alcohol Administration Act; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on the labeling and advertising of wine, distilled spirits, and malt beverages which appeared in the issue of August 8, 1984 (49 FR 31667). The action is necessary to correct technical errors.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta (202-566-7626).

SUPPLEMENTARY INFORMATION: In FR Doc. 84-20897 appearing on page 31667 in the issue of Wednesday, August 8, 1984, make the following correction:

§ 5.42 [Corrected]

On page 31673, second column under § 5.42 Prohibited practices, paragraph (b)(5)(ii) should read: "It is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or "

In addition, the following paragraph, which also presently reads as "(b)(5)(ii)," should be changed to "(b)(5)(iii)"

Approved: September 4, 1984.

W.T. Drake,

Acting Director.

[FR Doc. 84–23987 Filed 9–11–84; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2634-1]

National Emission Standards for Hazardous Air Pollutants; Reference Methods; Method 105 Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises "Method 105, Determination of Mercury in Wastewater Treatment Plant Sewage Sludges." Changes in the sampling and analytical procedure, which will improve the precision and accuracy of the method, are being made as a result of field and laboratory evaluations of the method.

In addition, it corrects an error in Methods 101 and 101A which resulted when several sentences are inadvertently deleted before publication.

EFFECTIVE DATE: September 12, 1984.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Docket: Docket Number A-83-31, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's at Central Docket Section (LE-131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gary McAlister or Mr. Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: The revised Method 105 differs from the present method as follows: (1) A sludge-blending procedure has been added; (2) the sludge sample size has been increased from 3.0 liters; and (3) twenty-ml portions of wet sludge are taken for mercury analysis rather than the 0.2-g portions of dried sludge now required.

Public Participation

The revisions were proposed and published in the **Federal Register** in November 1983 (48 FR 51064). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed revisions, but no person desired to make an oral presentation. The public comment period was from November 4, 1983, to January 8, 1984. Two comment letters were received concerning issues relative to the proposed revisions. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made.

Comments and Changes To The Proposed Method Revisions

Two comments letters were received on the proposed revisions. The comments and responses are summarized in this preamble. Some of the comment letters contained multiple comments.

1. One commenter reported that the aqua regia digestion procedure described in Method 105 did not give valid results. He recommended that the sulfuric acid digestion specified in Environmental Protection Agency Methods 245.1 and 245.5 be used instead.

EPA has successfully used the aqua regia digestion and has received no other negative comments about it. However, under § 60.8(b), the Administrator can approve alternative procedures which can be demonstrated to give acceptable results.

2. One commenter reported that he had obtained adequate homogenization of 3-liter sludge samples by hand blending and kneading the samples in a heavy plastic bag. The relative standard deviation for the samples ranged from 2.8 to 29.98 percent. He noted that the cost of the equipment for mechnical mixing could be as much as $2,100 and questioned whether the expense was justified if manual mixing could produce adequate sample precision.

Method 105 now requires 15-liter samples which are much larger than the 3-liter samples measured by this commenter. During collaborative testing of the method, EPA determined that manual mixing of these large samples could not provide adequate homogenization, but the mechanical blending procedure described in Method 105 did produce adequate mixing. Because a homogeneous sample is necessary to obtain consistent results, EPA believes that mechanical mixing of samples is required and that the need for representative samples justifies the added expense.

3. Another commenter noted that unless the sludge charging rate, Q, in the equation in § 61.54 for calculating mercury emissions, was on a dry basis, the equation would overestimate the emission rate. This commenter suggested that this be corrected by dividing the charging rate by the weight fraction of solids, F_{sm}.

EPA agrees. The equation in § 61.54 (3)(d) has been changed so that the sludge charging rate will be on a dry basis.

4. One commenter thought that in Appendix B, Section 5.1, m is the mass of mercury in the aliquot analyzed, not the mass in the digested sample.

EPA agrees that m is the mass of mercury in the aliquot of digested sample analyzed instead of the whole digested sample and has made the necessary change.

5. One commenter wrote that the solids content after mixing in the mortar mixer, F_{sm}, has no place in Equation 105–4. The commenter thought that Equation 105–4 should read as follows:

$$M=C_m(avg)/F_{sb}$$

EPA agrees Equation 105–4 was incorrect and has corrected the equation as shown above.

Docket

The docket is an organized and complete file of the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purposes of the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

This rulemaking would not impose any additional emission measurement requirements on any facilities. Rather, the rulemaking would simply revise an existing test method associated with emission measurement requirements that would apply irrespective to this rulemaking.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has been submitted to the Office of Management and Budget for review.

Pursuant to the provisions of 5 U.S.C. 605(b), EPA must consider the economic effect of this standard on small entities. Most, if not all, of the facilities covered by this regulation are owned by State or local governments would not be small entities.

This proposed rulemaking is issued under the authority of sections 112, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7412, 7414, and 7601(a)).

List of Subjects in 40 CFR Part 61

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel steam generators, Fiberglass insulation, Synthetic fibers.

Dated: September 5, 1984.

William D. Ruckelshaus,

Administrator.

PART 61—[AMENDED]

40 CFR Part 61 is amended by revising § 61.54 and Methods 101, 101A, and 105 of Appendix B to read as follows:

1. In § 61.54, paragraphs (c)(1), (c)(3), and (d) are revised as follows:

§ 61.54 Sludge sampling.

* * * * *

(c) * * *

(1) The sludge shall be sampled according to Method 105—Determination of Mercury in Wastewater Treatment Plant Sewage Sludges. A total of three composite samples shall be obtained within an operating period of 24 hours. When the 24-hour operating period is not continuous, the total sampling period shall not exceed 72 hours after the first grab sample is obtained. Samples shall not be exposed to any condition that may result in mercury contamination or loss.

* * * * *

(3) The sampling, handling, preparation, and analysis of sludge samples shall be accomplished according to Method 105 in Appendix B of this part.

(d) The mercury emissions shall be determined by use of the following equation.

$$E_{Hg} = \frac{MQ\ F_{sm(avg)}}{.1000}$$

where:

E_{Hg} = Mercury emissions, g/day.

M = Mercury concentration of sludge on a dry solids basis, μg/g.

Q = Sludge changing rate, kg/day.

F_{sm} = Weight fraction of solids in the collected sludge after mixing.

* * * * *

2. In Appendix B, Method 101, Section 8.3, last paragraph, by replacing the third sentence with the following two sentences. "If conditions (1) and (2) are met, attach the bottle section to the bubbler section of the aeration cell. Pipet 5 ml of stannous chloride solution into the aeration cell through the side arm, and immediately stopper the side arm."

3. In Appendix B, Method 101A, Section 8.2, last paragraph, replace the seventh sentence with the following sentence. "Now add 5 ml of tin (II) solution to the aeration bottle through the side arm, and immediately stopper the side arm."

4. Test Method 105 of Appendix B is revised as follows:

Appendix B—Test Methods

* * * * *

Method 105—Determination of Mecury in Wastewater Treatment Plant Sewage Sludge

1. *Applicability and Principle.* 1.1 Applicability. This method applies to the determination of total organic and inorganic mercury (Hg) content in sewage sludges. The range of this method is 0.2 to 5 μg/g; it may be extended by increasing or decreasing sample size.

1.2 Principle. Time-composite sludge samples are withdrawn from the conveyor belt after dewatering and before incineration or drying. A weighed portion of the sludge is disgested in aqua regia and oxidized by potassium permanganate ($KMnO_4$). Hg in the digested sample is then measured by the conventional spectrophotometric cold-vapor technique.

2. *Apparatus.* 2.1 Sampling.

2.1.1 Container. Plastic, 50-liter.

2.1.2 Scoop. To remove 950-ml (1-qt.) sludge sample.

2.2 Sludge Sample Preparation.

2.2.1 Mixer. Mortar mixer, wheelbarrow-type, 57-liter (or equivalent) with electricity driven motor.

2.2.2 Blender. Waring-type, 2-liter. (Note: Mention of specific trade names does not constitute endorsement by the Environmental Protection Agency.)

2.2.3 Scoop. To remove 100-ml and 20-ml samples of blended sludge.

2.3 Analysis. Same as Method 101, Sections 5.3 and 5.4, except for the following:

2.3.1 Balance. The balance of Method 101, Section 5.3.17, is not needed.

2.3.2 Filter Paper. S and S No. 588 (or equivalent).

3. *Reagents.* 3.1 Water. Same as Method 101A, Section 6.1.1.

3.2 Aqua Regia. Prepare immediately before use. Carefully add one volume of concentrated nitric acid (HNO_3) to three volumes of concentrated hydrochloric acid (HCl).

3.3 Antifoam B Silicon Emulsion. J.T. Baker Company (or equivalent).

3.4 Mercury (II) Stock Solution, 1 mg Hg/ml. Completely dissolve 135.4 mg of ACS reagent-grade $HgCl_2$ in 75 ml of water, add 10 ml of concentrated HNO_3, and adjust the volume to 100.0 ml with water. Mix thoroughly. (This solution is stable for at least 1 month.)

3.5 Intermediate Mercury Standard Solution, 10 μg Hg/ml. Prepare fresh weekly. Pipet 5.0 ml of the Hg stock solution into a 500-ml volumetric flask, and add 20 ml of the 15-percent HNO_3 solution. Adjust the volume to 500 ml with water. Thoroughly mix the solution.

3.6 Working Mercury Standard Solution, 200 ng Hg/ml. Prepare fresh daily. Pipet 5.0 ml of the "Intermediate Mercury Standard Solution" into a 250-ml volumetric flask. Add 20 ml of 15-percent HNO_3, and adjust the volume to 250 ml with water. Mix thoroughly.

3.7 Tin (II) Solution, Sodium Chloride-Hydroxylamine Solution, 15-Percent Nitric Acid, and Potassium Permanganate Solution. Same as Method 101A, Section 6.2.

4. *Procedure.* 4.1 Sludge Sampling. Withdraw equal-volume increments of sludge [for a total of at least 15 liters (16-qt.)] at intervals of 30 min over an 8-hr period, and place in a rigid plastic container.

4.2 Sludge Mixing. Transfer the entire 15-liter sample to a 57-liter capacity (2-ft³) mortar mixer. Mix the sample for a minimum of 30 min at 30 rpm. Using a 200-ml beaker, take six 100-ml portions of sludge, and combine in a 2-liter blender. Blend sludge for 5 min; add water as necessary to give a fluid consistency. Immediately after stopping the blender, use a 50-ml beaker to withdraw four 20-ml portions of blended sludge, and place them in separate, tared 125-ml Erlenmeyer flasks. Reweigh each flask to determine the exact amount of sludge added. (Use three of the samples to determine the mercury content in the sludge, and use the fourth to measure the solids content of the blended sludge.)

4.3 Solids Content of Blended Sludge. Dry one of the 20-ml blended samples from Section 4.2 in an oven at 105 °C to constant weight. Cool in a desiccator, and weigh and record the dry weight of the sample.

4.4 Aqua Regia Digestion of Blended Samples. To each of the three remaining 20-ml samples from Section 4.2, add 25 ml of aqua regia, and digest the samples on a hot plate at low heat (do not boil) for 30 min, or until samples are a pale yellow-brown color and are void of the dark brown color characteristic of organic matter. Remove from the hot plate, and allow to cool.

Filter each digested sample separately through an S and S No. 588 filter, or equivalent, and rinse the filter contents with 50 ml of water. Transfer the filtrate and filter washing to a 100-ml volumetric flask, and carefully dilute to volume with water.

4.5 Solids Content of Sludge Before Blending. Using a 200-ml beaker, remove two 100-ml portions of mixed sludge from the mortar mixer, and place in separate, tared 400-ml beakers. Reweigh each beaker to determine the exact amount of sludge added. Dry in an oven at 105 °C, and cool in a desiccator to constant weight.

4.6 Analysis for Mercury. The same as Method 101A, Sections 7.4 and 8, except for the following variation.

4.6.1 Spectrophotometer and Recorder Calibration. The mercury response may be measured by either peak height or peak area. Note: The temperature of the solution affects the rate at which elemental Hg is released from solution and, consequently, it affects the shape of the absorption curve (area) and the point of maximum absorbance (peak height). Therefore, to obtain reproducible results, bring all solutions to room temperature before use.

Set the spectrophotometer wavelength to 253.7 nm. Make certain the optical cell is at the minimum temperature that will prevent water condensation from occurring. Then set the recorder scale as follows: Using a 25-ml graduated cylinder, add 25 ml of water to the aeration-cell bottle. Add three drops of Antifoam B to the bottle, and then pipet 5.0 ml of the working Hg standard solution into the aeration cell.

Note.—Always add the Hg containing solution to the aeration cell after the 25 ml of water.

Place a Teflon-coated stirring bar in the bottle. Add 5 ml of 15-percent HNO_3 and 5 ml of 5-percent $KMnO_4$ to the aeration bottle, and mix well. Next, attach the bottle section to the bubbler section of the aeration cell, and make certain that: (1) the exit arm stopcock of the aeration cell (Figure 105–3) is closed (so that Hg will not prematurely enter the optical cell when the reducing agent is being added), and (2) there is no flow through the bubbler. Add 5 ml of sodium chloride-hydroxylamine solution to the aeration bottle through the side arm, and mix. If the solution does not become colorless, add additional sodium chloride-hydroxylamine solution in 1-ml increments until the solution is colorless. Now add 5 ml of tin (II) solution to the aeration bottle through the side arm, and immediately stopper the side arm. Stir the solution for 15 sec, turn on the recorder, open the aeration cell exit arm stopcock, and then immediately initiate aeration with continued stirring. Determine the maximum absorbance of the standard, and set this value to read 90 percent of the recorder full scale.

5. *Calculations.*

5.1 Nomenclature.

C_m = Concentration of Hg in the digested sample, μg/g.
F_{sb} = Weight fraction of solids in the blended sludge.
F_{sm} = Weight fraction of solids in the collected sludge after mixing.
M = Hg content of the sewage sludge (on a dry basis), μg/g.
m = Mass of Hg in the aliquot of digested sample analyzed, μg.
V_a = Volume of digested sample analyzed, ml.
V_s = Volume of digested sample, ml.
W_f = Weight of empty sample flask, g.
W_{fs} = Weight of sample flask and sample, g.
W_{fd} = Weight of sample flask and sample after drying, g.
W_b = Weight of empty sample beaker, g.
W_{bs} = Weight of sample beaker and sample, g.
W_{bd} = Weight of sample beaker and sample after drying, g.

5.2 Mercury Content of Digested Sample (Wet Basis). For each sample, correct the average maximum absorbance of the two consecutive samples whose peak heights agree with ±3 percent of their average for the contribution of the blank. Use the calibration curve and these corrected averages to determine the final Hg concentration in the solution cell for each sludge sample.

Calculate the total Hg content in each gram of digested sample correcting for any dilutions made to bring the sample into the working range of the spectrophotometer and for the weight of the sludge portion digested.

$$C_m = \frac{mV_s}{V_a\,(W_{fs} - W_f)} \quad \text{Eq. 105–1}$$

5.3 Solids Content of Blended Sludge. Determine the solids content of the 20-ml aliquot dried in the oven at 105 °C (Section 4.3).

$$F_{sb} = 1 - \frac{W_{fs} - W_{fd}}{W_{fs} - W_f} \quad \text{Eq. 105–2}$$

5.4 Solids Content of Bulk Sample (after mixing in mortar mixer). Determine the solids content of each 100-ml aliquot (Section 4.5), and average the results.

$$F_{sm} = 1 - \frac{W_{bs} - W_{bd}}{W_{bs} - W_b} \quad \text{Eq. 105–3}$$

5.5 Mercury Content of Bulk Sample (Dry Basis). Average the results from the three samples from each 8-hr composite sample, and calculate the Hg concentration of the composite sample on a dry basis.

$$M = \frac{C_m(\text{avg})}{F_{sb}} \quad \text{Eq. 105–4}$$

6. *Bibliography.*

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[FR Doc. 84–24061 Filed 9–11–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 62

[A–6–FRL–2667–6]

Arkansas Plan for Controlling Total Reduced Sulfur Emissions From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice approves Arkansas' plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills which was submitted by the Governor on February 28, 1983. Arkansas' plan was submitted in response to the publication of emission control guidelines by the Administrator under section 111(d) of the Clean Air Act, as amended. The plan, along with the clarification letter dated August 6, 1981, and the repsonses to the State's August 30, 1983 information request letter, satisfies EPA's requirement for adoption and submittal of a plan to control TRS. The proposed approval was published on February 13, 1984 at 49 FR 5358. One comment was received which is being addressed in this notice.

EFFECTIVE DATE: Effective on October 12, 1984.

ADDRESSES: Reference material is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air & Waste Management Division, Air Branch, State Implementation Plan Section, 1201 Elm Street, Dallas, Texas 75270

Arkansas Department of Pollution Control & Ecology, Air & Hazardous Materials Division, 8001 National Drive, Little Rock, Arkansas 72209.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Griffith at the EPA Region 6 address above or call (214) 767–9853.

SUPPLEMENTARY INFORMATION: On February 28, 1983, the Governor of Arkansas, after adequate notice and public hearing, submitted the State's plan for controlling total reduced sulfur emissions from existing kraft pulp mills. This plan was adopted by the Arkansas Commission on Pollution Control and Ecology on January 28, 1983. The State has adopted this plan to establish emission limitation for TRS from the pulp paper industry. The State has identified existing facilities and established emission limits for these facilities. In accordance with 40 CFR 60.24(e), the compliance schedules for each Kraft Paper Mill will be submitted to EPA for approval after appropriate public hearings have been held, as prescribed in § 60.23.

EPA reviewed this plan and developed an evaluation report,[1] which is based on the requirements of section 111(d) of the Clean Air Act of 1977, as amended, 40 CFR Part 60 Subpart B and an EPA guideline document titled "Kraft Pulping—Control of TRS Emissions from Existing Mills." This evaluation report is available for inspection during normal business hours at the EPA Region 6 Office and the other addresses listed above.

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[1] EPA Review of Arkansas' 111(d) plan for the Control of Total Reduced Sulfur from Kraft Pulp Mills and Addendum to EPA Review of Arkansas 111(d) Plan for Total Reduced Sulfur.

As submitted, the plan did not adequately demonstrate that the State had the requisite authority to disclose emission data to the public upon the public's request. However, when EPA approved Arkansas' general implementation plan submitted pursuant to the provisions of section 110(a) of the Clean Air Act, EPA provided rulemaking for making such data available under 40 CFR 62.852. This provision is appropriate for use in disclosing emission data from sources covered by this TRS plan.

The State adopted EPA Test Method 16 and allows alternate test methods to be used with the approval of the Director of the Arkansas Department of Pollution Control and Ecology. A letter of clarification dated August 6, 1981, states that the State will seek approval from the Regional Administrator before approving any alternative testing methods. That letter has already been approved as part of 40 CFR Part 62.

EPA has recommended emission standards in the guideline document for existing kraft pulp mills. But as stated in 40 CFR 60.24(d), "states may balance the emission guidelines, compliance times, and other information provided in the applicable guideline document against other factors of public concern in establishing emission standards . . ." The recommended guideline limits and Arkansas' limits are as follows:

EPA guideline	Parts per million	Arkansas
Recovery boilers:		
New design	5	5 ppm.
Old design	20	40 ppm.[1]
Lime kiln	20	40 ppm.
Multiple effect evaporators.	5	"Efficient incineration.
Digesters	5	Of all noncondensible gases."

[1] The State would allow 200 ppm from the recovery boiler at Weyerhaeuser Corp. because the company would have to replace their recovery boiler to meet a 40 ppm limit.

The Arkansas 111(d) plan for TRS is estimated to reduce total statewide emissions of TRS by 90 percent. Meeting EPA's limits would give the State an additional 5 percent reduction in TRS but, in many cases, would double the cost to the companies. The table below (from the 111(d) plan) summarizes the TRS emissions from the 1980 emission inventory for each source and the maximum allowable emission rate at final compliance. The last column shows the percent decrease in TRS emission for each source at final compliance.

Industry	Pounds-total reduced sulfur per hr		Percent decrease
	1980 emission rate	Maximum allowed	
International Paper, Camden	133.7	71.0	47
Arkansas Kraft Corp	137.4	17.8	87
Weyerhaeuser	315.2	39.0	88
Georgia Pacific Corp	1,385.3	83.3	94
International Paper, Pine Bluff	781.1	53.5	93
Nekoosa Paper, Inc	86.1	19.9	77
Total	2,838.8	284.5	90

On August 30, 1983, the State requested further information from the affected sources to further justify the deviation from EPA's limits. This was discussed in detail in the proposed approval and is included as an addendum to the evaluation report.

Public Comments

Comment—One public comment received on the proposed approval was that another public hearing be held on the 111(d) plan.

Response—On December 17, 1982, the Arkansas Commission on Pollution Control and Ecology (ACPCE) published a public hearing notice on the 111(d) Plan in two Little Rock newspapers for statewide circulation. The news release was also issued statewide to 325 different news media and copies of the 111(d) Plan were made available at 30 State depositories (libraries). The public hearing was held on January 17, 1983, 30 days after the notice was published. The state met all of EPA's requirements for public hearings listed in 40 CFR 60.23 and the state's public hearing provided full opportunity for public comment. EPA has reviewed the comments made at the state's hearing and considered them in deciding whether to approve this plan. No further public hearing is required.

Comment—The commenter feels that the public should be made aware of the state's plan to change the EPA's guidelines for TRS emissions from 20 parts per million (ppm) to a 40 ppm limit.

Response—At the April 30, 1980, public hearing on the 111(d) plan for TRS, the State addressed the fact that they are proposing standards which vary from EPA's guideline limits. Moreover, EPA's proposed rulemaking on the plan informed the public of the plan's content and provided an opportunity for the public to comment on it.

EPA's emission limits are recommended limits and not requirements that the states must adhere to since TRS is a Walfare-related pollutant. Therefore, EPA allows deviations from its recommended limits if states provide adequate justification.

Comment—The same commenter feels that the public should also be made aware of the state's special dispensation to the Weyerhaeuser Company in allowing a 200 ppm limit for the recovery furnace.

Response—Weyerhaeuser requested the 200 ppm limit during the April 30, 1980 public hearing and presented data showing why they could not meet the 40 ppm limit. Weyerhaeuser will not be allowed to increase its present TRS emissions. The public hearing transcript shows that no one raised any objections to Weyerhaeuser's request. The 111(d) plan lists the 1980 emission inventory and Weyerhaeuser is shown to be emitting 315.2 1b–TRS/hr. The 111(d) plan also shows that at the time of final compliance Weyerhaeuser will be emitting 39.0 1b–TRS/hr. which is an 88% decrease in TRS emissions. Also, EPA's guideline document "Kraft Pulping—Control of TRS Emissions from Existing Mills" says that "states will have substantial flexibility to consider factors other than technology and costs in establishing plans for the control of welfare-related pollutant * * *". The state reviewed Weyerhaeuser's request and granted them an emisson limit of 200 ppm from the recovery boiler.

Comment—The commenter also wants to know if the National Ambient Air Quality Standards (NAAQS) are being met when a 200 ppm emission limit of TRS is allowed.

Response—There is no NAAQS for TRS and the area is presently designated as attainment for all pollutants for which there are NAAQS.

Comment—Why is it that although Nekoosa Paper Inc.'s boiler is 15 years old with another 10 years of operating life expected, that boiler can be operated closer to its design load and meet the stricter guideline of 20 ppm yet Weyerhaeuser Co. cannot even meet the state's requirement of 40 ppm?

Response—At the April 30, 1980 public hearing, Weyerhaeuser stated that, "Based upon some recent preliminary studies, we believe that the liquor makeup and recovery boiler modifications will allow us to consistently meet 200 ppm TRS at the recovery boiler stack. We do not believe the State-proposed 40 ppm can consistently be met at this source without replacement of the recovery boiler at an estimated capital cost of $23 million" ($29 million in 1983). Weyerhaeuser's September 19, 1983 letter states that "the recovery boiler cost would add about $87 per ADT of product, which has had an average gross profit of $10–50 per ADT. This cost would not allow any increase in production; therefore, it would make running the mill a money-losing operation. The current expected life of the entire mill is an additional 12 years. . . . We do not see any circumstances that would necessitate retiring the boiler separate from other major mill components, i.e., the paper machine."

The September 23, 1983 letter from Nekoosa Papers, Inc. says that the company can meet the 40 ppm limit set by the State at reasonable cost.

EPA is not aware of any basis on which to question Weyerhaeuser's responses, which justify their inability to meet the State's limit of 40 ppm at reasonable cost.

Comment—Does the state readjust EPA guidelines because of the influence of large corporations?

Response—As stated in 40 CFR 60.24(d), "states are allowed to balance the emission guidelines, compliance times, and other information provided in the applicable guideline document against other factors of public concern in establishing emission standards, compliance schedules, and variances." EPA is approving the 111(d) plan for TRS because the state justified the deviation from EPA's recommended emission limits.

The Arkansas 111(d) Plan for TRS, along with the August 6, 1981, clarification letter on alternate test methods and the additional information provided in response the the State's August 30, 1983, letter, is being approved today by EPA.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

Date: September 5, 1984.

Alvin L. Alm,
Acting Administrator.

PART 62—[AMENDED]

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart E—Arkansas

1. Section 62.850 is amended by adding paragraphs (b)(2) and (c)(3) to read as follows:

§ 62.850 Identification of plan.

* * * * *

(b) * * *

(2) Control of total reduced sulfur (TRS) emissions from existing kraft pulp mills submitted by the Governor on February 28, 1983, and adopted by the State on January 28, 1983.

(c) * * *

(3) Kraft Pulp Mills

2. In Subpart E—Arkansas, a new center heading is added and new § 62.856 is added to read as follows:

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.865 Identification of sources.

(a) The plan applies to existing facilities at the following kraft pulp mill plants:

(1) International Paper Company in Camden, Arkansas.

(2) International Paper Company in Pine Bluff, Arkansas.

(3) Arkansas Kraft Corporation in Morrilton, Arkansas.

(4) Weyerhaeuser Company in Pine Bluff, Arkansas.

(5) Georgia-Pacific Corporation in Crossett, Arkansas.

(6) Wekoosa Paper Company in Ashdown, Arkansas.

(7) Potlatch Corporation of McGehee, Arkansas.

[FR Doc. 84–23926 Filed 9–11–84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6565

[C-17561]

Colorado; Partial Revocation of Public Water Reserve No. 107

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Water Reserve No. 107 insofar as it was construed by a Bureau of Land Management order to affect 80 acres of public land. This action will immediately open the land to public sale. It will be opened to other forms of surface entry and nonmetalliferous mining in approximately 30 days. The land has been and remains open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, BLM Colorado State Office, 1037—20th Street, Denver, Colorado 80202, 303–844–2592.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order of April 17, 1926, creating Public Water Reserve No. 107, as constructed by Bureau of Land Management Order dated January 17, 1973, is hereby revoked insofar as it affects the following described lands:

Sixth Principal Meridian

T. 5 S., R. 93 W.,
Sec. 13, W½SE¼.

The area described contains 80 acres in Garfield County.

2. Effective immediately, subject to valid existing rights, the surface and mineral estates shall be available for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976.

3. At 10 a.m. on October 12, 1984, the land shall be opened to operation of the public land laws generally, except for those identified in paragraph 2 above, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 12, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on October 12, 1984, the lands shall be opened to nonmetalliferous mineral location under the United States mining laws subject to valid existing rights. Appropriation of lands under the general mining laws for nonmetalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land

Managment will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 6, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-24084 Filed 9-11-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6620]

Changes in Flood Elevation Determinations; Colorado, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it adiministratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood insurance Program (NFIP).

These elevations, together with the flood plain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, flood plains.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Sonoma	Petaluma (city of)	Aug. 9, 1984 and Aug. 16, 1984; *Argus-Courier.*	Hon. Fred V. Mattei, Major, City of Petaluma, P.O. Box 61, Petaluma, CA 94953.	Aug. 14, 1984	060379B
Colorado: Adams/Arapahoe	Aurora (city of)	Aug. 29, 1984 and Sept. 5, 1984; *Aurora Sentinel.*	Hon. Dennis Champine, Mayor, City of Aurora, 1470 South Havana, Aurora, CO 80012.	Aug. 16, 1984	080002B
Maryland: Anne Arundel	Anne Arundel County	July 23, 1984 and July 30, 1984; *The Capitol.*	Hon. James Lighthizer, Anne Arundel County Executive, P.O. Box 1831, Annapolis, MD 21404.	July 13, 1984; letter of map revision.	240006C
Oregon: Tillamook County (unincorporated areas).	Tillamook County	July 18, 1984 and July 25, 1984; *Headlight Herald.*	Hon. Jerry Woodward, Chairman, Tillamook County, Board of Commissioners, 201 Laurel Avenue, Tillamook, OR 97141.	July 3, 1984	410196B
Texas:					
Brazos	City of Bryan	Aug. 1, 1984 and Aug. 8, 1984; *Bryan-College Station Eagle.*	Hon. Ernest Clark, Manager of the City of Bryan, P.O. Box 1000, Bryan, TX 77805.	July 30, 1984	480082
Dallas	City of Irving	Aug. 1, 1984 and Aug. 8, 1984; *Irving Daily News.*	Hon Bobby Joe Raper, Mayor of the City of Irving, P.O. Box 3008, Irving, TX 75061.	July 21, 1984	480180A
Vermont: Caledonia	Town of Lyndon	Aug. 21, 1984 and Aug. 28, 1984; *The Weekly News.*	Hon. Paul Southouse, Chairman of the Lyndon Board of Selectmen, Office of the Town Clerk, Lyndonville, VT 05851.	Aug. 13, 1984	500028A

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: August 24, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-24032 Filed 9-11-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Maryland, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Maps (FIRM) for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maryland:					
Anne Arundel (FEMA Docket No. 6595).		Mar. 22, 1984 and Mar. 29, 1984; *Capitol Gazette.*	Hon. O. James Lighthizer, Anne Arundel County Executive, Arundel Center, 44 Calvert Street, Annapolis, MD 21401.	Mar. 15, 1984; letter of map revision.	240008C
Montgomery (FEMA Docket No 6602.		Apr. 19, 1984 and Apr. 26, 1984; *Montgomery Journal.*	Hon. Charles W. Gilchrist, Montgomery County Executive, Executive Office Building, Rockville, MD 20850.	Apr. 12, 1984	240049
Washington (FEMA Docket No. 6596).		Apr. 19, 1984 and Apr. 26, 1984; *Morning Herald.*	Ronald L. Bowers, President, Board of County Commissioners, Washington County, Courthouse Annex, Summit Avenue, Hagerstown, MD 21740.	Apr. 6, 1984	240070
New Mexico: Bernalillo	City of Albuquerque (FEMA Docket No. 6595).	Mar. 22, 1984 and Mar. 29, 1984; *Journal Tribune.*	Hon. Harry E. Kinney, Mayor of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Mar. 15, 1984; letter of map revision.	350002C
New York: Yates (FEMA Docket No. 6596).	Village of Penn Yan	Apr. 19, 1984 and Apr. 26, 1984; *Chronicle-Express.*	Hon. Bruce LeClaire, Mayor, Village of Penn Yan, Village Clerk's Office, 3 Maiden Lane, Penn Yan, NY 14527.	Apr. 6, 1984	360962
Texas:					
Dallas, Denton, & Collin	City of Carrollton (FEMA Docket No. 6602).	Mar. 22, 1984 and Mar. 29, 1984; *Carrollton Chronicle.*	Hon. Leddie Taylor, Mayor of Carrollton, P.O. Box 110466, Carrollton, TX 75011.	Mar. 15, 1984; letter of map revision.	480167C
Dallas (FEMA Docket No. 6595).	City of Mesquite	Apr. 19, 1984 and Apr. 26, 1984; *Mesquite Daily News.*	Hon. Brunhilde Nystrom, Mayor, City of Mesquite, City Hall, Mesquite, TX 75149.	Apr. 10, 1984	485490
Hays	City of San Marcos (FEMA Docket No. 6595).	Mar. 28, 1984 and Apr. 4, 1984; *San Marcos Daily News.*	Hon. Emmie Craddock, Mayor of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.	Mar. 21, 1984; letter of map revision.	485505C

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44

FR 19367; delegation of authority to Administrator)

Issued: August 24, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–24033 Filed 9–11–84; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

[Docket No. FEMA 6618]

Final Flood Elevation Determinations; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice to Suspend Implementation of Final Flood Elevation Determination.

SUMMARY: Pursuant to Section 202 of the Marine Mammal Protection Act (Pub. L. 98–364) as amended on July 17, 1984, implementation of the final flood elevation determination for Cameron Parish, Louisiana, published at 48 FR 52725 on November 22, 1983, is suspended. This action has the effect of reinstating the Flood Insurance Rate Map for Cameron Parish, Louisiana, dated October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0230.

SUPPLEMENTARY INFORMATION: It is the intention of the Federal Emergency Management Agency to reissue a Flood Insurance Rate Map for Cameron Parish on July 17, 1985, one year from enactment of the Marine Mammal Protection Act. The Parish must modify their ordinances prior to July 17, 1985, to reflect the FIRM which will become effective on that date in order to remain eligible for participation in the National Flood Insurance Program.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: August 28, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–23909 Filed 9–11–84; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

Final Flood Elevation Determinations; California, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
California	Pleasanton (city of), Alameda County, FEMA–6605.	Alamo Canal	Intersection of Payne Court and Holland Drive	*318
		Arroyo De La Laguna	Upstream edge of Interstate Highway 680 crossing	*321
		Arroyo Del Valle	Upstream edge of Stanley Boulevard crossing	*345
		Arroyo Mocho	Downstream edge of Hopyard Road crossing	*320
		Chabot Canal	Upstream edge of West Las Positas Boulevard crossing.	*321
		Pleasanton Canal	Upstream edge of Hopyard Road crossing	*321
		Tassajara Creek	30 feet downstream from the Southern Pacific Railroad.	*329
		Hewlett Canal	100 feet downstream from the Southern Pacific Railroad crossing.	*325

Maps available for inspection at the Public Works Department, 200 Bernal Avenue, Pleasanton, California.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
New Jersey	Cape May, City, Cape May County (FEMA Docket No. 6605).	Atlantic Ocean	Approximately 100 feet northwest of the intersection of Beach Avenue and Wilmington Avenue.	*10

Maps available for inspection at the City Hall, 643 Washington Street, Cape May, New Jersey.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
New Jersey	Monmouth Beach, Borough, Monmouth County (FEMA Docket No. 6605).	Atlantic Ocean	South corporate limits	*14
			North corporate limits	*14

Maps available for inspection at the Borough Building, 22 Beach Road, Monmouth Beach, New Jersey.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
New York	Greenport, Village, Suffolk County (FEMA Docket No. 6605).	Greenport Harbor	Shoreline of Stirling Basin	*8
			Manor Place	*8
			Moneell Place	*8
			Shoreline from Stirling Basin to Railroad Station	*10
			Front Street	*8
			Shoreline from Railroad Station to Fanning Point	*8

Maps available for inspection at the Village Offices, 236 Third Street, Greenport, New York.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
North Carolina	Unincorporated Areas of Wake County (Docket No. FEMA-6605).	Ledge Creek—Basin 1, Stream 1	Just upstream of State Road 1900 at county boundary	*262
		Unnamed Stream—Basin 1, Stream 9.	At confluence with Ledge Creek—Basin 1, Stream 1	*262
			Just upstream of State Road 1901	*262
		Newlight Creek—Basin 3, Stream 1.	At confluence with Neuse River—Basin 15, Stream 1	*262
			Just upstream of State Road 1909	*262
			About 1,850 feet upstream of State Road 1910	*262
			About 6,100 feet upstream of State Road 1912	*371
		Unnamed Stream—Basin 3, Stream 3.	At confluence with Newlight Creek—Basin 3, Stream 1	*262
			Just upstream of State Road 1918	*262
			About 3,050 feet upstream of State Road 1918	*262
		Unnamed Stream—Basin 3, Stream 6.	At confluence with Newlight Creek—Basin 3, Stream 1	*262
			About 1,950 feet upstream of confluence with Newlight Creek—Basin 3, Stream 1.	*262
			About 6,850 feet upstream of confluence with Newlight Creek—Basin 3, Stream 1.	*335
		Buckhorn Branch—Basin 3, Stream 9.	At confluence with Newlight Creek—Basin 3, Stream 1	*262
			About 700 feet upstream of confluence with Newlight Creek—Basin 3, Stream 1.	*262
			About 7,700 feet upstream of confluence with Newlight Creek—Basin 3, Stream 1.	*299
		Horse Creek—Basin 4, Stream 1	At confluence with Neuse River—Basin 15, Stream 1	*262
			Just upstream of State Road 98	*262
			About 3,000 feet downstream of State Road 1923	*262
			About 1,950 feet upstream of State Road 1909	*338
		Unnamed Stream—Basin 4, Stream 3.	About 2,000 feet upstream of confluence with Horse Creek—Basin 4, Stream 1.	*338
			About 5,800 feet upstream of confluence with Horse Creek—Basin 4, Stream 1.	*379
		Water Fork—Basin 4, Stream 7	At confluence with Horse Creek—Basin 4, Stream 1	*262
			At confluence with Lowery Creek—Basin 4, Stream 10	*262
			About 1,000 feet upstream of confluence with Lowery Creek—Basin 4, Stream 10.	*262
		Lowery Creek—Basin 4, Stream 10	At confluence with Water Fork—Basin 4, Stream 7	*262
			About 2,700 feet upstream of confluence with Water Fork—Basin 4, Stream 7.	*262
			Just upstream of State Road 1900	*378
		Unnamed Stream—Basin 4, Stream 13.	At confluence with Lower Creek—Basin 4, Stream 10	*284
			About 5,200 feet upstream of confluence with Lowery Creek—Basin 4, Stream 10.	*341
		Richland Creek—Basin 5, Stream 1.	At confluence with Neuse River—Basin 15, Stream 1	*203
			About 6,500 feet upstream of confluence with Neuse River—Basin 15, Stream 1.	*211
			About 850 feet upstream of U.S. Route 1	*234
		Smith Creek—Basin 6, Stream 1	Just upstream of State Road 2045	*200
			Just upstream of State Road 2044	*207
			About 2,800 feet upstream of State Road 2049	*233
		Toms Creek—Basin 7, Stream 1	At confluence with Neuse River—Basin 15, Stream 1	*199
			About 500 feet upstream of State Road 2044	*205
			About 3,850 feet upstream of State Road 2049	*276
		Hodges Creek—Basin 8, Stream 1	At confluence with Neuse River—Basin 15, Stream 1	*191
			About 300 feet upstream of State Road 2049	*198
			About 900 feet upstream of State Road 2226	*223
		Powell Creek—Basin 8, Stream 7	At confluence with Hodges Creek—Basin 8, Stream 1	*193
			Just upstream of State Road 2049	*200
			About 7,200 feet upstream of State Road 2226	*261
		Beaverdam Creek—Basin 12, Stream 1.	At confluence with Neuse River—Basin 15, Stream 1	*185
			Just upstream of dam	*195
			Just upstream of State Road 2226	*236
		Poplar Creek—Basin 13, Stream 1	At confluence with Neuse River—Basin 15, Stream 1	*169
			Just upstream of State Road 2601	*175
			About 8,100 feet upstream of State Road 1007	*212
		Neuse River—Basin 15, Stream 1	At downstream county boundary	*164
			Just upstream of U.S. Route 64	*180
			Just downstream of Falls Dam (about 900 feet upstream of State Road 2000).	*205

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
			Just upstream of Falls Dam (about 1,000 feet downstream of State Road 2000).	*262
			At upstream county boundary	*262
		Unnamed Stream—Basin 15, Stream 7.	At confluence with Neuse River—Basin 15, Stream 1	*173
			About 3,800 feet downstream of State Road 1007	*178
			Just upstream of State Road 2601	*236
		Unnamed Stream—Basin 15, Stream 8.	At confluence with Unnamed Stream—Basin 15, Stream 7.	*176
			About 400 feet upstream of confluence with Unnamed Stream—Basin 15, Stream 7.	*178
			Just upstream of State Road 2511	*216
		Unnamed Stream—Basin 15, Stream 9.	At confluence with Neuse River—Basin 15, Stream 1	*174
			About 1,650 feet upstream of confluence with Neuse River—Basin 15, Stream 1.	*179
			Just upstream of State Road 2552	*208
		Walnut Creek—Basin 15, Stream 10.	At confluence with Neuse River—Basin 15, Stream 1	*177
			At confluence with Big Branch—Basin 15, Stream 14	*184
		Mango Creek—Basin 15, Stream 11.	At confluence with Neuse River—Basin 15, Stream 1	*179
			Just upstream of Norfolk Southern Railway	*187
			About 7,100 feet upstream of Norfolk Southern Railway.	*226
		Unnamed Stream—Basin 15, Stream 22.	At confluence with Neuse River—Basin 15, Stream 1	*189
			About 2,650 feet upstream of confluence with Neuse River—Basin 15, Stream 1.	*195
			Just upstream of State Road 2049	*220
		Unnamed Stream—Basin 15, Stream 25.	At confluence with Neuse River—Basin 15, Stream 1	*194
			About 2,200 feet upstream of confluence with Neuse River—Basin 15, Stream 1.	*200
			Just upstream of State Road 2049	*250
		Perry Creek—Basin 15, Stream 26	At confluence with Neuse River—Basin 15, Stream 1	*196
			About 4,200 feet upstream of State Road 2006	*203
			About 10,300 feet upstream of confluence with Neuse River—Basin 15, Stream 1.	*216
		Perry Creek East Branch—Basin 15, Stream 27.	At confluence with Perry Creek—Basin 15, Stream 26	*197
			About 700 feet downstream of State Road 2042	*203
			About 1,350 feet upstream of State Road 2132	*314
		Unnamed Stream—Basin 15, Stream 28.	Just downstream of Berkshire Downs Drive	*196
			About 3,500 feet upstream of Berkshire Downs Drive	*205
		Honeycutt Creek—Basin 15, Stream 31.	At confluence with Neuse River—Basin 15, Stream 1	*262
			Just upstream of State Road 2002	*262
			Just upstream of State Road 2010	*262
			About 3,400 feet upstream of State Road 2010	*262
			Just upstream of State Road 2005	*303
		Unnamed Stream—Basin 15, Stream 32.	At confluence with Honeycutt Creek—Basin 15, Stream 31.	*262
			About 2,400 feet upstream of confluence with Honeycutt Creek—Basin 15, Stream 31.	*262
			Just upstream of State Route 2010	*280
		Cedar Creek—Basin 15, Stream 34.	At confluence with Neuse River—Basin 15, Stream 1	*262
			Just upstream of State Road 2002	*262
			About 3,400 feet upstream of State Road 2002	*262
			About 3,100 feet upstream of State Road 2005	*335
		Upper Barton Creek—Basin 16, Stream 1.	At confluence with Neuse River—Basin 15, Stream 1	*262
			Just upstream of State Road 1005	*262
			About 1,900 feet downstream of State Road 1844	*262
			Just upstream of State Road 1841	*361
		Unnamed Stream—Basic 16, Stream 2.	At confluence with Upper Barton Creek—Basin 16, Stream 1.	*262
			About 3,350 feet upstream of confluence with Upper Barton Creek—Basin 16, Stream 1.	*262
			Just upstream of State Road 50	*334
		Lower Barton Creek—Basin 17, Stream 1.	At confluence with Neuse River—Basin 15, Stream 1	*262
			About 3,800 feet downstream of State Road 1834	*262
			Just upstream of Countrywood Drive	*300
			About 250 feet upstream of State Road 1826	[illegible]
		Unnamed Stream—Basin 17, Stream 4.	At confluence with Lower Barton Creek—Basin 17, Stream 1.	*293
			Just upstream of Carrington Drive	*295
			Just upstream of State Road 1831	*363
		Richland Creek—Basin 18, Stream 3.	About 5,600 feet downstream of State Road 1650	*278
			About 5,300 feet upstream of State Road 1650	*327
		Unnamed Stream—Basin 18, Stream 6.	At confluence with Sycamore Creek—Basin 18, Stream 6.	*359
			Just upstream of Unnamed Road	*399
			Just upstream of State Road 1837	*447
		Crabtree Creek—Basin 18, Stream 9.	At confluence with Neuse River—Basin 15, Stream 1	*178
			About 3,200 feet upstream of confluence with Neuse River—Basin 15, Stream 1.	*183
		Stirrup Iron Creek—Basin 18, Stream 12.	At confluence with Crabtree Creek—Basin 18, Stream 9.	*277
			Just upstream of State Road 3015	*281
			At county boundary	*321
		Unnamed Stream—Basin 18, Stream 13.	At confluence with Stirrup Iron Creek—Basin 18, Stream 12.	*287
			About 200 feet downstream of State Road 1002	*289
			Just upstream of dam	*316
		Bagwell Branch—Basin 20, Stream 10.	At confluence with Swift Creek—Basin 20, Stream 1	*241
			About 2,500 feet upstream of confluence with Swift Creek—Basin 20, Stream 1.	*241

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
		Unnamed Stream—Basin 20, Stream 20.	At confluence with Swift Creek—Basin 20, Stream 1	*296
			About 3,500 feet upstream of confluence with Swift Creek—Basin 20, Stream 1.	*321
		Unnamed Stream—Basin 22, Stream 20.	At confluence with Terrible Creek—Basin 22, Stream 19.	*298
			About 5,250 feet upstream of confluence with Terrible Creek—Basin 22, Stream 19.	*312
Maps available for inspection at the Planning Department, County Courthouse, 316 Fayetteville Mall, Raleigh, North Carolina.				
Oregon	Junction City (City of); Lane County, FEMA—6592.	Willamette River	Intersection of East 6th Avenue and Birch Street	*325
Maps are available for review at City Hall, 680 Greenwood, Junction City, Oregon.				
Pennsylvania	Middleburg, Borough, Snyder County, (FEMA Docket No. 6605).	Middle Creek	At most downstream corporate limits	*492
			Confluence of Stumps Run	*495
			U.S. Route 522 (Main Street) (upstream side)	*496
			Dam (upstream side)	*497
			Approximately 500' upstream of upstream corporate limits.	*498
		Stumps Run	Confluence with Middle Creek	*495
			East Market Street (upstream side)	*496
Maps available for inspection at the Borough Building, Middleburg, Pennsylvania.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: August 24, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-24034 Filed 9-11-84; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 40674-4106]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement the approved parts of Amendment 9 to the fishery management plan for the Commercial Tanner Crab off the Coast of Alsaka. Approved measures contained in this amendment are necessary to establish annually fishing seasons and areas based on biological information and socioeconomic needs of the fishery, and to update the acceptable biological catches on which optimum yields are based. These measures are intended to promoted an orderly fishery that is consistent with the needs of the industry and with conservation requirements.

EFFECTIVE DATE: October 7, 1984.

ADDRESS: Copies of the amendment, the enviromental assessment, and the regulatory impact review may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, telephone 907–274–4563.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Biologist, Kodiak Field Office, NMFS), 907–486–4791.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP) was developed by the North Pacific Fishery Managment Council (Council) and approved and implemented by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), under the Magnuson Fishery Conservation and Management Act, Pub. L. 94–265,as amended, 16 U.S.C. 1801 *et seq.* (Magnuson Act). The FMP was published in the **Federal Register** on May 6, 1978 (43 FR 21170). Following initial implementation of the FMP in December 1978, eight amendments to the FMP have been implemented.

Amendment 9 was adopted by the Council at its July 1983 meeting and contains three measures. These measures (1) establish a framework provision for setting Tanner crab fishing seasons by preseason notice and comment procedures, (2) broaden the field order authority of the Secretary of Commerce (Secretary) to adjust seasons or fishing areas for socioeconomic reasons, and (3) establish new optimum yields (OYs) for Tanner crab stocks based on the best available scientific information indicating changes in acceptable biological catches (ABCs). The preamble to the proposed rule (49 FR 26117, June 26, 1984) and the regulatory impact review prepared for the amendment and summarized in the preamble dicussed the need and justification for these measures.

After considering the merits of the three parts of Amendment 9 and their consistency with the Magnuson Act and other applicable law, the Secretary has (1) approved the framework measure to set seasons by the notice procedure that was proposed, (2) disapproved the broadened inseason field order authority, and (3) approved the updated ABCs.

The disapproved measure, as submitted by the Council, is not necessary nor appropriate for the conservation and management of the fishery. After revison, the Council may resubmit this portion of the amendment under section 304(a)(2) of the Magnuson Act. In the final rule, therefore, the proposed removal of § 671.26(c)(2), (d)(2), (e)(2) and (f)(2) and the proposed changes in § 671.27(b) are withdrawn to reflect disapproval of the broadened inseason field order authority of Amendment 9, as proposed. The final rule is also changed in § 671.26(a)(2)(ii) to indicate that the Secretary will publish a second notice within 45 days, instead of 30 days, after the end of the comment period. This change is necessary to accommodate the actual time required by the Secretary to review and clear the final notice.

Public Comments

Public comments were invited until August 3, 1984. No public comments were received.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary and appropriate for conservation and management of fishery resources and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for this amendment and concluded that no significant impact on the environment will occur as a result of this rule.

The Administrator of NOAA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

Although the Administrator of NOAA had determined that the proposed rule would have had a significant economic impact upon a substantial number of small domestic entities for the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, he has now determined that the final rule will not have such an impact. The measure which would have broadened inseason field order authority has been disapproved. The measure addressing preseason setting of seasons is purely procedural; the exercise of this authority will be analyzed to assess its impact on small entities. Finally, the revisions of ABCs and OYs reflect values currently used in management of the fishery, and thus do not constitute a change which would have a substantial economic impact on small entities. For these reasons, the General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact.

This final rule does not contain a collection of information requirement within the meaning of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 671

Fish, Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et. seq.*)

Dated: September 7, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management National Marine Fisheries Service.

PART 671—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 671 is amended as follows:

1. In § 671.2, new definitions for "Council" and "FMP" are added in appropriate alphabetical order to read as follows:

§ 671.2 Definitions.

* * * * *

Council means the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, telephone 907–274–4563.

* * * * *

FMP means the Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska.

* * * * *

2. In § 671.21, Table 1 at paragraph (a) is revised to read as follows:

§ 671.21 Optimum yield.

(a) * * *

TABLE 1.—OPTIMUM YIELDS (MILLIONS OF POUNDS) OF TANNER CRAB STOCKS IN THE FISHING DISTRICTS OR REGISTRATION AREAS OFF ALASKA[1]

Registration area—District	Optimum yield
Southeastern (A):	
Southeast	1.0 to 3.0.
Yakutat	0.1 to 1.0.
Prince William Sound (E)	1.5 to 3.5.
Cook Inlet (H)	1.5 to 3.0.
Westward (J):	
Kodiak	11.0 to 33.0.
Chignik	0.5 to 5.0.
South Peninsula	2.0 to 6.0.
Eastern Aleutians	0.1 to 2.0.
Western Aleutians	0.1 to 2.0.
Bering Sea:	
C. bairdi	5.0 to 28.5.
C. opilio	20.0 to 130.5.[2]

[1] Catches of Tanner crab in a State of Alaska registration area or district will be considered part of the optimum yield specified for the contiguous Federal registration area or district of the same name.

[2] Equals domestic annual harvest.

* * * * *

3. In § 671.26, paragraph (a) is revised to read as follows:

§ 671.26 Seasons, general gear restrictions, and registration areas.

(a) *Season dates*—(1) *Criteria for setting season opening and closing dates.* The Council may recommend to the Regional Director Tanner crab season opening and closing dates that it finds to be necessary in accordance with the following factors:

(i) Deadloss—the need to prevent or minimize deadloss, i.e., mortality of crab prior to processing.

(ii) Recovery rate—the need to increase the meat recovery rate.

(iii) Weather—the need to schedule seasons to avoid severe weather conditions.

(iv) Costs—the need to mininize costs to the industry.

(v) Other fisheries—the need to consider demands by other fisheries on harvesting, processing, and transportation systems.

(vi) Coordinated season timing—the need to distribute fishing effort and thus prevent gear saturation in a particualr area.

(vii) Enforcement and management costs—the need to consider costs of enforcement and management before, during, and after an open season.

(2) *Procedures*—(i) As soon as practicable after the Council has recommended to the Regional Director season opening and closing dates, the Secretary will publish an initial notice in the **Federal Register** specifying the proposed dates. Public comments on the proposed dates and whether they are consistent with the objectives of the FMP will be invited for a period of 30 days after this notice is published in the **Federal Register**.

(ii) Within 45 days after the end of the comment period, the Secretary will publish a second notice approving, disapproving, or partially disapproving the proposed season dates based on comments received and his determination on whether the dates are consistent with the objectives of the FMP, the national standards of the Magnuson Act, and other applicable law. Season opening and closing dates presented under this paragraph will remain in effect until the Secretary issues a notice approving changes to those dates.

* * * * *

[FR Doc. 84–24097 Filed 9–7–84; 8:02 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 178
Wednesday, September 12, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications Deletion of Distribution Construction Drawings

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Part 1736.97, Incorporation by Reference of Electric Standards and Specifications, by deleting two construction drawings from REA Bulletin 50–5 (D–803), "Specifications and Drawings for 14.4/24.9 kV Line Construction," revised September 1969. The two drawings proposed for deletion are: VG 310 14.4/24.9 kV, "Three Transformers Cluster Mounted Ungrounded Wye-Delta for 120/240 Volt Power Loads," and VG 311 14.4/24.9 kV, "Three Transformers Cluster Mounted 3-Wire Grounded Delta for 240 or 480 V Power Loads."

The drawings are proposed for deletion because of the possibility of transformer ferroresonance at 14.4/24.9 kV due to the ungrounded primaries. The intended effect is minimal since other equally satisfactory three-phase electrical connections can be used.

DATE: Public comments must be received by REA no later than November 13, 1984.

ADDRESS: Submit written comments to the Director, Engineering Standards Division, Room 1256–S, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter Jackson, Engineering Standards Division, Rural Electrification Administration, Room 1262, Washington, D.C. 20250 telephone (202) 382–9092. A Draft Impact Analysis has been prepared and is available at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR Part 1736.97, Incorporation by Reference of Electric Standards and Specifications, by deleting two construction drawings from REA Bulletin 50–5 (D–803), Specifications and Drawings for 14.4/24.9 kV Line Construction. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

The Rural Electrification Administration (REA) maintains a system of bulletins that contain construction standards and specifications for materials and equipment which are applicable to electric systems facilities constructed by REA electric borrowers in accordance with the REA loan contract. These standards and specifications may be used by REA electric borrowers without any review by REA of project specifications and engineering design.

Bulletin 50–5 was approved for incorporation by reference by the Director of the Federal Register on July 12, 1983 (Volume 48, No. 134, pages 31852–53). REA will seek reapproval for incorporation by reference prior to the issuance of a final rule.

Background

The transformer banks in both drawings are for an ungrounded wye primary with a delta connected secondary. It is generally considered good engineering practice for the wye primary, in this type of transformer bank, to be ungrounded. However, at higher distribution voltages, the possibility of ferroresonance becomes more likely because of the ungrounded wye. There is a fairly good chance at 14.4/24.9 kV that ferroresonance will occur either when the phases are closed in sequence at a distance from the transformer bank, or if one or two phases become opened. To minimize the likelihood of the ferroresonance problem, which is more probable because of the relatively high primary voltage, it is proposed to delete the two drawings VG310 and VG311.

As a result of this action, electric borrowers would be discouraged from installing new ungrounded wye-delta transformer connections at 14.4/24.9 kV. There would be no change required in existing installations. The preferred connections for new three-phase 14.4/24.9 kV transformer installations would then be grounded wye-grounded-wye. This connection is generally not subject to ferroresonance problems. New customers would be able to have 4-wire grounded wye secondary of either 120/208 volts or 277/480 volts. Delta connected 120/240, 240 and 480 volt secondaries would not be available from 14.4/24.9 kV primaries.

This should cause no problems and no extra expense for most consumers, or most individual industries or for Federal, State or local government agencies. The impact should, in essence, be minimal. The only likely area of impact would be new consumers who are relocating old plants, utilizing three phase motors which operate at 240 or 480 volts three phase, to a new location on an REA electric borrower's line. Such cases would have to be discussed between the cooperatives and the consumer. Possible exceptions could be made to accommodate the consumer's equipment.

This proposal will make REA Bulletin 50–5 (D–803) consistent with Bulletin 161–19, "Guide for Electric Service on Three-Phase Motor Installations," pages 15 and 16, which recommends that ungrounded wye-grounded delta transformer connections should not be used on 14.4/24.9 kV systems.

List of Subjects in 7 CFR Part 1736

Electrtic utilities, Engineering standards.

Dated: September 6, 1984.

Jack Van Mark,

Administrator.

[FR Doc. 84-24030 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-15-M

Food Safety and Inspection Service

9 CFR Parts 307 and 310

[Docket No. 83-031]

Swine Post-Mortem Inspection Procedures and Staffing Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat inspection regulations by establishing new swine post-mortem staffing standards using a more efficient inspection procedure for one- and two-inspector swine slaughter configurations, and for three-inspector swine slaughter configurations with heads detached. It would increase the number of swine that can be inspected before a third inspector is required, as well as the number of sows and boars that can be inspected on a detached head inspection configuration. The proposed rule would also set forth certain related facility requirements for inspection. This action would allow higher production rates for the establishments and greater inspection efficiency for the Department.

DATE: Comments must be received on or before November 13, 1984.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Food Safety and Inspection Service, Room 2637, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. (For additional information on Comments, see "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Mr. Clyde S. Smithson, Director, Industrial Engineering and Data Management Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2987.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that the proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Through the use of an improved inspection procedure, this proposal would increase inspection efficiency and industry productivity in as many as 700 swine slaughter establishments, at little or no extra cost.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this proposal would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). Small and medium sized establishments (with one or two inspectors) would benefit by gaining more flexibility in the planning of slaughter operations, as well as increasing their productivity, at little or no extra cost.

Comments

Interested persons are invited to submit comments concerning the proposal. Written comments must be sent in duplicate to the Regulations Office and should reference the docket number located in the heading of this document. All comments submitted pursuant to this proposal will be available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Introduction: Post-Mortem Inspection

Section 4 of the Federal Meat Inspection Act (21 U.S.C 604) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, carry out a post-mortem inspection of the carcasses and parts of certain domestic food animals, including swine, when these animals are slaughtered in an official establishment that is subject to inspection under the Act. Post-mortem inspection involves an examination by one or more trained food inspectors, under veterinary supervision, of the head, viscera (internal organs), and other parts of the carcass of each animal slaughtered, for the purpose of detecting disease or other conditions that could render the carcass or any part thereof unfit for human food or otherwise adulterated.

With the appropriate facilities, equipment, and placement of inspection stations, a swine slaughtering establishment can set its own production rates, and the Food Safety and Inspection Service (FSIS) assigns sufficient inspectors to carry out inspection at that rate. In establishments with relatively low production rates, one inspector performs all of the inspection of the head, viscera, and other parts of the carcass of each animal slaughtered at one station. In establishments with higher slaughter rates, two or more inspections may be needed. On a two-inspector configuration, these three inspection tasks must be divided between the two inspectors. On a line with three or more inspectors, each of these three inspection tasks is performed by a different inspector. Where two or more inspectors are required, they rotate between the tasks during the workday to equalize the workload.

New Post-Mortem Inspection Procedure for Large Establishments

On August 28, 1981, FSIS published an interim rule in the **Federal Register** (46 FR 43406) establishing new swine post-mortem inspection rates based on a more efficient inspection procedure. The interim rule was adopted as a final regulation on August 4, 1982 (47 FR 33673). The new procedure was tested in establishments with three or more inspectors located at three inspection stations.[1] Accordingly, the procedure affected only those operations requiring three or more inspectors and where the swine heads are inspected while attached to the carcass. The 1981 interim rule expressed FSIS's intention to extend the rules to the other classes of establishments upon completion of additional studies, which is the main purpose of this proposal.

Testing the New Procedure in Other Swine Establishments

Studies were recently completed to determine the impact and applicability of the new procedure and staffing standards to establishments which require less than three inspectors and to those establishments with three inpectors where the swine heads are inspected only when detached from the carcass.[2]

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[1] The tests are reported in two studies entitled "A Study on the Effectiveness of Current and Proposed Swine Post-Mortem Inspection" and "A Study on the Applicability of Proposed Swine Post-Mortem Inspection to Sows/Boars." Copies of these reports may be obtained without charge by writing to Dr. John Prucha, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

[2] A copy of the report on these studies, "Work Measurement Staffing Standard for the One to

Continued

These studies were conducted at swine slaughter establishments operating with a one or two-inspector line configuration and slaughtering both market hogs, and sows and boars. A review and evaluation of the elements in the one and two-inspector configurations showed that most of the inspection tasks are identical to the inspection tasks on which the approved work measurement standards for the three to seven inspector configurations are based, and that it takes the same amount of time to perform the same motion of work in either types of configurations.

As a result of these studies, the Agency is proposing improved inspection procedures which appear to be as effective in detecting conditions relating to adulteration as the current procedures.

Factors Influencing Increased Rate of Inspection

1. Revised Post-Mortem Inspection Procedure. The revised post-mortem inspection procedure requires fewer motions, and hence less effort and time to perform, than the procedure used prior to 1981. This has resulted from the installation of a mirror at the carcass station to eliminate turning the carcass, from the substitution of visual inspection for some of the palpation at the viscera station, and from the elimination of the requirement to turn and examine the carcass at the head station.

2. Attached and Detached Heads. The inspection of the head requires the examination of mandibular lymph nodes. These nodes are made accessible to the inspector in two ways. The head may be disjointed from the neck and left attached to the carcass by a flap of skin, or it may be removed and placed in a head rack, nose down, for the inspector's examination. Most establishments requiring three or more inspectors provide for the inspection of the head while it is still attached to the carcass by the flap of skin. However, most one- and two-inspector line configurations provide for the removal of the head from the carcass for inspection. Removal of the heads does not affect the inspection rate on market hog slaughter lines. The carcasses are short enough so that the market hog heads can be inspected while attached without requiring stooping by the inspector. Sow and boar heads hang nearer to the floor which requires the inspector to stoop and, therefore, more inspection time is necessary for sow and board head inspection.

As previously discussed, the inspection rates for three or more inspector lines, for carcasses with heads attached were promulgated on August 4, 1982. Those rates are contained in two tables (9 CFR 310.1(b)(3))—one for butcher hogs and one for sows and boars. For purposes of organization, this proposed rule would combine the two tables into one as Table 4, making no distinction, except as otherwise noted, between swine slaughter lines with heads attached and those with heads detached. FSIS is soliciting comments on Table 4 only as they relate to footnote number 1 concerning sows and boars where the heads are detached because it is the only change in the information contained in the Table. The minimum line rates, as currently contained in § 310.1(b)(3), for three-inspector configurations with heads attached are appropriately changed to reflect the maximum number of swine that can be inspected on two-inspector line configurations.

3. Addition of a Mirror at the Carcass Inspection Station. Currently, mirrors are required only for those three or more inspector slaughter lines where the swine heads are inspected while still attached. The criteria for such mirrors are set forth in § 307.2(m)(6) of the Federal meat inspection regulations (9 CFR 307.2(m)(6)). The mirror allows the inspector to review the back of the carcass without turning the carcass which decreases the time required. This proposal would extend such requirement to those sow and boar three-inspector lines where the heads are detached from the carcasses. In establishments where one or two inspectors are assigned, a mirror would not be required unless the establishment desires to increase production to the point where an additional inspector must be assigned. In that event, the inspection service would have the option to require a carcass mirror rather than place another inspector in the establishment. The inspection rates on one- and two-inspector configurations may be slightly higher if mirrors are provided. Therefore, to receive the faster inspection rate, such establishments would be required to install mirrors meeting the criteria in § 307.2(m)(6).

4. Arranging the facilities to minimize the inspector's walking distance. In one/ and two-inspector configurations, the inspector must sometimes walk from one of the three inspection stations to another. If the stations are located close to each other, the inspector can perform his/her tasks with less walking time. The less the walking time involved, the more animals that can be inspected per hour.

The proposed new staffing standards for one- and two-inspector lines are based upon the distance the inspector walks between the inspection stations. The new procedure would provide an incentive for smaller plants to increase productivity by rearranging their facilities to minimize the distance between the inspection stations.

5. Two-inspector line configurations. As previously mentioned, when two inspectors are assigned to an establishment, the three inspection tasks are divided between them. Various combinations of inspection tasks have been proposed, some of which are more productive than others.

The inspection rate for market hog two-inspector configurations would be the same for both attached and detached heads. Sow and boar rates would be different for attached than detached heads because the inspection time is greater for attached heads due to the necessary stooping by the inspector.

Inspection Station Configuration for Low Production Establishments

Staffing standards for various inspection station configurations have been developed and are proposed herein for those establishments that have low slaughter production rates. In such establishments where an additional inspector may be required, FSIS would have the option of implementing a more productive inspection configuration.

List of Subjects

9 CFR Part 307

Facilities, Meat inspection, Official establishment.

9 CFR Part 310

Meat inspection, Post-mortem inspection, Slaughter.

The Proposal

The Federal meat inspection regulations would be revised as follows:

1. The authority citation for Parts 307 and 310 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 601 *et seq.*, 33 U.S.C. 1254(b).

2. Section 307.2(m)(6) would be revised to read as follows:

Three Inspector Swine Slaughter Configurations," may be obtained without charge from Mr. Clyde S. Smithson, Director, Industrial Engineering and Data Management Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

§ 307.2 Other facilities and conditions to be provided by establishment.

* * * * *

(m) * * *

(6) For swine slaughter lines requiring three or more inspectors, and for those one- and two-inspector configurations where the establishment installs a mirror: At the carcass inspection station one glass or plastic, distortion-free mirror, at least 5 feet x 5 feet, mounted far enough away from the vertical axis of the moving line to allow the carcass to be turned, but not over 3 feet away, and so mounted that any inspector standing at the carcass inspection station can readily view the back of the carcass.

3. Section 310.1(b)(3) would be revised to read as follows:

§ 310.1 Extent and time of post-mortem inspection; post-mortem inspection staffing standards.

* * * * *

(b) * * *

(3) *Swine Inspection.* The following inspection staffing standards are applicable to swine slaughter configurations. The inspection standards for all slaughter lines are based upon the observation rather than palpation, at the viscera inspection station, of the spleen, liver, heart, lungs, and mediastinal lymph nodes. In addition, for one- and two-inspector lines, the standards are based upon the distance walked (in feet) by the inspector between work stations; and for three or more inspector slaughter lines, upon the use of a mirror, as described in § 307.2(m)(6), at the carcass inspection station. Although not required in a one- or two-inspector slaughter configuration, except in certain cases as determined by the inspector, if a mirror is used, it must comply with the requirements of § 307.2(m)(6).

TABLE 1.—ONE INSPECTOR—STAFFING STANDARDS FOR SWINE

Distance walked [1] in feet is:—	Maximum inspection rates (head per hour)			
	Market hogs		Sows and boars	
	Without mirror	With mirror	Without mirror	With mirror
0 to 5	140	150	131	143
6 to 10	134	144	126	137
11 to 15	129	137	122	132
16 to 20	124	132	117	127
21 to 25	120	127	113	122
26 to 30	116	122	110	118
31 to 35	112	118	106	114
36 to 40	108	114	103	110
41 to 45	105	110	100	106
46 to 50	101	107	97	103
51 to 55	98	103	94	100
56 to 60	96	100	91	97
61 to 65	93	97	89	94
66 to 70	90	95	87	92
71 to 75	88	92	85	89
76 to 80	86	89	82	87
81 to 85	84	87	80	85
86 to 90	82	85	79	83
91 to 95	80	83	77	81
96 to 100	78	81	75	79

[1] Distance walked is the total distance that the inspector will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, head, and washbasin).

TABLE 2.—TWO INSPECTORS—STAFFING STANDARDS FOR MARKET HOGS

Distance walked[1] in feet by inspector B is—	Maximum inspection rates (head per hour)		
	Line configuration		
	Carcass[2] Head viscera[3]	Viscera[2] Head carcass[3]	Head[2] Viscera carcass[3]
Without Mirror			
0 to 5	151–253	151–271	151–296
6 to 10	151–239	151–255	151–277
11 to 15	151–226	151–240	151–260
16 to 20	151–214	151–227	151–244
21 to 25	151–204	151–215	151–231
With Mirror			
0 to 5	151–253	151–303	151–318
6 to 10	151–239	151–283	151–304
11 to 15	151–226	151–265	151–289
16 to 20	151–214	151–249	151–270
21 to 25	151–204	151–235	151–254

[1] Distance walked is the total distance that Inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin).

[2] Inspector A.

[3] Inspector B.

NOTE.—On multiple-inspector kills, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload. Presentation must be correct.

TABLE 3.—TWO INSPECTORS—STAFFING STANDARDS FOR SOWS AND BOARS

Distance walked [1] in feet by insepctor B is—	Maximum inspection rates (head per hour)			
	Line configuration			
	Carcass [2] Head viscera [3] Heads detached	Viscera [2] Head carcass [3] Heads detached	Head [2] Viscera carcass [3] Heads detached	Head [2] Viscera carcass [3] Heads attached
Without Mirror				
0 to 5	144–248	144–254	144–267	144–267
6 to 10	144–235	144–240	144–253	144–253
11 to 15	144–222	144–227	144–239	144–239
16 to 20	144–211	144–215	144–226	144–226
21 to 25	144–201	144–205	144–214	144–214
With Mirror				
0 to 5	144–248	144–292	144–305	144–292
6 to 10	144–235	144–273	144–291	144–280
11 to 15	144–222	144–256	144–272	144–268
16 to 20	144–211	144–241	144–255	144–255
21 to 25	144–201	144–226	144–240	144–240

[1] Distance walked is the total distance that Inspector B will have to walk between work stations during one inspection cycle (e.g., between viscera, carcass, and washbasin).

[2] Inspector A.

[3] Inspector B.

NOTE.—On multiple-inspector kills, the inspectors must rotate between all inspection positions *during each shift* to equalize the workload. Presentation must be correct.

TABLE 4.—THREE INSPECTORS OR MORE—STAFFING STANDARDS FOR SWINE

Maximum inspection rates (head per hour)	Number of inspectors by station			
	Head	Viscera	Carcass	Total
Market hogs:				
319 to 506	1	1	1	3
507 to 540	1	2	1	4
541 to 859	2	2	1	5
860 to 1022	2	3	1	6
1023 to 1106	3	3	1	7
Sows and boars:				
306 to 439[1]	1	1	1	3
440 to 475	2	1	1	4
476 to 752	2	2	1	5
753 to 895	3	2	1	6
896 to 964	3	3	1	7

[1] This rate is 306–462 if the heads of sows and boars are detached from the carcasses at the time of inspection.

NOTE.—On multiple-inspector kills, the inspectors must rotate between all inspection positions *during each shift to equalize the workload.* Presentation must be correct.

Done at Washington, D.C., on August 24, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-24029 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 84-31]

Assessment of Fees; National Banks; District of Columbia Banks, Federal Branches and Agencies

AGENCY: Comptroller of the Currency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is seeking public comment on a proposed revision of the fees charged by the Office for

special examinations and investigations of national banking associations and District of Columbia banks, for examinations of the affiliates of such institutions, for examinations of fiduciary activities of such institutions exercising fiduciary powers, and for examinations and investigations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities. The Office proposes to charge a uniform hourly fee derived from a formula based on the cost of these examinations and investigations. The hourly fee would be revised annually to reflect projected costs as reflected in the budget for the coming year.

In addition, the Office proposes to institute annual publication of a "Notice of Comptroller of the Currency Fees." This notice would include all the fees to be charged by the Office in the coming year, inclusive of this proposal. The notice would be published on the first business day in December of each year.

DATE: All comments should be received by the Office no later than October 29, 1984.

ADDRESS: Comments should be directed to Docket No. 84-31 Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., 3rd floor, Washington, D.C. 20219, Attention: Lynnette Carter. Telephone (202) 447-1800. All comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Dennis J. Arczynski, Project Manager, Financial Operations (202) 447-1878 or Chari Anhouse, Attorney, Legal Advisory Services Division (202) 447-1880; Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency was created by federal legislation for the purpose of regulating the national banking system. Under the National Bank Act, 12 U.S.C. 1 *et seq.*, it has a responsibility to take every necessary and appropriate step to ensure that all national banks comply with the various laws enacted by Congress and the States.

The Office is authorized by 12 U.S.C. 481 and 482 to assess a fee based on assets on all national banks, District of Columbia banks, and federal branches and agencies of foreign banks to recover the costs associated with their supervision and examination. This is the general assessment fee at 12 CFR 8.2. Sections 481 and 482 also authorize the Office to recover the expenses it incurs in examining such institutions more frequently than twice in one calendar year, in examining any affiliate of a national bank, in examining the activities of institutions exercising fiduciary powers, in examinations and investigations conducted pursuant to 12 CFR Part 5, Rules, Polices, and Procedures for Corporate Activities.

The Office is seeking with this proposal to fully recover those expenses not recovered through the general assessment fee. The current fees set forth in 12 CFR 8.6, Daily Rate for Examinations of Affiliates and for Special Examinations and Investigations, do not fully recover the expenses for special examinations and investigations and examinations of national bank affiliates. The fee charged for these examinations and investigations has remained fixed since 1969. Since then, Office expenditures have increased by 382 percent as a result of inflation and increased responsibilities. Consequently, the Office will recover only 19 percent of its costs of conducting such examinations in 1984. In addition, the fee for trust examinations is established by a detailed formula at 12 CFR 8.7, Hourly Rate for Trust Examinations. This formula no longer reflects the current organization or examination techniques of the Office. Due to this discrepancy, the Office will recover only 84 percent of the cost of conducting trust examinations in 1984.

The Office proposes to charge a uniform hourly fee for all examinations and investigations expenses which are not recovered through the general assessment fee. This is due to the fact that, while the financial institution or the examination area in the bank may differ, the functions and activities performed by employees conducting the examination are essentially the same and the ultimate objective in each instance is identical. Therefore, the Office expense of conducting such examinations are effectively the same.

The proposed hourly rate would be derived from a formula which accurately reflects the salary, benefit, and travel costs of the employees performing the examination, as well as the general, administrative, and overhead expenses (indirect costs) required to support the Office's staff. The proposed formula for determining an hourly rate which recovers the total costs of examinations is as follows:

$$\frac{DC+DC(ICR)}{BH}=HR$$

where:

DC: Direct costs
BH: Billable hours
ICR: Indirect cost rate
HR: Hourly rate

The number of hours spent examining a bank, both on-site and off-site, multiplied by the hourly rate determined by this formula, establishes the fee charged to the institution for the examination.

The components of this formula are defined as follows:

Direct Costs: Projected salary, benefit, and travel expenses of the Office's employees performing examinations or investigations for the coming year.

Billable Hours: Projected Office employee hours devoted to examinations or investigations for the coming year.

Indirect Cost Rate: The indirect cost rate is a ratio of total indirect costs to total direct costs for the entire Office for the coming year. Indirect costs include those costs incurred for Office support activities (legal and regulatory, administrative, training, and external relations) and support costs (supplies, office rent, equipment, etc.) that cannot be clearly identified as a consequence of the performance of a single, specific function. The indirect cost rate, then, represents the average addition to direct costs required for the Office to recover its total costs of performing an activity.

Based on this formula, the revised rate for 1984 would have been $60 per hour. In 1985 and beyond, the Office proposes to revise the rate annually based upon projected costs for the coming year and be calculated pursuant to the above formula. The revised fee for 1985 and beyond would be effective as of January 1 of each year. The Office would provide a copy of the analysis determining the fee for a given year to any interested party upon request.

To ensure that all national banks and other interested parties are notified of the revised fee and the other fees of this Office, the Office proposes to publish a "Notice of Comptroller of the Currency Fees." The Notice would be published the first business day in December of each year and detail all of the Office's fees for the coming year. Under this proposal, the Notice will be distributed to all national banks and other interested parties.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Comptroller of the Currency certifies that the proposed fee revision will not have a significant impact on a substantial number of small entities. The proposed regulation would not impose additional reporting or recordkeeping requirements on any banks subject to the jurisdiction of this Office, nor would the proposed regulation have any other significant impact on these banks. This Office anticipates that the necessary increase in fees payable by any individual bank pursuant to this proposal will be sufficiently small as to have no appreciable effect on the individual bank's financial stability.

Regulatory Impact Analysis

Pursuant to section 3(g)(1) of Executive Order 12291 of February 17, 1981, the proposed fee revision does not constitute a major rule within the meaning of section 1(b) of the Executive Order. The proposed regulation: (1) Will not have an annual effect on the economy in excess of $100 million; (2) will not impose major cost or price increases on consumers, individual industries, federal, state or local government agencies, or geographic regions; and (3) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, no regulatory impact analysis need be prepared.

List of Subjects in 12 CFR Part 8

National banks, Assessment of Fees

PART 8—[AMENDED]

For the reasons set forth above, it is proposed to amend 12 CFR Part 8 as follows:

1. The authority citation for 12 CFR Part 8 is:

Authority: R.S. 5240, as amended, 12 U.S.C. 481, 482; 12 U.S.C. 3103; and in sec. 3, 47 Stat. 1586, 26 D.C. Code 102.

2. By revising the text of § 8.6 to read:

§ 8.6 Hourly rate for examinations and investigations.

(a) Pursuant to the authority contained in 12 U.S.C. 481 and 12 U.S.C. 482, the Office of the Comptroller of the Currency assesses a fee on an hourly basis to recover the total costs of examining fiduciary activities of national and District of Columbia banks and related entities, of conducting special examinations and investigations of national and District of Columbia banks, of conducting examinations of the affiliates of national and District of Columbia banks, and investigations and examinations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities.

(b) The fee assessed by paragraph (a) of this section will be determined by multiplying the number of hours employees of the Office of the Comptroller of the Currency spend on the examination or investigation by the hourly fee as determined in paragraph (c) of this section.

(c) The hourly fee assessed by paragraph (a) of this section will be calculated as follows:

$$\frac{DC+DC(ICR)}{BH}=HR$$

where:

DC: Direct costs
BH: Billable hours
ICR: Indirect cost rate
HR: Hourly rate

The component parts of the formula are defined as follows:

Direct Costs: Projected salary, benefit, and travel expenses to be incurred by the Office for employees performing examinations or investigations for the coming year.

Billable Hours: Projected employee hours devoted to examinations and investigations for the coming year.

Indirect Cost Rate: The indirect cost rate is a ratio of total indirect costs to total direct costs for the entire Office for the coming year. Indirect costs include those costs incurred for Office support activities (legal and regulatory, administrative, training, and external relations) and support costs (supplies, office rent, equipment, etc.) that cannot be clearly identified as a consequence of the performance of a single, specific function. The indirect cost rate, represents the average addition to direct costs required for the Office to recover its total costs of performing an activity.

(d) The hourly fee of paragraph (c) of this section will be revised annually in the "Notice of Comptroller of the Currency Fees."

3. Section 8.7 is removed and § 8.8 is redesignated as § 8.7 and paragraph (a) is revised to read as follows:

§ 8.7 Payment of interest on deliquent assessments and examination and investigation fees.

(a) Each national bank, each district bank, each Federal branch, and each Federal agency shall pay to the Comptroller of the Currency interests on its deliquent payments of semiannual assessments. In addition, each national bank and each entity with a trust department examined by the Comptroller of the Currency and each institution that is the subject of a special examination or investigation conducted by the Comptroller of the Currency shall pay to the Comptroller of the Currency interest on its deliquent payments of examination and investigation fees. Semiannual assessment payments will be considered deliquent if they are received after the time for payment specified in § 8.2. Examination and investigation fees will be considered deliquent if not received by the Comptroller of the Currency within 30 calendar days of the invoice date.

* * * * *

4. A new § 8.8 is added to read as follows:

§ 8.8 Notice of Comptroller of the Currency Fees.

On the first business day in December of each year, the Office will publish and distribute a "Notice of Comptroller of the Currency Fees." This Notice will contain all fees to be charged by the Office for the upcoming year. These fees will be effective January 1 of the following year.

Dated: August 16, 1984.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 84-24054 Filed 9-11-84; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AAL-4]

Proposed Establishment of Mekoryuk, AK; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to lower the base of controlled airspace in the vicinity of Mekoryuk, AK, Airport to 700 feet above the surface so that aircraft conducting flight under instrument flight rules (IFR) would have exclusive use of that airspace when the visibility is less than 3 miles and thereby enhancing the safety of such operations.

DATE: Comments must be received on or before October 24, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-4, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief

Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AAL-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the base of controlled airspace at 700 feet above the surface in a rectangular area 37 nautical miles by 15.5 nautical miles over the Mekoryuk, AK, Airport. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Mekoryuk, AK [New]

That airspace extending upward from 700 feet above the surface within 6 miles southeast and 9.5 miles northwest of the Nanwak NDB (lat. 60°23′10″N., long. 166°12′46″W.) 244°T(228°M) and 064°T(048°M) bearings, extending from 18.5 miles southwest to 18.5 miles northeast of the NDB.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on August 29, 1984.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-24020 Filed 9-11-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84–AAL–11]

Proposed Establishment of Port Heiden, AK, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to lower the base of controlled airspace in the vicinity of Port Heiden, AK, Airport to 700 feet above the surface so that aircraft conducting flight under instrument flight rules (IFR) would have exclusive use of that airspace when the visibility is less than 3 miles and thereby enhancing the safety of such operations.

DATE: Comments must be received on or before October 24, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84–AAL–11, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AAL–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the base of controlled airspace at 700 feet above the surface over the Port Heiden, AK, Airport within a generally circular area of approximately 800 square miles. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles it would enhance the safety of aircraft conducting flight under IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO), International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Port Heiden, AK [New]

That airspace extending upward from 700 feet above the surface within a 14.5-mile radius of the Port Heiden Airport (lat. 56°57'36" N., long. 158°36'48" W.); and within 9.5 miles south and 4.5 miles north of the 248° bearing from the Port Heiden NDB, extending from the 14.5-mile radius area to 23 miles west of the NDB; and within 9.5 miles west and 4.5 miles east of the 339° bearing from the Port Heiden NDB extending from the 14.5-mile radius area to 23 miles north of the NDB.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on August 29, 1984.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–24021 Filed 9–11–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 101

Moored Balloons, Kites, Unmanned Rockets, and Unmanned Free Balloons; Regulatory Review Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Initiation of regulatory review: Invitation to submit proposals.

SUMMARY: The FAA announces a Regulatory Review Program regarding Part 101 of the Federal Aviation Regulations (FAR) (hereinafter called "Review Program"). This Review Program is intended to provide full public participation in matters concerning FAA evaluation of the operation of moored balloons, kites, unmanned rockets, unmanned free ballons, and the possible inclusion of remotely piloted vehicle regulations. The Review Program is patterned on the FAA's earlier airworthiness and operations review programs.

DATE: Proposals must be received on or before November 13, 1984.

ADDRESS: Send proposals to the Part 101 Regulatory Review Program, Federal Aviation Administration, Office of the Associate Administrator for Air Traffic, Airspace-Rules and Aeronautical Information Division, ATT–200, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch, (ATT–230), Airspace-Rules and Aeronautical Information Division, AAT–200, 800 Independence Avenue SW., Washington, D.C. 20591 (202–426–8783).

SUPPLEMENTARY INFORMATION:

Scope

The Regulatory Review Program announced by this notice involves Part 101 of the Federal Aviation Regulations (14 CFR Part 101) entitled "Moored Balloons, Kites, Unmanned Rockets, and Unmanned Free Balloons." The scope of Part 101 includes the following:

1. Subpart A prescribes rules governing the operation of certain balloons that are moored to the surface of the earth; kites; unmanned rockets, and unmanned free balloons;
2. Subpart B applies to the operation of moored balloons and kites;
3. Subpart C applies to the operation of unmanned rockets; and
4. Subpart D applies to the operation of unmanned free balloons.

Comments Invited

This regulatory review program is initiated pursuant to FAA's policy for the institution of public proceedings in actions related to rulemaking. Interested persons are invited to participate by submitting any proposals for amendments to Part 101 that they believe are needed. We are particularly interested in comments/proposals on the following:

1. Moored Balloons

a. Should Parts 101 and 91 be revised to clarify the respective requirements for unmanned and manned moored balloon operations?

b. Should FAR Part 91 include additional provisions for the operation of manned moored balloons, such as anticollision lights and high visibility flags required for night/day operations, respectively?

2. Subpart C—Unmanned Rockets

a. With the advent of increased private industry emphasis toward providing space satellite launching services, and the developmental processes involved, and the consequential establishment of the DOT Office of Commercial Space Transportation to meet the needs of these business ventures, the FAA must review Part 101, Subpart C, within the constraints of safety, to accommodate/support the goals of the DOT Office of Commercial Space Transportation. This may necessitate the creation of a new subpart specifically dedicated to space transportation related ventures.

b. Should consideration be given to amending this part to allow the operation of unmanned rockets in controlled airspace if such is conducted in an established controlled firing area (CFA) and such operation remains subject to present safety, cloud/obscuring phenomena criteria and visibility, and other constraints?

Note.—CFA contain activities which, if not conducted in a controlled environment, could be hazardous to nonparticipating aircraft. The distinguishing feature of the CFA, as compared to other special use airspace, is that its activities are suspended immediately when spotter aircraft, radar, or ground lookout positions indicate an aircraft might be approaching the area. Nonparticipating aircraft are not required to change their path of flight.

3. Remotely Piloted Vehicles (RPV's)

a. With the exploration of possible uses for remotely piloted vehicles, such as: Scientific data gathering; military applications; training; private/commercial ventures; model, sport and recreational use, we are requesting comments on the necessity to develop regulations specifically for the operation of RPV's in airspace other than special use airspace.

b. If there is evidence that the regulation of RPV's as a class is needed, consideration must be given to incorporation of these rules in Part 101, which is primarily directed toward unmanned vehicles, or in the general operating rules of Part 91. Comments are requested regarding: What type of regulations are needed; under which Part of the FAR, and what size and/or weight restrictions, capabilities, etc., should be used to determine the different categories, if any, of RPV operation.

Required Format and Information

Based on experience gained in previous review programs, the FAA has determined that use of a standard format and inclusion of certain specific information greatly facilitates processing, compilation, and evaluation of proposals received. Appendix B contains a sample format that should be used. Each proposal should include at least the following information:

1. The full name or title of the proponent or an acceptable acronym.
2. The FAR section affected.
3. A short title identifying the subject of the proposal (10 words or less).

4. The specific regulatory language being proposed, if at all possible. If not, provide a precise description of the objectives of the proposal.

5. The language of the existing rule the proposal would change.

6. An explanation and justification of the proposal including:

a. Background pertinent to change.

b. Why is the change necessary.

c. How the needs of aviation are served (along with reasonable consideration provided to nonaviation interests).

d. What are the environmental, economic (including inflationary) and cost/benefit consequences, if adopted.

e. What other rules are affected (such as rules in other FAR Parts).

f. What other proposals, if any, are directly related.

g. Additional data, or references to publications.

Where a proposal covers serveral sections of Part 101, the information required in Item 6 above may be stated only once and a cross reference used if similar reason and logic apply.

Compilation of Proposals

Each proposal received by the date indicated above will be evaluated. The FAA will prepare a compilation of proposals for consideration during the Part 101 Regulatory Review Program. In addition to proposals received from outside the agency, internal FAA proposals will be considered.

Agenda and Conference

All proposals received prior to the cutoff date will be considered in preparing the agenda for the Part 101 Regulatory Review Conference. The agenda, including the compilation of proposals will be distributed by November 30, 1984. At that time, a Notice of Availability of the agenda will be published in the **Federal Register**. The conference will be held in the Washington, D.C., area; date and place to be announced. There will be no admission fee or other charge to attend or participate in the conference. All conference sessions will be open on a space available basis to all interested persons who register to attend. All meetings will be recorded. Copies of the record may be purchased from the Rules Docket (AGC-24), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Fees for copies of the record will be determined in accordance with 49 CFR Part 7.

Proposed and Final Rulemaking

The conference record and related regulatory review decument will be used in developing notices of proposed rulemaking, appropriate.

Drafting Information

The principal author of this document is Mr. Brent A. Fernald, Office of the Associate Administrator for Air Traffic.

List of Subjects in 14 CFR Part 101

Aviation Safety.

(Secs. 104, 307, 313(a), and 1101, Federal Aviation Act of 1958, (49 U.S.C. 1304, 1348, 1354(a), and 1501); sec 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.45))

Issued in Washington, D.C. on August 10, 1984.

R.J. Van Vuren,

Associate Administrator for Air Traffic.

Appendix A—Schedule for Part 101 Regulatory Review Program

—Notice initiating Part 101 Regulatory Review Program and inviting porposals to amend the Federal Aviation Regulations.

—Final date for delivering proposals to the FAA.

—Distribute agenda (including compilation of proposals and related working documents for Part 101 Regulatory Review Program) and publish a Notice of Availibility of the agenda in the **Federal Register**.

Appendix B—Format for Part 101 Review

The following format and guidelines should be followed in preparing proposals for consideration during the review.

Guidelines: Each proposal should be submitted on a separate page. The text should be within the margins not more than 6½" wide and 9" long so that it can be printed on 8" by 10½".

Sample Format

Proposal: (Leave Blank for FAA Use).
From: Mr. John Doe, XYZ Inc.
Index: (Leave Blank for FAA Use).
Far: 101
Subject: General Scope.

Proposal

Amend § 101.3 to read as follows:

§ 101.3

* * * * *

Current Rule

§ 101. Waivers.

No person may conduct operations that require a deviation from this part except under a certificate of waiver issued by the Administrator.

Explanation and Justification

* * * * *

[FR Doc. 84-24018 Filed 9-11-84; 8:45 am]

Billing Code 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 376

[Docket No. 40110-4107]

Amendments to the Distribution License Procedure

AGENCY: Office of Export Administration, ITA, Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: On January 19, 1984 (49 FR 2264–2267), the Office of Export Administration (OEA) solicited public comments on a proposal to amend the "Distribution License" procedure, which authorizes exports from the United States of certain commodities under an international marketing program to consignees that have been approved in advance as foreign distributors or users.

Subsequently, OEA received comments, consulted informally with industry groups, performed audits of several Distribution License holders and foreign consignees, and conducted an extensive review of the entire Distribution License (DL) procedure. As a result of the foregoing, OEA has determined that the changes incorporated in this new proposal will not only materially strengthen controls on exports under the Distribution License, but will also alleviate burdens on the business community that would not have contributed to an enhanced expert control program.

The public is invited to make comments on each proposed change, and to specify and substantiate anticipated workload impact and economic impact for each change. When possible, commenters should indicate any anticipated increase in individual validated licenses and reexport authorizations that would result from applicable regulatory proposals.

The Department anticipates that applicants with pending DL applications and pending extensions will have 60 days from the effective date of any new requirements to bring their applications into compliance with the new requirements. A key element of the new proposal, which makes possible further flexibility in the proposed regulatory provisions, is the requirement for pre-license approval of an internal control

program containing the minimal elements specified by the Department. Within six months of the effective date of any new regulations, the Department would expect from all current DL holders a narrative statement describing their internal control system. Comments on the implementation of these regulations are encouraged.

In a separate Notice, the Department of Commerce will be announcing a schedule for public hearings during the comment period. These public hearings will be completed in time for interested parties to prepare formal, written comments.

DATE: Comments must be received by November 13, 1984.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Services Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044. Mark "DL COMMENTS" on the face of the envelope.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Services Division, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation To Comment

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this regulation involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring a notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date are inapplicable. Nevertheless, to help ascertain the economic impact of the regulation upon the general public, the regulation is being issued in proposed form and public comment is being solicited.

2. Revisions to the existing collection of information requirement (OMB control no. 0625-0052) contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980. The public is invited to submit comments on this proposed reporting requirement to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer of International Trade Administration.

3. Because no notice of proposed rulemaking is required by law, this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*

4. Because this proposed rule is being issued with respect to a foreign affairs function, it is not subject to Executive Order No. 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

The period for submission of comments will close November 13, 1984. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments will become a matter of public record.

Comments that are accompanied by a request that the information be treated confidentially because of its business proprietary nature or for any other reason will be accepted on the conditions described below.

Public comments on these proposed regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230.

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

The Office of Export Administration (OEA) is especially interested in receiving comments on the business and economic effects of the proposed regulations. Because providing such comments may involve the disclosure of proprietary business information, OEA will accept comments on a confidential basis.

Persons may request confidential treatment for their comments involving proprietary information on paperwork burden, sales, or any other aspects of the business or economic impact of the proposed regulations. The request must include a full statement of the reasons why confidential treatment should be granted. The business or financial information for which confidential treatment is requested should be submitted to OEA on sheets of paper separate from any non-confidential information submitted. The top of each page should be marked with the term "CONFIDENTIAL BUSINESS INFORMATION." OEA will either accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, will return it. A nonconfidential summary must accompany each submission of confidential information. The summary will be made available for public inspection.

Information accepted by OEA as privileged under subsections (b) (3) or (4) of the Freedom of Information Act (5 U.S.C., section 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except according to law.

Proposed Revision of Distribution License Procedure

On January 19, 1984 (49 FR 2264-2267), the Department solicited comments on proposed revisions to the Distribution License procedure, a comprehensive export licensing system for firms with international marketing programs generally involving a number of foreign consignees/distributors.

Major changes to the Export Administration Regulations during the 1970's, such as elimination of monthly reporting requirements, reduction of record keeping requirements, and relaxation of eligibility standards, have reduced a number of the safeguards in the original program.

A thorough analysis of the DL procedure has confirmed that stronger safeguards are needed. The January 1984 proposal was issued with this purpose in mind. In addition, the Department concluded in 1983 that additional staff positions should be allocated to the special licensing unit in OEA and that an audit program should be re-established.

The aim of the proposal was to achieve the national security objectives of the United States by preventing the DL procedure from being used as a method to divert controlled commodities. It was also intended to impose effective controls without impeding legal U.S. trade. The DL regulations were issued in proposed form in January 1984 because the

Department wished to obtain additional information on their impact.

The Department received about 250 responses to the request for comments. In addition, OEA gained much information on the process and the DL holders' control programs from the conduct of several foreign and domestic audits. ITA officials also met with a wide variety of firms currently using the DL to clarify comments and assess the ways in which they were administering their licenses. This knowledge was extremely beneficial to the internal review of the DL procedure conducted by an ITA task force. By analyzing the intent of both the existing regulations and the January proposal, reviewing the results of recent audit activity, and considering the comments we received, the task force was better able to focus on key strengths and weaknesses in the DL procedure. The Department has prepared a new proposed regulation based on the following observations:

- The DL is the cornerstone of the marketing program for most U.S. firms that export controlled commodities. The DL procedure facilitates billions of dollars in sales each year and involves thousands of intra-company transfers; without it, U.S. firms would be less able to compete effectively in the international marketplace.
- Operations under DL procedure have changed considerably over the years, as U.S. business has expanded greatly its overseas marketing and production operations, and foreign competition has been increasing.
- Since the program's inception, effective administration of the process has been dependent on internal corporate controls. Some firms have designed good programs, but have become complacent in carrying them out, and some have control programs that simply need to be improved.
- The great majority of U.S. exporters will not jeopardize their DL privilege through inadvertent or willful violations of the DL regulations.
- Once the Department establishes the reliability of DL participants, it is the responsibility of each exporting company to maintain an effective export monitoring program and OEA must audit such programs to ensure that the requirements of the DL procedure are met.
- There is a need and opportunity to strengthen the DL procedure to ensure adequate controls without weakening the position of U.S. firms in international markets.
- With the recent hiring of additional personnel, OEA is now able to monitor more effectively the compliance of firms and to expand its program of educating the business community on DL requirements. In addition, OEA will be able to perform more thorough pre-license reviews and audits to establish participant reliability.

Based on the industry comments and an internal ITA review, we believe that not all of the requirements proposed in January are absolutely necessary for the building of an effective export control system. The requirements that we now propose will be, we believe, effective in safeguarding the national security while not unduly burdening the business community.

DL Holder Export Control Requirement

The purpose of these current proposals is to eliminate any of the January proposals that could have restricted legitimate economic activity under the DL procedure without contributing to the national security. This new proposal places greater emphasis on self-control to be exercised by DL holders and their foreign consignees, on the reliability of these entities, and on DL holders' internal control programs (which must be acceptable to OEA as a precondition for receiving or renewing a license). The internal control program must consist of the following elements:

- Identification of positions in the applicant firm and consignee firms responsible for compliance with the requirements of the DL procedure;
- Systems for assuring compliance with product and country restrictions, including controls over reexports to approved sales territories;
- A process for screening OEMs (original equipment manufacturers) that includes the collection and analysis of the following types of information; the names of the OEM principals, the size of the OEM (*e.g.*, the number of employees), and the sales volume;
- Exporter's internal audit system or program;
- Nuclear end-use/end-user controls;
- An education program for those parties in the applicant firm and consignee firms involved in sales of products under the DL procedure;
- A system for distribution and verification of receipt by consignees of the Table of Denial Orders (Supplement No. 1 to Part 388) and other material necessary to assure compliance; and
- Methodology for screening customers against the Table of Denial Orders.

This approach will substantially reduce the potential for diversion as well as the prospect of inadvertent violations of the procedure and permit OEA to better control what is actually being exported. We have sought throughout the revised proposal to minimize the paperwork burden, retaining only what is essential for effective control.

The approach of the new proposed regulations differs significantly from that of the January proposal. There is reduced emphasis on minimal threshold requirements, such as the number of licenses or transactions, although these remain as general guidelines for which exceptions can be justified. The new approach depends more upon the applicant providing sufficient evidence of the reliability of all parties with respect to the prevention of diversion of goods to proscribed destinations. Toward that end, an applicant will have to demonstrate that it has taken adequate steps, including the institution and execution of an appropriate internal control program, and has adequate experience to assure against improper use or diversion. With this additional evidence of reliability, initial applications and renewals of DLs can and will be reviewed more thoroughly and judged primarily on the *demonstrated* ability of the parties to comply with the regulatory requirements.

Eligibility Standards

The January proposal to revise experience standards would have required that the applicant has received at least 50 individual validated licenses in the previous year, and have had a minimum one-year written relationship with consignees other than subsidiaries. Public comments noted that these requirements would not improve our control over the process and would not accurately measure applicant/consignee reliability.

The internal task force review concluded that, while the quantitative standards of the proposed criteria are useful, there are other, more effective, factors that could also be used in evaluating applications. As noted above, increased emphasis will be given to evidence of the reliability of the exporter and proposed consignees, the effectiveness of established control mechanisms, and in some cases, the results of a pre-approval audit or interview.

The present proposal of "reasonable expectation" that the DL will replace 25 individual validated licenses is utilized so as not to penalize smaller firms. The new proposal also allows for exceptions to the one-year relationship when there is other evidence of the consignee's reliability.

Customer Reexport Assurances (Certification)

The January proposal would have required distributors to obtain assurances (in the form of written certifications) against unauthorized reexports from their customers in countries not listed in Supplement No. 2 to Part 373 of the Export Administration Regulations. Public comments indicated that carrying out this requirement may present legal problems in some countries as well as a loss of customers due to their unwillingness to undertake extra paperwork when comparable goods were available from alternative sources that did not impose this requirement. The Department task force concluded that the written assurance requirement would cause delays that would negate much of the advantage of the DL, and further concluded that other means are available to seek to have foreign customers comply with the limits on reexports. The new proposal deletes the written assurance requirement and imposes a requirement (currently employed by a number of firms) that the distributor, at a minimum, notify each customer, except those in countries listed in Supplement No. 2 to Part 373, that the goods were received from the U.S. under a special license and that such license precludes unauthorized reexport. Also, customers who are approved consignees on the DL, and agencies of foreign governments, would not be subject to the notification requirement.

Customer Lists

The January proposal would have required that DL holders submit an initial list of actual or anticipated customers, followed by quarterly updates. Comments indicated that the requirement may be contrary to local laws in a number of foreign countries, that independent distributors would rather change sources of supply than reveal the identity of their customers, and that the lists, if they could be compiled, would be so lengthy that providing them would be unduly burdensome. The task force concluded that the demonstrated volume of customer names would be so great (a minimum of one million names), and would be ever-changing, with the result that meaningful review could not be accomplished. As a result, other ways were sought to assure that parties who might not be approved to receive goods under individual validated licenses are not recipients of similar goods under the DL. Thus, it was decided that, for a few selected items on the Commodity Control List, shipment under the DL would be permitted only to customers who have been in fact pre-approved by OEA; this is a practice now administratively employed on applications involving certain of these types of commodities, which have been identified in a new Supplement No. 4. In this way, effective limits on parties and equipment of primary concern can be maintained without burdening either the government or the exporting community excessively. In addition, OEA will review customers during audits of consignee activities. Moreover, DL holders and consignees are encouraged to ask the Office of Export Enforcement about unknown or questionable customers, and will be given guidance in recognizing potential patterns for diversion. A new regulatory section is also being established listing the administrative sanctions that may be imposed on firms that fail to comply with DL requirements, emphasizing strict liability for dealing with denied parties.

Drop Shipments

In the January proposal, the ability of the DL holder to ship directly to a distributor's customer ("drop shipment"), at the request of the distributor, would have been limited to customers in the distributor's own country. Most comments indicated that this restriction would have an extreme adverse effect on most marketing programs and would make the DL unattractive to many current holders. The task force acknowledges that direct shipments from the U.S. may provide increased control because of the requirement for a destination control notice on shipping papers and the ease of auditing within the U.S., while continuing to see a need for more structure to the drop shipment provision. Thus, the new proposal allows continued use of drop shipments, but provides for a more specific definition of allowable drop shipments.

Sales Territory

Another January proposal would have required six sales in each country in a consignee's authorized sales territory. The intent was to assure that territories were realistic and that the consignee had sufficient business activity in each country to be familiar with customers and country procedures to ensure adequate control. It has been determined that it is appropriate to maintain the six-sale requirement, but only for those countries in the distributor's authorized sales territory not listed in Supplement No. 2 to Part 373.

Permissive Reexports

In January, we proposed eliminating the distributors' opportunity to take advantage of a variety of permissive reexport provisions. These options generally were seen as unnecessary in view of broadening of the procedure over the years. Comments indicated that many of the permissive reexport provisions were unnecessary, but that withdrawal of all such provisions would not be equitable. The task force concluded that certain permissive reexport provisions are generally unrelated to DL holders and should be deleted (Ship and Plane Stores, G-NNR, and G-FTZ). The two broadest permissive reexport provisions for DL holders, GLV and GTE, are unnecessary because the same shipments can be made within authorized sales territories under other provisions of the DL. The new proposal deletes inapplicable or unnecessary pemissive reexport provisions, but continues other permissive reexports that would be useful to DL holders.

Commodity Descriptions

The January proposal to require more specific product information on the DL application would have required each commodity to be shipped under the license to be listed by sub-paragraph on the Commodity Control List (CCL). Comments pointed out that this would be extremely difficult for DL holders who handle a wide range of products, and would require excessive amendment requests as product lines change. In addition, most commenters noted the difficulty of listing all spare and replacement parts by sub-paragraph.

Because this requirement is considered essential to OEA knowledge of what items are being shipped under the DL, the new proposal continues to require listing of CCL entry and sub-paragraph. The task force agreed that parts to service the exporter's products need not be listed in detail on the application.

Excluded Commodities

The January proposal would have excluded certain commodities from shipment under the DL, except within the countries listed in Supplement No. 2 to Part 373. Comments noted that some commodity descriptions lacked clarity, others caught items that are being phased out of production, and most of the excluded commodities are available elsewhere, thus making U.S. exporters less competitive without restricting availability effectively. The proposed exclusions have been re-reviewed by the task force and by OEA technicians. The result has been a more focused set of proposals that address national security concerns more precisely. The new proposal narrows the list of commodities excluded from shipment on a DL to truly strategic commodities that will be excluded for all destinations.

A few other commodities are being identified in a new Supplement No. 4. These include certain low-volume exports that, by current administrative practice, are not authorized for shipment under a DL unless the applicant lists the customers on the license application. Some of the commodities listed in the new Supplement No. 4 may not be shipped to any destination unless the applicant specifically identifies the commodities on the application, along with a listing of proposed customers for the commodities, and the commodities and customers are approved by OEA. Other commodities in Supplement No. 4 may be shipped to countries listed in Supplement No. 2 under a DL, but cannot be shipped to other destinations unless the commodities and customers are listed and OEA approves them. This action permits shipment to pre-approved customers of commodities that might otherwise have to be excluded from the DL entirely.

Administrative Penalties

The January proposal placed parties to the DL on notice that misuse of the license could result in loss of the privilege. No adverse comments were received and this provision is retained and clarified in the new proposal. These administrative penalties stand in addition to those that may be imposed under the Export Administration Act and Part 387 of the Regulations.

Audits

Another January proposal called for more extensive pre-approval review of DL applications and expanded auditing of existing license holders and consignees. Comments generally supported these actions and frequently suggested that improvements in these areas could decrease the need for some of the other proposals. These proposals have been expanded and clarified.

Administrative Conditions

The Department recognizes that export control programs in other countries may warrant the same treatment as that afforded countries in Supplement No. 2. Such treatment may be made available by administrative action within OEA. Conversely, participation in the DL procedure may be restricted by administrative action within OEA where insufficient protection is afforded against the diversion of controlled commodities.

Validity Period

This new rule proposes to increase the initial validity period of the DL from one year to two years, with a two-year extension, and with subsequent renewal periods of four years. It was considered that this change was justified on the basis of having a more thorough pre-approval license application review process and audits. An ancillary benefit will be a reduced paperwork burden on DL holders.

List of Subjects in 15 CFR Parts 373 and 376

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 373 and 376) are proposed to be amended as follows:

PART 373—[AMENDED]

1. Section 373.1 is amended by adding a paragraph (f) reading as follows:

§ 373.1 Introduction.

* * * * *

(f) *Compliance.* Improper use or failure to comply with the conditions of any special licensing procedure described in this Part 373 may, in addition to any enforcement action under Part 387 (see particularly § 387.4), result in the loss or restriction of export privileges under that licensing procedure, including:

(1) Temporary suspension of privileges under the special license for the license holder and any or all foreign consignees;

(2) Revocation of the special license;

(3) Deletion of foreign consignees;

(4) Restriction of commodities that may be shipped under the special license;

(5) Requirement that certain exports or reexports be individually authorized during an OEA review of the adequacy of procedures by the license holder or particular consignees;

(6) Restriction of sales by consignees to specific parties; or

(7) Requirement that a license holder provide an audit report to OEA of selected consignees or overseas operations.

2. In § 373.3, the introductory paragraph, paragraph (b), paragraphs (c)(1)(i), (c)(1)(iii) and (c)(2), and paragraphs (d)(1), (d)(3)(ii) (D) and (G) and (d)(2)(iv) and revised; and paragraphs (c)(1)(iv), (c)(4), (5) and (6), (d)(3)(iii) (A) and (B) are added, reading as follows:

§ 373.3 Distribution License.

A Distribution License procedure is established that authorizes exports of certain commodities under an international marketing program to consignees that have been approved in advance as foreign distributors or users. This procedure is a special privilege reserved for firms with extensive foreign distribution, thorough knowledge of and experience with the Export Administration Regulations, and the ability and internal control mechanisms to assure compliance with the requirements of the license. Thus, there is no automatic right to participate in the Distribution License procedure. Participants will be expected to establish eligibility and will be audited at intervals to assure that the Distribution License is being used properly. the Distribution License procedure is subject to the limitations in § 373.1.

(a) * * *

(b) *Ineligible or restricted commodities.* (1) The following commodities are ineligible for export under the Distribution License procedure, and must be shipped under an individual validated license of reexport authorization:

(i) Commodities related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium (see § 378.3):

(ii) Commodities listed in Supplement No. 1 to Part 373 (except as authorized by footnote):

(iii) Electronic, mechanical, or other devices, as described in § 376.13(a), primarily useful for surreptitious interception of wire or oral communications:

(iv) Commodities listed in a Supplement to Part 377 as being under short supply controls: and

(v) Aircraft parts and accessories covered by § 390.7.

(2) Commodities listed in Supplement No. 4 to Part 373 are subject to certain restrictions when exported under a Distribution License. Certain commodities in this Supplement cannot be exported under a Distribution License to any destination unless the applicant specifically lists the appropriate commodities and identifies the customers (and-users) of approved consignees abroad who will be receiving the commodities. Other commodities in the Supplement cannot be exported under a Distribution License to a

country *not* listed in Supplement No. 2 to Part 373 unless the applicant lists the commodities and identifies the customers. When OEA grants permission to export, the applicant and approved foreign consignees will be authorized to ship only those Supplement No. 4 items listed and approved, and only to pre-approved end-users.

(c) *Eligible exporters and consignees.* (1) * * *

(i) A subsidiary, affiliate, or branch of the U.S. exporter. The subsidiary, affiliate, or branch must be under the full and active control of the exporter and a majority of any voting stock in the subsidiary, affiliate, or branch must be owned by the exporter; or

(ii) * * *

(iii) An end-user importing the commodities for his/her own use or for use in the production or manufacture of commodities. For purposes of this section, a foreign party who modifies, but does not change, the essential character of a U.S. commodity, or attaches a U.S. commodity in essentially original form to foreign equipment, is *not* an end-user and should be considered a distributor under (c)(1)(ii) above.

(2) Prerequisite volume of business.

(i) The exporter shall have a reasonable expectation that the Distribution License, if granted, will replace at least 25 individual validated export licenses that would otherwise be required.

(ii) The applicant must be able to establish to OEA an ongoing business relationship of at least one year with proposed foreign consignees described in § 373.3(c)(1) (ii) and (iii).

(iii) The one-year relationship may be waived upon suitable evidence of reliability, *e.g.*, if the proposed consignee—

(A) Is approved under another Distribution License;

(B) Has been established as reliable by the Department of Commerce through pre-license checks, verification of information supplied by the applicant, or extensive experience as a consignee under individual validated licenses;

(C) Is an affiliate of another approved foreign consignee and is under the full and active control of the foreign consignee.

(3) * * *

(4) Certification of an internal control program. The applicant must be able to establish the existence of an adequate internal control program to assure compliance with all conditions of the Distribution License and the Export Administration Regulations.

(5) Essential elements of an internal control program. The applicant must submit for OEA approval the firm's internal control program to ensure exporter and approved consignee compliance with all conditions of the Distribution License and the Export Administration Regulations. An internal control program shall include, as a minimum, the following:

(i) Identification of positions in the applicant firm and consignee firms responsible for compliance with the requirements of the Distribution License procedure;

(ii) A system for distribution and verification of receipt by consignees of the Table of Denial Orders (Supplement No. 1 to Part 388) and other material necessary to assure compliance;

(iii) Systems for assuring compliance with product and country restrictions, including controls over reexports to approved sales territories;

(iv) An internal audit system or program;

(v) Nuclear end-use/end-user controls;

(vi) An education program for those parties in the applicant firm and consignee firms involved in sales of products under the Distribution License procedure;

(vii) Methodology for screening customers against the Table of Denial Orders; and

(viii) A process for screening Original Equipment Manufacturers (OEMs) that includes the collection and analysis of the following types of information:

(A) Names of OEM principals;

(B) Size of OEM, *e.g.*, number of employees;

(C) Sales volume;

(D) Sales territory (including sales to the Soviet Bloc);

(E) Servicing responsibilities;

(F) Financial stability of the OEM;

(G) OEM's reputation in the trading community; and

(H) OEM's proposed use and disposition of the exported commodities.

(ix) A records maintenance program.

(6) Notification of special restrictions. It is the responsibility of the exporter to notify all consignees of any special conditions or restrictions applicable to goods received under a Distribution License.

(d) *Application for Distribution License.* (1) Prior consultation. The preparation of an initial application for a Distribution License requires a substantial amount of work by the exporter. Therefore, a prospective applicant is required to consult with the Special Licensing Unit of the Office of Export Administration before preparing and submitting an application.

(2) * * *

(3) * * *

(ii) * * *

* * * * *

(D) List separately on the application, or on an attachment, a description of each type of commodity to be exported, and the appropriate Export Control Commodity Number and sub-paragraph designation from the Commodity Control List (CCL) (Supplement No. 1 to § 399.1) for each. Only commodities included in a CCL entry specifically listed on the application and approved by OEA may be exported under a Distribution License, except that spare or replacement parts for listed commodities may be included without specifying a CCL entry *if* such parts shipments will not exceed 20% of the value of the total exports under the license during any 12 month period *and* the applicant lists on the application—"Spare and replacement parts for commodities included in CCL entries——————." (The listing of the CCL entries by Export Control Commodity Number and sub-paragraph designation will generally constitute a sufficient description of the commodities being shipped. However, the exporter is encouraged to include as specific a description as possible in order to speed the processing of the application.) OEA may impose more specific limits on the commodities covered by the license. Listing of CCL entries that include items excluded by § 373.3(b) does *not* permit export or distribution of those excluded items, except with specific approval as indicated in § 373.3(b)(2).

* * * * *

(G) Leave blank item 9(a), "Quantity," the processing code under item 9(c), and item 9(d), "Unit Price" and "Total Price."

* * * * *

(iii) * * *

(A) Notice restricting reexport. Each Form ITA-6052P submitted by a party other than an end-user as described in § 373.3(c)(1)(iii) shall include a commitment that the commerical invoice for any shipment of commodities received under the Distribution License will include a notice restricting unauthorized reexport. This notice will not be required when the shipment is to a customer in a country listed in Supplement No. 2 to this Part 373, or when the customer is either another approved consignee under the Distribution License or a foreign government agency. The notice shall read as follows:

> "These commodities were authorized for export from the United State under a special Distribution License procedure on the condition that they may not be reexported without prior approval."

(B) The ultimate consignee(s) listed in item 7 of the license application must submit written certification on the Form ITA–6052P, or on a separate attachment of at least six sales during the previous year within each country in the assigned sales territory that is not listed in Supplement No. 2 to Part 373. Each time that a particular Distribution License is extended, the consignee must submit written verification of at least six sales per year within those countries.

(iv) *Comprehensive narrative statement.* (A) A comprehensive narrative statement shall be submitted by the applicant in support of the application. This statement shall describe the applicatant's internal control system and distribution methods pertinent to the application.

(B) The statement shall detail the applicant's internal control program, having, as a minimum, the requirements set forth in § 373.3(c)(5).

(C) In addition, the statement shall detail the nature and duration of the business relationship existing between the applicant and each consignee. If the consignee is a subsidiary, affiliate, or branch of the U.S. exporter, the statement shall show clearly that the qualifications set forth in § 373.3(c) are met and shall show the form of ownership or other control exercised by the U.S. exporter. If the U.S. exporter has assigned a sales territory to the consignee that includes a country or countries other than the one in which the consignee is located, the statement shall list the country or countries. For countries not listed in supplement No. 2, the statement shall include a justification for the need to include such countries in the sales territory. (For purposes of this § 373.3, a "sales territory" is defined as a list of specific destinations within Country Groups T&V, excluding Afghanistan and the People's Republic of China, in which the exporter, or his distributor, has a history of sales, or in which sales have been planned during the validity period of the license.) If the consignee is a distributor other than a subsidiary, affiliate, or branch of the U.S. exporter, the statement shall include the terms of the distributorship agreement and a copy of the portion of the written agreement assuring compliance with U.S. Export Administration Regulations as described in § 373.3(c)(1) (ii) and (iii). If the written agreement assigns a sales territory to the consignee that includes a country or countries other than the one in which the consignee is located, a copy of that portion of the written agreement shall also be included. In addition, the statement shall list, for each consignee, the volume of business in terms of general commodity categories involved for the preceding year.

(D) If the government of the country where the consignee is located restricts the inspection of records by a representative of the U.S. Government, the narrative statement must be accompanied by a statement from the consignee describing in full an alternative arrangement that would permit a review of the consignee's activities adequate to determine whether or not he/she has complied with the U.S. export control laws and regulations as required by § 373.3(1)(4). Approved consignees who sell to parties who subsequently will resell must include in the statement a certification that they will advise such party of the reexport restrictions on products received under the procedure.

3. Paragraph (e) of § 373.3 is amended by redesignating sub-paragraphs (1), (2) and (3) as (2) (3) and (4) respectively; by removing the phrase "of one year" from the end of the new paragraph (e)(2); by adding a sentence to the end of (e)(2)(v) reading—"The licensee shall assure that each approved consignee acknowledges receipt of reprints and addenda, and shall maintain copies of acknowledgements."; and by adding a new (e) (1) and (5) reading as follows:

§ 373.3 Distribution License.

* * * * *

(e) *Action on License Applications.*

(1) Pre-approval review. The Distribution License procedure authorizes multiple export transactions without a review and approval of each individual transaction by OEA. Thus, before approving such a license, OEA must be fully satisfied that the persons benefiting from this special licensing procedure can be relied upon to adhere to the conditions of the license and the Export Administration Regulations, and that the approval of the application will not be detrimental to U.S. interests. To permit OEA to make such judgments, each application will be reviewed by OEA and the Office of Export Enforcement to establish the reliability of the parties to the license. Such review may entail an audit of past export transactions, inspection of documents, and interviews in the United States and abroad. If OEA cannot verify the appropriateness of this special licensing procedure or establish the reliability of the proposed parties to the license, it may deny the application or modify it by eliminating persons from the application or by removing certain commodities or countries included in the application. However, failure to obtain approval to participate in this special licensing procedure does not preclude the filing of an application for an individual validated license or reexport authorization.

* * * * *

(5) Validity period. A new Distribution License will be valid for two years from the last day of the month in which it is issued, and may be extended once by amendment for a two-year period. Thereafter, a new application must be submitted. If approved, it will be valid for four years.

* * * * *

4. Paragraph (f)(2)(ii) of § 373.3 is amended by inserting in the first sentence after the phrase "reason to know the commodities" the phrase "will be diverted or reexported to unauthorized destinations or end-users, or"; and by designating the last sentence of the paragraph as a new paragraph (f)(3), titled "Rejection."

5. Section 373.3(i) is amended by adding an introductory paragraph and revising (i)(4) to read as follows:

§ 373.3 Distribution License.

* * * * *

(i) *Reexports.* Unless a distributor meets the qualifications set forth in this § 373.3(i), no commodities received by an approved consignee under a Distribution License may be reexported without specific prior written approval from OEA. The written approval may be included on the validated Distribution License, a validated Form ITA–6052P, or a validated Form ITA–699P (See Part 374).

* * * * *

(4) Permissive reexports. Approved distributors may take advantage of the permissive reexport provisions of § 374.2 (a)(4), (b), (d), (f), (g) and (i), and may reexport any commodity that at the time of reexport may be exported directly from the United States to the new country of destination under General License *G–DEST.* Adequate records of each reexport, including reference to the applicable provision of § 374.2, must be maintained by the distributor.

* * * * *

6. Paragraph (j) of § 373.3 is amended by adding the following five sentences:

§ 373.3 Distribution License.

* * * * *

(j) * * * This provision is limited to situations in which the approved consignee receiving a purchase order requests either the U.S. license holder or another approved consignee under the same license to ship directly to the customer of the consignee receiving the order, either in that consignee's own country or his authorized sales territory. Only an approved consignee may request the "by order of privilege" under the Distribution License. Also, this procedure does not apply to reexports by one distributor consignee to another distributor consignee's customers nor to exports from the U.S. exporter to a distributor's customers located outside countries listed in Supplement No. 2 to this Part 373 if the commodity involved is included in Supplement No. 4 to this Part 373 (see § 373.3(b)(2)). OEMs not approved as consignees may not invoke the drop shipment privilege of § 373.3(j). Furthermore, unless specifically authorized on the license or subsequently in writing by OEA, the exporter or consignee may not directly invoice the party receiving the commodities under the "by order of privilege."

7. Paragraph (l) of § 373.3 is amended by adding a paragraph (4)(i), reading as follows:

§ 373.3 Distribution License.

* * * * *

(l) *Records.*

* * * * *

(4) Inspection of records.

(i) The records of both U.S. exporters and approved consignees will be audited by OEA at suitable intervals. As part of the audit procedure, a consignee may be required on occasion to submit to OEA a listing of all sales under this license during the previous month.

* * * * *

8. The following entries are added/revised in Supplement No. 1 to Part 373, "Commodities Excluded from Certain Special License Procedures", each with a footnote reading "Excluded from the Distribution License procedure *only.*"—entry 1355 is added between 3336 and 1357; an additional entry 1565 is added following the present two entries numbered 1565; and an entry 1584 is added between 1570 and 1585, reading as follows:

PART 373—SPECIAL LICENSING PROCEDURES

* * * * *

Supplement No. 1.—Commodities Excluded From Certain Special Licensing Procedures

* * * * *

1355 Crystal pullers: computerized, or that are rechargeable without opening;

Molecular beam epitaxial equipment;

Electron beam systems for mask-making or semiconductor wafer or device processing;

Electron beam, ion beam, or x-ray equipment for projection image transfer;

Digitally controlled equipment specially designed for, testing digital microcircuits, and assemblies thereof, capable of test rates of 40 megahertz or greater.

* * * * *

1565 Specialized processing units that have an "equivalent multiply rate" in excess of 2 million (product) operations per second.

* * * * *

1584 Cathode ray oscilloscopes having amplifier bandwidths greater than 350 MHz;

Oscilloscopes having cathode-ray tubes incorporating microchannel plate electron multipliers capable of operating at frequencies greater than 1000 MHz;

Digital oscilloscopes with sequential sampling of the input signal at an interval of less than 2 nanoseconds.

* * * * *

9. A Supplement No. 4 to Part 373 is added, reading as follows:

PART 373—SPECIAL LICENSING PROCEDURES

* * * * *

Supplement No. 4.—Special Distribution License Restrictions for Certain Commodities Included in the Commodity Control List

The following commodities are subject to certain special restrictions, as specified in the applicable footnote (see § 373.3(b(2)).

1355A[1]: Plasma-enhanced or photo-enhanced chemical reactor equipment, as defined in subparagraph (b)(1)(iii)(c);

Equipment designed for ion implantation, or for ion-enhanced or photo-enhanced diffusion, as defined in subparagraph (b)(1)(vii));

Photo-optical or non-photo-optical step and repeat or partial field equipment for transfer of the image onto the wafer, as defined in paragraph (b)(2)(ix);

Projection image transfer for processing slices (wafers) of 4 inches or greater in diameter;

Digitally controlled equipment specially designed for testing microcircuits, and assemblies thereof, capable of performing functional (truth table) testing at a pattern rate greater than 20 MHz.

1370A[2]: Machine tools for generating optical quality surfaces, specially designed components and accessories therefor, and specially designed software.

1532A[2]: Linear measuring machines, except optical comparators, with two or more axes having a range in any axis greater than 200mm and an accuracy (including any compensation) less (finer) than 0.0008mm per any 300mm segment of travel, as defined in paragraph (b);

Angular measuring systems having an accuracy equal to or less than 1 second of arc, except optical instruments, such as auto-collimators, using collimated light to detect angular displacements of a mirror, as defined in paragraph (c).

4585B[2]: Photographic equipment: aerial camera film having extended sensitivity and/or high resolution or high temperature processing, as defined in paragraphs (b), (c), (d) and (e).

1733A[2]: Base materials, non-composite ceramic materials ceramic-ceramic composite materials and precursor materials for the manufacture of high-temperature fine technical ceramic products: precursor materials polycarbosilanes and polydiorganosilanes (for producing silicon carbide), as defined in paragraph (d)(1); Polysilazanes (for producing silicon nitride), as defined in paragraph (d)(2);

Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components), as defined in paragraph (d)(3).

1746A[2]: Polymeric substances and manufactures thereof; aromatic polyamides, as defined in paragraph (d).

4755B[2]: Silicone fluids and resins: silicone diffusion pump fluids having the capacity for producing ultimate pressures of less than 10—^{8} Torr, as defined in paragraph (a).

1757A[2]: Semiconductor materials: silicone, gallium, gallium III/V compounds, gallium phosphide, indium, indium compounds, heteroepitaxial materials, elemental Cd and Te, CdTe compounds, SiH_4, $SiClH_3$, $SiCl_4$, $SiCl_3H$ and $SiCl_2H_2$, single crystal sapphire, B_2O_3, germanium, resist materials sensitive to X-rays, electron or ion beams, or specified for dry development, single crystal forms of bismuth germanium oxide, lithium niobate, lithium tantalate and/or aluminum phosphate.

PART 376—[AMENDED]

10. Section 376.10 is amended by adding paragraphs (a)(4)(xxv) and (xxvi), reading as follows:

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[1] End-user data set forth in § 373.3(b)(2) is required for shipment to all destinations.

[2] End-user data for OEA review and approval set forth in § 373.3 (b)(2) is not required for shipment to countries listed in Supplement No. 2 to Part 373.

§ 376.10 Electronic computers and related equipment.

(a) *Digital computers.*

* * * * *

(4) Definitions of terms.

* * * * *

(xxv) "Equivalent multiply rate" is defined as the maximum number of multiplication operations that can be performed per second, neglecting setup or pipeline filling operations. This rate is based on the maximum rate achievable fully utilizing all hardware architectural features (including multiple or staged (pipelined) arithmetic units); assuming optimal operand lengths of 16 bits or greater and optimal operand locations in the "most immediate memory"; and ignoring initialization, interrupts, and data reordering times:

(A) If the basic multiplication operation includes multiple simultaneous multiplications either because of complicated computational arithmetic operations (complex multiplication, convolution, recursive filtering) or parallel pipelining, the "equivalent multiply rate" is the basic multiply rate times the number of multiplies that can be performed simultaneously;

(B) If multiple arithmetic units are used within a single processing unit, the "equivalent multiply rate" is the "equivalent multiply rate" of one unit multiplied by the number of units;

(C) If multiple processing units of the same or different types (*e.g.*, array processor, image enhancement processor) are contained in a system, the "equivalent multiply rate" is the sum of the "equivalent multiply rates" of each of the processing units.

(xxvi) "Most immediate memory" is defined as the portion of "main memory" most directly accessible by the central processing unit:

(A) For single level "main memories," the "most immediate memory" is the internal memory;

(B) For hierarchical "main memories," the "most immediate memory" is:

(1) The cache memory,

(2) The instruction stack, or

(3) The data stack.

* * * * *

Authority: Secs. 203, 206, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704). Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated: September 7, 1984.

William T. Archey,

Acting Assistant Secretary Trade Administration.

[FR Doc. 84–24128 Filed 9–10–84; 1:00 pm]

BILLING CODE 3510–DT–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–6548; 34–21288; 35–23411; 39–923; IC–14127; IA–929; File No. S7–31–84]

17 CFR Parts 230 and 240

Electronic Filing, Processing and Information Dissemination System

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of Comments.

SUMMARY: The Commission today is publishing a release requesting comment on approaches to managing and financing a contract to be let to a private vendor who will develop and implement an electronic filing, analysis and dissemination system for the SEC. The Commission anticipates a cost sharing contract which would satisfy SEC automation needs while affording the contractor limited rights to the dissemination of the SEC's database.

DATE: Comments should be received on or before October 30, 1984.

ADDRESS: Comments should be addressed to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, D.C. 20549. All comment letters should refer to File No. S7–31–84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fogash, (202) 272–2700; David T. Copenhafer, (202) 272–3796.

SUPPLEMENTARY INFORMATION:

I. Background

The SEC is currently testing a system to electronically receive and analyze the corporate disclosure documents filed by a group of volunteer companies. The system, called EDGAR for Electronic Data Gathering, Analysis and Retrieval, will permit filings to be made and processed electronically.[1] Developmental activity is taking place over a two-year period between May 1984 and May 1986 in a pilot contract awarded to Arthur Andersen and Company. At its peak the pilot system will be able to handle ten percent of the corporate disclosure documents filed with the Commission. The first electronic filing is scheduled to be received September 24, 1984.

This pilot will also test electronic dissemination on a limited basis in the Commission's Public Reference Rooms in Washington, D.C., New York and Chicago.

A primary impetus for EDGAR is the desire to achieve the technical potential for widespread, high-speed dissemination of the information filed with the Commission. To this end, the SEC ultimately plans to merge the electronic filing and processing functions being explored in the pilot project with the now separate dissemination function being provided by Disclosure Partners. This merger will take place in what is being termed the "Operational Contract" which is to be competitively awarded.

Starting in 1986, the contractor will assume full responsibility for all electronic processing created under the pilot and will begin to implement plans to expand automation to all filings. Electronic filing will grow from the approximately 10 percent of the universe being handled by the pilot to nearly 100 percent within two years.

Public comment is sought on how the investment in electronic operations should be financed. In view of the objective of improved dissemination, a structure of end-user fees rather than general tax revenue appears to be the preferred manner of financing the operational system. As a consequence, the SEC anticipates engaging a competitively chosen operational contractor in a cost sharing arrangement. The contractor will recover its costs by marketing the SEC data base in a regulated environment. The contractor will also be permitted to participate in the sale of value added services. Value added services are defined to include such products as specialized analytical routines, report generators, watch services, etc.

In attempting to come to an acceptable solution for the funding arrangement, a series of prioritized needs and concerns have evolved that guide and constrain any proposal.

1. SEC Dissemination Mandates

Copies of all public filings must be available to the public at reasonable prices. A primary objective of the proposed operational system is to improve dissemination, with particular emphasis on individual investors, in a more timely and geographically balanced manner than is presently available. Rapid growth in the use of home computers combined with improvements in telecommunications technology strongly suggest that the desired outcome can best be achieved through electronic dissemination. However, dissemination in paper and microfiche will continue to be available.

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[1] For background information on the pilot, see SEC Release No. 33–6519 (March 30, 1984) [49 FR 12707].

2. Adequate Cost Recovery

Whatever operating and financing structure is established must allow the contractor to realize a reasonable return on its investment.

3. Maintenance of Competition

The SEC contractor through the sale of data and related products will have certain advantages. These advantages must be structured so as not to constrain the existing framework of services providing financial information.

4. Contractor Indispensibility

The Commission must avoid arrangements which restrict its capability to recompete and possibly replace the operational contractor at the completion of the contract term.

The automation contractor will recover its costs through the sale of data and services to institutions and individuals in both bulk and non-bulk transactions. The contractor will also be free to market a wide array of value-added services such as userdriven extract reports or specialized analytical routines combining SEC data with other financial or market information. The SEC anticipates constructing the contractual arrangements with its contractor in such a manner so as to permit the contractor to price its basic dissemination products at a rate adequate to permit the recovery within seven years of its investment in both the SEC and its own basic operations.

II. Proposed System Configuration

The SEC envisions the construction of a contractor operated processing system divided into two major components. On one side will be a subsystem devoted to receiving, storing and disseminating incoming filing information. On the other side will be a subsystem dedicated entirely to the SEC, comprised of SEC storage and SEC internal processing. This proposed separation is intended to ensure that SEC-privileged information cannot be accessed by outsiders. This separation also ensures that dissemination demands will not result in degraded processing response time.

In addition to continuing to provide dissemination services in paper and microfilm for the foreseeable future, the contractor would make available a substantial line of both basic and valu-added products. Basic services would probably be limited to three primary products:

Product	Description
1. Real-time Electronic Bulk.	• User is connected to the SEC computer continuously through a dedicated link. • User has instantaneous access to each new filing at the moment it is accepted by the SEC. • User is copying and storing the entire SEC data base as it becomes available.
2. Real-time Electronic Non-Bulk.	• User may or may not be continuously connected to the SEC. • When connected, the user has instantaneous access to new filings and to entire historical data base. • User may copy or print portions of the file as desired, but is not storing the data base at his site. • This service could also be graded (and priced) along a continuum relating to response time or some other variable.
3. Delayed Electronic Bulk (tape).	• User periodically requests a specific segment of the SEC data base and receives a tape.

An important element of this proposed construction is that it affords all users of SEC data identical, immediate access. There would be no competitive advantage based on time. The SEC's contractor has no more rapid access than the financial information services industry or the securities industry to the updated database.

In order to ensure the widest dissemination at the lowest price, the Commission may want to permit the contractor to limit the ability of purchasers of real-time, electronic bulk data to re-sell this data in bulk form. The Commission would allow the contractor to refuse access to this data to those who violate the terms under which access has been granted. This arrangement eliminates the situation in which the database is bought, for example, for $100,000 and then shared or resold to ten others at a price of $20,000 to each buyer. If, on the other hand, the SEC contractor is the sole source of all raw data, the aggregate of all such purchases works to defray the development and maintenance costs and a lower price to all buyers can be charged.

One additional point with respect to basic dissemination is that the SEC will carefully control the price charged by the SEC contractor to ensure an adequate return while avoiding excessive gains.

III. Proposed Contractual Terms and Conditions

An essential ingredient to the success of the proposed cost sharing approach is the terms and conditions under which the automation contractor will operate. As stated earlier, these terms and conditions must result in a balance which permits the contractor to recover its investment and operating expenses and earn a reasonable profit level, while at the same time ensuring there are no anticompetitive biases in the rate structure.

Exclusivity

The SEC plans to provide the contractor with some form of protection relating to its creation of the basic electronic raw material (the unenhanced database). This protection could take several forms, such as lease agreements or restrictions on speed of retransmission.

Purchasers of the SEC electronic database will be free either to use the information internally, sell the data as a refined product or sell the data as an unrefined product in transaction-oriented formats (as opposed to bulk format).

Ratemaking

The final terms and conditions surrounding sale prices and SEC ratemaking will evolve throughout the entire process of comment, RFP, proposal submission, and contract negotiations; however, the SEC will retain control over the prices charged for whatever is ultimately defined as basic dissemination. The Commission will not involve itself in the price of competitive value-added service.

Contract Duration

The Commission believes seven years is sufficient to permit the operational contractor to recover its investment and achieve a reasonable return.

IV. Value of the SEC Data Base

The SEC awarded a contract in May 1984 to Mathematica Policy Research, Inc. to determine the marketability of a comprehensive EDGAR database. The study, which was completed June 12, 1984, indicates there is significant interest and potentially large revenues associated with such a product.

The target populations consisted of four potential customer groups: individual investors, securities firms, securities attorneys, and institutional investors.

The study reached the following general conclusions:

- Potential demand is dominated at lower price levels by individual investors, and is dominated at higher price levels by other consumer groups.
- Potential demand for value-added services is only slightly less than that for basic document retrieval services. The potential demand for combined value-added services is 1.8 million subscriptions at the lowest price level.
- Among the two specific value-added services tested, individual investors have a slight preference for

securities analysis, and other consumer groups have a slight preference for data extraction services.

- In terms of percentages, demand for EDGAR is quite high among mutual funds, securities attorneys, and securities firms. For individuals and pension funds, the relatively small percentage demand still results in a significant number of potential subscriptions because of the large size of these groups.
- Individual investor demand is clustered at the lower price levels. Demand by other consumer groups is more spread out over a wide range of prices.
- Consumer groups other than individuals intend to use multiple terminals to access EDGAR information, averaging between 7 and 14 terminals per organization.

Total potential demand for access to the SEC data base is summarized in the following table. An important assumption is that service is structured in such a manner that a single vendor is selling non-bulk, on-line subscriptions. Also, the table is based on subscriptions at the lowest tested price.

DEMAND FOR EDGAR TERMINALS

	Willing to pay for a subscription	Average number of terminals	Total number of terminals
Securities industry	1,378	8.55	11,782
Securities attorney	737	14.75	10,871
Institutional investors	3,724	7.44	27,706
Individual investors	[1] 1.9	1.00	[1] 1.9
Total	[1] 1.9	1.02	[1] 2.0

[1] Millions.

In terms of projected revenues, the following figures provide some indication of where the market is. The table clearly shows revenues are maximized at an annual subscription rate of $4,800.

TOTAL DEMAND, AND POTENTIAL REVENUE FOR BASIC EDGAR SERVICES: ALL CONSUMER GROUPS

Annual price per subscription	Number of potential subscribers	Cumulative number of potential subscribers	Potential revenue at market price (millions)
$100,000	38	38	4
$90,000	38	76	7
$81,600	56	132	11
$50,000	5	137	7
$44,400	149	286	13
$23,000	41	327	8
$20,000	159	486	10
$10,500	161	647	7
$9,600	493	1,140	11
$7,20	56	1,196	9
$4,800	238,554	239,750	1,151
$3,600	206	239,956	864
$2,400	1,081	241,037	578
$1,200	305,691	546,728	656
$900	428,910	975,638	878
$600	267,378	1,243,016	746
$300	555,686	1,789,702	540

Copies of the complete study are available by writing to: Edward A. Wilson, FOIA Officer, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

V. Suggested Areas of Response

Individuals or organizations interested in providing their comments to the Commission are encouraged to include responses to the following issues:

A. Should the proposed system be financed through user fees as opposed to general tax revenues?

B. Do you think that the Commission should regulate the price of dissemination of electronic raw data?

C. What mechanism, if any, do you believe should be employed to protect the SEC contractor's sale price for raw, bulk data? Please include a brief discussion of what you view as the advantages and disadvantages of your proposal).

D. Do you believe it is operationally feasible for the SEC to guarantee equity of access to all on-line users as suggested in this release?

E. What is your reaction to the proposed duration of seven years for the contract? Would a longer period result in a lower price to consumers?

F. Does the financing of the operational contract depend in any way on whether or not all or most companies file electronically with the SEC? (Examine the impact of the value of the database as well as on the filing community).

G. How should "basic dissemination" be defined?

H. What would be the impact of an approach which did not prohibit the resale of the raw database in bulk form, but required a waiting period of: (1) twenty-four hours; (2) one week; and (3) one month before the purchasers of the bulk data could sell it?

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements; securities.

Dated: September 5, 1984.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24040 Filed 9-11-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70a

Protection of Individual Privacy in Records; Proposed Amendment of Rules

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes an amendment to its regulations on privacy to add exemptions for a number of systems of records under sections 3(j) and 3(k) of the Privacy Act. As a result of these exemptions, these systems of records will not be subject to disclosure under the Privacy Act. These exemptions are needed to prevent unwarranted disclosure of the information in the files.

DATE: Comments may be submitted until October 12, 1984.

ADDRESS: Send comments to Seth D. Zinman, Associate Solicitor for Legislation and Legal Counsel, Office of the Solicitor, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of Solicitor, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone (202) 523-8188.

SUPPLEMENTARY INFORMATION: Section (j) of 5 U.S.C. 552a permits certain agencies within the Department of Labor to promulgate rules in accordance with the requirements of sections 553(b) (1), (2), and (3) (c) and (e) of Title 5, United States Code, to exempt certain systems of records from all the requirements of the Privacy Act except those set forth in 29 CFR 70a.13(a)(3). Investigatory material relating to criminal law enforcement can be protected.

Section (k) of 5 U.S.C. 552a permits the Department or its component units to promulgate rules in accordance with sections 553(b) (1), (2) and (3) (c) and (e) of Title 5, United States Code, to exempt those types of systems of records described in 29 CFR 70a.13(b)(2) from the requirements of the Privacy Act, and from requirements of the regulations set forth 29 CFR 70a.13(b)(3). In this connection, section (k)(2) of 5 U.S.C. 552a permits the protection of investigatory material compiled for the purpose of civil law enforcement. Section (k)(3) of 5 U.S.C. 552a permits the protection of investigatory material maintained in connection with providing protective services to the U.S. President and others. Section (k)(4) of 5 U.S.C. 552a permits the protection of records required by statute to be maintained and used solely as statistical records. Section (k)(5) of 5 U.S.C. 552a permits the protection of investigatory material compiled in connection with material compiled solely for the purpose of determining suitability and so forth for Federal civilian employment.

The exemptions proposed in this amendment correlate with the exemptions proposed in the Department's annual publication of its systems of records which was published in the **Federal Register** on July 13, 1982 at page 30362 of volume 47. That notice became final on August 12, 1982.

Drafting Information

This document was prepared under the direction and control of Francis X. Lilly, Solicitor of Labor, U.S. Department of Labor, Room S-2002, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-7675.

Classification

The proposed revision is procedural in character and gives direction to the Labor Department on which systems of records are exempt from certain provisions of the Privacy Act. Therefore, this rule is not classified as a "major rule" under Exective Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition employment investment, productivity, innovation, or on the ability of United State-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the amendment is procedural in character. The rule gives direction to the Labor Department on which systems of records are exempt from certain provisions of the Privacy Act and thus no economic impact is expected with respect to small entities, nor with respect to other entities as well. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain any new collection of information requirement.

List of Subjects in 29 CFR Part 70a

Privacy.

Accordingly, Part 70a to Title 29 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 70a—PROTECTION OF INDIVIDUAL PRIVACY IN RECORDS

Authority [Unchanged]

1. The authority citation for Part 70a reads as follows:

Authority: Sec. 3(f), Privacy Act of 1974 (5 U.S.C. 552a(f), 88 Stat. 1896, 1900); 5 U.S.C. 553 unless otherwise noted.

2. In § 70a.13, paragraph (d) is revised to read as follows:

§ 70a.13 Exemptions.

* * * * *

(d) *Procedure required to exempt a system of records under special exemption.* In order to exempt a system of record described in paragraph (b)(2) of this section from the provisions of the Privacy Act set forth in paragraph (b)(3) of this section, and the corresponding provisions of this part, notice of intention to exempt must be published in the **Federal Register**, and such notice shall meet the requirements prescribed in paragraph (a)(4) of this section. The Department has published notice of intention to exempt and hereby does, in fact, exempt the following record systems:

(1) OSEC-2 (Employee Conduct Investigations) is exempt under paragraph (k)(2) from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a. Disclosure of information could enable the subject of the record to take action to escape prosecution and could avail the subject greater access to information than already provided under rules of discovery. In addition, disclosure of information might lead to intimidation of witnesses, informants, or their families, and impair future investigations by making it more difficulty to collect similar information.

(2) OASAM-17 (Equal Employment Opportunity Complaint Files) is exempt under paragraphs (k)(2) from paragraphs (d)(3), (e)(4) (F) and (G) of 5 U.S.C. 552a. Disclosure of the information contained in these files may in some circumstances tend to discourage persons who have knowledge of facts and circumstances pertinent to charges from giving statements or cooperating during investigations.

(3) OASAM-20 (Personnel Investigation Records) is exempt under paragraph (k)(5) of U.S.C. 552a. In acordance with paragraph (k)(1) of the Privacy Act, if the system of records is specifically authorized to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to an Executive Order, it is exempt from subsections (c)(3), (d), (e) (1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a. In accordance with paragraph (k)(5) of the Privacy Act, if the system of records is investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a soures who furnished information to the government under a promise of confidentiality, it is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a.

(4) SASAM-22 (Office Civil Rights Citizen Discrimination Complaint Case Files) is exempt under paragraph (k)(2) from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a. Disclosure of information could enable that subject of the record to take action to esacpe prosecution and could avail the subject greater access to information than already provided under rules of discovery. In addition, disclosure of information might lead to intimidation of witnesses, informants, or their families, and impair future investigations by making it more difficult to collect similar information.

(5) ESA-2 (Office of Federal Contract Compliance Programs Complaint Files) is exempt under paragraph (k)(2) from pargraphs (d), (e)(4) (G), (e)(4) (H), and (f) of 5 U.S.C. 552a. Disclosure of information contained in these files may in some circumstances tend to discourage persons who have knowledge of facts and circumstances pertinent to charges from giving

statements or cooperation in investigations.

(6) ESA–6 (Office of Worker's Compensation, Black Lung Benefit Claim Files) is exempt under paragraph (k)(2) of 5 U.S.C. 552a. In accordance with paragraph (k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes other than material declared exempt under paragraph (j)(2) of the Privacy Act, which is maintained in this system's files of the Office of Worker's Compensation Programs of the Employment Standards Administration is exempt from paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and paragraph (f) of 5 U.S.C. 552a. The disclosure of civil investigatory information, if any, contained in this system's files, including the names of persons and agencies to whom the information has been transmitted, would substantially compromise the effectiveness of investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained could also impede signficantly the effectiveness of investigatory activities.

(7) ESA–9 (Office of Workers' Compensation Programs, Black Lung Medical Treatment Records File) is exempt under paragraph (k)(2) of 5 U.S.C. 552a. In accordance with paragraph (k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes other than material declared exempt under paragraph (j)(2) of the Privacy Act, which is maintained in this system's files of the Office of Workers' Compensation Programs of the Employment Standards Administration is exempt from paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and paragraph (f) of 5 U.S.C. 552a. The disclosure of civil investigatory information, if any, contained in this system's files, including the names of persons and agencies to whom the information has been transmitted, would substantially compromise the effectiveness of investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained could also impede significantly the effectiveness of investigatory activities.

(8) ESA–10 (Office of Workers' Compensation Programs, Black Lung Profile Beneficiaries File) is exempt under paragraph (k)(2) of 5 U.S.C. 552a. Material related to civil law enforcement [(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a. Disclosure of civil investigatory information, if any, contained in this system's files, including the names of persons and agencies to whom the information has been transmitted, would substantially compromise the effectiveness of investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained could also impede significantly the effectiveness of investigatory activities.

(9) ESA–13 (Office of Workers' Compensation Programs, Federal Employees Compensation Act File) is exempt under paragraph (k)(2) of 5 U.S.C. 552a. Material related to civil law enforcement [(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and paragraph (f) of 5 U.S.C. 552a. The disclosure of civil investigatory information, if any, contained in this system's files, including the names of persons and agencies to whom the information has been transmitted, would substantially compromise the effectiveness of investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained could also impede significantly the effectiveness of investigatory activities.

(10) ESA–25 (Office of Federal Contract Compliance Programs Management Information System (OFCC/MIS)) is exempt under paragraph (k)(2) from paragraphs (d), (e)(4)(G), (e)(4)(H), and (f) of the Act. The Disclosure of information contained in these files may in some circumstances tend to discourage persons who have knowledge of facts and circumstances pertinent to charges from giving statements or cooperating in investigations.

(11) ESA–26 (Division of Longshore and Harbor Workers' Compensation Investigation Files) is exempt under paragraph (k)(2) of 5 U.S.C. 552a. Material related to civil law enforcement [(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e)(4) (G), (H) and (I), and paragraph (f) of 5 U.S.C. 552a. Disclosure of information contained in civil investigative files, including the names of persons and agencies to whom the information has been transmitted, would substantially compromise the effectiveness of the investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained could also impede significantly the effectiveness of the investigatory activities.

(12) ETA–16 (Employment and Training Administration, Investigatory File) is exempt under paragraph 3(k)(2) of 5 U.S.C. 552a. Material related to civil law enforcement [(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and paragraph (f) of 5 U.S.C. 552a. Disclosure of civil investigatory information, if any, contained in this system's files, including the names of persons and

agencies to whom the information has been transmitted, would substantially compromise the effectiveness of investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained could also impede significantly the effectiveness of investigatory activities.

(13) OIG–1 (General Investigative Files, Case Tracking Files and Subject/Title Index) is exempt under paragraphs (j)(2) and (k) (2), (3), and (5) of 5 U.S.C. 552a. Material relating to criminal law enforcement [3(j)(2)] is exempted from the Act except paragraphs (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10) and (11), and paragraph (i) of the Act. Disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take such action as is necessary to prevent detection of criminal activities, conceal evidence, or to escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their respective families, and could jeopardize the safety and well-being of investigative personnel and their families. This imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would impede significantly the effectiveness of OIG investigatory activities and in addition, may preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity. In accordance with paragraph (k)(2) of the Privacy Act, investigatory material compiled for civil law enforcement purposes other than material declared exempt under paragraph (j)(2) of the Act, including certain material compiled from reciprocal investigations, which is maintained in OIG investigative files is exempt from paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a, until such time as a determination is made based upon such information. The disclosure of information contained in civil investigative files, including names of persons and agencies to whom the information has been transmitted would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations would enable subjects to take such action as is necessary to prevent detection of illegal activities, conceal evidence, or otherwise escape civil enforcement action. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their respective families, and in addition, could jeopardize the safety and well-being of investigative personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, and retained would also impede significantly the effectiveness of OIG investigatory activities. In accordance with paragraph (k)(5) of the Act, investigatory material compiled in connection with contract investigations solely for the purpose of determining integrity, suitability, eligibility, or qualifications for a DOL contract is exempt from paragraphs (c)(3), (d), and (f) of the Act to the extent that disclosure of such material would reveal the identity of a confidential source when an express promise has been given to withhold the identity of the source (or prior to September 27, 1975, under an implied promise that the source's identity would not be revealed). This exemption is necessary for OIG to collect information from certain sources who would otherwise be unwilling to provide information necessary to conduct such investigations.

(14) OIG–3 (Case Development Records) is exempt under paragraphs (j) and (k) of 5 U.S.C. 552a. Accordingly, this system of records is exempted from the provisions of paragraphs (c)(3), (4), (d), (e)(1), (2), and (3), (e)(4) (G), (H), (e)(5) and (8), and (f), and (h) of the Act as being investigatory material compiled for law enforcement purposes.

(15) OIG–4 (Temporary Matching Files, Loss Analysis Files) is exempt under paragraphs (j) and (k) of 5 U.S.C. 552a. Accordingly this system of records is exempted from the provisions of paragraphs (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H), and (I) and (f) of the Act as being investigatory material compiled for law enforcement purposes.

(16) LMSA–1 (Index Cards and Case Files, Division of Enforcement) relates to investigations under the Labor-Management Reporting and Disclosure Act and the Civil Service Reform Act, and is exempt under paragraphs (j)(2) and (k)(2) of 5 U.S.C. 552a. Material relating to criminal law enforcement is exempted from the provisions of the Act except for paragraphs (b), (c)(1) and (2), (e)(4) (A) through (F), (e)(6), (7), (9), (10), and (11), and paragraph (i) of the Act. Disclosure of this material could enable the subject of the record to evade prosecution and could, in addition, jeopardize the safety and welfare of investigators, witnesses, informants and their respective families. Material related to civil law enforcement [(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a. Disclosure could enable the subject to take action to prevent detection of illegal activities or avoid the consequences of violation of the law and, further, could lead to the intimidation or harassment of investigators, witnesses, informants, or their respective families.

(17) LMSA–4 (PWBP, Office of Enforcement Index Card File) is exempt under paragraphs (j)(2) and (k)(2) of 5 U.S.C. 552a. Material relating to criminal law enforcement [(j)(2)] is exempted from the provisions of the Act except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e)(6), (7), (9), (10) and (11), and paragraph (i) of the Act. Disclosure of this material could enable the subject of the record to evade prosecution and could, in addition, jeopardize the safety and welfare of investigators, witnesses, informants and their respective families. Material related to civil law enforcement [(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a. Disclosure would enable the subject to take action to prevent detection of illegal activities or avoid the consequences of violation of the law and, further, could lead to the intimidation or harassment of investigators, witnesses, informants, or their respective families.

(18) MSHA–10 (Discrimination Investigations) is exempt under paragraph (k)(2) of the Privacy Act from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the Act. Disclosure would enable the subject to take action to prevent detection of illegal activities or avoid the consequences of violation of law and, further, could lead to the intimidation or harassment of witnesses, information, or their families.

(19) OSHA–1 (Discrimination Complaint File) is exempt under paragraph (k)(2) of the Privacy Act from paragraphs (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a. Disclosure of information contained in this file could threaten investigators, witnesses

informants and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and would discourage those contacted in future investigations from cooperating with investigators.

(20) SOL-8 (Litigation Files, Special Litigation Task Force) is exempt under paragraph (k)(2) of 5 U.S.C. 552a. Material related to civil law enforcement is exempt from the provisions of paragraph (c)(3), (d), (e)(1), (e)(4), (G), (H), and (e)(4)(I), and (f) of 5 U.S.C. 552a. Disclosure of the records compiled with regard to the Central State litigation would substantially compromise the effectiveness of such litigation. Disclosure of these records could facilitate the concealment of evidence and lead to the intimidation of, or harm to, informants, witnesses and their respective families.

Signed at Washington, D.C. this 6th day of September, 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc 84-24059 Filed 9-11-84; 8:45 am]

BILLING CODE 4510-23-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-30078; PH-FRL 2668-3]

Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Rescission of Efficacy Data Waiver for Vertebrate Control Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the conditional registration regulations to provide that applicants routinely submit efficacy data to support the registration of pesticide products intended for control of vertebrate pests that may transmit human disease. This minor technical change will make the data requirements in the conditional registration regulations consistent with the pesticide registration data requirements proposed under 40 CFR Part 158, published in the **Federal Register** of November 24, 1982 (47 FR 53192).

DATE: Written comments on this proposed rule should be submitted on or before October 12, 1984. Comments should be identified with the notation OPP-30078.

ADDRESS: Submit written comments to: By mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921, Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

SUPPLEMENTARY INFORMATION: OMB Control Number 2000-0012.

This proposal is a minor, technical revision intended to eliminate a potential conflict between the Agency's existing conditional registration regulations and the proposed registration data requirements. The Agency's registration data requirements, in proposed 40 CFR 158.160 will routinely require applicants to provide efficacy data to support the registration of products used for control of vertebrate pests that transmit human disease. The conditional registration regulations, however, in § 162.163(b)(2)(i) indicate that applicants will be routinely required to provide efficacy data for pesticides which bear claims to control microorganisms that are harmful to humans and that cannot readily be observed by the user. To obtain efficacy data on other kinds of pesticides, including any vertebrate pest control product, the conditional registration regulations state that the Agency will make a specific request for the data.

The potential conflict between these two regulations has not yet arisen, however, because the Agency will delay the effective date of the efficacy data requirements for vertebrate control products in 40 CFR Part 158. These requirements will not become effective until after the Agency has amended the conditional registration regulations to be consistent with the proposed Part 158 rules. Thus, at present, EPA does not routinely require the submission of efficacy data on vertebrate pest control products. Rather, EPA must specifically direct applicants to provide efficacy data when it determines, on a case-by-case basis, that such information is needed.

This current arrangement is intended to be temporary, however, because the agency has decided, based on information that became known after the conditional registration rules were promulgated, that it needs efficacy data routinely on all pesticides intended for control of vertebrate pests that transmit human disease. Accordingly, the Agency is proposing to revise its conditional registration rules to be consistent with the proposed Part 158 requirements.

Following the issuance of the final conditional registration regulations in the summer of 1983, EPA realized that there were very serious concerns in the public health community about the efficacy of vertebrate control products. Many of these pesticides are used to control animals that transmit human diseases: Skunks, canids, bats, rats, mice, and certain birds. Unlike other types of pesticides, the efficacy of these vertebrate control products appears to be particularly dependent on the acceptance of the pesticide-bait formulation by the target pest. Small changes in the formulation or composition of the bait may render a product ineffective and could lead to a serious public health problem. This concern has been heightened by recent Government-sponsored tests which revealed that some new rodenticide products do not have satisfactory bait acceptance characteristics and consequently are nearly worthless.

To assure that similarly ineffective products are not permitted to enter the marketplace in the future, the Agency intends to require applicants to provide the results of testing of the end use formulation before EPA registers a new vertebrate control product. This requirement now appears in EPA's proposed pesticide registration data requirements in 40 CFR 158.160. This requirement cannot be implemented, however, until EPA makes its conditional registration regulations consistent with proposed § 158.160 by reinstating a direct requirement for such data in the conditional registration, regulations and removing the provision that permits EPA to require such data only on a case-by-case basis. This proposal would accomplish that change.

As explained above, this proposal merely makes a minor technical revision necessary to allow proposed § 158.160 to become effective. The impacts of requiring efficacy data on vertebrate control products have already been evaluated as part of the proposed 40 CFR Part 158 rules. Based on that analysis, I have determined and hereby certify that:

1. This proposed rule is not a major regulation as defined by Executive Order 12291.

2. This proposed rule does not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*).

3. The information collection burden that would be imposed by this proposal has been approved under OMB Clearance Number 2000–0012. This proposed rule has been submitted to the Office of Management and Budget for review as required by E.O. 12291.

In accordance with FIFRA section 25(a), this proposal was provided to the Secretary of Agriculture for comment. The Secretary of Agriculture had no adverse comment on this proposal.

Copies were also submitted for comment to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate. Neither Committee commented on the proposal.

The FIFRA Scientific Advisory Panel waived its review of this proposal.

(Secs. 3 and 25(a), Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 through 136y))

List of Subjects in 40 CFR Part 162

Administrative practice and procedure, Pesticides and pests, Data requirements, Labeling requirements.

Dated: September 5, 1984.

William D. Ruckelshaus,

Administrator.

PART 162—[AMENDED]

Accordingly, it is proposed that 40 CFR Part 162 be amended by revising § 162.163(b)(2) and adding OMB control number 2000–0012 at the end of the section to read as follows:

§ 162.163 Data required for agency review of applications for conditional registration.

* * * * *

(b) * * *

(2) *Efficacy data.* (i) Efficacy data for each product to the extent required by 40 CFR 158.160; and

(ii) Efficacy data for each product for which a new or added use is proposed, if the product contains an active ingredient, some uses of which have been suspended, cancelled or are the subject of a notice issued under § 162.11(a)(3)(ii) and risks identified in the notice or suspension/cancellation action may reasonably be anticipated as a result of the new use.

* * * * *

(Approved by the Office of Management and Budget under control number 2000–0012.)

[FR Doc. 84–23926 Filed 9–11–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300097; FRL-2667-3]

n-Hexyl Alcohol; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that *n*–hexyl alcohol be exempted from the requirement of a tolerance when used as solvent and/or cosolvent in pesticide formulations. This proposed regulation was requested by Stepan Company.

DATE: Written comments, identified by the document control number [OPP-300097], must be received on or before October 12, 1984.

ADDRESS:

By mail, submit comments to: Program Management and Support Divison (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Registration Support & Emergency Response Branch (TS–767C), Registration Division, Environmental Protection Agency, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava,
Registration Support & Emergency
Response Branch, Environmental
Protection Agency, 401 M St., SW.,
Washington, D.C. 20460.

Office location and telephone number:
Registration Support & Emergency
Response Branch, Rm. 716, CM #2,
1921 Jefferson Davis Highway,
Arlington, VA 22202. (703–557–7700).

SUPPLEMENTARY INFORMATION: At the request of the Stepan Company, the Administrator proposes to amend 40 CFR 180. 1001(c) through (e) by establishing an exemption from the requirement of a tolerance for *n*–hexyl alcohol when used as solvent and/or cosolvent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest or to animals.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. n-Hexyl alcohol.

Name and address of requestor. Stepan Company, Northfield, Il 60093.

Bases for approval. 1. *n*-Hexyl alcohol is cleared under 40 CFR 180.1001(d) for use as a solvent/cosolvent in pesticide formulations applied to growing crops only.

2. *n*-Hexyl alcohol is cleared under 21 CFR 172.515 as a synthetic flavoring substance and adjuvant. It is also cleared under 21 CFR 172.864 as a component of direct food additive.

3. *n*-Hexyl alcohol is a naturally occurring substance in certain fruits and flavors.

4. Subacute toxicity data including 13-week feeding studies in rats and dogs indicate the no-observed-effect level (NOEL) of 10,000 parts per million (ppm) and 5,000 ppm, respectively.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR 180.1001 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300097]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural Commodities, Pesticides and pests.

Dated: August 29, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Part 180—[Amended]

Therefore, it is proposed that 40 CFR 180.1001 be amended by adding and alphabetically inserting the inert ingredient *n*-hexyl alcohol to the tables in paragraphs (c) and (e) and removing *n*-hexyl alcohol from the table in paragraph (d) to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
n-Hexyl alcohol (CAS Reg. No. 111-27-3).	....	Solvent, cosolvent.
* * *	* *	* *

(d) * * *

Inert ingredients	Limits	Uses
* *	* *	*
n-Hexyl alcohol [Removed]	[Removed]	[Removed]
* *	* *	*

(e) * * *

Inert ingredients	Limits	Uses
* *	* *	*
n-Hexyl alcohol (CAS Reg. No. 111-27-3).	....	Solvent, cosolvent
* *	* *	*

[FR Doc. 84-23925 Filed 9-11-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6619]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administation, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area.

The elevation determinations, however, impose no restriction, unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

THE PROPOSED MODIFIED BASE FLOOD ELEVATIONS FOR SELECTED LOCATIONS ARE: PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	Los Angeles (city), Los Angeles (County).	Shallow Flooding	Intersection of Apple Street and Ridgeley Drive	#1	Eliminated.
			Intersection of Virginia Road and 29th Street	#1	Eliminated.
			Intersection of Exposition Boulevard and Chesapeake Avenue.	#1	Eliminated.
			Intersection of Rodeo Road and 7th Avenue	#1	Eliminated.

Maps available for inspection at Department of Public Works, City Hall, 200 North Spring Street, Room 800, Los Angeles, California.

Send comments to the Honorable Tom Bradley, City Hall, 200 North Spring Street, Los Angeles, California 90012.

Idaho	Garden City (city) Ada County	Boise River	Intersection of Reed Street and East 40th Street	*2654	*2651
			Intersection of Adams Street and East 47th Street	Not Previously Determined.	*2638

Maps available at City Hall, 201 E. 50th Street, Garden City, Idaho.

Send comments to the Honorable Margaret Mockwitz, 201 E. 50th Street, Garden City, Idaho 83714.

Iowa	City of Des Moines, Polk County	Fourmile Creek	About 3750 feet downstream of Scott Avenue	*789	*785
			About 1400 feet upstream of Dean Avenue	*803	*797
			About 400 feet downstream of University Avenue	*805	*800
			About 3800 feet upstream of East Douglas Avenue	*828	*824
		Seventh Ward Ditch	Just upstream of Easton Boulevard	None	*815
			Just upstream of Chicago and North Western Railroad	None	*830

Maps available for inspection at the Engineering Department, City Hall, East First and Locust Streets, Des Moines, Iowa. Send comments to Honorable Peter Crivaro, Mayor, City of Des Moines, City Hall, East First and Locust, Des Moines, Iowa 50307.

Iowa	City of Iowa City, Johnson County.	Iowa River	About 0.6 mile downstream of the confluence of Willow Creek.	None	*640
			Just downstream of Burlington Street and Dam	*644	*645
		Ralston Creek	At mouth	*642	*643
			Just downstream of Dam	*682	*679
			Just upstream of Dam	*683	[illegible]
			Just downstream of Scott Boulevard	None	*728
		South Branch Ralston Creek	At confluence with Ralston Creek	*670	*669
			About 1,675 feet upstream of Brookside Drive	*713	*712
		Willow Creek	At mouth	*639	*641
			About 600 feet downstream of South Riverside Drive	*641	*641
		Rapdi Creek	About 2.5 miles above mouth	None	*674
			About 4.3 miles above mouth	None	*685

Maps available for inspection at the Engineering Department, 410 E. Washington Street, Iowa City, Iowa. Send comments to Honorable Neal G. Berlin, City Manager, City of Iowa, 410 E. Washington Street, Iowa City, Iowa 52240.

Louisiana	St. Mary Parish	Gulf of Mexico	Englewood area, north of U.S. Route 90, south of Southern Pacific Railroad, east of Bayou Boeuf.	*7	*8

Maps available for inspection at the St. Mary Parish Courthouse, Franklin, Louisiana.

Send comments to Honorable Harold G. Clausen, Sr., President of the St. Mary Parish Police Jury, Fifth Floor—Courthouse, Franklin, Louisiana 70538.

Maryland	Washington County	Antietam Creek	Approximately 1,000 feet upstream Mount Aetna Road	*480	*475
			Corporate limits located approximately 800 upstream of U.S. Route 40.	*481	*477
			Upstream side State Route 64	*484	*483
		Tributary No. 74	Approximately 350 feet upstream of the confluence with West Branch.	*576	Zone C
			Downstream of Chessie System	*584	Zone C

Maps available for inspection at the Courthouse Annex, Summit Avenue, Hagerstown, Maryland.

Send comments to Honorable Barry A. Teach, Washington County Administrator, Courthouse Annex, Summit Avenue, Hagerstown, Maryland 21740.

New Hampshire	Keene, City, Cheshire County	Ash Swamp Brook	Approximately 1,330 feet downstream of State Route 9.	*474	*473
			Approximately 535 feet downstream of State Route 9	*475	*474
			Downstream State Route 9	*477	*475
			Approximately 125 feet upstream of State Route 9	*482	*479
			Approximately 1,200 feet upstream of State Route 9	*483	*481
			Approximately 1,900 feet upstream of State Route 9	*484	*483

Maps available for inspection at 3 Washington Street, Keene, New Hampshire.

Send comments to Honorable L. Edward Reyor, Mayor of the City of Keene, 3 Washington Street, Keene, New Hampshire 03431

New Jersey	Atlantic City, Atlantic County	Atlantic Ocean	Intersection of Gray Avenue and Rhode Island Avenue	*12	*10

Maps available for inspection at the City Hall, 1301 Bacharach Boulevard, Atlantic City, New Jersey.

Send comments to Honorable James Usry, Mayor of the City of Atlantic City, City Hall, 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401.

New Jersey	Brigantine, City, Atlantic County	Atlantic Ocean	South side of Brigantine Boulevard from 3rd Street North to 14th Street North.	*12	*10

THE PROPOSED MODIFIED BASE FLOOD ELEVATIONS FOR SELECTED LOCATIONS ARE: PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD).	
				Existing	Modified
			North of 12th Street North, east of intersection with Spaulding Place.	*11	*13
			North of interesection of 14th Street and 13th Street	*11	*10
Maps available for inspection at the City Hall, 1417 West Brigantine Avenue, Brigantine, New Jersey.					
Send comments to Honorable J. Edward Kline, Mayor of the City of Brigantine, 1417 West Brigantine, New Jersey 08206.					
New York	Liberty, Village, Sullivan County	Middle Mongaup River	Most downstream corporate limits	*1,377	*1,375
			Upstream of State Route 17 westbound off ramp	*1,380	*1,378
			Just downstream of State Route 52/corporate limits	*1,384	*1,382
			Corporate limits located just downstream of confluence of Lewis Street Brook.	*1,398	*1,397
Maps available for inspection at 167 North Main Street, Liberty, New York.					
Send comments to Honorable Ida Frankel, Mayor of the Village of Liberty, 167 North Main Street, Liberty, New York 12754.					
Oklahoma	Tulsa, City, Osage, Rogers, & Tulsa Counties.	Little Haikey Creek	Confluence with Little Haikey Creek	*706	*706
		Tributary	Upstream of South 77th Avenue	*709	*706
			Approximately 433 feet upstream of South 77th Avenue.	*712	*706
			Approximately 910 feet upstream of South 77th Avenue.	*714	*713
			Approximately 965 feet downstream of 72nd East Avenue.	*717	*716
			Downstream of 72nd East Avenue	*722	*722
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma.					
Send comments to Honorable Terry Young, Mayor of the City of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74103.					
Rhode Island	Portsmouth, Town, Newport County.	Sakonnet River	Approximately 200 feet north of intersection of Russell Avenue and Park Avenue.	*20	*18
			Intersection of Ormerod Avenue and Pine Street	*18	*16
Maps available for inspection at 2200 East Main Road, Portsmouth, Rhode Island.					
Send comments to Honorable Hubert E. Little, President of the Portsmouth Town Council, P.O. Box 155, Portsmouth, Rhode Island 02841.					
Texas	Grand Prarie, City, Dallas, Ellis, & Tarrant Counties.	Cottonwood Creek	Upstream S.E. 8th Street	*472	*470
			Approximately 550 feet upstream of S.E. 8th Street	*473	*471
			Approximately 1,025 feet upstream of S.E. 8th Street	*474	*472
			Downstream of S.E. 4th Street	*475	*474
			Approximately 375 feet upstream S.E. 4th Street	*476	*475
Maps available for inspection at 317 West College, Grand Prairie, Texas.					
Send comments to Honorable Anne Gresham, Mayor of the City of Grand Prairie, P.O. Box 530011, 317 West College, Grand Prairie, Texas 75053-0011.					
Texas	Plano, City, Collin & Denton Counties.	Stream 2I9	Approximately 320 feet downstream	*644	*648
			Approximately 1,800 feet upstream of Country Place Drive.	*660	*662
		Stream 5B 13	Approximately 1,000 feet upstream of confluence of Tributary to Stream 5B 13.	*702	*697
		Tributary to Stream 5B 13	At confluence with Stream 5B 13	None	*692
			Approximately 480 feet upstream of confluence	None	*694
		McKamy Branch	At downstream corporate limits	None	*663
		Prarie Creek	Upstream side of Park Boulevard	*710	*709
			Approximately 3,650 feet upstream of Park Boulevard	*725	*723
Maps available for inspection at the Municipal Annex Building, Plano, Texas.					
Send comments to Honorable Jack Harvard, Mayor fo the City of Plano, P.O. Box 358, Plano, Texas 75074.					
Texas	Robstown, City, Nueces County	Ditch A	Approximately 4,200 feet downstream of Missouri Pacific Railroad.	*70	*70
			Approximately 1,400 feet upstream of Bauer Road	*77	*77
Maps available for inspection at the Robstown City Hall, P.O. Box 872, Robstown, Texas.					
Send comments to Honorable Julio Garcia, Jr., Mayor of the City of Robstown City Hall, P.O. Box 872, Robstown, Texas 78380.					

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: August 24, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-24035 Filed 9-11-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6541]

Revision of Proposed Flood Elevation Determinations; New Jersey

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Plainsboro, Middlesex County, New Jersey.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 48 FR 30710 on July 5, 1983, and hence would supersede those previously published proposed rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Administration Building, P.O. Box 278, Plainsboro, New Jersey.

Send comments to: Honorable Barbara Wright, Mayor of the Township of Plainsboro, Administration Building, P.O. Box 278, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Township of Plainsboro, Middlesex County, New Jersey, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Millstone River:	
Downstream corporate limits	*57
U.S. Route 1 Bridge (upstream)	*61
Upstream of CONRAIL	*65
Upstream of Abandoned Railroad	*67
Upstream of Nostrand Road	*72
Upstream corporate limits	*74
Devils Brook:	
Confluence of Millstone River	*62
Upstream of Private Road	*66
Upstream of Schalks Crossing Road	*73
Upstream of Dirt Road Dam	*84
Upstream corporate limits	*84
Shallow Brook:	
Confluence with Devils Brook	*74
Approximately 850′ downstream of Scotts Corner Road	*80
Upstream corporate limits	*85
Bee Brook:	
Confluence with Devils Brook	*86
Approximately 3,100′ upstream of Woods Road	*83
Cranbury Brook:	
Confluence with Millstone River	*65
Upstream Maple Avenue	*68
Upstream George Davison Road	*71
Confluence of Cedar Brook	*72
Cedar Brook:	
Confluence with Cranbury Brook	*72
Upstream corporate limits	*80

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: August 27, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-24027 Filed 9-11-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 79-262; FCC 84-393]

Amendment To Eliminate Semi-Annual Reports and To Provide for Submission of Revised and Corected Data in Annual Reports of Overseas Telecommunications Traffic Data

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This document proposes to up-date and simplify the traffic reporting requirements for international carriers contained in §43.61 of the Commission's Rules and Regulations. The proposed rules seek to eliminate certain requirements that are no longer deemed necessary and are burdensome to the carriers.

DATES: Comments due on September 21, 1984. Replies due on October 15, 1984.

ADDRESS: Federal Communications Commission, 1919 M St., NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Laura Stein, Common Carrier Bureau, International Policy Division (202) 632-4047.

SUPPLEMENTARY INFORMATION: List of Subjects in 47 CFR Part 43:

Reports of Overseas Telecommunications Traffic, Reporting and Recordkeeping Requirements.

The collection of information requirement contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Federal Communications Commission.

Further Notice of Proposed Rulemaking

Amendment of § 43.61 of the Commission's Rules to eliminate semi-annual reports and to provide for the submission of revised and corrected data in the annual reports of overseas telecommunications traffic data; CC Docket No. 79-262.

Adopted: August 8, 1984.

Released: August 14, 1984.

By the Commission.

I. Introduction

1. On October 16, 1979, we issued a Notice of Inquiry and Proposed Rulemaking [1] in the above captioned proceeding requesting comments on a number of proposals concerning the overseas traffic reporting requirements contained in § 43.61 of our Rules and Regulations, 47 CFR 43.61 (1981). Pursuant to the current rule, common carriers engaged in the provision of overseas telecommunications services are required to file reports containing

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[1] *Notice of Inquiry and Proposed Rulemaking*, CC Docket No. 79-262, FCC 79-620 (released October 16, 1979). (Notice).

information on overseas traffic. These reports currently are filed twice a year, the first report covering the period January through June and the second covering the period January through December. The § 43.61 reporting rules were promulgated in 1964 [2] and have never been amended.

2. It is our objective to impose reporting requirements on licensees only where necessary to enable us best to fulfill our regulatory responsibilities under the Communications Act of 1934, as amended, 47 U.S.C. 151–609 (1981). This requires us to reassess periodically the purposes served by our reporting requirements, the effectiveness of our rules in serving these purposes, and the burden that the rules place upon the resources of the industry and the Commission. To this end, the Notice solicited comments on: (a) Whether the six-month report required under § 43.61 should be eliminated; (b) whether certain filing date changes should be made; (c) whether revisions or corrections should be required in order to increase the accuracy of the data reported; and (d) whether the scope, type or format of the data required under the current rule should be revised. We further stated that we would set forth specific proposed changes in the Rules in a further notice of proposed rulemaking after reviewing and analyzing the comments and replies solicited in the Notice.

3. Comments have been filed by American Telephone and Telegraph Company (AT&T), Hawaiian Telephone Company (Hawaiian), Roger W. Hubbell, ITT World Communications Inc. (ITT), RCA Global Communications, Inc. (RCA), TRT Telecommunications Corporation (TRT), and Western Union International, Inc. (WUI). Reply comments have been filed by AT&T and ITT.[3]

4. In this Notice, we seek to amend our rules to eliminate certain requirements that are no longer deemed necessary and are burdensome to the carriers. Over the last five years, we have studied the manner in which the Commission staff and other interested parties have used the § 43.61 traffic reports. Based upon our own observations and upon the comments filed by all interested parties, we tentatively conclude that:

(a) The six-month reporting requirement set forth in § 43.61 should be eliminated; (b) the due date for the § 43.61 annual reports should be changed from May 15 to July 31 for the data covering the preceding calendar year; (c) § 43.61 should be amended to require reporting carriers to submit on a one-time basis on October 31 of each year a revised report identifying and correcting any errors or estimates set forth in the annual report; (d) in view of our tentative conclusion in (c), § 43.61 should not be amended to require reporting carriers to submit additional revised reports between July 31 and October 31 correcting errors and estimates; and (e) § 43.61 should be amended to assure that certain data which carriers are required to submit will be in a format useful to the Commission.

Below we discuss both the views of interested parties in this proceeding and the bases for our tentative conclusions outlined above.

II. Filings and Discussion

A. (1) Current Two-Report Requirement

5. In the Notice, we stated that we are considering the elimination of the semi-annual reporting requirement. We solicited comments to determine whether the public interest benefits derived from the continued requirement of the first half-year report, in addition to the full-year report, outweigh the increased filing burdens imposed on both the carriers and the Commission staff.

6. ITT, RCA, TRT, and WUI all favor retention of the semi-annual reporting requirement. All express similar views that § 43.61 data are useful for marketing purposes. ITT and TRT also argue that the data assist management in rate making and facilities planning tasks. ITT also contends that the continuation of the half-year reporting requirement would not impose any additional burden upon the Commission, since the Commission already has the necessary computer programs to process the data it receives on punch cards from the reporting carriers.

7. AT&T, Hawaiian and Hubbell urge the elimination of the six-month report. AT&T and Hubbell specifically argue that the Commission does not need the § 43.61 data in making facility authorizations or in approving rates. Hawaiian joins these parties in suggesting that, by eliminating the semi-annual reporting requirement, substantial savings in resources would accrue to both the carriers and the Commission.

(2) Discussion

8. Although the § 43.61 data may be useful to international record carrier parties (IRCs) in their general business planning, none of the carriers has persuaded us that the semi-annual data are necessary for our regulatory needs or are required by the public interest for other reasons. Rather, it appears that the IRCs want the data only for private business purposes. Essentially, the IRCs argue that the six-month report is necessary as an historic input to the market forecasting process. We doubt that product, price, facilities construction or other marketing decisions will be adversely affected by the absence of semi-annual reports that, at best, document extremely short-term changes in traffic activity. The individual carriers know from month to month whether demand for their own services is growing, waning, or remaining constant; this information should be sufficient for the carriers' short-term business needs. The § 43.61 annual reports, as well as other data on file with the Commission,[4] will still be available for use in longer range market planning.

9. Moreover, as Hubbell correctly notes, the Commission does not generally require either the six-month or the twelve-month § 43.61 data in its facility authorization or ratemaking proceedings. While the Commission has found § 43.61 annual data useful in conducting different types of economic analyses for various proceedings, such as international facilities planning dockets, monitoring functions, estimating growth trends for the various international telecommunications services and conducting market structure studies of the international telecommunications industry, the semi-annual data is almost never used. Therefore, we propose to amend § 43.61 to require the filing of only an annual report.

B. (1) Due Dates, Resubmissions and Corrections

10. In the Notice we expressed concern that a substantial portion of the traffic data currently filed pursuant to § 43.61 may be estimates rather than actual figures. This limits the reliability and usefulness of the data submitted. Estimation can be required when delays are experienced by the carriers in receiving actual traffic counts from foreign correspondents. In such cases, it may be necessary for the carriers to estimate the traffic in order to meet the deadlines specified in our reporting requirements. Therefore, we requested information on the average proportion of estimated data for each category in the § 43.61 reports, the estimation methods employed, and the reliability of the results. We also requested information

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[2] *Amendments of Part 43 of the Commission Rules and Regulations, with respect to the filing by common carriers of periodic statistical reports of their overseas traffic.* FCC 64–866 (released October 1, 1964).

[3] ITT's motion to file its reply comments one day late will be granted.

[4] *See* n. 5, *infra.*

on the lag time experienced by carriers receiving inward message traffic data from foreign correspondents. We sought the foregoing information to determine whether a change in the filing date currently set forth in the rule is warranted in order to increase the accuracy of the data reported.[5] To further assure the receipt of useful data, we also requested comments on whether a second annual report should be required to be submitted to correct any errors or estimates set forth in the initial filing. Although the rules do not now specifically require the carriers to correct errors or estimations, the carriers have as a matter of course submitted additional reports updating and correcting previously filed data. We additionally invited comments on standards that should be adopted to ensure that substantial errors in filed data are reported to us and corrected regardless of the time of discovery.

11. The commenters submitted information on the proportion of estimated data included in their § 43.61 reports and some submitted information on the accuracy of their estimates. AT&T submitted data on the percentage of inward MTS traffic that was estimated and included in its six-month report filed in 1979. Delays in the receipt of the data required AT&T to estimate about 50 percent of the traffic. AT&T claims that its method of processing its § 43.61 data does not permit it to extract the estimates easily and, therefore, it cannot determine the accuracy of its estimates by a comparison with actual data. The IRCs state that approximately 80–90 percent of the data submitted by the current filing deadline are derived from actual traffic counts. The information provided by the carriers on the lag time experienced in receiving inward message traffic data from foreign correspondents indicates that if the filing dates were extended by several months, nearly all of the data reported under § 43.61 would be taken from actual traffic counts. There is some variation in the proportion of estimates submitted by the different IRCs and also among the various service categories.

12. The IRCs state that, were traffic estimation is required to meet the current filing deadlines, they rely on internal volume statistics, revenue accounting systems and switching computers to generate the estimates. They contend that their estimates are highly accurate and present some information to support this conclusion. TRT claims its telex estimates are within 5 percent of actual traffic counts whereas WUI states that its telegraph estimates are within 0.1 percent of the actual traffic data.

13. Only three parties specifically commented on the desirability of altering the current filing dates set forth in the Rules. AT&T argues that much of the inaccuracy arising from the uses of estimates would be eliminated if the due date for the submission of the annual report were changed from May 15 to September 1. Hubbell essentially agrees with AT&T but opts for a September 30 deadline. TRT contends, however, that the value of having the reports promptly available far outweighs any countervailing benefit that might be achieved in trying to eliminate the small inaccuracies in the data through the deferral of the reporting dates. In TRT's view, the reporting date should either remain unchanged or be advanced by one month to enhance the timeliness of the data.

14. The responses to the Notice's suggestion that a one-time revised § 43.61 report might be required at the end of the year to correct any errors or estimates set forth in the inital annual filing were mixed. AT&T, Hawaiian and WUI all favor requiring a revised report, although AT&T states that, if the rule's filing date for the annual report were pushed back, the number and magnitude of the changes required to be made in the revised filing would not be substantial. Hubbell, ITT and TRT, on the other hand, dispute the need for any such additional reporting requirement. These parties argue that a revised report requirement would impose an unreasonable burden on the carriers since, for the most part, it would serve to correct insubstantial errors. Hubbell comments that, if the due date for the annual report were extended by several months, the resulting increase in accuracy of the reported information would eliminate any perceived need for the Commission to require a second revised report.

15. While the commenters suggest that § 43.61 be modified to require that substantial inaccuracies in the § 43.61 filings be reported by the carriers upon discovery, no consensus emerged on what magnitude of error should trigger the submission of corrected data. Hawaiian and TRT endorse the basic concept tentatively set forth in the Notice of establishing a graduated standard in which updating requirements differ depending on the particular service and the amount of traffic by country involved. ITT and WUI recommend that an absolute error standard of ±5 percent be used to trigger the updating requirements. RCA prefers that a fixed error amount of $100,000 per country be used as the standard for requiring report updating, whereas Hubbell only would state that "gross discrepancies" should be reported. AT&T cautions that any updating standard chosen by the Commission should be tested on an interim basis before being incorporated into its Rules and Regulations.

(2) Discussion

16. In the Notice we expressed concern that portions of the data currently included in the § 43.61 reports were estimates and that substantial differences may exist between the estimates and the actual traffic counts. We also expressed a desire to limit the filing burdens placed on carriers which recognizing the need for usable data as soon as practical.[6]

17. We believe that there are means available to increase the accuracy of the data filed pursuant to § 43.61 while still obtaining the reports before the data is stale and without imposing undue burdens on the resources of the reporting carriers or the Commission. Our goal here is to balance three factors: The need for accurate data, the need for reports to be filed as soon as practicable, and the desire to limit the need to file a number of revised or corrected reports. We believe that moving the filing date from May 15 to July 31 correctly balances these factors and is responsive to the carriers' pleadings. By easing the reporting burden to allow the carriers an additional two and one-half months in which to file the annual report required under § 43.61, we virtually will eliminate the need for the carriers to rely on estimates for the submitted data. The comments indicate that these estimates are the most important source of inaccuracies contained in the reports. Significantly, only one party, TRT, argues that the value of having the reports available as promptly as possible outweighs the benefits of deferring the reporting date. We note, however, that the effect of deferral of

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[5] Section 43.61(b) now provides: Each common carrier engaged in furnishing telecommunications service between the continental United States and overseas points shall file with the Commission a report in triplicate with respect to such overseas telecommunications, not later than November 15 of each year for the preceding period of January through June, and not later than May 15 of each year for the preceding period of January through December, as provided hereafter in this section.

[6] Those carriers submitting information on the reliability of their overseas traffic estimates appear to have supplied data that fail to distinguish between estimates reported pursuant to § 43.61 and estimates performed for internal purposes. The carriers did not furnish information sufficient to support the assumption that the levels of accuracy are the same for both sets of estimates.

the current reporting date on the timeliness of the reports is not as great as it may appear. For example, of all the carriers required to file under §43.61, only two—AT&T and RCA—submitted their 1979 reports by the May 15, 1980, deadline currently set forth in the Rules. Thus, in addition to substantially reducing the number of inaccuracies contained in the § 43.61 reports, the easing of the filing deadline will assist in preserving the integrity of our reporting rules by reducing the burden of compliance.

18. We also tentatively conclude that the one-time submission, on October 31, of any corrections of errors and estimates contained in the annual report will ensure the utmost reliability of §43.61 data. As this data will already be readily accessible to the carriers, the burden of this subsequent submission is nominal. We emphasize that only corrections, rather than an entire revised report, need be submitted. In view of the July 31 and October 31 filing requirements, we tentatively conclude that the mandatory reporting between July 31 and October 31 of errors in the currently reported data is unecessary, as suggested by some carriers, and would impose an unwarranted burden on carriers.

c. (1) Revision of Scope, Type and Format of Required Data

19. In addition to considering the frequency and accuracy of carrier reporting pursuant to § 43.61, in the Notice we also initiated a comprehensive examination of the service classifications and categories of data reported under the current rule. Among other things, we specifically sought comments from interested parties on the classes of actual or potential services that are not identified and reported separately in the current § 43.61 reports. For each service listed, we requested specific suggestions concerning the appropriate measurement units that carriers should use to report the service (*i.e.*, message telephone service, messages, minutes, revenues). We also invited comments on whether data should be reported by tariff classification or by broad generic categories and whether data should be reported in a computer-readable format or in a hand-written form. We further requested comments on whether a need still exists for the submission of data for offshore points involved in domestic rate integration and for "transiting traffic" [7] data under § 43.61. Finally, we indicated that we would consider any other modifications to § 43.61 proposed by interested parties.

(2) Discussion

20. Upon examination of both the responses received in this inquiry and our own analysis of the information filed pursuant to § 43.61, we tentatively conclude that relatively few changes in the reporting requirements are needed to clarify or simplify the information reported in certain categories. However, program transmission service is an ambiguous category for which aggregate data is not useful to the Commission, particularly in view of significant traffic growth. AT&T's report specifically indicates that it combines audio program service with television transmission and reception services. RCA and ITT do not indicate whether television transmission and reception services are included in their report of program transmission service. A number of carriers report no traffice under this service category. In order to clarify the information received, we tentatively conclude that we should modify § 43.61 to specify that audio program transmission service and occasional use television transmission and reception services shall be reported separately. We note that this modification does not impose any new filing requirement but merely seeks to change the format in which the data is filed.

21. We also tentatively conclude that the requirements pertaining to the information filed for leased channels should be amended to reduce the number of transmissions rate categories of such circuits reported,[8] to make the specification of transmission rates more uniform and to assure that the higher transmission rate leased channel services developed over the last several years are reported. We propose to clarify this category of reported data because the current data is not reported by carriers in a similar manner and because this category of traffic has experienced substantial growth in recent years. Currently, the carriers report leased channel usage by transmission speeds using words per minute, bauds and, in the case of at least one carrier, bits per second.

22. Given the advent of new services that are continuously being offered and the diminution of some services that were in effect at the time the original reporting requirements were promulgated, we feel that new reporting categories for private line services are in order. We tentatively conclude that the leased channel information filed by the carriers can be made more useful and easier for them to prepare by specifying the following reporting categories:

a. Up to 1200 bits;
b. Over 1200 bits and up to 9600 bits;
c. Over 9600 bits and up to 56/64 kilobits;
d. Over 56/64 kilobits and up to 1.544/2.048 megabits;
e. Over 1.544/2.048 megabits and up to 30 megabits/18 megahertz;
f. Over 30 megabits/18 megahertz and up to 60 megabits/36 megahertz;
g. Over 60 megabits/36 megahertz and up to 120 megabits/72 megahertz; and
h. Voice only circuits.

We contemplate that the carriers will report all leased channels in these various categories based on the transmission rate the channels are capable of providing. Carriers may report data changes in categories (e), (c), and (g) in either megabits or megahertz of transponder bandwidth. Leased channels provided via basic circuits equipped with circuit multiplication equipment such as TASI or COM-2 should be reported in the voice only category. Reporting of leased channels in these categories will reduce the number of individual channels the carriers currently report. The carriers currently report a large number of low speed channels in a variety of word-per-minute speeds. All of these channels can now be reported in the first category we propose. The proposed categories will also encompass very wide bandwidth or higher transmission rate lease channels such as transponders or fractional transponders leased for television transmission. Inclusion of these leased channels will make the reports more useful. With use of these reporting categories, we believe there is no longer a need for the carriers to report the uses to which the customers put the channels they lease. Therefore, we tentatively conclude that this reporting requirement should be deleted.

23. Section 43.61 of the Commission's Rules requires carriers to file data on overseas services.[9] However, for

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[7] For purposes of § 43.61, "transiting traffic" generally means "communications which both originate and terminate outside but transit the continental United States, except communications originating and terminating in the area comprising Alaska, Canada, Saint Pierre-Miguelon and Mexico . . . ." *See* § 43.61(a)(16).

[8] While we have not included in our tentative conclusions that any particular reporting category should be deleted, we invite interested parties to suggest such deletions for services that have declined in importance and revenues. Two candidates which parties may want to propose for deletion are Address Press Service and Photo Transmission or Reception.

[9] Section 43.61 traffic data for Guam, Hawaii, America Samoa, and the Virgin Islands have always been submitted by the reporting carriers. This practice would not be changed by the propose rules as these points are not part of the Continental United States and this data is useful for international planning and authorization purposes.

purposes of these submissions, data on services to Mexico, Canada, Alaska and Saint Piere-Miquelon are not required to be filed. Historically, the non-filing of data for these three international and one domestic points was related to the provision of service to these locations through clear extension of our domestic networks. That is, service was provided over domestic satellite and terrestrial facilities with multiple interconnection points rather than from a limited number of international cable heads or earth stations. However, as our monitoring efforts become more sophisticated and as additional carriers submit applications to provide service to these points, a proper analysis of market data for the three international points becomes necessary. Thus, we would propose to modify § 43.61 to require carriers to submit data for these international points (but not Alaska) with their general filings. We invite interested persons to comment on the value to them of having this information available through § 43.61 reports.

24. We have completed our analysis of the numerous proposals advanced by the commenting parties suggesting revisions in the scope, type and format of the data required pursuant to § 43.61 and have set forth in the Appendix to this Further Notice of Proposed Rulemaking those specific Rule changes that we tentatively find to be warranted.

25. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354) it is certified, that section 603 and 604 of the Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b).

26. Accordingly, it is hereby ordered, That pursuant to the provisions of sections 4(i), 4(j), 219, 220(a), 303(r), 403, and 404 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 219, 220(a), 303(r), 403 and 404 (1970), this Further Notice of Proposed Rulemaking is instituted in CC Docket No. 79-262.

27. It is further ordered, That, pursuant to the procedures set forth in §§ 1.415, 1.419 and 1.421 of the Commission's Rules and Regulations, 47 CFR 1.415, 1.419 and 1.421 (1981), interested persons may file comments on the issues, tentative findings and conclusions discussed above and on the proposals contained in the attached Appendix on or before September 24, 1984, and Replies to such comments on or before October 15, 1984. Comments and Reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. All comments received in response to this Further Notice of Proposed Rulemaking will be available for public inspection in the Docket Reference Room (Room 239) of the Commission's Offices at 1919 M Street, NW., Washington, D.C. 20554.

28. It is further ordered, That for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex part* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commisison's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission'r Rules, 47 CFR 1.1231.

29. It is further ordered, That the Motion of ITT World Communications Inc., to file its Reply Comments late, dated December 26, 1979, is granted.

30. It is further ordered, That the Secretary shall cause a copy of this order to be published in the **Federal Register**, and shall mail a copy of this NPRM to the Chief for Advocacy of the Small Business Administration.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 43—[AMENDED]

1. Section 43.61 is proposed to be amended by revising subparagraph (a)(1), redesignating paragraphs (a)(5) through (a)(15) as (a)(6) through (a)(16) respectively, adding a new (a)(5), revising the redesignated (a)(10), redesignating (a)(16) and (a)(17) as (a)(18) and (a)(19) respectively, adding a new (a)(17), revising the redesignated (a)(18), and paragraphs (b) and (c), by revising (e)(6), redesignating (e)(7) and (e)(8) as (e)(8) and (e)(9) respectively, adding a new (e)(7) and revising the redesignated (e)(9)(ii) to read as follows:

§ 43.61 Reports of overseas telecommunications traffic.

(a) * * *

(1) "Telecommunications service between the continental United States and overseas points" means the transmission or reception of communications by cable or radio (i) which originate or terminate at points within the continental United States and Alaska and terminate or originate at points located outside the area comprising the continental United States and Alaska, and (ii) which both originate and terminate outside but transit the continental United States and Alaska, except communications both originating and terminating at points located in the aforementioned area.

* * * * *

(5) "Switched Data Transmission Service" means the transmission and reception of data at speeds up to 800 bits per second provided on a common carrier basis;

* * * * *

(10) "Overseas point" means: (i) For reports required by paragraph (b) of this section, any country or point located outside the area comprising the continental United States and Alaska, and shall include all overseas territories or possessions of the United States, as well as the State of Hawaii; and (ii) for reports required by paragraph (c) of this section, all points outside the particular state, territory, or possession for which a report is required.

* * * * *

(17) "Television transmission and reception service" means the transmission or reception of television signals for which a charge is made on a time basis.

(18) "Transiting traffic" means: (i) For reports required by paragraph (b) of this section, communications which both originate and terminate outside but transit the continental United States or Alaska; and (ii) for reports required by paragraph (c) of this section, communications which originate and terminate outside but transit the

particular state, territory, or possession for which a report is required.

Note.—Transiting traffic shall be considered in two separate legs—one inbound and the other outbound.

* * * * *

(b) Each common carrier engaged in furnishing telecommunications service between the continental United States and overseas points shall file with the Commission a report in triplicate with respect to such overseas telecommunications, not later than July 31 of each year for the preceding period of January through December, as provided hereafter in this section.

(c) Each common carrier engaged in furnishing telecommunications service between a United States point outside the continental United States and Alaska, and overseas points shall file with the Commission a report in triplicate with respect to such overseas telecommunications not later than July 31 of each year for the preceding period of January through December. This report shall contain the information required by paragraphs (e)(1)(ii), (2)(ii), (3)(ii), and (8) of this section, excluding leased channel service with the continental United States. In applying such paragraphs and definitions contained in paragraph (a) of this section the state, territory, or possession for which the report is made should be substituted for the words, "continental United States and Alaska," where applicable.

(1) Each reporting carrier shall submit a revised report by October 31 identifying and correcting any errors or estimates set forth in the annual report.

* * * * *

(e) * * *

(6) For program audio services: The number of chargeable minutes of all paid program service handled with each overseas point of destination or origin, and the corresponding revenues accruing to the respondent; and, for outbound traffic, the amounts of payouts to connecting carriers, other than for terminal handling in the continental United States and Alaska shall also be shown.

(7) For television transmission and reception services: (i) The number of chargeable minutes of all paid service handled with each overseas point of destination or origin, and the corresponding revenues accruing to the respondent; and, for outbound traffic, the amounts of payouts to connecting carriers, other than for terminal handling within the continental United States shall also be shown.

* * * * *

(9) * * *

(ii)(*a*) The number of leases in effect on the last day of the period covered in the report with (*1*) United States Government agencies, (*2*) foreign governments, (*3*) press entities, and (*4*) other users, separately for cable and radio operations between the continental United States and Alaska and each overseas point; (*b*) For each type of user, the number of leases shall be further reported for:

(*1*) the number of each channel provided in each of the following ranges of transmission speeds:

Up to 1200 bits; over 1200 bits and up to 9600 bits; over 9600 bits and up to 56/64 kilobits; over 56/64 kilobits and up to 1.544/2.048 megabits; over 1.544/2.048 megabits and up to 30 megabits/18 mHz; over 30 megabits/18 mHz and up to 60 megabits/36 mHz; over 60 megabits/36 mHz and up to 120 megabits/72 mHz; voice only circuits;

(*2*) service furnished for "Full Period" (twenty-four hours per day) and for each "Short Period" (less than twenty-four hours per day).

[FR Doc. 84–23947 Filed 9–11–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 56]

Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice recites recent events relevant to NHTSA's notice proposing to reimplement the treadwear grading requirements under its Uniform Tire Quality Grading Standards (UTQGS). That notice stated the agency's belief that its existing supply of bias belted course monitoring tires (CMT's) should be adequate for the next four years, and that the agency would be able to verify the base course wear rate and the coefficient of variation for its existing supply of bias belted CMT's shortly. Since issuing that notice, NHTSA has completed its review of the data generated in recent tests of those bias belted CMT's and concluded that the coefficients of variation for those CMT's are greater than the established 5 percent limit, and therefore unacceptable. Accordingly, the agency has entered into a contract with a tire manufacturer to produce a new supply of bias belted CMT's. The need to procure new bias belted CMT's may well force the agency to postpone the proposed effective dates for reimplementation of treadwear grading for bias belted tires.

DATE: Comment closing date: All comments on this notice must be received by NHTSA on or before October 12, 1984.

ADDRESS: Comments on this notice should refer to Docket No. 25, Notice 56 and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. Docket hours are 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Boehly, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1740).

SUPPLEMENTARY INFORMATION: On April 24, 1984, the U.S. Court of Appeals for the District of Columbia Circuit vacated the agency's order suspending the treadwear grading requirements under the UTQGS (*Public Citizen* v. *Steed*, 733 F.2d 93). In response to that court's decision, this agency recently published a notice of proposed rulemaking, which set forth a schedule intended to reimplement the treadwear grading requirements at the earliest feasible time (49 FR 32238; August 13, 1984).

That notice set forth one schedule for reimplementing treadwear grading for radial tires, and another for bias ply and bias belted tires. The reason for proposing different schedules was the need to procure new CMT's for radial tires, while the existing supply of CMT's for bias ply and bias belted tires were believed to be reliable. The notice stated at 49 FR 32239 that:

> The agency has completed its testing of the bias ply and bias belted CMT's and is currently reviewing those data. NHTSA anticipates that it will be able to verify the base course wear rate and coefficient of variation for this existing supply of bias ply and bias belted CMT's shortly.

NHTSA has completed its review of the test data generated for the existing supply of bias ply and bias belted CMT's. The agency has had a longstanding policy of accepting coefficients of variation for CMT's of not more than 5 percent as satisfactory. This standard was specifically approved by the reviewing court in *B.F. Goodrich Co.* v. *Department of Transportation*, 541 F.2d 1178, at 1189 (6th Cir. 1976), *cert. denied*, 430 U.S. 930 (1977). *See also* 40 FR 23073, at 23075; May 28, 1975, 42 FR

10320 at 10321; February 22, 1977, 43 FR 30542, at 30547; July 17, 1978.

The newly available data show that the existing bias ply CMT's have a coefficient of variation within the 5 percent limit; therefore, those CMT's can be used. However, the coefficient of variation measured for the existing supply of old bias belted CMT's exceeds the 5 percent standard, and consequently it would be inappropriate to use those old bias belted CMT's for testing. The data concerning the coefficient of variation of the existing supplies of bias and bias belted CMT's are reported in [BRENNER REPORT], which has been placed in Docket No. 25, Notice 55.

This agency acknowledges that it has an obligation to reimplement treadwear grading requirements for all types of tires at the earliest feasible date, given the decision in *Public Citizen* v. *Steed*. Accordingly, it has already awarded a contract to a tire manufacturer to produce and deliver a new group of bias belted CMT's. The contract requires those tires to be delivered to the agency not later than October 1, 1984. The agency will begin an expedited testing program to determine the appropriate base course wear rate for these tires as soon as possible after they are delivered. This should allow the tire manufacturers to begin testing for their bias belted tires only slightly later than projected in the August notice of proposed rulemaking.

Nevertheless, the agency has tentatively concluded that it may be necessary to delay the proposed dates for the dissemination of treadwear grading information for bias belted tires. These tires represent the smallest group of new tires currently manufactured, and no problems have arisen with respect to the proposed dates for dissemination of treadwear grading information for the other groups of tires (bias ply and radial). Comments are specifically requested on the appropriateness of delaying the proposed dates for bias belted tires in view of the newly discovered problems with the existing CMT's and on the earliest feasible dates when treadwear information for bias belted tires could be disseminated. This notice should not be interpreted as extending the time for comment on the schedules for reimplementing treadwear grading requirements for bias ply and radial tires proposed in the August notice of proposed rulemaking.

This supplemental notice is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The only impact of this notice is to fully inform the public of information which the agency has learned since it published the August notice of proposed rulemaking, and to allow the public to comment on the course of action which should be followed in response to this discovery. Since this notice, like the August notice of proposed rulemaking, would not impose any costs, a full regulatory evaluation has not been prepared.

Pursuant to the requirements of the Regulatory Flexibility Act, the agency has considered the impact of this notice on small entities. As noted above, the agency believes there are no cost impacts associated with seeking comment on the most appropriate course of action to be taken in response to facts learned after the notice of proposed rulemaking was published. Based on this, I hereby certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

The agency has also considered the environmental impacts of this supplemental notice. NHTSA has concluded that this notice will not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(Secs. 103, 112, 119, 201, and 203, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, and 1423); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 7, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-24096 Filed 9-7-84; 4:50 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40917-4117]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to preempt the authority of the State of Oregon to manage salmon fisheries in the territorial waters off the coast of Oregon. The Secretary of Commerce (Secretary) finds that Oregon's action in extending its commercial troll season for chinook salmon after closure of the season in Federal waters would have a substantial and adverse effect on the carrying out of the ocean salmon fishery management plan. This action is intended to conserve ocean salmon stocks.

DATES: The effective date of the final rule will be determined following a fact-finding hearing to be held at 9:00 a.m., Pacific Daylight Time, on September 13, 1984. Comments on this action must be received on or before September 18, 1984.

ADDRESSES: The hearing will be held at the Northwestern School of Law, Lewis and Clark, College, 10015 SW. Terwilliger Blvd., Courtroom 1, Portland, Oregon. Comments should be addressed to Dr. William G. Gordon, Assistant Administrator for Fisheries, NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Jay S. Johnson (Assistant General Counsel for Fisheries), 202–634–4224.

SUPPLEMENTARY INFORMATION: Section 306(b) of the Magnuson Conservation and Management Act authorizes the Secretary to regulate a fishery within State waters if he finds that: (1) Fishing in the fishery is engaged in predominantly within and beyond the fishery conservation zone (FCZ) and (2) a State has taken action which will substantially and adversely affect the implementation of the fishery management plan (FMP) for the fishery. Regulations prescribing preemption procedures require publication of proposed regulations concurrently with the issuance of a notice of proposed preemption to the Governor and Attorney General of the State concerned. Preemption regulations are published at 50 CFR Part 619.

An FMP for Commercial and Recreational Salmon Fisheries off the Coasts of California, Oregon, and Washington was submitted by the Pacific Fishery Management Council (Council) and implemented by Federal regulations (43 FR 15629, April 14, 1978). Emergency regulations for 1984 salmon fishing adopted by the Council (49 FR 18853), May 5, 1984) established seasons, quotas, area restrictions, gear limitations, size limits, and bag limits in Federal waters which were consistent with similar measures in State marine waters. On August 30, 1984, the Oregon Fish and Wildlife Commission (Commission) approved regulations which extended the season one month between Cape Falcon and Cape Blanco. The season in this area for all salmon except coho was scheduled to close August 31, 1984. The season in the FCZ closed August 31, 1984; however, the Commission's action permitted continued commercial troll fishing for chinook salmon in coastal waters (0–3 miles). This action is in contravention of the FMP for salmon.

On September 7, 1984, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), served notice on the State of Oregon of initiation of a proceeding to preempt State authority to manage the salmon fisheries off its coast. An administrative fact-finding hearing is scheduled on September 13, 1984, in Portland, Oregon. If a final determination is made to preempt State authority, regulations will be issued in the **Federal Register**, effective upon filing.

Classification

The Assistant Administrator finds for good cause that the reasons for preemption make it impracticable and contrary to the public interest to provide more than ten days' notice and opportunity for prior comment under the Administrative Procedure Act.

Under section 1(a)(1) of Executive Order 12291, this action is not subject to review by the Office of Management and Budget.

This rule requires no collection of information for purposes of the Paperwork Reduction Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because it involves no change to the management regime under the FMP.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: September 7, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF CALIFORNIA, OREGON, AND WASHINGTON

For the reasons set out in the preamble, 50 CFR Part 661 is proposed to be amended as follows:

1. The authority citation for Part 661 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 661.3 [Amended]

2. For the reasons set out in the preamble, 50 CFR 661.3 is amended by adding the following sentence to the end of the definition of the term "Fishery Management Area":

* * * * *

* * * In addition, the Fishery Management Area includes the territorial sea off the coast of Oregon.

* * * * *

[FR Doc. 84–24096 Filed 9–7–84; 5:11 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 178
Wednesday, September 12, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

September 7, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Animal and Plant Health Inspection Service

Cooperative National Plant Pest Survey and Detection Program
PPQ 391 and PPQ 395
On occasion; Semi-annually
State or local governments; 3,250,800 responses; 13,225 hours; not applicable under 2504(h)
Thomas E. Wallenmaier, (301) 436–6404

- Statistical Reporting Service

Farm Labor Survey
Quarterly
Farms; 47,560 responses; 11,901 hours; not applicable under 3504(h)
Lee Sandberg, (202) 447–6820

Jane A. Benoit,
Acting Department Clearance Officer.

[FR Doc. 84–24083 Filed 9–11–84; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

Flue-Cured Tobacco; 1985 National Marketing Quota for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determination.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to announce by December 15, 1984, the amount of the national marketing quota for flue-cured tobacco for the 1985–86 marketing year. The public is invited to comment on the amount of the national marketing quota to be determined and other related factors, as set forth in this notice.

DATE: Comments must be received on or before November 13, 1984 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–3391.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3741-South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major." The provisions of this proposed notice will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this proposed notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires the Secretary to determine and announce by December 15, 1984, the amount of the national marketing quota, the national average yield goal, and the national acreage allotment for the 1985–86 marketing year for flue-cured tobacco. The 1985–86 marketing year is the third of three consecutive years for which marketing quotas, approved by producers in a national referendum, will be in effect for such kind of tobacco.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The phrase "normal supply" is defined in section 301(b)(10)(B) of the

Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the yearly average quantity produced in the United States that was consumed during the ten marketing years immediately preceding the marketing year in which the quota must be announced (1984–85), adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the yearly average quantity produced in and exported from the United States during the ten marketing years immediately preceding the marketing year in which the quota must be announced (1984–85), adjusted for current trends in such exports.

The reserve supply level for the 1984–85 marketing year was determined to be 2,363 million pounds. This was based on a normal year's domestic consumption of 500 million pounds and a normal year's exports of 530 million pounds (49 FR 11862). The proposed reserve supply level for the 1985–86 marketing year is 2,252 million pounds, based on a normal year's domestic consumption of 480 million pounds and a normal year's exports of 500 million pounds.

Section 301(b)(16)(B) of the Act defines "total supply" as the carryover at the beginning of the marketing year (July 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The total supply for the 1984–85 marketing year is 3,016 million pounds based on carryover of 2,165 million pounds and estimated marketings of 851 million pounds.

Section 317(a)(1) of the Act defines "national marketing quota" for any kind of tobacco for a marketing year as the amount of the kind of tobacco produced in the United States which the Secretary estimates will be used domestically and exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The maximum downward adjustment is 15 percent of estimated domestic use and exports.

The amount of flue-cured tobacco produced and utilized domestically during the 1983–84 marketing year was 441 million pounds, and the amount exported was 453 million pounds, farm sales weight basis. The amount of the national marketing quota for the 1984–85 marketing year is 805 million pounds, based upon estimated domestic utilization of 455 million pounds and exports of 460 million pounds with a downward adjustment of 110 million pounds to make an orderly reduction in supplies. For the 1985–86 marketing year, utilization in the United States is estimated to be approximately 430 million pounds and exports are estimated to be approximately 445 million pounds. The total supply for the 1984–85 marketing year is 764 million pounds more than the proposed reserve supply level, but the amount of the adjustment desirable for maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level is still being considered. However, the national marketing quota is proposed to be within the range of 745 million to 875 million pounds.

Section 317(a)(2) of the Act defines "national average yield goal" for any kind of tobacco as the yield per acre which on a national average basis the Secretary determines will improve or insure the usability of the tobacco and increase the net return to the growers. For the 1984 crop of flue-cured tobacco, the national average yield goal was determined to be 1,989 pounds per acre (See 49 FR 11862).

Section 317(a)(3) of the Act defines the "national acreage allotment" as the acreage determined by dividing the national marketing quota by the national average yield goal. The national acreage allotment for the 1984–85 marketing year was determined to be 404,725.99 acres (See 49 FR 11862).

A national acreage factor for apportioning the national acreage allotment to old farms will be determined by dividing the national acreage allotment, less the reserve for new farms and old farm corrections and adjustments, by the sum of the preliminary 1985 allotments for old farms prior to any adjustments for overmarketings, undermarketings, or reductions which are required to be made because of marketing quota violations. The national acreage factor for the 1984–85 marketing year was .884 (See 49 FR 11862).

A national yield factor will be obtained by dividing the national average yield goal by the national average yield. The national average yield is computed by multiplying the preliminary farm yield for each farm by the acreage allotment determined for the farm prior to any adjustments for overmarketings, undermarketings, or reductions which are required to be made because of marketing quota violations, adding the products, and dividing the sum of the products by the national acreage allotment. The national yield factor for the 1984–85 marketing year was .9020 (49 FR 11862).

For each marketing year for which acreage-poundage quotas are in effect, section 317(e) of the Act provides that a reserve may be established from the national acreage allotment in an amount equivalent to not more than one percent of the national acreage allotment to be available for making corrections of errors in farm acreage allotments, adjusting inequities, and for establishing acreage allotments for new farms, which are farms on which no tobacco was produced or considered produced during the immediately preceding five years. A reserve of 475 acrea was established for the 1984–85 marketing year (49 FR 11862). The establishment of a reserve is also proposed for the 1985–86 marketing year.

Section 317(g)(1) of the Act provides that if the Secretary, in his discretion, determines it is desirable to encourage the marketing of grade N2 tobacco, or any grade of tobacco not eligible for price support, in order to meet the normal demands of export and domestic markets, the Secretary may authorize the marketing of such tobacco without the payment of penalty or deduction from subsequent quotas to the extent of 5 percent of the marketing quota for the farm on which the tobacco was produced. The marketing of any such tobacco in this manner has never been authorized under the acreage-poundage program and is not proposed for the 1985–86 marketing year.

Proposed Determinations

Accordingly, the Secretary of Agriculture proposes to determine and announce with respect to the 1985–86 marketing year for flue-cured tobacco:

(1) A reserve supply level in the amount of 2,252 million pounds.

(2) A national marketing quota in an amount within the range of 745–875 million pounds.

(3) A national average yield goal of 1,989 pounds.

(4) A reserve from the national acreage allotment in an amount within a range of 100 acres to 4,000 acres.

(5) The marketing of N2 or other grades of tobacco which are not eligible for price support, without payment of penalty or deduction from subsequent quotas, will not be authorized.

The national acreage allotment, the national acreage factor, and the national yield factor will be computed using the final determinations which will be made with respect to items set forth in (1) through (4) above.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741—South Building, 14th and Independence Avenue, SW., Washington, D.C. 20013.

(Secs. 301, 313, 317, 375, 52 Stat. 38, as amended, 47, as amended, 66, as amended, 79 Stat. 66, as amended (7 U.S.C. 1301, 1313, 1314c, 1375))

Signed at Washington, D.C. on September 7, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc 84-24031 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Critical Area Treatment Measures; Maryland Eastern Shore RC&D Area, Maryland

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for certain Critical Area Treatment Measures in Maryland. The proposed project actions will occur within the Maryland Eastern Shore RC&D Area, which encompasses the nine Eastern Shore counties of Cecil, Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Somerset, and Worcester.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301-344-4180.

SUPPLEMENTARY INFORMATION: Environmental assessments of these federally assisted actions indicate that these projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Gerald R. Calhoun, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for these projects.

Project actions will control erosion on a maximum of approximately three miles of streambank, five miles of shoreline, 250 acres of upland, and 100 acres of roadside. Structural practices will include installation of grassed waterways, diversions, grade stabilization structures, stone revetments, treated timber or aluminum bulkheads, and other practices that will aid in the stabilization and protection of the soil and water resource base. Nonstructural practices will include vegetative stabilization of eroding areas with species such as smooth cordgrass (*Spartina alterniflora*) and saltmeadow cordgrass (*S. patens*), as well as other adapted species. Installation of both structural and nonstructural practices will also include grading, shaping, backfilling, liming, fertilizing, and mulching to establish ground covers, grasses, legumes, shrubs, and trees.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. The environmental assessment file for each project will be available for public inspection through the office of Mr. Gerald R. Calhoun. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A-95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 6, 1984.

Gerald R. Calhoun,

State Conservationist.

[FR Doc. 84-24074 Filed 9-11-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Service Supply License Procedure.

Form Numbers: Agency—ITA—6026P, EAR 373.7(d)(k); OMB—0625-0041.

Type of Request: Revision of a currently approved collection.

Burden: 106 respondents; 3,878 reporting hours.

Needs and Use: The Service Supply License Procedure is used to authorize multiple shipments of parts from the U.S. or by approved service facilities abroad for the purpose of servicing equipment (A) previously exported from the U.S. (B) produced abroad by a foreign subsidiary of a U.S. firm or (C) produced abroad by a foreign manufacturer whose equipment incorporates parts exported from the United States.

Affected Public: Businesses or other for-profit organizations, small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Sheri Fox, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20203.

Dated: August 31, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-24036 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Color Television Receivers From Korea; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers from Korea. The review covers three of the six known manufacturers and/or exporters of this merchandise to the United States

currently covered by the order, and generally the period October 19, 1983 through April 30, 1984. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equil to the calculated differences between United States price and foreign market value on each of their sales during the period of review. Interested parties and invited to comment on these preliminary results.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984 the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18336–7) an antidumping duty order on color television receivers from Korea and announced its intent to conduct an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Traiff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of color television receivers, complete or incomplete, from Korea. The order covers all color television receivers regardless of tariff classifications. The merchandise is currently classifiable under item numbers 685.1125, 685.1126, 685.1127, 685.1128, 685.1129, 685.1135, 685.1144, 685.1148, 685.1155, 685.1456, 685.1458, 685.1460, and 685.1463 of the Tariff Schedule of the United States Annotated. The review covers three of the six known manufacturers and/or exporters of Korean color television receivers to the United States currently covered by the order, and generally the period October 19, 1983 through Aprial 30, 1984.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based either on the packed delivered, f.o.b. port, or plant price to the first unrelated purchaser in the United States. Where applicable, we made deductions for U.S. Customs duty, ocean freight, marine insurance, U.S. and foreign brokerage, handling charges, export license fees, Korean customs clearing fees, forwarding expenses, wharfage expenses, U.S. and Korean inland freight, commissions to unrelated parties, discounts, rebates, and the U.S. subsidiary's selling expenses.

We accounted for taxes imposed in Korea but rebated or not collected by reason of the exportation of the merchandise to the United States by subtraction from home market price as best information available. Where applicable, we added back to the U.S. price the amount of import duties and defense taxes on imported parts, rebated upon exportation of the color televisions, which had been assessed upon importation of the materials used to produce the televisions. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 7773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based either on the packed f.o.b. factory or delivered price with adjustments, where applicable, for inland freight, cash discounts, rebates, differences in certain advertising, warranty, royalty, sales promotion, credit and packing costs. We also made an adjustment for indirect selling expenses to offset U.S. selling expenses for ESP calculations. We made a further adjustment, where applicable, for differences in the physical characteristics of the merchandise. We denied claims for certain differences in warranty, credit, incentive discount, rebate, advertising, trademark, physical characteristics of the merchandise, packing, sales commission, credit sale rebate costs, and a claim for certain indirect selling expenses because they could not be verified at out on-site examinations of the companies' books and ledgers or because the claims were not properly quantified.

Preliminary Results of the Review

As a result of our comparison of United States price to Foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Daewoo	10/19/83–4/30/84	25.09
Gold Star	10/19/83–4/30/84	20.06
Samsung	10/19/83–4/30/84	52.50

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held on October 1, 1984. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any future shipments from a new exporter not covered in this review, whose first shipments occurred after April 30, 1984, and who is unrelated to any reviewed firm, a cash deposit of 25.09 percent shall be required. These deposit requirements are effective for all shipments of Korean color television receivers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53)).

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–24058 Filed 9–11–84; 8:45 am]

BILLING CODE 3510–DS–M

Polychloroprene Rubber From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on polycholoroprene rubber from Japan. The review covers the six known

manufacturers and/or exporter of this merchandise to the Untied States and the period December 1, 1982, through November 30, 1983. The review indicates the existence of no dumping margins during the period.

As a result of the review, the Department has preliminary determined not to assess dumping duties on sales during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 10694) the final results of its last administrative review of the antidumping finding on polychloroprene rubber from Japan (38 FR 35393, December 6, 1973) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 446.1521 and 446.2000 of the Tariff Schedules of the United States Annotated.

The review covers the six known manufacturers and/or exporters of this merchandise to the United States and the period December 1, 1982, through November 30, 1983.

Five firms did not ship Japanese polychloroprene rubber to the United States during the period. The estimated antidumping duties cash deposit rates for those firms will be the most recent rate for each firm.

Untied States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. U.S. warehouse price to the first unrelated purchaser in the United States. Where applicable, we made deductions for U.S. customs duties, U.S. entry and port charges, ocean freight, marine insurance, loading and handling charges, and foreign inland freight. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comprison. Home market price was based on the delivered price to unrelated purchasers with adjustments, where applicable, for inland freight and insurance. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1982, through November 30, 1983:

Manufacturer/Exporter	Margin (percent)
Denki Kagaku Kogyo, K.K	[1]0
Denki Kagaku Kogyo, K.K/Hoei Sangyo Co., Ltd	[1]55
Mitsui, K.K	[1]0
Showa Neoprene, K.K	0
Showa Neoprene, K.K Hoei Sangyo Co., Ltd	[1]0
Suzugo Corporation,	[1]55
Toyo Soda Manufacturing Co., Ltd	[1]0
Toyo Soda Manufacturing Co., Ltd./Hoei Sangyo Co., Ltd	[1]0

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess dumping duties on all appropriate entries.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. The Department shall not require a cash deposit of estimated antidumping duties for future entries from a new exporter not covered in this or prior reviews, whose first shipments of polychloroprene rubber occurred after November 30, 1983, and who is unrelated to any reviewed firm. These deposit requirements are effective for all shipments of Japanese polychloroprene rubber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: September 4, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24087 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receiving Sets, Monochrome and Color, From Japan; Preliminary Results of Administrative Review of Dumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Dumping Finding and Tentative Determination to Revoke in Part.

SUMMARY: The Department of Commerce has conducted an administrative review and tentatively determined to revoke in part the dumping finding on television receiving sets, monochrome and color, from Japan. This notice covers television receiving sets manufactured by Orion Denki, Ltd. and exported to the United States by Otake Trading Co. Ltd. The period of review is April 1, 1981, through March 31, 1982.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Michael A. Hudak, or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 53142) the final results of its last administrative review of the dumping finding on television receiving set from Japan (36 FR 4597, March 10, 1971) for televisions manufactured by Orion Denki, Ltd. and exported to the United States by Otake Trading Co., Ltd. and announced its intent to begin its

next administrative review of Orion and Otake. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image.) Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain sub-assemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

We indicated in the final results of the last administrative review covering Orion and Otake (48 FR 53142) that during this review we would determine whether or not "component televisions" are within the scope of this finding. Component televisions consist of separate monitors and control centers. The monitor is capable of displaying a video image but contains neither a tuner nor the circuitry necessary for reception of a broadcast television signal. The control center incorporates the tuner apparatus for reception and amplification of a broadcast television signal but lacks the ability to produce a video image. These two components are compatible with each other and with other types of components, such as video tape recorders and home computers. The monitor and tuner may be marketed separately, and they may be compatible with components produced by other manufacturers.

The finding on television receivers from Japan is limited to merchandise capable of receiving a broadcast television signal and producing a video image in its condition as imported (whether or not finished or assembled). Monitor and tuner components of component television are not within the scope of the finding when imported separately, because each component individually, while complete, lacks the necessary dual capability of receiving a broadcast television signal and producing a video image. However, when imported together, the monitors and tuners have the necessary dual capability and, therefore, are the same class or kind of merchandise as television receivers. Accordingly, we preliminarily determine that component televisions are within the scope of the finding on television receivers from Japan only when the monitor and tuner components are imported together.

United States Price

In calculating United States price the Department used purchase price as defined in section 772 of the Tariff Act.

Purchase price was based on the f.o.b. price to unrelated purchasers in the United States. Where applicable, deductions were made for foreign inland freight, shipping charges, bank charges, and commissions to unrelated parties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the price to purchasers in a third country (Canada), as defined in section 773 of the Tariff Act, because there were no sales of such or similar merchandise, manufactured by Orion and sold by Otake in the home market. Third country price was based on the f.o.b. price, with adjustments for shipping charges, bank charges, and foreign inland freight. We made a further adjustment where applicable, for differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no margins exist for the period from April 1, 1981, through March 31, 1982.

The Department has concluded that all sales of televisions manufactured by Orion Denki, Ltd. and exported to the United States by Otake Trading Co., Ltd. were made at not less than fair value for a two-year period. As provided for in § 353.54(e) of the Commerce Regulations, Otake has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that television receiving sets manufactured by Orion Denki, Ltd. and exported to the United States by Otake Trading Co., Ltd. are being sold by Otake at less than fair value.

Therefore we tentatively determine to revoke the finding on television receiving sets, monochrome and color, from Japan with regard to televisions manufactured by Orion Denki, Ltd. and exported to the United States by Otake Trading Co., Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured by Orion Denki, Ltd. and exported to the United States by Otake Trading Co., Ltd. entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries.

Further, the Department shall not require a cash deposit of estimated antidumping duties in accordance with section 353.48(b) of the Commerce Regulations, for Otake. A cash deposit of 3.37 percent shall be required on future entires of this merchandise for any shipment from a new exporter not covered in this or prior reviews, whose first shipment occurred after March 31, 1982. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: September 5, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–24066 Filed 9–11–84; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-079]

Viscose Rayon Staple Fiber From Italy; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On July 13, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on viscose rayon staple filer from Italy. The review covers the one known exporter of this merchandise to the United States, Snia Fibre, S.p.A., and the period June 1, 1983, through May 31, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1984, the Department of commerce ("the Department") published in the **Federal Register** (49 FR 28595) the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from Italy (44 FR 33878, June 13, 1979). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Italian viscose rayon staple fiber to the United States, Snia Fibre, S.p.A., and the period June 1, 1983, through May 31, 1984. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Final Results of the Review

We gave interested parties an opportunity to coment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results, and we determine that a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, of 18.6 percent shall be required on all shipments of Italian viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: September 4, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24069 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 626]

Piher Semiconductores, S.A.; Order Amending Temporary Denial of Export Privileges

In the matter of Piher Semiconductores, S.A., Avda San Julian, s/n Apartado Correos 177, Granallers (Barcelona), Spain.

By Order of April 9, 1982, 47 FR 16819 (April 20, 1982), June 2, 1982, 47 FR 24765 (June 8, 1982), August 3, 1982, 47 FR 35808 (August 17, 1982), October 12, 1982, 47 FR 46558 (October 19, 1982), December 7, 1982, 47 FR 55989 (December 14, 1982), March 22, 1983, 48 FR 12762 (March 28, 1983), May 19, 1983, 48 FR 23471 (May 25, 1983), August 26, 1983, 48 FR 40418 (September 7, 1983), November 30, 1983, 48 FR 54676 (December 6, 1983), February 28, 1984, and June 1, 1984, 49 FR 23906 (June 8, 1984), the Order of February 25, 1982, 47 FR 9044 (March 3, 1982) Temporarily Denying Export Privileges was amended so as to authorize certain exports by Piher International Corp. The Order of June 1, 1984 further provided that Piher International Corp. could apply for an extension of such authorization to export if serious economic hardship would be caused by failure of such extension coupled with a continuing consideration of a motion filed by Piher International Corp. that requested exception from the provisions of Paragraph III of the Order of February 25, 1982.

Consideration of this motion to except Piher International Corp. is still continuing, and it has now applied for an extension of its authorization to make certain exports, asserting that failure to obtain the extension will entail serious economic hardship.

Based on the representations made by Piher International Corp., I find that its application for an extension of its authorization to make certain exports is justified, and that granting this extension will not jeopardize the purpose of the Order of February 25, 1982.

Accordingly, it is hereby ordered that the Order of February 25, 1982, is further amended by excepting, from its denial of export privileges, Piher International Corp., with addresses at 565 W. Golf Road, Arlington Heights, Illinois 60005 and at Post Office Box 91969, Chicago, Illinois 60680, insofar as Piher International Corp. exports variable resistors and potentiometers to its customers in Canada and Singapore in fulfillment of shipments scheduled through November 1984 in the shipment release documents filed by Piher International Corp. in support of its Application for this extension, provided all such exports are G-DEST under the Export Administration Regulations (15 CFR Parts 368-399 (1983)). Piher International Corp. may apply for an extension of this Amendment to shipments scheduled after November 1984 should a continuing consideration of its aforesaid motion entail serious economic hardship if such an extension is not issued.

This Amendment of the Order is effective September 1, 1984.

Dated: August 31, 1984.

Thomas W. Hoya,

Hearing Commissioner.

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[C-357-403]

Oil Country Tubular Goods From Argentina; Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods. The estimated net bounty or grant is 0.90 percent *ad valorem*. We are directing the U.S. Customs Services to suspend liquidation of all entries of oil country tubular goods from Argentina which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this product in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Stuart Keitz: Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0160 or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Preliminary determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Post-financing of exports under Circular OPRAC 1-9.
- Import duty reductions on raw materials.

We estimate the net bounty or grant to be 0.90 percent *ad valorem*.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company, and the CF&I Steel Corporation filed on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Argentina of oil county tubular goods receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28289). We stated we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, LTV Steel Company entered this proceeding as a co-petitioner with Lone Star Steel Company and CF&I Steel Corporation.

Argentina is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, section 303 of the Act applies to this investigation. The merchandise being investigated is dutiable. Therefore, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government or Argentina in Washington, D.C., on July 13, 1984. On August 17, 1984, we received responses to the questionnaire.

Scope of Investigation

The products covered by this investigation are "*oil country tubular goods*" (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the *Tariff Schedules of the United States, Annotated* (*TSUSA*) under items 610.3216, 610.3219, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished or unfinished condition.

There is one known producer and exporter in Argentina of oil country tubular goods to the United States. We have received information from the government of Argentina regarding Dalmine Siderca S.A.I.C. (Dalsid) which is the sole exporter of this product to the United States during the period for which we are measuring bounties or grants, April 1983 through March 1984.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These general principles are described in detail in the Subsidies Appendix to the "Final Affirmative Countervailing Duty Determination and Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina" published in the **Federal Register** on April 26, 1984 (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to rigorous verification. If the response cannot be supported at verification and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based upon our analysis to date of the petition, the additional information filed by petitioners and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods under the following programs.

A. Post-Financing of Exports Under Circular OPRAC 1-9

On September 24, 1982, the Central Bank of Argentina established a post-financing program for exports under Circular OPRAC 1-9. OPRAC 1-9 loans are granted for up to 30 percent of the peso equivalent of the foreign currency in which the export transaction was paid. The term of the loan is 180 days. The interest rate charged on OPRAC 1-9 loans is the regulated rate used by commercial banks, as established by Central Bank Regulations. The system of financing is through the Central Bank of Argentina, which delegates the responsibility for granting the loans to intermediary banks. Dalsid received loans under the OPRAC 1-9 program.

To determine if the loans to Dalsid provided under the OPRAC 1-9 program constitute a bounty or grant, we compared the rate of interest charged on the OPRAC 1-9 loans, with the national average commercial rate for short-term borrowing, as required in the Subsidies Appendix.

For the purpose of this preliminary determination, we have used a weighted-average of the various forms of short-term borrowing available from Argentine banks during the period for which we are measuring bounties or grants, as the national average commercial rate for short-term borrowing. We are using the regulated rate, the unregulated rate, and the rate tied to the wholesale price index in our weighted-average interest rate. These rates are established by the Central Bank of Argentina and are compiled by the Fundacion de Investigaciones Economicas Latino Americanos (FIEL). Beginning August 1, 1983, funds were no longer lent at the unregulated rate. Therefore the basis for the weighted-average for the rest of the period of investigation is the regulated rate and the rate tied to the wholesale price index.

Using this weighted-average as a benchmark, we calculate a bounty or grant on exports of .69 percent *ad valorem*.

B. Import Duty Exemptions on Raw Materials

Argentine tariff law authorizes import duty exemptions on raw materials when there is no domestic production or insufficient domestic production of the raw material to meet domestic demand, provided that importation will not interfere with domestic production. Neither Dalsid nor the government of Argentina provided enough information about the program to establish that these benefits are not limited to a specific industry or group of industries. Therefore, for purposes of this preliminary determination, we conclude that import duty exemptions constitute a bounty or grant to Dalsid.

To calculate the benefit of the duty exemption, we multiplied the value of raw materials imported by Dalsid during the period of investigation by the duty rate for each of these inputs. Because any import duties that would have been paid would be eligible for a rebate upon exportation under the reembolso program, we had to factor out the import duties exempted on Dalsid's export sales from our calculation of the total amount of import duties exempted. We then divided the remainder by the total value of all Dalsid's sales to calculate a net bounty or grant of 0.21 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

A. "Reembolso"—Tax Rebate on Exports

The reembolso program was established in 1971. It authorized a refund by cash payment on export of taxes "that bear directly or indirectly" on exported products and/or their component raw materials for the purpose of promoting exports. The amount of the reimbursement is equal to a fixed percentage of the f.o.b. value of the exported merchandise. This percentage varies by product. Dalsid participates in the reembolso program.

Under the Act, the non-excessive rebate of indirect taxes levied at the final stage, and of prior stage cumulative indirect taxes borne by inputs that are physically incorporated into the final product, is not considered a subsidy. With respect to such non-VAT rebates, in order to determine whether a cash payment on export is a bona fide rebate of indirect taxes, we examine whether: (1) The program involved operates for the purpose of rebating indirect taxes; (2) whether there is a clear link between eligibility for payments on exports and indirect taxes paid, and (3) whether the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

The reembolso program is designed to refund taxes that "bear directly or indirectly on exported products." We view taxes borne by a product as indirect, and taxes on, for example, income and labor as direct.

Based on our review of the total tax incidence which the reembolso is designed to rebate, we are satisfied that the reembolso operates "for the purpose of rebating indirect taxes," and that it meets our first test.

In 1980, the Value Added Tax was established (Law 22.294/80) and in 1981, certain minor taxes were suspended (Law 22.374/81). As a result of these modifications to the Argentine tax system, the government in 1983 reviewed the incidence of taxes on oil country tubular goods in order to reevaluate the levels of the reembolso. In reviewing the studies on fiscal incidence of taxes, the government selected Dalsid as representative of the oil country tubular goods industry, as it is the only Argentine firm producing these products. In conjunction with the more general study conducted in 1978, this review provides a sufficient basis for our preliminary determination that there is a clear link between eligibility for the reembolso and indirect taxes paid.

In the questionnaire response, the government of Argentina provided us with data from its most recent analysis of the tax incidence on oil country tubular goods. This analysis, which was completed in 1983, shows that the taxes levied on oil country tubular goods, which the reembolso is designed to rebate, total 25.1 percent of the f.o.b. value of the exports. Six categories are included in the analysis: domestic raw material inputs, imported raw material inputs, transformation costs, labor, taxes paid directly, and export taxes.

In calculating the allowable tax incidence in the domestic and imported raw material categories, we only included those indirect taxes levied at prior stages of production that apply to physically incorporated inputs. Using this standard, we found that for domestic raw materials 5.4 percent of the tax incidence claimed is allowable and for imported raw materials 0.6 percent is allowable. We are satisfied that the government has reasonably calculated and documented the tax incidence on the physically incorporated raw materials, and has demonstrated a clear link between such tax incidence and the rebate paid on export, thus meeting our third test.

Regarding taxes paid on the transformation costs, we are preliminarily including those indirect taxes paid on materials used in transforming the raw materials into oil country tubular goods, which meet our standard for physical incorporation. Taxes on energy, equipment and services do not meet this standard. Thus of the 8.9 percent claimed, 1.5 percent is disallowed.

The taxes on labor, which total 1.2 percent, do not meet our standard for physical incorporation into the final product. We have therefore disallowed this amount.

The export taxes paid on oil country tubular goods, which include foreign exchange and stamp taxes, also meet our third test because they are itemized, and the rate of each tax and its incidence category are all indirect taxes. The total incidence of the taxes in this category is 2.5 percent.

Three taxes were included in the category of the taxes paid directly on oil country tubular goods. For the purpose of this preliminary determination, we are satisfied that two of the three taxes listed are indirect taxes and also meet our third test. No information was provided in the response concerning the Emergency Tax which permits us to determine if this tax is direct or indirect. Therefore, for this preliminary determination, we are disallowing this portion of the taxes paid directly on oil country tubular goods. Applying this standard, we found that of the 5.4 percent tax incidence claimed, 0.8 percent is allowable and 4.6 U.S. is not.

Of the total 25.1 percent tax incidence calculated in the reembolso study, we have allowed 10.84 percent.

Since July 5, 1982, the reembolso for oil country tubular goods has been 10 percent (Resolution ME 8/82). Because the reembolso does not exceed the total allowable indirect taxes of 10.84 percent, we determine that the reembolso does not confer a bounty or grant on oil country tubular goods.

B. Government Loan Guarantees

Petitioners alleged that the Argentine OCTG industry benefits from preferential loan guarantees provided by the government of Argentina.

In its response, Dalsid provides information concerning loan guarantees provided to it by the Banco Nacional de Desarrollo (BANADE), which is a development bank administered by the government of Argentina. Dalsid contracts for these guarantees only when required to by the lender. The terms and conditions of the guarantees are the same for all clients in Argentina. In order to receive a loan guarantee from BANADE, Dalsis is required to provide a counter-guarantee to secure the guarantee. Dalsid's guarantee could take the form of mortgages or securities. In addition, Dalsid pays a guarantee fee to BANADE of 0.1 percent.

We therefore preliminarily find that these loans guarantees are provided to Dalsid by BANADE on a strictly commercial basis, thus providing no preferential bounty or grant to Dalsid.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation," were not used by the manufacturers, producers, or exporters in Argentina of oil country tubular goods.

A. Medium- and Long-Term Loans Under Law 22.510 and Under Decrees 989/81 and 1894/83

Petitioners allege that the Argentine OCTG industry benefits from preferential medium- and long-term loans under Law 22.510 and under Decree 989/81 and 1894/83.

The response indicates that Dalsid has not received either medium- or long-term loans under either Law 22.510 or under Decrees 989/81 and 1894/83.

B. Capital Tax Exemptions Under Decrees 5038/61 and 548/81

Petitioners allege that the Argentine OCTG industry receives preferential capital tax exemptions.

The response indicates that Dalsid does pay capital taxes and does not avail itself of either Decree 5038/61 or Decree 548/81.

C. Subsidized Raw Material Inputs Under Decree 619

Petitioners allege that the Argentine OCTG industry benefits from subsidized raw material inputs under Decree 619, which provides that the Argentine government may subsidize industries supplying basic inputs, such as oil residue coal, electricity, and natural gas, to the steel industry.

The response indicates that Dalsid does not use Decree 619.

D. Government Trade Promotion Programs

Petitioners allege that the Argentine OCTG industry benefits from trade promotion programs which are funded by the government of Argentina and are designed to increase participation of Argentine companies in international trade fairs and trade missions.

As the response indicates, Dalsid has not participated in any such trade fairs. Further, no financial or other considerations were provided by the Argentine government in connection with such fairs.

E. Pre-Financing of Exports Under Circular OPRAC 1-1

Petitioners allege that the Argentine OCTG industry benefits from preferential short-term loans for pre-financing of exports under Circular OPRAC 1-1. Circular OPRAC 1-1 instituted a pre-financing program for Argentine exports as an alternative to the Circular RF 153 program for pre-financing of exports through dollar-indexed pesos. This program was initiated on August 21, 1981, and terminated on March 31, 1982. Under Circular OPRAC 1-1, loans could not exceed one year, and firms receiving OPRAC 1-1 loans could not also receive Circular RF-153 loans. Dalsid did not use these loans.

F. Additional Reembolso for Exports From Southern Argentine Ports

Petitioners allege that the Argentine OCTG industry receives additional rebates of taxes through the reembolso program for exports from southern Argentine ports.

The response indicates that according to the laws governing the reembolso program for exports from southern ports, exporters of OCTG are not not eligible for this program.

G. Exemption From Stamp Tax Under Decree 186/76

Petitioners allege that the Argentine OCTG industry receives an exemption from paying stamp taxes, which is authorized under Decree 186/76.

The response indicates that Dalsid is not eligible for exemption for the Stamp tax under Decree 186/76.

H. Benefits Under the "Argentine Steel Industry Development Contribution Fund"

Petitioners allege that the Argentine OCTG industry benefits from the "Argentine Steel Industry Development Contribution Fund," a fund which earmarks certain import surcharge taxes for steel industry development.

According to the response, Dalsid has never received any benefits from this fund and this particular fund was eliminated January 16, 1981, by Law 22.374.

I. Preferential Exchange Rates for Steel Industry Imports

Petitioners allege that the Argentine OCTG industry benefits from preferential exchange rates allowed under Argentine law for imports of machinery, parts, raw material, fuels, and other products used or installed in steel plants.

As indicated in the response, from July 6, 1982, through October 31, 1982, there was a dual exchange rate in Argentina. One rate existed for "commercial" transactions and one for "financial". On November 1, 1982, the Central Bank established a single exchange rate. During the period for which we are measuring bounties or grants, only one exchange rate was in effect for both commercial and financial transactions.

J. Price Premiums From Argentine Government Purchases of Argentine-Produced Steel

Petitioners allege that the Argentine OCTG industry benefits from price premiums paid by the Argentine government on its purhcases of Argentine-produced steel products.

The response indicates that the Argentine government does not have a program for paying premium prices for its purchases of Argentine produced OCTG.

Verification

In accordance with section 776(a) of the Act, we will verify data used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of OCTG from Argentina which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise in the amount of 0.90 percent *ad valorem*. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing at 10:00 a.m. on October 12, 1984, to afford interested parties an opportunity to comment on this preliminary determination at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 6, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of this notice's publication, at the above address and in at least 10 copies.

September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–24106 Filed 9–11–84; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–403]

Oil Country Tubular Goods from Brazil; Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters in Brazil of oil country tubular goods. The estimated net subsidy is 11.39 percent *ad valorem* for Confab, 6.88 percent *ad valorem* for Mannesmann, and 1.48 percent *ad valorem* for Persico. We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Brazil that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5050 or 377–1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods. For purposes of these investigations, the following programs are found to confer subsidies:

- Preferential Working Capital Financing for Exports (Resolutions 674 and 882)
- Export Financing Under the CIC–CREGE 14–11 Circular
- IPI Export Credit Premium
- Export Profits Exemption from Corporate Income Tax

We estimate the net subsidy to be 11.39 percent *ad valorem* for Confab, 6.88 percent *ad valorem* for Mannesmann, and 1.48 percent *ad valorem* for Persico.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company of Dallas, Texas, and the CF&I Steel Corporation of Pueblo, Colorado, on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of oil country tubular goods receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28290). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and the LTV Steel Company of Cleveland, Ohio became co-petitioner.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On July 23, 1984, the ITC determined that there is a reasonable indication that these imports are materially injuring, or threatening material injury to, a U.S. industry (49 FR 31782).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C., on July 13, 1984. On August 17, 1984, we received a response to the questionnaire.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either Amercian Petroleum Institute (API) or proprietary specifications, as currently provided for in the *Tariff Schedules of the United States, Annotated (TSUSA)* under items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished or unfinished condition.

There are three known producers and exporters in Brazil of oil country tubular goods to the United States. We have received information from the government of Brazil regarding Confab Industrial S.A. (Confab), Mannesmann S.A. and Mannesmann Commercial S.A. (Mannesmann), and Persico-Pizzamiglio S.A. (Persico). For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1983.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the instant investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to rigorous verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

In its response, the government of Brazil provided data for the applicable period, including financial statements and debt information for Confab, Mannesmann, and Persico.

Petitioners have alleged that both Mannesmann and Persico are uncreditworthy. For purposes of this preliminary determination, we assessed the creditworthiness of Mannesmann and Persico for the period 1978 through 1983. Based on our examination of Mannesmann's financial statements, we found Mannesmann to have been profitable in all but two of the last six fiscal years; in general, the financial position of the company was favorable. Therefore, we preliminarily determine Mannesmann to be creditwothty. In the case of Persico, we were provided with translated financial statements for the 1982 and 1983 fiscal years only. Based on our review of Persico's translated financial statements and a brief examination of the company's untranslated financial statements for the period 1978–1981, we found that, even though Persico incurred losses in the last two fiscal years, the company appears to have been profitable prior to that time. Accordingly, we preliminarily determine Persico to be creditworthy, but have requested translated financial statements for the last six years so that we may perform our usual detailed analysis.

For purposes of this preliminary determination, we are calculating an *ad valorem* subsidy rate for each company because of the material differences in the programs under which subsidies were received and in the subsidy rates of each company. We allocated the benefits received by each respondent in 1983 over the total sales value or export value, as appropriate, of each respondent.

Based upon our analysis of the petition and the response to our questionnaire, we preliminarily determine the following:

I. Programs Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods under the following programs.

A. Preferential Working Capital Financing for Exports (Resolutions 674 and 882)

Resolution 882 financing, administered by the Carteira do Comércio Exterior (CACEX) of the Banco do Brasil, is a form of short-term lending of working capital to purchase inputs for the production of goods destined for export. On January 1, 1984, Resolution 882 superseded Resolution 674, under which such financing was previously granted. Eligibility is determined on the basis of past exports or an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the interest rate ceiling on loans obtained under the program was raised from 40 to 60 percent. Resolution 882 changed the interest rate to full monetary correction plus three percent, the interest and principal being payable in one lump sum at the expiration of the loan. Confab, Mannesmann, and Persico have participated in the program.

Following CACEX approval of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation. Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue and loans incurred as a result of their use must be repaid within 18 months of that date.

Since Resolution 882 financing is contingent on export performance, and provides funds to participants at interest rates lower than those available from commercial sources, we preliminarily determine that this program confers an export subsidy. In our notice of "Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 17988), we used an effective benchmark rate reflecting compensating balances. Since that date, we have gathered information in a recent section 751 review which indicates that compensating balances are not usually required of their customers by Brazilian banks. Therefore, we used the minimum nominal discount rate of accounts receivable, which does not reflect compensating balances, as published in *Analise/Business Trends*, as our benchmark in calculating the subsidy.

Moreover, in earlier cases where we have used the nominal discount rate of accounts receivable, we used an uncompounded rate as our benchmark for Resolution 882 loans. We now feel that this rate is inappropriate, since compounding is necessary in order to equate the charges on a 90-day loan with an annual loan. Accordingly, we compounded the benchmark described above in our calculations (see the Subsidies Appendix).

We calculated the benefit as of the date of repayment of the loan, which is also the date the interest is paid under Resolution 882; in doing so, we applied the difference between the benchmark and the Resolution 882 rate to the amount of principal. This approach is consistent with our policy that we may recognize program-wide changes in a subsidy program that occur after the review period but prior to the preliminary determination. We allocated the benefit over the total value of all exports by each company under investigation, and calculated a subsidy rate of 10.15 percent *ad valorem* for Confab and 2.82 percent *ad valorem* for Mannesmann; Persico had no Resolution 674/882 loans due in 1983.

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies receiving Resolution 882 loans have a maximum eligibility of 10 percent. All others have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a purely commercial basis, the government of Brazil has not supplied sufficient data to support its assertion that commissions, exchange contract requirements and collateral requirements serve to raise the effective rates on these loans to a level of comparability with those on short-term loans from other commercial sources. Without sufficient information with which to quantify these additional charges, we must compare unadjusted nominal rates on 14–11 loans with our commercial benchmark, *i.e.*, the nominal discount rate of accounts receivable, as the best information available. This comparison shows that the rate on 14–11 loans is below the benchmark.

Only Persico has obtained loans under this program. To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts. We then allocated the benefit over the total value of Persico's exports, which resulted in a subsidy rate of 0.96 percent *ad valorem* for Persico.

C. IPI Export Credit Premium

Brazilian exporters of manufactured products are eligible for a tax credit on the Imposto sôbre Produtos Industrializados (Industrialized Products Tax, or IPI). The IPI export credit premium has been found to confer a benefit in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981, in accordance with Ministry of Finance "Portaria" (Notice) No. 270 (amended by Portaria No. 252 on November 29, 1982).

Subsequent to April 1, 1981, this credit premium was partially phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). The government of Brazil reduced the benefit from 15 percent to 14 percent on March 31, 1982; from 14 percent to 12.5 percent on June 30, 1982; and from 12.5 percent to 11 percent on September 30, 1982.

We divided the credits earned in 1983 by each respondent over the total value of each company's exports in that year, and calculated a net subsidy of 0.18 percent *ad valorem* for Confab, 1.79 percent *ad valorem* for Mannesmann, and 0.52 percent *ad valorem* for Persico.

D. Export Profits Exemption From Corporate Income Tax

Under Decree-Laws 1158 and 1721, exporters of oil country tubular goods are eligible for an exemption from income tax of a portion of profits attributable to export revenue. Confab and Mannesmann S.A. took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We multiplied that portion by the nominal corporate tax rate, and allocated the benefit over the total value of 1983 exports to calculate a subsidy rate of 1.06 percent *ad valorem* for Confab and 1.27 percent *ad valorem* for Mannesmann.

II. Programs Determined Not To Be Used

We preliminarily determined that manufacturers, producers or exporters in Brazil of oil country tubular goods did not use the following programs, listed in our notice of "Initiation of a Countervailing Duty Investigation; Oil Country Tubular Goods from Brazil" (49 FR 28290).

A. Funding for Expansion Through IPI Tax Rebates

Decree-Law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales.

The government of Brazil stated in its response that steel fabricators, a category which includes producers of oil country tubular goods, are not eligible for IPI rebates under Decree-Law 1547. Accordingly, we preliminarily determine that this program was not used by the producers of the products under investigation.

B. Exemption of IPI Tax and Customs Duties on Imported Equipment

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capcity in Brazil.

Decree-Law 1726 repealed this program in 1979. Subsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to the repeal still receive these benefits pending completion of the project.

The government of Brazil stated in its response that neither Confab, Mannesmann, nor Persico received any benefits under this program during the review period. We will seek confirmation of this assertion at verification, and preliminarily determine that this program was not used by the producers of the products under investigation.

C. Accelerated Depreciation for Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. According to the government of Brazil, no respondent company availed itself of this program during the review period. We will seek confirmation of this assertion at verification, and preliminarily determine that this program was not used by the producers of the products under investigation.

D. Resolution 330 of the Banco Central do Brasil (BCB)

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of oil country tubular goods would be eligible for financing under this program. However, the government of Brazil stated in its response that neither Confab, Mannesmann, nor Persico had participated in this program during the review period. We will seek confirmation of this assertion at verification, and preliminarily determine that this program was not used.

E. The BEFIEX Program

The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportaçao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years;
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

In its response, the government of Brazil stated that none of the respondents had received benefits through this program. Most of the merchandise produced by the respondents is sold in Brazil, and they are not able to make the required export commitments. Moreover, receipt of fiscal incentives under the CDI program described *supra* makes a company ineligible for BEFIEX incentives. Accordingly, we preliminarily determine that this program was not used during the review period.

F. The PROEX Program

Petitioners allege that short-term credits for exporters were established under the Programa de Financiamento à Produçao para a Exportaçao (PROEX), previously referred to as the Apôio à Exportaçao program. In its response, the government of Brazil stated that none of the respondents participated in this program during the review period.

G. Incentives for Trading Companies

Petitioners allege that the respondents distribute their export sales through such intermediaries as trading companies, and that under Resolution 643 of the BCB, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 882. In its response, the government of Brazil stated that the respondents were ineligible for participation in this program, because such participation is precluded by receipt of Resolution 674/882 financing. Accordingly, we preliminarily determine that this program was not used during the review period.

H. Construction of a port for the Steel Industry

Petitioners allege that Brazil's Third National Development Plan (1980–85) provides for the construction of a port at Praia Mole designed mainly for the export of steel products and the imports of coal.

In its response, the government of Brazil indicated that the Praia Mole facility is located at Ponta Tubarao near Vitoria in the state of Espirito Santo. Its purpose is to allow the Companhia Siderurgica de Tubarao (CST) and Açominas to import coal and export iron ore and steel. It also indicated that Praia Mole, which is currently about half-completed, was not used for the exportation of oil country tubular goods during the review period. Accordingly, we preliminarily determine this facility was not used by the producers of the products under investigation.

I. The CIEX Program

Decree-Law 1428 authorizes the Comissao para Incentivos à Exportaçao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. In its response, the government of Brazil stated that the respondents did not receive any benefits under this program. Accordingly, we preliminarily determine that this program was not used by the producers of the products under investigation.

J. Resolution 68 (FINEX) Financing

Resolution 68 of the Conselho Nacional do Coméercio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportaçao (FINEX) to extend dollar-denominated loans to foreign buyers of Brazilian goods.

In its response, the government of Brazil stated that the respondents did not receive any benefits under this program during the review period. We will seek confirmation of this assertion during verfication, and preliminarily determine that this program was not used by the producers of the products under investigation.

III. Programs for Which Additional Information Is Needed

A. Government Guarantees on Long-Term Loans

Petitioners allege that the respondents have benefited from certain government guarantees on foreign-currency loans. In its response, the government of Brazil states that the Banco Nacional do Desenvolvimento Econômico e Social (BNDES) guaranteed a number of foreign-currency loans issued to Persico under Resolution 63 of the Banco do Brasil.

We have no information that Resolution 63 loan guarantees are not limited to a specific enterprise or industry, or group of enterprises or industries, or to industries in specific regions. However, the information available to us in the response indicates that the loan guarantees, for which Persico paid a fee, did not have any bearing on the interest rate and terms of the loans, and that the loan guarantees were made on terms not inconsistent with commercial considerations.

We intend to seek additional information during verification on: (1) Whether Resolution 63 loan guarantees are provided on an industry-specific or region-specific basis, (2) whether such guarantees are available from commercial sources, (3) the conditions under which government loan guarantees are granted in Brazil, and (4) the actual commercial experience of other Brazilian firms with respect to government loan guarantees.

B. Local Tax Incentives

Petitioners allege that the respondents benefited from certain unspecified local tax measures and incentives in Brazil. In its response, the government of Brazil states that it knows of no local tax measures that would benefit the respondents. We intend to seek additional information on local tax measures in Brazil during verification.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tublar goods from Brazil which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise as follows:

Manufacturer/producer/exporter	Ad valorem rate (percent)
Confab Industrial S.A.	11.39
Mannesmann S.A. & Mannesmann Commercial S.A.	5.38
Persico-Pizzamiglio	1.48
All Other Manufacturers/Producers/Exporters	5.64

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on October 24, 1984, at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 17, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24106 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-406]

Oil Country Tubular Goods From Spain; Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitutes subsidies within the meaning of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Spain of oil country tubular goods ("OCTG"). The net subsidy rates for each company are listed in the "Suspension of Liquidation" section of this notice. We are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of OCTG from Spain which are entered, or withdrawn from warehouse, for consumption on or after September 12, 1984. The Customs Service shall require a cash deposit or bond on these products in the amounts equal to the estimated net subsidies. If this investigation proceeds normally, we will make our final determinaiton by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, John M. Davies, or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-0167, (202) 377-1784, or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in Spain of OCTG. The following programs are preliminarily determined to confer subsidies:

- Medium- and Long-term Loans and Loan Guarantees;
- Certain Types of Short-term Loans Provided under the Privileged Circuit Exporter Credits Program; and
- Excessive Rebates of Indirect Taxes on Exports under the Desgravacion Fiscal a la Exportacion ("DFE")

For exports made prior to July 11, 1984, we estimate the net subsidy to be 21.24 percent *ad valorum* for Altos Hornos de Vizcaya, S.A. ("AHV"), 1.59 percent *ad valorem* for Tubos Reunidos, S.A. ("TR"), and 15.49 percent *ad valorem* for all other manufacturers, producers, or exporters in Spain of OCTG. For exports made on or after July 11, 1984, we estimate the net subsidy to be 19.04 percent *ad valorem* for AHV, 1.59 percent *ad valorem* for TR, and 13.93 percent *ad valorem* for all other manufacturers, producers, or exporters in Spain of OCTG.

Case History

On June 13, 1984 we received a petition from the Lone Star Steel Company and the CF & I Steel Corporation filed on behalf of the OCTG industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Spain of OCTG receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1983, we initiated an investigation (49 fR 28425). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and LTV Steel Company of Cleveland, Ohio, became co-petitioner.

Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. On July 30, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry (49 FR 31782).

We presented a questionnaire concerning the allegations to the government of Spain at its embassy in Washington, D.C., on July 13, 1984. On August 23, 1984, we received replies to the questionnaire from the government of Spain and Tubos Reunidos, S.A. On August 24, 1984, we received a response from Altos Hornos de Vizcaya, S.A. These two companies account for approximately 75 to 80 percent of Spanish OCTG exports to the United States during the period of investigation.

Scope of Investigation

The products covered by this investigation are oil country tubular goods. For the purpose of this investigation, the term "oil country tubular goods" covers hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 6104946, 610.4954, 610.4957, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244. This investigation includes OCTG that are in both finished or unfinished condition.

Altos Hornos de Vizcaya, S.A. and its subsidiary Laminaciones de Lesaca, S.A., Babcock and Wilcox Espanola, S.A., Tubos Reunidos, S.A., Transformaciones Metalurgicas Especiales, S.A., and Tubacex C.E. de Tubos per Extrusion, S.A. are the only known producers and exporters in Spain of the subject products which were exported to the United States. The period for which we are measuring subsidization is the 1983 calendar year.

Analysis of Programs

AHV and TR answered our questionnaire. For purposes of this preliminary determination, we have used the information provided by these two companies.

Certain subsidies discussed in this notice were conveyed through a series of laws and decrees issued by the government of Spain. Those laws and decrees include the following:

Decree 669/74 of March 14, 1974: This decree established the National Steel Industry Program, 1974–1982. To achieve the specific goals established by this program, the government authorized certain benefits for integrated and non-integrated steel firms which included preferential loans and loan terms, accelerated amortization of non-liquid investments, substantial reduction of certain taxes, and expropriation of land for new plant construction.

Law 60/1978 of December 23, 1978: This law authorized government aid in the form of preferential loans and loan terms and capital infusions for the three integrated steel producers in Spain, including AHV.

Order of May 22, 1980: This order authorized the Banco de Credito Industrial ("BCI") to extend additional government credits to non-integrated steel companies who had made investments under Decree 669/1974. BCI is a government credit institution which issues loans under government direction to companies in the Spanish steel industry.

Royal Decree 878/1981 of May 8, 1981: This decree, also known as the Integral Iron and Steel Reconversion Plan, provided aid to the integrated steel producers in the form of preferential interest rates and terms on outstanding loans, new loans with preferential interest rates and terms, loan guarantees, and capital infusions. Certain of the subsidy programs are administered by the Institution Nacional de Industria ("INI"), a public holding company created in 1941 as an autonomous government agency to promote and stimulate the industrial development of Spain. INI's responsibilities cover a variety of sectors ranging from basic services to basic industries such as iron and steel.

General principles applied to the facts in this investigation are described in the "Subsidies Appendix" contained in the **Federal Register** notice of our Final Affirmative Countervailing Duty Determination and Countervailing Duty Order on Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina (49 FR 18006).

For purposes of this preliminary determination, we have calculated company-specific *ad valorem* subsidy rates in accordance with 19 CFR 355.28(a)(3), which states that "If separate enterprises have received materially different benefits, such differences shall also be estimated and stated." We have found that there are significant differences in the size and structure of the companies under investigation and in the usage of programs determined to confer subsidies.

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to rigorous verification. If the response cannot be supported at verification and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based upon our analysis of the petition, the material provided by the government of Spain in response to our questionnaire, and other available information, we determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Spain of OCTG under the following programs:

A. Medium- and Long-Term Loans and Loan Guarantees

Petitioners alleged benefits which constitute subsidies in the form of preferential loans terms and loan guarantees. We requested information from each company under investigation on all medium- and long-term loans outstanding during the period of investigation. Both AHV and TR reported medium- and long-term loans outstanding during the period for which we are measuring subsidization.

We determine that the government of Spain authorizes or directs banks to lend funds to certain companies in certain industries at rates or on terms inconsistent with commercial considerations.

Generally, to calculate any subsidy on these loans, we used the loan methodology detailed in the Subsidies Appendix. For fixed rate loans, we used long-term benchmark interest rates developed in previous countervailing duty investigations on Certain Steel Products from Spain (47 FR 51428) and on Carbon Steel Wire Rod from Spain (49 FR 19551). As best information on the weighted average cost of capital, we used the long-term benchmark interest rates used for fixed rate loans. For variable rate long-term loans, we applied the 1983 short-term benchmark interest rate (described in section 1–B below), with an adjustment where appropriate for foreign currency exchange commissions, to the 1983 outstanding loan balance. Since we were unable to find a commercial loan guarantee for use as a benchmark, we evaluated the long-term loans with government guarantees using the appropriate fixed rate or variable rate methodology outlined above.

The majority of loans reported by AHV and TR contained provisions for deferred principal repayment. We varified in our investigation of Certain Steel Products from Spain that loans made at preferential interest rates to these companies and loans made at commercial rates within and outside of Spain contained similar deferral provisions. Therefore, for purposes of this preliminary determination, we are not treating deferral principal repayments as a separate countervailable benefit.

We did not find subsidies on loans to AHV and TR which reportedly carried no INI or government guarantee or which were not the result of government mandate.

1. AHV: In the 1982 investigation of Certain Carbon Steel Products from Spain (47 FR 51428), AHV was deemed uncreditworthy for the years 1979 through 1981. Based upon our Subsidies Appendix methodology and after careful review of the financial statements for the years 1982 and 1983, we continue to find AHV uncreditworthy for the prior period as well as for 1982 and 1983. To determine the creditworthiness of a company, we analyze its present and past financial condition, as reflected in various financial indicators calculated from its financial statements. We examined several of the company's standard financial ratios. Important ratios in which AHV reflected unfavorable performance in the years 1979 through 1983 are times interest earned (operating income divided by interest charges), net income as a precent of sales, debt to equity and return on equity.

For the time that it was creditworthy, prior to 1979, we used the long-term benchmark interest rates described above for AHV. For its uncreditworthy period we used as a benchmark average maximum interest rates published by the Banco de Espana plus the "risk premium" (as described in the Subsidies Appendix).

2. TR: Based on our Subsidies Appendix methodology and upon evidence of continuing operating profits during the period 1980 through 1983, we preliminarily find TR to be creditworthy for the 1983 period of review. We reviewed TR's annual reports (translated) and financial statements. The company's net income, return on equity, cash flow and other important financial ratios are favorable. Accordingly, we applied the long-term loan methodology described above.

We allocated the countervailable benefit from each loan over the total sales value of steel production of the company. We preliminarily determine that the *ad valorem* subsidy for medium- and long-term loans is 6.74 percent to AHV and 0.90 percent to TR.

B. Certain Types of Short-term Loans Provided Under the Privileged Circuit Exporter Credits Program

Petitioners alleged benefits which constitute subsidies in the form of short-term preferential loans. We requested information on all short-term loans outstanding during the period for which we are measuring subsidization. AHV reported no short-term financing under this program during this period. TR reported that it has obtained short-term financing under the Privileged Circuit Exporter Credits Program during the period of investigation.

The government of Spain requires all Spanish commercial banks to maintain a specific percentage of their lendable funds in privileged circuit accounts. These funds are made available to exporters at preferential interest rates through a variety of credit programs. While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government mandated program to promote exports. Of the four privileged circuit programs available to companies we preliminarily determine that OCTG producers benefited from two programs, the working-capital loans program and the pre-financing of exports program.

1. *Working Capital Loans.* Under the privileged circuit program, firms may obtain working-capital loans for one year, the total of which is not to exceed a specified percentage of their previous year's exports. In 1983, the privileged circuit working-capital loan interest rate ceiling mandated by the Government was 10 percent, including fees and commissions.

To calculate the subsidy we compared the interest rate charged on working capital loans with the national average commercial interest rate on loans.

We chose as our 1983 benchmark for short-term operating capital loans, the 1983 weighted-average commercial, lending rate of 17.64 percent for loans of one to three years.

To determine the benefit, we compared the interest rate charged on working capital loans with the national average commercial interest rate of 17.64 percent. This interest differential was multiplied by the total amount of TR's privileged circuit working capital loans. The resulting amount was allocated over the total sales value of all exports of TR in 1983. We preliminarily determine that the *ad valorem* subsidy for privileged circuit loans to TR is 0.58 percent.

2. *Prefinancing of Exports Program.* TR reported that it also received preferential prefinancing of exports. TR obtained loans with terms of two to six months to finance exports of OCTG to the United States.

We chose as our 1983 benchmark for short-term prefinancing of exports the 1983 weighted-average commercial lending rate of 17.12 percent for loans of three months.

To determine the benefit, we compared the interest rate charged on prefinancing of exports with the national average commercial interest rate of 17.12 percent. This interest differential was multiplied by the amount of TR's privileged export credit loans. The interest benefit was allocated over the total sales value of TR's exports to the United States during 1983. We preliminarily determine that the *ad valorem* subsidy for short-term prefinancing of exports to TR is 0.11 percent.

For this preliminary determination, we have compared nominal rates with nominal rates in our calculation of subsidies.

For the final determination, we will try to get more information concerning these loans in order to make an effective to effective rate comparison.

C. Excessive Rebates of Indirect Taxes on Exports Under the Desgravacion Fiscal a la Exportation ("DFE")

Petitioners alleged that countervailable benefits are conferred on Spanish OCTG producers under the DFE program by the excessive rebate of indirect taxes on the export of OCTG.

Spain employs a cascading tax system under which a turnover tax is levied on each intermediate sale of a product through its various stages of production up to, but not including, the final sale at the retail level. The DFE is the program designed to rebate to exporters these accumulated turnover taxes as well as final stage taxes on exportation.

To calculate the amount of subsidy potentially conferred by the DFE it is necessary to determine whether the remission of indirect taxes is excessive. According to the responses, the indirect taxes borne by billet (the only input being identified as physically incorporated in the final product) and the corresponding share of billet to the value of OCTG, lead to an allowable rebate exceeding the DFE payment of 14.5 percent (prior to July 11, 1984) and 12.3 percent (after July 11, 1984).

Information submitted by respondents indicates, however, that only one of the firms under investigation, TR, purchased billet from unrelated suppliers. The other producer, AHV, is fully integrated and has provided no information on its purchased inputs, or what taxes, if any, were paid on these purchases.

Accordingly, we find that for TR and DFE does not constitute an excessive remission of indirect taxes and hence confers no subsidy.

For AHV the integrated producer that provided no information on purchased inputs we find the entire DFE rebate of 14.5 percent to be a subsidy for the period previous to July 11, 1984. On July 11, 1984, the DFE rebate applicable to all exporters of OCTG was reduced to 12.3 percent as part of Spain's transition to the value-added tax. Therefore, any exports of the merchandise under investigation on or after this date are subject to the lower DFE rate. Accordingly, we preliminarily determine that the DFE rebate confers an *ad valorem* subsidy of 12.3 percent on exports from AHV on or after July 11, 1984.

II. Programs Preliminarily Determined Not To Be Used

We have preliminarily determined that manufacturers, producers, or exporters in Spain of OCTG do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of OCTG from Spain".

A. Certain Privileged Circuit Credits

We discussed Privileged Circuit Credits in general, *supra*. We preliminarily determine that two programs, working-capital loans and prefinancing of exports provide subsidies to OCTG manufacturers, producers, or exporters. We preliminarily determine that the two remaining privileged circuit programs identified in our notice of initiation were not used by AHV or TR during the period of investigation. They are:

(1) Commercial services loans, and
(2) Short-term export credit.

B. Warehouse Construction Loans

Exporters desiring to construct warehouse facilities adjacent to loading zones may borrow 70–75 percent of the total investment. We preliminarily determine that AHV and TR have received no loans under this program.

C. Regional Investment Incentives Programs

The government of Spain and regional and municipal authorities provide various investment incentive programs. We preliminarily determine that AHV and TR have not participated in these regional programs.

D. Accelerated Depreciation and Reduction in Taxes

Decree 669/1974 permits the steel indutry to employ accelerated depreciation of non-liquid investments and to obtain a substantial reduction in certain taxes. We preliminarily determine that these programs were not used by AHV and TR.

E. Expropriation of Land for New Construction

Decree 669/1974 provided aid to certain industries by expropriating land for new plant construction. We preliminarily determine that AHV and TR have not used this program.

F. Grants

Petitioners allege that the Spanish OCTG producers have received grants from the government. We preliminarily determined that neither AHV nor TR have received grants from the government of Spain.

G. Energy Discounts

Petitioners allege that the OCTG producers receive discounts or rebates on energy prices under Law 878/1981. We preliminarily determine that AHV and TR have not received discounts or rebates on energy prices.

III. Programs for Which Additional Information Is Needed

Petitioners allege that the producers of OCTG purchase their steel inputs from Spanish producers which may themselves be subsidized. At this time, we do not have sufficient information from petitioners or respondents to determine whether countervailable benefits are being provided or to quantify the *ad valorem* amount of the possible subsidies regarding steel inputs. TR responded that it purchases steel inputs from unrelated companies; however, AHV did not respond directly to our questionnaire. Therefore, we intend to seek additional information on this issue during verification.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of OCTG from Spain which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amounts of 21.24 percent for AHV, 1.59 percent for TR, and 15.49 percent for all other manufacturers, producers, or exporters in Spain of OCTG for all exports made prior to July 11, 1984. For exports made on or after July 11, 1984, the amounts are 19.04 percent for AHV, 1.59 percent for TR, and 13.93 percent for all other manufacturers, producers, or exporters in Spain of OCTG. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination of whether these imports materially injure, or threaten to materially injure, a U.S. industry 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination on October 8, 1984, at 10:00 a.m. at the U.S. Department of Commerce, Room 3092, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 30, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24108 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-401]

Cotton Shop Towels From Peru; Suspension of Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Suspension of Countervailing Duty Investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving cotton shop towels from Peru. The basis for the suspension is an agreement to cease exports of this product to the United States.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew Debicki, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Case History

On March 28, 1984, we received a petition from Milliken and Company filed on behalf of the U.S. cotton shop towel industry. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Peru of cotton shop towels received, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and on April 17, 1984, we initiated an investigation (49 FR 15250). We stated at that time that we expected to issue a preliminary determination by June 21, 1984.

Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and, therefore, section 303 of the Act applies to this investigation. The merchandise under investigation is dutiable. Therefore, under this section, the petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

We presented questionnaires concerning the allegations to the government of Peru at its Embassy in Washington, D.C., on April 24, 1984. On June 7, 1984, we received replies to the questionnaires.

We issued an affirmative preliminary determination on June 21, 1984. (49 FR 26273). We determined preliminarily that there was reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of the Act are being provided to manufacturers, producers or exporters in Peru of cotton shop towels. We preliminarily determined the net bounty or grant to be 44 percent *ad valorem*. The programs preliminarily determined to bestow countervailable benefits were the certificate of tax rebate (CERTEX) program and the non-traditional export fund (FENT).

We directed the U.S. Customs Service to suspend liquidation of all entries of the product under investigation which were entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on this product in an amount equal to the estimated net bounties or grants.

Verification of the questionnaire responses from the government and Fabrica de Tejidos La Union Limitada, S.A., (La Union) took place during the week of July 23-29, 1984.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. A public hearing was requested, but cancelled upon notice to the parties to the investigation of the initialing of a suspension agreement. Both petitioners and respondents filed pre-hearing briefs commenting on our preliminary determination.

On August 3, 1984 we initialed a proposed suspension agreement. Petitioners have had 30 days in which to submit comments regarding the proposed suspension agreement. By a letter dated August 31, 1984, petitioner informed us that it had no objection to the proposed suspension agreement.

Scope of Investigation

The product covered by this investigation is cotton shop towels. This merchandise is currently classified under item number 366.2740 of the Tariff Schedules of the United States Annotated (TSUSA).

The period for which we are measuring bounties or grants is the calendar year 1983.

Suspension of Investigation

The Department has consulted with the petitioners and has considered any comments submitted with respect to the proposed suspension agreement. We have determined the agreement will lead to the cessation within 6 months of imports from Peru of the subject merchandise exported directly or indirectly to the United States, that the agreement can be monitored effectively, and that the agreement is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement, signed September 4, 1984, are set forth in Annex I of this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption of cotton shop towels from Peru effective June 27, 1983, as directed in our notice of "Preliminary Affirmative Countervailing Duty Determination: Cotton Shop Towels from Peru," 49 FR 26273, is hereby terminated. Any cash deposits on entries of cotton shop towels from Peru pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Annex I—Suspension Agreement, Cotton Shop Towels from Peru

Pursuant to the provisions of section 704 of the Tariff Act of 1930 (The Act), and § 355.31 of the Department of Commerce Regulations, the Department of Commerce (the Department) and Fabrica de Tejidos La Union Limitada, S.A. (La Union), Av. Nicolas Ayllon 2681, El Augustino, Lima, Peru, and Santa Cecilia Compania Textil, S.A. (Santa Cecilia) Av. de las Torres 261 Lima 3, Peru, enter into the following suspension agreement (the agreement) on the basis of which the Department shall suspend its countervailing duty investigation with respect to cotton shop towels from Peru, subject to the terms and provisions set forth below.

A. Product Coverage

This agreement applies to cotton shop towels from Peru which are the subject of the above referenced investigation, manufactured or exported by La Union, and Santa Cecilia and which are currently provided for under item number 366.2740 of the *Tariff Schedules of the United States* (hereinafter the subject product).

B. Basis for the Agreement

As of the effective date of this agreement, La Union and Santa Cecilia, exporters which account for substantially all of the exports of the subject product from Peru to the United States, agree not to make further exports of the subject product to the United States, either directly or through intermediaries, from Peru or through third countries.

C. Monitoring

La Union and Santa Cecilia will supply to the Department such information as the Department deems necessary to ensure that they are in full compliance with the terms of this agreement, so as to enable the Department to monitor this agreement effectively in accordance with section 704 of the Act and § 355.31 of the Department of Commerce Regulations. Such information shall include a quarterly statement of La Union's and Santa Cecilia's exports of the subject product to the United States and to all countries. The statement shall include the volume of the subject product exported either directly or through intermediaries, together with any information La Union and Santa Cecilia possess as to the ultimate destination of the merchandise, if this differs from the country to which the initial export is made. The statement shall be itemized by country of destination. In the absence of exports of the subject product to the United States, either directly or through intermediaries, La Union's and Santa Cecilia's quarterly statements shall so indicate. La Union and Santa Cecilia agree to submit such quarterly statements to the Department within 30 days after the beginning of the subsequent calendar quarter. La Union and Santa Cecilia will permit such data collection and verification as the Department deems necessary for monitoring this agreement. The Department may also request such information and conduct such verifications periodically pursuant to the administrative reviews conducted under section 751 of the Act. If the Department requests information in addition to the quarterly statements specified above, it will explain, upon making such request, the reason or reasons why it considers such information and/or verification thereof necessary to ensure full compliance with terms of this agreement. La Union and Santa Cecilia will notify the Department immediately should they alter their positions with respect to any terms of this agreement.

D. Violation of the Agreement

The Departmental shall terminate this agreement and resume the investigation or issue a countervailing duty order, as appropriate under § 355.32 of the Department of Commerce's Regulations, with respect to the subject product if the Department determines, pursuant to section 704(i)(1) of the Act, that either La Union or Santa Cecilia has not honored its obligations under this agreement. Additionally, the Department will resume this investigation or issue a countervailing duty order, as appropriate under § 355.32 of the Department of Commerce's Regulations, if it determines that the suspension of this investigation is no longer in the public interest or that effective monitoring is no longer practicable, as required by section 704(d)(1) (A) and (B) of the Act, or if this Agreement has been violated. Additionally, should La Union's and Santa Cecilia's annual imports of cotton shop towels from 1983 account for less than 85 percent of the cotton shop towels imported to the United States from Peru during any subsequent period of review, the Department, on its own initiative or at the request of the petitioner, may terminate this agreement and reopen the investigation or issue a countervailing duty order, as appropriate under § 355.32 of the Department of Commerce's Regulations. If reopened, the investigation will be resumed for all cotton shop towel exporters as if the affirmative preliminary determination was made on the date that the Department terminates this agreement.

E. Other Provisions

In entering into this agreement, La Union and Santa Cecilia do not admit that any benefits they have received in Peru on cotton shop towels are bounties, grants, or subsidies within the meaning of the United States countervailing duty law or any other United States law.

The effective date of this suspension agreement is the date of publication of notice of suspension of this investigation in the **Federal Register.**

Signed on this 4th day of September, 1984, for Fabrica de Tejidos La Union Limitada, S.A. and Santa Cecilia Compania Textil, S.A.

Gary M. Welsh

The Department intends immediately to begin an administrative review under section 751 of the Act. For further information regarding this review, contact Richard Moreland at (202) 377-2786.

Nothwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Dated: September 4, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24107 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-402]

Oil Country Tubular Goods From Korea: Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods (OCTG). The estimated net subsidy is 0.80 percent *ad valorem.* Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of OCTG from Korea which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or bond on these products in the amount equal to the estimated net subsidy. If this investigation proceeds normally, we will make our final determination by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Rick Herring, Tom Bombelles, or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-1785; 377-0187; or 377-3174; or 377-5414.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is a reasonable basis to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods. The following programs are preliminarily determined to confer subsidies:

- Export Financing under the Export Financing Regulations
- Long-term Loans Provided Through the National Investment Fund
- Accelerated Depreciation under Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption"
- Tax incentives for Exporters under Articles 22, 23 and 24 of the "Act

Concerning the Regulation of Tax Reduction and Exemption"

- Import Duty Deferrals under Article 36 of the Customs Act of Korea.

We estimate the net subsidy to be 0.60 percent *ad valorem.*

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Corporation filed on behalf of the OCTG industry. In compliance with the filing requirements of section 355.26 of our Regulations (19 CFR 355.26), petitions alleged that manufacturers, producers, or exporters in Korea of OCTG receive directly or indirectly benefits which constitute subsidies within the meaning of section 701 of the Act and that these imports materially injure, or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and on July 3, 1984, we initiated an investigation (49 FR 28291). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984 LTV Steel Company entered this proceeding as a co-petitioner with Lone Star Steel Company and CF&I Steel Corporation.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act an injury determination is required for this investigation. On July 30, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports materially injure, or threaten material injury to a U.S. industry (49 FR 31782).

We presented questionnaires concerning the allegations to the government of Korea at its embassy in Washington, D.C. on July 13 and July 23, 1984. On August 17, August 20 and August 21, we received replies to these questionnaires. On August 20 we presented a second supplemental questionnaire to the government of Korea. We received a response to this questionnaire on August 31. On July 18 and August 20, counsel for petitioners submitted additional information concerning the alleged subsidies. This information has been taken into consideration in this preliminary determination.

Scope of Investigation

The products covered by this investigation are oil country tubular goods (OCTG). For the purpose of this investigation the term "oil country tubular goods" covers hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the *Tariff Schedules of the United States, Annotated (TSUSA)* under items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244.
This investigation includes OCTG that are in both finished or unfinished condition.

There are five Korean producers of the subject merchandise which exported to the United States during the period of investigation: Hyundai Pipe Company (Hyundai Pipe), Korea Steel Pipe Company (Korea Steel), Pusan Steel Pipe Company (Pusan), DongJin Steel Company (DongJin), and Union Steel Manufacturing Company (Union). In addition, there are five trading companies which exported the subject merchandise to the United States during the period of investigation. The trading companies are the Hyundai Corporation, Kukje-ICC Corporation, Sunkyong Limited, Samsung Co., Ltd., and Daewoo Corporation.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These general principles are described in detail in the "Subsidies Appendix" to the "Final Affirmative Countervailing Duty Determination and Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina" published in the **Federal Register** on April 26, 1984 (49 FR 18006). For purposes of this preliminary determination, we are calculating a country-wide rate. The period for which we are measuring subsidization is the 1983 calendar year which corresponds to the most recent fiscal year for each of the Korean producers and exporters.

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to rigorous verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based upon our analysis to date of the petition, the additional information filed by petitioners and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Korea of OCTG under the following programs:

A. Short-Term Export Financing Under the Export Financing Regulations

Petitioners allege that the producers and exporters in Korea of OCTG receive preferential short-term export financing under the following programs:

- Export Loans under the 1972 Regulations for Export Financing
- Export Loans provided under the Foreign Trade Act
- Deferred Payment Export Loans
- Preferential Exchange Rates for Export Loans Based on Letter of Credit.

According to the response of the government of Korea, short-term export financing is authorized through the Export Financing Regulations. These Regulations, which were promulgated by the Monetary Board in 1972, were last amended in November 1983. The Bank of Korea establishes the guidelines for the implementation of these regulations and the commercial banks administer the export financing program.

Eligibility for short-term export financing is limited to the following:

- Exporters in receipt of letters of credit;
- Exporters concluding documents of acceptance or documents against payment contracts;
- Exporters purchasing local supplies;
- Exporters stockpiling raw materials;
- Exporters with certificates based on past export performance;
- Producers of raw materials for export; and
- Companies awarded domestic projects based on international public tender.

The maximum term of short-term export loans is 90 days. These loans, unlike short-term domestic financing, cannot be rolled over.

Prior to June 28, 1982 short-term export loans provided under the Export Financing Regulations were charged a lower interest rate than short-term domestic loans. From June 28, 1982 until January 23, 1984 the Monetary Board established a uniform rate of 10 percent for both export and domestic short-term financing provided by commercial banks. Since January 1984 the Monetary Board has been liberalizing the interest rate structure by allowing banks to lend at lower than the uniform rate depending on the creditworthiness of the company. The interest rate in effect during the period for which we are measuring subsidization was 10 percent for short-term export loans.

In order to determine whether short-term export financing under the Export Financing Regulations provides benefits which constitute export subsidies to the producers and exporters of OCTG, we must compare the 10 percent rate to the appropriate benchmark. As specified in the Subsidies Appendix, the benchmark for short-term loans is the most appropriate national average commercial method of short-term financing. Petitioners argue that the unofficial money (or curb) market establishes the appropriate market interest rate. The government of Korea's response contends that short-term loans from Korean commercial banks represent the most comparable commercial financing. Based upon our review and analysis of information submitted by both petitioners and respondents' and upon our research of the credit and interest rate structure in Korea, we preliminarily determine that the most appropriate national average commercial rate consists of a weighted-average of the interest rates charged by all sources of short-term commercial financing in Korea. These sources include: commercial banks, financing companies, commercial paper and the curb market. Using a weighted-average is comparable to what we did in our final affirmative determination in *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina* (49 FR 18006), in which we determined that a weighted average of the regulated and unregulated interest rates best represented the national average commercial rate.

We did not select the curb market as the sole source for our benchmark because, contrary to petitioner's allegations, the curb market was not the "normal" source of commercial funds for many Korean companies and cannot be construed as a "national average." Although the information provided by petitioners establishes that use of the curb market is not limited to small and high-risk firms and that nearly all Korean firms borrow on the curb market at least occasionally, their evidence does not show that it is the dominant or normal source of funds for most companies. Indeed, to the contrary, the evidence suggests that the importance of the curb market is declining. Most firms normally would go to commercial banks or to foreign capital markets for financing. They would use the curb market only occasionally and generally for very short periods when they had a pressing liability and were temporarily unable to get access to standard commercial sources of funds. (See in particular, Korea Chamber of Commerce *Survey*, June 1984, Exhibit 13 of the Government of Korea's response, August 17, 1984.)

We also did not use the interest rate on short-term borrowing from commercial banks as the sole benchmark as urged respondents. Respondents alleged the curb market was too small in size to use, is principally used by small and risky firms, and is tainted by element of illegality.

First, the size as reported to Korean tax authorities is highly suspect given the reported wide incidence of tax evasion by those lending in the curb market. Independent evidence suggests it is significantly greater in size than the percentage of 0.65 reported in the response. Second, although small and high-risk firms may be the dominant users of the curb market, the evidence shows that virtually all companies use it at times. Thus, it is a normal, albeit not dominant, source of commercial financing for many companies. Third, the curb market is not illegal. What is illegal is the apparently widespread tax evasion which is associated with nonreporting of interest earned by those lending in the curb market. Accordingly, we disagree with respondent's arguments concerning use of the curb market rate in determining the benchmark.

The factors used to weight each of the four intrest rates were based on data from a number of sources, including the monthly *Statistical Bulletin* of the Bank of Korea and a research report prepared by the Korean Economic Research Institute. The *Statistical Bulletin* provides the size of, and interest rates charged on, short-term financing by banks, finance companies and commercial paper. The Economic Research institute report provides data on the size of the curb market in Korea.

For the curb market interest rate, we reviewed studies and articles from a variety of sources. We chose a rate of 3 percent per month as representative. This rate was compounded to yield an annualized rate of 42.6%. Using the data from all of these sources, we calculated a weighted-average short-term commercial rate. Applying this weighted-average as the benchmark we calculate an estimated subsidy of 0.56 percent *ad valorem*. The statistics and information upon which we based our calculation of the national average commercial rate are subject to verification. Any additional information submitted by petitioners and respondents whch is verified will be considered for the final determination.

With respect to petitioner's other allegations that other preferential short-term export financing is provided through the Foreign Trade Act, through a deferred payment program and through preferential exchange rates for export loans based on letters of credit, these program are discussed in the section "Programs Preliminarily Determined Not to Confer Subsidies."

B. Long-Term Loans Through the National Investment Fund

On December 14, 1973, the government of Korea promulgated the National Investment Fund Act (Law No. 2635). The stated "purpose of this Act is to prescribe necessary matters for the establishment and effective management of the National Investment Fund on the bases of extensive nationwide savings efforts and participation, to secure and supply the investment and loan funds needed to promote the construcion of major industries, including the heavy and chemical industries, as well as to help increase exports." Since one of the two stated purposes of the Act is to help increase exports, we preliminarily determine that National Investment Fund (NIF) loans constitute export subsidies if they are provided at preferential rates. As outlined in the Subsidies Appendix, the appropriate benchmark for long-term loans will be company-specific, unless the company lacks adequate comparable commercial experience. If a company lacks adequate comparable commercial experience, we use a national average loan interest rate. As discussed in the section "Programs For Which Additional Information Is Needed," we have determined that we need additional information on long-term loans through both specialized banks and commercial banks before determining whether such loans themselves constitute a subsidy. Because such loans are the only other comparable financing to NIF loans, and because we have not made a determination with respect to these loans, we do not consider that there is comparable commercial experience with which to compare NIF loans. Therefore, for purposes of this preliminay determination we are using a national average rate for our benchmark. Because NIF long-term loans have variable interest rates, we do not perform present value calculations. Instead, we compare the interest rate paid by each company to the national average commercial rate for short-term loans during the period for which we are measuring subsidization. Using the weighted-average rate that we calculated for short-term export financing under the Export Financing Regulations as the benchmark, we find that the interest rates on NIF loans are preferential and as such confer benefits which constitute export subsidies. For NIF loans, we calculate an estimated subsidy of 0.03 percent of *ad valorem.*

C. Accelerated Depreciation

Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption" permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation, determined by a formula based on the firm's foreign exchange earnings and total business earnings. Of the firms investigated, only Pusan used accelerated depreciation under this program. Because the use of accelerated depreciation is contingent upon export performance, we preliminarily determine that this program confers benefits which constitute export subsidies.

To calculate the benefits from the accelerated depreciation program for the period in which we are measuring subsidization (calendar year 1983), we determined the tax savings received in 1983 based on the accelerated depreciation which had been deducted from the 1982 income taxes payable in 1983. The amount of tax savings received under this program was divided by the total value of exports in 1983 to determine an estimated subsidy of 0.07 percent *ad valorem.*

D. Tax Incentives for Exporters

Articles 22, 23, and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption" provide for the deduction from taxable income of a number of different reserves relating to export activities. These reserves cover export losses, overseas market development and price fluctuation losses. Under Article 22, a corporation may establish a reserve amounting to one percent of foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

Under Article 23 governing overseas market development, a corporation may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in developing overseas markets are offset from the reserve fund. Like the export loss reserve fund, if there are no offsets for expenses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

A price fluctuation reserve fund may be established under Article 24. A corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses incurred from the fluctuation of prices for export goods. These losses may be offset by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following business year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve funds are eventually reported as income and subject to corporate tax either when they offset export losses or when the one-year grace period expires. Pusan, Korea Steel, Kukje, Samsung, and Daewoo received benefits under these programs in 1983. We preliminarily determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferral of direct taxes specifically related to exports.

Because these export reserve funds are a one-year deferral of tax liabilities, we treat them as an interest free loan to the corporation equivalent to the tax savings on these funds. Accordingly, we have quantified the benefits from the reserve funds by calculating the amount of tax savings and then applying a rate of interest which the firm would have had to pay for a short-term loan. We are using the weighted-average rate calculated for short-term export financing *(supra).* Using this benchmark, we calculate an estimated subsidy of 0.09 percent *ad valorem.*

E. Import Duty Deferrals

Article 36 of the Customs Act of Korea permits the Ministry of Finance to designate an industry as eligible to pay customs duties on an installment basis, rather than upon entry. Prior to 1984, only "important" industries designated by the Ministry of Finance were eligible for import duty deferrals. The steel industry was allowed to make installment payments on import duties for a two-and-a-half to three year period. Because duty deferrals prior to 1984 were provided only to "important" industries designated by the Ministry of Finance, and because the respondents did not provide any information to show that during 1983 this program was not limited to a specific enterprise or industry or group of enterprises or industries, we preliminarily determine that these duty deferrals are countervailable.

We treat the deferral of duty as an interest-free loan during the period in which the payment of the duty is outstanding. To quantify the benefit from this program, we take the amount of duty deferred and apply a rate of interest the firm would have had to pay for a loan of comparable size and duration from commercial sources. Because the interest rates on long-term loans in Korea are variable, we consider that the appropriate benchmark is the corporate bond rate during the year in which duties were deferred. Using this benchmark, we calculate an estimated subsidy of 0.05 percent *ad valorem.*

II. Programs Preliminarily Determined Not To Confer a Subsidy

We preliminarily determine that benefits which constitute subsidies are not being provided to manufacturers, producers, or exporters in Korea of OCTG, under the following programs:

A. Certain Short-Term Export Financing

As discussed in the section "Programs Preliminarily Determined to Confer Subsidies", we found short-term export loans under the Export Financing Regulations to be countervailable. However, for the reasons discussed below, we find that certain other short-term export financing through the Foreign Trade Act, through deferred payment export loans or through preferential exchange rates for export loans are not countervailable:

1. *Export Financing under the Foreign Trade Act.* Petitioners allege that the government of Korea provides the steel industry with preferential short-term export financing under the Foreign Trade Act. According to the response of the government of Korea, the Foreign Trade Act was repealed on January 16, 1967. The government of Korea further states that short-term export financing is

not provided under the Foreign Trade Transactions Act. This law sets forth general trade procedures such as import-export licensing, and does not provide export financing. Since export loans are not provided under the Foreign Trade Transactions Act, we preliminarily determine that this Act does not confer a countervailable benefit to producers or exporters of OCTG.

2. *Deferred Payment Export Loans.* Petitioners allege that Korean producers and exporters of OCTG benefit from deferred payment of loans used to finance OCTG exports. According to the response of the government of Korea, there is no program offering deferred payment of export loans. Export loans are limited to a period of 90 days, except for certain exempted items which are not subject to this investigation. Therefore, we preliminarily determine there is no program offering deferred payment export loans that provides countervailable benefits to OCTG producers or exporters.

3. *Preferential Exchange Rates for Export Loans.* Petitioners allege that producers and exporters of OCTG receive preferential exchange rates for export loans based on letters of credit. Petitioners allege that the exchange rate used for loans based on letters of credit was ten percent more favorable to Korean exporters than the actual exchange rate. According to the response of the government of Korea, there is no preferential exchange rate used to convert export financing. For export loans granted under the Export Financing Regulations, a Won/U.S. dollar conversion factor which is lower than the official exchange rate is utilized merely to establish a ceiling on export financing.

For example, on loans for raw material imports the loan principal is determined by a fixed rate of W530/USD multiplied by the U.S. dollar value of the corresponding letter of credit. Therefore, we preliminarily determine that there is no program of preferential exchange rates for export loans that provides countervailable benefits to OCTG producers and exporters.

B. Medium- and Long-Term Export Financing

Petitioners allege that Korean exporters receive preferential medium- and long-term financing from the Export-Import Bank of Korea to finance exports of OCTG. According to respondents, the Export-Import Bank of Korea does not provide loans to the steel industry to finance the exports of OCTG. Respondents also state that the Korean Development Bank does not provide medium- or long-term export financing. Therefore, we preliminarily determine that there is no program offering medium- and long-term export loans that provides countervailable benefits to OCTG producers or exporters.

C. Investment Tax Credit

Petitioners allege that producers and exporters of OCTG may receive preferential tax benefits under Article 72 of the "Act Concerning the Regulation of Tax Reduction and Exemption" which provides for a temporary investment tax credit when the government deems it necessary for adjustment of economic activities. During the period from January 1, 1982 through December 31, 1982 Article 57–2 was the enforcement decree for Article 72. Article 57–2 specifies that the investment tax credit was available for the acquisition of fixed assets used directly for manufacturing or mining business. Consistent with past practice, programs available to all industries in the manufacturing and mining sectors are not limited to "a specific enterprise or industry, or group of enterprises or industries", and thus do not provide domestic subsidies. Since the tax credit is not contingent on export performance, it does not provide an export subsidy. Thus, we preliminarily determine that this program does not constitute a subsidy on the products under investigation during the period for which we are measuring subsidization.

D. Import Duty Reduction and Exemption for Raw Materials

Petitioners allege that producers and exporters of OCTG receive a reduction or exemption of import duties on iron ore and coal. The 1983 Tariff Schedules of Korea show that imports of iron ore and coal were not subject to any import duties. Therefore, we determine that there is no program providing a reduction or exemption of import duties on iron ore and coal that provides countervailable benefits to OCTG producers or exporters.

E. Subsidized Steel Inputs

Petitioners allege that DongJin may benefit from subsidies received by its parent company. Until 1984, DongJin was a wholly-owned subsidiary of Pohang Iron & Steel Company (POSCO), manufacturer of hot-rolled coil, blooms and billets. Petitioners allege that subsidies received by POSCO on those products may be being passed on to DongJin.

DongJin's raw material for OCTG is J-55 grade of hot-rolled steel coil. During 1983, DongJin purchased this product from POSCO and from an unrelated foreign supplier. The price paid by DongJin to POSCO was comparable to the price DongJin paid to its foreign supplier for hot-rolled coil. Furthermore, DongJin has informed us that no rebates or discounts are received from POSCO on these purchases. Consequently, we preliminarily determine that DongJin receives no countervailable benefits through its purchases of inputs from POSCO.

III. Programs Preliminarily Determined Not To Be Used

We have preliminarily determined that OCTG manufacturers, producers, or exporters in Korea do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of OCTG from Korea":

A. Preferential Utility Rates and Port Charges

Petitioners allege that "designated companies" under the Iron and Steel Industry Rehabilitation Order are eligible on a case-by-case-basis to receive discounts from regular utility and port rates. According to the responses, the rates charged to OCTG producers and exporters for utilities and the use of ports are the same as those charged to all other industrial users. In its response, the government states that this program under the Iron and Steel Industry Rehabilitation Order was never implemented.

B. Tariff Reductions on Imported Plant and Equipment

Petitioners allege that the government of Korea allows reductions of import duties for certain industries on certain items designated by the Ministry of Finance. According to the responses of the government of Korea and the companies, this program was not used by OCTG producers or exporters.

C. Free Export Zone Program

Petitioners allege that producers and exporters of OCTG receive tax benefits based upon location in a free export zone. According to the responses of the government of Korea, the producers and the trading companies, no OCTG manufacturer or exporter is located in a free export zone.

D. Foreign Capital Inducement Law

Petitioners allege that OCTG producers and exporters may be receiving financial and tax benefits under the Foreign Capital Inducement Law. According to the responses, no benefits have been received under this program.

E. Export Insurance

Petitioners allege that the government of Korea provides annual contributions to an export insurance program. According to the responses, export insurance was not used for exports of OCTG to the United States.

F. Steel Industry Development Scheme

Petitioners allege that the Korean Ministry of Commerce and Industry is sponsoring a steel industry development scheme in which the government will spend 210 billion won on POSCO's (DongJin's parent company) plant expansion project.

According to the response of the government of Korea, the Ministry of Trade and Commerce is not sponsoring such a scheme. POSCO's recent plant expansion was financed through retained earnings and foreign and domestic bank loans.

G. Training Aid

Petitioners allege that the steel industry has received training aid from the government of Korea. According to the response of the government of Korea and the OCTG producers, the steel industry has never received training grants.

H. Wage Controls

Petitioners allege that the government of Korea controls wages for government-run firms such as POSCO, resulting in lower production costs for this segment of Korean industry. It is further alleged that DongJin may benefit from government wage controls by virtue of its status as a wholly-owned subsidiary of POSCO. According to the response of the government of Korea, wages in Korea are not controlled by the government for private or state-owned enterprises. In addition, DongJin states in its response that the government does not control, in any way, the wages it pays to its employees.

I. Port Facilities

Petitioners allege that the government of Korea is constructing a port at Kwangyang Bay to facilitate the importation of coal and iron ore. It is further alleged that POSCO, and therefore its subsidiary, DongJin, will benefit from this port. According to the response of the government of Korea and the steel companies, POSCO, not the government, is constructing the port facilities. The port is scheduled for completion in 1987 and will not be used by any producer that exported OCTG to the United States during the period for which we are measuring subsidization.

IV. Programs for Which Additional Information Is Needed

We determine that additional information is needed on the following programs.

A. Medium- and Long-Term Government Financing

Petitioners allege that the steel industry has received preferential financing through Korean banks based on the government direction of credit and programs geared to providing loans to strategic industries. In Korea, two major groups of domestic institutions provide long-term financing: official financial institutions and commercial banks. The official institutions that have been involved in financing the steel industry include the Korea Development Bank (KDB), the Korean Exchange Bank (KEB), and the Export-Import Bank of Korea. With respect to commercial banks, until 1981 the government was the majority shareholder in each of these institutions. In addition, the government established the National Investment Fund (NIF) in 1973, through which long-term financing is made available to heavy and chemical industries, electronics and electric power industries and projects aimed at increasing food production. We have discussed long-term loans through the NIF in the section on "Programs Preliminarily Determined to Confer Subsidies."

For each of the official banks, the government has identified certain industries and sectors as priority sectors. These "designated" industries and sectors include shipbuilding, energy, iron and steel, electronics, non-ferrous metals, petro-chemicals, automobile manufacturing, machinery, aviation, agriculture and fisheries. With regard to the commercial banks, the government has not officially designated priority industries: however, national industrial and economic policies, as outlined in Korea's five-year plans and other official publications, do identify and designate certain industries for priority development. These are generally the same industries designated for the official financial institutions.

In previous determinations we have found that a subsidy exists where the government directs banks to lend funds to certain industries or groups of industries on terms inconsistent with commercial considerations or at preferential rates (see Final Affirmative Countervailing Duty Determination, *Carbon Steel Wire Rod from Spain,* 49 FR 19551, 19553). The issue presented here is whether the 11 disparate sectors designated as priority sectors can be said to constitute "a specific enterprise or industry or group of enterprises or industries" within the scope of section 771(5)(B) of the Act, or whether this grouping is too large. If too large, then by definition there is not subsidy (assuming no priority industry receives a disproportionate share of credit from the banks). In prior determinations we have found programs available to the entire agricultural sector to be available to more than a specific group of industries and thus not countervailable (see Final Negative Countervailing Duty Determination, *Fresh Asparagus from Mexico,* 48 FR 21618). Likewise, a program available to all extractive industries was not a subsidy (see Final Affirmative Countervailing Duty Determinations, *Certain Steel Products from France,* (47 FR 39332). Even more to the point, in the Suspension of Countervailing Duty Investigation, *Carbon Steel Wire Rod from Brazil,* 47 FR 42399), we found that FINAME loans were available to a wide variety of sectors in Brazil. We said in that determination: "While the steel industry is one of the chief recipients, this appears to be warranted in view of the capital requirements of a large capital intensive industry. Other large capital-intensive industries have received loans in similar proportions. In addition, numerous other sectors also received loans from FINAME during this period."

Reliance on the Final Affirmative Countervailing Duty Determination, *Certain Steel Products from Brazil,* (49 FR 17988), as contrary precedent is inappropriate. Exemption from the IPI tax was found countervailable because even though nominally available to 14 product sectors, we found that only specific companies producing certain priority products and having approved expansion projects received the exemption. The exemption was not even available to all steel companies. Thus, consistent with past precedent, we would find that the range of sectors identified by the government of Korea for priority development is too broad to constitute a group of industries. However, this does not end our inquiry.

As implied in the Brazilian rod determination and as stated in the Final Affirmative Countervailing Duty Determination, *Certain Steel Products from Korea,* (47 FR 57535), even if a program on its face is not limited to "a specific enterprise or industry or group of enterprises or industries," we look to see if it was selective in its implementation (*i.e.,* if the steel companies received a disproportionate share of the long-term loans). For example in the Final Negative Countervailing Duty Determination in *Fireplace Mesh Panels from Taiwan,* (48 FR 11305), we said that a program ". . . which does not target benefits or otherwise effectively predetermine the provision of benefits to an industry or a limited group of industries . . .". is not a subsidy. Accordingly, we must analyze whether the designated industry under investigation has received a disproportionate share of available credit and whether there are different interest rates being charged each of the designated industries.

We know that during 1983, (1) the steel industry did not receive loans in greater proportion than its share of the GNP, and (2) all industries, whether designated or not, were charged a 10 percent interest rate on their long-term loans. However, we know that during the 1970's priority sectors were charged lower interest rates than non-priority sectors. These interest differentials were reduced starting in mid-1980 and were eliminated on June 28, 1982 (Korea Exchange Bank, Monthly Review (November 1983) at 6–7; Exhibit 12 to the petition of United States Steel Corporation, petitioner in an ongoing investigation involving structural shapes and cold-rolled carbon steel flat-rolled products from Korea). A number of the loans to OCTG producers that were outstanding in 1983 were provided in the 1970's. We have no information on the record showing that in the 1970's the steel industry did receive a disproportionate share of available credit or that it was charged a more preferential interest rate than other industries. Accordingly, we cannot determine at this time whether a subsidy was provided. We are seeking additional information on these two issues.

In addition, we requested information as to whether the government of Korea channels interest rate subsidies in the form of assistance to meet interest obligations through the National Investment Fund (NIF) and the Korean Development Bank (KDB) to producers of OCTG. According to its response, the government of Korea does not provide any assistance to the steel industry in meeting its interest obligations. However, we intend to seek additional information with regard to this issue.

B. Government Provision of Equity

In their July 18 submission, petitioners alleged that POSCO, the parent company of DongJin received government equity infusions on terms consistent with commercial considerations and that this equity subsidy may have been passed through POSCO to DongJin. In order to determine whether any equity investment made by POSCO into DongJin is a subsidy, we must, as a threshold matter, determine whether the infusion was on terms inconsistent with commercial considerations.

The circumstances of DongJin's formation, and POSCO's equity infusion into it, are quite complex. According to the responses, DongJin was established on October 27, 1982 by POSCO. POSCO made a seed money equity infusion into DongJin at that time. DongJin was apparently formed to purchase the assets and inventory of a former steel company, Illsin. Illsin had been declared bankrupt in May, 1982. In accordance with Korean bankruptcy law, the courts foreclosed upon Illsin's assets in order to settle accounts with creditors, and sold these assets to two banks. These banks, in turn, offered the assets for sale to all purchasers as required by Korean banking regulations. DongJin purchased the assets.

The Subsidies Appendix states that to be "equityworthy" a company must show the ability to generate a reasonable rate of return within a reasonable period of time. We have insufficient information on the record to determine whether DongJin meets this standard at the time POSCO made its equity infusion. We are seeking additional information on this issue.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept any statement in the response that cannot be verified in our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Korea which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 0.80 percent *ad valorem.*, This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If our final determination is affirmative, the ITC will make its determination of whether these imports materially injure, or threaten material injury to a U.S. industry within 45 days after our final determination.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 26, 1984 at the U.S. Department of Commerce, Room 6802, 14th Street and Constitutional Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address with 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 22, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24104 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-404]

Preliminary Affirmative Countervailing Duty Determination: Oil Country Tubular Goods From Mexico

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute

bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of oil country tubular goods as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is preliminarily determined to be 5.65 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Mexico which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on these products in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination on November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Melissa G. Skinner, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-5414 or 377-4412.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits that constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Mexico of oil country tubular goods as described in the "Scope of Investigation" section of this notice. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)—to producers;
- Nacional Financiera, S.A. loans (NAFINSA);
- Preferential Federal Tax Incentives (CEPROFI)
- Energy Discounts

The estimated bounty or grant is 5.65 percent *ad valorem*. For this preliminary determination we are using the government of Mexico's questionnaire response and the company specific information provided by Tubos de Acero de Mexico, S.A. (TAMSA), the company that accounts for more than 85 percent, by volume, of the exports of the products under investigation to the United States.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company of Dallas, Texas, and the CF&I Steel Corporation, of Pueblo, Colorado, on behalf of the oil country tubular goods industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of oil country tubular goods (OCTG) receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

We found the petition to provide sufficient grounds upon which to initiate an investigation, and on July 3, 1984, we did so (49 FR 28292). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and LTV Steel Company of Cleveland, Ohio became co-petitioner.

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, the domestic industry is not required to allege that, and the United States International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Mexico in Washington, D.C. on July 13, 1984. On August 17, 1984, we received responses to the questionnaire from the government of Mexico, Hylsa and TAMSA. We subsequently notified the government of Mexico that we would not require responses from the other companies which had been identified as producers and/or exporters of the products under investigation.

Scope of the Investigation

The products covered by this investigation are "oil country tubular goods," which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or proprietary specifications, as currently provided for in the *Tariff Schedules of the United States, Annotated (TSUSA)* under items 610.3216, 610.3219, 610.3233, 610,3248, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4966, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished or unfinished condition.

The period for which we are measuring subsidization is calendar year 1983. The Mexican government responded that there are seven known producers of OCTG, of which only four are exporters. Hylsa and TAMSA responded to the questionnaire. However, because Hylsa did not export the products under investigation during calendar year 1983, and TAMSA accounts for more than 85 percent, by volume, of the exports of OCTG to the United States, we used the information provided by TAMSA in making this preliminary determination.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These general principles are described in detail in the Subsidies Appendix to the "Final Affirmative Countervailing Duty Determination and Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina", published in the Federal Register on April 26, 1984 (49 FR 18006). For purposes of this preliminary determination, we are calculating a country-wide rate.

In response to our questionnaire, the government of Mexico and the responding companies provided data for the applicable period. Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to rigorous verification. If the response cannot be supported at verification and the program is otherwise countervailable, the program will be considered to confer a bounty or grant in the final determination.

Based upon our analysis to date of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of OCTG under the following programs:

A. Preferential Financing Programs

1. *Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX) to Producers.* FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions that establish contracts for lines of credit with manufacturers and exporters. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade.

During the period for which we are measuring subsidization, exporters could obtain either FOMEX pre-export loans denominated in pesos with a maximum nominal annual interest rate of 8 percent, or denominated in dollars with a maximum annual interest rate of 6 percent. The maximum interest rates chargeable were increased in April 1984. TAMSA received pre-export, peso-denominated FOMEX loans during the period under investigation.

Because the FOMEX pre-export financing program provides loans for export-related purposes at interest rates significantly less than those for comparable commercially available loans, we preliminarily determine that this program confers a bounty or grant upon the exportation of OCTG.

We used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. For this purpose, we chose the nominal rate publishd monthly by the Banco de Mexico in the *Indicadores Economicos* (the "IE" rate). These rates are the weighted averages of the rates charged by commercial banks on peso loans.

We determined the benefits from these loans based on a comparison of the cost to the recipient of the FOMEX financing and the cost of comparable commercially available loans. Because these loans are export-related, we allocated the benefit received over TAMSA's total exports during the period for which we are measuring subsidization. On this basis, we calculated a bounty or grant in the amount of 0.35 percent *ad valorem.*

2. *Nacional Financiera, S.A. Loans (NAFINSA).* The petitioners alleged that the OCTG industry receives loans at preferential interest rates through NAFINSA. The government of Mexico did not provide any information with regard to the operation of NAFINSA. TAMSA received short-term loans at interest rates less than those for comparable commercially available loans from NAFINSA during the period of investigation. Because we have no evidence on the record that these loans are not limited to a specific industry, group of industries, or to companies in specific regions, we preliminarily determine that these loans confer a bounty or grant.

We used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. For this purpose, we chose the same rate we chose for the FOMEX loans to producers. These rates are the weighted averages of the rates charged by commercial banks on peso loans.

We determined the benefits from these loans based on a comparison of the cost of the NAFINSA financing and the cost of comparable commercially available loans. We allocated the benefit received over TAMSA's total sales during the period for which we are measuring subsidization. On this basis, we calculated a bounty or grant in the amount of 0.02 percent *ad valorem.*

B. Preferential Federal Tax Credits (CEPROFI)

CEPROFIs are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small- and medium-sized firms. CEPROFI tax credits are granted for investments in plant and equipment and for certain payments relating to increased employment and wages. The value of the tax credits are established as a percentage of the investment made. Certain types of investments receive higher percentage tax credits than do others.

CEPROFI certificates are tax certificates of fixed value, which may be used for a five-year period to pay Mexican federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms.

Article 25 of the decree authorizing the issuance of CEPROFIs, published in the *Diario Official de la Federacion (Diario Official)* on March 6, 1979, requires each recipient to pay a 4 percent supervision fee. The 4 percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFIs, and is therefore an allowable offset from the gross bounty or grant as defined by section 771(6)(A) of the Act.

CEPROFs for the purchase of Mexican-made capital goods in the amount of 5 percent of the value of the good, have been determined not to be countervailable. (*See* Final Affirmative Countervailing Duty Determination on Lime from Mexico, August 18, 1984). Therefore, with respect to the countervailable CEPROFIs for the purchase of Mexican-made capital goods, the benefit to the recipient is the difference between the 20 percent countervailable CEPROFI and the 5 percent non-countervailable CEPROFI.

The benefit provided by CEPROFIs is the amount of the certificates received less both the amount determined not to be countervailable and the supervision fee.

TAMSA received CEPROFIs for increased employment and for investment in equipment and buildings. Because these types of CEPROFIs are limited to a specific group of industries or to companies located in specific regions. We preliminarily determine that these CEPROFIs confer a bounty or grant.

We allocated the amount of CEPROFI benefits received during the period of investigation over TAMSA's total sales of all products. On this basis we calculated a bounty or grant of 5.04 percent *ad valorem.*

C. Energy Discounts

Petitioners alleged that OCTG producers receive discounts on energy prices from the state-owned electricity, oil and natural gas suppliers.

The program under which these discounts are available was established by a Presidential Decree published in the *Diario Oficial* on December 29, 1978. Based on a Presidential Decree published on June 19, 1979, the deadline for accepting applications was November 30, 1982. Those companies that qualified prior to the deadline are eligible to receive benefits until November 30, 1988, when the program is due to expire. The discounts are available to any company which makes new investment and is located in the priority zones.

TAMSA qualifies for, and receives, a discount on its purchases of natural gas. Because receipt of these discounts is limited to companies investing in priority zones, we preliminary determine that this program confers a bounty or grant.

We allocated the amount of the discounts received during the period over TAMSA's total sales of all products. On this basis we calculated a bounty or grant of 0.24 percent *ad valorem.*

II. Program Preliminary Determined Not to Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Mexico of OCTG under the following program:

A. National Preinvestment Fund for Studies and Projects (FONEP)

FONEP finances economic, technical, and feasibility studies for Mexican firms. Loans to finance feasibility studies have been determined not to confer bounties or grants. (*See* Final Affirmative Countervailing Duty Determination on Bars and Shapes from Mexico, 49 FR 32887).

III. Programs Preliminarily Determined Not to be Used

We preliminarily determine that the following programs have not been used by the companies that manufacture, produce, or export OCTG in Mexico. Unless otherwise indicated, the basis for these determinations is the Mexican government's statement that the responding manufacturers, producers, and exporters of OCTG did not receive benefits under these programs.

A. Preferential Financing Programs

1. *Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX)—to importers.* FOMEX may provide preferential financing to U.S. importers of Mexican products.

2. *Fund for Industrial Development Providing Credit for the Production of Exports (FONEI).* FONEI grants long-term credit for the creation, expansion, or moderization of enterprises in particular geographic regions.

3. *Article 94 Loans.* Under section II of Article 94 of the General Law of Credit Institutions and Auxiliary Organizations (the Banking Law) the Bank of Mexico establishes channels of credit to different sectors of economic activity.

4. *Guarantee and Development Fund for Medium and Small Businesses (FOGAIN).* All small- and medium-size businesses may receive loans under FOGAIN; however, rates vary according to location in various priority zones within Mexico.

5. *National Preinvestment Fund for Studies and Projects (FONEP).* FONEP finances economic, technical, and feasibility studies for Mexican firms. FONEP loans to finance feasibility studies have been determined not to confer bounties or grants, see the "Program Determined Not to Confer Bounties or Grants" section of this notice. However, we preliminarily determine that FONEP financing of economic and technical studies has not been used by the Mexican OCTG industry.

6. *National Fund for the Development of Industry (FOMIN).* FOMIN is a trust fund that funds small- and Medium-sized companies through stock purchases or loans at rates below those of commercial lending institutions.

B. Accelerated Depreciation

Companies may benefit from accelerated depreciation based on their status as a priority industry or their location in specific regions of the country.

C. Preferential Vessel, Freight, Terminal, and Insurance Benefits

Industries in Mexico may benefit from rebates or other discounts on transportation, storage, and insurance expenses involved in exporting products to the U.S.

D. Subsidized Steel Inputs

The responses stated that the only raw materials that TAMSA purchases are purchased from unrelated suppliers. Without relationship between the purchaser and the supplier, we have no reason to believe, nor is there any evidence of a pass through of subsidies. Therefore, we preliminarily determine that this program is not used.

E. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN)

FIDEIN is aimed at developing industrial parks and cities.

F. Government Financed Technology Development

The National Development Program may assist industries in Mexico through grants for the purchase of technology for new plants.

IV. Program for Which More Information Is Needed

We preliminarily determine that more information is needed with regard to the following program:

A. Port Facilities

Petitioners allege that the Mexican OCTG industry benefits from the preferential use of Mexican port facilities. The responses stated that, although TAMSA does export through the Port of Veracruz, they do not receive or benefit from any type of preferential port charges.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Mexico which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 5.65 percent *ad valorem*. This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, we will verify data used in making our final determination.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 4, 1984, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In additon, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 27, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24103 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-402]

Potassium Chloride From the German Democratic Republic: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that potassium chloride

(potash) from the German Democratic Republic (GDR) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to 112.17 percent of the ex-factory value of the merchandise. If this investigation proceeds normally, we will make a final determination by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that potash from the GDR is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 112.17 percent.

If this investigation proceeds normally, we will make a final determination by November 20, 1984.

Case History

On March 30, 1984, we received a petition from counsel for AMAX Chemical, Incorporated and Kerr-McGee Chemical Corporation filed on behalf of the domestic producers of potash. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that imports of potash from the GDR are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure or threaten material injury to a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on April 18, 1984 (49 FR 18004). On May 14, 1984, the ITC determined that there is a reasonable indication that imports of potash are materially injuring a U.S. industry.

On April 27, 1984, a questionnaire was presented to the government of the GDR. On June 5, 1984, we received a response from Kali Bergbau, the state controlled producer of potash in the GDR. As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that the GDR is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The merchandise covered by this investigation is potassium chloride, otherwide known as muriate of potash, as currently provided for in item 480.50 of the *Tariff Schedules of the United States*.

Because Kali Bergbau accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of potash for the period October 1, 1983, through March 31, 1984.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Kali Bergbau because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase based on the f.o.b. price to unrelated purchasers. We made deductions for foreign inland freight, brokerage, and loading charges.

In accordance with the policy set forth in our recent final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984) we based these deductions on charges in a non-state-controlled-economy country. The country we used in this investigation was the Federal Republic of Germany (FRG). We used costs in the FRG for the reasons stated below in the "Foreign Market Value" section.

Foreign Market Value

In accordance with section 773(c) of the Act, we used prices of potash sold in the home market of the FRG to determine foreign market value. This is because petitioners alleged that the GDR is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a). After an analysis of the GDR's economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that the GDR is a state-controlled-economy country for purposes of this investigation. Basic to our decision on this issue is the fact that the central government of the GDR strictly controls the prices and levels of production of the fertilizer industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled-economy.

After an analysis of countries producing potash, we determined that the FRG would be the most appropriate surrogate. However, we have been unable to develop actual prices for potash in the FRG prior to the preliminary determination.

Therefore, pursuant to § 353.8(a)(1) of our regulations, we based foreign market value on average home market price list prices, during the period under investigation, for the only producer of potash in the FRG. We made deductions for inland freight, based upon the petitioner's estimate of the average distance to purchasers in the FRG, and for a discount for prompt payment as shown on the price list. We made an adjustment for differences in the potassium oxide (K20) content of the potash sold in the FRG, which contains 50 percent K20, and that exorted from the USSR, which contains 60 percent K20. In making this adjustment, we used the relative percentages of K20 in the potash sold in both markets to determine the difference in market value of the merchandise as authorized by § 353.16 of our regulations.

In the absence of information concerning actual sales in the FRG, we made no circumstance of sale adjustments in reaching this preliminary determination. In addition, counsel for the respondent asserted that the producer in the FRG grants discounts from the price list prices and that the listed prices are for a different level of trade than for GDR sales to the United States. However, we do not have adequate information on which to make a deduction for the reported discounts or to adjust for a difference in the level of trade. We will seek further information on sales in the FRG, including possible circumstance of sale and level of trade adjustments, for the final determination.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of potash from the GDR that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 112.17 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on October 4, 1984, at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 27, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24102 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-402]

Potassium Chloride From Israel; Preliminary Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that potassium chloride from Israel is not being, nor is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination.

If this investigation proceeds normally, we will make a final determination by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: John R. Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that there is no reasonable basis to believe or suspect that potassium chloride from Israel is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act, 1930, as amended (19 U.S.C. 1673b) (the Act). We found that the United States price of potassium chloride from Israel exceeded the foreign market value on approximately 95 percent of all sales of this product. The weighted-average margin for the Dead Sea Works, Ltd. (DSW) was 0.06 percent, which is *de minimis.*

If this investigation proceeds normally, we will make a final determination by November 20, 1984.

Case History

On March 29, 1984, we received a petition filed by AMAX Chemicals Inc., Lakeland, Florida, and Kerr-McGee Chemical Corporation, Oklahoma City, Oklahoma, on behalf of U.S. producers of potassium chloride who represent a major portion of that industry. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Israel are being, or likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on April 18, 1984 (49 FR 18005). On May 14, 1984, the ITC determined that there is a reasonable indication that imports of potassium chloride from Israel are materially injuring a U.S. industry (49 FR 21813).

We presented a questionnaire concerning the allegations to DSW, the only known Israeli producer of potassium chloride, in Washington, D.C., on April 24, 1984, and requested a response by May 23, 1984. In a letter dated May 3, 1984, DSW requested an extension until June 6 to submit its response. We granted an extension until June 6 and on that date we received a response from DSW.

Scope of Investigation

The product covered by this investigation is potassium chloride, currently provided for under item 480.5000 of the *Tariff Schedules of the United States Annotated.* Since DSW is the sole Israeli manufacturer of this merchandise we limited our investigation to this one firm. We investigated 100 percent of sales of this merchandise by DSW to the United States during the period October 1, 1983, through March 31, 1984.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

Since we found that the Israeli home market prices were constantly adjusted upward to reflect the high rate of inflation in Israel during the period of investigation, we calculated a foreign market value for each month of the period of investigation. We then made our fair value comparisons using the appropriate monthly foreign market value.

United States Price

As provided in section 772(c), of the Act, we used the exporter's sale price of the subject merchandise to represent the United States price for sales by DSW because the merchandise was first sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the F.O.B. bulk unpacked price to United States purchasers. We made deductions from the gross price to unrelated purchasers, where appropriate, for Israeli inland freight, U.S. and Israeli brokerage fees, commissions, credit expenses, ocean freight, marine insurance and United States warehousing. The United States warehousing deduction was calculated based on the best information available to the Department. We have requested from DSW, and we utilize in our final determination, information on warehousing as well as other expenses occurred in the United States by or for the account of DSW.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on DSW's home market prices. DSW made sufficient sales of potassium chloride in the Israeli home market to form a basis for fair value comparisons. Since the vast majority of DSW's home market sales were made in U.S. dollars all home market sales not so made were converted to U.S. dollars prior to calculating foreign market value. Accordingly, all deductions and adjustments to home market sales which had been calculated in Israeli shekels were converted to United States dollars. All currency conversions of Israeli shekels to U.S. dollars for home market sales were made in accordance with § 353.56(a) of the Commerce regulations using the certified daily exchange rates.

We calculated foreign market value by deducting from the gross, packed F.O.B. ex-works or Dimona prices to unrelated purchasers the following items, where appropriate: packing, inland freight, credit expense, and commissions. We did not allow a claimed adjustment under § 353.15(c) for home market indirect selling expenses since we have no information on indirect selling expenses in the United States market. To the extent additional information reveals indirect selling expenses in the U.S. market, we will adjust foreign market value for indirect selling expenses up to the amount of such expenses in the U.S., in accordance with § 353.15(c) of the Regulations.

Verification

In accordance with section 773(a) of the Act, we will verify all information used in making our final determination.

ITC Notification

In accordance with 733(f) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR § 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on October 3, 1984, at the United States Department of Commerce, Conference Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 26, 1984. Oral presentations will be limited to issues raised in the briefs. All written view should be filed in accordance with 19 CFR 353.46 within 30 days of publication of this notice, at the above address and at least 10 copies.

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24100 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-402]

Potassium Chloride From Spain; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that potassium chloride from Spain is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of potassium chloride from Spain that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in amounts equal to 43.65 percent. If this investigation proceeds normally, we will make a final determination by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that potassium chloride from Spain is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act 1930, as amended (19 U.S.C. 1673b) (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 43.65 percent.

If this investigation proceeds normally, we will make a final determination by November 20, 1984.

Case History

On March 29, 1984, we received a petition filed by AMAX Chemicals Inc., Lakeland, Florida, and Kerr-McGee Chemical Corporation, Oklahoma City, Oklahoma, on behalf of U.S. producers of potassium chloride who represent a major portion of that industry. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on April 18, 1984 (49 FR 18005). On May 14, 1984, the ITC determined that there is a reasnable indication that imports of potassium chloride from Spain are materially injuring a U.S. industry (49 FR 21813).

We presented a questionnaire concerning the allegations to Comercial de Potasas, S.A. (COPSA), the only known Spanish exporter of potassium chloride, in Madrid, on May 7, 1984, and requested a response by June 6, 1984. On June 14, 1984, we received a response from COPSA.

Scope of Investigation

The product covered by this investigation is potassium chloride, currently provided for under item 480.5000 of the *Tariff Schedules of the United States Annotated.* Since COPSA is the sole Spanish exporter of this merchandise we limited our investigation to this one firm. We investigated 100 percent of sales of this merchandise by COPSA to the United States during the period October 1, 1983, through March 31, 1984.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by COPSA, because the merchandise appears to be sold to unrelated purchasers prior to its importation into the United States. We will seek for purposes of our final determination additional information concerning when these transactions take place. We calculated this price based on the FOB, C&F or CIF unpacked prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, Spanish brokerage fees, ocean freight, and marine insurance.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on COPSA's home market prices. COPSA made sufficient sales of potassium chloride in the Spanish home market to form a basis for fair value comparisons. We calculated home market prices on the basis of the unpacked, ex-mine price to unrelated purchasers. In accordance with § 353.15 of our regulations (19 CFR 353.15), we made a circumstance of sale adjustment for differences in credit terms. We also adjusted, where appropriate, for the differences between the commissions on sales to the United States and indirect selling expenses in the home market used as an offset to United States commissions in accordance with 19 CFR 353.15(c). We will also seek additional information concerning sales in the home market.

Verification

In accordance with section 773(a) of the Act, we will verify information used in making our determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of potassium chloride from Spain which are entered, or withdrawn, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise exceeded the United States price, which was 43.65 percent. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(a)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, if a level of export subsidies is determined in the final countervailing duty determination on potassium chloride from Spain, it will be subtracted from the dumping margins for deposit or bonding purposes.

ITC Notification

In accordance with section 773(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, wither publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 A.M. on October 3, 1984 at the United States Department of Commerce, Conference Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 20, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address and in at least 10 copies.

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-[illegible] Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-402]

Potassium Chloride From the Union of Soviet Socialist Republics; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that potassium chloride (potash) from the Union of Soviet Socialist Republics (USSR) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to 187.03 percent of the ex-factory value of the merchandise. If this investigation

proceeds normally, we will make a final determination by November 20, 1984.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitition Avenue, NW., Washington, D.C. 20230; Telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that potash from the USSR is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 187.03 percent.

If this investigation proceeds normally, we will make a final determination by November 20, 1984.

Case History

On March 30, 1984, we received a petition from counsel for AMAX Chemical, Incorporated and Kerr-McGee Chemical Corporation filed on behalf of the domestic producers of potash. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioner alleged that imports of potash from the USSR are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure or threaten material injury to a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on April 18, 1984 (49 FR 18004). On May 14, 1984, the ITC determined that there is a reasonable indication that imports of potash are materially injuring a U.S. industry.

On April 27, 1984, a questionnaire was presented to the government of the USSR. On July 13, 1984, we received a response from V/O Sojuzpromexport, the state owned producer of potash in the USSR. As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that the USSR is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The merchandise covered by this investigation is potassium chloride, otherwise known as muriate of potash, as currently provided for in item 480.50 of the *Tariff Schedules of the United States*.

Because V/O Sojuzpromexport, accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of potash for the period October 1, 1983, through March 31, 1984.

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by V/O Sojuzpromexport because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. price to unrelated purchasers. We made deductions for foreign inland freight, brokerage, and loading charges.

In accordance with the policy set forth in our recent final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984) we based these deductions on charges in a non-state-controlled-economy country. We based the brokerage and loading deductions upon costs in the Federal Republic of Germany (FRG). We used costs in the FRG for the reasons stated below in the "Foreign Market Value" section. However, because inland freight costs were not available in the FRG for distances comparable to those related to shipments from the USSR, we based the deduction for inland freight on freight rates within Canada, the next most appropriate surrogate country with rates for comparable distances.

Foreign Market Value

In accordance with section 773(c) of the Act, we used prices of potash sold the home market of the FRG to determine foreign market value. This is because petitioners alleged that the USSR is a state-controlled-economy country and that sales of the subject merchandise from the country do not permit a determination of foreign market value under section 773(a). After an analysis of the USSR's economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that the USSR is a state-controlled-economy country for purposes of this investigation. Basic to our decision on this issue is the fact that the central government of the USSR strictly controls the prices and levels of production of the fertilizer industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled-economy.

After an analysis of countries producing potash, we determined that the FRG would be the most appropriate surrogate. However, we have been unable to develop actual prices for potash in the FRG prior to the preliminary determination.

Therefore, pursuant to § 353.8(a)(1) of our regulations, we based foreign market value on average home market price list prices, during the period under investigation, for the only producer of potash in the FRG. We made deductions for inland freight, based upon the petitioner's estimate of the average distance to purchasers in the FRG, and for a discount for prompt payment established by the price list. We made an adjustment for differences in the potassium oxide (K20) content of the potash sold in the FRG, which contains 50 percent K20, and that exported from the USSR, which contains 60 percent K20. In making this adjustment, we used the relative percentages of K20 in the potash sold in both markets to determine the difference in market value of the merchandise as authorized by § 353.16 of our regulations.

In the absence of information concerning actual sales in the FRG, we made no circumstance of sale adjustments in reaching this preliminary determination. In addition, counsel on behalf of the respondent requested certain allowances for physical differences in the merchandise related to the importers' cost of processing non-standard particle sizes found in the potash from the USSR. However, we do not have an adequate basis on which to make such an adjustment for this determination. We will seek further information on sales in the FRG, including possible circumstance of sale adjustments, and information on physical differences in the merchandise for the final determination.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of potash from the USSR that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 187.03 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this invesitgation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to a U.S. industry before the later of 120 days after we make our preliminary affirmate determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on October 4, 1984, at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the isues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 27, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24101 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in Mauritius

September 7, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CICA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 13, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On October 3, 1983 a CITA directive was published in the **Federal Register** (48 FR 45143) which established a group limit of 115,500 dozen for cotton, wool and man-made fiber knitwear apparel products in Categories 338, 339, 345, 438, 445, 446, 638, 639, 645, and 646, produced or manufactured in Mauitius and exported during the twelve-month period which began on October 1, 1983 and extends through September 30, 1984. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 2 and 5, 1981 between the Governments of the United States and Mauritius provides for the borrowing of yardage from the following year's limit (carryforward), with the amount used being deducted from the limit in the following year. Under the terms of the bilateral agreement and at the request of the Government of Mauritius, the Government of the United States is increasing the group limit for knitwear apparel from 115,000 dozen to 123,050 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 7, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the
Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel the directive of September 29, 1983, which established an import restraint limit for certain cotton, wool and man-made fiber textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1983.

Effective on September 13, 1984, paragraph one of the directive of September 29, 1983 is hereby amended to increase the group limit established for cotton, wool and man-made fiber textile products in Categories 338, 339, 345, 438, 445, 446, 638, 639, 645, and 646, to 123,050 dozen.[1]

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-24109 Filed 9-11-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 30, 1984.

The USAF Scientific Advisory Board Weapons and Concepts Panel of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet at Lawrence Livermore National Laboratory, Livermore, California, on October 9, 1984 from 8:30 a.m. to 5:00 p.m. The subpanel will meet to hold classified discussions on weapons and concepts for strategic relocatable targets. Since the discussions will be classified the meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

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[1] The restraint limit has not been adjusted to reflect any imports exported after September 30, 1983.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84-24066 Filed 9-11-84; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education Application; Comprehensive Program for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Application Notice for Comprehensive Program for Fiscal Year 1985.

Preapplications and applications are invited for new awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

Under the Comprehensive Program the Secretary awards grants to institutions of postsecondary education and other public and private educational institutions and agencies for the purpose of improving postsecondary educational opportunities.

Authority for this program is contained in Title X of the Higher Education Act, as amended. (20 U.S.C. 1135)

Closing Dates for Transmittal of Preapplications and Applications

Preapplications for awards must be mailed or hand-delivered by November 29, 1984. Applications must be mailed or hand-delivered by March 19, 1985.

Preapplications and Applications Delivered by Mail

A preapplication or application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.116A, Washington, D.C. 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a receipt that is not dated by the U.S. Postal Service as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Preapplications and Applications Delivered by Hand

A preapplication or application that is hand-delivered must be taken to the Department of Education, Application Control Center, Attention: 84.116A, 7th and D Streets, SW., Room 5673, Regional Office Building 3, Washington, D.C. 20202.

The Secretary will accept hand-delivered preapplications, and applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Preapplications that are hand-delivered will not be accepted after 4:30 p.m. on November 29, 1984. Applications that are hand-delivered will not be accepted after 4:30 p.m. on March 19, 1985.

Program Information

Type of Competition

The Secretary supports a broad range of projects that respond to immediate problems or issues in a variety of categories that seek to improve post secondary educational opportunities.

Program Priorities

The following program priorities apply to the Comprehensive Program for Fiscal Year 1985.

(1) Learning important and difficult subjects and skills, including math, science, writing, foreign languages, reasoning, analysis, and problems-solving.

(2) Ensuring access to post secondary education by improving course and program completion rates and by increasing and improving the articulation between high school and college and between two- and four-year colleges.

(3) Providing education for a changing economy by providing educational programs and services for workers, unemployed individuals, businesses, and communities.

(4) Understanding educational uses and implications of the new technologies, such as computers, television, and other electronic communication media.

(5) Improving graduate and professional education by increasing access to postsecondary educational institutions at the graduate level and by reforming post-baccalaureate programs.

(6) Enhancing teacher education and cooperation with the schools by developing teacher education programs, teacher in-service programs and cooperative programs between high schools and colleges.

(7) Strengthening organizational capacities to improve learning by enhancing institutional leadership and managememt, the abilities of faculty and other staff, and resources and incentives for improvement.

Under the Comprehensive Program competition, projects that do not address one of these priorities are also eligible for support if they address other significant problems in postsecondary education.

Preapplications

Preapplications are required for this competition. They are reviewed in the same manner as applications, including review by independent field readers, and are evaluated on the basis of the selection criteria announced below.

Selection Criteria

The Secretary evaluates preapplications and applications on the basis of the following selection criteria:

(a) Significance for Postsecondary Education

The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would:

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) Feasibility

The Secretary reviews each proposed project for its feasibility by determining the extent to which:

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the proposed project design, including objectives, approaches and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the proposed project; and

(v) The applicant's relevant prior experience.

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) Potential for continuation of the proposed project beyond the period of the Fund's support (unless the project would be self-terminating).

(c) Appropriateness of the Fund's Support

The Secretary reviews each application to determine whether support of the proposed project by the Fund is appropriate in terms of the availability of other funding sources for the proposed activities.

For purposes of reviewing *preapplications,* the selection criteria grouped under "signifiance" ((a) above) are more important than those grouped under "feasibility" ((b) above) and "appropriateness" ((c) above). The group of criteria under "feasibility" ((b) above) is equal in importance to the "appropriateness" criterion ((c) above).

In reviewing *applications,* the selection criteria (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), (b)(3), and (c) are of equal importance.

In applying the criteria, the Secretary first analyzes preapplications and applications in terms of the individual criteria. The Secretary then bases the final judgment of a preapplication or application on an overall assessment of the extent to which the application satisfactorily addresses the selection criteria.

Other Information to be Requested from Applicants

In the final stage of the selection process, applicants whose applications are being considered for funding will be contacted by telephone to verify or clarify information relevant to their applications.

Available Funds

The President has requested a funding level of $11,710,000 for this program for Fiscal Year 1985. Pending resolution of the final level of appropriations, applications are invited to allow sufficient time for their evaluation and for the completion of the grants process prior to the end of the fiscal year should funds become available. It is estimated that 75 new awards ranging from $5,000 to $200,000 per year will be made.

Since a bill for fiscal year 1985 has not been passed, these are only estimates and do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Preapplication and Application Forms

Preapplication and application forms are included in the program information package. These materials will be sent directly to everyone on the mailing list for the Fund for the Improvement of Postsecondary Education. Institutions and persons not on this list can obtain these materials from the Comprehensive Program, Attention: 84.116A, Department of Education, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW. (Room 3100, Regional Office Building 3), Washington, D.C. 20202.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition. (Approved by the Office of Management and Budget under Control Number 1840–0514.)

Applicable Regulations

The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, with the exception noted in 34 CFR Part 630.4(b).

(2) The regulations in 34 CFR Part 630.

Further Information

For further information contact the Fund for the Improvement of Postsecondary Education, regarding the Comprehensive Program (84.116A); Telephone: (202) 245–8091/8100.

(20 U.S.C. 1135)

(Catalog of Federal Domestic Assistance No. 84.116A, Fund for the Improvement of Postsecondary Education)

Dated: September 4, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-[illegible] Filed 9-11-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Revised Proposed Nonfirm Energy Policy for Consumer Alternate Fuel Loads

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Revised Proposed Nonfirm Energy Policy for Consumer Alternate Fuel Loads and Request for Comments. *BPA File No:* NF–Ind-2.

Responsible Official: Thomas M. Noguchi, Director, Division of Customer Service, is the Responsible Official for the development of this policy.

SUMMARY: BPA issued its Proposed Nonfirm Energy Sales for Utilities' Industrial Loads on July 12, 1983 to utilize nonfirm energy in a new marketing effort aimed at displacing alternate fuel loads of industrial Consumers of BPA utility customers. As a result of comments received on the proposed policy, BPA is now proposing to expand the scope of the policy beyond alternate fuel industrial Consumers to any end-user alternate fuel installation. However, this policy does not incude displacement of cogeneration.

This revised proposed policy is being issued after consideration of the record to date. BPA is issuing an Environmental Assessment concurrently with this revised proposed policy. Upon completion of the process required by the National Environmental Policy Act, and after consideration of comments received in response to this notice, BPA will issue its final policy.

ADDRESS: Additional copies of this notice, and the new proposed contract, and the Staff Evaluation of the Record on this policy may be obtained from The Public Involvement Manager, Bonneville Power Administration, P.O Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: BPA Involvement office, at the address listed above, 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 Seventh Avenue, Eugene, OR 97401, 503-687-6592.

Mr. Arthur Harlow, Acting Upper Columbia Area Manager, Room 561, East West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Definitions
II. Policy Development to Date
  A. Interim Principles for Sales of Nonfirm Energy for Interruptible Loads
    1. Sales Under Interim Principles
    2. Request for Comments on Interim Principles
  B. Proposed Policy for Nonfirm Energy Sales for Utilities' Industrial Loads
  C. Renewal of Interim Nonfirm Energy Sales Contracts
III. Procedure For Policy Completion
IV. Issues
  A. Marketing
  B. Staff Evaluation of the Record
V. Policy for Nonfirm Energy Sales for Consumer Alternate Fuel Loads

I. Definitions.

A. "Alternate fuel capability" means the electrical energy and demand levels required to serve the nonfirm load at a level equivalent to the capability of the load's alternate fuel facilities.

B. "Consumer" refers to a qualifying direct service industrial customer or an account served by a utility.

C. "Contracted for or committed to determination" means a determination made pursuant to section 3(13)(A) of the Regional Act as may be stated in Exhibit K, Table 2 of the purchaser's Regional Act power sales contract, as applicable.

D. "Council" means the Pacific Northwest Electric Power and Conservation Planning Council, as defined in 3(6) of the Regional Act.

E. "Critical period" means that portion of the historical streamflow record which defines the maximum amount of energy which the sytem is able to produce without failure; the period of record which would have produced the smallest amount of energy in the same monthly distribution as the system's firm loads.

F. "Demand" means the number of kilowatts of power served during the peak hour in a period.

G. "Energy" means the total number of kilowatthours of power served during a period.

H. "Energy meter" is a device which measures the total kilowatthours of energy flowing through a given point.

I. "Firm load" means the actual maximum integrated 1-hour monthly peak and average monthly energy loads of the purchaser's system in the Pacific Northwest, which Bonneville is obligated to supply with firm power. Firm load does not include any load that the purchaser has a unilateral right to restrict.

J. "Firm power" means power which is guaranteed by the supplier to be available at all times except for reason of certain uncontrollable forces or continuity of service provisions.

K. "Firm power service level" means that portion of a consumer's load, served through the meters at the nonfirm load, which data indicates has been served with firm power in part or that will be served with firm power. The firm power service level includes a "firm power demand level"—the number of kilowatts of firm power served during the peak hour in a period, and a "firm power energy level"—the total number of kilowatthours of firm power served in a period.

L. "Hourly recording demand meter" is a device which records the number of kilowatthours used for each consecutive one-hour period at a given point.

M. "Maximum nonfirm service level" means the maximum amount of nonfirm energy which BPA will seve to a purchaser for a consumer's nonfirm load; the electric service level which is equivalent to the capacity of the alternate fuel source, less the firm power service level. The maximum nonfirm service level includes a maximum nonfirm demand level and a maximum nonfirm energy level.

N. "Nonfirm contract" means a contract which would be offered as a result of this policy to provide nonfirm service to purchasers for service to their consumer's nonfirm loads.

O. "Nonfirm energy" means energy supplied or available under an arrangement which does not have the guaranteed continuous availability feature of firm power.

P. "Nonfirm load" means the portion of a consumer's load which is capable of being served by electricity and which has an alternate, nonelectric fuel source capable of serving and available to serve the load when electricity is not available. Nonfirm loads are served by both electrical facilities and alternate fuel facilities.

Q. "Nonfirm service" means the service of nonfirm energy to a purchaser by BPA. BPA has the unilateral right to restrict this service at the end of any hour in which BPA determines that nonfirm energy is no longer available.

R. "Nonscheduling purchaser" refers to a purchaser that does not operate automatic generation control equipment; i.e. a utility that does not have equipment which regulates power output of electric generators within a control area in order to maintain system frequency, or a direct service industrial customer. However, Cowlitz County Public Utility District the Eugene Water and Electric Board, and Snohomish County Public Utility District, are scheduling purchasers without automatic generation control equipment.

S. "Northwest" means that area described in section 3(14) of the Regional Act.

T. "Point of delivery" is the point where Bonneville delivers power to a purchaser.

U. "Point of metering" in regard to this policy refers to the point at the customer's nonfirm load where power is metered. To determine the amount of nonfirm energy delivered at a purchaser's point of delivery, a loss factor is applied to the amount of nonfirm energy received at the customer's point of metering at the nonfirm load.

V. "Purchaser" refers to a utility or a direct service industrial customer which enters into a nonfirm contract as a result of this policy.

W. "Regional Act" refers to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501 (16 U.S.C. sections 839 *et seq.*).

X. "Regional Act power sales contract" refers to the power sales contracts which were offered to the utilities and direct service industries of the Northwest pursuant to the Regional Act.

Y. "Scheduling purchaser" refers to a utility which operates automatic generation control equipment; i.e. a utility which operates equipment that regulates power output of electric generators within a control area in order to maintain system frequency. However, Cowlitz County Public Utility District, the Eugene Water and Electric Board, and Snohomish County Public Utility District are scheduling purchasers without automatic generation control equipment.

Z. "Spill or forecast of imminent spill," for purposes of this policy, means the volume of nonfirm energy available exceeds or is about to exceed available markets; spill occurs when water is passed over the spillways of dams, rather than through generating turbines. BPA may also spill to aid fish passage.

AA. "Varhour meter" is a device which measures the reactive energy in a circuit.

II. Policy Development to Date

In late 1981, firm loads in the Northwest began to decline as the region entered a recession. Loads continued at reduced levels until 1983. Although loads have been reduced, BPA has experienced normal or better water years, resulting in the availability of more nonfirm energy than markets for such energy.

Furthermore, BPA has had a surplus of unsold firm resources, which has added to the availability of nonfirm energy.

In the summer of 1982, Umatilla Electric Cooperative, a BPA preference customer, was faced with the loss of over 20 percent of its firm load due to the prospect that increasing rates would cause three of its large food processor industrial Consumers to switch to gas from electricity for their boilers. Umatilla asked BPA to make energy available for these loads under the nonfirm rate schedule. BPA staff began working with Umatilla to develop an agreement to provide nonfirm energy for those electric boilers.

On November 30, 1982, BPA requested recommendations from the public on ways it could effectively market surplus firm energy (47 FR 53928). A number of the 58 respondents suggested BPA investigate ways to market nonfirm energy in the Northwest, as an alternative to firm energy sales outside the region. The Council recommended that BPA make surplus energy available to irrigators at reduced rates, and employees of BPA's direct-service industrial customers recommended BPA make blocks of power available to the region's aluminum industry at reduced rates.

A. Interim Principles for Sale of Nonfirm Energy for Interruptible Loads

In January 1983, BPA drafted principles for selling nonfirm energy to its Northwest utility customers for industrial loads with alternate fuel energy sources. BPA made sales of this type available to Northwest utilities on an interim basis, pending completion of this policy. BPA discussed the interim principle with representatives of publicly owned utilities, investor-owned utilities, the direct-service industries, and industrial customers of Northwest utilities.

1. During 1983, six utilities signed interim nonfirm energy sales contracts under the interim principles, which expired October 31, 1983.

a. *Umatilla Electric Cooperative* purchased up to 40 megawatts for two potato processing plants. Deliveries of about 17 MW began January 9, 1983. Both plants have natural gas-fired boilers as alternate fuel sources.

b. *The City of Port Angeles* purchased approximately 7 MW of nonfirm energy for an electric boiler at a Crown Zellerbach paper mill beginning February 1, 1983. The mill can use wood waste in lieu of electricity.

c. *Cowlitz County Public Utility District* purchased approximately 75 MW of nonfirm energy for electric boilers at the Longview Fibre and Weyerhaeuser mills beginning February 25, 1983. These mills can also use wood waste as fuel.

d. *Tillamook County People's Utility District* purchased approximately 3 MW of nonfirm energy beginning June 11, 1983, for service to a boiler at the Tillamook County Creamery Association. The creamery can use oil as an alternate fuel.

e. *Snohomish County Public Utility District* purchased approximately 45 megawatts of nonfirm energy for service to the electric boiler loads of the Weyerhaeuser Kraft and Lumber Manufacturing Facility and the Boeing Commercial Airplane Company beginning May 11, 1983. Weyerhaeuser can run alternate fuel boilers with natural gas, oil, or black liquor, a by-product of pulp production. Boeing can fire boilers with natural gas or oil in lieu of electricity.

f. *Lewis County Public Utility District* purchased approximately 3 megawatts of nonfirm energy beginning June 9, 1983, for service to the American Crossarm and Conduit Company. Lewis received nonfirm service under the curtailment provisions of the interim nonfirm principles, i.e. for the portion of their load that would not have otherwise operated due to economic conditions.

2. *Request for Comments on Interim Principles.* On March 15, 1983, BPA requested comments on the interim principles for sales of nonfirm energy for interruptible industrial and irrigation loads (48 FR 10903). In the same notice, BPA proposed to sell nonfirm energy to its direct-service industrial customers through October 31, 1983, in order to encourage restart of idle industrial capacity and increase BPA revenues.

BPA received 59 comments on both subjects. Those who commented on the principles as they applied to industrial loads generally supported the concept, and made specific comments on the contract restrictions contained within the interim principles. In light of these comments, BPA took the actions described below.

B. Proposed Policy for Nonfirm Energy Sales for Utilities' Industrial Loads

On July 12, 1983, BPA issued its proposed policy for sales of nonfirm energy to utilities for alternate fuel industrial loads. The proposed policy was published in the **Federal Register** on July 22, 1983, (48 FR 33518). The comment period expired August 31, 1983. BPA held a Public Information Forum on July 26, and Public Comment Forums in Spokane, Seattle and Portland on August 10, August 12, and August 8, respectively. BPA mailed a summary of comments to the policy mailing list on November 23, 1983.

The procedure for policy completion will be addressed below.

C. Renewal of Interim Nonfirm Energy Sales Contracts

Since October 31, 1983, BPA has renewed the interim contracts mentioned in part A.1., above, with Umatilla Electric Cooperative, the City of Port Angeles, Cowlitz County Public Utility District, Tillamook County Peoples' Utility District, and Snohomish County Public Utility District. BPA also entered into a new interim alternate fuel nonfirm energy contract with Kaiser Aluminum and Chemical Corporation, a direct service industrial customer, for a 7-megawatt electric boiler at Kaiser's Mead plant.

III. Procedure for Policy Completion

BPA is now issuing a Revised Proposed Nonfirm Energy Policy for Consumer Alternate Fuel Loads. This revised proposed policy considers comments received on the Proposed Policy for Nonfirm Energy Sales for Utilities' Industrial Loads, and BPA's experience under the interim alternate fuel nonfirm energy contracts. Copies of the Staff Evaluation of the Record and new proposed contract may be requested from BPA's Public Involvement Manager. BPA is issuing a revised proposed policy at this time so that BPA may receive public comment on the latest revision while completing the environmental review process required by the National Environmental Policy Act.

BPA is issuing an Environmental Assessment of the revised proposed policy. Copies of that Environmental Assessment may also be requested from BPA's Public Involvement Manager. Upon completion of the public and governmental agency comment period for the Environmental Assessment, BPA will determine whether a Finding of No Significant Impact (FONSI) is appropriate or whether an Environmental Impact Statement is needed. If BPA determines that a FONSI is appropriate, BPA expects to issue its final policy upon issuance of the FONSI.

Comments on either the revised proposed policy, the new proposed contract, or the Environmental Assessment should be addressed to BPA's Public Involvement Manager at the address listed above and should not be postmarked later than October 26, 1984. When BPA issues its final policy, BPA will supplement the Staff Evaluation of the Record to consider any additional comments received.

Public Comment Forums on the initial proposed policy were held in several Northwest locations. BPA has not scheduled public meetings on the revised proposed policy. On request, BPA will meet with individuals or groups to discuss aspects of the revised proposal. If sufficient public interest is shown, BPA will schedule a general Public Comment Forum during the public comment period. To request an individual or group meeting, or a general public forum, please contact the Public Involvement office at the appropriate number above.

IV. Issues

A. Marketing

The Bonneville Project Act, 16 USC, Chapter 12B, and the Federal Columbia River Transmission System Act, Pub. L. 93–454, direct BPA to encourage the widest possible use of all electric energy that can be generated and marketed at the lowest possible rates consistent with sound business principles. BPA believes that this policy is consistent with that directive, and will continue to be so through the proposed initial term of the contracts to be issued under the policy, June 30, 1988. During that term, BPA expects to have nonfirm energy available in excess of higher priority markets, in conditions encountered in most water years. During that term, subject to BPA's Regional Act section 7(i) rate adjustment process, BPA will consider establishing nonfirm energy rates designed to be competitive with most alternate fuels during periods when BPA has nonfirm energy available in excess of higher priority markets. BPA will work with its purchasers and their consumers to fashion and administer agreements that are workable for consumers, BPA's utility and DSI purchasers, and BPA.

Prior to the end of the initial contract term, BPA will review its nonfirm energy power marketing program and this policy to determine whether changed conditions require a change in the policy upon expiration of the initial contracts.

B. Summary of Staff Evaluation of the Record

Discussion of the following major issues and other issues and their resolution in the revised proposed policy is found in BPA's Staff Evaluation of the Record, which is available on request from BPA's Public Involvement Manager.

Nature of Load

The proposed policy indicated that the minimum load to be served under this policy would be 2 average MW. In response to public comment, the minimum has been lowered to 1 average MW, which is a scheduling minimum for BPA.

Load type was restricted to "industrial" in the proposed policy. In response to public comment, this sector limitation was removed. A qualifying load from any sector will be eligible to receive nonfirm service under this policy.

These two changes broaden the policy, bringing it closer to meeting the Council's directive in Chapter 10 of the Northwest Conservation and Electric Power Plan to develop the "nonfirm market to the fullest extent possible."

BPA is maintaining the requirement for a load to have an alternate fuel source as a way of insuring that firm load is not lost to nonfirm service although this provision has been criticized as being too restrictive and overly burdensome.

Required Equipment

Several comments indicated that the equipment requirements, particularly those for remote metering on the nonfirm load and the hard-copy terminal for notification, were burdensome, unnecessary, and reduced the value of this policy to the Northwest. BPA has maintained these requirements. Although the hard-copy terminal may not be required for some period, it is a cost which a utility should factor into its decision to receive service under the policy. BPA is now phasing in remote reading equipment at utility points of delivery. Thus, utilities can plan with certainty when the remote reading equipment will be necessary at the nonfirm load.

Separate metering is essential to determine the amount of nonfirm energy delivered and its contribution to a utility's peak.

Firm Service

Purchasers receiving nonfirm service for qualifying loads under contracts executed pursuant to this policy shall not receive firm service for such loads during the terms of the contracts, unless otherwise agreed by BPA. In the event BPA agrees to an exception, firm service to a utility purchaser would be subject to sections 8 and 9 of the Purchaser's Regional Act power sales contract.

Purchasers receiving nonfirm service for qualifying loads under contracts executed pursuant to this policy shall receive firm service to such loads after expiration of the contracts in accordance with sections 8 and 9 of the Purchaser's Regional Act power sales contract, in the case must provide at least 2 years' notice of its desire to receive firm service, unless otherwise agreed by BPA. Contracts offered under this policy will initially run until June 30, 1988.

The effect of this policy on contracted for or committed to loads is neutral. Taking nonfirm energy will not endanger such a determination.

Restriction Notification

BPA proposed to maintain the right to restrict deliveries at the end of any hour. This provision came under criticism from several parties. These parties, mostly consumers, argued that they needed more than 1 hour's notice to switch to their alternate fuel source. They further argued that the unauthorized increase charge was too severe given the short notice period.

These provisions, although stringent, will insure that these loads are truly nonfirm. A consumer can avoid the adverse consequences of restriction by operating his load prudently in light of the requirement on BPA to give maximum amount of notice of a change as is practicable. Operating experience under the interim agreements indicates that as BPA, utilities, and consumers become more accustomed to alternate fuel nonfirm operations, and problems diminish.

These restriction provisions also make this nonfirm service consistent with other nonfirm service.

Generating Utilities

The policy proposed to make this offer of nonfirm energy available to all Northwest utilities. Idaho Power Company commented that this offer should be limited to nongenerating utilities. Although IOU's can buy nonfirm at the Displacement rate for an alternate fuel load, they would need to buy it under this policy. Therefore, BPA will issue this policy as available to all Northwest utilities.

Utility Markup

Although BPA did not propose to limit utilities' retail markup of nonfirm energy, it did solicit comment on this point. Comments received indicated that utilities were strongly opposed to BPA regulation of markup. Staff does not believe that a markup limitation is necessary because of market forces; a utility that marks up its nonfirm too much will lose nonfirm sales to the alternate fuel.

DSI Alternate Fuel Loads

In its letter in response to this policy, Kaiser proposed including qualifying DSI alternate fuel loads under this policy. Since Kaiser's alternate fuel load has been using gas due to the noncompetitive price of firm power, they argue that this and other similar DSI loads should qualify on the same grounds that a utility's alternate fuel nonfirm load qualifies. Currently, BPA is aware of only one such DSI alternate fuel load, that of Kaiser.

The revised proposed policy provides that BPA allow service to DSI alternate fuel loads on a case-by-case basis consistent with the parties future rights and obligations under the DSI Regional Act power sales contract and determining that the loads served with nonfirm energy would not otherwise operate on Industrial Firm Power. BPA could therefore require an Operating or Contract Demand limitation during the term of nonfirm service.

Indemnity and Hold Harmless

Snohomish County PUD commented that the requirement or inclusion of an indemnity section between the utility and the consumer would completely frustrate these arrangements.

BPA has not required indemnity provisions in its interim alternate fuel nonfirm contracts. Also, to BPA's knowledge, there have been no incidents of damage as a result of changes in nonfirm availability. The terms of service have been understood and adhered to by utilities and consumers. BPA does not normally include indemnity provisions in its power sales contracts, except for section 22 of BPA General Contract Provision Form PSC-1. Because of the complex nature of indemnity and hold harmless agreements, the extra expense they may entail, because Staff believes that operations pursuant to this policy are not likely to result in significant damage to a consumer, and because BPA is contractually entitled to discontinue nonfirm energy availability according to the terms of the contract without liability for such discontinuation due to consumer reliance on its continued availability, BPA should not require an indemnity provision from the consumer to BPA. However, BPA should include in contracts issued under this policy a covenant by the purchaser that the nonfirm energy will not be used to supply any load under such conditions that discontinuance of deliveries would cause hardship to the consumer, the purchaser or otherwise in the purchaser's service area, and that the purchaser acknowledges full responsibility for any hardship that does occur.

Availability

The proposed policy stated that nonfirm energy would be available to alternate fuel loads whenever BPA made nonfirm available, (i.e., at either Spill or Standard rate and whether or not the Federal Columbia River Power System was spilling). The DSI's submitted a letter in the public comment process which urged BPA to limit availability of nonfirm energy for alternate fuel loads to spill periods only. They argued that BPA was undercutting the highest and best use of nonfirm in the Region by allowing a potentially large preference customer demand to come before service to the DSI First Quartile with nonfirm.

Because of the Supreme Court decision in *Aluminum Company of America, et al.*, v. *Central Lincoln PUD, et al.*, No. 82-1071, 52 USLW 4716 (June 5, 1984), DSI First Quartile service with nonfirm will have priority over nonfirm loads, thus rendering the DSI comment moot.

Contract Term

Because of the delay between publication of the proposed policy and issuance of the revised proposed policy, BPA should extend the proposed term of the initial contracts to be offered under the policy to June 30, 1988, to allow consumers and purchasers the opportunity to plan on service under the policy for a sufficient period. Extending the term of the initial contracts the additional year would also reduce the administrative burden of issuing new contracts sooner.

Weyerhaeuser commented that there should be some flexibility regarding the duration of the contracts so they can be tailored to specific consumers' needs.

In response to the Weyerhaeuser comment, this policy is a new policy for BPA in a developing marketing effort. BPA should not extend the term of the initial contracts beyond June 30, 1988, because BPA should not be bound by contractual terms if at that time it wants to change the policy. Further, June 30, 1988, coincides with the end of the current critical period, during which BPA is likely to be in load/resource surplus. Neither should BPA allow a shorter contract term because of the need to maintain consistency between contract terms.

A purchaser is not required to take energy made available. The term then acts as a restriction on firm service to a load under a nonfirm contract. By restricting firm service for the duration of the contract, BPA further insures that firm loads will not switch to nonfirm service.

V. Policy for Nonfirm Energy Sales for Consumer Alternate Fuel Loads

A. Objectives

This policy for the sale of nonfirm energy to purchasers for the qualifying loads of their consumers is intended to accomplish the following objectives:

1. To avoid loss of firm load.
2. To utilize BPA nonfirm hydroelectric resources that would otherwise be wasted.
3. To allow BPA's Northwest utility purchasers and their consumers and BPA's direct service industrial purchasers to enjoy the benefits of nonfirm energy, and, by doing so, to improve the region's economy.
4. To improve BPA revenues.

B. Summary Policy Statement

BPA will make nonfirm energy available to:

1. BPA's direct service industrial customers on a case-by-case basis, and
2. Northwest utilities, for service to nonfirm loads over 1 average MW and which are in excess of base historical firm service levels to the extent that such loads are capable of being served with an alternate fuel source.
3. *Policy Action.* BPA will offer to negotiate contracts consistent with this policy with Northwest utilites and direct service industrial purchasers which have qualifying nonfirm loads.

4. *Nature of Load and Level of Nonfirm Energy Service.* Nonfirm load shall have the capability of being served with electricity and shall have an alternate, nonelectric fuel source capable of serving and available to serve the load when electricity is not available. Nonfirm electrical energy service shall be available for the nonfirm load above the historical firm power energy and demand levels to such load, but the energy and demand levels of such nonfirm service for each nonfirm load shall not exceed the energy and demand levels of the consumers' electrical facilities equivalent to the capability of the alternate fuel facilities. Historical firm power service levels and maximum energy and demand levels for nonfirm service shall be determined by agreement of BPA and the purchaser.

BPA will change the maximum nonfirm service level of a nonfirm load if:

a. The purchaser requests an increase in such level and BPA determines that the alternate fuel capability has increased,

b. BPA determines that the alternate fuel capability has decreased, or

c. The purchaser requests a decrease in such level and a corresponding increase in the firm power service level, and BPA agrees to such an increase in the firm power service level pursuant to section 12 of this policy.

In all cases, BPA will avoid loss of firm load to nonfirm energy in determining firm service levels and maximum nonfirm service levels.

The purchaser shall have the unilateral right to restrict electric service to each consumer's nonfirm load no later than the end of the last hour in which BPA notifies the purchaser that nonfirm energy is no longer available.

The purchaser shall allow the consumer to switch to an energy source other than electricity when nonfirm energy is not available.

5. *Contact Between BPA and the Purchaser.* In order to implement this policy, BPA and interested purchasers with a nonfirm load shall negotiate and enter into a nonfirm contract extending through June 30, 1988. All such nonfirm contracts shall be substantially in the form prescribed by BPA, although BPA and the purchaser may agree to different terms if such terms are consistent with this policy or address matters not dealt with by this policy.

The nonfirm energy contracts shall have the BPA General Contract Provisions Form PSC-1, as amended, attached as an exhibit. The appropriate BPA rate schedules and general rate schedule provisions shall also be attached as an exhibit to each nonfirm energy contract. Nonfirm contracts shall also have exhibits specifying firm power service levels, maximum nonfirm service levels points of delivery, points of metering, and losses. Each nonfirm contract shall provide that the utility shall obtain the right in its contract with the consumer to allow BPA to inspect the electrical and alternate fuel facilities of the consumer, and to obtain reasonable information regarding service to the nonfirm load by the alternate fuel facilities. The contract shall also provide that BPA and the purchaser shall consult at the end of the second and third contract years concerning their ability and desire to enter into a subsequent nonfirm contract.

Further, each nonfirm contract shall include a covenant by the purchaser stating that the nonfirm energy will not be used to supply any load under such conditions that discontinuance of deliveries would cause hardship to the consumer, the purchaser or otherwise in the purchaser's service area, and that the purchaser acknowledges full responsibility for any hardship that does occur.

6. *Availability of Nonfirm Energy.* BPA shall solely determine the amount of nonfirm energy that it has available for sale. BPA shall offer such energy for sale under BPA's nonfirm energy rate schedule, which may, from time to time, be revised in accordance with section 7(i) of the Regional Act. In the event that allocation of available nonfirm energy is necessary, BPA shall allocate such energy in accordance with applicable law and BPA policy.

7. *Notification*—a. *Required Facilities.* (1) Prior to installation by BPA of the facilities described in paragraph (2), the purchaser shall provide and maintain a 24-hour phone number or a day and a night phone number for the purpose of receiving nonfirm availability information from BPA.

(2) If BPA determines that it is necessary to install a computer-initiated dial-up system for transmitting notification to purchasers with contracts pursuant to this policy, the purchaser shall provide a hard copy terminal equipped with an auto-answer modem (300 baud, Bell 103 compatible) connected to a dedicated phone line when BPA has completed installation of the dial-up system. The consumer may provide similar facilities.

b. *Notification of Availability.* From time to time BPA shall notify purchasers of the projected availability of nonfirm energy, including projected price, projected amount, projected duration, and other relevant information. If a consumer has chosen to participate in the dial-up system described in paragraph (a)(2), BPA shall also provide notification to the consumer.

c. *Notification of Purchase.* During any period of nonfirm availability, each participating purchaser shall notify BPA of the level of nonfirm service it requests, in a manner consistent with the terms of its nonfirm contract. Scheduling purchasers shall follow scheduling procedures required by their Regional Act power sales contracts. BPA retains the right to require nonscheduling purchasers: (1) To contact BPA by 1200 hours of the workday preceding the day of desired delivery of nonfirm energy to provide its requested hourly nonfirm energy service levels, and (2) to provide information each workday concerning the purchaser's nonfirm energy use for the previous day or days. Normally, however, BPA will require daily communication from nonscheduling purchasers only in the event of a significant change in the requested nonfirm service level.

d. *Notification of Change in Availability.* BPA shall give maximum practicable notice of any change in price, amount, or duration of availability of nonfirm energy, but reserves the right to change the price, amount, or duration of availability, at the end of any hour.

It shall be the responsibility of each purchaser and consumer to respond to notification of any change in availability.

8. *Metering.* Each purchaser and/or consumer shall provide separate metering at the nonfirm load. Such meters shall include an energy meter, an hourly recording demand meter, and a varhour meter. Such meters and meter installations must be approved by BPA for billing accuracy and compatibility with BPA remote reading equipment. When BPA installs remote reading equipment at a point of delivery which serves a nonfirm contract load, each purchaser and/or consumer shall provide for installation of remote reading equipment at each nonfirm consumer's point of metering. BPA and the purchaser shall agree on appropriate demand and energy loss factors between each nonfirm consumer's point of metering and the corresponding point of delivery. Until installation of remote reading equipment, the purchaser shall read meters at each nonfirm consumer's point of metering when meters are read at the corresponding point of delivery and shall immediately furnish BPA with the readings.

9. *Billing.* BPA shall bill purchasers for nonfirm energy delivered at each point of delivery. This amount shall be

determined by applying an appropriate loss factor to the amount of energy metered at the consumer's nonfirm load.

In order to back demand associated with the nonfirm energy deliveries out of a point of delivery's peak or coincidental peak, the data from the hourly recording demand meter will be used with appropriate loss factors applied.

10. *Rates.* BPA shall sell nonfirm energy to a purchaser at the applicable rate specified in BPA's nonfirm energy rate schedule. BPA's unauthorized increase charge shall apply to any energy taken by the purchaser for the nonfirm load which is in excess of nonfirm energy made available by BPA. BPA may provide guaranteed deliveries in accordance with applicable terms of the nonfirm energy rate schedule.

11. *Customer Service Facilities.* The provisions of BPA's Customer Service Policy shall apply to determine responsibility for furnishing transmission, transformation, distribution, metering, or communication equipment to service a nonfirm load.

12. *Firm Service.* Purchasers receiving nonfirm service for qualifying loads under contracts executed pursuant to this policy shall not receive firm service for such loads during the terms of the contracts, unless, otherwise agreed by BPA. In the event BPA agrees to an exception, firm service to a utility purchaser would be subject to sections 8 and 9 of the Purchaser's Regional Act power sales contract.

Purchasers receiving nonfirm service for qualifying loads under contracts executed pursuant to this policy shall receive firm service to such loads after expiration of the contracts in accordance with sections 8 and 9 of the purchaser's Regional Act power sales contract, in the case of a utility purchaser; *provided, however,* that any purchaser must provide at least 2 years' notice of its desire to receive firm service, unless otherwise agreed by BPA.

Issued in Portland, Oregon, on August 31, 1984.

James J. Jura,

Acting Administrator.

[FR Doc. 84-24184 Filed 9-11-84 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP83-1-003]

ANR Pipeline Co.; Petition for Declaratory Order or, in the Alternative, a Waiver

September 5, 1984.

Take notice that on August 30, 1984, ANR Pipeline Company (ANR) tendered for filing a "Petition For Declaratory Order Or In The Alternative A Waiver" concurrently with its filing of Substitute Sixth Revised Sheet No. 667 to Rate Schedule X-64, First Revised Volume No. 2 of its FERC Gas Tariff in compliance with the Federal Energy Regulatory Commission's (Commission) April 18, 1984, letter order in the above-captioned docket. ANR states that the purpose of filing Substitute Sixth Revised Sheet No. 667 is to reflect the annual redeterminatio of the rate ANR charges to High Island Offshore System (HIOS) for certain gas measurement and related services it provides HIOS. An effective date of November 1, 1982 is proposed.

ANR asserts that this filing does not constitute a new filing but is only an amended version of the filing originally made on October 1, 1982. ANR contends that because no fee was required on October 1, 1982 and because Commission Order No. 361 was not in effect until April 25, 1984, it should not have to pay a filing fee. Therefore, ANR requests the Commission issue an order declaring that a filing fee is not applicable to the instant action.

ANR also states that it has sent copies of this filing to HIOS and all parties to the proceeding in Docket No. RP83-1-000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24014 Filed 9-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-140-002]

ANR Pipeline Co.; Petition for Declaratory Order or, in the Alternative, a Waiver

September 5, 1984.

Take notice that on August 30, 1984, ANR Pipeline Company (ANR) tendered for filing a "Petition For Declaratory Order Or In The Alternative A Waiver" concurrently with its filing of First Revised Sheet No. 667A to Rate Schedule X-64, First Revised Volume No. 2 of its FERC Gas Tariff in compliance with the Federal Energy Regulatory Commission's (Commission) June 20, 1984, letter order in the above-captioned docket. ANR states that the purpose of filing Revised Sheet No. 667A is to reflect the annual redetermination of the rate ANR charges to High Island Offshore System (HIOS) for certain gas measurement and related services it provides HIOS. An effective date of November 1, 1983 is proposed.

ANR asserts that this filing does not consititute a new filing but is only an amended version of the filing originally made on September 30, 1983. ANR contends that because no fee was required on September 30, 1983 and because Commission Order No. 361 was not in effect until April 25, 1984, it should not have to pay a filing fee. Therefore, ANR requests the Commission issue an order declaring that a filing fee is not applicable to the instant action.

ANR also states that it has sent copies of this filing to HIOS and all parties to the proceeding in Docket No. RP83-140-000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 13, 1984. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

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the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24015 Filed 9-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-423-001]

Lone Star Gas Co.; Tariff Filing

September 5, 1984.

Take notice that on August 6, 1984, Lone Star Gas Company (Lone Star) tendered for filing its Rate Schedule T-2 to its FERC Gas Tariff, Original Volume No. 2. This tariff is an initial filing and will permit Lone Star to offer transportation service on its interstate facilities under the blanket certificate issued in CP83-423-001, which provides for transportation under Subpart G of Part 284 of the Commission's Rules. Lone Star states that all transportation preformed under this tariff will comply with the requirements of the certificate issued.

Lone Star requests an effective date of August 10, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordanace with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24016 Filed 9-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket NO. CP75-23-022 and CP75-120-015]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition to Amend

September 4, 1984.

Take notice that on August 6, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket Nos. CP75-23-022 and CP75-120-015, a petition to amend further the order issued March 7, 1977, in Docket Nos. CP75-23 and CP75-120 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Tenneco Oil Company (TOC) from additional receipt points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP75-23 it was authorized to transport natural gas for TOC from specified receipt points to a point of interconnection with Creole Gas Pipeline Corporation (Creole) at Yscloskey, Louisiana, for delivery to Air Products and Chemicals, Inc. (Air Products). Petitioner further states that in Docket No. CP75-120 it was authorized to transport natural gas for TOC from specified receipt points at Yscloskey, Louisiana, for delivery to Creole for transportation by Creole to TOC's Chalmette refinery.

Petitioner requests further amendment of the subject order so as to authorize the addition of receipt points for deliveries from TOC's uncommitted interest in Viosca Knoll Blocks 899 and 900, offshore Louisiana. Petitioner states that TOC proposes to deliver the gas from Block 899 to Petitioner at the existing point of interconnection between their facilities on Gulf Oil Company's B platform in Viosca Knoll Block 899. Petitioner further states that TOC proposes to deliver the gas from Block 900 to Petitioner at the existing point of interconnection between their facilities on Gulf Oil Company's A platform in Viosca Knoll Block 900. Petitioner proposed to transport the gas from these new receipt points to Southern Natural Gas Company (Southern) for TOC's account, at the existing point of interconnection of Petitioner's and Southern's facilities on Shell Oil Company's B platform in Block 62, South Pass Area, offshore Louisiana. Petitioner states that TOC has arranged for Southern to transport and deliver, thermally equivalent volumes of gas to Petitioner for TOC's account at the existing point of interconnection between the onshore terminus of the Project South Pass 77 facilities and Petitioner's pipeline at Valve No. 527A-601 in Plaquemines Parish, Louisiana, for transportation by Petitioner for the account of TOC to Yscloskey, Louisiana. Petitioner states that its obligation to execute this service for TOC is contingent upon TOC's ability to persuade Southern to execute the above described transportation service.

Petitioner proposes to charge TOC 15.45 cents and 9.24 cents per Mcf under Petitioner's Rate Schedules T-43 and T-44, respectively, for gas it transports from the proposes receipt points.

Petitioner proposed to transport gas from the new receipt points on a thermally equivalent basis.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 25, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-24017 Filed 9-11-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 3G2842/T463; OPP-FRL-2666-1]

American Cyanamid Co.; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the pesticide (±)Cyano(3-phenoxyphenyl)methyl(±)-4-(difluoro-methoxy)-alpha-(1-methylethyl) benzeneacetate in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire January 15, 1985.

FOR FURTHER INFORMATION CONTACT:
Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmetal Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of August 17, 1983 (48 FR 37277), announcing the establishment of temporary tolerances for residues of the pesticide (±)Cyano(3-phenoxyphenyl)methyl(±)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodities corn grain (except popcorn), fresh corn, and sweet corn (kernels and cob with husk removed) at 0.05 part per million (ppm). These tolerances were issued in response to pesticide petition PP 3G2842, submitted by American Cyanamid Co., Agricultural Division, P.O. Box 400, Princeton, NJ 08540.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 241-EUP-103, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.
2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 15, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: August 24, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-23707 Filed 9-11-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50610; FRL-2666-2]

Issuance of Experimental Use Permits, BFC Chemicals, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit:

1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

45639-EUP-16. Issuance. BFC Chemicals, Inc., 4311 Lancaster Pike, Wilmington, DE 19805. This experimental use permit allows the use of 960 pounds of the herbicide diethatyl ethyl on Bermuda grass grown for seed to evaluate the control of weeds. A total of 240 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from November 23, 1983 to January 31, 1985. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703-557-1830))

10182-EUP-17. Issuance. ICI Americas Inc., Wilmington, DE 19897. This experimental use permit allows the use of 1,680 pounds of the insecticide pirimiphos-methyl on stored grains to evaluate the control of various pests. A total of 133,629 tons are involved; the program in authorized only in the States of Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina South Dakota, Tennessee, Texas, Virginia, Wisconsin, and Washington. The experimental use permit is effective from October 25, 1983 to October 25, 1984. Temporary toleances for residues of the active ingredient in or on corn, grain sorghum, rice, and wheat have been established. A feed additive regulation for residues of the active ingredient in or on rice hulls and the mill fractions of rice and wheat have been established (21 CFR 561.432). (Jay Ellenberger, PM 12, Rm. 205, CM#2, (701-557-2836))

20954-EUP-26. Issuance. Zoecon Corporation, 975 California Ave., P.O. Box 10975, Palo Alto, CA 94304. This experimental use permit allows the use of 250 pounds of the insect growth regulator methoprene in poultry houses to evaluate the control of the darkling beetle. A total of 307,321 square feet are involved; the program is authorized only in the States of Arkansas, Florida, Georgia, North Carolina, Tennessee, and South Carolina. The experimental use permit is effective from November 10, 1983 to November 10, 1984. This permit is issued with the limitation that none of the residues will enter the food-chain. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95-396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: August 23, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-23708 Filed 9-11-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G2976/T464; OPP-FRL-2665-8]

Mobay Chemical Corp.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on certain raw agricultural commodities. These temporary tolerances were requested by Mobay Chemical Corporation.

DATE: These temporary tolerances expire April 20, 1985..

FOR FURTHER INFORMATION CONTACT: By mail.

Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120 has requested, in pesticide petition PP 4G2976, the establishment of temporary tolerances for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities cottonseed at 1.0 part per million (ppm); peanuts at 0.02 ppm; peanut hulls at 0.2 ppm; peanut hay at 20.0 ppm; soybeans at 0.05 ppm; soybean forage at 10.0 ppm; soybean straw at 0.7 ppm; soybean hay at 40.0 ppm; milk at 0.1 ppm; eggs at 0.01 ppm; meat, fat, and meat byproducts of poultry at 0.1 ppm; meat, fat and meat byproducts of cattle, goats, hogs, horses, and sheep at 1.0 ppm; soybean oil at 0.1 ppm; cottonseed hulls at 2.0 ppm; and soybean hulls at 0.1 ppm. A related food/feed additive regulation FAP 4H5416 has established tolerances for the food commodity soybean oil at 0.1 part per million (ppm); and for the feed commodities cottonseed hulls at 2.0 ppm; peanut hay at 20.0 ppm; peanut hulls at 0.2 ppm; soybean forage at 10.0 ppm; soybean hay at 40.0 ppm; soybean hulls at 0.1 ppm; and soybean straw at 0.7 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 3125-EUP-188 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.
2. Mobay Chemical Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 20, 1985. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: August 24, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-23710 Filed 9-11-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2668-4]

Management Advisory Group to the EPA Construction Grants Program; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two day meeting of the Management Advisory Group to the EPA Construction Grants Program (MAG) will be held on September 29-30, 1984, at the Hyatt Regency Hotel, Poydras Plaza and Loyola Avenue, New Orleans, Louisiana. The meeting will begin at 9:00 a.m. on both days and will adjourn at 5:00 p.m. on September 29 and 3:00 p.m. on September 30.

The principal agenda items will be to discuss and prepare the basis for a report on compliance, enforcement and operations and maintenance of municipal wastewater treatment facilities. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. Any member of the public wishing additional information should contact Ms. Georgette Brown at (202) 382-5859.

Dated: September 5, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-24062 Filed 9-11-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 84-391]

SMRS Applications in the New York City, Philadelphia, Washington, D.C., and Baltimore Areas

AGENCY: Federal Communications Commission.

ACTION: Order establishing lottery.

SUMMARY: The Commission has adopted a Memorandum Opinion and Order establishing a random selection lottery procedure to select from among competing applications for 800 MHz

Specalized Mobile Radio Systems in the New York City, Philadelphia, Washington, D.C. and Baltimore areas. This action was taken to expedite the applications process because there are no substantial, material differences among the competing applications.

FOR MORE INFORMATION CONTACT: Jerold Feldman, Private Radio Bureau, (202) 632-7125.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the matter of SMRS applications in the New York City, Philadelphia, Washington, D.C. and Baltimore Areas.

Adopted: August 8, 1984.

Released: August 30, 1984.

By the Commission: Commissioner Quello concurring and issuing a statement; Commissioner Rivera absent.

1. On February 22, 1984, the Commission, in accordance with procedures set forth in the *Second Report and Order* in General Docket No. 81-768, 48 FR 27182 (June 13, 1983), initiated by Public Notice (No. 2465) an expedited paper hearing proceeding to select licensees from among competing applicants for Specialized Mobile Radio (SMR) 800 MHz channels in the New York City, Philadelphia, Washington, D.C. and Baltimore areas. These areas have been consolidated in one proceeding because spacing rules preclude co-channel grants at proposed transmitter sites which are within 70 miles of each other. Only those applications which met the filing requirements as set forth in our *Second Report and Order* in PR Docket No. 79-191, *et al.*, 90 FCC 2d 1981 (1982), are being considered.[1]

2. The Public Notice, citing the comparative criteria established in our *Memorandum Opinion and Order* terminating PR Docket No. 79-191, *et al.*, 48 FR 51917 (November 15, 1983), noted that applicants will be awarded comparative points based upon the following:

(1) Applications proposing to expand an existing loaded trunked system will be awarded two comparative points.

(2) Applicants proposing to operate a new trunked system will be awarded one comparative point.

(3) Applicants proposing to operate a conventional system will be awarded no comparative points.

3. In accordance with Rule 1.221, applicants were required to file a Notice of Appearance and Statement and serve copies on all other applicants within 30 days. The purpose of the information furnished in the statement was to determine each applicant's comparative points. The Public Notice, sent to each applicant by certified mail, stated that an untimely filing of appearance or failure to respond could result in dismissal for failure to prosecute pursuant to Rules 1.221(c) and 1.961(b). Applicants were given 20 days to submit rebuttals or informal complaints concerning the qualifications or statements of competing applicants.

4. The Public Notice indicated that we would review the information submitted and make a final decision concerning the proper comparative points for each applicant. After the paper proceedings, those applications with the highest number of comparative points would be granted. If sufficient channels were not available to grant all applications with the same number of comparative points, grants in that group would be made in accordance with the Commission's lottery procedures.

5. The Public Notice initiating this proceeding listed 132 applications for SMR stations in the New York City, Philadelphia, Washington, D.C. and Baltimore areas.[2] Of these applications the following were dismissed for the reasons shown:

Applicant	File No.	Dismissed	Reason for dismissal
Clear Channel Communications Company	508606 508639 508607	Mar. 29, 1984	At its request.
Metropolitan Communications	508645	Mar. 28, 1984	Do.
Southwide Mobile Telephone Company	508686	do	Do.
Tower Site Communications	508641	Apr. 25, 1984	Application for system within 40 miles of existing station in Frederick, Maryland prohibited by Rule 90.627 (b).
	508649	Mar. 29, 1984	At its request.
	508272	do	Do.
High Tower Co	508719	Apr. 11, 1984	Application for system within 40 miles of existing station in Wheaton, Maryland prohibited by Rule 90.627(b).
Raymond E. Johns, T/A Johns Communications Co.	508389 508390	May 1, 1984	At its request.
Tectel Systems, Inc	508214	Apr. 12, 1984	Do.
Do	508210	June 15, 1984	Application for system within 40 miles of existing station in Bailey's Crossroads, Virginia prohibited by Rule 90.627(b).

6. The following applications are also dismissed by this order, for the reasons shown:

Applicant	File No.	Reason for dismissal
The Ad Shop Ltd	508312	Correspondence returned.
Phyllis R. Biondi	508305	Do.
Barbara Shade/Ross Shade.	507138	Do.
Skippy's Trucking, Inc	509076	Failure to respond.
Crest Utilities	506744	Do.
Graham & Newton	508242	Do.
Jery M. Kalso	508309	Do.
Mobile Comm., Inc	507517	Do.
Richard A. Boulais, d.b.a. Private Line Communications Co.	507746	Do.
Sound-Tronics, Inc	508348	Do.

7. Based on the Notices of Appearance and Statements and clarifying information furnished by several applicants pursuant to our request we have determined that, of the remaining applications, one application is assigned two comparative points for proposing to expand an existing loaded trunked system, 104 applications are each assigned one comparative point for proposing to operate a new trunked system and one application is assigned no comparative points for proposing to operate a conventional system.

8. Consistent with the February 22 Public Notice and the policies and procedures in our *Second Report and Orders* in General Docket No. 81-768, *supra*, and PR Docket No. 79-191, *et al.*, *supra*, applications assigned two comparative points will be granted without a lottery if there are sufficient channels available to accommodate such applicants. Therefore, the application of Henry Brothers Electronics, Inc. (File no. 508679), to add 5 channels to its existing loaded 5 channel SMR system WZN-578 located in Verona, New Jersey will be granted.

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[1] The applications to add to existing trunked systems filed by Carrier Communications Corp. (File no. 508744), Comtran Associates, Inc. (File no. 508021) and Leascom (File no. 508972) were dismissed because they did not meet the required 90% loading standard by the close of the December, 1982 filing period for applications for new 800 MHz frequencies. 90 FCC 2d at 1314-1315. These applications were included in this proceeding pending the outcome of the appeal of their dismissals. On July 10, 1984 the Commission denied the Applications for Review of these dismissal actions. Consequently these applications will receive no further consideration.

[2] The February 22 Public Notice listed 131 applications. On June 7, 1984 the Commission released a Public Notice (No. 4709) adding an applicant who was omitted from the initial list of participants.

9. When spectrum remains available but is insufficient to grant applications which are without substantial, material differences [3] and which are assigned one comparative point, those applications will be designated for random selection. Since sufficient channels are not available to grant all 104 applications proposing to operate a new trunked system, grants of these applications, which are listed in the attachment, will be made in accordance with the Commission's lottery procedures.[4]

10. Since there are insufficient channels to grant all applications for new trunked systems, the remaining application (File no. 508652) for a conventional system filed by Electronic Specialty Services, Inc. is dismissed by this order.

11. Accordingly, it is ordered, pursuant to section 309(i) of the Communications Act of 1934, as amended, (47 U.S.C. 309(i)) and § 1.972 of the Commission's Rules (47 CFR 1.972), that a lottery will be conducted to select from among the 104 competing applications for new trunked SMR systems in the New York City, Philadelphia, Washington, D.C. and Baltimore areas. A Lottery Notice will be issued shortly providing the date and procedures for this random selection process.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Competing Applications To Be Selected by Lottery for SMR Systems in New York City, Philadelphia, Washington, D.C. and Baltimore

1. Adv. Radio Comm. Services of Florida, Inc., P.O. Box 10, 1700 S. Dixie Highway, Boca Raton, FL 33432-0019; New York, NY 509231
2. American Mobile Systems, Inc., 4 West 58th Street, New York, NY 10019; Arlington, VA 505188
3. AMP/American Mobile Phone Corp., 663 5th Avenue, New York, NY 10022; New York, NY 508751
4. Henry Lutz & Anna Lutz d/b as Belford Enterprises, 368 E. Road, Belford, NJ 07718; Clarksville, NJ 508694
5. Frank N. Bovino T/A, Bovino Communications Co., 521 Cypress Street, Westwood, NJ 07675; Central Islip LI, NY 508823
6. Frank N. Bovino, Bovino Communications Co., 521 Cypress Street, Westwood, NJ 07675; Verona, NJ 508801
7. Richard Rosander & Klaus Hoffman, Commercial Communications Co., 500 Swenson Dr., Kenilworth, NJ 07033; Verona, NJ 506238
8. Communications Contracting Corp., 77 Money Street, Lodi, NJ 07644; W. Paterson, NJ 506623
9. Comtran Associates, Inc., 980 E. 35th Street, Brooklyn, NY 11210; Clarksville, NJ 507697
10. Comtran Associates, Inc., 980 E. 35th Street, Brooklyn, NY 11210; Easton, CT 507702
11. Marcel Boulais d/b as Confidential Communications Co., 5346 N. 91st Avenue, Tolleson, AZ 85353; New York, NY 507734
12. LaVonne H. Cordon, 22 Esworthy Terr., Gaithersburg, MD 20760; Independent Hill, VA 506649
13. Crescent Cardboard Co., c/o Crescent Communications, 112 E. 1st N., Logan, UT 84321; Philadelphia, PA 508848
14. Crescent Cardboard Co., c/o Crescent Communications, 112 E. 1st N., Logan, UT 84321; New York, NY 508853
15. Crescent Cardboard Co., c/o Crescent Communications, Co., 112 E. 1st N., Logan, UT 84321; Washington, D.C. 508866
16. Leo Denslow, 340 Cognewaugh Road, Cos Cob, CT 06807; New York, NY 508828
17. Elizabeth Michaels d/b as EM Communications, 3619 S. 7th Street, Arlington, VA 22204; Washington, D.C. 509549
18. Elizabeth Michaels d/b as EM Communications, 3619 S. 7th Street, Arlington, VA 22204; Towson, MD 509548
19. William W. Erdman, 1730 Pennsyvlania Ave. NW., Washington, D.C. 2006; New York, NY 507857
20. Events, Inc., 5702 F General Washington Dr., Alexandria, VA 22314; Manassas, VA 508746
21. Five States Tower Co., P.O. Box 416, Poughkeepsie, NY 12608; New York, NY 508696
22. Frederick R. Head Agency, Inc., 1801 Burnet Avenue, Syracuse, NY 13206; West New York, NJ 508368
23. John J. Gottsman d/b as G & S Enterprises, 1021 Stone Canyon Rd., Los Angeles, CA 90024; Philadelphia, PA 509065
24. John J. Gottsman d/b as G & S Enterprises, 1021 Stone Canyon Rd., Los Angeles, CA 90024; New York, NY 509079
25. John J. Gottsman d/b as G & S Enterprises, 1021 Stone Canyon Rd., Los Angeles, CA 90024; Washington, D.C. 509092
26. General Comms. & Electronics Co., P.O. Box 670, 59 Bloomfield Avenue, Pine Brook, NJ 07058; New York, NY 506237
27. General Electric Radio Ser. Corp., c/o General Electric Co. MRD, 6501 Loisdale Ct., Ste. 1100, Springfield, VA 22150; New York, NY 506856
28. General Electric Radio Services Corp., c/o General Electric Co. MCD, 6501 Loisdale Ct., Ste. 1100, Springfield, VA 22150; Philadelphia, PA 506854
29. General Electric Radio Services Corp., c/o General Electric Co. MRD, 6501 Loisdale Ct., Ste. 1100, Springfield, VA 22150; Washington, D.C. 506859
30. Handle Artists Management Ltd., 307 Candlewood Ct., Millersville, MD 21108; Washington, D.C. 508655
31. Handle Artists Management Ltd., 307 Candlewood Ct., Millersville, MD 21108; Towson, MD 508656
32. Michael E. Handley d/b as The Handley Co., 6260 Paddington Ln., Centreville, VA 22020; McLean, VA 508265
33. Hill's Capitol Security, Inc., 818 Roeder Rd., Ste. 500, Silver Spring, MD 20901; Washington, D.C. 509074
34. Howard Hollander, 185 Beach 136th St., Belle Harbor, NY 11694; Half Hollow Hills, NY 508295
35. J & H Radio, 1 Madison Street, E. Rutherford, NJ 07073; West Orange, NJ 506228
36. John B. Sydnor d/b as JB Sydnor Towing Service, 7128 Idylwood Road, Falls Church, VA 22043; McLean, VA 508313
37. Johnny Matthews Fuel & Trucking, 630 14th St., NE., Washington, D.C. 20002; Washington, D.C. 508752
38. Joel Kornreich, 33 Murray Hill Drive, Spring Valley, NY 10977; New York NY 507169
39. Leader Communications, Inc., 3003 W. Madison, Bellwood, IL 60104; Philadelphia, PA 508255
40. Leader Communications, Inc., 3003 W. Madison, Bellwood, IL 60104; New York NY 508799
41. Leader Communications, Inc., 3003 W. Madison, Bellwood, IL 60104; Washington, D.C. 509228
42. David J. Lesser, 14 Buckingham Drive, Dix Hills, NY 11746; New York, NY 507471
43. Loomis Radio Communications, Inc., P.O. Box 2383, Houston, TX 77001; New York, NY 508697

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[3] 48 FR 27182, 27195 (June 13, 1983).

[4] There are no substantial, material differences among these applicants since they all propose to operate a new 5 channel trunked SMR system and there are no financial qualifications required for applying for an SMR license. We deem there to be no substantial, material differences among applications which are assigned the same number of comparative points. See *Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945, 960 (1975).

44. Maryland Communications Co., Inc., 8641 Loch Raven Boulevard, Towson, MD 21204; Montclair, NJ 506608
45. MEB International Industries Inc., c/o M.E. Birkins, 185 E. Palisade Avenue, Englewood, NJ 07631; West New York, NJ 508266
46. MEB International Industries, c/o M.E. Birkins, 185 E. Palisade Ave., Englewood, NJ 07631; Arlington, VA 508267
47. Guy P. McSweeney, 3340 Peachtree Rd., NE, Suite 1690, Atlanta, GA 30326; Philadelphia, PA 509220
48. Guy P. McSweeney, 3340 Peachtree Rd., NE, Suite 1690, Atlanta, GA 30326; Washington, D.C. 509222
49. Microwave Carphones, Inc., P.O. Box 430016, Houston, TX 77243; Washington, D.C. 508218
50. Mobile/Comm of DC, Inc., P.O. Drawer 2367, Jackson, MS 39205; Vienna, VA 507515
51. Mobile Comms. Service Co., Inc., 147 Wheeler Avenue, Bridgeport, CT 06606; Easton, CT 508693
52. Mobile Radio Dispatch Service, Inc., P.O. Box 249, E. Bruswick, NJ 08816; Marlboro, NJ 508292
53. Motorola, Inc., 1270 Fairfield Rd., Suite 5, Gettysburg, PA 17325; Towson, MD 507477
54. Motorola, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325; Bull Run, VA 507511
55. Motorola, Inc., 1270 Fairfield Rd., Suite 5, Gettysburg, PA 17325; Huntington, NY 508046
56. Motorola, Inc., 1270 Fairfield Rd., Suite 5, Gettysburg, PA 17325; W. Orange, NJ 508124
57. Motorola, Inc., 1270 Fairfield Rd., Suite 5, Gettysburg, PA 17325; Hamilton, NJ 508813
58. Mountain Communications, Inc.,[1] 239 Main Street, West Orange, NJ 07052; Verona, NJ 506622
59. Stewart Nattboy, 3411 Avenue H, Brooklyn, NY 11210; New York, NY 507396
60. Norcom Communications Corp., P.O. Box 2208, N. Babylon, NY 11703; Clarksville, NJ 506750
61. Norcom Communications Corp., P.O. Box 2208, N. Babylon, NY 11703; Plainview, NY 506702
62. NUR Corporation, P.O. Box 6010, Los Osos, CA 93402; Atlantic City, NJ 506659
63. NUR Corporation, P.O. Box 6010, Los Osos, CA 93402; Philadelphia, PA 506669
64. NUR Corporation, P.O. Box 6010, Los Osos, CA 93402; Baltimore, MD 506676
65. NUR Corporation, 2141 10th Street, P.O. Box 6010, Los Osos, CA 93402; New York, NY 509139
66. Nysmac Corporation, 30 W. 25th Street, New York, NY 10010; New Haven, CT 507860
67. Nysmac Corporation, 30 W. 25th Street, New York, NY 10010; New York, NY 508296
68. R.G.I. Communications, Inc., P.O. Box 1068, Maywood, NJ 07606 Fort Lee, NJ 508065
69. Rilor Services, 628 Medford Road, Route 112, Patchoque, NY 11772; New York, NY 508146
70. Charles Sanfillipo, 280 Giffords Lane, Staten Island, NY 10308, New York, NY 507399
71. Scorpion Systems, Inc., Jeremiah Courtney Law Offices, 2120 L St, NW, Ste. 335, Washington, D.C. 20037; Bethesda, MD 509085
72. Scorpion Systems, Inc., Jeremiah Courtney Law Offices, 2120 L St, NW, Ste. 335, Washington, D.C. 20037; New York, NY 509089
73. Scorpion Systems, Inc., Jeremiah Courtney Law Offices, 2120 L St, NW, Ste. 335, Washington, D.C. 20037; Philadelphia, PA 509134
74. SMR Systems Corp., 1318 Round Oak Ct., McLean, VA 22101; Bull Run, VA 509545
75. SMR Systems Corp., 1318 Round Oak Ct., McLean, VA 22101; Catonsville, MD 509546
76. Southwide Mobile Telephone Co., 200 Park Offices, Ste. 200, P.O. Box 13219, Research Triangle Park, NC 27709; Leonardtown, MD 508893
77. Southwide Mobile Telephone Co., 200 Park Offices, Ste. 200, P.O. Box 13219, Research Triangle Park, NC 27709; Hagerstown, MD 508894
78. Southwide Mobile Telephone Co., 200 Park Offices, Ste. 200, P.O. Box 13219, Research Triangle Park, NC 27709; Dover, DE 508907
79. Southwide Mobile Telephone Co., 200 Park Offices, Ste. 200, P.O. Box 13219, Research Triangle Park, NC 27709; Front Royal, VA 508901
80. Southwide Mobile Telephone Co., 200 Park Offices, Ste. 200, P.O. Box 13219, Research Triangle Park, NC 27709; Fredericksburg, VA 508950
81. Southwide Mobile Telephone Co., 200 Park Offices, Ste. 200, P.O. Box 13219, Research Triangle Park, NC 27709; Baileys Cross Rds., VA 509189
82. Specialized Mobile Radio Services, Inc., 53 Broken Arrow Bend, Medford, NJ 08055; Williamstown, NJ 509099
83. Fred Steinberg, 29 Northwood Cir., Huntington, NY 11743; Half Hollows, NY 508275
84. William L. Swartzbaugh, 8 River Road Drive, Essex, CT 06426; W. New York, NJ 506310
85. Tactel Systems, Inc., 8325 Old Marlboro Pike, A–13, Upper Marlboro, MD 20772; Baltimore, MD 506192
86. Texas Mobile Communications, Inc., 1006 Wirt Rd., Ste 120, Houston, TX 77055; Washington, D.C. 506073
87. Texas Mobile Communications, Inc., 1006 Wirt Rd., Ste. 120, Houston, TX 77055; New York, NY 506112
88. Suzanne Tfister & Samuel T. Tornatore, d/b as Tornatore & Co., The University Building, 120 E. Washington Street, Syracuse, NY 13202; W. New York, NJ 506314
89. Tower Site Communications, Inc., 1115 Valewood Road, Towson, MD 21204; Fairfax, VA 506606
90. Tower Site Communications, Inc., 1115 Valewood Road, Towson, MD 21204; Central Islip LI, NY 506629
91. Trans-Ocean Comms, Inc., 82–16 Elliott Avenue, Middle Village, NY 11379; Forest Hills, NY 506993
92. Tri-State Paging Co., Inc., 35C Corbin Avenue, Bayshore, NY 11706; Huntington, NY 509174
93. Tu-Way Mobile Comm. Co., 2350 Schoenersville Rd., Allentown, PA 18103; Philadelphia, PA 506654
94. Two Way Communications Inc., 35C Corbin Avenue, Bayshore, NY 11706; Huntington, NY 506232
95. United States Sugar Corp., P.O. Box Drawer 1207, Clewiston, FL 33440; New York, NY 509164
96. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; Atlantic City, NJ 508234
97. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; Philadelphia, PA 508358
98. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; Frederick, MD 508383
99. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; Washington D.C. 506767
100. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; Allentown PA 508783
101. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; Elkton, MD 506841
102. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; Bridgeport, CT 506882
103. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458; New York, NY 506884
104. Xentel Corporation, P.O. Box 2066, Burbank, CA 91507; New York, NY 507530

August 8, 1984.

Concurring Statement of Commissioner James H. Quello

In re: Random selection proceeding for 800 MHz Specialized Mobile Radio (SMR) licenses in the New York City, Philadelphia, Washington, D.C. and Baltimore areas.

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[1] Mountain Communications, Inc.'s former address of record in this proceeding was 1728 Springfield Ave., Maplewood, NJ 07040.

I object to the manner in which the Commission approached the use of the lottery to decide among SMR applicants in this proceeding. Purporting to adopt a comparative process, the Commission found one-hundred and four applicants equally qualified to operate new SMR systems. In fact, there was no comparison of qualifications. The only "comparative" merits awarded were on the basis of the nature of the proposed service; i.e., expanded, new or conventional. Each applicant's ability to carry out its proposal was simply assumed.

I continue to have concerns that the Commission is unnecessarily weakening its comparative process as it perpetuates a trend toward deciding among applicants by lot.

[FR Doc. 84-23943 Filed 9-11-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Vistors for the Emergency Management Institute; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (Supp. II, 1972)), General Services Administration Regulations 41 CFR Part 101-6, and Federal Emergency Management Agency (FEMA) Regulation 44 CFR Part 12, and after consultation with the General Services Administration, the Director of FEMA has determined that the establishment of the FEMA Board of Visitors for the Emergency Management Institute (EMI) is in the public interest in connection with the performance of duties imposed on the Agency by law.

The objectives and the duties of the Board are to review the programs of EMI and make comments and recommendations to the Associate Director for Training and Fire Programs regarding the operation of the institute and any improvements therein which the Board deems appropriate.

1. In carrying out its responsibilities, the Board may include in its review:

(a) A discussion of the institute's programs to determine whether these programs further the basic mission of the EMI; and

(b) Other appropriate subject areas that are related to the effectiveness of the delivery of the institute's programs.

2. The Board shall draw on the expertise of its members and with the concurrence of the Associate Director for Training and Fire Programs, such other experts as may be considered appropriate in order to provide advice and make recommendations to the Associate Director.

3. The Board shall submit annually a written report to the Associate Director for Training and Fire Programs no later than April each year. This report shall provide detailed comments and recommendations regarding the operation of the institute.

4. The Board shall function solely as an advisory board and comply fully with the provisions of the Federal Advisory Committee Act.

Members and Chairman

The Board of Visitors will be composed of 12 members, including a chairman. The Associate Director shall appoint the individuals to the Board, including the member to be designated as chairman. The members of the Board, including the chairman, shall be selected from among professional in the fields of emergency management, education, public administration and industry and from such professional organizations as will ensure a balanced representation of interest.

Term of Office

Members shall be appointed for 1 year, an on January 1 each year may be reappointed for an additional year at the discretion of the Associate Director with the concurrence of the member. In the event a vacancy occurs, the Associate Director may appoint a replacement to fill the unexpired term.

Interested persons are invited to submit comments regarding the establishment of the Board of Visitors. Such comments, as well as any inquiries, may be addressed to the Rules Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, D.C. 20472.

Dated: September 5, 1984.

Louis O. Giuffrida,

Director.

[FR Doc. 84-24036 Filed 9-11-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0505]

Fee Schedules for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee Schedules for Wire Transfer of Funds and Net Settlement Services.

SUMMARY: The Board has approved a reduction in the basic fee for originating or receiving a wire transfer of funds from $0.65 to $0.60.

EFFECTIVE DATE: September 27, 1984.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202/452-2231) of Florence M. Young, Program Manager (202/452-3955) Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Elaine M. Boutilier, Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

On January 18, 1984, the Board issued for public comment a proposal to assess fixed monthly fees to all depository institutions having an electronic connection to the Federal Reserve for one or more priced services. (49 FR 2828). In conjunction with implementing the fixed monthly fees, it was also proposed that the fee for originating or receiving a basic wire transfer of funds be reduced from $0.65 to $0.60 per transfer.

Forty-eight comments were received from the public on the proposal. While the commenters generally discussed the reduction in the basic transaction fee in connection with the overall proposed fee structure, those who specifically discussed it overwhelmingly supported it.

The financial results of the Federal Reserve priced services operations indicate that during the period January through July 1984, the Reserve Banks have reported a net revenue surplus of $4.4 million. This surplus is attributable to costs lower than originally projected and volume of basic, on-line funds transfers higher than anticipated.

As a result, total cost, including the private sector adjustment factor (PSAF), is now projected to amount to $57.0 million and revenues should amount to $62.5 million, if the fee of $0.65 for a basic transfer is retained. In light of this, the Board has reduced the fee for originating or receiving a basic funds transfer from $0.65 to $0.60, effective September 27, 1984. With this reduction, it is estimated that 1984 revenues for the wire transfer of funds and net settlement service will amount to $61.5 million.

The Board also approved a modified schedule of fixed monthly fees to be assessed to all depository institutions having an electronic connection with the Federal Reserve for one or more priced services, effective January 2, 1985. A detailed notice on this action will be published shortly.

By order of the Board of Governors of the Federal Reserve System, September 6, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-24009 Filed 9-11-84; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicted or the offices of the Board of Governors not later than October 2, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York; to engage *de novo* through its subsidiary, The Chase Manhattan Trust Company of California, N.A., in performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency or custodial nature), in the manner authorized by federal or state law; and including the making of loans and investments and the taking of deposits which are limited to those loans, investments and deposits.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to engage *de novo* through its subsidiary, BA Futures, Incorporated, San Francisco, California, in acting as a futures commission merchant for non-affiliated persons. Such activities will include the execution and clearance on major commodities exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account. These activities would be conduted worldwide from a *de novo* office in Hong Kong. Comments on this application must be received not later than September 26, 1984.

2. *United Security Bancorporation*, Chewelah, Washington; to engage *de novo* through its subsidiary, USB Leasing, Inc., Chewelah, Washington, in leasing personal and real property and acting as agent, broker, or adviser in leasing such property.

3. *Wells Fargo & Company*, San Francisco, California; to engage *de novo* through its subsidiary, Central Western Insurance Company, Phoenix, Arizona, in the activity of underwriting, as reinsurer, credit-related life insurance which is directly related to extensions of credit by the credit extending affiliates of Wells Fargo & Company. These activities would be conducted in the States of Idaho and Utah, and the District of Columbia. Comments on this application must be received not later than September 27, 1984.

Board of Governors of the Federal Reserve System, September 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24064 Filed 9-11-84; 8:45 am]

BILLING CODE 6210-01-M

First Financial Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dsipute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 4, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Financial Bancorporation, Inc.*, Lakeland, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Lakeland, Lakeland, Florida.

2. *Hibernia Corporation*, New Orleans, Louisiana; to merge with Metro Shares, Inc., Metairie, Louisiana, thereby indirectly acquiring First Metropolitan Bank, Metairie, Louisiana.

3. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of The First National Bancorp of The South, Opp, Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 320 South LaSalle Street, Chicago, Illinois 60690:

1. *River Valley Bancorporation, Inc.*, Rothschild, Wisconsin; to acquire 80 percent or more of the voting shares of Farmers State Bank, Pound, Wisconsin.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ralston Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Ralston Bank, Ralston, Nebraska.

Board of Governors of the Federal Reserve System, September 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24063 Filed 9-11-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunication Standards

AGENCY: Office of Information Resources Management, General Services Administration.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on a Federal Telecommunications Standard (FED-STD) proposed for adoption: FED-STD 1029, "Telecommunications: Interoperability and Security Requirements for Encryption of Narrowband Digitized Voice Using the Data Encryption Standard".

DATE: Comments are due within 90 days of the date of this notice.

ADDRESS: Send comments to National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer-communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Request for copies of the July 6, 1984 draft of FED-STD 1029 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dated: September 3, 1984.

Francis A. McDonough,

Acting Assistant Administrator, Office of Information, Resources Management.

[FR Doc. 84-23905 Filed 9-11-84; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83N-0172; DESI 11114]

Wyanoids HC Rectal Suppositories; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug application (NDA) 11-114 for Wyanoids HC Rectal Suppositories. FDA is withdrawing approval because the combination drug product lacks substantial evidence of effectiveness. The product has been used to treat proctitis secondary to ulcerative colitis.

EFFECTIVE DATE: October 12, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 11114 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville MD 20852.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 3, 1974 (39 FR 841) (formerly Docket No. FDC-D-623), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the following NDA:

NDA 11-114; Wyanoids HC Rectal Suppositories containing hydrocortisone acetate 10 milligrams(mg), belladonna extract 15 mg, ephedrine sulfate 3 mg, zinc oxide 176 mg, boric acid 543 mg, bismuth iodide oxide 30 mg, bismuth subcarbonate 146 mg, balsam peru 30 mg, and cocoa butter; Wyeth Laboratories, Division of American Home Products Corp., 685 Third Ave., New York, NY 10017.

The basis of the proposal was that the product lacked substantial evidence of effectiveness. In response to the notice, Wyeth Laboratories requested a hearing. Wyeth has since withdrawn its hearing request. Accordingly FDA is now withdrawing approval of the NDA.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination product Wyanoids HC Rectal Suppositories will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 11-114 and all its amendments and supplements is withdrawn effective October 12, 1984. Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: September 5, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24024 Filed 9-11-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N-0001; DESI 6902]

Roniacol Tablets, Elixir, and Timespan Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug applications of Roniacol Tablets, Elixir, and Timespan Tablets. FDA is withdrawing approval because the drug products lack substantial evidence of effectiveness. The drug products have been used to treat peripheral vascular disease.

EFFECTIVE DATE: October 12, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 6902 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug

Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drugs and Biologics (HFN-366) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 25, 1979 (44 FR 30443), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the following new drug applications (NDA's):.

1. NDA 6-902; Roniacol Tablets containing nicotinyl tartrate 50 milligrams (mg) an Roniacol Elixir containing nicotinyl tartrate 50 mg/milliliter; Roche Laboratories, Division of Hoffmann-La Roche, Inc., 340 Kingsland Rd., Nutley, NJ 07110, and
2. NDA 11-813; Roniacol Timespan (sustained release) Tablets containing nicotinyl tartrate 150 mg; Hoffmann-La Roche, Inc.

The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.111(a)(5). In response to the notice, Roche Laboratories requested a hearing, but subsequently withdraw its hearing request. Accordingly, FDA is now withdrawing aproval of the NDA's.

Any drug product that is identical, related, or similar to a drug product named above and is not the suject of an approved new drug application is covered by the new drug appliations reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that Roniacol Tablets, Elixir, an Timespan Tablets will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of NDA's 6-902 and 11-813 and all their amendments and supplements is withdrawn effective October 12, 1984.

Shipment in interstate commerce of the products above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: September 5, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24023 Filed 9-11-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C-09006]

Colorado; Proposed Continuation of Withdrawal; Air Force Academy, Colorado

Correction

In FR Doc. 84-14698 beginning on page 22894 in the issue of Friday, June 1, 1984, make the following corrections.

On page 22894, Column 3, in the heading "Cintinuation" should read "Continuation",

On page 22895, Column 1, line 5, "1076" should read "1976".

On the same page column 1, in the second complete paragraph, line 7, "purposes" should read "purpose".

BILLING CODE 1505-01-M

Prineville District Advisory Council; Meeting

Notice is herby given in accordance with Pub.L. 92-463 of a meeting of the Prineville District Advisory Council to be held October 5, 1984. The meeting will be in the form of a field orientation tour of portions of the Two Rivers Planning Area in preparation for future involvement in the Two Rivers Resource Management Plan/Environmental Impact Statement process.

The tour will begin at the Prineville District BLM Office at 8:00 AM, located at 185 East Fourth Street, Prineville, Oregon.

The tour is open to the public, however, transportation for the public will not be provided. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address prior to September 28, 1984.

Dated: August 31, 1984.

Gerald E. Magnuson,

District Manager.

[FR Doc. 84-24076 Filed 9-11-84 8:45 am]

BILLING CODE 4310-33-M

Change of Hearing Date for Use of Helicopters for Gathering of Wild Horses in the Sheepshead Herd Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Change of Hearing Date for Use of Helicopters for Gathering of Wild Horses in the Vale District of Oregon.

SUMMARY: In order to accommodate an emergency fire rehabilitation project in the Vale District, Oregon, notice is hereby given that the hearing date for use of helicopters for gathering wild horses in the Sheepshead Mountain Wild Horse Herd has been changed from September 21, to September 17, 1984.

DATE: The hearing on use of helicopters for gathering wild horses in the Vale District, Oregon, will be held September 17, 1984, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Fearl Parker, (503) 473-3144, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, Oregon 97918.

SUPPLEMENTARY INFORMATION: This notice amends a Notice published in the **Federal Register** on August 24, 1984 (49 FR 33730), which announced a hearing on the use of helicopters in the gathering of wild horses in the Heath Creek-Sheepshead Herd Management Area during fiscal year 1985. The original hearing date was set for September 21, 1984. This notice changes the hearing date to September 17, 1984. This change is necessitated by the need to take immediate steps to rehabilitate lands in Southeastern Oregon.

The Bureau of Land Management has approved an emergency fire rehabilitation plan (M-335/EA No. OR-030-4-37) to deal with the effects of the Folly Farm Fire which burned some 12,470 acres in Southeastern Oregon between August 4 and August 8, 1984. The purpose of the project is to protect the soil of the watersheds and to allow native vegetation regeneration by reducing grazing influences, including those of wild horses. The plan requires the gathering of approximately 350 wild horses from the Heath Creek-Sheepshead Herd Management Area of the Burns and Vale Districts, Oregon. The Bureau will also reduce livestock use in the Sheepshead Allotment by 190 cattle for the 1985 and 1986 grazing seasons, and use herding to insure that all livestock stay off the burn area.

An inventory on August 14, 1984, counted 780 wild horses on the Heath Creek-Sheepshead Herd Management Area. The Herd Management Area has been allocated forage to sustain a maximum of 300 head of wild horses. Competition is great among the horse bands for space and feed. The herd is also highly mobile and is known to use the lavas along the southeast perimeter of the burn area as a foaling ground and wintering area. For the reasons set out above, and given the size and fingered configuration of the burn, it is estimated that at least one-half of the herd will migrate to feed on the burn area during fall and spring greenup. Thus, the herd needs to be reduced by approximately 50 percent this fall to lessen expected intense grazing on the weakened perennial grasses in the burn area. In addition, the soil crust would be maintained if wild horse and livestock use can be prevented.

The Bureau of Land Management has allocated to the Vale District additional wild horse and burro program funds on an emergency basis from this fiscal year's appropriation to accomplish this gathering of wild horse prior to, or during appropriation to accomplish this gathering of wild horse prior to, or during the early stages of, fall greenup. Authority to use the allocated funds will expire September 30, 1984. Weather conditions become increasingly adverse in the roundup area during late September and early October, possibly to the point that gathering operations would be impossible. Thus, given the inability to gather during the spring foaling season, the entire burned area could be subject to overgrazing throughout the fall and spring greenups, providing serious, adverse impacts to the vegetation and soil resources, if the roundup is not completed immediately.

Dated: September 10, 1984.

Henry Noldan,

Acting Assistant Director.

[FR Doc. 84-24153 Filed 9-11-84; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Establishment; Fire Island National Seashore

AGENCY: National Park Service—Fire Island National Seashore, Interior.

ACTION: Notice of Establishment.

NOTICE: The Act of September 11, 1964 (Pub. L. 88-587) authorized the establishment of Fire Island National Seashore for the purpose of conserving and preserving for the use of future generations certain relatively unspoiled and undeveloped beaches, dunes, and other natural features within Suffolk County, New York. The National Seashore possesses high values to the Nation as examples of unspoiled areas of great natural beauty in close proximity to large concentrations of urban population.

Section 2(e) of the Act provides that when the Secretary of the Interior determines that lands and waters or interests therein have been acquired by the United States in sufficient quantity to provide an administrative unit, he shall declare the establishment of the Fire Island National Seashore by publication of notice in the **Federal Register.** I have determined that lands and waters or interests therein have been acquired by the United States in sufficient quantity to provide an administrative unit. Accordingly, and by virtue of the authority contained in the Act of September 11, 1964, I hereby declare that Fire Island National Seashore is established.

Dated: September 7, 1984.

William Clark,

Secretary of the Interior.

[FR Doc. 84-24065 Filed 9-11-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-199 (Preliminary)]

Certain Dried Salted Codfish From Canada; Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from Canada of cod, which has been dried and salted, whether or not whole, but not otherwise prepared or preserved, and not in airtight containers, provided for in item 111.22 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 19, 1984, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by Codfish Corporation alleging that an industry in the United States is materially injured by reason of imports from Canada of the subject merchandise which is allegedly being sold at LTFV. Accordingly, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's investigation and of the public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on August 1, 1984 (49 FR 30810). The conference was held in Washington, D.C. on August 10, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on September 4, 1984. A public version of the Commission's report, Certain Dried Salted Codfish from Canada, (investigation No. 731-TA-199 (Preliminary), USITC Publication 1571, September 1984) contains the views of the Commission and information developed during the investigation.

Issued: September 4, 1984.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR. Doc. 84-24113 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

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[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[Investigation No. 731-TA-159 (Final)]

Carbon Steel Wire Rod From Poland; Determination

On the basis of the record [1] developed in investigation No. 731-TA-159 (Final), the Commission determines,[2] pursuant to section 735(b)(i) of the Tariff Act of 1930 (19 U.S.C. 1673(d)(b)(1)), that an industry in the United States is not materially injured, nor threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports of carbon steel wire rod from Poland, provided for in item 607.17 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

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[1] The "record" is defined in § 207.2(i) of the Commission's *Rules of Practice and Procedure* (19 U.S.C. 207.2(i)).

Background

The Commission instituted this final investigation following a preliminary determination by the Department of Commerce that carbon steel wire rod from Poland was being sold in the United States at LTFV. Commerce's preliminary LTFV determination was published in the **Federal Register** on May 8, 1984 (49 FR 19545).

Notice of the institution of the Commission's final investigation and scheduling of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, and by publishing the notice in the **Federal Register** on May 31, 1984 (49 FR 22722). On July 20, 1984, Commerce published in the **Federal Register** (49 FR 29434) its affirmative final LTFV determination with respect to carbon steel wire rod from Poland. The Commission's hearing was held in Washington, D.C. on July 31, 1984, and all persons who requested the opportunity were permitted to appear in person or through counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on September 4, 1984. A public version of the Commission's report, Carbon Steel Wire Rod from Poland (investigation No. 731-TA-159 (Final), USITC Publication 1574, 1984) contains the views of the Commission and information developed during the investigation.

Issued: September 5, 1984.

By Order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-24116. Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

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[2] Chairwoman Stern dissenting

[Investigations Nos. 701-TA-220 (Preliminary) and 731-TA-197 and 198 (Preliminary)]

Certain Welded Carbon Steel Pipes and Tubes From Brazil and Spain; Determinations

On the basis of the record [1] developed in investigation No. 701-TA-220 (Preliminary), the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Spain of small diameter circular welded carbon steel pipes and tubes [2] which are alleged to be subsidized by the Government of Spain.[3] The Commission also determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Spain of light-walled rectangular (including square) welded carbon steel pipes and tubes [4] which are alleged to be subsidized by the Government of Spain.[5] [6]

In addition, on the basis of the record developed in investigation No. 731-TA-197 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of small diameter circular welded carbon steel pipes and tubes which are alleged to be sold in the United States at less than fair value (LTFV).[7]

The Commission further determines, on the basis of the record developed in investigation No. 731-TA-198 (Preliminary), pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Spain of small diameter circular welded carbon steel pipes and tubes which are alleged to be sold at LTFV.[8] The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Spain of light-walled rectangular (including square) welded carbon steel pipes and tubes which are alleged to be sold in the United States at LTFV.[9] [10]

Background

On July 17, 1984, counsel for the Committee on Pipe & Tube Imports (CPTI)[11] filed petitions with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Spain of certain wleded carbon steel pipes and tubes which are allegedly being subsidized by the Government of Spain, and of imports from Brazil and Spain of certain welded carbon steel pipes and tubes which are allegedly sold at LTFV. Accordingly, effective July 17, 1984, the Commission instituted preliminary investigations under the provisions of the Tariff Act of 1930. Notice of the institution of the

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[1] The "record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] The term "small diameter circular welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 4.5 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, and 610.3243 of the Tariff Schedules of the United States Annotated (1984) (TSUSA). Prior to April 1, 1984, the circular pipes and tubes were provided for in TSUSA items 610.3231, 610.3232, 610.3241, and 610.3244.

[3] Chairwoman Stern determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports.

[4] The term "light-walled rectangular (including square) welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness of less than 0.156 inch, provided for in TSUSA item 610.4928. Prior to April 1, 1984, the rectangular pipes and tubes were provided for in TSUSA item 610.4975.

[5] Chairwoman Stern determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports.

[6] Vice Chairman Liebeler dissenting.

[7] Chairwoman Stern determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports.

[8] Chairwoman Stern determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports.

[9] Chairwoman Stern determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports.

[10] Vice Chairman Liebeler dissenting.

[11] The 11 member producers of the CPTI at the time the petitions were filed were Allied Tube & Conduit Corp., American Tube Co., Inc., Bull Moose Tube Co., Century Tube Corp., Copperweld Tubing Group, Kaiser Steel Corp., Merchants Metals, Inc., Pittsburgh-International, Southwestern Pipe, Inc., Western Tube & Conduit, and Wheatland Tube Co. Since the petitions were filed the following 11 firms became members of the CPTI, Central Steel Tube Co., Geneva Tube, LaClede Steel Co., Lone Star Steel Corp., Maverick Tube Corp., Newport Steel Corp., Phoenix Steel Corp., Sawhill division of Cyclops Corp., Sharon Tube Co., UNR-Leavitt, and Woodson Products.

Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on July 30, 1984 (49 FR 30375). A public conference was held in Washington, D.C. on August 8, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on these investigations to the Secretary of Commerce on August 31, 1984. A public version of the Commission's report, *Certain Welded Carbon Steel Pipes and Tubes from Brazil, and Spain* (investigations Nos. 701–TA–220 (Preliminary) and 731–TA–197 and 198 (Preliminary), USITC Publication 1569, 1984), contains the views of the Commission and information developed during the investigations.

Issued September 4, 1984.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–24115 Filed 9–11–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 732–TA–164 (Final)]

Stainless Steel Sheet From Spain

AGENCY: United States International Trade Commission.

ACTION: Amendment of the scope of the Commisisn's antidumping investigation on stainless steel sheet from Spain (Inv. No. 731–TA–164 (Final)) to include stainless steel strip.

SUMMARY: The Commission hereby gives notice of the amendment of the scope of its final antidumping investigation No. 731–TA–164 (Final) to include stainless steel strip, provided for in items 608.43 and 608.57 of the Tariff Schedules of the United States.

EFFECTIVE DATE: September 7, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–523–0369), U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: The Commission's final investigation on stainless steel sheet from Spain was instituted, effective June 26, 1984, following a preliminary determination by the Department of Commerce that there was a reasonable basis to believe or suspect that imports of such merchandise from Spain were being, or were likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). The Commission did not include stainless steel strip within the scope of its final investigation, although it was included in the Commission's preliminary investigation, because the Department of Commerce preliminarily determined that such strip was not being, and was not likely to be, sold in the United States at LTFV. On September 4, 1984, however, the Department of Commerce made a final affirmative determination with respect to both stainless steel sheet and strip from Spain. Accordingly, the Commission is amending the scope of its investigation to conform with the final determination by the Department of Commerce.

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 7, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–24123 Filed 9–11–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–170]

Certain Bag Closure Clips; Commission Decision Not To Review Initial Determination; Deadline for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination that there is a violation of section 337 in the above-captioned investigation. The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure, 47 FR 25134 (June 10, 1982), as amended by 48 FR 20225 (May 5, 1983) and 48 FR 21115 (May 11, 1983); to be codified at 19 CFR 210.53–.56.

SUPPLEMENTARY INFORMATION: On August 9, 1984, the presiding officer issued an initial determination that there is a violation of section 337 in the unauthorized importation and sale of certain bag closure clips, which have the effect or tendency to substantially injure a domestic industry. No petitions for review or agency comments were filed. Having examined the record in this investigation, including the initial determination of the presiding officer, the Commission has determined not to review the initial determination. Consequently, the initial determination has become the Commission determination on violation of section 337 in this investigation.

The Commission notes its disagreement with the presiding officer wherein he considered imports by settled respondents in assessing the existence of an effect or tendency of imports to substantially injure an efficiently and economically operated domestic industry. The Commission believes that there must be a finding of an unfair act with respect to the articles imported by the settled respondents before those articles may be considered relevant to a determinatiion of injury. No such finding was made in this investigation. However, even without considering the imports of settled respondents, the record contains sufficient evidence of an effect or tendency to substantially injure the domestic industry to support the initial determination.

Written Submissions

Inasmuch as the Commission has found that a violation of section 337 has occurred, it may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of relief, if any, that should be ordered.

If the Commission contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are the subject of the investigation and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond, if any, that should be imposed.

The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day that is fourteen (14) days after publication of this notice in the **Federal Register.**

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadline stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's office.

Notice of this investigation was published in the **Federal Register** on November 9, 1983 (48 FR 51551).

Copies of the nonconfidential version of the presiding officer's initial determination of August 9, 1984, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Issued: September 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24121 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-185]

Certain Rotary Wheel Printing Systems; Commission Determination Not To Review Initial Determination Designating Investigation More Complicated and Extending the Deadline for Completion of the Investigation by Sixty-one Days

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) designating the above-captioned investigation "more complicated" and extending the deadline for completion of the investigation by 61 days, i.e., until May 7, 1985.

SUPPLEMENTARY INFORMATION: On August 9, 1984, respondents Primages, Inc. (U.S.) and Primages, Inc. (Republic of China) filed a motion to designate the investigation "more complicated." On August 21, 1984, the presiding officer issued an ID granting the motion to designate the investigation "more complicated" and extending the deadline for completion of the investigation by 61 days. No petitions for review of the ID were received from the parties nor were comments received from any Government agency.

In light of the recent joinder of the Primages firms and Towa Sankiden Corp. as respondents, the cut-off of discovery, and the imminence of the evidentiary hearing absent an extension of the procedural schedule for completing the investigation, the Commission determined that difficulty in obtaining information with respect to the newly joined respondents required that the investigation be designated "more complicated."

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, telephone 202-523-0311.

Authority: 19 U.S.C. 1337; 19 CFR 210.15 and 210.53.

Issued: September 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24112 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-172]

Certain Shearing Machines; Commission Decision Not To Review Initial Determination Terminating Investigation

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 23) terminating the above-captioned investigation.

SUPPLEMENTARY INFORMATION: On July 13, 1984, complainant Bendix Automation Company (Bendix), respondents Amada Japan and U.S. Amada, and the Commission investigative attorney filed a joint motion to terminate the investigation on the basis of a settlement agreement concluded between the Warner and Swasey Company, as successor to the business of complainant Bendix, and respondent U.S. Amada. The presiding officer issued an ID granting the motion for termination on July 27, 1984. The Commission has received neither a petition for review of the ID nor comments from Government agencies or the public.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0311.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

Issued: September 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24111 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Commission Decision Not To Review Initial Determinations Terminating Respondents on the Basis of Consent Order Agreements

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's Initial Determinations (IDs) (Order Nos. 28–31 and 33) terminating respondents Conover Woodcraft Specialties, Inc.; Wilton Corporation; Wilke Machinery Company; Sid Tool Company; Industrial Industries International; Barrett and Tool Guys in the above-referenced investigation on the basis of consent order agreements.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51(c) and 210.53(h).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation in response to a complaint filed by Rockwell International Corp. of Pittsburgh, Pennsylvania to determine whether there is a violation of section 337 in the importation of certain woodworking machines into the United States, or in their distribution and sale. The notice named Conover Woodcraft Specialties, Inc.; Wilton Corporation; Wilke Machinery Company; Sid Tool Company; Industrial Industries International; Barrett and Tool Guys as among the twenty-two respondents. (48 FR 55786, December 15, 1983.)

On July 25, 1984 the presiding officer issued five initial determinations (IDs) terminating Conover Woodcraft Specialties, Inc., and Wilton Corporation (Order No. 28); Wilke Machinery Company (Order No. 29); Sid Tool Company (Order No. 30); Industrial Industries International (Order No. 31); and Barrett and Tool Guys (Order No. 33) as respondents on the basis of consent order agreements.

The Commission has received neither petitions for review of the IDs nor comments from Government agencies or the public.

Copies of the presiding officer's initial determination and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Hannelore V.M. Hasl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

Issued: September 4, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–24122 Filed 9–11–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-186]

Certain Tennis Rackets; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Trak, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on September 6, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies for all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: September 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–24119 Filed 9–11–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-186]

Certain Tennis Rackets; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Snauwaert and Depla, N.V., and Snauwaert and Depla Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on September 7, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: September 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24117 Filed 9-11-84; 8:45 am]

Billing Code 7020-02-M

[332-162]

Cancellation of Hearing on Foreign Industrial Targeting

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing.

Background

The Commission instituted the present investigation on its own motion under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on April 19, 1983, at the request of the Subcommittee on Trade of the House Committee on Ways and Means. The original notice of investigation, published in the **Federal Register** of May 11, 1983 (48 FR 21210), announced that the investigation would be divided into three phases: the first to consider Japanese industrial targeting, the second to consider the European Community's industrial targeting, and the third to consider industrial targeting of other major U.S. trading partners. The first and second phases of the study have been completed and reports published (USITC Publications 1437 in October 1983 and 1517 in April 1984). The third phase of the study was initiated on June 1, 1984, and a notice was published in the **Federal Register** of June 6, 1984 (49 FR 23463).

Public Hearing

A public hearing was scheduled to be held in the Commission Hearing Room in Washington, D.C., beginning at 10 a.m. on September 11, 1984. Because there were only three witnesses requesting an opportunity to testify, the Commission has canceled the hearing.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons were invited to submit written statements concerning the investigation no later than October 10, 1984. Because of the cancellation of the hearing, written submissions concerning the investigation will be received until October 31, 1984.

Issued: September 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24120 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-183]

Certain Indomethacin; Hearing

Notice is hereby given that a prehearing conference in this matter will be held at 9:00 a.m. on September 17, 1984, in Hearing Room F at the Interstate Commerce Commission Building, 12th & Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: September 6, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-24118 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

[332-192]

Conditions of Competition Between the U.S. and Major Foreign Filbert Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1322(g)) for the purpose of assessing the competitive position of filberts in the U.S. and major foreign markets.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Z. Macomber, principal analyst (telephone 202-724-1765) or Mr. David L. Ingersoll, Chief, Agriculture, Fisheries, and Forest Products Division (telephone 202-724-0068), U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

At the request of the United States Senate Committee on Finance, the Commission has instituted investigation No. 332-192 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of gathering and presenting information on the competitive and economic factors affecting the U.S. filbert nut industry in U.S. and major foreign markets and the competitive position of the major foreign suppliers in these markets. In some markets, filberts are also referred to as hazelnuts. Specifically, the Commission has been asked to:

(A) Profile the U.S. filbert industry,

(B) Compare U.S. and foreign tariff and nontariff barriers, such as grading standards and sanitary regulations,

(C) Describe international trade agreements bearing on trade in filberts,

(D) Discuss factors of competition between U.S. and major foreign suppliers in the U.S. market,

(E) Compare prices of U.S. and imported filberts,

(F) Identify the levels and trends in employment of U.S. growers and processors of filberts,

(G) Compare transportation costs for domestic and imported filberts to major U.S. market areas, and

(H) Compare marketing practices of U.S. and foreign suppliers.

The Committee specified that the products to be investigated should include in-shell filberts, and shelled, blanced, or otherwise prepared or preserved filberts. The Commission expects to complete its study by April 16, 1985.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be received by the Commission at the earliest practicable date, but not later than December 31, 1984. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: September 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24130 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

[332-193]

The Impact of Rules of Origin on United States Imports and Exports

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning the impact of rules of origin on the competitive position of U.S. imports and exports, at the direction of the President, and the scheduling of a hearing in connection therewith.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Forest (202) 523-0363—O/TA & TA.

Background and Scope of Investigation

The Commission instituted the investigation, No. 332-192, following receipt on August 20, 1984, of a request therefor by the President transmitted through the U.S. Trade Representative (USTR). The advice requested will be used as part of the United States' contribution to the General Agreement on Tariffs and Trade Ministerial meetings concerning rules of origin.

The economic consequences and potential trade distortions resulting from the application of rules of origin have been a matter of increasing concern in recent years. Efforts have been underway in various international fora to explore the possibility of making differing national rules of origin more uniform and consistent.

This study will focus on assessing the effects on trade of rules of origin applied by the United States and its major trading partners. In view of the fact that the structure and operation of the differing rules may significantly affect the competitive position of imports and exports in a market, the investigation will include an analysis of those aspects of the various rules. The major portion of the study, however, will be devoted to the examination of comments and complaints received from importers and exporters regarding the impact felt by them as a result of the application of rules of origin.

A copy of the request letter received from USTR is available for public inspection in the Office of the Secretary. The Commission's scheduled completion date for the report is April 19, 1985.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., on January 29, 1985. All persons shall have the right to appear by council or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, not later than noon, January 22, 1985.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on January 22, 1985. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: September 6, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24114 Filed 9-11-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 166)]

Rail Carriers; Chicago and North Western Transportation Co.—Abandonment—In Le Sueur and Waseca Counties, MN; Findings

The Commission has issued a certificate authorizing Chicago and North Western Transportation Company to abandon its 23.0-mile rail line between Montgomery, MN, milepost 63.0, and Waseca, MN, milepost 86.0 in Le Sueur and Waseca Counties, MN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.57.

James H. Bayne,

Secretary.

[FR Doc. 84-24051 Filed 9-11-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 159)]

Rail Carriers; Chicago and North Western Transportation Co.; Abandonment in Polk, Warren, Madison, Union, Ringgold, and Taylor Counties, IA, and in Worth, Nodaway, Andrew, and Buchanan Counties, MO; Findings

The Commission has issued a certificate authorizing Chicago and North Western Transportation Company to abandon its 150.5-mile line of railroad between Des Moines, IA (milepost 214.5) and St. Joseph, MO (milepost 64.0) in Polk, Warren, Madison, Union, Ringgold, and Taylor Counties, IA and in Worth, Nodaway, Andrew, and Buchanan Counties, MO. The certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period. The following notation shall be typed in bold face on the lower lefthand corner of the envelope containing the offer: "Rail Section, AB-OFA."

Information and procedures regarding financial assistance for continued rail service are set forth at 49 U.S.C. 10905 and 49 CFR 1152.57.

James H. Bayne,

Secretary.

[FR Doc. 84-24052 Filed 9-11-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 107)]

Rail Carriers; Seaboard System Railroad, Inc.; Abandonment in Horry County, SC; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc., to abandon its rail line between milepost ACH-336.10 near Conway and milepost ACH-350.20 near Myrtle Beach, a distance of 14.10 miles in Horry County, SC. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 84-24050 Filed 9-11-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30553]

Camp Lejeune Railroad Company—Lease Exemption; Exemption

Camp Lejeune Railroad Company (CLRR) filed a notice of exemption concerning acquisition of a Seaboard System Railroad, Inc. line of railroad from MP ACB-294.6 at Marine Junction, near Jacksonville, NC, to MP ACB-300.0 at Kellum, NC, a distance of approximately 5.4 miles. That line had been approved for abandonment by the Commission in Docket No. AB-55 (Sub-No. 79), *Seaboard System Railroad, Inc.—Abandonment and Discontinuance of Operations—In New Hanover, Pender, Onslow, Jones and Craven Counties, NC* (not printed), served March 5, 1984, and its acquisition by CLRR will not constitute a major market extension. Lease of the above rail line between Marine Junction and Kellum and lease from the United States of America, Department of the Navy, of the line between Kellum and Havelock, NC, will be considered in a separate decision.

Accordingly, this transaction comes within that class of transactions specifically exempted from the necessity of prior Commission review and approval under 49 CFR Part 1180 (2)(d)(1).

As a condition to use of this exemption, any employee affected by the purchase shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Decided: September 7, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-24196 Filed 9-11-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Arenol Chemical Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 15, 1984, Arenol Chemical Corporation, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 12, 1984.

Dated: September 5, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-24048 Filed 9-11-84; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

Registration of F-1 and M-1 Students

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of registration of certain F-1 and M-1 students for the Service's new automated student schools system.

FOR FURTHER INFORMATION CONTACT: Alice N. Strickler, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C., Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: In October 1984, the first computer-generated student status forms, required by 8 CFR 214.3(g)(2), will begin to be sent to schools approved by the Service for attendance of nonimmigrant F-1 and M-1 students. Not all schools will receive forms in October. The process will continue until June 1985.

A one-time registration of F-1 and M-1 students is also being done to capture data on those students who are not yet on record in the Service's new automated student schools system (STSC). The registration is being combined with a school's response to the first student status form it receives during Fiscal Year 1985 to facilitate processing for both the public and the Service. Accordingly, the schools will be given ninety days from the date generated to respond to the first student status forms they receive during Fiscal Year 1985, instead of the normal sixty stated in 8 CFR 214.3(g)(2). The procedures being used were set up in close coordination with the National Association for Foreign Student Affairs (NAFSA).

Under 8 CFR 214.1(f), a condition of a nonimmigrant's admission and continued stay in the United States is the full and truthful disclosure of all information requested by the Service. In accordance with that regulation, any student who is not listed by the Service on the first student status form sent during Fiscal Year 1985 to the school the student was last authorized to attend must sign any necessary Forms I-20A-B or I-20M-N, and must make his or her Forms I-94 and/or I-20 ID copy and any information necessary for this registration available to the Service. The designated school official must collect the necessary forms and information and furnish them to the Service upon request. If any student fails or refuses to give a designated school official any necessary forms or information, the Service will then request it directly from the student.

(Secs. 101(a)(15)(F) and 101(a)1(5)(M) and 214 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(15)(F), 1101(a)(15)(M) and 1184)

Dated: September 7, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-24093 Filed 9-11-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of the Secretary

State of California Employment Development Department; State of Idaho Department of Employment; State of Montana Department of Labor and Industry; Commonwealth of Puerto Rico Department of Labor; Hearing

This notice annouces an opportunity for a hearing for the unemployment compensation agencies of the States of California, Idaho, and Montana, and the Commonwealth of Puerto Rico (the "four States"), pursuant to the last sentence of section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c), and 20 CFR 601.5, to be held at 9:30 o'clock on the morning of October 2, 1984, in a Courtroom in the Vanguard Building, 1111 20th Street, NW., Washington, D.C. Each State agency will have an opportunity to make a record.

The hearing will be on the following issues:

Issues: Whether, with respect to the certification of the four States on October 31 1984, under section 3304(c) of the Internal Revenue Code of 1954 (the Code), 26 U.S.C. 3304(c), the unemployment compensation laws of the four States have failed to have been amended, with respect to weeks of unemployment beginning on or after April 1, 1984, so that—

(1) With respect to the State of California and the State of Idaho, their unemployment compensation laws include the provisions of clause (iv) of section 3304(a)(6)(A) of the Code (relating to employees of educational service agencies who perform services in professional and nonprofessional capacities in educational institutions), as amended by section 521(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98-21);

(2) With respect to the State of Montana, its unemployment compensation law includes the provisions of clauses (ii), (iii), and (iv) of section 3304(a)(6)(A) of the Code (relating to employees of educational institutions and educational service agencies who perform professional and nonprofessional services in educational institutions), as amended by section 521(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98-21); and

(3) with respect to the Commonwealth of Puerto Rico, its unemployment compensation law includes the provisions of clauses (iii) and (iv) of section 3304(a)(6)(A) of the Code (relating to employees of educational institutions and educational service agencies performing professional and nonprofessional services in educational institutions), as amended by section 521(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98-21).

Basis of Issues: Section 3304(a)(6)(A) of the Code provides that unemployment compensation shall be payable under a State law on the basis of service to which section 3309(a)(1) applies, that is service in the employ of a governmental entity or nonprofit organization described in paragraphs (7) and (8) of section 3306(c) of the Code, 26 U.S.C. 3306(c), in the same amount, on the same terms, and subject to the same conditions as unemployment is payable on the basis of other service subject to the State law. Clauses (ii), (iii), and (iv) of section 3304(a)(6)(A), exceptions to this "equal treatment" requirement, authorized the States, at their option, to deny benefits under certain conditions to nonprofessional employees of educational institutions between successive academic years or terms (clause (ii)), to deny benefits under certain conditions during certain vacation and holiday periods to professional and nonprofessional employees of educational institutions (clause (iii)), and to deny benefits under the conditions specified in clauses (i), (ii), and (iii) to employees of educational service agencies who perform professional or nonprofessional services in an educational institution (clause (iv)). Section 521(a)(2) of Pub. L. 98-21 amended clauses (ii), (iii), and (iv) of section 3304(a)(6)(A), effective for weeks of unemployment beginning on or after April 1, 1984, to make those provisions mandatory rather than optional with the States. As amended the clauses read as follows:

(ii) With respect to services in any other capacity [*i.e.*, nonprofessional] for an educational institution to which section 3309(a)(1) applies—

(I) Compensation payable on the basis of such services shall be denied to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) If compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),

(iii) With respect to any services described in clause (i) or (ii) [*i.e.*, professional or nonprofessional], compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess, and

(iv) With respect to any services described in clause (i) or (ii) [*i.e.*, professional or nonprofessional], compensation payable on the basis of such services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

Section 521(b)(1) of Pub. L. 98-21 provides that the amendments made in section 521(a)(2) are applicable to weeks of unemployment beginning on or after

April 1, 1984. Section 521(b)(2) provides a "grace period" for the enactment of needed changes in State laws, which has expired for each of the four States.

The State unemployment compensation laws of the four States appear not to be in conformity with the provisions of section 3304(a)(6)(A) of the Code, as amended by section 521(a)(2) of Pub. L. 98–21. The last sentence of section 3304(c) of the Code is therefore applicable to conformity proceedings on this issue.

Following the hearing a decision will be made as to each State. Such decision will have a bearing on whether each State is certifiable on October 31, 1984, with respect to normal and additional tax credits allowable to the State's employers pursuant to subsections (a) and (b) of 26 U.S.C. 3302 for the taxable year 1984, and will also have a bearing on other benefits to the State under the Federal-State unemployment compensation program.

The proceedings in this matter shall be in accordance with the attached Rules of Procedure.

For purposes of this hearing, all motions, briefs, and other papers shall be filed, pursuant to the above-referenced Rules of Procedure, with the presiding Administrative Law Judge, U.S. Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20036, who will be designated in accordance with the Rules of Procedure.

Counsel for each State unemployment compensation agency shall enter an appearance with the presiding Administrative Law Judge no later than September 13, 1984; a copy shall be provided to William H. DuRoss, III, Associate Solicitor for Employment and Training, 200 Constitution Avenue, NW., Washington, D.C. 20210, as expeditiously as possible.

Counsel for the U.S. Department of Labor shall enter an appearance with the presiding Administrative Law Judge no later than September 13, 1984; a copy shall be provided to each State agency as expeditiously as possible.

Signed at Washington, D.C., on September 6, 1984.

Raymond J. Donovan,
Secretary of Labor.

Rules of Procedure

1. An Administrative Law Judge will be designated by the Chief Administrative Law Judge, United States Department of Labor, to preside over the hearing and perform the functions required by these Rules.

2. The parties of record shall be the State agency (or agencies) (as defined in 26 U.S.C. 3306(e)) named in the Notice of Hearing and the U.S. Department of Labor.

3. Any non-party State agency, individual worker, employer, or organization, association of workers or employers, or member of the public, asserting an interest in the proceedings, may be permitted by the presiding Administrative Law Judge, upon motion granted, to participate in the hearing as amicus curiae only. Participation by any such amicus curiae shall be limited to the submittal of such briefs as may be directed by the presiding Administrative Law Judge. All motions contemplated by this Rule shall be filed with the presiding Administrative Law Judge no later than two (2) days prior to the scheduled hearing, and shall be served upon and received by each party prior to the hearing. The presiding Administrative Law Judge shall rule on all such motions and inform the applicants and the parties of the rulings prior to the hearing or at the beginning of the hearing.

4. The presiding Administrative Law Judge may issue an appropriate prehearing order governing all issues to be raised in the proceedings, and designation of evidence to be offered at the hearing.

5. The hearing will be conducted in an informal but orderly and expeditious manner. The presiding Administrative Law Judge will regulate all matters pertaining to the course and conduct of the proceedings, and may grant extensions of time regarding the submission of briefs and other papers, and may reschedule the hearing for another time or date for good cause shown.

6. Upon the commencement of the hearing, the U.S. Department of Labor will be offered an opportunity to make an opening statement as to the nature of the hearing and the matter(s) in issue. The State agency shall then be offered a similar opportunity to make an opening statement.

7. The order of the presentation of evidence will be as follows:

(a) The U.S. Department of Labor will proceed first by presenting any evidence it may wish to offer which is relevant to the issue(s) specified in the Notice of Hearing.

(b) The State agency will proceed next to present any evidence it may wish to offer which is relevant to the issue(s) referred to in Rule 7(a) above, followed by any evidence relevant to any additional issue, except that evidence regarding any issue other than the issue(s) referred to in the Notice of Hearing may be admitted only if the party offering such evidence has provided notice of such issue and a summary of such evidence, including a copy of any document to be offered, to each opposing party of record, prior to the hearing.

(c) The U.S. Department of Labor may next present relevant evidence in rebuttal on any issue, and the trial record shall thereafter be closed, except as provided for by Rule 9 below.

8. Technical rules of evidence shall not apply to the hearing. The presiding Administrative Law Judge will rule upon offers of proof and the admissibility of evidence, and may exclude irrelevant, immaterial, or unduly repetitious evidence or any other evidence excludable under these Rules, and may examine witnesses. All writings, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a satisfactory showing of their authenticity, relevancy, materiality, and admissibility under these Rules, be received in evidence.

9. During the hearing, the presiding Administrative Law Judge may require the production and introduction of further evidence upon any relevant matter, and may provide for the later receipt of such evidence or any other evidence for the record.

10. The proceedings at the hearing shall be recorded verbatim. The original and one copy of the transcript of the record of the hearing shall be furnished to the presiding Administrative Law Judge. The parties of record and any amicus curiae shall be entitled to secure a copy of the transcript from the reporter upon such terms as the party or amicus may arrange.

11. When any document is offered in evidence, one additional copy thereof shall be furnished to the presiding Administrative Law Judge and, unless previously provided, a copy shall be furnished to each opposing party of record.

12. (a) At the conclusion of the receipt of evidence, the presiding Administrative Law Judge shall hear oral arguments presented by the parties of record.

(b) Oral arguments shall be in the following order: Opening argument for the U.S. Department of Labor, unless waived; argument for the State agency, unless waived; and closing argument for the U.S. Department of Labor, unless waived.

13. The parties of record and any amicus curiae authorized to participate in the proceedings shall be permitted to file briefs. The parties of record may also file reply briefs and proposed findings of fact and conclusions of law on the matters in issue. All such briefs

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and other papers shall be filed with the presiding Administrative Law Judge, with proof of service, within such time periods as are established by the presiding Administrative Law Judge.

14. As soon as possible, but in no event later than October 12, 1984, the presiding Administrative Law Judge shall: (1) Prepare a recommended decision on the basis of the record containing recommended findings of fact and conclusions of law on all issues raised by the parties; (2) certify to the Secretary of Labor such recommended decision and the entire record of the proceedings; and (3) forward a copy of the recommended decision to each party of record and amicus curiae. No conclusions of law regarding either the constitutionality of any Federal or State statute or the constitutionality of interpretation thereof shall be made.

15. The parties of record may file with the presiding Administrative Law Judge a Statement of Exceptions, with proof of service, setting forth any exceptions they may have to the recommended decision, within seven (7) days after service by mail of the recommended decision. Upon receipt of any Statement of Exceptions, the presiding Administrative Law Judge shall promptly forward such Statement of Exceptions and proof of service to the Secretary of Labor, noting whether the statement was timely filed.

16. (a) Any briefs or other papers intended to be filed of record with the presiding Administrative Law Judge in the proceedings shall be mailed or otherwise delivered to the office of the presiding Administrative Law Judge. Unless otherwise ordered, such documents shall be deemed to be filed on the date they are postmarked if transmitted by the United States Postal Service, and shall be deemed to be filed on the date received in the Office of Administrative Law Judges if transmitted by any other means.

(b) An original and one copy of any brief or other paper shall be filed with the presiding Administrative Law Judge and shall be accepted subject to timely filing with proof of sufficient service upon the opposing parties.

(c) If the last day of a time limit prescribed by these Rules or established by the presiding Administrative Law Judge falls on a Saturday, Sunday, or a federal holiday, the time limit shall be extended to the next official business day.

17. Following the certification in accordance with Rule 14 above, and consideration of any Statement of exceptions filed and served in accordance with Rules 15 and 16, the Secretary of Labor shall render a decision in the matter, in writing, and shall forward the decision together with the record to the Chief Administrative Law Judge, and shall forward copies of his decision to the Governor of the State, to each party of record, and to any amicus curiae authorized to participate in the proceedings.

[FR Doc. 84-24039 Filed 9-11-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Office for Partnership Advisory Panel (Locals Test Program Section); Meeting

The meeting of the Office for Partnership Advisory Panel (Locals Test Program Section) which is scheduled to meet on September 12, 1984, from 10:00 a.m.–5:00 p.m.; on September 13, 1984, from 9:00 a.m.–5:00 p.m.; and on September 14, 1984 from 9:00 a.m.–1:00 p.m. is hereby amended to meet on September 12, 1984, from 10:00 a.m.–5:00 p.m.; on September 13, 1984, from 9:30 a.m.–5:00 p.m.; and on September 14, 1984, from 9:30 a.m.–1:00 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

The portions of this meeting which are scheduled to be open to the public on September 12, from 10:00 a.m.–11:00 a.m.; on September 13, from 2:30 p.m.–5:00 p.m.; and on September 14, from 9:00 a.m.–1:00 p.m. are hereby amended to be open on September 12, from 10:00 a.m.–2:15 p.m.; on September 13, from 3:45–5:00 p.m.; and on September 14, from 9:30 a.m.–1:00 p.m. to discuss policy, guidelines, and report on Locals Advocacy Project.

The remaining sessions of this meeting scheduled to meet on September 12, from 11:15 a.m.–5:00 p.m. and on September 13, from 9:30 a.m.–2:30 p.m. are now changed to meet September 12, from 2:15–5:00 p.m. and on September 13, from 9:30 a.m.–3:45 p.m. which are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Futher information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-24025 Filed 9-11-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Accident Investigation; Hearing

The National Transportation Safety Board will hold an Accident Investigation Hearing in the matter of the head-on collision of National Railroad Passenger Corporation (Amtrak) trains Nos. 168 and 151 at Astoria, Queens, New York, New York, on July 23, 1984, beginning at 9 a.m. on Tuesday, October 2, 1984, in the Georgian Room of the New York Penta Hotel, Seventh Avenue and 33rd Street, New York, New York 10001.

Dated: September 7, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-24053 Filed 9-11-84; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Gessar II; Meeting Postponed

The ACRS Subcommittee on GESSAR II scheduled for September 20 and 21, 1984, at the Bayview Plaza Holiday Inn (213/399–9344), 530 Pico Blvd., Santa Monica, CA has been postponed. Notice of this meeting was published Wednesday, September 5, 1984 (49 FR 35062).

Dated: September 7, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-24087 Filed 9-11-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Radiological Effects; Meeting

The ACRS Subcommittee on Reactor Radiological Effects will hold a meeting on Thursday, September 27 and Friday, September 28, 1984, Room 1046, 1717 H

Street, NW, Washington, DC. The entire meeting will be open to public attendance. Sessions of the subject meeting will be held from 8:30 a.m. until the conclusion of business each day.

On Thursday, the Subcommittee will (1) continue its discussion of NRC Staff proposed amendments to 10 CFR Part 20 to specify residual radioactive contamination limits, and (2) be briefed by and hold discussions with the NRC Staff on the status of the following Generic Safety Issues:

1. (Worker) Radiation Protection Plans,
2. Reactor Coolant Activity Limits for Operating Reactors,
3. Control Room Habitability,
4. Iodine Spiking, and
5. Radiation Source Control.

On Friday, the Subcommittee will be briefed by and hold discussions with (1) the NRC Staff on their evaluation of TMI-2 cleanup endpoint alternatives, and (2) DOE on their systematic approach regarding reactor safety and radiation protection research.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of DOE, the NRC Staff, Subcommittee consultants, and other interested persons regarding the previously named topics.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one to two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated September 7, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-24088 Filed 9-11-84; 8:45 am]

BILLING CODE 7590-01-M

Revised Inspection and Enforcement Manual Chapter Proprietary Review of Inspection Reports; Availability

The Office of Inspection and Enforcement has revised its manual chapter concerning the procedures for conducting proprietary review of inspection reports.

The revision of this manual chapter includes guidance that terminates the practice of routinely sending inspection reports to licensees for review for proprietary information prior to placing them in the Public Document Room (PDR). This revision places responsibility upon the licensee to inform inspectors that material provided in the course of an inspection is proprietary and upon the NRC staff to conduct proprietary reviews. In cases of significant doubt, on a case-by-case basis, the manual chapter calls for the licensee to be requested to conduct a proprietary review of final inspection reports prior to their placement in the Public Document Room.

For further information contact: Mr. Edwin F. Fox, Jr., Program Support and Analysis Staff, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 (telephone (301) 492-4905).

A copy of this notice and the manual chapter is being sent to all NRC licensees. A copy of the manual chapter is being placed in NRC's Public Document Room, 1717 H Street, NW, Washington, DC and in each Local Public Document Room (LPDR) throughout the United States for review by interested persons. Photo copies of the manual chapter may be obtained from the Public Document Room, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at 7 cents a page by calling (202) 634-3273.

Dated at Bethesda, MD, this 4th day of September 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-24086 Filed 9-11-84; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Power Planning Council

Northwest Conservation and Electric Power Plan; Proposed Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: On April 27, 1983, the Council adopted a final Northwest Conservation and Electric Power Plan (Power Plan). The Council is now proposing to amend two portions of that plan. This notice describes the proposed amendments, provides information on how to obtain additional information, and outlines the process for submitting written comments and participating in the hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m. October 12, 1984. Public hearings on the proposed amendments will be held in:

- Portland, Oregon at 9:00 a.m., October 4, 1984 in the Portland Building, 1120 SW., 5th Avenue, Meeting Room C on Second Floor.
- Seattle, Washington at 9:00 a.m., October 3, 1984 in Seattle Center, Mercer Forum VI (below Opera House).
- Boise, Idaho at 9:00 a.m., October 5, 1984 at the Owyhee Plaza, Encore Room, 11th and Main.
- Missoula, Montana at 9 a.m., October 1, 1984 at the Village Red Lion Motor Inn, 100 Madison.

Copies of the proposed amendments can be obtained by contacting Michele Sterling at the address and phone numbers given below.

Instructions for Oral Comment at Hearings

1. Requests for time slots must be made at least three days prior to the hearings to Ruth Curtis, Information Coordinator, at the Council's central office, 700 SW., Taylor, Suite 200, Portland, Oregon 97205 or (503) 222-5161 (toll free 1-800-222-3355 out of state or 1-800-452-2324 in Oregon).
2. Those who do not sign up for time slots will be permitted to testify as time permits.
3. Hearings should be used to summarize written comments. Comments should not be read.
4. Five copies of written testimony should be submitted to the Council.

5. Commenters will have 15 minutes to summarize written testimony.

Instructions for Written Comment

1. Comments must be received in the Council's central office, 700 SW., Taylor Street, Suite 200, Portland, Oregon 97205 by 5 p.m. on October 12, 1984. Comments received after that date will not be considered.

2. Written comments should be marked "Power Plan Amendments Comment."

3. Provide five copies of all comments.

FOR FURTHER INFORMATION CONTACT: Tom Foley, Manager, Conservation and Resource Assessment (regarding Appendix D), or Mark Cherniack, Conservation Analyst (regarding Action Item 12.13), 700 SW., Taylor, Suite 200, Portland, Oregon 97205) Toll-free 1-800-222-3355 in Montana, Idaho, and Washington; toll-free 1-800-452-2324 in Oregon; or 503-222-5161).

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), allows the Council to amend its Plan from time to time. At its meeting in Portland, Oregon on August 30, 1984 the Council voted to formally propose amending two portions of the Plan's Appendix D, "Method of Surcharge."

Appendix D, "Method of Surcharge."

The Act authorizes the Council to recommend that Bonneville Power Administration (Bonneville) impose rate surcharges upon utilities in jurisdictions in the region that fail to adopt the Council's model conservation standards or to implement measures which achieve comparable savings of electricity. 16 U.S.C. 839(f)(2). The Act also requires that the Council's Power Plan include a method for calculating such surcharges. 16 U.S.C. 839b(e)(3)(G). That method is included in the Plan's Appendix D. Bonneville recently informed the Council that it has encountered difficulties in developing a surcharge policy using the Council's Appendix D. In response, the Council developed an issue paper examining all aspects of the surcharge method. On July 23, 1984, after incorporating ideas raised by the Council in a discussion of the issue at the July 18-19, 1984 Council meeting in Spokane, the issue paper was sent to interested parties for public comments. Oral public comment was taken at the August 8-9, 1984 Council meeting in Kalispell, Montana and written comments were also received. As a result, at its August 30, 1984 meeting in Portland, Oregon, the Council voted to propose amending Appendix D of the Power Plan.

The anticipated effect of the proposed amendment is that the method of surcharging will be improved in at least the following ways:

- State and local jurisdictions and Bonneville customers will be able to see clearly how the surcharge might affect them;
- Bonneville's administrative duties will be lessened as it will not have to maintain voluminous records on consumers in its customers' service territories;
- The surcharge will be imposed only during the period that standards are not adopted or equivalent energy savings realized;
- Potentially time consuming and data intensive calculations will be eliminated.

The proposed text of the amended Appendix D is as follows:

Section 4(f)(2) of the Act provides for Council recommendation for surcharges on customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve savings of electricity comparable to the model conservation standards. The Council is responsible for drafting a "methodology" for the calculation of surcharges. The Council, in Action 25 of Chapter 10 of this Plan, has recommended to the Administrator that he impose a surcharge on customers serving jurisdictions which do not adopt the model conservation standards or achieve comparable savings. The purpose of the surcharge is twofold: (1) To recover costs imposed on the region's electric system by failure to adopt the model conservation standards or achieve comparable savings, and (2) to provide a strong incentive to utilities and state and local jurisdictions to adopt and/or enforce the standards or comparable alternatives. The following is the "methodolgy" for calculating surcharges:

1. The following model conservation standards must be adopted or comparable savings must be achieved in order to avoid surcharges:

- Model Standards for new residential buildings, Action 2;
- Model Standards for new commercial building, Action 6;
- Model Standards for conversion to electric space heat in residential buildings Action 3; and
- Model Standards for conversion to electric space conditioning in commercial buildings, Action 7.

2. The Administrator shall identify those customers, states, or political subdivisions which have not:

a. Implemented each of the model standards listed in paragraph 1; or

b. Achieved comparable savings of electricity through other conservation methods, such as utility electric service requirements or rate designs.

3. The surcharge shall then be calculated by the Bonneville Administrator as follows:

a. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and is not exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10% of the cost to the customer of all firm power purchased from Bonneville under the Power Sales Contract.

b. If the customer is not purchasing firm power from Bonneville under a Power Sales Contract, but is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10% of the cost to the customer of the power purchased from Bonneville in the exchange.

c. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and also is exchanging under a Residential Purchase and Sales Agreement the surcharge is calculated to be (a) 10% of the cost to the customer of firm power purchased under the Power Sales Contract *plus,* (b) 10% of the cost to the customer of power purchased from Bonneville in the exchange multiplied by the fraction of the utility's exchange load that is served by the utility's own resources.

This calculation of the surcharge is designed to eliminate the possibility of surcharging a utility twice on the same load. In the calculation, the portion of a utility's exchange resource that is purchased from Bonneville and already surcharged under the power sales contract is subtracted from the exchange resources before establishing a surcharge on the exchange load.

d. If only a portion of a utility's service area has not adopted the model standards or achieved comparable savings, the surcharge calculated under a., b., or c. above is to be multiplied by the non-complying jurisdiction's share of the utility's total load.

The surcharge shall be removed when model conservation standards have been adopted and enforced or alternative programs, estimated by the Administrator in consultation with the Council to save an equivalent amount of electricity, have been implemented.

4. A utility electric service requirement that results in construction of electrically space conditioned buildings which are the equivalent of buildings in compliance with the model conservation standards constitutes an alternative plan that achieves comparable electricity savings. The Council anticipates that very few state or local governments or utilities will present other types of alternative plans to save a comparable amount of electricity to that which can be saved through adoption of the model conservation standards. This is because, to comply with the Plan, an alternative program would have to rely on conservation activities not included in the Plan or currently offered by Bonneville. However, any entity that chooses not to adopt a particular model conservation standard within the alloted period for adoption and wishes to avoid a surcharge must declare, before that period expires, how it intends to achieve comparable savings. In addition, that entity must indicate how it

intends to demonstrate attainment of comparable savings.

To assist Bonneville in estimating comparable electricity savings from alternative plans, the entity should present its best estimate of new residential and commercial building construction in the non-complying jurisdictions within its service territory. Bonneville shall determine, in consultation with the Council, whether the alternative conservation plan of an entity will achieve comparable savings. When determining electricity savings that would have occurred had the standards been adopted, jurisdiction-specific weather data and construction estimates, where available, should be used along with the Council's residential and commercial heat loss models.

The Council recognizes that in many cases data will not be available. In these cases Bonneville should rely on average electricity savings estimated by building type and climate zone and included in the Plan. For residential buildings, Bonneville should assume the following regarding houses build to the model conservation standards: (1) Houses in climate zone 1 would save, on average, 5,130 kWh per year; (2) houses in climate zone 2 would save, on average, 8,508 kWh per year; and (3) houses in climate zone 3 would save, on average, 7,830 kWh per year. For commercial buildings and where good estimates are not available for the number of new houses, the savings should be determined by multiplying total expected regional average megawatt savings by sector from the standards, as shown in the Plan, by the utility's share of total regional load in the applicable sectors. Estimates of savings from conversion standards should be made on a case-by-case basis. The Council recognizes that these estimates will be difficult to make, but also that estimated savings from conversion standards probably will be small relative to savings from building standards. The Council will work with Bonneville on these estimates as requested.

If only a portion of a utility's service area has not adopted the standards, the lost electricity savings calculated in the above paragraph should be multiplied by the non-complying area's share of the utility's total applicable load.

If the Bonneville Administrator determines that the alternative plan will not achieve comparable savings, he shall notify the entity that its alternative plan has been judged to be not equivalent to the model conservation standards and that Bonneville will begin adding a surcharge to the entity's bill on a date certain. The surcharge will be calculated as described in Paragraph 3 of this method. If subsequent modifications to the entity's alternative plan bring it into compliance with the stated goals of the standards, then the surcharge shall be removed.

A general method of determining the electric energy savings of an alternative conservation plan shall be developed in consultation with the Council and included in Bonneville policy to implement the surcharge. Also, a method shall be included in the policy for terminating the surcharge once the model standards have been adopted and enforced or comparable savings have been achieved.

Action Item 12.13, Street and Area Lighting

On page 10–18 of the Two-Year Action Plan, Action Item 12.13 states that Bonneville Power Administration shall "Terminate financial assistance for street and area lighting improvements during the current period of surplus. Street and area lighting improvements have a short expected lifetime. These improvements would contribute unneeded savings during the surplus but would not last long enough to offset later deficits."

Bonneville supports continuation of the street and area lighting program at a low budget level through Fiscal Year 1988. Bonneville has presented the following information to the Council as reasons for this position:

(a) The program can be restarted if needed;

(b) The resource is the most expensive being undertaking in the commercial sector, with the exception of private outdoor lighting;

(c) Conversion of street lamps produces savings at night, when they are less valuable to BPA and to the region; and

(d) Commercial sector megawatt targets can be met without savings from this sector.

In addition, Bonneville has stated that continued operation of this program at a maintenance level is justifiable because:

(1) Inducing utilities to stock efficient fixtures encourages them to use the efficient fixtures on the new accounts.

(2) If utilities build up inventories of installed efficient fixtures, BPA hopes that they will eventually convert their entire inventory to efficient stock and use them for all replacements. At that point, BPA support could be completely terminated and the savings would still accrue.

The proposed amendment to Action Item 12.13 states that Bonneville shall "Continue financial assistance for the street and area lighting program at a minimum viable level."

The Council voted at the August 30, 1984 Council meeting to proceed with a public hearing process on this proposed amendment.

(Sec. 4, Pub. L. 96–501, 16 U.S.C. 839b)

Edward Sheets,

Executive Director.

[FR Doc. 84–24012 Filed 9–11–84; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–21294; File No. SR–NASD–84–21]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Revisions to NASD By-Laws Governing Authority To Organize and Operate Automated Systems

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the Association's By-Laws to expand its authority to organize and operate automated systems and to adopt rules and fees applicable to such systems without further recourse to the membership.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment to the By-Laws is primarily designed to conform the By-Laws language to certain statutory changes, clarify the application of certain provisions and generally update and modernize the By-Laws, as it specifically relates to the operation and regulation of evolving automated systems operated or under the control of the Association.

The text of the proposed By-Law amendment is one segmentable provision of a comprehensive revision to the By-Laws developed by the Association and approved by its membership. The Association is requesting that this single provision, involving the powers and authority of the Board of Governors with respect to the organization and operation of automated systems, be separately approved on an accelerated basis to enable the timely implementation of the Small Order Execution System and adoption of the rules and procedures necessary to regulate the use of this system.

This proposed rule change is believed by the Association to be consistent with section 15-(A)(b)(6) of the Act which requires that rules of the Association are designed to provide for "facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and a national market system, and, in general, to protect investors and the public interest;".

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association believes this rule change does not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Comments were solicited and received from the membership on the comprehensive revision of the By-Laws contained in SR-NASD-84-14, however, no comments were received with respect to the substance of the proposed rule change which is the subject of this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to a request for accelerated effectiveness as provided for under section 19(b)(2) of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 3, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 6, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24044 Filed 9-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21285; File No. SR-NASD-78-14]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Daily Reporting of Nonmarket Maker Block-Size Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. filed on September 25, 1978, and revised on May 14, 1979 and August 7, 1984, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association proposes to amend Schedule D of the NASD By-Laws to require members to report to the Association each day block-size transactions in NASDAQ securities, other than convertible debentures and those securities designated as NASDAQ/NMS securities, which are executed with persons other than registered NASDAQ market makers in that security.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments to Schedule D of the NASD By-Laws would improve the information available on NASDAQ securities by collecting volume in block-size transactions by non-market makers. The exclusion of NASDAQ/NMS securities is based upon the requirement already contained in Schedule D that all transactions in these securities be reported on a real-time basis. The exclusion of convertible debentures is in response to members' comments. The second amendment announced herein updates the filing by deletion of redundant and out-dated provisions and responds to comments by the Commission staff and others.

The proposed amendments to Schedule D are designed to fulfill the responsibility of the Association under 15A(b)(6) of the Securities Exchange Act of 1934, as amended, to facilitate transactions in securities, to perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose the same requirement on all NASD members and the number of transactions subject to the proposed rule is relatively small. As such, the Association does not foresee any impact on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Comments were solicited in Notice to Members 78-6. Seven comments in total were received. Several comments were deemed meritorious by the NASD Board of Governors and appropriate changes were made in the text of the proposed rule. Other comments focused on the burdens associated with transaction reporting. Notwithstanding the merits of these arguments at the time of their submission, the Association notes that since April 1, 1982 members have been obliged to have procedures in place to report trades in NASDAQ/NMS securities irrespective of their status as market makers in those securities. As such, it appears that any additional burden from this proposed rule change has been significantly reduced.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization located at 1735 K Street, NW., Washington, D.C. 20006.

All submissions should refer to the file number in the caption above and should be submitted by October 3, 1984.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Dated: September 4, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24045 Filed 9-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 14130; 812-5840]

Biltmore Holdings, Inc.; Filing of Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From All Provisions of the Act

September 6, 1984.

Notice is hereby given that Biltmore Holdings, Inc. ("Applicant") (formerly Canterbury Funding, Inc.), c/o Joyce A. Dixon, Esq., Dixon Dixon & Minahan P.C., Suite 1900, One First National Center, Omaha, Nebraska 68102, a Delaware corporation, filed an application on May 4, 1984, and amendments thereto on August 8, 1984, and August 31, 1984, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all of the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the relevant provisions thereof.

Applicant states that it was organized on April 26, 1984 for the sole purpose of engaging in the business of issuing and selling its commercial paper and using the net proceeds of the sale thereof to purchase participations in certain loans made by Bank of America National Trust and Savings Association ("Bank of America"), a national banking association organized and existing under the laws of the United States.

Applicant represents that payment of principal of, and interest on, Applicant's commercial paper will be guaranteed by The Travelers Indemnity Company ("Travelers"), a Connecticut corporation, pursuant to commercial paper bonds of indemnity to be issued by Travelers with respect to such commercial paper. It is further stated that substantially all of Applicant's assets will consist of participations purchased from Bank of America in loans made or otherwise owned by Bank of America meeting certain eligibility criteria.

Applicant represents that none of its outstanding common stock is, or in the future is proposed to be, owned by Bank of America or by Travelers or by any of their respective affiliates. Applicant further states that it is expected that approximately 40% of Applicant's outstanding common stock will be held in a voting trust, the trustee of which will be a designee of Travelers, pursuant to which Travelers will have veto power over certain corporate matters which, as provided in Applicant's certificate of incorporation, require the affirmative vote of two-thirds of the holders of Applicant's common stock. Applicant represents that there has been, and undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security of Applicant.

Applicant states that it proposes to issue and sell in the United States short-term negotiable promissory notes generally referred to as commercial paper ("Notes"). It is stated that the Notes will be offered and sold without registration under Section 5 of the Securities Act of 1933, as amended ("Securities Act"), in reliance upon a no-action letter from the Commission regarding the belief of Applicant that the offering and sale of the Notes are entitled to the exemption from the registration requirements of the Securities Act afforded by section 3(a)(3) thereof. Applicant represents that the Notes will not be issued or sold until Applicant has received such a no-action letter.

Applicant states further that the Notes will be sold in denominations $100,000 or more, will mature not more than 95 days from the date of issuance and will not be payable on demand prior to maturity or include any provisions for extension, renewal or automatic "roll-over" at the option of either the holder or Applicant. Applicant further represents that the Notes, prior to issuance, will have received one of the three highest ratings from at least one of the nationally recognized statistical rating organizations.

Applicant further states that the net proceeds of the sale of the Notes will be used by Applicant to purchase participations ("Participations") from Bank of America in loans meeting eligibility criteria specified in the Loan Participation Agreement. Each Participation purchased by Applicant will be a participation in only one eligible loan. It is stated, in addition, that the maturity date of any eligible loan in which a Participation is sold will be the same as the maturity date of the related Participation, and the same as the maturity date of the related commercial paper Notes. The maturity date of any eligible loan cannot exceed 95 days. Furthermore, the principal amount of each Participation purchased by Applicant shall be identical to the principal amount of each issuance of

Notes, the proceeds of which are used to purchase such Participation. Each issuance of Notes shall, Applicant further states, be made on the same business day on which the Participation to which such issuance relates is purchased. It is further stated that it is intended that Applicant will not purchase any Participation unless the "participation rate" thereon will be sufficient to pay all related costs and expenses of Applicant.

As represented in the application, the principal debt amount of each Participation to be purchased by Applicant shall not exceed 50% of the principal debt amount of the eligible loan in which such Participation is granted and, in any event, Bank of America shall retain a principal debt amount of each eligible loan at least equal to the principal debt amount of the Applicant's Participation in such eligible loan. The minimum size of any Participation is $100,000. The total amount of Participations in loans to any one obligor or its affiliates cannot exceed $10,000,000. Any portion of an eligible loan that it not subject to a Participation and is not required to be owned by Bank of American is not restricted as to ownership by documents between the Applicant and Bank of America. However, according to the application, Bank of America has represented to Applicant that such portion of an eligible loan will not be beneficially owned by more than 100 persons.

Applicant represents that payment of the principal of, and interest on, the Notes will be unconditionally guaranteed by Travelers pursuant to its obligations under the commercial paper bonds of indemnity ("Bonds of Indemnity") to be issued with respect to the Notes. Applicant undertakes, moreover, not to issue any Notes other than Notes the full payment of which is guaranteed by Travelers pursuant to the Bonds of Indemnity. It is further stated that, in order to secure the performance of Applicant's covenants to pay Travelers the premiums on the Bonds of Indemnity when due and to indemnify Travelers for certain losses Travelers may incur as a consequence of the performance of its obligations under the Bonds of Indemnity, Applicant shall transfer, pledge and assign to a trustee ("Trustee") in trust for the benefit of Travelers, and at all times maintain in the trust estate, "eligible collateral" (consisting of the Participations, evidenced by a master participation certificate, and/or cash) in an amount at least equal to the amount of principal, plus interest to maturity (or the face amount, in the case of Notes sold on a discount basis) of all Notes then outstanding). Applicant represents that it shall also assign to the Trustee, with respect to any Participation included in the trust estate, all its rights under the Loan Participation Agreement, including the right to have certain Participations repurchased by the Bank of America.

Applicant further represents that the Notes will be offered publicly to the types of sophisticated investors who ordinarily participate in the commercial paper market and that, although an announcement of the establishment of the commercial paper facility may be made as a matter of record, the Notes will not be advertised or otherwise offered for sale to the general public. Applicant undertakes to ensure that each dealer in the Notes will furnish each offeree a memorandum decribing the Notes and the businesses of Travelers and Applicant. Applicant represents that such memorandum will be updated to reflect material adverse changes in the financial condition of Travelers or Applicant and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States.

Applicant asserts that the exemption requested should be granted as being appropriate in the public interest, and consistent with the protection of investors and with the purposes underlying the Act. In support of this assertion, it is stated that the sole business of Applicant is to purchase Participations from Bank of America, thereby making available to Bank of America an additional source of funding for high-quality, short-term loans to its creditworthy, domestic corporate customers. Therefore, it is further asserted that Applicant's purpose and operations would be virtually identical to the purpose and operations of domestic banks, which are specificially excepted by section 3(c)(3) from the definition of investment company contained in the Act, and to the operations of foreign banks and foreign subsidiaries of domestic banks which the Commission has heretofore exempted from all provisions of the Act pursuant to section 6(c) of the Act. The application states that Bank of America has represented to Applicant that the transaction described in the application complies with all applicable banking law, rules and regulations. Further, it is asserted that a major purpose of the transaction described in the application is to provide an alternate funding source for new loans to qualified Bank of American corporate customers. No extensions of credit to such obligors shall have been adversely classified by appropriate Bank of American lending or loan review officers or the United States Comptroller of the Currency.

Applicant's Notes, it is further stated, will be unconditionally guaranteed by Travelers, an insurance company subject to the supervision of the insurance commissioners of each of the 50 states in which it is licensed to conduct its surety and insurance business. Applicant also alleges that the type of operations in which it will engage do not give rise to the types of abuses, such as insider loans and other forms of self-dealing, which Applicant believes the Act was principally designed to remedy. Therefore, it is stated, exemption of Applicant pursuant to section 6(c) of the Act would not diminish investor protection against such abuses. Finally, Applicant contends that the limited purpose for which it has been created, the nature of its assets, and the dependence by investors upon entities other than Applicant for repayment of Applicant's commercial paper indicate that Applicant is a different type of entity from that to which Congress intended the Act to apply.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 1, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-24041 Filed 9-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 23412; 70-7017]

Middle South Utilities, Inc.; Proposal To Issue Common Stock to Employee Stock Ownership Plan; Exception From Competitive Bidding

September 5, 1984.

The Middle South Utilities, Inc. ("Middle South") 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has proposed a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Middle South proposes to issue and sell to the Trustee of its Employee Stock Ownership Plan ("Plan") through December 31, 1987, a maximum of 2,000,000 shares of unissued common stock, $5 par value, along with 69,114 shares last authorized for such sale by prior Commission order (HCAR No. 23155, December 7, 1983). The purpose of the issuance is to provide additional common stock funding for the 1983 Plan year.

The exact number of shares to be issued by Middle South will be determined pursuant to the Plan, with respect to the Plan year. Middle South proposes to apply the proceeds to reduce its bank loans and for other corporate purposes.

The Plan will be amended effective January 1, 1983 to qualify contributions made to it for payroll-based tax credit treatment under the Economic Recovery Tax Act of 1981. Cash contributions to the Plan are limited to one-half of one percent of aggregate compensation paid or accrued in 1983, unless the subsidiaries of Middle South as contributors to the Plan, elect an investment-based tax credit of one and one-half percent of qualified investments. The purchase price per share of common stock acquired from Middle South by the trustee will be the fair market value as of the date of acquisition. Middle South's common stock had a market value of $13.12 at the close of 1983, with a market to book ratio of 1.26.

Under the Plan, the trustee is required to reinvest cash dividends paid on shares of Middle South's common stock allocated to a participant's account in additional shares of common stock. In reinvesting these cash dividends, the trustee may purchase common stock under the Plan, at the price provided for in such plan, on the open market or by private purchase, including purchases directly from Middle South at fair market value.

Middle South states that compliance with the requirements in paragraphs (b) and (c) of Rule 50 is not necessary or appropriate in the public interest or for the protection of investors or consumers to assure the maintenance of competitive conditions, the receipt of adequate consideration or the reasonableness of any fees or commissions to be paid.

The proposal and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 1, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24042 Filed 9-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. 23413; 70-6906]

Middle South Utilities, Inc. and Middle South Energy, Inc.; Proposed Common Stock Sales to Parent Holding Co.

September 6, 1984.

Middle South Utilities, Inc. ("MSE"), a registered holding company, and Middle South Energy, Inc. ("MSU"), a wholly owned subsidiary of MSU, 225 Baronne Street, New Orleans, Louisiana 70112, have filed a further proposal in this proceeding with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 43 thereunder.

MSE is authorized by its articles of incorporation to issue up to one million shares of common stock, no par value. By order dated March 23, 1984 (HCAR No. 23259), the Commission authorized MSE to issue and sell up to 100,000 shares to MSU through December 31, 1984, at a price of $1,000 per share. As of August 9, 1984, 72,900 shares of the 1984 common stock had been issued, raising to 776,500 the total number of shares sold by MSE to MSU.

The companies now state that, based upon MSE's revised estimate of cash requirements, in addition to the 27,100 authorized shares yet to be sold, MSE may need to sell an additional 160,000 shares (at $1,000 per share) to MSU through July 31, 1985. The proceeds will be applied toward costs incurred by MSE in the construction of its Grand Gulf nuclear-fired generating facility in Mississippi. Sales will be timed to coincide with MSE's cash needs with respect to the Grand Gulf project.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 1, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal as filed or as it may be amended, may be authorized.

For the Commission, by the Office of the Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24043 Filed 9-11-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 15bl-3
No. 270-8

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15bl-3 (17 CFR 240.15bl-3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) which requires the filing of a Form BD upon succession of a broker or dealer to the business of a registered broker or dealer. The potential affected persons are approximately 100 registered broker-dealers per year. Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 6, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24091 Filed 9–11–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash—(202) 272–2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Revised

Forms N–1A (270–283), N–2 (270–21), N–5 (270–172), N–8B–2 (270–181), and N–8B–4 (270–180)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance amendments to the following forms: N–1A, registration statement for open-end investment companies; N–2, registration statement for closed-end investment companies; N–5 registration statement for small business investment companies; N–8B–2, registration statement for unit investment trusts which are currently issuing securities; and N–8B–4, registration statement for face-amount certificate companies. This action is being taken in connection with revision of rule 12–1 under the Investment Company Act of 1940, which is renumbered rule 12d3–1. This rule will permit registered investment companies to acquire securities of issuers that derive 15% or less of their gross revenues from securities related activities (that is, the business of a broker, dealer, investment adviser or underwriter) without restrictions and, for the first time under the Act, permit investment companies to acquire securities of issuers that derive more than 15% of their gross revenues from securities related activities, provided certain conditions are met. The amendments to the registration forms will require identification of any broker-dealer whose securities the investment company has acquired where the broker-dealer regularly sells the investment company's shares, engages in principal transactions with the company or executes its portfolio transactions, and disclosure of the extent of the investment company's holdings in any such broker-dealer.

Submit comments to OMB Desk Officer: Katie Lewin (202) 395–7231, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: September 6, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24092 Filed 9–11–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14129; 812–5912]

American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust, et al.; Filing of Application for an Order for Exemption to the Extent Necessary To Implement the Proposed Reorganization

September 5, 1984.

Notice is hereby given that the American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust ("Mortgage Trust") and the American Federation of Labor and Congress of Industrial Organizations Housing Investment Trust ("Housing Trust," together, "Applicants"), 815 Sixteenth Street, NW., Washington, DC 20006, filed an application on August 2, 1984, and an amendment thereto on September 4, 1984, for an order of the Commission, pursuant to section 17(b) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of section 17(a) of the Act to the extent necessary to implement the proposed merger of the two Applicants. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

Applicants state that they are open-end, management investment companies, registered under the Act. In addition, Applicants state that "units of beneficial interest" of the Housing Trust (the "Housing Trust Units") are registered under the Securities Act of 1933 in indefinite number pursuant to Rule 24f–2(a)(1) under the Act. Applicants propose that the Housing Trust issue Housing Trust Units in exchange for assets of the Mortgage Trust on the basis of relative net asset values on September 30, 1984 (the "Exchange Date"), as provided in the Plan of Reorganization (the "Plan") between Applicants. It is also proposed that the Housing Trust will assume any known liabilities of the Mortgage Trust on the Exchange Date, as provided in the Plan, and that such liabilities will be taken into account in determining relative net asset values on that date as stated in the Plan. Each Applicant will bear the fees and expenses incurred by it in connection with the merger. Applicants represent that following the proposed exchange, the Mortgage Trust will distribute Housing Trust Units to participants in the Mortgage Trust pro rata to each participant's interest in the Mortgage Trust. Following the distribution of Housing Trust Units, the Mortgage Trust will dissolve and terminate its registration under the Act.

According to the application, the investment objective of both Applicants are identical: To secure income through investment in federally insured or guaranteed construction and long-term loans secured by mortgages or liens upon real estate and in certificates representing interests in one or more such loans. Pending investment in such loans and certificates, assets of each Applicant are held in short-term liquid securities which may or may not be secured by real estate or by federal guarantees or insurance. Mortgage investments of each Applicant are limited to union-built projects. Each Applicant only acquires mortgages with yields competitive with those then generally prevailing on mortgages having comparable terms and conditions taking into account differences in risk including those resulting from differences in properties, borrowers and loan terms.

The application states that both Applicants value their respective units on quarterly valuation dates; in both cases, the next regular valuation date occurs on the Exchange Date. The application further states that the valuation methods employed by each Applicant are identical. Although the fiscal year of the Mortgage Trust ends on June 30 whereas the fiscal year of the Mortgage Trust ends on September 30, the financial statements for each Applicant as of the Exchange Date will be audited by independent public accountants.

Applicants represent that they each reserve the right to claim tax-exempt status as labor organizations under section 501(c)(5) of the Internal Revenue Code. They further represent that neither expects to be taxable on income at the trust level. According to Applicants, because only labor organizations and eligible pension plans hold certificates of participation in the Mortgage Trust and the Housing Trust, the participants will ordinarily be exempt from federal income taxation on distributions from each Applicant. Applicants state that, for the foregoing reasons, no adjustment will be made for potential tax benefits or burdens of unrealized appreciation or depreciation in calculating the relative net asset values of each Applicant on the Exchange Date.

According to the application, the proposed reorganization will benefit the participants of each Applicant because consolidation will simplify and economize the administration of the assets of both Applicants. Separate reports and tax returns of each Applicant will not have to be prepared and filed. The maintenance of separate books and records for each Applicant will be eliminated as will separate annual audits. Because the consolidated entity will be substantially larger than either Applicant individually, investment in larger and more important union-built housing projects will be facilitated.

According to the application, each Applicant is sponsored by and has personnel and service agreements with the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"). The application also states that certain AFL-CIO officials and employees and other labor organization officials are trustees or officers of both Applicants. Because Applicants may not qualify for exemption under Rule 17a-8 under the Act, Applicants request a Commission order of exemption pursuant to section 17(b) of the Act. Applicants submit that the requested order is appropriate because the terms of the proposed transaction, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each participating registered investment company as recited in its registration statement and reports filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 28, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24069 Filed 9-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14128; 812-5317]

Pacific Funding Corp.; Filing of Application for an Order Exempting Applicant From All Provisions of the Act

September 5, 1984.

Notice is hereby given that Pacific Funding Corp. ("Applicant"), 165 Broadway, New York, NY 10080, a Delaware corporation, filed an application on September 14, 1983, and an amendment thereto on July 13, 1984, for a restated order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all of the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant states that it was organized as a special purpose corporation, created solely to issue and sell commercial paper notes, the subject of Applicant's previous order (Investment Company Act Release No. 12917, December 21, 1982) and medium-term promissory notes (discussed below), and to use the net proceeds of those sales to make purchases ("Purchases") from Union Bank ("Bank"), a banking corporation organized under the laws of California, of promissory notes ("Loan Notes") issued to the Bank by its customers ("Borrowers") evidencing loans or credit ("Loans") made or advanced by the Bank to the Borrowers.

Applicant further states that Borrower's payment obligations under each loan will be supported by an irrevocable letter of credit ("Letter of Credit") issued in favor of Applicant by the Bank for the account of each Borrower. Each Letter of Credit will entitle Applicant to demand payment thereunder in the event of a failure of the Borrower for whose account the Letter of Credit was issued to pay upon maturity Loans made to the Borrower. Substantially all of Applicant's assets will consist of notes representing the Loans. Applicant represents that none of Applicant's outstanding stock is or will in the future be owned by the Bank, by any of the Borrowers, or by any affiliate of the Bank or the Borrowers, and that there has been and there will in the future be no public offering of Applicant's common stock. Applicant proposes to issue and sell (i) in public transactions, short-term negotiable promissory notes ("Commerical Paper Notes") and (ii) in non-public transactions medium-term promissory notes ("Medium-Term Notes").

The application indicates that the Commercial Paper Notes will be sold in minimum denominations of $100,000. Applicant undertakes not to market any Commercial Paper Notes prior to receiving an opinion of counsel that the proposed offering of commercial paper is exempt from the registration requirements of the Securities Act of 1933 ("Securities Act"). Applicant does not request Commission review or approval of counsel's opinion, and the Commission expresses no opinion concerning availability of any such exemption.

Applicant states that the Commerical Paper Notes will be offered publicly, through one or more major dealers, only to the types of sophisticated and largely institutional investors that ordinarily participate in the commercial paper market and that, while an announcement of the establishment of the commercial paper facility may be made as a matter of record, the offering will not be advertised. Applicant undertakes to ensure that each dealer in the Commercial Paper Notes will furnish to each offeree a memorandum describing the businesses of the Bank and Applicant and providing the most recent annual and quarterly financial information for the Bank. Applicant represents that the memoranda prepared by each dealer will be updated as promptly as practicable to reflect material adverse changes in the financial status of Applicant or the Bank and will be at least as comprehensive as memoranda customarily used in offering commerical paper in the United States. Applicant consents to having the granting of its requested order expressly conditioned upon its compliance with the undertakings in the prior two sentences. Applicant represents that, prior to their issuance, the Commercial Paper Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, and Applicant's counsel will have certified that the rating was received.

Applicant states that the Medium-Term Notes will be sold in minimum denominations of not less than $150,000, will have maturities of from one to seven years, and will be sold only in non-public transactions. Applicant undertakes not to issue and sell any Medium-Term Notes prior to receiving an opinion of counsel that the private placement exemption available under section 4(2) of the Securities Act or Regulation D thereunder is applicable to these Medium-Term Note transactions.

Applicant states that it may, from time to time, offer for sale other debt securities, the proceeds of which would be similarly used to purchase Loan Notes. Applicant undertakes that any future issue of Applicant's debt securities will have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that Applicant's counsel will have certified that the rating was received. However, Applicant understands that no such rating shall be required to be obtained with respect to an issue of Applicant's other debt securities if, in the opinion of counsel, an exemption is available for the issue, pursuant to section 4(2) of the Securities Act or Regulation D thereunder. Applicant further undertakes that, in respect of any further offerings of Applicant's debt securities, it will obtain an opinion of counsel or a "no-action" letter issued by the staff of the Commission to the effect that the proposed offering is in compliance with, or entitled to an exemption from, the registration requirements of the Securities Act.

Applicant will utilize all of the net proceeds from sales of the Commerical Paper Notes or the Medium-Term Notes to make Purchases from the Bank. Applicant represents that for each Borrower, the aggregate amount of Commercial Paper Notes issued to obtain funds to make Purchases of Loan Notes of that Borrower and disbursements under the Letter of Credit issued for its account will not be permitted to exceed a designated amount specified for that Borrower. It is expected that each Borrower will use the proceeds of the Loans in the ordinary course of its business for, among other things, the purchase of merchandise, insurance and services.

According to the application, Morgan Guaranty Trust Company of New York ("Depositary") will, through its corporate trust department, act as issuing and paying agent for the Commercial Paper Notes and the Medium-Term Notes. As trustee for the benefit of holders of the Commerical Paper Notes and the Medium-Term Notes, the Depositary will receive an assignment of Applicant's rights to payments of the Loans evidenced by the Loan Notes and of Applicant's rights under the Letters of Credit supporting payment of such loans.

The Depositary will receive proceeds from Applicant's sales of the Commercial Paper Notes and Medium-Term Notes and deposit them in separate operating accounts at the Depositary for receipt of (i) those respective proceeds and (ii) payments made in respect of the Loans evidenced by the Loan Notes purchased with the proceeds from the sales of the Commercial Paper Notes and the Meduim-Term Notes. The Bank, as agent for Applicant, will collect payments made in respect of Loans evidenced by the Loan Notes and will remit the payments to the Depositary for deposit in their respective operating accounts. The Depositary shall, when required to pay the maturing Commercial Paper Notes or Medium-Term Notes, transfer funds held in the respective operating accounts to one of two special purpose trust accounts established at the Depositary for the holders of either the Commerical Paper Notes or the Medium-Term Notes. Maturing Commercial Paper Notes or Medium-Term Notes will be paid by the Depositary with funds from the foregoing sources or from the proceeds of any support credit, described below.

Applicant states that it will utilize all of the net proceeds from sales of the Commerical Paper Notes or the Meduim-Term Notes to make Purchases from the Bank. Applicant further states that while it is anticipated that Loan Notes will have the same maturity date as that of the Commercial Paper Notes or Meduim-Term Notes, Applicant may acquire Loan Notes with differing maturity dates from those of the Commercial Paper Notes or Meduim-Term Notes. Applicant represents that in any instance in which Commercial Paper Notes or Medium-Term Notes are issued with maturities different than the maturities of the related Loan Notes, irrevocable lines of credit will be issued in favor of Applicant by the Bank or irrevocable lines of credit from the Bank will be available to Applicant ("Support Credit") in an amount equal to the amount due in respect of the Commerical Paper Notes or of the Meduim-Term Notes issued to obtain funds to purchase the Loan Notes. Applicant further represents that, in the event that a Loan Note matures prior to the maturity of the Commercial Paper Note or the Medium-Term Note issued to obtain funds to make these Purchases, the proceeds from repayment of the Loan Note shall either be used to make additional Purchases of Loan Notes of the same type as the matured loan Note, or shall be temporarily held, pending use of the proceeds to pay amounts due on the Commercial Paper Notes or Medium-Term Notes which were issued to purchase the matured Loan Note, in obligations issued by, or the principal of and interest on which is fully guaranteed by, the United States or agencies or instrumentalities thereof, or in obligations of the Bank ("Temporary Holdings"). Applicant represents that, during any of its fiscal years, the average daily aggregate principal amount of the Temporary Holdings will not exceed ten percent of the average daily balance of the aggregate principal or face amount of the Commercial Paper Note and Medium-Term Notes outstanding during that fiscal year.

Applicant avers that it will receive assurances from either the Bank or the Borrower that, both at the time of the Purchase and for the period during which any Loan Note of the Borrower is to be outstanding, the Borrower is not and will not be an investment company as defined in section 3 of the Act. Each Borrower would be a company that itself could issue and sell its commercial paper without compliance with the Act's registration requirements. Applicant states that significant economies and efficiencies may be obtained by financing Loans to the Borrowers in the manner proposed, enabling the Bank to finance Loans to the Borrowers based on the rates available in the Commercial Paper market or the Medium-Term Note market. Applicant further argues that holders of Applicant's Commercial Paper Notes or Medium-Term Notes do not require the protections accorded investors under the Act. Applicant maintains that the assignment to the Depositary, as trustee for holders of the Commerical Paper Notes, of Applicant's rights to receive payment under the Loan Notes purchased from the Bank with Funds from the sale of Commercial Paper Notes or Medium-Term Notes, Applicant's rights under the irrevocable Letters of Credit issued by the Bank to support payment of loans evidenced by Loan Notes and Applicant's rights under the Support Credit in the case of Loan Notes having maturities different from those of the Commercial Paper Notes on Mediu m-Term Notes sold to obtain funds for Purchases, adequately protects the holders. In addition, Applicant contends that its operations do not lend themselves to the kinds of abuses the Act was intended to prevent.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 1, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24000 Filed 9–11–84; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 03/03–0175]

UV Capital; Issuance of License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)), by UV Capital (Applicant), 9 South 12th Street, Third Floor, Richmond, Virginia 23219, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of section 107.4 of the Regulations. Section 107.4(b)(1) of the Regulations states: "Unless the applicant has a corporate general partner, it shall not have fewer than two individual general partners initially, and thereafter for not more than sixty days at any one time. Some or all of the general partners may be members of a separate partnership that serves as a general partner of such Licensee; but all general partners of such separate partnership shall be considered for all purposes to be general partners of the Unincorporated Licensee. A limited partnership may not serve as a general partner of an Unincorporated Licensee."

The initial investors and their percentage of ownership of the Applicant are as follows:

Hillcrest Group, 9 South 12th Street, Richmond, VA 23219; General Partner; 2 percent
United Virginia Bank, 919 East Main Street, Richmond, VA 23219; Limited Partner; 98 percent

The partners of Hillcrest Group, a Virginia general partnership, are:

A. Hugh Ewing III, 1811 Monument Avenue, Richmond, VA 23220
James B. Farinholt, Jr., 6117 St. Andrews Lane, Richmond, VA 23226
John P. Funkhouser, 25 Albemarle Avenue, Richmond, VA 23226
J. Roderick Heller III, 6410 Shadow Road, Chevy Chase, MD 20815

United Virginia Bankshares Incorporated, a publicly owned company is the sole shareholder of United Virginia Bank.

No person owns 10 percent or more of the shares of United Virginia Bankshares.

Other Associates of the Applicant include the Southeastern Group, Inc. and its subsidiaries (including Hillcrest Management, Inc.), James River Capital Associates (a licensed SBIC), and Hillcrest Fund. Hillcrest Management, Inc. will provide management and other services to the Applicant under contract with Hillcrest Group.

The Applicant will begin operations with Private Capital of $2,550,505, consisting of $50,505 from the general partner and $2,500,000 from the limited partner. The limited partner will contribute an additional $2,500,000 on or before March 1, 1988.

The Applicant intends to conduct its operations in Virginia and surrounding states, the District of Columbia, and other southeastern states.

Matters involved in SBA's consideration of the application include the general business reputation and character of investors and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Richmond, Virginia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 6, 1984.

Robert G. Linseberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–24078 Filed 9–11–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Cancellation and Rescheduling of Meeting

This notice is given to advise of the cancellation of the Minority Business Resource Center Advisory Committee meeting originally scheduled to be held September 27, 1984. Notice of meeting was published in the **Federal Register** issue of September 5, 1984 (49 FR 35067).

Notice is hereby given of the rescheduling of said meeting for September 28, 1984, at 9:30 a.m. until 1:00 p.m. in Room 4234 at the Department of Transportation, 400 7th Street, SW, Washington, D.C. 20590. The agenda for the meeting remains the same as published in the issue of September 5, 1984.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Minority Business Resource Center, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426–2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on September 6, 1984.

Gregory L. Wright,

Deputy Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 84–24071 Filed 9–11–84; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147—Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance System to be held on October 2-4, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fourteenth Meeting Held July 12-13, 1984; (3) Consider Responses from Industry on the Need for TCAS-I Minimum Operational Performance Standard; (4) Report of the Aircraft Pilot Group on Considerations for Enhanced TCAS-II; (5) Review Draft Sections to Committee Report on Enhanced TACAS-II as a Result of Task Assignments from Previous Meeting; (6) Report of Working Group Preparing Proposed Changes to Section 2.3 of RTCA Document DO-185 "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment"; (7) Consideration of Additional Changes Needed to DO-185 and Scope the Total Work Plan; (8) Consideration of Proposed Revisions to the Committee Terms of Reference; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 5, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-24013 Filed 9-11-84; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 178
Wednesday, September 12, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:18 p.m. on Thursday, September 6, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in David City Bank, David City, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Thursday, September 6, 1984; (2) accept the bid for the transaction submitted by The First National Bank of Omaha, Omaha, Nebraska; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 7, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-24190 Filed 9-10-84; 12:47 pm]

BILLING CODE 6714-01-M

2

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., September 19, 1984.

PLACE: RFE/RL, Inc. New York Programming Center, 1775 Broadway, New York, New York 10019.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, February 16, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Arthur D. Levin, Budget and Administrative Officer, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, D.C. 20036, 202-254-8040.

Dated: September 10, 1984.

Arthur D. Levin,

Budget and Administrative Officer.

[FR Doc. 84-24206 Filed 9-10-84; 2:51 pm]

BILLING CODE 6155-01-M

3

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 2:30 p.m., Wednesday, September 19, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-154 [Final] (Cold-Rolled Carbon Steel Sheet from Brazil)—briefing and vote.
6. Investigations 731-TA-202 and -203 [Preliminary] (Tubular Metal Framed Stacking Chairs from Italy and Taiwan)—briefing and vote.
7. Investigation 104-TAA-23 (Tomato Products from Greece)—briefing and vote.
8. Any items left over from previous agneda.

CONTRACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 84-24125 Filed 9-10-84; 9:08 am]

BILLING CODE 7020-02-M

4

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., October 1, 1984.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 84-24227 Filed 9-10-84; 4:04 pm]

BILLING CODE 3710-GX-M

5

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., October 2, 1984.

PLACE: On board MV MISSISSIPPI at City Front, Vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project, and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 84-24228 Filed 9-10-84; 4:04 pm]

BILLING CODE 3710-GX-M

6

MISSISSIPPI RIVER COMMISSION

TIME AND DATES: 9:00 a.m., October 3, 1984.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 84-24229 Filed 9-10-84; 4:04 am]

BILLING CODE 3710-GX-M

7

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., October 5, 1984.

PLACE: On board MV MISSISSIPPI at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 84-24230 Filed 9-10-84; 4:04 p.m.]

BILLING CODE 3710-GX-M

8

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. There will be an Executive Session to discuss pending litigation and personnel matters.

TIME AND DATE: September 19-20, 1984, 9:00 a.m.

PLACE: Towne Plaza Motor Inn, North 7th Street & E. Yakima Avenue, Yakima, Washington.

MATTERS TO BE CONSIDERED:

1. Council Decisions on Amendments to the Columbia River Basin Fish and Wildlife Program*
    - Yakima Hatchery
    - Offsite Enhancement-704(d)
    - Painted Rocks Reservoir
    - Resident Fish
    - Harvest Controls—Program Section 500
    - Propagation (various)—Program Section 700
    - Mainstem Passage
    - John Day Acclimation Facilities
    - Discussion of Five—Year Action Plan
    - New Hydro Development—Section 1200
    - Coordination of River Operations—Section 1300
    - General and Legal Responses to Comments
2. Council Decision on Cumulative Assessment Study
3. Council Decision on Low—Income Definition—Power Plan Amendment, Action Item 1E
4. Council Business
5. Public Comment will follow items 2-4

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-24174 Filed 9-10-84; 12:06 pm]

BILLING CODE 0000-00-M

federal register

Wednesday
September 12, 1984

Part II

Federal Emergency Management Agency

Federal Radiological Emergency Response Plan (FRERP); Publication as an Interim Plan; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Emergency Response Plan (FRERP); Publication as an Interim Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Federal Radiological Emergency Response Plan (FRERP), referred to interchangeably as the Federal Plan, is published for implementation by Federal agencies to discharge statutory and regulatory responsibilities in response to a wide range of peacetime radiological emergencies. The FRERP will also serve as a resource document for States and private organizations to describe how the Federal Government will respond to State requests for assistance during a major radiological emergency and how Federal agencies will fulfill specific statutory or regulatory requirements to protect people and property from the consequences of such an event. FEMA will update the the FRERP from time to time, as required in Executive Order 12241.

This publication consists of Part I of the FRERP. It outlines authorities and responsibilities of each of the 12 agencies that have resources and capabilities applicable to a Federal response to a radiological emergency. It describes how these 12 agencies will work together to provide an efficient, coordinated Federal response and how the Federal Government will work with State governments and private organizations during an emergency response.

Part II of the FRERP is composed of individual agency response plans that are developed and maintained by each individual agency. These individual agency plans provide for each agency's response in accordance with the concept of operations specified in Part I. A summary of each agency's plan is contained in Part I.

THE FRERP has been developed as a cooperative effort of the 12 agencies represented on the Subcommittee on Federal Response of the Federal Radiological Preparedness Coordinating Committee. This Subcommittee coordinated Federal interagency emergency planning activities for peacetime radiological emergencies.

The Subcommittee's efforts span a two-year period that witnessed: (1) HIEX–82, a headquarters tabletop drill in October 1982 which tested Federal agencies' response to a simulated radiological emergency involving a nuclear power plant; (2) the publication in April 1983, of the Planning Guidance for the Preparation of the Federal Radiological Emergency Response Plan (FRERP) for use by Federal agencies in developing and coordinating their agencies' response plans; (3) NUWAX–83, a May 1983 field test of Federal nuclear weapons accident response capabilities; (4) the publication in the **Federal Register** in January 1984, of a draft Federal Plan, 49 FR 3578; and (5) a large scale field exercise in Florida in March 1984 to evaluate the effectiveness of the FRERP in coordinating Federal agencies' response to this simulated emergency. Lessons learned from this exercise, as contained in the FRERP Field Exercise Evaluation Report of June 1984, and comments received following the January 1984 publication of the draft Federal Plan were considered in revising this Plan.

The FRERP supersedes the "National Radiological Emergency Preparedness/Response Plan for Commercial Nuclear Power Plant Accidents", i.e., the Master Plan. The Master Plan was published by the Federal Emergency Management Agency (FEMA) in December 23, 1980, 45 FR 84910, to discharge a requirement under Pub. L. 96–295 to publish a coordinated, effective plan for Federal agencies to respond to a commercial nuclear power plant accident. This authority, delegated to FEMA in Executive Order 12241 and reflected in the publication of the Master Plan, is further fulfilled by this publication.

The FRERP represents an expansion in scope of the Master Plan to include a wide range of peacetime radiological emergencies including nuclear weapons accidents and transportation accidents involving radiological materials. As such, it reflects insights gained since the Master Plan was published in 1980 on how the Federal Government may more effectively respond to a wide range of peacetime radiological emergencies. This Plan was tested by the Federal agencies and proven viable in a field exercise conducted in March 1984.

Copies

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Adler, Chief, Federal Response Planning and Exercise Branch, Disaster Assistance Programs, State and Local Programs and Support Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, D.C. 20472, telephone 202–287–0508.

SUPPLEMENTARY INFORMATION: Under the provisions of Executive Order 12148 (July 20, 1979), the Director, FEMA, is responsible for establishing Federal policies for, and coordinating, all civil emergency planning, management, mitigation, and assistance functions of executive agencies. Under this mandate, FEMA has assumed the responsibility for coordinating the development of the Federal Radiological Emergency Response Plan.

Public Law 96–295, section 304 (June 30, 1980) requires that the President prepare and publish a National Contingency Plan which provides for an expeditious, efficient, and coordinated Federal response to an accident at a commercial nuclear power plant. Executive Order 12241 (September 29, 1980) delegated this responsibility to the Director, FEMA.

While the FRERP is a FEMA publication consistent with the charge under Executive Orders 12148 and 12241, this document also represents the collective approval of the Subcommittee on Federal Response. It is published in interim, but operational form, pending formal agency concurrences.

Dated: August 31, 1984.

Samuel W. Speck,

Associate Director, State and Local Programs and Support Directorate.

Federal Radiological Emergency Response Plan

Part I

August 1984.

Prepared by the Federal Emergency Management Agency and the other Agencies on the Subcommittee on Federal Response of the Federal Radiological Preparedness Coordinating Committee.

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I. Introduction and Background

A. Purpose

The Federal Radiological Emergency Response Plan (FRERP) is to be used by Federal agencies in peacetime radiological emergencies. It primarily concerns the offsite Federal response in support of State and local governments with jurisdiction for the emergency. The FRERP: (1) Provides the Federal government's concept of operations based on specific authorities for responding to radiological emergencies; (2) outlines Federal policies and planning assumptions that underlie this concept of operations and on which Federal agency response plans (in addition to their agency-specific policies) were based; and (3) specifies authorities and responsibilities of each Federal agency that may have a significant role in such emergencies.[1] The FRERP includes the Federal Radiological Monitoring and Assessment Plan (FRMAP) for use by Federal agencies with radiological monitoring and assessment capabilities.

Part I of the FRERP also includes summaries of Federal agency response plans. Part II consists of individual agencies' response plans, which are maintained by the respective agencies. These response plans provide specific guidance to Federal agencies for implementing Part I of the FRERP.

Part I of the FRERP will be revised by FEMA, as necessary, in coordination with the Subcommittee on Federal Response of the Federal Radiological Preparedness Coordinating Committee (FRPCC). DoE will have primary responsibility for proposing changes to the FRMAP section of the FRERP to the Subcommittee. Agencies should provide updates of their offsite plans and procedures to the Director, FEMA.

FEMA will periodically exercise the FRERP in coordination with the Subcommittee on Federal Response and the Subcommittee on Training and Exercises of the FRPCC. The results of such exercises will be used to update the FRERP and individual agency offsite response plans and procedures as necessary. The FRERP will be published from time to time in the **Federal Register.**

B. Scope

The FRERP covers any peacetime radiological emergency occurring within the United States, its territories, possessions, and territorial waters that could require a significant response by several Federal agencies. Specifically, emergencies occurring at fixed nuclear facilities or during the transportation of radioactive materials, including nuclear weapons, may fall within the scope of the plan regardless of whether the facility or radioactive materials are publicly or privately owned, Federally regulated, or regulated by an Agreement State.[2] The time period during which the FRERP is in effect encompasses the Federal response from initial notification of the Federal agencies through providing assistance to the State and local governments in recovering from the emergency and deactivation of the Federal response.

This plan applies to peacetime emergencies resulting from the following types of incidents:

- Fixed Nuclear Facility Incidents;
- Transportation Incidents; and
- Other Incidents, e.g., nuclear-powered satellite re-entry.

Each type of incident presents different types of response problems. Fixed nuclear facilities, including nuclear power reactors, have the advantages of known locations and existing site-specific emergency plans. Classifications of incident severity have been developed for many of these facilities, and the level of the Federal response may be guided by these classifications. The Nuclear Regulatory Commission (NRC) instituted a classification scheme for licensed nuclear power plants which has been in use for several years. This scheme is being expanded to include other NRC licensed facilities, and DoD and DoE are developing classification and reporting systems for their facilities which are similar to the NRC classification scheme.

Response to transportation accidents is more difficult to plan, as such accidents may occur anywhere, may involve a variety of radioactive materials, and may represent much less of a radiological hazard or serious threat to the public. In most cases, State resources or a limited Federal response will suffice.

Nuclear weapons accidents, weapon-significant incidents, and spent fuel incidents are not significantly different from accidents at fixed facilities or accidents during transportation of radioactive materials, and consequently are covered by these latter types of incidents.

The category of "other incidents" contains events that do not fit into the other two types of incidents. These incidents are more closely related to transportation incidents than to fixed nuclear facility incidents with regard to the nature of the Federal response that can be expected.

Sabotage and terrorism are not treated as separate types of incidents; rather, they are considered a complicating dimension of the incident types listed above. In general, responses to radiological emergencies do not depend on the initiating event. Thus, for example, a coordinated response to contain and mitigate a threatened or actual release of radioactive material from a power reactor would be essentially the same whether it resulted from an accidental or deliberate act. As a practical matter, the cause of the problem may not be known until post-accident investigations are completed.

The Atomic Energy Act directs the Federal Bureau of Investigation (FBI) to investigate all alleged or suspected criminal violations of the Act. The Attorney General, operating through the FBI and other appropriate personnel in the Department of Justice or in other Executive Departments, has the authority to investigate any alleged or suspected violations. The FBI is also legally responsible for locating any nuclear weapon, device, or material and for restoring nuclear facilities to their rightful custodians.

In view of the FBI's unique responsibilities under The Atomic Energy Act, as amended by the Energy Reorganization Act, it is realistic to expect that the DoD, DoE, or NRC will assist the FBI in locating and subsequently neutralizing any nuclear weapon or device of unauthorized origin. The FBI also will interface with these agencies as needed in responding to such acts.

Another aspect of the scope of the FRERP concerns the location of the response to the emergency. The FRERP is concerned primarily with Federal support to State and local governments beyond the immediate site of the emergency, i.e., "off site". For emergencies occurred at fixed nuclear facilities, "off site" generally refers to the area beyond the facility boundary. For a fixed nuclear facility owned, authorized, or regulated by a Federal agency, the onsite Federal support is the responsibility of that Federal agency, i.e., the CFA. For emergencies that do not occur at fixed nuclear facilities and for which no physical boundary exists, the offsite area is not defined. For example, in most transportation accidents not involving nuclear weapons the State or local government will define an area "on site" at the time of the accident and manage all actions within that area. In such accidents Federal agencies have no independent authority for defining the onsite area. For a transportation accident involving materials shipped by or for DoD, DoE, those agencies, as CFAs, will define and control the onsite area and take action on site depending on which of these agencies has custody of the material at the time of the accident. For certain spent fuel accidents DoE would be the CFA under Pub. L. 97–425 and have authority over the spent fuel material, but the State or local government would define and control the onsite area. In Agreement States, the State agency with regulatory authority will fulfill the onsite response role normally provided by the CFR for all activities that the State regulates.

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[1] The terms "Federal agency" and "Federal department" are used interchangeably throughout this document.

[2] Under the *Atomic Energy Act of 1954* (subsection 274.b.), the NRC has relinquished to certain States its regulatory authority for licensing the use of source, byproduct, and small quantities of special nuclear material.

The plan is designed to accomodate all types of peacetime radiological emergencies. However, the Federal response to different types of radiological emergencies under the FRERP will differ based on the type or amount of radioactive material involved, the potential for public impact, the size of the affected area, and the time available to respond.

C. Authorities

The following are the authorities for the response of the major Federal agencies participating in this plan:

- *The Atomic Energy Act of 1954, as amended, Pub. L. 83–703.* This Act declares that the use of nuclear materials must be regulated in the national interest in order to provide for the common defense and security, and to protect the health and safety of the public.
- *Executive Order 12148, July 20, 1979.* This Executive Order assigns the Director, FEMA, the responsibility for establishing Federal policies for, and coordinating, all civil defense and civil emergency planning, management, mitigation, and assistance functions of executive agencies.
- *Nuclear Regulatory Commission Appropriation Authorization, Pub. L. 96–295, June 30, 1980, section 304.* This authorization requires the President to prepare and publish a National Contingency Plan to provide for expeditious, efficient, and coordinated action by appropriate Federal agencies to protect the public health and safety in case of accidents at commercial nuclear power plants.
- *Executive Order 12241, September 29, 1980.* This Executive Order delegates to the Director, FEMA, the responsibility for publishing the National Contingency Plan for accidents at nuclear power facilities and requires that it be published from time to time in the **Federal Register**.
- *44 CFR Part 351, March 11, 1982.* This regulation establishes the Federal Radiological Preparedness Coordinating Committee, the parent of the Subcommittee on Federal Response that has developed this plan. It also assigns responsibility to the Department of Energy for the development of the Federal Radiological Monitoring and Assessment Plan.

Additional authorities for other Federal agencies are presented in Section IV.

D. Planning Assumptions

The following broad assumptions and policies have been used to prepare Part I of this plan and to develop the individual agency response plans and procedures contained in Part II.

1. Public and Private Sector Response

The owner or operator of an affected nuclear facility has primary responsibility for actions within the boundaries of that facility for minimizing the radiological hazard to the public. State or local governments have primary responsibility for determining and implementing any measures to protect life, property, and the environment in any areas not within the boundaries of a fixed nuclear facility or otherwise not within the control of a Federal agency. For example, in a transportation accident (other than one involving nuclear weapons) the State or local government has the responsibility for taking emergency actions both on site and off site. During an emergency, appropriate Federal resources may be used to support State and local governments' response measures, if requested. Federal agency response plans recognize the primacy of the response roles of owners or operators and State and local governments.

If the owner or operator of a radiological activity is licensed or regulated by a State agency in an "Agreement State", that State agency would provide onsite monitoring, evaluation, and advice. However, the Federal government will provide any appropriate support requested by that State agency or other State or local agencies with jurisdiction.

Certain Federal agencies have onsite response roles in a radiological emergency when a Federal agency owns, authorizes, or regulates a facility or radiological activity and has the authority to take action on site. That Federal agency is primarily responsible for monitoring the owner or operator's activities and for providing needed assistance. For example, in the case of an emergency at a licensed commercial nuclear power plant, the Nuclear Regulatory Commission monitors the situation, evaluates licensee actions, and advises the licensee, as appropriate, on the licensee's efforts to bring the reactor into a stable condition and minimize the offsite radiological consequences.

2. Federal Agency Authorities

Notwithstanding the primacy of the State for protecting public health and safety off site, some Federal agencies have statutory or other authorities for responding to certain situations affecting public health and safety without a State request. Section IV of this plan cites those relevant legislative and executive authorities. This plan provides a framework for coordinating Federal actions within those authorities; it does not create any new authorities.

3. Basis for a Federal Response

The Federal government will respond when: (1) A state, other governmental entity with jurisdiction, or regulated entity requests Federal support; or, (2) Federal agencies must respond to meet their statutory responsibilities, e.g., when an emergency significantly affects Federal missions, property, or resources. Any Federal response will be closely coordinated with the State or local governments concerned.

Responses to incidents on or affecting Federal lands are to be coordinated with Federal land management agencies to ensure that response activities are consistent with Federal statutes governing the use and occupancy of these lands. In addition, Federally recognized Indian tribes have a special relationship with the United States of America, and State and local governments may have limited or no authority on their reservations. The Bureau of Indian Affairs of the Department of the Interior (DoI) is available to assist other agencies in consulting with these tribes about radiological emergency preparedness and responses to incidents.

4. Federal Agency Resource Commitments

The resources of the Federal agencies will be made available during radiological assistance operations, subject to prior commitments to fulfill other operational requirements considered essential based on statutory responsibilities. Agencies committing resources under this plan do so with the understanding that the duration of the commitment of those resources will depend on the nature and extent of the emergency. It is further understood that subsequent emergencies that are more serious or of higher priority (such as those that may jeopardize national security) may require Federal agencies to reassess resources previously committed under this plan.

5. Protool for Federal Assistance Requests by Owners or Operators

The owner or operator of a facility or radiological activity, either private or authorized or regulated by the Federal government, can ask for assistance directly from the appropriate Federal agency. The State or local governments, as well as the CFA and FEMA, should be informed by the Federal agency first contacted when such assistance is requested.

6. Coordination of State and Local Assistance Requests

After notification of a radiological emergency that could signficantly impact the public health and safety, and after discussions with the CFA, or upon a direct State request for assistance, FEMA will designate and deploy a Senior FEMA Official (SFO) to provide a single point of contact, as required, for State and local assistance requests. Where possible, the SFO will co-locate with the State representative at an offsite location. State and local government requests for assistance can also be made directly to individual Federal agencies. Federal agencies contacted directly will inform the SFO. When State and local authorities are unable to obtain the required assistance, they should direct requests for offsite Federal assistance to the SFO, or, in the absence of such a designated official, to the appropriate FEMA regional office.

The Governor of the affected State will be advised of the designation of the SFO and will be asked to designate a State representative as the State Coordinating Officer (SCO) to provide a principal point of State contact. The SFO will promote effective operating relationships among Federal, State, local, volunteer, and private agencies.

7. Federal and State Communications

Emergency response requires a continuous flow of information among Federal and State agencies thoughout an emergency. This plan does not restrict this flow. However, for the SFO to coordinate response actions and maintain the most current information, Federal agencies need to keep the SFO informed of their major response efforts and activities that might impinge on the actions of other agencies.

8. Federal Referrals of State and Local Assistance Requests

State and local authorities will be encouraged to coordinate their actions with their SCO. Nevertheless, some State and local authorities may contact Federal agencies directly. Accordingly, to facilitate such contact, Federal agency response plans and procedure have:

a. Described the individual agencies' responsibilities in support of the State. This will help States to determine the most appropriate Federal agency to contact for the required assistance. Particular emphasis has been given to describing responsibilities that are closely related to those of other agencies.

b. Provided for referral for inquiries falling within another agency's area of responsibility to the appropriate agency as promptly as possible. Whenever a question exists as to the appropriate agency for referral, agencies should direct the referral to the SFO.

9. Coordination Among Federal Agencies

Federal agencies should coordinate their actions with the SFO. In addition, Federal agencies will communicate freely and interact directly with other Federal agencies as required during emergencies.

10. Public Information Coordination

Public information on the consequences of an emergency must be accurate, timely, and easily understood. Public information must be closely coordinated with State and local officials and disseminated to the public from official government sources. State officials are responsible for keeping their populace adequately informed. Since the Federal government's role is to help the State, the public information officers of the responding Federal agenices will, if requested, help State information officials prepare news releases and hold press conferences concerning the health and safety of the public.

When a multi-agency Federal response to an emergency occurs, all Federal public information releases will be coordinated through the interagency public information organizations described in Section II.

Close working relationships among the public information officials of Federal agencies, their State and local counterparts, and the owner or operator are essential. To foster close working relationships efforts will be made to co-locate Federal, State, local, and owner or operator public information officials at a Joint Information Center. The Federal government will coordinate with, and obtain concurrence as necessary from, the appropriate State or local officials on any statements to the public that bear on the responsibility of the State.

II. Concept of Operations

A. Response Overview and Summary

The CFA, FEMA, and DoE or EPA each has a specific coordination function in relation to the State and the owner or operator of the radiological activity as summarized in Table II-1. Other Federal officials may arrive on the scene prior to the arrival of the CFA, FEMA, and DoE/EPA and act under their own authorities to fulfill their responsibilities. During that brief period, those agencies will coordinate their activities among themselves and with the CFA, FRMA, and DoE as soon as they arrive concerning the status of ongoing response efforts. The CFA, FEMA, and DoE or EPA personnel on the scene will provide their regional or headquarters offices with all relevant information available.

TABLE II-1.—RESPONSE OVERVIEW

Response action	Lead Federal agency
(1) Conduct and manage Federal onsite actions to support the owner or operator. —Monitor; Evaluate; Advise—Assistance, if required	CFA.
(2) Coordinate Federal offsite radiological monitoring and assessement	
—Initial Response	DoE.
—Intermediate and Long-Term Response	EPA.
(3) Develop or evaluate recommendations for public protective action measures off site.	CFA.
(4) Present recommendations for offsite protective action measures to the appropriate State and/or local officials.	CFA, in coordination with FEMA whenever possible.
(5) Promote coordination of Federal assistance. This includes assistance to State and local governments and logistic support to Federal agencies.	FEMA.
(6) Coordinate release of information to the public and to Congress.	CFA initially; FEMA after mutual agreement.

TABLE II-1.—RESPONSE OVERVIEW—Continued

Response action	Lead Federal agency
(7) Coordinate release of information to the White House.	CFA initially; FEMA thereafter.

The Department of Energy, during the initial phases of the emergency, and the EPA thereafter, will work with the appropriate State and local agencies to coordinate offsite radiological monitoring and assessment activities. DoE or EPA will assess monitoring data and present them to the CFA and appropriate State agencies. The CFA will use this information, together with its assessment of the current condition and prognosis of the emergency on site, to develop or evaluate public protective action recommendations.

Federal departments and agencies that have day-to-day contacts with State counterparts will continue to use these contacts during an emergency. FEMA will be informed of contacts that may impinge on the actions of other Federal agencies. The Department of Health and Human Services (HHS), EPA, DoE, and the U.S. Department of Agriculture (USDA), in coordination with the appropriate State agencies, will provide advice to the CFA, if requested, concerning possible public health impacts and associated protective measures for mitigating them. The CFA will use this advice, as required, to develop a coordinated Federal position on recommendations for public protective action.

FEMA will remain informed of onsite conditions that could have an offsite impact, through the CFA. FEMA's overall coordination function is not intended to replace or supplant existing liaison and communication between Federal agencies and their State counterparts. If Federal agencies need assistance in exchanging information, or in acquiring or releasing public information, FEMA will help the agencies accomplish these tasks.

A CFA role will be assumed by a Federal agency in accordance with the scheme presented in Table II-2 when a significant Federal response is appropriate. Lesser events which do not warrant such a response are not covered by the FRERP. Specifically, a CFA role will be assumed for major radiological emergencies at fixed nuclear facilities which are owned, authorized, or regulated by a Federal agency, and for major transportation accidents involving shipments by or for DoD or DoE. For major transportation accidents involving nuclear materials other than DoD or DoE material, no Federal agency has the authority to become the CFA. In these instances, and in all other emergencies not cited above which require implementation of the FRERP, FEMA will consult with other appropriate Federal agencies regarding the CFA role. The result of such consultation will be either that a Federal agency assumes the CFA role, or that a decision is made that the CFA role is not appropriate. Whenever it is determined that a CFA is not appropriate, FEMA will coordinate the Federal response, relying on agencies with the technical expertise to evaluate the situation and develop advice for State and local governments.

TABLE II-2.—IDENTIFICATION OF COGNIZANT FEDERAL AGENCIES FOR RADIOLOGICAL EMERGENCIES

Type of emergency	Owner or operator	Cognizant Federal agency
Fixed nuclear facility.	NRC-licensed	NRC.
Do	Dod or DoE-owned or authorized.	DoD or DoE, respectively.
Do	Not federally owned, authorized, or licensed.	None.
Transportation (shipments by or for DoD or DoE).	DoD or DoE	DoD or DoE, respectively.
Transportation (all other).	Private, State, local, or Federal.	None.
All other emergencies.	do	NRC, DoD, or DoE; or None.

The CFA, in conjunction with FEMA whenever possible, will present any Federal recommendations to the State or other appropriate offsite authority with jurisdiction for implementing or relaxing protective actions. In the case of a fixed nuclear facility licensed by the NRC, the licensee is responsible for developing appropriate protective action recommendations and promptly providing those recommendations to State and local authorities without awaiting NRC's concurrence. NRC, in the role of CFA, will evaluate the licensee's protective action recommendations as time permits, and will either concur in them or suggest modifications, as appropriate. FEMA is then responsible for promoting coordination among Federal agencies providing assistance to the State in implementing those recommendations if such assistance is requested by the State, and for communicating those recommendations to the responding Federal agencies.

B. Notificaton, Activation, Recovery, and Deactivation

The headquarters officials of FEMA and each CFA will follow a pre-established system for notifying all appropriate Federal agencies.

1. Notification

The owner or operator of the facility or radiological activity is generally the first to become aware of a radiological emergency, and is responsible for notifying the appropriate State and Federal authorities.

Subsequent to its receipt of a notification of an incident, the CFA will notify FEMA headquarters in Washington, D.C. by contacting the FEMA Emergency Information and Coordination Center (EICC). CFAs maintain similar emergency operation centers at their headquarters, regional, or field offices.

A notification should include a description of the emergency situation so that FEMA can carry out its further notification and response duties. The CFA will provide FEMA with a general assessment of the emergency including location and nature of the accident, an assessment of the severity of the problem as known, a description of the CFA's response, and any follow-on actions anticipated by the CFA.

FEMA will verify that the State has been notified of the emergency by contacting the State. FEMA and the CFA will notify other appropriate Federal agencies of the emergency in accordance with their notification procedures, pre-established interagency agreements, or interagency operational response procedures. If no Federal agency has the authority to assume the CFA role, FEMA will make all notifications. In those cases where Federal lands could be affected, FEMA will notify the Federal agency with jurisdiction. The notifications will incorporate relevant information exchanged between the CFA, if any, and FEMA. Individual agencies should determine their specific requirements for subsequent information, whenever those requirements have not been predefined with the CFA or FEMA.

DoE will notify Federal agencies with FRMAP responsibilities in accordance with agreed-upon procedures. Federal agencies that can provide radiological assistance may respond upon receiving a direct request for assistance from the State or owner or operator. Federal agencies so contacted will inform the DoE as soon as their response team arrives at the scene.

2. Activation

Upon receipt of notification, each agency will assess the need to initiate its response. The response decision will be based on the situation reported and may consist of several steps:

- Alerting or activating appropriate Federal agency response components;
- Determining whether State or local government requests for assistance have been received (where appropriate);
- Activation of agency emergency response teams and their deployment to the scene; and
- Establishment of bases of operation at the scene of the emergency from which to carry out a coordinated Federal response.

A full-scale Federal response begins with the execution of the notification scheme and includes all the above four steps. Since many emergencies will not require a full-scale response, the Federal response might reach only the first or second step. When the Federal response reaches the third step, FEMA will so notify the affected State. When the third or fourth step is reached, an SFO may be deployed to establish an offsite base of operation for coordinating the Federal response, i.e., a Federal Response Center (FRC). The FRC will be established at a location that has been pre-selected together with the State, or otherwise will be established at the time of the emergency at a location identified in conjunction with the State. A Federal Radiological Monitoring and Assessment Center (FRMAC) will be established by DoE, usually at a nearby airport, in a similar manner. The CFA, if any, will establish a local base of operations. FEMA, the CFA, and DoE will exchange liaison representatives to ensure that activities at the various centers are coordinated.

As a result of notification of a radiological emergency, and after discussions with the CFA, FEMA may activate its headquarters Emergency Support Team. As soon as an Emergency Support Team is activated, FEMA will begin its coordinating activities. Prior to the arrival of the SFO or Deputy SFO (DSFO) at the scene, FEMA will rely on the Cognizant Federal Agency Official (CFAO), if at the scene, as the point of contact concerning Federal activities at the scene.

If an agency decides to initiate its response, that decision will be communicated to FEMA and will include: (1) The name and location of the lead agency official if one is designated; (2) the telephone number at which he/she can be contacted at headquarters or at the scene; (3) if appropriate, the primary official to deploy to the scene and his/her estimated time of arrival at the emergency site; and (4) intended location at the scene. Similarly, FEMA will provide each Federal agency with the same information when FEMA designates its SFO. FEMA will keep Federal agencies informed of the status of Federal agencies' response actions.

Because of its singular responsibility for Federal support on site, the CFA will determine and implement an efficient means for coordinating Federal support on site with Federal response activities off site.

a. *Deployment of Emergency Response Teams.* Agency plans and procedures describe response team deployment and establishment of bases of operations at the scene. Ideally, the SFO and staff, other Federal agency response teams, and State agency representatives would be co-located at the scene. Accordingly, FEMA and CFA site-specific emergency plans and procedures should be developed individually to accommodate State operations.

Some Federal agencies may immediately deploy their teams to the scene of the emergency to fulfill statutory responsibilities. This plan is not intended to restrict such activities; however, when the SFO arrives at the scene, the agencies that have already responded will inform the SFO of the offsite actions they have taken.

b. *SFO Designation and Deployment.* Upon activation, FEMA may deploy an Emergency Response Team (ERT) headed by an SFO. The SFO, once at the scene, will be supported by an Emergency Support Team at FEMA headquarters and the ERT. Prior to this deployment, FEMA will inform the affected State and the CFA of the planned FEMA response. FEMA will also notify the other agencies of its ERT deployment and activities.

Upon arrival at the scene, the SFO, or the DSFO if the SFO so authorizes, will establish an offsite base of operations, i.e., the Federal Response Center, for promoting coordination of the Federal response. The Deputy SFO, who leads the regional component, is likely to arrive at the scene prior to the arrival of the headquarters component and may have initial responsibility for establishing and operating the FRC until the SFO arrives.

The SFO will inform other Federal agencies at the emergency scene of the establishment of the FRC and request that they provide representation to it. The SFO will establish contact with the CFA or responsible State agency to determine the status of onsite response efforts. As soon as the SFO or DSFO arrives at the scene and contacts the CFA, the SFO (or DSFO) will serve as the focal point for promoting the coordination of the Federal response at the scene. The SFO and the CFAO will work together directly and through their representatives at the scene to ensure that each has an accurate understanding of the situation throughout the emergency.

3. Recovery and Response Deactivation

Prior to the deactivation of the Federal response, the Federal government may assist the State in developing its offsite recovery plan. Recovery planning will be initiated at the request of the State but generally after the cause of the emergency has been brought under control and immediate public health and safety and property protective actions have been accomplished. The SFO will coordinate Federal assistance to the State in recovery planning.

After the conditions on site have stabilized and the offsite contamination has been characterized and its extent determined, a CFA may or may not be needed. The agency that performed the CFA role may decide to deactivate its position as a CFA and focus primarily on the recovery effort on site. The CFA will discuss this deactivation with the SFO and determine a mutually agreeable time to implement the deactivation. However, the agency that served as CFA will continue to be available to provide required assistance to the State, in coordination with FEMA.

Each agency will discontinue response operations when advised by the State that assistance is no longer required or when its statutory responsibilities or response roles have been fulfilled. Prior to discontinuing its response operation, each agency will discuss its intent to do so with the CFA, FEMA, and with DoE or EPA if that agency is providing radiological support under the FRMAP.

C. General Response Roles of Principal Agencies and Officials

General Response roles are those that are independent of the cause, type, or location of the radiological emergency.

1. Role of the Cognizant Federal Agency

The CFA is the Federal agency that owns, authorizes, regulates, or is otherwise deemed responsible for the facility or radiological activity causing the emergency, and that has authority to take action on site. When it is necessary for a Federal agency to assume the CFA role, and to deploy to the site, the CFA will manage all Federal actions onsite, develop or evaluate offsite protective action and reentry recommendations, and help to implement those actions if requested by the State and if the CFA's resources permit.

Consistent with this role, the CFA has four general responsibilities:

- Receive notification of the emergency, initiate the CFA response, and notify appropriate Federal, State, and local agencies;
- Manage Federal response actions on site and coordinate these actions, as necessary, with the SFO and monitoring activities off site;
- Assess owner or operator, State, or locally recommended protective action measures and/or develop Federal recommendations for protective action and re-entry; help State and local authorities as resources permit; and
- Serve as the primary Federal source for information of a technical nature regarding the onsite emergency conditions and the potential or actual offsite radiological effects.

Each of these responsibilities is outlined in more detail below:

a *Receive Notification of the Emergency, Initiate the CFA Response, and Notify Appropriate Federal Agencies.* (1) Receive notification of the emergency from the owner or operator of the facility or radiological activity causing the emergency, or from State or local authorities, and determine the significance of the emergency and the appropriate CFA response to it.

(2) Notify FEMA and DoE of the emergency; include in the notification the CFA's activation mode and actions, a general assessment of the emergency, and any necessary background information. Discuss with FEMA the need to deploy a SFO and Emergency Response Team.

(3) Deploy a CFA team to the site, when appropriate.

b. *Manage Federal Response Actions Onsite and Coordinate these Actions, as Necessary, With the SFO and Monitoring Activities Offsite.* (1) Designate a lead CFAO at the site of the emergency who will coordinate with the SFO, as necessary, on any onsite Federal actions that may have significant impacts off site.

(2) Establish appropriate bases of operation to oversee the onsite response, monitor owner or operator activities, provide technical support to the owner or operator if requested, and serve as the principal source of information about onsite conditions for the Federal government.

(3) Manage the onsite Federal response to the emergency, including an assessment of the conditions on site and the means for mitigating their consequences off site.

(4) Keep other agencies informed of conditions and Federal actions on site.

(5) Serve as a point of contact concerning Federal activities at the scene when the CFAO arrives at the scene prior to the SFO or his designee. During this interim period, the CFA will keep FEMA informed of Federal activities at the scene.

(6) Prepare the section of the White House Executive Summary dealing with onsite related conditions and their actual or potential offsite radiological impacts and provide this section to FEMA.

c. *Assess Owner or Operator, State or Locally Recommended Protective Action Measures and/or Develop Federal Recommendations for Protective Action and Re-entry; Help State and Local Authorities as Resources Permit.* One of the primalry areas where the Federal government may be able to assist State and local governments is in advising them on initial protective action recommendations (PARs),[1] and other protective measures and reentry recommendations (RERs)[2] for the public that may be developed by the owner or operator, or State or local authorities. In providing such advice, the CFA will use, to the extent applicable, appropriate advice and input from other Federal agencies with technical expertise on those matters. FEMA, upon request, will assist the CFA as required in developing such advice.

Whenever possible, the CFA will coordinate its presentation of the Federal evaluation of PARs with FEMA either prior to, or at the time of, their presentation to the State or other offsite authorities. When imminent peril threatens the public health and safety, the CFA will present the evaluation of PARs directly to the State or other offsite authorities without having to coordinate with any other Federal agency. With regard to developing or evaluating RERs, the CFA will keep FEMA informed of their development or evaluation and coordinate presentation of such advice to the State with FEMA. More specifically, the CFA's responsibilities related to PAR and RER development or evaluation, and presentation are:

(1) Serve, as a point of contact for State and local government technical information and, as required, for technical assistance requests.

(2) Provide staff liaison representatives to State authorities and the SFO, to help interpret the technical aspects of the emergency on site and its potential or real offsite radiological consequences.

(3) Work with DoE in its efforts to provide offsite monitoring data and assessments to appropriate State and Federal agencies.

(4) Prepare a coordinated Federal position on PARs whenever possible. Consult with HHS, DoE, EPA, USDA, and other Federal agencies as required.

(5) When appropriate, present the Federal assessment of PARs, in conjunction with FEMA, to the State or other offsite authorities.

(6) Develop or evaluate RERs to protect the public and present such advice, in conjunction with the SFO, to the State.

(7) Help State and local government agencies implement protective actions, as required, when the CFA has available resources to help provide the needed assistance.

d. *Serve as the Primary Source for Technical Information Regarding the Emergency Conditions Onsite and the Potential or Real Offsite Radiological Effects.* (1) Make an initial report to the White House Situation Room covering, if possible, the condition of the radiological activity causing the emergency and the actual or potential offsite radiological impact. After the initial report, prepare the section of FEMA's report dealing with onsite conditions and their actual or potential impact off site.

(2) Review and concur in the release of all Federally generated information related to the onsite conditions and remain informed of all information related to offsite radiological effects. Where possible, the CFA should review Federally provided offsite radiological data before release.

(3) Assist the State Public Information Officer in developing coordinated public information releases.

(4) Protect national security by classifying sensitive technical information in a nuclear weapon accident or weapon-significant incident.

2. Role of the Federal Emergency Management Agency

FEMA's primary responsibilities in the Federal response are to immediately notify participating Federal agencies[3] of the emergency and to serve as a focal point for coordinating Federal response activities at the national level and at the scene of the emergency. The Director of FEMA will designate and deploy the

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[1] The development or evaluation of protective action recommendations will take into consideratoin Protective Action Guides (PAGs) issued by appropriate Federal and State agencies. See Appendix B for definitions of protective action recommendations and protective action guides.

[2] See Appendix B for definition.

[3] Except the CFA (which is notified directly by the owner or operator) and DoE (which is notified by the CFA or the owner or operator or the State).

SFO for coordinating Federal response activities at the scene of the emergency.

a. *Emergency Support Team Role.* Through its Emergency Support Team at headquarters, FEMA will:

(1) Notify participating agencies of the emergency situation and supply information they need to take appropriate actions.

(2) Coordinate Federal response activities at the national level.

(3) Receive information at the Emergency Information and Coordination Center (EICC) from the CFA headquarters or from other public and private organizations about the impact of the emergency and the organizations' response.

(4) Prepare periodic reports on the Federal response for the White House.

(5) Provide staff support and other resources to the SFO as required.

b. *Emergency Response Team Role.* At the scene of the Emergency, the FEMA response is carried out through its Emergency Response Team, headed by the SFO. The SFO coordinates Federal activities with State offsite activities and promotes the coordination of Federal actions, information, and recommendations. Free interaction among Federal, State, and local agencies is encouraged. The SFO can facilitate information flow among all response elements and help direct Federal resources to the appropriate State and local government agencies. The SFO will not intervene in the relationships and communication channels that already exist between Federal and State agencies; rather, the SFO provides an additional means for facilitating Federal-State interactions.

Through the SFO, FEMA carries out three major responsibilities:

- Promote coordination among Federal agencies and their interactions with the State, including, in conjunction with the CFA, the provision of Federally developed or evaluated PARs and RERs to the State or other appropriate offsite authorities responsible for implementing those recommendations;
- Coordinate offsite activities with onsite response activities of Federal or State agencies; and
- Serve as an information source on the status of the overall Federal response effort. (The public information function is described in Section II.D.)

Each of these responsibilities is outlined below:

(a) *Promote Coordination Among Federal Agencies and Their Interactions With the State.* (1) Promote coordination of the provision of offsite assistance to appropriate State and local government agencies by the Federal agencies, including medical care, food, potable water, shelter, clothing, transportation, security, and any other assistance needed to protect the public health and safety. This coordination function is to be performed in addition to, and does not supplant, the specific coordination functions assigned to other Federal agencies as part of their normal responsibility to provide these specialized forms of assistance.

(2) Maintain a continuous overview of the total Federal response effort to ensure that no necessary actions are omitted and no unnecessary duplication occurs; any omissions or duplications will be brought to the attention of the agencies concerned.

(3) Establish the Federal Response Center as a base of operations at an offsite location identified in conjunction with the State. The Federal Response Center serves as a focal point for Federal response team interactions with the State.

(4) Provide a principal point of contact for requests for Federal assistance by State or local governments.

(5) Refer all State and local requests to the most appropriate Federal agency.

(6) Refer all Federal agencies to appropriate points of contact in State or local governments.

(7) Provide information to the State or local governments concerning the status of their assistance requests.

(8) Maintain contact with DoE or EPA to ensure that the offsite Federal radiological monitoring and assessment effort is coordinated with other offsite Federal assistance to the State.

(9) Facilitate the exchange of all other information among Federal agencies.

(10) Make requests for additional Federal resources that cannot be acquired by Federal agencies at the scene.

(11) Refer all interagency policy issues and interagency operational problems that cannot be resolved at the scene to FEMA headquarters for resolution with Federal agencies at the national level.

(12) Promote the provision of information from Federal agencies to the State regarding actions taken or anticipated by them.

(13) Promote the coordination of all formal recommendations and guidance from Federal agencies before they are presented to the State.

(b) *Coordinate the Federal Offsite Response With the Federal or State Onsite Response.* (1) Promote the coordination of the Federal offsite response with the Federal or State onsite response so that any Federal actions off site are taken with knowledge of current or anticipated actions on site.

(2) Assist and support the CFA, if any, with obtainig needed logistical support through other Federal agencies as required.

(3) Assist the CFA, as required, in its development or evaluation of PARs and RERs including the provision of needed information to or from other Federal agencies having the required expertise.

(4) Ensure that the CFA is informed of the capabilities and resources of offsite Federal agencies for assisting with the implementation of Federal developed or evaluated PARs and RERs by the State or other offsite authorities.

(5) Assist the CFA, and DoE or EPA in their roles as FRMAP coordinators, in disseminating information to, and obtaining information from, other Federal agencies. Facilitate the exchange of all other information among Federal agencies.

(6) Participate in the presentation of a Federally coordinated assessment of PARs amd RERs to the State or other responsible offsite authorities inconjunction with the CFAO. When the public health and safety are in imminent peril, the CFAO will present PARs without consultation with the SFO or other Federal agencies.

(c) *Serve as an Information Source for the Total Federal Response.* (1) The SFO, in coordination with the CFA, will maintain an executive level summary of the total Federal response and will provide the FEMA Director with information, on a regular basis, on the status of the response that is appropriatre for the FEMA Director's overall executive summary to the President. Similarly, the FEMA Director will keep the White House Situation Room advised daily of continuing response activities. This FEMA activity does not preclude the White House from contacting any agency for information, nor does it restrict an agency from responding to White House request. The CFA will remain the source for technical information on the emergency, i.e., the onsite conditions and the potential or real offsite radiological impacts, and will provide this technical information to FEMA for inclusion in its summary.

(2) Provide pertinent information to the Members of Congress and their staffs making inquiries at the scene, coordinating as necessary with the CFA and other Federal agencies. FEMA and the CFA will each be responsible for keeping their respective Congressional Committees informed and will coordinate this with each other.

3. Role of DoE and EPA

The Department of Energy [4] and the Environmental Protection Agency have a major role in the Federal response by coordinating Federal radiological monitoring and assessment activities. There are three responsibilities involved, which initially fall to DoE. They are:

- Coordinate the offsite radiological monitoring, assessment, evaluation, and reporting of all Federal agencies during the initial phases of the emergency, including notification of Federal agencies in accordance with the provisions of the FRMAP;
- Maintain liaison and a common set of offsite radiological monitoring data with the facility owner or operator and State and local agencies with similar responsibilities; and
- Provide all monitoring data, assessments, and related evaluations to the CFA and State and assist the CFA in development of protective action recommendations and other measures to protect the public, as required. Where possible, the CFA should review the FRMAC monitoring data before release.

After the initial phases of the emergency, DoE will transfer these offsite coordination responsibilities to EPA at a mutually agreeable time. EPA will assume the lead agency responsibility for coordinating the intermediate and long-term offsite radiation monitoring activities after receiving adequate assurance from the Department of Energy and other Federal agencies that they will commit the required resources, personnel, and funds for the duration of the Federal response effort.

D. Public Information and Congressional Relations

This section describes the responsibilities for Federal agency public information and Congressional relations that will be implemented under this plan. Provision of accurate, consistent, well coordinated information to the public and to the Congress is recognized as to be of utmost importance.

1. General Public Information Responsibilities

The major roles and responsibilities for public information release during a radiological emergency are as follows.

a. *Facility or Radiological Activity Owners or Operators* are responsible for information concerning onsite status and conditions.

b. *The State* is responsible for releasing information relating to the impact of the emergency on the health and safety of its citizens and relating to its emergency response operations.

c. *The CFA*, if any, through the CFAO's Public Information Officer (PIO), and in close coordination with the owner or operator, and the State, is responsible for information related to (a) the onsite conditions of the radiological activity and (b) the offsite radiological effects. The CFA is responsible for the security classification of all onsite information in accidents or significant incidents involving nuclear weapons.

d. *Each Federal agency* is responsible for the preparation of public information released related to its own response activities. Prior to release, information will be coordinated through the public information organizations described in the remainder of this section.

e. *FEMA*, through the SFO's PIO, will work with the CFAO's PIO to promote coordination among all Federal agencies regarding public information generated by them and to promote the coordination of press release with the State. Coordination does not mean that the language of all releases must be approved by the SFO and CFAO PIOs, but rather that the information content is to be reviewed by them prior to release to ensure its consistency with the total information available. In cases when the public helath and safety are in imminent peril, the CFAO's PIO may review and release public information independently. The SFO's PIO will assume responsibility from the CFAO's PIO at a mutually agreeable time when recovery efforts are initiated by the State or other appropriate offsite authority. When no Federal agency assumes the CFA role, the SFO's PIO will coordinate Federally generated public information.

2. Coordinated Release of Public Information at the Scene of the Emergency

Upon arrival at the emergency scene, the CFAO's PIO or, if none, the SFO's PIO, will ensure the establishment of Federal public information operations at the Joint Information Center (JIC) in cooperation with the owner or operator's pre-established information center, or separately, if necessary. Most nuclear power plant owners or operators have designated JIC locations and have made arrangements to establish and operate these centers in an emergency. The JIC at the scene of the emergency will provide the public and the media with adequate, accurate, and timely public information regarding a radiological emergency. Efforts will be made to colocate all Federal, State, local and owner or operator public information officials in the JIC. However, if space limitations at a nuclear power plant's designated information center preclude its use as a JIC and/or if the State designates another location for its public information activities, special efforts will be necessary to maintain close coordination between the Federal JIC and these other press centers. If the Federal PIOs and the State PIOs cannot co-locate at the JIC, FEMA will notify the State when and where the Federal JIC has been established.

Whenever practical, the establishment of Federal operations at the JIC will be undertaken by the CFA in coordination with FEMA, other appropriate Federal agencies, and State and local authorities. If FEMA's PIO or any other participating agency's PIO arrives at the scene of the emergency before the CFAO, the FEMA PIO or another agency's PIO may establish and manage Federal operations at the JIC until the CFAO arrives. Upon arrival, the CFAO or his/her PIO shall assume primary responsibility for Federal operations at the JIC. If there is no CFAO for the emergency, the SFO's PIO shall assume primary responsibility for Federal operations at the JIC. When there is a CFAO, the SFO's PIO will assume responsibility for coordinating Federal public information at the JIC from the CFAO's PIO at a mutually agreeable time. FEMA PIOs at the scene will provide support to the CFA during the period that the CFA has Federal operational responsibility for the JIC. FEMA's support will include coordinating public information activities of other Federal, State, or volunteer agencies at the scene but not located at the JIC with which FEMA has a pre-established relationship.

3. Coordinated Release of Public Information at the Headquarters Level

For some emergency situations it may be necessary to release public information prior to the establishment of Federal operations at the JIC. When this is the case, Federal agencies must coordinate the release of public information through their headquarters with the CFA headquarters PIO. The CFA headquarters PIO serves as the single point of contact at the national headquarters level for all Federal agency PIOs as well as for the media. The CFA headquarters PIO, in conjunction with FEMA headquarters, will establish procedures for coordinating the release of Federal public information with the State prior to release to the media. If no Federal agency assumes the CFA role for the emergency, than the FEMA headquarters PIO will coordinate Federal public information as described above.

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[4] DoE would also serve as the CFA if the emergency involved DoE owned or authorized nuclear facilities, or radioactive materials (including nuclear weapons and spent nuclear fuel in DoE custody).

Prior to the establishment of Federal operations at the JIC, Federal agencies will coordinate releases of public information both at the regional level and near the site of the emergency through their Washington, D.C. headquarters offices.

The agency headquarters points of contact for public information will continue to operate throughout the emergency, but once the JIC is established all Washington-based information must be coordinated through the JIC prior to release. The Washington centers may, however, handle overflow news media inquiries and serve as a platform for carefully selected, Washington-based specialists to supply background information, as required.

4. Coordinated Release of Information to Congress

Responses to Congressional requests for information will be coordinated among the Federal agencies whenever possible. The CFA Congressional Liaison Officer (CLO) at the headquarters Congressional Affairs Office will provide a single point of contact for all Federal agency headquarters CLOs and Congressional staffs seeking site-specific emergency information. As time and circumstances permit, all agency CLOs will either channel Congressional requests to this single point of contact, or coordinate their intended responses with it.

If no Federal agency assumes the CFA role for the emergency, the FEMA headquarters CLO will coordinate Congressional information as described above.

A FEMA CLO will be the point of contact at the scene of the emergency for all Federal agency CLOs and Congressional staff seeking information regarding the emergency and actions being taken to assist offsite authorities. The FEMA CLO will keep in frequent contact with the CFA CLO, if any, who will continue to be the primary point of contact in the Washington, D.C. area. The FEMA CLO will provide appropriate information to Members of Congress and/or their field staffs with assistance as necessary from the CFA and other Federal agencies. This formal procedure does not preclude communication and information exchange between Congressional representatives and Federal agencies. However, Federal responses will be coordinated among Federal agencies in the manner described above. The CFA CLO and the FEMA CLO will coordinate with each other on the information provided to the Congress as well as on information being provided to the public through operations at the JIC.

E. International Response Coordination

Although the geographic scope of the FRERP is limited to the United States its territories, possessions, and territorial waters, it is recognized that radiological emergencies occurring near international borders (i.e., near Canada and Mexico) could require international cooperative response efforts.

Therefore, the CFA and FEMA, in consultation with the Department of State and other Federal agencies as appropriate, should coordinate and cooperate at the time of the emergency with affected countries in accordance with already established protocols (e.g., treaties, bilateral agreements). If any contacts are made between Federal agencies and foreign governments during an emergency, this should be reported to the Department of State and FEMA. It is also desirable that requests for assistance from United States border countries as a result of domestic radiological emergencies should be coordinated with the Department of State and FEMA.

III. Federal Radiological Monitoring and Assessment Plan (FRMAP)

A. Foreword

The Federal Radiological Monitoring and Assessment Plan was developed to coordinate Federal radiological assistance. Although the FRMAP is part of the FRERP, it may be implemented separately. The FRMAP, originally required under a FEMA regulation issued on March 11, 1982, is a revised and update version of the planning and response concepts of the Interagency Radiological Assistance Plan (IRAP) and supersedes that plan. FRMAP and IRAP are very similar in concept, with the most notable changes occurring in the designation of participating Federal agencies and, in some cases, their expanded or revised responsibilities, e.g., FEMA. The FRMAP deals with the initiation and coordination of Federal radiological monitoring and assessment assistance, not each Federal agency's individual response.

The FRMAP establishes: (a) A means of requesting and providing Federal radiological assistance from existing Federal resources and (b) an operational framework for coordinating the radiological monitoring and assessment activities of Federal agencies during radiological emergencies occurring within the United States and its territories. The operational guidelines presented here apply to all radiological emergencies in which Federal assistance is requested.

At one end of the range of radiological emergencies, the FRMAP may be implemented without the FRERP. At the other end of the range, the radiological assistance aprovided through FRMAP may be only a small portion of the total Federal response to a major emergency. FRMAP applies primarily to offsite Federal radiological monitoring and assessment assistance and the technical support for these activities.

B. Purpose

The purposes of the FRMAP are as follows:

- To make needed radiological monitoring and assessment assistance available to Federal agencies, State and local governments with jurisdiction, and the general public through appropriate State and local agencies;
- To provide a framework through which Federal agencies will coordinate their emergency radiological monitoring and assessment activities in support of Federal, State, and local governments' radiological monitoring and assessment activities; and
- To assist State and local governments with jurisdiction in preparing for radiological emergencies by describing Federal assistance responsibilities.

C. Authority and Jurisdiction

DoE is assigned the responsibility for developing the FRMAP under authority of 44 CFR Part 351. The FRMAP is included in the FRERP to provide a single, comprehensive document that describes all Federal offsite assistance responsibilities. The agencies participating in the FRMAP, including agencies that joined FRMAP subsequent to 44 CFR Part 351, are: FEMA, the Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA), the Department of Health and Human Services (HHS); the Department of Energy (DoE); the Department of Agriculture (USDA); the Department of Defense (DoD); the Department of Commerce (DoC); and the Department of the Interior (DoI).

The FRMAP recognizes that the above agencies may have other radiological planning and emergency responsibilities as part of their statutory authority, as well as established working relationships with State counterpart agencies. The provisions of the FRMAP do not limit those responsibilities, but complement them by providing for a coordinated Federal response when emergency radiological assistance is requested. All FRMAP activities will support the monitoring and assessment programs of the State, the owner of the radioactive material involved or the operator of the nuclear facility, the assessment needs of the CFA, or be carried out to meet statutory responsibilities.

D. Policy

1. Federal agency plans and procedures for implementing the FRMAP will be consistent with any Federal radiological emergency planning requirements for State and local governments and specific facilities.

2. The participating Federal agencies will maintain facilities, equipment, and personnel to carry out their statutory responsibilities. Existing radiological monitoring and assessment capabilities developed to carry out those responsibilities will be made available to State and local authorities with jurisdiction, and to other Federal agencies in an emergency if other resources are not available.

3. The Federal agencies will make their resources available on request. An agency may decline to provide any needed resources only if doing so would prevent that agency from carrying out its essential mission and emergency functions.

4. During the emergency phase of the Federal response, the DoE will coordinate all Federal offsite radiological monitoring and assessment operations and integrate the data derived from those activities. EPA will assume the lead agency responsibility for coordinating the intermediate and long-term offsite radiation monitoring activities after receiving adequate assurance from the Department of Energy and other Federal agencies that they will commit the required resources, personnel, and funds for the duration of the Federal response effort. The full FRMAP response will be terminated when the EPA Administrator determines, after consultation with the CFA and State and local officials, that: (a) There is no longer a threat to the public health and safety or to the environment, or (b) State and local resources are adequate for the situation, or (c) the Federal agencies are carrying out only non-emergency statutory responsibilities, or (d) there is mutual agreement of the agencies involved to terminate their response.

5. An agency that makes its resources available, although under the general direction of DoE (or later, EPA), does not place itself under the authority of the coordinating agency.

6. DoE (or later, EPA) will maintain a common and consistent set of all offsite radiological monitoring data and provide it, with interpretation, to the CFA, to the States, and to groups that these agencies designate, as well as to other Federal agencies involved in the emergency response. The principal description of the combined offsite and onsite radiological conditions will come from the CFA and the State.

7. The Federal radiological monitoring and assessment response will be in support of, and coordinated with, that of the State and local governments with jurisdiction. The resources of DoE and the participating agencies will be used only when State and local resources are not adequate. All offsite activities will be coordinated with those of the State.

8. Federal assistance will be initiated when the Federal Radiological Emergency Response Plan is in effect, or through a request from a State or local government, another Federal agency or private entity, or (in rare cases) when DoE, after notification of an incident, but in the absence of implementation of the FRERP or formal State request, believes it must respond to meet statutory requirements to protect public safety. Whenever DoE responds without a State request, the State will be notified by DoE. Requests from private entities will be referred to the State before any decision on response is made to ensure there will not be a duplication of effort.

9. Agencies carrying out statutory responsibilities related to radiological monitoring and assessment during a Federal response will also coordinate their activities through DoE (or later, EPA). This coordination will not limit the normal working relationship between a Federal agency and its State counterpart nor restrict the flow of information from that agency to the State.

10. Federal agencies, as their resources permit, will assist other Federal agencies and State and local governments with planning and training activities designed to improve local response capabilities, and will cooperate in drills, tests, and exercises.

11. Appropriate independent emergency actions may be taken by the participating Federal agencies on their own authority to save lives, minimize immediate hazards, and gather information about the emergency that might be lost by delay. Such action will not preempt later implementation of the FRMAP.

12. Funding for each agency's participation in support of the FRMAP is the responsibility of that agency unless provided for by other agreements.

E. Organization

1. General Principles

The FRMAP addresses the coordination of the participating agencies' support of offsite monitoring and assessment efforts. The organization of the FRMAP emergency response and the roles of some agencies under FRMAP will depend on the specific emergency, but will follow the principles outlined in the Federal Radiological Emergency Response Plan. Information generated from the FRMAP response is provided to the CFA and to the appropriate State authorities.

2. Involvement of Non-Participating Agencies

In some cases, other Federal agencies may become involved with FRMAP activities. The State Department would be involved if an incident occurring within the United States or its territories affected areas outside United States territory or if monitoring efforts needed to be coordinated across an international border. The Federal Bureau of Investigation (FBI) would have the principal role in the investigation of all emergencies where terrorism or deliberate release of radioactive materials is suspected, or in cases of threats against nuclear facilities or materials. The major FBI interfaces, however, are expected to be with the CFA and FEMA. Even when the FBI is involved, DoE/EPA will coordinate monitoring functions with their State counterparts.

3. Coordination of a Limited Response

The FRMAP recognizes that the appropriate response to a request for Federal radiological assistance may take many forms, ranging from advice given by telephone to a large Federal monitoring and assessment operation at the scene of a serious emergency. Most of the following guidelines for participating agencies are designed for the latter situation, but the FRMAP is also applicable to lesser incidents where a limited response, possibly by DoE alone, is sufficient.

F. Responsibilities of Participating Agencies

1. Responsibilities During Emergencies Cognizant Federal Agency. The CFA's primary emergency response responsibilities are stated in the

previous chapter at C.1. The CFA will also contribute to the FRMAP as follows:

a. Ensure that DoE, Federal, State, and local officials are notified quickly of a radiological emergency;

b. Provide pertinent onsite technical and radiological data to the DoE or EPA Offsite Technical Director (OSTD) and State and local officials; and

c. Utilize FRMAP data, as appropriate, to develop the Federal technical recommendations on protective measures and evaluate the facility or radiological activity owner or operator's recommendations. The presentation of these recommendations to the State or other offsite authority will be coordinated with FEMA.

Department of Energy. DoE's offsite responsibilities are:

a. Coordinate the offsite radiological monitoring, assessment, evaluation, and reporting activities of all Federal agencies during the initial phases of an emergency while maintaining technical liaison with State and local agencies with similar responsibilities.

b. Maintain a common set of all offsite radiological monitoring data and provide these data and interpretation, including any Federal dose projections, to the CFA and the State on an expedited basis to assist in developing other protective measures and re-entry recommendations for the public. The CFA will provide these data to other appropriate Federal agencies requiring direct knowledge of radiological conditions.

c. With other appropriate agencies, including those agencies with responsibilities for the ingestion pathway (e.g., EPA, HHS, and USDA), help the CFA to assess the accident potential and to develop technical recommendations on protective actions, and assist the State in preparing re-entry recommendations and in recovery planning.

d. Provide the personnel and equipment required to coordinate and, in cooperation with other Federal components, to perform the offsite radiological monitoring and evaluation activities.

e. Request supplemental radiological monitoring assistance from other Federal agencies when needed, when requested to do so by the State, or if considered necessary to maintain the credibility of the offsite assessment.

f. Request meteorological, hydrological, geographical, etc., data needed for monitoring and assessment efforts.

g. Provide consultation and support services to all other entitities (e.g., private contractors) with radiological monitoring functions and capabilities.

h. Assist HHS and other Federal, State, and local agencies by providing technical and medical advice on the methods of handling radiological contamination.

i. Assist the other Federal, State, and local agencies in early planning for decontamination and recovery of the offsite area and make recommendations to avoid the spread of contamination by improper emergency operations.

j. Provide telecommunications support to Federal agencies assisting in offsite radiological monitoring, if necessary.

k. Ensure the orderly transfer of responsibility for coordinating the intermediate and long-term radiological monitoring function to EPA at a mutually agreeable time after the initial phases of the emergency if the need for Federal radiological assistance continues.

Environmental Protection Agency. EPA will assume the lead agency responsibility for coordinating the intermediate and long-term offsite radiation monitoring activities after receiving adequate assurance from the Department of Energy and other Federal agencies that they will commit the requested resources, personnel, and funds for the duration of the Federal response effort. Once the coordination responsibilities are transferred from DoE and EPA, EPA will assume the DoE role described above. Prior to assuming coordination responsibility, EPA will function as one of the other participating agencies.

Federal Emergency Management Agency. FEMA has a major role in all situations involving a multi-agency response. In addition to coordinating the offsite (non-technical) response under the FRERP, FEMA may contribute to FRMAP by obtaining telecommunications and logistical support for agencies participating in radiological monitoring and assessment as requested by DoE or EPA as FRMAP coordinators.

Other Participating Agencies. Each participating agency will carry out its statutory responsibilities and any other responsibilities under the FRERP, if the FRERP is implemented, during the course of the radiological emergency. All radiological monitoring and assessment activities conducted as part of the statutory responsibilities will be coordinated with the other participating agencies through DoE and later, EPA. Each agency will make its radiological resources and capabilities available to the Federal assistance operations as resources permit.

2. Responsibilities for Training and Exercises

To improve the response capability of the participating agencies and the State and local personnel with whom they interact, the FRMAP encourages the development of training materials and presentation of training sessions by all agencies and at all levels. Radiological emergency response training should be oriented toward ensuring proper emergency actions at the scene of a radiological emergency, informing the public, and effecting a prompt return to normalcy. In addition to agency personnel, personnel who may be trained include those likely to be at the scene of the accident, such as personnel of a fixed nuclear facility, personnel providing emergency serices, those experts responding to calls for radiological assistance, and local authorities who need to work with State and Federal emergency radiological assistance personnel. Federal assistance in training State and local government personnel is available through FEMA (under 44 CFR Part 351), using the technical expertise and resources of other FRMAP agencies.

Exercises of the FRMAP aspect of the FRERP are encouraged among Federal, State, and local agencies. Exercises may occur independently or in conjunction with other exercises, such as State/facility emergency plan exercises or exercises of the FRERP. Each agency should coordinate its training programs and exercises through the Federal Radiological Preparedness Coordinating Committee (FRPCC) Subcommittee on Training and Exercises to avoid duplication and to make its training available to other agencies. Each agency is encouraged to furnish training materials and training assistance, as its resources permit, when requested to do so by other agencies.

G. Types of Emergencies

Three types of emergencies have been previously described in the FRERP. Each type of emergency may present different types of response problems.

Fixed nuclear facilities, including nuclear power reactors, have the advantages of known locations and existing site-specific emergency plans. Classifications of incident severity have been development for many of these facilities, and the level of FRMAP response may be guided by these classifications. The NRC has adopted four classifications for incidents at commercial nuclear power plants: Notification of Unusual Event; Alert; Site Area Emergency; and General Emergency. DoD and DoE have chosen the same four classifications for their nuclear facilities, although the type of possible incident would depend on the type of facility. In general, for facilities using these classifications, offsite monitoring and assessment activities would be expected only during a Site Area Emergency or a General Emergency. Substantial offsite radiological problems would be expected only during or following a General Emergency condition. Mobilization and activation could occur under an Alert if degradation of the level of safety at the facility or other conditions (public concern, unfavorable weather, lack of resources) warrant such action.

Response to transportation accidents is more difficult to plan, as such accidents may occur anywhere, may involve a variety of radioactive materials, and may represent much less of a radiological hazard or serious threat to the public. In most cases, State resources or a limited Federal response will suffice.

H. Operating Procedures

1. Notification and Activation

Notification of DoE and other participating agencies may occur through an alert to a possible problem or a request for radiological assistance. DoE will maintain national and regional coordination offices as points of access to Federal radiological emergency assistance and response. Requests for Federal radiological assistance will generally be directed to the appropriate DoE Radiological Assistance Regional Coordinating Office. An exception to this is a request from the DoD, which will be made through the DoD-DoE Joint Nuclear Accident Coordinating Center (JNACC) at Kirtland AFB in Albuquerque, New Mexico. Requests might also go directly to DoE's Emergency Operating Center (EOC) in Germantown, Maryland.

Requests for radiological assistance may come from other Federal agencies, State or local governments, licensees for radioactive materials, industries, or the general public. Requests from the general public will be referred to the State before any decision on response is made to ensure there will not be a duplication of effort. Although activation of a response under the FRMAP can occur at the request of other agencies, authorities, and coordinating centers, a State request for assistance will be obtained before major offsite operations begin.

The DoE regional office may respond by dispatching a Radiological Assistance Program (RAP) team, by requesting assistance from a regional office of another participating agency, or by referring the request to an appropriate State agency that can provide prompt assistance. The State will be notified when a RAP team is being sent. In addition, the DoE regional office will notify the Director of DoE's Emergency Action and Coordination Team (EACT) through the Emergency Operating Center (EOC) when the DoE regional office needs assistance or has responded to a request for assistance. EACT may choose to alert or activate major DoE response resources. If the initial request comes directly to the EOC, its staff will alert or dispatch a RAP team from the appropriate regional office.

The DoE EOC will notify, as necessary, DoC/NOAA, DoD, DoI, EPA, FEMA, HHS, NRC, and USDA in accordance with agreed-upon FRMAP notification procedures, to request their assistance if significant Federal involvement may be required. DoE, in its role as coordinator, may choose to contact, or may be contacted by, any of the participating agencies, but unless DoE is also the DVA, DoE will not be the primary source of general information about the incident.

Notification of FRMAP agencies may be delayed or omitted if necessary to avoid interfering with investigations of threats against nuclear facilities or materials. In some cases, notification may be made, but information not critical to the monitoring and assessment activities can be restricted by an ongoing criminal investigation. Restrictions on classified information may also prevent total disclosure to other participating agencies.

Agencies responding under FRMAP will usually arrive in stages, with advance teams preceding more fully equipped teams. Agencies will anticipate State needs to the maximum extent possible and respond as quickly as practical. However, it should be recognized that the logistics of any major response operation make the expectation of an immediate response to all State requests unrealistic.

2. Coordination at the Emergency Scene

DoE's Emergency Action and Coordination Team (EACT) at headquarters will designate an initial Off Site Technical Director (OSTD) for any emergency requiring more than a limited Federal response. The OSTD ensures that the DoE responsibility for coordinating offsite monitoring and assessment is met. Upon arrival at the scene of the emergency, the OSTD will contact the State or local agency responsible for radiological monitoring, and the senior officials of the CFA, FEMA, and EPA present at the emergency scene.

The person designated as OSTD may vary as the nature and degree of response change. For example, the OSTD will generally be the RAP team captain during the early response. As additional resources or additional RAP teams arrive, EACT may designate a higher-level official from a regional office of an official from DoE headquarters as OSTD. DoE will notify the appropriate participating agencies when these designations are made. In emergencies where DoE is also the CFA or has onsite responsibilities by agreement, the OSTD will coordinate the FRMAP activities, reporting to the CFAO through the designated DoE Team Leader. (The DoE Team Leader is the DoE official who coordinates the total DoE response.)

The OSTD is responsible for establishing a Federal Radiological Monitoring and Assessment Center (FRMAC) to be used as a coordination center for Federal monitoring efforts. This center need not be located near the emergency site or the Federal Response Center (FRC) as long as its actions can be coordinated with those centers. In some instances, the FRMAC location may have already been determined and included as part of a Federal agency, State, or local emergency plan. When the FRMAC location has not been previously determined, a location will be selected after conferring with the State. The location of the FRMAC will be reported to the CFA, FEMA, and State officials at the scene, and DoE headquarters will inform the headquarters of other appropriate participating agencies. When the FRC and FEMA and not located together, the OSTD will designate a liaison to the FRC and FEMA will designate a liaison to the FRMAC to facilitate coordination between centers. Representatives of all agencies participating in the FRMAP response should be present in the FRMAC, if possible.

The DoE OSTD will work closely with the EPA Radiological Response Coordinator to facilitate a smooth transition of the coordination responsibility to EPA at a mutually agreeable time and after consultation with the State. It is difficult to specify in advance when this transfer could occur, but it would generally be expected to take place after the immediate emergency situation is stabilized, offsite releases of radioactive material have ceased, and the offsite radiological conditions have been documented and their consequences have been assessed. In the case of an accident at a nuclear power plant, for instance, the transfer of responsibility might take place at a mutually agreeable time after NRC has determined the plant to be in stable condition.

After this transfer, a person designated by EPA's Office of Radiation Programs will serve as the OSTD and will assume the coordination responsibilities of the DoE OSTD. Other participating agencies will be responsible for coordinating their monitoring activities through the EPA OSTD as long as the FRMAP response continues.

3. Public Information

Public information activities relative to FRMAP operations will be coordinated in accordance with the FRERP. Each particiating agency is responsible for preparation of press releases about its own response activities in support of FRMAP. However, information for the public about the results of the Federal radiological monitoring should be coordinated through the CFA and FEMA. The participating agencies may supply public information personnel or technical experts to assist the CFA, FEMA, or State in their public information efforts.

Security considerations may restrict available information when classified nuclear material or facilities are involved. Information may also be temporarily withheld from the public in emergencies involving terrorism or sabotage to avoid interfering with an ongoing criminal investigation.

When the Federal response is limited, public information may be handled locally by appropriate Federal or local officials.

4. Congressional Information

Responses to Congressional requests for information will be coordinated among the Federal agencies as provided for in the FRERP.

5. Reimbursement

As stated in Section D, funding for each agency's participation in support of FRMAP is the responsibility of that agency, unless other agreements are in effect. This will be the case regardless of whether the activities were initiated by statutory responsibilities or by the request of another agency.

I. Supporting Agreements

Several interagency agreements have been signed that pertain to the offsite monitoring and assessment activities covered by FRMAP. Authority for each agency's role during a radiological emergency is contained within the authorities cited in each agency's response plan summary in the following chapter.

IV. Federal Agency Interfaces and Response Plan Summaries

To facilitate the coordination of Federal agency response actions, this section defines and summarizes Federal agency interfaces—those activities for which two or more agencies have related responsibilities. The interfaces among Federal agencies are determined in large part by the nature and severity of given emergencies. This section also contains summaries of the response plans of the participating Federal agencies, which provide agency mission statements, contact points for notification, Federal interfaces, plan references, and sources of authority.

A. Federal Agency Interfaces

Federal agency interfaces are necessary for a coordinated Federal response. These interfaces, describing how various Federal agencies will work together, are the planning elements that promote coordination in the Federal response. Some of these interfaces were described explicitly in the preceding sections; others are in the individual agency response plans and procedures. The interfaces are summarized and catalogued alphabetically in this section to provide a comprehensive reference list for participating agencies and other offsite authorities. This catalogue also serves as a glossary, since only the titles of these interfaces are used in the agency response plan summaries that follow.

Activation and Deployment (Procedures)

FEMA will execute operational response procedures as agreed to with each potential CFA to ensure that notification, activation, and deployment of Federal agencies take place in a timely, efficient, and mutually agreeable manner and in accordance with procedures in their agency plans.

Advise on Transportation of and to Emergency Housing

HUD may consult with DoT for advice on the best means for transporting dislocated persons to emergency housing or on transporting emergency housing to dislocated persons.

Congressional Information

Agency Congressional Liaison Officers (CLOs) will coordinate Congressional requests with the CFA Congressional Liaison Officer at headquarters or the FEMA CLO who will be the Congressional point of contact at the scene of the emergency. The CFA Headquarters CLO and FEMA CLO will keep in frequent contact.

Coordination (Liaison)

Agencies will provide or exchange liaison representatives, as necessary, to assist in the exchange of information among agencies.

Coordination (Offsite)

Federal agencies providing offsite assistance to State and local government agencies will coordinate this assistance through the SFO whenever Federal agencies share the implementation of certain responsibilities or when their activities may impinge on the actions of other agencies.

Coordination (Onsite/Offsite)

The SFO and the CFAO will work together directly and through their representatives at the scene, whether co-located or located at separate response centers, to coordinate the response efforts of the Federal agencies off site with the response efforts of the CFA and owner or operator on site.

Designation of Agency Lead Official

Each agency will exchange with FEMA appropriate information about its designated lead official and personnel at the scene, if any.

Emergency Shelter Availability

HUD and HHS will coordinate their assistance to State and local government officials in providing emergency shelter for relocated persons.

Federal Lands

The CFA and FEMA will coordinate with any affected Federal land management agencies (DoI, USDA, DoD, TVA) about response activities to ensure that they are consistent with governing Federal statutes.

Federal Response Center

Upon notification by FEMA of the location and establishment of the Federal Response Center, each Federal agency with representatives at the scene of the emergency will provide representation to the Center if possible.

FRMAP (Coordination With FRERP)

DoE or EPA will coordinate FRMAP monitoring and assessment activities with other Federal offsite assistance being provided to the State through the SFO.

FRMAP (Liaison)

Upon arrival at the scene, the DoE Offsite Technical Director (OSTD) will establish liaison with State and local officials, the CFA, FEMA, and EPA.

FRMAP (Monitoring Results)

DoE will coordinate Federal monitoring activities for the CFA and in support of the State during the initial stages of the emergency. The CFA, other Federal agencies, and the State will work with DoE to develop a comprehensive assessment of the offsite radiological monitoring data. The results of the assessment will be provided to the CFA and the State for further evaluation and distribution.

FRMAP (Notification)

DoE will notify Federal agencies that have FRMAP responsibilities in accordance with agreed-upon notification procedures.

FRMAP (Resources)

In making their resources available to support the FRMAP, all participating Federal agencies will coordinate their activities with DoE. When EPA has assumed the coordination responsibilities from DoE, participating Federal agencies will coordinate their activities with EPA.

FRMAP (Transition)

After the emergency phase of the response, DoE will transfer FRMAP coordination responsibilities to EPA at a mutually agreeable time.

Food/Feed Availability

USDA and HHS will coordinate their assistance to State and local government officials to ensure the availability of food and feed during emergencies.

Food/Feed Safety Recommendations

HHS and USDA, in coordination with the CFA, will jointly develop recommendations concerning the safety of food and animal feed.

Impact Assessment (Agriculture)

USDA will coordinate with HHS and EPA to assist State and local officals, as requested, in the disposition of contaminated livestock and poultry.

Impact Assessment (Health)

HHS will assist the CFA, FEMA, EPA, DoE as FRMAP coordinator, and, if requested, the State in assessing the impact of the radiological emergency on the health of persons in the affected area.

Indian Tribes

DoI (tribal government and trust resources issues) and HHS (health and safety issues) are available to assist the CFA and FEMA in consulting and coordinating with Federally recognized Indian tribes about incidents, responses, and protective measures affecting them.

Information Exchange

FEMA will establish a mechanism to facilitate the timely exchange of information among responding Federal agencies.

Information Requirements

CFA, DoE/EPA, and FEMA will satisfy the mutually agreed-upon information requirements specified by each participating Federal agency during the planning process.

International Cooperation (CFA)

The CFA, in consultation with FEMA, the Department of State, and other Federal agencies as appropriate, will cooperate with government counterparts in Canada and Mexico as agreed to in already established protocols in responding to radiological emergencies occurring near U.S. borders. The CFA will also provide appropriate and timely information directly to its counterparts in Mexico and Canada at the time of emergency.

International Cooperation (FEMA)

FEMA will work with the Department of State and other Federal agencies at the time of an emergency to ensure that affected or potentially affected countries are kept fully informed.

Logistical Support for Federal Agencies

FEMA will assist in obtaining resources needed by the CFA and other Federal agencies at the emergency scene.

Marine Fishery Product Safety

The Department of Commerce will provide support to HHS/FDA at its request on matters of fishery product safety (marine areas only).

Monitoring Resources (EPA)

EPA will provide resources to assist DoE in monitoring radioactivity levels in the environment during the emergency phase of the incident and, during the intermediate and long-term phase, will coordinate Federal radiological monitoring and the evaluation of actual environmental impact.

Notification (CFA)

The CFA, after receiving notification of the emergency, will notify FEMA and other Federal agencies in accordance with the CFA's notification procedures. This notification will include a description of the CFA's response status and current activities, a general assessment of the emergency, and any other information available.

Notification (FEMA)

FEMA will notify Federal agencies of the emergency situation and supply them with all relevant information available.

Other Protective Measures and Re-entry Recommendations (RERs) (Development)

The CFA will consult as appropriate with FEMA, DoE, EPA, HHS, USDA, and other Federal agencies in developing advice for the State regarding other protective measures and re-entry recommendations for the public.

Other Protective Measures and Re-entry Recommendations (RERs) (Presentation)

The CFA, in conjunction with FEMA and other appropriate Federal agencies, will present a coordinated Federal position on other protective measures and re-entry recommendations for the public to the State or other appropriate offsite authorities.

Protective Action Recommendations (Development)

Unless the public health and safety are in imminent peril, the CFA will consult as appropriate with FEMA, HHS, EPA, USDA, DoE, and other Federal agencies in preparing a coordinated Federal position on protective action recommendations, taking into consideration appropriate Federal and State Protective Action Guides when such recommendations are necessary.

Protective Action Recommendations (Presentation)

Unless the public health and safety are in imminent peril, the CFA, in conjunction with FEMA, will present an evaluation of protective action recommendations (PARs) to the State or other appropriate offsite authority, as requested.

Protective Action and Re-entry Recommendations Dissemination (CFA)

The CFA will inform DoE or EPA, as coordinators of Federal offsite radiological monitoring, of protective action and re-entry and other protective measures recommendations made to the State, and of any decisions or actions taken by the State based on those recommendations.

Protective Action and Re-entry Recommendations Dissemination (FEMA)

FEMA shall inform Federal agencies at the national level and at the Federal Response Center of protective action and re-entry recommendations made to the State and of any decisions or actions taken by the State based on those recommendations.

Protective Action Implementation (Food)

USDA, in coordination with HHS, will assist State and local officials in the implementation of protective measure to minimize radiation exposure to the public through food ingestion, and will inform FEMA of such assistance.

Public Information Releases from Headquarters

Federal agencies' headquarters PIOs will either channel media information requests to the CFA's PIO at the CFA headquarters or coordinate their intended public information releases through him/her prior to release.

Public Information Releases from the JIC

Federal agencies' PIOs will work together to promote the coordinated release of public information through the JIC.

Radiation Victim Care advice

DoE will provide HHS and other Federal, State, and local agencies with advice and medical resources to the extent available to assist in the handling and care of radiation accident victims if requested.

Recovery Planning

Prior to the Deactivation of the Federal response, FEMA will coordinate Federal assistance to the State, as requested, in planning for offsite recovery.

Status Updates

Agencies at the scene of the emergency prior to the arrival of the CFA, FEMA, and DoE will provide a status update on their activities when each of these agencies arrives at the scene of the emergency. Subsequent agency status updates will be provided to the CFA, FEMA, and DoE on a recurring basis as requested and to EPA upon transfer of the FRMAP coordination responsibility from DoE.

Water Projects

Federal water resources project managers (DoD, DoI, TVA) will coordinate the operation of their projects with the appropriate agencies to ensure protection of municipal (EPA) and agricultural (USDA) water supplies and fish and wildlife (DoC, DoI) during radiological emergencies.

DoC and DoD will provide weather support capabilities for radiological emergencies, backing up one another when required, and may call on additional support from other agencies, as necessary.

White House Information

The CFA will notify the White House of the incident. After the intial report, the CFA will prepare the section of FEMA's White House reports dealing with onsite conditions and their actual or potential offsite impacts. Based on information provided by the SFO and the other Federal agencies, FEMA will provide periodic executive summaries to the President and advise the White House daily of the overall Federal response.

White House Responses

All responses to the White House will be coordinated with FEMA. The agency receiving the inquiry will have lead responsibility for preparing and transmitting the response.

B. Summaries of Federal Agency Response Plans

This section provides summaries of the response plans prepared by participating Federal agencies:

Department of Commerce (DoC)
Department of Defense (DoD)
Department of Energy (DoE), CFA and FRMAP
Department of Health and Human Services (HHS)
Department of Housing and Urban Development (HUD)
Department of the Interior (DoI)
Department of Transportation (DoT)
Environmental Protection Agency (EPA)
Federal Emergency Management Agency (FEMA)
National Communications System (NCS)
Nuclear Regulatory Commission (NRC)
U.S. Department of Agriculture (USDA)

Each summary provides a mission statement, the agency contact point for notification, Federal agency interfaces, assistance responsibilities to Federal, State, and local governments, agency response plan and procedure references, and sources of agency authority. For ease of updating, emergency telephone and facsimile numbers are provided in Appendix C.

Department of Commerce Response Plan Summary

1. Summary of Response Mission

The National Oceanic and Atmospheric Administration (NOAA) is the primary agent within the Department of Commerce responsible for providing assistance to the Federal, State, and local organizations responding to a radiological emergency. NOAA's responsibilities include: Acquiring weather data and providing weather forecasts in connection with the emergency; disseminating weather and emergency information; and ensuring that marine fishery products available to the public are not contaminated.

2. Point of Notification at DoC Headquarters

Contact Person's Title: Chief, Applied Services Branch.

Contact Person's Organization: National Weather Service Headquarters.

Alternate Emergency Point of Contact: NOAA/NWS Communications Branch.

3. Federal Department or Agency Interfaces

Listed below are DoC's interfaces with other Federal departments and agencies in responding to a radiological emergency.

DEPARTMENT OF COMMERCE FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible DoC organization
Status updates, information requirements, and public information releases from Joint Information Center (JIC).	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	NOAA.
Federal response center	FEMA	NOAA.
Recovery planning	FEMA	NOAA/National Marine Fisheries Service (NMFS).

Department of Commerce Federal Agency Interfaces—Continued

Interface description	Agencies	Responsible DoC organization
Public information from headquarters, and congressional information.	DoD (CFA), DoE (CFA), NRC (CFA) during emergency phase; FEMA during recovery phase.	NOAA.
Notification	FEMA, NRC	NOAA/National Weather Service (NWS).
Fishery Product Safety	HHS/FDA	NMFS.
Information exchange, logistical support for other Federal agencies, coordination (offsite), and designation of agency lead official.	FEMA	NOAA.
Water projects	DoD (Army Corps of Engineers), DoI, USDA	NOAA/NMFS.
Weather support	DoD	NWS.
FRMAP (notification)	DoE	NWS.
FRMAP (resources)	DoE, EPA	NWS.
White House responses	FEMA	NOAA.

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Prepare and disseminate forecasts and warnings for sever weather such as hurricanes, tornadoes, severe thunderstorms, floods, extreme winter weather, and tsunamis to local officials and the general public.
- Broadcast, watches and warnings of natural disasters prepared by NOAA, and radiological emergency warnings approved by the States, over NOAA Weather Radio and other NOAA dissemination systems.
- Provide to the CFA, DoE, and the State, current and forecast meteorological information about wind speed and direction, low level stability, precipitation, and other meteorological and hydrological factors affecting the transport or dispersion of radioactive materials (gaseous, liquid, particulate).
- Provide support to HHS/FDA at its request, through the National Marine Fisheries Service (NMFS), in order to avoid human consumption of contaminated commercial fishery products. (Marine areas only.)

5. DoC Response Plan and Procedure References

Agency Response Plan

1. *National Plan for Radiological Emergencies at Commercial Nuclear Power Plants.* Federal Coordinator for Meteorological Services and Supporting Research, National Oceanic and Atmospheric Administration, November 1982.

6. DoC Specific Authorities

- *Department of Commerce Organization Order 25–5B,* as amended August 18, 1980.

Department of Defense Response Plan Summary

1. Summary of Response Mission

a. The Department of Defense is charged with the safe handling, storage, maintenance, assembly, and transportation of nuclear weapons, nuclear weapon components, and other radioactive material in DoD custody, and with the safe operation of DoD nuclear facilities. Inherent in this responsibility is the requirement to protect life and property from any health or safety hazards that could ensue from an accident or significant incident associated with these materials or activities. To fulfill these responsibilities, the DoD has issued plans and policy guidance requiring the development of a well-trained and equipped nuclear accident response organization. It should be noted that in order to protect national security information, policy guidance prohibits public release of information that identifies storage locations of nuclear materials, schedules of transportation of nuclear materials, or the schedules of nuclear-powered vessels. When DoD is not the CFA for a radiological emergency, it will support the CFA and FEMA within the constraints of national security.

b. The responsibility for onsite Command and Control at the scene of a nuclear accident or significant incident is assigned to:

(1) The Service or Agency in charge of a DoD installation, DoE facility, naval ship, or assigned geographic area where the accident or incident occurs.

(2) The Service or Agency having custody of the material at the time of the accident or significant incident if the accident occurs beyond the boundaries of a DoD installation, DoE facility, naval ship, or geographic area.

c. The National Military Command Center (NMCC) is responsible for initial national-level command and control and response of DoD resources and personnel until conditions have stabilized. Command and Control will be transferred to the responsible Service Operations Center, as Directed by the Secretary of Defense or his authorized representative. The NMCC will continue to provide information and support as required.

2. Point of Notification at DoD

Contact Person's Title: Deputy Director of Operations (DDO).

Contact Person's Organization: National Military Command Center, Organization of the Joint Chiefs of Staff.

3. Federal Department or Agency Interfaces

Listed below are DoD's interfaces with other Federal departments and agencies in responding to a radiological emergency.

Department of Defense Federal Agency Interfaces

Interface description	Agencies	Responsible DoD organization
Notification (CFA)	DoE, FEMA	NMCC.
Activation and deployment (procedures)	FEMA	NMCC.
Status updates	White House situation room, EPA, FEMA, USDA, HHS, DoE, NRC, DoJ.	NMCC.
Federal lands	DoE, DoI, USDA	NMCC.
FRMAP (notification)	EPA, HHS, USDA, DoC, DoE	NMCC.
FRMAP (coordination with FRERP)	DoE	NMCC.
FRMAP (liaison)	FEMA, DoE	NMCC.
Indian tribes	DoI, HHS	NMCC.
Recovery planning	FEMA	NMCC.
Information exchange, public information releases from the JIC, public information releases from headquarters.	DoE (CFA), NRC (CFA) during emergency phase; FEMA during recovery phase.	Department of Army. NMCC, OSD or service public affairs.
PAR (development)	FEMA, EPA, HHS, USDA, DoE (FRMAP), EPA (FRMAP)	NMCC.

DEPARTMENT OF DEFENSE FEDERAL AGENCY INTERFACES—Continued

Interface description	Agencies	Responsible DoD organization
PAR (presentation)	FEMA	NMCC.
RER (development)	FEMA, EPA, HHS, USDA	NMCC.
RER (presentation)	FEMA	NMCC.
PAR and RER dissemination (CFA)	DoE (FRMAP), EPA (FRMAP)	NMCC.
Congressional information	FEMA, DoE (CFA), NRC	OSD or service public affairs, congressional liaison offices.
Logistical support for the CFA	FEMA	NMCC or Department of Army.
Logistical support for Federal agencies	FEMA	NMCC or Department of Army.
Coordination (onsite/offsite)	FEMA	NMCC.
Designation of agency lead official	FEMA	NMCC.
Federal response center	FEMA	NMCC.
Water projects	DoI	Army Corps of Engineers.
White House information, White House responses	FEMA	OSD.

4. Responsibilities for Assistance to Federal, State, and Local Governments

a. Offsite authority and responsibilities at a nuclear accident rest with State and local officials. It is important to recognize that for nuclear weapons or weapon component accidents, land may be temporarily placed under effective Federal control by the establishment of a National Defense Area (NDA) or National Security Area (NSA) to protect U.S. government classified materials. These lands will revert back to State control upon disestablishment of the NDA or NSA.

b. The State Governor is responsible for the health, safety, and welfare of individuals within the territorial limits of the State during periods of emergency or crisis and may be expected to direct measures that must be taken to satisfy that responsibility. The On-scene Commander will assist the State, when possible, in coordination with FEMA, to ensure the public is protected.

c. Within the constraints of national security, provide military assistance in the form of manpower and logistic support, including aircraft services, as requested by FEMA.

d. Provide telecommunications support not available from other Federal agencies when requested by FEMA.

5. DoD Response Plan and Procedures References

Agency Response Plan

1. *Nuclear Weapon Accident Response Procedures (NARP) Manual*—January 1984.

2. DoD Directive 5100.52 *Radiological Assistance in the Event of Accident Involving Radiological Materials*—10 March 1981.

3. DoD Directive 5230.16 *Nuclear Accident and Incident Public Affairs Guidance*—7 February 1983.

6. DoD Specific Authorities

- The Atomic Energy Act of 1954, as amended.
- Pub. L. 97–351 "Convention on the Physical Protection of Nuclear Material Implementation Act of 1982".

Department of Energy Response Plan Summary (CFA)

1. Summary of Response Mission

The Department of Energy owns and operates a variety of fixed nuclear facilities and activities throughout the United States. Most of these facilities are located on large, government-owned reservations, and are operated by extensive technical staffs under the direction of DoE. Subject to review and concurrence by DoE headquarters, DoE officials at these field facilities are responsible for the preparation of emergency plans and procedures for all nuclear activities under their jurisdiction. DoE field officials have the authority to initiate immediate emergency response procedures, direct emergency shutdown operations, or place in safe condition the nuclear facilities and activities under their cognizance. DoE is the Cognizant Federal Agency (CFA) for nuclear activities under its jurisdiction. All field emergency activities are coordinated with appropriate headquarters officials, including the Director, Emergency Action and Coordination Team (EACT).

DoE field officials are also required to assist State and local authorities, within the constraints of national security and in coordination with FEMA, in the preparation of those portions of their radiological emergency plans related to DoE nuclear facilities.

As part of its preparedness activities, DoE maintains extensive, field-based radiological emergency response resources for deployment under the FRMAP.

2. Point of Notification at DoE Headquarters

Contact Person's Title: Emergency Coordinator.

Contact Person's Office: DoE Emergency Operations Center (EOC).

Contact Person's Emergency Location: DOE EOC.

3. Federal Department or Agency Interfaces

Listed below are the DoE's interfaces with other Federal departments or agencies in responding to a radiological emergency at a DoE facility:

DEPARTMENT OF ENERGY FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible DoE organization
Notification (CFA)	FEMA, NRC, EPA, HHS	EACT, field.
Activation and deployment (Procedures)	FEMA	EACT.
Status updates	DoC, DoD, NRC, EPA, FEMA, HHS, HUD, DoI, NCS, DoT, USDA.	Emergency action and coordination team (EACT), field.
Federal lands	DoD, DoI, USDA	EACT, field.
FRMAP (resources)	NRC, EPA, DoC, DoD, DoI	EACT, field.
Impact assessment (health)	HHS, EPA	Field, EACT.
Indian tribes	DoI, HHS	Field, EACT.
Information exchange	DoC, DoD, NRC, EPA, FEMA, HHS, HUD, DoI, NCS, DoT, USDA.	EACT, field.
Public information releases from headquarters, public information releases from JIC.	DoD (CFA), NRC (CFA) during emergency phase; FEMA during recovery phase.	EACT, Assistant Secretary for Congressional, intergovernmental and public affairs (ASCP) or field.

DEPARTMENT OF ENERGY FEDERAL AGENCY INTERFACES—Continued

Interface description	Agencies	Responsible DoE organization
Congressional information	DoC, DoD, NRC, EPA, FEMA, HHS, HUD, DoI, NCS, DoT, USDA.	ASCP
PAR (development)	FEMA, NRC, EPA, HHS, USDA	
PAR and RER dissemination (CFA)	DoE (FRMAP), EPA (FRMAP)	Field, EACT
PAR (presentation), logistical support for Federal agencies, coordination (onsite/offsite), information exchange, White House information, designation of agency lead official, international cooperation (CFA), Federal response center.	FEMA	Field, EACT.
RER (development)	FEMA, EPA, HHS, USDA	Field.
RER (presentation)	FEMA	
Recovery planning	FEMA	As designated.
White House information, White House responses	FEMA	EACT.

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Assess the nature and extent of the radiological emergency and its potential offsite effects on public health and safety. Advise the State and local agencies based on this assessment.
- Develop Federal recommendations on protective actions for State and local governments that consider, as appropriate, all substantive views of other Federal agencies. Whenever possible, coordinate presentation of protective action recommendations with FEMA prior to or during their presentation to appropriate State and local officials (the State Governor or designee), except in situations of imminent peril to the public health and safety where the DoE may be required to make independent contact with State and local officials.
- Provide for the release of public information concerning the radiological emergency, except for the release of information classified for national security purposes. Coordinate such releases to the extent possible with the Senior FEMA Official, other Federal agencies, and the State to provide consistent and accurate information to the public by the most expeditious means.

5. DoE Response Plan and Procedure References

- *Emergency Planning, Preparedness, and Response for Operations,* Order DoE 5500.2, August 1981.
- *Reactor and Nonreactor Facility Emergency Planning, Preparedness, and Response Program for Department of Energy Operations,* Order DoE 5500.3, August 1981.
- *Public Affairs Policy and Planning Requirements for Emergencies,* Order DoE 5500.4, August 1981.
- *Response to Accidents and Significant Incidents Involving Nuclear Weapons,* Order DoE 5530.1, January 1983.

6. DoE Specific Authorities

- *Atomic Energy Act of 1954* as amended.
- *Energy Reorganization Act of 1974.*
- *Department of Energy Organization Act of 1977.*
- *Nuclear Waste Policy Act of 1982 (Public Law 97–425).*

Department of Energy Response Plan Summary (FRMAP)

1. Summary of Response Mission

Independent of its responsibilities as a CFA, the Department of Energy (DoE) maintains and implements, during the initial phase of a radiological emergency, the Federal Radiological Monitoring and Assessment Plan (FRMAP). Under FRMAP DoE provides and coordinates Federal offsite radiological monitoring and assessment support to the CFA and to the State and local governments. DoE's support is augmented by several other Federal agencies including FEMA, NRC, EPA, HHS, USDA, DoC, DoD, and DoI. The FRMAP establishes the framework for coordinating the monitoring and assessment activities of the Federal agencies.

2. Point of Notification at DoE Headquarters

Contact Person's Title: Duty Officer.

Contact Person's Organization: Emergency Action and Coordination Team.

Contact Person's Emergency Location: Emergency Operations Center.

3. Federal Department or Agency Interfaces

Listed below are the DoE's interfaces with other Federal agencies and departments in responding to a radiological emergency. DoE's Radiological Control Division is largely responsible for coordinating DoE's reponse effort within DoE and among the Federal agencies.

DEPARTMENT OF ENERGY FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible DoE organization
Status updates	NRC (CFA), EPA, FEMA, DoC, USDA, HHS, DoI, DoD (CFA), DoE (CFA).	Radiological assistance program (RAP) team.
FRMAP (notification)	EPA, HHS, USDA, DoC, DoT, DoI, DoD (CFA), NRC (CFA), DoE (CFA).	Emergency action and coordination team (EACT).
FRMAP (coordination with FRERP)	EPA, HHS, USDA, DoC, DoI, DoD (CFA), NRC (CFA), DoE (CFA), FEMA.	RAP team/offsite technical director (OSTD).
FRMAP (liaison)	EPA, FEMA, NRC, DoD, DoE, (CFA), EPA	RAP team/OSTD.
FRMAP (monitoring results)	NRC (CFA), DoD (CFA), DoE (CFA), EPA	RAP team/OSTD.
FRMAP (transition)	EPA	EACT, RAP team/OSTD.
Recovery planning	FEMA	As designated.
Information exchange, public information releases from the JIC.	DoD (CFA), NRC (CFA) during emergency phase	RAP team/OSTD.
Public information releases from headquarters	FEMA during recovery phase	EACT.
Congressional information	FEMA, NRC (CFA), DoD (CFA), DoE (CFA), EPA	Assistant Secretary for congressional, intergovernmental, and public affairs.
PAR (development)	NRC (CFA), DoD (CFA), DoE (CFA)	RAP team/OSTD.
Radiation victim care advice	HHS	Radiological emergency assistance center/training site (REAC/TS).
Logistical support for Federal agencies	FEMA	RAP team/OSTD.
Coordination (offsite)	FEMA	RAP team/OSTD, EACT.
Designation of agency lead official	FEMA	EACT.

DEPARTMENT OF ENERGY FEDERAL AGENCY INTERFACES—Continued

Interface description	Agencies	Responsible DoE organization
Federal response center	FEMA	RAP team/OSTD.
White House responses	FEMA	EACT.

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Coordinate the offsite radiological monitoring, assessment, evaluation, and reporting of all Federal agencies during the initial phases of an incident, and maintain liaison with State and local agencies with similar responsibilities.
- Maintain a common set of offsite radiological monitoring data, and provide it with interpretation to the CFA and to appropriate State and local agencies requiring direct knowledge of radiological conditions.
- Provide HHS and other Federal, State, and local agencies with technical and medical advice concerning treatment of radiological contamination, if requested.

5. DoE Response Plan and Procedure References

Agency Response Plan

1. The Federal Radiological Monitoring and Assessment Plan Chapter III of the FRERP

Interagency Procedures

1. *Agreement between ERDA and NRC for Planning, Preparedness, and Response to Emergencies* March 8, 1977
2. *Operational Response Procedures (ORPs) Developed Between HHS, DoE, EPA, and the NRC* 1983
3. *DoE-EPA Letter of Agreement on Notification of Incidents at DoE Facilities* January 18, 1978
4. *National Plan for Radiological Emergencies at Commercial Nuclear Power Plants,* DoC–NOAA, November 1982.

6. DoE Specific Authorities

- *The Energy Reorganization Act of 1974* (Pub. L. 93–438).
- *The Department of Energy Organization Act of 1977* (Pub. L. 95–91).

Department of Health and Human Services Response Plan Summary

1. Summary of Response Mission

In a radiological emergency, the Department of Health and Human Services (HHS) assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to Federal, State, and local governments.

2. Point of Notification at HHS Headquarters

Contact Person's Title: Emergency Coordinator.

Contact Person's Division: Division of Emergency Coordination.[1]

Contact Person's Emergency Location: Emergency Operating Center, Room 3B–10, Hubert H. Humphrey Building, Washington, D.C. 20201.

3. Federal Department or Agency Interfaces

Listed below are HHS's interfaces with other Federal departments and agencies in responding to a radiological emergency.

DEPARTMENT OF HEALTH AND HUMAN SERVICES FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible HHS organization
Notification (FEMA)	FEMA	Emergency coordinator, regional emergency coordinator.
Status updates	FEMA, DoD (CFA), DoE (Not as (CFA), DoE (CFA), NRC (CFA).	Emergency coordinator, regional emergency coordinator.
Information exchange logistical support for Federal agencies	FEMA	Emergency coordinator, regional emergency coordinator, operating division(s).
Coordination (offsite)	FEMA	Regional emergency coordinator (OS), Public Health Service (FDA).
Coordination (liaison)	USDA	Public Health Service.
Information requirements	DoD (CFA), DoE (CFA), NRC, FEMA	Public Health Service, Office of the Secretary.
Designation of agency lead official	FEMA	Office of the Secretary (OS).
Public information releases from headquarters, public information releases from the JIC.	DoD (CFA), DoE (CFA), NRC (CFA), during emergency phase; FEMA during recovery phase.	Office of public affairs/OS.
Congressional information	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	Office of legislative liaison/OS.
Recovery planning	FEMA	Public Health Service (CDC/FDA/HRSA), SSA.
Federal response center	FEMA	Regional emergency coordinator.
PAR (development), RER (development)	DoD (CFA), DoE (CFA), NRC (CFA), EPA, USDA	Public Health Service (CDC/FDA/HRSA).
Impact assessment (health)	DoD (CFA), DoE (CFA), NRC (CFA), EPA	Public Health Service (CDC/FDA/HRSA).
Impact assessment (agriculture)	USDA, EPA	Public Health Service (FDA).
Indian tribes	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	Public Health Service (CDC/FDA/HRSA).
FRMAP (resources)	DoE, EPA	Public Health Service (FDA).
Radiation victim care advice	DoE	Public Health Service (HRSA, CDC).
Fishery product safety	DoC	Public Health Service (FDA).
Food availability	USDA	Public Health Service (FDA), Social Security Administration (OFA), Human Development Services (OPCR).
Food/feed safety recommendations, protective action implementation (food).	USDA, DoD (CFA), DoE (CFA), NRC (CFA)	Public Health Service (FDA).
Emergency shelter availability	HUD	Human Development Services.
White House responses	FEMA	Office of the Secretary (OS).

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Assist State and local government officials with jurisdiction in evacuating and relocating persons from the affected area as requested. Ensure the availability of health and medical care, food, emergency shelter, clothing, and other human services, especially for the aged, the poor, the infirm, the blind, and others most in need;

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[1] The Emergency and Epidemiological Operations Branch (EEOB) and the Office of Health Physics (OHP), Food and Drug Administration (FDA), Public Health Service, have made special arrangements with the Cognizant Federal Agencies (CFAs) for direct notification in a radiological emergency.

- Provide grants for crisis counseling to victims in affected geographic areas;
- Provide guidance to State and local officials with jurisdiction on the use of radio-protective substances (e.g., thyroid blocking agents), including doasage and also projected radiation doses that warrant the use of such drugs;
- Based on information from DoE's REACS/TS personnel, advice medical care personnel regarding proper medical treatment of people exposed to or contaminated by radioactive materials;
- Provide advice and guidance to State and local officials with jurisdiction and the CFA, if requested, in assessing the impact of the effects of radiological incidents on the health of persons in the affected area;
- Provide advice and guidance to State and local officials with jurisdiction and the CFA, if requested, in assessing the impact of the effects of radiological incidents on the health of persons in the affected area;
- Provide resources, in coordination with the U.S. Department of Agriculture, to ensure that food and animal feeds are safe for consumption;
- Assist, in coordination with the U.S. Department of Agriculture, in developing technical recommendations for State and local officials with jurisdiction regarding protective measures related to food and animal feed;
- Provide guidance to State and local governments on protective action guides for food and animal feeds; and
- Provide guidance to State and local health officials with jurisdiction when requested on disease control measures and epidemiological surveillance of exposed populations.

5. HHS Response Plan and Procedure References

Agency Response Plan

1. *The Department of Health and Human Services Response Plan for Radiological Emergencies (Draft)* Division of Emergency Coordination March 14, 1983.

Interagency Procedures

1. *Delegation of Authority—Emergency Preparedness Functions* Division of Emergency Coordination December 21, 1981.
2. *Emergency Planning and Operations Manual* Division of Emergency Coordination July 1, 1983.
3. *Disaster Response guides* Operating Divisions Various Dates.

6. HHS Specific Authorities

- *Older Americans Act.*
- *Public Health Service Act.*
- *Food, Drug, and Cosmetic Act of 1938.*
- *Snyder Act,* 25 U.S.C. 13 (1921).
- *Transfer Act,* Pub. L. 83–568.
- *Indian Health Care and Improvement Act,* (Pub. L. 14–437).
- *Federal Civil Defense Act of 1950.*
- *Disaster Relief Act of 1974,* (Pub. L. 93–288)—Section 413, Crisis Counseling, Administration, Training.

Department of Housing and Urban Development Response Plan Summary

1. Summary of Response Mission

The Department of Housing and Urban Development (HUD) provides information on available housing for disaster victims or displaced persons. HUD assists in planning for and placing homeless victims by providing emergency housing and technical and support staff within available resources.

2. Point of Notification at HUD Headquarters

Contact Person's Title: Emergency Coordinator.

Contact Person's Office: Emergency Preparedness Staff (EPS).

Contact Person's Emergency Location: Emergency Preparedness Staff.

3. Federal Department or Agency Interfaces

Listed below are HUD's interfaces with other Federal departments or agencies in responding to a radiological emergency.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible HUD organization
Notification (FEMA, coordination (offsite), designation of agency lead official, logistical support to Federal agencies, information exchange, Federal response center.	FEMA	Emergency preparedness staff.
Information requirements	FEMA, NRC (CFA), DoD (CFA), DoE (CFA)	Emergency preparedness staff.
Public information releases from headquarters, public information releases from the JIC.	DOD (CFA), DoE (CFA), NRC (CFA), during emergency phase; FEMA during recovery phase.	Office of Public Affairs.
Congressional information	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	Office of Legislation and Congressional Relations.
Emergency shelter availability	HHS	Emergency preparedness staff.
Advice on transportation of and to emergency housing	DoT	Emergency preparedness staff.
Recovery planning, White House responses	FEMA	Emergency preparedness staff.

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Review and report on available housing for disaster victims and displaced persons.
- Assist in planning for and placing homeless victims in available housing.
- Provide emergency housing support staff within available resources.
- Provide technical housing assistance and advisory personnel to State and local authorities with jurisdiction.

5. HUD Response Plan and Procedure References

Agency Response Plan

1. HUD *FRERP,* Office of Emergency Preparedness, September 30, 1983.

6. HUD Specific Authorities

None.

Department of the Interior Reponse Plan Summary

1. Summary of Reponse Mission

The Department of the Interior manages over 500 million acres of Federal lands and thousands of Federal natural resources facilities, and is responsible for these lands and facilities when they are threatened by a radiological emergency. In addition, the Department coordinates emergency response plans for Interior-managed park and recreation areas with State and local authorities, and operates Interior water resources projects to protect municipal and agricultural water supplies in cases of radiological emergencies. The Department provides advice and assistance concerning hydrologic and natural resouces, including fish and wildlife, to Federal, State, and local governments upon request. The Department also administers the Federal government's trust responsibility for 488 Federally recognized Indian tribes and villages and about 50 million acres of Indian lands. It also has certain responsibilities for the island territories of the United States.

2. Headquarters Point of Notification

Contact Person's Title: Director, Office of Environmental Project Review (OEPR).

Contact Person's Office: Office of the Secretary, Department of the Interior, Room 4256, Interior Building, Washington, D.C. 20240.

3. Federal Department or Agency Interfaces

DEPARTMENT OF INTERIOR FEDERAL AGENCY INTERFACES

Description	FRERP agency	Responsible DoI organization
Notification (FEMA), coordination (offsite), information exchange, logistical support to federal agencies.	FEMA	OEPR
Designation of agency lead official, status updates, and information requirements.	DoD (CFA), DoE (CFA), NRC (CFA)	OEPR
Federal lands, Indian tribes	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	OEPR (initially).
Public information releases from headquarters, public information releases from JIC.	DoD (CFA), DoE (CFA), NRC (CFA)	Office of public affairs.
Congressional information	DoD (CFA), DoE (CFA), NRC (CFA) during emergency phase; FEMA during recovery phase.	Office of congressional liaison.
FRMAP (resources)	DoE, EPA	U.S. Geological Survey.
Water projects	DoD (Army Corps Engineers), EPA, USDA	OEPR (initially).
White House Reponses	FEMA	OEPR.

4. Reponsibilities for Assistance to Federal, State, and Local Governments

- Provide hydrologic advice and assistance, including monitoring personnel, equipment, and laboratory support.
- Provide advice and assistance in assessing and minimizing offsite consequences on natural resources, including fish and wildlife.
- Provide economic, social, and political advice and assistance to the Territories of Guam, American Samoa, and the Virgin Islands and the Trust Territory of the Pacific Islands (interim).
- Provide cooridnation and liaison between Federal, State, and local agencies and Federally recognized Indian tribal governments.

5. DoI Reponse Plan and Procedure References

Agency Response Plan

1. 910 DM 5 (Draft)—Interior Emergency Operations, Federal Radiological Emergency Response Plan.

2. 296 DM 3 (Draft)—Interior Emergency Delegations, Radiological Emergencies.

6. DoI Specific Authorities

- *Act of 1894* providing for gauging streams and determining the water supplies of the U.S. (28 Stat. 398).
- *The Reclamation Act of 1902*, as amended (43 U.S.C. 391), and project authorization acts.
- *National Park Service Act of 1919* (16 U.S.C. 1), and park enabling acts.
- *The Snyder Act of 1921*, as amended (25 U.S.C. 13), including assistance to Indian tribes.
- *National Wildlife Refuge System Administration Act of 1966*, as amended (16 U.S.C. 668), and refuge enabling acts.
- *Federal Land Policy and Management Act of 1976* (43 U.S.C. 1701).

Department of Transportation Response Plan Summary

1. Summary of Response Mission

The Department of Transportation Radiological Emergency Response Plan for Non-Defense Emergencies (the plan) provides for assistance to State and local governments when a non-defense radiological emergency occurs that has adversely affected any one or more of the several transportation modes. The assistance will be in response to a request from a state or local jurisdiction when a determination has been made that their civil transportation technical or logistical resources are insufficient to adequately handle the requirements created by a radiological emergency.

2. Point of Notification at DoT Headquarters

Contact Person's Title: Director of Emergency Transportation.

Contact Person's Office: Office of Emergency Transportation.

Contact Person's Emergency Location: Headquarters, U.S. Department of Transportation, Washington, D.C. 20590.

3. Federal Department or Agency Interfaces

Listed below are DoT's interfaces with other Federal agencies and departments in responding to a non-defense radiological emergency.

DEPARTMENT OF TRANSPORTATION FEDERAL AGENCY INTERFACES

Interface Description	Agencies	Responsible DoT organization
Status Updates	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	Director of emergency transportation crisis coordinator (when designated).
Notification (FEMA), information exchange, logistical support for Federal agencies, coordination (offsite), and designation of agency lead official.	FEMA	Office of emergency transportation.
Information requirements	FEMA, DoD (CFA), DoE (CFA), NRC	Office of emergency transportation.
Public information release from the JIC, public information release from headquarters.	DoD (CFA), DoE (CFA), NRC (CFA) during emergency phase; FEMA during recovery phase.	Office of public affairs.
Congressional information	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	Office of congressional affairs.
Federal response center	FEMA	Crisis coordinator, regional emergency transportation coordinator (RETCO)
Advice on transportation of and to emergency housing	HUD	Office of emergency transportation (RETCO).
White House responses	FEMA	Crisis coordinator.

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Maintain capability and resources to respond to a request for assistance in a non-defense radiological emergency.
- Provide civil transportation technical and/or logistical resources.
- Coordinate the Federal transportation response in support of emergency transportation plans and actions of State and local authorities.
- Provide, through Regional Emergency Transportation Coordinators (RETCOs), representation to State and local transportation authorities.

5. DoT Response Plan and Procedure References

Agency Response Plan

1. Department of Transportation (DoT) Radiological Emergency Response Plan for Non-Defense Emergencies, November 1983

Intra-Agency Procedures

1. DoT Order 1900.7C, DoT Crisis Action Plan
2. DoT Order 1950.1A, Reports on Non-Defense Transportation Emergencies

6. DoT Specific Authorities

- Public Law 89–670, 1966, the *Department of Transportation Act.*
- Code of Federal Regulations 44 CFR Part 351 (44 CFR Part 351), Radiological Planning and Preparedness—Final Regulations, § 351.25—THe Department of Transportation.

Environmental Protection Agency Response Plan Summary

1. Summary of Response Mission

The Environmental Protection Agency (EPA) assists State and local governments during radiological emergencies in environmental and water supply monitoring, consequence assessment, and protective action decisions. These services may be provided at the request of the Federal or State government through FRMAP, or EPA may respond unilaterally to an emergency in order to fulfill its statutory responsibilities.

2. Point of Notification at EPA Headquarters

Contact Person's Title: Radiological Response Coordinator.

Contact Person's Office: Office of Radiation Programs (ORP).

Contact Person's Emergency Location: Emergency Operations Center.

3. Federal Department or Agency Interfaces

Listed below are EPA's interfaces with other Federal departments or agencies in responding to a radiological emergency.

ENVIRONMENTAL PROTECTION AGENCY FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible EPA organization
Status updates	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	Office of radiation programs (ORP).
FRMAP (notification), FRMAP (resources), FRMAP (monitoring results), FRMAP (coordination with FRERP), FRMAP (transition), FRMAP (liaison).	HHS, DoC, DoD, DoE, DoI, NRC, USDA	ORP.
Water projects	DoD (Army Corps of Engineers), DoI, USDA	ORP.
Impact assessment (Agriculture)	USDA	ORP.
PAR (development), RER (development)	DoD (CFA), DoE (CFA), NRC (CFA), HHS, USDA	ORP.
Information requirements	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	ORP.
Public information releases from headquarters, public information releases from JIC, congressional information.	DoD (CFA), DoE (CFA), NRC (CFA) during emergency phase, FEMA during recovery phase.	Office of Press Services.
Information exchange, logistical support for Federal agencies, coordination (offsite), designation of agency lead official, Federal response center.	FEMA	ORP.
Recovery planning, White House responses	FEMA	ORP.

4. Responsibilities For Assistance to Federal, State, and Local Governments

- Provide resources including personnel, equipment, and laboratory support to assist DoE in monitoring radioactivity levels in the environment during the emergency phase of the incident.
- Assume responsibility from DoE for coordinating Federal intermediate and long-term radiological monitoring after the initial phase of the emergency after receiving adequate assurance from the Department of Energy and other Federal agencies that they will commit the required resources, personnel, and funds for the duration of the Federal response effort.
- Assess the nature and extent of the environmental radiation hazard.
- Provide guidance to Federal agencies and State and local governments with jurisdiction on acceptable emergency levels of radioactivity and radiation in the environment.
- Assist the Cognizant Federal Agency (CFA), as requested, in developing recommended measures to protect the public health and safety.

5. EPA Response Plan and Procedure References

Agency Response Plan

1. *U.S. Environmental Protection Agency Radiological Emergency Response Plan,* Office of Radiation Programs, January 30, 1981.
2. *Letter Agreement between DoE and EPA for Notification of Accidental Radioactivity Releases into the Environment from DoE Facilities;* January 8, 1978.
3. *Operational Response Procedures*—Developed among the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, and the Department of Energy, November 30, 1982.

Interagency Procedures

1. *Manual of Protective Action Guides and Protective Actions for Nuclear Incidents,* Office of Radiation Programs, September 1975.
2. *Standard Operating Procedures for Radiological Emergency Response,* Appendix 3 to the *EPA Radiological Emergency Response Plan,* Office of Air, Noise, and Radiation, January 1981.
3. *Memorandum of Understanding Between the Federal Emergency Management Agency and the Environmental Protection Agency Concerning the Use of High Frequency Radio for Radiological Emergency Response* (under development), Office of Radiation Programs, Environmental Protection Agency.

6. EPA Specific Authorities

- *President's Reorganization Plan No. 3,* December 2, 1970.
- *Public Health Service Act,* as amended, 42 U.S.C. 241, Section 301, and 42 U.S.C. 243, section 311.

- *Safe Drinking Water Act* (Pub. L. 93–523).

Federal Emergency Management Agency Response Plan Summary

1. Summary of Response Mission

FEMA is responsible for coordinating the Federal response to all radiological emergencies that require a significant, multi-agency Federal presence. FEMA's coordination role promotes an effective and efficient response by Federal agencies at both the national level and at the scene of the emergency. Coordination is achieved at the national level by FEMA through use of FEMA's Emergency Support Team (EST) and at the scene of the emergency between Federal, State, and local agencies by FEMA's Emergency Response Team (ERT). FEMA's ERT includes a FEMA Regional Communications Manager, who is responsible for providing communications management support to the Senior FEMA Official.

2. Point of Notification at FEMA Headquarters

Contact Person's Title: Emergency Action Officer.

Contact Person's Office: Emergency Operations Directorate.

Contact Person's Emergency Location: Emergency Information and Coordination Center (EICC).

3. Federal Department or Agency Interfaces

Listed below are FEMA's interfaces with other Federal departments or agencies in responding to a radiological emergency.

FEDERAL EMERGENCY MANAGEMENT AGENCY FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible FEMA Organization(s)
Notification (FEMA)	DoC, DoI, DoT, DoD (CFA), DoE (CFA), EPA, HHS, HUD, NCS, NRC (CFA), USDA, DoE	EICC (emergency support team (EST), when activated).
Activation and deployment (procedures)	DoD (CFA), DoE (CFA), NRC (CFA)	EICC (EST, when activated).
Status updates	DoC, DoI, DoT, EPA, HHS, HUD, NCS, USDA, DoE	Emergency response team (ERT), EST.
Federal lands	DoD, DoE, DoI, USDA	ERT, EST.
Federal Response Center	DoC, DoI, DoT, DoD (CFA), DoE (CFA), NRC, EPA, HHS, HUD, NCS, USDA.	ERT, EST.
Information exchange	DoC, DoI, DoT, DoD (CFA), DoE (CFA), EPA, HHS, HUD, NCS, NRC, USDA.	ERT, EST.
Logistical support for Federal agencies	DoC, DoI, DoT, DoD (CFA), DoE (CFA), EPA, HHS, HUD, NCS, NRC (CFA), USDA.	ERT, EST.
PAR (development), PAR (presentation)	DoD (CFA), DoE (CFA), NRC	ERT.
PAR and RER dissemination (FEMA)	DoC, DoD, DoE, DoI, DoT, EPA, HHS, HUD, NCS, NRC, USDA.	ERT, EST.
FRMAP (coordination with FRERP)	DoE, EPA	ERT.
FRMAP (liaison)	DoE, EPA	ERT.
Coordination (onsite/offsite)	DoD (CFA), DoE (CFA), NRC	ERT.
Coordination (offsite)	DoC, DoI, DoT, EPA, HHS, HUD, NCS, USDA	ERT, EST.
Information requirements	DoC, DoI, DoT, DoD (CFA), DoE (CFA), EPA, HHS, HUD, NCS, NRC, USDA.	EICC and EST.
Indian tribes	DoI, HHS	ERT.
Designation of agency lead official	DoC, DoI, DoT, DoD (CFA), DoE (CFA), EPA, HHS, HUD, NCS, NRC (CFA), USDA.	EST.
Public information releases from headquarters, public information releases from JIC.	DoD (CFA), DoE (CFA), NRC (CFA) during emergency phase	EST, ERT, (respectively).
Congressional information	DoC, DoI, DoT, DoD (CFA), DoE (CFA), EPA, HHS, HUD, NCS, NRC, USDA.	EST, ERT.
White House responses	DoC, DoD, DoE, DoI, EPA, HHS, HUD, NCS, NRC, USDA	EST, ERT.
White House information	DoD (CFA), DoE (CFA), NRC (CFA) initially	EST.
RER (development), RER (presentation)	DoD (CFA), DoE (CFA), NRC (CFA)	ERT.
Recovery planning	DoD (CFA), DoE (CFA), NRC, DoC, DoE (non-CFA), DoI, DoT, EPA, HHS, HUD, USDA.	ERT.
International cooperation	DoS, DoD (CFA), DoE (CFA), NRC	EST, ERT.

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Coordinate assistance to State and local governments among the Federal agencies.
- Coordinate among the Federal agencies all offsite response activities, except those pertaining to the FRMAP, and coordinate these with the onsite activities of the Cognizant Federal Agency.
- Work with the CFA to coordinate the dissemination of public information concerning Federal emergency response activities. Promote the coordination of public information releases with State and local governments, appropriate Federal agencies, and appropriate private sector authorities.
- Help obtain logistical support for Federal agencies.

5. FEMA Response Plan and Procedure References

Response Plan

1. *FEMA Emergency Response Operations for Extraordinary Situations: Emergency Support Team Policy and Operations Response Procedures*, February 8, 1984.
2. *Guidance for Emergency Response Team Plans*, August 17, 1982.
3. *Emergency Response Team Plans* for FEMA Regions I, II, III, IV, V, VI, VII, VIII, IX, and X. Various dates

Interagency Procedures

1. *NRC/FEMA Operational Response Procedures for Response to a Commercial Nuclear Reactor Accident* (NUREG–0981; FEMA–51). Rev. 1, January 1984.
2. *Memorandum of Understanding* for Incident Response between the Federal Emergency Management Agency and the Nuclear Regulatory Commission, October 22, 1980.

6. FEMA Specific Authorities

- *Executive Order 11490*, June 15, 1976, as amended.
- *Executive Order 12148*, July 20, 1979.
- *Executive Order 12241*, September 29, 1980.

National Communications System Response Plan Summary

1. Summary of Response Mission

Under the current National Plan for Communications Support in Emergencies and Major Disasters, July 1983,[3] the National Communications

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[3] The National Plan for Communications Support in Emergencies and Major Disasters dated July 1983 is being revised and will be published in October 1984 to reflect changes in the role of the FEMA Regional Communications Manager consistent with the FEMA ERT/EST concept.

System (NCS) coordinates and manages telecommunications support for Federal agencies during radiological emergencies. The General Services Administration (GSA) appoints a Regional Emergency Communications Coordinator (RECC) to provide technical support to the FEMA Regional Director during the pre-emergency or emergency planning phase. The GSA also assigns, on request, a Federal Emergency Communications Coordinator (FECC) to the FEMA Regional Director or Senior FEMA Official (SFO) to head an Emergency Communications Staff (ECS), assess the availability of telecommunications means, and take necessary action to satisfy essential telecommunications requirements in the emergency area. The Emergency Communications Staff is made up of a FEMA-appointed Radio Communications Coordinator (RCC), a Military Communications Representative (MCR), telecommunications industry representatives, and others as needed.

2. Point of Notification at NCS Headquarters

Contact Person's Title: Operations Officer.

Contact Person's Office: Office of Emergency Preparedness (Operations).

Contact Person's Emergency Location: NCS/DCA Operations Center, 8th St. and South Court House Rd., Arlington, VA 22204.

3. Federal Department or Agency Interfaces

Listed below are NCS's interfaces with other Federal departments or agencies in responding to a radiological emergency.

NATIONAL COMMUNICATIONS SYSTEMS FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible NCS organization
Notification (FEMA)	FEMA	Emergency preparedness.
Logistical support for Federal agencies	FEMA	Emergency preparedness.
Information exchange	FEMA	Emergency preparedness.
Designation of agency lead official	FEMA	Emergency preparedness.
Federal response center	FEMA	Federal emergency communications coordinator (FECC) and staff.
Status updates	FEMA	(FECC) and staff.
Information requirements	DoD (CFA), DoE, (CFA), NRC (CFA)	Emergency preparedness.
Congressional information	DoD (CFA), DoE, (CFA), NRC, FEMA	Emergency preparedness.
Public information releases from headquarters, public information releases from the JIC.	DoD (CFA), DoE (CFA), NRC (CFA), during emergency phase; FEMA during recovery phase.	Emergency preparedness.
Recovery planning, White House responses	FEMA	FECC and staff.

4. Responsibilities for Assistance to Federal, State and Local Governments

- Provide and coordinate, in response to a FEMA request, the necessary communications for the Federal government response in accordance with the *National Plan for Communications Support in Emergencies and Major Disasters,* July 1983. Be prepared to provide this support prior to a formal declaration of an emergency or major disaster.
- Provide representation to appropriate State agencies to assist in meeting their communications requirements.

5. NCS Response Plan and Procedure References

Agency Response Plan

1. *National Plan for Communications Support in Emergencies and Major Disasters,* Office of Emergency Preparedness (Operations), July 1983.

Interagency Procedures

1. *Memorandum of Understanding,* GSA and FEMA, January 29, 1980.
2. *Executive Order 12046* (Relates to the transfer of telecommunications functions), The White House, March 27, 1978.

6. NCS Specific Authorities

- *Executive Order 12472,* Assignment of National Security and Emergency Preparedness Telecommunications Functions, April 3, 1984.
- *Executive Order 11490,* October 30, 1969.
- *Executive Order 12046, March 27, 1978.*
- White House Memorandum, *National Security and Emergency Preparedness: Telecommunications and Management and Coordination Responsibilities,* July 5, 1978.

U.S. Nuclear Regulatory Commission Response Plan Summary

1. Summary of Response Mission

The U.S. Nuclear Regulatory Commission (NRC) regulates the use of byproduct, source, and special nuclear material, including activities at commercial and research nuclear facilities. If an incident involving NRC-regulated activities poses a significant threat to the public health or safety or environmental quality, the NRC would be the Cognizant Federal Agency (CFA). In such an incident, the NRC is responsible for monitoring the licensee to ensure that appropriate protective action recommendations are being made to offsite authorities in a timely manner. In addition, the NRC will support its licensees and offsite authorities, including confirming the licensee's recommendations to offsite authorities, and will keep the media informed of the NRC's knowledge of the status of the incident. The NRC is also responsible for the development, coordination, and presentation (in conjunction with FEMA) of Federal protective action recommendations and for keep other Federal agencies and entities informed of the status of the incident.

Consistent with NRC's agreement to participate in FRMAP, the NRC may also be called upon to assist in Federal radiological monitoring and assessment activities during incidents for which it is not the CFA.

2. Point of Notification at NRC Headquarters

Contact Person's Title: Headquarters Operations Officer.

Contact Person's Office: Inspection and Enforcement (I&E).

Contact Person's Emergency Location: NRC Operations Center, Bethesda, Maryland.

3. Federal Department or Agency Interfaces

Listed below are the NRC's interfaces with other Federal departments or agencies in responding to a radiological emergency.

NUCLEAR REGULATORY COMMISSION FEDERAL AGENCY INTERFACES

Interface description	Agencies[1]	Responsible NRC organization
Notification (CFA)	FEMA, DoE, EPA, HHS	For all interfaces listed: a. Director of executive team (during initial activation). b. Director of site operations (during expended activation).
Activation and deployment (procedures)	FEMA	
Status updates	DoC, DoD, DoE, EPA, FEMA, HHS, HUD, DoI, NCS, DoT, USDA.	
Information requirements	DoC, DoD, DoE, EPA, FEMA, HHS, HUD, DoI, NCS, DoT, USDA.	
Public information releases from headquarters, public information releases from JIC.	DoD, (CFA), DoE, (CFA), during emergency phase; FEMA during recovery phase.	
Congressional information	DoC, DoD, DoE, EPA, FEMA, HHS, HUD, DoI, NCS, DoT, USDA, FEMA, DoE (FRMAP).	
Coordination (liaison)	FEMA, DoE (FRMAP)	
White House information, White House responses	FEMA	
PAR (development) RER (development)	FEMA, DoE EPA, HHS, USDA	
PAR and RER dissemination (CFA)	DoE (FRMAP), EPA (FRMAP)	
Federal lands	DoD, DoE, DoI, USDA	
Food/feed safety recommendations	HHS, USDA	
FRMAP (monitoring results)	DoE, (FRMAP)	
FRMAP (resources)	DoE, (FRMAP), EPA, (FRMAP)	
Impact assessment (Health)	HHS, EPA	
Indian tribes	DoI, HHS	
PAR (presentation), Logistical support for Federal agencies, Coordination (onsite/offsite), information exchange, designation of agency lead official, international cooperation (CFA), Federal response center.	FEMA	For all interfaces listed: a. Director of executive team (during expended activation). b. Director of site operations (during expended activation).
RER (presentation), PAR and RER dissemination (CFA)	FEMA, DoE, EPA, HHS, USDA, DoE (FRMAP), EPA (FRMAP)	
Recovery planning	FEMA	

[1] Periodic communications will be conducted with those agencies with which NRC has formal agreements, i.e., FEMA, DoE, EPA, HHS. Interfaces with other agencies will occur as required.

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Assess the nature and extent of the radiological emergency and its potential offsite effects on public health and safety. Advise the State and local agencies with jurisdiction based on this assessment.
- Assess the facility operator's recommendations and, if needed, develop Federal recommendations on protective actions for State and local governments with jurisdiction that consider, as required, all substantive views of other Federal agencies. Whenever possible, coordinate presentation of protective action recommendations with FEMA prior to or during their presentation to appropriate State and local officials (the State Governor or designee), except in situations of imminent peril to the public health and safety where the NRC may be required to make independent contact with State officials.
- Provide for the release of public information concerning the radiological emergency, except for the release of information classified for national security purposes. Coordinate such releases to the extent possible with the Senior FEMA Official, other Federal agencies, and the State to provide consistent and accurate information to the public by the most expeditious means.

5. NRC Response Plan and Procedure References

Response Plan

1. *NRC Incident Response Plan* Revision 1 (NUREG–0728), NRC Office of Inspection and Enforcement, April 1983.

Interagency Procedures

1. *Agency Procedures for the NRC Incident Response Plan* (NUREG–0845), NRC Office of Inspection and Enforcement, February 1983.
2. *NRC/FEMA Operational Response Procedures for Response to a Commercial Nuclear Reactor Accident,* (NUREG–0981; FEMA–51), Rev. 1, January 1984.
3. *Operational Response Procedures Developed Between NRC, EPA, HHS, and DOE, 1982.*
4. Memorandum of Understanding for Incident Response Between the Federal Emergency Management Agency and the Nuclear Regulatory Commission, October 22, 1980.

6. NRC Specific Authorities

- *Atomic Energy Act of 1954, as amended.*
- *Energy Reorganization Act of 1974.*
- 10 CFR Parts 0 to 199.

U.S. Department of Agriculture Response Plan Summary

1. Summary of Response Mission

The United States Department of Agriculture (USDA) is responsible for assisting State and local governments in developing agricultural protective measures and damage assessments. Other radiological emergency responsibilities of the USDA include: providing for the procurement of food for emergency feeding programs; ensuring that meat and meat products, poultry and poultry products, and eggs and egg products are safe for public consumption; and providing technical information and advice to farmers to aid in their recovery from the emergency.

2. Point of Notification at USDA Headquarters

Contact Person's Title: USDA Emergency Coordinator, Director, Intergovernmental Affairs, Room 102–A, Administration Building, Washington, D.C. 20250.

Contact Person's Office: Office of Intergovernmental Affairs, USDA.

3. Federal Department or Agency Interfaces

Listed below are USDA's interfaces with other Federal agencies in responding to a radiological emergency.

DEPARTMENT OF AGRICULTURE FEDERAL AGENCY INTERFACES

Interface description	Agencies	Responsible USDA organization
Notification (FEMA)	FEMA	Governmental and Public Affairs (GPA)/Office of Intergovernmental Affairs (OIA).
Status updates	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	GPA/OIA, Food Safety Inspection Service (FSIS), Office of Emergency Planning (OEP).
Information requirements	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	GPA/OIA, FSIS/OEP.
PAR (development), RER (development)	DoD (CFA), DoE (CFA), NRC (CFA), EPA, HHS	GPA/OIA, FSIS/OEP.
Public information releases from headquarters, public information releases from joint information center (JIC).	DoD (CFA), DoE (CFA), NRC (CFA), during emergency phase; FEMA during recovery phase.	GPA/Office of Information (OI).
Congressional information	DoD (CFA), DoE (CFA), NRC (CFA), FEMA	GPA/OI, GPA/Congressional relations (CR).
Coordination (offsite)	FEMA, HHS, EPA	GPA/OIA, FSIS/OEP.
Information exchange, designation of agency lead official, and logistical support for Federal agencies.	FEMA	GPA/OIA, FSIS/OEP, GPA/OIA, FSIS, Office of Operations (00).
Federal lands	DoD, DoE, DoI	GPA/OIA, FSIS/OEP.
FRMAP (notification), (resources), (liaison)	DoE, EPA	GPA/OIA, FSIS/OEP, USDA State/county resources as required.
Impact assessment (agriculture)	HHS, EPA	GPA/OIA, FSIS/OEP, USDA State/county resources as required.
Protective action implementation (food)	HHS, FEMA	GPA/OIA, FSIS/OEP, USDA State/county resources as required.
Food/feed availability, food/feed safety recommendations	HHS, FEMA, DoD (CFA), DoE (CFA), NRC (CFA)	GPA/OIA, FSIS/OEP, USDA State/county resources as required.
Water projects	DoD (Army Corps of Engineers), DoI, EPA	GPA/OIA, FSIS/OEP.
Recovery planning	FEMA	GPA/OIA, FSIS (OEP), USDA State/county resources as required.
White House responses	FEMA	GPA/OIA, FSIS (OEP).

4. Responsibilities for Assistance to Federal, State, and Local Governments

- Provide emergency food coupon assistance in officially designated disaster areas whenever a predetermined threshold of need is reached and the commercial system is sufficiently viable to accommodate the use of food coupons.
- Assist in providing livestock feed.
- Provide assistance through regular USDA programs if legally adaptable to radiological emergencies.
- Advise and assist State and local officials on the disposition of livestock and poultry affected by radiation. Coordinate this action with the EPA and HHS.
- Ensure the purity and wholesomeness of meat and meat products, poultry and poultry products, and eggs and egg products.
- Provide for the procurement of food.
- Assist State and local officials, in coordination with HHS and EPA, in the implementation of protective measures to minimize contamination through food ingestion.
- Assist in coordination with HHS and EPA in the emergency production, processing, and distribution of food during a radiological emergency, and assess damage to agricultural resources.
- Provide advice to State and local officials on how to minimize losses to agricultural resources from radiation effects.
- Provide information and assistance to farmers and others to aid them in returning to normal after a radiological emergency.
- Assist in reallocation of USDA donated food supplies from Commodity Credit Corporation stocks stored in warehouses, local schools, and other outlets to emergency care centers.
- Provide a liaison to State agricultural agencies to keep State and local officials informed of Federal efforts.

5. USDA Response Plan and Procedure References

1. *USDA Radiological Emergency Response Plan*, April 1984.

6. USDA Specific Authorities

- Title 7, U.S.C.

Appendix A—Acronyms*

ARAC	Atmospheric Release Advisory Capability
CFA	Cognizant Federal Agency
CFAO	Cognizant Federal Agency Official
CFR	Code of Federal Regulations
CHEMTREC	Chemical Transportation Emergency Center
CLO	Congressional Liaison Officer
DoC	Department of Commerce
DoD	Department of Defense
DoE	Department of Energy
DoI	Department of the Interior
DoJ/FBI	Department of Justice/Federal Bureau of Ivestigation
DoS	Department of State
DoT	Department of Transportation
DSFO	Deputy Senior FEMA Official
DSO	Director of Site Operations, NRC
EACT	Emergency Action and Coordination Team, DoE
EICC	Emergency Information and Coordination Center, FEMA
EOC	Emergency Operations Center, DoE
EOF	Emergency Operations Facility, Licensee
EPA	Environmental Protection Agency
FDA	Food and Drug Administration
FEMA	Federal Emergency Management Agency
FRC	Federal Response Center
FRERP	Federal Radiological Emergency Response Plan
FRMAC	Federal Radiological Monitoring and Assessment Center, DoE or EPA
FRMAP	Federal Radiological Monitoring and Assessment Plan (DoE)
FRPCC	Federal Radiological Preparedness Coordinating Committee
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
IRAP	Interagency Radiological Assistance Plan
JIC	Joint Information Center
JNACC	Joint Nuclear Accident Coordinating Center
LAO	Lead Agency Official
LNO	Liaison Officer
NCS	National Communications System
NOAA	National Oceanic and Atmospheric Administration, DoC
NRC	Nuclear Regulatory Commission
NWS	National Weather Service
OSTD	Offsite Technical Director, DoE
PAG	Protective Action Guide
PAR	Protective Action Recommendation
PIO	Public Information Officer
RAC	Regional Assistance Committee
RAP	Radiological Assistance Program, DoE
RER	Other Protective Measure and Re-entry Recommendation
SCO	State Coordinating Officer

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* This Appendix does not include acronyms that are defined in the Agency Response Plan Summaries (Section IV).

SFO	Senior FEMA Official
USDA	U.S. Department of Agriculture
USGS	U.S. Geological Survey

Appendix B—Definitions

Accident Response Group (ARG)—A DoE team of scientists, engineers, and technicians that is trained, organized, and equipped to respond to a nuclear weapons accident/incident.

Agency Lead Official—The designated official in each participating agency authorized to direct that agency's response to the radiological emergency.

Agreement State—A State that has entered into an Agreement under the *Atomic Energy Act of 1954*, as amended, in which NRC has relinquished to such States the majority of its regulatory authority over source, byproduct, and special nuclear material in quantities not sufficient to form a critical mass.

Assessment—The evaluation and interpretation of radiological measurements and other information to provide a basis for decision-making. Assessment can include projections of offsite radiological impact.

Cognizant Federal Agency (CFA)—The Federal agency that owns, authorizes, regulates, or is otherwise deemed responsible for the radiological activity causing the emergency and that has the authority to take action on site.

Cognizant Federal Agency Official (CFAO)—The lead official designated by the CFA to manage its response at the site of a radiological emergency.

Coordinate—To bring into common action so as not to unnecessarily duplicate or omit important actions. Coordination does not involve direction of one agency by another.

DoE Emergency Operations Center (EOC)—The center located at DoE headquarters through which DoE's EACT coordinates a FRMAP multi-agency response to a radiological emergency.

DoE Team Leader—The individual designated by the Director of the Emergency Action and Coordination Team (EACT) to manage all DoE field activities in response to an accident/incident if DoE has onsite responsibilities. The DoE Team Leader primarily supervises onsite operations.

Emergency—Any natural or man-caused situation that results in or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Emergency Action and Coordination Team (EACT)—The DoE senior management team at headquarters that coordinates the initial FRMAP response to radiological emergencies.

Emergency Response Team (ERT)—The FEMA team deployed to a radiological emergency scene by the FEMA Director to make an initial assessment of the situation and then provide FEMA's primary response capability.

Emergency Support Team (EST)—The FEMA headquarters team that carries out notification, activation, and coordination procedures from the FEMA EICC. The EST is responsible for Federal agency headquarters coordination, staff support of the FEMA Director, and support of the SFO.

Federal Radiological Monitoring and Assessment Plan (FRMAP)—A center usually established at an airport near the scene of a radiological emergency from which the DoE Offsite Technical Director conducts the FRMAP response. This center generally need not be located near the onsite or Federal-State operations centers as long as its operations can be coordinated with them.

Federal Radiological Monitoring and Assessment Center (FRMAC)—A plan to provide coordinated radiological monitoring and assessment assistance to the State and local governments in response to radiological emergencies. This plan, authorized by 44 CFR Part 351, is a revised version of the Interagency Radiological Assistance Plan.

Federal Response Center—A center established by FEMA at a location identified in conjunction with the State that serves as a focal point for Federal response team interactions with the State.

Fixed Nuclear Facilities—Stationary nuclear installations that use or produce radioactive materials in their normal operations. These facilities include commercial nuclear power plants and other fixed facilities.

Interagency Radiological Assistance Plan (IRAP)—A Plan originally published in 1965 by an interagency committee of Federal agency representatives as a means for providing rapid and effective radiological assistance in the event of a peacetime radiological incident. This plan has been superseded by the FRMAP.

Joint Information Center (JIC)—A central point of contact for all news media at the scene of the incident. News media representatives are kept informed of activities and events via public information officials from all participating Federal, State, and local agencies, who, ideally, are co-located at the JIC.

Joint Nuclear Accident Coordinating Center (JNACC)—A joint DoE/DoD capability at Kirtland Air Force Base, Albuquerque, New Mexico, responsible for maintaining current information on the location of specialized DoE and DoD teams or organizations capable of providing nuclear weapons accident assistance.

Liaison Officer (LNO)—A Federal agency official sent to another agency to facilitate interagency communications and coordination.

License—A license issued to a facility owner or operator by the NRC pursuant to the conditions of the *Atomic Energy Act of 1954* (as amended), or issued by an Agreement State pursuant to appropriate State laws. NRC licenses certain activities under section 170(a) of that Act.

Limited Response—Response to a request for radiological assistance that involves limited DoE or other agency resources and does not require the formal field management structure.

Local Government—Any county, city, village, town, district, or political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, including any rural community or unincorporated town or village or any other public entity.

Monitoring—The use of sampling and radiation detection equipment to determine the levels of radiation.

National Contingency Plan—An operations plan required to outline the Federal response to radiological emergencies at commercial nuclear power plants. In Executive Order 12241, the President delegated to FEMA the responsibility for the development and promulgation of such a plan in response to Pub. L. 96–295.

National Defense Area (NDA)—An area established by a DoD official on non-Federal lands located within the United States, its possessions, or its territories for the purpose of safeguarding classified defense information or protecting DoD equipment or material. Establishment of a National Defense Area temporarily places such non-Federal lands under the effective control of DoD and results only from an emergency event. The senior DoD representative at the scene will define the boundary, mark it with a physical barrier, and post warning signs.

National Radiological Emergency Preparedness/Response Plan For Commercial Nuclear Power Plant Accidents (Master Plan)—Commonly referred to as the Master Plan, this document was published by FEMA for interim use in December 1980 and represented the first step towards developing Federal radiological emergency response plans and procedures.

National Security Area (NSA)—An area established by DoE on non-Federal lands located within the United States, its possessions, or territories, for the purpose of safeguarding classified or restricted information, or protecting DoE equipment or material. Establishment of a NSA temporarily places such non-Federal lands under the effective control of DoE and results only from an emergency event. The senior DoE representative having custody of the material at the scene will define the boundary, mark it with a physical barrier, and post warning signs.

Nuclear Weapon Accident—An unexpected event involving nuclear weapons or radiological nuclear weapon components that results in any of the following:

- Accidential or unauthorized launching, firing, or use by U.S. forces or U.S.-supported allied forces of a nuclear capable weapons system that could create the risk of an outbreak of war;
- Nuclear detonation;
- Non-nuclear detonation or burning of a nuclear weapon or radiological nuclear weapon component;
- Radioactive contamination;
- Seizure, theft, loss, or destruction of a nuclear weapon or radiological nuclear weapon component, including jettisoning; and
- Public hazard, actual or implied.

Nuclear Weapon Significant Incident—An unexpected event involving nuclear weapons or radiological nuclear weapon components which does not fall in the nuclear weapon accident category but:

- Results in evident damage to a nuclear weapon or radiological nuclear weapon component to the extent that major rework, complete replacement, or examination or recertification by DoE is required;
- Requires immediate action in the interest of safety or nuclear weapons security;
- May result in adverse public reaction (national or international) or premature release of classified information; and
- Could lead to a nuclear weapon accident and warrants high officials of the signatory agencies being informed or taking action.

Off Site—The area outside the boundary of the onsite area.

Off Site Federal Support—Federal assistance in mitigating the offsite consequences of an emergency and protecting the public health and safety, including assistance with determining and implementing public protective action measures.

Off Site Technical Director (OSTD)—The DoE or EPA official designated to coordinate the Federal radiological monitoring and assessment activities under the Federal Radiological Monitoring and Assessment Plan.

On Site—The area within (a) the boundary established by the owner or operator of a fixed nuclear facility; or (b) the boundary established at the time of the emergency by the State or local government with jurisdiction for a transportation accident not occurring at a fixed nuclear facility and not involving nuclear weapons; or (c) the area established by the CFA as defined by a National Defense Area or National Security Area in a nuclear weapons accident or weapon significant incident.

On-Scene Commander—The military officer of senior DoE official who commands DoD and DoE forces and supervises all DoD and DoE operations at the scene of a DoD/DoE nuclear weapon accident or weapon significant incident.

Onsite Federal Support—Federal assistance that is the primary responsibility of the Federal agency that owns, authorizes, regulates, or is otherwise deemed responsible for the radiological facility or material being transported, i.e., the CFA. This response supports State and local efforts by supporting the owner or operator's efforts to bring the incident under control and thereby prevent or minimize offsite consequences.

Other Protective Measures and Re-entry Recommendations (RERs)—Advice provided to the State concerning guidance on actions necessary to avoid or minimize exposure to residual radiation or exposure through the ingestion pathway. Also advice provided to the State concerning guidance that may be issued to members of the public on returning to an area affected by a radiological emergency, either permanently or for short-term emergency actions.

Owner or Operator—The organization that owns or operates the nuclear facility or carrier, or cargo that causes the radiological emergency. The owner or operator may be a Federal agency, a State or local government, or a private business.

Participating Agencies—44 CFR Part 351 establishes the Federal Radiological Preparedness Coordinating Committee (FRPCC), which has approved the establishment of the Subcommittee on Federal Response. The 12 agencies represented on this Subcommittee are referred to as the participating agencies in the FRERP. They are: FEMA, NRC, EPA, HHS, DoE, USDA, DoC, DoT, DoD, DoI, HUD, and NCS.

Protective Action Guide (PAG)—A radiation exposure level or range established by appropriate Federal or State agencies beyond which protective action should be considered.

Protective Action Recommendation (PAR)—Advice to the State on emergency measures it should consider in determining action for the public to take to avoid or reduce their exposure to radiation.

Public Information Officers (PIOs)—Federal agency officials at headquarters and in the field responsible for preparing and coordinating the dissemination of public information in cooperation with other responding Federal, State, and local agencies.

Radiological Assistance Program (RAP) Team—A team dispatched to the site of a radiological incident by the DoE regional office responding to a radiological incident.

Radiological Emergency—A type of radiological incident that poses an actual or potential hazard to public health or safety or loss of property.

Radiological Transportation Incident—Any incident that involves a transportation vehicle or shipment containing radioactive materials.

Recovery Plan—A plan developed by the State to restore the affected area with Federal assistance if needed.

Senior FEMA Official (SFO)—Official appointed by the Director of FEMA, or his representative, to direct the FEMA response at the scene of a radiological emergency.

State Coordinating Officer (SCO)—An official designated by the Governor of the affected State to work with the CFAO and SFO in coordinating the response efforts of Federal, State, local, volunteer, and private agencies.

Subcommittee on Federal Response—A Subcommittee of the Federal Radiological Preparedness Coordinating Committee formed to develop and test the Federal Radiological Emergency Response Plan. Most agencies that would participate in the Federal radiological emergency response are represented on this Subcommittee.

Transportation of Radioactive Materials—Refers to the loading, unloading, movement, or temporary storage en route of radioactive materials.

Appendix C—Federal Emergency Phone and Facsimile Numbers

Federal department or agency	Contact person's tile	Phone No. and facsimile
DoC	Chief, Applied Services Branch (Alt) NOAA/NWS Communications Branch.	(301) 427-7858, (301) 427-7889. (FTS) 763-8189.
DoD	Deputy Director of Operations (DDO).	(202) 697-6340 (24-Hour). (Auto) 227-6340. (FTS) 697-6340.
DoE	Emergency Coordinator	(301) 353-5555. (FTS) 233-5555.
HHS	do	(202) 475-0276.
HUD	do	(202) 755-6020. (202) 755-6417 (After Hours).
DoI	Director, Office of Environmental Project Review.	(202) 343-3891. (FTS) 343-3891. (202) 248-8259 (Res). (202) 533-0488 (Alt Res).
	U.S. Park Police	(202) 426-6600 (24-Hour). (FTS) 426-6000 (24-Hour).
DoT	Director of emergency Transportation.	(202) 426-4262 (Ofc). (202) 426-1830. (Dot/USCG Duty Officer after normal duty hours).
EPA	Radiological Response Coordinator.	(703) 557-7390. (FTS) 557-7390. (FAX) 235-9027 (DEX-4100).
FEMA	Emergency Action Officer.	(202) 646-2400.
NCS	Operations Officer	(202) 692-2714. (202) 692-2539. (Auto) 231-1787. 651-1790, 651-3740. (FTS) 692-2616 (Ofc). (Auto) 222-2616 (Ofc). (FAX) 692-2714 (Commor FTS).
NRC	Headquarters Operations Officer.	(202) 951-0550 (FAX) (301) 492-7285 (Group I, II, III). (301) 492-8187 (Group I, II, III). (301) 492-7376 (Group I, II, III). (301) 492-7293 (Verification).
USDA	USDA Emergency Coordinator.	(FTS) 447-6643 (Days). (703) 491-6751 (Res). (301) 461-2237.

[FR Doc. 84-24037 Filed 9-11-84; 8:45 am]

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Federal Register
Vol. 49, No. 179
Thursday, September 13, 1984

Presidential Documents

Title 3—

The President

Memorandum of September 11, 1984

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State, the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625, 50 U.S.C. App. 5(b) note), and a previous determination made by the President on September 7, 1983 (48 *Fed. Reg.* 40695 (1983)), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1984.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1985, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 11, 1984.

[FR Doc. 84–24428
Filed 9–11–84; 4:20 pm]
Billing code 3195–01–M

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Rules and Regulations

Federal Register
Vol. 49, No. 179
Thursday, September 13, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Official Records; Fee Schedule; National Agricultural Library

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Fee Schedule is amended by increasing fees for photographic reproductions and on-line searching for National Agricultural Library records. These changes are necessary to offset base costs and increased production costs.

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph H. Howard, Director, National Agricultural Library, United States Department of Agriculture, Room 200, NAL, Beltsville, Maryland 20705 (301) 344-4248.

SUPPLEMENTARY INFORMATION: On May 7, 1984, the Department of Agriculture published a notice of proposed rulemaking in the Federal Register (49 FR 19307). Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the Department. On June 6, 1984, the proposed rule comment period expired. No comments were received. Therefore, this final rule is the same as that published in the notice.

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and been determined not to be a "major rule." In addition, it will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the fees provided for in this rule are not new but merely reflect a minimal increase in the costs currently borne by those persons requesting Government photographic reproductions and on-line searching. John E. Carson, Director, Office of Finance and Management made these determinations.

List of Subjects in 7 CFR Part 1

Freedom of information.

PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, Appendix A of Subpart A, of Part 1, title 7, Code of Federal Regulations is amended as follows:

Appendix A—Fee Schedule

1. The authority citation for Appendix A, Subpart A of Part 1 is revised to read as follows:

(5 U.S.C. 301, 552; 7 U.S.C. 2244; 31 U.S.C. 9701; and 7 CFR 2.75(a)(6)(xiii))

2. The heading and the provisions of paragraph a of section 16 are revised to read as follows:

Sec. 16. *Photographic reproduction prices.*

* * * * *

a. *National Agricultural Library.* The following prices are applicable to National Agricultural Library (NAL) items only: Reproduction of electrostatic, microfilm, and microfiche copy—$5.00 for the first 10 pages or fraction thereof, and $3.00 for each additional 10 pages or fraction thereof. Duplication of NAL-owned microfilm—$10.00 per reel. Duplication of NAL-owned microfiche—$5.00 for the first fiche, and $0.50 for each additional fiche. Magnetic tape containing bibliographic files—$45.00 per reel. As part of its reference service NAL may, in accordance with its policies, provide staff assistance and the use of manual or computerized reference tools to answer inquiries. All inquiries requiring more than a threshold level of one hour of staff time or $25 in computer costs shall be billed for that part of the staff time and computer-related costs which exceed the threshold levels in accordance with section 8, paragraphs c through e of this fee schedule. The contract rate charged by the commercial source to the National Agricultural Library for computer services is available at the National Agricultural Library, Room 200, United States Department of Agriculture, Beltsville, Maryland 20705 (301-344-4248).

* * * * *

Signed at Washington, D.C., on September 6, 1984.

Larry Wilson,
Acting Director, Office of Finance and Management.

[FR Doc. 84-[illegible] Filed 9-12-84; 8:45 am]

BILLING CODE 3410-[illegible]

Agricultural Marketing Service

7 CFR Part 993

Dried Prunes Produced in California; Changes in Pack Specifications

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule prescribes an additional nomenclature size designation—"Small", "Breakfast", "Petite", or "Economy"—for consumer packages of dried prunes under the marketing order for California dried prunes. Packages of prunes labeled with these size designations shall include prunes falling within a range of 85 to 100 prunes, inclusive, per pound. The current nomenclature size designations are "Extra Large," "Large", and "Medium". This additional nomenclature size designation is intended to give handlers more flexibility in merchandising small prunes.

EFFECTIVE DATE: September 13, 1984.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the August 14, 1984, issue of the Federal Register (49 FR 32366) and interested persons were afforded an opportunity to submit written comments until August

29, 1984. Two comments were received in favor of the proposal.

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The 1984–85 crop year begins August 1, 1984, and handlers will soon be receiving and packing 1984–crop prunes; (2) handlers need to implement this change as soon as possible in packing and marketing the prunes they pack; and (3) because this action relieves restrictions on handlers, they do not need advance notice to use the additional designation.

This final rule changes paragraphs (b) and (c) of § 993.515 of Subpart—Pack Specification as to Size (7 CFR 993.501—993.518) to prescribe another nomenclature size designation which handlers can use on consumer packages of dried prunes. This designation will be either "Small", "Breakfast", "Petite", or "Economy". The dried prunes in the packages shall fall within a size range of 85 to 100 prunes, inclusive, per pound.

The additional nomenclature size designation was recommended by the Prune Marketing Committee, which is established under the marketing agreement and Order No. 993 both as amended (7 CFR Part 993) regulating the handling of dried prunes produced in California (hereinafter both are referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Committee works with USDA in administering the order.

The pack specifications in § 993.515 prescribe commercially recognized size categories for the packing of prunes in consumer packages, including numerical and nomenclature size designations. The nomenclature size designations currently listed in § 993.515(b) continue in effect. These are "Extra Large", "Large", and "Medium". The additional nomenclature size designation—"Small", "Breakfast", "Petite", or "Economy"—will be defined in § 993.515(c) in terms of the count of prunes per pound as follows: "Small", "Breakfast", "Petite", or "Economy" means any size count which falls within the range of 85 to 100 prunes, inclusive, per pound.

Handlers have been using this nomenclature size designation in conjunction with the numerical designation of 90 to 00 prunes, inclusive, per pound for the past several years, but have found the appearance of both numerical and nomenclature designations on the label to be counterproductive in merchandising and promoting sales of such prunes. This action no longer requires the numerical designation to be included on the label with the "Small", "Breakfast", "Petite", or "Economy" size designation, thus making the label more useful in merchandising and promoting the sale of small prunes. Also, this action gives handlers greater latitude and flexibility in utilizing, packing, and marketing the smaller prunes they receive from producers each year.

After consideration of all relevant matter presented, including that in the notice, the Committee's recommendation, and other available information, it is found that to amend Subpart—Pack Specification as to Size (7 CFR 993.515) will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 993

Marketing agreements and orders plums and prunes, California.

§ 993.515 Amended

Therefore, § 993.515 is amended by revising paragraphs (b) and (c) to read as follows:

Subpart—Pack Specification as to Size

* * * * *

§ 993.515 Size categories.

* * * * *

Nomenclature designations. Each of the following is a nonmenclature size category:

(1) Extra Large;

(2) Large;

(3) Medium; and

(4) Small, Breakfast, Petite, or Economy.

(c) *Nomenclature designations defined.* As used in paragraph (b) of this section:

(1) "Extra Large" means any size count which falls within the range of 25 to 40 prunes, inclusive, per pound;

(2) "Large" means any size count which falls within the range of 40 to 60 prunes, inclusive, per pound;

(3) "Medium" means any size count which falls within the range of 60 to 85 prunes, inclusive, per pound; and

(4) "Small", "Breakfast", "Petite", or "Economy" means any size count which falls within the range of 85 to 100 prunes, inclusive, per pound.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: September 7, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–24255 Filed 9–12–84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1046

[Docket No. AO–123–A53]

Milk in the Louisville-Lexington-Evansville Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Louisville-Lexington-Evansville Federal milk marketing order. One change increases the Class I price differential by 20 cents per hundredweight from the effective date of the amended order through February 1985. Also, a hauling credit is provided for handlers of supplemental milk brought in from other milk orders during the same period. The base-excess plan will be modified to allow producers' milk delivered to other order plants regulated by the southeastern orders containing base-excess plans to be included in the computation of their bases.

These changes are based on evidence presented at a public hearing on proposals to amend this and 13 other Federal milk orders. The hearing was held on August 7, 1984, in Atlanta, Georgia. The order changes were requested by a cooperative association that represents dairy farmers who supply milk to the Louisville-Lexington-Evansville market.

The adopted order changes are necessary to reflect current marketing conditions and to insure that all handlers in the market share more equitably in the cost of obtaining substantial supplies of supplemental milk during the months in which demand is expected to be greatest. Because of the limited time available to complete the rulemaking procedures, a recommended decision and the opportunity to file exceptions thereto were omitted. The amendments were adopted in the Assistant Secretary's decision of August 22, 1984. More than two-thirds of the producers who voted in a referendum approved the issuance of the amended order.

EFFECTIVE DATE: September 13, 1984.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued August 1, 1984; published August 3, 1984 (49 FR 31072).

Emergency Final Decision: Issued August 22, 1984; published August 28, 1984 (49 FR 34028).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid tentative marketing agreement and order:

(a) *Findings upon the basis of the hearing record.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective upon publication in the **Federal Register.** Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued August 22, 1984 (49 FR 34028). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective upon publication in the **Federal Register** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of this order amending the order is approved or favored by at least two-thirds of the producers who are were engaged in the production of milk for sale in the marketing area during the determined representative period.

List of Subjects in 7 CFR Part 1046

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Louisville-Lexington-Evansville marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1046—MILK ON THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.50, paragraph (a) is revised to read as follows:

§ 1046.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.70, and plus $0.20 from the effective date hereof through February 1985.

* * * * *

2. In § 1046.60, paragraph (g) is revised to read as follows:

§ 1046.60 Handler's value of milk for computing uniform price.

* * * * *

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles of fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

3. Section 1046.90 is revised to read as follows:

§ 1046.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month, except that for the months of March 1985 through June 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1046.13.

4. In § 1046.92, the following language is added to paragraphs (a) and (b):

§ 1046.92 Computation of base for each producer.

(a) * * * For producer bases to be calculated on or before February 1, 1985, and subject to § 1046.93, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee; Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September through December 1984 by the number of days' production represented by such producer milk or by 100, whichever is more.

(b) * * * For bases calculated from the September–December 1984 base-forming period, the base for a producer whose milk was delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the base-forming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferable.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–704)

Effective date: September 13, 1984.

Signed at Washington, D.C., on September 10, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–24311 Filed 9–12–84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24238; Amdt. No. 1277]

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office, of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory test of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective October 25, 1984*

Deadhorse, AK—Deadhorse, VOR RWY 22, Amdt. 4
Deadhorse, AK—Deadhorse, VOR/DME RWY 4, Amdt. 1
Honolulu, HI—Honolulu Intl, VOR or TACAN RWY 8L, Orig.
Honolulu, HI—Honolulu Intl, VOR or TACAN RWY 8R, Amdt. 1
Honolulu, HI—Honolulu Intl, VOR or TACAN–A, Orig., Cancelled
Honolulu, HI—Honolulu Intl, VOR or TACAN RWY 4R, Orig., Cancelled
Kaunakakai, Molakai, HI—Molokai, VOR or TACAN–A, Amdt. 10
Lanai City, HI—Lanai, VOR or TACAN RWY 3, Amdt. 2
Lanai City, HI—Lanai, VOR or TACAN–A, Amdt. 6

Jerome, ID—Jerome County, VOR/DME–A, Orig.
Red Oak, IA—Red Oak Muni, VOR/DME–A, Amdt. 2
Goodland, KS—Renner Fld (Goodland Muni), VOR RWY 30, Amdt. 7
Goodland, KS—Renner Fld (Goodland Muni), VOR/DME RWY 30, Amdt. 5
Mount Sterling, KY—Mt Sterling-Montgomery County, VOR/DME RWY 7, Amdt. 3
Mount Sterling, KY—Mt Sterling-Montgomery County, VOR RWY 7, Amdt. 2
Richmond, KY—Madison, VOR/DME RWY 18, Amdt. 2
Hopedale, MA—Hopedale-Draper, VOR–A, Amdt. 5
Jaffrey, NH—Jaffrey Muni-Silver Ranch, VOR–A, Amdt. 5
Raleigh-Durham, NC—Raleigh-Durham, VOR RWY 5, Amdt. 12
Raleigh-Durham, NC—Raleigh-Durham, VOR RWY 23, Amdt. 13
Raleigh-Durham, NC—Raleigh-Durham, VOR RWY 32, Amdt. 2
Annville, PA—Millard, VOR/DME–A, Amdt. 1
Pottsville, PA—Schuylkill County/Joe Zerbey, VOR RWY 4, Admt. 4
Ashland, VA—Hanover County Muni, VOR RWY 16, Amdt. 2
Chesterfield, VA—Chesterfield County, VOR RWY 15, Amdt. 7
Petersburg, VA—Petersburg Muni, VOR RWY 23, Amdt. 3
Richmond, VA—Richard Evelyn Byrd Intl, VOR RWY 24, Amdt. 11
Richmond, VA—Richard Evelyn Byrd Intl, VOR RWY 33, Amdt. 18
Richmond, VA—Richard Evelyn Byrd Intl, VOR RWY 20, Amdt. 6
Richmond, VA—Richard Evelyn Byrd Intl, VOR RWY 15, Amdt. 23
Richmond, VA—Richard Evelyn Byrd Intl, VOR RWY 2, Amdt. 4
Rock Springs, WY—Rock Springs-Sweetwater County, VOR–B, Amdt. 3
Rock Springs, WY—Rock Springs-Sweetwater County, VOR/DME RWY 9, Amdt. 1
Rock Springs, WY—Rock Springs-Sweetwater County, VOR/DME RWY 27, Amdt. 1

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

* * * *Effective October 25, 1984*

Deadhorse, AK—Deadhorse, LOC/DME BC RWY 22, Amdt. 5
Honolulu, HI—Honolulu Intl, LDA/DME RWY 26L, Amdt. 3
Ashland, VA—Hanover County Muni, SDF RWY 16, Amdt. 2
Chesterfield, VA—Chesterfield County, SDF RWY 33, Amdt. 3

* * * *Effective September 27, 1984*

Harrison, AR—Boone County, LOC RWY 36, Amdt. 3
Texarkana, AR—Texarkana Muni-Webb Field, LOC BC RWY 4, Amdt. 10
St Louis, MO—Lambert-St Louis Intl, LDA/DME RWY 12L, Orig.
St Louis, MO—Lambert-St Louis Intl, LDA/DME–A, Orig., Cancelled

* * * *Effective August 22, 1984*

Lubbock, TX—Lubbock Intl, LOC BC RWY 35L, Amdt. 11

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

* * * * *Effective October 25, 1984*

Sacramento, CA—Sacramento Metropolitan, NDB RWY 34, Amdt. 1
Monroe, GA—Monroe Muni, NDB RWY 3, Orig.
Honolulu, HI—Honolulu Intl, NDB RWY 8L, Amdt. 16
Red Oak, IA—Red Oak Muni, NDB RWY 17, Amdt. 5
Caldwell, ID—Caldwell Industrial, NDB RWY 30, Orig.
Nampa, ID—Nampa Muni, NDB RWY 11, Orig.
Chicago, IL—Chicago Midway, NDB RWY 13R, Amdt. 9, Cancelled
Goodland, KS—Renner Fld (Goodland Muni), NDB RWY 30, Amdt. 6
Raleigh-Durham, NC—Raleigh-Durham, NDB RWY 5, Amdt. 18
Raleigh-Durham, NC—Raleigh-Durham, NDB RWY 23, Amdt. 2
Valley City, ND—Barnes County Muni, NDB RWY 31, Amdt. 1
Pottsville, PA—Schylkill County/Joe Zerbey, NDB RWY 29, Amdt. 3
Reading, PA—Reading Muni, Gen Carl A Spaatz Field, NDB RWY 36, Amdt. 22
Rogersville, TN—Hawkins County, NDB RWY 7, Amdt. 1
Ashland, VA—Hanover County Muni, NDB RWY 16, Amdt. 1
Chesterfield, VA—Chesterfield County, NDB RWY 33, Amdt. 5
Rock Springs, WY—Rock Springs-Sweetwater County, NDB-C, Amdt. 1

* * * *Effective September 27, 1984*

New Orleans, LA—New Orleans Intl (Moisant Field), NDB RWY 10, Amdt. 22

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective October 25, 1984*

Deadhorse, AK—Deadhorse, ILS/DME RWY 4, Amdt. 5
Sacramento, CA—Sacramento Metropolitan, ILS RWY 16, Amdt. 10
Sacramento, CA—Sacramento Metropolitan, ILS RWY 34, Amdt. 2
Honolulu, HI—Honolulu Intl, ILS RWY 4R, Amdt. 9
Honolulu, HI—Honolulu Intl, ILS RWY 8L, Amdt. 16
Chicago, IL—Chicago Midway, ILS RWY 13R, Amdt. 37
Goodland, KS—Renner Fld (Goodland Muni), ILS RWY 30, Amdt. 3
Kansas City, MO—Kansas City Intl, ILS RWY 1, Amdt. 8
Raleigh-Durham, NC—Raleigh-Durham, ILS RWY 5, Amdt. 22
Raleigh-Durham, NC—Raleigh-Durham, ILS RWY 23, Amdt. 2
Harrisburg, PA—Capital City, ILS RWY 8, Amdt. 7
Lancaster, PA—Lancaster, ILS RWY 8, Amdt. 10
Middletown, PA—Harrisburg Intl Arpt-Olmsted Fld, ILS RWY 13, Amdt. 8
Middletown, PA—Harrisburg Intl Arpt-Olmsted Fld, ILS RWY 31, Amdt. 2
Reading, PA—Reading Muni, Gen Carl A Spaatz Field, ILS RWY 36, Amdt. 27
Richmond, VA—Richard Evelyn Byrd Intl, ILS RWY 6, Amdt. 23
Richmond, VA—Richard Evelyn Byrd Intl, ILS RWY 15, Amdt. 5
Richmond, VA—Richard Evelyn Byrd Intl, ILS RWY 33, Amdt. 10
Rock Springs, WY—Rock Springs-Sweetwater County, ILS/DME RWY 27, Amdt. 2

* * * *Effective September 27, 1984*

Little Rock, AR—Adams Field, ILS RWY 4, Amdt. 21
Texarkana, AR—Texarkana Muni-Webb Field, ILS RWY 22, Amdt. 12
Hot Springs, AR—Memorial Field, ILS RWY 5, Amdt. 9
New Orleans, LA—New Orleans Intl (Moisant Field), ILS RWY 28, Amdt. 2
New Orleans, LA—New Orleans Intl (Moisant Field), ILS RWY 10, Amdt. 29
St Louis, MO—Lambert-St Louis Intl, ILS RWY 12R, Amdt. 16

* * * *Effective September 4, 1984*

Sarasota/Bradenton, FL—Sarasota-Bradenton, ILS RWY 14, Amdt. 1

* * * *Effective August 27, 1984*

Charlottesville, VA—Charlottesville-Albemarle, ILS RWY 3, Amdt. 10

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective October 25, 1984*

Raleigh-Durham, NC—Raleigh-Durham, RADAR–1, Amdt. 2
Harrisburg, PA—Capital City, RADAR–1, Amdt. 11
Middletown, PA—Harrisburg Intl Arpt-Olmsted, RADAR–1, Amdt. 6
Richmond, VA—Richard Evelyn Byrd Intl, RADAR–1, Amdt. 7

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective October 25, 1984*

Goodland, KS—Renner Fld (Goodland Muni), RNAV RWY 12, Amdt. 4
Lawrence, KS—Lawrence Muni, RNAV RWY 32, Orig.
Richmond, KY—Madison, RNAV RWY 36, Amdt. 2
Pottsville, PA—Schuylkill County/Joe Zerbey, RNAV RWY 29, Amdt. 1
Reading, PA—Reading Muni, Gen Carl A Spaatz Field, RNAV RWY 13, Amdt. 6
Richmond, VA—Richard Evelyn Byrd Intl, RNAV RWY 20, Amdt. 4

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

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keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on September 7, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-24147 Filed 9-12-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 1710

[Docket No. N-84-1286; FR 1732]

Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act

Correction

In FR Doc. 84-20696 beginning on page 31375 in the issue of Monday, August 6, 1984, make the following correction:

On page 31383, column three, line two, "continue" should read "contain".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1064-84]

Delegation of Authority To Designate Certain Employees of the Department of Agriculture (Tick Inspectors) To Carry and Use Firearms

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Order delegates the Attorney General's authority under Public Law 97-312, 7 U.S.C. 2274, to designate certain employees of the Department of Agriculture (Tick Inspectors) to carry and use firearms when necessary for self-protection while engaged in the performance of official duties.

EFFECTIVE DATE: September 5, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur F. Norton, Criminal Division, Washington, D.C. 20530 (202-724-7526).

The Order is not a rule within the meaning of either Executive Order 12291, Section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies); Intergovernmental relations.

PART 0—[AMENDED]

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 0 of Title 28 of the Code of Federal Regulations is amended by adding a new § 0.64-3 to read as follows:

§ 0.64-3 Delegation respecting designation of certain Department of Agriculture employees (Tick Inspectors) to carry and use firearms.

The Assistant Attorney General in charge of the Criminal Division is authorized to exercise all the power and authority vested in the Attorney General under section 2274 of Title 7, U.S. Code, concerning the designation of certain Department of Agriculture employees (Tick Inspectors) to carry and use firearms. This delegation includes the power and authority to issue, with the Department of Agriculture, joint rules and regulations pertaining to the carrying and use of such firearms, which would, when promulgated, supersede the existing regulations pertaining to the carrying and use of firearms by Tick Inspectors, promulgated by the Attorney General and contained in Attorney General's Order No. 1059-84. The Assistant Attorney General in charge of the Criminal Division is authorized to redelegate all of this authority under section 2274 to his Deputy Assistant Attorneys General and appropriate Office Directors and Section Chiefs.

Dated: September 5, 1984.

William French Smith,

Attorney General.

[FR Doc. 84-24168 Filed 9-12-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 26]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS): Cardiac Pacemaker Telephonic Monitoring

AGENCY: Office of the Secretary, DoD.

ACTION: Amendment of Final Rule.

SUMMARY: This final rule will amend DoD 6010.8-R (32 CFR Part 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The final rule will allow coverage for transtelephonic monitoring of cardiac pacemakers which is currently excluded under the CHAMPUS Basic Program. Transtelephonic monitoring of cardiac pacemakers is an effective means of alerting the physician to pacemaker malfunction and serves to increase patient comfort and reduce the cost of medical care.

DATE: This amendment is effective September 13, 1984.

FOR FURTHER INFORMATION CONTACT: David R. Bennett, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, Telephone (303)-361-8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

In FR Doc 84-1271 appearing in the Federal Register on January 18, 1984 (49 FR 2118), the Office of the Secretary of Defense published for public comment a proposed amendment extending CHAMPUS benefits for transtelephonic monitoring of cardiac pacemakers. Public comments were to have been submitted by February 17, 1984.

Except for the following comments that recommended changes to the language of the rule, all other comments that were received supported the proposed rulemaking.

1. One of the comments suggested that "self-contained cardiac pacemaker monitors" be excluded from coverage and that specific intervals be stipulated for single versus dual chamber pacemakers. These suggestions will be adopted and incorporated into CHAMPUS' internal procedural guidelines as soon as the new Medicare

instructions for transtelephonic monitoring of cardiac pacemakers are issued.

2. There were also two editorial comments regarding the proposed rule that were accepted and added to the final rule. Section 199.10, paragraph (g)(56) of Part 199, specifically excludes services and advice rendered by telephone or other telephonic device. This restriction prevents the payment of transtelephonic monitoring of cardiac pacemakers under the CHAMPUS Basic Program.

Transtelephonic monitoring is a convenient and effective means of alerting the physician to incorrect positioning of malfunctioning of electrodes, failure of the generator's electronic circuitry and impending battery exhaustion. This method serves to increase patient comfort by avoiding unnecessary trips to the physician's office, reducing the burden on the hospitals' specialized cardiac units and reducing the cost of pacemaker monitoring.

Under the final rule all telephonic services are excluded except for transtelephonic monitoring of cardiac pacemakers. Transtelephonic monitoring of cardiac pacemakers will be payable using Medicare utilization parameters for development and reimbursement of transtelephonic monitoring claims. If the utilization parameters are exceeded, written justification will be required from the physician that more frequent monitoring is medically necessary.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I, is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

Section 199.10 is amended by revising paragraph (g)(56) to read as follows:

§ 199.10 Basic Program Benefits.

* * * * *

(g) * * *

(56) *Telephonic Services.* Services or advice rendered by telephone or other telephonic device, including remote monitoring, except for transtelephonic monitoring of cardiac pacemakers.

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

Dated: September 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-24090 Filed 9-12-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08-83-04]

Drawbridge Operation Regulations; Teche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), St. Mary Parish (SMP) and Iberia Parish (IP), the Coast Guard is changing the operating regulations for all 22 low level drawbridges across Teche Bayou, from mile 3.9 to mile 73.3. Sixteen of the bridges are owned by the LDOTD, four by SMP and two by IP.

The change requires that at least four hours advance notice be given at all times to open the bridges, except the four at miles 27.0, 32.5, 37.0 and 38.9 where the four hours notice is limited to the hours between 9 p.m. and 5 a.m. Outside these hours, the four bridges still are required to open on signal.

Additionally, the change (1) revokes the operating regulation for the railroad bridge at mile 61.0, a bridge no longer used and kept in the open to navigation position, pending removal, and (2) requires that at least 24 hours advance notice be given at all times to open the combination railroad/vehicular bridge at mile 77.7, to be consistent with the existing opening requirement for the bridge immediately downstream at mile 75.2. This addition, although not part of the previously issued proposed rule, is included herein to put these two bridges in accord with current conditions and has no effect on navigation.

Existing regulations call for all of the bridges from mile 3.9 to mile 77.7 to open on signal, except that from 9 p.m. to 5 a.m. they are to open on advance notice of 12 hours, and in some cases on advance notice of three hours for part of the year. The bridge at mile 73.3 was completed very recently and presently has no special regulation.

This change is being made because of infrequent requests for opening the draws. This action will relieve the bridge owner of the burden of having a person constantly available to open the draws and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On August 11, 1983, the Coast Guard published a proposed rule (48 FR 36475) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 11 August 1983. In each notice, interested parties were given until 26 September 1983 to submit comments. The proposed rule was codified as an amendment to § 117.245 and § 117.540, Part 117, Title 33 CFR. The final rule has been recodified as an amendment to § 117.501 to conform to the numbering system established by 49 FR 17450 dated April 24, 1984.

Drafting Information

The drafters of these regulations are Perry Haynes, project officer, and Steve Crawford, project attorney, District Legal Office.

Discussion of Comments

Seven comments were received in response to the proposed rule. Four were from users of Teche Bayou located along its banks; namely, Radcliff Materials, Inc., M&C Contractors, Breaux's Bay Craft, Inc. and Sierra Delta, Inc. The other three were from parties who wrote on behalf of Teche Queen, Inc., the owner and operator of a prospective bayou cruise boat. All comments basically expressed concern about opening delays which may occur with the advance notice provisions. To allay this concern, the LDOTD held separate meetings with the four users of the waterway and the prospective user. At these meetings, bridge opening statistics were reviewed to show that each bridge averages well under one opening per day during the prescribed advance notice periods, so infrequent that there should be no difficulty in honoring the appointed times for openings. The waterway users, both actual and prospective, were assured by the LDOTD that it would provide prompt and efficient bridge opening service at all times required, with the District Administrator at Lafayette designated as the point of contact in the event of any problems. To accommodate M&C Contractors, the LDOTD agreed to a four hour advance notice for the bridge at mile 73.3, instead of the 24 hours as stated in the proposed rule, making this like the other bridges. In light of these undertakings, all the users indicated that the regulations were acceptable.

These modifications to the rule as originally proposed are minor and have a possible adverse impact only upon the bridge owners. The owners have, however, been involved in formulating these final rules and have assented to the provisions contained in this rule. Moreover, the revisions, which resulted from consultation and meetings between affected parties, will serve to enhance local navigation. Therefore, the Coast Guard finds that supplemental notice of the modified rule and public procedure thereon are unnecessary under 5 U.S.C. 533(b).

The advance notice for opening of any of the draws would be given by placing a collect call at any time from ashore or afloat. From ashore, call Lafayette (318) 233–7404 for LDOTD bridges, Franklin (318) 828–1960 for St. Mary Parish bridges, Loreauville (318) 229–6874 for Iberia Parish bridges and Lafayette (318) 261–3629 for the Southern Pacific railroad bridge. From afloat, call Morgan City Public Coast Station KKD 732, VHF Channels 24 and 26, for all bridges.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that each bridge averages well below one opening per day for vessels during the respective advance notice period prescribed. These few vessels can reasonably give a four hours notice for a bridge opening by placing a collect call to the bridge owner at any time, from ashore or afloat. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at a bridge at the appointed time would involve little or no additional expense to them. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subject in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, as recodified by 49 FR 17450 dated April 24, 1984, is amended by revising § 117.501 (a), (b) and (c) to read as follows:

§ 117.501 Teche Bayou.

(a) The draws of the following bridges shall be open on signal, except that from 9 p.m. to 5 a.m. the draws shall open on signal if at least four hours notice is given:

(1) St. Mary Parish bridge, mile 27.0 at Baldwin.

(2) S324 bridge, mile 32.5 at Charenton.

(3) S670 bridge, mile 37.0 at Adeline.

(4) St. Mary Parish bridge, mile 38.9 at Sorrel.

(b) The draws of the following bridges shall open on signal if at least four hours notice is given:

(1) St. Mary Parish bridge, mile 3.9 at Calumet.

(2) St. Mary Parish bridge, mile 11.8 at Centerville.

(3) S3069 bridge, mile 16.3 at Franklin.

(4) S322 bridge, mile 17.2 at Franklin.

(5) S323 bridge, mile 22.3 at Oaklawn.

(6) S671 bridge, mile 41.8 at Jeanerette.

(7) S3182 bridge, mile 43.5 at Jeanerette.

(8) S320 bridge, mile 48.7 at Olivier.

(9) S3195 bridge, mile 50.4 at New Iberia.

(10) S87 Spur bridge, mile 52.5 at New Iberia.

(11) S86 bridge, mile 53.0 at New Iberia.

(12) S3156 bridge, mile 53.3 at New Iberia.

(13) S44 bridge, mile 56.7 at Morbihan.

(14) Iberia Parish bridge, mile 58.0 at New Iberia.

(15) Iberia Parish bridge, mile 60.7 at Vida.

(16) S344 bridge, mile 62.5 at Loreauville.

(17) S86 bridge, mile 69.0 at Daspit.

(18) S92 bridge, mile 73.3 at St. Martinville.

(c) The draws of the S96 bridge, mile 75.2 at St. Martinville, the Southern Pacific Transportation Company railroad/vehicular bridge, mile 77.7 at Levert, and the S350 bridge, mile 82.0 at Parks, shall open on signal if at least 24 hours notice is given.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: September 5, 1984

W.H. Stewart,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 84–24216 Filed 9–12–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[OAR-4-FRL-2668-5]

Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants; Supplemental Delegation of Authority to South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of authority.

SUMMARY: On February 1, April 17, and 25, 1984, the State of South Carolina requested a delegation of authority for the implementation and enforcement of several additional categories of New Source Performance Standards and one category of National Emission Standards for Hazardous Air Pollutants. EPA's review of South Carolina's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, and the Agency made the delegation as requested.

EFFECTIVE DATE: These delegations of authority to South Carolina were effective April 6 and May 10, 1984.

ADDRESSES: Copies of the requests for the delegations of authority and EPA's letters of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standards should not be submitted to the EPA Region IV Office, but should instead be submitted to the following address: Mr. Otto Pearson, PE, Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Al Yeast (404) 881–3286.

SUPPLEMENTAL INFORMATION: Sections 101, 110, and 111 of the Clean Air Act authorize the Administrator to delegate his authority to implement and enforce the National Standards of Performance for New Stationary Sources (NSPS) and the National Emission Standards for

Hazardous Air Pollutants (NESHAP), to any State which has submitted adequate implementation and enforcement procedures.

On October 26, 1976, EPA delegated to the State of South Carolina the authority to implement the NSPS and NESHAP. Subsequent NSPS delegations were made on March 17, 1981, and March 22, 1982. On March 24, 1983, South Carolina requested that EPA delegate authority for the NSPS categories that had been promulgated since the March 22, 1982, delegation. On February 1, April 17 and 25, 1984, the State of South Carolina requested delegation of authority for several NSPS and NESHAP categories. The NSPS categories requested are as follows:

1. *Surface Coating of Metal Furniture, 40 CFR Part 60, Subpart EE,* as promulgated on October 29, 1982.
2. *Industrial Surface Coating: Large Appliances, 40 CFR Part 60, Subpart SS,* as promulgated on October 27, 1982.
3. *Metal Coil Surface Coating, 40 CFR Part 60, Subpart TT,* as promulgated on November 1, 1982.
4. *Synthetic Fiber Production Facilities, 40 CFR Part 60, Subpart HHH* as promulgated on April 5, 1984.
5. *Metallic Mineral Processing, 40 CFR Part 60, Subpart LL,* as promulgated on February 21, 1984.
6. *Pressure Sensitive Tape and Label Coating Operations, 40 CFR Part 60, Subpart RR,* as promulgated on October 18, 1983.
7. *Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, 40 CFR Part 60, Subpart VV,* as promulgated on October 18, 1983.
8. *Beverage Can Surface Coating Industry, 40 CFR Part 60, Subpart WW,* as promulgated on August 25, 1983.
9. *Bulk Gasoline Terminals, 40 CFR Part 60, Subpart XX,* as promulgated on August 18, 1983.

The NESHAP category being requested is:

1. *Asbestos, 40 CFR Part 61, Subpart M,* as promulgated on April 5, 1984.

Action. Since review of the pertinent South Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS and NESHAP, I delegated to the State of South Carolina my authority for the source categories listed above on April 6 and May 10, 1984.

The Office of Management and Budget has exempted this delegation from the requirements of section 3 of the Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7411, and 7601).

Dated: August 31, 1984.

John A. Little,

Acting Regional Administrator.

[FR Doc. 84-24080 Filed 9-12-84; 8:45 am]

BILLING CODE 6560-50-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program; Appendix A: Alabama

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management is establishing the location of a new office for filing of applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective September 13, 1984. In view of the need for its publication without an opportunity for prior comment, comments will still be received and considered. To be timely, comments must be received on or before October 15, 1984.

ADDRESS: Send or deliver comments to: Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, 1900 E Street, NW, Room 5532, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brooks, Coordinator, Voting Rights Program, (202) 632-5544.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Chambers County, Alabama, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject county, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because its purpose is the addition of five new locations to the list of counties in the regulations concerning OPM's responsibilities under that Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management amends 45 CFR 801.202, Appendix A, by alphabetically adding Chambers County, Alabama, to read as follows:

PART 801—VOTING RIGHTS PROGRAM

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

Alabama

County; Place for filing; Beginning date.

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Chambers; Lafayette—Examiners Office, Room 218, FHA Office, County Building, 18 Alabama Avenue E., July 30, 1984.

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(5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g))

[FR Doc. 84-24160 Filed 9-12-84; 8:45 am]

BILLING CODE 6325-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[APD 2800.12 CHGE 5]

Disputes and Appeals; Rules of the GSA Board of Contract Appeals

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add the Rules of the General Services Administration Board of Contract Appeals as Appendix B. The intended effect is to provide the rules which govern the proceedings in appeals relating to contracts filed with the Board.

EFFECTIVE DATE: Board rules were effective June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Carol A. Farrell, Office of GSA Acquisition Policy and Regulations, (202) 523-3822.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) therefore, no regulatory flexibility analysis had been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subject in 48 CFR Part 533

Government procurement.

(40 U.S.C. 486(c))

1. The GSAR General Structure, Appendix B is amended to remove the word "Reserved".

PART 533—DISPUTES AND APPEALS

Subpart 533.70—Rules of the GSA Board of Contract Appeals

2. Section 533.7001 is revised to read as follows:

533.7001 Rules of the GSA Board of Contract Appeals.

The rules of GSA Board of Contract Appeals which were issued June 1, 1984, by the Acting Administrator by GSA Order ADM 2806.4A, appear in their entirety, in Appendix B of this regulation.

3. Appendix B is amended to add the rules to read as follows:

Appendix B—Rules of the GSA Board of Contract Appeals

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Note.—The Form Exhibits will not be illustrated in this issue of the **Federal Register**, but will be illustrated in the GSAR.

Foreword

The GAS Board of Contract Appeals was established in GSA pursuant to the Contract Disputes Act of 1978 (Pub. L. 95-563, 92 Stat. 2383-91) as an independent tribunal to hear and decide contract disputes between contractors and GSA and other agencies of the United States. Additionally, the Board hears and decides appeals taken under the Disputes clause and in connection with contract-related claims. The authority of the Board is exercised in accordance with these rules and the agency standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

Rule 1. *Scope of rules; construction; rulings and orders.*

(a) *Scope.* These rules govern proceedings in appeals relating to contracts filed with the Board on or after June 1, 1984, and all further proceedings in appeals then pending, except to the extent that in the opinion of the Board, their application in a particular appeal pending on the effective date would be infeasible or would work an injustice, in which event the former procedure applies. Where appropriate, or where expressly provided, these rules also govern proceedings concerning any petition filed with the Board for an order directing a contracting officer to issue a decision.

(b) *Construction.* These rules shall be construed to secure the just, speedy, and inexpensive resolution of every appeal.

(c) *Rulings, orders, and directions.* The Board may make such rulings and issue such orders and directions as are necessary to secure the just, speedy, and inexpensive resolution of every appeal before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to these rules may be made on the motion or application of either party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as are just.

(d) *Panels.* Each appeal is assigned to a panel consisting of one or more administrative judges, one of whom is designated the panel chairman. In appeals not processed under Rule 13 or 14, a panel shall consist of three or more administrative judges. The panel chairman has responsibility for processing the appeal and may, without referral to other panel members, rule on nondispositive motions and dismiss an appeal with prejudice upon the joint request or with the joint consent of the parties. Concurrence of a majority of the panel, if more than one judge is assigned, is required for the following actions:

(1) Adjudicating an appeal on the merits or denying or refusing such an adjudication; and

(2) Issuing a ruling, order, or opinion deciding a motion filed under Rule 32 or 33.

Any action that may be taken by a panel may be taken by the full Board pursuant to Rule 30.

Rule 2. *Time: Computation; enlargement.*

(a) *Time for Performing required actions.* All time limitations prescribed in these rules or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) *Enlarging time.* Upon application of a party for good cause shown, the Board may enlarge any time prescribed by these rules or by an order or direction of the Board. A written application is required, but in exigent circumstances an oral request may be made and followed by a written request. An enlargement of time may be granted even though the request was filed after the time for taking the required action expired, but the party requesting the enlargement must show good cause for its inability to make the request before that time expired.

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by these rules or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is a Saturday, a Sunday, or a legal holiday under federal law, in which event the period shall include the next business day. When the period of time prescribed or allowed is less than 7 days, intervening Saturdays, Sundays, and legal holidays shall not be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

(d) *Adding time after service by mail.* When a party has the right, or is required, to file a document within a prescribed time after the filing of another document with the Board, and the document to which response is required or permitted is served on that party by mail, 5 days shall be added to the period within which that action may or must be performed.

(e) *Filing defined.* Filing occurs upon receipt by the Office of the Clerk of the Board, except that: (1) an appeal may also be filed with the Board by submitting a written notice of appeal to the contracting officer or to the head of the contracting agency; (2) the filing date of a document that has been mailed through the United States Postal Service is the date it is mailed; and (3) the filing date of a telegram is the date it is first transmitted by the telegraph company. A postmark affixed by the United States Postal Service shall be presumed establish the date of mailing; postmarks affixed by postage meters will not be accepted as evidence of the date of mailing. The date placed on a telegram by the telegraph company shall be presumed to establish the date of first transmission.

Rule 3. *Service of papers.*

(a) *On whom service must be made.* Except as these rules provide or the Board may order, when a party sends a document to the Board it must at the same time send a copy to the other party. Exceptions to this requirement appear in Rule 20 (subpoenas) and Rule 25 (posthearing and reply briefs). Any papers required to be served on a party shall be filed with the Board before service or within a reasonable time thereafter, but the Board may on motion of a party or on its own initiative order that deposition upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the Board or for use in a proceeding.

(b) *Proof of service.* Except when service is not required, a party sending a document to the Board must indicate to the Board that a copy has also been sent to the opposing party. This may be done by certificate of service, by the notation of a carbon copy (cc:), or by any other means that can reasonably be expected to indicate to the Board that the other party has received a copy. Unless informed otherwise, the Board will assume that a document was served by mail.

(c) *Failure to make service.* If a document sent to the Board by a party does not indicate that a copy has been served on the other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire of the other party whether it has received a copy and note on the record the fact of inquiry and the response and may also direct the party that submitted the document to serve a copy on the other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

Rule 4. *The appeal file.*

(a) *Submission to the Board by the contracting officer.* Within 30 days from receipt of notice that an appeal has been filed, or within such time as the Board may allow, the respondent shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision from which the contractor has appealed, including:

(1) The contracting officer's decision, if any, from which the appeal is taken;

(2) The contract, including amendments, specifications, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;

(4) Affidavits or statements of any witnesses on the matter in dispute and transcripts of any testimony taken prior to the filing of the notice of appeal;

(5) All documents and other tangible things on which the contracting officer relied in making the decision.

The respondent shall serve a copy of the appeal file on the appellant at the same time that it files the appeal file with the Board, except that it need not serve on the appellant those documents described in subparagraph (a)(2) of this rule. However, the respondent must serve upon the appellant a list indicating the specific contractual documents filed with the Board. This list must also be filed with the Board as an exhibit to the appeal file.

(b) *Submission to the Board by appellant.* Within 30 days after filing of the respondent's appeal file exhibits, or within such time as the Board may allow, the appellant shall file with the Board for inclusion in the appeal file documents or other tangible things relevant to the appeal that have not been submitted by the respondent. The appellant shall serve a copy of its additional appeal file exhibits upon the respondent at the same time as it files them with the Board.

(c) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal, require either or both of the parties to file other documents and tangible things as additional exhibits to the appeal file.

(d) *Organization of the appeal file.* Appeal file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete appeal file, after all submissions, will consist of one set of consecutively numbered appeal file exhibits. The index should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board but not served on the other party.

(e) *Lengthy or bulky documents.* The Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or outsized documents submitted to the Board as appeal file exhibits. The requirements of paragraph (d) of this rule apply to such documents. In addition, the party submitting them shall make them reasonably available to the other party for inspection if it has retained copies, and the Board will also make them available for inspection at its offices.

(f) *Use of appeal file as evidence.* All exhibits in the appeal file are part of the record upon which the Board will render its decision, except for those as to which an objection has been sustained. Unless otherwise ordered by the Board, objection to any exhibit in the appeal file may be made at any time prior to the swearing of the first witness or, if the appeal is submitted on the record pursuant to Rule 11, at any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(g) *When appeal file not required.* The Board may postpone or dispense with the submission of any or all appeal file exhibits.

Rule 5. *Filing appeals; Notice of appeal; docketing.*

(a) *Filing appeals.* (1) An appeal is commenced by filing a notice of appeal with the Board, or by submitting a notice of appeal to the contracting officer or to the head of the contracting agency.

(2) An appeal from a decision of a contracting officer shall be filed no later than 90 days after the date the appellant receives that decision.

(3) An appeal may be filed with the Board should the contracting officer fail or refuse to issue a timely decision on a claim submitted in writing.

(4) A contractor may file with the Board a petition that the Board direct a contracting officer to issue a written decision on a claim.

(b) *Notice of appeal.* (1) A notice of appeal or petition under subparagraph (a)(4) of this rule shall be in writing and should be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the contractor can satisfy this requirement by attaching a copy of the contracting officer's decision to the notice of appeal. If an appeal is taken, pursuant to subparagraph (a)(3) of this rule, from the failure of a contracting officer to issue a decision, or if a petition is filed with the Board, pursuant to subparagraph (a)(4) of this rule, requesting that the Board direct a contracting officer to issue a decision, the notice of appeal or petition should describe in detail the claim that the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching a copy of the written claim submission to the notice of appeal or petition.

(2) A written notice in any form, including the one specified in the Appendix to these rules, is sufficient to initiate an appeal. The notice of appeal, or a petition pursuant to subparagraph (a)(4) of this rule, should include the following information: (A) the number and date of the contract; (B) the name of the agency and the component thereof against which the claim has been asserted; (C) the name of the contracting officer whose decision or failure to decide is appealed and the date of the decision, if any; (D) a brief account of the circumstances giving rise to the appeal; and (E) an estimate of the amount of money in controversy, if any and if known.

(3) The appellant should send a copy of the notice of appeal or petition to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(c) *Notice of docketing.* Notices of appeal and petitions filed pursuant to subparagraph (a)(4) of this rule will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to both parties. The notice of docketing may include orders and directions to the parties.

Rule 6. *Appearances; notices of appearance.*

(a) *Appearances before the Board.* (1) *Appellant.* The party filing an appeal shall be known as the appellant. Any appellant may appear before the Board by an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, in the District of Columbia, or in a foreign country. Alternatively, an individual appellant may appear in his own behalf; a corporation, trust, or association may appear by one of its officers or by any other authorized representative; and a partnership may appear by one of its members or by any other authorized representative.

(2) *Respondent.* The Government agency whose decision is being appealed shall be known as the respondent. The respondent may appear before the Board by an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, in the District of Columbia, or in a foreign country. Alternatively, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.

(b) *Notice of appearance.* Unless a notice of appearance is filed by some other person, the person signing the notice of appeal shall be deemed to have appeared on behalf of the appellant, and the head of the respondent agency's litigation office shall be deemed to have appeared on behalf of the respondent. A notice of appearance in the form specified in the Appendix to these rule is sufficient.

Rule 7. *Pleadings.*

(a) *Pleadings required and permitted.* Except as the Board may otherwise order, the Board requires the submission of a complaint and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.

(b) *Complaint.* No later than 30 days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescibed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant.

(c) *Answer.* No later than 30 days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint as well as any affirmative defenses it chooses to assert. In lieu of answering, the respondent may file a dispositive motion of one of the sorts enumerated in Rule 8(c) or a motion for a more definite statement; if such a motion is filed and is denied by the Board in whole or in part, the respondent shall file its answer no later than 30 days after the Board's ruling on the motion. If no answer or motion is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by subparagraph (f) of this rule. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(d) *Reply to an answer.* If the Board orders or permits a reply to an answer, it shall be filed as directed by the Board.

(e) *Modifications to requirement for pleadings.* If the appellant has elected the small claims procedure provided by Rule 13 or the accelerated procedure provided by Rule 14, the submission of pleadings shall be governed by the applicable rule.

(f) *Amendment of pleadings.* Each party may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed; if the pleading is one to which no responsive pleading is permitted, such amendment may be made at any time within 20 days after it is served, or, in small claims proceedings under Rule 13, within 10 days after it is served. The Board may permit either party to amend its pleadings further on conditions fair to both parties. If a response to the unamended pleading was required by these rules or by an order of the Board, a response to the amended pleading shall be filed no later than 30 days after the filing of the amended pleading, or, in small claims proceedings, no later than 15 days after the filing of the amended pleading. Rule 12(e) concerns amendments to pleadings to conform to the evidence.

Rule 8. *Motions.*

(a) *How motions are made.* Motions may be oral or written. A written motion shall indicate the relief or order sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor. Rule 25 prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party.

(b) *When motions may be made.* A motion filed in lieu of an answer pursuant to Rule 7(c) shall be filed no later than when the answer is required to be filed. Any other dispositive motion shall be made as soon as the grounds therefor are known. Any other motion shall be made promptly or as required by these rules.

(c) *Dispositive motions.* The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment);

(4) Any other motion to dismiss with prejudice.

(d) *Other motions.* Other motions may be made in good faith and in proper form.

(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide an appeal. When all facts touching upon the Board's jurisdiction are not of record, decision of a jurisdictional question may be deferred pending hearing on the merits or the filing of record submissions.

(f) *Procedure.* A party may respond to a written motion other than a motion pursuant to Rule 31, 32, or 33 at any time within 20 days after the filing of the motion. Responses to motions pursuant to Rule 31, 32, or 33 may be made only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from either or both of the parties. Procedure on oral motions made at hearing shall be determined as necessary in the course of their consideration.

(g) *Effect of pending motion.* Except as these rules provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the appeal in accordance with these rules and the orders and directions of the Board. If a motion is initially filed in lieu of an answer, the answer will be due as prescribed by Rule 7(c).

Rule 9. *Election of hearing or record submission.*

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to Rule 11. Such an election may be filed at any time unless a time for filing is prescribed by the Board or by Rule 13 (small claims procedure) or Rule 14 (accelerated procedure). A party electing to submit its case on the record pursuant to Rule 11 may also elect to appear at a hearing solely to cross-examine any witness presented by the opposing party, provided that the Board is informed of that party's intention within 10 days of its receipt of notice of the election of hearing by the opposing party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices if they are not apparent. A hearing will be held if one or both of the parties elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of the other party, it shall consult with the other party before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit on the record shall be due as provided in Rule 11.

Rule 10. *Conferences; conference memorandum; prehearing order; sanctions; prehearing and presubmission briefs.*

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. The conference may be stenographically or electronically recorded. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understanding on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Any other matter that may aid in the disposition of the appeal.

(b) *Conference memorandum.* The Board may prepare a memorandum of the results of a conference, including any rulings or orders, and place such memorandum in the record of the appeal. A copy of the memorandum will be sent to each party, and each party shall have 7 days from receiving the memorandum to object to the substance of it.

(c) *Prehearing order.* The Board may issue a prehearing or presubmission order to govern the proceedings in an appeal.

(d) *Sanctions.* When the Board has issued written directions or orders to one or both of the parties, whether on its own initiative or following a prehearing or presubmission conference, and either party fails to comply, the Board may make such orders with regard to the failure as are just, including the following:

(1) Ordering that the facts pertaining to the matter in default shall be taken to be established for the purpose of the appeal in accordance with the contention of the party submitting documents or requests for admissions;

(2) Declaring a waiver of challenge of the accuracy of any statement or schedule of items and figures involved;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony; or

(5) Dismissing the appeal or any part thereof.

(e) *Prehearing or presubmission briefs.* At any time prior to hearing or to the date by which first record submissions are due, a party may, by leave of the Board, file a prehearing or presubmisson brief.

Rule 11. *Submissionon the record without a hearing.*

(a) *Submission on the record.* A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(1) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(2) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(3) A brief or memorandum of law.

The Board may require the submission of additional evidence or briefs and may order oral argument in an appeal submitted on the record.

(b) *Time for submission.* (1) If both parties have elected to submit their case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If one party has elected a hearing and the other party has elected to submit its case on the record, the party submitting in the record shall make its initial submission no later than commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time when the party's posthearing brief is due. The Board will accept a further record submission in the form of a reply brief if the party that attended the hearing is permitted to submit a reply brief; such a record submission will be due at the same time as the reply brief of the party that attended the hearing. Submission and service of record submissions in the form of briefs are governed by Rule 25.

(c) *Objections to evidence.* Objections to evidence in a record submission may be made at any time within 10 days after the filing of the submission. Replies to such objections, if any, may be made within 10 days after the filing of the objection. The Board may rule on such objections in its opinion deciding the merits of the appeal.

Rule 12. *Record of Board proceedings.*

(a) *Composition of the record for decision.* The record upon which any decision of the Board will be rendered consists of:

(1) The notice of appeal;

(2) Appeal file exhibits other than those as to which an objection has been sustained;

(3) Hearing exhibits other than those as to which an objection has been sustained;

(4) Pleadings;

(5) Motions and responses thereto;

(6) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(7) Documents and other tangible things admitted in evidence by the Board;

(8) Written transcripts or electronic recordings of proceedings;

(9) Stipulations and admissions by the parties;

(10) Depositions, or parts thereof received in evidence;

(11) Written interrogatories and responses received in evidence;

(12) Briefs and memoranda of law; and

(14) Anything else that the Board may designate part of the record.

All other papers and documents in an appeal are part of the administrative record of the proceedings in an appeal. The administrative record shall include appeal file and hearing exhibits offered but not received in evidence; it may also include correspondence with and between the parties, and depositions, interrogatories, offers of proof contained in the transcript, and other documents that are not part of the record for the purpose of any decision by the Board.

(b) *Time for entry into the record.* Except as the Board may otherwise order, nothing other than posthearing briefs will be received into the record after a hearing is completed. In cases submitted on the record without a hearing, nothing will be received into the record after the time for filing of the last record submission. Briefs will be due as provided in Rule 25(b).

(c) *Closing of the record.* Except as the Board may otherwise order, no proof shall be received in evidence after a hearing is completed or, in cases submitted on the record without a hearing, after notice by the Board to the parties that the record is closed and that the case is ready for decision.

(d) *Notice that the appeal is ready for decision.* The Board will give written notice to the parties when the record is closed and the case is ready for decision.

(e) *Amendments to conform to the evidence.* When issues within the proper scope of an appeal, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing (see Rule 21(h)) or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may formally amend the pleadings to conform to the proof or may order that the record be deemed to contain pleadings so amended.

(f) *Enlargement of the record.* The Board may at any time require or permit enlargement of the record with additional evidence and briefs. It may reopen the record to receive additional evidence and oral argument at a hearing.

(g) *Inspection of the record of proceedings; release of any paper, document, or tangible thing prohibited.* Except for any part thereof that is subject to a protective order, the record of proceedings in an appeal shall be made available for inspection by any person at the office of the Board during the Board's normal working hours. Except as provided in Rule 23(c), no paper, document, or tangible thing which is part of the record of proceedings in an appeal may be released from the offices of the Board. Copies may be obtained by any person as provided in Rule 37.

(h) *Submissions in camera.* (1) A party may by motion request that the Board receive and hold in camera documents that the party contends are privileged or confidential. The documents that are the subject of the motion shall be attached to the motion. If the Board denies the motion, the documents will be returned to the moving party. If the Board grants the motion, the documents will be held in camera and will be part of the record of the appeal.

(2) The Board may at any time determine that documents in its files should be held in camera. If such a determination is made, both parties will be so notified.

Rule 13. *Small claims procedure.*

(a) *General.* The small claims procedure is available solely at the appellant's election. This procedure shortens the time periods for and allows the elimination of many of the procedural steps required by these rules so that the Board may render its decision, where practicable, within 120 days after the Board's receipt of the election. Pleadings, discovery, and other prehearing activities may be restricted or eliminated. An appellant may elect the accelerated procedure prescribed by Rule 14, instead of the small claims procedure prescribed by this rule, for any appeal eligible for the small claims procedure.

(b) *Election of the small claims procedure.* In any appeal in which the amount in controversy is $10,000 or less, the appellant may elect the small claims procedure. Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after filing of the notice of docketing. A late election may be made only by leave of the Board.

(c) *Proceedings in small claims.* The Board may establish an expedited schedule for the proceedings other than that prescribed in subparagraphs (1) through (6) of this paragraph (c). The Board will ordinarily conduct a prehearing or presubmission conference pursuant to Rule 10 for this purpose. Except as the Board may otherwise order, the parties shall proceed in small claims appeals as follows:

(1) The respondent's appeal file exhibits shall be filed either as prescribed by Rule 4(a) or no later than 15 days after the filing of the appellant's notice of election, whichever first occurs.

(2) If the Board permits the filing of a complaint, it shall be filed either as prescribed by Rule 7(b) or no later than 15 days after filing of the appellant's notice of election, whichever first occurs.

(3) The appellant's appeal file exhibits shall be filed no later than 10 days after the filing of the respondent's appeal file exhibits.

(4) If the Board has permitted the filing of a complaint, the answer shall be filed no later than 10 days after the filing of the complaint.

(5) The election of each party prescribed by Rule 9 shall be filed no later than 30 days after the filing of the appellant's election of the small claims procedure.

(6) If the Board permits discovery, it shall be concluded no later than 10 days prior to the hearing date or, if both parties have elected to submit on the record pursuant to Rule 11, no later than 10 days prior to the date prescribed by the Board for first record submissions under Rule 11(b).

(d) *Decisions under the small claims procedure.* (1) Written decisions may be rendered by a single administrative judge and will be summary in form. If there is a hearing, the Board may, at the conclusion of the hearing, render a summary oral opinion deciding the appeal. Any such oral opinion will be reduced to writing, and copies will be given to both parties for record and payment purposes and to establish a date for commencement of the period for filing a motion pursuant to Rule 32 or 33.

(2) In the absence of fraud, a decision under the small claims procedure is final and conclusive and may not be appealed or set aside. Such decisions shall have no value as precedent.

(e) *Motions pursuant to Rules 31, 32, and 33.* A motion pursuant to Rule 31, 32, or 33 may be filed in an appeal decided under the small claims procedure. Ordinarily, such a motion will be decided by the administrative judge who decided the appeal or by one other administrative judge of the Board.

Rule 14. *Accelerated procedure.*

(a) *General.* The accelerated procedure is available solely at the appellant's election. This procedure shortens the time periods for many of the procedural steps required by these rules so that the Board may render its decision, where practicable, within 180 days after the Board's receipt of the election. An appellant may elect the accelerated procedure prescribed by this rule, instead of the small claims procedure prescribed by Rule 13, for any appeal eligible for the small claims procedure. In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) *Election of the accelerated procedure.* In any appeal in which the amount in controversy is $50,000 or less, the appellant may elect the accelerated procedure. Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after the date the appellant receives the Board's notice of docketing. A late election may be made only by leave of the Board.

(c) *Proceedings in accelerated appeals.* The Board may establish an expedited schedule for the proceedings other than that prescribed in subparagraphs (1) through (6) of this paragraph (c). The Board will ordinarily conduct a prehearing or presubmission conference pursuant to Rule 10 for this purpose. Except as the Board may otherwise order, the parties shall proceed in accelerated appeals as follows:

(1) The respondent's appeal file exhibits shall be filed as prescribed by Rule 4(a).

(2) The complaint shall be filed as prescribed by Rule 7(b).

(3) The appellant's appeal file exhibits shall be filed no later than 30 days after the filing of the respondent's appeal file exhibits.

(4) The answer shall be filed no later than 20 days after the filing of the complaint.

(5) The election of each party prescribed by Rule 9 shall be filed no later than 60 days after the filing of the appellant's election of the accelerated procedure.

(6) All discovery shall be concluded no later than 20 days prior to the hearing date or, if neither party has elected a hearing, no later than 20 days prior to the date prescribed by the Board for first record submissions under Rule 11.

(d) *Decisions under the accelerated procedure.* Decisions will be written and may be rendered by a single administrative judge with the concurrence of one other administrative judge. In the event the two administrative judges disagree, the chief administrative judge will designate a third administrative judge to participate in the decision.

(e) *Motions pursuant to Rules 31, 32, and 33.* A motion pursuant to Rule 31, 32, or 33 may be filed in an appeal decided under the accelerated procedure.

Rule 15. *General provisions governing discovery.*

(a) *Discovery methods.* The parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Requests for production of documents or other tangible things; and

(4) Requests for admissions.

Unless otherwise ordered by the Board or provided by these rules, the frequency of use of these methods is not limited.

(b) *Scope of discovery.* Except as otherwise limited by order of the Board in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending appeal, whether it relates to the claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Voluntary discovery.* The parties are encouraged to engage in voluntary discovery. The parties may by stipulation agree to the methods and procedures to be used in discovery except that agreements affecting the time provided in Rule 17 for responses to requests for discovery may be made only with the approval of the Board.

(d) *Discovery conference.* At any time after an appeal has been filed, upon application of a party or on its own initiative, the Board may hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with Rule 10.

(e) *Protective orders.* In connection with any discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(3) That discovery be conducted with no one present except persons designated by the Board;

(4) That confidential information not be disclosed or that it be disclosed only in a designated way; and

(5) Such other matters as justice may require.

(f) *Failure to make or cooperate in discovery: sanctions.* (1) A party may apply to the Board for an order compelling discovery when a party refuses or obstructs discovery. If a motion to compel discovery is denied in whole or in part, the Board may make a protective order of the type listed in paragraph (e) of this rule.

(2) When the Board has entered an order to provide or permit discovery, and there is a failure to comply with that order, the Board may make such orders with regard to the failure as are just, including the following:

(A) An order that designated facts shall be taken to be established for purposes of the appeal in accordance with the claim of the party obtaining that order;

(B) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence; and

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed.

(g) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provisions of Rule 20.

Rule 16. *Depositions.*

(a) *When depositions may be taken.* After an appeal has been filed, the parties may mutually agree to, or, upon application of a party, the Board may order, the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. Attendance of witnesses may be compelled by subpoena as provided in Rule 20, and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may, nevertheless, arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions propounded to him.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of, a public or private corporation, partnership or association, or governmental agency, which is a party, may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(A) The witness is dead; or

(B) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment; or

(D) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) Upon application and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, the adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action was pending before the Board. The motion shall show:

(1) the names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) the reasons for perpetuating the testimony of the persons named.

If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in Rule 15 and in this rule. Thereupon, the depositions may be taken and used as prescribed in these rules for depositions taken in actions pending before the Board. Upon request and for good cause shown, an administrative judge may issue or obtain a subpoena, in accordance with Rule 20, for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

Rule 17. *Interrogatories to parties; requests for admissions; requests for production of documents.*

After an appeal has been filed, a party may serve on the other party written interrogatories, requests for admissions, and requests for production of documents.

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath, and answered or objected to within 30 days after service.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admissions.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed or objected to within 30 days after service; otherwise, the matter therein may be deemed to be admitted. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference has been held, or some other event has occured.

(d) *Written requests for production of documents.* A written request for the production, inspection, and copying of any documents and things shall be answered or objected to within thirty days after service.

(e) *Enlargement of time.* Upon request of either party, or on its own initiative, the Board may prescribe a period of time other than that specified in this rule.

Rule 18. *Hearing examiners.*

(a) *Designation.* In appropriate cases the chief administrative judge may designate a duly appointed hearing examiner of the Board to conduct proceedings in an appeal that has been assigned to a panel. Any such designation shall be by written order of the chief administrative judge, who may specify the authority of the hearing examiner. A copy of such designation shall be sent to each party. In the absence of any specification in the order, and subject to paragraph (c) of this rule, the authority of the hearing examiner shall be as set forth in paragraph (b) of this rule. In no event shall the authority of the hearing examiner specified in the order of designation exceed that set forth in paragraph (b) of this rule. Either party may object in writing to the designation of a hearing examiner to conduct a hearing. Such objection must be filed with the chief administrative judge within 10 days of the objecting party's receipt of notice of the designation. The chief administrative judge will rule on any such objection within 5 days of its receipt.

(b) *Authority.* Subject to paragraph (c) of this rule and Rule 1(d), a hearing examiner may be given the authority, with respect to any appeal to which the hearing examiner has been designated, to:

(1) Correspond with the parties on behalf of the Board with respect to any matter within the hearing examiner's authority;

(2) Perform any act that would be within the authority of a single administrative judge of the Board, including the following:

(A) Establish the date and place of hearing;

(B) Establish a schedule for record submissions when at least one of the parties has elected not to attend a hearing;

(C) Conduct a prehearing or presubmission conference and make rulings or issue directions in the course of such a conference;

(D) Conduct a hearing and make rulings in the course of that hearing; and

(E) Make other rulings that do not relate to dispositive matters during the pendency of the appeal;

(3) Prepare recommended findings of fact and a recommended decision to be proposed to the assigned panel for adoption by the Board.

(c) *Limitations on authority.* Notwithstanding any other provision of this rule, no hearing examiner of the Board may:

(1) Conduct any proceedings with respect to an appeal to which the hearing examiner has not been designated or in contravention of the order designating the hearing examiner;

(2) Conduct a hearing with respect to an appeal in which the amount in dispute is greater than $50,000;

(3) Take any action that has the effect of an adjudication of the appeal on the merits;

(4) Take any action that has the effect of striking, dismissing, or granting partial summary judgment with respect to any claim or defense of a party;

(5) Sign a subpoena; or

(6) Issue an oral decision at the conclusion of a hearing under the small claims procedure.

(d) *Amendment of rulings.* Upon motion of either party, the chairman of the panel to which an appeal has been assigned may amend, alter, or vacate any ruling made by the hearing examiner prescribed in paragraph (b) of this rule. Such motions shall be filed within 5 days after the hearing is completed or, in cases submitted on the record, within 5 days after notice by the Board to the parties that the record is closed.

Rule 19. *Hearings: scheduling; notice; unexcused absences.*

(a) *Scheduling of hearings.* Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of these rules, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed pursuant to Rule 9 or otherwise. The time or place for hearing may be changed by the Board at any time.

(b) *Notice of hearing.* Notice of hearing will be by written order of the Board. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing shall, within 10 days of receipt of (1) a written notice of hearing or (2) any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing.

(c) *Unexcused absence from hearing.* In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to Rule 11.

Rule 20. *Subpoenas.*

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by the other party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of evidence by third parties, when practicable, without issuance of a subpoena.

(b) *Subpoenas in appeals governed by the Contract Disputes Act of 1978.* (1) *General.* Upon the written request of either party filed with the Office of the Clerk of the Board, or on his or her own initiative, an administrative judge to whom a case is assigned or who is otherwise designated by the chief judge, may issue a subpoena that commands the person to whom it is directed to:

(A) Attend and give testimony at a deposition in a city or county where that person resides or is employed or transacts business in person or at another location covenient to that person that is specifically determined by the Board;

(B) Attend and give testimony at a hearing; and

(C) Produce the books, papers, documents, and other tangible things designated in the subpoena.

(2) *Request for subpoena.* A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any documentary evidence sought. A request for a subpoena shall be filed at least:

(A) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; and

(B) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

The Board may, in its discretion, honor requests for subpoenas not made within these time limitations.

(3) *Form; issuance.* (A) Every subpoena shall be in the form specified in the Appendix to these rules. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his or her discretion, enter the name of the person to whom it is directed, but shall otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(B) if the person subpoenaed is located in a foreign country, a letter rogatory or a subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. ¶¶781–784.

(4) *Service.* (A) The party requesting a subpoena shall arrange for service. Service shall be made as soon as practicable after the subpoena has been issued.

(B) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage allowed by 28 U.S.C. ¶1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(5) *Proof of service.* The person serving the subpoena shall make proof of service thereof to the Board promptly and in any event before the date on which the person served must respond to the subpoena. Proof of service shall be made by completing and executing and submitting to the Board the "Return on Service" portion of a duplicate copy of the subpoena issued by an administrative judge. If service is made by a person other than a United States marshal or his deputy, that person shall make an affidavit as proof by executing the "Return on Service" in the presence of a notary.

(6) *Motion to quash or to modify.* Upon written motion by the person subpoenaed or by a party, made within 10 days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may (A) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (B) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed documentary evidence. Where circumstances require, the Board may act upon such a motion at any time after a copy has been served upon the opposing party.

(7) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board shall apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony, produce evidence or both. Any failure by any such person to obey the order of the court may be punished by the court as a contempt thereof.

(c) *Subpoenas in appeals not governed by the Contract Disputes Act of 1978.* (1) Upon written request of either party filed with the Office of the Clerk of the Board in appeals not governed by the provisions of the Contract Disputes Act of 1978, or on his or her own initiative, an administrative judge to whom a case is assigned or who is otherwise designated by the chief administrative judge may obtain a subpoena from an appropriate United States district court through the Department of Justice, in accordance with the provisions of 5 U.S.C. ¶304, and Rule 45 of the Federal Rules of Civil Procedure.

(2) A request for a subpoena under this paragraph shall be filed at least 30 days in advance of a scheduled deposition or hearing. However, the Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(3) A request for a subpoena under this paragraph shall contain the same information required under paragraph (b)(2) of this rule.

(4) In a case of refusal to obey a subpoena, the Board may apply appropriate sanctions or it may request the Department of Justice to seek enforcement of the subpoena.

Rule 21. *Hearing procedures.*

(a) *Nature and conduct of hearings.* Hearings take the general form of adversary trials similar to those conducted without a jury in courts of general jurisdiction. Subject to the foregoing, hearings will be conducted as informally as is reasonable and appropriate given the nature of the dispute and the representation of the parties. The Board may exclude from the hearing room any or all prospective witnesses or persons other than the parties and counsel, except that a party or counsel may be excluded from the hearing room in case of disruptive conduct. Additionally, at the request of a party, the Board shall order witnesses excluded so that they cannot hear the testimony of other witnesses.

(b) *Continuances; change of location.* Whenever practicable, a hearing will be conducted in one continuous session or a series of consecutive sessions at a single location. However, the Board may at any time continue the hearing to a future date and may arrange to conduct the hearing in more than one location. The Board may also continue a hearing to permit a party to conduct additional discovery on conditions established by the Board. In exercising its dicretion to continue a hearing or to change its location, the Board will give due consideration to the same elements (set forth in Rule 19(a)) that it considers in scheduling hearings.

(c) *Availability of witnesses, documents, and other tangible things.* It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whoever it wishes to call and whatever it wishes to use is available at hearing.

(d) *Enlargement of the record.* The Board may at any time during the conduct of a hearing require evidence or argument in addition to that put forth by the parties.

(e) *Examination of witnesses.* Witnesses before the Board will testify under oath or affirmation. Either party or the Board may obtain an answer from any witness to any question that is not the subject of an objection that the Board sustains.

(f) *Refusal to be sworn.* If a person called as a witness refuses to be sworn or to affirm before testifying, the Board may direct that witness to do so, and in the event of continued refusal, the Board may permit the taking of testimony without oath or affirmation. Alternatively, the Board may refuse to permit the examination of that witness, in which event it may state for the record the inferences it draws from the witness's refusal to testify under oath or affirmation. Alternatively, the Board may issue a subpoena to compel that witness to testify under oath or affirmation, and in the event of the witness's continued refusal to swear or affirm, may seek enforcement of that subpoena pursuant to Rule 20.

(g) *Refusal to answer.* If a witness refuses to answer a question put to him in the course of his testimony, the Board may direct that witness to answer, and in the event of continued refusal, the Board may state for the record the inferences it draws from the refusal to answer. Alternatively, the Board may issue a subpoena to compel that witness to testify and, in the event of the witness's continued refusal to testify, may seek enforcement of that subpoena pursuant to Rule 20.

(h) *Issues not raised by pleadings.* If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board if it is within the proper scope of the appeal. If such evidence is admitted, the Board may grant the objecting party a continuance to enable it to meet such evidence. If such evidence is admitted, the pleadings may be amended to conform to the evidence, as provided by Rule 12(e).

(i) *Delay by parties.* If the Board determines that the hearing is being unreasonably delayed by the failure of either or both of the parties to produce evidence, or by the undue prolongation of the presentation of evidence, it may, by written order or by ruling from the bench, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

Rule 22. *Admissibility and weight of evidence.*

(a) *Admissibility.* Any relevant evidence may be received. The Board may exclude relevant evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliale or untrustworthy.

(b) *Federal Rules of Evidence.* As a general matter, and subject to the other provisions of this rule, the Board will base its evidentiary rulings on the Federal Rules of Evidence.

(c) *Weight and credibility.* The Board will determine the weight to be given to evidence and the credibility to be accorded witnesses.

(d) *Submission of evidence in camera.* Rule 12(h) governs submissions in camera.

Rule 23. *Exhibits.*

(a) *Marking of exhibits.* (1) Documents and other tangible things offered in evidence by a party will be marked for identification by the Board during the hearing or, if it is convenient for the Board and the parties, prior to the commencement of the hearing. They will be numbered consecutively as the exhibits of the party offering them.

(2) If a party elects to proceed on the record without a hearing pursuant to Rule 11, documentary evidence submitted by that party will be numbered consecutively by the Board as appeal file exhibits.

(b) *Copies as exhibits.* Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, and such copies shall have the same force and effect as if they were the originals. If the Board so directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and the other party. When the original of a document has been received into evidence as an exhibit, an accurate copy thereof may be substituted in evidence for the original by leave of the Board at any time.

(c) *Withdrawal of documentary exhibits and other papers.* With the permission of the Board, a party may remove an exhibit during the course of a proceeding. Otherwise, no withdrawal of any papers in the Board's file is permitted. Inspection of the file at the Board's offices is permitted by Rule 12(g).

(d) *Disposition of physical exhibits.* Any physical (as opposed to documentary) exhibit may be disposed of by the Board at any time more than 90 days after the expiration of the period for appeal from the decision of the Board, unless it has been earlier withdrawn by the party that submitted it.

Rule 24. *Transcripts of proceedings; corrections.*

(a) *Transcripts.* Except as the Board may otherwise order, all hearings of appeals other than those under the small claims procedure prescribed by Rule 13 will be stenographically or electronically recorded and transcribed. Any other hearing or conference will be recorded or transcribed only by order of the Board. Copies or transcriptions of stenographic or electronic recordings not ordered to be transcribed by the Board will be furnished to the parties or other persons only on conditions prescribed by the Board, which may include the payment of the costs of copying or transcription. Each party is responsible for obtaining its own copy of the transcript if one is prepared.

(b) *Corrections.* Corrections to an official transcript will be made only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative, and only after notice to the parties giving them opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, but when no other method of correction is practicable the Board may require the reporter to provide substitute or additional pages.

Rule 25. *Briefs and memoranda of law.*

(a) *Form and content of briefs and memoranda of law.* Briefs and memoranda of law shall be typewritten on standard size 8½ by 11-inch paper. Otherwise, no particular form or organization is prescribed. Posthearing briefs should, at a minimum, succinctly set forth (1) the facts of the case with citations to those places in the record where supporting evidence can be found and (2) argument with citations to supporting legal authorities. Memoranda of law should generally adhere as closely as practicable to the form and content of briefs.

(b) *Submission and service of posthearing briefs.* Except as the Board may otherwise order, posthearing briefs shall be filed 30 days after the Board's receipt of the transcript; reply briefs, if filed, shall be filed 15 days after the parties' receipt of the initial posthearing briefs. The Board will notify the parties of the date of its receipt of the transcript. The Board will serve each party's brief on the other party; this is an exception to the general requirement for service of papers of Rule 3. In the event one party has elected a hearing and the other has elected to submit its case on the record pursuant to Rule 11, the filing of record submissions in the form of briefs shall be governed by this rule.

Rule 26. *Consolidation; separate hearings; separate determination of liability.*

(a) *Consolidation.* Where appeals involving common questions of law or fact are pending, the Board may:

(1) Order a joint hearing of any or all of the matters at issue in the appeals;

(2) Order the appeals consolidated; or

(3) Make such other orders concerning the proceedings therein as are intended to avoid unnecessary costs or delay.

(b) *Separate hearings.* The Board may order a separate hearing of any appeal or appeals or of any claims or issues or number of claims or issues therein. The Board may enter appropriate orders or decisions with respect to any claims or issues that are heard separately.

(c) *Separate determinations of liability.* The Board may:

(1) Limit a hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for other proceedings; and

(2) In its decision of an appeal, irrespective of whether there is evidence in the record concerning the amount of recovery, and whether or not a stipulation or order has been made, reserve determination of the amount of recovery for other proceedings. In any instance in which the Board has reserved its determination of the amount of recovery for other proceedings, its decision on the question of the right to recover shall be final, subject to the provisions of Rules 31, 32, and 33.

Rule 27. *Stay or suspension of proceedings; dismissals in lieu of stay or suspension.*

(a) *Stay of proceedings to obtain contracting officer's decision.* The Board may in its discretion stay proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) *Suspension for other cause.* The Board may suspend proceedings in an appeal for good cause. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) *Dismissal in lieu of stay or suspension.* When circumstances beyond the control of the Board prevent the continuation of proceedings in an appeal, the Board may, in lieu of issuing an order suspending proceedings, dismiss the appeal without prejudice to reinstatement. Such a dismissal may require reinstatement by a date certain or within a certain period of time after the occurrence of a specified event. If the order of dismissal does not otherwise provide, it will be subject to the provisions of Rule 28(a).

Rule 28. *Dismissals.*

(a) *Voluntary dismissal.* (1) Upon motion of the appellant or by stipulation of the parties, an appeal may be dismissed by the Board. Unless otherwise stated in the appellant's motion or in the stipulation, the dismissal is without prejudice, except that such a dismissal operates as an adjudication upon the merits when requested by an appellant whose appeal based on or including the same claim has previously been dismissed by the Board.

(2) When an appeal has been dismissed without prejudice and has not been reinstated by the Board upon application of either party within three years of the date of dismissal, or within such shorter period as the Board may prescribe, the appeal shall be deemed to have been dismissed with prejudice as of the expiration of the applicable period.

(b) *Involuntary dismissal.* (1) Upon motion of the respondent or upon its own initiative, the Board may dismiss an appeal for failure of the appellant to prosecute or comply with these rules or any order of the Board.

(2) Unless the Board in its order for dismissal otherwise specifies, a dismissal under this paragraph (b), and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, shall be with prejudice and operate as an adjudication upon the merits.

Rule 29. *Decisions.*

Except as provided in Rule 13 (small claims procedure), decisions of the Board will be made in writing upon the record as prescribed in Rule 12. Each of the parties will be furnished a copy of the decision certified by the Office of the Clerk of the Board, and the date of the receipt thereof by each party will be established in the record.

Rule 30. *Full board consideration.*

A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when (1) it is necessary to secure or maintain uniformity of Board decisions, or (2) the matter to be referred is one of exceptional importance. The chief administrative judge, on motion of either party, or at the request of any administrative judge of the Board, or on his or her own initiative, may order that a matter be considered by the full Board.

Rule 31. *Clerical mistakes.*

Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the Board may prescribe.

Rule 32. *Reconsideration; amendment of decisions; new hearings.*

(a) *Grounds.* Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in Rule 33(a). Reconsideration, or a new hearing, may be granted on all or any of the issues. On granting a motion for a new hearing, the Board may open the decision if one has been issued, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.

(b) *Procedure.* Any motion under this rule shall comply with the provisions of Rule 8 and shall set forth:

(1) The reason or reasons why the Board should consider the motion; and

(2) The relief sought and the grounds therefor.

If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* A motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed within 30 days after the date of receipt by the moving party of the decision or order. Not later than 30 days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

Rule 33. *Relief from decision or order.*

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under this rule shall comply with the provisions of Rules 8 and 32(b), and will be considered and ruled upon by the Board as provided in Rule 32(b).

(c) *Time for filing.* Any motion under this rule shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 days, or, in cases under the small claims procedure of Rule 13, no later than 30 days, after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under this rule, the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion under this rule does not affect the finality of a decision or suspend its operation.

Rule 34. *Harmless error.*

No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or omitted to be done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

Rule 35. *Payment of board awards.*

(a) *Generally.* Payment of Board awards in appeals brought under the authority of the Contract Disputes Act of 1978 may be made in accordance with 31 U.S.C. 1304. Payment of Board awards in appeals not brought under the authority of the Contract Disputes Act of 1978 will be made by the respondent agency out of appropriated funds. The remaining provisions of this Rule concern the procedure to obtain payment pursuant to 31 U.S.C. 1304.

(b) *Conditions for payment.* Before an appellant can obtain payment of a board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) Both parties must, by execution of a Certificate of Finality, waive their rights to relief under Rules 32 and 33 and also their rights to appeal the decision of the Board to the United States Court of Appeals for the Federal Circuit; or

(2) The time for filing an appeal to the United States Court of Appeals for the Federal Circuit must expire.

(c) *Procedure for filing of certificate of finality.* Whenever the Board issues a decision awarding an appellant any amount of money, it will attach to the copy of the decision sent to each party a form such as that illustrated in the Appendix to these rules. The conditions for payment prescribed in paragraph (b)(1) of this rule are satisfied if each of the parties returns a completed and duly executed copy of this form to the Board. When the form is executed on behalf of an appellant by an attorney or other representative, proof of signatory authority shall also be furnished. Upon receipt of completed and duly executed Certificates of Finality from both parties, the Board will forward a copy of each such Certificate (together with proof of signatory authority, if required) and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the appellant.

(d) *Procedure in absence of certificate of finality.* When one or both of the parties fails to submit a duly executed Certificate of Finality, but the conditions for payment have been satisfied as provided in paragraph (b)(2) of this rule, either party may file a written request that the board forward its decision to the United States General Accounting Office for payment. Thereupon, the board will forward a copy of that request and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the appellant.

(e) *Offer of award.* At any time after the filing of the notice of appeal, the respondent may make an offer of award. If such offer is accepted by the appellant, the parties shall file with the Board a stipulation setting forth the terms of the offer and stating (1) that they will not seek further Board proceedings following the Board's decision and (2) that they will not appeal the decision. The Board will adopt the parties' stipulation by decision. The Board's decision under this paragraph is an adjudication of the appeal on the merits.

Rule 36. *Record on review of a Board decision.*

(a) *Record on review.* When either party has filed a petition for review of a Board decision with the United States Court of Appeals for the Federal Circuit under Section 8(g)(1) of the Contract Disputes Act of 1978, 41 U.S.C. 607(g)(1), the record on review shall consist of the decision sought to be reviewed and the record before the Board as described in Rule 12. When the appellant has filed a notice of appeal of a decision in a pre-Contract Disputes Act case to the United States Claims Court under 41 U.S.C. 321–322, the record on appeal shall consist of the same materials.

(b) *Notice.* At the same time a party seeking review of a Board decision files a petition for review or a notice of appeal, that party shall file a copy of such petition with the Board.

(c) *Filing of certified list of record materials in Contract Disputes Act cases.* Promptly after service upon the Board of a petition for review of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the United States Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the court upon the court's order during the pendency of the appeal.

(d) *Transmission of record or stipulated record in pre-Contract Disputes Act cases.* Within 40 days from the filing of the notice of appeal, the Office of the Clerk of the Board shall transmit to the Clerk of the United States Claims Court the entire record or such parts thereof as the parties may designate by stipulation filed with the Board, except that the Office of the

Clerk of the Board shall retain documents and physical exhibits of unusual weight or bulk other than those designated by the parties. In lieu of filing the entire record or such parts thereof as the parties may designate, the Office of the Clerk of the Board may file a certified list of all materials constituting the record, or of such parts thereof as the parties may designate. The parties may also stipulate that neither the record nor a certified list be filed with the court. If none of the record or only parts thereof are filed with the court, the Board shall retain the parts not filed. Any stipulation of the parties shall be filed with the Board in sufficient time for the Office of the Clerk of the Board to assemble and file with the Clerk of the United States Claims Court those parts of the record designated by the stipulation, or a certified list of those parts, within the period specified herein. Upon request of the court or a party, the record or any part thereof retained by the Board shall be transmitted to the court notwithstanding any prior stipulation.

Rule 37. *Office of the Clerk of the Board.*

(a) *Open for the filing of papers.* The Office of the Clerk shall receive all papers submitted for filing, and shall be open for this purpose daily, at a time set by the chief administrative judge, except Saturdays, Sundays, and legal holidays.

(b) *Decisions and orders.* The Office of the Clerk shall keep in such form and manner as the Board may prescribe a correct copy of each decision or order of the Board subject to review and any other order or decision which the Board may direct to be kept.

(c) *Docket.* It shall be the duty of the Office of the Clerk to keep a docket on which shall be entered the title and nature of all appeals brought before the Board, the names of the persons filing such appeals, the names of the attorneys or other persons appearing for the parties, and a record of all of the proceedings in an appeal.

(d) *Copies and certification of papers.* Upon the request of any person, copies of papers and documents in an appeal may be provided by the Office of the Clerk. When required, the Office of the Clerk will certify copies of papers and documents as a true record of the Board. Except as provided in Rule 23(c), the Office of the Clerk will not release original records in its possession to any person.

Rule 38. *Seal of the Board.*

The Seal of the Board shall be the Seal of the General Services Administration, engraved in the center of a circular piece of brass or steel, with the words "Board of Contract Appeals" on its outer margin. The Seal shall be the means of authentication of all records, subpoenas, and certificates issued by the Board.

Dated: September 5, 1984.

William B. Ferguson,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 84-24155 Filed 9-12-84; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM-186; Amdt. 172-93, 173-177]

Shipment of Matches

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the requirements in 49 CFR 173.176 pertaining to safety matches and strike anywhere matches. The intended effect of this action is to simplify and clarify the requirements on safety matches and strike anywhere matches, and to remove obsolete requirements and certain requirements having no apparent safety justification.

EFFECTIVE DATE: October 15, 1984. However, compliance with the regulations as amended is authorized on September 13, 1984.

FOR FURTHER INFORMATION CONTACT: Hattie L. Mitchell (202) 426-2075, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Office hours are 9:00 a.m. to 5:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On June 6, 1983, MTB published a notice of proposed rulemaking under Docket No. HM-186, Notice No. 83-3 (48 FR 26650), which proposed to simplify and clarify the requirements in § 173.176 pertaining to safety matches and strike anywhere matches. In the proposed rule, the requirements on safety matches appear in § 173.176 and the requirements on strike anywhere matches appear in a new § 173.176a. Certain requirements that MTB believes are unwarranted were proposed to be removed.

MTB received three comments to the proposed rule. All comments were given full consideration in the development of this final rule. The three commenters expressed their support of MTB's effort to simplify and clarify the requirements on safety matches and strike anywhere matches.

The Air Transport Association (ATA) requested revision of the entry "matches, safety, *book, card, or strike-on-box*" in the Hazardous Materials Table (the Table), 172.101, by specifying "None" in column 4 to indicate that a FLAMMABLE SOLID label is not required. ATA pointed out that this revision would eliminate possible confusion and delay of safety matches while transport personnel verify whether or not labels must be affixed to the packages. MTB agrees and is revising the Table accordingly. Also, MTB is revising the entry for safety matches in the Table to show the word "None" in column (5)(b) since DOT specification packagings are not required. A "2" is added in column 7(b) to allow safety matches to be stowed "under deck," as well as "on deck," on a passenger vessel. The entry for strike anywhere matches is revised to show "1" in column 7(b) to continue authorization to stow strike anywhere matches "on deck". The "1" in column 7(b) was inadvertently omitted in the proposed rule.

A match manufacturer requested that MTB clarify the phrase "* * * are securely closed to prevent accidental ignition" in proposed § 173.176a(c). The match manufacturer maintained that it is impossible to control outside factors that may cause accidental ignition of strike anywhere matches, such as (1) matches stored in a building that catches fire, (2) matches transported on a railcar or motor vehicle which overturns, or (3) a package of matches punctured accidentally by operation of a forklift. The manufacturer suggested that proposed § 173.176a(c) be revised by adding at the end of the paragraph "* * * under conditions normally incident to transportation, or by rubbing against adjoining boxes." MTB stated in the preamble of the proposed rule that the intent of the requirement is to prevent movement of the matches within the package, thereby reducing the possibility of accidental ignition of the matches under normal transportation conditions. It is not MTB's intention to protect all possible transportation accidents. MTB is revising § 173.176a(c), and § 173.176(b) which contains a similar requirement, for clarity.

In the proposed rule, MTB solicited comments on the stability criteria for matches which have not been modified since May 12, 1930. Also, MTB invited comments on any other matter related to the safe transportation of matches, including any pending petitions for rulemaking or outstanding exemptions. MTB received no comment addressing these concerns.

MTB has determined that this final rule is not a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), nor requires an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 *et seq.*).

Based on limited information available concerning the size and nature of entities likely to be affected by this final rule, I certify that this final rule will not have a significant economic impact on a substantial number of small entities because the overall economic impact of this rule will be minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

List of Subjects

49 CFR Part 172

Hazardous Materials Transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous Materials Transportation, Packaging and containers.

In consideration of the foregoing, Parts 172 and 173 of 49 CFR are amended as follows:

1. Section 172.101 is amended by revising the following entries:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

+EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	3(a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	*	*	*	*	*	*	*	*			
	Matches, safety, *book card, or strike-on box.*	Flammable solid	UN 1944	None	§ 173.176	None	50 pounds	50 pounds	1,2	1,2	
	Matches, strike anywhere	Flammable solid	UN 1331	Flammable solid	None	§ 173.176a	Forbidden	Forbidden	1,2	1	
	*	*	*	*	*	*	*	*			

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. Section 173.176 is revised to read as follows:

§ 173.176 Safety matches.

(a) Safety matches (strike-on-box, book, and card) are matches which are intended to be ignited on a prepared surface. Safety matches, when offered for transportation, must be of a type which will not ignite spontaneously or undergo marked decomposition when subjected for eight consecutive hours to a temperature of 200 °F. (93.3 °C.). As used in this section, the term "safety matches" includes matches combined with or attached to the box, book, or card.

(b) Safety matches must be tightly packed in securely closed inside packagings to prevent accidental ignition under conditions normally incident to transportation, and further packed in outside fiberboard, wooden, or other equivalent-type packagings. Safety matches in outside packagings not exceeding 50 pounds gross weight are not subject to any other requirement (except marking) of this subchapter. Safety matches may be packed in the same outside packaging with materials not subject to this subchapter.

3. Section 173.176a is added to read as follows:

§ 173.176a Strike anywhere matches.

(a) Strike anywhere matches are matches which may be ignited by friction on a solid surface. Strike anywhere matches, when offered for transportation, must be of a type which will not ignite spontaneously or under go marked decomposition when one complete inside package is subjected for eight consecutive hours to a temperature of 200 °F. (93.3 °C.).

(b) Strike anywhere matches may not be packed in the same outside packaging with any material other than safety matches. The safety matches must be packed in separate inside packagings.

(c) *Inside packagings.* Strike anywhere matches must be tightly packed in securely closed chipboard, fiberboard, wooden, or metal inside packagings to prevent accidental ignition under conditions normally incident to transportation. Each inside packaging may contain no more than 700 strike anywhere matches.

(d) *Outside packagings.* Strike anywhere matches must be packed in specification packagings as follows:

(1) Spec. 15A or 19B (§§ 178.191 of this subchapter). Wooden boxes, with inside packages. Gross weight must not exceed 100 pounds.

(2) Spec. 12B or 12C (§§ 178.205, 178.206 of this subchapter). Fiberboard boxes, with inside packages. Gross weight must not exceed 60 pounds. Fill-in pieces specified by § 178.205–14 or § 178.206–14 of this subchapter are not required.

(49 U.S.C. 1803, 1804, 1808, 49 CFR 1.53; App. A to Part 1)

Issued in Washington, D.C. on September 7, 1984.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84-24209 Filed 9-12-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Experimental Population Status for an Introduced Population of Delmarva Fox Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service will introduce Delmarva Peninsula fox squirrels (*Sciurus niger cinereus*) into Sussex County, Delaware and designate this population as "nonessential experimental" in accordance with section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. Section 10(j) of that Act authorizes "experimental" populations of endangered species to be treated as if

they were threatened for purposes of section 9. The Service has much more discretion in devising a management program for threatened species than for endangered species, especially on matters regarding incidental or regulated taking. Accordingly, a special rule to allow take in accordance with State law has been developed for this nonessential experimental population. Because this experimental population is "nonessential," the formal consultation requirement and prohibitions of section 7(a)(2) will not apply to this population. In the past, this species was more widespread, being found throughout the Delmarva Peninsula. This action is being taken in an effort to reestablish the Delmarva fox squirrel in an area outside its current range but within its historic range.

DATES: This rule takes effect September 13, 1984.

ADDRESSES: Questions concerning this action should be addressed to the Regional Director, U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the Service's Regional Office in Newton Corner, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Parry, Assistant Regional Director, U.S. Fish and Wildlife Service, Newton Corner, Massachusetts 02158 (617/965–5100) or FTS 829–9316.

SUPPLEMENTARY INFORMATION: The Service determines that the 30-day delay in effective date called for under the Administrative Procedure Act for final regulations must be waived for good cause as described below.

Delaware contends that the Delmarva fox squirrels must be released by the week of September 17, 1984, to insure their maximum survivability. Release after that week would greatly reduce the likelihood of a successful transplantation due to lack of food and cover. The animals must be allowed to establish themselves before the advent of cold weather.

The Service concurs with this position and sets the effective date of this regulation on the date of publication.

Background

The Endangered Species Act Amendments of 1982, Pub. L. 97–304, became effective on October 13, 1982. Among the significant changes made by the 1982 Amendments was the creation of a new section 10(j) which established procedures for the designation of specific populations of listed species as "experimental populations." Under conservation authorities present in the Endangered Species Act previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species.

Local opposition to translocation efforts, however, severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under sections 7 and 9 of the Act. Under section 10(j) of the 1982 Amendments, past and future translocated populations established outside the current range may now be designated, at the discretion of the Service, as "experimental." Such a designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that such experimental populations of species which are otherwise listed as endangered may be treated as threatened. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question would be treated as if they were only proposed for listing for purposes of section 7 and therefore would not be afforded protection under section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities that are unlikely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from an existing source or donor population only after it has been determined that the removal itself will not violate section 7(a)(2) of the ESA and complies with the permit requirements in section 10(a) (1) (A) and (d). The species included in this rule is the Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*), which is currently listed as endangered.

The Delmarva fox squirrel was historically found in southeastern Pennsylvania, Delaware, south-cental New Jersey, eastern Maryland, and the Virginia portion of the Delmarva Peninsula. It is believed that the fox squirrel was never as abundant as the gray squirrel. Although little is known about its former distribution, it is likely that it was scattered and discontinuous throughout its range with more specific habitat requirements than those of the gray squirrel.

The fox squirrel was confined to savannah or park-like areas, forests bordering rivers and streams, and small open woodlots with little or no understory. As the forests were cut for agricultural purposes and forest products, they became unsuitable for fox squirrels. As the forest regrew, dense undergrowth developed, at least during the pole and early saw timber stages. Before second-growth forests were old enough to develop the open park-like conditions of mature forests, they were cut again. Thus, environments suitable to Delmarva fox squirrels were not recreated in the cutting cycle, and Delmarva fox squirrels declined and disappeared in many areas. By the turn of the century this animal had disappeared from southern New Jersey, Pennsylvania, and Virginia, but it is thought that it remained in Delaware until possibly the 1930's. It is currently found in eastern Maryland and was reintroduced into eastern Virginia in the 1970's.

Throughout their range, fox squirrels are currently adapted to these park-like conditions. They are often found in savannah areas, oak openings, and in narrow belts of trees along streams and rivers.

Good fox squirrel habitat contains mature trees that produce a dependable annual mast crop with a variety of tree species providing insurance against a food shortage brought about by failure of one or more of the species present. Good habitat for this species is currently located in Sussex County, Delaware. The establishment of an experimental population in this area will greatly enhance the recovery potential of this species by reestablishing a population in its former range. After the effective date of this rule, 6–18 fox squirrels taken from viable populations located in Dorchester and Talbot Counties, Maryland, will be introduced into the Sussex County site. The Dorchester and Talbot county populations have been monitored by the State of Maryland for the past 10 years. These are healthy populations that are naturally expanding their current range. The removal of 6–18 animals over a period of 18 months is not likely to jeopardize the continued existence and viability of these populations and release of this experimental population in Sussex County, Delaware, will further the conservation of the species throughout its range.

Status of Reintroduced Populations

The reintroduced population of Delmarva Peninsula fox squirrels is designated as an experimental population that is "nonessential" to the continued existence of the species according to the provisions of the 1982 Amendments to the Endangered Species Act. Thus, section 7(a)(1), which authorized Federal agencies to establish programs furthering the conservation of the species, and section 7(a)(4), which requires Federal agencies to confer informally with the Secretary regarding actions that are likely to jeopardize the continued existence of the species, would apply to the fox squirrels in the experimental population. The restrictions on Federal agency activity in section 7(a)(2), which pertain to listed species, would not apply.

Justification for the "nonessential" status for the introduced experimental population is as follows: By the early 1970's, the Delmarva fox squirrel was found in portions of four eastern shore counties of Maryland, and one location in Virginia. In Kent County, Maryland, this species is known from the Eastern Neck National Wildlife Refuge (NWR) and in Accomac County, Virginia, from the Chincoteague NWR (a translocated population established in the early 1970's).

Population status has changed since the early 1970's, principally due to translocation efforts by the State of Maryland to restore this species. Additional translocated and reproducing populations now exist within historic range in the Maryland counties of Cecil, Kent (outside of Eastern Neck NWR), Somerset, Worcester, Dorchester, and Talbot, and a summer 1982 translocation to Northampton County, Virginia has been accomplished. These successful transplantations indicate that the likelihood of the success of this effort is vey high.

Techniques for trapping and relocating this species are in place. Relocation efforts have been successful in Maryland for the past 10 years and techniques are continually being improved and refined. Monitoring of 6 release sites in Maryland has shown reproduction in five of six sites within 1 year of release and the Chincoteague site now serves as a donor population for other reintroductions. This suggests that no new procedures need to be developed to proceed with this reintroduction.

The removal of individuals from extant populations in Talbot and Dorchester County is not expected to affect adversely the viability of those populations; therefore, the loss of the reintroduced populations is not likely to appreciably reduce the likelihood of the survival of the species in the wild. In fact, the anticipated success of this reintroduction will enhance the recovery potential of this species by extending its current range and occupying currently unutilized habitat.

Location of Reintroduced Populations

The site for reintroduction of Delmarva Peninsula fox squirrels is totally isolated from existing populations of this species. The fox squirrels will be released into the Assawoman Wildlife Area in Sussex County, Delaware, in the extreme southeast corner of the State between Miller and Dirikson Creeks. This is approximately 50 miles from the nearest extant population located at the Chincoteague NWR.

Previous releases of this species have shown that individuals are not likely to travel more than 2 to 3 miles from the point of release. This assures that the Delaware population will remain geographically isolated and easily identifiable from other extant populations.

Management

This translocation project will be a joint cooperative effort between the Delaware Department of Natural Resources and Environmental Control, the Maryland Department of Natural Resources, and the Fish and Wildlife Service. The Delmarva Fox Squirrel Recovery Plan identifies reintroduction as a viable recovery task for enhancing recovery of the species and has been endorsed by the fox squirrel recovery team. Present plans call for the release of approximately 6 animals (4 females, 2 males) in the fall of the year, followed 6 months later with a spring release of approximately 6 additional animals (4 females, 2 males). A third release of approximately 6 animals the following fall will result in a total reintroduction of approximately 18 animals.

Released animals will be checked periodically to determine movement, reproductive success, and general health. The activities of the introduced population will be continually monitored by the Delaware Department of Natural Resources and Environmental Control and will be reported to the Delmarva Fox Squirrel Recovery Team and the FWS. It will be the responsibility of the Service to compile and disseminate this information to interested parties.

This nonessential experimental population will be treated as a threatened species under all provisions of the Act other than section 7 (except subsection (a)(1) thereof). All of the prohibitions referred to in the special rule apply to this population. Members of this experimental population could be incidentally taken in accordance with applicable State law. Thus, if a squirrel hunter accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of the Endangered Species Act, although it would be a violation of State law.

This reintroduction is not expected to conflict with human activities or hinder the utilization of the Assawoman Wildlife Area by the public. The reintroduction site is managed by the State of Delaware for the enhancement of the State's native wildlife resources and the introduction of Delmarva fox squirrel is consistent with this effort.

The Service proposed to adopt rules governing the designation of this Delmarva fox squirrel population as experimental on April 5, 1984 (49 FR 13556).

Summary of Comments and Recommendations

The Service received comments from the following:

Delaware Department of Natural Resources and Environmental Control, Maryland Department of Natural Resources, and the National Wildlife Federation (NWF).

Delaware and Maryland expressed support of this effort as they have throughout the development of this regulation and all the preliminary efforts to identify release sites and to formulate management objectives. Delaware pointed out that the Management section should be amended to reflect the actual reintroduction timetable from spring (stated in the proposed rule) to fall of 1984 for the first release. A second release would occur the following spring and a third release in the fall of 1985. This correction has been made. Delaware also requested that a phrase be added to the last sentence of the Management section clearly expressing that take of Delmarva fox squirrel is in violation of State law. We have complied with the request and amended this section accordingly, as well as having refined the special rule language to carefully tailor the protections afforded to meet the "necessary and advisable" test of section 4(d) of the Act.

NWF stated that allowing incidental take is arbitrary and expresed opposition to the special rule which allows take in accordance with State law. They believe that relaxation of the restrictions imposed by section 7 and 9 of the Act are not justified without the

State having expressed opposition to reintroduction. The Service regrets this misunderstanding. The decisions to designate this population as experimental nonessential and to develop the special rules associated with this designation were based on extensive discussion with Delaware and Maryland and the final position as expressed in this regulation is a consensus of those discussions.

Without the experimental designation and relaxed protections, this action would face opposition from the State of Delaware.

To clarify the take restriction and exemptions in this regulation, the Service has made wording changes in the following sections: The Management section was reworded to indicate that take prohibitions for this population are referred to in the special rule. In addition, the special rule was reworded to incorporate the specific prohibitions and restrictions that apply to this population. The Service believes this is necessary to clarify the incidental take question and to clarify the responsibilities of both Delaware and the Service in this undertaking.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act.

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The introduction site occurs within several miles of Atlantic Ocean resorts in a region that can be considered as high use for vacationers and wildlife enthusiasts. However, this site is not in the vicinity of a high concentration of year-round inhabitants. The Assawoman Wildlife Area has been set aside by the State of Delaware for wildlife use. The introduction of a nonessential experimental population into this area is compatible with current utilization of the site and is expected to have no impact on public use days. No private entities will be affected by this action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

National Environmental Policy Act (NEPA)

An Environmental Assessment (EA) under NEPA has been prepared and is available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service at the address listed above. Based upon the information considered in the EA, a decision has been made that the preparation of an Environmental Impact Statement is not required for this action.

Author

The principal author of this proposal is Peter G. Poulos, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; and Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend Section 17.11(h) by adding the following in alphabetical order (following the existing entry for this species) to the list of endangered and threatened mammals:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Mammals							
*	*	*	*	*	*	*	
Squirrel, Delmarva Peninsula fox	*Sciurus niger cinereus*	U.S.A. (Delmarva Peninsula to southeast PA).	U.S.A. (De—Sussex County)	XN	161	NA	17.84(a)
*	*	*	*	*	*	*	

3. Part 17 is amended by adding new paragraph (a) to § 17.84 to read as follows:

§ 17.84 Special rules—Vertebrates.

(a) Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*).

(1) The Delmarva Peninsula fox squirrel population identified in paragraph (6) below is a nonessential experimental population.

(2) No person shall take this species, except:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations; or

(ii) Incidental to recreational activities.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species (other than incidental taking as described in paragraph (2)(ii)) will also be a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraph (2) or (4).

(6) The site for reintroduction of Delmarva Peninsula fox squirrel is totally isolated from existing populations of this species. The nearest extant population is in the Chincoteague National Wildlife Refuge approximately 50 miles from the reintroduction site. The reintroduction site is within the historic range of this species and is located at the Assawoman Wildlife Area, Sussex County, Delaware. Observation of previous releases have shown that fox squirrels have not traveled more than 2 or 3 miles from release sites, therefore, the possibility of this population contacting extant wild populations is unlikely.

(7) The reintroduced population will be checked periodically to determine its condition and the success of the reintroduction. Of special concern will be the establishment of breeding pairs and the reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

(Experimental Population for Delmarva Peninsula Fox Squirrel)

Dated: August 22, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife Parks.

[FR Doc. 84-24196 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 40302-21]

Groundfish of the Gulf of Alaska; Notice of Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum yield of sablefish will be achieved in the Central Regulatory Area of the Gulf of Alaska, and that a closure of this area to a directed fishery for sablefish by fishermen of the United States is necessary to prevent overfishing of sablefish. This action is intended to promote the conservation of sablefish.

DATES: This notice is effective at noon, Alaska Daylight Time (ADT), September 11, 1984, until noon, Alaska Standard Time, December 31, 1984. Public comments are invited on this closure until September 26, 1984.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP), which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of fishing seasons and areas. Implementing rules at §§ 672.20 and 672.22 specify that these adjustments will be made by the Secretary of Commerce (Secretary by notice in the **Federal Register**.

Three regulatory areas of the Gulf of Alaska are defined in § 672.2. One of these is the Central Regulatory Area, for which the optimum yield (OY) of sablefish is 3,060 metric tons (mt). Of this amount, 160 mt will be harvested by foreign nations and 290 mt will be harvested by U.S. fishermen in joint ventrues. These amounts will be taken, as operational bycatches in directed fisheries for the other target species, during the remainder of the fishing year. Through August 25, 1984, U.S. fishermen have harvested and landed 2,116 mt of sablefish in the directed sablefish fishery. The balance of the OY available to U.S. fishermen for a directed fishery is 494 mt, which will be harvested by noon on September 11, 1984. The Regional Director has determined that the OY for sablefish will be taken by U.S. and foreign fishermen during the 1984 fishing year and that further fishing for sablefish by U.S. fishermen beyond September 11, 1984, would cause the OY to be exceeded.

Therefore, the Secretary issues this notice prohibiting further fishing for sablefish by U.S. fishermen in a directed fishery in the Central Regulatory Area after noon on September 11, 1984. This closure will be effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

The sablefish stock in the Central Regulatory Area will be subject to harm unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order is contrary to the public interest and that the effective date should not be delayed.

This action is taken under the authority of §§ 672.20 and 672.22 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It requires no collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR 672

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: September 10, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-24257 Filed 9-12-84; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 40453-4053]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NMFS issues this notice establishing restrictions which further reduce the levels of fishing for widow rockfish taken off the coasts of Washington, Oregon, and California, and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and is necessary to help prevent the optimum yield for widow rockfish from being reached before the end of 1984. This action is intended to lower fishing rates, reduce the risk of biological stress, and reduce the probability of fishery closure before the end of the year.

DATE: This notice is effective from 0001 (Pacific Daylight Time) September 9, 1984, until modified, superseded, or rescinded. Comments will be accepted through September 24, 1984.

ADDRESSES: Send comments to Dr. T.E. Kruse, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or to Mr. E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. The aggregate data upon which this notice is based are available for public inspection at the Office of the Director, Northwest Region, at the address above, during business hours until the end of the comment period.

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FOR FURTHER INFORMATION CONTACT: Dr. T.E. Kruse, 206-526-6150, or Mr. E.C. Fullerton, 213-548-2575.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved (47 FR 6043, February 10, 1982) under the Magnuson Fishery Conservation and Management Act, and final implementing regulations were published on October 5, 1982 (47 FR 43964). The regulations at 50 CFR 663.22(a) allow the Secretary of Commerce (Secretary) to impose restrictions to reduce fishing on stocks showing signs of biological stress. Biological stress of widow rockfish was documented shortly after implementation of the FMP in 1982 (47 FR 46287), and this species has been managed by trip limits since that time.

The action announced in this notice supersedes the provisions published in the **Federal Register** on May 10, 1984 (49 FR 19825) which imposed a 40,000-pound, one-landing-per-week trip limit on widow rockfish taken off the coasts of Washington, Oregon, and California. On August 2, 1984, the Secretary announced his concurrence with the Pacific Fishery Management Council's (Council) decision to further reduce the trip limit to 1,000 pounds when 9,200 metric tons (mt) is landed (49 FR 30948). The best scientific data available on August 30, 1984, indicated that 9,200 mt of widow rockfish will be landed by September 9, 1984. Accordingly, the trip limit for widow rockfish is reduced to 1,000 pounds and the trip frequency provision is removed. The States of Oregon and Washington are taking similar action effective September 9, 1984.

This reduction virtually will eliminate the directed fishery for widow rockfish for the remainder of 1984, while allowing incidental catches from other fisheries to be landed. A 1,000-pound trip limit imposed in September 1983 resulted in landings of 1.4 mt per day. If similar rates occur in 1984, complete closure of the fishery may be avoided. However, if the 9,300-mt optimum yield (OY) quota is reached before the end of the calendar year, all further landings will be prohibited as stated at § 663.21(b).

This reduction applies to all U.S. fishing vessels operating seaward of Washinton, Oregon, and California, including U.S. vessels delivering to foreign processors. For U.S. vessels delivering to foreign processors the trip limits are applied on a haul-by-haul basis. Foreign fishing and processing vessels already are subject to incidental catch and retention allowance percentages which are more restrictive than the limits placed on U.S. fisheries.

Secretarial Action

For the reasons stated above, the Secretary announces that:

(1) No more than 1,000 pounds (round weight) of widow rockfish may be taken and retained or landed, per vessel per fishing trip; and

(2) This restriction applies to all widow rockfish taken and retained in ocean waters offshore of, or landed in, Washington, Oregon, and California, regardless of the place of taking.

Classification

The determination to impose these fishing restrictions is based on the most recent data available.

These actions are taken under the authority of 50 CFR 663.22 and 663.23 and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of proposed reduction in fishing levels unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. Because of the immediate need to limit the harvest of widow rockfish and thereby reduce catch levels which could otherwise result in overharvest and closure of the fishery, further delay of this action is impracticable and contrary to the public interest. If fishing for widow rockfish continues at current rates, OY will be reached in mid-September. Prompt action to reduce those fishing rates is necessary to protect this resource and alleviate the necessity for closure before the end of the year. Consequently, this action is effective September 9, 1984. The States of Oregon and Washington are implementing similar regulations.

These restrictions require no collection of information for purposes of the Paperwork Reduction Act.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Management Team meeting June 25–27, 1984, and the Task Force/Groundfish Advisory Subpanel and Council meetings July 10–12, 1984, that generated the decision to impose a 1,000-pound trip limit for widow rockfish when 9,200 mt is reached. This decision was announced in the **Federal Register** on August 2, 1984 (49 FR 30948) and public comments were requested but none were received. The public also attended the meeting of the Council's Groundfish Management Team on August 30, 1984, in Seattle, Washington, when the projected catches of widow rockfish were announced and discussed. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.** If deemed appropriate, this action may be modified or rescinded on the basis of public comment.

List of Subjects in 50 CFR Part 663

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: September 10, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-24296 Filed 9-10-84; 5:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 179
Thursday, September 13, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

FCU Ownership of Fixed Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is a revision of § 701.36 of the National Credit Union Administration Rules and Regulations. It is a threshold rule, the substantive changes to which are being extended to federal credit unions between $1 and $2 million in assets and which have over 5% in fixed assets (as defined by the rule). Approximately 1,570 federal credit unions fall into the size category, and at least 51 have reported fixed assets in excess of 5% of their total assets. These 51 credit unions and others considering such investments would have to seek the written approval of the National Credit Union Administration for any investment in fixed assets exceeding 5% of their total assets. The proposed rule eliminates certain reporting requirements from these credit unions, however, and it eliminates aggregate payments on leases of fixed assets with a year or less maturity from the definition of fixed assets.

The rule retains provisions that require that property needed for future expansion be at least partially utilized within 3 years unless otherwise approved by the Administration. It also continues to prohibit all federal credit unions from acquiring real property for use as premises from directors, members of the supervisory and the credit committee, officials, and employees, their spouses, or members of their immediate families without written approval of the Administration. There are also certain housekeeping changes that clarify or simplify the existing rule.

DATE: Comments must be received on or before November 4, 1984.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456. Telephone: (202) 357-1100.

FOR FURTHER INFORMATION CONTACT: Louis P. Acuna, Director, Department of Supervision and Examination. Telephone (202) 357-1065

SUPPLEMENTARY INFORMATION:

Background

Section 107(4) of the Federal Credit Union Act states in part that a federal credit union shall have the power to purchase, hold, and dispose of property necessary or incidental to its operations. On December 8, 1978, the National Credit Union Administration published a final rule (§ 701.36 of the NCUA Rules and Regulations) which requires all federal credit unions having aggregate assets of $2 million or more to seek written approval of NCUA for any investment in fixed assets in excess of 5 percent of total assets or its previously approved investment limit. In support of its request, the rule required a federal credit union to submit specific reports and statements listed therein. The rule also included provisions that apply to all federal credit unions. Those provisions relate to the obtaining of property for future expansion, the disposal of abandoned property, the estimated useful lives of fixed assets, the maximum assigned salvage values, and the obtaining of property from officials, employees, or their relatives. No changes have been made to the rule since it was adopted in 1978.

As a part of its regulatory review process, the National Credit Union Administration issued a request for comments on January 23, 1984, concerning these existing rules. It solicited views on the existing rule and on several questions relating to it. The National Credit Union Administration received 61 letters which addressed these questions. Other issues raised by the commenters zeroed in on the definition of fixed assets—specifically, the inclusion of typewriters, calculators, EDP, security equipment, and also leasehold improvements. These issues are addressed in this proposed rule.

Is a Rule Needed?

We believe that there is still justification for having the rule. Its most substantive provisions affect only those federal credit unions with $1,000,000 or more in assets, over 5% of which is invested in fixed assets. It is in this sense a threshold rule which applies only to larger credit unions with an above-average investment in fixed assets. Investments of this type tend to have a negative impact on both income and expenses and, accordingly, raise the potential for safety and soundness problems. Thus, the rule serves a meaningful purpose and should be continued. The weight of evidence and agency experience clearly support this.

Purchases of fixed assets also have a direct impact on the National Credit Union Share Insurance Fund (NCUSIF), as noted in the 1984 Request for Comments. As of May 1984, the NCUSIF was negotiating the sale of 10 credit unions' fixed assets (land, buildings, and computer equipment) it had acquired from merged or liquidated credit unions. They had a book value of $3.4 million and the losses on their potential sale are estimated to be at least $1.4 million. In addition, the NCUSIF is committed to purchasing $1.9 million in fixed assets from approved mergers and liquidations if the assets are not sold. Potential losses from these commitments are also estimated to be $1.4 million.

Interestingly, over 92 percent of the commenters agreed that the rule should remain. Moreover, five respondents recommended continuance because their credit unions experienced adverse financial problems that resulted from overinvesting in fixed assets. Representative observations include:

- Before a rule was established, a state supervisor reported that of four credit unions who were pressured to build in 1978–1979 on the basis of need 15–20 years into the future, one credit union subsequently experienced 5 consecutive years of losses before reversing the negative trend, while another is still struggling towards salvaging its operations. In the state supervisor's words, "It was disasterous."
- In another instance, the president of an FCU wrote,"I think it would be disasterous to the credit union industry if limitations were totally removed since particularly in the construction of a new building, management and the board find it emotional, as well as an economic experience. The temptation to 'build for eternity' is strong."

- "The current regulation has resulted in some control of purchases of fixed assets but, more importantly, it has drawn attention to the need for proper planning when purchasing fixed . . .", an NCUA regional director commented.

Accompanying the first question was the issue of what asset size group and ratio of fixed assets to total assets the regulation should apply. Although the commenters provided a variety of responses on this issue, the majority did agree that assets should be the initial selection criteria and that the ratio of fixed assets to total assets should continue to be greater than 5 percent as the second criteria for the applicability of the fixed asset rule.

Support for extending the asset threshold to $1 million came from several commenters. An NCUA regional director commented that he has 45 federal credit unions with assets of $1 million or more which had an investment in fixed assets of over 5 percent. Twenty-nine of those FCU's had operating deficits in 1983. Statistics were provided indicating a contributing relationship between high fixed assets percentages and an inability to operate without a deficit earnings position. The regional director further commented on a study of 11 merged or liquidated credit unions within that region. Of the 11 cases, six revealed that ownership of fixed assets contributed to the credit unions' financial problems. In 10 of those 11 cases, NCUA still either owns the fixed assets or is committed to their future purchase. Problems such as those with excessive investments in fixed assets are rarely encountered in federal credit unions with less than $1 million in assets, but they are increasingly common in larger credit unions. Therefore, in consideration of these comments, we believe it to be in the best interests of federal credit unions and of the Insurance Fund to include those credit unions that have aggregate assets totaling $1 million or more and a ratio of fixed assets to total assets greater than 5 percent.

Should the Rule Be Extended to Federally-Insured State-Chartered Credit Unions?

We believe that the issue of investment in fixed assets involves supervision, and the National Credit Union Administration does not supervise state-chartered credit unions.

However, NCUA conducted a survey of state laws with regard to the fixed assets investment requirement in each state since a majority of commenters expressed that the regulation should apply to FISCUs. We found that 31 states have their own regulations, statutes, or prior approval requirements regarding the purchase of fixed assets or are in the legislative process of establishing a rule. Five states have no state-chartered federally insured credit unions.

Concerning FISCU's, it should be noted that the relationship between state supervisors and NCUA regional directors is a cooperative one; accordingly, a mutual exchange of information in problem investments, when they arise, is immediately communicated. Thus, since the majority of the states have their own fixed asset requirements and since the credit union state supervisory authorities are directly responsible for approving a credit union's activities in the purchase of fixed assets, there appears to be no need for an extension of federal rulemaking in this area. Several commenters did recommend, however, that NCUA's fixed asset rule could be used as a guideline in those states where there are no established rules.

Should There Be Different Requirements for Different Asset Size of Credit Unions?

Our review of comments received on this question as well as losses and other risk data related to the question has led us to the conclusion that a uniformly-applied 5% limit should be continued. The 5% limit has not shown itself to be hardship, and 31 of the 38 commenters agreed. The commenters indicated that using such varying asset criteria to determine whether NCUA approval was needed for investing in fixed assets would be difficult to administer. One commenter also noted that asset size per se would be neither an indicator of financial health, nor an indication of whether an investment should be made.

Federal credit unions with assets of $1,000,000 or more and a ratio of fixed assets to total assets of more than 5% tend to represent a greater risk of loss to the National Credit Union Administration Share Insurance Fund (NCUSIF) than do other federal credit unions. These federal credit unions have a history of lower average net earnings after dividends and statutory reserve transfers. They also experience adverse financial performance trends such as historically lower capital to asset ratios, higher operating expense to asset ratios, and lower average net income to average asset ratios than those federal credit unions that either have no fixed assets or aggregate fixed assets equal to 5 percent or less of total assets.

Should the Rule Specify the Form of Statements and Reports Submitted to NCUA in Support of a Request for an Approval of an Investment in Fixed Assets?

We note that this rule applies only to those larger federal credit unions whose investment in fixed assets exceed 5% of their total assets. We have concluded that it should not be necessary for those credit unions to submit uniform statements and reports since each regional director will continue to approve a request based upon the credit union's past and current financial performance and the merits of the credit union's proposal. Twenty-five of the 39 commenters responding to this issue concurred that the form of statements and reports required to be submitted in support of a request for an approval should be left to the regional director.

Should Specific Regulations Governing the Accounting for the Purchase, Sale, and Disposal of Fixed Assets and Any Sale and Leaseback Transactions, Including Any Resulting Gains, Be Included in the Rule?

The majority of the commenters responding to the last two questions indicated that the NCUA Board should not establish specific rules with regard to such transactions. Rather, reliance should be placed on generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and that accounting instructions and guidance properly belong in NCUA's *Accounting Manual for Federal Credit Unions.* We concur. (The majority of the commenters did agree, however, that NCUA should retain and update its September 1981 Interpretive Ruling and Policy Statement (IRPS 81-7) that deals with sale-and-leaseback arrangements of federally insured credit unions.)

Other Issues

Credit Union Service Corporations

A discussion was included with the January 23, 1984, Request for Comments regarding the use of a Credit Union Service Organization (CUSO) as a means of circumventing the fixed asset rule.

Our review of this area has indicated that this is a supervision issue which can be dealt with on a case-by-case basis. Investments in fixed assets by CUSO's can be made for legitimate purposes to service the needs of the CUSO, its users, and its investors. Abuses are not prevalent, but if patterns should develop, the NCUA Board would consider appropriate action at that time.

Definition of Fixed Assets

Another issue raised by commenters dealth with definition of fixed assets. The definition within the current rule is all-inclusive. The purchase of fixed assets generally consists of transferring income-earning assets to a non-earning status. It is recognized, however that some items, such as typewriters and calculators, are needed for basic credit union operations, and that in purchasing or replacing them, a paperwork burden may be created if the credit union is required to submit a fixed asset investment proposal to NCUA. As one credit union trade association commented, "some credit unions, when faced with declining assets, have had to seek permission from NCUA to buy such routine business items such as calculators and typewriters. We do not believe that this was the intent of the regulation." We concur with that statement; however, we do not believe that this type of situation is prevelent. We also believe that the regional directors will have sufficient flexibility to deal with such situations on a case-by-case basis with the least possible paperwork burden to the credit union.

An issue that has recently arisen was the application of the definition of fixed assets to a lease agreement. It has been opined that, "an FCU may not rent space or pay for renovations in a building that is owned by a director/treasurer without NCUA's written approval." While the language in the current rule supported the stated opinion, the rule was *not* intended to apply to short-term, informal lease agreements with credit union officials, employees, or their spouses where the lease agreement can be terminated at will. The definition of fixed assets was intended to apply to investments in long-term leases that would be recorded on the federal credit union's books as an asset. Accordingly, that portion of the definition of fixed assets that addresses leases (subsection (b)(4)(iii)) has been amended in the proposed rule to specify that it applies to leases with a maturity in excess of one year.

Summary

The proposed rule will continue to regulate a federal credit union's ownership of fixed assets. The proposed rule will not be extended to include federally insured state-chartered credit unions, but those federal credit unions that have assets between $1 and $2 million will need to seek written approval from their respective NCUA regional director when their investment in fixed assets exceeds 5 percent of total assets, unless the credit union has already obtained written approval under the existing rule. Different requirements for different asset sizes of credit unions have not been established. the mandated form of statments and reports submitted to NCUA in support of a request for an approval of an investment in fixed assets has been deleted, leaving the content of a fixed asset investment proposal to the discretion of the federal credit union's respective regional director. The definition of fixed assets has been modified to exclude lease agreements with a maturity of 1 year or less. And finally, specific regulations governing the accounting for the purchase, sale and disposal of fixed assets, and in arranging sale-and-leaseback transactions, are not included in the proposed rule because these subjects are adequately covered in the *Accounting Manual for Federal Credit Unions* and IRPS 81-7.

Regulatory Procedures

The proposed rule will have little or no significant economic impact on a substantial number of small credit unions, primarily those under $1 million in assets. For those credit unions having aggregate assets in excess of $1 million and a ratio of fixed assets to total assets greater than 5 percent, the rule will affect less than 250 federal credit unions. Since the proposed rule is essentially the continuation of a previous rule, only approximately 51 federal credit unions that are between $1 and 2 million in assets will be affected for the first time. Therefore, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Act. Written comments and recommendations regarding the information collection requirements of this proposed rule should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: Judith McIntosh.

List of Subjects in 12 CFR Part 701

Credit Unions.

Authority: 1757(4). 12 U.S.C. 1766, 12 U.S.C. 1784, 12 U.S.C.

By the National Credit Union Administration Board on the 5th day of September 1984.

Rosemary Brady,

Secretary of the Board.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Accordingly, the NCUA Board proposes that § 701.36 of the NCUA Rules and Regulations to be revised to read as follows:

§ 701.36 FCU Ownership of Fixed Assets.

(a) A federal credit union's ownership in fixed assets should be limited as described in this chapter.

(b) Definitions—as used in this section:

(1) Premises includes any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(2) Furniture, Fixtures, and Equipment includes all office furnishings, office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(3) Fixed Assets means premises and furniture, fixtures and equipment as these terms are defined above.

(4) Investments in fixed assets means:

(i) Any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of the lease payments pursuant to a lease agreement on fixed assets with a maturity in excess of 1 year;

(iv) Any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation holding any fixed assets used by the federal credit union and any loans to such partnership or corporation; or

(v) Any investment in furniture, fixtures and equipment.

(5) Abandoned premises means former federal credit union premises from the date of relocation to new quarters, and property originally acquired for future expansion for which such uses is no longer contemplated.

(c) Investment in Fixed Assets.

(1) No federal credit union with $1,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of assets.

(2) A federal credit union shall submit such statement and reports as the NCUA regional director may require in

support of any investment in fixed assets in excess of the limit specified above.

(3) If the Administration determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets. Once such a limit has been approved, a federal credit union may make future acquisitions of fixed assets, provided the aggregate of all such future investments in fixed assets does not exceed an additional 1 percent of the assets of the credit union over the amount approved.

(4) Federal credit unions shall submit their requests to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The regional office shall inform the requesting credit union, in writing, of the date the request was received. If the credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the credit union may proceed with its proposed investment in fixed assets.

(5) Federal credit unions with assets of between $1,000,000 and $2,000,000 that have investments in fixed assets in excess of 5 percent as of the effective date of this rule may honor existing (firm) commitments to acquire fixed assets without the Administration's approval; however, these Federal credit unions must notify the appropriate NCUA regional office of the existence of such commitments within 30 days of the effective date of this rule.

(d) *Premises.* (1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed 3 years unless otherwise approved in writing by the Administration. After real property acquired for future expansion has been held for 1 year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.

(2) A federal credit union shall endeavor to dispose of "abandoned premises" at a price sufficient to reimburse the federal credit union for its investment and costs of acquisition. Current documents must be maintained reflecting the federal credit union's continuing and diligent efforts to dispose of "abandoned premises." After "abandoned premises" have been on the federal credit union's books for 4 years, the property must be publicly advertised for sale. Disposition must occur through public or private sale within 5 years of abandonment, unless otherwise approved in writing by the Administration.

(3) *Prohibited transactions.* (1) Except with the prior written approval of the Administration, no federal credit union may acquire real property by investement in premises from any of the following:

(1) A director, member of the credit committee or supervisory committee, official or employee of the federal credit union, or the spouse of such director, member of the credit committee or supervisory committee, official or employee.

(2) A corporation in which any director, member of the credit committee or supervisory committee, official or employee, or the spouse of such director, member of the credit committee or supervisory committee, official or employee, is an officer or director, or has a stock interest of 10 percent or more;

(3) A partnership in which any director, member of the credit committee or supervisory committee, official or employee, or the spouse of such director, member of the credit committee or supervisory committee, official or employee is a general partner, or a limited partner with an interest of 10 perent or more; or,

(4) A member of the immediate family of a director, member of the credit committee of supervisory committee, official or employee of the federal credit union, living in the same household.

[FR Doc. 84-24049 Filed 9-12-84; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM84-15-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Extension of Time for Comments

September 10, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On July 18, 1984, the Commission issued a Notice of Proposed Rulemaking involving the generic determination of rate of return on common equity for public utilities (49 FR 29967, July 25, 1984). The comment period is being extended at the request of the Edison Electric Institute, Florida Power & Light Company, the American Public Power Association, Tampa Electric Company, Associated Utilities Services, Inc., Atlantic City Electric Company, Duquesne Light Company, Public Service Company of Colorado and West Texas Utilities Company.

DATES: Comments must be submitted on or before November 27, 1984. Reply comments must be submitted on or before January 11, 1985.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission 825 North Capitol Street, NE. Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary (202) 357-8400.

SUPPLEMENTARY INFORMATION: On August 23, 1984, August 27, 1984, August 30, 1984, August 31, 1984 and September 4, 1984, Edison Electric Institute (EEI), Florida Power & Light Company (FPL), the American Public Power Association (APPA), Tampa Electric Company (Tampa), Associated Utilities Services, Inc (AUS), Atlantic City Electric Company, Duquesne Light Company, Public Service Company of Colorado (Public Service) and West Texas Utilities Company (West Texas) filed respective motions for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued July 18, 1984, in the above-docketed proceeding. These motions state that additional time is required because of the complexity of the issues which are addressed in the proposed rule and because of the large number of detailed technical questions which are raised in the document. The motions further state that EEI, FPL, the APPA, Tampa Electric, AUS, Public Service and West Texas require additional time in order to coordinate the preparation of their comments with respective member companies and other public utilities, to consult with qualified personnel and to gather and evaluate significant financial and economic data On August 30, 1984, Montaup Electric Company filed an answer supporting EEI's motion for an extension of time.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including November 27, 1984. Reply comments shall be filed on or before January 11, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24246 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 385

[Docket No. RM83-41-000]

Rules of Discovery for Trial-Type Proceedings; Extension of Time for Comments

September 10, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On July 26, 1984, the Commission issued a Notice of Proposed Rulemaking involving rules of discovery for trial type proceedings (49 FR 30519, July 31, 1984). The comment period is being extended at the request of the Federal Energy Bar Association.

DATE: Comments must be submitted on or before November 1, 1984.

ADDRESS: Submit comments to: Office of the Secretary Federal Energy Regulatory Commission 825 North Capitol Street, NE. Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary (202) 357-8400.

SUPPLEMENTARY INFORMATION: On August 31, 1984, the Federal Energy Bar Association (FEBA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued July 26, 1984, in the above-docketed proceeding. The motion states that FEBA requires additional time in order to allow its Committee on Practice and Procedure to evaluate the proposed rule and, if appropriate, to prepare draft comments for review by the Association's Executive Committee.

Upon consideration, notice is hereby given that an extension of time for the filing of comments on the proposed rule is granted to and including November 1, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24247 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Reopening and Extension of Public Comment Period on Proposed Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: On July 11, 1984, the Ohio Division of Reclamation (the Division) submitted to OSM a proposed program amendment consisting of proposed rules of procedure for the Ohio Reclamation Board of Review. OSM published a notice in the **Federal Register** on August 9, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 31912). The public comment period ended September 10, 1984.

On August 24, 1984, the Division submitted revisions to the proposed rules of procedure. Accordingly, OSM is reopening and extending the comment period on Ohio's July 11, 1984 proposed amendment as modified on August 24, 1984. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. September 28, 1984 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to: Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227.

Copies of the Ohio program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Ohio Division of Reclamation, Building B-3, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION: The Ohio State program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.**

By letter dated July 11, 1984, Ohio submitted proposed rules of procedure for the Ohio Reclamation Board of Review, contained in Rules 1513-3-01 through 15-13-22. The rules include provisions for appeals, intervention, temporary relief, discovery, hearings, decisions, and award of costs. OSM announced receipt of the amendment and initiated a public comment period on August 9, 1984 (49 FR 31912). The comment period ended September 10, 1984.

On August 24, 1984, the Division submitted revisions to the proposed rules of procedure. Revisions were made to the following rules: 1513-3-02, 1513-3-03, 1513-3-04, 1513-3-06, 1513-3-08, 1513-3-13, 1513-3-14, 1513-3-16, 1513-3-21, and 1513-3-22. The revisions are primarily editorial, with the exception of the revisions to Rule 1513-3-21, concerning the award of costs and expenses. Paragraph (E) of the rule has been amended to provide that costs may be awarded to a permittee or the Division participating in a proceeding upon a finding that the permittee or Division has made a substantial contribution to a full and fair determination of the issues.

The full text of the proposed program amendment and of the subsequent modifications is available for review at the locations listed above under "**ADDRESSES**". Accordingly, OSM is now seeking public comment on the adequacy of Ohio's July 11, 1984 amendment in light of the State's August 24, 1984 modification.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

Dated: September 7, 1984.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 84-24127 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Inpatient Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment to rule.

SUMMARY: This amendment to DoD 6010.8–R would limit CHAMPUS payment for inpatient mental health services to 60 days annually for each patient. It is required in order to implement a provision of Pub. L. 98–94, the Defense Authorization Act for Fiscal Year 1984, which amended title 10, chapter 55, United States Code. This Public law states that, with certain exceptions, no CHAMPUS funds may be expended for inpatient mental health services in excess of 60 days annually for each beneficiary who receives inpatient mental health services. It is similar to a provision that was contained in Pub. L. 97–377, the Defense Appropriation Act for Fiscal year 1983, which restricted the funds available to CHAMPUS to pay inpatient mental health services, beginning January 1, 1983.

DATE: Written public comments must be received on or before October 15, 1984.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Policy Branch, OCHAMPUS, telephone (303) 361–3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Section 199.10 establishes the basic benefits of CHAMPUS, including inpatient services. Under the current provisions of the Regulation, CHAMPUS does not limit coverage of inpatient services on the basis of the length of stay. Although the Regulation requires that long-term inpatient stays be reviewed for continued medical necessity, payment may be made for the stay so long as it continues to be medically or psychologically necessary.

Pub. L. 97–377, the Defense Appropriation Act for fiscal year 1983, limited the expenditure of funds appropriated for CHAMPUS. Section 785 of the Public law provided that no payment could be made for inpatient mental health services in excess of 60 days per person per year. Section 785 also provided that this limitation did not apply to: (a) Services provided under the Program for the Handicapped; (b) admissions to residential treatment centers; (c) mental health services provided as partial hospitalization, that is, psychiatric day or night care; (d) mental health services provided to patients admitted to the inpatient facility before January 1, 1983, so long as they remained hospitalized continuously for medically or psychologically necessary reasons; and (e) mental health services provided pursuant to a waiver of the 60-day limit ". . . granted in accordance with the findings of current peer review, as prescribed in guidelines established and promulgated by the Director, Office of the Civilian Health and Medical Program of the Uniformed Services."

Because of the January 1, 1983 mandatory effective date, and because section 785 represented a restriction on the funds appropriated to CHAMPUS, we issued a policy to implement this limitation on December 29, 1982. At the same time, we began developing the regulatory amendment reflecting the limitation.

As required by title 10, chapter 55, United States Code, the Department of Defense consulted with the Department of Health and Human Services concerning this amendment. Section 785 generated some questions as to the criteria to be used in granting the authorized exceptions to the 60-day limit on inpatient psychiatric services. Consequently there were discussions between the Department of Health and Human Services and Department of Defense concerning the implementation of this exception. The criteria initially developed by the Department of Defense were based upon our belief that Congress recognized that there would only be a few patients whose physical or psychological condition was so severe that care in other than an inpatient setting would endanger the patient or the community or both and we thus provided for a waiver of the 60-day limit to cover these extraordinary circumstances.

However, following our discussions with the Department of Health and Human Services, but before publication of the amendment, Congress passed and the President signed Pub. L. 98–94, the Defense Authorization Act for Fiscal Year 1984. This public law contained a provision amending title 10, chapter 55, United States Code—the basic statute governing CHAMPUS—to incorporate the limitation of inpatient mental health services to 60 days annually per beneficiary.

The amendment exempts care under the program for the handicapped, partial hospital care and care in residential treatment centers, as did Pub. L. 97–377. Pub. L. 98–94, however, contains the following provision regarding the waiver of the 60-day limit:

> The limitation . . . does not apply in the case of inpatient mental health services—
>
> (4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.

We interpret this to be an unmistakable expression of Congressional intent that the waiver not be used routinely to approve inpatient mental health care beyond 60 days.

A conference was held in March of 1984 to discuss the 60-day inpatient mental health limit criteria. This meeting was attended by representatives of the American Psychiatric Association, the American Psychological Association, the American Nurses Association, the American Academy of Child Psychiatry, the National Association of Social Workers, the National Association of Private Pyschiatric Hospitals, the Surgeons General of the services and the National Institute of Mental Health.

After a general discussion of the legislation governing the inpatient mental health limit and an examination of the criteria granting waivers, the group essentially concurred that the criteria adequately addressed "extraordinary circumstances."

In order to implement the provisions of Pub. L. 98–94, we propose to amend § 199.10, paragraphs (b)(5), (c)(2)(ix)(b), and (g)(39).

In § 199.10 a new paragraph (b)(5)(xi) would be added which would:

1. Define inpatient mental health services as those institutional and professional services rendered to a CHAMPUS beneficiary admitted to a CHAMPUS-authorized institutional provider for treatment of a nervous and mental disorder, as defined in § 199.8.

2. Provide that CHAMPUS coverage for inpatient mental health services will end when the patient has received 60 days of covered inpatient mental health services in a calendar year. This amendment would not affect benefits for outpatient services or for inpatient services for treatment of conditions other than mental disorders.

3. Provide that benefits will end automatically unless the Director, OCHAMPUS, or a designee, grants a waiver of the 60-day limit. If a request for a waiver is subsequently granted, payment would be made for covered services from the 60th day. If, however, the request for the waiver is not granted, no payment will be made for any service provided after 12:01 A.M. of the 61st day of inpatient mental health services. Since the Director will require a

reasonable period of time to review the request for additional coverage—normally at least 10 working days—beneficiaries can reduce the risk of incurring noncovered expenses by submitting the request for additional coverage as promptly as possible.

4. Set forth the criteria that the director will use in determining when additional coverage will be granted. Requests for additional coverage will be reviewed by psychiatrists nominated by the American Psychiatric Association. The basis for approving additional coverage will be a finding that the patient's mental disorder results in the patient being placed at significant risk to self or of becoming a danger to others or that the patient has, in addition to the mental disorder, a medical condition requiring an inpatient level of care. In any case, additional coverage will not be granted unless the patient requires services that can be provided only in an inpatient setting.

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense, and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

Conforming revisions are also made in paragraphs 199.10(c)(2)(ix)(b) and (g)(39).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military Personnel.

Accordingly, it is proposed to amend 32 CFR, Chapter I reading as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

In § 199.10, by adding a new paragraph (b)(5)(xi), and by revising paragraphs (c)(3)(ix)(*b*) and adding (g)(39) to read as follows:

§ 199.10 Basic program benefits.

* * * * *

(b) * * *

(5) * * *

(xi) *Inpatient mental health services.* Inpatient mental health services are those services furnished by institutional and professional providers for treatment of a nervous or mental disorder (as defined in § 199.8(b)) to a patient admitted to a CHAMPUS-authorized acute, general hospital; a psychiatric hospital; or, unless otherwise exempted, a specialized treatment facility.

(*a*) *Benefits limited to 60 days of inpatient care.* CHAMPUS benefits for inpatient care are payable only so long as the inpatient level of care is medically or psychologically necessary and otherwise meets the requirements of this Part. In any case in which CHAMPUS benefits are paid for inpatient mental health services, those benefits will end automatically when a beneficiary has received 60 days of covered inpatient mental health services in a calendar year. This benefit limit applies whether the 60 days of inpatient mental health services are continuous or intermittent or involve one or more admissions to the same or different inpatient facilities. This limit on inpatient mental health services does not apply to: services provided under the provisions of § 199.11, "Program for the Handicapped;" services provided on less than a 24-hour-a-day basis; or services provided in an authorized residential treatment center that meets the requirements of § 199.12, (b)(4)(v), "Residential Treatment Centers for Emotionally Disturbed Children."

(*b*) *Director, OCHAMPUS, may grant additional coverage.* Upon written request by or on behalf of the beneficiary, the Director, OCHAMPUS, or a designee, may grant coverage of inpatient mental health services in excess of 60 days in a calendar year when such services are found to be required because of extraordinary medical or psychological circumstances. The Director may grant additional coverage if the written request documents that:

(*1*) the patient is suffering from an acute mental disorder or an acute exacerbation of a chronic mental disorder that results in the patient being put at significant risk to self or of becoming a danger to others, *and* the patient requires a type, level, and intensity of otherwise authorized service that can only be provided in an inpatient setting; or

(*2*) the patient has a serious medical condition apart from his or her psychiatric condition that requires a type, level, and intensity of service that can only be provided in an inpatient setting and the person continues to need psychiatric care, but cannot obtain it on an outpatient basis because of his or her inpatient status.

* * * * *

(c) * * *

(3) * * *

(ix) * * *

(*b*) *Psychotherapy: Inpatient.* In addition, if individual or group psychotherapy, or a combination of both, is being rendered to an inpatient on an on-going basis (i.e., non-crisis intervention), benefits are limited to no more than five one-hour therapy sessions (in any combination of group and individual therapy sessions) in any seven day period. Benefits for inpatient individual and group psychotherapy will end automatically when the patient has received 60 days of inpatient mental health services in a calendar year, unless additional coverage is granted by the Director, OCHAMPUS, in accordance with § 199.10(b)(5)(xi).

* * * * *

(g) * * *

(39) *Inpatient mental health services.* More than 60 days of inpatient mental health services received by a beneficiary in a calendar year, unless additional coverage is granted by the Director, OCHAMPUS, in accordance with § 199.10(b)(5)(xi). This exclusion does not apply to: services provided under the provisions of § 199.11, "Program for the Handicapped;" services provided on less than a 24-hour-a-day basis; or services provided in a CHAMPUS-authorized residential treatment center that meets the requirements of § 199.12(b)(4)(v), "Residential Treatment Centers for Emotionally Disturbed Children."

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

Dated: September 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-24001 Filed 9-12-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 84-51]

Drawbridge Operation Regulations; Reynolds Channel, NY

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Nassau County, New York, the Coast Guard is considering a change to the regulations governing the Long Beach drawbridge between Island Park and Long Beach, New York to revise the times that the bridge will be required to be opened on signal. This proposal is being made because of limited requests for opening of the draw between 7 a.m. and 8 a.m. This action should continue to relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 29, 1984.

ADDRESSES: Comments should be mailed to Commander (oah-br), Third Coast Guard District, Bldg 135A, Governors Island, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 9 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212)668-7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

On April 24, 1984, the Coast Guard published a final rule (49 FR 17450) that reorganized the regulations for drawbridges (Part 117 of Title 33 Code of Federal Regulations) to consolidate common requirements and to organize bridge regulations into a more usable format. This proposed rule follows the revised numbering and format.

Drafting Information

The drafters of this notice are Lucas A. Dlhopolsky, project manager, and Mary Ann Arisman, project attorney.

Discussion of Proposed Regulations

Current regulations allow the bridge to open on four hours notice between midnight and 7 a.m. each day. The County wishes to extend this notice period until 8 a.m. so that the bridge schedule will coincide with existing County work shifts. Bridge opening logs for 1980, 1981 and 1982 show an average of 10 boats requiring openings each year between 7 a.m. and 8 a.m. These few openings do not appear to justify requiring a bridge operator to be present between 7 a.m. and 8 a.m. each day. If regulations are amended as requested, a bridge opening may be obtained between 7 a.m. and 8 a.m. by merely providing four hours notice. Since the bridge presently requires four hours notice between midnight and 7 a.m., only minor inconvenience will result if the period is extended one hour.

The bridge provides a minimum vertical clearance of 20 feet above Mean High Water and 24 feet above Mean Low Water in the closed position. Therefore, only larger motor vessels and sailboats transiting the bridge between 7 a.m. and 8 a.m. would be affected by this regulation change.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This bridge is transited almost exclusively by recreational boaters navigating through Reynolds Channel. Since the closed draw has a vertical clearance sufficient to accommodate passage of most of these vessels, only minimal impact will result from these regulations. Of the openings between 7 a.m. and 8 a.m. from 1980-82, only one was for a commercial vessel. This indicates these regulations will have little or no economic impact on commercial vessels. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.799(g) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(g) The draw of the Long Beach Bridge across Reynolds Channel, mile 4.7, shall open on signal; except that:

(1) From midnight to 8 a.m. year-round, the draw shall open on signal if at least four hours notice is given; and

(2) From 3 p.m. to 8 p.m. on Saturdays, Sundays and holidays from May 15 through September 30, the draw need be opened only on the hour and half hour.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g)(3))

Dated: August 21, 1984.

R. L. Johanson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 84-24215 Filed 9-12-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL-2669-4]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed Rule.

SUMMARY: USEPA proposes to approve a change in the TSP designation status for a portion of Center Township within Marion County, Indiana from primary nonattainment to secondary nonattainment and for the remainder of the primary nonattainment area within Marion County, excepting Perry, Decatur, and Wayne Townships, to attainment. USEPA proposes to disapprove a requested change in the TSP designation to attainment for a portion of Center Township and for all of Perry, Decatur, and Wayne Townships in Marion County. These revisions were initiated by requests from the State of Indiana to redesignate the primary nonattainment area in Marion County and are based on the supporting data the State submitted. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such a change.

DATE: Comments on the State's redesignation requests and USEPA proposed action are due by November 13, 1984.

ADDRESSES: Copies of the redesignation requests, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency,
Air and Radiation Branch, Region V

(5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: (please submit an original and five copies if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every state. See 43 FR 8962 (March 3, 1978). These area designations may be revised whenever the data warrants.

The primary TSP NAAQS is violated when, in a year, either: (1) The geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard. The secondary TSP is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

The current designations for TSP in Marion County, Indiana, as codified at 40 CFR 81.315, are:

Attainment—The area of Washington, Township east of Fall Creek and the area of Franklin Township south of Thompson Road and east of Five Points Road.

Primary Nonattainment—Remainder of Marion County.

On October 14, 1982, the State of Indiana requested USEPA to redesignate all of the primary nonattainment area within Marion County, Indiana, with the execption of Center Township, from primary nonattainment to attainment for the TSP NAAQS. Additionally, on April 14, 1983, the State submitted a separate request to redesignate Center Township from primary nonattainment to secondary nonattainment for TSP.

The State of Indiana submitted supplementary information to support the requests on October 7, 1982, and on April 14, 1983. The City of Indianapolis Air Pollution Control Division submitted supplementary information with letters dated January 19, 1983 and April 15, 1983. The State submitted additional information to supplement the Center Township request on February 16, 1984.

To support the redesignation requests, the State submitted ambient air quality data collected at numerous monitors in Marion County during the period 1980–1983, air quality modeling results, emissions data, as well as other analyses (See February 16, 1984, submittal). A detailed review of this information is available in USEPA's Technical Support Document on this redesignation proposal.

The proposed redesignations were reviewed with respect to USEPA redesignation policy, as summarized in the memoranda "Section 107 Designation Policy Summary", April 21, 1983, and "Section 107 Questions and Answers", December 23, 1983. In summary, all available information relative to the attainment status of the area should be reviewed. These data should include the most recent eight consecutive quarters of quality assured, representative ambient air quality data, puls evidence of an implemented control strategy. Supplemental information, including the available air quality modeling, emissions data, and other relevant information, should be used to determine if the monitoring data accurately characterize the worst case air quality in the area. Information submitted to support attainment redesignations must adequately and accurately reflect long-term operating rates and the effects of applicable economic conditions on emissions.

The most recent eight quarters of TSP data within Marion County show attainment of the primary TSP NAAQS. Four sites (in Center and Wayne Towships) recorded violations of the secondary TSP NAAQS during 1982 and/or 1983. The City provided historical emissions and production data for the major TSP sources in the county and provided a list of real, enforceable emission reductions from the major TSP sources which have occurred due to recent compliance with federally approved RACT regulations or through recent enforcement action. The City also noted recent reductions in TSP emissions from area source categories such as from a restriction on open burning. These data constitute evidence of an implemented control strategy resulting in real, legally enforceable reductions. Therefore, for all of Marion County, except for southeastern Center Township and Perry, Decatur, and Wayne Townships, the proposed redesignation requests are supported by at least eight quarters of representative, quality-assured TSP monitor data which show attainment of the TSP NAAQS and by evidence of an implemented control strategy that USEPA has fully approved.

Center Township

However, for southeastern Center Township, USEPA cannot propose approval of the redesignation to secondary nonattainment for TSP because the existing monitoring network does not accurately characterize the worst case air quality in this area. The monitors are not located such that they can be expected to monitor worst case impacts from certain large TSP source in southeastern Center Township, i.e., Citizen's Gas and Coke Co. coke batteries, Indiana Farm Bureau, and Early and Daniel. For instance, the closest downwind monitor to Citizen's Gas and Coke is over five kilometers to the northeast. A closer site is northwest of Citizen's Gas and Coke, but it is generally upwind of the above facilities in southeastern Center Township. Due to this and other similar source/monitor configurations in southeastern Center Township, USEPA has determined that the monitored data do not reflect the worst case air quality of the area; also, available modeling data are insufficient to accurately characterize TSP air quality in this area. Therefore, this portion of Center Township cannot be redesignated at this time. USEPA is, however, proposing to approve the redesignation from primary nonattainment to secondary nonattainment for the remainder of Center Township, because the ambient data and the evidence of an approved, implemented control strategy allow such a redesignation.

Perry, Decatur, and Wayne Townships

As stated before, USEPA's redesignation policy requires ". . . evidence of an implemented control strategy that USEPA has fully approved". USEPA has approved Indiana's Marion County Part D TSP SIP with the exception of 325 IAC 11–3, Section 2f–h (Indiana's Coke Battery Regulations) and with the condition that Indiana submit acceptable industrial fugitive dust regulations by July 31, 1982. USEPA will, in the near future, propose action on revised emission limits and operating requirements for Citizen's Gas and Coke Company which satisfy the deficiencies noted by USEPA in 325 IAC 11–3 for Marion County. Indiana has submitted its Industrial Fugitive Dust Regulations (325 IAC 6–5). USEPA will propose action on these regulations in the near future.

There are numerous industrial sources within Marion County which emit significant fugitive emissions and which are not now required to have fugitive control plans. Several of those sources (including American Aggregates, Chrysler Foundry, Indianapolis Power and Light Company's Stout Plant, and Quemetco) are in Perry, Decatur, and Wayne Townships for which the State has requested to be redesignated to full attainment for TSP. Because Indiana has not applied RACT to these significant industrial fugitive dust sources and because the State has not provided sufficient monitor or modeling data representative of worst case air quality in the immediate vicinity of these sources, USEPA must propose to disapprove the redesignation request for Perry, Decatur, and Wayne Townships.

The available data do support a redesignation to secondary nonattainment for portions of Perry, Decatur, and Wayne Townships and full attainment for the remainder of these townships. If, during the public comment period, the State amends its redesignation request to include a secondary nonattainment area within Perry, Decatur, and Wayne Townships which incorporates the area surrounding the monitor in Wayne Township which recorded secondary nonattainment in 1982 and the areas surrounding the significant industrial fugitive dust emission sources in these townships, USEPA will consider this request and, if approvable, will directly approve redesignations for these areas in USEPA's final rulemaking.

Summary

USEPA proposes to approve the following proposed redesignations for Marion County:

(a) The primary TSP nonattainment areas within Franklin, Lawrence, Pike, Warren, and Washington Townships will be designated attainment.

(b) All of Center Township, except the area bounded by Keystone Avenue on the west, Southeastern Avenue on the north, and the Center Township boundaries on the east and south, will be designated as a secondary nonattainment area.

It is proposing to disapprove redesignation for the following areas:

(a) The area bounded by Keystone Avenue on the west, Southeastern Avenue on the north, and the Center Township boundaries on the east and south, will be retained as a primary nonattainment area.

(b) Perry, Decatur, and Wayne Townships will be retained as a primary nonattainment area. For these townships, USEPA will consider a State request to designate portions secondary nonattainment and the remainder attainment.

All interested persons are invited to submit written comments on the proposed redesignation and on USEPA's proposed actions. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: August 7, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-24193 Filed 9-12-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[OSWER-3-FRL 2669-5]

Virginia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Virginia's Application for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: The Commonwealth of Virginia has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Virginia's application and has made the tentative decision that Virginia's hazardous waste management program satisfies all of the requirements necessary to qualify for Final Authorization. Thus, EPA tentatively intends to grant Final Authorization. Thus, EPA tentatively intends to grant Final Authorization to the State to operate its program in lieu of the Federal program. Virginia's application for Final Authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATES: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for October 16, 1984. EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not communicated to EPA by telephone or in writing by October 9, 1984. EPA will determine by October 10, 1984 whether there is significant interest to hold the public hearing. Virginia will participate in the public hearing held by EPA on this subject if a hearing is to be held. All written comments on Virginia's Final Authorization application must be received by the close of business on October 23, 1984.

ADDRESSES: Copies of Virginia's Final Authorization application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying:

Bureau of Hazardous Waste Management, Virginia Department of Health, Monroe Building, 11th Floor, 101 North 14th Street, Richmond, Virginia 23219. Contact: Dr. Wladimir Gulevich, (804) 225-2975.

Environmental Protection Agency, 6th and Walnut Street, Curtis Building, Philadelphia, Pennsylvania 19106. Contact: Diane McCreary, (215) 597-0580.

U.S. Environmental Protection Agency, Headquarters Library, PM-211A, 401 M Street, SW., Washington, DC 20460, (202) 382-5926.

Written comments on the application and written or telephoned communication of interest in EPA's holding a public hearing on the Virginia application must be sent to: John A. Armstead, Program Manager, State Programs Section, U.S. EPA Region III, 6th and Walnut Street, Philadelphia, Pennsylvania 19106, (215) 597-7259.

If you wish to find out whether or not EPA will hold a public hearing on the Virginia application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after October 10, 1984 the EPA contact person listed below, or telephone Dr. Wladimir Gulevich, Director, Bureau of Hazardous Waste Management, 101 North 14th Street, Richmond, Virginia 23219 (804) 225-2975.

If significant public interest is expressed, EPA will hold a public hearing on Virginia's application for Final Authorization on Tuesday, October 16, 1984 at 3:00 p.m. at the James Monroe Building, 101 North 14th Street, Conference Room E, Richmond, Virginia.

FOR FURTHER INFORMATION CONTACT: Anthony J. Donatoni, Chief, State

Programs Section, U.S. EPA Region III, 6th and Walnut Street, Philadelpia, Pennsylvania 19106, (215) 597-7937.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "Interim Authorization", is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to Interim Authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263, and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities), and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks. Phase II B covers permitting of incinerator facilities, and Phase II C addresses permitting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, all Interim Authorizations expire on January 26, 1985, unless Congress extends the date. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received Final Authorization, as described below.

The second type of authorization is a "Final" (permanent) Authorization that is granted by EPA if the Agency finds that the State program is (1) "equivalent" to the Federal program, (2) consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained Interim Authorization in order to qualify for Final Authorization. EPA regulations for Final Authorization appear at 40 CFR 271.1-271.23.

B. Virginia

The State received Interim Authorization for Phase I on November 3, 1981 and Interim Authorization for Phase II, Components A and B, on August 17, 1983. On December 27, 1983, the State submitted a draft application for Final Authorization. The official application for Final Authorization was submitted on June 26, 1984. Prior to submission of the application to EPA, Virginia solicited public comments and held a public hearing on June 22, 1984. The Commonwealth did not receive any written or oral comments. EPA's comments on the official application were forwarded to the State on July 31, 1984. The comments requested Virginia to revise the Memorandum of Agreement to clarify the State's compliance and enforcement management procedures. The State's timely and appropriate enforcement action against program violators was identified by the Region III office as an area of concern. The State agreed, in the Memorandum of Agreement, to maintain a level of effort in compliance and enforcement which ensures an effective program which is consistent with EPA's Compliance/Enforcement Strategy (June 12, 1984). The State has shown significant improvement in this area since the submittal of the draft application.

The State does not seek authority to impose its hazardous waste regulatory program over Indian lands. Therefore, EPA requested the State to identify all Indian lands where EPA will be administering the RCRA program directly. They are:

Mattaponi Indian Reservation Box 178
West Point, Virginia 23181.
Pamunkey Indian Reservation
Pamunkey, Virginia 23086.

EPA has reviewed Virginia's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for Final Authorization. Consequently, EPA tentatively intends to grant Final Authorization to Virginia. Copies of Virginia's application are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

In making its final decision, EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny Final Authorization to Virginia. EPA expects to make a final decision on whether or not to approve Virginia's program by December 26, 1984, and will give notice of it in the **Federal Register**. EPA's final decision whether to approve the State's program will be based, in part, on Virginia's ability to maintain the current level of performance and fulfilling the commitments included in the Memorandum of Agreement. The notice will include a summary of the reasons for the Final determination and a response to all major comments.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(B), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Executive Order 12291, Section 3.

Lists of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8-7.

Dated: August 21, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-24194 Filed 9-12-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 82-105]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of comment period.

SUMMARY: On July 16, 1984, the Coast Guard published a Notice of Proposed rulemaking regarding the problem created when the term "controlling interest" was inserted into the Vessel Documentation Act (49 FR 28744) That NPRM had a comment deadline of September 14, 1984. The Coast Guard has received a request that the comment

period be extended and has decided that a 30 day extension would be appropriate.

DATE: All comments must be received by October 15, 1984.

ADDRESSES: Comments should be submitted to the Commandant (G-CMC/21), (CGD 82-105), U.S. Coast Guard Headquarters, Washington, D.C. 20593. Comments may be delivered and will be available for inspection at the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, phone (202) 426-1477, between the hours of 7:00 a.m and 4:00 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Meeks, Office of Merchant Marine Safety, (202) 426-1492, U.S. Coast Guard Headquarters, 2100 Second Street, SW. Washington, D.C. 20593.

Dated: September 10, 1984.

C.M. Holland,

Captain, USCG, Executive Secretary, Marine Safety Council.

[FR Doc. 84-24214 Filed 9-12-84; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 49, No. 179
Thursday, September 13, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Delegations of Authority for Lands Transactions

Correction

In FR Doc. 84-22907 beginning on page 34283 in the issue of Wednesday, August 29, 1984, make the following correction:

On page 34284, first column, tenth line from the bottom, "45 Fr 171169" should have read "45 FR 17169".

BILLING CODE 1505-01-M

Soil Conservation Service

Lost City Road Critical Area Treatment RC&D Measure, Oklahoma

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lost City Road Critical Area Treatment RC&D Measure, Cherokee County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624-4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan to stabilize the erosion along the country roadsides. The planned works of improvement include the construction of gabions on the slope of the road ditch with backfill behind the gabions. The gabions will stabilize the eroding road ditch banks and control the erosion.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 4, 1984.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 84-24108 Filed 9-12-84; 8:45 am]

BILLING CODE 3410-16-M

Clear Creek Watershed, Illinois; Intent to Deauthorize Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent To Deauthorize Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Clear *Creek Watershed Project, Cass County, Illinois.*

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, 301 North Randolph Street, Champaign, Il, 61820, telephone 217/398-5267.

SUPPLEMENTARY INFORMATION: A determination has been made by *John J. Eckes,* that the proposed works of improvement for the *Clear Creek Watershed* project will not be installed. Information regarding this determination may be obtained from *John J. Eckes, State Conservationist,* at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

Dated: August 27, 1984.

John J. Eckes,

State Conservationist.

[FR Doc. 24258 Filed 9-12-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Week ended August 31, 1984.

Subpart Q applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Aug. 30, 1984	42457	El Al Israel Airlines Limited, c/o Robert Reed Gray, Hale Russell & Gray, 1025 Connecticut Avenue, N.W., Suite #400, Washington, D.C. 20036. Application of El Al Israel Airlines Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests an amended foreign air carrier permit to amend paragraph A to conform to the Protocol, as follows: A. Between a terminal point or points in Israel; intermediate points in Cyprus, Turkey, Greece, Romania, Italy, Spain, Portugal, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, The Netherlands, United Kindgom, Eire, and Montreal, Canada (without traffic rights between Montreal and points in the United States); and the coterminal points New York, New York; Chicago, Illinois; Boston, Massachusetts; Maimi, Florida; and Los Angeles, California; and beyond (a) one specified U.S. point to Mexico City and (b) any specified U.S. points to South America and Asia without traffic rights between U.S. points and points beyond the United States. Answers may be filed by September 27, 1984.
Aug. 31, 1984	42461	Federal Express Corporation, c/o Nathaniel P. Breed,, Jr. Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W. Washington, D.C. 20036. Application of Federal Express Corporation pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity authorizing it to engage in scheduled overseas and foreign air transportation with respect to property and mail, on a permissive basis, over the following route: Between a point or points in the United States, Puerto Rico, the Virgin Islands, and Guam, on the one hand, and a point or points in the following areas or countries, as coterminal points, on the other hand: Japan, Korea, Taiwan, Hong Kong, The Philippines, Vietnam, Thailand, Malaysia, Singapore, Indonesia, Sri Lanka, and India. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 28, 1984.
Do	42324, 42325	TPI International Airways, Inc., c/o Harry A. Bowen, Bowen and Atkin, 2020 K Street, N.W., Suite 350, Washington, D.C. 20006. Application of TPI International Airways, Inc. for a certificate of public convenience and necessity for charter air transportation. (Information Requested by Order 84-7-73) Answers may be filed by September 28, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-24218 Filed 9-12-84; 8:45 am]

BILLING CODE 6320-01-M

Air Charter (SAFA); Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 84-9-22.

SUMMARY: The Board proposes to approve, in part, the following application:

Applicant: Air Charter (SAFA); Docket: 41256.

Date application filed: January 31, 1983.

Authority sought: Air Charter requests authority to engage in passenger charter operations, as follows:

A. Between any point or points in the Republic of France and any point or points in the United States, including intermediate and beyond points;

B. Between a point or points in the United States and a point or points in neither the Republic of France nor the United States, which charters do not stopover in the Republic of France; and

C. Between a point or points in the United States and a point or points in neither the Republic of France nor the United States, which charters stopover in the Republic of France.

Tentative Decision

The Board proposes to issue a five-year permit to Air Charter authorizing passenger charter operations between any point or points in France and any point or points in the United States. To the extent not granted, the remainder of Air Charter's request would be denied.

Objections

All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, NO LATER THAN October 9, 1984, file a statement of such objections in the docket with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of France. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for Objections

Docket 41256, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428

V. Michael Straus, Straus & Matthews, P.C., 1001 Connecticut Avenue, NW., Suite 335, Washington, D.C. 20036-5544.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For further information, CONTACT: Nancy Pitzer Trowbridge, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: September 7, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-24220 Filed 9-12-84; 8:45 am]

BILLING CODE 6320-01-M

Fitness Determination of Kenmore Air Harbor, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-119, Order to Show Cause, served September 7, 1984.

SUMMARY: The Board is propsoing to find that Kenmore Air Harbor, Inc, is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautices Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order.

Responses shall be filed no later than 15 days after the service date of the order, on September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Collins, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5216.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–8–119 is available from the Distribution Section, Room 100, 1925 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send postcard request for Order 84–8–119 to that address.

By the Civil Aeronautics Board: August 30, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–24219 Filed 9–12–84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42458]

Miami-London Competitive Service Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on September 26, 1984, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. before the undersigned administrative law judge.

Order 84–8–120 defines the issues to be considered in this proceeding. In order to facilitate the conduct of the conference, however, parties are instructed to submit one copy to each party and and two copies to the Judge of (1) proposed stipulations; (2) proposed requests for information and evidence; (3) statements of positions; and (4) proposed procedural dates. The Bureau of International Aviation will circulate its material on or before September 18, 1984, and the other parties on or before September 24, 1984. The submissions of the other parties shall be limited to points on which they differ with the Bureau and shall use the marking and lettering used by the Bureau to facilitate cross-referencing. The September 18 and September 24 dates are for actual delivery of material, rather than mailing dates.

Dated at Washington, D.C., September 6, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84–24217 Filed 9–12–84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 273]

Resolution and Order Approving the Application of the Iowa Foreign Trade Zone Corporation for a Foreign-Trade Zone in Polk County, IA, and a Special-Purpose Subzone in Forest City, IA, Adjacent to the Des Moines Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Iowa Foreign Trade Zone Corporation, an Iowa non-profit corporation affiliated with the Greater Des Moines Chamber of Commerce and the Iowa Development Commission, filed with the Foreign-Trade Zones Board (the Board) on November 28, 1983, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Polk County, Iowa, within the Des Moines Customs port of entry, and requesting special-purpose subzone status for the vehicle manufacturing plant of Winnebago Industries, Inc., in Forest City, Iowa, adjacent to the Des Moines Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

GRANT

To Establish, Operate, and Maintain a Foreign-Trade Zone in Polk County, IA, and a Subzone in Forest City, IA, Adjacent to the Des Moines Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Iowa Foreign Trade Zone Corporation, an Iowa non-profit corporation (the Grantee), has made application (filed November 28, 1983, Docket No. 40–83, 48 FR 55600) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Polk County, Iowa, and a special-purpose subzone for the vehicle manufacturing facility of Winnebago Industries, Inc. in Forest City, Iowa, adjacent to the Des Moines Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 107 and Subzone No 107A at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone and subzone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone.

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The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone and subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 4th day of September 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-24291 Filed 9-12-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held October 2, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Avenue, NW, Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation of the final report of the MCTL implementation project.
4. Present, review and approve the Computer Peripherals TAC annual report.
5. Membership status report by the Chairman.
6. Update by Department of Commerce on the distribution license rule.
7. Collection and discussion of 1985 agenda items for the Computer Peripherals TAC annual plan.
8. Discussion of subcommittee organization for the Computer Peripherals TAC.
9. Develop agenda for January 1985 meeting.
10. Action items due at next meeting.
11. New Business.

Executive Session

12. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meeting of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-5542.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: September 7, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc 84-24289 Filed 9-12-84; 8:45 am]

BILLING CODE 3510-25-M

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held October 2, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Avenue, NW,, Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to telecommunications equipment or technology.

The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377-4217.

For further information contact Mrs. Margaret A. Cornejo (202) 377-5542.

Dated: September 10, 1984.

James K. Pont,

Deputy Director, Office of Export Administration.

[FR Doc. 84-24290 Filed 9-12-84; 8:45 am]

BILLING CODE 3510-25-M

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on these applications must be submitted on or before October 3, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00029."

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class export by the applicant,
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–15940 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: First Agricultural Manufacturer's Export Trading Co., Inc. (FAMECO), Post Office Box 76141, Birmingham, AL 35264
Telephone: (205) 871–3263
Application No.: 84–00029
Date Received: August 23, 1984
Date Deemed Submitted: August 29, 1984
Members in Addition to Applicant: None

Summary of the Application

A. Export Trade

FAMECO, a newly-formed Alabama corporation, intends to export grain-storage installations. As an export agent, it will handle equipment designed to weigh, clean, dry, convey, store, grade, and process grain, rice, coffee and other cereals. This equipment includes grain bins (SIC number 3444621), feed bins (SIC number 3444625), farm elevators (SIC 3523260), continuous-flow grain driers (SIC number 3523836), crop-drying fans (SIC number 3523837) supplemental heaters (SIC number 3523844), grain cleaners (SIC number 3523820), and conveyors and unloaders (SIC number 3523850).

FAMECO and its members propose to design these grain-storage installations; purchase, consolidate and export component equipment; and oversee actual installation of the facilities for foreign customers. In addition, FAMECO will provide the following export trade services: market feasibility studies, system design and engineering, selection and purchase of compatible equipment, development of financial packages, consolidation and packaging/containerization for export, export documentation and shipping, supervision of equipment installation and start-up, equipment training, selection of spare parts inventories, and establishment of equipment maintenance schedules.

B. Export Markets

While FAMECO has initially concentrated its export efforts in Central America, it intends to conduct its future operations on a worldwide basis.

C. Export Trade Activities and Methods of Operation

FAMECO seeks certification:

(1) To enter into exclusive and non-exclusive agreements with individual U.S. suppliers of grain-storage equipment to act as their export agent for potential overseas customers.

(2) To enter into exclusive and non-exclusive agreements with foreign representatives or customers for delivery of export trade products and services.

(3) To establish, on behalf of competing suppliers, export prices for component equipment offered to foreign customers.

(4) To allocate foreign territories or customers among competing U.S. suppliers and through agreements with foreign representatives or distributors.

(5) To bring together competing U.S. suppliers for the purpose of responding to foreign bid invitations, without discussing confidential business information specific to any one supplier.

(6) To refuse to deal with any particular competitor of FAMECO.

Dated: September 7, 1984.

Irving P. Margulies,
General Counsel.

[FR Doc. 84-24201 Filed 9-12-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Issuance of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of exploration license to Ocean Mining Associates subject to terms, conditions, and restrictions.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act and 15 CFR Part 970, the National Oceanic and Atmospheric Administration on August 29, 1984 issued to Ocean Mining Associates, Box 2, Glouster Point, Va. 23062 a license to engage in deep seabed mining exploration activities subject to terms, conditions, and restrictions, for a site designated USA–3 which is located in the Clarion-Clipperton Fracture Zone of the Northeastern Equatorial Pacific Ocean. Interested persons are permitted

to examine a copy of the license at the address below.

FOR FURTHER INFORMATION CONTACT: John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235 (202) 653–8257.

Dated: September 7, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84–24185 Filed 9–12–84; 8:45 am]

BILLING CODE 3510–12–M

Deep Seabed Mining; Issuance of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of exploration license to Ocean Minerals Company subject to terms, conditions, and restrictions.

Pursuant to the Deep Seabed Hard Mineral Resources Act and 15 CFR Part 970, the National Oceanic and Atmospheric Administration on August 29, 1984 issued to Ocean Minerals Company, 465 Bernardo Avenue, Mountain View, California 94043 a license to engage in deep seabed mining exploration activities subject to terms, conditions, and restrictions, for a site designated USA–1 which is located in the Clarion-Clipperton Fracture Zone of the Northeastern Equatorial Pacific Ocean. Interested persons are permitted to examine a copy of the license at the address below.

FOR FURTHER INFORMATION CONTACT: John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Dated: September 7, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84–24186 Filed 9–12–84; 8:45 am]

BILLING CODE 3510–12–M

Deep Seabed Mining; Issuance of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of exploration license to Ocean Management Inc., subject to terms, conditions, and restrictions.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act and 15 CFR Part 970, the National Oceanic and Atmospheric Administration on August 29, 1984 issued to Ocean Management, Inc, One New York Plaza, New York, N.Y. 10004 a license to engage in deep seabed mining exploration activities subject to terms, conditions, and restrictions, for a site designated USA–2 which is located in the Clarion-Clipperton Fracture Zone of the Northeastern Equatorial Pacific Ocean. Interested persons are permitted to examine a copy of the license at the address below.

FOR FURTHER INFORMATION CONTACT: John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Dated: September 7, 1984.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84–24187 Filed 9–12–84; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395–7231. Copies of the submission are available from Joseph Salazar, Agency Clearance Officer, (202) 254–9735.

Title: Large Trader Reports
Form No.: CFTC 01–60 through 01–69, 01–74, 01–77, 01–78, 204, 304, 504, 604, 102, 40, 103A and 103B
Action: Extension
Respondents: Businesses (excluding small businesses)
Estimated annual burden: 46,270
Estimated number of respondents: 4,157.

Issued in Washington, D.C. on September 7, 1984.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84–24176 Filed 9–12–84; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities To Be Evaluated for Possible Conversion to Contract

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: The Air Force recently announced additional activities to be evaluated for possible conversion to contract. Cost studies, where required, will commence no sooner than 30 days after the date of this announcement. A summary of the installations and activities follows: Beale AFB, CA—PAVE PAWS Comm Equip Maint, PAVE PAWS Support; Cape Cod AFS, MA—PAVE PAWS Comm Equip Maint, PAVE PAWS Support; Eglin AFB, FL—Radar Comm Equip Maint-FPS 85, Radar Complex Spt-FPS 85.

FOR FURTHER INFORMATION CONTACT: Major Mel Martocchia, Telephone (202) 697–4935. For information concerning specific activities, contact the installations involved.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84–24165 Filed 9–12–84; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement on the Central and Southern Florida Water Supply Study

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The considered project will consist of structural and/or operational means of augmenting, conserving, and conveying water within the Central and Southern Florida Flood Control Project to meet the future needs of agricultural and urban areas and Everglades National Park.

2. The following alternatives or combinations thereof will be considered.

a. Increased storage within Lake Okeechobee and/or the Water Conservation Areas (WCA's).

b. Backpumping from canals into the WCA's.

c. Increased canal conveyance.

d. A flow-through system in the WCA's.

e. Deep-aquifer storage and retrieval.

f. Desalination.

3. a. Public involvement to date has included a Public Meeting on 2 March 1977 and numerous agency technical workshops. Comments on alternatives and environmental concerns have been solicited by letters to Federal and State agencies. Public input on issues has been received in conjunction with several related Corps actions in the area recently. A final Public Meeting is expected in FY 1986. Further participation is invited from any interested parties.

b. Significant issues to be analyzed in depth in the DEIS are as follows:

(1) Impact of hydrologic change on fish and wildlife resources in Everglades National Park, East Everglades, WCA's, and Lake Okeechobee.

(2) Impact of altered hydrology on private land owners and agricultural interests.

(3) Water supply effects on municipal and industrial users.

c. Coordination with appropriate Federal and State agencies is required under provisions of the Endangered Species Act and the National Historic Preservation Act.

4. A Scoping meeting is not contemplated.

5. The DEIS is expected to be available for review in FY 1986.

ADDRESS: Questions about the proposed action and DEIS may be referred to Dr. Jonathan Moulding, Environmental Studies Section, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232–0019. Telephone 791–2286.

Dated: August 24, 1984.

Charles T. Myers III,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84–24172 Filed 9–12–84; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 4 and 5, 1984.

ADDRESS: 1200 19th Street NW, Room 823, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: John W. Christensen, Executive Director, 1200 19th Street NW (Brown Building), Room 717–C, Washington, DC 20208. Telephone (202) 254–8227.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics and is responsible for establishing standards to insure tht statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes:

A report on the National Assessment of of Education Progress (NAEP).

A review of the clearance process for NCES data collection instruments and publication activities.

A review of recommendations of the *Alliance for Excellence* report—emphases on data quality and measurement needs.

A report on the progress of a study to evaluate and recommend improvements in the quality of NCES data and analyses.

Such old business and new business as the Chairman or membership may put before the Council.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Executive Director, Advisory Council on Education Statistics, 1200 19th Street NW (Brown Building), Room 717–C, Washington, DC 20208.

Dated: September 7, 1984.

Donald J. Senese,

Assistant Secretary for Education Research and Improvement.

[FR Doc. 84–24148 Filed 9–12–84; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Application Notice for New Awards for Fiscal Year 1985 Under the Fulbright-Hays Training Grant Programs; Faculty Research Abroad, Foreign Curriculum Consultants, Group Projects Abroad, and Doctoral Dissertation Research Abroad Programs

Applications are invited for new awards under the Fulbright-Hays Training Grant Programs for Fiscal Year 1985. The Fulbright-Hays Training Grants Programs include the Faculty Research Abroad, Foreign Curriculum Consultants, Group Projects Abroad, and Doctoral Dissertation Research Abroad programs. Authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2450(b)(6)).

The Faculty Research Abroad Program offers opportunities to faculty members of institutions of higher education for research and study abroad in modern foreign languages and area studies.

The Foreign Curriculum Consultants Program brings specialists from other countries to the United States as resource persons for an academic year to assist selected institutions in planning and developing curricula in modern foreign languages and area studies.

The Group Projects Abroad Program provides grants to educational institutions or nonprofit educational organizations for training, research, and study abroad in modern foreign languages and area studies by groups of individuals engaged in a common endeavor.

The Doctoral Dissertation Research Abroad Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Closing date for transmittal of applications: An application for a grant must be mailed or hand-delivered by November 16, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.019, Faculty Research Abroad Program; 84.020, Foreign Curriculum Consultants Program; 84.021, Group Projects Abroad Program; 84.022, Doctoral Dissertation Research Abroad Program; 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Eligible applicants: For the Faculty Research Abroad and Doctoral Dissertation Research Abroad programs, eligible applicants include institutions of higher education.

For the Foreign Curriculum Consultants Program, eligible applicants include institutions of higher education, State and local educational agencies, private nonprofit educational organizations, and consortia of those institutions and agencies.

For the Group Projects Abroad Program, eligible applicants include insitutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of those institutions, departments, and organizations.

Program information: Applications will be evaluated in accordance with the selection criteria contained in the regulations for these programs published in the **Federal Register** on December 19, 1983 (48 FR 56182–56193). These criteria are found in 34 CFR 663.32, 665.31, 664.31, and 662.32, respectively, for the Faculty Research Abroad, Foreign Curriculum Consultants, Group Projects Abroad, and Doctoral Dissertation Research Abroad programs.

Funding priorities: The regulations for these programs permit the establishment of funding priorities. Under §§ 662.32, 663.32, 664.31, 665.31 of the regulations, projects which address the priorities may receive additional points in the evaluation process. The following priorities have been established by the Secretary for the Faculty Research Abroad and Doctoral Dissertation Research Abroad programs for Fiscal Year 1985 and will receive five additional points in the evaluation process:

(1) Priority will be accorded within the Western Hemisphere to projects that focus upon the Caribbean Basin including Central America and the island nations of the Caribbean Sea, and that are in the disciplines of economics, geography, history of the nineteenth and twentieth centuries (except for Mexico), political science, sociology, and languages and literatures of peoples whose languages are not commonly taught in institutions of higher education in the United States.

(2) For the Faculty Research Abroad Program, the Group Projects Abroad Program, and the Doctoral Dissertation Research Abroad Program, the Secretary has determined that projects focusing on Western Europe will not be funded.

Available funds: The Administration's budget for Fiscal Year 1985 does not request an appropriation of U.S. dollars or special foreign currencies for any of the Fulbright-Hays Training Grant programs. However, it is estimated that up to $1,316,000 from the Fiscal Year 1984 special foreign currency appropriation, which is available until expended, will be available for these programs in Fiscal Year 1985.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Since the level of appropriations for these programs has not been established by the Congress and the President, it is not possible to provide data on the amount of funds available. Pending resolution of the final level of appropriations, applications are invited for all programs to allow sufficient time for evalution of the applications and to complete the grants process prior to the end of the fiscal year. The unusually lengthy time required to review applications for these programs in the United States and abroad and to recruit qualified foreign educators for the Foreign Curriculum Consultants Program makes this notice necessary at this time.

Application forms: Application forms and program information packages are available for mailing. They may be obtained by writing to the Center for International Education, Office of Postsecondary Education, U.S. Department of Education (Room 3923, ROB–3), Mail Stop 3225, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that applicants not submit information that is not requested. These forms are approved under the Paperwork Reduction Act of 1980. (Approved OMB Control Numbers 1840–0005 and 1840–0068.)

The program information package is intended to aid applicants in applying for assistance under this competition. Nothing in the program information pacakage is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under statute and regulations governing the competition.

Applicable regulations: Regulations applicable to these programs include the following:

(a) Regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies, 34 CFR Parts 662, 663, 664, and 665.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further information: For further information, contact Mrs. Marion Kane (Faculty Research Abroad Program), telephone (202) 245–2761; Mrs. Gwendolyn Lark (Foreign Curriculum Consultants Program), (202) 245–2794; Mr. Ralph Hines (Group Projects Abroad Program), (202) 245–2794; Mr. John Paul (Doctoral Dissertation Research Abroad Program), (202) 245–2761; Department of Education, Mail Stop 3225, 400 Maryland Avenue, SW., Washington, D.C. 20202.

(22 U.S.C. 2452(b)(6))

(Catalog of Federal Domestic Assistance No. 84.019, Faculty Research Abroad Program; No. 84.020, Foreign Curriculum Consultants Program; No. 84.021, Group Projects Abroad Program; No. 84.022, Doctoral Dissertation Research Abroad Program)

Dated: September 4, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 24213 Filed 9–12–84; 8:45 am]

BILLING CODE 4000–01–M

Undergraduate International Studies and Foreign Language Program; Application Notice for New and Noncompeting Continuation Projects for Fiscal Year 1985

Applications are invited for new and noncompeting continuation projects under the Undergraduate International Studies and Foreign Language Program.

Authority for this program is contained in Title VI, Section 604, of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1124)

The Undergraduate International Studies and Foreign Language Program issues awards to institutions of higher education, consortia of such institutions, and public and nonprofit private agencies and organizations, including professional and scholarly associations. The purpose of the awards is to—

(a) Assist institutions of higher education and consortia of such institutions, to plan, develop, and carry out a comprehensive program to strengthen and improve undergraduate instruction in international studies and foreign languages; and

(b) Assist associations and organizations to develop projects that will make an especially significant contribution to strengthening and improving undergraduate instruction in international studies and foreign languages.

Closing date for transmittal of applications: (1) An application for a new grant must be mailed or hand delivered by November 16, 1984. (2) An application for a noncompeting continuation grant, to be assured of consideration for funding, should be mailed or hand delivered by January 11, 1985. If the application for a noncompeting continuation grant is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.016 (Undergraduate International Studies and Foreign Language Program), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new grant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered should be taken to the U.S. Department of Education, Application Control Center, (Room 5673, Regional Office Building 3), 7th and D Streets, S.W., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new grant that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: Information regarding this program is contained in the International Education Programs General Provisions Regulations and the Undergraduate International Studies and Foreign Language Program Regulations, 34 CFR Parts 655 and 658. Information regarding the continuation of noncompeting continuation awards is contained in the Education Department General Administrative Regulations, EDGAR, 34 CFR 75.253.

Application topics for new projects: Applications will be accepted in Fiscal Year 1985 for new projects in all categories included in the program regulations. The Secretary encourages applications designed to promote excellence in education and provide leadership in developing more effective learning strategies in international education and modern foreign language training. The Secretary further encourages applications which demonstrate the active involvement of the institution's administration in program design and implementation, and provide evidence that the project will continue without Federal assistance after the grant terminates. More specifically, the Secretary encourages new projects in the following categories:

(1) Projects initiated by institutions of higher education and consortia of such institutions, which can serve as exemplary or model projects for other higher education institutions, particularly in the field of teacher education.

(2) Projects initiated by organizations and associations which will make a significant contribution to strengthening and improving undergraduate instruction in international studies and foreign languages.

(3) Projects that use Federal dollars in partnership with institutional and private sector funding.

(4) Projects that strengthen the acquisition of basic and higher level skills in modern foreign languages, and in disciplines such as history, anthropology, economics, and the geography of the areas where such foreign languages are spoken.

(5) Projects that strengthen the acquistion of knowledge and skills in professional fields with an international component, such as agriculture, business, education, and journalism, or that develop skills for the analysis of critical issues such as economic development, technology utilization, national security, or international trade.

(6) Projects that utilize computers to implement more effective means of teaching modern foreign languages, and for the collection and analysis of information about critical international issues.

Because of the planning time required to develop and implement new curricula in modern foreign languages, and to develop curricula that strengthen skills in international fields of study, the Secretary of Education is accepting applications for new projects of up to two years for a single institution, and up to three years for consortia.

Available funds: The Administration's budget for Fiscal Year 1985 does not include funds for the Undergraduate International Studies and Foreign Language Program. Since the level of appropriations for this program has not been established, it is not possible to provide data on the amount of funds available. However, applications are being invited to allow for sufficient time to evaluate applications and complete the grant process, should Congress appropriate funds for this program.

Application forms: Application forms and program information packages are expected to be ready for mailing by September 19, 1984. They may be obtained by writing to Mrs. Susanna C. Easton, International Studies Branch, International Education Programs, U.S. Department of Education, (Room 3916, Regional Office Building 3), 7th and D Streets, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary suggests that the narrative portion of the application not exceed 35 pages in length. The Secretary further urges that applicants not submit information that is not requested.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition. These program forms are approved under the Paperwork Reduction Act of 1980. (Approved by the Office of Management and Budget under Control Number 1840–0068)

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78.

Further information: For further information, contact Mrs. Susanna C. Easton, International Studies Branch, International Education Programs, U.S. Department of Education (Room 3916, Regional Office Building 3), 7th and D Streets., S.W., Washington, D.C. 20202. Telephone: (202) 245–2794.

(20 U.S.C. 1124).

(Catalog of Federal Domestic Assistance Number 84.016—Undergraduate International Studies and Foreign Language Program)

Dated: September 4, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84–24212 Filed 9–12–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Pursuant to 10 CFR 600.7(b), the DOE announces that it intends to award on a restricted eligibility basis a grant providing support to the 1984 conference on "Arctic Engineering in the 21st Century." The emphasis and focus of the conference is on long-term (1995–2010) engineering development the Arctic. The conference will be sponsored by the Marine Technology Society during October 15–17, 1984. The DOE support for this effort is not to exceed $20,000 in 1984.

Procurement request number: 01–84FE60550.

Project scope: The Arctic conference is designed to explore technological aspects of 21st Century operations, encouraging the exchange of data reviews and perspectives on future options for engineering in the Arctic. The broad spectrum of environmental constraints to coastal and offshore arctic operations will be contrasted with innovative engineering design and probable technological developments.

FOR FURTHER INFORMATION CONTACT: Linda S. Sapp, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Issued in Washington, D.C. on August 31, 1984.

Berton J. Roth,

Director, Procurement and Assistance, Management Directorate.

[FR Doc. 84–24177 Filed 9–12–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA85–1–31–000 and TA85–1–31–001]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

September 7, 1984.

Take notice that on August 31, 1984 Arkansas Louisiana Gas Company (Arkla) tendered for filing 37th Revised Sheet No. 4 and 10th Revised Sheet No. 4A to its FERC Gas Tariff First Revised Volume No. 1, Rate Schedule No. G–2, to become effective October 1, 1984.

Arkla states that the purpose of 37th Revised Sheet No. 4 is to reflect the projected cost of purchased gas for the six months period commencing October 1, 1984, recover or refund the accumulated deferred purchased gas costs and transportation costs as of June, 1984 and set forth the reduced PGA and estimated incremental pricing surcharges to be billed during the PGA period as contained on 10th Revised Sheet No. 4A effective October 1, 1984.

Arkla also states that a copy of the revised tariff sheets and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24130 Filed 9–12–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–1–31–002]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

September 7, 1984.

Take notice that on August 31, 1984 Arkansas Louisiana Gas Company (Arkla) tendered for filing 36th Revised Sheet No. 185 and 10th Revised Sheet No. 185A to its FERC Gas Tariff First Revised Volume No. 3, Rate Schedule No. X–26, to become effective October 1, 1984.

Arkla states that the purpose of 36th Revised Sheet No. 185 is to (1) reflect the projected cost of purchased gas for the six months period commencing October 1, 1984, (2) recover or refund accumulated deferred purchased gas costs and transportation costs as of June 30, 1984, and (3) set forth the reduced PGA and estimated incremental pricing surcharges to be billed during the PGA period as contained on 10th Revised Sheet No. 185A effective October 1, 1984.

Arkla also states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's judisdictional customers and other interested parties affected by this tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24131 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

Docket No. ER84-595-000]

Baltimore Gas and Electric Co.; Filing

September 7, 1984.

Take notice that on August 10, 1984, Baltimore Gas and Electric Company (BG&E) submitted for filing a letter agreement dated August 6, 1984, between BG&E and Public Service Electric and Gas Company (PSE&G), with attachments of the existing agreement between PSE&G and BG&E, dated August 10, 1983.

The Letter Agreement extends the term of a one-year period ending August 11, 1985, pursuant to the terms of the agreement dated August 10, 1983 that provided that the term of the agreement was subject to annual renewal by mutual consent.

The agreement of August 19, 1983 provides for PSE&G to purchase BG&E's utilized share of the capability of the 500 kV EHV System in importing energy from systems to the west of the Pennsylvania-New Jersey-Maryland Interconnection. The agreement dated August 10, 1983 was previously accepted for filing by the Commission.

Any person desiring to be heard or to protest said filing should file a Petition to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24132 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-34-000 and TA85-1-34-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 7, 1984.

Take notice that on August 31, 1984, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790 tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff to be effective October 1, 1984.

First Revised Volume No. 1

1st Revised Sheet No. 8
1st Revised Sheet No. 9
1st Revised Sheet No. 10
2nd Revised Sheet No. 43
2nd Revised Sheet No. 44

Original Volume No. 2

24th Revised Sheet No. 128

Reason for Filing

1st Revised Sheet No. 8 and 24th Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3 respectively to:

(i) Adjust the Primary adjustment to reflect changes in the average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges; and

(ii) Adjust the Balancing adjustment to amortize over the six-month adjustment period, the balance in the current period Unrecovered Purchase Gas Cost Account as of June 30, 1984.

1st Revised Sheet No. 9 contains the estimated incremental pricing surcharges for the adjustment period.

The above-mentioned changes are being made pursuant to Section 15 (Purchase Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 (as revised below) and § 154.38 *et seq.* of the Commission's Regulations (18 CFR 154.38, *et seq.*)

2nd Revised Sheets Nos. 43 and 44 are being filed to revise Section 15.5 of the General Terms and Conditions to specify that the calculation of the projected cost of gas be based on six month volumes instead of twelve months as currently provided.

In accordance with the Commission's Order No. 380 (Docket No. RM83-71-000) issued on May 25, 1984, 1st Revised Sheet No. 10 is being filed to eliminate from the minimum bill provision for Rate Schedule G "variable costs associated with gas not taken by Buyer".

FGT's filing also reflects a credit to Account 191.1 in the amount of $5,000,000, plus interest, attributable to the settlement in FERC Docket No. IN78-2.

The net effect of the adjustments being filed for Rate Schedules G and I is to increase the currently effective rate by 1.850¢/therm. Based on estimated G and I sales for the next 12 months, this results in an annual revenue increase of approximately $15,473,000. The net effect on the adjustments being filed for Rate Schedule T-3 is an increase of 1.07¢/Mcf. The annual effect on revenues from Rate Schedule T-3 is an increase of approximately $562,000.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested State Commissions and is being posted.

Any person desiring to be heard or to make any protests with reference to said filing should on or before September 13, 1984, file with the Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties in the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24133 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2124-000]

John J. Maloy, Jr.; Application

September 7, 1984.

Take notice that on August 27, 1984, John J. Maloy, Jr. filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Assistant Treasurer: Kentucky Utilities Company

Assistant Treasurer: Old Dominion Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 19, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24134 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-614-000]

Mississippi Power & Light Co.; Filing

September 7, 1984.

The filing Company submits the following:

Take notice that on August 23, 1984, Mississippi Power & Light Company (MP&L) tendered for filing a fully executed agreement for establishment on an additional SMEPA off-system delivery point dated December 23, 1983, between MP&L and South Mississippi Electric Power Association (SMEPA). This Agreement supplements the interchange agreement entered into between MP&L and SMEPA July 18, 1979, and filed with the Commission in FERC Docket No. ER79-529. Under that Interconnection Agreement, MP&L agreed to transmit capacity and energy over MP&L's transmission system from SMEPA facilities to SMEPA off-system delivery points. The December 23, 1983 Agreement establishes an additional off-system delivery point to which SMEPA capacity and energy is to be transmitted over MP&L's transmission system. The proposed change does not affect the present level of billings or service rendered by MP&L to SMEPA under the service schedules of the MP&L-SMEPA International Agreement.

To the extent necessary, MP&L requests waiver of the Commission's notice requirements to permit this Agreement to become effective as of December 23, 1983.

A copy of this filing has been mailed to SMEPA and to the Mississippi Public Service Commission, according to MP&L.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 20, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24135 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-652-001]

Niagara Mohawk Power Corp.; Refund Report

September 7, 1984.

Take notice that on August 15, 1984, Niagara Mohawk Power Corporation (Niagara Mohawk) submitted for filing its compliance refund report pursuant to a Commission's order issued July 3, 1984.

Niagara Mohawk states that it submitted this report of the refund and interest on the refund for the transmission charges to the Power Authority of the State of New York (PASNY) under the approved settlement.

Niagara Mohawk further states that the refund of $510,875.69, which has been tendered to PASNY, was based on the difference in transmission charges between the approved amount of $1.38 per Kw month for transmission service above 50 Kv and $1.78 per Kw per month for transmission service below 50 Kv and the billed rate of $1.45 per Kw for service below 50 Kv for the period beginning April 1, 1984. Also included was the difference in the energy transfer charges between the approved amount of $1.89 per Mwh and the billed rate of $1.99 per Mwh for the period beginning November 2, 1983.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions of protests should be filed on or before September 19, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24136 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST84-1210-000]

Oklahoma Natural Gas Co., a Division of ONEOK, Inc. and ONG Western, Inc.; Rate Application

September 7, 1984.

Take notice that on August 31, 1984, Oklahoma Natural Gas Company, a division of ONEOK, Inc. and ONG Western, Inc. (hereinafter referred to as Oklahoma Natural) tendered for filing an "Application For Approval Of Rates." These rates are to be charged by Oklahoma Natural in connection with the transportation of natural gas on behalf of Natural Gas Pipeline Company of America. The daily quantities to be transported will be approximately 20,000 MMBtu with the total quantities anticipated to be delivered during the term of the arrangement of approximately 14,600,000 MMBtu. Oklahoma Natural proposes to charge a transportation fee of ten cents ($.10) per MMBtu.

Oklahoma Natural states that it has filed a copy of this application with the Oklahoma Corporation Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions of protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24137 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-39-000 and TA85-1-39-001]

Pacific Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

September 7, 1984.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on August 31, 1984, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Twenty-fifth Revised Sheet No. 4
Ninth Revised Sheet No. 4-A
Twenty-first Revised Sheet No. 3

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provision as set forth in Sections 16 and 17, respectfully, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is October 1, 1984.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed October 1, 1984 Pacific Interstate Rate Schedule S-G-1 commodity rate of 256.22¢ per decatherm, an increase of 36.29¢ per decatherm from 219.93¢ per decatherm rate effective April 1, 1984, the date of the last S-G-1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and change in the Surcharge Adjustment.

Pacific Interstate states that the Current Gas Cost Adjustment is based on an annualized gas cost decrease of $6,730 and that the Surcharge Adjustment is designed to amortize over a six-month period beginning October 1, 1984 an amount of $11,500.09, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost account at June 30, 1984. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24138 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-613-000]

PacifiCorp, Doing Business as Pacific Power & Light Co.; Filing

September 7, 1984.

The filing Company submits the following:

Take notice that on August 23, 1984 PacifiCorp, doing business as Pacific Power & Light Company (Pacific), tendered for filing an Interconnection and Sales Agreement (Agreement), dated July 31, 1984, between Pacific and Pacific Gas and Electric Company (PGandE).

Pacific states that the Agreement provides for the sale of firm energy by Pacific to PGandE, and the installation of certain facilities to accommodate the sale.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24139 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-615-000]

Puget Sound Power & Light Co.; Filing

September 7, 1984.

The filing Company submits the following:

Take notice that on August 23, 1984 Puget Sound Power & Light Company (Puget) tendered for filing an proposed changes in its FPC Electric Tariff Original Volume No. 3. The schedule provides that non-firm energy will be sold at such times and in such amounts as the Company in its sole discretion determines. Therefore, estimates of transactions or revenues under this schedule would not be applicable and would be impossible to make.

Puget states that the proposed change in the rate schedule is to reflect actual costs of Puget's Colstrip Unit #3 thermal resource.

Puget requests an effective date of July 25, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24140 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA-85-1-7-000 and TA85-1-7-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 7, 1984.

Take notice that Southern Natural Gas Company (Southern) on August 31, 1984, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective October 1, 1984. Such filing is pursuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes reflect a net increase in Southern's rates of approximately 17.74¢ per Mcf as a result of the following items:

(1) A current Adjustment pursuant to section 17.3 of the General Terms and Conditions of Southern's tariff, reflecting an annual increase in the cost of purchased gas to jurisdictional customers of $65,851,870 or approximately 14.018¢ per Mcf.

(2) A Surcharge Adjustment for unrecovered purchased gas cost of 8.341¢ per Mcf, which is an increase of 3.709¢ per Mcf from the present Surcharge Adjustment. This Surcharge Adjustment includes a negative rate surcharge to flow through over a twelve-month period beginning April 1, 1984, refunds received from Gulf Oil Corporation and Exxon Company, U.S.A. in accordance with the Commission's order issued February 29, 1984, in *Southern Natural Gas Co.*, Docket No. TA84-1-7-002.

(3) A Surcharge Adjustment for estimated Demand Charge Credits pursuant to Section 9.6(3) of the General Terms and Conditions of Southern's tariff of (.009¢) per Mcf, which reflects an increase of .012¢ per Mcf from the present DCC Surcharge Adjustment.

Pursuant to § 282.602(a)(1)(ii) of the Commission's Regulations, Southern is also filing Tenth Revised Sheet No. 45R with a proposed effective date of October 1, 1984. Such tariff sheet reflects Southern's projected incremental pricing surcharge for the six-month period beginning October 1, 1984, to be zero.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24142 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-42-000 and TA85-1-42-001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 7, 1984.

Take notice that Transwestern Pipeline Company (Transwestern) on August 31, 1984 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

Twenty-sixth Revised Sheet No. 5
Twenty-fifth Revised Sheet No. 6
Tenth Revised Sheet No. 6A

The above tariff sheets are issued pursuant to Transwestern's Purchased Gas Cost Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected in these sheets is a decrease of $.4043/dth.

The rate change therein consists of:

(1) A decrease in the cost of Gas Adjustment of $.2920/dth based upon decreases in the projected gas costs; and

(2) A decrease in the Surcharge Adjustment of $.1123/dth due to a decrease in the balance in the Gas Cost Adjustment Account as of December 31, 1983.

The Incremental Pricing Surcharges for the months of October, 1984 through March, 1985 are projected to be zero. The maximum surcharge absorption capability on Transwestern's system is and has been insignificant in comparison to Transwestern's incremental acquisition costs. The supplemental analysis of those incremental acquisition costs required by § 282.602(d)(2)(i) of the Regulations is, therefore, of no practical meaning. On the other hand, preparation of the supplemental analysis is extremely burdensome administratively and is exceedingly voluminous because it requires a compilation of purchases from over 1,200 separate contracts. Accordingly, to prevent the unnecessary and substantial expenditure of resources associated with preparation of a report which has no practical significance, Transwestern respectfully submits that good cause has been shown for waiver of § 282.602(d)(2)(i) of the Regulations to permit Transwestern to forgo preparation of the supplemental analysis of incremental acquisition costs.

Also, in accordance with the Commission's Order Nos. 380 and 380A, Transwestern has reflected on the above listed tariff sheets the purchased gas cost separately from all other charges for those rate schedules containing commodity minimum bill provisions.

The proposed effective date of the above tariff sheets is October 1, 1984.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24143 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-40-000]

The United Illuminating Co.; Petition for Commission Disclaimer of Jurisdiction

September 7, 1984.

Take notice that on August 23, 1984, the United Illuminating Company (UI) submitted for filing its petition for the Commission's disclaimer of jurisdiction pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.

UI requests that this Commission determine that it (the Commission) does not have jurisdiction over (1) the sale by UI of a generating unit known as the Bridgeport Harbor Unit No. 3 (a fossil-fired generating unit located at UI's Bridgeport Harbor Plant in Bridgeport, Connecticut) to its wholly owned subsidiary, Bridgeport Electric Company ("BRECO") and (2) the lease-back of the Bridgeport Harbor Unit No. 3 by UI from BRECO, and (3) UI's acquisition of securities of BRECO as a portion of the purchase price of the Bridgeport Harbor Unit No. 2. UI also petitions the Commission to determine that, after the completion of the sale, the Commission will not have jurisdiction over BRECO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211, and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24141 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-612-000]

Virginia Electric and Power Co.; Filing

September 7, 1984.

The filing Company submits the following:

Take notice that on August 20, 1984, Virginia Electric and Power Company (Vepco) filed riders to implement the initial results of its Performance Incentive Provision approved by the Commission in Docket No. ER82-423-000. Vepco states that the riders have been approved by its wholesale customers.

Copies of the riders were served upon all of Vepco's jurisdictional wholesale customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordanc[illegible]th Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24144 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-565-000]

Yankee Resources, Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity, Limited Partial Abandonment Authorization and Declaration of Limited Jurisdiction

September 7, 1984.

Take notice that on August 24, 1984, Yankee Resources, Inc. ("Yankee") 425 Metro Place North, Suite 400, Dublin, Ohio 43017, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing Yankee to conduct a short-term spot sales marketing program, hereinafter referred to as Yankee Exchange Service ("YES"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would: (1) Authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in YES; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. Yankee also requests the Commission to declare that, with respect to Yankee and its questions, the Commission will only assert Natural Gas Act jurisdiction over sales for resale and the transportation not otherwise exempt from the NGA.

Under YES, Yankee proposes to sell on a spot basis natural gas qualifying for the section 102, 103, 107, and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432. Only contractually committed gas will be sold. Yankee and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for spot sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 19, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24145 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-623-000]

Centel Corp.; Filing

September 10, 1984

The filing Company submits the following:

Take notice that on August 27, 1984, Southern Colorado Power Division on behalf of Centel Corporation (Centel) tendered for filing Electric Rate Adjustment No. 1 applicable to sales of power and energy to the City of Las Animas. Adjustment No. 1 reflects increased rates charted by Southern Colorado's Power's supplier and results in an increase in revenues from sales to Las Animas of $44,680.

Centel requests an effective date of January 1, 1981, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the City of Las Animas and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24231 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-624-000]

Centel Corp.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, Southern Colorado Power Division (Southern Colorado Power) on behalf of Centel Corporation (Centel) tendered for filing Electric Rate Adjustment No. 2 applicable to sales of power and energy to the City of Las Animas. Adjustment No. 2 reflects increased rates charged by Southern Colorado Power's supplier and results in an increase in revenues from sales to Las Animas of $133,200.01.

Centel proposes an effective date of June 18, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the City of Las Animas and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825, North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24232 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-571-000]

Champlin Petroleum Co.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

September 10, 1984

Take notice that on August 27, 1984, Champlin Petroleum Company (Applicant), 801 Cherry Street, Fort Worth, Texas 76102, filed an application, pursuant to sections 4 and 7 of the Natural Gas Act and the Commission's Regulations thereunder, for limited partial abandonment authorization and a Blanket Limited-Term Certificate of Public Convenience and Necessity authorizing Applicant to conduct a short-term spot sales marketing program, hereinafter referred to as the Champlin Special Marketing Program (CSMP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of certain natural gas by Applicant for resale in interstate commerce; (2) permit temporary partial abandonment of certain natural gas sales; (3) confer pregranted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the CSMP; and (5) confer pregranted abandonment authorization for the transportation service allowed under the requested certificate. This authority is necessary for implementing a short-term experimental spot sales marketing program of gas, or transportation thereof, which is subject to NGA jurisdiction. Under the CSMP, Applicant proposes to sell on a spot basis contractually committed natural gas qualifying for the section 102, 103, 107 or 108 rate under the Natural Gas Policy Act of 1978. Applicant will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales made under the CSMP. Releasing purchasers will be given relief from take-or-pay liability for any volumes of gas released and sold under the CSMP.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 21, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214), and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24233 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-619-000]

Consolidated Edison Company of New York, Inc.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 24, 1984, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing as an initial rate schedule an agreement to provide interruptible transmission service to Orange & Rockland Utilities, Inc. (O&R). The agreement provides for a change of 2.6 mills per kilowatthour for transmission of power purchased by O&R from Northeast Utilities.

Con Edison requests an effective date of August 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon O&R.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24235 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-625-000]

Consolidated Edison Company of New York, Inc.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 60, an agreement to provide transmission service to the Power Authority of the State of New York (the "Authority"). The Supplement provides for an increase in the monthly transmission charge of $0.84 to $1.12 per kilowatt for transmission of power and energy sold by the authority to Brookhaven National Laboratory. The Supplement would increase annual revenues from jurisdictional service during Period I by $95,175.36.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-24236 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4579-029, et al.]

Cities Service Oil and Gas Corp. et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates[1]

September 10, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 20, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft^3	Pressure base
G-4579-029, D, Aug. 22, 1984	Cities Service Oil & Gas Corporation, P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Company, Section 12-4-N-12ECM, Texas County, OK.	(1)	
G-4579-030, D, Aug. 27, 1984	do	Northern Natural Gas Company, Section 3-31S-32W, Seward County, KS.	(2)	
G-11584-000, July 31, 1984	Sun Exporation and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, Jameson Field, Coke, Sterling and Mitchell Counties, TX.	(3)	
CI61-613-001, D, Aug. 22, 1984	Shell Western S&P Inc., P.O. Box 4684, Houston, TX 77210.	Northern Natural Gas Company, Hugoton field, Grant, Kearny and Stevens Counties, KS.	(4)	
CI65-517-000, D, Aug. 20, 1984	Shell Western E&P Inc., P.O. Boix 4684, Houston, TX 77210.	Valley Gas Transmission Inc., West Hackberry Field, Cameron Parish, LA.	(5)	
CI65-517-001, D, Aug. 27, 1984	do	Valley Gas Transmission Inc., Black Bayou Field, Cameron Parish, LA.	(6)	
CI65-739-004, D, Aug 27, 1984	do	ANR Pipeline Company, Kings Bayou Field, Cameron Parish, LA.	(7)	
CI76-646-004, Aug. 17, 1984	Getty Oil Company, Post Office Box 1404, Houston, TX 77251.	Tennessee Gas Pipeline Company, West Cameron Block 66, Offshore LA.	(8)	
CI77-24-003, D, Aug. 27, 1984	Champlin Petroleum Company, P.O. Box 1257, Englewood, CO 80150.	Panhandle Eastern Pipeline Company, Weld County, CO.	(9)	
CI78-923-001, E, Aug. 20, 1984	Phillips Petroleum Company (Successor In Interest To Phillips Oil Company), 336 HS&L Building, Bartlesville, OK 74004.	Tennessee Gas Pipeline Company, Ship Shoal Block, 167, Offshore LA.	(10)	14.73
CI79-110-000, E, Aug. 22, 1984	do	Transcontinental Gas Pipe Line Corporation, Vermilion Area Block 320 Field, Gulf of Mexico.	(11)	14.73
CI79-172-001, E, Aug 23, 1984	do	Transcontinential Gas Pipe Line Corporation, Block A-283, High Island Area, Gulf of Mexico.	(12)	14.73
CI81-53-002, E, Aug. 27, 1984	do	United Gas Pipe Line Company and Southern Natural Gas Company, West Cameron Area, Offshore Cameron LA.	(13)	14.73
CI81-56-002, E, Aug. 31, 1984	do	United Gas Pipe Line Company and Southern Natural Gas Company, West Cameron, Block 551, Offshore LA.	(14)	14.73
CI81-61-002, E, Aug. 27, 1984	do	United Gas Pipe Line Company and Southern Natural Gas Company, West Cameron, Block 560 Field, Cameron LA.	(15)	14.73
CI84-227-000 (G-11918), B, Feb. 27, 1984.	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston TX 77046.	United Gas Pipe Line Company, Iowa Field, Jefferson Davis and Calcasieu Parishes, LA.	(16)	
CI84-554-000, A, Aug. 20, 1984	Sequoia Associates Limited, 5400 Westheimer Court, Houston TX 77056.	Amoco Gas Company, Matagroda Island Block 624, Offshore TX.	(17)	14.73
CI84-558-000, A, Aug. 21, 1984	Samedan Oil Corporation, P.O. Box 909, Ardmore, OK 73402.	Michigan Wisconsin Pipe Line Company, E/2 Eugene Island Block 208, Offshore LA.	(18)	15.025
C-184-559-000, B, Aug. 20, 1984	Estate of Rushton L. Ardrey, 4816 St. Johns Drive, Dallas, TX 75205.	Phillips Petroleum Company, Geraldine Field, Reeves County, TX.	(19)	
CI84-560-000, B, Aug. 20, 1984	South Standard Mining Company, 1114 Walker Building, Salt Lake City, UT 84111.	Phillips Petroleum Company, Geraldine Field, Culberson county, TX.	(19)	

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI84-561-000 (CI67-222) B Aug. 20, 1984.	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Panhandle Eastern Pipe Line Company, S.E. Feldman Field, Hemphill County, TX.	(19)	
CI84-562-000 (CI73-750) B Aug. 20, 1984.	do	Arkansas Louisiana Gas Company, Ramp Penn Field, Hemphill County, TX.	(20)	
CI84-563-000 (CI73-536), B, Aug. 20, 1984.	Shell Western E&P Inc., P.O. Box 4684, Houston TX 77210	Montana-Dakota Utilities Co., Stateline Plant Area, Richland County, Montana and McKenzie County, North Dakota.	(21)	
CI84-567-000 (CI86-498), B, Aug. 22, 1984.	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, OK 74004.	Florida Gas Transmission Company, East White Point and Nueces Bay, Nueces and San Patricio County, TX.	(22)	
CI84-568-000, B, Aug. 27, 1984	William Moss Properties, Inc., 3303 Lee Parkway, Dallas TX 79219	Northern Natural Gas Company, MPF Field, Pecos County, TX.	(23)	
CI84-569-000, F, Aug. 27, 1984	Templeton Energy Income Corporation (Partial Successor In Interest To Forest Oil Corporation), 850 the Main Building, 1212 Main Street, Houston, TX 77002.	El Paso Natural Gas Company, Clear Lake Field, Beaver County, OK	(24)	
CI84-570-000, F, Aug. 27, 1984	do	Panhandle Eastern Pipe Line Company, N.W. Avard Field, Woods County, OK.	(25)	
CI84-572-000, B, Aug. 13, 1984	Gulf Oil Corporation, P.O. Box 2100 Houston, TX 77252.	Transcontinental Gas Pipe Line Corporation, Bayou Field, St. Charles Parish, LA.	(26)	
CI75-78-001, CI73-639-004, CI76-586-005, D, Aug. 3, 1984.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, TX 75221.	Southern Natural Gas Company, South Pass Block 67 Field, Offshore LA.	27	0
CI69-57-000, D, Aug. 21, 1984	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa OK 74102.	Tennessee Gas Pipeline Company, OCS Lease No. G-1087 (NW/4 East Cameron Block 83), Offshore LA.	(28)	
G-11046-002, D, Aug. 13, 1984	do	Tennessee Gas Pipeline Company, OCS Lease No. G-0187 (NW/4 East Cameron Block 83), Offshore LA.	(28)	

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[1] Royalty owner in the Shaffer "B" No. 1 well has requested that Applicant furnish natural gas for the purpose of fueling water pumping units in order to irrigate agriculture corps growing on lands encompassed in the Shaffer "B" No. 1 well proration unit. Gas purchaser has agreed to release gas for this high priority purpose subject to Commission approval.

[2] Royalty owner in the Burr "B" No. 1 Well has requested that Applicant furnish natural gas for the purpose of fueling water pumping units in order to irrigate agricultural crops growing on lands encompassed in the Burr "B" No. 1 Well proration unit. Gas purchaser has agreed to release gas for this high priority purpose subject to Commission approval.

[3] Applicant is filing to add acreage.

[4] Leases have been assigned to Tenneco Oil Company, which has filed to continue service

[5] Lease was assigned to Taylor Energy Company, effective October 1, 1983.

[6] Lease was partially released to the lessor, the State of Louisiana, on January 26, 1984.

[7] Leases have been released to lessors effective May 24, 1983

[8] Applicant is filing for additional delivery point

[9] Panhandle has released from the gas sales contract gas production from the #1 Burkhardt 32-3 and #4 Burkhardt 41-3 wells, Spindle Field, Weld County, Colorado

[10] Effective September 1, 1983, Phillips Oil Company assigned to Applicant its interest in the Ship Shoal Block 167, Offshore Louisiana.

[11] Effective December 1, 1983, Phillips Oil Company assigned to Applicant its interest in OCS-G-2089, Block 325, Vermilion Area Block 320 Field, Gulf of Mexico.

[12] Effective December 1, 1983, Phillips Oil Company assigned to Applicant, its working interest in OCS-G-2404, Block A-283, East Addition, South Extension, High Island Area, Gulf of Mexico

[13] Effective December 31, 1983, Phillips Oil Company assigned to Applicant its working interest in the West Cameron Area, Block 115 Field, Offshore, Cameron Parish, Louisiana.

[14] Effective December 31, 1983, Phillips Oil Company assigned to Applicant, its working interest in the West Cameron Area, Block 551, Offshore, Louisiana.

[15] Effective December 31, 1983, Phillips Oil Company assigned to Applicant, its working interest in OCS-G-3283, and produced from "A" Platform in Block 360, West Cameron Area, Offshore, Cameron Parish, Louisiana.

[16] The last wells were plugged and abandoned between December 23, 1980 and April 2, 1981 and the contract expired in accordance with its term provisions effective June 1, 1983

[17] Applicant is filing under Gas Purchase Contract dated August 7, 1984.

[18] Applicant is filing under Gas Purchase Contract dated October 7, 1968, via a Farmout Agreement dated April 17, 1983

[19] Purchaser (Phillips Petroleum Company) has discountinued operation of the Gathering System due to unprofitability

[20] Due to depletion of gas reserves, the unit well was plugged and abandoned and the leases expired.

[21] Plant has been sold to Utex Oil Company

[22] All leases have either been assigned or released.

[23] Gas sales declined drastically and Lovaca could not profitably operate their system

[24] Applicant, by Assignment and Bill of Sale dated June 13, 1984, effective March 1, 1984, acquired from Forest Oil Corporation the interest in the Barby Ranch Unit No. 1-11, Clear Lake Field, Beaver County, Oklahoma.

[25] Applicant, by Assignment and Bill of Sale dated June 13, 1984, effective March 1, 1984, acquired from Forest Oil Corporation the interest in the Fred O. Brinkley Lease situated in Section 29, T-27-N, R-15-W, Woods County, Oklahoma

[26] By assigned dated April 17, 1984, Gulf conveyed to Traillour Oil Company, March Engineering, Inc., and Rocky Mountain Resources, Ltd., its interest in the Bayou Couba Field, St Charles Parish, Louisiana.

[27] To permit the initiation of a new Enhanced Oil Recovery Project.

[28] OCS Lease No. G-1087 (NW/4 East Cameron Block 83), Offshore Louisiana expired April 2, 1984.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 84-24234 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-33-026]

El Paso Natural Gas Co.; Payment of Cash Settlement

September 7, 1984.

Take notice that on August 31, 1984, El Paso Natural Gas Company ("El Paso") tendered for filing, in compliance with paragraph 5.5 of Article V, *Cash Settlement*, of El Paso's Settlement Agreement filed January 16, 1984 at Docket Nos. TA82-2-33-000 and TA83-1-33-000 (Affiliated Entities) which was approved by the Federal Energy Regulatory Commission ("Commission") order issued May 4, 1984, a Report of Cash Settlement Made on August 1, 1984 to its affected interstate system gas customers entitled thereto.

El Paso states that a cash settlement, aggregating $8,000,000, exclusive of interest, was distributed in accordance with Article V of said Settlement Agreement.

EL Paso also states that copies of the applicable documents were served upon all of El Paso's affected interstate transmission system customers, all parties of record at Docket Nos. TA82-2-33-000 and TA83-1-33-000 (Affiliated Entities) and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before September 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24237 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP 84-50-003]

Granite State Gas Transmission, Inc., Tariff Filing

September 7, 1984.

Take notice that Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, on August 31, 1984, tendered for filing in its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets containing changes in rates and other tariff provisions for effectiveness on November 1, 1984:

First Revised Sheet No. 4
Eighth Revised Sheet No. 7
Original Sheet No. 7-A
First Revised Sheet No. 11
First Revised Sheet No. 12
First Revised Sheet No. 15
First Revised Sheet No. 51
First Revised Sheet No. 55
First Revised Sheet No. 61
First Revised Sheet No. 67
Second Revised Sheet No. 68
First Revised Sheet No. 69
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 72
First Revised Sheet No. 73
First Revised Sheet No. 74
First Revised Sheet No. 75
Original Sheet No. 75-A
Original Sheet No. 75-B
First Revised Sheet No. 76
Original Sheet No. 81
Original Sheet No. 82
Original Sheet No. 83
First Revised Sheet No. 112

Granite State also filed a revised Gas Sales Contract with Bay State Gas Company (Bay State) providing for an increase in firm daily deliveries from 64,141 Mcf a day to 83,640 Mcf a day, beginning November 1, 1984.

According to Granite State, the foregoing revised tariff sheets and the Gas Sales Contract are submitted in compliance with Article VI of the Stipulation and Agreement in settlement of Phase 1 of the proceedings in Boundary Gas, Inc., *et al.*, Docket Nos. CP81-107-000, *et al.*, approved by the Commission on February 2, 1984. (26 FERC ¶61,114) Granite State further states that the Phase 1 settlement approved the purchase of up to 40,000 Mcf a day of Canadian gas by Boundary Gas, Inc. from TransCanada PipeLines Limited and the resale at the border to four Firm Initial Service (FIS) customers, including Granite State which is allocated 9,814 Mcf a day. According to Granite State, the settlement also provided for firm transportation services by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) to deliver the imported gas to the Boundary Gas repurchasers and Granite State's gas supplies purchased from Boundary Gas will be delivered at an off-system delivery point for its account at Agawam, Massachusetts, where Tennessee's facilities connect with those of Bay State.

Granite State further states that the settlement in Phase 1 of the Boundary Gas, Inc. proceedings, *supra*, also authorized a long-term sale of up to 40,000 dt a day to the four FIS customers by Consolidated Gas Transmission Corporation (Consolidated) and that Granite State's allocated share in 9,814 dt a day and that this supply will be delivered to Granite State's market area in Massachusetts for resale to Bay State by firm connecting transportation services rendered by Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company which services were also authorized in the order approving the Phase 1 stipulation and Agreement.

Further, it is stated that Granite State's application in Docket No. CP84-50-000 was consolidated with the applications for certificates of public convenience and necessity in Phase 1 of the Boundary Gas proceedings and the order approving the settlement included authorization for Granite State to increase its firm sales to Bay State from 64,141 Mcf a day to 83,640 Mcf a day coincident with the commencement of the deliveries of the additional gas supplies from Boundary Gas and Consolidated and to file revised tariff provisions for its sales to Bay State in accordance with Article VI of the Stipulation and Agreement.

According to Granite State, the filing proposes increased rates for firm service to Bay State, effective November 1, 1984 reflecting the increased costs that Granite State will incur for the purchases of gas from Boundary Gas and Consolidated, for the transportation services for the delivery of the new gas supplies to its market area in Massachusetts and for recovery of precertification costs related to the Boundary Gas, Inc. project. Granite State further states that the revised rates for sales to Bay State result in an annual increase of $19,886,631, compared to existing rates, for the costs of the additional gas supplies and transportation services increased by Granite State beginning November 1, 1984 to provide expanded firm daily service to Bay State. Revised Rates are also included for sales to Northern Utilities, Inc., Granite State's other jurisdictional customer and, according to Granite State, the revision is for the purpose of restating its rates for sales to Northern Utilities to comply with the requirements of Order No. 380. (Docket No. RM83-71-000).

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inpection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24238 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3344-002, et al.]

Hydroelectric Applications (the Town of Gassaway, WV, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: License (Over 5 MW).

b. Project No: 3344-002.

c. Date Filed: January 10, 1983, amended June 20, 1983, and resubmitted May 7, 1984.

d. Applicant: The Town of Gassaway, West Virginia.

e. Name of Project: Sutton.

f. Location: On the Elk River in Braxton County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Robert R. Sousa, 193 Main Street, Sutton, West Virginia 26601 and James B. Price, President, Noah Corporation, P.O. Drawer 640, Aiken, South Carolina 29801.

i. Comment Date: November 7, 1984.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Sutton Dam and would consist of: (1) A new 11-foot-diameter steel penstock about 190 feet long connected to 2 existing outlet sluices; (2) a new powerhouse with a 2 turbine-generator units with a total installed capacity of 8,000 kW; (3) a new tailrace; (4) a new switchyard; (5 a new 138)-kV, 1,400-foot-long transmission line; and (6) other appurtenances. Applicant estimates an average annual generation of 32,200,000 kWh.

k. Purpose of Project: Project energy would be sold to the Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Exemption from Licensing.

b. Project No: 3492-003.

c. Date Filed: February 29, 1984.

d. Applicant: City of Haines, Oregon.

e. Name of Project: Spence-Young Hydroelectric Project.

f. Location: At the existing Rock Creek Reservoir, on Rock Creek, in Baker County, Oregon.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. Richard H. Camp, Mayor of the City of Haines, Haines City Hall, P.O. Box 208, Haines, Oregon 97833.

i. Comment Date: October 15, 1984.

j. Description of Project: The proposed project would consist of: (1) A submerged 10-foot by 6-foot by 5-foot concrete intake in the existing Rock Creek Reservoir, at elevation 4,962 feet; (2) a 2,850-foot-long, 30-inch-diameter steel penstock; (3) a powerhouse containing two generators with a combined capacity of 2,800 kW and an annual energy production of 6.5 GWh at elevation 4,022 feet; (4) a switchyard; and (5) a 250-foot-long, 25-kV transmission line to an existing CP National line. Water will be returned to Rock Creek.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: Al, A9, B, C and D3a.

3 a. Type of Application: License (5 MW or Less).

b. Project No: 4060-003.

c. Date Filed: November 21, 1983.

d. Applicant: Willwood Irrigation District.

e. Name of Project: Willwood Diversion Dam.

f. Location: On the Shoshone River in Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. G. Grinnell, Stone and Webster Engineering Corporation, P.O. Box 5406, Denver, Colorado 80217.

i. Comment Date: November 2, 1984.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the Bureau of Reclamation. The proposed project would consist of: (1) proposed penstock that is 7 feet in diameter and 46 feet long; (2) a proposed reinforced concrete powerhouse containing 1 generating unit rated at 1,870 kW; (3) a proposed 90-foot-wide and 2,000-foot-long sedimentation pond; (4) a proposed 2.3 mile, 69 kV transmission line; (5) proposed 271-foot-long and 5-inches high, removable flashboards that would be used during the peak irrigation season of mid July to mid August; and (6) appurtenant facilities. The estimated average annual energy output for the project is 10,900 MWh.

k. Purpose of Project: Power generated at the project would be sold to Western Area Power Administration or to Garland Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

4 a. Type of Application: Major License.

b. Project No: 4628-001.

c. Date Filed: November 25, 1983.

d. Applicant: McGrew and Associates.

e. Name of Project: Wells Creek Water Power Project.

f. Location: On Wells Creek, within Mt. Baker-Snoqualmie. National Forest, near Glacier, Whatcom County, Washington.

g. Filed Pursuant to: Water Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Thomas R. Childs, McGrew and Associates c/o Western Power, Inc., 2300 James Street, Suite 2-E, P.O. Box 5663, Bellingham, Washington 98227.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) A 22-foot-high, 310-foot-long earthen dam at streambed elevation 2,390 feet, forming a 7.6-acre reservoir with a storage capacity of 49.5 acre-feet at maximum water surface elevation 2,412 feet; (2) a 19-foot-high, 55-foot-long concrete intake structure; (3) a 150-foot-long overflow concrete spillway structure adjacent to the dam; (4) a 900-foot-long, 8-foot by 8-foot horseshoe shaped tunnel; (5) a 11,100-foot-long, 60-inch-diameter steel penstock; (6) a 50-foot-high, 64-foot-long underground powerhouse containing a single generating unit with an installed capacity of 15,300 kW; (7) a 60-foot-long tailrace; (8) a switchyard; and (9) a 200-foot-long, 55-kV transmission line connecting to the proposed Swan Creek Project transmission line. The Applicant estimates the average annual energy production to be 63 million kWh. The total cost to construct the project is estimated to be 26 million dollars in 1985 dollars.

k. Purpose of Project: The project power would be sold to Puget Sound Power and Light Company or Seattle City Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

5 a. Type of Application: Preliminary Permit.

b. Project No: 4866-001.

c. Date Filed: May 1, 1984.

d. Applicant: Allegheny County.

e. Name of Project: Monongahela Lock and Dam #3.

f. Location: On the Monongahela River in Allegheny County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: James W. Knox, Director, Allegheny County Hydro Power Programs, 429 Forbes Avenue, Room 1307, Pittsburg, Pennsylvania, 15219.

i. Comment Date: October 15, 1984.

j. Competing Application: Project No. 8086-000.

Date Filed: February 15, 1984.

Due Date: September 4, 1984.

k. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Lock and Dam Number 3 on the Monongahela River and would consist of: (1) A new powerhouse at the east end of the dam with three 750-kW turbine-generator units; (2) a new 150-foot-long tailrace; (3) a new 1.25-mile-long transmission line; and (4) other appurtenances. Applicant estimates an average annual generation of 13,140,000 kWh.

l. Purpose of Project: Project energy would be sold to Duquesne Light Company.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of these studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $40,000.

6 a. Type of Application: Major License.

b. Project No: 5137-001.

c. Date Filed: October 31, 1983.

d. Applicant: Twin River Resources.

e. Name of Project: Owl Creek Water Power.

f. Location: On Owl Creek a tributary to the Hoh River, near Forks, Jefferson County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. William L. Devine, President W.L.D Glacier Energy Company, P.O. Box 68, Mapple Falls, Washington 98266.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 58-foot-long diversion weir at elevation 900 feet; (2) a 12-foot-long inlet structure including a fish screen; (3) a 6,000-foot-long, 36-inch-diameter low pressure pipeline; (4) a 5,000-foot-long, 36-inch-diameter penstock; (5) a 36-foot-long, 25-foot-high powerhouse containing a single generating unit with an installed capacity of 1,600 kW at an operating head of 400 feet; (6) a 60-foot-long tailrace; (7) aa switchyard; and (8) a 1,500-foot-long, 25-kV transmission line connecting to an existing Clallam County PUD transmission line. The Applicant estimates the average annual energy production to be 10 million KWh. The total cost to construct the project is estimated to be $5.3 million, in 1986 dollars.

k. Purpose of Project: The project power would be sold to a nearby public utility, municipal entity or industry.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

7 a. Type of Application: Major License.

b. Project No: 5305-001.

c. Date Filed: December 19, 1983.

d. Applicant: Western Power, Inc.

e. Name of Project: Storm Ridge.

f. Location: On the North Fork Skykomish River, within Mt. Baker-Snoqualmie National Forest in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Neil H. Macdonald, Western Power, Inc., P.O. Box 31359, Seattle, Washington 98103.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) A 17-foot-high, 126-foot-long concrete diversion dam with a 40-foot-long overflow crest at elevation 2,455 feet; (2) a 68-foot-long, 22-foot-high, 17-foot-wide concrete and steel intake structure; (3) a 78-inch-diameter, 7,475-foot-long steel penstock; (4) a 67-foot-long, 51-foot-wide, 32-foot-high reinforced concrete powerhouse at elevation 1,855 feet containing a generating unit rated at 15.5 MW, producing an average annual output of 63.0 GWh; (5) a 100-foot-long tailrace, concrete-lined for the first 20 feet and the remainder rip-rap-lined; (6) a 15-mile-long, 155-kV transmission line from the switchyard adjacent to the powerhouse to Puget Sound Power and Light Company distribution lines near the town of Skykomish; and (7) a 290-foot-long access road. The proposed recreational plan includes improvement of one backcountry and several riverside hiking trails and completion of a parking area adjacent to the trailhead access road at Quartz Junction. The total estimated project capital cost as of February 1985 is $24,000,000.

k. Purpose of Project: To generate power for distribution to potential power purchasers such as the Puget Sound Power and Light Company and Seattle City Light.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

8 a. Type of Application: License (5MW or Less).

b. Project No: 6156-003.

c. Date Filed: June 22, 1984.

d. Applicant: Morris M. Zack and Milton M. Zack.

e. Name of Project: Zack Brothers.

f. Location: On Pellisier Creek, near Bishop, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Morris M. Zack, Route 4, Box 16, Bishop, California 93514; Mr. Milton M. Zack, 3530 Brookside Drive, Bishop, California 93514.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 5-foot-high, 12-foot-long concrete diversion dam located at elevation 6,000 feet msl; (2) a 10-inch-diameter, 3.25-mile-long pipeline/penstock; (3) a powerhouse located at elevation 4,700 feet msl, containing a single turbine-generator unit with an installed capacity of 500 kW and producing an estimated average annual generation of 4.84 GWh; (4) a 14-inch-diameter, 2,450-foot-long, tailrace pipe returning flows to Cinnamon Ranch; and (5) a 1.25-mile-long tap line to interconnect the project with an existing 12-kV Southern California Edison Company (SCE) line. Project power would be sold to SCE and Applicant estimates construction cost at $700,000. The project would be located on Inyo National Forest, Bureau of Land Management, and Applicant lands. The Applicant does not propose to develop any recreational facilities.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

9 a. Type of Application: License (Under 5 MW).

b. Project No: 7048-001.

c. Date Filed: June 15, 1984.

d. Applicant: The Metropolitan District.

e. Name of Project: The Collinsville Project.

f. Location: On the Farmington River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Bernard A. Batycki, District Manager, The Metropolitan District, 555 Main Street, Hartford, Connecticut 06103.

i. Comment Date: October 15, 1984.

j. Competing Application: Project No. 7277-000.

Date Filed: May 16, 1983.

k. Description of Project: The proposed run-of-river project would consist of the Upper Collins Dam Development and the Lower Collins Dam Development.

The Upper Collins Dam Development would consist of: (1) An existing 325-foot-long and 18-foot-high stone masonry dam with a spillway crest elevation of 286.2 feet NGVD; (2) new 3-foot-high flashboards; (3) a small reservoir with a surface area of 55 acres; (4) an existing 200-foot-long canal at the west side of the dam; (5) a new powerhouse with 2 turbine-generator units with a total installed capacity of 1,500 kW; (6) an existing tailrace; (7) a new 23-kV and 100-foot-long tranmission line; (8) new fish ladders; and (9) other appurtenances.

The Lower Collins Dam Development would consist of: (1) an existing 350-foot-long and 20-foot-high concrete gravity dam with a spillway crest elevation of 264.7 feet NGVD; (2) new 5-foot-high flashboards; (3) a small reservoir with a surface area of 32 acres; (4) an existing 650-foot-long canal at the east side of the dam; (5) a new powerhouse with 2 turbine-generator units with a total installed capacity of

1,500 kW; (6) an existing tailrace; (7) a new 23-kV and 100-foot-long transmission line; (8) new fish ladders; and (9) other appurtenances.

Applicant estimates an average annual generation of 11,400,000 kWh. Existing facilities are owned by the Connecticut Department of Environmental Protection.

l. Purpose of Project: Project energy would be sold to Northeast Utilities.

m. This notice also consists of the following standard paragraphs: A4, B, C & D1.

10 a. Type of Application; preliminary report.

b. Project No: 7255-001.

c. Date Filed: February 24, 1984.

d. Applicant: Stanton Creek Power.

e. Name of Project: Stanton Creek Hydropower Project.

f. Location: Stanton Creek, Flathead County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Henry Broers, 826 Kelly Road, Columbia Falls, Montana 59912.

i. Comment Date: November 1, 1984.

j. Description of Project: The proposed project would consist of all new facilities, would be located on State of Montana land, part of which is leased by the Applicant, and would consist of: (1) A 20-foot-long and 2-foot-high earth embankment diversion structure; (2) a 3,000-foot-long and 12-inch-diameter polyvinyl chloride penstock; (3) an 18-foot by 20-foot powerhouse with the installation of one turbine/generator unit, operating at a hydraulic head of 180 feet for a total installed capacity of 100 kW; (4) a 2,000-foot-long, 12.5–kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 700,000 kilowatt-hours per year.

k. Purpose of Project: The Applicant intends to use the power generated at the proposed facility to serve the Applicant's Stanton Creek Lodge with any excess being sold to the Flathead Electric Cooperative, Inc.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $5,000.

11 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7477–000.

c. Date Filed: August 1, 1983.

d. Applicant: Burt Dam Associates.

e. Name of Project: Burt Dam Project.

f. Location: On the Eighteenmile Creek in Niagara County, New York.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. §§ 2705 and 2708 *as amended.*

h. Contact Person: Jeffrey W. Moon, President, J.W. Corporation, 334 Black Lane, Weathersfield, Connecticut 06109 and Thomas P. Callahan, 32 Cherry Street, Lockport, New York 14094.

i. Comment Date: October 15, 1984.

j. Description of Project: The proposed project would consist of: (1) The 328-foot-long and 56-foot-high Burt Dam; (2) a reservoir with a storage capacity of 2,447 acre-feet; (3) existing intake structures; (4) an existing powerhouse at the downstream face of the east abutment, which contains an old 1,250-kW turbine-generator unit to be restored, or replaced with a new unit with similar capacity; (5) an existing 350-foot-long transmission line; and (6) other appurtenances. For purposes of increasing the flow available to the project, additional water would be diverted from the Erie Canal into the West Branch of the Eighteenmile Creek through the Halls' Sluice Gate at Lockport, New York and into the East Branch from the Maybe's Sluice Gate at Royalton, New York, which are 12 and 24 miles upstream of Burt Dam, respectively. Applicants executed an option to least project facilities from the Olcott Harbor Board of Trade. It is estimated that the project would produce an average annual generation of 8,745,000 kWh.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

12 a. Type of Application: Exemption (5 MW or less).

b. Project No: 7809–001.

c. Date Filed: June 6, 1984.

d. Applicant: Emerson Falls Hydro Associates.

e. Name of Project: Emerson Falls Project.

f. Location: On the Sleepers River in Caledonia County, Vermont.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Robert F. Desrochers, Emerson Falls Hydro Associates, North Danville Village, RFD 2, St. Johnsbury, Vermont 05819.

i. Comment Date: October 15, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 200-foot-long concrete dam varying in height from 0 to 6 feet; (2) a reservoir having a surface area of 0.05 acre, a negligible storage capacity, and a normal water surface elevation of 639.5 m.s.l.; (3) an existing 80-foot-long intake channel; (4) a proposed 3.5-foot-diameter, 390-foot-long steel penstock; (5) a proposed powerhouse containing one generating unit with a capacity of 230 kW; (6) a proposed 50-foot-long tailrace; (7) a proposed 100-foot-long, 12.5 kV transmission line; and (8) appurtenant facilities. The Applicant estimates the annual generation would be 800,000 kWh.

k. Purpose of Project: All project energy generated would be sold to the Central Vermont Public Service Corporation.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3A.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicant that would seek to take or develop the project.

13 a. Type of Application: Preliminary Permit.

b. Project No: 8133–000.

c. Date Filed: February 28, 1984.

d. Applicant: B. S. Incorporated.

e. Name of Project: East Fork Ditch.

f. Location: In Payette National Forest, on the East Fork of the Weiser River, near the town of Council, In Adams County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r)

h. Contact Person: Carl L. Meyers, 750 Warm Springs Avenue, Boise, Idaho 83702.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing diversion at elevation 4,900 feet; (2) a 4.5-mile-long, 36-inch-diameter conduit; (3) a forebay or standpipe; (4) an 8,500-

foot-long, 24-inch-diameter penstock; (5) a concrete powerhouse with a single generating unit with a capacity of 4,076 kW and an average annual generation of 15,000 Mwh; and (6) a 1.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $45,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to Idaho River Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

14 a. Type of Application: Exemption Under 5 MW.

b. Project No: 8153–000.

c. Date Filed: March 6, 1984.

d. Applicant: Clarke N. Moore.

e. Name of Project: Boulder Creek.

f. Location: On Boulder Creek, near Crescent City, in Del Norte County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2750 and 2708 *as amended.*

h. Contact Person: Mr. Clarke N. Moore, P.O. Box 633, Crescent City, California 95531.

i. Comment Date: October 12, 1984.

j. Description of Project: The run-of-river project consists of: (1) A 2-foot-high by 10-foot-long concrete diversion structure located on Boulder Creek approximately 0.5-mile from its confluence with the South Fork Smith River; (2) a 4-inch-diameter, 300-foot-long pipeline; (3) a 1,250-gallon surge tank; (4) a 4-inch-diameter, 600-foot-long penstock; (5) a powerhouse containing a single turbine-generator unit with an installed capacity of 550 watts and an average annual generation of 3,744 kWh; and (6) a short tap line. Project power is utilized to supply Applicant's single family home. There is no commercially available power in the project area.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

15 a. Type of Application: Preliminary Permit.

b. Project No: 8165–000.

c. Date Filed: March 9, 1984.

d. Applicant: Glass River Power Company.

e. Name of Project: Pachaug River No. 1 Project.

f. Location: On the Pachaug River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard D. Ely, Glass River Power Company, P.O. Box 474, Storrs, Connecticut 06268.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing 5-foot-high, 185-foot-long rack earth filled Beachdale Dam which will only be used to control part of the downstream flow; (2) a reservior having a surface area of 25 acres, a storage capacity of 50 acre-feet, and a normal water surface elevation of 265.1 feet m.s.l.; (3) the existing 100-foot-long McGuire Dam varying in height from 3 to 13 feet; (4) a reservior having a surface area of 7 acres, a storage capacity of 35 acre-feet and normal water surface elevation of 238.5 feet USGS; (5) two proposed concrete penstocks, the lower one 32 inches in diameter and 80 feet long, the upper one 24 inches in diameter and 25 feet long; (6) two proposed powerhouses, the lower containing one generating unit with an installed capacity of 60 kW, and the upper containing one generating unit with an installed capacity of 50 kW; (7) two proposed tailraces; (8) two new transmission lines; and (9) appurtenant facilities. The Applicant estimates the annual generation would be 341 MWh. The Beachdale Dam is owned by the State of Connecticut and the McGuire Dam is owned by Paul E. McGuire.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $25,000.

16a. Type of Application: Preliminary Permit.

b. Project No: 8166–000.

c. Date Filed: March 9, 1984.

d. Applicant: Glass River Power Company.

e. Name of Project: Pachuag River No. 2 Project.

f. Location: On the Pachuag River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard D. Ely, Glass River Power Company, P.O. Box 474, Storrs, Connecticut 06268.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 7-foot-high, 150-foot-long earth filled rock dam; (2) an impoundment with a surface area of 1.5-acres, a storage capacity of 1 acre-foot, and normal water surface elevation of 202 feet USGS; (3) an existing 30-foot-long headrace; (4) a proposed 35-foot-long, 2.5-foot-diameter fiberglass reinforced PVC penstock; (5) a proposed powerhouse containing one generating unit with a capacity of 40 kW; (6) an existing 350-foot-long tailrace; (7) existing transmission lines; and (8) appurtenant facilities. The Applicant estimates the annual generation would be 260 MWh. The existing dam is owned by Bob Blanchette and the other existing project facilities are owned by Rodney Robillard.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $32,000.

17a. Type of Application: Preliminary Permit.

b. Project No: 8181–000.

c. Date Filed: March 19, 1984.

d. Applicant: Harrisonburg Associates.

e. Name of Project: McGaheysville.

f. Location: South Fork of the Shenandoah River in Rockingham County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, Harrisonburg Associates, #CFS

Financial Services, 324 South State Street, Salt Lake City, Utah 84111.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 750-foot-long concrete dam owned by the City of Harrisonburg; (2) an existing 28-acre reservoir at 1,000 feet M.S.L.; (3) an existing 1,000-foot-long, 200-foot-wide power channel; (4) two existing 15-foot-long, 10-foot-diameter penstocks; (5) a proposed 100-foot by 50-foot powerhouse containing two turbine/generator units, each rated at 750 kW for a total installed capacity of 1.5 MW; (6) an existing 10-foot-long, 50-foot-wide tailrace; (7) a proposed 0.25-mile-long, 14.4-kV transmission line; and (8) appurtenant facilities. The estimated average annual energy would be 6,300 MWh.

k. Purpose of Project: Project power would be sold to either local municipalities or to the local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $150,000.

18 a. Type of Application: Preliminary Permit.

b. Project No: 8189-000.

c. Date Filed: March 21, 1984.

d. Applicant: Glass River Power Company.

e. Name of Project: Glasgo Project.

f. Location: On the Pachaug River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard D. Ely, Glass River Power Company, P.O. Box 474, Storrs, Connecticut 06268.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 200-foot-long, 20-foot-high rock faced earth dam; (2) a reservoir having a surface area of 180-acres, a storage capacity of 165 acre-feet, and a normal water surface elevation of 183.8 feet USGS; (3) an existing 4-foot-diameter, 80-foot-long concrete penstock; (4) a proposed powerhouse containing two generating units having a total installed capacity of 86 kW; (5) an existing transmission line; and (6) appurtenant facilities. The Applicant estimates the annual generation would be 410 MWh. The dam is owned by the State of Connecticut.

k. Purpose of Project: All project energy generated would be sold to Northeast Utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $15,000.

19 a. Type of Application: Preliminary Permit.

b. Project No: 8190-000.

c. Date Filed: March 21, 1984.

d. Applicant: Glass River Power Company.

e. Name of Project: Hopeville Project.

f. Location: On the Pachuag River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard D. Ely, Glass River Power Company, P.O. Box 474, Storrs, Connecticut 06268.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high, 493-foot-long rock filled earth dam; (2) reservoir having a surface area of 122-acres, a storage capacity of 1,000 acre-feet, and normal water surface elevation of 146.7 feet NGVD; (3) an existing 24-foot-long, 12-foot-diameter steel penstock; (4) a proposed powerhouse containing two generating units having a total installed capacity of 71 kW; (5) existing 12-kV transmission lines; and (6) appurtenant facilities. The Applicant estimates the annual generation would be 460 MWh. The dam is owned by the State of Connecticut.

k. Purpose of Project: All project energy generated would be sold to Northeast Utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $15,000.

20 a. Type of Application: Preliminary Permit.

b. Project No: 8195-000.

c. Date Filed: March 23, 1984.

d. Applicant: Northampton Associates.

e. Name of Project: Mill River.

f. Location: Mill River in Hampshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111.

i. Comment Date: November 5, 1984.

j. Description of Project: The Applicant proposes two alternative developments utilizing seven existing gravity/masonry dams owned by the city of Northampton.

Alternative A would consist of: (1) The 150-foot-long, 28-foot-high Chartpak Dam; (2) the 80-foot-long, 10-foot-high East Button Shop Dam; (3) the 80-foot-long, 10-foot-high South Button Shop Dam; (4) the 80-foot-long, 20-foot-high Cookes Left Dam; (5) the 30-foot-long, 8-foot-high Cookes Right Dam; (6) existing reservoirs behind each dam of negligible area and storage capacity; (7) a proposed 2,890-foot-long, 12-foot-diameter penstock; (8) a proposed 50-foot by 75-foot powerhouse containing one turbine generator with an installed capacity of 380 kW operating under a head of 67 feet; (9) a proposed 50-foot-long, 10-foot-wide tailrace; (10) a proposed 175-foot-long, 13.8-kV transmission line; and (11) appurtenant facilities. The estimated average annual generation would be 2,080 MWh.

Alternative B would consist of the following five hydroelectric developments:

(1) The Chartpak development would consist of: (a) The 150-foot-long, 28-foot-high Chartpak Dam; (b) the Chartpak reservoir with negligible area and storage capacity; (c) a proposed intake structure; (d) a proposed 25-foot-long, 10-foot-diameter penstock; (e) a proposed 50-foot by 75-foot powerhouse containing one turbine/generating unit with an installed capacity of 235 kW operating under a head of 26 feet; (f) a proposed 50-foot-long, 10-foot-wide tailrace; (g) a proposed 25-foot-long, 13.8-kV transmission line; and (h) appurtenant facilities. The estimated

average annual generation would be 850 MWh.

(2) The Button Shop development would consist of: (a) Two 80-foot-long, 10-foot-high Button Shop Dams; (b) the Button Shop reservoir with negligible area and storage capacity; (c) a proposed intake structure; (d) a proposed 200-foot-long, 10-foot-diameter penstock; (e) a proposed 50-foot by 75-foot powerhouse containing one turbine/generating unit with an installed capacity of 85 kW operating under a head of 10 feet; (f) a proposed 50-foot-long, 10-foot-wide tailrace; (g) a proposed 110-foot-long, 13.8-kV transmision line; and (h) appurtenant facilities. The estimated average annual generation would be 320 MWh.

(3) The Cookes development would consist of: (a) The 80-foot-long, 20-foot-high Cookes Left Dam; (b) the 30-foot-long, 8-foot-high Cookes Right Dam; (c) the Cookes reservoir with negligible area and storage capacity; (c) a proposed intake structure; (d) a proposed 50-foot-long, 10-foot-diameter penstock; (e) a proposed 50-foot by 75-foot powerhouse containing one turbine/generating unit with an installed capacity of 165 kW operating under a head of 19 feet; (f) a proposed 50-foot-long, 10-foot-wide tailrace; (g) a proposed 50-foot-long, 13.8-kV transmission line; and (h) appurtenant facilities. The estimated average annual generation would be 680 MWh.

(4) The Pro Brush development would consist of: (a) The 120-foot-long, 15-foot-high Pro Brush Dam; (b) Pro Brush reservoir with negligible area and storage capacity; (c) a proposed intake structure; (d) a proposed 35-foot-long, 10-foot-diameter penstock; (e) a proposed 50-foot by 75-foot powerhouse containing one turbine/generating unit with an installed capacity of 200 kW operating under a head of 22 feet; (f) a proposed 50-foot-long, 10-foot-wide tailrace; (g) a proposed 150-foot-long, 13.8-kV transmission line; and (h) appurtenant facilities. The estimated average annual generation would be 845 MWh.

(5) The Smith College development would consist of: (a) The 120-foot-long, 15-foot-high Smith College Dam; (b) the 15-acre Smith College reservoir with 400 acre-feet storage capacity; (c) a proposed intake structure; (d) a proposed 35-foot-long, 10-foot-diameter penstock; (e) a proposed 50-foot by 75-foot powerhouse containing one turbine/generating unit with an installed capacity of 120 kW operating under a head of 15 feet; (f) a proposed 50-foot-long, 10-foot-wide tailrace; (g) a proposed 600-foot/long, 13.8-kV transmission line; and (h) appurtenant facilities. The estimated average annual generation would be 570 MWh.

k. Purpose of Project: Project power would be sold to either the City of Northampton or to the local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $150,000.

21 a. Type of Application: Preliminary Permit.

b. Project No: 8254–000.

c. Date Filed: April 20, 1984.

d. Applicant: Burnt Ranch Stables.

e. Name of Project: Burnt Ranch Stables.

f. Location: On Hennesey Creek, near Burnt Ranch, in Trinity National Forest in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Aran Collier, 913 A Street, Arcata, California 95521.

i. Comment Date: October 29, 1984.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 12-foot-long diversion dam on Hennesey Creek at elevation 2,000 feet msl; (2) a 1-foot-diameter, 2,500-foot-long diversion conduit; (3) a 10-inch-diameter, 650-foot-long penstock; (4) a powerhouse with a total installed capacity of 100 kW operating under a head of 375 feet; and (5) a 300-foot-long, 12–kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) line. The Applicant estimates the average annual energy generation at 0.36 million kWh to be sold to PG&E.

A preliminary permit if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

22 a. Type of Application: Preliminary Permit.

b. Project No: 8274–001.

c. Date Filed: June 28, 1984.

d. Applicant: American Hydro Power Company.

e. Name of Project: Alvin R. Bush.

f. Location: Kettle Creek in Clinton County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Peter A. McGrath, 4026 Chestnut Street, Philadephia, Pennsylvania 19104.

i. Comment Date: November 2, 1984.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Alvin R. Bush Dam and outlet works and would consist of: (1) A new wood-frame powerhouse with 4 turbine-generator units with a total installed capacity of 975 kW at the downstream west side of the existing outlet tunnel; (2) an existing single phase 7.2 kV and 5-mile-long transmission line to be upgraded to 3-phase 12 kV; and (3) other appurtenances. Applicant estimates an average annual generation of 3,058,000 kWh.

k. Purpose of Project: Project energy would be sold to the Tri-County Rural Electric Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

23 a. Type of Application: Major License (< 5 MW).

b. Project No: 8278–000

c. Date Filed: May 1, 1984.

d. Applicant: Crystal Springs Hydroelectric Company.

e. Name of Project: Cedar Draw Creek.

f. Location: On Cedar Draw Creek, near Twin Falls, in Twin Falls County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Steven Krous, Halliwell Associates, Inc., 865 Waterman Avenue, East Providence, Rhode Island 02914.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) A seven-foot-high concrete diversion dam across Cedar Draw Creek at elevation 3,340 feet; (2) a concrete box intake with a fish screen, movable boards for flow control, and a sonic metered outlet to ensure downstream minimum flows; (3) a small pond behind the diversion; (4) a 5,750-foot-long, 60-inch-diameter steel penstock; (5) a 10-foot-diameter steel surge tank; (6) a 1,350-foot-long, 54-inch-diameter penstock; (7) an automatic powerhouse containing three generators with a combined capacity of 2,249 kW, producing an estimated 9.38 GWh of energy annually; (8) a tailrace at elevation 3,087 feet discharging water into Cedar Draw Creek; (9) a substation with a 2,500 kVA transformer; (10) a 0.25-mile-long, 46-kV transmission line to a proposed Idaho Power Company line.

Access to project facilities will be along a proposed road parallel to the penstock route. The estimated project cost as of May 1984, is $1,900,000.

k. Purpose of Project: The Applicant proposes to market power to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

24 a. Type of Application: Preliminary Permit.

b. Project No: 8280–000

c. Date Filed: May 1, 1984.

d. Applicant: F. Alan Sever.

e. Name of Project: Jeddo Tunnel.

f. Location: On a drainage tunnel in Luzerne County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: F. Alan Sever, 516 Sand Hill Road, Montoursville, Pennsylvania 17754.

i. Comment Date: November 1, 1984.

j. Description of Project: The proposed project would utilize an existing drainage tunnel, constructed almost 100 years ago, to generate power. The tunnel presently drains water from anthracite coal deep mines which have not been operated in the last 20 years. The Applicant proposed that the project will consist of: (1) Sealing the end of the drainage tunnel; (2) a proposed 500-foot-long, 6-foot-diameter penstock; (3) the tunnel will be used as a reservoir, and if it were projected to the surface, it would have an approximate surface area of 8.5 arces (the storage capacity is estimated at 125 acre-feet); (4) a proposed powerhouse with an installed generating capacity of 2 MW; (5) a proposed 1,000-foot-long, 12.5 kV transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 17 GWh. The owner of the project site and the tunnel is The Jeddo Tunnel Company. The Applicant proposed to sell the power generated to the Pennsylvania Power and Light Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $130,000.

25 a. Type of Application: Preliminary Permit.

b. Project No: 8290–000.

c. Date Filed: May 7, 1984.

d. Applicant: Valatie Falls Hydro Company.

e. Name of Project: Valatie Falls.

f. Location: Kinderhook Creek in the Village of Valatie, Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul S. Eckhoff, Box 158, Stuyvesant Falls, New York 12174.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 250-foot-long, 6-foot-high concrete dam owned by the Village of Valatie; (2) an existing 3-acre reservoir at an elevation of 228.3 feet m.s.l.; (3) existing headgates; (4) a proposed 104-foot-long, 7-foot-diameter penstock; (5) a proposed 400-kW turbine/generator unit; (6) a proposed 20-foot-long transmission line; and (7) appurtenant facilities. The average annual generation would be 1,750 MWh.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

26 a. Type of Application: Preliminary Permit.

b. Project No: 8311–000.

c. Date Filed: May 16, 1984.

d. Applicant: George E. Smith.

e. Name of Project: Sugar River Project.

f. Location: On the Sugar River, in the Towns of Sunapee and Newport, Sullivan County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: George E. Smith, Box 27, Guild, New Hampshire 03754.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed 7-foot-high, 100-foot-long dam; (2) a reservoir with negligible storage, a surface area of 3 acres, and a normal water surface elevation of 954.00 m.s.l.; (3) a proposed 1700-foot-long, 7.5-foot-diameter steel penstock; (4) a proposed powerhouse containing two generating units with a total installed capacity of 1,000 kW; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 4,000,000 kWh. The land in which the proposed facilities would be placed is owned by the Applicant.

k. Purpose of Project: All project power generated would be utilized by the Applicant or sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $28,000.

27 a. Type of Application: Preliminary Permit.

b. Project No: 8325–000.

c. Date Filed: May 29, 1984.

d. Applicant: Charles R. Pepe, Associates.

e. Name of Project: Riegelsville.

f. Location: On the Paulins Kill River in Knowlton Township, Warren County, New Jersey.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles R. Pepe, 120 North Pascack Road, Spring Valley, New York 10977.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing 15-foot-wide canal inlet structure; (2) the approximately twenty-five-foot-wide and 5000-foot-long intake canal; (3) the existing powerhouse to contain an installed generating capacity 300 kW; and (4) appurtenant facilities. The project would generate up to 1,000,000 kWh annually.

k. Purpose of Project: The Applicant proposes to sell the power to and directly connect with the New Jersy Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

28 a. Type of Application: Perliminary Permit.

b. Project No: 8336–000.

c. Date Filed: June 1, 1984.

d. Applicant: Easton Associates.

e. Name of Project: Cle-Elum.

f. Location: At the Bureau of Reclamations Cle-Elum Dam on the Cle-Elum River, near the town of Easton, in Kittitas County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joel Kirk Rector 4832 Colony Circle Salt Lake City, Utah 84117.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would utilize the Bureau of Reclamation's Cle-Elum Dam and Reservoir and would consist of : (1) A 450-foot-long, 10-foot-diameter steel penstock, lining the existing outlet tunnel; (2) a powerhouse at the toe of the dam at the end of the outlet tunnel, housing a single generating unit with a capacity of 5,000 kW and an average annual generation of 18.4 GWh; and (3) a 700-foot-long transmission line that would connect to an existing power line. A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $125,000. No new roads would be constructed during the feasibility study. Soil borings would be conducted as part of the site investigations.

k. Purpose of Project: Project power would be sold to Kittitas County PUD #1.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

29 a. Type of Application: Preliminary Permit.

b. Project No: 8367–000.

c. Date Filed: June 15, 1984.

d. Applicant: Spruce Run HydroPower Associates.

e. Name of Project: Spruce Run.

f. Location: On Black Brook, Mulhockaway Creek and Spruce Run in Hunterdon County, New Jersey.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert E. Hedden, 410 Seven Avenue, Suite 409, Annapolis, MD 21403.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing 93-foot-high, 5,400-foot-long dam; (2) the existing 1,290-acre reservoir with a storage capacity of 33,670 acre-feet at the normal maximum surface elevation of 273 feet M.S.L.; (3) a proposed powerhouse to contain an installed generating capacity of 300 kW; and (4) appurtenant facilities. The existing dam is owned by the New Jersey Water Supply Authority. The Applicant estimates the average annual energy generation will be 1.30 GWh. The proposed purchaser of the power produced is Central Jersey Power and Light Company.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for FERC license. Applicant estimates the cost of the studies under the permit would be 30,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

30 a. Type of Application: Preliminary Permit.

b. Project No: [illegible]-000.

c. Date Filed: June 21, 1984.

d. Applicant: The Barton Village Electric Department.

e. Name of Project: Crystal Lake Falls Project.

f. Location: On the Barton River and Crystal Lake in Orleans County, Vermont.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert F. Desrochers, Fairbank Mill Contracting, North Danville Village, RFD 2, St. Johnsbury, Vermont 05819.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 14-foot-high, 65-foot-long concrete dam; (2) a reservoir with a surface area of 712 acres, a storage capacity of 712 acre-feet, and a normal water surface elevation of 946.0 feet m.s.l.; (3) a proposed 3-foot-diameter, 550-foot-long steel penstock; (4) a proposed powerhouse containing two generating units having a total installed capacity of 200 kW; (4) a proposed 250-foot-long transmission line; and (5) appurtenant facilities. The Applicant estimates the averge annual generation would be 1,000,000 kWh. The existing project dam is owned by the State of Vermont.

k. Purpose of Project: All project energy generated would be used for distribution by the Applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope and Cost of Studies under Permit: A Preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an applicant for FERC license. Applicant estimates the cost of the studies under permit would be $10,000.

31 a. Type of Application: Exemption

b. Project No: 8385–000.

c. Date Filed: June 22, 1984.

d. Applicant: S. D. Warren Company.

e. Name of Project: Cumberland Mills.

f. Location: On the Presumpscot River in Cumberland County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Nicholas J. DeBenedictis, Esq., Senior Counsel, Scott Paper Company, Scott Plaza Two, Philadelphia, Pennsylvania 19113.

i. Comment Date: October 19, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing Cumberland Mills dam, comprised of three segments (the 140-foot-long, 12-foot-high main dam with the top elevation of the existing 3.4-foot-high flashboards at 41.62 feet m.s.l/; the 150-foot-long, 20-foot-high wing dam with a crest elevation of 43.5 feet m.s.l.; and the 120-foot-long, "flashboard section", composed of 5.92-foot-high flashboards with a crest elevation of 41.62 feet m.s.l.); (2) the existing 26-acre reservoir with a gross storage capacity of 312 acre-feet; (3) a proposed powerhouse which will contain two generating units with a total installed capacity of 1.8 MW; (4) a 35-foot-long intake channel; (5) the existing freshet channel will be modified; (6) the proposed 200-foot-long, 12.47-kV transmission line; and (7) appurtenant facilities.

The Applicant estimates that the average annual energy generation will be 10.0 GWh.

k. Purpose of Project: The Applicant intends to either sell the project energy to Central Maine Power or to use the energy at its own facilities.

l. This notice also consists of the following standard paragraphs: Al, A9, B, C & D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

32 a. Type of Applicant: Preliminary Permit.

b. Project No: 8406–000.

c. Date Filed: July 2, 1984.

d. Applicant: Turlock Irrigation District and Modesto Irrigation District.

e. Name of Project: South Fork.

f. Location: On South and Middle Forks Tuolumne River, near Groveland, within the Stanislaus National Forest, in Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lloyd Starn, P.O. Box 949, Turlock, California 95381.

i. Comment Date: November 5, 1984.

j. Description of Project: The proposed would consist of: (1) 170-foot-high, 380-foot-long dam with crest elevation at 2580 feet msl on South Fork Tuolumne River creating a reservoir by impounding waters from South Fork and Middle Fork Tuolumne River with a surface area of 17 acres and a gross storage capacity of 700 acre-feet at normal maximum water elevation of 2570 feet msl; (2) an 8-foot-diameter, 5,800-foot-long power tunnel; (3) a 5-foot-diameter, 1,900-foot-long penstock; (4) a powerhouse with a total installed capacity of 21 MW operating under a head of 1,050 feet; and (5) a 1.5-mile-long, 13.2-kV transmission line to connect to an existing 230-kV Hetch-Hetchy line. The Applicant estimates the average annual energy generation at 74 GWh to be sold to the local utilities.

A prelimary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $1,000,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

33 a. Type of Application: Conduit Exemption.

b. Project No: 8434–000.

c. Date Filed: July 13, 1984.

d. Applicant: Los Angeles County Flood Control District (LACFCD).

e. Name of Project: West Coast Basin Barrier.

f. Location: Pressure Reduction Station, in the City of El Segundo, Los Angeles County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. James L. Easton, Acting Chief Engineer, LACFCD P.O. Box 2418, Terminal Annex, Los Angeles, California 90051. Mr. W. R. Peterson, Parsons, Brinckerhoff, Quade, and Douglas, Inc., 1510 Arden Way, Suite 301, Sacramento, California 95815.

i. Comment Date: October 22, 1984.

j. Description of Project: The proposed project would consist of: (1) A single Francis turbine-generator unit with an installed capcity of 930 kW, producing an estimated average annual generation of 7.74 GWh, and located at the West Coast Basin Service Connection No. 28, an underground pressure reducing station vault used for the distribution of potable water; (2) enlargement of a 16-inch diameter pipe to 24-inch-diameter upstream of the turbine and to 22-inch-diameter downstream to accommodate inlet and outlet flow requirements; and (3) a 20-foot by 30-foot switchyard substation. A 250-foot-long 12-kV transmission line would connect the project to an existing Southern California Edison (SCE) line. Project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

34 a. Type of Application: Preliminary Permit.

b. Project No: 8444–000.

c. Date Filed: July 17, 1984.

d. Applicant: City of Vernon.

e. Name of Project: Bear Butte Hydroelectric.

f. Location: On Big Creek within the Sierra National Forest in Fresno County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce V. Malkenhorst, City Administrator, City of Vernon, 4305 Santa Fe Avenue, Vernon, California 90058.

i. Comment Date: October 25, 1984.

j. Competing Application: Project No. 7795, Date Filed: November 2, 1983.

k. Description of Project: The proposed project would consist of: (1) A 212-foot-high gravity type dam at elevation 8,132 feet, forming; (2) a reservoir with gross storage capacity of 12,000 acre-feet; (3) a 72-inch-diameter, 12,500-foot-long pipeline; (4) a 48 to 60-inch-diameter, 4,000-foot-long penstock; (5) a powerhouse, to be located on the east shore of Huntington Lake, containing a single generating unit with a rated capacity of 20,000 kW, operating under a head of 1,182 feet; and (6) a 4½-mile-long, 33-kV transmission line connecting the project with the Southern California Edison Company's existing Siphon Substation, west of the project.

l. Purpose of Project: The project's estimated annual generation of 61 million kWh will be used by the Applicant to meet the power demands of its customers within the City of Vernon.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

Competing Applications

A1. Exemption for Small Hydroelectirc Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydrolectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will to be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectirc exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydorelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption applicaton. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and(d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 10, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24226 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-620-000]

Iowa-Illinois Gas and Electric Co.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 24, 1984, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) tendered for filing an Interconnection Agreement (Agreement) with Iowa Electric Light and Power Company, Cedar Rapids, (Iowa Electric) dated June 15, 1984, with schedules reflecting facilities and points of connection, metering, facilities furnished one party for the other (to which separate facilities schedules may be appended), and transmission service schedules (to which separate transmission service schedules may be appended.

Iowa-Illinois states the Agreement is proposed effective as of its execution date. Included as addenda to the facilities service schedule are Facilities Schedule Nos. 1 and 2, dated June 15, 1984, each proposed effective as of that date, perpetuating, under current circumstances, certain existing arrangements and facilitating and providing for certain additional facilities at Iowa-Illinois' Hills Substation near Hills, Iowa. Included as an addendum to the transmission service schedule is Transmission Service Schedule No. 1, also dated June 15, 1984, proposed effective the first of the month next following the in-service condition of related additional facilities. Waiver of the Commission's notice and filing requirements has been requested by the parties accordingly.

Iowa-Illinois states that the Agreement and its service schedules do not provide for power and energy transactions, but that the Agreement provides a useful vehicle for the perpetuation of facilities and transmission arrangements as may be mutually agreeable.

Iowa-Illinois states a complete copy of the filing has been mailed to Iowa Electric, the Iowa State Commerce Commission, and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24239 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-627-000]

Iowa Public Service Co.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, Iowa Public Service Company (Iowa) tendered for filing an executed Limited Term Firm Service Interchange Agreement dated August 3, 1984, whereby Iowa Public Service Company will supply Union Electric with firm electric capacity, commencing July 1, 1984 and ending on September 1, 1984.

Iowa requests an effective date of July 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24240 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-616-000]

Mid-Continent Area Power Pool; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 23, 1984, Mid-Continent Area Power Pool (MAPP) tendered for filing Amendment No. 17 to the Mid-Continent Area Power Pool Agreement. MAPP states that the Amendment is the result of activities undertaken by the MAPP Joint Service Schedule and Rates Subcommittee, the MAPP Engineering Committee, the MAPP Operating Committee and the MAPP Management Committee.

MAPP proposes an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24241 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-585-00]

Mississippi Power Co.; Amendment to Filing

September 10, 1984.

Take notice that on August 6, 1984, Mississippi Power Company (Mississippi) tendered for filing an amendment to the Interconnection Agreement between Mississippi and South Mississippi Electric Power Association (SMEPA). Mississippi states that the amendment provides for the discontinuance of one of the two existing interconnection points between the facilities of Mississippi and SMEPA. Continued existence and operation of the second point of interconnection is unaffected by this amendment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24242 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-626-000]

Otter Tail Power Co.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, Otter Tail Power Company (Otter Tail) tendered for filing Supplement No. 2 to the Agreement between Otter Tail and East River Electric Power Cooperative, Inc., Madison South Dakota (East River).

Otter Tail states that Supplement No. 2 allows for the addition of a communication microwave tower at the Blair Substation and also an additional point of delivery to serve the Dumont Substation.

Otter Tail requests that the amended agreement (Supplement No. 2 to FERC No. 168) be permitted to be effective as soon as possible.

Copies of the filing were served upon East River Electric Power Cooperative, Inc., Traverse Electric Cooperative and the Minnesota Public Utilities Commission, State of Minnesota.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24243 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-62-000 and TA85-1-62-001]

Pacific Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

September 7, 1984.

Take Notice that Pacific Offshore Pipeline Company (Pacific Offshore) on August 31, 1984, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheets:

Second Revised Sheet No. 4

Pacific Offshore states that this tariff sheet is issued pursuant to Pacific Offshore's Purchase Gas Cost Adjustment (PGCA) Provision as set forth in Section 14 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1. The proposed effective date of this tendered tariff sheet and the rates thereon is October 1, 1984.

Pacific Offshore also states that the above-tendered tariff sheet reflects a proposed October 1, 1984 Pacific Offshore Rate Schedule G-1 commodity rate of $2.081 per decatherm, an increase of $.146 per decatherm from the $1.935 per decatherm rate effective April 1, 1984, the date of the revised commodity rate, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Offshore states that the Current Gas Cost Adjustment is based on an annualized gas cost increase of $343,587 and that the Surcharge Adjustment is designed to recover over a six-month period beginning October 1, 1984 an amount of $2,930.16, which is the amount of Pacific Offshore's Unrecovered Purchased Gas account at June 30, 1984. Due to the absence of actual historical data, Pacific Offshore has requested a waiver of the terms and conditions of its FERC Gas Tariff and request authority to use estimates of annualized volumes and by-product revenues for this filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24244 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-622-000]

Pacific Power & Light Co.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, PacifiCorp, doing business as Pacific Power & Light Company (Pacific) tendered for filing Pacific's Revised Appendix 1 for the state of Washington. The Revised Appendix 1 calculates for the average system cost for the state of Washington applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests an effective date of February 22, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Bonneville, the Washington Utilities and Transportation Commission, and Bonneville's Direct Service Industrial Customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24245 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2126-000]

Roland F. Hoch; Application

September 10, 1984.

Take notice that on August 30, 1984, Roland F. Hoch filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President and General Counsel, Tucson Electric Power Company

(1) Senior Vice President, General Counsel and Secretary, Alamito Company

(2) Member of the Board of Directors, Alamito Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24251 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-618-000]

Portland General Electric Co.; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 24, 1984, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's base rate change effective with meter readings on and after April 1, 1984. The filing includes a revised Appendix 1, Exhibit C, to the Residential Purchase and Sale Agreement along with the authorization for this rate change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows PGE's base ASC as determined by the Bonneville Power Administration to be 39.02 mills/kWh.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24250 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-35-000]

Public Service Company of New Mexico; Petition for Declaratory Order

September 10, 1984.

Take notice that on August 10, 1984, the Public Service Company of New Mexico (PNM) submitted for filing its petition for a declaratory order pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure.

PNM requests that this Commission issue a declaratory order to decide whether its proposed method for refunding to its wholesale customers monies received as a result of a settlement of an antitrust lawsuit is in the public interest and should be approved.

PNM proposes that the total net proceeds of the settlement fund, including interest income, be refunded to electric customers in the form of monthly billing credits based on future usage, at a rate of 3.5 mills per kWh until the settlement funds, plus interest, shall have been paid.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secratary.

[FR Doc. 84-24248 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-621-000]

Public Service Company of New Mexico; Filing

September 10, 1984.

The filing Company submits the following:

Take notice that on August 24, 1984, Public Service Company of New Mexico (PNM) tendered for filing Service Schedule D (Block Energy Sale) to the Interconnection Agreement (Rate Schedule FERC No. 37) between PNM and Nevada Power Company (NPC).

PNM states that the service to be provided to NPC under Service Schedule D is for the sale of approximately 15,180 megawatt hours of interruptible block energy at a rate of delivery of 33 megawatts per hour. The proposed service commenced on July 21, 1984, and terminates at midnight on September 15, 1984. The rates are specifically negotiated rates based upon peak hour deliveries only, and taking into consideration present competitive market factors.

PNM requests an effective date of July 21, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24249 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-502-013]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc., Producer-Suppliers of Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.; Petition To Amend

September 10, 1984.

Take notice that on September 4, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, on its own behalf and on behalf of producer-suppliers currently selling gas to Petitioner filed in Docket No. CP83-502-013 a petition to amend the order issued December 20, 1983, in Docket No. CP83-502-000 pursuant to section 7(b) and 7(c) of the Natural Gas Act so as to extend to December 31, 1985, the term of the certificate and abandonment authorizations and to modify the terms and conditions of the extended authorizations, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on September 8, 1983, Petitioner filed an application pursuant to section 7(b) and 7(c) of the Natural Gas Act on its own behalf and on behalf of its producer-suppliers and third-party transporters for certificate and abandonment authorizations necessary to implement its Temporary Special Marketing Program (TEMPRO) under which Petitioner acts as agent to arrange short-term spot market purchases and sales of natural gas supplies which are released from Petitioner's system supply in exchange for the producer's agreement to grant Petitioner take-or-pay relief. It is said further that Petitioner and other interstate, intrastate and Hinshaw pipelines provide the necessary transportation services.

Petitioner states that pursuant to orders issued December 20, 1983, March 23, 1984, July 3, 1984, and August 21, 1984, it is now ready to commence implementation of the program effective September 1, 1984, and that the authorization issued by the Commission expires on October 31, 1984. Petitioner states further that absent the extension requested herein, Petitioner would have only two months in which to operate under the program.

It is asserted that there are substantial benefits to be gained from the implementation of special marketing programs by interstate pipelines and producers. Petitioner contends that these substantial benefits include (1) lower cost gas supplies to consumers, (2) increased sales by producers, and (3) take-or-pay relief for interstate pipelines and their customers. It is said that two months is an insufficient period of time in which to realize the benefits of a special marketing program. It is said further that under its current authorization, Petitioner would have insufficient time to "gear up" TEMPRO to the point at which it could begin to realize substantial benefits from the implementation of the program. Petitioner, therefore, requests that the TEMPRO authorization be extended to December 31, 1985, so that Petitioner, its customers and its producers may realize the benefits which are available from special marketing programs.

Petitioner states that although extension of the TEMPRO program as currently authorized would serve the public interest, Petitioner requests that the Commission modify the TEMPRO authorization as follows.

A. *Reporting Requirements*—Petitioner asserts that as with other companies implementing special marketing programs, actual data for the preceding month's transactions under TEMPRO would not be available to Petitioner by the 15th day of the following month. Petitioner, therefore, requests that its program receive the same treatment as other special marketing programs and that its authorization be amended to permit the filing of estimated data by the 15th day of the month for the preceding month's activities and actual data by the 15th day of the month following the month in which the estimated data are filed. Absent this modification, it is said, Petitioner may not be able to comply with the reporting requirements of its authorization.

Petitioner believes that the reporting requirements for TEMPRO should be no more onerous than the reporting requirements applicable to other special marketing programs and that it would not impair the Commission's ability to monitor TEMPRO transactions. Petitioner accordingly requests that the TEMPRO reporting requirements be amended.

B. *Transportation Rate*—It is said that the TEMPRO order require Petitioner to charge its Rate Schedule IT or ITEU rates, which are fully allocated-cost rates, for TEMPRO transportation services. It is said further that these rates (including Gas Research Institute (GRI) surcharges) range from 8.27¢ to 65.66¢ per Mcf as follows:

Miles	Cents
0 to 150	8.27
151 to 450	18.39
451 to 750	31.90
751 to 1,050	45.40
1,051 to 1,350	58.91
Over to 1,350	65.66

Petitioner states that when fuel charges are added to these rates, TEMPRO customers could be required to pay in excess of 90¢ per Mcf for transportation of TEMPRO gas. Petitioner states further that these transportation add-one would require such a low wellhead price to the producers in order for the gas to be marketable that it jeopardizes the success of the program.

In the interests of promoting the success of the program, Petitioner requests that the Commission reconsider its decision to require Petitioner to charge a fully-allocated cost transportation rate under TEMPRO. Petitioner requests that its TEMPRO authorization be amended to permit Petitioner to charge its originally proposed TEMPRO transportation rate of 25¢ per Mcf plus fuel and GRI surcharges. Petitioner believes that this 25¢ rate is vital to the success of the TEMPRO program.

It is said that TEMPRO transactions would reduce Petitioner's take-or-pay exposure and would result in lower costs to all of Petitioner's customers by virtue of transportation revenue credits to Account No. 191. It is said further that in addition, some customers may receive more benefits from TEMPRO than others, but all customers would benefit from the program through take-or-pay relief and transportation revenue credits. Petitioner states further that its purchased gas costs can only go down as a result of TEMPRO because the weighted average cost of the gas released for sale under TEMPRO must be greater than Petitioner's weighted average cost of gas. Petitioner contends that it would thus be unduly discriminatory to deny Petitioner the opportunity to use a discounted transportation rate to achieve the same benefits for which others have been permitted to use discounted rates.

It is stated that the Commission has insisted on fully-allocated cost transportation rates under TEMPRO in order "to prevent any possible subsidization of TEMPRO transportation services by noneligible customers who would not utilize and who under no circumstances should be required to subsidize such services." However, Petitioner does not believe that the proposed 25¢ rate would result in subsidization of TEMPRO transportation services by non-eligible customers. Petitioner states that, as previously noted, there would be significant cost benefits to the entire system as a result of the TEMPRO transaction which would not be realized if the transportation rates were set unrealistically high.

Petitioner states that the IT transportation rates are too high to ensure the success of the program. Petitioner, it is said, has lost a substantial share of its historical markets to competing pipelines in the Chicago market area and would like to regain a portion of those markets through TEMPRO transactions. It is said that in order to transport TEMPRO gas produced in the Gulf Coast area to Chicago, Petitioner would be required to charge an IT transportation rate of 45.40¢ per Mcf. It is said further that this compares with Petitioner's current commodity charge of 19¢ to Midwestern Gas Transmission Company (Midwestern) for resales in the Chicago area. Petitioner states that any marginal market served directly or indirectly by Midwestern that is not currently purchasing gas from Midwestern is not likely to purchase TEMPRO gas at an even higher total cost. TEMPRO, it is said, has little chance of success in regaining the markets Petitioner has lost in the Chicago area.

For these reasons, Petitioner urges the Commission to depart from its decision to require fully-allocated cost transportation rates under TEMPRO. To ensure the success of TEMPRO, Petitioner renews its request that the Commission permit it to charge a transportation rate of 25¢ per Mcf plus fuel and GRI surcharges.

C. *Undedicated Gas Reserves*—It is said that ordering Paragraph (I) of the December 20, 1983, order prohibits the sale of gas under TEMPRO from reserves not contractually committed to Petitioner on or before December 20, 1983. This prohibition, it is said, is designed to ensure that Petitioner and its customers would receive some take-or-pay relief from each TEMPRO transaction. However, Petitioner believes that both its producers and its customers would benefit from the inclusion in TEMPRO of gas from reserves that are contractually committed to Petitioner after December 20, 1983. It is said that in this way, Petitioner would be able to negotiate for dedications of gas reserves now, but delay takes until a future date by attempting to market through TEMPRO any deliverability that becomes available from the reserves between now and the future date when Petitioner commences takes. TEMPRO, it is said, would be used in conjunction with any other available short-term markets for the gas, so that the producer would not be harmed by its agreement to dedicate the reserves to Petitioner now with no obligation for immediate takes by Petitioner. It is further said that due to the substantial benefits of being able to obtain present commitments of reserves with no present obligation to take available deliverability, Petitioner requests that Ordering Paragraph (I) of the December 20, 1983, order be deleted so that TEMPRO may become a tool for short-term marketing of newly dedicated reserves.

D. *Transportation Imbalances*—It is alleged that imbalances can arise under the TEMPRO transportation agreements because the volumes the producer delivers into the transporter's system on any give day for delivery to the TEMPRO purchaser may be either greater or less than the volumes the TEMPRO purchaser requests the transporter to redeliver for the purchaser's account on that day. It is alleged further that there is thus the possibility of the program's expiring before the transporter has redelivered to the purchaser all gas delivered into its system by the producer for the account of the TEMPRO purchaser or has received from the producer all gas which the transporter has redelivered upon request to the TEMPRO purchaser.

Petitioner states that, to avoid a situation in which the transporter is left with no authorization to redeliver to the purchaser the TEMPRO gas which has been delivered into its system by the producer, Petitioner requests the Commission amend the TEMPRO authorization to extend for a period of 180 days after the expiration of the authorized term solely for the purpose of eliminating any outstanding imbalances in deliveries. It is said that a period of 180 days is necessary because approximately 90 days would be required to obtain actual data from which to determine the amount of imbalance in deliveries and an additional 90 days of operations will be required to clear the imbalance. It is further said that this extension for elimination of imbalances is necessary whether or not the Commission extends the primary term of TEMPRO to December 31, 1985.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Sept. 24, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with teh Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24252 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-36-000]

Texas-New Mexico Power Company v. Public Service Company of New Mexico; Complaint, Petition for Order and Request to Institute Expedited Proceeding and to Consolidate

September 10, 1984.

Take notice that on August 16, 1984, Texas-New Mexico Power Company (TNP) submitted for filing its complaint, petition for an order and request to institute an expedited proceeding and to consolidate proceedings.

TNP requests that this Commission issue an order requiring Public Service Company of New Mexico to file a plan that would refund immediately monies received from the past four settlements and would propose a refund for monies yet to be received from these settlements.

TNP further requests that this Commission enter upon an expedited hearing to determine the appropriate basis for calculating all refund monies and method of payment to TNP as well as consolidate these proceedings with Docket Nos. EL84-32-000 and EL84-35-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24253 Filed 9-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2125-000]

Theodore W. Welp; Application

September 10, 1984.

Take notice that on August 30, 1984, Theodore W. Welp filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

(1) President, Chief, Executive Officer, Tucson Electric Power Company.

(2) Member of Board of Directors, Tucson Electric Power Company.

(1) Chairman, Chief Executive Officer, Alamito Company.

(2) Member of Board of Directors, Alamito Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24254 Filed 9-12-84, 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Floodplain/Wetlands Involvement Determination for the Archer-Stegall 115-KV Transmission Line in Laramie and Goshen Counties, Wyoming, and Scotts Bluff County, NE

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain/wetlands involvement and opportunity for comment.

SUMMARY: Western Area Power Administration (Western) proposes to remove the existing 87-mile-long Archer-Gering 115-kV transmission line and construct a new 70-mile-long 115-KV line from Archer Substation to Stegall Substation. The 70 miles of line would include new construction on 55 miles of the Archer-Gering right-of-way and paralleling an existing line from Archer to Stegall for 15 miles. Existing H-frame wood structures would be replaced. The existing conductor would be replaced with a larger conductor.

This action is proposed because the existing line has reached the end of its useful life due to its deteriorated condition. The line cannot be safely maintained in a reliable manner. Replacing the existing line will reduce the number of outages caused by structure failure and eliminate hazards to maintenance crews and the general public. Annual maintenance costs will be reduced. Replacement of the conductor will increase capacity to transmit power to future loads and reduce power losses.

Pursuant to the Department of Energy's "Compliance with Floodplain-Wetlands Environmental Review Requirements" (10 CFR Part 1022), Western has determined that this project would involve activities within a floodplain/wetland area. Western will prepare a floodplain assessment as part of its environmental assessment.

The line crosses the following floodplains in Laramie County, Wyoming: Ninemile Draw and Lodgepole Creek (T 15 N., R. 65 W.), an unnamed draw and Antelope Draw (T 16 N., R. 65 W.), Chivington Draw (T 16 N., R. 64 W.), an unnamed draw, Bull Springs Creek (T. 17 No, R. 63 W.), and Bull Springs Creek (T 17 N., R. 62 W.). In Goshen County, Wyoming, the following floodplains would be involved: Fourmile Draw and Horse Creek (T 19 N., R. 61 W.). Lodgepole Creek, Antelope Draw, and Fourmile Draw also have riparian vegetation associated with them.

Activities in the floodplain/wetlands areas include the possible placement of transmission line structures and vehicular traffic during construction.

Maps and further information are available from Western at the addresses provided below. Public comments or suggestions on Western's project activities in the floodplain/wetlands areas are invited.

DATE: Comments are due 15 business days from the date of publication of this notice in the **Federal Register**.

Comments: Send written comments or suggestions to: William Melander, Environmental Specialist, Loveland-Fort Collins Area Office, Western area Power Administration, Department of Energy, P.O. Box 3700, Loveland, CO 80539 (303) 224-7231 or FTS 330-7231.

FOR FURTHER INFORMATION CONTACT: Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231-1527 or FTS 327-1527.

Issued at Golden, Colorado, August 31, 1984

Robert L. McPhail,

Administrator.

[FR Doc. 84-24178 Filed 9-12-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51530 FRL-2645-5]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-20422 beginning on page 31136 in the issue of Friday, August 3, 1984, make the following correction in the middle column on page 31137:

1. Under the heading **PMN 84-988**, in the second line of the second paragraph, ">" should read "-".
2. Under the heading **PMN 84-990**, in the fifth line of the second paragraph, "(5-1)" should read (5-)".
3. Under the heading **PMN 84-991**, the first word in the first paragraph reading "*Importer*" should read "*Manufacturer*".

BILLING CODE 1505-01-M

[FRL-2669-7]

Establishment of the Pesticide Emergency Exemption Negotiated Rulemaking Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of an Advisory Committee To Negotiate Pesticide Emergency Exemptions. We have determined that this is in the public interest, and will assist the Agency in performing its duties under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

Copies of the Committee charter will be filed with appropriate committees of the Congress and the Library of Congress.

The Committee's initial meeting will be held on September 28, 1984 in the offices of the National Institute for Dispute Resolution, Suite 600, 1901 "L" Street NW., Washington, D.C. The meeting will start at 9:00 a.m. and is scheduled to end no later than 3:30 p.m. If interested in attending or receiving more information, please contact Chris Kirtz at (202) 382-7565.

Dated: September 8, 1984.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 84-24195 Filed 9-12-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2669-2]

Protest Appeals of Grantee Procurement Actions Under Grants for Construction of Publicly Owned Treatment Works; Subject Index List of Regional Administrator Protest Appeal Determinations Issued During 1981 and 1982

This notice publishes the subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1981 and 1982. These determinations were made pursuant to the EPA protest procedures set forth at 40 CFR 35.939.

This is the fifth EPA subject index and lists only the decisions for the two years stated. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086-29095 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812-25818 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770-58774 (September 4, 1980), and the index of 1980 determinations published at 46 FR 30476-30480 (June 8, 1981).

There were 107 appeal determinations issued in 1981 and 72 issued in 1982. The determinations are cited informally with the names of the assistance recipients and protestors shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for that year. This number is not part of the preferred citation which should state the following: Grantee, State, [EPA Region ——, date of determination] [Protest of ————].

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the EPA headquarters office identified below.

Interested parties are invited to submit comments concerning recommended improvements or corrections to the subject index list to Allan E. Brown, Assistant General Counsel, Grants (LE-132-G), Office of General Counsel, United States

Environmental Protection Agency; Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: J. Kent Holland Jr., Esquire; Grants, Contracts, and General Law Division (LE-132-G), Office of General Counsel, United States Environmental Protection Agency, Washington, D.C. 20460; (202) 382-5313.

Dated: August 31, 1984.

A. James Barnes,

General Counsel (LE-130).

Ambiguity

81:03 Pierce County, WA (X, 1-14-81) (Frank Coluccio Const.) (MBE requirements).

81:20 Tupelo, MS (IV, 4-7-81) (Jesco, Inc.) (equipment listing requirement).

81:22 Corvallis, OR (X, 4-10-81) (Environmental Pollution Control, Inc.) (reject all bids and readvertise).

81:30 Portage, IN (V, 4-28-81) (Associated Mechanical Services) (MBE requirements).

81:50 Kalida, OH (V, 7-2-81) (Sherburn Co.) (alternate pipe materials not prejudicial).

81:51 Lynchberg, OH (V, 7-21-81) (Dow Construction Corp.) (bid clarified after opening).

81:73 Valparaiso, IN (V, 8-28-81) (H. DeWulf Mechanical Contractor) (MBE requirements).

81:76 Chicago MSD, IL (V, 10-27-81) (S.A. Healy) (MBE requirements).

81:82 Batesville, IN (V, 10-7-81) (Bowen Engineering) (MBE requirements).

81:90 Chicago MSD, IL (V, 10-27-81) (S.A. Healy, *et al.*) (MBE requirements) (reconsideration see 81:76).

81:97 Elmhurst, IL (V, 11-12-81) (Miller-Davis) (MBE requirements).

82:15 Philadelphia, PA (III, 3-16-82) (Williard, Inc.) (prejudice to bidders justifies rejection of all bids).

A/E Procurement

81:17 McHenry County, IL (V, 3-16-81) (Pio Lombardo & Assoc.) (evaluation criteria).

81:39 Guam PUA (IX, 5-29-81) (John Carollo Engineers—George Chen & Sons) (failure to list evaluation criteria and procedures).

Award—Prime Contract

81:63 Honolulu, HI (IX, 8-12-81) (Nichols Engineering & Research) (equipment procurement by subcontract instead of separate direct prime contracts).

82:14 Atlanta, GA (IV, 3-15-82) (Ruby-Collins and John D. Stephens) (no award to reconstituted joint venture with sub-entities different from bidder).

Bid Evaluation

81:31 Gildford County, MI (VIII, 4-28-81) (Baltrusch Const.) (separate bid schedules erroneously combined to determine low bidder).

82:66 Smyrna, TN (IV, 11-29-82) (Charles Finch Co. and Waterman Industries) (bid rejection must be based on performance not just physical differences).

82:67 Cullman, AL (IV, 11-30-82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) ("performance" refers to minimum needs, not best facilities but adequate ones).

Bid Shopping

81:20 Tupelo, MS (IV, 4-7-81) (Jesco, Inc.) (ambiguous equipment listing requirement).

82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (R&M Assoc.) (listing prequalified subcontractors was not to prevent bid shopping) (reversed 81:83).

82:16 Ottawa County, OH (V, 3-16-82) (Munitech) (substantial deviation).

82:21 Fallbrook Sanitary District, CA (IX, 4-6-82) (Metro-Young/Lopez Const., A Joint Venture) (controlling state statute).

82:23 Passaic Valley, NJ (II, 4-20-82) (Rochester Pump and Machine, Inc.) (not limited by EPA).

Bids

Alternate

82:59 Rochester Pure Waters District, NY (II, 11-3-82) (Schiavone Const./Cotton Dean Underground Excavation Co., Joint Venture) (award to low bidder on highest cost alternate).

Extension of Bids

81:32 Black Diamond, WA (X, 4-21-81) (Bowen Const.) (bidder intent to hold bid open although not formally extended).

Qualified

81:22 Corvallis, OR (X, 4-10-81) (Environmental Pollution Control, Inc.) (bid reserved right to substitute equipment).

Unbalanced

81:53 Timmonsville, SC (IV, 7-17-81) (Quality Sanitary Services) (not automatically nonresponsive—depends whether award will result in lowest cost).

Bidders

82:14 Atlanta, GA (IV, 3-15-82) (Ruby-Collins and John D. Stephens) (no award to reconstituted joint venture with sub-entities different from bidder).

Bonds

81:49 Los Angeles County, CA (IX, 7-1-81) (Dresser Industries) (performance bond demonstrates responsibility).

81:56 New Castle, IN (V, 7-22-81) (Ralph Reed and Sons) (single vs. incremental performance bonds).

81:87 Cridersville, OH (V, 10-16-81) (Miami Valley Contractors) (no appeal bond required to protest).

82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (R&M Assoc.) (submission of bond in lieu of experience) (reversed 81:83).

82:15 Philadelphia, PA (III, 3-16-82) (Willard, Inc.) (two bonds if bid on separate contracts, one if bid covers both) (performance bond guaranteeing lowest energy costs).

82:43 Brockton, MA (I, 8-16-82) (Tenco Hydro) (experience bond must be accepted in lieu of specified experience) (bond language generally unacceptable to sureties unduly restricts competition).

82:57 Cape May County MUA, NJ (II, 11-1-82) (American Bioreactor Corp. and Fairfield Service Co.) (bond not acceptable alternative in lieu of construction meeting specifications).

82:63 Elk Pinch, WV (III, 11-18-82) (Kappe Assoc.) (nondiscriminatory performance bond requirement, standing of subcontractor).

Burden of Proof

81:22 Corvallis, OR (X, 4-10-81) (Environmental Pollution Control, Inc.) (shifting burden when grantee awards to apparent nonresponsive bidder).

81:24 El Dorado Irrigation District, CA (IX, 4-13-81) (Lotus Const.) (protestor's, where award to apparent low bidder).

81:33 Lynchburg, OH (V, 4-30-81) (Dow Const.) (failure to rebut sworn statements).

81:45 Pasadena, TX (VI, 8-17-82) (Parkson) (shifting throughout restrictive specification protest).

81:69 Houma, LA (VI, 8-19-81) (Hydromatic Pump) (shifting).

81:80 Sacramento County, CA (IX, 10-2-81) (Westates Carbon Co.) (sole source procurement—shifting burden).

81:85 Sacramento, CA (IX, 10-14-81) (Dredge Masters International) (grantee's, for determining apparent low bid nonresponsive).

81:106 Gower, MO (VII, 12-29-81) (Empire Generator) (protestant must show restrictive specification excluded it).

82:20 Baltimore, MD (III, 4-1-82) (J. Vinton Schafer & Sons) (grantee's, if rejects apparent low bidder).

82:27 Eveleth, MN (V, 5–3–82) (Gridor Const.) (protestor's, if award to apparent low bidder).

82:37 Cullman, AL (IV, 7–6–82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (grantee's, if award not to low bidder).

82:41 Abilene, TX (VI, 7–27–82) (R&S Engineering) (shifting on restrictive specifications).

82:43 Brockton, MA (I, 8–16–82) (Tenco Hydro) (grantee must show minimum performance needs) (grantee must prove untimely appeal).

82:45 Pasadena, TX (VI, 8–17–82) (Parkson) (protestor must show product excluded).

82:49 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (shifting throughout restrictive specification protest).

82:61 El Dorado, KS (VII, 11–16–82) (Oursler Brothers Const.) (grantee must show rational basis for exclusionary design requirements).

82:66 Smyrna, TN (IV, 11–29–82) (Charles Finch Co. and Waterman Industries) (grantee's, where protestor proves restrictive specification).

Buy American

81:49 Los Angeles County, CA (IX, 7–1–81) (Dresser Industries) (preference depending upon delivered price).

81:58 Ashland, KY (IV, 7–27–81) (Fairbanks Morse Pump) (domestic preference) (reversed by reconsideration 81:79).

81:79 Ashland, KY (IV, 10–1–81) (Fairbanks Morse Pump) (domestic preference mandatory).

82:23 Passaic Valley, NJ (II, 4–20–82) (Rochester Pump and Machine) (price comparison by informal negotiation after bid opening).

82:38 Fulton, NY (II, 7–16–82) (LOC Pump and Equipment) (refers to place of manufacture not to design features).

Choice of Law

State Law

81:09 Wilmington, DE (III, 2–12–81) (Ashbrook-Simon-Hartley) (grantee may make price cap matter of responsiveness).

81:67 Wanaque Sewerage Authority, NJ (II, 8–18–81) (A. Cestone Co.) (correcting bid and displacing low bidder).

81:78 Lake County, CA (IX, 9–24–81) (Rickel Manufacturing Corp.) (grantee's attorney's opinion interpreting state law supports award).

82:21 Fallbrook Sanitary District, CA (IX, 4–6–82) (Metro-Young/Lopez Const., A Joint Venture) (grantee's interpretation).

82:22 Goldendale, WA (X, 4–16–82) (IMCO General Const.) (state law requiring bid rejection where irregularity).

82:69 Globe, AZ (IX, 12–8–82) (Mercury Const., Inc.) (protest proceedings governed by local law).

Competition

A. General

81:92 Hallandale, FL (IV, 11–3–81) (Municipal & Industrial Pipe Services, Interstate Pipe Maintenance; and Polymer Chemical Corp.) (sufficient competition on single material distributed by independent sources).

B. Free and open

81:02 Little Blue Valley, MO (VII, 1–8–81) (Eby Const.) (award to low responsive responsible bidder).

81:17 McHenry County, IL (V, 3–16–81) (Pio Lombardo & Assoc.) (local preference impermissible A/E evaluation criterion).

81:19 Phoenix, AZ (IX, 3–27–81) (TGK Const. and M.M. Sundt Const.) (no unfair advantage from supplier substitution).

81:43 Honolulu, HI (IX, 6–11–81) (Hawaii Concrete Products) (disguised sole source).

81:80 Sacramento County, CA (IX, 10–2–81) (Westates Carbon Co.) (unduly restrictive experience requirement).

82:17 Lummi Indian, WA (X, 3–26–82) (Walker Processing Corp.) (approval of only one supplier not proof of violation).

C. De Facto

82:34 Monterey, CA (IX, 6–24–82) (Frank M. Booth, Inc.) (competition where one manufacturer exists but others can meet specifications).

Conflict of Interest

81:01 N.Y. State DEC, NY (II, 1–7–81) (Sweda Enterprises) (firms representing other clients, not protestable).

Descriptive Literature Requirement (Test Data, etc.)

81:47 Jasonville, IN (V, 6–30–81) (Hinde Engineering) (incorrect information submitted late).

82:12 Channelview, TX (VI, 3–8–82) (Euramca Ecosystems) (must allow 30 days for submitting data).

E.E.O.

81:59 Metropolitan Wastewater Management Commission, OR (X, 4–29–81) (Hyland Brothers Const. and Assoc.) (responsibility, not responsiveness).

81:95 Fowlerville, MI (V, 11–9–81) (Normco Const.) (responsiveness, not responsibility).

81:101 Chicago MSD, IL (V, 12–16–81) (Walsh Const.) (responsibility, not responsiveness).

82:04 Westport, SD (VIII, 2–3–82) (H.F. Jacobs and Sons) (responsibility, not responsiveness).

Engineering Judgment

81:08 Morgantown,WV (III, 2–1–81) (Clow Co.) (sole sourcing must be based on minimum needs).

81:58 Ashland, KY (IV, 7–27–81) (Fairbanks Morse Pump) (spectulative maintenance problems).

81:61 Southington, CT (I, 8–7–81) (Chemcon) (pump design).

81:69 Houma, LA (VI, 8–18–81) (Hydromatic Pump) (conclusory representations).

81:74 Tifton, GA (IV, 9–1–81) (Municipal & Industrial Pipe Services) (deference to engineer's judgment).

81:83 Rush-Ryan Sewer Authority, PA (III, 10–13–81) (R&M Assoc.) (ability to develop test data).

81:86 Huntsville, AL (IV, 10–15–81) (Municipal & Industrial Pipe Services, and Astor Bolden Enterprises) (selection of single material grout).

81:89 Harford County, MD (III, 10–19–81) (Schuylkill Products) (exclusion of a specific manufacturing process).

81:92 Hallandale, FL (IV, 11–3–81) (Municipal & Industrial Pipe Services; Interstate Pipe Maintenance; and Polymer Chemical Corp.) (use of single material grout).

81:100 Harriman, TN (IV, 12–9–81) (Municipal & Industrial Pipe Services) (best able to restore technical matters and evaluate specific project requirements).

82:02 Rush-Ryan Sewer Authority, PA (III, 1–22–82) (R&M Assoc.) (bond submittal in lieu of experience).

82:06 Tangier, VA (III, 2–11–82) (Ultraviolet Purification Systems) (excess capacity requirement is rational where design is experimental).

82:07 Chattanooga, TN (IV, 2–18–82) (Spencer Turbine Co.) (cast iron to insure reliability and performance).

82:10 Sauget, IL (V, 2–19–82) (GHA Lock Co.) (deference to technical judgment of grantee).

82:18 Miami-Dade Water & Sewer Authority, FL (IV, 3–31–81) (Worthington Group) (requiring heavy duty pump).

82:44 Memphis, TN (IV, 8–16–82) (B.F. Goodrich Co.) (exclusion of plastic media bio filter not rational).

82:45 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (deference to engineer is not absolute).

82:57 Cape May MUA, NJ (II, 11–1–82) (American Bioreactor Co. and Fairfield Service) (baic project design).

82:61 El Dorado, KS (VII, 11–16–82) (Oursler Brothers Const.) (must be rationally based).

82:67 Cullman,AL (IV, 11–30–82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (deference to engineer's action not absolute).

Evaluation of Bids

81:02 Little Blue Valley, MO (VII, 1–8–81) (Eby Const.) (evaluation factors not in IFB).

81:17 McHenry County Board, IL (V, 3–16–81) (Pio Lombardo & Assoc.) (A/E evaluation to be based on performance criteria not local preference).

81:39 Guam PUA (IX, 5–29–81) (John Carollo Engineers—George Chen & Sons) (failure to list evaluation criteria and procedures).

81:62 Cobb County, GA (IV, 8–11–81) (American Bioreactor Corp./BAV) (single base method of evaluation prohibited).

82:47 Bedford Heights, OH (V, 8–20–82) (Suburban Power Piping, *et al.*) (subcontractor listing errors not basis for rejection unless IFB clear).

82:59 Rochester Pure Water District, NY (II, 11–3–82) (Schiavone Const./ Cotton Dean Underground Excavation Co., Joint Venture) (award to low bidder on highest cost alternate).

Experience Requirements

81:77 Carrboro, NC (IV, 9–23–81) (Clevepak Corp.) (award to newly formed corporation—experience requirements discouraged).

81:80 Sacramento County,CA (IX, 10–2–81) (Westates Carbon Co.) (unduly restrictive).

81:83 Rush-Ryan Sewer Authority, PA (III, 10–13–81) (R&M Assoc.) (test results or installation listing).

82:02 Rush-Ryan Sewer Authority, PA (III, 1–22–82) (R&M Assoc.) (bond submittal in lieu of experience) (reconsideration).

82:63 Brockton, MA (I, 8–16–82) (Tenco Hydro) (may be justified during protest—must permit bond in lieu).

Formal Advertising

81:38 Indianapolis, IN (V, 5–27–81) (American Digital Systems) (may be used to procure SSES contractor).

82:08 Santa Fe, NM, (VI, 2–18–82) (Mesa Grande) (verbal IFB amendment).

82:63 Elk Pinch PSD, WV (III, 1–18–82) (Kappe Assoc., Inc.) (communicate addenda in time for bid preparation).

82:68 Atwood, OH (V, 12–1–82) (Munitech) (bidders on equal footing).

Grantee Responsibility

81:33 Lynchburg, OH (V, 4–30–81) (Dow Const.) (state/local legal determination).

81:46 San Francisco, CA (IX, 3–27–81) (Alliance of Minority Contractors and Suppliers) (contract administration to maximize MBE).

81:68 Warren County MUA, NJ (II, 8–19–81) (Schuylkill Products) (evaluation of other materials where two materials specified).

82:12 Channelview, TX (VI, 3–8–82) (Euramca Ecosystems) (when prequalifying equipment, must allow 30 days for submitting data).

82:22 Goldendale, WAS (X, 4–16–82) (IMCO General Const.) (give parties notice of protest procedure and opportunity to express views).

8:41 Abilene, TX (VI, 7–27–82) (R&M Engineering) (allow contractor rebuttal before finding nonresponsible for prior inadequate performance).

82:45 Pasadena, TX (VI, 8–17–82) (Parkson) (pre-rejection notice of reasons for rejection not necessary).

82:49 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (rebuttal opportunity).

82:70 Metropolitan Wastewater Management Commission, OR (X, 12–22–82) (Robert Dougan Const.) (rejection of all bids if specifications unduly restrictive).

Harmless Error

81:87 Cridersville, OH (V, 10–16–81) (Miami Valley Contractors) (omission of MBE guidance from IFB).

81:90 Chicago MSD, IL (V, 10–27–81) (S.A. Healy, *et al.*) (reconsideration of 81:76) (ambiguous MBE requirements).

82:45 Pasadena, TX (VI, 8–17–82) (Parkson) (actual notice of reason for rejection not given).

Jurisdiction

81:01 N.Y. State DEC, NY (II, 1–7–81) (Sweda Enterprises) (firms representing other clients not protestable).

81:05 Puerto Rico Aqueduct and Sewer Authority, PR (II, 1–29–81) (Redondo Const.) (bid withdrawn because of mistake not subject to EPA review).

81:08 Morgantown, WV (III, 2–1–81) (Clow Co.) (prior EPA approval does not bar review)

81:26 Loganville, GA (IV, 4–14–81) (Miller, Stevenson & Steininchen) (contract termination dispute).

81:41 Grand Haven, MI (V, 6–5–81) (Equipment & Gravel) (procurement of services beyond grant scope).

81:49 Los Angeles County, CA (IX, 7–1–81) (Dresser Industries) (competitor subcontractor's compliance with equipment specifications not protestable)

81:59 Metropolitan Wastewater Management Commission, OR (X, 7–30–81) (Hyland Brothers Const. and Assoc.) (whether competing bidder will meet MBE goal not protestable).

81:64 Loganville, GA (IV, 8–14–81) (Flygt Corp.) (personal financial loss not matter of contract award propriety).

81:66 Ewing-Lawrence Sewerage Authority, NJ (II, 8–18–81) (Standard Engineers and Const.) (equitable adjustment claim not protestable).

81:84 Russian River County Sanitation District, CA (IX, 10–14–81) (Dan Caputo & Wagner Const.) (withholding payment not protestable).

81:91 Western Monmouth Utilities Authority, NJ (II, 10–29–81) (Parcoa) (failure to pay contractor not protestable).

81:96 Atlanta, GA (IV, 11–13–81) (Fisher & Porter Co.) (contract performance and administration are post-award matters not protestable).

81:101 Ewing Lawrence Sewerage Authority, NJ (II, 12–14–81) (Neshaminy Const.) (substitution of subcontractor not protestable).

82:02 Rysh-Ryan Sewer Authority, PA (III, 1–22–82) (R & M Assoc.) (state approval of similar facilities not protestable).

82:07 Chattanooga, TN (IV, 2–18–82) (Spencer Turbine Co.) (basic design decision to use existing structure not protestable).

82:23 Passaic Valley, NJ (II, 4–20–82) (Rochester Pump and Machine) (subcontractors selection of supplier not protestable).

82:24 El Doredo, KS (VII, 4–20–82) (Oursler Brothers Const.) (equipment rejection matter of contract administration).

82:29 Syracuse, NY (II, 5–18–82) (Bat-Con, Inc.) (withholding payments to contractors not protestable).

82:39 Russian River, CA (IX, 7–20–82) (Dan Caputo Co. and Wagner Co., A Joint Venture) (contract administration dispute not protestable).

82:42 Philadelphia, PA (III, 7–28–82) (Carr & Duff) (failure to negotiate change order not protestable).

82:57 Cape May County MUA, NJ (II, 11–1–82) (American Bioreactor Corp. and Fairfield Service Co.) (basic project designs not protestable).

82:61 El Dorado, KS (VII, 11–16–82) (Oursler Brothers Const.) (jurisdiction to consider reconsideration request).

82:64 Shady Spring PSD, WV (III, 11–22–82) (Davis Water & Waste Industries, Inc.) (subcontractor substitution not protestable).

Local Preference

License Requirement

82:33 Henderson, NV (IX, 6–22–82) (Nielson, Vasko & Earl, Inc.) (state law requiring license before bidding).

Minority Business Enterprises (see also Responsibility and Responsiveness

81:04 Central Contra Costa Sanitary District, CA (IX, 1–27–81) (D.W. Young Const.) (MBE share in joint venture).

81:12 California SWRCB, CA (IX 2–26–81) (Navas Pipe Supply and Hydro Conduit Co.) (middleman MBE, no commercially useful function).

81:27 Black Diamond, WA (X, 4–21–81) (Bowen Const.) (failure to meet goal or show positive efforts) (remanded for bidder to show efforts).

81:32 Black Diamond, WA (X, 4–29–81) (Bowen Const.) (need not segregate supply and construction components to determine compliance with twin MBE goals).

81:37 Crescenta Valley County, CA (IX, 5–18–81) (J.C. Plumbing Co.) (failure to demonstrate positive efforts).

81:45 San Francisco, CA (IX, 6–15–81) (Hydro Conduit Co.) (MBE firms not required to demonstrate social or economic disadvantage resulting from discrimination).

81:46 San Francisco, CA (IX, 6–15–81) (Alliance of Minority Contractors and Suppliers) (must be clearly defined role for MBE in joint venture).

81:55 Centerville, IA (VII, 7–21–81) (Grady Unlimited) (policy establishes no right to subcontract) (maximum positive efforts not required).

81:59 Metropolitan Wastewater Management Commission, OR (X, 7–30–81) (Hyland Brothers Const. and Assoc.) (MBE subcontractors listing, curable after bid opening).

81:72 Sun Valley, NV (IX, 8–21–81) (Hydro Conduit Co.) (protest premature because contractor not yet designated MBE).

81:76 Chicago MSD, IL (V, 9–18–81) (S.A. Healy Co., *et al.*) (commercially useful function) (minority control).

81:87 Cridersville, OH (V, 10–16–81) (Miami Valley Contractors) (omission of MBE guidance from IFB).

81:90 Chicago MSD, IL (V, 10–27–81) (S.A. Healy, *et al.*) (reconsideration of 81:76) (ambiguous MBE requirements).

81:93 Marengo, IN (V, 11–3–810) (E.H. Hughes Co.) (lack of State assistance no excuse for lack of positive efforts).

81:96 Tallahassee, FL (IV, 11–10–81) (GS&L Mechanical Const. and Assoc. Minority Contractors) (MBE association may challenge MBE compliance on behalf of members) (failure to meet MBE goal requires examination of positive efforts).

82:29 Syracuse, NY (II, 5–18–82) (Bat-Con, Inc.) (withholding payments to contractor for failure to meet MBE requirements not protestable).

82:36 Williamstown, MI (V, 6–28–82) (Barnhart & Son) (pre-bid positive efforts documentation).

82:52 Gwynn Falls, MD (III, 9–14–82) (R.J. Longo Const.) (meet goal or demonstrate positive efforts).

82:68 Atwood, OH (V, 12–1–82) (Munitech) (failure to provide MBE documentation).

Mistake

81:05 Puerto Rico Aqueduct and Sewer Authority, PR (II, 1–29–81) (Redondo Const.) (withdrawal of mistaken bid not protestable).

81:48 Cleveland, MS (IV, 7–1–81) (Roland Pugh Const.) (corrected bid displaced bidder, intent ascertainable from bid).

81:67 Wanaque Sewerage Authority, NJ (II, 8–19–81) (A. Cestone Co.) (corrected unit price bid displaced low bidder).

82:30 Panorama Village, TX (VI, 5–21–82) (Ranger Const.) (unit price extensions may be corrected if intent clear from face of bid).

Negotiated Procurement

81:38 Indianapolis, IN (V, 5–27–81) (American Digital Systems) (not required in procurement of SSES contractor).

Prequalification

81:13 Atlanta, GA (IV, 3–5–81) (R.J. Longo Const.) (bidder's responsibility for assuring receipt of prequalification package) (general contractor) (one year between prequalification and bidding not *per se* restrictive).

81:22 Corvallis, OR (X, 4–10–81) (Environmental Pollution Control, Inc.) (bid must conform to all elements of specifications even if lists prequalified equipment).

81:23 Tifton, GA (IV, 4–13–81) (Astor Bolden Enterprises and Municipal & Industrial Pipe Serv.) (only permissible for selection of major equipment items in situations of public exigency).

81:47 Jasonville, IN (V, 6–30–81) (Hinde Engineering Co.) (grantee representation created de facto prequalification, not conclusive responsiveness determination).

81:62 Cobb County, GA (IV, 8–11–81) (American Bioreactor Corp./BAV) (must conform to PRM 79–10 and requirement must be justified).

81:83 Rush-Ryan Sewer Authority, PA (III, 10–13–81) (R&M Assoc.) (single manufacturer prequalified on open specifications is not sole source procurement) (reversed by reconsideration 82:02).

81:106 Gower, MO (VII, 12–29–81) (Empire Generator) (clarification of submittals).

82:02 Rush-Ryan Sewer Authority, PA (III. 1–22–82) (R&M Assoc.) (grantee cannot reject bid as nonresponsive for failure to list prequalified supplier unless IFB so clearly states) (reconsideration of 81:83).

82:12 Channelview, TX (VI, 3–8–82) (Euramca Ecosystems) (must allow 30 days for submitting data).

82:14 Atlanta, GA (IV, 3–15–82) (Ruby Collins, Inc. and John D. Stephens) (prequalified joint venture cannot change its component entities and be awarded the contract).

82:19 Mount Pleasant, SC (IV, 3–31–82) (Bird Machine Co.) (description of major item sufficient without describing ancillary items).

82:37 Cullman, AL (IV, 7–6–82) (Cal Co.; Encore Co.; and Drew and Assoc.) (30 days for submitting equipment data).

82:49 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (notification procedures).

82:56 Macon-Bibb County, GA (IV, 10–26–82) (Charles Finch Co.) (time for submitting presubmittals).

82:57 Cape May County MUA, NJ (II, 11–1–82) (American Bioreactor Co. And Fairfield Service Co.) (decision not to pre-qualify processes as "or equal").

Procedure

81:10 N.Y. State DEC, NY (II, 2–13–81) (Sweda Enterprises) (protest not stating bases or referring to EPA regulations).

81:17 McHenry, IL (V, 3–16–81) (Pio Lombardo & Assoc.) failure to notify interested parties having actual knowledge).

81:32 Black Diamond, WA (X, 4–29–81) (Bowen Const.) (bidder intent to hold bid open although not formally extended).

81:34 San Diego, CA (IX, 5–1–81) (Westates Carbon) (small size and lack of counsel no excuse for not knowing and following procedures).

81:44 Tuolumme County, CA (IX, 6–11–81) (Chaudhury & Assoc.) (appeal filed with Regional Counsel not mailed to interested parties).

81:46 San Francisco, CA (IX, 3–27–81) (Alliance of Minority Contractors and Suppliers) (failure to notify interested parties or cite regulations) (time limit for filing not waived).

81:58 Ashland, KY (IV, 7–27–81) (Fairbanks Morse Pump) (suppliers appeal period not started by notice to prime that equipment rejected) (failure to notify interested parties).

81:59 Metropolitan Wastewater Management Commission, OR (X, 7–30–81) (Hyland Brothers Const. and Assoc.) (no prejudice from failure to transmit protest to other parties).

81:60 East Troy, WI (V, 7–31–81) (Joseph Lorenz, Inc.) (failure to send copy of initial protest did not require dismissal).

81:69 Houma, LA (VI, 8–19–81) (Hydromatic Pump) (detailed initial protest telegram did not require additional written protest).

81:81 Columbus, OH (V, 10–5–81) (Cantwell Machinery) (omission of legal report from grantee decision).

81:87 Cridersville, OH (V, 10–16–81) (Miami Valley Contractors) (appeal bond unnecessary).

81:100 Harriman, TN (IV, 12–9–81) (Municipal & Industrial Pipe Services) (failure to file detailed protest after telegraphic notice).

82:09 Cobden, IL (V, 2–19–82) (R–J Equipment Sales) (elements of protest appeal).

82:10 Sauget, IL (V, 2–19–82) (GHA Locks Joint Co.) (appeal not made moot by addendum).

82:15 Philadelphia, PA (III, 3–16–82) (Williard, Inc.) (request for review need not contain word "protest").

82:20 Baltimore, MD (III, 4–1–82) (J. Vinton Shafer & Sons) (no reference to regulation).

82:24 El Dorado, KS (VII, 4–20–82) (Oursler Brothers Const.) (protest appeal must allege regulatory violation) (reversed by reconsideration 82:61).

82:48 Claremont, CA (IX, 8–26–82) (Peter Gavrilis) (summary dismissal of nonmeritorious protest).

82:61 El Dorado, KS (VII, 11–16–82) (Oursler Brothers Const.) (reconsideration reversed 82:24 concerning necessity of citing regulatory violation in appeal).

Rational Basis Test

81:16 Clermont County, IL (V, 3–16–81) (Glenn Rhoades Const.) (EPA reliance on grantee determination of state/local law unless no rational basis).

81:39 Guam PAU (IX, 5–29–81) (John Carollo Engineers—George Chen & Sons) (re-ranking A/E firms).

81:43 Honolulu, HI (IX, 6–11–81) (Hawaii Concrete Products) (vertical cast pipe vs. centrifugal cast pipe).

81:58 Ashland, KY (IV, 7–27–81) (Fairbanks Morse Pump) (design decision).

81:61 Southington, CT (I, 8–7–81) (Chemcon) (pump design).

81:68 Warren County MUA, NJ (II, 8–19–81) (Schuykill Products) (materials limited without test results).

81:69 Houma, LA (VI, 8–19–81) (Hydromatic Pump) (minimum performance needs of pumps) (speculation of maintenance problems not sufficient).

81:83 Rush-Ryan Sewer Authority, PA (III 10–13–81) (R&M Assoc.) (failure to submit test data) (reversed by reconsideration 82:02).

81:85 Sacramento, CA (IX, 10–14–81) (Dredge Masters International) (bid evaluation).

81:89 Harford County, MD (III, 10–19–81) (Schuylkill Products) (exclusion of specific manufacturing process).

81:100 Harriman, TN (IV, 12–9–81) (Municipal & Industrial Pipe Services) (single material grout required by soil conditions).

82:01 Bowling Green, OH (V, 1–12–82) (DCK Contracting) (limited EPA review).

82:06 Tangier, Va (III, 2–11–82) (Ultraviolet Purification Systems) (experimental design).

82:07 Chattanooga, TN (IV, 2–18–82) (Spencer Turbine Co.) (grantee reliance on engineer).

82:10 Sauget, IL (V, 2–19–82) (GHA Lock Joint Co.) (sustain grantee where rational basis).

82:12 Channelview, TX (VI, 3–8–82) (Euramca Ecosystems) (erroneous legal premise not rational).

82:17 Lummi Indian, WA (X, 3–26–82) (Walker Processing Corp.) (deference to engineering judgment).

82:18 Miami-Dade water & Sewer Authority, FL (IV, 3–31–82 (Worthington Group) (engineer's basis for specification).

82:21 Fallbrook Sanitary District, CA (IX, 4–6–82) (Metro—Young/Lopez Const., A Joint Venture) (grantee's interpretation and application of state law).

82:22 Goldendale, WA (X, 4–16–82) (IMCO General Const.) (determination that ambiguity did not give substantial advantage to others).

82:26 Akron, OH (V, 5–3–82) (Environmental Elements) (deference to technical judgment).

82:27 Eveleth, MN (V, 5–3–82) (Gridor Const.) (waiving irregularities in bid).

82:31 Menominee, MI (V, 6–8–82) (Krygoski Const.) (finding bid to be nonconditional in spite of alternative proposal).

82:34 Monterey, CA (IX, 6–24–82) (Frank M. Booth, Inc.) (specification requiring use of nickel, minimum performance needs).

82:38 Fulton, NY (II, 7–16–82) (LOC Pump and Equipment) (specification based on minimum needs).

82:41 Abilene, TX (VI, 7–27–82) (R&S Engineering) (minimum performance needs stated as manufacturers only).

82:43 Brockton, MA (I, 8–16–82) (Tenco Hydro) (minimum needs justification).

82:44 Memphis, TN (IV, 8–16–82) (B.F. Goodrich Co.) (exclusion of plastic media bio filter not rational).

82:46 Spearfish, SD (VIII, 8–19–82) (Sheesley Plumbing and Heating Co.) (minimum performance needs).

82:49 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (minimum performance needs).

82:53 Monterey, CA (IX, 9–29–82) (Frank M. Booth, Inc.) (longevity in service).

82:59 Rochester Pure Waters District, NY (II, 11–3–82) (Schiavone Const./Cotton Dean Underground Excavation Co., Joint Venture) (award to low bidder on highest cost alternate).

82:66 Smyrna, TN (IV, 11–29–82) (Waterman Industries, and Charles Finch Co.) (equipment rejection to be for performance reasons not physical differences).

82:70 Metropolitan Wastewater Management Commission, OR (X, 12–22–82) (Robert Dougan Const.) (rejection of all bids because equipment not meeting specifications did satisfy performance requirements).

Reconsideration

81:03 Pierce County, WA (X, 1–14–81) (Frank Culuccio Const.) (substantial error of law alleged) (affirmed 12–23–80 decision).

81:10 N.Y. State DEC, NY (II, 2–13–81) (Sweda Enterprises) (affirmed 81:01).

81:28 Corvallis, OR (X, 4–22–81) (Environmental Pollution Control, Inc.) (cannot reargue points previously discussed and decided or make new contentions based on same facts (affirmed 81:22).

81:32 Black Diamond, WA (X, 4–29–81) (Bowen Const.) (affirmed 81:27).

81:52 Buncome County, NC (IV, 7–17–81) (Carlon, Division of Indian Head) (no new facts) (affirmed 81:36).

81:79 Ashland, KY (IV, 10/1/81) (Fairbanks Morse Pump) (affirmed 81:58).

81:90 Chicago MSD, IL (V, 10–27–81) (S.A. Healy Co., *et al.*) (affirmed 81:76).

82:02 Rush-Ryan Sewer Authority, PA (III, 1–22–82) (R&M Associates) (clearly erroneous law or fact) (reversed 81:83).

82:03 Fort Wayne, IN (V, 1–25–82) (Bates & Rogers Const.) (affirmed 81:88).

82:13 Santa Fe, NM (VI, 3–9–82) (Ranger Const.) (renewal of same arguments) (affirmed 82:08).

82:53 Monterey, CA (IX, 9–29–82) (Frank M. Booth, Inc.) (evidence available but not offered) (affirmed 82:34).

82:58 Russian River, CA (IX, 11–1–82) (Dan Caputo Co., and Wagner Const. Co., A joint Venture) (denied where no mistakes, new evidence or error of law) (affirmed 82:39).

82:61 El Dorado, KS (VII, 11–1–82) (Oursler Brothers Const.) (legal error in not permitting protest of restrictive specifications) (reversed 82:24).

82:65 Spearfish, SD (VIII, 11–23–82) (Sheesley Plumbing and Heating Co.) (affirmed 82:46).

82:67 Cullman, AL (IV, 11–30–82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (no mistake, new evidence or legal error) (affirmed 82:37).

Rejection of All Bids

81:14 Puerto Rico Aqueduct and Sewer Authority, PR (II, 3–6–81) (Spearin, Preston & Burrows, and Conduit and Foundation Corp., Joint Venture) (work divided into two contracts and readvertised).

81:22 Corvallis, OR (X, 4–10–81) (Environmental Pollution Control, Inc.) (ambiguous specification).

81:30 Portage, IN (V, 4–28–81) (Associated Mechanical Services) (MBE requirements ambiguous).

81:53 Timmonsville, SC (IV, 7–17–81) (Quality Sanitary Services) (inaccurate quantity estimates).

81:71 Central Contra Costa Sanitary District, CA (IX, 8–21–81) (D.W. Young Const.) (litigation not good cause).

81:73 Valparaiso, IN (V, 8–28–81) (H. DeWulf Mechanical Contractor) (MBE requirements ambiguous).

81:82 Batesville, IN (V, 10–7–81) (Bowen Engineering) (MBE requirements ambigous).

81:95 Fowlerville, MI (V, 11–9–81) (Normco Const.) (no evidence of good cause).

82:01 Bowling Green, OH (V, 1–12–82) (DCK Contracting) (good cause defined).

82:11 Carmel, IN (V, 3–3–82) (E.H. Hughes Co.) (rejection where bids unreasonable in light of cost estimates).

82:15 Philadelphia, PA (III, 3–16–82) (Williard, Inc.) (justified if ambiguity prejudiced bidders).

82:22 Goldendale, WA (X, 4–16–81) (IMCO General Const.) (justified by inconsistencies in bidding documents).

82:40 Whitestone, NY (II, 7–26–82) (F.G. Compagni Const.) (IFB stating inaccurate quantities).

82:70 Metropolitan Wastewater Management Commission, OR (X, 12–22–82) (Robert Dougan Const.) (rejection of all bids because equipment not meeting specifications did satisfy performance requiements).

Responsibility

81:03 Pierce County, WA (X, 1–14–81) (Frank Coluccio Const.) (MBE requirements).

81:04 Central Contra Costa Sanitary District, CA (IX, 1–27–81) (D.W. Young Const.) (MBE requirements—failure to demonstrate positive efforts).

81:19 Phoenix, AZ (IX, 3–27–81) (TGK Const. & M.M. Sundt Const.) (unacceptable subcontractor did not make prime non-responsible).

81:20 Tupelo, MS (IV, 4–7–81) (Jesco, Inc.) (equipment listing requirement) (substitute more expensive equipment if listed equipment unsatisfactory).

81:27 Black Diamond, WA (X, 4–21–81) (Bowen Const.) MBE goals not met, requires examination of positive efforts).

81:31 Gildford County Sewer District, MI (VIII, 4–28–81) (Baltrush Const.) (MBE requirements).

81:32 Black Diamond, WA (X, 4–29–81) (Bowen Cosnt.) MBE responsibility shown by positive efforts).

81:37 Crescenta Valley County, CA (IX, 5–18–81) (J.C. Plumbing Co., & Channel Const.) (MBE requirements—failure to demonstrate positive efforts).

81:38 Indianapolis, IN (V, 5–27–81) (American Digital Systems) (deference to grantee responsibility determination).

81:49 Los Angeles County, CA (IX, 7–1–81) (Dresser Industries) (performance shows capability to meet obligations).

81:50 Kalida, OH (V, 7–2–81) (Sherburn Co.) (submission of catalog cuts and equipment guarantee).

81:59 Metropolitan Wastewater Management Commission, OR (X, 7–20–81) (Hyland Brothers Const.) (failure to list MBE subcontractors).

81:60 East Troy, WI (V, 7–31–81) (Joseph Lorenz) (MBE requirements).

81:71 Central Contra Costa Sanitary District, CA (IX, 8–21–81) D.W. Young Const.) (failure to comply with (MBE requirements).

81:75 New Castle, IN (V, 9–9–81) (Joe R. Norman Contractor) (financial standing, performance bond).

81:76 Chicago MSD, IL (V, 9–18–81) (S.A. Healy, *et al.*) (MBE requirements remain a matter of responsibility despite IFB's attempt to make it responsiveness).

81:77 Carrboro, NC (IV, 9–23–81) (Clevepak Corp.) (deference to affirmative determination of responsibility unless fraud, bad faith or evidence that specific objective standards violated).

81:82 Batesville, IN (V, 10–7–81) (Bowen Engineering) (subcontractor listing).

81:90 Chicago MSD, IL (V, 10–27–81) (S.A. Healy, *et al*) (MBE requirements).

81:95 Fowlerville, MI (V, 11–9–81) (Normco Const.) (MBE requirements).

81:96 Tallahassee, FL (IV, 11–10–81) (GS&L Mechanical Const.; Assoc. of Minority Contractors) (MBE requirements).

81:101 Chicago MSD, IL (V, 12–16–81) (Walsh Const.) (EEO forms).

81:103 Atlanta, GA (IV, 12–18—81) (Rocco Ferrera & Co.) (MBE requirements).

82:03 Fort Wayne, IN (V, 1–25–82) (Bates & Rogers Const.) (fiscal integrity requirements).

82:04 Westport, SD (VIII, 2–3–82) (H.F. Jacobs and Sons) (MBE requirements, EEO Certification, nonsegregated facilities certificate).

82:08 Santa Fe, NM (VI, 2–18–82) (Mesa Grande) (MBE documentation).

82:21 Fallbrook Sanitary District, CA (IX, 4–6–82) (Metro—Young/Lopez Const., A Joint Venture) (MBE requirements).

82:25 Perryville, MD (III, 4–28–82) (J. Vinton Schafer & Sons) (MBE requirements).

82:28 Gwynn Falls Relief Interceptors (III, 5–7–82) (R.J. Longo and B&B Tunnelling Contractors) (MBE requirements).

82:33 Henderson, NV (IX, 6–22–82) (Nielson, Vasko & Earl, Inc.) (MBE requirements and possession of work license).

82:41 Abilene, TX (VI, 7–27–82) (R&S Engineering) (contractors right to rebut allegations of prior inadequate performance).

82:49 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (supplier's right to rebut allegations of prior inadequate performance).

82:52 Gwynn Falls, MD (III, 9–14–82) (R.J. Longo Const.) (MBE requirements).

82:61 El Dorado, KS (VII, 11–16–82) (Oursler Brothers Const.) (rebuttal opportunity).

82:62 Statesville, NC (IV, 11–17–82) (DPS Contractors) (contrasted responsiveness) (bid documentation and certifications submittal).

82:64 Shady Spring PSD, WV (III, 11–22–82) (Davis Water & Waste Industries (MBE requirements).

Responsiveness

81:06 Oceanside, CA (IX, 1–30–81) (Bird Machine Co.) (unacceptable subcontractor listed).

81:15 Myrtle Beach, SC (IV, 3–13–81) (Paul N. Howard Co.) (omission of unit prices) (oral questions and answers concerning IFB unreliable).

81:16 Clermont County Sewer District, IL (V, 3–16–81) (Glenn Rhoades Const.) (MBE requirements).

81:19 Phoenix, AZ (IX, 3–27–81) (TGK Const. & M.M. Sundt Const.) (unacceptable supplier listing).

81:20 Tupelo, MS (IV, 4–7–81) (Jesco, Inc.) (failure to satisfy IFB listing requirements did not affect responsiveness).

81:22 Corvallis, OR (X, 4–10–81) (Environmental Pollution Control, Inc.)

(grantee's right to require equipment substitution does not permit waiver of nonresponsive equipment offer).

81:24 El Dorado Irrigation District, CA (IX, 4–13–81) (Lotus Const.) (failure to acknowledge addenda waived as minor defect).

81:30 Tomah, WI (V, 4–10–81) (W.G. Jaques) (MBE requirements).

81:38 Indianapolis, IN (V, 5–27–81) (American Digital Systems) (deference to technical judgment of grantee).

81:46 San Francisco, CA (IX, 6–15–81) (Alliance of Minority Contractors and Suppliers) (MBE requirements).

81:50 Kalida, OH (V, 7–2–81) (Sherburn Co.) (failure to list unit prices).

81:51 Lynchburg, OH (V, 7–2–81) (Dow Const.) (failure to list unit prices).

81:65 South Lyon, MI (V, 8–27–81) (DCK Contracting (MBE requirements).

81:76 Chicago MSD, IL (V, 9–18–81) (S.A. Healy, *et al.*) (MBE requirements).

81:85 Sacramento, CA (IX, 10–14–81) (Dredge Masters International) (failure to submit equipment description) (exception to payment terms).

81:90 Chicago MSD, IL (V, 10–27–81) (S.A. Healy, *et al.*) (MBE requirements).

81:93 Marengo, IN (V, 11–3–81) (E.H. Hughes) (MBE requirements).

81:95 Fowlerville, MI (V, 11–9–81) (Normco Const.) (EEO requirements).

81:97 Elmhurst, IL (V, 11–12–81) (Miller-Davis) (MBE requirements).

81:106 Gower, MO (VII, 12–29–81) (Empire Generator) (deviation from warranty requirement).

81:107 Colchester, CT (I, 12–31–81) (Clark Sewer Const.) (failure to bid on alternate).

82:01 Bowling Green OH (V, 1–12–82) (DCK Contracting) (MBE requirements).

82:22 Goldendale, WA (X, 4–16–82) (IMCO General Const.) (failure to list subcontractors or suppliers).

82:27 Eveleth, MN (V, 5–3–82) (Gridor Const.) (MBE requirements).

82:31 Menominee, MI (V, 6–8–82) (Krygoski Const.) (conditional bid).

82:35 Van Buren County, MI (V, 6–28–82) (Union Const.) (bid responsive despite failure to acknowledge addendum).

82:36 Williamstown, MI (V, 6–28–82) (Barnhart & Son) (MBE requirements).

82:45 Pasadena, TX (VI, 9–17–82) (Parkson) ("better" equipment than specified must meet design specifications).

82:67 Cullman, AL (IV, 11–30–82) (Cal Corp.; Encore Corp. and Drew and Assoc.) (bidder able to comply with solicitation requirements need not offer equipment listed in solicitation).

82:68 Atwood, OH (V, 12–1–82) (Munitech).

82:69 Globe, AZ (IX, 12–8–82) (Mercury Const.) (addendum must be included with bid).

Review

81:12 California SWRCB, CA (IX, 2–26–81) (Navas Pipe Supply and Hydro Conduit Co.) (review of delegated state decision).

81:31 Gildford County Sewer District, MI (VIII, 4–28–81) (Baltrusch Const.) (role of EPA Regional Administrator).

81:39 Guam PUA (IX, 5–29–81) (John Carollo Engineers—George Chen & Sons, Inc.) (A/E procurement) (review of A/E procurement to insure maximum competition and compliance with regulations).

81:74 Tifton, GA (IV, 9–1–81) (Municipal & Industrial Pipe Services) (EPA review of determination by state delegated authority).

81:87 Cridersville, OH (V, 10–16–81) (Miami Valley Contractors) (issues raised before grantee only).

82:04 Westport, SD (VIII, 2–3–82) (H.P. Jacobs and Sons) (role of EPA Regional Administrator).

Salient Requirements

81:43 Honolulu, HI (IX, 6–11–81) (Hawaii Concrete Products) (vertical cast pipe vs. centrifugal cast pipe).

81:58 Ashland, KY (IV, 7–27–81) (Fairbanks Mores Pump) (speculative maintenance problem not salient).

81:69 Houma, LA (VI, 8–19–81) (Hydromatic Pump) (recirculation port size) (speculative maintenance problems not salient).

81:79 Ashland, KY (IV, 10–1–81) (Fairbanks Morse Pump) (maintenance cost).

82:06 Tangier, VA (III, 2–11–82) (Ultraviolet Purification Systems) (minimum performance needs).

82:34 Monterey, CA (IX, 6–24–82) (Frank M. Booth, Inc.) (minimum performance needs for brand names).

82:37 Cullman, AL (IV, 7–6–82) (Cal Corp.; Encore Corp. and Drew and Assoc.) (based on mechanical reliability and maintenance considerations) (design features enhancing safety and efficiency).

82:41 Abilene, TX (VI, 7–27–82) (R&S Engineering) (manufacturers only—unrelated to performance).

82:46 Spearfish, SD (VIII, 8–19–82) (Sheesley Plumbing and Heating Co.) (drawn around single named brand).

82:49 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (unidentified).

82:50 Eaton, OH (V, 9–14–82) (Wagner Machinery) (unidentified).

82:53 Monterey, CA (IX, 9–29–82) (Frank M. Booth, Inc.) (longevity in service).

82:55 Haysville, KS (VII, 10–13–82) (Walker Process) (on-site maintenance).

82:16 El Dorado, KS (VII, 11–16–82) (Oursler Brothers Const.) (chain vs. cable).

Sole Source

81:08 Morgantown, WV (III, 2–1–81) (Clow Co.) (not justified by cost effectiveness analysis).

81:43 Honolulu, HI (IX, 6–11–81) (Hawaii Concrete Products, Inc.) (disguised).

81:47 Jasonville, IN (V, 6–30–81) (Hinde Engineering Co.) (catalog specifications not sole source).

81:62 Cobb County, GA (IV, 8–11–81) (American Bioreactor Corp./BAV) (single manufacturers "or equals").

81:80 Sacramento County, CA (IX, 10–2–81) (Westates Carbon Co.) (inadequate justification).

81:83 Rush-Ryan Sewer Authority, PA (III, 10–13–81) (R&M Associates) (single manufacturer prequalified).

81:86 Huntsville, AL (IV, 10–15–81) (Municipal & Industrial Pipe Services and Astor Bolden Enterprises) (must justify naming single grout material whether sole source or single material).

81:92 Hallandale, FL (IV, 11–3–81) (Municipal & Industrial Pipe Services; Interstate Pipe Maintenance; and Polymer Chemical Corp.) (single material distinguished) (competition among suppliers).

81:100 Harriman, TN (IV, 12–9–81) (Municipal & Industrial Pipe Services) (distinguished from single material with several available suppliers).

82:02 Rush-Ryan Sewer Authority, PA (III, 1–22–82) (R&M Assoc.) (prequalification procedures) (reversed 81:83).

82:10 Sauget, IL (V, 2–19–82) (GHA Lock Joint Co.) (specifications allowing only one product is not sole source since available from more than one source).

82:17 Lummi Indian, WA (X, 3–26–82) (Walker Processing Corp.) (type RBC available from sole source but other brands could be modified).

82:18 Miami-Dade Water & Sewerage Authority, FL (IV, 3–31–82) (Worthington Group) (not sole source if two or more manufactures can meet specification).

82:19 Mount Pleasant, SC (IV, 3–31–82) (Bird Machine Co.) (justification for sole sourcing inadequate).

82:37 Cullman, AL (IV, 7–6–82) (Cal Corp.; Encore Corp.; and Drew Assoc.) (equipment available from more than one source not sole source).

82:44 Memphis, TN (IV, 8–16–82) (B.F. Goodrich Co.) (inadequate justification for single material activated filtration process).

82:68 **Atwood, OH** (V, 12–1–82) (Munitech) (deviation from specifications).

Specifications

A. General

81:08 **Morgantown, WV** (III, 2–1–81) (Clow Co.) (prior EPA approval does not bar review).

81:53 **Timmonsville, SC** (IV, 7–17–81) (Quality Sanitary Services) (bidder reliance on quantities approximated in IFB).

82:06 **Tangier, VA** (III, 2–11–82) (Ultraviolet Purification Systems) (brand name or equal-identify salient requirement and how related to minimum needs).

82:07 **Chattanooga, TN** (IV, 2–18–82) (Spencer Turbine Co.) (basic design decision to utilize existing structure not protestable).

82:37 **Cullman, AL** (IV, 7–6–82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (IFB must clearly explain information to be submitted and method of award).

82:57 **Cape May County MUA, NJ** (II, 11–1–82) (American Bioreactor Co. and Fairfield Service Co.) (basic project design not met when "or equal" proposal fails to meet key features).

B. Unduly Restrictive

81:02 **Little Blue Valley, MO** (VII, 1–8–81) (Eby Const.) (restrictive as applied; local preference).

81:09 **Wilmington, DE** (III, 2–12–81) (Ashbrook-Simon-Hartley) (maximum unit price).

81:29 **North Plainfield, NJ** (II, 4–24–81) (Schuylkill Products) (two pipe materials specified).

81:43 **Honolulu, HI** (IX, 6–11–81) (Hawaii Concrete Products) (vertical cast pipe lacked performance basis).

81:47 **Jasonville, IN** (V, 6–30–81) (Hinde Engineering Co.) (catalog specifications that competitors capable of copying).

81:50 **Kalida, OH** (V, 7–2–81) (Sherburn Co.) (single base bid pipe procurement prohibited).

81:58 **Ashland, KY** (IV, 7–27–81) (Fairbanks Morse Pump) (EPA funds minimum performance not ideal or best design).

81:61 **Southington, CT** (I, 8–7–81) (Chemcon) (pump design).

81:62 **Cobb County, GA** (IV, 8–11–81) (American Bioreactor Corp./BAV) (single base bidding prohibited) (no sole source violation where contract permitted use of "equal").

81:68 **Warren County MUA, NJ** (II, 8–19–81) (Schuylkill Products) (design criteria permitted only two types pipe—other processes not evaluated).

81:69 **Houma, LA** (VI, 8–19–81) (Hydromatic Pump) (catalog design specifications).

81:74 **Tifton, GA** (IV, 9–1–81) (Municipal & Industrial Pipe Services) (single material).

81:79 **Ashland, KY** (IV, 10–1–81) (Fairbanks Morse Pump) (documented maintenance costs as performance requirements).

81:86 **Huntsville, AL** (IV, 10–15–81) (Municipal & Industrial Pipe Services, and Astor Bolden Enterprises) (single material grout).

81:85 **Sacramento, CA** (IX, 10–14–81) (Dredge Masters International) (performance testing of equipment).

81:89 **Harford County, MD** (III, 10–19–81) (Schuylkill Products) (nationally accepted concrete pipe standard; exclusion of Packerhead pipe).

81:92 **Hallandale, FL** (IV, 11–3–81) (Municipal & Industrial Pipe Services, Interstate Pipe Maintenance; and Polymer Chemical Corp.) (single material grout).

82:06 **Tangier, VA** (III, 2–11–82) (Ultraviolet Purification Systems) (excess capacity justified by experimental design).

82:07 **Chattanooga, TN** (IV, 2–18–82) (Spencer Turbine Co.) (requiring cast iron for reliability, and performance).

82:18 **Miami-Dade Water & Sewer Authority, FL** (IV, 3–31–82) (Worthington Group) (design features requiring heavy duty pump justified on past experience and performance needs).

82:19 **Mount Pleasant, SC** (IV, 3–31–82) (Bird Machine Co., Inc.) (specifications must be performance based, not require duplication of competitors design) (exclusionary requirements not based on performance resulted in unjustified sole source).

82:34 **Monterey, CA** (IX, 6–24–82) (Frank M. Booth, Inc.) (not unduly restrictive where only one manufacturer supplies equipment but others are capable).

82:37 **Cullman, AL** (IV, 7–6–82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (performance requirements may include safety, efficiency, reliability and maintenance factors) (requiring single brand "or equal" does not require resoliciting because substitute equipment permitted in alternate bid).

82:38 **Fulton, NY** (II, 7–16–82) (LOC Pump and Equipment) (minimum needs).

82:41 **Abilene, TX** (VI, 7–27–82) (R&S Engineering) (manufacturers only) (performance refers to minimum not best).

82:43 **Brockton, MA** (I, 8–16–82) (Tenco Hydro) (may be unduly restrictive even with two acceptable materials).

82:44 **Memphis, TN** (IV, 8–16–82) (B.F. Goodrich Co.) (inadequate justification for single material activated filtration process).

82:45 **Pasadena, TX** (VI, 8–17–82) (Parkson) (protestor must show product excluded).

82:46 **Spearfish, SD** (VIII, 8–19–82) (Sheesley Plumbing and Heating Co.) (restrictive applications drawn around single name brand).

82:49 **Dumas, AR** (VI, 9–7–82) (Hinde Engineering) (detailed catalog specifications related to design more than performance unduly restrictive) (minimum performance not necessarily "best").

82:50 **Eaton, OH** (V, 9–14–82) (Wagoner Machinery) (catalog specifications) (same as one manufacturer's machine) (salient requirements not identified).

82:53 **Monterey, CA** (IX, 9–29–82) (Frank M. Booth, Inc.) (only one supplier, not proof of undue restriction).

82:55 **Haysville, KS** (VII, 10–13–82) (Walker Process) (on-site maintenance as minimum performance need for major equipment).

82:57 **Cape May County MUA, NJ** (II, 11–1–82) (American Bioreactor Co. and Fairfield Service Co.) ("or equal" alternatives).

82:61 **El Dorado, KS** (VII, 11–16–82) (Oursler Brothers Const.) (catalog specifications) (failure to state minimum performance needs).

82:66 **Smyrna, TN** (IV, 11–29–82) (Charles Finch Co. and Waterman Industries) (rejection of "equal" must be performance based).

82:68 **Atwood, OH** (V, 12–1–82) (Munitech, Inc.) (sole source/deviation from specifications).

82:70 **Metropolitan Wastewater Management Commission, OR** (X, 12–22–82) (Robert Dougan Const.) (rejection of all bids if grantee finds its specifications unduly restrictive).

Standing

82:06 **Oceanside, CA** (IX, 1–30–81) (Bird Machine Co., Inc.) (subcontractor cannot protest a prime's use of nonresponsible subcontractor).

81:07 **Albert Lea, MN** (V, 2–3–81) (Pennwalt Corp.) (summary disposition).

81:19 **Phoenix, AZ** (IX, 3–27–81) (TGK Const. and M.M. Sundt Const.) (second low bidder).

81:45 **San Francisco, CA** (IX, 10–2–81) (Hydro Conduit Co.) (supplier/offeror with ability to compete has affected financial interest).

81:46 **San Francisco, CA** (IX, 6–15–81) (Alliance of Minority Contractors and Suppliers) (association representing minority subcontractors).

81:47 Jasonville, IN (V, 6–30–81) (Hinde Engineering) (equipment supplier may protest restrictive application of specifications, may not protest specifications with which it complies).

81:49 Los Angeles County, CA (IX, 7–1–81) (Dresser Industries) (subcontractor lacks standing to protest competitor's equipment compliance with specifications).

81:58 Ashland, KY (IV, 7–27–81) (Fairbanks Morse Pump) (subcontractor protesting restrictive specifications).

81:59 Metropolitan Wastewater Management Commission, OR (X, 7–30–81) (Hyland Brothers Const. and Assoc.) (entitlement to contract award as responsive, responsible bidder not required for filing protest).

81:64 Loganville, GA (IV, 8–14–81) (Flygt Corp.) (subcontractors/suppliers lack standing to protest equipment order cancellation).

81:72 Albert Lea, MN (V, 2–3–81) (Bird Machine Co.) (subcontractors may not protest substitution by prime).

81:75 New Castle, IN (V, 9–9–81) (Joe R. Norman Contractor) (bidder may not challenge acceptance of performance bond absent effect on competition).

81:77 Carrboro, NC (IV, 9–23–81) (Clevepak Corp.) (suppliers protesting procurement from nonresponsible supplier).

81:92 Hallandale, FL (IV, 11–3–81) (Municipal & Industrial Pipe Services; Interstate Pipe Maintenance; and Polymer Chemical Corp.) (supplier challenging single material requirement).

81:96 Tallahassee, FL (IV, 11–10–81) (CS&L Mechanical Const. and Assoc. of Minority Contractors) (association representing minority contractors).

82:03 Fort Wayne, IN (V, 1–25–82) (Bates & Rogers Const.) (equipment supplier lacked standing).

82:09 Cobden, IL (V, 2–19–82) (R–J Equipment Sales) (standing of equipment suppliers limited).

82:29 Syracuse, NY (II, 5–18–82) (Bat-Con, Inc.) (withholding payments to contractor for failure to meet MBE requirements not protestable).

82:46 Spearfish, SD (VIII, 8–19–82) (Sheesley Plumbing and Heating Co.) (subcontractor protest of restrictive application of specifications).

82:48 Claremont, CA (IX, 8–26–82) (Peter Gavrilis) (city employee allegedly fired for questioning subagreement award lacks standing).

82:49 Dumas, AR (VI, 9–7–82) (Hinde Engineering) (potential subcontractor may protest restrictive specifications).

82:51 Moline, IL (V, 9–21–82) (Walker Process) (subcontractor/supplier lacks standing to challenge evaluation of prime bid responsiveness).

82:58 Russian River, CA (IX, 11–1–82) (Dan Caputo Co., and Wagner Const., A Joint Venture) (terminated contractor not bidding on corrective work contract lacks standing).

82:60 Rochester Pure Waters District, NY (II, 11–3–82) (Schiavone Const. Co./Cotton Dean Underground Excavation Co., Joint Venture) ("public interest" provides no standing).

82:63 Elk Pinch, WV (III, 11–18–82) (Kappe Assoc.) (subcontractor lacks standing to protest nondiscriminatory performance bond requirement).

82:64 Shady Spring PSD, WV (III, 11–22–82) (Davis Water & Waste Industries, Inc.) (subcontractor substitution not protestable).

82:71 Columbus, OH (V, 12–29–82) (Zimpro) (adversely affected direct financial interest).

82:72 Alliance, OH (V, 9–10–82) (R&S Engineering) (no standing where subcontractor failed to attempt prequalification).

Sua Sponte Review

81:08 Morgantown, WV (III, 2–11–81) (Clow Co.) (untimely protest, disguised sole source specifications).

81:31 Gildford County Sewer District, MI (VIII, 4–28–81) (Baltrusch) Const. (unstated rejection rationale reviewed).

81:38 Indianapolis, IN (V, 5–27–81) (American Digital Systems) (denied, no fundamental principles at issue).

81:55 Centerville, IA (VII, 7–21–81) (Grady Unlimited) (discretionary).

81:62 Cobb County, GA (IV, 8–11–81) (American Bioreactor Corp./BAV) (importance of prospective procurement).

81:69 Houma, LA (VI, 8–19–81) (Hydromatic Pump) (untimely protest, exclusionary specifications).

81:87 Cridersville, OH (V, 10–16–81) (Miami Valley Contractors) (issues not raised to grantee).

82:25 Perryville, MD (III, 4–28–82) (J. Vinton Schafter & Sons, Inc.) (MBE responsiveness issues).

82:44 Memphis, TN (IV, 8–16–82) (B.F. Goodrich Co.) (review of single material specification).

82:52 Gwynns Falls Relief Interceptors (III, 9–14–82) (R.J. Longo Const.) (before grantee decision).

Subcontract—Award

81:06 Oceanside, CA (IX, 1–30–81) (Bird Machine Co.) (prime bid responsive though listed nonresponsible subcontractor).

81:23 Passaic Valley, NJ (II, 4–20–82) (Rochester Pump and Machine, Inc.) (no EPA regulation for subcontractor procuring supplies) (competitive negotiation principles do not apply to subcontractor selection).

81:55 Centerville, IA (VII, 7–21–81) (Grady Unlimited) (MBE policy establishes no right to award).

81:63 Honolulu, HI (IX, 8–12–81) (Nichols Engineering & Research Co.) (equipment procurement by subcontract instead of separate direct contracts).

81:101 Ewing Lawrence Sewerage Authority, NJ (II, 12–14–81) (Neshaminy Const.) (substitution of subcontractors not protestable).

82:22 Goldendale, WA (X, 4–16–82) (IMCO General Const.) (failure to list subcontractors made of responsiveness).

82:64 Shady Spring PSD, WV (III, 11–22–82) (Davis Water & Waste Industries) (subcontractor substitution not protestable).

82:71 Columbus, OH (V, 12–29–82) (Zimpro) (grounds for subcontractor protest).

82:72 Alliance, OH (V, 9–10–82) (R&S Engineering) (no standing where subcontractor failed to attempt prequalification).

Summary Disposition

81:07 Albert Lea, MN (V, 2–3–81) (Pennwalt Corp.) (untimely, no standing).

81:41 Grand Haven, MI (V, 6–5–81) (Equipment & Gravel) (work beyond scope of project).

81:63 Honolulu, HI (IX, 8–12–81) (Nichols Engineering & Research Co.) (frivolous).

81:100 Harriman, TN (IV, 12–9–81) (Municipal & Industrial Pipe Services) (failure to file written protest after telegram).

81:104 Elizabethtown, KY (IV, 12–18–81) (Autorol Corp.) (protest used to preserve restrictive specification for protestor's benefit).

82:03 Fort Wayne, IN (V, 1–25–82) (Bates & Rogers Const.) (appeal procedurally defective).

82:39 Russian River, CA (IX, 7–20–82) (Dan Caputo, Co. and Wagner Co., A Joint Venture) (contractor claim).

82:51 Moline, IL (V, 9–21–82) (Walker Process) (supplier lacks standing to challenge bid evaluation/responsiveness).

82:57 Cape May County MUA, NJ (II, 11–1–82) (American Bioreactor Co. and Fairfield Service Co.) (protest not frivolous where basic project design not clear from IFB).

82:71 Columbus, OH (V, 12–29–82) (Zimpro) (no adversely affected financial interest).

Time Limitations

81:01 N.Y. State DEC, NY (II, 1–7–81) (Sweda Enterprises) (7 days from IFB).

81:06 Morgantown, WV (III, 2–11–81) (Clow Co.) (protest 10 days after receipt of IFB) (sua sponte review granted).

81:09 Wilmington, DE (III, 2–12–81) (Ashbrook-Simon-Hartley) (knowledge of restrictive specification requires protest before bid opening).

81:23 Tifton, TA (IV, 4–13–81) (Astor Bolden Enterprises, Inc. and Municipal & Industrial Pipe Services, Ltd.) (protest to be within week of factual event giving notice of basis).

81:25 Hopkinsville, KY (IV, 4–14–81) (Price, Inc. and Neal Inc., Joint Venture) (protest within week of constructive knowledge).

81:33 Lynchburg, OH (V, 4–30–81) (Dow Const.) (clock starts on bid evaluation issue when access to bid content allowed).

81:34 San Diego, CA (IX, 5–1–81) (Westates Carbon) (time limits protect public interest).

81:36 Buncombe County, NC (IV, 5–7–81) (Carlon, Division of Indian Head) (advance knowledge of restrictive specifications before bid opening made protest late).

81:38 Indianapolis, IN (V, 5–27–81) (American Digital Systems) (clock starts on procurement method issue on receipt of IFB).

81:40 Memphis, TN (IV, 6–2–81) (American Digital Systems) (where RFP not in conformity with request for qualifications must protest week after proposal meeting).

81:44 Tuolumme County, CA (IX, 6–11–81) (Chaudhury & Assoc., Inc.) (protest 6 days late, appeal 1 day late).

81:46 San Francisco, CA (IX, 6–15–81) (Alliance of Minority Contractors and Suppliers) (5 days late).

81:47 Jasonville, IN (V, 6–30–81) (Hydro Conduit) (each issue's timeliness considered separately).

81:49 Los Angeles County, CA (IX, 7–1–81) (Dresser Industries) (timely filed three months post bid opening).

81:54 Monmouth County, NJ (II, 7–21–81) (Fellows, Read & Assoc.) (for protesting short proposal preparation period).

81:55 Centerville, IA (VII, 7–21–81) (Grady Unlimited) (understandable but inexcusable delay).

81:57 Newaygo County Board of Public Works, MI (V, 7–24–81) (D.J. Domas) (one day late).

81:58 Ashland, KY (IV, 7–27–81) (Fairbanks Morse Pump) (notice to prime that supplier's equipment rejected does not start clock on supplier) (failure to notify interested parties does not affect dismissal).

81:62 Cobb County, GA (IV, 8–11–81) (American Bioreactor Corp./BAC) (*sua sponte* review after time for protest appeal) (one week means seven consecutive calendar days).

81:64 Loganville, GA (IV, 8–14–81) (Flygt Corp.) (Supplier's protest due week after letter advising equipment would not be used).

81:69 Houma, LA (VI, 8–19–81) (Hydromatic Pump) (untimely appeal, *sua sponte* review of exclusionary specifications).

81:70 Tuscaloosa, AL (IV, 8–20–81) (Naylor Supply Co.) (receipt of determination by law firm, not individual attorney, starts clock).

81:80 Sacramento County, CA (IX, 10–2–81) (Westates Carbon Co.) (restrictive specification protest filed after bid opening).

81:81 Columbus, OH (V, 10–5–81) (Cantwell Machinery) (receipt by counsel is receipt by protestor).

81:86 Huntsville, AL (IV, 10–5–81) (Municipal, & Industrial Pipe Services and Astor Bolden Enterprises) (unduly restrictive specification exception to time limitation).

81:88 Fort Wayne, IN (V, 10–16–81) (Bates and Rogers Const.) (53 days late).

81:94 Oneida County Sewer District, NY (II, 11–4–81) (C.O. Falter Const.) (grantee letter interpreting specifications starts clock).

81:95 Fowlerville, MI (V, 11–9–81) (Normco Const.) (verbal notice does not start appeal clock).

81:96 Tallahassee, FL (IV, 11–10–81) (GS&L Mechanical Const.; Assoc. of Minority Contractors) (timely protest after termination of post bid-opening negotiations).

81:99 South Seminole and North Orange County, FL (IV, 11–20–81) (DeZurik Valve Manufacturing (where bidder knew specifications were ambiguous, protest must be filed prior to bid opening).

81:104 Elizabethtown, KY (IV, 12–18–81) Autorol Corp.) (one week means seven days).

81:105 South Seminole and North Orange County Wastewater Transmission Authority, FL (IV, 12–22–81) (Terra Video) (seven days to protest to grantee).

81:107 Colchester, CT (I, 12–31–81) (Clark Sewer Const.) (clock begins on responsiveness issue at bid opening).

82:03 Fort Wayne, IN (V, 1–25–82) (Bates & Rogers Const.) (knew or should have know test for timeliness).

82:05 Wawarsing, NY (II, 2–8–82) (A. Ceston Co.) (time not tolled by further discussions).

82:07 Chattanooga, TN (IV, 2–18–82) (Spencer Turbine Co.) (protestor should have known specification restrictive before bid opening).

82:09 Cobden, IL (V, 2–19–82) (R–J Equipment Sales) (one week time limitation).

82:10 Sauget, IL (V, 2–19–82) (GHA Lock Joint) (protest of specifications after bid opening).

82:12 Channelview, TX (VI, 3–8–82) (Euramca Ecosystems) (interlocutory grantee decision resolved initial protest but created grounds for second protest).

82:19 Mt. Pleasant, SC (IV, 3–31–82) (Bird Machine Co.) (letter denying prequalification starts clock).

82:25 Perryville, MD (III, 4–28–82) (J. Vinton Schafer & Sons) (constructive knowledge) (*sua sponte* review granted).

82:26 Akron, OH (V, 5–3–82) (Environmental Elements) (grantee dismissal as untimely).

82:27 Eveleth, MN (V, 5–3–82) (Gridor Const.) (knew or should have known).

82:31 Menominee, MI (V, 6–8–82) (Krygoski Const.) (knew or should have known).

82:39 Russian River, CA (IX, 7–20–82) (Dan Caputo Co. and Wagner Co., A Joint Venture) (supplemental protest raising new issues).

82:43 Brockton, MA (I, 8–16–82) (Tenco Hydro) (grantee has burden of demonstrating untimeliness).

82:44 Memphis, TN (IV, 8–16–82) (B.F. Goodrich Co.) (protest late) (*sua sponte* review granted).

82:46 Spearfish, SD (VIII, 8–19–82) (Sheesley Plumbing and Heating Co.) (restrictive application starts clock).

82:47 Bedford Heights, OH (V, 8–20–82) (Suburban Power Piping, *et al.*) (knew or should have known).

82:54 Palm Beach, FL (IV, 10–7–82) (Polymer Chemical Co.).

82:60 Rochester Pure Waters District, NY (II, 11–3–82) (Schiavone Const. Co./Cotton Dean Underground Excavation Co., Joint Venture) (clear manifestation starts clock).

82:64 Shady Spring PSD, WV (III, 11–22–82) (Davis Water & Waste Industries) (where negotiation letters and requests for clarification, grantee reply needed before protestable).

82:68 Atwood, OH (V, 12–1–82) (Munitech) (waiver of deviation from specifications) (appeal filed with EPA 5 days late).

Waiver

81:20 Tomah, WI (V, 4–10–81) (W.G. Jaques) (MBE requirement designated responsiveness not waivable).

81:24 El Dorado Irrigation District, CA (IX, 4–13–81) (Lotus Const.) (failure to acknowledge addenda).

81:48 Cleveland, MS (IV, 7–1–81) (Roland Pugh Const.) (wavier of minor deviation not giving bidder advantage).

81:50 Kalida, OH (V, 7-2-81) (Sherburn Co.) (failure to list unit prices not waivable).

81:107 Colchester, CT (I, 12-31-81) (Clark Sewer Const.) (failure to bid on alternate waivable).

82:03 Fort Wayne, IN (V, 1-25-82) (Bates & Rogers Const.) (waiver of fiscal integrity requirements).

82:21 Fallbrook Sanitary District, CA (IX, 4-6-82) (Metro-Young/Lopez Const., A Joint Venture) (demonstration of positive MBE requirements).

82:27 Eveleth, MN (V, 5-3-82) (Gridor Const.) (may waive dib defect where immaterial).

82:35 Van Buren County, MI (V, 6-28-82) (Union Const.) (omission waivable as minor where no competitive edge results).

82:68 Atwood, OH (V, 12-1-82) (Munitech) (Waiver of deviation from specifications) (appeal filed with EPA 5 days late).

82:69 Globe, AZ (IX, 12-8-82) (Mercury Const.) (failure to acknowledge addenda).

[FR Doc. 84-24192 Filed 9-12-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240048; FRL-2639-2]

Special Local Need Registrations; Voluntary Cancellations

Correction

In FR Doc. 84-19874 beginning on page 30784 in the issue of Wednesday, August 1, 1984, make the following corrections:

1. On page 30784, in the fourth column of the table, the entries on the third and fourth lines should be transposed.

2. On page 30785:

a. Under New Jersey, in the last line of the second column, add the word "Concentrate" at the end of the line.

b. Under New Mexico, in the fourth line of the second column, add "& Repellant" at the end of the line.

c. Under New York, the entry "NY 78 0028", in the second column, add "Dibrom" following "ortho".

d. Under the same state, same entry, third column, "Orotho" should read "Ortho".

3. On page 30787:

a. Under Texas, the entry "TX 78 0040", second column, "Nudring" should read "Nudrin".

b. Under the same state, the entry "TX 79 0033", second column, "colloidall" should read "Colloidal".

c. Under the same state, the entry "TX 80 0026", second column, "Solubel Power" should read "Soluble Powder".

d. Under the same state, the entry "TX 81 0018", "Mitcite...do..." should read "Miticide.".

e. Under the same state, same entry, third column, "3" should read "do".

4. On page 30788, the heading **Wisconsin** should be added above the entry "WI 77 0001".

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 84-31]

Arctic Gulf Marine, Inc., Peninsula Shippers Association, Inc., Southbound Shippers, Inc.; Order of Investigation and Hearing

Arctic Gulf Marine, Inc. (AGM) was a tariffed common carrier by water operating a barge service in the Seattle, Washington/Alaska trade prior to the cancellation of its tariff on December 3, 1982. Information before the Commission indicates that AGM:

1. Charged a different compensation for the transportation of property than the rates specified in its tariff on file with the Commission and duly published and in effect on 13 or more shipments during the period April 23, 1982-October 29, 1982.

2. Absorbed drayage charges without a provision in its tariff authorizing such absorptions during the period July 7, 1982-October 14, 1982.

3. Carried out unfiled and unapproved preferential and cooperative working arrangements, and agreements granting special rates and accommodations, with Peninsula Shippers Association, Inc., and Southbound Shippers, Inc., during the period March 15, 1982-November 10, 1982.

Information before the Commission indicates that Peninsula Shippers Association, Inc. (PSA) has been operating as a common carrier by water in the Seattle, Washington/Alaska trade since March 20, 1982, without a tariff on file with the Commission, and has entered into and carried out unfiled and unapproved preferential cooperative working arrangements, and agreements providing for special rates and accommodations with AGM.

Information before the Commission indicates that Southbound Shippers, Inc. (SSI) has been operating as a common carrier by water in the Seattle, Washington/Alaska trade since November 10, 1982, without a tariff on file with the Commission, and has entered into and carried out unfiled and unapproved preferential cooperative working arrangements, and agreements providing for special rates and accommodations with PSA and/or AGM.

Section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844) provides in pertinent part:

> That every common carrier by water in intercoastal commerce shall file with the Federal Maritime Commission and keep open to public inspection schedules showing all rates, fares, and charges for or in connection with transportation. . . . nor shall any common carrier by water in intercoastal commerce charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the Commission and duly posted and in effect at the time. . . .

By charging different compensation for transportation of property than the rates specified in its filed tariff, and by absorbing drayage charges without a provisioin authorizing such practice in its tariff, it appears that AGM violated this section. It also appears that PSA and SSI violated this section by operating as common carriers without a schedule of their rates having been filed with the Commission.

Section 15 of the Shipping Act, 1916 (46 U.S.C. app. 814), which, at the time of the activities discussed above, provided in pertinent part:

> Every common carrier by water . . . shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier . . . giving or receiving special rates, accommodations, or other special privileges or advantages; . . . or in any manner providing for an exclusive, preferential, or cooperative working arrangement. . . .
>
> Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission . . .

By entering into and carrying out preferential working arrangements and agreements providing for special rates and accommodations, it also appears that AGM, PSA, and SSI have violated this section.

Therefore, it is ordered, That pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821), a formal investigation and hearing is hereby instituted to determine:

1. Whether AGM violated section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844) by charging a different compensation for the transportation of property than the rates filed with the Commission in its tariff and in effect at the time.

2. Whether AGM violated section 2 of the Intercoastal Shipping Act, 1933 (46

U.S.C. app. 844) by absorbing drayage charges without a provision in its tariff filed with the Commission and in effect at the time providing for such absorptions.

3. Whether AGM, PSA, and/or SSI entered into and carried out unfiled and unapproved preferential and cooperative working arrangements, and agreements granting special rates and accommodations, in violation of section 15 of the Shipping Act, 1916 (46 U.S.C. app. 814).

4. Whether PSA violated section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844) by operating as a common carrier by water in the Seattle, Washington/Alaska trade without a tariff on file with the Commission containing a schedule of its rates and charges.

5. Whether SSI violated section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844) by operating as a common carrier by water in the Seattle, Washington/Alaska trade without a tariff on file with the Commission containing a schedule of its rates and charges.

6. Whether, in the event AGM, PSA, and/or SSI are found to have violated any provisions of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, *et seq.*), or the Shipping Act, 1916 (46 U.S.C. app. 801, *et seq.*,) civil penalties should be assessed, and, if so, the amount of such penalties;

It is further ordered, That Arctic Gulf Marine, Inc., Peninsula Shippers Association, Inc., and Southbound Shippers, Inc. be named Respondents in this proceeding;

It is further ordered, That this matter be assigned to an Administrative Law Judge for public hearing and decision at a date and place to be hereafter determined by the Presiding Administrative Law Judge. This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue otherwise requires an oral hearing and cross-examination for the development of an adequate record;

It is further ordered, That pursuant to the terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 10, 1986, and the final decision of the Commission shall be issued by May 10, 1986;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy thereof be served upon the Respondents and the Commission's Bureau of Hearing Counsel;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24149 Filed 9-12-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Conifer/Essex Group, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governor. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Conifer/Essex Group, Inc.*, Worcester, Massachusetts: to continue to engage through its subsidiary, Conifer Computer Services, Inc., Worcester, Massachusetts, in data processing activities from an office located in Peabody, Massachusetts and to expand the service area for such activities to include the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhade Island, and Vermont, prior approval having been obtained for Massachusetts only.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Herring Bancorp, Inc.*, Vernon, Texas; to engage *de novo* through its subsidiary, Herring Trust Company, Vernon, Texas, in all functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature) in the manner authorized by state or federal law.

Board of Governors of the Federal Reserve System, September 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24295 Filed 9-12-84; 8:45 am]

BILLING CODE 6210-01-M

First Virginia Banks, Inc.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (32 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than October 5, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to engage through a national bank subsidiary, First Virginia Bank, N.A., Gaithersburg, Maryland, in deposit-taking, consumer and mortgage (1–4 family dwellings only) lending, trust, investment advisory and other banking services, but not in making commercial loans, in Montgomery County, Prince Georges County, and Baltimore County, Maryland.

Board of Governors of the Federal Reserve System, September 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24292 Filed 9-12-84; 8:45 am]

BILLING CODE 6210-01-M

Florida National Banks of Florida, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The Company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 Federal Register 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Florida National Banks of Florida, Inc.*, Jacksonville, Florida; to merge with Beacon Financial Corporation, Inc., Jupiter, Florida, thereby indirectly acquiring Lighthouse National Bank, Jupiter, Florida. Florida National Banks of Florida, Inc., has also applied to acquire Beacon Leasing Corporation, Jupiter, Florida, thereby engaging in leasing activities in the State of Florida; and to acquire LNB Mortgage Corporation, Jupiter, Florida, thereby engaging in the origination, sales, servicing and brokerage of mortgage loans in the States of Florida.

Board of Governors of the Federal Reserve System, September 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24293 Filed 9-12-84; 8:45 am]

BILLING CODE 6210-01-M

Sebastian Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 5, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Sebastian Bankshares, Inc.*, Barling, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Lavaca, Arkansas.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Allied Bank Northwest, N.A., San Antonio, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 7, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24204 Filed 9-12-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Longitudinal Study of Human Semen Characteristics; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: October 11, 1984

Time: 8:00 a.m.-4:30 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226

Purpose: To review and discuss the reproductive and semen parameters and characteristics that should be studied in a longitudinal study design. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Steven M. Schrader, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226; Telephones: FTS: 684-8357; Commercial: 513/684-8357.

Dated: September 4, 1984.

Jeffrey P. Koplan, M.D.,

Acting Director, Centers for Disease Control.

[FR Doc. 84-24154 Filed 9-12-84; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of the Disapproval of an Ohio State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 16, 1984, in Chicago, Illinois, to reconsider our decision to disapprove Ohio State Plan Amendment 84-2.

Closing Date: Requests to participate in the hearing as a party must be received by September 28, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Ohio State Plan Amendment 84-2. .

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Ohio's request to revise the State's provisions for determining the cost of care liability for an institutionalized Medicaid recipient violates Federal regulations at 42 CFR 435.733.

Federal regulations at 42 CFR 435.733 require that the State reduce its payment to the institution when the Medicaid recipient has income to contribute to the cost of his or her care. They also require the State agency to deduct certain amounts from that income based on needs the patient is determined to have. One of the deductions required is an amount for the maintenance needs of a spouse at home (the MNA). In a State which uses a more restrictive income eligibility standard for Medicaid eligibility of the aged, blind, or disabled than is used to determine SSI eligibility, and which does not have a program for the medically needy, the amount to be deducted must not exceed the Medicaid eligibility standard for an individual. (That standard adopted pursuant to section 1902(f) of the Act, will be more restrictive than the SSI income eligibility standard.)

Ohio's current Medicaid plan allows for an MNA of $222.00 while Ohio's income eligibility standard for an individual is $258.00. The MNA therefore conforms to Federal regulation.

The proposed amendment would raise the maximum MNA to $258.00 and would, in addition, disregard the spouse's first $324.00 of personal income in determining how much MNA to allow. This effectively sets the maintenance needs level of the spouse at $528.00.

In addition, the December 1, 1983 effective date requested by the State was not approved because we believe that 45 CFR 201.3 precludes approving any State plan amendment which has an effective date which precedes the first day of the quarter in which the amendment was submitted, if it involves increases in Medicaid spending over the currently approved plan.

The notice to Ohio announcing an administrative hearing to reconsider our disapproval of the State Plan Amendment reads as follows:

Ms. Patricia K. Barry,
Director, Ohio Department of Human Services, 30 East Broad Street, Columbus, Ohio 43215

Dear Ms. Barry: This is to advise you that your request for reconsideration of the decision to disapprove the Ohio State Plan Amendment 84-2 was received on August 8, 1984. You have requested a reconsideration of the disapproval of whether this plan amendment, which would revise the maximum allowance for the maintenance needs of the noninstitutionalized spouse of an institutionalized Medicaid recipient, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on October 16, 1984, at 10 a.m., in the 8th Floor Conference Room, 175 West Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph.D

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 12.714, Medical Assistance Program)

Dated: September 6, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84–24298 Filed 9–12–84; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on September 24, 1984, 8:45 a.m. to adjournment, at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. The meeting which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the Implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, P.O. Box 30174, Bethesda, Maryland 20205, (301) 496–6045, will provide an agenda and rosters of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 27, 1984.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 84–24151 Filed 9–12–84; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Advisory Committee Working Group on Human Gene Therapy; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee working Group on Human Gene Therapy at the National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20205, on October 12, 1984, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss submission guidelines for proposals involving human gene therapy and review procedures. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Human Gene Therapy, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland, telephone 301–496–6051.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH Lists in its announcements the number and title of affected individual programs for the guidance of the public. Because of guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which NDA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual program listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 27, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–24150 Filed 9–12–84; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Advisory Committee, Working Group on Release Into Environment; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on Release into Environment at the National Institutes of Health, Building 31A, Conference Room 4, 9000 Rockville Pike, Bethesda, Maryland 20205, on October 5, 1984, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss submission guidelines for proposals involving microorganisms, and other issues involving release into the environment of recombinant organisms. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. Elizabeth Milewski, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Release into Environment, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland, telephone 301–496–6051.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 27, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–24152 Filed 9–12–84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit; Milwaukee County 200 et al.

Notice is hereby given that two applicants have applied in due form for permits under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the regulations governing the taking and importing of marine mammals (50 CFR Part 18).

1. Applicant:

a. Name: Milwaukee County Zoo—APP# 2575 BM

b. Address: 10001 West Bluemound Road, Milwaukee, WI 53226

2. Type of permit: import

3. Name and number of animals: polar bear (*Ursus maritmus*) one

4. Type of Activity: Public display

5. Location of Activity: Milwaukee County Zoo, Milwaukee, WI

6. Period of Activity: Permanent public display.

The purpose of this application is to import one captive-born female polar bear cub from the Ruhr Zoo, Gelsenkirchen, West Germany for public display and captive propagation.

1. Applicant:

a. Name: Dr. Donald B. Siniff—APP# 3713BM

b. Address: University of Minnesota, Minneapolis, MN

2. Type of permit: take

3. Name and number of animals: California sea otters (*Enhydra lutris*), one hundred

4. Type of activity: Research—all otters will be drugged, tagged, receive transmitters (surgical and/or temple) and undergo blood and premolar extraction

5. Location of activity: coastal California

6. Period of activity: 3 years.

The purpose of the research is to acquire data on certain population parameters of the California sea otter. The data will be used to develop a population model to be used in predicting the potential impact of oil spills on otters and in alleviating potential problems that may be associated with oil spills, such as the translocation of otters to safer regions.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies these applications to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views or requests for copies of the complete applications, or requests for a public hearing on these applications, should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), P.O. Box 3654, Arlington, VA 22203, within 30 days of the publication of this notice. Please refer to the appropriate APP # when submitting comments. Individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements contained in this notice are summaries of those of the applicants and do not necessarily reflect the views of the U.S. Fish and Wildlife Service.

Documents submitted in connection with the above applications are available for review during normal business hours (7:45 am–4:15 pm) in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: September 7, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84–24128 Filed 9–12–84; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Cyril M. Schneider et al.; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Cyril M.Schneider, New York, NY—APP# 559707.

The applicant requests a permit to import a bontebok (*Damaliscus dorcas dorcas*) trophy, taken from the captive herd of Mr. L. de Bruin, Somerset East, Republic of South Africa, for enhancement of the survival and propagation of the herd.

Applicant: Joseph C. Witt, Dorchester, MA—APP# 3472BM.

The applicant requests a permit to purchase one male and one female red siskin (*Carduelis cuculatus*) for enhancement of propagation.

Applicant: USFWS/National Fisheries Research Center, La Crosse, WI—APP# 2729BM.

The applicants request a permit to take (sacrifice) 30 Higgin's eye pearly mussels (*Lampsilis higginsi*) from the Mississippi River system for scientific research.

Applicant: Dr. Michael F. Baad, CA State University, Sacramento, CA—APP# 3632BM.

The applicant requests a permit to take (collect) seeds of *Arabis macdonaldiana* from BLM lands in Red Mountain, Mendocino County, CA, for scientific research and enhancement of propagation.

Applicant: Burnet Park Zoo, Liverpool, NY—APP# 3735BM.

The applicant requests a permit to purchase in interstate commerce one 7-year old captive born female gibbon (*Hylobates lar*) from the Philadelphia Zoological Gardens for enhancement of propagation. This gibbon will be on breeding loan at the Utica Zoo, Utica, NY until such time as the Burnet facilities have been completed.

Applicant: University of WI Zoological Museum, Madison, WI—APP# 2422BM.

The applicant requests a permit to import and reexport salvaged specimens of the following species in the course of a cooperative project with the Government of Ecuador: Galapagos tortoise (*Geochelone elephantopus*), land iguana (*Conolophus pallidus*), leatherback turtle, (*Dermochelys coriacea*), hawsbill turtle (*Eretmochelys imbricata*), Galapagos penguin (*Spheniscus mendiculus*), brown pelican (*Pelicanus occidentalis*), Galapagos hawk (*Buteo galapagoensis*), peregrine falcon (*Falco peregrinus anatum*) for scientific research.

Applicant: Woodlanders, Inc., Aiken, SC—APP# 3300BM.

The applicant requests a permit to sell in interstate commerce and export artificially propagated specimens of Virginia round-leaf birch (*Betula uber*), Chapman rhododendron (*Rhododendron chapmanii*) and Florida torreya (*Torreyea taxifolia*) for enhancement of propagation.

Applicant: Waimea Arboretum & Botanical Garden, Haleiwa, HI—APP# 2043BM.

The applicant requests a permit to export and import propagation material of listed Hawaiian plants to other scientific institutions for enhancement of propagation.

Applicant: Tom Mantzel, Fort Worth, TX—APP# 4364BM.

The applicant requests a permit to import 12 cheetahs (*Acinonyx jubatus*) from Dr. Hymie Ebedes, Pretoria, South Africa for enhancement of the propagation of the species. The animals were captive-bred by Helga Delf, Windhook, Namibia.

Applicant: Oak Ridge Associated Universities, Oak Ridge, TN—PRT 2-11147.

The applicant requests a permit to take (=harm, harass) a maximum of 78 captive-born cotton-top marmosets (*Saguinus oedipus*) for the purpose of scientific research. Animals would be subjected to protocols for developing viral vaccines that could result in death.

Applicant: Lagoon Corporation, Farmington, UT—APP# 4454BM.

The applicant requests a permit to import a pair of captive-born Siberian tigers (*Panthera tigris*) from Onkanagan Game Farm, Tenticton, Canada, for enhancement of survival.

Applicant: Department of Agriculture, Division of Aquatic & Wildlife Resources, Agana, Guam—PRT 2-11325.

The applicant requests a permit to take (band, sample for disease, monitor by use of radio telemetry) specimens of the following species: Mariana gallinule (*Gallinula chloropus guami*), Vanikoro swiftlet (*Aerodramus vanikorensis bartschi*), Mariana crow (*Corvus kubaryi*), Guam broadbill (*Miagra freycineti*), bridled white-eye (*Zosterops c. conspicillata*), Micronesian kingfisher (*Halcyon c. cinnamomina*), Mariana fruit bat (*Pteropus m. mariannus*), and the little Marianas fruit bat (*Pteropus tokudae*), for scientific research and enhancement of propagation and survival.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 North Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, of data to the Director at the above address. Please refer to the appropriate PRT 2 # or APP # when submitting comments.

Dated: September 7, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 84-24129 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[U-54760]

Utah; Public Lands Held in Trust for Paiute Indian Tribe of Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Public Law 98-219 (98 Stat. 11; 25 U.S.C. 766) dated February 17, 1984, certain public lands as depicted on maps contained in the draft document entitled "Proposed Paiute Indian Tribe of Utah Reservation Plan" (Bureau of Indian Affairs, January 24, 1982) are held in trust by the United States for the benefit of bands of the Paiute Indian Tribe of Utah and are part of the reservation of that tribe.

FOR FURTHER INFORMATION CONTACT: Milt Rupp, Utah State Office, Bureau of Land Management, 136 East South, Temple, Salt Lake City, Utah 84111, 801-524-3142.

1. The public lands are described as follows:

For the Koosharem Band

T. 25 S., R 1 E., SLM
  Sec. 19, lots 2, 3, 4, SW¼NE¼, SE¼NW¼, E½SW¼, NW¼SE¼;
  Sec. 30, lots 1, 2, 3, NE¼NW¼.
T. 25 S., R 1 W., SLM
  Sec. 24, SE¼NE¼, E½SE¼;
  Sec. 25, E½E½.
T. 25 S., R. 4 W., SLM
  Sec. 10, SW¼;
  Sec. 15, NW¼, W½SW¼;
  Sec. 22, W½NW¼, NW¼SW¼.

The areas described aggregate 1,273.54 acres in Sevier County.

For the Kanosh Band

T. 25 S., R. 6 W., SLM
  Sec. 30, lots 1, 2, 3, 5, 6, S½NE¼, NW¼NE¼, E½SW¼, SE¼.
T. 25 S., R 7 W., SLM
  Sec. 22, SE¼;
  Sec. 23, SW¼, W½SE¼;
  Sec. 27, NE¼.

The areas described aggregate 1,101.54 acres in Millard County.

For the Cedar City Band

T. 37 S., R. 11 W., SLM
  Sec. 6, lots 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
  Sec. 7, lots 1, 2, 3, 4, E½W½, E½;
  Sec. 18, lot 1, N½NE¼, NE¼,NW¼.
T. 37 S., R. 12 W., SLM
  Sec. 1, lots 1, 2, 5, 7, 8, 9, 10, SE¼NW¼, SW¼;
  Sec. 12, lots 1, 2, 3, NW¼NW¼.

The areas described aggregate 2,043.78 acres in Iron County.

For the Indian Peaks Band

T. 37 S., R. 12 W., SLM
  Sec. 12, lots 4, 5, 6, 7, 8, 9, 11, 12, 13, SW¼NW¼.

The areas described aggregates 425.05 acres in Iron County.

All four areas described aggregate 4,843.91 acres in Utah.

Dated: September 4, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-24159 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-84-M

Notice of Intent to Hold Scoping Meetings

AGENCY: Interior.

ACTION: Notice of intent to hold scoping meetings.

SUMMARY: This notice announces the intent of the Department of the Interior to hold scoping meetings for the preparation of the supplement to the *Federal Coal Management Program Environmental Statement* (EIS). The notice of intent to prepare this supplement appeared in the **Federal Register** (Vol. 49, page 34976) on September 4, 1984. Scoping meetings will be held in Denver, Colorado, on September 25, 1984.

DATES: September 25, 1984, at 8:00 a.m. and 1:00 p.m. The afternoon session will continue until all persons who wish to speak have had an opportunity to do so.

ADDRESS: The meetings will be held at The Clarion, 3203 Quebec Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: In Washington, DC, Andrew Strasfogel, (202) 343-4537; in Denver, Jack Edwards, (303) 234-6737.

SUPPLEMENTARY INFORMATION: On August 30, 1984, the Department of the Interior announced its intent to prepare a supplement to the *Federal Coal Management Program Environmental Statement* (April 1979). The supplement will analyze as its proposed action the potential impacts on the human environment of continuing the coal program identified in the 1979 EIS as the Preferred Program and revised to reflect rule changes promulgated in 1982 and 1983, changes in policies and procedures resulting from recent program reviews, and current projections of national and regional needs for coal. Proposed alternatives are emergency and preference right leasing only, lease by application, and no Federal leasing. The draft is expected to be available for public comment in February 1985.

Preliminary concerns identified by the Department to date include the demand and production projections and their role in the coal program, the role of preference right lease applications in the program, and environmental protection provisions of the preferred program.

Public involvement is invited to determine the scope and significant issues to be analyzed in this supplement. Public participation has been invited in requests for written comments on the range of issues to be addressed and the significant issues relating to the proposed action. These comments were invited by October 4, 1984, and are to be addressed to Director (650), Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240. Comments may be hand-delivered to Room 3610 in the Main Interior Building at that address.

The Department is also soliciting oral comments through scoping meetings to be held in Denver, Colorado, on September 25, 1984, at the address and times noted above. Members of the public, special interest groups, State and local government representatives, and representatives of other Federal agencies are invited.

The following procedures are requested:

Individuals who wish to speak are to sign in the witness register in person prior to the start of the meeting at which they wish to speak.

Each person may speak only once.

Speakers are to limit comments to 10 minutes.

Speakers are asked to provide a written text of their comments, either at the meeting or by October 4, 1984.

Dated: September 11, 1984.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 84-24481 Filed 9-12-84; 10:08 am]

BILLING CODE 4310-84-M

Ukiah District, California, Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR 1780 that a meeting of the Ukiah District Advisory Council will occur on October 15, 1984.

The meeting will begin at 10:00 a.m. in the Bureau of Land Management's Arcata Resource Area Office, 1125 16th Street, Arcata, California. The agenda will include a recommendation from the Advisory Council to the District Manager on the suitability of the King Range and Chemise Mountain wilderness study areas for inclusion in the National Wilderness Preservation System. A draft environmental impact statement will be released for a 90-day public comment period in December 1984.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Opportunity for public comment will be provided at 10:30 a.m., October 15, 1984.

Summary minutes of the meeting will be maintained in the District Office and will be available for inspection and reproduction within 30 days following the meeting.

For additional information contact: Barbara Gibbons, Bureau of Land Management, P.O. Box 940, 555 Leslie Street, Ukiah, California 95482-0940, telephone (707) 462-3873.

Dated: September 7, 1984.

Van W. Manning,

District Manager.

[FR Doc. 84-24187 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, at 202-395-7340.

Title: Free Use Application and Permit
Bureau form number 5510-1
Frequency: once for each permit
Description of respondents: settlers, residents, miners and nonprofit groups
Annual responses: 100
Annual burden hours: 8
Bureau clearance office (alternate): Linda Gibbs 202-653-8853.

Dated: August 28, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84-24167 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-84-M

[A-18411]

Arizona; Conveyance of Public Land; Reconveyed Land Opened to Entry

September 5, 1984.

Notice is hereby given that pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716,the following described lands were transferred out of Federal ownership in exchange for privately-owned land. The lands transferred into private ownership are described as follows:

Gila and Salt River Meridian, Arizona

T. 25 N., R. 19W.,
Sec. 16, W½SW¼SW¼NW¼.

Compromising 5.00 acres in Mohave County.

Lands acquired by the United States are described as:

Gila and Salt River Meridian, Arizona

T. 18 N., R. 16 W.,
Sec. 11, N½NW¼SW¼.

Compromising 20.00 acres in Mohave County.

The exchange was made based on approximately equal values.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and the acquisition of private land by the Federal Government.

The surface of the land acquired by the Federal Government in this exchange will be open to entry under the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, at 10:00 a.m. on October 19, 1984. The mineral estate is owned by the Santa Fe Railroad Company and, therefore, will not be subject to entry under the United States Mining or Mineral Leasing Laws.

Mario L. Lopez,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 84-24181 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-32-M

Colorado; Filing of Plat of Survey

September 5, 1984.

The plat of survey of the following describerd lands will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., September 5, 1984.

The plat representing the dependent resurvey of a portion of the south and north boundaries, a portion of the subdivisional lines, portions of certain tracts, and the survey of the subdivision of section 23, 24, 26, and 32, T. 38 N., R. 19 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted August 27, 1984.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037—20th Street, Denver, Colorado 80202.

Jack A. Eaves,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 84-24156 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-84-M

[M-54382]

Conveyance and Order Providing for Opening of Public Lands, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Lands in Lewis and Clark, Powell and Missoula Counties, Montana.

SUMMARY: This order will open the lands reconveyed in an exchange under the Act of October 21, 1976, et seq., to the operation of the public land laws. All minerals in the lands conveyed to the United States were reserved to the grantor, its successors or assigns, or to its predecessors. All of the mineral rights, except rock and gravel, were reserved to the United States on the public lands transferred.

DATE: At 9 a.m. on October 31, 1984, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provision of existing withdrawals and the requirements of applicable law. The segregation of the public land that was subsequently transferred to the private party, which was created by the Notice of Realty Action published in the **Federal Register** on September 10, 1982 (47 FR 39898), terminated on issuance of the patent and deed on April 25, 1984.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone: (406) 657–6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)), the flowing described surface estate was transferred by patent to Champion International Corporation of Bonner, Montana.

Principal Meridian, Montana

T. 11 N., R. 10 W.,
Sec. 30, SE¼SE¼.
T. 14 N., R. 10 W.,
Sec. 6, SE¼NE¼.
T. 14 N., R. 11 W.,
Sec. 2, SE¼NE¼.
T. 14 N., R. 12 W.,
Sec. 20, SW¼NE¼.
T. 12 N., R. 14 W.,
Sec. 8, S½
T. 12 N., R. 15 W.,
Sec. 34, SE¼SE¼.
T. 14 E., R. 15 W.,
Sec. 17, NE¼SE¼.
T. 12 N., R. 16 W.,
Sec. 7, NE¼SE¼.
T. 13 N., R. 16 W.,
Sec. 4, SE¼SE¼;
Sec. 20, NE¼SW¼;
Sec. 29, NE¼SW¼,
Sec. 30, lots 2 and 4;
Sec. 31, lot 4, E½NE¼, SW¼NE¼, and SE¼SE¼.
T. 14 N., R. 16 W.,
Sec. 26, SE¼DE¼.
T. 11 N., R. 17 W.,
Sec. 2, lots 1, and 2.
T. 13 N., R. 17 W.,
Sec. 2, lot 1;
Sec. 4, lot 4, NE¼SW¼, W½SW¼, and NW¼SE¼;
Sec. 10, SW¼SW¼, E½SE¼, and NW¼SE¼;
Sec. 14, NW¼NW¼.
T. 13 N., R. 18W.,
Sec. 26, NW¼NW¼;
Sec. 35, NW¼NE¼.

Aggregating 1,617.65 acres.

2. The following described lands were conveyed to the same party by quitclaim deed:

Principal Meridian, Montana

T. 12 N., R. 16 W.,
Sec. 11, NE¼NE¼.
T. 13 N., R. 18 W.,
Sec. 24, SW¼NW¼ and N½SW¼;
Sec. 25, lot 1.

Aggregating 204.05 acres.

3. In exchange for the above land, the United States acquired the surface estate of the following described land in Lewis and Clark, Powell and Missoula counties, Montana:

Principal Meridian, Montana

T. 14 N., R. 8 W.,
Sec. 19, SE¼SW¼.
T. 11 N., R. 10 W.,
Sec. 15, All.
T. 14 N., R. 10 W.,
Sec. 19, lots 1, 2, 3, 4, E½, E½W½;
Sec. 30, All that portion of the N½NE¼ and NE¼NW¼ lying north of the northerly right-of-way line of Montana State Highway No. 200, excepting that portion of the NE¼NE¼NE¼ lying north of Arasta Creek, which was deeded to the State of Montana Highway Commission by Roy Neil Spieker and recorded on the 28th day of August 1954, in Book 44 of Deeds at Pages 179–180, Powell County records.
T. 12 N., R. 10W.,
Sec. 25, N½, N½SW¼, SE¼SW¼, SE¼.
T. 12, N., R. 15 W.,
Sec. 30, SW¼SE¼.

Aggregating 1,975.60 acres.

At 9 a.m. on October 31, 1984, the above described lands that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,

Deputy State Director, Division of Lands & Renewable Resources.

[FR Doc. 84–24157 Filed 9–12–84; 8:45 am]

BILLING CODE 4310-DN-M

[M-60093]

Realty Action, Exchange of Public and Private Lands in Garfield County, MT

September 7, 1984.

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice.

SUMMARY: The following described public lands have been determined to be suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian, Montana

T. 17 N., R. 32 E.,
Sec. 2, SW¼SW¼;
Sec. 3, E½SW¼, W½SE¼SE¼SE¼;
Sec. 4, S½SW¼;
Sec. 8, SE¼NE¼, NE¼NW¼, NE¼SE¼;
Sec. 9, W½, S½SE¼;
Sec. 10, N½SW¼;
Sec. 11, W½;
Sec. 14, N½NW¼, SE¼NW¼;
Sec. 17, NE¼NE¼.
T. 18 N., R. 31 E.,
Sec. 14, SE¼SE¼;
Sec. 24, NW¼NW¼, N½SW¼, SW¼SW¼;
Sec. 25, NW¼NW¼;
Sec. 20, NE¼NE¼.
T. 18 N., R. 32 E.,
Sec. 16, SE¼SE¼;
Sec. 19, lots 1–4, NE¼NE¼, E½W½;
Sec. 20, NW¼SW¼.

Aggregating 2,073.52 acres of public land.

In exchange for these public lands, the United States Government will acquire the surface estate in the following described lands from D.K., Inc. of Sand Springs, Montana:

Principal Meridian, Montana

T. 19 N., R. 32 E.,
Sec. 31, lot 4, SE¼SW¼, S½SE¼.

Principal Meridian, Montana

T. 18 N., R. 31 E.,
Sec. 1, lots 1, 2, S½NE¼, N½SE¼;
Sec. 2, E½SW¼, W½SE¼;
Sec. 12, all.
T. 18 N., R. 32 E.,
Sec. 6, lots 3–6, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Sec. 7, lot 1, NE¼, NE¼NW¼, N½NE¼SE¼.

Aggregating 1,920.86 acres of private land.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of this department.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange is available at the Miles City District Office, Garryowen Road, Miles City, Montana.

SUPPLEMENTARY INFORMATION: The purpose of this proposal is to provide management enhancement and legal access to approximately 2,000 acres of public land, which are presently without legal access. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with State and county officials. The Garfield County Commissioners were consulted on January 31, 1984, and concurred there is no need to hold a public meeting. The public interest will be well served by making the exchange.

The publication of this notice segregates the public land described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945, for lands being transferred out of Federal ownership.
2. The reservation to the United States of all minerals on the public lands being exchanged. The present mineral status of the private lands being exchanged will remain status quo also.
3. All valid existing rights of record.
4. The exchange will be based on an equal value basis as determined by a formal appraisal on both the public and private lands involved.
5. The exchange must meet the requirements of the applicable parts of the Code of Federal Regulations.

Dated: September 6, 1984.

Robert A. Teegarden,
Acting District Manager.

[FR Doc. 84-24158 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-DN-M

Land Resource Management; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: Plats of survey of the lands described below accepted August 3, 1984, will be officially filed in the Montana State Office effective 8 a.m. on November 2, 1984.

Principal Meridian, Montana

T 13 N., R. 24 E.

The plat represents the dependent resurvey of a portion of the south boundary of Township 14 North, Range 24 East, and a portion of the subdivisional lines; and the survey of the subdivision of sections 1, 2, and 12, Township 13 North, Range 24 East, Principal Meridian, Montana. The area described is in Fergus County.

Principal Meridian, Montana

T. 13 N., R. 25 E.

The plat, in four sheets, represents the dependent resurvey of a portion of the Third Standard Parallel North, the Coulson Guide Meridian, a portion of the west and north boundaries, and a portion of the subdivisional ines; and the survey of the subdivision of sections 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 17, 18, 22, 26, 27, 28, 29, 31, 32, 33, 34, and 35, Township 13 North, Range 25 East, Principal Meridian, Montana. The area is in Petroleum County.

These surveys were requested by the Lewistown District Office to facilitate their administrative needs.

EFFECTIVE DATE: November 2, 1984.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: August 31, 1984.

Linda M. Wagner,
Chief, Branch of Records.

[FR Doc. 84-24163 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-DN-M

[Designation Order NV-040-8401]

Nevada Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Designation Decisions.

Decision: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as open to off-road motorized vehicle use.

The 4,239,352 acre area area affected by the open designation is known as the Schell Resource Area, located in the BLM's Ely District and encompassing lands in White Pine, Lincoln, and Nye Counties Nevada. This designation is a result of a resource management decision made in the 1983 Schell Management Framework Plan. Open designation was determined to be appropriate for the entire Resource Area because of the extremely light off-road vehicle use which the area receives, and because of the high importance attached to such use by local residents.

This designation is published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

This designation becomes effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of these designations is available for inspection at the Ely District Office, listed below.

ADDRESS: For further information, contact either the Ely District Manager or the Schell Area Manager at the following address: Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, 702-289-4865.

Dated: August 24, 1984.

Merill DeSpain,
District Manager.

[FR Doc. 84-24175 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-HC-M

Off-Road Vehicle Designation; Roseburg, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice given relating to the use of off-road vehicles on public lands.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirement of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

The following lands under administration of the Bureau of Land Management are designated as open, limited or closed to off-road motor vehicle use.

The area affected by the designations is the Roseburg District, which includes 423,900 acres of public lands in the Dillard, Drain, North and South Umpqua Resource Areas in Douglas County, Oregon. These designations are a result of resource management decisions made in the 1983 Management Framework Plan and analyzed in the Roseburg Timber Management Environmental Impact Statement. These designations are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days to the Interior Board of Land Appeals.

A. *Open Designation.* Areas which are designated open to off-road motor vehicles comprise 414,245 acres. The steep topography and forest vegetation which occur on BLM lands in the Roseburg District, preclude significant ORV use on much of this area.

B. *Limited Designation.* None.

C. *Closed Designation.* Areas which are designated closed to off-road motor vehicles comprise 9,655 acres. These are generally small parcels of land scattered throughout the District. They include the following special features:

—Recreation Sites
—Research Natural Areas (RNAs)
—Outstanding Natural Areas (ONAs)
—Areas of Critical Environmental Concern (ACECs)
—Cultural Resource Sites
—Habitat Areas of Threatened or Endangered Species
—Progeny Test Sites

Maps of the closed areas are available for review at the Roseburg District Office, 777 N.W. Garden Valley Blvd., Roseburg, OR 97470, Tel: (503) 672-4491.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer.

Dated: September 7, 1984.

Melvin D. Berg,

Associate District Manager.

[FR Doc. 84-24171 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-84-M

Filing of Plat of Survey: Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 7 S., R. 19 E., Accepted July 20, 1984
T. 40 S., R. 10 E., Accepted August 3, 1984
T. 2 S., R. 4 E., Accepted August 17, 1984
T. 37 S., R. 1 E., Accepted July 20, 1984
T. 37 S., R. 3 W., Accepted August 17, 1984
T. 23 S., R. 4 W., Accepted August 3, 1984
T. 25 S., R. 4 W., Accepted August 3, 1984
T. 33 S., R. 6 W., Accepted July 20, 1984
T. 31 S., R. 7 W., Accepted August 3, 1984
T. 32 S., R. 7 W., Accepted August 3, 1984
T. 9 S., R. 9 W., Accepted July 20, 1984

All of the above-listed plats were officially filed August 20, 1984.

T. 7 S., R. 10 W., Accepted August 24, 1984
T. 19 S., R. 9 W., Accepted August 24, 1984
T. 20 S., R. 9 W., Accepted August 21, 1984

Washington

T. 7 N., R. 11 E., Accepted August 24, 1984
T. 7 N., R. 12 E., Accepted August 24, 1984

All of the above-listed plats were officially filed August 27, 1984.

The above-listed plats represent dependent resurveys, subdivisions, corrective dependent resurveys, and a supplemental plat.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 7, 1984.

Robert E. Mollohan

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-24256 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-33-M

[W-74970]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Dated: August 31, 1984.

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, Section 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-74970 for lands in Western County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the new lease terms for rentals and royalties at rates of $5.00 per acre, and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessees having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Act of 1920 (30 U.S.C. 188), the Bureau of Land Management if proposing to reinstate lease W-74970 effective April 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Harold G. Stinchcomb,

Chief, Branch of Fluid Minerals.

[FR Doc. 84-24250 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-22-M

[W-83613]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Dated: August 31, 1984.

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, Section 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-83613 for lands in Natrona County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the new lease terms for rentals and royalties at rates of $5.00 per acre, and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessess having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-83613 effective April 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Harold G. Stinchcomb,

Chief, Branch of Fluid Minerals.

[FR Doc. 84-24260 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-22-M

[84070]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Dated: August 31, 1984.

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, Section 3108.2-1(c), and Pub. L. 97451, a petition for reinstatement of oil and gas lease W-84070 for lands in Niobrara County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the new lease terms for rentals and royalties at rates of $5.00 per acre, and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessess having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-84070 effective May 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Harold G. Stinchcomb,

Chief, Branch of Fluid Minerals.

[FR Doc. 84-24257 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4826, 5576, 5582 and 5583, Blocks 332, 333, 354, and 355, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on September 6, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management

Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 6, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–24221 Filed 9–12–84; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Conoco Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the Grand Isle/CATCO Federal Unit Agreement No. 14–08–0001–2021, submitted on August 31, 1984, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle/CATCO Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 7, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–24224 Filed 9–12–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0759, Block 173, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on September 6, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives or affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 6, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–24222 Filed 9–12–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Texaco U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0310, Block 219, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 4, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 4, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-24223 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulfur Operations on the Outer Continental Shelf; Receipt of Proposed Development and Production Plan

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Union Oil Company of California, has submitted a Development and Production Plan describing the activities it proposes to conduct as operator of Lease OCS-P 0441, offshore California. The purpose of this Notice is to inform the public that the Minerals Management Service (MMS) is considering approval of the plan and that it is available for public review and comment.

DATES: The plan may be reviewed weekdays, 8:00 a.m. to 3:00 p.m. Written comments must be received or postmarked by November 9, 1984.

ADDRESSES: The plan is available for public review at the Office of the Regional Manager, Pacific OCS Region, Minerals Management Service, Room 160, 1340 West Sixth Street, Los Angeles, California 90017. Written comments may be mailed or hand-delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Dunaway, Regional Supervisor, Office of Field Operations, Pacific OCS Region, (213) 688-2083).

SUPPLEMENTARY INFORMATION: Section 25 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1351, requires the MMS to make any development and production plans available for public review. Regulation 30 CFR 250.34 provides for the publication of a Notice that such a plan is available for review.

William E. Grant,

Regional Manager, Pacific OCS Region.

[FR Doc. 84-24162 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Negotiate Concession Contract; Amfac Hotels and Resorts, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Amfrac Hotels and Resorts, Inc. dba Fred Harvey, authorizing it to continue to provide food, beverage, merchandising and automobile service station facilities and services for the public at Petrified Forest National Park for a period of ten (10) years from January 1, 1985, through December 31, 1994. It is the intention of the National Park Service to combine two existing concessions contracts into one document.

This contract(s) renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under the two existing contracts which expire by limitation of time on December 31, 1984, and December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Fred Harvey, the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Fred Harvey. If Fred Harvey amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Fred Harvey.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Region, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: August 28, 1984.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 84-24207 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract; Jackglo, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Jackglo, Inc., authorizing it to continue to provide curio, gift shop, snack and fast food facilities and services for the public at Nuir Woods National Monument for a period of Ten (10) years from January 1, 1985, through December 31, 1994.

This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the Environmental Analysis of September 1980 that was prepared in conjunction with the General Management Plan for Muir Woods National Monument.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given perference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Jackglo, Inc., the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Jackglo, Inc. If Jackglo, Inc. amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Jackglo, Inc.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Region, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: August 28, 1984.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 84-24206 Filed 9-12-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-165 (Final)]

Certain Valves, Nozzles, and Connectors of Brass From Italy for Use in Fire Protection Systems

AGENCY: International Trade Commission.

ACTION: In conformance with the determination of the International Trade Administration of the Department of Commerce to amend its schedule for the conduct of the referenced investigation, the Commission hereby revises its schedule as follows: The prehearing conference will be held on November 27, 1984; the hearing will be held on December 7, 1984; and the Commission's final determination shall be issued on or before January 7, 1985.

EFFECTIVE DATE: September 7, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. George L. Deyman, (202-523-0481), Office of Investigations, International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: The Commission instituted this final antidumping investigation effective July 10, 1984, and scheduled a hearing to be held in connection therewith for October 2, 1984 (49 FR 30029, July 25, 1984). However, the Department of Commerce extended its investigation in response to a request from counsel for respondents in its investigation. The effect of the extension was to change the scheduled date for Commerce to make its final determination from September 17, 1984 to no later than November 23, 1984. Accordingly, the Commission is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's hearing, which was to have been held on October 2, 1984, has been rescheduled to begin at 10 a.m. on December 7, 1984, in the Hearing Room, International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 20, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10 a.m. on November 27, 1984, in room 117 of the International Trade Commission Building. The deadline for filing prehearing briefs is November 30, 1984. A public version of the prehearing staff report containing preliminary findings of fact in this investigation will be placed in the public records on November 20, 1984. The deadline for filing posthearing briefs is December 14, 1984.

Issued: September 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24199 Filed 9-12-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 16-84]

Privacy Act of 1974; Modified Systems of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the INTERPOL-United States National Central Bureau (INTERPOL-USNCB) proposes to modify a system of records to include two new routine uses.

The system being modified is entitled "The INTERPOL-United States National Central Bureau (INTERPOL-USNCB) (Department of Justice) INTERPOL-USNCB Records System, JUSTICE/INTERPOL-001," and was last published on February 4, 1983, in the **Federal Register** Volume 48, beginning on page 5351.

The first new routine use permits access to these records by student volunteers working under 5 U.S.C. 3111, and by students working under the college work-study program pursuant to 42 U.S.C. 2751 *et seq.* who have a need for the records in the performance of their duties. The second routine use provides for the disclosure of records to the INTERPOL Supervisory Board[*] where such disclosure is considered reasonably necessary to obtain information to further investigative efforts or to apprehend criminal offenders. The section entitled "Routine Uses of Records Maintained in the System Including Categories of Users and the Purposes of Such Users" is revised to reflect these new uses which have been italicized for public convenience.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment. Comments should be addressed to Thomas F. O'Leary, Assistant Director, Administrative Service Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

The amended system is reprinted below in its entirety.

Dated: August 24, 1984.

William D. Van Stavoren,

Deputy Assistant Attorney General for Administration.

JUSTICE/INTERPOL-001

SYSTEM NAME:

The INTERPOL-United States National Central Bureau (INTERPOL-USNCB) (Department of Justice) *INTERPOL-USNCB Records System.*

SYSTEM LOCATION:

INTERPOL-U.S. National Central Bureau, Department of Justice, Room 6649, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted or are subjects of a criminal investigation with internationl aspects; specific deceased persons in connection with death notices; individuals who may be associated with certain weapons, motor vehicles, artifacts, etc., stolen and/or involved in a crime; victims of criminal violations in the United States or abroad; and *INTERPOL-USNCB* personnel involved in litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The program records of the INTERPOL-USNCB consists of criminal

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[*] The INTERPOL Supervisory Board is an international board comprised of three judges having oversight responsibilities regarding the purpose and scope of personal information maintained in the internal archives of INTERPOL.

and non-criminal case files. The files contain fingerprint records, photographs, criminal investigative reports, radio messages (international), teletype messages (internal U.S.), log sheets, computer printouts, letters, memoranda, and statements of witnesses and parties to litigation.

These record relate to fugitives, wanted persons, lookouts (temporary and permanent), specific missing persons, deceased persons in connection with death notices. Information about individuals includes names, alias, date of birth, address, physical description, various identification numbers, reason for the record or lookout, and details and circumstances surrounding the actual or suspected violation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 263a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event of record(s) in this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use to the appropriate law enforcement and criminal justice agencies whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulations or order issued pursuant thereto. A record may be disclosed to federal, state or local agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license grant or other benefit; to federal agencies in response to their request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. A record may be disclosed to appropriate parties engaged in litigation or in preparation of possible litigation, e.g., to potential witnesses for the purpose of securing their testimony when necessary before courts, magistrates or administrative tribunals; to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings; to foreign governments in accordance with formal or informal international agreements; to local, state, federal and foreign agents; to the Treasury Enforcement Communications System (TECS) (Treasury/CS 00.244); to the International Criminal Police Organization (INTERPOL) General Secretariat and National Central Bureaus in member countries; *to the INTERPOL Supervisory Board, an international board comprised of three judges having oversight responsibilities regarding the purpose and scope of personal information maintained in the international archives of INTERPOL;* to employees and officials of financial and commercial business firms and private individuals where such release is considered reasonably necessary to obtain information to further investigative efforts or to apprehend criminal offenders; to other third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and to translators of foreign languages as necessary. *In addition, records are accessed by INTERPOL–USNCB employees and by volunteer students and students working under a college work-study program who have a need for the records in the performance of their duties.*

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS SERVICE:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Service [NARS] in records management inspections conducted under the authority of 44 U.S.C 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in file folders *in the INTERPOL—United States National Central Bureau, and in file folders, in microfilm records* and on magnetic disks *in the INTERPOL Case Tracking System (ICTS) at the INTERPOL—*United States National Central Bureau, and certain limited data, *e.g.*, that which concerns fugitives and wanted persons, is stored in the Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244, a system published by the U.S. Department of the Treasury.

RETRIEVABILITY:

Information is retrieved primarily by name, file name, system identification number, personal identification number, and by weapon or motor vehicle number or by other identifying data. *Prior to 1975, case files were arranged by name of subject. Since 1975, files have been arranged by year, month and sequential number.*

SAFEGUARDS:

Information maintained on magnetic disks is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Only those individuals specifically authorized and assigned an identification code by the system manager will have access to the computer. Identification codes will be assigned only to those *INTERPOL–USNCB* employees who require access to the information to perform their official duties. In addition, access to the information must be accomplished through a terminal which is located in the *INTERPOL–USNCB* office that is occupied during the day and locked at night. Information in file folders *and in microfilm records* is stored in file cabinets in the same secured area.

RETENTION AND DISPOSAL:

Case files opened after April 5, 1982 have been stored on microfilm (41 CFR

Sec. 101-11.506). In addition, records that were closed prior to April 5, 1982 but are recalled from the Federal Archives and Records Center (FARC) are also microfilmed.

Case files that were closed prior to April 5, 1982 are transferred to the FARC five years from the date the case is closed and are destroyed ten years thereafter, if there has been no recall from the FARC and no case activity.

Case files closed as of April 5, 1982 and thereafter are disposed of as follows: The hard copy (paper record) of the case file may be destroyed when the microfilm records have been verified for clearness, completeness and accuracy. The microfilm record of the case file is destroyed ten years after closing of the case, if there has been no case activity.

SYSTEM MANAGER(S) AND ADDRESS:

Chief. *INTERPOL*–United States National Central Bureau, Department of Justice, Room 6649, 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Inquiries regarding whether the system contains a record pertaining to an individual may be addressed to the Chief, INTERPOL-United States National Central Bureau, Department of Justice, Room 6649, 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20530. To enable INTERPOL–USNCB personnel to determine whether the system contains a record relating to him or her, the requester must submit a written request identifying the record system, identifying the category and type of records, sought, and providing the individual's full name and at least two items of secondary information (data of birth, social security number, employee identification number, or similar identifying information).

RECORD ACCESS PROCEDURES:

Although the Attorney General has exempted the system from the access, contest and amendment provisions of the Privacy Act, some records may be available under the Freedom of Information Act. Inquiries should be addressed to the official designated under "Notification procedure" above. The letter and envelope should be clearly marked "Freedom of Information Request" and a return address provided for transmitting any information to the requester.

CONTESTING RECORD PROCEDURES:

See "Access procedures" above.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include investigative reports of federal, state, local, and foreign law enforcement agencies (including investigative reports from a system of records published by Department of the Treasury entitled Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244): other non-Department of Justice investigative agencies; client agencies of the Department of Justice; statements of witnesses and parties; and the work product of the staff of the United States National Central Bureau working on particular cases. Although the organization uses the name INTERPOL–USNCB for purposes of public recognition, the INTERPOL–USNCB is not synonymous with the International Criminal Police Organization (ICPO–INTERPOL), which is a private, intergovernmental organization headquartered in St. Cloud, France. The Department of Justice INTERPOL–USNCB serves as the United States liaison with the INTERPOL General Secretariat and works in cooperation with the National Central Bureaus of other member countries, but is not an agent, legal representative, nor organizational subunit of the International Criminal Police Organization. The records maintained by the INTERPOL–USNCB are separate and distinct from records maintained by the International Criminal Police Organization, and INTERPOL–USNCB does not have custody of, access to, nor control over the records of the International Criminal Police Organization.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has *exempted* this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and *(8)*, (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) and (k)(5). *Rules have been* promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and *have been* published in the **Federal Register.**

[FR Doc. 84-24169 Filed 9-12-84. 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decrees Pursuant to Clean Water Act and Electroplating Pretreatment Regulations

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 27, 1984, eight proposed consent decrees in *United States* v. *General Motors Corporation* were lodged with United States District Courts for the: Northern District of Georgia; District of New Jersey; District of Kansas; Central District of California; Southern District of Ohio; Northern District of Texas; and the Western District of Missouri. The Complaints, which were simultaneously filed by the United States, allege violations of Section 307 of the Clean Water Act resulting from the failure of eight of General Motor's automobile assembly plants to meet the electroplating pretreatment standards on and after the June 30, 1984 compliance date. The eight plants are: the Linden Plant in Linden, New Jersey; the Norwood Plant in Norwood, Ohio; the Van Nuys Plant in Van Nuys, California; the Fairfax Plant in Kansas City, Kansas; the Leeds Plant in Kansas City, Missouri; the Arlington Plant in Arlington, Texas; the Doraville Plant in Doraville, Georgia; and the Lakewood Plant in Atlanta, Georgia.

The complaints all seek injunctive relief to require General Motors to comply immediately with the applicable pretreatment standards and to pay civil penalties for any violations of those standards.

The consent decrees require General Motors to undertake long-term construction projects at each of the eight plants involving major modifications to existing wastewater treatment systems. In the period prior to completion of that construction in September 1985, General Motors will employ interim measures (such as the installation of portable treatment facilities) in an effort to meet the standards. The consent decrees further provide for a schedule of penalties if there are compliance failures after June 30, 1984.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *General Motors Corporation*, D.J. Ref. 90-5-1-1-2177.

The proposed consent decrees may be examined at the offices of the United States Attorneys or the regional offices of the Environmental Protection Agency as follows:

Consent decree	U.S. attorney	EPA
The Linden Decree	Federal Bldg., 970 Broad St., Newark, NJ 07102.	Region II, 26 Federal Plaza, New York, NY 10278

Consent decree	U.S. attorney	EPA
The Arlington Decree.	310 U.S. Courthouse, 10th & Lamar Streets, Ft. Worth, TX 76106.	Region VI, 1201 Elm Street, Dallas, TX 75270
The Fairfax Decree.	412 Federal Bldg., 812 North Seventh St., Kansas City, KS 66001.	Region VII, 324 East 11th St., Kansas City, MO 64106
The Leeds Decree.	549 U.S. Courthouse, 811 Grand Avenue, Kansas City, MO 64106.	Region VII, 324 East 11th St., Kansas City, MO 64106
The Van Nuys Decree.	312 North Spring St., Los Angeles, CA 90012.	Region IX, 215 Fremont Street, San Francisco, CA 94105
The Norwood Decree.	220 USPO & Courthouse, 5th & Walnut St., Cincinnati, OH 45202.	Region V, 230 South Dearborn St., Chicago, Ill 60604
The Doraville Decree, The Lakewood Decree.	Suite 1800, Richard Russell Bldg., 75 Spring St., S.W., Atlanta, GA 30335.	Region IV, 345 Courtland St., Atlanta, GA 30365

Copies of the consent decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, D.C. 20530. A copy of a proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of a decree, please identify which decree is being requested and enclose a check in the amount of $4.10 payable to Treasurer of the United States. If all eight decrees are requested, enclose a check in the amount of $32.80.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-24170 Filed 9-12-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[ORPS Application No. P-6333V]

Employee Benefit Plans; Alternative Method of Compliance for the Texas Commerce Trust Co. Short-Term Trust for Qualified Employee Benefit Plans

AGENCY: Office of Pension and Welfare Programs, Department of Labor.

ACTION: Grant of alternative method of compliance.

SUMMARY: The Department of Labor (the Department) hereby grants an alternative method of compliance with annual reporting requirements of the Employee Retirement Income Security Act of 1974 (ERISA) for all employee benefit plans with units of participation in the Texas Commerce Trust Co. Short-Term Trust for Qualified Employee Benefit Plans (the Trust).

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. John Christensen, Office of Reporting and Plan Standards, Office of Pension and Welfare Benefit Programs, (202) 523-8684 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On May 2, 1984 notice was published in the **Federal Register** (49 FR 18795) of the pendency before the Department of an alternative method of compliance with the annual reporting requirements of the Employee Retirement Income Security Act of 1974 (ERISA) for all employee benefit plans with units of participation (Participating Plans) in the Texas Commerce Trust Co. Short-Term Trust for Qualified Employee Benefit Plans (the Trust). The alternative method of compliance was requested in a petition filed by Gardere & Wynne, Attorneys and Counselors, Dallas, Texas, for the Trustees of the Trust, on behalf of all Participating Plans, pursuant to section 110(a) of the Act.

The notice set forth a summary of the facts and representations contained in the petition for an alternative method of compliance and referred interested persons to the petition on file with the Department for a complete statement of the facts and representations. The petition has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested alternative method of compliance to the Department and the petitioner has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency.

No public comments were received by the Department on the notice, and the Department has decided to grant the proposed alternative method of compliance.

Alternative Method of Compliance

In accordance with section 110(a) of the Act and based upon the entire record, the Department makes the following determinations:

(1) The use of the alternative method of compliance prescribed herein is consistent with the purposes of Title I of the Act and provides adequate disclosure to the Plans' participants and beneficiaries and adequate reporting to the Department,

(2) The application of the annual reporting requirements would increase the costs to the Plans or impose unreasonable administrative burdens with respect to the operation of the Plans, and

(3) The application of the annual reporting requirements of the Act would be adverse to the interests of the Plans' participants in the aggregate.

Accordingly, subject to the express condition that the material facts and representation contained in the petition are true and complete and the petition accurately describes all factors material to the granting of the alternative method of compliance, the Department hereby grants the following alternative method of compliance for plans participating in the Texas Commerce Trust Co. Short-Term Trust for Qualified Employee Benefit Plans:

(a) *General.* Under the authority of section 110 of the Act, a plan whose assets are held in whole or in part in the Texas Commerce Trust Co. Short-Term Trust for Qualified Employee Benefit Plans (hereinafter a "Participating Plan") shall include in the annual return report (Form 5500 series) and in the separate statements and schedules of the annual report, for plan years beginning on or after January 1, 1983, the information described in paragraph (b) of this alternative; provided that the trustees of the Texas Commerce Trust Co. Short-Term Trust for Qualified Employee Benefit Plans (hereinafter the "Trust") file directly with the Department and provide each administrator of a Participating Plan the information described in paragraph (c) of this alternative no later than the date on which the plan's annual report is due. The information described in paragraph (c), however, shall be considered as part of the annual report for purposes of the requirements of § 104(a)(1)(A) of the Act and § 2520.104a-5. This alternative method of compliance has no application to assets not held in the Trust.

(b) *Reporting Information Relating to Participating Plans to be Filed with the Internal Revenue Service.* A Participating Plan utilizing this alternative method of compliance shall include in the annual return/report (Form 5500 series) and in the separate statements and schedules of the annual report: The current value of units participating in the Trust held by the plan; transactions involving the acquisition and disposition by the plan of units of participation in the Trust; and, as an attachment to the annual report, a certification by the administrator of the Participating Plan that the plan has received a copy of the information, described in paragraph (c), filed with the Department by the Trust. Such plan is not required to include in the annual report any information concerning individual transactions of the Trust.

(c) *Reporting Information Relating to the Trust to be Filed with the Department of Labor.* The following information regarding the Trust must be reported for the fiscal year of the Trust ending with or within the plan year for which a Participating Plan's annual report is made:

(1) Name, address and employer identification number (EIN) of the Trust;

(2) A list of all Participating Plans investing in the Trust identified by plan name, plan number, and name and EIN of the plan sponsor as they appear on the annual return/report, and each plan's percentage interest in the Trust as of the beginning and ending of the fiscal year of the Trust;

(3) A statement of assets and liabilities of the Trust;

(4) A statement of income and expenses of the Trust;

(5) The assets held for investment (including the acquisitions and dispositions during the fiscal year of the Trust), leases and obligations in default, and compensation paid by the Trust for services in the manner required by the instructions to the annual return/report Form 5500;

(6) A report of an independent qualified public accountant regarding the statements and schedules described in subparagraphs (2) through (5) above which meets the requirements of 29 CFR 2520.103-1(b)(5).

The Trust shall file the information described in this paragraph (c) with the Department by mailing it to: Office of Reports and Disclosure, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, NW. Washington, D.C. 20210, Attention: Texas Commerce Trust Co. Alternative Method of Compliance.

Signed at Washington, D.C., this 8th day of September.

Robert A.G. Monks,

Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 84-24200 Filed 9-12-84; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Statement of Policy; Investigations, Inspections, and Adjudicatory Proceedings

On August 5, 1983, the Commission set forth interim procedures for handling conflicts between the NRC's responsibility to disclose information to adjudicatory boards and parties, and the NRC's need to protect investigative material from premature public disclosure. "Statement of Policy—Investigations and Adjudicatory Proceedings," 48 FR 36358 (August 10, 1983).

Those interim procedures called for the NRC staff or Office of Investigations (OI), when it felt disclosure of information to an adjudicatory board was required but that unrestricted disclosure could compromise an inspection or investigation, to present the information and its concerns about disclosure to the board *in camera*, without disclosure of the substance of the information to the other parties. A board decision to disclose the information to the parties was appealable to the Commission, and the board was not to order disclosure until the Commission addressed the matter.

That Statement of Policy was to remain in effect until the Commission received and took action on the recommendations of an internal NRC task force established to develop guidelines for reconciling these conflicts in individual cases. The Commission in that Statement also requested public comments on the propriety and desirability of *ex parte in camera* presentation of information to a board, and suggestions for any better alternatives.

The Task Force submitted its report to the Commission on December 30, 1983. A copy of that report will be placed in the Commission's Public Document Room. The Task Force approved the principles discussed in the Commission's earlier Statement of Policy, and made several recommendations intended to define specifically the responsibilities of the boards, the staff, and OI in presenting disclosure issues for resolution.

The Task Force recommended that the final Policy Statement explain that full disclosure of material information to adjudicatory boards and the parties is the general rule, but that some conflicts between the duty to disclose and the need to protect information will be inevitable. The Task Force further recommended that issues regarding disclosure to the parties be initially determined by the adjudicatory boards with provision for expedited appellate review, and that procedures for the resolution of such conflicts be established by rule. Finally, the Task Force suggested that existing board notification procedures should remain unaffected by the Policy Statement, and that those procedures and Commission guidelines for disclosure of information concerning investigations and inspections should apply to all NRC offices. Those recommendations have been incorporated in this Statement.

In addition, two comments were submitted by members of the public.

One commenter stated that the withholding of information from public disclosure should be confined to the minimum essential to avoid compromising enforcement actions, and that appropriate representatives of each party should be allowed to participate under suitable protective orders in any *in camera* proceeding except in the most exceptional cases.

The other commenter maintained that an *in camera* presentation to the board with only one party present is undesirable and violates the *ex parte* rule. That commenter suggested an alternative of having the attorneys or authorized representatives of parties who have signed a protective agreement present at any *in camera* presentation, with appropriate sanctions for violating the protective agreement.[1]

The Commission, after considering these comments and the report of the Task Force, has decided that it would be appropriate, in order to better explain the Commission's policy in this area, to provide the following explanation of the conflict between the duty to disclose investigation or inspection information to the boards and parties and the need to protect that information:

All parties in NRC adjudicatory proceedings, including the NRC staff, have a duty to disclose to the boards and other parties all new information they acquire which is considered material and relevant to any issue in controversy in the proceeding. Such disclosure is required to allow full resolution of all issues in the proceeding. The Commission expects all NRC offices to utilize procedures which will assure prompt and appropriate action to fulfill this responsibility.

However, the Commission recognizes that there may be conflicts between this responsibility to provide the boards and parties with information and an investigating or inspecting office's need to avoid public disclosure for either or both of two reasons: (1) To avoid compromising an ongoing investigation or inspection; and (2) to protect confidential sources. The importance of protecting information for either of these reasons can in appropriate circumstances be as great as the importance of disclosing the information to the boards and parties.

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[1] Both comments also included suggestions regarding matters beyond the scope of this Policy Statement, which is concerned only with establishing a procedure to handle conflicts between the duty to disclose information to the boards and parties and the need to protect that information. For instance, one suggestion was that the NRC impose a more stringent standard in deciding whether information warrants a board notification. Another recommended that the NRC improve the quality of its investigations.

With regard to the first reason, avoiding compromise of an investigation or inspection, it is important to informed licensing decisions that NRC inspections and investigations are conducted so that all relevant information is gathered for appropriate evaluation. Release of investigative material to the subject of an investigation before the completion of the investigation could adversely affect the NRC's ability to complete that investigation fully and adequately. The subject, upon discovering what evidence the NRC had already acquired and the direction being taken by the NRC investigation, might attempt to alter or limit the direction or the nature or availability of further statements or evidence, and prevent NRC from learning the facts. The failure to ascertain all relevant facts could itself result in the NRC making an uninformed licensing decision. However, the need to protect information developed in investigations or inspections usually ends once the investigation or inspection is completed and evaluated for possible enforcement action.

The second reason for not disclosing investigative material—to protect confidential sources—has a different basis. Individuals sometimes present safety concerns to the NRC only after being assured that their individual identity will be kept confidential. This desire for confidentially may arise for a number of reasons, including the possibility of harassment and retaliation. Confidential sources are a valuable asset to NRC inspections and investigations. Releasing names to the parties in an adjudication after promising confidentially to sources would be detrimental to the NRC's overall inspection and investigation activities because other individuals may be reluctant to bring information to the NRC. However, the need to protect confidential sources does not end when the investigation or inspection is completed and evaluated for possible enforcement action.

By this Policy Statement, the Commission is not attempting to resolve the conflict that may arise in each case between the duty to disclose information to the boards and parties and the need to protect that information or its source. The resolution of actual conflicts must be decided on the merits of each individual case. However, the Commission does note that as a general rule it favors full disclosure to the boards and parties, that information should be protected only when necessary, and that any limits on disclosure to the parties should be limited in both scope and duration to the minimum necessary to achieve the purposes of the non-disclosure policy.

The purpose of this Policy Statement is to establish a procedure by which the conflicts can be resolved. The Policy Statement takes over once a determination has been made, under established board notification procedures, that information should be disclosed to the boards and public, but OI or staff believes that the information should be protected. In those cases the Commission has decided that the only workable solution to protect both interests is to provide for an *in camera* presentation to the board by the NRC staff or OI, with no party present. Any other procedure could defeat the purpose of non-disclosure and might actually inhibit the acquisition of information critical to decisions. Allowing the other parties or their representatives to be present in all cases, even under a protective order, could breach promises of confidentiality or allow the subject of an investigation to prematurely acquire information about the investigation. We note in this regard the difficulties of attempting to prevent a party's representative from talking to his client about the relevance of the information and how to respond to it, even under a protective order.

The Commission believes that the boards, using the procedures established in this Policy Statement, can resolve most potential disclosure conflicts once they have been advised of the nature of the information involved, the status of the inspection or investigation, and the projected time for its completion. In many of the cases when the procedures in this Policy Statement are triggered by a concern for premature public disclosure, it may be possible for boards to provide for the timely consideration of relevant matters derived from investigations and inspections through the deferral or rescheduling of issues for hearing. In other instances, the boards may be able to resolve the conflict by placing limitations on the scope of disclosure to the parties, or by using protective orders.

The Commission wishes to emphasize that these procedures do not abrogate the well-established principle of administrative law that a board *may not* use *ex parte* information presented *in camera* in making licensing decisions. These procedures are designed to allow the boards to determine the relevance of material to the adjudication, and whether that information must be disclosed to the parties, and, if disclosure is required, to provide a mechanism for case management both to protect investigations and inspections and to allow for the timely provision of material and relevant information to the parties. As such these procedures are analogous to the procedures for resolving disputes regarding discovery, *see, e.g.,* 10 CFR 2.740(c), and do not violate the prohibition in 10 CFR 2.780 against *ex parte* discussion of substantive matters at issue.

In accord with the above discussion, the Commission has decided that the procedures to be followed, where there is a conflict between the need for disclosure to the board and parties and the need to protect an investigation or inspection, will include *in camera* presentations by the staff or OI. However, because this procedure represents a departure from normal Commission procedure, it is the Commission's view that the decision should be implemented by rulemaking. Accordingly, the Commission directs the NRC staff to commence a rulemaking on the matter.

Until completion of the rulemaking, the following will control the procedures to be followed in resolving conflicts between the duty to disclose to boards and the need to protect information developed in investigation or inspection:

1. Established board notification procedures should be used by staff or OI to determine whether information in their possession is potentially relevant and material to a pending adjudicatory proceeding.[2] The general rule is that all information warranting disclosure to the boards and parties, including information that is the subject of ongoing investigations or inspections, should be disclosed, except as provided herein.

2. When staff or OI believes that it has a duty in a particular case to provide an adjudicatory board with information concerning an inspection or investigation, or when a board requests such information, staff or OI should provide the information to the board and parties unless it believes that unrestricted disclosure would prejudice an ongoing inspection or investigation, or reveal confidential sources. If staff or OI believes unrestricted disclosure

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[2] While this Statement refers only to staff and OI who are the organizations principally involved, the statement will apply to any other offices of the Commission which may have the problem.

would have these adverse results, it should propose to the board and parties that the information be disclosed under suitable protective orders and other restrictions, unless such restricted disclosure would also defeat the purpose behind non-disclosure. If staff or OI believes that any disclosure, however restricted, would defeat the purpose behind non-disclosure, it shall provide the board with an explanation of the basis of its concern about disclosure and present the information to the board, *in camera*, without other parties present. A verbatim transcript of the *in camera* proceeding will be made.[3]

All parties should be advised by the board of the conduct and purpose of the *in camera* proceeding but should not be informed of the substance of the information presented. If, after such *in camera* presentation, a board finds that disclosure to other parties under protective order or otherwise is required (*e.g.*, withholding information may prejudice one or more parties or jeopardize timely completion of the proceedings, or the board disagrees that release will prejudice the investigation), it shall notify staff or OI of its intent to order disclosure, specifying the information to be provided, the terms of any protective order proposed, and the basis for its conclusion that prompt disclosure is required. The staff or OI shall provide the board within a reasonable period of time, to be set by the board, a statement of objections or concurrence. If the board disagrees with any objection and the disagreement cannot be resolved, the board shall promptly certify the record of the *in camera* proceeding to the Commission for resolution of the disclosure dispute, and so inform the other parties. Any licensing board decision to order disclosure of the identify of a confidential source shall be certified to the Commission for review regardless of whether OI and staff concur in the disclosure.[4] The board's decision shall be stayed pending a Commission decision. The record before the Commission shall consist of the transcript, the board's Notice of Intent to require disclosure and the objections of Staff or OI. Staff or OI may file a brief with the Commission within ten days of filing a statement of objections with the board. The record before the Commission, including staff or OI's brief, shall be kept *in camera* to the extent necessary to protect the purposes of non-disclosure.

The Commission recognizes that no other party may be in a position effectively to respond to staff or OI's brief because the proceedings have been conducted *in camera*. However, in those cases where another party feels that it is in a position to file a brief, it may do so within seven days after staff or OI files its brief with the Commission.

3. Staff or OI shall notify the board and, as appropriate, the Commission, if the objection to disclosure to the parties of previously withheld information, or any portion of it, is withdrawn. Unless the Commission has directed otherwise, such information—with the exception of the identities of confidential sources—may then be disclosed without further Commission order.

4. When a board or the Commission determines that information concerning a pending investigation or inspection should not be disclosed to the parties, the record of any *in camera* proceeding conducted shall be deemed sealed pending further order. That record will be ordered included in the public record of the adjudicatory proceeding upon completion of the inspection or investigation, or upon public disclosure of the information involved, whichever is earlier, subject to any privileges that may validly be claimed under the Commission's regulations, including protection of the identify of a confidential source. Only the Commission can order release of the identify of a confidential source.

Dated at Washington, D.C. this 7th day of September, 1984.

Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-24261 Filed 9-12-84; 8:45 am]

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[3] Nothing in this Statement prohibits staff on OI from sharing information.

[4] The Commission has decided to review any licensing board decision ordering disclosure of the identify of a confidential source because of the importance to the Commission's inspection and investigation program of protecting the identity of confidential sources.

[Docket No. 50-334]

Duquesne Light Co., et al. (Beaver Valley Power Station Unit No. 1); Exemption

I

The Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees), are the holder of Facility Operating License No. DPR-66 which authorizes operation of the Beaver Valley Power Station, Unit No. 1 (the facility) at steady-state power levels not in excess of 2652 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Beaver County, Pennsylvania. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of those fifteen subsections, III.G, is the subject of this exemption.

Subsection III.G specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers cannot be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area is required (III.G.3).

In response to previous requests from the licensee, the Commission granted an exemption to requirements of subsection III.G and III.L on March 14, 1983. By letter dated December 16, 1983 and supplemented by letter dated May 30, 1984, Duquesne Light Company requested additional exemptions from the requirements of Subsection III.G of Appendix R.

III

We have reviewed the licensee's exemption requests and evaluation of these requests is as follows:

1. Fixed Suppression and Detection Systems

For the following areas, an exemption is requested from Section III.G.3 to the extent it requires fixed suppression and detection to be provided throughout a fire area for which alternative shutdown has been provided:

Primary Auxiliary Building (PA-1A), Elev. 768

Control Room HVAC Equipment Room (CR-2), Elev. 713

Emergency Switchgear Rooms (ES-1 & 2), Elev. 713

Process Instrument Room (CR-4), Elev. 713

Communications Equipment & Relay Panel Room (CR-3), Elev. 713

Normal Switchgear Room (NS–1), Elev. 713
Carbon Dioxide Storage/PG Pump Room (CO–2)
Pipe Tunnel (Sub-area QP–1), Elev. 735

With the exception of the Carbon Dioxide Storage/PG Pump Room (CO–2), all of these areas are provided with either partial or complete fire detection systems. The carbon dioxide storage area is in a separate building adjacent to the diesel generator buildings. A fire in this area would not threaten safe-shutdown equipment.

All of the fire areas for which exemptions have been requested represent a similar configuration, i.e., combustible loading is light, there is alternate shutdown capability, detection (except CO_2 storage area) and manual fire suppression equipment is available. (The CO_2 storage area contains only equipment valves and cables in conduit. It is in a separate building and a fire here would not threaten adjacent safety related areas.) The low combustible loading in these areas ensures that safety-related equipment in adjacent areas will not be threatened. The installation of a fixed fire suppression system would not significantly increase the level of fire protection in these areas.

Based on our evaluation, we find that the existing fire protection in conjunction with alternate shutdown capability in the eight areas for which an exemption has been requested provides a level of fire protection equivalent to the technical requirements of section III.G.3 of Appendix R and, therefore, the exemptions should be granted.

2. Control Room HVAC Equipment Room (CR–2) Elev. 713

An exemption is requested from section III.G.2 to the extent it requires the separation of adjacent fire areas by 3-hour rated fire barriers.

The control room HVAC equipment room is separated from other areas by 3-hour rated fire barriers with the exception of a 1½-hour rated fire door which leads to the Relay Room (CR–3). The combustible loading in both areas (CR–3 and CR–2), if totally consumed, would correspond to an equivalent fire severity of approximately 40–50 minutes on the ASTM E–119 Standard Time-Temperature Curve. Smoke detection and manual fire suppression equipment is provided in each area. Alternate shutdown capability is provided independent of the fire area.

The 1½-hour rated fire door which leads to the relay room exceeds the combustible loading in both the HVAC equipment room and the delay room with considerable margin. In the event a fire occurred in either room, there is reasonable assurance that the installed smoke detection system would alarm and alert the fire brigade before the door's integrity is challenged. Replacing the existing door with a 3-hour rated assembly would not significantly enhance fire protection safety.

Based on our evaluation, we find that the existing fire door in the HVAC equipment room (CR–2) provides a level of fire protection equivalent to the technical requirements of section III.G. The exemption should, therefore, be granted.

3. Emergency Switchgear Rooms (ES–1 and ES–2) Elev. 713

An exemption is requested from section III.G.2 to the extent it requires the separation of adjacent fire areas by 3-hour rated fire barriers.

The Emergency Switchgear Rooms are located on the 713 elev. beneath the cable spreading room. The ceiling which forms a boundary between the two areas constitutes a 1½-hour fire barrier. All other adjacent boundaries are 3-hour rated. The combustible loading in the emergency switchgear room, if totally consumed, would correspond to an equivalent fire severity of approximately 25 minutes on the ASTM E–119 Standard Time-Temperature Curve.

Smoke detection and manual fire suppression equipment are provided in the area. The 1½-hour rated ceiling exceeds the combustible loading in the switchgear room with considerable margin. In the event a fire occurred, there is reasonable assurance that the installed smoke detection system would alarm and alert the fire brigade before the ceiling's integrity is challenged. Replacing the existing ceiling with a 3-hour rated assemblies would not significantly enhance fire protection safety.

Based on our evaluation, we find that the protection provided for the emergency switchgear room ceiling provides a level of fire protection equivalent to the technical requirements of section III.G. The exemption should, therefore, be granted.

4. Process Instrument Room (CR–4), Elev. 713

An exemption is requested from section III.G.2 to the extent it requires the separation of adjacent fire areas by 3-hour rated fire barriers.

The process instrument room is located on the 713 elev. beneath the cable spreading room. The ceiling which forms a barrier between the process instrument room and the cable spreading room is a 1½-hour rated fire barrier. In addition, three doors which communicate to the adjacent relay room (CR–3) are 1½-hour rated fire doors. All other boundaries are 3-hour rated.

The combustible loading in the area, if totally consumed, would correspond to an equivalent fire severity of approximately 45 minutes on the ASTM E–119 Standard Time-Temperature Curve. Smoke detection and manual fire suppression equipment are provided in the area. Alternate shutdown capability independent of the area is also provided.

The 1½-hour rated fire doors which lead to the relay room and 1½-hour rated ceiling exceed the combustible loading in both the process instrument room and the relay room with considerable margin. In the event a fire occurred in either room, there is reasonable assurance that the installed smoke detection system would alarm and alert the fire brigade before the door's or ceiling's integrity is challenged. Replacing the existing doors and ceiling with 3-hour rated assemblies would not significantly enhance fire protection safety.

Based on our evaluation, we conclude that the protection provided for the process instrument room provides a level of fire protection equivalent to the technical requirements of section III.G. The exemption should, therefore, be granted.

5. Communication Equipment and Relay Panel Room (CR–3) Elev. 173

An exemption is requested from section III.G.2 to the extent it requires the separation of adjacent fire areas by complete 3-hour rated barriers.

The communications equipment and relay panel room is located on the 713′ elev. beneath the cable spreading room. The ceiling that separates the relay room from the cable spreading room is a 1½-hour rated fire barrier. In addition, two doors that communicate with the adjacent process instrument room (CR–4) carry a 1½-hour rating.

Smoke detection and manual fire suppression equipment are provided in the area. The combustion loading in the area, if totally consumed, would correspond to an equivalent fire severity of approximately fifty minutes on the ASTM E–119 Standard Time-Temperature Curve. Alternate shutdown capability independent of the area is provided.

The 1½-hour rated fire doors which lead to the process instrument room and the 1½-hour rated ceiling exceed the combustible loading in both the process instrument room and the relay room with considerable margin. In the event a fire occurred in either room, there is reasonable assurance that the installed smoke detection system would alarm and alert the fire brigade before the door's integrity is challenged. Replacing the existing doors and ceiling with 3-hour rated assemblies would not significantly enhance fire protection safety.

Based on our evaluation, we conclude that the protection provided for the Communications Equipment & Relay Panel Room provides a level of fire protection equivalent to the technical requirements of section III.G. The exemption should, therefore, be granted.

6. Normal Switchgear Room NS–1 Elev. 713

An exemption is requested from section III.G.2 to the extent it requires the separation of adjacent fire areas by 3-hour rated barriers.

The normal switchgear room is located on the 713 elev. of the service building, one floor below the cable spreading room. The normal switchgear room is surrounded by 3-hour rated barriers with the exception of 1½-hour rated fire dampers installed in the ductwork that penetrates the cable spreading room.

Smoke detection and manual fire suppression equipment are provided in the area. The combustible loading in the area, if totally consumed, would correspond to an equivalent fire severity of approximately 50 minutes on the ASTM E–119 Standard Time-Temperature Curve. Alternate shutdown capability independent of the area is provided.

The 1½-hour rated fire dampers which lead to the cable spreading room exceed the combustible loading in the normal switchgear room with considerable margin. In the event a fire occurred in the switchgear room, there is reasonable assurance that the installed smoke detection system would alarm and alert the fire brigade before the dampers' integrity is challenged. Replacing the existing dampers with 3-hour rated assemblies would not significantly enhance fire protection safety.

Based on our evaluation, we conclude that the protection provided for the normal switchgear room provides a level of fire protection equivalent to the technical requirements of section III.G. The exemption should, therefore, be granted.

7. Cable Spreading Room

An exemption is requested from section III.G.2 to the extent it requires the separation of adjacent fire areas by complete 3-hour rated barriers.

The cable spreading room is located on the 725′6″ elev. of the service building. The walls and ceilings constitute 3-hour rated barriers. The floor is a 1½-hour rated floor. Ductwork is provided with 3-hour rated dampers except those ducts which penetrate the floor and the west wall which separates the cable spreading room from the normal switchgear room. These ducts are provided with 1½-hour rated dampers. All cables and equipment needed for safe-shutdown will be removed from the normal switchgear room and relocated at the next refueling outage. The cable spreading room doors are 3-hour rated except for the 1½-hour rated door that opens to the east stairtower.

The combustible loading in the cable spreading room, if totally consumed, would correspond to an equivalent fire severity of approximately 1-hour and twenty minutes on the ASTM E–119 Standard Time-Temperature Curve.

To approve fire area boundaries of less than a 3-hour rating, we need reasonable assurance that the proposed boundaries will exceed the in-situ fuel load with margin. In the cable spreading room, the margin proposed is not considered adequate for the general case. However, in the three specific cases cited, we have evaluated the location and configuration of the 1½-hour rated components and consider them acceptable for the following reasons:

- 1½-hour rated stairtower door—section C.5.a of our guidelines recommends the use of 2-hour rated concrete stairtower enclosures with self-closing Class B (1½-hour) fire doors. The licensee has provided this level of protection. We, therefore, find the 1½-hour rated fire doors acceptable.
- 1½-hour rated floor and 1½-hour rated fire dampers in the floor. In the event of a fire in the cable spreading room, the heat from the fire would rise and challenge the ceiling and upper wall areas of the cable spreading room. Only after a considerable time period will the heat transfer down through the floor become significant. With the added benefit of the installed smoke detection system, automatic suppression system and response of the fire brigade, there is reasonable assurance that the 1½-hour rated floor and dampers will remain functional.
- 1½-hour rated dampers penetrating the wall to the normal switchgear room. The licensee has committed to remove all cables and equipment from the normal switchgear room needed for safe-shutdown. Therefore, if a fire propagated to this area, by the failure of the 1½-hour rated damper, no safe-shutdown equipment would be damaged. The walls of the normal switchgear room that separate it from the remainder of the plant are 3-hour rated barriers. Therefore, a cable spreading room fire which spreads to the switchgear room by failure of the 1½-hour rated dampers will not spread beyond the normal switchgear room.

Based on our evaluation, we conclude that the protection provided for the cable spreading room provides a level of fire protection equivalent to the technical requirements of section III.G. The exemption should, therefore, be granted.

8. Reactor Containment RC–1

An exemption is requested from section III.G. to the extent it requires the separation of redundant trains of the source range monitor within containment by greater than 20 feet.

This fire area includes the entire area inside containment. The redundant trains of safe shutdown components in this area include the containment ventilation, pressurizer pressure controls, pressurizer power operated relief valves, pressurizer relief blocking valves, pressurizer heaters, steam generator level transmitters, pressurizer level transmitters, reactor coolant hot and cold leg temperature instrumentation, and associated cables.

The combustible loading in this area consists of approximately 48,000 pounds of cable insulation, 265 gallons of lubricating oil for each of three reactor coolant pumps, and 200 pounds of charcoal in the containment air filter cubicles.

All cable insulation is qualified to a test comparable to IEEE Standard 383. The reactor coolant pumps are fitted with an oil collection system. Smoke detection systems and water deluge systems are provided only in the cable penetration area and in the residual heat removal pump area. Portable fire extinguishers and manual hose stations are provided throughout the fire area.

We had previously approved an exemption for the separation of redundant equipment and cables inside containment. At our request, the licensee has added an additional channel of source range neutron detection. Due to the physical arrangement inside containment, separation of the redundant cables by more than 20-feet is not possible. A minimim separation of approximately five feet is maintained. Each channel of neutron detection is in a separate conduit.

The protection for redundant trains of safe shutdown equipment inside containment does not meet the technical requirements of Section III.G because redundant power cables are not separated by at least 20 feet free of combustibles. Due to the configuration and location of the cables within the containment and to the restricted access of these sub-areas during plant operation, an exposure fire involving the accumulation of significant quantities of transient combustible materials is unlikely. Because there are only a few cables in these sub-areas and all cables inside containment are qualified to a test comparable to that of IEEE Standard 383 and routed in conduit, a fire of sufficient magnitude to damage redundant cables or components is also unlikely.

Based on the above evaluation, the existing protection for the containment area provides a level of fire protection equivalent to the technical requirements of section III.G of Appendix R. Therefore, the exemption should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property of common defense and security and is otherwise in the public interest and hereby grants an exemption from the requirements of Subsections III.G of Appendix R to 10 CFR 50 to the extent that it requires fixed suppression and detection systems, 3-hour rated fire barriers or 20-foot separation of redundant equipment for the areas/equipment described above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (49 FR 32135).

Dated at Bethesda, Maryland this 30th day of August 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Licensing.

[FR Doc. 84-24264 Filed 9-12-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., et al.; Exemption From Appendix R to 10 CFR Part 50 Fire Protection Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted an Exemption from certain requirements of Appendix R to 10 CFR Part 50 to Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees). The Exemption relates to the Fire Protection Program for the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The Exemption is effective as of

The Exemption waives certain requirements of Subsection III.G for this facility, to the extent that fixed fire suppression and detection systems need not be provided for certain fire areas, 3-hour rated fire barriers need not be installed between certain fire areas, and 20-feet separation is not required between certain pieces of equipment. The Exemption is granted mainly on the basis that the combustible loading in all these areas are light. Details are provided in the Exemption.

The request for Exemption complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR which are set forth in the Exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (49 FR 32135).

For further details with respect to this action, see (1) the application for Exemption dated December 16, 1983 and supplemented by letter dated May 30, 1984, (2) the Commission's letter dated August 30, 1984 and (3) the Exemption. All of these items are available for public inspection at the Commission's Public Document Room 1717 H. Street, NW., Washington, D.C. and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washaington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this August 30, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Licensing.

[FR Doc. 84-24300 Filed 9-12-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-498 OL, STN 50-499 OL; ASLBP No. 79-421-07 OL]

Houston Lighting and Power Co., et al. (South Texas Project Units 1 and 2); Order Scheduling Prehearing Conference)

September 7, 1984.

In accordance with the provisions of the Atomic Safety and Licensing Board's Memorandum and Orders dated May 22, 1984 (at p. 13) and July 10, 1984 (at pp. 9-10), a prehearing conference will be held on Monday, October 15, 1984 and (to the extent necessary) on Tuesday, October 16, 1984. The conference will commence at 9:30 a.m., on October 15, 1984, at the Astro Village Hotel, Forum Room No. 5, 2350 South Loop W (I-610 at Kirdy), Houston, Texas. If a session of the conference is needed on October 16, it will be held at the same location beginning at 9:00 a.m.

At the conference, the Licensing Board will consider, *inter alia*, the specification of issues to be heard in Phase II of the operating license proceeding, the legal aspects of the reportability of the Quadrex Report, any further discovery requests (to the extent consistent with our earlier orders on this subject), and the scheduling of Phase II hearings. We remind parties that, as provided in our May 22, 1984 Memorandum and Order, a list of particular matters which CCANP (and other parties or participants, as applicable) believe should be litigated in the Phase II hearings should submitted by October 5, 1984.

All parties (or their counsel or representatives) who wish to participate in Phase II hearings are directed to attend the prehearing conference. The public is also invited to attend, but no oral limited appearance statements will be received.

It is so ordered.

Dated at Bethesda, Maryland this 7th day of September 1984.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 84-24265 Filed 9-12-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-19532; License No. 11-19921-01; EA 84-18]

Inspection & Testing, Inc.; Attn.: T.L. Finkenbinder, President; Order To Show Cause and Order Suspending License Effective Immediately

I

Inspection & Testing, Inc., 4990 Valenty Road, Chubbuck, Idaho 83202, (Licensee) is the holder of License No. 11–19921–01 (license) issued by the Nuclear Regulatory Commission (NRC). License No. 11–19921–01 authorizes the possession and use of byproduct materials for industrial radiography and is due to expire February 28, 1987.

II

On April 14, 1984, the Commission issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $4800.00 to the licensee for violations of NRC requirements in the conduct or radiographic field operations which resulted in a personnel overexposure.

The licensee responded on April 23, 1984 to the Notice of Violation and Proposed Imposition of Civil Penalties requesting that the civil penalty be mitigated due to the severe financial impact it would have on the state of its business and its ability to survive. The licensee indicated that it was seriously considering bankruptcy. As a result, the proposed civil penalty was reduced to $1000.00 and an Order imposing the penalty was issued on July 6, 1984. In further conversations with members of the NRC staff, the most recent of which was on August 30, 1984, the licensee indicated that bankruptcy proceedings would be commenced shortly and that he expected repossession of his assets to begin within a few days.

These developments raise substantial questions as to whether the licensee has sufficient resources to properly safeguard the licensed material in its possession and assure that it is used in a manner appropriate for adequate protection of the public health and safety. Accordingly, I find that the public health, safety, and interest require that this Order be made immediately effective.

III

In view of the above, it is hereby ordered, effective immediately, pursuant to Sections 81 and 161(b) of the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR Parts 2 and 30, that:

(A) License No. 11–19921–01 is suspended pending further order, and the licensee shall cease and desist from any use of byproduct material in its possession and shall immediately place all such material in locked storage;

(B) Within 7 days of the issuance of this Order, the licensee shall transfer all licensed material within its possession to a person authorized by the Commission to possess such material as set forth in 10 CFR 30.41 and shall notify in writing the NRC Region IV Office within 7 days when such transfer has taken place; and

(C) The licensee shall show cause, as provided in Section IV below, why License No. 11–19921–01 should not be revoked.

IV

Within 25 days of the date of this Order, the licensee may show cause why the license should not be revoked, as required in section III.C above, by filing a written answer under oath or affirmation that sets forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order in substantially the form proposed in this Order to Show Cause. Upon failure of the licensee to file an answer within the specified time, the Director of the Office of Inspection and Enforcement may issue without further notice an Order Revoking License No. 11–19921–01.

V

The licensee may request a hearing on this Order within 25 days after the issuance of this Order. Any answer to the Order or requerst for a hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of section III.A and III.B of this Order.

If the licensee requests a hearing on this Order, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be consiered at such hearing shall be whether, on the basis of the matters set forth in Section II of this Order, License No. 11–19921–01 should be revoked.

Dated at Bethesda, Maryland this 31st day of August 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84–24263 Filed 9–12–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–263]

Northern States Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Northern States Power Company (licensee) for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

In accordance with the licensee's application for amendment dated May 30, 1984, as supplemented September 6, 1984, the proposed amendment would modify the Technical Specifications as follows:

1. Change the slope of the flow-biased average power range monitor (APRM) scram and rod block trip setpoint curves from 0.65 to 0.58 and change their intercept values such that, at rated core flow, the setpoints are unchanged from their current values.

2. Delete the requirement for setdown of the APRM flow-biased scram and rod block setpoints when core maximum fraction of limiting power density (MFLPD) exceeds the fraction of core rated thermal power (core total peaking factor exceeding design peaking factor). In order to maintain function and margins, replace the setdown requirement with new multiplier to the minimum critical power ratio (MCPR) and average planar linear heat generation rate (APLHGR) operating limits when core power or flow conditions are less than the licensed conditions.

3. Replace the Rod Block Monitor (RBM) flow-biased trip equation with power-dependent setpoint definitions, incorporate RBM filter and time delay setpoints, and change the RBM downscale trip setpoint. Add appropriate RBM operability and surveillance requirements, including the definition of Limiting Rod Pattern for Rod Withdrawal Error (RWE).

4. Eliminate the APRM Rod Block as limiting safety system setting. This function is not used in safety analyses for Monticello and should not be a limiting safety system setting.

5. Add new limiting conditions for operation operability requirements for the RBM, including setpoints.

6. a. Make various format changes and changes to the Table of Contents and lists of Tables and Figures.

b. Add a definition of limiting control rod pattern, and delete a definition of maximum fraction of limiting power density, so that definitions correspond to present usage.

c. Change the Technical Specification bases to make them consistent with the above-described changes in requirements.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the

Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By Oct. 15, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (20 the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 30, 1984, as supplemented September 6, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland this 7th day of September, 1984.

For the Nuclear Regulatory Commission.

Robert A. Hermann,

Acting Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 84-24263 Filed 9-12-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix E to 10 CFR Part 50 to the Virginia Electric and Power Company (the licensee) for the North Anna Power Station, Unit Nos. 1 and 2 at the licensee's site in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The exemption would permit the extension of the emergency preparedness exercise at the North Anna Power Station, Unit Nos. 1 and 2, from June to November 1984. The proposed exemption is in accordance with the licensee's request for exemption dated February 17, 1984.

The Need for the Proposed Action

10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of § 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F of Appendix E requires each licensee to conduct emergency preparedness exercises at each site at least annually.

At a Federal Emergency Management Agency (FEMA) meeting on January 10, 1984, the Commonwealth of Virginia requested that a date of November 15, 1984 be established for the 1984 North Anna exercise to allow time for installation of a computer network system within all local jurisdictions within the 10-mile EPZ. A schedule of exercises was developed to accommodate the request of the Commonwealth of Virginia. The last exercise held at North Anna was in June 1983.

Environmental Impact of the Proposed Action

The proposed exemption affects only the scheduling of the annual emergency preparedness exercise and does not affect the risk of facility accidents. Thus, postaccident radiological releases will not differ from those determined previously, and the proposed relief does not otherwise affect facility radiological effluents, or any significant occupational exposures. Likewise, the relief does not affect facility non-radiologicial effluents and has no other environmental impact. Therefore, the Commission concludes there are no measureable radiological or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require literal compliance with Section IV.F of Appendix E to 10 CFR Part 50. Such an action would not enhance the protection of the environment and would result in an unnecessary exercise prior to the better exercise which can take place once the computer network system is installed and all participants are involved.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in connection with the Final Environmental Statement relating to this facility, "Final Environmental Statement related to the Continuation of Construction and Operation Of Units 1 and 2 and the Construction of Units 3 and 4, North Anna Power Station," April 1973; and "Addendum to the Final Environmental Statement Related to Operation of The North Anna Power Station, Units 1 and 2, "NUREG–0134, November 1976.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request, the FEMA Final report of the 1983 exercise at the North Anna Power Station, and a memorandum from FEMA to the NRC dated January 9, 1984, transmitting the Final Report of the exercise held in 1983 and which states that the Commonwealth of Virginia and Caroline, Hanover, Louisa, Orange and Spotsylvania Counties have demonstrated and overall capability to protect the health and safety of the public. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for relief dated February 17, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Board of Supervisors Office, Louisa County Courthouse, Louisa , Virginia and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia.

Dated at Bethesda, Maryland this 7th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84–24266 Filed 9–12–84; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee; Regular Meeting Notice

AGENCY: State Agency Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Plan of Action for Council/PUC Inertie Access, California Sales, Transmission Upgrades, and New Transmission Ownership;
- Power Plan Revision Workplan and PUC involvement in key issues; and

Status: Open.

- New business.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee.

DATE: Monday, September 10, 1984. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Conference Room at 700 SW. Taylor; Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–24173 Filed 9–12–84; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 21295; SR–NASD–84–16]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

September 7, 1984.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on June 29, 1984, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend the NASD Code of Arbitration to conform to recent amendments to the uniform arbitration code developed by the Securities Industry Conference on Arbitration. The Municipal Securities Rulemaking Board already has adopted the amendments to the uniform code.[1] The New York Stock Exchange has submitted a proposed rule change with the amendments,[2] and the other self-regulatory organizations are expected to submit rule filings with those changes shortly.

The proposed rule change would: (1) extend the time limitation on arbitration of claims to allow arbitration of claims over six years old if a court with jurisdiction over the claim directs that the claim be resolved by arbitration; (2) increase the dollar limit on simplified arbitration for small claims from $2,500 to $5,000; (3) lower the arbitration fees and deposits for claims under $2,500 and raise them for claims over $10,000; (4) allow arbitrators the discretion to bar respondent's presentation of facts or defenses that were not disclosed to the claimant prior to the hearing; (5) allow arbitrators to consolidate arbitrations where there are multiple claimants; (6) specify the rights of parties to challenge peremptorily appointments of arbitrators to the panel and provide unlimited challenges for causes; (7) allow arbitrators to assess costs in a dispute that was settled or withdrawn subsequent to the first hearing; and (8) permit a party to file amendments to its pleadings before a panel has been appointed if the amendment is filed in writing with the director of arbitration.

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[1] *See*, SR–MSRB–84–5 which amends MSRB Rule G–35 and Rule A–16, approved in Securities Exchange Act Release No. 21047 (June 14, 1984), 49 FR 25332 (June 20, 1984).

[2] See, SR–NYSE–84–20, noticed in Securities Exchange Act Release No. 20979 (May 18, 1984), 49 FR 25554 (May 21, 1984).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21188, August 2, 1984) and by publication in the **Federal Register** (49 FR 31791, August 8, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Acting Secretory.

[FR Doc. 84-24102 Filed 9-12-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21293; File No. SR-NASD-84-13]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Proposed Amendments to Sections 1(c) and 59(j) of the Association's Uniform Practice Code

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1984, National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides a statement relating to the fact that in the case of non-delivery of securities the defaulting party will be liable for damages arising therefrom. In addition the rule change creates a procedure under the Association's Uniform Practice Code for sending liability notices similar to those now in use for transactions cleared through the facilities of National Securities Clearing Corporation.

II. Self-Regulatory Organization's Statement Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendments, is as follows: Section 1(c)—The purpose of the addition to this section which sets forth the fact that, in the case of nondelivery of securities the defaulting party shall be liable is to provide uniformity among members of the securities industry. Rule 180 of the New York Stock Exchange currently contains this language and the Board determined that it was appropriate for the Association's Code to contain a similar statement. While the conclusion with respect to liability has been implied under the Uniform Practice Code, the Board was of the view that this statement should be included to eliminate the possible conclusion that the omission of such a statement calls for a contrary implication under the UPC.

Section 59(j)—This section, relating to liability notice procedures, adds a new procedure which may be utilized by members with respect to contracts calling for the delivery of securities upon which a call or expiration date is imminent. The purpose of this section is to create a procedure for transactions which are subject to the Uniform Practice Code which is similar to that used by the National Securities Clearing Corporation (NSCC). The proposal will allow NASD members to utilize the same procedures with respect to their ex-clearing transactions as they do with respect to those transactions cleared through NSCC thereby simplifying members firms' back office procedures.

The statutory basis for the proposed rule changes is found in section 15(A)(b)(6) of the Securities Exchange Act of 1934 in that the proposed amendments will foster cooperation and coordination in clearing and settling transactions in securities by clarifying the fact that a defaulting party to a transaction shall be liable for damages arising from such default and by establishing a procedure for notification of a member failing to delivery securities of the existence of a claim for damages as a result of such failure.

B. Self-Regulatory Organization's Statement on Burden on Competition

It is the Association's view that any burden on competition will be outweighed by the improved efficiency in its members' operating procedures which is provided by the proposed amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Association did not solicit nor did it receive comments on the proposed amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are on file with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization located at 1735 K Street, NW., Washington, D.C. 20006. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 6, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24181 Filed 9-12-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23414; (170-7009)]

Columbus and Southern Ohio Electric Co.; Proposal To Issue First Mortgage Bonds at Competitive Bidding or, in the Alternative, To Enter Into Term Loan Agreements

September 7, 1984.

Columbus and Southern Ohio Electric Company ("CSO") 215 North Front Street, Columbus, Ohio 43215, a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has proposed a transaction with this Commission subject to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

CSO proposes to issue and sell prior to November 1, 1984, up to $60,000,000 aggregate principal amount of its First Mortgage Bonds ("Bonds"), in one or more new series, each such series having a maturity of not less than 5 years and not more than 30 years. The interest rate and the price to be paid to CSO for the Bonds (which shall not be less than 99 percent, and not more than 102.75 percent of the principal amount) will be determined at the time of the sale or sales by competitive bidding in accordance with Rule 50 of the Act. CSO may employ alternative competitive bidding procedures in accordance with the Commission's statement of policy set forth in HCAR No. 22623, September 2, 1982.

If market conditions should not be propitious for the sale of the Bonds on a competitive bidding basis, CSO proposes, subject to further authorization by the Commission, either to place the Bonds privately with institutional investors or to negotiate with underwriters for the sale of the Bonds. The interest rate and price, if authorized by the Commission, would be determined by negotiation in each such instance with institutional investors or with underwriters for the sale of the Bonds. If CSO determines to issue the Bonds in more than one series, CSO may wish to sell one or more series on a competitive bidding basis and one or more series on a negotiated basis, with variable maturity dates to be determined at that time.

It is expected that the terms of the Bonds will preclude CSO from redeeming any such Bond at a regular redemption price prior to five years subsequent to the first day of the month in which the Bonds of that series are first authenticated and delivered, if such redemption is for the purpose of refunding such Bond through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to the Company of such Bonds.

The Bonds will be issued under and secured by the Indenture of Mortgage and Deed of Trust ("Mortgage"), dated as of September 1, 1940, as supplemented and amended and as to be further supplemented and amended by one or more new Supplemental Indentures.

The proceeds from the sale of the Bond will be deposited with the Trustee under the Mortgage, to be used to repay, on November 1, 1984, CSO's maturity $60,000,000 principal amount of First Mortgage Bonds, 9½% Series. The proposed sale of the Bonds is part of an overall financing program of the Company, which also contemplates that additional cash capital contributions of up to $80,000,000 will be made by AEP, as authorized by prior Commission Order (HCAR No. 23164).

As an alternative to issuing the Bonds, CSO requests authorization, if market conditions appear to be propitious, to enter into one or more Term Loan Agreements whereby CSO would borrow a principal amount of up to $60,000,000 from one or more major commercial banks. Such Term Loan Agreement would provide for the delivery by CSO of one or more promissory notes with terms of from one to seven years, bearing interest at a rate of no more than sixteen percent (16%) per year. The proceeds of any such borrowing would be used for the same purposes, as above.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24179 Filed 9-12-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14136; (812-5874)]

Western Builders Mortgage Finance Co.; Filing of Application for an Order Exempting Applicant

September 7, 1984.

Notice is hereby given that Western Builders Mortgage Finance Company, 828 Seventheenth Street, Denver, Colorado ("Applicant"), filed an application on June 18, 1984, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, Applicant is a newly-formed limited purpose finance corporation organized to facilitate the financing of long-term residential mortgages secured by single family residences and will not engage in any other unrelated business or investment activities. Applicant represents that it will issue securities and enter into funding agreements as described below with certain limited purpose finance companies (the "Finance Companies"). Applicant represents that, in general, each Finance Company participating in a series of bonds issued by Applicant is or will be organized and principally owned or otherwise controlled by a separate concern involved in the home bulding or mortgage finance business. Applicant states that its Class A and Class B Common Stock will be issued to participating Finance Companies or the respective controlling concern of such a Finance Company, and its Class C Common Stock will be issued to a nominee of Boettcher & Company, Inc., the representative of the Underwriters.

The Class C Common Stock has limited voting rights and no dividend rights; the Class B Common Stock has limited dividend rights except upon dissolution of the Company.

Applicant proposes to issue in series Mortgage Collateralized Bonds ("Bonds"), each series to be separately secured principally by the pledge by the Finance Companies to the Applicant and by the Applicant to a trustee of collateral consisting primarily of conventional mortgage loans, mortgage loans insured by the Federal Housing Administration or guaranteed by the Veterans' Administration (collectively "Mortgage Loans"), Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation, Guaranteed Mortgage Pass-through Certificates issued by the Federal National Mortgage Association, mortgage collateralized obligations issued by any person or entity or other interests in mortgages, and "fully-modified pass-through" mortgage-backed certificates fully guaranteed as to principal and interest by the Government National Mortgage Association (collectively "Mortgage Certificates"; together with Mortgage Loans, "Mortgage Collateral"). Applicant states that each series of Bonds may also be secured by certain proceeds accounts, debt service funds, reserve funds and insurance policies. Applicant further states that each Mortgage Loan will be secured by a first mortgage or deed of trust on a single family residence. Applicant also states that each Mortgage Certificate will evidence an undivided interest in a pool of mortgage loans. Each series of Bonds will be issued pursuant to an indenture between Applicant and an independent trustee (the "Trustee") and as supplemented by one or more supplemental indentures. Applicant contemplates that certain series of the Bonds will be registered under the Securities Act of 1933 and others will be sold in private placements.

The Applicant and each Finance Company participating in a series of Bonds will enter into a funding agreement with respect to such series of Bonds (collectively the "Funding Agreements") pursuant to which (i) the Applicant will issue each series of Bonds; (ii) the Applicant will lend the proceeds of the sale of such series of Bonds to such Finance Companies individually in amounts to be used primarily to repay indebtness to lenders or others incurred in connection with the funding or acquisition of mortgage loans secured by single-family residences in most cases constructed by the homebuilders (the "Builders") affiliated or otherwise doing business with such Finance Companies; (iii) each Finance Company will repay the loan made to it by the Applicant by causing payments to be made directly to the Trustee on behalf of the Applicant in such amounts as are necessary to pay a proportionate share of the principal of and interest on such series of Bonds as the same become due; and (iv) each Finance Company will pledge the corresponding Mortgage Collateral to the Applicant as security for its loan. The Applicant will assign to the Trustee its right, title and interest in such Funding Agreements and the Mortgage Collateral pledged thereunder as security for such series of Bonds. Applicant represents that each series of Bonds will be secured by collateral consisting primarily of Mortgage Loans and Mortgage Certificates with an aggregate principal amount at least equal to the initial principal amount of such Bonds. Scheduled available principal and interest payments on the Mortgage Collateral securing such Bonds (together with any required payments from the debt service and reserve funds with respect to such Bonds) plus income received thereon will be sufficient to make the interest payments on and amortize the principal of such Bonds by their stated maturity.

Applicant asserts that the activities proposed could be conducted directly by each individual Finance Company without the requirement of registration, since each of the Finance Companies is exempt under various provisions of the Act, including Section 3(c)(5)(C) thereof. Applicant further asserts that there is no public policy reason to require it to register as an investment company merely because it is facilitating the financing efforts of a number of smaller builders to achieve economics of size the same as the larger builders or builder-owned entities achieve. While Applicant believes that it does not fall within the definition of an investment company as set forth in the Act, its principal asset will be evidences of indebtdeness of the Finance Companies. Applicant believes that such evidences of indebtness are not securities within the purview of Section 3 of the Act. Applicant states that its primary activity will be facilitating the sale of single-family residential property through the financing of whole residential mortgages rather than investing, reinvesting, owning, holding or trading in securities. However, Applicant states that this application has been filed to eliminate any possible ambiguity concerning the applicability of the Act to the Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 1, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of sevice (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24180 Filed 9-12-84; 8:45 am]

BILLING CODE 8010-01-M

[Public Notice CM-8/765]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Working Group on International Data Flows of the Advisory Committee on International Investment, Technology, and Development on October 2, 1984 from 10:00 a.m. to noon. The meeting will be in Room 1912 of the Department of State, 2201, C Street, NW., Washington D.C. 20520.

The meeting will be held to discuss the results of the July 2–3 session of the OECD Working Party on Transborder Data Flows (TBDFs), the upcoming (October 9–11) meeting of the full Information, Computer and Communications Policy Committee of the OECD, and to update the status of the report on TBDFs related to the UN Centre on Transnational Corporations.

Members of the public wishing to attend the meeting must contact the Office of Investment Affairs Department of State, 2201 C Street, NW., Washington D.C. 20520, ((202)632–2738) in order to arrange admittance to the State Department. Please use the C Street entrance.

The Chairman of the Working Group will, as time permits, entertain oral comments from members of the public at the meeting.

Dated: August 31, 1984.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 84-24202 Filed 9-12-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/764]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 2, 1984, in Room 330, Brown Building, 1229 20th Street NW., Washington, D.C. (Federal Communications Commission) at 10:00 a.m.

Study Group 9 deals with questions relating to line-of-sight and trans-horizon radio-relay systems operating via terrestrial stations at frequencies above about 30 MHz. The purpose of the meeting will be to review, plan and initiate preparations for the Final Meeting of international Study Group 9 in the Fall of 1985.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20250; telephone (202) 632-2592.

Dated: August 24, 1984.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 84-24203 Filed 9-12-84; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/763]

Soviet and Eastern European Studies Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies Advisory Committee will meet on October 1-2, 1984 starting at 10:00 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, D.C.

The Advisory Committee recommends grant policies for the advancement of the objectives of the Soviet-Eastern European Research and Training Act of 1983. The agenda will include: opening statements by the Chairman of the Committee and its members; oral statements by interested members of the public and receipt of written statements; and discussion, approval, and recommendation for a public call for proposals from "national organizations with an interest and expertise in conducting research and training concerning Soviet and Eastern European countries and in disseminating the results of such research" based on guidelines amplifying the purposes set forth in the 1983 Act.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry wil be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise Paul K. Cook, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR, Department of State, Room 4643, Washington D.C., 20520, (202) 653-5144.

All attendees must use the C Street entrance to the building.

Dated: September 4, 1984.

Paul K. Cook,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 84-24202 Filed 9-12-84; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Vegetation Maintenance Management Program for the Alaska Railroad

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. The proposed action is to develop a program to manage vegetation on the Alaska Railroad (ARR) roadbeds and rights-of-way to provide for the safety of employees and the public and to allow the economical operation of the railroad. The ARR maintains approximately 600 miles of track, including mainline between Seward and Fairbanks and Whittier and Portage, Alaska: Whittier, Palmer, Suntrana, and Eielson branch lines; Fairbanks and Anchorage International Airport Spurs and other auxiliary tracks.

2. Alternatives to be considered include herbicide application, mechanical and manual removal of vegetation, increased roadbed reballasting frequency, integrated pest management programs, various combinations of these methods, and any other alternatives identified by agencies and the public during the scoping process.

3. Principal concerns to be addressed are associated with the potential adverse effects of herbicides on humans, animals, non-target plants, and biological community processes. Other concerns may be identified during the scoping process. An environmental assessment of the proposed action was circulated for public review in May and June of 1984. Public and agency comments regarding the environmental assessment will be considered in defining the scope of the DEIS.

4. Notice that ARR will prepare a DEIS and a request for additional scoping comments will be sent to recipients of the Environmental Assessment. Public meetings will be scheduled at various locations along the ARR to invite scoping comments and identify public concerns. Coordination meetings will be held with interested government agencies.

5. Completion of the DEIS has not been scheduled pending receipt and evaluation of scoping comments.

ADDRESS: Questions about the proposed action and DEIS should be addressed to Chief Engineer, The Alaska Railroad, Pouch 7-2111, Anchorage, Alaska 99510-7069.

A.T. Polanchek,

Assistant General Manager.

[FR Doc. 84-24184 Filed 9-12-84; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processsing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to

expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application has been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes September 27, 1984.

ADDRESS: *Comments to:* Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, D.C.

Application No.	Applicant	Renewal of Exemption
3004–X	Big Three Industries, Inc., Houston, TX	3004
3330–X	Western Zirconium, Inc., Ogden, UT	3330
3768–X	Essex Industrial Chemicals, Inc., Baltimore, MD.	3768
4453–X	Gulf Oil Products Co., Houston, TX	4453
5038–X	Synthatron Corp., Parsippany, NJ	5038
5248–X	U.S. Department of Energy, Washington, DC.	5248
5820–X	ICI Americas, Inc., Wilmington, DE	5820
6071–X	The Boeing Co., Seattle, WA	6071
6205–X	Beech Aircraft Corp., Boulder, CO	6205
6293–X	Hercules, Inc., Wilmington, DE	6293
6296–X	American Cyanamid Co., Wayne, NJ	6296
6434–X	Rhone-Poulenc Inc., Monmouth Junction, NJ.	6434
6518–X	Syntex Chemicals Inc., Boulder, CO	6518
6530–X	Big Three Industries, Inc., Houston, TX	6530
6543–X	Synthatron Corp., Parsippany, NJ	6543
6694–X	Eurotainer S.A., Paris France	6694
6762–X	DuBois Chemical Co., Cincinnati, OH	6762
6932–X	Eurotainer, S.A., Paris, France	6932
6971–X	Chem Service, Inc., West Chester, PA	6971
6984–X	Ireco Chemicals, Salt Lake City, UT	6984
7024–X	Avondale Mills, Sylacauga, AL	7024
7046–X	J.T. Baker Chemical Co., Phillipsburg, NJ.	7046
7206–X	Ruan Transport Corp., Des Moines, IA	7206
7220–X	Greif Brothers Corp., Springfield, NJ	7220
7247–X	U.S. Department of Defense, Washington, DC.	7247
7259–X	Exxon Chemical Americas, Houston, TX	7259
7285–X	Partefer S.A.R.L., Paris, France	7285
7517–X	Trinity Industries, Inc. Dallas, TX	7517
7574–X	Remmers-Tomkins Flight Service, Inc. Burlington, IA.	7574
7650–X	ICI Americas, Inc., Wilmington, DE	7650
7677–X	San Diego Gas & Electric Co., San Diego, CA.	7677
7694–X	Borg-Warner Corp., Van Nuys, CA	7694
7777–X	Lang Engineering Co., Inc., Rochester, WI.	7777
7778–X	Schenley Industries, Inc., New York, NY	7778
7806–X	Whitmire Research Laboratories, Inc., St. Louis, MO.	7806
7835–X	Synthatron Corp., Parsippany, NJ	7835
7840–X	General Dynamic Corp., Fort Worth, TX	7840
7840–X	Douglas Aircraft Co., Long Beach, CA	7840
7951–X	Avoset Food Corp., Pleasanton, CA	7951
8060–X	Partefer, Paris, France	8060
8063–X	Union Carbide Corp., Danbury, CT[1]	8063
8080–X	Diamond Shamrock Corp., Deer Park, TX.	8080
8080–X	American Chrome & Chemicals Inc., Corpus Christi, TX.	8080
8080–X	Allied Chemical, Morristown, NJ	8080
8084–X	E.I. duPont de Nemours & Co., Inc., Wilmington, DE.	8084
8111–X	U.S. Department of Energy, Washington, DC.	8111
8125–X	Compagnie des Containers Reservoirs, Paris, France.	8125
8378–X	Cooper Biomedical, Inc., Malvern, PA	8378
8445–X	Union Carbide Corp., Danbury, CT	8445
8450–X	The LTV Aerospace and Defense Co., Dallas, TX[2].	8450
8477–X	Mobay Chemical Corp., Pittsburgh, PA	8477
8478–X	West-Mark, Ceres, CA	8478
8495–X	Walter Kidde, Wilson, NC[3]	8495
8528–X	Beech Aircraft Corp., Boulder, CO	8528
8554–X	E.I. duPont de Nemours & Co., Inc., Wilmington, DE[4].	8554
8674–X	Gulf Oil Chemicals Co., Houston, TX	8674
8723–X	Ireco Inc., Salt Lake City, UT	8723
8760–X	Barton Solvents, Inc., Des Moines, IA[5]	8760
8793–X	American Chemical & Refining Co., Inc. Waterbury, CT[6].	8793
8867–X	3M Co., St. Paul, MN	8867
8876–X	Amalgamet Canada—Division of Premetalco Inc., Toronto, Ontario, Canada.	8876
8878–X	Corning Glass Works, Corning, NY	8878
8878–X	Preussag AG Metall, Boslar, West Germany.	8878
8891–X	BIC Corp., Milford, CT	8891
8913–X	Eurotainer, S.A., Paris, France	8913
8923–X	Union Carbide Corp., Danbury, CT	8923
8927–X	HTL Industries, Inc., Duarte, CA	8927
8931–X	C-I-L Inc., North York, Ontario	8931
8939–X	Hollice Clark Truck Fabrication, Inc., Odessa, TX.	8939

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[1] To renew and to modify paragraph 4, proper shipping name to coincide with HM-115.

[2] To authorize use of a modified DOT Specification 15A wooden box for shipment of rocket motors.

[3] To increase the volumetric water capacity to not exceed 100 lbs. and the design service pressure to not exceed 1,400 psi.

[4] To authorize an additional design cargo tank motor vehicle.

[5] To renew and to authorize other combustible and flammable materials to be identified under UN1993.

[6] To authorize a DOT specification 2E one quart capacity polyethylene bottle with minimum wall thickness of .008 inch for shipment of potassium cyanide solution.

Application No.	Applicant	Parties to exemption
4803–P	Southeastern Industrial Cleaning Services, Inc., Ensley, AL.	4803
6126–P	Aceto Chemical Co., Inc., Flushing, NY	6126
6418–P	Wilbur-Ellis Co., Fresno, CA	6418
6762–P	Carlin Laboratories, Jacksonville, FL	6762
6984–P	Gulf Oil Products Co., Houston, TX	6984
7811–P	U.S. Department of Energy, Washington, DC.	7811
7891–P	J.T. Baker Chemical Co., Phillipsburg, NJ.	7891
7929–P	Trojan Corp., Salt Lake City, UT	7929
7951–P	Swift & Co., Oak Brook, IL	7951
8129–P	Bryson Industrial Services, Inc., Lexington, SC.	8129
8129–P	Acurex Corp., Mountain View, CA	8129
8129–P	University of Colorado, Boulder, Boulder, CO.	8129
8129–P	The University of New Mexico, Albuquerque, NM.	8129
8129–P	The University of Arizona, Tucson, AZ	8129
8129–P	McKesson Corp., Dublin, CA	8129
8129–P	Aqua-Tech, Inc., Port Washington, WI	8129
8445–P	Hopkins Agricultural Chemical Co., Madison, WI.	8445
8445–P	The University of New Mexico, Albuquerque, NM.	8445
8445–P	Bryson Industrial Services, Inc., Lexington, SC.	8445
8445–P	The University of Iowa, Iowa City, IA	8445
8509–P	Chemtech Industries, Inc., St. Louis, MO.	8509
8511–P	Pennwalt Corp., Philadelphia, PA	8511
8908–P	Allied Corp., Morristown, NJ	8908
9229–P	Capilano Plastics Co., Ltd., Westminster, BC.	9229
9233–P	Allied Corp., Morristown, NJ	9233

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53 (e)).

Issued in Washington, DC, on September 5, 1984.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-24210 Filed 9-12-84; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes October 16, 1984.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the application are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9304–N	Metz Metallurgical Corp., South Plainfield, NJ	49 CFR 173.182	To authorize shipment of silver nitrate, classed as an oxidizer, not to exceed 66 pounds in DOT Specification 35 containers with a rated capacity of 45 pounds. (Modes 1 and 2.)
9305–N	ARCO Pipe Line Co., Independence, KS	49 CFR 173.119, 173.304, 173.315	To authorize shipment of flammable liquid and gases, (hydrocarbon products) in non-DOT specification containers (meter provers). (Mode 1.)
9306–N	R.M.B. Products, Inc., Simi Valley, CA	49 CFR Part 173, Subpart F	To manufacture, mark and sell a teflon liner similar to DOT Specification 2SL, for use in DOT Specification 6D, for shipment of those corrosive liquids presently authorized in DOT 6D/2S or 2SL. (Modes 1 and 2.)
9307–N	Better Methods, Inc., Secaucus, NJ	49 CFR 173.119(b)(4)	To authorize shipment of methyl alcohol, flammable liquid, in three two gallon capacity metal containers overpacked in a DOT Specification 12B fiberboard box (Mode 1.)
9308–N	Pennwalt Corp., Buffalo, NY	49 CFR 173.243	To authorize shipment of a corrosive liquid, n.o.s., in DOT Specification 2E polyethylene bottles equipped with vented closures to be overpacked in DOT Specification 12B fiberboard boxes. (Mode 1.)
9309–N	Sky Lines International, Inc., Mobile, AL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those presecribed for air shipment. (Mode 4.)
9311–N	Aero-Structures Co., Tarzana, CA	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), Part 107, Appendix B, y.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
9312–N	The National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.102, 173.302(a), 173.88(i), 173.95	To authorize shipment of space shuttle orbiters each containing as intergral parts residual hypergolic fluids, nonflammable gas pressurized vessel and variety of Class C explosive devices. (Mode 1.)
9313–N	Corco Chemical Corp., Fairless Hills, PA	49 CFR 173.245, 173.248, 173.263, 173.268	To authorize shipment of various corrosive material and an oxidizer in used DOT Specification 1–D glass carboys overpacked in 1–M styrofoam overpacks. (Mode 1.)
9314–N	Lely Corp., Wilson, NC	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC–307/312 except for bottom outlet valve variations, for shipment of various flammable, corrosive, or poison waste liquids or semi-solids (Mode 1.)
9315–N	Chromasco, Toronto, ON	49 CFR 173.178	To authorize shipment of magnesium salt-coated granules, flammable solid, in non-DOT specification woven polypropylene bags of up to two ton capacity (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e).

Issued in Washington, DC, on September 5, 1984.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84–24211 Filed 9–12–84; 8:45 am]

BILLING CODE 4910–60–M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of System Notice and New Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering adding a new routine use statement for the system of VA records entitled "Compensation, Pension, Education and Rehabilitation Record-VA" (58VA21/22/28) as set forth on page 372 of the **Federal Register** of January 5, 1982.

The VA Office Of Inspector General under the authority of the Inspector General's Act (Pub. L. 95–452, section 4(a)) and the Department of Veterans Benefits under the authority of Title 38, United States Code, sections 210(c)(1) and 3006 plan to conduct a series of computer matches to validate entitlement to benefits granted under Title 38, United States Code and prevent fraud and abuse. The matches will compare Federal, State, County and Municipal records with VA compensation, pension, education and rehabilitation records to determine if the eligibility of the recipients has changed.

In order to disclose identifying information, e.g., social security number and date of birth, to a Federal, State, County or Municipal agency and to use the information generated by the matches to detect unwarranted VA benefit payments and meet the requirements of due process, a new routine use must be added.

The proposed new routine use No. 46 permits the disclosure of identifying information regarding veterans and the dependents of veterans, except for their names and addresses, to a Federal, State, County or Municipal agency. The new routine use will also permit the disclosure of the name and address of veterans and dependents of veterans to a Federal agency when required by the Federal agency in order to provide information.

The VA has determined that release of information for these purposes is necessary and proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before October 15, 1984 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 29, 1984. Any person visiting Central Office for the purpose of inspecting any such comments will be received by Central Office Veterans Service Unit in room 132. Visitors to any field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective October 15, 1984.

Approved: September 7, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of System of Records

In the system identified as 58VA21-22-28, "Compensation, Pension, Education and Rehabilitation Records-VA," appearing at 47FR372, the following changes are made:

58VA21-22-28

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records-VA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

46. Identifying information, including social security number, concerning veterans and the dependents of veterans, except for the name and address, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran or a dependent of a disabled or deceased veteran, who is receiving or has received veterans benefits under Title 38, United States Code. The name and address of veterans and of dependents of veterans may also be disclosed to a Federal agency under this routine use if required by the Federal agency in order to provide information.

[FR Doc. 84-24205 Filed 9-12-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 179
Thursday, September 13, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:35 p.m. on Friday, September 7, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Oakland Savings Bank, Oakland, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, September 7, 1984; (2) accept the bid for the transaction submitted by Oakland State Bank, Oakland, Iowa; a newly-chartered State nonmember bank subsidiary of Panhandle Aviation, Inc., Clarinda, Iowa, (3) adopt an order approving the applications of Oakland State Bank, Oakland, Iowa, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in Oakland Savings Bank, Oakland, Iowa, and for consent to establish the sole branch of Oakland Savings Bank as a branch of Oakland State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At that same meeting, the Board also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-24348 Filed 9-11-84; 11:57 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 17, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance for a United States branch of a foreign bank:

Hongkong and Shanghai Banking Corporation, Hong Kong, for Federal deposit insurance of deposits received at and recorded for the account of its proposed United States branch to be located at 29 South LaSalle Street, Chicago, Illinois.

Request for reconsideration of a previous denial of an application for consent to establish a branch:

Mitsui Manufacturers Bank, Los Angeles, California, for reconsideration of a previous denial of an application for consent to establish a branch at 150 Almaden Boulevard, San Jose, California.

Request for reconsideration of a previous denial of a request for relief from reimbursement for violations under Regulation Z:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Appeal from a denial of a request for access to records under the Privacy Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle D. Robinson,

Executive Secretary.

[FR Doc. 84-24349 Filed 9-11-84; 11:57 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m., on Monday, September 17, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities:

The Farmers National Bank of Madison, Nebraska, for consent to purchase the assets of and assume the liability to pay deposits made in Creston Cooperative Credit Association, Creston, Nebraska, an operating noninsured institution.

Application for consent to merge and establish two branches:

Lynn Five Cents Savings Bank, Lynn, Massachusetts, an insured mutual savings bank, for consent to merge, under its charter and title, with Lincoln Co-operative Bank, Lynn, Massachusetts, and for consent to establish the two offices of Lincon Co-operative Bank as branches of the resultant bank.

Application for consent to establish a remote service facility:

The Binghamton Savings Bank, Binghamton, New York, for consent to establish a remote service facility at Boscov's Department Store, Binghamton, New York.

Application for consent to purchase indirectly 100-percent ownerhip in another financial entity:

Savings Bank of Puget Sound, Seattle, Washington, for consent to acquire indirectly 100 percent of Puget Sound International Finance, N.V., Netherlands Antilles.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,100-L: Girod Trust Company, San Juan, Puerto Rico.

Memorandum and resolution re: Compilation and Publication of Legal Division Staff Opinions.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Divisions of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Bank of Red Oak, Red Oak, Oklahoma, AP-368 (Memo dated August 23, 1984)

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-24350 Filed 9-11-84; 11:57 am]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 18, 1984, 10:00 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, September 20, 1984, 10:00 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings

Correction and approval of minutes

Eligibility for Candidates to receive Presidential Primary Matching Funds

Draft Advisory Opinion #1984-37: Michael A. Nemeroff on behalf of American Medical Association

Request by Carter-Mondale Committee to reconsider Commission's repayment determination

Plans for Tenth Anniversary Activities of the Federal Election Commission

Finance Committee Report 1985 Management Plan

Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-24399 Filed 9-11-84; 3:26 pm]

BILLING CODE 6715-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 10, 1984 (49 FR 35574).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., September 12, 1984.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CAG-45—Docket No. CP84-474-000, American Distribution Company (Alabama Division)

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24400 Filed 9-11-84; 3:33 pm]

BILLING CODE 6717-02-M

6

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10.00 a.m., Wednesday, September 19, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 11, 1984.

James McAfee,

Associate Secretary of the Board

[FR Doc. 84-24383 Filed 9-11-84; 3:03 pm]

BILLING CODE 6210-01-M

7

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 20, 1984

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Ave., NW., Washington, D.C. 20423

STATUS: Open Special Conference

MATTERS TO BE DISCUSSED:

Ex Parte No. 55 (Sub-No. 57), Exemption of Certain Transactions Under 49 U.S.C. 11343 (49 CFR Part 1181, Subpart A and Part 1186)

Ex Parte No. 230 (Sub-No. 6), Improvement of TOFC/COFC Regulations (Railroad—Affiliated Motor Carriers and Other Motor Carriers)

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary.

[FR Doc. 84-24462 Filed 9-12-84; 10:12 am]

BILLING CODE 7035-01-M

federal register

Thursday
September 13, 1984

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of actions under NIH guidelines for research involving recombinant DNA Molecules.

SUMMARY: This notice sets forth actions taken by the Director, National Institutes of Health (NIH), under the June 1983 NIH Guidelines for Research Involving Recombinant DNA Molecules (48 FR 24556).

EFFECTIVE DATE: September 13, 1984.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205, (301) 469–6051.

SUPPLEMENTARY INFORMATION: Two major actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules are being promulgated today. These proposed actions were published for comment in the **Federal Register** of April 24, 1984 (49 FR 17674), and reviewed and recommended for approval by the Recombinant DNA Advisory Committee (RAC) at its meeting on June 1, 1984. In accordance with section IV–C–1–b of the NIH Guidelines, these actions have been found to comply with the Guidelines and to present no significant risk to health or the environment

Part I of this announcement provides background information on the actions. Part II provides a summary of the actions of the Director, NIH.

Action on other items reviewed and recommended for approval at the June 1, 1984, RAC meeting will be announced at a later date.

I. Decision on Actions Under Guidelines

I–A. Proposal To Clone Shiga-Like Toxin Gene From E. coli

Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences (USUHS) in collaboration with Dr. Randall Holmes (USUHS) proposed to clone in *Escherichia coli* K–12 the structural gene of the Shiga-like toxin of *E. coli.* Shiga-like toxin has activity similar to the activity of *Shigella dysenteriae* toxin.

The description of the review resulting in this decision is organized as follows:

I–A–1. History of the Proposal
I–A–2. Comments on the Proposal in Response to the April 24, 1984, **Federal Register** Notice
I–A–2. Excerpts From the Minutes of the May 11, 1984, Meeting of the RAC Working Group on Toxins
I–A–4. Excerpts of Drafts Minutes of the June 1, 1984, RAC Discussion of the Proposal
I–A–5. Decision

I–A–1. History of the Proposal

In a first submission in September 1982, the investigators proposed to clone the Shiga-like toxin gene in *E. coli* EK1 host-vector systems using plasmid, cosmid, or lambda cloning vectors. In support of their proposals, Drs. O'Brien and Holmes offered the following arguments:

a. Clinical isolates of *E. coli* have already been demonstrated to elaborate large amounts of toxin indistinguishable from that produced by *Shigella dysenteriae 1* (Shiga). Therefore, the genes for Shiga-like toxin production are present in the *E. coli* gene pool found in nature.

b. Human volunteers fed large numbers of *Shigella dysenteriae 1* organisms that produced Shiga toxin but could not colonize the bowel did not become ill. Therefore, any accidental ingestion of the organism to be manufactured, a toxin-producing *E. coli* K–12 strain that cannot colonize the human intestinal tract, would pose little hazard to man.

c. Purification of Shiga toxin in several laboratories and *E. coli* Shiga-like toxin in the investigator's laboratory has not identified any excessive risk from the aerosolization of toxin that probably occurs during the process of toxin preparation. In one laboratory, toxin was isolated from 500 liters of culture with only P1 physical containment.

d. Shiga toxin is a potent cytotoxin for a subline of HeLa cells (a human cervical carcinoma tissue culture cell line), but the toxin has no effect on many other human, monkey, or rodent tissue culture cells. Therefore, the toxin is quite cell-type specific; and this limited spectrum of activity suggests that it would be non-toxic for most cells in the human body.

e. Contrary to the old literature, Shiga toxin is not a neurotoxin. By 1955, it was established that the paralysis observed in rabbits and mice (but not monkeys, guinea pigs, hamsters, or rats) when toxin is given intravenously is a reflection of the effect of toxin on the endothelium of small blood vessels, not a direct effect on nerve cells.

This first submission was summarized in the **Federal Register** of September 22, 1982 (47 FR 41924).

One comment on a related issue was received during the comment period. Dr. K. N. Timmis of the Universite de Geneve suggested that the NIH Guidelines for Research Involving Recombinant DNA Molecules as they relate to the cloning of the Shiga toxin gene be revised. Dr. Timmis argued that *Shigella* and *Escherichia* are closely related, and that the NIH recognizes the high degree of relatedness by including these two genera in Sublist A, Appendix A, of the Guidelines. Dr. Timmis argued, therefore, that no NIH review should be required when the Shiga toxin gene is to be cloned in *E. coli* K–12.

The RAC discussed the request submitted by Drs. O'Brien and Holmes at the October 25, 1982, meeting. The committee by a vote of twelve in favor, none opposed, and one abstention, recommended that the initial experiments be performed under P4 + EK1 containment conditions. The NIH accepted the RAC recommendation that P4 + EK1 containment is adequate to contain safety the experiments proposed by Drs. O'Brien and Holmes and appropriate language was added to the Guidelines at Appendix F–IV–H.

In December 1983, Drs. O'Brien and Holmes requested reconsideration of containment levels in view of information which had recently become available. They requested approval at the P2 level of physical containment for the following reasons:

a. Epidemiology studies have been performed on over 150 *E. coli* strains isolated from human and animals stools. These studies have shown that the majority (80%) of the strains made detectable levels of Shiga-like toxin. Moreover, four of four substrains of the well-characterized bacterium *E. coli* K–12 were shown to make low levels of the toxin. Thus, cloning of the Shiga-like toxin gene from clinical isolates of *E. coli* into laboratory strains of *E. coli* K–12 will not involve the introduction of a "foreign" toxin into the organism.

b. Production of low levels of Shiga-like toxin was observed in 2 of 15 normal human gut flora *E. coli* strains from asymptomatic infants.

c. Strains of *Vibrio cholerae* and *Vibrio parahaemolyticus* were tested and shown to produce the Shiga-like toxin. Thus, the gene(s) for Shiga-like toxin are present in naturally occurring isolates of the family *Vibrionaceae* and not restricted to the *Enterobacteriaceae.* In volunteer studies, some of the strains of *V. cholerae* that produce Shiga-like toxin did not cause disease. Therefore, the ability to produce Shiga-like toxin is not equivalent with virulence in humans challenged by the oral route.

d. Phages for two clinical isolates of *E. coli* have been shown to control high-level production of Shiga-like toxin in *E. coli* K–12 host strains by phage conversion. Thus, either the structural gene(s) for the Shiga-like toxin or regulatory genes that control high-level production of the toxin are present on wild-type phages from clinical isolates of *E. coli*. In this sense, "cloning" of genes that affect production of Shiga-like toxin onto phage genomes has already occurred in nature.

In addition, the U.S. Cholera Panel of the National Institute of Allergy and Infectious Diseases (NIAID) recommended that NIH reconsider the ban:

> . . . on Shiga toxin cloning experiments in containment facilities other than P4. This strict requirement will prevent most laboratories from deleting the Shiga gene from candidate *V. cholerae* and ETEC vaccine strains. Shiga toxin is now found in many nonpathogenic *E. coli*, including the common vector host, *E. coli* K–12.

The request for reconsideration was published in the January 5, 1984, **Federal Register** (49 FR 696). During the comment period, a letter was received from Dr. Werner Arber, the chairman of the Swiss Commission for Experimental Genetics, which is in charge of questions related to research involving recombinant DNA molecules. Dr. Arber wrote that a Swiss *ad hoc* committee of experts requested by the Commission for Experimental Genetics had reviewed proposed research involving cloning of the Shiga toxin gene in an *E. coli* host-vector system. Dr. Arber wrote this committee had concluded that:

> Work with recombinant DNA could not be expected to present a more severe biohazard than work with the natural pathogens . . . recent investigations had shown that a number of bacterial strains related to *Shigella*, in particular *E. coli* strains, carried genes homologous to the gene for Shiga toxin . . . although Shigellosis is a serious disease, it does not represent a serious danger for an epidemic.

A letter from Dr. Kenneth Timmis of the Universite de Geneve said:

> An *ad hoc* committee of medical microbiologists specifically constituted in Switzerland to evaluate the possible danger of cloning in *E. coli* K–12 the gene for Shiga toxin, concluded that the experiment represented no greater danger than did work on *Shigella* itself and, as a result, recommended P2/EK1 containment conditions. . . . A different committee of medical microbiologists set up for the same purpose in Western Germany arrived at precisely the same conclusion.

The RAC reviewed the proposal of Drs. O'Brien and Holmes at the February 6, 1984, meeting. A full account of the RAC discussion, including the request by Mr. Jeremy Rifkin for an arms control impact statement, is found in the Minutes of the meeting available from ORDA. By a vote of nine in favor, five opposed, and four abstensions, the RAC recommended that Drs. O'Brien and Holmes and coworkers be allowed to proceed with cloning the gene for Shiga-like toxin under P2 physical containment conditions in *E. coli* K–12, restricted to using EK2 plasmid vectors, commencing first with the use of pBR325 and pBR322 and proceeding to other EK2 plasmid vectors only is those are unsatisfactory.

By a vote of eight in favor, four opposed, and five abstensions, the RAC passed the same motion but with the names of the investigators deleted from the motion.

It has been the practice of NIH not to accept RAC recommendations that do not indicate a clear consensus. Accordingly, it was announced in the **Federal Register** of April 25, 1984 (49 FR 17846), that NIH did not accept the RAC recommendations offered at the February 6, 1984, meeting relating to the cloning of the Shiga-like toxin gene. The investigators had approval, however, to conduct these experiments at the P4 level of containment under their previous permission which appears in the Guidelines (48 FR 24569) under Appendix F–IV–H.

In a letter dated April 4, 1984, Drs. O'Brien and Holmes asked the RAC to address the following specific issues:

a. That the containment conditions required for cloning of the intact structural gene(s) for Shiga-like toxin of *E. coli* into *E. coli* K–12 be reduced from P4+EK1 to P3+EK1.

b. If the investigators are successful in cloning the structural gene(s) for Shiga-like toxin and if they can document that the amount of toxin produced by the clones is no greater than the amount made by highly toxinogenic clinical isolates of *E. coli* (i.e., approximately 10^7 50% cytotoxic doses/mg protein in cell lysates and 10^6 50% cytotoxic doses/ml in culture supernatants when bacteria are grown in iron-depleted glucose syncase media), they request permission to remove such clones from the original containment conditions and to perform subsequent work with them under P1+EK1 conditions.

c. If they can identify nontoxinogenic fragments of the structural gene(s) for Shiga-like toxin, the investigators request permission to:

(1) Remove any such cloned nontoxic fragments (generated during the search for clones that contain intact toxin structural genes) from the original containment conditions to work with them under P1 + EK1 conditions; and

(2) Directly clone any such nontoxic fragments into *E. coli* K–12 under P1 + EK1 conditions.

d. If the structural gene for Shiga-like toxin is shown to be present in a specific bacteriophage genome and its physical location is determined, they request permission to:

(1) Remove from the original containment conditions any clones of fragments of phage genome (generated during the process of obtaining cloned toxin structural genes) that do not correspond to toxin structural genes and to work with them under P1 + EK1 conditions; and

(2) Directly clone any fragments of the phage genome that do not correspond to toxin structural genes into *E. coli* K–12 under P1 + EK1 conditions.

e. If in future experiments the investigators can isolate nontoxinogenic alleles of the structural gene(s) for Shiga-like toxin by transposon mediated mutagenesis (insertional inactivation) or by chemical mutagenesis, they request permission to clone these nontoxinogenic alleles of the toxin structural gene(s) into *E. coli* K–12 under P1 + EK1 conditions.

Dr. O'Brien and coworkers supplied additional data in support of these requests.

I–A–2. Comments on the Proposal in Response to the April 24, 1984, Federal Register Notice

This proposal containing the five specific issues raised by Drs. O'Brien and Holmes in their April 4, 1984, letter appeared in the **Federal Register** of April 24, 1984 (49 FR 17672). During the public comment period, three communications were received concerning this proposal. These communications were from Mr. Jeremy Rifkin of the Foundation on Economic Trends, Dr. Jay P. Sanford, President, Uniformed Services University of the Health Services (USUHS), and Ms. Patricia Campbell, Public Affairs Officer, USUHS.

Mr. Jeremy Rifkin in a letter dated May 15, 1984, proposed that:

> . . . the RAC postpone its consideration of the Shiga-like toxin experiment to be conducted by the Uniformed Services University of the Health Sciences until an adequate mechanism is developed and applied that will enable RAC to determine the potential military applications of this and certain other types of recombinant DNA research. I am particularly concerned about the relationship between the development of vaccines and other prophylactic and defensive uses of recombinant DNA technology and the potential convertibility of this research for military purposes.
>
> Once again, I am asking that the RAC send a formal request to the Department of

> Defense (DOD) and the Arms Control and Disarmament Agency (ACDA) asking for an Arms Control Impact Statement (ACIS) for the Shiga-like toxin experiment and all other recombinant DNA related research presently being conducted by the DOD and agencies and institutions related to the DOD.

Mr. Rifkin contended that:

> . . . experiments like the proposed Shiga experiment being considered today are technologies 'with potential military application or weapons systems applications' and therefore are subject to section 36(a)(3) of the Arms Control and Disarmament Act. It is my understanding that the DOD and the Arms Control and Disarmament Agency are in non-compliance with this act in regard to the Shiga experiment and other biological experiments involving recombinant DNA technology. Therefore, it would be improper for the RAC to consider this proposed experiment to clone a Shiga toxin until such time as a weapons impact statement covering this experiment and or the category of experiments it is part of, is forthcoming from the Arms Control and Disarmament Agency.

He further stated that:

> . . . I urge this committee to place a moratorium on all further authorizations of DOD related toxin experiments until such time as this committee engages in a full dialogue with all other interested agencies in the Executive and Congressional branches relative to the potential uses of this technology for biological warfare purposes.

Dr. Jay P. Sanford, President, USUHS, in a letter dated May 15, 1984, wrote that:

> At the RAC meeting on 6 February 1984, Mr. Jeremy Rifkin, President, Foundation on Economic Trends, submitted a press release, 'Arms Control Impact Statement requested for DoD Toxin Experiment.' The statute from which he quoted is as follows: 22 U.S.C. 2576, '(a) In order to assist the Director in the performance of his duties with respect to arms control and disarmament policy and negotiations, any Government agency preparing any legislative or budgetary proposal for —' '(3) any other programs involving technology with potential military application or weapon systems which such Government agency or the Director believes may have a significant impact on arms control and disarmament policy or negotiations shall, on a continuing basis, provide the Director with full and timely access to detailed information, in accordance with the procedures established pursuant to section 2575 of this title, with respect to the nature, scope and purpose of such proposal.'
>
> The Department of Defense does not believe that the O'Brien-Holmes proposal (program) has (would have) a significant impact on arms control and disarmament policy or negotiations.
>
> As a technical point, the current O'Brien-Holmes request to RAC was neither a legislative nor budgetary proposal. Their original budgetary proposal was reviewed and approved by the National Institute of Allergy and Infectious Diseases (AI 20148).

A fact sheet concerning the Shiga-like toxin proposal was distributed by Ms. Patricia Campbell, Public Affairs Officer, USUHS, at the June 1, 1984, RAC meeting. The fact sheet offered the following information:

> Randall Holmes, Ph.D., M.D., Chairman and Professor, and Alison O'Brien, Ph.D., Associate Professor, Department of Microbiology, Uniformed Services University of the Health Sciences (USUHS), are studying a substance (toxin) produced by a bacterium (Escherichia coli). This bacterium is one of many bacteria that can cause diarrhea in humans and animals. Diarrheal diseases are the number one killer of children in third world countries.
>
> The purpose of the O'Brien/Holmes research is to determine whether the toxin (called Shiga-like toxin) has a role in diarrhea due to *E. coli*. Such information may help in the development of vaccines against such diarrheas.

I–A–3. Excerpts From the Minutes of the May 11, 1984, Meeting of the RAC Working Group on Toxins.

The NIH convened a meeting of the RAC Working Group on Toxins on May 11, 1984, to review available scientific data with regard to Drs. O'Brien's and Holmes' April 4, 1984, request. The following excerpts from the minutes of that meeting indicate the basis for the recommendations made by the working group to the RAC at the June 1, 1984, RAC meeting.

In regard to the first request in the April 4, 1984, letter from Drs. O'Brien and Holmes, the following discussion ensured:

> Dr. Levine said he had participated in formulating Appendix F [to the Guidelines]. In his opinion, cloning of the Shiga toxin gene was paced under Section F–1 which requires NIH review and approval because the working group at that time did not possess sufficient data to evaluate pertinent questions. Dr. Levine thought pertinent data were now available. He cited the data generated through feeding experiments with 140 human volunteers. These volunteers were fed Shiga toxin-producing *Shigella* which lacked invasive characteristics. No disease symptoms were observed in 139 individuals; in one individual the strain reverted to an invasive form and the volunteer developed shigellosis. He also cited the evidence generated by Branham, Dack, and Riggs which shows that large amounts of Shiga toxin instilled directly into monkey intestinal pouches has no effect. Dr. Levine said the containment specified for cloning Shiga toxin in *E. coli* K–12 should be lowered on the basis of these data.
>
> Dr. Gottesman calculated that in a worst case scenario, 10^9 engineered *E. coli* with the Shiga toxin gene on a high expression, high copy number plasmid might produce one milligram of toxin in the human gut. Dr. Gill calculated that this amount is roughly equivalent to approximately 14,000 lethal doses for humans when the toxin is administered parenterally. He said that 100,000 times more tetanus toxin is required enterally to kill animals than is required parenterally. Dr. Gottesman noted that Branham, Dack, and Riggs had administered 20,000 lethal doses to monkey intestinal pouches with no observed effect.
>
> Dr. Levine moved that the working group recommend to RAC that cloning of the Shiga toxin gene in *E. coli* be permitted at P3 containment. Dr. Gill seconded the motion. By a vote of five in favor, none opposed, and no abstentions, the working group accepted the motion.

In regard to the second item in the request in the April 4, 1984, letter from Drs. O'Brien and Holmes, the following discussion ensued:

> Dr. Levine suggested that under the conditions specified by Dr. O'Brien, P2 containment would be acceptable. He felt highly toxigenic isolates should be handled under conditions equivalent to P2 in the clinical laboratory.
>
> Dr. Gill said some novel considerations arise when a gene is cloned in a new genetic background. These include: (1) Has the potential for genetic transfer of the gene to other organisms been increased; and (2) how does the cloning affect the amount of gene product expressed? He felt these issues should be considered in evaluating the second item in the proposal.
>
> Dr. Gill said he would like Dr. Levine's motion to require the investigators to select organisms with lower levels of toxin expression than 10^7 50% cytotoxic doses/mg protein in cell lysates and 10^6 50% cytotoxic doses/ml in culture supernatants.
>
> Dr. Levine pointed out that use of poorly mobilizable plasmid vectors such as pBR322 add an additional measure of safety; language specifying use of this type of plasmid vector might meet Dr. Gill's concerns.

After some discussion as to appropriate language the following motion was developed:

> The Working Group recommends to RAC that *E. coli* host-vector systems expressing the Shiga toxin gene may be removed from P3 to P2 containment conditions under the following conditions:
>
> (1) that the amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain 933 *E. coli* 0157H7, grown and measured under optimal conditions; and
>
> (2) the cloning vehicle is to be an EK1 vector preferrably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.
>
> By a vote of five in favor, none opposed, and no abstentions, the working group accepted this motion.

In regard to the third item in the request of the April 4, 1984, letter, the following discussion ensued:

> Dr. Gill suggested the working group approve the third item of the request with the added clarification that under p1+EK1 conditions the modified organism will not

contain overlapping fragments which together would encompass the structural gene(s). This specification will eliminate the possibility that the structural gene might be regenerated through recombinational events.

By a vote of five in favor, none opposed, and no abstentions, the working group approved the motion to offer this recommendation to RAC.

In regard to the fourth item in the April 4, 1984, proposal:

It was the consensus of the group that these experiments would not fall under Appendix F of the Guidelines, and no action need be taken.

In regard to the fifth item in the April 4, 1984, letter from Drs. O'Brien and Holmes:

It was the consensus of the group that because no working group could predict all potential scenarios each specific nontoxinogenic allele should be considered individually on a case-by-case basis. A system is in place within the NIH to perform this type of evaluation.

I–A–4. Excerpts of Draft Minutes of the June 1, 1984, RAC Discussion of the Proposal

At its June 1, 1984, meeting, the RAC discussed the requests in the April 4, 1984, letter from Drs. O'Brien and Holmes and the recommendations made by the RAC Working Group on Toxins at its May 11, 1984, meeting. The following draft minutes from the June 1, 1984, RAC meeting summarize the pertinent points raised during the discussion:

Dr. Gottesman introduced the proposal (tabs 1153, 1165, 1162, 1156/II, 1168, 1170) of Drs. Alison O'Brien and Randall Holmes of the Uniformed Services University of the Health Sciences (USUHS) to clone at P3 containment the Shiga-like toxin gene of *E. coli* in *E. coli* K–12 host-vector systems. Shiga-like toxin has activity similar to the activity of *Shigella dysenteriae* toxin.

Dr. Gottesman said that at the February 6, 1984, RAC meeting, she had voted against the motion to lower containment from P4 to P2 because she felt certain questions had not been fully addressed. Her preception of the sentiment of the committee at that meeting, however, was that RAC overwhelmingly favored the motion in spite of the split vote. She felt the split vote partially reflected a disagreement over whether the motion should provide an exclusive approval for Dr. O'Brien's group.

Dr. Gottesman said subsequent to the February 6 RAC meeting, Dr. O'Brien had submitted a revised proposal on April 4 and that NIH had convened the RAC Working Group on Toxins on May 11, 1984, to review the new proposal in the light of available scientific data on Shiga toxin. Dr. Gottesman said a great deal of discussion occurred at the working group meeting. This discussion clarified the scientific issues and resulted in working group recommendations to RAC on Dr. O'Brien's April 4, 1984, proposal.

Dr. Gottesman said these recommendations were unanimously approved by the working group and represent a consensus between individuals holding very different points of view. She strongly urged the RAC to accept the working group recommendations.

Dr. Gottesman said the first request of Dr. O'Brien's April 4 proposal was to lower containment conditions for cloning the intact structural gene(s) for Shiga-like toxin of *E. coli* into *E. coli* K–12 from P4 + EKl to P3 + EKl. Dr. Gottesman said this proposal was accepted by the Working Group on Toxins on the basis of two sets of data:

a. The data generated through experiments with 140 human volunteers fed Shiga toxin-producing *Shigella* lacking invasive characteristics. No disease symptoms were observed in 139 individuals; in one individual, the strain reverted to an invasive form and the volunteer developed shigellosis. Since *E. coli* K–12 neither adheres nor is invasive, no disease should be caused by *E. coli* K–12 containing the Shiga toxin gene.

b. The evidence generated by Branham, Dack, and Riggs which shows that large amounts of Shiga toxin instilled directly into monkey intestinal pouches has no effect.

Dr. Gottesman said that in the worst case scenario, in which all the *E. coli* in the human intestine (estimated to be 10^9) were expressing the Shiga toxin gene on a high expression, high copy number plasmid, one milligram of toxin might be produced in the human gut. This amount is roughly equivalent to approximately 14,000 lethal does for humans if the toxin were to be administered parenterally. However, Branham, Dack, and Riggs had administered 20,000 lethal doses enterally to monkey intestinal pouches with no observed effect.

In regard to the second item of Dr. O'Brien's April 4 letter requesting lowering of certain characterized clones to Pl +EKl conditions, Dr. Gottesman said the working group recommends modifications in the request. The working group recommends that host-vector systems expressing the Shiga toxin gene may be removed from P3 to P2 containment conditions under the following conditions:

a. That the amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain 933 *E. coli* 0157H7, grown and measured under optimal conditions; and

b. The cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such pBR322, pBR328, and pBR325.

Dr. Landy asked if the working group recommendation specified that both the host-vector system and strain 933 *E. coli* 0157H7 were to be grown under optimal conditions. Dr. Gottesman replied that both strains should be grown under optimal toxin producing conditions.

Dr. Gottesman said the working group recommended approval of the third item of the Apirl 4 request with the clarification that the modified organism will not contain overlapping fragments which together would encompass the structural gene(s). This specification will eliminate the possibility that the structural gene might be regenerated through recombinational events.

In regard to the fourth item in the April 4, 1984, proposal Dr. Gottesman said it was the consensus of the working group that these experiments would not fall under Appendix F of the Guidelines, and no action need be taken by the RAC.

In regard to the fifth item in the April 4, 1984, letter from Drs. O'Brien and Holmes, Dr. Gottesman said it was the consensus of the group that no working group could predict all potential scenarios; thus, each specific nontoxinogenic allele should be considered individually on a case-by-case basis. A system is in place within the NIH to perform this type of evaluation, so no specific action need be taken by the RAC.

Dr. King Holmes said the proposed research is extremely important and should be pursued. He had, however, several concerns which he felt should be addressed: (1) He noted that only four individual animals of one primate species had been tested by Branham, Dack, and Riggs. He asked whether primate species might differ in their response to the toxin. (2) He also questioned the calculations developed by the working group in a worst case scenario; he wondered whether this scenario would correspond to the *in vivo* situation. (3) He noted that data presented at an earlier RAC meeting by Dr. O'Brien suggested a toxin dose-effect; i.e., *E. coli* isolates from patients who have hemorrhagic colitis produced more toxin *in vitro* than did *E. coli* isolates from patients who did not have hemorrhagic colitis. (4) He questioned what would be the effect of feeding "non-healthy" individuals *E. coli* K–12 producing Shiga toxin.

Dr. Holmes felt the apparent lack of toxicity for intestinal epithelial cells is not entirely reassuring in terms of toxicities for other epithelial cell types such as HeLa cells. He pointed out that the toxin is presumed to be toxic for endothelial vascular cells. He asked what would be the effect on humans if toxin producing *E. coli* is inhaled? What if toxin producing *E. coli* colonizes the skin or urogenital tract?

Dr. Holmes questioned the effect the toxin might have on corneal or conjunctival cells in neonates born vaginally of women vaginally colonized by *E. coli* producing Shiga toxin. What might be the effect on the endocervix or endometrium of women vaginally colonized by *E. coli* producing the toxin? What would be the effect on the male whose prostate might be colonized?

Dr Holmes questioned the language of the third recommendation which specifies that the modified host-sector system will not contain overlapping fragments which together would encompass the structural gene(s); he noted that *E. coli* K–12 host-vector systems may contain a chromosomal gene encoding Shiga toxin.

Dr. Holmes said he was not persuaded that the proposed experiments require an Arms Control Impact Statement (ACIS) as argued by Mr. Rifkin in his May 15, 1984, letter. Dr. O'Brien's proposed experiments are NIF funded and will be performed by civilian investigators associated with the USUHS medical school. He said he was not persuaded that the affiliation of the investigators with USUHs constitutes a reason *per se* for requiring an ACIS.

Dr Holmes suggested the issue as he saw it is not whether an ACIS is necessary for this particular experiment but whether any ACIS might be needed for toxin related recombinant DNA experiments in general.

Dr. Levine pointed out that when the Working Group on Toxins was constituted in the spring of 1981 to evaluate the cloning of toxin genes, it was clear that experiments involving the cloning of the gene encoding botulinum toxin presented a real concern. Botulinum toxin is an exoxinosis; i.e., the pure toxin if imbibed or ingested orally causes illness. Tetanus toxin also presents a real concern. Shiga toxin, on the other hand, is a very potent toxin when administered parenterally; however, there is no evidence epidemiologically or pathophysiologically that Shiga toxin is an exotoxinosis. In 1981 in discussing the appropriate category for experiments involving cloning of the Shiga toxin gene, the Working Group on Toxins was divided. Some individuals said these experiments should be in the same category as experiments involving the gene for tetanus toxin; this position was based on consideration of Shiga toxin's pharmacological potency. Others felt Shiga toxin should be in a separate category on the basis of epidemiological evidence. As the hour was late, Shiga toxin was assigned to the same category as botulinum and tetanus toxin pending further information. Dr Levine said most of the Working Group on Toxin members who participated in the May 11, 1984, meeting were members of the working group which in the spring of 1981 drew up Appendix F to the Guidelines. These individuals, thus, had the opportunity at the May 11, 1984, meeting to review additional data concerning Shiga toxin and to offer recommendations. Dr. Levine, pointed out that Swiss and West German committees of experts have suggested experiments involving cloning of the Shiga toxin gene be permitted at no higher than P2 + EK1 containment. He said the recommendations of the RAC Working Group on Toxins in contrast represent a very conservative attitude towards the cloning of the Shiga toxin gene. He urged the RAC to accept the working group recommendations.

In response to Dr. King Holmes' stated concerns, Dr. Levine said the Working Group on Toxins, in devising its guidelines for Appendix F, had considered toxicity to primates to be of paramount importance and more relevant than data generated with 40 guinea pigs or 40 mice. He emphasized that the primate data of Braham, Dack, and Riggs show that 20,000 monkey parenteral lethal doses will not cause adverse effect when administered by means of an intestinal pouch.

Dr. Levine said he did not believe *E. coli* would present a problem by colonizing the skin or peritoneal areas; if *E. coli* is going to present a problem, it will present a problem in the gut as the numers of *E. coli* in the gut are orders of magnitude greater than in other areas of the body.

Dr. Levine said that *E. coli* strains which cause hemorrhagic colitis, such as 933 *E. coli* 0157H7, are smooth *E. coli* strains capable of colonizing the human gut. These strains also have other virulence factors. Nevertheless, these strains are not widespread pathogens. He argued that if strains such as 0157H7 which possess so many virulence characteristics are not widespread pathogens, it is inconceivable that a rough *E. coli* strain, such as *E. coli* K–12 which does not colonize or possess virulence factors, would become a widespread pathogen.

Dr. Levine said the infinitesimal risks perceived to be associated with cloning the Shiga toxin gene in *E. coli* K–12 must be weighed against the actual benefits. He said research with the Shiga toxin gene is very important to the development of a cholera vaccine. He explained that live attenuated cholera vaccines which lack cholera toxin are a major step forward in controlling cholera by immunoprophylaxis. These vaccines, however, still cause a mild diarrhea in perhaps a third of the recipients. Thus, this vaccine is not sufficiently attenuated for public health use. Dr. Levine said the mild diarrhea may be explained in two ways: (1) The diarrhea is a response to the intestine to colonization by the live bacterial strain, or (2) other diarrhea-causing toxins may be produced by the live attenuated strain. Dr. O'Brien and her coworkers have shown that some cholera vaccine strains do produce Shiga toxin. Shiga toxin thus may play a role in causing the mild diarrhea associated with the live attenauted cholera vaccine strains. This possibility must be tested by cloning the Shiga toxin gene and deleting it from the vaccine strains. Delaying this research will adversely affect public health.

Dr. Holmes asked Dr. Levine to explain why if non-invasive *V. cholerae* vaccine strains may cause Shiga toxin induced diarrhea, would there not be similar concerns about an *E. coli* strain producing Shiga toxin? Dr. Levine replied that to be a concern the bacterium must possess accessory virulence properties. These virulence properties need not include invasiveness; the organisms must, however, possess characteristics that maintain the bacteria in a special proximity to the intestinal cells. Dr. Levine said the *V. cholerae* vaccine strains colonize the small bowel in contrast to *E. coli* K–12 strains which will not colonize the small bowel.

Dr. Clowes said at the February 6 RAC meeting he had supported the motion to lower containment requirements to P2 because: (1) *E. coli* and *Shigella* exchange genetic information in nature, and (2) other virulence factors in addition to toxin production are necessary for pathogenicity. He said he had abstained during the vote, however, because he felt the language of the motion was vague. Dr. Clowes said he supported the current recommendations of the Working Group on Toxins. However, as *E. coli* K–12 probably possesses a chromosomal Shiga toxin gene, he would like to suggest that the working group recommendation on item three of Dr. O'Brien's April 4 request be modified to require P2 containment conditions.

Dr. Fedoroff felt P2 containment was not necessary. She pointed out that two recombinational events would have to occur to generate a plasmid vector carrying the full structural gene for Shiga toxin: one recombinational event to integrate the plasmid into the chromosome, and a second to return the plasmid to the extrachromosomal state.

Dr. McKinney said Dr. Clowes' suggestion satisfied Dr. Holmes' concern regarding inhalation exposure to Shiga toxin-producing *E. coli*, since P2 reduces the probability of exposure by aerosol. He supported Dr. Clowes' suggestion.

Dr. Gottesman said she wished to respond to certain of Dr. Holmes' concerns. She reminded the committee the proposed research with the Shiga toxin structural gene is to be performed under P3 containment with *E. coli* K–12 host vector systems. P3 containment conditions severely limit the possibility of the organism escaping. In addition, the host in this case would be *E. coli* K–12 which is a debilitated strain. In addition, Dr. Gottesman argued that Shiga toxin exists in *E. coli* strains in nature; thus, the only way in which a novel organism might be produced by recombinant DNA techniques is if the plasmid construct produces higher levels of toxin than strains in nature. Dr. Gottesman felt these considerations and the primate data indicating that Shiga toxin is not toxic when delivered in the gut, address most of the concerns.

Dr. Gottesman moved that RAC recommend experiments involving the cloning in *E. coli* K–12 of the intact structural gene(s) of Shigalike toxin of *E. coli* be permitted at P3 + EK1 containment. This is the first request in Dr. O'Brien's April 4 proposal. Dr. Federoff seconded the motion. Dr. King Holmes noted that he would support the motion as he felt the benefits greatly outweigh the risks. By a vote of twenty-one in favor, none opposed, and one abstention, the RAC recommended the motion.

Dr. Gottesman then moved RAC approve the working group recommendation that *E. coli* host-vector systems expressing the Shiga toxin gene may be removed from P3 to P2 containment under the following conditions:

a. That the amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain, 933 *E. coli* 0157H7, grown and measured under optimal conditions; and

b. The cloning vehicle is to be an EK1 vector, preferably belonging to the class of poorly mobilized plasmids, such as pBR322, pBR328, and pBR325.

Dr. Fedoroff seconded the motion.

Mr. Jeremy Rifkin was recognized and said he felt that a critical turning point has been reached with this technology. He thought this turning point similar to the running point in the nuclear technology discussions where it became very obvious there was a convertibility between the peaceful use of nuclear technology and its possible military applications. Mr. Rifkin felt this convertibility was especially obvious in relation to the use of plutonium in the nuclear energy industry and its use in military weapons.

Mr. Rifkin said that in the last few months several disturbing events occurred: (1) The Wall Street Journal published a seven part series on possible military applications of genetic engineering in the Soviet Union; (2)

the American Associations for the Advancement of Science (AAAS) held a panel on biological warfare at their annual meeting at which a spokesperson from the Defense Information Agency pointed out the convertibility between peaceful uses of this technology and military applications; and (3) Environmental Action and the Foundation on Economic Trends joined in releasing to the public a mathematical model from the leading Soviet mathematical modeler of epidemiological studies. This scientist is concerned that the mathematical model he developed for tracing and tracking viruses could be used for military purposes.

Mr. Rifkin said he was curious about the interest in Shiga toxin because it was his understanding that this particular form of dysentery is not found in any significant way in the United States but is pandemic to the five countries of Central America. He said:

". . . it doesn't take much intelligence to understand that it would be very helpful to have such a vaccine, if for no other reason, to inoculate U.S. ground troops."

He added that:

"U.S. ground troops having that kind of vaccine would be able to be in a position to be deployed in those five Central American countries with the protection of that vaccine."

Mr. Rifkin suggested that RAC:

". . . postpone consideration of this experiment and similar experiments by DOD or DOD-related institutions until such time as another agency, the Arms Control and Disarmament Agency, complies with the ACIS requirements."

Mr. Rifkin called the attention of the committee to the letter from Dr. Jay Sanford, President of the Uniformed Services University of the Health Sciences, which states that the Department of Defense (DOD) does not believe these experiments will have a significant impact on arms control and disarmament. Mr. Rifkin said that the Arms Control and Disarmament Agency is the agency which has to deal with it, not the DOD.

Mr. Rifkin suggested that RAC discuss setting up a RAC subgroup to:

". . . take a look at this whole area of convertibility of toxins from peaceful uses to military uses and to initiate a very exhaustive study, complete with recommendations and findings, to bring back to this committee for discussion at a future date."

Mr. Rifkin also suggested that the subgroup:

". . . look at all of the ways that we might deal with controls, regulations, protocols, and procedures dealing with this whole question of toxins used for domestic purposes versus military."

Dr. Levine said he wished to offer a few clarifications. He explained that:

"Shiga toxin was originally isolated from a serotype of *Shigella* called *Shigella dysenteriae-1*, or Shiga. That particular organism caused pandemic dysentery in Central America from 1968–1970. There no longer is a pandemic in Central America. There hasn't been for many years. In fact, it's an uncommon endemic organism in Central America. *Shigella Dysenteriae–1*, amongst all *Shigella*, amongst all bacteria, is one of only a handful of organisms that are capable of exhibiting pandemic spread, and that occurs every couple of generations interspersed widely throughout the world. One does not really know why it turns up. There was a similar large epidemic in Bangladesh in the 1970s, for example; there was one 15 years earlier in East Africa. There is no Shiga dysentery pandemic in Central America now. . . .

The genes, however, that *Shigella dysenteriae-1* have, we now recognize are in all *Shigella*, or apparently all *Shigella*, because all *Shigella* serotypes that have been looked at are now found to produce this toxin. And what's much more important, *E. coli* can produce lots of Shiga toxin. . . .

The last point I would make, Mr. Chairman, is that it bothers me, as a health worker and health professional interested in geographic medicine and tropical pediatrics, to have such great emphasis put on one aspect of warfare when there's another war out there and it's a war that I'm involved in fighting in a different way and that is a war against disease, and that's also a real war, and that's taking place now, that's not hypothetical. Shiga dysentery does cause disease, cholera causes disease. There are many, many—there are millions of children—that die of these diseases throughout the world. That's war, and we need every armament we have against that war. Without question, nefarious individuals in many countries can take not only guns and arms and such explosive armaments, but nefarious individuals can use biological means and chemical means and apply them in warfare without question. But they don't need to clone Shiga toxin to do this. My lord, there are so many nasty agents that exist for the potential for warfare that we know about. But there's another war out there and I think it's our primary responsibility to come up with the best armaments to fight that other war.

Mr. Rifkin said he totally agreed that:

". . . we have a responsibility to develop vaccines that are going to be helpful in dealing with some of these dreaded diseases. All I'm suggesting at this point is that we're at a stage where there is a convertibility with toxins for military purposes, and just as we're interested in solving the problem of diseases, shouldn't we be interested in setting down some guidelines, and protocols, and procedures for the potential convertibility of this technology . . . ."

Mr. Rifkin asked if there was:

". . . any room for discussion at this committee of the NIH for taking a look at how toxin-related experiments might be somehow used for military purposes? If not, I won't bring it up again if you think that there is no room for this committee, or the NIH, to look into this matter in any way, shape, or form about the convertibility. I will not bring it up again if you so decide that that's your—the NIH's—position."

Dr. McKinney said he:

". . . would make the observation, Mr. Chairman, that if indeed our concern would be predicated on convertibility of any technology to ultimate use in warfare that we should have started with the invention of the wheel and that we would, in fact, cease to do any and all research in the world, in fact, cease to do any and all research in the world because of the potential for converting any new technology to ultimate warfare use."

Dr. McKinney said he wished to comment on the materials which accompanied Mr. Rifki's letter of May 15, 1984. He said he had found a number of gross technical errors in this material. He cited Mr. Rifkin's statement that RAC is authorizing experiments. Dr. McKinney said RAC does not 'authorize' experiments, rather it is an advisory body to the NIH. It is the prerogative of the NIH to accept or reject RAC's recommendations. Dr. McKinney felt the inappropriate use of the word 'authorize' conveys to the public a false impression of RAC's function.

Dr. McKinney said he could not accept Mr. Rifking's position that RAC is a participant in the potential convertibility of a technology to military applications. He said such a potential exists with any technology. The primary role of RAC, however, is to serve the public interest. In this service, concrete measures to control disease have precedence over hypothetical considerations which might be raised over what somebody might do someday.

Dr. Landy said he was personally offended by Mr. Rifkin's implication that American researchers would not feel compelled to research diseases that are not endemic to the United States.

Dr. Miller of the FDA underscored the public health importance of the research proposed by Dr. O'Brien. He urged RAC to recommend conditions which would permit this research to proceed. Dr. Miller felt the:

". . . issue of convertibility to biological warfare is really . . . not an issue at all, but rather . . . a manifestation of what the British journal *Nature* in the May 24th issue alluded to in describing Mr. Rifkin as someone whose nuisance to substance ratio is high."

Dr. Rapp said a toxin is one type of virulence factor. If instead of using the word "toxin," the words "virulence factors" were used, many experiments with important health problem applications would be part of the convertibility discussion.

Dr. Rapp strongly supported Dr. Landy's comments. He offered as an example the research being conducted in the U.S. on malaria. He did not think the U.S. was going to invade West Africa because U.S. researchers are studying malaria. Malaria is an important international health problems and most U.S. researchers consider themselves international scientists attempting to solve world health problems. Dr. Walter's agreed.

Dr. McGarrity pointed to Appendix F as evidence that RAC and the Working Group on Toxins have deliberated long and hard in considering recombinant DNA experiments involving toxin genes.

Dr. Gottesman said the concern that this research might be converted to uses scientists would not approve is one reason scientists began the process of evaluating applications of the recombinant DNA technique. This concern was discussed at Asilomar. The RAC meets in open session to keep the public aware of the issues.

Dr. Gottesman said she was bothered a great deal by Mr. Rifkin's implication that these experiments are more likely to be missed because the investigators are associated with USUHS. The said this is "guilt by association." She rejected this implication and urged RAC to approve the working group recommendations concerning Dr. O'Brien's April 4, proposal.

Mr. Rifkin said:

"* * * it's rather disingenuous for the committee to suggest that I'm only interested in diseases that affect the United States of America and, therefore, don't care about diseases that affect the world. I think if anybody is familiar with my writings of books over the years you know that's just not true."

Mr. Rifkin said:

"* * * the real question here that I think that we have to deal with is a question that's been raised not just by me; it's been raised in several forums. If you get a chance to read, for example, the Bulletin of Atomic Scientists, which is rather a distinguished journal of science, you'll find there was a long article in the November issue by Dr. Sinsheimer of the University of California and another historian where they raised some problems about convertibility and raise some very specific suggestions about what might be done by various Government agencies to try and address this issue, yet it still has not been addressed in this committee as of today."

Mr. Rifkin added that:

"In terms of a nuisance factor * * *. We are all American taxpayers. We are citizens. We come in front of this committee both as professionals and lay people to lay out our concerns. I have legitimate concerns. You might totally disagree with them. You might have a totally different perspective. But we owe it to each other to discuss these and in each case when you have decided and voted I have not said another thing on that particular area. But I will continue to be here if I think that the perspectives that I want covered are not covered by this committee, including this one, and I hope at some point you discuss the convertibility of this technology for military purposes."

It has previously been moved and seconded that the RAC approve the recommendation of the Working Group on Toxins that *E. coli* host-vector systems expressing the Shiga toxin gene may be removed from P3 to P2 containment under the following conditions:

a. That the amount of toxin produced by the modified host-vector system be no greater than that produced by the positive control strains 933 *E. coli* 0157H7 grown and measured under optimal conditions; and

b. The cloning vehicle is to be an EK1 vector, preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

By a vote of twenty-one in favor, one opposed, and one abstention, the RAC accepted the motion.

Dr. Gottesman then moved acceptance of the third item of the April 4 request, i.e., to remove nontoxinogenic fragments of the structural gene(s) from P3 to lower physical containment at EK1 biological containment with the stipulation that the modified organism will not contain overlapping fragments which together would encompass the structural gene(s). In response to concerns expressed earlier in the meeting, Dr. Gottesman moved that physical containment be set at P2, higher than the requested P1 physical containment level. Dr. Fedoroff seconded the motion. By a vote of twenty-one in favor, none opposed, and one abstention, the RAC accepted the motion.

Dr. Gottesman felt a motion concerning items four and five was not required, but moved that RAC indicate that items four and five of Dr. O'Brien's April 4 request do not require RAC action. Dr. Holmes seconded the motion. By a vote of twenty-one in favor, none opposed, and one abstention, the RAC approved the motion.

I-A-5. Decision

I have reviewed the extensive deliberations of the RAC Working Group on Toxins and of the full RAC concerning the April 4, 1984, requests of Drs. Alison O'Brien and Randall Holmes. I believe the containment conditions recommended by the RAC at its June 1, 1984, meeting are adequate to contain safely the experiment. I accept the RAC recommendations and the language of Appendix F-IV-H will be modified to indicate this.

I-B. Proposed Amendment of Procedures for Scale-Up of Organisms Listed in Appendix C

In May 1983, Dr. Irving S. Johnson of Eli Lilly and Company proposed that procedures be modified for experiments involving more than 10 liters of culture of "exempt" organisms listed in Appendix C of the NIH Guidelines for Research Involving Recombinant DNA Molecules. In September 1983, Dr. Max Marsh of Lilly Research Laboratories offered an alternate modification of Appendix C and requested it be referred to the RAC Large-Scale Review Working Group. The proposals were reviewed by the RAC at its September 19, 1983, meeting and referred to the Large-Scale Review Working Group. The RAC Large-Scale Review Working Group met on February 7, 1984. After evaluating data and discussing the issues (the Minutes of the meeting are available from ORDA), the Large-Scale Review Working Group proposed the following modifications to the Guidelines:

1. In Appendix K-II-D of Appendix K-II, *P1-LS Level*, the work "minimize" would be substituted for the word "prevent." Appendix K-II-D would read as follows:

> Appendix K-II-D. Exhaust gases removed from a closed system or other primary containment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to minimize the release of viable organisms containing recombinant DNA molecules to the environment.

2. The second paragraph of Appendix C-II, *Experiments Involving E. coli K-12 Host-Vector Systems;* Appendix C-III, *Experiments Involving Saccharomyces cerevisiae Host-Vector Systems;* and Appendix C-IV, *Experiments Involving Bacillus subtilis Host-Vector Systems;* would be modified to read as follows:

> For these exempt laboratory experiments, P1 physical containment conditions are recommended.

3. A paragraph would be added following the second paragraph of Appendix C-II, Appendix C-III, and Appendix C-IV. The paragraph would read as follows:

> For large-scale fermentation experiments P1-LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of P1-LS requirements as outlined in Appendix K-II-A through K-II-F is permitted.

4. A reference to Appendix C would be added to the fourth sentence of Appendix K-I, *Selection of Physical Containment Levels.* The sentence would read as follows:

> The P1-LS level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules which require P1 containment at the laboratory scale (see Appendix C).

As a possible substitute, NIH staff proposed the following alternate modification of Appendix K-1, *Selection of Physical Containment Levels.* The following sentence would be added following the fourth sentence of Appendix K-1, *Selection of Physical Containment Levels:*

> (The P1-LS level of physical containment is recommended for large-scale research or production of viable organisms for which P1 is recommended at the laboratory scale such as those described in Appendix C).

An announcement of these recommendations of the Large-Scale Review Working Group and the substitute proposed by NIH staff appeared in the April 24, 1984, **Federal Register** (49 FR 17672). During the thirty day comment period three comments were received. These comments were from Mr. C. Searle Wadley and Dr. John H. Keene of Abbott Laboratories, Dr. Judith A. Hautala of Genex Corporation, and Dr. J. Allan Waitz of Schering Corporation.

Mr. C. Searle Wadley and Dr. John H. Keene of Abbott Laboratories, North Chicago, Illinois wrote:

> The risk assessments have been done with the exempt organisms for which the proposed amendments apply. There is no evidence we are aware of to indicate that there is any increased risk to personnel or public health

> by experimentation with these organisms at low volumes and no reason that the production of large volumes will lead to any greater risk to personnel or the environment. . . . We believe that the proposed amendments are well conceived and recommend their acceptance by NIH for incorporation into the guidelines. We suggest, however, that the placement of the paragraph under modification #3 . . . be reconsidered. Adding the proposed paragraph after the second paragraph would, in effect, place this paragraph dealing with large-scale fermentation experiments under the exemption experiments. Since large scale experiments are not exempted but rather are listed as exceptions to the exemptions, we recommend the proposed paragraph be added to the third paragraph under the "Exceptions" section of Appendix C–II, Appendix C–III, and Appendix C–IV.

Dr. Judith A. Hautala of Genex Corporation, Gaithersburg, Maryland wrote:

> The proposed modification of Appendix K–II–D to require that exhaust gases be treated so as to "minimize" rather than "prevent" the release of viable organisms is necessary in order to make the requirement realistic. Even HEPA filters, which are specifically recommended in Appendix K–II–D, are rated as removing only 99.97% of the particles larger than 0.2 microns. Thus, the term "prevent" is too restrictive to be operationally useful. . . . Part 3 of the proposed amendment, which explicitly grants to the Institutional Biosafety Committee (IBC) the right to exercise some latitude in the application of P1–LS containment requirements to organisms covered by Appendix C, is appropriate for several reasons. These organisms are exempt from the NIH Guidelines at the laboratory level because they have been shown to present no significant risk to health or the environment. Therefore, it would seem reasonable to allow the IBC to relax certain aspects of the P1–LS requirements after careful review of the host-vector system, the large-scale process description, the equipment to be utilized, and the emergency spill procedures. For example, in order to accommodate process and equipment realities, it may in some instances be appropriate for the IBC to allow certain large-scale transfer or processing operations involving viable organisms to be carried out without absolute containment. Providing that worker exposure and environmental losses are minimized, this type of latitude should present no significant risk.

Dr. J. Allan Waitz of Schering Corporation, Bloomfield, New Jersey, wrote:

> HEPA filters are only 99.97% efficient for particles of 0.3 u diameter, so to say that HEPA filtration 'prevents' release of recombinant organisms is incorrect. Use of the word 'minimize' would more accurately reflect the removal properties of a HEPA filter. If this is the intent of the proposed change, we support it. . . .
>
> The P1–LS recommendations should be the *minimum* requirements for handling volumes of recombinant organisms. While we agree that the IBCs should have the flexibility necessary to carry out their responsibilities, we are opposed to the IBC having so much flexibility that the Guidelines could be ignored completely. Accordingly, we urge the RAC to reject this proposed change. This includes rejection of the change proposed in Item I–2, since the current wording in Appendix C–II, C–III, and C–IV is adequate.

The RAC discussed this proposal at the June 1, 1984, meeting. Drs. McKinney, McGarrity, and Wensink spoke in favor of the proposal. Alternative wording to that which appeared in the April 24 **Federal Register** was considered but rejected. By a vote of twenty in favor, none opposed, and no abstentions, the RAC adopted the recommendation of the Large-Scale Review Working Group to substitute the word "minimize" for the word "prevent" in the Appendix K–II–D.

By a vote of twenty-one in favor, none opposed, and no absentions, the RAC adopted the recommendation of the Large-Scale Review Working Group that the second paragraph of Appendices C–II, C–III, and C–IV be modified to read:

> For these exempt laboratory experiments P1 physical containment conditions are recommended.

In the same motion, RAC adopted the recommendation of the Large-Scale Review Working Group that a paragraph be added following the second paragraph of Appendix C–II, Appendix C–III, and Appendix C–IV. The paragraph would read as follows:

> For large-scale fermentation experiments P1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of P1–LS requirements as outlined in Appendix K–II–A through K–II–F is permitted.

By a vote of twenty in favor, none opposed, and no abstentions, the RAC recommended the NIH staff proposal to add the following language to Appendix K–I:

> (The P1–LS level of physical containment is recommended for large-scale research or production of viable organisms for which P1 is recommended at the laboratory scale such as those described in Appendix C.)

I accept these recommendations and Appendix C–II, *Experiments Involving E. coli K–12 Host-Vector Systems,* Appendix C–III, *Experiments Involving Saccharomyces cerevisiae Host-Vector Systems,* Appendix C–IV, *Experiments Involving Bacillus subtilis Host-Vector Systems,* Appendix K–I, *Selection of Physical Containment Levels,* and Appendix K–II–D of Appendix K–II, *P1–LS Level,* will be modified as recommended.

II. Summary of Actions

II–A. Proposal to Clone Shiga-Like Toxin Gene From E. coli

Appendix F–IV–H of the Guidelines is modified to read as follows:

> Appendix F–IV–H. The intact structural gene(s) of the Shiga-like toxin from *E. coli* may be cloned in *E. coli* K–12 under P3+EK1 containment conditions.
>
> *E. coli* host-vector systems expressing the Shiga-like toxin gene may be moved from P3 to P2 containment conditions provided that (1) the amount of toxin produced by the modified host-vector systems is no greater than that produced by the positive control strain 933 *E. coli* 0157H7, grown and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.
>
> "Nontoxinogenic fragments of the Shiga-like toxin structural gene(s) may be moved from P3 + EK1 to P2 + EK1 containment conditions or such nontoxic fragments may be directly cloned in *E. coli* K–12 under P2 + EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s).

II–B. Proposed Amendment of Procedures for Scale-Up of Organisms Listed in Appendix C

1. In Appendix K–II–D of Appendix K–II, *Pl–LS Level,* the word "minimize" is substituted for the word "prevent." Appendix K–II–D reads as follows:

> Appendix K–II–D. Exhaust gases removed from a closed system or other primary containment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to minimize the release of viable organisms containing recombinant DNA molecules to the environment.

2. The second paragraph of Appendix C–II, *Experiments Involving E. coli K–12 Host-Vector Systems;* Appendix C–III, *Experiments Involving Saccharomyces cerevisiae Host-Vector Systems;* and Appendix C–IV, *Experiments Involving Bacillus subtilis Host-Vector System* is modified to read as follows:

> For these exempt laboratory experiments, P1 physical containment conditions are recommended.

3. A paragraph is added following the second paragraph of Appendix C–II, Appendix C–III, and Appendix C–IV. That paragraph reads as follows:

> For large-scale fermentation experiments P1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of P1–LS requirements as outlined

in Appendix K–II–A through K–II–F is permitted.

4. A reference to Appendix C is added after the fourth sentence of Appendix K–I, *Selection of Physical Containment Levels*. The new sentence reads as follows:

(The P1–LS level of physical containment is recommended for large-scale research or production of viable organisms for which P1 is recommended at the laboratory scale such as those described in Appendix C.)

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: September 3, 1984.

James B. Wyngaarden, M.D.,

Director, National Institutes of Health.

[FR Doc. 84–23914 Filed 9–12–84; 8:45 am]

BILLING CODE 4140–01–M

federal register

Thursday
September 13, 1984

Part III

Office of Management and Budget

Budget Deferral; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferral

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority which now totals $331,964,058. The deferral affects the Department of Energy.

The details of the deferral are contained in the attached report.

Ronald Reagan.

The White House,
September 6, 1984.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
D84-8A	Department of Energy Energy Programs Uranium supply and enrichment activities...	331,964
	Total, deferrals...........................	331,964

* * *

SUMMARY OF SPECIAL MESSAGES FOR FY 1984
(in thousands of dollars)

	Rescissions	Deferrals
Thirteenth special message:		
New items.....................................	---	---
Revisions to previous special messages......	---	201,964
Effects of thirteenth special message.......	---	201,964
Amounts from previous special messages that are changed by this message (changes noted above).................................	---	130,000
Subtotal, rescissions and deferrals.........	---	331,964
Amounts from previous special messages that are not changed by this message............	636,411	7,304,509
Total amount proposed to date in all special messages..........................	636,411	7,636,473

D84-8A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D84-8 transmitted to Congress on October 3, 1983.

This is an increase of $201,964,058 to a previous deferral of $130,000,000 in the Department of Energy's Uranium supply and enrichment activities, resulting in a total of $331,964,058 deferred. The additional deferral includes: $26,000,000 for TVA power rate reductions; $41,900,000 in unused power contingency; $32,000,000 in reduced contract costs; $87,000,000 in reduced TVA power purchases; $15,000,000 from construction; and $64,058 in recoveries of prior year obligations for the months of February, March and April 1984. The reduction to construction is being made to allow time to determine where efficiency savings can be made and will actually result in cost reductions. The other deferred amounts are the result of excess funding in 1984. None of these deferrals will have an impact on program accomplishments for 1984.

While these funds are not needed in 1984, they are required, in part, in 1985 to fund the Uranium enrichment program as well as other DOE appropriations as reflected in the 1985 Appropriations Bill.

Deferral No: D84-8A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau: Energy Programs

Appropriation title and symbol:

Uranium Supply and Enrichment
Activities
89X0226

OMB identification code:
89-0226-0-1-271

Grant program: ☐ Yes ☒ No

Type of account or fund:

☐ Annual

☐ Multiple-year ______ (expiration date)

☒ No-Year

New budget authority..... $2,235,000,000
(P.L. 98-50)

Other budgetary resources 40,230,099*

Total budgetary resources 2,275,230,099*

Amount to be deferred:
Part of year $______
Entire year 331,964,058*

Legal authority (in addition to sec. 1013):

☒ Antideficiency Act

☐ Other______

Type of budget authority:

☒ Appropriation

☐ Contract authority

☐ Other______

Justification: *The Department's total 1984 electric bill is expected to be $124 million lower than originally budgeted and current estimates of capital equipment requirements for the gaseous diffusion complex indicate that $6 million of 1984 appropriations for capital equipment are no longer needed. The funds will be placed in a contingency fund to be used in 1985. The contingency fund is necessary because uncertainties in the marketplace may lead to higher-than-estimated costs and capital requirements in 1985. An additional $201,964,058 is being deferred as a result of TVA power rate reductions ($26,000,000), unused power contingency ($41,900,000), reduced contract costs ($32,000,000), reduced TVA power purchases ($87,000,000), construction ($15,000,000) and recoveries of prior year obligations ($64,058).

Estimated Program Effect: None.

Outlay Effect: *These deferrals will reduce outlays by a total of $332 million in 1984.

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* Revised from previous report.

[FR Doc. 84-24379 Filed 10-12-84; 8:45 am]

BILLING CODE 3110-01-C

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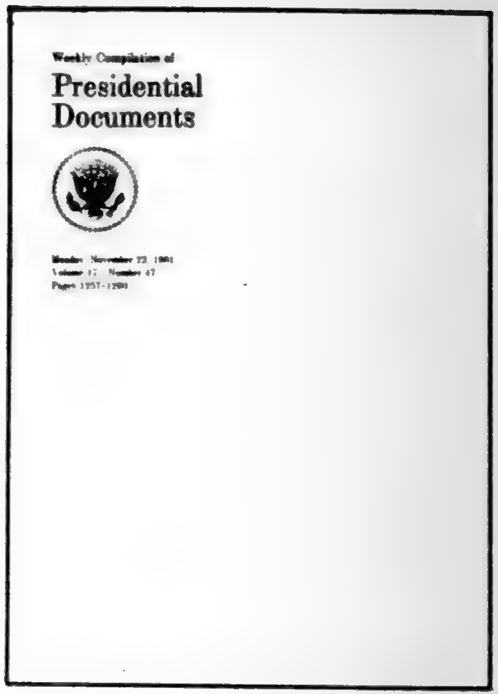
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federal register

Friday
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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The President

Presidential Determination No. 84-13 of September 8, 1984

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, authorizing the use of up to $5 million of funds from the United States Emergency Refugee and Migration Assistance Fund

Memorandum for the Secretary of State

In order to meet unexpected urgent refugee and migration needs in Africa and to respond to appeals of the International Committee of the Red Cross and the United Nations High Commissioner for Refugees, I hereby determine, pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended (the Act), that it is important to the national interests that up to $5 million shall be made available from the United States Emergency Refugee and Migration Assistance Fund for contributions to the International Committee of the Red Cross and to the activities of the United Nations High Commissioner for Refugees for assistance to persons in Africa.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

This Determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 8, 1984.

[FR Doc. 84-24533
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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Definitions

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is finalizing, with minor adjustment, its proposed rule on definitions published in the Federal Register on April 16, 1984 (49 FR 14958). This action amends the regulation on "Meaning of terms" by revising the section to clarify definitions, remove obsolete definitions, add definitions for Compliance and Standardization, and to add the definitions from the other sections of the regulations, all of which will facilitate the use of the regulations. This action further deletes definitions from the other sections of the regulations and makes other changes necessary because of the shift of definitions from other sections to the Meaning of terms section.

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. The action has been classified as nonmajor, because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the inspection and weighing services and those entities that perform these services do not meet the requirements for small entities, and this action poses no new or additional duties or obligations to business entities involved in the loading, weighing, handling, or sampling of grain.

Review of Regulations

The review of the regulations' definitions found in §§ 800.0, 800.16, 800.25, 800.56, 800.73, 800.84, and 800.171 (7 CFR 800.0, 800.16, 800.25, 800.56, 800.73, 800.84, and 800.171) included a determination of the continued need for and consequences of each definition. An objective was to assure that the language of the definitions is clear and that the definitions are consistent with FGIS policy. FGIS determined that these definitions, in general, are serving their intended purpose; are consistent with FGIS policy; and should remain in effect. However, in the April 16, 1984, Federal Register (49 FR 14958), FGIS proposed certain revisions to the sections. Based upon the comments received and all other information available, this final rule makes the following revisions:

1. Amend § 800.0(b), Definitions, by revising the section to: (i) Clarify definitions for: (3) Agency; (7) Approved weigher; (10) Assigned area of responsibility; (17) Circuit; (19) Container; (23) Deceptive loading, handling, weighing, or sampling; (25) Department of Agriculture; (29) Export elevator; (31) Export port location; (49) Official certificate; (52) Official form; (54) Official inspection; (56) Official inspection personnel; (59) Official mark; (60) Official sample; (65) Official U.S. Standards for Grain; (67) Official weighing; (68) Class X or Class Y weighing equipment testing; (79) Respondent; (89) Supervision; (90) Supervision of weighing; and (94) Warehouse sampler; (ii) remove obsolete definitions: (63) Official stowage examiner, because FGIS does not use the term; (75) Region, because FGIS no longer has regions; and (76) Regional office, because FGIS no longer has regional offices; and (iii) redesignate definitions. Also in section 800.0(b) FGIS will (i) add the definitions for Compliance and Standardization to clarify the parameters of the FGIS Compliance and Standardization programs under the Act; (ii) consolidate the definitions in one location by adding the definitions for: Elevator areas and facilities; Merchandiser; Quantity; Regular workday; Nonregular workday; Holiday; Service representative; Contract service; Door-probe sample; Shallow-probe sample; and Employed from §§ 800.25(a)(1), (2), and (3); 800.73(c)(1), (2), (3), (4), and (5); § 800.84(f)(4)(i) and (ii); and 800.171(e), respectively; (iii) revise the definitions for Official certificate; Official form; and Official mark found in § 800.0(b)(49), (52), and (59), respectively, to be identical with the definitions currently found in § 800.56(a), (b), and (c), respectively; (iv) revise the definition for Export elevator in § 800.0(b)(29) by integrating the definition at § 800.16(a); and (v) revise the definition for Export port location in § 800.0(b)(31) by integrating the definition at § 800.16(b).

FGIS is reserving § 800.0(b)(50) because a new definition will be proposed in a separate regulation review.

Because of the above changes, the definitions in section 800.0(b) are redesignated so as to present them in alphabetical order.

2. Remove § 800.16, Determinations; export elevator and export port location, because the definition for Export elevator at § 800.16(a) is to be combined with the one at current § 800.0(b)(29), and the definition for Export port location at § 800.16(b) is to be combined with the one at current § 800.0(b)(31).

3. Amend § 800.25, Elevator and merchandising records required to be kept, by removing paragraph (a) which is to be added to § 800.0(b) and redesignating paragraphs (b) as (a), (c) as (b), (d) as (c), (e) as (d), (f) as (e), and (g) as (f).

4. Remove § 800.56 including the note, Official certificates, official forms, and official marks, because the definitions comprising this section are moved to § 800.0(b).

5. Amend § 800.73, Computation and payment of service fees; general fee information, by removing paragraph (c) which is to be added to § 800.0(b) and redesignating paragraphs (d) as (c), (e) as (d), (f) as (e), and (g) as (f).

6. Amend § 800.84, Inspection of grain in land carriers, containers, and barges in single lots, by removing paragraph (f)(4) which is to be added to § 800.0(b); by changing the words "(f)(1) through (5)" in paragraph (f)(5) to "(f)(1) through (4)"; and by redesignating paragraph (f)(5) as (f)(4).

7. Amend § 800.171, Who may be licensed or authorized, by removing paragraph (e) which is to be added to § 800.0(b).

FGIS received two comments to the proposed rule which allowed 60 days for public comment. One commentor supported the adoption of the revisions as proposed. The other commentor was of the opinion that the definition for Elevator areas and facilities goes past the intent of the Grain Standards Act. The commentor believes that FGIS inspection and weighing activities should not include access to storage areas, bins, interstices, the basement, belts, other conveyors and the automatic data processing facilities related to inspection and weighting. The commentor recommended that the definition be amended to include only those areas necessary to verify the accuracy of weights and inspections. The Service received similar comments prior to promulgating the definition at § 800.25(a)(1) in its regulations published in the March 11, 1980, **Federal Register** (45 FR 15802–15873). At that time, FGIS finalized the section as originally proposed, with minor nonsubstantive adjustments. The basis for its decision appearing on page 15804 was:

(1) The Act gives the Service access to elevators and other grain handling facilities in order to provide service and monitor the services; and

(2) The Service has been very careful not to abuse this access in the past and has inserted wording (§ 800.26(b)) to reflect the fact that it will notify the elevator manager or his/her representative before entering an elevator.

The basis and rationale for the promulgation of the definition of Elevator areas and facilities made in 1980 remains applicable today. The Service needs access to the listed areas so as to properly establish and maintain a national grain inspection system and to regulate the weighing of grain. In doing so, the Service will, as authorized by the Act, be able to adequately supervise and monitor its programs, maintain program integrity and perform enforcement duties as necessary. Over the past few years, FGIS has not encountered any difficulties in applying the definition of Elevator areas and facilities in its programs. This definition is limited to only those areas which would be necessary to verify the accuracy of weights and inspections and as such comports with the commentor's recommendation that the definition be so limited. Accordingly, the definition of Elevator areas and facilities will remain as proposed.

FGIS has reviewed further its proposal to remove the definition for Approved scale testing organization. The scale testing organization program is presently under review. A decision has not been made as to whether the program should be fully implemented or not retained at all. At this time, pending a final determination of this matter, it has been decided that the definition should be retained. Accordingly, FGIS is retaining the definition without change at § 800.0(b)(6). Because of this action, the definitions in proposed § 800.0(b)(6) through (b)(104) are redesignated in this final rule as § 800.0(b)(7) (b)(105). As part of its reorganization to add definitions to § 800.0 from other sections of the regulations, FGIS proposed that the definitions relating to fees which appear in section 800.73 be included in the proposed § 800.0 definitions. As such, the definitions of Regular workday, Nonregular workday, Service representative and Contract service were proposed to be added to § 800.0. The intent of this action was to move all of the definitions which appear in § 800.73 to § 800.0. Inadvertently, the definition of Holiday was not included in the proposed § 800.0 nor was the proposed deletion of the definitions relating to fees in § 800.73 provided for so as to eliminate duplication as was the case in transfers of definitions from other sections of the regulations. Further, by final rule dated June 28, 1984, at 49 FR 26560, FGIS revised the definitions of Regular and Nonregular workday and redesignated the definition section as § 800.73(d) from § 800.73(c).

For the above reasons, this final rule will include these revisions. Accordingly, the definitions of Regular and Nonregular workday will be changed from the proposal to reflect the revisions made at 49 FR 26560, the definition of Holiday will be added as § 800.0(b)(43) and § 800.73, Computation and payment of service fees; general fee information, will be amended by removing paragraph (d), Definitions relating to fees, and redesignating paragraphs (e), (f) and (g) as (d), (e) and (f), respectively. The final rule at 49 FR 26560 also revised the definition of Business day which appears in § 800.0. This final rule will incorporate this change and correctly reference the section of the regulations for Business day as § 800.0(b)(13) and not (b)(12).

Additionally, the footnote which appeared in the proposal for the definition of official personnel will be correctly cited as the footnote numbered 2 and not 1.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, and Grain.

PART 800—GENERAL REGULATIONS

Definitions

Accordingly, the regulations are amended as follows:

1. Section 800.0, Meaning of terms, is amended by revising paragraph (b) to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms shall have the meanings given for them below. The terms defined in the Act have been incorporated herein for easy reference.

(1) *Act.* The United States Grain Standards Act, as amended (39 Stat. 482–485, as amended 7 U.S.C. 71 *et seq.*).

(2) *Administrator.* The Administrator of the Federal Grain Inspection Service or his delegates.[1]

(3) *Agency.* A delegated State or an official agency designated by the Administrator, as appropriate.

(4) *Appeal inspection service.* An official review by a field office of the results of an original inspection service or a reinspection service.

(5) *Applicant.* An interested person who requests an official inspection or a Class X of Class Y weighing service.

(6) *Approved scale testing organization.* A State or local governmental agency, or person, approved by the Service to perform official equipment testing services with respect to weighing equipment.

(7) *Approved weigher.* A person employed by or at an approved weighing facility and approved by the Service to physically perform Class X of Class Y weighing services, and certify the results of Class Y weighing.

(8) *Approved weighing equipment.* Any weighing device or related equipment approved by the Service for the performance of Class X or Class Y weighing services.

(9) *Approved weighing facility.* An elevator that is approved by the Service to receive Class X or Class Y weighing services.

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[1] A definition taken from the U.S. Grain Standards Act, as amended, with certain modifications which do not change the meanings.

(10) *Assigned area of responsibility.* A geographical area assigned to an agency or to a field office for the performance of official inspection or Class X or Class Y weighing services.

(11) *Board appeal inspection service.* An official review by the Board of Appeals and Review of the results on an appeal inspection service.

(12) *Board of Appeals and Review.* The Board of Appeals and Review of the Service.

(13) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by an agency.

(14) *Cargo shipment.* Bulk or sacked grain that is loaded directly aboard waterborne carrier for shipment. Grain loaded aboard a land carrier for shipment aboard a waterborne carrier shall not be considered to be a cargo shipment.

(15) *Carrier.* A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk or sacked grain.

(16) *Chapter.* Chapter VIII of the Code of Federal Regulations (7 CFR, Chapter VIII).

(17) *Circuit.* A geographical area assigned to a field office.

(18) *Class X or Class Y weighing equipment testing.* Any operation or procedure performed by official personnel to determine the accuracy of the equipment used, or to be used, in the performance of Class X or Class Y weighing services.

(19) *Combined lot.* Grain loaded aboard, or being loaded aboard, or discharged from two or more carriers as one lot.

(20) *Compliance.* Conformance with all requirements and procedures established by statute, regulation, instruction, or directive so that managerial, administrative, and technical functions are accomplished effectively. Compliance functions include: evaluating alleged violations, initiating preliminary investigations; initiating implementation of all necessary corrective actions; conducting management and technical reviews; administering the designation of agencies and the delegation of State agencies to perform official functions; identifying and, where appropriate, waiving and monitoring conflicts of interest; licensing agency personnel; responding to audits of FGIS programs; and reviewing and, when appropriate, approving agency fee schedules.

(21) *Container.* A carrier, or a bin, other storage space, bag, box, or other receptacle for grain.

(22) *Contract grade.* The official grade, official factors, or official criteria specified in a contract for sale or confirmation of sale; or in the absence of a contract the official grade, official factors, or official criteria specified by the applicant for official service.

(23) *Contract service.* An inspection or weighing service performed under a contract between an applicant and the Service.

(24) *Contractor.* A person who enters into a contract with the Service for the performance of specified official inspection or official monitoring services.

(25) *Date of official inspection service or Class X or Class Y weighing services.* The day on which an official inspection, or a Class X or Class Y weighing service is completed. For certification purposes, a day shall be considered to end at midnight, local time.

(26) *Deceptive loading, handling, weighing, or sampling.* Any manner of loading, handling, weighing, or sampling that knowingly deceives or attempts to deceive official personnel.[1]

(27) *Delegated State.* A State agency delegated authority under the Act to provide official inspection service, or Class X or Class Y weighing services, or both, at one or more export port locations in the State.

(28) *Department of Agriculture and Department.* The United States Department of Agriculture (USDA).[1]

(29) *Designated agency.* A State or local governmental agency, or person, designated under the Act to provide either official inspection service, or Class X or Class Y weighing services, or both, at locations other than export port locations.

(30) *Door-probe sample.* A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain only in the vicinity of the tailgate of the truck or trailer, the door of the railroad boxcar, or in a similarly restricted opening or area in the carrier in which the grain is located or is loaded in hopper cars or barges in such a manner that a representative sample cannot be obtained.

(31) *Elevator.* Any warehouse, storage, or handling facility used primarily for receiving, storing, or shipping grain. In a facility that is used primarily for receiving, storing, and shipping grain, all parts of the main facility, as well as annexes, shall be considered to be part of the elevator. A warehouse, storage, and handling facility that is located adjacent to and is operated primarily as an adjunct of a grain processing facility shall not be considered to be an elevator.

(32) *Elevator areas and facilities.* All operational areas, including the automated data processing facilities that are an integral part of the inspection or weighing operations of an elevator; the loading and unloading docks; the headhouse and control rooms; all storage areas, including the bins, the interstices, the bin floor, and the basement; and all handling facilities, including the belts, other conveyors, distributor scales, spouting, mechanical samplers, and electronic controls.

(33) *Employed.* An individual is employed if the individual is actually employed or the employment is being withheld pending issuance of a license under the Act.

(34) *Exporter.* Any person who ships or causes to be shipped any bulk or sacked grain in a final carrier or container in which the grain is transported from the United States to any place outside the United States.

(35) *Export elevator.* Any grain elevator, warehouse, or other storage or handling facility in the United States (i) from which bulk or sacked export grain is loaded (A) aboard a carrier in which the grain is shipped from the United States to any place outside thereof, or (B) into a container for shipment to an export port location where the grain and the container will be loaded aboard a carrier in which it will be shipped from the United States to any place outside thereof; and (ii) which has been approved by the Service as a facility where Class X or Class Y weighing of grain may be obtained.[1]

(36) *Export grain.* Grain for shipment from the United States to any place outside thereof.[1]

(37) *Export port location.* A commonly recognized port of export in the United States or Canada, as determined by the Administrator, from which grain produced in the United States is shipped to any place outside the United States. Such locations include any coastal or border location or site in the United States which contains one or more export elevators, and is identified by the Service as an export port location.[1]

(38) *False, incorrect, and misleading.* Respectively false, incorrect, and misleading in any particular.[1]

(39) *Federal Register.* An official U.S. Government publication issued under the Federal Register Act of July 26, 1935, as amended (44 U.S.C. 301 *et seq.*).

(40) *Field Office.* An office of the Service designated to perform or supervise official inspection services and Class X and Class Y weighing services.

(41) *Grain.* Corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans,

triticale, mixed grain, and any other food grains, feed grains, and oilseeds for which standards are established under Section 4 of the Act.[1]

(42) *Handling.* Loading, unloading, elevating, storing, binning, mixing, blending, drying, aerating, screening, cleaning, washing, treating, or fumigating grain.

(43) *Holiday.* The legal public holidays specified in paragraph (a) of Section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive Order. Under Section 610 and Executive Order No. 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(44) *"IN" movement.* A movement of grain into an elevator, or into or through a city, town, port, or other location without a loss of identity.

(45) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(46) *Interested person.* Any person having a contract or other financial interest in grain as the owner, seller, purchaser, warehouseman, or carrier, or otherwise.[1]

(47) *Interstate or foreign commerce.* Commerce from any State to or through any other State, or to or through any foreign country.[1]

(48) *Licensee.* Any person licensed by the Service.

(49) *Loading.* Placing grain in or aboard any carrier or container.

(50) *"LOCAL" movement.* A bin run or other inhouse movement, or grain in bins, tanks, or similar containers which are not in transit or designed to transport grain.

(51) [Reserved.]

(52) *Lot.* A specific quantity of grain identified as such.[1]

(53) *Material error.* An error in the results of an official inspection service that exceeds the official tolerance, or any error in the results of a Class X or Class Y weighing service.

(54) *Material portion.* A portion of a lot which, in accordance with the inspection plans prescribed in the instructions, is considered inferior to the contract or declared grade.

(55) *Merchandiser.* Any person, other than a producer, who buys and sells grain and takes title to the grain. A person who operates as a broker or commission agent and does not take title to the grain shall not be considered to be a merchandiser.

(56) *Monitoring.* Observing or reviewing activities performed under or subject to the Act for adherence to the Act, the regulations, standards, and instructions and preparing reports thereon.

(57) *Nonregular workday.* Any Sunday or holiday.

(58) *Official agency.* Any State or local government agency, or any person, designated by the Administrator pursuant to subsection (f) of Section 7 of the Act for the conduct of official inspection (other than appeal inspection), or subsection (c) of Section 7A of the Act for the conduct of Class X or Class Y weighing (other than review of weighing).[1]

(59) *Official certificate.* Those certificates which show the results of official services performed under the Act as provided in the instructions, and any other official certificates which may be approved by the Service in accordance with the instructions.

(60) *Official criteria.* A quantified physical or chemical property of grain that is approved by the Service to determine the quality or condition of grain or other facts relating to grain.

(61) *Official factor.* A quantified physical or chemical property of grain as identified in the Official U.S. Standards for Grain.

(62) *Official forms.* License, authorizations, and approvals; official certificates; official pan tickets; official inspection or weighing logs; weight sheets; shipping bin weight loading logs; official equipment testing reports; official certificates of registration; and any other forms which may be issued or approved by the Service that show the name of the Service or an agency and a form number.

(63) *Official grade designation.* A numerical or sample grade designation, specified in the standards relating to kind, class, quality, and condition of grain provided for in the Act.[1]

(64) *Official inspection.* The determination (by original inspection, and when requested, reinspection and appeal inspection) and the certification, by official personnel, of the kind, class, quality, or condition of grain, under standards provided for in the Act; or the condition of vessels and other carriers or receptacles for the transportation of grain insofar as it may affect the quality of such grain; or other facts relating to grain under other criteria approved by the Administrator (the term "officially inspected" shall be construed accordingly).[1]

(65) *Official inspection equipment testing.* Any operation or procedure by official personnel to determine the accuracy of equipment used, or to be used, in the performance of official inspection services.

(66) *Official inspection technician.* Any official personnel who perform or supervise the performance of specified official inspection services and certify the results thereof, other than certifying the grade of the grain.

(67) *Official inspector.* Any official personnel who perform or supervise the performance of official inspection services and certify the results thereof including the grade of the grain.

(68) *Official marks.* The symbols or terms "official certificate," "official grade," "officially sampled," "officially inspected," "official inspection," "U.S. inspected," "loaded under continuous official inspection," "official weighing," "officially weighed," "official weight," "official supervision of weighing," "supervision of weighing," "officially supervised weight," "loaded under continiuous official weighing," "loaded under continuous official inspection and weighing," "officially tested," "Class X weight," "official Class X weighing," "Class X weighing," "official Class Y weighing," "Class Y weighing," and "Class Y weight."

(69) *Official personnel.* Persons licensed or otherwise authorized by the Administrator pursuant to Section 8 of the Act to perform all or specified functions involved in official inspection, Class X or Class Y weighing, or in the supervision of official inspection, or Class X or Class Y weighing.[2]

(70) *Official sample.* A sample obtained from a lot of grain by, and submitted for official inspection by, official personnel (the term "official sampling" shall be construed accordingly).[1]

(71) *Official sampler.* Any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(72) *Official stowage examination.* Any examining operation or procedure performed by official personnel to determine the suitability of a carrier or container to receive or store grain.

(73) *Official tolerance.* A statistical allowance prescribed by the Service, on the basis of expected variation, for use in performing or supervising the performance of official inspection services, official equipment testing services, and, when determined under an established loading plan, reinspection services and appeal inspection services.

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[2] This definition is the same as the definition for "Official inspection personnel" found at Section 3 of the Act. Warehouseman's samplers are not considered official personnel but they are licensed under authority of Section 11 of the Act.

(74) *Official U.S. Standards for Grain.* The Official U.S. Standards for Grain established under the Act describe the physical and biological condition of grain at the time of inspection.

(75) *Official weigher.* Any official personnel who perform or supervise the performance of Class X or Class Y weighing services and certify the results thereof, including the weight of the grain.

(76) *Official weighing.* (Referred to as Class X weighing.) The determination and certification by official personnel of the quantity of a lot of grain under standards provided for in the Act, based on the actual performance of weighing or the physical supervision thereof, including the physical inspection and testing for accuracy of the weights and scales and the physical inspection of the premises at which weighing is performed and the monitoring of the discharge of grain into the elevator or conveyance. (The terms "officially weigh" and "officially weighed" shall be construed accordingly.)[1]

(77) *Official weighing technician.* Any personnel who perform or supervise specified weighing services and certify the results thereof other than certifying the weight of grain.

(78) *Official weight sample.* Sacks of grain obtained at random by, or under the complete supervision of, official personnel from a lot of sacked grain for the purpose of computing the weight of the grain in the lot.

(79) *Original inspection.* An initial official inspection of grain.

(80) *"Out" movement.* A movement of grain out of an elevator or out of a city, town, port, or other location.

(81) *Person.* Any individual, partnership, corporation, association, or other business entity.[1]

(82) *Quantity.* Pounds or kilograms, tons or metric tons, or bushels.

(83) *Reasonably continuous operation.* A loading or unloading operation in one specific location which does not include inactive intervals in excess of 889 consecutive hours.

(84) *Regular workday.* Any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday that is not a holiday.

(85) *Regulations.* The regulations in Parts 800, 801, and 802 of this chapter.

(86) *Reinspection service.* An official review of the results of an original inspection service by the agency or field office that performed the original inspection service.

(87) *Respondent.* The party proceeded against.

(88) *Review of weighing service.* An official review of the results of a Class X or Class Y weighing service.

(89) *Secretary.* The Secretary of Agriculture of the United States or his delegates.[1]

(90) *Service.* The Federal Grain Inspection Service of the United States Department of Agriculture (FGIS).[1]

(91) *Service representative.* An authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

(92) *Shallow-probe sample.* A sample taken with a probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain at the prescribed locations, but only at an angle greater or more obtuse from the vertical than the angle prescribed in the instructions.

(93) *Ship.* The verb "ship" with respect to grain means transfer physical possession of the grain to another person for the purpose of transportation by any means of conveyance, or transport one's own grain by any means of conveyance.[1]

(94) *Shiplot grain.* Grain loaded aboard, or being loaded aboard, or discharged from an ocean-going vessel including a barge, lake vessel, or other vessel of similar capacity.

(95) *Shipper's Export Declaration.* The Shipper's Export Declaration certificate filed with the U.S. Department of Commerce, Bureau of Census.

(96) *Specified service point.* A city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and within which the agency or one or more of its inspectors or weighers is located.

(97) *Standardization.* The act, process, or result of standardizing methodology and measurement of quality and quantity. Standardization functions include: compiling and evaluating data to develop and to update grading and weighing standards, developing or evaluating new methodology for determining grain quality and quantity, providing reference standards for official grading methods, and reviewing official results through the use of a quality control and weight monitoring program.

(98) *State.* Any one of the States (including Puerto Rico) or territories or possessions of the United States (including the District of Columbia).[1]

(99) *Submitted sample.* A sample submitted by or for an interested person for official inspection, other than an official sample.[1]

(100) *Supervision.* The effective guidance of agencies, official personnel and others who perform activities under the Act, so as to reasonably assure the integrity and accuracy of the program activities. Supervision includes overseeing, directing, and coordinating the performance of activities under the Act, reviewing the performance of these activities; and effecting appropriate action. FGIS supervisory personnel supervise agencies, official personnel and others who perform activities under the Act. Agency supervisors are responsible for the direct supervision of their own official personnel and employees. FGIS provides oversight, guidance, and assistance to agencies as they carry out their responsibilities.

(101) *Supervision of weighing* (Referred to as Class Y weighing.) Such supervision by official personnel of the grain-weighing process as is determined by the Administrator to be adequate to reasonably assure the integrity and accuracy of the weighing and of certificates which set forth the weight of the grain and such physical inspection by such personnel of the premises at which the grain weighing is performed as will reasonably assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance.[1]

(102) *United States.* The States (including Puerto Rico) and the territories and possessions of the United States (including the District of Columbia).[1]

(103) *Use of official inspection service.* The use of the services provided under a delegation or designation or provided by the Service.

(104) *Uniform in quality.* A lot of grain in which there are no material portions.

(105) *Warehouseman's sampler.* An elevator employee licensed by the Service to obtain samples of grain for a warehouseman's sample-lot inspection service. Warehouseman's samplers are not considered official personnel, but they are licensed under authority of Section 11 of the Act.

§ 800.16 [Removed]

2. Section 800.16, Determinations; export elevator and export port location is removed.

§ 800.25 [Amended]

3. Section 800.25, Elevator and merchandising records required to be kept, is amended by removing paragraph (a) and redesignating paragraphs (b) as (a), (c) as (b), (d) as (c), (e) as (d), (f) as (e), and (g) as (f).

§ 800.56 [Removed]

4. Section 800.56, Official certificates, official forms, and official marks, is removed.

§ 800.73 [Amended]

5. Section 800.73, Computation and payment of service fees; general fee information, is amended by removing paragraph (d) and redesignating paragraphs (e) as (d), (f) as (e), and (g) as (f).

6. Section 800.84, Inspection of grain in land carriers, containers, and barges in single lots, is amended by removing paragraph (f)(4); by changing the words "(f)(1) through (5)" in paragraph (f)(5) to "(f)(1) through (4)"; and by redesignating paragraph (f)(5) as (f)(4) to read as follows:

§ 800.84 Inspection of grain in land carriers, containers, and barges in single lots.

* * * * *

(f) * * *

(4) *Restriction.* No "partial inspection—heavily loaded" inspection certificate shall be issued for sacked grain or for any inspection other than the inspections described in paragraphs (f)(1) through (4) of this section and § 800.85(h)(2).

* * * * *

§ 800.171 [Amended]

7. Section 800.171, Who may be licensed or authorized, is amended by removing paragraph (e).

(Secs. 8, 9, 10, 14, 18, Pub. L. 94–582, 90 Stat. 2870, 2875, 2877, 2882, 2884; (7 U.S.C. 79, 79a, 79b, 84, 87a, 87e) and Sec. 155, Pub. L. 97–35, 95 Stat. 371; (7 U.S.C. 79, 79a))

Dated: September 5, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–24225 Filed 9–13–84; 8:45 am]

BILLING CODE 3410–EM–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 481]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh Califonria-Arizona lemons that may be shipped to market at 235,200 cartons during the period September 16–22, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 16, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on September 11, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.781 is added as follows:

§ 910.781 Lemon regulation 481.

The quantity of lemons grown in California and Arizona which may be handled during the period September 16, 1984, through September 22, 1984, is established at 235,200 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: September 12, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–24554 Filed 9–13–84; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1033

[Docket No. AO–166–A52]

Milk in the Ohio Valley Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Ohio Valley milk marketing order. The amendments: (1) Eliminate minus location adjustments at plants located outside the marketing area and generally to the south and east of such area; (2) impose a charge on handler payments that are overdue; (3) reduce the qualification requirements for pool plants; (4) adopt less-restrictive diversion provisions; (5) revise the method of payment for bulk fluid milk products received from a pool plant operated by a cooperative association; and (6) revise certain handler reporting requirements.

The order changes are based on evidence presented at a public hearing held at Columbus, Ohio, on October 12–13, 1983. They are needed to reflect current marketing conditions and to promote marketing efficiencies. Cooperative associations representing more than two-thirds of the dairy farmers supplying milk for the market during June 1984 have approved issuance of the order, as amended.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued September 26, 1983; published September 29, 1983 (48 FR 44565).

Suspension Order: Issued December 6, 1983; published December 12, 1983 (48 FR 55275).

Suspension Order: Issued December 12, 1983; published December 16, 1983 (48 FR 55829).

Suspension Order: Issued January 12, 1984; published January 17, 1984 (49 FR 1980).

Termination Order: Issued February 24, 1984; published February 29, 1984 (49 FR 7353).

Suspension Order: Issued March 16, 1984; published March 22, 1984 (49 FR 10656).

Partial Recommended Decision: Issued July 11, 1984; published July 16, 1984 (49 FR 28721).

Partial Final Decision: Issued August 30, 1984; published September 6, 1984 (49 FR 35101).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Ohio Valley marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective upon publication of this document in the **Federal Register.** Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The partial recommended decision of the Deputy Administrator, Marketing Program Operations, was issued July 11, 1984 (49 FR 28721), and the partial final decision of the Assistant Secretary containing all amendment provisions of this order was issued August 30, 1984 (49 FR 35101). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective upon publication of this document in the **Federal Register,** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by more than two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1033

Milk marketing order, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Ohio Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

§ 1033.11 [Amended]

1. In § 1033.11, the word "transferred" is changed to "delivered".

2. Section 1033.12 is revised to read as follows:

§ 1033.12 Pool plant.

"Pool plant" means a plant described in paragraph (a), (b), or (c) of this section that is not a producer-handler plant or a plant that is subject to another Federal order as set forth in § 1033.56.

(a) A distributing plant with:

(1) Route disposition in the marketing area during each month of not less than 15 percent of its total route disposition; and

(2) Route disposition of not less than 40 percent during each of the months of September through February, and 35 percent during each of the months of March through August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a) (1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products priced as Class I milk under this or any other Federal order;

(ii) A distributing plant (except a plant that met the route disposition percentage on a unit basis under paragraph (a)(2)(iii) of this section) that does not meet the minimum route disposition percentage specified in paragraph (a)(2) of this section to qualify for pool status in the current month shall be deemed to have met such qualifying percentage in such month, if the plant met the applicable percentage in each of the three immediately preceding months; and

(iii) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total route disposition percentage specified in paragraph (a)(2) of this section if such handler requests that the plants be so considered and each plant in the unit meets the in-area route disposition percentage specified in paragraph (a)(1) of this section.

(b) A supply plant from which during the month 35 percent or more of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1033.16(c) is delivered by transfer or diversion as fluid milk products, except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) A supply plant that does not meet the minimum delivery requirement specified in paragraph (b) of this section to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months; and

(3) A supply plant that qualified as a pool plant in each of the immediately preceding months of September through February on the basis of its deliveries to pool distributing plants shall be a pool plant for each of the following months of March through August, unless the plant operator files a written request with the market administrator asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

(c) A plant operated by a cooperative association if, during the month, 50 percent or more of the producer milk of members of the association is delivered to a pool distributing plant(s) either directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 50-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the similar provisions of another Federal order applicable to a distributing plant or a supply plant.

(3) Section 1033.14 is revised to read as follows:

§ 1033.14 Producer.

(a) Except as provided in paragraph (b) of this section, "Producer" means any person who produces milk approved by a duly constituted health authority for fluid consumption, whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received at a pool plant from a handler described in § 1033.16(c); or

(3) Diverted from a pool plant in accordance with § 1033.15.

(b) "Producer" shall not include:

(1) Any person defined as a producer-handler under a Federal milk order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such dairy farmer which is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1033.46(a)(6)(ii) and the corresponding step of § 1033.46(b); or

(3) Any person with respect to milk produced by such dairy farmer which is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

4. Section 1033.15 is revised to read as follows:

§ 1033.15 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1033.16(c) under the conditions set forth therein;

(c) Received by a handler described in § 1033.16(c) from producers in excess of the quantity delivery to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1033.16(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) In any month of September through February, the operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent of the producer milk physically received at or diverted from such pool plant during the month;

(3) In any month of September through February, a cooperative association may divert an aggregate quantity of milk not exceeding 50 percent of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

(4) Any milk diverted in excess of the limit set forth in paragraph (e) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant were it is received.

5. In § 1033.16, paragraphs (b) and (c) are revised to read as follows:

§ 1033.16 Handler.

* * * * *

(b) A cooperative association with respect to the producer milk which is diverted to nonpool plants for the account of such association pursuant to § 1033.15, excluding producer milk diverted by the association as the operator of a pool plant pursuant to paragraph (a) of this section;

(c) A cooperative association with respect to producer milk which is delivered for its account from the farm to a pool plant in a tank truck owned and operated by, or under contract to such cooperative association. Milk delivered pursuant to this paragraph shall not include producer milk diverted to another pool plant by the association as the operator of a pool plant pursuant to paragraph (a) of this section. Milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by such cooperative association at the location of the pool plant to which such milk was delivered;

* * * * *

§ 1033.30 [Amended]

6. In § 1033.30(b)(2), the reference "§ 1033.15(a)(2)" is changed to "§ 1033.15(b)".

7. In § 1033.31, paragraphs (c), (d), and (e) are revised and two new paragraphs (f) and (g) are added to read as follows:

§ 1033.31 Other reports.

* * * * *

(c) On or before the 26th day of the month, each handler who receives milk from a producer and does not make payment to such producer shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The identity of each such producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(d) On or before the 26th day of the month, each handler who receives milk from a producer and makes payment to such producer, shall report the following information to the market administrator with respect to the receipts of milk by such handler during the first 15 days of the month:

(1) The total pounds of producer milk received from such producers;

(2) The total deductions authorized by such producers to be made from the partial payments for such milk;

(3) The total pounds of milk received from a handler described in § 1033.16(c); and

(4) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(e) On or before the 6th day after the end of the month, each handler who receives milk from a producer and does not make payment to such producer shall report to the market administrator the following information with respect to the receipts of milk by such handler during such month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1033.16(c); and

(5) The total pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool plant within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred or diverted from each such plant.

(g) In addition to the reports required pursuant to paragraphs (a) through (f) of this section and §§ 1033.30 and 1033.32, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

8. A new § 1033.32 is added to read as follows:

§ 1033.32 Payroll reports.

(a) On or before the 20th day after the end of the month, each handler who elects to pay producers pursuant to § 1033.72(d) shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer;

(5) The net amount of payment to the producer; and

(6) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1033.57(a) shall report to the market administrator, in the detail and on forms prescribed by the market administrator, his payroll for such month for dairy farmers from whom he received bottling grade milk. Such payroll shall show for each dairy farmer the total pounds of milk received from him, the average butterfat content thereof, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat content thereof, and the rate and net amount of payment, together with the amount and nature of any deductions involved.

9. In § 1033.45, a new paragraph (d) is added to read as follows:

§ 1033.45 Computation of skim milk and butterfat in each class.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.43(a) and the value thereof at class prices (applicable at the location of the transferee-plant) shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60.

10. In § 1033.53, the section title is changed, paragraph (a) is revised, and a new paragraph (c) is added to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers that is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1033.51(a) shall be adjusted on the basis of where the plant receiving the milk is located, as follows:

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Northwestern zone	Minus 5 cents.
Central zone	No adjustment.
Southeastern zone	Plus 5 cents.

(2) At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section,

the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, no minus location adjustment shall apply at any plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia or Virginia; and

(4) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * *

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section.

§ 1033.57 [Amended]

11. In the introductory text and in paragraph (a)(1)(ii) of § 1033.57, the references to "1033.31(d)" should read "1033.32(b)" in both places.

12. In § 1033.60, paragraph (a) is revised to read as follows:

§ 1033.60 Computation of the net pool obligation of each handler.

* * * * *

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1033.46(c) and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.45(d) in each class as determined pursuant to § 1033.43(a) by the applicable class price and add the resulting amounts;

* * * * *

13. Section 1033.71 is revised to read as follows:

§ 1033.71 Payments to the market administrator.

(a) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 26th day of each month an amount determined by multiplying the hundredweight of producer milk and bulk fluid milk products from a pool plant operated by a cooperative association received by such handler during the first 15 days of the month by the basic formula price for the preceding month less proper deductions and charges authorized in writing by such producers.

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60(a) adjusted by the butterfat differential specified in § 1033.73 plus the amounts computed pursuant to § 1033.60 (b) through (g), less:

(1) The amount obtained from multiplying the weighted average price applicable at the location of the plants from which the other source milk is received (not to be less than the Class III price) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

(2) Partial payments made pursuant to paragraph (a) of this section for such month; and

(3) Proper deductions and charges authorized in writing by producers from whom the handler received milk, except that the total deductions and charges made under this section for the month for each producer shall not be greater than the total value of the milk received from such producer during the month.

(c) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) and (b) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator;

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any day that is a national holiday, payments shall be considered to have been received by the due date if they are received not later than the next day on which the market administrator's office is open for public business; and

(3) Payments due the market administrator from a cooperative association as a handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1033.72.

14. In § 1033.72, the section title is changed and the section is revised to read as follows:

§ 1033.72 Payment to producers and to cooperative associations.

(a) On or before the 28th day of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the first 15 days of the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(a) at a rate per hundredweight equal to the basic formula price for the preceding month, less the deductions authorized in writing by producers and charges made by handlers with respect to such milk.

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) at the uniform price per hundredweight as adjusted pursuant to §§ 1033.73 and 1033.74 less:

(1) Partial payments made pursuant to paragraph (a) of this section with respect to such milk;

(2) Deductions for marketing services pursuant to § 1033.75; and

(3) Other deductions authorized in writing by producers and made by handlers with respect to such milk.

(c) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In lieu of making payments to individual producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to the individual producers pursuant to this paragraph, the handler shall furnish the following information to each producer:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if it is other than the applicable minimum rate;

(4) The amount and nature of any deductions subtracted from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(e) The following conditions shall apply with respect to the payments by the market administrator prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1033.71(c)(2) of paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to producers or cooperative associations, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to § 1033.71, he shall reduce uniformly per hundredweight the payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete the payments to producers on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

(g) If the unobligated balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, except those payments due producers as described in paragraph (f) of this section, the market administrator shall reduce uniformly per hundredweight the payments to producers and shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the funds become available.

15. Section 1033.76 is revised to read as follows:

§ 1033.76 Expense of administration.

As a pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own farm production and milk received from a handler described in § 1033.16(c) but excluding bulk fluid milk products delivered from a pool plant operated by a cooperative association to another pool plant pursuant to § 1033.45(d));

(b) Receipts of bulk fluid milk products from a pool plant operated by a cooperative association pursuant to § 1033.45(d);

(c) Receipts of other source milk allocated to Class I pursuant to § 1033.46(a) (6), (7), and (11) and the corresponding steps of § 1033.46(b), except such other source milk on which no handler obligation applies pursuant to § 1033.60(g); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1033.57(b)(2)(ii).

16. A new section 1033.78 is added to read as follows:

§ 1033.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1033.57, 1033.71, 1033.72(d), 1033.76, 1033.77, or 1033.78 shall be increased one (1) percent beginning on the first day after the due date, and on the same day of each succeeding month until such obligation is paid, subject to the following conditions:

(a) Charges on overdue accounts collected pursuant to this section shall be deposited into the administrative assessment fund maintained by the market administrator;

(b) Amounts payable pursuant to this section shall be computed by the market administrator monthly on the unpaid balance (including any unpaid charges previously assessed pursuant to this section) remaining on each overdue obligation on such date; and

(c) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: September 14, 1984.

Signed at Washington, D.C., on: September 10, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–24352 Filed 9–13–84; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 84–076]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the "Inspection and Handling of Livestock for Exportation" regulations by adding Minneapolis/St. Paul, Minnesota (airport only), to the list of ports designated as ports of embarkation and by adding the American Livestock Export Company as the export inspection facility for that port. This action is necessary because it has been determined that the export facility of the American Livestock Export Company for the port at Minneapolis/St. Paul meets the requirements of the regulations for inclusion in the list of export inspection facilities.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. George Winegar, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8383.

SUPPLEMENTARY INFORMATION:

Background

The "Inspection and Handling of Livestock for Exportation" regulations in 9 CFR Part 91 regulate the exportation of animals from the United States. On June 11, 1984, a document was published in the **Federal Register** (49 FR 24013–24014) which amended § 91.14(a) of the regulations by adding Minneapolis-St. Paul (airport only) to the list of ports designated as ports of embarkation and by adding the "American Livestock Export Company, 25788 Northfield Blvd., Hampton, MN 55031, (612) 831-3873" as the export inspection facility for that port.

The interim rule was made effective on June 11, 1984. Comments were solicited for 60 days following publication. No comments were received. The factual situation which was set forth in the document of June 11, 1984, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that, compared with the total number of animals exported annually from the United States, less than one percent of the total number of animals will be exported annually through the port at Minneapolis/St. Paul, Minnesota.

Under these circumstances, Mr. Bert W. Hawkins, Administrator, Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, the interim rule which was published at 49 FR 24013–24014 on June 11, 1984, is adopted as a final rule.

Authority: Secs. 4, 5, 23 Stat. 32, as amended; sec. 11, 58 Stat. 734, as amended; sec. 1, 32 Stat. 791, as amended; sec. 10, 26 Stat. 417; secs. 1 and 2, 26 Stat. 833, as amended; secs. 12, 13, 14, 16, 34 Stat. 1263, as amended; secs. 1, 3(b), 12(a), 12(h), 81 Stat. 584, 588, 592; secs. 3 and 11, 76 Stat. 130, 132; sec. 1109, 72 Stat. 799, as amended; 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 10th day of September 1984.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-24358 Filed 9-13-84; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 84-078]

Change in Disease Status of France Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of pork and pork products by removing France from the list of countries regulated because of African swine fever (ASF). It has been determined that ASF no longer exists in France. This rule will remove certain restrictions on the importation of pork and pork products from France because of ASF. However, France is not included in the lists of countries declared to be free of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. Therefore, the importation of pork and pork products into the United States from France will remain subject to restrictions imposed because of these diseases.

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including African swine fever (ASF).

A document published in the Federal Register on June 19, 1984 (49 FR 25004–25005) proposed to amend § 94.8 of the regulations by removing France from the list of countries in which ASF exists or is reasonably believed to exist. Comments were solicited for 60 days after publication. Only one comment was received. The commenter supported the proposed change. The rationale set forth in the proposal still provides a basis for the amendment. Therefore, the regulations are amended as proposed.

The effect of this action is to remove certain restrictions on the importation of pork and pork products from France because of ASF. However, pork and pork products from France will remain subject to the provisions in Part 94 because of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. These provisions, among other things, require that pork and pork products from France be heat treated or cured as a condition for importation.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that insignificant quantities of pork and pork products will be imported into the United States from France as a result of this action.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

§ 94.8 [Amended]

Accordingly, 9 CFR Part 94 is amended by removing "France" from the introductory material in § 94.8.

Authority: Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, 11; 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 10th day of September 1984.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-24353 Filed 9-13-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 385 and 399

[Docket No. 40815-4115]

Exports of Certain Chemicals to Iran and Iraq; Validated Export License Required

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule expands foreign policy controls on the export from the United States to Iran and Iraq of certain chemicals used in producing chemical weapons. The additional chemicals are:

dimethylamine
dimethylamine hydrochloride
ethylene chlorohydrin (chloroethanol)

The Department of Commerce, after consultation with the Department of State, has determined that the controls are necessary to further significantly the foreign policy of the United States and that, notwithstanding any availability of these commodities from foreign sources, adequate evidence is available that absence of controls would prove detrimental to such interests. This rule furthers the U.S. policy of opposing prohibited use of chemical weapons and maintaining neutrality in the Iran/Iraq war, and promoting a mediated end of that war. A validated license now is required for all exports from the United States of the chemicals listed above to Iran and Iraq.

This rule expands the foreign policy controls on the export of certain chemicals to Iran and Iraq effective March 30, 1984 (49 FR 13135–13136, April 3, 1984). As of September 14, 1984, 12:00 noon EDT, a validated license is required for all exports from the United States of the chemicals listed above to Iran and Iraq.

DATES: This rule is effective September 14, 1984. Comments must be received by November 13, 1984.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Services Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Exporter Services Division, (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation to Comment

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this regulation involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring a notice of proposed rulemaking, an opportunity for public participation and a delay in effective date are inapplicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in developing final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. Applicants for the validated export license required by this rule will use Form ITA-622P. This form has been approved by the Office of Management and Budget under control number 0625-0001.

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. Because this rule is being issued with respect to a foreign affairs function, it is not subject to Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

The period for submission of comments will close November 13, 1984. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. The Department will not accept public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Such comments and materials will be returned to the person submitting the comments and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the *Code of Federal Regulations.* Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects in 15 CFR Parts 385 and 399

Communist countries, Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

§ 385.4 [Amended]

1. Paragraph (e) of § 385.4 is amended by revising the first sentence to read as follows:

(e) * * * In support of U.S. foreign policy, and particularly U.S. policies of opposing prohibited use of chemical weapons and maintaining neutrality in the Iran/Iraq war and of promoting a mediated end to that war, an individual validated license is required to export from the United States postassium fluoride, dimethyl methylphosphonate, methyl phosphonyl difluoride, thiodiglycol, phosphorus oxychloride, dimethylamine, dimethylamine hydrochloride, and ethylene chlorohydrin (chloroethanol) to Iran and Iraq.

* * * * *

§ 399.11 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials is amended by revising the last sentence of the *Validated License Required* paragraph of entry 5799D to read "A validated license also is required for export of dimethyl methylphosphonate, methyl phosphonyl difluoride, and dimethylamine hydrochloride to Iran and Iraq."; and by revising the *Reason for Control* paragraph to read "National security; foreign policy. Foreign policy controls apply only to exports of dimethyl methylphosphonate, methyl phosphonyl difluoride, and dimethylamine hydrochloride to Iran and Iraq."

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials is amended by revising the last sentence of the *Validated License Required* paragraph of entry 6799G to read "A validated license also is required for exports of potassium fluoride, phosphorus oxychloride, thiodiglycol, ethylene chlorohydrin (chloroethanol) and dimethylamine to Iran and Iraq."

§ 399.2 [Amended]

4. Interpretation 24, Chemicals, of Supplement No. 1 to § 399.2 is amended by revising the entry "Dimethyl amine" (Organic Chemicals) to read "Dimethylamine [1]" with a footnote reading" [1] A validated license is required for export of dimethylamine to Iran and Iraq."

Authority: Sections 203, 206, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated: September 11, 1984.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84–24308 Filed 9–13–84; 8:45 am]

BILLING CODE 3510–DT–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–14132; File No. S7–3–84]

Exemption for Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a rule that provides an exemption from the custody requirements of the Investment Company Act of 1940 so that U.S. registered management investment companies may place and maintain their foreign securities, cash and cash equivalents with eligible foreign custodians under certain conditions. The rule also permits Canadian management investment companies that are registered under the Act pursuant to the conditions of rule 7d–1 (17 CFR 270.7d–1) to maintain their foreign securities, cash and cash equivalents directly with overseas branches of qualified U.S. banks under certain conditions. The rule eliminates the need to apply for an exemptive order of the Commission with respect to most, if not all, foreign custody arrangements involving: (i) U.S. investment companies and foreign banking institutions, trust companies, securities depositories and clearing agencies; and (ii) Canadian investment companies and overseas branches of qualified U.S. banks.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth K. Norsworthy, Chief, or Brion R. Thompson, Esq., Office of Regulatory Policy, (202) 272–2048, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

After the effective date, questions should be directed to the Office of Chief Counsel, (202) 272–2030, Division of Investment Management, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 17f–5 [17 CFR 270.17f–5] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] ("Act") which provides an exemption from the custody requirements of section 17(f) of the Act [15 U.S.C. 80a–17(f)] to enable U.S. and Canadian registered management investment companies to place and maintain foreign securities (as defined in the rule) with certain foreign custodians provided that the directors make certain determinations with respect to such foreign custodial arrangements. Canadian investment companies relying on the rule may place and maintain their foreign securities with overseas branches of qualified U.S. banks (as defined in the rule). Conforming amendments to rules 7d–1 and 17f–4 under the Act are adopted to reflect the adoption of rule 17f–5.

Without exemptive relief from section 17(f), a U.S. registered management investment company may maintain its assets outside the United States only if the assets are in the custody of an overseas branch of a U.S. bank and a Canadian registered management investment company may only maintain its assets within the United States. A U.S. investment company intending to purchase or sell foreign securities in a foreign country or region that does not have an overseas branch of a U.S. bank offering custodial services must apply for exemptive relief or incur the inconvenience and expense associated with moving the securities away for their primary market or forego effecting transactions in that particular securities market. Canadian investment companies must apply for exemptive relief to permit them to maintain their assets anywhere outside the United States.

Rule 17f–5 was proposed to permit U.S. and Canadian investment companies to make foreign custody arrangements under appropriate conditions. The rule was originally proposed in Investment Company Act Release No. 12354 (April 5, 1982) [47 FR 16341]. Based upon comments received on that proposal, a revised version of the rule was published for public comment in Investment Company Act Release No. 13724 (January 17, 1984) [49 FR 2904]. Both releases discuss in detail the Commission's reasons for proposing an exemptive rule in this area and for proposing certain conditions to the exemption. This release focuses upon commentator reaction to the revised proposal and the changes that have been made in the revised proposal to reflect those comments.

At the present time, several investment companies have made foreign custody arrangements in reliance upon exemptive orders granted to The Chase Manhattan Bank ("Chase") and The Bank of New York ("BONY"). These banks requested and were granted exemptive relief from section 17(f) by Commission order to act as intermediaries for their investment company customers in establishing and maintaining foreign custody arrangements for those customers under certain conditions.[1] After rule 17f–5 was initially proposed, the Division of Investment Management took the position that it would not recommend enforcement action to the Commission if investment companies were to establish foreign custody arrangement that conformed to the conditions contained in the Chase order and in the rule proposal, provided of course that those arrangements were modified if necessary to conform to the conditions of the final rule when adopted.[2]

The Commission today is issuing two notices advising Chase and BONY that it intends to modify certain conditions of their exemptive orders to conform to conditions of the final rule.[3] Any investment companies that may have made foreign custody arrangements in reliance on the Chase or BONY orders or the staff's no-action position will be given until March 1, 1985 to conform those arrangements to the orders as modified or to the final rule adopted today. While investment companies relying on the Chase or BONY orders or on the staff's no-action position will have until March 1, 1985 to modify existing foreign custody arrangements where necessary, any *new* foreign custody arrangements made by those companies after the effective date of the rule must comply with the conditions of the rule or of the orders as the Commission intends to modify them.

I. Discussion

In response to the revised rule proposal, the Commission received fifteen comment letters.[4] With respect to the scope of the rule, the commentators addressed the type of foreign custody arrangements which would be appropriate for Canadian investment companies, the type of securities that investment companies may keep with foreign custodians and the type of foreign custodians that should be considered eligible custodians. The commentators also addressed whether investment company directors should be permitted to delegate their responsibility for making foreign custody arrangements to intermediaries and if so, the type of entity which should be considered qualified to act as intermediary.

As discussed in more detail below, the final rule, as in the revised proposal, allows Canadian investment companies to maintain their assets in overseas branches of qualified U.S. banks and defines foreign securities to include securities issued and sold primarily outside the United States by a foreign or U.S. issuer. The final rule differs, however, from the revised proposal by reducing the minimum shareholders' equity required of foreign banking institutions and trust companies from $400 to $200 million. The final rule also reduces the minimum shareholders' equity required of foreign subsidiaries of U.S. banks and bank-holding companies from $200 to $100 million, applying that standard to the subsidiary rather than its parent.[5]

Like the revised proposal, the final rule does not permit investment company directors to delegate the responsibility of authorizing the company's foreign custody arrangements to U.S. intermediary. The text of the rule, however, has been redrafted to make clear that the Commission does not intend to discourage an investment company from using an expert third party, such as its U.S. custodian, to assist it in selecting the country where the assets will be located or the foreign custodian which will have custody of the assets. Nor does the Commission intend to deter an investment company from relying on an intermediary to negotiate a contract with an eligible foreign custodian or to oversee the performance of that custodian. However, the rule makes clear that the directors must have an opportunity to approve the country, the foreign custodian and the contract negotiated with the custodian before a foreign custody arrangement is implemented.[6] Further, the rule makes clear that it is the directors' responsibility to independently evaluate the company's existing foreign custody arrangements even though the company may use an intermediary to assist in that process.[7]

As discussed below, the instruction in the revised proposal relating to cash and cash equivalents and certain instructions relating to the custody agreement are moved directly to the text of the final rule to become express conditions.[8] The instruction relating to physical segregation of assets has been deleted. The remaining instructions have been redesignated as "notes" to the final rule and an additional paragraph has been added concerning the selection of foreign custodians. In view of the trend towards evidencing ownership of securities by book-entry, the paragraph relating to physical segregation of assets has been deleted.

A. Scope of the Rule

1. Canadian companies

The final rule allows Canadian investment companies that are registered under the Act pursuant to the conditions of rule 7d–1 to maintain foreign securities, cash and cash equivalents with overseas branches of qualified U.S. banks. A qualified U.S. bank is defined to be a banking institution or trust company that meets the definition of bank contained in section 2(a)(5) of the Act and that has an aggregate capital, surplus and undivided profits of at least $500,000.

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[1] *See* Investment Company Act Release No. 12053 (November 20, 1981), granting the application of Chase Manhattan Bank, N.A., File No. 812–4475, and Investment Company Act Release No. 12658 (September 14, 1982), granting the application of the Bank of New York, 812–5109.

[2] *See* response of the Division of Investment Management to request of the Mitsubishi Bank of California (Pub. avail. Sept. 1, 1982); *see also* response of the Division of Investment Management to request of State Street Bank and Trust Company (pub. avail. Jan. 16, 1984).

[3] *See* Investment Company Act Release Nos. 14133 and 14134 (September 7, 1984). *See also infra* text at notes 5–8 and 11.

[4] One commentator requested that the Commission hold an evidentiary hearing on the revised proposal. The Commission is not required by the applicable provisions of the Act or of the Adminstrative Procedure Act to grant this request. *See, e.g., Washington State Farm Bureau* v. *Marshall*, 625 F. 2d 296, 307 (9th Cir. 1980) and *California Citizens Board Ass'n v. U.S.*, 375 F.2d 43, 50 (9th Cir. 1967), *cert. denied*, 389 U.S. 844 (1967). The Commission has decided not to exercise its discretionary authority to hold a hearing, because, in its opinion, staff research and two rounds of comment letters provide a sufficient factual basis for the rule adoption.

[5] *Cf.* Chase and BONY orders which do not contain any minimum size requirements for foreign custodians. As of this date, the Commission is issuing notices of its intent to amend those orders to require that investment companies relying on these orders must use foreign custodians that meet these eligibility requirements.

[6] *Cf.* Chase and BONY orders that condition exemptive relief, *inter alia*, upon the foreign custody agreement being subject to the investment company's approval. These orders do not explicitly state that such approval must be obtained before the foreign custody agreement is implemented. As of this date, the Commission is issuing notices of its intent to amend the Chase and BONY orders to, *inter alia*, make clear that any investment company relying upon these orders must have a majority of its directors approve any foreign custody arrangement made by Chase or BONY before that arrangement is implemented.

[7] *Cf.* Chase and BONY applications that state only that under rule 17f–4 [17 CFR 270.17f–4], a majority of directors of the investment company are required to review the custody agreement with Chase and with any foreign securities depository at least annually. As of this date, the Commission is issuing notices of its intent to amend the Chase and BONY orders to require the directors to establish a system to monitor all of their company's existing foreign custody arrangements and to review those arrangements at least annually to determine whether their continuance is in the best interest of the company and its shareholders.

[8] *Cf.* Chase and BONY orders which do not address the amount of cash and cash equivalents that an investment company may maintain in a foreign bank or foreign securities depository. As of this date, the Commission is issuing notices of its intent to amend those orders to require that an investment company may maintain cash and cash equivalents with an eligible foreign custodian only in amounts reasonably necessary to effect the company's foreign securities transactions.

Three commentators believed that the final rule should not differentiate between Canadian and U.S. investment companies. In their view, if the rule limited Canadian companies to maintaining their foreign securities in overseas branches of qualified U.S. banks, those companies would be subjected to unnecessary financial and operational burdens. These commentators argued that once a foreign fund has been permitted to register pursuant to section 7(d) of the Act, the Commission's jurisdictional concerns should be resolved, because a statutory condition to registration under the section is a Commission finding that "it is both legally and practically feasible effectively to enforce the provisions of [the Act] against such company . . . " Two of those commentators suggested that instead of requiring Canadian investment companies to maintain 100% of their assets in the custody of U.S. bank branches, Canadian companies could be required to maintain at least 25% of their assets insuch branches. Two other commentators recommended that the term "an overseas branch" of a qualified U.S. bank branches be changed to "a foreign branch" because otherwise the rule could be read to prohibit a Canadian investment company from maintaining custody of its assets with Canadian branches of qualified U.S. banks.

The Commission believes that registered Canadian investment companies should maintain their securities within the United States as contemplated by rule 7d–1[9] unless the primary trading market for a security is overseas, i.e., outside the United States and Canada. To the extent that a Canadian investment company's foreign custodial arrangements involve foreign entities other than overseas branches of U.S. banks, the Commission further believes that the staff should continue to evaluate such arrangements in the context of individual applications in order to address adequately the potential difficulties which a U.S. shareholder or the Commission may encounter in obtaining jurisdiction over, or enforcing a judgment against, such Canadian companies and their officers and directors.

2. Definition of foreign securities

The final rule, as in the revised proposal, defines the term "foreign securities" to include securities issued and sold primarily outside the United States by a foreign or U.S. issuer.[10] One commentator recommended that the definition be amended to include securities which although issued and sold in the United States have a significant trading market ouside the United States. Another wanted foreign securities redefined as "securities issued, sold or having a trading market outside the United States," arguing that this revised definition would eliminate the uncertainty that the word "primarily" produces and would introduce the concept of a foreign trading market "as an appropriate nexus justifying the choice of a foreign depository." The Commission has decided, however, that the proposed definition should not be modified in this regard. The rule is intended essentially to give investment companies the flexibility to maintain their assets in or near their primary trading markets when those markets are outside the United States—not to give investment companies the opportunity to keep abroad assets customarily purchased or sold in the United States.

3. Eligible foreign custodians

a. *Definition of eligible foreign banking institutions and trust companies.* The final rule reduces the proposed minimum shareholders' equity requirement for foreign banking institutions and trust companies from $400 to $200 million (US $ or the equivalent of US $) and replaces the proposed requirement that a U.S. bank or bank-holding company have at least $200 million shareholders' equity in order for its majority-owned foreign subsidiaries to qualify as eligible foreign custodians with a requirement that a majority-owned foreign subsidiary must have shareholders' equity in excess of $100 million. Any foreign banking institution or trust company and any foreign subsidiary of a U.S. bank or bank-holding company that maintains custody of the company's assets must meet these minimum equity requirements throughout the time that it serves as the company's custodian or subcustodian.

Seven commentators believed that minimum equity should not determine whether a foreign bank or trust company is competent to serve as an eligible foreign custodian. Four of those commentators argued that the proposed equity requirement was arbitrary and excessive and would preclude many otherwise qualified foreign banks from serving as eligible foreign custodians. Two commentators observed that there are countries where there are no banks that would meet the minimum requirement and that certain foreign banks, particularly those that are owned by a foreign government, might not have shareholders' equity.

The commentators suggested several alternative definitions of eligible foreign banking institutions and trust companies. One commentator recommended that the requirement provide that an eligible foreign custodian have total assets in excess of $500 million. Another commentator suggested that the definition include foreign banking institutions or trust companies that are regulated by a foreign government or agency thereof or that have shareholders' equity in excess of $400 million. A third commentator suggested that the minimum equity requirement should be no higher than that which the alternative formulation of the revised proposal would impose on U.S. intermediaries (*i.e.*, at least $200 million); and in a foreign country where no foreign bank meets that equity requirement, the five largest banks of that country should be considered eligible foreign custodians. That commentator believed, however, that if a qualified U.S. intermediary selects the foreign custodian, the foreign custodian should not have to satisfy any size criterion. Another commentator observed that if the equity requirement is denominated in U.S. dollars, some eligible foreign custodians could become suddenly ineligible due to foreign currency fluctuations. That commentator suggested that the rule state that if a foreign bank is an eligible foreign custodian at the time a custody agreement is entered into, it will not become ineligible if it fails to continue to satisfy the size standard because of foreign currency fluctuations or other developments. Two commentators suggested that instead of prescribing size criteria, the rule should require that investment company directors consider more relevant factors which stress an institution's competence as a custodian.

The Commission believes that the revised definition will permit investment companies to find a sufficient number of qualifying foreign banks and trust companies and foreign subsidiaries of U.S. banks and bank-holding companies while reducing to the extent practicable the risks inherent in foreign custody arrangements. While the revised definition may preclude a smaller foreign bank with custodial expertise from serving as an eligible foreign custodian under the rule, that bank can always be the subject of an application for exemptive relief and, if appropriate, the rule can be amended in the future, based on that applications experience.

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[9] *See* Investment Company Act Release No. 1945 (January 28, 1954) [19 FR 2585]. At the time rule 7d–1 was proposed to permit Canadian investment companies to register under the Act, the Commission stated that, among other things, such companies must maintain their assets in the United States.

[10] The definition has been reworded to make clear that securities issued or guaranteed by the U.S. Government or by any state or any political subdivision or agency thereof must be issued and sold primarily outside the United States in order to be considered "foreign securities" under the rule.

b. *Definition of eligible foreign securities depositories and clearing agencies.* The definition of eligible foreign securities depositories and clearing agencies has not been changed in the final rule. In order to be an eligible foreign custodian, a securities depository or clearing agency incorporated or organized under the laws of a country other than the United States must either operate the central system for handling of securities or equivalent book-entries in a particular country or operate a transnational system for the central handling of securities or equivalent book entries.[11]

Four commentators objected to this proposed definition. Two objected because certain foreign securities depositories may not operate the only central system for handling of securities issued in a particular country. These commentators suggested that the definition of eligible foreign securities depositories and clearing agencies be revised to include those depositories and clearing agencies which operate *a* central system for handling of securites or equivalent book-entries. Another commentator objected to the proposed definition because transnational clearing systems operated by a foreign branch of a qualified U.S. bank would not be included.

The Commission believes that foreign custody arrangements with foreign securities depositories or clearing agencies that do not operate the central system for handling securities or equivalent book-entries in a given country should be evaluated on a case-by-case basis. Transnational securities depositories and clearing agencies which are operated by overseas branches of U.S. banks would be considered eligible foreign custodians under the definition as proposed. While certain transnational depositories and clearing systems may be operated by an overseas branch of a U.S. bank, it is the Commission's understanding that the depository or clearing agency is still incorporated or organized outside the United States.

B. Involvement of a Third Party

The final rule has been redrafted to make clear that the directors may use an expert third party to: (i) Select the country where the company's assets will be located;[12] (ii) select the foreign custodian(s) that will have custody of those assets; (iii) negotiate custody agreements with those custodians; and (iv) oversee those foreign custody arrangements. The third party selection of country and/or foreign custodian and any contract negotiated by the third party with that foreign custodian must be approved by the directors *before* the foreign custody arrangement can be implemented. Further, the performance of the foreign custodian is subject to the directors' review and approval at least once a year.

Eleven commentators urged that the proposed rule be revised to permit the directors to delegate to a qualified third party the responsibility of selecting foreign custodians, negotiating contracts with those custodians and overseeing their performance. One commentator believed that the rule should also permit the directors to delegate the selection of the foreign country where the company's assets would be located.

Several commentators pointed out that most investment companies employ U.S. intermediaries because the companies do not have the bargaining power or the resources to deal with foreign custodians directly. According to these commentators, because intermediaries have established relationships with various foreign custodians, they are more experienced than investment company directors in negotiating custody agreements that provide cost savings and adequate safeguards for the company's assets. In contrast, two commentators believed that investment company directors should retain ultimate responsibility for approving each of the company's foreign custody arrangements.

The Commission does not intend in the final rule (nor did it intend in the revised proposal) to prevent investment companies from using an intermediary to establish and supervise foreign custody arrangements because there may be instances where the intermediary has greater expertise than the directors in dealing with a particular foreign banking institution, trust company, securities depository or clearing agency. Where an intermediary has established a relationship with a foreign custodian, the intermediary may be in a better position to evaluate the risks associated with foreign custody arrangements with that custodian. In addition, as noted by the commentators, investment companies that use an intermediary may experience cost savings from operating efficiencies that the intermediary is able to effect. However, the Commission believes that the company's assets should be moved to a new location only after the directors have had an opportunity to approve that foreign custody arrangement. Further, the Commission believes that the directors should retain primary responsibility for periodically evaluating those arrangements.

C. Conditions to the Exemption

The final rule includes in its text certain conditions to the exemption which appeared as instructions in the revised proposal. In particular, the rule requires the custody agreement to provide that: (i) the company will be adequately indemnified and its assets adequately insured in the event of loss;[13] (ii) the company's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign custodian or its creditors except a claim for payment for their safe custody or administration;[14] (iii) beneficial ownership for the company's assets will be freely transferable without the payment of money or value other than for safe custody or administration;[15] (iv) adequate records will be maintained identifying the assets as belonging to the company;[16] (v) the company's independent public accountants will either be given access to those records or confirmation of the contents of those records;[17] and (vi) the company will receive periodic reports with respect to the safekeeping of its assets, including but not necessarily limited to, notification of any transfer to or from the company's account.[18] In addition, the final rule contains as a condition, instead of an instruction, a requirement that the company's cash and cash equivalents be maintained with eligible foreign custodians only in amounts reasonably necessary to effect the company's foreign securities transactions.[19] The Commission believes that these conditions are so critical to the adequate safekeeping of investment company securities that they belong in the text of the rule as formal conditions to exemption. With the exception of the condition relating to cash and cash equivalents, all of these conditions are conditions to the exemptive relief granted Chase and BONY customers and, in the case of conditions (ii) and (iii), are also conditions to the foreign custody of brokerage and ERISA funds.[20]

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[11] *Cf.* Chase and BONY orders which permit investment companies to use any foreign securities depository or clearing agency which operates a central system for handling of securities or equivalent book-entries. As of this date, the Commission is issuing notices of its intent to modify the Chase and BONY orders to, *inter alia,* require that, with the exception of transnational foreign depositories and clearing agencies, investment companies relying on those orders must have their assets deposited only in *the* central system for handling securities in a given country.

[12] *Cf.* Chase and BONY orders that condition exemptive relief, *inter alia,* upon the directors of each investment company selecting the country where their company's assets will be located.

[13] *See* instruction 3g of the revised proposal. *See also* Chase application as amended, at pp. 6–7 and p. 13.

[14] *See* instruction 3a of the revised proposal. *See also* Chase application as amended, as p. 6; rule 17f–1(b)(2) with respect to custody of securities by member firms; *see also* Exchange Act Release No. 10429 (October 12, 1973) [38 FR 29217] publishing the Commission's guidelines for placement by brokers or dealers of customer's securities in foreign depositories, clearing agencies or banks for purposes of rule 15c3–3 under the Exchange Act [17 CFR § 240.15c3–3]; *see also* rule 404b–1 [29 CFR § 2550.404b–1] adopted by the Department of Labor under section 404(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1104(b)] permitting a fiduciary to entrust care over assets of an employee benefit plan to a U.S. broker or dealer which in turn maintains the custody of such assets in a foreign depository, clearing agency or bank.

[15] *See* instruction 3b of the revised proposal. *See also* analogous provisions cited *supra* in note 14.

D. Notes to the Rule

As discussed above, several of the instructions to the revised proposal have been incorporated in the text of the final rule as conditions to exemptive relief. With the exception of the instruction relating to physical segregation of assets, the other instructions to the revised proposal have been retained as notes to the final rule. In consideration of commentator observations that physical segregation may no longer be possible where ownership of a company's securities is evidenced by book-entry, instruction 3c has been deleted. A new note has been added to make clear that size is not the only criterion which should be considered in selecting a company's foreign custodians. Note 2a states that in selecting or approving the selection of a foreign custodian, the directors should consider, among other things, the financial strength of the foreign custodian, its general reputation and standing in the country in which it is located, its ability to provide efficiently the custodial services required and the relative costs of those services.[21]

Although a number of commentators generally opposed including instructions in the final rule, the Commission believes that in view of the rule's scope, the extent to which it authorizes departures from past practices and the critical importance of safekeeping fund assets, the impression should not be conveyed that foreign custody is a routine matter. Determinations concerning foreign custody of funds assets, because of the increased risks involved, mandate a high degree of scrutiny.

List of Subjects in 17 CFR Part 270

Accountants, Accounting, Fraud, Investment companies, Securities, Surety bonds.

II. Text of Final Rule and Rule Amendments

PART 270—[AMENDED]

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By revising paragraph (b)(8)(v) of § 270.7d–1 to read as follows:

§ 270.7d–1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

* * * * *

(b) * * *

(8) * * *

(v) Except as provided in rule 17f–5 [17 CFR 270.17f–5], applicant will appoint, by contract, a bank, as defined in section 2(a)(5) and having the qualification described in section 26(a)(1), to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash necessary to meet applicant's current administrative expenses. Said contract will provide, *inter alia*, that said custodian will:

(A) consummate all purchases and sales of securities by applicant, other than purchases and sales on an established securities exchange, through the delivery of securities and receipt of cash, or *vice versa* as the case may be, within the United States, and (B) redeem in the United States such of applicant's shares as shall be surrendered therefor, and (C) distribute applicant's assets, or the proceeds thereof, to applicant's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in paragraphs (b) (3) and (5) of this section.

* * * * *

2. By revising paragraph (b) of § 270.17f–4 to read as follows:

§ 270.17f–4 Deposits of securities in securities depositories.

* * * * *

(b) A registered management investment company (investment company) or any qualified custodian may deposit all or any part of the securities owned by the investment company in a foreign securities depository or clearing agency in accordance with rule 17f–5 (17 CFR 270.17f–5) or in a (1) clearing agency registered with the Commission under section 17A of the Securities Exchange Act of 1934 (clearing agency), which acts as a securities depository, or (2) the book-entry system as provided in Subpart O of Treasury Circular No. 300, 31 CFR 306, Subpart B of 31 CFR Part 350, and the book-entry regulations of federal agencies substantially in the form of Subpart O, in accordance with the following paragraphs of this rule.

* * * * *

3. By adding § 270.17f–5 to read as follows:

§ 270.17f–5 Custody of investment company assets outside the United States.

(a) Any management investment company registered under the Act, and incorporated or organized under the laws of the United States or of a state, may place and maintain in the care of an eligible foreign custodian the company's foreign securities, cash and cash equivalents in amounts reasonably necessary to effect the company's foreign securities transactions, *Provided That*:

(1) A majority of the board of directors of the company shall have:

(i) Determined that maintaining the company's assets in a particular country or countries is consistent with the best interests of the company and its shareholders;

(ii) Determined that maintaining the company's assets with a particular foreign custodian is consistent with the best interests of the company and its shareholders; and

(iii) Approved, as consistent with the best interests of the company and its shareholders, a written contract which will govern the manner in which such custodian will maintain the company's assets and which provides that:

(A) The company will be adequately indemnified and its assets adequately insured in the event of loss;

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[16] *See* instruction 3c of the revised proposal.

[17] *See* instruction 3d of the revised proposal. *See also* Chase application as amended, at p. 7.

[18] *See* instruction 3e of the revised proposal. *See also* Chase application as amended, at p. 5.

[19] *See* instruction 4 of the revised proposal.

[20] *See supra* notes 13–19.

[21] *See* Chase application as amended, at p. 13.

(B) The company's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign custodian or its creditors except a claim of payment for their safe custody or administration;

(C) Beneficial ownership for the company's assets will be freely transferable without the payment of money or value other than for safe custody or administration;

(D) Adequate records will be maintained identifying the assets as belonging to the company;

(E) The company's independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) The company will receive periodic reports with respect to the safekeeping of the company's assets, including, but not necessarily limited to, notification of any transfer to or from the company's account.

(2) The board of directors establishes a system to monitor such foreign custody arrangements to ensure compliance with the conditions of this rule;

(3) A majority of the board of directors, at least annually, reviews and approves the continuance of such arrangements as consistent with the best interests of the company and its shareholders.

(b) Any management investment company, incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of rule 7d–1, may place and maintain the company's foreign securities, cash and cash equivalents in the care of an overseas branch of a qualified U.S. bank, *Provided That:*

(1) Prior to the placing of any such assets with such overseas branch, a majority of the board of directors of the company shall have determined that maintaining such assets in a particular country or countries is consistent with the best interests of the company and its shareholders;

(2) The board of directors establishes a system to monitor such foreign custody arrangements and to ensure that the amount of cash and cash equivalents maintained in the care of such overseas branch is limited to an amount reasonably necessary to effect the company's foreign securities transactions; and

(3) A majority of the board of directors, at least annually, reviews and approves the continuation of such arrangements as consistent with the best interests of the company and its shareholders.

(c) As used herein,

(1) "Foreign Securities" include: securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country and securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

(2) "Eligible Foreign Custodian" means:

(i) A banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 (U.S. $ or the equivalent of U.S. $); or

(ii) A majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100,000,000; or

(iii) A securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country; or

(iv) A securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States which operates a transnational system for the central handling of securities or equivalent book-entries.

(3) "Qualified U.S. Bank" means (i) a banking institution organized under the laws of the United States, (ii) a member bank of the Federal Reserve System, (iii) any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this rule, or (iv) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (i), (ii), or (iii) of this paragraph. Any entity described in clause (i), (ii), (iii) or (iv) must have an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000.

Notes.—The provisions of rule 17f–5 set forth determinations which the directors of the registered investment management company must make in connection with approving foreign custody arrangements.[33] Those determinations should be made only after consideration of all matters which the directors, in carrying out their fiduciary duties, find relevant, including but not necessarily limited to, consideration of the following:

1. With respect to the selection of the country where the company's assets will be maintained, the directors of U.S. and Canadian investment companies should consider:

a. Whether applicable foreign law would restrict the access afforded the company's independent public accountants to books and records kept by an eligible foreign custodian located in that country;

b. Whether applicable foreign law would restrict the company's ability to recover its assets in the event of the bankruptcy of an eligible foreign custodian located in that country;

c. Whether applicable foreign law would restrict the company's ability to recover assets that are lost while under the control of an eligible foreign custodian located in the country;

d. The likelihood of expropriation, nationalization, freezes, or confiscation of the company's assets; and

e. Whether difficulties in converting the company's cash and cash equivalents to U.S. dollars are reasonably foreseeable;

2. With respect to the selection of a foreign custodian, the directors of a U.S. investment company should consider:

a. The financial strength of the foreign custodian, its general reputation and standing in the country in which it is located, its ability to provide efficiently the custodial services required and the relative cost for those services.

b. Whether the foreign custodian would provide a level of safeguards for maintaining the company's assets not materially different from that provided by the company's U.S. custodian in maintaining the company's securities in the United States;

c. Whether the foreign custodian has branch offices in the United States in order to facilitate the assertion of jurisdiction over and enforcement of judgments against such costodian; and

d. In the case of a foreign securities depository, the number of participants in, and operating history of, the depository.

3. The extent of a U.S. or Canadian company's exposure to loss and the potential effect thereof upon shareholders should be

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[33] *See* Investment Company Act Release No. 13724, January 17, 1984.

disclosed, if material, in the company's prospectus.

Statutory basis: Rule 17f-5 is adopted pursuant to sections 6(c) [15 U.S.C. 80a-6(c)] and 38(a) [15 U.S.C. 80a-37(a)] of the Act. Technical amendments to rules 7d-1 and 17f-4 are adopted pursuant to section 38(a) of the Act.

By the Commission.

Dated: September 7, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24354 Filed 9-13-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 83F-0088]

Indirect Food Additives; Polymers; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that provided for the safe use of certain ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer formulations in contact with foods and beverages containing up to 50 percent alcohol (49 FR 29576; July 23, 1984). That document failed to reflect an amendment published in the Federal Register of June 22, 1984 (49 FR 25628). This document corrects that error.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-19308 appearing on page 29576 in the issue of Monday, July 23, 1984, the following correction is made on page 29577: In § 177.1315 *Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer* in the table in paragraph (b) in the first column in the fourth line in items 4. and 5., the words "or terephthalic acid" are added between "terephthalate" and "with".

Dated: September 7, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-24331 Filed 9-13-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-84-1068; FR-1637]

Manufactured Home Construction and Safety Standards; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction to a final rule.

SUMMARY: On August 9, 1984, the Department published a final rule revising its Manufactured Home Construction and Safety Standards. The final rule is scheduled to be effective on February 11, 1985 (See Notice announcing corrected effective date published on August 17, 1984, 49 FR 32847.) The first amendment in the August 9, 1984 rule contained an error, which today's document corrects.

FOR FURTHER INFORMATION CONTACT: Richard A. Mendlen, Manufactured Housing Standards Division, Office of Manufactured Housing and Regulatory Functions, Room 9154, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-5798. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, this document corrects FR Doc 84-21076 appearing on page 31996 of the August 9, 1984, issue of the Federal Register as set forth below:

On page 32008, in the right column, amendment number "1." is corrected to read as follows:

1. Section 3280.106 is amended by revising paragraph (c) and by adding a new paragraph (d) as set forth below:

§ 3280.106 Exit facilities; egress windows.

* * * * *

(c) Locks, latches, operating handles, tabs, and any other window screen or storm window devices which need to be operated in order to permit exiting, shall not be located in excess of 54 inches from the finished floor.

(d) Integral rolled-in screens shall not be permitted in an egress window unless the window is of the hinged-type.

Authority: Secs. 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403 and 5424, and sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 11, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-24465 Filed 9-13-84; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Certified Designated 706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on certified designated 706 agencies. Publication of this amendment effectuates the designation of the Kansas City, Missouri Human Relations Department, and St. Louis, Missouri Civil Rights Enforcement Agency as certified 706 Agencies.

EFFECTIVE DATE: September 13, 1984.

FOR FURTHER INFORMATION CONTACT: Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Special Services Staff, 2401 E Street, NW., Washington, D.C. 20507, telephone 202/634-6808.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Kansas City, Missouri Human Relations Department, and St. Louis, Missouri Civil Rights Enforcement Agency meet the eligibility criteria for certification of a designated 706 agency as established in 29 CFR 1601.75(b). In accordance with 29 CFR 1601.75(c) the Commission hereby amends the list of certified designated 706 agencies to include the Kansas City, Missouri Human Relations Department, and St. Louis, Missouri Civil Rights Enforcement Agency. Publication of this amendment to § 1601.80 effectuates the designation of the following agencies as a certified 706 agencies: Kansas City, Missouri Human Relations Department, and St. Louis, Missouri Civil Rights Enforcement Agency.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

§ 1601.80 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.80 by adding the Kansas City, Missouri Human Relations

Department, and St. Louis, Missouri Civil Rights Enforcement Agency in alphabetical order.

(42 U.S.C. 2000e–12(a))

Signed at Washington, D.C. this 6th day of September 1984.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 84–24304 Filed 9–13–84; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt. No. 26]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Treatment of Mental Disorders

AGENCY: Office of the Secretary, DoD.

ACTION: Amendment of final rule.

SUMMARY: This amends portions of the CHAMPUS DoD 6010.8–R that describe the benefits available under the Civilian Health and Medical Program of the Uniformed Services for the treatment of mental disorders. This amendment is necessary to implement certain policy decisions of the Secretary of Defense intended to bring the CHAMPUS benefits into line with the current practices of professionals who treat mental disorders and to strengthen our ability to monitor and control the cost and quality of services in this significant benefit area.

DATE: The provisions of this amendment are effective November 13, 1984. Any Residential Treatment Center or Alcoholism Treatment Facility which has not entered into a participation agreement with the Director, OCHAMPUS, as set forth in this amendment, by June 1, 1985, will no longer be considered a CHAMPUS-authorized provider and no benefits will be paid for any service rendered by such facility.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Rose M. Sabo, Policy Branch, OCHAMPUS, telephone (303) 361–4014.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

The treatment of mental disorders is a significant benefit under the CHAMPUS because the Uniformed Services medical treatment facilities have limited capacity to provide such services. Military dependents and retirees who might have access to the Uniformed Service medical treatment facilities for much of their medical care must often rely on civilian providers when in need of treatment for psychological and emotional disorders. Therefore, while CHAMPUS pays for only a portion of the total medical services received by our 6.5 million beneficiaries, it pays for most of the mental health services our beneficiaries receive. This heavy reliance on CHAMPUS coverage means that about 16% of the total CHAMPUS benefit payments are for mental health services.

The CHAMPUS benefit for treatment of mental disorders is also unique in that there are few limitations. Most third party benefit programs and health insurance programs establish absolute limits on the number of inpatient days or outpatient visits they will cover for the treatment of mental disorders or set a maximum dollar limit on coverage of the treatment of mental disorders. In general, CHAMPUS will cover services for the treatment of mental disorders so long as the care is medically or psychologically necessary. Even a recent funding limitation which limits coverage of inpatient mental health services to 60 days in a calendar year for a beneficiary permits coverage of services in excess of 60 days in extraordinary circumstances are present. This issue will be addressed in a separate amendment.

This lack of limitations on CHAMPUS coverage of the treatment of mental disorders means that we must be unusually concerned with assuring that the services we cover are medically or phsychologically necessary and are of high quality.

Since the publication of the CHAMPUS Regulation in 1977, we have identified a number of issues related to the program's benefits for the treatment of mental disorders that should be clarified or amended. These modifications are necessary for a number of reasons: changes in professional practices, identification of areas of the benefit that require closer monitoring, and areas in which current requirements are unnecessarily burdensome.

Accordingly, on September 15, 1982, in FR Doc. 82–25252 (42 FR 40644), we published a notice of proposed rulemaking for public comment. Comments were received from 44 individuals and organizations.

The notice proposed to amend the Regulation in the following general areas: the basic benefits for inpatient and outpatient treatment of mental disorders by both professional and institutional providers, benefits and provider authorization standards for residential treatment centers, benefits and provider authorization standards for the treatment of alcoholism, standards for CHAMPUS authorization of professional providers, and miscellaneous technical and clarifying amendments.

Following is a discussion of the comments we received and the action we are taking in response.

Basic Benefits for Treatment of Mental Disorders

1. *Definition of Mental Disorder.* Many of the comments objected to the proposed definition of mental disorder. Those commenting stated that the definition was unduly restrictive, would prevent coverage of needed services, and was a distortion of the definition of mental disorder generally in use by the profession.

The Regulation currently defines a [Nervous and] Mental Disorder as a condition listed in the Diagnostic and Statistical Manual of Mental Disorders, 2nd edition (DSM–II). We proposed to amend this definition, first, because the third edition of the manual, DSM–III, is now in wide use, and, second, because this limited definition does not adequately describe the condition that CHAMPUS provides coverage for. Consequently, we proposed to change this definition to read as follows: "Mental Disorder means a nervous or mental condition which involves a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and is associated with a painful symptom (distress) *and* an impairment in functioning in one or more age-appropriate life activities."

We stated in the notice that this definition was similar to the definition of mental disorder in DSM–III. The significant difference is that our proposed definition requires distress *and* functional impairment whereas the DSM–III definition discusses distress *or* impairment.

It is long-standing program policy that, in order for benefits to be paid for the treatment of mental disorders, the patient's condition must be serious enough to interfere with his or her ability to carry out usual activities. This definition does not add that requirement, but simply incorporates it into the Regulation.

CHAMPUS cannot cover any services designed simply to improve the patient's general level of health or well-being. We cover only those services which are medically or psychologically necessary to diagnose or treat an illness or injury. It is the program's position that, while a person may exhibit signs or symptoms which meet the diagnostic criteria of DSM-III, treatment becomes medically or psychologically necessary, for purposes of CHAMPUS coverage, when the mental disorder is of a degree which interferes with the patient's ability to carry out usual activities, such as work or school.

We believe that early intervention is as important in the treatment of mental disorders as it is in the treatment of other conditions. We would point out that the definition does not require that a patient be unable to carry out usual activities. It requires rather that the patient's ability to function be impaired.

Because of the concern of the commenters, however, we are clarifying that the definition of mental disorder only defines a level of disorder which qualifies for benefit payment.

2. *Treatment of Mental Disorders by Other Than Physicians.* Several comments wanted the Regulation to state that all services must be performed by physicians or under a physician's supervision. Other comments objected to the requirement that the services of clinical social workers and marriage and family counselors be performed under physician supervision.

Still others requested that we recognize as authorized providers types of providers not now listed in the regulation, such as certified psychoanalysts and certified mental health counselors.

CHAMPUS rules regarding who may be considered an independent professional provider, with no requirement for physician supervision, derive from language contained in the annual Defense Appropriation Act. To the extent that the Appropriation Act restrictions permit us to consider a provider to be independent of physician supervision, we are taking the general position in the notice that we will provide payment for services provided to eligible beneficiaries if: 1. The service is a benefit of CHAMPUS and meets all requirements for coverage, 2. the provider of the care is a CHAMPUS-authorized provider in accordance with § 199.12 of Part 199, and 3. the provider's state license permits the rendering of the specific service.

All instructions we issue to claims processors and professional reviewers to implement this amendment will emphasize that medical services must be rendered by or under a physician's supervision and that lack of physician involvement, when such is demanded by the circumstances of the case, is a basis for denial of payment on quality grounds.

In some cases, however, where we do specify a particular provider, we do so because we feel that important issues of quality care require it. It should also be noted that, while CHAMPUS might not require that a provider be supervised by or work in collaboration with a physician, the provider's state license may. In that case, we would cover only those services rendered in accordance with the provisions of that state licensure.

In the proposed rule, clinical social workers were listed as providers for whom physician supervision was required. At the time the notice was published, CHAMPUS was conducting a test of coverage of the services of clinical social workers independent of physician supervision, at the direction of Congress. Since that time and in accordance with congressional direction, we have concluded the test and authorized CHAMPUS coverage of clinical social workers as independent providers. All issues relating to standards for CHAMPUS authorization of clincial social workers were removed from this amendment and addressed in a separate rulemaking document. Those comments we recieved in response to the notice on the subject proposal that specifically addressed clinical social workers were considered in the social workers' amendment.

In response to a comment, we have changed a provider designation from "Certified Psychiatric Nurse Practitioner" to "Certified Psychiatric Nurse Specialist."

We do not plan to add any categories of authorized professional providers of mental health services at this time. We believe that CHAMPUS beneficiaries have a reasonably broad choice of providers from among the generally recognized professions that treat mental disorders.

3. *Limits and review requirements—Psychotherapy.* In the proposed rule, § 199.10(c)(3)(ix) sets forth certain limits and review requirements for payment of inpatient and outpatient psychotherapy. Several comments requested that we liberalize the limitations. We have not accepted this suggestion; the proposal generally represents more liberal limits than are currently in effect. One comment, however, did recommend that we provide a special exception to the maximum therapy-per-day limit in special circumstances. We think this suggestion has merit and can be accommodated within the proposed language. The proposed language deleted the reference in the Regulation that limited psychotherapy to one session in a 24-hour period. Instructions to claims processors and professional reviewers will specifically authorize more than one psychotherapy session on the same day under special circumstances, where medical or psychological necessity exists. We continue to believe that, in general, more than one psychotherapy session on the same day is not the standard of care, but we also understand that certain circumstances might make more than one session appropriate.

We will continue to review carefully any case where multiple psychotherapy sessions are provided on the same day and will expect that the attending provider will document fully the medical or psychological necessity for them.

One comment asked that we change the reference to professional review of claims to peer review. We have not accepted this recommendation. The CHAMPUS system for conducting reviews of the quality and appropriateness of care is a combination of review by peers and review by other professionals. We feel the term "professional review" more clearly describes this combined system. Further, as mentioned previously, the CHAMPUS focus is on the service rendered, not necessarily on the discipline of the provider rendering that service. We are in the process of developing standards and criteria for review of claims for treatment of mental disorders by various mental health specialties recognized as authorized CHAMPUS providers.

4. *Coverage of specific mental health services.* A group of comments requested that the Regulation list the specific approaches to treatment of mental disorders which CHAMPUS covers and set out the specific requirements for coverage of electroshock therapy. We have not accepted this suggestion; this level of detail is covered in the implementing instructions issued to claims processors and professional reviewers.

Treatment of Alcoholism

1. *Aversion Therapy.* The current regulation is silent on coverage of aversion therapy, defined as the programmed use of physical measures, such as electric shock, alcohol, or other drugs, as negative reinforcement to produce a conditioned aversion to beverage alcohol. Because professional opinion we have received on the issue of

aversion therapy has been mixed, we concluded that aversion therapy was not widely accepted by the general medical community as effective for the treatment of alcoholism. Because the CHAMPUS Regulation specifically prohibits coverage of services which are investigational or not generally accepted by the medical community as effective, we proposed to exclude aversion therapy as a covered service in the treatment of alcoholism. We received several comments in opposition to this exclusion.

It is clear that support for the efficacy of aversion therapy has grown; however, our very real concern over the safety of aversion therapy has led us to retain the exclusion of this service in the final amendment.

Nevertheless, we do believe that this is an appropriate area for further development. We will be asking interested professionals in the field to meet with us to determine whether it is possible to establish standards and criteria for the review of claims for aversion therapy. We will be particularly interested in determining whether we can develop standards for providers of aversion therapy to assure responsible patient selection and medical screening and to assure that adequate safeguards, including informed consent, exist for the patient undergoing aversion therapy. If such standards can be developed and a mechanism can be created for assuring that providers meet the standards, an amendment of the Regulation to authorize coverage for aversion therapy would be considered.

2. *Treatment of other substance abuse.* One comment suggested that we amend the alcohol benefits to apply also to the treatment of other substance abuse. While we agree that specific information concerning benefits for treatment of other substance abuse is required in the Regulation, we do not necessarily agree that the benefits and provider standards prescribed for treatment of alcoholism are appropriate for other substance abuse. We are in the process of developing guidelines for this area; they will be issued separately.

3. *Three-episode lifetime limit.* Several comments objected to the lifetime limit on benefits for the treatment of alcoholism. They point out that alcoholism is a chronic disease, characterized by relapses, and that by limiting the number of treatment episodes, patients may be denied treatment that would be effective in overcoming the disease. We do not plan to change this provision. We believe that offering coverage for multiple episodes does recognize the nature of the disease.

4. *Alcohol Rehabilitation—21-day limit.* As with the lifetime limit on coverage, several comments objected to the 21-day limit on alcohol rehabilitation services. Their objections centered on the argument that many alcohol programs are designed as 21- to 30-day programs. Our limit means that patients must often bear a portion of the cost of the program themselves. We do not plan to change this limit at this time. The 21-day limit on residential alcohol rehabilitation has been a CHAMPUS policy since 1977. We have seen no research that indicates that longer programs result in improved outcomes, although we understand that such research is being conducted. If the research should show a relationship between length of program and outcome, we would consider reopening the issue.

5. *Coverage of other providers.* One comment requested that we consider expanding the list of facilities we authorize to include recovery homes and halfway houses. While we recognize the importance of these facilities to the recovering alcoholic, their primary focus is domiciliary care rather than treatment, Statutorily, CHAMPUS is prohibited from covering domiciliary services.

6. *Coverage of Antabuse (disulfiram).* Several comments asked that we clarify whether the exclusion of aversion therapy meant that administration of Antabuse (disulfiram) is also excluded. It does not. We do not consider the administration of disulfiram to be aversion therapy since the intent is not to establish a conditioned reflex. Disulfiram is covered under CHAMPUS as a prescription drug.

7. *Detoxification services.* We have added language to the amendment to clarify a point raised in the comments. Detoxification services are covered, whether provided in a hospital or in an alcohol rehabilitation facility qualified to provide it. If the patient's medical condition is serious and requires the staff and facilities of an acute, general hospital, detoxification is payable (for up to seven days) on the same basis as any other covered hospital admission. If the patient is able to be detoxified in an authorized alcohol rehabilitation facility, under medical supervision, coverage of the detoxification services is in addition to the coverage of rehabilitation services. The medical necessity for and the length of detoxification must be documented.

Authorized Providers

1. *Requirement for accreditation by the Joint Commission on Accreditation of Hospitals.* Several comments took issue with the requirement that facilities be accredited by the Joint Commission on Accreditation of Hospitals (JCAH) in order to be authorized providers under CHAMPUS. We have amended each occurrence of this requirement to provide that a facility must be accredited by JCAH or must be certified under Title XVIII of the Social Security Act (Medicare).

It has been long-standing policy that providers seeking authorization by CHAMPUS must meet standards established by their respective professional organizations and national accrediting bodies, where such exist. CHAMPUS is unable to conduct a program such as Medicare's to survey and certify each facility seeking authorization. It is our practice to review the standards set by the various professional organizations or national accrediting bodies and to require either eligibility for membership in the professional organization or accreditation by the body establishing acceptable standards. For a national program such as CHAMPUS, state licensure can only be one component of the provider certification effort, since each state's licensure requirements may differ.

We have modified the amendment to clarify that certification by Medicare is acceptable for CHAMPUS purposes, to the extent that Medicare certifies the same types of facilities that CHAMPUS recognizes. For other types of facilities, we specify the standards, if any, which we have reviewed and found to be acceptable.

2. *Access to records.* Several comments expressed concern that the standards for various facilities require the facilities to agree to make clinical records of CHAMPUS patients available to the Director, OCHAMPUS. While we certainly understand the concern over confidentiality of the patient's records, we would point out that patients authorize the release of records to OCHAMPUS as part of the procedure for claiming benefit payment. Further, by law, we may pay only for services which are medically or psychologically necessary to diagnose or treat illness or injury. Making such a determination often requires us to review clinical records.

Because we are cognizant of the sensitive nature of the records created in a case involving the treatment of a mental disorder, we make special efforts to assure the security of any records we request.

Residential Treatment Centers

Therapeutic absences. One comment stated an objection to the proposed requirement that therapeutic absences be included in the patient's treatment plan. The current Regulation prohibits payment for institutional charges when the patient is absent from the facility, except in the case of a therapeutic absence of not more than 72 hours. We recognize that a gradual re-introduction of the patient to his or her usual environment may be an important factor in preventing readmissions and that therapeutic absences of longer than 72 hours are sometimes required, particularly late in the patient's inpatient care. Since we do not expect the facility to fill that patient's bed during the absence, we believe we ought to cover that charge. However, we also believe that therapeutic absences must be an integral part of the case planning.

Technical Changes

We also received several editorial suggestions, to improve clarity or consistency. Those have been adopted.

Also, because this amendment significantly revised certain preauthorization requirements, we are taking this opportunity to make technical revisions in the location of information regarding preauthorization requirements in general. Section 199.10, paragraph (a)(11) will contain the general instructions on preauthorization of basic benefits and other sections will simply contain a cross-reference to this paragraph.

We have also reorganized the notice so that each change is sequential, rather than grouped by subject, as was done in the Notice of Proposed Rulemaking.

Finally, we have added a paragraph to Section 199.10, to specifically cover occupational therapy services when provided to inpatients or outpatients of CHAMPUS authorized hospitals. The removal of a general exclusion inadvertently omitted mention of occupational therapy as a CHAMPUS covered service.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR, Chapter I is amended reading as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. In § 199.8, paragraph (b) the definitions of "Appropriate Medical Care paragraph (i)," "Basic Program," "Clinical Psychologist," "Collateral Visits," "Hospitals: Psychiatric," "Medical," and "Preauthorization" are revised to read as follows:

§ 199.8 Definitions.

* * * * *

(b) * * *

Appropriate Medical Care. * * *

(i) Services performed in connection with the diagnosis or treatment of disease or injury, pregnancy, mental disorder, or well-baby care which are in keeping with the generally accepted norms for medical practice in the United States.

* * * * *

Basic Program. The primary medical benefits authorized under Chapter 55 of title 10, United States Code, and set forth in § 199.10.

* * * * *

Clinical Psychologist. A psychologist, certified or licensed at the independent practice level in his or her state, who meets the criteria in § 199.12(c)(3)(iii)(*a*).

* * * * *

Collateral Visits. Sessions with the patient's family or significant others for purposes of information gathering or implementing treatment goals.

* * * * *

Hospitals: Psychiatric. An institution that meets the criteria in § 199.12(b)(4)(ii).

* * * * *

Medical. The generally used term which pertains to the diagnosis and treatment of illness, injury, pregnancy and mental disorders by trained and licensed or certified health professionals. For purposes of CHAMPUS, the term "medical" should be understood to include "medical, psychological, surgical, and obstetrical" unless it is specifically stated that a more restrictive meaning is intended.

* * * * *

Preauthorization. A decision issued in writing by the Director, OCHAMPUS, or a designee, that CHAMPUS benefits are payable for certain services that a beneficiary has not yet received.

* * * * *

2. In § 199.8, paragraph (b) by removing the definitions of "DSM-II," "Medically Necessary," "Nervous and Mental Disorder," "Psychiatric Services," "Residential Treatment Centers for Emotionally Disturbed Children (RTC's)," and "RTC" and by adding, in alphabetical order, definitions for "Certified Psychiatric Nurse Specialists," "Medically or Psychologically Necessary," "Mental Disorder," and "Residential Treatment Center (RTC)," to read as follows:

Certified Psychiatric Nurse Specialist. A licensed, registered nurse who meets the criteria in § 199.12(c)(3)(iii)(*g*).

* * * * *

Medically or Psychologically Necessary. The frequency, extent, and types of medical services or supplies which represent appropriate medical care and that are generally accepted by qualified professionals to be reasonable and adequate for the diagnosis and treatment of illness, injury, pregnancy, and mental disorders or that are reasonable and adequate for well-baby care.

* * * * *

Mental Disorder. For purposes of the payment of CHAMPUS benefits, a mental disorder is a nervous or mental condition that involves a clinically significant behavioral or psychological syndrome or pattern that is associated with a painful symptom, such as distress, *and* that impairs a patient's ability to function in one or more major life activities. Additionally, the mental disorder must be one of those conditions listed in the DSM-III.

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Residential Treatment Center (RTC) A facility (or distinct part of a facility) which meets the criteria in § 199.12(b)(4)(v).

* * * * *

3. In § 199.10, by redesignating paragraph (a)(11) as (a)(12) and adding new paragraph (a)(11), by removing paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), and (b)(1)(v), by redesignating paragraph (b)(1)(vi) as (b)(1)(ii), by redesignating paragraph (b)(1)(vii) as (b)(1)(iii), by redesignating paragraph (b)(1)(viii) as (b)(1)(iv); by revising paragraphs (b)(4)(v), (b)(4)(vi), (c)(2)(v), (c)(3)(vi), (c)(3)(ix), (c)(3)(x), (e)(4), (e)(8)(iv), (e)(10)(iii), (g)(1), (g)(6), (g)(19), (g)(22), (g)(41), and (g)(44); by removing the language in paragraphs (g)(32), (g)(48), and (g)(49) and reserving the number designations to read as follows:

§ 199.10 Basic program benefits.

(a) *General.** * *

(11) *Preauthorization.* Because CHAMPUS benefits are limited for certain types of care, the beneficiary is required to obtain preauthorization from the Director, OCHAMPUS, or a designee, before the services are provided. The types of care for which preauthorization is required are identified in other parts of this section. Examples are adjunctive dental care and plastic, cosmetic and reconstructive surgery.

(i) *Purpose of preauthorization.* Preauthorization is required for those types of services for which coverage is limited or for which the conditions for coverage are highly technical. In such cases, the likelihood that CHAMPUS benefits will *not* be available is high. To minimize the risk that beneficiaries will incur costs that CHAMPUS cannot cover, the beneficiary is expected to request preauthorization of the care before the services are received. If a beneficiary fails to obtain preauthorization before receiving the services, the Director, OCHAMPUS, or a designee, may extend CHAMPUS benefits if the services or supplies otherwise would qualify for benefits but for the failure to obtain preauthorization.

(ii) *Admissions to authorized institutions requiring preauthorization.* When the Director, OCHAMPUS, requires preauthorization to an inpatient facility, the request for preauthorization is processed by OCHAMPUS. If the beneficiary elects to proceed with an admission prior to receiving written preauthorization from OCHAMPUS, authorization may be requested subsequently. If the stay in the institution is determined to be appropriate under the provisions of this Regulation, the Director, OCHAMPUS, or a designee, shall authorize benefits retroactively to the date of admission to the institution. If the stay is determined not to qualify under the provisions of this Part, the Director, or a designee, shall deny benefits as of the date the care failed to meet the requirements for coverage.

(*a*) *Initial preauthorization: Limited to 30 days.* The Director, OCHAMPUS, or a designee, shall limit the initial preauthorization to 30 days of inpatient care. At the end of this initial 30 days, the Director, OCHAMPUS, or a designee, shall review the care to determine whether it continues to be appropriate and to meet all requirements for coverage. The Director, OCHAMPUS, or designee, shall repeat this review every 30 days thereafter, or at such other time period as may be specified by the Director, OCHAMPUS, or a designee.

(*b*) *Approved treatment plan.* A request for preauthorization described in paragraph (a)(11) of this section, requires submission of a detailed treatment plan, in accordance with guidelines and procedures issued by the Director, OCHAMPUS.

(iii) *Other preauthorization requirements.* (*a*) The Director, OCHAMPUS, or a designee, shall respond to all requests for preauthorization in writing and shall send notification of approval or denial to the beneficiary.

(*b*) The Director, OCHAMPUS, or a designee, shall specify, in the approved preauthorization, the services and supplies the approval covers.

(*c*) An approved preauthorization is valid only for 90 days from the date of issuance. If the preauthorized services and supplies are not obtained or commenced within the 90-day period, a new preauthorization request is required.

(*d*) A preauthorization may set forth other special limits or requirements as indicated by the particular case or situation for which preauthorization is being issued.

* * * * *

(b) * * *

(4) * * *

(v) *Treatment of mental disorders.* Services and supplies that are medically or psychologically necessary to diagnose and treat the mental disorder for which the patient was admitted to the RTC. Covered services and requirements for qualifications of providers are as listed in paragraph (c)(3)(ix) of this section.

(vi) *Other necessary medical care.* Emergency medical services or other authorized medical care may be rendered by the RTC provided it is professionally capable of rendering such services and meets standards required by the Director, OCHAMPUS. It is intended, however, that CHAMPUS payments to an RTC should primarily cover those services and supplies directly related to the treatment of mental disorders that require residential care.

* * * * *

(c) * * *

(2) * * *

(v) *Treatment of mental disorders.*

* * * * *

(3) * * *

(vi) *Inpatient care: Concurrent.* Concurrent inpatient care by more than one individual professional provider is covered if required because of the severity and complexity of the beneficiary's condition or because the beneficiary has multiple conditions that require treatment by providers of different specialities. Any claim for concurrent care must be reviewed before extending benefits in order to ascertain the condition of the beneficiary at the time the concurrent care was rendered. In the absence of such determination, benefits are payable only for inpatient care rendered by the attending physician.

* * * * *

(ix) *Treatment of mental disorders.* CHAMPUS benefits for the treatment of mental disorders are payable for beneficiaries who are outpatients or inpatients of CHAMPUS-authorized general or psychiatric hospitals RTCs, or specialized treatment facilities, as authorized by the Director, OCHAMPUS, or a designee. All such services are subject to review for medical or psychological necessity and for quality of care.

(*a*) *Covered diagnostic and therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following professional services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists or clinical social workers; and marriage, family, and pastoral counselors, under a physician's supervision. No payment will be made for any service listed in this paragraph (c)(3)(ix)(*a*) that is rendered by an individual who does not meet the criteria of § 199.12 for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

(*1*) *Individual psychotherapy, adult or child.* A covered individual psychotherapy session is no more than 60 minutes in length. An individual psychotherapy session of up to 120 minutes in length is payable for crisis intervention.

(*2*) *Group psychotherapy.* A covered group psychotherapy session is no more than 90 minutes in length.

(*3*) *Family or conjoint psychotherapy.* A covered family or conjoint psychotherapy session is no more than 90 minutes in length. A family or conjoint psychotherapy session of up to 180 minutes in length is payable for crisis intervention.

(*4*) *Psychoanalysis.* Psychoanalysis is covered subject to specific review for medical or psychological necessity and appropriateness by the Director, OCHAMPUS, or a designee.

(*5*) *Psychological testing and assessment.*

(*6*) *Administration of psychotropic drugs.* When prescribed by an authorized provider qualified by licensure to prescribe drugs.

(*7*) *Electroconvulsive treatment.* When provided in accordance with guidelines issued by the Director, OCHAMPUS.

(*8*) *Collateral visits.* Covered collateral visits are those that are medically or psychologically necessary for the treatment of the patient and, as such, are considered as a psychotherapy session for purposes of paragraph (c)(3)(ix)(*b*) of this section.

(b) Limitations and review requirements.

(1) Outpatient psychotherapy. Outpatient psychotherapy generally is limited to a maximum of two psychotherapy sessions per week, in any combination of individual, family, conjoint, collateral, or group sessions. Before benefits can be extended for more than two outpatient psychotherapy sessions per week, professional review of the medical or psychological necessity for and appropriateness of the more intensive therapy is required.

(2) Inpatient psychotherapy. Coverage of inpatient psychotherapy is based on the medical or psychological necessity for the services identified in the patient's treatment plan. As a general rule, up to five psychotherapy sessions per week are considered appropriate. Additional sessions per week or more than one type of psychotherapy session performed on the same day—for example, an individual psychotherapy session and a family psychotherapy session on the same day—could be considered for coverage, depending on the medical or psychological necessity for the services. Benefits for inpatient psychotherapy will end automatically when the patient has received 60 days of covered inpatient mental health services in a calendar year, unless additional coverage is granted by the Director, OCHAMPUS. The Director, OCHAMPUS, shall issue specific guidelines for reviewing the medical and psychological necessity for and the quality of inpatient psychotherapy.

(c) Covered ancillary therapies. Includes art, music, dance, occupational, and other designated ancillary therapies, when included by the attending provider in an approved inpatient or outpatient treatment plan.

(d) Review of claims for treatment of mental disorder. The Director, OCHAMPUS, shall establish and maintain procedures for review, including professional review, of the services provided for the treatment of mental disorders.

(x) *Physical and occupational therapy.*

(a) Physical therapy. To be covered, physical therapy must be related to a covered medical condition. If performed by other than a physician, a physician shall refer the patient for treatment and a physician shall supervise the physical therapy. Generally, coverage of outpatient physical therapy is limited to a 60-day period, at up to two physical therapy sessions per week. Physical therapy beyond this length or frequency requires documentation of the medical necessity for the therapy and the anticipated results of the therapy. General exercise programs are not covered, even if recommended by a physician and conducted by qualified personnel. Passive exercises and range of motion exercises are not covered except when prescribed by a physician as an integral part of a comprehensive program of physical therapy.

(b) Occupational therapy. To be covered, occupational therapy must be related to a covered medical condition and must be directed to assisting the patient to overcome or compensate for disability resulting from illness, injury or the effects of treatment of a covered condition. If performed by other than a physician, a physician shall prescribe the treatment and a physician shall supervise the occupational therapy. The occupational therapist providing the therapy shall be an employee of a CHAMPUS-authorized institutional provider and the services must be rendered in connection with CHAMPUS authorized care. Only those occupational therapy services that are rendered as part of an organized inpatient or outpatient rehabilitation program are covered. Occupational therapists are not considered CHAMPUS-authorized providers in their own right and may not submit bills on a fee-for-service basis. The employing institutional provider shall bill for the services of the occupational therapist.

* * * * *

(e) * * *

(4) Treatment of alcoholism. Emergency and inpatient hospital care for complications of alcoholism and detoxification are covered as for any other medical condition. Specific coverage for the treatment of alcoholism includes detoxification, rehabilitation, and outpatient care provided in authorized alcohol rehabilitation facilities.

(i) *Emergency and inpatient hospital services.* Emergency and inpatient hospital services are covered when medically necessary for the active medical treatment of the acute phases of alcohol withdrawal (detoxification), for stabilization, and for treatment of medical complications of alcoholism. Emergency and inpatient hospital services are considered medically necessary only when the patient's condition is such that the personnel and facilities of a hospital are required. In general, these services require no more than seven days per episode. Any case of inpatient hospital care that continues beyond seven days is subject to review to determine whether the longer stay is medically necessary for the patient's medical condition. Longer stays provided for alcohol rehabilitation in a hospital-based rehabilitation facility are covered, subject to the provisions of paragraph (e)(4)(ii) of this section. Inpatient hospital services are also subject to the provisions of § 199.10(b)(5)(xi), regarding the limit on inpatient mental health services.

(ii) *Authorized alcoholism treatment.* Only those services provided in an organized alcoholism treatment program, by an authorized free-standing or hospital-based alcohol rehabilitation facility are covered. Covered services consist of any or all of the services listed below. A qualified mental health provider (physicians, clinical psychologists, clinical social workers, psychiatric nurse specialists; see § 199.10(c)(3)(ix)) shall prescribe the particular level of treatment. Each eligible CHAMPUS beneficiary is entitled to three alcoholism treatment benefit periods in his or her lifetime. (A benefit period begins with the first date of covered alcoholism treatment and ends 365 days later, regardless of the total services actually used within the benefit period. Unused benefits cannot be carried over to subsequent benefit periods. Emergency and inpatient hospital services [as described in paragraph (e)(4)(i) of this section] do not constitute alcoholism treatment for purposes of establishing the beginning of a benefit period.)

(a) Rehabilitative care. Rehabilitative care in an authorized alcohol rehabilitation facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage is limited to no more than 21 days of rehabilitative care in a benefit period. If the patient is medically in need of alcohol detoxification, but does not require the personnel or facilities of a general hospital setting, up to seven days of detoxification services are covered in addition to the rehabilitative care. The medical necsssity for the detoxification must be documented. Any detoxification services provided by the alcohol rehabilitation facility must be under general medical supervision.

(b) Outpatient care. Outpatient treatment provided by an approved alcohol rehabilitation facility, whether free-standing or hospital-based, is covered for up to 60 visits in a benefit period.

(c) Family therapy. Family therapy provided by an approved alcohol rehabilitation facility, whether free-standing or hospital-based, is covered for up to 15 visits in a benefit period.

(iii) *Exclusions.*

(a) Aversion therapy. The programmed use of physical measures, such as electric shock, alcohol, or other drugs as negative reinforcement (aversion therapy) is not covered, even if recommended by a physician.

(b) Domiciliary settings. Domiciliary facilities, generally referred to as halfway or quarterway houses, are not authorized providers and charges for services provided by these facilities are not covered.

(iv) Confidentiality. Release of any patient identifying information, including that required to adjudicate a claim, must comply with the provisions of section 523 of the Health Service Act (HSA), as amended, (42 U.S.C. 290dd-3), which governs the release of medical and other information from the records of patients undergoing treatment of alcoholism. If the patient refuses to authorize the release of medical records which are, in the opinion of the Director, OCHAMPUS, or a designee, necessary to determine benefits on a claim for treatment of alcoholism, the claim will be denied.

* * * * *

(8) * * *

(iv) *Preauthorization required.* In order for CHAMPUS benefits to be extended for cosmetic, reconstructive and plastic surgical procedures which might qualify under paragraphs (e)(8)(i) and (e)(8)(v) *(e)*, *(g)* and *(h)* of this section, preauthorization is required from the Director, OCHAMPUS, or a designee. Refer to § 199.10 paragraph (a)(11) for information on preauthorization. Preauthorization is not required for reconstructive breast surgery following mastectomy performed for the treatment of carcinoma, fibrocystic disease, nonmalignant tumors, or traumatic injuries.

* * * * *

(10) * * *

(iii) *Preauthorization required.* In order to be covered, adjunctive dental care requires preauthorization from the Director, OCHAMPUS, or a designee, in accordance with paragraph (a)(11) of this section. When adjunctive dental care involves a medical (not dental) emergency (such as facial injuries resulting from an accident), the requirement for preauthorization is waived. Such waiver, however, is limited to the essential adjunctive dental care related to the medical condition requiring the immediate emergency treatment. A complete explanation, with supporting medical documentation, must be submitted with claims for emergency adjuctive dental care.

* * * * *

(g) * * *

(1) *Not Medically or psychologically necessary.* Services and supplies that are not medically or psychologically necessary for the diagnosis or treatment of a covered illness (including mental disorder) or injury, for the diagnosis and treatment of pregnancy, or for well-baby care.

* * * * *

(6) *Therapeutic absences.* Therapeutic absences from an inpatient facility, except when such absences are specifically included in a treatment plan approved by the Director, OCHAMPUS, or a designee.

* * * * *

(19) *Preauthorization required.* Services or supplies which require preauthorization if preauthorization was not obtained. Services and supplies which were not provided according to the terms of the preauthorization. The Director, OCHAMPUS, or a designee, may grant an exception to the requirement for preauthorization if the services otherwise would be payable except for the failure to obtain preauthorization.

* * * * *

(22) *Services or supplies ordered by a court or other government agency.* Services or supplies, including inpatient stays, directed or agreed to by a court or other governmental agency. However, those services and supplies (including inpatient stays) that otherwise are medically or psychologically necessary for the diagnosis or treatment of a covered condition and that otherwise meet all CHAMPUS requirements for coverage are not excluded.

* * * * *

(32) [Reserved]

* * * * *

(41) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition, for example, educational counseling, vocational counseling, and counseling for socio-economic purposes. Services provided by a marriage, family, or pastoral counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.12, "Authorized Providers." Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized alcohol rehabilitation facility and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost rate.

* * * * *

(44) *Education or training.* Academic education or vocational training services and supplies, unless the provisions of § 199.10(b)(1)(v), relating to general or special education, apply.

* * * * *

(48) [Reserved]

(49) [Reserved]

* * * * *

3. In § 199.11, by revising paragraphs (c)(4)(i), (c)(4)(ii) and (f) to read as follows:

§ 199.11 Program for the Handicapped.

* * * * *

(c) * * *

(4) *Application approval.*

(i) *Authority for approval.* The Director, OCHAMPUS, is vested with the final authority on all applications for coverage under the Program for the Handicapped. This includes the determination as to the severity of the handicap and the appropriateness of the supplies or services to the handicapping condition for which coverage is requested. The Director, OCHAMPUS, or a designee, shall request such information as is deemed necessary to make these determinations before issuing approvals or denials. Failure to supply such information will result in deferral or denial of the application for coverage.

(ii) *Deferral or denial of application.* In those situations where a deferred or denied application for coverage under the Program for the Handicapped is subsequently approved, such subsequent approval may be applied retroactively to the date coverage would have been effective had adequate information been provided.

* * * * *

(f) Procedures for obtaining benefits. Active duty members seeking benefits under the Program for the Handicapped for a dependent spouse or child must secure authorization from OCHAMPUS for such benefits in advance. Payment will not be made for any services or supplies under the Program for the Handicapped received or obtained prior to approval of the application by the Director, OCHAMPUS, or a designee. If a beneficiary fails to obtain preauthorization before receiving the services, the Director, OCHAMPUS, or a designee, may extend CHAMPUS benefits if the services or supplies otherwise would qualify for benefits but for the failure to obtain preauthorization.

* * * * *

4. In § 199.12, by revising paragraphs (a)(6), (b)(1)(i), (b)(3)(i), (b)(4)(ii) introductory text, (b)(4)(ii)*(b)*, (b)(4)(v), and (c)(3)(iii)*(a)*; by redesignating paragraph (c)(3)(iii)*(g)* as (c)(3)(iii)*(h)*; and by adding new paragraphs

(b)(4)(viii)(*b*)(*3*) and (c)(3)(iii)(*g*) to read as follows:

§199.12 Authorized providers.

(a) * * *

(6) *Provider required.* In order to be considered for benefits, all services and supplies shall be rendered by, prescribed by, or furnished at the direction of, or on the order of a CHAMPUS-authorized provider practicing within the scope of his or her license.

* * * * *

(b) * * *

(1) * * *

(i) *Preauthorization.* The Director, OCHAMPUS, reserves the right to require preauthorization for admission to inpatient facilities. Refer to § 199.10(a)(11) for information on preauthorization.

* * * * *

(3) * * *

(i) *JCAH accreditation status.* Each CHAMPUS fiscal intermediary shall keep informed as to the current JCAH accreditation status of all hospitals and skilled nursing facilities in its area; and the provider's status under Medicare, particularly with regard to compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d(1)). The Director, OCHAMPUS, or a designee, shall specifically approve all other authorized institutional providers providing services to CHAMPUS beneficiaries. At the discretion of the Director, OCHAMPUS, any facility that is certified and participating as a provider of services under title XVIII of the Social Security Act (Medicare), may be deemed to meet CHAMPUS requirements. The facility must be providing a type and level of service that is authorized by this part.

* * * * *

(4) * * *

(ii) *Hospitals, psychiatric.* A psychiatric hospital in an institution which is engaged primarily in providing services to inpatients for the diagnosis and treatment of mental disorders.

* * * * *

(*b*) In order for the services of a psychiatric hospital to be covered, the hospital shall comply with the provisions outlined in paragraph (b)(4)(i) of this section. All psychiatric hospitals shall be accredited by the JCAH in order for their services to be cost-shared under CHAMPUS. In the case of those psychiatric hospital that are not JCAH-accredited because they have not been in operation a sufficient period of time to be eligible to request an accreditation survey by the JCAH, the Director, OCHAMPUS, or a designee, may grant temporary approval if the hospital is certified and participating under Title XVIII of the Social Security Act (Medicare, Part A). This temporary approval expires 12 months from the date on which the psychiatric hospital first becomes eligible to request an accreditation survey by the JCAH.

* * * * *

(v) *Residential treatment centers.* A residential treatment center (RTC) is a facility or distinct part of a facility that provides, to children and adolescents, a total, twenty-four hour, therapeutically planned group living and learning situation where distinct and individualized psychotherapeutic interventions can take place. A residential treatment center is organized and professionally staffed to provide residential treatment of mental disorders to children and adolescents who have sufficient intellectual potential to respond to active treatment (that is, for whom it can reasonably be assumed that treatment of the mental disorder will result in an improved ability to function outside the residential treatment center), for whom outpatient treatment is not appropriate, and for whom a protected and structured environment is medically or psychologically necessary.

(*a*) In order for the services of a residential treatment center to be authorized, the residential treatment center shall:

(*1*) Be accredited by the Joint Commission on Accreditation of Hospitals under the Commission Standards for Psychiatric Facilities Serving Children and Adolescents; and

(*2*) Comply with the Standards for Residential Child Care, developed by the Interstate Consortium on Residential Child Care, as required by the Director, OCHAMPUS, or a designee;

(*3*) Comply with the CHAMPUS Standards for Residential Treatment Centers Serving Children and Adolescents with Mental Disorders, as issued by the Director, OCHAMPUS;

(*4*) Have entered into a Participation Agreement with OCHAMPUS within which the residential treatment center agrees, in part, to:

(*i*) Accept payment for its services based on an allowable-cost rate acceptable to the Director, OCHAMPUS, or such other method as determined by the Director, OCHAMPUS;

(*ii*) Furnish OCHAMPUS with cost data certified to by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*iii*) Accept the CHAMPUS-determined rate as payment in full and collect from the CHAMPUS beneficiary or the family of the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability, as defined in § 199.10, and charges for services and supplies that are not a benefit of CHAMPUS;

(*iv*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability, as defined in § 199.10;

(*v*) Permit access by the Director, OCHAMPUS, to clinical records of CHAMPUS beneficiaries and to the financial and organizational records of the facility;

(*vi*) Comply with the provisions of section 199.14, and submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS;

(*vii*) Submit claims for services provided to CHAMPUS beneficiaries at least every thirty days. If claims are not submitted at least every thirty days, the residential treatment center agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS;

(*b*) The residential treatment center shall not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits shall not be paid for services provided by the residential treatment center until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

Note.—Each residential treatment center shall enter into a participation agreement as described in § 199.12(b)(4)(v)(*a*)(*4*), above, by June 1, 1985. A residential treatment center that was a CHAMPUS-authorized provider as of September 14, 1984, and that otherwise meets the requirements of this § 199.12 (b)(4)(v)(*a*) (*1*) through (*3*) and (b)(4)(v)(*c*) will continue to be authorized until the participation agreement is signed or June 1, 1985, whichever occurs first.

(*c*) Even though a residential treatment center may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for a particular admission is contingent upon certain conditions:

(*i*) The child seeking admission is suffering from a mental disorder which meets the diagnostic criteria of the DSM–III and meets the CHAMPUS definition of a mental disorder in § 199.8 of this part.

(*ii*) The child meets the criteria for admission to a residential treatment center issued by the Director, OCHAMPUS.

(*iii*) A psychiatrist or other physician or a clinical psychologist shall recommend that the child be admitted to the residential treatment center.

(*iv*) A psychiatrist or a clinical psychologist shall direct the development of the child's treatment plan.

(*v*) All services shall be provided by or under the supervision of a qualified mental health provider (refer to § 199.10(c)(3)(ix)).

* * * * *

(viii) * * *

(*b*) * * *

(*3*) *Alcohol rehabilitation facilities.* In order to be authorized under CHAMPUS as a provider of alcohol detoxification, rehabilitative services, outpatient treatment, and family therapy, alcohol rehabilitation facilities, both free-standing facilities and hospital-based facilities, shall operate primarily for the purpose of providing alcoholism treatment (on either an inpatient [including partial care] or an outpatient basis) and shall meet the following criteria:

(*i*) The course of treatment shall be prescribed by and supervised by a qualified mental health provider (refer to § 199.10(c)(3)(ix)) practicing within the scope of his or her license. When indicated by the patient's physical status, the patient shall be under the general supervision of a physician.

(*ii*) The type and level of care provided by the facility are otherwise authorized by this part.

(*iii*) The facility shall meet all licensing and other certification requirements of the jurisdiction in which the facility is located.

((*iv*) The facility shall be accredited by the JCAH or shall meet such other requirements as the Director, OCHAMPUS, finds necessary in the interest of the health and safety of the individuals who are furnished services in the facility.

(*v*) The facility shall have entered into a participation agreement with OCHAMPUS within which the facility agrees, in part, to:

(*A*) Accept payment for its services based on an allowable-cost rate acceptable to the Director, OCHAMPUS, or such other method as determined by the Director, OCHAMPUS;

(*B*) Furnish OCHAMPUS with cost data certified to by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS;

(*C*) Accept the CHAMPUS-determined rate as payment in full and to collect from the CHAMPUS beneficiary those amounts that represent the beneficiary's liability, as defined in § 199.10, and charges for services and supplies that are not a benefit of CHAMPUS;

(*D*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability, as defined in § 199.10;

(*E*) Permit access by the Director, OCHAMPUS, to clinical records of CHAMPUS beneficiaries and to the financial and organizational records of the facility;

(*F*) Comply with the provisions of § 199.14, and to submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary to CHAMPUS.

(*vi*) The alcoholism rehabilitation facility shall not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits shall not be paid for services provided by the alcoholism rehabilitation facility until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

Note.—Each alcoholism rehabilitation facility shall enter into a participation agreement as described in § 199.12(b)(4)(viii)(*b*)(*3*)(*e*), above, by June 1, 1985. An alcoholism rehabilitation facility that was a CHAMPUS-authorized provider as of September 14, 1984 and that otherwise meets the requirements of this § 199.12(b)(4)(viii) (*b*)(*3*) (*a*) through (*d*) will continue to be authorized until the participation agreement is signed or June 1, 1985, whichever occurs first.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(*a*) *Clinical psychologist.* For purposes of CHAMPUS, a clinical psychologist is an individual who:

(*i*) Is licensed or certified by the state for the independent practice of psychology; and

(*ii*) Possesses a doctoral degree in psychology from a regionally accredited university; and

(*iii*) Has had two years of supervised clinical experience in psychological health services of which at least one year is post-doctoral and one year (may be the post-doctoral year) is in an organized psychological health service training program; or

(*iv*) Is listed in the *National Register of Health Service Providers in Psychology*, published by the Council for the National Register of Health Service Providers in Psychology.

* * * * *

(*g*) *Certified psychiatric nurse specialist.* A certified psychiatric nurse specialist may provide covered care independent of physician referral and supervision. For purposes of CHAMPUS, a certified psychiatric nurse specialist is an individual who:

(*i*) Is a licensed, registered nurse; and

(*ii*) Has at least a master's degree in nursing with a specialization in psychiatric and mental health nursing; and

(*iii*) Has had at least two years of post-master's degree practice in the field of psychiatric and mental health nursing, including an average of eight hours of direct patient contact per week; or

(*iv*) Is listed in a CHAMPUS-recognized, professionally sanctioned listing of clinical specialists in psychiatric and mental health nursing.

* * * * *

5. In § 199.13, by removing paragraph (e)(2) and redesignating paragraph (e)(3) as (e)(2), and by revising paragraphs (f)(1) and (f)(1)(ii) to read as follows:

§ 199.13 Claims submission, review, and payment.

* * * * *

(f) * * *

(1) *Preauthorization must be granted before benefits can be extended.* In those situations requiring preauthorization, the request for such preauthorization shall be submitted and approved before benefits may be extended, except as provided in § 199.10 paragraph (a)(11). If a claim for services or supplies is submitted without the required preauthorization, no benefits shall be paid, unless the Director, OCHAMPUS, or a designee, has granted an exception to the requirement for preauthorization.

* * * * *

(ii) *Time limit on preauthorization.* Approved preauthorizations are valid for specific periods of time, usually 90 days. If the preauthorized services or suppplies are not obtained or commenced within the specified time limit, a new preauthorization is required before benefits may be extended.

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

Dated: September 6, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-24002 Filed 9-13-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 40442-4092]

Final Rules for Patent Maintenance Fees

Correction

In FR Doc. 84-23181 beginning on page 34716 in the issue of Friday, August 31, 1984, make the following corrections:

1. On page 34719, in the second full paragraph in the third column, in the twentieth and twenty-first lines, delete "A petition under § 1.377 would provide an avenue for seeking relief.".

2. In the same column, the eighth line from the bottom, insert" provide an avenue for seeking relief. A petition under § 1.377 would" between "would" and "not".

3. On page 34721, in the sixth line from the bottom of the first column, insert the word "amount" after the word "surcharge".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 2670-6; NC-002]

Approval and Promulgation of Implementation Plans North Carolina; 1982 Revision to Charlotte CO Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 26, 1984 (49 FR 11175), EPA approved North Carolina's 1982 revision to its carbon monoxide (CO) State Implementation Plan (SIP) for Charlotte except for its I/M plan and commitments to certain transportation control measures (TCM's) which had been submitted to EPA in draft form only. EPA found that these portions of the plan would meet the requirements of the Clean Air Act if subjected to a public hearing and formally adopted. Furthermore, in the March 26, 1984, notice, the Agency said that it would approve them once they were officially submitted. A public hearing on the two outstanding portions was held on January 31, 1984; they were adopted by the Environmental Management Commission on April 12, 1984, and submitted to EPA on April 17, 1984. Because they are the same as the ones reviewed in draft by EPA, and because EPA had previously announced its intention to approve them upon their official submittal to the Agency, EPA today approves these two remaining portions of the SIP. This means that the 1982 SIP revision of the Charlotte CO nonattainment area is now approved in full.

DATE: This action will be effective November 13, 1984, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 84, Washington, DC 20408

Public Information Reference Unit, EPA, 401 M Street, SW., Washington, DC 20460.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, Atlanta, GA 30365

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

FOR FURTHER INFORMATION CONTACT: Tom Lyttle EPA, Region IV, Air Management Branch, 345 Courtland Street, Atlanta, Georgia, 404-881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: On February 3, 1983 (48 FR 5052), EPA proposed to approve North Carolina's 1982 revision to the Part D CO SIP for Charlotte. At that time, EPA had received the auto inspection/maintenance (I/M) program plan in draft only. Based on the draft submitted, EPA proposed to approve the I/M portion of the plan when it was officially submitted. The original submittal also was lacking commitments by the North Carolina Department of Transportation to fund certain transportation control measures (TCM's) necessary to meet the CO standard. EPA proposed approval of the complete CO plan, contingent on correction of those two deficiencies. On March 26, 1984 (49 FR 11175), EPA took final action to approve the CO SIP. EPA did not take action on the I/M and TCM portions, however, because the corrections to the deficiencies noted above had not been officially submitted, although they had been submitted in draft. North Carolina had committed to hold a public hearing on these two portions of the SIP and submit them officially no later than May 1, 1984. In the March 26 notice, EPA found that the draft submittals would meet EPA requirements once they were submitted in final form, and stated its intention to approve these two remaining portions of the SIP if the final submittals were consistent with drafts.

The I/M and TCM portions of the SIP were given a public hearing on January 31, 1984. They were adopted by the Environmental Management Commission on April 12, 1984, and submitted to EPA on April 17, 1984. The final submittals were identical to the draft submittals reviewed earlier by EPA.

The I/M plan is the same as the draft which EPA found acceptable in its February 3, 1983 proposal. A full description of the SIP revision and of EPA's evaluation was contained in the February 3, 1983 notice. The TCM plan contains commitments to certain intersection improvements, which had not been originally included in the SIP. The TCM plan was revised to delete two parallel roadway improvements, since a revised attainment demonstration showed that these two projects were unnecessary to expeditiously attain the CO standards.

Action: EPA approves the I/M and TCM portions of the North Carolina Part D SIP for the Charlotte CO nonattainment area. These revisions meet all requirements of the Clean Air Act and EPA policy. Because EPA has already announced its intention to approve these portions of the SIP upon their official submittal, the Agency is foregoing a proposal to approve the TCM portions of the SIP. The public has already been given the opportunity to comment on the I/M plan as part of the February 3, 1983, proposal. With the approval of these two portions of the SIP, the Charlotte CO SIP is approved in full.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by [60 days from today]. This action may not be challenged later in proceedings to enforce its requirements. [See sec. 307(b)(2).]

Incorporation by reference of the North Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Lead, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act as amended (42 U.S.C. 7410 and 7502)

Dated: September 7, 1984.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart II—North Carolina

Section 52.1770(c) is amended by revising paragraph (c)(37) to read as follows:

§ 52.1770 Identification of plan

* * * * *

(c) The plan revisions listed below were submitted on the date specified.

* * * * *

(37) 1982 revision of the Part D plan for the Mecklenburg County CO nonattainment area, submitted on June 17, 1982, and April 17, 1984, by the North Carolina Department of Natural Resources and Community Development.

[FR Doc. 84–24369 Filed 9–13–84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPO-030-F]

Medicare Program; Interest Charges on Overpayments and Underpayments to Providers and Suppliers of Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule and correction.

SUMMARY: On December 6, 1982, we published a final rule with comment period (47 FR 54811) concerning interest charges on overpayments and underpayments to providers and suppliers of services and indicated that we would consider making revisions to respond to comments received. That rule implemented section 117 of Pub. L. 97–248, the Tax Equity and Fiscal Responsbility Act of 1982. The purpose of this final rule is to respond to the comments we received and to make some minor revisions to the rule.

EFFECTIVE DATE: These regulations are effective October 15, 1984.

SUPPLEMENTARY INFORMATION:

I. Background

Section 117 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), was enacted on September 3, 1982. It added a new subsection (d) to section 1815 and a new subsection (j) to section 1833 of title XVIII (Medicare) of the Social Security Act (the Act). These provisions require that once a final determination is made that a provider or supplier of services has received an overpayment or underpayment from Medicare, and payment of the excess or deficit is not made within 30 days of the date of the final determination, interest charges will be applied to the balance due. The regulations at 42 CFR 405.376 implement the legislation and provide specific rules regarding interest on Medicare overpayments and underpayments.

Section 405.376 sets forth the rules and rates for the charging of interest on overpayments and underpayments to providers and suppliers, other than those outlined in § 405.454(l), and specify the circumstances under which HCFA may waive interest charges.

Specifically, the regulations that—

1. If a cost report is filed that does not indicate an amount is due (or owed by) HCFA, but the intermediary determines that an overpayment (or underpayment) exists—

- Interest will be charged on debts in accordance with the prevailing rate(s) specified in the Treasury Fiscal Requirements Manual (§ 8020.20), unless HCFA can recoup (or pay) the overpayment (or underpayment) within 30 days.

Interest will accrue from the date of the final determination and will be charged (paid) on the overpayment (underpayment) balance for each 30-day period that payment is delayed. (Periods of less than 30 days will be treated as a full 30-day period, and the 30-day interest charge will be applied to any balance.)

- No interest will be charged if the overpayment is completely liquidated within 30 days of the final determination.
- No interest will be paid if the underpayment is completely liquidated within 30 days of the notification of the underpayment.
- Interest will accrue on the balance of the overpayment remaining at the beginning of each 30-day period if a debt is repaid in installments.

These rules also apply if a carrier determines that it has overpaid or underpaid a physician or supplier.

2. If a cost report is filed and indicates an amount is due HCFA, interest will accrue on that overpayment from the date the cost report is filed, unless (i) full payment accompanies the report or (ii) the provider and the intermediary agree in advance to subtract the amount of overpayment from Medicare payments over the next 30-day period. In addition, if the intermediary determines that a further overpayment exists, interest accrues from the date of the final determination with respect to that further overpayment.

3. In instances when a cost report is not filed timely and the intermediary subsequently determines that an overpayment exists, interest is also assessed on the overpayment from the date the cost report was due to the date the cost report is filed.

Interest on overpayments under these regulations begins with the issuance of both a notice of program reimbursement (NPR) and a written demand for payment, or, when an NPR is not utilized, upon the issuance of a written determination that an overpayment exists and of a written demand for payment. (Interest accrues from the date of the final determination except as required by any subsequent administrative or judicial reversal.)

Under the regulations, interest assessed on overpayments and interest on funds borrowed during a cost reporting period for the purpose of repaying Medicare overpayments is not considered an allowable cost to providers of services.

If an overpayment determination is ultimately reversed administratively or judicially in favor of the provider or supplier of services, appropriate adjustments will be made with respect to the overpayment and the interest assessed.

II. Analysis and Response to Comments

We received comments from 35 commenters, who consisted of health facilities, health care associations, Medicare intermediaries, certified public accountant firms, State health agencies, and a law firm.

The comments are discussed below according to the order in which the provisions appear in the regulations.

1. Basic rules: 42 CFR 405.376(b)

Three commenters disagreed with the provision that, for purposes of computing interest, periods of less than 30 days should be treated the same as a full period; they recommended that interest should be calculated on daily balances.

Response: The regulations conform with the requirements of the Treasury Fiscal Requirements Manual, with which we must comply. In addition, calculating interest on a 30-day period is easier for Medicare contractors to administer. The provision will apply to underpayments as well as overpayments, requiring us to pay a provider 30 days' worth of interest even if we settle the underpayment sooner.

2. Definition of final determination: 42 CFR 405.376(c)

a. Twenty-four commenters believe that the filing of the cost report should not be considered as a final determination nor as a "triggering device" for the accrual of interest when a cost report indicating an overpayment is submitted and payment does not accompany the cost report.

Response: We do not agree with this comment. The filing of a cost report showing an overpayment is an admission by a provider that a debt exists that is therefore due and payable at that time. This has always been our policy. Before sections 1815(d) and 1833(j) of the Act were enacted, there was no incentive for compliance. If a provider filed a cost report without returning any overpayment, we would need to monitor constantly, send a series of demand letters, and possibly suspend program payments. The intent of Congress in adding these interest charges was to encourage more timely settlement.

b. One commenter stated that if a provider receives an extension for filing a cost report, we should not penalize the provider for delinquency.

Response: We agree with the comment and the regulations (§ 405.376(c)(i)(iv)) point out that an extension granted by the intermediary for one 30-day period does extend the due date. If any interest on an overpayment is to be assessed, it would accrue only from the extended due date.

c. One commenter stated that the use of the term "unfiled cost report" is confusing in the context of these regulations and that a better term would be "late filed cost report", since the purpose is to establish the date from which interest accrues, rather than to discuss procedures concerning unfiled cost reports.

Response: We agree with this comment and are changing "unfiled cost report" to "cost report that is not filed on time" in § 405.376 (c)(1)(iv) and (e)(3), the two places it appears.

d. Three commenters had difficulty with the definition of final determination because of the possibility that the provider's cost report would show an underpayment and the intermediary's review would show an overpayment. Two of the commenters noted that the provider may show an underpayment because of the need to preserve appeal rights. One of the commenters wanted to know whether in such a situation a provider was required to repay the amount overpaid within 30 days of the due date or would be permitted to wait for the NPR. Two comments concerned the date the interest would start: with the due date of the cost report or with the intermediary's determination that there is an overpayment. (One of these comments concerned a late filed cost report that showed an underpayment; the intermediary charged interest from the due date of the cost report.)

Response: When adjustments excluding certain appeal items result in an overpayment, interest accrues from the date of notification and demand for repayment. Interest will always accrue on any overpayment, either as filed, or later determined, when a cost report is delinquent. Interest accrues during the period of delinquency even through the amount due is repaid within 30 days from the date of determination.

e. Three commenters wanted to know whether the interest provisions apply to interim payments or lump sum repayments based on interim rate adjustments. The definition of final determination as a written determination of an overpayment when there is no notice of program reimbursement permits, two commenters believed, interest assessment on interim reimbursement; one commenter stated that if that is HCFA's intention, it should be specified in a future proposed revision and not implemented before providers have a chance to comment.

Response: We agree with this comment. We will not assess interest on overpayments resulting from interim rate adjustments. However, as indicated below, we may assess interest based on an initial retroactive adjustment if the provider does not dispute the adjustment.

f. One commenter requested that the definition of a timely-filed cost report for purpose of assessing interest on an overpayment should be clarified. For an example, he suggested that if a cost report is not filed within 90 days but is filed within 120 days; and the overpayment is repaid within 30 days, no interest should be charged. He stated that the policy on assessment of interest should be consistent with the policy on offset/suspension of interim/PIP payments when a cost report is not timely filed (i.e., the interim/PIP payments are not reduced until after the 120-day periods ends).

Response: A cost report is due on the last day of the third month following the close of the cost reporting period with a single 30-day extension granted for good cause. If an overpayment exists when the cost report is filed, it is payable at that time. The suspension of interim payments is a collection procedure. It is not practical to expect the intermediary to begin offset the day after a cost report is late.

g. One commenter stated that our position in considering a provider's cost report as a "final determination" when there is an overpayment might cause a provider to take and sustain the position that we and our intermediaries would be barred from further audits or adjustments of the report.

Response: We do not agree with this comment. The term "final determination" is defined in regulations as a means of establishing the initial date of interest accrual. It does not prevent further adjustment of an overpayment or underpayment in the usual cost settlement or appeals process.

3. Rate of interest: 42 CFR 405.376(d)

a. Two commenters stated that the interest rate to be charged is vital information and should be available in convenient form to all parties concerned.

Response: We agree and will send the current interest rate each quarter to the HCFA Regional Administrators who will establish procedures to notify the intermediaries and carriers in the region, who in turn will keep the providers and suppliers apprised of interest rates.

b. Two commenters stated that the regulations do not define what constitutes default. They stated that conditions that give rise to declaration of default should be defined.

Response: We agree with this comment. We will explain default and include in our administrative instructions the procedures the intermediary should follow. The provider or supplier is considered in default if he fails to pay two consecutive installment payments of an extended repayment agreement.

c. One commenter believed that there should be a distinction between a delay in repayment for good cause and default: if good cause exists, the interest rate should not be modified. This commenter and another one believed that if there is a default in repayment, the interest rate should match the prevailing rate, whether it is higher or lower.

Response: In response to the first comment: we define default as missing two payments (or more) on a repayment schedule; the balance of the debt then becomes subject to a higher rate of interest (if a higher rate is in effect at that time.) This policy will be included in administrative instructions. In response to the second comment: because the **Federal Register** may publish the interest rate as much as 60 days prior to its effective date, a provider or supplier could delay payment knowing that a future interest rate would be lower than the rate currently being assessed. To assess the lower rate prevailing at the time of default would defeat the purpose of the regulation; i.e., prompt repayment of Medicare overpayments.

4. Accrual of Interest: 42 CFR 405.376(e)

a. Twenty-four commenters expressed their belief that the regulations are not consistent in their treatment of overpayments and underpayments when they appear on a cost report as filed. They stated that if the cost report indicates an overpayment, the balance is due immediately. If it indicates an underpayment when the cost report is filed, the provider must wait until the intermediary reviews it and decides the correct amount due. These commenters felt a provider is deprived of the amount due and does not receive any interest for the period in which the intermediary makes its decision.

Response: Although it may appear that there is an inconsistency in the treatment of overpayments and underpayments when they appear on a cost report; we believe the different treatment is justified. Interim rates are set by the intermediary based primarily upon data submitted by a provider. A cost report showing an underpayment is a claim for funds against the government and cannot be paid until the claim is verified. On the other hand, a cost report showing an overpayment is a statement by the provider (which has received payments during the period of the cost report) that it has been overpaid. Based on that statement, payment should accompany the cost report. It is not reasonable to require either the government to take an additional step to collect the overpayment before interest starts to accrue or to allow the provider an additional period to repay the admitted overpayment before interest is charged. In the latter case a provider has had interest-free funds in excess of those to which it is entitled during part or all of the cost report year (and, in many cases, as long as 18 months). With respect to the underpayment, existing regulations (42 CFR 405.454(f)) require the intermediary to make a retroactive adjustment. In either case, the amount of the debt must be reasonably certain before it becomes due and payable.

b. These 24 commenters also stated that if the full amount of an underpayment is not received upon tentative settlement (to which we refer as an initial retroactive adjustment in this preamble), interest to the provider should accrue from the date the cost report is filed. Such a policy would eliminate partial refunds of underpayments based upon a percentage of the claimed underpayment. Providers are being denied a complete return of their costs until the intermediary makes final retroactive adjustments.

Response: We do not agree with this comment. Initial retroactive adjustments (see 42 CFR 405.454(f)(2)) by the intermediary are intended to bring the interim payments into agreement with the reimbursable amount payable to the provider. Regardless of whether there is an overpayment or underpayment, either the provider or the intermediary has 30 days to pay from the date of the determination before interest accrues. Interest is not retroactive to the due date of the cost report except in those cases where the provider does not file the cost report timely or does not pay the overpayment when filing a cost report indicating an amount due the Medicare program.

c. The twenty-four commenters also stated that if our findings are reversed on appeal, we should pay interest to the provider to the extent that it has prepaid the overpayment.

Response: We cannot accept this comment. If findings are reversed or changed upon administrative or judicial appeal, we will refund any interest erroneously collected. We can only pay interest or otherwise disburse funds when the payment is authorized by law. Sections 1815(d) and 1833(j) of the Act require only that interest be paid if an underpayment is not paid within 30 days from the date of the final determination; it does not otherwise authorize payment of interest.

d. One commenter stated that when a cost report showing an underpayment is filed late, interest should not be charged for the period beginning with the due date and up to the date the intermediary determines there is an overpayment, since to charge interest from the date the cost report was due penalizes the provider for filing late.

Response: Whenever a cost report is filed late and an overpayment exists, either as initially reported by the provider or as later determined by the intermediary, interest will accrue. The accrual for the delinquent period runs from the due date to the date filed, not to the date of determination. Under section 1815(a) of the Act, all payments previously made constitute an overpayment when a cost report is not timely filed.

e. Three commenters had difficulty with the option to liquidate the overpayment. To one of the commenters the meaning of "agree in advance" was unclear: he wanted to know whether it means in advance of the cost report filing date or in advance of the interim payment reduction. All three did not believe that the intermediary had to agree, as the regulations imply, to a liquidation of the overpayment if the provider repaid the amount within 30 days of a determination of an overpayment.

Response: The agreement to offset interim payments must be reached before the cost report is due since interest will otherwise accrue from the due date of a cost report showing an overpayment when filed. If the intermediary determines the overpayment, no agreement is needed if the amount due is paid within 30 days.

f. One commenter suggested that we change the language in § 405.376(e)(2)(ii) so that there is no confusion because of the difference in the definitions of "final determination" in the law and in our regulations. The commenter suggested we eliminate the term "further overpayment" and change the language so that it is clear that there is a final determination for each overpayment discovered. The commenter also thought the regulations should specify the interest rate for further overpayments.

Response: We agree with these comments and are adopting the pertinent language the commenter included in his comment, with two minor changes. Section 405.376(e)(2)(ii) will read: "If the intermediary determines an additional overpayment during the cost settlement process, interest will accrue from the date of each determination." We are adding a subparagraph (iii) to state that the interest rate to be assessed on any determination is the rate that is in effect on the date the determination is made.

g. Twenty-four commenters believed that the accrual of interest on underpayments is not consistent with the accrual of interest on overpayments once the contractor makes a determination, since interest to the provider or supplier does not begin to accrue until 30 days after the determination.

Response: We agree with this comment. We will eliminate "beginning 30 days" from § 405.376(e)(4) so that interest to us or to the provider or supplier accrues from the date of the determination. We are also amending § 405.376(f)(1)(i) to show that interest will be waived when either the underpayment or overpayment is liquidated within 30 days so that we may benefit from liquidating underpayments.

h. One commenter wanted to know when interest starts to accrue on amounts owing because of amended NPRs.

Response: When an amended NPR establishes or increases the amount of an overpayment, interest on the overpayment, or the increased amount, accrues from the date the intermediary sends the amended NPR and new demand letters to the provider.

i. One commenter requested that there be some provision to protect providers and suppliers from assessment of interest charges when the provider has made "good faith" efforts to refund an overpayment; e.g., the provider has sent a check that the intermediary could not locate.

Response: We agree with the comment and we are furnishing the details for determining the date of receipt in our administrative instructions. Generally, we will consider the date of postmark to be the date of "receipt" (postal service regulations consider a letter to be the addressee's after it is postmarked); when other types of delivery are used (such as Federal Express or Overnight Mail), the receipt will establish the date of receipt. Because postmarks are sometimes missing or illegible, we suggest providers using the U.S. mail send letters by certified mail, return receipt requested.

j. Two commenters stated that one intermediary has indicated that interest will be assessed from the date of an initial retroactive adjustment. The commenter stated that because the regulations appear to provide quite clearly that interest starts with the issuance of a notice of program reimbursement (NPR) and a written demand for payment, the intermediary's position does not appear to be supported by the regulations.

Response: We do not agree entirely with this comment. Although the NPR is the primary basis upon which interest is assessed against providers, the regulations do not require an NPR to be issued before interest may accrue. When an initial retroactive adjustment results in an overpayment, a written determination that an overpayment exists and a written demand for payment is sufficient to start the accrual of interest.

Section 405.376(c)(1)(ii) indicates that a final determination occurs in those cases when an NPR is not utilized upon the isssuance of a written overpayment determination and demand for payment. (That section also includes the parenthetical phrase "(primarily under Part B)." This is not meant to be an exclusive phrase limiting this type of determination to Part B overpayments. Provider overpayments and underpayments are the principal subject dealt with in the regulation and the phrase is meant to point out where Part B debts fall in the definition of final determination.) This section, therefore, also defines final determination with regard to provider overpayments and underpayments that are made before the issuance of the NPR.

It is our experience that because the initial retroactive adjustment serves to correct mathematical errors of calculations, or other obvious errors or inconsistencies, it is, for the most part, not disputed by the provider. Accordingly, these adjustments, in effect, create a correct cost report, which if filed accurately when submitted would have indicated a different amount in the provider's overpayment or underpayment. In the case of an overpayment, if this amount had appeared on the cost report, payment would be due when the cost report was filed. This, just as a cost report that indicates an amount is due HCFA constitutes a final determination under 42 CFR 405.376(c)(1), an undisputed initial retroactive adjustment is also a final determination.

Full review and settlement of a provider's cost report can be a very time-consuming process. To implement the processing of the provider's cost report as quickly as possible, the intermediary makes an initial retroactive adjustment as soon as it receives the cost report and reviews it. For this purpose, the intermediary accepts costs as reported except for obvious errors or inconsistencies, subject to a later audit or review. To avoid creating overpayments (later on in the settlement process) while making initial retroactive adjustments, the intermediary reduces the amount due the provider by any amounts claimed that are attributable to obvious errors or inconsistencies, as well as by any monies owed the program (42 CFR 405.454(f)(2).

The intermediary bases initial retroactive adjustments on the data that it determines will result in the most accurate reimbursement to the provider. Usually the initial retroactive adjustment is performed in conjunction with a desk review of provider costs that includes not only a comparative cost analysis but also a review of all available information about the provider. It also provides the means for resolving as many problems as possible without audit by obtaining additional information and documentation from the provider.

When the intermediary issues a demand letter based on an initial retroactive adjustment, the written determination will set out the basis for the overpayment. The provider will be given 15-days following the date of such notification to contest the determination regarding the existence or amount of the overpayment. In its response, the provider must include, along with any pertinent evidence, a statement concerning why it believes the overpayment determination is wrong. If the provider does not respond within the 15-day period, or the provider's response indicates agreement with the initial retroactive adjustment, interest will accrue from the date of that adjustment, unless the overpayment is liquidated within 30-days. If the provider submits a written statement disputing portions of the initial retroactive adjustment, interest will not be assessed on those disputed amounts based upon the initial retroactive adjustment until the dispute is settled. In case of dispute, the intermediary will either proceed with the audit and an NPR, or issue a separate determination concerning the initial retroactive adjustment based on the evidence submitted together with any other material bearing on the overpayment.

In those cases when the intermediary acts on the provider's response to the notice of the initial retroactive adjustment before the issuance of an NPR, the intermediary must issue a separate determination to the provider. This notice must contain specific findings and an explanation as to why the intermediary's reimbursement decision differs from the amount the provider claimed.

In sum, interest will accrue from the date of the initial retroactive adjustment when the provider does not respond within the 15-day period, or when the provider's response indicates agreement with the adjustment. If the provider disputes the adjustment, interest will not accrue on those portions of it that are contested until the intermediary issues a new notice to the provider or until the intermediary issues an NPR.

We are revising 42 CFR 405.376 (c)(1)(ii) so that it shows examples of final determinations. One of the examples shows that if a provider disputes portions of an initial retroactive adjustment, the "final determination," when the intermediary confirms the adjustment, is the new determination issued on those portions.

k. One commenter believed that since there is no incentive for an intermediary to issue an NPR timely, interest on underpayments should begin to accrue either upon the date of the NPR or 12 months after the filing of the cost report.

Response: We do not agree with this comment. The intermediary cannot know before it issues an NPR whether an audit will result in an overpayment or an underpayment. However, if we were to pay interest (retroactively) on underpayments from 12 months following the filing of a cost report when the NPR is not issued timely, we would have to charge interest for overpayments as well as pay interest on underpayments.

5. Waiver of interest charges: 42 CFR 405.376(f) Three commenters thought that we should establish thresholds of interest to be waived.

Response: We do not agree with this comment. As we stated in the preamble to the final rule with comment period, we will waive the interest when the cost of collecting interest is more than the amount of interest involved. Since the cost of collecting interest may vary, we cannot state a fixed threshold amount in the regulations or in instructions. We will, however, issue instructions so that intermediaries and carriers can determine whether interest should be waived in a given case.

6. Exceptions to applicability: 42 CFR 405.376(h)

a. One commenter stated the term "final decision" as used in paragraph (h)(2) may be confused with the term "final determinations" when a final determination is administratively or judicially reversed.

Response: We agree with this comment. Instead of stating ". . . the reversal is the final decision in the case . . .", we will state "the reversal is no longer subject to appeal . . .".

b. One commenter requested a clarification of the phrase "appropriate adjustments will be made" in § 405.376(h)(2).

Response: This phrase means that any interest erroneously collected will be refunded to the paying party.

7. Interest as a nonallowable cost: 42 CFR 405.376(i) and 405.419

a. Twenty-three commenters stated that interest on funds providers borrow in order to repay an overpayment should be an allowable cost since it is related to patient care.

Response: We do not agree. The principal reasons for overpayments are nonallowable and excessive costs that are not related to patient care. Therefore, we cannot allow the interest as an allowable cost.

b. These same commenters believed that interest income received as a result of an underpayment not being timely paid by an intermediary should not be used to reduce allowable interest expense in computing reimbursable costs.

Response: We agree with this comment. Administrative instructions will indicate that the interest income on underpayments will not be offset against interest expense in computing reimbursable costs.

c. One commenter stated that the regulations do not clearly state that interest on funds borrowed solely to repay an overpayment will be disallowed, but rather imply that interest on any borrowings is nonallowable, up to the amount of the overpayment and made during the period in which the overpayment is repaid.

Response: We agree with the comment and we are adding to §§ 405.376(i) and 405.419(a)(1)(C) language that will clarify that interest is nonallowable where the provider cannot show that the borrowing would have been necessary if the overpayment had not occurred.

d. One commenter wanted to know whether interest assessed on an overpayment would be considered an allowable expense if after the cost report is settled there is a determination that there is in fact an underpayment.

Response: We will refund interest assessed on an overpayment and later found to be collected in error. Since no expense will have been incurred the interest is not an allowable cost.

The remainder of the comments, discussed below, did not address specified sections of the regulations.

8. Effective date of regulations.

Three commenters stated that the regulations should only affect those cost reports filed after September 3, 1982.

Response: Section 117 of the TEFRA states that the interest provisions of the Social Security Act apply to "final determinations made on or after the date of enactment" of the TEFRA, September 3, 1982; therefore, we cannot comply with the comment.

9. Miscellaneous

a. Two commenters disagreed with our position that the regulations did not need to be published as a notice of proposed rulemaking.

Response: We published the regulations as final regulations in order to conform as soon as possible with Congress' intent to reduce the amount and duration of Medicare overpayments, since Congress wanted determinations made on or after the date the law was enacted to be subject to the law. In addition, we did provide the public with an opportunity to comment. We have considered the comments carefully and are making changes as explained in this preamble.

b. One commenter stated that an NPR should include a statement clearly spelling out to the provider its obligation for repayment, the amounts of interest to be charged, the circumstances under which it will be charged, and the provider's rights to appeal.

Response: We agree with this comment. We are going to list in administrative instructions specific items relating to interest assessment that must be included in future NPRs.

c. One commenter requested a differentiation between Part A and Part B when determining an overpayment. He wanted to know, for example, whether a Part B underpayment would be applied against a Part A overpayment to determine the amount due.

Response: The regulation does not change existing rules for offsetting Part A and Part B overpayments and underpayments in the cost report settlement process.

III. Summary of Changes

As a result of comments, we are making the following changes:

(1) *Sections 405.376 (c)(1)(iv) and (e)(3):* We are revising "unfiled cost report" to "cost report that is not filed in time".

(2) *Section 405.376(c)(1)(ii):* We are revising this subparagraph so that the definition of "final determination" includes any new determination issued because a provider disputed an initial retroactive adjustment. This revised definition will require that interest begin to accrue on the date a new determination is issued in response to a provider dispute, rather than when the adjustment was made.

(3) *Section 405.376(e)(2):* We are revising subparagraph (ii) to clarify that there is a final determination for each overpayment discovered. We are also adding a new subparagraph (iii) to show that the interest for each final determination will be that in effect on the date of the determination.

(4) *Sections 405.376 (e)(4) and (f)(1)(i):* We are revising these subparagraphs to show that interest accrues from the date of the determination on either an overpayment or underpayment and that interest will be waived for an overpayment or underpayment when liquidated within 30 days.

(5) *Section 405.376(h)(2):* We are changing the term "final decision" in this subparagraph so that it will not be confused with the term "final determination".

(6) *Sections 405.376(i) and 405.419(a)(1)(iii):* We are revising these subparagraphs to clarify that interest on borrowed funds is not an allowable cost if it cannot be shown that the amount was not borrowed to repay an overpayment.

IV. Technical Changes

In addition to revisions prompted by comments, we are making three technical revisions to the regulations.

The first change is to § 405.376(c)(1)(iii). We are revising the phrase "Upon the date of submittal of a timely-filed cost report . . ." to "Upon the due date of a timely filed cost report . . .". We are changing the language so that no providers will be discouraged from filing a cost report early when the report shows an amount due the program.

We are changing § 405.376(e)(2)(i) for the same reason. We are changing in that paragraph the phrase "interest . . . will accrue from the date the cost report is filed unless . . ." to "interest . . . will accrue from the due date of the cost report unless . . .".

The third revision is to § 405.419(a)(2). We are deleting the phrase "and interest assessed on an overpayment." The current language in that paragraph may imply that interest paid on an overpayment that is reversed is an allowable cost. Since we refund any interest paid on overpayment when there is an administrative or judicial reversal of the overpayment, there is no cost incurred.

In addition, on January 30, 1984 (49 FR 3648), we published a final rule concerning the reduction in the number of providers dealing directly with HCFA. On page 3659, in the first column, in the amendment to § 405.2001, we erroneously stated that we were revising paragraph (a) instead of stating that we were revising the introductory matter of paragraph (a). As a result, the revision as printed deletes subparagraphs (1), (2) and (3). We are correcting the amendatory language to § 405.2001 so that subparagraphs (1), (2) and (3) remain part of paragraph (a).

V. Impact Analyses

A. Executive Order 12291

We have determined that this final rule is not likely to result in an annual impact of $100 million annually or meet other threshold criteria of Section 1(b) of the Order. The overall intent of these regulations is to make a few technical and clarifying changes, mostly in response to comments we received on the final rule with comment period we published on December 6, 1982. These regulations changes will have a very minimal, if any, effect.

B. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96–345) that these final regulations will not result in a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. These regulations will affect some providers, physicians and other suppliers of services, most of which are small entities. However, as noted in the Executive Order analysis, since these regulations merely clarify the final regulations published on December 6, 1982, the impact on providers and suppliers will not be significant.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (agreements), End-stage renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. 42 CFR Chapter IV, Part 405 is amended as set forth below:

1. Subpart C is amended as set forth below:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

The authority citation for Subpart C reads as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh and 1395pp) and 31 U.S.C. 3711.

Section 405.376 is amended by reprinting paragraph (c)(1) for the convenience of the reader and by revising paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), (e)(2), (e)(3), (e)(4), (f)(1)(i), (h)(2) and (i) as follows:

§ 405.376 Interest charges on overpayments and underpayments to providers and suppliers.

* * * * *

(c) *Definition of final determination.* (1) For purposes of this section, a final determination is deemed to occur—

* * * * *

(ii) When an NPR is not utilized as a notice of determination (primarily under Part B), upon the issuance of either (A) a written determination that an overpayment exists and a written demand for payment, or (B) a written determination of an underpayment. (Examples of when an NPR is not utilized are carrier reasonable charge determinations under 42 CFR 405.501 and initial retroactive adjustment determinations under 42 CFR 405.454(f)(2). In the latter case, a final determination is deemed to have been made if the provider does not dispute the adjustment determination within 15 days of the notice of the determination. If the provider does dispute portions of the determination, a final determination is deemed to have been made on those portions when the intermediary issues a new determination in response to the dispute);

(iii) Upon the due date of a timely-filed cost report that (A) indicates an amount is due HCFA, and (B) is not accompanied by payment in full. (If an additional overpayment or underpayment is determined by the carrier or intermediary, a final determination on the additional amount will be made in accordance with paragraphs (c)(1)(i) or (c)(1)(ii) of this section); or,

(iv) With respect to a cost report that is not filed on time, the day following the date the cost report was due (plus a single extension of time not to exceed 30 days if granted for good cause), until such time as a cost report is filed. (When such cost report is subsequently filed, there will be an additional determination as specified in paragraphs (c)(1) (i), (ii) or (iii) of this section.)

* * * * *

(e) *Accrual of interest.*

* * * * *

(2)(i) If a cost report is filed and indicates that an amount is due HCFA, interest on the amount due will accrue from the due date of the cost report is unless—

(A) Full payment on the amount due accompanies the cost report; or

(B) The provider and the intermediary agree in advance to liquidate the overpayment through a reduction in interim payments over the next 30-day period.

(ii) If the intermediary determines an additional overpayment during the cost settlement process, interest will accrue from the date of each determination.

(iii) The interest rate on each of the final determinations of an overpayment will be the rate of interest in effect on the date the determination is made.

(3) In the case of a cost report, that is not filed on time, interest also will accrue on a determined overpayment from the day following the due date of the report (plus a single extension of time not to exceed 30 days if granted for good cause, as specified in § 405.453(f)), to the time the cost report is filed.

(4) If an intermediary or a carrier makes a final determination that an underpayment exists, interest to the provider or the supplier will accrue from the date of notification of the underpayment.

(f) *Waiver of interest charges.* (1) When an intermediary or a carrier makes a final determination that an overpayment or underpayment exists, as specified in paragraphs (e)(1), (e)(2)(ii), and (e)(4)—

(i) Interest charges will be waived if the overpayment or underpayment is completely liquidated within 30 days from the date of the final determination.

* * * * *

(h) Exceptions to applicability.

* * * * *

(2) If an overpayment or an underpayment determination is reversed administratively or judicially, and the reversal is no longer subject to appeal, appropriate adjustments will be made with respect to the overpayment or underpayment and the amount of interest charged.

(i) *Non-allowable cost.* As specified in § 405.419, interest accrued on overpayments and interest on funds borrowed specifically to repay overpayments are not considered allowable costs, up to the amount of the overpayment, unless the provider had made a prior commitment to borrow funds for other purposes (e.g., capital improvements).

(See section 405.419(a)(2) for exceptions based on administrative or judicial reversal.)

2. Subpart D is amended as set forth below:

Subpart D—Principles of Reimbursement of Providers, Outpatient Dialysis, and Services by Hospital-Based Physicians

The authority citation for Subpart D reads as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

Section 405.419 is amended by reprinting paragraphs (a)(1) (i) and (ii) for the convenience of the reader and revising paragraphs (a)(1)(iii) and (a)(2) as follows:

§ 405.419 Interest expense.

(a) (1) *Principle.* Necessary and proper interest on both current and capital indebtedness is an allowable cost. However, interest costs are not allowable if incurred as a result of—

(i) Judicial review by a Federal court (as described in § 405.454(l)),

(ii) An interest assessment on a determined overpayment (as described in § 405.376), or

(iii) Interest on funds borrowed to repay an overpayment (as described in § 405.454(l) or § 405.376), up to the amount of the overpayment, unless the provider had made a prior commitment to borrow funds for other purposes (e.g., capital improvements).

(2) *Exception.* In those cases of administrative or judicial reversal, interest paid on funds borrowed to repay an overpayment is an allowable cost, in accordance with this section.

* * * * *

B. In **Federal Register** document 84-2424, appearing at page 3659 in the issue of January 30, 1984, the amendatory language of paragraph "2" is corrected to read as follows:

"Section 405.2001 is amended by revising the introductory text of paragraph (a) to read as follows:"

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medicare Insurance)

Dated: June 2, 1984.

Carolyne K. Davis

Administrator, Health Care, Financing Administration.

Approved: August 23, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-24290 Filed 9-13-84; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 84-26]

Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984; Suspension of Reporting Requirements

AGENCY: Federal Maritime Commission.

ACTION: Interim rules.

SUMMARY: The Commission amends its Interim Rules governing agreements by ocean common carriers and other persons subject to the Shipping Act of 1984. These amendments, issued pursuant to the interim rulemaking authority provided in the Act, defer implementation of the Interim Rule provisions requiring: (1) A conference or other agreement body to specify, in reports of meetings, what documents have been distributed to its members, and (2) the agreement body to maintain and file an index of documents with the Commission.

DATE: Interim Rule effective September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984 (1984 Act), Pub. L. 98-237, 98 Stat. 67, 46 U.S.C. app. 1701-1720 became effective on June 18, 1984. Section 17(b) of the 1984 Act authorizes the Commission to prescribe interim rules without adhering to the normal notice and comment procedures under the Administrative Procedure Act (5 U.S.C. 553). On May 29, 1984, the Commission published an Interim Rule and Request for Comments implementing those provisions of the Act which govern agreements by ocean common carriers and other persons subject to the 1984 Act. This Interim Rule became effective on June 18, 1984. Interested persons were given 90 days from the date of publication in the **Federal Register** in which to comment on the interim rules.

The Commission has now been requested by certain conferences to immediately suspend the requirement in § 572.704 that conferences maintain and file with the Commission an index of documents, and the related requirement in § 572.703(b) that meeting reports:

> . . . shall specify any documents distributed by the conference or other agreement to inform or assist the members on such matters . . . . occurring within the scope of the agreement and which are being discussed or considered by the membership.[1]

Section 704 of the Interim Rule provides:

> (a) Each agreement required to file minutes pursuant to § 572.703 shall maintain an index of all reports, circulars, notices, statistics, analytical studies, or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines.
>
> (b) Each index required by paragraph (a) of this section shall be filed with the Commission on a quarterly basis, the first to be filed for the period ending September 30, 1984, and for each succeeding quarterly period thereafter. Each index must be certified by an official of the agreement as true and correct.

Upon consideration of the emergency comments, we have determined to grant the interim relief requested, and defer implementation of these requirements pending issuance of a Final Rule. This action is not a determination on the ultimate merit of these comments which will be considered in connection with the issuance of a final rule. Accordingly, § 572.704 is being amended to provide that for the index of documents the first period to be reported is that ending "March 31, 1985" rather than "September 30, 1984." Also, § 572.703 is amended to provide that minutes need not specify documents which are distributed until January 1, 1985.

List of Subjects in 46 CFR Part 572

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and record keeeping requirements.

PART 572—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553, and sections 5, 6, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1704, 1705 and 1716), The Commission amends Title 46, Code of Federal Regulations, Part 572, Subpart G, as follows:

1. In § 572.703 revise paragraph (b) to read as follows:

§ 572.703 Filing of minutes.

* * * * *

(b) *Content of Minutes.* Conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, marine terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting describing all matters within the scope of the agreement which are discussed or considered at any such meeting, shall specify any documents distributed by the conference or other agreement to inform or assist the members on such matters, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions, or the votes taken.

Reports of meetings filed with the Commission in accordance with this requirement need not specify documents that were distributed until January 1, 1985.

§ 572.704 [Amended]

* * * * *

2. In § 572.704, *Index of Documents,* in paragraph (b), remove "September 30, 1984" and insert "March 31, 1985."

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24350 Filed 9-13-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[FCC 84-409]

Maritime Radar Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules for radar stations on ships between 500 and 1,600 gross tons. The Commission initiated this action to implement new radar requirements in the International Convention for the Safety of Life at Sea, 1974 (SOLAS). This action will improve the safety of life and property at sea.

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 83

Communications equipment, Marine safety, Radiodetermination, Ship stations.

Order

In the matter of amendment of Part 83 of the Commission's rules regarding radar stations on ships between 500 and 1,600 gross tons.

Adopted: September 5, 1984.

By the Commission.

Released: September 7, 1984.

1. This Order amends the Commission's rules to implement the portion of the first set of amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS), that pertains to the installation of radar equipment on ships between 500 and 1,600 gross tons.

2. An amendment to Regulation 12 of Chapter V of SOLAS requires ships between 500 and 1,600 gross tons constructed on or after September 1, 1984, to carry radar.[1] The performance standards of the radar equipment must not be inferior to those adopted by the International Maritime Organization (IMO).[2] We are amending Section 83.465 of the Commission's rules to apply the IMO specifications for compulsory radar systems to ships between 500 and 1,600 gross tons.

3. Authority for this amendment is contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Since this amendment implements a treaty provision, prior notice and comment is not required 5 U.S.C. 553(a)(1). In addition, because this provision should be noncontroversial, we find good cause to dispense with the prior notice and comment procedure of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

4. Accordingly, it is ordered, That effective October 15, 1984, the Commission's rules are amended as set forth in the attached Appendix.

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[1] In addition to the comments seeking immediate relief, numerous other comments have been filed regarding the Interim Rule. These other comments require no immediate attention and are not addressed in this notice. They will be considered at a later date.

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[1] For the purpose of SOLAS "constructed" means a stage of ship construction where: (a) The keel is laid; or (b) construction identifiable with a specific ship begins; or (c) assembly of that ship has commenced comprising at least 50 tons or 1 percent of the estimated mass of all structural material, whichever is less.

[2] The International Maritime Organization (IMO) is responsible for administering the SOLAS Convention. The applicable radar standards are contained in the IMO resolution A. 477 (XII).

5. Regarding questions on matters covered in this document contact Mr. William P. Berges at (202) 632–7175.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

William J. Tricarico,
Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

§ 83.465 [Amended]

In § 83.465 the introductory paragraph is amended by adding a new first sentence and revising the present first sentence to read as follows:

* * * * *

On ships between 500 tons and 1,600 gross tons that are constructed on or after September 1, 1984, and are engaged in international voyages all compulsorily installed ship radar must comply with the specifications in Regulation 12, Chapter V of the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended. On ships over 1,600 gross tons all compulsorily installed ship radar stations shall, in addition to meeting all other relevant provisions of this chapter, comply with the applicable radar specifications issued by the Radio Technical Commission for Marine Services under date of July 18, 1978, as given in the Final Report of Special Committee 65—Ship Radar. * * *

* * * * *

[FR Doc. 84–24304 Filed 9–13–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 83

[FCC 84–411]

Amendment of the Commission's Rules To Correct the Record Keeping Requirements Applicable to Vessels Subject to the Great Lakes Agreement and To Add a Technical Specification Applicable to Survival Craft Radios

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action clarifies two unrelated rules in the maritime radio service. This action is a result of the Commission's review of the rules. These amendments are intended to correct the record keeping requirements for vessels subject to the Great Lakes Agreement and include a technical specification applicable to survival craft radios.

EFFECTIVE DATE: October 17, 1984.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bagnato, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 83

Communications equipment, Great Lakes.

Order

Amendment of part 83 to correct the record keeping requirements applicable to vessels subject to the Great Lakes agreement and to add a technical specification applicable to survival craft radios.

Adopted: September 5, 1984.
Released: September 10, 1984.

By the Commission.

1. In Docket No. 82–798,[1] the Commission deleted the requirement for recreational boaters to maintain a record of the radio station operation. In amending the general requirements applicable to radiotelephone stations, the requirements for the license operator to sign each entry was inadvertently deleted for vessels subject to the Great Lakes Agreement.[2] Therefore, we are amending § 83.368 of the rules to properly reflect the record keeping requirements for ships subject to the Great Lakes Agreement.

2. Section 83.140(c) requires that all shipboard equipment type accepted for use in the Maritime Services must be tested over an ambient temperature range of −20° to +50° Celsius. Portable survival equipment required to be carried on board ships for safety purposes must be type approved rather than type accepted. That is, an equipment authorization for compulsory equipment is based on the Commission's examination and measurement of sample units instead of test data submitted by the applicant. However, the rules delineating the technical specifications applicable to survival craft equipment type approved for use in the Maritime Services do not reflect any ambient temperature range for testing frequency stability. Accordingly, we are amending § 83.556 of the rules to include the industry standard of −20° to +50° Celsius ambient temperature range for testing compulsory survival craft equipment required to be type approved.

3. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Since these amendments make minor changes which are likely to be noncontroversial, we find good cause to dispense with the notice and comment procedures of the Administrative Procedure Act 5 U.S.C. 553(b)(3)(B).

4. In view of the above, it is ordered, That §§ 83.368 and 83.556 of the rules are amended, as set forth in the attached Appendix effective October 17, 1984.

5. Regarding questions on matters covered in this document, contact Nicholas G. Bagnato, (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICE

1. In § 83.368(a) the first sentence is revised to read as follows:

§ 83.368 Radiotelephone station log.

(a) Ship radiotelephone stations subject to Title III, Part II of the Communications Act, the Safety of Life at Sea Convention or the Great Lakes Agreement shall maintain a station log.

* * * * *

2. Section 83.556 is amended by adding a new paragraph (c) to read as follows:

§ 83.556 General requirements for survival craft radio equipment.

* * * * *

(c) Survival craft radio equipment to be type approved under this part shall be tested with ambient temperature variation from −20° to +50° Celsius.

* * * * *

[FR Doc. 84–24382 Filed 9–13–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 82–244; RM–3451; FCC 84–415]

Radiated Power of Private Land Mobile Radio Stations in the Los Angeles Urbanized Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission deletes a table applying to the Los Angeles area which limits the effective radiated

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[1] *Report and Order*, PR Docket No. 82–798, FCC 83–248, released June 14, 1983, 48 FR 28040.

[2] Agreement Between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio, 1973 (T.I.A.S. 7837). See Technical Regulation 5(1)(c).

power of private land mobile stations operating on TV-shared frequencies in the band 470-512 MHz. Without this action, licensees would be required to increase their radio system complexity while incurring additional costs.

EFFECTIVE DATE: October 17, 1984.

FOR FURTHER INFORMATION CONTACT: Keith Plourd, Private Radio Bureau, Washington, D.C. 20554, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Industrial radio services, Land transportation radio services, Private land mobile radio services, Public safety radio services, Radiolocation radio service, Special emergency radio service.

Report and Order

In the matter of amendment of § 90.307(f) of the Commission's rules and regulations to delete a table limiting the effective radiated power of stations at elevations exceeding 1500 feet ASL in the Band 470-512 MHz in the Los Angeles urbanized area (PR Docket No. 82-244, RM-3451).

Adopted: September 5, 1984.

Released: September 10, 1984.

By the Commission.

Introduction

1. Section 90.307(f) of the Commission's Rules limits the effective radiated power (ERP) of private land mobile radio stations operating in the 470-512 MHz band in Los Angeles, California.[1] Licensees are required to adjust their system power according to the height of their transmitting antennas. Higher antennas required lower radiated powers. In theory, this enhances spectrum efficiency by permitting frequency re-use under certain circumstances in this particular geographic area. In practice, this power restriction appears to have little if any positive impact on spectrum efficiency and it operates to limit the communications quality of private land mobile radio systems.

Background

2. On January 27, 1975, the Commission amended its Rules to limit the EPR of private land mobile radio stations operating in the Los Angeles area according to their antenna height.[2] Licensees operating systems at that time were allowed until January 1, 1980 to comply with the new ERP limitations. On June 20, 1979, the Commission received a *Petition for Rule Making* from the California Mobile Radio Association (now the National Mobile Radio Association or MNRA) requesting that the Commission delete the ERP table.[3] In view of this petition, the Chief of the Private Radio Bureau extended the date for grandfathered systems to comply with these limitations to December 31, 1980.

3. On October 21, 1980, the Commission denied the *Petition for Rule Making* stating that NMRA's arguments were essentially the same arguments which the Commission previously considered and denied in Docket 20109.[4] NMRA filed a *Petition for Reconsideration* on December 2, 1980, arguing that the limitation on system ERP would not achieve the Commission's goal of increased frequency re-use. On January 29, 1980, NMRA submitted a *Motion for Stay* of the October 21, 1980, decision arguing that conformance with the ERP table would cause imminent disruption to radio systems including critical public safety systems. On May 19, 1981, the Chief of the Private Radio Bureau stayed indefinitely the requirement that grandfathered stations conform with the ERP restrictions pending Commission action on NMRA's *Petition for Reconsideration.*[5]

4. On April 29, 1982, the Commission adopted a *Notice of Proposed Rule Making* (NPRM) in response to the NMRA petition.[6] The *Notice* proposed to delete § 90.307(f) because the ERP limitations did not appear to be achieving the goal intended but rather were burdening licensees and limiting the effectiveness of their systems. The Commission expresses its concern that requiring present systems to reduce their ERP would disrupt communications with potentially serious impact on critical public safety systems. The Commission indicated that it would delay final action on this matter until the completion of its study of propagation in Southern California.

Comments

5. Formal comments on the *Notice* were received from Teletech, Inc. (Teletech), the County of Los Angeles (LA County), the Manufacturers Radio Frequency Advisory Committee (MRFAC), and Palomar Communications Co., Inc. (Palomar). Approximately fourteen informal comments supporting the Commission's proposal to delete the ERP table were received from various radio users in the Los Angeles area. Reply comments were filed by the National Mobile Radio Association (NMRA).

6. Only Palomar and Teletech opposed the proposal to delete the ERP table. Palomar expressed concern that removal of the ERP restrictions would foreclose the possibility of allocating the same frequencies in the future to San Diego. Teletech argued that the proposal was contrary to the Commission's objective of promoting channel re-use and that an increase in ERP would increase the potential for intermodulation interference.

7. MRFAC supported the Commission's proposal without qualification. LA County stated that the ERP restriction severely limits the effectiveness of large local public safety systems. As an example, one of the eighteen major mountain top repeaters used in the LA County radio system is limited to 25 watts ERP, although it must serve an area of approximately 1000 square miles. This results in unreliable coverage throughout much of this service area. LA County argues that frequency re-use problems are best resolved locally.

8. NMRA focused on the system imbalance which the current rule promotes. While base stations are often limited to 125 watts ERP, NMRA points out that mobile units are allowed to use 200 watts ERP which results in weak, interference-prone base to mobile communications and increased interference from mobile units to base station receivers of other systems. NMRA concludes by stating that its members have observed a lower incidence of this latter type of interference in base systems using higher effective radiated powers.

Discussion

9. The Commission recognized in Docket No. 20109 that many licensees in the 470-512 MHz band were employing community repeaters located on mountain peaks which surround Los Angeles.[7] The Commission observed that these stations blanket the Los Angeles area and might impair local frequency re-use.[8] Therefore, the

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[1] 47 CFR 90.307(f) provides a table restricting ERP as a function of antenna height (above sea level). This table also appears in 47 CFR 90.309(b), Figure A.

[2] *Report and Order*, Docket No. 20109, 49 FCC 2d 1300 (1974).

[3] *Petition for Rule Making*, RM-3451, filed June 20, 1979.

[4] *Memorandum Opinion and Order*, RM-3451, 83 FCC 2d 141 (1981).

[5] Public Notice, released May 19, 1981 entitled "Stay of Effectiveness of Rule 90.307(f)."

[6] *Notice of Proposed Rule Making*, Docket No. 82-244, 47 FR 21276, May 18, 1982.

[7] *Notice of Proposed Rule Making*, Docket No. 20109, 47 FCC 2d 1116 (1974).

[8] 47 CFR 90.313(c).

Commission proposed to limit the effective radiated power at these sites to encourage local frequency re-use. In theory, this action would reduce signal levels from these high sites sufficiently to permit multiple co-channel systems to operate simultaneously within the Los Angeles area.

10. Although we remain committed to encouraging frequency re-use in general, we are also aware that the application of a forced re-use policy to the Los Angeles area creates significant problems which impact licensees operating in the area. The Los Angeles urban area extends over 50 miles in diameter and is bounded on three sides by tall mountains. Most licensees require coverage throughout the complete area. The tall mountains are natural antenna locations providing line-of-sight coverage of the entire Los Angeles area. Most of the developed antenna sites are located on these mountain peaks. The majority of licensees in all services regulated by the Commission operate from these natural antenna locations.

11. Since the developed antenna sites are removed from the center of Los Angeles, sufficient power is necessary to cover effectively the entire service area. The ERP table, however, was designed to limit the very coverage these licensees require. The County of Los Angeles states that the reduced communications effectiveness for both the Sheriff's Department and the County Fire Department. The imposition of the ERP table would require licensees with grandfathered systems to secure additional transmission sites and redundant facilities to maintain their present service area, raising the procurement and operating costs of their communication systems.

12. Therefore, while frequency re-use is a goal, we must seek to encourage re-use in a practical manner. Our ERP table does not appear to have fostered frequency re-use in the Los Angeles area. It appears that the locations of antenna sites are influenced far more by local real estate conditions than by the Commission's Rules. In Docket No. 18262, we expected the Los Angeles area from similar ERP restrictions in the 800 MHz private radio ban in recognition of the unique topography of the area.[9] Again, we must strike a balance between frequency re-use and communications effectiveness. As before, we believe the public interest would be best served in these unique circumstances by deleting the table in its entirety and allowing licensees to employ the powers they need to achieve adequate communications service.

13. We have decided to move forward with this proceeding absent the final results of our study of propagation anomalies in southern California. The intent of the study is to examine signal enhancement due to ducting. We recognize that signal enhancement due to ducting can increase the potential for interference between land mobile transmissions and distant television receivers. However, stations grandfathered when the ERP table was adopted in 1974 continue to operate at higher powers without any indication of interference to television reception. We do not anticipate that the elimination of the ERP restrictions will create significant additional interference.[10]

14. In regard to Palomar's concern that the elimination of the ERP table may foreclose the allocation of additional frequencies to San Diego, we must point out that our action in this proceeding affects only television channels 14 and 20, which have been allocated in Los Angeles for the use of land mobile systems. This should not adversely affect our options in San Diego. If it becomes necessary to allocate additional spectrum for use in San Diego, we could consider other frequencies in the 470–512 MHz band. We do agree with Teletech that increased ERP could result in an increase in the potential for intermodulation interference at the mountain top antenna sites. Intermodulation interference, however, is best controlled on a case-by-case basis at the actual transmitting site, rather than by a federal restriction on system ERP. We do caution licensees to be aware of this potential problem and to take appropriate steps to control it if they increase their radiated powers. See 47 CFR 90.173(b).

15. In view of the foregoing, the Commission finds that it is in the public interest to amend the Rules as proposed. Therefore, it is ordered, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that effective October 17, 1984, Part 90 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix.

16. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 90—[AMENDED]

Part 90 of the Commission's Rules and Regulations (47 CFR Part 90) is amended as follows:

§ 90.307 [Amended]

1. Section 90.307(f) is removed and reserved, including the associated notes.

§ 90.309 [Amended]

2. In § 90.309(b), Figure "A", the effective radiation power table applying to Los Angeles is removed.

§ 90.307 [Amended]

3. The reference to § 90.307(f) in § 90.307(b) is removed.

[FR Doc. 84-24393 Filed 9-13-84; 8:45 am]

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[9] *Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945, 979 (1975).

[10] A preliminary analysis of the results of the southern California study indicates enhanced signal levels on most of the measured over-the-horizon and over-water paths between Los Angeles and San Diego. The degree of enhancement varied with the length of the path and the time of year. Enhanced fields of 20 dB or more were measured for a significant period of the year. These findings suggest that the potential for interference between KPBS-TV (channel 15) in San Diego and land mobile operations in Los Angeles from both high and low antenna heights may be greater than considered in Docket No. 18261. The degree of potential interference is related to distance, antenna height, path, and frequency with respect to the edge of the channel. If there is harmful interference, it may be necessary to reevaluate the technical standards in Docket No. 18261 or to take other remedial action.

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47 CFR Part 97

[FCC 84-413; PR Docket No. 82-624]

Definition and Measurement of Transmitting Power in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FCC rules regarding maximum allowable power in the Amateur Radio Service to correct a typographical error. It also denies three Petitions for Reconsideration of the Report and Order in this proceeding because: (1) This proceeding is not mutually exclusive with or determinative of the issues raised in General Docket No. 83-114; and (2) petitioners raise no other facts or issues not previously considered. This document also clarifies that the maximum allowable power in the amateur radio service will not be changed without further rule making.

DATE: Effective October 17, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Memorandum Opinion and Order

In the matter of definition and Measurement of Transmitting Power in the Amateur Radio Service; PR Docket No. 82-624.

Adopted: September 5, 1984.
By the Commission.

Released: September 10, 1984.

1. On July 22, 1983 the Commission adopted a *Report and Order*, 48 FR 34746 (August 1, 1983) in this proceeding replacing the former input power measurement standard in the Amateur Radio Service with a power measurement standard based upon peak envelope power output. This *Report and Order* was later modified by two *Errata*, 48 FR 37224 (August 17, 1983) and 48 FR 44814 (September 30, 1983).

2. The Society for Promotion of Amplitude Modulation (Society), Kevin Alfred Strom (Strom) and Donald B. Chester (Chester) filed Petitions for Reconsideration.[1] The American Radio Relay League (ARRL) filed a Motion for Clarification. Arthur E. Provan (Provan) and Byron H. Kretzman (Kretzman) filed reply comments in support of Chester's comments.

3. The ARRL, in its Motion for Clarification, addressed the language in paragraph five of the *Report and Order*. In this paragraph we set forth the methods we intend to employ in determining the output power of an amateur radio station. We also stated: "Should we decide upon other standards in the future, we will release them in public notices." The ARRL sought clarification on whether this statement was meant to include the actual output power limitation, the methods used for measurement of output power, or both. Further, the ARRL maintained that in either case public notice would be inappropriate, and that such changes require notice and comment rule making proceedings as described in section 553 of the Administrative Procedure Act (5 U.S.C. 553).

4. The last sentence of paragraph five of the *Report and Order*, regarding release of future standards by public notice, dealt only with the procedures used for measurement of output power. This sentence was not meant to include the actual output power limitation. We anticipate that any revision of the 1500 watt peak envelope power output limit in § 97.67(b) of the Rules would be the subject of a notice and comment rule making proceeding.[2]

5. We do not view announcement of changes in measurement methods as within the purview of 5 U.S.C. 553. These methods merely reflect Field Operations Bureau practice for measuring power. Because improved testing equipment and techniques may become available, there may be a need to change these power measurement methods at some time in the future. Should the Field Operations Bureau change its method of measuring amateur radio transmitting power, we intend to inform the public of this change in method by public notice. This matter is a general statement of procedure not subject to the provisions of the Administrative Procedure Act. *See* 5 U.S.C. 553(a)(3)(A).

6. Chester, Provan and Kretzman all expressed the view that the instant proceeding is inconsistent with General Docket No. 83-114. We disagree. General Docket No. 83-114 is both a Notice of Inquiry and a Notice of Proposed Rule Making. *Notice of Inquiry and Proposed Rule Making*, General Docket No. 83-114, 48 FR 14299 (April 4, 1983). The rule changes at issue in that *Notice of Proposed Rule Making* are limited to Parts 15 and 73 of our Rules. The *Notice of Inquiry* in that proceeding in a broad discussion of possible rationale for reducing the Commission's technical regulations and adopting alternative approaches. The instant proceeding is not mutually exclusive with nor a predetermination of the outcome of the inquiry in General Docket No. 83-114. If, in that proceeding, we determine that deregulatory alternatives in the areas of interoperability, efficiency or interference should be adopted, we will then see whether they have particular applicability to rules in the Amateur Radio Service.

7. Further, the inquiry proceeding does not address the question of whether input power or output power measurements are more appropriate in the Amateur Radio Service.[3] Rather, it addresses the overall question of whether rules limiting power are necessary to control interference. We have a power limitation in the Amateur Radio Service and therefore the question of whether that limitation should be upon input or output power and of how to properly measure the power were properly reached in this docket.

8. Each of the filings requesting reconsideration other than the ARRL's deal with the impact of this proceeding upon AM DSB operations in the Amateur Radio Service. In the *Report and Order* we recognized that this docket would have an impact on AM DSB operations. We estimated that use of output power measurement standards would typically limit AM DSB operations to half of their previous maximum allowable operating power. We stated that in the worst case this would result in an actual power reduction of 3dB, which should be insignificant in terms of actual communications effectiveness. We concluded that we could not justify a permanent and continuous expense, both for equipment and training, to make a special power measurement for amateurs who happen to engage in AM DSB operations, particularly where they constitute only approximately one percent of the U.S. amateur population.

9. Strom commented that variations in amplifier efficiency for AM DSB operations may cause variations in average output for a given input power, but that these variations are within a calculable range of efficiences. This is true, but we estimate the variation range in average output power calculated on the basis of input power for AM DSB operations in the Amateur Radio Service to be between 45% and 90%. AM DSB operation is in fact a primary example of the inapplicability of input power measurement to certain operating methods. This issue illustrates the extent to which input power standards were archaic. Moreover, the input power measurement standard failed to indicate radiated power or interference potential.

10. The only new facts or analysis presented by Chester and Strom are allegations of quantifiable peak envelope power measurements (PEP) as functions of d.c. plate input power measurements. We have rejected these estimates for the reasons stated in paragraph nine. Chester argues that the 1% of U.S. amateur operators using AM

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[1] Strom included a request for public hearing in his Petition for Reconsideration. Participants in rule making proceedings are not entitled to a public evidentiary hearing or to oral presentation. *Amateur Licensing and Call Sign Simplification*, 71 FCC 2d 559 (April 27, 1979). Strom has made no showing that his or others' opportunity to submit data and statements to the Commission was inadequate. We therefore deny Strom's request for public hearing. *See Chemical Leaman Tank Lines, Inc.* v *U.S.*, 368 F. Supp 925 (D. Del. 1973). *See also Chip Steak Co.* v *Hardin*, 332 F. Supp. 1084 (N.D.Cal. 1971), *aff'd* 467 F. 2d 481, *cert. den.* 411 U.S. 916.

[2] A cross-reference in § 97.67(b) was inadvertently changed. We will correct paragraph (b) to clarify that the peak power output standard is subject to certain limitations and exceptions in §§ 97.61 and 97.67 of the Commission's rules.

[3] The inquiry notes that most of our radio services have technical regulations that exercise interference control by limiting the power, bandwidth and other technical parameters of emissions at the output of transmitters. The Amateur Radio Service is one of the few remaining services that had not, until this proceeding, been modified to adopt this approach. We long ago abandoned input power measurement standards in most radio services in favor of output power measurement standards.

DSB should be permitted to operate with 4,000 watts PEP instead of 1,500 Watts PEP, but we cannot reconcile this argument with the requirements of section 324 of the Communications Act of 1934 (the Act), as amended (47 U.S.C. 324) which prescribes that one should use the minimum amount of power necessary to carry out the communication desired. *See also* 4 CFR 97.67(a).

11. Neither Chester, Society nor Strom set forth any new facts, issues or analysis to persuade us that adoption of output power measurement in lieu of input power measurement was erroneous. Our action is applicable to the entire Amateur Radio Service. The fact that it will have a more noticeable impact on one group of operators because of a combination of circumstances does not make it arbitrary or discriminatory, as argued by Society. In light of the above analysis, we find no persuasive reason to permanently exempt AM DSB operators from the new output power measurement rules. We believe that the provisions of the rules adopted in the *Report and Order* grandfathering input power measurement rules for AM DSB operation until 1990 minimize the immediate impact of this rule change upon such operation.

12. Accordingly, it is ordered that the Petitions for Reconsideration of Donald A. Chester, the Society for Promotion of Amplitude Modulation and Kevin Alfred Strom are denied. It is further ordered that the Motion for Clarification of the American Radio Relay League is granted in part consistent with this Memorandum Opinion and Order. It is further ordered that paragraph (b) of § 97.67 of the Commission's rules is amended as set forth in the attached Appendix, effective October 17, 1984.

13. These actions are taken pursuant to § 1.429 of the Commission's rules (47 CFR 1.429) and sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C 154(i) and 303(r)).

14. It is further ordered that this proceeding is terminated. For further information about this document, contact John J. Borkowski, (202) 632-4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 97—[AMENDED]

Appendix

Part 97 of the Commission's rules (47 CFR Part 97) is amended as follows:

Paragraph (b) of § 97.67 is revised to read:

§ 97.67 Maximum authorized transmitting power.

* * * * *

(b) Each amateur radio transmitter may be operated with a peak envelope power output (transmitter power) not exceeding 1500 watts, except as provided in other limitations of these rules.

* * * * *

[FR Doc. 84–24395 Filed 9–13–84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Ch. 3

Acquisition Regulation; Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule; amendments.

SUMMARY: This rule amends the final rule published in the **Federal Register** on April 9, 1984 (49 FR 13959–14051) that established the Department of Health and Human Services Acquisition Regulation (HHSAR) as Chapter 3 of Title 48, Code of Federal Regulations. The HHSAR implements and supplements the Federal Acquisition Regulation (FAR), Title 48 CFR Chapter 1. The amendments being made in this rule to 48 CFR Chapter 3 reflect comments made by the two respondents as well as administrative, clerical, and typographical corrections disclosed by the Department.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: E.S. Lanham, Procurement Analyst, Division of Procurement Policy, telephone (202) 245-8901.

SUPPLEMENTARY INFORMATION: The final rule published on April 9, 1984 requested comments from interested parties, and comments were received from two organizations. The amendments being made in this rule to 48 CFR Chapter 3 reflect comments made by the two respondents, as well as administrative, clerical, and typographical corrections disclosed by the Department.

One amendment redesignates Appendix A, Single Letter of Credit Recipients and Central Point Addresses, and Appendix B, HHSAR Subject Index (not published in the **Federal Register** of April 9, 1984 but to appear in the Code of Federal Regulations), as Attachment I and Attachment II, respectively. This is being done to accommodate the forthcoming Public Health Service Acquisition Regulation (PHSAR) (published elsewhere in this issue of the **Federal Register**), which will implement and supplement the HHSAR, as Appendix A to Chapter 3 of Title 48, Code of Federal Regulations, to comply with a recent decision from the Office of the **Federal Register** concerning the treatment of lower tier Department/Agency implementations and supplementations under the FAR System. Accordingly, a change is also being made to paragraph (d) of section 301.304 to explain the designation of lower tier implementations and supplementations to the HHSAR.

Another amendment removes the term "[Reserved]", and the CFR paragraph designation to which the term refers, throughout Chapter 3 of Title 48 CFR. The purpose of this action is to eliminate any concern that the HHSAR may be disregarding or negating the corresponding text in the FAR. The intent was to present a sequential flow within the sections where the term appears to make it easier for the user to follow the text, and to eliminate possible user confusion that paragraphs might be mislettered. However, since the term denotes a meaning other than that intended, it is being removed from the entire regulation.

A third amendment removes section 303.302 Reporting identical bids, and section 303.302-2 Reporting requirements, as a result of an amendment to the FAR transmitted by Federal Acquisition Circular Number 84–1, dated March 26, 1984 (49 FR 12972, March 30, 1984), eliminating the requirement for Federal agencies to report identical bids to the Attorney General.

A fourth amendment removes Subpart 305.2—Synopses of Proposed Contracts, also as a result of new FAR coverage transmitted by Federal Acquisition Circular Number 84–1 eliminating the need for HHSAR coverage on time of synopsizing, and special situations—research and development advance notices (sections 305.203 and 305.205, respectively.)

The remaining amendments correct administrative, clerical and typographical errors. Several comments by the respondents addressed internal administrative guidance which were not incorporated because the guidance has little or no bearing on outside parties.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Ch. 3

Government procurement.

Accordingly, the Department amends 48 CFR Chapter 3 as set forth below.

Dated: August 27, 1984.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations is amended as shown.

1. Title 48 CFR Chapter 3 is amended by removing the term "[Reserved]," and the CFR designation that precedes it, wherever they appear within the Chapter.

2. Paragraph (d) of section 301.304 is amended by adding the following after the table showing the organizational prefixes:

301.304 Agency control and compliance procedure.

* * * * *

Each OPDIV or lower level acquisition regulation will be included in its entirety as a separate appendix to 48 CFR Chapter 3. The Director, Division of Procurement Policy will assign the appendix designation upon approval of the initial request to establish the OPDIV or lower level acquisition regulation.

301.501 [Amended]

3. In the first sentence of paragraph (b) of section 301.501, the phrase "a direct" is removed and replaced by the word "an".

Subpart 303.3—Report of Suspected Antitrust Violations

4. The heading of Subpart 303.3 is revised to read as set forth above.

303.302 and 303.302–2 [Removed]

5. Sections 303.302 and 303.302–2 are removed.

6. Section 304.201 is revised to read as follows:

304.201 Procedures.

The signed original of bilateral contracts and modifications shall be placed in the contract file, and duplicate originals shall be furnished the contractor, the appropriate accounting point, the project officer, and other individuals or offices, as applicable. Purchase orders, delivery orders, and other unilateral contracts and modifications shall be distributed the same as bilateral contracts except the original shall be furnished the contractor or seller. Copies of unilateral contracts and modifications with carbon impressioned signatures may be used but must be stamped "DUPLICATE ORIGINAL" (see 304.101).

305.102 [Amended]

7. Section 305.102 is amended by revising the dollar threshold in the third sentence from "$5,000" to "$10,000".

Subpart 305.2 [Removed]

8. Subpart 305.2, consisting of sections 305.203 and 305.205, is removed.

307.105–2 [Amended]

9. In section 307.105–2(a)(8), remove the word "involve" and insert in its place "concern the subjects of".

313.107 [Amended]

10. Paragraph (e) of section 313.107 is removed.

315.406–5 [Amended]

11. In the last sentence of section 315.406–5(b)(3)(ii)(B) which begins "However, care should be taken", add a comma between the words "necessary" and "to".

315.413–2 [Corrected]

12. Section 315.413–2 (p. 13988), the introductory text, is amended by correcting the reference to "315.215–12" to read "352.215–12," and by correcting the reference to "FAR 15.215–12" to read "FAR 52.215—12".

351.670 [Corrected]

13. Section 351.670 (page 13991) is corrected so that the section number reads "315.670." Paragraph (d) of that section is corrected by removing the word "should" and inserting in its place the word "shall."

315.7006 [Corrected]

14. Section 315.7006 is amended by correcting the word "should" in the first and second sentences to read "shall."

330.7000 [Corrected]

15. In section 330.7000, the references to "FAR 32.205–10" in the first and last sentences are corrected to read "FAR 31.205–10."

330.070–1 [Amended]

16. In the first sentence of section 335.070–1, add a comma and the phrase "when authorized," between the phrases "this type of contract" and "should also be considered".

335.070 [Corrected]

17. The third section heading (Method of cost sharing) under section 335.070 Cost sharing (p. 14021) is corrected to read "335.070–3."

352.215–70 [Corrected]

18. In the text of the clause in section 352.215–70 (p. 14032), the word "changes" is corrected to read "charges."

Appendix A—[Redesignated as Attachment I]

Appendix B—[Redesignated as Attachment II]

19. Appendix A, Single Letter of Credit Recipients and Central Point Addresses, is redesignated Attachment I, and Appendix B, HHSAR Subject Index (not published in the April 9, 1984 edition of the **Federal Register** but to appear in the Code of Federal Regulations), is redesignated Attachment II.

(5 U.S.C. 301; 40 U.S.C. 486(c))

[FR Doc. 84-24186 Filed 9-13-84; 8:45 am]

BILLING CODE 4150-04-M

Proposed Rules

Federal Register
Vol. 49, No. 180
Friday, September 14, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Certification of Canadian Railway Workers; Withdrawal of Proposed Rule

AGENCY: Employment and Training Administration, Labor.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Labor (DOL) is withdrawing a proposed rule for the certification of certain immigrant Canadian aliens for permanent employment in railway work in the United States. It has been determined that the labor certification process and rulemaking by DOL are inappropriate means for resolving this immigration issue.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Bruening. Telephone: 202-376-6228.

SUPPLEMENTARY INFORMATION: On January 16, 1981, the Department of Labor (DOL) published a notice of proposed rulemaking in the **Federal Register** (46 FR 3910) to amend 20 CFR Part 656 to add to the *Schedule A* precertification list certain Canadian railway workers who will be employed with the same international corporation or organization with which they were employed in the United States or Canada for one continuous year, who qualify for such employment on the basis of seniority rights under a collective bargaining agreement between the employer and an international labor union. It was anticipated that United States workers would be afforded reciprocal treatment by Canadian immigration authorities.

As noted in the notice extending the comment period, the vast majority of the commenters objected to the rule. 46 FR 26789 (May 15, 1981). DOL has determined after review of the comments that the alien labor certification process and rulemaking by DOL are inappropriate means to resolve this immigration issue. The proposed rule would provide a disproportionate benefit to Canadian workers entering the United States, as opposed to United States workers entering Canada, and diminish and otherwise adversely affect the employment opportunities of U.S. workers in this country.

Accordingly, the proposed rule to amend 20 CFR Part 656, published at 46 FR 3910 (January 16, 1981), is hereby withdrawn.

Signed at Washington, D.C. this 10th day of September, 1984.

Raymond J. Donovan,
Secretary of Labor.

[FR Doc. 84-24416 Filed 9-13-84; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Adminstration

21 CFR Part 102

[Docket No. 82N-0389]

Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is providing another 45 days for interested persons to submit their comments on its proposal that would amend the regulation establishing common or usual names for diluted fruit or vegetable juice beverages. FDA is granting this extension based on requests for the extension of the comment period.

Comment date: October 29, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0177.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 1, 1984 (49 FR 22831), FDA proposed to amend the regulation establishing common or usual names for diluted fruit or vegetable juice beverages to exempt cranberry juice products from percent ingredient labeling requirements. The proposal would also allow manufacturers of other diluted high-acid juice beverages to request a similar exemption for their products. Additionally, FDA proposed to eliminate the requirement for the declaration of the percentage of individual juices in diluted multiple-juice beverages. FDA said it would retain the requirement that the total percentage of juice in multiple-juice beverages be declared in the labeling.

In that same issue of the **Federal Register**, FDA proposed to extend the effective date of 21 CFR 102.33 for affected products until the completion of this rulemaking (49 FR 22834). In the **Federal Register** of June 27, 1984 (49 FR 36541), FDA published a final rule extending the effective date of 21 CFR 102.33.

Additionally, based on two requests, in the **Federal Register** of July 31, 1984 (49 FR 30528), FDA extended the comment period for 45 days on its proposal to amend the regulation establishing common or usual names for diluted fruit or vegetable juice beverages.

The agency has received two requests to extend the comment period an additional 45 days. One request was submitted on behalf of the Processors Council of the California-Arizona Citrus League and the other was submitted by the National Juice Products Association. The associations seek the additional time to discuss the proposal at the National Juice Products Association's mid-year meeting. The associations intend to use the meeting as a means of reaching a consensus regarding the position to be taken concerning the proposed rule.

The agency believes that, under these circumstances, extending the comment period an additional 45 days is reasonable and is likely to result in more informed and focused comments on the proposed rule. Therefore, interested persons may, on or before October 29, 1984, submit to the Dockets

Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 11, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24527 Filed 9-13-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 281

Land Disposal; Sale of Lands Pursuant to Section 10 of the Act Approved March 1, 1911

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations at 36 CFR Part 281 were promulgated in 1955 to implement section 10 of the Weeks Act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 480). Section 10 provides for the sale of small areas of land that are chiefly valuable for agriculture which may have been acquired as part of a larger tract for National Forest purposes. Since the regulations were promulgated, the Forest Service has not had a single instance requiring application of these regulations, and there is no foreseeable need for them. Therefore, the Agency proposes to remove Part 281 from the Code of Federal Regulations.

DATE: November 13, 1984.

ADDRESS: Comments in the proposed rule may be sent to R. Max Peterson, Chief (5450), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Paul R. Haarala, Lands Staff, (202) 235-2161.

SUPPLEMENTARY INFORMATION: Over 27 million acres have been acquired for National Forest purposes under the authority of the Weeks Act. Over 20 million acres of those lands, which were acquired prior to 1961, were in poor condition because of excessive timber cutting, fire damage, and erosion from tillage of lands unsuitable for agriculture. Under Federal ownership, the productivity of these lands has been restored.

The Agency anticipates no future use of the Weeks Act sale regulations, since current Federal land acquisition programs preclude acquiring lands that are chiefly valuable for agricultural purposes.

This proposed action to revoke Part 281 has been reviewed under relevant USDA procedures, Executive Order 12291, and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et. seq.), and it has been determined that:

(1) This rule is not a major rule;

(2) No effect on the economy will result from the repeal of this regulation;

(3) This action will not have a significant economic impact on a substantial number of small entities;

(4) It does not directly or indirectly result in information collection requirements or requests or impose any paperwork burden; and

(5) It does not affect the environment; therefore, an environmental assessment or impact statement is not required.

Therefore, for the reasons set forth in the preamble, it is proposed that Part 281 of Title 36 be removed from the Code of Federal Regulations.

List of Subjects in 36 CFR Part 281

Administrative practice and procedure, National forests, Public lands—sales.

Dated: August 27, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-24420 Filed 9-13-84; 8:45 am]

BILLING CODE 3410-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21323]

The Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply period.

SUMMARY: Action taken herein extends the time for filing comments and replies to comments in response to the *Second Further Notice of Proposed Rule Making* in Docket No. 21323. This *Further Notice* requested additional information on the issue of whether to require cable television systems to retransmit program-related aural subcarriers of broadcast stations and asked for comments on a proposal for resolving it that was submitted jointly by the National Association of Broadcasters and the Association of Maximum Service Telecasters. The extension of time was requested by several parties.

DATES: Comments are due on or before October 4, 1984 and replies to comments are due on or before October 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202)632-6302.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments to Second Further Notice of Proposed Rule Making

In the matter of the use of subcarrier frequencies in the aural baseband of television transmitters; Docket No. 21323.

Issued: September 7, 1984.
Released: September 10, 1984.
By the Chief, Mass Media Bureau.

1. On July 26, 1984 the Commission adopted a *Second Further Notice of Proposed Rule Making* in Docket No. 21323 (49 FR 32619) to consider the issue of whether to require cable television systems to carry program-related aural subcarriers of broadcast television stations. The *Further Notice* was released on August 13, 1984 with comments due by September 19, 1984 and reply comments due by October 4, 1984.

2. On August 24, 1984, the National Association of Broadcasters, the Association of Maximum Service Telecasters, and the Corporation for Public Broadcasting submitted a joint petition to extend the comment period 15 days. Petitioners base their request on a plea that the *Further Notice* presents many issues and questions some of which are complex, and the brevity of the comment period would prevent themselves and other parties from fully addressing the matter.

3. The Commission is interested in expeditiously completing the TV aural subcarrier proceeding. However, it also recognizes the importance of the cable retransmission question and wishes to provide sufficient time for parties to submit comments. Therefore, the petitioners' request for a 15 day extension of time for filing comments and reply comments is granted.

4. Accordingly, it is ordered that the time for filing comments and replies to comments to the above referenced *Further Notice* is extended to and including October 4, 1984 for comments and October 19, 1984 for reply comments.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(i), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 84-24366 Filed 9-13-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 84-279]

Narrowband Technologies for Base and Mobile Communications in the Private Land Mobile Radio Services; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This document extends the reply comment period in PR Docket No. 84-279 concerning Narrowband Technologies[1] in response to a petition from the Land Mobile Communications Council.

DATE: Reply comments are now due by October 1, 1984.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Keith Plourd, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Industrial radio services, Land transportation radio services, Public safety radio services.

Order

In the matter of amendment of Part 90 of the Commission's rules and regulations to authorize narrowband technologies for base and mobile communications in the private land mobile radio services, (PR Docket No. 84-279).

Adopted: September 6, 1984.
Released: September 7, 1984.
By the Chief, Private Radio Bureau.

1. On April 4, 1984, the Commission released a *Notice of Proposed Rule Making* to propose the introduction of narrowband technologies in the Private Land Mobile Radio Services. Comments were originally due June 11, 1984, and reply comments July 11, 1984. The Land Mobile Communications Council (LMCC) requested an extension of time for filing comments. In an *Order* released June 5, 1984, the Commission granted LMCC's request, extending the comment period to August 10, 1984, and reply comment period to September 10, 1984. LMCC has now requested that the reply comment period be extended until October 1, 1984.

2. On August 10, 1984, LMCC submitted comments which contained a preliminary report prepared by a consulting firm evaluating the potential use of narrowband technologies. The final version of that report was submitted to the Commission on August 31, 1984. LMCC argues that the current reply period is not sufficient for interested parties to have an adequate opportunity in which to respond to the report and, therefore, an additional extension of time is warranted.

3. In order to develop a complete record on which to base our decision, it appears that a further extension of time is now necessary to provide all parties sufficient opportunity to address all comments in this proceeding. Accordingly, It is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules, that interested persons are to file reply comments by October 1, 1984.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 84-24301 Filed 9-13-84; 8:45 am]

BILLING CODE 6712-01-M

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[1] The proposed rule was published on May 4, 1984, 49 FR 19074.

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47 CFR Part 97

Request for Federal Preemption of Local Amateur Radio Antenna Zoning

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: This notice requests comments on a *Request for Issuance of Declaratory Ruling* filed by the American Radio Relay League seeking Federal preemption of state and local zoning laws and regulations in matters of amateur radio antennas and transmitters. While it is not required that this notice be published in the **Federal Register**, the Register is being used in this instance as one additional method of seeking comments from the public because of the potential impact this matter could have on persons outside of the field of communications.

DATES: Comments must be filed on or before November 9, 1984. Reply comments must be filed on or before December 14, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4965.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Antennas.

American Radio Relay League (ARRL) Requests Federal Preemption of Local Amateur Radio Antenna Zoning; Pleading Cycle Established

August 30, 1984.

On July 16, 1984, the American Radio Relay League, Incorporated (the ARRL) filed a *Request for Issuance of Declaratory Ruling* requesting the Commission to exercise federal preemptive authority over state and local zoning regulations which affect transmitters and antennas used by amateur radio operators. Specifically, the ARRL seeks a declaratory ruling preempting all local ordinances which provably preclude or significantly inhibit effective, reliable amateur communications, and which are not clearly necessary to insure the safety of a proposed antenna installation.

The Private Radio Bureau seeks comments on this filing. Parties wishing to file formal comment on the issues raised therein should do so by filing an original and four copies with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554, on or before November 9, 1984. Reply comments may be filed on or before December 14, 1984. Comments and reply comments should refer to the following number: PRB-1.

Copies of the ARRL's *Request for Issuance of Declaratory Ruling* and any subsequently filed documents in this matter may be obtained from International Transcription Services, Inc., 1270 Fairfield Road (Route 116 West), Gettysburg, Pennsylvania 17325, (717) 337-1433 or 4006 University Drive, Fairfax, Virginia 22030, (703) 352-2400/(202) 296-7322. Any documents related to this matter will also be available for inspection and copying in the Private Radio Bureau Public Reference Room, 1270 Fairfield Road (Route 116 West), Gettysburg, Pennsylvania 17325.

For further information contact John J. Borkowski at (202) 632-4964.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-24360 Filed 9-13-84; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

Amendments to GSA Board of Contract Appeals Rules of Procedure

AGENCY: Board of Contract Appeals, GSA.

ACTION: Request for comments.

SUMMARY: This notice invites written comments on proposed amendments to the rules of procedure of the GSA Board of Contract Appeals which will govern proceedings before the Board in protests involving automatic data processing equipment (ADP) procurements.

DATE: Comments must be submitted on or before October 15, 1984.

ADDRESS: Copies of the proposed rules may be obtained from and written comments submitted to: Office of the Clerk of the Board, c/o Ms. Beatrice Jones, Rm. 7204, GSA Board of Contract Appeals, 18th & F Sts., NW, Washington, DC 20405, (202) 566–0116.

FOR FURTHER INFORMATION CONTACT: James J. Regan, Chief Counsel, GSA Board of Contract Appeals, (202) 566–0890.

SUPPLEMENTARY INFORMATION: Section 2713 of the Competition in Contracting Act of 1984, 40 U.S.C. 759(h), provides that protests involving procurement of ADP may be filed with the Board on or after January 15, 1985. The Act also provides that the Board is to adopt and issue rules and procedures necessary for the expeditious resolution of such protests. Amendments have been made to the Board's rules of procedure for contract disputes and appeals, effective June 1, 1984, which appear in Appendix B to 48 CFR Chapter 5.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); therefore, no regulatory flexibility analysis has been prepared. The rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Chapter 5

Government procurement.

Dated: September 11, 1984.

Leonard J. Suchanek,

Chairman and Chief Administrative Judge, GSA Board of Contract Appeals.

[FR Doc. 84-24386 Filed 9-13-84; 8:45 am]

BILLING CODE 6820-34-M

Notices

Federal Register

Vol. 49, No. 180

Friday, September 14, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding the Office of Surface Mining's Regulation of Surface Mining and Related Activities in the State of Tennessee

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the Office of Surface Mining, U.S. Department of the Interior, and the Tennessee State Historic Preservation Officer. The Office of Surface Mining proposes to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Tennessee, following withdrawal of Federal approval for the State's regulatory program. The Programmatic Memorandum of Agreement will establish mechanism by which the potential effects of permits will be assessed and historic and cultural properties identified, evaluated, and taken into account in the planning and implementation of mining activities in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: October 15, 1984.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ronald D. Anzalone, Eastern Division of Project Review, Advisory Council on Historic Preservation, 202–786–0505, or Kristi Heisel, Office of Surface Mining, Department of the Interior, 202–343–4140.

Dated: September 10, 1984.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 84–24368 Filed 9–13–84; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1985 Wheat Program; Determinations Regarding the Proclamation of 1985-Crop Program Provisions for Wheat

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determinations of the 1985-crop wheat loan and purchase rate, established (target) price, combined acreage reduction and land diversion program, payment-in-kind diversion program, grazing and haying provisions, and other program provisions.

SUMMARY: The purpose of this notice is to affirm the following determinations which were announced by the Secretary of Agriculture on June 14, 1984 with respect to the 1985 crop of wheat: (1) The loan and purchase rate will be $3.30 per bushel; (2) the established (target) price will be $4.38 per bushel; (3) an acreage reduction program for wheat will be in effect with a uniform reduction of 20 percent combined with a land diversion program of 10 percent; (4) the 1985 acreage base will be the average acreage planted and considered planted to wheat for the 1983 and 1984 crops; (5) the land diversion payment rate will be $2.70 per bushel; (6) there will be no optional land diversion program with payment-in-kind compensation; (7) there will be no haying and only limited grazing of acreage devoted to acreage conservation reserve; (8) the decision on whether entry will be permitted into the farmer-owned reserve will be made at a later date; (9) offsetting compliance will not apply; and (10) summer fallow land will be eligible for designation as acreage conservation reserve, and (11) binding contracts must be executed by producers in order to participate in the 1985 Wheat Program. These determinations are made in accordance with sections 107B, 107C, 109 and 110 Act of 1949, as amended (hereinafter referred to as the "1949 Act").

EFFECTIVE DATE: June 14, 1984.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, Commodity Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–4146. The Final Regulatory Impact Analysis describing the options considered in developing this Notice of Determinations is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance program to which this notice applies to are: TITLE—Wheat Production Stabilization: Number 10.058 and TITLE—Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

This notice sets forth determinations with respect to the following issues which are briefly described.

1. The Loan and Purchase Level

Section 107B(a) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1985 crop of wheat at such level, not less than $3.55 per bushel, as the Secretary determines will maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat. If the Secretary determines that the average price of wheat received by producers in any marketing year is not more that 105 percent of the level of loans and purchases for wheat for such marketing year, the Secretary may reduce the level of loans and purchases for the next marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain, except that the level of loans and purchases shall not be reduced by more than 10 percent in any year nor below $3.00 per bushel.

2. The Established (Target) Price Level

Section 107B(b)(1)(C) of the 1949 Act provides that the established (target) price for wheat shall not be less than $4.38 per bushel for the 1985 crop. Any such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made.

3. Acreage Reduction Program and Cash Land Diversion Program

Sections 107B(e)(1)(D) and (2) of the 1949 Act require that the Secretary provide for a combination of an acreage reduction program (ARP) and a cash land diversion (CLD) program for the 1985 crop of wheat under which the acreage planted to wheat for harvest on the farm would be limited to the acreage base for the farm reduced by not more than 30 percent, consisting of an acreage reduction program of not more than 20 percent and a reduction of 10 percent under the cash land diversion program. As a condition of eligiblity for loans, purchases, and payments on the 1985 crop of wheat, the producers on a farm must comply with the terms and conditions of the combined ARP and CLD program. The Secretary shall announce any such wheat acreage reduction program not later than July 1 prior to the calendar year in which the crop is harvested. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each wheat-producing farm. Producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat loans, purchases, and payments with respect to that farm. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres actually planted to wheat by (2) the number of acres authorized to be planted to wheat under a limitation established by the Secretary shall be devoted to conservation uses in accordance with regulations issued by the Secretary.

4. Establishment of Acreage Bases

Section 107B(e)(2) of the 1949 Act provides that the acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage planted on the farm to wheat for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to wheat for harvest in the two crop years immediately preceding the year for which the determination is made. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base.

5. Cash Land Dimension Payments

Section 107B(e)(5) of the 1949 Act provides that the Secretary shall implement a CLD program for the 1985 crop of wheat under which the Secretary shall make crop retirement and conservation payments to any producer whose acreage planted to wheat for harvest on the farm for such crop is reduced so that it does not exceed the wheat acreage base for the farm, less an amount equivalent to 10 percent of the wheat acreage base, in addition to the ARP reduction, and who devotes this acreage to approved conservation uses. Such payments shall be made in an amount computed by multiplying (1) the diversion payment rate by (2) the farm program payment yield for the crop by (3) the additional acreage diverted under the cash land diversion program. The CLD payment rate for the 1985 crop of wheat shall be established by the Secretary at not less than $2.70 per bushel. The Secretary shall make not less than 50 percent of the CLD program payments to producers of the 1985 crop of wheat as soon as practicable after a producer enters into a cash land diversion contract and in advance of any determination of performance.

6. Optional Land Diversion Program With Payment-In-Kind (PIK) Compensation

An additional land diversion program with compensation being made available in the form of commodities (i.e., Payment-In-Kind) to participating producers is authorized by the 1949 Act and the CCC Charter Act.

The 1949 Act authorizes the Secretary to make diversion payments to producers of wheat if the Secretary determines that such payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. The CCC Charter Act (15 U.S.C. 714 *et seq.*) also gives the Commodity Credit Corporation (CCC) broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets and remove and dispose of agricultural surpluses.

7. Haying and Grazing of Acreage Conservation Reserve Land

Section 107B(e)(4) of the 1949 Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion. The Secretary may authorize haying and grazing of acreage devoted to the acreage conservation reserve (ACR).

8. Provisions of the Farmer-Owned Reserve (FOR)

Section 110 of the 1949 Act provides that the Secretary shall formulate and administer a program under which producers of wheat will be able to store wheat when it is in abundant supply and extend the time for its orderly marketing. The Secretary shall provide for original or extended price support loans at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the current level of price support provided for under the wheat program established in accordance with section 107B of the 1949 Act. The program may provide for: (1) repayment of such loans in not less than three years nor more than five years; (2) payments to producers for storage in such amounts and under such conditions as are determined to be appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate of interest charged CCC by the United States Treasury, except that the Secretary may waive or adjust such interest as the Secretary deems appropriate; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers before the market price for wheat has reached the trigger release level; and (5) conditions designed to induce producers to redeem and market the wheat securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained a specified level (i.e., the "trigger release level"), as determined by the Secretary. The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcements, the Secretary shall specify the quantity of wheat to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of wheat. The Secretary may place an upper limit on the amount of wheat placed in the reserve but such upper limit shall not be less than seven hundred million bushels of wheat.

9. Other Provisions

a. Offsetting Compliance

Section 107B(g) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the wheat program. The Secretary may promulgate regulations providing for offsetting compliance requirements. If such regulations are implemented, operators and owners of farms would have to ensure that all of the farms in which they had an interest were either in compliance with the program requirements or the acreages of wheat planted for harvest on each of such farms did not exceed the wheat acreage bases which were established for such farms.

b. Summer Fallow Rules

The Secretary may authorize the designation of summer fallow land as ACR acreage.

c. Binding Program Contracts

The Secretary may require that program contracts between producers and CCC be binding. These contracts may also provide for liquidated damages in the event producers do not fulfill the terms and conditions of the contracts.

Summary of Public Comments

A proposed notice of determination with respect to the 1985 crop of wheat was published in the **Federal Register** on May 11, 1984, (49 FR 20037) and provided for a 30-day comment period. The comment period was limited to 30 days to allow the Secretary sufficient time to properly consider the comments received before the final program determinations were made. A total of 87 comments were received. Comments were received on all issues discussed above. Following is a summary of the comments received:

1. Loan and Purchase Level

With respect to the loan and purchase level, a total of 40 comments were received with 16 favoring a higher loan and purchase level than in 1984, 7 favoring the same level and 17 favoring a lower loan and purchase level. Most farmers (52 percent) favored increasing the loan and purchase level for the 1985 crop while nearly three-quarters of the farm organizations submitting comments favored a lower level.

2. Established "Target" Price

With respect to the established (target) price, a total of 27 comments were received with 12 favoring a higher target price than in 1984, and 15 supporting the same target price. Comments favored a target price in the $4.38 to $7.00 range.

3. Acreage Reduction/Cash Land Diversion Program

A total of 27 comments were received with 21 favoring a 20-percent ARP/10-percent CLD program. Other comments supported either a 15-percent ARP/10-percent CLD or a 10-percent ARP/10.-percent CLD.

4. Cash Land Diversion Payment

A total of 15 comments were received with 6 favoring a $2.70 per bushel payment rate. The others favored a higher rate ranging from $2.74 to $4.00 per bushel.

5. Optional Land Diversion Program With Payment-In-Kind (PIK) Payments

A total of 29 comments were received with 21 favoring an optional 10–20 percent land diversion program with PIK payments ranging from 80 to 90 percent of farm program payment yield. Two comments opposed an optional diversion program while six recommended other types of optional programs.

6. Haying and Grazing of Acreage Conservation Reserve (ACR) Land

Over 80 percent of the 52 comments received favored the haying and grazing of ACR acreage. The majority also favored the option of allowing State ASC committees to determine whether or not haying or grazing should be authorized. The National Hay Association and several State Hay organizations opposed the haying of ACR land.

7. Provisions of the Farmer-Owned Reserve (FOR)

A total of 18 comments were received. The majority favored (1) having the same loan level for reserve loans as the loan level for regular price support loans; (2) a storage payment rate at 26.5 cents per bushel; and (3) entry into the reserve at maturity of the regular 9-month price support loan.

8. Offsetting Compliance

A total of 31 comments were received with 26 opposed to implementation of offsetting compliance requirements.

9. Summer Fallow Rules

A total of 37 comments were received with 32 favoring designation of summer fallow acreage as ACR.

10. Binding Program Contracts

A total of 31 comments were received with 26 favoring binding contracts for the 1985 Wheat Program. A large majority favored the binding contract at conclusion of the signup period while others felt the contract should be binding at a later date.

Determinations

A number of the determinations with respect to the wheat program are required to be made not later than July 1 prior to the calendar year in which the crop is harvested. On June 14, 1984, the Secretary announced by press release the program provisions for the 1985 crop of wheat. The purpose of its notice is to affirm the program determinations previously announced. Thus, it has been determined that no further public rulemaking is required with respect to the following determinations:

1. Loan and Purchase Level

In accordance with section 107B(a) of the 1949 Act, it has been determined that the loan and purchase rate for the 1985 crop of wheat is $3.30 per bushel. This level will best maintain the competitive relationship of wheat to other grains in domestic and foreign markets after taking into consideration the cost of producing wheat, supply and demand conditions, and the world prices for wheat. It has been determined that the average price of wheat received by producers for the 1984/85 marketing year will be not more than 105 percent of the 1984 crop loan level of $3.30 per bushel.

2. Established "Target Price"

In accordance with section 107B(b)(1)(C) of the 1949 Act, it has been determined that the established (target) price for wheat is $4.38 per bushel, which is the minimum statutory level. It has also been determined that the provisions of section 107B(b)(1)(D) are applicable with respect to the 1985 crop of wheat since the average price of wheat received by producers in the

1984/85 marketing year is not expected to be more than 105 percent of the level of loans and purchases for the 1984/85 marketing year. Accordingly, to provide producers with the same total returns as if the loan and purchase rate had not been reduced, it has been determined that any established price "deficiency" payment above 83 cents per bushel (the difference between the target price of $4.38 per bushel and the statutory minimum loan price of $3.55 per bushel) will not be included in the determination of payments which are subject to the $50,000 maximum payment limitation imposed by Section 1101 of the Food and Agriculture Act of 1981.

3. Acreage Reduction/Cash Land Diversion Program

In accordance with section 107B(e)(2)(D) of the 1949 Act, it has been determined that a 30 percent reduction shall be implemented consisting of a 20 percent ARP combined with a 10 percent CLD. Producers will be required to reduce their 1985 acreage of wheat for harvest from the established acreage base by at least 30 percent to be eligible for loans, purchases, and payments. It has been determined that the total supply of wheat, in the absence of such limitations, will be excessive.

4. Establishment of 1985-Crop Acreage Bases

In accordance with section 107B(e)(2) of the 1949 Act, it has been determined that the 1985 wheat acreage bases shall be established using the average of the acreage planted and considered planted to wheat for the 1983 and 1984 crops. For farms where crop rotation practices are utilized, the acreage base shall be the acreage planted and considered planted to wheat in the immediately prior years that correspond to the farm's rotation practice. This method was selected to moderate the impacts of overplantings on farms not participating in the commodity production adjustment programs in prior years.

5. Cash Land Diversion Payment

In accordance with section 107B(e)(5) of the 1949 Act, it has been determined that the CLD payment rate shall be $2.70 per bushel, which is the minimum statutory level. Producers entering into a land diversion contract may receive one-half of the diversion payment in advance of any determination of performance of the contract.

6. Optional Land Diversion Program With Payment-In-Kind (PIK) Compensation

It has been determined that no optional land diversion program with PIK compensation will be offered to producers for the 1985 crop of wheat. When the PIK program was implemented for the 1983 crops it was announced as a short-term measure for the 1983 crops and, perhaps, the 1984 crops. To extend this program into the 1985 crop would run counter to the efforts to regain our competitiveness in the world markets. A more aggressive acreage reduction program would signal to the rest of the world that the U.S. was willing to continue to assume the world supply adjustment burden while allowing our competitors in world markets to expand their production and reap the benefits of any resultant price strength.

7. Haying and Grazing of Acreage Conservation Reserve (ACR) Acreage

In accordance with section 107B(e)(4) of the 1949 Act, it has been determined tht haying of cover crops on ACR acreage will not be permitted. However, ACR acreage may be grazed except during the six principal growing months as designated by county Agricultural Stabilization and Conservation (ASC) committees. In the event of a natural disaster, emergency haying and grazing may be approved as needed on a county-by-county basis.

The unrestricted haying and grazing of ACR acreage, which was permitted for the 1984 crop, was not extended for the following reasons: (1) Haying of ACR creates a new supply of hay and can adversely impact the established hay industry; (2) the 1985 program was announced well in advance of the fall seedings of winter wheat thereby allowing farmers sufficient time to plan their fall seedings based on full knowledge of the applicable program provisions; and (3) the announced grazing provisions will allow county, ASC committees to permit grazing of ACR acreage through the end of April, a time period which is considered to be adequate to provide maximum grazing benefits from the ACR cover and still properly protect the land from wind and water erosion.

It is further determined that the planting of alternative crops for harvest on ACR acreage will not be permitted.

8. Provisions of the Farmer-Owned Reserve (FOR)

In accordance with section 110 of the 1949 Act, the Secretary has determined that there will be no immediate entry into the farmer owned reserve program for the 1985 crop of wheat. Further, the Secretary intends to review the size of the reserve before regular price support loans for the 1985 crop reach maturity. A determination whether to impose a limitation on the size of the reserve will be made accordingly.

9. Offsetting Compliance

In accordance with section 107B(g) of the 1949 Act, it has been determined that offsetting compliance will not be required as a condition of eligibility for program benefits on a farm where a producer has an interest in more than one farm.

10. Summer Fallow Rules

With respect to farms with a summer fallow rotation, acreage designated as ACR must be cropland that was devoted to row crops or small grains in one of the last two crop years. It has been determined that this action was necessary to achieve a high level of participation in the 1985 Wheat Program in the summer fallow regions.

11. Binding Program Contracts

Contracts signed by program participants for the ARP and CLD program will be considered binding at the end of the signup period and will provide for liquidated damages if producers do not comply with contractual arrangements. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling into the program and will also result in a more effective program.

Authority: Secs. 107B, 107C, 109, 110, 95 Stat. 1221, as amended, 98 Stat. 766, 91 Stat. 950, as amended, 951, as amended (7 U.S.C. 1445b–1, 1445b–2, 1445d and 1445e); sec. 1001, 91 Stat. 950, as amended (7 U.S.C. 1309); sec. 1101, 95 Stat. 1263 (7 U.S.C. 1308).

Signed at Washington, D.C. on September 11, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-24424 Filed 9-13-84; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Joint Interchange Order Between Department of the Army and Department of Agriculture; Interchange of Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

This is a a notice of an interchange order which describes the interchange of administrative jurisdiction of 17.27 acres of land within the boundaries of the Daniel Boone National Forest, Kentucky, from the Department of Agriculture to the Department of the Army and the interchange of administrative jurisdiction of 5,768.07 acres of land within the Daniel Boone National Forest, Kentucky, from the Department of the Army to the Department of Agriculture.

The interchange order describes the tracts briefly. Legal descriptions are on file in the Office of the District Engineer, Louisville District, Corps of Engineers, Louisville, Kentucky, and the Office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky. Therefore, the order is published as follows:

Dated: September 5, 1984.

R. Max Peterson,

Chief.

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF THE ARMY

Cave Run Lake, KY, Joint Order Interchanging Administrative Jurisdiction of the Department of the Army Lands and National Forest Lands

Interchange Order No. 3

By virtue of the authority vested in the Secretary of Agriculture and the Secretary of the Army by the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A, attached hereto and made a part hereof, which lands are within the exterior boundaries of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Seccretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of record and to such continued use by the Corps of Engineers as is necessary for the construction, protection, and unrestricted operation, maintenance, and administration of the water storage and flood-control facilities and functions of the Cave Run Lake.

(2) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army.

(3) Pursuant to section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to laws applicable to Department of the Army lands comprising the Cave Run Lake project. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereafter subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of the date of publication in the **Federal Register.**

Dated: July 2, 1984.

John O. Marsh, Jr.

Secretary of the Army.

Dated: April 17, 1984.

John R. Block,

Secretary of Agriculture.

Exhibit A.—Lands Transferred From the Secretary of the Army to the Secretary of Agriculture

The following listed tracts acquired by the Department of the Army for or in connection with the Cave Run Lake project, in Bath, Rowan, Menifee, and Morgan Counties, Kentucky.

Segment 1: 115c, part of 119

Segment 3: 301, 303, 303–2, 303–3, 303–4, 305–C, 306–C, 307, 308, 308–2, 310, 311, 312–1, 312–2, 313, 314.

Segment 4: 406C, 410–1, 410–2, 411, part of A (formerly a part of Forest Service Tract 86I).

Segment 6: 609C.

Segment 7: 700C, 702C, 703, 704, 705, 705C, 706, 707, 709, 710, 712, 713–1, 713–2, 714, 715, 716.

Segment 8: 800C.

Segment 9: 915C, 923C–1, 923C–2, 924, 929C.

Segment 10: 1000C, 1004C, 1005C.

Segment 11: 1100C, 1102C, 1107C.

Segment 12: 1210C.

Segment 13: 1300, 1302C

Segment 15: 1507C, 1509C–1, 1509C–2

Segment 16: 1606C.

Segment 17: 1700C, 1705C–1, 1705C–2, 1711C.

Segment 18: 1801C.

Segment 19: 1903C.

Segment 20: 2000C, 2003C, 2004C.

Segment 21: 2103–1C, 2104C, 2105–1C, 2106, 2108C, C (formerly a part of Forest Service Tract 393II).

Segment 22: 2204–2C, 2205–2C.

Segment 23: 2309C, 2315.

Segment 24: 2400C.

Segment 25: 2502C, 2511C.

Segment 26: 2601C–1, 2601C–2 2608C, 2609C.

Segment 28: 2800C, 2801C.

Segment 29: 2902C, 2908C.

Segment 30: 3000C, 3001C–1, 3001C–2.

Segment 31: 3104.

Segment 32: 3200C, 3204, 3207.

Segment 33: 3300, 3301, 3302, 3303, 3305, 3306, 3307, 3308, 3309, 3310, 3310C, 3311, 3312, 3317, 3318, 3319, 3320C, 3343.

Segment 34: 3400 3401, 3403, 3404, 3404C1, 3404C2, 3404C3, 3404C4, 3404C5, 3405, 3406.

Segment 35: 3504C.

Segment 36: 3604C, 3627.

Segment 37: 3700, 3802, 3703, 3703C, 3704, 3705, 3706, 3707, 3708, 3709, 3710, 3711.

Segment 38: 3813, 3814, 3814, 3815, 3816, 3817.

Segment 40: 4000C, 4014C, 4017C, 4022, 4023.

Segment 42: 4200, 4201, 4202, 4204, 4205.

Segment 43: 4300C1, 4300C2, 4302.

Segment 45: 4500, 4502, 4503, 4504–1, 4504–2, 4505, 4506.

Segment 46: 4602, 4603: 4604, 4605, 4606, 4607.

Segment 48: 4800 4801: 4802 4803, 4804, 4805 4806, 4807.

Segment 49: 4900, 4901, 4904.

Segment 51: 5100, 5101, 5102, 5103, 5104, 5105, 5106.

Segment 52: 5200, 5203.

Segment 53: 5300, 5301, 5302, 5303, 5304.

Segment 54: 5401, 5409, 5411, 5414.

Segment 56: 5600, 5601, 5602, 5603, 5603C.

All lands transferred herein consist of 5,768.07 acres, more or less. Legal descriptions of the transferred tracts and real estate segment maps depicting their locations are on file in the office of the District Engineer, U.S. Army Engineer District, Louisville Kentucky, and the Office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky. In two previous partial interchanges at the Cave Run Lake project, the jurisdiction of Department of the Army lands was transferred subject to outstanding mineral interests. Those interests have since been acquired or extinguished. This final interchange of lands at the Cave Run Lake project includes (1) all interests acquired or obtained for the lands proposed in this report, and (2) all mineral interests acquired or obtained for project lands previously interchanged from the Department of the Army to the Department of Agriculture.

Exhibit B.—Lands Transferred From the Secretary of Agriculture to the Secretary of the Army

A portion of U.S. Forest Service Tract 172 consisting of 17.27 acres, more or less, in Rowan County, Kentucky, acquired by the Department of Agriculture as a part of the Daniel Boone National Forest.

A complete legal description and plat are on file in the office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky, and in the office of the District Engineer, U.S. Army Engineer District, Louisville, Kentucky.

[FR Doc. 84–24419 Filed 9–13–84; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-045]

Steel Wire Rope From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on steel wire rope from Japan. The review covers 102 of the 121 known manufacturers and/or exporters and two of the four known third-country resellers of this merchandise to the United States and generally the period October 1, 1982, through September 30, 1983. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their shipments during the period.

When company-supplied information was inadequate or no information was received in response to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 12294) the final results of its last administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under items 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United Sates Annotated.

The review covers 102 of the 121 known manufacturers and/or exporters and two of the four known third-country resellers of Japanese steel wire rope to the United States and generally the period October 1, 1982, through September 30, 1983. We are deferring our review of the remaining 21 firms until a subsequent administrative review.

Fifty-five firms did not ship Japanese steel wire rope to the United States during the period. The estimated antidumping duties cash deposit rates for those firms will be the most recent rate for each firm. Twenty-six firms failed to respond to our questionnaire or provided inadequate responses to our questionnaire, and one firm did not permit the Department to conduct an on-site verification of its response to our questionnaire. For those 27 firms we used the best information available to determine the assessment and estimated antidumping duties cash deposit rates. The best information available is the most recent rate for each firm or the highest rate among responding firms with shipments in the period, whichever is higher.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based either on the f.o.b. or c.i.f., packed price to unrelated purchasers in the United States or to unrelated trading companies for export to the United States. Where applicable, we made deductions for foreign inland freight, f.o.b. charges, ocean freight, insurance, and quantity discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, the price to a third country (Australia), or the constructed value, all as defined in section 773 of the Tariff Act. Home market and third-country prices were based on the packed delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight, f.o.b. charges, ocean freight, and differences in the cost of packing, warranty, and credit. Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and the cost of packing. The amount added for general expenses was ten percent of the sum of materials and fabrication costs, or actual general expenses, whichever was higher. The amount added for profit was eight percent of the sum of materials, fabrication costs, and general expenses, or actual profit, whichever was higher.

Due to an allegation by the petitioner, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, of sales in the home market below the cost of production, we requested those firms that were not shown in a previous review to be selling substantially all of their wire rope in the home market at prices above their costs of production to provide cost of production information. We did not receive adequate cost of production data from any such firm.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period October 1, 1982, through September 30, 1983:

Manufacturer/exporter	Margin (percent)
Ace Industrial Co., Ltd	[1] 5.66
Ako Rope, K.K	[1] 7.29
Asahi Mini Rope Co., Ltd	[1] 9.68
Chrysanthemum Nippon Wire Rope Co., Ltd	1.21
Chrysanthemum Nippon Wire Co., Ltd./Izumi Trading Co., Ltd	0
Chrysanthemum Nippon Wire Rope Co., Ltd./Kent-Moore Japan, Inc	0
Chuo Seisakusho Ltd./Kohshin Co. Ltd	10.26
Chuo Seisakusho Ltd./all other exporters	[1] 1.30
Daido Corp.	[1] 7.29
Daisen Kogyo	[1] 5.66
Daiwa Steel Co., Ltd. (also known as Daiwa Kogyo K.K.)	[1] 5.98
Daiyu Kogyo Co., Ltd	11.21
Dia Enterprises, Ltd	11.21
J. Gerber & Co. (Japan)	[1] 0
Godo Tessen Co., Ltd	11.21
Hakko Sangyo Co., Ltd	[1] 0
Hannan Wire Rope Mfg. Co., Ltd./Far East Industrial Co., Ltd	11.21
Hannan Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	11.21
Ibe Steel Rope Mfg. Co., Ltd./Hori Trading Co., Ltd	[1] 9.65
Igeta Wire Rope Co., Ltd./Mitsui & Co., Ltd	[2] 3.81
Igeta Wire Rope Co., Ltd./Kimura Shoten, Ltd. (formerly known as Osaka Ship Supplies Center)	11.21
Iwata Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Japan Steel Wire Rope Co., Ltd./Kohshin Co., Ltd	[1] 7.29
Kasuga Seiko Co., Ltd./Higashishiba & Co., Ltd	11.21
Kasuga Seiko Co., Ltd./Kohshin Co., Ltd	[1] 7.29
Kasuga Seiko Co., Ltd./Nissho-Iwai	[1] 7.29
Kasuga Seiko Co., Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha Ltd.)	11.21
Kawashima Trading Co., Ltd	11.21
Kawatetsu Wire Products Ltd./Mitsui & Co., Ltd	[2] 0
Kiku Steel & Wire Rope Co., Ltd./Watanabe Trading Co., Ltd	11.21

Manufacturer/exporter	Margin (percent)
Kobayashi Metals, Ltd	[1] 5.68
Kokoku Steel Wire, Ltd	11.21
Kokoku Steel Wire, Ltd./Kanematsu-Gosho Ltd	[1] 7.29
Kokoku Steel Wire, Ltd./Kohshin Co., Ltd	11.21
Kokoku Steel Wire, Ltd./Kongo Corp	[1] 7.29
Kokoku Steel Wire, Ltd./Koyo Boeki Co., Ltd	[1] 7.29
Kokoku Steel Wire, Ltd./Mitsui & Co., Ltd	[2] 7.29
Kokoku Steel Wire, Ltd./Nichimen Co., Ltd	11.21
Kokoku Steel Wire, Ltd./Nissho-Iwai	11.21
Kokoku Steel Wire, Ltd./Shinkyo Shoji Kaisha Ltd. (also known as Shinsho Corp.)	[1] 7.29
Kokoku Steel Wire, Ltd./Sumitomo Corporation (also known as Sumitomo Shoji Kaisha Ltd.)	[1] 7.29
Kokoku Steel Wire, Ltd./Yutoku & Co., Ltd	11.21
Kondo Iron Works Co., Ltd	11.21
Koshihara Iron Works Co., Ltd	[1] 5.68
Kyosei Industry Co., Ltd	[1] 0
Kyowa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 7.29
Kyowa Wire Rope Mfg. Co., Ltd./S.M. Industries, Inc	11.21
Kyowa Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	11.21
Liberty Shokai, Ltd	[1] 5.68
Maruka Machinery Co., Ltd	[1] 5.68
Marusen Wire Rope Mfg. Co., Ltd./S.M. Industries, Inc	[1] 7.29
Marusen Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	[1] 0.23
Meiji Seiko Co., Ltd. (also known as Meiji Steel Wire Rope Co., Ltd.)/Mitsui & Co., Ltd	[2] 0
Millwire Industries Co., Ltd./K. Onishi & Co., Ltd	11.21
Misawa Trading Co., Ltd. (also known as Misawa Kosan Kaisha, Ltd.)/S.M. Industries, Inc	[1] 7.29
Naigai Rope Mfg. Co., Ltd./Mitani Kogyo Co. or Mitani Seisakusho Ltd	[1] 7.29
Naniwa Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	11.21
Naniwa Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Naniwa Wire Rope Mfg. Co., Ltd./all exporters other than Mitsui of Higashishiba	[1] 0.65
Nankai Senshu Steel Wire & Rope Co., Ltd./Sumitomo Shoji Kaisha Ltd. (also known as Sumitomo Corp.)	[1] 7.29
Nanri Trading Co., Ltd	11.21
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Kin-yo Co., Ltd	[1] 7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./S.M. Industries, Inc	[1] 7.29
Nihon (or Nippon) Miniature Rope Mfg. Co., Ltd./Yutoku & Co., Ltd	[1] 7.29
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Daimyo Bussan Co., Ltd	11.21
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./F.A. Industries Corp	11.21
Nikko (Seiko) Steel Wire Rope Mfg. Co., Ltd./Union Co., Ltd	11.21
Nippo Wire & Rope Co., Ltd	11.21
Nippo Wire & Rope Co., Ltd./Kohshin Co., Ltd	[1] 7.29
Nippo Wire & Rope Co., Ltd./Koutoku Trading Co., Ltd	[1] 7.29
Nippon Steel Wire Rope Mfg. Co., Ltd./Higashishiba & Co., Ltd	11.21
Nippon Steel Wire Rope Mfg. Co., Ltd./Mitsui & Co., Ltd	[2] 0
Nishi-Nippon Fujikura Co., Ltd. (also known as Shimada & Co., Ltd.)	[1] 5.68
Nishimura Wire Rope Mfg. Co., Ltd./Kin-yo Co., Ltd	[1] 7.29
Nishimura Wire Rope Mfg. Co., Ltd./K–M Int'l	[1] 7.29
Nishiya Wire Rope Co., Ltd./Mitsui	[2] 0
Nissei Sangyo Co., Ltd	[1] 7.29
Nobuhara Mfg. & Supply Co	[1] 7.29
Ryoei Shoji Co., Ltd	[1] 7.29
Sakai & Co., Ltd	11.21
Sasaki Kogyo Yugen Kaisha Co., Ltd	[1] 7.29
Seiko Wire Rope Co., Ltd./Kin-yo Co., Ltd	[1] 7.29
Seiko Wire Rope Co., Ltd./Kohshin Co., Ltd	[1] 7.29
Seiko Wire Rope Co., Ltd./Koutoku Trading Co., Ltd	[1] 11.21
Seiko Wire Rope Co., Ltd./Okura & Co., Ltd	[1] 7.29
Seiko Wire Rope Co., Ltd./S.M. Industries, Inc	[1] 7.29
Seo Hardware Corp	[1] 9.68
Shibamoto & Co., Ltd	[1] 5.68
Shimada & Co., Ltd. also known as Nishi-Nippon Fujikura Co., Ltd.)	[1] 5.68
Shinko Wire Co., Ltd./Kanematsu-Gosho Ltd	[1] 0
Shinko Wire Co., Ltd./Mitsui & Co., Ltd	[2] 0
Shinko Wire Co., Ltd./Nissho-Iwai	[1] 0
Shinko Wire Co., Ltd./Shinsho Corp	10.71
Shinyo Ropes Co., Ltd	[1] 11.21
Shinko Ropes Co., Ltd./Far East Industrial Co., Ltd	[1] 11.21
Shinyo Ropes Co., Ltd./Higashishiba & Co., Ltd	[1] 11.21
Shinyo Ropes Co., Ltd./Mitsui & Co., Ltd	[2] 0
Shinyo Ropes Co., Ltd./S.M. Industries, Inc	4.62
Shinyo Ropes Co., Ltd./Yutoku & Co., Ltd	11.21
Showa Boeki Co., Ltd	[1] 5.68
Sumiyoshi Kinzoku Kogyo	11.21
Taiho Seikosho Co., Ltd./Kin-yo Co., Ltd	[1] 7.29
Taiyo Seiki (Iron Works) Co., Ltd./Far East Industrial Co., Ltd	[1] 7.29
Y. Takeuchi and Co	[1] 7.29
Tanaka Metals Corp	[1] 5.68
Teikoku Sangyo Co., Ltd./Kin-yo Co., Ltd	[1] 7.29
Teikoku Sangyo Co., Ltd./Sumitomo Corporation (Sumitomo Shoji Kaisha, Ltd.)	11.21
Teikoku Sangyo Co., Ltd./The Tosho Co., Ltd	[1] 7.29
Teikoku Sangyo Co., Ltd./Mitsui & Co., Ltd	[1] 7.29
Teikoku Sangyo Co., Ltd./Mitsubishi Corp	[1] 7.29
Teikoku Sangyo Co., Ltd./Nissho-Iwai	[1] 7.29
Teikoku Sangyo Co., Ltd./Watanabe Trading Co., Ltd	[1] 7.29
Tokyo Rope Mfg. Co., Ltd./Alaska Boeki Co., Ltd	11.21
Tokyo Rope Mfg. Co., Ltd./C. Itoh & Co., Ltd	[1] 2.21
Toyo Sangyo Co., Ltd. (also known as Toyo Mini Rope)	[1] 7.29
Ui Steel Products Works Ltd	11.21
Ui Steel Products Works Ltd./F.A. Industries Corp	11.21
Union Wire Rope Mfg. Co., Ltd./Senyu Bussan Kaisha, Ltd	11.66
Wire Shoji/Higashishiba & Co., Ltd	11.21
Yamasho Co., Ltd	11.21
Yuasa Trading Co., Ltd	11.21
Manufactural/Third-Country Reseller (Country)	
Daishin Shoji Co., Ltd./Vanguard Steel Ltd. (Canada)	3.06
Igeta Wire Rope Co., Ltd./Wesco Industries Ltd. (Canada)	[1] 7.29
Shinyo Ropes Co., Ltd./Vanguard Steel Ltd. (Canada)	[1] 7.29
Tokoyo rope Mfg. Co., Ltd./Wesco Industries Ltd. (Canada)	[1] 7.29
We preliminarily determine that the following margins exist for the period October 1, 1981, through September 30, 1982:	
Nippo Wire & Rope Co., Ltd./Kohshin Co., Ltd	7.29
Nippo Wire & Rope Co., Ltd./Koutoku Trading Co., Ltd	[1] 7.29
Shinyo Ropes Co., Ltd	7.29
Shinyo Ropes Co., Ltd./Far East Industrial Co., Ltd	7.29
Teikoku Sangyo Co., Ltd./Kin-yo Co., Ltd	7.29
Ui Steel Products Works Ltd./F.A. Industries Corp	7.29
Wire Shoji/Higashishiba & Co., Ltd	7.29

[1] No shipments during the period.
[2] For cash deposit purposes only.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing. The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for those firms. Since the weighted-average margin for Marusen Wire Rope Mfg. Co., Ltd./Yutoku & Co., Ltd. is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the deposit requirement for that manufacturer/exporter combination. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments of Japanese steel wire rope occurred after September 30, 1983, and who is unrelated to any reviewed firm, a cash deposit of 11.21 percent shall be required. These deposit requirements are effective for all shipments of Japanese steel wire rope entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: September 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24480 Filed 9-13-84; 8:45 am]

BILLING CODE 3510-DS-M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

AGENCY: International Trade Administration, Commerce.

Federal Register citation of previous announcement: 49 FR 35672, September 11, 1984.

Previously announced time and date of the meeting: 1:00 p.m., September 25, 1984.

Changes in the Meeting

9:30 a.m., September 26, 1984, Herbert C. Hoover Building, Conference Room A, 14th Street and Constitution Avenue NW., Washington, D.C.

Dated: September 11, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-24487 Filed 9-13-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-401]

Potassium Chloride From Israel; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Affirmative Countervailing Duty Determination.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of potassium chloride, as described in the "Scope of Investigation" section of this notice. The net bounty or grant is 3.64 percent *ad valorem*. Therefore, we have notified the International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue the suspension of liquidation ordered in the preliminary determination of all entries of potassium chloride from Israel which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond on this product in the amount equal to the net bounty or grant.

EFFECTIVE DATE: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: John R. Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of postassium chloride. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Investment Grants under the Encouragement of Capital Investment Law 5719-1959 (ECIL).
- Export Shipment Fund Under ECIL.
- Export Production Fund Under ECIL.
- Imports-for-Exports Fund under ECIL.

The bounty or grant is 3.64 percent *ad valorem*.

Case History

On March 29, 1984, we received a petition filed by AMAX Chemicals Inc., Lakeland, Florida, and Kerr-McGee Chemical Corporation, Oklahoma City, Oklahoma, on behalf of U.S. producers of potassium chloride who represent a major portion of that industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of potassium chloride receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Act and that these imports are materially injuring or threatening to materially injure, a U.S. industry.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and, on Apirl 18, 1984, we initiated such an investigation (49 FR 18001).

Israel is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, section 303 of the Act applies to this investigation. Section 303(a)(2) of the Act requires an injury determination by the ITC, since the merchandise enters the United States duty-free and the international obligations of the United States so require.

We presented questionnaires concerning the allegations to the government of Israel and Dead Sea Works Ltd. (DSW), the only known Israeli producer or potassium chloride, in Washington, D.C., on April 23, 1984, and requested a response by May 23, 1984. In a letter dated May 2, 1984, DSW requested an extension until June 6 to submit its response. We granted an extension until May 29. On that date we received responses from the Israeli government and DSW. On May 17, 1984, we denied a government of Israel request that we consider this case extraordinarily complicated.

On June 25, 1984, we preliminarly determined that benefits that constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers and exporters in Israel of postassium chloride (49 FR 26776). At the request of the petitioners, we held a hearing on July 11, 1984 to allow the parties an opportunity to address the issues arising in the investigation.

Scope of Investigation

The product covered by this investigation is potassium chloride, currently provided for under item 480.5000 of the *Tariff Schedules of the United States Annotated*. The period for which we are measuring benefits is April 1, 1982, through March 31, 1983.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and the parties' comments we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to DSW under the following programs:

A. ECIL Investment Grants

The purpose of "The Encouragement of Capital Investments Law, 5719-1959 (ECIL)" is to attract capital to Israel with a view toward developing the productive capacity of the national economy, improving the balance of payments, absorbing immigration, and offsetting the economic disadvantages in Israel's development areas.

Investment grants are given as a percentage of the investment. The percentage varies according to the location of a project. "Approved projects" located in Zone A are entitled to receive a grant amounting to 30 percent of the total investment in fixed assets; "approved projects" in Zone B are entitled to receive a grant amounting to 15 percent of the total investment; and those in Zone C are not entitled to receive grants. Any company located in Zone A, regardless of the industry, is eligible for grants. Only projects that demonstrate economic viability are approved. After the Investment Center approves a project, it instructs a commercial bank to disburse the grant funds to the grant recipient.

DSW, which is located in Zone A, received various ECIL grants during the years 1972 through 1982 for the purposes of plant enlargement and the construction of dikes and canals used in the production of potassium chloride. DSW received additional ECIL grants in fiscal years 1979 through 1982 for the expansion of potassium chloride production under its Makleff Stage A and Stage B projects.

Because ECIL investment grants are limited to companies located in specific regions, we determine that grants benefiting the production of potassium chloride of the grades marketable by DSW in the United States confer countervailable bounties or grants. We have included in our calculations all grants for the construction of the hot leach and flotation plants and the portions of those grants used to build the dikes, ponds, and canals that benefit the hot leach and flotation plants. We have not considered as countervailable benefits those portions of the grants for the plant expansion, machinery, and equipment received for Stages A and B of the Makleff Project since DSW has provided convincing evidence that it is not selling, and cannot sell, potassium chloride produced by the Makleff "Cold Crystallization" process to the U.S. However, we have included in our calculations those portions of the Makleff grants used for the construction of dikes, evaporting ponds, and canals which benefit the hot leach and flotation plants. We have allocated the grants for all ponds, dikes canals based on the hot leach and flotation plants' percentage of potassium chloride production during the period of review. If in future administrative reviews we find that circumstances change and potassium chloride from the Makleff plant is sold to the United States, we will reevaluate this determination.

We calculated the countervailable benefit of these grants by using the grant methodology set out in the "Subsidies Appendix," 49 FR 18016 (April 26, 1984).

In determining the discount rate, we concluded that suitable company-specific long-term borrowing rates were not available. Consequently, we used the national average bond rate and the national average rate of return on equity. These numbers were based on Bank of Israel statistics. We allocated the grants over eleven years, which is the average asset depreciation range for assets used in the manufacture of chemicals, as determined by the 1977 Internal Revenue Service guidelines (Rev. Proc. 77-10). We then allocated the benefits during the period of review over the total sales (less the sales from the Makleff plant) by DSW during the period of review. We thus determined a bounty or grant in the amount of 1.18 percent *ad valorem* exists.

In January, 1984, the ECIL law was amended to include export performance requirements as one of its criteria for eligibility. Since this requirement was not in effect when the grants relevant to the period for which we are measuring benefits in this investigation were received, we have treated this program as a domestic bounty or grant.

B. Export Credit Funds

During the period of review the Bank of Israel provided short-term financing to DSW through three export credit funds: the Export Production Fund (for working capital loans), the Export Shipments Fund (for accounts receivable), and the Imports-for-Exports Fund (for financing of imported materials used for export production).

We calculated the countervailable benefit of these export credit funds using the short-term loan methodology set out in the "Subsidies Appendix," (49 FR 18016 (April 26, 1984)).

We find short-term export loans (one year or less) to be countervailable to the extent that they are given at rates less than those for comparable commercial loans. To determine the amount of the bounty or grant for short-term loans, we compare the terms of the loan at issue with a benchmark, that is, a comparable commercial loan. We included in our calculations all loans for which DSW paid interest during the review period. For our benchmark, we used the rates of the most appropriate national average commercial method of short-term financing. The benchmark used for each of the export funds is included in our description of each program.

1. *Export Production Fund.* Preferential financing is provided in Israeli shekels and in certain foreign currencies to exporters through the Export Production Fund (EPF) to finance the production process for items to be exported. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters according to the terms established for this fund by the Bank of Israel may receive credit from the Bank of Israel for the financing which they provide.

During the period of review DSW received EPF loans in shekels at a quarterly interest rate of 10.5 percent. In our preliminary determination, we annualized the EPF quarterly interest rate of 10.5 percent and compared that number with our benchmark which was the effective annual cost of overdraft accounts published by the Bank of Israel.

We have changed our calculation to take into account the fact that DSW pays interest on its EPF loans at the end of each 3 months and not on an annualized basis. Accordingly, we are now using as the basis of our benchmark the average quarterly cost of overdraft accounts published by the Bank of Israel. This figure includes the interest rate, commitment fees, management fees, and penalties.

We determined the benefits from these loans based on a comparision of the cost of the EPF financing and the cost of the comparable commercially available financing. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we caluclated a bounty or grant in the amount of 1.966 percent *ad valorem*.

2. *Export Shipments Fund.* The preferential financing designed to afford exporters the possibility of extending credit in foreign currency to their customers abroad is provided by the Export Shipments Fund (ESF). The Bank of Israel manages this fund. Financial institutions which offer credit to exporters according to the terms established for this fund by the Bank of Israel are discharged from certain payment obligations to the Bank of Israel and are exempt from the credit ceiling fixed by the Bank of Israel.

Exporters are required to pay the Euro-currency interest rate plus a premium on loans obtained through the ESF. Financing is granted after the merchandise is shipped upon the presentation by the exporter of particular export documents. Up to 90 percent of the export value of the merchandise shipped may be financed through this fund for a period not to exceed 6 months. Credit from this fund is provided in the currency indicated on the export documents.

In our preliminary determination, we used as the best available benchmark for dollar loans the sum of the interest rate and the applicable surcharge, in dollar terms, available in Israel on non-directed United States dollar credit. We obtained these figures from Bank of Israel statistics. We were not able to obtain the interest rates available in Israel on non-directed credit in other foreign currencies. For these loans, we used as the benchmark the interest rates on comparable commercial loans, the interest rates DSW received on foreign currency loans adjusted (on a quarterly basis) by the percentage difference by which the interest rate on the non-directed United States dollar benchmark (surcharge excluded) exceeded the interest rates DSW received on United States dollar loans. The applicable surcharge was then added to the foreign currency benchmark interest rates.

Based on our verification, we have determined that during the review period, non-directed foreign currency credit liable to surcharge is not the most appropriate commercial method of foreign currency borrowing for large companies since it represents only a narrow segment of foreign currency borrowing that is not commonly utilized by Israeli companies. At verification, we determined that Israeli companies were able to borrow in the international financial markets at Euro rate plus an appropriate premium. Consequently, we are using as our foreign currency benchmark the Euro rate in effect on the date DSW obtained its foreign currency loans plus a spread of 2 percent which we determined to be the most representative premium paid by Israeli companies during the review period.

We calculated the benefit of the loans by comparing the appropriate benchmark to the preferential rates of interest obtained by DSW on its ESF loans. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 0.41 percent *ad valorem.*

3. *Imports-for-Exports Fund.* Through the Imports-for-Export Fund, preferential financing is provided in foreign currency to exporters in order to finance imported material used for export production. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters through this fund may receive credit from the Bank of Israel for the financing which they provide. In its response, the government of Israel states that financial institutions grant credit to exporters in foreign currency at a rate of interest equal to 60 percent of the Euro-currency interest rate for the currency in which the loan is given for a period not to exceed 1 year. The Bank of Israel then credits the financial institution's account with an amount equal to the difference between the rate of interest paid by the exporter (60 percent of the Euro-currency rate) and the Euro-currency rate plus 3/8.

As with the ESF, we have amended the benchmarks used in the preliminary determination to represent the interest rate on comparable commercial loans. We used as our benchmark for this fund the foreign currency benchmark described in the "Export Shipments Fund" section.

We calculated the benefit of these loans by comparing the appropriate benchmark to the preferential rates of interest obtained by DSW on its Imports-for-Exports Fund loans. this benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 0.083 percent *ad valorem.*

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to DSW under the following programs:

A. Exchange Insurances Scheme

During the period for which we are measuring bounties or grants, DSW's exports were covered under the "Exchange Rate Risk Insurance Scheme" (EIS) offered by the government-owned "Israel Foreign Trade Risks Insurance Corporation Ltd." (IFTRIC). EIS, which is optional for all exporters, is a mixture of exchange rate risk insurance and cost escalation coverage. It is designed to insure the exporter against decreased payments in its foreign currency receivables resulting from a delay in devaluation of the shekel with respect to a market basket of exchange rates, relative to the appreciation of the consumer price index.

IFTRIC structured the EIS program so that it contains certain fundamental economic principles. First, IFTRIC designed EIS to be self-balancing. Under EIS, if the change in the consumer price index is larger than the changes in the rate of the shekel depreciation, the exporter is indemnified by an amount equal to the difference between the changes multiplied by the "added value" of the exports. When the depreciation is higher than the change in the consumer price index, EIS requires the exporter to compensate IFTRIC. Second, IFTRIC set up a premium schedule and compensation formula based on economic projections. Based on these projections, IFTRIC established separate premium schedules for three areas: (1) The U.S., (2) the European Communities, and (3) the rest of the world. Based on the economic projections, the premium rate for exporters of merchandise to the U.S. was the highest. Third, IFTRIC made EIS insurance optional. Those Israeli exporters who chose to participate in the program could choose EIS coverage for all three areas or for all areas other than the U.S. This policy was established due to pressure from exporters who felt that premiums to the U.S. were higher than the risks warranted. Lastly, the EIS is required to pay a premium to the government of Israel which acts as a reinsurer.

Under paragraph j of the Annex to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement On Tariffs and Trade (the Subsidies Code), an export subsidy is

> [t]he provision by governments (or special institutions controlled by governments) . . . of insurance or guarantee programmes against increase in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

Under this standard, the premiums must be manifestly inadequate to cover long-term operating costs and losses.

As described above, EIS is structured to be self-balancing. It is designed to prevent losses and take away any gains that arise because of non-commensurate movements in the domestic inflation rate and the currency appreciation/depreciation rate. Under the compensation formula, if inflation equals devaluation, then the insured receives no payment under EIS. If inflation is greater than devaluation, then the insured is paid. If inflation is less than devaluation, the insured pays EIS.

In the long run, it would not be expected that either of the latter two situations would be sustained since movements in inflation rates and exchange rates are generally correlated. With floating exchange rates, the adjustment would be more rapid. With fixed rates, the rate of adjustment would depend on how often and to what extent the government of Israel devalues the currency. Even with fixed rates, it is unlikely that an overvalued or undervalued currency could be maintained indefinitely.

Thus, in the long term, it should be expected that the inflation rate and the devaluation rate will correspond. As a result, a scheme such as EIS should operate at about the break even level over the long-term. Any premiums paid would be necessary only to cover operating costs.

In the short-run period examined, EIS has not attained the break-even point. While actual loss figures are only available for the first six months of operation, there are indications that the program has suffered continuing losses. However, the program has been in operation only for a short period and it is impossible to ascertain, on the basis of the data available, whether the extent of the losses make the premiums manifestly inadequate to cover long-term losses.

For these reasons, we are unable at this time to determine whether the premiums are manifestly inadequate to cover long term operating costs and consequently do not currently find this program to confer a countervailable benefit. However, we will continue to review the financial performance of this program during our first review under section 751 of the Act. If at this time sufficient information is available to permit a judgment as to whether the premiums are adequate to meet long-term operating costs, and if that judgment results in a conclusion that the program confers a bounty or grant, countervailing duties to offset the bounties or grants will be issued on all entries of the subject merchandise from the effective date of the initial suspension of liquidation in the investigation.

B. ECIL Partial Non-Payment of Employer's Tax

The petition alleges that DSW benefits from the partial non-payment of the employer's tax which normally amounts to 7 percent of payroll. The extent of non-payment depends on the ratio between "approved" assets and total assets.

On January 1, 1980, the employer's tax law was amended. Since April 1, 1980, the employer's tax has not been applicable to the productive sectors, including industrial manufacturing firms, agricultural farms, operation of hotels, and the building of housing or civil engineering related to the above activities. As a result, DSW has not paid an employer's tax since 1980.

We determine that non-payment of the employer's tax as a result of the 1980 amendment is so broad that the 1980 amendment is no longer a selective exemption from a tax. Further, this domestic program is not provided by government action to a specific enterprise or industry, or a group of enterprises or industries. Thus, it does not confer a countervailable benefit.

C. Preferential Ocean Freight Rates

The petition alleges that most potassium chloride exported from Israel to the United States (back-haul) is shipped by Zim Navigation which is 40 percent owned by the government of Israel, at rates which are charges on bulk (grain) shipments from the United States to Israel (front-haul). Petitioners add that the enormous difference between the front-haul and back-haul rates cannot be accounted for simply as the result of the imbalance in shipments into and out of Israel. They are deliberately structured, at the government of Israel's direction, to cross-subsidize lower freight rates on potassium chloride exports to the United States by higher freight rates on grain imports (by the government of Israel) from the United States.

We verified that there are three Israeli bulk carriers: Zim Navigation Company Ltd. (Zim), El Yam Ships Ltd. (El Yam), and Rosenfeld Company (Rosenfeld), the most recent entrant in the bulk freight business. While Zim is partially owned by the government of Israel, El Yam and Rosenfeld are both privately owned. Although unrelated, Zim and El Yam have an informal agreement to share their bulk freight business, including grain and potassium chloride shipments. We verified that Zim and El Yam negotiated their grain contracts with the Government Trade Administration (GTA) on a commercial basis. El Yam's and Zim's rates to carry grain were substantially lower than the rates charged by U.S. carriers that also ship grain to Israel for the GTA. While the petitioners have submitted a chart showing that some shippers to the Middle East carry grain at rates generally lower than Zim and El Yam carry grain to Israel, this chart is not dispositive. The risk associated with blacklisting of shippers which carry cargo to Israel, the differences in the size and efficiency of the ships, and the difference in the distances to the port destinations are factors which, alone, could account for the differences in rates. Further, even putting these factors aside, the differences in rates are not so large as to warrant the conclusion that the government of Israel was paying high grain shipment rates to Zim or other Israeli shippers to cross-subsidize lower potassium chloride shipment rates.

We also verified that Zim and El Yam negotiate their contracts directly with DSW to carry potassium chloride. These negotiations are on a commercial basis, with Zim and El Yam using their deviation costs as a basis for negotiations. The government's participation in the negotiations between DSW and El Yam and Zim was limited to the government securing: (1) An assurance from the two shippers that the back-haul of potassium chloride would not interfere with the existing obligations of the shippers to carry grain on the front-haul, and (2) more favorable terms from the shippers for the shipment of grain.

Lastly, we verified that during the review period DSW paid a non-Israeli shipper a lower rate to carry potassium chloride than the rate charged by Zim and El Yam. DSW has also provided evidence of lower spot market rates which it had received but did not utilize, preferring instead to stick with reliable long-term contracts.

For these reasons, we conclude that the shipping rates to carry potassium chloride paid by DSW to Zim and El Yam are set on a commercial basis and that the government is not paying higher grain shipment rates to cross-subsidize lower potassium chloride shipment rates. Consequently, ocean freight rates do not constitute a countervailable benefit.

D. Preferential Wharfage Charges

Petitioners allege that the "Israeli Ports Dues and Charges" schedule is designed to subsidize exports by disproportionately raising wharfage revenue from imports and vastly undercharging exports.

The Knesset established the Israel Port Authority (IPA) by Port Authority Law 5721–1961 as a self-supporting enterprise to build and operate the ports. The "Israeli Ports Dues and Charges" is a general schedule of port charges which applies to all users of the port who do not have a separate contract with IPA. DSW, however, is one of two companies that has used their own monies to build port facilities for its own use at Ashdod. Consequently, DSW has a separate contract with IPA and the general schedule of port charges does not apply to DSW. We verified that DSW pays both rental and operational charges to IPA. The basis of DSW's rental charges to IPA is a 1967 appraisal of the land value which is linked to the cost of building index. We also verified that DSW pays operational charges on a cost-plus basis. Consequently, we conclude that this program does not constitute a countervailable benefit to DSW since DSW pays rental and operational charges on a commercial basis.

III. Program Determined Not To Be Used

We determine that the following program was not used by DSW:

ECIL Reduction of Corporate Tax Liability

The petition alleges that DSW's corporate tax liability is limited to 30 percent instead of the normal 60 percent rate and that the benefit lasts 7 years and is prorated according to the ratio between "approved" assets and total assets.

"Approval projects" under ECIL are liable to pay a 30 percent corporate tax on the portion of the "approved" fixed assets, while the regular corporate rate for an industrial corporation is 40 percent. The program is administered by the Investment Center. Even though DSW had profits, DSW did not receive benefits from this program during the period of review. Under Israeli tax laws, DSW's tax liability is consolidated with its parent, Israel Chemicals Ltd. (ICL). Since ICL had losses, DSW paid no taxes. Consequently, DSW did not use the benefit of a reduced corporate income tax.

IV. Programs Which Have Been Terminated

A. Property Tax Exemption on Buildings

The petition alleges that DSW may continue to benefit from the ECIL provisions that allow eligible enterprises a 5 year exemption from payment of ⅘ of property taxes on buildings. The petition states that this program was repealed by Amendment 17 of the ECIL on August 1, 1978.

The last year that DSW used this program was 1980. The property tax on buildings was abolished for all taxpayers on April 1, 1981.

B. Property Tax Exemption on Equipment

The petition alleges that the government of Israel provides a 10 year exemption from payment of ⅛ of the property taxes on equipment approved prior to repeal of this program. The program was repealed by Amendment 17 of ECIL on August 1, 1978. The last year for which DSW used this program was 1980. This program was abolished for all taxpayers as of April 1, 1981.

Petitioners Comments

Comment 1: The four grades of potassium chloride produced by all of DSW's plants are fungible, "like" products not only to each other but to the grades produced and sold in the United States. Based on the chemical and physical data provided by DSW, there is no obvious unresolvable technical reason why the fine grade potassium chloride product of the Makleff plant is not suitable for sale in the United States market either as is or as a compacted granular grade. Thus, the ECIL grants relating to the Makleff plant are countervailable.

DOC Position: After reviewing all the technical evidence on the record, we find that DSW cannot sell potassium choloride produced by the Makleff plant to the U.S. Although all grades of potassium chloride are essentially chemically fungible, there uses in the market place are largely grade-specific. The Makleff plant primarily produces a fine grade of potassium chloride and there is persuasive evidence that this product technically is not saleable in the United States. Further, there is no evidence on the record to refute DSW's contention that the Makleff fine grade has not been sold as is or as a compacted granular grade in the United States market. Accordingly, we determine that ECIL grants for the Makleff plant are not countervailable because they do not benefit the production of exports of potassium chloride to the United States. Since the technical evidence supporting this position is proprietary information we are unable to elaborate on our position in this notice.

Comment 2: The ITC determined that potassium chloride is a "like product." In determining in its preliminary determination that grants for the construction of the Makleff plant are not countervailable, it was improper for the Department to conclude that Makleff produced potassium chloride is excluded from the concept of "like product."

DOC Position: As stated above, the Department excluded these grants because the Makleff produced potassium chloride is not, and cannot be, sold to the U.S. The definition of a "like product" is a criterion the Department must consider in determining "interested party" status. The concept of "like product", however, has no bearing on our determination of which ECIL grants to include in our calculations of countervailable benefits.

Comment 3: The preliminary determination which did not treat the grants relating to the Makleff plant as countervailable is inconsistent with Certain Steel Products from Italy, 47 FR 39356 (Sept. 7, 1982) and Congressional intent.

DOC Position: Certain Steel Products from Italy is inapposite. Unlike the present case, the steel products from both factories could be sold to the United States. There were no technical difficulties prohibiting the sale of steel from either factory to the U.S. The comment about Congressional intent is irrelevant to this issue. A countervailable practice must be conferred with respect to the manufacture, production, or exportation of a class or kind of merchandise imported into the United States. As stated above, we are satified that potassium chloride produced by the Makleff plant is not, and cannot be, sold to the U.S.

Comment 4: Even if potassium chloride produced in the Makleff plant cannot be sold to the U.S., it is sold to Europe and other markets. Sales to markets other than the U.S. can release output from other DSW plants for sale in the U.S. Thus, the grants to Makleff indirectly subsidize the sale of potassium chloride in the U.S. market.

DOC Position: There is no evidence on the record that the grants to Makleff indirectly subsidize the sale of DSW's potassium chloride in the U.S. The evidence shows the DSW has penetrated the European market with potassium chloride produced by the Makleff plant. However, the amount of granular or standard grades sold to Europe had remained fairly constant. The record does not show that DSW has substituted fine for granular or standard grades in the European market.

Comment 5: The Department should (1) allocate ECIL grant benefiting all DSW assets put in service after 1980 over 5 years (based on IRS ACRS guidelines) and (2) allocated ECIL grants put in service prior to 1981 over 9.5 years (based on IRS Class Life Asset Depreciation Range System (ADRS) (Rev. Prac. 77-10)) guidelines.

DOC Position: We have allocated ECIL grant over 11 years based on the average depreciation range for assets used in the manufacture of chemicals and allied products as reflected by category 28 of the 1977 ARDS guidelines. The use of this table is consistent with our Subsidies Appendix published at 49 FR 18006, 18019 (April 26, 1984). The fact that U.S. taxpayers may elect accelerated depreciation or may use the 1983 IRS table for assets put into service prior to 1981 is not determinative. As stated in the Subsidies Appendix, "we have concluded that there are no economic or financial rules that mandate the choice of an allocation period." The ITA has selected the 1977 IRS guidelines as the standard to apply.

Comment 6: With regard to the calculation of the weighted cost of capital, the Department should use actual interest rates incurred by DSW to calculate the marginal cost of debt. Also, the Department should include dividends paid on shares as part of the marginal cost of equity.

DOC Position: We concluded that DSW's long-term loan rates were not suitable as benchmarks for the marginal cost of debt because they contained restrictive terms. For reasons more fully set out in the Subsidies Appendix, we cannot calculate a company's actual marginal cost of equity. As a surrogate, we have used the company's marginal cost of debt, plus the difference between the national average rate of return on equity and the national average cost of debt. Further, the company specific refinements are not possible because of the aggregate (i.e. nationwide) nature of the figures which adjust the marginal cost of debt to the marginal cost of equity.

Comment 7: Petitioners suggest that the Department's allocation formula for grants lacks a compounding term in the discount rate terms. Moreover, they recommend a different valuation formula which would measure the benefit to the recipient by calculating the future value of the grant.

DOC Position: We do not believe that the allocation formula should include a compounding term. The formula used by ITA is designed to ensure that the present value (in the year of grant receipt) of the amounts allocated over time does not exceed the face value of the grant. In this way, we are consistent with the Act and our international obligations in that the amount countervailed will not exceed the total net subsidy.

This result will not necessarily be obtained using the petitioner's methodology. Only if the discount rate remains constant throughout the allocation period will the petitioners' methodology lead to the present value of the amounts countervailed (measured in the year of receipt) being equal to the grant. We note that were we to apply their formula (using the same discount rate throughout), the effect would be to allocate a disproportionate share of the benefit to later years of the allocation period. This result, while not unreasonable, has been rejected in favor of a declining balance methodology that allocates higher benefits to those years immediately following the receipt of the grant.

Comment 8: ECIL grants are export subsidies.

DOC Position: The ECIL program was changed in January 1984 to include as one of its criteria certain export performance requirements. Since all the grants relevant to our investigation were received prior to 1984, we have treated those ECIL grants as domestic subsidies.

Comment 9: The appropriate benchmark for determining the subsidy element for the export credit funds is the actual commercial borrow experience of DSW. If DSW's credit experience is unavailable, credits denominated in U.S. dollars and French francs should be measured against LIBOR plus an appropriate premium for foreign currency loans. For Israeli shekel loans, the appropriate benchmark should be a reasonable positive real rate of return plus the increase in the CPI.

DOC Position: For short-term loan benchmarks, the Subsidies Appendix provides that we will use the most appropriate national average commercial method of short-term financing, rather than company specific experience. For reasons elaborated in that appendix we agree that foreign currency loans should be measured against interest rates offered in the international financial market.

Comment 10: Since 1978, the U.S. has taken the position before GATT that export inflation insurance schemes are subsidies. The EIS exchange risk program is a variant of these subsidies.

DOC Position: The standard under the GATT for whether such schemes constitute subsidies, as set forth above, is whether premiums collected are manifestly inadequate to cover long-term operating costs and losses. Available information does not permit us to reach that conclusion in the present investigation.

Comment 11: With regard to the EIS program, the Department should segregate long-term operating costs of IFTRIC from those to a specific insurance product line.

DOC Position: For the purposes of this investigation, based upon all the facts available, we have done so. Whether this would be appropriate in future cases will be determined upon the facts of those cases.

Comment 12: The gross subsidy from EIS should be the difference between the lag in devaluation of the skekel behind inflation. The net subsidy is the difference between the gross subsidy and the premiums.

DOC Position: Since we did not determine that the EIS program is countervailable at this time, we do not have to reach the issue of how to measure the value of the alleged benefit.

Comment 13: Under *Bethlehem Steel corp.* v. *United States,* 6 CIT ———, Slip Op. 84-67, June 8, 1984, the preliminary determination that the exemption from the employer's tax is not countervailable because it is generally available is erroneous as a matter of law.

DOC Position: In *Bethlehem,* the court's broad opinion that the Department cannot apply a rule that "generally available" benefits are not subsidies is dictum. The Department continues to interpret the language in section 771(5)(B) of the Act that the term subsidy includes "domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries . . ." to mean that benefits broadly or "generally" available do not constitute countervailable bounties or grants. In this case we determined that the exemption from the tax program is "generally available." Further, our position does not conflict with the holding of *Bethlehem* which states that tax laws become bounties or grants to the taxpayer only if the elimination or reduction of the tax is selective. In this case, the 1980 amendment to the tax law was so broad as to cover nearly every sector of the economy. Consequently, the program no longer operates as a selective exemption from the employer's tax.

Comment 14: The amount of countervailable benefit attributable to the corporation income tax program is the difference between the ordinary 61 percent and the special 30 percent rate linked to ECIL benefits. Further, the Department should examine intra-corporate transfers of funds.

DOC Position: DSW's eligibility under the ECIL program to pay a reduced corporate income tax rate is an insufficient basis to conclude that DSW has received a countervailable benefit. Where DSW paid no tax because of its combined return with its parent company, it has not, in fact, received the benefit of a lower tax rate. We are not concerned with intra-corporate transfers of funds but rather with corporate income taxes paid by DSW througy ICL to the government.

Comment 15: The government is subsidizing potassium chloride shipments to the extent it is paying more than $17.00 per MT for the grain haul to Israel. The facts on the record indicate that Zim and El-Yam carry both potassium chloride and grain, the contracts for import and export are between these carriers and the government and no others, and the rates for import carriers of grain to Haifa are contingent upon a reciprocal agreement for export charter of potassium chloride from Ashdod. When the GOL exclusively negotiates all grain import rates and the shipment of potassium chloride and phosphates are linked in reciprocal contracts with all carriers, there are no market rates by leg of voyage. Thus, the Department should look to surrogate rates supplied by the petitioner to determine market rates.

DOC Position: See our discussion of these issues under Section II.C. of this notice.

Comment 16: The "Israeli Port Dues and Charges" schedule is designed to subsidize exports in general and potassium chloride in particular. Further, the Department should analyze the contract between DSW and the Israeli Port Authority to determine the extent to which the land and equipment lease payments have actually been adjusted through exchange rate or consumer price linkages to reflect the current market value of the lease services to DWS.

DOC Position: The "Israeli Port Dues and Charges" schedule does not apply to DSW. We verified that the rental charges paid by DSW are linked to the cost of building index and that the operation charges are paid on a cost plus basis.

Respondent's Comments

Comment 1: It was inappropriate for ITA to consider as countervailable the grants for the constructin of ponds and dikes relating to the Makleff plant. DSW's pond capacity prior to the construction of the Makleff plant was more than adequte to produce sufficient raw material for the hot leach and flotation plants. But for the construction of the Makleff plant, the new ponds would not have been constructed. If ITA insists on including grants to Makleff-related ponds, dikes, and canals, ITA should calculate the benefit by dividing the grant benefit by total sales and not excluding exports of the Makleff product.

DOC Position: We have countervailed the grants for the construction of ponds and dikes relating to Makleff because those ponds and dikes do not exclusively benefit the Makleff plant. Rather, raw material used for the production of potassium chloride in the hot leach and flotation plants also pass through those ponds. The larger capacity of the ponds increases the efficiency of the production of raw material for all potassium chloride produced by DSW. We therefore have included in our calculations those portions of the Makleff grants used to construct canals, ponds, dikes and calculated the benefit by multiplying the grants by the proportion that potassium chloride from the hot leach and flotation plants represent of total potassium chloride production and allocating this amount over the sales of the hot leach and flotation plants.

Comment 2: ITA's allocation of grants over 10 years is inappropriate. Although DSW's production is a type of mining, it is not the type envisioned by the IRS depreciation guidelines. If ITA uses the IRS guidelines, grants for land improvements should not be spread over the life of the equipment when the grants were specifically tied to land improvements and when the IRS guidelines provide specifically that land improvements shall be spread over 20 years.

DOC Position: As discussed previously, we have concluded that there are no economic or financial rules that mandate the choice of an allocation period and we have selected the 1977 IRS guidelines as the standard to apply. Consistent with the Subsidies Appendix, we have selected Category 28-Chemicals and Allied Products which reflects the type of business activities involved in DSW's manufacture of potassium chloride.

Comment 3: The preliminary determination vastly overstates the benchmarks used to calculate the benefits from the export funds. DSW's own experience should be used as a benchmark. Since DSW is one of the most efficient and largest revenue producing companies in Israel, it is unfair, inappropriate, and violative of the statute to use benchmark rates which include small and unprofitable companies.

DOC Position: As explained more fully in the Subsidies Appendix, we use as our benchmark for short-term financing the most appropriate national average commercial method of short-term financing, instead of company-specific experience.

Comment 4: The benchmark for export production fund loans should be the quarterly (not annualized and not compounded) shekel overdraft rate. Further, the overdraft rate includes components not attributable to export production fund loans which are term loans. Since ITA is using the overdraft as proxy for a term loan, it must eliminate those elements of the revolving credit not attributable to term loans. Those elements are a negotiated commitment fee for the credit line, penalty interest for exceeding the credit line, and a management fee.

DOC Position: We agree that the benchmark for export production fund loans should be the quarterly shekel overdraft rate. In choosing a benchmark, we are seeking the national average commercial method of short-term shekel financing. The benchmark selected for the EPF is the average cost of overdraft accounts. Since the management fees, committment fees and penalty interest are components of the national average experience of overdraft borrowing, they are properly included in the benchmark.

Comment 5: With regard to the benchmark used in the preliminary determination for the Export Shipments Fund and the Import-for-Export Fund, non-directed foreign currency credit liable to the surcharge is unrepresentative of any national average because it represents only a narrow segment of foreign currency borrowing, is highly restrictive, and includes a surcharge intended to discourage borrowing. Further, ITA's addition of the surcharge to the Bank of Israel figure used as the benchmark double-counted the surcharge. Lastly, the Bank of Israel demonstrated that commercial loans exist which should be used as a benchmark. Companies can discount accounts receivable at the Euro rate plus a certain percent.

DOC Position: We agree and have modified our foreign currency benchmarks accordingly.

Comment 6: The EIS is an internationally accepted type of insurance and does not provide a subsidy.

DOC Position: As stated above, section 771(5)(B) of the Act incorporates the Annex to the Subsidies Code into U.S. law. Paragraph j of that Annex sets forth the standards for determining when exchange rate insurance schemes, such as EIS, constitute export subsidies.

Verification

In accordance with section 776(a) of the Act, we verified all information used in making our final determination. During verification we followed normal procedures, including meetings with government officials, inspection of government documents and on-site inspection of the records and operations of DSW.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we directed the U.S. Customs Service to suspend liquidation of all entries of potassium chloride from Israel which are entered, or withdrawn from warehouse, for consumption on or after June 29, 1984. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the net bounty or grant for each such entry of this merchandise from Israel in the amount of 3.04 percent *ad valorem*.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulation (19 CFR 355.35). In accordance with the Department's regulations (19 CFR 355.34(A)) timely written views have been received and considered.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on potassium chloride from Israel entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the net bounty or grant amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: September 10, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-24382 Filed 9-13-84; 8:45 am]

BILLING CODE 3510-DS-M

Stainless Steel Round Wire Announcement of Fourth Quarter 1984 Monitoring Prices

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of the Fourth Quarter 1984 Monitoring Price Levels for Imports of Stainless Steel Round Wire Products.

SUMMARY: Fourth quarter 1984 monitoring prices for stainless steel round wire products will remain unchanged from their third quarter levels.

FOR FURTHER INFORMATION CONTACT: Michael C. Fuchs, Agreements Compliance Division, Import Administration, Room 3709, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1102.

SUPPLEMENTARY INFORMATION: The Department of Commerce announces that fourth quarter 1984 monitoring price bases and extras for stainless steel round wire products will not change from their third quarter levels. Increases in cost of production were offset by the yen value relative to the dollar.

The Department uses these prices to monitor imports of stainless steel wire and cold-drawn bar under 0.703 inches in diameter for possible initiation of antidumping or countervailing duty investigations. Each quarter the Department reviews Japanese steel production and delivery costs and revises monitoring prices accordingly. The fourth quarter monitoring prices apply to those products exported to the United States on or after October 1, 1984.

Dated: September 10, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24351 Filed 9-13-84; 8:45 am]

BILLING CODE 3510-25-M

Office of Trade Adjustment Assistance; Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Manson & Barish, Inc., P.O. Box P 429, Bayshore, New York 11706, producer of tires (accepted July 23, 1984); (2) Custom Dressers, Inc., 2702 South High Avenue, Oklahoma City, Oklahoma 71329, producer of motorcycle accessories (accepted July 24, 1984); (3) Schott Bros., Inc., 358 Lehigh Avenue, Perth Amboy, New Jersey 08861, producer of men's jackets (accepted July 26, 1984); (4) Puerto Rican Cement Company, GPO Box 4487, San Juan, Puerto Rico 00936, producer of cement and bags (accepted July 27, 1984); (5) Orange County Coat Company, Inc., 5-11 Washington Terrace, Newburgh, New York 12550, producer of women's coats and suits (accepted July 27, 1984); (6) M.H. Rhodes, Inc., 99 Thompson Road, Avon, Connecticut 06001, producer of timing devices (accepted July 30, 1984); (7) Rocky Mountain Refractories, 1550 Pioneer Road, Salt Lake City, Utah 84104, producer of cement and barite (accepted August 1, 1984); (8) McGuire Manufacturing Company, Inc., P.O. Box 7015, Prospect, Connecticut 06712, producer of plumbing supplies (accepted August 2, 1984); (9) The EdnaLite Corporation, 200 North Water Street, Peekskill, New York 10566, producer of optical lenses for printing and copying machines, and other vision systems (accepted August 2, 1984); (10) Jacobson Tool & Manufacturing Corporation, 8141 North Lawndale Avenue, Skokie, Illinois 60076, producer of machine tools (accepted August 3, 1984); (11) G.J. Lupo Company, Inc., 2482 South 3270 West, Salt Lake City, Utah 84119, producer of mining equipment (accepted August 3, 1984); (12) Altra, Inc., 5541 Central Avenue, Boulder, Colorado 80301, producer of adult jackets, coats, pants, overalls, and shorts; children's jackets; luggage, packs, tote and travel bags (accepted August 6, 1984); (13) John Royle & Sons, 1000 Cannonball Road, Pompton Lakes, New Jersey 07442, producer of extruding machinery (accepted August 7, 1984); (14) Adirondack Foundries, Inc., Shaker Road, Watervliet, New York 12189, producer of valves and other castings (accepted August 7, 1984); (15) Dandy Zipper Manufacturing Company, Inc., 434 South Fifth Street, Brooklyn, New York 11211, producer of slide fasteners (accepted August 7, 1984); (16) Globe United, Inc., N92 W15800 Megal Drive, Menomonee Falls, Wisconsin 53051, producer of roller skates (accepted August 7, 1984); (17) Universal Ceramics, Inc., P.O. Box 483, Adairsville, Georgia 30103, producer of ceramic tiles (accepted August 7, 1984); (18) MICMIX Audio Products, Inc., 2995 Ladybird Lane, Dallas, Texas 75220, producer of audio equipment (accepted August 7, 1984); (19) American Poly-Seal, Inc., The Hamilton Building, Folcroft Industrial Park, Folcroft, Pennsylvania 19032, producer of waterbeds (accepted August 7, 1984); (20) Honey Acres, Inc., Highway 67 North, Ashippun, Wisconsin 53003, producer of honey, candy and beeswax (accepted August 7, 1984); (21) Imperial Knitting Company, Inc., 2745 North 3rd Street, Milwaukee, Wisconsin 53212, producer of men's and women's sweaters; caps & blankets (accepted August 8, 1984); (22) Kearsarge Peg Company, Inc., P.O. Box 158, Bartlett, New Hampshire 03812, producer of wood pegs (accepted August 9, 1984); (23) Philip's Sportsware, Inc., 156 Porter Street, East Boston, Massachusetts 02128, producer of women's jackets (accepted August 9, 1984); (24) W.C. Redmon Company, P.O. Box 7, Peru, Indiana 46970, producer of hampers, baskets, chests, trunks, bassinets and shelving (accepted August 10, 1984); (25) Bertsch and Company, Inc., 2 East Church Street, Cambridge City, Indiana 47327, producer of machine tools (accepted August 10, 1984); (26) Harmony Design, Inc., P.O. Box 774, Boulder, Colorado 80306, producer of belt buckles (accepted August 10, 1984); (27) Albany Hyatt Billiard Ball Company, Inc., 6 Easy Street, Glens Falls, New York 12801, producer of billiard balls (accepted August 13, 1984); (28) Gateway Corporation, P.O. Box 908, Corinth, Mississippi 38834, producer of wood handles (accepted August 13, 1984); (29) Brosius Brothers, Inc., 11640 Adie Road, St. Louis, Missouri 63043, producer of fastening tools and industrial equipment (accepted August 13, 1984); (30) Flo Hawaii, Inc., 1320 Kalani Street, Honolulu, Hawaii 96817, producer of women's blouses, dresses, shorts & skirts (accepted August 14, 1984); (31) Jon Pier, Inc., 1439 S. State College Boulevard, Anaheim, California 92806, producer of women's pants, skirts, jackets, blouses and shirts (accepted August 14, 1984); (32) J&S Shoe Manufacturing Corporation, 39-40 30th Street, Long Island City, New York 11101, producer of women's footwear (accepted August 14, 1984); (33) Kalkstein Silk Mills, Inc., 75 Wood Street, Paterson, New Jersey 07524, producer of fabric (accepted August 15, 1984); (34) Oberhamer Shoe Company, 425 Minnehaha Avenue, St. Paul, Minnesota 55103, producer of footwear (accepted August 17, 1984); (35) D&D Products, Inc., P.O. Box 215, North Prairie, Wisconsin 53153, producer of aquatic weed harvesters and other equipment (accepted August 21, 1984); (36) Magic Marker Industries, Inc., 467 Calhoun Street, Trenton, New Jersey 08618, producer of writing instruments (accepted August 21, 1984); (37) United Lens Company, Inc., 259 Worcester Street, Southbridge, Massachusetts 01550, producer of ophthalmic and industrial lens blanks (accepted August 21, 1984); (38) Elegant Yarn, Inc., 661 South Main Street, Webster, Massachusetts 01570, producer of yarn (accepted August 23, 1984); (39) Catamount Glassware Company, Inc., Water Street, North Bennington, Vermont 05257, producer of glass cookware (accepted August 24, 1984); (40) Fabsco Corporation, 1745 West 124th Street, Calumet Park, Illinois 60643, producer of industrial fasteners (accepted August 24, 1984); (41) Albar, Inc., P.O. Box 2368, Lynnwood, Wasington 98036, producer of transformers and other power conversion equipment (accepted August 28, 1984); (42) Factory Boutique, Inc., 140 North Marine Avenue, Wilmington, California 907444, producer of adult's swimwear and shorts, and other fabric articles (accepted August 28, 1984); (43) Sunburst Products, Inc., 21025 Osborne Street, Canoga Park, California 91304, producer of wallets, eyeglass cases and tote bags (accepted August 28, 1984); (44) International Chain Corporation, 9800 NW 79th Avenue, Hialeah Gardens, Florida 33016, producer of jewelry (accepted August 28, 1984) (45) R&M Manufacturing Corporation, 124 Water Street, Leominster, Massachusetts 01453, producer of women's pajamas, nightgowns and robes (accepted August 28, 1984); (46) The Trojan Luggage Company, P.O. Box 13127, Memphis, Tennessee 38113, producer of luggage, trunks and footlockers (accepted August 30, 1984); (47) Langley Products, Inc., Four Pines Bridge Road, Beacon Falls, Connecticut 06403–1399, producer of solar equipment, greenhouses and skylights (accepted August 30, 1984); (48) Northeast Tool and Engineering Company, 797 Page Boulevard, East Springfield, Massachusetts 01104, producer of forgoings (accepted August 30, 1984); (49) American Actuator Corporation, P.O. Box 384, Stamford, Connecticut 06904, producer of machine tool accessories (accepted August 30, 1984); (50) Mathewson Corporation, Two Hancock Street, Quincy, Massachusetts 92171, producer of mattress-making machinery, sewing machinery, and marine propulsion systems (accepted August 30, 1984); (51) The Bastian Company, Inc., 1600 North Clinton Avenue, Rochester, New York 14621, producer of jewelry and name tags (accepted September 4, 1984); (52) Gayle Manufacturing Company, Inc., P.O. Box 1365, Woodland, California 95695, fabricator of structural steel (accepted September 4, 1984); and (53) Twin Manufacturing Company, Inc., 215 Candlewood Road, North Bayshore, New York 11706, producer of men's and women's jackets, vests, shorts and jogging suits (accepted September 4, 1984).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S., Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 84–24431 Filed 9–13–84; 8:45 am]

BILLING CODE 3510–DR–M

National Bureau of Standards

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Each person who submits a proposal must include his or her name and address, must identify the notice and must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the disposition of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

Dated: September 10, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Committees Soliciting Proposals

The following Committees are planning to meet to begin preparation of their respective reports. In accordance with the Regulations Governing Committee Projects, Committees are now accepting proposals for recommendations on documents content on the documents listed below. Proposals received by the closing date indicated will be acted on by the Committee, and that action will be published in the Committee's Report. Proposals must be submitted to Assistant Vice President Arthur E. Cote on Proposal Forms (available from Mr. Cote).

Boiler Furnace Explosions:	
NFPA 85F–1982, Pulverized Fuel Systems.	Jan. 18, 1985.
NFPA 85G–1982, Furnace Implosions	Aug. 31, 1984.
Chemicals and Explosives:	
NFPA 40–1982, Cellulose Nitrate Motion Picture Film.	Dec. 31, 1985.
NFPA 498–1982, Explosives Motor Vehicle Terminals.	Dec. 31, 1984.
Combustible Metals:	
NFPA 48–1981, Magnesium	June 30, 1985.
NFPA 482–1982, Zirconium	June 30, 1985.
NFPA 481–1982, Titanium	June 30, 1985.
Dust Explosion Hazards:	
NFPA 61A–1984, Manufacturing and Handling of Starch.	(open).
NFPA 61B–1980, Grain Elevators and Bulk Grain Handling Facilities.	Jan. 15, 1985.
NFPA 61C–1984, Dust Explosions in Feed Mills.	(open).
NFPA 61D–1984, Milling of Agricultural Commodities for Human Consumption.	(open).
NFPA 65–1980, Processing and Finishing of Aluminum.	Jan. 15, 1985.
NFPA 651–1980, Manufacture of Aluminum or Magnesium Powder.	Jan. 15, 1985.
Electrical Equipment for Industrial Machinery:	
NFPA 79–1984, Electrical Equipment for Industrial Machinery.	Jan. 18, 1985.
Fire Tests:	
Proposed NFPA 264, Heat Release Rate, Measurement by Oxygen Consumption.	Jan. 18, 1985.
NFPA 702–1980, Classification of the Flammability of Wearing Apparel.	Jan. 18, 1985.
Firesafety Symbols:	
Proposed NFPA 171, Visual Alerting Symbols for General Public Firesafety.	Jan. 18, 1985.
NFPA 172–1980, Architectural and Engineering Drawings.	Jan. 18, 1985.
NFPA 174–1980, Risk Analysis Diagrams.	Jan. 18, 1985.
NFPA 178–1980, Fire Fighting Operations.	Jan. 18, 1985.
Foam:	
NFPA 11–1983, Low Expansion and Combined Agent Systems.	(open).
NFPA 11A–1983, High Expansion Foam Systems.	(open).
Industrial and Medical Gases:	
NFPA 51–1983, Oxygen-Fuel Gas Welding and Cutting and Allied Processes.	Oct. 5, 1984.
NFPA 56F–1983, Nonflammable Medical Gas Systems.	Oct. 5, 1984.
Lightning Protection:	
NFPA 78–1983, Lightning Protection Code.	Jan. 18, 1985.
Loss Prevention Procedures and Practices:	
NFPA 27–1981, Organization, Training and Equipment of Private Fire Brigades.	Dec. 31, 1984.
NFPA 601–1981, Guard Service in Fire Loss Prevention.	Dec. 31, 1984.
NFPA 601A–1981, Guard Operations in Fire Loss Prevention.	Dec. 31, 1984.
Marine Fire Protection:	
NFPA 303–1984, Marinas and Boatyards.	Jan. 18, 1985.
National Electrical Code:	
NFPA 70–1984, National Electrical Code.	Nov. 23, 1984.
Non-Nuclear Power Generating Plants:	
Proposed NFPA 851, Fire Protection for Hydroelectric Generating Plants.	Jan. 18, 1985.
Portable Fire Extinguishers:	
NFPA 10–1984, Portable Fire Extinguishers.	Jan. 18, 1985.
NFPA 10L–1980, Model Enabling Act for Portable Fire Extinguishers.	Jan. 18, 1985.
Recreational Vehicles:	
NFPA 501C–1982, Recreational Vehicles.	Jan. 18, 1985.
Rural Fire Protection and Control:	
Proposed NFPA 1232, Strategies for Obtaining and Moving Water for Rural Fire Officers.	Jan. 18, 1985.
Storage:	
NFPA 231–1984, Indoor General Storage.	Jan. 18, 1985.
NFPA 231D–1980, Rubber Tires	Aug. 31, 1984.
NFPA 232–1980, Protection of Records.	Aug. 15, 1984.
NFPA 232AM–1980, Archives and Record Centers.	Aug. 15, 1984.
Systems Concepts for Fire Protection in Structures:	
Proposed NFPA 550, Guide for Firesafety Concepts Tree.	Oct. 5, 1984.
Water Extinguishing Systems:	
NFPA 14–1982, Standpipe and Hose Systems.	(open).
NFPA 16–1980, Foam Water Sprinkler and Spray Systems.	(open).
NFPA 16A–1983, Closed-Head Foam Water Sprinkler Systems.	(open).
NFPA 20–1982, Fire Pumps	Jan. 18, 1985.

[FR Doc. 84–24377 Filed 9–13–84; 8:45 am]

BILLING CODE 3510–13–M

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of requests for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1985 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Technical Committee Reports have been available for distribution since August 17, 1984. Comments received on or before November 2, 1984, will be considered by the NFPA before final action is taken on the proposals.

ADDRESS: The 1985 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (No charge for single copies.) Comments on the reports should be submitted to Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Secretary, Standards Council, at above address, (607) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before November 2, 1984, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by March 22, 1985, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 13–17, 1985, at the Hyatt Regency in Chicago, Illinois, by NFPA members.

Dated: September 10, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Action at the NFPA Annual Meeting in May 1985 is being proposed on the NFPA standards listed below:

1985 Annual Meeting Technical Committee Reports

Committee reporting and action

Aviation

Airport Facilities

NFPA 417, Aircraft Loading Walkways, O–P

Boiler Furnace Explosions

NFPA 85E, Pulverized Coal-Fired Multiple Burner Boiler Furnaces, O–P

Building Construction

Building Construction

NFPA 204M, Smoke and Heat Venting, O–P
NFPA 205MT, Plastics in Building Construction, W
NFPA 220, Types of Building Construction, O–P
NFPA 703, Impregnated Wood and Fire Retardance Coatings of Building Materials, O–P

Fire Doors and Windows

NFPA 105M, Smoke and Draft Control Door Assemblies, N–O

Chemicals and Explosives

Explosives

NFPA 495, Explosive Materials, O–P

Fire Department Equipment

NFPA 1901, Automotive Fire Apparatus, O–P

Fire Hose

NFPA 1961, Fire Hose, O–P

Fire Service Training

NFPA 1402, Fire Fighter Training Centers, N–O

Halogenated Fire Extinguishing Agent Systems

NFPA 12A, Halon 1301, O–C
NFPA 12B, Halon 1211, O–C

Libraries, Museums and Historic Buildings

NFPA 910, Protection of Libary Collections From Fire, O–C
NFPA 911, Protection of Museum Collections From Fire, O–C

Marine Fire Protection

Marine Terminals

NFPA 307 (incorporating existinf NFPA 87), Operation of Marine Terminals, N–O

Ovens and Furnaces

NFPA 86D, Industrial Furnaces Using Vacuums as Atmosphere, O–P

Protective Equipment for Fire Fighters

NFPA 1975, Station Uniforms, N–O
NFPA 1983, Personnel Ropes, N–O

Race Track Stables

NFPA 150, Race Track Stables, O–P

Signaling Systems

Central Station Signaling Systems

NFPA 71, Central Station Signaling Systems, O–C

Types of Action

Proposed action on official documents:
O–P Partial amendments.
O–C Complete revision.

Proposed action on new documents: N–O Official adoption.

Other Proposed Action: W Withdrawal.

[FR Doc. 84–24336 Filed 9–13–84; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1984 commodities to be produced by and services to be provided by workshops for the blind and other severaly handicapped.

EFFECTIVE DATE: September 14, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 16, May 11, June 22, June 29, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 9941, 49 FR 20048, 49 FR 26790, 49 FR 25664) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

Additions

After consideration of the relevant matter presented, the Committee has determine that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a signficant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other complance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce or provide the commodities and service procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1984:

Class 7530

Folder Set, File: 7530–00–286–6926

Class 7920

Cloth, Wiping: 7920–LL–L03–6134
(Requirements for Pearl Harbor Naval Shipyard, Pearl Harbor, Hawaii only)

SIC 7349

Janitorial/Custodial, Federal Building and Courthouse, 5th and Okmulgee, Muskogee, Oklahoma
Janitorial/Custodial, U.S. Courthouse, Broadway and Maine, Portland, Oregon

SIC 7369

Commissary Shelf Stocking and Custodial, Lowry Air Force Base, Colorado

SIC 9199

Administrative Services, DCASR Building B-95, 805 Walker Street, Marietta, Georgia

C.W. Fletcher,
Executive Director.

[FR Doc. 84–24380 Filed 9–13–84; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1984; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1984 commodities and a military resale commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before October 17, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodity and service to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 5306

Pin Connecting Track: 5306-00-679-9658

Class 8465

Canteen, Water, Plastic: 8465-01-115-0026
Pack, Personal Gear: 8465-01-141-2321
Military Resale Item No. and Name: No. 519 Fabric Softener, Reusable

SIC 7349

Janitorial/Custodial, Federal Building and U.S. Courthouse, 550 West Fort Street, Boise, Idaho

Deletions

It is proposed to delete the following commodities from Procurement Lhat 1984, October 18, 1983 (48 FR 48415):

Class 8415

Mask, Extreme Cold Weather: 8415-00-243-9844

SIC 7331

Mailing Service for the following: United States Metric Board, Arlington, Virginia

C.W. Fletcher,

Executive Director.

[FR Doc. 84-24381 Filed 9-13-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Deletion and Amendments to Systems of Records Notices

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of deletion and amendments to system of records.

SUMMARY: The Office of the Secretary of Defense proposes to delete one and amend two notices for systems of records subject to the Privacy Act of 1974. The specific changes to the notices being amended are set forth below folowed by the system notices, as amended, published in their entirety.

DATES: This shall be effective without further notice October 15, 1984, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, OSASD(A), Room 5C-315, Pentagon, Washington, D.C. 20301-1155 Telephone: 202/695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act of 1974, Title 5, United States Code 552a (Pub. L. 93-579; 44 Stat. 1896. *et seq.*) have been published in the **Federal Register** at:

FR Doc. 83-12048 (48 FR-25827) June 6, 1983
FR Doc. 84-4418 (49 FR 6145) February 17, 1984
FR Doc. 84-17736 (49 FR 27602) July 5, 1984
FR Doc. 84-20096 (49 FR 30560) July 31, 1984
FR Doc. 84-22569 (49 FR 33700) August 24, 1984

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

DELETION

DUSDRE 03

System Name:

Inventor's File, Office Under Secretarty of Defense (Research and Engineering) (48 FR 25861, June 6, 1983).

Reason: This system is no longer being maintained as a system of records.

AMENDMENTS

DUSDRE 02

System Name:

OUSDRE Personnel Administration files (48 FR 25860, June 6, 1983).

Changes:

Add the heading "PURPOSE(S)" before the heading *Routine Uses of Records Maintained in the system, including Categories of Users and purposes of such uses.*

Add the following paragraph under the heading *PURPOSE(S):* The information contained in these personnel files is used by the office manager, supervisory personnel and the Under Secretary of Defense for Research and Engineering in the management of his/her organization. Specific uses include determining eligibility for appointment to positions; reviewing financial interest and background of individual applying for appointments; comparing individual resumes and job requirements; keep account of time worked; travel performed; orders issued, awards given to personnel and security clearance granted."

Delete the heading *"Routine uses (disclosure) of Records Maintained in the System Including Categories of Users, Uses, and purpose of such Uses."*

Delete the heading *"Internal Users, Uses, and Purposes."*

Delete the paragraph following the above heading.

Delete the heading *"External Users," Uses," and Purposes"* and add the heading *"Routine Uses of Records Maintained in the System, Including Categories of users and the purposes of such uses."*

AMENDMENTS

DUSDRE 04

System Name

Requests for two-Year Foreign Residence Waiver Files (48 FR 25861, June 6, 1983).

Changes:

Add the following heading *"Purpose(s)"* before the heading *Routine uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses.*

Add the following paragraph under the heading *PURPOSE(S)* "Data is used by Under Secretary of Defense for Research and Engineering, Security Policy and Review Division Officials to evaluate requests of foreigners requesting Waiver of Foreign Residency."

Delete the heading *"Routine Uses (disclosure) of records Maintained in the System Including Categories of Users, Uses, and the purpose of Such Uses."*

Deleted the heading *"Internal Users, Uses, and Purposes."*

Delete the paragraph following the above heading.

Delete the heading *"External, Users, Uses, and Purpose"* and add the heading *"Routine Uses of Records Maintained in the System, Including Categories of Users and the purposes of Such Uses."*

Delete the paragraph under the heading *"Safeguards"* and add the paragraph "Building Guards and Secure (Vault) Area. Records are maintained in an area accessible only to authorized personnel".

Delete third line under heading *"Notification Procedure"* and add "Room 3E1065".

Systems DUSDRE 02 and DUSDRE 04 read as follows:

DUSDRE 02

SYSTEM NAME:

OUSDRE Personnel Administration Files.

SYSTEM LOCATION:

Office of the Under Secretary of Defense for Research and Engineering (OUSDRE), Office Secretary of Defense, Room 3E1006, Pentagon, Washington, D.C. 20301-3000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees assigned to or considered for positions in OUSDRE including civilian and military personnel and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain position descriptions; biographical résumés, qualification statements (SD 171, SD 173, SD 398, SF 161, etc.); Confidential Statement of Affiliations and Financial Interests, Department of Defense Personnel (DD Form 1555); requests for personnel actions (SD 52, 108); notification of Personal Action (SD 50); appointments affidavits (SF 61, 61B); award recommendations; appraisals and efficiency reports; time and attendance records (SF 1135); travel orders and vouchers; and security clearance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133.

PURPOSE(S):

The information contained in these personnel files is used by the office manager, supervisory personnel and the Under Secretary of Defense for Research and Engineering in the management of his organization. Specific uses include: Determining eligibility for appointment to positions; reviewing financial interest and background of individual applying for appointments; comparing individuals résumés with job requirements; keeping account of time worked; travel performed; orders issued; awards given to Personnel and Security Clearances granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Office of the Secretary of Defense (OSD), Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of the individual concerned.

SAFEGUARDS:

Building guards and locked file containers. Records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are temporary in nature and are destroyed after individuals leave employment of OUSDRE or are no longer under consideration for employment.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant to USDRE, Office of the Secretary of Defense, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Personnel Assistant, Office of the Executive Assistant to USDRE, Room 3E1006, Pentagon, Washington, D.C. 20301–3000, Telephone: 202–695–6556.

Written requests for information should contain the full name of the individual, current address, telephone number, and any other information which would help in identifying the desired inforemation.

For personal visits, the individual must be able to provide acceptable identification, that is, driver's license, employing office's identification card, and give verbal information that could be verified with his "case folder."

RECORD ACCESS PROCEDURES:

Requests should be addressed to System Manager as shown above.

CONTESTING RECORD PROCEDURES:

The Agency's rulds for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is provided by the Directorate for Personnel and Security, Security Division, Washington Headquarters Services, Department of Defense, individuals concerned, travel vouchers, security forms, travel orders, individual's supervisors, and time and attendance clerks.

EXEMPTION CLAIMED UNDER THIS SYSTEM:

None.

DUSDRE 04

SYSTEM NAME:

Requests for Two-Year Foreign Residence Waiver Files.

SYSTEM LOCATION:

Security Policy and Review Division—Office of the Director, Program Control and Administration, Office of the Under Secretary of Defense for Research and Engineering, Office of the Secretary of Defense.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any foreigner applying for a Waiver of Foreign Residency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain requests for waiver of foreign residency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 535).

PURPOSE(S):

Data is used by Under Secretary of Defense for Research and Engineering, Security Policy and Review Division officials to evaluate requests of foreigners requesting waiver of Foreign Residency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual.

SAFEGUARDS:

Building guards and secure (vault) area. Records are maintained in an area accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are permanent. Retained in active file for ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Control and Administration, OUSDRE, Office of the Secretary of Defense, Pentagon, Washington, D.C. 20301–3000.

NOTIFICATION PROCEDURE:

Information may be obtained from: Security Policy and Review Division, Room 3D1065, Pentagon, Washington, D.C. 20301–3000, Telephone: 202–697–3459.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Under Secretary of Defense for Research and Engineering, Office of the Secretary of Defense, Pentagon, Washington, D.C. 20301–3000.

Written requests for information should contain full name of individual, current address and telephone number and approximate date of waiver request.

For personal visits, individual must be able to provide appropriate identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Application and related correspondence from sponsor and individual requesting waiver.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 84-24410 Filed 9-13-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Systems Management College Board of Visitors; Meeting

AGENCY: Defense Systems Management College, DOD.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 202, Fort Belvoir, Virginia. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come-first-serve basis. Persons desiring to attend the meeting should call Ms. Radean M. Kerns on (703) 664-6480.

DATE: September 27, 1984, 7:30 a.m. to 2:30 p.m.

Dated: September 11, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24409 Filed 9-13-84; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group D (Mainly Laser Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on October 8, 1984 at M/A COM Omni Spectra, 2626 South Hardy Drive, Tempe, AZ 85282.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The laser area includes programs on developments and research related to low energy lasers for such applications as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The reivew will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II § 10(d)(1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: September 11, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24406 Filed 9-13-84; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on October 9-10, 1984 at Palisades Institute for Research Services, Inc., Crystal Gateway #3, Suite 1203, Jefferson Davis Highway, Arlington, VA 22202.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II § 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 section U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: September 11, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24407 Filed 9-13-84; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on October 2, 1984 at Palisades Institute for Research Services, Inc., Crystal Gateway #3, Suite 1203, 1215 Jefferson Davis Highway, Arlington, Virginia 22202.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Enginering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II § 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: September 11, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24408 Filed 9-13-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Ad Hoc Committee on Military Aerospace Platform; Meeting

September 10, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on the Military Aerospace Platform will meet in the ANSER Building, 3 Crystal Gateway, Arlington, VA on October 4–5, 1984.

The purpose of the meeting is to review contractor proposals for military aerospace platform/transatmospheric vehicle concepts. The meeting will convene from 8:30 to 5:00 p.m. on October 4 and from 8:30 a.m. to 3:00 p.m. on October 5.

The meeting concerns matters listed in Section 552b(c) of the Title 5, United States Code, specifically subparagraphs(1) and (4) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84–24309 Filed 9–13–84; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Ad Hoc Committee on Application of Artificial Intelligence (AI);

September 10, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on the Application of Artificial Intelligence (AI) will meet in the Pentagon, Washington, DC on October 15–16, 1984.

The purpose of the meeting will be to review Air Force planning, distribution of funding, and current programs for AI. The committee will also review DARPA and Navy AI programs. The meeting will be held from 8:30 a.m. to 5:00 p.m. on October 15 and from 8:30 a.m. to 1:00 p.m. on October 16.

The meeting will be open to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84–24310 Filed 9–13–84; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Advisory Council on Dependents' Education; Meeting

AGENCY: Advisory Council on Dependents' Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education and of two standing committees concerning education programs and administration. This notice also describes the functions of the council. Notice of these meetings is required under section 10(1)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATE: The Advisory Council on Dependents' Education: October 15, 9:30 a.m. to 5:00 p.m.; and October 17, 9:00 a.m. to 5:00 p.m. The committees: October 16, 9:00 a.m. to 4:00 p.m.

ADDRESS: Rosslyn Westpark Hotel, The Club Room, 1900 Fort Myer Drive, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Keough, Administrator of Education for Overseas Dependents, 400 Maryland Ave., S.W., Washington, D.C. 20202, (202) 245–8011.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under section 1411 of the Defense Dependents' Education Act of 1978, as amended (20 U.S.C. 929). The Council is established to recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system.

The meeting of the Council is open to the public. The proposed agenda for the full Council on October 15 includes: A report of the Administrator on Council matters, a progress report by the Director, a report by the Director on previously expressed ACDE concerns, and presentations by DoDDS staff members on the talented and gifted program, the opportunity for imput and problem-solving in curriculum development at the local level, trends for the SIMS/RIMS (information management) program, the pilot master teacher program, military construction of small schools, and the certification/recertification program. The proposed agenda for the full Council on October 17 includes reports by the two standing committees, with discussion and voting on proposed recommendations.

The proposed agenda for the Education Program Committee on October 16 includes standardized test results, functional literacy vocabulary in elementary host nation programs, continued DoDDS response to the National Commission on Excellence in Education Report, the TAG program and the demographic study, the kindergarten entrance age, and the opportunity for input and problem-solving in curriculum development at the local level.

The proposed agenda for the Administration Committee includes projections of school enrollment, and addition to end-of-year reports by local school advisory committees, trends for the SIMS/RIMS program, the pilot master teacher program, military construction of small schools, and the certification/recertification program.

Records are kept of all Council proceedings and are available for inspection at the office of the Advisory Council on Dependents' Education, Room 3047, 400 Maryland Ave., S.W., Washington, D.C., from the hours of 8:30 a.m. to 5:00 p.m.

Dated: September 5, 1984.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 84–24404 Filed 9–13–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

International Atomic Energy Agreement; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954 as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaseful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–EU–818, to Omnium Scientifique Industriel, Paris, France, one gram of uranium enriched to 0.99 percent in U–235, one gram of uranium enriched to 4.95 percent in U–235, and one gram of uranium enriched to 1.51 percent in U–235, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen (15) days after the date of publication of this notice.

For the Department of Energy.

Dated: September 10, 1984.

Harold Jaffe,

Acting Duputy Assistant Secretary for International Affairs.

[FR Doc. 84-24341 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; European Atomic Energy Community Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sales:

Contract Number S-EU-816, to the Netherlands Energy Research Foundation, 200 milligrams of uranium-233, for use in isotope dilution analysis.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen (15) days after the date of publication of this notice.

For the Department of Energy.

Dated: September 10, 1984.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-24343 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-EU-817, to CEA, Office des Rayonnements, France, 5 milligrams of thorium-230 for measurement of thorium concentrations in volcanic minerals.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen (15) days after the date of publication of this notice.

For the Department of Energy.

Dated: September 10, 1984.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-24344 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; European Atomic Energy Agency and Brazil; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Agency (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Brazil Concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/EU(BR)-4, from Brazil to Kernforschungsanlage Julich Gmbh, the Federal Republic of Germany, uranium oxide pellets containing 502 grams of uranium enriched to 1.98% in U-235 for irradiation testing.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 10, 1984.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-24339 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; European Atomic Energy Community et al.; Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreements for Cooperation Between the Government of the United States of America and the Governments of Japan, the Philippines, Sweden, and Switzerland Concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval for the conversion of uranium enrichment service contracts to the new utilities services contract form for the following nuclear power stations:

Japan—Chugoku Electric Power Co.—Shimane No. 1, and Chugoku No. 3 and No. 4
  —Tohoku Electric Power Co.—Onagawa No. 1, Namie Odaka No. 1, Tohoku No. 4 and No. 5, and Maki No. 1
Philippines—National Power Corp.—PNPP No. 1
Sweden—Swedish State Power Board—Ringhals Nos. 1, 2, 3, and 4, and Forsmark Nos. 1, 2 and 3
Switzerland—Kernkraftwerk Leibstadt—Leibstadt No. 1
IAEA—Yugoslavia—KRSKO No. 1
Euratom—France—Fessenheim No. 2 and Bugey No. 3
  —The Federal Republic of Germany—Ems, Unterweser, Isar, Grohnde No. 1, Obrigheim, Brunsbuettel, Philippsburg No. 1, THTR, and Stade
  —The Netherlands—Borssele No. 1

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that theses subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen (15) days after the date of publication of this notice.

For the Department of Energy.

Dated: September 10, 1984.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-24342 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Switzerland; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the conversion of uranium enrichment contracts to the new utilities services contracts for the Graben and Muehleberg power reactors in Switzerland.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen (15) days after the date of publication of this notice.

For the Department of Energy.

Dated: September 10, 1984.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-24340 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Distribution Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Distribution Task Group of the Committee on the Strategic Petroleum Reserve will meet in September 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Distribution Task Group will hold its fourth meeting on Monday, September 17, 1984, starting at 7:30 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the Distribution Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review preliminary SPR draft report.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Distribution Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Distribution Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on September 6, 1984.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 84-24338 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE), notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last notice published Thursday, July 26, 1984 (49 FR 30098).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr.

Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, DC, September 10, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
FERC-42	Application for annual or basic valuation.	Extension	On occasion	Mandatory	Business or other for profit.	90	45	The data collected on this form identifies the pipeline company requesting the valuation of physical properties and provides for calculation and submission of the required valuation fee.

[FR Doc. 84-24347 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Supply Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Supply Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: October 9, 1984—9:30 a.m.–4:00 p.m.

Place: O'Hare Hilton, O'Hare International Airport, Room 2019, Chicago, IL 60666.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–5444.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda:

- Follow-up discussion to August 2, 1984, meeting on general issues facing energy supply R&D.
- Progress reports on supply sector issue papers.
- Progress reports on staff studies previously identified and discussion of additional studies needed.
- Planning of future activities of the Supply Subpanel.
- Public comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 31, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-24337 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA–FC–80–013 (OFC Case No. 55041–0731–01–12)]

Proposed Modification of an Order Granting Permanent Fuels Mixture Exemption to Brunswick Pulp and Paper Company

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under 10 CFR Part 501, Subpart G to modify the permanent fuels mixture exemption granted by Order ("Order") to a new major fuel burning installation (MFBI), a package boiler identified as Boiler No. 5 owned and operated by Brunswick Pulp and Paper Company (Brunswick) at its Brunswick, Georgia facility, under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" of "The Act").

Based upon its review of Brunswick's July 18, 1984, modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR 501.102(b), exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the Federal Register (see **DATES** section, below).

If no responses are received within the established period, the Order modification, as proposed, shall become final upon the expiration of that period without further action by ERA. A detailed discussion of the Order and Brunswick's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written responses to ERA's proposed modification of the Brunswick Order must be received no later than October 15, 1984.

Unless ERA receives comments adverse to its proposed action within the established comment period, the modification order shall become final on October 15, 1984; and the modification therein shall become effective on December 14, 1984.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585. OFC–55041–0731–01–12 should be printed on the outside of the envelope and the documents contained herein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory

Administration, Forrestal Building, Room GA–073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–1730

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On December 31, 1980, ERA exempted, by Order, Brunswick's new package boiler, identified as Boiler No. 5, at its Brunswick, Georgia plant facility from the prohibitions of section 202 of FUA.[1] The Order was published in the **Federal Register** on January 7, 1981 (46 FR 1768). Subject to the terms and conditions set forth in the Order, the permanent fuels mixture exemption permitted, in a mixture with hydrogen, the use of No. 6 fuel oil in the package boiler in an amount not to exceed 25 percent of the total annual Btu heat input of the energy sources used in that unit. Brunswick's exemption request was filed under the then-effective 10 CFR § 503.38 (45 FR 38276, June 6, 1980) and was granted pursuant to section 212(d) of FUA.

Subsequently, via letter dated June 1, 1982, Brunswick requested ERA to modify the subject Order to permit the use of either natural gas or No. 6 oil in the mixture with hydrogen as the primary energy source for Boiler No. 5. The modification request was initiated when Georgia Natural Gas Company established a connection between its natural gas distribution system and Brunswick's plant, thereby making natural gas available throughout the plant for both process and non-process uses.

ERA, based upon its review of Brunswick's June 1, 1982 request, the record in this matter and pursuant to 10 CFR 501.501, commenced a proceeding to modify the subject Order. The Notice and Proposed Modification was issued June 18, 1982; published in the **Federal Register** June 28, 1982 (47 FR 27889); and, without further action on the part of ERA, became effective 30 days after the date of its publication in the **Federal Register**.

By letter filed with ERA on July 18, 1984, Brunswick requested that ERA now modify the Order to delete the annual certification part of the following reporting requirement:

> In accordance with the reporting requirements in § 503.38(g), Brunswick will certify to the Economic Regulatory Administration (ERA), Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street NW., Washington, D.C. 24061, the date the package boiler is first operated and, each year on the anniversary of that date, that the amount of No. 6 oil used in the package boiler did not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that unit. The certification must be executed by a duly authorized representative of Brunswick.

Brunswick based its modification request upon the fact that since the issuance of the Order with its annual reporting requirements, DOE has issued final rules amending § 503.38(g) of the interim rules to delete therefrom reporting requirements for boilers granted fuels mixtures exemptions (46 FR 59872, December 7, 1981).

As requested, ERA has commenced a proceeding pursuant to 10 CFR 501.101(a), for the modification of the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G.

Having considered the information contained in Brunswick's request, along with the other information of record in this proceeding, ERA proposes to modify the original permanent fuels mixture exemption Order as follows:

Modification Order

To: Brunswick Pulp and Paper Company

Major fuel burning installation	Location	Docket No.
Boiler No. 5	Brunswick, Georgia.	ERA–FC–80–013 (OFC Case No. 55041–0731–01–12).

Based upon its review of the whole record in the proceeding, ERA has determined that the revision of § 503.38 in the final rules published on December 7, 1981, described supra, constitutes significantly changed circumstances warranting the modification of the original exemption Order, as provided by 10 CFR 501.102 and 501.103.

Accordingly, ERA hereby modifies the Order in Docket Number ERA–FC–80–013 to delete therefrom the annual certification reporting requirement.

Procedures

Parties to the original Order proceeding in Docket No. ERA–FC–80–013, are hereby notified of ERA's proposed modification of the Order exempting Brunswick's Boiler No. 5, Brunswick, Georgia from the prohibitions in section 202 of FUA and of their right pursuant to 10 CFR § 501.101(d) to file a response thereto within 30 days after the publication of this Notice in the **Federal Register**. If ERA receives no adverse responses within the allotted comment period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C., September 5, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84–24340 Filed 9–13–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER84–631–000]

Arizona Public Service Co.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

Take notice that on August 21, 1984, Arizona Public Service Company (Arizona) tendered for filing an executed Wholesale Power Agreement (Agreement) between Arizona and Southern California Edison Company (SCE) to replace the unexecuted Agreement submitted for filing on June 29, 1984.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24314 Filed 9–13–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–630–000]

Carolina Power & Light Co.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

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[1] Section 202 of FUA prohibits the use of natural gas or petroleum as the primary energy source by certain MFBI's.

Take notice that on August 27, 1984, Carolina Power & Light Company (Carolina) tendered for filing changes outlined below in its agreement with Randolph EMC.

Randolph EMC—Provisions include the installation of special metering facilities required to provide metering pulse information at the New Robbins 23 KV Point of Delivery and the addition of hydroelectric generating facility located on the Deep River at High Falls, North Carolina, the portion of the electrical system served from this Point of Delivery. Customer has allowed the Company to purchase the capacity and energy generating from the hydroelectric facility.

The above Supplement is proposed to be effective sixty days after filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24315 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-664-000]

Columbia Gas Transmission Corp.; Notice of Request Under Blanket Authorization

September 11, 1984.

Take notice that on August 24, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-664-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Wheeling-Pittsburgh Steel Corporation (Wheeling-Pittsburgh) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 4 billion Btu equivalent of natural gas per day for Wheeling-Pittsburgh through June 30, 1985. Columbia states that the gas to be transported would be purchased from Yankee Resources, Inc. (Yankee) and would be used as process gas and boiler fuel in Wheeling-Pittsburgh's Steubenville, Ohio, plant.

It is indicated that Columbia has released certain gas supplies of Yankee and that these supplies are subject to the ceiling price provisions of Sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Wheeling-Pittsburgh has made arrangements to purchase this released gas from Yankee. Columbia states that it would receive the gas from Yankee and redeliver the gas to Columbia Gas of Ohio, Inc., the distribution company serving Wheeling-Pittsburgh near Steubenville, Ohio. Further Columbia states that depending upon whether its gathering facilities are involved, it would charge either: (1) 40.11 cents per dt equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after insurance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24316 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-636-000]

Commonwealth Edison Co.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

Take notice that on August 30, 1984, Commonwealth Edison Company (Edison) tendered for filing a Letter Agreement dated June 29, 1984 between Commonwealth Edison Company and Wabash Valley Power Association, Incorporated.

Edison states that the Letter Agreement provides for Commonwealth Edison Company to stand ready to supply Wabash Valley Power Association, Incorporated with 49,000 kW (an increase of 4,000 kW over present agreement) of Standby Power from July 1, 1984 through December 31, 1984.

Edison requests an effective date of July 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Wabash Valley Power Association, Incorporated Indianapolis, Indiana and the Illinois Commerce Commission, Springfield, Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motion or protests should be filed on or before September 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24317 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-629-000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 66, an agreement to provide transmission service to the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the monthly transmission charge of $0.84 to $1.12 per kilowatt for transmission of power and energy sold by the Authority of Grumman Corporation. The Supplement would increase annual revenues from jurisdictional service during Period I by $17,683.68.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24318 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-626-000]

Florida Exploration Co., Petitioner and Houston Natural Gas Company, Black Marlin Pipeline Company, Industrial Natural Gas Company and Houston Pipe Line Company, Respondents; Petition for Institution of Proceedings

September 11, 1984.

Take notice that on July 27, 1984, Florida Exploration Company (FEC), 3040 Post Oak Boulevard, Houston, Texas 77056 filed in Docket No. CP84-626-000, a petition for the institution of proceedings pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) and Sections 5(e) and 5(f) of the Outer Continental Shelf Lands Act (OCS Act) (43 U.S.C. 1334 (e) and (f)) to determine the appropriate proportionate amounts of natural gas produced from the High Island Area, Blocks A-6 (HI A-6) and 201 (HI 201), offshore Texas, which should be purchased from the several working interest owners [1] and transported by Houston Natural Gas Company (HNG) and its wholly-owned subsidiaries,[2] all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

FEC alleges that Industrial has contracted with Shell Offshore, Inc. (Shell), to purchase its production from HI A-6 and HI 201. FEC states that it has offered to sell its share of the production to Industrial under the same terms and conditions as in the Shell/Industrial contract; however, Industrial has refused to purchase either FEC's gas or to enter into a preliminary agreement to purchase FEC's gas at a later date. FEC contends that Industrial's refusal to purchase FEC's share of the production from HI A-6 and HI 201 on a non-discriminatory basis violates the OCS Act and the Sherman Antitrust Act (15 U.S.C. 1, *et seq.*).

It is submitted that, in order to transport the volumes of gas purchased by Industrial from Shell, Black Marlin filed on April 18, 1984, an application in Docket No. CP84-354-000, requesting authorization to construct and operate, among other things, a 13-mile extension of its offshore pipeline system to the Shell platform in HI A-6 and to transport up to 37,000 Mcf of gas per day for Industrial.

FEC filed simultaneously a motion to consolidate Black Marlin's application in Docket No. CP84-354-000 with the instant petition alleging the two proceedings involve common questions of fact, law and policy that could be evaluated and resolved more efficiently in a single proceeding.

As a basis for its petition to institute proceedings in the subject docket, FEC states that Section 5(e) of the OCS Act requires a pipeline that is both purchasing and transporting OCS gas cannot fulfill its obligations merely by either purchasing or transporting gas on a non-discriminatory basis but rather Section 5(e) requires that pipelines must perform "without discrimination" all of the functions in which they have chosen to engage in OCS lands.

FEC alleges the language and concept of the OCS Act of 1953, as amended in 1978, was not original but derived from Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) which provided in part that pipeline rights-of-way through public lands could be issued subject to the requirement that pipelines be "constructed, operated and maintained as common carriers." It is explained that in 1935 to this stipulation was added that "[pipelines] shall accept, convey, transport or purchase without discrimination oil or natural gas produced from government lands in the vicinity of the pipeline in such proportionate amounts—determined to be reasonable—" (49 Stat. 678-79 (1935)). Based upon these statements, FEC contends, therefore, Section 5(e) of the OCS Act requires that the HNG/HPL/Industrial/Black Marlin entity (HGN Entity) which is both transporting and purchasing goes from OCS lands must perform both functions without discrimination.

FEC further alleges that the HNG Entity is not fulfilling its obligations as it is not purchasing the OCS gas in proportionate amounts as the HNG Entity has arranged to purchase 100 percent of Shell's production and has refused to purchase any of the production owned by the remaining working interests, including FEC's interests. Further, FEC states while Black Marlin has asserted that it is willing to transport gas from HI 6 and HI 201, for buyers other than Industrial, for the same fee that it proposes to charge for the Shell production, the proffered transportation service is inferior to the service Black Marlin offered Industrial as it is circuitous and more expensive.

FEC summarizes its instant petition stating that Section 5(e) of the OCS Act requires, in the absence of voluntary compliance, that the Commission must institute proceedings to determine the reasonable proportionate amounts of natural gas which must be purchased and transported "without discrimination" by pipelines located in OCS lands. FEC states that whatever volumes the HNG Entity chooses to buy from the area of HI 6 and HI 201 on whatever terms, it must purchase *pro rata* from all the working interest owners who are willing to sell on those terms.

FEC states that a hearing before the Commssion is the proper forum for the airing of differences on this subject and for the on-the-record investigation of all pertinent facts.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

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[1] It is explained that FEC, Apache Corporation (Apache), Flour Oil and Gas Corporation (Flour) and Crown Central Petroleum Corporation (Crown) own a 25 percent working interest in HI A-6; FEC, Flour and Mapco, Inc., own a 25 percent working interest n HI 201. Shell Offshore, Inc., owns 75 percent working interest in both blocks, it is submitted.

[2] Black Marlin Pipeline Company (Black Marlin), Industrial Natural Gas Company (Industrial), and Houston Pipe Line Company (HPL).

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24319 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-634-000]

Florida Power Corp.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

Take notice that on August 29, 1984, Florida Power Corporation (Florida Power) tendered for filing Service Schedule X providing for extended economy interchange service between Florida Power and the City of Kissimmee, Florida. Florida states that Service Schedule X is submitted for inclusion as a supplement under the existing contract for interchange service between Florida Power and the City of Kissimmee, designated as Flordia Power's Rate Schedule FERC No. 94.

Florida Power requests an effective date of September 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24320 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-635-000]

Gulf States Utilities Co.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

Take notice that on August 30, 1984, Gulf States Utilities Company (Gulf States) tendered for filing proposed changes in the electric service schedules presently on file with the Commission which are applicable to a Power Interconnection Agreement between Gulf States and Cajun Electric Power Cooperative, Inc. (CEPCO) and its member cooperatives. The rate schedule change will involve the installation of two 34.5 KV reclosers west of New Roads and Ventress, Louisiana; payment by CEPCO of a facilities charge, and payment of a cancellation charge when the New Roads Delivery Point is abandoned.

Gulf States indicates that the reason for the proposed change is that by installing the reclosures CEPCO will better serve its member cooperatives.

Gulf States requests an effective date of August 27, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon CEPCO and the utilities commissions of Texas and Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24321 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP74-134-005]

Natural Gas Pipeline Company of America; Notice of Petition to Amend

September 11, 1984.

Take notice that on August 17, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP74-134-005 a petition to amend further the order issued May 29, 1975, in Docket Nos. CP74-134 and CP74-145,[1] as amended, pursuant to Section 7(c) of the Natural Gas Act so as to authorize the addition of a delivery point in Custer County, Oklahoma, for an existing exchange arrangement between Natural and Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Natural requests authorization to add an additional exchange delivery point to permit the delivery of gas to Northern for the account of Natural at the existing interconnection of Northern's gathering and measurement facilities and the Smith "B" No. 1-21 well in Custer County. It is stated that Natural has a supply of gas available from this well under an existing gas purchase agreement. It is further stated that the use of existing facilities at this delivery point precludes the need for any construction. Natural asserts that the addition of the Custer County delivery point would not change the maximum daily volume exchanged, which would remain at 5,000 Mcf, and would have no adverse impact on Natural's customers.

Natural states that deliveries at the Custer County delivery point have commenced under the provisions of Order No. 60 and Natural's blanket certificate issued in Docket No. CP80-125, as reported in Docket Nos. ST84-221 (Natural) and ST 84-210 (Northern).

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Oct. 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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[1] Issued jointly to Natural and to Northern Natural Gas Company, a Division of InterNorth, Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24322 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-20-000]

Niagara Mohawk Power Corp.; Notice of Application

September 11, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Niagara Mohawk Power Corporation (NMPC) tendered for filing an application pursuant to Section 203 of the Federal Power Act, seeking authority to acquire up to $250,000,000 of bonds and a note to be issued by Long Island Lighting Company (LILCO).

It is asserted that NMPC would acquire at a closing intended to occur on or before October 1, 1984 (the "Closing") approximately $80,000,000 aggregate principal amount of LILCO's General and Refunding Bonds ½% Series due August 1, 1993 (Bonds) and LILCO's unsecured note (Note) bearing interest of the rate of 19% per annum. The Bonds and the Note are to be acquired by NMPC under a Settlement Agreement dated August 30, 1984 between NMPC and LILCO ("Settlement Agreement") relating to payment of construction costs of the Nine Mile Point Nuclear Station Unit No. 2 ("Unit"). At the Closing, LILCO will pledge to a pledgee acting on behalf of NMPC Bonds having an aggregate principal amount equal to $250 million less the principal amount of Bonds delivered to NMPC at the Closing. The pledged Bonds will be acquired by NMPC from time to time as NMPC makes further construction advances for the unit on LILCO's behalf.

In addition to interest payable on the Bonds at the rate of ½% annually, LILCO has an unsecured obligation to make quarterly supplemental payments ("Supplemental Payments") to NMPC in amounts equal to 18.5% per annum on the principal amount of Bonds held by NMPC. This obligation is to be evidence by the Note. Until the date of commercial operation of the Unit or certain other dates provided in the Settlement Agreement, LILCO may elect to defer the Supplemental Payments, and in such event NMPC may add the deferred amount as additional principal under the Note.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24323 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-38-002]

Otter Tail Power Co.; Notice of Compliance Refund Report

September 11, 1984.

Take notice that on August 20, 1984, Otter Tail Power Company (Otter Tail) submitted for filing a compliance refund report pursuant to § 35.19(a) of the Commission's Rules of Practice and Procedure.

Otter Tail states that the reduced rate levels were placed into effect on bills rendered for the period May 20–June 20, 1984; therefore, no amounts in the "excess billed" column of the report beginning June 1984 were reported.

Otter Tail also states that the interest was calculated at the average quarterly prime rate and was compounded quarterly. Otter Tail further states that a copy of the refund detail has been submitted to each customer and a copy of the complete refund report is being submitted to each state commission on the service list.

Any person desiring to be heard or to protest this filing should file commenters with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before September 26, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24324 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-661-000]

Panhandle Eastern Pipe Line Co.; Notice of Request Under Blanket Authorization

September 11, 1984.

Take notice that on August 24, 1984, Panhandle Eastern Pipe Line Company (PEPL), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-661-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that PEPL proposes to transport natural gas on behalf of a qualified end-user under the authorization issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

PEPL states that the proposed transportation service would be performed pursuant to a transportation agreement dated July 10, 1984 (Agreement) among PEPL, Central Illinois Light Company (CILCO) and Caterpillar Tractor Company (Caterpillar). It is explained that the Agreement provides for the transportation of up to 11,000 Mcf (Mcfd) of natural gas per day on behalf of Caterpillar for use in boiler, until heaters, heat treatment equipment, core ovens, and miscellaneous process equipment.

PEPL states that the agreement provides for PEPL to receive a transportation quantity of up to 11,000 Mcfd on an interruptible basis, at an existing point of interconnection between PEPL and the tailgate of Union Texas Products Corporation plant in Major County, Oklahoma. It is explained that PEPL would then transport and redeliver such gas, less four percent reduction for fuel, to CILCO at PEPL's Peoria sales station in Tazewell County, Illinois, which in turn would make ultimate delivery to Caterpillar for its end-use at its facilities in Peoria, Illinois. It is stated that CILCO is an existing jurisdictional customer of PEPL and Caterpillar is an existing end-user customer of CILCO.

It is stated that no new facilities are required for this transportation. The transportation charge is based on PEPL's currently effective OST Tariff, and there is no Added Incentive Charge applicable to this transportation service, it is stated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR

385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24325 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-629-000]

Puget Sound Power & Light Co.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, the Agreement for exchange of energy for coal at Centralia, executed on June 28, 1984 between Puget and the City of Seattle, City Light Department (Seattle).

Puget states that the Agreement generally requires Puget to make available to Seattle each hour up to 52 MW of energy in lieu of Seattle's operation of the Centralia Steam Plant. Seattle has agreed to compensate Puget for such energy by transferring coal from Seattle's coal inventory account to Puget's coal inventory account.

Puget requests an effective date of June 4, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24326 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-632-000]

Southwestern Electric Power Co.; Notice of Filing

September 11, 1984.

The filing Company submits the following:

Take notice that on August 27, 1984, Southwestern Electric Power Company (SWEPCO) tendered for filing a Letter Agreement dated June 14, 1984 between SWEPCO and North Texas Electric Cooperative, Inc. (NTEC) amending a Power Supply Agreement dated April 8, 1982 between SWEPCO and NTEC (FERC Rate Schedule No. 84).

SWEPCO states that the sole purpose of the Letter Agreement is to correct a minor typographical error in the Power Supply Agreement. Correction of the typographical error has no substantive effect on the contractual arrangements between SWEPCO and NTEC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24327 Filed 9-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-659-000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

September 11, 1984.

Take notice that on August 22, 1984, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-659-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline looping, compression and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate during 1985: (1) On its Central Texas Gathering System (CTGS), approximately 11.0 miles of 30-inch pipeline loop extending from Brazos Block A-133 B to Brazos Block A-76 A, offshore Texas; (2) on its mainline system in Louisiana, approximately 8.42 miles of 42-inch pipeline loop in Allen and Evangeline Parishes between its compressor station Nos. 45 and 50; (3) on its mainline system in Louisiana, approximately 4.96 miles of 42-inch pipeline loop in West Feliciana and East Feliciana Parishes between its compressor station Nos. 50 and 60; and (4) on its mainline system in Louisiana, an additional 8,000 horsepower compressor unit in its compressor station No. 51 in Evangeline Parish.

Applicant states it anticipates that during the 1985-86 winter season, the peak day volumes which would be required to be moved to Station No. 65 through the mainline system from all upstream sources will be 2,400,564 Mcf of gas per day. This in turn requires, it is stated, a volume of some 1,555,000 Mcf per day or an increase of approximately 188,000 Mcf per day over the present system, flowing in the main line leaving Station No. 45.

Applicant avers that the 2,400,564 Mcf of gas per day at Station No. 65 represents the sum of anticipated maximum flowing supplies from presently attached sources as well as new sources to be attached, withdrawal volumes from the Washington Storage Field, volumes attributable to exchange transactions in this area of the system, and short-haul and long-haul transportation volumes. The volumes flowing east from Station No. 65 toward the market would remain unchanged at the level of 3,100,000 Mcf per day needed to meet current firm contract obligations, it is stated.

It is stated that the proposed facilities are estimated to cost $44,385,000, which would be financed initially through revolving credit arrangements, short-term loans and funds on hand. Permanent financing, it is explained, would be undertaken as part of an overall long-term financing program at a later date.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1984, file with the Federal Energy

Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24328 Filed 9–13–84 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–487–002]

Williston Basin Interstate Pipeline Co. and Montana-Dakota Utilities Co.; Notice of Petition for Declaratory Order

September 11, 1984.

Take notice that on August 16, 1984, Williston Basin Interstate Pipeline Company (Williston) and Montana-Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, filed a petition in Docket No. CP82–487–002 a petition pursuant to rule 207 (18 CFR 384.207) for the issuance of a declaratory order addressing the jurisdiction of certain producer gas that MDU has placed in storage, but has not paid for, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, MDU states it is suffering from a decline in demand for its gas and has projected purchases from its producer suppliers at approximately 35 percent of contractual levels. As a result it states it is unable to purchase and store all of the available gas; therefore, it alleges it has embarked on a program in which it receives and stores, as part of its system supply, its full contractual levels of casinghead and residue gas, but does not pay for this gas. MDU believes that this policy would avoid the possible flaring of casinghead and residue gas and/or the shutting-in of oil production and the related gas production. MDU contends that, ultimately, any of this gas it accepts into its system would be purchased by MDU and would become system supply, a Commission authorized act. Alternatively, MDU submits that if this gas is later stored and transported on behalf of a producer to an off-system market, subject to an executed Rate Schedule S–2 service agreement, MDU is authorized to do so by virtue of its certificate in Docket No. CP83–254–000.

Therefore, Williston and MDU request that the Commission make a determination, in connection with its consideration of the settlement in Docket Nos. CP82–487–000, *et al.*, that no additional authorizations are necessary to store volumes received from producer suppliers, but not paid for, and not subject to a Rate Schedule S–2 agreement.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24329 Filed 9–13–84; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Extension of Integrated System Power Rates; Order Confirming and Approving Extension of Integrated System Power Rates on an Interim Basis

AGENCY: Southwestern Power Administration.

ACTION: Notice of power rate order.

SUMMARY: The Deputy Secretary of Energy has confirmed and approved, on an interim basis, an extension of the existing Southwestern Power Administration System rates. This action is authorized under Delegation Order No. 0204–108, 48 FR 55664 (Dec. 14, 1983) and provides a continuation through September 30, 1986, of the System rates that were confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) for the period August 1, 1983, through July 31, 1984. The following System rates were extended through September 30, 1984, on an interim basis by Rate Order No. SWPA–15 and are authorized by Rate Order No. SWPA–16 to remain in effect on an interim basis through September 30, 1986, or until confirmed and approved on a final basis by the FERC:

Rate Schedule P–4, Peaking Power
Rate Schedule F–4A, Firm Power
Rate Schedule F–4B, Firm Power through Oklahoma Utility Companies
Rate Schedule EE–2 (Revised), Excess Energy
Rate Schedule IC–2 (Revised), Interruptible Capacity

EFFECTIVE DATES: Rate Order No. SWPA–16 specifies October 1, 1984, as the effective date for the extension of the existing System rates.

FOR FURTHER INFORMATION CONTACT:

Walter M. Bowers, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529

Fred A. Sheap, Office of Power Marketing Coordination, Department of Energy, CE–91, Forrestal Building, Room 6B–104, 1000 Independence Avenue SW., Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: The present System rates were approved by the FERC for the period August 1, 1983, through July 31, 1984, under Docket No. EF83–4011–000 and were extended by the Deputy Secretary of Energy through September 30, 1984, under Rate Order No. SWPA–15. The Administrator has prepared the 1983 Power Repayment Study and has determined that the existing System rates are consistent with the provisions of Section 5 of the

Flood Control Act of 1944 and Department of Energy Order No. RA 6120.2. In this regard, the Administrator has determined that the rates are the lowest possible rates to the customers consistent with sound business principles. Based on the 1983 Power Repayment Study, the Deputy Secretary of Energy has extended the effective period of the System rates on an interim basis through September 30, 1986, or until confirmed and approved on a final basis by the FERC.

Issued in Washington, D.C., August 29, 1984.

Danny J. Boggs,

Deputy Secretary.

DEPARTMENT OF ENERGY

Deputy Secretary of Energy

[Rate Order No. SWPA-16]

Order Confirming and Approving Extension of System Rates on an Interim Basis

August 29, 1984.

In the matter of: Southwestern Power Administration—System Rates.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60626 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place into effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the Delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664 (December 14, 1983) the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve and place in effect on a final basis or to disapprove power and transmission rates. This rate order is issued pursuant to the delegation to the Deputy Secretary of Energy.

Background

On May 17, 1984, the Southwestern Power Administration (SWPA) published notice in the **Federal Register** (49 FR 20905) that the 1983 Current Power Repayment Study for the integrated system projects indicates that the existing power rates satisfy cost recovery criteria specified in Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The Federal Register Notice was issued in accordance with Title 10, Part 903, Subpart A, of the Code of Federal Regulations entitled, "Procedures for Public Participation in Power and Transmission Rate Adjustments." The Federal Register Notice apprised the public that the Administrator proposes to request an extension of the effective period of the System rates through September 30, 1986, the date requested in the original rate filing. The rates have been in effect since confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) in Docket No. EF83–4011–000 for the period August 1, 1983, through July 31, 1984. An interim extension subject to final confirmation and approval by the FERC was granted for the period August 1, 1984, through September 30, 1984, by the Deputy Secretary of Energy on August 3, 1984. On May 17, 1984, the date of publication of the Federal Register Notice inviting pubic participation, SWPA mailed a copy of the **Federal Register** Notice and supporting data for the 1983 Repayment Study to the customers for information. Based on the date of publication, written comments from customers and interested parties were due by June 16, 1984. However, the Administrator granted a request from the Southwestern Power Resources Association dated May 30, 1984, to extend the public comment period through June 30, 1984. Notice of the extended comment period was mailed to each customer June 7, 1984, and was published in the **Federal Register** June 18, 1984 (49 FR 24939). Written comments on the proposal are contained along with SWPA's responses in the Comments and Responses Section of this rate order. The existing System rate schedules are shown below:

Rate Schedule P–4, Peaking Power
Rate Schedule F–4A, Firm Power
Rate Schedule F–4B, Firm Power through Oklahoma Utility Companies
Rate Schedule EE–2 (Revised), Excess Energy
Rate Schedule IC–2 (Revised), Interruptible Capacity

Rate Schedule P–4 applies to wholesale customers purchasing hydro and/or seasonal peaking power and peaking energy from the integrated system. This rate schedule is designed for peaking customer whose energy usage is 1200 kilowatt hours per kilowatt per year and for two peaking customers who are presently supplied 1800 kilowatt hours per kilowatt per year (Cajun Electric Cooperative, Inc., and Northeast Texas Electric Cooperative, Inc.). The two 1800 hour customers will be converted to 1200 hours usage beginning in FY 1986.

Rate Schedule F–4A applies to firm power sales from the integrated system and Rate Schedule F–4B applies to the Oklahoma Companies arrangements which provide for reimbursement to Public Service Company of Oklahoma (PSO) and Oklahoma Gas and Electric Company (OG&E) for thermal generation. The Oklahoma Companies arrangements provide for borderline power and energy sales to a number of municipalities in the service areas of PSO and OG&E. SWPA has separately-stated charges for transformation to load center delivery which SWPA also must pay. All the customers served by the companies under these arrangements receive load center service; the customers pay SWPA the load center firm rate (Rate Schedule F–4B), and SWPA pays the transmission costs, part of which is borne by the customers through the application of the rate for load center service. SWPA is reimbursed for the cost of power purchased under the contracts by the customers through a thermal energy charge which is passed through directly to the customers served under Rate Schedule F–4B.

Rate Schedule EE–2 (Revised) applies to sales of Excess Energy and Rate Schedule IC–2 (Revised) applies to sales of Interruptible Capacity.

Discussion

The 1983 Current Power Repayment Study indicates that the existing System rates will repay the integrated system investment with interest and all operating costs as required by Department of Energy Order No. RA 6120.2. This study is an update of the 1982 Repayment Study and tests the adequacy of the existing rates based on a new cost evaluation period of FY 1983 through FY 1987. The 1982 Repayment Study utilized a cost evaluation period of FY 1982 through FY 1986. The main difference in the two studies results from extending the cost evaluation period the additional year and updating costs to current levels.

In FERC's "Order Confirming and Approving Rates" for the Integrated System Projects, issued August 1, 1983, the Commission reiterated its concern over what it considers to be SWPA's arrearage in meeting scheduled repayment and suggested that "prompt correction of SWPA's amortization practices can ameliorate prior deficits in repayment obligations". While SWPA takes issue with the implication that scheduled amortization payments are required by law, or are even possible in a wholly hydroelectric system, SWPA does share the Commission's concern for timely repayment of all annual costs and the Federal investment. DOE Order No. RA 6120.2 prescribes the Secretary of Energy's policies and procedures for accomplishing timely repayment. SWPA is obliged to follow such policies.

As recognized by the FERC in Order No. EF83-4011-000, SWPA has taken action to improve its financial position in several ways. SWPA is continuing the policy of allowing all firm (load factor) power sales contracts to expire and replacing them with peaking power contracts which obligates SWPA to supply only 1200 kilowatt-hours per kilowatt per year. This limits the need for SWPA to purchase power from other utilities in low water years to fulfill contract obligations. Also, in designing the present System rate schedules, SWPA increased the capacity component of the rates relative to the energy component to ensure consistent recovery of costs, especially in low water years. In addition, the present rates include a purchased power adjustment charge to recover the cost of purchased power in average water years. SWPA established deferred accounts to reflect the balances of revenue from the purchased power adjustment and expenses from the cost of purchased power. In Order EF83-4011-000, the FERC directed SWPA to provide the monthly balances of its deferred credit and cost accounts together with a statement describing the effects of the purchased power cost adjustment on SWPA and the customers. SWPA has provided, in a separate attachment, the monthly balances of the deferred credit and cost accounts for FERC information. SWPA is assuming that any deferred credit or cost carried on its balance sheet will ultimately be "flowed back" to the customers in the form of periodic adjustments to the purchased power cost adjustment and will, over a period of time, even out and have no effect on System Power Repayment Study results. SWPA believes the purchased power adjustment has provided satisfactory results while in effect during this limited period and will include the results in the rate determination procedure at the time of the next rate filing after additional results are monitored and FY 1983 and subsequent actual financial data are included.

SWPA has taken additional steps to improve its financial position. SWPA has reviewed cost and revenue estimating procedures to assure the accuracy of those projections. Such accuracy is evidenced both by the comparison of the estimates for FY 1982 used in the 1982 Repayment Studies with actual costs experienced and SWPA's continuing analysis of alternative cost estimating methods. Further, SWPA is committed to annual power repayment studies and subsequent timely rate adjustments and has made a comparison, similar to the one the Commission staff has made regarding the actual repayment progress versus expected progress under various amortization methods, including the power repayment study method amortization "schedule". SWPA found that under the present rate level it will "catch-up" to accumulated amortization expected under the present repayment study method by FY 1990. The same study indicated that amortization through FY 1982 under this method should have been some $74 million, reaching $86 million by FY 1984 and about $135 million by FY 1990. It is expected that actual repayment status at the end of FY 1984 will approach $60 million.

SWPA's plan is to maintain amortization at the level necessary to repay investment and annual costs as required by legislation and resultant policy. SWPA believes that, given its commitment to annual power repayment studies and timely, unrestricted rate adjustments implemented as needed, any perceived deficiency should be readily corrected. SWPA believes that persistent monitoring of the annual repayment studies and decisive action to correct any mis-estimates of revenues and expenses will eliminate any potential "bow wave" effect on amortization. SWPA previously recognized the need for additional revenue and increased System rates approximately 33 percent effective April 1, 1979. Thus, two rate adjustments within little more than four years have increased average annual revenues approximately 70 percent. This cannot be ignored as a significant accomplishment toward repayment of the Federal investment and an indication of SWPA's intent to maintain revenues at adequate levels. SWPA has also updated its computer capacilities which facilitates analyses of revenues, expenses and other repayment study data not possible on the previous system. The new computer system will enable SWPA to test the effects of input variations on the repayment studies in very short time frames that previously required manual preparation. SWPA has also been successful in winning litigation directed toward eliminating the implementation of power rates on an interim basis. Interim rates will continue to facilitate cost recovery when rates are pending final review by the FERC.

In its August 1, 1983, Order on the System rates, the FERC specified that "* * * annual interest on additions should be computed using the current interest rate applicable in each year, as required by DOE Order No. RA 6120.2 (September 20, 1979), rather than the project interest rates which are reflected in SWPA's current repayment study". SWPA has made the necessary computer program changes using the current interest rates on plant additions rather than the original project interest rates. This change actually amounted to only a technical adjustment and had little, if any, effect on future interest expense. The change is reflected in the revenue distribution section of the 1983 Power Repayment Study.

SWPA also recognizes that the historic period used in this study ends more than 18 months before the filing date althrough the study was completed within the 18-month period. However, the limited approval period provided by FERC made completion of the 1983 PRS, which would include FY 1983 actual data, impossible prior to this filing time. Actual audited financial data are not available until approximately February following the end of a fiscal year making completion of a timely power repayment study difficult at best. Further, the public participation process required, and the preparation of both the Sam Rayburn Dam rate extension and the Tex-La Contract Rate increase at the same time, virtually guaranteed that the criteria could not be met without preparing another study with the 1983 data to be filed at a later date. In addition, the data needed for filing a rate action require considerable additional time to prepare and this time simply would not have been available after waiting for FY 1983 financial data. Therefore, SWPA used actual FY 1982 financial data as the basis for the 1983 Power Repayment Study.

Comments and Responses

The Southwestern Power Administration received written comments from three organizations concerning the proposed extension of the System rates through September 30, 1986. The Southwestern Power Resources Association provided comments by letter dated June 26, 1984, the National Wildlife Federation by letter dated June 28, 1984, and the Department of the Army by letter also dated June 28, 1984. A summary of the two major comments and responses to those comments prepared by the SWPA staff follow:

Amortization Policy

Comment: The National Wildlife Federation (NWF) and Department of the Army (DOA) comments relate to repayment policy, and oppose priority of revenue distribution to the highest interest-bearing investment. The NWF further recommends straight-line amortization of the Federal investment to determine revenue requirements. Southwestern Power Resources Association, however, supports the present method of amortization as required under current Department of Energy policies in Order No. RA 6120.2.

Response: SWPA's repayment policy is set forth in Department Of Energy Order No. RA 6120.2. Section 8.c.(3) of that Order states: "To the extent possible, while still complying with the repayment periods established for each increment of investment and unless otherwise indicated by legislation, amortization of the investment will be accompanied by application to the highest interest-bearing investment first." The policy is based on Section 5 of the Flood Control Act of 1944 (Flood Control Act) which requires that power and energy from Federal projects be marketed, ". . . at the lowest possible rates to consumers consistent with sound business principles. . . ." Priority of revenue distribution to the highest interest-bearing investment and the actual amortization methodology are separate issues. The policy of paying the highest interest-bearing investment first, results in reduced interest expense and is consistent with the least cost approach directed by the Flood Control Act. Amortization of the capital investment is required by the Flood Control Act to be accomplished, ". . . over a reasonable period of years. . . ." This period has been determined by Order No. RA 6120.2 to be within 50 years from the date of commercial service for the hydroelectric projects and to be shorter periods for transmission and replacement investments based on their service lives.

Repayment of investment within the established periods takes priority over distribution of revenue to the highest interest-bearing investment. Priority distribution of revenue to the highest interest-bearing investment is made *only* after payment of current and any deferred annual expense and is a sound business principle which results in the lowest rates for the sale of power and energy to the customers. Proper business management requires priority retirement of the most expensive debt to reduce the cost of borrowing. Also, the benefits of Federal multipurpose hydroelectric projects are available not only to electric customers but to those who benefit from the other project purposes such as flood control, water supply, navigation, and recreation. Therefore, the opportunity exists for most taxpayers to participate in the benefits of the hydroelectric projects financed by Congressional Appropriations. It should be noted that hydroelectric power does, in fact, reap actual monetary benefits to the taxpayer and not just hypothetical, indirect, and less specific benefits. The appropriations are tied to rates of interest determined by the cost of borrowing to the Government when the appropriations are made. The interest earned by the taxpayer on appropriations must be paid to the Treasury by the Power Marketing Administrations (PMAs) along with funds to repay the appropriations. Priority of revenue distribution is assigned to payment of imputed annual interest ahead of investment. For PMAs, Congressional Appropriations are the surrogate "debt instrument" which must be repaid within a term not to exceed 50 years. The logic that there are no debt instruments repayable to the Treasury could lead to the erroneous conclusion that no interest should be imputed at all. However, the PMAs (including SWPA) have carefully created a system which endeavors to impute interest costs and interest income that would be identical to the methods used in the private sector. This system includes the management of cash receipts and cash disbursements in such a way as to minimize expenses and maximize proceeds.

SWPA also believes that "Congress intended that sound business principles be applied to protect the Federal investment, not to artificially reduce the repayment obligations of the power purchasers." As reflected previously, Section 5 of the Flood Control Act presents a dual statutory standard regarding rates to be charged for the sale of power and energy. It requires that rates be *both* (1) the lowest possible to consumers and (2) consistent with sound business principles. The requirement to charge the lowest possible rates could result in rates that are too low to repay the Government's investment and related costs, if not governed by the requirements that the rates are to be consistent with sound business principles and recover costs over a reasonable period of years. Conversely, rates that are higher than necessary to pay annual costs and amortize investment could be determined to be excessive. Therefore, one must consider both requirements when developing power rates. Power Repayment Studies, which are prepared annually, demonstrate whether rates satisfy both requirements. Frequent monitoring of the Power Repayment Studies ensures that appropriate action is taken to repay the Federal investment as stipulated by legislation and resultant policy. The Congress decided in the original, and reiterated in subsequent, Power Marketing legislation that it wishes to recover all of the capital which it has invested in the power features of multiple-purpose water projects, including the cost of land, with interest, over a set period of years which bears no necessary relationship to the useful life of the project. Just as in a home mortgage, the recovery of the capital including capital invested in land, is set for a fixed period. Also, just like a home mortgage, current annual costs (such as taxes for a mortgage or operations and maintenance costs for the PMAs) must also be recovered. The mortgage payment is calculated so that equal payments will be made each year on a combination of interest and return of capital over the set period of years. In the early years, interest payments are large and capital payments are small. In the later years, the reverse applies. The rate of interest, as in a mortgage, is set at the beginning of the loan period and continues throughout the life of the loan.

Had the Congress conceived of its investment in power differently, some other method of determining the repayment obligation might well have been appropriate. For example, had the Congress wished to view its investment in power as a permanent investment of public funds which it expected the managers to protect and preserve, it would then have expected that depreciation would have been included in cost recovery. Straight Line or some other accepted form of depreciation on the constructed property, but not on the land, over the useful life of the property—not any arbitrary set period of years—would have been appropriate. Those funds would then appropriately have been reinvested annually in the power program, thus preserving the total capital invested in power. A rate of return would also have been appropriate on that capital, reflecting the current cost of long-term capital to the Treasury. The Congress did not choose a capital budgeting view of its investment. Thus, concepts such as "rate of return" and "straight-line depreciation" are inappropriate to determine repayment obligations. We should remember that we are dealing with the liability side of the balance sheet; hence, the repayment or amortization of a debt, not the depreciation of an asset. The highest interest rate first concept follows logically from these assumptions. The PMAs are placed in the position of a mortgagee, having contracted for several mortgages with different terminal dates and at different interest rates. The statutory requirement to practice sound business principles dictates that the mortgagee reduce his interest burden insofar as possible, consistent with his obligations to repay capital by the terminal dates for each investment.

The Repayment Studies utilize the mortgage type, or declining balance, amortization, the commonly accepted method of repaying debt in most businesses, combined with priority application of revenue to the highest interest-bearing investment. Straight-line amortization would abandon the level payment concept presently utilized with no apparent advantage to be gained within the limits of the cost approach established in the Flood Control Act.

SWPA also believes that it is not financially feasible in a wholly hydroelectric power system to establish a *fixed* schedule of amortization payments in addition to the fixed obligation to recover all annual costs each year, e.g. operation and maintenance, purchase power and wheeling, and interest on the unamortized capital. Therefore, unlike a mortgage, the repayment system permits the PMAs to vary the amount of capital returned to the Treasury from year to year, reflecting the water conditions and, thus, the volume of sales which they experience. The Congress from the beginning recognized that in a hydroelectric marketing system the amount of marketable energy would vary from year to year with the water and agreed, in order to have a stable rate structure, that a reasonable approach to repayment would be to plan to recover capital assuming average water conditions. This enables the PMA to apply a stable rate over a period of years. In good water years, this system recovers more capital than planned; in poor ones, less.

SWPA not only increased its rates effective August 1, 1983, but also changed both their form and structure, to ensure timely repayment of the Federal investment and to avoid variations which had caused earlier deficiencies. The present rates are demonstrated by the 1983 Current Power Repayment Study to repay the Federal investment and related costs within the required number of years without the need for balloon payments in the final years. Of course, as mentioned earlier, the declining balance (or mortgage type) method of amortization will apply greater amounts to interest in early years (less to principal) and greater amounts to principal (less to interest) in later years. There is no impediment to timely repayment of the Federal investment stemming from the present repayment methodology. Impediments most likely to hinder repayment of the Federal investment would center around the inability of a PMA to implement rate increases as needed to cover rising costs, or revised policy that would arbitrarily increase power costs beyond the level of customer demand.

To summarize, SWPA believes that the use of the highest interest-bearing investment first repayment policy does not result in a subsidization of the power users. All power revenues are deposited with the U.S. Treasury upon receipt, and this of course reduces the amount of general funds required from the taxpayer. It is important, however, to distinguish the two separate functions involved here: the Treasury's management of Federal funds and the financial management of the PMAs. The Department has cuncluded that it would be inappropriate for the PMAs (including SWPA) to adopt the perspective of the Treasury Department. The PMAs statutory obligations to repay investment costs financed with appropriations and allocated to power for repayment are similar to obligations associated with term bond financing. That is, no periodic payments are required, but the entire amount must be repaid by a certain time. Any business would manage the repayment of its debts in a way that would minimize its interest expenses and that is what the Department's policy requires the PMAs to do. This debt management practice definitely does not conflict with sound accounting principles nor has it resulted in untimely repayment.

Corps O&M Estimates

Comment: The Southwestern Power Resource Association (SPRA), while supporting the extension, expressed its opinion that Corps' Operation and Maintenance Expense Estimates are excessive by $5.2 million annually and indicated that their previously proposed alternatives for calculating Corps O&M expense "are as valid today as they were when we originally submitted them to SWPA, DOE and the FERC."

Response: In a continuing effort to develop both accurate and understandable procedures for forecasting costs in our power repayment studies, as encouraged by the FERC in its rate orders directed to SWPA, we have reviewed the methodology used to estimate Corps O&M. Since considerable customer confusion was evidenced in the previous rate filing as to the method used by the Corps, which included not only inflation but other cost increase factors as well, the Corps was requested to provide SWPA its future O&M estimates based on FY 1983 cost levels. The Corps applied escalation factors based on project age to its FY 1983 projections to account for "increased O&M requirements that inevitably occur at older projects." Subsequently, SWPA adjusted the Corps' estimates by compounded rates of inflation based on Gross National Product Deflators. Such a method removes the inconsistency in approach between Corps O&M estimates and SWPA O&M and purchased power costs, as well as eliminating the Corps' rate of change percentages which had been confused with inflation and which were applied to typically deficient base year costs (also confusing). SWPA is of the opinion that the new Corps estimates of future O&M expense are based on reasonable and accurate assumptions and that the new methodology warrants serious consideration, even though the result is a reduction in total estimated Corps O&M expense of approximately $2.6 million annually beginning in the fifth year of the cost evaluation period. Further, the new methodology was previously recommended by SPRA (formerly Committee on Power for the Southwest) and the customers as an alternative to the method used to calculate Corps O&M expense in the 1982 Power Repayment Study (PRS). It should be noted, however, that the other projected increases in system costs caused the PRS to show the continuing adequacy of current rates. SWPA will continue to monitor Corps O&M expense, and all other expenses to ensure that estimates continue to be as close to actual occurrences as is reasonably possible.

Availability of Information

Information regarding this rate extension including studies, comments and other supporting material, is available for public review in the offices of the Southwestern Power Administration, 333 West 4th, Tulsa, Oklahoma 74101.

Administrator's Certification

Based on the above costs, the 1983 System Power Repayment Study indicates that the existing power rates will repay all costs of the integrated system including amortization of the power investment in accordance with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204-108, the Administrator has determined that the existing System rates are the lowest possible rates consistent with sound business principles in accordance with Section 5 of the Flood Control Act of 1944.

Environment

The environmental impact of the present rates was analyzed in consideration of the Department of Energy "Environmental Compliance Guide" prior to implementation August 1, 1983. The amount of the proposed increase did not warrant an Environmental Assessment or an Environmental Impact Statement in accordance with these regulations.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis effective October 1, 1984, extension of the existing SWPA System power rates through September 30, 1986. The following System rates shall remain in effect on an interim basis through September 30, 1986, or until the FERC confirms and approves an extension of the rates or substitute rates on a final basis:

Rate Schedule P-4, Peaking Power
Rate Schedule F-4A, Firm Power
Rate Schedule F-4B, Firm Power through Oklahoma Utility Companies
Rate Schedule EE-2 (Revised), Excess Energy Rate Schedule
Rate Schedule IC-2 (Revised), Interruptible Capacity.

Issued at Washington, D.C. this 20th day of August 1984.

[FR Doc. 84-24345 Filed 9-13-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2669-3]

Availability of Environmental Impact Statements Filed September 4, 1984 Through September 7, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

EIS No. 840399, Final, FHW, OR, Albany-Junction City Highway/OR-99E Improvement, Queen Avenue to Tangent Drive, Linn County, Due: October 15, 1984, Contact: Dale Wilken, (503) 399-5749.

EIS No. 840400, DSuppl, COE, MN, Chaska Flood Control Plan, Minnesota River, Carver County, Due: October 29, 1984, Contact: Robbin Blackman, (612) 725-7746.

EIS No. 840401, Draft, EPA, NC, Morehead City Ocean Dredged Material Disposal Site, Designation, Carteret County, Due: October 29, 1984, Contact: E.T. Heinen, (404) 257-3776.

EIS No. 840402, DSuppl, COE, KY, Yatesville Lake Multipurpose/Local Protection Project, Blaine Creek, Lawrence County, Due: October 29, 1984, Contact: John Justice, Jr., (304) 529-5634.

EIS No. 840403, Draft, COE, WA, Quillayute River Navigation Project, Operations and Mainenance, Clallan County, Due: October 29, 1984, Contact: W. Burton Hamner, (206) 764-3624.

EIS No. 840404, Draft, FHW, TN, Pellissippi Parkway/TN-162 Extension, I-40/75 to TN-115/Alcoa Highway, Blount and Knox Counties, Due: October 29, 1984, Contact: Edward Oakley, (615) 251-5394.

EIS No. 840405, Draft, COE, AK, Auke Bay Breakwater and Marina Developments, Permit, Juneau, Due: October 29, 1984, Contact: Gene Augustine, (907) 552-4942.

EIS No. 840406, Final, FHW, CA, Roseville Bypass/CA-65 Construction, I-80 to CA-65, Placer Co., Due: October 15, 1984, Contact: Mike Cook, (916) 440-3541.

EIS No. 840407, Draft, DOE, TN, Oak Ridge Reservation, Central Low-Level Radioactive Waste Disposal Facility, Roane and Anderson Counties, Due: October 29, 1984, Contact: Doyle Brown, (615) 576-4876.

Amended Notice

EIS No. 840398, DSuppl, HUD, WA, Gem Heights Planned Development, Mortgage Insurance, Pierce County, Published FR 9-7-84, Correction—This document was inadvertently filed with the Environmental Protection Agency (EPA) as a Federal Environmental Impact Statement. Its correct status is a State Environmental Impact Statement and is therefore being officially retracted.

Dated: September 11, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-24381 Filed 9-13-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51536; FRL-2670-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of seventeen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-1132, 84-1133, 84-1134, 84-1135, 84-1136 and 84-1137—November 28, 1984.

PMN 84-1138—December 2, 1984.

PMN 84-1139, 84-1140, 84-1141, 84-1142, 84-1143, 84-1144, 84-1145 and 84-1146—December 3, 1984.

PMN 84-1147 and 84-1148—December 4, 1984.

Written comments by:

PMN 84-1132, 84-1133, 84-1134, 84-1135, 84-1136 and 84-1137—October 29, 1984.

PMN 84-1138—November 2, 1984.

PMN 84-1139, 84-1140, 84-1141, 84-1142, 84-1143, 84-1144, 84-1145 and 84-1146—November 3, 1984.

PMN 84-1147 and 84-1148—November 4, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51536]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management

Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notices contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84–1132

Importer. Confidential.

Chemical. (G) Heterocyclic substituted copper phthalocyanine.

Use/Import. (S) Site-limited dye intermediate. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: a total of 6 workers, up to 3 hrs/da, up to 63 da/yr.

Environmental Release/Disposal. Release to water. Disposal by publicly owned treatment works (POTW).

PMS 84–1133

Manufacturer. Confidential

Chemical. (G) Hydroxy acrylic resin.

Use/Production. (G) Resin will be made into paint by our customer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1134

Importer. Confidential.

Chemical. (G) Hydroxy acrylic resin.

Use/Import. (G) Paint is imported and sold. Import range; Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1135

Manufacturer. Confidential.

Chemical. (G) Vinyl urethane.

Use/Production. (G) Resin. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84–1136

Importer. UNIROYAL INC.

Chemical. (G) Substituted aromatic amide.

Use/Import. (S) Industrial modifier for amine-cured expoxy systems. Import range: Confidential.

Toxicity Data. Acut oral: >5,000 mg/kg; irritation: Skin—Very mild, Eye—Non-irritant; Ames Test: Positive, Finished product: Negative.

Exposure. Manufacture and use: dermal and inhalation, a total of 4–10 workers/tower, 2 workers/line and 2–5 workers/curing unit, 1 hr/batch.

Environmental Release/Disposal. Less than 1 to 10 kg/yr released to air.

PMN 84–1137

Manufacturer. UNIROYAL INC.

Chemical. (G) Cycloaliphatic expoxide.

Use/Production. (S) Industrial modifier for amine-cured expoxy systems. Prod. range: Confidential.

Toxicity Data. Acute oral: Between 4,250 and 5,000 mg/kg; Irritation: Skin—Mild, Eye—Mild-irritant; Ames Test: Positive.

Exposure. Use: dermal and inhalation, a total of 4–10 workers/tower, 2 workers/line, 2–5 worker/curing unit and 2 workers/filamint winder, hr/batch.

Environmental Release/Disposal. Less than 1 to 10 kg/yr released to air.

PMN 84–1138

Manufacturer. Confidential.

Chemical. (G) Sulfonated vinylic homopolymer salt.

Use/Production. (G) Oil recovery additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84–1139

Manufacturer. Confidential.

Chemical. (G) Cellulosic ether.

Use/Production. (S) Rheological modifier for fluids used in recovery of subterranean oil and gas. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 10 workers, up to 4 hrs/da, up to 35 da/yr.

Environmental Release/Disposal. Confidential. Disposal by industrial wastewater treatment facility.

PMN 84–1140

Manufacturer. Confidential.

Chemical. (G) Monobasic acid—modified alkyd resin.

Use/Production. (G) Site-limited polymer intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Confidential.

PMN 84–1141

Importer. Confidential.

Chemical. (G) Phenylene bis[benzothiazoyloxoalkylamide] [methylimidazole] derivative mixed salts.

Use/Import. (S) Industrial colorant for paper. Import range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Irritant, Eye—Severe; Ames Test: Mutagenic.

Exposure. Processing: a total of 3 workers per plant.

Environmental Release/Disposal. Release to water.

PMN 84–1142

Manufacturer. The C.P. Hall Company.

Chemical. (G) Aliphatic polyester.

Use/Production. (S) Industrial plasticizer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. Confidential.

PMN 84–1143

Manufacturer. Confidential

Chemical. (G) 2,4,6-trisubstituted phenol.

Use/Production. (G) Chemical intermediate—destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1144

Manufacturer. Confidential.

Chemical. (G) Isoalkyleneoxy alkanoate.

Use/Production. (G) Solvent. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation; Skin—Essentially no irritation, Eye—Slight; LC_{50} 48 hr (Daphnia magna): 370 mg/L; LC_{50} 96 hr (Fathead minnow): 71 mg/L; BOD (Industrial) Day 5: 1% ThoD, Day 10: 9% ThoD, Day 20: 16% ThoD, Day 28: 20% ThoD; BOD (Municipal) Day 5: 5% ThoD, Day 10: 16% ThoD, Day 20: 12% ThoD, Day 28: 29% ThoD.

Exposure. Manufacture: dermal, a total of 3 workers.

Environmental Release/Disposal. Release to air. Disposal by incineration.

PMN 84–1145

Manufacturer. SCM Specialty Chemicals.

Chemical. (G) Alkytrialkoxysilane.

Use/Production. (G) Surface modifier. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-1146

Manufacturer. Confidential.

Chemical. (G) Substituted polyethylene glycol succinate.

Use/Production. (G) Papermaking additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5 g/kg; Irritation: Skin—Mild, Eye—Moderate; Ames Test: Negative.

Exposure. Manufacture: dermal, a total of 90 workers, up to 6 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. 0.05 to 7 kg/day released. Disposal by incineration.

PMN 84-1147

Importer. Confidential.

Chemical. (G) Polyether polyol.

Use/Import. (S) Industrial and commercial base fluid for use in conjunction with mineral oils or polyalphaolefines in the formulation of partially and fully synethetic lubricants, respectively. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

PMN 84-1148

Importer. Confidential.

Chemical. (G) Polyether polyol.

Use/Import. (S) Industrial and commerical base fluid for use in conjunction with mineral oils or polyalphaolefines in the formulation of partially and fully synthetic lubricants, respectively. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

Dated: September 10, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-24364 Filed 9-13-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100012; FRL-2669-8]

Automated Sciences Group, Inc.; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Automated Sciences Group, Inc., 700 Roeder Road, Silver Spring, Maryland 20910, under Contract No. 68-02-3986. This contractor shall perform services for the Office of Pesticide Programs (OPP) of EPA. Some of the information that will be made available to this contractor has been claimed to be confidential business information (CBI). Information will be transferred to the contractor consistent with requirements of 40 CFR 2.301(h). This action will enable the contractor to fulfill the obligations of the contract, and this notice serves to notify affected persons.

DATE: Automated Sciences Group, Inc., will be given access to these documents no sooner than September 19, 1984.

FOR FURTHER INFORMATION CONTACT:

By mail:

William C. Grosse, Program
Management and Support Division
(TS-757C), Office of Pesticide
Programs, Environmental Protection
Agency, 401 M St., SW., Washington,
D.C. 20460.

Office location and telephone number:
Rm. 222, CM#2, 1921 Jefferson Davis
Highway, Arlington, Virginia, (703-
557-2613).

SUPPLEMENTARY INFORMATION: Under this contract, Automated Sciences Group, Inc., shall index, code, and enter technical data into the Pesticide Data Management System (PDMS) from which retrievals are run and bibliographies produced to support the registration, tolerance, and special review programs, and other data-dependent activities of the pesticide registration program.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 3, 6 and 7.

Contractors are authorized to received such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contract with Automated Sciences Group, Inc.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contract with Automated Sciences Group, Inc., specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of this contractor will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: September 6, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-[illegible] Filed 9-13-84; 8:45 am]

BILLING CODE [illegible]

[OPP-100011; FRL-2670-3]

Kendrick & Co.; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under section 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Kendrick & Company, Suite 500, 800 18th Street NW., Washington, D.C. 20006, under Contract No. 68-02-3983. This contractor shall perform various services for the Office of Pesticide Programs (OPP) of EPA. Some of the information that will be made available to this contractor has been claimed to be confidential business information (CBI). Information will be transferred to the contractor consistent with requirements of 40 CFR 2.301(h). This action will enable the contractor to fulfill the obligations of the contract, and this notice serves to notify affected persons.

DATE: Kendrick & Company will be given access to these documents no sooner than September 19, 1984.

FOR FURTHER INFORMATION CONTACT:

By mail:

William C. Grosse, Program
Management and Support Division
(TS-757C), Office of Pesticide
Programs, Environmental Protection
Agency, 401 M St., SW., Washington,
D.C. 20460

Office location and telephone number:
Rm 222, CM#2, 1921 Jefferson Davis
Highway, Arlington, Virginia, (703-
557-2613).

SUPPLEMENTARY INFORMATION: Under this contract, Kendrick & Company will perform word processing services, editing and proofreading, and final typing of manuscripts submitted by OPP, containing documentation of EPA staff analyses and review of data submitted by applicants for registration and reregistration under the Federal Insecticide, Fungicide, and Rodenticide Act, and related correspondence with applicants for registration and others.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret, commercial or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA section 3, 6 and 7. Contractors are authorized to receive such data if the EPA program office managing the contract makes the determiniations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contract with Kendrick & Company.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contract with Kendrick & Company specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of this contractor will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: September 6, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-24373 Filed 9-13-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2670-5]

Nebraska Pretreatment Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the national pollutant discharge elimination system pretreatment program of the State of Nebraska.

SUMMARY: On September 7, 1984, the Environmental Protection Agency approved the State of Nebraska's National Pollutant Discharge Elimination System State Pretreatment Program. This action authorizes the State of Nebraska to administer the National Pretreatment Program as it applies to municipalities and industries within the State.

FOR FURTHER INFORMATION CONTACT: David A. Greenburg, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 426-7035.

SUPPLEMENTARY INFORMATION:

Background

The Pretreatment Program, required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The objectives of the Pretreatment Program are to: (1) prevent introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works or otherwise be incompatible with such works; and (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludge. Local pretreatment programs will be the primary vehicle for administering, applying and enforcing pretreatment standards for industrial users of POTWs. To receive pretreatment program approval, a State must submit to the EPA a modification to its NPDES program pursuant to the requirements and procedures of the General Pretreatment Regulation (40 CFR Part 403).

In support of its application for pretreatment program approval, the State of Nebraska has submitted to EPA copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the State pretreatment program as required by 40 CFR Part 403. EPA has concluded, upon reviewing all of these submitted materials, that the State has adequate legal authority to administer the pretreatment program, including the authority to perform each of the acitivities set forth in 40 CFR 403.10(f)(1)(i)–(vi). The State does not have any provisions for granting removal credits (§ 403.10(f)(1)(vii)), based on its desire to be more stringent than the Federal program and not grant removal credits. The State is authorized to adopt this more stringent approach by section 510 of the Clean Water Act.

The State of Nebraska has also submitted to EPA a program description and a set of sample forms. The program description sets forth the number of POTWs and industrial users subject to the program; the priorities and procedures for issuing State permits to implement the applicable pretreatment requirements; sampling and analysis procedures; enforcement procedures; and a description of the resources to be dedicated to the program. The sample forms indicate the information to be collected from industrial users of POTWs, including industrial waste surveys and permit applications; permits; and monitoring and noncompliance reports. Based upon this information, EPA has concluded that the State will have the necessary procedures and resources, including the procedures and resources listed in 40 CFR 403.10(f) (2) and (3), to administer the pretreatment program. This conclusion is supported not only by a review of the State's program description and forms but also is buttressed by Nebraska's experience in administering its approved NPDES program.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

	Approved NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
California	05/14/73	05/05/78	
Colorado	03/27/75		
Connecticut	09/26/73		06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74		
Kentucky	09/30/83	09/30/83	09/30/83
Maryland	09/05/74		
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri	10/30/74	06/26/79	06/03/81
Montana	06/10/74	06/23/81	(¹)
Nebraska	06/12/74	11/02/79	
Nevada	09/19/75	08/31/78	
New Jersey	04/13/82	04/13/82	04/13/83
New York	10/28/75	06/13/80	
North Carolina	10/19/75		06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		08/10/83
Vermont	03/11/74		03/16/82
Virgin Islands	06/30/74		
Virginia	03/31/75	02/09/82	
Washington	11/14/73		
West Virginia	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

[1] Date of administration signature.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this action from OMB review requirements of Executive Order

12291 pursuant to section 8(b) of that Order.

Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this State Pretreatment Program Approval will not have a significant impact on a substantial number of small entities. Approval of the Nebraska NPDES State Pretreatment Program establishes no new substantive requirements, but merely transfers responsibility for administration of the program from EPA to the State.

Dated: September 7, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-24372 Filed 9-13-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 84-320; Report No. DS-305]

Radiodetermination Satellite Service; Applications Acceptable for Filing

September 7, 1984.

The Commission has found, upon initial review, that the following applications filed by Geostar Corporation (GEOSTAR) on March 31, 1983, for authority to construct, launch and operate radiodetermination satellites are acceptable for filing. The Commission reserves the right to return these applications, however, if, upon further examination, it is determined that they are defective or not in conformance with the Commission's rules, regulations and policies.

Geostar Corporation

2191-DSS-P/LA-84
2192-DSS-P/LA-84
2193-DSS-P/LA-84
2194-DSS-P/LA-84

Application for authority to construct, launch and operate four space stations in the radiodetermination satellite service. Each of the proposed satellites will receive transmissions from a central earth station facility within the 16.5 MHz band between 6525-6541.5 MHz and retransmit these signals throughout the United States in the band 2483.5-2500 MHz at a nominal e.i.r.p. of 34 dBW. Transceivers receiving these signals will, at random intervals, transmit signals back to the satellite in the band 1610.0-1625.5 MHz at a nominal e.i.r.p. between 25.7 and 36 dBW. These signals will be reveived by the satellite and will be retransmitted to the central station within the band 5117-5183 MHz at a nominal e.i.r.p. of 34 dBW. Telemetry, tracking and telecommand will be conducted in the 5 GHz band. The requested orbital locations are 70° W.L., 100° W.L. and 130° W.L. with a fourth satellite colocated at one of these locations as an in-orbit spare. The proposed system would provide radiodetermination and associated message transfer services. This would allow subscribers to determine latitude, longitude and altitude and to exchange brief encoded messages using inexpensive transceivers. Services are proposed to be offered on a noncommon carrier basis.

Simulaneously with the submission of its applications GEOSTAR petitioned the Commission to begin a rulemaking to reallocate spectrum to accommodate this system. (RM-4426) On July 12, the FCC adopted a *Notice of Proposed Rulemaking* to allocate frequencies at 1610.0-1626.5 MHz, 2483.5-2500 MHz, and 5177-5183 MHz for this service, as well as to address regulatory and licensing issues concurrently. *See Notice of Proposed Rulemaking,* FCC 84-319, Docket Nos. 84-689 and 84-690. Comments concerning the reallocation of spectrum and licensing policies and procedures should be filed in accordance with that notice. For reference purposes, GEOSTAR's applications have been assigned the file numbers listed above. Comments or petitions on GEOSTAR's applications may be filed within thirty (30) days of the date of this notice. The time for filing subsequent pleadings is specified in Section 1.45 of the Rules, 47 CFR 1.45. No extensions of time will be granted because of the need to expedite initiation of this new service to the public.

Interested parties wishing to file radiodetermination satellite service applications to be considered concurrently with GEOSTAR's application must do so within forty-five days of the date of this Notice. *See, e.g., Direct Broadcast Satellite Service,* 86 FCC 2d 719, 753 (1981); *Domestic Fixed Satellite Service,* 48 FR 40233 (September 6, 1983). We require each applicant to file a concrete, comprehensive proposal for its proposed radiodetermination satellite system and services, describing in detail all pertinent technical and operational aspects of the system and its ability in fact to proceed expeditiously with actual construction and launch. In particular, this information shall include that specified in Appendix B of *Space Station Application Filing Procedures,* 48 FR 40256 (September 6, 1983), as appropriate. However, in response to item II.F, applicants should address issues relating to compatibility with the proposed Geostar system as required by paragraph 34 of the *Notice of Proposed Rulemaking,* rather than 2° orbital spacing. Applicants should also describe, as a central part of the application, "the position, velocity and/or other characteristics of an object or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves," 47 CFR 2.1, as well as any other ancillary services to be provided. Applications that fail to comport with these requirements, or that fail to address meaningfully the other matters raised in the *Notice of Proposed Rulemaking, supra,* concerning licensing policies and procedures, as of the cut-off date will be dismissed as unacceptable for filing.

Action by the Commission July 12, 1984. Commissioners Fowler (Chairman), Quello and Patrick with Commissioner Dawson dissenting in part and issuing a statement.

For forther information contract: Fern Jarmulnek at (202) 634-1662.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-24380 Filed 9-13-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-850 et al.; File Nos. BP-810202AH]

Central Bucks Broadcasting Co., et al., Applications for Construction Permits; Hearing Designation Order

In the matter of applications of Central Bucks Broadcasting Co., WBUX(AM), Doylestown, Pennsylvania, Has: 1570 kHz, 5 kW, DA-D; Req: 1160 kHz, 1 kW, DA-2, U (MM Docket No. 84-850, File No. BP-810202AH); Windjammer Communications Corp., WQMR(AM), Skowhegan, Maine, Has: 1150 kHz, 5 kW, D, Req: 1160 kHz, 1 kW, 10 kW-LS, U (MM Docket No. 84-851, File No. BP-810604AA); Valley Broadcasting Co., WYNS(AM), Lehighton, Pennsylvania, Has: 1150 kHz, 1 kW, DA-D, Req: 1160 kHz, 1 kW, 5 kW-LS, DA-2, U (MM Docket No. 84-852, File No. BP-810831AP); Mechanicville Broadcasting Co., WMVI(AM), Mechanicville, New York, Has: 1170 kHz, 250 W, D, Req: 1160 kHz, 1 kW, 50 kW-LS, DA-2, Req: 1160 kHz, 1 kW, DA-2, U (MM Docket No. 84-853, File No. BP-810831AW); Raymark Broadcasting Co. Inc., WRID(AM), Homer City, Pennsylvania, Has: 1520 kHz, 500 W, DA-2, U (MM Docket No. 84-854, File No. BP-811116AA); Housatonic Valley Broadcasting Co., WINE(AM), Brookfield, Connecticut, Has: 940 kHz, 1 kW, D, Req: 1160 kHz, 1 kW, 2.5 kW-LS, DA-2, U, Berkshire Broadcasting Corp., WLAD(AM), Danbury, Connecticut, Has: 800 kHz, 1 kW, D, Req: 1160 kHz, 5 kW, 10 kW-LS, DA-2, U (MM Docket No. 84-856, File No. BP-811116AE); Somerset Valley Broadcasting Co. Inc., WBRW(AM), Bridgewater Township, New Jersey, Has: 1170 kHz, 500 W, DA–D, Req: 1160 kHz, 1 kW, 500 W–LS, DA–2, U (MM Docket No. 84–857, File No. BP–811116AG); Minority Broadcasting Co. of the Midwest, Inc., Warrington, Pennsylvania, Req: 1160 kHz, 1 kW, 250 W–LS, DA–2, U (MM Docket No. 84–858, File No. BP–811124AA); Mid-Hudson Valley Broadcasting, Inc., WCRR(AM), Cornwall, New York, Has: 1170 kHz, 1 kW, DA–D, Req: 1160 kHz, 1 kW, 5 kW–LS, DA–2, U (MM Docket No. 84–859, File No. BP–811202AA); Edward F. Perry, Jr., Easthampton, Massachusetts, Req: 1160 kHz, 1 kW, 10 kW–LS, DA–2, U (MM Docket No. 84–860, File No. BP–811204AA); Rama Communications Group, Inc., Oakland, New Jersey, Req: 1160 kHz, 1 kW, 2.5 kW–LS, DA–2, U (MM Docket No. 84–861, File No. BP–811204AB); North Shore Broadcasting Corp., WOBM(AM), Lakewood, New Jersey, Has: 1170 kHz, 5 kW, DA–D, Req: 1160 kHz, 1 kW, 5 kW–LS, DA–2, U (MM Docket No. 84–862, File No. BP–811204AC), for construction permits.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned applications which are linked to each other either directly or indirectly through the presence of intervening interlocking proposals.[1] Also before the Commission are petitions to deny filed by the various applicants[2] and outside parties, and pleadings responsive thereto.

2. *Mechanicville Broadcasting Company (Mechanicville).* Mechanicville notes that 1,638 persons would reside within the proposed daytime 1 V/m contour, a figure greater than 1 percent of the 95,651 persons located within the 25 mV/m contour. Hence, the proposal does not comply with § 73.24(g) (the blanketing provision) of the Commission's Rules. Mechanicville states, however, that it will satisfy all reasonable complaints of blanketing interference within the 1 V/m contour; consequently, an appropriate condition will be specified.

3. *Housatonic Valley Broadcasting Company (Housatonic).* A petition to deny has been filed by Mechanicville alleging overlap between the 0.5 mV/m contour of Housatonic and the 0.5 mV/m contour of first adjacent channel station WCRR, Cornwall-on-Hudson, New York, prohibited by § 73.37(a) of our Rules. In addition, Mechanicville claims that Housatonic's proposed nighttime operation fails to meet the coverage requirements of § 73.24(j) of our Rules.

4. Review of all measurement data submitted by the applicants here persuades us that no overlap exists between the 0.5 mV/m contours of WCRR and the Housatonic proposal. As for Housatonic's coverage of its community of license, Brookfield Town according to the applicant is a combination of urban and rural areas typical of New England civil divisions. We note that Housatonic's proposed nighttime interference-free contour would not cover a substantial area within the actual city limits of Brookfield Town; this coverage however does include the major population centers of Brookfield and Brookfield Center which represent the areas of highest population density within the Census Division. Consequently, we conclude that a waiver of § 73.24(j) (the coverage requirement of our Rules) is warranted.

5. Further, the Commission has not yet received Federal Aviation Administration clearance for the antenna tower proposed by Housatonic.

6. *Berkshire Broadcasting Corporation (Berkshire).* A petition to deny has been filed by Mechanicville. The petition alleges that Berkshire has failed to comply with § 73.21(a)(2)(ii)(C) of our Rules which limits nighttime power of new Class II–B stations on the clear channel frequencies to 1 kilowatt, § 73.188 [§ 73.24(j)] which requires adequate nighttime interference-free service to the community of license, and the § 73.37(e)(2) acceptance criteria.

7. With respect first to our acceptance criteria, only two commercial broadcast stations are licensed to Danbury, Connecticut, WLAD and the co-owned WDAQ(FM), and no FM channel is available for use in that community.[3] Consequently, the proposed WLAD operation would provide a second nighttime aural transmission service to Danbury, and is therefore acceptable for filing under § 73.37(e)(2)(ii) of our Rules.

8. In addition, Berkshire has requested a waiver of § 73.21(a)(2)(ii)(C). We have, however, adopted a strict standard for waiver requests of this nature. Waivers will be granted only upon a showing that the higher power proposed is necessary to provide principal city coverage and will not impeded our allocation objectives. While Berkshire argues that operation at 5 kW is necessary to provide substantial compliance with the nighttime coverage requirement of § 73.24(j) of the Commission's Rules, it appears that operation at 1 kW might cover a sufficient percentage of the residential areas of Danbury either to achieve substantial compliance with our coverage requirement or to satisfy coverage requirements in the manner discussed above in paragraph 4 with respect to New England civil divisions. Hence, Berkshire has not complied with the first part of our test. Moreover, Berkshire has not submitted the required preclusion study. Consequently, an appropriate issue will be specified.

9. *Somerset Valley Broadcasting Company, Inc. (Somerset).* Mechanicville has filed a "request" that the Commission return the Somerset application because of overlap of its proposed 0.5 mV/m contour with the 0.5 mV/m contour of WCNX(AM), Middletown, Connecticut, in contravention of Section 73.37(a) of our Rules. Based on our engineering studies, we conclude that no prohibited overlap will occur, especially in light of the latest amendment, filed March 12, 1984, to reduce daytime power and redesign the directional antenna. Consequently, the petition filed by Mechanicville will be denied.

10. In addition, New Jersey Bell has submitted a letter dated February 1, 1982 stating that its equipment within Somerset's proposed 1 V/m contour is susceptible to AM RFI and could cause interference to the telephone company's operation. Consequently, an appropriate condition will be specified.

11. *Minority Broadcasting Company of the Midwest, Inc. (Midwest).* Somerset has filed a petition to deny alleging that the Midwest proposal fails to provide the nighttime interference-free coverage of the community of license required by § 73.24(j) of our Rules. In addition, a petition for return of this application as unacceptable for filing has been filed by Central Bucks Broadcasting Company. In its petition, Central Bucks complains that Midwest has photocopied the entire technical showing prepared for Central Bucks here by E. Harold Munn, Jr. (with only a substitute page 1, Section V–A of Form 310) without the knowledge or consent of Mr. Munn.

12. Midwest has submitted an amendment dated March 12, 1984 proposing a new antenna site 3.8 miles south of the original antenna site. The amendment includes a complete engineering study, prepared on behalf of Midwest, demonstrating that the

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[1] Groups of this nature are commonly termed "daisy chains".

[2] A motion to enlarge issues would normally be filed by the parties after designation for hearing pursuant to § 1.229 of the Commission's Rules. In these instances, however, the pleadings will be considered at this stage of the proceeding because the allegations relate to the alleged failure of the various parties to meet our criteria governing the acceptance of proposals for filing.

[3] In addition, non-commercial educational station WXCI(FM) is licensed to Western Connecticut State College, Danbury, Connecticut.

proposed 10 mV/m nighttime interference-free contour would cover the entire community of Warrington. Consequently, the petitions of Somerset Valley Broadcasting Company and Central Bucks Broadcasting Company will be dismissed as moot.

13. Midwest has failed to provide the EEO information required in Section VI, Form 301. Midwest's statement that it "will make on-air announcements regarding Equal Employment Opportunities on a daily basis" is clearly insufficient. Consequently, Midwest will be required to file the EEO program found in Section VI, Form 301, with the presiding Administrative Law Judge within 30 days of the release of this Order.

14. Midwest states that its costs for the first three months of operation will be $36,300 and that it will secure operating capital for those three months from Seaway Bank of Chicago. The applicant, however, has not submitted a bank commitment letter refecting an intent to provide Midwest with these funds. Consequently, the applicant has not established its financial qualifications to construct and operate as proposed, and an appropriate issue will be specified.

15. *Edward F. Perry, Jr. (Perry).* A petition to deny and a supplement thereto have been filed by Amherst Broadcasting, Inc., licensee of WTTT(AM), Amherst, Massachusetts (Amherst). In its pleading, Amherst cites Perry's failure here to apprise the Commission of a disqualifying issue specified in a different proceeding against Hampshire County Broadcasting, a corporation in which Perry is a principal. In addition, Amherst contends that Perry, among others, was charged in a civil suit in Federal District Court in the District of Columbia with "unfair competition and fraudulent and corrupt practices."

16. We note, as does Amherst, that Perry has disclosed the civil suit in our Hampshire proceeding and that this proceeding is itself a matter of Commission record; consequently, we do not believe that any intent to conceal or mislead the Commission is apparent. We will require, however, that Perry submit a clarifying amendment to its proposal here reflecting the two proceedings, and that it apprise the presiding Administrative Law Judge of their status on an ongoing basis.

17. Mechanicville has filed a "statement of notice" against the proposed Perry operation, wherein it alleges, and we agree, that Perry has submitted an incomplete financial showing. Specifically, Perry states in his application that during the year following the filing of the Easthampton proposal he "will accumulate the liquid assets necessary to place the required down payments on equipment and operate the station without revenue for three months." Further, Perry maintains that an equipment lease letter and a copy of his most recent balance sheet will be supplied as an amendment to the application. As no such amendment has been forthcoming, and as Perry has not otherwise documented his financial assets, we cannot determine whether he has the necessary funds available to construct and operate the proposed station. An appropriate issue will be specified.[4]

18. Our review of Perry's engineering showing reveals several deficiencies in the Perry application. First, Perry states in his application that the nighttime limit to the Easthampton proposal is less than 5.0 mV/m. We have determined, however, that the nighttime interference-free contour would be greater than 10 mV/m and Perry has not submitted any showing of the nighttime interference-free coverage to support his proposal. Consequently, Perry will be required to submit an amendment detailing the nighttime interference-free coverage of his proposal to the presiding Administrative Law Judge within 30 days of the release of this Order. The presiding Administrative Law Judge will then evaluate the coverage map submitted and specify any additional issues as appropriate. Perry has also failed to provide radiation scales on both daytime and nighttime horizontal antenna plots, and has submitted incorrect data on Section V–G, Form 301 (i.e., missing information on one of the proposed towers). Consequently, a clarifying engineering amendment is required.

19. In addition, the Commission has not yet received Federal Aviation Administration clearance for the antenna tower proposed by Perry. An appropriate issue will be specified.

20. *Rama Communications Group, Inc. (Rama).* New Jersey Bell has submitted a letter dated March 2, 1984 stating that its T–1 carrier facility located within Rama's 1 V/m contour may be subject to blanketing interference. Consequently, an appropriate condition will be specified.

21. *Local notice certification issues.* Applicants for new broadcast stations or major modifications of existing stations are required to give local notice of the filing of their applications in accordance with § 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Perry, Raymark, and Midwest have done either. If they have not already done so, Perry, Raymark, and Midwest will be required to give local public notice and to file a statement that they have complied with the local public notice requirement with the presiding Administrative Law Judge within 30 days of the release of this Order.

22. *Environmental narrative issues.* Since the Mechanicville and Perry proposals constitute major environmental actions as defined by § 1.1305(a) of the Commission's Rules, the applicants are required to submit the environmental narrative information described in § 1.1311 of our Rules. The Mechanicville and Perry proposals fail to include information concerning access roads and power lines to their respective sites and their zoning classifications (if any).

23. Consequently, Mechanicville and Perry will be required to file within 30 days of the release of this Order amended environmental narrative statements with the presiding Administrative Law Judge. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1972), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

24. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[5] However, since the

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[4] Mechanicville also raises allegations of a violation by Perry of our regional concentration of control provision; such contentions have been mooted by our *Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules*, FCC 84–156, released May 1, 1984. In addition, the license of Perry's WGFP(AM), Webster, Massachusetts, has been assigned to Okun Broadcasting Corporation (BAL–840104EQ, consummated March 23, 1984), and an assignment of the license of Perry's WRTT(AM), Vernon, Connecticut, has been granted to Radio-Television-Tele-Communications, Inc. (BAL–840412EP, consummation still pending), thus eliminating any potential multiple ownership problem.

[5] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

25. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower heights and locations proposed by Housatonic Valley Broadcasting Company and Edward F. Perry, Jr.

2. If a final environmental impact statement is issued with respect to Edward F. Perry, Jr. and Mechanicville Broadcasting Company which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

3. To determine with respect to the proposal of Berkshire Broadcasting Corporation whether circumstances exist which warrant waiver of § 73.21(a)(2)(ii)(C) of the Commission's Rules.

4. To determine with respect to the application of Minority Broadcasting Company of the Midwest, Inc.:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

5. To determine with respect to the application of Edward F. Perry, Jr.:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

6. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

7. To determine, in the event it is concluded that choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

26. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

27. It is further ordered, That § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Edward F. Perry, Jr. and Mechanicville Broadcasting Company shall submit the amended environmental narrative statement required by § 1.1311 of the Rules to the presiding Administrative Law Judge with a copy to the Chief, Audio Services Division.

28. It is further ordered, That Edward F. Perry, Jr., Raymark Broadcasting Company, Inc., and Minority Broadcasting Company of the Midwest, Inc. shall comply with the local notice provision of § 73.3580 of the Commission's Rules, as discussed above, and advise the presiding Administrative Law Judge as to compliance within 30 days of the release of this Order.

29. It is further ordered, That in the event that the application of Mechanicville Broadcasting Company is granted, the construction permit shall contain the following condition:

The applicant, pursuant to § 73.88 of the Commission's Rules, shall satisfy all reasonable complaints of blanketing interference within its 1 V/m contour.

30. It is further ordered, That the petition to deny filed by Mechanicville Broadcasting Company against the proposed operation of Housatonic Valley Broadcasting Company, is denied.

31. It is further ordered, That Housatonic Valley Broadcasting Company's request for a waiver of § 73.24(j) of the Commission's Rules, is granted.

32. It is further ordered, That the petition to deny filed by Mechanicville Broadcasting Company against the proposed operation of Berkshire Broadcasting Corporation, is granted to the extent indicated herein and is denied in all other respects.

33. It is further ordered, That the request that the Commission return the application of Somerset Valley Broadcasting Company, Inc. filed by Mechanicville Broadcasting Company, is denied.

34. It is further ordered, That in the event that the application of Somerset Valley Broadcasting Company, Inc. is granted, the construction permit shall contain the following condition:

The applicant, pursuant to § 73.88 of the Commission's Rules, shall satisfy all reasonable complaints of blanketing interference within its 1V/m contour.

35. It is further ordered, That the petition to deny filed by Somerset Valley Broadcasting Company and the petition for return of application as unacceptable for filing filed by Central Bucks Broadcasting Company against the proposed operation of Minority Broadcasting Company of the Midwest, Inc., are dismissed as moot.

36. It is further ordered, That Minority Broadcasting of the Midwest shall submit the EEO information required in Section VI, Form 301, to the presiding Administrative Law Judge within 30 days of the release of this Order.

37. It is further ordered, That the petition to deny and supplement filed by Amherst Broadcasting, Inc. against the proposed operation of Edward F. Perry, Jr., is granted to the extent indicated herein, and is denied in all other respects.

38. It is further ordered, That Edward F. Perry, Jr. shall submit an amendment specifying all judicial and Commission proceedings to which he is a party, and describing all issues being litigated in each, to the presiding Administrative Law Judge within 30 days of the release of this Order.

39. It is further ordered, That Edward F. Perry, Jr. shall submit an amendment detailing the nighttime interference-free coverage of his proposal, an amended Section V-G, Form 301, and appropriate radiation scales to the daytime and nighttime horizontal antenna plots to the presiding Administrative Law Judge within 30 days of the release of this Order.

40. It is further ordered, That the statement of notice filed by Mechanicville Broadcasting Company against the proposed operation of Edward F. Perry, Jr., is granted to the extent indicated herein, and is denied in all other respects.

41. *It is further ordered*, That in the event that the application of Rama Communications Group, Inc. is granted, the construction permit shall contain the following condition:

The applicant, pursuant to § 73.88 of the Commission's Rules, shall satisfy all reasonable complaints of blanketing interference within its 1 V/m contour.

42. *It is further ordered*, That in addition to the copy served on the Chief, Hearing Division, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Divison, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

43. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

44. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–24387 Filed 9–13–84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84–843 et al.; File Nos. BP–810108AD, et al.]

D.R.O., Inc., et al.; Application for Construction Permit; Hearing Designation Order

In the matter of applications of D.R.O., Inc., Fenton, Michigan, Req: 1160 Khz, 1 kW, DA–1, U (MM Docket No. 84–843, File No. BP-810108AD); Radcomm, Inc., WWHK (AM), Mt. Clemens, Michigan, Has: 1430 kHz, 500 W, DA–2, U, Req: 1160 kHz, 1 kW, 10 kW–LS, DA–2, U (MM Docket No. 84–844; File No. BP-811112AD); Minority Broadcasting Co. of the Midwest, Inc., Fenton, Michigan, Req: 1160 kHz, 1 kW, DA–1, U (MM Docket No. 84–845, File No. BP–811117AD), for construction permit.

Adopted: August 31, 1984.

Released: September 11, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegate authority, has under consideration the mutually exclusive applications of D.R.O., Inc. (D.R.O), Radcomm, Inc. (Radcomm) and Minority Broadcasting Company of the Midwest, Inc. (MBC).

2. *Radcomm.* WWHK is presently operating under a special temporary authority to remain silent pending financial reorganizaiton of Radcomm. In addition, a lawsuit is currently pending in a local Micigan court among the shareholders of Radcomm over the funding of the radio station and the financial responsibilities of each of the owners. Under these circumstances, a question is raised as to whether Radcomm possesses sufficient funds to construct and operate its proposed facilties for three months without revenue; consequently, an appropriate financial issue will be specified.

3. *MBC.* D.R.O. has filed a motion to dismiss and a supplement thereto claiming that MBC, in support of its application, copied without authorization D.R.O.'s entire engineering exhibit. Under Commission policy, however, the fact that the MBC application as initially submitted contained copied engineering material did not render the application incomplete and therefore unacceptable at the time of filing. *See, e.g., Roanoke Christian Broadcasting, Inc.*, FCC 84–98, released March 20, 1984. Further, MBC submitted its own complete engineering exhibit prior to the effective date of an injunction issued by the United States District Court (filed in the Northern District of Illinois, Eastern Division pursuant to a civil suit filed by D.R.O.). Therefore, the court's language in its injunction barring the use of the copied engineering "for any purpose" never effectively rendered the application incomplete at any point during its pendency. Accordingly, the petitions will be denied on this basis.

4. We note that MBC in its exhibit has calculated its nighttime interference-free coverage on the basis of 10 mV/m. Commission engineering studies, however, indicate that the nighttime interference-free contour will be considerably greater than 10 mV/m. MBC has not provided a contour map indicating nighttime interference-free city coverage with the higher value. Consequently, the applicant must submit an amendment to the presiding Administrative Law Judge within 30 days of the release of this Order. The Administrative Law Judge will then evaluate the amended proposal and, if the coverage is deemed to be inadequate, specify any additional issues or grant a waiver of § 73.24(j) (the coverage requirement of our Rules) as appropriate.

5. MBC states that its costs for the first three months of operation will be $28,000 and that it will secure operating capital for those three months form Seaway Bank of Chicago. The applicant, however, has not submitted a bank commitment letter reflecting an intent to provide MBC with these funds. Consequently, the applicant has not established its financial qualifications to constuct and operate as proposed, and an appropriate issue will be specified.

6. MBC has also failed to provide the EEO information required in Section VI, Form 301. Consequently, MBC will be required to file the EEO program found in Section VI, Form 301, with the presiding Administrative Law Judge within 30 days of the release of this Order.

7. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

8. Accordingly, *it is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the application of Radcomm, Inc.:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

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[1] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

2. To determine with respect to the application of Minority Broadcasting Company of the Midwest, Inc.:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine: (a) The areas and populations which would recive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing isues, which of the applications should be granted.

9. It is further ordered, That the petition to dismiss and supplement thereto filed by D.R.O., Inc., are denied.

10. It is further ordered, That Minority Broadcasting Company of the Midwest, Inc. shall submit an amendment specifying the coverage to Fenton, Michigan provided by the actual nighttime interference-free contour to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. It is further ordered, That Minority Broadcasting Company of the Midwest, Inc. shall submit the EEO information required in Section VI, Form 301, to the presiding Administrative Law Judge within 30 days of the release of this Order.

12. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-24385 Filed 9-13-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-846, et al.; File Nos. BP-810220 AG, et al.]

WABB, Inc.; et al.; Application for Construction Permit; Hearing Designation Order

In the matter of, WABB, Inc., WABB (AM), Prichard, Alabama, Has: 1480 kHz, 5 kW, DA-N, U, Req: 1160 kHz, 1 kW, 10 kW-LS, DA-N, U (MM Docket No. 84-846 File No. BP-810220AG); Minority Broadcasting Co. of Alabama, Inc., Prichard, Alabama, Req: 1160 kHz, 1 kW, 10 kW-LS, DA-N, U (MM Docket No. 84-847, File No. BP-810304AB); United Broadcasting Co., Inc., Mobile, Alabama, Req: 1160 kHz, 1 kW, 10 kW-LS, DA-N, U (MM Docket No. 84-848, File No. BP-810423AB); Alabama Native American Broadcasting Co., WASG (AM), Atmore, Alabama, Has: 1140 kHz, 10 kW, U, Req: 1160 KhZ, 2.5 kW, 50 kW-LS, DA-2, U (MM Docket No. 84-849, File No. BP-810724AH), for construction permit.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applicaions of WABB, Inc. (WABB), Minority Broadcasting Company of Alabama (Minority), United Broadcasting Company, Inc. (United), and Alabama Native American Broadcasting Company (Alabama Native).

2. *WABB.* A petition to deny has been filed against the proposed operation of WABB by National Public Radio (NPR). NPR has alleged that the WABB proposal, although specifying Prichard as the community of license, would continue to maintain its primary coverage in the metropolitan Mobile area.

3. To the extent that this contention relates to divining the service intentions of WABB, our abolition of the suburban community policy (*Report and Order,* 93 FCC 2d 436 (1983)), obviates any need for us to consider this allegation. We note however, as does NPR, that WABB proposes to retain its main studio in Mobile without the good cause showing required by §73.1125 of our Rules. Consequently, an appropriate issue will be specified.

4. We further note, as does NPR , that WABB has offered its present facilities on 1480 kHz to Spring Hill College of Mobile, Alabama, contingent upon the grant of WABB's 1160 kHz application. Should the WABB proposal on 1160 kHz be granted, however, WABB would no longer have an interest in the facility at 1480 kHZ to assign, as it plans, and the frequency of 1480 kHz would revert to the public domain. *See Southern Keswick, Inc.,* 34 FCC 2d 624 (1972).

5. WABB states in its application that the nighttime limit to its proposal is 3.2 mV/m. We have determined, however, that the nighttime interference-free contour would be slightly greater than the normally protected 10 mV/m contour, and WABB has not submitted any showing of its actual nighttime interference-free coverage contour to support its proposal. Consequently, WABB will be required to submit an amendment detailing the nightime interference-free coverage of its actual contour to the presiding Administrative Law Judge within 30 days of the release of this Order. It is clear, however, that WABB is attemping to serve the city of Prichard from a deep null in its radiation pattern. Consequently, the normally protected 10 mV/m nighttime interference-free contour and the slightly greater actual contour provide service to only a small portion of Prichard. Therefore, WABB has failed to satisfy the coverage requirement of §73.24(j). Although WABB has failed to request a waiver of this rule, we will permit the presiding Administrative Law Judge to evaluate the coverage map submitted and determine whether circumstances exist which warrant a waive of § 73.24(j) of our rules.

6. Applicants for new broadcast stations or major modificaion of existing facilities are required to give local notice of the filing of their applications in accordance with § 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. WABB has filed a local public notice incorrectly listing Mobile, Alabama as the proposed community of license. Consequently, WABB will be required to submit an amended local public notice and to file a statement that it has complied with the local public notice requirement with the

presiding Administrative Law Judge within 30 days of the release of this Order.

7. *Minority.* A petition to dismiss and a motion to dismiss and return application have been filed by WABB and United, respectively, against the proposed operation of Minority. Both petitioners maintain that Minority has submitted the entire WABB engineering proposal except for page 1 of Section V (Form 301) in support of its proposal. The Commission, however, has previously determined that "an applicant whose engineering data is used by another without authorization can adequately protect its property rights, if any, in court. . . ." *Roanoke Christian Broadcasting, Inc.*, FCC 84–98, released March 20, 1984. Consequently, we will specify no issues in this regard.

8. The petitioners also allege, correctly, that Minority actually specified three potential antenna sites in its application; in response, Minority has filed an amendment dated December 23, 1981 identifying the transmitter site as "7535 Telegraph Road; ¼ block north of intersection of Telegraph Road and Bay Bridge Road." Both petitioners, in their replies, claim that the address of 7535 Telegraph Road at the corresponding coordinates provided by Minority is non-existent. We must conclude under these circumstances that Minority has failed to specify a definite and viable transmitter site and has failed, as a consequence, to establish its technical qualifications to construct and operate as proposed. Consequently, an appropriate issue will be specified. Such a technical showing includes the submission of Section V–G, Form 301, daytime and nighttime interference-free coverage contours and an environmental statement (if necessary) and must be made after the transmitter site is established.[1] At that point the presiding Administrative Law Judge may specify at his descretion any additional issues that may arise.

9. In addition, Minority states in its Section II, Form 301 (legal qualifications information) that 10,000 shares in the applicant corporation have been issued, but Minority accounts for the ownership of only 93,600 of these shares. Consequently, we are unsure as to the ownership of the remaining 6,400 shares; Minority will be required to submit a clarifying amendment correcting this discrepancy to the presiding Administrative Law Judge within 30 days of the release of this Order.

10. We also conclude that Minority's financial showing is incomplete. Minority notes in its financial statement that stockholders will lend the corporation the necesary funds to construct and operate as proposed, but no formal signed pledges by the stockholders have been submitted with the application; therefore, we cannot determine whether Minority possesses sufficient funds to construct and operate its proposed station for three months without revenue, and an appropriate financial issue will be specified.

11. *United.* United States in its application that the nighttime limit to its proposal is 8.8 mV/m. We have determined, however, that the nighttime interference-free contour would be slightly greater than the 10 mV/m normally protected contour, and United has not submitted any showing of its actual nighttime interference-free coverage contour to support its proposal. Consequently, United will be required to submit an admendment detailing the nighttime interference-free coverage of its actual contour to the presiding Administrative Law Judge within 30 days of the release of this Order. The presiding Administrative Law Judge will then evaluate the coverage map submitted and determine whether the proposal complies with the coverage requirement of § 73.24(j) of the Commission's Rules and, if not, specify a waiver issue as appropriate.

12. *Alabama Native.* Alabama Native has requested a nighttime operating power of 2.5 kW in contravention of § 73.21(a)(2)(ii)(C) which limits nighttime power of Class II–B stations on the clear channel frequencies to 1kW. It has been determined, however, that using the proposed pattern at the permitted power of 1 kW, coverage of Atmore will be achieved. Consequently, Alabama Native will be required to file an amendment to reduce its nighttime power to 1 kW with the presiding Administrative Law Judge within 30 days of the release of this Order.

13. *Environmental narrative issues.* Since the WABB and United proposals constitute major environmental actions as defined by § 1.1305(a) of the Commission's Rules, the applicants are required to submit the environmental impact information described in § 1.1311 of our Rules. WABB's environmental narrative statement fails to state whether construction of the proposed facility has been a source of local controversy in the community; United's environmental narrative statement fails to include information concerning power lines to the site and whether construction has been a source of local controversy.

14. Consequently, WABB and United will be required to file amended environmental narrative statements with the presiding Administrative Law Judge within 30 days of the release of this Order. In addition, copies shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provision of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

15. Except as indicated by the issues specified below, all applicants are qualifed to construct and operate as proposed.[2] Since the proposals are mutually exclusive, however, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

16. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to WABB, Inc. and United Broadcasting Company, Inc. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the enviroinment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

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[1] Minority has, in any event, failed to obtain FAA clearance for its proposed antenna operation; an appropriate issue will therefore be specified.

[2] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine whether the proposal of WABB, Inc. complies with the main studio location requirements of § 73.1125 of the Commission's Rules.

3. To determine, with respect to the proposal of WABB, Inc., whether circumstances exist which warrant a waiver of § 73.24(j) of the Commission's Rules.

4. To determine whether Minority Broadcasting Company of Alabama, Inc. has available a definite antenna site and whether, in light thereof, the applicant is technically qualified to construct and operate as proposed.

5. To determine with respect to the application of Minority Broadcasting Company of Alabama, Inc.:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed, and

(b) Whether, in light of the evidence adduced pursuant to (a), the applicant is financially qualified.

6. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower height and location proposed by Minority Broadcasting Company of Alabama, Inc.

7. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service.

8. To determine, in the event it is concluded that choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

17. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

18. It is further ordered, That § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, WABB, Inc. and United Broadcasting Company, Inc. shall submit the amended environmental narrative statement required by § 1.1311 of the Rules to the presiding Administrative Law Judge with a copy to the Chief, Audio Services Division.

19. It is further ordered, That WABB, Inc. shall submit an amendment detailing the actual nighttime interference-free coverage of its proposal to the presiding Administrative Law Judge within 30 days of the release of this Order.

20. It is further ordered, That WABB, Inc. shall submit an amended local notice certification pursuant to § 732.3580 of the Commission's Rules, as discussed above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

21. It is further ordered, That the petition to deny filed by National Public Radio, is granted to the extent indicated herein and is denied in all other respects.

22. It is further ordered, That the petition to dismiss filed by WABB, Inc. and the motion to dismiss and return application filed by United Broadcasting Company, Inc., are granted to the extent indicated herein and are denied in all other respects.

23. It is further ordered, That Minority Broadcasting Company of Alabama, Inc. shall submit a revised Section II, Form 301 detailing the ownership of the applicant's stock, to the presiding Administrative Law Judge within 30 days of the release of this Order.

24. It is further ordered, That United Broadcasting Company, Inc. shall submit an amendment detailing the actual nighttime interference-free coverage of its proposal to the presiding Adminsitrative Law Judge within 30 days of the release of this Order.

25. It is further ordered, That Alabama Native American Broadcasting Company shall submit an amendment to reduce its nighttime power to 1 kW to the presiding Administrative Law Judge within 30 days of the release of this Order.

26. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Streeet, NW., Washington, D.C. 20554.

27. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

28. It is further ordered, That the applicants herein, shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-24384 Filed 9-13-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Emergency Training Center, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA).

Dates of Meeting: October 15-16, 1984.

Place: National Emergency Training Center, Emmitsburg, Maryland.

Time: 8:30 a.m.-5:00 p.m.

Proposed Agenda:

October 15-16: Approval of Minutes; Old Business; BOV Visitation to NFA Classes and Facilities; New Business.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact Mr. Joseph Donovan, Superintendent, National Fire Academy, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727 (telephone number 301-447-6771) on or before October 8, 1984.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 5, 1984.

Joseph L. Donovan,

Superintendent, National Fire Academy.

[FR Doc. 84-24335 Filed 9-13-84; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-723-DR]

Major Disaster and Related Determinations; Nevada

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nevada (FEMA-723-DR), dated September 6, 1984, and related determinations.

DATED: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

Notice

Notice is hereby given that, in a letter of September 6, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

> I have determined that the damage in certain areas of the State of Nevada, resulting from severe storms and flooding, beginning or or about July 22, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Nevada.
>
> In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Nevada to have been affected adversely by this declared major disaster:

Clark county for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-24333 Filed 9-13-84; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-722-DR]

Major Disaster and Related Determinations; New Mexico

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA-722-DR), dated September 6, 1984, and related determinations.

DATED: September 6, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

Notice is hereby given that, in a letter of September 6, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

> I have determined that the damage in certain areas of the State of New Mexico, resulting from severe storms and flooding, beginning on or about August 8, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of New Mexico.
>
> In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six monthts after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Lonnie R. Chant of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Mexico to have been affected adversely by this declared major disaster:

Eddy, Lincoln and Otero Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-24334 Filed 9-13-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000161-042.

Title: Gulf United Kingdom Freight Conference.

Parties:

Atlantic Cargo Services, AB
Compagnie Generale Maritime
Hapag Lloyd AG
Intercontinental Transport (ICT) BV
Lykes Bros. Steamdship Co., Inc.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.

Synopsis: The proposed amendment provides for through ratemaking authority, incorporates previously adopted model agreement provisions prescribed by the Commission's interim rules and restates and reorganizes the agreement.

Agreement No.: 207-010640.

Title: Armada/GLTL East Africa Service.

Parties:

Armada Great Lakes/East Africa

Service, Ltd.
Great Lakes Transcaribbean Line, GmbH

Synopsis: The proposed agreement would permit the parties to operate a joint service offering both port-to-port and intermodal service in the trade between U.S. Great Lakes, St. Lawrence River, Atlantic and Gulf Ports and ports in Southwest, South, Southeast and East Africa and the Malagasy Republic.

By Order of the Federal Maritime Commission.

Dated: September 10, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24302 Filed 9-13-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572. 603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008090-024.
Title: Mediterranean North Pacific Coast Freight Conference.
Parties:
d'Amico Societa' Di Navigazione Per Azioni "Italia" Societa' Per Azioni Di Navigazione
Zim Israel Navigation Co., Limited
United Yugoslav Lines

Synopsis: The proposed amendmant would substitute a new article concerning independent action for the Commission's interim mandatory rule and would add a new article authorizing conference action with respect to service contracts.

Agreement No.: 221-010641.
Title: San Francisco Marine Terminal Agreement.
Parties:
San Francisco Part Commission (Port)
Columbus Line (CL)

Synopsis: The agreement provides that CL will have the non-exclusive use of the Port's Piers 94 and 96, to be used as a container terminal for a period of three years with two one-year extension options. CL will use the facilities for its regularly scheduled Northern California port of call. The Port will reduce its revenues from wharfage, dockage, demurrage and storage on Cl's vessels by 40 percent. The parties have requested a 14 day review period.

By Order of the Federal Maritime Commission.

Dated: September 10, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24303 Filed 9-13-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Bancorp, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act) 12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 5, 1984.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Bancorp, Inc.*, Denton, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank of Denton, Denton, Texas.

Board of Governors of the Federal Reserve System, September 10, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-24305 Filed 9-13-84; 8:45 am]

BILLING CODE 6210-01-M

Hamptons Bancshares Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hamptons Bancshares Inc.*, East Hampton, New York; to engage *de novo* through its subsidiary, Leasehampton

Corp., East Hampton, New York, in providing through direct acquisition (purchase) various types of equipment to be leased, for specific periods of time to lessees (end users). As lessor, Leasehampton Corp. will be providing various businesses with the equipment they require without their having to make an outright purchase. At the end of the lease term, a purchase option may be exercised by the lessee to purchase the equipment from Leasehampton Corp. Leasehampton Corp. is benefitted by rental income inclusive of an appropriate financing charge, investment tax credit benefits, tax deferral from the application of accelerated depreciation, as well as the residual cash value of the equipment at the expiration (maturity) of the lease. Leasehampton Corp. will be arranging the financing of lease transactions that have been generated by various third party lessors (lease brokers) in which an assignment is provided to convey and transfer all rights, title and interest in and to the equipment so described on the lease contract. Funding of all such lease transactions will be fully amortizing and the exercising of purchase options will be the responsibility of the lessor and lessee.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, PNC Commercial Corp., Tampa, Florida, in making or acquiring consumer or commercial loans or other extensions of credit (including issuing letters of credit and accepting drafts) for its own account or the account of others and; leasing personal property or acting as agent, broker, or advisor in leasing such property; and providing financial advice to state and local governments, such as with respect to the issuance of their securities.

Board of Governors of the Federal Reserve System, September 10, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-24306 Filed 9-13-84; 8:45 am]

BILLING CODE 6210-01-M

Norstar Bancorp Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp Inc.*, Albany, New York; to acquire Chapdelaine & Co. Government Securities, Inc., New York, New York, thereby acting as a broker to primary dealers of U.S. government securities and securities issued by U.S. government agencies; acting as an underwriter, broker and dealer in obligations of the United States, and bank obligations, including certificates of deposit and bankers' acceptances, that state member banks of the Federal Reserve System may be authorized to underwrite and deal in; and acting as an "inadvertent principal" in the event of the mistaken purchase of securities not authorized by customers when such customers refuse to accept the securities.

Board of Governors of the Federal Reserve System, September 10, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-24307 Filed 9-13-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 7.

Public Health Service

Health Resources and Services Administration

Subject: Information Collection Requirement in 42 CFR Part 57.3003 and 57.3004 (b) and (c)—New
Respondents: Universities
OMB Desk Officer: Fay S. Iudicello

National Institutes of Health

Subject: Telephone Survey of the Public to Determine Changes in Knowledge, Beliefs, and Behaviors Related to Cancer Prevention—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Centers for Disease Control

Subject: Possible Association Between Reye Syndrome and Medication—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Shellfish Certification Cancellation (0910-0022)—Reinstatement
Respondents: 25 States and 5 foreign countries
Subject: Shellfish Certification (0910-0021)—Reinstatement
Respondents: 25 States and 5 foreign countries
OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Report of Black Lung Student Beneficiary at End of School Year (0960-0322)—Revision

Respondents: Individuals who wish to have their Black Lung Student's Benefits Continued
Subject: Recapitulation of State's Report of Wages Paid (0960–0042)—Extension No Change
Respondents: State Agencies
Subject: Statement of Living Arrangements, Support and Maintenance (0960–0174)—Revision
Respondents: Individuals who apply for SSI Benefits
OMB Desk Officer: Robert J. Fishman

Health Care Financing Administration

Subject: Home Health Agency Cost Report—Extention (0938–0022)
Respondents: Providers of Services
Subject: Schedule of Net Hours Available—Existing Collection
Respondents: Medicare Contractors
Subject: Questionnaire Concerning Forged Checks—Revision (0938–0205)
Respondents: Medicare Contractors
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. ATTN: (name of OMB Desk Officer).

Dated: September 7, 1984.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–24183 Filed 9–13–84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 75N–0184; DESI 597]

Certain Anticholinergics in Combination With a Sedative; Drug Efficacy Study Implementation, Denial of Hearing, and Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is denying a hearing and withdrawing approval of the new drug applications of three anticholinergic/sedative combination products because they lack substantial evidence of effectiveness. The products are offered as adjunctive therapy in the treatment of peptic ulcer and the irritable bowel syndrome.

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: The effectiveness of many anticholinergic-antispasmodic/sedative combinations is currently being evaluated under the Food and Drug Administration's (FDA) Drug Efficacy Study Implementation (DESI) program. The agency has now completed its review of three of these products.

In a notice published in the Federal Register of July 27, 1972 (37 FR 15026), FDA announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group (NAS/NRC), on numerous anticholinergic-antispasmodic/sedative combinations including the drug products listed below. The notices stated that the products were "possibly effective" for various gastrointestinal diseases.

1. NDA 9–014; Pro-Banthine with Phenobarbital Tablets manufactured by G.D. Searle & Co., P.O Box 5110, Chicago, IL 60680 (Searle).

2. NDA 13–430; Valpin with Phenobarbital Tablets and Valpin 50 with Phenobarbital Tablets containing 15 milligrams (mg) and 50 mg anisotropine methylbromide, respectively, manufactured by Du Pont Pharmaceuticals, Inc. (formerly manufactured by Endo Laboratories, Inc.), E.I. du Pont de Nemours & Co., Wilmington, DE 19898 (Du Pont). (These products were not reviewed by NAS/NRC. However, a lower strength Valpin with Phenobarbital Tablets (containing 10 mg anisotropine methylbromide) was reviewed by NAS/NRC, and was discussed in July 27, 1972 notice. The agency withdrew approval of that product on October 7, 1977 (42 FR 54619). This notice pertains only to the higher strengths of Valpin with Phenobarbital Tablets.)

In a notice published in the Federal Register of November 11, 1975 (40 FR 52644), the products covered by the present notice and certain other anticholinergic/sedative combinations were permitted to remain on the market pending completion of clinical studies of effectiveness as adjunctive therapy in peptic ulcer, in treating the irritable bowel syndrome, or in treating acute enterocolitis. The notice stated that the studies were to be completed, and the data submitted, within 18 months after the agency approved or commented upon the manufacturer's proposed study protocol. In a notice published in the Federal Register of June 20, 1978 (43 FR 26490), FDA announced it would allow an additional year for completion of the studies because no manufacturer had been able to complete the studies within 18 months.

The manufacturers submitted data on the effectiveness of their products in treating the irritable bowel syndrome and duodenal ulcer, and as adjunctive therapy in peptic ulcer. These data, however, were seriously incomplete and the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) found that the studies were not adequate and well-controlled within the meaning of 21 CFR 314.111(a)(5)(ii), and that they did not show that each component makes a contribution to the combination product, as required by 21 CFR 300.50(a). Therefore, in two Federal Register notices published on January 16, 1981 (46 FR 3977 and 3981), the Director revoked the temporary exemption, reclassified the drugs to lacking substantial evidence of effectiveness, proposed to withdraw approval of the new drug applications, and offered an opportunity for a hearing on the proposal. Manufacturers of some of the drugs covered by the January 16, 1981 notice did not request a hearing and approval for marketing of those drugs has already been withdrawn (46 FR 36248). Manufacturers of other drugs covered by the January 16, 1981 notice did file timely hearing requests. The latter hearing requests are currently under review by the agency.

The manufacturers of the drugs covered by the present notice submitted hearing requests in a timely manner, but submitted no new evaluable data or analyses from clinical trials to support the requests. Instead, the responses relied on legal arguments. For the most part, these manufacturers argued that they require additional time to complete ongoing effectiveness studies and that, in any event, the agency is required to take regulatory action against all anticholinergic/sedative combinations at the same time.

The Commissioner believes that the agency has provided firms with more than enough time to demonstrate effectiveness. Holders of new drug applications approved for safety before 1962 have been on notice for more than 20 years that the effectiveness provisions of the Drug Amendments of 1962 would affect their products. During this time, the manufacturers have been allowed to market their products while FDA undertook to review over 16,500 claims made by 4,000 drug products evaluated by NAS/NRC. See *United States* v. *Article of Drug* * * *

Hormonin, 498 F. Supp. 424, 427 (D.N.J. 1980), *aff'd,* 672 F.2d 904 (3d Cir. 1981). The manufacturers here could have taken advantage of this time to demonstrate the effectiveness of their products. Furthermore, the agency has never implied that it would treat all anticholinergic/sedative combinations as a class. The June 20, 1978 notice specifically stated that the data on one product would be applicable to another only if the two products contained the same ingredients and the same recommended dosage (43 FR 26491).

The Commissioner has reviewed the studies submitted to demonstrate the effectiveness of the products covered by the present notice. The Commissioner finds that the studies do not constitute substantial evidence of such effectiveness. The Commissioner also finds that the manufacturers have not raised any genuine and substantial issue of fact justifying a hearing. In addition, the Commissioner finds the legal arguments presented unpersuasive. Accordingly, the Commissioner is denying the hearing requests and withdrawing approval of the new drug applications. A full discussion follows:

I. The Drugs

1. Pro-Banthine with Phenobarbital Tablets contains 15 mg propantheline bormide and 15 mg phenobarbital.

2. Valpin with Phenobarbital Tablets and Valpin 50 with Phenobarbital Tablets contain 15 mg anisotropine methylbromide and 15 mg phenobarbital, and 50 mg anisotropine methylbromide and 15 mg phenobarbital, respectively.

II. Recommended Uses

The drugs are labeled as possibly effective as adjunctive therapy in the treatment of peptic ulcer and in the treatment of the irritable bowel syndrome (irritable colon, spastic colon, mucous colitis, acute enterocolitis, and functional gastrointestinal disorders).

III. Data Submitted To Support Claims of Effectiveness and Legal Arguments

A. Proof of Effectiveness

The Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 301 et seq.) requires that all drugs be shown to be effective for their labeled indications. Section 505(e) of the act (21 U.S.C. 355(e)) directs FDA to withdraw approval of a new drug application if the manufacturer fails to carry the burden of showing that there is substantial evidence respecting the efficacy of the approved drug. The general contours of substantial evidence are defined by section 505(d) of the act to include "evidence consisting of adequate and well-controlled investigations * * *." To explain the basis upon which FDA determies the effectiveness of a drug and to enunciate the requirements for and characteristics of an adequate and well-controlled clinical investigation, FDA published regulations outlining principles developed over a peroid of many years by investigators actively engaged in the evaluation of the effectiveness of drugs (21 CFR 314.111). In the case of a drug that contains a fixed combination of drugs, FDA has also published regulations that require that, for there to be substantial evidence of effectiveness, each ingredient designated as active must contribute to the claimed effect (21 CFR 300.50(a)) (the combination policy).

B. Pro-Banthine With Phenobarbital Tablets

Searle submitted the results of a study comparing the effectiveness of Pro-Banthine with Phenobarbital Tablets (Pro-Banthine PB), Pro-Banthine Tablets (propantheline bromide alone), phenobarbital alone, and placebo in the irritable bowel syndrome. The design of the study meets the requirements of the combination policy but, as noted in the January 16, 1981 notice of opportunity for hearing (NOOH), the study does not demonstrate the effectiveness of Pro-Banthine. Upon submission of the study, Searle acknowledged that there were no statistically significant differences among treatment groups. Furthermore, Searle made no specific response to the Director's evaluation of the study in the NOOH, nor did it submit additional data. Also, Searle has failed to provide any data or information to counter the agency's conclusion in the January 16, 1981 notice that substantial evidence of effectiveness has not been submitted.

Instead, Searle argues in its request for hearing that Pro-Banthine PB should remain on the market pending the agency's evaluation of effectiveness in treatment of the irritable bowel syndome of all other indentical, similar, or related anticholinergic/sedative combinations. According to Searle, the components of the anticholinergic/sedative combinations are closely related in pharmacological and clinical action. Thus, the firm asserts that if one anticholinergic/sedative product is shown to be effective because of a different protocol design, a larger patient population, or the use of a new methodology, all other related products would show similar results if studied under the same conditions.

Searle notes that the agency found a compelling medical need for anticholingeric/sedative combinations when it exempted the products from the schedule established for completion of the DESI review. Searle states that this medical need still exists.

Finally, Searle argues that because these products have always been treated as a class and subject to the same time limits for conducting studies, manufacturers have had to compete for the same medical investigators and patients. The firm states that the manufacturers were unable to enroll sufficient patients in the studies to demonstrate effectiveness, and that had it known that the agency would not act against the products on a class basis, it would have continued to attempt to enroll and study additional patients.

The Commissioner is taking action at this time against those anticholinergic/sedative combination products for which the supporting data are seriously incomplete. The Commissioner is not required to "choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge* v. *Williams,* 397 U.S. 471, 487 (1970). The agency is currently reviewing the data submitted on other anticholinergic/sedative combinations and will take appropriate regulatory action on those products when the review is complete.

If, as Searle suggests, a number of anticholinergic/sedative combinations were found to be effective, it might be possible to generalize the observations and concluded that, as a class, products of this type, appropriately formulated, are useful for some conditions. That conclusion, however, would not be helpful in determining whether a particular combination product was effective. Other than simply asserting that Pro-Banthine PB is related to anticholinergic/sedative combinations, Searle has presented no evidence demonstrating the effectiveness of other products or showing that such evidence would be applicable to its product as formulated. In the absence of such evidence, only studies of the particular combination can be considered pertinent to that combination. There are no other propantheline bromide with phenobarbital tablets under review for effectiveness.

In 1975, the agency found a medical need for anticholinergic/sedative combinations to remain on the market pending an evaluation of their effectiveness. This finding was based on the perceived importance of the drugs to patient convenience and selection of proper dosage. There is no medical need, however, for a product that has not been shown to be effective after numerous years of study.

The Commissioner acknowledges that all manufacturers of anticholinergic/sedative combinations had to compete for patients and investigators and that the studies were difficult to conduct. It must be noted, however, that a number of manufacturers were able to complete studies. In addition, the difficulties of conducting a study have no bearing on the evaluation of the effectiveness of the drug studied and do not excuse as company from proving that its product is effective. *Cooper Laboratories, Inc.* v. *Commissioner,* 501 F.2d 772, 779 (D.C. Cir. 1974). For all the foregoing reasons, Searle's hearing request is denied.

C. Valpin With Phenobarbital Tablets

Du Pont conducted a study comparing the effectiveness of Valpin 50 PB Tablets, Valpin 50 Tablets (anisotropine methylbromide alone), phenobarbital alone, and placebo in treating irritable bowel syndrome. The design of this study meets the requirements of the combination policy. The study, however, does not provide substantial evidence of effectiveness of either of the Valpin products. Du Pont has submitted reports on only 22 of a possible 120 patients. Only 19 of the 22 patients completed the scheduled treatment. The statistical summary of these preliminary results, submitted by Du Pont, concludes: "Data are not extensive enough for statistical analysis to test for differences in treatment responses among medication groups." FDA noted this acknowledgment by Du Pont in the January 16, 1981 NOOH (46 FR 3979). Du Pont did not in its request for hearing suggest that the study provides substantial evidence of effectiveness.

Du Pont instead contends that the NOOH is deficient for failing to refer specifically to data Du Pont had submitted, making it impossible for Du Pont to respond to the Director's evaluation. As just noted, the NOOH specifically stated that Du Pont conceded that its data were inadequate to draw any conclusions about the effectiveness of Valpin PB and Valpin 50 PB because only 19 patients were enrolled in the study. Du Pont's argument overlooks this reference to its products and the data submitted in support of them.

Du Pont also asserts that the NOOH covers the entire category of anticholinergic/sedative combinations, and that Du Pont is entitled to benefit from all pertinent data submitted by any manufacturer, but that the NOOH failed to cite studies conducted by other manufacturers, or to note where such studies are located. Thus, Du Pont argues that it cannot comment on these studies even though they may affect the determination of effectiveness of its own products. Du Pont incorporates by reference any data submitted by other manufacturers of products identical, similar, or related to Valpin PB and Valpin 50 PB and asserts that if a hearing is held on any of such products, it is entitled to participate in the hearing.

This argument suggests that effectiveness conclusions about anticholinergic/sedative combinations must be made on a class basis. As shown above, the Commissioner is not required to proceed in this manner. Moreover, and more importantly, there are no other anisotropine methylbromide-phenobarbital combinations under review for effectiveness. Other than simply asserting that Valpin PB and Valpin 50 are related to other anticholinergic/sedative combinations, Du Pont has failed to submit any evidence that data demonstrating the effectiveness of other such combinations are applicable to its products. In the absence of such evidence, only studies of the particular combination under review can be considered pertinent to that combination (21 CFR 314.111(a)(5)(ii)(*b*); see 43 FR 26491).

In addition, it must be emphasized that Du Pont is responsible for finding, organizing, and evaluating data supporting the effectiveness of its products (21 CFR 314.200(c)). FDA is unaware of any such data. Even if FDA were, however, it is not the Commissioner's responsibility to identify for Du Pont studies upon which it may or should rely. Moreover, the Director's evaluation of the effectiveness of other manufacturers' products was described in the NOOH.

The Commissioner will, however, incorporate in his evaluation pertinent data not submitted by the sponsor of which he is aware. Accordingly, the Commissioner considered two literature references submitted by another firm to support its hearing request on a different drug on the effectiveness of anisotropine methylbromide combined with phenobarbital. The first reference (King, J.C., "Anisotropine Methylbromide for Relief of Gastrointestinal Spasm: Double-Blind Crossover Comparison Study with Belladonna Alkaloids and Phenobarbital," *Current Therapeutic Research,* 8(11):535–541, 1966) reported on a double-blind, crossover study comparing three antispasmodic drugs—anisotropine methylbromide, anisotropine methylbromide combined with phenobarbital, and belladonna alkaloids combined with phenobarbital. The drugs were administered to 140 patients with gastrointestinal spasm due to a variety of gastrointestinal disorders including pylorospasm, spastic colon, duodenitis, diverticulitis, functional gastrointestinal spasm, irritable colon, gastroenteritis, cholelithiasis, gastritis, acute cholecystitis, internal hemorrhage, carcinoma of the cecum, cardiospasm, heartburn, diaphragmatic hernia, hiatus hernia, and postgastrectomy dumping syndrome.

For the comparison relevant here (anisotropine methylbromide versus anisotropine methylbromide/phenobarbital), the author stated that among the crossover patients, greater relief of gastrointestinal spasm was obtained with anisotropine methylbromide/phenobarbital than with anisotropine methylbromide alone. In 58 patients, 96 percent obtained good to excellent results with anisotropine methylbromide/phenobarbital compared with 86 percent for anisotropine methylbromide alone.

This study does not provide substantial evidence of the effectiveness of Valpin PB in irritable bowel syndrome. The design of the study does not meet the criteria of the combination policy, as there was no phenobarbital group. It is impossible, therefore, to determine the contribution of anisotropine methylbromide to the effectiveness of the combination as a whole (21 CFR 300.50(a)). Only three patients were diagnosed as having irritable bowel syndrome, and neither patient assignments nor results were tabulated by diagnosis. Accordingly, even if three patients were an adequate patient population, it is impossible to compare quantitatively the results of the different medications in the treatment of irritable bowel syndrome (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)).

The second reference (Batterman, R.C., G.J. Movratoff, and J.E. Kaufman, "Anisotropine Methylbromide—A New Antispasmodic for Gastrointestinal Disorders," *Current Therapeutic Research,* 5(5):213–218, 1963) was a report of a single-blind study comparing anisotropine methylbromide alone (administered in both 10-mg and 15-mg doses) and anisotropine methylbromide combined with phenobarbital. The drugs were administered to 67 patients with a variety of gastrointestinal disorders charcterized as peptic ulcer, diverticulitis, functional gastrointestinal disturbance (when the symptomology appeared to be associated with anxiety unrelated to any specific condition), constipation, and gastroenteritis. The authors state that overall effectiveness, regardless of diagnosis, was 77.3 percent for anisotropine methylbromide alone (10 mg), 75 percent for the anisotropine methylbromide alone (15 mg), and 85 percent for the anisotropine methylbromide combined with phenobarbital.

The study fails to provide substantial evidence of the effectiveness of Valpin PB in irritable bowel syndrome or in peptic ulcer, another appropriate indication for investigation. The design of the study does not meet the criteria of the combination policy, as there was no phenobarbital group. It is impossible, therefore, to determine the contribution of anisotropine methylbromide to the effectiveness of the combination as a whole (21 CFR 300.50(a)). The number of patients diagnosed as having irritable bowel syndrome (i.e., lower functional gastrointestinal disease as opposed to upper functional gastrointestinal disease) was not specified either in the protocol or in the report of the results of the study, thereby making it impossible to compare quantitatively the effectiveness of the different medications in the treatment of irritable bowel syndrome (21 CFR 314.111(a)(5)(ii) *(a)(2)(iii)* and *(a)(4)*).

Du Pont also argues that FDA imposed a protocol design that was virtually impossible to follow and that this accounted for the low rate of accession into Du Pont's study. Du Pont contends, therefore, that action against Valpin PB and Valpin 50 PB (as well as any other anticholinergic/sedative combination) should be stayed until reasonable guidelines for conducting studies can be developed and firms are given a reasonable opportunity to complete studies. Du Pont states that it is prepared to work with the agency in establishing practical and valid clinical study methods.

Du Pont's assertion that the "FDA sanctioned protocol" for conducting studies of anticholinergic/sedative combinations is virtually impossible to follow is without merit. FDA has not established any specific protocol for testing of anticholinergic/sedative combination drugs. It has, however, drafted guidelines for studying such products. These guideliens do not constitute legal requirements, but rather reflect an approach to testing efficacy of such drugs which is acceptable to FDA (21 CFR 10.90(b)). If the protocol outlined in the guidelines is too difficult or is otherwise impractical, there has never been any impediment to Du Pont's planning and conducting studies of another design, which it claims it is willing to do. Furthermore, the difficulty of conducting a clinical trial does not excuse a company from proving that its product is effective. *Cooper Laboratories, Inc.* v. *Commissioner, supra.* Du Pont has had ample time to enroll more patients under its existing protocol or to design a new protocol, with or without the agency's assistance, but it has not done so. Accordingly, Du Pont's request for additional time to conduct studies is denied.

IV. Findings

On the basis of the foregoing, the Commissioner finds (1) that there is a lack of substantial evidence that any of the products named above is effective for its labeled indications, and (2) that there is a lack of substantial evidence that each component of the products named above contributes to the claimed effects (21 U.S.C. 355(d); 21 CFR 300.50 and 314.111(a)(5)(ii)). Further, the manufacturers have not demonstrated that there is a genuine and substantial issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052 as amended (21 U.S.C. 355(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the hearing requests are denied and approval of NDA 9-014 for Pro-Banthine with Phenobarbital Tablets; NDA 13-430 for Valpin with Phenobarbital Tablets and Valpin 50 with Phenobarbital Tablets is withdrawn effective October 15, 1985.

Dated: August 30, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84-24332 Filed 9-13-84 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0396; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of pertinent parts of new drug application (NDA) 12-575 for Actifed-C Expectorant. FDA is withdrawing approval because this combination drug product lacks substantial evidence of effectiveness in the relief of symptoms of cough, cold, or allergy. The agency has approved a reformulated product as safe and effective.

EFFECTIVE DATE: October 15, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 6514 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Margery Erickson, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the Federal Register of May 25, 1982 (47 FR 22609), FDA proposed to withdraw approval of the NDA for the drug product described below. The basis of the proposal was that the product lacks substantial evidence of effectiveness as a combination drug as required by 21 CFR 300.50. In response to the notice, Burroughs Wellcome Co. requested a hearing and proposed to reformulate the product.

Actified-C Expectorant (NDA 12-575) containing 10 mg codeine phosphate, 2 mg triprolodine hydrochloride, 30 mg pseudoephedrine hydrochloride, and 100 mg quaifenesin; Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.

In a notice published in the Federal Register of January 3, 1984 (49 FR 153), FDA announced the marketing conditions for a reformulated Actifed-C product. FDA subsequently approved the supplemental application providing for the reformulated product.

Burroughs Wellcome Co. has since withdrawn its hearing request. Accordingly, FDA is now withdrawing approval of those parts of NDA 12-575 that provide for the old formulation known as Actifed-C Expectorant.

Any drug product that is identical, related, or similar to Actifed-C Expectorant and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination product Actifed-C Expectorant will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 12-575 pertaining to Actifed-C Expectorant, and all the amendments and supplements for that product, are withdrawn effective October 15, 1984. Shipment in interstate commerce of the product above, or any identical, related, or similar product that is not the subject of an approved new drug application, will then be unlawful.

Dated: September 5, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24146 Filed 9-13-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Advisory Committee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the months of October and November 1984:

Name: Health Services Research Review Subcommittee.

Date and Time: October 4-5, 1985, 8:00 a.m.

Place: Linden Hill Hotel, Pinehurst Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open October 4, 8:00 to 12:00 noon.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research (NCHSR).

Agenda: The open session of the meeting on October 4, 8:00 a.m. to 12:00 noon will be devoted to presentations by the Director and Divsion Directors, NCHSR, and a business meeting covering administrative matters and reports.

During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with provisions set forth in section 552(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Anthony Pollitt, Ph.D., National Center for Health Services Research, Room 1-52, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3091.

Name: Health Care Technology Study Section.

Date and Time: October 25-26, 1985, 8:00 a.m.

Place: The Pavilion, Conference Room, 12000 Old Georgetown Road, Rockville, Maryland 20852.

Open October 25, 8:00 to 12:00 noon.

Closed for remainder of meeting.

Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research (NCHSR).

Agenda: The open session from 8:00 a.m. to 12:00 noon will be devoted to business meeting covering administrative matters and reports and presentations by the Director and Division Directors, NCHSR. The closed portion of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Dr. Alan E. Myers National Center for Health Services Research, Room 1-52, Park building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3091.

Name: Health Services Developmental Grants Review Subcommittee

Date and Time: November 1-2, 1985, 8:00 a.m.

Place: Linden Hill Hotel, Queensbury Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open November 1, 8:00 to 12:00 noon.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Service Research (NCHSR).

Agenda: The open session of the meeting on November 1 will be devoted to a business meeting covering administrative matters and reports and presentations by the Director and Division Directors, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with provisions set forth in section 552b(c)(6),

Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Mr. Hope S. Glover, National Cenrter for Health Services Research, Room 1-52, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: August 31, 1984.

John E. Marshall,

Director, National Center for Health Services Research.

[FR Doc. 84-24362 Filed 9-13-84; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Livestock Grazing; Proposed Deviation From Scheduled Preparation of Environmental Impact Statements

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed deviation from scheduled preparation of environmental impact statements on livestock grazing.

SUMMARY: This document provides notice of a material deviation from the scheduled preparation of environmental impact statements on livestock grazing as required by the amended final judgment entered in *Natural Resources Defense Council, Inc., et al.,* v. *Cecil Andrus, et al.,* Civil Action No. 1983-73 (D.D.C. April 14, 1978).

ADDRESS: Comments and suggestions should be sent to: Director (220), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: [Civil Action No. 1983-73]. *Natural Resources Defense Council, Inc., et al.,* v. *Cecil Andrus, et al.*

Proposed Deviation From Scheduled Preparation of Environmental Impacts Statements on Livestock Grazing

The amended final judgment in this case requires Federal defendants, specifically the Bureau of Land Management (BLM), to prepare a series of environmental impact statements (EIS's) on their program for managing livestock grazing on public lands. The judgment contemplates material deviations from the judgment upon notice to this court. Specifically, paragraph 9 of the amended final judgment provides:

> If the federal defendants believe, in good faith, that circumstances dictate that any material deviations must be made, then in any event, the federal defendants shall give

Notice to this Court wherein a detailed explanation shall be made of the deviation which is anticipated to occur together with the reason(s) therefor. This Notice shall be filed prior to the anticipated implementation of such deviation, and contemporaneously a copy of such Notice shall be sent by registered mail to all parties to this action (No. 1983–73) and such Notice shall be published in the **Federal Register**. Thereafter, if objections are filed with the court within 30 days from the date of the publication in the **Federal Register**, the federal defendants and the objecting parties may make such motions and present evidence to the court as to them seems proper, and the court shall determine if such deviations shall be allowed to occur or make any other appropriate order; provided, however, that if no objections are filed with the court within such 30 day period, the BLM shall be authorized to implement such deviation.

Paragraph 5(c) of the judgment provides in part that:

> [D]uring fiscal years 1983 through and including 1988, all of the EIS's remaining to be prepared shall be completed and they shall be completed at a yearly rate of at least 14% of the total, cumulative minium, and provided further, that notice of land descriptions and the number of EIS's to be completed each year, beginning in 1982, shall be published in the **Federal Register** at least 60 days prior to the beginning of each year.

According to the plan published by the Federal defendants, coupled with deviations from Fiscal Year 1983, the current schedule requires the BLM to complete 22 EIS's by September 30, 1984, the end of the fiscal year. The BLM has effectively carried out most of the plan. Indeed, by September 30, the BLM will have completed 15 of the 22 EIS's, which represents 20.3 percent of the total cumulative minimum EIS's to be prepared during Fiscal Years 1983 through and including 1988.

During Fiscal Year 1984 there were seven delays.

First, immaterial deviations from the current schedule occurred for preparing and completing the Buffalo, Wyoming, Resource Area Resource Management Plan (RMP)/EIS and the Powder River, Montana, Resource Area RMP/EIS. The revised filing date for these documents is April 29, 1985.

Second, the BLM will be unable to meet the current schedule for completing the San Juan, Colorado, Resource Area RMP/EIS; the John Day, Oregon, Resource Area RMP/EIS; the Lahontan, Nevada, Resource Area RMP/EIS; Book Cliffs, Utah, Resource Area RMP/EIS; and the Cedar, Utah, Resource RMP/EIS. The Federal defendants accordingly give notice of the following proposed material deviations from the current schedule:

RMP/EIS area	State	Revised filing dates
San Juan	Colorado	Dec. 1, 1984.
John Day	Oregon	Nov. 15,1984.
Lahontan	Nevada	Nov. 16, 1984.
Book Cliffs	Utah	Nov. 30, 1984.
Cedar	Utah	Oct. 15, 1984.

Delays in completing the San Juan, Colorado, Resource Area RMP/EIS; the Lahontan, Nevada, Resource Area RMP/EIS; and the Book Cliffs Resource Area RMP/EIS flow from concerns about the land use plans rather than the accompanying site-specific EIS's on managing livestock grazing. Public comments on the draft plan for the San Juan, Colorado, Resource Area required the BLM to reconsider its analysis on oil and gas leasing and wilderness designation. The BLM's response to these comments, including revisions to the draft plan, has added 2 months to the document's scheduled completion. Similarly, in developing its draft plan for Lahontan, Nevada, Resource Area, public comments required the BLM to issue a supplement to the plan, which discussed areas of critical environmental concern and rights-of-way corridors. Preparing and circulating the plan's supplement, including the consistency review of the State of Nevada's Governor, placed the BLM 6 weeks behind its original schedule. And, again, public comments on the draft plan for the Book Cliffs, Utah, Resource Area required the BLM to reconsider its analysis of tar sand development in the area. The BLM's response to these comments, including revisions to the draft plan, has added 2 months to the document's scheduled completion. Because the BLM treats an EIS on its livestock grazing program as interrelated with an RMP, the delays in completing the above three land use plans have necessarily resulted in concomitant delays for completing the site-specific EIS's on managing livestock grazing in the respective resource areas.

The Cedar, Utah Resource Area RMP/EIS has been delayed due to an extended public comment period. The BLM thought the additional 30 days of comment could be compressed into the original schedule. Recent experience has proven this not to be the case. The Cedar, Utah, Resource Area RMP/EIS scheduled completion has been delayed by 2 weeks.

Completion of the John Day, Oregon, Resource Area RMP/EIS has been delayed by management problems. First, a new word processing system proved incompatible with the existing system, delaying issuance of the draft RMP/EIS. Second, subsequent delays occurred because the available staff also was required to work simultaneously on a statewide EIS discussing proposed wilderness designations. These delays have set back publication of the John Day, Oregon, Resource Area RMP/EIS by 6 weeks.

Dated: September 11, 1984.

Robert F. Burford,

Director.

[FR Doc. 84–24378 Filed 9–13–84; 8:45 am]

BILLING CODE 4310-84-M

Public Lands; Amending of State Indemnity Selection Application; Utah

On August 23, 1984, the State of Utah filed an amendment to its state indemnity selection application U–53874 deleting 5,863.24 acres of public land while adding 7,034.56 acres of public land.

The public lands added are described as follows:

Salt Lake Meridian, Utah

T. 36 S., R. 5 E.,
  Secs. 34–35, all.
T. 37 S., R. 5 E.,
  Sec. 1, all;
Sec. 3, all;
  Secs. 9–15, all.

The filing of this amendment segregates the above-described public lands from settlement, sale, location, or entry under the public land laws, including the mining laws but not the mineral leasing laws or the Geothermal Steam Act. This segregative effect shall terminate upon the issuance of a document of conveyance to these public lands, or upon the publication in the **Federal Register** of a notice of termination of the segregation, or upon the expiration of two years from the date of the filing of this amendment, whichever occurs first.

The public lands deleted are described as follows:

Salt Lake Meridian, Utah

T. 36 S., R. 4 E.,
  Secs. 34–35, all.
T. 37 S., R. 4 E.,
  Sec. 1, all;
  Sec. 3, all;
  Secs. 10–12, all.
T. 36 S., R. 5 E.,
  Sec. 31, lots 1–4, E½W½;
T. 37 S., R. 5 E.,
  Sec. 6, S½, NW¼;
  Sec. 7, all.

Pursuant to the regulations contained in 43 CFR 2091.2–6, the above-described public lands, at 10:00 a.m. on October 1, 1984, will be relieved of the segregative effect (as described in FR Doc. 84–16544 of the **Federal Register**, Vol. 49, No. 121, published on June 21, 1984) of the above-mentioned application.

Orval L. Hadley,

Chief, Branch of Lands and Mineral Operations.

[FR Doc. 84–24380 Filed 9–13–84; 8:45 am]

BILLING CODE 4310-DQ-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperatives; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: September 11, 1984.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) and (2) Bounty Transport Inc., 856 Route 25A, Miller Place, NY 11764
(3) 856 Route 25A Miller Place, NY 11764
(4) George Squires, P.O. Box 584, Shoreham, NY 11786.
(1) and (2) North Pacific Canners & Packers, Inc., P.O. Box 1800, Lake Oswego, OR 97034
(3) 18053 S.W. Lower Boones Ferry Rd., Durham, OR 97062
(4) Bill Chaplin, P.O. Box 1800, Lake Oswego, OR 97034.
(1) and (2) Rockingham Poultry Marketing Cooperative, Inc., P.O. Box 275, Broadway, VA 22815
(3) Coop Drive, Broadway, VA 22815
(4) June M. Fahrney, P.O. Box 275, Broadway, VA 22815
(1) and (2) Universal Cooperatives Inc., P.O. Box 460, Minneapolis, MN 55440
(3) 2600 East College Ave., P.O. Box 115, Goshen, IN 46526
(4) Robert Ickes, P.O. Box 115, Goshen, IN 46526.

James H. Bayne,

Secretary.

[FR Doc. 84-24414 Filed 9-13-84; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice, as required by 49 U.S.C. 11524(b)(1), that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Art Metal-U.S.A., Inc., 300 Passaic Street, Newark, NJ 07104.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

(a) Steel Sales, Inc., A New Jersey corporation.

(b) Art Plating, Inc., A New Jersey corporation.

1. Parent corporation and address of principal office: Century Resources, Inc., 3080 Valley View Drive, Columbus, Ohio 43204.

2. Wholly-owned subsidiary which will participate in the operations and state of incorporation: CR Transport, Inc., An Ohio corporation.

1. Parent corporation and address of principal office: Gamble-Skogmo, Inc., 3340 Ocean Park Boulevard, Santa Monica, CA 90405.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Howard Brothers Discount Stores, Inc., a Louisiana corporation;

(ii) Leath and Company, an Indian corporation;

(iii) Leath Furniture Company, a Michigan corporation;

(iv) Leath Furniture Company, an Illinois corporation;

(v) Red Owl Stores, Inc., a Delaware corporation;

(vi) Snyder's Drug Stores, Inc., a Minnesota corporation;

(vii) Southland Wholesale Distributors, Inc., a Louisiana corporation; and

(viii) Woman's World Shops, Inc., a Delaware corporation.

1. Parent corporation and address of principal office: Henkel of America, Inc., 600 Madison Avenue, New York, New York 10022.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Henkel Corporation—Delaware.

(ii) Bonewitz Chemical Services, Inc.—Iowa.

1. Parent corporation and address of principal office: M&L Unlimited, Inc., 1630 Summit Street, P.O. Box 302, New Haven, IN 46774.

2. Wholly-owned subsidiaries which will participate in the operation: Telecommunications of Indiana, Inc., 10929 U.S. Hwy 14, P.O. Box 181, New Haven, IN 46774. Incorporated in the state of Indiana.

1. Parent corporation and address of principal office: The Wickes Corporation, 3340 Ocean Park Boulevard, Santa Monica, CA 90405.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Lee L. Woodard Sons, Inc.;

(ii) Paragon Wood Products, Inc.;

(iii) Wickes Europe, Inc.; and

(iv) Yorktowne, Inc.; all of which are Delaware corporations.

James H. Bayne,

Secretary.

[FR Doc. 84-24415 Filed 9-13-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30537]

Rail Carriers; Missouri Pacific Railroad Co.—Trackage Rights Exemption—The Alton & Southern Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 the acquisition by Missouri Pacific Railroad Company of trackage rights over rail lines of The Alton & Southern Railway Company between St. Louis, MO, and Lenox (Mitchell), IL, and between Granite City and East St. Louis, IL, subject to labor protection.

DATES: This exemption is effective on October 15, 1984. Petitions for reconsideration must be filed by October 4, 1984. Petitions for stay must be filed by September 24, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30537 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) James H. Durkin, Esq., Missouri Pacific Railroad Company, 210 North 13th Street, St. Louis, MO 63103.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call toll free (800) 424-5403, or 289-4357 (DC Metropolitan area).

Decided: September 5, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-24427 Filed 9-13-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30500]

Rail Carriers; Norfolk Southern Corp.-Control-North American Van Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 3 accepting application and setting procedural schedule.

SUMMARY: The Commission accepts for consideration the application for Norfolk Southern Corporation (NS) to acquire control of North American Van Lines, Inc., and sets a schedule for the proceeding. The Commission also dismisses for lack of jurisdiction NS' directly related application under 49 U.S.C. 11301 to assume certain debt obligations.

DATES: Written comments must be served and filed with the Commission no later than October 15, 1984. Preliminary comments by intervening public parties must be filed by October 30, 1984. Responsive applications and opposition evidence must be filed no later than November 13, 1984. Additional scheduling information is included in the Commission's decision.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

ADDRESSES: An original and 20 copies of all pleadings, referring to Finance Docket No. 30500, should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Applicants' Representative:

Eugene T. Liipfert, Fritz R. Kahn, Suite 1000, 1660 L Street, NW., Washington, DC 20036

R. Allan Wimbish, Norfolk Southern Corporation, 204 South Jefferson Street, Roanoke, Virginia 24042

Martin A. Weissert, North American Van Lines, Inc., P.O. Box 988, Fort Wayne, Indiana 46801

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InforSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 10, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,
Secretary.

[FR Doc. 84-24429 Filed 9-13-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 456]

The Staggers Rail Act of 1980—Conference of Interested Parties

AGENCY: Interstate Commerce Commission.

ACTION: Institution of Proceeding.

SUMMARY: The Commission is instituting a proceeding to (1) gather information from carriers and shippers regarding the problems and benefits arising from the implementation of recent legislation, particularly the Staggers Rail Act of 1980, and (2) provide a forum for direct discussion among these affected parties. It is hoped that this conference will lead to a more complete understanding of the changes that have occurred in rail transportation as a result of such legislation, and its implementation, and that it will assist the parties in resolving any problems that may exist.

DATES: Notice of Intent to Participate should be filed by October 1, 1984. A docket management conference is scheduled for October 3, 1984.

ADDRESS: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Comments should refer to Ex Parte No. 456.

FOR FURTHER INFORMATION CONTACT: David H. Allard, Chief Administrative Law Judge, (202) 275-7502.

SUPPLEMENTARY INFORMATION: Pursuant to 49 U.S.C. 10321 and 10311, the Commission is instituting this proceeding. Our purpose is twofold: to gather and analyze, with the assistance of shippers and carriers, information relating to the effect of the reforms stemming from recent rail legislation and to offer a forum for full and frank discussion of problem areas by those directly affected. This proceeding may lead to a greater consensus among all parties as to the proper role of regulation in today's rail transportation markets and will offer opportunities for resolving commercial disputes without recourse to agency, court or legislative intervention.

While the Commission may, as a result of information developed in this proceeding, reexamine existing policies and procedures, it is not our purpose here to determine the rights or obligations of parties, or otherwise relitigate matters at issue before the Commission or resolved in other regulatory proceedings.

A docket management conference is set for 9:30 a.m., October 3, 1984, Offices, Interstate Commerce Commission, Washington, D.C., before the Commission's Chief Administrative Law Judge. The agenda for that conference will include (1) organization, management and structure of the information gathering process; and (2) appropriate time tables for the completion of all aspects of the proceeding. Common interest conference groups may be formed, under the Chief Administrative Law Judge's supervision, around areas such as contracting, reciprocal switching, revenue adequacy, market dominance criteria, maximum reasonable rate guidelines, joint rate and joint route cancellations, etc. In advance of the conference, parties should meet, where practical, and discuss agenda suggestions and submit these ideas to the Chief Administrative Law Judge no later than October 1, 1984. An agenda for the October 3 conference will be available from the Commission's Public Information Office at noon, October 2, 1984.

Parties should be prepared at the conference to discuss means of submitting relevant information and views. They also should be prepared to participate in conference groups and exchange ideas with a view towards: (1) Resolving, to the greatest practical extent through commercially viable processes, areas where disputes may exist among the parties; and (2) identifying the benefits of deregulation that should be preserved or enhanced.

The record and results of the conference groups shall be certified by the Chief Administrative Law Judge to the Commission.

This decision will not significantly affect the quality of the human environment or conservation of energy resources and will not have an adverse impact on small business.

Authority: 49 U.S.C. 10321 and 10311).

It is ordered:

1. A proceeding is instituted upon the Commission's own motion to investigate the effect of recent rail legislation, particularly the Staggers Rail Act of 1980, on the users and providers of rail services.

2. A docket management conference on this subject before the Commission's Chief Administrative Law Judge will be held at 9:30 a.m., October 3, 1984, Offices of Interstate Commerce Commssion, Washington, DC 20423.

3. After the initial docket management conference, a service list shall be established to permit notice to all interested parties and copies of all materials served on the Commission prior to or subsequent to the Conference to be served on all parties on that list.

4. This notice will be published in the **Federal Register.**

Decided: September 10, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-24628 Filed 9-13-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-202)]

Burlington Northern Railroad Company—Abandonment—In Latah and Nez Perce Counties, ID; Findings

The Commission has found that the public convenience and necessity permit the Burlington Northern Railroad Company to abandon its 37.73-mile rail line between Moscow, ID (milepost 86.80) and Arrow, (milepost 123.50) in Latah and Nez Perce Counties, ID. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commisson and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-24576 Filed 9-13-84; 11:44 am]

BILLING CODE 7035-01-M

[Ex Parte No. 347 (Sub-1)]

Coal Rate Guidelines—Nationwide

AGENCY: Interstate Commerce Commission.

ACTION: Postponement of Oral Argument.

SUMMARY: The oral argument in this proceeding, previously scheduled for 10:00 a.m., September 18, 1984, (49 FR 33351, 8-22-84), has been postponed.

DATES: Oral argument in Ex Parte No. 347 (Sub-No. 1) is now scheduled for 10:00 a.m., October 4, 1984. By September 27, 1984, the coordinators should provide the Office of the Secretary with any changes in the list of participants or time allocations previously furnished. The Commission will issue a schedule of appearances.

ADDRESS: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th Street and Constitution Avenue, NW., Washington, D.C.

This notice is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: September 12, 1984.

By the Commission, Acting Chairman Frederic N. Andre.

James H. Bayne,

Secretary.

[FR Doc. 84-24613 Filed 9-13-84; 11:44 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter No. 30-84

Unemployment Insurance Program Letter No. 30-84 establishes September 28, 1984 as the due date for the payment of interest due on interest-bearing Title XII advances at the end of FY 84. It also provides references and interpretive guidelines relating to sections 303(c)(3), 1202(b)(3)(A), 1202(b)(5), and 1202(b)(9) of the Social Security Act, and section 3304(a)(17) of the Federal Unemployment Tax Act on this subject.

These interpretations clarify the establishment of due dates for any interest owed, current or future, in accordance with the amendment made by Pub. L. 98-21 to section 1202(b)(3)(A) of the Act. When such due date falls on either a weekend or Federal holiday any interest due and payable must be paid on or before the next *preceding* business day.

UIPL No. 30-84 is published below.

Dated: September 7, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

Dated: September 7, 1984.

Directive: Unemployment Insurance Program Letter No. 30-84

To: All State Employment Security Agencies

From: Bert Lewis, Administrator for Regional Management.

Subject: Payment of Interest on Title XII Loans

1. *Purpose.* To advise States of the 1984 due date for the payment of interest on Title XII advances, and to transmit instructions for use by SESAs to calculate interest amounts due and reduction of interest due through September 30, 1984.

2. *References.* Social Security Act, section 1202(b)(3)(A), and UIPL 31-83.

3. *Background.* Public Law 98-21 amended section 1202(b)(3)(A) of the Social Security Act to require that the payment of interest due on Title XII advances must be made before the first day of the next fiscal year. The due date for deferred interest on May through September loans remains unchanged (before December 31 of the following year) as does the date for interest due by reason of a later advance; i.e., cash flow loans repaid in full by September 30, followed by subsequent borrowings during the calendar year. All interest payment due dates (including 1202(b)(9)) are either prior to or not later than a given date, so that if interest cannot be paid on the last day it is due because that day falls on a weekend or a Federal holiday, the interest must be paid on the next preceding business day. This rule is applicable at all times in the future.

Expiration Date: September 30, 1986.

The Department of Labor and the Trust/Funds Branch in the U.S. Treasury have determined and agreed that since the last day of Fiscal Year 1984 falls on a Sunday, any interest due and payable prior to October 1, *must be paid on or before* September 28, 1984. The rate of interest to be charged on Title XII advances during Calandar Year 1984 is 9.78 percent; the rate of interest for Calendar Year 1983 is 10.00 percent.

4. *Procedure.* To expedite the interest calculation and billing process at Treasury and to provide SESAs with more time at the end to transmit interest amounts due, the following procedure is being initiated:

a. *Treasury Calculation and Billing of Interest Due.* September 21, 1984, has been designated as the cut-off date for the calculation of interest due. Interest will be calculated by Treasury on the outstanding balance of interest-bearing Title XII advances as of the close of business on that day and projected through September 30, 1984. This amount will be billed to the States as the amount of interest due and payable on or before September 28, 1984. Projection of interest at this point assumes no further advances or repayments after the cut-off date and through September 30, 1984. If a State receives additional advances or makes any voluntary repayments after the September 21 cut-off date, the amount billed by the Treasury must be adjusted by the SESA in accordance with the procedure in (b) and (c) below.

b. *Increased Interest Due to Advances Received After September 21, 1984.* The formula SESAs are to follow to calculate the daily interest accrual on Title XII advances received during the period September 24 through September 28, 1984, is as follows:

Interest Rate (9.78 percent) times 1 day divided by 366 times the amount advanced that day equals the amount of interest due for that day (rounded to the nearest cent). This procedure must be repeated for each day an advance is outstanding *from the day of receipt until and including September 30, 1984.* Since the amount advanced each day is a *separate advance,* the daily interest acrual must be calculated on *each advance* as explained above from the day of receipt until and including September 30, 1984.

The increased amount of interest due will be the sum of the daily interest accruals resulting from the above calculations and is to be added by the SESA to the amount billed by Treasury.

c. *Reduction of Interest Amount Billed Due to Voluntary Repayments Made After September 21, 1984.* To determine the amount of interest to be *subtracted* from the amount billed by Treasury in the event a repayment(s) is made subsequent to September 21, and on or before September 28, 1984, the following procedure should be used:

Perform the calculation as explained in (b) above to determine the daily interest accrual for *each repayment from the date made until and including September 30, 1984* (rounded to the nearest cent). The amount to be *subtracted* from the amount billed by Treasury will be the sum of the daily interest accruals from each day's repayment(s) as explained above.

Any adjustment to the amount billed by Treasury must be documented and substantiated in a letter to the Trust/Funds Branch which must follow the interst payment immediately. Treasury will verify the transactions and adjustments and advise the States if further action is required. Accuracy in the calculation of adjustments by SESAs is essential. If a discrepancy occurs which results in a late payment, the sanctions provided in section 3304(a)(17) of the Federal Unemployment Tax Act and sections 303(c)(3) and 1202(b)(5) of the Social Security Act would apply.

d. The billing notice to the States will include the name and telephone number of a contact person in the Trust/Funds Branch in the U.S. Treasury. Exact detailed instructions for SESAs to follow to pay the interest amount due and payable on or before September 28, 1984, will also be included in the billing letters prepared by Treasury.

e. Treasury Staff are available for consultation with SESAs at any time to verify loans, repayments, and interest charges. Correspondence to the Treasury should be mailed to: Mr. Melvin Visnick, Manager, Trust/Funds Branch, U.S. Treasury Department, Treasury Annex #1 Room 326, Washington, DC 20226.

6. *Action Required.* Agency Administrators should assure that the responsible individuals are advised of this directive; and assure that any interest due and payable on or before September 28, 1984, (or at any later time) is paid timely and in accordance with the instructions provided by the U.S. Treasury Department and federal law requirements.

7. *Inquiries.* Direct questions to the appropriate regional office.

[FR Doc. 84-24417 Filed 9-13-84; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-19-M]

Phelps Dodge Corp.; Petition for Modification of Application of Mandatory Safety Standard

Phelps Dodge Corporation, Tyrone, New Mexico 88065 has filed a petition to modify the application of 30 CFR 55.9-22 (berms or guards) to its Tyrone Branch (I.D. No. 29-00159) located in Grant County, New Mexico. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. There are elevated roadways on the outer banks of the tailings dams working level roads. The roads in question are not used for loading, hauling or dumping of the product being mined; they are service roads used primarily in the daytime that are subject to minimal travel by persons well-versed with conditions of the roads. These roadways are under the constant surveillance of supervisory personnel of the mine and the safety of the dams is under the supervision of a registered professional engineer.

3. The present practice, established pursuant to direction from the state of New Mexico, is that erosion of the faces of the dams be minimized for the safe operation of tailing dams. The state has required that a slight outward grade be maintained to promote immediate drainage of rainfall in a lateral fashion across the roads to prevent the collection of water into large rivulets which would erode the face of the dam. The dams are constructed with sand fraction underflow of hydrocyclones which are spaced evenly in the pipeline across the dam. The sands can be mobilized by even the smallest runoff from rains, the competency of the dam structure itself is directly related to the thickness of the sand shell, and deep erosion channels resulting from runoff reduces the depth of the sand shell, thereby reducing the integrity and safety of the dam and those persons working thereon.

4. Petitioner proposes to install berms only under the following conditions:

a. Along roadways where the outside slope is steeper than 3 to 1; and

b. Along sections of roadways narrower than 20 feet of clear width.

5. Petitioner states that construction of berms along all other roadways could reduce the integrity and safety of the dams because:

a. The berms could cause pooling of floodwaters, promoting absorption of water in the shell of the dam. The greater the excess water contained in the dam the lower its safety factor;

b. If there were breaks in the tailings pipeline on the dams, berms along roadways would tend to direct the entire flow into a single channel which could shortly cause dam failure or significant damage to the dams;

c. The erosion and soaking of roadways which would result by placing berms along the roadways across the dam could create a potential severe driving hazard during times of rainfall, causing water to collect. Maintenance of the roads requires ready access by road maintenance equipment to dress the operational surface following rainfalls. Berms tend to retain the moisture and delay such maintenance.

6. Petitioner states that guard facilities such as post and cables would also result in a diminution in safety to miners. In order to maintain the lateral drainage across the roadways, and protect the integrity of the dam and the safety of persons working thereon, it is necessary not to have any trace berm whatever along the crest of the dam. Posts and/or cables would interfere in sweeping the roadway clear of all materials to the crest of the dam, resulting in leaving a trace berm which would interfere with lateral drainage.

7. As an alternate method, petitioner proposes to classify and use the tailing dam roads as follows:

a. Operational: The most recently constructed road at each dam is the operational road at that dam, and will be used for normal access. Operational roads may be used by personnel who service and maintain cyclones, piping and roads, and by supervisors, tailing dam operators and other authorized personnel who are knowledgeable about the road system and the rules;

b. Intermittently Used: Some roads at each dam are used intermittently by a small number of individuals, primarily engineering technicians who log piezometers. Access to these roads will be restricted to authorized personnel such as supervisory and engineering department personnel. Access will be physically restricted and signs setting forth the classification will be posted at each end;

c. Abandoned: Roads which are seldom used and are not required for normal operations will be classified as abandoned. Access to roads classified as abandoned will be physically restricted.

8. Petitioner further states that trucks normally assigned to tailing dam service have a maximum width of eight feet; other vehicles which normally travel the roads are narrower. The only wider vehicle is a road grader needed for periodic maintenance of the roadway and outer slope. Traffic control signs setting forth the speed limits will be posted at each end of each operational road. Signs showing curves will be installed on the inside of the roads as needed along its length.

9. All personnel assigned to work at tailings dams are and will be task-trained in the duties and hazards likely to be encountered. Vehicles routinely assigned to use at the dams are equipped with two-way radios. No vehicles without an operable radio will be assigned to an operator on any shift.

10. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1984. Copies of the petition are available for inspection at that address.

Dated: September 7, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84–24618 Filed 9–13–84; 8:45 am]

BILLING CODE 4510–43–M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84–136; Exemption Application No. D–4066 et al.]

Grant of Individual Exemptions; Atalanta Sosnoff Segmentation Fund, et al.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department make the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interest of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Atalanta/Sosnoff Segmentation Fund, L.P. (the Partnership) Located in New York, New York

[Prohibited Transaction Exemption 84–136; Application No. D–4066]

Exemption

Section I. Transactions Involving Acquisition of a Partnership Interest

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the acquisition from Atalanta/Sosnoff Capital Corporation (A/S) of interests in the Partnership by employee benefit plans (the Plans) for which A/S provides or will provide investment management services and therefore is or will be a fiduciary, provided that:

(a) a fiduciary of each Plan, who is independent of and unrelated to A/S and its affiliates, authorizes investment of the Plan's assets in the Partnership; and (b) not more than 10% of a Plan's assets are invested in the Partnership.

Section II. Transactions Involving the Partnership

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section IV are met.

(1) *Transactions Between Parties In Interest and the Partnership: General.*

Any transaction between a party in interest with respect to a Plan and the Partnership, or any acquisition or holding by the Partnership of employer securities, if the party in interest is not A/S or one of its affiliates and if, at the time of the transaction, acquisition or holding, the interest of the Plan, together with the interests of any other plans maintained by the same employer or employee organization in the Partnership, does not exceed 5 percent of the total of all assets in the Partnership.

(2) *Special Transactions Not Meeting the Criteria of Section II(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Partnership.*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Plan, and the Partnership, or any acquisition or holding by the Partnership of employer securities, if at the time of the transaction, acquisition or holding—

(A) the interest of the multiemployer plan in the Partnership does not exceed 10 percent of the total assets in the Partnership, and the employer is not a substantial employer with respect to the plan, or

(B) the interest of the multiemployer plan in the Partnership exceeds 10 percent of the total assets in the Partnership, but the employer is not a substantial employer with respect to the plan and would not be a substantial employer if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales or Holdings of Employer Securities.*

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities by the Partnership which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section II, if no commission is paid to A/S or to the employer, or any affiliate of A/S or the employer in connection with the acquisition or sale of employer securities; and

(aa) Neither A/S nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is a debt obligation of the issuer, either:

1. The Partnership owns the obligation at the time the plan acquires an interest in the partnership, and interests in the Partnership are offered and redeemed in accordance with valuation procedures of the Partnership applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Partnership not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such Plan and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. A/S, its affiliates and any collective investment fund maintained by A/S or its affiliates shall be considered to be persons independent of the issuer if A/S is not an affiliate of the issuer.

(B) In the case of a Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subparagraph (3)(A) of this paragraph (a) shall be available only if, immediately after the acquisition of the employer securities, the aggregate fair market value of employer securities with respect to which A/S or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Plan with respect to which A/S or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subparagraph (3)(A) of this paragraph (a), the term "employer securities" shall include securities issued by a person who is a party in interest with respect to a Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) *Transactions With Persons Who Are Parties In Interest With Respect to a Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.* The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction between the Partnership and a person who is a party in interest with respect to a Plan that has an interest in the Partnership if—

(A) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationmship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Plan's assets in, or held by, the Partnership;

(B) The person is not A/S or an affiliate thereof; and

(C) The person is a party in interest with respect to a Plan whose interest in the Partnership, aggregated with the Partnership interests held by any other Plan maintained by the same employer or employee organization, does not exceed 20 percent of the total limited partnership units of the Partnership.

Section III. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any acquisition or holding of qualifying employer securities (other than through the Partnership) by a Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities held by the Partnership; (2) the requirements paragraphs (a)(1), (a)(2) or (a)(3) of Section II of this exemption are met; and (3) the applicable conditions set forth in Section IV of this exemption are met.

Section IV—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of A/S or its affiliate, the terms of the transaction are not less favorable to the Partnership than the terms generally available in arm's-length transactions between unrelated parties.

(b) A/S or its affiliate maintains for a period of six years from the date of the transaction the records necesary to enable the persons described in paragraph (c) of this Section IV to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of A/S or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section IV are unconditionally available at their customary location for examination during normal business hours by:

(A) any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) any fiduciary of a Plan who has authority to acquire or dispose of the interests in the Partnership of the Plan or any duly authorized employee or representative of such fiduciary,

(C) any contributing employer to any Plan or any duly authorized employee or representative of such employer, and

(D) any participant or beneficiary of any Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragrah (c) shall be authorized to examine trade secrets of A/S or its affiliate, or commercial or financial information which is privileged or confidential.

Section V—Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any officer, director, employee, relative of, or partner in any such person, and

(3) any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(C) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(e) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Partnership occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of subsections II(a)(1) or II(b) at such time as the interest of the Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Partnership by the Plan. For this purpose, assets allocated do not include the reinvestment of Partnership earnings. Nothing in this paragraph (e) shall be construed as exempting a transaction entered into by the Partnership which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(f) Each Plan shall be considered to own the same proportionate undivided interest in each asset of the Partnership as its proportionate interest in the total assets of the Partnership as calculated on the most recent preceding valuation date of the Partnership.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 20, 1984 at 49 FR 29487.

Written Comments

The only comment received by the Department was submitted by the applicants who were seeking to correct errors of fact contained in their original exemption application. Both the original application and the notice of proposed exemption state that Mr. Martin T. Sosnoff owns 50% of the outstanding capital stock and is an executive Officer of Atalanta Capital Corporation (Capital) and that Mr. Shepard D. Osherow is an executive officer of Capital. This factual information was correct at the time the exemption application was filed. However, as of November 15, 1983, Messrs. Sosnoff and Osherow resigned their positions with Capital and Mr. Sosnoff relinquished his equity interest in Capital. The Department has considered this information and has determined, on the basis of the entire record in this case, that the exemption should be granted as proposed.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll free number.)

Emerald Packaging, Inc. Employees Profit Sharing Plan and Emerald Packaging, Inc. Pension Plan (the Plans) Located in Berkeley, California

[Prohibited Transaction Exemption 84-137; Exemption Application Nos. D-4992 and D-4993]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of five years, to the proposed loans by the Plans of up to 25% of each Plan's assets to Emerald Packaging, Inc., provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27848.

Temporary Nature of Exemption

This exemption is temporary and will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plans may hold loans originated during this five year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with

section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 11th day of September 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84-24408 Filed 9-13-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on October 2, 1984, from 9:00 a.m.-6:30 p.m. and on October 3, 1984, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Penn. Avenue NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on October 2, 1984, from 9:00 a.m.-6:30 p.m. and on October 3, 1984, from 9:00 a.m.-11:00 a.m. Topics for discussion will be Guidelines, Special Initiatives, Review Process and Five Year Plan.

The remaining sessions of this meeting on October 3, 1984, from 11:00 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: September 10, 1984.

John H. Clark,

Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-24401 Filed 9-13-84; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Dance/Inter-Arts/State Programs Presenting-Touring Initiative Section) to the National Council on the Arts will be held on October 1, 1984, from 9:30 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Penn., Avenue, N.W., Washington, D.C. 20506.

A portion of the meeting will be open to the public on October 1, 1984, from 3:00-6:00 p.m. to discuss policy and guidelines review.

The remaining sessions of this meeting on October 1, 1984, from 9:30 a.m.-3:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: September 10, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-24402 Filed 9-13-84; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Atmospheric Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date: October 3-5, 1984.

Time: 9:00 a.m.-5:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting:

Open
- October 3 (9:00 a.m.-5:00 p.m.) and October 4 (9:00 a.m.-12:00 noon)

Closed
- October 4 (1:00 p.m.-5:00 p.m.) and October 5 (8:30 a.m.-5:00 p.m.).

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C. 20550, telephone: (202) 357-9874.

Purpose of committee: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area.

Agenda

October 3, 1984, Room 543—9:00 a.m. to 5:00 p.m. (Open)

- Opening Remarks by Chairman, ACAS and Division Director, ATM
- Approval of Minutes from ACAS Meeting April 25-27, 1984
- Science and Engineering Education Interaction
- Response to the Centers and Facilities Section (CFS) Review at April 25-27, 1984 Meeting
- Remarks by Acting Assistant Director, AAEO
- Long Range Planning for FY 1987-1991
- Criteria for Long Range Planning (LRP) for FY 1987-1991
- Response of ACAS Chairman to LRP Discussion

October 4, 1984, Room 543—9:00 a.m. to 12:00 noon (Open)

- Remarks by Director, NSF.
- Conclusion of Long Range Planning for FY 1987-1991.

October 4, 1984, Rooms 628, 642, and 643—1:00 p.m. to 5:00 p.m. and October 5, 1984, 8:30 a.m. to 5:00 p.m. (Closed)

Committee review of the Atmospheric Chemistry, Climate Dynamics, and Experimental Meteorology Programs, including examination of proposal jackets, reviewer comments and other privileged material.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 11, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-24435 Filed 9-13-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and Time: October 1 & 2, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Time of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Program Director, Systematic Biology, (202) 357–9588, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 11, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-24434 Filed 9-13-84; 8:45 am]

BILLING CODE 7555-01-M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–7934.

SUPPLEMENTARY INFORMATION: On July 30, 1984, the National Science Foundation published a notice in the **Federal Register** of permit applications received. On September 7, 1984 permits were issued to:

Wayne Z. Trivelpiece
David F. Parmelee
Donald B. Siniff
Arthur L. DeVries
William M. Hamner

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 84-24406 Filed 9-13-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export and Import Nuclear Facilities or Materials; Mitsubishi International Corp., et al.

Correction

In FR Doc. 84–22965 appearing on page 34317 in the issue of Wednesday, August 29, 1984, make the following correction to the table "NRC Import/Export Applications". The third entry in the column "Material in kilograms; Total element" reading "88,377" should have read "38,377".

BILLING CODE 1505-01-M

[Docket No. 50-294]

Finding of no Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-114; Michigan State University

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Amendment to Facility Operating License No. R–114 for the Michigan State University (MSU) research reactor located on the campus in East Lansing, Michigan.

The Amendment will renew the Operating License until February 15, 1998, in accordance with the licensee's application dated September 19, 1977, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on December 20, 1977 at 42 FR 63829. No request for hearing or leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Summary of Environmental Impacts as Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1969. The environmental impacts associated with the continued operation of the MSU facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the MSU reactor for an additional 14 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an

Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the Technical Specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) The expected consequences of a broad spectrum of postulated credible accidents have been considered, emphasizing those likely to cause loss of integrity of fuel-element cladding. The staff performed conservative analyses of the most serious credible accidents and determined that the calculated potential radiation doses in unrestricted areas are small fractions of 10 CFR Part 20 guidelines;

(c) The systems provided for control of radiological effluents can be operated to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA); and

(d) The licensee's Technical Specifications, which provide limiting conditions for the operation of the facility, are such that there is a high degree of assurance that the facility will be operated safely and reliably.

For further details with respect to this proposed action, see the application for license renewal dated September 19, 1977, as supplemented, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG-1084).

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTENTION: Director, Division of Licensing.

Copies of NUREG-1084 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this September 5, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84-24413 Filed 9-13-84; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities or Materials; Mitsui and Co. (U.S.A.), Inc.

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 10th day of September 1984 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type (percent)	Material in kilograms		End-use	Country or destination
		Total element	Total isotope		
Mitsui & Co. (USA), Inc., 8-27-84, 8-29-84, XSNMO2171.	3.95	40,750	1,236	Fuel for Kashiwazaki Kariha Unit 1	Japan.
Mitsui & Co. (USA), Inc., 8-28-84, 8-31-84, XSNMO2172.	3.95	17,360	529	Reload fuel for Kashiwazaki Kariha Unit 1	Japan.

[FR Doc. 84-24412 Filed 9-13-84; 8:45 am]

BILLING CODE 7590-01-M

[NUREG-0800]

Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability

The U.S. Nuclear Regulatory Commission (NRC) has published a revision to Section 6.2.1.1.C, "Pressure-Suppression Type BWR Containments" of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision consists of SRP Section 6.2.1.1.C, Rev. 6 and incorporates the resolution of Generic Issue B-10, "Behavior of Mark III Containments." The acceptance criteria and guidelines incorporated into the SRP section are detailed in Appendix C to NUREG-0978, "Mark III LOCA-Related Hydrodynamic Load Definition." The implementation guidelines for Mark III containment LOCA-related hydrodynamic loads are identified in Section 4 of NUREG-0978. All changes to SRP Section 6.2.1.1.C are identified by a line in the margin of the revised SRP section.

The revised SRP section is effective immediately. A copy is expected to be available in the Public Document Room within 2 weeks. Copies of the revised SRP Section or of the complete Standard Review Plan, NUREG-0800, Accession No. PD-81-920199, are available for purchase from the National Technical Information Service, 5385 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650.

Dated at Bethesda, Maryland this 10th day of September, 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-24411 Filed 9-13-84; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A84-13; Order No. 575]

Dodgeville, MI 49921 (Lorraine Richards, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: September 10, 1984.

Docket Number: A84-13.

Name of affected post office: Dodgeville, Michigan.

Names(s) of petitioner(s): Lorraine Richards.

Type of determination: Closing.

Date of filing of appeal papers: September 5, 1984.

Categories of Issues Apparently Raised

1. Whether the petition was timely filed, so as to give the Commission jurisdiction to hear the appeal.
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].
3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
4. Effect on employees [39 U.S.C. 404(b)(2)(B)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decisional schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 20, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Petition

September 5, 1984—Filing of Petition.

September 10, 1984—Notice and Order of Filing of Appeal.

October 1, 1984—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

October 10, 1984—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

October 30, 1984—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

November 14, 1984—(1) Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

November 21, 1984—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of a prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].

January 3, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 84-24433 Filed 9-13-84; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14134-812-5109]

The Bank of New York; Proposal To Amend an Existing Order of the Commission Pursuant to Section 38(a) of the Act

September 7, 1984.

Notice is hereby given that the Commission proposes to issue an order pursuant to Section 38(a) of the Investment Company Act of 1940 ("Act") amending an existing order of the Commission dated November 20, 1981 (Investment Company Act Release No. 12053). The existing order exempts The Bank of New York ("BONY"), 90 Washington Street, New York, New York 10015, any subcustodian of BONY, any custodian for which BONY acts as subcustodian and any investment company registered under the Act other than an investment company registered under Section 7(d) of the Act ("company") from the provisions of Section 17(f) of the Act and Rule 17f-4 thereunder to the extent necessary to permit BONY, as the custodian of the securities and other assets of an investment company ("securities") or as the subcustodian of such securities as to which any other entity is acting as custodian and such other entity for which BONY so acts, to deposit or to cause or permit the deposit of such securities in foreign banks and foreign securities depositories (as defined in the order) under certain conditions.

As defined in the application as amended, "securities" do not include securities issued by the Government of the United States or by any State or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or of any State thereof other than certificates of deposit, evidence of indebtedness and other securities, issued or guaranteed by an entity so organized which have been issued or sold outside the United States. "Foreign bank" is defined to be a banking institution supervised and regulated by the banking authorities in the location where such institution may maintain physical custody of the securities and "securities depository" is defined to be any system for the central handling of securities abroad where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities.

The existing order provides, *inter alia,* that the custody agreement between BONY and the company, or the subcustodial agreement between BONY and the entity which acts as the custodian for the assets of the company, is subject to the approval of the company and, under Rule 17f-4(d)(5), the approval and review at least annually of the board of directors of the company.

Section 38(a) of the Act provides, in part, that the Commission shall have the authority from time to time to make, issue, amend and rescind such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission by the Act. Pursuant to that section, the Commission proposes to amend the existing exemptive order to conform certain conditions of that order to Rule 17f-5 [17 CFR 270.17f-5] which was adopted by the Commission in Investment Company Act Release No. 14132, dated September 7, 1984.

As amended, the BONY order would permit registered management investment companies to maintain cash and cash equivalents with eligible foreign custodian only in amounts reasonably necessary to effect the company's foreign securities transactions.[1] Investment companies relying on the amended order would be able to maintain their securities and other assets only in the care of the following eligible foreign custodians: (i) a banking institution or trust company incorporated or organized under the laws of country other than the United States that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200 million (U.S. $ or the equivalent of U.S. $);[2] (ii) a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100 million (U.S. $ or the equivalent of U.S. $);[3] (iii) a securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country;[4] or (iv) a securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States which operates a transnational system for the central handling of securities or equivalent bookentries.[5]

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[1] *See* paragraph (a) of Rule 17f-5.

[2] *Id.,* at paragraph (c)(2)(i).

The existing order would be further amended to provide that before a foreign custody arrangement is implemented, a majority of the board of directors of the company must approve the foreign custodian and the terms of the custody agreement with that custodian as consistent with the best interests of the company and its shareholders.[6] Further, the board of directors must establish a system to monitor all foreign custody arrangements made pursuant to the terms of the amended order[7] and, at least annually, review and approve the continuance of such arrangements as consistent with the best interests of the company and its shareholders.[8] Any investment companies that have made foreign custody arrangements in reliance on the existing exemptive order will have until March 1, 1985 to conform those arrangements to the conditions of the order as amended.

Notice is further given that any interested person wishing to request a hearing may do so, not later than October 1, 1984, at 5:30 p.m., by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Acting Secretary, Securities and Exchange Commission, Washington, D.C. 20549. After said date, an order will be issued amending the existing order unless the Commission orders a hearing upon request or upon its own motion.

By the Commission.
Shirley E. Hollis,
Acting Secretary.

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[3] *Id.*, at paragraph (c)(2)(ii).

[4] *Id.*, at paragraph (c)(2)(iii).

[5] *Id.*, at paragraph (c)(2)(ii).

[6] *Id.*, at paragraph (a)(1).

[7] *Id., at paragraph (a)(2).*

[8] *Id., at paragraph (a)(3).*

[Release No. 14133; 812-4475]

The Chase Manhattan Bank, N.A.; Proposal To Amend An Existing Order of the Commission

September 7, 1984.

Notice is hereby given that the Commission proposes to issue an order pursuant to Section 38(a) of the Investment Company Act of 1940 ("Act") amending an existing order of the Commission dated November 20, 1981 (Investment Company Act Release No. 12053). The existing order exempts the Chase Manhattan Bank, N.A. ("Chase"), 1 Chase Manhattan Plaza, New York, New York 10081, any subcustodian of Chase, any custodian for which Chase acts as subcustodian and any investment company registered under the Act other than an investment company registerd under section 7(d) of the Act ("company") from the provisions of section 17(f) of the Act and Rule 17f–4 thereunder to the extent necessary to permit Chase, as the custodian of the securities and other assets of an investment company ("securities") or as the subcustodian of such securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit or to cause or permit the deposit of such securities in foreign banks and foreign securities depositories (as defined in the order) under certain conditions.

As defined in the application as amended, "securities" do not include securities issued by the Government of the United States or by any State or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or of any state thereof other than certificates of deposit, evidences of indebtedness and other securities, issued or guaranteed by an entity so organized which have been issued or sold outside the United States. "Foreign bank" is defined to be a banking institution supervised and regulated by the banking authorities in the location where such institution may maintain physical custody of the securities and "securities depository" is defined to be any system for the central handling of securities abroad where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities.

The existing order provides, *inter alia*, that the custody agreement between Chase and the company, or the subcustodial agreement between Chase and the entity which acts as the custodian for the assets of the company, is subject to the approval of the company and, Rule 17f–4(d)(5), the approval and review at least annually of the board of directors of the company.

Section 38(a) of the Act provides, in part, that the Commission shall have the authority from time to time to make, issue, amend and rescind such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission by the Act. Pursuant to that section, the Commission proposes to amend the existing exemptive order to conform certain conditions of that order to Rule 17f–5 [17 CFR 270.17f–5] which was adopted by the Commission in Investment Company Act Release No. 14132, dated September 7, 1984.

As amended, the Chase order would permit registered management investment companies to maintain cash and cash equivalents with eligible foreign custodians only in amounts reasonably necessary to effect the company's foreign securities transactions.[1] Investment companies relying on the amended order would be able to maintain their securities and other assets only in the care of the following eligible foreign custodians: (i) a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200 million (U.S. $ or the equivalent of U.S. $);[2] (ii) a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100 million (U.S. $ or the equivalent of U.S. $);[3] (iii) a securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country;[4] or (iv) a securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States which operates a transnational system for the central handling of securities or equivalent book-entries.[5]

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[1] *See* paragraph (a) of Rule 17f–5.

[2] *Id.*, at paragraph (c)(2)(i).

[3] *Id.*, at paragraph (c)(2)(ii).

[4] *Id.*, at paragraph (c)(2)(iii).

The existing order would be further amended to provide that *before* a foreign custody arrangement is implemented, a majority of the board of directors of the company must approve the foreign custodian and the terms of the custody agreement with that custodian as consistent with the best interests of the company and its shareholders.[6] Further, the board of directors must establish a system to monitor all foreign custody arrangements made pursuant to the terms of the amended order[7] and, at least annually, review and approve the continuance of such arrangements as consistent with the best interests of the company and its shareholders.[8] Any investment companies that have made foreign custody arrangements in reliance on the existing exemptive order will have until March 1, 1985 to conform those arrangements to the conditions of the order as amended.

Notice is further given that any interested person wishing to request a hearing may do so, not later than October 1, 1984, at 5:30 p.m., by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Acting Secretary, Securities and Exchange Commission, Washington, D.C. 20549. After said date, an order will be issued amending the existing order unless the Commission orders a hearing upon request or upon its own motion.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24357 Filed 9-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21302; File No. SR-NASD-84-14]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Proposed New Text of the NASD By-Laws

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 14, 1984, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to replace the NASD By-Laws in their entirety with a new text which was contained in NASD Notice to Members 83-55 (Oct. 20, 1983).

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment to the By-Laws are primarily designed to conform the By-Law language to certain statutory changes, codify exising Board interpretations, clarify the application of certain provisions and generally update and modernize the By-Laws. In addition to the technical and substantive changes made within the By-Laws, it is proposed that present Schedules A through D be retitled and transferred to new sections of the NASD Manual which will be divided according to subject matter, e.g., Fees and Charges, Automated Systems, Member Qualifications and Administrative Districts. It is also proposed that Schedules E and G will be redrafted as Rules of Fair Practice. These changes to the schedules will be the subject of subsequent filings pursuant to Rule 19b-4 and it is contemplated that those changes will be coordinated with the implementation of the revised By-Laws. Schedule F was previously rescinded.

A section by section analysis of the purposes of the By-Law amendments is contained in Notice to Members 83-55 in the explanations following each section of the By-Laws. These explanations are incorporated by reference herein.

The proposed revisions to the By-Laws are designed to aid the Association in more adequately fulfilling its responsibilities as defined under Section 15A of the Securities Exchange Act of 1934 (the "Act").

B. Self-Regulatory Organization's Statement on Burden on Competition.

The proposed amendment will not result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed amendment was approved by the Association's membership by a vote of 1019 For; 21 Against. Comments had previously been received in response to Notice to Members 83-8 (February 4, 1983). The Association received five written comments which were generally accepted by the Board of Governors and incorporated into the text filed with the Commission for approval. Copies and Notices to Members relevant to the proposed rule change and comments by members thereto are available at the Commission's Public Reference Section or the main office of the NASD.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 5, 1984.

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[5] *Id.*, at paragraph (c)(2)(ii).

[6] *Id.*, at paragraph (a)(1).

[7] *Id.*, at paragraph (a)(2).

[8] *Id.*, at paragraph (a)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

September 10, 1984.

[FR Doc. 84-24355 Filed 9-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21300 (SR-BSE-84-2)]

Self-Regulatory Organization; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

September 10, 1984.

The Boston Stock Exchange ("BSE"), One Boston Place, Boston, Massachusetts 02108, submitted on July 5, 1984 copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to expand the pilot program established for execution of standard odd-lot market orders to purchase or sell shares in American Telephone and Telegraph ("AT&T") and the equity issues created as a result of the AT&T divestiture to include all BSE issues.[1] The BSE is implementing these procedures on a two-month pilot basis.

Under the procedures, standard odd-lot orders received prior to the opening will be executed at the consolidated opening price. In addition, the BSE's procedures provide that any customer or his representative may request and be provided an execution based upon the opening in the primary market. An odd-lot differential may be charged on these orders.[2] Standard odd-lot market orders received after the opening in all BSE issues will receive an execution price based on the best consolidated quotation in the stock at the time such order is received by the specialist. No odd-lot differential will be charged on these orders.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21180, July 27, 1984) and by publication in the Federal Register (49 FR 31023, August 2, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24423 Filed 9-13-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] The Commission approved the adoption of a nine month pilot program (SR-BSE-83-14) on November 18, 1983. (Securities Exchange Act, No. 20399, 48 FR 54151, November 30, 1983). The pilot procedures are applicable only to a limited number of issues: American Information Technologies Corporation, American Telephone & Telegraph Co., Bell Atlantic Corporation, Bell South Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation and U.S. West, Inc.

[2] In instances in which quotation information is not avialable (e.g. when the quotation is in a non-firm mode) standard odd-lot market orders will be executed on the last consolidated round-lot sale. An odd-lot differential may be charged on these orders.

[Release No. 21302 (File No. SR-NASD-84-14)]

Self Regulatory Organizations; Filing and Proposed Rule Change; National Association of Securities Dealers, Inc.

September 10, 1984.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on June 14, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to codify and revise generally the NASD's By-Laws. The proposed rule change is part of the NASD's effort to review and revise its rules, By-Laws, and interpretations. The proposed amendments: (1) codify existing interpretations of the NASD's Board of Governors, (2) conform the By-Law language to changes in the Act engendered by the Securities Acts Amendments of 1975; and (3) eliminate or modify obsolete provisions of the By-Laws. The proposal includes numerous technical and substantive modifications to the By-Laws.[1] As an example of a technical change, the proposal would reword and move Article XVI on the establishment of NASDAQ and Article XVII on use of registered clearing agencies to a modified Article VII, which discusses the powers and authorities of the Board of Governors. A more substantive change included in the proposal would provide that a Nominating Committee include a majority of persons who have previously served on the District Committee and/or Board of Governors.

The Commission is particularly interested in receiving comments on two sections of the proposed rule change concerning summary disciplinary powers of the NASD's Board of Governors. Under section 3(c) of the By-Laws as proposed to be amended, the Board of Governors upon notice would be able to (1) cancel the membership of a member if it becomes ineligible for continuance in membership; (2) suspend or bar a person from continuing to be associated with any member if such person is or becomes ineligible for association due to lack of qualifications or to a statutory disqualification; or (3) cancel the membership of any member who continues to be associated with any such ineligible person. In addition, the NASD would retain the provision that permits the Board of Governors, upon fifteen days written notice, to cancel or suspend any member or associated person for failure to produce any report, document, or other information required to be filed or requested by the NASD.

The NASD further contemplates that it will file with the Commission additional technical modifications of its rules, By-Laws, and provisions. For example, the NASD states that it will submit another proposed rule change to retitle Schedules A through E and G of the By-Laws and transfer them to a new section of the *NASD Manual*.[2]

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-82-24.

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[1] In its filing with the Commission, the NASD included a section-by-section analysis of the By-Laws amendments in NASD Notice to Members 83-55 (October 20, 1983), which is attached as an exhibit to the proposed rule change.

[2] In addition, the NASD contemplates redrafting Schedules E and G of the By-Laws as Rules of Fair Practice.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24422 Filed 9-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21307 (File No. SR-PSDTC-84-08)]

Self-Regulatory Organizations; Order Approving Proposed Rule Change; Pacific Securities Depository Trust Co.

September 10, 1984.

I. Introduction

On June 22, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would establish a dividend reinvestment program (the "Program") for participants with positions in eligible securities and would institute fees to reflect PSDTC's costs for providing this service. The proposed rule change was amended on July 18, 1984, when PSDTC filed its proposed dividend reinvestment procedures with the Commission. The Commission solicited comment on the proposed rule change in Securities Exchange Release No. 21183.[1] No letters of comment were received. As discussed below, the Commission is approving the proposed rule change.

II. Description

Generally, the Program will allow PSDTC participants to reinvest cash dividends and retain the resulting securities on deposit with PSDTC. Securities that are or will be eligible for this Program must meet certain requirements. First, the securities must be PSDTC eligible. In addition, the administrator of each dividend reinvestment plan ("DRP") must agree to comply with PSDTC procedures. Finally, the terms of each DRP must be compatible with PSDTC's DRP processing. Currently, eight securities are eligible for this Program.

Under the Program, PSDTC will notify its participants when a dividend is declared and whether the Program includes dividends on those securities. Generally, participants will receive this notice, which includes the deadline for acceptance of participant DRP instructions, approximately five business days prior to the announced record date. If it so elects, a participant may specify the number of shares on deposit at PSDTC, the dividend on which the participant elects to reinvest, and the number with respect to which it elects to receive a cash dividend. PSDTC will accept provisional reinvestment instructions by telephone pending receipt of a DRP participant instruction form. If participant instruction forms are not timely received, however, PSDTC retains the right to cancel any telephone instructions. Participants that wish to cancel their DRP instructions would be required to contact PSDTC immediately. PSDTC then will contact the plan administrator and, if the administrator accepts them, the instructions will be cancelled.

PSDTC will aggregate participant DRP instructions and request dividend reinvestment plan administrators to reinvest the appropriate quantity of dividends due PSDTC for those participants. PSDTC will receive securities purchased pursuant to DRP instructions submitted to plan administrators approximately three weeks after the cash dividend payment date, while PSDTC will receive payment for dividends that are not being reinvested one day after the scheduled payment date. Upon receipt of the additional securities, PSDTC will process a stock dividend adjustment for the amount of full shares due to each participant and a cash dividend adjustment for fractional shares at a rate determined by each plan administrator.

PSDTC proposes to charge $18.00 for each DRP instruction processed, plus $5.00 for each special request. These proposed fees would be in addition to other applicable dividend processing fees.

III. Discussion

PSDTC states in its filing that the proposed rule change is consistent with the Act in general and with sections 17A(b)(3)(D) and 17A(b)(3)(F) of the Act in particular. As discussed more fully below, the Commission agrees and is approving the proposed rule change.

The Program would allow PSDTC participants to more efficiently and effectively manage their security positions. Specifically, to the extent that participants lessen the number of entities and separate transactions involved in purchasing additional securities, greater efficiencies and economies. Currently, PSDTC participants desiring to reinvest dividend proceeds must execute separate trades to acquire those securities after they receive the cash dividend.

The Commission also believes that the Program enhances the safeguarding of funds and securities and contributes to the immobilization of securities certificates. By permitting participants to reinvest all or part of their dividends, the Program allows PSDTC participants to receive and retain stock dividends within a depository environment. As a result, securities certificates are immobilized and participants' funds and securities are more effectively safeguarded.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, the requirements of section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-PSDTC-84-8) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24421 Filed 9-13-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Grant Assurances and Agreement for Airport Improvement Program; Correction

AGENCY: Federal Aviation Administration (FAA), (DOT).

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[1] 49 FR 31028 (August 2, 1984).

ACTION: Correction of Preamble for notice of grant assurances to be used in the Airport Improvement Program.

SUMMARY: This notice corrects the preamble for the Notice of grant assurances to be used in the Airport Improvement Program that was published in the Federal Register, Vol. 49, No. 174, pg. 35282 on September 6, 1984.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Robert E. David, APP-3, Office of Airport Planning and Programming (Room 619), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, Telephone (202) 426-8246.

Background: On September 6, 1984, the Federal Aviation Administration published a notice in the **Federal Register** of new grant assurances and agreement which would be used beginning in Fiscal Year 1985. The Background section of the notice contained several errors and is being reprinted here for clarification. The grant assurances and agreement which were included in the September 6, 1984, notice were correct as printed. The correct Background paragraph is as follows:

Background: Under the provisions of the Airport and Airway Improvement Act of 1982, as a condition to approval of a grant application, the Secretary must receive certain assurances from the sponsor (applicant). These assurances are submitted as Part V of the application for Federal assistance. The FAA has reviewed the assurances currently being used and updated them to reflect the requirements of current law. The assurances have also been revised to reflect that under the Airport Improvement Program grants can be made for the improvement of privately owned airports and for noise program implementation.

Two sets of assurances are included in this notice. The first set (FAA Form 5100-100) contains assurances to be made by airport sponsors in their applications requesting funds for airport development, airport planning and noise program implementation and by planning agencies in their applications requesting funds for integrated airport system planning. The second set (FAA Form 5100-100.1) contains assurances to be made by sponsors in their application requesting funds for noise program implementation when the sponsor does not own or operate the airport.

The assurances, submitted with the application for assistance under the Airport Improvement Program, are incorporated into the grant agreement by reference. For this reason, the grant agreement (FAA Form 5100-37) is also included as part of this notice. As need dictates, the assurances published herein may be amended to reflect the individual contractual circumstances at particular airports, or to resolve problems arising in the grant program. These assurances will be used beginning in Fiscal Year 1985 (October 1, 1984). Similar assurances have been applied to sponsors prior to that date under the terms of the 1982 Act and related laws.

Issued in Washington, D.C., on September 11, 1984.

William F. Shea,

Associate Administrator for Airports.

[FR Doc. 84-24432 Filed 9-13-84; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, Mar. 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, Dec. 27, 1982), I hereby determine that the objects in the exhibit "Venice: The American View, 1860-1920" (included in the list [1] file as a part of this Determination), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement between the Fine Arts Museums of San Francisco and foreign lenders. I also determine that the temporary exhibtion or display of the listed exhibit objects at the Fine Arts Museums of San Francisco, California, Palace of the Legion of Honor, beginning on or about October 20, 1984, to on or about January 20, 1985, and the possible additional display of all or some of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, Ohio, beginning on or about February 27, 1985, to on or about April 21, 1985, is in the national interest.

Public notice of this Determination is ordered to be published in the **Federal Register**.

Dated: September 11, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-[illegible] Filed 9-[illegible]-84; 8:45 am]

BILLING CODE [illegible]-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions, a revision and a new collection and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the item on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 10, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

1. Department of Veterans Benefits
2. Loan Service Report
3. VA Form 26-6808
4. On occasion
5. Individuals or Households
6. 55,000 responses
7. 27,500 hours
8. Not applicable

Extensions

1. Department of Veterans Benefits

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[1] An itemized list of imported objects included in the exhibit is filed as part of the original document.

2. Veteran's Application for Educational Benefits (under Chapter 34, Title 38, U.S.C.—For Service Beginning Prior to Jan. 1, 1977) and Notice of Eligibility to Education or Training Benefits (under Chapter 34, Title 38, U.S.C.)
3. VA Form 22–1990 and VA Form 22–1990v
4. Once-initial application
5. Individuals or households
6. 52,000 responses
7. 39,000 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Veterans Application for Compensation or Pension at Separation from Service
3. VA Form 21–526e
4. On occasion
5. Individuals or households
6. 32,000
7. 21,440
8. Not applicable

* * * * *

Extension

1. Department of Veterans Benefits
2. Statement in Support of Claim
3. VA Form 21–4138
4. On occasion
5. Individuals or households
6. 752,000
7. 188,000
8. Not applicable

Extension

1. Department of Medicine and Surgery
2. Report of Nursing Home Care
3. VA Form 10–1204b
4. Monthly
5. Business or other for-profit; Non-profit institutions; Small businesses or organizations
6. 11,261 responses
7. 22,522 hours
8. Not applicable

* * * * *

New

1. Department of Veterans Benefits
2. Emergency Veterans' Job Training Act of 1983 (Telephone Survey)
3. None
4. One-time survey
5. Individuals or households; State or local governments; Farms; Business or other for-profit; Non-profit institutions; Small businesses or organizations
6. 3,000 responses
7. 1,333 hours
8. Not applicable

[FR Doc. 84–24375 Filed 9–13–84; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Amendment of System Notice

Notice is hereby given that the Veterans Administration is revising certain paragraphs and is considering the addition of two new routine use statements in the system of records entitled: Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA (34VA11) as set forth on page 677 of the **Federal Register** publication, Privacy Act Issuances, 1980 Compilation, Volume V, and amended on page 43244 of the **Federal Register** of September 30, 1982. The paragraphs being revised are: System Location, Safeguards, and Retention and Disposal. These revisions are necessary to include contractors who operate systems of records subject to the Privacy Act when conducting research studies for the Veterans Administration. Routine use statements numbered 5 and 6 are being added to provide for the release of information to research facilities or Federal agencies and their contractors so that research studies can be conducted under Agency contract.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 21420. All relevant material received before October 15, 1984 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until Oct. 29, 1984.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the proposed routine use statement is effective October 15, 1984.

Dated: September 7, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of System of Records

In the system identified as 34VA11, "Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA", appearing at page 677 of the "Privacy Act Issuances, 1980 Compilation, Volume V", and 47 FR 43244 is revised as follows:

34VA11

SYSTEM NAME:

Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA.

SYSTEM LOCATION:

Records are maintained at each VA health care facility where the research project was conducted and at VA Central Office. Address locations are listed in VA Appendix 1 at the end of this document. In addition, records are maintained at contractor and field work sites as studies are developed, data collected and reports written. A list of locations where individually identifiable data are currently located is available from the System Manager.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 73, Section 4101(a).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

5. Disclosure of medical record data, excluding name and address (unless name and address is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Chief Medical Director.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel of the Armed Services and/or their dependents may be disclosed (a) to a Federal department or agency or (b) directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, the VA may impose applicable conditions on the department, agency and/or contractor to insure the appropriateness of the disclosure to the contractor.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

Physical Security: Access to VA working space and medical record storage areas is restricted to VA employees on a "need to know" basis. Generally, VA file areas are locked after normal duty hours and protected from outside access by the Federal protective Service. Employee file records and file records of public figures or otherwise sensitive medical record files are stored in separate locked files. Strict control measures are enforced to ensure that disclosure is limited to a "need to know" basis. Access to a contractor's records and their system of computers used with the particular project are available to authorized personnel only. Records on investigators stored on automated storage media are accessible by authorized VACO personnel via terminals which are dedicated to this research and development information system.

RETENTION AND DISPOSAL:

The project records are held five (5) years after completion of the research project and/or publication of a final report unless they become part of the patient's individual medical history file in which case the record would remain 15 years after the last activity of care. At the end of a study, records maintained by a contractor are returned to the VA for appropriate disposition.

[FR Doc. 84-24376 Filed 9-13-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 180
Friday, September 14, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—September 19, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Agreement No. 202–009238–014: Modification of the Greece/United States Atlantic Rate Agreement to enlarge its scope.
2. Agreement No. 207–010137–008: Modification of the Barber Blue Sea Line Joint Service to enlarge its scope.
3. Agreements Nos. 212–009847–010, et al.: Extension and Modification of the U.S./Argentina and U.S./Brazil Revenue Pools.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

Francis C. Hurney,
Secretary.

[FR Doc. 84–24487 Filed 9–12–84; 1:18 pm]
BILLING CODE 6730–01–M

2

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

DATE: October 3–5, 1984.

TIME: 8:30 a.m. to 5:00 p.m.

ROOM: 315.

PROGRAM: This meeting will review applications submitted to the Basic Research Program: Archaeology and Material Studies Panel, Division of Research Programs, for projects beginning after January 1, 1985.

DATE: October 4–5, 1984.

TIME: 9:00 a.m. to 5:00 p.m.

ROOM: 415.

PROGRAM: This meeting will review applications submitted for Special Project/Program Development Programs, Division of General Programs, for projects beginning after April 1, 1985.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 84–24489 Filed 9–12–84; 1:17 pm]
BILLING CODE 7536–01–M

federal register

Friday
September 14, 1984

Part II

Architectural and Transportation Barriers Compliance Board

Advisory Standards for Chairs Used Primarily for Enplaning and Deplaning Physically Handicapped Passengers: Invitation for Public Comment

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Advisory Standards for Chairs Used Primarily for Enplaning and Deplaning Physically Handicapped Passengers

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Invitation for public comment on the development of advisory standards.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or the Board) invites public comment on a proposal to develop advisory standards for chairs (i.e., aircraft boarding chairs) to be used primarily for the safe enplaning and deplaning of physically handicapped passengers. The ATBCB has received a number of reports of accidents and near-accidents involving the use of these chairs. The purpose of this invitation is to (1) investigate the nature and extent of the problems with such chairs; (2) prepare plans and proposals for actions that could be used by various parties, including, for example, air carriers, insurance providers, airport managers, and Federal, State and local governments; and (3) develop standards and provide technical assistance to public or private entities. Section A of the Supplementary Information describes the principal statutes under which the Board is issuing this invitation; Section B describes the boarding chairs and some of the reported problems; Section C asks a series of questions to elicit information on boarding chairs in four categories: Part (1) Problem Identification, Part (2) Specifications, Part (3) Procedural Issues, Part (4) Demographics; and Section D seeks information on other barriers encountered by disabled air travelers and possible solutions.

DATE: To be assured of consideration, comments must be in writing and must be postmarked on or before November 13, 1984.

ADDRESS: Comments should be sent to: Docket Trans-1-84, 330 C Street, SW., Room 1010, Mail Stop 2101 Washington, D.C. 20202. Comments received will be available for public inspection, Monday through Friday, from 9:00 a.m. to 5:00 p.m., except legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on technical issues concerning this proposal, contact Mr. Dennis Cannon, Office of Technical Services, (202) 472-2700 (voice or TDD). Information on legal questions should be addressed to Ms. Linda Potter, Office of the General Counsel (202) 245-1801 (voice or TDD). These are not toll free numbers.

For additional copies of the proposal, contact Ms. Michelle Henson, Office of Technical Services, Room 1010, Mail Stop 2101 330 C Street, SW., Washington, D.C. 20202; (202) 472-2700 (voice or TDD). Copies of the proposal are also available on tape for those with visual impairments. Tapes may be obtained at the above address or by contacting Ms. Henson.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 502 of the Rehabilitation Act of 1973, as amended, the Architectural and Transportation Barriers Compliance Board (ATBCB) is vested with various statutory functions relating to transportation barriers confronting persons with disability (29 U.S.C. (792)). First, the Board is directed to investigate and examine alternative approaches to transportation barriers, particularly with respect to public transportation (including air, water, and surface transportation whether interstate, foreign, intrastate, or local), and to determine what measures are being taken by Federal, State, and local governments and public and private agencies to eliminate such barriers. (*id.* at 792(b) (2) and (3)).

The Board is also required to "prepare plans and proposals for . . . actions as may be necessary to the goals of adequate transportation . . . for handicapped individuals, including proposals for bringing together in cooperative effort, agencies, organizations, and groups working toward such goals or whose cooperation is essential to effective and comprehensive action" (*id.* at 792(c)(3)).

The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-502) amended section 502 to provide the ATBCB with new functions regarding transportation barriers. Under the Amendments, the Board is required to "insure that public conveyances, including rolling stock, are readily accessible to, and usuable by physically handicapped persons. (29 U.S.C. at 792(b)(8)).

The Amendments also require the Board, in cooperation and consultation with other concerned agencies, to "develop standards and provide appropriate technical assistance to any public or private activity, person or entity affected by regulations prescribed pursuant to this title [Title V of the Rehabilitation Act] with respect to overcoming . . . transportation . . . barriers" (*id.* at 792(d)(3)).

Clearly, ensuring that transportation (including air transportation) for persons with disabilities is accessible is a prime duty of the Board. The Board has reason to believe that current practices and standards regarding the use of aircraft boarding chairs for enplaning and deplaning disabled passengers are inadequate and unsafe. In fact, the Board has received a number of reports of accidents or near-accidents involving the use of these chairs.

As a result, the Board is concerned with the lack of standards in current regulations—standards that would ensure adequate safety features, equipment and procedures necessary to secure the safe enplaning and deplaning of physically handicapped passengers by airport operators and airline carriers.

To carry out its responsibilities unders section 502 to investigate barriers to air travel encountered by disabled persons, the Board is issuing this invitation to comment to collect information on the nature and extent of problems in enplaning and deplaning. Some of the problems may be addressed by specific design features to be incorporated in future equipment while other problems may be addressed by recommending non-structural procedural changes for other agencies to consider in their rulemaking. Specifications which may be developed as a result of this inquiry could be used by airlines to prepare bid specifications for purchases of chairs. They could also be used by insurance providers to determine liability coverage needed or to assist others in implementing regulations issued by Federal, State, or local agencies. Information on non-structural procedural matters could be used to prepare reports on barriers to air travel for the President and Congress. In addition, information obtained by this inquiry may be used by other Federal agencies and by the Board's Transportation Committee to identify problems and potential solutions.

With respect to specific design features, the Board is considering developing non-binding standards in consultation and coordination with a number of concerned agencies. These standards would be used to provide technical assistance to public and private entities to ensure the safe enplaning and deplaning of disabled passengers. In addition, they could supplement existing binding regulations in this area. For instance, in enforcing the requirement that enplaning and deplaning assistance be provided using aircraft boarding chairs, if necessary (14

CFR 382.15(a)(2)), an agency could utilize the non-binding standard to show whether the chair used met the requirement of providing boarding assistance. The standard would also be offered to Federal, State or local governments to be adopted as requirements in their regulations or codes.

It should be noted that these standards would be only advisory unless adopted as mandatory by other agencies. Also, they would be separate from the Board's "Minimum Guidelines and Requirements for Accessible Design" (39 CFR Part 1190) and the standards prescribed pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S. 4151–4157).

B. Chairs Used Primarily for Enplaning and Deplaning

In many airports, aircraft boarding chairs (often call "aisle chairs" although this term is sometimes used to mean an on-board wheelchair) are used for passengers requiring assistance in enplaning and deplaning. The type of equipment most commonly used is a narrow, high-back seat without arm rests on a wheeled, tubular frame. Similar to a dolly, it usually has two wheels, located at the rear, which are about eight inches in diameter, on which the frame must be tilted back to move the chair and passenger. The wheels usually have no locks (i.e., devices to keep the wheels from turning, popularly but incorrectly referred to as brakes) and, in the upright position, the chair depends on the contact of the footplate with the floor to prevent movement. Lap belts, shoulder harnesses, or leg belts may be provided but are frequently missing or broken. The width of the chair is approximately 16 inches so as to be compatible with typical aircraft aisles. The tubular frame and the footplate are specifically designed to allow the chair with passenger to be carried up or down stairs by two people or be wheeled by an assistant down a narrow aisle. The boarding chairs are also used, at times, for transporting disabled passengers between gates at the airport when a transfer to another plane is necessary.

The Architectural and Transportation Barriers Compliance Board has received a number of reports of accidents and near accidents involving boarding chairs during the enplaning and deplaning of disabled passengers on commercial airlines. Passengers using this equipment complain of the chairs' instability resulting from its high narrow design, the absence or inadequacy of restraining belts, and the lack of personnel trained specifically to assist passengers with physical limitations. In addition to safety concerns, passengers required to use these chairs complain of physical discomfort and the indignity which results from the use of the most common chairs. Depending on the chair design, some airlines also use the same narrow chair for movement within the airport. When this is the case, complaints are also registered about the boarding chair because it does not permit independent mobility; that is, a specially trained person must always accompany a boarding chair user. This may preclude the use of airport restroom facilities since the assistant is not always the same sex as the passenger.

While the ATBCB's review of the equipment used for assisting passengers has shown that aircraft boarding chairs which have safety features are available on the market, it has not been able to identify any regulation which would require airport and airline operators to use such chairs. To assist the ATBCB in carrying out its review, the Board has established a working group composed of representatives from the Department of Transportation, including the Federal Aviation Administration, the Civil Aeronautics Board and other Federal agencies to assist the ATBCB in reviewing existing regulations and to develop recommendations to ensure the safety of passengers with disabilities. Preliminary information suggests that some of the problems will not be solved by equipment design changes alone and solutions for those problems would not be appropriately included in a specification. Therefore, in addition to the equipment issues which are the main focus of this inquiry, some of the information obtained from the public in response to this inquiry may be used by the ATBCB Transportation Committee and this working group in making recommendations to the Board or other agencies on appropriate means to improve such equipment and/or procedures.

Since responses to different parts of this inquiry may be forwarded to different agencies, there may be some duplication in questions.

Dated July 10, 1984.

By vote of the Board.

Mary Alice Ford,

Chairperson, Architectural and Transportation Barriers Compliance Board.

BILLING CODE [illegible]

C. Questions.

The following questions are divided into four parts representing the distinct areas of inquiry covered by this Invitation to Comment. Respondents may answer only the part(s) which concern them since each part will be analyzed separately and may be forwarded to different agencies for implementation. In additon, it is possible that some of the information can be supplied only by air carriers, engineers, or airport operators.

Answers may be provided directly on the invitation to comment; however, if additional space is needed to answer a question, please do not hesitate to include additional sheets of paper. Please number your answers to correspond to the questions in each part.

Part 1. Problem Identification. While the ATBCB has received some reports of problems, including from our own Board members, and has reviewed complaints made to the CAB, we are by no means certain of the magnitude of the problem. The Board, therefore, seeks information to highlight additional problem areas not already identified by the Board. Questions in this part are intended to clarify problems encountered by disabled air travelers and to highlight important areas of concern. Answers will assist the Board in assessing the priority to be placed on various components of advisory standards which the Board may develop. This information may also be useful to other agencies for areas to be addressed in their own regulation.

Based on your own experience or direct knowledge, please answer the following questions.

1.1. With respect to boarding chairs, what problems have been experienced by disabled travelers? Which of these problems have you experienced?

____

____

____

____

____

____

1.2. How often do each of these problems arise? How often has particular problem happened to you? Please indicate the nature of the problem and the number of times that you have experienced a particular problem and/or the number of times that you have knowledge of a particular problem occurring.

Problem	Number of times you have experienced problem	Number of times you have knowledge of a particular problem (does not include your own experience)

1.3. With respect to each of the problems identified above, please describe the cause of the problem. For example, was it caused by chair design flaws? Airline or airport personnel? Combination? Other?

1.4. Could these problems be corrected by adequate personnel training? If so, who should be trained?

1.5 Were the problems a result of failure to properly maintain equipment? If so, please describe the type of problem.

Part 2. Specifications. Some of the problems encountered during enplaning and deplaning appear to be a result of the design of the most commonly used chairs.

Questions in this part relate to actual design features that might be incorporated in an ideal chair. Answers from this part may be used by the ATBCB to develop a model specification which could be used by the airline industry in preparing specifications for bid, the insurance industry to determine insurance coverage, or by local, State or other Federal agencies as part of their own binding regulations.

2.1. Type of Specification. Specifications can generally be grouped into two categories: performance and prescriptive. Performance standards specify the functions a device must perform without specifying the manner. Prescriptive standards, on the other hand, specify a particular design feature or additional equipment to be added to the device. A performance standard for a boarding chair might be that it be designed to be capable of maintaining a 98th percentile quadraplegic in an upright seated position. A prescriptive specification might call for armrests, lap, and shoulder harnesses. To be useful, a performance specification may need to prescribe a test to be passed to determine whether a particular design meets the criterion. Such a test might be that a 98th percentile anthropomorphic dummy be retained when the chair is tipped sideways at a 30° angle (or some other appropriate angle). Alternatively, a combination of the two can be used, such as requiring lap and shoulder belts and/or that a dummy be retained at a prescribed angle (the "and/or" means that lap belts can be provided which also pass the test, or some other method which passes the test, but not merely providing lap belts).

2.1.1. Should the ATBCB develop advisory standards for boarding chairs?

____

____

2.1.2. If so, should the ATBCB develop performance standards or prescriptive (specific design) standards? Combination? Please describe.

____

____

2.1.3. If the standards should be performance, what specific requirements should be included?

____

____

____

2.1.4. What tests, if any, should be performed?

____

____

2.1.5. Who should perform the tests? Manufacturer? Air Carrier? Independent testing laboratory? Other (specify)?

____

____

____

2.2. Independent Mobility. The standard manual wheelchair has two large wheels with handrims for self-propulsion. To be usable, such wheels must come above the seat level and the seat must fit between the two wheels. In order for such a chair to fit down the narrow aisle (approximately 16 inches) of a typical airplane, the seat would be extremely narrow and probably unusable. To provide for the maximum boarding chair seat width, consistent with the narrow aisle, chair designers have used only small wheels placed below the seat, thus sacrificing independent mobility. This is generally only a problem if the chair is used outside the aircraft or for maneuvering in the lavatory. Some recent designs of travel chairs have both standard large rear wheels and four small casters. The large wheels, which allow independent mobility outside the aircraft, can be quickly and easily removed to allow the chair to traverse narrow aisles. The disadvantage is that the separate wheels could be damaged or misplaced when not attached to the chair. In the narrow aisle configuration, the chair can be moved by many disabled people by grasping stationary objects, such as lavatory grab bars, and pulling or pushing oneself along. Even this procedure is not possible with the most common boarding chair since it has only two wheels and must be tipped back to roll.

2.2.1. Should a standard for an aircraft boarding chair allow a user to propel and maneuver the equipment without assistance?

If this same chair is used as a circulation chair for transporting passengers within the terminal, then is independent mobility needed?

On board the aircraft?

2.2.2. If so, can this be accomplished without large wheels with handrims?

2.2.3. If large wheels with handrims are used, how can the chair be made narrow enough to traverse the aisle?

2.2.4. If large wheels are to be removed, how can they be kept with the chair to avoid damage or misplacement?

2.2.5. Should boarding chairs be rollable without having to be tipped back?

2.3. Safety. In addition to complaints about inadequate seat belts and harnesses, some disabled individuals complain of the lack of armrests. This contributes to the feeling of insecurity associated with the narrow, highback design which makes the chair inherently unstable. Some experimental chairs have been designed with outriggers which provide stability but can be folded for aisle passage. Another complaint involves the absense of wheel locks (often incorrectly called "brakes") to help prevent the chair from rolling. While even the most efficient wheel locks cannot prevent the chair from moving, especially on a smooth floor, they can contribute significantly to steadying the chair while a disabled person transfers from his/her chair to the boarding chair.

2.3.1. Should a boarding chair be required to have lap, shoulder, and leg harnesses?

____

How should they be attached?

____

Should the user be able to operate them unassisted?

____

Would a performance specification be better? (If so, what should it be?)

____
____
____

2.3.2. Should a boarding chair be required to have armrests? Why?

____
____

2.3.3. Should wheel locks be prescribed? Why?

____
____

2.3.4. Should the chair be required to be as stable (from sideways tipping) as a standard wheelchair?

____

What should the standard be?

____

How should it be measured? How should it be accomplished?

____

2.4. Single Design. There are actually three classes of wheelchairs which may be used by a disabled person traveling by air: In addition to the chairs used for enplaning and deplaning passengers (i.e., boarding chairs) described above, there are airport circulation chairs and an on-board wheelchairs. The airport circulation chair is frequently a "standard" adult size wheelchair. Because they are intended to accommodate the entire spectrum of disabled passengers they rarely fit any one individual and are often described as uncomfortable. They may also have been modified to prevent folding to make unauthorized removal from the airport more difficult. The on-board wheelchair has been specifically designed for circulation within the aircraft, especially to the restroom. Particular attention has been given to weight and foldability due to stowage requirements. Such requirements are not necessarily relevant to enplaning/deplaning chairs or airport circulation chairs. Most on-board wheelchairs could be used for enplaning and deplaning but there is a reluctance to take such chairs far from the aircraft where they are to be kept.

2.4.1. Can one chair design be used for all three functions?

2.4.2. If so, should a single design be used?

2.4.3. If so, how should the problem of independent mobility in the airport be addressed?

2.4.4. What design features should be incorporated to prevent unauthorized removal?

Will these features compromise the utility of the chair?

2.4.5. Are there characteristics unique to one or more classes of chairs that makes a single design impractical?

2.5. Seating. For easy transfer, the seat of the chair used for enplaning/deplaning physically handicapped passengers should be compatible with airport circulation chairs, on-board wheelchairs, aircraft seating, and personal wheelchair seats.

2.5.1. What should the seat height be?

2.5.2. Should the seat be padded?

With a specific thickness? (How thick?) Is specific padding needed only if this same chair is used as an airport circulation chair?

2.5.3. Should the chairs be provided with folding armrests for easy transfer?

Sliding seat panels to create a "bridge" between boarding chair and wheelchair or aircraft seat for easy transfer?

2.6. Scope. The Board is aware that some of the problems result from the apparent failure to have a sufficient number of boarding chairs or to provide the equipment in a reasonable time. Where mobile lounges (vehicles which transport passengers from aircraft parked at maintenance facilities to terminals) are used, it is necessary to have the chair on board the lounge before it leaves the terminal. Disabled travelers have reported that, in spite of advance notice, such chairs are not always available. On other occasions, chairs are not provided even when the pilot has been asked to "radio ahead".

2.6.1. Should a boarding chair be kept at each gate or jetway?

2.6.2. Should a boarding chair be kept on each mobile lounge?

2.6.3. Should a boarding chair be kept at some measurable distance from each gate or jetway? If so, what should that distance be?

2.6.4. Should a maximum time be established between gate arrival of the aircraft and availability of the boarding chair? If so, what should it be?

2.7. Boarding Chairs: Other Concerns. In addition to the above mentioned questions, are there other issues which should be addressed in this advisory standard for boarding chairs?

Part 3. Procedural Issues. Even if the ATBCB develops an advisory specification for the chair, resolution of the problems may also depend on the adequacy of the training received by chair users, airport and airline personnel and the extent to which the chair is maintained in proper working order. While these procedural issues are beyond the scope of an advisory standard which may be developed by the ATBCB, information about such problems may assist the Board in weighing the relative importance of various design features. Moreover, this information may be of value to the airline industry by highlighting particular problem areas which the industry may need to address by developing better training and maintenance programs. In addition, the answers to questions in this part may be useful to other Federal agencies, such as the Department of Transportation, in developing their own regulations in this area. In order for the industry and other agencies to properly address this subject, information on existing programs and indentified problems is needed.

3.1. Training. Some of the problems with current boarding chairs appear to result from inadequate training or failure to train the appropriate personnel. Some supervisory personnel have been reported to have "recruited" the nearest able bodied person rather than anyone with specific training. It is also not always clear whether the assisting personnel are airline or airport employees. In addition, a new type of chair may necessitate specific training.

3.1.1. Is specific training necessary to assist in enplaning and deplaning?

3.1.2. What training programs are currently used? Which personnel are being trained?

3.1.3. Who currently provides boarding assistance and who currently provides the training?

3.1.4. What type of training should be provided and to which airport and airline personnel?

3.1.5. What retraining schedule is used? How is the need for retraining determined?

3.1.6. Can elements from existing programs be combined to form a model?

3.2. Maintenance. Some of the problems seem to have been caused by a failure to maintain equipment in proper working order.

3.2.1. What maintenance practices are currently followed?

On what schedule?

3.2.2. Are there specific maintenance standards for boarding chairs or similar equipment?

3.2.3. Who currently performs maintenance?

Airport personnel?

Airline personnel?

Other?

3.2.4. Is the maintenance program verified?

If so, who is responsible?

If not, who should be?

Airport?

Air carrier?

3.2.5. Does the manufacturer supply a suggested maintenance schedule?

If so, is the schedule adequate?

Part 4. Demographics. Answers to the questions in this part will be used for statistical purposes only to help develop a profile for reports to the Board and other Federal agencies. Supplying this information is optional and failure to do so will not in any way affect the validity of responses to other questions. Please include this sheet or a reasonable facsimile with your comments. (Check all answers that apply).

4.1. Which of the following categories apply to you?

4.1.1. Wheelchair user.

4.1.2. Walker, crutch, other mobility aid user.

4.1.3. Visually impaired.

4.1.4. Hearing impaired.

4.1.5. Able-bodied.

4.1.6. Other (specify)____________________

4.2. If you have a disability, what type of aids do you use primarily?

4.2.1. Manual wheelchair.

4.2.2. Power wheelchair (except three-wheeled) with gel or dry cell battery.

4.2.3. Power wheelchair (except three-wheeled) with wet cell battery.

4.2.4. Three-wheeled power chair with gel or dry cell battery.

4.2.5. Three-wheeled power chair with wet cell battery.

4.2.6. Walker, cane or other mobility aid.

4.2.7. Crutches.

4.2.8. Hearing-ear or helping dog.

4.2.9. White cane (visually impaired).

4.2.10. Dog guide. (visually impaired)

4.2.11. Hearing aid.

4.2.12. Other (specify)____________________________

4.3. Are the comments submitted on behalf of an organization or as as individual?

4.3.1. Officially. (Please name organization or agency.)

4.3.2. For myself.

4.4. Are you a member of, or employed by, any of the following organizations, companies, or agencies?

4.4.1. Consumer organization.

4.4.2. Social service agency.

4.4.3. Air carrier.

4.4.4. Airport operator.

4.4.5. Air carrier trade association.

4.4.6. Airport operator trade association.

4.4.7. Manufacturer/supplier of mobility aids.

4.4.8. Engineer/designer

4.4.9. Federal government.

4.4.10. State or local government.

4.4.11. Manufacturer/supplier of aircraft or related equipment.

4.4.12. Rehabilitation professional.

4.4.13. Airline personnel labor or professional organization.

4.4.14. Other (specify) ____________________________

4.5. On the average, how frequently do you travel by air?

4.5.1. Less than once a year.

4.5.2. From one time to five times a year.

4.5.3. Five to ten times a year.

4.5.4. More than ten times a year.

4.6. Have you ever used, a boarding chair? If so, which type?

4.6.1. High-back dolly, (standard chair described previously)

4.6.2. Amigo Escort.

4.6.3. Manten Airport Buggy.

4.6.4. Whilshire.

4.6.5. Newton.

4.6.6. Other (specify) ______________________

4.7. Are you familiar with any of the following boarding chairs, even though you may never have used one?

4.7.1. High-back dolly (standard).

4.7.2. Amigo Escort.

4.7.3. Manten Airport Buggy.

4.7.4. Whilshire.

4.7.5. Newton.

4.7.6. Other (specify) ______________________

D. **Other Areas of Concern.** Complaints filed both with the CAB and the ATBCB indicate that enplaning and deplaning is only one of several areas where barriers to air travel have been encountered by disabled persons. Other problems have resulted, for example, from the absence or inadequacy of lifting devices for boarding aircraft, the absence or inadequacy of provisions for oxygen, and problems with transporting electric wheelchairs with wet cell batteries. Should issues such as these and others be addressed by future ATBCB advisory rules? Please identify specific problems disabled travelers have encountered.

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[FR Doc. 84-24308 Filed 9-13-84; 8:45 am]

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federal register

Friday
September 14, 1984

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notices

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9-83, 48 FR 35736 (1983), and 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arkansas:	
AR84-4090	Jan. 13, 1984.
AR84-4091	Do.
AR84-4092	Do.
AR84-4093	Do.
California:	
CA84-5001	Mar. 30, 1984.
CA83-5119	Sept. 16, 1983.
Illinois IL83-2037	Apr. 29, 1983.
New Mexico: NM84-4027	May 18, 1984.
Nevada: NV84-5017	June 29, 1984.
Pennsylvania:	
PA83-3047	Oct. 14, 1983.
PA83-3048	Oct. 7, 1983.
Tennessee: TN84-1023	Aug. 31, 1984.
Texas: TX84-4036	May 25, 1984.
Wisconsin: WI84-5025	Aug. 24, 1984

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Missouri: MO84-4014 (MO84-4054)	Mar. 9, 1984.
New York: NY83-3003 (NY84-3036)	Mar. 25, 1983.

Signed at Washington, D.C. this 7th day of September 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION #AR84-4090-MOD.#5
(49 FR 1844-Jan. 13, 1984)

GARLAND, CLARK, & HOT SPRING COUNTIES, ARKANSAS

CHANGE:	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Group 1	$6.41	$1.45
Group 2	6.66	1.45
Group 3	6.81	1.45
Group 4	6.91	1.45
Group 5	7.06	1.45
Group 6	7.31	1.45
Group 7	7.21	1.45

DECISION #AR84-4091-MOD.#5
(49 FR 1845-Jan. 13, 1984)

UNION AND OUACHITA COUNTIES, ARKANSAS

CHANGE:	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Group 1	$6.41	$1.45
Group 2	6.66	1.45
Group 3	6.81	1.45
Group 4	6.91	1.45
Group 5	7.06	1.45
Group 6	7.31	1.45
Group 7	7.21	1.45
LINE CONSTRUCTION:		
Electrical contracts $20,000 or less:		
Lineman, Operators	14.71	A
Cable Splicers	15.01	A
Electrical contracts over $20,000:		
Lineman, Operators	15.50	A
Cable Splicers	15.80	A
Electrical contracts $20,000 or less and over $20,000:		
Groundman	65%JR	A
Truck Driver	70%JR	A
Winch Operator	80%JR	A

FOOTNOTE:
A- 3-3/4% + 1.00

DECISION #AR84-4092-MOD.#7
(49 FR 1846-Jan. 13, 1984)

SEBASTIAN, CRAWFORD, AND WASHINGTON COUNTIES, ARKANSAS

CHANGE:	Basic Hourly Rates	Fringe Benefits
SEBASTIAN AND CRAWFORD COUNTIES:		
LABORERS:		
Group 1	$6.41	$1.45
Group 2	6.66	1.45
Group 3	6.81	1.45
Group 4	6.91	1.45
Group 5	7.06	1.45
Group 6	7.31	1.45
Group 7	7.21	1.45

DECISION #AR84-4093-MOD.#6
(49 FR 1847-Jan. 13, 1984)

PULASKI AND JEFFERSON COUNTIES, ARKANSAS

CHANGE:	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Group 1	$6.41	$1.45
Group 2	6.66	1.45
Group 3	6.81	1.45
Group 4	6.91	1.45
Group 5	7.06	1.45
Group 6	7.31	1.45
Group 7	7.21	1.45

MODIFICATIONS P. 2

DECISION NO. CA83-5119 - MOD. #5
(48 FR 41702 - September 16, 1983)
San Diego County, CA

Change:	Basic Hourly Rates	Fringe Benefits
Electricians:		
Electricians	$20.00	$3.83+ 3%
Cable Splicers	20.45	3.83+ 3%
Utility Technician	16.50	.74+ 3%
Sound Installers	16.47	1.46+ 3%

DECISION NO. NV84-5017 - MOD. #1
(49 FR 26874- June 29, 1984)
Washoe County, Nevada

Change:	Basic Hourly Rates	Fringe Benefits
Bricklayers; Stonemason	$13.40	$2.66
Carpenters	12.23	5.47
Ironworkers:		
Fence Erectors	17.16	8.78
Ornamental; Reinforcing; Structural	18.05	8.78
Power Equipment Operators (Except Piledriving and Steel Erection):		
Change Fringe Benefits only to read:		$11.03
Power Equipment Operators: Piledriving:		
Group 1	15.03	11.03
Group 1-A	15.55	11.03
Group 1-B	15.85	11.03
Group 2-A	15.85	11.03
Group 2-B	16.67	11.03
Group 2-C	16.99	11.03
Group 2-D	17.22	11.03
Group 3	17.44	11.03
Group 3-A	18.10	11.03
Group 4	18.92	11.03
Group 5	19.19	11.03
Group 6	20.90	11.03
Power Equipment Operators: Steel Erection		
Group 1	15.74	11.03
Group 2	16.30	11.03
Group 3	17.86	11.03
Group 4	18.06	11.03

DECISION NO. NV84-5017 (Cont'd)

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators: Steel Erection		
Group 4-A	$18.54	$11.03
Group 5	19.30	11.03
Group 6	19.94	11.03
Group 7	20.40	11.03
Group 8	20.84	11.03
Group 9	22.42	11.03

DECISION NO. PA83-3047 - MOD. No. 3
(49 FR 46922 - October 14, 1983)
Luzerne Co., Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits
Millwrights	$16.57	2.55
Carpenters:		
Hazelton, Freeland, Block Creek, Butler, Dennison, Foster, Hazle, Hallenback, Nescpeck, Sugarloaf and lower part of Salem Twps.	14.50	2.55
Power Equipment Op.		
Group 1	15.89	26.6% +a

DECISION NO. PA83-3048 - MOD. #2
(48 FR 45917 - October 7, 1983)
Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania

CHANGE:	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators:		
Group 1	15.89	26.6% +a

MODIFICATIONS P. 3

DECISION NO. CA84-5001 - MOD. #7
(49 FR 12873 - March 30, 1984)
Alameda, Alpine, Amador, Butte, Calaveras Counties, etc., California

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$21.60	4.25
BRICKLAYERS:		
Area 3	16.24	4.91
Area 4	16.24	4.91
Area 5	17.24	4.91
Area 7	15.55	4.45
CARPENTERS:		
Area 1:		
Carpenters	20.27	6.455
Hardwood Floorlayers, Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring Saw Filers	20.42	6.455
Millwrights	20.27	7.455
Piledrivermen	19.38	8.885
Area 2:		
Carpenters	17.64	6.455
Hardwood Floorlayers; Shinglers; Power Saw Op.; Steel Scaffold Erector & Steel Shoring; Saw Filers	17.79	6.455
Millwrights	18.54	7.455
Piledrivermen	19.38	8.885
CEMENT MASONS	16.02	6.18
ELECTRICIANS:		
Area 6:		
Electricians	25.16	5.45+ 3%
Cable Splicers	27.16	5.45+ 3%
Area 14:		
Electricians	25.965	7.26+ 3%
Cable Splicers	29.21	7.26+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	29.39	3.29+a
Helpers	20.57	3.29+a
Probationary Helpers	14.695	

DECISION NO. CA84-5001 CONT'D

	Basic Hourly Rates	Fringe Benefits
GLAZIERS:		
Area 5	18.83	3.89
Area 6	13.58	3.04
IRONWORKERS:		
Fence Erector	17.16	8.78
Reinforcing, Ornamental & Structural	18.05	8.78
LINE CONSTRUCTION:		
Area 1:		
Groundman	18.87	5.45+ 3%
Line Equipment Operators	22.64	5.45+ 3%
Linemen	25.16	5.45+ 3%
Cable Splicers	27.16	5.45+ 3%
Area 6:		
Groundman	14.17	6.30+ 3%
Linemen, Technicians, Equipment Operators	18.89	7.48+ 3%
Cable Splicers	21.25	7.48+ 3%
Area 9:		
Groundman & Truck Drivers	18.42	7.298+ 3%
Linemen	22.56	7.298+ 3%
Heavy Equipent Operators	22.10	7.298+ 3%
Area 13:		
Groundmen	22.07	7.26+ 3%
Linemen, Technicians	25.965	7.26+ 3%
Cable Splicers	29.21	7.26+ 3%
MARBLE SETTERS	19.27	3.53
PAINTERS:		
Area 4:		
Brush	21.08	4.12
Tapers	22.38	4.12
Area 7:		
Brush	20.43	4.68
Spray; Sandblasting; Steam Cleaning	20.93	4.68
Drywall Finisher	21.43	4.68
Paperhangers	21.43	4.68

MODIFICATIONS P. 4

DECISION NO. CA84-5001 CONT'D

	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D)		
Area 10:		
Brush	12.00	2.41
Spray; Sandblasters; Structural Steel; Swing Stage; Tapers; Paperhangers	12.24	2.41
PLASTERERS:		
Area 5	17.92	8.25
PLUMBERS:		
Area 1	26.42	5.88
PLUMBERS; STEAMFITTERS:		
Area 7	29.97	11.00
ROOFERS:		
Area 1:		
Roofers	17.00	7.37
Mastic Workers; Kettlemen (2 kettles w/o pumps)	17.25	7.37
Bitumastic; Enamelers; Pipewrappers; Coal Tar Build-up	19.00	7.37
Area 5:		
Roofers	16.10	7.65
Mastic Workers; Kettlemen (2 kettles w/o pumps)	16.35	7.65
Bitumastic; Enamelers; Pipewrappers; Coal Tar Pitch	18.10	7.65
Area 8:		
Roofers	16.80	6.40
Mastic Workers; Kettlemen (2 kettles w/o pumps)	17.05	6.40
Bitumastic; Enamelers; Pipewrappers; Coal Tar	18.80	6.40
SHEET METAL WORKERS		
Area 1	26.36	6.36
Area 3	18.38	4.94+12%
Area 5	21.46	7.50
Area 7	26.66	6.08
Area 9	26.19	6.76
Area 10	26.24	6.30
Area 11	22.92	6.86
Area 12	25.64	9.21
TILE SETTERS:		
Area 1	22.01	4.32

DECISION NO. CA84-5001 CONT'D

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Group 1	16.30	6.54
Group 2	16.38	6.54
Group 3	16.40	6.54
Group 4	16.41	6.54
Group 5	16.42	6.54
Group 6	16.43	6.54
Group 7	16.45	6.54
Group 8	16.47	6.54
Group 9	16.48	6.54
Group 10	16.50	6.54
Group 11	16.51	6.54
Group 12	16.55	6.54
Group 13	16.56	6.54
Group 14	16.57	6.54
Group 15	16.60	6.54
Group 16	16.61	6.54
Group 17	16.62	6.54
Group 18	16.64	6.54
Group 19	16.65	6.54
Group 20	16.66	6.54
Group 21	16.71	6.54
Group 22	16.74	6.54
Group 23	16.75	6.54
Group 24	16.84	6.54
Group 25	16.85	6.54
Group 26	16.85	6.54
Group 27	16.88	6.54
Group 29	16.94	6.54
Group 30	16.95	6.54
Group 31	16.98	6.54
Group 32	17.04	6.54
Group 33	16.97	6.54
Group 34	17.19	6.54
Group 35	17.29	6.54
Group 36	17.24	6.54
Group 37	17.49	6.54
Group 38	17.64	6.54
Group 28	16.90	6.54

MODIFICATIONS P. 5

DECISION NO. IL83-2037 - MOD. #1 (48 FR 19583 - April 29, 1983) Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin	Basic Hourly Rates	Fringe Benefits
DRILL BOATS:		
Engineer	$16.40	$2.03 +c
Blaster	16.57	2.03 +c
Fireman	15.89	2.03 +c
Driller, Welder, Machinist	16.41	2.03 +c
Oiler	15.62	2.03 +c
FLOATING EQUIPMENT (CLAIM SHELL, DRAGLINE, & MARINE CONSTRUCTION)		
Projects less than $250,000:		
Engineer & Operator	21.05	5.15 +g
Equipment Operator	18.75	5.15 +g
Fireman	17.70	5.15 +g
Oiler	15.60	5.15 +g
Projects $250,000 or more:		
Engineer & Operator	21.65	5.15 +g
Equipment Operator	19.20	5.15 +g
Fireman	18.10	5.15 +g
Oiler	16.00	5.15 +g

DELETE:
Footnotes e and f

DECISION NO. NM84-4027 - MOD. #4 (49 FR 21263 - 5/18/84) Statewide (excluding Eddy & Lea Cos. for building construction) New Mexico	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power Equipment Ops.		
General Building Const:		
Group I	$11.08	1.95
Group II	12.22	1.95
Group III	12.30	1.95
Group IV	12.51	1.95
Group V	12.57	1.95
Group VI	12.67	1.95
Group VII	12.77	1.95
Group VIII	13.95	1.95
Power Equipment Ops.		
Heavy Construction:		
Group I	11.03	1.95
Group II	12.17	1.95
Group III	12.25	1.95
Group IV	12.46	1.95
Group V	12.52	1.95
Group VI	12.62	1.95
Group VII	12.72	1.95
Group VIII	13.90	1.95
Sheet metal workers:		
Zone II-A	14.30	2.17+3%
Zone II-B	15.80	2.17+3%
Zone II-C	16.55	2.17+3%

MODIFICATIONS P. 6

DECISION NO. WI84-5025-MOD #1 (49 FR-33787- August 24, 1984) La Crosse, Monroe and Vernon Counties Wisconsin	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers	$14.30	2.35
Sheet Metal Workers	14.48	2.00+ 3%

Welders: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO. TX84-4036 - MOD. #3 (49 FR 22189 - 5/25/84) Jefferson & Orange Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers	$16.125	2.95
Bricklayer & stonemason:		
Refractory & acid-proofing work	19.22	2.20
All other work	17.58	2.20
Pipefitters	17.84	2.50

DECISION NUMBER TN84-1023 Mod # 1 (49 FR 34644 - August 31, 1984) Carter, Greene, Hawkins, Johnson, Sullivan, Unicoi & Washington Cos., TN	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$16.20	3.375
ADD:		
BRICKLAYERS	13.20	

SUPERSEDEAS DECISION

STATE: NEW YORK
COUNTY: ONONDAGAGA
DECISION NO.: NY84-3036
DATE: DATE OF PUBLICATION
Supersedes Decision No. NY83-3003 dated March 25, 1983 in 48 FR 12647.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including 4 stories), Heavy Construction (except water well drilling) and Highway Construction.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.21	3.16
BOILERMAKERS	18.16	3.691
BRICKLAYERS & STONE MASONS	14.73	3.31
CARPENTERS		
Building	14.15	3.62
Heavy & Highway	13.55	3.595 +a
CEMENT MASONS		
Building	14.30	3.20
Heavy & Highway	14.05	3.20
ELECTRICIANS		
Elbridge & Skaneateles	18.00	3.25+ +3%
Remainder of County Electricians	17.10	3.25+ +3%
Cable Splicers	18.20	3.25+ +3%
ELEVATOR CONSTRUCTORS	17.47	3.00+ b+c
ELEVATOR CONSTRUCTORS' HELPERS	12.23	3.00+ b+c
ELEVATORS CONSTRUCTORS HELPERS (PROBATIONARY)	8.735	
GLAZIERS	12.65	2.15
IRONWORKERS		
Structural, ornamental, machinery mover, reinforcing, rigger	15.85	5.60
Sheeter	16.10	5.60
Sheeter, Bucker-up	15.97	5.60
LABORERS (BUILDING)		
Laborers	12.33	2.95
LABORERS (HEAVY and HIGHWAY)		
Class A	12.29	2.95+a
Class B	12.49	2.95+a
Class C	12.69	2.95+a
Class D	12.89	2.95+a

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+d +6.25%
Cable splicer	19.525	4.35+d +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+d +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+d +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+d +6.25%
Groundman	10.098	4.35+d +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+d +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+d +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+d +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+d +6.25%
Groundman	10.098	4.35+d +6.25%

DECISION NO. NY84-3036

Page 2

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+d +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+d +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+d +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35+d +6.25%
Groundman	10.098	4.35+d +6.25%
MARBLE, TILE & TERRAZZO WORKERS	13.72	2.30
MARBLE, TILE & TERRAZZO FINISHERS	11.97	2.30
MILLWRIGHTS	14.145	4.57+a
PAINTERS:		
Brush & Roller	12.10	3.25
Taping	12.35	3.25
Spray; epoxy and special coatings brush and roll application	12.60	3.25
Epoxy and special coatings spray application	12.80	3.25
Sandblasting	12.95	3.25
Boatswain chair	12.85	3.25
Swing	12.75	3.25
Structural Steel	12.70	3.25
Bridge	13.30	3.25
Sign	9.55	3.25
PLUMBERS	16.09	3.93
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)		
Class 1	16.98	4.25+d
Class 2	16.09	4.25+d
Class 3	14.29	4.25+d
Class 4	17.48	4.25+d
Class 5	18.98	4.25+d
Class 6	17.98	4.25+d
Class 7	18.02	4.25+d

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (HEAVY AND HIGHWAY):		
Group I	15.86	4.25+a
Group II	15.32	4.25+a
Group III	13.79	4.25+a
Group IV	12.44	4.25+a
ROOFERS	16.45	3.45
SOFT FLOOR LAYERS	14.15	3.62
SPRINKLER FITTERS	16.92	3.23
STEAMFITTERS	16.145	4.23+f
TRUCK DRIVERS		
Building (Except Ready-mix):		
Jobs of $5,000,000 or less:		
Class 1	13.58	2.45
Class 2	13.73	2.45
Class 3	13.78	2.45
Class 4	13.98	2.45
Ready Mix:		
Class 1	10.05	2.10+g
Class 2	10.70	2.10+g
Heavy & Highway (Except Ready-mix):		
Class 1	13.74	2.20+a
Class 2	13.79	2.20+a
Class 3	13.84	2.20+a
Class 4	13.99	2.20+a
Class 5	14.14	2.20+a

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Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. 6 paid holidays: A through F, provided employee works day before and day after the holiday.
b. 7 paid holidays: A through F, plus day after Thanksgiving.
c. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
d. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

e. 6 paid holidays: A through F providing employee has worked 5 consecutive days before and the working day after the holiday.

f. Labor Day and Thanksgiving Day, provided the employee has worked the week prior to the holiday.

g. 6 paid holidays: A through F, provided the employee has worked any of the 5 working days immediately preceding or any of the 5 working days immediately following the holiday.

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CLASSIFICATIONS

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helpers, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setter, stone or granite curb setters.

POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION

Class 1: Asphalt and blacktop roller; Automated concrete spreader (CMI or equivalent); Automated fine grade machine (CMI); Backhoe; Belt placer; Blacktop spreader (such as Barber Greene and BlawKnox); Blacktop Plant (automated); Blast or rotary drill (truck or cat mounted); Boom truck; Cableway; Caisson auger; Carry-all-scraper-self loading; Central Mix plant (automated); Cherry picker over five (5) ton capacity; Compressors; Pump; Generator or welding machine (when used in a battery of not more than four (4); Crane, Crusher-rock; Derrick; Diesel power unit; Dragline; Dredge; Dual drum paver; Elevating grader (self-propelled ot towed); Elevator hoist - two cage; Excavator - all purpose - hydraulically operated; Fork lift (factory rating 15 ft. or more); Front end loader (4 c.y. and over); Gradall; Grader (power); Head tower (Saur man or equal); Hoist (2 or 3 drums); Locomotive; Maintenance engineer; Maintenance welder; Mine hoist; Mucking machine or mole; Overhead crane fixed permanent; Pile driver; Quarry Master or equivalent; Refrigeration equipment - for soil stabilization; Shovel; Side boom; Slip form paver; Straddle buggy (Ross carrier, Lumber carrier) Tractor drawn belt type loader (Euclid loader); Trenching machine (digging capacity of over 4 ft. depth); Truck crane operator; Tunnel shovel; Vibro or sonic hammer controls (when not mounted in proximity to the rig operator)

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POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION (CONT'D):

Class 2: "A" Frame truck; Blacktop plant (non-automatic); Boring machine; Bulldozer; Cage hoist; Carry-all scraper; Central mix plant (non-automated); Cherry picker five (5) tons and under; Compressor (500 c.f. and over); Concrete paver (single drum over 16S); Concrete pump; Core boring machine; Drill rigs-tractor mounted; Elevator - as a material hoist; Fork lift (factory rating less than 15 ft.); Front end loader (under 4 cu. yds.); Gunnite machine; High pressure boiler (15 lbs. and over); Hoist (one drum); Hydraulic breaking hammer (Drop hammer); Kolman plant loader (screening gravel); Maintenance grease man; Mixer for stabilized base - self-propelled (seaman mixer); Monorail machine; Parapet concrete or pavement grinder; post hole digger (truck or tractor mounted); Power sweeper (Wayne or similar); Pump 4" and over; Pump-crete or squeeze-crete; Road widener (front end of grader or self-propelled); Shell winder (motorized); Snorkel (overhead arms); Roller; Trenching machine (digging capacity of 4 ft. or less); Tugger hoist; Vibro tamp; Well drill; Well point system (submersible pumps when used in lieu of well-point system); Winch (motor driver); Winch cat; Winch truck

Class 3: Compressor (under 500 cu. ft.); Concrete paver or mixer (under 16S); Concrete pavement spreaders and finishers (not automated); Conveyor (over 12 ft.); Electric submersible pump (4" and over); Farm tractor with or without accessories; Fine grade machine (not automated); Fireman; Form tamper; Generator (2,500 watts and over); Hydraulic pump; Grout pump; Mechanical heaters - more than two (2) mechanical heaters or any mechanical heater or heaters whose combined output exceeds 640,000 BTU per hour (manufacturer's rating); Mulching machine; Oiler; Power driven welding machine - 300 amp. and over (other than all electric); Power heaterman (hay drier), Pump (under 4"); Revinius widner (road widener); Steam cleaner or Jenny; Tractor with or without towed accessories, post driver (truck or tractor mounted)

Class 4: Quad 9 bulldozer or multibowl scraper

Class 5: Crane or Derrick with a boom length over 300 ft. including jib

Class 6: Crane or Derrick with a boom length over 150 ft. including jib, and on a piledriver with leads or boom length over 100 ft.

Class 7: Master mechanic

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POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION

Group I - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker, (over 5 tons capacity) concrete pump (8" or over) crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purposes-hydraulically operated) (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader (4 c.y. and over), head tower (sauerman or equal) hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power garder, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver, tractor drawn tractor drawn belt-type loader, truck crane, tunnel shovel.

Group II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Kolman plant loader and similar type loaders, locomotive, maintenance engineer/greaseman/welder, mixer (for stabilized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

Group III - A-frame truck, compressors (4 not to exbeed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), compressors (any size but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, drill-well, electric pumps used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), gunite machine, hammers (hydraulic-self-propelled), post hole digger and post driver, power sweeper, roller (grade and fill), submersible electric pump (when used in lieu of well point system); tractor with towed accessories, vibratory compactor, vibro tamp, well point.

Group IV - Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), compressor (any size, but subject to other provisions for compressors), dust collectors, generators, pumps, welding machines (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system). Light plants, mulching machine, oiler, parapet-concrete or pavement grinder, power broom (towed), power heaterman, revinius widener, shell winder, steam cleaner, tractor.

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TRUCK DRIVERS (BUILDING Except Ready-mix):

Class 1: Truck drivers, parts chasers.

Class 2: Tractor Trailer drivers, farm tractor and fuel truck drivers.

Class 3: Material check and reciver.

Class 4: Euclid driver.

TRUCK DRIVERS (READY-MIX):

Class 1: Ready-mix driver.

Class 2: Truck driver.

TRUCK DRIVERS (HEAVY & HIGHWAY - Except Ready-mix):

Class 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dupsters, material checkers and receivers, greasers, truck tiremen and parts chaser.

Class 2: Tandems, batch trucks, mechanics and dispatcher.

Class 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

Class 4: Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self-loaded, and straddle (ross) carrier.

Class 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

SUPERSEDEAS DECISION

STATE: Missouri COUNTY: Pulaski
DECISION NO.: MO84-4054 DATE: Date of Publication
Supersedes Decision No. MO84-4014 dated March 9, 1984 in 49 FR 9080.
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.92	2.25
BOILERMAKERS	17.495	3.00
BRICKLAYERS, STONEMASONS & TILE LAYERS	14.50	.50
CARPENTERS:		
Projects under $500,000.00	14.06	3.42
Projects $500,000.00 and over	14.56	3.42
CEMENT MASONS	14.38	2.70
ELECTRICIANS:		
Electricians	15.04	9% + 1.89
Cable Splicers	15.44	9% + 1.89
IRONWORKERS, STRUCTURAL, ORNAMENTAL, REINFORCING	16.575	2.90
LABORERS:		
Laborers, general	12.25	1.95
Plumbers laborers and mason tenders	12.50	1.95
Powderman	13.25	1.95
PAINTERS:		
Brush & roller	12.50	2.60
Taping, paperhanging & floor work	13.00	2.60
Spray, structural steel & sandblasting	13.75	2.60
PIPEFITTERS & PLUMBERS	18.95	5.58
SHEET METAL WORKERS	17.64	2.85
TRUCK DRIVERS:		
GROUP 1	11.85	2.00
GROUP 2	12.25	2.00
GROUP 3	12.32	2.00
GROUP 4	12.37	2.00
GROUP 5	12.52	2.00
GROUP 6	13.35	2.00
ROOFERS	12.00	.66
PLASTERERS	17.505	1.62

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVER:		
Ft. Leonard Wood Only:		
GROUP 1	12.85	2.00
GROUP 2	13.00	2.00
GROUP 3	13.07	2.00
GROUP 4	13.12	2.00
GROUP 5	13.27	2.00
GROUP 6	13.60	2.00
POWER EQUIPMENT OPERATORS:		
GROUP I	16.32	4.04
GROUP II	16.32	4.04
GROUP III	15.02	4.04
GROUP III (a)	13.95	4.04
GROUP IV	14.57	4.04
GROUP IV (a)	13.49	4.04
GROUP V:		
(a)	17.02	4.04
(b)	17.87	4.04
(c)	18.32	4.04
(d)	19.07	4.04

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Power Equipment Operators

Group I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other powers); switch boat; whirley

Group II - air tuggerw/air compressor; anchor-placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (jobsite); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer (such as mixermobile); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination, compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines,self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers,jackhammers and barco equipment - no engineer required); elevating grader; engineman, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; highlift; hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist; stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe cleaning machine; pipe wrapping machines; plant asphalt; plant, concrete producing or ready-mix job site; plant heating-job site; plant mixing-job site; plant power, generating-job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or sub-grade; scoop, tractor drawn; spreader box; sub-grader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

Group III - Conveyor, large (net self-propelled); conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer two or more mixers of one bag capacityor less, air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor air (mounted on truck; concrete saw, self-propelled;curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist; one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are

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Group III - (Cont'd):
used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader,regardless of size, not paver; oiler on dredge; oiler on truck crane pug mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment

Group III(a) - Truck crane and dredge

Group IV - Boat operator-outboard motor (job site); conveyor (such as con-vay-it) regardlessof how used; oiler; sweeper, floor

Group IV(a) - Crawler type

Group V - (a) Air pressure, oiler engineer, operating under ten pounds (b) air pressure, oiler engineer operating over ten pounds (c) air pressure engineer operating under ten pounds (d) air pressure engineer operating over ten pounds (e) crane-piledriving and extracting; crane using rock socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as Linden); derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoists, three or more drums; scoop,tandem; tractor, tandem crawler

Crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of $2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50¢ above base rate

TRUCK DRIVER CLASSIFICATION DEFINITIONS

GROUP 1 - Flat bed drivers; pick-ups and station wagons; tireman & station attendant; dump, single axle

GROUP 2 - Flat bed, tandem axle; dump, tandem; tank trucks, single axle

GROUP 3 - Agitator & transit-mix

GROUP 4 - Winch trucks; steel haulers, derrick & A-trucks; distributors drivers & operators; tank truck; tandem & semi-tractors; wheel tractors; oilers, greasers & mechanic helpers; heavy excavating & hauling euclids, dumpsters, etc.

GROUP 5 - Fork lifts & high lifts, etc., when unloading or carrying

GROUP 6 - Mechanics

federal register

Friday
September 14, 1984

Part IV

Department of Health and Human Services

Public Health Service

48 CFR Ch. 3, Appendix A
Acquisition Regulation; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

48 CFR Ch. 3, Appendix A

Acquisition Regulation

AGENCY: Public Health Service (PHS), HHS.

ACTION: Final rule with request for comments.

SUMMARY: This rule establishes the Public Health Service Acquisition Regulation (PHSAR) as Appendix A to the Department of Health and Human Services Acquisition Regulation (HHSAR), Chapter 3 of Title 48, Code of Federal Regulations (49 FR 13960, April 9, 1984). The PHSAR implements and supplements HHSAR and the Federal Acquisition Regulation (FAR), Title 48 CFR Chapter 1. Since these regulations affect only PHS acquisitions, a decision was made to publish them separately from the HHSAR.

The FAR was jointly promulgated on September 19, 1983 (48 FR 42102) by the Department of Defense, General Services Administration, and National Aeronautics and Space Administration as the uniform, simplified, government-wide acquisition regulation required by Executive Order 12352, Federal Procurement Reforms. The FAR supersedes the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation on April 1, 1984.

As a result of the promulgation of the FAR, all civilian agency implementations of the Federal Procurement Regulations, including the HHS Procurement Regulations, became obsolete on the effective date. For this reason, the Department of Health and Human Services is establishing the PHSAR to effect policies and procedures governing the acquisition processes which were formerly found in the HHS Procurement Regulations, Chapter 3 of Title 41, Code of Federal Regulations, and PHS Procurement Regulations.

DATES: This final rule is effective April 1, 1984. Comment due date is October 15, 1984.

ADDRESS: Any person or organization wishing to submit comments pertaining to the PHSAR may do so by mailing them to the Contracts Management Branch, Division of Grants and Contracts, Room 18A–11, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Comments received after October 15, 1984 will not be considered. Oral comments will not be taken.

FOR FURTHER INFORMATION CONTACT: Stephen R. Gane, Procurement Analyst, at (301) 443–2710.

SUPPLEMENTARY INFORMATION: The PHSAR implements the HHSAR and FAR where required or considered necessary and supplements the HHSAR and FAR in areas where there is no coverage or the coverage is considered inadequate. The PHSAR is the result of reformating the existing HHS and PHS Procurement Regulations, removing portions of the PHS Procurement Regulations which would duplicate HHSAR or FAR coverage of subject matter not contained in the Federal Procurement Regulations, and inserting needed internal procedural guidance in areas where the FAR and HHSAR require implementation.

The Department highlights the following areas which were previously contained in the HHS Procurement Regulations and are now in the PHSAR:

Subpart PHS 380.1—Acquisitions Involving Human Subjects
Subpart PHS 380.2—Acquisitions Involving the Use of Laboratory Animals
Subpart PHS 380.3—Acquisition of Drugs and Medical Supplies
Subpart PHS 380.4—Contracts under the Indian Self-Determination Act
Subpart PHS 380.5—Acquisitions under the Buy Indian Act

The HHSAR, including the PHSAR, 48 CFR Chapter 3, supersedes the HHS Procurement Regulations, 41 CFR Chapter 3, as of April 1, 1984. However, the HHS and PHS Procurement Regulations remain in effect for those contracts awarded, or based upon solicitations issued, before the effective date.

Executive Order 12291

In accordance with the memorandum of October 4, 1982 from the Director, Office of Management and Budget, this final rule is exempt from the provisions of Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires the preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. Since this rule reformats existing procurement policies and procedures which would impact the public, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities, and, thus, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

Parts PHS 352 and 380 contain information collection or reporting requirements. As required by the Paperwork Reduction Act of 1980, the Department has submitted a copy of this final rule to the Office of Management and Budget for its review of these information requirements. Individuals and organizations desiring to submit comments on the information requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for HHS.

Administrative Procedure Act

The Administrative Procedure Act (APA) exempts rules relating to contracts from the prior notice and comment procedures normally required for formal rulemaking (5 U.S.C. 553(a)). This Department, however, as a matter of policy, utilizes the public participation procedures of the APA for rules relating to contracts except when, as authorized by the APA, "the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." (36 FR 2532; 5 U.S.C. 553(b)(B)).

The Department has determined that this rule falls within the authorized exceptions to the APA. Because this rule merely reformats the Department's existing procurement regulations to conform them to FAR, and inserts needed internal procedural guidance in areas where the FAR requires implementation, prior public comment is deemed unnecessary. Further, since the Department's procurement regulations became obsolete on April 1, 1984, it is impracticable to provide for prior public comment on this rule. Lastly, it would be contrary to the public interest to utilize a prior public comment procedure, since that procedure would result in PHS not having any acquisition regulations in effect on or after April 1, 1984.

OFPP Policy Letter No. 83–2

The Office of Federal Procurement Policy, in Policy Letter No. 83–2, requires that an agency must provide an opportunity for public comment before adopting procurement (acquisition) regulations if the regulations represent a "significant" change to existing regulations. A change to existing regulations "is generally considered to be significant if it has an effect beyond the internal procedures of the issuing agency, or a cost or administrative impact on contractors."

The Department has determined that this rule does not represent a significant change. As indicated earlier in the preamble, the changes made to the Department's procurement (acquisition) regulations are in the areas of format and internal procedures. Accordingly, the Department has concluded that the requirements of the Policy Letter do not apply.

For these reasons, the Department is issuing the PHS Acquisition Regulation as a final rule. However, the Department will accept comments on the regulation until October 15, 1984, and will review all comments for possible revisions to the regulation.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Ch. 3

Government procurement.

Accordingly, the Department amends Title 48, Code of Federal Regulations, by establishing Appendix A—Public Health Service, to Chapter 3 as set forth below.

Dated: April 24, 1984.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

Appendix A—Public Health Service

SUBCHAPTER A—GENERAL

Part PHS 301—PHS Acquisition Regulation System
Part PHS 302—Definitions of Words and Terms
Part PHS 304—Administrative Matters

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part PHS 314—Formal Advertising
Part PHS 315—Contracting by Negotiation

SUBCHAPTER H—CLAUSES AND FORMS

Part PHS 352—Solicitation Provisions and Contract Clauses

SUBCHAPTER T—PHS SUPPLEMENTATIONS

Part PHS 380—Special Program Requirements Affecting PHS Acquisitions

SUBCHAPTER A—GENERAL

PART PHS 301—PHS ACQUISITION REGULATION SYSTEM

Subpart PHS 301.1—Purpose, Authority, Issuance

Sec.
PHS 301.101 Purpose.
PHS 301.102 Authority.
PHS 301.103 Applicability.
PHS 301.104 Issuance.
PHS 301.104-1 Publication and code arrangement.
PHS 301.104-2 Arrangement of regulations.
PHS 301.104-3 Copies.
PHS 301.105 OMB approval under the Paperwork Reduction Act.

Subpart PHS 301.2—Administration

PHS 301.201 Maintenance of the PHSAR.
PHS 301.270 Acquisition Management Advisory Committee.
PHS 301.271 Timing of PHSAR revisions.

Subpart PHS 301.4—Deviations From the FAR

PHS 301.470 Procedure.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 301.1—Purpose, Authority, Issuance

PHS 301.101 Purpose.

(a) The Public Health Service Acquisition Regulation (PHSAR) is issued to establish uniform acquisition policies and procedures throughout PHS which are necessary to implement or supplement the Department of Health and Human Services Acquisition Regulation (HHSAR).

(b) PHS issuances do not reiterate material published in the HHSAR or the Federal Acquisition Regulation (FAR).

(c) The PHSAR implements and supplements the HHSAR. Implementing material expands upon or indicates the manner of compliance with the related HHSAR. Supplementing material is new material which has no counterpart in the HHSAR. The omission of sections or subsections in PHSAR means no further explanation or qualification is necessary for implementation within PHS. Therefore, in order to obtain comprehensive coverage and assure consideration of all acquisition policies and procedures pertinent to PHS, the FAR, HHSAR, and PHSAR should be read.

PHS 301.102 Authority.

(a) The HHSAR authorizes supplementation or implementation of the FAR and HHSAR in accordance with prescribed procedures (see 301.301) in order to publish essential acquisition instructions, policies, and procedures that do not conflict with, supersede or duplicate that prescribed by the FAR and the HHSAR.

PHS 301.103 Applicability.

The FAR, HHSAR and PHSAR issuances apply to all acquisitions made by PHS procuring activities as defined in FAR 1.103.

PHS 301.104 Issuance.

PHS 301.104-1 Publication and code arrangement.

(a) The PHSAR is published in the same forms as indicated in FAR 1.104-1(a).

(b) PHS issuances will be published on yellow pages in looseleaf form for insertion into the HHSAR.

PHS 301.104-2 Arrangement of regulations.

(a) *General.* The PHSAR conforms to the FAR and HHSAR with respect to divisional arrangements; i.e., subchapters, parts, subparts, sections, subsections, and paragraphs.

(c) *References and citations.*

(2) This regulation shall be referred to as the Public Health Service Acquisition Regulation (PHSAR), Appendix A to the Department of Health and Human Services Acquisition Regulation. Any reference shall be cited as "PHS" followed by the appropriate number.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by "FAR." References to the HHSAR shall state only the number without the prefix "HHSAR."

PHS 301.104-3 Copies.

Copies of the PHSAR in Federal Register form may be purchased by the public from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402. Looseleaf copies of the PHSAR may be obtained by departmental personnel having a need for the document by placing an order with a Directives Distribution Coordinator in accordance with General Administration Manual Chapter 1-00, Exhibit G, HHS Staff Manual System.

PHS 301.105 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this regulation:

PHSAR Segment	OMB control No.
All Segments	0990-0129

Subpart PHS 301.2—Administration

PHS 301.201 Maintenance of PHSAR.

The PHSAR is maintained by the Division of Grants and Contracts, Office of Resource Management, Office of Management, PHS. The Director, Division of Grants and Contracts is responsible for developing and preparing material to be included in the PHSAR.

PHS 301.270 Acquisition Management Advisory Committee.

(a) The Director, Division of Grants and Contracts has established the

Acquisition Management Advisory Committee (AMAC) to assist and facilitate the planning and development of acquisition policies and procedures, and the resolving of operational problems affecting all acquisition activities in the PHS.

(b) The AMAC consists of members and alternates from the Office of the Assistant Secretary for Health, Alcohol, Drug Abuse, and Mental Health Administration, Centers for Disease Control, Food and Drug Administration, Health Resources and Services Administration, and National Institutes of Health.

PHS 301.271 Timing of PHSAR revisions.

PHSAR revisions will be issued throughout the year as the need arises. PHS issuances shall be effective on the date cited in the **Federal Register** issuance or on the date of the transmittal notice which distributes it to PHSAR Staff Manual holders, unless otherwise directed.

Subpart PHS 301.4—Deviations From the FAR

PHS 301.470 Procedure.

(a) Requests for deviations from the FAR, HHSAR or any PHSAR issuance for implementation or supplementation shall be submitted in writing by the PHS agency principal official responsible for acquisition to the Director, Division of Grants and Contracts, ORM/OM/PHS for approval and/or further processing as may be required. When it is recognized that a deviation will be required prior to the issuance of a solicitation, the request for deviation must be processed and approved prior to release of the solicitation. When completion of a contract action is contingent on approval of a deviation, the request for deviation must be processed and approval granted by the appropriate level, prior to contract execution. In an exigency situation, initial verbal contact should be made with the Chief, Contracts Management Branch, DGC/ORM/OM/PHS or his/her designee. Only deviations to the PHSAR may be granted by the Director, Division of Grants and Contracts.

(b) Each request for deviation shall provide sufficient information to permit PHS compliance with the HHSAR. Generally, such requests shall contain the following:

(1) A clear statement of the deviation required.

(2) The reason the deviation is considered necessary or would be in the best interest of the Government.

(3) The name of the contractor and contract number, or the name of the proposed contractor and the solicitation number.

(4) A statement indicating whether or not the deviation had been previously requested. If so, outline the circumstances involved and the disposition of that request.

(5) All pertinent background information which will contribute to a full understanding of the desired deviation.

PART PHS 302—DEFINITIONS OF WORDS AND TERMS

Subpart PHS 302.1—Definitions

PHS 302.170 Definitions of terms.

The following terms, when utilized in PHS supplementing or implementing issuances to the HHSAR, have the meanings set forth below.

"PHS agencies" identifies collectively that group of organizational entities within the PHS which have assigned major health functions as currently shown in the PHS Organization Handbook. The PHS agencies are as follows:

Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA)
Centers for Disease Control (CDC)
Food and Drug Administration (FDA)
Health Resources and Services Administration (HRSA)
National Institutes of Health (NIH)

"PHS agency heads" identifies collectively those individuals who are given the responsibility and authority to manage and direct the efforts of the PHS agencies. These are the Administrators of ADAMHA and HRSA, Commissioner of FDA, and Directors of NIH and CDC.

"PHS contracting activities" identifies collectively those organizational elements of the PHS staff offices and the PHS agencies which have functional responsibility to contract for the acquisition of personal property and nonpersonal services.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART PHS 304—ADMINISTRATIVE MATTERS

Subpart PHS 304.1—Contract Execution

Sec.
PHS 304.170 Ratification of unauthorized contract awards.

Subpart PHS 304.6—Contract Reporting

PHS 304.670 PHS Contract Information System.
PHS 304.670-1 Policy.
PHS 304.670-2 PHS agency implementation.

Subpart PHS 304.71—Review and Approval of Proposed Contract Awards

PHS 304.7101 Contracts requiring review and approval.

Sec.
PHS 304.7102 Conduct of the review.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart PHS 304.1—Contract Execution

PHS 304.170 Ratification of unauthorized contract awards.

(c)(2) Where ratification of an unauthorized contract action within a PHS agency is requested, the contracting officer shall forward the file through acquisition channels to an official at an organizational level above the contracting officer. He/she in turn shall analyze and evaluate the contracting officer's submission and make appropriate recommendations regarding ratification to the head of the contracting activity.

The Administrative Services Center (ASC), Office of Management (OM), will submit its requests for ratification to the Director, OM through the Division of Grants and Contracts (DGC), Office of Resource Management, OM/PHS.

(c)(4)(i) PHS agencies, and ASC, OM/PHS, shall submit a report of ratification data as specified in 304.170. PHS agencies with several contracting offices will be required to collect the required information from these activities and submit a consolidated agency report.

(ii) These reports shall be submitted to DGC/ORM/OM/PHS within 20 days following the expiration of the reporting period. A consolidated PHS report will be prepared for submission to the Deputy Assistant Secretary for Procurement, Assistance, and Logistics as specified in 304.170.

Subpart PHS 304.6—Contract Reporting

PHS 304.670 PHS Contract Information System (PHSCIS).

The PHS Contract Information System consolidates all PHS contract data for the Department-wide Contract Information System (DCIS) from the PHS contracting activities.

PHS 304.670-1 Policy

The PHS principal officials responsible for acquisition (PORA) are responsible to ensure that all required contract information is collected, submitted, and received into the PHSCIS on or before the 10th day of each month for all contracts and contract modifications of any value and other acquisitions over $10,000 of the prior month.

PHS 304.670-2 PHS agency implementation.

It is the responsibility of the PORAs to develop and implement appropriate procedures within their activities to ensure that data submissions to the PHSCIS are timely, error free, and contain all the required information.

Subpart PHS 304.71—Review and Approval of Proposed Contract Awards

PHS 304.7101 Contracts requiring review and approval.

(b)(2)(i) In addition to the reviews required by 304.7101(a) and PHS 304.7101(c), internal reviews are to be conducted of National Cancer Institute (NCI), National Institutes of Health (NIH), acquisitions expected to be in the range from $500,000–$1,000,000, and National Heart, Lung, and Blood Institute (NHLBI), NIH acquisitions expected to be in the range from $300,000–$750,000. (The officials responsible for these reviews shall be the Chief, Research Contracts Branch, Office of Administrative Management, NCI, NIH, and the Chief, Contracts Operations Branch, Division of Extramural Research, NHLBI, NIH, respectively.)

(ii) Furthermore, to assure that an adequate review of smaller dollar acquisitions is made prior to award, a statistically significant sample of contract actions of dollar values, less than those amounts referenced in this section is required to be approved prior to award. This review and approval will be by the designated Reviewing Official listed in paragraph (c) (but see PHS 304.7102(a)). Records of such review actions will be maintained and will include documentation of the resolution of any significant issue raised by the review.

(c) *Reviewing officials.* For PHS agency contract awards expected to exceed the dollar amounts stated in this paragraph, the reviewing official indicated will personally approve the award. Other than these specified requirements for the designated reviewing official, PHS agencies may assign other review and approval responsibilities at their discretion. The following officials shall be responsible for preaward contract review and approval of all proposed contracts and modifications which are expected to exceed the dollar limits expressed below:

Review and approval required for contracts expected to exceed	PHS acquisition activity	Reviewing official
	Office of the Assistant Secretary for Health	
$300,000	Administrative Services Center Office of Management	Director, Administrative Services Center.
	Alcohol, Drug Abuse and Mental Health Administration	
$300,000	National Institute on Drug Abuse	Director, Division of Grants and Contracts Management.
$300,000	National Institute on Alcohol Abuse and Alcoholism	Do.
$300,000	National Institue of Mental Health	Do.
$300,000	St. Elizabeths Hospital, NIMH	Do.
$50,000	Addiction Research Center	Do.
	Centers for Disease Control	
$100,000	Centers for Disease Control	Director, Procurement and Grants Office.
	Food and Drug Administration	
$300,000	Negotiated Contracts Branch	Director, Divisin of Contracts and Grants Management.
$300,000	National Center for Toxicological Research	Do.
$300,000	Procurement, Property, and Facilities Management Branch	Director, Division of Management Services.
	National Institutes of Health	
$1,000,000	National Cancer Institute	Director, Division of Contracts and Grants.
$750,000	National Heart, Lung, and Blood Institute	Do.
$500,000	National Institute of Neurological and Communicative Disorders and Stroke.	Do.
$500,000	National Institute of Child Health and Human Development	Do.
$500,000	National Institute of Allergy and Infectious Diseases	Do.
$500,000	National Library of Medicine (Research and development awards only)	Do.
$250,000	National Institute of Dental Research	Do.
$250,000	National Institute of Arthritis, Metabolism and Digestive Diseases	Do.
$250,000	Centralized procuring activity for all other National Institutes of Health Research Organizations.	Do.
$250,000	National Library of Medicine (Awards other than research and development).	Director, Division of Administrative Services.
$100,000	Procurement Branch, Division of Administrative Services	Do.
$100,000	National Institute of Environment Health Services	Do.
	Health Resources and Services Administration	
$300,000	Health Resources and Services Administration	Director, Division of Grants and Procurement Management.

PHS 304.7102 Conduct of the review.

(a) *General.* The reviewing official is not required to personally perform the review, but he or she is responsible for assuring that the reviewer is knowledgeable in the acquisition field and has sufficient expertise to perform a comprehensive review and to make cogent recommendations to the reviewing official for actions exceeding the dollar amounts stated in this subpart. The reviewing official shall approve each proposed contract award that is reviewed.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART PHS 314—FORMAL ADVERTISING

Subpart PHS 314.4—Opening of Bids and Award of Contract

Sec.
PHS 314.406–3 Other mistakes disclosed before award.
PHS 314.406–4 Mistakes after award.
PHS 314.407–8 Protests against award.
PHS 314.470 Protest control officer procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 314.4—Opening of Bids and Award of Contract

PHS 314.406–3 Other mistakes disclosed before award.

(g)(3) Information on mistakes in bids alleged after bid opening but before award shall be forwarded in duplicate by the contracting officer, through the contracting activity's principal official responsible for acqusition, to the Chief, Contracts Management Branch (CMB), Division of Grants and Contracts (DGC), Office of Resource Management (ORM), Office of Management (OM)/PHS. Care should be exercised to assure that such mistakes in bids are treated and processed in accordance with the requirements of FAR 14.406 and 314.406 of this chapter, and this subsection. After review and analysis, the Chief, CMB, shall forward the file, along with appropriate comments, to the Departmental Protest Control Officer, Office of Evaluation and Compliance, Office of Procurement, Assistance, and Logistics (OPAL), OS.

PHS 314.406–4 Mistakes after award.

(e)(2) Contracting Officers shall forward files relating to mistakes after award in duplicate, through the same channels outlined in PHS 314.406–3(g)(3). Particular care should be taken to assure compliance with the guidance and documentation requirements expressed in FAR 14.406–4.

PHS 314.407–8 Protests against award.

(a) *General.* (2) Reports concerning protests whether before or after award, shall include the following documentation:

(i) A statement by the PHS contracting activity's protest control officer. This statement shall be in the form of a transmittal letter to the PHS Protest Control Officer and shall summarize the allegations and the main thrust(s) of the protest; recapitulate the contracting activity's position leading to logical conclusions and appropriate recommendations for disposition of the protest; and reflect the action proposed or taken to correct Government deficiencies whenever applicable.

(ii) Each contracting officer's statement of facts and circumstances shall include a brief acquisition history and a specific comment on each individual protestant allegation, implication and innuendo; and shall refer to supportive statements obtained from program personnel whenever applicable.

(iii) The contracting officer's conclusions and recommendations. These should be supported by factual data and logical rational and bolstered whenever possible by reference to Comptroller General decision and other authoritative sources.

(iv) Other documents relevant to the protest. These include but are not limited to: the specifications, or where too bulky, that part which is relevant to the protest; a copy of the protest, and any correspondence relating thereto (e.g., General Accounting Office (GAO), HHS, and PHS transmittals and decisions); cost advisory/audit reports; technical evaluations; etc.

(4) Whenever the contracting officer deems it advisable to obtain the views of higher authority or when such submission is required by 314.407–8(b)(2), the protest files shall be forwarded in triplicate to the PHS Protest Control Officer, CMB/DGC/ORM/OM/PHS. These protest files shall be forwarded by transmittal letter signed by the contracting activity's principal official responsible for acquistion. The block of the transmittal letter should reflect information as follow:

Protest Before Award—Protestant's Name
Solicitation Number
OR
Protest After Award—Contract Number
Contractor's Name
Protestant's Name

Upon receipt of the file, the PHS Protest Control Officer will analyze the submission, assure that all pertinent aspects of the protest have been addressed, prepare comments, and continue processing of the file to the DHHS Protest Control Officer, Office of Evaluation and Compliance.

(5) Reports on protests filed with GAO shall be processed in accordance with PHS 314.406–8(a)(4) above.

(6) Each PHS agency shall designate a protest control officer, who shall be qualified and function in accordance with the criteria and guidance in PHS 314.470, Protest control officer procedures. The designations and the termination of such appointments shall be forwarded to the PHS Protest Control Officer, CMB/DGC/ORM/OM/PHS. Other PHS contracting activities, e.g., the Administrative Services Center, OM/PHS need not appoint protest control officers but should route all protests filed above the level of the contracting officer to the PHS Protest Control Officer, and call on him/her for any assistance which may be required on protest related matters.

(b) *Protest before award.* (2) All protest correspondence, which is required by 314.407–8(b)(2) to be submitted to the Director, Office of Evaluation and Compliance, OPAL/OS, shall be processed in accordance with PHS 314.407–8(a)(4) above.

(c) *Protests after award.* All formal protests after award shall be processed in accordance with PHS 314.407–8(a)(4) above.

(d) *Protest file disposition.* A copy of the protest file and the administrative determinations relating thereto, shall be retained as part of the official contract file.

PHS 314.470 Protest control officer procedures.

(a) Each PHS agency shall designate a protest control officer to monitor protests from the time of initial notification that a protest is imminent to release of the completed protest file. The protest control officer may be the PHS contracting activity's chief contracting official or an individual, senior in the contracting organization, who is designated by management to perform this function due to his/her depth of contract knowledge, experience, and professional acumen.

(b) Specifically, the designated protest control officer should be qualified to address the questions of form which frequently arise in regard to formally advertised acquisitions, as well as the technical and more sophisticated questions of fact which occur in both advertised and negotiated acquisitions. In this regard, he/she must have a broad enough experience base to articulate objectively the Government's positions on questions of restrictive or improper specifications, competitive range, technical evaluations, etc., and generally be in position to render immediate assistance to contracting officers to insure the validity of fundamental decisions relating to protests.

(c) With the appointment of protest control officers, processing procedures are visualized as follows:

(1) Contracting officer receives notification of protest.

(2) Contracting officer notifies the protest control officer of the protest and schedules a meeting to discuss the events and circumstances involved in the solicitation and/or contract in question and the contractor allegations relating thereto. If technical aspects are involved, responsible and qualified technical personnel may also be required to attend.

(3) If the protest is considered valid, a course of action designed to rectify the situation is agreed upon. If the protest has been lodged at the contracting officer level, remedial action may be immediately effected. However, where a protest is lodged at a higher level, the protest file should be documented and recommendations for remedial action should be processed through channels and acted upon after receipt of proper approval.

(4) If the protest is not considered valid, a plan of action is adopted which leads the contracting officer to the collection and accumulation of information required to document the protest file fully. The protest control officer then establishes a suspense date for submission of the complete protest file. (Note: Where contracting officers are located at distant field locations, telephone coordination may be substituted for the desired personal contact between the protest control officer and the contracting officer.) Each individual allegation, implication, and innuendo should be refuted to the contracting officer's Statement of Facts leading to logical conclusions on the thrust(s) of the protest and the recommendation that the protest be denied.

(5) While the protest control officer plays a key role in defining the basic approach and in providing advice as to what additional documentation or action should be taken, the contracting officer is still responsible for full compliance with the provisions of FAR, HHSAR, and PHSAR issuances regarding the handling of the protest and the preparation of the contract file. During this documentation phase, the protest control officer remains available for further consultation and follows-up to assure compliance with the established suspense date. When the protest file is completely assembled, documented, and indexed, it is returned to the protest control officer for evaluation and analysis. If additional refinements of Government documentation are still required, he/she takes action to obtain it; otherwise, he/she prepares a summary statement of the Government's position in regard to the protest and makes appropriate recommendations to the next level of review.

(6) The protest control officer will perform the same advisory and consultant functions in processing both protests before and after award. However, on protests after award, it is imperative that an early, knowledgeable decision be made on the validity of the protest, so that performance may either be permitted to continue or curtailed. In such situations, aggressive action is required to preclude contract expiration or product delivery, whenever the validity of the protest brings into serious consideration the nullification of the initial award.

PART PHS 315—CONTRACTING BY NEGOTIATION

Subpart PHS 315.2—Negotiation Authorities

Sec.
PHS 315.202 Public exigency.
PHS 315.205 Services of educational institutions.

Subpart PHS 315.3—Determination and Findings To Justify Negotiation

PHS 315.307 Signatory authority.

Subpart PHS 315.10—Preaward and Postaward Notifications, Protests, and Mistakes

PHS 315.1003 Protests against award.

Subpart PHS 315.71—Noncompetitive Acquisitions

PHS 315.7101 Policy.
PHS 315.7103 Criteria.
PHS 315.7106 Review and approval.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 315.2—Negotiation Authorities

PHS 315.202 Public exigency.

(c) *Limitations.* Use of this authority requires a written determination with supporting facts by the principal official responsible for acquisition.

PHS 315.205 Services of educational institutions.

(c) *Limitations.* (1) Use of this authority determination for any service other than those listed in FAR 15.205(b) shall require a written determination with supporting facts by the principal official responsible for acquisition.

Subpart PHS 315.3—Determination and Findings To Justify Negotiation

PHS 315.307 Signatory authority.

(a) *Contracting officer.* Individual D&Fs addressed in FAR 15.207, 15.208 and 15.210 shall be signed by the contracting officer.

(b) *Principal official responsible for acquisition (PORA).* In addition to those D&Fs designated in 315.307(b), the PORA shall also sign all individual and class D&Fs made under the negotiation authorities addressed in FAR 15.202 and PHS 315.205(c)(1).

(c) *Agency head.* The Assistant Secretary for Health shall sign individual and class D&Fs made for:

(1) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7) and

(2) Use of an indemnification provision in a research contract pursuant to 42 U.S.C. 241(a)(7).

Subpart PHS 315.10—Preaward and Postaward Notifications, Protests, and Mistakes

PHS 315.1003 Protests against award.

See PHS 314.407–8.

Subpart 315.71—Noncompetitive Acquisitions

PHS 315.7101 Policy.

(a) Noncompetitive acquisitions are to be authorized as required by 315.71 and as set forth herein. The following types of actions are covered:

(i) New contracts to be awarded noncompetitively.

(ii) Whole project buys, as defined by 315.7108. The approval official will be determined by the cumulative value of all acquisitions; i.e., the amount of the basic award, whether competitive or noncompetitive, plus all planned follow-on work.

(iii) Legislative or executive directions which preclude competition (or require award to a specific source) are considered noncompetitive and require approval by the appropriate official.

(iv) Contract modifications for additional work which were not authorized under (a)(ii) above. Contract modifications which exercise options, provide incremental funding, or award the noncompetitive portions of approved whole project buys are exempt from this procedure provided they were authorized as part of the initial award.

PHS 315.7103 Criteria.

(l) Certain PHS requirements can be performed only by the National Academy of Sciences (NAS) because of its preeminent position in the health field as the objective, independent, counterpart to the Government (PHS). In those circumstances where proposed awards to NAS are inappropriate for competition, but yet do not meet any of the existing criteria in 315.71, the following criterion is authorized to justify noncompetitive award.

(1) The NAS, by virtue of a committee/panel of scientific experts in the area of concern, its independent and objective point of reference in examining and reporting on this subject, and the unparalleled acceptance by the target audience(s) of NAS' findings and opinions on the matter under study, is the only source which can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the program requirement.

(2) It must be shown that the success of the proposed acquisition is critically dependent upon performance by the NAS. In addition, the Justification for Noncompetitive Acquisition (JNCA) must contain a statement that the other HHSAR criteria have been considered, but do not apply. All JNCAs citing this criterion, regardless of dollar amount, must be approved by the Assistant Secretary for Health (ASH) in accordance with the procedures set forth in PHS 315.7106.

PHS 315.7106 Review and approval.

(c)(1) Noncompetitive acquisitions estimated to cost $100,000 or more shall be subject to review and approval of the designated officials as set forth below:

$100,000–$749,999: Head of the PHS agency (delegable to the Principal Agency Official Responsible for Administration); Deputy Assistant Secretary for Health Operations (DASHO) for the PHS Staff Offices.
$750,000 or more: DASHO.

(2) All noncompetitive acquisitions with the NAS citing criterion PHS 315.7103 (1) must be approved by the Assistant Secretary for Health (ASH).

(3) Proposed noncompetitive acquisitions requiring approval either by DASHO or ASH shall be concurred in by the Head of the PHS agency or Principal Agency Official Responsible for Administration (for PHS Staff Offices, the appropriate staff office head) and then forwarded to the Director, Division of Grants and Contracts, Office of Resource Management, OM, for evaluation. The request for approval shall include:

(i) A JNCA as required by 315.7105 containing signatures evidencing concurrence by the appropriate acquisition, program, and management officials.

(ii) A JNCA narrative that addresses the following questions:

(A) Why the acquisition cannot be competed?

(B) What grounds are there for excluding all actual or potential offerors?

(C) What actions have been taken to obtain competition in the instant acquisition and

(D) What action is needed to avoid continuation of noncompetitive acquisitions in the future?

(iii) A document, preferably the request for contract (RFC), providing background data about the acquisition. Specifically, data concerning any previous competitive or noncompetitive predecessor contracts should be included as well as any plans for follow-on acquisitions to the contract. This data should cover performance periods and their respective costs.

(iv) A copy of any sources sought synopsis including the results of the evaluation of the responses received.

SUBCHAPTER H—CLAUSES AND FORMS

PART PHS 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart PHS 352.2—Texts of Provisions and Clauses

Sec.
PHS 352.280–1 Protection of Human Subjects.
PHS 352.280–2 Care of Laboratory Animals.
PHS 352.280–3 Maximum Allowable Cost for Drugs.
PHS 352.280–4 Contracts Awarded Under the Indian Self-Determination Act.
PHS 352.280–6 Demurrage Charge Provisions for Reusable Cylinders and Containers.

Subpart PHS 352.3—Provision and Clause Matrices

PHS 352.280–4 Contract Clauses for Contracts Awarded Under the Indian Self-Determination Act.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 352.2—Texts of Provisions and Clauses

PHS 352.280-1 Protection of Human Subjects.

The policy and procedures to be followed whenever individuals may be at risk as a consequence of participation as subjects in research, development, demonstration, or other activities being conducted under a contract are provided in Subpart PHS 380.1.

(a) The following provision shall be included in solicitations expected to involve human subjects:

Notice to Offerors of Requirement for Adequate Assurance of Protection of Human Subjects (Apr. 1984)

Prospective contractors being considered for award will be required to give acceptable assurance that the project described herein will be subject to initial and continuing review by an appropriate institutional committee. This review shall assure that the rights and welfare of the individuals involved are adequately protected, that the risks to an individual are out weighed by the potential benefits to him/her or by the importance of the knowledge to be gained, and that informed consent will be obtained by methods that are adequate and appropriate.

(End of provision)

(b) The following clause shall be included in contracts involving human subjects:

Protection of Human Subjects (Apr. 1984)

(a) The Contractor agrees that the rights and welfare of human subjects involved in performance of this contract will be protected in accordance with procedures specified in its current Institutional Assurance on file with the Office for Protection from Research Risks, NIH, PHS. The Contractor further agrees to provide certification at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the applicable Institutional Assurance accepted by the Office for Protection from Research Risks, NIH, PHS.

(b) the Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. No provision of this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor of its employees.

(End of clause)

PHS 352.280–2 Care of laboratory animals.

The policy and procedures to be used when contracts involve laboratory animals are provided in Subpart PHS 380.2. The following clause shall be used in all contracts involving the use laboratory animals.

Care of Laboratory Animals (Apr 1984)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Pub. L. 89–544, Laboratory Animal Welfare Act, August 24, 1966, as amended by Pub. L. 91–579, Animal Welfare Act of 1970, December 24, 1970. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences (NAS)—National Research Council (NRC), and in the United States Department of Agriculture's (USDA) regulations and standards issued under the Public laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. Contractor reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, NAS–NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of August 24, 1966, as amended (Pub. L. 89–544 and Pub. L. 91–579).

Note.—The Contractor may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(End of clause)

PHS 352.280–3 Maximum allowable cost for drugs.

The following clause, or one reading substantially as follows, shall be included in all contracts subject to the provisions of the Maximum Allowable Cost (MAC) regulation and PHS 380.305.

Maximum Allowable Cost for Drugs (Apr 1984)

(a) Reimbursement for drugs provided or used under this contract shall be in accordance with the Maximum Allowable Cost (MAC) regulation set forth in 45 CFR Subtitle A, Part 19. In accordance with 19.3 of the MAC regulation, the amount which is recognized for reimbursement or payment purposes for any drug purchased under the terms of the contract shall not exceed the lowest of:

(1) The maximum allowable cost of the drug, if any, established in accordance with 19.5 of the MAC regulation plus a reasonable dispensing fee;

(2) The acquisition cost of the drug plus a reasonable dispensing fee; or

(3) The provider's usual and customary charge to the public for the drug; *Provided,* That:

(i) The maximum allowable cost established for any drug shall not apply to a brand of that drug prescribed for a patient which the prescriber has certified in his/her own handwriting is medically necessary for that patient; and *Provided, further,* That:

(ii) When compensation for drug dispensing is included in some other amount payable to the provider by the reimbursing or payment program agency, a separate dispensing fee will not be recognized.

(b) The Contractor agrees:

(1) To include the following solicitation notification in all applicable solicitations issued under this contract and to ensure that subcontractors include it in any subsequent applicable solicitation:

This acquisition is subject to the Maximum Allowable Cost (MAC) regulation set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(2) To include this clause, including this paragraph (b), in all applicable subcontracts, regardless of tier, awarded pursuant to this contract.

(3) To include the furnished MAC determination or acquisition cost data in all applicable solicitations issued under this contract and in all resultant subcontracts awarded pursuant to this contract.

(End of clause)

PHS 352.280–4 Contracts Awarded Under the Indian Self-Determination Act.

(a) Insert the following clauses in cost-reimbursement contracts awarded under the Indian Self-Determination Act as described in subpart PHS 380.4.

Clause No. 1—Definitions (June 1977)

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services (HHS); and the term "his/her duly authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his/her authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of monitoring contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

(End of clause)

Clause No. 2—Disputes (June 1977)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

Clause No. 3—Limitation of Cost (June 1977)

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in this contract and the Contractor agrees to use its best efforts to perform all work and all obligations under this contract within such estimated costs. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the contract, or, if at any time the Contractor has reason to believe that the total cost to the Government, for the performance of this contract, will be substantially greater or less than the estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the contract and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of such estimated cost unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in this contract has been increased by the Contracting Officer in writing, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

(End of clause)

Clause No. 4—Allowable Cost (June 1977)

(a) *Compensation for Contractor's performance.* Payment for the allowable cost, as herein defined and as actually incurred by the Contractor shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Allowable cost.* The allowable cost of performing the work under this contract shall be the cost actually incurred by the Contractor, either directly incident or properly allocable to the contract, in the performance of this contract in accordance with its terms. The allowable cost, direct and indirect, including acceptability of cost allocation methods, shall be determined by the Contracting Officer in accordance with:

(1)(i) "A Guide for Nonprofit Institutions Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health and Human Services, HHS Publication OASC-5" or (ii) "A Guide for Hospitals, Grants and Contracts with the Department of Health and Human Services, HHS Publication OASC-3," or (iii) Subpart 1-15.7 of the Federal Procurement Regulations (41 CFR Subpart 1-15.7) if the contract is with a state or local government agency, or (iv) Subpart 1-15.4 of the Federal Procurement Regulations (41 CFR Subpart 1-15.4) if the contract is for the procurement of construction or architect-engineer services.

(2) The terms of the contract.

(End of clause)

Clause No. 5—Negotiated Overhead Rates (June 1977)

(a) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost," the allowable indirect costs shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the expiration of each of the Contractor's financial years or such period as may mutually be agreed upon by the Government and the Contractor, shall submit to the Contracting Officer, with a copy to the cognizant audit agency, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles set forth in paragraph (b)(1) of Clause 4, as in effect on the date of this contract, and the same hereby incorporated herein by reference.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed final rate, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in this contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this contract shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his/her duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his/her duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d) and (e) above.

(End of clause)

Clause No. 6—Payment (June 1977)

(a) *Payment on account of allowable cost.* Once each month (or at more frequent intervals if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of (b) below, make payment thereon as approved by the Contracting Officer.

(b) *Audit Adjustments.* At any time or times prior to settlement under this contract the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayment, or increased for underpayments on preceding invoices or vouchers.

(c) *Completion voucher.* On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "Completion Voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and provisions of (d) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 6 months (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion.

(d) *Applicable credits.* The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable cost hereunder when approved by the Contracting Officer.

(e) *Financial settlement.* Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract, and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are susceptible to exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; Provided, That such claims are not known to the Contractor on the date of the execution of the release; And provided further, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(End of clause)

Clause No. 7—Advance Payments (June 1977)

(a) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he/she may designate in writing (hereinafter called the "Countersigning Agent"). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. An interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefor shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder.

(h) *Lien on Property Under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release to the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (1) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assembles, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(j) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations.* (1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $——.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

(End of clause)

Clause No. 8—Examination of Records (June 1977)

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States and the Secretary, or any of their duly authorized representatives, shall until expiration of 3 years after final payment under this contract or of the time period for the particular records in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20) whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States, or his/her duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20) whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchases orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his/her duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

(End of clause)

Clause No. 9—Inspection and Reports (June 1977)

(a) *Inspection of work.* The Government shall have the right to inspect the work and activities under this contract, including without limitation, premises where any Government property may be located at such reasonable times and in such manner as it may deem appropriate and the Contractor shall afford the Government proper facilities and assistance for such inspection.

(b) *Reports.* The Contractor shall furnish such progress reports, schedules, financial and cost reports, and other reports, concerning the work under this contract as specified elsewhere in this contract. Cost and other financial data and projections furnished pursuant to this paragraph (b) shall not relieve the Contractor of the requirements for furnishing notice specified in the clause of this contract entitled "Limitation of Cost."

(c) In addition, where Federal financial assistance is involved in the contract effort, the following clause will apply:

Reports to the Indian People

The contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people served or represented by the contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(d) *Annual Reporting.*

(1) For each fiscal year during which a tribal orgainzation receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services involved. The reports shall include any other information requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the contract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the tribal contractor shall furnish other reports when and as required by the Secretary.

(End of clause)

Clause No. 10—Subcontracting (June 1977)

(a) *Prior approval required.* Except as provided in (c) below, the Contractor shall not enter into any subcontract or purchase order not otherwise expressly authorized elsewhere in this contract without the prior written approval of the Contracting Officer and subject to such conditions as the Contracting Officer may require.

(b) *Request for approval.* The Contractor's request for approval to enter into a subcontract pursuant to this clause shall include: (1) A description of the supplies or services to be called for by the subcontract; (2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained; (3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof; (4) identification of the type of subcontract to be used; (5) a copy or draft of the proposed subcontract, if available; and (6) any other information which the Contracting Officer may require.

(c) *Certain purchases of property and services.* Prior written approval shall not be required for firm fixed-price subcontracts for the purchase or rental of items of personal property having a unit acquisition cost of less than $200 or for subcontracts in a total amount less than $1,000 unless otherwise specified elsewhere in this contract: Provided, however, That advance notification shall be given by the Contractor of any subcontract which exceeds in dollar amount 5 percentum of the total estimated cost of this contract.

(d) *Contractor's procurement system.* The contractor shall use methods, practices or procedures in subcontracting or purchasing (hereinafter referred to as the Contractor's "procurement system") acceptable to the Contracting Officer. The Contracting Officer may, at any time during the performance of this contract, require the Contractor to provide information concerning its procurement system.

(e) *Effect of subcontracting.* Subcontracts shall be made in the name of the Contractor and shall not bind nor purport to bind the Government. The making of subcontracts hereunder shall not relieve the Contractor of any requirement under this contract (including, but not limited to, the duty to properly supervise and coordinate the work of subcontracts, and the duty to maintain and account for property pursuant to the clause of this contract entitled "Government Property"). Approval of the provisions of any subcontract by the Contracting Officer shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost. In no event shall approval of any subcontract by the Contracting Officer be construed as effecting any increase in the estimated cost set forth in this contract. No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Procurements from contractor-controlled sources.* Procurement or transfer of equipment, materials, supplies, or services from contractor-controlled source (any division or other organizational component of the prime contractor, exclusive of the contracting component, and any subsidiary or affiliate of the Contractor under a common control) shall be considered a subcontract for the purpose of this clause.

(End of clause)

Clause No. 11—Accounts, Audit and Records (June 1977)

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The Contractor's facility(ies), or such part thereof as may be engaged in the performance of this contract, and its records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his/her authorized representative.

(c) The contractor shall preserve and make available its records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in (41 CFR Part 1–20), whichever expires earlier and (2) for such longer period, if any, as is required by applicable statute, or by other clause of this contract, or by (i) or (ii) below.

(i) If this contract is completely or partially retroceded or reassumed by the Government, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Contracting Officer or any of his/her duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at this level involved in place of the Contractor: to add "of the Government prime contract" in place of "this contract" in (B) of subparagraph (c)(ii) above.

(End of clause)

Clause No. 12—Government Property (June 1977)

(a) *Government furnished property.* (1) The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (such property to be referred to as "Government furnished property").

In the event that Government furnished property is not delivered to the contractor by the time or times as stated, or if not stated, in sufficient time to enable the Contractor to meet such delivery or performance dates under this contract, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and make appropriate equitable adjustments to any contractual provisions affected by any such delay in accordance with the provisions of the clause of this contract entitled "Changes."

In the event that Government furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, immediately upon receipt thereof, notify the Contracting Officer of such fact, and, as directed by the Contracting Officer either (i) return or otherwise dispose of such property, or (ii) effect repairs or modifications thereto. Upon completion of (i) or (ii) above, the Contracting Officer, upon timely written request of the Contractor, shall make appropriate equitable adjustments to any contractual provisions affected thereby in accordance with the provisions of the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Title.* (1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property now owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

(c) *Use of Government property.* Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(d) *Property management and control.* The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance repair, protection, and preservation, control of and accountability for Government property, so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall comply with Federal, State, and local laws, codes, ordinances, regulations, and orders pertaining to standards of construction, safety, environment quality, energy conservation, historic site preservation, facilities for the handicapped, emergency preparedness, and other requirements that are applicable to the physical characteristics, operation, and maintenance of Government property. The Contractor agrees to promptly receipt for all Government property in a form and manner as prescribed by the Contracting Officer. The Contractor further agrees to take all reasonable steps to comply with all directions or instructions which the Contracting Officer may prescribe regarding the management and control of Government property.

(e) *Risk or loss.* (1) The Contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto);

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of

(A) all or substantially all of the Contractor's operations at any one plant, laboratory or separate location in which this contract is being performed or

(B) a separate and complete major organization, industrial or otherwise in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (d) hereof, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (4) hereof;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; Provided That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) If the Contractor transfers Government property to the possession and control of a subcontractor the transfer shall not affect the liability of the Contractor for loss or

destruction of or damage to Government property as set forth in (1) above. The Contractor shall require the subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to Government property while in the latter's possession or control, and the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received (except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract). Provided, however, That the subcontractor may be relieved from such liability only to the extent that the subcontract, with the prior approval of the Contracting Officer, so provides.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovation of the damaged Government property, or take such other actions as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The loss, destruction or damage and, upon the request of the Constracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(f) *Disposition of Government property.*

(1) During the period of performance of this contract, the Contractor shall promptly and regularly report to the Contracting Officer, in such form and manner as the Contracting Officer may direct, concerning the status of Government property under the contract, including all Government property in the Contractor's possession which is not in use or which is excess to the needs of the contract. The Contractor shall make such disposition of Government property as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(2) Upon completion or expiration of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract. Such accounting shall include inventory schedules covering all items of Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, or for which the Contractor has not otherwise been relieved of responsibility. The Contractor shall deliver or make such other disposition of Government property covered in such inventory schedules as the Contracting Officer may direct.

(3) The net proceeds of any disposition of Government property, in accordance with (1) and (2) above, shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(g) *Restoration of premises.* Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any Government property.

(End of clause)

Clause No. 13—Changes (June 1977)

The Contracting Officer may at any time, with the consent of the Contractor, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) Drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; and (d) the amount of Government furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not by any such order, an equitable adjustment shall be made (a) in the estimated cost or delivery schedule, or both, and (b) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: Provided, however, That the Contracting Officer, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Clause No. 14—Notice to the Government of Delays (June 1977)

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(End of clause)

Clause No. 15—Retrocession (June 1977)

(a) The Indian Tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the Tribe.

(b) Should the Tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies, mutually agree to:

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

(End of clause)

Clause No. 16—Assumption and Reassumption of Contract Programs (June 1977)

(a) When the Director or his/her delegate determines that the performance of a Contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, he/she will, in writing, notify the contractor of such determinations and will request that the Contractor take such corrective action within such period of time as the Director or his/her delegate may prescribe.

(b) When the Director or his/her delegate determines that a Contractor has not taken corrective action (as prescribed by him/her under paragraph (a) of this section) to his/her satisfaction, he/she may, after the Contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c) (1) When the Director or his/her delegate has made a determination described in paragraph (b) of this section, he/she shall in writing notify the Contractor of such determination and of the Contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his/her delegate shall set forth the reasons for the determination in sufficient detail to enable the Contractor to respond and shall inform the Contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the Contractor for a hearing, the Board, established pursuant to paragraph (d) of this section shall in writing within 10 days of the establishment notify the Contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his/her delegate determines that a Contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he/she may immediately rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he/she will immediately notify the Contractor of such action and the basis therefor; and offer the Contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d) (1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determination at issue. The Board shall afford the Contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on Contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogatories; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall become final within 20 days unless the Director, Indian Health Service or his/her representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his/her representative shall be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where the Board is considering issues arising under paragraph (2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(c) In any case where the officer has rescinded a contract under paragraph (b) or (c) of this section, he/she may decline to enter into a new contract agreement with the Contractor until such time as he/she is satisfied that the basis for the recision has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(End of clause)

Clause No. 17—Key Personnel (June 1977)

Where "key personnel" have been identified in this contract, it has been determined that such named personnel are necessary for the successful performance of the work under this contract; and the Contractor agrees to assign such personnel to the performance of the work under this contract, and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned personnel is unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such personnel with personnel of substantially equal ability and qualifications.

(End of clause)

Clause No. 18—Litigation and Claims (June 1977)

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost," except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any cost resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

Clause No. 19—Indemnity and Insurance (June 1977)

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program included as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's, landlord's, and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental and other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his/her opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waivers shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either expressed or implied, that will serve to authorize or emppwer the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy insurance.

(End of clause)

Clause No. 20—Overtime (June 1977)

Except as provided in this contract, the Contractor shall not perform overtime work under or in connection with this contract for which premium compensation is required to be paid, without specific written approval from the Contracting Officer.

(End of clause)

Clause No. 21—Foreign Travel (June 1977)

Foreign travel shall not be performed without the prior written approval of the Contracting Officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

(End of clause)

Clause No. 22—Questionnaire and Surveys (June 1977)

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

(End of clause)

Clause No. 23—Printing (June 1977)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and ½ inches, one side only, one color.

(End of clause)

Clause No. 24—Services of Consultants (June 1977)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracting," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $100, exclusive of travel costs or where the services of any consultant under this contract will exceed 10 days in any calendar year. Whenever Contracting Officer approval is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

(End of clause)

Clause No. 25—Assignment of Claims (June 1977)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payment to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

Clause No. 26—Contract Work Hours and Safety Standard Act—Overtime Compensation (June 1977)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts for any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

(End of clause)

Clause No. 27—Walsh-Healey Public Contracts Act (June 1977)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

(End of clause)

Clause No. 28—Equal Opportunity (June 1977)

Subject to the Indian preference in training and employment of Clause 29 during the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

Clause No. 29—Indian Preference in Training and Employment (June 1977)

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the Tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

(End of clause)

Clause No. 30—Certificate of Nonsegregated Facilities (June 1977)

By signing the contract the Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities. A certificate of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(End of clause)

Clause No. 31—Convict Labor (June 1977)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor, except as provided by Public Law 89–176, September 10, 1965 (18 U.S.C. 4082(c)(2)), and Executive Order No. 11755, December 29, 1973.

(End of clause)

Clause No. 32—Officials Not To Benefit (June 1977)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

Clause No. 33—Buy American Act for Supply and Service Contracts (June 1977)

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purpose of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954).

(End of clause)

Clause No. 34—Anti-Kickback Act (June 1977)

(a) Public Law 86–695, September 2, 1960 (41 U.S.C. 51–54) among other things prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift or gratuity to the prime contractor or any higher tier subcontractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgment for the award of a subcontact or order.

(b) The provisions of Public Law 86–695 are applicable to this contract and any subcontracts entered into under the contract.

(End of clause)

Clause No. 35—Use of Indian Business Concerns (June 1977)

(a) As used in this clause, the term "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 FR 36.204(i).

(b) The contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian business concerns established by the Tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1–1.7, 1–1.8, and 1–1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in sections 1–1.710–3(b), 1–1.805–3(b), and 1–1.1310–2(b), respectively, of the Federal Procurement Regulations (41 CFR Chaper 1).

(End of clause)

Clause No. 36—Payment of Interest on Contractor's Claims (June 1977)

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to P.L. 92–41, 85 Stat. 97, from the date the Contractor furnished to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeals, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing its remedies before a board of contract appeals or a court of competent jurisdiction.

The Contractor further agrees to comply with any rules, regulations and reporting requirements which may be imposed by the HHS Office for Civil Rights for purposes of insuring the proper exercise of this authority. The Contractor agrees to insert this clause in all subcontract(s) under this contract.

(End of clause)

Clause No. 37—Fair and Equal Treatment of Indian People (June 1977)

(a) The Contractor agrees consistent with medical needs to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) denying a patient any service or benefit or availability of a facility;

(ii) providing any service or benefit to a patient which is different, or is provided in a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his/her receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership, or other requirements of condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to reassume this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

(End of clause)

Clause No. 38—Price Reduction for Defective Cost or Pricing Data

The following clause applies to all contracts where cost and pricing data is required in accordance with P.L. 87–653.

Price Reduction for Defective Cost or Pricing Data (June 1977)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the Clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data-Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in its Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(Note.—Since this contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier subcontractors.)

(End of clause)

Clause No. 39—Subcontractor Cost and Pricing Data

The following clauses should be included in all contracts, when the subcontracts of the type and size described therein are contemplated.

Subcontractor Cost and Pricing Data (June 1977)

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification of which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market price or commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of its cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such expected subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clauses:

Subcontractor Cost and Pricing Data—Price Adjustments

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(End of clause)

Clause No. 40—Penalties (June 1977)

(a) Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The Contractor agrees to insert the clause in all subcontracts.

(End of clause)

Clause No. 41—Effect on Existing Rights (June 1977)

(a) Nothing in this contract shall be construed as:

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or,

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(End of clause)

Clause No. 42—General Services Administration (GSA) Supply Sources

Indian tribal organizations which are awarded cost-reimbursement type contracts under the Indian Self-Determination Act, may be authorized to utilize GSA supply sources. The following clause will be inserted in all cost-reimbursement type contracts under which the Contractor may be authorized to acquire items for the account of the Government from GSA supply sources:

General Services Administration Supply Sources (June 1977)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government, (1) unless otherwise specifically provided in the contract, (2) unless otherwise provided in the Government Property clause of this contract, or (3) in the absence of both the conditions in (1) and (2) of the clause. However, such property shall not be considered to be "Government-furnished property."

(End of clause)

(b) Insert the following clauses in fixed price contracts awarded under the Indian Self-Determination Act as described in Subpart PHS 380.4:

Clause No. 1—Definitions (June 1977)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services and the term "his/her duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his/her authority.

(c) The term "Department" means the Department of Health and Human Services (HHS).

(d) The term "constituent agency" means the agency of the Department responsible for the administration of this contract.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

(f) The term "Project Officer" means the person representing the Government for the purpose of technical direction of contract performance. The Project Officer is not

authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(End of clause)

Clause No. 2—Disputes (June 1977)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

Clause No. 3—Contract Work Hours and Safety Standard Act—Overtime Compensation (June 1977)

This contract, to the extent it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330), is subject to the following provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standard Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater numbers of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) at the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the Tribe and the work is being performed by the tribal organization or Tribe with its own regular employees.

(End of Clause)

Clause No. 4—Walsh-Healey Public Contracts Act (June 1977)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 34–45), there are hereby incorporated by reference all representations and stipulations required by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the Tribe and the work is being performed by the tribal organization or Tribe with its own regular employees.

(End of Clause)

Clause No. 5—Convict Labor (June 1977)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor except as provided by Public Law 89–176, September 10, 1965 (18 U.S.C. 4082(c)(2) and Executive Order No. 11755, December 29, 1973.

(End of clause)

Clause No. 6—Notice to the Government of Delays (June 1977)

Whenever the Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the Contractor shall within ten days give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(End of clause)

Clause No. 7—Assignment of Claims (June 1977)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payment aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract payments to assignee of any moneys due or due to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41).

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

Clause No. 8—Officials Not To Benefit (June 1977)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

Clause No. 9—Anti-Kickback Act (June 1977)

(a) Public Law 86–695, September 2, 1960 (41 U.S.C. 51–54) among other things, prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift, or gratuity to the prime contractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgement for the award of a subcontract or order.

(b) The provisions of Public Law 86–695 are applicable this contract and any subcontracts entered into under the contract.

(End of clause)

Clause No. 10—Penalties (June 1977)

Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for not more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The Contractor agrees to insert this clause in all subcontracts.

(End of clause)

Clause No. 11—Buy American Act (June 1977)

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) "A domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable. (The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954).

(End of clause)

Clause No. 12—Equal Opportunity (June 1977)

Subject to the Indian preference requirements of Clause 17, during the performance of this contract the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of Sepember 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contrator will furnish all information and reports required by executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

Clause No. 13—Certificate of Nonsegregated Facilities (June 1977)

By signing the contract the Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "Segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. It futher agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities. A certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(End of clause)

Clause No. 14—Subcontracting (June 1977)

The Contractor shall not enter into subcontracts for any of the work contemplated under this contract without obtaining the prior written approval of the Contracting Officer and subject to such conditions and provisions as he/she may deem necessary, in his/her discretion, to protect the interests of the Government: Provided, however, That notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for the purchase by the Contractor of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the requirements under this contract; Provided, further, however, That the aforesaid right of Contractor to engage such services shall in no event be construed to permit the Contractor to subcontract with a third-party for the performance of any major function contemplated under this contract to be performed by the Contractor, and Provided, further, however, That no provision of this clause and no such approval by the Contracting Officer of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Government in addition to the total contract price.

(End of clause)

Clause No. 15—Competition in Subcontracting (June 1977)

The Contractor agrees to select subcontractors on a competitive basis to the maximum practical consistent with the objectives and requirements of this contract.

(End of clause)

Clause No. 16—Use of Indian Business Concerns (June 1977)

(a) As used in this clause, the term, "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 CFR 36.204(i).

(b) The Contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with efficient performance of the contract. The Contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in sections 1-1.710-3(b), 1-1.805-3(b), and 1-1.1310-2(b), respectively of the Federal Procurement Regulations (41 CFR Chapter 1).

(End of clause)

Clause No. 17—Indian Preference in Training and Employment (June 1977)

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under this contract.

(End of clause)

Clause No. 18—Inspection (June 1977)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

Clause No. 19—Changes (June 1977)

The Contracting Officer may at any time, with the consent of the Contractor, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following (i) drawings, designs, or specifications, (ii) place of inspection, delivery, or acceptance, and (iii) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; Provided, however, That the Contracting Officer, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Clause No. 20—Retrocession (June 1977)

(a) The Indian tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the Tribe.

(b) Should the Tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies mutually agree to:

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

(End of clause)

Clause No. 21—Assumption and Reassumption of Contract Programs (June 1977)

(a) When the Contracting Officer determines that the performance of a

Contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any person, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, the Contracting Officer will, in writing, notify the Contractor of such determination and will request that the Contractor take such corrective action within such period of time as the Secretary may prescribe.

(b) When the Director or his/her delegate determines that a Contractor has not taken corrective action (as prescribed by him/her under paragraph (a) of this section) to his/her satisfaction, he/she may, after the Contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his/her delegate has made a determination described in paragraph (b) of this section, he/she shall in writing notify the Contractor of such determination and of the Contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his/her delegate shall set forth the reasons for the determination in sufficient detail to enable the Contractor to respond and shall inform the Contractor of its rights to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the Contractor for a hearing, the Board, established pursuant to paragraph (d) of this section, shall in writing within 10 days of the establishment notify the Contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his/her delegate determines that a Contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he/she may immediately rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he/she will immediately notify the Contractor of such action and the basis therefor; and offer the Contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the Contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogation; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall become final within 20 days unless the Director, Indian Health Service or his/her representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his/her representative shall be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where Board is considering issues arising under paragraph (2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(e) In any case where the officer has rescinded a contract under paragraphs (b) or (c) of this section, he/she may decline to enter into a new contract agreement with the Contractor until such time as he/she is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(End of clause)

Clause No. 22—Payment of Interest on Contractors' Claims (June 1977)

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnished to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing its remedies before a board of contract appeals or a court of competent jurisdiction.

(End of clause)

Clause No. 23—Government-Furnished Property (June 1977)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-Furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-Furnished Property suitable for use will be delivered to the Contractor at the times stated elsewhere in this contract or, if not so stated, in sufficient time to enable the Contractor by such time or times, to meet such delivery or performance dates. In the event that Government-Furnished Property is not delivered to the Contractor to meet such delivery or performance dates, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the delivery or performance dates, or the contract price, or both, and any other contractual provision affected by the delay. In the event that Government-Furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of such property, or (2) effect repairs or modifications. Upon completion of (1) or (2) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates of the contract price, or both, and any other contractual provision effected by the return, disposition, repair, or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-Furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance date or the contract price, or both, and any other contractual provisions affected by the decrease.

(c) Title to the Government-Furnished Property shall remain in the Government. Title to Government-Furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-Furnished Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(d) The Government-Furnished Property, unless otherwise specifically provided herein, and except as otherwise approved or directed by the Contracting Officer in writing, shall be used exclusively for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-Furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property, as the Government directs; Provided, however, That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible; and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-Furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) The Contractor also agrees to maintain and administer, in accordance with sound business practice, a property control system which will provide the following: Contract number; nomenclature of item; quantity received; issued; and balance on hand; posting reference to include date received, issued unit price and location; marking or identification of item; adequate maintenance, storage, and security of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. The Contractor further agrees to receipt promptly for all Government property in a form and manner as prescribed by the Contracting Officer.

(g) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government-Furnished Property is located.

(h) (i) The Contractor shall not be liable for any loss or damage to the Government-Furnished Property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto):

(A) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(B) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government-Furnished Property as required by subparagraph (e) above; or

(C) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in this contract; or

(D) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(E) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed but only to the extent of such insurance or reimbursement; Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(ii) The Contractor represents that it is not including the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-Furnished Property, except the extent that the risk of loss is imposed on the Contractor under (i)(C) above, or insurance has been required under (i)(D) above.

(iii) Upon the happening of loss or destruction of or damage to any Government-Furnished Property, the Contractor shall notify the Contracting Officer thereof and shall take all reasonable steps to protect the Government-Furnished Property from further damage, separate the damaged and undamaged Government-Furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(A) The lost, destroyed and damaged Government-Furnished Property;

(B) The time and origin of the loss, destruction or damage;

(C) All known interest in commingled property of which the Government-Furnished Property is a part; and

(D) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under the subparagraph (iii), to the extent approved by the Contracting Officer and set forth in a supplemental agreement or amendment to this contract.

(iv) With the prior written approval of the Contracting Officer after loss or destruction of or damage to Government-Furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-Furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of other, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-Furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-Furnished Property in accordance with the provisions of this contract, the Government-Furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-Furnished Property, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(i) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract or which has not been previously disposed of in accordance with the provisions of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(j) If the Contracting Officer determines that the interests of the Government require removal of any Government-Furnished Property, or if the Contractor determines any Government-Furnished Property to be in excess of its need under this contract such Government-Furnished Property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government-Furnished Property under this paragraph (j) or paragraph (i) above, upon timely written request of the Contractor, an equitable adjustment shall be made in the contract price to cover the direct cost to the Contractor of such removal and of any property damage occasioned thereby.

(End of clause)

Clause No. 24—Examination of Records by the Comptroller General (June 1977)

(a) The Contractor agrees that the Comptroller General of the United States or any of his/her duly authorized representatives shall, until expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his/her duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

Clause No. 25—Indemnity and Insurance (June 1977)

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program including as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's, landlord's, and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental, or other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his/her opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either expressed or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy or insurance.

(End of clause)

Clause No. 26—Fair and Equal Treatment of Indian People (June 1977)

(a) The Contractor agrees to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) Denying a patient any service or benefit or availability of a facility;

(ii) Providing any service or benefit to a patient which is different, or is provided in a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his/her receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership, or other requirements or conditions which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to terminate this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

(End of clause)

Clause No. 27—Reports to the Indian People and Annual Reports (June 1977)

(a) The Contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people serviced or represented by the Contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(b) *Annual reports.*

(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to the contract under this Part, the tribe which requested the contract must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services involved. The report shall include any other information requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the reports to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the contract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the tribal contractor shall furnish other reports when and as required by the Secretary.

(End of clause)

Clause No. 28—Questionnaires and Surveys (June 1977)

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

(End of clause)

Clause No. 29—Printing (June 1977)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, That performance of a requirement under this contract involvingthe reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and ½ inches, one side only, one color.

(End of clause)

Clause No. 30—Price Reduction for Defective Cost or Pricing

The following clause applies to all contracts where cost and pricing data is required in accordance with P.L. 87–653.

Price Reduction for Defective Cost or Pricing Data (June 1977)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the clause of this contract entitled "Subcontractor Cost, or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in its Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier subcontractors).

(End of clause)

Clause No. 31—Subcontractor Cost and Pricing Data

The following clause should be included in all contracts when the subcontracts of the type and size described therein are contemplated.

Subcontractor Cost and Pricing Data (June 1977)

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The contractor shall insert the substance of this clause including this paragraph (c) in each of its cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clause:

Subcontractor Cost and Pricing Data—Price Adjustment

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(End of clause)

Clause No. 32.—Advance Payment (June 1977)

(a) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) hereof) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he/she may designate in writing (hereinafter called the "Countersigning Agent"). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purpose of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and or such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefor shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other items, which lien shall secure the repayment or any advance payments made hereunder.

(h) *Lien on Property under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (1) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by other operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(j) *Prohibition against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations.* (1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $———.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

(End of clause)

Clause No. 33—Effect on Existing Rights (June 1977)

(a) Nothing in this contract shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(End of clause)

Clause No. 34—Federal, State, and Local Taxes (June 1977)

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase; Provided, That the Contractor if requested by the Contracting Officer, warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or the amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain, a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(d) As used in paragraph (b) above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the direction of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

(End of clause)

PHS 352.280–6 Demurrage charge provisions for reusable cylinders and containers.

The clause set forth below shall be inserted in solicitations and resultant contracts when delivery of the items may be in contractor-furnished reusable gas cylinders or other containers.

Demurrage Charge Provisions for Reusable Cylinders and Containers (Apr. 1984)

(a) Reusable gas cylinders or other containers identified below by offereors shall remain the property of the Contractor (except as provided in (c) below), and will be loaned without charge to the Government for the period stipulated below. In computing the period involved, such free loan period shall commence on the first day after date of delivery of each container to the herein specified f.o.b. point(s). Offerors who specify less than ——— days (to be determined by the Contracting Officer in accordance with trade custom), shall have their offers increased for evaluation purposes only by an amount arrived at by multiplying the number of days less than the established free loan period by the daily rental charge. In the event the offeror does not specify a free loan period, such period shall be ——— days (insert the same number of days as the established free loan period). Beginning with the first day after expiration of the free loan period to and including the date the containers are delivered to the Contractor's designated carrier, the Government shall pay the Contractor demurrage (rental) in the amount specified below. No demurrage shall accrue to the Contractor in excess of the herein specified container's replacement value. For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the herein specified replacement value less allocable demurrage paid therefor. Such lost or damaged containers paid for by the Government shall become the property of the Government.

(b) Empty containers will be delivered to the Contractor's designated carrier (offeror to identify applicable carrier below) f.o.b. points of original delivery specified in this solicitation/contract.

OFFERORS SHALL FURNISH THE FOLLOWING INFORMATION, AS APPLICABLE, FOR CONTAINERS

Applicable item No.	Type and size of container	Quantity	Free loan period	Demurrage charges per day per cylinder

Replacement value for each container	Identification and location of offeror's carrier for return of empty container

(c) When the offeror indicates that containers have a replacement value of less than $10, the Government shall have the option to purchase containers and add the cost to the offered price. When purchase option is exercised, offers shall be evaluated accordingly. In this event, the container shall become the property of the Government.

(End of clause)

Subpart PHS 352.3—Provision and Clause Matrices

PHS 352.380–4 Contract clauses for contracts awarded under the Indian Self-Determination Act.

(a) PHS Acquisition Regulations (PHSAR) Clauses for Cost-Reimbursement Contracts Awarded under the Indian Self-Determination Act.

Number, PHSAR Clause No., and Title and Date of Clause

1. 352.280–4(a)(1) Definitions. (June 1977)
2. 352.280–4(a)(2) Disputes. (June 1977)
3. 352.280–4(a)(3) Limitation of Cost. (June 1977)
4. 352.280–4(a)(4) Allowable Cost. (June 1977)
5. 352.280–4(a)(5) Negotiated Overhead Rates. (June 1977)
6. 352.280–4(a)(6) Payment (June 1977)
7. 352.280–4(a)(7) Advance Payment. (June 1977)
8. 352.280–4(a)(8) Examination of Records. (June 1977)
9. 352.280–4(a)(9) Inspection and Reports. (June 1977)
10. 352.280–4(a)(10) Subcontracting. (June 1977)
11. 352.280–4(a)(11) Accounts, Audit, and Records. (June 1977)
12. 352.280–4(a)(12) Government Property. (June 1977)
13. 352.280–4(a)(13) Changes. (June 1977)
14. 352.280–4(a)(14) Notice to the Government of Delays. (June 1977)
15. 352.280–4(a)(15) Retrocession. (June 1977)
16. 352.280–4(a)(16) Reassumption of Programs. (June 1977)
17. 352.280–4(a)(17) Key Personnel. (June 1977)
18. 352.280–4(a)(18) Litigation and Claims. (June 1977)
19. 352.280–4(a)(19) Indemnity and Insurance. (June 1977)
20. 352.280–4(a)(20) Overtime. (June 1977)
21. 352.280–4(a)(21) Foreign Travel. (June 1977)
22. 352.280–4(a)(22) Questionnaires and Surveys. (June 1977)
23. 352.280–4(a)(23) Printing. (June 1977)
24. 352.280–4(a)(24) Services of Consultants. (June 1977)
25. 352.280–4(a)(25) Assignment of Claims. (June 1977)
26. 352.280–4(a)(26) Contract Work Hours and Safety Standards Act-Overtime Compensation. (June 1977)
27. 352.280–4(a)(27) Walsh-Healey Public Contracts Act. (June 1977)
28. 352.280–4(a)(28) Equal Opportunity. (June 1977)
29. 352.280–4(a)(29) Indian Preference in Training and Employment. (June 1977)
30. 352.280–4(a)(30) Certificate of Nonsegregated Facilities. (June 1977)
31. 352.280–4(a)(31) Convict Labor. (June 1977)
32. 352.280–4(a)(32) Officials not to Benefit. (June 1977)
33. 352.280–4(a)(33) Buy American Act Supply and Service contracts. (June 1977)
34. 352.280–4(a)(34) Anti-Kickback Act. (June 1977)
35. 352.280–4(a)(35) Use of Indian Business Concerns. (June 1977)
36. 352.280–4(a)(36) Payment of Interest on Contractors' Claims. (June 1977)
37. 352.280–4(a)(37) Fair and Equal Treatment of Indian People. (June 1977)
38. 352.280–4(a)(38) Price Reduction for Defective Cost or Pricing Data. (June 1977)
39. 352.280–4(a)(39) Subcontractor Cost and Pricing Data. (June 1977)
40. 352.280–4(a)(40) Penalties. (June 1977)
41. 352.280–4(a)(41) Effect on Existing Rights. (June 1977)
42. 352.280–4(a)(42) General Services Administration Supply Sources. (June 1977)

(b) PHSAR Clauses for Fixed-Price Contracts Awarded under the Indian Self-Determination Act.

Number, PHSAR Clause No. and Title and Date of Clause

1. 352.280–4(b)(1) Definitions. (June 1977)
2. 352.280–4(b)(2) Disputes. (June 1977)
3. 352.280–4(b)(3) Contract Work Hours and Safety Standards Act-Overtime Compensation. (June 1977)
4. 352.280–4(b)(4) Walsh-Healey Public Contracts Act. (June 1977)
5. 352.280–4(b)(5) Convict Labor. (June 1977)
6. 352.280–4(b)(6) Notice to the Government of Delays. (June 1977)
7. 352.280–4(b)(7) Assignment of Claims. (June 1977)

8. 352.280-4(b)(8) Officials not to Benefit. (June 1977)
9. 352.280-4(b)(9) Anti-Kickback Act. (June 1977)
10. 352.280-4(b)(10) Penalties. (June 1977)
11. 352.280-4(b)(11) Buy American Act. (June 1977)
12. 352.280-4(b)(12) Equal Opportunity. (June 1977)
13. 352.280-4(b)(13) Certificate of Nonsegregated Facilities. (June 1977)
14. 352.280-4(b)(14) Subcontracting. (June 1977)
15. 352.280-4(b)(15) Competition in Subcontracting. (June 1977)
16. 352.280-4(b)(16) Use of Indian Business Concerns. (June 1977)
17. 352.280-4(b)(17) Indian Preference in Training and Employment. (June 1977)
18. 352.280-4(b)(18) Inspection. (June 1977)
19. 352.280-4(b)(19) Changes. (June 1977)
20. 352.280-4(b)(20) Retrocession. (June 1977)
21. 352.280-4(b)(21) Assumption and Reassumption of Contract Programs. (June 1977)
22. 352.280-4(b)(22) Payment of Interest on Contractor's Claims. (June 1977)
23. 352.280-4(b)(23) Government-Furnished Property. (June 1977)
24. 352.280-4(b)(24) Examination of Records by the Comptroller General. (June 1977)
25. 352.280-4(b)(25) Indemnity and Insurance. (June 1977)
26. 352.280-4(b)(26) Fair and Equal Treatment of Indian People. (June 1977)
27. 352.280-4(b)(27) Reports to the Indian People and Annual Reports. (June 1977)
28. 352.280-4(b)(28) Questionnaries and Surveys. (June 1977)
29. 352.280-4(b)(29) Printing. (June 1977)
30. 352.280-4(b)(30) Price Reduction for Defective Cost or Pricing. (June 1977)
31. 352.280-4(b)(31) Subcontractor Cost and Pricing Data. (June 1977)
32. 352.280-4(b)(32) Advance Payment. (June 1977)
33. 352.280-4(b)(33) Effect on Existing Rights. (June 1977)
34. 352.280-4(b)(34) Federal, State, and Local Taxes. (June 1977)

SUBCHAPTER T—PHS SUPPLEMENTATIONS

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PHS 380.502-1 Indian.
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PHS 380.502-4 Buy Indian contract.
PHS 380.502-5 Buy Indian restricted advertising.
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PHS 380.505 Responsibility determinations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 380.1—Acquisitions Involving Human Subjects

PHS 380.101 Scope of subpart.

This subpart provides policies and procedures to be followed whenever individuals may be at risk as a consequence of participation as a subject in research, development, demonstration, or other activities being conducted under contract.

PHS 380.102 Policy.

It is the policy of the Public Health Service that no contract involving risk to human subjects shall be awarded until acceptable assurance has been given that the project or activity will be subject to initial and continuing review by an appropriate institutional committee(s) as described in Chapter 1-40 PHS Grants Administration Manual. Except where the prime contractor holds a General Institutional Assurance (see PHS 380.103(b)), a separate Special Assurance will be required of each subcontractor or cooperating institution having immediate responsibility for human subjects involved in performance of the contract. Contracts involving human subjects at risk will not be awarded to an individual unless he/she is affiliated with or sponsored by an institution which can and will assume responsibility for safeguarding the human subjects involved.

PHS 380.103 Applicability.

(a) The policy set forth in PHS 380.102 applies to all contracts which involve activities in which subjects may be at risk. The identification of programs requires the application of sound professional judgment; therefore, the determination should involve professional staff within the component activities of PHS. PHS staff and consultants serving programs shall be responsible for identifying those specific projects or activities which require application of the policy. The Office for Protection from Research Risks (OPRR), Office of the Director, National Institutes of Health, is responsible for negotiation of assurances covering all PHS-supported activities involving human subjects.

(b) Contracting officers shall be guided by recommendations of the OPRR regarding nonaward or termination of a contract due to inadequate assurance or breach of assurance for protection of human subjects. General Institutional Assurances (applicable to all PHS grant and contract activities) previously accepted by the OPRR and listed in its current "Cumulative List of Institutions in Compliance with HHS Policy on Protection of Human Subjects" will be considered acceptable for purposes of this policy. Copies of proposals selected for negotiation and requiring a special assurance shall be forwarded to the Director, OPRR, NIH, Bldg. 31, Rm. 4B09, Bethesda, MD 20205, as early as possible in order that timely action may be taken to secure an assurance.

PHS 380.104 Types of assurances.

Assurances may be one of two types:

(a) *General assurance.* A general assurance describes the review and implementation procedures applicable to all HHS-supported activities within an institution, regardless of the number, location, or types of its components. General assurances will be required from institutions having a significant number of concurrent PHS projects or activities involving human subjects.

(b) *Special assurance.* A special assurance will, as a rule, describe those review and implementation procedures applicable to a single project or activity. Special assurances may also be approved in modified form to meet unusual requirements either of the agency or its subordinate element or of the institution receiving a contract. Special assurances are not to be solicited from institutions which have accepted general assurances on file.

PHS 380.105 Notice to offerors.

(a) Requests for proposals shall contain the notice to offerors in PHS 352.280–1 whenever contract performance is expected to involve risk to human subjects.

(b) Institutional review of proposals submitted by institutions having an accepted general assurance should be certified in the manner required by instructions for completion of the contract proposal, or one of the following statements must be typed on the lower or right-hand margin of the page bearing the name of the institutional official authorized to sign or execute proposals for the institution:

(1) "Human Subjects—Reviewed and Approved on (Date) ———."

Note.—This date should be no later than 90 days prior to the submission date, and must not be more than 12 months prior to the proposed starting date.

(2) "Human Subjects—Reviewed Pending on (Date) ———."

Note.—This date should be at least 1 month earlier than the proposed starting date on the project to avoid possible conflict with the award date.

(c) Special assurances generally will not be requested prior to determination that a contract proposal has been selected for negotiation. When a special assurance is submitted, it provides certification for the initial contract period concerned. No additional documentation is required. If the terms of the contract provide for additional years to complete the project, with annual obligation of funds, the noncompetitive renewal proposal shall be certified in the manner described in the preceding paragraph.

PHS 380.106 Contract clause.

The clause set forth in PHS 352.280–1 shall be inserted in all contracts involving human subjects.

Subpart PHS 380.2—Acquisitions Involving the Use of Laboratory Animals

PHS 380.201 Scope of subpart.

This issuance describes PHS contracts for projects or activities involving animals, and the responsibilities of the PHS agencies and subordinate elements for implementing policies and procedures described herein.

PHS 380.202 Definitions.

(a) *Animal Welfare Act.* The Act of August 24, 1966 (Pub. L. 89–544), commonly known as the Laboratory Animals Welfare Act, as amended in 1970 (Pub. L. 91–579) and 1976 (Pub. L. 94–279).

(b) *Animal.* "Animal" means any live, warm-blooded animal (homiotherm) which is being used, or is intended for use, for research, testing, training, education, experimentation, or demonstration purposes.

(c) *Animal facility.* "Animal facility" means any room, building, or area used to contain a primary enclosure designed to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, or hutch.

(d) *Institution.* Any corporation, institution, organization, agency, or other legally accountable person, other than an individual, located in a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, Wake Island, Johnston Island, the Virgin Islands, the Canal Zone, or the Trust Territory of the Pacific Islands.

(e) *Significant numbers of animals.* No fixed quantitative definition of this term is offered. Institutions believing that they do not use significant numbers of animals in PHS supported activities and wishing to modify their institutional committee make-up on the basis of their animal inventory as provided for by PHS 380.205(a)(2)(ii) should give inventory information as suggested by the assurance examples in PHS 380.207. Final determination as to the acceptability of such modifications will be made by the PHS.

PHS 380.203 Policy.

It is the policy of PHS that institutions awarded contracts involving animals shall assure PHS in writing that they will evaluate on a continuing basis their animal facilities in regard to the care, use, and treatment of such animals, consistent with the standards established by the Animal Welfare Act, and NIH publication 18–23 "Guide for Care and Use of Laboratory Animals," (reprinted 1980), including the "Principles for Use of Animals." No PHS contract involving the use of animals will be awarded to an institution unless an assurance has been filed with PHS. No contract will be awarded to an individual without affiliation with an institution which has accepted responsibility for administration of the funds awarded and has filed an assurance with PHS.

PHS 380.204 Applicability.

(a) This policy is applicable to the contracts of any PHS activity which involves the use of animals in direct research, training, testing, or other activities to be performed by the contractor institution. While the bulk of such support is offered by a few PHS activities (NIH, FDA), staff of all activities shall be alert to the inclusion of procedures involving animals into proposals received.

(b) Applicability of this policy to contracts for the acquisition of animals or animal materials for use in PHS intramural activities shall be determined by the PHS officials responsible for administering programs which award such contracts.

PHS 380.205 Contractor implementation.

(a) See PHS 380.207 for examples of acceptable assurance forms. An assurance will identify the evaluation mechanism or mechanisms to be used by the institution, based on one of the following three actions, as appropriate:

(1) Accreditation of all institutional animal facilities by a nationally recognized professional laboratory animal accrediting body. (Registration, licensing, or inspection by the Animal Health Division of the Department of Agriculture or by any State, county, or municipal Government agency, does not serve to satisfy the terms of this policy. Accreditation by the American Association for Accreditation of Laboratory Animal Care does serve to satisfy the terms of this policy.)

(2) Establishment of an institutional committee to evaluate on a continuing basis the care of all animals held or used by or for the contractor institution for use in research, teaching, or other activities supported by PHS contracts.

(i) Where the institution uses significant numbers of animals in PHS supported activities, the committee will consist of at least three members, at least one of whom must be a Doctor of Veterinary Medicine.

(ii) Where the institution does not use significant numbers of animals in PHS supported activities, the committee will consist of at least three members. At least one of the members must be a scientist with demonstrated expertise in the care and use of laboratory animals. If this expertise is not available, a Doctor of Veterinary Medicine available to the committee on a consultant basis is the permissible alternative.

(3) Both of the foregoing (accreditation and committee), if the accreditation is limited to only a portion of the institution's facilities for the care and use of live animals.

(b) *Institutional review of proposals.* Contractor institutions are encouraged to review their proposals in the light of the pertinent provisions of the Animal Welfare Act, the standards set by the Institute of Laboratory Animal Resources, National Academy of Sciences, National Research Council (NAS, NRC), and the Principles for Use of Animals, and to familiarize their staff with these provisions, standards, and principles. However, there is no requirement under this policy that institutional committees perform review of individual proposals or regularly provide to PHS summaries or certifications of such committee actions.

(c) *Reporting to PHS.* No routine reports are required. Assurance requirements are limited to the descriptions, on a one-time basis, of administrative mechanisms for the continuing evaluation of institutional facilities and activities concerned with the care and use of animals. However, significant changes in assurance status or significant problems encountered in implementing this policy shall be promptly reported to the Office for protection from Research Risks, (OPRR) Office of the Director, NIH, PHS. Review of these changes or problems, or of institutional and other records of performance under the terms and conditions of this policy, may require renegotiation of the assurance, or such other action as may be appropriate.

(d) *Maintenance of institutional records.* As a part of the continuing evaluation process, PHS awardee institutions shall keep records of committee activities, including recommendations and determinations, and/or records of accrediting body determinations. Institutions shall also keep animal inventory records to establish whether significant numbers of animals are being used. These records shall be available for inspection by the Secretay, HHS, or his/her authorized representatives. They shall be retained for a period of three years after termination of the budget period to which they apply.

PHS 380.206 PHS implementation.

(a) The Office for Protection from Research Risks, (OPRR), Office of the Director, NIH, PHS, will be responsible for general administration and coordination of the implementation of this policy. The OPRR will publish and distribute to all PHS agencies a cumulative list of all institutions which have filed assurances of compliance as specified in PHS 380.205.

(b) Staff, advisory groups, and consultants, in their review of applications for PHS contracts, shall consider the requirements of this policy with special attention to the principles described in the Guide for Care and Use of Laboratory Animals. If a project is disapproved or not awarded as requested, entirely or in part on grounds of incompatibility with this policy or its related principles, PHS program staff shall bring the circumstances to the attention of the OPRR, which will call the matter to the attention of the offeror.

(c) (1) PHS agencies are responsible for implementing the requirements of this policy.

(2) No PHS contract involving the use of animals shall be awarded when the contract proposal raises questions in the minds of PHS agency staff as to the proposer's compliance with the terms of this policy or its related principles. The principal investigator or project director will be contacted by PHS staff and given an opportunity to resolve the questions, in a time period specified by the PHS agency.

(3) Final adverse action shall be taken by PHS only if the principal investigator or project director fails or refuses to satisfactorily resolve the questions within the time period specified. Alternatively, if, in the judgment of PHS staff, the project or activity can properly be restricted so as to eliminate those parts of the design which are incompatible with this policy or its principles, such restricted award may be offered.

(d) If, in the judgment of the Secretary or his/her authorized representative, an institution has failed in a material manner [1] to comply with the terms of this policy, he/she may:

(1) With respect to an institution, determine that its eligibility to receive further PHS contracts involving the use of animals be withdrawn, and the disqualification to continue until terminated in the public interest by the Secretary or his/her authorized representative. The institution shall be promptly notified of this action.

(2) With respect to a particular PHS contract involving the use of animals, require that it be terminated in the manner provided for in applicable acquisition regulations. The contractor shall be promptly notified of this action.

(3) With respect to an individual employed by the contractor, determine that he/she is no longer qualified to serve as principal investigator, program director, or other person responsible for the direction of activities funded by PHS contracts involving the use of animals, and that the disqualification is to continue until terminated in the public interest by the Secretary or his/her authorized representative. The individual shall be promptly notified of this action.

PHS 380.207 Examples of acceptable assurance forms.

Assurances may take any one of several forms depending on circumstances, but should include the information provided by one or more of the examples below, be dated, and be signed by an authorized representative of the institution:

(a) "This institution uses or intends to use significant numbers of warm-blooded animals in activities supported by PHS contracts. We are accredited by the American Association for Accreditation of Laboratory Animal Care (AAALAC). Our director(s) of laboratory animal care, as listed with AAALAC, is as follows: (insert names(s), degree(s), title(s)). Our accreditation applies to the following facilities and components of ths institution:

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Records of accrediting body determinations will be available for inspection by the Secretary, HHS, or his authorized representatives."

(b) "This institution uses or intends to use significant numbers of warm-blooded animals in activities supported by PHS contracts. We have established a committee of at least three members, at least one of whom is a Doctor of Veterinary Medicine (insert name), to evaluate the care of all warm-blooded animals held or used for contracts. The committee will be responsible for animals housed at the following facilities and components of this institution:

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The evaluation committee will periodically inspect the animal facilities of this institution and report its findings and recommendations to the institution's responsible officials on a schedule the committee determines necessary, but in no case will these reports be issued less than annually. Records will be kept of committee activities and recommendations. These records will be available for inspection by the Secretary, HHS, or his/her authorized representatives."

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[1] Any violation under Section 19 or 20 of the Animal Welfare Act shall be considered to constitute a material failure to comply with the terms of this policy.

(c) "This institution uses or intends to use warm-blooded animals in activities supported by HHS contracts, but not in significant numbers (average daily inventory, ——— warm-blooded animals, total inventory, ——— warm-blooded animals, total animal inventory, ——— warm-blooded animals).

We have established a committee of at least three members, one of whom is (insert name, highest degree held, field of major interest, years of animal research experience) to evaluate the care of all warm-blooded animals held or used for research, teaching or other activities supported by PHS contracts. The committee will be responsible for animals housed at the following facilities and components of this institution:

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The evaluation committee will periodically inspect the animal facilities of this institution and report its findings and recommendations to the institution's responsible officials on a schedule the committee determines necessary, but in no case will these reports be issued less than annually. Records will be kept of committee activities and recommendations. These records will be available for inspection by the Secretary, HHS, or his/her authorized representatives."

(d) "This institution uses or intends to use warm-blooded animals in activities supported by PHS contracts, but not in significant numbers (average daily inventory, ——— warm-blooded animals, total annual inventory, ——— warm-blooded animals). We have established a committee of at least three members, to evaluate the care of all warm-blooded animals held or used for research, teaching, or other activities supported by PHS contracts. We have arranged for a Doctor of Veterinary Medicine (insert name), to consult with the committee as needed. The committee will be responsible for animals housed at the following facilities and components of this institution:

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The evaluation committee will periodically inspect the animal facilities of this institution and report its findings and recommendations to the institution's responsible officials on a schedule the committee determines necessary, but in no case will these reports be issued less than annually. Records will be kept of committee activities and recommendations. These records will be available for inspection by the Secretary, HHS, or his/her authorized representatives."

Subpart PHS 380.3—Acquisition of Drugs and Medical Supplies

PHS 380.301 Scope of subpart.

This subpart provides policies and procedures pertaining to the acquisition of drug products and medical supplies by PHS or PHS's contractors.

PHS 380.302 Acquisition of drugs.

PHS 380.302-1 Policy.

(a) Drugs shall be acquired at the lowest possible price consistent with acceptable standards of identity, strength, quality, purity, safety and effectiveness, and with due regard for the welfare of the patient and the professional judgment of the prescriber.

(b) Contracting activities shall ensure that drugs are acquired by generic name on a competitive basis whenever it is possible to obtain therapeutically effective drugs of established quality. However, the professional judgment of the prescriber to request drugs by brand name or house designation must be recognized when the best interest of the patient requires it. Similarly, scientific investigators have the prerogative to request drugs having end-product characteristics considered necessary for the conduct of research or investigations.

(c) Prior to taking any acquisition action, the contracting officer shall ensure that the requested drug products are not available from mandatory sources such as Federal Supply Schedules. Part 103-26 of the HHS Material Management Manual describes sources of supply for drugs.

PHS 380.302-2 Solicitation and contract requirements.

The contracting officer should consider including statements similar to the following in solicitations and resultant contracts pertaining to drug products:

(a) The offeror (contractor) guarantees that all requirements established by the Food and Drug Administration, HHS, have been met. These requirements include: plant sanitation, manufacturing, packaging, labeling, identification, strength, quality, purity, safety, and effectiveness.

Note.—The contracting officer may want to cite the applicable reference(s) pertaining to the FDA requirements.

(b) The offeror (contractor), by signing this document, guarantees/warrants that any applicable shelf-life requirements have been met and the furnished drugs are free from defects.

(c) The Government reserves the right to inspect the manufacturer's plant and premises during normal operating hours.

Note.—FDA will normally conduct the inspection when requested, but may request to be reimbursed for the services.

(d) The offeror (contractor) agrees to submit either a comprehensive, certified analysis on each lot of drugs at the time of delivery of the drugs, or a comprehensive list of specifications met by the drugs along with a certificate of analysis, or other suitable documentation, verifying that the drugs meet the appropriate standards.

(e) The offeror (contractor) claims it is not currently listed as a disqualified bidder or offeror for drugs by any Federal agency or department.

(f) The offeror must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(g) If the offeror (prime contractor) plans to use (or uses) a subcontractor or secondary manufacturer for the furnishing of any or all the drug products under the resultant contract, the name and address of the subcontractor or secondary manufacturer is to be furnished the contracting officer, along with the drug lots affected. The prime contractor shall ensure that the subcontractor or secondary manufacturer complies with the above stated requirements.

PHS 380.303 Acquisition of controlled drugs.

(a) Controlled drugs include narcotics and dangerous drugs identified by the Drug Enforcement Administration (DEA), Department of Justice, in the regulations implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Title 21 CFR Chapter II).

(b) The DEA issues a Controlled Substances Inventory List which provides general information pertaining to the ordering of controlled drug products and the use of specific order forms. The local DEA regional office should be contacted to receive the list and instructions regarding registering and ordering forms, as well as other matters concerning the handling and processing of controlled drugs. Sections 103–27.6204(a)(2) and 103–27.6302(b) of the HHS Material Management Manual provide information on issuing, shipping, and safeguarding controlled drugs.

(c) Contracting officers shall ensure that requests for contracts or purchase requests are supported by the required DEA form prior to initiation of any action.

PHS 380.304 Effectiveness of drug products.

PHS 380.304–1 General.

(a) The National Academy of Sciences National Research Council (NAS-NRC) has established effectiveness classifications for the indication of drug products, based upon the following criteria:

(1) Factual information that is freely available in scientific literature;

(2) Factual information that is available from the Food and Drug Administration, the manufacturer, or other sources; and

(3) Experience and informed judgment of the members of NAS-NRC panels.

(b) The indications mentioned in the following categories refer to "the effect the drug purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling." That is, the indications are the claims noted in the labeling of a given drug product.

(1) *Category A—Effective.* For the presented indication, the drug is effective on the basis of the criteria cited in PHS 380.304–1(a) above.

(2) *Category B—Probably Effective.* For the indication presented, effectiveness of the drug is probable on the basis of the criteria cited in PHS 380.304–1(a) but additional evidence is required before it can be assigned to Category A.

(3) *Category C—Possibly Effective.* In relation to the indication in question, there is little evidence of effectiveness under any of the criteria cited in PHS 380.304–1(a). The possibility that additional supporting evidence might be developed should not be ruled out, however.

(4) *Category D—Ineffective.* In relation to the indication in question, there is no acceptable evidence under any of the criteria cited in PHS 380.304–1(a) to support a claim of effectiveness.

PHS 380.304–2 Policy.

(a) It is PHS policy to not acquire drug products classified "ineffective" or "possibly effective" for use in its direct care programs. However, there are two exceptions to this policy:

(1) Drug products categorized as "ineffective" and "possibly effective" may be acquired for use in the pursuit of approved clinical research products.

(2) Drug products categorized as "possibly effective" may be acquired when no alternate means of therapy with drug products in the "probably effective" or "effective" categories are available.

(b) This policy applies to similar drug products marketed by the same or other firms.

PHS 380.304–3 Procedures.

(a) The contracting officer, prior to initiating action on a purchase request or request for contract for drug products, shall ensure that the items are screened against current lists of products identified by the Pharmacy Liaison Officer, Public Health Service, to determine whether acquisition of the items is prohibited, and that the individual actually performing the screening has annotated and initialed the request.

(b) When the request is received for a drug product which is allowable under the exceptions stated in PHS 380.304–2, the contracting officer shall ensure that the appropriate justification is provided, that it is signed by the responsible program official, and that it is included in the contract or purchase request file.

(c) When the request for a restricted drug product cannot be resolved by the substitution of another item, the contracting officer shall consider the request as a deviation and process it in accordance with Subpart 301.4.

PHS 380.304–4 Distribution of information.

(a) The Pharmacy Liaison Officer, Public Health Service, has responsibility for distributing information on the effectiveness of drug products to the principal official responsible for acquisition. The principal official responsible for acquisition will be advised by telephone of drug products classified as "ineffective" or "possibly effective" prior to publication in the Federal Register, and will be provided a monthly list of these drug products following publication in the Federal Register.

(b) The principal official responsible for acquisition shall establish procedures for the distribution of information on the effectiveness of drug products and implement other controls necessary to assure compliance with the policy set forth in PHS 380.304–2.

PHS 380.305 Maximum allowable cost for drugs.

PHS 380.305–1 General.

(a) The regulation entitled "Limitation on Payment or Reimbursement for Drugs," also known as the Maximum Allowable Cost or MAC regulation, is set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(b) The MAC regulation established departmental policies and procedures for determining allowable drug costs and, where applicable, dispensing fees to be used to establish:

(1) Reimbursement to providers and health maintenance organizations under the Medicare program;

(2) Reimbursement to States under State administered health, welfare, and social service programs; and

(3) Allowable costs under projects for health services.

PHS 380.305–2 Applicability.

(a) This regulation implements the MAC regulation by establishing acquisition procedures consistent with the purpose and intent of the MAC regulation.

(b) This regulation applies to the direct acquisition of drugs by PHS and the acquisition or supply of drugs by PHS contractors.

(c) This regulation does not apply to the acquisition of drugs for research programs made by PHS and its contractors.

PHS 380.305–3 Responsibilities.

(a) The program office which initiates the requirement is responsible for advising the contracting office as to the applicability of the MAC regulation to the proposed acquisition.

(b) The Pharmacy Liaison Officer, PHS, is responsible for distributing to the principal official responsible for acquisition of the MAC determination or data concerning the acquisition cost of drugs. The MAC determination should be furnished within thirty days after publication as a final rule in the Federal Register. Acquisition cost data should be furnished within thirty days after the effective date.

(c) The principal official responsible for acquisition shall establish procedures for disseminating MAC determinations and acquisition cost data and may initiate other actions necessary to ensure compliance with the requirements of this regualation.

PHS 380.305–4 Solicitation notification.

(a) The contracting officer shall ensure that all requests for proposals and invitations for bids which are subject to the provisions of the MAC regulation contain a notice worded substantially as follows:

> This acquisition is subject to the Maximum Allowable Cost (MAC) regulation set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(b) The contracting officer shall include the applicable MAC determination or acquisition cost data in the RFP or IFB.

(c) The referenced solicitation notice, or a notice worded similarly to it, is required to be included in all applicable solicitations issued by the contractor or its subcontractors.

PHS 380.305–5 Contract requirements.

(a) The contracting officer shall include a clause entitled "Maximum Allowable Cost for Drugs," reading substantially as the clause cited in PHS 352.280–3, in all contracts subject to the provisions of the MAC regulation.

(b) The contracting officer shall incorporate in all contracts subject to the provisions of the MAC regulation the applicable MAC determination or acquisition cost data furnished in the solicitation.

(c) The clause cited in PHS 352.280–3, or a clause worded substantially as that cluase, is required to be included in all applicable contracts awarded by the contractor or its subcontractors.

PHS 380.306 Acquisition of tax free and specially denatured alcohol.

(a) All orders for tax free and specially denatured alcohol shall be placed with the HRSA Supply Service Center, Perry Point, MD. Orders shall be placed in accordance with the ordering instructions contained in the HRSA Medical Supply Catalog.

Subpart PHS 380.4—Contracts Under the Indian Self-Determination Act

PHS 380.400 Scope of subpart.

This subpart prescribes procedures for contracting by the Public Health Service (PHS) under the Indian Self-Determination Act (25 U.S.C. 450f).

PHS 380.401 Applicability of regulations.

Contracts with tribal organizations resulting from the submission of Indian Self-Determination Contract Proposals as authorized in Public Law 93–638 shall be in accordance with 41 CFR Chapters 1 and 3, except as otherwise provided herein. If this subpart conflicts with any of the other provisions of 41 CFR Chapters 1 or 3, the provisions of this subpart govern.

PHS 380.402 Waivers.

(a) The Secretary of Health and Human Services (HHS) waives Federal contract clauses that are normally contained in the General provisions of a contract to the extent that they are omitted from the General provisions prescribed for such contracts in this subpart.

(b) The Secretary may waive for the purpose of a specific contract other provisions of Federal contracting laws or regulations as determined not appropriate in view of, or are inconsistent with, the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). Requests for such waivers shall be in accordance with 42 CFR 36.216.

(c) Although it is PHS's policy to obtain competition whenever possible, any contract award to a tribal organization resulting from the submission of an Indian Self-Determination Contract Proposal will be effected without competition.

(d) Proposed contracts under section 103 of the Indian Self-Determination Act are exempted from the synopsis requirements of 41 CFR 1–1.1003. Although subcontracts are subject under section 7(b) of that act to a preference to Indian organizations and to Indian-owned economic enterprises, opportunities to so subcontract may be publicized by contracting officers as provided for in 41 CFR 1–1.1003–4.

PHS 380.403 Negotiating authority.

Contracts entered into pursuant to section 103 of the Indian Self-Determination Act (25 U.S.C. 450g) will cite as the negotiating authority 41 U.S.C. 252(c)(15) and 25 U.S.C. 450g.

PHS 380.404 Definitions.

The definitions prescribed in 42 CFR 36.204 are applicable to this supbart.

PHS 380.405 Types of contracts.

(a) Cost-reimbursement contracts will be used for all contracts made pursuant to this subpart between PHS and an Indian tribe or tribal organization. In addition to other provisions as the Secretary may from time to time require, the cost-reimbursement contracts shall contain the terms set out in PHS 352.280–4(a).

(b) Fixed-price contracts may be used in only these instances where costs can be precisely established. In addition to other provisions as the Secretary may from time to time require, the fixed-price contracts shall contain the terms set out in PHS 352.280–4(b).

(c) Cost sharing contracts may be used where the tribe contributes to the cost of a program and may specify a percentage of cost or fixed amount to be funded by the Government.

PHS 380.406 Term of contract.

(a) The term of contracts awarded under the Act shall not exceed one year except that contracts may be made for a longer term up to three years subject to the availability of appropriations under the following circumstances:

(1) The services provided under the contract can reasonably be expected to be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe or tribes to be served by the contract request that the term be more than one year. The tribal organizational will indicate the desired term of the contract in the Self-Determination Contract Proposal.

(b) Contract made for a term of more than one year may be renegotiated annually to reflect factors which include, but need not be limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract.

PHS 380.407 Exemption from bonds.

A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this subpart for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors other than tribal organizations, to furnish both performance and payment bonds as follows:

(a) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he/she deems adequate, for the protection of the United States.

(b) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in the prosecution of the work provided for in the contract. Whenever the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $1,000,000 but not more than $5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $5,000,000, the payment bond shall be $2,500,000.

PHS 380.408 Acquisition of construction and architect-engineering service contract.

(a) This section sets forth procedures and requirements peculiar to construction and architect-engineering service contracts. The terms and conditions of these contracts when negotiated with an Indian tribe or tribal organization pursuant to the Act shall, to the extent applicable, be in accordance with the requirements set forth in 41 CFR Part 1–18 and Subpart 1–4.10. However, if there is a conflict between 41 CFR Part 1–18 and Subpart 1–4.10, and any provision of the Act or 42 CFR Part 36, the Act or 42 CFR Part 36 shall govern. In addition these contracts shall include the special provisions identified in PHS 380.410.

(b) *Exceptions.*

(1) Subpart 1–18.10 of this title is not applicable.

(2) The contract clauses required by § 1–18.703–1 of this title shall be inserted in construction contracts with an Indian tribe or tribal organization which serves as a governmental instrumentality of an Indian tribe, but shall be prefaced by the provision contained in § 1–18.702–3 of this title.

(3) In all cases, the contracting officer shall obtain and insert the Wage Determination Decision issued by the Secretary of Labor in the contract prior to award of any contract for construction that falls within the purview of the Davis-Bacon Act. The Wage Determination Decision should be furnished sufficiently in advance of the contract award date to permit full consideration by the tribal organization and any prospective subcontractors.

PHS 380.409 Performance of personal services.

Any contract made under this subpart may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in connection with the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Providing such assistance, benefits, or services.

PHS 380.410 Special provisions of Indian Self-Determination contracts.

Contracts entered into pursuant to Section 103 of the Indian Self-Determination Act must incorporate special clauses which are consistent with those prescribed in Subpart I of Part 36 of 42 CFR on the following subjects:

(a) Fair and equal treatment of Indian people.

(b) Use of Indian business concerns.

(c) Indian preference in training and employment.

(d) Indemnity and insurance.

(e) Reports to the Indian people.

(f) Penalties.

(g) Retrocession.

(h) Assumption and reassumption of contract programs.

PHS 380.411 General provisions.

General provisions are published in these regulations (see PHS 352.280–4 for text of clauses) in order to respond to the expressed desire of the Indian people, to have published in one place, all of the terms and conditions applicable to contracts awarded under the Act. These general provisions incorporate the special clauses whose titles are listed in PHS 380.410, above, as well as applicable standard contract clauses.

Subpart PHS 380.5—Acquisitions Under the Buy Indian Act

PHS 380.500 Scope of subpart.

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Bay Indian Act. Applicability of this subpart is limited to acquisitions made by or on behalf of the Indian Health Service of the Public Health Service.

PHS 380.501 Policy.

(a) The Indian Health Service will utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act was enacted as a proviso to Section 23 of the Act of June 25, 1910, Chapter 431, Pub. L. 313, 61st Congress, 36 Stat. 861,and prescribes the application of the advertising requirements of section 3709 of the Revised Statutes to the acquisition of Indian supplies. As set out in 25 U.S.C. 47, the Buy Indian Act provides as follows:

> So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

(b) The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians were transferred to the Secretary of Health, Education, and Welfare, on July 1, 1955 by Pub. L. 568, 83rd Congress, 42 U.S.C. 2001 et seq. Accordingly, the Secretary of Health and Human Services is authorized to use the Buy Indian Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of the Indian Health Service).

(c) Use of the Buy Indian Act negotiation authority has been emphasized in subsequent legislation, particularly Pub. L. 94–437 and Pub. L. 96–537.

PHS 380.502 Definitions.

PHS 380.502–1 Indian.

Indian means a member of any tribe, pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services. The Secretary of Health and Human Services in making such determinations may take into account the determination of the tribe with which affiliation is claimed.

PHS 380.502–2 Indian firm.

Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Pub. L. 94–437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (see PHS 380.503(a)).

PHS 380.502–3 Product of Indian industry.

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

PHS 380.502–4 Buy Indian contract.

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c)(15) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service.

PHS 380.502-5 Buy Indian restricted advertising.

Buy Indian restricted advertising is a special method of negotiated acquisition conducted in the same manner as a formally advertised acquisition, except that competition and award are restricted to Indian firms (see FAR 19.101). Thus, a Buy Indian acquisition may be considered an acquisition set-aside for Indian firms in the manner that some acquisitions are set-aside for small business concerns (see FAR 19.101). Set-aside acquisitions are, technically, negotiated acquisitions but should be conducted as if they were formally advertised acquisitions in instances where the formal advertising method would be used if the set-aside was not in effect.

PHS 380.503 Requirements.

(a) *Indian ownership.* The degree of ownership that is called for by PHS 380.502-2 shall be 100 percent during the period covered by a Buy Indian contract unless a deviation from that 100 percent requirement is approved on an individual basis by the cognizant Area or Program Office Director of the Indian Health Service. Such a deviation, which may be to not less than 51 percent, must be accompanied by an appropriate justification for the deviation.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or pubic works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a) and Part 28 of the Federal Acquisition Regulation (48 CFR Ch. 1). In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), which requires that preference be given to Indians in employment, training, and subcontracting. Subpart 370.2 and the contract clauses in 352.270-2 and 352.270-3 represent the Department's implementation of section 7(b). The Indian Preference clause set forth in 352.270-2 shall be included in all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in 352.270-3 shall be used as specified in 370.202(b). All requirements set forth in Subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a-5) shall be included in all contracts awarded under the Buy Indian Act for over $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or members of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

PHS 380.504 Competition.

(a) Contracts to be awarded under the Buy Indian Act shall be subject to competition among Indians or Indian concerns to the maximum extent that competition is determined by the contracting officer to be practicable, pursuant to FAR 14.101 and FAR 15.105. When competition is determined not to be practicable, a Justification for Noncompetitive Acquisition shall be prepared in accordance with 315.7105 and subsequently retained in the contract file.

(b) Notwithstanding the provisions of Subpart 315.71, a request for approval of noncompetitive acquisitions to be negotiated under the Buy Indian Act may, if $25,000 or less, be approved by the chief of the contracting office,or, if over $25,000, by the cognizant Area or Program Office Director. Approval shall be in the form of a Justification for Noncompetitive Acquisition.

(c) Solicitations must be synopsized and publicized in the Commerce Business Daily (see FAR 5.2 and Subpart 305.2) and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis should state that the acquisition is restricted to Indian firms under the Buy Indian Act.

PHS 380.505 Responsibility determinations.

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under such a contract and that the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a), to be made prior to the award of a contract, will be made in writing by the contracting officer reflecting an analysis of the standards set forth in FAR 9.104-1, 309.104-1 of this Chapter and PHS 380.502-2.

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federal register

Friday
September 14, 1984

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Regulations; Final Frameworks for Late Season Migratory Bird Hunting; Final Rule and Lead Poisoning in Bald Eagles; Proposed Alternative Conservation Measures; Notice of Intent; Request for Comments

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late season frameworks from which States may select season dates, limits and other options for the 1984–85 migratory bird hunting season. The earliest of these seasons generally commences on or about October 1, 1984, and include most of those for waterfowl.

The frameworks are similar to those in effect last hunting season except restrictive regulations have been developed in the Pacific Flyway for cackling and dusky Canada geese and white-fronted geese, and in the Mississippi Flyway for Mississippi Valley Population Canada geese. In the Atlantic Flyway the option for an experimental permit season for whistling swans will be offered in North Carolina. The Service continues its program of stabilized duck hunting regulations into the 1984–85 hunting season as the fifth year of a 5-year cooperative study with Canada. Restrictions initiated in 1983–84 to reduce the black duck harvest will be continued this year.

The Service responds to the comments received following notice of the National Wildlife Federation petition concerning lead poisoning in bald eagles.

The Service annually prescribes hunting regulations frameworks to the States. The effects of this final rule are to facilitate the selection of hunting seasons by the States and to further the establishment of the late season migratory bird hunting regulations for the 1984–85 season. State selections will be published in the Federal Register as amendments to §§ 20.104 through 20.107 and § 20.109 of Title 50 CFR Part 20.

EFFECTIVE DATE: This rule takes effect on September 14, 1984. Tentative State selections of seasons and other options based on the proposed frameworks were due no later than August 31, 1984.

ADDRESSES: Send State season selections to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received on the proposed late season frameworks are available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 23, 1984, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (49 FR 11120) proposals to amend 50 CFR Part 20, with comment periods ending June 21, July 16 (later extended to July 18), and August 17 (later extended to August 29), 1984, respectively, for the 1984–85 Alaska, Hawaii, Puerto Rico and Virgin Islands hunting seasons; other early hunting seasons; and the late hunting seasons frameworks. That document dealt with the establishment of hunting seasons, shooting hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. A supplemental proposed rulemaking for both the early and late season frameworks appeared in the **Federal Register** dated June 13, 1984 (49 FR 24417).

On July 9, 1984, the Service published for public comment in the **Federal Register** (49 FR 28026) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early season migratory bird hunting regulations. On July 19, 1984, the Service published in the **Federal Register** (49 FR 29238) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands, and on August 7, 1984 (49 FR 31421) a fifth document containing final frameworks for other early seasons for migratory bird hunting regulations from which State wildlife conservation agency officials selected early season hunting dates, hours, areas and limits for the 1984–85 seasons. On August 20, 1984, the Service published in the **Federal Register** (49 FR 33090), a sixth document containing proposed frameworks for late season migratory bird hunting regulations. On August 31, 1984, the Service published in the **Federal Register** (49 FR 34648) a seventh document consisting of a final rule amending Subpart K of Title 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe and gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special falconry seasons. This document is the eighth in the series and establishes final frameworks for late season migratory bird hunting regulations for the 1984–85 season.

These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Review of Public Comments and the Service's Response

Written Comments Received

In the **Federal Register** dated June 13, 1984 (at 49 FR 24418), the Service responded to comments received up to that time on proposed late season frameworks. Eleven statements made at the public hearing on proposed late hunting season frameworks and 597 additional written comments were summarized and responded to in the **Federal Register** dated August 20, 1984 (at 49 FR 33093). Since then 883 written comments have been received. In several cases, more than one comment was received from the same respondent, and in some others views were offered on more than one regulatory subject. The new comments originated from 19 states, 44 organizations and a number of individuals. They are summarized and responded to according to the regulatory topics identified in the **Federal Register** dated March 23, 1984 (49 FR 11120). The Service also gave notice in the August 20, 1984 **Federal Register** (at 49 FR 33091) of receipt of a petition from the National Wildlife Federation (NWF) recommending immediate action to protect bald eagles from lead poisoning. The Service solicited comment on the NWF proposals. The following relates to the petition and the comments:

The Impact of Lead Shot on Bald Eagles—Notice of Alternative Conservation Measures

As discussed in more detail in the pages that follow, one of the most emotional and intensely debated issues arising under the 1984–85 waterfowl season regulations process has been the effect of lead shot on the American bald eagle. Although the Fish and Wildlife Service has been studying this issue for some time, a recent petition on the subject from the National Wildlife Federation (NWF) requesting emergency regulatory action has intensified the Service's assessment of the problem.

Regardless of its cause, lead poisoning in bald eagles is occurring and additional work is needed to provide a better understanding of the ecological relationship and biological significance of this type of mortality in bald eagles. The ecological relationship between bald eagles and waterfowl also requires strong consideration in assessing bald eagle/lead poisoning. Issues of concern include the species of waterfowl (geese vs ducks) being used as a food base; the number of waterfowl being consumed by bald eagles; the time of year when eagles are feeding on these waterfowl; the length of time of bald eagle-waterfowl interactions at specific sites; and, the use of toxic and non-toxic shot all play major roles in influencing the occurrence of lead poisoning in bald eagles.

In order to get a better perspective on this problem, the Service has convened a number of meetings in recent weeks among representatives from its endangered species, research, and migratory bird programs. Wholly apart from the Service's responsibilities towards the bald eagle established under section 7(a)(2) of the Endangered Species Act, the mission of this group of technical and resource experts was to formulate conservation measures which could reasonably be expected to provide credible biological information and long term solutions to the problem of lead poisoning of bald eagles.

The preliminary conservation recommendations from this ad hoc working group have now been completed. In order to provide the public with an opportunity to comment on these proposed conservation measures, the Service is publishing them in this issue of the **Federal Register**. All public comments on these measures received within the next 45 days will be taken into account in formulating the Service's final conservation measures for addressing the problem of lead poisoning in bald eagles.

The National Wildlife Federation petition on lead shot

As noted in the August 20th proposed frameworks publication, the NWF petitioned the Service at the August 1, 1984, public hearing to take emergency action in responding to lead poisoning in bald eagles. In particular, the NWF divided 95 counties around the country into so-called "Class I" or "Class II" areas. Class I areas were identified by the NWF as areas where there had been: (a) At least one bald eagle death from lead poisoning since 1966; (b) a concentration of fifteen or more wintering bald eagles; and (c) at least one documented death of a waterfowl due to lead poisoning or a 5 percent lead shot ingestion rate for waterfowl in the areas and (d) the absence of a non-toxic shot zone. Class II areas were identified as areas where there had been: (a) a concentration of fifteen or more wintering bald eagles; and either (b) one or more bald eagles with lead poisoning, regardless of whether the poisoning was lethal or sublethal (included in this category were bald eagles whose lead poisoning had only been preliminarily diagnosed at the time of the August 1st petition); or (c) at least one death of a waterfowl due to lead poisoning or a 5 percent lead shot ingestion rate for waterfowl in the area.

The NWF petitioned the Service to immediately designate non-toxic shot zones for all Class I areas for the 1984–85 season, or in the alternative, to exercise on an emergency basis the agency's closure authority under the Migratory Bird Treaty Act and prohibit all waterfowl hunting in those areas for the 1984–85 season. The NWF demanded that the Service immediately propose a regulation for Class II areas which would establish the areas as non-toxic shot zones for the 1985–86 season.

As was noted in the Service's August 20th publication in the **Federal Register**, the designation of steel shot zones was beyond the scope and intent of the August 1st public hearing and the proposed rule on late season waterfowl frameworks. For reasons set forth in more detail later in this document, the Fish and Wildlife Service has historically bifurcated the regulatory process establishing waterfowl frameworks (e.g. seasons and bag limits) from the regulatory process establishing non-toxic shot zones. Thus, that part of the NWF petition regarding the emergency establishment of steel shot zones for Class I areas was not germane to the regulatory process at hand. Instead, the Service intended to solicit public comment on the NWF's steel shot request in conjunction with a mid-September publication of steel shot zone modifications proposed for the 1985–86 season.

Summary of Major Comments

In response to the August 20th publication, twenty-one comments were received on the NWF petition. Letters from the NWF, the Sierra Club Legal Defense Fund, Inc., National Audubon Society, The Wildlife Society, Center for Environmental Education, The Izaak Walton League of America, Natural Resources Defense Council, Inc., and World Wildlife Fund-U.S. were in support of the petition submitted by the NWF. Letters from The Sportmen's Clubs of Texas, Inc., South Carolina Wildlife Federation, and six individuals were also in support of the NWF petition.

The National Rifle Association (NRA) submitted comments which questioned the emergency nature of the NWF petition and the validity of some of the county designations by the NWF. The NRA requested the economic impacts of the NWF petition be carefully analyzed and adequate time for public comment be permitted by the Service before final decisions are made.

The Arizona Game and Fish Department questioned the need for emergency action. They stated that action taken without adequate warning to hunters and ammunition suppliers tends to cause unnecessary resentment.

In addition, a resident in Holt County, Missouri, a Class I area in the NWF analysis, objected to the NWF petition. He questioned the adequacy of steel shot as a replacement for lead shot and expressed concern over the negative economic impacts of the actions outlined in the NWF petition.

Finally, the Federal Cartridge Corporation commented that the ammunition industry needs 12 to 14 months notice when changes in steel shot zones are made. This period allows time to remove lead shot inventories and produce and distribute steel shot ammunition. For these reasons the Federal Cartridge Corporation requested that the implementation of steel shot in additional areas be delayed until 1985.

None of the comments identified above presented the Service with new technical data or information which the Service did not already have.

The NWF submitted the most extensive comments on the issue. The Federation objected to the fact that the Service formally submitted for public comment only that part of its petition dealing with the emergency closure of its Class I areas to the hunting of waterfowl. The Federation also contended that the Service failed to justify this procedure. In addition, the NWF criticized the Service for what it characterized as a failure to respond in a timely fashion to a known problem involving lead poisoning in bald eagles. It objected to a statement in the August 20th publication implying that a revised Biological Opinion on the subject stemming from reinitiated Section 7 consultation had been signed on the 15th of August when it actually had been signed on the 27th of that month. The NWF also demanded that a final response be made to its petition by September 14, the anticipated publication date of the late season final frameworks. Finally, the NWF demanded the Service immediately issue a proposed rule designating all of the Federation's Class II areas as steel shot zones for the 1985–86 season. The other public comments in support of the NWF petition generally raised the same points.

FWS Biological Assessment of the Scientific Methodology and Assumptions of the NWF Petition and Report

Before responding in detail to the public comments of the NWF and others, the Service believes that it would be helpful to summarize its biological assessment of the scientific literature, methodology and assumptions which served as the basis for the NWF petition and report.

A. Summary of Literature on Lead Poisoning of Bald Eagles

Recognition of lead poisoning as a cause of mortality among bald eagles is of recent origin (Mulhern et al., 1970). An increasing number of diagnosed cases of this disease are being reported to the National Wildlife Health Laboratory (NWHL). However, far less is known about lead poisoning in bald eagles than in waterfowl because of the limited number of experimental studies carried out on this species.

There is one experimental study involving lead dosing of bald eagles. In this study, four out of five bald eagles that received lead died (Pattee et al., 1981), and the fifth became blind and was sacrificed after 133 days. The span of time from ingestion to death after initial dosing of the four eagles that died was 10, 12, 20 and 125 days (Hoffman et al., 1981). These birds were given an initial dosage of 10 number 4 lead shot. Regurgitation of shot required redosing and resulted in actual numbers of shot fed varying from 10 to 155. The number of shot recovered at necropsy varied from 1 to 10, and the number of shot recovered as a result of being expelled by the eagles varied from 5 to 145.

The study by Pattee et al. (1981), demonstrates that ingestion of lead shot can result in bald eagle mortality, provided shot is retained long enough for lead absorption to occur. It did not determine what causes retention of lead pellets. However, it appears that once pellets have been retained in bald eagles for more than 24 hours, there is a tendency for continued retention of the shot for a prolonged period (Redig, 1978). Lead concentrations in liver tissue of the four birds that died in Pattee's study ranged between 11.5 and 27.0 ppm (wet weight basis). Those findings are consistent with experimental data from lead studies in waterfowl and are supportive of diagnostic evaluations of eagle mortality made by the NWHL and other laboratories.

There are two differences between the cause of lead poisoning in bald eagles and in waterfowl. These are methods of lead ingestion and time of ingestion until death. Ingestion of lead shot as a result of feeding activities occurs for both eagles and waterfowl. However, for waterfowl the principal source of exposure is spent lead shot deposited in waterfowl hunting areas. The major source of lead exposure for bald eagles is thought to be shot lodged in the tissue of food animals (Redig, 1978; Pattee and Hennes, 1983).

The second important difference is the lead intoxication process. Data on bald eagles and other raptors indicate that lead intoxication is a slower process in raptors than in waterfowl. The time involved between exposure and death may span more than a month in bald eagles (Redig, 1979), while waterfowl typically succumb or recover within 3 weeks. It also appears that the period of debilitation prior to death is more prolonged in waterfowl than in bald eagles. The result is that waterfowl with acute lead poisoning are less mobile than bald eagles with acute lead poisoning. It is this greater mobility of the eagles during this period that makes it more difficult to indentify areas containing high concentrations of lead shot that serve as the source of lead in bald eagle deaths.

B. Critique of National Wildlife Federation Class I and II Selection Criteria

The methods used by the NWF to identify bald eagle/lead poisoning raise questions that need to be addressed before the conclusions reached by NWF can be adequately evaluated and confirmed. These questions involve the biological basis for NWF's identification of specific counties as problem areas requiring the use of non-toxic shot. Attention is focused on the following:

(1) *Utilization of waterfowl/lead poisoning problem areas as a criterion for identifying bald eagle problem areas.* The Service believes the primary cause of lead poisoning in bald eagles is from the ingestion of shot embedded in the tissues of birds hit, but not retrieved by hunters, rather than consumption of lead poisoned waterfowl. Therefore, the basis for using waterfowl lead poisoning problem areas to define bald eagle problem areas is questionable.

Furthermore, the definition of waterfowl/lead poisoning areas based on duck or goose gizzard collections with a 5 percent incidence of ingested shot, represents an arbitrary designation. It cannot be assumed that a 5 percent incidence of shot in gizzards will result in lead poisoning. Finally, NWF's use of a single case of lead poisoning in waterfowl within a county during the past 10 years to define a waterfowl/lead poisoning area is questionable. Differences in opinion about what constitutes a lead poisoning area, and the significance of lead poisoning as a mortality factor in waterfowl, continue to be the most difficult and controversial aspects of dealing with the lead poisoning issue.

The petition also does not indicate what criteria were used to verify the occurrence of lead poisoning in waterfowl (page 8, section A 1). In view of the weight being given to a single case of documented lead poisoning, a rigorous examination is needed to determine what constitutes verification.

(2) *Identification of lead poisoning in bald eagles as a criterion for identifying lead poisoning problem areas.* Lead poisoning as a cause of death in bald eagles cannot be defined solely on the basis of a lead liver concentration of 10 ppm or greater (wet weight) (NWF report, p. 11–12) because toxicology is only one part of the diagnostic process used in assessing the cause of bald eagle mortality.

Experimental values of lead in soft tissues of bald eagles are available from five eagles, four of which died (Pattee et al., 1981). This small sample is an inadequate one on which to base rigid judgments regarding lead concentrations in soft tissues. Enough exceptions have been observed in lead concentrations in the soft tissues of birds to question seriously the validity of assessments of lead poisoning, based solely on tissue concentrations of lead.

The National Wildlife Federation cites an exception to the 10 ppm criterion by selecting 6 ppm with associated clinical signs as being diagnostic of lead poisoning in bald eagles. Using such a criterion is invalid because differences in response of individual birds to lead can result in higher concentrations of lead being present without a diagnosis of lead poisoning being issued. Conversely, a difference in response can result in lead concentrations in liver tissue below 10 ppm also being diagnosed as lead poisoning.

The petition does not indicate whether the NWF used the diagnoses of pathologists reporting cases they reviewed, or whether they reevaluated those cases based on the criteria stated on page 12 of their report. If changes were made, the biological validity of any alterations in the diagnoses needed to be assessed. This is especially true if clinical signs were used as criteria. It is not clear whether NWF used the term clinical signs to include postmortem findings. Clinical signs are associated with live birds and are not specific for lead poisoning. Pathology at necropsy and histopathological evaluations are better indicators of lead poisoning than are clinical signs.

Evaluation of sublethal levels in body tissues of bald eagles is subject to opinion. Although a great deal of supposition is possible, a strong biological basis is lacking to support the many hypotheses regarding effects of these tissue lead concentrations.

Sublethal levels of lead in body tissues clearly demonstrate exposure to lead. Enzyme assays clearly demonstrate some disruptive effects of lead on certain biological functions. However, extrapolation of these and other findings to an assessment of bald eagle survival and reproduction, following exposure to sublethal levels of lead, is questionable.

FWS Response to Public Comments on the NWF Petition

Having employed the above analysis in measuring the scientific validity of the NWF's petition and its assessment of an emergency, the Service will now respond to the major public comments received on the NWF petition:

A. The failure to request expressly public comment on that part of the NWF petition regarding emergency steel shot designations. All twenty-one of the public comments received addressed the steel shot portion of the Federation's petition. Regardless of that fact, the Service believes that that part of the NWF petition dealing with emergency designation of steel shot zones was beyond the scope and subject matter of the August 20th proposed rule. That proposed rule was intended to cover the establishment of late season frameworks and not the designation of steel shot zones. The latter issue has been historically addressed in a separate series of rulemakings that follow an entirely different timetable than that utilized for regulations involving annual seasons and bag limits.

This bifurcation of the migratory bird hunting regulatory process has been employed for a number of reasons. Final administrative decisions on the content of migratory bird frameworks must necessarily be made at the end of summer after the last breeding ground surveys have been completed and an assessement of the fall flight is developed. Although time is of the essence at that point, generally the States are able to complete their own administrative review procedures on the selection of seasons and bag limits before the start of the fall hunting season.

On the other hand, the designation of new steel shot zones requires substantially more lead time for the implementation of final administrative decisions. One of the primary reasons for this has been that every year since 1978, the Service has had a rider attached to its appropriation bill which bars it from spending funds to implement and enforce final steel shot regulations without the approval of the affected State Fish and Wildlife agency. Thus, as a matter of law, this appropriations limitation precludes the very sort of unilateral Federal designation of steel shot zones that the NWF petition demanded for its Class I areas for the 1984–85 season. And, it is important to note, the appropriation act's limitation on Service action is controlling even in the face of other substantive agency obligations under statutes like the Endangered Species Act.

Given the appropriations rider, and local controversies which can surround each new steel shot zonal designation, sufficient lead time must be built into the regulatory process to allow for extensive consultation with the affected States. As a general matter, the Service attempts to finalize steel shot designations one year in advance of the actual affected season. In the case of the 1984–85 season, for example, the last **Federal Register** publication on steel shot occurred in June of 1983 (48 FR 26457).

Often one of the crucial factors for gaining State approval is the availability of nontoxic shot. Since most wholesale orders for ammunition are received by late spring, and not all major ammunition manufacturers have regional distribution centers capable of rapidly reallocating limited supplies of steel shot, an unexpected conversion to steel shot in August or September would for all practical purposes close down the fall hunt. The Service and the States are aware of this potential effect which is one of the reasons why they try to avoid the sort of precipitous regulatory action advocated by the NWF for Class I areas.

Moreover, since so much lead time on the designation of steel shot zones is built into the Federal rulemaking process, many States print up and distribute their hunter informational materials on lead and steel requirements well in advance of the establishment of final State seasons and bag limits. A last minute conversion to steel shot would in most instances hopelessly confuse the hunting public and make the successful enforcement of a new steel shot requirement virtually impossible.

In summary, both as a matter of law and as a matter of policy, the Service was not being arbitrary and capricious, nor acting in violation of Federal law, by deferring public consideration of the NWF steel shot proposal until the next scheduled publication of steel shot proposals for the 1985–86 season which is currently set for mid-September. The appropriations rider precludes the Service from unilaterally coverting the Class I areas into 1984–85 steel shot zones. Since there was no practical or legally authorized opportunity for the Service to implement the 1984–85 Class I proposal, the Service intends to solicit public comment formally in the mid-September publication on NWF petition in the context of a proposal to designate Class I and Class II areas as non-toxic shot zones for 1985–86. Although submitting it for public comment, the Service would not be endorsing it as a proposed rule.

B. Lead poisoning in bald eagles. The NWF and others criticized the Service for not having acted sooner in dealing with lead poisoning problem in bald eagles. To date, most research on lead poisoning has focused on waterfowl and even this effort has produced tentative conclusions. Moreover, as noted in the August 27th Biological Opinion written by the Endangered Species Office, not only is lead poisoning not jeopardizing continued existence of the bald eagle nationwide, the eagle is in fact continuing its recovery and is increasing in number. In fact, the National Wildlife Federation's own recent national population survey of bald eagles showed an increase of over 900 eagles from last year. Because the resources available for the endangered species recovery program are not inexhaustible, the Service felt it was justified in concentrating its research efforts on more critically endangered species like the whooping crane or the California condor.

Given the increase, however, in both the public's concern over this matter and the number of eagles recently diagnosed as having died of lead poisoning, the Service recognizes the need to intensify its efforts to resolve this problem. The Service believes the preliminary conservation measures set forth in this issue of the **Federal Register** is a positive step and responds to the criticism of the NWF and others.

C. NWF demand for FWS to publish by September 14 both a response to its steel shot petition for Class I Areas and a proposed rule for the Class II Areas for 1985–86. The Service believes that the detailed discussion of the NWF petition for Class I Areas in the preceding pages adequately addresses the first part of the Federation's demand. As for the immediate issuance of a steel shot proposed rule for the NWF's Class II Areas, the Service has made a commitment to solicit public comment on this request in its next regularly scheduled publication of its 1985–86 steel shot proposals. Moreover, the Service is proposing its own alternative conservation measures in the general public notice section of this **Federal Register** and has set mid-December as the target date for making a decision on the proposed designation of steel shot zones for a number of the Federation's Class II Areas.

D. The use of the Service's emergency closure authority under the Migratory Bird Treaty Act. Many of the commenters in favor of the NWF petition supported its alternative request that the Service close down waterfowl hunting in Class I Areas on an emergency basis if steel shot zones were not designated for those areas this fall. After a careful review of all relevant information on this matter, the Service has decided against exercising its emergency closure powers as requested. To begin with, the Service is not convinced that it is confronted with an emergency. As noted in the August 27 Biological Opinion on the NWF petition, the bald eagle is steadily continuing its recovery and has not had its continued existence jeopardized by lead poisoning. As noted previously, this is substantiated by the fact that the Federation's own recently announced population count for bald eagles showed an increase of over 900 bald eagles since last year. Moreover, the Service's biological critique of the Federation's methodology and criteria has shown that many of the petition's assumptions and conclusions are speculative. Given the stringent standards the courts have devised for assessing the legality of emergency rules, the Service is not convinced that such precipitous action as an emergency closure is either authorized or warranted at this time. The Service admits that more must be done to study the effects of lead poisoning of eagles, but it feels that there is no crisis facing the eagle, nor is there likely to be one with the implementation of carefully devised conservation measure like those set forth in today's general public notice. By accelerating its analysis of the problem in an orderly and logical fashion, the Service believes that it will be in a much better position by mid-December to launch a comprehensive program for addressing lead poisoning in bald eagles.

2. Framework dates for ducks and geese in the continental United States. Two comments were received regarding frameworks for ducks and geese. The National Wildlife Federation and the Wildlife Legislative Fund of America (by letters of August 8 and August 22, 1984, respectively) endorsed the proposed late season regulations. Both organizations supported the Service's proposal to continue the stablized duck hunting regulations study through the 1984–85 season. The National Wildlife Federation also urged the Service to present the evaluation of the stabilized regulations program as soon as practicable, but before seasons are established for 1985–86.

Response. The support of the National Wildlife Federation and the Wildlife Legislative Fund of America for the proposed frameworks and continuation of the stabilized regulations study is acknowledged. The Service notes the interest of the Federation in an expedited review of the 5-year stabilized regulations study and a presentation of the evaluation prior to the 1985–86 waterfowl seasons. In response to similar comments in the June 20, 1984, **Federal Register** (at 49 FR 33092), the Service indicated an intensive review will be initiated to determine what management measures should be implemented in 1985, including harvest reductions as they may be appropriate, to improve the status of duck populations, particularly mallards and pintails, in the prairie breeding grounds of Canada. The Service's review and development of management programs will be a cooperative effort with the Flyway Councils, the Canadian Wildlife Service, and other appropriate Canadian jurisdictions.

3. *Black ducks.* The National Wildlife Federation (by letter of August 8, 1984) endorsed the Service's proposal to continue the black duck harvest restrictions of 1983–84 in 1984–1985 and 1985–86 in order to insure that the Service can evaluate what impact restrictive regulations have on black duck populations.

Response. The Service acknowledges the support of the National Wildlife Federation for the proposed black duck hunting frameworks and the continuation of those frameworks through the 1985–86 waterfowl season.

4. *Wood ducks.* Wisconsin (by letter of August 14, 1984) expressed the view that the proposed early wood duck season option offered the Mississippi Flyway States of Arkansas, Louisiana, Mississippi, and Alabama (August 20, 1984, **Federal Register**, at 49 FR 33101) violates the concept of the stabilized duck hunting regulations study and has the potential for impacting northern nesting wood ducks. They stated that because the affected States have never pursued this option it should be withdrawn and possibly offered Flyway-wide when the wood duck population can sustain such a season.

Response. The early wood duck season option was first offered to the above States by the Service in 1977 in an effort to provide for additional harvest of southeastern wood ducks, yet not increase the harvest of northern nesting wood ducks. The option, offered every year since 1977, allows the additional harvest of wood ducks for up to 9 days during the period October 1–15 provided that the days taken are a part of the regular waterfowl season days of participating States. The Service does not view the option as being a violation of the stabilized duck hunting regulations program because it has been offered each of the previous 4 years of the 5-year study. Although the eligible States have not exercised their option for an early wood duck season, the Service believes it should continue to be offered in 1984. The Service does not believe the early wood duck season option should be offered Flyway-wide since northern wood ducks are already harvested at a relatively high rate.

12. *Canvasback and redheads.* In the August 20, 1984, **Federal Register** the Service accepted a change in the boundary for the experimental canvasback area in Maryland and indicated it was "incorporated in the proposed late season framework * * *" Through error the requested change was not made in the August 20 **Federal Register** but it is corrected in these final late season frameworks for migratory birds.

13. *Zoning.* In the June 13, 1984, **Federal Register** (at 49 FR 24421) the Service proposed to apply Central Flyway duck season length and Mississippi Flyway bag limits to the West zone in Louisiana beginning in the 1985–86 hunting season. The Service has received 25 comments on the Louisiana proposal: 3 (1 State and 2 individuals) in support and 22 (18 States, 2 organizations and 2 individuals) in opposition. The comments in opposition identify the following problems:

1. The Service has inadequately considered the adverse impacts that implementation of this proposal could have on Central and Mississippi Flyway duck resources.
2. The proposal is inconsistent with the concept of Federal-State cooperative waterfowl management in that is was developed by Louisiana and the Service without consultation with or participation by other concerned States.
3. The proposal narrowly addresses the relationship between the Mississippi and Central Flyways only with respect to Louisiana. It ignores this relationship with respect to other States in the Mississippi Flyway and fails to address the potential impact on the entire boundary between the two Flyways.
4. The potential for further modifying the distribution of the harvest among States in the Mississippi and Central Flyways, which is already heavily weighted in favor of Louisiana has not been given adequate consideration.
5. Conclusions drawn from study, on which the proposal is based, are strongly influenced by questionable assumptions regarding differences in harvest rates between the Mississippi and Central Flyways.
6. It is inappropriate at this time, when mallard and other duck populations are depressed as a result of drought, to initiate changes in frameworks that may increase duck harvest, especially mallards.
7. The proposal should not be considered until after the current experiment involving stabilized duck hunting regulations has been completed, analyzed and evaluated.

By letter of August 16, 1984, Michigan indicated that the boundary description of their Southeastern duck hunting zone as described in the August 20, 1984, **Federal Register** (at 49 FR 33102) was inadequate and provided a more detailed description of the zone.

Response. In view of the source and nature of comments received on the proposal for zoning Louisiana the Service has concluded that further action should be deferred pending additional consultation particularly with the Central and Mississippi Flyway Councils.

With respect to the comment from Michigan, the final frameworks set forth in this document reflect a more detailed description of the Southeastern zone in Michigan.

14. *Goose and Brant Seasons.* For State wildlife agencies (Wisconsin, Michigan, Kentucky and Indiana), 3 organizations and 21 individuals commented on the harvest regulations proposed in the August 20, 1984, **Federal Register** for Mississippi Valley Population (MVP) Canada Geese.

Wisconsin noted that the seasonal bag limit for Canada geese in the Theresa portion of the Horicon Zone should be 4 birds, rather than 2 as proposed, and that no mention was made of the late season for giant Canada geese normally offered in the Mississippi River Zone. Wisconsin also commented about Canada goose season lengths and bag limits in other States, including Missouri and Indiana, and observed that they appeared to be inconsistent with efforts to reduce the kill of MVP geese.

Michigan objected to the proposed regulations as being more restrictive than necessary, particularly in areas where Tennessee Valley Population (TVP) Canada geese intermingle with MVP Canada geese. They recommended a 40-day season Statewide, except in 10 western counties of the Upper Peninsula where the season would be 25 days. Bag limits could be 2 birds daily Statewide, except in the Allegan County Goose Management Area where a 1-bird daily bag limit would apply. State-imposed quotas would be established in the Seney Zone (500 birds), Allegan County Goose Management Area (4000 birds, 6000 in 1983), and Saginaw County Goose Management Area (5000 birds).

Kentucky proposed that the 7000 Canada goose quota assigned to the West Kentucky Zone be increased by 800 birds in recognition of harvest of TVP geese in the Union-Henderson County area.

Indiana proposed that a 40-day Canada goose season be offered in Posey County with a quota of 1000 birds assigned to the Hovey Lake area. When the quota is reached, the Canada goose season in Posey County would be closed. Indiana also proposed that the Canada goose season length Statewide, except for Posey County, be 50 days.

Six individuals and 1 hunting club in Michigan believed that the season length and bag limits for Canada geese were too restrictive, especially as they affected hunting for TVP and giant Canadas.

Three Indiana goose hunters believed the proposed regulations for Canada geese in Posey County were too restrictive and that Indian was being treated unfairly compared with other States in the MVP range.

An Illinois hunting group indicated that it was unfair to apply restrictions outside the Canada goose quota zones, questioned the accuracy of harvest estimates, and recommended a framework closing date of December 31 in Illinois.

Eleven individuals and 1 organization in Tennessee believed the 1500-bird quota for Canada geese in the Northwest Zone should be larger and compared the small Tennessee quota with the larger quotas of other States. Two of the individuals suggested that quotas elsewhere be reduced to allow a larger quota in Tennessee. One of the individuals recommended a 2-bird daily bag limit for Canada geese, and another noted that restrictive regulations would result in economic loss because of reduced tourism.

Response. The Service will correct in the final frameworks the bag limits in the Horicon Zone to provide for a season bag limit of 4 birds instead of 2 birds. The late season for giant Canada geese, from November 25 to December 9, in the Mississippi River Zone of Wisconsin was inadvertently omitted and is included in the final frameworks. Bag limits of 2 daily and 4 in possession will be continued as in previous years. In regard to Wisconsin's comments about Canada goose hunting regulations in other States where MVP geese are harvested the Service is of the view that the proposed season lengths and bag limits will be effective in lowering the kill as recommended by the MVP Committee of the Mississippi Flyway Council.

Michigan's concern that restrictions on the harvest of MVP geese in that State will have the additional effect of reducing the harvest of TVP geese is noted and the Service concurs that this is likely to be the case in Michigan as well as some other States in the MVP range. However, in those areas where both MVP and TVP geese are present at the same time there appears to be no practical way to avoid this situation and still provide the needed reduction in MVP harvests. The MVP Committee of the Mississippi Flyway Council has unanimously recommended that the 1984 harvest be reduced by 50 percent from that of 1983 to help reverse the 7-year downward trend. They recommended that the season length throughout the MVP range be no more than 25 days. The Committee believes that this is necessary in order to achieve progress toward the unanimously accepted 500,000 bird population goal, and the Service concurs. The Service believes the proposed Canada goose regulations for Michigan are necessary under the circumstances. The Service is of the view that the proposal by Michigan for a 25-day season in the 10 western counties of the Upper Peninsula and 40 days elsewhere in the State, a daily bag limit of 2 geese in most areas, and a reduction of 2000 birds in the harvest quota for the Allegan County Goose Management Area is inadequate to achieve a 50 percent Statewide reduction in harvest of MVP geese.

In Kentucky, as in Michigan, there is no clear line dividing the ranges of MVP and TVP Canada geese. Some TVP geese occur in the range occupied by MVP geese, and vice versa. Thus, the proposal to increase the Kentucky harvest objective by 800 geese to allow for kill of TVP geese within the MVP control zone is considered inappropriate because no allowance is made for harvest of MVP geese that occurs in the range assigned to TVP geese.

The Indiana proposal appears to have merit and deserves technical consideration by the MVP Committee of the Mississippi Flyway Council for future consideration. The main question concerns the degree to which harvest at Hovey Lake is related to the County-wide harvest in Posey County. The 40-day season length proposed by Indiana is inconsistent with guidelines of the MVP Committee that season length not exceed 25 days.

The comments by individuals and organizations are generally dealt with above. The Service has proposed restrictive regulations for MVP Canada geese within guidelines provided by the MVP Committee. It is difficult to apply restrictions evenly, and some inequities may occur. However, the Service believes that a significant effort is necessary to reduce the harvest of these geese and make progress toward achieving a 500,000 bird population.

15. *Whistling swan.* In the August 20, 1984, **Federal Register** (at 49 FR 33101) the Service proposed a limited experimental swan hunt in North Carolina beginning in the 1984–85 hunting season. In that document the Service addressed the comments received through August 7th. Since August 7, an additional 812 written comments have been received, 212 in opposition and 600 in support of a swan season. Those opposed to swan hunting continue to express the belief swans are too special to be hunted, that if hunted, many will be crippled and lost, and that any agricultural or shellfish losses could be alleviated by means other than hunting. Those favoring a season believe swans are numerous enough to sustain hunting and are a proper game species, that swans do cause agricultural damage and do compete with other wildlife for food resources.

Response. The additional comments received in opposition or support since August 7 are similar in content to those responded to in the August 20, 1984, **Federal Register** (at 49 FR 33096). The recent comments offer no new evidence that a limited experimental swan season would be detrimental to the eastern population of whistling swans. The Service recognizes that strong opposition, on other than biological grounds, exists to the hunting of swans. The Service notes, however, that swans have been hunted under permit in the Pacific Flyway since 1962. The sum of that experience indicates that swans are an appropriate game bird and that permit hunts represent a safe and cautious approach to the proper management of the resource. Therefore, a swan season, with the constraints previously noted, is authorized for North Carolina in 1984–85.

25. *Migratory bird hunting in Alaska.* By letter of August 22, 1984, The Wildlife Legislative Fund of America expressed concern over the impact of illegal taking of cackling Canada geese, white-fronted geese, emperor geese and black brant in Alaska, whether for subsistence or other purposes. They strongly urged the Service to take action to control the spring harvest of these species before it worsens because it is having serious adverse impacts on the species and it is contrary to the laws and treaties regarding protection of migratory game birds.

Response. The Service acknowledges the concerns expressed by The Wildlife Legislative Fund of America. In the August 20, 1984 **Federal Register** (at 49 FR 33092) the Service responded to similar concerns expressed by two speakers at the August 1, 1984, Public Hearing on late waterfowl hunting season regulations. Harvest restrictions on several species of geese that nest in the Yukon-Kuskokwim Delta of Alaska have been proposed for 1984–85. In addition, the Association of Village Council Presidents, working in cooperation with the above agencies on behalf of the residents of the Yukon-Kuskokwim Delta have agreed to follow the same guidelines in curtailing the harvest of these geese in the Delta where they traditionally contribute an important source of food in spring and early summer. This curtailment was initiated in the spring of 1984. The Service is of the view that the development and implementation of this agreement represents an important step toward conservation of these geese and merits continuation until results of the agreement can be measured.

Nontoxic Shot Regulations

On August 13, 1981, the Service published in the **Federal Register** (46 FR 40879) final rules describing nontoxic shot zones for waterfowl hunting. When eaten by waterfowl, spent lead pellets may have a toxic effect. Nontoxic shot zones reduce availability of lead pellets in selected waterfowl feeding areas. Steel shot is the only non-toxic shot type available at this time.

Amendments to these regulations were published in the **Federal Register** (47 FR 32546; July 28, 1982 and 48 FR 26457; June 8, 1983). These amendments relate to changes in Indiana, Maine, Massachusetts, Nebraska, Michigan, Illinois, Florida, and Texas. Some States have State regulations requiring steel shot for waterfowl hunting in areas not included in the Federal regulations published in the **Federal Register** on August 13, 1981 (46 FR 40879) and as amended.

Some national wildlife refuges require use of steel shot on hunting areas within their boundaries, and these rules are published with other regulations regarding public use of the refuges (Title 50 CFR Part 32.12—Hunting).

Waterfowl hunters are advised to consult State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council of Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. A recent supplement to the Final Environmental Statement is the environmental assessment entitled "Proposed Hunting Regulations on Eastern Population of Whistling (Tundra) Swans, 1984" and dated September 1984. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] "* * * by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical." The Service therefore initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 5, 1984, the Chief, Office of Endangered Species (OES), concluded that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. As noted in the August 20, 1984, **Federal Register** (at 49 FR 33097) the Service reinitiated Section 7 consultation on the proposed 1984–85 migratory game bird regulations in response to information submitted by the National Wildlife Federation regarding secondary lead poisoning of bald eagles. The reinitiated consultation was completed on August 27, 1984, and found that the proposed migratory bird regulations were not likely to jeopardize the continued existence of the listed bald eagle. In a supplemental biological opinion dated September 6, 1984, the OES considered actions proposed to be taken by the Service in regard to its authorities for the conservation of listed species under section 7(a)(1) of the Endangered Species Act. The OES believed the measures proposed were timely and appropriate. A second revised supplemental opinion was issued by OES on September 10, 1984, which concluded that the proposed migratory bird regulations were not likely to jeopardize, even on a regional basis, the continued existence of the listed bald eagle.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, D.C.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 23, 1984 (at 49 FR 11124), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated July 19, 1984 (at 49 FR 29239).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed late hunting season rulemakings were published on March 23, June 13, and August 20, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the close of each period time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates, shooting hours and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** final rulemaking amending 50 CFR Part 20 (§§ 20.104 through 20.107 and § 20.109) to reflect seasons, limits and shooting hours for the contiguous United States for the 1984–85 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1984–85 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

BILLING CODE 4310-55-M

Final Regulations Frameworks for 1984-85 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved final frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl, coots and gallinules; sandhill cranes in Arizona; and common snipe in the Pacific Flyway. Frameworks are summarized below. States may be more restrictive in selecting season regulations, but may not exceed the framework provisions.

GENERAL

Split Season: States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Extra Blue-winged Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Extra teal: States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

Special Scaup-only Season: States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 1, 1984, and January 31, 1985, all dates inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1984.

4. These areas must be described and delineated in State hunting regulations.

OR

Extra Scaup: As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, except if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Massachusetts, Connecticut and Pennsylvania may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill crane, gallinule and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

ATLANTIC FLYWAY

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots and Mergansers

Outside Dates: Between October 1, 1984, and January 20, 1985.

Hunting Season: 50 days.

Daily Bag and Possession Limits (including restrictions on black ducks): (a) basic daily bag and possession limits of 4 and 8 ducks, respectively, of which no more than 2 in the daily bag and 4 in possession may be black ducks; or (b) basic daily bag and possession limits of 5 and 10 ducks, respectively, of which no more than 1 in the daily bag and 2 in possession may be black ducks. In addition, the following restrictions of black duck harvest are listed by State.

Connecticut: During the first segment of the split season in both the coastal and inland zones, no black ducks are permitted; during the second segment of the season, 1 black duck is permitted per day and 2 in possession.

Delaware: No hunting of black ducks is permitted on the following dates of the duck hunting season: October 1-3 and October 29-November 3. On other days of the duck hunting season 1 black duck in the daily bag and 2 in possession is permitted.

Maine: North Zone: 1 black duck is permitted per day and 2 in possession. South Zone during the first segment of a split season, no black ducks are permitted; during the secon segment, 2 black ducks are permitted per day and 4 in possession.

Maryland: Inland Zone: The season is closed on black ducks during the first segment of a split season (no less than 3 hunting days); during the remainder of the season the black duck will have a point value of 100. Coastal Zone: The season is closed on black ducks during the first 6 days of the duck season; during the remainder of the season the black duck will have a point value of 100.

Massachusetts: Western Zone: 1 black duck is permitted per day and 2 in possession, and the season will open no earlier than October 14. Central Zone: 1 black duck is permitted per day and 2 in possession, and the season opening will coincide with the Coastal Zone opening and the pheasant hunting season. Coastal Zone: The season opening will coincide with the pheasant hunting season. During periods when black ducks may be hunted, 2 black ducks are permitted per day and 4 in possession. No hunting of black ducks is permitted during a 10-day period in the second segment of a split season, and no hunting of black ducks is permitted after January 1 in this zone.

New Hampshire: Inland Zone: 1 black duck is permitted per day and 2 in possession. Coastal Zone: during the first part of a split season no hunting of black ducks is permitted; during the second part of the split season 2 black ducks are permitted per day and 4 in possession.

New Jersey: For black duck restrictions see point system option for Atlantic Flyway.

New York: Long Island Zone: 1 black duck is permitted per day and 2 in possession throughout the season. Western Zone: during the first part of a split season, 1 black duck is permitted per day and 2 in possession; during the second part of the split season no hunting of black ducks is permitted. Northeastern Zone: during the first part of a split season, 1 black duck is permitted per day and 2 in possession; during the second part of the split season no hunting of black ducks is permitted. Southeastern Zone: during the first 25 days of the duck hunting season 1 black duck is permitted per day and 2 in possession and during the last 25 days of the duck hunting season no hunting of black ducks is permitted.

North Carolina: The season for black ducks is closed during that part of the duck season prior to December 17; thereafter 1 black duck per day and 2 in possession is permitted.

Pennsylvania: Lake Erie Zone: 1 black duck is permitted per day and 2 in possession during the October 22 to December 3 portion of the duck season; on all other duck hunting days no black ducks are permitted. Northwest Zone: 1 black duck is permitted in the daily bag and 2 in possession during the October 24 to December 3 portion of the duck season; on all other duck hunting days no black ducks are permitted. North Zone: 1 black duck will be permitted per day and 2 in possession during the October 20 to November 19 portion of the duck season; on all other duck hunting days no black ducks are permitted. South Zone: 1 black duck will be permitted per day and 2 in possession during the November 7 to December 3 portion of the duck season; on all other duck hunting days no black ducks are permitted.

Rhode Island: The daily bag limit of black ducks is 1 and the possession limit is 2.

South Carolina: During the November 21 to November 24 portion of the duck season no black ducks are permitted in the daily bag. On all other duck hunting days the daily bag limit of black ducks is 1 and the possession limit is 2; however, there will be no open season on black ducks in Georgetown, Charleston, Colleton, and Beaufort Counties.

Vermont: No black ducks are permitted in the daily bag during the first 5-7 days of the hunting season; 1 black duck per day and 2 in possession is permitted during the remainder of the duck hunting season.

Virginia: During the period November 20-December 1 (including no less than 10 duck hunting days), no black ducks are permitted in the daily bag.

West Virginia: The daily bag limit of black ducks is 1 and the possession limit is 2.

Canvasbacks and Redheads: Except in closed areas, the limit of canvasbacks is 1 daily and 1 in possession. The limit of redheads throughout the flyway is 2 daily, except that in areas open to canvasback harvest the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback. The possession limit of redheads is twice the daily bag limit under conventional regulations. The possession limit of canvasbacks is equal to the daily bag limit. Under the point system, canvasbacks (except in closed areas) count 100 points each and redheads flywaywide count 70 points each.

Areas closed to canvasback hunting are:

New York - Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

New Jersey - Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

Maryland, Virginia and North Carolina - Those portions of each State lying east of U.S. Highway 1.

In addition, areas or portions of areas as specified below, otherwise closed to taking of canvasbacks, may be opened to hunting of canvasbacks during an experimental season. The experimental season must occur during the last 11 days of the regular season in New York, New Jersey and North Carolina and the last 6 days of the regular duck season in Maryland and Virginia, the daily bag under conventional regulations may include no more than 4 canvasbacks, not more than 1 of which may be a female. Under the point system male canvasbacks are 25 points and females 100 points. Possession limits are twice daily bag limits. The areas eligible for this experimental season are:

New York - Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls, and all waters of Lake Cayuga.

New Jersey - (1) east of the Garden State Parkway from Route 440, south to Route 36 (Raritan and Sandy Hook Bays, Navesink and Shrewsbury Rivers); (2) east of the Garden State Parkway from Route 88 south to Route 72 (Barnegat, Silver and Manahawkin Bays, Metedeconk and Toms Rivers).

Maryland - The waters of Chesapeake Bay and its tributaries to the first upstream bridge, except on the Patuxent River the boundary is the second upstream bridge (Maryland Route 231 bridge near Benedict, MD); including Potomac River and its tributaries upstream to U.S. Route 301 bridge.

Virginia - Starting at the Virginia-Maryland line (301 birdge) those lands and waters enclosed in the area bounded by: U.S. Highway 301 south to Route 207 and continuing to the junction of U.S. Route 1, south on Route 1 to Route 460, then southeast on 460 to Route 13, then east and north on Route 13 to the Maryland line, then westward on the Maryland-Virginia line to Route 301.

North Carolina - that portion of Pamlico Sound and it's tributaries designated as coastal fishing waters within two miles of the mainland, extending from Long Shoal Point on north side of Long Shoal River to that point of marsh near Whortonville on the north side of Broad Creek known as Piney Point and upstream in Pamilco River to the Aurora-Belhaven ferry crossing.

The remaining portions of areas in each of the five participating States presently closed to the taking of canvasback will remain closed.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Restriction on Mottled Ducks: The season is closed to taking of mottled ducks in South Carolina.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Lake Champlain Area, New York Follows Vermont: The Lake Champlain Area of New York must follow the waterfowl seasons, daily bag and possession limits, and shooting hours selected by Vermont. This area includes that part of New York lying east and north of a boundary running south from the Canadian border along U.S. Highway 9 to New York Route 22 south of Keeseville, along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22, along New York Route 22 to U.S. Highway 4 at Whitehall, and along U.S. Highway 4 to the Vermont border.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Area, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning:

Long Island: New York may, for Long Island, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York: Upstate New York (excluding the Lake Champlain area) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. Option (a) or (b) for seasons and bag limits (see Daily Bag and Possession Limits) is applicable to the zones in the Upstate area within the Flyway framework; only conventional regulations may be selected. Each zone will be permitted the number of days offered under options (a) or (b). In addition, a 2-segment split season may be selected in each zone. The basic daily bag limit on ducks in each zone and the restrictions applicable to options (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus options shall be applicable to the Upstate zones, but the 16-day special scaup season will not be allowed.

New York Zone Definitions: The zones are defined as follows:

The West Zone is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The North and South Zones are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. North Zone - That portion of State north of Interstate 95.

b. South Zone - That portion of State south of Interstate 95.

Maine may be divided into two zones as follows:

a. North Zone - Game Management Zones 1 through 5.

b. South Zone - Game Management Zones 6 through 8.

New Hampshire

Coastal Zone — That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham, and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone — That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. Allegheny Mountain Upland Zone - The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. 219 south to the intersection of Interstate 64. The southern boundary follows I-64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows Route 19 north to the intersection of I-79, and follows I-79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State - That portion outside the above boundaries.

Maryland, Massachusetts, New Jersey and Pennsylvania, may continue zoning experiments now in progress as shown in the sections that follow. Maryland may be divided into two zones, Massachusetts and New Jersey may be divided into three zones, and Pennsylvania into four zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Option (a) or (b) for seasons and bag limits (see Daily Bag and Possession Limits) is applicable to the zones within the Flyway framework. Only conventional regulations may be selected in Massachusetts, Connecticut, West Virginia and Pennsylvania. New Jersey and Maryland must select the point system. Each zone will be permitted the full number of days offered under options (a) or (b). In addition, a two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to options (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

Zone Definitions:

Maryland

Inland Zone - that portion of the State north and west of U.S. Route 1 from its junction with the Maryland-Pennsylvania border south to its junction with I-95 north of Washington, D.C. and east and south along I-95 to the Maryland-Virginia border.

Coastal Zone - that portion of the State south and east of the above described highway boundaries.

Massachusetts

Western Zone - That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone - That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I-93, south on I-93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I-195, west on I-195 to the Rhode Island line. EXCEPT the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the coastal zone.

Coastal Zone - That portion of the State east and south of the Central Zone.

New Jersey

Coastal Zone — That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May City and continuing to the Delaware boundary in Delaware Bay.

North Zone - That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone - That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania

Lake Erie Zone - The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone - That portion of the State north of I-80 from the New Jersey State line west to the junction of State Route 147, then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I-80, then west on I-80 to its junction with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone - That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I-80, and on the west by the Ohio line.

South Zone - The remaining portion of the State.

Point System Option for all States in the Atlantic Flyway: As an alternative to conventional bag limits for ducks, a 50-day season with a point-system bag limit may be selected by States in the Atlantic Flyway during the framework dates prescribed. Point values for species and sexes taken are as follows: in Florida only, the fulvous tree duck counts 100 points each; in all States the canvasback counts 100 points each (except in closed areas or during the special experimental season); the female mallard, black duck (except as noted below), mottled duck (except South Carolina), wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; the blue-winged teal, green-winged teal, pintail, gadwall, wigeon, shoveler, scaup, sea ducks and mergansers (except hooded) count 10 points each; the male mallard, the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia, and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

Special point system restrictions will be in effect for taking black ducks in Maryland and New Jersey. Black ducks will have a point value of 100 in the Southern and Coastal Zones of New Jersey. In Maryland, during the period when black ducks are permitted in the daily bag, the black duck will have a point value of 100.

Sea Ducks: In any State in the Atlantic Flyway selecting both point-system regulations and a special sea duck season, sea ducks count 10 points each during the point-system season, but during any part of the sea duck season falling outside the point-system season, sea duck daily bag and possession limits of 7 and 14, respectively, apply.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1984, and January 20, 1985, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons for Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. In New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I-81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I-80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1985. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with a possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut will be 3 and 6, respectively. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1984, to January 20, 1985, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a December 20, 1984, t January 31, 1985, framework; the daily bag and possession limits are 1 and 2 Canada geese respectively. In South Carolina the season on Canada geese is closed in the counties o Abbeville, Allendale, Anderson, Bamberg, Barnwell, Beauford, Cherokee, Chester, Colleton, Edgefield, Fairfield, Greenwood, Hampton, Kershaw, Lancaster, Laurens, Lee, McCormick, Newberry, Oconee, Pickens, Richland, Saluda, Spartenburg, Sumter, Union and York.

Closures on Canada Geese: The season for Canada geese is closed in Florida and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1984, and January 31, 1985 States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese) the daily bag and possession limits are 4 and 8 geese, respectively.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1984, and January 20, 1985 States in the Atlantic Flyway may select a 50-day season for Atlantic brant; the daily bag an possession limits are 4 and 8 brant, respectively.

Whistling Swans

In North Carolina an experimental season for whistling swans may be selected subject to th following conditions: (a) the season will be 90 days and must run concurrently with the snow goose season; (b) the State agency must issue permits and obtain harvest and hunte participation data; and (c) no more than 1,000 permits may be issued, authorizing eac permittee to take 1 whistling swan.

MISSISSIPPI FLYWAY

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots and Mergansers

Outside Dates: Between September 29, 1984, and January 20, 1985, in all States, except that the framework opening date is September 22 in Iowa, and the framework closing date is January 31 in Mississippi.

Hunting Season: Not more than 50 days.

Limits: The daily bag limit of ducks is 5, and may include no more than 3 mallards (no more than 2 of which may be females), 1 black duck and 2 wood ducks (except as noted below). The possession limit is 10, including no more than 6 mallards (no more than 4 of which may b females), 2 black ducks and 4 wood ducks (except as noted below). Except in closed areas, th limits of canvasbacks and redheads are 1 daily and 2 in possession for each species.

Closed Areas for Canvasback Hunting:

Mississippi River - (1) Entire river, both sides, from Lock and Dam 9 upstream to the confluence of the Chippewa River. (2) Pool 19 bordering Iowa and Illinois.

Michigan - Macomb and St. Clair Counties, including the adjacent Great Lakes waters and interconnecting waterways under the jurisdiction of the State of Michigan.

Wisconsin - In the Mississippi River Zone, all that part of Wisconsin west of the Burlington-Northern Railroad from Lock and Dam 9 north to the center-line of the Chippewa River.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Point System Option: As an alternative to conventional bag limits for ducks, a 50-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point value for species and sexes taken are as follows: except in closed areas, the canvasback and black duck count 100 points each; the redhead, female mallard, wood duck (except as noted below) and hooded merganser count 70 points each; the pintail, blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 10 points each; the male mallard and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point value of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Coot Limits—Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between September 29 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system, the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Western Louisiana: In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season for ducks, coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: Alabama, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Tennessee and Wisconsin may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone - Mobile and Baldwin Counties. North Zone - The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone - That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I-280, east along I-280 to I-80, then east along I-80 to the Indiana border. Central Zone - That portion of the State between the North and South Zone boundaries. South Zone - That portion of the State south of a line running east from the Missouri border along Illinois Highway 155 to Illinois Highway 159, north along Illinois Highway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I-70, then east along I-70 to the Indiana border.

Indiana: North Zone: That portion of the State north of State Highway 18. Ohio River Zone: That portion of Indiana south of Interstate Highway 64. South Zone: That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

Iowa: North Zone - That portion of Iowa north of Interstate 80. South Zone - the remainder of the State.

Michigan: North Zone - The Upper Peninsula. Southeast Zone - That portion of the Lower Peninsula south and east of a line running north from the Michigan-Ohio border along U.S. Highway 127 to US-27, north along US-27 to South County Line Road in Gratiot County, east along South County Line Road to McClelland Road, north along McClelland Road to M-57, west along M-57 to US-27, north along US-27 to M-20, east along M-20 to US-10, east along US-10 to M-13, north along M-13 to US-23, north and east along US-23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then due east ten miles into Saginaw Bay, and from that point along a northeast line to the Ontario border. Middle Zone - The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone - That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. Highway 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone - The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: North Zone - The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone - The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone - That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone - Lake and Obion Counties, or a designated portion of that area. State Zone - The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone - That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone - The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) the same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall not begin until after the regular season closing date in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths and Limits: Between September 29, 1984, and January 20, 1985, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Louisiana: Between September 29, 1984, and February 14, 1985, Louisiana may select 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons, with daily bag and possession limits as described above.

Minnesota. In the:

(a) Lac Qui Parle Zone (described in State Regulations)—the season for Canada geese closes after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (described in State regulations)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese will be concurrent with the duck season. The daily bag limit is 1 Canada goose and the possession limit is 2.

Iowa: The season may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highways 92 and 71) may be held at a different time than the season in the remainder of the State.

Missouri. In the:

(a) Swan Lake Zone (described in State regulations)—the season for Canada geese closes after 70 days or when 16,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)— A 50-day season on Canada geese may be selected between December 1, 1984, and January 20, 1985, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State—the season for Canada geese will be concurrent with the duck season in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

Wisconsin: In the:

(a) Horicon and Central Zones (Columbia, Dodge, Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest portion of Washington County north of State Highway 33 and west of U.S. Highway 45) - the harvest of Canada geese is limited to 15,000 birds. The season may not exceed 25 days, and bag limits may not exceed 2 birds per day and 4 birds per season.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2. A special late season harvest of giant Canada geese may be held during November 25 to December 9. The daily bag and possession limits during this special season are 2 and 4, respectively.

(c) Northeast Zone (that portion of the North Hunting Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1-31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Zone (that portion of the South Hunting Zone which includes part of Wood County, Juneau, Sauk, Dane and Green Counties and all counties or portions of counties eastward) - in that portion of the Southeast Zone outside the Horicon and Central tag zones, the season may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a special late season to harvest giant Canada geese may be held between November 25 and December 9. During the late season, the daily bag limit is 2 Canada geese and the possession limit is 4.

(e) Remainder of the State - the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Illinois: In the:

(a) Southern Illinois Quota Zone (described in State regulations) - The season for Canada geese will close after 25 days or when 17,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Tri-County Area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County) - The season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 4.

(c) Remainder of State - Seasons for Canada geese up to 20 days may be selected by zones established for duck hunting seasons, except that in the South Zone the season will close no later than December 15. The daily bag limit is 1 Canada goose and the possession limit is 4.

Michigan. In the:

(a) Counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon—the season for Canada geese may extend for 20 days, with a framework opening date for all geese of September 26. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southern Michigan Goose Management Area (described in State regulations)—The season for Canada geese may not exceed 35 days between September 29, 1984, and December 20, 1984. During this period, the daily bag limit is 1 Canada goose and the possession limit is 2. A late season of up to 57 days may be held between December 22, 1984, and February 16, 1985 to control local populations of giant Canada geese. During the late season, the daily bag limit is 3 Canada geese and the possession limit is 6.

(c) Remainder of the State:

(1) West of a boundary described as follows: North from the Indiana border along U.S. Highway 131 to U.S. Highway 31, then north along U.S. Highway 31 to I-75, then north along I-75 to the Ontario border - The season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(2) East of the boundary described in (1) above - The season for Canada geese may not exceed 35 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: The season for Canada geese may extend for 70 days, except in Posey County where the season may not exceed 20 days. The daily bag limit is 2 Canada geese and the possession limit is 4, except in Posey County, where the daily bag and possession limits are 1 and 2, respectively. The goose season may be set by zones established for duck hunting.

Kentucky: In the:

(a) West Kentucky Zone (that portion of the State west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I-24, east on I-24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border) - The State may select one of the following options for Canada geese:

(1) A season not to exceed 20 days, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(2) A season not to exceed 25 days, with a daily bag limit of 2 Canada geese and a possession limit of 4. If this option is selected, the progression of the harvest will be monitored and the season will close after 25 days or when 7,000 birds have been harvested, whichever occurs first.

Under both options, the season may extend to January 31, 1985.

(b) Remainder of the State - The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: In the:

(a) Northwest Zone (Lake, Obion, Weakley and Carroll Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone) - The State may select one of the following options for Canada geese:

(1) A season not to exceed 20 days, with a daily bag limit of 1 Canada goose and possession limit of 2.

(2) A season not to exceed 25 days, with a daily bag limit of 2 Canada geese and a possession limit of 4. If this option is selected, the progression of the harvest will be monitored and the season will close after 25 days or when 1, 500 birds have been harvested, whichever occurs first.

Under both options, the season may extend to January 31, 1985.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45) - The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1985. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

Arkansas and Louisiana: The season for Canada geese is closed.

Mississippi: In the:

(a) Sardis Zone (described in State regulations) - The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1984. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State - The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1985.

Alabama: The season is closed for all geese in the counties of Henry, Russell and Barbour. Elsewhere in Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri, Illinois, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Zone, the Swan Lake Zone in Missouri, and, if applicable, the West Kentucky Zone and the Northwest Zone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

Shipping Restrictions: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

CENTRAL FLYWAY

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Outside Dates: September 29, 1984, through January 20, 1985.

Hunting Season: The season in the Low Plains Unit may include no more than 60 days. The season in the High Plains Mallard Management Unit may include no more than 83 days provided that the last 23 days of such season must begin on or after December 8, 1984. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: Conventional limits for ducks are 5 daily, including no more than 1 canvasback, 1 redhead, 1 female mallard, 1 hooded merganser and 2 wood ducks; and 10 in possession, including no more than 1 canvasback, 2 redheads, 2 female mallards, 2 hooded mergansers and 4 wood ducks.

As an alternative to conventional bag and possession limits for ducks, States may select point system regulations. Under this system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of other birds already taken during that day, reaches or exceeds 100 points. The point values are: canvasbacks, 100 points each; female mallards, Mexican-like ducks, mottled ducks (Texas only), wood ducks, redheads and hooded mergansers, 70 points each; blue-winged teal, green-winged teal, cinnamon teal, scaup, pintails, gadwalls, wigeon, shovelers and mergansers (except the hooded merganser), 10 points each; all other species and sexes of ducks, 20 points each. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

The daily bag and possession limits of coots are 15 and 30, respectively.

Zoning: Montana, Nebraska, New Mexico, South Dakota, Oklahoma and Wyoming may select hunting seasons for ducks (including mergansers) and coots either statewide or by zones described as follows:

Montana: Two experimental zones in the Central Flyway portion as follows:

Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska: Four zones within the Low Plains portion as follows:

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N-67; north through Nemaha to U.S. 73-75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N-63; north and west to U.S. 77; north to N-92; west to U.S. 81; south to N-66; west to N-14; south to I-80; west to U.S. 34; west to N-10; south to the State Line; west to U.S. 283; north to N-23; west to N-47; north to U.S. 30; east to N-14; north to N-52; northwesterly to N-91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N-70 from Wheeler County to N-14; south to N-39; southeast to N-22; east to U.S. 81; southest to U.S. 30; east to U.S. 73; north to N-51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico: Two experimental zones as follows:

Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma: Two experimental zones in the Low Plains portion as follows:

Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 51, OK 51 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains portion.

South Dakota: Two zones within the Low Plains portion as follows:

South Zone. Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3207 to Lake Andes, and S.D Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81.

North Zone. The remainder of the Low Plains portion.

Wyoming: Four zones in the Central Flyway portion as follows:

Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2. Platte, Goshen and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" include all other species.

Outside Dates: September 29, 1984, through January 20, 1985, for dark geese and September 29, 1984 through February 17, 1985 for light geese, except as noted for New Mexico.

Possession Limits: Goose possession limits are twice the daily bag limits.

West Tier States. States in this tier may select seasons either statewide or in designated management units as follows:

Montana: No more than 93 days; daily bag limits are 2 geese in Sheridan County and 3 geese in the remainder of the Central Flyway portion.

Wyoming: No more than 93 days with daily bag limits of 2 geese for each of four Goose Management Units which coincide with management zones for ducks.

Colorado: No more than 93 days with a daily bag limit of 2 geese.

New Mexico: For dark geese, no more than 93 days with a daily bag limit of 2 during the period September 29, 1984, through January 20, 1985; and for light geese, no more than 93 days with a daily bag limit of 5 during the period September 29, 1984, through February 28, 1985.

Texas (west of U.S. 81): No more than 93 days with a daily bag limit of 5 geese which may include no more than 2 dark geese.

East Tier States - Light geese. North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and that portion of Texas east of U.S. Highway 81 may select a season for light geese of no more than 86 days with a daily bag limits of 5 geese.

East Tier States - Dark geese. States may select seasons statewide or in designated management units for dark geese of no more than 72 days, except in Nebraska and South Dakota as noted, with a daily bag limit of 2 geese except as follows:

North Dakota: The daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through October 28 and no more than 2 Canada geese or 2 white-fronted geese or 1 of each during the remainder of the season.

South Dakota: In Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of SD Highway 65), Dewey, Gregory, Haakon (north of Kirley Road and east of Plum Creek), Hughes, Hyde, Lyman, Potter, Stanley, Sully, Tripp (east of U.S. Highway 183), Walworth and Yankton (west of U.S. Highway 81) Counties, the season length may not exceed 79 days and the daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose through November 9, and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season. In the remainder of the State, the season length may be no more than 72 days and the daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose.

Nebraska: In Goose Management Unit 1 comprised of Boyd, Cedar (west of U.S. Highway 81), Keya Paha (east of U.S. Highway 183) and Knox Counties, the season length may be no more than 79 days and the daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose through November 9 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

In Goose Management Unit 2, the remainder of Nebraska east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to the Kansas line; and in Goose Management Unit 3, that portion of Nebraska west of these highways, the daily bag limit may include no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 20 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

Kansas: The daily bag limit may include no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 25 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

Oklahoma: In Goose Management Unit 1 (that portion of western and southern Oklahoma bounded by the following highways: starting at the Kansas-Oklahoma line, U.S. 77 to U.S. 177, U.S. 177 to OK 33, OK 33 to U.S. 75, U.S. 75 to Indian Nation Turnpike, Indian Nation Turnpike to U.S. 271, and U.S. 271 to the Oklahoma-Texas line) and in Goose Management Unit 2 (the remainder of Oklahoma), the daily bag limit may include no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

Texas: In that portion east of U.S. Highway 81, the bag limit may include no more than 1 Canada goose and 1 white-fronted goose daily.

Whistling Swans

The following States may issue permits authorizing each permittee to take no more than one whistling swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvests, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking ducks.

PACIFIC FLYWAY

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks (including Mergansers), Coots, Gallinules and Common Snipe

Outside Dates: Between September 29, 1984, and January 20, 1985.

Hunting Seasons: Concurrent 93-day seasons on ducks, coots, gallinules and common snipe may be selected except as subsequently noted.

Duck Limits: Basic daily bag and possession limits for ducks are 7 and 14, respectively. No more than 2 redheads or 2 canvasbacks or 1 of each may be taken daily and no more than 4 singly or in the aggregate may be possessed.

Coot and Gallinule Limits: The daily bag and possession limit of coots and gallinules is 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

"Columbia Basin" Portions of Washington, Oregon, and Idaho: In the Idaho counties of Ada, Bannock, Benewah, Blaine, Bonner, Boundary, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Kootenai, Latah, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Twin Falls, Washington and that portion of Bingham County lying outside the Blackfoot Reservoir drainage; the Oregon counties of Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco; and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be 100 days and must run concurrently.

Colorado, Montana, New Mexico and Wyoming — Common Snipe: For States partially within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1984, and February 28, 1985, and need not be concurrent with the duck season.

Geese (including Brant)

Outside dates, season lengths and limits on geese (including brant): Between September 29, 1984, and January 20, 1985, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). The basic daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 20 and November 30, 1984, Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively.

Aleutian Canada goose closure: The season is closed on the Aleutian Canada goose. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Cackling Canada goose closure: The season is closed on the cackling Canada goose in California, Oregon and Washington.

Canada goose closures in California: Three areas in California, described as follows, are restricted in the hunting of Canada geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, the hunting season for Canada geese will not open before December 15 and may continue to the end of the waterfowl hunting season.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23.

Western Oregon: Those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Tillamook County lying south of an east-west line passing through the most westerly point of Cape Lookout shall be closed to the hunting of Canada geese. The season on Canada geese in the remainder of Western Oregon shall extend from November 17 through December 16, with bag and possession limits of 1 goose. On State management areas and National Wildlife Refuges having controlled hunts within this area, the bag and possession limits may be increased to 3 geese, of which only 1 may be a dusky Canada goose. A method of validating geese harvested on these areas is a condition of the optionally larger limits.

"Columbia Basin" Portions of Washington and Oregon—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be of 100 days duration and must run concurrently with the duck season.

Oregon (Lake and Klamath Counties) — geese: In the Oregon counties of Lake and Klamath the season on dark geese will not open until two weeks after the opening date of the white goose season and be two weeks less than the white goose season.

California (Northeastern Zone) — geese: In the Northeastern Zone of California the season may be from October 13 to January 13, except that white-fronted geese may be taken only during October 13 to November 4. Limits will be 3 geese per day and 3 in possession, of which not more than 1 may be a dark goose in the daily bag, or 2 dark geese in possession. The daily bag limit on dark geese may be expanded to 2, provided both are Canada geese.

California (Balance of the State Zone) — geese: In the Balance of the State Zone the season may be from November 3 through January 20, except that white-fronted geese may be taken only during November 3 to January 6. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Pacific Population of Canada geese—Idaho, Oregon and Montana: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 Canada geese and the season for Canada geese may not extend beyond January 6, 1985.

Rocky Mountain Population of Canada Geese—Montana and Wyoming: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 6, 1985. In Lincoln County, Wyoming, the combined special sandhill crane-Canada goose season and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond January 6, 1985.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese throughout the State.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Western Washington: In the Washington counties of Island, Skagit, Snohomish and Whatcom, the season for snow geese may not extend beyond January 1, 1985. In Clark and Cowlitz counties the season on Canada geese shall extend from November 17 through December 16, with bag and possession limits of 1 goose. On State management areas and National Wildlife Refuges having controlled hunts within these two counties, the bag and possession limits may be increased to 3 geese, of which only 1 may be a dusky Canada goose. A method of validating geese harvested in these areas is a condition of the optionally larger limits.

Whistling Swans

In Utah, Nevada and Montana, an open season for whistling swans may be selected subject to the following conditions: (a) the season must run concurrently with the duck season; (b) the appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 whistling swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 whistling swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 whistling swan in either Teton or Cascade Counties.

Sandhill Cranes

Arizona may select an experimental sandhill crane season subject to the conditions specified in the frameworks for early seasons.

SPECIAL FALCONRY FRAMEWORKS

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular and any special season framework dates.

Daily Bag and Possession Limits: Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

NOTE: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: September 11, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–24488 Filed 9–13–84; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Lead Poisoning in Bald Eagles; Proposed Alternative Conservation Measures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: The United States Fish and Wildlife Service is announcing that it has developed a series of proposed alternative conservation measures designed to address lead poisoning in bald eagles. These conservation measures range from a commitment to do additional scientific research to a recognition of the potential need to designate additional steel shot zones for the hunting of migratory waterfowl in the 1985–86 hunting season. Comments and information on the biological and economic impacts of these proposed conservation measures are solicited. Such information and comments will be used in revising these conservation measures, as necessary, and in preparing any required environmental and economic impact analyses under the National Environmental Policy Act, the Regulatory Flexibility Act and Executive Order 12291.

DATE: The comment period for this notice will end on October 29, 1984.

ADDRESS: All comments and information should be submitted to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and information received in response to this notice will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION:

Introduction

The American bald eagle, our national symbol, is afforded greater protection than any other species. Protective provisions found in the Bald and Golden Eagle Protection Act, the Endangered Species Act and the Migratory Bird Treaty Act collectively impose unique conservation responsibilities for the bald eagle upon the Secretary of the Interior. After a period of substantial decline, the last few years have witnessed a dramatic increase in the population levels of bald eagles. Nonetheless, the species is not yet fully recovered and some eagles continue to die from lead poisoning.

Mindful of his conservation responsibilities, the Secretary of the Interior through the United States Fish and Wildlife Service is asking the public to participate in the development of comprehensive conservation measures designed to resolve the issue of lead poisoning in bald eagles. To achieve this goal, the Service has developed a plan of action that is progressive yet scientifically responsible. It recognizes both the existence of considerable scientific uncertainty about the relationship between lead shot and bald eagle mortality and the Secretary's conservation responsibilities. First, the Service has tentatively established a priority listing of areas where there is substantive evidence showing that bald eagles have either died from lead poisoning or could potentially be affected by lead poisoning. For those areas of greatest concern, the Service is announcing its current intention to propose regulations by mid-December that would ban the use of lead shot for the 1985–86 season unless study and public comment during the interim period show that regulations would not be appropriate. Similar regulatory measures could be proposed for other areas by mid-December depending on the results of further analysis of data and public comments. Second, the Service is preparing a comprehensive research strategy comprised of short term and long term research proposals to be implemented over the next three years. Public comment is also being sought in connection with this element of the Service's conservation program. Finally, the Service requests assistance in the development of an objective public education program on the issue of lead poisoning of eagles.

The Service fully recognizes the crucial role that the States must play in developing a comprehensive and effective response to the lead poisoning issue and welcomes their participation. The Service also recognizes that elements of this program could produce temporary hardships on some members of the hunting community. The Service therefore intends this public notice to provide all persons with an early opportunity to comment on the Service's conservation measures. Nevertheless, given the Secretary's unique conservation responsibilities for the American bald eagle, the Service must weigh the degree of scientific uncertainty against the risk to the well-being of this nation's symbol—a matter of interest and concern to all Americans.

General Background

After a period of significant decline in population, due in large measure to the effects of certain pesticides, the bald eagle is increasing in number in all parts of the country. For example, the National Wildlife Federation recently announced that their annual eagle population survey showed an increase of over 900 bald eagles from the year before. The most important factor contributing to this long term recovery was the steps taken by the Federal Government to restrict the use of pesticides.

As the effects of pesticides on eagles continue to decline, attention has shifted to other causes of eagle mortality. Most recently, the debate has focused upon the effect and causes of lead poisoning in eagles. The Fish and Wildlife Service has been aware of this issue and has been studying it for some time. Formulating definitive solutions to the problem of lead poisoning in eagles is very difficult. Most of the research in recent years regarding the environmental affects of lead shot has focused on waterfowl, not raptors. Moreover, the biological conclusions developed for lead poisoning in waterfowl are not readily transferable to bald eagles.

The Fish and Wildlife Service acknowledges that an increased number of dead bald eagles recovered in recent years have died of lead poisoning. To date, the exact cause of this increase is unknown. The Service believes, however, that it maybe related to increased testing for lead poisoning; greater consumption of waterfowl by bald eagles as a primary winter food source; habitat losses resulting in increased concentrations of eagles and waterfowl for longer periods during the year; and an increased effort to recover dead bald eagles.

Regardless of the reasons, lead poisoning in bald eagles is occurring and additional work is needed to provide a better understanding of the ecological relationship and biological significance of this type of mortality in bald eagles. The ecological relationship between bald eagles and waterfowl also requires that strong consideration be given to various factors that could be relevant in identifying bald eagle/lead poisoning problem areas: The species of waterfowl (geese vs. ducks) used as a food base, the numbers of waterfowl being consumed by bald eagles, the time of year when eagles are feeding on these waterfowl, the use of toxic and non-toxic shot, and the length of time of bald eagle-waterfowl interactions at site-specific areas all play a major role in influencing the potential for lead poisoning in bald eagles.

Recently the National Wildlife Federation petitioned the Fish and Wildlife Service to take emergency regulatory action under the migratory bird hunting program to respond to the eagle/lead poisoning issue. That petition, and the Service's response to it, are discussed in some detail in the final migratory bird hunting frameworks published by the Service in this issue of the **Federal Register.** As a result of the Federation petition, the Service has intensified its review of this issue. Although the Service from a biological point of view disagrees with many of the assumptions and conclusions relied upon by the Federation, it nevertheless concurs that additional conservation measures should be developed to deal with lead poisoning.

Proposed Conservation Measures

The Service has developed a proposed plan of action for implementing such additional conservation measures for the bald eagle. In formulating these measures, the Service took into account the following information. Eagle food studies have shown that bald eagles prey heavily on waterfowl, especially where other alternative sources of food like fish are not available. Moreover, studies have shown that a high percentage of waterfowl carry lead shot in their bodies, either in their gizzards or in their muscle tissue, as a result of having been hit but not killed by lead shot. Studies also indicate that the larger of body size of waterfowl, the greater the frequency of lodged shot in muscle tissue. For example, geese frequently carry more lodged shot than do ducks. Given these factors, the Service hypotheizes the greatest areas of concern for lead poisoniong in bald eagles will be areas where: (1) Lead shot is used for waterfowl; (2) there are large concentrations of bald eagles and waterfowl (especially geese) in fall and winter; and (3) heavy harvests of such waterfowl (with the associated high incidence of carried lead shot). The assumption is that in such situations, there is a greater likelihood that bald eagles will ingest lead shot carried in the bodies of waterfowl.

In consideration of the above factors, the Service has developed an approach designed to assess the issue of lead poisoning in bald eagles. First the Service took the counties of the country that were included in the NWF petition and ranked them on the basis of the level of harvested waterfowl. It then confirmed that each of those counties had a wintering population of fifteen or more bald eagles. Finally, the Service noted for each county whether or not there had been a documented death of a bald eagle that was attributed by the Service to lead poisoning. In addition to a high level of lead within the soft tissues of a bald eagle, the Service relied upon pathology at necropsy and histopathological evaulations as a basis for concluding that lead poisoning was the cause of death.

Using this priority ranking approach, the Service has divided the counties under consideration into three different categories. Category I includes those counties of most concern to the Service. The classification indicators used to place areas into Category I were the following: (1) An annual average harvest of 25,000 or more waterfowl; *and* (2) at least one documented bald eagle death attributed by the Service to lead poisoning. Apply these indicators to the list of counties previously established, the Service identified 5 counties in three states to be included in Category I. These counties are:

Name of county	Number of harvested waterfowl	Number of dead bald eagles
Siskiyou (CA)	77,300	3
Modoc (CA)	27,200	1
Klamath (OR)	59,200	0
Jackson (OR)	6,600	1
Holt (MO)	25,000	1

The four listed counties in California and Oregon constitute the Klamath Basin area and were treated as an ecological habitat unit because the same waterfowl and eagle populations must range over this entire area. Thus Klamath County in Oregon was included within Category I despite the fact that no recorded eagle deaths occurred there. The top three counties of the Klamath Basin alone generate an annual average waterfowl harvest of over 163,000 birds and have a wintering population of well over a hundred bald eagles. As a related matter, a recent monitoring study of two national wildlife refuges within this Basin indicated a significant lead poisoning problem in waterfowl on those refuges. Based on these findings, the Service has requested that the State of California designate those two refuges as steel shot zones for the 1985–86 season. Therefore, this earlier agency decision, which was limited to wildlife refuges and waterfowl, should not be confused with this current proposal involving bald eagles.

The fifth county in Category I, Holt County, Missouri, was included because of the size of its waterfowl harvest (25,000) and the presence of a confirmed bald eagle death due to lead poisoning. Moreover, a significant percentage of Holt County's annual harvest is of geese, not ducks, and there is a large concentration of wintering bald eagles.

For these five counties in Category I, the Service has tentatively concluded that available evidence indicates that there is a subsantial likelihood of a problem involving lead poisoning in bald eagles.

Category II areas were selected on the basis of less restrictive indicators. These indicators were: (1) An average annual harvest of 25,000 or more waterfowl and no eagle deaths attributable to lead poisoning; *or* (2) an average annual harvest of less than 25,000 waterfowl and one documented bald eagle death due to lead poisoning. Applying these indicators to the list of counties previously established, the Service has identified fourteen counties in eleven states to be included in Category II. These counties are:

Name of county	Number of harvest waterfowl	Number of dead bald eagles
Thurston (WA)	14,800	1
Clallam (WA)	31,000	0
Lassen (CA)	42,900	0
Butte (CA)	111,200	0
Weber (UT)	54,000	0
Canyon (IO)	52,300	0
Coconino (AZ)	5,800	1
Churchill (NV)	38,200	0
Jefferson (AR)	46,100	0
Madison (IL)	3,900	1
Terrebonne (LA)	91,500	0
Dorchester (MD)	34,700	0
Washington (ME)	10,400	1
Hancock (ME)	13,700	1

For these fourteen counties in Category II, the Service has tentatively concluded that available information suggests that there may be a problem in these areas involving lead poisoning in eagles.

Category III areas were selected on the basis of a classification indicator that was less restrictive than those utilized for Category II. This indicator was: An average annual harvest of between 10,000 and 25,000 waterfowl but no documented bald eagle deaths due to lead poisoning. Applying this indicator to the list of counties previously established, the Service has identified ten counties in seven states to be included in Category III. These counties are:

Name of county	Number of harvest waterfowl	Number of dead bald eagles
Whatcom (WA)	10,200	0
Pierce (WA)	11,000	0
Spokane (WA)	16,400	0
Duchesne (UT)	10,800	0
Mississippi (AR)	11,200	0

Name of county	Number of harvest waterfowl	Number of dead bald eagles
St. Charles (MO)	19,400	0
Mason (IL)	12,400	0
Henderson (IL)	11,600	0
Ballard (KY)	13,600	0
Sagadahoc (ME)	11,200	0

For these ten counties in Category III, the Service has tentatively concluded that available information suggests that there is the potential for a problem of unknown magnitude involving the lead poisoning of bald eagles.

In developing the various classification indicators for Categories I through III the Service has arrived at certain tentative conclusions. First, based on currently available data, the Service believes there is more likely to be a causal connection between the use of lead shot and lead poisoning in bald eagles for Category I areas, than there is for the other two Categories. Second, as the Service's degree of confidence in its assumptions increases from Category III to Category I, the agency's ability to initiate effective, remedial conservation measures increases as well. For these reasons, the Service's proposed plan of action for addressing lead poisoning in eagles becomes progressively more specific and aggressive as one moves away from Category III and into the other Categories.

Proposed Plan of Action

Based on the above assumptions, priority rankings and conservation obligations, the Service is actively considering the following. First, for Category I counties, the Service has under active consideration a proposal to designate these counties as non-toxic shot zones for the 1985–86 season. Moreover, after compliance with other aspects of procedural administrative law, the Service is prepared to issue a proposed regulation to that effect by December 15, 1984, unless either further study by the Service, or public comments received in response to this notice, presents evidence that: (1) The proposal will not contribute to the conservation of the bald eagle, or (2) factual assumptions underlying the Category I designations are erroneous. Moreover, in recognition of current Appropriations Act restrictions on the Service's authority to promulgate steel shot regulations without the approval of the affected states, the Service will consult actively with affected states and seek their approval should such a rule ultimately be published for Category I areas.

As for the Category II counties, the Service believes that an intensive review of available data, and the accelerated acquisition of additional information may provide further evidence of a causal connection between the use of lead shot and lead poisoning in bald eagles. Currently available information, however, is not sufficient for the Service to announce any particular regulatory intentions at this time. The Service recognizes the distinct possibility of having eventually to add some of the Category II areas to the Category I level of concern. Therefore, the Service is interested in receiving public comments on whether an adequate data base exists that would warrant the designation of any Category II area as a non-toxic shot zone for the 1985–86 season. The Service also requests that all relevant data be provided regarding a causal connection between the use of lead shot and lead poisoning in eagles in these areas. The Service will make an administrative decision regarding further action on Category II areas prior to the publication of any Category I proposed rule.

Finally, for Category III areas, the Service again believes that an intensive review of available data and the accelerated acquisition of additional information may provide further guidance as to what administrative actions, if any, the Service should take. Although it is conceivable that proposed steel shot regulations may ultimately be required for some of the Category III areas as information both about these areas and the effects of lead poisoning of eagles increases, the Service is not prepared to say that this is the case at this time. Instead, the Service will review what additional data becomes available within the next two months and will reassess its decision to focus on further research instead of immediate regulatory action for Category III areas. The Service actively solicits public comment on this approach for Category III areas.

In summary, the public is being asked to comment on an array of regulatory strategies that are tailored to the incidence of lead poisoning in bald eagles. During the public comment period, the Service will continue to evaluate its assumptions and indicators and will refine them when deemed appropriate. There may be, for example, situations where smaller ecological units like river basins more accurately reflect the areas of lead poisoning concern than do artificial political boundaries like county lines. Thus, the Service is not locked in to the approach of using counties as the basis for further regulatory action where a smaller descriptive unit would more accurately address lead poisoning. The public is urged to suggest similar refinements if warranted or to suggest other areas that should be added to Categories I, II or III. In addition to providing ecological data and information, the Service also requests the public to submit information on anticipated economic impacts that could result from the implementation of the various regulatory strategies.

Research and Planning

In addition to the above action plan regarding the designation of steel shot zones, the Service has also begun to develop a research strategy for providing additional scientific data on lead poisoning in bald eagles. The goal of this research program will be to maximize the acquisition of meaningful data in a cost effective and timely manner. The Service's research strategy is to be divided into two categories consisting of short term proposals, capable of being completed by the first of December, and long term proposals, capable of being completed within three years. Individual proposals would be ranked in priority order within each category based on the availability of funds and the usefulness of the anticipated data.

The Service is especially interested in receiving public comment on potential long term research proposals. Potential subject areas the Service is considering include food habit studies of wintering concentrations of bald eagles; time sequential approaches for taking blood samples at breeding and wintering areas; additional analysis of plumbism in bald eagles; accelerated pathological analysis of retrieved dead bald eagles with a priority for analysis of eagles from Category I, II and III areas; and the expansion of current banding efforts. The Service has set September 21st and November 1st respectively as the target dates for designating its research strategies with prioritized short term and long term research proposals. Any public comments received on these matters will be taken into account in developing the agency's forthcoming research proposals.

The Service also notes that the bald eagle is one of 54 National Species of Special Emphasis (NSSE) designated by the Service to be addressed in FWS Regional Resource Planning (RRP). The RRP process, a key component of the Service's overall planning effort, follows a seven step process from an analysis phase to a specific operations or action plan plase. Endangered Species Recovery Plans are also integrated into this process along with data and information from other sources, including the public. The first cycle of RRP documents were completed in the fall of 1983 and are currently being revised. As more data become available to the Service regarding lead poisoning in bald eagles, it will be incorporated into the Bald Eagle Recovery Plans and RRP's as appropriate.

In addition, the service is in the process of developing an overall report on the bald eagle that would summarize information and data regarding the status of the species. The report will also specify management actions that should be implemented to address the conservation needs of the species. The format of the report will now be revised to address lead poisoning in an expanded fashion. The report should be completed in the early spring of 1985.

Education

Finally, the Service intends to develop an objective public education program on the issue. Public comments on the scope and content of such an education program are solicited and will be taken into account by the Service as it begins to formulate its plans.

This notice is published under the authority of the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, the Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*, and the Bald and Golden Eagle Protection Act, 16 U.S.C. 668 *et seq.*

Dated: September 11, 1984.

Rolf L. Wallenstrom,

Acting Director, U.S. Fish and Wildlife Service.

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Part VI

Federal Maritime Commission

46 CFR Part 510

Licensing of Ocean Freight Forwarders; Final Rule

46 CFR Parts 515, 520, 525, 530, and 540

The Shipping Act of 1984; Marine Terminal Operations and Passenger Vessels; Final Rules

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket No. 84-19]

Licensing of Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: These rules finalize and/or revise the Commission's ocean freight forwarder interim regulations to implement the Shipping Act of 1984 which became effective June 18, 1984. Revisions included in these final rules relate to, among others, the reporting and noticing of shipper affiliations by forwarders, invoicing, certification requirements for compensation, anti-rebate policy declarations, accounting to principals, port-wide exemptions and sale/transfer of forwarder's stock. The revisions are intended to lessen the regulatory burden upon the forwarding industry.

DATE: Final rules effective October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Jeremiah D. Hospital, Chief, Office of Freight Forwarders, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5843.

SUPPLEMENTARY INFORMATION: On March 20, 1984, the Shipping Act of 1984 (the 1984 Act) (46 U.S.C. app. 1701-1720) was enacted. This legislation substantially altered the regulatory responsibilities of the Commission and directly impacted on the Commission's regulations pertaining to the ocean freight forwarding industry. A number of changes to the Commission's forwarder regulations, 46 CFR Part 510, were required by the new legislation.

On May 3, 1984, the Commission published in the **Federal Register** (49 FR 18839) Interim Rules concerning the licensing and operations of ocean freight forwarders which became effective on June 18, 1984 pursuant to section 17(b) of the 1984 Act. The Interim Rules also addressed rule changes previously proposed and noticed in Docket No. 83-35, The Licensing of Independent Ocean Freight Forwarders. The Commission provided thirty days for comments on its Interim Rules. Comments were received from the following parties: The Marine Exchange of the San Francisco Bay Region; General Steamship Corporation Ltd.; NAVTRANS International Freight Forwarding, Inc.; The "8900" Lines, North Atlantic Israel Freight Conference, North Atlantic Mediterranean Freight Conference, U.S. Atlantic and Gulf/Australia-New Zealand Conference, and United States Atlantic Ports/Italy, France and Spain Freight Conference, collectively; American President Lines, Ltd.; Hapag-Lloyd Agencies; Kerr Steamship Company, Inc.; Columbia River Customs Brokers & Forwarders Association, Inc.; The Pacific Merchant Shipping Association; TMX Shipping, Inc.; J.E. Lowden & Company; Sea-Land Service, Inc.; The National Customs Brokers & Forwarders Association of America, Inc.; The National Council on International Trade Documentation; and Trans Freight Lines, Inc.

Discussion of Comments

In view of the discussion in the Interim Rules of the previous comments submitted in Docket No. 83-35, we will limit our discussion to the comments to the Interim Rules.

The vast majority of the commenting parties, twelve of fifteen, limited their comments to the certification requirements for the payment of ocean freight forwarder compensation. The general view of these comments is that the current certification requirements contained in section 510.33 of the forwarder rules create substantial administrative expenses both on the part of the forwarder and the carrier which could be eliminated through use of efficient automated systems for the payment of compensation. It is pointed out that the 1984 Act specifically eliminates the language of the Shipping Act, 1916 (1916 Act) requiring certifications *prior* to payment of compensation by the carrier. It is suggested that this change expresses Congress' intent to eliminate the current onerous and counterproductive paperwork procedures.

A number of these commenters recommend that forwarders be allowed to provide the required certification to carriers in various ways. It is suggested that the forwarder's certification be allowed to be placed on the bill of lading (the current requirement), or on a summary statement, or on a forwarder's compensation invoice to a carrier, or on a carrier's check. Other methods suggested included an annual written statement to a carrier that the forwarder is entitled to compensation on all shipments handled by it except as otherwise indicated on the bill of lading and a restrictive endorsement on the back of the carrier's compensation check.

It has been estimated by one commenter that with a revised rule, as recommended, the industry could realize a saving of three million dollars. The significant saving, it is suggested, would result from elimination of the need both for forwarders to submit the huge volume of certifications to carriers and for carriers to process and retain this paperwork in order to generate appropriate compensation checks. Payment of compensation, it is believed, could be better automated and less enmeshed in clerical procedures.

In view of the comments regarding the certification requirements contained in the forwarder regulations, the Final Rules will allow forwarders to provide the required certification on one copy of the bill of lading, or on a forwarder's summary statement, or on a forwarder's invoice for compensation, or as an endorsement on the back of a carrier's compensation check. Carriers will still be required to retain a copy of the forwarder's certification. Forwarders will only be required to retain in their shipment files evidence that the required services were performed on the particular shipments.

It is our belief that this change is consistent with the language of the 1984 Act, and it will afford the industry an opportunity to streamline procedures for the payment of ocean freight forwarder compensation to the benefit of all concerned. Moreover, under our Final Rule forwarders will no longer be required to check specific services performed on each shipment as the certification language is broad enough to cover any shipment. Appropriate amendments to the pertinent sections of the Final Rules have been made accordingly.

The National Customs Brokers and Forwarders Association of America, Inc. (the Association) submitted comments on a number of areas of the Interim Rules. The Association favors the shipper-affiliations notice requirement contained in section 510.31(b) of the Interim Rules. However, it believes that it does not go far enough to protect exporters in the United States. It believes that the requirement should be extended beyond affiliations with exporters from the United States to include exporters from foreign countries. It sees the potential for harm to U.S. exporters if forwarders affiliated with foreign exporters release information about their U.S. principals to their foreign affiliates which the foreign affiliate could use to attract business away from the U.S. exporter.

We see merit in the Association's suggestion and we have adopted the recommended language offered by the Association as part of the Final Rules.

The Association, although generally supporting the changes in the invoicing rule, does not feel the notice that is to appear on each invoice to a principal advising of potential markup of charges is necessary and results in more regulation than the previous rule. It urges that this notice requirement be deleted. Further, it suggests that the prior written quotation provisions of the previous rules be retained. It seeks also to retain the filing of fee schedules so that no further disclosure beyond the schedule is required.

The Association's comments regarding the invoicing rule are not persuasive. The intent of our Interim Rule on invoicing was, and still is, to interject the forces of the marketplace in the area of forwarder billing practices. We believe this will act as a self-policing mechanism compelling forwarders to account to their principals rather than to the Commission, to the extent possible.

We have amended, however, the language of the rule so as not to prescribe a specific format that forwarders must follow. The rule will allow a forwarder to bill its principal for services rendered by the forwarder in any manner the forwarder so chooses. We have retained the notice requirement, with some modification, which will advise a principal that, upon request, the forwarder shall provide a detailed breakout of the components of charges assessed by the forwarder along with copies of any pertinent document.

The Association does not agree with the rule on requiring forwarders to place an anti-rebate policy declaration on each invoice to a principal. It believes that there is no statutory basis for the rule; thus the rule should be deleted.

For the reasons stated in our notice of Interim Rules, we are not disposed to change this rule and it will be adopted in the Final Rules.

Finally, the Association seeks modification to the rule on accounting to the principal for funds due the principal. It believes that the forwarder should be allowed to offset its receivables from any funds due the principal without the principal's consent. This is a matter which is best left to the parties involved to agree upon rather than through government regulation. Thus, we have deleted the consent requirement in the Final Rules. The forwarder will still be required, however, to account to its principal for such funds.

NAVTRANS International Freight Forwarding, Inc. (NAVTRANS) generally supports the Interim Rules. It requests, however, that we reconsider its previous comments in Docket No. 83-35. Further to its previous comments, it questions the continued need for notification of the sale/transfer of a forwarder's stock in view of the deletion of the approval requirement.

NAVTRANS' previous comments were considered in drafting the Interim Rules; thus, we see no need to reconsider them here. Further, we do not agree that we need not be notified of stock sales/transfers. To properly discharge our regulatory responsibilities, it is essential that we know who are the owners of forwarders, especially in instances where the question of beneficial interest is present.

The "8900" Lines, *et al.* submitted comments on a single point. They oppose deletion of section 510.36 requiring the filing of agreements under section 15 of the 1916 Act. They argue that the 1984 Act in no way affects, much less eliminates, the requirement under section 15 of the 1916 Act, that agreements among ocean freight forwarders be filed with the Commission for approval. They state that persons carrying on the business of forwarding are still "other persons" subject to the 1916 Act and, therefore, are required to file agreements for approval by the Commission pursuant to section 15 of that Act. They urge that § 510.36 be retained in the forwarder rules.

The issue raised by the "8900" Lines, *et al.* will be the subject of a separate rulemaking proceeding. Therefore, no further comment in the context of the instant proceeding on the issue is necessary at this time.

Having addressed the comments submitted to our Interim Rules, we turn now to two areas which we wish to further amend for clarification purposes.

Under § 510.31(e), *Arrangements with unauthorized persons*, we have amended the last sentence by adding the word "also" after "licensee shall." This change is to make it clear that when a third party is involved in a forwarding transaction, the licensee shall, in addition to providing the third party with an invoice, provide a copy of its invoice to the shipper. Thus, the last sentence is to read, in pertinent part:

> * * * the licensee shall also transmit to the person paying the forwarding charges a copy of its invoice for services rendered.

Under § 510.33(a), *Disclosure of principal*, we have added language specifying that the identity of the shipper must be shown "in the shipper identification box on the bill of lading" as opposed to just "on the bill of lading" as the rule currently reads.

The Interim Rules deleted several sections from the rules in effect prior to June 18, 1984 (prior rules). For the sake of clarity, we have redesignated a number of sections. The Interim Rules deleted paragraph (a) of § 510.32, *Forwarder and principal; fees*. Therefore, we have redesignated the remaining paragraphs, (b) through (k), as paragraphs (a) through (j) in the Final Rules.

Paragraphs (a) and (b) of § 510.35, *Reports required to be filed*, have been deleted and all that remains is paragraph (c). Thus, we have retitled § 510.35 as *Anti-rebate certification*, and deleted the paragraph designation.

The Interim Rules also deleted §§ 510.12 and 510.21 from the prior rules. In view of this, we have redesignated §§ 510.13 through 510.20 as §§ 510.12 through 510.19 in the Final Rules. Similarly, §§ 510.31 through 510.35 have been redesignated as §§ 510.21 through 510.25 in the Final Rules. Conforming amendments to cross references that appear throughout the Final Rules have been made accordingly.

To correct an oversight regarding the appropriate OMB control numbers appearing in § 510.91, we have amended that section to reflect the correct OMB control number as 3072-0018 for all the sections indicated in the table appearing in the section.

Pursuant to 5 U.S.C. 601 *et seq.*, the Chairman of the Commission certifies that the Final Rules published herein will not have a significant economic impact on a substantial number of small entities. The Final Rules are intended to bring the Commission's regulations in line with new legislation. Further, they tend to lessen the regulatory burden upon the forwarding industry and they should have a cost-saving impact on the operations of forwarders.

List of Subjects in 46 CFR Part 510

Exports, Freight forwarders, Maritime carriers, Rates, Reports and recordkeeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, 10, 11, 13, 15, 17, and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718), the Commission revises 46 CFR Part 510 to read as follows:

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

Subpart A—General

Sec.
510.1 Scope.
510.2 Definitions.
510.3 License, when required.
510.4 License, when not required.

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

510.11 Basic Requirements for licensing; eligibility.
510.12 Application for license.

Sec.
510.13 Investigation of applicants.
510.14 Surety bond requirements.
510.15 Denial of license.
510.16 Revocation or suspension of license.
510.17 Application after revocation or denial.
510.18 Issuance and use of license.
510.19 Changes in organization.

Subpart C—Duties and Responsibilities of Freight Forwarders; Forwarding Charges; Reports to Commission

510.21 General duties.
510.22 Forwarder and principal; fees.
510.23 Forwarder and carrier; compensation.
510.24 Records required to be kept.
510.25 Anti-rebate certification.
510.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 5 U.S.C. 553; secs. 3, 8, 10, 11, 13, 15, 17, and 19, Shipping Act, of 1984; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718.

Subpart A—General

§ 510.1 Scope.

(a) This part sets forth regulations providing for the licensing as ocean freight forwarders of persons, including individuals, corporations and partnerships, who wish to carry on the business of freight forwarding. This part also prescribes the bonding requirements and the duties and responsibilities of ocean freight forwarders, regulations concerning practices of freight forwarders and common carriers, and the grounds and procedures for revocation and suspension of licenses.

(b) Information obtained under this part is used to determine the qualifications of freight forwarders and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of a freight forwarder license. Persons operating without the proper license may be subject to civil penalties not to exceed $5,000 for each such violation unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation; for other violations of the provisions of this part, the civil penalties range from $5,000 to $25,000 for each violation (46 U.S.C. app. 1712). Each day of a continuing violation shall constitute a separate violation.

§ 510.2 Definitions.

The terms used in this part are defined as follows:

(a) "Act" means the Shipping Act of 1984 (46 U.S.C. app. 1701–1720).

(b) "Beneficial interest" includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term "beneficial interest" shall not include any obligation in favor of a freight forwarder arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) "Branch office" means any office established by or maintained by or under the control of a licensee for the purpose of rendering freight forwarding services, which office is located at an address different from that of the licensee's designated home office. This term does not include a separately incorporated entity.

(d) "Brokerage" refers to payment by a common carrier to an ocean freight broker for the performance of services as specified in paragraph (m) of this section.

(e) "Common carrier" means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) "Compensation" means payment by a common carrier to a freight forwarder for the performance of services as specified in § 510.23(c) of this part.

(g) "Freight forwarding fee" means charges billed by a freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) "Freight forwarding services" refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but is not limited to, the following:

(1) Ordering cargo to port;

(2) Preparing and/or processing export declarations;

(3) Booking arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing ocean bills of lading;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) Clearing shipments in accordance with United States Government export regulations;

(10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(i) "From the United States" means oceanborne export commerce from the United States, its Territories, or possessions to foreign countries.

(j) "Licensee" is any person licensed by the Federal Maritime Commission as an ocean freight forwarder.

(k) "Non-vessel-operating common carrier" means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(l) "Ocean common carrier" means a vessel-operating common carrier but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(m) "Ocean freight broker" is an entity which is engaged by a carrier to secure cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

(n) "Ocean freight forwarder" means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) "Principal," except as used in Surety Bond Form FMC 59, Rev., refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensee to facilitate the ocean transportation of such property.

(p) "Reduced forwarding fees" means charges to a principal for forwarding services that are below the licensee's usual charges for such services.

(q) "Shipment" means all of the cargo carried under the terms of a single bill of lading.

(r) "Shipper" means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(s) "Small shipment" refers to a single shipment sent by one consignor to one consignee on one bill of lading which does not exceed the underlying common carrier's minimum charge rule.

(t) "Special contract" is a contract for freight forwarding services which provides for a periodic lump sum fee.

(u) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

§ 510.3 License; when required.

Except as otherwise provided in this part, a person must hold a valid ocean freight forwarded license in order to perform freight forwarding services, and, except as provided in § 510.4 of this part, no person shall perform, or hold out to perform, such services unless such person holds a valid license issued by the Commission to engage in such business. A separate license is required for each branch office that is separately incorporated.

§ 510.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shipper.* Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Employee or branch office of licensed forwarder.* An individual employee or unincorporated branch office of a licensed ocean freight forwarder is not required to be licensed in order to act solely for such licensee, but each licensed ocean freight forwarder will be held strictly responsible hereunder for the acts or omissions of any of its employees rendered in connection with the conduct of the business.

(c) *Common carrier.* A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs on file with the Commission.

(d) *Ocean freight brokers.* An ocean freight broker is not required to be licensed to perform those services specified in § 510.2(m).

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

§ 510.11 Basic Requirements for licensing; eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean freight forwarder's license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean freight forwarding duties in the United States, and the necessary character to render forwarding services; and

(2) It has obtained and filed with the Commission a valid surety bond in conformance with § 510.4

(b) *Qualifying individual.* The following individuals must qualify the applicant for a license:

(1) *Sole proprietorship*—The applicant sole proprietor.

(2) *Partnership*—At least one of the active managing partners, but all partners must execute the application.

(3) *Corporation*—At least one of the active corporate officers.

(c) *Affiliates of forwarders.* An independently qualified applicant may be granted a separate license to carry on the business of forwarding even though it is associated with, under common control with, or otherwise related to another ocean freight forwarder through stock ownership or common directors or officers, if such applicant submits: (1) A separate application and fee, and (2) a valid surety bond in the form and amount prescribed under § 510.14 of this part. The proprietor, partner or officer who is the qualifying individual of one active licensee shall not also be designated the qualifying proprietor, partner or officer of an applicant for another ocean freight forwarder license.

(d) *Common carrier.* A common carrier or agent thereof which meets the requirements of this part may be licensed to dispatch shipments moving on other than such carrier's own bill of lading subject to the provisions of § 510.23(g) of this part.

§ 510.12 Application for license.

(a) *Application and forms.* Any person who wishes to obtain a license to carry on the business of forwarding shall submit, in duplicate, to the Director of the Commission's Bureau of Tariffs, a completed application Form FMC-18 Rev. ("Application for a License as an Ocean Freight Forwarder") and a completed antirebate certification in the format prescribed under § 510.25 of this part. Copies of Form FMC-18 Rev. may be obtained from the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573, or from any of the Commission's offices at other locations. Notice of filing of such application shall be published in the **Federal Register** and shall state the name and address of the applicant. If the applicant is a corporation or partnership, the names of the officers or partners thereof shall be published.

(b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of $350 made payable to the "Federal Maritime Commission."

(c) *Rejection.* Any application which appears upon its face to be incomplete or to indicate that the applicant fails to meet the licensing requirements of the Shipping Act of 1984, or the Commission's regulations, shall be returned by certified U.S. mail to the applicant without further processing, together with an explanation of the reason(s) for rejection, and the application fee shall be refunded in full. All other applications will be assigned an application number, and each applicant will be notified of the number assigned to its application. Persons who have had their applications returned may reapply for a license at any time thereafter by submitting a new application, together with the full application fee.

(d) *Investigation.* Each applicant shall be investigated in accordance with § 510.13 of this part.

(e) *Changes in fact.* Each applicant and each licensee shall submit to the Commission, in duplicate, an amended Form FMC-18 Rev. advising of any changes in the facts submitted in the original application, within thirty (30) days after such change(s) occur. In the case of an application for a license, any unreported change may delay the processing and investigation of the application and may result in rejection or denial of the application. No fee is required when reporting changes to an application for initial license under this section.

§ 510.13 Investigation of applicants.

The Commission shall conduct an investigation of the applicant's qualifications for a license. Such investigations may address:

(a) The accuracy of the information submitted in the application;

(b) The integrity and financial responsibility of the applicant;

(c) The character of the applicant and its qualifying individual; and

(d) The length and nature of the qualifying individual's experience in handling freight forwarding duties.

§ 510.14 Surety bond requirements.

(a) *Form and amount.* No license shall be issued to an applicant who does not have a valid surety bond (FMC–59 Rev.) on file with the Commission in the amount of $30,000. The amount of such bond shall be increased by $10,000 for each of the applicant's unincorporated branch offices. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury. Surety Bond Form FMC–59 Rev. can be obtained in the same manner as Form FMC–18 Rev. under § 510.12(a) of this part.

(b) *Filing of bond.* Upon notification by the Commission by certified U.S. mail that the applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Tariffs, a surety bond in the form and amount prescribed in § 510.14(a) of this part. No license will be issued until the Commission is in receipt of a valid surety bond from the applicant. If more than six (6) months elapse between issuance of the notification of qualification and receipt of the surety bond, the Commission shall, at its discretion, undertake a supplementary investigation to determine the applicant's continued qualification. The fee for such supplementary investigation shall be $100 payable by money order, certified check or cashier's check to the "Federal Maritime Commission." Should the applicant not file the requisite surety bond within two years of notification, the Commission will consider the application to be invalid.

(c) *Branch offices.* A new surety bond, or rider to the existing bond, increasing the amount of the bond in accordance with § 510.14(a) of this part, shall be filed with the Commission prior to the date the licensee commences operation of any branch office. Failure to adhere to this requirement may result in revocation of the license.

(d) *Termination of bond.* No license shall remain in effect unless a valid surety bond is maintained on file with the Commission. Upon receipt of notice of termination of a surety bond, the Commission shall notify the concerned licensee by certified U.S. mail, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license as of the termination date of the bond unless the licensee shall have submitted a valid replacement surety bond before such termination date. Replacement surety bonds must bear an effective date no later than the termination date of the expiring bond.

§ 510.15 Denial of license.

If the Commission determines, as a result of its investigation, that the applicant:

(a) Does not possess the necessary experience or character to render forwarding services;

(b) Has failed to respond to any lawful inquiry of the Commission; or

(c) Has made any willfully false or misleading statement to the Commission in connection with its application, a letter of intent to deny the application shall be sent to the applicant by certified U.S. mail, stating the reason(s) why the Commission intends to deny the application. If the applicant submits a written request for hearing on the proposed denial within twenty (20) days after receipt of notification, such hearing shall be granted by the Commission pursuant to its Rules of Practice and Procedure contained in Part 502 of this chapter. Otherwise, denial of the application will become effective and the applicant shall be so notified by certified U.S. mail. Civil penalties for violations of the Act or any Commission order, rule or regulation may be assessed in accordance with Part 505 of this chapter in any proceeding on the proposal denial of a license or may be compromised for any such violation when a proceeding has not been instituted.

§ 510.16 Revocation or suspension of license.

(a) *Grounds for revocation.* Except for the automatic revocation for termination of a surety bond under § 510.14(d) of this part, or as provided in § 510.14(c) of this part, a license may be revoked or suspended after notice and hearing for any of the following reasons:

(1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of forwarding;

(2) Failure to respond to any lawful order or inquiry by the Commission;

(3) Making a willfully false or misleading statement to the Commission in connection with an application for a license or its continuance in effect;

(4) Where the Commission determines that the licensee is not qualified to render freight forwarding services; or

(5) Failure to honor the licensee's financial obligations to the Commission, such as for civil penalties assessed or agreed to in a settlement agreement under Part 505 of this chapter.

(b) *Civil penalties.* As provided for in Part 505 of this chapter, civil penalties for violations of the Act or any Commission order, rule, or regulation may be assessed in any proceeding to revoke or suspend a license and may be compromised when such a proceeding has not been instituted.

(c) *Notice of Revocation.* The Commission shall publish in the **Federal Register** a notice of each revocation.

§ 510.17 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render forwarding services, any further application within 3 years of the date of the most recent conduct on which the Commission's notice of revocation or denial was based, made by such former licensee or applicant or by another applicant employing the same qualifying individual or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission.

§ 510.18 Issuance and use of license.

(a) *Qualification necessary for issuance.* The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render forwarding services and has filed the required surety bond.

(b) *To whom issued.* The Commission will issue a license only in the name of the applicant, whether the applicant be a sole proprietorship, a partnership, or a corporation, and the license will be issued to only one legal entity. A license issued to a sole proprietor doing business under a trade name shall be in the name of the sole proprietor, indicating the trade name under which the licensee will be conducting business. Only one license shall be issued to any applicant regardless of the number of names under which such applicant may be doing business.

(c) *Use limited to named licensee.* Except as otherwise provided in this part, such license is limited exclusively to use by the named licensee and shall not be transferred without approval to another person.

§ 510.19 Changes in organization.

(a) The following changes in an existing licensee's organization require prior approval of the Commission:

(1) Transfer of a corporate license to another person;

(2) Change in ownership of an individual proprietorship;

(3) Addition of one or more partners to a licensed partnership;

(4) Change in the business structure of a licensee from or to a sole proprietorship, partnership, or corporation, whether or not such change involves a change in ownership;

(5) Acquisition of one or more additional licensees, whether for the purposes of merger, consolidation, or control;

(6) Any change in a licensee's name; or

(7) Change in the identity or status of the designated qualifying individual, except as discussed in paragraphs (b) and (c) of this section.

(b) *Operation after death of sole proprietor.* In the event the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may continue operation of such proprietorship solely with respect to shipments for which the deceased sole proprietor had undertaken to act as an ocean freight forwarder pursuant to the existing license, if the death is reported within thirty (30) days to the Commission and to all principals for whom services on such shipments are to be rendered. The acceptance or solicitation of any other shipments is expressly prohibited until a new license has been issued. Applications for a new license by the said executor, administrator, heir(s), or assign(s) shall be made on Form FMC-18 Rev., and shall be accompanied by the transfer fee set forth in § 510.19(e) of this part.

(c) *Operation after retirement, resignation, or death of qualifying individual.* When a partnership or corporation has been licensed on the basis of the qualifications of one or more of the partners or officers thereof, and such qualifying individual(s) shall no longer serve in a full-time, active capacity with the firm, the licensee shall report such change to the Commission within thirty (30) days. Within the same 30-day period, the licensee shall furnish to the Commission the name(s) and detailed ocean freight forwarding experience of other active managing partner(s) or officer(s) who may qualify the licensee. Such qualifying individual(s) must meet the applicable requirements set forth in § 510.11(a) of this part. The licensee may continue to operate as an ocean freight forwarder while the Commission investigates the qualifications of the newly designated partner or officer.

(d) *Incorporation of branch office.* In the event a licensee's validly operating branch office undergoes incorporation as a separate entity, the licensee may continue to operate such office pending receipt of a separate license, provided that:

(1) The separately incorporated entity applies to the Commission for its own license within ten (10) days after incorporation, and

(2) The continued operation of the office is carried on as a *bona fide* branch office of the licensee, under its full control and responsibility, and not as an operation of the separately incorporated entity.

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under § 510.19(a) of this part shall be filed in duplicate with the Director, Bureau of Tariffs, Federal Maritime Commission, on Form FMC-18, Rev., together with a processing fee of $100, made payable by money order, certified check, or cashier's check to the "Federal Maritime Commission."

Subpart C—Duties and Responsibilities of Freight Forwarders; Forwarding Charges; Reports to Commission

§ 510.21 General duties.

(a) *License; name and number.* Each licensee shall carry on the business of forwarding only under the name in which its license is issued and only under its license number as assigned by the Commission. Wherever the licensee's name appears on shipping documents, its FMC license number shall also be included.

(b) *Stationery and billing forms; notice of shipper affiliation.*

(1) The name and license number of each licensee shall be permanently imprinted on the licensee's office stationery and billing forms. The Commission may temporarily waive this requirement for good cause shown if the licensee rubber stamps or types its name and FMC license number on all papers and invoices concerned with any forwarding transaction.

(2) When a licensee is a shipper or seller of goods in international commerce or affiliated with such an entity, the licensee shall have the option of: (i) Identifying itself as such and/or, where applicable, listing its affiliates on its office stationery and billing forms, or (ii) including the following notice on such items:

> This company is a shipper or seller of goods in international commerce or is affiliated with such an entity. Upon request, a general statement of its business activities and those of its affiliates, along with a written list of the names of such affiliates, will be provided.

(c) *Use of license by others; prohibition.* No licensee shall permit its license or name to be used by any person who is not a *bona fide* individual employee of the licensee. Unincorporated branch offices of the licensee may use the license number and name of the licensee if such branch offices: (1) Have been reported to the Commission in writing; and (2) are covered by an increased bond in accordance with § 510.14(c) of this part.

(d) *Arrangements with forwarders whose licenses have been revoked.* Unless prior written approval from the Commission has been obtained, no licensee shall, directly or indirectly: (1) Agree to perform forwarding services on export shipments as an associate, correspondent, officer, employee, agent, or sub-agent of any person whose license has been revoked or suspended pursuant to § 510.16 of this part; (2) assist in the furtherance of any forwarding business of such person; (3) share forwarding fees or freight compensation with any such person; or (4) permit any such person directly or indirectly to participate, through ownership or otherwise, in the control or direction of the freight forwarding business of the licensee.

(e) *Arrangements with unauthorized persons.* No licensee shall enter into an agreement or other arrangement (excluding sales agency arrangements not prohibited by law or this part) with an unlicensed person so that any resulting fee, compensation, or other benefit inures to the benefit of the unlicensed person. When a licensee is employed for the transaction of forwarding business by a person who is not the person responsible for paying the forwarding charges, the licensee shall also transmit to the person paying the forwarding charges a copy of its invoice for service rendered.

(f) *False or fraudulent claims, false information.* No licensee shall prepare or file or assist in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning a forwarding transaction which it has reason to believe is false or fraudulent, nor shall any such licensee knowingly impart to a principal, common carrier or other person, false information relative to any forwarding transaction.

(g) *Response to requests of Commission.* Upon the request of any authorized representative of the Commission, a licensee shall make available promptly for inspection or reproduction all records and books of account in connection with its forwarding business, and shall respond promptly to any lawful inquiries by such representative.

(h) *Policy against rebates.* The following declaration shall appear on all invoices submitted to principals:

> (Name of firm) has a policy against payment, solicitation, or receipt of any rebate, directly or indirectly, which would be unlawful under the United States Shipping Act of 1984.

§ 510.22 Forwarder and principal; fees.

(a) *Compensation or fee sharing.* No licensee shall share, directly or indirectly, any compensation or freight forwarding fee with a shipper, consignee, seller, or purchaser, or an agent, affiliate, or employee thereof; nor with any person advancing the purchase price of the property or guaranteeing payment therefor; nor with any person having a beneficial interest in the shipment.

(b) *Withholding information.* No licensee shall withhold any information concerning a forwarding transaction from its principal.

(c) *Due diligence.* Each licensee shall exercise due diligence to ascertain the accuracy of any information it imparts to a principal concerning any forwarding transaction.

(d) *Errors and omissions.* Each licensee shall comply with the laws of the United States and any involved State, Territory, or possession thereof, and shall assure that to the best of its knowledge there exists no error, misrepresentation in, or omission from any export declaration, bill of lading, affidavit, or other document which the licensee executes in connection with a shipment. A licensee who has reason to believe that its principal has not, with respect to a shipment to be handled by such licensee, complied with the laws of the United States or any State, Commonwealth or Territory thereof, or has made any error or misrepresentation in, or omission from, any export declaration, bill of lading, affidavit, or other paper which the principal executes in connection with such shipment, shall advise its principal promptly of the suspected noncompliance, error, misrepresentation or omission, and shall decline to participate in any transaction involving such document until the matter is properly and lawfully resolved.

(e) *Express written authority.* No licensee shall endorse or negotiate any draft, check, or warrant drawn to the order of its principal without the express written authority of such principal.

(f) *Receipt for cargo.* Each receipt issued for cargo by a license shall be clearly identified as "Receipt for Cargo" and be readily distinguishable from a bill of lading.

(g) *Invoices; documents available upon request.* A licensee may charge its principal for services rendered. Upon request of its principal, each licensee shall provide a complete breakout of the components of its charges and a true copy of any underlying document or bill of charges pertaining to the licensee's invoice. The following notice shall appear on each invoice to a principal:

> Upon request, we shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges.

(h) *Special contracts.* To the extent that special arrangements or contracts are entered into by a licensee, the licensee shall not deny equal terms to other shippers similarly situated.

(i) *Reduced forwarding fees.* No licensee shall render, or offer to render, any freight forwarding service free of charge or at a reduced fee in consideration of receiving compensation from a common carrier or for any other reason. Exception: A licensee may perform freight forwarding services for recognized relief agencies or charitable organizations, which are designated as such in the tariff of the common carrier, free of charge or at reduced fees.

(j) *Accounting to principal.* Each licensee shall account to its principal(s) for overpayments, adjustments of charges, reductions in rates, insurance refunds, insurance monies received for claims, proceeds of c.o.d. shipments, drafts, letters of credit, and any other sums due such principal(s).

§ 510.23 Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name may appear after the name of the shipper, but the licensee must be identified as the shipper's agent.

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensee only pursuant to such common carrier's tariff provisions. Where a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the licensee has provided a written certification as prescribed in § 510.23(c) of this part and the shipper has been disclosed on the bill of lading as provided for in § 510.23(a) of this part. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certification for a period of five (5) years.

(c) *Form of certification.* Where a licensee is entitled to compensation, the licensee shall provide the common carrier with a signed certification which indicates that the licensee has performed the required services that entitle it to compensation. The certification shall read as follows:

> The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. ———, issued by the Federal Maritime Commission and has performed the following services:
>
> (1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and
>
> (b) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

The required certification may be placed on one copy of the relevant bill of lading, a summary statement from the licensee, the licensee's compensation invoice, or as an endorsement on the carrier's compensation check. Each licensee shall retain evidence in its shipment files that the licensee, in fact, has performed the required services enumerated on the certification.

(d) *Compensation pursuant to tariff provisions.* No licensee, or employee thereof, shall accept compensation from a common carrier which is different than that specifically provided for in the carrier's effective tariff(s) lawfully on file with the Commission. No conference or group of common carriers shall deny in the export commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount.

(e) *Compensation; services performed by underlying carrier; exemptions.* No licensee shall charge or collect compensation in the event the underlying common carrier, or its agent, has, at the request of such licensee, performed any of the forwarding services set forth in § 510.2(h) unless such carrier or agent is also a licensee, or unless no other licensee is willing and able to perform such services.

(f) *Duplicative compensation.* A common carrier shall not pay compensation for the services described in § 510.23(c) more than once on the same shipment.

(g) *Licensed non-vessel-operating common carriers; compensation.*

(1) A non-vessel-operating common carrier or person related thereto licensed under this part may collect compensation when, and only when, the following certification is made together with the certification required under paragraph (c) of this section:

> The undersigned certifies that neither it nor any related person has issued a bill of lading or otherwise undertaken common carrier responsibility as a non-vessel-operating common carrier for the ocean transportation of the shipment covered by this bill of lading.

(2) Whenever a person acts in the capacity of a non-vessel-operating common carrier as to any shipment, such person shall not collect compensation, nor shall any underlying ocean common carrier pay compensation to such person for such shipment.

(h) A freight forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

§ 510.24 Records required to be kept.

Each licensee shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its business of forwarding. These records must be kept in the United States in such manner as to enable authorized Commission personnel to readily determine the licensee's cash position, accounts receivable and accounts payable. The licensee must maintain the following records for a period of five years:

(a) *General financial data.* A current running account of all receipts and disbursements, accounts receivable and payable, and daily cash balances, supported by appropriate books of account, bank deposit slips, cancelled checks, and monthly reconciliation of bank statements.

(b) *Types of services by shipment.* A separate file shall be maintained for each shipment. Each file shall include a copy of each document prepared, processed, or obtained by the licensee, including each invoice for any service arranged by the licensee and performed by others, with respect to such shipment.

(c) *Receipts and disbursements by shipment.* A record of all sums received and/or disbursed by the licensee for services rendered and out-of-pocket expenses advanced in connection with each shipment, including specific dates and amounts.

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract with a principal, or modification or cancellation thereof, to which it may be a party. Authorized Commission personnel and *bona fide* shippers shall have access to such records upon reasonable request.

§ 510.25 Anti-rebate certifications.

By March 1st of each year, the Chief Executive Officer of every licensee shall certify that it has a policy against rebates, that it has promulgated such policy to all appropriate individuals in the firm, that it has taken steps to prevent such illegal practices which measures must be fully described in detail, and, that it will cooperate with the Commission in any investigation of suspected rebates. This certification shall be in accordance with the following format:

(Name of Filing Firm)

Certification of Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

Pursuant to the provisions of section 15(b) of the Shipping Act of 1984, and Federal Maritime Commission regulations promulgated pursuant thereto, 46 CFR Parts 510 and 582,

I, ———, Chief Executive Officer of (name of firm), holder of valid ocean freight forwarder license #———, state under oath that:

1. It is the policy of (name of firm) to prohibit the participation of said freight forwarder in the payment, solicitation, or receipt of any rebate, directly or indirectly, to or by any carrier or shipper, which is unlawful under the provisions of the Shipping Act of 1984.

2. Each owner, officer, employee and agent of (name and firm) was notified or reminded of this policy on or before ——— of the present year.

3. (Set forth the details of measures instituted within the filing firm or otherwise to prohibit participation in the payment of illegal rebates in the foreign commerce of the United States.)

4. (Name of firm) affirms that it will fully cooperate with the Commission in its investigation of suspected rebating in United States foreign trades.

Signature

Subscribed to and sworn before me this — day of ———, 19—.

Notary Public

§ 510.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
510.12 (Form FMC-18)	3072-0018
510.14	3072-0018
510.15	3072-0018
510.19 (Form FMC-18)	3072-0018
510.21 through 510.25	3072-0018

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–24312 Filed 9–13–84; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Parts 515, 520, 525, 530, and 540

[Docket No. 84–18]

The Shipping Act of 1984; Final Rules for Marine Terminal Operations and Passenger Vessels

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: On March 20, 1984, the President signed the Shipping Act of 1984, which became effective on June 18, 1984. The Commission hereby issues final rules to supersede previously issued interim rules to implement the Shipping Act of 1984. In addition, minor style and technical changes have been made. The parts which are included in this rulemaking are: Part 515 [filing of tariffs by marine terminal operators—old part 533]; Part 520 [filing of tariffs by terminal barge operators in Pacific Slope States—old part 550]; Part 525 [free time and demurrage—old part 526]; Part 530 [truck detention at New York—old part 551]; and Part 540 [security for the protection of the public on passenger vessels]. Along with the final rule on Part 510 (Ocean Freight Forwarders), published separately, all of Subchapter B is now final.

EFFECTIVE DATE: October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C., (202) 523-5796.

SUPPLEMENTARY INFORMATION: These final rules, together with the simultaneous but separately published final rule on Part 510 (Ocean Freight Forwarders) finalize Subchapter B of Chapter IV, Title 46 of the Code of Federal Regulations. The new Title for Subchapter B is: "Regulations Affecting Ocean Freight Forwarders, Marine Terminal Operations and Passenger Vessels".

This proceeding was instituted by a Notice entitled "Interim Rules to Implement the Shipping Act of 1984", published in the Federal Register on May 3, 1984 (49 FR 18846), which cited the Federal Maritime Commission's interim rulemaking authority under section 17(b) of the Shipping Act of 1984 (46 U.S.C. app. 1716(b)) and the necessity, under that statute, for publishing superseding, final rules by December 15, 1984. These rules are being published as such final, superseding rules, without prejudice, however, to the promulgation of any further rules that may be desirable, from time to time, before or after December 15, 1984.

The Interim Rules, finalized herein, restructure the Commission's Code of Federal Regulations' Part numbers for logic and convenience. The "new" numbers are effective as of June 18, 1984, while the "old" numbers appeared in the October 1, 1983, Title 46 (Shipping), Part 400 to End, edition of the CFR.

The major changes made by the Interim Rules to the old rules involved the Authority Citations, penalty provisions, and the exclusion of forest products, bulk cargo and recyclable metal scrap, waste paper and paper waste from the tariff-filing requirements—all to implement the Shipping Act of 1984. See 49 FR 18846.

The Supplementary Information to the interim rules also mentioned Docket No. 83-38, *Notice of Inquiry and Intent to Review Regulations of Ports and Marine Terminal Operators*, presided over by Commissioner Robert Setrakian. The issues in that proceeding may affect marine terminal operations and suggest further amendments to the rules in the parts published here. Such further rulemaking, if necessary, may be outside the scope of the Interim Rules and, therefore, require a separate rulemaking. Accordingly, at this time, the Commission will not defer finalization of these marine-terminal-related rules.

The Interim Rules published on May 3, 1984, generated only two comments: one from the Maryland Port Administration which endorsed the language modifications to Part 515, "Filing of Tariffs by Terminal Operators"; and the other from the National Maritime Council which had no further comment other than recognizing that the Interim Rules were required for technical compliance with the 1984 Act. The Commission, therefore, sees no need to make any substantive changes in any of the Interim Rules, and is publishing them as final, superseding rules in this proceeding in their entirety.

In preparing the various parts for publication, certain other non-substantive changes suggested themselves. Most of such minor changes made here involve style (e.g., for OMB Control Numbers or exemptions under the Paperwork Reduction Act; changing "provided, however" to "except"; elimination of gender specific references, etc.), grammar, syntax, numbering, punctuation, correction of typographical errors, and removal of superfluous verbiage—all without affecting substance.

In addition, we are restoring to the "Authority Citation" in old Part 550 (new Part 520), reference to Sec. 3 of the Shipping Act, 1916 (46 U.S.C. app. 804); we are deleting obsolete, effective-date provisions appearing in (old) §§ 553.4 and 540.4(b); a new map of the New York Port District is being provided for (new) Part 530; and we think a more descriptive nomenclature is "Marine Terminal Operators" instead of merely "Terminal Operators."

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects

46 CFR Parts 515, 520, 525, and 530

Barges, Cargo, Cargo vessels, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 540

Rates and fares, Passenger vessels, Reporting and recordkeeping requirements, Surety bonds.

Corrections

These final rules are subject to review and editing of form before publication in the Code of Federal Regulations. Users are requested to notify the Commission of any omissions and typographical-type errors in order that corrections can be made before the Commission's CFR book goes to press in January, 1985.

Therefore, pursuant to 5 U.S.C. 552, 553; secs. 3, 17, 18(a), 21, and 43 of the Shipping Act, 1916 (46 U.S.C. app. 804, 816, 817(a), 820, and 841a); sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844); secs. 8, 10, 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, 1714 and 1716), and secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 817d and 817e):

1. The Title to Subchapter B is revised to read as follows:

SUBCHAPTER B—REGULATIONS AFFECTING OCEAN FREIGHT FORWARDERS, MARINE TERMINAL OPERATIONS AND PASSENGER VESSELS

2. Title 46 Code of Federal Regulations, Parts 515, 520, 525, 530, and 540 are revised to read as follows:

PART 515—FILING OF TARIFFS BY MARINE TERMINAL OPERATORS

Sec.
515.1 Scope.
515.2 Purpose.
515.3 Persons who must file.
515.4 Filing of tariffs and tariff changes.
515.5 Compliance with this part and other terminal tariff filing requirements.
515.6 Definitions.
515.91 OMB Control numbers assigned pursuant to the Paperwork Reduction Act

Authority: 5 U.S.C. 553; secs. 17, 21, 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 820, 841a); secs. 10, 15, 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1714, 1716).

§ 515.1 Scope.

This part sets forth rules and regulations for the filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

§ 515.2 Purpose.

The purpose of this part is to enable the Commission to discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices. Compliance is mandatory and failure to file the required tariffs may result in a penalty of not more than $5,000 for each day such violation continues. Additionally, if willful and knowing, the Shipping Act of 1984 provides a civil penalty of not more than $25,000 for each day a violation continues.

§ 515.3 Persons who must file.

Except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste, every person other than the Department of Defense (including the military department and all agencies of the Department of Defense), carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities as described in § 515.1, including, but not limited to terminals owned or operated by States and their political subdivisions; railroads who perform port terminal sevices not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities, shall file in duplicate with the Bureau of Tariffs, Federal Maritime Commission, and shall keep open for inspection at all its places of business, a schedule or tariff showing all its rates, charges, rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities, except that rates and charges for terminal services performed for water carriers pursuant to negotiated contracts, and for storage of cargo and services incidental thereto by public warehousemen pursuant to storage agreements covered by issued warehouse receipts need not be filed for purposes of this part.

§ 515.4 Filing of tariffs and tariff changes.

Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be kept open for public inspection as provided in § 515.3.

§ 515.5 Compliance with this part and other terminal tariff filing requirements.

Persons who file tariffs pursuant to requirements of Commission Orders or agreements, approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, shall not be relieved of such requirements by this part. Marine Terminal Operators who file tariffs with the Interstate Commerce Commission pursuant to statute or rule of that Commission may satisfy the requirements of this part of filing with the Federal Maritime Commission a copy of any such tariff filed with the Interstate Commerce Commission.

§ 515.6 Definitions.

(a) The definitions of terminal services set forth in paragraph (d) of this section shall be set forth in tariffs filed pursuant to this part except that other definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in terminal tariffs.

(b) These definitions shall apply to "port terminal facilities" which are defined as one or more structures comprising a terminal unit, and include, but are not limited to wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

(c) For the purpose of this section, "point of rest" means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading.

(d) *Definitions of terminal services*—(1) *Dockage* means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.

(2) *Wharfage* means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of wharf and does not include charges for any other service.

(3) *Free time* means the specified period during which cargo may occupy space assigned to it on terminal property free of wharf demurrage or terminal storage changes immediately prior to the unloading or subsequent to the discharge of such cargo on or off the vessel.

(4) *Wharf demurrage* means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time unless arrangements have been made for storage.

(5) *Terminal storage* means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage, after storage arrangements have been made.

(6) *Handling* means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle.

(7) *Loading and unloading* means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility.

(8) *Usage* means the use of terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

(9) *Checking* means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same.

(10) *Heavy lift* means the service of providing heavy lift cranes and equipment for lifting cargo.

§ 515.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
515.3 through 515.5	3072-0002

PART 520—FILING OF TARIFFS BY TERMINAL BARGE OPERATORS IN PACIFIC SLOPE STATES

§ 520.1 Scope.

(a) The rules and regulations set forth in this part cover the filing of tariffs by terminal barge operators in Pacific Slope States in the foreign and domestic commerce of the United States.

(b) Terminal barge operators moving containers or containerized cargo by barge between points in the Continental United States shall file a schedule of their rates, charges and services solely with the Federal Maritime Commission where:

(1) The cargo is moving between a point in a foreign country or a noncontiguous State, territory, or possession and a point in the United States.

(2) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading.

(3) Such terminal operator is a Pacific Slope State municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service on January 2, 1975.

(4) Such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service.

(c) The terminal operator providing such service shall be subject to the provisions of the Shipping Act, 1916 and/or the Shipping Act of 1984.

(5 U.S.C. 553; secs. 3, 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 804, 817(a) and 841(a)); sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844); and secs. 8 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707 and 1716))

§ 520.2 Tariff filing requirements.

(a) Terminal barge operators subject to this part shall comply with the tariff filing requirements of Part 580 of this Chapter with respect to the publication of rates, charges and services for cargo moving in the foreign and/or domestic offshore commerce of the United States.

(b) Terminal barge operators, while exempt from the tariff filing form requirements of Part 550 of this Chapter with respect to their operations as water carriers carrying cargo in the domestic offshore trades, shall comply with all other required regulations, where applicable.

(c) Tariff(s) filed pursuant to § 520.2(a) shall specifically provide that the rates charged are based upon factors normally considered by a regular commercial operator in the same service.

Note.—In accordance with 44 U.S.C. 3506(c)(5), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act, because there are nine or fewer respondents.

(5 U.S.C. 553; secs. 3, 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 804, 817(a) and 841(a)); sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844); and secs. 8 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707 and 1716))

PART 525—FREE TIME AND DEMURRAGE CHARGES ON IMPORT PROPERTY APPLICABLE TO ALL COMMON CARRIERS BY WATER

§ 525.1 Free time and demurrage charges at the Port of New York.

(a) Free time of five days (exclusive of Saturdays, Sundays, and legal holidays), computed from the start of business on the first day after complete discharge of the vessel, is adequate free time on import property at New York under present conditions.

(b) Free time on import property at New York shall not be less than five days, except on property of such a special nature as to require earlier removal because of local ordinances or other governmental regulations, or because piers are not equipped to care for such property for such period, or except as the Commission may hereafter direct.

(c) Except as provided in §§ 530.3(e)(2), 530.4(e) and 530.4(g) of this Chapter, where a carrier is for any reason, unable, or refuses, to tender cargo for delivery during free time, free time must be extended for a period equal to the duration of the carrier's disability or refusal. If such condition arises after the expiration of free time, either no demurrage or first period demurrage, whichever is specified in the appropriate tariff, will be charged for a period equal to the duration of the carrier's inability or refusal.

(d) Where a consignee is prevented from removing its cargo by factors beyond its control (such as, but not limited to, longshoremen's strikes, trucking strikes or weather conditions) which affect an entire port area or a substantial portion thereof, and when a consignee is prevented from removing its cargo by a longshoremen's strike which affects only one pier or less than a substantial portion of the port area, carriers shall (after expiration of free time) assess demurrage against imports at the rate applicable to the first demurrage period, for such time as the inability to remove the cargo may continue. Every departure from the regular demurrage charges shall be reported to the Commission.

(e) The Commission makes no finding approving or disapproving demurrage rates presently effective as to import property at the port of New York.

(f) Following a longshoremen's strike of five (5) days or more:

(1) Free time shall be extended for a period not less than five (5) days (exclusive of Saturdays, Sundays, and legal holidays) beyond the time at which it would normally terminate, for cargo which was in a free time period at the commencement of the longshoremen's strike.

(2) First period demurrage shall be extended for a period not less than five (5) calendar days beyond the time at which it would normally terminate, for cargo which was subject to first period demurrage at the commencement of the longshoremen's strike.

(g) The extensions set forth in paragraphs (f)(1) and (f)(2) of this section, shall apply only: (1) If the cargo is actually picked up within such extended time or (2) if, pursuant to an appointment system adopted by both carriers and consignees, cargo is picked up within twenty-four (24) hours of advance notification that cargo is available for pickup and readily accessible, in which latter event, time shall not be extended more than twenty-four (24) hours beyond the additional free time or demurrage period.

Note.—In accordance with 44 U.S.C. 3506(c)(5), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act, because ;there are nine or fewer respondents.

(5 U.S.C. 553; secs. 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841a); secs. 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709 and 1716))

PART 530—TRUCK DETENTION AT THE PORT OF NEW YORK

Sec.
530.1 General provisions.
530.2 Documentation.
530.3 Terminals operating on appointment system.
530.4 Terminals operating a non-appointment system.
530.5 Combination non-appointment/appointment system.
530.6 Computation of time.
530.7 Penalties.
530.8 Submission of claims for penalties.
530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix A—New York/New Jersey Port District
Appendix B—Motor carrier Preference Slip

Authority: 5 U.S.C. 553; secs. 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816 and 841a); secs. 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709 and 1716).

§ 530.1 General provisions.

(a) *The Port of New York* is that area designated as "The Port District" on the map (Appendix A).

(b) For purposes of this part, a terminal operator is any person who receives cargo from motor carriers and/or delivers cargo to motor carriers in connection with transportation by common carrier by water, excluding persons who operate marine terminal facilities controlled by the Department of Defense including the military department and all agencies of the Department of Defense.

(c) Motor carriers (common, contract, or private), terminal operators, including steamship companies acting as terminal operators, and steamship companies whose action or inaction otherwise impedes expeditious pickup and delivery of cargo by motor carriers at marine terminal facilities within the Port of New York, shall be subject to the provisions established by terminal operators in accordance with this part, which provisions shall be reflected in the tariff of each such terminal operator.

(d) Importers and exporters, or motor carriers or other agents of importers or exporters, and terminal operators at marine terminal facilities in the Port of New York, shall be entitled to receive remuneration in accordance with the provisions of this part.

(e) The person responsible for operating each marine terminal facility within the Port of New York shall identify itself to the Federal Maritime Commission not more than 10 days after the effective date of this part and shall thereafter promptly notify the Commission of any change in responsibility. Based thereon, the Federal Maritime Commission (Commission) will publish and maintain a current list identifying, as to each such marine terminal facility, the party responsible for receipt and settlement of claims arising under this part.

(f) All communications to the Federal Maritime Commission required by this part shall be directed to the Federal Maritime Commission, Office of the Secretary, 1100 L Street NW., Washington, D.C. 20573.

(g)(1) Except as provided in paragraph (g)(2) of this section, no penalty shall be imposed upon a terminal operator under this part if receipt or delivery of cargo at a marine terminal facility is prevented or delayed by strike or work stoppage, act of God, fire, serious accident, or severe or unusual weather condition. The Commission shall be notified in writing by the party claiming the existence of the condition who shall specify the date and time of commencement and termination of any such strike, work stoppage, or severe or unusual weather or other condition.

(2) No terminal operator shall be absolved from liability under this part for delays resulting from inadequate or insufficient labor, and/or equipment, other than reasonable delays necessary to obtain special equipment required for handling unusual cargo on a non-appointment basis

(h) Terminal operators shall not be liable for delays due to United States Government regulations; nor shall terminal operators be liable for time consumed by receipt or delivery of cargo by marks other than by bill of lading, provided at the request of the shipper, consignee or motor carrier.

(i) Steamship companies responsibile for house-to-house movement of containers, i.e., containers moving as a unit from origin to destination, are responsible under this part for delay occasioned by lack of sufficient chassis, or unavailability, action or inaction of their container inspection personnel. For purposes of this part, "containers" shall include empty as well as stuffed containers.

(j) Disputes concerning liability under any provisions of this part shall be settled by an impartial Adjudicator selected by the Commission.

(k) Terminal operators are not required to deliver cargo to motor carriers prior to the time that the ocean vessel which transported said cargo is fully discharged. If a terminal operator exercises the option of delivering cargo to motor carriers prior to the time that the ocean carrier which transported said cargo is fully discharged, the terminal operator shall notify the consignee or its designated agent that the cargo is on the pier, at its place of rest, and segregated by bill of lading, and shall identify the terminal operator employee giving such notification.

(l) Marine terminal facilities in the Port of New York shall be operated in accordance with the appointment, non-appointment, or combination appointment/non-appointment procedures established by the terminal operator in accordance with this part. Each terminal operator shall identify in its respective tariff whether its marine terminal facility will be operated on an appointment, non-appointment, or combination appointment/non-appointment basis. Said tariff shall incorporate the specific procedures applicable at each such marine terminal facility, which procedures shall comply with the provisions of this part, be prominently displayed at the marine facility, and shall be modified on not less than 30 days' notice.

(m) Compliance is mandatory and failure of terminal operators or motor carriers to follow the provisions of this part may result in the assessment of penalties as specified in § 530.7.

§ 530.2 Documentation.

(a)(1) Delivery orders shall not be mailed or delivered to terminal operators, nor mailed or delivered to steamship companies for receipt on behalf of terminal operators, prior to arrival of motor carrier vehicles at marine terminal facilities. Dock receipts may be lodged with terminal operators or steamship companies for receipt on behalf of terminal operators prior to arrival of motor carrier vehicles at marine terminal facilities. Upon arrival at marine terminal facilities, motor carrier vehicle operators shall have physical possession of delivery orders required by this part, and shall either have physical possession of dock receipts required by this part or shall have had said dock receipts lodged with the terminal operator or steamship company in accordance with the above-described procedure. Motor carrier vehicles having physical possession of delivery orders or dock receipts immediately shall be issued a sequentially numbered and time-stamped gate pass by order of arrival. When dock receipts are lodged with the terminal operator or steamship company, the sequentially numbered and time-stamped gate pass immediately shall be issued upon tender of the dock receipt to the gateman by the motor carrier vehicle driver. The sequential number and all time stamps and notations recorded on the gate pass and any other arrival document shall be recorded on the copy of the delivery order or dock receipt retained by the motor carrier. Motor carrier vehicles not complying with the requirements of this paragraph shall be denied entry to the marine terminal facility.

(2) Motor carriers shall be permitted to receive cargo on Open Delivery Orders, i.e., single delivery orders covering multiple truckloads or shipments, and deliver cargo on Open Dock Receipts, i.e., single dock receipts covering multiple truckloads or shipments, upon presenting to the terminal operator, subsequent to receipt or delivery of the initial load, satisfactory evidence of authorization to effect receipt or delivery of the remaining truckloads or shipments, as established by the terminal operator and published in its tariff.

(b) Dock receipts required as full and complete documentation for receipt of export cargo shall include the following information:

(1) Name of the motor carrier.

(2) Name of forwarding agent. (If none, insert "none".)

(3) Shipper.

(4) Name of vessel.

(5) Pier, berth, or area designated for receipt of cargo.

(6) Port of discharge.

(7) Container identification and seal number. (On full container loads.)

(8) Booking number.

(9) Cargo to be held on dock should be so indicated in space provided for vessel name.

(10) Marks, number of packages, commodity, cube and weight.

(11) An original and three copies of the dock receipt authorized by the steamship line that is to receive the cargo must be tendered to the terminal operator, one copy of which shall be returned to and retained by the motor carrier in accordance with § 530.2(a)(1).

(c) Delivery order required as full and complete documentation for the delivery of import cargo shall provide the following information:

(1) Name and address of party issuing delivery order.

(2) Address of terminal.

(3) Name and address of motor carrier making pickup.

(4) Vessel name.

(5) Voyage number or estimated date of arrival.

(6) Bill of Lading number.

(7) Port of Lading.

(8) City of destination. (On full container loads.)

(9) Container identification number. (On full container loads.)

(10) Booking number. (On receipt of empty containers.)

(11) Marks, number of packages, commodity, cube and weight. When partial lots are to be delivered, they should be identified by marks.

(12) Date free time expires.

(13) Date through which demurrage is paid/guaranteed after free time has expired.

(14) An original and two copies of the delivery order, the original legibly signed in ink, with the name of the signer typed below the signature, shall be tendered to the terminal operator, one copy of which shall be returned to and retained by the motor carrier in accordance with § 530.2(a)(1).

(d)(1) Terminal operators shall not honor delivery orders with strikeouts or other changes to the original.

(2) If a motor carrier named in an original delivery order substitutes another motor carrier in its place, the motor carrier named in the original delivery order shall provide a turnover order to the second carrier containing all information required by the original delivery order. Both the original delivery order and the turnover order must be presented to the terminal operator by the motor carrier requesting delivery of cargo. Upon written request, in accordance with procedures established by the terminal operator and published in its tariff, special arrangements may be made to accommodate general agency situations.

(e) If a motor carrier presents documents to the terminal operator which do not contain all information required by this part, or which are complete but contain inaccurate information, said motor carrier shall be required to surrender its gate pass and shall be denied service; or, at the request of said motor carrier, the terminal operator may correct or complete the deficient document and service said motor carrier in accordance with this part.

(f) If documents are rejected by the terminal operator, or service is refused for any other reason, the terminal operator shall provide the motor carrier written explanation, time-stamped, of the deficiencies in documentation or other reason(s) for refusal of service, and shall attach thereto a copy of the deficient document, if any.

(g) Section 530.2(e) shall not be applicable if documents are incorrect because of substitution of one vessel for another, redocking of a vessel from a scheduled pier to another, or change in consignment of an export shipment from a scheduled vessel to another due to an early closeout of the scheduled vessel or other such rescheduling for the convenience of the steamship company or terminal operator. Delay occasioned in such circumstances shall be included in the computation of time for purposes of this rule and chargeable to the party responsible for such change.

§ 530.3 Terminals operating on appointment system.

Subject to the following provisions of this section, terminal operators shall establish the basis upon which appointments will be available and shall publish in their tariffs reasonable methods and procedures for booking appointments.

(a)(1) Except for good cause, all requests for appointments shall be granted. If a request for an appointment is not granted, the terminal operator shall record the request and reason for refusal.

(2) Appointments, when granted, shall be identified by sequentially assigned numbers. The terminal operator shall record the date and time of requests for appointments, the name of the person making the requests; the date, time and identification number of scheduled appointments; and shall identify the terminal operator employee granting the appointment.

(b) Appointments to receive delivery of cargo shall not be granted by terminal operators unless and until a freight release covering subject cargo has been provided by the steamship company. Appointments shall be granted only if the terminal operator is advised of the nature, type and quantity of cargo to be delivered or received. If, because of the size, weight or shape of the cargo, special equipment is required, the terminal operator shall so advise the motor carrier at the time the appointment is granted, and the motor carrier shall advise the terminal operator of the type of "rolling stock" which it will employ to effectuate the interchange of cargo.

(c)(1) Gate passes shall be issued to motor carriers by order of arrival at the marine terminal facility. Motor carriers arriving after the time of a scheduled appointment shall be deemed to have missed the appointment and may be denied service.

(2) Except where a terminal operator has arranged for delivery of cargo on the last day of free time, or on the first or second day of demurrage, in accordance with paragraph (e)(2) of this section, motor carriers may cancel appointments (without penalty), provided the terminal operator is given three (3) working hours' notice of said cancellation.

(d)(1) Upon receipt of a gate pass issued pursuant to paragraph (c)(1) of this section, motor carrier personnel holding dock receipts or other satisfactory evidence of authorization to effect delivery or cargo shall proceed immediately to the receiving clerk of the terminal operator who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for unloading.

(2) Upon receipt of a gate pass issued pursuant to paragraph (c)(1) of this section, motor carrier personnel holding delivery orders or other satisfactory evidence of authorization to receive delivery of cargo shall proceed to the Bureau of Customs for completion of required procedures, and thereafter, shall immediately proceed to the delivery clerk of the terminal operator who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for loading.

(e)(1) See § 525.1(c) of this chapter for provisions regarding extension of free time.

(2) At full-appointed terminals, if an appointment is not available as requested, an appointment shall be granted within 72 hours (three business days) of said request, except as provided by paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(i) *Cargo permitted 5 days' free time—Extension of free time.* (A) If an appointment is requested at least 48 hours prior to the expiration of free time, the terminal operator shall arrange to deliver cargo prior to expiration of free time, or extend free time until an appointment is granted.

(B) If an appointment is requested less than 48 hours—but more than 24 hours—prior to expiration of free time, the terminal operator shall arrange for delivery of cargo prior to the close of business on the first working day of demurrage for which first demurrage day the cargo shall be liable, or, after said first demurrage day, cargo shall assume non-demurrage status until an appointment is granted.

(C) If an appointment is requested less than 24 hours prior to expiration of free time, the terminal operator shall arrange for delivery of cargo prior to the close of business on the second working day of demurrage for which two (2) demurrage days the cargo shall be liable, or, after said two (2) demurrage days, cargo shall assume non-demurrage status until an appointment is granted.

(ii) *Cargo permitted 2 or 3 days' free time—Extension of free time.* (A) If an appointment is requested at least 24 hours prior to expiration of free time, the terminal operator shall arrange to deliver cargo prior to expiration of free time or extend free time until an appointment is granted.

(B) If an appointment is requested less than 24 hours prior to expiration of time, the terminal operator shall arrange for delivery of cargo prior to the close of business on the first working day of demurrage for which first demurrage day the cargo shall be liable, or, after said first demurrage day, cargo shall assume non-demurrage status until an appointment is granted.

§ 530.4 Terminals operating a non-appointment system.

(a) Each business day shall be divided into a number of "service periods" (for example, periods commencing at 8 a.m., 10 a.m., 1 p.m., 3 p.m.) as scheduled by the terminal operator according to the nature and capabilities of the particular facility.

(b) Motor carriers arriving at marine terminal facilities shall be issued sequentially numbered time-stamped gate passes by order of arrival, valid for entry to the terminal facility at the time of commencement of the service period indicated thereon.

(c) Upon receipt of a gate pass issued pursuant to paragraph (b) of this section, motor carrier personnel holding dock receipts or other satisfactory evidence of authorization to effect delivery of cargo shall proceed immediately to the receiving clerk of the terminal operator who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for unloading.

(d) Upon receipt of a gate pass issued pursuant to paragraph (b) of this section, motor carrier personnel holding delivery orders or other satisfactory evidence of authorization to receive delivery of cargo shall proceed to the Bureau of Customs for completion of required procedures and thereafter immediately proceed to the delivery clerk of the terminal operator, who shall immediately time-stamp the gate pass upon presentation of documents. After said documents are determined to be in proper order, the motor carrier shall be routed for loading.

(e) A motor carrier entitled to a gate pass scheduling service for a later service period, but unwilling to wait for that service, may elect, not more than 30 minutes after issuance of said gate pass, to receive a preference slip (Appendix B), entitling said motor carrier to service on the next business day as specified thereon. However, free time will not be extended if cargo is on the last day of free time, nor will collection of demurrage charges be suspended.

(f) Motor carriers arriving at a marine terminal facility after the capacity of said facility has been reached may be turned away, but shall be given preference for service on the next business day according to the order in which they arrived and were turned away. Motor carriers turned away under these circumstances shall be issued a preference slip (Appendix B), sequentially numbered, which shall assure preference for service on the next business day and, where cargo is on the last day of free time, create a one-day extension of free time, or suspend collection of demurrage charges for one day as to cargo already on demurrage. The preference slip shall be attached to the gate pass when said gate pass is issued and all notations recorded on the preference slip shall be duplicated in the motor carrier's copy of the delivery order or dock receipt.

(g) If, at the commencement of its scheduled service period, a motor carrier is not available to receive cargo which is on the last day of free time, and because of the unavailability of said motor carrier, the terminal operator is unable to provide service on that day, there shall be no extension of free time.

(h) If all vehicles scheduled for a service period are discharged prior to the end of that period, the motor carrier available and holding the next sequenced gate pass shall be served.

(i) It shall be the responsibility of the motor carrier to determine from the terminal operator whether cargo to be delivered to said motor carrier is on the pier, at its place of rest, and segregated by bill of lading.

§ 530.5 Combination non-appointment/appointment system.

(a) An express line or non-appointment line may be established in conjunction with an appointment system in such a manner as the terminal operator determines best suits the needs of the particular facility.

(b) All rules applicable to non-appointment facilities (§ 530.4) shall be applicable to the non-appointment portion of a combination non-appointment/appointment terminal operation.

(c) If a motor carrier attempts to make an appointment at a facility operating a combination system, and no appointment is available, and then said motor carrier seeks service as a non-appointment vehicle, said motor carrier shall be treated as a non-appointment vehicle for purposes of extension of free time.

§ 530.6 Computation of time.

(a) Validation time is: (1) Time of issuance of a gate pass upon a motor carrier's arrival at a marine terminal facility or (2) if, upon arrival, a motor carrier is scheduled for a later service period, the time of commencement of that scheduled service period, or (3) if a motor carrier is issued a preference slip pursuant to § 530.4(e) or § 530.4(f), the time scheduled thereon.

(b) Time for purposes of this part shall accrue from validation or appointment time. Delay demonstrated by the terminal operator to be due to United States Government regulations, action or inaction of motor carrier personnel, or other such cause, shall be excluded from computation of time. Time elapsed, if any, between appointment or validation time and presentation of documents to the delivery or receiving clerk shall be presumed to be due to such cause.

§ 530.7 Penalties.

(a) A terminal operator who refuses to serve a motor carrier after rejecting, for lack of full and complete documentation, a delivery order or dock receipt which does contain the information required by this part, shall be subject to a penalty of $30.

(b) If a motor carrier fails to meet a scheduled appointment at a marine terminal facility, said motor carrier shall be subject to a charge of $15. If, pursuant to § 530.3(b) a motor carrier is advised that special equipment will be required and the motor carrier fails to meet said appointment, the motor carrier shall be subject to a charge of $30.

(c) If, pursuant to § 530.2(e), a terminal operator completes or corrects deficient documents presented by a motor carrier, a charge of $15 shall be assessed against said motor carrier.

(d) If, contrary to § 530.3(b) a freight release covering subject cargo has not been authorized prior to a scheduled appointment, the terminal operator that granted said appointment shall be assessed a penalty of $30.

(e) If, pursuant to § 530.1(k) or a request under § 530.4(i) a terminal operator notifies a motor carrier that cargo is on the pier, at its place of rest, and segregated by bill of lading, and cargo is not on the pier, at its place of rest, and segregated by bill of lading, when the motor carrier attempts to obtain said cargo, the terminal operator shall be subject to a penalty of $30.

(f) *Time allowances*—(1) *Containers handled as a single unit.* If service is not completed within the following times, penalty charges will accrue against the terminal operator at a rate or $4 per 15 minutes, or any fraction thereof, in excess of these times.

Appointment	75 minutes.
Non-appointment	120 minutes.

(2) *Non-containerized cargo.* When vehicles are loaded by the terminal operator, or unloaded by the terminal operator at the request of the motor carrier, within the time periods set forth below, there will be no penalty. If a vehicle is not loaded or unloaded within the following time periods, penalty charges will accrue against the terminal operator at a rate of $4.00 per 15 minutes, or any fraction thereof, in excess of these times.

(i) *Non-Appointment Vehicles:*

0 to 5,000 pounds	210 minutes.
5,001 to 10,000 pounds	240 minutes.
10,001 to 15,000 pounds	270 minutes.
15,001 to 30,000 pounds	285 minutes.
Over 30,000 pounds	300 minutes.

(ii) *Appointment Vehicles:*

2,000 pounds or less	90 minutes.
2,001 to 5,000 pounds	120 minutes.
5,001 to 10,000 pounds	150 minutes.
10,001 to 15,000 pounds	180 minutes.
15,001 to 20,000 pounds	210 minutes.
20,001 to 25,000 pounds	240 minutes.
Over 25,000 pounds	270 minutes.

(g) When freight is unloaded by the driver or other personnel of the motor carrier and unloading is not completed within the times prescribed by paragraph (f) of this section, as computed from the time that the vehicle is spotted at a place convenient for unloading, the terminal operator shall be entitled to a penalty payment of $4 for each 15 minute period or any fraction thereof in excess of the specified time, unless the delay is demonstrated by the motor carrier to have been occasioned by the action or inaction of the terminal operator.

(h) A motor carrier admitted to a marine terminal facility for loading or unloading—or holding an appointment for loading or unloading—shall be completely loaded or unloaded prior to the close of that business day. If the motor carrier is not completely loaded or unloaded when the terminal closes on that business day, time for purposes of this part shall accrue only while the terminal is conducting operations. In addition:

(1) Motor carriers holding appointments shall be entitled to a penalty payment of $30 from the terminal operator whether the shutout of the vehicle was due to refusal of management to authorize overtime, or labor's refusal to work overtime.

(2) Non-appointment vehicles shall be entitled to a penalty payment of $30 from the terminal operator if the shutout of the vehicle was due to refusal of management to authorize overtime. If the shutout results from labor's refusal to work overtime, the terminal operator shall not be subject to a penalty.

(3) Management shall be presumed to have refused to authorize overtime, unless the terminal operator establishes otherwise.

§ 530.8 Submission of claims for penalties.

(a) All communication required by this section shall be via certified mail; return receipt requested.

(b) Any person claiming payments under this section shall file a written claim with the terminal operator or motor carrier against whom said claim is made.

(c)(1) Claims shall be filed within forty-five (45) calendar days from the date on which the claim arose or said claim shall be barred. The party against whom claim is made shall within twenty (20) calendar days from receipt of said claim make payment thereon or reject. In rejecting a claim, the terminal operator or motor carrier shall set forth the reason or reasons for said rejection and shall provide available documentation substantiating said rejection. Claims rejected because they do not contain sufficient information may be resubmitted no later than twenty (20) days from receipt of rejection.

(2) Rejected claims may be submitted for review within twenty (20) days of receipt of rejection to the Adjudicator who will affirm or reverse the rejection of claims within 30 days of receipt of the request for review. All decisions of Adjudicator shall be final and binding.

(d)(1) Claims submitted by motor carriers, or importers or exporters on whose behalf motor carriers act, shall include the motor carrier's copy of the applicable delivery order or dock receipt, any other relevant document, a brief, but complete description of the facts giving rise to the claim, and a statement of the amount claimed.

(2) Claims filed by terminal operators shall include the terminal operator's copy of the applicable delivery order or dock receipt, a copy of the gate pass and any other arrival documents issued, copies of all other relevant documents, a brief explanation of the facts giving rise to the claim, and a statement of the amount claimed.

(e)(1) If the party identified as the terminal operator at a marine terminal facility under § 530.1(e) rejects a claim pursuant to § 530.1(1) or § 530.2(g), or otherwise denies a claim on the ground that the delay was caused by the steamship company, the original claim and a statement of the reasons for rejection shall be forwarded within seven days to the steamship company alleged by the terminal operator to be liable for the claim, copy to the claimant.

(2) The steamship company shall pay or reject the claim within twenty (20) calendar days from receipt thereof.

(3) If the claim is rejected by the steamship company, the claimant may submit both rejections to the Adjudicator who shall review the rejection of the claim by both parties and determine liability as between the two.

§ 530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
530.1 through 530.3	3072-0010
530.8	3072-0010

BILLING CODE 6730-01-M

Appendix A to 46 CFR
Part 530

(From 1981 "New York Port
Handbook")

New York/New Jersey Port District

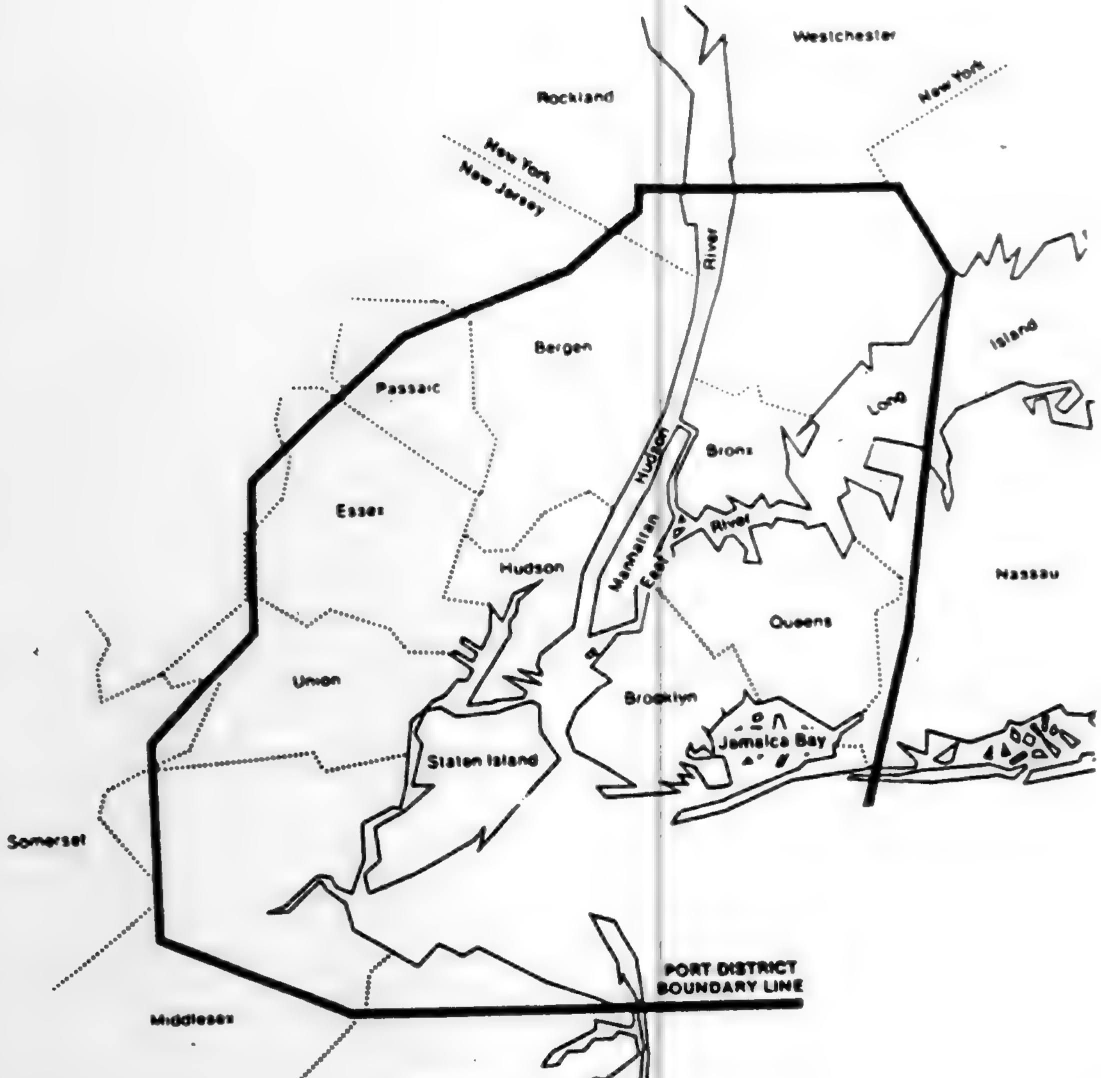
Westchester
Rockland
New York
New York
New Jersey
River
Island
Bergen
Passaic
Long
Hudson
Bronx
Essex
River
Manhattan
East
Hudson
Nassau
Queens
Union
Brooklyn
Jamaica Bay
Staten Island
Somerset
PORT DISTRICT
BOUNDARY LINE
Middlesex
Monmouth
Atlantic Ocean

BILLING CODE 6730-01-C

Appendix B to 46 CFR Part 530

Motor Carrier Preference Slip
(See § 530.4)

No. ____________________

TIME STAMP

STEVEDORING CO. INC.

LOCATION (Pier/Berth/Shed)____________________

MOTOR CARRIER ____________________

The above indicated vehicle could not be serviced today. Preference for service will be given the next business day at ____________________ a.m./p.m.

D/R's__________ Pkgs./Pieces__________ WEIGHT __________

D/O's__________ Pkgs./Pieces__________ WEIGHT __________

CONTAINER # __________ GATEMAN __________

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

Sec.
540.1 Scope.
540.2 Definitions.
540.3 Proof of financial responsibility, when required.
540.4 Procedure for establishing financial responsibility.
540.5 Insurance, guaranties, escrow accounts, and self-insurance.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Denial, revocation, suspension, or modification.
540.9 Miscellaneous.
Form FMC-131
Form 132A
Form 133A

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

540.20 Scope.
540.21 Definitions.
540.22 Proof of financial responsibility, when required.
Sec.
540.23 Procedure for establishing financial responsibility.
540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.
540.25 Evidence of financial responsibility.
540.26 Denial, revocation, suspension, or modification.
540.27 Miscellaneous.
Form FMC-132B
Form FMC-133B

Subpart C—Assessment, Remission, and Mitigation of Civil Penalties

540.30 Scope.
540.31 Definitions.
540.32 Procedure.
540.33 Petition for remission or mitigation of penalty.
540.34 Settlement; execution of agreement form.
540.35 Referral to Department of Justice.
540.36 Payment of penalties.
590.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix A—Example of Settlement Agreement to be used under 46 CFR 540.30–540.36
Appendix B—Example of promissory not to be used under 46 CFR 540.36

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); Sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); Sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

§ 540.1 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled. Included also are the qualifications required by the Commission for issuance of a Certificate (Performance) and the basis for the denial, revocation, modification, or suspension of such Certificates.

(b) Failure to comply with this part may result in denial of an application for a certificate. Vessels operating without the proper certificate may be denied clearance and their owners may also be subject to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817d and 817e).

§ 540.2 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(d) *Berth or stateroom accommodation* or *passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Performance)* means a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation issued pursuant to this subpart.

(g) *Passenger* means any person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation.

(h) *Passenger revenue* means those monies wherever paid by passengers who are to embark at any U.S. port for water transportation and all other accommodations, services and facilities relating thereto.

(i) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

(j) *Insurer* means any insurance company, underwriter, corporation, or association or underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(k) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

§ 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

§ 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an application on Form FMC–131 for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation. Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, D.C. 20573, or at the Commission's offices at New York, NY; New Orleans, LA; San Francisco, CA; Miami, FL; Los Angeles, CA; Hato Rey, PR; and Chicago, IL.

(b) An application for a Certificate (Performance) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith except that any person other than the owner or charterer who arranges, offers, advertises, or provides passage on a vessel may apply for a Certificate (Performance). Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Performance) shall be accompanied by a filing fee remittance of $1,600.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register**.

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, except that the Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 *Surety Bonds*) of the following methods:

(a) Filing with the Commission evidence of insurance, issued by an insurer, providing coverage for indemnification of passengers in the event of the nonperformance of water transportation.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office, in Washington, D.C. 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (c) of this section.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation.

(c) Filing with the Commission a guaranty on Form FMC–133A, by a guarantor acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation.

(d) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in the introductory text of this section, except that the Commission, for good cause shown, may waive the requirement as to the amount of working capital. The Commission will take into consideration all current contractual requirements with respect to the maintenance of such working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Performance) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus, except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

§ 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC-132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the gross passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given or a satisfactory bond has been provided, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.

§ 540.8 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

§ 540.9 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132A), guaranty (Form FMC-133A), and application (Form FMC-131) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this Subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of its death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the Certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail at its last known address on file with the Commission.

(f) [Reserved]

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (a) or (b).

(h) Every person who has been issued a Certificate (Performance) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Performance). In addition, the statements will be due within 30 days after the close of every such 6-month period.

(i) [Reserved]

(j) The amount of: (1) Insurance as specified in § 540.5(a), (2) the escrow account as specified in § 540.5(b), (3) the guaranty as specified in § 540.5(c), or (4) the surety bond as specified in § 540.6, shall not be required to exceed 10 million dollars (U.S.).

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Pub. L. 89-777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

Form FMC-131

FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Application for Certificate of Financial Responsibility

In compliance with the provisions of Pub. L. 89-777 and 46 CFR Part 540, application is hereby made for a Certificate of Financial Responsibility (check one or both as applicable):

[ ] for indemnification of passengers for nonperformance. [ ] Initial application [ ] Certificate has previously been applied for (if so, give date of application and action taken thereon).

[ ] to meet liability incurred for death or injury to passengers or other persons. [ ] Initial application [ ] Certificate has previously been applied for (if so, give date of application and action taken thereon).

Instructions

Submit two (2) typed copies of the application to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. The application is in four parts: Part I—General; Part II—Performance; Part III—Casualty and Part IV—Declaration. Applicants must answer all questions in Part I and Part IV, then Parts II and/or Part III as appropriate. Instructions relating to Part II and Part III are contained at the beginning of the respective part. If the information required to be submitted under 46 CFR Part 540 has been previously submitted under other rules and regulations of the Commission, state when and for what reason such information was submitted. If previously submitted, it is not necessary to resubmit. If additional space is required, supplementary sheets may be attached.

Part I—General

Answer All Questions

1(a) Legal business name:

(b) English equivalent of legal name if customarily written in language other than English:

(c) Trade name or names used:

2(a) State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust, or other organized group of persons (whether incorporated or not), or as a receiver, trustee, or other liquidating agent, and describe current business activities and length of time engaged therein.

(b) If a corporation, association, joint stock company, business trust, or other organization, give:

Name of State or country in which incorporated or organized.

Date of the incorporation or organization.

(c) If a partnership, give name and address of each partner:

3. Give following information regarding any person or company controlling, controlled by, or under common control with you (answer only if applying as a self-insurer under Part II or Part III).

Name	Address	Business and relationship to you

4. In relation to the passenger transportation engaged in by you to or from U.S. ports:

Do you own all the vessels? [ ] Yes [ ] No (If "No" indicate the nature of the arrangements under which those not owned by you are available to you (e.g., bareboat, time, voyage, or other charter, or arrangement).)

5. Name of each passenger vessel having accommodations for 50 or more passengers and embarking passengers at U.S. ports:

Name	Country of registry	Registration No.	Maximum number of berth or stateroom accommodations

6. Submit a copy of passenger ticket or other contract evidencing the sale of passenger transportation.

7. Name and address of applicant's U.S. agent or other person authorized to accept legal service in the United States.

Part II—Performance

Answer items 8-15 if applying for Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance. If you are filing evidence of insurance, escrow account, guaranty or surety bond under Subpart A of 46 CFR Part 540 and providing at least ten (10) million dollars (U.S.) of coverage, you need not answer questions 10-15.

8. If you are providing at least ten (10) million dollars (U.S.) of coverage, state type of evidence and name and address of applicant's insurer, escrow agent, guarantor or surety (as appropriate).

9.* A Certificate (Performance) is desired for the following proposed passenger voyage or voyages: (Give itinerary and indicate whether the Certificate is for a single voyage, multiple voyages or all voyages scheduled annually.)

Vessel	Voyage date	Voyage itinerary

10. Items 11-15 are optional methods; answer only the one item which is applicable to this application. Check the appropriate box below:

[ ] Insurance (item 11).
[ ] Escrow (item 12).
[ ] Surety bond (item 13).
[ ] Guaranty (item 14).
[ ] Self-insurer (item 15).

11(a) Total amount of performance insurance which is to be computed in accordance with § 540.5 of 46 CFR Part 540. (Evidence of insurance must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which insurance amount is determined (attach data substantiating that amount is not less than that prescribed in § 540.5 of 46 CFR Part 540.)

(c) Name and address of applicant's insurer for performance policy.

12(a) Name and address of applicant's escrow agent. (Applicant may pledge cash or U.S. Government securities, in lieu of a surety bond, to fulfill the indemnification provisions of Pub. L. 89-777.)

(b) Total escrow deposit which is to be computed in accordance with § 540.5 of 46 CFR Part 540. (Escrow agreement must be filed with the Federal Maritime Commission before a Certificate (Performance) will be issued.) Cash $———. U.S. Government Securities $———.

(c) Method by which escrow amount is determined (attach data substantiating that amount is not less than that prescribed by § 540.5 of 46 CFR Part 540).

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* The filing of sailing schedules will be acceptable in answers to this question.

13(a) Total amount of surety bond in accordance with § 540.6 of 46 CFR Part 540. (The bond must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which bond amount is determined (attach data substantiating that amount is not less than that prescribed in § 540.6 of 46 CFR Part 540).

(c) Name and address of applicant's surety on performance bond.

14(a) Total amount of guaranty which is to be computed in accordance with § 540.5 of 46 CFR Part 540. (Guaranty must be filed with the Federal Maritime Commission before a Certificate (Performance) may be issued.)

(b) Method by which guaranty amount is determined (attach data substantiating that amount is not less than that prescribed in § 540.5 46 CFR Part 540).

(c) Name and address of applicant's guarantor.

15. If applicant intends to qualify as a self-insurer for a Certificate (Performance) under § 540.5 of 46 CFR Part 540, attach all data, statements, and documentation required therein.

Part III—Casualty

Answer Items 16–22 if Applying for Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons

16. Name of passenger vessel subject to section 2 of Pub. L. 89–777 operated by you to or from U.S. ports which has largest number of berth or stateroom accommodations. State the maximum number of berth or stateroom accommodations.

17. Amount of death or injury liability coverage based on number of accommodations aboard vessel named in item 16 above, calculated in accordance with § 540.24 of 46 CFR Part 540.

Items 18–22 Are Optional Methods: Answer Only the One Item Which is Applicable to This Application

18(a) Total amount of applicant's insurance. (Evidence of the insurance must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's insurer.

19(a) Total amount of surety bond. (Bond must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's surety for death or injury bond.

20(a) Total amount of escrow deposit. (Escrow agreement must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(d) Name and address of applicant's escrow agent.

21(a) Total amount of guaranty. (Guaranty must be filed with the Federal Maritime Commission before a Certificate (Casualty) will be issued.)

(b) Name and address of applicant's guarantor.

22. If applicant intends to qualify as a self-insurer for a Certificate (Casualty) under § 540.24(c) of 46 CFR Part 540, attach all data, statements and documentation required therein.

Part IV—Declaration

This application is submitted by or on behalf of

(a) Name.
(b) Name and title of official.
(c) Home office— Street and number.
(d) City.
(e) State or country.
(f) ZIP Code.
(g) Principal office in the United States—Street and number.
(h) City.
(i) State.

I Declare that I have examined this application, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

By ————————————
(Signature of official)

————————————
(Date)

Comments:

From FMC–132A

Passenger Vessel Surety Bond (46 CFR Part 540)

Know all men by these presents, that we ———— (Name of applicant), of ———— (City), ———— (State and country), as Principal (hereinafter called Principal), and ———— (Name of surety), a company created and existing under the laws of ———— (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of ————, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility and the supplying transportation and other services subject to Subpart A of Part 540 of Title 46, Code of Federal Regulations, in accordance with the ticket contract between the Principal and the passenger, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to Subpart A of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services in accordance with the ticket contract made by the Principal and the passenger while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the passage price paid by or on behalf of such passenger.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ————, 19—, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds due under ticket contracts made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds arising from ticket contracts made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on —— day of ————, 19—.

PRINCIPAL

Name ————————————
By ————————————
(Signature and title)
Witness ————————————

SURETY

[SEAL] Name ————————————
By ————————————
(Signature and title)
Witness ————————————

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC–133A

Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act

1. Whereas ———— (Name of applicant) (Hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed

Schedule ("the Vessels"), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with Section 3 of Pub. L. 89–777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of Section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed $______.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of transportation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty except that:

(i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and,

(ii) Such termination shall not affect the liability of the Guarantor for refunds arising from ticket contracts made by the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates ______, with offices at ______, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart A of Part 540 of Title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

____

(Place and Date of Execution)

____

(Type Name of Guarantor)

____

(Type Address of Guarantor)

By ______________________________

(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

§ 540.20 Scope.

The regulations contained in this subpart set forth the procedures whereby owners or charterers of vessels having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. Included also are the qualifications required by the Commission for issuance of a Certificate (Casualty) and the basis for the denial, revocation, suspension, or modification of such Certificates.

§ 540.21 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any state thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodations* or *passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Casualty)* means a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages issued pursuant to this subpart.

(g) *Voyage* means voyage of a vessel to or from U.S. ports.

(h) *Insurer* means any insurance company, underwriter, corporation or association of underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(i) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(j) For the purpose of determining compliance with § 540.22, "passengers embarking at United States ports" means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

§ 540.22 Proof of financial responsibility, when required.

No vessel shall embark passengers at U.S. ports unless a Certificate (Casualty) has been issued to or covers the owner or charterer of such vessel.

§ 540.23 Procedure for establishing financial responsibility.

(a) In order to comply with section 2 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an Application on Form FMC–131 for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages. Copies of Form FMC–131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573, or at the Commission's offices at New York, NY; New Orleans, LA; San Francisco, CA; Miami, FL; Los Angeles, CA; Hato Rey, PR; and Chicago, IL.

(b) An application for a Certificate (Casualty) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the sailing. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Casualty) shall be accompanied by a filing fee remittance of $800.

(c) The application shall be signed by a duly authorized officer or represenative of the applicant with a copy of evidence of his authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register.**

§ 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

Evidence of adequate financial responsibility for the purposes of this subpart may be established by one of the following methods:

(a) Filing with the Commission evidence of insurance issued by an insurer providing coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:

Twenty thousand dollars for each passenger accommodation up to and including 500; plus

Fifteen thousand dollars for each additional passenger accommodation between 501 and 1,000; plus

Ten thousand dollars for each additional passenger accommodation between 1,001 and 1,500; plus

Five thousand dollars for each passenger accommodation in excess of 1,500;

except that, if the applicant is operating more than one vessel subject to this subpart, the amount prescribed by this paragraph shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments, or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office in Washington, D.C. 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commissioner, or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (d) of this section.

(b) Filing with the Commission a surety bond on Form FMC-132B issued by a bonding company authorized to do business in the United States and acceptable to the Commission. Such surety bond shall evidence coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount calculated as in paragraph (a) of this section, and shall not be terminated while a voyage is in progress.

(c) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in paragraph (a) of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Casualty) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(d) Filing with the Commission a guaranty on Form FMC-133B by a guarantor acceptable to the Commission. Any such guaranty shall be in an amount calculated as in paragraph (a) of this section.

(e) Filing with the Commission evidence of an escrow account, acceptable to the Commission, the amount of such account to be calculated as in paragraph (a) of this section.

(f) The Commission will, for good cause shown, consider any combination of the alternatives described in paragraphs (a) through (e) of this section for the purpose of establishing financial responsibility.

§ 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

§ 540.26 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify, and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Casualty) shall become null and void upon cancellation or termination of evidence of insurance, surety bond, guaranty, or escrow account.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

§ 540.27 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132B), guaranty (Form FMC-133B), and application (Form FMC-131 as set forth in Subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail, at its last known address on file with the Commission.

(f) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the charterer shall file) must within 10 days file with the Secretary of the Commission evidence of any such arrangement.

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.26(a) or § 540.26(b).

(h) Every person who has been issued a Certificate (Casualty) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every such 6-month period commencing with the first 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Casualty). In addition, the statements will be due within 30 days after the close of every 6-month period.

Form FMC-132B

(5-67)

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. ______

FMC Certificate No. ______

Passenger Vessel Surety Bond (46 CFR Part 540)

Know all men by these presents, that We ______ (Name of applicant), of ______ (City), ______ (State and country), as Principal (hereinafter called Principal), and ______ (Name of surety), a company created and existing under the laws of ______ (State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of ______, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to Subpart B of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall in no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Pub. L. 89-777, then the

Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the —— day of ————, 19—, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the —— day of ————, 19—.

PRINCIPAL

Name ____________________
By ____________________
(Signature and title)
Witness ____________________

SURETY

Name ____________________
By [SEAL] ____________________
(Signature and title)
Witness ____________________

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC-133B

(5-67)

FEDERAL MARITIME COMMISSION

Guaranty No. ____________________
FMC Certificate No. ____________________

Guaranty in Respect of Liability for Death or Injury, Section 2 of the Act

1. Whereas ———— (Name of Applicant) (Hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Pub. L. 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act, then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act without the Certificate, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates ————, with offices at ————, as the Guarantor's legal agent for Service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart B of Part 540 of Title 46, Code of Federal Regulations, issued under section 2 of the Pub. L 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

____
(Place and Date of Execution)

____
(Name and Guarantor)

____
(Address of Guarantor)

By ____________________
(Name and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Subpart C—Assessment, Remission, and Mitigation of Civil Penalties

§ 540.30 Scope.

Sections 2 and 3 of Pub. L. 89-777 subject any person who violates the provisions of those sections to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These sections further provide that such penalties may be "remitted or mitigated" by the Commission "upon such terms as they in their discretion shall deem proper." This subpart sets forth regulations prescribing standards and procedures for the collection, mitigation, and remission of civil penalties incurred under sections 2 and 3 of Pub. L. 89-777, and the rules and regulations promulgated pursuant thereto.[1]

§ 540.31 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States, or the laws of any foreign country.

(b) *Commission* means the Federal Maritime Commission.

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[1] Sections 2(d) and 3(d) of Pub. L. 89-777 authorize the Federal Maritime Commission to prescribe such regulations as may be necessary to carry out the provisions of secs. 2 and 3.

(c) *The Act* means Pub. L. 89-777 (80 Stat. 1356, 1357, 1358)).

(d) *Offender* means any person charged with a violation.

§ 540.32 Procedure.

(a) If it is adjudged or otherwise determined that a violation has occurred and it is decided to invoke a statutory penalty, a registered letter will be sent to the offender informing him of the nature of the violation, the statutory and factual basis of the penalty, and the amount of the penalty. This notification shall further advise the offender that, within 20 days, or such longer period as the Commission in its discretion may allow, he or she may either pay the penalty demanded or petition for the remission or mitigation of such penalty.

(b) All correspondence, petitions, forms, or other instruments regarding the collection, remission or mitigation of any penalty under this subpart should be addressed to the Bureau of Hearing Counsel, Federal Maritime Commission, Washington, D.C. 20573.

§ 540.33 Petition for remission of mitigation of penalty.

(a) An offender may submit any oral or written material or information in answer to the notification letter explaining, mitigating, showing extenuating circumstances, or, where there has been no formal proceeding on the merits, denying the violation. Material or information so presented will be considered in making the final determination as to whether to mitigate the penalty and the amount for which it will be mitigated, or whether to remit it in full.

(b) When no penalty is invoked or the penalty is remitted, no further action by the offender will be necessary. When the penalty is mitigated, such mitigation will be made conditional upon the full payment within 15 days or such longer period as the Commission in its discretion may allow unless the offender within that time executes a promissory note as provided by § 540.36.

§ 540.34 Settlement; execution of agreement form.

When a statutory penalty is mitigated and the offender agrees to settle for that amount, he or she shall be provided with a Settlement Agreement Form (Appendix A), to be signed, in duplicate, and returned. This form, after reciting the nature of the violation, will contain a statement evidencing the offender's agreement to settlement of the Commission's penalty claim for the amount set forth in the agreement and shall also embody an "approval and acceptance" provision. Upon settlement of the penalty in the agreed amount, one copy of the Settlement Agreement shall be returned to the debtor with the "Approval and Acceptance" thereon signed by the Director, Bureau of Hearing Counsel.

§ 540.35 Referral to Department of Justice.

(a) The Commission will refer violations to the Department of Justice with the recommendation that action be taken to collect the full statutory penalty when:

(1) The offender, within the prescribed time, does not explain the violation, petition for mitigation or remission, or otherwise respond to letters or inquiries.

(2) The offender, having responded to such letters or inquiries, fails or refuses to pay the statutory or mitigated penalty, as determined by the Commission, within the prescribed time.

(b) No action looking to the remission or mitigation of a penalty shall be taken on any petition, irrespective of the amount involved, if the case has been referred to the Department of Justice for collection.

§ 540.36 Payment of penalties.

Payment of penalties by the offender shall be made by:

(a) A bank cashier's check or other instrument acceptable to the Commission.

(b) Regular installments by check after the execution of a promissory note containing a confess-judgment agreement (Appendix B).

(c) A combination of the alternatives described in paragraphs (a) and (b) of this section. All checks or other instruments submitted in payment of claims shall be made payable to "Federal Maritime Commission."

§ 540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
540.4 (Form FMC-131)	3072-0012
540.5	3072-0011
540.6	3072-0011
540.8	3072-0011
540.9	3072-0011
540.23 (Form FMC-131)	3072-0012
540.24	3072-0011
540.26	3072-0011
540.27	3072-0011

Appendix A—Example of Settlement Agreement To Be Used Under 46 CFR 540.30–540.36

Settlement Agreement FMC File No. ——

This Agreement is entered into between:
(1) the Federal Maritime Commission and,
(2) —— hereinafter referred to as Respondent.

WHEREAS, the Commission is considering the institution of an assessment proceeding against Respondent for the recovery of civil penalties provided under the —— Act ——, for —— alleged violation(s) of Section(s) ——.

WHEREAS, this course of action is the result of practices believed by the Commission to have been engaged in by Respondent to wit;

——

——

WHEREAS, the parties are desirous of expeditiously settling the matter according to the conditions and terms of this Agreement and wish to avoid the delays and expense which would accompany agency litigation concerning these penalty claims; and,

WHEREAS, Section —— of the —— Act —— authorizes the Commission to collect and compromise civil penalties arising from the alleged violation(s) set forth and described above; and,

WHEREAS, the Respondent has terminated the practices which are the basis of the alleged violation(s) set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate, discourage and prevent these practices by Respondent or its officers, employees and agents.

NOW THEREFORE, in consideration of the premises herein, and in compromise of all civil penalties arising from the violation(s) set forth and described herein that may have occurred between —— (date) and —— (date), the undersigned Respondent herewith tenders to the Federal Maritime Commission a bank cashier's check in the sum of $——, upon the following terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the Director of the Bureau of Hearing Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claims for recovery of civil penalties from Respondent arising from the alleged violations set forth and described herein, that have been disclosed by Respondent to the

Commission and that occurred between ———— (date) and ———— (date).

2. The undersigned voluntarily signs this instrument and states that no promises or respresentations have been made to the Respondent other than the agreements and consideration herein expressed.

3. It is expressly understood and agreed that this Agreement is not to be construed as an admission of guilt by undersigned Respondent to the alleged violations set forth above.

4. Insofar as this agreement may be inconsistent with Commission procedures for compromise and settlement of violations as set out at 46 CFR Part 505, the parties hereby waive application of such procedures.

By ————————
Title ————————
Date ————————

Approval and Acceptance

The above Terms and Conditions and Amount of Consideration are hereby Approved and Accepted:

By the Federal Maritime Commission.

(Hearing Counsel)

Director, Bureau of Hearing Counsel.

Date————

Appendix B—Example of Promissory Note To Be Used Under 46 CFR 540.36

Promissory Note Containing Agreement for Judgment

FMC File No.————

For value received, ———— promises to pay to the Federal Maritime Commission (the Commission) the principal sum of $———— ($———) to be paid at the offices of the Commission in Washington, D.C., by bank cashier's or certified check in the following installments:

$———— ($———) within — months of execution of the settlement agreement by the Director of the Bureau of Hearing Counsel;

$———— ($———) within — months of execution of the agreement;

$———— ($———) within — months of execution of the agreement;

[Further payments if necessary]

In addition to the principal amount payable hereunder, interest on the unpaid balance thereof shall be paid with each installment. Such interest shall accrue from the date of the execution of this Promissory Note by the Director of the Bureau of Hearing Counsel, and be computed at the rate of [———— percent (——%) per annum.]

If any payment of principal or interest shall remain unpaid for a period of ten (10) days after becoming due and payable, the entire unpaid principal amount of this Promissory Note, together with interest thereon, shall become immediately due and payable at the option of the Commission without demand or notice, said demand and notice being hereby expressly waived.

If a default shall occur in the payment of principal or interest under this Promissory Note, ———— (Respondent) does hereby authorize and empower any U.S. attorney, any of its assistants or any attorney of any court of record, Federal or State, to appear for him or her, and to enter and confess judgment against ———— (Respondent) for the entire unpaid principal amount of this Promissory Note, together with interest, in any court of record, Federal or State; to waive the issuance and service of process upon ———— (Respondent) in any suit on this Promissory Note; to waive any venue requirement in such suit; to release all errors which may intervene in entering up such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

———— (Respondent) hereby ratifies and confirms all that said attorney may do by virtue thereof.

This Promissory Note may be prepaid in whole or in part by Respondent by bank cashier's or certified check at any time, provided that accrued interest on the principal amount prepaid shall be paid at the time of the prepayment.

By ————————
Title ————————
Date ————————

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24313 Filed 9-13-84; 8:45 am]

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federal register

Friday
September 14, 1984

Part VII

Department of Health and Human Services

Food and Drug Administration

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21 CFR Parts 600, 803, 1002, and 1003
Medical Device Reporting; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 803, 1002, and 1003

[Docket No. 79N-0182]

Medical Device Reporting

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that requires manufacturers and importers of medical devices, including diagnostic devices, to report to FDA whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. FDA is taking this action under the Medical Device Amendments of 1976.

The final rule is intended to assure that FDA is informed promptly of all serious problems or potentially serious problems associated with marketed devices. FDA is the principal public health agency responsible for ensuring that devices are safe and effective. To carry out its responsibilities, the agency needs to be informed whenever a manufacturer or importer receives or otherwise becomes aware of information about device problems. Only if FDA is provided with such information will it be able to evaluate the risk, if any, associated with a device and take whatever action is necessary to reduce or eliminate the public's exposure to this risk. Depending on the facts and circumstances, these steps could include contacting the manufacturer or importer of the device and monitoring its voluntary actions to respond to the problem, initiating a consumer or user education program, or initiating regulatory action, such as injunction, seizure, or other enforcement action.

DATES: Comments on the conforming amendments by October 15, 1984. Effective November 13, 1984. For additional information concerning this effective date, see "Paperwork Reduction Act of 1980" appearing in the preamble of this document.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Forst, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of November 18, 1980 (45 FR 76183), under the authority of sections 502(t), 519, 701(a), and 704(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(t), 360i, 371(a), and 374(e)), FDA issued a proposed rule that would have required device manufacturers, importers, and distributors to submit to FDA reports concerning devices that (1) may have caused a death or injury; (2) may have had a deficiency that could result in a death or injury or that could give inaccurate diagnostic information and, thereby, result in improper treatment; or (3) were the subject of a remedial action. Interested persons were given until February 17, 1981, to submit written comments on the proposal. FDA received more than 200 written comments. In addition, on February 2, 1981, FDA held a public hearing on the proposal at which 30 persons presented information and views. (The public hearing, announced in the proposal and originally scheduled for January 22, 1981, was rescheduled by notice published in the **Federal Register** of January 9, 1981 (46 FR 2364).)

Most of the comments on the 1980 proposal criticized its reporting requirements as being too broad in scope and claimed that the burden on manufacturers, importers, and distributors of complying with the requirements would outweigh any resulting benefits to the public health. Other comments, however, stated that to assure that devices are not adulterated or misbranded and are otherwise safe and effective, FDA needs to receive reports of death and serious injury, or at least death.

Subsequently, by a notice published in the **Federal Register** of November 24, 1981 (46 FR 57568), FDA placed the 1980 proposed rule in abeyance. FDA took this action to permit further review and evaluation of the comments recived on the proposal, to permit a review of the proposal in light of Executive Order 12291, which was issued on February 17, 1981, and to permit the initiation, completion, and analysis of an inspection program of complaint files maintained by manufacturers under the current good manufacturing practice (CGMP) regulations for medical devices (21 CFR Part 820). The inspection program was designed to provide FDA with data to determine, among other things, whether FDA inspection of manufacturers' complaint files could substitute for some or all of the proposed reporting requirements.

After publication of the notice of abeyance, FDA continued to review and evaluate the comments on the 1980 proposal. The agency concluded that the broad reporting requirements of the proposed rule were not appropriate. FDA tentatively concluded, however, that information regarding device-related deaths and serious injuries should be reported even if records of these events are maintained in the manufacturers' complaint files because the resources available to the agency for inspectional programs permit FDA to review most such files only once every 2 years. FDA also tentatively concluded that it needs, on a more timely basis, information about device-related deaths, serious injuries, and malfunctions that could cause deaths or serious injuries. For these reasons, in the **Federal Register** of May 27, 1983 (48 FR 24014), under the authority of sections 510 and 704(a) of the act (21 U.S.C. 360 and 374(a)), as well as the sections of the act cited in the November 1980 proposal, FDA issued a reproposed rule under which manufacturers and importers of medical devices would have been required to report to FDA whenever the manufacturer or importer had information that reasonably suggested, or a person made in allegation of which the manufacturer or importer was aware, that one of its marketed medical devices (1) caused or contributed to a death or serious injury or (2) malfunctioned, if a recurrence of the malfunction was likely to cause or contribute to a death or serious injury.

FDA acknowledged that the reporting requirements in the 1983 reproposal were narrower than those in the 1980 proposal, which would have required device manufacturers and distributors (including importers) to submit reports to FDA about devices that may have caused a death or injury or that may have a deficiency that could result in a death or injury. (For a complete discussion of the differences between the proposal and the reproposal, see 48 FR 24014.)

Since publication of the reproposal, FDA has completed its "Survey of Device Manufacturer Complaint Files" (Ref. 1) (the Survey) announced in the November 24, 1981, notice of abeyance, and has analyzed the data collected. The results of this analysis compel three conclusions. First, the results show that

FDA review of manufacturers' complaint files cannot substitute for a reporting rule; review of such files is not a timely or efficient way for the agency to learn of device problems and could not enable FDA to protect the public health adequately. Second, the results show that the reporting requirements of the final rule do not duplicate existing reporting systems and are not unduly burdensome. Third, the results show that under the 1980 proposal, FDA would have received more than 225,000 reports each year from manufacturers alone, and that less than 12 percent of these reports would have been related to incidents involving death, serious injury, or malfunctions that could have led to death or serious injury. Given the resources available to FDA to administer a device reporting program, the agency could not review more than 225,000 reports each year, determine which ones required further investigation and action by the agency, and proceed in a timely manner to protect the public from hazardous or potentially hazardous devices. A copy of the Survey is on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville MD 20857, under Docket No. 79N-0182 and is available for review by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Statutory Authority and Legislative History

Section 519 of the act authorizes FDA to issue regulations to require device manufacturers, importers, and distributors to maintain such records, make such reports, and provide such information to FDA as may reasonably be necessary to assure that devices are not adulterated or misbranded and are otherwise safe and effective for human use. The legislative history of the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) reflects clear congressional intent to permit FDA to require under the authority of section 519 of the act that device manufacturers, importers, and distributors report to FDA product defects and adverse reactions to the firms' devices. H.R. Rep. No. 94-853, 94th Cong., 2d Sess. 23 (1976). In discussing the notification provisions of section 518 of the act (21 U.S.C. 360h), the House Report, the principal legislative document on the amendments, states:

> The notification provision is similar to, and to some extent patterned after, comparable authority contained in the National Traffic and Motor Vehicle Safety Act of 1966, the Radiation Control for Health and Safety Act of 1968, and the Consumer Product Safety Act of 1972. These statutes also include requirements that manufacturers provide notification of defects in their products to appropriate Federal agencies. The Committee determined that a comparable provision in new section 518(a) with respect to devices would be unnecessary since the Secretary could require the reporting of such information under the recordkeeping and reporting authority provided in new section 519 of the Act.

H.R. Rep. No. 94-853, *supra*, at 21.

Elsewhere, the House Report lists examples of reasonable reporting requirements, including reports of defects, adverse reactions, and patient injuries (*id.* at 23). That Congress intended FDA to use its authority under section 519 of the act to protect the public from potentially hazardous devices, as well as devices with confirmed hazards, is also clear from the legislative history (see *id.* at 24).

Among other things, section 519 of the act requires that any reporting requirement established under the authority of that section (1) may not be unduly burdensome (considering the cost of compliance and the need for the requirement); (2) shall state the purpose for any required report or information and identify to the fullest extent practicable such report or information; (3) may not, except in certain circumstances, require the disclosure of a patient's identity; and (4) may not, except in certain circumstances, require the manufacturer, distributor, or importer of a class I (general controls) device to maintain for such a device records respecting information not in its possession or to submit with respect to such device periodic reports or to submit with respect to such device information not in its possession. The House Report cautions, however, that these limitations "should not be construed * * * as limiting the Secretary's authority to obtain information needed to insure that the public is protected from potentially hazardous devices" (*id.* at 24).

Section 701(a) of the act authorizes FDA to promulgate substantive binding regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973); *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir.), *cert. denied*, 423 U.S. 827 (1975). Section 502(t)(2) of the act deems a device to be adulterated, and thus prohibited from commerce under sections 301 and 304 of the act (21 U.S.C. 331 and 334), if there is a failure to furnish any material or information required under section 519 of the act respecting the device. Section 704(e) of the act provides that every person required under section 519 of the act to maintain records and every person who is in charge or custody of such records shall, upon request of any authorized FDA employee, permit such employee at all reasonable times to have access to, and to copy and verify, such records. Section 704(a) of the act provides that for purposes of enforcement of the act, any duly authorized FDA employee is authorized, among other things, (1) to enter, at reasonable times, any factory, warehouse, or establishment in which devices are manufactured, processed, packed, or held, or to enter any vehicle being used to transport or hold devices and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. Section 510 of the act requires every person who owns or operates any establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device to register with FDA the person's name, places of business, and all such establishments and to list with FDA each device introduced by the person for commercial distribution. FDA's need for information about the safety and effectiveness of devices is implicit in other sections of the act, e.g., section 513 (21 U.S.C. 360c) on device classification, section 514 (21 U.S.C. 360d) on performance standards, and section 515 (21 U.S.C. 360e) on premarket approval. Thus, for example, reporting requirements may be a condition of approval under section 515.

Comments on the Reproposed Rule

In response to the 1983 reproposal, FDA received 84 written comments from interested persons. Comments were received from device manufacturers, industry trade associations, the Office of Management and Budget (OMB), and members of the public. The following is a summary of the significant comments received on the reproposal, including comments received from OMB (see paragraphs 39, 50, and 62 of this preamble), and the agency's response to them. The summary takes into account the significant comments on the proposed rule which are relevant to the reproposal and the final rule but which were not addressed in the preamble to the reproposal.

General Comments

1. Many comments assert that the proposed and reproposed rule would violate section 519 of the act, which prohibits the promulgation of reporting and recordkeeping requirements that are unduly burdensome. FDA also received comments that claim that the proposed and reproposed rule would not impose any undue burden on device manufacturers, importers, or distributors.

The reporting requirements included in the reproposed rule were considerably narrower than those included in the November 1980 proposal, which FDA concluded were unnecessarily broad (see 48 FR 24014). Whether or not the provisions of the proposed rule would have been unduly burdensome, FDA could not have processed in an effective manner all the information they would have captured (see the "Background" section of this preamble). FDA does not believe that the provisions of the reproposed rule would have been unduly burdensome (see 48 FR 24015). In any event, as explained throughout this preamble, in the final rule, FDA has made certain that manufacturers and importers are required to report to the agency only such information as may be reasonably necessary to assure the protection of the public health. Based on the Survey, FDA estimates that it will receive, 25,100 reports annually. FDA expects that most manufacturers and importers will not need to submit any reports under the final rule. FDA recognizes, however, that some manufacturers and importers will need to submit several reports to the agency. In short, the number of reports required will vary considerably from manufacturer to manufacturer and importer to importer. Given the nature of the events that are required to be reported—device-related deaths and serious injuries, and device malfunctions that are likely to lead to deaths or serious injuries—FDA has concluded that the final rule strikes the proper balance and protects the public health while avoiding undue burdens on industry. FDA notes that the submission of 25,100 reports to FDA each year under the final rule will represent less than 4 reports for every registered device establishment.

The purpose of the final rule is to assure that FDA is informed promptly of all serious problems or potentially serious problems associated with marketed devices. FDA is the principal public health agency responsible for ensuring that devices are safe and effective. To carry out its responsibilities, the agency needs to be informed whenever a manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. (For the sake of convenience, information that is required to be reported under the final rule is referred to throughout this preamble as information about a reportable event.) Only if FDA is provided with information about reportable events will it be able to evaluate the risk, if any, associated with a device and take whatever steps are necessary to reduce or eliminate the public's exposure to this risk. Depending on the facts and circumstances, these steps could include contacting the manufacturer or importer of the device and monitoring its voluntary actions to respond to the problem, initiating a consumer or user education program, or initiating regulatory action, such as injunction, seizure, or other enforcement action. Moreover, the agency needs to receive information about reportable events promptly so that it can react rapidly to the problem and thereby prevent, to the extent possible, recurrence of any death or serious injury.

2. One comment states that FDA has not identified the occurrence of any death or serious injury of which the agency did not have timely notice. The comment also states that FDA has not identified any death or serious injury which would be prevented by the reproposed rule.

The results of the Survey show that reportable deaths and serious injuries do occur for which FDA does not receive timely notice. For example, following FDA's receipt of a complaint about an inter-aortic pump, an FDA inspection uncovered an additional 50 complaints. The firm subsequently recalled the pump. In another instance, following FDA's receipt of a complaint about an intravenous pump, an FDA inspection uncovered more than 94 additional complaints and resulted in major changes in the device's labeling.

FDA's experience in administering the amendments demonstrates that in these and similar instances, the agency could eliminate or reduce device-related deaths and serious injuries if FDA had timely notice of reportable events. In and of itself, of course, reporting under the final rule will not eliminate device-related deaths or serious injuries; however, such reporting will enable FDA to take action to reduce or prevent deaths and serious injuries associated with devices.

3. Many comments contend that FDA's existing voluntary reporting system provides adequate collection of and access to information concerning reportable events. The comments state that the purpose of the voluntary system is to encourage reports from users to manufacturers to enable manufacturers to correct any device problems; reporting to FDA will not improve this procedure. FDA also received comments stating that the existing voluntary system is not adequate to keep FDA informed of medical device problems.

FDA does not believe that reporting under the current voluntary system is an adequate substitute for this final rule. At present, FDA receives reports of device problems through its voluntary Device Experience Network (DEN) system. DEN consists of reports made to the Problem Reporting Program, which is coordinated by the United States Pharmacopeial Convention, Inc., and reports made to the Government Wide Quality Assurance Program (GWQAP) and the National Electronic Injury Surveillance System (NEISS).

Based on its experience, FDA does not believe that information about all reportable events is provided to FDA under DEN. As part of the Problem Reporting Program, from time to time FDA has actively encouraged the reporting of adverse device experiences to DEN through such organizations as the American Association of Critical Care Nurses, the American College of Pathologists, and the American College of Physicians. During these periods, the number of device experience reports has significantly increased. When there is no such encouragement, FDA believes that many incidents go unreported. Through the GWQAP program, FDA receives complaints only about those products purchased under contract by the Veterans Administration and the Department of Defense. Likewise, NEISS is limited in scope; the only device-related problems that are reported to NEISS, and subsequently, to FDA, are those medical problems that are treated in the emergency rooms of participating hospitals.

FDA acknowledges that the final rule does not require users to report to manufacturers, importers, or FDA. Voluntary reporting under DEN is not an adequate substitute for the requirements of the rule because DEN is not comprehensive and because, as the results of the Survey show, information that is provided by users to manufacturers is not always provided by manufacturers to FDA.

4. One comment argues that any final rule should require device users to report directly to FDA.

Section 519 of the act authorizes FDA to issue regulations to require manufacturers, importers, and distributors to report to FDA product defects and adverse reactions to the firms' devices (see the "Statutory Authority and Legislative History" section and paragraph 51 of this preamble). For the reasons discussed in paragraphs 26a and 26b of this preamble, the final rule does not apply to a distributor other than a wholly owned distributor, which is considered to be an affiliate company under the control of the manufacturer. Accordingly, the final rule applies to a device user only if the user also is a manufacturer or importer.

FDA encourages device users to submit reports of device problems through the agency's voluntary DEN system (see paragraph 3 of this preamble). FDA plans to continue this voluntary system to complement the reporting requirements of the final rule.

5. One comment argues that the reproposed rule is unnecessary because it duplicates requirements under §§ 820.162 and 820.198 of the CGMP regulations to investigate device-related incidents of death and serious injury. The comment also argues that under § 7.46 (21 CFR 7.46) of FDA's guideline on policy, procedures, and industry responsibilities concerning recalls, a manufacturer is required to notify the appropriate FDA district office immediately if the manufacturer believes that one of its marketed devices is in violation of the act.

Under § 820.162, after a device has been released for distribution, a manufacturer is required to investigate any failure of a device or any of its components to meet its performance specifications and to establish and maintain a written record of the investigation, including the manufacturer's conclusions and followup. Under § 820.198, a manufacturer is required to review, evaluate, and investigate any complaint involving the possible failure of a device to meet any of its performance specifications and any complaint pertaining to injury, death, or any hazard to safety and to maintain a written record of the investigation. Under § 820.180, a manufacturer is required to retain records of such investigations. However, §§ 820.162, 820.198, and 820.180 do not require any report or other information about a failure or complaint to be transmitted to FDA. In many instances, FDA becomes aware of these failures and complaints only when the agency reviews a manufacturer's records. Generally, FDA conducts a CGMP inspection, including a records review, at a firm only every other year. The agency does not expect that such inspections will be conducted any more frequently in the future. If the agency were to rely on its inspection of manufacturer records for notification of reportable events, there could be as much as a 2-year period intervening between such an event and the time the agency became aware of it. During that intervening period, the agency would be able to do little to reduce or eliminate the risk presented by the device, simply because it would be unaware of the risk.

The results of the Survey show that reliance on §§ 820.162 and 820.198, as suggested by the comments, would require FDA to examine, during establishment inspections, more than 225,000 complaints to identify those that are reportable events under the final rule. As explained in the "Background" section and paragraph 17 of this preamble, FDA could not review 225,000 reports submitted to the agency to determine which ones required further investigation by FDA, and proceed in a timely manner to protect the public from hazardous or potentially hazardous devices. It follows that the agency could not effectively review and process, on site, more than 225,000 complaints annually.

In short, investigation of device failures and complaints of failures and maintenance of records of such investigations, required by the CGMP regulations, help achieve the public health objectives of those regulations but are not a substitute for the reporting requirements of this final rule. Also, the CGMP regulations do not apply to importers.

Likewise, FDA's recall guidelines do not require a device manufacturer or importer to submit any information to the agency. Under § 7.46, a firm is requested to notify FDA voluntarily whenever the firm removes or corrects a distributed product that the firm believes to be in violation of the act; any submission under § 7.46 is wholly voluntary and the failure to submit information under that section is not a violation of law. The final rule makes mandatory the submission of a report whenever a manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

6. One comment argues that FDA should complete its survey of manufacturers' complaint files before establishing reporting requirements to ensure that only necessary requirements are imposed.

FDA does not believe that completion of the Survey was a prerequisite to the promulgation of this or any other medical device reporting rule. As stated in the "Background" section of this preamble, however, FDA has completed the Survey. The agency has concluded that this final rule imposes only those requirements necessary to enable FDA to carry out its responsibilities to protect the public health and that the data from the Survey support this conclusion.

7. One comment recommends that any final rule not require submission of a report of a device incident which could be construed as an admission that the death or serious injury was caused by the device.

The information required in the report is set forth in § 803.24(c) of this final rule. FDA does not believe that the submission of information that reasonably suggests that a device may have caused or contributed to a death or serious injury will be treated by the courts as an admission that the device actually caused or contributed to a death or serious injury. FDA advises, however, that whether the courts will treat the submission of this information as an admission is strictly within the authority of the courts to decide, on a case-by-case basis.

8. Two comments argue that the reproposed rule violates the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), because the requirement to report a malfunction, if, as a result of a recurrence of the malfunction, the device or any other device marketed by the manufacturer or importer is likely to cause or contribute to a death or serious injury, calls for speculation and will result in reports of minor device problems. A third comment argues that the reproposed rule violates section 3506(a) of the Paperwork Reduction Act of 1980, which provides that "[e]ach agency shall be responsible for carrying out its information management activities in an efficient, effective, and economical manner" because requiring reports based on mere allegation is speculative, inefficient, ineffective, and uneconomical.

FDA disagrees with the comments. The requirement to which the first two comments refer calls for the exercise of professional judgment rather than speculation (see paragraphs 56 and 60 of this preamble). Further, if information reasonably suggests that a device has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, the device problem is not "minor." FDA has demonstrated the practical utility of and the need for the information required to be submitted under the final rule. The rule accordingly complies with the Paperwork Reduction Act of 1980.

The final rule does not require reports based on "mere allegation." For this reason, the third comment is not directly relevant. The final rule requires reporting whenever information "reasonably suggests" that a reportable event has occurred. As discussed in paragraph 38 of this preamble, if a health care professional informs a manufacturer or importer that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, such information reasonably suggests that a reportable event has occurred.

FDA believes that it is not speculative, inefficient, ineffective, or uneconomical for the agency to require the submission of information about reportable events before such events have been confirmed by the manufacturer or importer. Reasonable persons may differ as to whether a death or serious injury is device-related. Reasonable persons also may differ as to whether, as a result of recurrence of a malfunction, a device is likely to cause or contribute to a death or serious injury. FDA, as the public health agency responsible for protecting the public from unsafe devices, should make an independent evaluation of the device's role, if any, in a reportable event. It would be irresponsible for FDA to wait for confirmation of a reportable event by a manufacturer or importer before requiring reporting of any information about such event.

9. Two comments recommend that the final rule not become effective for 180 days after publication in the **Federal Register** to enable manufacturers and importers to establish internal procedures to administer the new reporting requirements.

FDA disagrees with the comments. FDA believes that 90 days is a reasonable period for manufacturers and importers to establish a procedure for complying with the provisions of the final rule. Manufacturers should already have in place procedures for investigating device failures under § 820.162, for reviewing, investigating, and evaluating device complaints under § 820.198, and for maintaining records under § 820.180 (see paragraph 5 of this preamble). (Those provisions of the CGMP regulations became effective on Dec. 18, 1978.) Thus, the only additional requirements that the final rule imposes on manufacturers are those of establishing procedures for preparing and submitting a report or additional information to the agency, and for retaining records under final § 803.31(d) (see paragraph 90 of this preamble).

FDA recognizes that importers are not subject to the requirements of §§ 820.162 and 820.180. FDA believes, however, that 90 days is a sufficient period for importers to establish a complaint file and procedures for maintaining such a file; to establish procedures for preparing and submitting a report or additional information to the agency, and to establish procedures for retaining records under final § 803.31 (a) and (b) (see paragraphs 89, 90, and 91 of this preamble).

To assure that device manufacturers and importers are aware of their responsibilities under this final rule, FDA will mail to every manufacturer and importer registered with FDA a copy of the rule as published in the **Federal Register**.

Economic Impact

10. Many comments claim that the reproposed rule would be too costly in comparison with any benefit to be derived from it.

FDA disagrees with the comments. As explained throughout this preamble, FDA has concluded that receipt of information about reportable events is necesssary to enable the agency to carry out its responsibilities to protect the public health. The threshold assessment of the cost impact of the final rule shows that the cost of the rule will be no more than $4 million based on the submission of 25,100 reports. The benefits from the final rule—the prevention or reduction of device-related deaths and serious injuries—justify the anticipated cost of the final rule to device manufacturers and importers.

11. Several comments state that, due to the definition of serious injury in the reproposed rule, FDA would require reporting of minor device problems and anticipated adverse experiences. These comments argue that FDA based its threshold assessment of the reproposed rule on an estimate of the number of reports of serious device problems which would be submitted, thereby underestimating the number of reports that would be submitted to the agency. The comments argue further that reporting of minor device problems and anticipated adverse reactions would not provide any benefit to the public health.

Under § 803.3(e) of the reproposed rule, a serious injury was defined as an injury that (1) is life threatening, (2) necessitates immediate medical or surgical intervention, (3) results in permanent impairment of a body function or permanent damage to body structure, or (4) results in unanticipated temporary impairment of a body function or unanticipated temporary damage to body structure. FDA agrees that some device problems that led to such an injury could fairly be characterized as "minor" device problems. FDA, therefore, has revised the definition of "serious injury" to include an injury requiring medical or surgical intervention by a health care professional to (i) preclude permanent impairment of a body function or permanent damage to body structure or (ii) relieve unanticipated temporary impairment of a body function or unanticipated temporary damage to body structure (see final § 803.3(h) and paragraphs 39, 40, and 41 of this preamble). With this revision, FDA believes that the threshold assessment for the final rule does not include the cost of submitting reports of minor device problems because such reports are not required by the rule.

12. Several comments state that FDA has neglected to include in the threshold assessment for the reproposed rule any estimate of the cost of submitting additional information when required by FDA and of complying with FDA inspections initiated in response to the receipt of a report.

The cost of submitting additional information to FDA if required under § 803.24(e) is not significant. Under § 820.162 of the CGMP regulations, after a device has been released for distribution, a manufacturer already is required to investigate any failure of a device or any of its components to meet its performance specifications and to establish and maintain a written record of the investigation, including the manufacturer's conclusions and followup. Under § 820.198, a manufacturer already is required to review, evaluate, and investigate any complaint involving the possible failure of a device to meet any of its performance specifications and any complaint pertaining to injury, death, or any hazard to safety and to maintain a written record of the investigation.

Accordingly, any additional information required under § 803.24(e) should already have been gathered, reviewed, and evaluated under §§ 820.162 and 820.198. The cost of complying with an FDA inspection initiated in response to the receipt of a report cannot be estimated because any such cost would depend critically on the results of the inspection. For manufacturers, virtually the only costs imposed by the final rule are those of establishing procedures for, and preparing and submitting, a report or additional information to the agency and for retaining records under final § 803.31(d) (see paragraphs 90 and 91 of this preamble).

Under the final rule, importers are not required to review, evaluate, or investigate a reportable event. For importers, therefore, the only costs imposed by the final rule are those of establishing procedures for, and maintaining, complaint files; establishing procedures for, and preparing and submitting, a report or additional information to the agency; and establishing procedures for, and retaining, records under final § 803.31 (a) and (b) (see paragraphs 89, 90, and 91 of this preamble).

13. One comment states that FDA did not include in its threshold assessment the cost of legal review of a report before initial submission.

The per report cost used by FDA to determine the total cost of the final rule took into account 13 independent estimates submitted to FDA in comments on the November 1980 proposal. Although the estimates did not include data or information concerning the cost of legal review, they apparently include all costs that those preparing the estimates thought necessary in submitting a report to FDA, including legal review. FDA notes that the rule does not require those submitting reports to FDA to subject the reports first to legal review.

14. Several comments state that FDA failed to include in its threshold assessment for the reproposed rule the costs of more expensive product liability insurance and increased product liability litigation that would be caused by the reproposed rule.

FDA has no reason or evidence to believe that the final rule will result in increased product liability litigation and, therefore, did not include in its threshold assessment costs associated with such litigation (see paragraph 43 of this preamble). The cost of product liability insurance is determined primarily, though not exclusively, by the product liability experience of the insurance carrier. If an increase in product liability litigation does not occur as a result of the final rule, then an increase in product liability insurance will not occur as a result of the final rule.

FDA notes that none of the coments contains any data to substantiate the claims that product liability insurance premiums and litigation would increase as the result of the promulgation of any medical device reporting rule, nor do the comments include any basis for the statement that insurance carriers will raise the cost of product liability insurance in anticipation of increased product liability litigation.

15. Four comments contend that FDA has underestimated the number of reports that would be received under the reproposal.

FDA agrees with the comments. In the threshold assessment for the reproposed rule, FDA estimated that 7,050 reports would be submitted annually. This estimate was based on data from DEN, which as discussed in paragraph 3 of this preamble, is not comprehensive. Based on data from the Survey, FDA estimates that under the final rule no more than 25,100 reports will be submitted annually (see paragraph 1 of this preamble). FDA believes that the data collected under the Survey are valid and has used the 25,100 estimate in its threshold assessment for the final rule.

16. One comment claims that under the reproposed rule, the diagnostic device industry would be required to submit 2,000,000 reports each year.

FDA disagrees with the comment. Based on the Survey, FDA projected that 18,000 reports of failure to diagnose are received each year by manufacturers of diagnostic devices. FDA estimates that under the final rule, only a fraction of these failures to diagnose will be required to be reported.

Scope

17a. Several comments suggest that to protect the public health adequately, FDA return to the reporting requirements in the November 1980 proposal.

Under the 1980 proposal, manufacturers, distributors, and importers would have been required to submit to the agency reports concerning devices that (1) may have caused a death or injury; (2) may have had a deficiency that could result in a death or injury or that could give inaccurate diagnostic information and, thereby, result in improper treatment; or (3) were the subject of a remedial action by the manufacturer. FDA received more than 200 written comments on the proposed rule, and 30 persons presented information and views at a public hearing on the proposal. After reviewing these comments, FDA tentatively concluded that the requirements proposed in 1980 would have been unnecessarily broad, and might have resulted in reports not useful to the agency (48 FR 24014). The data from the Survey support this conclusion. Under the proposal, FDA would have received more than 225,000 reports annually from device manufacturers. Most of these reports would have been for minor device problems that now are adequately corrected without FDA involvement. This figure, moreover, does not include reports that would have been received from device distributors and importers. Given the resources available to FDA to administer a device reporting program, the agency could not review more than 225,000 reports each year, determine which ones required further investigation and action by the agency, and take whatever steps were necessary to reduce or eliminate the public's exposure to devices that proved hazardous or potentially hazardous (see the "Background" section and paragraphs 1 and 5 of this preamble). FDA believes that the reporting requirements of the final rule will ensure that the agency is informed of the more serious device problems that may require FDA involvement to protect the public health.

FDA advises that on its own initiative, it has revised final §§ 803.1(a) and 803.24 to require reporting whenever information reasonably suggests that a device "may have" caused or contributed to a death or serious injury, instead of whenever information reasonably suggests that a device "has" caused or contributed to a death or serious injury, as was reproposed in §§ 803.1(a) and 803.24. FDA revised the final rule in this manner because the agency needs to learn of instances in which there may be an association, as well as a causal connection, between the use of a device and a death or serious injury. If data or other information establish the existence of such an associated, relabeling of the device to disclose the association may be required under sections 502(a) and 201(n) of the act (21 U.S.C. 352(a) and 321(n)), as was the case when the occurrence of toxic shock syndrome was found to be associated with the use of menstrual tampons (see 47 FR 26982; June 22, 1982) (21 CFR 801.430). Data or other information establishing the existence of an association between the use of a device and a death or serious injury also could provide the basis for action by FDA under section 518 of the act to require notification and other remedies. In addition, regulatory action under other provisions of the act, publicity, FDA-requested recalls under Part 7, or educational programs could be based on a finding that a death or serious injury is associated with a device.

17b. One comment argues that FDA should require manufacturers and importers to cease distribution of a marketed device upon receipt of information that reasonably suggests that a death or serious injury related to the device has occurred.

The requirement recommended by the comment is beyond the scope of this rulemaking proceeding. FDA believes, however, that imposition of an unqualified obligation to cease distribution upon receipt of information about a reportable death or serious injury, before the manufacturer, importer, or FDA had conducted any investigation of the event, would be unwise. The decision to cease distribution should be made on a case-by-case basis, taking into account such factors as the risks inherent in, and the benefits presented by, the use of the device, and the nature of the information that reasonably suggests that the device "may have caused or contributed to" the death or serious injury. FDA believes that where the facts and circumstances warrant, a responsible manufacturer or importer will voluntarily cease distribution of a marketed device. FDA notes that where the facts and circumstances are such that the device is in violation of the law, e.g., misbranded or adulterated within the meaning of section 501 or 502 of the act (21 U.S.C. 351 or 352), the agency will take whatever action is necessary to protect the public health.

18. One comment suggests that for class I (general controls), class II (performance standards), and class III (premarket approval) devices FDA adopt the reporting requirements currently imposed by FDA as a condition to premarket approval for class III devices that now require such approval.

FDA disagrees that the reporting requirements referred to in the comments should apply to all marketed devices. These requirements are specially designed to enable the agency to monitor the performance in the population-at-large of devices which, unlike class I and class II devices, and class III devices that do not now require premarket approval, do not have a history of marketing. For the reasons discussed in paragraph 96 of this preamble, however, manufacturers and importers of class III devices that now require premarket approval are subject to the provisions of the final rule, along with any specific requirements imposed on the approval orders for such devices.

19. One comment suggests that reports be required if a device does not meet its labeling specifications or a performance standard and, thereby, is ineffective. According to the comment, under the reproposed rule, a report would not be required unless such ineffectiveness falls under the definition of serious injury.

For the reasons discussed throughout this preamble, FDA has limited the reporting requirements under the final rule to instances in which information reasonably suggests that a device (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Although the need for reports is not as great if the ineffectiveness of the device does not directly or indirectly pose a risk of death or serious injury, FDA strongly encourages voluntary reporting about ineffective devices.

20. One comment suggests that FDA exclude from the final rule any requirement to report adverse experiences disclosed in a device's labeling. The comment claims that this exclusion would be consistent with FDA's position stated in the preamble to the reproposed rule (48 FR 24019) "that FDA may notify a manufacturer or importer that a report of a particular type of event is no longer required (e.g., the injury reported becomes recognized by FDA as an inherent risk of using the device in which event it would become part of the product labeling)."

FDA recognizes that there are inherent risks associated with the use of certain devices and that the labeling for some of these devices properly informs the user of these risks. However, the comment misconstrued the statement cited by the comment. Even if the occurrence of a reportable event is disclosed in the device's labeling, a manufacturer or importer is subject to the obligation to report information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

In general, the agency reviews labeling for medical devices before marketing as part of its review of three types of documents, premarket approval applications, reclassification petitions, and premarket notification submissions. The largest category of documents is premarket notification submissions under section 510(k) of the act and Subpart E of Part 807 of FDA's regulations (21 CFR Part 807). FDA's review of these submissions is intended to permit the agency to determine the status of a postamendments device under section 513(f) of the act, which requires premarket approval or reclassification of any postamendments device that is not "substantially equivalent" to a preamendments or reclassified device. In determining whether a postamendments device is substantially equivalent to a preamendments or reclassified device, FDA considers whether the device presents risks and benefits not materially different from those of the preamendments or reclassified device. For a postamendments device to be "substantially equivalent," its intended use must be the same as, and its materials, design, and energy source, among other things, must not differ materially from, those of a preamendments or reclassified device. In addition, any variation between the postamendments device and the already marketed device must not materially affect safety or effectiveness. See H.R. Rep. No. 94-853, *supra,* at 36. Congress did not intend or authorize FDA to review a premarket notification submission for the purpose of determining whether the postamendments device that is the subject of the submission is safe or effective, except on a comparison basis. A determination by FDA that a postamendments device is "substantially equivalent" is thus not a determination that the device is not adulterated or misbranded and is otherwise safe and effective.

FDA's review of premarket notification submissions is not sufficiently comprehensive for the agency to state precisely how many reviewed devices have labeling that discloses, or adequately discloses, whatever risks are inherent in the use of the device. Furthermore, some devices have labeling that lists certain adverse experiences in the precautions or contraindications section of the labeling but that does not describe the frequency or expected severity of the adverse experiences. For these reasons, final § 803.24(a) requires that a manufacturer or importer report to FDA whenever information reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury, regardless of the device's labeling, unless, under final § 803.24(d)(4), FDA notifies the manufacturer or importer, in writing, that a report of a particular type of event is no longer required (see paragraph 97 of this preamble).

FDA has included a narrow exception from reporting certain device malfunctions if, within 15 days of initial receipt of the information, certain conditions are met. When information reasonably suggests that a reportable malfunction has occurred, a manufacturer or importer is nevertheless not required to report if (i) the manufacturer or importer determines that a death or serious injury has not occurred; (ii) the device's labeling sets forth information concerning the potential for death or the type of serious injury that the malfunction may cause or contribute to; (iii) the device's labeling describes the malfunction, and the routine service, repair, or maintenance instructions to correct the malfunction; (iv) the malfunction has occurred or is occurring at or below the frequency and severity stated in the labeling or, if there is not any pertinent statement in the labeling, at or below the frequency and severity that are usual for the device; and (v) the malfunction does not lead the manufacturer or importer to undertake a remedial action involving any device other than the device product in which the malfunction occurrred (see the discussion beginning at paragraph 51 of this preamble and new § 803.24(d)(3)(iii) of the final rule).

21. One comment suggests that only reports of life-threatening occurrences be submitted. The comment explains that when first fitted, many orthotic and prosthetic devices may cause discomfort to the patient. This discomfort may require medical intervention or some adjustment that may result in temporary impairment of body function or structure, according to the comment.

The agency believes that it needs to be informed of events other than life-threatening events, e.g., those that cause permanent impairment of a body function or damage to body structure. Under the revised definition of serious injury in final § 803.3(h), however, an injury that is not life threatening or that does not result in permanent impairment is not "serious" unless the injury necessitates medical or surgical intervention by a health care professional to preclude permanent impairment of a body function or damage to body structure or to relieve unanticipated temporary impairment of a body function or damage to body structure (see paragraph 39 of this preamble). If the event described in the comment is not a "serious injury" as defined in § 803.3(h), then a report is not required.

22. One comment states that U.S. manufacturers should not be required to report incidents that occur in foreign countries. The comment states that foreign manufacturers are not required to submit reports to FDA concerning incidents that occur in foreign countries. The comment then argues that not requiring U.S. manufacturers to submit reports of incidents that occur in foreign countries would place U.S. manufacturers in the same competitive position as foreign manufacturers.

FDA disagrees with the comment. The agency is interested in information about any reportable event without regard to the location of the event because such information may enable FDA to assist in the protection of the public health. The rule applies equally to manufacturers and importers because both are required to register with FDA. If an importer receives information about a reportable event, a report is required regardless of the location of the event. FDA decided to exclude foreign manufacturers from the rule because, under section 519 of the act, FDA does not have authority to require a foreign manufacturer that does not offer a device for import into the United States to submit to FDA reports about the device. FDA does not believe that this lack of authority provides a competitive advantage to a foreign manufacturer whose device is not in commercial distribution in the United States.

23. Several comments argue that any final rule should not apply to class I devices. These comments argue that class I devices are not critical devices within the meaning of Part 820 or significant risk devices within the meaning of Part 812 of FDA's regulations governing investigational device exemptions (21 CFR Part 812), and that Part 820 and Part 812, respectively, contain different safeguards for these types of devices.

As noted in the preamble to the reproposal (48 FR 24017), FDA agrees that, in general, the lower the level of classification, the lower the risk posed by a device and the less likelihood that death or serious injury would be associated with such device. Consequently, even without an exemption, manufacturers or importers would receive, and subsequently report to FDA, fewer reports about deaths or serious injuries associated with class I devices than they would for class II or class III devices. Yet, if information reasonably suggests that a marketed device (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, its level of classification is irrelevant. Regardless of the nature of a marketed device or its classification, FDA needs to be notified of all reportable events so that the agency can respond to them.

24. One comment argues that FDA should not impose any reporting requirements until the agency has promulgated final rules classifying all devices into class I, class II, or class III. Another comment argues that any final rule should not apply to hearing aids, which FDA has proposed to classify into class II (47 FR 3280; January 22, 1982), because there allegedly have not been any injuries associated with these devices.

FDA disagrees with these comments. As discussed in paragraph 23 of this preamble, if information reasonably suggests that one of a manufacturer's or importer's marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, FDA needs to be notified. Whether the device that is the subject of the reportable event has previously been associated with injuries or is the subject of a final classification rule is irrelevant, as is the classification of the device.

25. One comment suggests that the phrase "has information" in reproposed § 803.1(a) be changed to "has received or becomes aware of information." This comment claimed that, as reproposed, a report would be required if an employee of a firm read a journal article describing a device-related incident.

FDA advises that it intended the reproposed rule to apply in the circumstance described by the comment. FDA has revised § 803.1(a) in the final rule by substituting the phrase "receives or otherwise becomes aware of information" for the phrase "has information" to make clear this intent. FDA also has revised § 803.24 in the final rule to specify that a manufacturer or importer is required to report when the manufacturer or importer receives or otherwise becomes aware of information in a journal which reasonably suggests that a reportable event involving one of the manufacturer's or importer's marketed devices has occurred (see paragraph 53 of this preamble).

26a. Several comments suggests that independent distributors be required to report to manufacturers. The comments argue that, in many instances, the independent distributor rather than the manufacturer of the device receives information about device problems. According to the comments, if the independent distributor does not provide this information to the manufacturer, FDA will remain uninformed and the manufacturer will be insulated from the reporting requirements, which will place in an unfair competitive position a manufacturer who sells directly to device users.

As noted in the preamble to the reproposed rule (48 FR 24016), FDA believes that manufacturers and importers generally are the most knowledgeable about their devices and are best able to evaluate any hazards or problems associated with their devices. In all likelihood, a manufacturer or importer whose identity is known will be informed by device users and independent distributors of reportable events due to the nature of these events. Therefore, under the final rule, only device manufacturers and importers are required to report. If, after implementing the final rule, FDA determines that requiring reports from independent distributors is necessary to be promptly informed of reportable events, the agency will propose such reporting requirements.

FDA does not believe that the final rule places at an unfair competitive advantage a manufacturer that has elected to sell directly to device users. FDA believes that the independent distributor has ample incentive to inform, and will inform, the manufacturer of reportable events and, accordingly, that such events will be reported to FDA.

26b. One comment asks whether a manufacturer is required to submit a report if information of a death or serious injury associated with the use of one of its devices is given to a distributor that is wholly owned by the manufacturer.

FDA advises that for the purpose of the final rule, a wholly owned distributor is considered to be an "affiliate company" under the control of the manufacturer. Accordingly, information received by a wholly owned distributor is deemed to be information received by a manufacturer. Thus, a manufacturer is required to report if information about a reportable event associated with one of the manufacturer's marketed devices is provided to a distributor that is wholly owned by the manufacturer.

27. One comment suggests that a distributor be permitted to submit reports on behalf of a manufacturer with the manufacturer's consent. The comment states that some distributors are much larger than some small manufacturers and better equipped to comply with the reporting requirements of any final rule.

FDA disagrees with the comment. A manufacturer is ultimately responsible for its devices and can easily furnish the information required in the report under final § 803.24(c). Under § 820.162 of the CGMP regulations, after a device has been released for distribution, a manufacturer is required to investigate any failure of a device or any of its components to meet its performance specifications and to establish and maintain a record of the investigation, including the manufacturer's conclusions and followup. Under § 820.198, a manufacturer is required to review, evaluate, and investigate any complaint involving the possible failure of a device to meet any of its performance specifications and any complaint pertaining to death, injury, or any hazard to safety and to maintain a written record of the investigation. Submission of this information to FDA pursuant to a request for additional information under final § 803.24(e) should be easily within the means and expertise of the manufacturer.

28. One comment requests that FDA clarify whether the reproposed rule applies to diagnostic devices. The comment notes that diagnostic devices were specifically identified as subject to the provisions of the November 1980 proposal and that the reproposal was unclear. Another comment states that reports of death or serious injury due to misdiagnosis should not be submitted because whether a diagnostic device has caused or contributed to a death or serious injury is speculative, at best.

FDA advises that, except for in vitro diagnostic products, manufacturers of which are required to be registered under Part 607 (21 CFR Part 607) of FDA's regulations governing establishment registration and product listing for manufacturers of human blood and blood products (see paragraph 94 of this preamble) and for general purpose articles (see paragraph 29 of this preamble), the final rule applies to all marketed devices, including diagnostic devices. FDA agrees that it may be difficult to determine whether a death or serious injury is a result of the failure of a diagnostic device to perform properly. However, if the information about the event reasonably suggests (see paragraph 38 of this preamble) that the event may have resulted from the failure of a diagnostic device to perform properly, a reportable event has occurred, and a report is required.

29. One comment requests clarification of the application of the reproposed rule to general purpose articles. The comment argues that general purpose articles should not be subject to the final rule even if a person manufactures other medical devices that are subject to the rule.

FDA agrees with the comment. General purpose articles are articles such as chemical reagents or laboratory equipment whose uses are generally known by a person trained in their use and which are not labeled or promoted for medical uses (see 21 CFR 807.65(c)). A manufacturer of general purpose articles is not required to submit reports concerning those products even if the manufacturer also markets other medical devices.

Definitions

30. Many comments request that FDA include a definition of "Malfunction" in the final rule. According to the comments, the statement in the preamble that "a device malfunction occurs whenever [the device] fails to perform its intended function" is inadequate and may result in numerous unnecessary reports (48 FR 24018).

FDA notes that a report about a malfunction is required only when information reasonably suggests that a device has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

FDA agrees that a definition of malfunction should be added to the final rule. FDA has defined "malfunction" in final § 803.3(c) and has redesignated reproposed § 803.3(c) as § 803.3(d). A "malfunction" is the failure of a device to meet any of its performance specifications or otherwise to perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the objective intent of the person legally responsible for labeling of the device. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the device. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It also may be shown by the circumstances that the device is, with the knowledge of such persons or their representatives, offered and used to perform a function for which it is neither labeled nor advertised. This definition was chosen to make the final rule consistent with §§ 820.162 and 820.198 and with the meaning of "intended use" in section 201(h) of the act (21 U.S.C. 321(h)) and § 801.4 of FDA's regulations governing the labeling of devices (21 CFR 801.4). ("Malfunction" is discussed more completely in paragraphs 20, 51, and 56 through 60 of this preamble.)

31. One comment suggests changing the definition of manufacturer in reproposed § 803.3(c) (final § 803.3(d)) to exclude private label distributors other than those that set specifications for a device or are importers.

A person who does not perform any of the activities listed in § 807.20(a) (1) through (5), which specifies who is required to register, or who is exempted under § 807.65(e) from the requirement to register, is not subject to the requirements of this final rule. A private label distributor, i.e., a distributor that obtains a device from a manufacturer with the label already applied and that does not repackage or otherwise alter the device's package or label, is not required to register under Part 807 and, therefore, is not subject to the final rule. The agency advises that it intends to monitor closely the effect of this exclusion on the public health. If FDA determines that to protect the public health adequately it needs to make private label distributors or any other persons subject to the rule, FDA will propose appropriate amendments to the rule.

32. A comment argues that mail order firms and retailers should be excluded from the definition of manufacturer in any final rule.

FDA advises that only mail order firms or retailers that are required to register under § 807.20 and that are not exempted under § 807.65 from the requirement to register are subject to the final rule.

33. One comment suggests that a manufacturer be defined as any person who is required to list a medical device under Part 807, other than a person who initially distributes a device imported into the United States. The comment asserts that the definition of "manufacturer" in § 803.3(c) of the reproposal as "any person required to register under Part 807" includes contract manufacturers that manufacture a device according to another firm's specifications, as well as the firm that originally writes the specifications and markets the device. The comment argues that the definition is redundant and will result in duplicate reports from both the contract manufacturer and the "distributing" manufacturer. The comment concludes that by restricting the reporting requirements to those firms listing devices with FDA, duplicate reports will be eliminated.

FDA disagrees with the comment. The agency believes that the "distributing" manufacturer rather than the "contract" manufacturer (as these terms are used in the comment) will be the person contacted concerning a reportable event because the "distributing" manufacturer is listed on the labeling. Therefore, FDA does not believe that duplicate reporting will result from reproposed § 803.3(c) (final § 803.3(d)). FDA advises, however, that if the "contract" manfacturer receives information about a reportable event, the "contract" maufacturer is required to report to FDA. FDA notes that the "distributing" manufacturer is required to report because it is required to register as a manufacturer under § 807.20(a)(1).

34. One comment asks whether "person" includes a corporate entity.

It does. In response to this inquiry, FDA has added to the final rule new § 803.3(e), which defines the term "person" as any individual, partnership, corporation, association, scientific or academic establishment, Government agency, or organizational unit thereof, or any other legal entity.

35. Several comments object to the definition of "remedial action" in reproposed § 803.3(d) (final § 803.3(g)). The comments claim that, as defined, remedial action could include "communications" to insurance carriers, product liability attorneys, or employees who are subject to disciplinary actions. The comments argue that the definition should be limited to manufacturer actions concerning the labeling, manufacture, or distribution of a device.

FDA did not intend nor does the agency believe that the definition of "remedial action" includes the "communications" referred to in the comments. Generally, remedial actions include notification or other activities that are directed to devices, health institutions, health professionals, device users, manufacturers, importers, distributors, or retailers and that are intended to correct a reportable event. FDA believes that such activities may not be limited to actions concerning the labeling, manufacture, or distribution of a device, e.g., the repair of a device in the field.

36. One comment suggests that the definition of "remedial action" in reproposed § 803.3(d) (final § 803.3(g)) be made consistent with that of "recall" in § 7.3(g), which does not include withdrawals or stock recoveries. Another comment suggests that the term "remedial action" be changed to "corrective action" and defined as any action taken by a manufacturer or importer as a result of its investigation in response to information received concerning a potential or actual device-related death or serious injury.

FDA disagrees that the definition of "remedial action" should be made consistent with that of "recall" in § 7.3(g). Although not all market withdrawals or stock recoveries constitute "remedial actions," information about those initiated in response to reportable events is necessary to enable FDA to take action to protect the public health.

FDA does not believe that the suggested definition of "corrective action" differs significantly from that of "remedial action" or that changing the term "remedial action" to "corrective action" would serve any useful purpose.

37. One comment suggests that FDA define "person alleges."

FDA has deleted this phrase from the final rule. Therefore, a definition is not necessary (see paragraphs 8 and 38 of this preamble concerning reporting of "allegations").

38. Several comments argue that the phrase "information that reasonably suggests" in reproposed §§ 803.1(a) and 803.24(a) is vague and should be defined. One comment suggests that if the information known to the manufacturer or importer is such that "reasonable persons can differ as to whether a device has caused or contributed to a death or serious injury," than this information "reasonably suggests" that a reportable event has occurred.

FDA agrees that the phrase "information that reasonably suggests" should be defined. FDA has added to the final rule new § 803.3(f), which provides that "information that reasonably suggests" a conclusion means (1) information (such as professional, scientific, or medical facts or opinions) from which a reasonable person would reach the conclusion, and (2) a statement to a manufacturer or importer by a health care professional (e.g., a doctor of medicine, osteopathy, dental surgery, podiatry, or chiropractic, or an optometrist, pharmocist, registered nurse, or a hospital administrator), reaching the conclusion.

Under final §§ 803.3(f)(1) and 803.24(a), information that reasonably suggests a conclusion may be provided by any user of a device, e.g., a consumer, or any other person as defined in final § 803.3(e). Under final §§ 803.3(f)(2) and 803.24(a), if a physician, for example, informs a manufacturer or importer that he or she had to replace one of the firm's implanted devices because the device malfunctioned and a serious injury occurred, the information provided by the physician reasonably suggests that a reportable event has occurred. The manufacturer or importer may not wait until it receives the device from the physician or until it has conducted its own analysis of the device before it reports under final § 803.24(b)(1). Similarly, if a serious injury did not occur, but the physician informs the manufacturer or importer that the device has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a serious injury (or death) if the malfunction were to recur, the information provided by the physician reasonably suggests that a reportable event has occurred. The manufacturer or importer may not wait until it receives the device from the physician or until it has conducted its own analysis of the device before it reports under final § 803.24(b)(2).

FDA recognizes that new § 803.3(f)(2) provides that information furnished by a health care professional is information that per se reasonably suggests that a reportable event has occured. FDA has concluded that this per se provision is warranted because of such persons' special education, training, experience, expertise, and knowledge with respect to medical devices.

FDA notes that even if information received from a health care professional or any other source initially appears to require a report, a report nevertheless is not required if, within the time period for reporting, the manufacturer or importer determines that certain conditions are met (see final § 803.24(d)(3) and paragraph 51 of this preamble).

39. Many comments, including comments from OMB, object to the definition of serious injury in reproposed § 803.3(e) (final § 803.3(h)) on the ground that it would result in the submission of reports of minor injuries. Some of these comments argue that only permanent impairment or damage should be reported; others argue that only unanticipated events should be reported. According to the comments, users accept the fact that some unavoidable risk may be associated with a device given the condition of the patient and the inherent nautre or function of the device. OMB recommends that the phrase "necessitates immediate medical or surgical intervention" in reproposed § 803.3(e)(2) (final § 803.3(h)(3)) be qualified by the phrase "by a health professional." OMB also recommends that FDA not include in the definition of serious injury unanticipated temporary impairment of a body function or unanticipated temporary damage to body structure.

FDA advises that it intended the definition of serious injury in the reproposed rule to include those serious health problems that require prompt action to protect the public health (48 FR 24018). In the reproposal, FDA used the word "immediate" to modify "medical or surgical intervention" and the word "unanticipated" to modify "temporary impairment of a body function or damage to body structure" to eliminate reports of minor injury. The comments have persuaded FDA that the reproposed definition could be interpreted such that manufacturers and importers would be required to submit reports of minor injuries.

FDA has revised the definition of serious injury in reproposed § 803.3(e)(2) (final § 803.3(h)(3)) by providing that the medical or surgical intervention must be undertaken "by a health care professional" to preclude permanent impairment of a body function or permanent damage to body structure or to relieve unanticipated temporary impairment of a body function or unanticipated temporary damage to body structure. FDA made the revision because any medical or surgical intervention that is undertaken by other than a health care professional is likely to be undertaken in response to minor injuries, e.g., cuts or bruises caused by needle burrs on a defective syringe. FDA also has revised the definition by deleting the word "immediate" before the phrase "medical or surgical intervention" because FDA does not believe that an injury is "serious" only if it necessitates immediate, e.g., emergency or same day, medical or surgical intervention. If a cardiac pacemaker malfunctions, explanation may be indicated, but not always immediately. Thus, FDA has combined § 803.3(e) (2), (3), and (4) of the reproposal as § 803.3(h)(3) and has revised final § 803.3(h)(3) to read "necessitates medical or surgical intervention by a health care professional to (i) preclude permanent impairment of a body function or permanent damage to body structure or (ii) relieve unanticipated temporary impairment of a body function or unanticipated temporary damage to body structure."

FDA disagrees with the comments that argue that only permanent impairment or damage need be reported. Unanticipated temporary impairment or damage whose relief necessitates medical or surgical intervention by a health care professional is a significant event. Such impairment or damage cannot be successfully treated by a layperson. Further, if left untreated by a health care professional, unanticipated temporary impairment or damage could well result in permanent impairment or damage.

FDA disagrees with the comments that argue that only unanticipated injuries need be reported. FDA believes that a device-related incident that is life threatening, results in permanent health impairment, or requires medical or surgical intervention by a health care professional to preclude permanent health impairment should be reported to FDA whether or not anticipated. Such an incident is serious and FDA needs to know about it to determine, for example, whether the probable benefits to health from the use of the device outweigh the probable risks of injury from such use, and whether the agency needs to take any action to eliminate or reduce the public's exposure to these risks. The final rule requires a report of an incident involving temporary health impairment only if such impairment is unanticipated. The determination whether a temporary health impairment is unanticipated will be made by the manufacturer or importer. To make clear its intent, FDA has added to final § 803.3(h)(3), the following sentence: "Temporary impairment to a body function or temporary damage to body structure is unanticipated if reference to such impairment or damage is not made in the labeling for the device or, if such reference is made in the labeling for the device, the manufacturer or importer of the device determines that such impairment or damage has occurred or is occurring more frequently or with greater severity than is stated in the labeling for the device or, if there is not any pertinent statement in the labeling, than is usual for the device."

40. Several comments argue that "unanticipated temporary impairment" is too vague to provide useful guidance. One of these comments suggests adding to the final rule language from the preamble to the reproposal (48 FR 24018) which stated that electrical shocks, severe lacerations, or broken bones are unanticipated events. Another comment asserts that the discussion in the preamble is inadequate because electrical shocks are not defined as to severity or duration, severe laceration is undefined, and all broken bones are considered of equal seriousness.

FDA believes that the changes to the definition of "serious injury" (final § 803.3(h)), discussed in paragraph 39 of this preamble, make clear the meaning of "unanticipated temporary impairment." FDA does not believe that specifying in the final rule electrical shocks, severe lacerations, or broken bones will further define "unanticipated temporary impairment," or that these specific events need any definition.

41. One comment suggests that FDA delete reproposed § 803.3(e) (2) and (4) or add to the definition of serious injury the concept of significant medical intervention or significant temporary impairment. According to the comment, many minor injuries are corrected by medical intervention and, although unanticipated, are temporary and insignificant.

FDA disagrees with the suggestion. Under § 803.3(h) of the final rule, a serious injury is one that necessitates medical or surgical intervention by a health care professional to preclude permanent health impairment or to relieve unanticipated temporary health impairment. FDA believes that this and other changes in final § 803.3(h), as discussed in paragraph 39 of this preamble, will eliminate reports of minor injuries. Thus, there is no need to establish whether medical or surgical intervention is "significant" or whether an unanticipated temporary health impairment that requires such intervention is "significant."

42. One comment questions whether FDA intended that all four conditions under reproposed § 803.3(e) (final § 803.3(h)) be satisfied before a report is required or whether it is necessary that only one condition be met. Another comment suggests that FDA make each condition under reproposed § 803.3(e) (final § 803.3(h)) conjunctive rather than disjunctive. Other comments, however, argue that FDA needs to receive reports of an event that meets only one of the conditions.

Under final § 803.3(h), there are only three types of serious injury. If any one of these types occurs, then an injury is "serious" and a report is required. Making all provisions of § 803.3(h) conjunctive would mean that an event would have to be life threatening before a report could be required under the final rule, which would be inconsistent with the intent of Congress in enacting section 519 of the act (see "Statutory Authority and Legislative History" of this preamble) and would prevent FDA from adequately protecting the public from serious health risks that are less than life threatening.

Confidentiality

43. Many comments express concern that the public availability of unverified reports will lead to spurious product liability claims or unjustly damage a manufacturer's reputation and request that FDA add to the final rule a section on the confidentiality of reports. The comments suggest that the reports be considered trade secret or confidential commercial information and, as such, not available for public disclosure under § 20.61 of FDA's regulations governing public information (21 CFR 20.61). The comments also suggest that the name of the manufacturer or importer of the device, any patient or other device user, any health care professional, or any health care institution be deleted from a report before its public disclosure.

FDA has added to the final rule new § 803.9 *Public availability of reports*. FDA is generally required under the Freedom of Information Act (the FOIA) (5 U.S.C. 552) to make publicly available reports received under this final rule. The public availability of such reports is governed by the FOIA and Part 20. As specified in new § 803.9, in accordance with the FOIA and FDA's regulations, before a report is made publicly available, FDA will delete from the report information whose disclosure would constitute a clearly unwarranted invasion of personal privacy (see 5 U.S.C. 552(b)(6); § 20.63) or which constitutes trade secret or confidential commercial or financial information (see 5 U.S.C. 552(b)(4); § 20.61). However, FDA will make available to a patient who requests a report all the information in the report concerning that patient, except for trade secret or confidential commercial or financial information.

FDA notes that a good deal of information in reports of adverse reactions to approved new drugs (see 21 CFR 314.14) and in reports of device problems received under DEN is publicly available (see §§ 20.111 and 20.113). None of the comments demonstrates that a spurious product liability claim or unjust damage to any manufacturer's reputation has resulted from the public availability of such reports.

44. One comment suggests that reports received under any final rule be kept confidential until after FDA's investigation of the incident has been completed. Another comment suggests that a report be released only if FDA determines that the incident is device related.

Under § 20.64, information submitted to FDA under the final rule may be considered an investigatory record compiled for law enforcement purposes and, therefore, not available for public disclosure until FDA's investigation is complete. FDA will determine on a case-by-case basis whether § 20.64 applies. FDA does not have the authority under the FOIA or Part 20 to withhold a report submitted under the final rule if the agency determines that the event that is the subject of the report is not device related.

45. One comment suggests that to ensure the confidentiality of reports FDA destroy them 1 year after the date of their receipt.

FDA disagrees with the comment. The agency believes that retention of the reports for an indeterminate period will enable the agency to undertake trend analyses and to determine the need for regulations, administrative or judicial enforcement actions, standards, guidelines, or educational programs.

46. One comment suggests that reports be kept confidential if there is ongoing litigation concerning the involvement of the device with a death or serious injury.

Under the FOIA and Part 20, FDA is without authority to withhold publicly available information because of ongoing litigation to which the government is not a party. If the government is a party to the litigation, the information would be withheld from public disclosure under § 20.64 as an investigatory record compiled for law enforcement purposes.

47. One comment suggests that reports submitted in response to a request for additional information under reproposed § 803.24(e) be kept confidential.

FDA lacks authority to categorize all such reports as confidential (see paragraphs 43 and 46 of this preamble). All reports and additional information, whether submitted under § 803.24 (b) or (e) of the final rule, are subject to the same statutes and regulations regarding public disclosure.

48. One comment suggests that before disclosing a report, FDA should provide the manufacturer or importer an opportunity to explain why public disclosure of information submitted in a report is not required for protection of the public health.

The comment's suggestion is inappropriate. Whether information is or is not required for protection of the public health is not relevant to whether the information is exempt from public disclosure under the FOIA and Part 20 (see paragraph 43 of this preamble). Under § 20.45, in situations where the confidentiality of data or information is uncertain and there is a request for public disclosure, FDA will consult with the person who has submitted or divulged the data or information or who would be affected by disclosure before determining whether or not such data or information is available for public disclosure.

49a. Many comments request that FDA add an express disclaimer to each report released, such as "Neither the submission of information by a manufacturer or importer pursuant to this rule, nor public release of such information, constitutes an admission that a device has malfunctioned or establishes the existence of any causal connections between a product and a death or serious injury."

FDA cannot accede to the request. Whether information submitted in a report or subsequently released by FDA constitutes an admission or establishes causation is for litigants to dispute, and the courts to decide, on a case-by-case basis. As explained in paragraph 7 of this preamble, however, FDA does not believe that the submission of the information required by the final rule will be treated by the courts as an admission.

49b. One comment suggests that the final rule recognize that a court order may prohibit release of information to FDA.

If a court order prohibits a manufacturer or importer from submitting certain information to FDA, the agency will respect the order. FDA accordingly does not believe that any provision concerning court orders needs to be included in the final rule.

When a Report Is Required

50. Several comments argue that the reproposal would require the submission of a report upon receipt by the manufacturer of a mere allegation that a death or serious injury had been caused by one of its devices. These comments claim that the legislative history of section 519 of the act does not authorize FDA to require reports of allegations that are unsubstantiated or known to be false. OMB states that requiring reporting of unverified or unsubstantiated allegations that a reportable event has occurred would be unreasonable. OMB recommends that manufacturers and importers be required to review all such "allegations" within 15 working days of initial receipt, but should not be required to report to FDA unless the manufacturer or importer determines that evidence suggests or could reasonably suggest that a device "caused or contributed to a death or serious injury."

FDA agrees that the reproposal would have required the submission of a report upon the receipt by a manufacturer or importer of an allegation that a death or serious injury had been caused by one of its devices. As noted in paragraph 8 of this preamble, however, the requirement to report allegations has been deleted from the final rule. For the reasons discussed in paragraph 38 of this preamble, FDA has provided in new § 803.3(f), which defines the phrase "information that reasonably suggests," that information furnished by a health care professional is information that per se reasonably suggests that a reportable event has occurred.

For the reasons discussed in paragraph 51 of this preamble, FDA does not agree that information about device-related deaths or serious injuries be confirmed before FDA may require that such information be reported to the agency. To carry out its responsibilities under the act, the agency needs to be informed whenever a manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury. If the final rule applied only when information reasonably suggested that a device "had" caused or contributed to a death or serious injury, FDA would not learn of instances in which there could have been an association, as well as a causal connection, between the use of a device and a death or serious injury (see paragraph 17 of this preamble). FDA notes that under final § 803.24(d)(3), even if information initially appears to require a report, a report nevertheless is not required if, within the time period for reporting, the manufacturer or importer determining that certain conditions are met (see paragraph 51 of this preamble).

51. Many comments argue that a manufacturer or importer should be required to submit a report only if the manufacturer or importer confirms that a reportable incident is device related. These comments state that manufacturers and importers receive many complaints that upon investigation are determined not to involve the manufacturer's or importer's device. One comment suggests that manufacturers or importers be required to submit unconfirmed reports only if FDA can assist in the acquisition of information to determine whether the incident was device related. Other comments argue that manufacturers or importers should submit such reports regardless of whether the manufacturer or importer believes the incident to be device related.

The legislative history provides that reasonable reporting requirements include reports of defects, adverse reactions, and patient injuries (see the "Statutory Authority and Legislative History" section of this preamble). Nowhere in section 519 of the act or its legislative history is FDA's authority limited to requiring only information about reportable events that have been confirmed by the manufacturer or importer of the device. The legislative history clearly states that the limitations under section 519 of the act should not be construed as restricting FDA's authority to obtain information needed to ensure that the public is protected from potentially hazardous devices.

Where a device may have caused or contributed to a death or serious injury, FDA, as the public health agency responsible for protecting the public from unsafe devices, should make an independent evaluation of the device's role, if any, in the death or serious injury. So long as a reasonable person would conclude that a device may have caused or contributed to a death or serious injury, where there is such a difference of opinion, FDA should review and evaluate the role of the device. Requiring reports of death or serious injury, whether or not confirmed to be device related, is consistent with both the existing requirements (21 CFR 310.301) and recently proposed revisions for reporting adverse reactions associated with new human drugs (47 FR 46622; October 19, 1982).

FDA notes that there are cases in which a device malfunctions and the nature or severity of the malfunction is such that, although the device did not actually cause or contribute to a death or serious injury, the device or another device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. For example, an incubator thermostat malfunctions in such a way that the incubator could cause or contribute to a death or serious injury of a premature baby; however, at the time of the malfunction, the incubator is not in use and, thus, the device does not cause or contribute to a death or serious injury. Under a system of reporting only confirmed device-related deaths and serious injuries, this type of incident would not be reported simply because there would not have been a death or serious injury determined to have been device-related.

When a manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its devices has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, the manufacturer or importer may not wait until the malfunction recurs or until a death or serious injury occurs before notifying the agency of the malfunction. If FDA is to be able to prevent or reduce deaths or serious injuries from devices that malfunction, or is to be able otherwise to minimize the risk to the public health from such devices, the agency needs to receive this information in a timely manner from all manufacturers and importers.

FDA recognizes that a manufacturer or importer may receive information that erroneously attributes a reportable event to one of its devices. For this reason, FDA has revised § 803.24(d) in the final rule to enumerate the circumstances in which a report is not required even though the manufacturer or importer has received or otherwise become aware of information that initially appears to require a report under § 803.24(a). A report respecting a death or serious injury is not required if, within 5 calendar days of initial receipt of the information, the manufacturer or importer determines that a death or serious injury has not occurred (§ 803.24(d)(3)(i)). A report respecting a death, serious injury, or malfunction is not required if, within 5 calendar days of receipt of the information about the death or serious injury or within 15 working days of receipt of information about the malfunction, the manufacturer or importer determines that the information is erroneous in that the device that is the subject of the information was manufactured or imported by another manufacturer or importer (§ 803.24(d)(3)(ii)). In such circumstances, however, FDA strongly encourages the manufacturer or importer to report the event to FDA and, if known, to the manufacturer or importer that actually marketed the device.

A report respecting a malfunction is not required if, within 15 working days of receipt of information about the malfunction, (i) the manufacturer or importer determines that a death or serious injury has not occurred; (ii) the device's labeling sets forth information concerning the potential for death or the type of serious injury that the malfunction may cause or contribute to; (iii) the device's labeling describes the malfunction, and the routine service, repair, or maintenance instructions to correct the malfunction; (iv) the malfunction has occurred or is occurring at or below the frequency and severity stated in the labeling for the device or, if there is not any pertinent statement in the labeling, at or below the frequency and severity that are usual for the device; and (v) the malfunction does not lead the manufacturer or importer to undertake a remedial action involving any device other than the device product in which the malfunction occurred (§ 803.24(d)(3)(iii)).

52. One comment states that isolated reports of adverse occurrences from use of a device may be received by many manufacturers or importers and discarded in good faith as not device related; however, the reports aggregated by FDA may reveal a previously unsuspected device problem. Many comments state that manufacturers or importers receive a lot of complaints that, upon verification, are determined to be the result of user error, a failure to service or maintain the device properly, or use of the device beyond its labeled useful life. According to the comments, the submission of reports in these circumstances will not lead to any public benefit and, therefore, is an unnecessary cost to the manufacturer or importer and FDA. One comment states that user error may indicate improper instructions, inadequate labeling, or the need for an educational program.

FDA agrees that analysis by the agency of information from isolated reports submitted by many manufacturers and importers may result in the discovery of unsuspected device problems. FDA does not agree that reportable events attributable to user error, failure to service or maintain a device, or use of a device beyond its labeled useful life should not be reported. Reportable events determined by the manufacturer or importer to be the result of user error, improper service or maintenance, or improper use may indicate, for example, that the device is misbranded within the meaning of section 502(f) of the act (21 U.S.C. 352(f)) in that its labeling fails to bear adequate directions for use or to comply with § 801.109 of FDA's regulations governing labeling for devices. FDA agrees with the comment that states that reports of events attributable to user error also may indicate the need for an educational program for consumers and professional users.

53. One comment requests clarification as to when a manufacturer or importer has accumulated sufficient information to determine that the information "reasonably suggests" or "alleges" a death or serious injury. Another comment asks how allegations would arise, how a manufacturer or importer would be made aware of them, and how a mere allegation would be reported to FDA.

As noted in paragraph 8 of this preamble, the requirement to submit a report based on an "allegation" has been deleted from the final rule. The phrase "information that reasonably suggests" is defined in new § 803.3(f) of the final rule and discussed in paragraph 38 of this preamble. A manufacturer or importer is required to report whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Revisions in final § 803.24(a) describe more specifically the circumstances in which a report is required: the manufacturer or importer receives or otherwise becomes aware of information in the medical or scientific literature which reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur (§ 803.24(a)(2)(i)); or the manufacturer or importer, through its own research, testing, evaluation, servicing, or maintenance of one of its devices, receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices malfunctions and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur (§ 803.24(a)(2)(ii)).

54. Many comments suggest that the phrase "or a person alleges and the manufacturer or importer is aware of the allegation" be deleted from any final rule. The comments argue that any reasonable allegation would be included in the phrase "reasonably suggests," and that reporting unreasonable, irresponsible, or unlikely allegations would be an unnecessary expenditure of industry and FDA resources. The comments further argue that reports of allegations will be misleading to the public and unjustly damage a manufacturer's reputation, that disgruntled employees, competitors, or other persons with interests adverse to the manufacturer could trigger the submission of frivolous reports, and that the reproposal would require the submission of information that may be erroneous, vague, based upon idle rumor, or clearly absurd.

FDA has deleted from the final rule the phrase "or a person alleges and the manufacturer or importer is aware of the allegation" (see paragraph 8 of this preamble), has added new § 803.3(f) (see paragraph 38 of this preamble), and has revised § 803.24(a) (see paragraphs 17, 25, and 53 of this preamble) to define more clearly when a report is required. FDA believes that these revisions, together with the revisions in final § 803.24(d) (see paragraphs 20 and 51 of this preamble), address each of the concerns raised by the comments without compromising FDA's ability to protect the public health.

55. One comment suggests that FDA not require the submission of allegations during litigation where the manufacturer or importer has a reasonable basis to believe that the allegation is not well founded.

Whether an allegation made in the course of litigation is required to be reported depends on whether the allegation reasonably suggests that one of the manufacturer's or importer's marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

56. Several comments argue that a report should be required only if a death or serious injury has occurred and that device malfunctions should not be reported. According to the comments, the reproposal would require that the manufacturer or importer determine whether the malfunction is likely to recur, and if it recurs, whether the device may cause or contribute to a death or serious injury. The comments believe that this standard is too subjective. Other comments strongly support requiring reporting of malfunctions before a death or serious injury has occurred.

As explained in paragraph 51 of this preamble, FDA disagrees that only incidents of death or serious injury should be reported. The purpose of a report is to enable FDA to take action that will eliminate unnecessary risks to health posed by medical devices. Such risks may be identified before a death or serious injury occurs. For example, in 1983 FDA learned of a report of a failure of a weld on the hood of an infant radiant warmer. The hood fell and would have struck the infant if a nurse had not been present and caught the hood. Similarly, in 1982 FDA learned of another instance in which a defect in an infusion pump in which a valve motor malfunction resulted in the occasional failure of the device to medicate the patient. As a result of the malfunction, the pump could have withdrawn the patient's own blood and reinfused him or her with it. The device was subsequently recalled.

The reproposed rule did not, and the final rule does not, require a manufacturer or importer to determine whether a malfunction is likely to recur. As explained in paragraph 57 of this preamble, FDA presumes that if a device malfunctions, the malfunction could recur. Thus, reproposed § 803.24(a) (final § 803.24(a)) requires that if information reasonably suggests that a marketed device has malfunctioned, the manufacturer or importer determine whether the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. In this context, the word "likely" means more probable than not and provides adequate guidance to manufacturers and importers.

FDA notes that if the information is received from a health care professional, the information reasonably suggests that a reportable malfunction has occurred (see § 803.3(f) of the final rule and paragraph 38 of this preamble), and the manufacturer or importer does not determine whether the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

57. Several comments suggest that to eliminate reports of routine service and maintenance, a device malfunction should not be required to be reported if such malfunction (i) has not recurred and is not likely to recur; (ii) did not occur during the performance of an intended therapeutic or diagnostic use of the device; or (iii) was corrected or is correctable by routine service or maintenance.

FDA agrees in part with the comments. FDA believes that agency resources allocated to the implementation of this final rule should not be spent monitoring device problems that can be corrected by routine service or maintenance. As discussed in paragraph 20 of this preamble, new § 803.24(d)(3)(iii) has been added to provide that a report is not required under certain specified circumstances. FDA believes that these changes in the final rule will eliminate reports of routine device service, repair, and maintenance.

FDA disagrees with the comment suggesting that the malfunction must recur or be likely to recur before the manufacturer or importer is required to report. FDA presumes that if a device malfunctions, another device marketed by the manufacturer or importer also could malfunction because, generally, all devices of the same type are produced under the same manufacturing practices. FDA also disagrees with the comment that the malfunction must occur during the performance of an intended therapeutic or diagnostic use of the device. A reportable malfunction under § 803.24(a) (1) or (2) of the final rule could occur when a device is not in use. FDA needs to know about such malfunctions so that it can take action to reduce or eliminate the risk of death or serious injury should the malfunction recur when the device is in use (see paragraphs 51 and 56 of this preamble).

58. One comment argues that a malfunction should not be required to be reported if it results from improper or inadequate maintenance by the user, unauthorized modification, or misuse or negligent handling.

FDA disagrees with the comment. For the reasons explained in paragraph 52 of this preamble, FDA does not believe the requirement to submit a report under final § 803.24(a) (1)(ii) or (2) should be determined by the manufacturer's or importer's assessment whether the malfunction is due to user error or misuse.

59. One comment asserts that a death or serious injury should not be required to be reported unless it is associated with or related to a device malfunction.

FDA disagrees with the comment. A device that performs to its specifications or otherwise performs as intended does not "malfunction" as defined in the final rule. However, because of flaws in its labeling or because of user error (see paragraph 52 of this preamble), such a device could cause or contribute to a death or serious injury. Therefore, FDA concludes that reporting should not be limited in the manner suggested by the comment.

60. One comment requests guidance about who determines the severity of a malfunction and whether it would generate a serious injury.

Under final § 803.24(a), the manufacturer or importer determines whether information "reasonably suggests" (see § 803.3(f) of the final rule and paragraph 38 of this preamble) that a malfunction has occurred and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. If a health care professional informs a manufacturer or importer that one of its marketed devices has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, a reportable malfunction has occurred. In such circumstance, the manufacturer or importer does not determine the severity of the malfunction or whether the malfunction would generate a serious injury. In all other circumstances, the manufacturer or importer is required to make a determination with respect to the likelihood (see paragraph 56 of this preamble) that, as a result of a recurrence of the malfunction, the device or any other device marketed by the manufacturer or importer will cause or contribute to a death a serious injury. To the extent that this determination requires an assessment of the severity of the malfunction, the manufacturer or importer necessarily would have to make such assessment.

61. Three comments suggest that the phrase "or contributed to" in reproposed § 803.24(a) be eliminated because it is vague. The comments claim that the phrase will cause manufacturers or importers to submit a report for every service call or even when the device played only a minor role in the reportable event. One comment suggests the phrase "likely to cause or contribute to" be replace by "likely to be a determinant" in the case of a malfunction.

FDA disagrees in part with the comments. If a manufacturer or importer receives information that reasonably suggests that one of its devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, a report is required. In this context, the phrase "contribute to" means to play a part in the death or serious injury. As defined, FDA believes that the phrase "contribute to" is not vague, provides adequate guidance to manufacturers and importers concerning a reportable event, and will not result in the submissions of reports of every service call. Deaths or serious injuries in which a device played a part, however, are reportable events under the final rule.

FDA disagrees that the phrase "likely to cause or contribute to" should be replaced by the phrase "likely to be a determinant" in the case of a malfunction. The latter phrase would limit reportable events to those in which a malfunction likely was a cofactor, would be inconsistent with the legislative history of the amendments in general and section 519 in particular, and would preclude FDA from carrying out its statutory mandate to evaluate the risk, if any, associated with potentially hazardous devices.

Time Requirements

62. Several comments argue that the 15-working-day time period is too long. The comments recommend shortening the time period for reporting a death or serious injury. OMB notes that 15 working days is 3 weeks and suggests that FDA reassess whether device-related deaths should be reported earlier than 3 weeks after they occur. Several comments state that the time periods used in the November 1980 proposal (45 FR 76183), 72 hours for reports by telephone of death and 7 working days for written reports of injury, would be reasonable because under the reproposal FDA would not require much information in the telephone or written report.

FDA agrees that to enable timely involvement by the agency, FDA needs to receive reports of death and serious injury sooner than 15 working days after the manufacturer or importer receives or otherwise becomes aware of the information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury. As discussed in paragraph 39 of this preamble, FDA has revised the definition of "serious injury" in final § 803.3(h) to exclude minor injuries. For this reason, FDA believes that serious injuries and deaths should be subject to the same reporting requirements. Accordingly, FDA has revised final § 803.24(b) to require a telephone report as soon as possible but no later than within 5 calendar days of initial receipt, by the manufacturer or importer, of information that reasonably suggests that a device-related death or serious injury has occurred.

FDA recognizes that the 5-calendar-day time period for telephone reports of device-related deaths and serious injuries is shorter than the 15-working-day time period proposed for reports of any fatal or life-threatening adverse drug experience not mentioned in the product labeling (46 FR 46622; October 19, 1982). The shorter time period is warranted because the relationship between a device and a death or serious injury generally is easier to discern than is the relationship between a death or serious injury and a drug product; in the latter circumstance, but not the former, factors such a clinically significant drug/drug interactions or sensitivity reactions may make it difficult to determine whether there is any link between the product and the death or serious injury. For these reasons, FDA believes that the 5-calendar-day time period for providing FDA, by telephone, information about device-related deaths and serious injuries is reasonable.

Under final § 803.24(b)(1), the manufacturer or importer is also required to submit a followup written report within 15 working days of initial receipt of the information by the manufacturer or importer requiring a telephone report.

FDA recognizes that the 5-day time period for telephone reports of deaths and the 15-day time period for written reports of serious injuries are longer than those specified in the November 1980 proposal. FDA emphasizes, however, that under final § 803.24(b) telephone reports of device-related serious injuries are required to be submitted as soon as possible, but no later than within 5 calendar days of initial receipt of the information; under the proposal, information about such injuries would not have been required until 7 working days after receipt of the information. The change from 3 to 5 calendar days for reporting device-related deaths gives manufacturers or importers a reasonable time to gather the information specified in final § 803.24(c) and to determine under final § 803.24(d)(3) (i) or (ii) that a report is not required.

63. Many comments state that a manufacturer or importer should be deemed to be in compliance with any final rule based upon reproposed § 803.24(b) if the manufacturer or importer transmits the written report within the specified 15-day time period. Requiring receipt by FDA within the 15-day time period would discriminate against manufacturers and importers located on, for instance, the west coast, because transmittal time is longer for them than for manufacturers and importers located close to FDA in Maryland, where reproposed § 803.33 would require reports to be submitted.

FDA agrees with the comments and has revised final § 803.24(b) to require that the written report be submitted to FDA, i.e., postmarked or otherwise dated upon dispatch, to FDA within 15 working days of initial receipt of the information by the manufacturer or importer.

64. Several comments request clarification of whether the 15-working-day time period applies to the written report required under reproposed § 803.24(a) and to any additional information required by FDA under § 803.24(e).

The 15-working-day time period in final § 803.24(b) applies only to the written report. As FDA stated in the preamble to the reproposal (48 FR 24020), if FDA requires a manufacturer or importer to submit additional information, FDA will state in the request the date by which the manufacturer or importer is required to submit the information. Final § 803.24(e) has been revised accordingly.

65. One comment requests clarification as to whether the 15-working-day time period applies if a telephone report is made.

The telephone report to which the comment refers was an option under reproposed § 803.24(b). If such a report was made, a confirming written report would have been required to be received by FDA within 15 working days of initial receipt of the information. As explained in paragraph 62 of this preamble, under final § 803.24(b)(1), a telephone report within 5 calendar days is required in certain circumstances. Within 15 working days of initial receipt of the information, a written report is required to be submitted to FDA. Thus, the 15-working-day time period still applies when a telephone report is made.

66. Several comments suggest that the 15-working-day time period in reproposed § 803.24(b) be extended to at least 30 days. The comments argue that such a time period would allow importers time to consult with the foreign manufacturers before submitting reports and would allow all manufacturers time to obtain the information required in the report by reproposed § 803.24(c). Other comments suggest that FDA permit manufacturers or importers to request extensions of time, if necessary, to obtain the required information.

FDA disagrees with the comments. FDA believes that it would be inconsistent with section 519 of the act and its legislative history and with FDA's responsibility to protect the public health for the agency to permit manufacturers or importers to wait 30 working days—a month and a half—before reporting to FDA that one of its marketed devices may have caused or contributed to a death or serious injury. In response to comments arguing that the 15-working-day time period in the reproposal would be too long, after reconsidering the appropriateness of that time period, especially in light of the minimal amount of information that is required to be included in the report, and as discussed in paragraph 62 of this preamble, FDA has concluded that it is reasonable to require the prompt submission of information that reasonably suggests that a device may have caused or contributed to a death or serious injury. Therefore, the final rule requires a manufacturer or importer to provide such information to the agency as soon as possible, but no later than within 5 calendar days of its initial receipt (see paragraph 62 of this preamble). FDA believes that manufacturers and importers should be able to assemble, process, and submit the information required in the report within the allotted time period. The final rule does not require that the manufacturer or importer provide in the report under final § 803.24(c) any information not in its possession (see paragraphs 12, 69, and 81 of this preamble). Therefore, an extension of time should not be necessary.

67. Several comments suggest that the phrase "essential information" in reproposed § 803.24(b) be eliminated because it is vague and that the phrase "the information in § 803.24(c)" be used.

FDA agrees with the comment and has revised final § 803.24(b) (1) and (2) accordingly.

68. Several comments argue that FDA should require only one submission concerning a reportable event, and that this information should be required to be submitted only after the manufacturer or importer has completed its investigation of the event.

FDA disagrees with the comment. Only a minimal amount of information about a reportable event is required in the report under final § 803.24(c). If information reasonably suggests that a marketed device (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, FDA needs to be promptly advised to evaluate the possible risk to health posed by the device and to take whatever steps are necessary to reduce or eliminate the public's exposure to this risk. In some cases, FDA may conclude that the information provided in the report is adequate for FDA to take whatever additional action is necessary to protect the public health. In other cases, FDA may conclude that further action by FDA or the manufacturer or importer is not necessary. In still other cases, FDA may determine that to protect the public health the agency needs information in addition to that provided in the report. The submission of a report to FDA soon after the reportable event has occurred will enable the agency to initiate its own investigation, if deemed necessary, or to assist the manufacturer or importer in obtaining information from third parties. Thus, whether FDA will need information about a reportable event in addition to that provided under final § 803.24(c) will depend on the facts and circumstances of each matter. In any case, for the reasons discussed in paragraphs 50, 51, 53, and 57 of this preamble, FDA has concluded that it should not delay its review or any investigation of a reportable event until after a manufacturer or importer has completed its investigation of the same event.

69. One comment argues that FDA may require only the submission of information in the possession of the manufacturer or importer and that FDA does not have authority to require that a manufacturer or importer collect the additional information.

FDA disagrees with the comment. Section 519(a) of the act authorizes FDA to require manufacturers and importers to maintain such records, make such reports, and provide such imformation to FDA as may reasonably be necessary to assure that devices are not adulterated or misbranded and are otherwise safe and effective for human use. Nowhere in section 519 of the act or its legislative history is there any indication that Congress intended to limit FDA's authority in the manner claimed by the comment. Moreover, section 519(a)(5) of the act provides that the agency may not require the manufacturer or importer of a class I device to maintain for such a device records respecting information not in its possession or to submit with respect to such device information not in its possession, unless such report or information is necessary to determine if the device should be reclassified or is adulterated or misbranded. Thus, by negative implication, as well as its explicit language, section 519(a) of the act authorizes FDA to require the collection and submission of information not in the possession of manufacturer or importer, albeit with certain limitations on that authority insofar as class I devices are concerned.

FDA advises, however, that nothing in the final rule requires a manufacturer or importer to submit to FDA information not in the possession of the manufacturer or importer (see § 803.24 (c) and (e) of the final rule and paragraphs 12, 66, and 81 of this preamble). In any event, under § 820.162 of the CGMP regulations, after a device has been released for distribution, a manufacturer already is required to investigate any failure of a device or any of its components to meet its performance specifications and to establish and maintain a writtern record of the investigation, including the manufacturer's conclusions and followup. Under § 820.198, a manufacturer already is required to review, evaluate, and investigate any complaint involving the possible failure of a device to meet any of its performance specifications and any complaint pertaining to injury, death, or any hazard to safety and to maintain a written record of the investigation. FDA believes that the information listed in § 803.24(e) which may be required by FDA is information that would be included in the written record of an adequate investigation under § 820.162 or § 820.198. As explained in paragraph 12 of this preamble, importers are not required to review, evaluate, or investigate a reportable event.

70. Many comments argue that reproposed § 803.24(c) should be revised to require in the report only information "to the extent known" by the manufacturer or importer when the report is due. Manufacturers and importers claim that this qualifying phrase is needed because the information necessary to evaluate a complaint often is in the hands of a third party, e.g., a physician or health care institution, that is reluctant to allow a manufacturer or importer access to the information until the third party has completed its own independent investigation, if at all.

FDA disagrees with the comments. FDA believes that the information listed under § 803.24(c) (1), (2), (3), (5), and (6) will be known by the manufacturer or importer and is critical to the agency's ability to initiate any investigation that needs to be conducted. FDA notes that, under the reproposed and final rule, the information listed in § 803.24(c)(4) is required to be submitted only "to the extent known." On its own initiative, FDA has added the following language to final § 803.24(c)(1): "and, to the extent known, the model, catalog, or other identification number or code of the device, and the manufacturing lot or serial number of the device."

71. Many comments argue that manufacturers and importers should be allowed to submit additional information concerning a reportable event at any time, regardless of whether the manufacturer or importer states in the report that additional information will be submitted.

FDA agrees with the comments and advises that it will accept, at any time, additional information submitted by a manufacturer or importer. Unless a manufacturer or importer notifies FDA in the report under final § 803.24(c) that it intends to submit additional information, however, FDA will presume that such information will not be submitted.

72. One comment suggests that reproposed § 803.24(c)(6) be deleted, arguing that a manufacturer or importer always will submit additional information to FDA because the report has placed the matter on public record. Another comment suggests that reproposed § 803.24(c)(6) be modified to state whether the report is complete, not whether additional information will be submitted. Still another comment objects to FDA requesting that a manufacturer or importer specify when the additional information will be submitted, arguing that this information often must be obtained from a third party. According to the comment, FDA should at most request an "expected [estimated] time frame."

Section 803.24(c)(6) of the reproposal provided that a medical device report was to "[s]tate, if the manufacturer or importer intends to submit additional information, when such information will be submitted." According to the preamble, however, § 803.24(c)(6) provided that a medical device report was to "state whether the manufacturer or importer intends to submit additional information, and, if so, when such information will be submitted" (48 FR 24019). The language in the preamble accurately reflected FDA's intent, and the comments responded to that language. Final § 803.24(c)(6) has been modified to be consistent with FDA's intent, as expressed in the preamble to the reproposal.

The agency does not believe that every manufacturer and importer always will submit, on a voluntary basis, additional information. The reason for requiring a statement of a manufacturer's or importer's intent to submit additional information is to assist FDA with the utilization of its resources to investigate reportable events. To reduce the reporting burden on the medical device indusrty, FDA is providing that manufacturers and importers may submit in the report under final § 803.24(c) a minimal amount of information about a reportable event. In certain instances, however, the protection of the public health will require that FDA initiate its own investigation of an event and may require that the agency obtain more information from the manufacturer or importer about the event. By providing that a manufacturer or importer state in the report under final § 803.24(c) whether it intends to submit additional information and, if so, to declare when such additional information will be submitted, FDA will be better able to determine whether its investigation can proceed on the basis of the report, and, where the manufacturer or importer states that additional information will be submitted, and when, whether it may defer such investigation pending receipt of the additional information. Revising § 803.24(c)(6) to require a statement from a manufacturer or importer about whether the report is complete would not provide FDA with the information it needs to allocate its resources properly.

FDA does not agree with the comment suggesting that FDA should at most request an "expected time frame" for the submission of additional information. Given the seriousness of the events required to be reported, FDA accepts an estimated time frame which the manufacturer or importer could change without notifying FDA.

73. On its own initiative, FDA has added to the final rule new § 803.24(c)(7), which requires that the manufacturer or importer state in the report FDA whether the reported event is occurring more frequently or with greater severity than is stated in the labeling for the device or, if there is not any pertinent statement in the labeling, than is usual for the device, if such information is available. FDA needs this information to assist the agency in determining the significance of a reported event and whether to begin its own investigation.

On its own initiative, FDA also is adding to the final rule new § 803.24(e)(7), which provides that, if requested by FDA, the manufacturer or importer shall submit to FDA (1) all the information on the basis of which the manufacturer or importer determined that the reported event is occurring more frequently or with greater severity than is stated in the labeling for the device or, if there is not any pertinent statement in the labeling, than is usual for the device; and (2) any evaluation or analysis available to or used by the manufacturer or importer in making this determination. In the final rule, FDA has redesignated reproposed § 803.24(e) (7) through (10) as § 803.24(e) (8) through (11).

74. One comment argues that requiring a manufacturer or importer to submit to FDA any of the evaluations specified in reproposed § 803.24(e) (final § 803.24(e)) would violate a manufacturer's or importer's constitutional rights because such information may be self-incriminating.

These requirements do not violate any privilege against compelled self-incrimination. That privilege attaches only to a person in his or her individual capacity, and is available neither to a collective entity, such as a business enterprise, nor to an individual acting in

a representative capacity on behalf of a collective entity. *California Bankers Ass'n* v. *Schultz*, 416 U.S. 21, 55 (1974); *Bellis* v. *United States*, 417 U.S. 85 (1974); *United States* v. *Kordel*, 397 U.S. 1, 8 (1970); *Curcio* v. *United States*, 354 U.S. 118, 122 (1957); *United States* v. *White*, 322 U.S. 694, 699 (1944); *Wilson* v. *United States*, 221 U.S. 361, 382–384 (1911); *Hale* v. *Henkel*, 201 U.S. 43, 74–75 (1906). Even for individuals, the privilege against compelled self-incrimination is inapplicable where a reporting requirement is applied to an "essentially noncriminal and regulatory area of inquiry," where self-reporting is the only feasible means of securing the required information, and where the requirement is not applied to a "highly selective group inherently suspect of criminal activities" in an "area permeated with criminal statutes." *California* v. *Byers*, 402 U.S. 424, 430 (1971); see *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Albertson* v. *SACB*, 382 U.S. 70, 79 (1965); *Shapiro* v. *United States*, 335 U.S. 1 (1948). FDA concludes that each of these conditions is met here and therefore that the privilege against self-incrimination does not apply to individuals subject to the final rule.

75. One comment suggests that reproposed § 803.24(e) be revised to avoid duplication with any recordkeeping requirement under Part 820.

FDA does not believe that any provision of the final rule duplicates any provision of Part 820. The rule merely requires that in the case of a reportable event, some or all of the information required to be maintained under Part 820 be submitted to FDA.

76. Many comments argue that any additional information required under reproposed § 803.24(e) should be limited to information to the extent known by the manufacturer or importer. The comments claim that generally, the information needed to complete a report is in the possession of a third party, e.g., health care provider, and assert that the third party may be unwilling to allow the manufacturer or importer access to the information.

To the extent that the information listed under § 803.24(e) is not in the possession of the manufacturer or importer, and is not required to be obtained under §§ 820.162 and 820.198 of the CGMP regulations, the information is only required if available (§ 803.24(e) (4), (5), (6), and (10)). FDA acknowledges that a complete description of the reportable event may be unavailable to the manufacturer or importer. Therefore, FDA has revised § 803.24(e)(3) to provide that if a complete description of the reportable event is unavailable, the manufacturer or importer shall state the reason for its unavailability.

77. Many comments on reproposed § 803.24(e) argue that a request for additional information should be in writing and should state the basis for FDA's conclusion that such information is needed to protect the public health.

FDA agrees in part with the comments. In some cases, FDA may conduct an on-site inspection in response to information received about a reportable event. In such cases, section 704(e) of the act and final § 803.31 (c) and (d) require the manufacturer or importer to permit any authorized FDA employee at all reasonable times to have access to and to copy and verify records of reportable events. FDA agrees, however, that a request for additional information under final § 803.24(e) should be in writing and should state the reason or purpose such information is being required. The agency has revised § 803.24(e) to provide that any request for additional information under that section will be in writing, will state the reason or purpose for which the information is being requested, and will specify a due date for the submission of the information.

78. Several comments suggest that FDA include in any final rule criteria specifying when FDA will require the submission of additional information.

FDA will review each report submitted under final §803.24(b) and determine on a case-by-case basis whether the protection of the public health requires additional information. FDA believes that the agency needs to acquire some experience under the final rule before the agency can determine whether it is feasible to identify criteria for when additional information will be required under § 803.24(e). At this time, therefore, FDA is rejecting the suggestion.

79. One comment argues that FDA should set a time period after which it will not require additional information under reproposed § 803.24(e). The comments suggests 2 years, which is the retention period for records specified for importers in reproposed § 803.31(b).

FDA disagrees with the comment. Under final § 803.31(d), a manufacturer is required to retain copies of information received concerning a reportable event for a period of 2 years from the date that a report or additional information is submitted to FDA under § 803.24 (b) or (e), or for a period of time equivalent to the design and expected life of the device, whichever is greater (see paragraph 90 of this preamble). For the reasons discussed in paragraph 90 of this preamble, FDA reproposed in § 803.31(b) and is establishing in final § 803.31(b) a 2-year record retention requirement for importers. FDA believes, however, that the agency could reasonably require, at any time, whatever additional information the manufacturer or importer has retained.

80. One comment argues that a manufacturer or importer should have at least 30 days after receiving a request for additional information to submit it.

FDA has revised § 803.24(e) in the final rule to provide that an FDA request for additional information will specify a time period for the submission of such information. This time period will depend on a number of factors, including FDA's evaluation/assessment of the risk to health posed by the device. Therefore, FDA is not specifying in the final rule any preset time period within which manufacturers or importers are required to submit additional information.

81. One comment states that the phrase "whether a death or serious injury has occurred" should be deleted from proposed § 803.24(e)(3) because the information has been submitted under § 803.24(c)(4).

FDA disagrees with the comment. The report submitted under § 803.24(c)(4) is required to include only that information known by the manufacturer or importer at the time the report is submitted. FDA recognizes that when a manufacturer or importer submits its report under final § 803.24(b), the manufacturer or importer may not know whether a death or serious injury has, in fact, occurred. For this reason, final § 803.24(c)(4) requires that the manufacturer or importer describe in the report a reportable event "to the extent known" at that time. Under such circumstances, FDA expects that the additional information that the agency may subsequently require under § 803.24(e)(3) will be more complete and will likely confirm whether a death or serious injury has occurred. This is so because the manufacturer will have had more time to investigate the event in accordance with Part 820 and the importer, although not subject to Part 820 or required under the final rule to investigate the event, will have had more time to conduct a voluntary investigation of the event or obtain more information on the matter from the foreign manufacturer.

Content of a Report

82. Several comments on reproposed § 803.24(e)(5) state that the identity of an individual providing the information to the manufacturer or importer should not be routinely required by FDA.

FDA disagrees with the comment. In some cases, FDA may determine that it should immediately begin an independent investigation of a reportable event. FDA will need to know the identity of the individual providing the information to the manufacturer or importer to begin such an investigation in a timely manner.

FDA recognizes that under section 519(a)(4) of the act, a rule promulgated under section 519 of the act may not mandate that the identity of any patient be disclosed in records, reports, or information submitted to the agency unless the identification is required for the medical welfare of an individual, to determine the safety or effectiveness of a device, or to verify a record, report, or information submitted under the act. Given the scope of the final rule, FDA believes that disclosure of the identity of a patient providing information about a reportable event to a manufacturer or importer will be required to enable the agency to determine the safety or effectiveness of the device or to verify a record, report, or other information submitted under the rule. In most cases, however, FDA expects that the person providing the information to the manufacturer or importer will be a person other than a patient.

83. One comment claims that an evaluation may be publicly available and used as an admission against interest in a product liability proceeding.

The public availability of information submitted to FDA under the final rule is discussed in paragraphs 43 through 49 of this preamble. Whether an evaluation constitutes an admission against interest is for the courts to decide on a case-by-case basis (see paragraphs 7 and 49a. of this preamble). In any event, FDA needs the evaluations specified in final § 803.24(e) to carry out its statutory mandate to protect the public health.

84. Many comments urge that FDA revise reproposed § 803.24(e) (4), (5), and (6) to require the submission of an evaluation of a reportable event only if the evaluation is prepared for or used by the manufacturer of the device. One comment argues that it is unreasonable to require a manufacturer to submit unsubstantiated evaluations prepared by a third party regarding the manufacturer's device and submitted to or otherwise obtained by the manufacturer. Another comment suggested that after all information about a reportable event is collected, FDA should make its own determination as to whether the event is device related; FDA should not require the manufacturer to make such a determination.

FDA disagrees in part and agrees in part with the comments. Under §§ 820.162, 820.198, and 820.180 of the CGMP regulations, a manufacturer is required to maintain records of the evaluations referred to in the comments; under section 704(e) of the act, every person required under section 519 of the act to maintain records and every person who is in charge or custody of such records shall, upon request of any authorized FDA employee, permit such employee at all reasonable times to have access to, and to copy and verify, such reports. Final § 803.24(e) merely requires the manufacturer to submit evaluations to FDA rather than to have FDA go to the manufacturing facility to obtain it, and therefore is reasonable.

FDA agrees that it should make its own determination as to whether the reported event is device related. In making its determination, FDA will take into account evaluations prepared for or used by the manufacturer, or prepared by a third party and submitted to or otherwise obtained by the manufacturer. None of these evaluations is required by the final rule; each of them already is required to be made or maintained under §§ 820.162, 820.198, and 820.180, and each of them is required to be submitted to FDA under final § 803.24(e).

85. Several comments request clarification of the term "attributable" in reproposed § 803.24(e) (6) and (7) (final § 803.24(e) (6) and (8)).

FDA advises that the phrase "whether the event described in the medical device report is or is not attributable to the device" means an assessment of whether (1) the device caused or contributed to a death or serious injury or (2) as a result of a recurrence of a malfunction, the device or any other device marketed by the manufacturer or importer is likely to cause a death or serious injury.

86. Many comments argue that FDA should not require that manufacturers submit the information listed in reproposed § 803.24(e) (7) through (10) (final § 803.24(e) (8) through (11)) and, therefore, that these paragraphs should be deleted from any final rule. The comments state that manufacturers and importers do not make recall decisions for every complaint received. According to the comments, FDA should require that the agency be notified only if a manufacturer or importer has conducted a voluntary recall, and already has collected, pursuant to Part 7, the information listed in reproposed § 803.24(e) (7) through (10).

FDA disagrees with the comments. The final rule does not require a manufacturer or importer to make a recall decision for any complaint received. Under §§ 820.162 and 820.198 of the CGMP regulations, however, a manufacturer is required to make such a decision. Submission of the information specified in final § 803.24(e) (8) through (11) will be necessary, and will be required, whenever FDA determines that the protection of the public health demands that the agency conduct its own investigation of the reported event. Whether FDA will invoke these or any other provisions of final § 803.24(e) will depend on the facts and circumstances surrounding the event.

Under Part 7, reports of recalls are not required to be submitted to FDA, but rather are requested to be submitted voluntarily. In any event, information about recalls initiated in response to reportable events is necessary to enable FDA to take action to protect the public health and for the reasons discussed in paragraphs 5 and 68 of this preamble, FDA may not defer action, including investigation, with respect to every reportable event until after the manufacturer or importer has conducted a recall. FDA notes that if a remedial action is undertaken in response to information that is required to be reported under this rule, and such remedial action includes a significant change or modification to the device, a premarket notification may be required under 21 CFR 807.81.

87. Several comments state that reproposed § 803.24(e) (7) through (10) (final § 803.24(e) (8) through (11)) would require the submission of trade secret or confidential commercial information not generally available to FDA, and argue that such information can be required only for restricted and critical devices. One comment states that information required under reproposed § 803.24(e)(9) (final § 803.24(e)(10)) constitutes sales data, and argues that FDA does not have authority to require such data under section 704(a) of the act (21 U.S.C. 374(a)).

FDA disagrees with the comments, and directs attention to section 704(e) of the act. FDA acknowledges that the second sentence of section 704(a) of the act limits the agency's authority to examine, during an inspection, records relating to other than restricted devices. However, section 704(e) of the act provides that every person required to maintain records under section 519 of the act, and every person who is in charge or custody of such records, shall permit FDA at all reasonable times to have access to and to copy and verify such records. Section 704(e) of the act does not limit in any way the types of device records maintained under section 519 and 520(g) of the act that FDA may inspect. Moreover, nothing in section 519 of the act or its legislative history precludes FDA from requiring the submission of trade secret or confidential commercial information. In addition, sections 301(j) and 520(c) of the act (21 U.S.C. 331(j) and 360j(c)), by explicitly protecting from public disclosure trade secret or confidential commercial information obtained under the authority of section 519, are evidence that Congress expected FDA to obtain such information under section 519.

88. One comment argues that reproposed § 803.24(e)(10) (final § 803.24(e)(11)) should be limited to information about the distribution of the affected lot or batch.

The extent to which FDA will require distribution information will be determined on a case-by-case basis. Any such request will be limited to that information necessary to protect the public health. FDA does not believe that a change in the language of the final rule is necessary.

Complaint Files

89. One comment suggests that a complaint file requirement for importers is unnecessary because all reports and additional information will be submitted to FDA.

FDA disagrees with the comment. The complaint file requirement is necessary to enable FDA to verify the accuracy of any report or additional information submitted to the agency under the final rule. The requirement also is necessary to enable FDA to determine whether, based on the information required to be maintained in the complaint file, an importer is reporting when it receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Absent the complaint file requirement, FDA could not be assured that device importers had fully complied with the requirements of the final rule.

90. One comment argues that the retention period for complaint files should be the same for manufacturers and importers, i.e., for a period of time equivalent to the design and expected life of the device, but in no case less than 2 years from the date of release by the manufacturer or importer for commercial distribution.

FDA disagrees with the comment. The record retention period should begin on the date of the submission to FDA of information about the reportable event. If FDA adopted the record retention period recommended by the comment, and, e.g., a reportable event occurred 3 years after the date of release for commercial distribution and within 10 days of the end of the expected life of the device, the manufacturer or importer could dispose of the records concerning the event immediately upon submission of a medical device written report under final § 803.24(b).

Final § 803.31(d) provides that a manufacturer is to retain copies of records of any information, including any written or oral communication, received by the manufacturer concerning a death, serious injury, or device malfunction that requires a report under § 803.24. The manufacturer also is required to retain a copy of any report submitted to FDA under § 803.24(b) and any additional information submitted to FDA under § 803.24(e). The manufacturer is to retain the records referred to in § 803.31(d) for a period of 2 years from the date that the report or additional information is submitted to FDA under § 803.24 (b) or (e) or for a period of time equivalent to the design and expected life of the device, whichever is greater. The manufacturer may maintain as part of its complaint file under § 820.198 the records referred to in this paragraph.

FDA believes that, unlike device manufacturers, importers generally do not maintain scientific or engineering staffs and, therefore, may be unable to determine the period of time equivalent to the design and expected life of the device. Therefore, FDA selected for importers a time period that the agency determined to be reasonable. The 2-year record retention period specified in final § 803.31(b) begins on the date that an importer submits to FDA under § 803.24 (b) or (e) a report or additional information about a reportable event and is the minimal period that a manufacturer is required to retain this type of information under new § 803.31(d).

91. One comment suggests that a manufacturer that also is an importer be permitted to maintain all its complaint files at one location.

FDA agrees with the comment. Final § 803.31(c) provides that an importer that also is a manufacturer may maintain the file at the same location as the manufacturer maintains its records under §§ 820.180 and 820.198.

Exemptions From Reporting

92. One comment suggests that FDA include in any final rule a provision noting a possible exemption under section 513(d)(2)(A) of the act (21 U.S.C. 360b(d)(2)(A)) from a requirement of section 519 of the act upon the recommendation of an FDA advisory committee. Two comments suggest that any final rule include a provision for manufacturers or importers to petition for an exemption from reporting in certain situations not already exempted, rather than to use the citizen petition provisions under Part 10.

FDA disagrees with the comments. There is no need to include in the final rule a provision that duplicates section 513(d)(2)(A) of the act or § 10.30. Section 513(d)(2)(A) speaks for itself, and § 10.30 is adequate for the purpose referred to in the comments. FDA notes that under § 803.24(d), FDA may notify a manufacturer or importer that reports of a particular type of event are no longer required.

93. One comment contends that FDA is required to exempt class I devices under section 519 of the act.

FDA disagrees with the comment. Under section 519 of the act, FDA is prohibited from requiring a manufacturer, importer, or distributor of a class I device to maintain for such a device records respecting information not in its possession or to submit reports of information not in its possession, or to submit reports on a periodic basis, unless such reports are necessary to determine if the device should be reclassified or is adulterated or misbranded. Nothing in section 519 of the act or its legislative history bars FDA from applying to manufacturers and importers of class I devices any of the provisions of the final rule. None of those provisions requires such a manufacturer or importer to maintain for its class I devices records respecting information not in its possession or to submit reports of information not in its possession, or to submit reports on a periodic basis.

94. Several comments argue that the reporting requirements in the reproposed rule are broader than the reporting requirements in several current FDA regulations (21 CFR 600.14, 606.170, 640.73, 812.150, 813.153, 1002.20, and 1003.10), which are cited in reproposed § 803.36(a) (1), (2), and (3). The comments contend that unless FDA has found that reporting under those regulations is inadequate, devices subject to those regulations should not be subject to any final medical device reporting rule.

The final rule applies to all manufacturers and importers of marketed devices other than general purpose articles. FDA has decided not to retain in the final rule the exemptions that were included in reproposed § 803.36(a) (1), (2), and (3).

FDA advises that §§ 606.170 and 640.73 do not apply to manufacturers or importers of medical devices. For this reason, the final rule does not duplicate either § 606.170 or § 640.73, and reproposed § 803.36(a)(1) insofar as it referred to §§ 606.170 and 640.73 is unnecessary. Because the final rule applies only to marketed devices, reproposed § 803.36(a)(3), which applied to investigational devices, also is unnecessary.

FDA needs a uniform reporting system for all marketed medical devices which captures, in a timely fashion, information about reportable events under the final rule. Accordingly, FDA is revising §§ 600.14, 1002.20, and 1003.10 to conform them to the final rule by providing that whenever a manufacturer or importer is required to report to FDA (1) under one of these sections and (2) under the final rule, the manufacturer is required to report only under the final rule. By establishing a uniform reporting system, FDA ensures that it will receive, in a prompt and efficient manner, the information it needs to protect the public from hazardous and potentially hazardous devices.

FDA finds for good cause that notice and public procedure are unnecessary in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), considering the previous opportunities for comment afforded in the rulemaking and the resolution of the issues involved with the rule, as described in this paragraph. The agency, nevertheless, is providing a 30-day period during which it will accept comments on the conforming amendments. If FDA decides on the basis of comments received that any change to the conforming amendments is necessary, it will publish the change in the **Federal Register**.

FDA has redesignated reproposed § 803.36 (b) and (c) as final § 803.36 (a) and (b).

95. One comment suggests adding to any final rule exemptions for manufacturers and importers of devices which report to the Center for Drugs and Biologics, in accordance with § 310.301, § 310.302, § 312.1(a)(6), or § 431.60(b)(2).

FDA disagrees with the comment. Section 312.1(a)(6) applied to certain investigational devices before the effective date of FDA's regulations governing investigational device exemptions (21 CFR Part 812). Because the final rule applies only to marketed devices, there is no need to add an exemption for manufacturers and importers that report under § 312.1(a)(6) or Part 812.

In a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), FDA indicated that following enactment of the amendments, the Center for Drugs and Biologics would temporarily administer premarket approval and other requirements for transitional devices that previously were regulated as new drugs or antibiotic drugs. Thus, manufacturers of such devices have been required to provide information concerning experience with the devices to the Center for Drugs and Biologics in accordance with regulations applicable to new drugs or antibiotic drugs. In the December 16, 1977 notice, FDA also explained that the agency would gradually shift administrative responsibility for regulating transitional devices from the Center for Drugs and Biologics to the Center for Devices and Radiological Health at a pace consistent with the availability of manpower and administrative and technical capabilities. Consistent with that notice and in the interest of avoiding duplicative reporting requirements, FDA has concluded that on the effective date of the final rule, manufacturers and importers of transitional devices no longer need to report under § 310.301, § 310.302, or § 431.60(b)(2). This policy will be incorporated in any final rule governing the premarket approval of medical devices. Such a rule is under development.

96. Many comments argue that FDA should exempt from the requirements of any final medical device reporting rule adverse reactions that are required to be reported under the premarket approval regulations (when final) or pursuant to a condition to approval imposed in a premarket approval order for a class III device.

FDA disagrees with the comments. In the interest of uniformity of reporting requirements for all marketed medical devices (see paragraph 94 of this preamble), FDA affirms its tentative decisions, reflected in the November 1980 proposal and the May 1983 reproposal, not to exempt from the final rule manufacturers or importers that hold approved PMA's. To avoid duplicative reporting under both this final rule and approved PMA's, FDA advises that, upon the effective date of this final rule, any holder of an approved PMA for a device that is the subject of a reportable event will be required to report to FDA under this final rule. The holder shall continue to report to FDA under the terms or conditions to approval any information that is required under such terms or conditions and that is not a reportable event under this final rule. This policy will be incorporated in any final rule governing the premarket approval of medical devices. Such a rule is under development.

97. One comment suggests adding to any final rule exemptions for manufacturers and importers that submit information about reportable events under a voluntary program established by FDA, e.g., manufacturers of dialyzers are reporting hypersensitivity reactions on a quarterly basis.

FDA disagrees with the comment. Voluntary reporting, which by definition may cease at any time a manufacturer or importer chooses, cannot substitute for reporting under the final rule. FDA notes that there is not any specific program for manufacturers of dialyzers to report concerning hypersensitivity reactions to those devices.

Economic Assessment

FDA has assessed the economic impact of the final rule in accordance with Executive Order 12291 and concludes that the rule is not a major rule under the criteria included in the Executive Order. The agency also has considered the economic impact upon small business in accordance with the Regulatory Flexibility Act (Pub. L. 96-354) and certifies that there will not be a significant impact upon a substantial number of small medical device manufacturers or importers.

FDA estimates that under the final rule, approximately 25,100 medical device reports will be submitted each year. About 2,100 of these reports are expected to be for deaths and serious injuries. The remaining reports would be for device malfunctions which, if they recurred, could cause or contribute to a death or serious injury.

Using data provided by industry, FDA estimates that a cost of $600 for each report involving a death or serious injury will be incurred by the manufacturer or importer. (Even though these reportable events must be investigated by manufacturers under the CGMP regulations, FDA envisions that additional review by manufacturers may be undertaken before submission to FDA of this type of report. FDA also envisions that importers, although not subject to the CGMP regulations, will conduct voluntary investigations of device-related deaths and serious injuries.)

FDA believes that the cost of reports of device malfunctions will be proportional to the concern that the manufacturer or importer has over the potential for death or serious injury presented by the malfunction. FDA estimates that there will be 4,600 reports for which this concern will be the greatest and for which some additional professional review might be necessary. FDA has assumed that a manufacturer or importer will incur an average cost of $300 for each such report. For the remaining reports of malfunctions, FDA assumes that a manufacturer or importer will incur a cost of only $60 for each report because these reports will entail only cursory review, photocopying, and mailing costs. Other costs attributable to the final rule include the cost of telephone calls for deaths and serious injuries, the cost to importers of establishing and maintaining complaints files, and the cost to manufacturers and importers of retaining records in accordance with final § 803.31. FDA estimates that the total cost of the final rule is approximately $4 million per year.

The agency also has examined the impact of the final rule upon small manufacturers. FDA estimates that most reports submitted under the final rule will be for critical devices within the meaning of Part 820 and that only about 43 percent of all establishments manufacturing such devices are small establishments. Also, small establishments typically manufacture only half as many types of medical devices as large establishments. Thus, neglecting differences in sales volume (larger establishments would sell more devices of each type) and assuming that the likelihood of a report on a device made by a small or large establishment would be the same, FDA expects that, at most, 22 percent (43 percent × 0.5) of the anticipated reports under the final rule will be from small establishments.

Therefore, FDA concludes that no more than 22 percent of the anticipated $4 million annual cost of the final rule (less than $0.9 million) should be ascribed to small establishments. Because there are between 5,000 and 6,000 such establishments subject to the final rule, the average impact on any one small establishment should be less than $200 annually.

Reference

1. "Survey of Device Establishment Complaint Files," March 1984, Center for Devices and Radiological Health.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 and 5 CFR 1320.13(g) of OMB's regulations implementing the provisions of that act, FDA has submitted the final rule to OMB for approval of the collection of information requirements contained in §§ 803.24 and 803.31 of the rule. These requirements will not be effective until FDA obtains OMB approval. In accordance with 5 CFR 1320.13(j), prior to November 13, 1984, FDA will publish in the **Federal Register** a notice of OMB's decision to approve, modify, or disapprove these requirements.

List of Subjects

21 CFR Part 600

Biologics.

21 CFR Part 803

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 1002

Administrative practice and procedure, Electronic products, Radiation protection, Reporting requirements.

21 CFR Part 1003

Administrative practice and procedure, Defects, Electronic products, Noncompliance, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502(t), 510, 519, 701(a), 704 (a) and (e), 52 Stat. 1055, 76 Stat. 792–795 as amended, 90 Stat. 564–565, 578, 581 (21 U.S.C. 352(t), 360, 360i, 371(a), 374 (a) and (e))) and under the Public Health Service Act (secs. 215, 351, 354–360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n)) and under 21 CFR 5.11, Title 21 of the Code of Federal Regulations is amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. Part 600 is amended in § 600.14 by designating the existing text as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 600.14 Reporting of errors.

(a) * * *

(b) Manufacturers of licensed in vitro diagnostic products, and manufacturers of unlicensed in vitro diagnostic products which are required to be registered under Part 607 of this chapter, shall notify the Director in accordance with paragraph (a) of this section. Manufacturers of other in vitro diagnostic products which are required to be registered under Part 807 of this chapter, shall report in accordance with Part 803 of this chapter.

2. By adding new Part 803, to read as follows:

PART 803—MEDICAL DEVICE REPORTING

Subpart A—General Provisions

Sec.
803.1 Scope.
803.3 Definitions.
803.9 Public availability of reports.

Subpart B—Reports and Records

803.24 Reports by manufacturers and importers.
803.31 Complaint files.
803.33 Where to submit a report.
803.36 Exemptions from reporting.

Authority: (Secs. 502(t), 510, 519, 701(a), 704 (a) and (e), 52 Stat. 1055, 76 Stat. 792–795 as amended, 90 Stat. 564–565, 578, 581 (21 U.S.C. 352(t), 360, 360i, 371(a), 374 (a) and (e)).

Subpart A—General Provisions

§ 803.1 Scope.

(a) FDA is requiring a device manufacturer or importer to report to FDA whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. These reports will enable FDA to protect the public health by helping to ensure that devices are not adulterated or misbranded and are otherwise safe and effective for their intended use. In addition, a device importer is required to establish and maintain a complaint file and to permit any authorized FDA employee at all reasonable times to have access to and to copy and verify the records contained in this file.

(b) This part supplements, and does not supersede, other provisions of this subchapter, including the provisions of Part 820, such as the requirements under § 820.162 that a manufacturer investigate the failure of a device or any of its components to meet its performance specifications and to establish and maintain a written record of the investigation, including the manufacturer's conclusions and followup, the requirements under § 820.198 that a manufacturer establish and maintain a complaint file, and the requirements under § 820.180 that a manufacturer allow access to, and copying of, these files by any authorized FDA representative.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 803.3 Definitions.

(a) "FDA" means the Food and Drug Administration.

(b) "Importer" means any person who imports a device into the United States and is required to register under Part 807.

(c) "Malfunction" means the failure of a device to meet any of its performance specifications or otherwise to perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the objective intent of the person legally responsible for the labeling of the device. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the device. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It also may be shown by the circumstances that the device is, with the knowledge of such persons or their representatives, offered and used to perform a function for which it is neither labeled nor advertised.

(d) "Manufacturer" means any person who is required to register under Part 807, other than a person who initially distributes a device imported into the United States.

(e) "Person" includes any individual, partnership, corporation, association, scientific or academic establishment, Government agency, or organizational unit thereof, or any other legal entity.

(f) "Information that reasonably suggests" a conclusion means (1) information (such as professional, scientific, or medical facts or opinions) from which a reasonable person would reach the conclusion, and (2) a statement to a manufacturer or importer by a health care professional (e.g., a doctor of medicine, osteopathy, dental surgery, podiatry, or chiropractic, or an optometrist, pharmacist, or a registered nurse, or a hospital administrator), reaching the conclusion.

(g) A "remedial action" is any recall, repair, modification, adjustment, relabeling, destruction, inspection (including patient monitoring), notification, or any other action that is initiated by a manufacturer or importer in response to information that it receives or otherwise becomes aware of and that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(h) A "serious injury" is an injury that (1) is life threatening, (2) results in permanent impairment of a body function or permanent damage to body structure, or (3) necessitates medical or surgical intervention by a health care professional to (i) preclude permanent impairment of a body function or permanent damage to body structure or (ii) relieve unanticipated temporary impairment of a body function or unanticipated temporary damage to body structure. Temporary impairment of a body function or temporary damage to body structure is unanticipated if reference to such impairment or damage is not made in the labeling for the device or, if such reference is made in the labeling for the device, the manufacturer or importer of the device determines that such impairment or damage has occurred or is occurring more frequently or with greater severity than is stated in the labeling for the device or, if there is not any pertinent statement in the labeling, than is usual for the device.

(i) Any term defined in section 201 of the Federal Food, Drug, and Cosmetic Act shall have that meaning, unless otherwise defined in this Part.

§ 803.9 Public availability of reports.

(a) Any report, including any FDA record of a telephone report, submitted under this part is available for public disclosure in accordance with Part 20.

(b) Before public disclosure of a report, FDA will delete from the report (1) any information that constitutes trade secret or confidential commercial or financial information under § 20.61; and (2) any personnel, medical, and similar information disclosure of which would constitute a clearly unwarranted invasion of personal privacy under § 20.63; provided, however, that except for the information that constitutes trade secret or confidential commercial or financial information under § 20.61, FDA will disclose to a patient who requests a report all the information in the report concerning that patient.

Subpart B—Reports and Records

§ 803.24 Reports by manufacturers and importers.

(a) A manufacturer or importer shall submit to FDA a report containing the information listed in paragraph (c) of this section whenever the manufacturer or importer:

(1) Receives or otherwise becomes aware of oral or written information that reasonably suggests that:

(i) A death or serious injury has occurred and that one of the manufacturer's or importer's marketed devices may have caused or contributed to a death or serious injury; or

(ii) One of the manufacturer's or importer's marketed devices has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(2) Receives or otherwise becomes aware of information:

(i) In the medical or scientific literature, whether published or unpublished, that reasonably suggests that one of its marketed devices (*a*) may have caused or contributed to a death or serious injury or (*b*) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur; or

(ii) Through its own research, testing, evaluation, servicing, or maintenance of one of its devices, that reasonably suggests that one of its marketed devices malfunctions and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(b)(1) Whenever a manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury, the manufacturer or importer shall report to FDA by telephone as soon as possible, but no later than within 5 calendar days of initial receipt of the information. The manufacturer or importer shall include in the telephone report the information listed in paragraph (c) of this section. The manufacturer or importer shall follow the telephone report with a written report submitted to FDA within 15 working days of initial receipt of the information.

(2) Whenever a manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur, the manufacturer or importer shall report in writing or by telephone to FDA as soon as the information listed in paragraph (c) of this section has been obtained, but in no event later than 15 working days after initial receipt of the information. The manufacturer or importer shall follow any report made by telephone with a written report submitted to FDA within 15 working days of initial receipt of the information.

(c) A medical device telephone report or written report is required to:

(1) Identify the device, including its brand name and common or usual name and, to the extent known, the model, catalog, or other identification number or code of the device, and the manufacturing lot or serial number of the device.

(2) Identify the manufacturer or, in the case of an imported device, identify the importer and the foreign manufacturer;

(3) Identify, by name, address, and telephone number, the individual making the report to FDA;

(4) Describe, to the extent known, the event giving rise to the information received by the manufacturer or importer, including (i) whether any deaths or serious injuries have occurred and (ii) the number of persons who died or were seriously injured. (If the report is required under paragraph (a)(2)(i) of this section, the description of the event shall include a copy of the article.);

(5) Identify, by name and address, the person submitting the information to the manufacturer or importer;

(6) State whether the manufacturer or importer intends to submit additional information, and, if so, when such information will be submitted; and

(7) State whether the reported event has occurred or is occurring more frequently or with greater severity than is stated in the labeling for the device or, if there is not any pertinent statement in the labeling, than is usual for the device, if such information is available.

(d)(1) A manufacturer or importer shall report to FDA as required under this part each time it receives or otherwise becomes aware of information described in paragraph (a) of this section, even if an event of the same or a similar nature has been reported previously to FDA. A medical device report is required under paragraph (a) of this section even if the manufacturer or importer believes that the event that requires a report is due to user error, the failure to service or maintain the device properly, the use of the device beyond its labeled useful life, or any other reason not listed under paragraph (d) (2) or (3) of this section.

(2) Only one medical device report is required under paragraph (a) of this section if the manufacturer or importer becomes aware, from more than one source, of information concerning the same patient and the same event.

(3) A medical device report is not required if within the time period specified under paragraph (b) of this section, the manufacturer or importer determines that:

(i) The information received under paragraph (a)(1)(i) of this section is erroneous in that a death or serious injury has not occurred; or

(ii) The information received under paragraph (a)(1)(i) or (ii) of this section is erroneous in that the device that is the subject of the information was manufactured or imported by another manufacturer or importer; or

(iii) Although the manufacturer or importer has received or otherwise became aware of information that reasonably suggests that a malfunction has occurred, each of the following applies:

(*a*) A death or serious injury has not occurred;

(*b*) The device's labeling sets forth information concerning the potential for death to the type of serious injury that the malfunction may cause or contribute to;

(*c*) The device's labeling describes the malfunction, and the routine service, repair, or maintenance instructions to correct the malfunction;

(*d*) The malfunction has occurred or is occurring at or below the frequency and severity stated in the labeling for the device or, if there is not any pertinent statement in the labeling, at or below the frequency and severity that are usual for the device; and

(*e*) The malfunction does not lead the manufacturer or importer to undertake a remedial action involving any device other than the device product in which the malfunction occurred.

(4) FDA may notify a manufacturer or importer, in writing, that medical device reports of a particular type of event are no longer required.

(e) If FDA determines that the protection of the public health requires information in addition to that included in the medical device report submitted to FDA under paragraph (b) of this section, a manufacturer or importer shall, upon FDA's request, submit such additional information. Any request by FDA under this paragraph will be in writing, state the reason or purpose for which the information is being requested, and specify a due date for the submission of such information. Additional items that may be requested include:

(1) Model, catalog, or other identification number or code of the device.

(2) Manufacturing lot or serial number of the device.

(3) A complete description of the event giving rise to the information received by the manufacturer or importer, including (i) whether any deaths or serious injuries have occurred and (ii) the number of persons who died or were seriously injured. If a complete description is unavailable, the manufacturer or importer shall explain the reason for the unavailability of such description.

(4) Any evaluation of the risk of death or serious injury, including failure analysis, and copies of any laboratory testing or analyses available to or used by the manufacturer or importer.

(5) Any available evaluation by a practitioner, such as a physician or dentist, licensed by law to use or order the use of the device, of the event described in the medical device report.

(6) Any evaluation or other determination available to or used by the manufacturer or importer as to whether the event described in the medical device report is or is not attributable to the device and the basis for such determination.

(7)(i) All the information on the basis of which the manufacturer or importer determined that the reported event has occurred or is occurring more frequently or with greater severity than is stated in the labeling for the device or, if there is not any pertinent statement in the labeling, than is usual for the device; and (ii) any evaluation or analysis available to or used by the manufacturer or importer in making this determination.

(8) If the manufacturer or importer determines that the event described in the medical device report is attributable to the device, an outline of the plan for remedial action or, if the manufacturer or importer determines that a remedial action is unnecessary, the basis for such determination.

(9) A copy of any proposed remedial action communication and the names and addresses of recipients of the communication.

(10) Information concerning the device's manufacture, e.g., the total number manufactured or the number in the same batch, lot, or equivalent unit of production, the location and date of manufacture, and the device's expiration date, if any.

(11) Information concerning the device's distribution, e.g., the location and number of devices in inventory stock and distribution channels, a list of all consignees, and the dates of distribution.

(Information collection requirements approved by the Office of Management and Budget under number .)

§ 803.31 Complaint files.

(a) An importer shall establish a complaint file and maintain a record of any information, including any written or oral communication, received by the importer concerning a death, serious injury, or device malfunction that requires a report under § 803.24. The file also is required to contain a copy of any medical device report submitted to FDA under § 803.24(b) and any additional information submitted to FDA under § 803.24(e).

(b) An importer shall retain copies of records maintained under paragraph (a) of this section for a period of 2 years from the date that the medical device report or additional information is submitted to FDA under § 803.24 (b) or (e), even if the importer has ceased importing the device that is the subject of the report or the additional information.

(c) An importer shall maintain the complaint file established under this section at the importer's principal business establishment. An importer that also is a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198. An importer shall permit any authorized FDA employee at all reasonable times to have access to and to copy and verify the records contained in the complaint file.

(d) A manufacturer shall retain copies of records of any information, including any written or oral communication, received by the manufacturer concerning a death, serious injury, or device malfunction that requires a report under § 803.24. The manufacturer also shall retain a copy of any medical device report submitted to FDA under § 803.24(b) and any additional information submitted to FDA under § 803.24(e). The manufacturer shall retain the records referred to in this paragraph for a period of 2 years from the date that the report or additional information is submitted to FDA under § 803.24 (b) or (e) or for a period of time equivalent to the design and expected life of the device, whichever is greater. The manufacturer may maintain as part of its complaint file under § 820.198 the records referred to in this paragraph. The manufacturer shall permit any authorized FDA employee at all reasonable times to have access to and to copy and verify the records referred to in this paragraph.

(Information collection requirements approved by the Office of Management under number.)

§ 803.33 Where to submit a report.

(a) Any telephone report required under this part shall be provided to 301-427-7500.

(b) Any written report or additional information required under this part shall be submitted to the Device Monitoring Branch (HFZ-343), Center for Devices and Radiological Health, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

§ 803.36 Exemptions from reporting.

A manufacturer or importer otherwise subject to this part is exempt from reporting as required under this part, if the manufacturer or importer:

(a) Is a practitioner who is licensed by law to prescribe or administer devices intended for use in humans and who manufactures or imports devices solely for use in the course of that individual's professional practice.

(b) Is a person who manufactures or imports devices intended for use in humans solely for such person's use in research or teaching and not for sale or under an investigational device exemption granted under Part 812 or Part 813.

PART 1002—RECORDS AND REPORTS

3. Part 1002 is amended in § 1002.20 by adding new paragraph (c), to read as follows:

§ 1002.20 Reporting of accidental radiation occurrences.

* * * * *

(c) If a manufacturer is required to report to the Director under paragraph (a) of this section and also is required to report under Part 803 of this chapter, the manufacturer shall report in accordance with Part 803. If a manufacturer is required to report to the Director under paragraph (a) of this section and is not required to report under Part 803, the manufacturer shall report in accordance with paragraph (a) of this section.

PART 1003—NOTIFICATION OF DEFECTS OR FAILURE TO COMPLY

4. Part 1003 is amended in § 1003.10 by adding new paragraph (c), to read as follows:

§ 1003.10 Discovery of defect or failure of compliance by manufacturer; notice requirements.

* * * * *

(c) If a manufacturer is required to notify the Secretary under paragraph (a) of this section and also is required to report to the Food and Drug Administration under Part 803 of this chapter, the manufacturer shall report in accordance with Part 803. If a manufacturer is required to notify the Secretary under paragraph (a) of this section and is not required to report to the Food and Drug Administration under Part 803, the manufacturer shall notify the Secretary in accordance with paragraph (a) of this section.

Interested persons may, on or before October 15, 1984, submit to the Dockets Management Branch (address above) written comments regarding the amendments conforming §§ 600.14, 1002.20, and 1003.10 to this final rule. If FDA decides on the basis of comments received that any change to the conforming amendments is necessary, it will publish the change in the **Federal Register**. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. November 13, 1984.

(Secs. 502(t), 510, 519, 701(a), 704 (a) and (e), 52 Stat. 1055, 76 Stat. 792–795 as amended, 90 Stat. 564–565, 578, 581 (21 U.S.C. 352(t), 360, 360i, 371(a), 374 (a) and (e)); secs. 215, 351, 354–360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n))

Dated: August 27, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-23910 Filed 9-13-84; 8:45 am]

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federal register

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Part VIII

Office of Management and Budget

Budget Rescissions and Deferrals; Cumultative Report

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1984.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of September 1, 1984 of nine rescission proposals and 65 deferrals contained in the first twelve special messages of FY 1984. These messages were transmitted to the Congress on October 3, November 17, December 14 and December 21, 1983; and January 12, February 1 and 22, March 26, May 8 and 21, June 20, and July 20, 1984.

Rescissions (Table A and Attachment A)

As of September 1, 1984, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the nine rescissions proposed by the President in 1984.

Deferrals (Table B and Attachment B)

As of September 1, 1984, $1,946.0 million in 1984 budget authority was being deferred from obligation and $10.8 million in 1984 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1984.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 48, FR p. 45730, Thursday, October 6, 1983
Vol. 48, FR p. 53060, Wednesday, November 23, 1983
Vol. 48, FR p. 56720, Thursday, December 22, 1983
Vol. 48, FR p. 57098, Tuesday, December 27, 1983
Vol. 49, FR p. 2076, Tuesday, January 17, 1984
Vol. 49, FR p. 4692, Tuesday, February 7, 1984
Vol. 49, FR p. 7342, Tuesday, February 28, 1984
Vol. 49, FR p. 13096, Monday, April 2, 1984
Vol. 49, FR p. 20234, Friday, May 11, 1984
Vol. 49, FR p. 22032, Thursday, May 24, 1984
Vol. 49, FR p. 26014, Monday, June 25, 1984
Vol. 49, FR p. 30155, Thursday, July 26, 1984

David A. Stockman,
Director, Office of Management and Budget.

TABLE A

STATUS OF 1984 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$ 636.4
Accepted by the Congress	-55.4 a/
Rejected by the Congress	-581.0
Pending before the Congress	$ -0-

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a/ These amounts were available for obligation between March 28 and August 22, 1984 when the Second Supplemental Appropriations Act (P.L. 98-396) was enacted.

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TABLE B

STATUS OF 1984 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$ 7,434.5
Routine Executive releases through September 1, 1984 (OMB/Agency Releases of $5,548.2 million and cumulative adjustments of -$86.5 million)	-5,461.7
Overturned by the Congress	-16.0
Currently before the Congress	$ 1,956.8 a/

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a/ This amount includes $10.8 million in outlays for a Department of the Treasury deferral (D84-16).

Attachments

BILLING CODE 3110-01-M

Attachment A - Status of Rescissions - Fiscal Year 1984

As of September 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payment for operation of low-income housing	R84-2		331,431	2-1-84		331,431	3-28-84	
DEPARTMENT OF THE INTERIOR								
National Park Service								
Land acquisition	R84-3		30,000	2-1-84	30,000	30,000	3-28-84	P.L. 98-396
DEPARTMENT OF LABOR								
Occupational Safety and Health Administration	R84-1		1,700	12-21-83		1,700	3-19-84	
OTHER INDEPENDENT AGENCIES								
Corporation for Public Broadcasting								
Public broadcasting fund	R84-9		20,000	2-1-84		20,000	3-28-84	
Delaware and Susquehana River Basin Commissions								
Salaries and expenses, Delaware River Basin Commission	R84-4		19	2-1-84		19	3-28-84	
Salaries and expenses, Susquehana River Basin Commission	R84-5		24	2-1-84		24	3-28-84	
Panama Canal Commission								
Operating expenses	R84-6A		17,750	2-1-84	17,750	17,750	3-28-84	P.L. 98-396
Capital outlay	R84-6B		7,625	2-1-84	7,625	7,625	3-28-84	P.L. 98-396
OFF-BUDGET FEDERAL ENTITIES								
DEPARTMENT OF AGRICULTURE								
Rural Electrification Administration								
Rural electrification and telephone revolving fund	R84-7		197,862	2-1-84		197,862	3-28-84	
Rural telephone bank	R84-8		30,000	2-1-84		30,000	3-28-84	
Rescissions, total BA			636,411		55,375	636,411		

NOTE:- Amounts rescinded in the Second Supplemental Appropriations Act (P.L.98-396) on August 22, 1984 were available between the date of release and the date of enactment.

Attachment B - Status of Deferrals - Fiscal Year 1984

As of September 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-84
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs	D84-1	10,000		10-3-83					10,000
International Security Assistance									
Foreign military sales credit	D84-30	1,315,000		1-12-84	-1315000				0
Economic support fund	D84-24	303,080		12-14-83					
	D84-24A		2,267,691	1-12-84	-2663571				0
	D84-60	102,000		5-8-84					10,000
Military assistance	D84-31	426,970		1-12-84	-426970				0
DEPARTMENT OF AGRICULTURE									
Soil Conservation Service									
Watershed and flood prevention operations	D84-49	8,138		2-1-84					8,138
Forest Service									
Construction	D84-37	10,014		2-1-84					10,014
Timber salvage sales	D84-2	6,211		10-3-83					
	D84-2A		9,210	1-12-84	-1950				13,471
Expenses, brush disposal	D84-3	42,674		10-3-83					
	D84-3A		12,398	1-12-84					
	D84-3B		778	5-8-84					55,850
DEPARTMENT OF COMMERCE									
International Trade Administration									
Participation in U.S. expositions	D84-32	550		1-12-84					550
National Oceanic & Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D84-4	33,600		10-3-83	-33600				0

Attachment B - Status of Deferrals - Fiscal Year 1984

As of September 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-84
DEPARTMENT OF DEFENSE - MILITARY									
Operation and Maintenance									
Environmental restoration, defense.........	D84-33	75,000		1-12-84	-75000				0
Military Construction									
Military construction, all services........	D84-5	414,597		10-3-83					
	D84-5A		488,340	12-14-83	-734902			129,648	297,683
Family Housing, Defense									
Family housing, Air Force..................	D84-6	53,000		10-3-83					
	D84-6A		20,131	12-14-83	-73131				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.......................	D84-7	777		10-3-83					
	D84-7A		385	1-12-84					1,162
DEPARTMENT OF EDUCATION									
Office of Postsecondary Education									
Higher education............................	D84-38	500		2-1-84	-500				0
DEPARTMENT OF ENERGY									
Atomic Energy Defense Activities									
Atomic energy defense activities...........	D84-62	1,050		6-20-84					
	D84-62A		206	7-20-84					1,256
Energy Programs									
General science and research activities....	D84-63	700		6-20-84					700
Energy supply, research and development activities................................	D84-39	10,052		2-1-84					
	D84-39A		800	6-20-84	-1999				8,853
Uranium supply and enrichment activities...	D84-8	130,000		10-3-83					130,000
Fossil energy research and development.....	D84-21	20,326		11-17-83	-20326				
	D84-21A		500	12-14-83					
	D84-21B		8,993	2-1-84					
	D84-21C		150	6-20-84					
	D84-21D		771	7-20-84					10,414
Fossil energy construction.................	D84-25	38,038	1,962	12-14-83					
	D84-25A		23,196	2-1-84				-26000	37,196
Naval petroleum and oil shale reserves.....	D84-40	41,500		2-1-84					
	D84-40A		50	6-20-84					41,550
Energy conservation.........................	D84-41	10,077		2-1-84	-8577			1,218	2,718
Strategic petroleum reserve................	D84-26	12,707		12-14-83					
	D84-26A		256	2-1-84					
	D84-26B		92	7-20-84					13,055
Alternative fuels production...............	D84-22	13,800		11-17-83					
	D84-22A		4,300	2-1-84	-12300			712	6,512
Power Marketing Administrations									
Operation and maintenance, Southwestern Power Administration.........................	D84-42	7,000		2-1-84					
	D84-42A		60	6-20-84					
	D84-42B		41	7-20-84					7,101
Construction, rehabilitation, operation and maintenance, Western Area Power Administration.............................	D84-64	100		6-20-84					
	D84-64A		514	7-20-84					614
Departmental Administration									
Departmental administration................	D84-43	29,053		2-1-84					
	D84-43A		375	6-20-84					
	D84-43B		6,660	7-20-84					36,088
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Centers for Disease Control									
Disease control.............................	D84-27	15,560		12-14-83					15,560

Attachment B - Status of Deferrals - Fiscal Year 1984

As of September 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-84
National Institutes of Health Buildings and facilities	D84-65	8,006		7-20-84					8,006
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	D84-9	6,463		10-3-83					
	D84-9A		571	1-12-84					7,034
Social Security Administration Limitation on administrative expenses (construction)	D84-10	10,571		10-3-83					
	D84-10A		10,490	12-21-83	-13				21,048
DEPARTMENT OF THE INTERIOR									
Minerals Management Service Payments for proceeds, sale of water, Mineral Leasing Act of 1920	D84-11	40		10-3-83					40
Bureau of Reclamation Construction program	D84-61	8,000		5-21-84	-8000				0
Bureau of the Mines Mines and minerals	D84-44	1,667		2-1-84					1,667
National Park Service Land acquisition and state assistance (contract authority)	D84-23	30,000		11-17-83					
	D84-23A		2,700	2-1-84				-30000	2,700
Construction (trust fund)	D84-50	14,000		2-22-84		-14000	98-332		0
Office of the Secretary Office of Water Policy	D84-51	300		2-22-84	-300				0
DEPARTMENT OF JUSTICE									
Interagency Law Enforcement Organized crime drug enforcement	D84-57	272		3-26-84					272
Federal Bureau of Investigation Salaries and expenses	D84-58	42,000		3-26-84					42,000
Federal Prison System Buildings and facilities	D84-28	22,026		12-14-83					
	D84-28A		23,752	1-12-84					45,777
Office of Justice Assistance, Research and Statistics Law enforcement assistance	D84-52	296		2-22-84					296
DEPARTMENT OF STATE									
International Organizations and Conferences Contributions to international organizations	D84-46	4,723		2-1-84					4,723
Contributions for international peacekeeping activities	D84-45	10,879		2-1-84					10,879
United States emergency refugee and migration assistance fund	D84-12	37,928		10-3-83					
	D84-12A		192	1-12-84	-192				37,928
United States bilateral science and technology agreements	D84-13	2,000		10-3-83					2,000
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration Railroad research and development	D84-53	578		2-22-84					578
Federal Aviation Administration Facilities, engineering and development	D84-59	360		3-26-84					360
Construction, Washington Metropolitan Airports	D84-54	277		2-22-84					277

Attachment B - Status of Deferrals - Fiscal Year 1984

As of September 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-84
Facilities and equipment (airport and airway trust)	D84-14	1,083,268		10-3-83	-153063				930,205
U.S. Coast Guard									
Retired pay	D84-55	13,350		2-22-84					13,350
Maritime Administration									
Ship construction	D84-47	7,000		2-1-84					7,000
Office of the Secretary									
Transportation planning, research and development	D84-56	160		2-22-84					160
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance trust fund	D84-15	56,068		10-3-83	-3336			111	52,843
	D84-16	15,209		10-3-83	-15209			10,808	10,808
Bureau of the Mint									
Expansion and improvements	D84-29	256		12-14-83	-256				0
OTHER INDEPENDENT AGENCIES									
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D84-17	13,148		10-3-83					13,148
Railroad Retirement Board									
Milwaukee Railroad restructuring, administration	D84-18	85		10-3-83					
	D84-18A		147	12-14-83					232
Tennessee Valley Authority									
Tennessee Valley Authority fund	D84-19	7,000		10-3-83					7,000
	D84-48	2,192		2-1-84					2,192
United States Information Agency									
Salaries and expenses	D84-34	2,400		1-12-84					2,400
Salaries and expenses (special foreign currency program)	D84-35	2,900		1-12-84					2,900
Acquisition and construction of radio facilities	D84-36	9,645		1-12-84					9,645
United States Railway Association									
Administrative expenses	D84-20	2,050		10-3-83		-2050	98-181		0
TOTAL, DEFERRALS		4,548,798	2,885,711		-5,548,195	-16,050		86,497	1,956,761

Notes: Deferral D84-25 was reported as part of D84-21 in the second special message. In the third special message the deferral was reported separately and adjusted upward slightly.

Of the amount deferred as D84-25, $26 million was transferred to Fossil energy research and development pursuant to the 1984 Interior and Related Agencies Appropriations Act.

All of the above amounts represent budget authority except one general revenue sharing deferral (D84-16) of outlays only.

The Soil Conservation Service deferral was erroneously transmitted as D84-36 in the sixth special message. It has been renumbered as D84-49.

[FR Doc. 84-24425 Filed 9-13-84; 8:45 am]

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

Avocados Grown in South Florida and Imported Avocados; Grade and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which established grade and maturity requirements for Florida avocados and imported avocados. The rule is necessary to assure the shipment of ample supplies of mature avocados of acceptable quality in the interest of producers and consumers.

EFFECTIVE DATE: October 17, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on May 18, 1984, and published in the **Federal Register** (49 FR 21697) on May 23, 1984. The rule added § 915.329 (Florida Avocado Regulation 29) under Marketing Order 915 effective May 23, 1984, and § 944.27 (Avocado Import Regulation 35) under Part 944 effective May 28, 1984, establishing minimum grade and maturity requirements for shipments of fresh avocados grown in South Florida and avocados imported into the United States, effective through April 30, 1985. The rule provided that interested persons could file public comments through June 22, 1984, none of which were received.

The Florida avocado regulation was based upon the recommendation of the Avocado Administrative Committee comprised of Florida avocado producers and handlers, and a public representative, and was issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The avocado import regulation (7 CFR Part 944) was issued under section 8e (7 U.S.C. 608e-1) of the Act. The Secretary finds that this action will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule published in the **Federal Register** (49 FR 21697) is adopted as a final rule.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: September 11, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-24476 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 915

Avocados Grown in South Florida; Container Regulation Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the dimensions of a currently authorized container used solely for export shipments of avocados to add more flexibility in the packing of fruit of larger sizes and varieties. The rule is designed to assure that export shipments of avocados are in containers suitable for that purpose.

DATES: *Effective date:* September 12, 1984.

Comments due: October 17, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Avocado Administrative Committee and upon other available information.

This rule revises the inside dimensions of the only container currently authorized solely for export shipments of avocados from 14½ x 11 1/16 x 3 5/16 inches, to 14⅛ x 11 1/16 and depth varying from 3⅛ to 5 inches. Authorizing handlers to vary the depth of this container from 3⅛ to 5 inches is designed to provide more flexibility in the packing of avocados by permitting larger sized fruit to be packed in the container, including the larger fruited varieties. Current requirements that the avocados be packed in a single layer in this container, and that the net weight of the avocados be not less than 8.5 pounds would remain in effect. Specifying container dimensions, the minimum net weight of avocados packed in the container, and pack requirements are designed to insure that avocados are not damaged during transit. This particular container requirement is necessary to protect the quality of avocados shipped to export markets, thereby expanding the demand for avocados in such markets.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this final rule until 30 days afer publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. In addition, this action relieves restrictions on handlers, the rule was unanimously recommended by the committee at a public meeting, handlers are aware of the rule's provisions and need no additional time to comply therewith, and no constructive purpose would be served by delaying the effective date beyond the day of signature of the rule. The rule relieves handling requirements by slightly revising container specifications to provide more flexibility in the packing of additional sizes and varieties of avocados for export. The rule provides a 30-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the rule need be received within 30 days, so that any necessary changes can be made promptly to enhance orderly marketing of Florida avocados. All comments received will be considered prior to finalization of this interim rule. It is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Agricultural marketing service, marketing agreements and orders, Avocados, Florida.

PART 915—[AMENDED]

Therefore, § 915.305 is amended by revising the introductory text in paragraph (a), and paragraph (a)(2), to read as follows:

§ 915.305 Florida Avocado Container Regulation.

(a) On and after September 12, 1984 no handler shall handle any avocados for the fresh market from the production area to any point outside thereof in containers having a capacity of more than 4 pounds of avocados unless the containers meet the requirements specified in this section: *Provided*, That the containers authorized in this section shall not be used for handling avocados for commercial processing into products pursuant to § 915.55(c).

* * * * *

(2) Containers with inside dimensions of 14½ x 11$\frac{1}{16}$ and depth varying from 3½ to 5 inches: *Provided*, That such containers shall only be used for export shipments.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: September 12, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–24553 Filed 9–14–84; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 917

Fresh Pears, Plums, and Peaches Grown in California; Further Amendment of Certified Farmers Markets Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises provisions governing the exemption from regulations for California pears handled at certified farmers markets. Such provisions are designed to prevent such exempt fruit from entering fresh channels for other than the specified purposes and to ensure that the fruit sold at certified farmers markets is of acceptable quality.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The final rule is issued under the marketing agreement, as amended, and Marketing Order 917, as amended (7 CFR Part 917), regulating the handling of pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Pear Commodity Committee, which operates under Marketing Order 917, recommended the change in the rule covering pears that are sold at certified farmers markets at its annual regulatory meeting on June 27, 1984. The rule is based upon committee recommendations, information submitted by the committee, and other available information. The rule would extend to pears certain requirements recently adopted for peaches, plums, and nectarines shipped to certified farmers markets within the State of California (49 FR 28540). Pears were not covered under the recent rule because the rule change was needed for peaches, plums, and nectarines before the start of the 1984 pear season and the pear committee was not scheduled to meet until after the start of the 1984 season for the other fruits.

Currently, a person who both produces and handles the pears may sell at a certified farmers market up to 200 pounds of such fruit to any one person during any one day. Such fruit must meet minimum quality requirements specified in the California Food and Agricultural Code. These shipments are exempt under § 917.143(b) of the marketing order. The intent of the exemption provision was to help small growers by permitting them to sell fruit directly to consumers at the premises where the fruit is grown, at a nearby packinghouse or retail stand, or at certified farmers markets.

During past years, commercial packers have been shipping fruit sorted out at the packinghouse to certified farmers markets in increasing quantities. Since such shipments consist of fruit which is not eligible to be sold in commercial outlets, such fruit tends to be of low quality. Shipment of such fruit was not contemplated when the exemption provision was authorized.

There have been instances of fruit shipped from packinghouses to certified farmers markets which has not met minimum quality requirements. Also, there are indications that some fruit has been reported as handled under the certified farmers market exemption but diverted to commercial fresh market outlets. Because such fruit is shipped from packinghouses and is handled with properly graded fruit, it is difficult to ascertain compliance with marketing order regulations. The rule is designed to prevent such exempt fruit from entering fresh channels for other than the specified purposes and to ensure that the fruit sold at certified farmers markets is of acceptable quality.

The final rule would restrict the sale of pears sorted out by a handler and sold at certified farmers markets to pears which meet all the quality requirements stated in Pear Regulation 12 (§ 917.461, i.e., the pears must grade at least U.S. Combination) except that they are soft and overripe. To provide additional safeguards, all pears sorted out by a handler (1) would be subject to the inspection and certification, assessment, and reporting requirements of the order and (2) must be packed in containers marked clearly that the fruit is for sale only at certified farmers markets. The container marking requirement is intended to assure that the fruit is sold only as specified.

Similar action was recently taken in regard to peaches and plums handled under Marketing Order 917 and nectarines handled under Marketing Order 916. It is highly desirable that the regulations provide equal treatment to all fruits covered under these two marketing orders.

The Secretary finds that it is impracticable and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on this action at an open meeting at which the committee, without opposition, recommended amending the regulation as specified in the final rule. California pear handlers have been apprised of the amendment and the effective date. The provisions in the final rule are the same as those in a proposed rule published in the **Federal Register** (49 FR 32367) on August 14, 1984. The proposed rule provided that comments could be received through August 24, 1984. One comment was received. It was submitted by the California Department of Food and Agriculture and supported the proposed change. It is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

The final rule amends § 917.143 (7 CFR Part 917) by revising paragraph (b)(4) to read as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.143 Exemptions.

* * * * *

(b) * * *

(4) Such pears, plums and peaches are handled by the person who produces them; and the handling takes place (i) on the premises where grown, (ii) at a packinghouse or retail stand nearby which is operated by said handler, or (iii) at a certified farmers market in compliance with section 1392 of the regulations of the California Department of Food and Agriculture: *Provided*, That the exemption for certified farmers markets shall not apply to fruit sorted out by a handler unless such fruit is packed in containers clearly and legibly marked to show that the fruit contained therein is only to be sold at a certified farmers market, and the handler complies with regulations established under §§ 917.37, 917.41(a)(1), 917.45, and 917.50, except that such fruit may be handled to such markets if the fruit fails to meet the applicable grade only on account of being soft and overripe.

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Dated: September 11, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–24477 Filed 9–14–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM–11; Special Conditions No. 25–ANM–5]

Special Conditions; Israel Aircraft Industries Model 1125 Westwind Astra Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101(b) of the Federal Aviation Regulations (FAR) to Israel Aircraft Industries (IAI) for the Model 1125 Westwind Astra series airplane. The airplane will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) and an unusually high operating altitude (45,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

EFFECTIVE DATE: October 17, 1984.

FOR FURTHER INFORMATION CONTACT: James Walker (ATTCS) or Mark Quam (45,000 feet operation), Regulation and Policy Office, ANM–110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone: (206) 431–2116/2134.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1981, IAI, Ben-Gurion International Airport, Israel, filed an application for a type certificate in the transport airplane category for the 1125 series airplane designated as the Model 1125 Westwind Astra series airplane. The 1125 series airplane is a derivative version of the 1121, 1123, and 1124 series airplanes, for which FAA Type Certificate No. A2SW was issued. The aircraft has two Garrett Model TFE–731–3B–100G turbofan engines mounted on pylons extending from the aft fuselage, a maximum takeoff weight of 23,500 pounds, a 9-passenger interior, and a 45,000-foot ceiling. Type certification of the Model 1125 Westwind Astra series airplane is being processed as a new type certificate in accordance with Subpart B of Part 21 of the FAR.

Israel Aircraft Industries filed an application for certification to operate the Model 1125 Westwind Astra series airplane up to a maximum altitude of 45,000 feet. The oxygen protective capability is limited to 40,000 feet (in this case the passenger equipment). If failure occurs leading to cabin altitudes in excess of 40,000 feet, the event will most likely be catastrophic. Further, with the ATTCS installed and operating, takeoffs can be made with engine thrust set at less than the maximum takeoff thrust approved for the airplane under existing conditions. If an engine fails during takeoff, the automatic system will reset the fuel control fuel metering schedule on the operating engine to provide the maximum takeoff thrust.

Discussion of Comments

A notice of proposed special conditions was published in the **Federal Register** (49 FR 9906; March 16, 1984) for comment. The only comments received were relative to the high altitude special condition proposals.

Two commenters objected to the reduction in the structural inspection interval required for operation at higher altitudes.

FAA Response: The inspection program for the pressure vessel is necessary to assure that a structural failure causing rapid decompression while operating at the higher altitudes is extremely improbable. Service experience has shown that decompressions due to structural failures are not extremely improbable. The consequences of a rapid decompression above 41,000 feet could be catastrophic while the same failure condition probably would not be at lower altitudes. Rapid decompressions are not usually catastrophic because most failures occur at altitudes within the protective capability of the oxygen equipment. Application of this inspection criteria to structure other than the pressure vessel is not necessary because, under present inspection programs, structural damage in these areas is usually detected before progressing to a catastrophic failure condition.

The inspection intervals prescribed under § 25.571 assure that structural damage will be detected before the residual strength level falls below limit load. Normally the critical crack associated with a limit load condition is orders of magnitude away from a catastrophic condition. However, the critical crack length associated with cabin decompression at high altitude defines a potentially catastrophic condition. Both conditions must be investigated.

One commenter stated the last part of the "note" of the special condition Figure 4 that allows only two minutes exceedence of 25,000 feet does not correspond to the 4.5 minutes allowed in the basic curve of Figure 4. The two minutes should be replaced by five minutes.

FAA Response: The FAA does not concur. The basic Figure 4 criteria limits the maximum altitude to 37,000 and is based on the assumption that all occupants will be breathing oxygen after the failure leading to decompression. In the event the basic Figure 4 criteria cannot be met, the alternative criteria (see Figure 4) is provided. This criteria allows the cabin altitude to exceed 37,000 feet, but not more than 40,000 feet. The passengers may not be capable of donning oxygen masks when exposed to this altitude range during rapid decompression. To compound the physiological problem, the oxygen dispensing systems have not proven 100 percent reliable. Therefore to prevent permanent physiological damage to the occupants who may pass out before receiving oxygen, or are unable to receive oxygen, the decompression exposure time above 25,000 feet is not to exceed two minutes total time.

Type Certification Basis

The type certification basis is as follows: Part 25 of the FAR effective February 1, 1965, Amendments 25–1 through 25–54; Part 36 of the FAR, Amendments 36–1 through the current amendment; Special Federal Aviation Regulation No. 27, Amendment 27–4 through the current amendment; and the special conditions for high altitude operations and for an ATTCS system contained herein.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual features of the airplane. Special conditions, as appropriate, are now issued after public notice in accordance with §§ 11.28 and 11.49 and will become part of the type certification basis in accordance with § 21.17(a)(2).

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to Israel Aircraft Industries for the Model 1125 Westwind Astra series airplanes:

I. Operation Above 41,000 Feet to 45,000 Feet

A. Pressure Vessel Integrity

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with Special Condition D. (Pressurization) must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

3. In addition to the requirements of § 25.365, the fuselage pressure vessel should be capable of withstanding maximum regulated pressure combined with 1 g flight loads with a frame or stringer failed and two adjacent panels cracked, without total failure of the fuselage or without floor collapse.

B. Ventilation

In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

C. Air Conditioning

In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

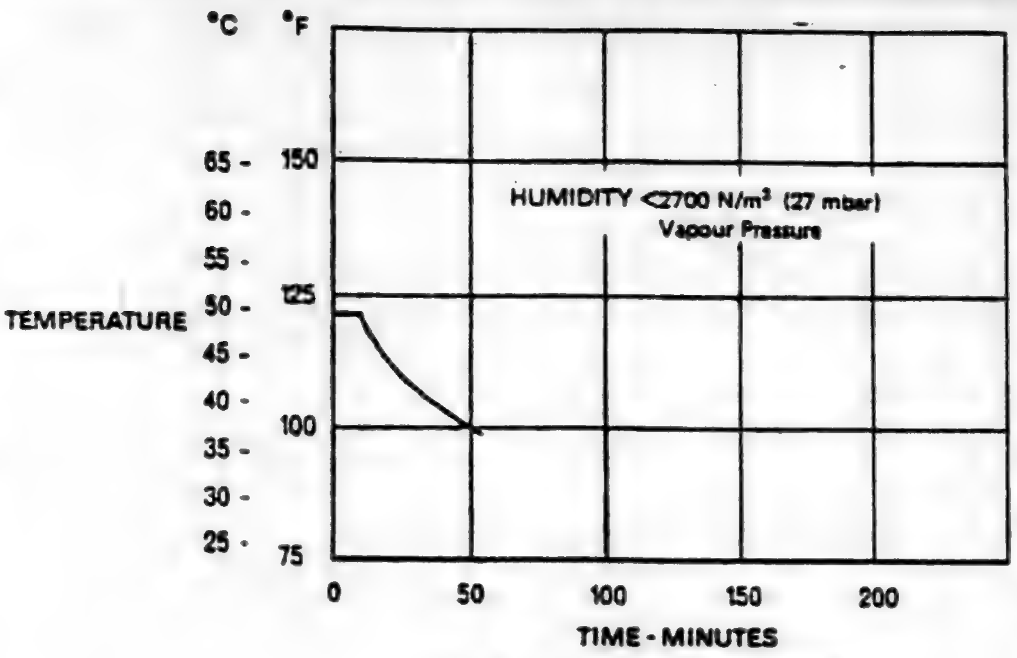

TIME - TEMPERATURE RELATIONSHIP

FIGURE 1

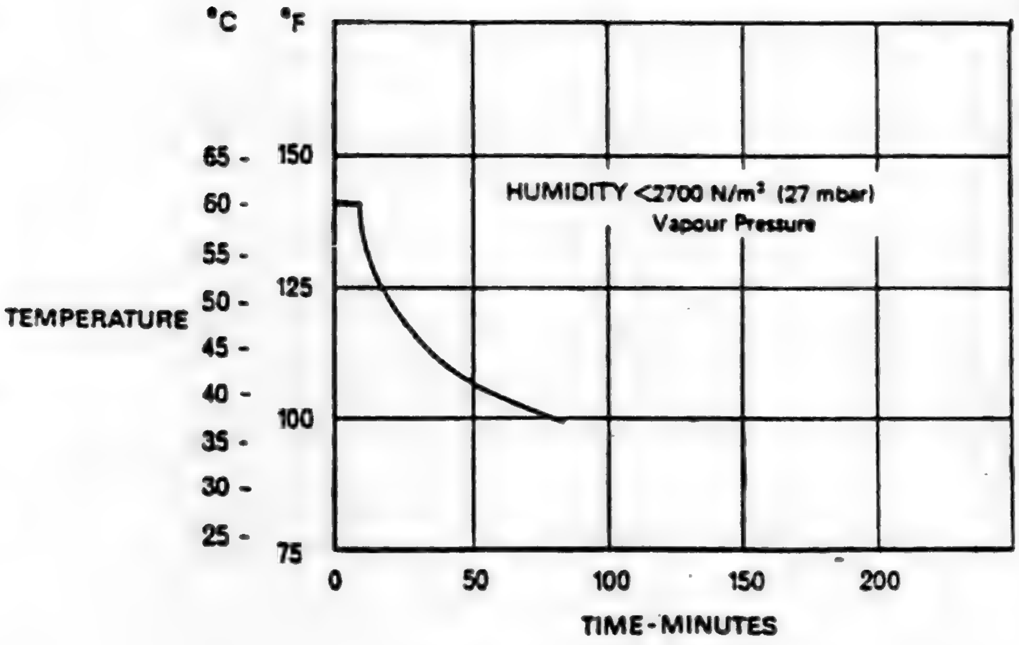

MAXIMUM TIME-TEMPERATURE RELATIONSHIP

FIGURE 2

D. Pressurization

In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable double failure in the pressurization system (apply § 25.1309, Amendment 41, if desired).

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs D1 and D2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

For Figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

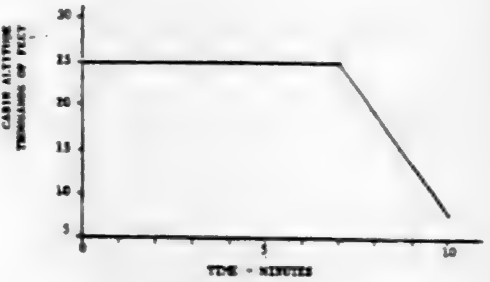

FIGURE 3
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)

For Figure 4, time starts at the moment cabin pressure exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed

25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

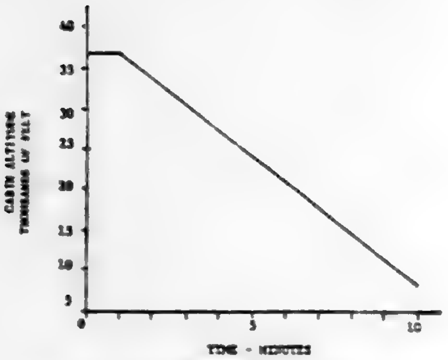

FIGURE 4
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)

E. Oxygen Equipment and Supply

1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for the pilots. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within five seconds.

II. Automatic Takeoff Thrust Control System (ATTCS)

A. General

With the ATTCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase thrust.

B. Definitions

1. *ATTCS.* An ATTCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled thrust increase, and furnish cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATTCS takeoff, the critical time interval between V1 and minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATTCS failure, the resulting minimum flight path thereafter intersects the Part 25 required gross flight path at no less than 400 feet from the takeoff surface. This definition is shown in the following graph (Figure 5):

FIGURE 5.
CRITICAL TIME INTERVALS

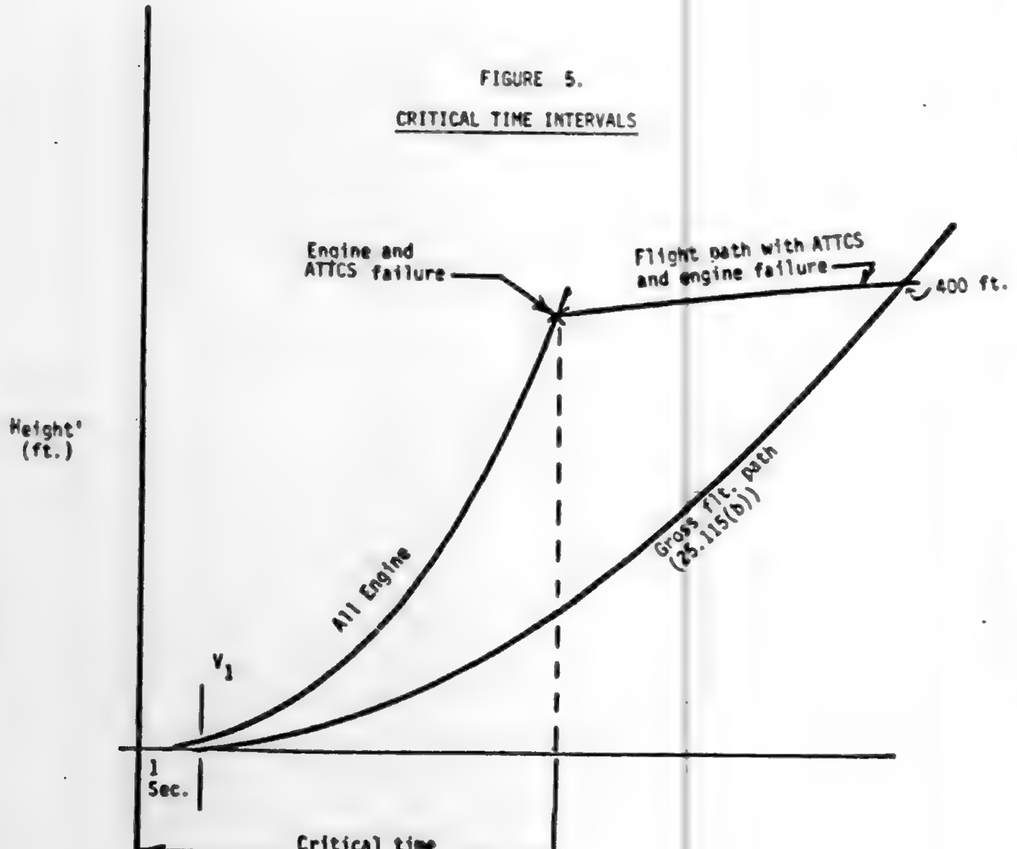

3. *Takeoff Thrust.* Notwithstanding the definition of "takeoff thrust" in Part 1 of the Federal Aviation Regulations (FAR), "takeoff thrust" means each thrust obtained from each initial thrust setting approved for takeoff under these special conditions.

C. Performance Requirements

The applicant must comply with the following performance requirements.

1. The following reliability and performance criteria apply:

a. Automatic Takeoff Thrust Control System (ATTCS) failure during the critical time interval must be shown to be improbable.

b. The concurrent existence of an ATTCS failure and engine failure during the critical time interval must be shown to be extremely improbable.

c. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATTCS system functioning.

D. Thrust Setting

The initial takeoff thrust setting on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust approved for the airplane under existing conditions);

2. That requirement to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power level position; or

3. That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust level to the maximum approved takeoff thrust.

E. Powerplant Controls

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATTCS must be designed to:

a. Apply thrust on the operating engine following an engine failure during takeoff to achieve the selected takeoff thrust without exceeding engine operating limits;

b. Permit manual decrease or increase in thrust up to the maximum takeoff thrust approved for the airplane under existing conditions through the use of the power level. For aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of thrust controlled by the power levels in the event of an ATTCS failure provided the means is located on or forward of the power levers, is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meets the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew before takeoff that the ATTCS is in a condition to operate; and

d. Provides a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. Powerplant Instruments

In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.28 and 11.49)

Note.—This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule at general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

Issued in Seattle, Washington, on August 30, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–24456 Filed 9–14–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–10–AD; Amdt. 39–4913]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes which requires inspection for cracks and repair, as necessary, of the frame to tension tie joints at body station 760 (Group I and II airplanes) or body station 780 (Group III airplanes). This action is prompted by a report of a crack which occurred during fatigue testing. An undetected crack could result in loss of cabin pressurization and extensive structural damage.

EFFECTIVE DATE: October 19, 1984.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM–120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and repair of cracks in the structure was published in the **Federal Register** on April 30, 1984 (49 FR 18310). The comment period for the proposal closed on June 15, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. Due consideration has been given to the one comment which was received from the Air Transport Association of America (ATA).

The ATA, on behalf of one operator, requested that the repetitive inspection interval be increased to 3700 landings to be in agreement with the Service Bulletin. The FAA concurs, as the 3000 landing figure was an editorial error, and paragraph A. of the AD has been revised accordingly.

It is estimated that 72 airplanes of U.S. registry are affected by this AD, that it will take approximately 3 man-hours per airplane to accomplish the required inspection, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of the AD is estimated to be $8640. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the change noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 747 series airplanes, certificated in all categories, listed in Boeing Service Bulletin 747–53–2088, Revision 2, or later FAA approved revisions.

To detect cracks and prevent failure of the frame to tension tie joint structure, accomplish the following unless already accomplished:

A. For airplanes that have been modified in accordance with Service Bulletin 747–53–2088, within the next 500 landings after the effective date of this AD or prior to the accumulation or 8,000 landings, whichever is later, perform a close visual inspection of the tension tie at body station (BS) 760 on Group I and Group II airplanes, and at BS 780 on Group III airplanes, for cracks in the areas identified in Service Bulletin 747–53–2088, Revision 2, or later FAA approved revisions. Repeat inspections at intervals not to exceed 3700 landings. If cracks are found, repair and modify in accordance with Service Bulletin 747–53–2088, Revision 2, or later FAA approved revisions, prior to further pressurized flight. Inspections are to continue after repair.

B. For airplanes that have been modified in accordance with Service Bulletin 747–53–2088, within the next 1000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after modification, whichever is later, perform a close visual inspection of the tension tie at BS 760 on Group I and Group II airplanes, and at BS 780 on Group III airplanes, for cracks in the areas identified for inspection in Service Bulletin 747–53–2088, Revision 2, or later FAA approved revisions. Repeat inspections at intervals not to exceed 8000 landings. If cracks are found, repair in accordance with Service Bulletin 747–53–2088, Revision 2, or later FAA approved revisions, prior to further pressurized flight. Inspections are to continue after repair.

C. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This amendment becomes effective October 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979);

and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 4, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24459 Filed 9-14-84; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2855]

The American College of Obstetricians and Gynecologists; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission Order entered by consent against The American College of Obstetricians and Gynecologists ("ACOG"), 88 F.T.C. 955. In accordance with the ACOG request, the original Order has been modified by deleting Paragraph II(B), which barred the association from advising in favor of or against any relative value scale developed by third parties; and by inserting a provision identical to that contained in the Commission Order entered against *Michigan State Medical Society*, 101 F.T.C. 191. This provision allows ACOG more freedom to discuss any issue, including reimbursement, with third-party payers and governmental entities.

DATES: Consent Order issued on December 14, 1976, Modifying Order issued August 28, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/L-301-18, Selig S. Merber, Washington, D.C. 20580, (202) 634-4662.

SUPPLEMENTARY INFORMATION: In the Matter of The American College of Obstetricians and Gynecologists. Codification appearing at 42 FR 4119 remains unchanged.

List of Subjects in 16 CFR Part 13

Fee schedules, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Order Reopening and Modifying Final Order in Docket No. C-2855

By petition filed May 2, 1984, the American College of Obstetricians and Gynecologists ("ACOG") asked the Commission to reopen and modify the Commission order in Docket No. C-2855 entered by consent against ACOG on December 14, 1976 ("Order"). ACOG requested that the Commission modify the Order by (a) deleting Paragraph II(B) of the Order, which prohibits ACOG from advising in favor of or against any relative value scale developed by third parties (except that ACOG is permitted to provide historical data), and (b) inserting a provision identical to a provision contained in the Commission's Order in *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow ACOG more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. ACOG's petition was placed on the public record and no comments were received.

Upon consideration of ACOG's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(B) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. ACOG has demonstrated that the Order's restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities has caused injury to ACOG and the public that outweighs any benefit that may be derived from the restriction. Modification is also consistent with the Commission's decision in *Michigan State*.

The Order continues to prohibit ACOG from developing or circulating its own relative value guide for use by its members. In addition, although the Order no longer will prohibit ACOG from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were ACOG to negotiate or attempt to negotiate an agreement with any such party or engage in any type of coercive activity to effect such an agreement.

Accordingly,

It is ordered, that this matter be, and it hereby is, reopened and that the Order in Docket No. C-2855 be modified (1) to delete Paragraph II(B) and to redesignate Paragraphs II(C) and II(D) of the Order Paragraphs II(B) and II(C) respectively (2) to renumber Paragraphs III, IV and V of the Order Paragraphs IV, V and VI respectively; and (3) to insert the following:

III

It is further ordered that this order shall not be construed to prevent ACOG from:

A. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government, executive agency, or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

B. Providing information or views, on its own behalf or on behalf of its members, to third-party payers concerning any issue, including reimbursement.

By direction of the Commission.

Issued: August 28, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-24475 Filed 9-14-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

Antibiotic, Nitrofuran, and Sulfonamide Drugs in Animal Feeds; Nitrofurazone and Furazolidone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to provide for interim marketing by Hess & Clark, Inc., of nitrofurazone premixes for use in the manufacture of swine feeds. The regulations are also amended to add Hess & Clark as a sponsor of premixes containing furazolidone for use in combination with other drugs in the manufacture of chicken, turkey, and swine feeds.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 6, 1974 (39 FR 28393) (corrected September 27, 1974) (39 FR 34682), FDA proposed to amend 21 CFR 135.109 (recodified 21 CFR 558.15) by listing those drug sponsors, drug premixes, and combination medicated products for which sponsors had provided commitments to comply with certain regulatory requirements for safety and effectiveness studies. In the final rule published in **Federal Register** of February 25, 1976 (41 FR 8281) (effective March 26, 1976), FDA listed sponsors that had submitted commitments by the required date to undertake the required studies. The final rule inadvertently did not reflect that Hess & Clark had submitted commitments to carry out the required studies for using nitrofurazone premixes to make swine feeds (NADA 6–395). While the rule listed Hess & Clark as a sponsor of furazolidone premixes to be used alone to make feeds for chickens, turkeys, or swine (NADA 9–073), its listing as a sponsor for such use in combination with other drugs was omitted. Accordingly, the Center for Veterinary Medicine is amending 21 CFR 558.15 to properly reflect Hess & Clark's approval.

NADA 6–395 is the subject of a notice of opportunity for hearing (NOOH) on a proposal to withdraw approval, which published in the **Federal Register** of August 17, 1976 (41 FR 34899). NADA 9–073 is the subject of a similar NOOH that published in the **Federal Register** of May 13, 1976 (41 FR 19907). This change in § 558.15 affects neither the NOOH's nor the Center's underlying conclusions in any manner.

This document provides for inclusion of the existing interim approvals in the regulations. It does not involve submission of data to demonstrate safety and effectiveness. Because the applications were approved before July 1, 1975, the sponsor is not required to submit a summary of safety and effectiveness data and information under the freedom of information provisions of 21 CFR 514.11(e)(2)(ii). However, a summary of the basis of approval is available upon request in accordance with 21 CFR 514.11(e)(2)(i).

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—[AMENDED]

Therefore, under the Federal, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.82), § 558.15 is amended in paragraph (g)(1) in the table by removing the entry "SmithKline Animal Health Products," and by adding it at the end of the table under the entry for "Hess & Clark and SmithKline Animal Health Products" as set forth below; and in paragraph (g)(2) by revising the entry "SmithKline Animal Health Products" to read "Hess & Clark and SmithKline Animal Health Products".

§ 558.15 Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals.

* * * * *

(g) * * *
(1) * * *

Drug sponsor	Drug premix	Species	Use levels	Indications for use
Hess & Clark and SmithKline Animal Health Products.	* * *	* * *	* * *	* * *
Do	........do	Swine	0.055 percent (500 g/ton).	Treatment of necrotic enteritis caused by *S. choleraesuis.*

* * * * *

Effective date. September 17, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: September 7, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–24516 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

Indian School Equalization Program; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of Interim rule with request for comments.

SUMMARY: The Bureau published on September 4, 1984 (49 FR 34820) an interim rule revising the present requirements of four (4) "Average Daily Membership" (ADM) count weeks and requires one ADM count week for the timely distribution of funds to Bureau funded schools. The revision will address ADM, count weeks, computation of ADM, provisions for declining enrollment, and the schedule for allotments. This document corrects the September 4 publication to reflect changes made during the review processes under Executive Order 12291. Such changes were erroneously omitted from the document submitted to the Office of Federal Register. For the convenience of the reader, the Bureau is publishing the complete interim rule.

DATES: This document will become effective September 17, 1984. Comments are due October 17, 1984.

ADDRESS: Written comments should be directed to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, DC 20240. If preferred, comments may be delivered to Room 3510, Main Interior Building, 18th and "C" Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Garrett (202) 343–2123.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This interim rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Office of Indian Education Programs during its review and analysis of the student ADM counts of this year and previous years has found that: (1) The differences in ADM among four count weeks are not significant; (2) considerable savings in staff time and funds will be realized by eliminating extra count weeks; (3) the current process delays final allotment until the school year for which the funds were appropriated has virtually ended; and (4) school board members, school supervisors, and Area/Agency personnel have emphasized that instituting effective measures requires earlier notification and allotment of funds. Based on the above four findings, we are proposing to eliminate three of the four count weeks for computing the average daily membership. Section 39.32 is being changed to reflect the reduction of average daily membership count weeks from four to one. In addition, new terms have been added and terms have been redefined to provide clarity for the public. In order to realize these benefits in the school year 1984–85, which would be contrary to the public interest to forego, these regulations have to be in effect by the beginning of the school year. Therefore, in accordance with 5 U.S.C. 553(b)(B), the Bureau finds good cause for the regulations to take effect without proposed rule making. Further, in accordance with 5 U.S.C. 553(d)(3), the Bureau finds good cause for the regulations to be effective upon publication, since otherwise, allotments of funds to schools would be delayed.

The policy of the Bureau is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this interim rule to the location identified in the Address section of this preamble. Comments must be received on or before the date specified in the DATE section of this preamble.

The Bureau of Indian Affairs has determined that this rule is not a major rule within the terms of Executive Order 12291 because it will not have a major effect on the economy and will not result in a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, because of these factors, it does not have a significant economic effect on a substantial number of small entities within the terms of the Regulatory Flexibility Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.*

The primary author of this document is Nancy Garrett, Deputy Director, Office of Indian Education Programs, 18th and "C" Streets, NW., Washington, DC 20240, (202) 343-2123.

List of Subjects in 25 CFR Part 39

Indian education, Schools, Grant programs—education, Grant programs—Indians.

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM

25 CFR Part 39 is amended as follows:

1. In § 39.30, paragraphs (b) and (c) are revised as set forth below, and paragraphs (d), (e) and (f) are removed.

§ 39.30 Definitions.

* * * * *

(b) "Count week" means the last full week in September for the purposes of calculating allotments.

(c) "Student classification" means any special student need area that receives a separate weighting through the Indian School Equalization Formula.

2. Section 39.32 is revised to read as follows:

§ 39.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 39.2(f) shall be determined during the last full school week in September during which all students eligible under the definition shall be counted by student program classification.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices and, in the case of off-reservation boarding schools, Area education offices together with each school's supervisor and school board chairperson where a board exists shall be responsible for certifying the validity of each school's student counts. The September ADM will be used to determine final allotments for the school year.

3. Section 39.35 is revised to read as follows:

§ 39.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the ADM for the September count week of the current year.

4. Section 39.36 is revised to read as follows:

§ 39.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average of the current and previous years' September ADM count.

5. In § 39.50 paragraph (d) "Initial allotments" is redesignated as paragraph (e) and revised; a new paragraph (d) "Final allotment" is added; paragraph (e) "Responsible fiscal agent" is redesignated as paragraph (f) with no change, and paragraph (f) "Tentative allotments" is redesignated as paragraph (g) and revised to read as follows:

§ 39.50 Definitions.

* * * * *

(d) "Final allotment" means that notice of funds available to schools, based on the September student count as computed through the Indian School Equalization Formula (ISEF) based on full distribution of Indian School Equalization Program (ISEP) funds available for the fiscal year.

(e) "Initial allotment" means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula prior to any adjustments due to fluctuating student counts.

* * * * *

(g) "Tentative allotment" means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula based on a proposed appropriation in the President's budget for the next fiscal year.

6. Section 39.51 is revised to read as follows:

§ 39.51 Notice of allotments.

The Director shall notify school administrators and boards of allotments of funds based on the September ADM count established under Subpart B of this Part according to the following schedule:

(a) Tentative allotments shall be made by March 15 of the prior fiscal year;

(b) Initial allotments shall be made not later than November 15 of the fiscal year; and

(c) Final allotments shall be made not later than January 15 of the fiscal year.

Dated: September 7, 1984.

Ken Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-24077 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-8-FRL-2671-1]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants Delegation of Authority in Region VIII

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice is to clear up any confusion which may have arisen concerning the specific subparts of the Federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) which are delegated to each of the States in EPA Region VIII to enforce. These States are Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844-6131.

SUPPLEMENTARY INFORMATION: The New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) are Federal regulations for industries and pollutants of national concern. These regulations were first promulgated in 1971 and have been delegated to the States for enforcement since 1974. The list of affected industries has grown each year, however, and not all industries have a potential for locating in each of the States. As each new subpart has been added, every State has not always adopted an equivalent regulation to enable State enforcement.

The State of Utah has incorporated by reference all present and future NSPS and NESHAPS regulations and does have the authority and resources to enforce them. Utah will automatically receive delegation of each new NSPS and NESHAPS subpart, as it is promulgated. The other States must adopt an equivalent State regulation prior to delegation.

The lists below indicate the delegation status of each State in Region VIII for each NSPS and NESHAPS subpart. This Notice is issued under the authority of Sections 111 and 112 of the Clean Air Act.

(Secs. 111 and 112, 42 U.S.C. 7412 of the Clean Air Act)

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: August 8, 1984.

John G. Welles,
Regional Administrator.

PART 60—[AMENDED]

Title 40, Part 60 of the Code of Federal Regulations is amended as follows:

Subpart A—General Provisions

§ 60.4 [Amended]

In § 60.4 the table below is added as follows:

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS FOR REGION VIII

Subpart	State					
	Colorado	Montana	North Dakota	South Dakota	Utah	Wyoming
A General provisions						
D Fossil fuel fired steam generating units constructed after 8/17/71	(*)	(*)	(*)	(*)	(*)	
Da Electric utility steam generating units constructed after 9/18/75	(*)	(*)	(*)	(*)	(*)	(*)
E Incinerators	(*)	(*)	(*)	(*)	(*)	(*)
F Portland cement plants	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric acid plants	(*)	(*)	(*)	(*)	(*)	(*)
H Sulfuric acid plants	(*)	(*)	(*)	(*)	(*)	(*)
I Asphalt concrete plants	(*)	(*)	(*)	(*)	(*)	(*)
J Petroleum refineries	(*)	(*)	(*)	(*)	(*)	(*)
K Storage vessels for petroleum liquids constructed after 6/11/73 prior to 5/19/78	(*)	(*)	(*)	(*)	(*)	(*)
Ka Storage vessels for petroleum liquids constructed after 5/18/78	(*)	(*)	(*)	(*)	(*)	(*)
L Secondary lead smelters	(*)	(*)			(*)	(*)
M Secondary brass and bronze ingot production	(*)	(*)			(*)	(*)
N Iron and steel plants	(*)	(*)			(*)	(*)
O Sewage treatment plants	(*)	(*)			(*)	(*)
P Primary copper smelters	(*)	(*)	(*)	(*)	(*)	(*)
Q Primary zinc smelters	(*)	(*)			(*)	(*)
R Primary lead smelters	(*)	(*)			(*)	(*)
S Primary aluminum reduction plants	(*)	(*)			(*)	(*)
T Phosphate fertilizer industry: Wet process phosphoric acid plants	(*)	(*)			(*)	(*)
U Phosphate fertilizer industry: Super phosporic acid plants	(*)	(*)	(*)		(*)	(*)
V Phosphate fertilizer industry: Diammonium phosphate plant	(*)	(*)	(*)		(*)	(*)
W Phosphate fertilizer industry: Triple super phosphate plant	(*)	(*)	(*)		(*)	(*)
X Phosphate fertilizer industry: Granular triple supper phosphate storage facilities	(*)	(*)	(*)		(*)	(*)
Y Coal preparation plants	(*)	(*)	(*)		(*)	(*)
Z Ferralloy production facilities	(*)	(*)	(*)	(*)	(*)	(*)
AA Steel plants: Electric arc furnaces	(*)	(*)			(*)	(*)
BB Kraft pulp mills	(*)	(*)			(*)	(*)
CC Glass manufacturing plants	(*)	(*)			(*)	(*)
DD Grain elevators	(*)	(*)			(*)	(*)
EE Surface coating of metal furniture	(*)	(*)	(*)	(*)	(*)	(*)
GG Stationary gas turbines	(*)	(*)			(*)	(*)
HH Lime manufacturing plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead—acid battery manufacturing plants	(*)	(*)	(*)	(*)	(*)	(*)
LL Metalic minerals	(*)				(*)	(*)
MM Automobile and light duty surface coating operations					(*)	(*)
NN Phosphate rock plants	(*)	(*)			(*)	(*)
PP Ammonium sulfate manufacturing	(*)				(*)	(*)
QQ Graphic Arts: Publication rotogravure printing	(*)	(*)			(*)	(*)
SS Industrial surface coating: Large appliances	(*)				(*)	(*)
TT Metal coil surface coating	(*)				(*)	(*)
UU Asphalt processing and roofing manufacture	(*)				(*)	(*)
VV Synthetic organic chemical manufacturing: Equipment leaks of VOC	(*)				(*)	(*)
WW Beverage can coating					(*)	
XX Bulk gasoline terminals	(*)				(*)	
HHH Synthetic fiber production	(*)				(*)	
					(*)	

* Indicates delegation.

PART 61—[AMENDED]

Title 40, Part 61 of the Code of Federal Regulations is amended as follows:

Subpart A—General Provisions

§ 61.04 [Amended]

In § 61.04 the table below is added as follows:

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDSOUS AIR POLLUTANTS (NESHAPS) IN REGION VIII

Subpart	State					
	Colorado	Montana	North Dakota	South Dakota	Utah	Wyoming
A General provisions	(*)		(*)		(*)	
B Asbestos	(*)		(*)		(*)	
C Beryllium	(*)		(*)		(*)	
D Beryllium rocket motor firing	(*)		(*)		(*)	
E Mercury	(*)		(*)		(*)	
F Vinyl chloride	(*)		(*)		(*)	

*Indicates delegation.

[FR Doc. 84-24494 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-8-FRL-2671-6]

Designation of Areas of Air Quality Planning Purposes; Attainment Status Redesignation; Utah

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule.

SUMMARY: The EPA gives notice that the final rule approving the redesignation of the attainment status for Salt Lake County and Utah County from non-attainment to attainment for total suspended particulates (TSP) on July 11, 1984 (49 FR 28243) has been withdrawn. Information received from the Utah Air Conservation Committee indicates that these Counties have exceeded primary and secondary TSP NAAQS in 1984. This action does not affect any other part of the notice, i.e., approval of the Utah State Implementation Plan for TSP, lifting of the construction moratorium for TSP in Salt Lake County, and the correction in the December 21, 1983 (48 FR 56378) approval of the Utah carbon monoxide plan for Provo, Utah.

EFFECTIVE DATE: This action is effective on September 10, 1984.

ADDRESS: Copy of the State submittal is available for public inspection during normal business hours at: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844-3471.

SUPPLEMENTARY INFORMATION: On December 2, 1983 (48 FR 54348), following a request from the State of Utah, EPA redesignated several areas in Utah from non-attainment to attainment for TSP under Section 107 of the Clean Air Act. In that action, EPA declined to redesignate Salt Lake and Utah Counties. Salt Lake County did not have an approved Part D SIP. Utah County was designated non-attainment because of violations caused by the U.S. Steel facility.

Subsequent submittals by the State indicated that the last measured violation of primary standards in Utah and Salt Lake Counties occurred in 1980 and the last measured violation of the secondary standard occurred in 1981.

On July 11, 1984 (49 FR 28243), EPA published a final rulemaking approving the Utah State Implementation Plant for TSP for Salt Lake County and lifted the construction moritorium for TSP in Salt Lake County. That action also redesignated Salt Lake and Utah Counties to attainment for TSP.

On August 10, 1984, EPA received comments from Dr. J.R. Macfarlane, Chairman of the Utah Air Conservation Committee stating that TSP data for Salt Lake and Utah Counties show exceedances of primary and secondary NAAQS for first quarter (Jan.–Mar.) of 1984.

Because the new data suggests that the redesignation to attainment is inappropriate, EPA is withdrawing that portion of the July 11, 1984 (49 FR 28243) action regarding redesignation of Salt Lake and Utah Counties to attainment for TSP. EPA is doing so without providing prior notice and opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment will be impractical because EPA needs to withdraw its approval quickly in order to consider the comments from the State. In addition, further notice is not necessary because EPA has already informed the public it would follow this procedure if adverse or critical comments were received by August 10, 1984. For the same reasons, EPA finds it has good cause under 5 U.S.C. 553(b) to make this withdrawal immediately effective.

EPA will review the State's submittal and determine the course of action. After review and consultation with the State, another notice will be published announcing new rulemaking on this issue and provide time for public comment.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

This rulemaking is issued under the authority of Section 107, 110, 172 and 176 of the Clean Air Act (42 U.S.C. 7407, 7410, 7502 and 7506).

Dated: September 10, 1984.

Alvin L. Alm,

Acting Administrator.

Therefore, the amendment to § 81.345 appearing at 49 FR 28243, July 11, 1984 which was to become effective September 10, 1984 is withdrawn.

[FR Doc. 84-24498 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 84-32]

Rules Governing Agreements by Ocean Common Carriers and Other Persons

AGENCY: Federal Maritime Commission.

ACTION: Interim rule and request for comments.

SUMMARY: This rule states the Commission's policy that an agreement filed pursuant to the Shipping Act of 1984 must be definite, complete and specific with regard to the authority contained therein. The rule establishes guidelines for distinguishing between impermissible open-ended authority and allowable interstitial authority. This statement of policy and rule is necessary to enable the Commission to evaluate the impact of an agreement, to monitor its operations, and to clarify the scope of the antitrust immunity contained therein.

DATE: Interim rule effective upon publication. Comments on or before October 17, 1984.

ADDRESS: Address comments (original and 20 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984 (46 U.S.C. app. 1701-1720) (hereinafter referred to as "the Act" or "the 1984 Act") requires the Commission to conduct both a technical and substantive review of agreements filed pursuant to section 5 of the Act (46 U.S.C. app. 1704). Section 5 requires that a true copy of every agreement within the scope of the Act be filed with the Commission. Under section 6(b) of the Act (46 U.S.C. app. 1705(b)), the Commission must conduct a preliminary review to determine whether an agreement meets the requirements of section 5. The Commission is authorized to reject agreements that do not meet these requirements. Under section 6(g) (46 U.S.C. app. 1705(g)), the Commission must review an agreement to determine whether it is substantially anticompetitive and is likely to result in an unreasonable reduction in transportation service or an unreasonable increase in transportation cost. In performing its review functions under section 6, the Commission must observe strict timeframes which are mandated by statute.

The 1984 Act also places an obligation on the Commission to monitor operations conducted pursuant to an agreement. In this regard, the Commission's responsibility to evaluate an agreement under section 6(g) continues after an agreement becomes effective. In addition, section 10 of the Act (46 U.S.C. app. 1709) enumerates certain acts which are prohibited. Section 10(a)(2) prohibits a person from operating under an agreement required to be filed under section 5 that has not become effective under section 6. Section 10(a)(3) prohibits a person from operating under an agreement required to be filed under section 5 except in accordance with the terms of the agreement.

Section 7 of the Act (46 U.S.C. app. 1706) provides for an exemption from the antitrust laws for certain enumerated categories of agreements. Section 7(a)(2) states, in relevant part, that the antitrust laws do not apply to:

> * * * any activity or agreement within the scope of this Act, whether permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place * * *.

In order to ensure that the Commission may adequately fulfill its responsibilities under the Act to review and monitor agreements and to ensure that agreements are stated with sufficient precision to determine the scope of the antitrust immunity conferred upon them, the Commission is amending its rules governing agreements by ocean common carriers and other persons subject to the Act (46 CFR Part 572).[1] These amendments consist of a new rule stating Commission policy regarding the clarity, completeness and specificity required of agreements and a new rule which distinguishes between impermissible open-ended authority and allowable interstitial authority.

I. Addition to Subpart A—General Provisions

Section 572.103 Policies.

The addition to Subpart A, § 572.103, adds a new paragraph (g) which states Commission policy regarding the clarity, completeness and specificity required in agreements. An agreement filed under the Shipping Act of 1984 must be clear and definite in its terms, must embody the complete present understanding of the parties and must set forth the specific authorities and conditions under which the members of the agreement will conduct their operations and regulate the relationships among the agreement members.

An agreement should be sufficiently clear and definite in its essential terms so as to apprise the Commission of the activities which will be undertaken pursuant to the agreement so that the Commission may evaluate its probable economic impact. At the same time, the Commission does not interpret the 1984 Act to require agreements to be drafted to a degree of exactitude that deprives the parties of a reasonable extent of commercial flexibility—within clearly defined parameters—to respond to changing trade conditions.

One purpose of this policy is to ensure that the Commission may fulfill its responsibility to review an agreement prior to its effectiveness. Under section 6(g) of the Act, the Commission is charged with making an analysis of the competitive impact of an agreement. This evaluation would be made difficult or impossible where an agreement is vague, incomplete or contains open-ended authority.

A second purpose of this policy is to enable the Commission to monitor operations under an agreement once it has gone into effect. The Commission's role as a monitoring agency has been heightened under the 1984 Act which generally allows most agreements to go into effect after a brief waiting period. Because of this shift in emphasis in the regulatory regime, it becomes even more important to have an agreement which is clear, complete and definite. In this regard, it should be noted that section 10(a)(2) prohibits any person from operating under an agreement that has not become effective and that section 10(a)(3) prohibits any person from operating under an agreement except in accordance with its terms. It is, therefore, also in the interest of the parties to an agreement to state their agreement with precision.

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[1] On May 29, 1984, the Commission published Interim Rules which implement those provisions of the Shipping Act of 1984 which govern agreements by ocean common carriers and other persons subject to the Act (49 FR 22296). These rules were issued pursuant to authority contained in section 17(b) of the Act (46 U.S.C. app. 1716(b)) to issue interim rules without observing the normal notice and comment procedures required by the Administrative Procedure Act (5 U.S.C. 553). The preamble to these rules stated that persons could file emergency comments prior to the effective date for consideration by the Commission. A number of such comments were received, and on June 14, 1984, the Commission published amendments to its interim agreements' rules making certain modifications and corrections in these rules (49 FR 24697). These Interim Rules, as amended, went into effect on June 18, 1984. They are codified in Title 46 of the Code of Federal Regulations at Part 572.

Finally, agreement authority should be stated completely and specifically in order to avoid, to the maximum degree possible, any ambiguity concerning antitrust immunity for any activity conducted under the agreement. Exemptions from the antitrust laws are generally strictly and narrowly construed. The 1984 Act, however, extends antitrust immunity to an activity undertaken or entered into "with a reasonable basis to conclude that it is pursuant to an agreement on file with the Commission and in effect when the activity took place." The risk of assuming that a particular activity is pursuant to a stated authority is one that is undertaken by the parties to an agreement. In order for the parties to avoid difficult issues regarding the scope of antitrust coverage, the Commission believes it is best that agreement activities and authorities be stated as clearly as possible.

The Shipping Act of 1984 does not affect previously established Commission policy regarding the clarity, completeness and specificity required in agreements. Accordingly, the new policy statement in § 572.103(g) merely represents a codification of that established policy. There is, however, a greater need for such a restatement of policy under the 1984 Act to enable the Commission to carry out its review functions within strict statutory deadlines and adequately monitor subsequent operations.

II. Addition to Subpart D—Filing and Form of Agreements

Section 572.406 Clear and definite agreements.

The addition to Subpart D adds a new § 572.406 which establishes guidelines for the completeness required of agreements and distinguishes between impermissible open-ended authority and permitted interstitial authority.

Section 572.406(a) requires that an agreement reflect the full and complete *present* understanding of the parties as to its essential terms. The agreement must set forth in adequate detail the procedures and arrangements under which the activity permitted by the agreement is to take place once the agreement becomes effective. For example, an agreement which merely stated that the parties are authorized "to operate a joint service," without indicating the number, or range of vessels, committed to the service would not be deemed to reflect the full understanding of the parties. Such a deficiency would defeat any meaningful Commission review. Similarly, a statement in a joint service agreement which authorized the parties to "acquire substitute or additional tonnage" would result in a situation where the Commission would be unable to evaluate the economic impact of the agreement on the trade under section 6(g). Finally, a filed agreement which referred to or was governed by another agreement not filed with the Commission would be incomplete. It should be noted that operation under an agreement which is incomplete may constitute a violation of section 10(a)(3) of the Act.

Section 572.406(a) also requires that agreements be specific as to the understanding of the parties. Agreements should specify the authority of the agreement and the activities to be conducted under it. The rule does not contemplate that every activity be enumerated in detail. However, general grants of authority which do not specify the activities under the agreement are not favored. For example, an agreement which, as its authority, merely recited the statutory language of section 4(a)(1)–(7) of the Act would require some further clarification. Otherwise, review of such an agreement would be virtually meaningless. Such general statements of authority, even where clarified by subsequent refinement, should be avoided.

Section 572.406(b) proscribes the use of clauses in agreements which contain open-ended authority unless such provisions expressly state that any further such agreement cannot become operative unless filed and effective under the 1984 Act. A problem of open-ended authority arises where an agreement allows for *future* substantive modification of an agreement without specifically requiring filing under section 5. Such general authority to make future modifications without filing with the Commission would subvert the Commission's ability to review and monitor an agreement. Because any such future modifications to an agreement would generally become effective within 45 days after the amendment is filed with the Commission, there is no undue burden or delay in gaining effectiveness of an agreement.

Section 572.406(c) provides that activities which may reasonably be viewed as interstitial to a stated agreement authority need not be expressly stated. For example, authority to establish OCP rates would be viewed as interstitial to general ratemaking authority. However, establishment of a tariffed contract rate system would not be interstitial. Changes in the terms and conditions of a charter party underlying a space charter agreement would generally be interstitial. However, changes in the number of vessels (or range of number of vessels) and definition of vessel capacity (or range of capacities) dedicated in a joint service or space charter agreement would not. The rule allows flexibility to make changes for tariff matters or routine operational and administrative matters having no anticompetitive effect.

The rule does not state how the Commission will treat an agreement that is not sufficiently specific, complete and definite. In most cases, such deficiencies could probably be corrected through informal discussions between the Commission's staff and the parties. An agreement which is severely deficient, however, may be rejected, investigated or subject to a formal request for additional information or to challenge in the court under section 11(h) of the Act.

III. Conclusion

This rule is being published as an interim rule, pursuant to section 17(b) of the Act, with opportunity for comment. It will become effective on publication and will serve as an interim rule until such time as a final rule supersedes it. All interested persons have been provided 30 days to comment on the interim rule. This interim rule and all comments filed within the 30-day period will be used as the basis for a final rule pursuant to the requirements of the Administrative Procedure Act (5 U.S.C. 553).

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that these rules will not have a significant economic impact on a substantial number of small entities, within the meaning of that Act.

OMB clearance for the interim rules in 46 CFR Part 572 has been granted under OMB Number 3072–0045. These interim amendments will also be submitted, and comments on the information collection aspects of the amendments may be made at the time the interim rules are formally submitted to OMB as Final Rules.

List of Subjects in 46 CFR Part 572

Antitrust, Contracts, Maritime carriers.

PART 572—[AMENDED]

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and sections 5, 6, 7, 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1704, 1705, 1706, 1709, 1716), the Federal Maritime Commission hereby amends Title 46, Code of Federal Regulations, Part 572, Subchapter D as follows:

1. In Subpart A, § 572.103, add a new paragraph (g) to read as follows:

§ 572.103 Policies.

* * * * *

(g) An agreement filed under the Shipping Act of 1984 must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

2. In Subpart D, add a new § 572.406 to read as follows:

§ 572.406 Clear and definite agreements.

(a) Any agreement required to be filed by the Act and the rules of this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, open-ended or vague agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act;

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial and are permitted without further filing under section 5 of the Act only when the further agreement concerns: (1) Routine operational or administrative matters which will have no anticompetitive effect; or (2) establishment of tariff rates, rules, and regulations which are routine and ordinary.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24457 Filed 9-14-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 90, and 94

[PR Docket No. 83-991; FCC 84-414]

Elimination of Outdated or Unnecessary Rules in the Private Land Mobile Radio Services and the Private Operational-Fixed Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order deleting various rules for the Private Land Mobile Radio Services (Part 90) and the Private Operational-Fixed Microwave Service (Part 94) which are outdated or unnecessary to the efficient administration of the subject services. This action is part of the Commission's ongoing Regulatory Review Program, which seeks to remove those rules which may no longer be necessary.

EFFECTIVE DATE: October 18, 1984.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Private Radio Bureau (202) 632-7597.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 90

Private land mobile radio services, Radio.

47 CFR Part 94

Radio.

Report and Order

In the matter of amendment of Parts 1, 90 and 94 of the Commission's Rules to eliminate outdated and unnecessary rules; PR Docket No. 83-991.

Adopted: September 5, 1984.

Released: September 11, 1984.

By the Commission.

Introduction and Background

1. On September 9, 1983, the Commission adopted a *Notice of Proposed Rule Making*, pursuant to its Regulatory Review Program, concerning the elimination of those provisions of the Commission's Rules governing the Private Land Mobile Radio Services and the Private Operational-Fixed Microwave Service which were outdated or no longer necessary for the effective regulation of those services.[1] Among other things, the *Notice* proposed the elimination of various notification and filing requirements; the deletion of the frequency set-aside for itinerant operations in the Special Industrial Radio Service and the Business Radio Service; the elimination of certain technical requirements on control stations transmitting on mobile service frequencies; and the consolidation of various rule sections governing emergency communications.

2. Six sets of comments were filed in response to the *Notice* in this proceeding. Commenters were the Association of American Railroads (AAR), the Central Committee on Telecommunications of the American Petroleum Institute (API), Forest Industries Telecommunications (FIT), Motorola, Inc. (Motorola), the National Association of Business and Educational Radio, Inc. (NABER), and the Special Industrial Radio Service Association, Inc. (SIRSA). No reply comments were filed.

Discussion

3. All commenters supported our efforts to eliminate unnecessary restrictions from the Rules codified in 47 CFR Parts 1, 90 and 94 governing the Private Land Mobile Radio Services and the Private Operational-Fixed Microwave Service. Several of the proposals contained in our *Notice* elicited support from the commenting parties; other proposals elicited no comments. We are adopting without further discussion several of the *Notice's* noncontroversial proposals, including: deletion of the rule regarding shared use of broadcast antenna structures (§ 1.915); deletion of the rule regarding rented communications equipment (§ 1.956); deletion of references to private radio applications filed prior to December 12, 1960 (§ 1.962); deletion of the provision permitting applicants participating in an area-wide medical communications plan to file the plan with their applications (§ 90.35); revision of the rule regarding license terms (§ 90.149); deletion of the rule requiring notification of the use of special identifiers in the Public Safety and Special Emergency Radio Services (§ 90.425); deletion of the filing requirement regarding tower maintenance agreements (§ 90.441); assigning the Radiolocation Service a new designator (§ 90.555); deletion of a reference to a non-existent rule (§ 94.31); deletion of the notification requirement regarding discontinued microwave stations (§ 94.53); deletion of the rule requiring notification of the commencement or discontinuance of

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[1] *Notice of Proposed Rule Making* (FCC 83-397), released September 22, 1983, 48 FR 43355 (September 23, 1983).

microwave station operation (§ 94.55); and correction of a mis-specified frequency pair (§ 94.90).

4. In our *Notice*, we also proposed the deletion of technical requirements for control stations operating on frequencies in the 450–470 MHz band located within 75 miles of the center of specified urban areas. No comments opposed this proposal. In support, Forest Industries Telecommunications (FIT) stated: "FIT agrees that it is enough that control stations are licensed on a secondary, non-interference basis to mobile service communications." We agree that the retention of these technical restrictions serves no useful purpose and, in addition to removing these technical requirements with respect to control stations in the 450–470 MHz band, we are also adopting the proposed conforming amendments to delete these restrictions on control stations operating in the 800 HMz band.[2]

5. In the *Notice*, we proposed eliminating and/or revising five rule sections in Parts 90 and 94 concerning emergency communications in order to consolidate similar rule provisions and eliminate eight notification requirements. These rules require licensees to notify the Commission and the Engineer in Charge of the Radio District in which the station is located when the licensee's station is used for emergency communications and when such emergency use is terminated. Several commenters supported our proposal; none opposed it. Motorola stated:

> Motorola supports the proposal to eliminate the notification requirement as to the beginning and termination of emergency communications. Since the rules in question * * * were enacted, experience has not shown a need for the notification requirements present in the rules; that is, the great majority of licensees have demonstrated that they can suspend normal operations in the event of an emergency, provide emergency communications, and properly return to their normal authorized communications. The administrative burdens on both licensees and on the Commission related to the notice requirements are not justified.
>
> Similarly, Motorola supports the proposed revisions to § 90.411 * * *. The present rule limits civil defense communications to those which a particular licensee would be eligible to provide under its normal criteria for eligibility. This limitation appears to be either superfluous (since the licensee is already permitted to provide such communications) or counterproductive (defeating the very purpose of the rule, to permit civil defense communications which a licensee might not normally be permitted to provide). There is no reason to anticipate that this added flexibility would result in improper communications by licensees. At any rate, the Commission will, under proposed Section 90.411, have the authority to order the discontinuance of such special use.

We agree, and accordingly adopt revised rules governing emergency communications in the Private Land Mobile Radio Services and the Private Operational-Fixed Microwave Service.[3]

6. The commenters identified only two areas of disagreement with our proposals: itinerant frequency set-asides in the Business and Special Industrial Radio Services and deletion of the prohibition contained in Part 94 against the transmission of program material to cable television systems. Additionally, one commenter proposed additional rules for simplification or elimination which were not contained in the *Notice*.

Itinerant Frequencies

7. In the *Notice*, we proposed to eliminate the last remaining distinctions in the rules between frequencies for permanent area use and frequencies for itinerant operations by making all frequencies in the Business and Special Industrial Radio Services available for operation on a permanent basis. Temporary or wide-area use was proposed to be permitted upon a showing of need. NABER, in its comments, requested clarification of our proposed rule to redesignate the itinerant frequencies for "general" rather than "permanent" use. If such a clarification was not made, NABER indicated that it opposed our proposal because the frequency coordinator "may not be able to confirm the accuracy and quality of the licensee's frequency selection if temporary or wide-area systems were randomly interspersed among the frequencies set aside for permanent area use." Motorola offered similar concerns about this aspect of the *Notice*. SIRSA strongly opposed our proposal, stating:

> Allowing "itinerant" operation on any frequency allocated to the Special Industrial Radio Service, based on a "showing of need" would be tantamount to eliminating frequency coordination in the Special Industrial Radio Service since "itinerant" users could "show up" on any given channel without prior frequency coordination. [Footnote omitted]. Itinerant operations could destroy the value of the Special Industrial Radio Service for more than 45,000 "permanent" use licensees; and it is for this reason, we respectfully submit, that the Commission designated frequencies for "itinerant" users. Contrary to the suggestion made by the Commission in its Notice that continued designation of these frequencies for "itinerant" operations appears to be unnecessary for spectrum management purposes, it is absolutely necessary for spectrum management purposes that the "itinerant" classification remain as presently found in the rules.

While noting that some 1,600 users almost 94,000 mobile transmitters employ itinerant frequencies in the Special Industrial Radio Service, SIRSA went on to conclude:

> Continuing to designate a few channels for "itinerant" use will assure a "home" for users having short term communication requirements over a wide area without causing destructive interference to licensees having more permanent requirements. Adoption of the proposal to amend 690.73 could result in chaotic conditions on any frequency in the Special Industrial Radio Service instead of a limited number of instances of interference that only lasts for a short duration on four assignments where all users realize that interference may be experienced from time to time as users move into and out of a particular geographic area.

8. We are persuaded by the arguments advanced by SIRSA (in which API concurred), along with the reservations expressed by NABER and Motorola, that the public interest is best served by retaining the current rules. We therefore decline to adopt the proposed rules in this matter.

Additional Rule Sections

9. The AAR suggested in its comments that we consider revising or eliminating rule §§ 90.443, 90.445, 90.447 and 94.113 concerning station records; and §§ 90.215 and 94.85 concerning transmitter measurements. In support of its suggestion, AAR states:

> The Commission's regulartory objective would be better served by eliminating the specific "how to do" requirements contained in these rules and relying on the responsibility imposed on all licensees to assure that their radio facilities are operated in accordance with the Commission's rules and the terms and conditions of their licenses.

These comments will be taken under advisement and reviewed along with other comments received in response to our *Notice* in General Docket 84–361[4] regarding rules that will be reviewed pursuant to the Regulatory Flexibility Act of 1980.

Transmission of Program Material to Cable Television Systems

10. In the *Notice*, we proposed to delete § 94.25(h) of our Rules governing the Private Operational-Fixed Microwave Service (POFS). This rule

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[2] *See* Appendix, Part 90, paragraphs 4, 7 and 19.

[3] *See* Appendix, Part 90, paragraphs 8–11; Part 94, paragraph 1.

[4] *List of Rules to be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1983–84*, FCC 84–135, released April 12, 1984, 49 FR 17045 (April 23, 1984).

prohibits the acceptance of applications for authorizations to construct POFS systems for the transmission of program material to cable television systems. In support of our proposal, we noted that the Commission had specifically permitted such service to be provided in the microwave frequency bands above 21,200 MHz.[5]

11. FIT and AAR commented in opposition to our proposal. They believe the prohibition on transmission to cable television systems is still applicable, and, in any case, should not have been proposed to be deleted in the context of a "non-controversial" regulatory review rule making proceeding. FIT presented its argument, stating:

> The substance of § 94.25(h) was adopted in the mid 1960s in Docket 15586 as part of a series of policy decisions regarding the requirements of the cable television industry for microwave relay facilities. In that Docket, the Commission established a new radio service for the cable television industry, the [Community Antenna Relay Service], and also decided to discontinue authorizing cable TV microwave relay systems in the Business Radio Service and later in the Private Operational-Fixed Microwave Service. [Citations omitted]. These decisions are incorporated in Paragraph (h) of § 94.25 and in § 94.9(b)(3). While the Commission, in Docket 19671, eliminated some restrictions against the transmission of video program material by certain private microwave stations, its decision in Docket 19671 was not intended to reopen the Private Operational-Fixed Microwave Service to the cable industry. Therefore, Paragraph (h) should not be eliminated, certainly not in the context of this proceeding which deals only with noncontroversial deletions or revision of clearly outdated or unnecessary rules.

AAR commented in similar fashion to FIT.

12. While FIT accurately describes the origin of rule § 94.25(h), it has misconstrued the Commission's intention in adopting its *Memorandum Opinion and Order* in Docket 19671, *supra*. In that document, which was effective August 1, 1983, we amended § 94.9 governing permissibility of communications to read as follows:

* * * * *

> (b) The radio facilities shall not be used for any of the following:

* * * * *

> (2) Transmission of program material for use in connection with broadcasting, except that:
>
> (i) The facilities may be used to transmit program material from one location to another, provided that the operational-fixed frequencies do not serve as the final link in the chain of distribution of the program material to *broadcast stations*.

* * * * *

> (3) To provide the final link in the chain of transmission of program material to cable television systems, multipoint distribution systems, or master antenna TV systems, *except in the frequency bands above 21,200 MHz*.
>
> [Emphasis added.]

13. Clearly, the rules adopted in Docket 19671 permit the transmission of program material to cable television systems so long as the OFS frequencies above 21.2 GHz are employed. Since the existing provision of § 94.25(h) prohibiting the acceptance of applications to construct OFS stations for transmission of program material to cable television systems is in contradiction to the rules the Commission promulgated in Docket 19671, we are amending it to specify that the prohibition applies only to authorizations for transmission facilities operating in the frequency bands below 21.2 GHz.

Miscellaneous Matters

14. We are taking this opportunity to make several minor editorial changes, such as correcting typographical errors and mis-designated references, and clarifying some rule sections in Parts 90 and 94. With respect to these amendments, which are found in the attached Appendix, we find that good cause exists for dispensing with the notice and comment procedures of the Adminstrative Procedure Act, 5 U.S.C. 553. As these changes involve minor, noncontroversial amendments, public notice and comment is unnecessary. The following subparagraphs set out those editorial changes which did not appear in the *Notice* in this proceeding:

(a) *Section 90.75:* Corrections are made to update references to rule sections whose numbers were changed during our Part 90 consolidation of 1978; to correct a reference to another paragraph in that section; and to correct a reference to Subpart Q, which governs developmental operations.

(b) *Sections 90.360 and 90.611:* Paragraph (d) of each section is clarified to indicate that applications which are dismissed are not always physically returned to the applicant; paragraph (e) of each section is clarified to conform it to § 90.141 governing resubmitted applications for facilities above 470 MHz.

(c) *Sections 90.364, 90.607, 90.627 and 90.631(a):* These rule sections are clarified to indicate that, for purposes of trunked systems loading only, control stations are counted along with vehicular and portable mobile units.[6]

(d) *Section 90.631(b):* This provision is clarified to remove the reference to "waiting lists." For Subpart S frequencies it is not the existence of a waiting list that triggers the "takeback" provision, but rather the fact that all trunked channels in the system's geographic area are assigned.

(e) *Section 90.555:* Typographical errors in the Table at paragraph (b) are corrected.

(f) *Section 90.637:* A typographical error is corrected.

(g) *17 rule sections in Part 90:* In each of 17 rule sections, a reference to Subpart P is corrected to specify Subpart Q, which governs developmental operations.

(h) *Section 94.15:* A typographical error is corrected.

(i) *Section 94.63:* This section is revised to add references to multiple address radio systems which were inadvertently omitted when we adopted rules authorizing these systems.

(j) *Section 94.65:* This section is revised in order to bring it into conformance with the rules we adopted in Docket 19671, *supra*, and in the *Report and Order* in Gen. Docket 80-112, 48 FR 33873 (July 26, 1983).

(k) *Sections 94.67 and 94.71:* These sections are revised in order to bring them into conformance with the rules we adopted in Docket 19671, *supra*, that permit digital transmissions. Hence digital transmission standards are added for frequency tolerance and emission and bandwidth limitations.

Conclusion

15. In summary, the Commission is adopting all material aspects of our *Notice* in this proceeding except that we decline to change the frequency set-aside for itinerant operations in the Business and Special Industrial Radio Services. In adopting these rule amendments, we are eliminating thirteen distinct filing and/or notification requirements to which licensees and applicants were formerly subject, as well as eliminating all technical requirements on control stations operating on a secondary basis and consolidating and simplifying the rules governing emergency communications. Additional amendments of an editorial nature are made to Parts 90 and 94.

16. In the *Notice* adopted in this proceeding, the Commission certified

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[5] *Memorandum Opinion and Order*, Docket 19671 (FCC 83-245), released June 23, 1983, 48 FR 32578 (July 18, 1983); *Memorandum Opinion and Order* dismissing pet. recon., Docket 19671 (FCC 84-234), released June 5, 1984. The petition for reconsideration filed in this proceeding did not address the issue of transmission to cable television systems.

[6] *See Memorandum Opinion and Order*, PR Docket 79-191 *et al.*, FCC 83-474, released November 1, 1983, 48 FR 51917 (November 15, 1983) at paragraph 11.

that the rule changes proposed would not have a significant economic impact on a substantial number of small entities. Accordingly, the Commission concluded that Sections 603 and 604 of the Regulatory Flexibility Act do not apply to this proceeding. Therefore, there is no requirement for a final regulatory flexibility analysis of the rule changes now being adopted.

17. Accordingly, it is ordered, that effective October 18, 1984, Parts 1, 90 and 94 of the Commission's Rules, 47 CFR Parts 1, 90 and 94, are amended as shown in the attached Appendix. Authority for this action is found in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

18. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 1, 90 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart F—Private Radio Services Applications and Proceedings

§ 1.915 [Removed]

1. Section 1.915 is removed in its entirety.

§ 1.956 [Removed]

2. Section 1.956 is removed in its entirety.

3. Section 1.962 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.

(a) Except as qualified in paragraph (b) of this section, the provisions of this section shall apply to all applications for authorizations, and substantial amendments thereof, for the following categories of stations and services:

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

§ 90.35 [Amended]

1. Section 90.35 is amended by removing and reserving paragraph (b).

2. In § 90.75, corrections are made by revising paragraph (c)(39)(x), paragraph (d)(4) and paragraph (e)(2). As corrected, the section reads as follows:

* * * * *

§ 90.75 Business Radio Service.

(c) * * *

(39) * * *

(x) Operational fixed stations authorized under this paragraph are exempt from the requirements of §§ 90.137(b), 90.429(d), 90.425 and 90.433.

* * * * *

(d) * * *

(4) Low-power mobile stations of 100 mW or less output power may be assigned any frequency separated by 12.5 kHz from a regularly assigned frequency in the bands 460.650–460.875 MHz and 465.650–465.875 MHz listed in paragraph (b) of this section, for one-way, non-voice biomedical telemetry operations in hospitals, or in medical or convalescent centers.

(e) * * *

(2) Frequencies in the ranges 30.56–30.57 MHz, 35.00–35.01 MHz, 35.99–36.00 MHz and 37.00–37.01 MHz are available for assignment to applicants in this service subject to the provisions of Subpart Q.

* * * * *

3. In § 90.149, paragraph (a) is amended as set forth below and paragraph (b) is corrected by changing the phrase "Subpart P" to read "Subpart Q".

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal.

* * * * *

4. In § 90.249, paragraph (a)(2) is revised as set forth below to delete the reference to paragraph (b) and paragraph (b) is removed and marked [Reserved].

§ 90.249 Control stations.

* * * * *

(a) * * *

(2) A control station associated with mobile relay station(s) may, at the option of the applicant, be assigned the frequency of the associated mobile station. In the Railroad Radio Service such a control station may be assigned any mobile service frequency available for assignment to mobile stations in that service. Such operation is on a secondary basis to use of the frequency for regular mobile service communications.

* * * * *

(b) [Reserved]

* * * * *

5. In § 90.360, paragraphs (d) and (e) are revised to read as follows:

§ 90.360 Processing of applications.

* * * * *

(d) An application which is dismissed will lose its place in the processing line.

(e) If an application is returned for correction and resubmitted and received by the Commission within 30 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 30 days it will lose its place in the processing line.

6. Section 90.364, is amended by revising paragraph (b)(2) and adding new paragraph (b)(3) to read as follows:

§ 90.364 Limitation on the number of frequency pairs assignable for trunked systems and on the number of trunked systems.

* * * * *

(b) * * *

(2) The licensee's existing trunked system(s) authorized on or before October 16, 1982 is loaded to at least 80% of its authorized capacity of vehicular and portable mobile units and control stations.

(3) The licensee's existing trunked system(s) authorized after October 16, 1982 is loaded to at least 80 vehicular and portable mobile units and control stations per channel.

§ 90.376 [Amended]

7. In § 90.376, paragraphs (a)(2), (a)(3) and (a)(4) are removed. Paragraph (a)(1) is redesignated paragraph (b).

8. Section 90.407 is revised to read as follows:

§ 90.407 Emergency communications.

The licensee of any station authorized under this part may, during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster, utilize such station for emergency communications in a manner other than that specified in the station authorization or in the rules and regulations governing the operation of such stations. The Commission may at any time order the discontinuance of such special use of the authorized facilities.

§ 90.409 [Removed]

9. Section 90.409 is removed in its entirety.

10. Section 90.411 is revised to read as follows:

§ 90.411 Civil defense communications.

The licensee of any station authorized under this part may, on a voluntary basis, transmit communications necessary for the implementation of civil defense activities assigned such station by local civil defense authorities during an actual or simulated emergency, including drills and tests. The Commission may at any time order the discontinuance of such special use of the authorized facilities.

§ 90.413 [Removed]

11. Section 90.413 is removed in its entirety.

12. Section 90.425 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 90.425 Station identification.

* * * * *

(a) * * *

(4) * * *

(i) In the Public Safety and Special Emergency Radio Services, mobile units licensed to a governmental entity and which operate on frequencies above 30 MHz may use an indentifier which contains, at a minimum, the name of the licensee if the licensee maintains at the station a list of the special identifier(s) to be used by the mobile units.

* * * * *

13. Section 90.441 is revised to read as follows:

§ 90.441 Inspection and maintenance of tower marking and associated control equipment.

* * * * *

(b) Licensees operating stations licensed under this part which share a tower used for antenna and/or antenna supporting purposes with other licensees under this chapter may designate in writing one licensee or a nonlicensed agent to be responsible for maintenance and inspection of the tower and maintenance of the inspection log. In such cases, a copy of the agreement must be kept in each participating licensee's station records.

14. Section 90.555 is amended as follows:

A. In paragraph (a), revise the entries under the heading "Industrial Services", and add a new heading "Radiolocation" and entry just after the entries for Industrial Services to read as set forth below.

B. In the table to paragraph (b), redesignate all references to "IR", as "RS", and also, under Megahertz, revise the entries "39.44–39.50 to read as set forth below:

§ 90.555 Combined frequency listing.

(a) * * *

Industrial Services

IB—Business.
IF—Forest products.
IM—Motion picture.
IP—Petroleum.
IS—Special industrial.
IT—Telephone maintenance.
IW—Power.
IX—Manufacturers.
IY—Relay press.

Radiolocation Service

RS—Radiolocation.

Land Transportation Services

* * * * *

(b) * * *

Frequency	Services	Special limitations
* * * * *		
39.44	PP	
39.46	PP	Intersystems operation.
39.48	PP	
39.50	PL, PP	
* * * * *		

15. In § 90.607, paragraph (c)(2) is revised to read as follows:

§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

* * * * *

(c) * * *

(2) Specify the number of vehicular and portable mobile units and control stations to be placed in operation within the term of the license.

* * * * *

16. In § 90.611, paragraphs (d) and (e) are revised to read as follows:

§ 90.611 Processing of applications.

* * * * *

(d) An application which is dismissed will lose its place in the processing line.

(e) If an application is returned for correction and resubmitted and received by the Commission within 30 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 30 days it will lose its place in the processing line.

17. In § 90.627, paragraph (b)(2) is revised to read as follows:

§ 90.627 Limitation on the number of frequency pairs that may be assignable for trunked systems and on the number of trunked systems.

* * * * *

(b) * * *

(2) The licensee's existing trunked system is loaded to at least 80 vehicular and portable mobile units and control stations per channel.

18. In § 90.631, paragraphs (a) and (b) are revised to read as follows:

§ 90.631 Trunked systems loading requirements.

(a) Trunked systems will be authorized on the basis of a loading criterion of 100 mobile stations per channel. For purposes of determining compliance with trunked system loading requirements under this subpart, the term "mobile station" includes vehicular and portable mobile units and control stations.

(b) Each applicant for a trunked system shall certify that a minimum of 60 mobiles for each channel authorized will be placed in operation within three years of initial license grant, and that a minimum of 80 mobiles for each channel authorized will be placed in operation within five years of initial license grant. If at the end of three years or five years a trunked system is not loaded to the prescribed levels and all trunked channels are assigned in the system's geographic area, authorization for channels not loaded to 100 mobile stations cancels automatically. All licenses are subject to this condition.

* * * * *

§ 90.637 [Amended]

19. In § 90.637, paragraphs (a)(2), (a)(3) and (a)(4) are removed. Paragraph (a)(1) is redesignated paragraph (b). In new paragraph (b), the last word "communication" is corrected to read "communications".

20. In each of the following rule sections, a correction is made by revising the phrase "Subpart P" to read "Subpart Q".

Sections

90.19(f)(4)
90.23(d)(2)
90.25(d)(4)
90.53(c)(4)
90.63(a)(2)
90.67(e)(2)
90.69(e)(2)
90.71(e)(2)
90.73(f)(2)
90.79(d)(16)
90.79(f)(2)
90.81(f)(2)
90.89(d)(3)
90.91(d)(5)
90.93(c)(9)
90.95(d)(14)
90.95(e)(3)

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. In § 94.11, paragraph (b) is revised to read as follows:

§ 94.11 Points of communication.

* * * * *

(b) *Emergency communications.* During a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, stations may be used for emergency

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communications unrelated to the licensee's activities. The Commission may at any time order discontinuance of such special use of the authorized facilities.

§ 94.15 [Corrected]

2. In § 94.15, paragraph (a) is amended by changing the word "as" in the first sentence to "are".

3. In § 94.25, paragraph (b) is revised and paragraph (h) is revised as set forth below:

§ 94.25 Filing of applications.

* * * * *

(b) Every application for a radio station authorization and all correspondence relating thereto, shall be filed with the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, Pennsylvania 17325.

* * * * *

(h) Applications for authorizations to construct microwave operational-fixed radio stations for transmission of program material to cable television systems will not be accepted, except in the frequency bands above 21,200 MHz.

* * * * *

§ 94.31 [Amended]

4. In § 94.31, paragraph (g) is removed and marked [Reserved].

5. Section 94.53 is revised to read as follows:

§ 94.53 Discontinuance of station operation.

In case of permanent discontinuance of a station licensed under this part, the licensee shall forward the station license to the Federal Communications Commission, Gettysburg, Pennsylvania 17325, for cancellation. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

§ 94.55 [Removed]

6. Section 94.55 is removed in its entirety.

7. Section 94.63 is amended by revising paragraph (b) introductory text to read as follows:

§ 94.63 Interference protection criteria for operational-fixed stations.

* * * * *

(b) The interference protection criteria for operational-fixed stations, other than those licensed on frequencies set out in §§ 94.65(a)(1), 94.90 and 94.91 are as follows:

* * * * *

8. Section 94.65 is amended by revising paragraph (f) and footnotes 1 and 2 to paragraph (f) to read as follows:

§ 94.65 Frequencies.

* * * * *

(f) *2500–2690 MHz:* The channels 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz, and the corresponding response frequencies 2686.9375 MHz, 2687.9375 MHz, and 2688.9375 MHz may be assigned for operational-fixed stations. Such assignments are subject to the condition that all operational-fixed stations must comply with the technical standards applicable to stations in the Instructional Television Fixed Service (ITFS) contained in Subpart I of Part 74 of this chapter.[1] Operational-fixed stations authorized in this band as of July 16, 1971 which do not comply with the above provisions may continue to operate at their presently assigned frequencies. Requests for subsequent license renewals or modifications for existing licenses will be considered; however, expansion of systems comprised of such stations will not be permitted.

2650–2656	2686.9375 [2]
2662–2668	2687.9375 [2]
2674–2680	2688.9375 [2]

* * * * *

9. Section 94.67 is amended by revising footnote 2 to the frequency tolerance table to read as follows:

§ 94.67 Frequency tolerance.

* * * * *

[2] In accordance with the technical standards contained in Subpart I, Part 74 of this chapter when A5 emission is to be employed. Otherwise, the frequency tolerance shall be 0.0025%

* * * * *

10. Section 94.71 is amended by revising footnote 3 to the table in paragraph (b) to read as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

(b) * * *

[3] Assignments for applications proposing to employ amplitude modulation (A5) for the transmission of a video signal will be made in accordance with the technical standards governing the Instructional Television Fixed Service contained in Subpart I, Part 74 of this chapter. For applications not proposing to employ a video signal, the standards contained in paragraph (c) below shall apply.

* * * * *

§ 94.90 [Amended]

11. Section 94.90 is amended by changing the reference in the introductory paragraph from "12,200/12,460" to "12,220/12,460".

[FR Doc. 84-24398 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1022; RM-4576]

FM Broadcast Stations in Houghton and Hancock, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 242 to Houghton, Michigan, in response to a petition filed by Midwest Radio Consultants, Inc. The assignment could provide a second FM service to Houghton.

EFFECTIVE DATE: November 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Houghton and Hancock, Michigan); MM Docket No. 83-1022 RM-4576.

Adopted: August 31, 1984.

Released: September 11, 1984.

By the Chief, Policy and Rules Division

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 48 FR 45433, published October 5, 1983, proposing the assignment of Class C Channel 242 to either Hancock or Houghton, Michigan, in response to a petition filed by Midwest Radio Consultants, Inc. ("petitioner"). The proposal would add a second FM service to either community. Petitioner filed comments supporting its original proposal to make a hyphenated assignment. However, petitioner states

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[1] Pursuant to § 94.69, however, stations licensed on the channels specified in this paragraph may employ any type of emission consistent with efficient use of the spectrum and good engineering practice, except that Type B, damped-wave emission will not be authorized.

[2] Response frequencies: when authorized, they may be paired respectively with the channels 2650–2656, 2662–2668 and 2674–2680 MHz and used in accordance with the technical standards prescribed for ITFS response stations in Part 74, Subpart I, of this chapter.

that if the assignment can be made to only one community, the assignment should be made to Houghton because it is the county seat and the larger of the two communities. No other comments were received.

2. The Commission has determined that the public interest would be served by assigning Channel 242 to Houghton. An interest has been shown for its use and such an assignment could provide a second local service to that community. We found no reason to grant a hyphenated assignment. Both communities already have their own FM stations which demonstrates their separate identities. The channel can be assigned to Houghton consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.[1] Canadian concurrence has been received.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b), and 0.283 of the Commission's rules, it is ordered. That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended as follows:

City	Channel No.
Houghton, MI	242, 249A

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24509 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1141; RM-4497]

FM Broadcast Station in Saugatuck, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 224A to Saugatuck, Michigan, in response to petitions filed by David C. Schaberg. The assignment could provide a first FM broadcast service to Saugatuck.

EFFECTIVE DATE: November 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Saugatuck, Michigan); MM Docket No. 83-1141, RM-4497.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. In response to a petition filed by David C. Schaberg ("petitioner"), the Commission adopted a *Notice of Proposed Rule Making*, 48 FR 51658, published November 10, 1983, proposing the assignment of FM Channel 224A to Saugatuck, Michigan, as its first FM assignment. Petitioner filed comments indicating that it would file an application to construct and operate on Channel 224A, if assigned. Supporting comments were also filed by Robert A. Sherman. No opposing comments were received.

2. The proposed assignment of Channel 224A to Saugatuck can be made in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.[1] Canadian concurrence has been received.

3. The Commission has determined that the public interest would be served by assigning Channel 224A to Saugatuck, Michigan, since it could provide a first FM broadcast service to that community.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the community listed below:

City	Channel No.
Saugatuck, MI	224A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24510 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1142; RM-4503; RM-4674]

FM Broadcast Stations in Charlotte Amalie, VI, and Isabel Segunda, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 296A to Charlotte Amalie, Virgin Islands, as that community's fourth local assignment, at the request of John T. Galanses.

EFFECTIVE DATE: November 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Charlotte Amalie, Virgin Islands, and Isabel Segunda, Puerto Rico); MM Docket No. 83-1142, RM-4503, RM-4674.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 51661, published November 10, 1983, which sought comments on the request of John T. Galanses ("Galanses") to assign FM Channel 282 to Charlotte

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[1] An assignment to either Houghton or Hancock would fail to provide two existing stations the 16 kilometer buffer zone now permitted to Class C stations with less than a 300 meter antenna height. However, this requirement applies to petitions filed after March 1, 1984. See BC Docket 80-90, 94 FCC 2d 152 (1983), recons. 49 FR 10400 published March 20, 1984.

[1] It should be noted that the assignment of 224A to Saugatuck, Michigan, does not provide the 16 kilometer buffer zone for WKJE-FM, Channel 225, Cadillac, Michigan. See Docket 80-90, 49 FR 10260, published March 20, 1984. This requirement applies to petitions filed after March 1, 1984. David A. Schaberg's petition was received on June 6, 1983.

Amalie, Virgin Islands, as that community's fourth FM allocation. A petition filed by Reynald Charles d/b/a Third Angel Corporation, requesting assignment of the same channel at Charlotte Amalie, was accepted as comments in support of the request. Doroteo Laboy filed a petition for rule making looking toward the assignment of FM Channel 280A to Isabel Segunda, Puerto Rico, as that community's second local assignment. It was accepted as a counterproposal in this proceeding but later withdrawn.[1] Comments in opposition to the Charlotte Amalie proposal were filed by Thousand Islands Corporation ("Thousand Islands"), licensee of AM Station WVWI, Charlotte Amalie. Comments, counterproposal and reply comments were filed by Galanses.

2. Based on the Commission's action in May, 1983, increasing the antenna heights permitted by Class A stations in Puerto Rico and the Virgin Islands, Galanses filed comments and a counterproposal requesting that Channel 296A be assigned in lieu of Channel 282.[2] He further stated that should Third Angel Corporation wish to apply for a separate channel, Channel 285A could also be assigned at Charlotte Amalie. Galanses concluded by restating that he would apply for Channel 296A, if assigned.

3. In its opposition, Thousand Islands does not appear to oppose the assignment of an additional FM allocation at Charlotte Amalie *per se*, but rather calls into question the intention of Galanses to apply for the frequency. It bases this belief on the purported delay of Galanses in submitting an amended application for use of Channel 236 at Christiansted, Virgin Island, which was assigned at his request, and the fact that less than three months after Commission grant of the application, Galanses filed an application for transfer of control of the corporation holding the construction permit to the minority shareholder. As of the date of its pleading, Thousand Islands stated that the station was still unbuilt. Galanses responded by pointing out the Station WJKC, Channel 236 at Christiansted went on the air on October 29, 1983, and reaffirmed his intention to apply for and operate a station at Charlotte Amalie.[3] He attempts to verify this affirmation by detailing his actions concerning activation of FM channels which have been allocated to other localities at his request.

4. We do not find the allegations of Thousand Islands concerning Galanses' statement of intent appropriate for resolution at this stage. Galanses has provided the Commission with the necessary statement indicating his intention to promptly apply for use of the channel and provide service to the community of Charlotte Amalie. The good faith intentions of a prospective applicant are generally assumed in a rule making proceeding. Otherwise, the legitimacy of a petitioner's interest cannot be adequately settled without an evidentiary hearing. See *Fort Smith, Arkansas*, 47 FR 23189, published May 27, 1982, and *Northampton, Massachusetts*, 49 FR 4491, published February 7, 1984. However, Thousand Islands can properly raise allegations concerning the intentions of Galanses at the application stage.

5. Based on the above discussion, we find that the assignment of Channel 296A to Charlotte Amalie, as that community's fifth local allotment, to be in the public interest. We are not assigning an additional FM channel to Charlotte Amalie at this time as no timely expression of interest was received.[4] Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended to read as follows for the community listed below:

City	Channel No.
Charlotte Amalie, VI	226, 250, 266, 271, and 296A.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24511 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1233; RM-4542]

FM Broadcast Station in Bloomfield, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 283 to Bloomfield, New Mexico, as that community's first FM allocation, at the request of KBRY, Inc.

EFFECTIVE DATE: November 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Bloomfield, New Mexico); MM Docket No. 83-1233, RM-4542.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 53725, published November 29, 1983, proposing the assignment of Channel 283 to Bloomfield, New Mexico, as that community's first local FM allocation. The *Notice* was issued in response to a request filed by KBRY, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the channel, if assigned. No other comments have been received. Channel 283 can be

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[1] Borinquen Broadcasting Company, licensee of Station WVJP-FM, Caguas, Puerto Rico, filed comments in opposition which will not be considered herein as they relate solely to the Isabel Segunda proposal.

[2] See *Report and Order*, BC Docket 81-421, 48 FR 24898, published June 3, 1983.

[3] Thousand Islands filed a response to the reply comments of Galanses accompanied by a request for its acceptance. We will not consider the response. There is no provision in the rules for the customary filing of responses to reply comments and the information contained therein is not of decisional significance. See, § 1.415(d) of the Commission's Rules.

[4] The record in this proceeding closed on January 11, 1984. On July 23, 1984, Sterling Communications filed comments on behalf of Reynald Charles restating his interest in the assignment of Class B Channel 282 to Charlotte Amalie. However, there was no explanation given as to why the response was filed seven months late nor was it accompanied by a request for the consideration of such late-filed comments. Further, no mention is made as to whether Charles is seeking the assignment of a sixth channel at Charlotte Amalie, in addition to Channel 296A as proposed by Galanses, or whether Charles would accept a Class A channel in light of the Commission's action in BC Docket 81-421, as discussed in paragraph 2, *infra*. Therefore, we shall not accept the late-filed pleading of Reynald Charles. However, should he desire the allocation of a sixth FM channel, he may re-petition the Commission to assign either a Class B or a Class A channel.

assigned to Bloomfield in compliance with the Commission's minimum distance separation and other technical requirements.

2. In view of the fact that this assignment could provide Bloomfield with its first local FM service, we believe the assignment to be in the public interest. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Bloomfield, NM	283

3. It is further ordered, that this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24512 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1344; RM-4643]

FM Broadcast Station in Manteo, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 252A to Manteo, North Carolina, as that community's second local FM service, in response to a petition filed by Bayliss Broadcasting Company.

EFFECTIVE DATE: November 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Manteo, North Carolina); MM Docket No. 83-1344, RM-4643.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 466, published January 4, 1984, proposing the assignment of Channel 252A to Manteo, North Carolina, as that community's second local FM service. The *Notice* was adopted in response to a petition filed by Bayliss Broadcasting Co. ("petitioner"). Supporting comments were filed by petitioner reiterating its intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 252A to Manteo, North Carolina, in order to provide a second FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i) 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Manteo, NC	252A, 257A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24513 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-472; RM-4331]

TV Broadcast Station in Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 42 to Little Rock, Arkansas as its fifth commercial television channel, in response to a petition filed by Millard V. Oakley.

EFFECTIVE DATE: November 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Station (Little Rock, Arkansas); MM Docket 83-472, RM-4331.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making* 48 FR 26463, published June 8, 1983, proposing the assignment of UHF Television Channel 42 to Little Rock, Arkansas, as its fifth commercial television assignment, in response to a petition filed by Millard V. Oakley ("petitioner"). Supporting comments were filed by the petitioner in which he restated his intention to apply for Channel 42, if assigned to Little Rock. Comments in opposition to the proposal were filed by Little Rock Communications Associates ("LRCA") permittee of Station KLRT-TV (Channel 16) Little Rock, Arkansas. Petitioner did not respond.

2. LRCA in its comments argues that to add Channel 42 at Little Rock would be contrary to Commission policy, harmful to the development of service in the Little Rock area, and inefficient from a technical standpoint. In this regard it notes that the Commission in recent months has granted a construction permit for Channel 26 at Hot Springs, Arkansas, and Channel 39 at Pine Bluff, Arkansas, and there is also on file an application for Channel 25 at Pine Bluff. These communities are said to be in the Little Rock ADI and would provide

service to that area. LRCA claims that the proposed assignment is contrary to Commission policy of postponing consideration of requests for additional television assignments to cities with authorized but unused assignments until all existing allocations have been put to use, citing UHF channel assignments at *San Diego, California* 13 R.R. 2d 1553, 1556 (1968), *Baytown, Texas* 12 R.R. 2d 1581, 1583 (1968) and *Waukegan, Illinois* 15 R.R. 2d 1509, 1511 (1969). IRCA also contends that the Commission in the San Diego case denied a petition for an additional allocation because it determined the community was not suffering from a critical shortage of assignments, outlets or services, and that a more exact assessment of the community's needs could be made after all the assigned channels were in operation. In its opinion, the San Diego case is directly applicable to the Little Rock proposal. LRCA further claims that the assignment of Channel 42 to Little Rock would seriously threaten the economic viability of KRLT (Channel 16), Little Rock's only independent UHF station. As a final matter LRCA argues that spacing and interference limitations would make it relatively difficult and costly to transmit a usuable signal on Channel 42. For these reasons LRCA urges the Commission not to adopt the proposal.

3. After consideration of the proposal and comments filed in the proceeding, we have concluded that the requested assignment would be in the public interest. The petitioner has adequately demonstrated a need for a fifth commercial assignment at Little Rock. Although Little Rock receives service from nearby cities, these stations are obligated to their community of license and cannot be expected to serve Little Rock to the same extent as a local station. With respect to the concerns of LRCA that a Channel 42 assignment at Little Rock would be restricted in the choice of a transmitter site, it must be assumed that the petitioner was aware of this limitation when he expressed an interest in the channel. In the past we have not been persuaded to refuse to make an assignment because it limited the choice of site so long as it did not preclude being able to obtain a proper site from which the station could provide the requisite city coverage. It appears that the opposition's comments are concerned more with the competitive impact of another station in the Little Rock market. However, we have held that economic issues are not an obstacle in making an assignment, as they are more adequately resolved at the application stage. See *Sanger, Clovis, Visalia and Fresno, California*, 49 RR 2d 579 (1981) and *Beaverton, Michigan*, 44 RR 2d 55 (1978). The cases cited by LRCA concerning the prior use of unoccupied channels are outdated cases. Current Commission policy makes no such requirements. Rather additional channels will be assigned in order to accommodate other interests and avoid hearings. Here however, there are no other Little Rock channels available for petitioners to apply.

4. Accordingly, in view of the above, it is ordered, that effective November 19, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Little Rock, AR	*2–, 4, 7–, 11, 16–, *36, and 42.

5. Authority for the adoption of the amendment herein contained Section 4(1), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning the above, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–24507 Filed 9–14–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–825; RM4480]

TV Broadcast Station in Orlando, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 27 to Orlando, Florida, in response to a petition filed by Allen Sheets. The assignment could provide a fifth commercial television service to Orlando.

EFFECTIVE DATE: November 19, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Orlando, Florida); MM Docket 83–825, RM–4480.

Adopted: August 31, 1984.

Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making* 48 FR 37485, published August 18, 1983, proposing the assignment of UHF Television Channel 27 to Orlando, Florida, as its fifth commercial television service. The *Notice* was issued in response to a petition filed by Allen Sheets ("petitioner"). Supporting comments were filed by the petitioner restating his intention to apply for the channel, if assigned. Daytona Beach Television Associates (DBTA) filed comments in opposition to the proposal.[1] Petitioner did not respond.

2. DBTA comments that it is opposed to the assignment because a Channel 27 transmitter site located at the reference point for Orlando would be 5.11 miles short spaced to its proposed site for Channel 26 at Daytona Beach, instead of 4.6 miles as stated in the *Notice* DBTA submitted engineering data to substantiate its claim.[2]

3. After careful consideration of the proposal and comments presented in this proceeding, we have determined that Orlando will benefit from the requested assignment, since it would provide for a fifth commercial television service to the community. As stated in the *Notice* the transmitter site is restricted to 4.6 miles south of the city coordinates (see fn. 2) to avoid short-spacing to Station WMFE-TV, Channel * 24, Orlando, and to the Application for Channel 26 at Daytona Beach, Florida.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 202 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, that effective November 19, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's rules, is amended with respect to the following community:

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[1] Daytona Beach Television Associates (DBTA) is an applicant for television Channel 26, Daytona Beach, Florida.

[2] DBTA's Engineering study utilized reference coordinates different from the National Atlas coordinates used by the Federal Communications Commission.

City	Channel No.
Orlando, FL	6–, 9, *24–, 27, 35+, and 65.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–24508 Filed 9–14–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Admt. 195.31; Docket No. PS–77]

Transportation of Hazardous Liquids by Pipeline; Isolated Corrosion Pitting

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This amendment revises the standard governing isolated corrosion pitting on hazardous liquid pipelines by replacing it with a standard similar to the one governing localized corrosion pitting on gas transmission lines. The current standard is too restrictive because it does not permit the use of technological advances in evaluating the strength of corroded pipe. This amendment will reduce costs to industry and consumers without reducing pipeline safety.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Copies of this amendment may be obtained from the Dockets Branch, Room 8426, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426–2392.

SUPPLEMENTARY INFORMATION: By a letter dated May 21, 1982, The American Petroleum Institute (API), a national trade association involved in most areas of the petroleum industry, petitioned MTB to revise the Federal safety standard in § 195.416(g) governing isolated corrosion pitting. The API asked that the standard be revised to reflect the corrosion pitting criteria found in § 451.6.2(a)(7) of the American Society of Mechanical Engineers (ASME) Code B31.4, "Liquid Petroleum Transportation Piping Systems," (1979 Edition).

With regard to steel pipe that is required to be examined for external corrosion, § 195.416(g) currently provides:

> If isolated corrosion pitting is found, the operator shall repair or replace the pipe unless—
>
> (1) The diameter of the corrosion pits is less than the nominal wall thickness as measured at the surface of the pipe; and
>
> (2) The remaining wall thickness at the bottom of the pits is at least 70 percent of the nominal wall thickness.

This standard was derived from a notice of proposed rulemaking (33 FR 10213; July 17, 1968) which in § 180.416(g) proposed that pipe be replaced if corrosion pitting reduces the original wall thickness by 10 percent or more. The technical basis for the modified version of the rule finally adopted as quoted above was not explained in the final rule document (34 FR 15473; Oct. 4, 1969).

On the basis of research conducted by Battelle Columbus Laboratories ("Summary of Research to Determine the Strength of Corroded Areas in Line Pipe", J.F. Kiefner and A.R. Duffy, July 20, 1971), as reflected in the B31.4 Code. API asserts in its petition that § 195.416(g) is unduly stringent. The current rule causes pipe to be replaced or repaired when these remedial measures are not needed for safety.

The Battelle research developed and tested criteria, incorporating mathematical expression of length and depth of corroded areas, to predict the pressure strength of corroded pipe. For pit depths equal to 80 percent or more of nominal wall thickness, the criteria require repair or replacement of pipe. For pit depths less than 80 percent of nominal wall thickness, the criteria permit continued operation of pipe at its current maximum pressure if the measured aggregate length of the corroded area is equal to or less than a calculated value. The pipe may be operated at a calculated reduced pressure if the length is longer than the calculated value.

The underlying premise of these criteria is that the minimum stress level at which pipe will fail in corrosion pits is 100 percent of the pipe's specified minimum yield strength (SMYS). Since the maximum operating pressure permitted under Part 195 produces a maximum stress level of 72 percent of SMYS, the criteria provide a 1.4 (100/72) factor of safety. This factor is greater than the minimum 1.25 factor of safety provided under § 195.406(a)(3) by hydrostatic pressure testing. The 1.25 factor, which results from limiting maximum operating pressure to 80 percent of test pressure, is generally accepted as a sufficient measure of pipeline integrity.

MTB concurs with API's criticism of the current standard for accepting or rejecting isolated corrosion pitting because it has no apparent scientific foundation and does not emphasize pipe strength. The remaining pressure strength of pipe material in a corroded area is the most important consideration in determining whether the pipe can safely continue in use. Although evaluating that strength is a complex problem, the Battelle criteria have gained recognition as an acceptable method of evaluation. Not only are the criteria included in the B31.4 Code–1979, but they are also in the ASME B31.8 Code for gas pipelines and the ASME *Guide for Gas Transmission and Distribution Piping Systems—1982.*

In view of the safety provided by the Battelle criteria, their widespread acceptance by the industry, and the potential for cost savings, the MTB published a notice of proposed rulemaking (48 FR 46589, October 13, 1983) proposing to grant API's petition and amend § 195.416(g) to allow use of the Battelle criteria. Rather than including the criteria directly in § 195.416(g), the notice proposed the adoption of a performance standard because it would permit the use of future technological developments. Although the B31.4 Code provisions that API recommended are not performance standards, the MTB standard in 49 CFR 192.485(b) for localized corrosion pitting on gas transmission lines is written in performance terms. This Part 192 standard for pipelines comparable to interstate hazardous liquid pipelines and operated in similar environments has provided an acceptable level of safety without enforcement difficulties since its adoption in 1978 (36 FR 12302). MTB proposed in the notice therefore, that this standard, in a slightly modified form to fit the Part 195 regulatory context, be adopted for isolated corrosion pitting on hazardous liquid pipelines subject to Part 195 instead of the current § 195.416(g).

Eleven commenters responded to the notice in Docket PS–77. The American Petroleum Institute, the American Gas Association, the Interstate Natural Gas Association of America, as well as eight major pipeline operators. All of the commenters recommended adoption of the proposed standard.

One pipeline operator, while generally agreeing with the proposed rule to permit the use of the Battelle criteria for external corrosion pitting, recommended that § 195.418 also be revised to permit the use of the criteria for internal corrosion pitting. Although this recommendation goes beyond the scope of the notice, MTB believes the recommended rule change is unnecessary, because § 195.418 is written in performance terms that allow use of the Battelle criteria for evaluating internal corrosion effects where proper length and depth measurements can be made.

The notice of proposed rulemaking was presented to the Technical Hazardous Liquid Pipeline Safety Standards Committee on December 7, 1983. The committee found the proposed rule to be technically feasible, reasonable, and practicable.

Classification

The Regulatory Flexibility Act (94 Stat 1164, 5 U.S.C. 601) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that the final rule will not have a significant economic impact on a substantial number of small entities because few, if any, interstate hazardous liquid pipelines are owned by small entities.

Since this proposed rule will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and governmental agencies, and no adverse effects are anticipated, the action is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (DOT Order 2100.5). Further, MTB has determined that this final rule does not require a full Regulatory Evaluation under those procedures. While the rule would provide definite cost savings for operators in many cases, the difference between the existing and revised requirements and the frequency at which savings would occur should result only in a minor cost savings impact on the hazardous liquid pipeline industry as a whole.

List of Subjects in 49 CFR Part 195

Pipeline safety, External corrosion, Isolated corrosion pitting.

PART 195—[AMENDED]

In view of the foregoing, MTB hereby revises § 195.416(g) to read as follows:

§ 195.416 External corrosion control.

* * * * *

(g) If localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

* * * * *

(49 U.S.C. 2002; 49 CFR 1.153 and Appendix A of Part 1)

Issued in Washington on September 12, 1984.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84-24549 Filed 9-14-84; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

Delegation of Authority to Chairman and Director, Office of Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: On July 31, 1984, the Commission exercised its power under 49 U.S.C. 10305(a) to recall certain matters previously delegated to the Office of Proceedings' Review Board to Divisions of the Commission.

The Commission has decided to recall the authority to issue certificates and decisions authorizing abandonments or discontinuances when the proceeding is either (a) filed under 49 U.S.C. 10903 and not protested pursuant to 49 U.S.C. 10904(b); or (b) involves an application by Consolidated Rail Corporation (Conrail) under section 308 of the Regional Rail Reorganization Act of 1973. The Commission delegates the authority to issue these certificates and decisions to the Chairman of the Commission because applications filed under these provisions must be granted by the Commission.

Concurrently, the Chairman has delegated the authority to issue these certificates and decisions to the Director of the Office of Proceedings.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245, or Wayne A. Michel (202) 275-7657.

SUPPLEMENTARY INFORMATION:

Comments: Since this is a final action undertaken to revise internal organization matters, formal comments are unnecessary. 5 U.S.C. 553(b)(A).

Prior to August 1, 1984, the Commission's Review Board decided licensing, rates, and finance proceedings including abandonments and discontinuances. On August 12 and September 12, 1983, the Commission voted to abolish the Review Board and to recall its docket for handling by Divisions of the Commission. The effective date for that action was established as July 31, 1984. All Review Board actions, with a few exceptions discussed in 49 CFR Parts 1011, 1115, and 1160, *Removal of Delegated Authority From the Review Board* (not printed), served August 1, 1984, were to be handled by the Divisions.

We have now decided to delegate certain abandonment and discontinuance proceedings to the Chairman. Specifically, the Chairman shall handle abandonment and/or discontinuance proceedings that either are (1) filed under 49 U.S.C. 10903 and not protested pursuant to 49 U.S.C. 10904(b), or (2) filed by Conrail pursuant to section 308(c)(2) of the Regional Rail Reorganization Act of 1973 (3R Act) (45 U.S.C. 748). This decisional authority is being delegated because applications filed under these provisions must be granted by the Commission. The Interstate Commerce Act provision covering abandonment and/or discontinuance applications states:

> (b) If no protest is received within 30 days after the application is filed, the Commission shall find that the public convenience and necessity require or permit the abandonment or discontinuance. 49 U.S.C. 10904(b).

The 3R Act provision governing Conrail abandonment and/or discontinuance applications contains similar language.

> (2) . . . An application for abandonment that is filed by [Conrail] under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless within such 90 day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line. 45 U.S.C. 748(c)(2).

Thus, if certain formal procedural requirements are met, the Commission must authorize the abandonment and/or discontinuance applications.

Under these circumstances, we find that these matters are ministerial and should be delegated to the Chairman. For the same reason, the Chairman has decided to delegate consideration of these cases to the Director of the Office of Proceedings.

These changes require minor revisions of several sections in 49 CFR Part 1011. New paragraphs are added to specifically list the additional duties of the Chairman and Director of the Office of Proceedings, respectively. Since the rule changes only affect internal Commission procedures, they are issued in final form and public comment is not required. The revisions in the Appendix are adopted.

This action does not affect significantly the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, authority delegations.

These final rules are issued pursuant to 5 U.S.C. 553 and 49 U.S.C. 10305.

Dated: September 10, 1984.

By the Commission; Chairman Taylor, Vice Chairman Andre, Commissioners Sterret and Gradison.

James H. Bayne,
Secretary.

Appendix

49 CFR Chapter X is amended as follows:

1. Section 1011.5 is amended by adding new paragraphs (a) (8) and (9) to read as follows:

§ 1011.5 Delegations to individual Commissioners.

(a) * * *

(8) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903 and the Commission must find, pursuant to 49 U.S.C. 10904(b), that the public convenience and necessity require or permit the abandonment or discontinuance.

(9) Issuance of certificates and decisions authorizing the Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

* * * * *

§ 1011.6 [Amended]

2. Section 1011.6 is amended by amending the first sentence in paragraph (e)(1) by revising the phrase "in paragraphs (f)(2) and (k) of this section" to read "in paragraphs (f)(2) and (k) of this section and paragraphs (8) and (9) of § 1011.5(a)".

3. Section 1011.7 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 1011.7 Delegation of authority by the Chairman of the Interstate Commerce Commission.

* * * * *

(i) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903, and the Commission must find, pursuant to 49 U.S.C. 10904(b) that the public convenience and necessity require or permit the abandonment or discontinuance, is delegated to the Director of the Office of Proceedings.

(j) Issuance of certificates and decisions authorizing the Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed is delegated to the Director of the Office of Proceedings.

[FR Doc. 84-[illegible] Filed [illegible]]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 49, No. 181
Monday, September 17, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

Bid Protest Regulations

AGENCY: General Accounting Office.

ACTION: Proposed rule.

SUMMARY: This proposed amendment to Part 21 of title 4, Code of Federal Regulations implements sections 3551–3556 of title 31, United States Code (as added by section 2741 of the Competition in Contracting Act of 1984 (Pub. L. 98–369)) and establishes regulations for the consideration of bid protests by the General Accounting Office.

The proposed regulations are designed to insure compliance by both the General Accounting Office and the Federal agencies with the statutory time limits for the issuance of bid protest decisions. The proposed regulations follow the statutorily mandated time limits for reports by federal agencies and General Accounting Office decisions and also provide for the withholding of awards or the suspension of performance of contracts once a protest is filed.

DATE: The GAO will consider comments received on or before October 17, 1984.

ADDRESS: Send comments to U.S. General Accounting Office, Office of General Counsel, 441 G Street, NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: James W. Vickers, Senior Attorney, General Accounting Office, by telephone (202) 275–6181.

SUPPLEMENTARY INFORMATION: The Competition In Contracting Act of 1984, Pub. L. 98–369, (the Act) provides for a procurement protest system whereby interested parties may protest to the Comptroller General alleged violations of a procurement statute or regulation with respect to a procurement or proposed procurement by a federal agency.

The major changes or additions to the current General Accounting Office Bid Protest Procedures (4 CFR Part 21 (1984)) are discussed in the following section analysis.

Section 21.0 contains the definitions of "interested party" and "federal agency" from section 3551 of the Act in addition to definitions of "contracting agency" and "contracting activity." The definitions of "working days" and "adverse agency action" are the same as in the current procedures.

Section 21.1 includes the definition of "protest" in section 3551 of the Act and provides in accordance with section 3552 of the Act that GAO will not decide protests filed initially with the General Services Administration Board of Contract Appeals. This section also sets forth the necessary elements of a protest including the requirement for a certificate of service showing that a copy of the protest has been served on the contracting agency.

Section 21.2 follows the basic timeliness rules of the current procedures and also contains strict procedural requirements for filing a protest.

Section 21.3 follows the current procedures with the addition of a 25-day deadline for filing the agency report, the procedure for extending the deadline and a description of what the report must contain. The time for comments on the report by the protester has been shortened to 7-days from the 10 days permitted under the current procedures. This section also lists examples of the type of cases which will be dismissed as not under GAO's jurisdiction and provides for summary dismissals. Finally, this section implements the provision of section 3555 of the Act that the failure of any party to comply with the stated time limits may result in the matter being decided without consideration of the late submission.

Section 21.4 implements sections 3553 (c)(1) and (d)(1) of the Act regarding withholding of award and suspension of contract performance following the filing of a protest.

Section 21.5 permits interested parties to request relevant documents from the agency as required by section 3553(f) of the Act.

Section 21.6 maintains our current bid protest conference mechanism but shortens the time limits and comment procedures reflecting the limited time under the Act to issue decisions.

Section 21.7 provides for the remedies set forth in section 3554(b)(1) of the Act and states that we will declare a successful protester to be entitled to costs only if the section 3554(b)(1) remedies are not feasible.

Section 21.8 sets forth the statutory deadlines for issuing decisions under normal and express option procedures and provides for extension of the 90-day period as permitted by section 3554(a)(1) of the Act.

Section 21.9 establishes the express option procedure required by section 3554(a)(2) of the Act and incorporates the 10-day deadline for agency reports in section 3553(b)(2)(c) of the Act. Streamlined procedures for hearing these protests are set forth.

Section 21.10 is similar to our current procedures except that a court must specifically request a decision and further provides for change of all deadlines if a court so orders.

Section 21.11 follows section 3554(d) of the Act.

Section 21.12 provides that GAO will continue to decide certain protest matters which it has traditionally considered, namely, protests of sales by federal agencies, and of procurements by the District of Columbia and by agencies of the government other than federal agencies, if they agree. GAO's protest function has for over 60 years proved to be a useful and beneficial dimension in the procurement/sales practices of the government. This section provides for a continuation of those benefits in situations where GAO's experience indicates they may be needed, but it omits particular features of section 2741(a) of the Competition in Contracting Act of 1984 which have not by that law been made applicable to these protests.

Section 21.13 follows our current procedures regarding requests for reconsideration.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Government contracts.

It is proposed to revise 4 CFR part 21 to read as follows:

PART 21—BID PROTEST REGULATIONS

Sec.
21.0 Definitions.
21.1 Filing of protest.
21.2 Time for filing.
21.3 Notice of protest, submission of agency report and time for filing comments on report.
21.4 Withholding of award and suspension of contract performance.
21.5 Furnishing of protest-related information by contracting agencies.
21.6 Conferences.
21.7 Remedies.
21.8 Time for decision by the General Accounting Office.
21.9 Express option.
210. Effect of judicial proceedings.
21.11 Signing and distribution of decisions.
21.12 Nonstatutory protests.
21.13 Request for reconsideration.

Authority: Secs. 3551–3556 of title 31, United States Code.

§21.0 Definitions.

(a) "Interested party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) "Federal agency" means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives and the Architect of the Capitol and any activities under his direction.

(c) "Contracting agency" means a federal agency which has awarded or proposed to award a contract under a protested procurement.

(d) "Contracting activity" means that part of a contracting agency directly responsible for the award or proposed award of a contract under a protested procurement.

(e) All "days" referred to are deemed to be "working days" of the federal government unless otherwise designated.

(f) "Adverse agency action" is any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. It may include but is not limited to: a decision on the merits of a protest; a procurement action such as the award of a contract or the rejection of a bid despite the pendency of a protest; or contracting agency acquiescence in and active support of continued and substantial contract performance.

§ 21.1 Filing of Protest.

(a) An interested party may protest to the General Accounting Office a solicitaiton issued by or for a federal agency for the procurement of property or services, or the proposed award or the award of such a contract. A party who has filed a protest with the General Services Administration Board of Contract Appeals under section III(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) with respect to a procurement or proposed procurement of automated data processing equipment and services may not file a protest with respect to that procurement with the General Accounting Office.

(b) Protests must be in writing and addressed as follows: General Counsel, General Accounting Office, Washington, D.C. 20548, Attention: Procurement Law Control Group.

(c) A protest filed with the General Accounting Office shall:

(1) Include the name, address and telephone number of the protester,

(2) Be signed by the protester or its representative,

(3) Identify the contracting activity and the solicitation and/or contract number,

(4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents,

(5) Specifically request a ruling by the Comptroller General of the United States (Comptroller General) and

(6) State the form of relief requested. A copy of the protest (including relevant documents not issued by the contracting agency) shall be concurrently served upon the contracting agency and the contracting activity. The protest submissions filed with the General Accounting Office shall be accompanied by a certificate of such service.

(d) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged, and clearly state legally sufficient grounds of protest.

(e) A protest filed with the General Accounting Office may be dismissed for failure to comply with any of the requirements of this section.

§ 21.2 Time for filing.

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

(3) If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10-days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered, provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraphs (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to the General Accounting Office must be filed within the 10-day period provided by this paragraph.

(b) (1) The term "filed" regarding protests to the General Accounting Office means receipt of the protest submission in the Procurement Law Control Group of the General Accounting Office. A protest will not be considered filed unless it includes evidence of service upon the contracting agency and the contracting activity in accordance with paragraph (b)(2) of this section. The term "filed" regarding protests to the contracting agency means receipt in the contracting agency.

(2) Service upon the contracting agency and the contracting activity shall be made by delivering in person or by commercial mail carrier the protest submission to both locations or by depositing the protest submission properly addressed with postage prepaid, in the United States mail (certified, first class, or overnight mail only). Service upon a party is accomplished in the same manner.

(3) The original of the protest submission required to be served shall contain a certificate of service signed by the protester or its representative stating that service has been made, the date and manner of service.

(c) The Comptroller general, for good cause shown, or where he determines that a protest raises issues significant to the procurement system, may consider any protest which is not filed timely.

§ 21.3 Notice of protest, submission of agency report and time for filing of comments on report.

(a) The General Accounting Office shall notify the contracting agency within 1 day of the filing of a protest. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The contracting agency shall furnish copies of the protest submissions to such parties with instructions to communicate further directly with the General Accounting Office. Copies of any such communications shall be furnished to the contracting agency.

(b) Material submitted by a protester will not be withheld from any interested party outside the government or from any federal agency which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified wherever it appears.

(c) The contracting agency shall file a complete report on the protest with the General Accounting Office within 25 days from the date of receipt of notice of the protest from the General Accounting Office. The contracting agency shall simultaneously serve the report upon the protester and interested parties who have responded to the notice given under paragraph (a) of this section. The report shall contain copies of the protest, the bid or proposal submitted by the protester and of the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested, the solicitation, including the specifications or portions relevant to the protest, the abstract of bids or offers or relevant portions, any other documents that are relevant to the protest, and the contracting officer's statement setting forth findings, actions, recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to all allegations of the protest which the agency contests. The copy of the report filed with the General Accounting Office shall also include a certificate of service signed by an agency representative stating that service has been made, the date and manner of service. Service upon the protester and interested parties shall be made in the same manner as service upon the contracting agency and contracting activity provided for in § 21.2(b)(2).

(d) The contracting agency may request, in writing, an extension of the 25-day report submission time period. The request shall set forth the reasons for which the extension is needed. The Comptroller General will determine, in writing, whether the specific circumstances of the protest require a period longer than 25 days for the submission of the report and, if so, will set a new date for the submission of the report. Extensions are to be considered exceptional and will be granted sparingly. The agency should make its request for an extension as promptly as possible to permit it to timely submit a report should the Comptroller General deny the request.

(e) Comments on the agency report shall be filed with the General Accounting Office within 7 days after receipt of the report, with a copy served on the contracting agency and other participating interested parties. Failure of the protester to file comments, or to file a statement that it does not intend to file comments but desires a decision on the basis of the existing record, or to request an extension under this section within the 7-day period will result in dismissal of the protest. The Comptroller General upon a showing that the specific circumstances of the protest require a period longer than 7 days for the submission of comments on the agency report, may set a new date for the submission of such comments. Extensions are to be considered exceptional and will be granted sparingly.

(f) Notwithstanding any other provision of this section, when on its face a protest does not state a valid basis for protest or is untimely (unless the protest is to be considered pursuant to § 21.2(d)) the Comptroller General will summarily dismiss the protest without requiring the submission of an agency report. When the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained by the General Accounting Office, the Comptroller General shall dismiss the protest at that time. If the Comptroller General has dismissed the protest, he will notify the contracting agency that a report need not be submitted. Among the protests which may be dismissed without consideration of the merits are those concerning the following:

(1) Contract Administration. The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601–13.

(2) Small Business Size Standards. Challenges of established size standards or the size status of particular firms are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

(3) Negative Determination of Responsibility of a Small Business Concern. The Small Business Administration, under its certificate of competency program, makes final dispositions of contracting office determinations that a small business firm is not responsible to perform a contract. 15 U.S.C. 637(b)(7)(A).

(4) Set-Asides and Awards Under Section 8(a) of the Small Business Act. Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to effect a procurement under the 8(a) program and the award of an 8(a) subcontract are not subject to review absent a showing of possible fraud or bad faith or that regulations were violated. 15 U.S.C. 637(a).

(5) Affirmative Determination of Responsibility. Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(6) Procurement Protested to the General Services Administration Board of Contract Appeals. Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. Once a particular procurement or proposed procurement is protested to the Board, the matter may not be the subject of a protest to the General Accounting Office. 40 U.S.C. 759(h), as amended by section 2713 of the Competition In Contrating Act of 1984, Pub. L. 98–369.

(7) Protests not filed either in the General Accounting Office or the

contrating agency within the time limits set forth in § 21.2.

(8) Procurements by agencies other than federal agencies as Defined by Section 3 of the Federal Property and Administration Services Act of 1979, 40 U.S.C. 472. Protest of procurements or proposed procurements by such agencies (e.g., U.S. Postal Service, Federal Deposit Insurance Corporation) are beyond the General Accounting Office bid protest jurisdiction as established in section 2741 of the Competition In Contracting Act of 1984, Pub. L. 98–369.

(9) Nonappropriated Fund Activities. The General Accounting Office has no authority under section 2741 of the Competition In Contracting Act of 1984, Pub. L. 98–369 to consider protests that do not involve the expenditure of appropriated funds.

(10) Walsh-Healey Public Contracts Act. Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is for determination solely by the procuring agency, the Small Business Administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35–45.

(11) Judicial Proceedings. The General Accounting Office will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court, unless the court requests a decision by the General Accounting Office.

(g) A protest decision may not be delayed by the failure of a party to file a submission within the specified time limits. Consequently, the failure of any party or contracting agency to comply with the prescribed time limits may result in resolution of the protest without consideration of the untimely submission.

§ 21.4 Withholding of award and suspension of contract performance.

(a) When the contracting agency receives notice of a protest from the General Accounting Office prior to award of a contract it may not award a contract, including an order under a Federal Supply Schedule contract or a basic ordering agreement, under the protested procurement while the protest is pending unless the head of the procuring activity responsible for award of the contract determines in writing and reports to the General Accounting Office that urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office decision. This finding may be made only if the award is otherwise likely to occur within 30 calendar days. See section 3553(c) of the Competition In Contracting Act of 1984, Pub. L. 98–369.

(b) When the contracting agency receives notice of a protest from the General Accounting Office after award of a contract, but within 10 days of the date of contract award, it shall immediately direct the contractor to cease contract performance and to suspend related activities that may result in additional obligations being incurred by the government under that contract while the protest is pending. The head of the procuring activity responsible for award of the contract may authorize contract performance notwithstanding the pending protest if he determines in writing and reports to the General Accounting Office that:

(1) Performance of the contract is in the government's best interest, or

(2) Urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office's decision. See section 3553(d) of the Competition In Contracting Act of 1984, Pub. L. 98–369.

§ 21.5 Furnishing of protest-related information by contracting agencies.

Upon request by an interested party the contracting agency shall provide, to that party, within 5 days of receipt of the request, any document relevant to the protested procurement (including the report required by § 21.3(c)) that the party is entitled by law or regulation to receive.

§ 21.6 Conference.

(a) A conference on the merits of the protest may, at the sole discretion of the General Accounting, be held at the request of the protester, interested parties who have responded to the notice given under § 21.3(a), or the contracting agency. Requests for a conference should be made at the earliest possible time in the protest proceeding.

(b) Conferences will be held on a date set by the General Accounting Office no later than 5-days after receipt by the protester and interested parties of the agency report. All such interested parties shall be invited to attend. Ordinarily, only one conference will be held on a bid protest.

(c) If a conference is held, no separate comments under § 21.3(e) will be considered. The protester, all interested parties and the contracting agency shall file comments on the conference and report as appropriate with the General Accounting Office, with service on the other parties, within 5-days of the date on which the conference was held.

(d) The General Accounting Office may request that a conference be held if at any time during the protest proceeding it decides that such a conference is needed to clarify material issues. If such a conference is held, the General Accounting Office shall make such adjustments in the submission deadlines as it determines to be fair to all parties.

(e) Failure of the protester to file comments, or to file a statement that it does not intend to file comments but desires a decision on the basis of the existing record, or to request an extension under this section within the 5-day period set forth in paragraph (c) of this section will result in dismissal of the protest. The General Accounting Office may set a new date for the submission of comments under the circumstances set forth in § 21.3(e).

§ 21.7 Remedies.

(a) If the Comptroller General determines that a solicitation, proposed award, or award does not comply with statute or regulation, the Comptroller Generall shall recommend that the contracting agency implement any combination of the following remedies which the Comptroller General deems appropriate under the circumstances:

(1) Refrain from exercising options under the contract,

(2) Terminate the contract,

(3) Recompete the contract,

(4) Issue a new solicitation,

(5) Award a contract consistent with statute and regulation; or,

(6) Such other recommendations as the Comptroller General determines necessary to promote compliance.

(b) In determining the appropriate recommendation, the Comptroller General, shall, except as specified in paragraph (c) of this section, consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, cost to the government, the urgency of the procurement and the impact of the recommendation on the contracting agency's mission.

(c) If the head of the procuring activity makes the finding referred to in § 21.4(b)(1) that performance of the contract notwithstanding a pending protest is in the government's best interest, the Comptroller General shall make its recommendation under paragraph (a) of this section without regard to any cost or disruption from terminating, recompeting or rewarding the contract.

(d) If the Comptroller General determines that a solicitation, proposed award, or award does not comply with statute or regulation it may declare the protester to be entitled to the costs of:

(1) Filing and pursuing the protest, including reasonable attorney's fees; and

(2) Bid and proposal preparation.

(e) Ordinarily, the Comptroller General will allow the recovery of costs under paragraph (d) of this section only if it is not feasible to recommend any of the remedies listed in paragraphs (a)(2)–(5) of this section.

(f) If the Comptroller General decides that the protester is entitled to the recovery of such costs, the protester and the contracting agency shall attempt to reach agreement on the amount of the costs. If the protester and the contracting agency cannot reach agreement within a reasonable time, the Comptroller General will determine the amount.

§ 21.8 Time for decision by the General Accounting Office.

(a) The General Accounting Office shall issue a decision on a protest within 90 days from the date the protest is filed with it.

(b) In those protests for which the General Accounting Office invokes the express option under § 21.11, the General Accounting Office shall issue a decision within 45 calendar days from the date the protest is filed with it.

(c) The General Accounting Office may extend the deadlines in paragraph (a) of this section on a case-by-case basis by stating in writing the reasons that the specific circumstances of the protest require a longer period. Such extensions are regarded as exceptional, and are to be used in unique circumstances only.

§ 21.9 Express option.

(a) At the request of the protester, the contracting agency or an interested party for an expeditious decision, the Comptroller General will consider the feasibility of using an express option.

(b) The express option will be invoked solely at the discretion of the Comptroller General only in those cases suitable for resolution within 45 calendar days.

(c) Requests for the express option must be in writing and received in the General Accounting Office no later than 3 days after the protest is filed. The Comptroller General will determine within 2 days of receipt of the request whether to invoke the express option and will notify the contracting agency, protester and interested parties who have responded to the notice under § 21.3(a).

(d) When the express option is used the filing deadlines in § 21.3 and the provisions of § 21.6 shall not apply and:

(1) The contracting agency shall file a complete report with the Procurement Law Control Group of the General Accounting Office on the protest within 10 days from the date it receives notice from the General Accounting Office that the express option will be used, with service upon the protester and interested parties who have responded to the notice under § 21.3(a).

(2) Comments on the agency report shall be filed with the General Accounting Office within 5 days after receipt of the report with a copy served on the contracting agency and other participating interested parties.

(3) The General Accounting Office may arrange a conference to ascertain and clarify the material issues at any time deemed appropriate during the protest proceeding.

(4) The General Accounting Office shall issue its decision within 45 calendar days from the date the protest is filed with it.

§ 21.10 Effect of judicial proceedings.

(a) The Comptroller General will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court.

(b) Paragraph (a) of this section shall not apply where the court requests a decision by the General Accounting Office.

(c) Where the court requests a decision by the General Accounting Office, the times for filing the agency report (§ 21.3(c)), filing comments on the report (§ 21.3(e)), holding a conference and filing comments (§ 21.6), and issuing a decision (§ 21.8) may be changed if the court so orders.

§ 21.11 Singing and distribution of decisions.

Each bid protest decision shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to all participating interested parties, the protester, the head of the contracting activity responsible for the protested procurement, the senior procurement executive of each federal agency involved, and any member of the public.

§ 21.12 Nonstatutory protests.

(a) The General Accounting Office may consider protests concerning sales by a federal agency or procurements by agencies of the government other than federal agencies as defined in § 21.0(b) or by the District of Columbia, if they agree to have their protests decided by the general Accounting Office.

(b) All of the provisions of these Bid Protest Regulations shall apply to any nonstatutory protest decided by the Comptroller General, except for the provisions of § 21.4 pertaining to withholding of award and suspension of contract performance, and except for the provision of § 21.7(d) pertaining to entitlement to attorney's fees.

§ 21.13 Request for reconsideration.

(a) Reconsideration of a decision of the General Accounting Office may be requested by the protester, any interested party who participated in the protest, and any federal agency involved in the protest. The General Accounting Office will not consider any request for reconsideration which does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered which was not available to the party during the pendency of the protest.

(b) Request for reconsideration of a decision of the General Accounting Office shall be filed, with copies to any federal agency and interested parties who participated in the protest, not later than 10-days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the General Accounting Office.

(c) A request for reconsideration shall be subject to those bid protest procedures consistent with the need for prompt and fair resolution of the matter.

Milton J. Socolar,

Special Assistant to the Comptroller General of the United States.

[FR Doc. 84-24532 Filed 9-14-84; 8:45 am]

BILLING CODE 1610-10-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Food Distribution Program Regulations (7 CFR Part 250) to require a 100 percent yield factor for all substitutable donated foods which have been made available to processors for conversion into different end products pursuant to agreements with distributing, subdistributing or recipient agencies.

DATE: To be assured of consideration comments must be received or postmarked on or before November 16, 1984.

ADDRESS: Comments should be sent to: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22303.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, (703) 756–3660.

SUPPLEMENTARY INFORMATION: Any new information collection and recordkeeping requirements contained in this rule are subject to approval by the Office of Management and Budget before becoming effective.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (Pub. L. 96–354). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing of donated foods. Among other things, processors are required to provide as part of the processing contract a description of each end product to be processed and the quantity of each donated food and any other ingredient which is needed to yield a specific number of each end product. The current regulations do not, however, set forth a specific yield requirement.

The Department is proposing to establish a 100 percent yield factor for all substitutable foods. A yield factor is that percentage of a donated food which must be returned in the end product. It is necessary to set the yield factor at 100 percent in order to set an equitable standard of performance so as to assure that no food processor enjoys unjust enrichment as a result of involvement in this program.

Although the Department understands that actual processing losses can vary by food-type and end product, the Department is proposing to revise § 250.15(d)(4)(ii) to require a 100 percent yield factor for all substitutable donated foods for any processing agreement. A 100 percent yield factor is defined in such a way that if, for example, 100 pounds of donated food are delivered to a food processor, 100 pounds of donated food (or food of that type) must appear in the end product. A 100 percent yield factor is not being required for "nonsubstitutable" donated foods. Meat and poultry items which are the chief nonsubstitutable items may have considerable weight loss due to the cooking or deboning processes; therefore, a 100 percent yield factor would be impracticable and result in a much higher price being charged to the recipient agencies for the end products.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting requirements, School breakfast and lunch programs, Surplus agricultural commodities.

PART 250—[AMENDED]

Accordingly, § 250.15 is amended by revising paragraph (d)(4)(ii) to read as follows:

§ 250.15 State Processing of donated foods.

* * * * *

(d) * * *

(4) * * *

(ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product distributed to eligible recipient agencies. The yield factor for substitutable donated foods must be 100 percent.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.550)

(Sec. 416, Pub. L. 81–439, as amended)

Dated: September 11, 1984.

Sonia F. Crow,
Acting Administrator.

[FR Doc. 84–24568 Filed 9–14–84; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 84–351]

Cancellation of Hearing on Unshu Oranges

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document announces that the public hearing concerning a rulemaking proposal to relieve geographic restrictions on importing Unshu oranges from Japan into the United States (see 49 FR 32207–32209, August 13, 1984), scheduled for Tuesday, September 18, 1984, in Washington, D.C., is cancelled.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

Done at Washington, D.C., this 14th day of September, 1984.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-24718 Filed 9-14-84; 10:35 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1007

[Docket No. AO-366-A21]

Milk in the Georgia Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that no change be made in the Georgia order. A cooperative association proposed that aseptically processed fluid milk products that are exported outside the continental United States be exempt from pricing and pooling under the Georgia milk order. The decision concludes that the hearing record does not establish that the proposed exemption would substantially improve export sales by the cooperative association.

DATE: Comments are due on or before October 9, 1984.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20205 (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing:

Issued May 10, 1983; published May 16, 1983 (48 FR 21962).

Supplemental Notice of Hearing:

Issued May 26, 1983; published June 1, 1983 (48 FR 24391).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Georgia marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, on or before 20 days after publication in the **Federal Register**. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The issue was considered at a hearing held at Hapeville, Georgia on July 12–13, 1983 pursuant to notices thereof issued May 10, 1983 and May 26, 1983 (48 FR 21962 and 48 FR 24391).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. However, no participants at the hearing testified about any potentially adverse impact of the proposals on small businesses.

The material issue on the record relates to:

An exemption from pricing and pooling under the Georgia milk order for aseptically processed fluid milk products exported outside the continental United States.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

An exemption from pricing and pooling under the Georgia milk order for aseptically processed fluid milk products exported outside the continental United States should not be adopted.

The Georgia milk order presently provides that a distributing plant, located in the marketing area, that processes and distributes primarily aseptically processed fluid milk products shall be fully regulated by the Georgia milk order irrespective of the market or markets in which the products may be distributed. Also, the Georgia order classifies and prices as Class I milk all dispositions of aseptically processed fluid milk products. This includes domestic and export sales.

Dairymen, Inc. (DI) a cooperative association of dairy farmers, proposed that producer milk used in aseptically processed fluid milk products that are exported from the continental United States be exempt from pricing and pooling under the Georgia milk order. As revised at the hearing, the proposed exemption would not apply to shipments to Alaska and Hawaii.

Under the modified proposal, "exempt milk" would be milk received at a pool plant in bulk form from a dairy farmer who produced it, or a cooperative association, to the extent of the quantity of any skim milk and butterfat disposed of in the form of an aseptically processed and packaged fluid milk product for export to any area located outside the United States. To obtain the exemption, the dairy farmer or cooperative association would have to notify the market administrator and the receiving handler that non-producer status for such milk was elected beginning with the month in which the election was made and continuing for each following month until cancelled in writing.

The Milk Industy Foundation (MIF), a trade association of milk dealers, proposed that whatever classification and pooling is provided for exported aseptically processed fluid milk products also be provided for all other exported fluid milk products. At the hearing, and in a post-hearing brief, the DI position was that the cooperative would not object to the adoption of the MIF proposal if a hearing record for the market affected demonstrated a need for it.

The MIF witness also proposed a revision of the DI proposal. The revision would allow a handler and not a dairy farmer or a cooperative association to designate what milk supplies would be "non-producer milk" in applying the proposed exemption from regulation.

Proponent's Presentation

The following points were made by the DI witness presenting the position of the cooperative association for the hearing record:

1. Exemption provisions are common in milk orders.

2. DI sells aseptically processed milk products in Puerto Rico, the Philippines, Nigeria, Aruba, Curacao, Montserrat, San Andreas, the Bahamas, and other countries. These sales compete directly with aseptically processed fluid milk products from Quebec Province, Canada, and from plants located in the European Economic Community (EEC). The export sales of the cooperative are at a distinct disadvantage in competing with these foreign sales because the Canadian milk is exempt from Canadian

pricing regulations and the EEC milk is subsidized. Consequently, the development of DI export sales is greatly hindered, particularly in the relatively nearby Caribbean area.

3. Specific price and cost information to describe the competitive situation in export markets is extremely limited. The competing EEC plants have an advantage over DI of 15 cents a quart on raw milk costs. This consists of an EEC "target price" of $11.92 a hundredweight for milk of 3.7 percent butterfat content and an export subsidy of $3.71 a hunderweight compared with a Georgia milk order Class I price of $15.20 a hunderdweight of milk of 3.7 percent butterfat content as of January 1983. DI competes with EEC plants for sales in the Bahamas, Montserrat, Curacao and Aruba.

4. Assuming that EEC processing, packaging and marketing costs are about the same as for DI, and that butterfat values are about the same, the competitive disadvantage of the DI pool plant at Savannah, Georgia, would be altered only by the relative locations of the Savannah plant and the EEC plants to the respective export markets.

5. DI competes also with aseptically processed fluid milk products from Canada in the Bahamas, Curacao, Aruba and Puerto Rico. Canadian sales also are made to Antigua and Jamaica. In December 1982, Canada exported aseptically processed fluid milk products (2 percent butterfat content) to Puerto Rico for 39 cents a quart compared with 55 cents a quart for DI. The Canadian sales had an advantage of 16 cents a quart.

6. Adoption of the proposal would enable DI to expand substantially its sales of aseptically processed milk, particularly in the relatively nearby Caribbean area. Such expansion would improve the operating efficiency of the DI pool plant at Savannah, Georgia, tend to reduce the quantity of milk used in Class III, increase blend prices to producers, improve the U.S. balance of trade, and reduce government purchases of dairy products.

There was no supporting testimony for the DI proposal from any of the 11 organizations represented at the hearing.

Opponents' Presentations

A. The DI proposal was opposed by four dairy farmer cooperatives supplying milk to the Upper Florida, Tampa Bay, and Southeastern Florida marketing areas on the following basis:

1. Handlers buying milk from the Florida cooperatives sell up to 1.5 million pounds of Class I milk each month outside the continental U.S. If the proposed exemption were adopted, a similar exemption should be provided for handlers regulated by the Florida orders who export fresh milk.

2. Producers associated with the Florida milk markets produce milk for a Class I market. If aseptically processed milk from the U.S. cannot compete in foreign markets without financial loss, such losses should be confined to the firms engaged in the business. The milk order program is not an appropriate place to seek financial relief for private business decisions that do not turn out as well as anticipated.

B. The DI proposal also was opposed by the Atlanta Dairies Cooperative on the basis that it would reduce Class I sales under the Georgia milk order and reduce blend prices to producers. Also, the Georgia producers would have to carry the reserve supply of milk associated with DI sales of export milk.

C. The DI proposal was opposed by the Southland Corporation, Borden, Inc., and 20 handlers regulated by the Middle Atlantic and New York-New Jersey milk orders on the following basis:

1. If the proposed exemption is adopted, a similar one should be adopted to cover all fluid milk products exported from the U.S. whether processed by handlers regulated by the Georgia milk order or any other milk order.

2. The Department should not adopt the unprecedented provision that producers should designate which milk is exempt from regulation and which is not.

3. Southland and Borden each operate plants regulated under Florida milk orders and from which substantial quantities of fluid milk products are processed for distribution to the Caribbean area. Some of the sales are to U.S. military bases outside the continental U.S.

4. Aseptically processed milk is a fluid milk beverage and competes with fresh fluid milk in the U.S. and in foreign markets. The consistent policy of the Department has been that fluid milk products for beverage use, no matter how processed, are classified as Class I milk. Some exceptions have been infant and diet formulas and eggnog. Also, in 1974, the Department denied a proposal for a lower classification of sterilized milk for 32 milk orders, and it regards reconstituted nonfat dry milk as being a Class I fluid milk product.

5. The export market for fresh fluid milk is a growing one in the relatively nearby Caribbean area and in Mexico. Exported fresh fluid milk sold by Southland, Borden and other companies presently competes successfully with aseptically processed milk exported by DI from its plant at Savannah, Georgia, and with foreign competitors.

In 1981, 11.6 million pounds of fluid milk products were exported from the Upper Florida and Southeastern Florida milk order areas. In 1982, 15 million pounds were exported. For the first four months of 1983, 5.6 million pounds were exported. Most of the sales were fresh fluid milk.

Also, U.S. Census data indicate that exports of fresh fluid milk products increased to 36.9 million pounds in 1981 from 18.9 million pounds in 1978. Over 50 percent of the exports were to Mexico. Other countries receiving shipments of fluid milk were Venezuela, Bermuda, and virtually every island nation in the Caribbean area. Very little of the substantial increase in sales was aseptically processed milk.

6. Adoption of the DI proposal would reduce proponent's product cost substantially in exporting aseptically processed milk—from the present Class I price to the Class III price or lower. This could undermine fresh milk sales. The result would be to reduce Class I sales under the Georgia order and under other milk orders. The Department should make no distinction for exported aseptically processed milk.

7. Adopting the DI proposal is not necessary to increase the quantity of milk that is exported. The proposed exemption would be potentially harmful to the companies that have increased exports of fresh milk sales and to the dairy farmers who supply the milk.

8. If the proposal were adopted, administrative problems for the Department would include the verification that aseptically processed milk actually was exported. Also, there would be no controls to ensure that once it was exported the aseptically processed milk would not be returned to the U.S. to undermine sales of higher priced fresh milk and aseptically processed milk for U.S. disposition.

9. The DI proposal should not be adopted because it would permit dairy farmers to designate what milk is to be exempt and what milk is not. The term "use" relating to milk order sales has consistently been applied by the Department to mean the use of which the raw milk is put by the handler. No milk order presently provides for the classification of milk by producers, and such a proposal has the potential to disrupt normal economic decision making by handlers.

10. If the exemption were adopted for aseptically processed milk that is exported by DI, handlers' costs for fluid milk products would not be uniform as

required by the Agricultural Marketing Agreement Act of 1937, as amended.

D. The DI proposal was opposed by Kinnett Dairies on the following basis:

1. Fluid milk, regardless of processing techniques, is priced under milk orders as Class I milk with the point of sale having no bearing on the classification. This treatment does not give one handler a competitive advantage over another.

2. To exempt aseptically processed milk that is exported from pricing and pooling under the order would have a deleterious effect on the orderly marketing of milk.

3. DI, as a cooperative that is owned and operated by producer members, has the capability to be competitive in any export market as long as their producer members choose to do so. If DI chooses to export aseptically processed milk, its members should be willing to make whatever investment is necessary and should not expect other segments of the industry to subsidize their operation.

4. If Class I sales are removed from the Georgia order pool through the adoption of the proposed exemption, other producers would be subsidizing the export operation.

5. Kinnett Dairies supports the long-standing Department policy that all fluid milk products be treated alike under milk orders.

6. The Georgia market administrator probably could not track the disposition of exported milk unless it is kept in the Georgia pool as Class I milk.

E. The Milk Industry Foundation (MIF), a trade association of milk dealers, proposed that whatever classification and pooling is provided for exported aseptically processed milk should also be provided for all other exported fluid milk products. In support of this, the spokeman for MIF made the following points:

1. One of the main tenets of the Federal milk order program is to provide uniform raw milk costs to competing handlers. This is done by treating all competing fluid milk products alike, regardless of processing method or packaging. An exception to this has been milk packaged in hermetically sealed containers for infant and diet use. The main policy should be continued.

2. The Georgia order does not differentiate between dairy products sold domestically and those that are exported. In the domestic market, aseptically processed milk and other fluid milk products compete with each other and are classified and priced alike. The relationship between aseptically processed milk and other fluid milk products does not change simply because the consuming public lives inside or outside the U.S.

3. Handlers regulated by Federal milk orders other than the Georgia milk order sell fresh fluid milk products in the Caribbean area and Mexico. If the Department adopts the DI proposal, immediate competitive inequities would result between the DI pool plant regulated by the Georgia milk order and pool plants under some other milk orders.

4. Placing exports to the Caribbean area and Mexico in something other then Class I would facilitate the export of fluid milk products to those areas and back again to gain access to a lower cost milk supply. If that happened, the entire classified pricing system of the Federal milk order program would be in jeopardy.

5. If milk sold in the Caribbean and Mexico continued to be Class I, while exports to areas beyond those places were exempt from regulation, the possibility of fluid milk products reentering the U.S. after having been exported would be decreased.

6. A mechanism to insure the re-entry does not occur must be found if Federal milk order regulation of exports is changed. The market administrators of milk orders affected must be able to verify that what is claimed to be an exempt export actually leaves the U.S. and does not come back in later.

7. Removing exports from Class I will lower total Class I sales under a number of milk orders. This could lower blend prices somewhat in a number of milk orders.

8. Some members of the dairy industry question the advisability of encouraging export sales at other than Class I prices from the Georgia area and other milk order areas where milk supplies are relatively tight.

9. If the Department decides that export sales may be exempt from regulation, the choice of exempt status should be available to all handlers and not be dependent upon individual dairy farmers. The order should allow handlers to designate non-producer status for milk that is exported.

10. Handlers from various milk order areas are in direct competition for sales of milk in the Caribbean area. If the Department decides to exempt exported fluid milk from regulation by the Georgia milk order, the same status should be provided for handlers regulated under other milk orders, if requested.

Discussion of the Issue

The issue raised by this proceeding is whether the Dairymen, Inc., pool plant at Savannah, Georgia, should be provided with exemption from pricing and pooling under the Georgia milk order for export sales of aseptically processed fluid milk products in order to expand such export sales substantially. The proposed exemption for export sales could only apply to the DI pool plant becuase it is the only plant regulated by the Georgia milk order that packages aseptically processed fluid milk products.

Of the 30 export markets identified in the hearing record, European Economic Community (EEC) plants export aseptically processed milk to 25, Canada to 6, and DI to 9. The EEC, Canadian, and DI plants compete for aseptically processed milk sales in the Bahamas, Curacao, and Aruba. EEC plants and DI compete in Montserrat. The Canadian and DI plants compete in Puerto Rico and the Canadian and EEC plants compete in Antigua. The EEC plants distribute without competition from the Canadian and DI plants in 18 of the export markets identified in the hearing record. It would appear that DI could aim at expanding sales of aseptically processed milk sales in 21 of the export markets identified and increase its sales to the 8 export markets it serves now.

The DI witness said that the EEC plants have a 15-cent a quart advantage over DI in sales of aseptically processed fluid milk products in the export markets where they compete. The DI witness said that detailed price information to describe the competitive situation in export markets is extremely limited. He said that EEC plants' advantage consisted of an EEC "target price" of $11.92 a hundredweight for milk of 3.7 percent butterfat content and an export subsidy of $3.71 a hundredweight. He compared this with a Georgia milk order Class I price of $15.20 a hundredweight for milk of 3.7 percent butterfat content. The witness assumed that EEC processing and marketing costs are about the same as for the DI pool plant at Savannah, Georgia. However, there is no basis in the record for concluding that the assumptions made are valid. The witness also stated that the competitive disadvantage of the DI plant would be altered (improved) by the relative locations of the Savannah plant and EEC plants to the respective sales outlets. No transport costs from the EEC to the Caribbean area were entered in evidence. Also, concerning the EEC subsidy, the evidence is that EEC products with 3 percent or less fat by weight receive no export subsidy. Products with more than 3 percent fat but less than 8.9 percent fat received a subsidy in January 1983 of $3.71 a hundredweight. In selling aseptically processed lowfat milk of 2 percent butterfat or less, DI would encounter no EEC subsidy, for counterpart products. It must be concluded that there is no definitive data in evidence concerning the cost of supplying aseptically processed fluid milk products from EEC plants to export markets in the Caribbean area. Consequently, no accurate judgment about such costs can be made on the basis of the record.

However, it is unlikely that the proposed exemption, if adopted, could provide DI with the means to expand export sales substantially in competition with EEC and Canadian plants, as intended. The testimony was that Canadian exporters have an advantage of 16 cents a quart in Puerto Rico and EEC plants have an advantage of 15 cents a quart where they compete with DI. The record established that the competitive cost of any dependable supply of nonpool milk for export at the DI pool plant likely would be the Georgia order weighted average price. The weighted average price for 1982 was $14.23 a hundredweight, which was 55 cents a hundredweight less than the Class I price. At 46.5 quarts a hundredweight, this translates to a reduction of 1.2 cents per quart. Thus, adoption of the proposed exemption could not provide DI with the means of expanding export sales of aseptically processed fluid milk products in the face of the competitive advantage claimed for Canadian and EEC exporters.

The DI witness said that an important beneficial result from adopting the proposed exemption for exported aseptically processed milk would be that a substantial portion of the Class III milk in the Georgia market would be reduced, since it would be exported as exempt milk. In 1982, the proportion of producer milk that was used in Class III was 18 percent. For the first 5 months of 1983, the Class III utilization percentage was down slightly from the same months of 1982. Other source milk, as a percentage of producer milk, increased slightly for the first 5 months of 1983 as compared to the same months of 1982. The combination of lower Class III use and an increase in the use of other source milk likely indicates a tightening of producer milk for the market. It could be argued that the Class III utilization under the Georgia milk order is no more than a sufficient reserve for Class I use and that to reduce it substantially, as intended by proponent, would endanger an adequate supply of milk for fluid use. That important consideration notwithstanding, if all the Class III utilization were transferred to export sales of aseptically processed milk, only a moderate increase would be noticeable in the weighted average price of the order.

The proponent also said that another benefit from adopting its proposal would be that the U.S. balance of trade would be improved and government purchases of dairy products under the price support program would be reduced. It is noted that the quantity of aseptically processed milk from the Savannah plant that could contribute to such an impact would be so minor as to have no measurable effect either in the balance of trade or in price support purchases.

Handlers presented a variety of reasons for not adopting the DI proposal. Chief among them was the view that aseptically processed milk is a fluid milk beverage and competes with fresh fluid milk in both U.S. and foreign markets. In their view, the Department should continue to apply the long-standing policy that milk processed into fluid milk products for beverage use is Class I milk. In this connection, it was indicated on the record that the Department had made some exceptions to this approach by providing a lower price than Class I for infant and diet formulas and eggnog. If marketing conditions justify such lower price for specific milk products, such accommodation can and has been made. However, such an exception for exported aseptically processed milk is not justified on the basis of this record.

Handlers also argued that no distinction should be made between the classification and pricing of aseptically processed milk that is disposed of in the U.S. and that which is disposed of for export. As indicated previously, the proponent did not establish on this record that adoption of its proposal could effectively expand export sales of aseptically processed milk. Accordingly, no basis was made for distinguishing between domestic and export sales by means of an exemption from pricing and pooling for export sales of aseptically processed milk.

There was some discussion on the record about whether aseptically processed milk sales and fresh milk sales compete for the same market in the U.S. and in foreign areas. Presumably, separate markets might provide the basis for different treatment concerning classification and pricing or an exemption from regulation. The proponent suggested that in the Caribbean area, fresh milk sales may supply a market with refrigeration capacity whereas aseptically processed milk sales may not. Also, the proponent commented on some studies of the domestic market which indicated that aseptically processed milk may not be competing for the same market as fresh milk. However, the information on these points was not definitive and it provided no basis in this record for making a distinction in the regulatory treatment of domestic and export sales of aseptically processed and fresh milk.

There is no valid reason in this record why export sales of aseptically processed fluid milk products should be priced lower than the Class I price which is applied to products that are fluid milk in both form and use. Producers should not be made to forfeit some of their returns from Class I milk to expand the sales of aseptically processed milk in foreign markets. This is especially true when the adoption of the exemption proposed by DI could not likely achieve the goal intended. Insofar as this record is concerned, returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are aseptically processed or not. Apparently, such products in either form are being marketed for the same beverage use. Accordingly, continuing to classify all such products as Class I milk will assure that the returns from producer milk used in aseptically processed fluid milk products will contribute on the same basis as returns from producer milk used in other fluid milk products for beverage use toward inducing an adequate supply of milk for beverage use.

Handlers also argued that adoption of the DI proposal would result in immediate and competitive inequities between the DI pool plant regulated by the Georgia milk order and pool plants under some other milk orders. It was argued that sales of fresh milk that is exported would be supplanted by aseptically processed milk exports. As a result, Class I sales in various orders would decline, blend prices to producers would drop and handlers would not be assured uniform pricing of milk for fluid use among competitors as is required by the Agricultural Marketing Agreement Act of 1937, as amended.

In this connection, handlers did not present any specific information in evidence concerning comparative costs and the actual economic impact that the DI proposal would have on export marketing conditions for fresh milk. In the absence of substantive data to elucidate marketing conditions concerning this, it cannot be concluded that immediate and competitive inequities among handlers actually would occur as handler witnesses claimed. There is specific information in the record that handlers exporting fresh milk are competing successfully with aseptically processed milk exports from the U.S., Canada, and the European Economic Community.

Handlers argued that an exemption from regulation for all fluid milk exports would be needed if the DI proposal were adopted. It must be concluded that this record does not provide the basis for such action even if the DI proposal were adopted.

The witness for Atlanta Dairies testified that if the DI proposal were adopted, all the producers associated with the Georgia market, and specifically those who are not members of DI, would have to carry the reserve supplies of milk that necessarily would be associated with DI sales of exported milk. This is a valid concern, and the proponent described no benefits to the market as a whole, from the adoption of their proposal that would compensate independent producers for this outcome. Proponent argued that the blend price under the order would increase somewhat. However, it is not clear from record evidence that such increase would offset for individual producers the loss of Class I sales under the order and the financial burden of having to carry reserve supplies associated with DI sales of exported milk.

Another point made by a handler witness was to question the advisability of accommodating export sales of aseptically processed milk as proposed by DI when the Georgia market and other milk markets in the region have rather tight supplies of milk. This view parallels a finding made earlier in this decision that adoption of the DI proposal could jeopardize a continuing adequate supply of milk for Class I use in the Georgia market if the quantity of Class III milk in the pool is reduced substantially as intended by DI.

Hearing record data indicated that for the months of July through September 1982, Georgia Class III utilization averaged 11.4 percent of total utilization. With Class III utilization this low, during any year, an increase in exports during these months could deplete, at least temporily, the supply of reserve milk for the Georgia market. The proponent, having entered into contractual arrangements to serve the export market, might find it difficult to shift supplies back in time to serve the Georgia marketing area. In other months of the year, producers whose milk is priced under the order would be required to carry part of the reserve milk supply associated with the export of aseptically processed milk products.

A number of handler witnesses said that placing fluid milk exports to the Caribbean in something other than Class I could facilitate the shipment of fluid milk products to those areas and back again to gain access to a lower cost milk supply. Their view was that the entire classified pricing system could be in jeopardy. There is some doubt from record evidence that this could readily happen, especially where ocean freight costs and relatively long-distance voyages would be involved. Handler witnesses presented no analytical data to establish their point. However, the close proximity of extensive areas of Mexico to California, Arizona, New Mexico and Texas might result in the problem cited by the handler witnesses. The record evidence presented no effective controls to deal with this eventuality.

Proponent's proposal and the testimony relating to it, understandably, was focused on a method whereby DI as a cooperative would claim exemption from pricing and pooling for the milk of some of its producer members that it designated for export sales of aseptically processed milk. As indicated, Dairymen, Inc., presently operates the only pool plant packaging aseptically processed milk under the Georgia order. The cooperative's proposal, however, raised questions concerning the propriety, under milk orders, of having individual producers and cooperative associations designating the end-use of milk. One handler witness said that the exemption should not be adopted because it would permit dairy farmers to designate what milk is to be exempt and what milk is not. His view was that no milk order presently provides for the end-use classification of milk by producers, and that the proposal has the potential of disrupting normal economic decision making by handlers who operate milk plants. Another witness said that the order should allow handlers, and not producers and cooperatives, to decide whether to elect non-producer status for export milk.

In this connection, the Federal milk order program regulates handlers and pool plants. Regulatory status depends on where a handler sells milk, the quantity sold in Class I or the quantity delivered from supply plants to distributing plants during the month. If the handler's actions cause the plant not to be pooled, then the regulations do not apply to that milk supply. It is the handler's actions on which this determination is made. To allow individual dairy farmers to pick and choose which handlers have to pay Class I prices for raw milk used for export and which should receive exempt milk status on their raw milk supply would create severe competitive inequities. Two handlers competing for export sales, one with exempt milk and one with Class I milk, would not be competing on an equal basis. Any provision that established this type of situation would be inappropriate for a milk order. The record of this hearing does not deal effectively with this aspect of the proposal either in terms of specific testimony about the impacts on various persons encompassed by the regulation or in terms of appropriate amendatory provisions.

On the basis of the foregoing considerations, it is concluded that the proposal to exempt exported aseptically processed fluid milk products from pricing and pooling under the Georgia milk order should not be adopted. Accordingly, the proposal is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Determination

The findings and conclusions of this decision do not require any change in the regulatory provisions of the order regulating the handling of milk in the Georgia marketing area.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on September 12, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84–24552 Filed 9–14–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 420

[Docket No. CAS-RM-79-501]

State Energy Conservation Program

AGENCY: Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy is considering proposing modifications to the regulations for the operation of its State Energy Conservation Program. The objective of this notice of inquiry is to solicit ideas and suggestions concerning how the program can be made more efficient and productive through regulatory and not legislative means. In addition to the review of the general direction and scope of the program and its regulations, the Department is particularly interested in comments relating to modifying the energy savings component of the formula that determines the amount of funds allocated to each State.

DATES: Written comments (five copies) must be received on or before November 1, 1984. Four public hearings will be held on the dates and at the times following: Kansas City, Missouri on September 28, 1984 beginning at 9:30 a.m.; Salt Lake City, Utah on October 1, 1984 beginning at 9:30 a.m.; Atlanta, Georgia on September 26, 1984 beginning at 9:30 a.m.; and Philadelphia, Pennsylvania on September 24, 1984 beginning at 9:30 a.m.

ADDRESSES: (1) Public hearing locations: Kansas City Federal Building, 601 East 12th Street, Room 116, Kansas City, Missouri 64106; Salt Lake City Federal Building, 125 South State St., Room B-20 (Basement Level), Salt Lake City, Utah 84138; Richard Russell Federal Building, 75 Spring St., SW., Room 1278, Atlanta, Georgia 30303; and William J. Green Federal Building, 600 Arch Street, Room 10320 (10th Floor), Philadelphia, Pennsylvania 19106. Send all written comments, oral statements and requests to speak at a hearing to Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets Unit, Room 6B-025, Docket Number CAS-RM-79-501, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Rick Klimkos, Energy Management and Extension Division, Conservation and Renewable Energy, Department of Energy, Mail Stop 6A-081, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-8287.

Edward H. Pulliam, Office of General Counsel, Department of Energy, Mail Stop 6B-144, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

The State Energy Conservation Program (SECP) was established by Part C of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 932 (42 U.S.C. 6321 *et seq.*), to provide financial assistance to develop, modify or implement State energy conservation plans. Part C was subsequently amended by Part B of Title IV of the Energy Conservation and Production Act (ECPA) Pub. L. 94-385, 90 Stat. 1158 (42 U.S.C. 6326 and 6327), which provided financial assistance to develop, modify or implement supplemental State energy conservation plans. Together, the EPCA and ECPA provisions describe the SECP.

Regulations for the program appear in 10 CFR 420. The Department of Energy (DOE) most recently amended the regulations on August 30, 1983 (48 FR 39356) in order to make the program more flexible and responsive to the needs of the States.

Although DOE has not recommended that this program be funded for any subsequent fiscal years, the Department recognizes that continued funding is a possibility and would like to operate the program as efficiently as possible. Therefore, DOE is now interested in receiving general comments about the program, as well as suggestions about modifications to the energy savings component of the funding formula. The energy savings issue is more fully detailed in Section II below. The objective of this notice of inquiry is to receive from concerned members of the public ideas and suggestions which could be implemented to make the program more effective and productive without changing the enabling legislation of the SECP.

II. Issue and Questions for Public Comment

DOE is particularly interested in obtaining views on the issue and questions set forth below.

The program regulations require that financial assistance for the SECP be allocated to States based on a formula in which 40 percent of the funds are divided on the basis of population, 25 percent are shared equally, and 35 percent are based on estimated energy savings. This formula has been used since the program's beginning. On February 11, 1983, DOE proposed an amendment to the SECP regulations (48 FR 6492) which, if adopted, would have replaced estimated energy savings with actual energy savings reported by States at the end of each year as validated or calculated by DOE. In response to the many comments expressing reservations about this proposed change, DOE, in the final rule published August 30, 1983 (48 FR 39356), decided not to initiate the change but rather to design and conduct, with State assistance, a pilot test of an energy savings validation system in order to determine the workability and feasibility of the concept.

At the request of DOE, Oak Ridge National Laboratory (ORNL) undertook an analysis of the feasibility of validating energy savings attributable to the SECP. An Advisory Group made up of representatives from five States and one DOE Operations Office was established to assist ORNL in its effort.

ORNL concluded that the concept of a validation system for SECP energy savings is not feasible for a number of technical and institutional reasons. The technical limitations, which result in the general inability to measure SECP energy savings with any degree of confidence, were identified as follows:

- The inability to properly attribute energy savings to SECP activities can lead to an overstatement of those savings.
- Numerous factors which cannot be accurately measured, but which must be considered in standard methodologies used in the calculation of energy savings, may produce large error rates in these calculations.
- Energy savings produced by activities funded and completed in prior years can distort annual estimates and mask current programs performance.
- Inconsistencies among State estimates of energy savings result from some States using the standard methodologies and others using other procedures.
- Multi-year programs can produce savings of different amounts in different years, which makes it difficult for separate yearly evaluations to present an accurate appraisal of the value of a particular State energy savings project.

The institutional limitations identified were:

- The cost of implementing a validation system is prohibitive relative to the funds available for the SECP.
- Time constraints do not allow a validation system to be in place by FY 1985.

- Expertise to implement a validation system did not exist in the States or DOE.
- Uncertainty in yearly funding levels resulting from the validation system may cause instability in staffing levels and discourage multi-year programs.
- Small innovative programs may be replaced by easily verifiable programs thus changing the SECP philosophy.
- More Federal involvement in state decision-making will occur contrary to the objective of the August 30, 1983 final rule. An adversarial relationship between DOE and States may be promoted.
- Incentives for States to inflate energy savings may shift from estimates of projected savings to estimates of actual savings.

These conclusions raise questions about the current regulation and DOE is considering modifying the regulation. Among the questions raised and about which DOE would particularly like comments are the following:

1. Should DOE amend its regulations to change the energy savings component of the funding formula? The August 30, 1983 final rule does not require DOE to change the funding formula at the conclusion of the pilot test of an energy savings validation system. The existing formula will remain unless DOE initiates actions to change it. However, consistently reliable estimates of energy savings have not been produced under the current system. Inaccuracies in reporting are due in part to DOE's basing 35 percent of the funding formula on the projection with no rigorous verification system, the State's desire to avoid reporting a large shortfall against projected energy savings, and turnover and shortages in State technical staff capable of doing energy savings calculations.

2. If the energy component of the funding formula is modified, what changes should be made? A measure of energy savings is required in the funding formula in order to meet the requirements of the SECP legislation. However, DOE is not restricted to the existing method used to measure energy savings. In addition to adding factors to the funding formula, deleting existing ones, or changing the weight assigned to those factors, changes in the way energy savings are measured may be made. DOE is concerned that modifications to the energy savings component of the funding fomula support the following goals: (1) A defensible and as accurate as possible accounting of energy savings, (2) promotion of energy savings, (3) an equitable allocation system for SECP funds, (4) a cost-effective approach to program evaluation and validation, and (5) a stronger linkage between program evaluation and program management.

3. If modifications to the energy savings component of the funding formula are made, are changes to the regulations in other areas needed to support those changes? DOE is concerned that relability and validity of information other than energy savings also be assured. Techniques to imporve the reliability, validity, and accurate reporting of information such as the number of training sessions held, the number of people using carpool facilities, and other indicators of program progress might be used in conjunction with and support of modifications to the funding formula.

4. If modifications to the energy savings component of the funding formula are made, should some funds be set aside for performance-based funding either to reward States achieving program success or to direct additional funds to States lagging in program results? DOE is concerned with equitable distribution of program funds and not drastically altering traditional State allocation levels. At the same time, DOE is concerned with promoting and increasing energy savings.

In addition to the specific concern with the energy savings component of the formula, DOE also invites comments or suggestions about other aspects of the program which the public feel need to be addressed, and which could be changed through regulatory (rather than legislative) means.

III. Comment Procedures

All interested persons are invited to submit written comments to DOE by the date mentioned previously in the **DATE** section of this notice. Such correspondence should be mailed to: Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B-025, Docket Number CAS-RM-79-501, Forrestal Building, 1000 Independence Avenue, SW., Washington D.C. 20585. Five copies should be submitted.

All comments received will be available for publilc inspection in the DOE Reading Room 1E-090, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any information or data considered by the person furnishing it to be confidential and which may be exempt by law from public disclosure must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination, pursuant to DOE's regulations on confidentiality (10 CFR Part 1004).

DOE will hold several public hearings on this Notice of Inquiry. The hearings will be held in: Philadelphia, Pennsylvania, Atlanta, Georgia, Kansas City, Missouri and Salt Lake City, Utah on the dates and at the addresses stated in the **DATE** and **ADDRESSES** sections of the Notice of inquiry.

Any person who has an interest in the Notice of Inquiry, or who is a representative of a group or class of persons which has an interest in it, may make a written request for an opportunity to make an oral presentation. Such a request to speak at a hearing should be addressed to Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets Unit, Room 6B-025, Docket Number CAS-RM-79-501, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319, and must be received by 4:30 p.m., local time on September 13, 1984. A request may also be hand delivered between the hours or 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments, with the additional notation, "With Request to Speak".

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation, and should provide a phone number where the person may be reached. Each person selected to be heard at a public hearing will be notified. Those persons selected to be heard should bring five copies of their statement to the hearing. If a person cannot provide five copies, alternative arrangements can be made in advance of the hearings. Requests for alternative arrangements should be made in the letter requesting to speak.

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to twenty minutes, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to notify potential interested parties. Hearing dates may be cancelled in the event no public testimony has been scheduled in advance.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs/energy, reporting and recordkeeping requirements, technical assistance.

Issued in Washington, D.C., September 5, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84-24464 Filed 9-14-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Parts 270, 271, 272, 273, and 274

[Docket No. RM84-14-000]

Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act

Issued: September 13, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On January 1, 1985, the Natural Gas Policy Act of 1978 (NGPA) will deregulate the prices for substantial amounts of interstate and intrastate gas. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to prepare for price deregulation under section 121 of the NGPA for certain types of natural gas subject to sections 102, 103, 105, and 106 and new maximum lawful prices under sections 103(b) and 105(b)(3).

DATES: An original and 14 copies of comments must be filed by October 17, 1984. A public hearing will be held on October 11, 1984. Requests to participate in the public hearing must be submitted by October 4, 1984.

ADDRESS: All filings should refer to Docket No. RM84-14-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Leslie Lawner, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8511.

Ken Malloy, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION: On January 1, 1985, the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982), will deregulate the prices for substantial amounts of interstate and intrastate gas. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to prepare for price deregulation under section 121 of the NGPA for certain types of natural gas subject to sections 102, 103, 105, and 106 and new maximum lawful prices under sections 103(b) and 105(b)(3).

I. Background

At the time Congress was considering the NGPA, oil prices were rising and increasing demand and declining supplies of natural gas created severe shortages in many parts of the nation. Political concern about these market distortions, as well as concern about the nation's energy dependence, led Congress to enact legislation revamping the natural gas pricing structure that had existed under the Natural Gas Act (NGA) and eventually to phase in market forces as a substitute for that structure for a substantial amount of our nation's gas supplies. Thus, in 1978, Congress deregulated some gas shortly after the enactment of the NGPA, provided for deregulation of prices for other categories of gas over the next decade, and retained regulatory and pricing controls on other gas wells until these wells are depleted.

Title I of the NGPA created several categories of natural gas, the first sale of which is subject to maximum lawful prices (ceiling prices). Those categories are based on a variety of factors, such as the date the well was drilled, whether the gas was sold under intrastate contracts or committed or dedicated to interstate commerce (dedicated gas), and the need for incentives to produce gas that is otherwise difficult or uneconomical to produce. In contrast, the price of certain natural gas produced from completion locations deeper than 15,000 feet, geopressured brine, coal seams, or Devonian shale was deregulated in 1979, shortly after enactment of the NGPA. Moreover, under section 121, the price for some sections 102 and 103 gas and certain intrastate gas will be deregulated on January 1, 1985, while additional section 103 gas will be deregulated on July 1, 1987. In addition to price deregulation, Congress also mandated higher ceiling prices on January 1, 1985, for certain categories of gas under sections 103 and 105.

II. Discussion

This rulemaking generally concerns categories of natural gas that will be price deregulated under section 121. On January 1, 1985, section 121(a) eliminates price controls from "new natural gas" defined in section 102(c) [1] and certain gas produced from "new, onshore production wells" under section 103.[2] Subject to section 121(e), section 121 also deregulates the price of intrastate gas that is subject to section 105 or 106(b) if the price paid for the last deliveries of such natural gas occurring on December 31, 1984 (or the price that would have been paid if no deliveries occurred on that date) is higher than $1.00 per MMBtu.[3]

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[1] "New natural gas" under section 102(c) covers three types of gas: (1) Gas produced from the Outer Continental Shelf under a lease entered into after April 20, 1977; (2) gas produced from an onshore well on which surface drilling began on or after February 19, 1977, or the depth was increased by 1,000 feet on or after that date, and which is at least 2.5 miles from the nearest marker well or which is 1,000 feet deeper than the deepest completion location of any marker well within 2.5 miles; and (3) gas produced from a reservoir from which natural gas was not produced in commercial quantities before April 20, 1977, subject to certain exclusions. Section 121 deregulates all three types of gas.

[2] "New, onshore production wells" under section 103(c) are onshore wells on which surface drilling began on or after February 19, 1977, and from which gas is produced from a proration unit that meets certain requirements. Section 121 deregulates on January 1, 1985, the price of section 103 wells that were not committed or dedicated to interstate commerce on April 20, 1977, and that produce gas from a completion location deeper than 5,000 feet.

The Commission has two goals in this rulemaking. The first is to resolve those legal and policy issues that are presented by deregulation of certain categories of gas under section 121. The second is to make technical amendments to the Commission's NGPA regulations to conform them to the pricing changes that will take effect on January 1, 1985.

A. Jurisdictional Agency Determinations

Section 503 establishes procedures under which well category determinations are made by State or Federal jurisdictional agencies and then reviewed by this Commission. Since enactment of the NGPA, this section and the Commission's implementing regulations have been used primarily for determining whether gas qualifies under a particular NGPA pricing category. With deregulation occurring on January 1, 1985, it appears that determinations will still be required before production can qualify for deregulated prices. This is due to the criteria that must be met before production qualifies for a deregulated category. Thus, even though section 121 deregulates the price of certain categories of gas, it appears that first sellers must continue to file for determinations for certain categories of gas that will be price deregulated after the determination becomes final, where determinations previously have been required under Title I.

First, for sections 102 and 103 gas deregulated by section 121 and for which a producer has not filed for or obtained a determination prior to January 1, 1985, it appears that first sellers must continue to file applications for determinations with the appropriate jurisdictional agencies. The Commission is tentatively of the view that the NGPA requires a determination in this instance.

Under the determination process Congress established in section 503, jurisdictional agencies make certain factual findings about the well characteristics for certain categories of gas in Subtitle A of Title I of that Act. Subject to certain iterim collection procedures in section 503(e), an affirmative determination by the jurisdictional agency is a condition precedent to a first seller charging and collecting a specified price. Section 503 does not distinguish between gas that is regulated or deregulated, but attaches a substantive effect to a jurisdictional agency's application of the definitions in sections 102(c), 102(d), 103(c), 107(c) and 108(b). Nothing in section 503 or 121 indicates that Congress intended this substantive effect to be changed by deregulation on January 1, 1985. Thus, the Commission tentatively believes that the NGPA requires producers to obtain well category determinations, even for gas which will be price deregulated upon a final determination.

The Commission's approach to deregulation under section 107 followed this view. Under section 107(c), Congress deregulated the price of certain types of high-cost natural gas, *i.e.*, gas produced from completions below 15,000 feet, Devonian shale, geopressured brine, and occluded natural gas produced from coal seams. Section 503(a)(1) requires that a determination be made "applying the definition of high-cost natural gas under section 107(c)." Similarly, section 107(c) requires that gas must be "determined in accordance with section 503 to be" high-cost gas. Given this NGPA mandate, the Commission required that producers obtain a determination in order for gas to be deregulated under section 107(c). This rule would adopt similar requirements for gas under sections 102(c) and 103 that will be deregulated on January 1, 1985.

The Commission is also considering alternative methods for meeting this statutory obligation. For example, it may be possible to establish a notice procedure similar to that used for obtaining qualifying status under section 210 of PURPA.[4] Under the procedure in § 292.207(a)(2), a party seeking to have qualifying status under PURPA for a cogeneration or small power production facility, may certify to the Commission in an informational filing that the facility meets the criteria in the rule, some of which are statutory in nature. The Commission requests comments on whether it has the authority under the NGPA to establish a similar procedure for well category determinations for deregulated gas and, if it does, whether such a procedure should be established. Comments are also invited on alternative means for carrying out the Commission's obligations under the statute, as well as the degree of latitude permitted by the statute.

Second, where a producer has already obtained a determination prior to January 1, 1985, that the gas qualifies as section 102(c) or 103 gas, the Commission is not proposing to require any additional determination that the gas is deregulated. Hence, the price for all section 102(c) or 103 gas that otherwise meets the prerequisites for deregulation is deregulated on January 1, 1985. Under this proposal, the producer would determine whether the gas meets any additional criteria for a deregulation under section 121 of the NGPA. The Commission expects that pipelines will monitor a producer's decision as to whether or not the gas is deregulated. The Commission intends to review these decisions with audits and investigation of complaints.

Whether a section 103 application was filed before or after January 1, 1985, gas subject to that application must meet two criteria imposed by section 121 to be deregulated. It must not have been committed or dedicated to interstate commerce on April 20, 1977,[5] and it must be produced from a completion location deeper than 5,000 feet.[6] The Commission recognizes that it may have an obligation to review the deregulation criteria for section 103 gas before a first seller may charge and collect the deregulated price. Therefore, the Commission is considering requiring producers of such gas to file an affidavit, either separately or as part of a determination application, with the Commission and the purchasing pipeline that the section 103 gas meets these criteria. Alternatively, the Commission could require a standard section 503 determination by jurisdictional agencies with review by this Commission prior to deregulation taking effect. While we recognize these options, especially the latter, would impose a significant burden on applicants, jurisdictional agencies, and this Commission, the Commission requests comments on all aspects of these options including its statutory responsibilities to require such review.

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[3] Section 121(e) provides that, if the price for section 105 gas is over $1.00 per MMBtu because of the operation of an indefinite price escalator clause, gas will not be deregulated, but is subject to the ceiling prices in section 105(b)(3).

[4] Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.*

[5] For purposes of determining whether the gas was committed or dedicated to interstate commerce on April 20, 1977, the Commission intends to apply the definition in secion 2(18) of the NGPA. Under the NGA, acreage subject to an interstate contract was not dedicated gas until gas actually commenced flowing in interstate commerce. Conversely, if no gas under the contract actually flowed in interstate commerce, then the gas was not dedicated gas under the NGA. Under section 2(18) of the NGPA, however, gas may be committed or dedicated to interstate commerce before flowing in interstate commerce, if, when sold, it "would be required to be sold in interstate commerce . . . under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act." *See generally, Conoco, Inc.* v. *FERC*, 622 F.2d 796 (5th Cir. 1980); *Tenneco Exploration Ltd.* v. *FERC*, 649 F.2d 376 (5th Cir. 1981). Hence, gas which, if sold, would have been required to be sold in interstate commerce under the terms of any contract, Natural Gas Act (NGA) certificate, or provision of such Act would be deemed committed or dedicated to interstate commerce on April 20, 1977.

[6] For purposes of determining whether the completion location is located at a depth of more than 5,000 feet, the Commission proposes to amend § 272.104 to apply to section 103 gas. Section 272.104 currently applies to section 107(c) high-cost natural gas which must, among other things, be produced from a completion location deeper than 15,000 feet and requires that the measurement "shall be the true vertical depth from the surface location to the highest perforation point of the completion location." 18 CFR 272.104 (1983). The Commission believes it is appropriate to use the same measurement definition for section 103 gas as for section 107(c) gas because it would be consistent with our current practice.

Third, where an application for a determination is pending before a jurisdictional agency or this Commission on January 1, 1985, and becomes final after January 1, 1985, the Commission is proposing that the determination must become final before the gas qualifies for deregulation. This follows from the first proposal that producers should be required to obtain a determination even for gas that will be price deregulated after January 1, 1985.

The fourth instance concerns "new tight formation gas" under section 107(c)(5). In order to qualify as new tight formation gas, a producer must file the same information, in addition to other information, that would be filed to qualify as a section 102 or 103 determination. 18 CFR 274.205(e)(1)(i)(A) or (B) (1983). Thus, a determination that gas qualifies as new tight formation gas is implicitly a determination that the gas meets the qualifications for either section 102(c) or 103. Accordingly, for new tight formation gas for which a producer has received a final determination prior to January 1, 1985, such gas would be deregulated under section 121 if the application contained the data and met the requirements for section 102(c) or 103 gas.

B. Interim Collection

The Commission's regulations state two different rules governing the price a first seller may collect while an application is pending before the Commission. The first rule applies to gas that is subject to a ceiling and for which a determination is required under the NGPA. In that situation, the Commission's current regulations allow producers, subject to contractual authorization, to collect the highest ceiling price for which they applied. 18 CFR 273.202(a)(1) and 273.203(a)(1) (1983). The second rule applies to gas that is deregulated under section 107 and for which a determination is required. In that situation, the Commission's regulations allow a producer, subject to contractual authorization, to collect only up to the section 102 price, not a higher deregulated contract price, while a determination is pending before a jurisdictional agency or this Commission. 18 CFR 273.202(a)(2) and 273.203(a)(2) (1983).

The Commission is proposing several changes to its interim collection regulations in light of deregulation on January 1, 1985. First, §§ 273.202(a)(2) and 273.203(a)(2) would be amended to apply not only to section 107 gas, but also to sections 102(c) and 103 deregulated gas. Secondly, and more importantly, the Commission is proposing to eliminate the section 102 price cap on interim collections and permit a producer to collect the deregulated price while an application for a determination for such gas is pending before a jurisdictional agency or this Commission. This rule would apply both for applications pending on January 1, 1985, and for those filed after January 1, 1985. The deregulated price should be the price that the producer and purchaser agree should be collected during the interim period.

The Commission's experience in reviewing over 165,000 determinations for sections 102, 103, and 107 gas indicates that producers file for the correct category of gas for these sections in over 96% of the cases. Thus, the Commission believes that in the vast majority of cases no refunds will be necessary under its proposed rule. However, if it is finally determined that the gas does not qualify under these sections, the producer will, of course, be required to refund the difference between the price collected and the otherwise applicable ceiling price, with interest. 18 CFR 154.102 (c) and (d) (1983). Moreover, all other aspects of the Commission's current interim collection regulations would remain in effect for such gas, such as the surety bond or escrow requirement options.

C. Gas Qualifying for Both a Regulated and a Deregulated Category

There may be instances where gas produced from a well qualifies for two NGPA categories, one regulated and one deregulated. For example, gas that may qualify as section 103 deregulated gas under section 121 might also qualify as stripper well gas, which remains regulated under section 108 of the NGPA. Depending upon a producer's contracts, there may be some instances where it is more advantageous to the producer to collect a regulated price rather than a deregulated price. For example, in the current gas market, a producer may claim a contractual right to receive a higher price if the gas can remain under a regulated category than if the gas is not subject to any applicable ceiling price by operation of section 121 of the NGPA. Therefore, the Commission may have to interpret the NGPA as to whether the ceiling price provisions of the NGPA apply to gas that meets the criteria for both a regulated and deregulated category of gas.

The Commission believes that Congress intended all price controls for gas specified in section 121 to terminate on January 1, 1985, whether or not the gas continued to qualify for a regulated price. This interpretation is consistent with the overall scheme envisioned by Congress when it enacted the NGPA—to provide incentive prices to encourage exploration and development of new reserves in the short-term, and to gradually substitute market forces for regulated prices by phasing in deregulation in 1985 and 1987.

Arguably, section 101(b)(5) provides producers a choice to remain regulated if the regulated price is higher than the deregulated price. That section provides that if natural gas "qualifies under more than one provision of this title providing for any maximum lawful price or any exemption from such a price . . ., the provision which could result in the highest price shall be applicable."

The Commission seeks comments on whether conflicts between regulated and deregulated gas prices are governed by this section, for example, on the theory that deregulation is not an "exemption for such price whth respect to any first sale." Under this approach, Congress may have intended the language regarding "exemption," rather than referring to deregulation, to refer to instances in which the otherwise applicable ceiling price would not apply, such as special relief under sections 104, 106, and 109. Congress foresaw the possibility that in administering the well category ceiling prices, it was conceivable that some gas would qualify for more than one ceiling price. Hence, it sought to clarify that the "provisions that permit the seller to obtain the highest price" would apply. Joint Explantory Statement of the Committee on Conference, H.R. Rep. No. 1752, 95th Cong., 2d Sess. 74 (1978). The issue is whether Congress intended this section to supersede the explicit statutory requirement of deregulation in section 121, when phased-in deregulation was one of its primary objectives in enacting the statute.

In any event, the Commission recognizes that there may be many instances in which there will be contract disputes regarding the appropriate deregulated price allowed by the contract. For example, if a contract merely states that a producer can collect the "highest regulated price" for deregulated gas, the parties may disagree as to what that price is. These types of contract disputes should generally be resolved by the parties or the appropriate judicial forum. *See generally, Pennzoil Co.* v. *FERC,* 645 F.2d 360, 380–82 (5th Cir. 1981). The Commission nonetheless invites comments on whether this is the most appropriate procedure for resolving these disputes.

D. Contracts Under Section 105

1. Definition of Indefinite Price Escalator Clauses

As noted above, section 121 deregulates the price of intrastate contracts where the price paid on December 31, 1984, is higher than $1.00 per MMBtu provided that the price has not been established under an indefinite price escalator clause as defined in section 105(b)(3)(B). This, sales of gas under section 105 will be deregulated only if the price paid exceeds $1.00 on December 31, 1984, without the effect of an indefinite price escalator clause, but will not be deregulated if it exceeds $1.00 by virtue of the operation of an indefinite price escalator clause.

First, section 105(b)(3)(B) defines an indefinite price escalator clause as a clause

> which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or . . . which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

In its Order No. 23 series,[7] the Commission found in general that for interstate contracts, most-favored-nations clauses, price-reference clauses, certain redetermination clauses, FPC clauses, area rate clauses, and other such clauses are indefinite price escalator clauses.[8] The Commission believes that these findings are consistent with the definition of indefinite price escalator clauses in section 105(b)(3)(B) and should be used in applying that definition to intrastate contracts.

Second, while the Commission could rely on State or Federal courts to resolve contractual disputes as to whether a contract clause should be treated as an indefinite price escalator clause under section 105(b)(3)(B), the Commission requests comments on whether to allow the use of declaratory orders or NGPA interpretations of the General Counsel (18 CFR 385.207 and 385.1901 (1983)), or procedures similar to the Order No. 23 procedures to resolve such disputes. Since declaratory orders offer the parties the opportunity to obtain a binding resolution before the Commission, the Commission is proposing to specifically provide in § 271.506(a) that a petition for declaratory order be filed in instances where there is a conflict as to whether a contract clause meets the definition in NGPA section 105(b)3)(B). While the Commission is inclined to exercise its own authority for purposes of determining what constitutes an indefinite price escalator clause and whether the gas subject to such a contract is deregulated, the Commission is inclined to leave other aspects of a contract's dispute (such as the price that can be charged under the contract) to be resolved by the parties or appropriate judicial forum.

2. Operation of the $1.00 per MMBtu Threshhold

Other problems arise in determining whether the gas is actually priced above $1.00 on December 31, 1984. For example, some contracts may contain a definite pricing term which sets the price above $1.00 per MMBtu, without resorting to any indefinite price escalator clause that may also be in the contract. Thus, if the contract includes a definite price term setting the price at $1.10 per MMBtu and also an indefinite price escalator clause, the question arises as to whether the gas is deregulated, especially if the producer has used the indefinite clause to collect the section 102 price under the authority of section 105(b)(1).

The Commission believes that section 105(b)(3)(A) requires that the operation of the indefinite price escalator clause be the only mechanism by which the price is raised above $1.00 per MMBtu on December 31, 1984. Thus, in the above example, the gas would be deregulated. If Congress intended otherwise, it could have stated that all intrastate contracts with indefinite price escalator clauses remain regulated; there would be no need to reference the $1.00 threshold. Thus, the Commission is proposing in new § 271.506(b) that a contract will be deregulated if the fixed price that was or would have been collected under the contract is more than $1.00 per MMTtu.

A related problem arises when the price paid under an intrastate contract is based on a percentage of the proceeds from a subsequent sale (percentage sale). Determining whether the percentage sale price is above $1.00 per MMBtu on December 31, 1984, obviously presents the problem of determining a specific price paid on December 31, 1984. If conceived of as a daily price, a percentage sale price can fluctuate on a daily basis. For example, under a percentage sale, the price of gas, if reported on a daily basis, may be above $1.00 on December 28, below a $1.00 on January 1, 1985, and above $1.00 again on January 3, 1985.

The Commission faced a similar problem in Order No. 68, [9] in which the Commission had to determine whether a percentage sale exceeded the section 105 and 106(b) ceiling price. The Commission noted that "the pricing mechanisms under sections 105 and 106(b) appear to assume a specific price stipulated by the terms of the contract." That order resolved this dilemma by reference to the subsequent resale between the percentage sale buyer and subsequent purchaser (resale contract). If the resale contract was within the ceiling price authorized by the NGPA, then the Commission assumed that the price paid under the percentage sale was within the ceilling price of the NGPA. The Commission noted that this was "the only practical course."

For purposes of determining whether section 105 gas subject to percentage sales contracts is priced above $1.00 per MMBtu and thereby deregulated, the Commission is proposing to follow the same rule established in Order No. 68. As proposed in § 271.506(c), if a resale contract that is the subject of a prior percentage sale is above $1.00 per MMBtu, the Commission will deem the percentage sale deregulated by operation of section 121. Conversely, if the price paid under the resale contract is below $1.00 per MMBtu on December 31, 1984, then the Commission will deem the percentage sale not deregulated by operation of section 121.

The Commission recognizes that under this proposal, there may be certain instances where the price paid under the resale contract is over $1.00 per MMBtu and the percentage given to the seller is less than $1.00 per MMBtu, and thus not technically eligible for price decontrol. The Commission believes that this problem is *de minimis*. Under section 105, the ceiling price for a percentage sale that remains regulated is the section 102 price ($3.73—July 1984). The Commission believes that, given the current surplus market, there will be few instances in which the price collected for a percentage sale of deregulated gas would exceed or equal the section 102 price. Thus, it makes little practical difference whether the Commission considers these percentage sales regulated or deregulated sales. Also, a decision to deregulate the percentage sale contract will have no rate impact on consumers since the resale contract will qualify for a deregulated price. The Commission is, therefore, inclined to follow Order No. 68's resolution of the percentage sale problem.

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[7] Final Regulations Amending and Clarifying Regulations Under the Natural Gas Act and the Natural Gas Policy Act, 44 FR 16895 (Mar. 20, 1979) (Order No. 23); 44 FR 34472 (June 15, 1979) (Order No. 23–B) (codified at 18 CFR § 154.94 (h) through (j) (1983)).

[8] In Order No. 23, the Commission was concerned with the issue of whether various contractual clauses provided contractual authority to collect NGPA maximum lawful prices. Here, however, the Commission is concerned not so much with interpreting the intent of parties to contracts but with whether certain pricing clauses fall within the definition of "indefinite price escalator clause."

[9] Rules Generally Applicable to Regulated Sales of Natural Gas and Ceiling Prices, 45 FR 5678 (Jan. 24, 1980) (Order No. 68).

Alternatively, the Commission recognizes that it could require parties to percentage sale contracts to determine as closely as possible whether the price actually paid on December 31, 1984, is above or below $1.00 per MMBtu. The Commission is concerned that this option would entail considerable accounting and administrative burden to the parties and this Commission. However, the Commission requests comments on the proposal and this alternative as well as other administratively feasible techniques for determining whether a percentage sale exceeds the $1.00 per MMBtu threshold mandated in section 105 of the NGPA.

E. Other issues and conforming amendments

The Commission has indicated above those issues that it must resolve that relate to deregulation or new ceiling prices of certain gas in 1985. The Commission, however, wishes to be apprised of any other issues that commenters are aware of that will be presented by pending deregulation.

Many technical, conforming amendments must be made to the Commission's regulations implementing the NGPA in light of the changes that will be made under the NGPA on January 1, 1985. For example, the Commission's regulations relating to deregulated gas are codified in Part 272 and the regulations relating to regulated gas in Part 271. Since the price of gas subject to sections 102 and 103 is currently regulated, the regulations for these sections are contained in Part 271. Since most of the gas subject to these sections will be deregulated in 1985, the Commission has the choice of either amending Part 271 to reflect deregulation changes, or including in Part 272 the regulations that will apply to the deregulated gas under sections 102 and 103.

The Commission also has included technical and conforming changes that must be made to its NGPA regulations in the regulatory text of this proposal. For example, the table of ceiling prices listed at the end of § 271.101 is amended to reflect the new ceiling prices for sections 103 and 105 gas that remains regulated. While the Commission believes it has covered substantially all changes that must be made, it encourages comments on additional issues, and technical and conforming amendments in light of the changes that will be made by the NGPA in January of 1985.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires certain statements, descriptions, and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities."[10] The Commission is not required to make such an analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities."[11]

There are approximately 10,000 natural gas producers in the United States, many of which would be classified as small entities under the appropriate RFA definition.[12] This proposed rule might affect most of these entities by amending the filing requirements that must be followed for gas that will be deregulated on January 1, 1985. While these changes will be important in implementing deregulation under the Natural Gas Policy Act, the Commission does not believe that the burden imposed by these regulations will be significant. For the most part these regulations would merely make legal decisions and technical corrections necessary to implementing the statute. In those few instances were the Commission proposes to amend its regulations based on policy, the Commission believes that the economic impact, if any, will not be "significant." Accordingly, the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

IV. Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice. An original and 14 copies of such comments should be filed with the Commission by October 17, 1984. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM84-14-000. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

In addition, pursuant to section 502(b) of the NGPA, the Commission will hold a public hearing on October 11, 1984, at 10:00 a.m. Requests for participation in this hearing must be submitted by October 4, 1984. Requests should indicate the amount of time required for the oral presentation. Persons participating should, if possible, bring 25 copies of their presentation to the hearing.

This hearing will not be of a judicial or evidentiary type. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked or persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM84-14-000, in the Commission's Division of Public Information.

List of Subjects in 18 CFR Parts 270 through 274

Natural gas, Incentive prices.

In consideration of the foregoing, the Commission proposes to amend Parts 270 through 274, Subchapter H, Chapter 1, Title 18 Code of Federal Regulation.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 270—[AMENDED]

1. The authority citation for Part 270 is revised to read as follows:

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[10] 5 U.S.C. 603(a) (1982).

[11] *Id.* at section 605(b).

[12] *Id.* at section 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines small business concern as a business which is independently owned and operated and which is not dominant in its field of operation.

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

2. Section 270.101(a) is amended by removing the words "high-cost" and inserting, in their place, the word "natural."

3. Section 270.101(c)(2) is revised to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(c) * * *

(2) The price of gas is deregulated only if such gas is deregulated natural gas as defined in § 272.103(a).

* * * * *

§ 270.102 [Amended]

4. Section 270.102(b)(14) is amended by removing the words "high-cost" and inserting, in their place, the word "natural."

5. A new § 270.208 is added to read as follows:

§ 270.208 Applicability of section 121.

Natural gas that is subject to section 121(a) of the NGPA shall be price deregulated and not subject to the maximum lawful prices of the NGPA, regardless of whether the gas also meets the criteria for some other category of gas subject to a maximum lawful price under Subtitle A of Title I of the NGPA.

PART 271—[AMENDED]

6. The authority citation for Part 271 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

7. Table I following § 271.101 is amended by adding a sentence at the end of footnote 1, adding footnotes 4, 5, and 6, adding a new designation E between designations C and F in the column reading "Subpart of Part 271" and revising designations B and C to read as follows:

§ 271.101 Ceiling prices for certain categories of natural gas.

* * * * *

TABLE I—NATURAL GAS CEILING PRICES (OTHER THAN NGPA §§ 104 AND 106(a))

Sub-part of part 271	NGPA section	Category of gas	*Maximum lawful price per MMBtu for deliveries in*
B	102	New natural gas, certain OCS gas[4].	* * *
C	103	New, onshore production wells[5].	* * *
E	105(b)(3)	Existing intrastate contracts[6].	

* * * * *

[1] * * *. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's Regulations.)

* * * * *

[4] Commencing January 1, 1985, the price of natural gas finally determined to be eligible as new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's Regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be eligible as natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's Regulations.)

[6] Prior to January 1, 1985, the maximum lawful price was the price specified in Subpart B of Part 271.

8. Section 271.201(a) is revised and the introductory text of the section is reprinted for the convenience of the reader:

§ 271.201 Applicability.

This subpart implements section 102 of the NGPA and applies to the first sale of:

(a) new natural gas which is not deregulated natural gas (see § 272.103(a)); or

* * * * *

9. Section 271.301 is revised to read as follows:

§ 271.301 Applicability.

This subpart implements section 103 of the NGPA and applies to the first sale of natural gas produced from a new, onshore production well, if such gas is not deregulated natural gas (see § 272.103(a)).

10. Section 271.501 is amended by revising the first sentence to read as follows:

§ 271.501 Applicability.

This subpart implements section 105 of the NGPA and applies to the first sale of natural gas under an existing intrastate contract or under a successor to a intrastate contract, if such natural gas is not deregulated natural gas (see § 272.103(a)). * * *

11. Section 271.502(a) is amended by removing the heading "November 9, 1978, contract price at or below $2.06 per MMBtu."

12. Section 271.502 is amended by removing the heading for paragraph (b), revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

§ 271.502 Maximum lawful prices.

* * * * *

(b) In the case of a first sale of natural gas to which this subpart applies and for which the price paid exceeds $1.00 per MMBtu on December 31, 1984 (or would exceed $1.00 per MMBtu if sold on such date) solely by operation of an indefinite escalator clause, the maximum lawful price for natural gas delivered in any month shall be the higher of:

(1) the maximum lawful price per MMBtu for such month specified for Subpart E of Part 271 in Table I of § 271.101(a); or

* * * * *

13. A new § 271.506 is added to read as follows:

§ 271.506 Rules related to deregulation of intrastate gas.

(a) *Indefinite price escalator clauses.* In any case where there is a controversy over whether a particular contract clause is an indefinite price escalator clause under section 105(b)(3)(B), a petition for a declaratory order under § 385.207 of the Commission's regulations shall be filed.

(b) *Contracts over $1.00 by virtue of a definite price clause.* The price of natural gas subject to this subpart is deregulated if the price paid under a clause other than an indefinite price escalator clause is higher than $1.00 per MMBtu for the last deliveries of such gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date.

(c) *Percentage-of-proceeds sales.* The price of natural gas sold under a percentage-of-proceeds contract subject to this subpart is deregulated if the price paid on the resale contract is deregulated under Part 272. (§ 270.202(b) states other rules for percentage-of-proceeds sales.)

14. Section 271.601 is revised to read as follows:

§ 271.601 Applicability.

This subpart implements section 106(b) of the NGPA and applies to the first sale of natural gas under an intrastate rollover contract, if such natural gas is not deregulated natural gas (see § 272.103(a)).

PART 272—[AMENDED]

15. The authority citation for Part 272 reads as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

§§ 272.101 and 272.102 [Amended]

16. Sections 272.101 and 272.102 are amended by removing the words "high-cost" and inserting, in their place, the word "natural."

17. In § 272.103, paragraph (a) is revised to read as follows:

§ 272.103 Definitions.

(a) "Deregulated natural gas" means:

(1) Natural gas for which a jurisdictional agency determination has become final under Parts 274 and 275 that the gas qualifies as:

(i) deep, high-cost natural gas;

(ii) gas produced from geopressured brine;

(iii) occluded natural gas produced from coal seams; or

(iv) gas produced from Devonian shale.

(2) Natural gas for which a jurisdictional agency determination becomes final under Parts 274 and 275 and which is sold in a first sale on or after January 1, 1985, and such gas qualifies as:

(i) new natural gas as defined in § 271.203;

(ii) natural gas produced from any new, onshore production well if such gas as defined in § 271.303:

(A) was not committed or dedicated to interstate commerce (as defined in NGPA section 2(18)) on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) Natural gas sold under an existing intrastate contract, any successor to an existing contract or any rollover contract, if:

(i) such natural gas was not committed or dedicated to any interstate commerce on November 8, 1978; and

(ii) the price paid under a clause other than an indefinite price escalator clause for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date is higher than $1.00 per MMBtu.

* * * * *

18. Section 272.104 is revised to read as follows:

§ 272.104 Special rules for measuring the depth of deregulated natural gas.

For purposes of determining the depth of a completion location under §§ 272.103(a)(2)(ii)(B) and 272.103(b), measurement shall be the true vertical depth from the surface location to the highest perforation point in the completion location.

PART 273—[AMENDED]

19. The authority citation for Part 273 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

20. Section 273.202(a)(2) is revised to read as follows:

§273.202 Collection pending jurisdictional agency determination of eligibility.

(a) * * *

(2) If a application has been filed with the jurisdictional agency for a determination of eligibility under Part 272 (relating to deregulated natural gas), the deregulated price may be charged pending the jurisdictional agency determination.

* * * * *

21. Section 273.203(a)(2) is revised to read as follows:

§ 273.203 Collection pending review of jurisdictional agency determination.

(a) * * *

(2) If a jurisdictional agency has determined in accordance with Part 274 that natural gas qualifies under Part 272 (relating to deregulated natural gas), the seller may charge and collect the deregulated price during the period described in paragraph (b) of this section.

* * * * *

22. In § 273.204, a new paragraph (a)(1)(iv) is added to read as follows:

§ 273.204 Retroactive collection after final determination.

(a) * * *

(1) * * *

(iv) in the case of a new natural gas (as defined in § 271.203) and natural gas produced from a new, onshore production well (as defined in § 271.303) which also satisfies the criteria of § 272.103(a)(3), if the application for determination was filed on or before January 1, 1985, then for first sales of such natural gas delivered on or after January 1, 1985, the seller may retroactively collect the amount by which the deregulated price exceeds the price collected during such period.

* * * * *

§ 273.204 [Amended]

23. Section 273.204(a)(2) is amended by removing the words "Part 272" and inserting, in their place, the words "§ 272.103.103(a)(1)."

PART 274—[AMENDED]

24. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–34342; Department of Energy Organization Act, 42 U.S.C. 7101–7352.

25. Section 274.101 is amended by revising the introductory language to read as follows:

§ 274.101 Applicability.

This part applies to determinations of jurisdictional agencies (as defined in § 274.501) made under § 272.103(a)(1) and the following subparts of Part 271:

* * * * *

[FR Doc. 84-24610 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 83N-0280]

Food Labeling; Nutrition Labeling of Food; Calorie Content; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that proposed to amend the food labeling regulations to provide for the exclusion of nondigestible dietary fiber when determining the calorie content of a food for nutrition labeling purposes (49 FR 32216; August 13, 1984). This document corrects a typographical error.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0177.

SUPPLEMENTARY INFORMATION:

§ 101.9 [Corrected].

In FR Doc. 84-21340, appearing on page 32216, in the issue of Monday, August 13, 1984, the following correction is made on page 32218: In the first column under § 101.9 *Nutrition labeling in food,* in paragraph (c)(3), in the seventh line, "January 25, 1982" is corrected to read "1984".

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24518 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

National Forest Townsites

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: These revised regulations will provide standards to expedite processing of sales of certain National Forest System lands to governmental entities pursuant to the National Forest Townsite Act of July 31, 1958 (72 Stat. 438; 16 U.S.C. 478a) as amended by the Federal Land Policy and Management

Act of 1976 (90 Stat. 2743; 43 U.S.C. 1722). The revision of these regulations will clarify the existing process, provide for prior designation of potential townsites by the Secretary of Agriculture or the Secretary's designee, expedite case processing by reducing the number of decision levels, and reduce regulatory impact on nonfederal entities.

DATE: Comments must be received by November 16, 1984.

ADDRESS: Comments should be sent to: R. Max Peterson (5450), Chief, Forest Service, U.S. Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Paul Haarala, Lands Staff, Forest Service, (703) 235-2161.

SUPPLEMENTARY INFORMATION: The National Forest Townsite Act of 1958, as amended by the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1722), provides the Secretary of Agriculture with discretionary authority to set aside and designate certain tracts of National Forest System lands and to offer them for sale to a governmental subdivision for essential indigenous needs of an established community. The rule at 36 CFR Part 254, Subpart B sets forth the procedures for applying for, setting aside, designating, and conveying such land.

The Forest Service proposes to clarify the present regulations to expedite processing of applications and to replace mandatory land use standards with the flexibility to require zoning ordinances and/or covenants in the conveyance only when necessary.

The regulations would be revised to follow the procedural sequence set out by the Townsite Act, that is; receipt of the application, setting aside and designating the townsite, making the necessary studies to determine viability and extent of the lands to be transferred, submitting the package for review and approval, and final processing of conveyance documents by the designated official. In addition, the rule would clarify the temporary segregative effect of an order to designate a townsite and the meaning of community objectives. Delegations of authority would be deleted since this was done by Federal Register Notice of January 10, 1984, at 49 FR 1259.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and has been determined not to be a major rule. Little or no effect on the economy will result from this regulation. Since the proposed rule provides steamlined procedures for processing townsite applications, time and costs to the Federal Government and to other units of government in handling these cases should be significantly reduced.

The Assistant Secretary of Agriculture for Natural Resources and the Environment has determined that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, it would result in reducing procedures or paperwork.

The regulation does not significantly affect the environment; therefore, an environment impact statement is not required under the National Environmental Policy Act of 1969.

List of Subjects in 36 CFR Part 254

National Forests, Public lands—Acquisition and exchange Public lands—permit, Public lands—sales, community facilities.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 254 of Title 36 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

* * * * *

Subpart B—National Forest Townsites

Sec.	
254.20	Purpose and scope.
254.21	Applications.
254.22	Designation and public notice.
254.23	Studies, assessments, and approval.
254.24	Conveyance.
254.25	Survey.
254.26	Appraisal.

Authority: Public Law 85-569; 72 Stat. 438; 16 U.S.C. 478a, as amended by sec. 213, Pub. L. 94-579; 90 Stat. 2743; 43 U.S.C. 1722.

* * * * *

Subpart B—National Forest Townsites

§ 254.20 Purpose and scope.

(a) A Forest Service official may upon application set aside and designate for townsite purposes up to 640 acres of National Forest System lands adjacent to or contiguous to an established community in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(b) National Forest System lands, needed by the community, may be sold under the Townsite Act, only if those lands would serve indigenous community objectives that outweigh the public objectives and values of retaining the lands in Federal ownership:

(1) Acceptable indigenous community objectives include, but are not limited to, space for housing and service industries, expansion of existing economic enterprises, new industries utilizing local resources and skills, public schools, public health facilities, community parks, and other intensive recreation areas for local citizens.

(2) Unacceptable objectives include, but are not limited to, intensive commercial enterprises or new industries that would change the character of the local community, and housing projects to attract seasonal or other outside occupants.

§ 254.21 Applications.

(a) An application to purchase National Forest System lands—

(1) Must be made by designated official(s) authorized to do business in the name of a county, city, or local governmental subdivision;

(2) May be in the form of a letter, ordinance, or resolution;

(3) Must be filed with the District Ranger or the Forest Supervisor for the National Forest area in which the lands are situated; and

(4) Must be limited to 640 acres or less adjacent to an established community.

(b) An application must be accompanied by—

(1) A description of the land desired; and

(2) A development plan, consisting of a narrative statement and map, which gives a detailed description of the intended use of the site and how essential community needs will be met by the purchase.

§ 254.22 Designation and public notice.

(a) A Forest Service official must—

(1) Ensure the application meets the requirements of §§ 254.20 and 254.21;

(2) Process an order to set aside and designate the lands for townsite purposes; and

(3) Transmit, where applicable, a copy of the designation order to the State Director, Bureau of Land Management.

(b) The designation order will segregate the lands from entry as long as the application remains in force.

(c) The designation order does not preclude other compatible land adjustments under the Secretary's authority within the area set aside.

(d) A Forest Service official must prepare a public notice of the proposed townsite sale to be inserted once a week for 4 consecutive weeks in a local newspaper:

(1) The notice shall include descriptive information on the proposed townsite sale and identify the applicant

and responsible Forest Service official; and

(2) A period of 45 days, from first date of publication, must be provided for accepting public comments.

§ 254.23 Studies, assessments, and approval.

(a) After initial public notice has been published, a Forest Service official must conduct the necessary studies and assessments to—

(1) Determine if the lands applied for are essential for community needs resulting from growth and from the need to improve and modernize community facilities and services;

(2) Determine if lands applied for would serve indigenous community objectives that outweigh other public objectives and values which would be served by maintaining such a tract in Federal ownership;

(3) Determine if the sale would substantially affect or impair important scenic, wildlife, environmental, historical, archeological, or cultural values;

(4) Evaluate the applicability of public comments;

(5) Identify the extent of valid existing rights and uses; and

(6) Determine if zoning ordinances, convenants, or standards are needed to protect adjacent National Forest land and to protect or mitigate valid existing rights and uses.

(b) Upon approval, the authorized Forest Service official shall process the conveyance pursuant to §§ 254.24, 254.25, and 254.26.

(c) Upon disapproval, a Forest Service official shall—

(1) Notify the applicant in writing of the reasons the proposal is not acceptable; and

(2) Inform the applicant of alternate proposals under other authorities and/or appeal rights.

§ 254.24 Conveyance.

(a) Conveyance of the approved tract(s) may be made by a single transaction or by multiple transactions spread over a period of time in accordance with a prearranged schedule.

(b) The authorized Forest Service official shall—

(1) Execute and convey title to the townsite tract(s) by quitclaim deed;

(2) Ensure deeds are free of terms and convenants, except those deemed necessary to ensure protection of adjacent National Forest System land and/or valid existing rights and uses; and

(3) Deliver executed deeds to the governmental body upon—

(i) Adoption of zoning ordinance and development plan if found necessary; and

(ii) Notice from the authorized Forest Service Fiscal Agent that payment of fair market value has been received.

§ 254.25 Survey.

The authorized Forest Service official shall conduct or provide for the necessary tract survey and boundary posting of National Forest System land.

§ 254.26. Appraisal.

Fair market value of townsite tracts shall be determined following Forest Service appraisal procedures and the Uniform Standards for Federal Acquisitions.

Dated: August 28, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-24550 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2670-7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA proposes to approve a revision to the Illinois State implementation Plan (SIP) for ozone. The revision, if finally approved, will provide for an extended compliance schedule for St. Charles Manufacturing Company (St. Charles) located in St. Charles, Kane County, Illinois. This SIP will allow St. Charles additional time to reformulate their high solids coatings. This action is taken in response to an August 15, 1983, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by October 17, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396 before visiting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26) USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On August 15, 1983, Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for St. Charles' three spray paint booths and two bake ovens which are located in the Chicago ozone demonstration area. This proposed revision is in the form of a June 16, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB) Number PCB 82-156. It grants a variance form the existing SIP requirement until October 31, 1983.

Under the existing federally approved SIP, each metal coating operation at St. Charles is subject to the emission control requirements contained in Rule 205 of Chapter 2 (Air Pollution) of the IPCB Rules and Regulations. IPCB Rule 205(n)(1)(G) limits volatile organic compound (VOC) emissions from metal furniture coating operations to 3.0 pounds per gallons of coating (excluding water). Rule 205(j) stipulates that final compliance is required by December 31, 1982

In lieu of the compliance date contained in the existing federally approved SIP, the State is proposing an extended compliance schedule for St. Charles. St. Charles is a metal coating facility that used approximately 26,760 gallons of coating in 1982 in their metal furniture operations. The average VOC content of these coatings was stated to be 3.48 pounds of VOC per gallon.

Therefore, the Board conditioned this variance such that during the period of the variance, the average yearly VOC content from metal furniture coating operations should not exceed 3.48 pounds per gallon (excluding water).

St. Charles claims it has been unable to comply with the December 31, 1982, compliance schedule because acceptable alternate high solids paints for its non-acid resistant paint lines has not been developed. The company has worked closely with its suppliers since June 1979, to develop the necessary reformulations. Although it was able to achieve compliance in its acid resistant paint line by June 1982, the company claims that unexpected technical problems delayed final compliance by some of its non-acid resistant and custom color paints.

As of October 15, 1982, St. Charles was in the following position on its three paint lines:

Non-Acid

St. Charles has approved eight (of 18) non-acid colors from one of its coating suppliers. Together with that supplier, St. Charles expected to complete the development, testing and approval of the remaining ten colors by the end of January 1983.

Acid Resistant Paint Line

Since June of 1982, all acid resistant paint used in St. Charles production has been at 3.0 pounds VOC per gallon or lower.

Primer Higher Solids

There was sufficient progress from two of its coating suppliers that St. Charles was anticipating having acceptable primers with higher solids by January 1982.

Customer Colors

One of its suppliers is working on a higher solids paint line for special colors.

In the March 20, 1984 Federal Register (49 FR 10277), USEPA proposed to disapprove the SIP revision for St. Charles because the Illinois Ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was proposed for disapproval in the February 3, 1983, Federal Register.

During the 30-day comment period on this notice of proposed rulemaking, USEPA received one comment.

Comment: Submitted April 19, 1984, by the IEPA. IEPA believes that the reasons discussed by USEPA for disapproval of the proposed compliance schedule in the March 20, 1984, Notice of Proposed Rulemaking no longer exist because the State has submitted to USEPA an approvable ozone attainment demonstration for the Chicago area. USEPA should, therefore, approve the proposed changes. The State believes a reproposal of the rulemaking is not necessary. USEPA can and should finally approve the compliance schedule changes as proposed by IEPA. If, however, there are alternative grounds for disapproval not stated in the March 20, 1984 Notice, the State believes USEPA should supplement its proposed rulemaking and identify and addresses these grounds.

USEPA Response: The St. Charles proposed rulemaking is being supplemented because USEPA has reversed its March 20, 1984, proposed action and is based upon different issues. USEPA is today withdrawing the March 20, 1984, proposal as it applies to the St. Charles plant and is reproposing to approve the revision for this plant. USEPA agrees with the State that because the State has submitted an approvable ozone attainment demonstration for the Chicago area, this is no longer a basis for disapproving the compliance data extension for St. Charles.

St. Charles is located in a nonattainment area for ozone, which has received an extension through 1987 to comply with the ozone national ambient air quality standards. The VOC emissions from St. Charles will not interfere with reasonable further progress because Illinois' revised attainment demonstration has a growth margin well in excess of that required to accommodate this extension request.

USEPA has determined that St. Charles has provided substantial documentation demonstrating that they have been expeditiously pursuing reformulation to high solids coatings since June 1979. In addition, the company has achieved considerable success in its reformulation program and, based upon its submittal, it appears likely that the company's program will result in final compliance. USEPA proposes approval of the compliance date extension for the metal furniture coating operations at the St. Charles plant as a revision to the Illinois ozone SIP. USEPA will not take final action on this revision until it approves the State's ozone attainment demonstration for the Chicago area.

USEPA is providing a 30-day comment period on this notice of supplemental proposed rulemaking. Public comments received on or before (30-days from publication) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office at the front of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone Sulphur oxides Nitrogen dioxide, Lead Particulate matter, Carbon monoxide, Hydrocarbon.

(Sec. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C.) 7410, 7502, and 7601(a))

Dated: August 2, 1984

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-24370 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2671-3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision, if finally approved, will provide for an extended compliance schedule for Getty Synthetic Fuels, Incorporated (Getty) located in Cook County, Illinois. This revision will allow Getty additional time to modify and test their new methane recovery process unit. This action is taken in response to a March 14, 1983, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by October 17, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visting the Region V office).

Environmental Protection Agency,
Region V, Air and Radiation Branch,
230 South Dearborn Street, Chicago,
Illinois 60604

Illinois Environmental Protection
Agency, Division of Air Pollution
Control, 2200 Churchill Road,
Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan (312) 353-0396.

SUPPLEMENTARY INFORMATION: On March 14, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Getty's methane recovery unit at the C.I.D. landfill in Calumet City, which is located in the Chicago ozone demonstration area. This proposed revision is in the form of a

February 10, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB) Number PCB 81–171. It grants a variance from the existing SIP requirements until October 1, 1983, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, this methane recovery unit is subject to the emission controls requirements contained in Rule 205 of Chapter 2 (Air Pollution) of the IPCB Rules and Regulations. IPCB Rule 205(f) limits organic material emissions to 8 pounds per hour from any emission source. Rule 205(j) stipulates that final compliance with rule 205(f) was required by December 31, 1973, for existing sources. Compliance was, therefore, required by Getty upon start-up in 1981.

In lieu of immediate compliance, the State is proposing an extended compliance schedule for Getty's methane recovery unit. Getty had encountered several difficulties with their methane recovery process.

These start-up problems were believed to be caused by higher concentrations than anticipated of certain heavy hydrocarbons in the C.I.D. landfill gas and unexpected equipment limitations. Getty, therefore, required additional time to make necessary process modifications.

USEPA's review of a September, 1983, stack test revealed Getty's methane recovery process to be in compliance with Rule 205(f).

The May 11, 1984, and June 9, 1984, technical support document contains a detailed discussion of Getty's process difficulties and compliance plan.

In the March 20, 1984 **Federal Register** (49 FR 10277), USEPA proposed to disapprove the SIP revision for the Getty plant because the Illinois Ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was proposed for disapproval in the February 3, 1983 **Federal Register**.

During the 30-day public comment period USEPA received one comment from IEPA in response to the March 20, 1984, **Federal Register**.

Comment: IEPA believes that the reasons discussed by USEPA for disapproval of the proposed compliance schedule in the March 20, 1984, Notice of Proposed Rulemaking no longer exist because the State has submitted to USEPA an approvable ozone attainment demonstration for the Chicago area. IEPA believes that USEPA should, therefore, approve the proposed changes. The State also believes a reproposal of the rulemaking is not necessary. USEPA can and should finally approve the compliance schedule changes as proposed by IEPA. If, however, there are alternative grounds for disapproval not stated in the March 20, 1984 Notice, the State believes USEPA should repropose rulemaking which identifies and addresses these grounds.

USEPA Response: USEPA is today withdrawing the March 20, 1984, proposal as it applies to the Getty plant and is reproposing to approve the revision for this plant. USEPA agrees that because the State has submitted an approvable ozone attainment demonstration for the Chicago area, this is no longer a basis for disapproving the compliance date extension.

Proposed Action: USEPA has determined that Getty proceeded expeditiously to comply with Rule 205(f). Therefore, USEPA is proposing approval of Getty's extended compliance schedule to October 1, 1983. USEPA will not take final action on this revision until it approves the State's ozone attainment demonstration for the Chicago area.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before October 17, 1984 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office at the front of this notice.

Under 5 U.S.C. section 605(b), the administrator has certified that SIP approvals does not have a significant economic impact on a substantial number of small entities. (See (45 FR 8709)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))).

Dated: August 2, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-24493 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[EPA Docket No. AM053MD; A-3-FRL-2671-4]

Proposed Approval of Revisions of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Maryland Air Management Administration (MAMA) has submitted amendments to its air pollution control regulations and has requested that they be reviewed and processed by EPA as revisions to the Maryland State Implementation Plan (SIP).

EPA is proposing approval of these revisions, which consist of amendments to the Code of Maryland Regulation (COMAR) under the "Administrative Provisions" and "Control of Iron and Steel Production Installations" Sections of COMAR 10.18.01 and 10.18.10, respectively. This decision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51.

DATE: EPA must receive any comments on or before October 17, 1984.

ADDRESSES: Copies of the proposed SIP revision, as well as accompanying support documentation submitted by the MAMA, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: James B. Topsale, P.E.

Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, MD 21201, Attn: George P. Ferreri.

All comments should be submitted to James E. Sydnor at the EPA, Region III address listed above. Please reference the EPA Docket number found in the heading of this Notice in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale, (3AM13), 215/597-4553 at the EPA, Region III address indicated above.

SUPPLEMENTARY INFORMATION: On February 13, 1984 EPA received COMAR amendments which change the State's stationary source stack testing procedures document and correct a procedural defect in the incorporation by reference of the procedures for observing and evaluating visible emissions from iron and steel facilities.

The MAMA provided proof that, after adequate public notice, public hearings were held on October 3, 4, and 5, 1983 regarding the amendments. The MAMA is amending stack testing procedures referenced in COMAR 10.18.01.04 (Test Methods for Stationary Sources, Maryland State Bureau of Air Quality and Noise Control, March 1976) and in COMAR 10.18.10.07 (Stack Test Methods for Stationary Sources, TM No. 73–116, amended November 1980) to include additional tests and make certain wording and organizational changes. The two separate stack test method documents are now combined into one, Air Management Administration Technical Memorandum, AMA TM 83–05, "Stack Test Methods for Stationary Sources", revised June 1983. Additional test procedures are provided in AMA TM 83–05 for asphalt processing and roofing plants (Method 1005A), coke oven quench tower cooling water (Method 1013), and fluorides from aluminum production plants (Method 1014).[1] Also, several wording and format changes were made from the original documents to clarify certain measurements, eliminate confusion with comparable EPA test methods, and to provide a more efficient means of making future changes. Method 1013 was originally approved by EPA on June 18, 1982, when the Agency revised Maryland's SIP to include iron and steel industry regulations. Method 1013 was part of the AMA TM 81–04 which specified the testing and observation procedures to determine compliance with the regulations. For measuring the level of total dissolved solids in quench make-up water, Method 1013 references procedure No. 208B described in the fourteenth edition of *Standard Methods for Examination of Water and Wastewater.* This method requires that the filter used in the analysis be dried to 180 °C. The test procedure differs from that which EPA has more recently endorsed, i.e., State of Indiana Coke Battery Regulations approved on December 6, 1983 (48 FR 54612). EPA believes that ASTM D 1888, Method A, or its equivalent, *Standard Method* No. 208C, is generally a more appropriate test procedure because it requires that the filter be dried to 103–105 °C. At this lower temperature, some materials which are volatilized in Method No. 208B will remain on the filter. In this particular situation in Maryland, however, only one steel facility is affected. The make-up water used at that facility is not high in volatile matter content. Therefore, in this situation the reference to *Standard Method* No. 208B is acceptable.

Also, as part of this amendment, the MAMA is correcting a procedural defect in the incorporation by reference into COMAR 10.18.10.07 of the Air Management Administration Technical Memorandum, AMA TM 81–04, "Procedures for Observing and Evaluating Visible Emissions from Stationary Sources", dated May 1981. No changes are being made in this technical memorandum, except as noted above, and this action is only necessary to ensure that the document has been properly incorporated by reference into the Code of Maryland Regulations.

EPA Evaluation/Approval

The Regional Administrator's decision to propose approval of this SIP revision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51 Requirements for Preparation, Adoption and Submittal of State Implementation Plans. The public is invited to submit to the address stated above, comments on whether the proposed amendment to the MAMA's air pollution control regulations should be approved as a revision to the Maryland SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 48 FR 9809).

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(42 U.S.C. 7401–7642)

Dated: September 5, 1984.

Stanley L. Laskowski,

Regional Administrator.

[FR Doc. 84–24496 Filed 9–14–84; 8:45 am]

BILLING CODE 6560–50–M

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[1] The approvability of Method 1014 is addressed in a separate proposed Notice for a Maryland 111(d) Plan appearing in the **Federal Register** on August 27, 1984 (49 FR 33905).

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40 CFR Part 60

[AD–FRL–2671–2]

Standards of Performance for New Stationary Sources; Opacity Provisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects typographical errors and errors in the amendatory language in the proposed opacity provisions in 40 CFR Part 60 that appeared at page 30676 in the **Federal Register** on Tuesday, July 31, 1984 (49 FR 30676).

FOR FURTHER INFORMATION CONTACT: Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5624.

Dated: September 10, 1984.

Joseph A. Cannon,

Assistant Administrator.

The following corrections are made in the **Federal Register** document 84–20104 appearing at page 30676 in the issue of July 31, 1984:

1. On page 30676, third column, the 22nd line from the bottom, "The" should have read "the."

2. On page 30677, second column, the amendatory language is corrected to read as follows: "It is proposed that 40 CFR Part 60 be amended by adding paragraph (a)(6) to § 60.7; by adding a new sentence inserted after the current first two sentences in paragraph (b) to § 60.11; and also to § 60.11, by revising paragraph (e)(1) and by replacing the first sentence with two new sentences in paragraph (e)(2) to read as follows:"

§ 60.11 [Corrected]

3. On the same page, in the third column, § 60.11(b) is corrected by adding three asterisks immediately following the sentence.

4. In the same column, § 60.11(e)(1), in the 16th line, "as" should have read "at."

5. In the same column, § 60.11(e)(2) in the 16th line, "results. If" should have read "results, if"; and in the 19th line, three asterisks should be inserted at the end of the line.

[FR Doc. 84–24495 Filed 9–14–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 11

Settlement and Payment of Claims to Employees for Damage or Loss, Personal Property

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation amends FEMA claims regulation by adding a new Subpart D which specifies the procedures by which the Director of FEMA will settle and pay claims of employees of FEMA amounting to not more than $25,000 for damage to or loss of personal property incident to their service in FEMA.

DATE: Comments should be submitted on or before November 16, 1984.

ADDRESS: Comments should be sent to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Robert S. Brock, Office of General Counsel, at (202) 287-0378.

SUPPLEMENTARY INFORMATION: These regulations concerning personnel claims are similar to those of other federal agencies.

This regulation is not a major rule within the Term of Executive Order 12291, nor does it have a significant economic impact on a substantial number of small entities. Hence, no regulatory analyses have been prepared. It deals with administrative matters and has no impact on the environment, and is within categorical exemptions to the preparation of environmental documents required under 44 CFR Part 10.

The regulation contains informative collection requirements. These have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments are to be directed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: FEMA Desk Officer, Room 3201, New Executive Office Building, Washington, D.C. 20503.

List of Subjects in 44 CFR Part 11

Administrative practices and procedures, Claims.

Accordingly, Chapter I, Subchapter A, Part 11 of Title 44, Code of Federal Regulations, is proposed to be amended:

1. By adding new Subpart D as follows:

PART 11—CLAIMS

Subpart D—Personnel Claims Regulations

Sec.

11.70 Scope and purpose.
11.71 Claimants.
11.72 Time limitations.
11.73 Allowable claims.
11.74 Claims not allowed.
11.75 Claims involving carriers and insurers.
11.76 Claims procedures.
11.77 Settlement of claims.
11.78 Computation of amount of award.
11.79 Attorney's fees.

Authority: 31 U.S.C. 3721.

Subpart D—Personnel Claims Regulations

§ 11.70 Scope and purpose.

(a) The Director, Federal Emergency Management Agency (FEMA), is authorized by 31 U.S.C. 3721 to settle and pay (including replacement in kind) claims of officers and employees of FEMA, amounting to not more than $25,000 for damage to or loss of personal property incident to their service. Property may be replaced in-kind at the option of the Government. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

§ 11.71 Claimants.

(a) A claim pursuant to this subpart may only be made by: (1) An employee of FEMA; (2) a former employee of FEMA whose claim arises out of an incident occurring before his/her separation from FEMA; (3) survivors of a person named in paragraph (a)(1) or (2) of this section, in the following order of precedence: (i) Spouse; (ii) children; (iii) father or mother, or both or (iv) brothers or sisters, or both; (4) the authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 11.72 Time limitations.

(a) A claim under this part may be allowed only if it is in writing, specifies a sum certain and is received in the Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472: (1) Within 2 years after it accrues; (2) or if it cannot be filed within the time limits of paragraph (a)(1) of this section because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after the claim accrues, when the claimant shows good cause, the claim may be filed within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict.

(b) For purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

§ 11.73 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his/her agent, the members of his/her family, or his/her private employee (the standard to be applied is that of reasonable care under the circumstances); and (2) the possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and (3) the claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with FEMA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, unless excluded by § 11.74.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 states or the District of Columbia that were assigned to the claimant or otherwise provided in-kind by the United States; or

(ii) Any warehouse, office, working area, or other place (except quarters) authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Motor vehicles.* Claims may be allowed for automobiles and other motor vehicles damaged or lost by overseas shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and offloading incident thereto. Other claims for damage to or loss of automobiles and other major vehicles may be allowed when use of the vehicles on a nonreimbursable basis was required by the claimant's supervisor, but these claims shall be limited to a maximum of $1,000.00.

(4) *Mobile homes.* Claims may be allowed for damage to or loss of mobile homes and their content under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) *Money.* Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping, deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, their agent, or their employee. The adjudicating authority should use the test of whether the claimant did their best under the circumstances to protect the property; or

(v) When taken by force from the claimant's person.

(6) *Clothing.* Claims may be allowed for clothing and accessories customarily worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such as fire, flood, hurricane, or by enemy or other belligerent action;

(iii) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant required by the job situation; or

(iv) When using a motor vehicle.

(7) *Property used for benefit of the Government.* Claims may be allowed for damage to or loss of property (except motor vehicles, see §§ 11.73(c)(3) and 11.74(b)(13)) used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority or by reason of necessity.

(8) *Enemy action or public service.* Claims may be allowed for damage to or loss of property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nation;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(9) *Marine or aircraft disaster.* Claims may be allowed for personal property damaged or lost as a result of marine or aircraft disaster or accident.

(10) *Government property.* Claims may be allowed for property owned by the United States only when the claimant is financially responsible to an agency of the Government other than FEMA.

(11) *Borrowed property.* Claims may be allowed for borrowed property that has been damaged or lost.

(12) (i) A claim against the Government may be made for not more than $40,000 by an officer or employee of the agency for damage to, or loss of, personal property in a foreign country that was incurred incident to service, and—

(A) The officer, or employee was evacuated from the country on a recommendation or order of the Secretary of State or other competent authority that was made in responding to an incident of political unrest or hostile act by people in that country; and the damage or loss resulted from the evacuation, incident, or hostile act; or

(B) The damage or loss resulted from a hostile act directed against the Government or its officers, or employees.

(ii) On paying the claim under this subsection, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against the foreign country for the damage or less for which the Government made the payment.

(iii) Amounts may be obligated or expended for claims under this subsection only to the extent provided in advance in appropriation laws.

§11.74 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, claimant's employee, or a member of claimant's family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 states and the District of Columbia that were not assigned to the claimant or otherwise provided in-kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of paragraph (a) of this section, the following are examples of claims which are not payable:

(1) *Claims not incident to service.* Claims which arose during the conduct of personal business are not payable.

(2) *Subrogation claims.* Claims based upon payment or other consideration to a proper claimant are not payable.

(3) *Assigned claims.* Claims based upon assignment of a claim by a proper claimant are not payable.

(4) *Conditional vendor claims.* Claims asserted by or on behalf of a conditional vendor are not payable.

(5) *Claims by improper claimants.* Claims by persons not designated in § 11.71 are not payable.

(6) *Articles of extraordinary value.* Claims are not payable for valuable or expensive articles, such as cameras, watches, jewelry, furs, or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken, by the claimant.

(7) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimants' immediate household. This prohibition includes articles acquired at the request of others and articles for sale.

(8) *Property used for business.* Claims are not payable for property normally used for business or profit.

(9) *Unserviceable property.* Claims are not payable for wornout or unserviceable property.

(10) *Violation of law or directive.* Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitation imposed on the weight of shipments of household goods.

(11) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(12) *Government property.* Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than FEMA.

(13) *Motor vehicles.* Claims for motor vehicles, except as provided for by § 11.73(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorious claims for damage to or loss of motor vehicles, limited to a maximum of $1,000.00, may be recommended to the Office of General Counsel for consideration and approval for payment.

(14) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(15) *Losses recoverable from carrier, insurer or contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, insurer or under contract except as permitted under § 11.75.

(16) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this subpart. However, where, in the opinion of the adjudicating authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value for the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(17) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant's agent, claimant's employee, or member of claimant's family has intentionally misrepresented an item claimed as to cost, condition, costs to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper, it may be paid. This does not preclude appropriate disciplinary action if warranted.

(18) *Minimum amount.* Loss or damage amounting to less than $10.

§11.75 Claims involving carriers and insurers.

In the event the property which is the subject of a claim was lost or damaged while in the possession of a carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(1) If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document.

(2) The demand should be made within the time limit provided in the policy and prior to the filing of a claim against the Government.

(3) If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under terms and conditions of the insurance coverage, prior to the filing of the concurrent claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer, had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit a claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submission of a claim to the Government, the claimant must certify in the claim that no recovery (or the amount of recovery) has been gained from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If the carrier or insurer has not taken final action on the claim against them, by the time the claimant submits a claim to the Government, the claimant will immediately notify them to address all correspondence in regard to the claim to him/her, in care of the General Counsel of FEMA.

(3) The claimant shall timely advise the General Counsel, in writing, of any action which is taken by the carrier or insurer on the claim. On request, the claimant also will furnish such evidence as may be required to enable the United States to enforce the claim.

(e) When a claim is paid by FEMA, the claimant will assign to the United States, to the extent of any payment on the claim accepted by claimant, all rights, title, and interest in any claim against the carrier, insurer, or other party arising out of the incident on which the claim against the Government is based. After payment of the claim by the Government, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by the claimant from the United States.

(f) When a claimant recovers for the loss from the carrier or insurer before the claim against the Government under this subpart is settled, the amount or recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For the purpose of this paragraph (f) the claimant's total loss is to be determined without regard to the $25,000 maximum set forth above. However, if the resulting amount, after making this deduction, exceeds $25,000, the claimant will be allowed only $25,000.

§ 11.76 Claims procedures.

(a) *Filing a claim.* Applicants shall file claims in writing with the General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472. Each written claim shall contain, as a minimum:

(1) Name, address, and place of employment of the claimant;

(2) Place and date of the damage or loss;

(3) A brief statement of the facts and circumstances surrounding the damage or loss;

(4) Cost, date, and place of acquisition of each price of property damaged or lost;

(5) Two itemized repair estimates, or value estimates, whichever is applicable;

(6) Copies of police reports, if applicable;

(7) A statement from the claimant's supervisor that the loss was incident to service;

(8) A statement that the property was or was not insured;

(9) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;

(10) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant's supervisor that the claimant was required to provide such property or that the claimant's providing it was in the interest of the Government; and

(11) Other evidence as may be required.

(b) *Single claim.* A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the adjudicating authority determines that a genuine hardship exists.

(c) *Loss in quarters.* Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;

(2) Whether the quarters were assigned or provided in-kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Name of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(d) *Loss by theft or robbery.* Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(e) *Transportation losses.* Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer indicating;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statement of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his/her employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and new weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(f) *Marine or aircraft disaster.* Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant's right to be, or to have property on board.

(g) *Enemy action, public disaster, or public service.* Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant's required presence in the area involved; and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in § 11.73(c)(8).

(h) *Money.* Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition should be accompanied by:

(1) Name, grade, and address of the person or persons who received money and any others involved;

(2) Name and designation of the authority who authorized such person or

persons to accept personal funds and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(i) *Motor vehicles or mobile homes in transit.* Claims for damage to motor vehicles or mobile homes in transit should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

§ 11.77 Settlement of claims.

(a) The General Counsel, FEMA, is authorized to settle (consider, ascertain, adjust, determine, and dispose of, whether by full or partial allowance or disallowance) any claim under this subpart.

(b) The General Counsel may formulate such procedures and make such redelegations as may be required to fulfill the objectives of this subpart.

(c) The General Counsel shall conduct or request the Office of Inspector General to conduct such investigation as may be appropriate in order to determine the validity of a claim.

(d) The General Counsel shall notify a claimant in writing of action taken on their claim, and if partial or full disallowance is made, the reasons therefor.

(e) In the event a claim submitted against a carrier under § 11.75 has not been settled, before settlement of the claim against the Government pursuant to this subpart, the General Counsel shall notify such carrier or insurer to pay the proceeds of the claim to FEMA to the extent FEMA has paid such to claimant in settlement.

(f) The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

§ 11.78 Computation of amount of award.

(a) The amount allowed for damage to or loss of any items of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange), and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage, of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its costs, its conditions when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in-kind whenever appropriate.

§ 11.79 Attorney's fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. A person violating this section shall be fined not more than $1,000.

Dated: September 10, 1984.

Louis O. Giuffrida,

Director.

[FR Doc. 84-24406 Filed 9-14-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-804; RM-4789]

TV Broadcast Station in Sheridan, WY; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On August 29, 1984, the Commission published a Notice of Proposed Rule Making in this proceeding concerning the assignment of an FM Broadcast Station in Sheridan, Wyoming (49 FR 34257). Inadvertently, the assigned Docket number was referred to in the Preamble as MM Docket number 83-804. The correct Docket number is 84-804.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurle, Mass Media Bureau, (202) 634-6530.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-24397 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-61; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Maps and Records

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Withdrawal of Advance Notice of Proposed Rule making (ANPRM).

SUMMARY: An ANPRM was published to generate information to be used in evaluating the need for requiring additional maps and records of gas pipeline systems as a means of improving pipeline safety. The information obtained showed that additional regulations would not result in net safety benefits.

FOR FURTHER INFORMATION CONTACT: Robert F. Langley, (202) 426-2082.

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board (NTSB), in a published recommendation (P-78-50), recommended to MTB that "the Materials Transportation Bureau of the U.S. Department of Transportation: Revise 49 CFR Part 192 to require that gas company system maps and records be maintained accurately to identify the location, size, and operating pressure of all of their pipelines."

NTSB also made a recommendation to a gas pipeline operator (P-77-40) with regard to verifying the location and the mapping of all high pressure shut-off valves. Additional accident investigation reports, issued by NTSB and reported in Docket No. PS-61; Notice 1, indicated a lack of maps or records or a misreading of the available maps or records by the gas pipeline operator. According to NTSB, the operator's lack of proper records possibly increased the severity of the accidents recorded. Following these recommendations, MTB published an ANPRM (Docket No. PS-61; Notice 1, 44 FR 68493, November 29, 1979) to gain more information about the need for new or additional Federal regulations that would require operators to keep additional specific information on maps or records.

At the time that the ANPRM of Docket No. PS-61 was being written, the Congress enacted an amendment (Pub. L. 96-129) to the Natural Gas Pipeline Safety Act of 1968. In section 110(b)(1) of this amendment, the Secretary of Transportation was directed to conduct a study as to whether pipeline safety

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could be significantly enhanced in a cost-effective manner by regulations requiring pipeline facility operator to prepare and maintain a general description of their pipeline facilities. Several of the questions in the ANPRM were asked to provide feedback from gas pipeline operators relative to the survey requested by the Congress. Notable among those questions were those suggesting that information be included on records with regard to climate, geology, seismology, and projected population for the area adjacent to the pipeline.

Notice 1 and Responses Received

Notice 1 of Docket No. PS–61 asked a total of 17 major questions with some of these containing other relevant questions. The 84 commenters to the ANPRM represented a cross section of industry trade associations, large and small gas operators, members of the public at large, and the Congress. Many of the State agencies commented also. The Technical Pipeline Safety Standards Committee (TPSSC) reviewed and commented on the docket at a public hearing held June 17, 1980. Two of the commenting trade associations had conducted a survey among their members on some of the items presented in the ANPRM, so their comments reflected the views of several hundred gas operators.

It was evident, after reviewing the comments that, as MTB has found during inspections, the majority of gas pipeline operators have a system of mapping and record keeping meeting or exceeding the suggested requirements of Docket No. PS–61. Most of the remainder of the commenters are, at present, keeping maps or other written records of satisfactory quality to meet the requirements of Part 192.

Two commenters could not see any reason to have requirements for records or mapkeeping in the regulations and preferred their own methods of maintaining records. These two commenters are probably typical of some of the operators encountered on inspections by representatives of MTB's Office of Operations and Enforcement (OOE). The inspectors have reported operators who kept records or maps on scraps of paper or by memory. For this type of operator, OOE has found that educating such an operator in proper record keeping methods is more effective than new or additional regulations.

Two State agencies and other commenters, amounting to 14 percent of the responses, stated that they could not see any justification for having additional requirements for records or mapkeeping in the regulations. Their reasons for this were that existing regulations are sufficient; a greater burden would be placed on the consumer since the additional costs of compliance would be passed on to the gas user, and maps would reveal the location of the gas facilities leaving the facilities prone to sabotage.

Another general comment, repeated by 49 percent of the commenters, had to do with making mapkeeping regulations apply retroactively to existing pipeline systems. These commenters pointed out that the NTSB recommendations quoted in the ANPRM discussed failures of operators to locate older buried facilities in a timely manner. The NTSB conclusion in their report was that, in some instances, locating facilities more quickly would have presented some injuries and damages. In discussing the question in relation to the points from the NTSB reports, these commenters then concluded that MTB would have to retroactively apply the requirements if they were to satisfy NTSB's concern. These commenters estimated that increased costs to the gas pipeline industry would be in excess of 100 million dollars if there were a requirement to map old gas pipeline systems not currently mapped or to update existing maps of these systems.

MTB's analysis supports the position of these commenters in regard to the high cost of searching for and mapping these portions of existing systems that are currently unmapped.

DOT Cost-Benefit Analysis

Section 110(a) of the 1979 amendment to the Natural Gas Pipeline Safety Act of 1968 directed the Secretary of Transportation to conduct and complete a cost-benefit analysis to determine whether additional legislation on pipeline safety is benefical. The report submitted to the Congress, "Cost Benefit Analysis of Increased Natural Gas Pipeline Safety Regulation"—April 1981, by MTB centered on regulations currently being proposed.

One of the proposals, for which a cost-benefit analysis was made, was the proposal made in Docket No. PS–61 to provide adequate maps and records of gas pipeline systems. This is discussed in Chapter 5 of the analysis. Chapter 5 contains several tables which had been developed from a survey conducted by the Transportation Systems Center in 1980 and from information in the comments to Docket No. PS–61. In assessing the potential benefits of additional maps and records, Table 5–3 of the analysis lists data items referenced by pipeline safety regulations. In order that an operator might fully comply with the sections of 49 CFR Part 192 listed, some sort of record, map, or other proof of compliance must be maintained.

TABLES 5.3.—DATA ITEMS REFERENCED BY REGULATIONS

Data item	Data included in regulations
A. Location of facilities:	
1. Pipelines (all sizes)	Services: §§ 192.353, 192.355.
2. Compressor/regulator stations.	§ 192.163.
3. Primary line valves	§ 192.181.
4. Vaults	§ 192.185.
5. Rectifiers	
6. Appurtenances	
B. Facility descriptions:	
1. Age	DOT F7100.1–1 Parts B&C; DOT F7100.2–1 Parts B&C.
2. Type of material	DOT F7100.1–1 Part G; DOT F7100.2–1 Part G.
3. Type of construction	
4. Pipe size	DOT F7100.1–1 Part G; DOT F7100.2–1 Part G.
5. Wall thickness	DOT F7100.1–8b; DOT F7100.2–8b, 192.109.
6. Coating	DOT F7100.1–1 Part B; DOT F7100.1 Part A.2; DOT F7100.2–1 Part B; DOT F7100.2 Part A.2, 192.461.
7. Cathodic protection	DOT F7100.1 Part A.4; DOT F7100.2; Part A.4, 192.455.
8. Design specification	DOT F7100.1–8c; DOT F7100.2–8c.
9. Manufacturer	
C. Operating conditions:	
1. Material transported	
2. Transport pressure	DOT F7100.1–2d; DOT F7100.2–3f.
3. MAOP	192.619, 192.623.
D. Ambient conditions:	
1. Climate	
2. Soil/geology	
3. Seismic	
4. Population (class location studies).	§§ 192.5, 192.607, 192.609, 192.613.
5. Demographic	

Opposite these suggested requirements in the table are shown the present regulations in 49 CFR Part 192 or reporting requirements in 49 CFR Part 191 for which, in order to fulfill the requirements of the regulation, an operator would have to maintain the suggested record. Sixty-two percent of the commenters to Docket No. PS–61 indicated that they were keeping records in a form or manner to show compliance with an existing regulation. As shown by Table 5.4 of the report, typical gas pipeline operators maintain more thorough records than NTSB suggests should be kept and more than are required by inference in the existing regulations.

As discussed in the analysis on pages 5–11 and 5–13 of the above report to Congress:

> The implementation of a regulation requiring pipeline operators to maintain a description of their facilities in sufficient detail for adequate field work (operations, maintenance, inspection) would require certain actions by both the Department and

industry. In order to determine whether operators has sufficient maps, information records and retrieval systems, MTB would have to establish operational guidelines for field inspectors to utilize in evaluating each operator's mapping and information system. Criteria developed in section 5.2 would be utilized as the basis for these inspections, with the field inspectors making a final determination as to sufficiency of the mapping and information system. MTB would identify the noncompliant operators, note deficiencies and establish a period of compliance.

Pipeline operators, without sufficient maps, records or retrieval systems would be required to develop this information in sufficient detail to satisfy the requirements imposed by regulation. In many cases, operators might only have to develop information on parts of their existing facilities, and the extent of this data assemblage would be based on the availability of existing information. Thus, most of the resultant actions and activities would be placed on pipeline operators.

The costs associated with a regulatory requirement for maintaining a description of pipeline facilities would impact both the Department and industry. In order to be consistent with information presented in Chapter 4, Department costs are termed *administrative costs* and industry costs are termed *compliance costs*.

Table 5.6 of the analysis enumerates some of these costs.

As discussed on page 5–14 of the analysis:

> Administrative costs would be incurred due to the examination and evaluation of current mapping and recording of information on pipeline facilities. It is estimated that each system would require eight hours of inspection time for initial evaluation of maps and records and one hour per year for subsequent review. Over a twenty-year period this would require 27 hours of inspection time for each pipeline system. As there are approximately 7,000 gas pipeline systems which would be affected by mapping requirements, 189,000 inspection hours would be required. Using a burdened rate of $50 per hour, the administrative costs of mapping requirements can be estimated at $9,450,000.

TABLES 5.4.—ADDITIONAL DATA REQUIREMENTS WHICH MIGHT HAVE TO BE MAINTAINED BY OPERATORS, AS A RESULT OF PIPELINE FACILITIES DESCRIPTION REQUIREMENTS OF SECTION 110(b)(1)

Data item	Currently maintained by typical operators	Included in current regulation	Additional data which might be required
A. Location of facilities:			
1. Pipline (all sizes)	X	X	
2. Compressor/regulator stations	X	X	
3. Primary line valves	X	X	
4. Vaults	X	X	
5. Rectifiers	X		X
6. Appurtenances	X		X
B. Facility descriptors:			
1. Age	X	X	
2. Type of material	X	X	
3. Type of construction	X		X
4. Pipe size	X	X	
5. Wall thickness	X	X	
6. Coating	X	X	
7. Type cathodic protection	X	X	
8. Design Specification	X	X	
9. Manufacturer			X
C. Operating Conditions:			
1. Material transported			X
2. Transport pressure		X	
3. MAOP	X	X	
D. Ambient conditions:			
1. Climate			[1] X
2. Soil/geology			[1] X
3. Seismic			[1] X
4. Population (class location studies)		X	
5. Demographic			X

[1] These data would only be maintained if extraordinary conditions exist.

TABLE 5.6. ESTIMATED COST OF COMPLIANCE FOR MAINTAINING A DESCRIPTION OF PIPELINE FACILITIES—SMALL DISTRIBUTION SYSTEMS (1980 DOLLARS)

Total mileage		181,800
Cost of mapping ($100 to $200 per mile)	$18,180,000	$36,360,000
Cost of information record system ($25 to $50 per mile)	4,545,000	9,090,000
Cost of annual maintenance of records and maps ($1 to $2 per mile for 19 years)	3,454,200	6,908,400
Total cost	26,179,200	52,358,400

The benefits of instituting additional specific regulations for maps and records are discussed on page 5–25 of the analysis as follows:

> Since a facilities description requirement would not substantially affect large distribution companies, any possible benefits in terms of reduced leaks would be minimal. Requiring such descriptions to be maintained by smaller operators, especially municipal and master meter operators, might produce more positive results with regard to leaks resulting from damage by outside forces. However, the diversion of operating funds into the development of maps and records could also result in a net reduction in safety due to overall system deterioration.

The commenters to Notice 1 also developed costs. Their costs were somewhat higher than those presented in the DOT cost-benefit analysis. The commenters averaged their costs for mapping both existing and new systems and arrived at a cost per customer of $20.00. The 22 commenters who presented costs represented 7,235,000 gas customers. The total cost would be $144,700,000. If this average cost is extended nationwide to all 48,717,100 [1] gas utility customers, the total projected cost for additional mapping of existing and new gas pipeline systems would be $974,342,000. At the December 17, 1980, TPSSC meeting in Washington, D.C., the American Gas Association made a report indicataing that costs to industry of converting to computerized records would be at least $500,000,000.

Conclusions

The MTB cannot present any substantial benefits to offset the costs presented to it, which are even higher than those presented in the cost-benefit analysis. Since the gas pipeline operators should now be keeping records, which could also include maps, to show complianace with many of the present regulations, it appears redundant to set forth additional specific regulations requiring the same records.

Because of high costs and the fact that gas pipeline safety would not be significantly enhanced, at this time, by further regulation dealing with maps and records, the proposals presented in Docket No. PS–61; Notice 1 are hereby withdrawn.

(49 U.S.C. 1672; 49 CFR 1.53; Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on September 11, 1984.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 84-24465 Filed 9-14-84; 8:45 am]

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[1] American Gas Association Annual Report.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To List the Tar River Spiny Mussel (Elliptio (Canthyria) steinstansana) As an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Tar River spiny mussel *(Elliptio (Canthyria) steinstansana)* to be an endangered species. The species is currently known to be restricted to approximately 12 miles of the Tar River in Edgecombe County, North Carolina. Since the species has a restricted distribution, any factor that degrades water or substrate quality in this short river reach, such as land use changes, chemical spills, and increases in agricultural and urban runoff, could threaten the mussel's survival. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended. The Service is requesting information on environmental and other impacts that would result from listing the Tar River spiny mussel as an endangered species.

DATES: Comments from all interested parties must be received by November 16, 1984. Public hearing requests must be received by November 1, 1984.

ADDRESSES: Interested persons, organizations, agencies, and governments are requested to submit comments to the Field Supervisor, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321). Comments and materials relating to this proposal will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 8/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Tar River spiny mussel was first discovered in the Tar River, Edgecombe County, North Carolina, by Dr. Carol B. Stein in 1966. Subsequently, the species was recorded from the Tar River in Nash, Edgecombe, and Pitt Counties (Shelley, 1972; Johnson and Clarke, 1983). The species was described by Johnson and Clarke (1983) as *Elliptio (Canthyria) steinstansana.*

Historical distribution data on the Tar River spiny mussel are limited. However, it can be inferred from available records that the species inhabited the Tar River from Pitt County near Falkland, North Carolina, upstream through Edgecombe County to Spring Hope, Nash County, North Carolina as recently as 1966. According to a recent Service-funded survey of the Tar, Neuse, and Roanoke Rivers in North Carolina, the known Tar River spiny mussel population (estimated at 100 to 500 individuals) is restricted to about 12 miles of the Tar River in Edgecombe County, North Carolina.

Aside from the Tar River spiny mussel, only two other freshwater spined mussels are known to exist: a small-shelled and short-spined species, *Fusconaia collina,* found only in the James River in Virginia, and a large-shelled and long-spined species, *Elliptio (Canthyria) spinosa,* collected only from the Altamaha River in Georgia. The shell size and spine length of the Tar River species is intermediate between these two species.

Because of its rarity, little is known of the Tar River spiny mussel's biology. The species has been collected on sand and mud substrates, and it has been suggested that the mussel's spines help it maintain an upright position as it moves through the soft substrate. Like other freshwater mussels, it feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel larvae attach for a short time to a fish species. The mussel's life span, time of spawning, fish species the larva parasitizes, and many other aspects of its life history are still unknown.

The Tar River spiny mussel may have always existed in low numbers. However, the apparent recent reduction in its distribution and the extremely small population size make it vulnerable to extinction from a single catastrophic event such as a tank truck accident involving a toxic chemical spill. The North Carolina Department of Natural Resources and Community Development (1983) reports of the Tar River that "Agricultural erosion rates are low, but loadings of nutrients and pesticides are above average." A hydroelectric project proposed for an upstream reservoir could also impact the species if the mussel's welfare is not considered during planning, construction, and operation of the facility.

On March 5, 1982, the Service published a notice in the **Federal Register** (47 FR 9483) that a status review was being conducted for the Tar River spiny mussel. The notice requested data on the species' status and solicited information on environmental and economic impacts, plus the effects on small businesses that could result if the species were listed and its critical habitat were designated. A total of 24 letters were received by the Service in response to the notice of review. Only two respondents totally opposed the listing of the species, while five respondents felt more information was needed before further decisions were made on listing. Three of the comments involved questions concerning potential economic impacts of designating critical habitat, but these letters provided no information that the Service could use in making economic projections. Four comments identified potential projects and ongoing activities that could impact the species; ten responses stated they were aware of no project that might impact the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Tar River spiny mussel *(Elliptio (Canthyria) steinstansana)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Results of a recent Service-funded survey of the Tar, Neuse, and Roanoke Rivers indicate that the Tar River spiny mussel (with an estimated total population size of 100 to 500 individuals) exists only in approximately 12 miles of the Tar River in Edgecombe County, North Carolina. This represents a significant reduction in known range as historic records show the species was once found both upstream (Nash County, North Carolina) and downstream (Pitt County, North Carolina) of its present range.

The species' restricted range makes it vulnerable to toxic chemical spills, which could cause total extinction. The mussel is also threatened by other factors. Currently, a feasibility study is being conducted involving hydroelectric power production at an upstream dam in Rocky Mount, North Carolina. This study is considering restricting river flows on a daily basis to store water for peak power demands. Fluctuating river flows could impact the species by stranding individuals on sand bars and, if the river flows are reduced substantially, by affecting the species' water quality requirements.

In a report prepared by the North Carolina Department of Natural Resources and Community Development (1983), the Tar River was characterized as having low agricultural erosion rates, but loadings of nutrients and pesticides were about average. The North Carolina Wildlife Resources Commission, in response to the Service's notice of review, stated that pumping large volumes of water from the Tar River during drought periods could threaten the species by decreasing water quality.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species has recently been described and its approximate range delineated (Johnson and Clarke, 1983). This notoriety for such a unique and rare mussel can be expected to increase collection pressure from shell dealers and collectors. As the population is small, the removal of any individuals could serously impact the species' survival.

C. *Disease or predation.* There is no evidence of threats from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (subsection 113–272.4) prohibits collecting wildlife, which includes freshwater mussels, without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal projects. Federal listing would provide protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The Tar River has become infested by the Asiatic clam (*Corbicula fluminea*)—a species introduced accidentally from Asia. This non-native species may have an adverse effect on the Tar River spiny mussel's survival. The feeding activity of the Asiatic clam (estimated at 1,000 individuals per square meter) could reduce the availability of phytoplankton needed as a food source for the Tar River spiny mussel.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Tar River spiny mussel as endangered. The mussel's small populaton and presented restricted range (12 river miles) makes it extremely vulnerable to a single catastrophic event; its range has greatly narrowed with the immediate past; therefore, threatened status would not be appropriate. Critical habitat designation (see Critical Habitat section of this proposal) would not be prudent for the Tar River spiny mussel, as defining its exact range and specific habitat could threaten the species by increasing the risk of illegal taking of this unqiue spiny mussel. A decision to take no action would exclude the Tar River spiny mussel from needed protection available under the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Act, as Amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designtion of critical habitat is not prudent for the Tar River spiny mussel at this time. This rare mussel is unique, being one of only three known species of spined freshwater mussels. Because of this, the Service believes a detailed descriptive of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and increase the law enforcement problem. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the Tar River spiny mussel and risk depletion of an already limited population.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquistion and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. When a species is listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likey to jeopardize the continued existence of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service.

Federal activities that could impact the species and its habitat include, but are not limited to, the following: Issuance of permits for hydroelectric facilities, stream alterations, reservoir construction, wastewater facility development, and road and bridge construction on the Tar River. The construction of a planned hydroelectric facility at Rocky Mount, North Carolina, could likewise impact the species, as discussed above. It has been the experience of the Service that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship on interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes or to enhance the propagation of survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commerical trade, or other relevant data concerning any threat (or lack thereof) to the Tar River spiny mussel;

(2) The location of any additional populations of the Tar River spiny mussel and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the Tar River spiny mussel.

Final promulgation of the regulation on the Tar River spiny mussel will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Warren T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Johnson, R.I. and A.H. Clarke. 1983. A new spiny mussel, *(Elliptio (Canthyria) steinstansana)* (Bivalvia: Unionidae), from the Tar River, North Carolina. Occasional Papers on Mollusks, 4(6):289–298.

North Carolina Department of Natural Resources and Community Development, Division of Environmental Management. 1983. Biological classification of streams and ponds in North Carolina—Documentation of impaired water use, July 1983, 335 pp.

Shelley, R.M. 1972. In defense of naiades. Wildlife in North Carolina, 36:4–8, 26–27.

Author

The primary author of this proposed rule is Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under clams to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
*	*	*	*	*	*	*	
Mussel, Tar River spiny	*Elliptio (Canthyria) steinstansana*	U.S.A. (NC)	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: August 15, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–24301 Filed 9–14–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 181
Monday, September 17, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 84-346]

Citrus Canker; Declaration of Emergency Because of Citrus Canker

Whereas, a serious infestation of citrus canker exists in parts of Folorida, and.

Whereas, citrus canker is a devastating bacterial disease which rapidly and aggressively infects citrus and which can be spread easily causing catastrophic damage to entire citrus growing areas;

Now therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens the citrus growing industries of this country and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of a program to detect and identify citrus canker infested areas, to control and prevent the dissemination of citrus canker to noninfested areas in the United States, and to eradicate citrus canker wherever it may be found.

EFFECTIVE DATE: This declaration of emergency shall become effective September 11, 1984.

John R. Block,
Secretary of Agriculture.

[FR Doc. 84-24558 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

Tobacco Inspection; George H. Stalvey et al.; Public Hearing Regarding Application

Notice is hereby given of a public hearing to be held in the auditorium of the Lowndes County Civic Center, 1202 East Hill Avenue, Valdosta, Georgia, beginning at 9:30 a.m., e.s.t. on October 3, 1984, upon the application of Mr. George H. Stalvey and Mr. Melvin Parker of Hahire, George; Mr. Roy A. Pierce, Jr., Mr. Santa Deas, Mr. Joe Parker of Hahira, Georgia; Mr. Roy A. Lastinger of Valdosta, Georgia, for tobacco inspection and price support services to a new market which would be a consolidation of the currently designated markets of Hahira and Valdosta, Georgia. Such public hearing will be conducted and evidence received pursuant to the joint policy statement and regulations governing the extension to tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR Part 29, Subpart A, Sec. 29.1–29.3)

Date: September 12, 1984.

C.W. McMillan,
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-24550 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Special Uses; Electronic Communication Sites

AGENCY: Forest Service, USDA.

ACTION: Extension of public comment period.

SUMMARY: On July 6, 1984, at 49 FR 27801, the Forest Service published a notice of proposed policy for communication sites on National Forest System lands authorized under special-use permits. The public comment period was to expire on September 4. A number of special-use holders have requested a 30-day extension to ensure that they have sufficient time to adequately review and comment on this matter. In response, the Forest Service is extending the public comment period until October 4.

DATE: Public comments must be received on or before October 4, 1984.

ADDRESS: Comments may be mailed to R. Max Peterson, Chief (2720) Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Paul M. Stockinger, Forest Service, Lands Staff, (703) 235-8107.

Dated: September 10, 1984.

R. Max Peterson,
Chief.

[FR Doc. 84-24551 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 84-9-24, Dockets 42181 and 42182]

Certificate Application of Pacific Freight Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Board is proposing to issue certificates of public convenience and necessity under section 401 of the Federal Aviation Act to Pacific Freight Airlines, Inc. to engage in scheduled interstate, overseas, and foreign air transportation of property and mail. The Board has tentatively found that issuance of the certificates is consistent with the public convenience and necessity and that Pacific Freight is fit to provide its proposed service.

DATES: Objections: All interested persons having objections to the Board's tentative fitness determination shall file, and serve upon all persons listed below, no later than October 4, 1984, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support objections.

ADDRESS: Responses shall be filed in Dockets 42181 and 42182, and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served on the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5345.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-24 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-24 to that address.

By the Civil Aeronautics Board: September 10, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-24567 Filed 9-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-14, Docket 42262]

Fitness Investigation of Westates Airlines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting the *Westates Airlines Fitness Investigation.*

SUMMARY: The Board is instituting an investigation to determine the fitness of Westates Airlines to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to intervene or proposing to request additional evidence in the *Westates Airlines Fitness Investigation* shall file their petitions in Docket 42262 by September 21, 1984.

ADDRESSES: Petitions to intervene and requests for additional evidence should be filed in Docket 42262 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-14 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-14 to that address.

By the Bureau of Domestic Aviation: September 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-24566 Filed 9-14-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 2:00 p.m., on October 5, 1984, at the U.S. Commission on Civil Rights, Room 3290, 230 South Dearborn Street, Chicago, Illinois 60604. The purpose of the meeting is to discuss program plans for Fiscal Year '85.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24502 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 6:00 p.m. on October 5, 1984 and will end at 1:00 p.m on October 26, 1984, at the Holiday Inn, Reunion Room, 1000 N. Broadway, Wichita, Kansas 67214. The purpose of the meeting is to engage in program planning and to conduct a community forum on the status of civil rights in Wichita.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Central States Regional Office at (816) 354-5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24500 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for September 19, 1984, at Lexington, Kentucky (FR Doc 84-22714 on page 33912) has a new meeting date.

The meeting will be held on September 20, 1984. The address and time will remain the same.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24501 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Advisory Committee to the Commission originally scheduled for October 9, 1984, at Rockville, Maryland, (FR Doc 84-23637 on page 35394) has a new meeting date.

The meeting will be held on October 10, 1984. The address and time will remain the same.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24503 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m., on October 1, 1984, at the YWCA, Member Lounge, 65 East Kellogg Boulevard, St. Paul, Minnesota 55101. The purpose of the meeting is to discuss the status of the Minnesota Human Rights Commission and the project on mental health.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24504 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness; Rescheduled Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of change of meeting.

SUMMARY: This notice announces the rescheduling of the meeting of the International Trade Committee a subcommittee of the President's Commission on Industrial Competitiveness. On September 6, 1984 a notice appeared at 49 FR 35165 announcing a September 18 meeting of the International Trade Committee to be held from 9:00–5:00 at the Sheraton International in Rosemont, Illinois. This meeting has been rescheduled for September 26, from 10:00–5:00 at the Essex House Hotel, Suite 455, 160 Central Park South, New York, New York 10019. The agenda will include discussion of recommendations concerning export control, antitrust and the trading environment.

Public Participation

The meeting will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone: 202–395–4527.

Dated: September 12, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–24474 Filed 9–12–84; 2:42 pm]

BILLING CODE 3510–18–M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Leisure Activities Survey

Form Numbers: Agency—LAS–1, 2, 3, 4, 5, 6, and 13, OMB—None

Type of Request: New Collection

Burden: 17,280 respondents; 1,434 reporting hours

Needs and Uses: This survey provides annual measures of participation in selected leisure activities and measures changes in the participation. Planners use this information to study patterns of participation across various population subgroups and to look for correlates to arts and other cultural activities. The research will better enable arts organizations to make policy decisions based on such things as current demand, potential audience, and how to best serve the needs of their constituent population.

Affected public: Individuals or households

Frequency: Monthly

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census

Title: Forward Trace Study

Form Numbers: Agency—D-8111, D-8115, OMB—None

Type of Request: New Collection

Burden: 13,500 respondents; 5,040 reporting hours

Needs and Uses: This study is being used to improve the Bureau's ability to evaluate coverage for the 1990 Decennial Census. The project duplicates the activities needed to carry out a national reverse record check (RRC). The RRC is an evaluation program in which a sample of the population is drawn from a frame created before the census. The sample individuals are traced to the time of the census and matched to the census. The proportion of the sample determined not to have been counted in the census provides an estimate of the population that was missed in the census.

Affected Public: Individuals or households

Frequency: Nonrecurring

Respondent's Obligation: Mandatory

OMB Desk Officer: Timothy Sprehe 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 7, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84–24555 Filed 9–14–84; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Survey of Income and Program Participation—1984 Panel Wave 5

Form Numbers: Agency—SIPP–4500 Wave 5 Questionnaire—SIPP–4605—Introductory Letter, OMB—0607–0435

Type of Request: Revision of a currently approved collection

Burden: 42,000 respondents; 21,000 reporting hours

Needs and Uses: The Survey of Income and Program Participation (SIPP) is a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. The data will provide the executive and legislative branches improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. Changes in status and participation will be measured over time. The data will support policy and program planning.

Affected Public: Individuals or households

Frequency: Three times a year

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 7, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84–24556 Filed 9–14–84; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: General License (GIT) Shipments Originating in Canada
Form Numbers: Agency—EAR-371.4(c)); OMB—0625-0137
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 15,000 respondents; 1,250 reporting hours

Needs and Use: For each shipment from Canada moving in transit through the United States to a foreign destination, a copy of the Form B-13, Canadian Customs Entry, must be presented to the Customs Office at the U.S. port of export rather than at the port of entry. The information is used to verify the information on the Shipper's Export Declaration.

Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20203.

Dated: September 7, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84-24557 Filed 9-14-84; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[C-469-403]

Potassium Chloride From Spain; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final affirmative countervailing duty determination.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The estimated net subsidy is 7.88 percent *ad valorem* on exports prior to July 11, 1984, and 6.90 percent *ad valorem* on exports on or after July 11, 1984. Therefore, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, for consumption on or after June 29, 1984. The Customs Service shall require a cash deposit or bond on this product in the amount equal to the estimated net subsidy.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-0189.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits constituting subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The following programs are found to confer subsidies:

- Short-term preferential loans (provided under the Privileged Circuit Exporter Credits Program as working-capital loans and export credits).
- Excessive rebates of indirect taxes on exports under the Desgravacion Fiscal a la Exportacion (DFE).

We determine the net subsidy to be 7.88 percent *ad valorem* on exports prior to July 11, 1984, and 6.90 percent *ad valorem* on exports on or after July 11, 1984.

Case History

On March 30, 1984, we received a petition from Amax Chemical, Inc. and Kerr-McGee Chemical Corporation filed on behalf of the U.S. industry producing potassium chloride. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Spain of potassium chloride receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten to materially injure, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 19, 1984, we initiated an investigation (49 FR 18149).

Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. On May 14, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports materially injure, or threaten to materially injure, a U.S. industry (49 FR 21813).

We presented questionnaires concerning the allegations to the government of Spain at its embassy in Washington, D.C., on April 23, 1984. On June 4, 1984, we received a response to the questionnaire from Minas de Potasa de Suria, S.A., (Suria) and on June 22, 1984, we received a response from the related exporter, Comercial de Potasas, S.A. (Copsa). The government of Spain replied to our questionnaire on July 3, 1984. On June 29, 1984, we published an affirmative preliminary countervailing duty determination (49 FR 26784).

During the week of July 8, 1984, we conducted a verification of the responses in Spain.

In response to a request from petitioners, a public hearing was held on August 9, 1984. We received briefs from the parties to the proceeding on August 3, 1984, and August 16, 1984.

Scope of Investigation

The product covered by this investigation is potassium chloride. For the purposes of this investigation, the term "potassium chloride" covers potassium chloride, otherwise known as muriate of potash, as currently provided for in item 480.50 of the *Tariff Schedules of the United States*.

There is one known firm in Spain which produces potassium chloride for export to the United States. We have received information from Suria, which produced 100 percent of the potassium chloride exported to the United States during the period of investigation, calendar year 1983, and from Suria's related exporter, Copsa.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, and our verification, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Spain of potassium chloride under the programs discussed below:

A. Privileged Circuit Exporter Credits Program

Petitioners alleged benefits which constitute subsidies in the form of short-term preferential loans. We requested information on all short-term loans outstanding during the period for which we are measuring subsidization. The only preferential short-term borrowing received by Suria was that obtained under the Privileged Circuit Exporter Credits Program.

The government of Spain requires all Spanish commercial banks to maintain a specific percentage of their lendable funds in privileged circuit accounts. These funds are made available to exporters at preferential interest rates though a variety of credit programs. While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government-mandated program to promote exports. Of the four privileged circuit programs available to companies, we determine that the respondent potassium chloride producer benefited from two programs, the working-capital loan and the short-term export credit programs.

1. *Working Capital Loans.* Under the privileged circuit program, firms may obtain working-capital loans for one year, the total of which is not to exceed a specified percentage of their previous year's exports. During the period of investigation, Suria received three working-capital loans under this program.

For our preliminary countervailing duty determination on potassium chloride from Spain, we used the average prime interest rate for one year as the basis for our benchmark interest rate. We added two percentage points to the average prime rate to arrive at the interest rate faced by average borrowers. To this we then added a legally established 0.5 percent commission.

During our verification of the responses, we met with the director of a bank in Madrid. From the director we learned that our benchmark is a nominal interest rate. We also found that the Bank of Spain which publishes the average prime interest rate also publishes weighted-average lending rates on all loans by length and type of loan. Since the weighted-average lending rate reflects average borrowing in Spain, it is a more accurate source for a benchmark than the prime rate to which we have been adding an estimate of the percent over prime which average borrowers would pay.

Consequently, for this final determination, we chose as our 1983 benchmark for short-term operating capital loans, the 1983 weighted-average lending rate for loans of one to three years. Since this is a nominal rate, we found the effective rate by quarterly compounding, and then adding the 0.5 percent commission. In addition, an ITE tax of four percent is charged by the government on all interest payments, both commercial and preferential. We added this tax to the benchmark. Based on these data, we determine the national average commercial interest rate to be 20.09 percent for one-year working capital loans given in 1983.

Although in the past we have relied upon comparisons between nominal interest rates, we prefer to compare effective interest rates as stated in the Subsidies Appendix (49 FR at 18022). At verification we received information with which to calculate an effective benchmark interest rate. Given our preference for effective interest rates, we are changing Suria's nominal interest rates to effective rates and calculating the benefit based on a comparison of effective rates.

To determine the benefit, we compared the effective preferential interest rate (including tax and commission) with the effective national average commercial interest rate of 20.09 percent. We multiplied this interest differential by the total amount of Suria's privileged circuit working-capital loans.

We allocated the resulting product over the total sales value of all exports of Suria in 1983. On this basis we determine that the *ad valorem* subsidy for short-term working capital loans to Suria is 0.48 percent.

2. *Short-Term Export Credit.* The short-term export credit program provides loans for up to 90 percent of the value of a company's export shipments at a 10 percent nominal interest rate for a maximum of one year. Suria obtained four 90-day loans under this program during 1983 to finance exports of potassium chloride to the United States.

For our preliminary countervailing duty determination on potassium chloride from Spain, we used as a benchmark the average prime interest rate for loans of 90 days. We added two percentage points to the average prime rate to arrive at the interest rate faced by average borrowers. To this we then added a legally established 0.5 percent commission.

As with working capital loans, we learned during verification that the average prime rate for 90-day loans is a nominal rate and that the Bank of Spain publishes weighted-average lending rates which more closely approximate the rates afforded the average borrowers.

Consequently, for this final determination, we chose as our 1983 benchmark for short-term export credit loans, the 1983 weighted-average lending rate for trade discount loans of three months. Since this a nominal rate, we found the effective rate by quarterly compounding. In addition, an ITE tax of four percent is charged by the government on all interest payments, both commercial and preferential. We added this tax to the benchmark. Based on these data, we determine the national average commercial interest rate to be 18.35 percent for 90-day export credit loans given in 1983.

As explained in the section of this notice on working capital loans, we prefer to compare effective interest rates to evaluate the benefit from preferential financing.

To determine the benefit, we compared the effective preferential interest rate (including tax) with the effective national average commercial interest rate of 18.35 percent. We multiplied this interest differential by the amount of Suria's privileged circuit export credit loans. We allocated the interest benefit over the total sales value of Suria's exports to the United States during 1983. We determine that the *ad valorem* subsidy for short-term export credits to Suria is 1.56 percent.

B. Desgravacion Fiscal a la Exportacion (DFE)

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the export product (see Annex 1.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2

of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

In this case, we determine that Suria does not purchase from other sources any inputs that are physically incorporated into the final product. Thus, there are no turnover taxes paid on these inputs. The rebate of a final stage tax, the tax on freight, is, however, allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE. Based on our analysis, the amount of the subsidy if the DFE rebate less the amount of the final stage freight tax.

During our verification, we learned that the DFE rebate was reduced from 6.5 percent on potassium chloride exports to 5.525 percent effective July 11, 1984. Since the decree was signed on June 20, 1984, prior to our preliminary determination, we have included this information in our final determination. Therefore, any exports of the merchandise under investigation on or after July 11, 1984, are subject to the lower DFE rebate.

On this basis, we determine that the DFE rebate, less the final stage tax, confers an *ad valorem* subsidy of 5.84 percent on exports prior to July 11, 984, and 4.86 percent *ad valorem* on exports on or after July 11, 1984.

II. Program Determined Not to Confer Subsidies

We determine that subsidies are not being provided to manufacturers, producers, or exporters, in Spain of potassium chloride under the following program:

Government Equity Purchases

Petitioners alleged that producers of potassium chloride benefited from government of Spain purchases of equity on terms inconsistent with commercial considerations.

During verification we found that prior to 1982, a Belgian company held 100 percent of Suria's stock. In 1982, this Belgian company sold 51 percent of its shares in Suria to Fodina, a holding company owned by the government of Spain. Consistent with the Subsidies Appendix (49 FR 18006), we determine that since Fodina purchased previously issued shares from the Belgian company, there is no subsidy to Suria. This is true no matter what price the government pays, since any overpayment benefits only the prior shareholders and not Suria.

III. Programs Determined Not To Be Used

We have determined that potassium chloride manufacturers, producers, or exporters in Spain do not use the following programs identified in the notice of "Initiation of Countervailing Duty Investigation of Potassium Chloride from Spain."

A. Certain Benefits Under the Privileged Circuit Export Credits Program

In our analysis of the Privileged Circuit Export Credits Program earlier in this notice, we found that two programs, short-term working capital loans and short-term export credits, did provide subsidies to the respondent. We determine that the two remaining programs identified in our notice of initiation are not used. They are: (1) Commercial services loans, and (2) Prefinancing exports.

B. Medium- and Long-Term Preferential Loans

Petitioners alleged that producers of potassium chloride are receiving medium- and long-term preferential financing either directly from the government of Spain or from banks instructed by the government of Spain. We verified that Suria had no outstanding medium- or long-term loans during the period in which we are measuring subsidization.

Petitioners' Comments

Comment 1. Petitioners argue that the entire rebate of the DFE is a subsidy to the producer of potassium chloride, since there are no physically incorporated imputs on which indirect taxes are paid.

DOC Position. Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of Part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes, and therefore, a subsidy.

In this case, we determine that Suria does not purchase from other sources any imputs that are physically incorporated into the final product. Thus, there are no turnover taxes paid on these inputs. Consequently, the subsidy is equal to the DFE rebate less final stage taxes.

Comment 2. Petitioners state that the Department incorrectly characterized the IGTE on rail transportation to the port as a final stage indirect tax that may be properly offset against the DFE. Petitioners take the position that such export freight is a tax on transport categorized under present GATT rules as a *tax occulte*, i.e., a tax that may not be rebated.

DOC Position. The freight charges in question are established for exporting the merchandise and are treated as a tax on the exported product. We view this as a final stage tax, and have consistently held that this freight tax is an allowable final stage tax. See, for example, Non-Rubber Footwear from Spain (49 FR 19378) and Amoxicillin Trihydrate and Its Salts from Spain (49 FR 12730). Consequently, the rebate of this tax is allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE.

Comment 3. Petitioners argue that the Department should not offset the Impuesto de Muellaje, a port charge, against the DFE. They state that the port charge does not appear to be an indirect tax, but a utilization fee.

DOC Position. We agree that the Impuesto de Muellaje is a utilization fee rather than a tax and, therefore, we are not allowing this as a deduction from the DFE.

Comment 4. Petitioners express concern that if the Department calculates interest rate differentials based on effective interest rates, rather than nominal interest rates, the prepayment of interest on subsidized loans might cause an adjustment to be made mitigating the benefit from the lower (nominal) rate.

DOC Position. Although in the past we have relied upon comparisons between nominal interest rates, we prefer to compare effective interest rates as stated in the Subsidies Appendix (49 FR at 18022) as follows: "The magnitude of the benefit from loans is a function of the difference between the cost of the loan under examination and the cost of the benchmark loan. Ideally, we attempt to quantify the total effective cost of each type of loan in our comparisons. However, the charges added on to the nominal interest rates for each loan cannot always be quantified. In these cases, we base our calculations on the difference between the quantifiable equivalent terms of both loans." For our final determination we calculated the benefit from these preferential loans as the difference between the effective cost of the loans under examination and the effective cost of the benchmark loans.

Respondent's Comments

Comment 1. Respondent states that its effective average interest rate on short-term export credits is higher than the Department's preliminary calculations show.

DOC Position. We agree. For our preliminary determination we did not have sufficiently detailed information to calculate the effective interest rates on the short-term export credit loans. During our verification, we gathered sufficient information to calculate effective interest rates for short-term export credits which are higher interest rates than the nominal interest rates in our preliminary calculations. See the section on the Privileged Circuit Exporter Credits Program.

Comment 2. Respondent states that since 54.2 percent of the cost of its inputs for the production of potassium chloride are effected by the ICTE at the rate of 4 percent during 1983, the rebate of 6.5 percent under the DFE is clearly justified. Consequently, respondent argues that the DFE represents only a reimbursement of the indirect taxes affecting production and that there is no subsidy from the DFE program.

DOC Position. We disagree. See DOC Position to Petitioners' Comment 1.

Verification

In accordance with section 776(a) of the Act, we verified all information used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, or consumption, on or after June 29, 1984. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 7.88 percent *ad valorem* on exports prior to July 11, 1984, and 6.90 percent *ad valorem* on exports on or after July 11, 1984. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination of whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs Service to assess countervailing duties on all entries of potassium chloride from Spain entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation date, and to require a cash deposit or bond for an amount equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84–24560 Filed 9–14–84; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Selling Price Increase

Effective January 1, 1985, NTIS will increase the selling price of its Published Search product in both paper copy and microfiche. The cost to North American Continent customers will go from $35 to $40 and for all others from $60 to $70 per search.

Thomas P. Bold, Jr.,

Director, Office of Administrative Management.

[FR Doc. 84–24505 Filed 9–14–84; 8:45 am]

BILLING CODE 3510–04–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Recommencement of Trading in the One-Year U.S. Treasury Bill Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange has submitted a proposal to recommence trading in the one-year U.S. Treasury bill contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of that proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before October 17, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME one-year U.S. Treasury bill futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254–7227.

SUPPLEMENTARY INFORMATION: Since the CME one-year U.S. Treasury bill contract is now dormant within the meaning of Commission Rule 5.2 (47 FR 29515 (July 7, 1982)), the Exchange has submitted a proposal to recommence trading in the contract pursuant to the requirements of Rule 5.2. The Exchange states that during this dormant period three developments have increased the potential hedging demand for a futures contract based on one-year U.S. Treasury bills: (1) The delivery cycle for the futures contract on three-month U.S. Treasury bills has been modified in a way that would improve intermediate-term hedges involving the two contracts; (2) the absolute exposure to interest-rate risk in the maturity range that would be served by the one-year U.S. Treasury bill contract has been increased substantially; and (3) businesses exposed to interest-rate risk are better equipped and more willing to manage such risk with futures.

The Commission believes the CME's proposal to recommence trading in the one-year U.S. Treasury bill contract pursuant to the requirements of Commission Rule 5.2 is of major economic significance in accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982). The Exchange ceased to list trading months in December 1980. Accordingly, the Commission believes that the resumption of trading in the contract may raise questions concerning its overall conformity with cash market practices and its economic purpose. The CME's proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of its proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by October 17, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on September 11, 1984.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84-24528 Filed 9-14-84; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a consumer survey to determine the number of fireplace inserts and wood- or coal-burning stoves owned by consumers.

The purpose of this project is to resolve differences in previous estimates the Commission has obtained from different sources. Accurate figures for the number of these appliances that are used by consumers are needed to assess the risks associated with the devices. The results of this survey also may help to explain differences in previous estimates based on consumer surveys and estimates provided by manufacturers of the devices.

The survey is to be a "caravan" survey which is conducted by a contractor every two weeks and involves a national probability sample of 1,000 households. In order to conduct the Commission's survey, the contractor would ask each respondent 2–10 questions (depending on whether and how many of the devices are possessed by the respondent) as part of one edition of the caravan survey.

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, DC 20207.

Title of information collection: Consumer survey to determine the number of fireplace inserts and coal- or wood-burning stoves possessed by consumers.

Type of request: Approval of new plan.

Frequency of collection: One time.

General description of respondents: Random sample of consumers.

Estimated number of respondents: 1000

Estimated average number of hours per response: 0.05

Comments: Comments on this proposed collection of information should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7313. Copies of the proposed collection of information requirement are available from Francine Shacter, Office of Budget and Program Implementation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 11, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-24400 Filed 9-14-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Meeting; National Advisory Council on Bilingual Education

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under section 10(1)(2) of the Federal Advisory Committee Act. This document is to notify the general public of their opportunity to attend.

DATES: October 10, 1984 Orientation for New Council Members by Departmental Staff from 8:30 a.m.–noon and a business Meeting 1:00 p.m.–4:30 p.m. Also on October 11–12, 1984 from 9:00 a.m.–4:30 p.m. a Business Meeting will be held at: The U.S. Department of Education, Regional Office Building Number (3), Room 3652 (Gold Room), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Room 421, Reporter's Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202-245-2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

The meeting of the Council is open to the public. The proposed agenda includes the following:

October 10, 1984

I. Orientation

A. Welcoming Remarks by the Director of the Office of Bilingual Education and Minority Languages Affairs
B. Swearing In Ceremony for new Council Members
C. Required Orientation for Council Members by Designated Department of Education Staff

II. Business Meeting

A. Introduction of Policies and Procedures Handbook

October 11, 1984

I. Business Meeting

A. Policies and Procedures Handbook
B. Election of Officers, Selection of Subcommittees and Members
C. Preparation of Council Calendar for Fiscal Year 1985
D. Subcommittee meetings

October 12, 1984

I. Business Meeting

A. Reconvene

B. Subcommittee Reports
C. Update of Annual Report
D. Old Business
E. New Business
F. Steering Committee Prepares Business agenda for next Council Meeting.

Dated: September 12, 1984.

Jesse M. Soriano,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 84-24485 Filed 9-14-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion advisory Committee.

Date and Time: October 4-5, 1984—9:00 a.m. until 5:00 p.m.

Location: U.S. Department of Energy, Forrestal Building, Room IE-245, Washington, D.C. 20585.

Contact: Rosalie Weller, Office of Fusion Energy, ER-50, U.S. Department of Energy, Mail Stop G-226, Washington, D.C. 20545, Phone: (301)-353-3347.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Tentative Agenda Outline

NAS/NRC Study of International Cooperation in Magnetic Fusion Energy—L. Manning Muntzing
Comparative Assessment of Energy Options—John Sheffield
ERAB Study of Long-Range Energy R & D Needs—R. Williamson
MFAC Discussion
Public Discussion

Evaluation of DOE Fusion Program Plan and Strategy

Review of Charge of MFAC—Ron Davidson
Fusion Program Plan and Strategy—John Clarke, et al.
MFAC Discussion
Formulation of MFAC Findings and Recommendations
Public Input and Discussion

New Charge Areas

New Charges to MFAC
Discussion
Other Business

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available approximately 30 days following the meeting.

Issued at Washington, D.C., on September 11, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-24463 Filed 9-14-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP83-140-001, et al.]

ANR Pipeline Company, et al.; Filing of Pipeline Refund Reports and Refund Plans

September 12, 1984.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 20, 1984. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
8/ 6/84	ANR Pipeline Co.	RP83-140-001	Report.
8/ 9/84	Mississippi River Transmission Corp.	RP70-1-000	Do.
8/ 9/84	Southern Natural Gas Co.	RP83-58-012	Do.
8/20/84	Valley Gas Transmission, Inc.	RP83-82-004	Do.
8/23/84	Consolidated Gas Supply Corp.	RP72-157-070	Do.
8/24/84	Transwestern Pipeline Co.	RP80-25-013	Do.
8/27/84	East Tennessee Natural Gas Co.	RP71-15-017	Do.
8/27/84	Alabama-Tennessee Natural Gas Co.	RP73-77-026	Do.
8/31/84	East Tennessee Natural Gas Co.	RP78-85-018	Do.
8/31/84	National Fuel Gas Supply Corp.	RP80-135-043	Do.

[FR Doc. 84-24534 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-637-000]

Central Vermont Public Service Corp.; Filing

September 12, 1984.

The filing company submits the following:

Take notice that on August 30, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Sales and Exchange Agreement (the Agreement) between the Central Maine Power Company (CMP) and CVPS. The Agreement, dated April 1, 1984, provides for the exchange of a portion of the CVPS system capacity and associated energy for an equal entitlement in capacity from the CMP system (an Exchange).

CVPS states that the Agreement provides that the parties will determine not less than twelve (12) hours prior to such Exchange whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, take place during that day or week.

CMP shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by CMP for the preceding month by the energy reservation charge in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental system energy cost adjusted for transmission losses to the delivery point.

CVPS shall pay CMP for each month an Exchange occurs, an energy charge which shall be the sum of each of the hourly energy charges for each of the hours of exchange in such month. The hourly energy charge shall be the product of (1) the NEPEX Replacement Fuel Price for the Exchange Units; (2) the full load average heat rate of the Exchange Units as recorded to NEPEX on Form NX12 (expressed in BTU/MWH or, for steam fossil fired exchange units, the experienced average monthly heat rate of each such unit expressed in BTU/MWH; (3) the net energy output in MWH from the Exchange Units for such hour; and (4) the CVPS Entitlement Fraction in the Exchange Units for such hour.

CVPS requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as their respective Public Service Boards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24535 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-68-000]

El Paso Electric Co.; Application

September 12, 1984.

Take notice that on September 4, 1984, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to section 204 of the Federal Power Act to issue and sell up to an additional 500,000 shares of Common Stock, no par value, pursuant to the Applicant's Customer Stock Purchase Plan and applying for an exemption of such transaction from the competitive bidding requirements of the Commission.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before October 4, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24536 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-69-000]

El Paso Electric Co.; Application

September 12, 1984.

Take notice that on September 4, 1984, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to section 204 of the Federal Power Act to issue and sell up to an additional 1,500,000 shares of Common Stock, no par value, pursuant to the Applicant's Dividend Reinvestment and Stock Purchase Plan and applying for an exemption of such transaction from the competitive bidding requirements of the Commission.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before October 4, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24537 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-617-000]

Florida Power and Light Co.; Filing

September 12, 1984.

The filing Company submits the following:

Take notice that on August 23, 1984, Florida Power and Light Company (FP&L) tendered for filing a document entitled "Amendment Number Two to Contract for Interchange Service between FP&L and Jacksonville Electric Authority (JEA)."

FP&L states that this Amendment was entered into in accordance with the provisions of the existing Contract for Interchange Service between FP&L and JEA which contemplates that the parties may mutually agree to establish additional service schedules. FP&L states that Service Schedule X provides the parties with the necessary vehicle to better maximize the overall economy of power production in the State of Florida.

FP&L requests that the proposed Amendment be made effective no later than 60 days from the date of filing. According to FP&L, a copy of this filing was served upon the Jacksonville Electric Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol, Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24538 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-541-000]

Oklahoma Gas & Electric Co.; Electric Rates; Order Accepting for Filing and Suspending Rates, Granting Intervention, Ordering Summary Disposition, Granting Waiver of Notice, and Establishing Hearing and Price Squeeze Procedures

Issued September 10, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On July 12, 1984, Oklahoma Gas and Electric Company (OGE) tendered for filing a proposed two-step increase in its rates for: (1) Firm power and supplemental service to 23 municipal and three cooperative wholesale customers; (2) transmission service and thermal energy provided to the Southwestern Power Administration (SWPA); and (3) transmission service to Western Farmers Electric Cooperative (WFEC).[1] The proposed Phase One rates would increase overall revenues by approximately $10.5 million (12.3%) and the Phase Two rates would increase revenues by an additional $4.3 million (5.1%), representing a total increase of approximately $14.8 million, or 17.4%. OGE requests effective dates of September 10 and September 11, 1984, for the Phase One and Phase Two rates, respectively, but also requests that the Phase One rates be deemed withdrawn in the event that the same suspension period is ordered for both phases.

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[1] *See* Attachment for rate schedule designations and affected customers.

OGE has also proposed increased rates for firm power service to the Town of Mannford and the City of Perry, Oklahoma, which are served under separate contracts that permit rate changes to become effective prospectively only after a final Commission order. Finally, OGE filed a number of revised tariff sheets and service agreements for individual customers, for which it seeks various effective dates and waiver of § 35.3 of the Commission's regulations where necessary.[2] These latter filings amend various terms and conditions, but do not in themselves involve the change in rates proposed by OGE in this docket.

Notice of OGE's filing was published in the **Federal Register**,[3] with comments due on or before August 6, 1984. Timely motions to intervene were filed by SWPA and jointly by the Municipal Electric Systems of Oklahoma, the municipal customers of OGE, and OGE's three wholesale rural electric cooperative customers (collectively referred to as MESO).[4] WFEC also filed a timely motion to intervene, but suplemented its pleading on August 13, 1984.[5] On August 9, 1984, Great Lakes Carbon Corporation (Great Lakes) filed a motion to intervene out of time, asserting that it had insufficient notice to file its pleading in a timely manner. Great Lakes states that, as a retail customer of one of OGE's cooperative customers, it has a significant interest in this proceeding.

SWPA raises various cost of service issues, including: (1) The rate of return on equity requested by OGE; (2) the justification for the demand portion of the transmission cost of service; (3) the justification for any increase in the energy component of the transmission service charge; and (4) the allocation of production related costs to transmission service.

MESO requests a five month suspension for each phase of the proposed increase and alleges price squeeze. In support of its motion for a maximum suspension, MESO identifies numerous cost of service issues, including: (1) Rate of return on equity; (2) the stated equity ratio; (3) the claimed cash working capital allowance and the inclusion in working capital of prepayments for natural gas; (4) OGE's reserve margins for generating capacity; (5) OGE's computation of the interest expense used in calculating its income tax allowance; (6) certain dues and other expense items included in miscellaneous general expenses; (7) revenue credits for off-system gas sales; (8) allocation of general plant, intangible plant, and a portion of administrative and general expenses; (9) allocation of demand costs to the municipal partial requirements service; and (10) OGE's forecasts of coincident and non-coincident peak demands.

WFEC protests the proposed increase, raising issues with regard to OGE's claimed return on equity, equity ratio, and claimed cash working capital allowance. WFEC requests that the Commission suspend the proposed transmission rates for five months, based on the relevant cost of service issues raised in MESO's pleading.

OGE separately responded to the pleadings of SWPA, MESO, and WFEC. While not objecting to the interventions, OGE opposes WFEC's request for permission to file a supplemental protest. In addition, the company denies the allegations that its proposed rates are excessive or will result in a price squeeze.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motions to intervene serve to make SWPA, MESO, and WFEC parties to this proceeding. Concerning WFEC's late-filed supplemental protest, we note that the specific issues raised by WFEC had already been raised by MESO in a timely pleading. Therefore, OGE has had ample opportunity to respond to those points and we perceive no prejudice in permitting WFEC to express its position more fully. Accordingly, we decline to strike WFEC's supplemental pleading.

Based on the relationship of Great Lakes' retail rates to OGE's wholesale rates, it appears that Great Lakes may have an interest in this proceeding and that its intervention is in the public interest. Moreover, because this proceeding is not at an advanced stage and the intervention was only three days out of time, granting the late intervention should cause no undue prejudice or delay. Therefore, we shall grant Great Lakes' request to intervene out of time.

We note that OGE has subtracted accumulated deferred investment tax credits (ADITC) from rate base in computing its interest expense for tax allowance purposes. This adjustment contravenes established Commission precedent.[6] Accordingly, we shall order summary disposition as to this matter and direct OGE to file revised rates and supporting cost statements reflecting this decision.

Our preliminary review of OGE's filing indicates that OGE's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept OGE's submittal for filing, as modified by summary disposition, and we shall suspend the proposed rate as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we explained the Commission's suspension policy, noting that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our review of OGE's rates suggests that the Phase One and Phase Two rates for firm service to the municipal customers (the WM-1 rate) and the Phase One rate for the wholesale rural electric cooperatives (the WC-1 rate) may not yield substantially excessive revenues. However, our examination also suggests that the Phase Two rates for the cooperative customers (WC-1 rate), as well as the Phase One and Phase Two rates for supplemental service to municipal customers (the WM-2 rate) and for service to SWPA and WFEC, may result in substantially excessive revenues. Since the same suspension period would therefore be ordered for both phases of the WM-1, the WM-2, the SWPA, and the WFEC rates, we shall deem the Phase One rates to be withdrawn with respect to those rates, as requested by OGE. Accordingly, we shall suspend the Phase Two WM–1 rate (except with respect to Mannford and Perry) and the Phase One WC–1 rate for one day from 60 days after filing, to become effective on September 12, 1984, subject to refund.[7] We shall suspend the proposed Phase Two WC–1, WM–2, SWPA, and WFEC rates for five months, to become effective on February 11, 1985, subject to refund.[8] In addition, we shall accept for filing and set for hearing OGE's proposed WM–1 rates for Mannford and Perry, to become effective prospectively only after a final Commission order regarding those rates.

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[2] *See* Attachment for description of proposed revisions and effective dates agreed to by the parties pursuant to the executed agreements.

[3] 49 FR 30357 (1984).

[4] The municipal customers represented by MESO include Blackwell, Edward, Geary, Goltry, Kingfisher, Mannford, Newkirk, Okeene, Perry, Ponca City, Pond Creek, Prague, Stillwater, Stroud, Tecumseh, Tonkawa, Waynoka, and Wynnewood, Oklahoma, and Clarksville and Paris, Arkansas. The cooperative customers are Arkansas Valley Electric Cooperative, Inc., Cimarron Electric Cooperative, Inc., and KAMO Electric Cooperative, Inc.

[5] In support of its request for permission to file a later suplemental protest, WFEC cited a need to retain new counsel just prior to the comment deadline.

[6] *See Alabama Power Company*, Opinion No. 54, 8 FERC ¶ 61,083 at 61,328 (1979); *Central Telephone & Utilities Corp.*, 14 FERC ¶ 61,186 at 61,352 (1981).

With respect to the company's request for waiver of the notice requirements for the revised tariff sheets and service agreements for individual customers, we find that good cause exists to grant the request, in light of the affected parties' agreement. Therefore, we shall accept these modifications for filing, to become effective, without suspension, on the dates specified by the parties.

In light of the price squeeze allegation raised by MESO, we shall institute price squeeze proceedings and phase them in accordance with our policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79–339, 8 FERC ¶61,131 (1979).

The Commission order:

(A) The intervention of Great Lakes is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) WFEC's request to file its August 13, 1984 supplemental protest is hereby granted.

(C) Summary disposition is hereby ordered with respect to OGE's subtraction of ADITC from rate base in computing the interest expense in the income tax calculation. Within thirty (30) days of the date of this order, OGE shall file a revised cost of service as well as revised Phase One and Phase Two rates, except for those rates deemed to have been withdrawn.

(D) The requested waivers of § 35.3 of the Commission's regulations are hereby granted and the revised tariff sheets and service agreements submitted by OGE are hereby accepted for filing, to became effective on the dates set forth in item numbers (1) through (4) and (15) through (20) of the Attachment to this order.

(E) OGE's proposed rates are hereby accepted for filing, as modified by Paragraph (C) above, and are suspended, to become effective, subject to refund, as follows: The Phase Two tariff rates for firm service to the municipal customers (except for Mannford and Perry) (the WM–1 rate) and the Phase One tariff rate for firm service to the rural electric cooperatives (the WC–1 rate) are suspended for one day, to become effective on September 12, 1984; the Phase Two WC–1 rate and the Phase Two rates for supplemental municipal service (the WM–2 rate) and for SWPA and WFEC are suspended for five months, to become effective of February 11, 1985. The Phase One tariff rates for firm and supplemental service to municipal customers (the WM–1 and WM–2 rates) and the Phase One rates for SWPA and WFEC are deemed withdrawn. After a final Commission order approving a WM–1 rate has been issued in this proceeding, the approving WM–1 rate shall take effect for Mannford and Perry.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of OGE's rates.

(G) The Commission staff shall serve top sheets in this proceeding on or before September 21, 1984.

(H) A presiding administrative law judge, to be designated by the Chief Adminsitrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure (18 CFR, Part 385).

(I) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just are reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(J) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Oklahoma Gas and Electric Company

[Docket No. ER84–541–000]

Rate Schedule Designations

Designation		Description	Effective date
I. FERC Electric Tariff First Revised Volume No. 1			
Sheet No.	*Supersedes Sheet No.*		
(1) 1st revised sheet No. 1	Original sheet No. 1	Table of contents	September 10, 1984.
(2) 1st revised sheet No. 2	Original sheet No. 2	Preliminary statement	Do.
(3) 1st revised sheet No. 2	Original sheet No. 17	Terms and conditions	Do.
(4) Original sheet No. 17A		......do	Do.
(5) 5th revised sheet Nos. 7, 8, 9	4th revised sheet Nos. 7, 8, 9	Rate WC–1, phase 1	September 12, 1984, subject to refund.
(6) 6th revised sheet No. 28	5th revised sheet No. 28	Index, phase 1	Do.
(7) 5th revised sheet No. 29	4th revised sheet No. 29	Index, phase I	Do.
(8) 6th revised sheet Nos. 4, 5, 6	5th revised sheet Nos. 4, 5, 6	Rate WM–1, phase 2	Do.
(9) 6th revised sheet Nos. 7, 8, 9	5th revised sheet Nos. 7, 8, 9	Rate WC–1, phase 2	February 11, 1985, subject to refund.
(10) 4th revised sheet Nos. 10, 11, 12	3rd revised sheet Nos. 10, 11, 12	Rate WM–2, phase 2	September 12, 1984, subject to refund.
(11) 7th revised sheet No. 28	6th revised sheet No. 28	Index, phase 2	Do.
(12) 6th revised sheet No. 29	5th revised sheet No. 29	Index, phase 2	Do.
(13) Supplement No. 4 to rate schedule FERC No. 106 (supersedes supplement No. 3).		SWPA, revised page Nos. 20, 22, 23, phase 2.	February 11, 1985, subject to refund.
(14) Supplement No. 5 to rate schedule FERC No. 103 (supersedes supplement No. 4).		WFEC, revised page No. 16, phase 2	Do.

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[7] Where our analysis indicates significant differences in excess revenues, we consider the classes independently for suspension purposes. *See West Texas Utilities Company,* 26 *FERC* ¶ *61,041 at 61,138 (1984).*

[8] We note that OGE's proposed effective date for the Phase One rates falls one day short of the statutory 60 day notice period. The suspension periods ordered here have been measured from September 11, 1984, 60 days after filing.

Service Agreements under FERC Electric Tariff First Revised Volume No. 1

	Service agreement No.	Other party	Description	Effective date
(15)	65	City of Clarksville	Additional delivery	February 15, 1985.
(16)	66	City of Stillwater	do	Initiation of service.
(17)	67	Cimarron Electric Cooperative, Inc.	do	September 20, 1984.
(18)	Supplement No. 1 to (15)	City of Clarksville	Supplemental power contract	July 1, 1981.
(19)	Service agreement No. 68	Town of Goltry	do	August 1, 1983.
(20)	Supplement No. 2 to service agreement No. 40.	City of Paris	do	July 1, 1985.

[FR Doc. 84-24539 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-66-000]

PacifiCorp, Doing Business as Pacific Power & Light Co.; Application

September 12, 1984.

Take notice that on August 31, 1984, PacifiCorp, d.b.a. Pacific Power and Light Company (Pacific), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing it (1) to borrow the proceeds of not more than $90,000,000 in aggregate principal amount of Pollution Control Revenue Bonds to be issued by the Sweetwater and Converse Counties, Wyoming (Counties), and (2) to enter into such agreements or arrangements with the Counties and other entities as may be reasonably necessary to effect the borrowings. These agreements or arrangements may include guarantees, pledges, sale and leasebacks, lease and leasebacks, collateralized security issuances, and reimbursement agreements. The financing is related to certain air and water pollution abatement facilities located at Pacific's Jim Bridger and Dave Johnston Generating Plants.

Any person desiring to be heard or to make any protest with reference to the application should, on or before September 28, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with 18 CFR 385.211 or 385.214, respectively. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24540 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-653-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Certificate

September 12, 1984.

Take notice that on August 16, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642 Houston, Texas 77001, filed in Docket No. CP84-653-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Panhandle proposes to transport natural gas on behalf of PPG Industries, Inc. (Shipper), under authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle proposes to transport up to 4,400 Mcf of natural gas per day and up to 1,606,000 Mcf of natural gas per year on behalf of Shipper. It is asserted that Panhandle would receive the gas at an existing point of interconnection with Union Texas Products Corporation, the seller, in Major County, Oklahoma, and deliver equivalent volumes (less four percent reduction for fuel) to Illinois Power Company in Macon County, Illinois, which in turn would make the ultimate delivery to Shipper in Mt. Zion, Illinois. In addition, Panhandle requests "flexible authority" to add and delete sources of supply or receipt/delivery points. It is asserted that Panhandle would file additional information to insure that any changes in sources or receipt/delivery points would be on behalf of the same end-user at the same location and under the same terms and conditions as would be authorized in Docket No. CP84-653-000. It is further asserted that Panhandle's transportation charge would be based upon Panhandle's Rate Schedule OST and that there is no 5-cent added incentive charge proposed.

Shipper would utilize the gas transported for boiler and process heating, it is stated. Panhandle further states that it would not construct or add to its existng facilities to provide this transportation service. The term of this proposed serivce would be from the date automatic authorization expires until the earlier of (1) eighteen months form the July 9, 1984, date of the transportation agreement, (2) termination of the authorization as provided by Subpart F of Part 157, of the Commission's Regulations, or (3) termination of the service by any of the parties, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24541 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-028]

Pennzoil Co.; Fourteenth Amendment to Application for Immediate Clarification or Abandonment Authorization

September 11, 1984.

Take notice that on September 7, 1984, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-028 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to eleven new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Fourteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause," if any it can, why it should not be found to be in violation of its duty * * * to provide adequate gas service to all applicants * * * and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, September 19, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-028.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24542 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-19-000]

South Carolina Electric & Gas Co.; Application and Petition for Order Disclaiming Jurisdiction

September 12, 1984.

Take notice that on August 28, 1984, South Carolina Electric and Gas Company (SCE&G or Company) submitted for filing its application for approval of transfer of facilities pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.

SCE&G requests that the Commission issue an order disclaiming jurisdiction over the Williams Station one of its (SCE&G) generating facilities because SCE&G proposes to transfer ownership of the plant to South Carolina Generating Company, Inc. (GENCO), which is to be a wholly-owned subsidiary of SCE&G. Therefore, SCE&G states that the Public Service Commission of South Carolina has jurisdiction to approve the transfer of Williams Station from SCE&G to GENCO and the transfer is not subject to the requirements of section 203.

SCE&G states that alternatively, in the event the Commission determines that it has jurisdiction over the transfer, SCE&G requests that the Commission issue an order granting such tranfser and to that end, SCE&G also filed an application to transfer the Willians Station to GENCO in accordance with the requirements of Part 33 of the Commission's Regulations under the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 4, 1984. Protests will be considered by the Commission in determining the appropriate actiion to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24545 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF84-5051-000]

Western Area Power Administration; Filing

September 12, 1984.

The filing Company submits the following:

Take notice that on August 28, 1984, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA-25, did confirm and approve, on an interim basis, to be effective on the first day of the October 1984 billing period, Western Area Power Administration's (Western) new Rate Schedules RGP-F2 and RGP-EE1 for the Rio Grande Project.

The revised FY 1983 power repayment study dated January 5, 1984, on which the power rates are based, indicates that a composite rate of 30.85 mills per kWh for firm capacity and energy, and a rate of 22.0 mills per kWh for excess nonfirm winter season energy are needed to meet project repayment requirements. This represents an increase of 3.85 mills per kWh (14.3 percent) for firm power over the existing composite rate of 27.00 mills per kWh. The excess nonfirm winter season energy rate remains the same as was charged during the past two winters. The increased firm rate is expected to increase the annual revenues through 1990 by $235,620 per year, which is required to meet increased costs in operations and maintenance, additions and replacements, and for repayment of the project investment. The 5-percent voltage discount under Rate Schedule RGP-F1 was eliminated since both customers were receiving the same discount.

These rates will be in effect pending the Commission's approval of them, or substitute rates, on a final basis, or until superseded.

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates consistent with sound business principles. The Deputy Secretary states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period pursuant to authority vested in the Commission by Delegation Order No. 0204-108.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24546 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-454-000]

Penobscot Energy Recovery Company Portland, ME; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 12, 1984.

On August 20, 1984, Penobscot Energy Recovery Company, (Applicant), of One Monument Square, Portland, Maine 04101, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located in Orrington, Maine. It will have a power production capacity of 20,000 kilowatts and will use biomass in the form of Municipal solid waste as its primary energy source. No electric utility company or electric utility holding company will have any ownership interest in the facility. Construction of the proposed facility is expected to commence on or about May 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24543 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-476-000]

San Diego Solar Concepts III, Ltd.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 12, 1984.

On August 29, 1984, San Diego Solar Concepts III, Ltd., P.O. Box 20173, San Jose, California, 95160, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Borrego Springs, San Diego County, California. The proposed facility will consist of a maximum of 400 solar modules floating on four cooling ponds. No oil or gas will be used in the proposed facility. The maximum annual electric power production of the facility will be approximately 2,920,000 kilowatt hours. The maximum annual thermal energy production capacity of the facility will be approximately 467,200 therms of hot water energy. The hot water produced in the cooling process will be sold for process use in a nearby alcohol distillery. The facility will be completed for use no later than December 31, 1984.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24544 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2670-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Research Program

- *Title:* Survey of State Environmental Officials to Determine

Research Needs for ORD Planning (EPA #1229).

Abstract: EPA's Office of Research and Development proposes to survey state enviromental officials annually to determine their research needs. The Agency will use this information the increase consideration of state research needs in Agency planning.

Respondents: State environmental officials.

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street, SW., Washington, D.C. 20460; and

Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: September 11, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-24374 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 84-499]

Location of District Offices

Dated: September 11, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of administrative policy.

SUMMARY: The Board is notifying the public that it has determined as a general policy to ensure that its district examination offices are within or near the corresponding district Federal Home Loan Banks. This policy is intended to improve the flow of information between the respective offices and to enhance the Board's ability to effectively examine, monitor and supervise the thrift industry.

DATE: August 10, 1984.

ADDRESS: Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: James Kristufek (202-377-6290), Special Assistant to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: On August 10, 1984, the Federal Home Loan Bank Board adopted the following administrative policy:

Statement of Policy

It is of the utmost importance that the Office of Examinations and Supervision district offices be located within immediate or close proximity to, and preferably "under the same roof" as, the corresponding Federal Home Loan Banks. To do otherwise would hinder the free flow of information between the respective offices which would adversely affect our ability to effectively examine, monitor and supervise the industry.

In instances where an OES District office is requested by the District Bank to relocate from their existing space, the following principles will apply:

1. The District Bank will pay for all moving expenses of the OES district office;

2. Leasehold improvements, if necessary to put the space in a useable condition, will be paid for by the District Bank with the exception of special or unusual items requested by the District Director;

3. The square foot lease cost charged the district office will be determined by application of a "blended rate" determined as follows: The total rental cost of all space leased by the Bank, including the OES space and all maintenance costs, will be divided by the total square footage leased to arrive at the "blended rate" to be charged the district office.

In instances where a District Bank relocated to a new building, OES will also relocate to the new building and the principles stated in 2. and 3. above will apply. The moving expenses of the OES district office will be paid for by OES, however.

The Chairman may appoint a Board Member to serve as arbitrator to resolve any disputes that might arise as to implementation of the above guidelines.

Multi-year leases should be used, where possible, but of course such leases would be subject to the annual appropriations process.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-24472 Filed 9-14-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Northwestern Financial Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Northwestern Financial Corporation,* North Wilkesboro, North Carolina; to engage *de novo,* through its subsidiary, Northwestern Equity Mortgage Corp., Wilkesboro, North Carolina, in soliciting, closing, making, negotiating, acquiring and/or selling consumer or commercial mortgage loans (including conventional and alternative mortgage transactions) for its own account and, or the account of others and/or otherwise acting as mortgage broker or mortgage banker; and acting as agent for the sale of credit life, health and accident and other credit-related insurance.

B. **Federal Reserve Bank of Kansas** City (Thomas M. Hoening, Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Continental Financial, Inc.*, Omaha, Nebraska; to engage *de novo*, through its subsidiary, River City Insurance Company, Inc., Omaha, Nebraska, in underwriting life, accident and health insurance directly related to extensions of credit by its subsidiary bank.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mercantile Texas Corporation*, Dallas, Texas; to engage *de novo*, through it subsidiaries, MCorp Management, Dallas, Texas, and MCorp Properties, Dallas Texas, in making or acquiring for their own account or for the account of others, loans and other extensions of credit. Lending activities will principally involve participation in commercial loans made by Mercantile Texas Corporation and its subsidiaries but may from time to time include credit card loans, consumer loans, mortgage loans and factoring.

Board of Governors of the Federal Reserve System, September 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24470 Filed 9-14-84; 8:45 am]

BILLING CODE 6210-01-M

Rigler Investment Co., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 18442(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 8, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Rigler Investment Co.*, New Hampton, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Security State Bank, New Hampton, Iowa.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Fort Knox Bancshares, Inc.*, Chillicothe, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Investors Services, Inc., Fort Knox, Kentucky, thereby indirectly acquiring Fort Knox National Bank, Fort Knox, Kentucky.

2. *McIlroy Investment Co., Inc.*, Fayetteville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Industrial Finance Company, Fayetteville, Arkansas, thereby indirectly acquiring 82.5 percent of the voting shares of McIlroy Bank & Trust, Fayetteville, Arkansas.

3. *TPB Bancorp*, Brownston, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of The Peoples Bank, Brownston, Indiana.

Board of Governors of the Federal Reserve System, September 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24471 Filed 9-14-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces renewal of the Cardiovascular and Renal Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on August 27, 1986, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24517 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

Endocrinologic and Metabolic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces renewal of the Endocrinologic and Metabolic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on August 27, 1986, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24520 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0278; DESI 7630]

Drugs for Human Use; Drug Efficacy Implementation; Upgrading Notice and Withdrawal of Approval of Pertinent Parts of New Drug Application for Winstrol Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the conditions for marketing stanozolol tablets for the indication for which it is evaluated as effective, for the treatment of hereditary angioedema, and is withdrawing approval of parts of the new drug application pertaining to the less-than-effective indications.

DATE: Revised labeling shall be put into use by October 17, 1984.

ADDRESS: Communications in response to this notice should be identified with the reference number DESI 7630, and directed to the attention of the appropriate office named below.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drugs (HFN–230), Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20856.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HEN–310), Rm. 216 Center for Drugs and Biologics, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** of April 23, 1984 (49 FR 17094), FDA reclassified stanozolol to lacking substantial evidence of effectiveness for its labeled indications and offered an opportunity for a hearing on the proposal to withdraw approval of the following new drug applicaton (NDA):

NDA 12.885; Winstrol Tablets containing stanozolol 2 milligrams (mg); Sterling Drug Inc., 90 Park Ave., New York, NY 10016.

In response to the notice, Sterling Drug requested a hearing on the indications evaluated as lacking substantial evidence of effectiveness. Previously Sterling had submitted data for literature references in support of the use of stanozolol in the treatment of hereditary angioedema. These data were evaluated and determined by the agency to provide substantial evidence of effectiveness for that indication. Sterling later withdrew its hearing request.

Effectiveness Conclusions

On the basis of the data and information submitted and reviewed, the Director of the Center for Drugs and Biologics has determined that stanozolol is effective for the treatment of hereditary angiodema. In addition, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), the Director also finds that, on the basis of new information before him with respect to the drug product's previously labeled indications, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that stanozolol will have the effects it is represented to have under the conditions of use prescribed, recommended, or suggested for those indications. Therefore, pursuant to the foregoing findings, approval of pertinent parts of NDA 12–885 pertaining to those indications is withdrawn effective October 17, 1984. Shipment in interstate commerce of the product above, or any identical, related, or similar product with indications for which approval is withdrawn, will be unlawful after October 17, 1984.

This drug product is regarded as a new drug (21 U.S.C. 321(p)) and an approved new drug application is required for marketing.

In addition to the holder of the new drug application specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to the drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Marketing

FDA has reviewed all available evidence and concludes that stanozolol is effective for the indication listed in the labeling conditions below. The agency is prepared to approve abbreviated new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet form suitable for oral administration

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows: For the treatment of hereditary angioedema.

3. *Marketing status.* a. Marketing of the drug product that is now the subject of an approved or effective new drug application may be continued provided that, on or before October 17, 1984, the holder of the application has put into use revised labeling in accord with the labeling conditions described above.

b. Approval of an abbreviated new drug application (21 CFR 314.2) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating in vivo bioavailability of the drug or information to permit waiver of the requirement. Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: September 11, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–24514 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 75N–0184; DESI 597]

Drugs for Human Use; Drug Efficacy Study Implementation; Cantil With Phenobarbital Tablets; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those parts of a new drug application pertaining to Cantil with Phenobarbital Tablets ("Cantil PB"). The basis of the withdrawal is that there is a lack of substantial evidence that the drug is effective in the adjunctive therapy of peptic ulcer. This notice does not affect single entity Cantil products, which are effective for the adjunctive therapy of peptic ulcer.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 597 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN–366), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 16, 1981 (46 FR 3877), FDA proposed to withdraw approval of the new drug applications for certain anticholinergic/sedative combinations used for the treatment of various gastrointestinal disorders. The notice also offered an opportunity for a hearing on the proposal. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), 21 CFR 314.111(a)(5), and 21 CFR 300.50.

In response to that notice, Merrell Dow Pharmaceuticals, Inc., requested a hearing on Cantil PB. Subsequently, Merrell Dow withdrew its hearing request. Accordingly, FDA is now withdrawing approval of the appropriate parts of the following new drug application (NDA) that provide for Cantil PB.

NDA 10-679; those parts that provide for Cantil with Phenobarbital Tablets containing 25 milligrams (mg) mepenzolate bromide and 16 mg phenobarbital; Merrell Dow Pharmaceuticals, Inc., a subsidiary of the Dow Chemical Co., 2110 East Halbraith Rd., Cincinnati, OH 45215.

This notice does not apply to Cantil Tablets and Liquid (NDA 10-679) containing single entity mepenzolate bromide, which are effective for the adjunctive therapy of peptic ulcer. See **Federal Registers** of June 18, 1971 (36 FR 11754) and May 25, 1979 (44 FR 30439).

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination product Cantil with Phenobarbital Tablets will have the effects its purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 10-679 that provide for Cantil with Phenobarbital Tablets and all amendments and supplements thereto is withdrawn effective October 17, 1984.

Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: September 11, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24515 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0067 (DESI No. 10826); Formerly Docket No. 80N-0012]

E.R. Squibb & Sons, Inc.; Certain Drugs Containing Antibiotic, Corticosteriod, and Antifungal Components; Notice of Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to withdraw approval of the new drug applications (NDA's) for Mycolog Cream and Ointment. The drugs are intended for treatment of various dermatologic conditions.

DATES: Notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1984. Disclosure of data and information and submission of narrative statements by November 16, 1984. Prehearing conference on December 12, 1984, at 10 a.m.

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Submissions should be identified with docket number 84N-0067 and clearly labeled "Mycolog Hearing.") Prehearing conference in the FDA Hearing, Room Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In a notice (DESI 10826) published in the **Federal Register** of June 29, 1972 (37 FR 12856), the Food and Drug Administration (FDA) evaluated the effectiveness of certain prescription drug products for topical use. These products included Mycolog Cream and Ointment, which are approved under NDA's 60-576 and 60-572, respectively, held by E.R. Squibb & Sons, Inc., New Brunswick, NJ (hereinafter Squibb). Both products are composed of triamcinolone acetonide (1.0 milligram/gram (mg/g)), nystatin (100,000 units/g), neomycin sulfate (2.5 mg/g), and gramicidin (0.25 mg/g).

The 1972 notice, part of the Drug Efficacy Study Implementation (DESI) program, stated that FDA had evaluated reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, together with other available evidence, and had concluded that the reviewed product including Mycolog Cream and Ointment, were possibly effective for all of their labeled indications relating to use in various dermatoses and as inti-enfective agents.

Subsequently, in a notice published in the **Federal Register** of October 9, 1974 (39 FR 36365), the Commissioner of Food and Drugs announced that certain anti-infective/corticosteroid drugs, including Mycolog Cream and Ointment, would be permitted to remain on the market beyond the time limits prescribed for implementation of the DESI program. This continued marketing was contingent upon the fulfillment of certain conditions set forth in the notice. With respect to the antibiotic/corticosteriod products, these conditions were (1) that the corticosteriod in the product be present in an amount not less than the equivalent of 0.5 percent hydrocortisone; (2) that the product be appropriately labeled, as set forth in the notice; (3) that, within 90 days of the date of the notice, the drug's manufacturer or distributor submit to FDA for approval protocols for two single investigator studies (or one multicenter study) designed to show that the product is effective for its claimed indications and that it satisfies FDA's policy for fixed combination prescription drugs (21 CFR 300.50); (4) that the effectiveness studies begin within 6 months of the agency's approval of the protocols; (5) that the manufacturer or distributor submit progress reports to FDA at 6-month intervals; and (6) that the manufacturer or distributor submit data from the studies to FDA within 18 months of FDA's approval of the protocols.

Following publication of the 1974 notice, Squibb conducted and submitted the results of a clinical study to support the possibly effective indication for cutaneous candidiasis of its products Mycolog Cream and Ointment. No other indication was addressed in the study. Squibb also submitted nine references and articles in support of its products. Upon review of these data and other available information, the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) concluded that there is a lack of substantial evidence that either Mycolog Cream or Ointment is effective for its labeled indications (21 U.S.C. 355(d), 21 CFR 314.111(a)(5)), and, further, that the submitted data do not demonstrate that each component of the two products makes a significant contribution to the claimed effects of each drug (21 CFR 300.50(a)). Accordingly, by notice in the **Federal Register** of September 25, 1981 (46 FR 47408), the Director announced his conclusions concerning the effectiveness data for Mycolog Cream and Ointment, revoked the temporary exemption for continued marketing of the drugs, reclassified the drugs as lacking substantial evidence of effectiveness, proposed to withdraw approval of the NDA's for the products, and offered an opportunity for a hearing on the proposed withdrawal.

On October 20, 1981, Squibb requested a hearing, and, on November 24, 1981, filed data and other information in support of its hearing request.

In addition to Squibb, the following drug manufacturers and organizations filed hearing requests in response to the Director's 1981 proposal:

1. Byk-Gulden, Inc., 60 Baylis Rd., Melville, NY 11747: NDA 62-135; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Ointment.

NDA 62-136; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Cream.

2. Clay Park Laboratories, 3339, Park Ave., Bronx, NY 10456:

NDA 62-186; Nystatin-Neomycin Sulfate-Gamicidin-Triamcinolone Acetonide Cream.

NDA 62-280; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Ointment.

3. K-Line Pharmaceuticals, Ltd., Downsview, Ontario, Canada.

4. Lemmon Co. (formerly Premo Pharmaceutical Laboratories), Sellersville, PA 18960:

NDA 61-954; Myco Triacet Cream containing Nystatin, Neomycin Sulfate, Gramicidin, and Triamcinolone Acetonide.

NDA 62-045; Myco Triacet Ointment containing Nystatin, Neomycin Sulfate, Gramicidin, and Triamcinolone Acetonide.

5. NMC Laboratories, 70-32 83d St., Glendale, NY 11385.

6. National Pharmaceutical Alliance, Suite 800, 2550 M St. NW., Washington, DC 20037.

7. American Academy of Dermatology, Council on Government Liaison, University of Virginia School of Medicine, Charlottesville, VA 22901.

The Commissioner is now granting the hearing request of Squibb on the proposal to withdraw approval of the NDA's for Mycolog Cream and Ointment. Approval of these NDA's will be withdrawn unless there exists substantial evidence (21 U.S.C. 355(d), 21 CFR 314.111(a)(5)) that the products have the clinical effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(d)). In addition, because the Mycolog products are fixed combination prescription drugs, such evidence exists for them only if "each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug" (21 CFR 300.50(a)).

In its submission requesting a hearing, Squibb also requested that the agency reinstate the temporary exemption for continued marketing, known as the "paragraph XIV" exemption, of Mycolog Cream and Ointment, which was revoked on September 25, 1981 (46 FR 47408). Paragraph XIV of the court's order implementing its decision in *American Public Health Ass'n* v. *Veneman*, 349 F. Supp. 1311 (D.D.C. 1972), allowed FDA administrative enforcement discretion, pending completion of scientific studies, with respect to continued marketing of less-than-effective drugs that were part of the DESI program. See 37 FR 26623. Squibb argued that the agency's revocation of the exemption for Mycolog without notice and comment violated the procedural requirements for rulemaking under the Administrative Procedure Act (5 U.S.C. 553).

The revocation of paragraph XIV status is not the promulgation of a rule within the meaning of the Administrative Procedure Act (5 U.S.C. 551(4)). The Supreme Court has distinguished "substantive rules" from other agency decisions, describing substantive rules as "binding" and as "affecting individual rights and obligations." *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 301-302 (1979). Paragraph XIV, however, conferred no new rights on the products affected by it, but merely preserved FDA's flexibility and discretion in implementing the court's order. A "paragraph XIV" exemption grants no right to market a drug product, and its revocation does not remove a drug product from the market. Exemptions and revocations under paragraph XIV are not substantive norms enforeable in court, but are expressions of agency enforcement discretion. Thus, as neither the exemption nor the revocation affecting Mycolog was a rulemaking in violation of the Administrative Procedure Act, the Commissioner rejects both Squibb's argument and, for the reasons stated in the 1981 notice, its request to reinstate the exemption.

Squibb has submitted one multicenter study, as well as other studies and information, to establish that the effectiveness criteria of the statute and regulations are satisfied for Mycolog Cream and Ointment. Several other drug manufacturers, which manufacture generic versions of Mycolog Cream and Ointment, have filed notices of their intent to rely on and incorporate by reference all data submitted by Squibb for its Mycolog products. Accordingly, there are two questions to be addressed in this proceeding with respect to the Mycolog products and their generic versions:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug; and

2. Whether, on the basis of any such adequate and well-controlled investigations that exist, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs that the drug products in question satisfy the combination policy found in 21 CFR 300.50 and will have the effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof (21 U.S.C. 355(d)).

The parties to the hearing will be FDA's Center for Drugs and Biologics, E.R. Squibb & Sons, Inc., and the aforementioned manufacturers of products identical, similar, or related to Mycolog Cream or Ointment. The presiding officer will be Administrative Law Judge Daniel J. Davidson. In addition to the manufacturer parties, the trade association and the professional medical group that requested a hearing, and any other interested person, shall be permitted to participate as nonparty participants (see 21 CFR 12.89), provided that they file a notice of participation pursuant to 21 CFR 12.45(a).

In accordance with 21 CFR 12.85(a)(4), the Center for Drugs and Biologics has filed with the Dockets Management Branch a narrative statement setting forth its position on the issues of the hearing and a summary of the types of evidence to be introduced in support of its position in the hearing, together with copies of data contained in the Center's files that relate to the issues raised herein. Interested persons may obtain a copy of the Center's narrative statement from the Dockets Management Branch (address above). Such persons may also examine the data on the drugs subject to this hearing notice (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

The prehearing conference will be held on December 12, 1984, at 10 a.m., in the FDA Hearing Room, Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held in the FDA Hearing Room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1984. Participants other than the Center for Drugs and Biologics shall disclose data and information and submit their narrative statements pursuant to 21 CFR 12.85 on or before November 16, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92.

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on matters relevant to the issues under consideration.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052 as amended (21 U.S.C. 355)) and under authority delegated to me (21 CFR 5.10), I order that a public hearing be held on the issues set forth in this notice.

Dated: September 11, 1984.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 84-24584 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0012; DESI 8884]

Erythromycin Ointment; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is withdrawing approval of the new drug application (NDA) for Ilotycin No. 90 Ointment, held by Eli Lilly & Co., on the ground that there is a lack of substantial evidence of the product's effectiveness in the treatment of the various dermatologic disorders for which it is labeled.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 8884 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Rm. 216, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** of September 25, 1981 (46 FR 47408), the Director of the Bureau of Drugs proposed to issue an order withdrawing approval of the new drug applications for certain topical anti-inefective drug products. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5). In response to that notice, Eli Lilly & Co., filed a hearing request for Ilotycin No. 90 Ointment and submitted data, information, and analyses in support of its request. Because Eli Lilly & Co., subsequently withdrew its hearing request, approval of the new drug application for this product is now withdrawn.

NDA 60-646; Ilotycin No. 90 Ointment containing erythromycin, Eli Lilly & Co., P.O. Box 618, Indianapolis, IN 46206.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 60-646 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82 and 47 FR 26913 published in the **Federal Register** of June 22, 1982) finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 60-646 and all its amendments and supplements is withdrawn effective October 17, 1984.

Shipment in interstate commerce of the above product or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 20, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24523 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0632]

Lemmon Co.; New Drug Applications; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new drug applications (NDA's) for methaqualone. These withdrawals are based upon a statutory

directive that such approval be withdrawn and upon a written request from the holder of the NDA's. The intended effect of this action is to comply with the statutory directive and the written request of the holder of the NDA's.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 98-329 (98 Stat. 280), the Attorney General transferred methaqualone from Schedule II to Schedule I of the Controlled Substances Act (CSA) (49 FR 33870; August 27, 1984). Pub. L. 98-329 also directs that, effective 30 days after the date methaqualone is transferred to Schedule I of the CSA, the approval of the NDA's for methaqualone shall be withdrawn under the Federal Food, Drug, and Cosmetic Act.

Also, on August 31, 1984, the holder of the only two NDA's for methaqualone (the Lemmon Co.) requested that FDA withdraw approval of the applications. The applicant also, by written request, waived its opportunity for hearing.

Therefore, pursuant to the foregoing, approval of the NDA's for methaqualone (NDA's 14-166 and 17-051) is withdrawn effective September 26, 1984.

Dated: September 11, 1984.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 84-24522 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0012; DESI 9405]

Terra-Cortril Topical Ointment; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application (NDA) for Terra-Cortril Topical Ointment. FDA is withdrawing approval because the combination drug product lacks substantial evidence of effectiveness. The product is labeled for the treatment of various dermatologic conditions.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 9405 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 25, 1981 (46 FR 47408), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the following NDA:

NDA 61-011; Terra-Cortril Topical Ointment containing oxytetracycline hydrochloride 30 milligrams (mg) and hydrocortisone 10 mg; Pfizer Inc., 235 East 42d St., New York, NY 10017.

The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), 21 CFR 314.111(a)(5), and 21 CFR 300.50. In response to the notice, Pfizer requested a hearing, but subsequently withdrew its hearing request. Accordingly, FDA is now withdrawing approval of the NDA.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination product Terra-Cortril Topical Ointment will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 61-011 and all its amendments and supplments is withdrawn effective October 17, 1984. Shipment in interstate commerce of this product or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: September 7, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24521 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84M-0288]

Vistakon, Inc.; Premarket Approval of the VISTAMARC ™ (Etafilcon A) Hydrophilic Contact Lens For Not-Aphakic Extended Wear

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application for premarket approval under the Medical Device Amendments of 1976 of the VISTAMARC ™ (etafilcon A) Hydrophilic Contact Lens for Not-aphakic Extended Wear, sponsored by Vistakon, Inc., Jacksonville, FL. After reviewing the recommendation of the Ophthalmic Devices Panel (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel), FDA notified the sponsor that the supplemental application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by October 17, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On December 27, 1982, Vistakon, Inc., Jacksonville, FL 32207, submitted to FDA a supplemental application for premarket approval of the VISTAMARC ™ (etafilcon A) Hydrophilic Contact Lens for Not-aphakic Extended Wear. The lens is spherical and ranges in powers from −20.00 to +14.00 diopters (D). The lens is indicated for extended wear from 1 to 30 days between each cleaning and heat or chemical disinfection. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and that may have 1.00 D or less of astigmatism. The supplemental application was reviewed on May 20, 1983, by the then Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. (On April 14, 1984, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel was terminated. Concurrently, FDA established the Ophthalmic Devices Panel (see 49 FR 17446; April 24, 1984).) On August 10, 1984, FDA approved the supplemental application by letter to the sponsor from the Director, Office of Device Evaluation of the Center for Devices and Radiological Health.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadend the definition of the term "device" in section 201 (h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from the office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the VISTAMARC™ (etafilcon A) Hydrophilic Contact Lens for Not-aphakic Extended Wear states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that FDA approved for use with approved contact lenses made from polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this supplemental application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 17, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–24519 Filed 9–14–84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 78N–0070; DESI No. 1626]

Combination Drugs Containing Theophylline, Ephedrine Sulfate, and Hydroxyzine Hydrochloride; Notice of Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to withdraw approval of the new drug applications for Marax Tablets and Marax Syrup, containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. The drugs are intended for the treatment of bronchial asthma. Products that do not contain the triple combination of theophylline, ephedrine sulfate, and hydroxyzine hydrochloride will not be included in the hearing.

DATES: Notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1984. Disclosure of data and information and submission of narrative statement by FDA's Center for Drugs and Biologics by December 17, 1984. And by other participants by January 15, 1985. Prehearing conference on February 14, 1985, beginning at 10 a.m..

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Submissions should be identified with Docket No. 78N–0070 and clearly labeled "Marax Hearing.") Prehearing conference in the FDA Hearing Room, Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Regulations Policy

Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION:

Background of This Proceeding

In a notice (DESI 1626) published in the **Federal Register** of July 26, 1972 (37 FR 14895), the Food and Drug Administration (FDA) evalutated the effectiveness of certain prescription combination drug products containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride, including Marax Tablets (NDA 11-768) and Marax Syrup (NDA 12-879), used primarily for treating bronchial asthma. Marax is approved under new drug applications held by J.B. Roerig Division, Pfizer Pharmaceuticals ("Roerig"), 235 East 42nd St., New York, NY 10017.

The 1972 notice, part of the Drug Efficacy Study Implementation (DESI) program, stated that FDA had evalauted the reports of the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, together with other evidence, and had concluded that the products lacked substantial evidence of effectiveness for the following indications: pulmonary infections associated with bronchospasm, dyspnea induced by exertion and cough, Cheyne-Stokes repiration, status asthmaticus, bronchospastic type of chronic hypertrophic pulmonary emphysema, other pulmonary disorders, or as a sedative. FDA concluded that the drugs were possibly effective as labeled for the following indications: bronchial asthma and other related claims.

Pursuant to the 1972 notice, Roerig revised the labeling for the drug products to include only the indication "for controlling bronchospastic disorders" and qualified that claim in the labeling as "possibly effective." In support of that indication, Roerig submitted data and other information to FDA.

In a notice of opportunity for hearing published in the **Federal Register** of March 24, 1978 (43 FR 12380), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) reviewed the data and information submitted by Roerig. The Director concluded that the material failed to provide substantial evidence of the effectiveness of Marax in controlling bronchial asthma because the contribution of hydroxyzine to the claimed indication had not been demonstrated. *Id.* at 12382. The Director stated that the notice did not discuss the contribution of ephedrine/theophylline to the effectiveness of the combination product because the ephedrine/theophylline combination was then being reviewed by FDA.

In the 1978 notice, the Director also stated that no data had been submitted on any of the other indications classified in 1972 as possibly effective. He, therefore, reclassified those indications to lacking substantial evidence of effectiveness. No data was submitted in support of any of the indications classified as lacking substantial evidence of effectiveness in the 1972 notice.

The Director concluded in the 1978 notice that on the basis of all the data and information available to him that he was unware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 300.50 and 314.111(a)(5), demonstrating the effectiveness of the triple combination.

The 1978 notice advised the holder of the new drug application and other interested parties that the Director proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug applications for the triple combination product, and all amendments and supplements thereto, on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the applications, showed that there was a lack of substantial evidence that the drug products containing the triple combination will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

The 1978 notice was amended on February 20, 1984 (49 FR 7454) to reflect new information on the safety and effectiveness of these drugs. On the basis of FDA's review of theophylline and ephedrine, the Director concluded that there was a lack of substantial evidence that each ingredient in the combination, theophylline and ephedrine in addition to hydroxyzine, made a contribution to the claimed effects and that the dosage of each component (amount, frequency, duration) was such that the combination was safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drugs (21 CFR 300.50).

Requests for Hearing

In response to the 1978 and 1984 notices, Roerig submitted hearing requests and data and the other information in support of its requests. In addition to Roerig, the following firms requested a hearing:

Barre-National, Inc., 4128 Haywood Ave., Baltimore, MD 21215 ("Barre"); Hydroxyzine Compound Syrup (no NDA) containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. Barre submitted hearing requests in response to both notices. In response to the 1984 notice, Barre expanded its hearing request to include seven additional drug products, none of which contain the triple combination of ingredients included in this notice of hearing.

Barrows Research Group, Inc., 99 West Hawthorne Ave., Valley Stream, NY 11580 ("Barrows"); unnamed drug product containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. Barrows submitted a hearing request only in response to the 1984 notice.

Cord Laboratories, Inc., 2555 W. Midway Blvd., Broomfield, CO 80020 ("Cord"); Brofed Tablets (no NDA) containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. Cord requested a hearing and submitted data and other information to support its request in response both to the original and amended notices.

Parke-Davis, Division of Warner-Lambert Co., ("Parke-Davis"), 201 Tabor Rd., Morris Plains, NJ 07950; Tedral SA (no NDA) containing theophylline, ephedrine hydrochloride, and phenobarbital. Parke-Davis requested a hearing in response to the 1984 notice only. It also submitted data and information in support of its request.

Premo Pharmaceutical Laboratories, Inc. (now Lemmon Co.), 111 Leuning St., South Hackensack, NJ 07606; unnamed drug product containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. The Lemmon Co. subsequently withdrew its hearing request.

American Home Products Corporation, 685 Third Ave., New York, NY 10017, submitted comments to the docket.

Review of the Hearing Requests by the Director of the Center for Drugs and Biologics

The Director of the Center for Drugs and Biologics evaluated the requests for a hearing on the issue whether there is substantial evidence (21 U.S.C. 355(d)) of the effectiveness of Marax and its various generic copies, and recommended that a hearing be held on this issue.

The Director considered the requests from Barre and Parke-Davis to expand the hearing to include various additional drug products that do not contain the fixed triple combination of ingredients theophylline, ephedrine, and hydroxyzine and recommended that issues relating to these additional drug products not be included in this hearing. The basis of such recommendation is set out below.

The Director's Recommendation Concerning the Additional Drug Products

For the following reasons, the Director concluded that products which do not contain the triple combination of ingredients present in Marax should not be included in the hearing.

The additional products described by Barre and Parke-Davis are being evaluated by the agency in separate dockets (Docket Nos. 76N–0056 and 76N–0057) and may be the subject of future **Federal Register** notices. Because the additional products manufactured by Barre and Parke-Davis do not contain the same three ingredients as the products that are the subject of this hearing (e.g., Parke-Davis' product, Tedral SA, differs from the products covered by this notice in that, among other things, it is in a sustained release form and does not contain hydroxyzine but a different active ingredient, phenobarbital), they are not properly included in this hearing.

The Commissioner's Ruling on the Hearing Requests

The Commissoner is now granting the hearing request of Roerig on the proposal to withdraw approval of the NDAs for Marax. Approval will be withdrawn unless there exists substantial evidence (21 U.S.C. 355(d), 21 CFR 314.111(a)(5)) that the products have the clinical effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(d)). In addition, because the Marax products are fixed combination prescription drugs, such evidence exists for them only if "each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug" (21 CFR 300.50).

Under 21 CFR 314.200(f), the Commissioner will not evaluate or rule upon the Director's recommendation that a hearing be denied as to some (but not all) issues. Further, the regulation provides that those issues as to which the Director has recommended a denial not be included in the notice of hearing. Accordingly, the additional products described by Barre and Parke-Davis, that do not contain the triple combination theophylline, ephedrine, and hydroxyzine, are not included in this notice.

Issues in this Proceeding

In light of the Director's recommendation and the requirements of 21 CFR 314.200, two questions will be addressed in this proceeding with respect to Marax Tablets, Marax Syrup, or any other drug product with the same fixed combination of theophylline, ephedrine, and hydroxyzine and the same labeling:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug products; and

2. Whether, on the basis of any such adequate and well-controlled investigations that exist, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs that the drug products in question satisfy the combination policy set out in 21 CFR 300.50 and will have the effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof (21 U.S.C. 355(d)).

Parties to the Hearing

The parties to the hearing will be FDA's Center for Drugs and Biologics, Roerig, Cord, Barre, and Barrows. The presiding officer will be Administrative Law Judge Daniel J. Davidson. In addition to the parties named above, Parke-Davis, American Home Products Corporation, and any other interested person may participate in the hearing as nonparty participants (see 21 CFR 12.89) provided that they file a notice of participation pursuant to 21 CFR 12.45(a).

Disclosure of Information by the Center and Hearing Participants

Under 21 CFR 12.85, FDA's Center for Drugs and Biologics would normally file with the Dockets Management Branch a narrative statement setting forth its position on the issues for hearing and a summary of the types of evidence to be introduced in support of its position in the hearing, together with copies of data within the Center's files relating to the issues raised herein, at the time when this notice issues. I am, under 21 CFR 10.19, modifying that requirement to the extent that the Center will be granted until December 17, 1984 to make those submissions. I have concluded that this modification of this regulation in the context of this proceeding does not prejudice any participant in the hearing, serves the ends of justice, is in accordance with law, and thus is authorized by section 10.19. The modification allows the FDA to advise the parties that a hearing is pending on this matter prior to the completion by the Center of the sometimes lengthy process of complying with the requirements of section 12.85.

Interested persons may obtain a copy of the narrative statement, after it is filed, from the Dockets Management Branch, at the address given above. Such persons may also examine the data on the drugs subject to this hearing notice (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch from 9:00 a.m. to 4:00 p.m., Monday through Friday. Parties and participants, other than the Center for Drugs and Biologics, shall disclose data and information and submit narrative statements pursuant to 21 CFR 12.85 on or before January 15, 1985.

Prehearing Conference

The prehearing conference will be held on February 14, 1985, in the FDA Hearing Room, Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held in the FDA Hearing Room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1985. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92.

Media Coverage of the Hearing

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on matters relevant to the issues under consideration.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723).

These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well at the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 505, 52 Stat. 1052 as amended (21 U.S.C. 355)), and under authority delegated to me (21 CFR 5.10), I order that a public hearing be held on the issues set out in this notice.

Dated: September 12, 1984.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 84–24578 Filed 9–14–84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N–0113; DESI 2847]

Drugs for Human Use; Drug, Efficacy Study Implementation; Parenteral Multivitamin Products; Revocation of Exemption ("Paragraph XIV/Category 11"); Announcement of Effective Formulations; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for certain parenteral multivitamin drug products. The exemption has permitted the drug products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. The agency also announces those parenteral multivitamin formulations that are effective and the conditions under which they may be marketed. In addition, this notice classifies other formulations as lacking substantial evidence of effectiveness, proposes to withdraw approval of those parts of new drug applications that provide for these formulations, and offers an opportunity for a hearing on the proposal.

DATES: Revocation of exemption effective September 17, 1984; supplements to conditionally approved new drug applications due on or before November 16, 1984; hearing requests due on or before October 17, 1984; data in support of hearing requests due on or before November 16, 1984.

ADDRESS: Communications in response to this notice should be identified with Docket No. 79N–0113 (DESI 2847), directed to the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, except requests for opinion of applicability are to be sent to the address listed below.

Supplements to the conditionally approved new drug applications (identify with NDA number): Division of Endocrine and Metabolic Drug Products (HFN–810), Rm. 14B–05, Center for Drugs and Biologics.

Original abbreviated new drug applications: Division of Generic Drug Monographs (HFN–230), Center for Drugs and Biologics.

Request for hearing, supporting data, and other comments: Dockets Management Branch (HFA–305), Rm. 4–62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), Rm. 216, Center for Drugs and Biologics, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

Background

In a notice published in the **Federal Register** of July 27, 1972 (37 FR 15027), FDA announced its evaluations of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, on certain parenteral multivitamin drug products. The agency stated that the products, as then formulated, lacked substantial evidence of effectiveness for their claimed indications. This conclusion was not based upon any lack of effectiveness for the individual vitamins in the formulations, but because the available formulations lacked certain essential vitamins, or contained too much or too little of other vitamins, or both.

In a followup notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), parenternal multivitamin products were granted a temporary exemption from the time limits imposed for the implementation of the Drug Efficacy Study. The temporary exemption was based on the recognized critical medical importance of parenteral multivitamin therapy and the lack of alternative drugs. The exemption allowed the products to remain on the market as then formulated, while complex technical and medical problems were resolved and rational formulations were developed and tested.

To facilitate the determination and evaluation of rational multivitamin formulations, FDA accepted the assistance offered by the American Medical Association (AMA). In December 1975, the AMA submitted its "Guidelines for Multivitamin Preparations for Parenteral Use," which recommended specific amounts of individual vitamins as well as detailed procedures for evaluating the stability, safety, and effectiveness of the formulations.

The AMA report stressed that the guideline formulations were estimated from the existing Recommended Daily Allowance (RDA), which in turn is based on dietary population surveys. The assumptions, applied by the AMA to correlate the established dietary allowances of the essential vitamins to the parenteral administration of vitamins to patients in various disease states, required that clinical trials be conducted to evaluate the guideline formulations.

FDA accepted the AMA guidelines with minor reservations and subsequently in a **Federal Register** notice published July 13, 1979 (44 FR 40933) amended the terms of the December 1972 temporary exemption to require conditional approval of a new drug application or a supplemental new drug application within specific time frames as a condition for the continued marketing of a parenteral multivitamin drug product. The agency granted conditional approval of applications based on the following criteria: (1) reformation in accord with the AMA guidelines as to the number and quantities of vitamins in the formulation; (2) an outline of studies to evaluate the stability and biological availability of the reformulated preparations, along the lines set forth in the AMA report; and (3) a plan or protocol for clinical effectiveness studies, also in accord with the AMA guidelines. The reformulated products could be marketed in place of the previous formulations after agency review and "conditional" approval of the submissions. This procedure allowed continued marketing of parenteral multivitamins while clinical testing and evaluation of the AMA guidelines formulations were carried out.

Conditionally Approved Products (AMA Guideline Formulations)

The products listed below have received conditional approval under the terms of the July 13, 1979 notice.

1. NDA 6–071; Berocca PN containing vitamin A (palmitate) 3,300 International Units (I.U.)/vial, vitamin D (ergocalciferol) 200 U.S.P. units/milliliter (mL), vitamin E (dl-alpha tocopherol) 10 U.S.P. units/mL, vitamin C (ascorbic acid) 100 milligrams (mg)/mL, folic acid 400 micrograms (mcg)/mL, niacin (niacinamide) 40 mg/mL, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/mL, vitamin B_1 (thiamine hydrochloride) 3 mg/mL, vitamin B_6 (pyridoxine hydrochloride) 4 mg/mL, vitamin B_{12} (cyanocobalamin) 5 mcg/mL, pantothenic acid (dexpanthenol) 15 mg/mL, and d-biotin 60 mcg/mL; Roche Laboratories, Division of Hoffmann La-Roche Inc., Roche Park, Nutley, NJ 07110.

2. NDA 6–071; Berocca-WS containing vitamin C (ascorbic acid) 100 mg/mL, folic acid 400 mcg/mL, niacin (niacinamide) 40 mg/mL, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/mL, vitamin B_1 (thiamine hydrochloride) 3 mg/mL, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/mL, vitamin B_{12} (cyanocobalamin) 5 mcg/mL, pantothenic acid (d-panthenol) 15 mg/mL, and d-biotin 60 mcg/mL; Roche Laboratories, Inc.

3. NDA 8–809; MVI–12 containing vitamin A (retinol) 3,300 I.U./vial, vitamin D (ergocalciferol) 200 I.U./vial, vitamin E (dl-alpha tocopherol acetate) 10 I.U./vial, vitamin C (ascorbic acid) 100 mg/vial, folic acid 400 mcg/vial, niacin (niacinamide) 40 mg/vial, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/vial, vitamin B_1 (thiamine hydrochloride) 3.0 mg/vial, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/vial, vitamin B_{12} (cyanocobalamin) 5 mcg/vial, pantothenic acid (d-panthenolalcohol) 15 mg/vial, biotin 60 mcg/vial; USV Laboratories Division, USV Pharmaceuticals, Tuckahoe, NY 10707.

4. NDA 18–223; Multivitamin Additive containing vitamin A 3,300 I.U./5 mL, vitamin D 200 I.U./5 mL, vitamin E 10 I.U./5 mL, vitamin C (ascorbic acid) 100 mg/5 mL, folic acid 400 mcg/5 mL, niacin (niacinamide) 40 mg/5 mL, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/5 mL, vitamin B_1 (thiamine hydrochloride) 3.0 mg/5 mL, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/5 mL, vitamin B_{12} (cyanocobalamin) 5 mcg/5 mL, pantothenic acid (pantothenyl alcohol) 15 mg/5 mL, d-biotin 60 mcg/5 mL; Abbott Labs, North Chicago, IL 60064.

5. NDA 18–439; MVC Plus containing vitamin A (retinol) 3,300 I.U./10 mL, vitamin D (ergocalciferol) 200 I.U./10 mL, vitamin E (dl-alpha tocopherol acetate) 10 I.U./10 mL, vitamin C (ascorbic acid) 100 mg/10 mL, folic acid 400 mcg/10 mL, niacin (niacinamide) 40 mg/10 mL, vitamin B_2 (riboflavin 5' phosphate sodium) 3.6 mg/10 mL, vitamin B_1 (thiamine hydrochloride) 3 mg/10 mL, vitamin B_6 (pyridoxine hydrochloride) 4 mg/10 mL, vitamin B_{12} 5 mcg/10 mL, pantothenic acid (dexpanthenol) 15 mg/10 mL, biotin 60 mcg/10 mL; Ascot Hospital Pharmaceuticals, Inc., Skokie, IL 60076.

6. NDA 18–440; M.V.C. 9+3 containing vitamin A (retinol) 3,300 I.U./5 mL, vitamin D (ergocalciferol) 200 I.U./5 mL, vitamin E (dl-alpha tocopherol acetate) 10 I.U./5 mL, vitamin C (ascorbic acid) 100 mg/5 mL, folic acid 400 mcg/5 mL, niacin (niacinamide) 40.0 mg/5 mL, vitamin B_2 (riboflavin-5'-phosphate) 3.6 mg/5 mL, vitamin B_1 (thiamine hydrochloride) 3.0 mg/5 mL, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/5 mL, vitamin B_{12} (cyanocobalamin) 5 mcg/5 mL, pantothenic acid (dexpanthenol) 15.0 mg/5 mL, and biotin 60 mcg/5 mL; Lypho Med. Inc., Chicago, IL 60651.

7. NDA 18–920; M.V.I. Pediatric (lyophilized) each vial containing vitamin A (retinol) 2,300 U.S.P. units/vial, vitamin D (ergocalciferol) 400 U.S.P. units/vial, vitamin E (dl-alpha tocopherol acetate) 7 U.S.P. units/vial, vitamin C (ascorbic acid) 80 mg/vial, folic acid 140 mcg/vial, niacin (niacinamide) 17.0 mg/vial, vitamin B_2 (riboflavin-5'-phosphate sodium) 1.4 mg/vial, vitamin B_1 (thiamine hydrochloride) 1.2 mg/vial, vitamin B_6 (pyridoxine hydrochloride) 1.0 mg/vial, vitamin B_{12} (cyanocobalamin) 1 mcg/vial, dexpanthenol (d-pantothenyl alcohol) 5.0 mg/vial, biotin 20 mcg/vial, vitamin K_1 (phytonadione) 200 mcg/vial; Armour Pharmaceutical Co., P.O. Box 511, Kankakee, IL 60901.

8. NDA 18–933; M.V.I.–12 Lyophilized each vial containing vitamin A (retinol) 3,300 U.S.P. units, vitamin D (ergocalciferol) 200 units, vitamin E (dl-alpha tocopherol acetate) 10 U.S.P. units, vitamin C (ascorbic acid) 100 mg, folic acid 400 mcg, niacin (niacinamide) 40 mg, vitamin B_2 (riboflavin-5'-phosphate sodium) 3.6 mg, vitamin B_1 (thiamine) 3.0 mg, vitamin B_6 (pyridoxine) 4.0 mg, vitamin B_{12} (cyanocobalamin) 5 mcg, dexpanthenol (d-pantothenyl alcohol) 15.0 mg, biotin 60 mcg; Armour Pharmaceutical Co.

The Director of the Center for Drugs and Biologics has considered the results from the clinical trials on the recommended AMA formulations, and other available material, and has determined that except for the pediatric parenteral formulation, the 1975 AMA guideline formulations are effective multivitamin preparations. However, the Director recognizes that as these products are used and evaluated in an ever increasing number of patients with a variety of disease conditions, future adjustments to the formulations may be necessary.

The temporary exemption announced in the December 14, 1972 notice as it pertains to any drug product of composition given above is hereby revoked. The drugs listed above are regarded as new drugs (21 U.S.C. 321(p)). A fully approved new drug application is now required for marketing them (except for M.V.I. Pediatric, as explained below). A supplemental new drug application is required for the products listed above (except for M.V.I. Pediatric) to revise their labeling to update the previous "conditionally approved" new drug applications providing for them.

In light of recent events involving reports of adverse effects associated with the use of a particular single entity parenteral vitamin E product in premature and low-birth-weight infants, the Director has determined that further evaluation of pediatric parenteral multivitamin formulations which contain vitamin E is required. (At the current time, it is unknown whether the adverse effects associated with the single entity product are related to the relatively large dosage of vitamin E administered, to the solubilizer in the product formulation, or to some other factor.) A future **Federal Register** notice will address the agency's conclusions on these products. Until that time, pediatric multivitamin products may be marketed only under the terms and conditions of the July 13, 1979 **Federal Register** notice (41 FR 40933).

Products Lacking Substantial Evidence of Effectiveness

The three products listed below were included in the initial DESI notice of July 27, 1972 (37 FR 15027). The sponsors of these products provided for a reformulated preparation in accord with the AMA guidelines as stated in the July 13, 1979 notice (44 FR 40933), and received conditional approval. Under the terms of that notice, the original products could remain on the market pending evaluation of the AMA guideline formulations. Insofar as the guildeline formulations have now been found to be effective, the original formulations are now classified as lacking substantial evidence of effectiveness, their paragraph XIV exemption is hereby revoked, and the Director proposes to withdraw approval of the following parts of the new drug applications, that provide for them:

1. NDA 6–071; those parts that provide for Berocca C and Berocca C–500 Injectable both containing thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride, dexpanthenol, d-biotin, and ascorbic acid; Roche Laboratories, Inc.

2. NDA 6–809; those parts that provide for M.V.I. Injectable containing ascorbic acid, vitamin A, ergocalciferol, thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride, dexpanthenol, and dl-alpha tocopherol acetate; USV Pharmaceuticals.

In addition to the holder of the new drug applications named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specifc drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Continued Marketing of Formulations Evaluated as Effective

FDA has reviewed all available evidence and concludes that the parenteral multivitamin drug products formulated as listed below are effective for the applicable indication listed in the labeling conditions below.

Conditions for Approval and Marketing. FDA is prepared to approve abbreviated new drug applications and supplements to the conditionally approved new drug applications listed above (except for M.V.I. Pediatric) under conditions described herein.

1. *Form of drug.*

(a) *Intravenous Multivitamin Preparations.* The preparation is an aqueous solution or lyophilized powder suitable for reconstitution and/or secondary dilution prior to intravenous infusion, and contains the specified amounts of the following individual vitamins, either as the moiety listed below or as the chemically equivalent salt or ester.

(i) *Adult formulation* (intended for ages 11 and older)

Ingredient	Amount per unit dose
Fat soluble vitamins	
A (retinol)	3300 I.U
D (ergocalciferol or cholecalciferol)	200 I.U
E (alpha-tocopherol)	10 I.U.
Water soluble vitamins	
C (ascorbic acid)	100 mg.
Folic acid	400 mcg
Niacin	40 mg
B_2 (riboflavin)	3.6 mg
B_1 (thiamine)	3.0 mg
B_6 (pyridoxine)	4.0 mg
B_{12} (cyanocobalamin)	5.0 mcg.
Pantothenic acid	15.0 mg.
Biotin	60.0 mcg.

(b) *Intramuscular Multivitamin Preparations.* The preparation is a sterile solution suitable for intramuscular injection.

(i) *Adult formulation.* The vitamin composition of the adult intramuscular formulation shall be that of the adult preparation (listed above) *without* the fat soluble vitamins.

2. *Labeling Conditions.*

(a) The label bears the statement "Caution: Federal Law prohibits dispensing without prescription."

(b) The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

(i) *Intravenous Multivitamin Preparations*

(*a*) *Adult.* This formulation is indicated as daily multivitamin maintenance dosage for adults and children age 11 and above receiving parenteral nutrition. It is also indicated in other situations where administration by the intravenous route is required. Such situations include surgery, excessive burns, fractures and other trauma, severe infectious diseases, and comatose states, which may provoke a "stress" situation with profound alterations in the body's metabolic demands and consequent tissue depletion of nutrients.

The physician should not await the development of clinical signs of vitamin deficiency before initiating vitamin therapy. The use of a multivitamin product obviates the need to speculate on the status of individual vitamin nutriture.

This product (administered in intravenous fluids under proper dilution) contributes intake of these necessary vitamins, except vitamin K, toward maintaining the body's normal resistance and repair processes.

Patients with multiple vitamin deficiencies or with markedly increased requirements may be given multiples of the daily dosage for two or more days as indicated by the clinical status. This product does not contain vitamin K, which may have to be administered separately. Clinical testing indicates that some patients do not maintain adequate levels of certain vitamins when this formulation in recommended amounts is the sole source of vitamins. No vitamin deficiencies were clinically evident, but blood levels of vitamin A, C, D, and folic acid declined in a number of subjects who received this formulation as the only vitamin source for 4 to 6 months. Therefore, in patients for whom total parenteral nutrition will be continued for long periods of time, these vitamins should be monitored. If deficiencies appear to be developing, multiples of the formulation (1.5 to 3 times) may be needed for a period of time. When multiples of the formulation are used for more than a few weeks, vitamins A and D should be monitored occasionally to be certain that an excess accumulation of these vitamins is not occurring.

(ii) *Intramuscular Multivitamin Preparations.*

(*a*) *Adult.* This product is indicated for adults and children 11 years of age or older for conditions in which (1) intake or absorption of the water-soluble vitamins is inadequate and oral intake must be supplemented; or (2) there is a known or suspected serious depletion of the water-soluble vitamins and immediate treatment by the intramuscular route is advisable.

Conditions which may require parenteral administration of water-soluble vitamins may include disorders which can affect oral intake, gastrointestinal absorption, or utilization, such as: comatose states, persistent vomiting, prolonged fever, severe infectious diseases, major surgery, extensive burns, fractures and other traumas, chronic alcoholism, diarrhea, achlorhydria, or liver disease.

The physician should not await the development of clinical signs of vitamin deficiency before initiating therapy as there are few specific or pathognomonic signs of early vitamin deficiencies.

(c) CONTRAINDICATIONS: Known hypersensitivity to any of the vitamins in this product or a pre-existing hypervitaminosis.

3. *Marketing Status.* (a) Marketing of the drug products that are now the subjects of conditionally approved new drug applications (except for M.V.I. Pediatric) may be continued provided that on or before November 16, 1984 the holder of the application submits (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)). FDA will evaluate the submitted material and, if adequate, will grant full approval to the conditionally approved new drug applications.

(b) Approval of an abbreviated new drug application (21 CFR 314.2) containing full information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the formulation or information to permit waiver of the requirement. The bioavailability requirements are waived under 21 CFR 320.22(b)(1) for intravenous products formulated described in this notice (see section 1(a) *Form of Drug*). Marketing the drug products before approval of a new drug application will subject the products, and those persons who caused the products to be marketed, to regulatory action.

(c) Marketing of M.V.I. Pediatric may be continued under the terms and conditions of the July 13, 1979 **Federal Register** notice (41 FR 40933).

Notice of Opportunity for Hearing

On the basis of all the data and information available to him, the Director of the Center for Drugs and Biologics is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and 300.50, and demonstrating the effectiveness of the parenteral multivitamin formulations listed above under *"Products Lacking Substantial Evidence of Effectiveness."*

Therefore, notice is given to the holders of the new drug applications and to all other interested persons, that the Director of the Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of those parts of the new drug applications and all amendments and supplements thereto providing for the formulations classified as lacking substantial evidence of effectiveness on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that these formulations will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. If no hearing is requested, then those parts of the new drug applications that pertain to the formulations evaluated as lacking substantial evidence of effectiveness (part of NDA 6–071 providing for Berocca C and Berocca C–500; part of NDA 6–809 providing for M.V.I. Injectable) will be considered withdrawn and no further order will issue.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310 and 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to the drug products named above (21 CFR 310.6), and not the subject of an approved new drug application, are hereby given an opportunity for a hearing to show why approval of those parts of the new drug applications providing for the formulations evaluated as lacking substantial evidence of effectiveness should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products named above and of all identical, related, or similar drug products not the subject of an approved new drug application.

The applicant or any other person subject to this notice under 21 CFR 310.6 who decide to seek a hearing, shall file (1) on or before December 17, 1984 a written notice of appearance and request for hearing, and (2) on or before November 16, 1984 the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a granting or denial of a hearing are contained in 21 CFR 314.200.

The failure of the applicants or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product, the composition of which has been evaluated in this notice as lacking substantial evidence of effectiveness, may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such a drug product from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the affected parts of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)), and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: September 12, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–24580 Filed 9–14–84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N-0184; DESI 597]

Drugs for Human Use; Drug Efficacy Study Implementation; Bentyl With Phenobarbital Capsules, Tablets, and Syrup; Withdrawal of Approval of Parts of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those parts of the new drug applications that provide for Bentyl with Phenobarbital Capsules and Tablets and Bentyl Syrup with Phenobarbital. The withdrawal is based on a lack of substantial evidence of effectiveness. The combination products contain dicyclomine hydrochloride and phenobarbital and have been used to treat various gastrointestinal conditions. This notice does not apply to single entity Bentyl products that are effective in the treatment of the irritable bowel syndrome.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 597 and directed to the Division of Drug Labeling Compliance (HFN-310), Rm. 216, Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In notices published in the Federal Register of January 16, 1981 (46 FR 3977) and April 12, 1983 (48 FR 15717), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the new drug applications (NDA's) for certain anticholinergic/antispasmodic drugs in fixed combination with a sedative. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.11 and 21 CFR 300.50. In response to the notices, Merrell Dow Pharmaceuticals, Inc., requested a hearing for Bentyl with Phenobarbital Capsules and Tablets and Bentyl Syrup with Phenobarbital.

Subsequently, Merrell Dow withdrew its hearing request. Accordingly, FDA is now withdrawing approval of parts of the following NDA's:.

1. NDA 7-409, those parts that provide for Bentyl with Phenobarbital Capsules and Tablets containing 10 to 20 milligrams (mg) dicyclomine hydrochloride, respectively, and 15 mg phenobarbital; Merrell Dow Pharmaceuticals, Inc., 110 East Amity Rd., Cincinnati, OH 45215.

2. NDA 7-961, those parts that provide for Bentyl Syrup with Phenobarbital containing dicyclomine hydrochloride 10 mg/5 milliliter (mL) and phenobarbital 15 mg/mL, Merrell Dow Pharmaceuticals, Inc.

This notice does not apply to those parts of NDA 7-409 that provide for single entity Bentyl Capsules and Tablets and those parts of NDA 7-961 for Bentyl Syrup or NDA 8-370 for Bentyl Injection. Single entity Bentyl products are effective treatment for the irritable bowel syndrome (see 49 FR 25681).

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific drug product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drug Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the combination products Bentyl with Phenobarbital Capsules and Tablets and Bentyl Syrup with Phenobarbital will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA's 7-409 and 7-961 that provide for the combination products listed above and all amendments and supplements thereto is withdrawn effective October 17, 1984. Shipment in interstate commerce of the products above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated. Sepatember 12, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24579 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended at 48 FR 54538, December 5, 1983), is amended to reflect the restructuring of components and the realignment of functional responsibilities within the office of the Associate Director for Health Planning, Bureau of Health Maintenance Organizations and Resources Development.

Under Section HB 10, Organization and Functions, delete the Divisions in their entirety and substitute the following:

Division of Analysis and Assistance (HBHB2). Directs the analytical and technical assistance activities of the Office of Health Planning which support the development and maintenance of integrated health planning efforts. Specifically: (1) Directs and monitors a national health planning assistance program for regional offices, State and Local Planning Agencies, and other private or public organizations, and groups interested or involved in health planning and resources development; (2) establishes an analytic agenda for the development of studies, reports, and sessions; (3) establishes specific plans and activities to link agency and non-Federal sources; (4) identifies the need for studies and other products to support the health planning program at the regional, State, and local levels; (5) coordinates Division activities with other components of the Bureau, Agency, Department and regional offices; (6) develops and implements strategies, either directly or through contracts, for the evaluation of the outcome and impact of the health planning program; and (7) recommends legislative and policy changes, and approaches based on the conduct of its analytic and assistance activities.

Division of Agency Operations and Management (HBHB3). Directs the development of effective, integrated and well managed health systems agencies (HSAs), state health planning and development agencies (SHPDAs) and statewide health coordinating councils (SHCCs). Specifically: (1) Serves as a focal point for the development, interpretation and dissemination of program policy, regulation, guidance, and performance standards for use by regional offices in implementing and monitoring the health planning program, and by State and local agencies in conducting health planning and resources development functions; (2) serves as the focal point to regional offices, HSAs, SHPDAs and others for the provisions of guidance and technical assistance on agency organization and management, plan development and implementation, capital expenditure review programs, and other legislatively prescribed functions; coordinates division activities with other components of the Department and/or outside groups in their development and implementation; (3) directs and monitors the national certificate of need (XV PHS Act) and section 1122 of the Social Security Act programs, providing guidance to regional offices and State agencies on consistency of State laws with Federal requirements; (4) reviews area designation requests and agency funding applications and recommends action as appropriate, develops and modifies designation agreements, and notifies regional offices of decisions made; (5) develops and oversees programs for the periodic assessment of Agency performance and impact; (6) either directly or through contracts, develops studies and other reports to identify problems requiring central office involvement, or to evaluate agency effectiveness, and provides feedback to regional offices on findings; and (7) participates in the development of legislative and policy changes.

National Health Planning Information Center (HBHB4). Is the focal point for obtaining, developing and disseminating information and data necessary to carry out the requirements of the health planning program. Specifically: (1) Provides overall direction and supervision to the information and data gathering, development and dissemination process within NHPIC; (2) develops, promotes, and implements special information and communication initiatives (i.e., video taping, subject specific conferences) to serve intelligence needs of planning and other entities; (3) identifies and initiates relationships with NCHSR, NCHS, AHA, HCFA, etc. to strengthen working and data/intelligence bases and to foster two-way data and information sharing on cost, access, and technology issues; (4) serves as the focal point for OHP international health planning efforts, develops and coordinates plans and knowledge with OHP, BHMORD and HRSA offices and participates in dissemination of information gained through these efforts; and (5) provides consultation and assistance to other components of OHP, BHMORD and HRSA in the design, establishment and operation of information collection, development and dissemination.

Dated: September 1, 1984.

Robert Graham,

Administrator, Health Resources and Services Administration.

[FR Doc. 84-24520 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1444]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer of the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Litigation Handbook for Program Participants
Office: General Counsel
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Estimated Burden Hours: 500
Status: New
Contact: Steven Goldstein, HUD, (202) 755-4942; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 21, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-24480 Filed 9-14-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Int. RMP/EIS 84-26]

Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Egan Resource Area, Ely District, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of and protest period for the Proposed Resource Management Plan and Environmental Impact Statement for the Egan Resource Area, Ely District, Ely, Nevada.

SUMMARY: The Ely District Office, Bureau of Land Management, has prepared a combined Proposed Resource Management Plan and Final Environmental Impact Statement for the Egan Resource Area. The Egan Resource

Area covers 3.6 million acres of public land in the following Nevada Counties: White Pine, Lincoln, and Nye.

Copies of the Proposed Plan and Final Environmental Impact Statement for the Egan Resource Area will be sent to many individuals, agencies, and groups who have been involved in the Egan Resource Area planning process. A limited number of copies of the Proposed Plan and Final Environmental Impact Statement are available upon request. Copies may be obtained by contacting Merrill L. DeSpain, Ely District Manager, at the address listed below. Any part of the Proposed Plan with the exception of the wilderness recommendation may be protested. The wilderness recommendations that have been made are preliminary and subject to change during administrative review. A separate final legislative environmental impact statement will be prepared for the wilderness study recommendations. If a protest is submitted it should contain the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested.
- A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.
- A short concise statement explaining precisely why the BLM Ely District Manager's decision is wrong.

Protests must be filed on or before October 22, 1984. Protests should be sent to Robert Burford, Director of the Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Merriall L. DeSpain, District Manager, Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289-4865.

Copies of the draft document are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240
Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, NV 89801
Bureau of Land Management, Nevada State Office, P.O. Box 12000, 300 Booth Street, Reno, NV 89520, (702) 784-5448
Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89102, (702) 385-6403
Bureau of Land Management, Winnemucca District Office, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623-3676
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, NV 89301, (702) 289-4965
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Carson City, NV 89701
Bureau of Land Management, Battle Mountain District Office, North 2nd & Scott Streets, Battle Mountain, NV 89820, (702) 635-5181.

Also, copies are available for review at the following public libraries:

White Pine County Library, Campton Street, Ely, NV 89301
Nevada State Library, Library Building, Carson City, NV 89701
Government Publications Dept., University of Nevada, Reno Library, Reno, NV 89557
Lincoln County Library, Pioche, NV 89043
James Dickinson Library, 4505 Maryland Parkway, University of Nevada, Las Vegas, Las Vegas, NV 89154
Nye County Library, Tonopah, NV 89049
Lincoln County Library, Tonopah, NV 89043.

Dated: September 10, 1984.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 84-24590 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Izembek National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement and Wilderness Review, Availability and Public Hearings, Alaska

Correction

In FR Doc. 84-23141 beginning on page 35432 in the issue of Friday, September 7, 1984, make the following correction: In column three, the table at the bottom of the page, "Public Hearing", first column, "Date", first entry, "Nov. 2, 1984" should read "Nov. 1, 1984".

BILLING CODE 1505-01-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Industrial Minerals Surveys

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption statistical data on nonfuel minerals commodities. This information is published in Bureau of Mines publications including the Mineral Industry Survey (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials for use by private organizations and other government agencies.

Bureau Form Number: 6-1221-A ET AL

Frequency: Annual, Biennially, Monthly, Quarterly, and Semiannually

Description of Respondents: Producers and Consumers of Industrial Minerals

Annual Responses: 16,952

Annual Burden Hours: 13,248

Bureau Clearance Officer: James T. Hereford 202-634-1125

Dated: September 11, 1984.

Robert C. Horton,

Director.

[FR Doc. 84-24484 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-53-M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 10:30 a.m. (PST) on Saturday, September 29, 1984, at the West Marin School, Point Reyes Station, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin and San Francisco counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman.
Ms. Amy Meyer, Vice Chair.
Mr. Ernest Ayala.
Mr. Richard Bartke.
Mr. Fred Blumberg.
Ms. Margot Patterson Doss.
Mr. Jerry Friedman.
Mr. Charles Gould.
Ms. Daphne Greene.
Mr. Peter Haas, Sr.
Mr. Burr Heneman.
Mr. John Jacobs.
Mr. John Mitchell.
Ms. Gimmy Park Li.
Mr. Merritt Robinson.
Mr. John J. Spring.
Dr. Edgar Wayburn.
Mr. Joseph Williams.

The major agenda items for this meeting will be the Point Reyes Superintendent's report on the status of Limantour road, bicycle use in the wilderness area, the progress on planning and fund-raising for the Clem Miller Environmental Education Center and a general status report from Golden Gate National Recreation Area.

The meetings are open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Shirwin Smith, Staff Assistant at Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123; telephone (415) 556-4484.

Minutes of the meeting will be available for public inspection by October 29, 1984 in the Office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: September 5, 1984.

Howard Chapman,

Regional Director, Western Region.

[FR Doc. 84-24562 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-70-M

Lake Clark National Park and Preserve Subsistence Resource Commission; Meeting

AGENCY: Alaska Region, National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Lake Clark National Park and Preserve Subsistence Resource Commission. The following agenda items will be discussed:

—Commission membership
—Research and resource management
—Summary of park/preserve regulations
—General management plan update
—Land status
—Residency requirements
—Traditional use

DATE: The meeting will begin at 9:00 a.m. on September 29, 1984, and conclude the afternoon of September 29, 1984.

ADDRESS: The meeting will be held at the Nondalton, Alaska school.

FOR FURTHER INFORMATION CONTACT: Paul F. Haertel, Superintendent, Lake Clark National Park and Preserve, 701 C Street, Box 61, Anchorage, Alaska 99513.

SUPPLEMENTARY INFORMATION: The Lake Clark National Park and Preserve Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84-24561 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on the Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability.

SUMMARY: OSM is anouncing the availability of six annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The six reports, covering the States of Colorado, Kentucky, Mississippi, Montana, Ohio and West Virginia, were prepared under the provisions of OSM's oversight policy and have been transmitted to Congress.

ADDRESSES: See "**SUPPLEMENTARY INFORMATION**" for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: Copies of the reports are available, free of charge, at the respective OSM offices listed below:

Colorado: Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Kentucky: Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Mississippi: Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

Montana: Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Ohio: Columbus Field Office, Office of Surface Mining, 2242 South Hamilton Road, Columbus, Ohio 43227.

West Virginia: Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301.

Background

Under section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. OSM has developed an evaluation policy, in consultation with the States, which is implemented primarily through OSM's Field Offices. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress. The schedule for the reports calls for staggered completion dates.

The first six evaluation reports for this year have been completed. The Colorado, Kentucky, Mississippi, Montana, Ohio and West Virginia reports were completed and sent to Congress September 5, 1984. These final reports are now publicly available. As the remaining reports are completed, OSM plans to make them available also.

Dated: September 11, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

[FR Doc. 84-24473 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-37 (Sub-12X)]

Oregon-Washington Railroad & Navigation Co. and Union Pacific Railroad Co. Abandonment and Discontinuance in Lewis County, WA; Exemption

The Oregon-Washington Railroad & Navigation Company (OWR&N) and the Union Pacific Railroad Company (UP) (applicants) have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* OWR&N intends to abandon and UP to discontinue service over a line of railroad known as the Grays Harbor Branch extending from milepost 1.02 near Centralia to milepost 2.5 near Blakeslee Junction, a distance of 1.48 miles in Lewis County, WA.

Applicants have certified: (1) That no local traffic has moved over the line for at least 2 years, and that any overhead traffic on the line is being rerouted over the Burlington Northern Railroad Company track between the points to be abandoned pursuant to an agreement with Burlington Northern, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2 year period. The Public Service Commission (or equivalent agency) in Washington [1] has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

The exemption will be effective on October 17, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 27, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 9, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Jeanna L. Regier, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 6, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-24482 Filed 9-14-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30550]

Southern Pacific Transportation Co.; Abandonment and Trackage Rights Exemption Over the Atchison, Topeka & Santa Fe Railway Co. and the Sierra Railroad Co.; Exemption

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR 1180.4(g) to permit relocation of a line of railroad. SPT would accomplish this by: (1) Abandoning a 27.6 mile segment of its rail line in San Joaquin and Stanislaus Counties, CA, from milepost 94.00 at or near Stockton to milepost 121.60 at or near Oakdale, and (2) acquiring (a) 30 miles of trackage rights over The Atchison, Topeka & Santa Fe Railway Company (Santa Fe) from milepost 1120 + 2732 at or near Stockton to milepost 6 + 3211 at or near Oakdale, and (b) 4,700 feet of trackage rights over the Sierra Railway Company in the city of Oakdale.

Relocation over essentially parallel lines of the Santa Fe will allow SPT to abandon a branch in need of substantial maintenance while preserving comparable or faster service to existing shippers over the Santa Fe line.

Thus, this joint project of three railroads will relocate a branch line of SPT which will not disrupt service to the public and falls within the class of transactions identified at 49 CFR 1180.2(d) which the Commission has found to be exempt under 49 U.S.C. 10505.

As a condition to use of the exemption, SPT has proposed that any employees affected by the transaction be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979). However, since the relocation project involves not only an abandonment but a trackage rights transaction, we must also impose the conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). Together these conditions satisfy the statutory requirements of 49 U.S.C. 10505(g) (2).

This notice is effective upon publication.

Decided: September 6, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-24481 Filed 9-14-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Coastal Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement ("CIS") as set out below have been filed with the United States District Court for the District of Columbia in *United States of America* v. *The Coastal Corporation.*

The Complaint in this case alleged that Coastal violated section 7A of the Clayton Act, 15 U.S.C. 18a (commonly known as the Hart-Scott-Rodino Act) by failing to comply with the reporting and waiting period requirements of the Act before it acquired 75,500 shares of Houston Natural Gas Corporation common stock on January 19, 1984. The proposed Final Judgment requires Coastal to pay to the United States a civil penalty of $230,000. The CIS explains the background of the case and the intended effects of the proposed judgment.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark Leddy, Deputy Director of Operations, Antitrust Division, United States Department of Justice, Washington, D.C. 20530.

Mark Leddy,

Deputy Director of Operations, Antitrust Division.

In the U.S. District Court for the District of the District of Columbia

[Civil Action No. 84-2675]

Filed: August 30, 1984.

United States of America, Plaintiff v. *The Coastal Corporation,* Defendant.

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[1] Washington Utilities and Transportation Commission.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the procedures of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plantiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. Venue is proper in this district for purposes of this action.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: August 30, 1984.

For the Plaintiff.

J. Paul McGrath,

Assistant Attorney General.

Mark Leddy,

Catherine G. O'Sullivan,

Jack Sidorov,

Attorneys, Antitrust Division, Department of Justice, Washington, D.C. 20530.

For the Defendants.

Neal R. Stoll,

Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, N.Y. 10022.

For the Federal Trade Commission,

Walter T. Winslow,

Acting Director, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580.

In the U.S. District Court for the District of the District of Columbia

[Civil Action No. 84–2675]

United States of America, Plaintiff v. *The Coastal Corporation,* Defendant.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on August 30, 1984, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by the defendant with respect to any allegation of the complaint;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

(1) This court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7A of the Clayton Act (15 U.S.C. 18a);

(2) this Final Judgment applies to the defendant and its successors and assigns;

(3) Judgment hereby is entered in favor of the plaintiff, United States of America, and against the defendant, The Coastal Corporation, and the defendant shall pay to the United States, pursuant to Section 7A(G)(1) of the Clayton Act (15 U.S.C. 18a(g)(1)), a civil penalty of $230,000, an amount representing $10,000 a day for each day that defendant was alleged in the Complaint to be in violation of Section 7A(a), due and payable within 15 days from the date of the entry of this Final Judgment; such payment to be made by certified check payable to the Treasurer of the United States and delivered to the Chief of the Claims Unit, Office of the United States Attorney for the District of the District of Columbia;

(4) In the event of a default in payment that continues for 10 days beyond the due date of the payment, interest at the rate of nine percent per annum shall accrue thereon from the date of default to the date of payment; and

(5) Entry of this Final Judgment is in the public interest.

Dated: ________________

____

United States District Judge.

U.S. District Court for the District of the District of Columbia

[Civil Action No. 84–2675]

Filed: August 30, 1984.

United States of America, Plaintiff v. *The Coastal Corporation,* Defendant.

Competitive Impact Statement

The United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case, in accordance with the procedures of Section 2(B) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h).[1]

I

Nature and Purpose of the Proceeding

On August 30, 1984, the United States, at the request of the Federal Trade Commission ("FTC"), filed a suit for a civil penalty under Section 7A of the Clayton Act, commonly known as the Hart-Scott-Rodino Act ("HSR Act"), 15 U.S.C. 18a, alleging that The Coastal Corporation ("Coastal" or "Defendant") had violated the HSR Act. The HSR Act imposes certain notification and waiting period requirements on parties meeting the size threshold that are contemplating relatively large acquisition of voting securities or assets.

The manifest congressional intent behind the HSR Act was to give the Government the information needed to determine whether such an acquisition would violate the antitrust laws, and an opportunity to block an anticompetitive acquisition, before it is consummated.

The complaint alleges that Coastal did not comply with the notification and waiting period requirements of the HSR Act before it acquired 75,500 shares of Houston Natural Gas Corporation ("HNG") on January 19, 1984. The complaint asks the Court to: (1) Find that Defendant violated the HSR Act; and (2) require Defendant to pay a civil penalty of $230,000.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation and this Competitive Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the procedures of the Antitrust Procedures and Penalty Act. Entry of the proposed Final Judgment will terminate the action.

II

Practices and Events Giving Rise to the Alleged Violation

On January 19, 1984, Coastal, which already held voting securities of HNG valued in excess of $15 million, purchased 75,500 additional shares of HNG common stock. Prior to purchasing this stock, Coastal did not file a HSR

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[1] The United States does not believe that the Antitrust Procedures and Penalties Act is applicable in actions where the complaint seeks, and the final judgment provides for, only the payment of civil penalties. The government has taken this position with respect to the consent judgment in *United States* v. *RSR Corp.*, Civ. No. CA3–83–1828–C (N.D. Tex.) (decree entered November 1, 1983) and the civil penalties component of the consent judgment in *United States* v. *ARA Services, Inc.*, Civ. No. 77–1105–C (E.D. Mo.) (consent judgment, including civil penalties, approved August 14, 1979). We believe it appropriate to follow the procedures of the Antitrust Procedures and Penalties Act here, however, because those procedures provide an excellent means of describing to the public the proposed Final Judgment in this first civil penalty action brought under the Hart-Scott-Rodino Act and the circumstances and events that gave rise to the proposed Final Judgment.

Act premerger notification and report form nor did it observe the waiting period prescribed by the Act. Because of the size of Coastal and HNG, the extent of Coastal's holdings of HNG stock, and the involvement of Coastal and HNG in interstate commerce, the January 19, 1984 transaction was subject to the HSR Act's notification and waiting requirements unless an exemption applied. (See 15 U.S.C. 18a(a).)

The January 19, 1984 stock purchases would be exempt from the requirements of the HSR Act if made "solely for the purpose of investment" as that term is used in the Act (15 U.S.C. 18a(c)(9)) and the Act's implementing regulations (16 CFR 801.1, 802.9). The Federal Trade Commission's Bureau of Competition ("Bureau") conducted an investigation of Coastal's January 19th purchases in order to determine whether the purchases were "solely for the purpose of investment." The Bureau's investigation indicated that the purchases were not made "solely for the purpose of investment." Thus, the Bureau concluded, as the complaint alleges, that Coastal's January 19, 1984 acquisition violated the notification and waiting requirements of the HSR Act.

On January 27, 1984, Coastal publicly announced a tender offer for additional shares of HNG stock and filed a notification and report form pursuant to the HSR Act with regard to that proposed acquisition. The waiting period relating to this tender offer expired February 11, 1984, after which Coastal would acquire HNG shares without violating the HSR Act. The complaint alleges that Coastal remained in violation of the HSR Act at least through February 11, 1984.

Coastal has divested the 75,500 shares it acquired on January 19, 1984. (See Complaint, Attachment 1.) Coastal was required to divest those shares by an agreement it entered into with the Bureau on February 10, 1984. (See Complaint, Attachment 2.)

III

Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the procedures of the Antitrust Procedures and Penalties Act. The proposed Final Judgment does not constitute an admission by any party as to any issue of law or fact. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment requires the defendant to pay a civil penalty to the United States Treasury. Section (g)(1) of the HSR Act, 15 U.S.C. 18a(g)(1), provides that any person who fails to comply with the requirements of the HSR Act shall be liable in an action brought by the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation.

The proposed judgment imposes on Coastal a civil penalty of $230,000, an amount representing the maximum $10,000 per day for each of the 23 days that Coastal was alleged in the complaint to be in violation of the Act. Payment is due within 15 days from the date of entry of the Final Judgment. The proposed judgment also contains a provision regarding the payment of interest to be required in the event that Coastal's payment is more than 10 days late.

IV

Competitive Effect of the Proposed Final Judgment

The relief encompassed in the Final Judgment is aimed at penalizing and thereby deterring non-compliance with the notification and waiting requirements of the HSR Act.

Prior to the passage of the HSR Act, the antitrust enforcement agencies often lacked sufficient time and information to obtain an adequate remedy for an anticompetitive acquisition. By assuring that the antitrust enforcement agencies receive prior notification and information concerning significant acquisitions involving sizeable parties, the HSR Act has improved the effectiveness of antitrust enforcement. Strict compliance with the Act's notification and reporting requirements is essential if the government is to be effective in interdicting anticompetitive acquisitions.

The Final Judgment requires Defendant to pay the Act's maximum civil penalty of $10,000 per day for each day that defendant was alleged to be in violation of the Act. While civil penalties are intended to penalize a defendant for violating the law and, unlike structural or other forms of injunctive relief in antitrust cases, have no competitive effect in and of themselves, the civil penalty in this case will help deter Defendant and others who in the future may be similarly situated from failing to comply with the notice and waiting requirements of the HSR Act. Compliance with these requirements will strengthen antitrust enforcement and thereby help to maintain competitive markets.

V

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

VI

Procedures Available for Modification of the Proposed Final Judgment

The Proposed Final Judgment is subject to a Stipulation between the United States and the Defendant providing that the United States may withdraw its consent to the proposed Judgment at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the court's determination that the proposed Judgment is in the public interest.

The Antitrust Procedures and Penalties Act provides a period of at least sixty days preceding the entry of the proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States will evaluate any such comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and published in the **Federal Register** in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to: Mark Leddy, Deputy Director of Operations, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

VII

Alternatives to the Proposed Final Judgment

All substantive relief request in the Complaint is included in the proposed Final Judgment. Accordingly, the United States did not consider alternatives.

VIII

Determinative Documents

The United States has brought this action at the request of the Federal Trade Commission. In formulating the proposed Final Judgment, the United States considered determinative a February 10, 1984 letter agreement between Coastal and the FTC's Bureau of Competition. That letter agreement is attached to the complaint as Attachment 2, and is being filed along with this Competitive Impact Statement.

Dated: August 30, 1984.

Mark Leddy,

Catherine G. O'Sullivan,

Jack Sidorov,

Attorneys, Antitrust Division, Department of Justice, Washington, D.C. 20530; Tel: (202) 633–3544.

Federal Trade Commission

February 10, 1984.

George L. Brundrett, Jr., Esquire,

Senior Vice President, General Counsel, The Coastal Corporation, Nine Greenway Plaza, Houston, Texas 77046.

Re The Coastal Corporation's Obligation to File a Hart-Scott-Rodino Premerger Notification Form Under Section 7A of the Clayton Act.

Dear Mr. Brundrett: This letter states the terms of the agreement between the Bureau of Competition and The Coastal Corporation ("Coastal") concerning the Bureau's investigation of possible violations of Section 7A of the Clayton Act, 15 U.S.C. 18a ("the Act"), by Coastal.

On January 19, 1984, Coastal, which already held voting securities of Houston Natural Gas Corporation ("HNG") valued in excess of $15 million, purchased 75,500 additional shares of HNG common stock. Prior to purchasing this stock, Coastal did not file a Hart-Scott-Rodino premerger notification and report form nor observe the waiting period required by the Act. We understand that Coastal's position is that it did not file a notification and report form because it believed that the purchases of January 19th were made "solely for the purpose of investment" as that term is used in the Act [1] and the Act's implementing regulations.[2] The Bureau has reason to believe, however, that Coastal's purchases of HNG voting securities on January 19, 1984, were not made "solely for the purpose of investment."

The Bureau construes the term "solely for the purpose of investment," as that term is used in the Act and in the premerger rules, to apply only to purchases of voting securities made with the intention to hold the stock as a passive investment. The Bureau's investigation of Coastal's purchases of HNG stock indicates that at the time of Coastal's January 19th purchases, Coastal's intent included that possibility of acquiring control of HNG. The Bureau understands, however, that Coastal maintains that at the time it made its January 19th purchases, it had the investment intention necessary to rely on the "solely for the purpose of investment" exemption.

Having been informed of the Bureau's position regarding its January 19th purchases, and in reliance on the Bureau's statements concerning its intended actions set forth below, Coastal has agreed (i) to divest, within ten (10) business days of the execution of this agreement, 75,500 shares of HNG common stock that being the number of shares acquired by Coastal on January 19, 1984, and (ii) to enter into a Final Judgment in substantially the form attached hereto as Attachment A.

The Bureau has determined to close its investigation[3] and not to seek the issuance of a request for additional information under Section 7A(e) of the Act with respect to the alleged violation by Coastal. In addition, in reliance upon Coastal's agreement to take the actions just described, the Bureau has determined to recommend that the Commission request the Department of Justice to file a Complaint and a Stipulation in substantially the form attached hereto as Attachment B and to file a Final Judgment in substantially the form attached hereto as Attachment A.

Nothing in this letter should be construed to limit the authority of the Commission to take any enforcement action in the future with respect to the conduct described in this letter or any other conduct by Coastal.

Very truly yours,

Barbara A. Clark,

Acting Director, Bureau of Competition.

Accepted by:

George L. Brundrett,

Senior Vice President and General Counsel, The Coastal Corporation.

In the U.S. District Court for the District of the District of Columbia

United States of America, Plaintiff v. *The Coastal Corporation,* Defendant.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issues;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

(1) This court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7A of the Clayton Act (15 U.S.C. 18a).

(2) This Final Judgment applies to the defendant and its successors and assigns.

(3) Without admitting liability for the offenses charged in the complaint, defendant agrees:

(a) to divest 75,500 shares of voting securities of Houston Natural Gas Corporation ("HNG"), the number of HNG shares alleged in the Complaint to have been acquired in violation of Section 7A(a) of the Clayton Act (15 U.S.C. 18a(a)), in the event that this divestiture has not occurred in accordance with the letter agreement dated February 10, 1984, between defendant and the Bureau of Competition of the Federal Trade Commission (attached as Appendix A); and (b) to pay to the United States, pursuant to Section 7A(g)(1) of the Clayton Act (15 U.S.C. 18a(g)(1)), a civil penalty of $230,000, an amount representing $10,000 a day for each day that defendant was alleged in the Complaint to be in violation of Section 7A(a), due and payable within 15 days from the date of the entry of this Final Judgment, such payment to be made by certified check payable to the Treasurer of the United States and delivered to the Chief of the Claims Unit, Office of the United States Attorney for the District of the District of Columbia;

(4) In the event of a default in payment that continues for 10 days beyond the due date of the payment, interest at the rate of nine percent per annum shall accrue thereon from the date of default to the date of payment;

It is hereby ordered, adjudged, and decreed that judgment be entered, and hereby is entered, in favor of the plaintiff, United States of America, and against the defendant, The Coastal Corporation, and that the defendant shall:

(a) divest 75,500 shares of voting securities of HNG in the event that this divestiture has not occurred in accordance with the letter agreement attached hereto as Appendix A, and

(b) pay to the United States a civil penalty of $230,000, payable according to the terms and conditions recited above.

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[1] 15 U.S.C. 18a(c)(9).

[2] This term is defined at 16 CFR 801.1 and is used in the premerger rules at 16 CFR 802.9. Under the Act and the rules, Coastal would be entitled to purchase up to 10% of HNG's voting securities without filing a notification and report form or waiting the required period if the purchases were made "solely for the purpose of investment."

[3] The Bureau has concluded its investigation of Coastal's January 19th purchases of HNG stock as well as its investigation of Coastal's earlier purchases of HNG stock.

United States District Judge.

The parties, by their respective counsel, hereby consent to the terms and conditions of the Final Judgment as set forth above and consent to the entry thereof.

For plaintiff:

Joseph E. diGenova,

United States Attorney for the District of the District of Columbia.

For defendant:

Neal R. Stoll,

Skadden, Arps, Slate, Meagher & Flom (A member of the Firm).

For the Federal Trade Commission:

Barbara A. Clark,

Attorney, Bureau of Competition.

The Coastal Corporation,

By: George L. Brundrett

State of Texas,

County of Harris, ss:

On the 10th day of February, 1984, before me came George L. Brundrett, Jr. to me known, who, being by me sworn, did depose and say that he/she resides at Houston, Texas that he/she is the Senior Vice President, Gen. Counsel & Secretary of The Coastal Corporation, the defendant herein, which executed the foregoing instrument, and who is duly authorized to sign and has so signed said instrument on behalf of defendant, The Coastal Corporation.

Judgment entered this —— day of February —, 1984.

Clerk

Judith A. Bloss,

Notary Public.

In the U.S. District Court for the District of the District of Columbia

United States of America, Plaintiff v. *The Coastal Corporation,* Defendant.

Complaint for Civil Penalties and Other Relief Pursuant to Section 7A of the Clayton Act

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this action to obtain monetary relief in the form of civil penalties and other relief against the defendant named herein, and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino ("HSR") Act, in order to recover civil penalties and obtain other relief for a violation by defendant of the HSR Act.

2. This Court has jurisdiction over Coastal and over the subject matter of this action pursuant to the HSR Act and 28 U.S.C. 1331, 1337, 1345.

3. Venue is proper by virtue of Coastal's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of Final Judgment in the District.

II

Defendant

4. The Coastal Corporation ("Coastal") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at Coastal Tower, Nine Greenway Plaza, Houston, Texas 77046.

III

Violation Alleged

5. On January 19, 1984, Coastal, which already held voting securities of Houston Natural Gas ("HNG") valued in excess of $15 million, purchased 75,500 additional shares of HNG common stock.

6. The transaction described in paragraph 5 above is subject to the reporting and waiting period requirements of the HSR Act and the regulations thereunder, 16 CFR 801.1 *et seq.*

7. Coastal did not comply with the reporting and waiting period requirements of the HSR Act before it acquired the 75,500 shares of HNG common stock on January 19, 1984.

8. Subsequent to Coastal's January 19, 1984 purchases, on January 27, 1984, Coastal made a public announcement of a tender offer to acquire additional shares of HNG common stock and, pursuant to the requirements of the HSR Act and the regulations thereunder, 16 CFR 801.1 *et seq.*, filed a notification and report form as required by the HSR Act.

9. Coastal's violation of the HSR Act continued until 11:59 p.m., February 11, 1984, when the waiting period relating to its tender offer expired.

10. Section (g) of the HSR Act, 15 U.S.C. 18a(g)(1), authorizes civil penalties of not more than $10,000 for each day during which a violation continues and such other equitable relief as a court may order.

IV

Relief Requested

Wherefore, plaintiff prays that this Court:

1. Adjudge and decree that Coastal's purchase of 75,500 shares of HNG stock on January 19, 1984, was in violation of the HSR Act, and that this violation continued each day that Coastal held this stock until the waiting period described above expired.

2. Direct Coastal to pay to the United States Treasury civil penalties of $230,000, an amount which represents $10,000 a day for each day that Coastal was in violation of the HSR Act.

3. Direct Coastal to divest 75,500 shares of voting securities of HNG in the event that this divestiture has not occurred in accordance with the letter agreement dated February 10, 1984, between Coastal and the Bureau of Competition of the Federal Trade Commission (attached as Appendix A).

Respectfully submitted,

United States Attorney for the District of the District of Columbia, Attorney for Plaintiff, United States of America.

In the U.S. District Court for the District of the District of Columbia

United States of American, Plaintiff v. *The Coastal Corporation,* Defendant.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. Venue is proper in this district for purposes of this action.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: ____________________

For the plaintiff: ____________________

Assistant Attorney General.

Director of Operations.

[Staff Attorney].

[Staff Attorney].

For the defendants:

Neal R. Stoll

Skadden, Arps, Slate, Meagher & Flom (Attorneys for The Coastal Corporation).

For the Federal Trade Commission:

Barbara A. Clark,

Attorney, Bureau of Competition.

[FR Doc. 84-24466 Filed 9-14-84; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84-72]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: October 2, 8:30 a.m. to 5:00 p.m.; and October 3, 1984, 8:30 a.m. to 12:00 noon.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Dr. Artur Mager and is composed of 25 other members who will meet with several invited participants and certain NASA personnel.

The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including Committee members and other participants). Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda

October 2, 1984

8:30 a.m.—Introductory Remarks, Comments on Agenda.

9 a.m.—Briefings to the Subcommittees on Plans for Space Station Utilization for Applications.

1 p.m.—Subcommittee Meetings.

3 p.m.—Briefing on French Satellite System.

5 p.m.—Adjourn.

October 3, 1984

8:30 a.m.—Committee Business, Review of Reports.

12:00 noon—Adjourn.

Dated: September 7, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-24456 Filed 9-14-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Meeting; Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowships Section—Poetry and Prose) to the National Council on the Arts will be held on October 4-6, 1984. The Poetry section of this meeting will be held on October 4-5, from 9:00 a.m.-6:00 p.m.; and on October 6, from 9:00 a.m.-3:30 p.m. in room 730 of the Nancy Hanks Center. The Prose section of this meeting will be held on October 4-5, from 9:00 a.m.-6:00 p.m.; and on October 6, from 9:00 a.m.-3:30 p.m. in room 714 of the Nancy Hanks Center. The Poetry and Prose sections of this meeting will meet jointly on October 6, from 3:30-5:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on October 6, from 3:00-5:00 p.m. to discuss Fellowship Policy.

The remaining sessions of this meeting on October 4-5, from 9:00 a.m.-6:00 p.m. and on October 6, from 9:00 a.m.-3:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: September 11, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-24581 Filed 9-14-84; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

West Virginia University; Order Terminating Facility License

[Docket No. 50-129]

By application dated September 27, 1979, as supplemented by letter dated November 30, 1979, West Virginia University (WVU) requested authorization to dismantle the AGN-211P Reactor (the facility), a research reactor located on the campus in Morgantown, West Virginia, and to dispose of the component parts in accordance with the plan submitted as part of the application, and to terminate Facility Operating License No. R-58. A "Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Components Parts, and Termination of Facility License" was published in the Federal Register on October 29, 1979 (44 FR 62087). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

By letter dated May 23, 1983, WVU indicated compliance with the dismantling and residue disposal plan submitted in 1979, and requested termination of the Facility Operating License No. R-58. The facility area has been inspected by a Nuclear Regulatory Commission Region II inspector. Radiation surveys confirm that radiation levels meet the values defined in the dismantling plan, and the area is available for unrestricted access.

Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated January 22, 1980. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. In accordance with 10 CFR, the Commission has determined that the issuance of this termination Order will have no significant impact. The Finding of No Significant Environmental Impact was published in the **Federal Register**.

For further details with respect to this action see (1) the application for authorization to dismantle the facility and dispose of component parts and for termination of facility operating license dated September 27, 1979, as supplemented, (2) the Commission's Order Authorizing Dismantling of Facility and Disposition of Component Parts, dated January 22, 1980, and (3) the Commission's related Safety Evaluation. Each of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

This termination Order is effective as of its date of issuance.

Dated at Bethesda, Maryland, this 7th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84-24546 Filed 9-14-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Union Electric Company (the licensee) for the Callaway Plant, Unit 1 located at the licensee's site in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The exemption would eliminate the full pressure test required by paragraph III.D.2(b)(ii) of Appendix J normal air lock opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the licensee's request dated July 31, 1984.

The Need for the Proposed Action

The proposed exemption is required to provide the licensee with greater plant availability over the lifetime of the plant.

Environmental Impacts of the Proposed Action

The proposed exemption grants the substitution of an airlock seal test for an airlock pressure test while the reactor is in a shutdown or refueling mode. With respect to this exemption from Appendix J, the increment of environmental impact is related soley to the potential increased probability of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small, due to the added seal leakage tests and the protection against excessive leakage afforded by the other tests required by Appendix J.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "FES related to the operation of Callaway Plant Units 1 and 2," dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemption dated July 31, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Fulton City Library, 709 Market Street, Fulton, Missouri.

Dated at Bethesda, Maryland, this 11th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-24547 Filed 9-14-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16 to GPU Nuclear Corporation and Jersey Central Power and Light Company (the licensees) for the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

Identification of Proposed Action

The amendment would consist of changes to the operating license and Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool (SFP) from 1800 fuel assemblies to 2600 fuel assemblies with average enrichments no greater than 3.01 weight percent U-235.

The amendment to the TS is responsive to the licensees' application dated August 20, 1982, as supplemented September 2, and December 20, 1983. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment By the Office of Nuclear Reactor Regulation Relating to the Second Modification of the Spent Fuel Storage Pool, Provisional Operating License No. DPR-16, GPU Nuclear Corporation and Jersey Central Power and Light Company, Oyster Creek Nuclear Generating Station, Docket No. 50-219" dated September 13, 1984.

Summary of Environmental Assessment

The Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575) concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended licensing SFP expansion on a case-by-case basis.

For Oyster Creek the expansion of the storage capacity of the SFP will not create any significant additional radiological effects or measurable non-radiological environmental impacts. The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 millirem per year; the estimated dose to the population within a 50-mile radius is estimated to be less than 0.1 person-rem per year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose to workers during the modification of the storage racks is estimated by the licensees to be 25 person-rems. This is a small fraction of the total person-rems from occupational dose at the plant. The small increase in radiation dose should not affect the licensees' ability to maintain individual occupational dose within the limits of 10 CFR Part 20, and as low as reasonably achievable.

Finding of No Significant Impact

The staff has reviewed this proposed facility modification relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment to the TS dated August 20, 1982, as supplemented September 2, and December 20, 1983, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the Final Environmental Statement for Oyster Creek issued December 1974, and (4) the Environmental Assessment dated September 13, 1984. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555 and at the Oyster Creek Local Public Document Room, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Bethesda, Maryland, this 13th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-24680 Filed 9-14-84; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 405, 1129 Twentieth Street, NW., Washington, D.C. 20527; Telephone (202) 653-2818.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-7231.

Summary of Form Under Review:

Type of Request: Revision
Title: Investment Missions Application Form
Form Number: OPIC—78
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: Business and other institutions
Number of Responses: 60 per year
Reporting Hours: 1 hr per application

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Investment Missions Application form is completed by U.S. companies interested in participating in an OPIC sponsored investment mission. The form provides the necessary information for internal evaluation of a U.S. firm's capability and resources to undertake an overseas project.

Dated: September 4, 1984.

Lee H. Phillips, Jr.,

Office of the General Counsel.

[FR Doc. 84-24402 Filed 9-14-84; 8:45 am]

BILLING CODE 3210-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of information collection from the public submitted to OMB for clearance.

SUMMARY: In accordance with the "Paperwork Reduction Act of 1980" (Title 44 U.S.C. Chapter 35), this notice announces a collection of information from the public which has been submitted to OMB for clearance. It establishes a new OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs, which will be completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies will use the information to determine if applicants meet the financial needs criteria required by these programs. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

DATES: Comments on this proposal should be received within 10 working days from date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, D.C. 20415; and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720, Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-24467 Filed 9-14-84; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21308; File No. SR-MSRB-84-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

September 11, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on September 7, 1984, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB Rule G-4, which concerns statutory disqualifications, by replacing a reference to a rescinded Commission rule with a reference to the currently applicable rule. Specifically, the proposed rule change would refer to Rule 19d-3 under the Act instead of former Rule 15b8-2 under the Act, a rescinded SECO rule, as the basis for applying for relief from certain disqualifications.

This proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the **Federal Register** during the week of September 17, 1984. Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Comments should refer to File No. SR-MSRB-84-13.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the MSRB.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24478 Filed 9-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21306; File No. SR-NYSE-84-31]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.

September 10, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 31, 1984, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change provides for new Forms 97A and 97B to be used in the administration and enforcement of recently amended NYSE Rule 97.[1] In contrast to the former rule, the restrictions of amended Rule 97 apply only on the day the firm acquires a position as a result of block positioning activity rather than for the entire period the block positioning firm has a position in the stock. Under the proposed rule change, a firm would be required to complete Form 97A for any day or days selected by the Exchange, reporting positions acquired as principal in connection with facilitating customer block transactions having a market value of $200,000 or more, and any subsequent additions to such positions on that trading day. When the block positioning firm carries a position acquired on one trading day over to the next trading day, the subsequent trading activity would be monitored by the firm's completion of proposed Form 97B for the period covering the next four trading days after the position is first acquired or until the position is entirely liquidated, whichever occurs first. The Exchange cites section 6(b)(5) of the Act as the statutory basis for the proposed rule change in that the rule change would promote just and equitable principles of trade and would help prevent fraudulent and manipulative acts and practices.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Reference should be made to File No. SR-NYSE-84-31.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24479 Filed 9-14-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13244]

Application and Opportunity for Hearing; Trans World Airlines, Inc.

September 11, 1984.

Notice is hereby given that Trans World Airlines, Inc. ("Applicant") has filed an application under clause (ii) of section 310(b) (1) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), for a finding by the Securities and

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[1] Amendments to Rule 97 were approved by the Commission in Securities Exchange Act Release No. 21098 (June 25, 1984); 49 FR 27229, July 2, 1984 (File No. SR-NYSE-84-16).

Exchange Commission (the "Commission") that the trusteeships of The Bank of New York (the "Bank") under (i) a Trust Indenture and Mortgage, dated May 1, 1971 (the "Indenture") among Bankers Trust Company, as Owner-Trustee ("Bankers Trust"), Applicant as Guarantor and the Bank as Indenture Trustee, (ii) an Equipment Trust Agreement, dated October 1, 1979 (the "Equipment Trust") between Applicant and the Bank which provides for the issuance of certain Equipment Trust Certificates due May 11, 1990 (the "Equipment Trust"), (iii) an Indenture of Mortgage, dated as of January 1, 1977 (the "Mortgage") among certain senior lenders, Applicant and the Bank, as Trustee (succeeding the original Trustee Marine Midland Bank), (iv) a Note Facility Indenture of Mortgage dated as of January 16, 1984 (the "Facility Mortgage") between the Applicant and the Bank as Trustee for the benefit of holders of Promissory Notes which may be issued under a future long-term revolving credit facility arrangement related to the Note Facility Agreement, and (v) an Indenture of Mortgage, dated as of June 29, 1984 (the "Chattel Mortgage") between Applicant and the Bank as Trustee for the benefit of holders of Floating Rate Secured Notes due June 29, 1989 and issued under the Loan Agreement, and of certain additional such notes which may be issued in the future under supplemental agreements and Chattel Mortgages in substantially the same form, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the Indenture.

The Application alleges that:

(1) The Commission has previously considered the subject trusteeships, excepting the Chattel Mortgage trusteeship, in response to applications submitted on March 12, 1980 (the "1980 Application") and February 15, 1984, as amended on April 6, 1984 (the "1984 Application") of the Applicant, in each case under Section 310(b)(1), clause (ii), of the 1939 Act. By Orders dated May 28, 1980 in File No. 22-10302 and March 30, 1984, as amended on May 17, 1984 in File No. 22-12976, the Commission found that the Bank's trusteeships, as well as an agency appointment under a certain Pledge Agreement (which terminated by full payment of the secured obligation thereunder on August 15, 1983), were not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the Indenture.

(2) The Indenture was qualified under the 1939 Act and filed with the Commission as Exhibit 4(a)-17 to the Registration Statement (Registration No. 2-40077) which Applicant filed to register the 11% Guaranteed Loan Certificates due June 1, 1986 (the "Loan Certificates") under the Securities Act of 1933, as amended (the "1933 Act"). There were outstanding, on May 15, 1984, $13,693,000 aggregate principal amount of Loan Certificates, payment of which is guaranteed by Applicant and is secured by the mortgage of three Boeing 747-131 aircraft which were purchased in part by the proceeds of the sale of the Loan Certificates. Additional funds were provided by certain banking and financial institutions (the "Owners") for whom Bankers Trust acts as Owner-Trustee. The three aircraft have been leased to Applicant by Bankers Trust for terms ending on May 31, 1986. After the Loan Certificates have been paid in full, the three aircraft will remain the property of the Owners subject to certain rights of Applicant to acquire them at the fair market value when the lease expires.

(3) Applicant and the Bank, as trustee, entered into the Equipment Trust in connection with the purchase of three Boeing 747SP-31 aircraft (the "Aircraft") delivered in March and April of 1980. The Equipment Trust covering the Aircraft secures the Equipment Trust Certificates which are guaranteed by Applicant and were issued in private placements on the respective delivery dates of the Aircraft. The Equipment Trust Certificates have not been registered under the 1933 Act since the sales thereof have not involved public offerings and are therefore exempt under the 1933 Act. The Aircraft are leased to Applicant by the Bank for terms ending in 1990. At the termination of the lease, the lease payments will be treated as payment in full of the purchase price of the Aircraft and title to all the Aircraft will vest in Applicant. The Equipment Trust is set forth in Exhibit A to Applicant's 1980 Application. On July 27, 1984, Applicant sold one of the three Aircraft and the aggregate principal amount of Equipment Trust Certificates outstanding was reduced on a pro-rata basis in accordance with the ratio that the original purchase price of such Aircraft bore to the original purchase price of all three Aircraft.

(4) The Bank is successor to Marine Midland Bank as Trustee for certain of Applicant's senior lenders under the Mortgage, by which Applicant has mortgaged substantially all aircraft and aircraft engines (together with appliances from time to time installed) owned by Applicant on March 1, 1977, as more particularly described in the granting clauses thereof. (As of July 15, 1984, Applicant owned 53 jet aircraft subject to the lien of the Mortgage.) The Mortgage is not qualified under the 1939 Act and was filed with the Commission as Exhibit 1 to the March 1, 1977 Form 8-K filed by Applicant. The Mortgage secures Applicant's senior indebtedness currently outstanding under, or that may be issued pursuant to, certain senior debt instruments. The Mortgage has been amended by six supplemental indentures, the first five being on file with the Commission as Exhibits 3(c)-2 and 3(c)-3 of Applicant's January 25, 1979 Form 8-B and Exhibit 4(b)-3 to File No. 2-77852. The sixth supplemental indenture is set forth in Exhibit B to the 1984 Application.

(5) The Facility Mortgage established an additional trusteeship for the Bank commencing on February 1, 1984. It secured investors through Merrill Lynch International & Co. (the "Placing Agent") under a Note Facility Agreement, dated as of January 16, 1984 (the "Note Facility"). The maturity date of the last of the Promissory Notes issued under the Facility Mortgage was June 21, 1984. However, it is contemplated that the Facility Mortgage may serve in the future as the security vehicle for a possible proposed additional long-term credit facility of up to $200 million to be created between TWA, the Placing Agent and other financial institutions, not including the Bank, in accordance with the terms and conditions outlined in Paragraph 6 of the 1984 Application.

(6) The Chattel Mortgage establishes a new trusteeship for the Bank commencing on June 29, 1984 securing five year Floating Rate Primissory Notes of TWA (the "Floating Rate Notes") in the aggregate principal amount of $25 million issued under a Loan Agreement between C.C. Leasing Corporation and Goldome FSB as Lenders, and TWA. Because the sale of the Floating Rate Notes is a private placement, the offering is not required to be registered with the Commission under the 1933 Act and the Chattel Mortgage is not required to be qualified under the 1939 Act.

(7) The property initially mortgaged under the Chattel Mortgage is, as specified in Schedule I thereto, two used Boeing Model 727-231 aircraft and two used Lockheed L-1011 aircraft. Each of the aircraft includes three engines and each of those engines is subjected to the lien of the Chattel Mortgage, as specified in Schedule II thereto. Prior to

the establishment of the Chattel Mortgage, the property was encumbered by the lien of the Facility Mortgage and released by the Bank, as Trustee, upon the maturity of the three-month Promissory Notes issued thereunder. Thus, the collateral over which the Bank will exercise its duties as Trustee under the Chattel Mortgage is entirely distinct and separate from the collateral under the Indenture, the Equipment Trust and the Mortgage. As for the Facility Mortgage, there is no collateral thereunder at the present time.

(8) The Chattel Mortgage may also in the future serve as the vehicle for a proposed additional long-term credit facility to be created between TWA and other financial institutions (not including the Bank). That facility will also involve the issuance of additional Floating Rate Notes up to a maximum principal aggregate amount of $25 million, bringing the total maximum amount of all such Notes to $50 million. Any such additional Notes are to have maturity dates of June 29, 1989 and the Chattel Mortgage provides flexibility for the addition or removal of mortgaged property, provided that 66⅔% of the appraised value thereof plus 100% of the cash included in an Aviation Property Fund (as defined in the Chattel Mortgage), is not less than the aggregate amount of Floating Rate Notes outstanding, except in the case of Applicant's making of certain prepayments or cash payments in connection therewith. Thus, additional aircraft or engines can readily be added to the Chattel Mortgage to secure an increase in outstanding credit up to the $50 million maximum. The Chattel Mortgage also provides for the substitution of aircraft and engines under certain circumstances. Additional property to be placed under the Chattel Mortgage would not be subject to any other mortgage or lien encumbrance for which the Bank has a trusteeship. In submitting this Application, TWA requests that the Commission issue its Order with respect to the Bank's role as Trustee under the Chattel Mortgage, recognizing that it may, in the future, secure additional Floating Rate Notes.

(9) Applicant believes that no material conflict of interest will result from the Bank acting as Trustee under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage. The Indenture, the Mortgage, the Equipment Trust, the Facility Mortgage and the Chattel Mortgage each cover wholly separate and distinct collateral consisting of identified aircraft and aircraft engines. In the event that the Bank should have the occasion to proceed against the security of any one or more of these instruments, such action would not affect the security, or the use of any security, under any of the others. As a result, Applicant believes that the Bank, in serving as Trustee under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage, and, more importantly, in taking action on behalf of the security holders or the senior lenders with respect to their separate security under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage, will not be placed in a situation in which the potential for a material conflict of interest would arise.

(10) Applicant believes that the Bank's serving as Trustee under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage will be beneficial to the holders of the Loan Certificates, the holders of the Equipment Trust Certificates, the senior lenders, the holders of the Promissory Notes, if any, and the holders of the Floating Rate Notes, in that the operations of the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage would be simplified if the Trustee acting under the Indenture can act as the Trustee under those instruments as well. The specialized nature of the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage, is such that Applicant believes that the holders of the Loan Certificates, the holders of Equipment Trust Certificates, the senior lenders, the holders of the Promissory Notes, if any, the holders of Floating Rate Notes and Applicant would benefit by having a common trustee familiar with the operation of the Applicant under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage.

(11) The Indenture contains the provisions permitted by the proviso of section 310(b)(1) of the 1939 Act which allow Applicant to make the application under section 310(b)(1)(ii). Applicant is not in default under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage, the Chattel Mortgage or any other indenture or equipment trust agreement.

Applicant has waived any hearing as well as notice of any hearing and all rights of specified procedures under the rules of practice of the Commission.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than October 1, 1984 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, pursuant to delegated authority, by the Division of Corporation Finance.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24570 Filed 9-14-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange Inc.

September 10, 1984.

The above named national securities exchange has filed application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Payless Cashway's, Inc.
  Common Stock, $.50 Par Value (File No. 7-7760)
Page Petroleum, Ltd.
  Common Stock, No Par Value (File No. 7-7761)
Pacific Gas Transmission Co.
  Common Stock, No Par Value (File No. 7-7762)
Philips Industries, Inc.
  Common Stock, $1.00 Par Value (File No. 7-7763)
Combined International Corp.
  Common Stock, $1.00 Par Value (File No. 7-7764)
Pioneer Corp.
  Common Stock, $.50 Par Value (File No. 7-7765)
Pantry Pride, Inc.
  Common Stock, $.01 Par Value (File

No. 7–7766)

Restaurant Associates Industries, Inc.
  Common Stock, $1.00 Par Value (File No. 7–7767)
Rogers Corp.
  Capital Stock, $1.00 Par Value (File No. 7–7768)
Raychem Corp.
  Common Stock, No Par Value (File No. 7–7769)
Ryan Homes, Inc.
  Common Stock, No Par Value (File No. 7–7770)
Sundance Oil Co.
  Capital Stock, $.01 Par Value (File No. 7–7771)
Seatrain Lines, Inc.
  Common Stock, $1.00 Par Value (File No. 7–7772)
Scientific-Atlanta, Inc.
  Common Stock, $.50 Par Value (File No. 7–7773)
Sherwin Williams Co.
  Common Stock, $6.25 Par Value (File No. 7–7774)
Spectra-Physics, Inc.
  Common Stock, $.20 Par Value (File No. 7–7775)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24572 Filed 9–14–84; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange Inc.

September 10, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Mc Dermott International
  Common Stock, $1.00 Par Value (File No. 7–7860)
U.S. Home
  Common Stock, $1.00 Par Value (File No. 7–7861)
Teco Energy
  Common Stock, $1.00 Par Value (File No. 7–7862)
Norwest Corporation
  Common Stock, $1 ⅔ Par Value (File No. 7–7863)
Staley (A.E.) Manufacturing
  Common Stock, No Par Value (File No. 7–7864)
Forest Laboratories
  Common Stock, $.10 Par Value (File No. 7–7865)
Newmont Mining
  Common Stock, $5.00 Par Value (File No. 7–7866)
Rochester Gas & Electric
  Common Stock, $5.00 Par Value (File No. 7–7867)
Unicorp American Corporation
  Common Stock, $.01 Par Value (File No. 7–7868)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interest persons are invited to submit on or before October 1, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24571 Filed 9–14–84; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2164 Amdt. No. 2]

Nevada; Declaration of Disaster Loan Area

The above numbered Declaration (49 FR 32703) and Amendment No. 1 (49 FR 35459) is hereby amended to include the adjacent County of Lincoln. All other information remains the same, i.e. the termination date for filing applications for physical damage is the close of business on October 9, 1984, and for economic injury until the close of business on May 8, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 10, 1984.

Irenemaree Castillo,

Acting Administrator

[FR Doc. 84–24685 Filed 9–14–84; 8:45 am]

BILLING CODE 8025–01–M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Correction to Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This corrects a notice published in the Federal Register on July 30, 1984 (49 FR 30393), concerning actions subject to Intergovernmental review.

DATE: Effective September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, Washington, D.C. 20416, (202) 653–6768.

In FR Doc. 84–19941 appearing at page 30394 in the issue for Monday, July 30, 1984, in the third column, under Addressees of Proposed SBDC's and Proposal Developers, delete the third addressee which reads as follows:

Albert Calum, Interamerican University of Puerto Rico, P.O. Box 1293, Hato Rey, Puerto Rico 00919, (809) 753–8008, Ext. 253.

The proposal submitted by Interamerican University of Puerto Rico was incomplete. Therefore, the Small Business Administration is currently open to receiving any completed proposal for the establishment of an

SBDC in the Commonwealth of Puerto Rico.

James C. Sanders,

Administrator.

[FR Doc. 84-24612 Filed 9-14-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Whittier, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed transportation project to improve access to the City of Whittier, Alaska.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administration, P.O. Box 1648, Juneau, Alaska 99801, Telephone (907) 586-7428; Merlyn L. Paine, Central Region Environmental Coordinator, Alaska Department of Transportation and Public Facilities, Pouch 6900, Anchorage, Alaska 99502, Telephone (907) 266-1508.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF), will prepare an Environmental Impact Statement (EIS) on the proposed improved access to Whittier, Alaska. Highway access to Whittier does not presently exist. The proposed project would supplement railroad access through construction of a rural highway into the City of Whittier, possibly involving a tunnel; or construction of a road into Bear Valley and a railroad terminal there to improve efficiency of the present rail shuttle system.

Construction of the proposed transportation improvement is considered necessary for the following reasons: (1) The existing railroad shuttle is inconvenient and inadequate, (2) shuttle capacity could become even more inadequate if there are significant increases in Marine Highway transportation, (3) the increasing population base in the Anchorage area will increase demand for nearby marine recreation opportunities, (4) tourism is a growing industry in Alaska and could produce additional demand on Whittier access facilities as the area becomes better known, and (5) possible development of the deepwater port facility and commercial fishing industry in Whittier could pose significant demands for freight transport beyond capacity of the shuttle.

Alternatives under consideration include:

(1) No action.

(2) Construct a road from the area of the Portage Glacier Visitor Center into Bear Valley with a railroad terminal facility located in Bear Valley.

(3) A road from the Portage Glacier Visitor Center area into Bear Valley and modification of the existing railroad tunnel through Maynard Mountain between Whittier and Bear Valley to accommodate a one-lane highway.

(4) Same as number (3) above, except the existing railroad tunnel would be modified to accommodate a two-lane highway.

(5) A road from the vicinity of the Portage Glacier Visitor Center into Bear Valley and construction of a new two-lane highway tunnel just south of the existing rail tunnel.

(6) Construction of a new two-lane highway from the area of the Portage Glacier Visitor Center through Bear Valley, around Maynard Mountain, over Portage Pass and then into Whittier.

A scoping process to identify the full range of issues related to the proposed action will include solicitation of comments from appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed interest in the proposal. Public information/scoping meetings will be held at times and locations to be determined. At least one meeting will be held in Anchorage and one in Whittier. Public hearings will be held in Whittier and Anchorage in late 1985 after the Draft EIS has been completed and made available for public and agency review.

Comments or questions concerning the proposed action should be directed to the FHWA or the ADOT&PF at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction)

Issued: September 6, 1984.

Barry F. Morehead,

Division Administrator, FHWA, Juneau, Alaska.

[FR Doc. 84-24491 Filed 9-14-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 11, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8271
Type of Review: New
Title: Investor Reporting of Tax Shelter Registration Number
Clearance Officer: Garrick Shear, (202) 566-6254, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of Government Financial Operations

OMB Number: 1510-0006
Form Number: TFS 6312
Type of Review: Extension
Title: Federal Process Agent Appointments
Clearance Officer: Doug Lewis, (202) 287-4500, Bureau of Government Financial Operations, Room 163, 401 14th Street, SW., Washington, DC 20228
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Office of the Secretary

OMB Number: 1505-0001
Form Number: International Capital Form S
Type of Review: Extension
Title: Purchases and Sales of Long-Term Securities by Foreigners
Clearance Officer: Cathy Thomas, (202) 535-6020, Office of the Secretary, Department of the Treasury, Room 7225, 1201 Constitution Avenue, NW., Washington, DC 20220
OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Customs Service

OMB Number: 1515-0055

Form Number: Customs Form 3229
Type of Review: Revision
Title: Certificate of Origin

OMB Number: 1515–0050
Form Number: Customs Forms 3347 and 3347A
Type of Review: Extension
Title: Declaration of Owner for Merchandise Obtained (Otherwise than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee when Entry is Made by Agent

OMB Number: New
Form Number: Customs Form 3461–A (Test)
Type of Review: New
Title: Accept Entry Cover Sheet

OMB Number: New
Form Number: None
Type of Review: New
Title: Transfer Cargo to A Container Station

Clearance Officer: Vince Olive, (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, DC 20229

OMB Reviewer: Judy McIntosh, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph Maty,

Departmental Reports, Management Office.

[FR Doc. 84–24469 Filed 9–14–84; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 181
Monday, September 17, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Item
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1

CIVIL AERONAUTICS BOARD

TIME AND DATE: 10:00 a.m., September 18, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. *Unified Agenda of Federal Regulations.* (Memo 2490, OGC)
3. Docket 39635, Standard Foreign Fare Level Methodology. (Memo 497-B, OGC, BIA)
4. Proposed changes in the Board's procedures for exemption applications and related changes in filing fee schedules and policy statements. (OGC, BIA, OC, BDA)
5. Docket 42316, Frontier Airlines' notice of intent to terminate service at Abilene, Texas, Durango, Colorado, Farmington, New Mexico, Fort Smith, Arkansas, Grand Island, Nebraska and Topeka, Kansas. (Memo 2487, BDA, OCCCA)
6. Docket 42129, Renewal of carrier selection to provide essential air service for Massena, Ogdensburg, Plattsburgh, Saranac Lake/Lake Placid and Watertown, New York. (BDA, OCCCA)
7. Docket 40274, Essential air service for Thief River Falls, Minnesota. (BDA, OCCCA, OC)
8. Dockets 39422, 39423 and 39424, Essential Air Service at Roswell, Carlsbad and Hobbs, New Mexico. (Memo 546-E, BDA, OCCCA, OC)
9. Dockets 42318 and 42319, Applications of Orion Lift Service, Inc. d/b/a Orion Air under Subpart Q for certificates authorizing foreign charter air transportation and interstate and overseas scheduled air transportation. (Memo 2488, BDA)
10. Order 84-4-28 which tentatively proposed to require Clearwater Flying Service d/b/a Empire Airways to change its name because of name confusion with Empire Airlines. (Memo 2042-D, BDA, OGC)
11. Commute carrier fitness determination of Lynbird International, Inc. (Memo 2484, BDA)
12. Commuter carrier fitness determination of Island Airlines, Inc. (Memo 2486, BDA)
13. Commuter carrier fitness determination of Air Caribe International, Inc.; Docket 42394, Emergency Exemption of Air Caribe to operate as a commuter pending completion of its fitness review and Docket 42401, Application for fitness review. (BDA)
14. Commuter carrier fitness determination of Enterprise Airlines, Inc. (Memo 2485, BDA)
15. Revocation of air carrier certificates of Air Chicago, Inc.; Airgo, Inc.; Colonial Airlines, Inc.; Columbia Air; Falcon Airways, Inc.; Great Western Airlines, Inc.; JFC Enterprises, Inc. d/b/a Concord International Airlines; Sun Pacific Airlines; Sundance International, Inc. d/b/a Sundance International; Swift Air Charter, Inc.; TRA Airlines, Inc.; and Transwest Air Express. (Memo 2489, BDA, OGC)
16. Docket 42171, Application of Key Airlines, Inc. (Memo 2432-A, BIA, OGC)
17. Report on Japan. (BIA)
18. Report on Peru. (BIA)
19. Negotiations with Fiji. (BIA)
20. Negotiations with Argentina. (BIA)
21. Negotiations with the Dominican Republic. (BIA)
22. Discussion of Aviation Relations with Saudi Arabia. (BIA)
23. Discussion of Aviation Relations with the United Kingdom. (BIA)
24. Report on ECAC (France). (BIA)

STATUS: 1-16 Open, 17-24 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, *The Secretary,* (202) 673-5068.

[FR Doc. 84-24584 Filed 9-12-84; 5:00 pm]

BILLING CODE 6320-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:00 a.m., Thursday, September 13, 1984.

LOCATION: Third Floor Hearing Room, 1111-18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Budget FY 86

The Commission will consider issues related to the Budget for Fiscal Year 1986.

The Commission by unanimous consent vote decided that agency business required scheduling this meeting without seven days notice.

FOR A RECORDED MESSAGE CONTAINING THE LASTEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84-24624 Filed 9-13-84; 3:16 pm]

BILLING CODE 6355-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 12, 1984.

TIME AND DATE: 10:00 a.m., Tuesday, September 18, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Pyro Mining Company, Docket No. KENT 84-151; Sua Sponte Review. (Issues include whether the Administrative Law Judge appropriately assessed civil penalties.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. 5 U.S.C. 552b(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 65-5632.

[FR Doc. 84-24643 Filed 9-13-84; 3:25 pm]

BILLING CODE 6735-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 17, 1984, at 450 Fifth Street NW., Washington, D.C.

Closed meetings will be held on Tuesday, September 18, 1984, at 10:00 a.m. and 2:30 p.m., and on Thursday, September 20, 1984, following the 2:30 p.m. open meeting.

Open meetings will be held on Wednesday, September 19, 1984, at 10:00 a.m. and Thursday, September 20, 1984, at 2:30 p.m., in Room IC30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set sourth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting September 18, 1984, at 10:00 a.m., will be:

Formal orders of investigation.

Institutions of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Institution of injunctive action.

Settlement of injunctive action.

The subject matter of the closed meeting scheduled for Tuesday, September 18, 1984, at 2:30 p.m., will be:

Institution of administrative proceeding of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, September 20, 1984, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, September 19, 1984, at 10:00 a.m., will be:

1. Consideration of whether to issue Orders granting full registration to the Boston Stock Exchange Clearing Corporation and cancelling the termporary registration of the New England Securities Depository Trust Company. For further information, please contact Easter Saverson, Jr. at (202) 272–2900.

2. Consideration of whether to adopt amendments to Rule 139, relating to the publication of research reports by brokers or dealers that contain information, opinions or recommendations concerning registrants that are in the process of registering securities for public sale. The amendments would expand the class of publications that come within the Rule's safe harbor protection from violations of section 5 of the Securities Act of 1933. For further information, please contract Patricia B. Magee at (202) 272–2589.

The subject matter of the open meeting scheduled for Thursday, September 20, 1984, at 2:30 p.m., will be:

Oral argument on an appeal by Russell G. Davy, a certified public accountant, from the decision of an administrative law judge. For further information, please contact Herbert V. Efron at (202) 272–7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272–2179.

Dated: September 12, 1984.

Shirley E. Hollis

Acting Secretary.

[FR Doc. 84–24583 Filed 9–13–84; 4:39 pm]

BILLING CODE 8010–01–M

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federal register

Monday
September 17, 1984

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; State Petitions for Exemption From Federal Preemption of State Standards for Refrigerators and Refrigerator-Freezers, Freezers, Water Heaters, Room Air Conditioners, Central Air Conditioners, Furnaces and Kitchen Ranges and Ovens; Proposed Rules; Correction

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket Nos. CE-CP-SPRM-AR006, VA007, FL008, PA009, WI010, SC012, NM013, GA014, RI015, NH016, MA017, CA018, OR019, NY020, MO021, TX022, NJ023, IL024, UT025, IA026, WV027, MN028, WA029, KS030, HI031, TN032]

Energy Conservation Program for Consumer Products; State Petitions for Exemptions From Federal Preemption of State Standards for Refrigerators and Refrigerator-Freezers, Freezers, Water Heaters, Room Air Conditioners, Central Air Conditioners, Furnaces and Kitchen Ranges and Ovens, Correction

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Proposed rules correction.

SUMMARY: This document corrects errors made in the proposed rules to grant 26 State petitions for exemption from Federal preemption of State standards pertaining to the energy efficiency or energy use of refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners, furnaces and kitchen ranges and ovens appearing at and following page 32944 of the August 17, 1984, **Federal Register** (Vol. 49, No. 161).

DATES: Written comments on the proposed rules must be received by the Department by November 15, 1984. Oral views, data and arguments may be presented at any of the public hearings listed on page 32976 of the August 17, 1984, **Federal Register**.

ADDRESSES: Written comments, statements and requests to speak at the hearings are to be submitted to U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Efficiency Program for Consumer Products, Docket No. CE-CP-SPRM-(appropriate State code), Mail Station 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy Mail Station CE-113, Room GF-217, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127, or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Room 6B-128, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9513

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., (202) 252-9319.

Issued in Washington, D.C., September 4, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

The following corrections are made to FR Doc. 84-21864 appearing on page 32944 of the August 17, 1984, **Federal Register** (Vol. 49, No. 161):

1. On page 32944, column two, under the heading ADDRESSES, and, on page 32976, column one, first paragraph; the starting time of all public hearings is corrected to be 9:30 a.m.

2. On page 32964, column three, last paragraph, the discussion of the petition submitted by the State of Texas (which concludes on page 32965, column two) is corrected to read as follows:

"TEXAS (TX022). The petition submitted by Texas [64] seeks a rule exempting from Federal preemption Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards and the building code ordinances of 49 localities as they pertain to the energy efficiency of water heaters, room and central air conditioners and furnaces. Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards adopts The Model Code for Energy Conservation in New Building Construction, 1977 Edition, as the State building code for the construction of modular homes. The adopted code contains energy efficiency requirements applicable to water heaters, room air conditioners, central air conditioners and furnaces. It is based on ASHRAE Standard 90-75. Texas' petition includes a list identifying the 49 localities that have energy efficiency requirements incorporated into their building codes. For each of these localities, Texas' petition identifies the building code adopted by the locality (BOCA, ICBO, or SBCC), the date of the edition of the model building code adopted, and the ordinance which adopted the model building code.

"Today's notice proposes to grant Texas' petition for exemption from preemption of its construction standards for modular homes as they pertain to water heaters, room air conditioners, central air conditioners, and furnaces, and the building codes of the 49 localities for which Texas had petitioned. See Section 430.33 (e)(15), (f)(15), (g)(16), and (h)(16) of today's proposed rule for a listing of the localities of Texas with building code energy efficiency requirements pertaining to water heaters, room air conditioners, central air conditioners and furnaces, respectively, which DOE is proposing to exempt from Federal supersession.

"1. Standard Levels

"Water Heaters

"Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards provides that electric storage water heaters shall have a standby loss not exceeding 4 watts per square foot of tank surface area; and that gas- and oil-fired storage water heaters shall have a recovery efficiency not less than 75 percent and a standby loss not exceeding the quantity of $2.3 + 67/V$, expressed in percent per hour of the stored thermal energy, where V equals the rated storage capacity in gallons.[64A]

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90-75, electric storage water heaters are required to have a standby loss which, for building codes adopted prior to January 1, 1977, does not exceed 4 watts per square foot of tank surface area. Gas-and oil-fired storage water heaters are required to have a recovery efficiency which, for building codes adopted prior to January 1, 1977, is not less than 70 percent and; for building codes adopted thereafter, is not less than 75 percent.

"Gas- and oil-fired storage water heaters are also required to have a standby loss which, for building codes adopted prior to January 1, 1977, does not exceed the quantity of $4.3 + 67/V$, expressed in percent per hour of the stored thermal energy, where V equals the volume of the water heater in gallons; and, for building codes adopted thereafter, does not exceed the quantity of $2.3 + 67/V$, expressed in percent per hour of the stored thermal energy, where V equals the volume of the water heater in gallons.[64B]

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[64] Texas' petition was received by letter dated December 20, 1983, and amended by letter dated August 7, 1984.

[64A] Texas' water heater standards reference the ANSI Standard C72.1-72 test method and the ANSI Standard Z21.10.3-74 test method. DOE has reviewed these test methods and finds that they differ from the DOE water heater test procedure. The Department is treating these test methods as an integral part of Texas' water heater standards for which exemption from preemption is being sought.

[64B] The ASHRAE Standard 90-75 water heater standards reference the ANSI Standard C72.1-72

Continued

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90A-1980, electric storage water heaters shall have a standby loss not exceeding 4 watts per square foot of tank surface, or 43 watts, whichever is greater. Gas- and oil-fired storage water heaters with input ratings of 75,000 Btu per hour of less shall have a recovery efficiency not less than 75 percent and a standby loss not exceeding the quantity of 2.3 + 67/V, expressed in percent per hour of the stored thermal energy, where V equals the rated volume of the water heaters gallons. Oil-fired water heaters with input ratings exceeding 75,000 Btu per hour are required to have a combustion efficiency not less than 80 percent. Additionally, oil-fired water heaters with input ratings exceeding 75,000 Btu per hour but less than 4,000 Btu per hour per gallon of self stored water are required to have a standby loss which, for building codes adopted prior to January 1, 1982, does not exceed the quantity 2.8 +0.002Q/V and, for building codes adopted thereafter, does not exceed the quantity 2.8 + 67/V, expressed in percent per hour of the stored thermal energy, where V equals the rated volume of the water heater, in gallons, and Q equals the rated input of the water heater, in Btu per hour.[84C]

"Room Air Conditioners and Central Air Conditioners

"Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards provides that room air conditioners and central air conditioners shall have an energy efficiency ratio not less than 6.8 Btu per watt-hour.[85A]

"For those localities in Texas that have adpoted building codes which based on the ASHRAE Standard 90-75, room and central air conditioners are required to have an energy efficiency ratio which, for building codes adopted after January 1, 1977, but before January 1, 1980, is not less than 6.1 Btu per watt-hour; and for building codes adopted thereafter, is not less than 6.8 Btu per watt-hour.[85B]

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90A-1980, room and central air conditioners are required to have an energy efficiency ratio not less than 6.8 Btu per watt-hour.[85C]

"Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards provides that furnaces shall have a combustion efficiency not less than 75 percent.[86A]

For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90-75, furnaces shall have a combustion efficiency not less than 75 percent at maximum rated output.[86B]

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90A-1980, furnaces shall have a steady state combustion efficiency not less than 74 percent, except for gravity central furnaces which shall have steady state combustion efficiency not less than 69 percent.[86C]

"2. Significant State interest

"The petition states that it is in the best interest of the State to continue to utilize its resources as efficiently as possible due to its declining domestic oil production and the continued instability of OPEC oil supplies. The local units of government believe that minimum appliance efficiency standards are in the best economic interest of their citizens and that existing minimum standards provide reasonable paybacks on the additional first cost.

"3. Additional Information

"The petition states that the State has determined that enforcement of minimum appliance efficiency standards developed through a concensus approach is the most effective means of regulation without placing an undue burden on interstate commerce.

"The petition further states that preemption of local building codes is unnecessarily disruptive to local commerce and the local power to govern. These local governments believe that enforcement of these standards is the most effective means of regulation without placing an undue burden on interstate commerce.

"4. Proposed Determination

"DOE has reviewed Texas' petition in accordance with the requirements of section 327(b)(3) of the Act and § 430.47 of the regulation. Based on its analysis, DOE has determined that Texas has provided prima facie evidence showing that paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards and the building code ordinances of 49 localities within the State are more stringent than DOE's rules for water heaters, room air conditioners, central air conditioners and furnaces; are justified by a significant State interest; and do not appear to impose an undue burden on interstate commerce. Accordingly, DOE proposes to issue a rule amending § 430.33 exempting paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards and the building code ordinances of 49 localities within Texas from the preemptive provisions of section 327(a)(2)(A) of the Act."

3. The proposed amendments to 10 CFR 430.33 are corrected by revising the introductory text of paragraphs (e)(15), (f)(15), (g)(16) and (h)(16) to read as follows:

§ 430.33 Preemption of State regulations.

* * * * *

(e) * * *

(15) Texas Department of Labor and Standards Rules, paragraph 69.78(a)(3),

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test method and the ANSI Standard z21.103-74 test method. DOE has reviewed these test methods and finds that they differ from the DOE water heater test procedure. The Department is treating these test methods as an integral part of the water heater standards of those Texas localities for which exemption from preemption is being sought.

[84C] The ASHRAE Standard 90A-1980 water heater standards reference the DOE water heater test procedure.

[85A] Texas' room air conditioner standard references the ANSI Standard z234.1-72 test method which DOE adopted as its test procedure for room air conditioners. Texas' central air conditioner standard references the ARI Standard 210-75 test method. DOE has reviewed this test method and finds that it differs from the DOE central air conditioner test procedure. The Department is treating these test methods as an integral part of Texas room air conditioner and central air conditioner standards for which exemption from preemption is being sought.

[85B] The ASHRAE Standard 90-75, room air conditioner standard references the ANSI Standard Z234.1-72 test method which DOE adopted as its test procedure for room air conditioners. The ASHRAE Standard 90-75 central air conditioner standard references the ARI Standard 210-75 test method. DOE has reviewed this test method and finds that it differs from the DOE central air conditioner test procedure. The Department is treating these test methods as an integral part of the room air conditioner and central air conditioner standards of those Texas localities for which exemption from preemption is being sought.

[85C] The ASHRAE Standard 90A-1980 room air conditioner standard references the ANSI Standard Z234.1-72 test method which DOE adopted as its test procedure for room air conditioners. The ASHRAE Standard 90A-1980 central air conditioner standard references the DOE central air conditioner test procedure.

[86A] Texas' furnace standards reference the ANSI Standard Z21.13-74 test method, the ANSI Standard Z21.47-71 test method, and the HI Standard 6.6. test method. DOE has reviewed these test methods and finds that they differ from the DOE furnace test procedure. The Department is treating these methods as an integral part of Texas' furnace standards for which exemption from preemption is being sought.

[86B] The ASHRAE Standard 90-75, furnace standards reference the ANSI Standard Z21.13-74 test method, the ANSI Standard Z21.47-71 test method, and the HI Standard 6.6. test method. DOE has reviewed these test methods and finds that they differ from the DOE furnace test procedure. The Department is treating these test methods as an integral part of the furnace standards of those Texas localities for which exemption from preemption being sought.

[86C] The ASHRAE Standard 90A-1980 furnace standards reference the DOE furnace test procedure.

pretaining to water heaters in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to water heaters that are covered products, are exempt from preemption:

* * * * *

(f) * * *

(15) Texas Department of Labor and Standards Rules, paragraph 60.78(a)(3), pertaining to room air conditioners in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to room air conditioners that are covered products are exempt from preemption:

* * * * *

(g) * * *

(16) Texas Department of Labor and Standards Rules, paragraph 69.76(a)(3) pertaining to central air conditioners in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to central air conditioners that are covered products, exempt from preemption:

* * * * *

(h) * * *

(16) Texas Department of Labor and Standards Rules, paragraph 69(a)(3), pertaining to furnaces in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to furnaces that are covered products, are exempt from preemption:

* * * * *

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federal register

Monday
September 17, 1984

Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Southern California; Oil and Gas Lease Sale 80; Leasing System, Sale 80; Notices

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Southern California
Oil and Gas Lease Sale 80

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Manager (RM), Pacific Region, Minerals Management Service (MMS), 1340 West 6th Street, Los Angeles, California 90017. Bids may be delivered, either by mail or in person, to the above address until the Bid Submission Deadline, at 10:00 a.m., Pacific Standard Time (p.s.t.), October 16, 1984. Bids will not be accepted on the day of Bid Opening, October 17, 1984. Bids received by the RM later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RM prior to 12:00 p.m., p.s.t., October 16, 1984. Bids may not be withdrawn unless written withdrawal is received by the RM prior to 9:00 a.m., p.s.t., October 17, 1984. Bid Opening Time will be 10:00 a.m., p.s.t., October 17, 1984, at the Los Angeles Convention Center, 1201 South Figueroa Street, Room 212, Los Angeles, California 90015. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 49 FR 1267 on March 30, 1984.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale 80; (map number, map name (if applicable), and block number(s)), not to be opened until 10:00 a.m., p.s.t., October 17, 1984," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 80, Leasing Map No. 6A, Block 55N 89W, not to be opened until 10:00 a.m., p.s.t., October 17, 1984." For those blocks which must be bid upon together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block or bidding unit as described in paragraph 12 will be considered. All documents must be executed in conformance with signatory authorizations on file. Partnerships also must submit or have on file in the Pacific Region a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $371 or more per hectare or $150 or more per acre, or fractions thereof. All leases resulting from this sale will provide for a yearly rental payment of $8.00 per hectare or $3.00 per acre, or fractions thereof. All leases awarded will provide for a minimum royalty of $8.00 per hectare or $3.00 per acre, or fractions thereof. The following systems will be used:

(a) Bonus Bidding with 16-2/3 Percent Royalty. Bids on the following blocks and bidding units offered must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent. Leasing Map No. 6A, whole blocks: 39N72W, 37N72W; bidding unit blocks: 40N73W, 40N72W; split block: 54N82W. Leasing Map No. 6B, whole and partial blocks: 49N66W, 49N65W, 49N61W; split blocks: 50N62W, 40N71W, 34N54W; bidding unit blocks: 51N63W, 51N62W, 49N60W, 49N59W. Leasing Map No. 6C, whole blocks: 34N39W, 34N38W. Leasing Map No. 6D, whole and partial blocks: 14N57W, 13N56W, 11N60W, 10N60W, 10N59W. Leasing Map No. 6E, whole blocks: 9N59W, 9N58W, 8N58W. Official Protraction Diagram NI 11-10, San Clemente, whole and partial blocks: 462, 506, 507; bidding unit blocks: 418, 419.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the remaining blocks in this sale must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982) and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $371 or more per hectare or $150 or more per acre, or fractions thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations, may be returned to the person submitting that bid by the RM and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale, MMS will utilize procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS. The RM will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids at the sale. Bidders are referred to 30 CFR 218.155 (49 FR 8602, March 8, 1984).

11. Leasing Maps/Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps/Official Protraction Diagrams which may be purchased from the Pacific Region at the address stated in paragraph 2 of this Notice:

(a) OCS Leasing Maps--Channel Islands Area: (Maps 6A, 6B, 6D, and 6E sell for $1.00 each; Map 6C sells for $2.00.)

6A (revised July 24, 1967)
6B (revised July 24, 1967)
6C (revised April 25, 1977)
6D (approved August 8, 1966)
6E (approved August 8, 1966)

(b) Official Protraction Diagrams: (Sell for $2.00 each)

NI 11-10, San Clemente (revised September 27, 1977)
NH 11-1, Bushnell Knoll (approved December 12, 1979)

12. Description of the Areas Offered for Bids.

(a) Categories of blocks listed:

The lease sale area offered for bids is listed by Leasing Map or Official Protraction Diagram (OPD). One, two, or three categories appear under each map or OPD listed: (1) whole or partial blocks, (2) split blocks, and (3) blocks which comprise bidding units.

(1) Whole or partial blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Whole blocks on maps contain 5,760 acres; whole blocks on OPD's contain 2,304 hectares. Acres and hectares for whole or partial blocks listed in this paragraph may be found on the appropriate map or OPD.

(2) Split blocks are blocks divided into two portions. This occurs where the 3-geographical-mile-line or the boundary of the Channel Islands National Marine Sanctuary intersects a block and divides it into Federal and State portions or into available and withdrawn Federal portions. Each split block listed below represents the available Federal portion and must be bid on separately.

(3) Bidding units are a combination of portions of adjacent blocks. Both parts of a bidding unit must be bid on together.

(b) The following blocks or portions of blocks are offered for bids:

OCS Leasing Map No. 6A, Channel Islands

(1) Whole or Partial Blocks:

55N89W through 55N87W
54N89W through 54N87W
53N89W 1/
53N88W through 53N86W
52N88W 1/
52N87W through 52N81W
51N87W through 51N72W
50N87W through 50N72W
49N87W 1/
49N86W through 49N85W
49N76W through 49N72W
48N86W 1/
48N85W
48N75W through 48N73W
42N82W through 42N81W
41N80W through 41N79W
40N79W through 40N78W
39N77W
39N72W
38N76W through 38N72W
37N75W through 37N72W
36N75W through 36N73W

1/ That portion North and East of a diagonal line from the NW corner to the SE corner.

OCS Leasing Map No. 6A Continued

(2) Split Blocks:

Blocks	Acres	Blocks	Acres	Blocks	Acres
54N82W	3795.99	48N77W	5727.83	41N78W	5038.15
49N84W	5754.03	48N72W	5602.12	40N77W	4776.33
49N83W	4378.54	47N77W	1796.46	40N76W	1262.15
49N81W	4235.61	47N76W	4840.12	39N76W	5758.35
49N80W	3376.41	47N75W	3665.08	39N75W	4741.80
49N79W	3950.41	47N74W	3443.39	39N74W	4693.90
48N84W	4118.04	42N80W	4992.09	39N73W	5749.64
48N78W	1776.75				

(3) Bidding Units:

Blocks	Acres	Total Acres	Blocks	Acres	Total Acres
47N85W 1/	2880.00		42N79W	4129.48	
47N84W	1406.43	4286.43	42N78W	1511.86	5641.34
47N73W	2653.35		40N73W	975.14	
47N72W	996.55	3649.90	40N72W	3410.96	4386.10
43N82W	2614.78				
43N81W	439.80	3054.58			

OCS Leasing Map No. 6B, Channel Islands

(1) Whole or Partial Blocks:

51N71W
51N70W (W½W½)
50N71W through 50N70W
49N71W through 49N70W
49N66W through 49N65W
49N61W
48N67W
48N65W through 48N64W
42N54W through 42N53W
41N54W through 41N53W
40N70W
40N54W through 40N53W
39N68W
39N54W through 39N53W
38N68W
38N55W through 38N53W
37N68W
37N55W through 37N53W
36N68W
36N55W through 36N53W
35N55W through 35N53W
34N52W through 34N40W
33N51W through 33N40W
32N51W through 32N48W
32N42W through 32N40W
31N40W

(2) Split Blocks:

Blocks	Acres	Blocks	Acres	Blocks	Acres
50N62W	5718.74	47N65W	2860.19	34N53W	5005.09
48N71W	3671.80	46N62W	485.64	33N52W	4268.57
48N70W	3690.13	42N62W	243.34	32N47W	4815.71
48N69W	4673.61	42N59W	1567.84	32N44W	2398.91
48N68W	5742.67	40N71W	5043.18	32N43W	4680.61
47N66W	3318.67	34N54W	3624.78	31N41W	5093.28

1/ That portion North and East of a diagonal line from the NW corner to the SE corner.

OCS Leasing Map No. 6B Continued

(3) Bidding Units:

Blocks	Acres	Total Acres	Blocks	Acres	Total Acres
51N63W	2880.00(S½)		32N46W	1370.39	
51N62W	1672.17	4552.17	32N45W	1561.01	2931.40
49N60W	4098.18		31N43W	269.09	
49N59W	378.76	4476.94	31N42W	2971.95	3241.04
47N68W	382.54		30N41W	214.50	
47N67W	1475.54	1858.08	30N40W	4631.63	4846.13
47N64W	2058.49				
47N63W	2919.33	4977.82			

OCS Leasing Map No. 6C, Channel Islands

(1) Whole or Partial Blocks:

34N39W through 34N38W
33N39W through 33N38W
32N39W through 32N37W
31N39W through 31N36W
30N39W through 30N36W
29N38W through 29N36W
28N38W through 28N36W
28N35W 2/
27N38W through 27N35W
27N34W 2/
26N38W through 26N34W
26N33W 2/
25N39W through 25N33W
25N32W 2/
24N39W through 24N32W
24N31W 2/
23N39W through 23N31W
23N30W 2/
22N34W through 22N30W
22N29W 2/
21N33W through 21N29W
21N28W 2/
20N33W through 20N28W
19N32W through 19N28W
18N32W through 18N28W
17N32W through 17N28W
16N32W through 16N28W
15N31W through 15N28W

(2) Split Blocks:

Blocks	Acres	Blocks	Acres
29N39W	5653.79	28N39W	3970.44

OCS Leasing Map No. 6D, Channel Islands

(1) Whole or Partial Blocks:

28N46W
27N46W
26N47W through 26N45W
25N54W
25N49W through 25N40W
24N55W through 24N53W
24N50W through 24N40W
23N55W through 23N53W
23N50W through 23N40W
22N54W
22N50W through 22N48W
22N43W through 22N40W
21N48W
21N43W through 21N40W
20N42W through 20N40W
18N59W through 18N56W
17N58W through 17N55W
16N58W through 16N54W
15N58W through 15N53W
14N60W through 14N52W
13N60W through 13N52W
12N60W through 12N51W
11N60W through 11N50W
10N60W through 10N50W

2/ That portion South and West of a diagonal line from the NW corner to the SE corner.

OCS Leasing Map No. 6D Continued

(2) Split Blocks:

Blocks	Acres
29N40W	1490.64
22N44W	5742.24

Blocks	Acres
20N43W	5393.84
19N43W	1533.67

(3) Bidding Units:

Blocks	Acres	Total Acres
22N47W	4123.51	
21N47W	883.96	5007.47
22N46W	2009.63	
22N45W	3303.07	5312.70

Blocks	Acres	Total Acres
21N44W	3563.68	
20N44W	646.21	4209.89

OCS Leasing Map No. 6E, Channel Islands

(1) Whole or Partial Blocks:

9N60W through 9N58W
8N60W through 8N58W
7N60W through 7N58W
6N60W through 6N58W
5N60W through 5N58W
4N60W through 4N58W

Official Protraction Diagram NI 11-10, San Clemente

(1) Whole or Partial Blocks:

462 through 469
506 through 512
550 through 555
594 through 598
605
638 through 641
648 through 649
682 through 684
691 through 693
723 through 727
734 through 737
767 through 771
778 through 781
811 through 814
821 through 825
857
864 through 869
907 through 913
950 through 957
994 through 1001

(3) Bidding Units:

Blocks	Hectares	Total Hectares
418	121.59	
419	203.22	324.81
420	220.78	
421	238.31	459.09

Blocks	Hectares	Total Hectares
422	255.82	
423	273.30	529.12
424	290.76	
425	308.19	598.95

Official Protraction Diagram NH 11-1, Bushnell Knoll

(1) Whole Blocks:

21 through 29
65 through 73
109 through 117
153 through 161
197 through 205
241 through 249
285 through 293
329 through 337
554 through 556

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale for the following blocks or indicated portions of blocks will be for an initial term of 10 years.

OCS Leasing Map No. 6A, Channel Islands

53N89W
42N82W
36N75W

OCS Leasing Map No. 6B, Channel Islands

39N68W
39N53W
38N68W
38N53W
37N53W
36N53W

OCS Leasing Map No. 6C, Channel Islands

25N39W
24N39W through 24N37W
24N35W
23N39W through 23N35W
22N34W through 22N33W
21N33W through 21N32W
20N33W through 20N32W
19N32W through 19N31W
19N29W through 19N28W
18N32W through 18N28W
17N31W through 17N28W
16N30W through 16N28W
15N29W through 15N28W

OCS Leasing Map No. 6D, Channel Islands

28N46W
27N46W
26N47W through 26N45W
25N54W
25N49W through 25N40W
24N55W through 24N53W
24N47W through 24N40W
23N55W through 23N53W
23N50W
23N46W through 23N40W
22N54W
22N50W
22N46W through 22N40W
21N44W through 21N43W
21N41W through 21N40W
20N44W through 20N43W
20N41W through 20N40W
19N43W
18N58W through 18N56W
17N57W through 17N55W
16N56W through 16N54W
15N55W through 15N53W
14N54W through 14N52W
13N52W
12N51W
11N53W
10N54W through 10N51W

OCS Leasing Map No. 6E, Channel Islands

6N60W
5N60W through 5N58W
4N60W through 4N58W

Official Protraction Diagram NI 11-10, San Clemente

Blocks

422 through 425
466 through 469
511 through 512
605
638 through 639
648 through 649
682 through 684
691 through 693
723 through 727
734 through 737
767 through 771
778 through 781
811 through 814
821 through 825
857
864 through 868
907 through 912
950 through 956
994 through 1001

Official Protraction Diagram NH 11-1, Bushnell Knoll

Blocks

65 through 71
109 through 117
153 through 161
197 through 205
241 through 249
285 through 293
329 through 337
554 through 556

All other leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form MMS-2005 (August 1982), available from the RM, Pacific Region, at the address stated in paragraph 2.

(b) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale.

Stipulation No. 1--Protection of Biological Resources

(a) If the Regional Manager (RM) has reason to believe that biological populations or habitats exist and require protection, the RM shall give the lessee notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements. Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the RM and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones;

(2) A species of limited regional distribution that may be adversely affected by any lease operation.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: 1) relocate the site of such operation so as not to adversely affect the resources identified; 2) modify operations in such a way as not to adversely affect the significant biological populations or habitats deserving protection; or 3) establish to the satisfaction of the RM on the basis of the site specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The RM will review all data submitted and determine, in writing, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the RM has given the lessee written directions on how to proceed.

(b) The lessee agrees that, if any area of biological significance should be discovered during the conduct of any operations on the leased area, the lessee shall report immediately such findings to the RM and make every reasonable effort to preserve and protect the biological resources from damage until the RM has given the lessee directions with respect to its protection.

Stipulation No. 2--Protection of Cultural Resources

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Manager (RM) believes a cultural resource may exist in the lease area, the RM will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RM, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RM for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operations so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RM that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archeological investigation, conducted by an archeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RM. A report on the investigation shall be submitted to the RM for review.

(3) If the RM determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, the RM will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RM has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RM. The lessee shall make every reasonable effort to preserve the cultural resource until the RM has told the lessee how to protect it.

Stipulation No. 3--Operational Controls, Electromagnetic Emissions, and Evacuation

(a) The lessee agrees that, prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in warning areas at all times.

(b) The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, WSMC, the Commander, PMTC, and the Commander, FACSFAC, or other appropriate military agency, to the degree necessary to prevent damage to or unacceptable interference with Department of Defense flight, testing, or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors will be affected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(Paragraph (c) of this stipulation will only be included in leases issued for the following blocks:)

OCS Leasing Map No. 6A, Channel Islands

55N89W through 55N87W
54N89W through 54N87W
54N82W
53N89W through 53N86W
52N88W through 52N81W
51N87W through 51N76W
50N87W through 50N75W
49N87W through 49N83W
49N81W through 49N79W
49N76W through 49N75W
48N86W through 48N84W
48N78W through 48N77W
48N75W through 48N74W
47N85W through 47N84W
47N77W through 47N73W
43N82W through 43N81W
42N82W through 42N78W
41N80W through 41N78W
40N79W through 40N76W
40N73W through 40N72W
39N77W through 39N72W
38N76W through 38N72W
37N75W through 37N72W
36N75W through 36N73W

OCS Leasing Map No. 6B, Channel Islands

40N71W through 40N70W
39N68W
38N68W
37N68W
36N68W

OCS Leasing Map No. 6D, Channel Islands

25N54W
24N55W through 24N53W
23N55W through 23N53W
22N54W
18N59W through 18N56W
17N58W through 17N55W
16N58W through 16N54W
15N58W through 15N53W
14N60W through 14N52W
13N60W through 13N52W
12N60W through 12N51W
11N60W through 11N50W
10N60W through 10N50W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W
8N60W through 8N58W
7N60W through 7N58W
6N60W through 6N58W
5N60W through 5N58W
4N60W through 4N58W

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418 through 425
462 through 469
506 through 512
550 through 555
594 through 598
605
638 through 641
648 through 649
682 through 684
691 through 693
723 through 727
734 through 737
767 through 771
778 through 781
811 through 814
821 through 825
857
864 through 869
907 through 913
950 through 957
994 through 1001

Official Protraction Diagram NH 11-1, Bushnell Knoll

21 through 29
65 through 73
109 through 117
153 through 161
197 through 205
241 through 249
285 through 293
329 through 337
554 through 556

(c) The lessee, recognizing that mineral exploration and exploitation and recovery operations of the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel and appropriate sheltering of personnel not evacuated (appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances) will come into effect upon the order of the Regional Manager (RM) after consultation with the Commander, WSMC, Vandenberg Air Force Base, or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed 72 hours; however, any such suspension may be extended by order of the RM. During such periods, equipment may remain in place.

Stipulation No. 4--Hold Harmless

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center, the Pacific Missile Test Center, or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Stipulation No. 5--Transportation of Hydrocarbon Products

(a) Pipelines will be required: (1) if pipeline rights-of-way can be determined and obtained; (2) if laying of such pipelines is technologically feasible and environmentally preferable; and (3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Pacific Regional Technical Working Group with the participation of Federal, State, and local governments and the industry.

(b) Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Manager.

(c) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Ports and Waterways Safety Act of 1972 as amended (33 U.S.C. 1221, et seq.).

Stipulation No. 6--Wells and Pipelines

(a) Wells. Subsea wellheads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible, in such a manner as to allow commercial trawl gear to pass over the structure without snagging or otherwise damaging the structure or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the Regional Manager. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with the accuracy of at least ±50 feet at 200 miles.

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. In the event that an irregular pipe surface is unavoidable due to the need of valves, anodes, or other structures, those irregular surfaces shall be protected in such a manner as to allow trawl gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 7--Fisheries and Wildlife Training Program

The lessee shall include in its exploration and development plans, submitted under 30 CFR 250.34, a proposed fisheries and wildlife training program for review and approval by the Regional Manager. The training program shall be for all personnel involved in exploration, development, and production operations, and for platform and shorebased supervisors. The purpose of the training program shall be to familiarize persons working on the project of the value of the commercial fishing industry, the methods of offshore fishing operations, the potential conflicts between fishing operations and offshore oil and gas activities, the locations of marine mammal and bird rookery sites in the area, the locations of gray whale and other endangered whale migration routes in the area, the seasonal abundance and sensitivities of these animals to disturbance, and the Federal laws that have been established to protect endangered and threatened species from harassment or injury. Additionally, the lessee shall include in the training program required above, information on the behavior of gray whales migration and how to avoid conflicts with this migration. The program shall be formulated and implemented by qualified instructors.

Stipulation No. 8--Hazardous Waste

(This stipulation will be included in leases issued for the following blocks:)

(a) OCS Leasing Map No. 6B: 34N47W.

(b) OCS Leasing Map No. 6C: 23N34W, 20N31W, 20N30W, 17N29W, 17N28W, 16N30W, 16N29W, 16N28W, 15N30W, 15N29W, 15N28W.

(c) OCS Leasing Map No. 6D: 26N47W, 25N49W, 25N48W, 24N50W.

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall investigate the potential existence of any radioactive waste, munitions, or toxic chemical waste on the lease. This investigation shall consist of examination of data acquired in the course of the shallow geologic hazard survey as conducted in accordance with the current Notice to Lessees issued by the Regional Manager (RM) and examination of the dump site records. This survey shall be over an acceptable grid and shall employ a magnetometer, water depth recorder, and dual side scan sonar or other equipment as determined necessary by the RM. If the results of the survey indicate the presence of such dumped materials, further investigation as to their nature may be required. A report of this investigation shall be included in the shallow geologic hazards survey report.

If the presence of dumped material is established, the lessee shall: (1) locate the site of the operation so as not to disturb the material; (2) conduct the operation in a manner that minimally disturbs the ocean floor (e.g., dynamically positioned drilling vessel); or (3) establish to the satisfaction of the RM, on the basis of further investigation, that disturbance of the material would not result in any adverse effects on the human or marine environments.

Stipulation No. 9--Protection of Important Biological Resources

(The following part of this stipulation will be included on leases issued on blocks listed under (i) and (ii) below:)

(i) OCS Leasing Map No. 6A, Channel Islands

54N82W
52N85W through 52N84W
52N82W
51N85W
51N80W through 51N79W
51N77W through 51N72W
50N86W through 50N84W
50N82W through 50N81W
50N78W through 50N77W
49N83W
49N81W through 49N79W
49N74W
48N84W
48N73W through 48N72W
47N77W through 47N72W
43N82W through 43N81W
42N82W through 42N78W
41N80W through 41N78W
40N79W through 40N76W
40N73W through 40N72W
39N77W through 39N74W
38N76W through 38N72W
37N75W through 37N73W

OCS Leasing Map No. 6B, Channel Islands

51N62W
50N62W
49N66W through 49N65W
49N61W through 49N59W
48N71W through 48N67W
48N65W through 48N64W
47N68W through 47N63W
46N62W
44N54W
37N55W through 37N53W
36N55W through 36N53W
35N54W through 35N53W
34N54W through 34N40W
33N52W through 33N50W
32N51W through 32N50W

(ii) OCS Leasing Map No. 6D, Channel Islands

16N58W through 16N57W
15N58W through 15N55W
13N59W through 13N54W
12N60W through 12N54W
11N60W through 11N55W
10N60W through 10N55W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W
8N59W through 8N58W
7N59W through 7N58W
6N58W

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594 through 598
638 though 641

(a) The lessee shall be required to maintain state-of-the-art oil spill containment and cleanup equipment (in accordance with the requirements of the previously agreed upon U.S. Coast Guard (USCG) Notice No. 5740) onsite and in the vicinity of exploratory drilling and development and production operations. In addition, suitable means of deployment and personnel trained in deployment and use of this equipment must be available. Such deployment for exploration, development, and production operations shall have the capability of immediate initiation of oil spill containment and cleanup.

(The following part of this stipulation will be included in leases issued on blocks listed under (i) above:)

(b) In the case of spills larger than can be contained by equipment on exploration vessels or production platforms, the lessee shall maintain state-of-the-art equipment on the vessels which, based on the proximity to the Channel Islands National Marine Sanctuary, are capable of responding to a request for assistance and being on the scene within 2 to 4 hours of the request if local conditions permit. The lessee shall install on exploration vessels and production platforms real-time monitoring capability to assist the USCG in acquiring meteorological and oceanographic data necessary to make accurate predictions of the trajectory of oil spills. This information shall support oil spill containment and cleanup operations. When a spill greater than 1 barrel occurs, the lessee shall notify the California Office of Emergency Services within 24 hours of such a spill.

(The following part of this stipulation will be included in leases issued on blocks listed under (ii) above:)

(c) Development and production operations will be required to include the capability to automatically detect the loss of oil and gas at any time.

Stipulation No. 10--Testing of Oil Spill Containment Equipment

The lessee shall conduct semiannual full-scale drills at the request of the lessor for platforms and operator-controlled contracted cleanup vessels for deploying equipment in open water to test the equipment and the contingency plan. These drills must involve all primary equipment identified in the oil spill contingency plans as satisfying Outer Continental Shelf Operating Order No. 7. At least two of these drills shall include the primary equipment controlled and operated by the appropriate cooperative. These drills will be unannounced and held under realistic environmental conditions in which deployment and operations can be accomplished without endangering safety of personnel. Representatives of the U.S. Coast Guard, Minerals Management Service, and California Coastal

Commission may be present as observers. The lessor's inspectors will frequently inspect oil and gas facilities where oil spill containment and cleanup equipment are maintained in order to assure readiness.

Stipulation No. 11--Onshore Oil Processing

Any initial processing of oil will be conducted at an onshore facility, if feasible, subject to the granting of necessary permits by local authorities within a reasonable period of time as provided for in State of California law. If after review by local and State authorities these permits cannot be acquired, then the Regional Manager shall determine, in cooperation and participation with the State, what further action needs to be taken in regard to the lessee's development and production plan. Exceptions to the initial onshore processing include standard oil/gas/water separation processes and necessary treatment of oil prior to being pumped from the platform into a pipeline to shore, if pipeline transport is determined practicable.

Stipulation No. 12--Protection of Commercial Fisheries

(a) The lessee, operator(s), subcontractor(s), and all personnel involved in exploration, development, and production operations shall endeavor to minimize conflicts between the oil and gas industry and the commercial fishing industry.

Prior to submitting a plan of exploration or development to the lessor, appropriate oil and gas personnel shall contact potentially affected commercial fishermen or their representatives to discuss potential conflicts with the siting, timing, and methods proposed. Through this consultation the lessee shall assure that, whenever feasible, exploratory and development activities are compatible with seasonal fishing operations and will not result in permanently barring commercial fishing from important fishing grounds.

A discussion of the resolutions reached during this consultation process and a discussion of any unresolved conflicts shall be included in the Plan of Exploration or Development/Production. The lessee shall send a copy of the Plan of Exploration or Development/Production to the fisheries liasion office and the marine extension office at the same time they are submitted to the lessor to allow concurrent review and comment as part of the lessor's plan approval process.

In accordance with 30 CFR 250.34-1(b)(1), copies of such plans are sent to appropriate State agencies, such as the California State Lands Commission, California Department of Fish and Game, and the California Coastal Commission.

(b) In particular, the lessee shall show in the Plan of Exploration or Development/Production crew and supply boat operation routes which will be used to minimize impacts to commercial fishing, marine mammals, and endangered and threatened species. Conflicts foreseen in the planning stages or that develop later shall be resolved whenever feasible and as quickly as possible.

(c) The lessee also shall include in the Plan of Development/Production analyses of the effects of its operations on the allocation and use of local dock space by fishing boats and crew and supply boats. These analyses shall include present (baseline) uses, predicted oil and gas uses which increase the level of demand, and an assessment of individual and cumulative impacts. Conflicts foreseen in the planning stages or that develop later shall be resolved whenever feasible and as quickly as possible.

(d) The lessee shall be required to employ jack-up drilling rigs for drilling exploratory wells in primary commercial fishing trawl grounds as determined by the Regional Manager (RM) when water depths are 275 feet or less. The RM may approve other drilling vessels when geological or bottom conditions prohibit the use of jack-ups. When considering the use of other drilling vessels, the RM will consult with the California Department of Fish and Game to determine the effects of the vessels on commercial fishing.

(e) All activities associated with exploration and development operations shall be conducted to avoid the creation of obstacles to commercial fishing operations. If the RM has reason to believe that the site has not been adequately cleared, additional surveys shall be required to detect the location of any obstacles to commercial fishing.

Stipulation No. 13--Protection of Marine Biota

All drilling muds discharged from exploration and development and production operations must contain only those components approved by the U.S. Environmental Protection Agency in accordance with National Pollutant Discharge Elimination System permits issued for this lease.

When drilling fluid discharges are proposed within 1000 meters of Areas of Special Biological Significance, a National Marine Sanctuary, or other sensitive areas as determined by the Regional Manager, the lessee shall include the results of a drilling fluids dispersion model for anticipated discharges in a Plan of Exploration or Development/Production.

Stipulation No. 14--Disposal of Drilling Discharges

(This stipulation will be included in leases issued on the following blocks:)

OCS Leasing Map No. 6D, Channel Islands

16N58W through 16N57W
15N58W through 15N55W
14N59W through 14N54W
13N59W through 13N54W
12N60W through 12N54W
11N60W through 11N55W
10N60W through 10N55W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W
8N59W through 8N58W
7N59W through 7N58W
6N58W

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506 through 510
550 through 554
594 through 598
638 through 641

The Regional Manager (RM) may require the lessee to modify muds and cutting discharge operations or transport the material to disposal sites approved by the U.S. Environmental Protection Agency (EPA). After consultation with the EPA, the RM shall determine the method of disposal based upon review of the data obtained from the surveys and studies established pursuant to Stipulation No. 1 and from other relevant sources of information.

Stipulation No. 15--Suspension of Operations

(This stipulation will be included in the leases issued for the following blocks in water depths of 400-900 meters:)

OCS Leasing Map No. 6A, Channel Islands

55N89W through 55N87W
54N89W through 54N87W
53N89W through 53N86W
52N88W through 52N83W
51N87W through 51N80W
51N77W through 51N72W
50N87W through 50N72W
49N87W through 49N83W
49N80W through 49N79W
49N76W through 49N72W
48N86W through 48N85W
48N75W through 48N72W
47N85W through 47N84W
43N82W through 43N81W
42N81W through 42N79W
41N80W through 41N78W
40N79W through 40N76W
39N77W through 39N75W
38N76W through 38N74W
37N75W through 37N74W
36N75W through 36N73W

OCS Leasing Map No. 6B, Channel Islands

51N70W
50N71W through 50N70W
49N71W through 49N70W
48N71W through 48N69W
42N54W through 42N53W
41N54W through 41N53W
40N54W through 40N53W
39N54W
38N55W through 38N54W
37N68W
37N55W through 37N54W
36N68W
36N54W
35N53W
34N52W through 34N40W
33N51W through 33N40W
32N51W
32N46W through 32N40W
31N42W through 31N40W
30N41W through 30N40W

OCS Leasing Map No. 6C, Channel Islands

33N39W
32N39W through 32N38W
31N39W through 31N37W
30N39W through 30N36W
29N39W through 29N36W
28N39W through 28N35W
27N38W through 27N34W
26N37W through 26N33W
24N34W through 24N31W
23N34W through 23N30W
22N32W through 22N29W
21N31W through 21N28W
20N31W through 20N28W
19N30W
16N32W through 16N31W

OCS Leasing Map No. 6D, Channel Islands

29N40W
25N49W
24N50W through 24N48W
23N50W through 23N48W
22N49W through 22N47W
21N48W through 21N47W
21N42W
18N59W
17N58W
16N58W through 16N57W
15N56W
14N55W
13N54W through 13N52W
12N54W through 12N51W
11N55W through 11N54W
11N52W through 11N50W
10N55W
10N50W

OCS Leasing Map No. 6E, Channel Islands

8N60W through 8N59W
7N60W through 7N59W
6N59W through 6N58W

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The Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to this lease if such suspension or cessation of operations or activities is necessary to complete operations or activities described in a development and production plan approved by the Regional Manager pursuant to 30 CFR part 250.34.

Stipulation No. 16--Protection of Mackerel Fishery in San Pedro Bay

(This stipulation will be included in leases issued for the following blocks: Leasing Map No. 6B: 34N40W, 33N40W; Leasing Map No. 6C: 34N39W, 34N38W, 33N39W, 33N38W, 32N39W, 32N38W, 32N37W, 31N37W.)

(a) The lessee shall be required to employ jack-up drilling rigs for drilling exploratory wells as determined by the Regional Manager (RM) when water depths are 275 feet or less. The RM may approve other drilling vessels when geological or bottom conditions prohibit the use of jack-ups. When considering the use of other drilling vessels, the RM will consult with the California Department of Fish and Game to determine the effects of the vessels on commercial fishing.

(b) Lessees shall not employ pendant buoys on drilling vessels or shall place pendant buoys at a depth sufficient to avoid conflict with the mackerel fishery on these blocks. Anchor patterns will be designed to minimize displacement area.

Stipulation No. 17--Protection of Air Quality

Lessees shall comply with the following requirements until the Minerals Management Service completes rulemaking procedures concerning air quality regulations applicable to oil and gas operations on the Outer Continental Shelf off California. Any revisions to the current air quality rules will be applied to all exploratory and development/production operations on leases issued as a result of this sale.

(a) For drilling vessels used in exploration activities, the lessee shall apply control technologies for NO_x identified by the Regional Manager (RM) or apply other control measures that result in equivalent emissions limitations. The lessee shall use only those pollution control technologies which can be approved by the U.S. Coast Guard (USCG), the American Bureau of Shipping (ABS), and/or other agencies, as appropriate.

(b) The lessee shall provide the RM with the schedule and location of proposed exploration activities at least 2 months in advance of the activities.

(c) For all plans of development/production, the lessee shall provide, in a manner specified by the RM, an evaluation of the impacts of emissions of NO_x and VOC on onshore concentrations of NO_2 and O_3.

(d) For development/production facilities and for oil transport vessels while attached to the facility, the lessee shall apply control technologies for NO_x and VOC identified by the RM, or apply other control measures that result in equivalent emission limitations. The lessee shall use only those pollution control technologies which can be approved by the USCG, the ABS, and/or other agencies, as appropriate.

(e) The lessee shall install best available control technology, approved by the RM and by the USCG, the ABS, and/or other agencies, as appropriate, to reduce VOC emissions resulting from the transfer of oil from storage facilities to a transport vessel.

14. Information to Lessees.

(a) Information on MOU with DOT on Pipelines. Bidders are advised that the Departments of Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(b) Information on Unitization. Bidders are advised that in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate.

(c) Information on 10-Year Leases. For those blocks identified in paragraph 4(a) as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the Minerals Management Service (MMS) either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(d) Information on Affirmative Action. Revision of Department of Labor regulations of Affirmative Action requirements for government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action forms described in paragraph 5 of this notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action forms.

(e) Information on Navigation Safety. Surface occupancy or other activities which would, in the opinion of the U.S. Coast Guard (USCG), create a hazard to vessel traffic may be restricted or subject to other regulatory measures under the USCG's authority. Such areas include, but are not limited to, vessel safety fairways, precautionary areas, or vessel traffic separation schemes established by the USCG pursuant to the Ports and Waterways Safety Act of 1972 as amended (33 USC 1221, et seq.). These types of routing measures exist and additional ones are presently being considered within the proposed sale area. According to the rules and regulations of the Eleventh Coast Guard District, permanent surface structures will not be permitted in vessel traffic lanes or associated buffer zones. Further, temporary exploratory wells will not be permitted in the lanes and will not be permitted in the buffer zones if the location of the proposed drilling is found by the USCG to pose an unacceptable hazard to navigation.

(f) Information on U.S Army Corps of Engineers Permits. The U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf (OCS) in accordance with section 4(e) of the OCS Lands Act, as amended.

(g) Information on Protection of Marine Mammals.

(1) Activities which result in harm to, or which jeopardize an endangered species, including the gray whale, shall be prohibited by appropriate Federal officials acting pursuant to the Endangered Species Act and the Marine Mammals Protection Act.

(2) Aircraft should operate to reduce effects of aircraft disturbances on seabird colonies and marine mammals, including migrating gray whales, consistent with aircraft safety, at distances from the coastline and at altitudes for specific areas identified by the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service, and the California Department of Fish and Game (CDFG). A minimum altitude of 1,000 feet is recommended near the Channel Islands National Marine Sanctuary to minimize potential disturbances. The CDFG and FWS recommend minimum altitude restrictions over many of the rookeries and colonies.

(h) Information on Protection of Commercial Fishing. The MMS will be in close contact with affected harbor districts in reviewing analyses of the effects of oil and gas operations on the allocation and use of local dock space by fishing boats and crew and supply boats. These analyses will be included in subsequent environmental documents prepared by the MMS.

(i) Information on Protection of Biologically Significant Areas. Prior to invoking Stipulation No. 1, the Regional Manager (RM) will consult with the California Department of Fish and Game on the biological stipulation. Such consultation will address the blocks which will be surveyed and the classes of biota to be considered. Special consideration will be given to the following blocks located on the Tanner and Cortez Banks:

OCS Leasing Map No. 6D, Channel Islands

16N58W through 16N57W
15N58W through 15N55W
14N59W through 14N54W
13N59W through 13N54W
12N60W through 12N54W
11N60W through 11N55W
10N60W through 10N55W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W
8N59W through 8N58W
7N59W through 7N58W
6N58W

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462 through 465
506 through 510
550 through 554
594 through 598
638 through 641

(j) Information on Coastal Fisheries. Lessees proposing operations in areas of coastal fisheries should design their operations to minimize conflict with these fisheries. These measures may include (a) the use of a jack-up drilling vessel, (b) the placement of anchors to lessen area displaced, (c) the removal of ocean floor protrusions or debris, (d) the design of pipelaying operations to minimize ocean floor disturbance, (e) the use of support vessel routes, and (f) the providing to fishermen activity locations in Loran C coordinates.

(k) Information on Water Use. Lessees planning to use water from areas with restricted water supply, such as Santa Barbara or Ventura Counties, shall provide a water use plan which describes the required amounts of water and methods for obtaining it. This plan shall be submitted to the Regional Supervisor with the submission of any Plan of Exploration or Development/Production for review by affected Federal, state, and local government Agencies.

(l) Information on NASA Operations. Lessees are advised that the RM will consult with National Aeronautics and Space Administration when Plans of Exploration are submitted and during the approval process on Applications for Permits to Drill to determine possible conflicts with space shuttle activity. If conflicts exist, lessees on the following blocks may be restricted as to timing of drilling activity and placement of drilling equipment.

OCS Leasing Map No. 6D, Channel Islands

16N57W through 16N56W
15N58W through 15N55W
14N60W through 14N54W
13N60W through 13N54W
12N60W through 12N53W
11N60W through 11N53W
10N60W through 10N52W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N57W
8N60W through 8N57W
7N60W through 7N57W
6N60W through 6N57W
5N60W through 5N57W
4N60W through 4N57W

Official Protraction Diagram NI 11-10, San Clemente

Blocks

418 through 424
462 through 468
506 through 512
550 through 555
594 through 598
638 through 641
682 through 684
723 through 727
767 through 770
811 through 814
857

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

Wm D Bettenberg
Director, Minerals Management Service
William D. Bettenberg

Approved:

Secretary of the Interior
William Clark

SEP 12 1984
Date

[FR Doc. 84-24560 Filed 9-14-84; 8:45 am]
BILLING CODE 4310-MR-C

UNITED STATES
DEPARTMENT OF THE INTERIOR
Minerals Management Service

Outer Continental Shelf
Southern California
Notice of Leasing Systems, Sale 80

Section 8(a)(8)(43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the *Federal Register*:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the blocks to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

1. *Bidding Systems to be Used*. In the Outer Continental Shelf (OCS) Sale 80, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on 30 blocks and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16 2/3-Percent Royalty*. This system is authorized by section 8(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12 1/2-Percent Royalty*. This system is authorized by section 8(a)(1)(A) of the OCSLA. It has been chosen for certain blocks proposed for Southern California (Sale 80) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. The Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased Federal blocks were considered to enhance orderly development of each field.

b. Blocks in deeper water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are as follows:

1. Bonus Bidding with a 16 2/3-Percent Royalty

OCS Leasing Map No. 6A, Channel Islands

40N73W through 40N72W
39N72W
37N72W
54N82W

OCS Leasing Map No. 6B, Channel Islands

51N63W through 51N62W
50N62W
49N66W through 49N65W
49N61W through 49N59W
40N71W
34N54W

OCS Leasing Map No. 6C, Channel Islands

34N38W
34N39W

OCS Leasing Map No. 6D, Channel Islands

14N57W
13N56W
11N60W
10N60W through 10N59W

OCS Leasing Map No. 6E, Channel Islands

9N59W
9N58W
8N58W

Official Protraction Diagram No. NI 11-10, San Clemente

418, 419, 462, 506, 507

2. Bonus Bidding with a 12 1/2-Percent Royalty.

All remaining unleased blocks in this sale.

Director, Minerals Management Service
William D. Bettenberg

Approved:

Secretary of the Interior
William Clark

SEP 12 1984

[FR Doc. 84-24573 Filed 9-14-84; 8:45 am]
BILLING CODE 4310-MR-C

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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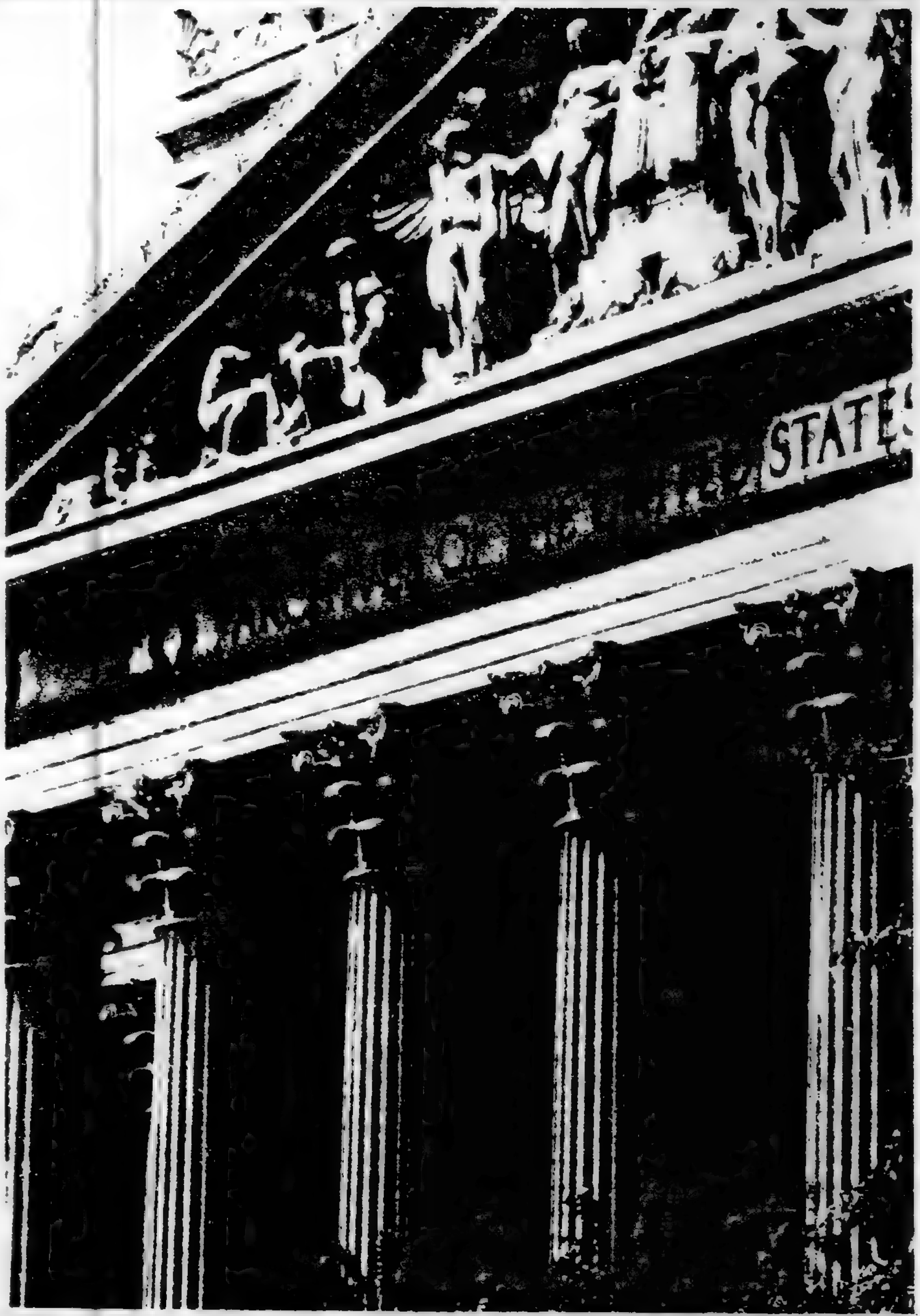

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Reporting and Recordkeeping Requirements
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Presidential Documents

Title 3—

The President

Memorandum of September 6, 1984

Delegation of Authority for Report Containing a Determination Concerning El Salvador

Memorandum for the Secretary of State

By authority vested in me as President by the Constitution and statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to you the functions conferred upon me by Public Law 98–396 (Second Supplemental Appropriations Act, 1984) in the "General Provisions" of Chapter XII, insofar as they relate to El Salvador.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 6, 1984.

[FR Doc. 84–24816
Filed 9–14–84; 4:01 pm]
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Presidential Documents

Executive Order 12487 of September 14, 1984

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and laws of the United States of America, and in accordance with section 2207 of the Deficit Reduction Act of 1984 (Public Law 98–369), it is hereby ordered as follows:

Section 1. Executive Order No. 12456 of December 30, 1983, as amended, is further amended by replacing Schedule 8 attached thereto with the corresponding new Schedule 8 attached hereto.

Sec. 2. The adjustments of rates of pay made by section 1 of this Order are effective on the first day of the first applicable pay period beginning on or after January 1, 1984.

Ronald Reagan

THE WHITE HOUSE,
September 14, 1984.

Schedule 8 - JUDICIAL SALARIES

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Voluntary Expedited Appeals Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Extension of expiration date of interim regulations regarding voluntary expedited appeals procedures.

SUMMARY: The Merit Systems Protection Board is extending by 90 days the expiration date of interim regulations concerning its Voluntary Expedited Appeals Procedures. The regulations will now expire December 17, 1984. The extension is being made to allow further time to evaluate this pilot program. Regulations were first published on March 18, 1983 at 48 FR 11399–11403 and were extended through September 18, 1984 by amended regulations published June 29, 1984 at 49 FR 26697–26701.

EFFECTIVE DATES: September 18, 1984 for 90 days through December 17, 1984.

ADDRESS: Paul E. Trayers, Legislative Counsel, Office of the Legislative Counsel, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Paul E. Trayers, Legislative Counsel, (202) 653–7175.

Dated: September 13, 1984.

For the Board.

Herbert E. Ellingwood,
Chairman.

[FR Doc. 84–24584 Filed 9–17–84; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 629 and 630

Job Training Partnership Act; Maximum and Minimum Limitations on Expenditures

AGENCY: Employment and Training Administration, Labor.

ACTION: Interpretations.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is issuing five interpretations of the Job Training Partnership Act (JTPA) regulations, relating to maximum and minimum limitations on expenditures of JTPA funds, to provide guidance to JTPA recipients and to foster compliance with the Act. Public comments are being invited on the interpretations.

DATES: Through June 30, 1984, interpretations by the States on the issues discussed below are acceptable, to the extent that the interpretations are consistent with JTPA and applicable rules and regulations. The below interpretations of the Employment and Training Administration (ETA) of the Department of Labor (DOL) on the issues discussed below shall be effective on and after July 1, 1984. However, written comments on ETA's interpretations are invited from the public. Written comments must be received on or before October 18, 1984.

ADDRESS: Send written comments to: Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, Room 6402—Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213, Attention: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo. Telephone: 202–376–6093.

SUPPLEMENTARY INFORMATION:

Introduction

The Job Training Partnership Act (JTPA), 29 U.S.C. 1501 *et seq.*, was enacted to establish programs to prepare youth and unskilled adults for entry into the labor force; and afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment. JTPA Sec. 1, 29 U.S.C. 1501; *see* 20 CFR 626.1(a). To effectuate the purposes of JTPA, funds are made available to States and to service delivery areas (SDAs) within the States. The Secretary of Labor is authorized to prescribe such rules and regulations under JTPA as the Secretary deems necessary. JTPA section 169, 29 U.S.C. 1579. The JTPA regulations are published at 20 CFR Parts 626–638 and 684. *See also* 29 CFR Parts 31 and 32.

Questions

The Employment and Training Administration (ETA) of the Department of Labor (DOL) is issuing interpretations of JTPA regulations which apply to five related questions, raised by States and service delivery areas (SDAs), concerning the application of maximum and minimum limitations contained in JTPA. These questions are:

1. Does the 15 percent limitation for administrative expenditures in 20 CFR 629.39(a)(2) apply against total expenditures or total availability for programs under Title II–A of JTPA (29 U.S.C. 1601 *et seq.*)?

2. Does the 70 percent requirement for the expenditure of funds for training under title II–A of JTPA as required by 20 CFR 629.39(c)(1) apply against total expenditures or total availability?

3. Does the requirement in 20 CFR 630.1(b)(1) that 40 percent of the JTPA Title II–A funds be expended for services to eligible youth apply against total expenditures or total availability for Title II–A (see JTPA Sec. 203(b)(1), 29 U.S.C. 1603(b)(1))?

4. Do the matching fund requirements contained in JTPA section 304 (29 U.S.C. 1654) apply to total funds expended or available under that section?

5. What period(s) of time will be used in determining compliance with the four above-described requirements?

Interpretations

ETA proposes the following interpretations in response to the questions posed above (the answers to Question No. 5 are contained in the answers to Questions Nos. 1–4):

1. Fifteen Percent Limitation on Administrative Costs (20 CFR 629.39(a)(2))

ETA will review compliance with the 15 percent limitation on administrative costs on this basis: 15 percent of the amount of each year's total allotment to each SDA for programs under title II–A of JTPA (29 U.S.C. 1601 *et. seq.*). The time period to be used in determining compliance with this requirement shall be the two years of the approved local job training plan. This policy for determining compliance with the 15 percent limitation shall not limit the authority contained in JTPA section 167(b) for recipients to expend funds during the program year for which the funds are obligated and the two succeeding program years. 29 U.S.C. 1571(b). The State shall be responsible for determining appropriate action to be taken if this requirement is not met in accordance with §§ 629.43(b) and 629.44 of the regulations. 20 CFR 629.43 and 629.44.

Example: An SDA receives $100,000 for first Program Year and $200,000 for the second Program Year covered by an approved two-year local job training plan. The maximum approved two-year local job training plan. The maximum amount available to be expended for administration during the two years of the job training plan would be $45,000. At the end of the two-year period, there are $5,000 in unexpended administrative funds from the second year of the two-year period. The $5,000 may be carried forward and be expended for administration during the two-year period of the next approved local job training plan. At the close of the first two-year plan, funds unexpended from the first year of the plan are available to be expended only during the *first* year of the next two-year plan. This is consistent with statutory language allowing three years for the expenditure of each year's appropriation. JTPA section 161(b), 29 U.S.C. 1571(b). The maximum amount available for administrative costs in the second two-year local job training plan would be the $5,000 from the second year of the first plan, plus 15 percent of the allotments for the two Program Years in the second plan. Funds carried forward from one approved local job training plan to the next would have to be accounted for specifically to assure compliance with this requirement and § 629.35(a) of the JTPA regulations.

2. Seventy Percent Requirement for Expenditure of Training Funds (20 CFR 629.39(c)(1))

ETA will review compliance with the 70 percent requirement for the expenditure of training funds on this basis: 70 percent of each year's total allotment to each SDA for programs under Title II–A of JTPA. This requirement should be adjusted to account for any waivers granted pursuant to JTPA section 108(c) (29 U.S.C. 1518(c)). The time period to be used in determining compliance with this requirement shall be the two years of the approved local job training plan. In accordance with §§ 629.43(b) and 629.44 of the regulations, the State shall be responsibile for determining appropriate actions to be taken if this requirement is not met. 20 CFR 629.43(b) and 629.44.

3. Forty Percent Requirement for Services to Eligible Youth (20 CFR 630.1(b)(1))

ETA will review compliance with the 40 percent requirement for expenditure for eligible youth of funds under Title II–A of JTPA on this basis: 40 percent of each year's total allotment to each SDA. This requirement should be adjusted to account for any change in the 40 percent in accordance with JTPA section 203(b)(2) (29 U.S.C. 1603(b)(2)). The time period to be used in determining compliance with this requirement shall be the two years of the approved local job training plan. In accordance with §§ 624.43(b) and 629.44 of the regulations, the State shall be responsible for determining appropriate actions to be taken if this requirement is not met. 20 CFR 624.43(b) and 629.44.

4. Matching Funds for Employment and Training Assistance to Dislocated Workers (JTPA section 304)

The matching funds required by JTPA Sec. 304 (29 U.S.C. 1654) shall be provided for all Federal formula funds, required to be matched, expended pursuant to JTPA Title III (29 U.S.C. 1651 *et seq.*). The time period to be used by ETA to review compliance with this requirement shall be the three years that JTPA provides for expenditure of funds allocated under JTPA. *See* JTPA section 161(b), 29 U.S.C. 1571(b).

Signed at Washington, D.C., this 11th day of September 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 84-24704 Filed 9-17-84; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 83F-0336]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N,N'*-dioleoylethylenediamine in supported films made from ionomeric resins and ethylene vinyl acetate copolymers to be used in contact with food. This action responds to a petition filed by E.I. duPont de Nemours & Co.

DATES: Effective September 18, 1984; objections by October 18, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 31, 1983 (48 FR 50167), FDA announced that a petition (FAP 3B3755) had been filed by E.I. duPont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) and § 175.320 *Resinous and polymeric coatings for polyolefin films* (21 CFR 175.320) be amended to provide for the safe use of *N,N'*-dioleoylethylenediamine in supported films made from ionomeric resins and ethylene vinyl acetate copolymers to be used in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. In § 175.300(b)(3)(xxv) by alphabetically inserting a new item in the list of substances to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *
(3) * * *
(xxv) * * *

N, N'-Dioleoylethylenediamine (CAS Reg. No. 110–31–6) for use only in ionomeric resins complying with § 177.1330 of this chapter and in ethylene vinyl acetate copolymers complying with § 177.1350 of this chapter at a level not to exceed 0.0085 milligram per square centimeter (0.055 milligram per square inch) in the finished food-contact article.

* * * * *

2. In § 175.320(b)(3)(iii) by alphabetically inserting a new item in the list of substances to read as follows:

§ 175.320 Resinous and polymeric coatings for polyolefin films.

* * * * *

(b) * * *
(3) * * *
(iii) * * *

N,N'-Dioleoylethylenediamine (CAS Reg. No. 110–31–6) for use only in ionomeric resins complying with § 177.1330 of this chapter and in ethylene vinyl acetate copolymers complying with § 177.1350 of this chapter at a level not to exceed 0.0085 milligram per square centimeter (0.055 milligram per square inch) in the finished food-contact article.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before *October 18, 1984* submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and anaysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective September 18, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–24587 Filed 9–17–84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Internal Revenue Practice; Statement of Procedural Rules; Miscellaneous Amendments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of statement of procedural rules.

SUMMARY: This document contains miscellaneous amendments to the Statement of Procedural Rules (SPR). The SPR sets forth the procedural rules of the Internal Revenue Service for all taxes administered by the Service as well as certain rules that apply to the Bureau of Alcohol, Tobacco and Firearms. These amendments update the SPR and make certain changes in the Service's procedure, including amendments necessitated by recent legislation.

DATE: The amendments are effective September 18, 1984.

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the SPR (26 CFR Part 601), issued under the authority contained in 5 U.S.C. 301 and 552. Some amendments update the SPR to reflect changes in nomenclature. The United States Court of Claims is now the United States Claims Court and the Office of International Operations of the Internal Revenue Service is now the Foreign Operationals District. The other amendments are described in the order of the sections of the SPR being amended.

Section 601.103 Summary of General Tax Procedures.

Section 3405, added to the Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), provides special rules for withholding taxes from payments of pensions and annuities. Generally, taxes will be withheld unless the recipient elects otherwise. Section 601.103 of the SPR is amended to conform with this new section of the Code.

Section 601.104 Collection functions.

The amendments to this section of the SPR also reflect revisions to the Code made by TEFRA. An amendment to paragraph (a)(3) relating to payments of estimated tax sets forth new minimum amounts of tax liability which an individual must expect to incur in taxable years after 1981 before the individual is required to make estimated tax payments. In addition, references to the declaration of estimated tax, which was eliminated by TEFRA, are removed from this section.

For taxable years beginning after December 31, 1982, a corporation may no longer elect to pay tax in installments. Paragraph (b) is amended to reflect that a corporation which requests an extension of time for filing an income tax return must pay the total amount of its properly estimated tax by the original due date of the return.

Paragraph (c)(2) relating to collection by levy is revised to include the taxpayer safeguard of amended section 6331(d). In the case of a levy made after December 31, 1982, a taxpayer must be notified in writing of intent to levy on any property (not just salary or wages) unless a determination is made that collection is in jeopardy. Paragraph (c)(3) is revised to correspond with section 6325(a), as amended by TEFRA. Under that section, the issuance of a certificate of release of lien is required within 30 days after it is determined that certain conditions are met. Finally, an illustrative list of the civil penalties enacted by TEFRA to promote taxpayer compliance is added to paragraph (c)(4) relating to penalties.

Section 601.106(a)(1)(iii) Appeals of penalties after assessment.

Amendments are made to paragraph (a)(1)(iii) of § 601.106 in order to incorporate changes in penalty provisions made by the Miscellaneous Tax Act of 1979, the Economic Recovery Tax Act of 1981, and the Tax Equity and Fiscal Responsibility Act of 1982. Prior law provided for abatement of certain penalties if the position taken by a taxpayer was supported by "reasonable cause." Abatement of some penalties is now also allowed if there is a showing by the taxpayer of "reasonable basis." Accordingly, subdivision (*a*) is amended to conform the appeals procedure with the various legislation. In addition, current subdivision (*e*) is removed to reflect the repeal of former section 6658 which provided a penalty for a violation of section 6851 (relating to termination of the taxable year).

The penalty imposed by section 6700 for promoting abusive tax shelters is subject to the procedural rules of section 6703 which allow a taxpayer to protest such penalty by paying a prescribed percentage and filing a claim for a refund. Thus, new subdivision (*d*) is added to exclude this penalty from the appeal procedure.

Section 601.401 Collection of employment taxes.

Federal employment taxes, which are collected by means of returns and by withholding, generally must be deducted and withheld by employers from wages or compensation (including tips) paid to employees. Cross-references to the special rules relating to tips in §§ 31.3102-3 and 31.3402(k)-1 are added to paragraph (a)(3) of § 601.401, as amended May 9, 1984 (49 FR 19648).

Section 601.403 Miscellaneous excise taxes collected by return.

The Crude Oil Windfall Profit Tax Act of 1980 enacted new Chapter 45 of the Code, imposing an excise tax on the windfall profit from domestically produced crude oil. New paragraph (a)(11) is added to § 601.403 to include this tax in the list of miscellaneous excise taxes. The rules for filing a return with respect to a windfall profit tax liability and a cross-reference to the procedures for depositing the tax are added to paragraphs (c)(1) and (c)(3) respectively of § 601.403.

Section 601.805(b)(1) Tax counseling for the elderly, miscellaneous administrative provisions.

In the Treasury Department 1981 Appropriation, the Service was authorized to advance funds to sponsors of Tax Counseling for the Elderly (TCE) programs in order to finance operations. Such authority applied only to TCE programs operated under the 1981 appropriation. Because under the current Treasury department appropriation the Service does not have statutory authority to make such advance payments, references to them are removed from § 601.805(b)(1)

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for procedural rules. Accordingly, the amendments to the Statement of Procedural Rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these amendments to the Statement of Procedural Rules is Michel A. Dazé of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the amendments both on matters of substance and style.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Taxes.

Adoption of Amendments to Statement of Procedural Rules

Accordingly, 26 CFR Part 601 is amended as follows:

PART 601—[AMENDED]

Paragraph 1. Section 601.101(a) is amended by revising the fifth and sixth sentences to read as set forth below.

§ 601.101 Introduction.

(a) *General.* * * * The Director, Foreign Operations District, administers the internal revenue laws applicable to taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations, provided the books and records of those taxpayers are located outside the United States. For purposes of these procedural rules any reference to a district director or a district office includes the Director, Foreign Operations District, or the District Office, Foreign Operations District, if appropriate. * * *

* * * * *

Par. 2. Section 601.103 is amended as follows:

1. The fifth sentence of paragraph (a) is revised to read as set forth below.
2. Paragraph (c)(1) is amended by removing from the fourth sentence the words "of International Operations" and adding instead the words ", Foreign Operations District".
3. Paragraph (c)(3) is amended by removing from the fourth sentence the words "Court of" and by adding after "Claims" the word "Court".

§ 601.103 Summary of General Tax Procedures.

(a) *Collection procedure.* * * * In the case of wages earners, annuitants, pensioners, and nonresident aliens, the income tax is collected in large part through withholding at the source. * * *

* * * * *

Par. 3. Section 601.104 is amended as follows:

1. Paragraph (a)(3) is revised to read as set forth below.
2. Paragraph (b) is revised to read as set forth below.

3. A new sentence as set forth below is added after the first sentence in paragraph (c)(2).

4. The eighth sentence of paragraph (c)(3) is revised and a new sentence is added after the eighth sentence to read as set forth below.

5. Paragraph (c)(4) is amended by adding in the first sentence the words "(or a minimum penalty)" after the words "amount of tax" and by adding after the fourth sentence a new sentence as set forth below.

§ 601.104 Collection functions.

(a) *Collection methods.* * * *

(3) *Payments of estimated tax.* Any individual who may reasonably expect to receive gross income for the taxable year from wages or from sources other than wages, in excess of amounts specified by law, and who can reasonably expect his or her estimated tax to be at least $200 in 1982, $300 in 1983, $400 in 1984, and $500 in 1985 and later is required to make estimated tax payments. Payments of estimated tax are applied in payment of the tax for the taxable year. A husband and wife may jointly make a single payment which may be applied in payment of the income tax liability of either spouse in any proportion they may specify. For taxable years ending on or after December 31, 1955, the law requires payments of estimated tax by certain corporations. See section 6154 of the Code.

* * * * *

(b) *Extension of time for filing returns*—(1) *General.* Under certain circumstances the district directors or directors of service centers are authorized to grant a reasonable extension of time for filing a return or declaration. The maximum period for extensions cannot be in excess of 6 months, except in the case of taxpayers who are abroad. With an exception in the case of estate tax returns, written application for extension must be received by the appropriate director on or before the date prescribed by law for filing the return or declaration.

(2) *Corporations.* On or before the last date prescribed by law for filing its income tax return for taxable years beginning before January 1, 1983, a corporation may obtain an automatic 3-month extension of time for filing the income tax return by filing Form 7004 and paying an estimated amount not less than would be required as the first installment of tax due should the corporation elect to pay the tax in installments. Form 7005 should be used, when an additional extension of time is requested by a corporation that previously received an automatic 3-month extension. For taxable years beginning after December 31, 1982, a corporation may no longer elect to pay tax in installments. On or before the last date prescribed by law for filing its income tax return for taxable years beginning after 1982, a corporation in such years may obtain an automatic 3-month extension of time for filing its income tax return by filing Form 7004 and paying the full amount properly estimated as its tax liability.

(3) *Individuals.* On or before the date prescribed for the filing of the return of an individual, such individual may obtain an automatic 4-month extension of time for filing his or her return by filing Form 4868 accompanied by payment of the full amount of the estimated unpaid tax liability.

(c) *Enforcement procedure.* * * *

(2) *Levy.* * * * However, unless collection is in jeopardy, the taxpayer must be furnished written notice of intent to levy no fewer than 10 days before the date of the levy. * * *

(3) *Liens.* * * * A certificate of release of lien will be issued not later than 30 days after the taxpayer furnishes proper bond in lieu of the lien, or 30 days after it is determined that the liability has been satisfied, has become unenforceable by reason of lapse of time, or has been discharged in bankruptcy. If a certificate has not been issued and one of the foregoing criteria for release has been met, a certificate of release of lien will be issued within 30 days after a written request by a taxpayer, specifying the grounds upon which the issuance of release is sought.

(4) *Penalties.* * * * There are also civil penalties for filing false withholding certificates, for substantial understatement of income tax, for filing a frivolous return, for organizing or participating in the sale of abusive tax shelters, and for aiding and abetting in the understatement of tax liability. * * *

* * * * *

Par. 4. Section 601.106 is amended as follows:

1. The fourth sentence of paragraph (a)(1)(i) is amended by removing the words "of International Operations" and adding instead ", Foreign Operations District".

2. The words "or reasonable basis" are added in paragraph (a)(1)(iii)(*a*) after the worrds "reasonable cause".

3. Paragraph (a)(1)(iii)(*e*) is removed.

4. Paragraph (a)(1)(iii)(*d*) is redesignated paragraph (a)(1)(iii)(*e*), and such paragraph as redesignated is amended by removing the final word "and" and changing the ending punctuation from a semicolon to a period.

5. New paragraph (a)(1)(iii)(*d*) as set forth below is added after paragraph (a)(1)(iii)(*c*).

6. Paragraph (d)(2)(iii) is amended by removing the words "Court of Claims." and by inserting after "or U.S." the words "Claims Court."

7. The second sentence of paragraph (f)(4) is amended by removing the words "of International Operations" and adding instead ", Foreign Operations District,". The words "or Office of International Operations" and the commas appearing before and after the words "service center" are removed from the first sentence of paragraph (f)(5) and the words "(including the Foreign Operations District) or" are added instead after the words "district office".

§ 601.106 Appeals functions.

(a) *General.* (1)(i) * * *

(iii) * * *

(*d*) The penalty provided in section 6700 for promoting abusive tax shelters (because the penalty is subject to the procedural rules of section 6703 which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty); and

* * * * *

§ 601.202 [Amended]

Par. 5. Section 601.202 is amended as follows:

1. Paragraph (c)(4) is amended by removing the words ", the Director of International Operations," and adding instead "(including the Director, Foreign Operations District),".

2. Paragraph (c)(6) is amended by removing the words "of International Operations" and adding instead ", Foreign Operations District".

§ 601.203 [Amended]

Par. 6. Section 601.203 is amended as follows:

1. Paragraph (a)(1) is amended by removing from the second sentence "Office of International Operations" and adding instead "District Office, Foreign Operations District" and by removing from the fourth sentence ", the Director of International Operations, the Assistant Director of International Operations," and adding instead "(including the District Director and Assistant District Director, Foreign Operations District),".

2. Paragraph (c)(3) is amended by removing from the first sentence ", Director of International Operations, Assistant Director of International Operations" and adding instead "(including the District Director and

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Assistant District Director, Foreign Operations District)", and by removing from the second sentence "or Director of International Operations" and adding instead "(including the Director, Foreign Operations District)".

§ 601.206 [Amended]

Par. 7. Section 601.206(c) is amended by removing "Office of International Operations" and adding instead "District Office, Foreign Operations District".

Par. 8. Section 601.401 is amended by removing the second sentence from paragraph (a)(3) and inserting in its place the revised text as set forth below.

§ 601.401 Employment taxes.

(a) *General.* * * *

(3) *Collected methods.* * * * Employee tax must be deducted and withheld by employers from "wages" or "compensation" (including tips reported in writing to employer) paid to employees, and the employer is liable for the employee tax whether or not it is so deducted. For special rules relating to tips see §§ 31.3102–3 and 31.3402 (k)–1.

* * * * *

Par. 9. Section 601.403 is amended as follows:

1. Paragraph (a) is amended by adding at the end thereof new paragraph (11) as set forth below.
2. Paragraph (c)(1) is amended by adding at the end thereof two new sentences as set forth below.
3. Paragraph (c)(3) is amended by adding in the first sentence after "hydraulic mining," the words "domestically produced crude oil," and by adding before the final sentence a new sentence as set forth below.

§ 601.403 Miscellaneous excise taxes collected by return.

(a) *General.* * * *

(11) *Domestic crude oil.* Chapter 45 of the Code imposes an excise tax on the windfall profit from domestically produced crude oil, except exempt oil.

* * * * *

(c) *Collection of tax*—(1) *Imposed taxes.* * * * Each quarter in which there is a windfall profit tax liability for the production of domestic crude oil, a return must be filed by purchasers of crude oil who are required to deduct and withhold the tax, operators and qualified disbursers who choose to deduct and withhold the tax, and producers of crude oil on which no withholding is required. Each producer of crude oil who did not have enough tax withheld during the calendar year must file an annual return by May 31 following the calendar year during which the oil was removed.

* * * * *

(3) *Depository procedures.* * * * The procedures for depositing windfall profit tax are contained in § 51.4995–3 and Temporary Excise Tax Regulatons under the Crude Oil Windfall Profit Tax Act of 1980, § 150.4995–3. * * *

* * * * *

§ 601–506 [Amended]

Par. 10. Section 601.506(b)(2) is amended by removing from the third sentence the words "Court of Claims," and by adding after the words "in the U.S." the words "Claims Court,".

§ 601.702 [Amended]

Par. 11. Section 601.703 is amended as follows:

1. The words "of the Office of International Operations" are removed from the second sentence of paragraph (c)(7)(i) and the words," Foreign Operations District" are added instead.
2. Paragraph (g) is amended by removing from the first sentence the words "the Director of the Office of International Operations," and by adding after "District Directors" and before the comma the words "(including the Director, Foreign Operations District)". Paragrah (g) is also amended by removing from the National Office list of mailing addresses the words "Office of International Operations" and adding instead "Foreign Operations District".

§ 601.805 [Amended]

Par. 12. Paragraph (b)(1) of § 601.805 is amended by removing the second sentence and by removing from the third sentence the words "these two circulars" and adding instead "this circular".

These amendments to the Statement of Procedural Rules are issued under the authority contained in 5 U.S.C. 301 and 552.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 84–24575 Filed 9–17–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

Correction

In FR Doc. 84–17104 appearing on page 26225 in the issue of Wednesday, June 27, 1984, make the following correction: In the third line from the bottom, "more" should be removed.

BILLING CODE 1505–01–M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to be consistent with the Department of Labor revised regulations under the Service Contract Act of 1965, as amended. While a number of minor editorial revisions have been made throughout that part of the Postal Contracting Manual dealing with the Service Contract Act, significant changes are described below in the Explanation of Changes.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245–4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 84–4, dated August 31, 1984.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorportion by reference.

Explanation of Changes

1. PCM 12–902.3—A reference is added for guidance on the various types of contracts covered by the act.
2. 12–902.4—Canton Island is deleted from coverage (see 29 CFR 4.112(a)). A new paragraph (b) is added to reflect the "significant or substantial" standard DOL uses to determine whether work is "performed" in the United States (29 4.112(b)(2)). The paragraph that was 12–902.4 is now 12–904.4(a).

3. 12–902.6—The present provision is designated as paragraph (a). Paragraph (b) is added to reflect 29 CFR 4.114(b), which explicitly warns contractors that they will be held liable for violations of the act by their subcontractors.

4. 12–903(3)—"Section 22" is replaced with "section 10721" to reflect recodification of the Interstate Commerce Act.

5. 12–903(8)—"Services" is changed to "contract" to conform with DOL's interpretation that the act applies to contracts and not separate service-contract specifications (48 FR 49742–43). The remainder of the change harmonizes with the "significant or substantial" test (see item 2 above).

6. 12–903(9)—New subsection (iii) is added to reflect 29 CFR 4.123(e), exempting automated data processing, scientific, medical, office, and business machinery repair and calibration from coverage in limited circumstances.

7. 12–904(2)—The title of 29 CFR Part 4, Subpart B, is changed to "Wage Determination Procedures." The title of the subpart relating to fringe benefits is changed to "Compensation Standards" located at 29 CFR Part 4, Subpart D.

8. 12–905a—The clause for service contracts in excess of $2,500 appears only in Form 7382, Additional General Provisions for Service Contracts. Form 7382 has been revised to include the text of 29 CFR 4.6. Use the Form 7382, Additional Contract Provisions for Service Contracts, April 1984, included in Section 16, immediately when applicable. Previous editions of Form 7382 are obsolete and must be destroyed.

9. 12–905b—The section is revised to incorporate a new Labor Standards clause for service contracts not in excess of $2,500 (see 29 CFR 4.6). The new clause (August 1984) will be incorporated in procurement forms as they are reprinted. Pending incorporation, contracting officers must substitute the August 1984 clause for previous editions of the clause in solicitations for service contracts of $2,500 or less.

10. 12–906.2(a)—The section is revised in accordance with 29 CFR 4.4(a)(1) to specify when wage determinations must be requested and when late determinations are to be incorporated into solicitations and contracts.

11. 12–906.2(c)—"Furnished *for* the same location" is changed to "furnished *in* the same location." This change, consistent with 29 CFR 4.4(c), modifies the existing requirement in those cases where a successor contractor need not be in the same location (29 CFR 4.163(i)). "Office of Special Wage Standards" is changed to "Wage and Hour Division."

12. 12–906.2(d)—"Office of Special Wage Standards" is changed to "Wage and Hour Division," and rules are added to reflect 29 CFR 4.4(f), concerning contracts subject to the act on which more than five service employees are contemplated.

13. 12–906.2 (e) and (f)—New paragraphs incorporate the two-step procurement procedure which DOL adopted at 29 CFR 4.3 and 4.4 for locality determinations when the place of performance of a service contract is unknown at the time of solicitation.

14. 12–906.2(g)—New paragraph reflects 29 CFR 4.4(g).

15. 12–906.3(a)—"Office of Special Wage Standards" is changed to "Wage and Hour Division." The rule concerning action on responses to SF 98 notices received from DOL less than 10 days before the opening of bids or the date established for the initial receipt of proposals is deleted (reflecting 29 CFR 4.5(a)(1)).

16. 12–906.3(b)—Procedures after award are revised to reflect 29 CFR 4.5(b)(1), 4.4(g), 4.5(c) (1) and (2), and 4.5(d).

17. 12–906.5—"$2,500" is changed to "$10,000" to reflect the changes in 29 CFR 4.8, whereby SF 99 need not be filed for contracts with a value less than $10,000.

18. 16–7382—The revised Form 7382 (April 1984) is illustrated.

19. 18–601—A new section is added to clarify that the Service Contract Act does not apply to professional architect-engineer contracts.

20. 22–704—This section is revised to add a clause for cleaning services contracts involving five or fewer service contract employees to provide for equitably adjusting the contract price where award is necessary before receipt of wage determination.

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-24500 Filed 9-17-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-2670-4]

Revisions to North Dakota PSD Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is approving revisions to North Dakota's Prevention Significant Deterioration (PSD) regulation submitted on October 28, 1982, with supplementary information submitted on July 5, 1983; March 8, 1984 and June 20, 1984. These revisions are necessary so that the regulations will be consistent with the changes to the EPA PSD regulations published August 7, 1980. The purpose is so that North Dakota can continue to administer the PSD program.

DATES: This action will be effective November 19, 1984, unless notice is received by October 18, 1984, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency,
Region VIII, Air Programs Branch,
1860 Lincoln Street, Denver, Colorado
80295

Environmental Protection Agency,
Public Information Reference Unit,
Waterside Mall, 401 M Street, SW.,
Washington, D.C. 20460

The Office of the Federal Register, 1100
L Street, NW., Room 8401,
Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street Denver, Colorado 80295, (303) 837-6131.

SUPPLEMENTARY INFORMATION: EPA approved North Dakota regulations for Prevention of Significant Deterioration (PSD) on November 2, 1979 (44 FR 63103). Chapter 33–15–15 of the North Dakota Air Pollution Control Regulations, the PSD regulation, has been revised to be consistent with the changes to the EPA regulations published on August 7, 1980 (40 CFR 51.24).

EPA was initially concerned that the definition of "major stationary source" was inconsistent with EPA's definition, but this concern was answered by supplementary information submitted by the State on July 5, 1983. The revision is being approved with the understanding that the definition of "major stationary source" has the same affect as EPA's definition.

EPA advised the State of certain additional inconsistencies between the North Dakota and EPA regulations. These inconsistencies included the definition of "high terrain" and the notification of governors of all affected states for innovative control technology waivers. Supplemental information was submitted by the State on March 8, 1984, which resolves these inconsistencies.

Under this program, North Dakota will be issuing permits and establishing emission limitations that may be affected by the recent judicial review of stack height regulations promulgated by EPA on February 8, 1982 (47 FR 5864). For this reason, EPA has required that the State include the following caveat in all potentially affected permit approvals until the stack height regulations are revised by EPA:

> In approving this permit, the Department has determined that the application complies with the applicable provisions of the stack height regulations promulgated by EPA on February 8, 1982 (47 FR 5864). Portions of these regulations have been overturned by a panel of the U.S. Court of Appeals for the D.C. Circuit. Sierra Club v. EPA, 719 F.2d 436 (D.C. Cir., 1983). Consequently, this permit may be subject to modification when EPA issues revised regulations in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

North Dakota made an enforceable commitment to include such a caveat in all affected permits by letter dated June 20, 1984. This letter is part of the SIP revision EPA is approving today.

EPA has determined that these revisions are consistent with the requirements of section 110 of the Clean Air Act and, therefore, is approving these revisions.

The public is advise that this action will be effective November 19, 1984. However, if we receive written notice by 30 days from date of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw this final action and another will begin a new rulemaking by announcing a proposal of this action and establishing a commemt period.

Under section 307(b)(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

This rulemaking is issued under the authority of section 110 of the Clean Air Act (42 U.S.C. 7410).

Note.—Incorporation by reference of the State Implementation Plan for the State of North Dakota was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 7, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subject JJ—North Dakota

In § 52.1820, paragraph (c)(14) is added as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(14) Revisions to the Prevention of Significant Deterioration requirements in Chapter 33–15–15 of the North Dakota regulations were submitted on October 28, 1982 by the Governor, with supplemental information submitted on July 5, 1983, March 8, 1984 and June 20, 1984, by the State Agency.

[FR Doc. 84–24367 Filed 9–17–84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-11

[FPMR Amdt. B-58]

Records Disposition

AGENCY: National Archives and Records Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a GSA form number cited in a regulation on records disposition which was published February 21, 1984 (49 FR 6370). In 41 CFR 101–11.410–8(b), the GSA Form titled "Agency Review for Contingent Disposal" was referred to as GSA Form 3265. The form number should be 3165.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas, Management Analysis and Improvement Division, (202) 523–3214.

1. The authority citation for Part 101–11 reads as follows:

Authority: 44 U.S.C. 3301–3314; 44 U.S.C. 2101–2113, 2901–2910, 3101–3107.

2. 41 CFR 101–11.410–8(b) is corrected to read as follows:

§ 101–11.410–8 Disposal clearances for records in Federal records centers.

* * * * *

(b) Contingent records (records of Federal agencies scheduled for destruction after occurrence of an event at some unspecified time in the future) held by Federal records centers will be disposed of upon receipt of agency concurrence in response to GSA Form 3165, Agency Review for Contingent Disposal, or other written concurrence. If the agency does not respond to the review notice within 90 calendar days, the records center may return the records to the agency and reject future transfers of that records series.

* * * * *

Dated: September 10, 1984.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 84–24602 Filed 9–17–84; 8:45 am]

BILLING CODE 4820-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Information Collection Requirements Approved by OMB

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This new subpart is being added to advise the public of the control numbers assigned by the Office of Management and Budget (OMB) to the information collection requirements of FEMA.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, telephone: (202) 287–0377.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 35401) seeks, in part, to minimize the Federal paperwork burden. The Act requires that agencies obtain OMB review and clearance of certain reporting and recording requirements and give public notice of clearance numbers. 44 CFR Part 2 is being amended to add a new Subpart C to display the control numbers assigned by OMB to the information collection requirements of FEMA.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551–553 *et seq.*)

requiring advance notice and comment. FEMA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12291; that a regulatory analysis is not required; and that environmental impact documents under the National Environmental Policy Act of 1969 are not required since the action is administrative and categorically exempt from 44 CFR Part 10.

List of Subjects in 44 CFR Part 2

Organization and functions (government agencies), Record and recordkeeping requirements.

Accordingly, 44 CFR Part 2 is amended as follows:

PART 2—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

1. The Table of Contents is amended by adding at the end thereof the following:

Subpart C—OMB Control Numbers

Sec.
2.80 Purpose.
2.81 OMB control numbers assigned to information collections.

2. A new Subpart C is added, as follows:

Subpart C—OMB Control Numbers

§ 2.80 Purpose.

The purpose of this subpart is to display OMB control numbers assigned to FEMA's information collection requirements.

§ 2.81 OMB control numbers assigned to information collections.

This section collects and displays the control numbers assigned to information collection requirements of FEMA by OMB pursuant to the Paperwork Reduction Act of 1980. FEMA intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

44 CFR part or section where identified and described	Current OMB control No.
9.11(e)	3067–0077
59.22	3067–0018
59.24	3067–0020
64.3	3067–0020
65.3	3067–0148
66	3067–0148
67.7	3067–0148
70.3	3067–0147
75.11	3067–0127
150.3	3067–0150
205.54	3067–0146
205.54(j)	3067–0145
205.94	3067–0034
205.96	3067–0026
205.115	3067–0149
205.116	3067–0151
306	3067–0074
332.3(d)	3067–0152
332.5	3067–0152
360	3067–0100

48 CFR part or section where identified and described	Current OMB control No.
7.5	3067–0118
44	3067–0116

Dated: Septembr 12, 1984.

George Jett,

General Counsel.

[FR Doc. 84–24609 Filed 9–17–84; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 61 and 63

[CGD 80–064]

Marine Engineering; Thermal Fluid Heaters, Required Tests and Inspections; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Final Rule on tests and inspection of thermal fluid heaters that appeared at page 32192 in the **Federal Register** of Monday, August 13, 1984 (49 FR 32192). The action is necessary to correct clerical errors in revising citations.

FOR FURTHER INFORMATION CONTACT: CDR David M. Strasser, Commandant (G–MVI–2/24), U.S. Coast Guard Headquarters, Room 2409, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426–4431.

The following corrections are made in FR Doc. 84–21378 appearing on 32192 in the issue of August 13, 1984:

1. On page 32193, at the bottom of column two, in amendment 1 "reads as follows" is corrected to read "is revised to read as follows and replaces all existing authority citations within the part".

2. On page 32194 on the last line of column one "reads" is corrected to read "is revised to read".

Dated: September 12, 1984.

A.F. Bridgman, Jr.,

Chief, Legislative and Administrative Law Division.

[FR Doc. 84–24636 Filed 9–17–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 83–1291]

Elimination of Annual Report of Miscellaneous Common Carriers (FCC Form P); Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects an erroneous citation in a prior order concerning elimination of Annual Report of Miscellaneous Common Carriers (FCC Form P), published on March 19, 1984 (49 FR 10121).

FOR FURTHER INFORMATION CONTACT: Warren G. Lavey, Common Carrier Bureau, (202) 632–6910.

Erratum

In the Matter of Elimination of Annual Report of Miscellaneous Common Carriers (FCC Form P) CC Docket No. 83–1291.

Released: September 12, 1984.

The Order (FCC 84–74), released March 8, 1984, inadvertently stated that rule section 47 CFR 1.785(a)(6) had been removed. The correct cite of the removed paragraph is 47 CFR 1.785(a)(5).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–24586 Filed 9–17–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[Docket Nos. 20521, 20548, et al.]

Corporate Ownership Reporting and Disclosure by Broadcast Licensees; Multiple Ownership of Standard, FM, and Television Stations and Cable TV Systems; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission makes editorial corrections to rules appearing in the appendices of a document which was published in the

Federal Register. The document revises the standards for attributing interests in broadcast, cable television and newspaper properties in the application of the media multiple ownership rules. This erratum adds language inadvertently omitted from § 73.3555 of the Commission's Rules, revises an incorrect reference to the transfer of control rules in that section and changes an incorrect time period contained in § 73.3615(a) of the Commission's Rules.

FOR FURTHER INFORMATION CONTACT: Laurel R. Bergold, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of corporate ownership reporting and disclosure by broadcast licensees, Docket No. 20521; amendment of §§ 73.35, 73.240 and 73.636 of the Commission's rules relating to multiple ownership of Standard, FM, and Television Broadcast Stations, Docket No. 20548; amendment of §§ 73.35, 73.240, 73.636 and 76.501 of the Commission's rules relating to Multiple Ownership of AM, FM, and Television Stations and CATV Systems, BC Docket No. 78–239; reexamination of the Commission's rules and policies regarding the attribution of ownership interests in Broadcast, Cable Television and Newspaper Entities, MM Docket No. 83–46, RM–3653, RM–3695, and RM–4045.

Released: September 11, 1984.

1. On April 30, 1984 the Commission released a *Report and Order* (*"Order"*), FCC 84–115, 49 FR 19482, published on May 8, 1984 (FR Doc. 84–12231) in the above-captioned proceedings. This *Order* makes a number of revisions to the standards governing the means by which the Commission attributes interests in broadcast, cable television and newspaper properties and to the manner in which these interests are reported.

2. In the course of preparing this *Order*, several inadvertent errors were made. First, when recodifying the Commission's rules, certain language was inadvertently omitted from § 73.3555 as shown in Appendix C of the Commission's *Order*. To rectify this error, § 73.3555 is corrected to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(b) No license for an AM, FM, or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls one or more such broadcast stations and the grant of such license will result in:

(1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV braodcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the AM station; or

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with § 73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station.

* * * * *

3. Second, the reference to the transfer of control rules does not accurately reflect those rules as recodified and the UHF exception to the one-to-a market rule is incorrectly stated. Accordingly, Note 4 in § 73.3555, as shown in Appendix C of the Commission's *Order*, is corrected to substitute § 73.3540(f) for § 73.3540(d) and to accurately reflect the UHF exception to the one-to-a market rule. As revised, Note 4 reads as follows:

Note 4.—Paragraphs (a)-(d) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class IV stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b) of this part, or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated or controlled broadcast stations in the same service and if no new encompassment of communities proscribed in paragraphs (b) and (c) of this section as to commonly owned, operated, or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting overlap areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience, or necessity.) This section will not apply to major changes in UHF television broadcast stations authorized as of September 30, 1984, which will result in Grace B overlap with another television station that was commonly owned, operated, or controlled as of September 30, 1984; or to any broadcast application where grant of such application would result in the Grade A contour of an existing or proposed UHF station encompassing the entire community of license of an existing or proposed AM or FM broadcast station that is commonly owned, operated or controlled or would result in the entire community of license of such UHF station being encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station. Such UHF overlap or community encompassment cases will be handled on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. Commonly owned, operated, or controlled broadcast stations, with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group, or entity, except as provided above in this note. If a commonly owned, operated, or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

* * * * *

4. Third, the time period for the filing of Ownership Reports, which is specified in § 73.3615, as shown in Appendix D in the Commission's *Order*, is incorrectly stated. Accordingly, § 73.3615(a), as revised, substitutes "60 days" for "30 days" and is corrected to read as follows:

§ 73.3165 Ownership reports.

* * * * *

(a) Each licensee of a commercial AM, FM, or TV broadcast station which is not a sole proprietorship or 50/50 partnership shall file an Ownership Report on FCC Form 323 once a year, on the anniversary of the date that its renewal application is required to be filed. [Sole proprietorships and 50/50 partnerships will file ownership information in connection with the application process.] Licensees owning multiple stations with different anniversary dates need file only one Report per year on the anniversary of their choice, provided that their Reports are not more than one year apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-24594 Filed 9-17-84; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR AC-84-6]

Basis of Award of Construction Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5, APD 2800.12, Parts 536 and 552, to provide expanded coverage on the basis of award for construction contracts. The intended effect is to provide policies and procedures in the regulatory system.

DATES: Effective Date: September 10, 1984. Expiration Date: This Acquisition Circular expires 6 months after issuance unless canceled earlier or extended.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), Office of Acquisition Policy, (202-523-4754).

SUPPLEMENTARY INFORMATION:

Regulatory Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 536 and 552

Government procurement.

Authority: 40 U.S.C. 486(c).

In 48 CFR Chapter 5, the following Acquisition Circular is added to Appendix C at the end of the chapter to read as follows:

Dated: September 10, 1984.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

General Services Administration Acquisition Regulation—Acquisition Circular (AC-84-6)

To: All GSA contracting activities.

Subject: Basis of award for construction contracts.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5, APD 2800.12, to provide expanded coverage on the basis of award for construction contracts.

2. *Background.* The Public Buildings Service (PBS) requested that Section 536.303-70, Bids that include alternates, and Section 552.236-73, Contract Award—with Alternates, be revised and expanded to cover other situations (i.e., use of alternates and options) which may be desired in the award of construction contracts. The PBS request was prompted by a recent Comptroller General decision (B-215080, dated May 29, 1984) which highlighted the need for expanded coverage.

3. *Effective date.* September 10, 1984.

4. *Expiration date.* This Acquisition Circular expires 6 months after issuance unless canceled earlier.

5. *Applicability.* This Acquisition Circular applies to solicitations for the procurement of construction which may or may not include alternates, options, or both.

6. *Reference to regulation.* Sections 536.303-70, 536.570-4, and 552.236-73.

7. *Explanation of changes.*

a. Section 536.303-70 is revised to read as follows:

536.303-70 Bids that include alternates.

(a) The base bid shall include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to allow the inclusion of all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in a stated order of priority. Alternates shall be used only when clearly justified and should involve significant amounts of work in relation to the base bid. Their use shall be limited and should involve only "add" alternates.

(b) The language of all solicitation provisions for alternates shall be approved in writing by counsel.

(c) All solicitations requiring a base bid and alternates shall include the Alternate II provision at 552.236-73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

(d) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded shall be announced at the beginning of the bid opening and shall be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

b. Section 536.303-71 is added to provide procedures for the use of options in construction contracts, as follows:

536.303-71 Bids that include options.

(a) Subject to paragraphs (b) and (c) below, the contracting officer may include options in contracts when it is in the Government's interest.

(b) The appropriate use of options may include the following:

(1) When additional work is anticipated but funds are not expected to be available at time of award and it would not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) When fixed building equipment, e.g. elevators, escalators, will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) The contracting officer shall not employ options if:

(1) The option represents known firm requirements for which funds are available;

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable; or

(3) The option requirement can readily be handled as a separate competitive acquisition.

(d) Solicitations containing option provisions shall state the period within which the options shall be exercised.

(e) The solicitations shall state whether the basis of award is inclusive or exclusive of the options. Before a solicitation that includes evaluated options is issued, the contracting officer shall make a determination (1) that there is reasonable certainty that funds will be made available to permit exercise of the option and (2) that competition for the option requirement is impractical once the initial contract is awarded.

(f) The language of all solicitation provisions for options shall be approved in writing by counsel.

(g) All solicitations requiring a base bid and options shall include the Alternate I provision at 552.236-73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

c. Section 536.303-72 is added to provide procedures for the use of both alternates and options in construction contracts as follows:

536.303-72 Bids that include alternates and options.

(a) Solicitations may include alternates and options when the conditions in Sections 536.303-70, Bids that include alternates, and 536.303-71, Bids that include options, are satisfied. In such solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening, plus (3) all options designated to be evaluated.

(b) In the case of options associated with alternates, the basis of award may require the evaluation of such options if the related alternate is selected.

(c) All solicitations requiring a base bid, alternates and options shall include the Alternate III provision at 552.236-73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

(d) Before opening bids that include alternates and options, the contracting officer shall determine and record in the contract file the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded shall be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid and evaluated options plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid, the evaluated options, and the same combination of alternate items.

d. Section 536.370 is added to provide procedures for the exercising of options in construction contracts, as follows:

536.370 Exercise of options.

(a) When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining that:

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need; and

(3) The exercise of the option is the most advantageous method of fulfilling the Governments need, price and other factors considered.

(c) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option and the requirements of this section. The written determination shall be included in the contract file.

(d) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority. The negotiation authorities under 41 U.S.C. 252(c) are not applicable and shall not be cited.

e. Section 536.570-4 is revised to read as follows:

536.570-4 Basis of award—construction contract.

The contracting officer shall insert the provision at 552.236-73, Basis of Award—Construction Contract or the appropriate Alternate, as applicable, in solicitations for fixed-price construction except for indefinite quantity contracts, when the contract amount is expected to exceed the small purchase limit.

f. Section 552.236-73 is revised to read as follows:

552.236-73 Basis of award—construction contract.

As prescribed in 536.570-4, insert the provision or the appropriate Alternate substantially as follows in solicitations for fixed-price construction, except for indefinite quantity contracts, when the contract amount is expected to exceed the small purchase limit. The basic clause is used when the solicitation includes only a base bid.

Basis of Award—Construction Contract (August 1984)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer and Award and the provision entitled "Contract Award—Formal Advertising—Construction".

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of Clause)

Alternate I

If the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard form 1442, Solicitation, Offer and Award and the provision entitled "Contract Award—Formal Advertising—Construction".

Alternate II

If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled "Contract Award—Formal Advertising—Construction."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates does not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000,

$8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceeds the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

Alternate III

If the solicitation includes a base bid, alternates and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled "Contract Award—Formal Advertising—Construction."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates does not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection under paragraph (c). If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

g. The title of clause number 552.236-4 on the Fixed-Price Construction matrix in 552.300 is revised to read: Basis of Award—Construction Contract.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 84-24603 Filed 9-17-84; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-06; Notice 3]

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Safety Standard No. 209, *Seat Belt Assemblies*, to alter the test procedure specified under the "resistance to light" requirements of the standard. This amendment is intended to establish an equivalent strength test for both nylon and polyester webbing materials used in seat belt assemblies. This amendment changes the test apparatus for polyester fibers by replacing the currently specified "Corex D" filter with a chemically strengthened or tempered soda-lime glass filter. The "Corex D" filter would still be utilized in testing nylon webbing, since it offers the best correlation with actual outdoor results when dealing with nylon webbing material.

DATES: Effective date September 18, 1985. Petitions for reconsideration must be received by the agency not later than October 18, 1984. The incorporation by reference of the standard in this regulation is approved by the Director of the Federal Register effective September 18, 1985.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 [Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: Under Safety Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), seat belts must pass a "resistance to light" test (paragraph S4.2(e)). This test measures the strength and durability of the seat belt webbing material after exposure to sunlight. The "resistance to light" test represents an accelerated determination of outdoor exposure or aging. A rapid form of testing is needed so that webbing may be certified in accordance with Standard No. 209 and automotive companies' specifications prior to shipment.

On May 1, 1980, a Notice of Proposed Rulemaking (45 FR 29102) was issued, proposing an amendment to the procedure to be used in "resistance to light" tests. The original standard called for a "Corex D" filter in testing webbing material. The "Corex D" filter was an adequate test apparatus prior to the introduction of polyester webbing material for seat belts. Research had shown that although the specified test apparatus of a carbon arc light source combined with a "Corex D" filter, in general, was an effective method of simulating the effects of sunlight, it did result in the emission of certain radiations that were unrepresentative of the actual effects of natural sunlight. These peculiar radiations, which destroyed polyester but not nylon fibers, made the "Corex D" test procedure inappropriate for measuring the "resistance to light" requirements of seat belts containing polyester webbing material.

The proposed procedure replaced the required "Corex D" filter with a plain soda-lime glass filter in an attempt to create a similar, adequate testing for both nylon and polyester webbing material used in seat belt assemblies. Responses to that notice indicated that the proposed plain soda-lime glass filters were cracking either during the test cycle, due to the intense heat emitted during the 100 hours of test time, or after the test period, during the cool down of the equipment.

The Narrow Fabrics Institute, Inc. requested a delay in the rulemaking process in order to locate a less heat sensitive substitute. On September 16, 1980, the agency informed the Narrow Fabrics Institute, Inc. that the rulemaking process would be delayed until the development of a filter more resistant to thermal shock.

Upon completion of a two-year search and a one-year period of evaluation, the Narrow Fabrics Institute submitted a revised test apparatus. The improved filter was a chemically strengthened or tempered soda-lime glass. Testing done by the agency under Contract No. DTNH-22-83-P-02016 confirmed that the new filter maintained the same light transmittance characteristics of the untreated soda-lime glass filter originally proposed, but was free of the previous thermal shock problems. The treated soda-lime glass filter produces an excellent correlation with actual outdoor results, for the proper accelerated degradation of polyester webbing, without the prior breakage difficulties.

A careful evaluation of data compiled over the past few years demonstrates that as to nylon webbing material, the "Corex D" filter still affords the best correlation with actual outdoor results. In light of these various findings, the agency proposed on November 28, 1983 (48 FR 53583) to amend the test procedure to reflect these results.

Four of the five commenters to the docket supported the proposed amendment to Standard No. 209. The other commenter, Renault, made two objections. First, it argued that the carbon arc light used in Standard No. 209 is unrepresentative of real use conditions. It urges the use of an xenon lamp. As stated previously, the use of the carbon arc light with the appropriate filters produces excellent correlation with actual outdoors test of the resistance to light capability of seat belts. The agency therefore does not believe it is necessary to propose an amendment to allow the use of an xenon lamp.

Renault also said that Standard No. 209 should not use different test procedures for different materials. It recommended that the agency not require the use of different filters, but instead specify the transmission band and spectral distribution of the radiation used in the test. Finally, Renault said that if the agency decides to require a filter, it should provide a more specific definition of the filter to be used in the testing. In particular, Renault asked that the agency specify the wave length of the light being used.

The agency disagrees with Renault concerning the use of different filters in the resistance to light test. The carbon arc test equipment used in the resistance to light test is a well established test procedure that has been long used by the motor vehicle and seat belt industries. Tests conducted by the Narrow Fabrics Institute show that the carbon arc test equipment, when used with the appropriate filters, produces results comparable to actual outdoor resistance to light tests. Although the agency has decided to retain the use of the filters, it agrees with Renault that the specific characteristics of the new soda-lime filter need to be more precisely defined. The agency has obtained information on the transmittance of chemically strengthened soda-lime glass from the principal manufacturer of that device. Based on that information, the agency is amending the standard to specify the transmittance of the soda-lime glass to be used in the resistance to light test of polyester belts.

Update References

In the November 1983 notice, the agency proposed to update one of the American Society for Testing and Materials recommended practices incorporated by reference in the standard. The proposal to incorporate ASTM G23-81 was not opposed by the commenters and is therefore adopted.

Economic Impacts

The agency has determined that the testing costs under this proposal would have minimal economic impact. Therefore, the final rule is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures, and a full regulatory evaluation has not been prepared.

Furthermore, under the Regulatory Flexibility Act, the agency has reviewed the effects of this final rule on small entities. Based on this evaluation, I certify that the final rule will not have a significant economic impact on a sustantial number of small entities. Due to the minimal effect on testing costs, the final rule will not significantly affect the manufacturing costs of any seat belt manufacturers who are small entities or the retail price of vehicles purchased by any small organizations or governmental units. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

In addition, the agency has evaluated this action for purposes of the National Environmental Policy Act and has determined that the final rule will not have a significant impact on the quality of the human environment.

The amendment is effective one year after the issuance of this notice. This one-year period should give manufacturers sufficient time to procure the filters and to adjust established schedules to accommodate the additional testing process.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, paragraph S5.1(3) of Safety Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), is amended by revising paragraph (e) to read as follows:

§ 571.209 Standard No. 209; seat belt assemblies.

* * * * *

S5.1 * * *

(e) *Resistance to Light.* Webbing at least 20 inches or 50 centimeters in length from three seat belt assemblies shall be suspended vertically on the inside of the specimen rack in a Type E carbon-arc light-exposure apparatus described in Standard Practice for Operating Light-Exposure Apparatus (Carbon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials, ASTM Designation: G23-81, published by the American Society for Testing and Materials, except that the filter used for 100 percent polyester yarns shall be chemically strengthened soda-lime glass with a transmittance of less than 5 percent for wave lengths equal to or less than 305 nanometers and 90 percent or greater transmittance for wave lengths of 375 to 800 nanometers. The apparatus shall be operated without water spray at an air temperature of 60± 2 degrees Celsius or 140± 3.6 degrees Fahrenheit measured at a point 1.0± 0.2 inch or 25± 5 millimeters outside the specimen rack and midway in height. The temperature sensing element shall be shielded from radiation. The specimens shall be exposed to light from the carbon-arc for 100 hours and then conditioned as prescribed in paragraph (a) of this section. The colorfastness of the exposed and conditioned specimens shall be determined on the Geometric Gray Scale issued by the American Association of Textile Chemists and Colorists. The breaking strength of the specimens shall be determined by the procedure prescribed in paragraph (b) of this section. The median values for the breaking strengths determined on exposed and unexposed specimens shall be used to calculate the percentage of breaking strength retained.

* * * * *

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued: August 31, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-23721 Filed 9-17-84; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 49, No. 182
Tuesday, September 18, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-142-84; LR-149-84]

Tax Shelter Registration and Requirement To Maintain Lists of Investors in Potentially Abusive Tax Shelters; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to tax shelter registration, and the requirement to maintain lists of investors in potentially abusive tax shelters.

DATES: The public hearing will be held on Thursday, November 15, 1984, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, November 1, 1984.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-142-84, LR-149-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: One of the two subjects of the public hearing is proposed regulations under sections 6111 and 6707 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, August 15, 1984 (49 FR 32728) (See Doc. No. 84-21729).

The second subject of the public hearing is proposed regulations under section 6112 and 6708 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, August 29, 1984 (49 FR 34246) (See Doc. No. 84-22938).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, November 1, 1984, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-24574 Filed 9-17-84; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 51

[LR-38-82]

Net Profit Interests, Proposed Rulemaking

Correction

In FR Doc. 84-22936 beginning on page 34242 in the issue of Wednesday August 29, 1984, make the following corrections:

1. On page 32243, first column, in the fourth line below "Background", "4922" should have read "4992".

2. On the same page, second column, first complete paragraph, fourth line from the bottom, "of his share" should have read "as his share".

§ 51.4988-2 [Corrected]

3. On page 34244, in § 51.4988-2 (c)(4)(B), second column, in the third line insert the following after "to such portion": "shall be treated as paid or incurred by such person".

4. On the same page, third column, eighth line, "of" should have read "if".

§ 51.4996-1 [Corrected]

5. On page 34245, in § 51.4996-1 (b)(3)(iv), second column, eleven lines from the bottom, "new" should have read "net".

6. On the same page, same column, in § 51.4996-1(b)(3)(vii), second line from the bottom, "on" should have read "in".

7. In the third column, in § 51.4996-1 (b)(3)(viii), Example (2), fourth line, insert the word "interest" between "royalty" and "agreement".

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 111

Additional Specifications for the Testing of Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this change is to amend the specifications for testing postage meters to include auxiliary equipment required for the operation of postage meters. This includes such items as carrying cases with built-in power supplies, postage meter bases which would effect the operation of the meters, and other equipment which could cause failures of postage meters. Testing meters without testing auxiliary equipment may not be sufficient to assure accuracy in collecting postage.

DATE: Comments must be received on or before October 17, 1984.

ADDRESS: Comments may be mailed to the Office of Mail Classification, Rates & Classification Department, U.S. Postal Service, Washington, DC 20260-5371, or be delivered to Room 8430 at the above address between 8:00 a.m. and 4:00 p.m. Comments may also be inspected during the above hours in Room 8430.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner (202) 245-4565.

SUPPLEMENTARY INFORMATION: Since the inception of the use of postage meters in 1920, the Postal Service has subjected only postage meter heads to examination, testing and approval. Until recently, the accounting functions of meters have been mechanical. With the advent of electronic accounting functions, there is no way to determine the effect of electro-magnetic radiation from external power supplies or the effect of interface connections between the power supply and meter. Concern has also been expressed that external units that interface with the accounting section of a meter may have the ability to affect the information it contains. Even where the meters themselves can pass the most detailed and rigorous tests, the value of the tests could be voided if the meters could be affected by electro-magnetic radiation from devices which have not also been tested and approved. The value of testing just one portion of the system is considered to be questionable and may not assure accuracy in collecting proper and correct postage.

The full burden of maintaining accounting integrity must rest with the meter under all conditions of environment, communications, power and usage. Although it is the responsibility of the meter manufacturer to assure and provide evidence that adequate testing of electronic meters has taken place, examination, testing and approval of auxiliary equipment which could cause failure of postage meters is needed.

It is not the intent of the Postal Service to delineate every device that may interface with a postage meter (mechanical, electronic or a combination of the two) or to examine, test and approve all these devices. However, because of the variables inherent in electronic devices and the need for demonstrated reliability of postage meters, selective auxiliary equipment must also be tested.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

Part 144—Postage Meters and Meter Stamps

In 144.9, add new .92j reading as follows:

144.9 Manufacture and distribution of postage meters.

* * * * *

.92 Specifications

* * * * *

.92j Auxiliary equipment required for the operation of the postage meters must be a part of the final production models submitted for postal approval. Failure of the auxiliary equipment, which could cause malfunction in postage meter operation, will be considered the same as a postage meter failure.

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the proposal is adopted.

(39 U.S.C. 401 (2), (10), 404(a) (2), (4))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-24585 Filed 9-17-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-2672-3]

Approval and Promulgation of State Implementation Plan; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking addresses the State Implementation Plan (SIP) revisions submitted on May 29, 1984 by the State of Idaho Department of Health and Welfare pursuant to the requirements of Part D of the 1977 Clean Air Act (hereinafter referred to as the Act). In today's action EPA is proposing to approve the 1984 carbon monoxide (CO) plan for the Boise-Ida County nonattainment area based on review of the mentioned SIP revision. Upon final approval by EPA, the CO plan will become a federally enforceable part of the SIP as required by the Act.

DATE: Comments must be postmarked on or before October 18, 1984.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-84-6), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Idaho, Department of Health and Welfare, 450 W. State Street, Statehouse, Boise, Idaho 83720.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-7369, (FTS) 399-7369.

SUPPLEMENTARY INFORMATION:

I. Background

On October 23, 1980 (45 FR 7052) EPA approved the first phase of the Boise-Ada County CO SIP. In that Notice EPA called for implementation of an I/M program by December 31, 1982 for a decentralized program or by December 31, 1983 for a centralized program. In addition, EPA approved the State's request for an extension of the CO attainment date to December 31, 1987.

On November 8, 1982 a draft of the second phase CO SIP was submitted to EPA. A hearing was held on December 14, 1982, and the draft SIP was adopted without change and submitted to EPA on December 23, 1982. On February 3, 1983 EPA published a proposal (48 FR 5133) to approve the SIP. The implementation of an I/M program was the major component of the plan. It should be noted that without the I/M reduction, the projected attainment date is beyond 1990. Unfortunately the original ordinances which were contained in the 1982 SIP and on which the I/M portion of the plan was based, were found to be defective and the original program design and schedule were abandoned. Based upon those events, EPA concluded that the I/M portion of the CO plan was no longer approvable and on January 18, 1984 (49 FR 2120) EPA then proposed to disapprove the I/M and attainment date demonstration portions of the plan.

City and County officials then made a renewed effort to overcome the deficiencies described above. On August 24, 1983 the County officials adopted a new I/M ordinance calling for the implementation of a decentralized I/M program by August 1984. On September 12, 1983 the city also adopted the same ordinance.

The initial program design was adopted and then a new SIP revision was prepared. This new SIP revision contains essentially the same control measures as the old 1982 SIP in addition to a new I/M program and attainment demonstration. The new SIP revision was adopted by the Idaho State Department of Health and Welfare (IDHW) and then submitted to EPA on May 29, 1984.

II. Plan Review

The 1984 Boise-Ada County SIP revision contains several control measures and elements that are identical to the 1982 revision. Those measures and elements are briefly summarized in the next subsection. For additional information please see the February 3, 1983 **Federal Register** (48 FR 5133). Two new components, I/M and the Attainment Demonstration are discussed in Section B.

A. Original Elements of the SIP

EPA is proposing to approve the following control strategies, that were contained in the original 1982 SIP and have been re-submitted in the 1984 SIP. The following is a list of these control measures:

1. Mechanics training;
2. Public transit improvement and expansion;
3. Parking management program;
4. Traffic flow improvements;
5. Bicycle program;
6. Park and ride lots;
7. Drive-in management ordinance;
8. Staggered work hours; and
9. Cold-start education.

The commitment to these measures ensures that the requirements for basic transportation needs are satisfied and that improved mobility will be emphasized. Therefore, EPA is proposing to approve the element pertaining to basic transportation needs.

Additionally, the SIP revision contains procedures to ensure that federal actions will be reviewed for conformity with the SIP in a manner consistent with the criteria contained in the April 1, 1980 notice on conformity (45 FR 21590). Procedures for specifically evaluating Department of Transportation plans and programs are included in the SIP. After determining conformity of the plans and programs, all federal aid projects will still be evaluated in accordance with procedures specified in the National Environmental Policy Act. If the analysis indicates that the project will create new violations or exacerbate existing violations, then the project will not be constructed without modifications to the project or plan sufficient to maintain reasonable further progress toward attainment. It should be noted that the most recent EPA emissions factors must be used in these analyses.

Therefore, EPA is also proposing to approve the element of the plan pertaining to Conformity of Federal Actions with the SIP. A detailed discussion of these approvable elements is contained in the February 3, 1983 (48 FR 5133) **Federal Register** Notice.

B. New Elements of the SIP

1. Data and Modeling Results

Numerous violations of the 8-hour CO standard of 9 parts per million (ppm) have been recorded each year in the Boise-Ada County area. Based upon an analysis of ambient air quality monitoring data for three years, the adjusted CO design concentrations is 15.9 ppm, which corresponds to a required emission reduction of 53 percent in order to meet the standard.

A rollback model was used to predict air quality concentrations. The results of the analysis indicates that Boise-Ada County will have several violations of the 8-hour CO ambient air quality standard beyond 1984. However, analysis also shows that the controls adopted in this plan will achieve a 56 percent reduction and are projected to bring the region into attainment by late 1986.

2. Inspection and Maintenance Program (I/M)

A total I/M program was adopted as ordinance by the Ada County Board of Commissioners on August 24, 1983 and by the Boise City Council on September 12, 1983. The program is a decentralized, sticker, type of program. It should be noted that the mandatory portion of the I/M program started on August 1, 1984, and an anti-tampering check for model year 1984 and newer vehicles will gradually be phased in. Although most of the components of the program are already included in the SIP revision, the formal submittal of the final operating rules and regulations is necessary before final SIP approval. EPA expects the enforcement mechanism for the sticker program to be equally as effective as a denial of vehicle registration enforcement mechanism.

III. Proposed Rulemaking Action

EPA is proposing to approve the 1984 Boise CO attainment plan and establish a new attainment date of December 31, 1986. This proposed approval is based on review of the SIP revision submitted by the IDHW to EPA on May 29, 1984.

Interested parties are invited to comment on all aspects of this proposed Approval of the Idaho SIP revision. Comments should be submitted preferably in triplicate, to the address listed in the front of this Notice. Public comments postmarked by October 18, 1984 will be considered in any final action EPA takes on this proposal.

Pursuant to the provisions of 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals under sections 110 and 172 of the Act will not have significant impact on a substantial number of small entities (46 FR 8709, January 27, 1981). This action constitutes a SIP approval under sections 110 and 172 within the terms of the January 27, 1981 certification.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Secs. 110(a), 172, 176, and 316 of the Clean Air Act (42 U.S.C. 7410(a), 7502 and 7601(a)))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxide, Lead Particulate matter, Carbon monoxide, Hydrocarbons, and Intergovernmental Relations.

Dated: July 25, 1984.

Robert S. Burd,

Acting Regional Administrator.

[FR Doc. 84–24033 Filed 9–17–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket Nos. 84–689 and 84–690 (FCC 84–319)]

Allocating Spectrum for, and Establishing Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is proposing to allocate spectrum in the bands 1610–1610.5 MHz, 2483.5–2500 MHz and 5117–5183 MHz for the establishment of a radiodetermination satellite service, and to establish policies and procedures for the licensing of such systems. A need for a nationwide radiodetermination service has been expressed by a broad cross-section of potential users in response to a proposal by Geostar Corporation to establish such a system. The allocation would provide frequencies for a nationwide radiodetermination service that would allow users to determine position information and to exchange brief coded messages. The service would be available anywhere within the continental United States. To enable one or more radiodetermination satellite

system authorizations to be issued at the time frequency allocations are finalized for this service, procedures are adopted to accept and process applications for radiodetermination systems concurrently with the frequency allocation rulemaking.

DATES: Comments must be submitted on or before November 13, 1984 and Reply comments on or before December 13, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: For questions concerning the proposed allocation: Melvin J. Murray, Office of Science and Technology (202) 653-8168.

For questions concerning applications or application processing procedures: Ronald J. Lepkowski, Satellite Radio Branch (202) 634-1624.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Notice of Proposed Rulemaking

In the matter of amendment of the Commission's Rules to allocate spectrum for, and to establish other rules and policies pertaining to, a Radiodetermination Satellite Service (Gen Docket No. 84-689, RM-4426); In the matter of policies and procedures for the licensing of space and earth stations in the Radiodetermination Satellite Service (Gen Docket No. 84-690), and In the matter of the applications of Geostar Corp. for authority to construct, launch and operate space stations in the Radiodetermination Satellite Service (File Nos. 2191-DSS-P/LA-83, 2192-DSS-P/LA-83, 2193-DSS-P/LA-83, 2194-DSS-P/LA-83).

Adopted: July 12, 1984.

Released: September 7, 1984.

By the Commission: Commissioner Dawson dissenting in part and issuing a separate statement; Commissioner Rivera absent.

Introduction

1. On March 31, 1983, the Geostar Corporation (Geostar) petitioned the Commission to begin a proceeding to allocate spectrum for developmental operation of a new type of satellite system. The proposed system would provide radiodetermination and associated message transfer services to subscribers throughout the continental United States.[1] The system would allow subscribers to determine latitude, longitude and altitude and to exchange brief coded messages using inexpensive hand-held transceivers. The purpose of this *Notice* is to propose the allocation of spectrum for a radiodetermination satellite service, to accept and process applications for radiodetermination satellite systems, and to determine the extent of any necessary regulation of licensees in this service.

Background

2. Geostar requests a nationwide exclusive spectrum allocation of 33 MHz. The 1610-1626.5 MHz band would be used for ground-to-space transmissons from the hand-held transceivers to the satellites and the 2483.5-2500 MHz band would be used for space-to-ground transmissions from the satellites to the hand-held transceivers. Additional non-exclusive allocations of 16.5 MHz centered at 5125 MHz and 5175 MHz were also requested for communications between the satellites and a single computer processing and control facility. Geostar's use of this spectrum would preclude other uses only within a small radius of the control facility.

3. Along with the petition for spectrum allocation, Geostar submitted applications for authority to construct and launch the proposed satellite system. Geostar proposes to locate four satellites in geostationary orbit: one each at 70, 100, and 130 degrees West Longitude and one in-orbit spare. The applications request that Geostar be granted interim authority to operate the satellite system on a developmental basis prior to the resolution of the underlying rulemaking proceeding. The Commission has not acted on the application, however, due to the complex public policy issues inherent in spectrum allocations.

4. On April 19, 1983, the Commission placed Geostar's petition for spectrum allocation on public notice (No. 1401). The majority of comments supported the proposal, citing the potential benefits of the Geostar system in aeronautical, marine, and land transportation safety. The Communications Satellite corporation (COMSAT) expressed concern that use of the 1610-1626.5 MHz band be coordinated with the International Maritime Satellite Organization. Only one comment opposed the petition. Offshore Navigation, Inc. (ONI) argued that the petition should be denied pending a complete evaluation of the relevant market potential and technical issues.

5. Geostar submitted supplemental information to the Commission on August 30, 1983, which revised a number of the system parameters included in its original petition. The most significant change was in the spectrum requested for the communications links between the satellites and the terrestrial computer and control facility. The original request of two communication links of 16.5 MHz centered at 5125 MHz and 5175 MHz has been amended to request a downlink allocation of 66 MHz between 5117-5183 MHz and an uplink allocation of 16.5 MHz within the frequency band 6425-7075 MHz. The original request for 33 MHz of spectrum for the communications links between the satellites and the hand-held transceivers remains the same.

6. On September 14, 1983, the Commission placed Geostar's supplemental information on public notice (No. 1425). Five parties filed comments, with three endorsing the Geostar proposal. CBS, Inc. objects to the radiodetermination downlink at 2483.5-2500 MHz and also suggests that the control uplink be located within the 6525-6875 MHz band because of concern about interference with broadcast electronic news gathering (ENG) equipment operating in both the 2 GHz and 6 GHz bands. The Mobile Satellite Corporation (MOBILSAT) argues that the Geostar proposal is not responsive to the needs of the market in that it would offer only radiodetermination information and that the satellite system design is technically deficient and cannot realize the stated accuracy of 1 to 7 meters.

7. Based on the substantial number of comments received in support of the Geostar proposal, we believe sufficient interest has been demonstrated by a broad cross section of potential users to suggest that there is a need for a nationwide radiodetermination satellite service. Only ONI and MOBILSAT have objected to the overall proposal. ONI objects to what perceives to be a proposal for an exclusive allocation of 133 MHz of spectrum when in fact, Geostar seeks only 33 MHz. MOBILSAT questions the stated accuracy of the Geostar satellite system but bases its arguments on the assumption that the Geostar system uses range difference techniques, rather than direct range measurements, to determine position information. MOBILSAT appears to agree that direct range measurement techniques can be quite accurate. Both COMSAT and CBS expressed concern over the potential for interference between the Geostar satellite system and other spectrum users and we intend to explore their concerns in this proceeding. All other comments urge the Commission to proceed expeditiously

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[1] The Rules define radiodetermination as the determination of position, or the obtaining of information relating to position, by means of the propagation properties of radio waves. Radionavigation is radiodetermination used for purposes of navigation, including obstruction warning, and radiolocation is radiodetermination used for purposes other than those of radionavigation. See 47 CFR 2.1.

toward the implementation of the Geostar proposal. On balance, the record before us strongly supports initiating a proceeding to seek comments on a radiodetermination satellite service. This action is clearly in the public interest and is consistent with our mandate "to encourage the provision of new technologies and services to the public."[3]

8. The Geostar system appears to be particularly innovative because of its ability to make available to millions of users a communications service dedicated to the safety of life and property. The digital communications technology selected for use by Geostar allows for extremely efficient use of the proposed spectrum allocation. For the first time, millions of subscribers would have access to a radiodetermination service which could provide information critical to safety of life and property. As the Aircraft Owners and Pilots Association stated in their comments: "The capacity of the Geostar Satellite Service to report instantly the location of aircraft which are either downed or in other distress situations represents a potentially major breakthrough with substantial life-saving ramifications."

Description of the Proposed Satellite System

9. According to Geostar's petition and applications, the proposed satellite system will serve three principal types of users. One is airline and general aviation aircraft that need navigational information during flight, as well as message relay during emergency situations. Another type of use includes terrestrial and marine vehicles that require location information and the ability to send messages. Also, the home base of a fleet of vehicles could use the satellite system to dispatch and control individual vehicles. The third potential use is for pedestrians that require location information and the ability to send messages. In each case the system would be particularly useful during accident and emergency situations. Each user will be equipped with what Geostar terms an Automatic Beacon Transponder (ABT). The pedestrian would use a hand-held transceiver with a liquid-crystal display. ABT units for vehicular and aircraft usage will be somewhat larger and more technically complex to permit increased accuracy and operational flexibility. Each ABT will be capable of displaying one or more types of information: User position, speed, answer to a question, a warning message, or messages from other users. Geostar estimates that the pedestrian unit will cost about $450 and that monthly service charges will range from $30 to $40. No price estimates were given for the vehicular and aircraft units. According to Geostar, the proposed system will support a traffic capacity in excess of eighteen thousand 256 bit transmissions per second from aircraft, surface vehicles and pedestrian units.

10. The proposed system's space segment is to consist of three geostationary satellites located at 70° west, 100° west and 130° west longitude to provide coverage to the contiguous 48 states. Each of the satellites is to be identical in design. The proposed satellite system would use random access time division multiplex with slotted ALOHA protocol and differential phase shift keying (DPSK). The satellites are to relay information between the system's users and a control center. The control center will contain facilities to communicate with each satellite and computers required to perform position determination and other system functions. Geostar has proposed to locate its control center at Princeton, New Jersey.

11. Four communications links are required for the radiodetermination system proposed by Geostar: two space-to-earth links and two earth-to-space links. The users' radiodetermination uplink would operate within the 1610–1626.5 MHz band. The users' radiodetermination downlink would operate within the 2483.5–2500 MHz band. The control center would be linked to each satellite using a single data uplink bandwidth of 16.5 MHz located within the 6425–7075 MHz band. For the data downlink, the band 5117–5183 MHz would be used to link each of the satellites to the control center.

12. Operationally, the control center continually transmits via each of the three satellites what Geostar terms an Interrogation Pulse Group (IPG) available to all users throughout the continental U.S. The IPG's are transmitted at a 100 Hz rate and consist of a pre-set pattern of 64 bits of 80 nanoseconds duration each. The user may respond from an ABT by transmitting a message which will be in one of several possible formats, depending upon the needs of the user. The message always contains timing and identification information and may contain a user message. Based on elapsed time from the emission of an IPG from the control center to the receipt of an ABT's response via each of the 3 different satellites, the user's position is calculated using direct range measurements. The control center then transmits an addressed message, which may include the user's position, through one of the satellites for relay to the user intended to receive the message.

13. A user may access the system through three basic types of responses to the IPG: A position request, and emergency signal or a message signal. Based on the user's selection for the type of response, a varying length digital message transmission will be relayed to the control center through the satellites system. After responding, the user awaits a system reply. The reply will be either the user position location information or confirmation that the user message has been received by the control center and sent out as instructed. If the user does not receive a reply within 0.6 seconds, either due to coincidence of the user's response with that of another user's at the satellites antenna, or bit errors on the user-to-control center communications link, the ABT will automatically repeat the response message. Randomization is introduced into the time of repeat to avoid consecutive coincidences on the uplink.

14. Geostar claims its radiodetermination system will provide position information with accuracies in the range from 1 to 7 meters. To accomplish such accuracy, Geostar will employ fixed "benchmark" transceivers at known locations. Accordingly, systematic errors for each mobile user's measured range can be corrected by subtracting corresponding range errors to fixed benchmark transceivers in the same geographical area. Such errors include ionospheric delay variations, drifts in the electronic delays through the satellites, variations in the positions of the satellites antennas, and lack of knowledge of details of the earth's shape. The only equipment error which cannot be subtracted, according to Geostar, is drifting of the electronic delay within an individual user transceiver.

Spectrum Requirements

15. According to Geostar, radiodetermination propagation requirements, as well as the need to design technologically feasible equipment, necessitate use of frequencies in the 1 to 6 GHz range. The frequency bands selected for consideration were further constrained by the International Table of Frequency Allocations for Region 2. Also, exclusive Government primary bands were rejected. Remaining candidate bands were ranked so that least occupied bands were the most preferred and so

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[3] 47 U.S.C. 157.

that no existing radio services would be left without an alternative radio band.

16. At the present time, the 1610–1626.5 MHz band, requested for use to provide the user radiodetermination uplink is allocated internationally and domestically to aeronautical radionavigation. International Footnote 732 provides for satellite-based facilities associated with aids to air navigation. For reference, the allocation and accompanying footnotes are reproduced in the Appendix A. Within the U.S., no telecommunications use is presently being made of this band. However, as provided in Footnote 734, the 1610.6–1613.8 MHz band is used by the radio astronomy service for observing the hydroxyl spectral line.

17. The 2483.5–2500 MHz band has been proposed by Geostar to provide for the radiodetermination downlink to users. The band 2483.5–2500 MHz is part of the 2400–2500 MHz ISM band and its current allocation status is also set out in Appendix A. Geostar has provided a technical analysis regarding the potential interference that would result from ISM equipment operating in this band to Geostar user equipments. In particular, it carried out a statistical analysis and performed on site field measurements for interference resulting from operation of microwave ovens. From its study, Geostar has concluded that this interference source should not pose a serious operational problem to its proposed system. The sole effect of possible microwave oven interference to Geostar user equipments would be to cause a modest incease in the "retransmit" rate.

18. The 2483.5–2500 MHz band is also allocated to TV auxiliary broadcast stations under Subpart F of Part 74 of the Commission's Rules.[3] According to the Commission's records of assignments, in March 1984, there were 72 broadcast licensees operating either fixed or mobile stations in the 2484–2500 MHz band. These stations, located throughout the U.S., are used in conjunction with television broadcast stations principally for electronic news-gathering operations (ENG) and for studio-to-transmitter links. Also, within the continental U.S. there were stations licensed in the petroleum radio service under § 90.65 and operating principally along the coast of California and Gulf of Mexico. Additionally, twenty-one stations located throughout the U.S. were found to be licensed under a number of private radio services including police, fire, power, local government, radiolocation, motion picture and the experimental/developmental radio service. According to Geostar, interference would be caused to these stations by the proposed satellite system if these stations' receiving antenna beams were to be pointed within 13 degrees of any of the three satellites which would be transmitting in the 2483.5–2500 MHz band. Moreover, Geostar, in its petition, indicates that its users' receiving equipment would be subject to interference at significant distances from terrestrial transmitters operating in the 2483.5–2500 MHz band. Consequently, Geostar requests that the stations currently licensed in this band be relocated to other channels within the band 2450–2483.5 MHz. It claims the private radio services could easily be reassigned, requiring only a change of crystal and minor system adjustments. Similarly, for TV auxiliary broadcast stations, Geostar indicates that relocation to other channels is also possible by a simple replacement of the crystal and minor system adjustment.

19.The next band requested by Geostar is 5117–5183 MHz and its current allocation status is also tabulated in Appendix A. This band, like the 1610–1626.5 MHz band, is allocated primarily for aeronautical radionavigation. This band would be used by the Geostar system to provide a downlink to the earth station located at Princeton, N.J. and would contain seven channels, condensed into the width of four channels by use of dual polarizations; this accounts for a total bandwidth of 66 MHz (4 x 16.5 MHz).[4] As presently envisioned by Footnote 796, the 5000–5250 MHz band is intended to be used internationally for one-way links from major airports to aircraft for guidance in final approach and landing. These receive-only systems are referred to as Microwave Landing System (MLS) and will be used primarily aboard commercial or military aircraft. Geostar has provided a technical analysis showing that the interference to planned MLS receivers from the proposed satellite link will be about 30 dB below the receiver noise. It considers this value sufficent to protect the MLS receivers.

20. A 16 MHz bandwidth within the 6425–7075 MMHz band is requested by Geostar to provide for an uplink to transmit commands and message traffic from its proposed computer center and earth station at Princeton, N.J. to each of the three geosynchronous satellites. This band's allocation status is also set forth in Appendix A. It is currently being used by licensees in the Domestic Public Fixed, Private Operational Fixed, and Auxiliary Broadcast services.

21. In its petition Geostar shows that it calculated the coordination area around Princeton, N.J. according to the procedures set forth in Appendix 28 of the ITU regulations. For that area, Geostar included a listing of various stations presently licensed in the 6525–6545 MHz, 6625–6645 MHz, and 7050–7070 MHz bands. Geostar believes it can coordinate its proposed frequency usage with existing licensees. For the entire 6425–7075 MHz band, Geostar indicates that radiation from its Princeton earth station would not contribute any interference to passive microwave sensor measurements being carried out over the oceans pursuant to Footnote 809.

Current and Proposed Allocations

22. Of the four bands requested for use by Geostar, the one posing the most difficult allocation issue is the 2483.5–2540 MHz band. Because the level of radiation from terrestrial stations in the 2483.5–2500 MHz band would be above that which the Geostar receivers would be able to tolerate, we propose to reallocate this band to the radiodetermination satellite service and to relocate existing licensees. We do however, invite comment on whether some other accommodation might be possible to avoid the proposed relocation. For example, does the nature of the ENG operations permit any practical sharing arrangement? (Commenters should keep in mind the proposal by Geostar to provide aeronautical radionavigation and emergency communications.) If the proposal to relocate licenses is adopted, we would permit existing licenses a certain period of time in which to vacate the 2483.5–2500 MHz band and relocate to other bands allocated for their respective services. Since a launch date of 1987 is indicated for the Geostar system, we ask for comments on the amount of time that should be given to existing licensees for relocation. We do not envision this requirement to be excessively burdensome, because of what we perceive to be an adequate number of other frequencies available for relocation and a nominal cost for

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[3] Specifically, the table of frequency assignments under § 74.602 indicates there are 10 channels in the designated "A" band, 1990–2110 MHz and 2450–2500 MHz.

[4] By using a number of downlink channels the probability of user message collision at a satellite is reduced from the single downlink channel case. As a consequence of using seven channels to support fifteen antenna feed borns, the maximum user population is five times greater than for a single downlink channel system.

frequency change.[5] We also request comments on the feasibility and desirability of requiring radiodetermination satellite system licensees to compensate terrestrial licensees for the costs of such relocations.

23. The primary use of the ISM band at 2400–2500 MHz is for microwave ovens, and Geostar's analysis showed that they would not pose a serious operational problem to its proposed system. However, future uses of the band could include other, higher power, operations.[6] We solicit comments on the possibilities for future use of the band and the effects of other kinds of applications on the proposed radiodetermination satellite service.

24. With regard to the bands, 1610–1626.5 MHz and 5117–5183 MHz, we note that although a completely conforming international allocation does not exist, we believe the proposed service does, nonetheless, fall under the purview of the existing allocations. For the 1610–1625.5 MHz band, the international footnote 732 is pertinent and indicates that the band is reserved worldwide for airborne electronic aids to air navigation and any directly associated ground-based or satellite-borne facilities. We believe the type of service proposed by Geostar fits this categorization in addition to its provision of several correlatable services. Accordingly, we are therefore proposing to add a U.S. footnote to indicate that the 1610–1626.5 MHz band will be allocated for this type radiodetermination-satellite service within the continental United States. The footnote we propose reads as follows:

> The band 1610–1626.5 MHz is also allocated for use by the radiodetermination satellite service in the Earth-to-space direction.

25. We note that although there appears to be no active use of the band, there is monitoring of the hydroxyl line by the radio astronomy service. Emissions from airborne stations can be serious sources of interference for radio astronomy observations. For example, the airborne transceivers could present a problem in this regard; however, Geostar indicates that these will be located on the upper fuselages of aircraft and, thus, there will be shielding provided by the body of an aircraft. Nevertheless, in order to thoroughly evaluate the compatibility of the two services in the 1610–1626.5 MHz band, we solicit specific comments on this sharing situation and the possibilities for eliminating or avoiding interference problems.

26. For the 5117–5183 MHz band, we believe the type of service proposed by Geostar again falls under the purview of the existing allocations. It is noted that international footnote 733 indicates that the 5000–5250 MHz band is to be used for the operation of microwave landing systems (MLS) and that this use takes precedence over other uses. It appears, however, that MLS may occupy only the 5030–5090 MHz segment, as international standards and practices are now being established. Nonetheless, as stated earlier, Geostar claims its proposed system will not cause interference to future possible MLS use of this band because the downlink signal level is considerably below the threshold level of detection for currently planned MLS receivers. However, we propose to add a new footnote to our table indicating the actual sub-band, direction of transmission, and power flux density limit. Because it is not clear what level of power flux density should be proposed to limit harmful emissions to other possible users in the band, we ask for recommendations on the specific appropriate level with accompanying justification. The proposed footnote to be added to the U.S. Table for the frequency range 5000–5250 MHz would read as follows:

> The sub-band 5117–5183 MHz is also allocated for space-to-Earth transmissions in the fixed-satellite service for use in conjunction with the radiodetermination satellite service operating in the bands 1610–1626.5 MHz and 2483.5–2500 MHz. The total power flux density at the earth's surface shall in no case exceed XXX dbw/m^2 per Hz for all angles of arrival.

27. For both the 1610–1626.5 MHz and the 5117–5183 MHz bands, we note that international coordination is required pursuant to Article 11 and 14 of the ITU Radio Regulations.

28. With regard to Geostar's request to use 16.5 MHz between 6425 and 7075 MHz for its earth station uplink, we have analyzed this band and have found portions of it to be congested in certain areas throughout the U.S. We note that the 6425–6525 MHz and 6875–7075 MHz bands are also allocated to mobile services with which coordination becomes less practical. Accordingly, we suggest that the proposed radiodetermination satellite system use the 6525–6541.5 MHz band which is allocated for only fixed and fixed-satellite (earth-to-space) services. Although there are a number of fixed links in the vicinity of Princeton, N.J., we believe the procedures set out in Part 25 will work effectively for coordinating th proposed earth station with the fixed links in the 6525–6541.5 MHz band segment and propose to require them to be followed. No allocation changes are necessary as the uplink operation is allowable, by definition, in the fixed-satellite service.

29. We believe, based on the information presented in Geostar's filing and the generally favorable comment received in response to the public notice of this petition, that there is sufficient basis to initiate a proceeding proposing the aforementioned frequency bands for a radiodetermination satellite service and associated feeder links. However, due to the likely need to reaccommodate stations from the 2483.5–2500 MHz band and the need to use a relatively large amount of spectrum in other frequency bands, we advise now that we do not foresee the possibility of any future expansion of the service by means of an increased allocation. We solicit public comment on the use of the proposed frequency bands for this purpose, as presented in Appendix B, and on the public's perception for the need to implement the system as described in Geostar's petition and applications.

Entry Policies

30. In addition to these frequency allocation proposals, we are also proposing policies and procedures to govern the licensing and operation of the facilities that will use the frequencies being allocated. For the reasons set forth below, we have determined to accept and process applications for radiodetermination satellite systems. We will use this rulemaking proceeding, together with the applications filed, to determine the extent of any necessary regulation of this service. Our objective in this proceeding is to authorize systems to offer this new satellite communications service on a timely basis with the minimum amount of regulation practicable. Thus, all parties are on notice that if these changes are adopted, we intend to issue one or more radiodetermination satellite system authorizations at the time we finalize the frequency allocations for this service.

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[5] We anticipate that most television auxiliary broadcast operations will be able to shift to other channels within the 2450–2483.5 MHz band at no increase in cost since most equipment in current use is frequency selectable. For fixed links, broadcast, as well as non-broadcast, we again believe that most operations can use other frequencies within the 2450–2483.5 MHz band by merely changing the frequency determining element in the transmission equipment and retuning the equipment.

[6] On April 26, 1984, the Commission adopted a Notice of Proposed Rulemaking looking toward permitting unlimited power spread spectrum systems to operate in some ISM bands, including the 2450 MHz band.

31. In proposing to allocate frequencies to the radiodetermination satellite service, we seek to provide the earliest practical opportunity for entrepreneurs to implement their proposed radiodetermination satellite systems in any allocation finally adopted. We have already received a concrete application from Geostar, who is willing to proceed promptly with its proposal. We are not, however, proposing that the frequencies involved be assigned only to Geostar. Frequency assignments will be made in the context of the application processing and licensing proceeding we are also beginning today by accepting Geostar's application for filing. This approach will allow us to consider how the satellites to be authorized can best use the frequencies being allocated, and to issue initial system authorizations at the same time we finalize the frequency allocations proposed above.[7] To this end, we will use this rulemaking proceeding to establish policies and conditions regarding the licensing and operation of radiodetermination satellite systems, and, if necessary and appropriate, resolve by rule any conflicts between applications.[8]

32. In fashioning entry policies and licensing procedures for other services, we have on many previous occasions determined that competition was feasible and would provide effects that serve the public interest in new and diversified services.[9] The courts have also endorsed the concept of competitive market forces achieving the same public policy goals that detailed administrative regulation was initially designed to achieve.[10] We believe the same beneficial effects can be achieved by crafting licensing policies that allow competition in the provision of radiodetermination satellite services. Thus, a primary objective in this proceeding is to establish an approach which embodies the minimum necessary regulation while allowing multiple entrants into this market.

33. A key policy matter to be addressed by commenters is the feasibility of licensing multiple systems to operate in the spectrum allocation being proposed. Because the Geostar system design is the only one before us, and because no counter proposals in the bands concerned were advanced in the comments on its rulemaking petition in RM-4426, we will use it as our initial baseline for radiodetermination satellite system design and operation.[11] Moreover, we believe that Geostar is a good system model because its design appears to allow several radiodetermination satellite systems to be authorized in the spectrum and to operate independently to provide radiodetermination satellite services on a competitive, unregulated basis. Use of the same assigned frequencies by multiple operators appears feasible because of the random access time division multiplex operation of the Geostar system with slotted ALOHA protocol. With suitable coding techniques, such a technical design should allow the licensing of multiple satellite systems, as well as multiple service providers over the same system, all using the same frequencies even without antenna discrimination provided by the user terminals.

34. There is, of course, an ultimate limit to the number of systems and users that could be accommodated in the frequency bands we propose to allocate for this radiodetermination satellite service. However, even under optimistic estimates of Geostar's expected system loading, utilization of the allocated orbit spectrum resource by Geostar would be small compared to that ultimate limit. To make multiple entry feasible, we propose that all radiodetermination satellite systems proposing to operate in these bands employ random access time division multiplex techniques. Any applicant proposing a system design that is incompatible with this design must demonstrate how multiple entry would be accomplished and how the proposed design is better than Geostar's proposal. Given the level of Geostar's development, any alternative proposals should avoid future or theoretical possibilities in favor of concrete approaches such as Geostar. If, as a result of this rulemaking, we adopt rules requiring compatibility with the Geostar system design, we reserve the right to return any applications that do not conform to this requirement. We also propose that only minimal technical standards be established for this service. Such standards must include those specified in the international Radio Regulations. We therefore propose to apply the requirements of Part 25 of the rules to this service, and request comments and proposals for any necessary changes to Part 25 that may be required or for any other technical standards needed.

35. In addition to proposing compatibility with the Geostar system design, we also propose to require all applicants to proceed expeditiously with the actual construction and launch of their proposed radiodetermination system.[12] All applications must include complete responses to the information requested in the public notice we are adopting today, and all applicants will have to present a detailed business plan, with well-defined milestones, to support their claim that they are in fact prepared to proceed immediately upon grant with the construction and operation of the facilities they propose.

36. A complex satellite system like Geostar also appears capable of providing services that may not always fall clearly within previously defined categories. For example, it is clear that the radiodetermination function of the Geostar proposal consists of providing the geographic coordinates, velocity and direction data of a transceiver identified by the customer. However, the same radio system can also transfer information from a central point to one or more transceivers, or vice versa. A system like Geostar might, therefore, be

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[7] We do not believe it necessary or desirable to promulgate formal rules before accepting or processing applications because of the specialized nature of radiodetermination satellite system design and operation. We have developed flexible policies and procedures in licensing other satellite services, such as domestic satellites. *See, e.g., Domestic Fixed-Satellite Service,* 84 FCC 2d 584 (1981). This experience is readily adaptable to a new satellite service such as the one being addressed here.

[8] *See, e.g., Domestic Communications Satellite Facilities,* 22 FCC 2d 810 (1970); *Alaska Bush Earth Stations,* 81 FCC 2d 304 (1980). We have previously discussed our administrative flexibility to authorize new satellite systems either on an ad hoc, case-by-case approach or in the context of a general rulemaking proceeding. *See Direct Broadcasting Satellites Service,* 86 FCC 2d 719, 725, (1981). Our decision here is to proceed with the space station licensing process concurrently with rulemaking to allocate frequencies. This will allow affected parties the opportunity to comment on the frequency allocations, general issues pertaining to this service, and the specific satellite facilities being proposed.

[9] *See, e.g., Domestic Communications Satellite Facilities,* 35 FCC 2d 844 (1972), *recons.* 38 FCC 2d 665 (1972), *aff'd sub nom. Network Project v. FCC,* 511 F.2d 786 (D.C. Cir. 1975); *Specialized Common Carrier Services,* 29 FCC 2d 870, *recon. denied,* 31 FCC 2d 1106 (1971), *aff'd sub nom. Washington Utilities and Transportation Commission v. FCC,* 513 F.2d 1142 (9th Cir.), *cert. denied,* 423 U.S. 836 (1975). *Direct Broadcasting Satellite Service,* 90 FCC 2d 676 (1982).

[10] *See, e.g., United States v. FCC, 652 F. 2d 72 (D.C. Cir. 1980); Computer and Communications Industry Association v. FCC,* 693 F. 2d 198 (D.C. Cir. 1982).

[11] An analogous approach was recently taken in our authorization of television stereo/subcarrier services to insure the continued utility of equipment designed to initial technical standards. *Second Report and Order* in Docket No. 21323, FCC 84-116 released April 23, 1984.

[12] Although the estimates of what Geostar believes to be the demand for its services provide sufficient confidence to warrant allocation of frequencies to the radiodetermination satellite service at this time, it is neither necessary nor desirable for us to verify that demand is sufficient to make a system such as Geostar financially viable over the long run. We do not intend to adopt regulatory policies oriented towards guaranteeing such viability.

capable of providing radiodetermination, and a multiplicity of fixed/mobile communications services. We do not propose to prohibit any auxilliary or incidental service provided over satellites in the bands to be allocated, provided that the primary purpose of such satellites is to provide radiodetermination services by satellite. However, we will require each applicant to describe clearly the services that may be potentially offered over its proposed satellite system and the types of user terminals that will access the satellite system. We believe it necessary to understand the potential range of users and user terminals that will be available for the actual provision of service to the public, as well as the terms and conditions under which user terminals can access the space segment. With such information, we can assure that efficient use is made of the frequencies being allocated and that a competitive market for innovative services can develop on an unregulated basis.

37. As described in Geostar's applications, radiodetermination satellite service consists of three functions: radiolocation, radionavigation, and an ancillary message capability. We do not propose to impose common carrier obligations on Geostar or any competing radiodetermination satellite service provider for the reasons described below. As an initial matter, because the licensee exercises control over the communications channel in the rendition of radiolocation and radionavigation services, we believe that these activities should not be subject to common carrier regulations. *See, e.g., Industrial Radio Service,* 5 FCC 2d 197, 202 (1966), where the Commission held that radiolocation service is not a common carrier service within the meaning of Title II of the Communications Act because "the specific intelligence transmitted is and must be the sole responsibility and prerogative of the licensee and not the subscriber."

38. Nor do we believe that the addition of ancillary message capability to this service requires us to impose common carrier regulations upon the proposed radiodetermination satellite offering as a whole.[13] In *National Association of Regulatory Utility Commissioners* v. *FCC,* 525 F.2d 630, 642 (D.C. Cir.), *cert. denied,* 425 U.S. 999 (1976) (*NARUC I*), the court identified two criteria determinative of whether a service may be provided on a non-common carrier basis: (1) Whether there is or should be any "legal compulsion" to serve the public indifferently; and (2) if not, whether there are reasons implicit "in the nature" of the service to expect an "indifferent holding out to the eligible user public." *Id.* at 642. Regarding "legal compulsion," the court found that Specialized Mobile Radio Systems (SMRS) were not compelled by the Commission to serve any particular applicant and had unlimited discretion in determining whom, and on what terms, to serve. The court also determined that there was "little reason to expect any sort of holding out to the public" if the service involved the establishment of "medium-to-long term contractual relations" with a "high level of stability among those employing the service" and if the operator expected to provide "highly individualized" services to clients. *Id.* at 643–44.

39. Here, applying the first *NARUC I* test, we do not anticipate that there will be any public interest necessity to impose a "legal compulsion" upon the ancillary message features of radiodetermination satellite service to serve the public indifferently. We note in this regard that even though radiodetermination satellite service will be valuable for the protection of life and safety, it does not appear necessary to impose any common carrier obligations in order to ensure the availability of this kind of service to the public. Not only do competitive radiolocation and message services exist,[14] but we anticipate the filing of additional applications by firms seeking to provide radiodetermination service in competition to Geostar.

40. Nor does it appear, under the second test, that the proposed service will be offered as an "indifferent holding out to the eligible user public." As proposed in Geostar's petitions and application, radiodetermination service is designed to provide radiolocation and radionavigation information accurate to within 1 to 7 meters, in conjunction with ancillary message capability. The service is intended for three principal types of users: commercial and private aircraft, commercial terrestrial and marine vehicles, and pedestrians requiring accurate location information and ancillary short message capability. Any of these potential users may access the system through a position request, emergency signal, or a message signal, all of which may be individually tailored to meet the individual user's requirements. For example, commercial airlines or private pilots utilizing this service might require a system which gives radionavigation position information at one minute intervals, but access to the system through a message signal every few seconds during emergency communications. Alternatively, interstate trucking companies or railroads may access the system a few times a day through a radiolocation request when tracking vehicles crossing the desert, but desire more frequent access to the system through message signals in order to notify truckers of shipments waiting for pick up. Finally, ore exploration ventures might contract for pedestrian radiolocation information and access to message signals at individually predetermined time intervals. As these examples illustrate, the proposed radiodetermination service may be tailored to accommodate the highly individualized methods of operation and demands of potential users, a characteristic *NARUC I* indicates may illuminate whether an entity in fact does not operate as a common carrier. *Id.* at 643. We request public comment on our regulatory proposal and specifically invite commenters to address the alternative legal theories we have proposed for non-common carrier regulation of radiodetermination satellite services.

Application Processing Procedures

41. Although we do not believe it is likely, we recognize that some potential exists for mutual exclusivity between the Geostar applications and other applications proposing use of the same frequency bands that might be filed between now and the time that this rulemaking proceeding is completed. For example, it is possible that we would receive more applications than could be accommodated under a random access time division multiplex scheme, or that an applicant will propose a different technology than Geostar has which would be substantially more efficient or otherwise further advance the objectives we have defined. Should this eventuate, we propose to establish policies and procedures in this rulemaking that will allow us to select among competing applicants. At this time, however, we expect at the conclusion of this rulemaking to be able to grant radio station authorizations for radiodetermination satellite systems to

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[13] It is our understanding that message services will be offered as an ancillary part of the radiodetermination service, and not as a stand-along offering to the public for hire. Therefore, we tentatively conclude that there is no legal requirement to isolate one element of this integrated service and treat it as common carriage.

[14] Private marine radiolocation service is regulated under Part 90. *Industrial Radiolocation Service, supra.* A government-owned global positioning satellete offers commercial radiodetermination service for ships and aircarft in addition to its military services. The Federal Avaition Administration also offers radionavigation information to commercial flights. None of these other services are under common carrier regulations.

all qualified applicants whose proposals conform to our rules. To this end, today in a Public Notice we are formally establishing a cut-off date for such applications to insure that we have a finite set of radiodetermination satellite proposals to consider.[15] A period of 45 days will be provided for the filing of any such applications.[16] This cut-off will safeguard the procedural rights of any serious potential system operator who may have been awaiting the allocation of frequencies before filing its application.[17] That notice identifies the minimum information needed for a complete application to be acceptable by the Commission. Geostar will also be required to review its application and submit any additional required information within 20 days of release that notice.

42. Incomplete (i.e., those that do not supply the required information) and untimely filed applications will be returned to the applicant without processing. Those that appear *prima facie* acceptable for filing will be placed on public notice upon initial review. The *Public Notice* will set time limits for the filing of petitions or comments on the applications. With respect to application processing, a period of 30 days from the public notice accepting either Geostar's or other applications for a radiodetermination satellite system will be provided for petitions or comments on the applications, and subsequent pleadings on the applications will be due within the amount of time provided by § 1.45 of the rules, 47 CFR 1.45.

43. Commenters should review the Geostar applications, as well as any others that might be filed. Comments on Geostar's and any other applications should address the technical impact of each system proposal on the others, the desirability and utility of the services to be offered over each proposed system, and the ability of each proposal to conform to the regulatory objectives proposed above. The resulting record is intended to provide the basis for Commission specification of any necessary design and operating standards, as well as terms and conditions on any system authorization, in concluding this rulemaking proceeding. As stated above, absent a convincing showing to the contrary in the record to be compiled in this proceeding, we propose to require any authorized system to be compatible with Geostar.

44. Finally, the question of licensing individual transceivers needs to be addressed. Although Geostar proposes a postcard licensing scheme, we do not find much utilify in such an approach. We would rather use a flexible blanket license approach, where either the space station licensee or a service vendor hods the authorization and responsibility for a specified member of user units. We, therefore, propose no individual transceiver licensing.

Conclusion

45. In summary, we propose to allocate frequencies to the radiodetermination satellite service and to process simultaneously initial applications for such satellite systems. We will, therefore, consider petitions or comments on the specific applications and comments on the general technical and other policies for this service, including whether the public interest would be served by allocating specturm for the service. Thus, this proceeding will adopt any rules or policies necessary to govern the design, operation and licensing of radiodetermination satellite facilities and services concurrently with the finalization of the frequency allocations for this service.

46. This *Notice of Proposed Rulemaking* is issued pursuant to authority contained in sections 4(i), 4(j), 303 and 403 of the Communications Act of 1934 of 1934 as amended, 47 U.S.C. 154(i), 154(j), 303 and 403.

47. Our initial analysis pursuant to the *Regulatory Flexibility Act*, Pub. L. 96-354, is presented in Appendix D. Our initial conclusion on this matter is that the actions proposed in this proceeding will not have a significant economic impact on a substantial number of small businesses if ultimately adopted.

48. Interested parties may file comments with respect to this *Notice of Proposed Rulemaking* on or before November 13, 1984. Reply comments may be filed on or before December 13, 1984. In accordance with § 1.1419 of the Commission's Rules and Regulations, 47 CFR 1.1419, an original and five copies of all documents filed in this proceeding should be furnished to the Commission. copies of all filings will be available for public inspection during regular business hours in the Commission's public reference room at its headquarters in Washington, D.C. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

49. For the purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a *Notice of Proposed Rulemaking* until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier.[18] In general an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. An person who submits a written *ex parte* presentation must serve a copy of that presentation on the Secretary of the Commission for inclusion into the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments in the proceeding must prepare a written summary of that presentation. On the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion into the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by Docket Number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

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[15] *See Public Notice*, Report No. DS-305 adopted today. We have used such procedures in other satellite services, *see, e.g., Direct Broadcast Satellites*, 86 FCC 2d 719 (1981); *Domestic Fixed Satellite Service*, 48 FR 40256 (September 6, 1983).

[16] Motions for extensions of time will be considered in a case-by-case basis.

[17] We have addressed an analogous situation in the domestic Fixed-Satellite Service in *GTE Satellite Corporation*, 93 FCC 2d 832 (1983).

[18] With respect to the processing of the applications, appropriate *ex parte* statements will be issued as required.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

Summary of Comments and Reply Comments

1. About 30 to 35 comments were received the majority of which support the petition. Representative of these are a number of active and retired airline captains who envision the system as contributing to the general improvement of air safety and traffic control. Specifically they state that the GSS would provide collision avoidance information, offer more reliable "approach" guidance, be able to locate "downed" aircraft quickly, and contribute to better utilization of aircraft at more favorable altitudes resulting in significant fuel economy.

2. Among the other favorable comments received are the following:

(a) A non-profit consumer group advocated GSS use for locating and rescuing intercity bus passengers involved in accidents in remote locations. It indicates that most bus companies don't allow use of CB radios which could be used in such situations.

(b) National Ocean Industries Association, a domestic trade association representing over 450 corporations engaged in ocean development activity, indicates GSS could be used as a maritime EPIRP (emergency position indicating radio beacon) for recreational boats in distress.

(c) The U.S. Department of Commerce states that GSS could provide precise geographic coordinates for structures visited by Census Bureau enumerators and could be used for the exchange of these data and other associated information between structure location and Census Bureau computing equipment using inexpensive transceivers.

(d) Seiscom Delta United Corp., a geophysical contractor, claims it would use the proposed GSS to obtain highly accurate positioning data in carrying out seismic surveys. Also, it would use GSS' capability to relay short messages between the central office and field operations. Also, it mentions that the satellite system could be beneficial for use as a vehicle locator service and to determine whether an employee working alone in some remote area needs medical assistance.

3. Opposing comments were filed by Offshore Navigation, Inc. ("ONI"), CBS Inc., and Mobile Satellite Corp ("Mobilsat").

(a) ONI claims that Geostar's proposal is imaginative, not in the public interest, and that it has no firm commitment to raising the funds needed. It doubts whether the FAA would prescribe installation and use of such a commercial system. ONI alleges that the aviation industry can secure precise position information through use of government-operated GPS and likely could do so at lesser cost and with greater reliability than available through Geostar.

(b) In reply, Geostar indicates that there are strong supportive comments on file from two major general aviation manufacturers, the representative of over 265,000 aircraft owners and pilots, the world's largest private airport, college aeronautics departments, aircraft equipment companies and several highly experienced individuals. Contrary to ONI's contention, Geostar continues, mandatory use of the GSS is not required for the delivery of effective aeronautical radio-determination service. Position determination, identification of downed aircraft, prevailing wind advisories and distress assistance, which are the basic aeronautical radio-determination services of the first generation GSS, benefit individual aircraft without reference to any other aircraft. It contends that mandatory use neither is being requested nor is required.

(c) CBS, Inc. opposes the reallocation of the 2483–2500 MHz band as it would limit the ability of broadcasters to engage in electronic news gathering ("ENG") in that band. Also, it objects to use of the bands 6425–6525 MHz and 6875–7125 MHz for use as a GSS communications uplink because these bands are also used extensively by broadcasters for ENG.

(d) In reply to CBS, Geostar disagrees with CBS' analysis and continues to urge that 2483–2500 MHz be reserved for Geostar's radio-determination downlink. Geostar indicates that channel reassignment of the auxiliary broadcast fixed stations operating in the 2483–2500 MHz band to other channels is entirely feasible and very inexpensive. It contends that the reassignment will not limit the ability of broadcasters to engage in ENG in the 2 GHz band. In respect to the 6 GHz bands to which CBS objects, Geostar states that these links would be used only for narrow beam satellite/control center communications from a single earth station. These signals are fully compatible with auxiliary broadcast and other types of stations outside the coordination area required by existing Commission rules.

(e) The Communications Satellite Corp. ("Comsat"), in its comments claims that the range of increased noise temperature is sufficiently high to require Geostar to formally coordinate with INMARSAT if GSS is to use the 1610–1626.5 MHz band.

(f) Geostar, in reply to Comsat's concerns, submitted a modification to its proposal so as to reduce the GSS out-of-band emissions. It included computations examining the impact of GSS emissions upon INMARSAT uplinks. It concludes that coordination is required and that it will comply fully with all coordination requirements.

(g) The Mobile Satellite Corp. ("Mobilsat") submitted voluminous comments opposing the GSS proposal. It claims that the GSS is not a workable system, that Geostar has not demonstrated that the market could support the system, that Geostar has not justified its allocation request for over 100 MHz of spectrum, that Geostar is not financially capable of implementing its proposed system, among numerous other allegations. Mobilsat claims that the accuracy of position determination proposed by GSS of 1 to 7 meters is not obtainable using range difference techniques. It states it is not possible to determine altitude with useful accuracy by range or range difference measurements from satellites in geostationary orbit because the satellites are in one plane and nearly in a straight line.

(h) Mobilsat contends that Geostar has overlooked the effect of multipath on range measurement accuracy. It claims shadowing problems would render service unworkable, even if law enforcement agencies agreed to respond to Geostar's alarms. In urban areas, Mobilsat alleges that cellular radio telephone systems may better serve Geostar's intended crime prevention.

(i) Mobilsat claims that the air traffic control (ATC) functions would be duplicative of existing terrestrial ILS and microwave landing systems. It states that neither application (aviation and crime prevention) has been shown to have a significant existence.

(j) In response to Mobilsat's comments, Geostar indicates that its system uses direct range measurements, not range differences. Accordingly, the assumptions made by Mobilsat concerning Geostar's alleged accuracy are incorrect. Geostar states that a properly designed range measurement system can provide highly accurate position fixes including altitude as well as longitude and latitude. According to Geostar, the most common factor affecting range accuracy will be delay variations at the user transceiver. Geostar admits its system is developmental in nature and will change as work progresses.

(k) Geostar concedes that it does not make any accuracy claims where the users-to-satellite path is not line-of-sight. It states that it is requesting an exclusive assignment of 33 MHz for the radio-determination links. The remaining 82.5 MHz is for narrow beam satellite links from a single earth station.

(l) Geostar claims that it has never asserted an intent to provide a local area air traffic control service and the system would not be duplicative of MLS systems. "MLS" systems are not intended to provide enroute navigational guidance and emergency advisory services as can Geostar. Geostar contends that none of the existing services address the radio-determination market Geostar intends to serve. They are solely radionavigational and lack the two-way radio-communications and radio positioning that Geostar provides. It states that Navstar is only a one-way system designed for tactical environments and is not responsive to the civilian market.

(m) Geostar states that its GSS will be a supplementary service rather than an alternative to existing governmental services.

Appendix B

INTERNATIONAL TABLE			UNITED STATES TABLE	
			GOVERNMENT	NON-GOVERNMENT
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Allocation MHz	Allocation MHz
(1)	(2)	(3)	(4)	(5)
1 610–1 626.5	AERONAUTICAL RADIONAVIGATION 722 727 730 732 733 734		1 610–1626.5 AERONAUTICAL RADIONAVIGATION 722 732 733 734 US39 US40 US208 US260	1 610–1 626.5 AERONAUTICAL RADIONAVIGATION 722 732 733 734 US39 US40 US208 US260

722 In the bands 1 400—1 727 MHz, 101—120 GHz and 197—220 GHz, passive research is being conducted by some countries in a programme for the search for international emissions of extra-terrestrial origin.

732 The band 1610—1626.5 MHz is reserved on a worldwide basis for the use and development of airborne electronic aids to air navigation and any directly associated ground-based or satellite-borne facilities. Such satellite use is subject to agreement obtained under the procedure set forth in Article 14.

733 The bands 1 610—1 626.5 MHz, 5 000—5 250 MHz and 15.7 GHz are also allocated to the aeronautical mobile-satellite (R) service on a primary basis. Such use is subject to agreement obtained under the procedure set forth in Article 14.

734 The band 1 610.6—1 613.8 MHz is also allocated to the radio astronomy service on a secondary basis for spectral line observations. In making assignments to stations of other services to which the band is allocated, administrations are urged to take all practicable steps to protect the radio astronomy service from harmful interference. Emissions from space of airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 343 and 344 and Article 36).

US39 Radio altimeters are permitted to use the band 1600–1660 MHz only until such time as international standardization of other aeronautical radionavigation systems or devices requires the discontinuance of radio altimeters in this band.

US40 The band 1592.5–1622.5 MHz is allotted provisionally, but on a primary basis, for the collision avoidance function, noting the continued use of existing altimeters in the band 1600–1660 MHz.

US208 Planning and use of the band 1559–1626.5 MHz necessitate the development of technical and/or operational sharing criteria to ensure the maximum degree of electromagnetic compatibility with existing and planned systems within the band.

US260 Aeronautical mobile communications which are an integral part of aeronautical radionavigation systems may be satisfied in the bands 1559–1626.5 MHz, 5000–5250 MHz and 15.4–15.7 GHz.

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
			GOVERNMENT	NON-GOVERNMENT		
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Allocation MHz	Allocation MHz	RULE PART (s)	Special Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2 450–2 500 FIXED MOBILE RADIO-LOCATION 752 753	2 450–2 500 FIXED MOBILE RADIO-LOCATION 752		2 450–2 500 752 US41	FIXED MOBILE RADIO-LOCATION 752 US41	AUXILIARY BROADCASTING (74) PRIVATE OPERATIONAL-FIXED MICROWAVE (94) PRIVATE LAND MOBILE (90)	2 450 ± 50 MHz industrial, scientific and medical frequency

752 The band 2 400–2 500 MHz (centre frequency 2 450 MHz) is designated for industrial, scientific and medical (ISM) applications. Radio services operating within this band must accept harmful interference which may be caused by these applications. ISM equipment operating in the band is subject to the provisions of No. 1815.

US41 The Government radio location service is permitted in the band 2450–2500 MHz on condition that harmful interference is not caused to non-Government services.

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
			GOVERNMENT	NON-GOVERNMENT		
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Allocation MHz	Allocation MHz	RULE PART(s)	Special Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5 000–5 250	AERONAUTICAL RADIONAVIGATION 733 796 797		5 000–5 250 AERONAUTICAL RADIONAVIGATION 733 797 US211 US260	5 000–5 250 AERONAUTICAL RADIONAVITATION 733 796 797 US211 US260	AVIATION (87)	

733 The bands 1 610–1 626.5 MHz, 5 000–5 250 MHz and 15.4–15.7 GHz are also allocated to the aeronautical mobile-satellite (R) service on a primary basis. Such use is subject to agreement obtained under the procedure set forth in Article 14.

796 The band 5 000–5 250 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. The requirements of this system shall take precedence over other uses of this band.

797 The bands 5 000–5 250 MHz, and 15.4–15.7 GHz are also allocated to the fixed-satellite service and the intersatellite service, for connection between one or more earth stations at specified fixed points on the Earth and space stations, when these services are used in conjunction with the aeronautical mobile (R) service. Such use shall be subject to agreement obtained under the procedure set forth in Article 14.

US211 In the bands 1670–1690, 5000–5250 MHz and 10.7–11.7, 15.1365–15.35, 15.4 15.7, 22.5–22.55, 24–24.05, 31.0–31.3, 31.8–32.0, 40.5–42.5, 84–86, 102–105, 116–126, 151–164, 176.5–182, 185–190, 231–235, 252–265 GHz, applicants for airborne or space station assignments are urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference; however, US74 applies.

US260 Aeronautical mobile communications which are an integral part of aeronautical radio navigation systems may be satisfied in the bands 1559–1626.5 MHz, 5000–5250 MHz and 15.4–15.7 GHz.

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
			GOVERNMENT	NON-GOVERNMENT		
Region 1 Allocation MHz (1)	Region 2 Allocation MHz (2)	Region 3 Allocation MHz (3)	Allocation MHz (4)	Allocation MHz (5)	RULE PART(s) (6)	Special Use Frequencies (7)
				6425–6525 FIXED-SATELLITE (Earth-to-Space) MOBILE 791 809 NG122	DOMESTIC PUBLIC FIXED (21) Auxiliary Broadcasting (74) 6 525–6 875 FIXED PRIVATE OPERATIONAL-FIXED- SATELLITE FIXED (Earth-to-space) MICROWAVE (94) 6 875–7 075 FIXEDAUXILIARY BROADCAST-FIXED- SATELLITE ING (74) (Earth-to-space) MOBILE 809 NG118	

• • • • • • •

791 The standard frequency and time signal-satellite service may be authorized to use the frequency 4 202 MHz for space-to-Earth transmissions and the frequency 6427 MHz for Earth-to-space transmissions. Such transmissions shall be confined within the limits of ±2 MHz of these frequencies and shall be subject to agreement obtained under the procedures set forth in Article 14.

809 In the band 6 425–7 075 MHz, passive microwave sensor measurements are carried out over the oceans. In the band 7 075–7 250 MHz, passive, microwave sensor measurements are carried out. Administrations should bear in mind the needs of the earth exploration-satellite (passive) and space research (passive) services in their future planning of this band.

NG118 Television translator relay stations may be authorized to use frequencies in this band on a secondary basis to stations operating in accordance to the Table of Frequency Allocations.

NG122 Television Pickup stations may be authorized under Part 74 in the 6425–6525 MHz band on a secondary basis to stations operating in accordance with the Table of Frequency Allocations.

Appendix C

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended, as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

§ 2.106 Table of Frequency Allocations. [Amended]

1. In § 2.106, columns 4 and 5 of the allocation table for the band 1610–1626.5 MHz are amended by adding a new footnote US XXX as follows:

United States Table	
Government Allocation MHz (4)	Non-Government Allocation MHz (5)
• • •	• •
1610–1626.5 AERONAUTICAL RADIONAVIGATION 722 732 733 734 US39 US40 US208 US260 USXXX	1610–1626.5 AERONAUTICAL RADIONAVIGATION 722 732 733 734 US39 US40 US208 US260 USXXX
• • •	• •

U.S. Footnotes

• • • • •

USXXX The band 1610–1626.5 MHz is also allocated for use by the radiodetermination satellite service in the Earth-to-space direction.

2. In § 2.106, columns 4 and 5, remove the frequency bands 2450–2500. Also, remove the text from columns 6 and 7 adjacent to frequency bands 2450–2500. Add the following new entries to the table as follows:

United States Table		FCC USE DESIGNATORS	
Government	Non-Government		
Allocation MHz (4)	Allocation MHz (5)	Rule Part (s) (6)	Special-Use Frequencies (7)
•	•	•	•
2450–2483	2450–2483 FIXED MOBILE	AUXILIARY BROADCASTING (74)	
	Radiolocation	PRIVATE OPERATIONAL-FIXED (94)	2450±50 MHz
752 US 41	752 US41	PRIVATE LAND MOBILE (90)	Industrial, scientific and medical frequency
2483–2500	2483–2500 RADIODETERMINATION SATELLITE		
752 US 41	(space-to-Earth) 752 US 41		
•	•	•	•

3. In § 2.106 columns 4 and 5 are amended for the band 5000–5250 MHz by adding a new footnote USXXZ as follows:

United States Table		FCC USE DESIGNATORS	
Government	Non-Government		
Allocation MHz (4)	Allocation MHz (5)	Rule Part (s) (6)	Special-Use Frequencies (7)
•	•	•	•
5000–5250 AERONAUTICAL RADIONAVI 733 796 797 US211 US260 USXXZ	5000–5250 AERONAUTICAL RADIONAVIGATION 733 796 797 US211 US260 USXXZ	AVIATION (87)	
•	•	•	•

U.S. FOOTNOTES

• • • • •

USXXZ The sub-band 5117–5183 MHz is also allocated for space-to-Earth transmissions in the Fixed satellite service for use in conjunction with the radiodetermination satellite service operating in the bands 1610–1626.5 MHz and 2483–2500 MHz. The total power flux density at the earth's surface shall in no case exceed XXXX dbw/m² per Hz for all angles of arrival.

Separate Statement of Commissioner Mimi Weyforth Dawson Dissenting in Part

Re: Amendment of the Commission's Rules to Allocate Spectrum for and

to Establish Other Rules and
Policies Pertaining to a
Radiodetermination Satellite
Service, RM–4426

I support the Commission's proposal to allocate frequencies to the radiodetermination service, but I strongly disagree with consolidating the general rulemaking proceeding with the application process. Accepting applications before any allocation to this service is finalized has the potential to create legal and administrative problems that may be counter-productive to our efforts to expedite the process. Moreover, such an approach gives the appearance of prejudging the ultimate rules that will be adopted.

This consolidated approach requires that applications be filed without the benefit of final rules or standards and, as a consequence, amendments may be necessary in order to bring them into compliance. Administratively, the filing and processing of amendments could complicate the Commission's procedures or, at best, slow the process down.

Moreover, from a legal and policy standpoint, a consolidated approach potentially raises questions of fundamental fairness and due process. Under the adopted procedures, Geostar's application will be accepted for filing as well as any other completed applications proposing radiodetermination satellite systems that are technically compatible with Geostar's. On the other hand, those applicants proposing an incompatible system design "must demonstrate [in the rulemaking] how multiple entry would be accomplished and how the proposed design is better than Geostar's proposal."[1] It is not clear whether these applications will be accepted for filing pending the outcome of the rulemaking. Likewise, it is unclear whether applications proposing an alternative use of the frequencies will be accepted for filing. It appears, however, that the Commission intends to selectively accept certain applications for filing during the pendency of the rulemaking and not others.

The major flaw of this approach is that, at this time, the Commission has no basis whatsoever upon which to selectively accept applications. The Commission has no final rules in place nor has it allocated these frequencies to the radiodetermination service. While I disagree with the general policy of accepting *any* applications concurrently with the rulemaking proceeding, I believe that once the Commission is willing to accept some, it should accept all bonafide applications. Otherwise, the Commission's consolidated procedures may be valnerable to arguments raising questions of fairness and due process. To avoid this possibility, however unlikely, my preference would have been for the Commission to expeditiously rule on the frequency allocation issue, determine the final rules and standards, and then process conforming applications.

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[1] *Order* at para. 34. While the Commission has, on occasion, processed applications concurrently with a rulemaking to allocate frequencies, this is the first time the Commission is proposing to mandate a particular transmission technique before final rules are adopted. *Cf.* Direct Broadcast Satellites, *Report and Order*, 90 FCC 2d 676 (1982), *Notice of Proposed Policy Statement and Rulemaking*, 86 FCC 2d 719 (1981); and Domestic Communications Satellite Facilities, 25 FCC 2d 718 (1970).

[FR Doc. 84-24308 Filed 9-17-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-750; FCC 84-356]

Processing of FM and TV Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This action proposes changes in the current rules with respect to filing applications for FM and TV station licenses and modifications thereto. The proceeding seeks comment on proposals to eliminate the initial cut-off lists and to adopt a "window" filing system for all vacant commercial FM and TV channels now on or subsequently added to the Tables of Allotments. All mutually exclusive applications filed during the window period would be consolidated for comparative hearings. If no application for a particular channel is filed during the window, the first acceptable application filed thereafter would be granted on a "first-filed" basis. All applications filed under the proposed procedures would continue to be subject to petitions to deny. This action is proposed with a goal of expediting additional service to the public and eliminating unnecessary administrative costs for both the Commission and applicants.

DATE: Comments must be filed on or before October 15, 1984, and reply comments must be filed on or before October 30, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert H. Ratcliffe, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television and radio broadcasting.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.3572 and 73.3573 relating to processing of FM and TV broadcast applications, MM Docket No. 84–750.

Adopted: July 26, 1984.

Released: September 7, 1984.

By the Commission: Commissioner Rivera issuing a separate statement at a later date.

Introduction

1. We institute this proceeding to explore alternative procedures for processing applications for new commercial FM and TV stations and modifications to existing stations with a goal of expediting additional service to the public and eliminating unnecessary administrative costs.

2. Under existing Commission rules, applications for new FM and TV stations must specify vacant channels listed in the Tables of Allotments.[1] Once filed and accepted, applications are placed on "cut-off" lists which publish the dates for filing competing applications and petitions to deny.[2] If

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[1] The FM "Table of Allotments" is found in § 73.202 of the Commission's rules and the TV "Table of Assignments" is found in § 73.606 of the Commission's rules. Both tables shall be referred to herein as the "Tables of Allotments."

[2] Parallel provisions for the processing of television and FM applications are contained in § 73.3572 and 73.3573 of the Commission's rules, respectively.

competing applications are received, a second "cut-off" list is published, establishing the deadline for the filing of petitions to deny those competing applications. We believe these cut-off procedures disrupt the processing of an original application by often attracting competing applications which are filed for purposes of delay. Thus, this process may encourage some unnecessary comparative hearings to determine which of the otherwise qualified applicants deserves a grant. These comparative hearings are extremely costly to both the applicants and the Commission, and can delay the institution of new service to the public for many years. In the commercial setting, these costs and delays may deter investors in new broadcast ventures and may have a deleterious effect on an individual applicant's ability to finance a new broadcast station.

3. We believe the alternative cut-off procedures set forth below will substantially reduce the cost and delay of the comparative hearing process and will encourage full utilization of the channels allotted in the FM and TV Tables of Allotments. Moreover, the proposed rule changes should achieve a better balance between the dual, and sometimes divergent, goals of our application processing system: to select the best possible applicant and to bring new service to the public as expeditiously as possible.

History of Current Processing Rules

4. The Communications Act of 1934, as amended, does not specifically provide for the filing of mutually exclusive applications for broadcast facilities. However, the Act provides that applications for new facilities cannot be granted for thirty days following public notice of their acceptance for filing and such applications cannot be denied without affording the applicant a right to a hearing. 47 U.S.C. 309. Prior to 1945, the Commission had no rules establishing procedures to protect applicants' rights under these statutory provisions.

5. In March 1944, the Fetzer Broadcasting Company filed an application for authority to construct a new AM broadcast station in Grand Rapids, Michigan. In May 1944, before the Fetzer application had been acted upon, Ashbacker Radio Corporation filed a request to change the operating frequency of its station WKBZ in Muskegon, Michigan. The two applications were mutually exclusive, but Commission granted the Fetzer application without hearing and designated Ashbacker's application for hearing. Ashbacker appealed. Upon review, the Supreme Court held that where two bona fide applications are mutually exclusive the grant of one without a comparative hearing for both of them deprives a party of its right to a hearing under section 309(a) of the Communications Act. *Ashbacker* v. *FCC*, 326 U.S. 327 (1945). The court also noted, however, that the Commission could promulgate regulations limiting the filing rights of competing applicants.[3]

6. Since *Ashbacker*, the Commission has used various "cut-off" procedures in processing broadcast applications, culminating with the present system of inviting competing applications by publishing a list of applications that have been found to be acceptable for filing.[4] On several occasions the Court of Appeals for the District of Columbia has approved cut-off procedures as a useful processing device.[5] The Court has acknowledged that employment of a cut-off date was a reasonable and necessary limitation on the statutory right to a comparative hearing,[6] so long as the regulations provided fair notice to the public of what was being cut-off.[7] In all of the cases where the validity of cut-off rules was at issue, the Court was concerned with notice to potential applicants. We believe that for FM and TV, such notice can be provided by events other than the filing of an initial application for a channel.

7. FM and TV channels are licensed using Tables of Allotments which specify both communities and available channels. Those channels have been placed in the Tables after notice and comment rule making in which the public has had an opportunity to participate. As a result, all channels in the Tables are technically compatible, and they are allotted only after consideration of a fair, equitable and efficient distribution of frequencies pursuant to section 307(b) of the Communications Act. Under such circumstances, the notice that a channel is available for application by its inclusion in the appropriate Table is more than adeuate under the Communications Act and relevant case law.[8]

Proposals

8. Accordingly, we propose adoption of a procedure under which parties interested in applying for vacant commercial channels now listed in the FM and TV Tables of Allotments will be invited to file their applications during a designated filing "window period" of 45 days.[9] This window period would be established for all such existing channels in the report and order in this proceeding.[10] Similarly, we propose that future Commission rule making decisions adding commercial channels to the FM or TV Tables would include a specified filing window during which interested parties may file competing applications for the added channels.[11] For both existing and future channels, all applications filed for a specific channel during the applicable window period would be processed for consolidated consideration, with appropriate opportunities for the filing of petitions to deny. All timely filed, acceptable applications for a particular channel would be designated for a comparative hearing, if necessary. All applications filed during the open window period would be treated as filed on the same date.

9. If no applications are received during the specified window period for a vacant channel, the first acceptable application for the channel filed after the window closing date will cut off the filing rights of subsequent applicants. We believe that any subsequent applicants will have been on notice that the channel was available from its inclusion in the Table and the announcement of the window period and they will have had an opportunity to file earlier. Therefore, cutting off such

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[3] *See Ashbacker* v. *FCC*, 326 U.S. 327, 333 n.9.

[4] 47 CFR 73.3572 and 73.3573 contain cut-off rules for the TV and FM services.

[5] *Ranger* v. *FCC*, 294 F.2d 240 (D.C. Cir. 1961); *Ridge Radio* v. *FCC*, 292 F.2d 770 (D.C. Cir. 1961); *Century Broadcasting* v. *FCC*, 310 F.2d 864 (D.C. Cir. 1962); *Radio Athens* v. *FCC*, 401 F.2d 398 (D.C. Cir. 1968).

[6] *See Radio Athens* v. *FCC*, *supra* note 6 at 400–401.

[7] *See Ridge Radio* v. *FCC*, *supra* note 5.

[8] This is not to say that a window filing process would be inappropriate for all nontabled services as well. Indeed, we have proposed a form of window processing for Low Power Television. *See Notice of Proposed Rule Making* in Docket 84–1350, 49 FR 908 (January 6, 1984).

[9] At present, the FM Table contains 76 available commercial channels. The TV Table contains 129 vacant commercial channels. The *Notice of Proposed Rule Making* in Docket 84–231 proposes the addition of 684 channels to the FM Table, implementing our action in Docket 80–90, *Report and Order*, 94 FCC 2d 152 (1983).

[10] We do not contemplate application of these procedures to noncommercial FM and TV channels. The special problems of these applicants in securing funding, staff and programming before applying for a new station would appear to argue against use of a window filing system. These educational applicants are often dependent upon institutional funding which may take two years or more to secure and may involve legislative affirmation of the broadcast development and funding plan.

[11] Channels are only available in the specific listed community. See *Report and Order* in Docket No. 82–320, 93 FCC 2d 436 (1983). However, we have proposed to expand the definition of "community" to include an entire metropolitan area. *Notice of Proposed Rule Making* in Docket 83–403, 48 FR 19428 (April 29, 1983).

applications would not be unreasonable, and it would expedite the provision of a new service to the public on an available channel.[12] As with applications filed during the window period, we would entertain petitions to deny.

10. Commenters are asked to address themselves to the legal analysis with leads us to the conclusion that the Tables of Allotments can provide adequate notice for the establishment of the cut-off procedures proposed herein. Comments are also invited on the practical efficacy of the proposed procedures to curtail administrative delays in the authorization of new service. Finally, parties should comment on the specifics of the proposal, including the duration of the window periods.

11. We believe that the window processing system proposed herein should also be applicable to applications for modification of facilities in order to expedite the processing of such applications.[13] Under this proposal, the initial filing window of 45 days established in this proceeding would govern all applications for modifications to existing facilities where the proposed change would affect either another existing facility or a vacant channel currently listed in the Tables of Allotments. Modification applications that would affect channels added to the Tables by future rule making action would be subject to the filing window established in the report and order adding the relevant channel to the Tables.

12. Change applications filed during the applicable window period would be consolidated for hearing with any mutually exclusive applications for new broadcast stations or inconsistent change applications. Accordingly, an existing licensee should file its application for modification during the window period if it would affect or be affected by potential operations on a vacant channel allotment or modifications to other existing stations. All such applications would then be consolidated for hearing. Otherwise, the grant of a license for the vacant channel or modification of an existing license could limit future site selection options of other existing stations. Similarly, the grant of a modification may limit the site selection options for a channel assignment that remains vacant after the window period.

13. If no applications are filed during the window period, the first application for a vacant channel filed thereafter would cut off mutually exclusive modification applications, thereby possibly limiting the site selection for such changes. If an application for modification is the first filed after the window period, applicants for a new channel or applicants for inconsistent modifications could be similarly limited in their site selection. We seek comment on these proposals for the processing of applications for modification. We request that commenters suggest any alternatives which they believe will improve the processing of modification applications while preserving the Commission's interest in expediting future grants of new full service licenses.

Other Matters

14. Our proposal is intended to expedite new service to the public, but such service could be delayed by extensions of the time normally afforded by the Commission to construct a new station. Because our proposal limits the ability of parties to file competing applications, particularly after the window period, successful applicants that have had the benefit of these expedited procedures should be held to strict construction schedules. This will also help avoid the filing of speculative applications by parties who are not ready, willing and able to undertake prompt construction of the station for which they have applied. Thus, we propose strict enforcement of our current limits on the duration of construction permits, 12 months for FM and 18 months for TV.[14] We believe it would not be appropriate to favorably consider applications for extension of time within which to construct except in the most unusual circumstances.[15] Failure to comply with the terms of the construction permit would result in its automatic forfeiture pursuant to § 73.3599 of the Commission's Rules. In the event that a channel allotment is vacated, for this or any other reason, we propose to announce a subsequent filing window by public notice for the acceptance of new applications for such a channel.

Initial Regulatory Flexibility Analysis

15. Pursuant to requirements of the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. *Reason for Action.* Our experience indicates that the current cut-off procedures for the acceptance of competing applications for commercial full service FM and television stations delay service to the public, disrupt the processing of an original application and often require costly comparative hearings which do not benefit the public interest. This *Notice* outlines alternative cut-off procedures designed to reduce comparative hearings and limit applications to only those seriously interested in providing better service.

II. *The Objective.* The Commission seeks comment on proposals to amend the current cut-off rules for applicants seeking licenses for the commercial FM and TV stations listed in the Tables of Assignments. The objective is to determine whether the proposals are consistent with the legal requirements of the Communications Act of 1934, as amended, and whether these proposals or others will curtail delays in the authorization of new service to the public.

III. *Legal Basis.* The action taken by the *Notice* is authorized by sections 4(i) and 303 of the Communications Act of 1934, as amended.

IV. *Description, Potential Impact and Number of Small Entities Affected.* The Commission believes that adoption of the proposals set forth in this *Notice* would benefit small entities interested in acquiring new FM and TV commercial broadcast licenses. Under the current rules, small entities are handicapped by the delays and costs incurred during the comparative hearing process. The proposals in the *Notice* would benefit an unknown number of small entities by limiting the scope and frequency of comparative hearings for new licenses.

V. *Recording, Recordkeeping and Other Compliance Requirements.* The proposals would eliminate the Commission's publication of periodic cut-off lists which interested applicants must now monitor so that they may file mutually exclusive applications. Interested applicants would instead have to be aware of Commission orders adding new allotments to the Tables which would announce the filing window for such stations. The current recording, recordkeeping and compliance requirements for existing and future licensees would not be affected.

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[12] At this time, we do not propose to determine the first filed application with stop watch precision. Rather we propose to consider all applications filed by close of business on the same day as simultaneously filed.

[13] In the *First Report and Order* in Docket 83-1377, FCC 84-298, adopted June 27, 1984, the Commission changed the definition of minor modification to encompass all changes in power, antenna location or antenna height, without regard to their effect on coverage area. The additional certainty afforded by this cut-off procedure for minor modifications will, therefore, benefit a potentially large number of licensees.

[14] See § 73.3598 (a) and (b) of the Commission's rules.

[15] Applications for extension of time to construct an FM Station would continue to be subject to the Public Notice, "Guidelines Established For Processing of Applications For Additional Time Within Which To Construct AM and FM Broadcast Stations," released May 14, 1984, Mimeo No. 4144.

VI. *Federal Rules Which Overlap, Duplicate or Conflict with This Rule.* None

VIII. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with the Stated Objectives.* The proposals in this *Notice* should all have a positive impact on the ability of small entities to enter the broadcasting arena.

Administrative Matters

16. This action is taken pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

17. Pursuant to procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before October 15, 1984 and reply comments on or before October 30, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order.*

18. In accordance with the provisions of § 1.419 of the rules, formal prticipants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one (1) copy. All timely comments will be considered, regardless of the number of copies submitted. In any event, all comments must contain reference to the appropriate docket number (MM Docket No. 84-750). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 "M" Street, NW., Washington, D.C. 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Small Business Division at (202) 632-7000.

19. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals advanced herein. The IRFA is set forth in Paragraph 15 of the *Notice.* Written public comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice,* but the must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall cause a copy of this *Notice,* including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, as required by section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.* (1981)).

20. For purposes of this nonrestricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments and formal oral arguments) addressing the merits of a pending proceeding and containing matters not fully covered in any previously filed written comments for the proceeding. Any person who submits a written *ex parte* presentation must submit a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation must prepare a written summary of it which must be served on the Commission's Secretary for inclusion in the pulic file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally, § 1.231 of the Commission's rules.*

21. For further information regarding this proceeding, contact Robert Ratcliffe, Mass Media Bureau, (202) 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-24506 Filed 9-17-84; 8:45 am]

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47 CFR Part 90

[PR Docket No. 84-874; FCC 84-412]

Amendment of Part 90 of the Commission's Rules To Allocate the 1900-2000 kHz Frequency Band to the Radiolocation Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The 1979 World Administrative Radio Conference reallocated the 1900-2000 kHz frequency band for radiolocation purposes. This document proposes to amend Part 90 of the Commission's Rules to allocate the 1900-2000 kHz frequency band in the Radiolocation Service and provide rules for its use.

DATE: Comments are due by October 26, 1984 and replies by November 23, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 90

Radiolocation services, Radio.

Notice of Proposed Rule Making

In the matter of amendment of Part 90 of the Commission's rules to implement the 1900-2000 kHz frequency band in the radiolocation service; PR Docket No. 84-874, FCC 84-412.

Adopted: September 5, 1984.
Released: September 11, 1984.
By the Commission.

Background

1. On November 8, 1983, the Commission adopted a *Second Report and Order* in General Docket 80-739[1] which implemented into Part 2 of the Commission's Rules and Regulations the Final Acts of the 1979 World Administrative Radio Conference (1979 WARC). Included in the *Second Report and Order* was a revised Table of Frequency Allocations in § 2.106. Part of the revision of the Table was the reallocation of the 1900-2000 kHz frequency band from the Radionavigation to the Radiolocation Service for shared use between non-government users.[2] [3]

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[1] *Second Report and Order,* General Docket 80-279, adopted November 8, 1983, 49 FR 2357, January 19, 1984.

[2] Other changes in the Radiolocation Service allocations in the *Second Report and Order* of General Docket 80-739 are not yet effective since the changes are dependent upon future broadcast

Continued

2. Under the present rules of Part 90, Subpart F, the following frequency bands in the medium frequency range (MF) are authorized for radiolocation operations:

1605–1715 kHz
1715–1750 kHz
1750–1800 kHz

The 1979 WARC revised the MF radiolocation allocations as follows:

Frequency band (kHz)	Footnote in the U.S. table of frequency allocations
1605 to 1615	480, US 221.[4]
1615 to 1625	US 237.[5]
1625 to 1705	US 238.[6]
1705 to 1715	US 240.[7]
1715 to 1725	US 240.[7]
1725 to 1740	US 240.[7]
1740 to 1750	US 240.[7]
1750 to 1800	[8]
1900 to 2000	US 290.[9]

[4] 480 In Region 2, the use of the band 1605–1705 kHz by stations of the broadcasting service shall be subject to a plan to be established by a regional administrative radio conference.

US 221 Use of the mobile service in the bands 525–535 kHz and 1605–1615 kHz is limited to distribution of public service information from travelers information stations operating on 530 kHz or 1610 kHz.

[5] US 237 Until implementation procedures and schedules are determined by a future Regional Conference of the International Telecomunication Union, the band 1615–1625 kHz is also allocated on a primary basis to the radiolocation service.

[6] US 238 Until implementation procedures and schedules are determined by a future Regional Conference of the International Telecommunication Union, the band 1625–1705 kHz is allocated to the radiolocation service on a primary basis as a different category of service.

[7] US 240 The bands 1715–1725 and 1740–1750 kHz are allocated on a primary basis and the band 1705–1715 kHz and 1725–1740 kHz on a secondary basis to the aeronautical radionavigation service (radiobeacons).

[8] No changes in this band.

[9] US 290 In the band 1900–2000 kHz, amateur stations may continue to operate on a secondary basis to the radiolocation service, and in accordance with NG15 pending a decision as to their disposition through a future rule making proceeding in conjunction with the implementation of the standard broadcasting service in the 1625–1705 kHz band.

3. The reallocation indicates that radiolocation stations operating in the 1605–1705 kHz band will eventually be displaced in accordance with footnotes 480, US 237, and US 238 to the U.S. Table of Frequency Allocations. To provide spectrum for these displaced systems, the Commission, on its own motion, is issuing this *Notice of Proposed Rule Making* which proposes to implement the 1900–2000 kHz band in Part 90 of the Rules, and to establish specific rules for its use.[10]

Discussion

4. Radiolocation services are principally employed by persons engaged in commercial operations in offshore waters, e.g., gas and oil exploration, drilling, and production. Interference to the radiolocation signal can cause significant delays due to the necessity of repeating complex operations and thus can be costly from time and monetary standpoints. It thus appears that there is a valid basis for exclusive assignments in certain circumstances.[11] At the same time, we recognize that assignments in the 1605–1705 kHz band are made on a shared basis. We propose, therefore, to divide the 1900–2000 kHz band into two 50 kHz segments with the band 1900–1950 kHz proposed for exclusive assignments,[12] and the band 1950–2000 kHz for non-exclusive or shared assignments. Displaced licensees will be eligible for assignments in both the 1900–1950 kHz exclusive and 1950–2000 kHz shared bands. We recognize that some existing systems require 2 frequencies for operation. We ask comments as to whether these systems can effectively operate within either of the 50 kHz band segments.

5. Under present rules, exclusivity in the 1750–1800 kHz radiolocation band is now afforded within 360 miles to stations operating on the same frequency or no different frequencies separated by 3 kHz. Radiolocation service users have indicated that the 360 mile separation is inadequate to meet current operational conditions, since it was established when operations were conducted only during the daytime. Currently, with vessels operating 100 miles and more offshore, position control is required around the clock. Skip propagation between dusk and dawn can carry signals 1000 miles and more. Examples have been cited of interference between East coast and Gulf of Mexico operations. Additionally, the 360 miles separation is between shore stations, and it is possible that a mobile station can experience interference by being closer than 360 miles to a non-affiliated interfering shore station. Consequently, in order to provide effective protection against interference, radiolocation service users have indicated that separation of about 1200 miles between shore stations is necessary. We propose therefore to establish a separation between co-channel assignments of 1,200 miles for stations operating in the 1900–1950 kHz band.

6. Increasing the geographic separation between exclusive assignments decreases the re-use capabilities of the available frequencies and the number of channels that can be utilized along the entire coastline. To counteract this, we are also proposing to reduce the maximum authorized bandwidth in the MF radiolocation bands from 2 kHz to 1 kHz. It is our understanding that presently available radiolocation equipment can meet this bandwidth standard. This proposed change will effectively double the amount of available channels from 25 to 50 in the 1900–1950 kHz band. We are also proposing to establish a maximum authorized bandwidth of 1 kHz in the shared 1950–2000 kHz band. Reducing the authorized bandwidth to 1 kHz in the 1900–1950 kHz band allows us to reduce the frequency separation criteria for channel exclusivity from 3 kHz to 1.2 kHz. Licensees in the Radiolocation Service indicate that a reduction to 1.2 kHz is in accord with current state-of-the-art equipment.

7. In summary, we proposed that each frequency assignment in the 1900–1950 kHz band be made on an exclusive basis within an assigned primary service area. This service area is defined as the area in which radiolocation signal intensities are adequate from all stations in the system.[13] The normal geographic separation between stations of differeent licensees shall be at least 1200 miles (1931 km) when the stations are operation on the the same frequency or on different frequencies separated by less that 1.2 kHz. Further, if a geographical separation of less than 1200 miles is desired under these circumstances, it must be shown that the requested separation will result in a protection ratio of 20 dB throughout the primary service area of other stations.

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service actions. Specifically, footnotes 480, US 237, and US 238 to the Table of Frequency Allocations permit radiolocation to continue on a primary basis from 1605 to 1705 kHz, but only until implementation procedures and schedules are determined by a future Regional Broadcasting Conference.

[9] The Rules define radionavigation as radiodetermination used for purpose of navigation, including obstruction warning, and radiolocation as radiodetermination used for purposes other than those of radionavigation. Radiodetermination is defined as the determination of position, or the obtaining of information relating to position, by means of the propagation properties of radio waves. See 47 CFR 2.1.

[10] Paragraph 24 of the *Second Report and Order* in General Docket 80–739 states that the purpose of allocating the 1900–2000 kHz band to the Radiolocation Service was to provide reaccommodation spectrum for radiolocation users that will have to move out of the 1605–1705 kHz band when AM broadcasting is implemented in that band. The *First Notice of Inquiry*, Gen. Docket 84–467, adopted May 10, 1984, released May 16, 1984 begins the FCC preparation for an ITU Region 2 Administrative Radio Conference for the planning of broadcasting in the 1605–1705 kHz band.

[11] Presently, § 90.103(c)(7) of the Rules affords stations operating in the 1750–1800 kHz radiolocation band interference protection by allowing exclusive assignments in their primary operating area. The interference protection is obtained by providing a minimum geographic separation of 360 miles between stations when they are operating on the same frequency or on different frequencies separated by 3 kHz.

[12] Assignment exclusivity was established for radiolocation stations in the *Report and Order*, Docket 9233, 16 FR 13096, December 28, 1951.

[13] The service are definition is the same as that given in 47 CFR 90.103(c)(7) for the 1750–1800 kHz band.

8. Recent developments in radiolocation systems include wide-band, low-powered systems that do not conform to the bandwidth requirements of the present (or proposed) rules. In order to accommodate such new systems in the 1900–2000 kHz band, we are proposing to allow wide-band systems to operate on a secondary operation basis,[14] and to limit their transmitter power so that the field strength does not exceed 120 microvolts per meter at 1 mile. We specifically ask for comments on this proposal.

9. No change in protection criteria is proposed at this time for the 1750–1800 kHz band. Licensees of radiolocation stations operating in the 1605–1715, 1715–1750, and 1750–1800 kHz bands may request modifications of their station authorizations to operate in the 1900–2000 kHz band. We propose to process requests for station authorizations in the 1900–2000 kHz band in accordance with the random selection prodcedures set forth in § 1.972 of the Rules, except that displaced licensees will be given priority to minimize disruption to existing systems. We do request comments on whether it would be appropriate to modify the protection criteria for systems in the 1750–1800 kHz band, or whether the protection criteria currently in effect for that band should be retained in order to accommodate older systems and existing assignment patterns.

10. *Regulatory Flexibility Act Initial Analysis*—

I. *Reason for Action.* This action is being taken to incorporate into the Rules frequency band reallocations in the Radiolocation Service that were included in the Final Acts of the 1979 World Administrative Radio Conference (WARC). Our proposals would implement the 1900–2000 kHz band into the Rules, thus providing radio spectrum for those radiolocation licensees who would be required to change frequencies because of the WARC decisions.

II. *Objective.* The objective of this action is to make more efficient use of the spectrum allocated to the Radiolocation Service.

III. *Legal Basis.* This action is proposed in accordance with Sections 303(e) and 303(f) of the Communications Act of 1934, as amended, that authorizes the Commission to regulate the apparatus used by radio stations and to make such regulations as may be necessary to prevent interference between stations.

IV. *Description, Potential Impact, and Number of Small Entities Affected.* Implementation of the Final Acts of the 1979 WARC will eventually have an economic impact upon approximately 1500 Radiolocation Service licensees by requiring them to change operating frequencies. The rules proposed in this proceeding do not create any additional economic impact upon these licensees, but are beneficial in that they serve to provide frequency spectrum for the displaced licensees.

V. *Recording, Record Keeping, and Other Compliance Requirements.* None.

VI. *Federal Rules which Overlap, Duplicate, or Conflict with this Rule.* None.

VII. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objectives.* None.

Ordering Clauses

11. Accordingly, notice is hereby given of rule making to amend Part 90 of the Commission's Rules and Regulations, in accordance with the proposal set forth in the attached Appendix.

12. The proposed amendment to the Rules is issued pursuant to authority contained in sections 4(i), 303(b), 303(f), 303(g) and 303(r) of the Communications Act, as amended.

13. It is further ordered that the Secretary shall cause a copy of this *Notice of Proposed Rule Making* to be served upon the Chief Counsel for Advocacy of the Small Business Administration. The Secretary shall also cause a copy to be published in the **Federal Register.**

14. We encourage all interested parties to respond to this *Notice of Proposed Rule Making* since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings or formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submit a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who make an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding, must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1232 of the Commission's Rules, 47 CFR 1.1231.

15. Pursuant to applicable procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before October 26, 1984 and reply comments on or before November 23, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public files and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

16. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission Public Reference Room at its headquarters in Washington, D.C.

17. For further information on this proceeding, contact Eugene Thomson, Private Radio Bureau, Washington, D.C. 20554, (202) 634–2443.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

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[14] Secondary operation is defined as radio communications which may not cause interference to operations authorized on a primary basis and which are not protected from interference from those primary operations.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

Part 90 of the Commission's Rules and Regulations is amended as follows:

1. Section 90.103(b)—*Radiolocation Service Frequency Table* is amended by revising the entries under kilohertz for the bands 1605–1715 through 3230–3400 to read:

§ 90.103 Radiolocation service.

* * * * *

(b) * * *

RADIOLOCATION SERVICE FREQUENCY TABLE

Frequency or band	Class of stations	Limitations
Kilohertz		
*	*	* * *
1605 to 1715	do	4, 5, 6, and 27.
1715 to 1750	do	5, 6, and 27.
1750 to 1800	do	5, 6, 7, and 27.
1900 to 1950	do	6, 25, 26, and 27.
1950 to 2000	do	6, 25, and 27.
3230 to 3400	do	6 and 8.
*	*	* * *

2. A new § 90.103(c)(25) is added to read:

* * * * *

(c) * * *

(25) Station assignments on frequencies in this band will be made subject to the conditions that the maximum output power shall not exceed 375 watts and the maximum authorized bandwidth shall not exceed 1.0 kHz.

* * * * *

3. A new § 90.103(c)(26) is added to read:

* * * * *

(c) * * *

(26) Each frequency assignment in this band is on an exclusive basis within the primary service area to which assigned. The primary service area is the area where the signal intensities are adequate for radiolocation purposes from all stations in the radiolocation system of which the station in question is a part; that is, the primary service area of the station coincides with the primary service area of the system. The normal minimum geographical separation between stations of different licensees shall be at least 1200 mi. (1931 km.) when the stations are operated on the same frequency or on different frequencies separated by less than 1.2 kHz. Where geographical separation of less than 1200 mi. (1931 km.) is desired under these circumstances, it must be shown that the desire separation will result in a protection ratio of at least 20 decibels throughout the primary service area of other stations.

* * * * *

4. A new § 90.103(c)(27) is added to read:

* * * * *

(c) * * *

(27) Notwithstanding the bandwidth limitations otherwise set forth in this section of the rules, systems operating in this band may use such bandwidth as is necessary to proper operation of the system provided that the field strength does not exceed 120 microvolts per meter at 1 mile. Such operations shall be on a secondary basis to stations operating within otherwise applicable technical standards.

* * * * *

[FR Doc. 84–24592 Filed 9–17–84; 8:45 am]
BILLING CODE 6712–01–M

VETERANS ADMINISTRATION

48 CFR Parts 819 and 852

Acquisition Regulations

AGENCY: Veterans Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The VA (Veterans Administration) proposes to amend the VAAR (Veterans Administration Acquisition Regulations) by adding provisions regarding encouraging Vietnam era and disabled veteran owned and operated small businesses in VA acquisitions. The proposed rule would also increase the small business class set-aside threshold for construction projects and architect-engineer service contracts.

DATES: Written comments should be submitted no later than October 18, 1984.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections to Administrator of Veterans Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office in room 132 of the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 29, 1984.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg (202) 389–2334.

SUPPLEMENTARY INFORMATION:

I. Background

On March 29, 1984, the VA published in the **Federal Register** at pages 12582 to 12644, interim final rules, 48 CFR, which established Chapter 8, VA Acquisition Regulation. These rules were effective on April 1, 1984. The proposed rules contained herein are in addition to those previously published. Pub. L. 93–237 Amended the Small Business Act by directing SBA (Small Business Administration) to give "special consideration" to veterans of the Armed Forces in all SBA programs. The Small Business Administration has provided thousands of hours of counseling, training and financial assistance in the form of business loans to veteran owned businesses. This assistance has been instrumental in establishing many veteran initiated business enterprises as viable firms. Vietnam era veterans and disabled veterans, as part of our next generation of entrepreneurs, deserve our special consideration at this time. Therefore, the VA is proposing to adopt SBA's philosophy and actively seek Vietnam era veteran and disabled veteran owned and operated small businesses for competitive VA business opportunities. Eligible veterans would include the following:

a. Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

b. Disabled veterans of any era with a minimum compensable disability of 30 percent, or a veteran of any era who was discharged for disability.

The proposed rule will require VA contracting officers to take affirmative steps to ensure eligible veteran owned firms are given the maximum opportunity to compete for contract awards. In order to develop the necessary bidders lists, the rule will prescribe a certification in VAAR Part 852 to be included in VA invitations for bids, requests for proposals and requests for quotations.

Section 819.502–2(d), which implements FAR (Federal Acquisition Regulation) 19.502–2, will raise the current VA small business class set-aside threshold for construction projects from $2,000,000 to $3,000,000 per project and for architect-engineer service from those services incident to construction projects estimated to cost $2,000,000 and less to those services incident to construction projects estimated to cost $3,000,000 and less. Our experience has shown that we can expect adequate competition from qualified small business concerns to ensure reasonable prices at these thresholds.

II. Executive Order 12291

Pursuant to the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Christopher DeMuth, Administrator, Information and Regulatory Affairs, dated December 15, 1983, this proposed rule is exempt from sections 3, 4, and 5 of the Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this proposed rule does not come within the term "rule" as defined in the RFA [54 U.S.C. 601(2)], it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed upon the public under 819.7003(a) have been submitted to the Office of Management and Budget for approval, in accordance with section 3504(h) of the Paperwork Reduction Act.

Information on and copies of the information collection requirements can be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments and questions about the information collections and recordkeeping requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Dick Eisinger, Desk Officer for the VA, 726 Jackson Place, NW., Washington, D.C. 20503 (202) 395-7316.

List of Subjects in 48 CFR Parts 819 and 852

Government procurement.

Approved: August 31, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

For reasons set out in the preamble, Title 48 of the Code of Federal Regulations, Chapter 8, is amended as follows:

PART 819—[AMENDED]

1. In 819.502-2, paragraph (d) is revised to read as follows:

819.502-2 Total set-asides.

* * * * *

(d) All proposed procurement for construction anticipated to cost between $10,000 and $3 million and all proposed procurement for architect-engineer services for construction projects of $3 million and less will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization.

2. Subpart 819.70 is added to read as follows:

Subpart 819.70—Veteran-Owned and Operated Small Business

Sec.
819.7001 Policy.
819.7002 Definition.
819.7003 Procedure.
919.7004 Waiver of the use of Vietnam era or disabled veterans-owned firms.

Subpart 819.70—Veteran-Owned and Operated Small Business

819.7001 Policy.

(a) Public Law 93-237 amended the Small Business Act by directing SBA to give "special consideration" to veterans of the Armed Forces in all SBA programs. Consistent with and in furtherance of that statute, it is the policy of the Veterans Administration to encourage participation by Vietnam era and disabled veteran-owned and operated small businesses in VA acquisitions.

(b) All VA facilities having procurement requirements for which Vietnam era veteran-owned small businesses and disabled veteran-owned small businesses are known sources, will take affirmative action to solicit these firms and assist them in participating in VA acquisition opportunities.

A Vietnam era veteran-owned small business or a disabled veteran-owned small business is a small business that is at least 51 percent owned by such a veteran who also controls and operates the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For purposes of this definition, eligible veterans include:

(a) Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964 and May 7, 1975 and were discharged other than dishonorably.

(b) Disabled veterans of any era with a minimum compensable disability of 30 percent; or a veteran of any era who was discharged for disability.

819.7003 Procedure.

(a) As part of each procurement action involving other than small purchase procedures, VA contracting offices shall request, through Small Business Administration, Procurement Automated Source System (PASS), a listing of Vietnam era veteran-owned contractors capable of meeting the requirements of the particular solicitation. Firms identified on the PASS list shall be included on solicitation mailing lists, shall be incorporated in the contract file and shall be subject to audit. The Veteran-owned business representation in 852.219-70 shall be included in all solicitations and to each request for quotations.

(b) To further identify disabled veteran-owned businesses, each contracting activity shall formulate local plans to identify such firms and to include them on the facility solicitation mailing lists. State and local employment agencies and veterans' councils are potential sources for this information. In addition, the Department of Labor and the Vietnam Veterans Leadership Conference (a unit of ACTION) are provided the PASS list for use in employment assistance efforts for Vietnam era and disabled veterans.

819.7004 Waiver of the use of Vietnam era or disabled veterans-owned firms.

It is the policy of the VA to provide Vietnam era and disabled veteran-owned firms an opportunity to participate in the acquisition process. A contracting office wishing to waive this policy for a particular procurement over $10,000 must first process a VA Form 07-2268 or 90-2268. The contracting officer must clearly document on VAF 07-2268 or 90-2268 the reasons that eligible veteran-owned firms are not intended to be solicited or quotations sought for the particular procurement. Exempt from this reporting requirement are SBA 8(a) acquisitions and Labor Surplus Area set-asides.

PART 852—[AMENDED]

3. In Subpart 852.2, 852.219-70 is added to read as follows:

852.219-70 Veteran-owned small business.

(a) As prescribed in 819.7003(a), the following certification will be made a part of all solicitations and all requests for quotations:

> The offeror represents that the firm submitting this offer ( ) is ( ) is not, a Vietnam era veteran-owned small business and ( ) is ( ) is not, a disabled veteran-owned small business. A Vietnam era veteran-owned small business or a disabled veteran-owned small business is defined as a small business, at least 51 percent of which is owned by such a veteran, who also controls and operates the business. Control in this

context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For the purpose of this definition, eligible veterans include:

(1) Those who served for a period of more than 180 days, any part of which was between August 5, 1964 and May 7, 1975 and were discharged other than dishonorably.

(2) Disabled veterans of any era with a minimum compensable disability of 30 percent, or a veteran of any era who was discharged for disability.

(b) Failure to execute this representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award (see FAR 14.405).

(38 U.S.C. 210 and 40 U.S.C. 486(c))

[FR Doc. 84-24692 Filed 9-17-84; 8:45 am]

BILLING CODE 8320-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1845

Acquisition Regulations; Promulgation of NASA FAR Supplement Directive 84-2

Correction

In FR Doc. 84-22897 beginning on page 34258 in the issue of Wednesday, August 29, 1984, make the following corrections to "Annex II to Subpart 1845.72, Double Sampling Plan" appearing on page 34277:

Subpart 1845.72, Annex II—[Corrected]

1. In column 1, under "Lot Range", the entry which reads "1 to 8" should read "1 to 18" and the entry which reads "151 to 500" should read "151 to 400".

2. In the "Lot Range 19 to 50", under the column "Reject if defects in sample 1 are", the entry should read "1".

3. In the same "Lot Range", under the column" Continue with sample 2 if defects in sample 1 are ", the entry should be blank. The "1" should not have appeared.

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 49, No. 182
Tuesday, September 18, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Proposed Posting of Stockyards; Turlock Livestock Auction Yard, et al.; Correction

On August 7, 1984, a notice was published in the **Federal Register** giving notice of the proposed posting for certain stockyards listing their facility number, name, and location of stockyards.

This notice is to correct the facility no. assigned to the following market in that publication.

The notice should have read:

KY–170 Lee City Livestock Co., Inc.
Lee City, Kentucky

Done at Washington, D.C., this 12th day of September, 1984.

Jack W. Brinckmeyer,
Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84–24626 Filed 9–17–84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–016]

Choline Chloride From Canada; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that choline chloride from Canada is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by reason of imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which is entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "**Suspension of Liquidation**" section of this notice.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: David D. Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2239.

Final Determination

We have determined that choline chloride from Canada is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act).

We found that the foreign market value of choline chloride from Canada exceeded the United States price on 73 percent of sales. These margins ranged from 0.1 percent to 39.7 percent. The overall weighted-average margin on all sales compared is 9.73 percent.

Case History

On November 15, 1983, we received a petition filed by Syntex Agribusiness, Inc., Nutrition and Chemical Division (Syntex), on behalf of the domestic manufacturers in the United States of choline chloride. In accordance with the filing requirements of 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of choline chloride from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threaten to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds on which to initiate an antidumping investigation. We notified the ITC of our action and initiated the investigation on December 5, 1983 (48 FR 56251). On March 17, 1984, we were informed by the ITC that there is a reasonable indication that imports of choline chloride from Canada are materially injuring a United States industry.

An antidumping questionnaire was presented to Chinook Chemicals Company (Chinook) the only known Canadian producer/exporter, on December 8, 1983. We received the response on January 27, 1984. Subsequently, we received additional data and explanations directed to portions of the response that were incomplete, inaccurate or unclear. On February 9, 1984, petitioner also alleged that "critical circumstances" exist, as defined in section 733(e) of the Act.

On April 23, 1984, we preliminarily determined that there was reason to believe or suspect that choline chloride from Canada was being sold in the United States at less than fair value (49 FR 18344). At the request of the respondent, we held a hearing on May 23, 1984, to allow the parties an opportunity to address the issues arising in this investigation. On July 6, 1984, we postponed the final determination to September 12, 1984.

Scope of Investigation

The merchandise covered by this investigation is choline chloride, which is currently classified under item number 439.5055 of the *Tariff Schedules of the United States Annotated* (1983) (TSUSA). Pure choline chloride is a chemical with chemical formula of C_5H_{14} ClNO and a molecular weight of 139.6. The chemical name is (2-hydroxyethyl) trimethylammonium chloride. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier.

This investigation covers the period June 1 through November 30, 1983.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the aqueous choline chloride and certain sales of choline chloride on a cereal carrier to represent the United States price for the sales by Chinook when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the duty paid, delivered, packed or unpacked price, or duty paid, f.o.b. plant, packed or unpacked price, as appropriate. We made deductions for freight, import duties and brokerage, and quantity rebates where appropriate. We also included in our purchase price calculation a shipment of aqueous choline chloride given to one customer with no charge, pursuant to a long-term contract.

We allocated the poundage of this shipment over the three-year life of the contract by (1) calculating the total amount of choline chloride, in pounds, to be shipped pursuant to the contract; (2) taking the ratio of the number of pounds of the free shipment to the total number of pounds to be shipped pursuant to the contract; (3) for each shipment made during the period of our investigation, multiplying this fraction by the number of pounds shipped; and (4) adding this increment to each shipment made during the period of our investigation. These adjustments had the effect of decreasing United States price. We allocated the duty, brokerage and freight attributable to the free shipment in equal increments over all shipments made during the investigatory period. We determined the amount of the increment by dividing the total duty, brokerage and freight expenses attributable to the free shipment by the estimated number of shipments Chinook expected to make under the contract. See our responses to Petitioner's Comment One.

As provided in section 772(c) of the Act, we used the exporter's sales price of certain sales of choline chloride on a cereal carrier to represent the United States price for sales by Chinook when the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the duty paid, delivered, packed or unpacked price, or duty paid, f.o.b. warehouse, packed or unpacked price, as appropriate. We made deductions for freight, commissions to an unrelated U.S. agent, import duties and brokerage. We also made a deduction for Chinook's indirect selling expenses incurred on U.S. sales.

Foreign Market Value

In accordance with § 353.3 of the Commerce Regulations (19 CFR 353.3), we used home market sales for the determination of foreign market value for Chinook. We calculated the home market prices on the basis of delivered or f.o.b. plant, packed prices to unrelated purchasers in Canada. From these prices we made deductions for freight where incurred.

In accordance with § 353.23(a) of the Commerce Regulations, we did not make a circumstance of sale adjustment for differences in credit expenses since the adjustment was insignificant.

We made a deduction for quantity discounts in the home market. Where exporter's sales prices were used as United States price, we also made deductions for indirect selling expenses incurred in the home market up to the amount of U.S. sales commissions and indirect selling expenses in accordance with § 353.15 of the Commerce Regulations. We made an adjustment to foreign market value for home market indirect selling expenses on purchase price sales where commissions were paid to unrelated U.S. commission agents. We made no adjustments for packing costs of choline chloride on a cereal carrier because they were the same in both markets. There were no packing costs for aqueous choline chloride; therefore, no adjustment was made. We excluded certain sales of off-specification choline chloride on a cereal carrier because they were determined not to be sales of choline chloride in the ordinary course of trade.

Negative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of choline chloride from Canada present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist when the Department determines that: (A)(i) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (B) there have been massive imports of the merchandise under investigation over a relatively short period.

In determining massive imports over a short period we looked at recent trends in import penetration levels; whether recent imports are significantly above the average calculated over the last two years; and whether the pattern of imports over the last three year period may be explained by seasonal swing. After examination imports of choline chloride from Canada with respect to these considerations, we find that there have not been massive imports over a relatively short period. Therefore, because there have not been massive imports over a short period we determine that critical circumstances do not exist for choline chloride from Canada.

Petitioner's Comments

Comment 1— Chinook entered into a three-year contract with one of its customers. The terms of the contract called for Chinook to supply the customer's requirements of aqueous choline chloride at any and all of the customer's U.S. feed mills at a certain price. Chinook also agreed to supply the first shipment free of charge provided the customer converted a particular plant so as to process aqueous, rather than solid, choline chloride. Petitioner argues that this shipment of aqueous choline chloride (hereafter the "free shipment") should be included in the fair market value calculation as a sale at zero price.

DOC Position—We disagree. In determining if the free shipment was a sale at zero price, we looked to whether the shipment constituted a gift or non-commercial disposal. By the terms of the contract, this transaction was clearly not a gift. Chinook promised to provide the first shipment free if the customer converted its mill to aqueous choline chloride use. Chinook received value in exchange for the free shipment in that the customer agreed to change its operations to accommodate aqueous choline chloride. The contractual terms reflect Chinook's business judgment of the value of securing the customer's business. Nor was the shipment a non-commercial disposal. Rather, the agreement to ship the free choline chloride in exchange for conversion of the customer's mill was part and parcel of a written requirements contract.

Because the free shipment was integral to the contract as a whole, we have allocated the volume of the shipment over the full three-year life of the contract. We determine this to be the most reasonable treatment of the shipment, since Chinook clearly contemplated three years of sales at the time it agreed to provide the first shipment of aqueous choline chloride at no charge.

To allocate the shipment over the full life of the contract, we first divided the poundage of the fre shipment by the estimated total amount of choline chloride Chinook expects to ship to the customer pursuant to the contract. We calculated this estimated total by multiplying the average number of pounds in shipments already made during the first year by the number of shipments Chinook plans to make in the three years of the contract. We then multiplied the resulting percentage by the volume of each shipment (excluding the free shipment) made during the period of our investigation, which coincides roughly with the first year of the contract. The result was an amount of choline chloride, in pounds, representing the increment to be added to each shipment made during the investigation. We added this increment to each shipment made during the period of our investigation. The net effect of these adjustments is to reduce United States price by increasing the number of pounds of choline chloride shipped in the investigatory period, thus reducing the price per pound.

We also allocated the duty, freight and brokerage attributable to the free shipment over all the shipments expected during the life of the contract. We calculated the amount of the increment by dividing the total of these expenses by the estimated number of shipments Chinook expected to make pursuant to the contract.

This resulted in equal increments, which we deducted from United States price of each shipment made during the period of our investigation.

We will continue to make these adjustments during our administrative reviews over the next two years of the contract.

Comment 2—No circumstance of sale adjustment for credit should be made because the term of sale in both markets are identical and the actual customer payment date is irrelevant. Moreover, the adjustment claimed is insignificant and should be disregarded.

DOC Position—The claimed adjustment amounts to .003 percent of the total sales value, which is insignificant in relation to the value of the affected transactions. Therefore, we have disregarded it in our calculations, as provided by § 353.23(a) of the Commerce Regulations.

Comment 3—Chinook has failed to provide any information concerning costs incurred in maintaining inventory during the investigatory period. Costs of inventory include those actual costs and implicit credit costs incurred in holding inventory in warehouse.

DOC Position—The Department included in its determination all actual expenses incurred in maintaining the inventory. The Department views credit expense as that expense between the company and an unrelated purchaser. Since credit expense has a direct effect on the sales price to the purchaser, the Department would consider the full amount of the credit adjustment. Maintaining inventory does not involve credit expense. The Department continues the policy of including only those costs actually incurred by a company for all other adjustments except the credit adjustment.

Comment 4—Chinook revised its indirect selling expenses at verification. The revised indirect selling expense should not be allowed because the information was not properly verified and because the figures were taken from profit and loss statements with respect to Chinook's entire business; thus inflating the actual expense attributable to choline chloride. Further, since the indirect selling expenses are incurred for both markets, we should allocate these expenses to each market and allow only that portion attributable to home market sales as the indirect selling expense amount.

DOC Position—In its response, Chinook originally listed a few indirect selling expenses on the assumption that they would only be allowed up to the amount of U.S. commissions paid. At vertification we dicovered that some sales were in fact exporter's sales price transactions, at which point Chinook made an accounting of all indirect selling expenses attributable to choline chloride. We verified these expenses. The allocation made for indirect selling expenses was related to each market as a percentage of total sales. We believe it is appropriate to apportion the percentage basis indirect selling expenses to each market on the basis of sales volume.

Comment 5—Sales of off-specification cereal choline chloride are not in the ordinary course of trade, and are not sales of such or similar merchandise and should be disregarded for purposes of the foreign market value determination.

DOC Position—We agree. We have disregarded these off-specification sales of cereal choline chloride in calculating foreign market value as they are not in the ordinary course of trade.

Respondent's Comments

Comment 1—The free shipment of aqueous choline chloride cannot be categories as an individually negotiated sale. Had the contract been breached Chinook would have been entitled to a proportionate amount of the value of the shipment. Rather, respondents argue that this shipment is a sample for testing purposes.

DOC Position—We agree that this shipment cannot be categorized as an individually negotiated sale. However, we cannot classify this shipment as a sample given strictly for testing purposes. There is no documentation in the contract stating the specific purpose of the free shipment, nor has respondent supplied other documentation to support this argument as we requested. We also note that respondent has not refuted arguments that the volume needed for testing is far less than the quantity of the shipment, and that the shipment was not destroyed but was incorporated into useable feed products. With respect to the question of compensation were there a breach of contract, Chinook provided us with no documentation to support this argument. We have treated this shipment as indicated in the response to Petitioner's Comment One.

Comment 2—Alternatively, the Department should prorate the amount of the shipment over the amount of choline chloride shipped pursuant to the contract.

DOC Position—We agree that proper treatment of the shipment would be to allocate the amount of the shipment over the period of the contract. At verification we collected invoices of all shipments made to the contract customer. We requested and received documentation estimating the volume of choline chloride expected to be sold during the three-year life of the contract.

To allocate this shipment over the life of the contract, we calculated the average increment in pounds and added this amount to each shipment. We also allocated the freight expenses and duty charges for the free shipment over the estimated shipments in this contract. See our response to Petitioner's Comment One.

Comment 3—At verification Commerce requested and received information on certain expenses which it viewed as freight expenses. The respondent claims that expenses incident to Chinook's trailers are indirect selling expenses, and as such are not an allowable deduction to home market and United States price because the statute permits the deduction of indirect expenses only where they are directly related expenses. Chinook has already provided all directly related expenses of the shipments it made.

DOC Position—We disagree that these charges are indirect selling expenses. Chinook incurred certain expenses incident to the trailers it owns, which are devoted to the delivery and pick up of products. These expenses would not have occurred if it did not have a segment of its operation devoted to the delivery and pick up of products. On the contrary, Chinook would pay a common carrier for its trucking services. The common carrier would incur the same expenses as those we have included in our calculation. The fact that no cost savings are seen by Chinook when a common carrier is contracted does not prove that these expenses are purely administrative. We believe that the only proper way of assessing the true value of a freight charge is to include all expenses incident to the operation of shipping.

To calculate this expense, we determined the total expenses of Chinook's freight operation and allocated that amount, on the basis of total pounds shipped, to the choline chloride business. This gave a standard factor of cents per pound to apply to the quantity of each shipment of choline chloride except shipments in which a common carrier was used.

Comment 4—If these indirect selling expenses are included in the price comparison, there is no limit to the range of indirect selling expenses that Commerce might apply to direct charges. Moreover, if this becomes the rule it should apply to home market adjustments as well as to adjustments to United States prices.

DOC Position—We disagree with respondents. We believe that there is a clear distinction between indirect selling expenses and the expenses incident to the operation of Chinook's shipping segment. If we are to identify freight expenses as a charge, we must ascertain all expenses related to that charge as provided for in section 772(d)(2)(A) of the Act. If we were to ignore the expenses incurred for Chinook's shipping operation we would be understanding the freight charge. To call these expenses indirect selling expenses does not take into account that these expenses are wholly attributable to freight. Therefore, we believe these are properly called freight expenses and should be deducted as an expense incident to bringing the merchandise from the place of shipment in Canada to the delivery point in the U.S. (see section 772(d)(2)(A) of the Act).

Comment 5—Even if indirect selling expenses were added to Chinook's freight cost, Commerce's proposed method of allocation would not produce fair results because of certain expenses incurred during the period of investigation which have a long-term benefit.

DOC Position—We assume that Chinook is an ongoing concern and, as such, regularly incurs expenses that will not be completely expensed within the period of our investigation. We did not make an exception for any of the freight expenses obtained because we did not view any of them as capital costs to be amortized over time beyond the current accounting period.

Comment 6—Cereal choline choloride sold by Chinook in the home market is such or similar to cereal choline chloride sold in the U.S. Certain off-specification cereal choline chloride has virtually the same physcial characteristics as other cereal choline chloride, and its end use is substantially the same as other cereal choline chloride. Off-specification cereal choline chloride is sold at comparatively lower prices than other cereal choline chloride; however, it is approximately equal in commercial value to other cereal choline chloride.

DOC Position—We disagree. We have disregarded these off-specification sales of cereal choline chloride in calculating foreign market value as they are not in the ordinary course of trade.

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site inspection of the manufacturer's operations and examination of accounting records and selected documents containing relevant information.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we directed the United States Customs Service to suspend liquidation of all entries of choline chloride from Canada.

This suspension of liquidation applies to all merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margin is as follows:

Manufacturer	Weighted-average margin percentage
All Manufacturers/Producers/Exporters	9.73

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-24645 Filed 9-17-84; 8:45 am]

BILLING CODE 3510-25-M

[A-412-012]

Choline Chloride From the United Kingdom; Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that choline chloride from the United Kingdom is not being sold, nor is likely to be sold, in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We found *de minimis* margins of 0.03 percent on exports of the subject merchandise during the period of investigation.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: David D. Johnston, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2239.

Final Determination

We have determined that choline chloride from the United Kingdom is not being sold, nor is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act).

We found that the foreign market value of choline chloride from the United Kingdom was less than the United States price on almost all sales.

Case History

On November 15, 1983, we received a petition filed by Syntex Agribusiness, Inc., Nutrition and Chemical Division (Syntex), on behalf of the domestic manufacturers in the United States of choline chloride. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of choline chloride from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threaten to injure materially, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated the investigation on December 5, 1983 (48 FR 56248). On March 17, 1984, we were informed by the ITC that there is a reasonable indication that imports of choline chloride from the United Kingdom are materially injuring a United States industry.

An antidumping questionnaire was presented to Imperial Chemical Industries PLC (ICI), the only known British producer/exporter on December 21, 1983. We received the response on February 6, 1984. On February 9, 1984, petitioner also alleged that "critical circumstances" exist, as defined in section 733(e) of the Act. Subsequently, we received additional data and explanations directed to portions of the response that were incomplete, inaccurate or unclear. On April 23, 1984, we preliminarily determined that choline chloride from the United Kingdom was not being sold in the United States at less than fair value (49 FR 18345). On May 4, 1984, we received a letter from petitioner alleging sales at less than cost of production and requesting that the case be extended to allow for this investigation. On June 14, 1984, we determined that there was a reasonable basis to initiate an investigation to determine if sales at less than cost of production existed. On June 14, 1984, we postponed the final determination to September 12, 1984. We received the cost of production response on July 11, 1984. At the request of the petitioner, we held a hearing on August 24, 1984, to allow the parties an opportunity to address the issues arising in this investigation.

Scope of Investigation

The merchandise covered by this investigation is choline chloride which is currently classified under item number 439.5055 of the *Tariff Schedules of the United States Annotated* (1983) (TSUSA). Pure choline chloride is a chemical with chemical formula of $C_5H_{14}ClNO$ and a molecular weight of 139.6. The chemical name is (2-hydroxyethyl) trimethlammonium chloride. Choline chloride is marketed in several forms, including but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 or 60 percent dried on a cereal carrier.

This investigation covers the period February 1, 1983, through November 30, 1983.

United States Price

As provided in section 772(b) of the Act, we used the exporter's sales price of the subject merchandise to represent the United States price for the sales by ICI because the merchandise was sold to unrelated purchasers after inportation into the United States. We calculated the exporter's sales price for ICI based on the f.o.b. delivered unpacked price of liquid choline chloride. We made deductions for United Kingdom inland freight, ocean freight, insurance, loading charges, United States inland freight, document fees, outgoing document fees, import duties, brokerage, and commissions to an unrelated sales agent. We also made deductions for ICI's credit expenses and indirect selling expenses incurred on United States sales.

Foreign Market Value

In accordance with § 353.3 of the Commerce Regulations (19 CFR 353.3) we used home market sales for the determination of foreign market value for ICI. Petitioner alleged that sales of choline chloride in the home market were at prices below the cost of producing choline chloride. We examined production costs, which included all appropriate costs for materials, conversion from solution to dry carrier, and general expenses. We found that all sales of choline chloride were made at or above the cost of production. Therefore, we used all home market sales listed in determining foreign market value. We calculated the home market prices on the basis of delivered, packed prices to unrelated purchasers in the United Kingdom. From these prices we made deductions for inland freight and insurance.

We made a deduction for credit expenses in accordance with § 353.15(a) of the Commerce Regulations. We also made adjustments for all actual, indirect selling expenses incurred in the home market up to the amount of United States sales commissions and indirect selling expenses in accordance with § 353.15 of the Commerce Regulations. We made adjustments for differences in the physical characteristics of the merchandise in accordance with § 353.16 of the Commerce Regulations. We made adjustments for differences in packing costs of the United States and home market.

Negative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of choline chloride from the United Kingdom present "critical circumstances." Since this final determination is negative, this question is moot.

Petitioner's Comments

Comment 1—The International Trade Administration (ITA) must deduct both commissions and any selling expenses incurred by Karl O. Helm (Helm), ICI's United States selling agent, from the United States price. In accordance with section 771(13) of the Act, Helm is the "exporter" for purposes of computing United States price because it is ICI's selling agent. Section 772(e) of the Act therefore requires us to deduct the indirect selling expenses incurred by Helm, as well as Helm's commission. It is irrelevant that ICI paid Helm a commission and did not reimburse Helm for all its expenses, since the Act requires us to deduct both commissions and expenses generally incurred in selling in the United States.

DOC Position—The purpose of a commission to an unrelated sales agent is to supply that agent with necessary funds for that agent's operation and profit. The indirect selling expenses given in the response are the expenses that the agent covers and are subsumed by the commission. In this case Helm's commission was greater than its indirect selling expenses; therefore, we have only allowed the commission amounts as a deduction from United States price as is consistent with longstanding Departmental practice.

Comment 2—Certain expenses (document fees, outgoing document fees, handling, outgoing handling, and financing expenses) were mentioned in the verification report, but were not included in the ICI questionnaire response.

DOC Position—We included all these expenses in our calculation of United States price. The handling charge was the brokerage charge in the response. The outgoing handling charge was the loading charge in the response. Document fees, outgoing document fees and financing expenses were not included in the response but have been included in our final calculation because these expenses were discovered at verification.

Comment 3—ICI has not reported its (as opposed to Helm's) United States selling expenses.

DOC Position—The purpose of ICI maintaining a sales agent is to have the agent perform the functions of selling in the United States. Helm bears general selling expenses, while ICI pays all other selling expenses. ICI has reported and we have verified all the expenses ICI pays in connection with United States sales.

Comment 4—The claim for U.K. inland freight on United States sales is erroneous in that it is based on a statement made by ICI officials at verification that rented trucks "could" make two trips a day. The expense might be twice as great if two trips a day were not made.

DOC Position—We reviewed the invoices obtained at verification to substantiate this claim, and found that all of the shipments of choline chloride from the plant to sea port were double shipments, except one shipment that listed three loads and another that listed a shipment of choline chloride from the sea port to the plant and on to another destination. We verified the number of trips made per day to be at least two. Therefore, the expense obtained for U.K. inland freight on United States sales is accurate.

Comment 5—ICI failed to report insurance expenses on home market shipments of choline chloride destined for sale in the United States. Accordingly, no adjustment for insurance on home market shipments should be allowed.

DOC Position—We verified that all ICI domestic shipments were insured on a tonnage basis. However, respondent did not account for insurance expenses on all domestic shipments. Specifically, ICI did not claim insurance expenses on either the domestic freight portion of U.S. shipment or on some domestic shipments from plant to converter. If we were to make additional allowances for insurance expenses on both shipments for U.S. sales and domestic shipments from plant to converter, the net result would be inconsequential. Therefore, we have allowed the insurance expenses as claimed in the response.

Comment 6—The ITA failed to verify ICI's reported expenses for United States inland freight.

DOC Position—We disagree. We obtained copies of sales and shipping invoices, checks of payment, freight invoices, customer sales ledgers, and journal entries for representatives sales at the verification.

Comment 7—Petitioner argues that ITA should have based its calculation of foreign market value entirely upon certain sales of liquid choline chloride in the U.K. According to petitioner, because the merchandise involved in these home market sales was identical to the merchandise sold to the United States, section 771(16) of the Act requires ITA to use these sales before resorting to comparisons of similar merchandise. Petitioner claims that it is irrelevant that the quantity of liquid choline chloride sold in the U.K. is small. Alternatively, petitioner argues that ITA must include home market sales of liquid choline chloride along with sales of dry choline chloride in its calculation of foreign value.

DOC Position—We disagree. The liquid choline chloride sold in the U.K. is not identical to that sold in the United States. The liquid choline chloride sold in the U.K. is a 75 percent solution, whereas the liquid choline chloride sold in the U.S. is a 70 percent solution. Moreover, even if the liquid choline chloride sold in the U.K. were identical, we could not use those sales as the basis for calculating foreign market value. In order to be used as the basis for foreign market value, merchandise not only must be "such or similar" to the merchandise sold in the United States; it also must be sold in sufficient quantities so as to form a viable market for comparison purposes. In this case, the sales of liquid choline chloride in the U.K. amounted to only 0.05 percent of all home market sales of choline chloride. This amount is too small to constitute the sort of viable market required by the antidumping law.

As for including sales of liquid choline chloride along with sales of dry choline chloride in the calculation of foreign market value, the volume of the sales of liquid choline chloride was so small as to have an insignificant effect on the calculation of foreign market value. In view of this fact and the broad discretion ITA possesses in fair value investigations, we determined to ignore the inconsequential home market sales of liquid choline chloride.

Comment 8—Use of a single weighted-average foreign market value is improper because substantial time lags between bulk exports from ICI to its selling agent in the United States could mask apparent dumping. Rather, at least three foreign market values, corresponding to the three dates of exportation, should be calculated for the determination of sales at less than fair value. By calculating three separate foreign market values, Commerce will account for sales at less than fair value taking place in one or more portions of the period under review.

DOC Position—The Department only calcuates individual home market values in a fair value investigation when there are significant price variations on home market sales during the investigative period. As this is not the case in this investigation, we have calculated a single weighted-average home market price for the period of investigation in accordance with § 353.20 of the Commerce Regulations.

Comment 9—The ITA should determine separate foreign market values for silica and cereal choline chloride, because they are different products as seen by the significant differences in conversion costs and respondent's argument that they are different in terms of use and component materials.

DOC Position—The Department considers both silica and cereal choline chloride as similar merchandise. We do not view the reported differences in conversion costs as significant in this determination. Furthermore, the respondent has not said that the two products are different in terms of use and component materials. The respondent has only indicated that the cereal type is more similar in usage and component materials.

Comment 10—The adjustment for physical differences in the merchandise was improper because the conversion costs cannot be reconciled with the cost of production information. The verification report shows that the solid support costs in the cost of production response are less than the amounts set forth in the original questionnaire response. Further, ICI paid import duties on raw materials used for dry choline chloride while no accounting was made for duties refunded on dry choline chloride shipments to third countries.

DOC Position—The two responses do coincide with each other, lending further strength to the accuracy of each. With respect to the solid support cost mentioned by petitioner, the amounts checked were individual invoices within the period of investigation. We only verified aggregate amounts and checked individual items claimed within the aggregate amount to verify the validity of the expense and to check its accuracy. In this case, we found a valid audit trail for expenses and closely comparable expenses of the individual exense checked to the aggregate amount seen in the response. Finally, the fact that no duty refunds were reported in the conversion cost of home market sales of dry choline chloride is proper. Duty refunds given for dry choline chloride sold to third countries would properly go to reduce the cost of the product being shipped to the foreign country and not that of home market sales. In light of the foregoing, we determine that the conversion cost given in ICI's original questionnaire response is accurate and verified for use in our final determination of foreign market value.

Comment 11—The adjustment for differences in credit expenses was improper. ICI based the adjustment on Helm's receipt of payment from the ultimate customer rather than on ICI's receipt of payment from Helm. Second, the verification report states that ICI 1982/1983 credit costs were not available and 1984 costs were used. Finally, ICI could not provide documentation to substantiate the short-term borrowing rate. Therefore, the claimed credit adjustment should be denied.

DOC Position—We agree that the proper basis for calculation of credit expense is from date of sale to ICI's receipt of payment and that the interest rate given to us was unacceptable. We cannot accept Helm's receipt of payment as the basis for calculation of credit expenses, as respondent suggests, because Helm is unrelated to ICI. We recalculated the United States credit expense by taking the total time ICI was incurring credit expenses due to the merchandise being sold but not having received funds. We used the date of shipment in the United States to date of repayment to ICI to determine the length of the credit period. We used a short-term interest rate as calculated from ICI financial statements and derived a total interest expense to be divided by total sales to be used in the credit adjustment.

Comment 12—The ITA must correct errors found during its home market sales verification. These errors occurred on inland freight, insurance, packing and general, selling and administrative expenses (G, S & A). The freight rate for the home market did not correspond with the actual costs incurred and should be denied in its entirety. Insurance, even though a *de minimis* deduction, should be denied because it is paid to a related company. Packing costs involved a pallet cost which is a general overhead cost. Even if pallet costs are allowed, the amount claimed should be reduced by the amount seen at verification. No documentation was provided to establish the amount of G, S & A expenses attributable to choline chloride sales. No breakdown of the component charges of G, S & A was made and the verification report amount is inconsistent with the original submission.

DOC Position—We recognize that ICI is a large business which uses many economies of scale in its daily operation. This is the case with its home freight expenses. We verified the expenses claimed since the system established to handle any shipment was constructed in such a way that the most economical (best overall rate) shipper (preferred) was used if available. Many shippers bid haulage rates for different quantities to various destinations. ICI analyzes all rates, quantities and locations and designates a preferred shipper for each route. ICI then makes a chart for all ICI domestic shipping using all the shippers and their bids to various destinations, noting the preferred shippers. These preferred shippers' rates were used to quantify freight costs in the response. The verification report states that there was one occasion when the preferred carrier was not used and another shipper carried that merchandise. In that shipment, the costs of the other shipper were slightly lower than the costs of the preferred shippper for that quantity.

We did verify actual expenses in accordance with the chart that was used to construct the response amounts for freight, and saw that, except in one instance mentioned above when the chart listed preferred shippers rates for any given shipment, they were in fact the lowest rates. In light of this, we consider these expenses fully verified.

We treated the insurance claimed as noted in DOC position in Comment 5.

We have allowed a deduction for pallet costs as verified because pallets are a material cost of packing. The fact that a material is reuseable does not mean that no cost is attributable to that material. The verification report shows that the average cost of the pallet per trip was used in the packing cost calculation.

Comment 13—The ITA should reject the cost of production response and used the best information available—i.e., petitioner's cost of production information—to construct a value for home market sales.

DOC Position—Section 776(a) requires us to use the "best information available" to us as the basis of our determination if we are unable to verify the accuracy of the information submitted. Section 776(b) requires us to use the "best information otherwise available" if "a party of any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." We were able to verify the accuracy of all information repondents submitted to use for use in this final determination. Further, all information was submitted timely and in the form requested. We see no reason to reject the verified response.

Respondent's Comment

Comment 1—The credit period in the United States is properly measured from the date of extension of credit to the unrelated United States customer to repayment by such customer to Helm.

DOC Position—Because Helm is unrelated to ICI, we do not consider the date that payment is made to Helm a proper basis for calculating credit extended by ICI. This is consistent with our longstanding practice (see DOC position for petitioner's comment 11).

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site inspection of the manufacuturer's operations and examination of accounting records and selected documents containing relevant information.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is being published to pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84–24646 Filed 9–17–84; 8:45 am]

BILLING CODE 3510-25-M

[C-580-403]

Cold-Rolled Carbon Steel Flat-Rolled Products From Korea; Preliminary Affirmative Countervailing Duty Determination; and Carbon Steel Structural Shapes From Korea; Preliminary Negative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of cold-rolled carbon steel flat-rolled products. The estimated net subsidy is 3.81 percent *ad valorem*. We also preliminarily determine that no benefits which constitutes subsidies within the meaning of the Act are being provided to manufacturers, producers or exporters in Korea of carbon steel

structural shapes. The estimated net subsidy is *de minimis*, and therefore our preliminary determination is negative. Accordingly, we are directing the U.S. Customs Service to suspend liquidation of all entries of cold-rolled carbon steel flat-rolled products from Korea which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or bond on cold-rolled carbon steel flat-rolled products in the amount equal to the estimated net subsidy. If these investigations proceed normally, we will make our final determinations by November 26, 1984.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Rick Herring, Tom Bombelles, or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202)377–1785; 377–0187; 377–3174; or 377–5414.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that the following programs confer subsidies on the products under investigation:

- Export Financing under the Export Financing Regulations.
- Long-term Loans Provided Through the National Investment Fund.
- Government Equity Infusions into POSCO.
- Special Depreciation under the "Act Concerning the Regulation of Tax Reduction and Exemption".
- Tax Incentives for Exporters under Articles 22, 23, and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption".
- Import Duty Deferrals under Article 36 of the Customs Act of Korea.
- Reductions in Port Charges.
- Tariff Reductions on Plant and Equipment under Article 28 of the Customs Act of Korea.

For cold-rolled carbon steel flat-rolled products, we estimate the net subsidy to be 3.81 percent *ad valorem*. Therefore, there is a reasonable basis to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in Korea of cold-rolled carbon steel flat-rolled products. The estimated net subsidy for carbon steel structural shapes is 0.40 percent *ad valorem* which is *de minimis*. Therefore, with respect to carbon steel structural shapes, we preliminarily determine that there is no reason to believe or suspect that certain benefits constituting subsidies within the Act are being provided to manufacturers, producers, or exporters.

Case History

On June 18, 1984, we received a petition from United States Steel Corporation filed on behalf of the carbon steel structural shapes and cold-rolled carbon steel flat-rolled products (shapes and sheet) industries. In compliance with the filing requirements of § 355.26 of our Regulations (19 CFR 355.26), petitioner alleged that manufacturers, producers, or exporters in Korea of shapes and sheet receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on July 3, 1984, we initiated investigations (49 FR 28294). We stated that we expected to issue preliminary determinations by September 11, 1984.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. On August 2, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports materially injure, or threaten material injury to, a U.S. industry (49 FR 26648).

We presented questionnaires concerning the allegations to the government of Korea at its embassy in Washington, D.C. on July 13 and July 23, 1984. On August 17, August 20 and August 21, we received replies to these questionnaires. On August 20, we presented a second supplemental questionnaire to the government of Korea. We received a response to this questionnaire on August 31. We received another supplemental response on September 4. On July 19, August 31, and September 5, the petitioner submitted additional information concerning the alleged subsidies. This information has been taken into consideration in these preliminary determinations.

Scope of Investigations

The products covered by these investigations are carbon steel stuructural shapes and cold-rolled carbon steel flat-rolled products. The term "*carbon steel structural shapes*" covers hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2, Subpart B of the *Tariff Schedules of the United States Annotated (TSUSA)*, for blooms, billets, slabs, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the *TSUSA*. Such products are generally referred to as structural shapes.

The term "*cold-rolled carbon steel flat-rolled products*" covers the following cold-rolled carbon steel products: Cold-rolled carbon steel flat-rolled products are flat-rolled carbon steel product, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width, and 0.1875 or more in thickness; as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness whether or not in coil; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

There are three Korean producers of cold-rolled carbon steel flat-rolled products that exported to the United States during the period of investigation: Pohang Iron and Steel Company (POSCO), DongJin Steel Company (DongJin) and Union Steel Manufacturing Company (Union). In addition, six trading companies exported cold-rolled carbon steel flat-rolled products to the United States during the period of investigation: Hyundai Corporation, Kukje-ICC Corporation, Sunkyong Limited, Samsung Company, Ltd., Daewoo Corporation and Hyosung Corporation. Inchon Iron & Steel Company (Inchon) is the only producer of carbon steel structural shapes that exported to the United States during the period of investigation. Of the trading companies, only Hyundai Corporation exported carbon steel structural shapes to the United States during the period of investigation.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigations. These general principles are described in detail in the

"Subsidies Appendix" to the "Final Affirmative Countervailing Duty Determination and Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina" published in the **Federal Register** on April 26, 1984 (49 *FR* 18006). For purposes of these preliminary determinations, we are calculating country-wide rates. The period for which we are measuring subsidization is the 1983 calendar year which corresponds to the most recent fiscal year for each of the Korean producers and exporters.

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to rigorous verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determinations.

Petitioner alleges that POSCO is both unequityworthy and uncreditworthy. Although we did not initate on these specific allegations, we did request information in our questionnaires in order to review these allegations in accordance with the guidelines set out in the Subsidies Appendix. Even though government equity infusions into POSCO were found in the 1982 *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea* (47 *FR* 57535) not to be on terms inconsistent with commercial considerations, our standards have been revised by the Subsidies Appendix, and, thus, we must reexamine these allegations in these investigations.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow contervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a reasonable commercial investment. POSCO's shares are not publicly traded; therefore, we must determine whether POSCO is equityworthy. To make this preliminary determination, we reviewed and assessed POSCO's financial statements from 1972 through 1983. We also examined studies submitted by the government of Korea. In analyzing the financial statements, we considered the information from the viewpoint of an investor. Accordingly, the Department considered accounting principles and practices, the accounting methods employed by the company, and the impact of such methods on company's overall financial results. After taking into consideration the accounting practices and methods, we examined the following ratios:

- Rate of return on equity;
- Debt to tangible net worth;
- Percent of foreign-denominated debt;
- Cash flow to principal repayment; and
- Current ratio.

Based on our review of POSCO's financial statements and the responses by both POSCO and the government, we preliminarily determine that the government's equity infusions into POSCO were on terms inconsistent with commercial considerations from 1978 through 1980.

With respect to the allegation that POSCO is uncreditworthy, we preliminarily determine that POSCO has been and continues to be creditworthy. In making this determination, we focused on the ability of the company to meet its interest obligations. In addition, an important measure of creditworthiness is whether foreign lenders are lending significant amounts of funds to the company. Accordingly, we also examined the percentage of POSCO's outstanding loans that are foreign loans.

Based upon analysis to date of the petition, the additional information filed by petitioner and the responses to our questionnaires, we preliminarily determine the following:

1. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufactures, producers, or exporters in Korea of shapes and sheet under the following programs:

A. Short-Term Export Financing Under the Export Financing Regulations

Petitioner alleges that the producers and exporters in Korea of shapes and sheet receive preferential short-term export financing under the following programs:

- Export Loans under the 1972 Regulations for Export Financing.
- Export Loans provided under the Foreign Trade Act.
- Deferred Payment Export Loans.
- Preferential Exchange Rates for Export Loans Based on Letter of Credit.

According to the response of the government of Korea, short-term export financing is authorized through the Export Financing Regulations. These Regulations, which were promulgated by the Monetary Board in 1972, were last amended in November 1983. The Bank of Korea establishes the guidelines for the implementation of these regulations and the commercial banks administer the export financing program.

Eligibility for short-term export financing is limited to the following:

- Exporters in receipt of letters of credit;
- Exporters concluding documents of acceptance or documents against payment contracts;
- Exporters purchasing local supplies;
- Exporters stockpiling raw materials;
- Exporters with certificates based on past export performance;
- Producers of raw materials for export; and
- Companies awarded domestic projects based on international public tender.

The maximum term of short-term export loans is 90 days. These loans, unlike short-term domestic financing, cannot be rolled-over.

Prior to June 28, 1982, short-term export loans provided under the Export Financing Regulations were charged a lower interest rate than short-term domestic loans. From June 28, 1982 until January 23, 1984, the Monetary Board established a uniform rate of 10 percent for both export and domestic short-term financing provided by commercial banks. Since January 1984, the Monetary Board has been liberalizing the interest rate structure by allowing banks to lend at lower than the uniform rate depending on the creditworthiness of the company. The interest rate in effect during the period for which we are measuring subsidization was 10 percent for short-term export loans.

In order to determine whether short-term export financing under the Export Financing Regulations provides benefits which constitute export subsidies to the producers and exporters of shapes and sheet, we must compare the 10 percent rate to the appropriate benchmark. As specified in the Subsidies Appendix, the benchmark for short-term loans is the most appropriate national average commercial method of short-term financing. Petitioner argues that the unofficial money (or curb) market establishes the appropriate market interest rate. The government of Korea's response contends that short-term loans from Korean commercial banks represent the most comparable commercial financing. Based upon our review and analysis of information submitted by both petitioner and respondents and upon our research of the credit and interest rate structure in Korea, we preliminarily determine that the most appropriate national average commercial rate consists of a weighted-average of the interest rates charged by all sources of short-term commercial financing in Korea. These sources include: commercial banks, financing companies, commercial paper and the curb market. Using a weighted-average is comparable to what we did in our final affirmative determination in *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina* (49 FR 18006), in which we determined that a weighted-average of the regulated and unregulated interest rates best represented the national average commercial rate.

We did not select the curb market as the sole source for our benchmark because, contrary to petitioner's allegations, the curb market was not the "normal" source of commercial funds for many Korean companies and cannot be construed as a "national average." Although the information provided by petitioner establishes that use of the curb market is not limited to small and high-risk firms and that nearly all Korean firms borrow on the curb market at least occasionally, the evidence does not show that it is the dominant or normal source of funds for most companies. Indeed, to the contrary, the evidence suggests that the importance of the curb market is declining. Most firms normally would go to commercial banks or to foreign capital markets for financing. They would use the curb market only occasionally and generally for very short periods when they had a pressing liability and were temporarily unable to get access to standard commercial sources of funds. (See in particular, Korea Chamber of Commerce *Survey*, June 1984, Exhibit 13 of the Government of Korea's response, August 17, 1984.)

We also did not use the interest rate on short-term borrowing from commercial banks as the sole benchmark, as urged by respondents. Respondents alleged the curb market was to small in size to use, is principally used by small and risky firms, and is tainted by elements of illegality.

First, the size as reported to Korean tax authorities is highly suspect given the reported wide incidence of tax evasion by those lending in the curb market. Independent evidence suggests it is significantly greater in size than the percentage of 0.65 reported in the response. Second, although small and high-risk firms may be the dominant users of the curb market, the evidence shows that virtually all companies use it at times. Thus, it is a normal, albeit not dominant, source of commercial financing for many companies. Third, the curb market is not illegal. What is illegal is the apparently widespread tax evasion which is associated with nonreporting of interest earned by those lending in the curb market. Accordingly, we disagree with respondent's arguments concerning use of the curb market rate in determining the benchmark.

The factors used to weight each of the four interest rates were based on data from a number of sources, including the monthly *Statistical Bulletin* of the Bank of Korea and a research report prepared by the Korean Economic Research Institute. The *Statistical Bulletin* provides the size of, and interest rates charges on, short-term financing by banks, finance companies and commercial paper. The Economic Research Institute report provides data on the size of the curb market in Korea.

For the curb market interest rate, we reviewed studies and articles a variety of sources. We chose a rate of 3 percent per month as representative. This rate was compounded to yield an annualized rate of 42.6 percent. Using the data from all of these sources, we calculated a weighted-average short-term commerical rate. Applying this weighted-average as the benchmark we calulate an estimated subsidy of 0.24 percent *ad valorem* for carbon steel structural shapes and 0.27 percent *ad valorem* for cold-rolled carbon steel flat-rolled products. The statistics and information upon which we based our calculation of the national average commerical rate are subject to verification. During our verification we will also investigate further any and all programs or policies which may serve to increase or decrease the effective interest rate for borrowers. Any additional information submitted by petitoner and respondents which is verified will be considered for the final determinations.

With respect to petitioner's other allegations that preferential short-term export financing is also provided through the Foreign Trade Act, through a deferred payment program and through preferential exchange rates for export loans based on letters of credit, these programs are discussed in the section "Programs Preliminarily Determined Not To Confer Subsidies."

B. Long-Term Loans Through the National Investment Fund

On December 14, 1973, the government of Korea promulgated the National Investment Fund Act (Law No. 2635). The stated "purpose of this Act is to prescribe necessary matters for the establishment and effective management of the National Investment Fund on the bases of extensive nationwide savings efforts and participation, to secure and supply the investment and loan funds needed to promote the construction of major industries, including the heavy and chemical industries, as well as to help increase exports." Since one of the two stated purposes of the Act is to help increase exports, we preliminarily determine that National Investment Fund (NIF) loans constitute export subsidies if they are provided at preferential rates. As outlined in the Subsidies Appendix, the appropriate benchmark for long-term loans will be company-specific, unless the company lacks adequate comparable commerical experience. If a company lacks adequate comparable commerical experience, we use a national average loan interest rate. As discussed in the section "Programs For Which Additional Information Is Needed," we have determined that we need additional information on long-term loans through both specialized banks and commercial banks before determining whether such loans themselves constitute a subsidy. Because such loans are the only other comparable financing to NIF loans, and because we have not made a determination with respect to these loans, we do not consider that there is comparable commerical experience with which to compare NIF loans. Therefore, for purposes of these preliminary determinations, we are using a national average rate for our benchmark. Because NIF long-term loans have variable interest rates, we do not perform present value calculations. Instead, we compare the interest rate paid by each company to the national average commerical rate for short-term loans during the period for which we are measuring subsidization. Using the weighted-average rate that we calculated for short-term export financing under the Export Financing Regulations as the benchmark, we find that the interest rates on NIF loans are preferential and as such confer benefits which constitute export subsides. For NIF loans, we calculate an estimated subsidy of 0.14 percent *ad valorem* for carbon steel structual shapes and 0.36

percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

C. Government Equity Infusions Into POSCO

Petitioner alleges that equity infusions into POSCO by the government of Korea are on terms inconsistent with commercial considerations. As discussed in the "Analysis of Programs" section, we preliminarily determine that POSCO was not a reasonable commercial investment (was unequityworthy) from 1978 through 1980, and, thus the government equity infusions in each of those years were on terms inconsistent with commercial considerations. Therefore, we preliminarily determine that these infusions confer benefits which constitute a subsidy. To calculate the benefit, we followed the rate of return shortfall methodology outlined in the Subsidies Appendix and found an estimated subsidy of 0.46 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

D. Special Depreciation Under the "Act Concerning the Regulation of Tax Reduction and Exemption

In our questionnarie, we requested information on a program that permits accelerated depreciation under Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption." Article 25 permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. As discussed in the section "Programs Preliminary Determined Not To Be Used," no producers of shapes and sheet claimed accelerated depreciation under Article 25. However, POSCO did claim "special" depreciation under Article 11 of "The Act Concerning the Regulation of Tax Reduction and Exemption." This special depreciation is provided to "a domestic person carrying on an important industry." Because we have no evidence in the record of these investigations that this special depreciation for "important" industries is not limited to a specific enterprise or industry or group of enterprises or industries, we preliminarily determine that it constitutes a subsidy. POSCO is the only company producing any of the products under investigation that claimed this special depreciation.

To calculate the benefits from the special depreciation program for the period in which we are measuring subsidization (calendar year 1983), we determined the tax savings received in 1983 based on the accelerated depreciation which had been deducted from the 1982 income taxes payable in 1983. The amount of tax savings received under this program was divided by the total value of all sales in 1983 to determine an estimated subsidy of 2.36 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

E. Tax Incentives for Exporters

Articles 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption" provide for the deduction from taxable income of a number of different reserves relating to export activities. These reserves cover export losses, overseas market development and price fluctuation losses. Under Article 22, a corporation may establish a reserve amounting to one percent of foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

Under Article 23 governing overseas market development, a corporation may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in developing overseas markets are offset from the reserve fund. Like the export loss reserve fund, if there are no offsets for expenses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

A price fluctuation reserve fund may be established under Article 24. A corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses incurred from the fluctuation of prices for export goods, by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following business year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve funds are eventually reported as income and subject to corporate tax either when they offset export losses of when the one-year grace period expires. We preliminarily determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferral of direct taxes specifically realted to exports. Only certain trading companies exporting cold-rolled steel flat-rolled products used these programs during the period for which we are measuring subsidization.

Because these export reserve funds are a one-year deferral of tax liabilities, we treat them as an interest-free loan to the corporation equivalent to the tax savings on these funds. Accordingly, we have quantified the benefits from the reserve funds by calculating the amount of tax savings and then applying a rate of interest which the firm would have had to pay for a short-term loan. We are using the weighted-average rate calculated for short-term export financing *(supra)*. Using this benchmark, we calculate an estimated subsidy of 0.03 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

F. Import Duty Deferrals

Article 36 of the Customs Act of Korea permits the Ministry of Finance to designate an industry as eligible to pay customs duties on an installment basis, rather than upon entry. Prior to 1984, only "important" industries designated by the Ministry of Finance were eligible for import duty deferrals. The steel industry was allowed to make installment payments on import duties for a two-and-a-half to three year period. Because duty deferrals prior to 1984 were provided only to "important" industries designated by the Ministry of Finance, and because the respondents did not provide any information to show that during 1983 this program was not limited to a specific enterprise or industry or group of enterprises or industries, we preliminarily determine that these duty deferrals are countervailable.

We treat each deferral of duty, that is still outstanding during the period for which we are measuring subsidization, as an interest-free loan. To quantify the benefit from this program, we take the amount of duty deferred and apply a rate of interest the firm would have had to pay for a loan of comparable size and duration from commercial sources. Because the interest rates on long-term loans in Korea are variable, we consider that the appropriate benchmark is the corporate bond rate during the year in which duties were deferred. Using this benchmark, we calculate an estimated subsidy of 0.02 percent *ad valorem* for carbon steel structural shapes and 0.03 percent *ad valorem* for cold-rolled carbon steel flat-rolled products.

G. Reductions in Port Charges

"Designated companies" under the Iron & Steel Industry Rehabilitation Order are eligible on a case-by-case basis to receive discounts from regular utility and port rates. In its response, the government states that this progarm was never fully implemented and that only POSCO receives any benefits under it. POSCO receives a 50 percent reduction in port charges only. Because this reduction is limited to a specific enterprise, we preliminarily determine that it constitutes a subsidy. Since the reduction is 50 percent of port charges, the amount of the benefit is equal to the amount of port charges paid and is treated as a grant. Because the grant is less than 0.5 percent of total sales, we allocate it to the year of receipt and calculate an estimated subsidy of 0.03 percent *ad valorem* on cold-rolled carbon steel flat-rolled products.

H. Tariff Reductions on Plant and Equipment

Petitioner alleges that the government of Korea allows reductions of import duties for certain industries on certain goods designated by the Ministry of Finance. Under Article 28 (Duty Abatement for Important Industries) of the Customs Act, "Customs duty may be abated with respect to goods which are designated by the notice of the Ministry of Finance from among machinery equipment for the use of such industries as designated by an Ordinance of the Ministry of Finance from among those falling under any of the following Subparagraphs * * * which cannot be properly manufactured domestically * * *." The industries listed in the subparagraphs include the chemical industry, primary metal manufacture, general machinery manufacturer, manufacture of electric instruments, manufacture of transportation machinery, manufacture of scientific instruments, manufacture of machine parts and electric railroad transportation. Because these tariff reductions or abatements require designation and are not automatically available, and beause we do not know at this time whether all or just one of the industries listed has been designated, we preliminarily determine that this program is limited to a specific enterprise or industry or group of enterprises or industries. The amount of the tariff reduction or abatement is treated as a grant. As described above, because the total amount of grants (*i.e.*, reductions in port charges plus tariff reductions on plant and equipment) received by POSCO is less than 0.5 percent of total sales, we allocated the benefit to the year of receipt and calculate an estimated subsidy of 0.27 percent *ad valorem* on cold-rolled carbon steel flat-rolled products.

II. Programs Preliminarily Determined Not To Confer a Subsidy

We preliminarily determine that benefits which constitute subsidies are not being provided to manufacturers, producers, or exporters in Korea of shapes and sheet, under the following programs:

A. Certain Short-Term Export Financing

As discussed in the section "Programs Preliminarily Determined to Confer Subsidies," we found short-term export loans under the Export Financing Regulations to be countervailable. However, for the reasons discussed below, we find that certain other short-term export financing through the Foreign Trade Act, through deferred payment export loans or through preferential exchange rates for export loans are not countervailable:

1. Export Financing under the Foreign Trade Act

Petitioner alleges that the government of Korea provides the steel industry with preferential short-term export financing under the Foreign Trade Act. According to the response of the government of Korea, the Foreign Trade Act was repealed on January 16, 1967. The government of Korea further states that short-term export financing is not provided under the Foreign Trade Transactions Act. This law sets forth general trade procedures such as import-export licensing, and does not provide export financing. Since export loans are not provided under the Foreign Trade Transactions Act, we preliminarily determine that this Act does not confer a countervailable benefit to producers or exporters of shapes and sheet.

2. Deferred Payment Export Loans

Petitioner alleges that Korean producers and exporters of shapes and sheet benefit from deferred payment of loans used to finance shapes and sheet exports. According to the response of the government of Korea, there is no program offering deferred payment of export loans. Export loans are limited to a period of 90 days, except for certain exempted items which are not subject to these investigations. Therefore, we preliminarily determine there is no program offering deferred payment export loans that provides countervailable benefits to shapes and sheet producers or exporters.

3. Preferential Exchange Rates for Export Loans

Petitioner alleges that producers and exporters of shapes and sheet receive preferential exchange rates for export loans based on letters of credit. Petitioner alleges that the exchange rate used for loans based on letters of credit was ten percent more favorable to Korean exporters than the actual exchange rate. According to the response of the government of Korea, there is no preferential exchange rate used to convert export financing. For export loans granted under the Export Financing Regulations, a Won/U.S. dollar conversion factor which is lower than the official exchange rate is utilized merely to establish a ceiling on export financing. For example, on loans for raw material imports the loan principal is determined by a fixed rate of W530/USD multiplied by the U.S. dollar value of the corresponding letter of credit. Therefore, we preliminarily determine that there is no program of preferential exchange rates for export loans that provides countervailable benefits to shapes and sheet producers and exporters.

B. Medium- and Long-Term Export Financing

Petitioner alleges that Korean exporters receive preferential medium- and long-term financing from the Export-Import Bank of Korea to finance exports of shapes and sheet. According to respondents, the Export-Import Bank of Korea does not provide loans to the steel industry to finance the exports of shapes and sheet. Respondents also state that the Korean Development Bank does not provide medium- or long-term export financing. Except for NIF loans which are discussed in the section "Programs Preliminarily Determined to Confer Subsidies," we preliminarily determine that there are no other programs offering medium- and long-term export loans to shapes and sheet producers or exporters.

C. Investment Tax Credit

In our notice of initiation, we stated that we would investigate whether producers and exporters of shapes and sheet may receive preferential tax benefits under Article 72 of the "Act Concerning the Regulation of Tax Reduction and Exemption," which provides for a temporary investment tax credit when the government deems it necessary for adjustment of economic activities. During the period from January 1, 1982 through December 31, 1982, Article 57–2 ws the enforcement decree for Article 72. Article 57–2 specifies that the investment tax credit was available for the acquisition of fixed assets used directly for manufacturing or mining business.

Consistent with past practice, programs available to all industries in the manufacturing and mining sectors are not limited to "a specific enterprises or industry, or group of enterprise or industries," and thus do not provide domestic subsidies. Since the tax credit is not contingent on export performance it does not provide an export subsidy. Thus, we preliminarily determine that this program does not constitute a subsidy on the products under investigation during the period for which we are measuring subsidization.

D. Import Duty Reduction and Exemption for Raw Materials

Petitioner alleges that producers and exporters of shapes and sheet receive a reduction or exemption of import duties on iron ore and coal. The 1983 Tariff Schedules of Korea show that imports of iron ore and coal were not subject to any import duties. Therefore, we determine that there is no program providing a reduction or exemption of import duties on iron ore and coal that provides countervailable benefits to shapes and sheet producers or exporters.

E. Coal Import Funds

Petitioner alleges that the government of Korea subsidizes the importation of coal through a specific fund for that purpose. According to the responses of the government and the producers, there is no coal import fund for any industry in Korea. Furthermore, respondents indicate that all imported coal is purchased on a commercial basis and that world market prices are paid. Therefore, we preliminarily determine that there is no program providing coal import funds that provides countervailable benefits to shapes and sheet producers.

F. Financial Support for Raw Materials Purchases

Petitioner alleges that the Korean government provides administrative and financial support to "qualified steel producers" for the purchase of iron ore, limestone, fluorite and other raw materials.

According to the responses of the government and the producers, no such supports, neither administrative nor financial, exist to help the steel industry purchase or otherwise secure raw materials. Therefore, we preliminarily determine that there is no program of finanical support for raw material purchases that provides countervailable benefits to shapes and sheet producers.

III. Programs Preliminarily Determined Not To Be Used

We have preliminarily determined that shapes and sheet manufacturers, producers, or exporters in Korea do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigations; Carbon Steel Structural Shapes and Cold-Rolled Carbon Steel Flat-Rolled Products from Korea":

A. Free Export Zone Program

In our notice of initiation, we stated that we would investigate whether producers and exporters of shapes and sheet receive tax benefits based upon location in a free export zone. According to the response of the government of Korea, the producers and the trading companies, no shapes or sheet manufacturer or exporter is located in a free export zone.

B. Foreign Capital Inducement Law

In our notice of initiation, we stated that we would investigation whether shapes and sheet producers and exporters may be receiving financial and tax benefits under the Foreign Capital Inducement Law. According to the responses, no benefits have been received under this program.

C. Export Insurance

Petitioner alleges that the government of Korea provides annual contributions to an export insurance program. According to the responses, export insurance was not used for exports of shapes and sheet to the United States.

D. Steel Industry Development Scheme

Petitioner alleges that the Korean Ministry of Commerce and Industry is sponsoring a steel industry development scheme in which the government will spend 210 billion won on POSCO's plant expansion project.

According to the response of the government of Korea, the Ministry of Trade and Commerce is not sponsoring such a scheme. POSCO's recent plant expansion was financed through retained earnings and foreign and domestic bank loans.

E. Training Aid

Petitioner alleges that the steel industry has received training aid from the government of Korea. According to the response of the government of Korea and the shapes and sheet producers, the steel industry has never received training grants.

F. Wage Controls

Petitioner alleges that the government of Korea controls wages for government-run firms such as POSCO, resulting in lower production costs for this segment of Korean industry. According to the response of the government of Korea, wages in Korea are not controlled by the government for private or state-owned enterprises. In addition, POSCO states in its response that the government does not control, in any way, the wages it pays to its employees.

G. Accelerated Depreciation Under Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption"

In our questionnaire, we requested information on the program of accelerated depreciation under Article 25 of the "Act Concerning the Regulation of Tac Reduction and Exemption." Article 25 permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. According to the responses, producers of shapes or sheet did not claim accelerated depreciation under Article 25 in their 1983 tax returns. Therefore, we preliminarily determine that this program was not used during the period for which we are measuring subsidization.

IV. Programs For Which Additional Information Is Needed

We determine that additional information is needed on the following programs:

A. Medium- and Long-term Government Financing

Petitioner alleges that the steel industry has received preferential financing through Korean banks based on the government direction of credit and programs geared to providing loans to strategic industries. In Korea, two major groups of domestic institutions provide long-term financing: official financial institutions and commercial banks. The official institutions that have been involved in financing the steel industry include the Korea Development Bank (KDB), the Korean Exchange Bank (KEB), and the Export-Import Bank of Korea. With respect to commercial banks, until 1981 the government was the majority shareholder in each of these institutions. In addition, the government established the National Investment Fund (NIF) in 1973, through which long-term financing is made available to heavy and chemical industries, electronics and electric power industries, and projects aimed at increasing food production. We have discussed long-term loans through the NIF in the section on "Programs

Preliminarily Determined to Confer Subsidies."

For each of the official banks, the government has identified certain industries and sectors as priority sectors. These "designated" industries and sectors include shipbuilding, energy, iron and steel, electronics, non-ferrous metals, petro-chemicals, automobile manufacturing, machinery, aviation, agriculture and fisheries. With regard to the commercial banks, the government has not officially designated priority industries; however, national industrial and economic policies, as outlined in Korea's five-year plans and other official publications, do identify and designate certain industries for priority development. These are generally the same industries designated for the official financial institutions.

In previous determinations we have found that a subsidy exists where the government directs banks to lend funds to certain industries or groups of industries on terms inconsistent with commercial considerations or at preferential rates (see Final Affirmative Countervailing Duty Determination, *Carbon Steel Wire Rod from Spain,* 49 FR 19551, 19553). The issue presented here is whether the 11 disparate sectors designated as priority sectors can be said to constitute "a specific enterprise or industry or group of enterprises or industries" within the scope of section 771(5)(B) of the Act, or whether this grouping is too large. If too large, then by definition there is no subsidy (assuming no priority industry receives a disproportionate share of credit from the banks). In prior determinations we have found programs available to the entire agricultural sector to be available to more than a specific group of industries and thus not countervailable (see Final Negative Countervailing Duty Determination, *Fresh Asparagus from Mexico,* 48 FR 21618). Likewise, a program available to all extractive industries was not a subsidy (see Final Affirmative Countervailing Duty Determinations, *Certain Steel Products from France,* (47 FR 39332). Even more to the point, in the Suspension of Countervailing Duty Investigation, *Carbon Steel Wire Rod from Brazil,* (47 FR 42399), we found that FINAME loans were available to a wide variety of sectors in Brazil. We said in that determination: "While the steel industry is one of the chief recipients, this appears to be warranted in view of the capital requirements of a large capital intensive industry. Other large capital-intensive industries have received loans in similar proportions. In addition, numerous other sectors also received loans from FINAME during this period."

Reliance on the Final Affirmative Countervailing Duty Determination, *Certain Steel Products from Brazil,* (49 FR 17988), as contrary precedent is inappropriate. Exemption from the IPI tax was found countervailable because even though nominally available to 14 product sectors, we found that only specific companies producing certain priority products and having approved expansion projects received the exemption. The exemption was not even available to all steel companies. Thus, consistent with past precedent, we would find that the range of sectors identified by the government of Korea for priority development is too broad to constitute a group of industries. However, this does not end our inquiry.

As implied in the Brazilian rod determination and as stated in the Final Affirmative Countevailing Duty Determination, *Certain Steel Products from Korea,* (47 FR 57535), even if a program on its face is not limited to "a specific enterprise or industry or group of enterprises or industries," we look to see if it was selective in its implementation (*i.e.,* if the steel companies received a disproportionate share of the long-term loans). For example in the Final Negative Countervailing Duty Determination in *Fireplace Mesh Panels from Taiwan,* (48 FR 11305), we said that a program" "* * * which does not target benefits or otherwise effectively predetermine the provision of benefits to an industry or a limited group of industries * * *" is not a subsidy. Accordingly, we must analyze whether the designated industry under investigation has received a disproportionate share of available credit and whether there are different interest rates being charged each of the designated industries.

We know that during 1983, (1) the steel industry did not receive loans in greater proportion than its share of the GNP, and (2) all industries, whether designated or not, were charged a 10 percent interest rate on their long-term loans. However, we know that during the 1970's priority sectors were charged lower interest rates than non-priority sectors. These interest differentials were reduced starting in mid-1980 and were eliminated on June 28, 1982 (Korea Exchange Bank, Monthly Review (November 1983) at 6–7; Exhibit 12 to the petition). A number of the loans to shapes and sheet producers that were outstanding in 1983 were provided in the 1970's. We have no information on the record showing that in the 1970's the steel industry did receive a disproportionate share of available credit or that it was charged a more preferential interest rate than other industries. Accordingly, we cannot determine at this time whether a subsidy was provided. We are seeking additional information on these two issues.

In addition, we requested information as to whether the government of Korea channels interest rate subsidies in the form of assistance to meet interest obligations through the National Investment Fund (NIF) and the Korean Development Bank (KDB) to producers of shapes and sheet. According to its response, the government of Korea does not provide any assistance to the steel industry in meeting its interest obligations. However, we intend to seek additional information with regard to this issue.

In its August 31, 1984 submission, petitioner alleged that the government of Korea provided international loan repayment guarantees through the Korean Development Bank. In our original questionnaire dated July 13, 1984, we asked the government of Korea and the producers whether any loans outstanding in 1983 had received any guarantees. According to respondents, no guarantees were provided for any loans outstanding in 1983 to any of the producers and exporters under investigation. During our verification we intend to seek additional information on any loan guarantee programs provided to Korean industry by the Korean Development Bank and any other bank(s).

B. Equity Infusions Into DongJin

In an ongoing investigation regarding oil county tubular goods (OCTG) from Korea, petitioners alleged that POSCO, the parent company of DongJin, received government equity infusions on terms inconsistent with commercial considerations and that this equity subsidy may have been passed through POSCO to DongJin. We were not aware until receipt of the responses in the shapes and sheet investigations that DongJin was a producer of sheet as well as OCTG. Therefore, we are incorporating the allegation by the OCTG petitioners regarding equity infusions into DongJin into these investigations of shapes and sheet.

In order determine whether any equity investment made by POSCO into DongJin is a subsidy, we must, as a threshold matter, determine whether the infusion was on terms inconsistent with commercial considerations.

The circumstances of DongJin's formation, and POSCO's equity infusion into it, are quite complex. According to the responses, Dongjin was established on October 27, 1982 by POSCO. POSCO made a seed money equity infusion into Dongjin at that time. Dongjin was apparently formed to purchase the assets and inventory of a former steel company, Llssin. Llssin had been declared bankrupt in May 1982. In accordance with Korean bankruptcy law, the courts foreclosed upon Llssin's assets in order to settle accounts with creditors, and sold these assets to two banks. These banks, in turn, offered the assets for sale to all purchasers as requiring by Korean banking regulations. Dongjin purchased the assets.

The Subsidies Appendix states that to be "equityworthy" a company must show the ability to generate a reasonable rate of return within a reasonable period of time. We have insufficient information on the record to determine whether Dongjin meets this standard at the time POSCO made its equity infusion. We are seeking additional information on this issue.

C. Port Facilities

Petitioner alleges that the government of Korea is constructing a port at Kwangyang Bay to facilitate the importation of coal and iron ore. It is further alleged that POSCO, will benefit from this port. According to the responses of the government of Korea and the steel companies, POSCO, not the government, is constructing the port facilities. One question raised by the responses concerns certain reclaimed land turned over to POSCO by the government in exchange for equity. We will seek additional information concerning this transaction between the government and POSCO for this land.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determinations. As previously stated, we will not accept any statements in the responses that cannot be verified in our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cold-rolled carbon steel flat-rolled products which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond, for each such entry of the merchandise in the amount of 3.81 percent *ad valorem*. This suspension will remain in effect until further notice. As discussed above, our preliminary determination with respect to carbon steel structural shapes is negative; therefore, we are not directing the U.S. Customs Service to supend liquidation of entries of carbon steel structural shapes.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If our final determinations are affirmative, the ITC will make its determination of whether these imports materially injure, or threaten material injury to a U.S. industry within 45 days after our final determinations.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 9:00 a.m. on October 29, 1984 at the U.S. Department of Commerce, Room 5611, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 22, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: September 11, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-24635 Filed 9-17-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Managment Council will convene a public meeting to discuss reports of the groundfish, lobster, scallop, surf clam, and striped bass oversight committees; enforcement issues, and other fishery management and administrative matters. The public meeting will convene on September 18, 1984, at approximately 10 a.m., and adjourn on September 19, 1984, at approximately 10 a.m., and adjourn on September 19, at approximately 5 p.m., at the Howard Johnson Motor Lodge, Portsmouth, NH. The meeting may be lengthened or shortened, or agenda items rearranged, depending upon progress on the agenda. For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA; telephone: (617) 231-0422.

Dated: September 12, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 84-24626 Filed 9-17-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton Textile Products From the People's Republic of China

September 13, 1984.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 19, 1984. For further information contact Jane Corwin (202/377-4212).

Background

A CITA directive establishing import limits for specific categories of cotton, wool and man-made fiber textile products, including terry and other pile towels in Category 363, produced or manufactured in the People's Republic of China, and exported during the twelve-month period which began on January 1, 1984, was published in the **Federal Register** on December 22, 1983 (48 FR 56626). The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983 provides for the carryover of shortfalls in certain categories from the previous agreement year. Accordingly, at the request of the Government of the People's Republic of China carryover is being applied to the current-year limit for Category 363, increasing that limit from 17,939,338 numbers to 18,456,958 numbers.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 13, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels for restraint for certain specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984.

Effective on September 19, 1984, the directive of December 19, 1983 is hereby further amended to adjust the previously established level of restraint for Category 363 to 18,456,958 numbers [1] under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1982.[2]

The Committee for the Implementation of Textile Agreements has determined that the action falls within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553.

Sincerly,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-24067 Filed 9-17-84; 8:45 am]

BILLING CODE 3510-DR-M

Withdrawal of Calls on Certain Wool Apparel Products Produced or Manufactured in India

September 13, 1984.

On April 30, 1984 a notice was published in the **Federal Register** (49 FR 18348) which announced the establishment of prorated twelve-month limits for wool sweaters in Categories 445 and 446, produced or manufactured in India and exported during the period which began on January 28, 1984 and extends through December 31, 1984. The purpose of this notice is to announce that the United States Government has concluded that there is no further need to control these categories at the individual limits; however, imports in these categories will still remain subject to the group limit established for apparel products in Categories 330–359, 431–459, and 630–659, produced or manufactured in India and exported during 1984. (See 48 FR 55891) Should it become necessary to discuss these categories with the Government of India at a later date, further notice will be published in the **Federal Register**.

Effective date: September 19, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 13, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This letter cancels and supersedes the directive of April 25, 1984 concerning wool textile products in Categories 445 and 446, produced or manufactured in India, effective on September 19, 1984.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-24068 Filed 9-17-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Upper Jordan River Interim Investigation, Salt Lake County, UT

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. *Action.*—The Corps of Engineers is investigating flood problems in the Jordan River Basin. The interim investigation concerns alternative solutions for flood hazard reduction on the Upper Jordan River and principal tributaries: Mill Creek and Big and Little Cottonwood Creeks. The final array of alternatives being studied in detail are No Action and two plans for improving the flood carrying capacity of Mill Creek to a 100-year recurrence interval, i.e., floods expected to occur one percent of the time on average.

2. *Alternatives.*—a. *No Action Plan.*—The Federal Government would not participate in a flood hazard reduction solution. Without additional measures to complement local interest plan, flooding would recur at intervals more frequent than one percent. The floods impact on streamside urban developments and also affect stream habitat, riparian vegetation and floodplain esthetics. Although local interests would continue to provide improvements for reducing the flood hazard, these would not likely reach the one percent level of protection without Federal assistance.

b. *Channel and Diversion at 1300 East Street.*—Two reaches to Mill Creek would be improved to increase flood carrying capacity. An 8,000-foot reach from 900 West Street to State Street would be deepened and bridges would be raised to contain flows up to 700 cfs. A 2,000-foot reach from 1300 East Street to Highland Drive would be improved with a concrete or grouted rock lining to contain 1,500 cfs. A diversion dam at 1300 East would divert flows in excess of 200 cfs via a 6,000-foot conduit to Hillview detention basin (built by local interests). Detained floodwaters would be routed through existing storm drains back to Mill Creek after the flood peak passes. (Local interests plan to provide a detention basin at Scott Avenue to reduce peak runoff which would work in concert with these improvements.)

c. *Channel and Diversion at Highland Drive.*—This plan would be similar to the other but would differ as follows.

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[1] The level has not been adjusted to account for any imports exported after December 31, 1983.

[2] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryover or carry forward, respectively; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

The diversion would be located at Highland Drive. The 2,000 feet of concrete or grouted riprap on Mill Creek would be eliminated. The conduit would be lengthened to 8,000 feet to convey diverted flows from Highland Drive to the Hillview detention basin. The added 2,000-foot conduit would be located along Murphys Lane.

3. *Scoping.*—A public meeting was held in Salt Lake City, Utah, on 9 August 1977 to discuss flood and related problems in the Jordan River Basin. The consensus of those presenting statements indicated support for investigation of flood and related problems, including identification of significant and insignificant environmental concerns relating to various alternatives. Frequent meetings have been held with representatives of Salt Lake County Flood Control Department to insure that the problems were properly recognized and the alternatives considered were reasonable.

An environmental assessment (EA) dated September 1981, was circulated to interested agencies, organizations, and individuals for review and comment. Comments received have assisted in determining preferred alternatives. This process has assisted in obtaining public participation.

Another public meeting is scheduled to be held early in 1985 to discuss the alternative plans and to assist in selecting the plan to be recommended. No separate scoping meeting is being scheduled. The continuing public coordination has resulted in identification of the significant issues listed below:

- Flood hazard reduction.
- Project area employment.
- Impacts to fish and wildlife resources.
- Impacts to riparian habitat and esthetic and scenic features.
- Impact on archeological and historical resources.
- Land use changes in the Upper Jordan River Basin.
- Sociological and Economic changes in the Upper Jordan River Basin.
- Recreation needs and opportunities.

All interested parties are invited to call or write to suggest the issues they believe are significant which should be discussed in detail in the DEIS and which issues are not significant enough for detailed study. Sources of data and information to support the suggestions should be identified if possible.

4. *Estimated Date of DEIS.*—A draft environmental impact statement is expected to be circulated for public review in December 1984.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Robert Verkade, Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, telephone (916) 440–2456 or FTS 448–2456.

Dated: September 6, 1984.

Albert E. McCollam, Jr.,

Lieutenant Colonel, CE, Acting Commander.

[FR Doc. 84–24629 Filed 9–17–84; 8:45 am]

BILLING CODE 3710-GH-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, September 25, 1984, beginning at 1:30 p.m. in the Schooner Room of the Virden Center, University of Delaware on Pilottown Road, Lewes, Delaware. The hearing will be a part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 9:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *U.S. Department of the Interior—National Park Service D–83–30 CP.* Restoration of an aqueduct (Roebling Bridge) crossing the Upper Delaware National Scenic and Recreational River in the vicinity of Lackawaxen, Pennsylvania. Renovations will include repair of stone piers and steel bridge cables, placement of riprap in scour holes adjacent to the piers, and installation of timber crib ice breakers in front of pier faces. The crossing extends from Lackawaxen, Pennsylvania (Pike County) to Minisink Ford, New York (Sullivan County) and is located at River Mile 277.4.

2. *Robeson Township Board of Supervisors D–83–34 CP.* A sewage treatment project to serve Robeson Township in Berks County, Pennsylvania. The treatment plant will be designed to remove 94 percent BOD and 87 percent suspended solids from an average sewage flow of 0.30 million gallons per day (mgd). Treated effluent will discharge to the Schuylkill River in Robeson Township, Berks County, Pennsylvania.

3. *Manwalamink Water Company D–84–18.* Expansion of a sewage treatment project serving the Shawnee development in Smithfield Township, Monroe County, Pennsylvania. The treatment plant will be expanded to remove 86 percent BOD and 90 percent suspended solids from a sewage flow of 0.245 mgd. Treated effluent will discharge to the Delaware River in Smithfield Township. The project is located within the Delaware Water Gap National Recreation Area.

4. *Wichard Sewer Company D–84–23.* Modification of a sewage treatment project in Horsham Township, Montgomery County, Pennsylvania. The original Wichard STP, as previously approved by the Commission, was to serve 648 homes in the Country Springs residential development. However, the plant presently treats an average flow of only 18,000 gallons per day (gpd). The modified project includes the use of current excess capacity by the Horsham Township Sewer Authority which will purchase 100,000 gpd of treatment capacity for interim sewage service to existing homes and a country club in nearby portions of the Township. Many of the homes to be served have experienced chronic problems with on-site septic systems. The plant will be constructed in phases and is designed to remove 97 percent BOD$_5$ and 95 percent TSS from an ultimate approved waste flow of 227,000 gpd.

5. *Harry T. Hudson, Jr. D–84–31.* A ground water withdrawal project to supply up to 19.55 million gallons/month of water for irrigation of the applicant's farm crops. Well No. 1 is located in Sussex County, Delaware.

6. *Draper-King Cole, Inc. D–84–32.* A ground water withdrawal project to replace water from Well Nos. 1 and 7 that have become unreliable sources of supply at the applicant's plantsite in Milton, Delaware. The proposed total withdrawal from new Well Nos. 1A and 7A will not exceed 0.84 mgd. Total maximum withdrawal from all wells in the applicant's system will remain at 2.5 mgd. The project is located in the Town of Milton, Sussex County, Delaware.

7. *Town of Clayton D–84–34 CP.* A ground water withdrawal project to replace water from Well No. 2 that has become an unreliable source of supply. The proposed withdrawal from the new Well No. 2R will be limited to an average of 0.4 mgd. Total withdrawal from all wells in the applicant's system will remain at 7.5 million gallons per 30 days. The project is located in the Town of Clayton, Kent County, Delaware.

Water Supply Contract

A proposed water supply contract between the Commission and Public Service Electric and Gas Company of New Jersey for the sale of water supplies to the Company for use at the Hope Creek Nuclear Generating Station, Unit 1, located on the Delaware River at River Mile 51.36, Lower Alloways Creek Township, Salem County, New Jersey. The contract provides for minimum payments to the Commission by the Company for water to be used for cooling a 1067-megawatt nuclear unit. Annual payments will be in accord with the terms and conditions of the Commission's water supply policy and regulations as adopted by Resolution Nos. 71–4 and 74–6.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: September 10, 1984.

Richard C. Albert,

Acting Secretary.

[FR Doc. 84–24608 Filed 9–17–84; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Office of Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreement; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale:

Contract Number S–EU–819, for the sale of 200,000 curies of tritium gas to Surelite, Ltd., England, for use in the manufacture of light sources. The U.S. Nuclear Regulatory Commission license XB01181 has been issued approving export of this material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 12, 1984.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–24623 Filed 9–17–84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–EU–821, to the Technical University, Munich, the Federal Republic of Germany, 20 milligrams of plutonium-242 and 10 milligrams of curium-244, for use in Mossbauer effect studies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: September 12, 1984.

For the Department of Energy.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–24624 Filed 9–17–84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–EU–820, one gram of plutonium-241 to the Central Bureau for Nuclear Measurements, Geel, Belgium, for use in target preparation. The targets will be used in accelerators for basic research.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: September 12, 1984.

For the Department of Energy.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–24625 Filed 9–17–84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the assignment of uranium enriching services totaling 29,950 separative work units in Fiscal Year 1986 from Sweden to Japan for use by the Kyushu Electric Power Co., Inc. power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 12, 1984.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-24622 Filed 9-17-84; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate

Restriction of Eligibility for Grant Award

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a grant providing support to the National Academy of Sciences for partial support of an in-depth study regarding the Impact of National Security Controls on International Technology Transfer. The DOE support under this grant is valued at $50,000 over an 18-month period.

Procurement Request Number: 01-84ER51063.000.

Project Scope: The objective of this grant award is to support the activities of the National Academy of Sciences Committee on Science, Engineering, and Public Policy undertaking a study of the impact of national security controls on international technology transfer, particularly as they affect high technology industries in the United States. Eligibility for this grant award is being limited to the National Academy of Sciences because this on-going science coordinating and information sharing activity is only performed by the National Academy of Sciences.

FOR FURTHER INFORMATION CONTACT: Thomas E. Brown, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone No.: (202) 252-1026.

Issued in Washington, DC on September 11, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 84-24081 Filed 9-17-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 4466-001]

Capital Development Company; Surrender of Preliminary Permit

September 14, 1984.

Take notice that Capital Development Company, Permittee for the Frailey Mountain Water Power Project No. 4466, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 4466 was issued on February 1, 1982, and would have expired on January 31, 1985. The project would have been located on Deer Creek in Skagit and Snohomish Counties, Washington.

Capital Development Company filed the request on August 8, 1984, and the surrender of the preliminary permit for Project No. 4466 is deemed accepted as of August 8, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24651 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-547-004]

Colorado Interstate Gas Company; Amendment to Application

September 13, 1984.

Take notice that on August 20, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 19 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP82-547-004 an amendment pursuant to section 7 of the Natural Gas Act to its existing application for a certificate of public convenience and necessity to reflect certain changes in its proposals, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, by the subject amendment, CIG withdraws all portions of its application except for its requests for authorization to modify facilities at the Schaeffer-Weeks sales meter station (Schaeffer-Weeks), one of its points of delivery to Public Service Company of Colorado (PSCo) and to amend its service agreement with PSCo to reflect an increase in the maximum daily volume obligation from Mcf 800 to 3,000 Mcf of gas and the delivery pressure from 150 psig, to CIG's line pressure at Schaeffer-Weeks. CIG states that the Schaeffer-Weeks facilities were constructed and service agreement modifications were implemented under a temporary certificate issued by the Commission on September 29, 1983.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24653 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01

[Project No. 7787-001]

Colorado Slopes Power; Surrender of Preliminary Permit

September 14, 1984.

Take notice that Colorado Slopes Power, Permittee for the Jackson Gulch Dam Project No. 7787 located on the Jackson Gulch River in Montezuma County, Colorado, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 11, 1984, and would have expired on September 30, 1985. The Permittee states that it expects to file a license application for the project as a different organizational entity.

Colorado Slopes Power's request was filed July 12, 1984. The surrender of the permit for Project No. 7787 is in the public interest and will become effective thirty days from the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24654 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-59-001]

Columbia Gas Transmission Corp.; Amendment to Request Under Blanket Authorization

September 13, 1984.

Take notice that on August 29, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; filed in Docket No.

CP84-59-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Koppers Company, Inc., Piston Ring and Seal Division (Koppers), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to continue transporting up to 147 MMBtu equivalent of natural gas to Koppers' Baltimore, Maryland, plant until June 30, 1985, instead of the October 23, 1984, termination date authorized in Docket No. CP84-59-000 under the prior notice procedure by notice issued December 27, 1983. It is stated that in all other respects the transportation would remain the same as authorized in Docket No. CP84-59-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24655 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5705]

Grisdale Hill Co.; Surrender of Preliminary Permit

September 14, 1984.

Take notice that Grisdale Hill Company, Permittee for the Huckleberry Creek Project No. 5705, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5705 was issued on July 21, 1983, and would have expired on December 31, 1984. The project would have been located on Huckleberry Creek in Lane County, Oregon.

Grisdale Hill Company filed the request on August 9, 1984, and the surrender of the preliminary permit for Project No. 5705 is deemed accepted as of August 9, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24657 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7005-001]

Grisdale Hill Co.; Surrender of Preliminary Permit

September 14, 1984.

Take notice that Grisdale Hill Company, Permittee for the Christy Creek Hydroelectric Project No. 7005 has requested that its preliminary permit be terminated. The Preliminary Permit was issued on June 23, 1983, and would have expired on November 30, 1984. The project would have been located on Christy Creek within Willamette National Forest in Lane County, Oregon.

Grisdale Hill Company filed the request on August 7, 1984, and the surrender of the preliminary permit for Project No. 7005 is deemed accepted as of August 7, 1984, and effective as of 30 days after the date of this notice.

Kenneth Plumb,

Secretary.

[FR Doc. 84-24656 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6936-001]

G. Stetson Heiser; Surrender of Preliminary Permit

September 14, 1984.

Take notice that G. Stetson Heiser, Permittee for the proposed Buck Street Project No. 6936, requested by letter dated July 22, 1984, that its preliminary permit be terminated. The preliminary permit was issued on May 16, 1963, and would have expired on October 31, 1984. The project would have been located on Buck Street in Merrimack County, New Hampshire. The project is not being pursued due to lack of sufficient funding.

The surrender of the preliminary permit for Project No. 6936 is effective 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24658 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6994-001]

City of Memphis, TN; Surrender of Preliminary Permit

September 14, 1984.

Take notice that the City of Memphis, Tennessee, Permittee for the proposed H. M. Bessie Hydroelectric Project, FERC No. 6994, has requested that its preliminary permit be terminated. The permit was issued on August 18, 1983, and would have expired on July 31, 1985. The project would have been located on the Mississippi River in Lake County, Tennessee; Fulton County, Kentucky and New Madrid County, Missouri.

The Permittee filed its request on July 23, 1984, and the surrender of the preliminary permit for Project No. 6994 is effective 30 days after issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24652 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5830-002]

Publishers Paper Co.; Surrender of Preliminary Permit

September 14, 1984.

Take notice that Publishers Paper Company, Permittee for the New Willamette Falls Hydroelectric Project No. 5830, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5830 was issued on June 17, 1982, and would have expired on June 30, 1985. The project would have been located on the Willamette River in Clackamas County, Oregon.

Publishers Paper Company filed the request on August 6, 1984, and the surrender of the preliminary permit for Project No. 5830 is deemed accepted as of August 6, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24663 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA84-25-000]

Phelps Dodge Corp.; Petition for Continuation of Temporary Exemption Relief and Request for Interim Relief

Issued: September 13, 1984.

On August 30, 1984, petitioner, Phelps Dodge Corporation (Phelps Dodge), 2600 North Central Avenue, Phoenix, Arizona, 85004, filed with the Federal Energy Regulatory Commission

(Commission) a petition for a continuation of the temporary relief granted to it by Order of the Director, Office of Pipeline and Producer Rates on September 22, 1983,[1] under section 206(d) of the Natural Gas Policy Act of 1978 (NGPA).[2]

The September 22, 1983 order granted Phelps Dodge temporary relief from incremental pricing surcharges for its Ajo and Bisbee, Arizona, and Tyronne, New Mexico, facilities for the period beginning with the September 1983 billing period, and extending through the billing period of September, 1984. Phelps Dodge's August 30, 1984 petition seeks a continuance of this temporary relief for the subject refineries for an additional twelve month period. Phelps Dodge also requests interim relief, to be granted effective October 1, 1984.

The procedurs applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.[3] Any person desiring to participate in this proceeding must file a motion to intervene under Subpart K, within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-25064 Filed 9-17-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 5278-003]

Yankee Power Co.; Surrender of Exemption

September 14, 1984.

Take notice that Yankee Power Company, Exemptee for the North Fork Plume Creek Hydro Project No. 5278, has requested that its Exemption be terminated. The order granting Exemption for Project No. 5278 was issued on August 2, 1982. The project would have been located on North Fork Plume Creek in Pend Oreille County, Washington.

Yankee Power Company filed the request on August 6, 1984, and the surrender of the Exemption for Project No. 5278 is deemed accepted as of August 6, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-24666 Filed 9-17-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-465-000]

CalWind Resources, Inc., Encino, CA; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 13, 1984.

On August 23, 1984, CalWind Resources, Inc. (Applicant) of 4267 Mooncrest Place, Encino, California 91436 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located approximately 9 miles southwest of Techachapi, California and will consist of 238 wind turbine generators rated at 65 kW each. The total electric power production capacity will be approximately 9 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-24650 Filed 9-17-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-381-001]

International Paper Co., Natchez Mill; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 13, 1984.

On July 26, 1984, International Paper Company (Applicant), of 77 West 45 Street, New York, New York 10036, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's paper mill in Natchez, Mississippi. The facility's primary energy sources are biomass in the forms of wood and spent pulping liquor, oil and gas. The rebuilt turbine/generator was restored to service in May 1979. The Applicant seeks to qualify as new capacity, the rebuilt 23.4 MW unit as new capacity within the meaning of § 292.304(b)(1).

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-24060 Filed 9-17-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-458-000]

McGrew and Associates, Wells Creeks; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 13, 1984.

On August 23, 1984, McGrew and Associates (Applicant) of P.O. Box 31359, 1914 North, 34th Street, Seattle, Washington 98103-1359, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 15.3 megawatt hydroelectric facility is located near the North Fork Nooksack River on Wells Creek in Whatcom County, Washington.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of

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[1] *See* Order of the Director, OPPR, Docket Nos. SA83-12-000, SA83-13-000, and SA83-14-000, 24 FERC ¶ 62,354 (1983).

[2] 15 U.S.C. 3301-3432 (1982).

[3] 18 CFR 385.1101-385.1117 (1983).

Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24660 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-459-000]

McGrew and Associates, Ruth Creek; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 13, 1984.

On August 23, 1984, McGrew and Associates, (Applicant) of P.O. Box 31359, 1919 North 34th Street, Seattle, Washington 98103-1359, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2.8 megawatt hydroelectric facility is located near the North Fork Nooksack River on Ruth Creek in Whatcom County, Washington.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. Clt closes not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24661 Filed 9-17-84; 8:45]

BILLING CODE 6717-01-M

[Docket No. QF84-460-000]

McGrew and Associates, Swamp Creek; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 13, 1984.

On August 23, 1984, McGrew and Associates (Applicant), of P.O. Box 31359, 1914 North 34th Street, Seattle, Washington 98103-1359 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.5 megawatt hydroelectric facility is located near the North Fork Nooksack River on Swamp Creek in Whatcom County, Washington.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24662 Filed 9-17-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Windham Gas and Oil Company in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

Date and Address: Applications for refund must be postmarked by December 17, 1984, should conspicuously display a reference to case number HEF-0198, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Windham Gas and Oil Company and DOE. The consent order settled all disputes between DOE and Windham concerning possible violations of DOE price regulations with respect to the firm's sales of motor gasoline during the period March 1, 1979 through August 31, 1979.

Any member of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by December 17, 1984, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: August 27, 1984.

George B. Breznay,

Director, Office of the Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Windham Gas and Oil Company
Date of Filing: October 13, 1983
Case Number: HEF-0198

August 27, 1984.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Windham Gas and Oil Company (Windham), a division of Ropet Incorporated.

Windham was a marketer of petroleum products which it sold to resellers and end-users in the Windham, Ohio area during the period of federal price controls, and was therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. A DOE audit of Windham's records revealed possible violations of DOE price regulations with respect to the firm's sales of motor gasoline during the period March 1, 1979, through August 31, 1979 (hereinafter) referred to as the audit period).

In order to settle all claims and disputes between Windham and DOE regarding the firm's sales of motor gasoline during the audit period, Windham and DOE entered into a consent order on February 10, 1981. Under the terms of the consent order Windham agreed to remit $36,000 to DOE. Windham has paid DOE the $36,000, which is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of July 31, 1984, the Windham escrow account had earned $14,194.47 in interest.

On March 20, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Windham's alleged violations. 49 FR 12742 (March 30, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the Windham consent order. In the first stage, we will refund money to identifiable purchasers of motor gasoline who were injured by Windham's pricing practices during the period March 1 through August 31, 1979. After meritorious claims are paid in the first stage, a second stage of the refund procedure may be necessary if funds remain. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

This decision establishes procedures for filing claims in the first stage of the Windham refund proceeding. We will describe the information that a purchaser of Windham motor gasoline should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the March 20 decision. We will not, however, determine procedures for a second stage of the refund process in this decision. Our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund. It is therefore premature for us to address the issues raised by commenters regarding the disposition of funds remaining after all the first-stage claims have been paid.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Windham consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Windham consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers. The Windham consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by Windham's alleged violations. In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of Windham motor gasoline for the period March 1 through August 31, 1979. If the gasoline was not purchased directly from Windham, the claimant must include a statement setting forth his reasons for believing the product originated with Windham. In addition, a reseller or retailer of motor gasoline that files a claim will be required to establish that it absorbed the alleged overcharges and was thereby injured. A demonstration of injury can be made in two ways. First, each claimant that is a reseller or a retailer, must show as an initial matter that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices.[1] *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). These two groups of claimants will also have to demonstrate that, at the time they purchased motor gasoline from Windham, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges.

Second, a reseller or retailer may rely on a presumption of injury and supply no further proof of injury. As in many prior special refund cases, we will adopt a presumption that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). A reseller or retailer claimant will not be required to submit any further proof of injury if its refund claim is based on a monthly purchase level below a threshold level of 50,000 gallons. (*2*) The adoption of a particular level of purchases below which a claimant need not submit any additional evidence of injury is based on several considerations. First, the cost of compiling information sufficient to show injury may be expensive. Second, our experience indicates that many refund applicants will be small businesses, such as single outlet retailers, who generally maintain a less sophisticated record keeping system than larger firms. The threshold level is set to minimize unnecessary burdens on small businesses who might otherwise be precluded from receiving refunds to redress their injuries. We considered these factors in setting the threshold level at 50,000 gallons per month, as well as the per-gallon refund amount in conjunction with the length of the audit period, that is, the amount a successful claimant would be entitled to receive if it purchased the threshold amount each month of the audit period. A successful claimant who purchased 50,000 gallons of Windham motor gasoline during each of the six months of the audit period will receive refund of $1,248, excluding interest.

A reseller or retailer which made only spot purchases from Windham probably sustained no injury, and must clearly demonstrate injury if it files a refund application. We have previously noted that spot purchasers "tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases * * * at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers." *Vickers* at 85,396–97. We believe that this rationale holds true in the present case. A spot purchaser therefore should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for the Windham motor gasoline it purchased. *See Amoco* at 88,200.

Claimants who were ultimate consumers of Windham motor gasoline had no opportunity to pass on the costs associated with the alleged overcharges, and therefore will not be required to submit any further proof of injury in order to qualify for a refund. *See Standard Oil Co. (Indiana/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding an end-use consumer need only) document the specific quantities of Windham motor gasoline it purchased during the audit period in order to receive a refund.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of motor gasoline covered by the consent order. The refund amount in this case will be $.0041597 per gallon ($36,000 received from Windham divided by 8,654,369 gallons of motor gasoline sold by Windham during the audit period), exclusive of interest. Successful claimants' refunds will be calculated by multiplying their eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it was injured by an amount greater than the volumetric figure may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also 10 CFR 205.286(b).*

B. Application for Refund. After having considered all the comments received concerning the first-stage proceedings tentatively adopted in our March 20 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Windham motor gasoline. An application must be in writing, signed by the applicant, and specify that it pertains to the Windham Consent Order Fund, Case Number HEF–0198.

An applicant should indicate from whom the motor gasoline was purchased and, if the applicant is not a direct purchaser from Windham it should also indicate the basis for its belief that the motor gasoline which it purchased originated from Windham. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Windham motor gasoline, such as whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from March 1, 1979, through January 27, 1981. (*3*) The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Windham Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the Windham consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It is Therefore Ordered That:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF–0198 be granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Windham Gas and Oil Company pursuant to the consent order executed on February 10, 1981, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: August 27, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

(*1*). The price rules applicable to sales of motor gasoline by retailers were amended effective July 16, 1979. 44 FR 42542 (July 19, 1979). The amended regulation, 10 CFR 212.93(a)(2), provided for a fixed per-gallon markup of 15.4 cents (later increased) for retail sales of motor gasoline, and eliminated the "banking" provisions formerly in effect. Since the fixed markup rule was in effect during part of the period covered by the Windham consent order, no showing of cost banks will be required of retailers after July 16, 1979. The use of banking remained optional for larger resellers of motor gasoline; firms that elected to continue cost banking will be required to submit this information throughout the audit period if they apply for refunds based on purchases greater than 50,000 gallons per month.

(*2*). Claimants whose purchases exceed 50,000 gallons per month during the period for which a refund is claimed, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 50,000 gallons-per-month threshold amount without being required to submit evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981) (hereinafter *Vickers*); *see also Ada* at 88,122.

(*3*). *See* note 1 *supra.*

[FR Doc. 84–24598 Filed 9–17–84; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $1,866.23 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Midwest Industrial Fuels, Inc., a reseller retailer of motor gasoline located in La Crosse, Wisconsin.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0130.

FOR FURTHER INFORMATION CONTACT: Gary Comstock, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Midwest Industrial Fuels, Inc. which settled possible pricing violations in the firm's sale of No. 2 fuel oil to customers during the period November 1, 1973 through April 30, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Midwest pursuant to the consent order. The DOE has tentatively decided that the consent order funds should be distributed to the two wholesale purchasers which DOE's audit indicated may have been overcharged. In addition, applications for refund from purchasers not identified by the DOE audit will be considered. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: August 27, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Midwest Industrial Fuels, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0130.

August 27, 1984.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process is typically used in situations where DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1982), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, ERA, on October 13, 1983, filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Midwest Industrial Fuels, Inc. (Midwest). Midwest is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR § 212.31, and is located in LaCrosse, Wisconsin. A DOE audit of the firm's records revealed possible pricing violations amounting to $269,653.12 with respect to sales of No. 2 fuel oil during the period November 1, 1973, through April 30, 1974. In order to settle all claims and disputes between Midwest and the DOE regarding the firm's sales of No. 2 fuel oil during the audit period, Midwest and the DOE entered into a consent order on August 31, 1981, in which the firm agreed to make refunds amounting to $137,000.41 (including interest). According to the Midwest consent order, the alleged overcharges affected two classes of customers. Separate processes were established by which Midwest would make refunds directly to certain of its customers who were allegedly injured, as well as place funds in escrow for DOE to distribute. First, $135,135.18, representing alleged overcharges on sales of No. 2 fuel oil to end users, was to be refunded directly to those purchasers.(*1*) In addition, $1,866.23 representing alleged overcharges with respect to sales of No. 2 fuel oil to certain wholesale purchasers was to be deposited by Midwest into an interest-bearing escrow account for ultimate distribution by DOE. This Decision concerns the distribution of the $1,866.23 that Midwest deposited into the escrow account on September 15, 1981, plus accrued interest to date.

II. Proposed Refund Procedures

During DOE's audit of Midwest, two wholesale purchasers were identified as having allegedly been overcharged. While the DOE audit file represents only preliminary determinations, does not necessarily reflect actual overcharges, nor provide conclusive evidence as to the identity of possible refund recipients or the amount of money that they should receive in a Subpart V proceeding, it is reasonable to use the information contained in the audit file for guidance. *See Armstrong and Associates/City of San Antonio,* 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion Corp.,* 12 DOE ¶ 85,014 (1984), we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit. *See, e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Brown Oil Co.,* 12 DOE ¶ 85,028 (1984); and *Reinhard Distributors, Inc.,* Case No. HEF–0163 (July 13, 1984) (proposed decision). In view of the small amount of money involved in this proceeding, it would seem that the most efficient method of accomplishing restitution would be simply to distribute the escrow funds to those firms identified by the audit as injured by Midwest's pricing practices. The wholesale purchasers identified by the audit, with the share of the settlement amount allotted to each by ERA, are listed below:

Purchaser	Share of settlement amount[2]
Big Bear Stores	$1,444.27
Amoco (retail station)	421.96

NOTE: See footnote at end of document.

We have no other information regarding the identity or location of these purchasers. We are therefore presently unable to proceed with a distribution of refunds to them. We will, in an effort to better identify these two purchasers, provide Midwest and various service station associations in Wisconsin, Iowa, and Minnesota with copies of this proposed decision, in addition to publishing notice in the **Federal Register.** We will accept information regarding the identity and present locations of these purchasers for a period of 45 days from the date of publication of notice of a final Decision and Order in this proceeding in the **Federal Register.**

We also recognize that there may have been other wholesale purchasers not identified by the ERA audit, as well as downstream purchasers, who may have been injured as a result of Midwest's pricing practices during the audit period and would therefore be entitled to a portion of the consent order funds. If additional meritorious claims are filed, we will adjust the figures listed above accordingly. Actual refunds will be determined only after analyzing all appropriate claims.(*3*) Finally, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases from Midwest of No. 2 fuel oil, or to submit a statement verifying that it purchased petroleum products from Midwest and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding.(*4*) However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Midwest Industrial Fuels, Inc., pursuant to the consent order executed on August 31, 1981, will be distributed in accordance with the foregoing determination.

Footnotes

(*1*) On October 15, 1981, Midwest advised DOE that it had made full payment of direct refunds to end users as specified in the consent order.

(*2*) The share of the escrow fund which the listed purchasers are to receive represents 50.8 percent of the amount each was allegedly overcharged, and is consistent with the terms of the consent order which settled for 50.8 percent of the total amount of alleged overcharges identified by the audit.

(*3*) Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated above.

(*4*) If we are unable to locate either of the firms named in the audit, and no other purchaser files a claim, we will terminate the initial stage of this refund proceeding and reserve the funds for distribution in a susequent proceeding.

[FR Doc. 84–24590 Filed 9–17–84; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from U.S. Compressed Gas Company in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by December 17, 1984, should conspicuously display a reference to case number HEF–0188, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between U.S. Compressed Gas Company (USC) and DOE. The consent order settled all disputes between DOE and USC concerning possible violations of DOE price regulations with respect to the firm's sales of propane during the period November 1, 1973 through September 30, 1976.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by December 17, 1984, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: August 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: U.S. Compressed Gas Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0188.

August 28, 1984.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with U.S. Compressed Gas Company (USC).

USC was a marketer of propane which it sold to resellers and end-users in the King of Prussia, Pennsylvania area during the period of federal price controls, and was therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. An ERA audit of USC's records revealed possible violations of DOE price regulations with respect to the firm's sales of propane during the period November 1973 through September 1976 (hereinafter referred to as the audit period). In the audit, ERA identified by name more than 100 customers who were allegedly overcharged in their purchases of USC propane during the audit period.(*1*)

In order to settle all claims and disputes between USC and DOE regarding the firm's sales of propane during the audit period, USC and DOE entered into a consent order on April 28, 1980. Under the terms of the consent order USC agreed to remit $57,000 to DOE. USC has paid DOE the $57,000, which is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of June 30, 1984, the USC escrow account had earned $21,264.27 interest.

On May 24, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by USC's alleged violations. 49 FR 23225 (June 5, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the USC consent order. In the first stage, we will refund money to identifiable purchasers of propane who were injured by USC's pricing practices during the period November 1973 through September 1976. After meritorious claims are paid in the first stage, a second stage of the refund procedure may be necessary if funds remain. *See generally Office of Special Counsel, Economic Regulatory Administration: In re Standard Oil Company (Indiana)*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

This decision establishes procedures for filing claims in the first stage of the USC refund proceeding. We will describe the information that a purchaser of USC propane should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. We will not, however, determine procedures for a second stage of the refund process in this decision. Our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund. It is therefore premature for us to address issues regarding the disposition of funds remaining after all the first-stage claims have been paid. The comments filed in response to our May 24 proposed decision were filed by various States and involve disposition of funds remaining after the conclusion of first stage proceedings. Therefore, they will not be discussed here.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to estabish such a proceeding with respect to the USC consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the USC consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers

The USC consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by USC's alleged violations. In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of USC propane for the period November 1973 through September 1976. If the propane was not purchased directly from USC, the claimant must include a statement setting forth his reasons for believing the product originated with USC. In addition, a reseller or retailer of propane that files a claim will be required to establish that it absorbed the alleged overcharges and was thereby injured. As an initial matter, each claimant that is a reseller or a retailer must show as an initial matter that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement, Economic Regulatory Administration: In re Ada Resources, Inc.*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). These two groups of claimants will also have to demonstrate that, at the time they purchased propane from USC, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges.

As in many prior special refund cases, we will adopt a presumption that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). A reseller or retailer claimant will not be required to submit any further proof of injury if its refund claim is based on a monthly purchase level below a threshold level of 50,000 gallons. (*2*) The adoption of a particular level of purchases below which a claimant need not submit any additional evidence of injury is based on several considerations. First, the cost of compiling information sufficient to show injury may be expensive. Second, our experience indicates that many refund applicants will be small businesses, such as single outlet retailers, who generally maintain a less sophisticated record keeping system than larger firms. The threshold level is set to minimize unnecessary burdens on small businesses who might otherwise be precluded from receiving refunds to redress their injuries. We considered these factors in setting the threshold level at 50,000 gallons per month, as well as the per-gallon refund amount in conjunction with the lenght of the audit period, that is, the amount a successful claimant would be entitled to receive if it pruchased the threshold amount each month of the audit period. Under the presumption of injury which we are adopting in this case, a successful claimant who purchased 50,000 gallons of USC propane during each of the thirty-five months of the audit period will receive a refund of approximately $3,600 excluding interest.

A reseller or retailer which made only spot purchases from USC probably sustained no injury, and must clearly demonstrate injury if it files a refund application. We have previously noted that spot purchasers "tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases . . . at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers." *Office of Enforcement, Economic Regulatory Administration: In re Vickers Energy Corp.*, 8 DOE ¶ 82,597 at 85,396–97 (1981). We believe that this rationale holds true in the present case. A spot purchaser therefore should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for the USC propane it purchased. *See Amoco* at 88,200.

Claimants who were ultimate consumers of USC propane had no opportunity to pass on the costs associated with the alleged overcharges, and therefore will not be required to submit any further proof of injury in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding an end-user or a consumer need only document the specific quantities of USC propane it purchased during the audit period in order to receive a refund.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of motor gasoline covered by the consent order. The refund amount in this case will be $.002061 per gallon ($57,000 received from USC divided by 27,648,180 gallons of propane sold by USC during the audit period), exclusive of interest. Successful claimants' refunds will be calculated by multiplying their eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it was injured by an amount greater than the volumetric figure may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweights the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

B. Application for Refund

After having considered all the comments received concerning the first-stage proceedings tentatively adopted in our May 24 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased USC propane. An application must be in writing, signed by the applicant, and specify that it pertains to the USC Consent Order Fund, Case Number HEF-0166.

An applicant should indicate from whom the propane was purchased and, if the applicant is not a direct purchaser from USC. It should also indicate the basis for its belief that the propane which it purchased originated from USC. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the USC propane such as whether it was a reseller or ultimate consumer. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973, through January 27, 1981. The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its applications for refund is being considered. *See* 10 CFR 205.9(d). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: USC Consent Order Refund Proceedings, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the USC consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It Is Therefore Ordered That:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF/0188 is hereby granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by U.S. Compressed Gas Company, pursuant to the consent order executed on April 28, 1980, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: August 28, 1984.

George B., Breznay,

Director, Office of Hearings and Appeals.

Notes

(1) The purchasers of USC propane were listed only by name and it was impossible to directly notify them of this refund proceeding. The proposed decision was published in the **Federal Register,** and copies were sent to the National LP-Gas Association and newspapers in the King of Prussia area.

(2) Claimants whose purchases exceed 50,000 gallons per month during the period for which a refund is claimed, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 50,000 gallons-per-month threshold amount without being required to submit evidence of injury. *See* Office of Enforcement, Economic Regulatory Administration: In re Vickers Energy Corp., 8 DOE ¶ 82,597 (1981) at 85,396; *see also Ada* at 88,122.

[FR Doc. 84-24600 Filed 9-17-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2600-6]

National Emission Standards for Hazardous Air Pollutants; Addition of Coke Oven Emissions to List of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Addition to the list of hazardous air pollutants.

SUMMARY: This notice announces the Administrator's decision to list coke oven emissions as a hazardous air pollutant under section 112 of the Clean Air Act. The decision to list coke oven emissions as a hazardous air pollutant is based on the Administrator's findings that coke oven emissions pose a significant risk to the public.

Emission standards for wet-coal charged by-product coke oven batteries will be proposed in Spring 1985. A public hearing will be held to provide interested persons an opportunity presentation of data, views, or arguments concerning the listing of coke oven emissions as a hazardous air pollutant and the proposed standard for wet-coal charged by-product coke oven batteries.

DATES: *Comments.* Comments on this listing decision must be received on or before the close of the comment period on the emission standards for coke oven batteries to be proposed at a later date.

Public Hearing. A public hearing on this listing decision will be held, if requested, in conjunction with any hearing on the proposed emission standards for coke ovens. The time and place of the hearing will be announced in the emission standard proposal notice.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-83-33, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kent Berry, Strategies and Air Standards Division, (MD-12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC., 27711, telephone (919) 541-5504 or FTS 629-5504.

SUPPLEMENTARY INFORMATION:

Background

Section 112 of the Clean Air Act requires the Administrator to list as hazardous air pollutants, those pollutants which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness. Listing of a pollutant under section 112 signifies the Administrator's intent to develop emission standards for one or more stationary source categories emitting that pollutant.

As part of EPA's efforts to determine whether to regulate coke oven emissions under section 112 or other Clean Air Act provisions, EPA prepared several documents relevant to this decision. These included an assessment of the health effects of coke oven emissions,[1] a risk assessment for ambient coke oven exposures, and an exposure assessment for coke oven emissions. These documents were reviewed at a public Science Advisory Board (SAB) meeting on May 30 and 31, 1978. The SAB is an advisory group of nationally prominent scientists from outside EPA. Based on the SAB comments and those received from the public, the health and exposure documents were revised (1)(2). The portion of the risk assessment document dealing with the calculation of the "unit risk" number (a measure of the carcinogenic potency of coke oven emissions) was combined with a discussion of the qualitative evidence of carcinogenicity and was released to the public for comment on April 26, 1982 (47 FR 17860). Public SAB meetings to review successive drafts of this document were held on August 2-3, 1982, December 8-9, 1982, June 10, 1983, and September 22-23, 1983.[2] In an April

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[1] As used in this notice, the term "coke oven emissions" refers to emissions that arise directly from the coke oven, and does not include emissions from other facilities associated with the battery (i.e., battery stacks, quench towers, or by-product plant). It is quite probable that the large majority of the worker exposure (and risk) to cancer-causing pollutants from coke ovens was due to emissions from the battery and not the ancillary facilities at the coke plant.

[2] The final document, entitled "Carcinogen Assessment of Coke Oven Emissions," EPA-600/6-82-003F, February 1984, is available from the Center for Environmental Research Information, 20 West St. Clair St., Cincinnati, Ohio 45268, (513) 684-7531. The external review drafts and public comments on the drafts of this document are available for inspection and copying in the docket. The transcripts of the SAB meetings are available for inspection and copying at the US EPA Committee Management Staff, Vicki Bailey, Room M2515, 401 M St., SW., Washington, D.C. 20460, (202) 382-5036.

11, 1984 letter to the Administrator, the SAB provided its comments on the document and its general agreement with the adequacy of the document.

Qualitative Assessment of Carcinogenicity

The production of coke by the carbonization of bituminous coal leads to the atmospheric release of chemically complex emissions, including polycyclic organic matter (POM), aromatic compounds (e.g., beta-napthylamine, benzene), and trace metals (e.g., arsenic, beryllium, cadmium, chromium, nickel) which are of concern due to their potential carcinogenic or cocarcinogenic effects. Extensive epidemiological studies of coke oven workers have shown them to be at an excess risk of mortality from lung cancer, prostate cancer, and kidney cancer. A dose-response relationship was established in terms of both the length of employment and intensity of exposure according to work area at the top or the side of the coke oven. Coke oven emission extracts have been shown to be carcinogenic in a number of animal bioassays. The Carcinogen Assessment Document concludes that coke oven emissions are carcinogenic to humans, and the SAB unanimously concurred with this conclusion.

While epidemiological studies have clearly established a dose-response relationship between cancer in workers and occupational exposure to coke oven emissions, it has not been proven through epidemiological studies that exposure to coke oven emissions at ambient levels causes cancers. Epidemiological studies that have revealed a statistically significant association between occupational exposure and cancer for substances such as asbestos, benzene, vinyl chloride, and ionizing radiation, as well as for coke oven emissions, are not as easily applied to the general public with its inherent number of confounding variables such as a much more diverse and mobile exposed population, a lack of consolidated medical records, and limited historical exposure data. Given the above characteristics, EPA considers it improbable that any epidemiological association, short of very large increases in cancer, can be detected among the public with any reasonable certainty. As discussed below, EPA has taken the position, shared by other Federal regulatory agencies, that in the absence of sound scientific evidence to the contrary, carcinogens should be considered to pose some cancer risk at any exposure level. The significance of this risk addressed in the following section

Public Health Risks

Estimation of Cancer Potency

The first element in conducting a risk assessment for coke oven emissions is the estimation of the carcinogenic potency of the emissions, which is expressed as the "unit risk." The unit risk estimate for an air pollutant is defined as the lifetime cancer risk occurring in a population in which all individuals are exposed continuously from birth throughout their lifetimes to a concentration of 1 $\mu g/m^3$ of the agent in the air they breathe. The data used for estimating the unit risk for coke oven emissions are based on the extensive epidemiological studies of coke oven workers which demonstrated an excess cancer risk for persons exposed to high concentrations of these emissions. An extrapolation model then be used to predict the response at much lower community levels. It is assumed, unless evidence exists to the contrary, that if a carcinogenic response occurs at the dose levels used in a study, then responses will occur at all lower doses with an incidence determined by the extrapolation model.

It is not possible to verify any mathematical extrapolation model that relates carcinogen exposure to cancer risks at the extremely low concentrations which must be dealt with in evaluating environmental hazards. For practical reasons, such low levels of risk cannot be measured directly either by animal experiments or by epidemiological studies. EPA, therefore, depends on the current understanding of the mechanisms of carcinogenesis for guidance as to which risk model to use. At the present time, the dominant view of the carcinogenic process involves the concept that most agents that cause cancer also cause irreversible damage to DNA. This position is reflected by the fact that a very large proportion of agents that cause cancer are also mutagenic. There is reason to expect that the quantal type of biological response, which is characteristic of mutagenesis, is associated with a linear non-threshold dose-response relationship. Indeed, there is substantial evidence from mutagenesis studies with both ionizing radiation and a wide variety of chemicals that this type of dose-response model is the appropriate one to use. This is particularly true at the lower end of the dose-response curve. At higher doses, there can be an upward curvature probably reflecting the effects of multi-stage processes on the mutagenic response. The linear non-threshold dose-response relationship is also consistent with the relatively few epidemiological studies of cancer responses to specific agents that contain enough information to make the evaluation possible (e.g., radiation-induced leukemia, breast and thyroid cancer, liver cancer induced by aflatoxins in the diet). There is also some evidence from animal experiments that is consistent with the linear non-threshold model.

The Carcinogen Assessment Document provides a number of different potency estimates for coke oven emissions using two different models (a multi-stage, or polynomial, model and Weibull or power model) as well as different assumptions for adjusting dose to account for the latency period between exposure and the onset of cancer (referred to as the "lag time"). The range of the unit risk estimate under the various assumptions covers five orders of magnitude. The document presents a composite unit risk estimate based on the geometric mean of the four different lag times from the multi-stage model, adjusted to have the largest linear term that is still consistent with the experimental data.[3] This number, 6.2×10^{-4} per $\mu\gamma/m^3$ of benzene soluble organics from coke ovens, is judged to be the most plausible upper-bound risk estimate. It is not, however, the highest unit risk number calculated; the unit risk using *only* the 15-year lag data is twice as high as this "composite" figure. This estimate applies to lung cancer only and does not account for the risks of contracting prostate, kidney, or other cancers which have also been shown to be elevated in coke oven workers. Quantitative data were not sufficient to estimate the risk of contracting these other cancers.

The health assessment document also presents maximum likelihood estimates of the muti-stage model for the four lag times. The maximum likelihood estimates are based on the parameter values for the multi-stage model that maximize the probability of observing the results found in the epidemiology studies. The difference between the maximum likelihood estimate and the 95% upper-bound estimate depends on the lag time. At the 15-year lag time the upper-bound estimate is 2 times higher than the maximum likelihood estimate, while at the 0 lag time, the difference is more than 2 orders of magnitude. The relative difference between estimates is higher for the shorter lag times because the maximum likelihood estimate for linear term is zero. In such cases, the maximum likelihood low dose risk estimates are extremely sensitive to small changes in the data; parameter estimates that yield almost as high a value for the likelihood function as the maximum likelihood estimates generate much higher predicted risks at the low doses. Furthermore, a lag time of 0 years is less biologically plausible; most human lung cancers occur 20–30 years after exposure to known carcinogens. Accordingly, the longer lag times are more realistic. The maximum likelihood and upper-bound unit risk estimates are summarized below.

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[3] This is termed the "95% upper bound," since it is consistent with the best fit, or maximum likelihood estimate, at the 95% confidence level.

MAXIMUM LIKELIHOOD AND 95 PERCENT UPPER-BOUND UNIT RISK ESTIMATES FOR DIFFERENT LAG TIMES

Lag time	Maximum likelihood	95 percent upper-bound
0	2.28×10^{-6}	3.14×10^{-4}
5	4.67×10^{-6}	4.45×10^{-4}
10	3.54×10^{-4}	8.22×10^{-4}
15	6.29×10^{-4}	1.26×109^{-3}

During the public and SAB review of the Carcinogen Assessment Document the American Iron and Steel Institute (AISI) submitted to the Agency information contending that the nonlinear, or Weibull model fits the occupational data better than the linear model in the observed range, gives environmental risk estimates that are lower by an order of magnitude or more than the multi-stage model, and is biologically acceptable. AISI, through their consultants (Consultants in Epidemiology and Occupational Health, Inc. (CEOH)), argued that a composite estimate should average the results from the Weibull and the multi-stage models and should not use data adjusted for the latency period (i.e., use only zero lag time data or, at most, the zero and 5-year lag data). CEOH argued that the zero lag data should be used because it uses all the exposure data, that it contains the most reliable data and most recent exposures, and that recent exposures may have an "enhancing" effect which should not be excluded. Finally, CEOH argued for using the best fit as well as the 95% upper bound for estimating the unit risk. Using the CEOH assumptions, the composite unit risk would be one to more than two orders of magnitude lower than the EPA composite.

As discussed in the Carcinogen Assessment Document, both the Weibull model and the 0- and 5-year lag time for the maximum likelihood estimate are nonlinear at the unit risk concentration. Because a linear model is consistent with current carcinogenic theory and data on other environmental carcinogens, the use of either the Weibull model or the maximum likelihood estimates for these lag times would have the potential for understimating the actual risk. In contrast, the 95% upper-bound estimate of the multi-stage model is a conservative estimate of the actual risk, i.e., it is not likely that the true risk would be much more than the 95% upper-bound, but it may well be considerably lower.

With respect to the lag time issue, the CEOH arguments involving the need to use the most recent data because they are most complete and reliable are not relevant if, in fact, such exposures do not contribute to the cancers which were observed. It is likely that the carcinogenicity of coke oven emissions involves both an initiation as well as a promotion component, with the initiation component probably having little effect for the 10 years immediately preceding the onset of cancer. Since the relative importance of the initiating and promoting components of coke oven emissions are not known, one assumption of lag time cannot be chosen over another on the basis of available data. Thus, EPA has given equal weight to the different lag times by taking the geometric mean of the four lag times. While the SAB took no direct position on the lag time issue, their endorsement of the linear approach indirectly supports inclusion of the 10- and 15-year lag data, since these data are linear and the zero lag data are not.

Exposure

There are currently about 42 wet-coal charged by-product coke plants in existence in the United States, some of which are temporarily shut down but are included in the exposure analysis. Many of these plants are located in or near large population centers, so that the exposed population living within 50 km of a coke oven is quite large. Exact estimates of mass emissions from coke ovens are difficult to obtain and are imprecise because of the fugitive and variable nature of coke oven emissions. However, a variety of emission tests permit an estimate of the range of emissions from the various emission points under the current regulatory baseline. This baseline represents the collective effect of equipment and work practice standards established by the Occupational Safety and Health Administration, State Implementation Plan (SIP) requirements developed to attain the national ambient air quality standards for particulate matter, and consent decrees negotiated under the SIP's. The emission estimates are in terms of the benzene soluble organic (BSO) portion of the particulate matter emitted from charging operations, topside leaks, and door leaks. The emission estimates are expressed in terms of BSO because BSO was used as an indicator of exposure to coke oven emissions in the epidemiology studies and subsequently as an indicator of the carcinogenic potency of coke oven emissions in the Carcinogen Assessment Document. These are presented as ranges to reflect the considerable uncertainty in the emission estimates. The estimated emissions under the regulatory baseline for charging, topside, and door leaks are 150–1,580 metric tons per year.

These emissions, even at the low end of the ranges, result in significant public exposure. This is due to the magnitude of the emissions as well as their low release height (these are fugitive emissions and not emitted through a stack). The most exposed individuals are estimated to be exposed to annual average BSO concentrations ranging from 5.7 to 59 $\mu g/m^3$. The number of people estimated to be exposed to annual average BSO concentrations exceeding 1 $\mu g/m^3$ is 1700 to 117,000. These ranges reflect the ranges in emissions discussed above.

To produce quantitative expressions of public health risks, a numerical expression of public exposure is needed, i.e., of the numbers of people exposed to the various concentrations of coke oven emissions. The difficulty of defining public exposure was noted by the national Task Force on Environmental Cancer and Heart and Lung Disease in their 5th Annual Report to Congress, in 1982.(3) They reported that "* * * Proportion of the American population works some distance away from their homes and experiences different types of pollution in their homes, on the way to and from work, and in the workplace. Also, the American population is quite mobile, and many people move every few years." They also noted the necessity and difficulty of dealing with very long-term exposures because of "* * * the long latent period required for the development and expression of neoplasia (cancer) * * *" To develop quantitative expressions of public exposure to coke oven emissions, it was necessary to use assumptions and a computerized model.

The exposure model assumes that individuals are continuously exposed at their place of residence for a 70-year period to a constant source of coke oven emissions. Census data were used to locate people with respect to the emitting sources, and the exposed population consisted of all the people estimated to be living within a radial distance of 50 kilometers from the sources. By combining population locations and concentrations, the exposure model produced estimates of exposure at selected radial distances from each identified source and summed the exposure estimates for each source. As used in this notice, the term "exposure" means the product of the estimated ambient air concentration of BSO from coke ovens and the estimated number of people exposed to that concentration. The units of exposure are people—$\mu g/m^3$.

AISI also submitted a number of comments relative to the exposure estimates for coke oven emissions. They contended that due to overestimates in emissions as well as modeling deficiencies, EPA had overestimated public exposure by "considerably more than an order of magnitude." EPA has examined the emission estimates carefully and believes that the likely range of emissions has been adequately bounded. Several of AISI's comments relating to the need to use meteorological data at each coke oven location, more accurate population distribution data, buoyancy and building wake effects, and treatment of the emissions as a line source rather than a point source have since been addressed through additional modeling.

Quantitative Estimates of Public Health Risks

By combining the estimates of public exposure with the unit risk, two types of quantitative estimates are produced. The first, called maximum lifetime risk, relates to the individual or individuals estimated to live in the area of highest concentration as estimated by the dispersion model. The second type of risk estimate, called aggregate risk, is a summation of all the risks to people living within 50 kilometers of a source and is customarily summed for all the sources in a particular category. The aggregate risk is expressed as incidences of cancer among all of the exposed population after 70 years of exposure; for statistical convenience, it is often divided by 70 and expressed as cancer incidences per year.

There also are risks of fatal cancers other than lung cancer, nonfatal cancer, and serious genetic effects, which could not be quantitatively estimated; however, EPA qualitatively considers all of these risks when it makes regulatory decisions on the need to control emissions of coke over emissions.

Using the techniques described above (including the upper-bound unit risk number), which generally produce conservative estimates of risk, the following estimates of annual lung cancer incidence and lifetime risk were calculated at the regulatory baseline:

Cancer Cases per year: 8.6(1.5–15.7)[4]

Number of Plants Causing Various Levels of Individual Risk:

Greater than 1 in 100—6
Between 1 in 100 and 1 in 1000—32
Less than 1 in 1000—4

AISI contends that more "realistic" estimates of risk would be two orders of magnitude less than EPA's upper-bound estimates, with maximum individual risks being "much lower than many risks (such as smoking one pack of cigarettes or drinking one can of diet soda per day, flying 3,000 miles per year, or being killed by lightning) that are regularly accepted by society." Thus, AISI concludes that coke over emissions do not pose a significant health hazard of the kind Congress intended to be regulated under section 112 of the Clean Air Act.

As noted above, EPA does not agree that AISI's risk estimates are more plausible or valid than EPA's. As a matter of prudent public health policy, EPA has chosen to use techniques for estimating risk that are plausible but not likely to underestimate the true risk. Even if AISI's two orders of magnitude adjustment were correct, it is not true that the maximum individual lifetime risk from coke ovens is much less than the activities mentioned by AISI (except for cigarette smoking). Furthermore, EPA does not agree that the presence of other unregulated or tolerated health risks, equal or greater in magnitude than those estimated for exposure to coke oven emissions, obviates the need for regulation. Activities such as smoking and air travel are essentially voluntary in nature with recognized risks. The risk of someone being struck by lightning, while largely involuntary, would be difficult to reduce effectively. For coke oven emissions, however a large component of the health risk is involuntary and unknown. At the same time, reasonable actions are available that can reduce the risks from exposure to coke oven emissions.

EPA continues to believe that the well-documented evidence of the carcinogenicity of coke oven emissions, the quantity of emissions from coke ovens, the observed and estimated ambient concentrations, the proximity of large populations to emitting sources, and the numerical estimates of health risks (including consideration of the uncertainties of such estimates) support the determination that exposure to coke oven emissions "can reasonably be anticipated to result in an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness" (section 112 (a)(1) of the Clean Air Act).

The hazardous air pollutant designated by today's action automatically becomes a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14)). CERCLA requires that persons in charge of facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (NRC) of the release. (See CERCLA section 103 and 48 FR 23552 (May 25, 1983). The toll-free telephone number of the NRC is (800) 424–8802; in the Washington, D.C. metropolitan area (202) 426–2675.

For those hazardous substances for which RQs have not been assigned, a statutory RQ of one pound within a 24-hour period will be assigned for CERCLA notification purposes until the RQs are adjusted by regulation.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. A separate determination will be made with respect to the emission standards for coke ovens proposed under section 112(b). This action was submitted to the Office of Management and Budget for review. Any comments from OMB and any EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because a listing under section 112 imposes no requirements in and of itself. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (U.S.C. 3501 et. seq.).

Notice is hereby given that the Administrator, pursuant to section 112(b)(1)(A) of the Act, amends the list of hazardous air pollutants to read as follows:

List of Hazardous Air Pollutants

* * * * *

8. Coke oven emissions.

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[4] Based on the mid-point of the emission estimates; range is shown in parenthesis.

Dated: September 10, 1984.

William D. Ruckelshaus,

Administrator.

References

(*1*) U.S. Environmental Protection Agency, "An Assessment of the Health Effects of Coke Oven Emissions Germane to Low Level Exposures," Revised External Review Draft, November 1978.

(*2*) Suta, B.E., "Human Population Exposures to Coke Oven Emissions," October 1978 (Revised May 1979).

(*3*) U.S. Environmental Protection Agency et al., "Environmental Cancer and Heart and Lung Disease," Fifth Annual Report to Congress by the Task Force on Environmental Cancer and Heart and Lung Disease, August 1982.

[FR Doc. 84-24690 Filed 9-17-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59167A; FRL-2672-8]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-74 and TME-84-75. The test marketing conditions are described below.

EFFECTIVE DATE: September 7, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M Street, SW., Washington, DC 20460, (202-382-3480).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury

EPA hereby approved TME-84-74 and TME-84-75. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met. The following additional restrictions apply. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substances produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME 84-74

Date of Receipt: July 30, 1984.

Notice of Receipt: August 10, 1984 (49 FR 32109).

Applicant: Products Research and Chemical Corporation.

Chemical: (S) Reaction product of methylene-bis-(4-cyclohexyl isocyanate) with the polymer of ethanol, 2-mercapto oxirane extended, hydroxy terminated.

Use: (S) Coating for aircraft.

Production Volume: 500 kg.

Number of Customers: Ten.

Worker Exposure: Manufacture: a total of 3 workers for 6 hours per day for up to 15 days per year. Processing: a total of 40 workers for 8 hours per day for up to 8 days per year.

Test Marketing Period: Two years.

Commencing on: September 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the substance are expected to be low. The test marketing substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84-75

Date of Receipt: July 31, 1984.

Notice of Receipt: August 10, 1984 (49 FR 32109).

Applicant: Products Research and Chemical Corporation.

Chemical: (S) Reaction product of methylene-bis-(4-cyclohexyl isocyanate) with the polymer of ethanol, 2,2'-thiobis; ethanol, 2-mercapto; and oxirane methyl.

Use: (S) Coating for aircraft.

Production Volume: 500 kg.

Number of Customers: Ten.

Worker Exposure: Manufacture: a total of 3 workers for 6 hours per day for up to 15 days per year. Processing: a total of 40 workers for 8 hours per day for up to 8 days per year.

Test Marketing Period: Two years.

Commencing on: September 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the substance are expected to be low. The test marketing substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 7, 1984.

Don R. Clay,

Director, Office of Toxic Substance.

[FR Doc. 84-24631 Filed 9-17-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59165B; FRL-2672-7]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of four applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-67, TME-84-68, TME-84-69, and TME-84-70. The test marketing conditions are described below.

EFFECTIVE DATE: September 7, 1984.

FOR FURTHER INFORMATION CONTACT: James Alwood, Premanufacture Notice Management Branch, Chemical Control

Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-215, 401 M St. SW., Washington, DC 20460, (202-382-3741).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-67, TME-84-68, TME-84-69, and TME-84-70. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met. The following additional restrictions apply. A bill of lading accompanying each shipment must state that use of the substances is restricted to that approved in the TMEs. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substances produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

TME 84-67

Date of Receipt: July 17, 1984.

Notice of Receipt: July 27, 1984 (49 FR 30241).

Voluntary Suspension of Review Period: July 20, 1984 through July 29, 1984.

Applicant: Confidential.

Chemical: (G) Acrylate copolymer.

Use: (S) Anti-foulant.

Production Volume: 23,000 kg.

Number of customers: 5.

Worker Exposure: Manufacturing, processing, and use—dermal, up to 20 workers.

Test Marketing Period: 1 year.

Commencing on: September 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable health or environmental risks.

Public Comments: None.

TME-84-68

Date of Receipt: July 17, 1984.

Notice of Receipt: July 27, 1984 (49 FR 30241).

Voluntary Suspension of Review Period: July 20, 1984 through July 29, 1984.

Applicant: Confidential.

Chemical: (G) Acrylate Copolymer.

Use: (S) Anti-foulant.

Production Volume: 23,000 kg.

Number of Customers: 5.

Worker Exposure: Manufacturing, processing, and use—dermal, up to 20 workers.

Test Marketing Period: One year.

Commencing on: September 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not present any unreasonable risk of injury to health or the environment.

Public comments: None.

TME-84-69

Date of Receipt: July 17, 1984.

Notice of Receipt: July 27, 1984 (49 FR 30241).

Voluntary Suspension of Review Period: July 20, 1984 through July 29, 1984.

Applicant: Confidential.

Chemical: (G) Acrylate copolymer.

Use: (S) Anti-foulant.

Production volume: 23,000 kg.

Number of Customers: 5.

Worker Exposure: Manufacturing, processing, and use—dermal, up to 20 workers.

Test Marketing Period: One year.

Commencing on: September 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME-84-70

Date of Receipt: July 17, 1984.

Notice of Receipt: July 27, 1984 (49 FR 30241).

Voluntary Suspension of Review Period: July 20, 1984 through July 29, 1984.

Applicant: Confidential.

Chemical: (G) Acrylate Copolymer.

Use: (S) Anti-foulant.

Production Volume: 23,000 kg.

Number of Customers: 5.

Worker Exposure: Manufacturing, processing, and use—dermal, up to 20 workers.

Test marketing Period: One year.

Commencing on: September 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 7, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-[illegible] Filed 9-17-84; 8:45 am]

BILLING CODE 6560-50-M

[SA-FRL-2673-2]

Science Advisory Board; Environmental Health Committee, Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on October 3-4, 1984, in Conference Room 3906-3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:15 a.m. on

October 3, 1984, and adjourn not later than 4 p.m. on October 4, 1984.

The principal purposes of the meeting will be:

First on October 3, 1984, (1) to be briefed on the programs and initiatives of the Office of Health Research in EPA's Office of Research and Development (ORD); (2) to receive an informational briefing on overall Agency activities regarding ethylene oxide; (3) to review and comment on the scientific adequacy of a draft Health Assessment Document (HAD) on ethylene oxide prepared by the Office of Health and Environmental Assessment (OHEA) in ORD. The HAD is dated April, 1984 (EPA-600/8-84-009A).

Second, on October 4, 1984, to continue the review and comment on the HAD for ethylene oxide; (4) to hear an update for the EHC on the use of its reviews by the Office of Air Quality Planning and Standards; (5) to review additional information from the Office of Toxic Substances regarding a research study, "Design Options for a Retrospective Validation Study of PMN Health Hazard Assessment;" (6) to discuss a report from the HAD Subcommittee for Improving the Quality of HAD reviews; and (7) to discuss upcoming issues of current interest to the members.

For information on how to obtain copies of the draft HAD please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684-7562.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact Dr. Daniel Byrd, Executive Secretary to the EHC, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 before c.o.b. September 28, 1984.

Dated: September 11, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-24752 Filed 9-17-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 11, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

OMB Number: 3060-0315
Title: Section 76.221, Sponsorship identification; list retention; related requirements
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 352 Recordkeepers; 176 Hours

OMB Number: 3060-0316
Title: Section 76.305, Records to be maintained locally by cable television system operators for public inspection
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 3,200 Recordkeepers; 332,800 Hours

OMB Number: 3060-0314
Title: Section 76.209, Fairness doctrine; personal attacks; political editorials
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 850 Respondents; 2,210 Hours

OMB Number: 3060-0313
Title: Section 76.205, Origination cablecasts by candidates for public office
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 850 Recordkeepers; 4,250 Hours

William J. Tricarico,

Secretary, Federal Communications Commissions.

[FR Doc. 84-24593 Filed 9-17-84; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements of OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L 96-511.

Copies of these submissions are available from Doris R. Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on an information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-48414.

OMB No.: 3060-0019
Title: Application for a Radio Station License or Modification Thereof Under Part 23 or 25
Form No.: FCC 403
Action: Extension
Respondents: Wireline and radio common carriers applying for license upon completion of construction, or seeking to modify an existing license
Estimated Annual Burden: 3,000 Responses, 30,000 Hours.

OMB No.: 3060-0029
Title: Application for New Commercial or Noncommercial Educational Broadcast Station License
Form No.: FCC 302
Action: Revision
Respondents: Commercial AM, FM and TV stations and Noncommercial FM and TV stations (including small businesses)
Estimated Annual Burden: 962 Responses, 257,420 Hours.

OMB No.: 3060-0034
Title: Application for Construction Permit for Noncommercial Educational Broadcast Station
Form No.: FCC 340
Action: Revision
Respondents: Noncommercial educational AM, FM and TV stations
Estimated Annual Burden: 544 Responses, 41,344 Hours.

OMB No.: 3060-0059
Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference
Form No.: FCC 740
Action: Revision
Respondents: Importers of radio frequency devices (including small businesses)
Estimated Annual Burden: 240,000 Responses, 20,160 Hours.

OMB No.: 3060-0090
Title: Registration of Canadian Radio Station Licensee and Application for Permit to Operate in the United States.
Form No.: FCC 410
Action: Extension
Respondents: Canadian licensees requesting permission to operate mobile units in the U.S.

Estimated Annual Burden: 223 Responses, 19 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-24601 Filed 9-17-84; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Main Committee Meeting

September 12, 1984

The next meeting of the Space WARC Advisory Committee is scheduled for October 1, 1984. The principal objective of the meeting will be to review the status of U.S. preparations for the Space WARC, including a review of the work plan and coordinated schedule of the working groups within the Committee. Details regarding the date, place and agenda of the meeting are provided below.

Chairman: S.E. Doyle (916) 355-6941.

Vice Chairman: R.F. Stowe (703) 442-5022.

Date: Monday, October 1, 1984.

Time: 10:00 A.M.-1:00 P.M.

Location: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554.

Agenda

(1) Adopted of Agenda
(2) Review of Minutes
(3) Work Pland Review and Schedule
  —Service and Bands Working Group
  —Planning Working Group
  —Technical and Economic Working Group
  —International Regulatory Working Group
  —Broadcast Satellite Services Working Group
(4) Coordinated Schedule of Meetings
(5) Other Business
(6) Adjournment

Note.—The Steering Working Group will meet from 9:00-10:00 A.M. in the above location on the same date.

William J. Tricarico,

Secretary, Federal Communitation Commissions.

[FR Doc. 84-24589 Filed 9-17-84; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1478]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

September 10, 1984.

Tne following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Cable Television syndicate Exclusivity and Carriage of Sports Telecasts. (RM-4138)

Filed by: Philip R. Hochberg, Attorney for National Basketball Association, National Hockey League and North American Soccer League on 8-8-84.

Subject: Petition to exempt Digital Electronic Organs From Part 15 of the FCC Rules. (RM-4460)

Filed by: Donald E. Ward and Chester F. Naumowicz, Attorneys for Allen Organ Company on 8-23-84.

Subject: Investigation of Access and Divestiture Related Tariffs. (CC 83-1145, Phase I)

Filed by:

William G. Milne, General Counsel and Daniel A. Huber, Assistant General Counsel for U.S. Telephone, Inc., on 5-2-84.

Randall B. Lowe and Tanina D. Liammari, Attorneys for The Association of Long Distance Telephone Companies on 5-30-84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-24600 Filed 9-17-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at he Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221-004153-001.

Title: Freeport, Texas Terminal Premises Agreement.

Parties:

Brazos River Harbor Navigation District (Freeport, Texas), (Brazos), (Standard Fruit and Steamship (Standard).

Synopsis: Agreement No. 221-004153-001 modifies the basic agreement to state that all construction referred to in the original agreement has been accomplished. Changes were made in the amount of rent to be paid by Standard to Brazos for the exclusive use of the facilities.

Agreement No.: 224-0104642.

Title: Oakland Marine Terminal Agreement.

Parties:

The Port of Oakland (Port).

Stevedoring Services of America (SSA).

Synopsis: The agreement provides that the Port will assign to SSA the responsibility of management, terminal operation and cargo solicitation services at the Port's Charles P. Howard Terminal. SSA will utilize the said area and the two container cranes therein for the berthing of vessels and the loading and discharging of cargoes and operations thereto. The term of the agreement is for five years with an extension option.

Dated: September 13, 1984.

By order of the federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24698 Filed 9-17-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Alamo Corporation of Texas; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1984.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Alamo Corporation of Texas,* Alamo, Texas; to engage in those trust and fiduciary activities permitted by Texas law and Regulation Y, by acquiring certain assets of Business Benefits Corporation, Houston, Texas, whose business consists of providing consultation and record keeping services for defined benefit and contribution retirement plans.

Board of Governors of the Federal Reserve System, September 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24581 Filed 9-17-84; 8:45 am]

BILLING CODE 6210-01-M

Susquehanna Bancshares, Inc., et al.; Notice of Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105.

1. *Susquehanna Bancshares, Inc.,* Lititz, Pennsylvania; to engage *de novo* through its subsidiary, Susque-Bancshares Life Insurance Company, Phoenix, Arizona, in underwriting as reinsurer, credit life and accident and health insurance directly related to extensions of credit by Farmers First Bank, Lititz, Pennsylvania, and Citizens National Bank & Trust Company of Waynesboro, Waynesboro, Pennsylvania. These activities would be conducted in southcentral Pennsylvania.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Maryland Bancorp,* Baltimore, Maryland, and *Allied Irish Banks Limited,* Dublin, Ireland; to engage *de novo* through their subsidiary, First Maryland Life Insurance Company, in underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit by affiliates of First Maryland Bancorp. These activities would be conducted in the State of Virginia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Shell Rock Bancorporation,* Shell Rock, Iowa; to engage *de novo* in the making or acquiring of loans or other extensions of credit such as would be made by a commercial financial company, including commercial loans secured by a borrower's inventory, accounts receivable or other assets. These activities would be conducted in the State of Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Heritage Bancorp, Inc.,* El Reno, Oklahoma; to engage *de novo* in general insurance agency activities, except the sale of life insurance and annuities, by a bank holding company with less than $50 million in assets.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bancorp Hawaii, Inc.* Honolulu, Hawaii; to engage through its existing subsidiary, Bancorp Life Insurance of Hawaii, Inc., Honolulu, Hawaii, in underwriting as a reinsurer of credit life insurance in conjunction with short-term consumer lending activities of Bank of Hawaii. These activities would be conducted in American Samoa, Koror, Kwajalein, Ponape and Yap.

Board of Governors of the Federal Reserve System, September 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24582 Filed 9-17-84; 8:45 am]

BILLING CODE 6210-01-M

United Virgina Bankshares Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 11, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *United Virginia Bankshares Incorporated,* Richmond, Virginia; to acquire 20.5 percent or more of the voting shares or assets of Citizens Trust Company, Portsmouth, Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *FMB Bancshares, Inc.,* Lakeland, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers & Merchants Bank, Lakeland, Georgia.

2. *Golden Summit Corporation* Milton, Florida; to acquire 100 percent of the voting shares or assets of American Security State Bank, Pensacola, Florida, a *de novo* bank.

3. *Peoples Bancshares of Natchitoches, Inc.,* Natchitoches, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank & Trust Company, Natchitoches, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *Arlington Bank Corporation,* Arlington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Arlington State Bank, Arlington, Indiana.

2. *First American Corporation,* Elk Grove Village, Illinois; to acquire 20.2 percent or more of the voting shares of Meadowview Bancorp, Inc., Chicago, Illinois, thereby indirectly acquiring First Bank of Meadowview, Kankakee, Illinois.

3. *Meadowview Bancorp, Inc.,* Chicago, Illinois; to become a bank holding company by acquiring 80 percent or more of the voting shares of First Bank of Meadowview, Kankakee, Illinois.

4. *M.S.B. Bancorporation, Inc.,* Marion, Wisconsin; to become a bank holding company by acquiring at least 90 percent of the voting shares of Marion State Bank, Marion, Wisconsin.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fairmont Farmers State Company,* Fairmont, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Fairmont, Nebraska.

2. *Security Bancorporation, Inc.,* St. Joseph, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Security National Bank, St. Joseph, Missouri.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Coppell Financial Corporation, Inc.,* Dallas, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Coppell Bank, N.A., Coppell, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24583 Filed 9-17-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 84-0764—Champion International Corporation's proposed acquisition of voting securities of St. Regis Corporation.	Aug. 27, 1984.
(2) 84-0765—Champion International Corporation's proposed acquisition of voting securities of St. Regis Corporation.	Do.
(3) 84-0766—Champion International Corporation's proposed acquisition of assets of St. Regis Corporation.	Do.
(4) 84-0798—Esselte AB's proposed acquisition of voting securities of Nielsen Moulding Design Corporation (Helmer Nielsen, UPE).	Aug. 29, 1984.
(5) 84-0852—Merrill Lynch & Company Incorporated's proposed acquisition of voting securities of Palm Beach, Incorporated.	Do.
(6) 84-0819—Paine Webber Group Incorporated's proposed acquisition of voting securities of Rouse Real Estate Finance, Incorporated (The Rouse Company, UPE).	Aug. 29, 1984.
(7) 84-0790—The Coca-Cola Company's proposed acquisition of voting securities of The Mid-Atlantic Bottling Company.	Do.
(8) 84-0800—Security Centres Holding PLC's proposed acquisition of voting securities of Holmes Protection, Incorporated (Jacques G. Murray, UPE).	Do.
(9) 84-0810—The Times Mirror Company's proposed acquisition of voting securities of Tejon Ranch Company.	Do.
(10) 84-0828—Hawker Siddeley Group PLC's proposed acquisition of voting securities of Safetran Systems Corporation (CCI Corporation, UPE).	Do.
(11) 84-0843—Farah Manufacturing Company, Incorporated's proposed acquisition of assets of General Holdings, Limited, Geno Limited and Generra Sportswear, Company, Incorporated.	Do.
(12) 84-0848—Lextel Corporation's proposed acquisition of voting securities of LDX, Incorporated (Kansas City Southern Industries, Incorporated, UPE).	Do.
(13) 84-0849—Kansas City Southern Industries, Incorporated's proposed acquisition of voting securities of Lextel Corporation.	Do.
(14) 84-0850—First Boston Incorporated's proposed acquisition of voting securities of RaceCo Incorporated.	Do.
(15) 84-0851—First Boston Incorporated's proposed acquisition of voting securities of Amerace Corporation.	Do.
(16) 84-0856—Bass Investments Ltd. Partnership's proposed acquisition of voting securities of Amerace Corporation.	Do.
(17) 84-0806—The May Department Stores Company's proposed acquisition of assets of Meshulam Riklis.	Aug. 30, 1984
(18) 84-0811—Nippon Oil & Fats Company, Ltd.'s proposed formation of a joint venture corporation, Metal Coatings International Incorporated.	Do.
(19) 84-0814—Diamond Shamrock Corporation's proposed formation of a joint venture corporation, Metal Coatings International Incorporated.	Do.
(20) 84-0846—Merrill Lynch and Company, Incorporated's proposed acquisition of voting securities of Becker Paribas Holdings, Incorporated (Compagnie Financiere de Paribas, UPE).	Do.
(21) 84-0862—Provident Mutual Life Insurance Company of Philadephia's proposed acquisition of voting securities of W.H. Newbold's Son & Company, Incorporated.	Do.
(22) 84-0864—ITT Corporation's proposed acquisition of voting securities of Yamaha Motor Corporation, USA and assets of Yamaha Motor Corporation (Yamaha Motor Company, Ltd, UPE).	Do.
(23) 84-0867—Texas Eastern Corporation's proposed acquisition of voting securities of NORPAC Exploration Service, Incorporated.	Do.

Transaction	Waiting period terminated effective
(24) 84-0755—United Artists Communications, Incorporated's proposed acquisition of voting securities of General Electric Cablevision Corporation (General Electric Company, UPE).	Aug. 31, 1984.
(25) 84-0756—General Electric Company's proposed acquisition of voting securities of United Artists Communications, Incorporated.	Do.
(26) 84-0825—TRW Incorporated's proposed acquisition of voting securities of D.A.B. Industries, Incorporated.	Sept. 5, 1984.
(27) 84-0829—Royal Dutch Petroleum Company's proposed acquisition of assets of W. R. Grace & Company.	Do.
(28) 84-0836—Sonat, Incorporated's proposed acquisition of voting securities of Boise Cascade Corporation.	Sept. 6, 1984.
(29) 84-0838—Boise Cascade Corporation's proposed acquisition of assets of Boise Southern Company	Do.
(30) 84-0842—Sonat, Incorporated's proposed acquisition of assets of Boise Southern Company	Do.
(31) 84-0858—Tenneco Incorporated's proposed acquisition of voting securities of Multistate Oil Properties N. V., (Amero Realty Investments N. V., Mr. Gunter Sachs, UPE)	Do.
(32) 84-0873—Bass Brothers Enterprises, Incorporated's proposed acquisition of voting securities of American Motor Inns, Incorporated	Do.
(33) 84-0820—The Philadelphia Saving Fund Society's proposed acquisition of assets of the Mortgage Banking Operations of three Corporations (Norvald L. Ulvestad, UPE).	Sept. 7, 1984.
(34) 84-0853—The Circle K Corporation's proposed acquisition of assets of General Host Corporation.	Do.
(35) 84-0859—Inspiration Resources Corporation's proposed acquisition of voting securities of Universal Resources Corporation	Do.
(36) 84-0860—Legrand S. A.'s proposed acquisition of voting securities of Pass & Seymour, Incorporated	Do.
(37) 84-0865—Legrand S. A.'s proposed acquisition of voting securities of Pass & Seymour, Incorporated	Do.

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

Emily H. Rock,

Secretary.

[FR Doc. 84-24700 Filed 9-17-84; 8:45 am]

BILLING CODE 6750-01-M

Senior Executive Service; Announcement of Membership of Performance Review Boards

The Federal Trade Commission has two Performance Review Boards.

The members of the first Board are:

Wallace S. Snyder
Richard Higgins
Winston S. Moore

The members of the second Board are:

Amanda Pedersen
Ronald S. Bond
Barbara Clark

For further information, please call Stephen C. Benowitz, Director of Personnel, Federal Trade Commission, (202) 523-3966.

Stephen C. Benowitz,

Director of Personnel.

[FR Doc. 84-24699 Filed 9-17-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-84258]

Alaska; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides an opportunity for public comment pursuant to a proposed withdrawal and reservation of lands requested by the United States Air Force, Tactical Air Command, on May 21, 1984, for support of an existing facility.

EFFECTIVE DATE: Date of publication; comments must be received on or before December 17, 1984.

ADDRESS: Comments and meeting requests should be sent to Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271-5060.

On May 21, 1984, the United States Air Force, Tactical Air Command, filed an application to withdraw the following described land from settlement, sale, location, or entry under the general public lands laws, including the mining laws, subject to valid existing rights:

A parcel of land situated within Sections 14, 15, 22 and 23, Township 23 North, Range 18 West, Umiat Meridian, Barrow Recording District, Second Judicial District, State of Alaska; said parcel being more particularly described as follows:

COMMENCING at U.S.C. & G.S. Station "Point Barrow"—South Base—1945;

Thence South 88°40′55″

West, a distance of 4632.56 feet, more or less, to a point;

Thence north, a distance of 146.00 feet, more or less, to the mean high water line of Imikpuk Lake;

Thence northerly, along said mean high water line, a distance of 4300.00 feet, more or less, to a point on the northerly end of said lake, said point being located on an approximate bearing of South 43° East, 275.00 feet, more or less, and approximately South 52°35′ West, 625.00 feet, more or less, from the southwesterly terminus of the Point Barrow Airfield Centerline, as extended, said point being also THE TRUE POINT OF BEGINNING;

Thence on an approximate bearing of North 43° West, a distance of 625.00 feet, more or less, to the mean high water line of the Chukchi Sea;

Thence northeasterly, along said mean high water line, a distance of 6000.00 feet, more or less, to a point being located on an approximate bearing of North 34°50′ West, 380.00 feet, more or less, and approximately North 52°35′ East, 300.00 feet, more or less, from the northeasterly terminus of said airport centerline, as extended;

Thence on an approximate bearing of South 34°50′ East, a distance of 485.00 feet, more or less, to the north—south center section line of Section 14, Township 23 North, Range 18 West, Umiat Meridian;

Thence South, along said north—south center section line, a distance of 975.00 feet, more or less, to the mean high water line of the North Salt Lagoon;

Thence southwesterly along said mean high water line, a distance of 3000.00 feet, more or less, to a point on the east boundary line of Section 22 of said township and range;

Thence West, a distance of 600.00 feet, more or less;

Thence South, a distance of 1062.00 feet, more or less;

Thence on an approximate bearing of South 50° West, a distance of 480.00 feet, more or less, to the mean high water line of said Imikpuk Lake;

Thence northwesterly, along said mean high water line, a distance of 1000.00 feet, more or less, to the Point of Beginning.

The area described contains approximately 150 acres located near Pt. Barrow, Alaska.

The purpose of the proposed withdrawal is for support of an existing facility.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are licenses, permits, cooperative agreements, or other discretionary land use authorizations of a temporary nature.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the applicant agency.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 84-24605 Filed 9-17-84; 8:45 am]

BILLING CODE 4310-JA-M

Susanville, CA, District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Tour and Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 (FLPMA) that a meeting of the Susanville District Advisory Council will be held on October 4 and 5, 1984.

The meeting will begin at 10:00 a.m. on October 4, in the Conference Room of the Bureau of Land Management Office, 705 Hall Street, Susanville CA. On October 5, the Council will be taken on a field trip to examine issues surrounding Eagle Lake, fuel wood cutting, and prescribed fire.

The Agenda will include:

(1) Nevada State Government's Wilderness Consistency Review Process.

(2) A report on the seasons wildfire impacts and proposal rehabilitation.

(3) BLM's prescribed fire plans.

(4) Eagle Lake water level issues.

(5) Updates on numerous on-going programs.

The meeting is open to the public and time will be provided for public comment.

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Public Affairs Officer, (916) 257-5381.

C. Rex Cleary,

District Manager, Susanville.

[FR Doc. 84-24634 Filed 9-17-84; 8:45 am]

BILLING CODE 4310-40-M

[C-083504, C-083587]

Small Tract Classification; Cancellation, Opening of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Small Tract Classification and Opening of Public Lands.

SUMMARY: This order terminates classifications made under the authority of the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682(a)) which was repealed by the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2751; 43 U.S.C. 1712) and opens the land to operation of the public land laws and the general mining laws.

FOR FURTHER INFORMATION CONTACT: Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

By virtue of the authority vested in the Secretary of the Interior by section 202 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1712, it is ordered as follows:

1. Small Tract Classification No. 15 of November 8, 1955, published in the Federal Register of November 17, 1955, at page 8523 and Small Tract Classification No. 18 of July 7, 1957, published in the Federal Register of July 10, 1957, at page 4865 are hereby canceled.

2. At 10 a.m. on October 11, 1984, the lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 11, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Sixth Principal Meridian

T. 3 N., R. 76 W.;
  Sec. 22, lots 10 and 16.
T. 1 N., R. 91 W.,
  Sec. 36, lots 11, 12, 19, 27, 31, 32, 33, 34, 35, 36, 38, 39, 52, 59 and 60.

The areas described aggregate 49.29 acres in Grand and Rio Blanco Counties.

3. At 10 a.m. on October 11, 1984, the lands described will be opened to location under the United States mining laws. Appropriation of the lands described in paragraph two above under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in the local courts.

4. These lands have been and will remain open to applications and offers under the mineral leasing laws.

Dated: September 5, 1984.

Richard E. Richards,

Acting Chief, Branch of Lands & Minerals Operations, Colorado State Office.

[FR Doc. 84-24604 Filed 9-17-84; 8:45 am]

BILLING CODE 4310-JB-M

[Serial No. I-13343]

Exchange of Public and Private Lands; Idaho

The United States has issued an exchange conveyance document to National American Enterprises, Inc., 2358 South 3600 West, Salt Lake City, Utah 84419, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 2 N., R. 3 E.,
  Sec. 15, SW¼;
  Sec. 17, SE¼NE¼, E½SE¼;
  Sec. 20, NE¼NE¼;
  Sec. 23, NE¼SE¼;
  Sec. 25, N½SW¼;
  Sec. 35, SW¼SW¼, W½W½W½SE¼SW¼.

Comprising 485.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 2 N., R. 3 E.,
  Sec. 10, NE¼NE¼SW¼, S½NW¼SE¼; E½SW¼SE¼;
  Sec. 14, N½NW¼;
  Sec. 15, N½NE¼NE¼, SE¼NE¼NE¼;
  Sec. 23, N½NE¼NE¼,
  Sec. 24, N½SW¼NW¼, NE¼NE¼SW¼, S½NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, SE¼SE¼.
T. 2 N., R. 4 E.,
  Sec. 19, lot 4 except for 120 foot square parcel described as follows:

Beginning at a point on south line of section 19 from which the southwest corner of section 19 bears N.89°32′30″ W. a distance of 1146.15 ft., from point of beginning with metes and bounds:

S. 89°32′30″ E. 120.0 ft.
N. 0°27′30″ E. 120.0 ft.
N. 89°32′30″ W. 120.0 ft.
S. 0°27′30″ W. 120.0 ft. to point of beginning.

Sec. 30: lots 1 and 2, W½SE¼NW¼, NE¼ SW¼.

Comprising 480.4 acres of private land.

The purpose of this exchange was to acquire the non-Federal land which has high historical values, livestock grazing, and wildlife habitat. The public interest was well served through completion of the exchange.

Dated: September 7, 1984.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 84-24007 Filed 9-17-84; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Concurrent Jurisdiction—Units of the National Park Service Situated in the State of North Carolina

Notice is hereby given that effective as of the 27th day of July 1984, concurrent jurisdiction was established over National Park Service lands and waters within the following units of the National Park System situated in the State of North Carolina:

Blue Ridge Parkway
Cape Hatteras National Seashore
Cape Lookout National Seashore
Carl Sandburg Home National Historic Site
Fort Raleigh National Historic Site
Great Smoky Mountains National Park
Guilford Courthouse National Military Park
Moores Creek National Military Park
Wright Brothers National Monument

Concurrent jurisdiction was established by virtue of a Memorandum of Agreement between the United States of America, acting through the Director of the National Park Service, in accordance with the Act of October 7, 1976, (90 Stat. 1939; 16 U.S.C. 1a-3) and the Act of February 1, 1940, (54 Stat. 19, as amended; 40 U.S.C. 255) and the State of North Carolina, acting through its Governor, in accordance with the General Statutes of North Carolina 104-11.1 and 104-31.

The Honorable James B. Hunt, Jr., Governor of the State of North Carolina, executed this Memorandum of Agreement on June 28, 1983. Concurrent jurisdiction was established upon execution of this Memorandum of Agreement by Russell E. Dickenson, Director of the National Park Service, on July 27, 1984.

Bob Baker,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 84-24680 Filed 9-17-84; 8:45 am]

BILLING CODE 4310-70-M

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Guest Services, Inc., authorizing it to continue to provide food and beverage, merchandise and souvenirs, tennis, ice skating, marina and related services for the public within the National Capital Region for a period of up to twenty-five (25) years from January 1, 1985.

This proposed contract requires/authorizes a construction and improvement program. The construction and improvement program required/authorized was previously addressed in the National Environmental Policy Act document (Final Environmental Impact Statement on this proposed rehabilitation of the National Mall and the Development Concept Plan for the Washington Monument Grounds within the National Capital Region).

An assesment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the National Capital Region.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1991, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, D.C., for information as to the requirements of the proposed contract.

Dated: September 7, 1984.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 84-24648 Filed 9-17-84; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 7, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 3, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Ashley County

Parkdale, *Williams, Dr. Robert George, House,* AR 8 and 209

Benton County

Siloam Springs, *Alfrey-Brown House,* 1001 S. Washington St.

Cleburne County

Heber Springs vicinity, *Winkley Bridge,* E of Heber Springs at Little Red River

Cleveland County

Rison vicinity, Mt. Carmel Methodist Church, N of Rison off U.S. 79

Desha County

Arkansas City, *Arkansas City High School,* Robert S. Moore and Presidents Sts.

Lonoke County

Lonoke *Rock Island Depot,* U.S. 70 and Center St.

Montgomery County

Pine Ridge, *Huddleston Store and McKinzie Store,* AR 88

Pulaski County

Little Rock, *First Church of Christ, Scientist,* 20th and Louisiana Sts.

INDIANA

Dubois County

Jasper vicinity, *Opel, John, House (Green Tree Hotel),* St. James St.

IOWA

Keokuk County

Sigourney vicinity, *Lancaster School,* SE of Sigourney

KANSAS

Atchison County

Atchison, *Howard, Frank, House,* 305 North Terrace

Lyon County

Emporia, *Plumb, Mrs. Preston B., House,* 224 E. 6th Ave.

Sedgwick County

Wichita, *Lassen Hotel,* Market Ave. and 1st St.

LOUISIANA

East Feliciana Parish

Clinton, *Woodside,* St. Helena St.

Lafayette Parish

Youngsville, *Dupleix House,* 106 Lafayette St.

Lincoln Parish

Simsboro vicinity, *Walnut Creek Baptist Church,* NW of Simsboro off I–20

Ouachita Parish

Monroe, *Lower Pargoud,* 2111 S. Grand St.

West Feliciana Parish

Laurel Hill, *St. John's Episcopal Church,* Old Laurel Hill Rd.

MICHIGAN

Washtenaw County

Ypsilanti, *Eastern Michigan University Historic District,* Cross St., Washtenaw and Forest Aves.

Ypsilanti, *Pease Auditorium,* College Pl.

MINNESOTA

Meeker County

Litchfield, *Litchfield Opera House,* 126 N. Marshall Ave.

MISSISSIPPI

Pike County

Magnolia, *Annex, The (Magnolia MRA),* 225 Magnolia St.

Magnolia, *Berryhill House (Magnolia MRA),* 265 W. Railroad Ave.

Magnolia, *Buie Building (Magnolia MRA),* 110 E. Railroad Ave.

Magnolia, *Carraway House (Magnolia MRA),* 420 N. Clark St.

Magnolia, *Chadwick, George, House (Magnolia MRA),* 560 N. Cherry St.

Magnolia, *Depot (Magnolia MRA),* 101 E. Railroad Ave.

Magnolia, *Everette-Gottig-Bilbo House (Magnolia MRA),* 109 E. Myrtle St.

Magnolia, *Holmes House (Magnolia MRA),* 405 N. Cherry St.

Magnolia, *Lanier House (Magnolia MRA),* 400 N. Clark St.

Magnolia, *Lieb-Rawls House (Magnolia MRA),* 303 Magnolia St.

Magnolia, *Mullen House (Magnolia MRA),* 515 N. Cherry St.

Magnolia, *Myrtle Street Historic District (Magnolia MRA),* W. Myrtle St. between N. Clark and N. Prewitt Sts.

Magnolia, *Norwood-TWL Building (Magnolia MRA),* 131 W. Railroad Ave.

Magnolia, *Simmons House (Magnolia MRA),* 489 Prewitt St.

Magnolia, *Southtown Historic District (Magnolia MRA),* Roughly bounded by Minnehaha Creek, Illinois Central RR, Bay, Laurel, and Prewitt Sts.

Magnolia, *Stogner House (Magnolia MRA),* 550 N. Cherry St.

NEW YORK

Rensselaer County

Troy, *Oakwood Cemetery,* 101st St.

TENNESSEE

Davidson County

Nashville, *Federal Reserve Bank of Atlanta (Marr and Holman Buildings in Downtown Nashville TR),* 226 N. 3rd Ave.

Nashville, *Noel Hotel (Marr and Holman Buildings in Downtown Nashville TR),* 200–204 N. 4th Ave.

Nashville, *Rich-Schwartz Building (Marr and Holman Buildings in Downtown Nashville TR),* 202–204 N. 6th Ave.

Nashville, *Robertson, James, Hotel (Marr and Holman Buildings in Downtown Nashville TR),* 118 N. 7th Ave.

Nashville, *Tennessee Supreme Court Building (Marr and Holman Buildings in Downtown Nashville TR),* 401 N. 7th Ave.

Nashville, *U.S. Post Office (Marr and Holman Buildings in Downtown Nashville TR),* 901 Broadway

Nashville, *Warner Building (Marr and Holman Buildings in Downtown Nashville TR),* 535 Church St.

TEXAS

Bexar County

San Antonio, *South Alamo Street-South St. Mary's Street Historic District,* Bounded by the San Antonio River, S. Alamo, S. St. Mary's, and Temple Sts.

Jefferson County

Beaumont, *Duke, Holmes, House,* 694 Forrest St.

Tarrant County

Fort Worth, *Allen Chapel AME Church,* 116 Elm St.

VERMONT

Bennington County

Bennington vicinity, *Old Bennington Historic District,* Roughly bounded by Rutland RR, Monument Ave. and Circle, West Rd., Seminary Lane, Elm and Fairview Sts.

VIRGINIA

Bedford (Independent City)

Bedford Historic District, Roughly bounded by Longwood, Bedford, and Mountain Aves., Peaks, Oak, Grove, and Washington Sts.

Bristol (Independent City)

Virginia Intermont College, Moore and Harmeling Sts.

Buckingham County

Gravel Hill, *Buckingham Female Collegiate Institute Historic District,* VA 617

Falls Church (Independent City)

Mount Hope, 203 Oak St.

Hampton (Independent City)

Victoria Boulevard Historic District, Roughly bounded by Sunset Creek, Armisted and Linden Aves., and Bridge St.

Louisa County

Bumpas vicinity, *Jerdone Castle,* N of Bumpas

Newport News (Independent City)

Hotel Warwick, 25th St. and West Ave.

Norfolk (Independent City)

U.S. Post Office and Courthouse, 600 Granby St.

Portsmouth (Independent City)

Park View Historic District, Roughly bounded by Elm and Parkview Aves., Fort Lane, Blair, and Harrell Sts.

Richmond (Independent City)

Randolph School, 300 S. Randolph St.

Virginia War Memorial Carillon, 1300 Blanton Ave.

Tazewell County

Cedar Bluff, *Clinch Valley Roller Mills,* River Street Dr.

Waynesboro (Independent City)

Fishburne Military School, 225 S. Wayne Ave.

WISCONSIN

St. Croix County

Hudson, *Darling, Frederick L., House (Hudson and North Hudson MRA),* 617 3rd St.

Hudson, *Dwelley, William, Hose (Hudson and North Hudson MRA),* 1002 4th St.

Hudson, *Hudson Public Library (Hudson and North Hudson MRA),* 304 Locust St.

Hudson, *Humphrey, Herman L., House (Hudson and North Hudson MRA),* 803 Orange St.

Hudson, *Johnson, August, House (Hudson and North Hudson MRA),* 427 St. Croix St.

Hudson, *Johnson, Dr. Samuel C., House (Hudson and North Hudson MRA),* 405 Locust St.

Hudson, *Lewis-Williams House (Hudson and North Hudson MRA),* 101 3rd St.

Hudson, *Merritt, Samuel T., House (Hudson and North Hudson MRA),* 904 7th St.

Hudson, *Second Street Commercial District (Hudson and North Hudson MRA),* Roughly 1st, 2nd, Walnut, and Locust Sts.

Hudson, *Sixth Street Historic District (Hudson and North Hudson MRA),* Roughly 6th St. between Myrtle and Vine Sts.

Hudson, *Williams, T.E., Block (Hudson and North Hudson MRA),* 321 2nd St.

North Hudson, *Chicago, St. Paul, Minneapolis and Omaha Railroad Car Shop Historic District (Hudson and North Hudson MRA),* Roughly bounded by Gallahad Rd., Sommer, 4th and St. Croix Sts.

[FR Doc. 84-24640 Filed 9-17-84; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River; Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 28, 1984, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159, (717) 729–7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan; discussion of recent study session on concerns of riparian landowners. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y.; Damascus Township, Pennsylvania.

Dated: September 7, 1984.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 84–24617 Filed 9–17–84; 8:45 am]

BILLING CODE 4710–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30553]

Camp LeJeune Railroad Co.; Lease Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the lease and operation by the Camp LeJeune Railroad Company of (1) 5.4 miles of rail line between Marine Junction and Kellum, NC and (2) from Kellum to Havelock, NC, a distance of approximately 35.9 miles of rail line near Camp LeJeune, NC, from the requirement of prior approval under 49 U.S.C. 11343. A notice of exemption will be issued separately regarding the acquisition of the line of rail between Marine Junction and Kellum, NC.

DATES: This exemption shall be effective on September 17, 1984. Petitions to reopen must be filed by October 9, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30553 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: Nancy S. Fleischman, Norfolk Southern Corporation, 1050 Connecticut Avenue, NW., Suite 740, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 11, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary..

[FR Doc. 84–24615 Filed 9–17–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub-115X)

Illinois Central Gulf Railroad Co.; Abandonment Exemption in Evansville, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by the Illinois Central Gulf Railroad Company (IGC) of its 0.30-mile line of railroad in Evansville, IN, subject to labor conditions.

DATES: This exemption shall be effective on September 17, 1984. Petitions to reopen must be filed by October 9, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB–43 (Sub No. 115X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' Representative: Richard M. Kamowski, Illinois Central Gulf Railroad Company, 233 North Michigan Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 10, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary..

[FR Doc. 84–24614 Filed 9–17–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30515]

LaSalle and Bureau County Railroad Co.; Exemption; Acquisition, Operation, Trackage Rights, and Securities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10901 and 11301, respectively, (1) the acquisition by LaSalle and Bureau County Railroad Company (LaSalle) of trackage rights over the former main line of the Chicago, Rock Island, and Pacific Railroad Company (Rock Island) between the Chicago Loop and Blue Island, IL, plus acquisition and operation of various adjacent tracks and properties formerly owned by Rock Island that LaSalle has been operating under a service order and temporary exemption; and (2) issuance of $1.6 million in corporate debt securities.

DATES: This exemption is effective on September 18, 1984. Petitions to reopen must be filed by October 9, 1984.

ADDRESSES: Send petitions referring to Finance Docket No. 30515 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative, Peter A. Gilbertson, Suite 350, 1575 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 7, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-24619 Filed 9-17-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30536]

Nittany & Bald Eagle Railroad Co; Modified Rail Certificate

September 12, 1984.

On July 25, 1984, a notice was filed by the Nittany & Bald Eagle Railroad Company (N&BE) for a modified rail certificate of public convenience and necessity under 49 CFR 1150, Subpart C for operation of three lines of railroad in Pennsylvania as particularly described below:

(a) The Bald Eagle Branch between milepost 3.0 at Vail in Blair County and milepost 32.0 at Milesburg in Centre County;

(b) The Bellefonte Secondary Track between milepost 30.8 at its connection with the Bald Eagle Branch in Milesburg in Centre County and milepost 42.5 at Lemont, also in Centre County;

(c) The Pleasant Gap Industrial Track between mileposts 0.0 and 3.0 in Pleasant Gap, in Centre County.

These rail segments formerly were owned and operated by Consolidated Rail Corporation (Conrail). In Docket No. AB-167 (Sub-No. 392N), decided February 25, 1982, the Commission authorized Conrail to abandon a portion of the line in (a) above. In Docket No. AB-167 (Sub-No. 457N), decided September 16, 1983, the Commission authorized Conrail to abandon the remainder of line (a) and, in addition, lines (b) and (c).

The Susquehanna Economic Development Administration—Council of Governments Joint Rail Authority (SEDA), a political subdivision of the state of Pennsylvania, has acquired the lines in question from Conrail and, effective July 27, 1984, has leased the lines to N&BE for an initial period of five years. On August 1, 1984, N&BE commenced operations over the lines and instituted interchange with Conrail at milepost 3.0 in Bald Eagle.

This notice shall be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreements, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-24618 Filed 9-17-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30548]

The Pittsburgh & Lake Erie Railroad Co.; Merger of Lake Erie and Eastern Railroad Co.; Exemption

Decided: September 11, 1984.

On August 13, 1984, the Pittsburgh & Lake Erie Railroad Company (P&LE) and its wholly-owned subsidiary, Lake Erie and Eastern Railroad Company (LE&E), filed a notice of exemption for the merger of LE&E into P&LE. P&LE owns all of the outstanding stock of LE&E. Consummation of the merger will simplify P&LE's corporate structure and allow P&LE to achieve various efficiencies and economies such as the elimination of separate accounting records, board of directors, and minute books. Since LE&E is operated as an integral part of P&LE, the merger will not result in any changes in the transportation services offered or the operations performed along LE&E lines.

This is a transaction within a corporate family and will not result in any changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, it is an exempt transaction pursuant to 49 CFR 1180.2(d)(3).

As a condition to the use of this exemption, any employees affected by this transaction shall be protected pursuant to *New York Dock Ry.-Control-Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-24617 Filed 9-17-84; 8:45 am]

BILLING CODE 7035-01-M

[Decision-Notice OP2 MCF-15877; Vol. OP2-450]

Motor Carrier Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a requst for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the

Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 12, 1984.

By the Commission.

James H. Bayne,

Secretary.

Volume OP2-450

No. MC-F-15877

DAVID DANZEISEN, HOWARD FOX, MARTIN STRAHL, AND SAMUEL B. ZINDER (PETITIONERS) (98 Cutter Mill Road, Great Neck, NY 11021)—CONTINUANCE IN CONTROL—MOUNTAIN VIEW COACH LINES, INC. (MOUNTAIN) (Route 9W, West Coxsackie, NY 12192), VANGUARD INTERSTATE TOURS, INC. (VANGUARD) (1 Westerly Road, Ossining, NY 10562), and MHS BUS COMPANY (MHS) (92 Middle Neck Road, Great Neck, NY 11021). Filed July 17, 1984. Representative: Samuel B. Zinder, P.C., 98 Cutter Mill Road, Great Neck, NY 11021.

Petitioners seek authority to continue in control of Mountain, Vanguard, and MHS. MHS was recently granted authority for nation-wide charter and special authority in MC-164951 conditioned upon approval of common control by the petitioners. All four petitioners are in a control relationship as to MHS. David Danzeisen, Martin Strahl and Samuel Zinder control Mountain, a common carrier of passengers (MC-47495), and David Danzeisen also controls Vanguard, a common carrier of passengers (MC-5723). All three carriers possess nation-wide charter and special authority.

Howard Fox controls a passenger broker, Trails West, Inc. (MC-130062).

Note.—This notice does not purport to be a complete description of the operating rights of the carriers involved.

[FR Doc. 84-24036 Filed 9-17-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importers of Controlled Substances; First State Chemical Co.; Registration

By Notice dated May 11, 1984, and published in the **Federal Register** on May 22, 1984 (49 FR 21572), McNeilab, Inc., dba First State Chemical Company, 803 Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: September 12, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-24637 Filed 9-17-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Standards

Administration of Federal Sector Labor Organizations Standards of Conduct; Redesignation and Reassignment of Functions

AGENCY: Office of the Assistant Secretary for Labor-Management Standards, Labor.

ACTION: Notice of Redesignation of Titles and Reassignment of Duties.

SUMMARY: This Document announces redesignations and reassignments involving the administration of the requirements of the Standards of Conduct for Federal Sector Labor Organizations, 5 U.S.C. 7120, 29 CFR Parts 207-209, which resulted from a realignment and reorganization of the administering agency.

FOR FURTHER INFORMATION CONTACT: Kay Oshel, Chief, Division of Interpretations and Standards, Office of Standards, Technical Assistance and Disclosure, Office of Labor-Management Standards, Department of Labor, Washington, D.C. 20210, telephone 202-523-7373.

SUPPLEMENTARY INFORMATION: Pursuant to Secretary of Labor's Order 3-84, dated May 3, 1984, 49 FR 20578, the agency which has as one of its functions the administration of the Standards of Conduct for Federal Sector Labor Organizations, 5 U.S.C. 7120, 29 CFR Parts 207-209, has been redesignated as the Office of Labor-Management Standards (OLMS), headed by an Assistant Secretary for Labor-Management Standards. The previous title of the official responsible for administering the Standards of Conduct was the Assistant Secretary for Labor-Management Relations, head of the Labor-Management Services Administration (LMSA). Other positions within LMSA which had responsibility for Standards of Conduct matters but which no longer exist are the Director of the Office of Labor-Management Standards Enforcement (LMSA) and the Regional Administrators of LMSA

Consequently, the duties of the Assistant Secretary for Labor-Management Relations set forth in the regulations, 29 CFR Parts 207-209, shall be carried out by the Assistant Secretary for Labor-Management Standards. The duties of the Regional Administrators, LMSA set forth in the regulations shall be carried out by the Area Administrators, OLMS. The duties of the Director, LMSE set forth in the regulations in connection with enforcing the standards relating to trusteeships and the election and removal of officers, 29 CFR 208.26-208.30, shall be carried out by the Director, Office of Elections, Trusteeships, and International Union Audits, OLMS. The other enforcement duties of the Director, LMSE set forth in the regulations shall be carried out by the Area Administrators, OLMS.

Signed at Washington, D.C., this 7th day of September, 1984.

Ronald J. St. Cyr,

Acting Assistant Secretary for Labor-Management Standards.

[FR Doc. 84-24703 Filed 9-17-84; 8:45 am]

BILLING CODE 4510-29-M

Employment and Training Administration

[TA-W-15, 344]

Audiofidelity Enterprises, Incorporated, Rahway, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 31, 1984 in response to a worker petition received on May 23, 1984 which was filed on behalf of workers at Audiofidelity Enterprises, Incorporated, Rahway, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 10th day of September 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-24601 Filed 9-17-84; 8:45 am]

BILLING CODE 4510-23-M

Unwrought Copper; Industry Study Report

On July 16, 1984, the U.S. International Trade Commission (ITC) determined that increased imports of unwrought copper products are a substantial cause of serious injury to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. (49 FR 30040).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on unwrought copper products. The report found as follows:

1. The Department of Labor (DOL) has received and processed 126 petitions for trade adjustment assistance involving workers in the copper industry since April 3, 1975, the effective date of the adjustment assistance program, including 65 received during the July 1978–June 1984 period. Sixty petitions were certified covering 16,673 workers, and 66 petitions were denied, terminated or withdrawn. An additional two petitions covering industry workers were in process as of the report date.

As of March 31, 1984, DOL had paid $53,786,080 in trade readjustment allowances (TRA) to 15,937 workers formerly employed in plants producing copper products. Workers certified during 1978–1983 were paid $3,107,469. Job search allowances of $190,824 were paid to 1,123 industry workers, job relocation allowances of $547,082 were paid to 772 industry workers, and 2,700 workers entered training as of March 31, 1984.

2. Average employment of production and related workers in the unwrought copper industry declined steadily from 1981 through 1983. Permanent employment levels are expected to continue declining during 1984–1985. Industrywide temporary layoffs are also expected.

3. Unemployment rates for 13 of 22 areas with facilities producing unwrought copper were above the national unemployment rate of 7.6 percent (unadjusted) for April 1984. Reemployment prospects for present and potentially separated workers in the industry appear to be poor-to-fair.

4. A total of $29.7 million is available in Fiscal Year 1984 to provide training, job search and relocation allowances to eligible unwrought copper workers as well as all other eligible workers of industries adversely affected by import competition under the trade adjustment assistance program. Funding for Fiscal Year 1985 is expected to be continued at about Fiscal Year 1984 levels and will be provided from both Title III funds of the Job Training Partnership Act (JTPA) and discretionary funds available to the Secretary.

All worker trade adjustment assistance program benefits and allowances, including TRA which are entitlements funded separately from the Federal Unemployment Benefit and Allowances (FUBA) account, will expire on September 30, 1985, unless the legislative authority is extended. Dislocated workers, including import impacted workers, should benefit from $427.2 million which has been set aside for the administration and delivery by the States of dislocated worker benefits under Title III of JTPA for the October 1983–June 30, 1985 period, and an additional $223.0 million requested for the July 1, 1985–June 30, 1986 period.

Copies of the Department report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting Larry Ludwig, Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street, NW., Room 6020, Washington, D.C. 20213 (phone 202–376–7163).

Signed at Washington, D.C. this 4th day of September 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

[FR Doc. 84-24694 Filed 9-17-84; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; New Extended Benefit Period in Puerto Rico

This notice announces the beginning of a new Extended Benefit Period in Puerto Rico, effective on September 9, 1984.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulation (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the period consisting of the week ending on August 25, 1984, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on September 9, 1984.

Information for Claimants

The duration of extended benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on September 12, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 84-24690 Filed 9-17-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Blaw-Knox Equipment et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 3, 1984–September 7, 1984

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sale or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of article like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-15, 334; Blaw-Knox Equipment, Pittsburg, PA

TA-W-15, 327; Fick Foundry Co., Tacoma, WA

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15, 367; National Steel Service Center, Inc., Boonton, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-15, 238; General Motors Corp., General Motors Assembly Div., Fremont CA

A certification was issued covering all workers separated on or after May 2, 1983.

TA-W-15, 306; Kaiser Steel Corp., Raton Coal Properties, Raton, NM

A certification was issued covering all workers separated on or after March 7, 1983 and before September 30, 1983.

TA-W-15, 373; Levi Strauss & Co., Ramer, TN

A certification was issued covering all workers separated on or after June 1, 1984.

TA-W-15, 369; Ralston Purina Co., Van Camp Seafood Div., San Diego, CA

A certification was issued covering all workers separated on or after June 1, 1983.

I hereby certify that the aforementioned determinations were issued during the period September 3, 1984–September 7, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 11, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-24693 Filed 9-17-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Developmental Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Biology.

Date and time: October 4, 5, 6, 1984, starting at 9:00 A.M., to 5:00 P.M.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Donald E. Fosket, Program Director, Developmental Biology Program, Room 332-H, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7989.

Purpose of advisory panel: To provide advice and recommendations concerning support of research in developmental biology.

Agenda

To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF July 6, 1979.

Dated: September 13, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-24638 Filed 9-17-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and time: October 4 & 5, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St. NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Patrick W. Flanagan, Program Director, Ecology (202) 357-9734, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support of research in ecology.

Agenda

Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on July 6, 1979.

Dated: September 13, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-24640 Filed 9-17-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecosystem Studies; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and time: October 4 & 5, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1224, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact person: Dr. James R. Gosz, Program Director, Ecosystem Studies (202) 357-9596, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda

Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 13, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-24639 Filed 9-17-84; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Technology.

Place: Rm. 540, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Dates: Thursday and Friday, October 4-5, 1984.

Time: Thursday, 9-5 p.m.; Friday, 9-3 p.m.

Type of meeting: Open.

Contact person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street, NW., Washington, D.C. 20550 Telephone: 202/357-9418.

Purpose of committee: To provide advice to the Foundation on policies and activities of the Foundation to encourage full participation of women, minorities, the handicapped and other groups currently underrepresented in scientific, engineering, professional and technical fields.

Summary minutes: May be obtained from the contact person at the above stated addresses.

Agenda

To review progress by the two subcommittees of the NSF Committee on Equal Opportunities in Science and Technology and to meet with the Director and other NSF staff.

Dated: September 13, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-24641 Filed 9-17-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-13]

Babcock & Wilcox Company; Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of Orders authorizing Babcock & Wilcox Company (licensee) to dispose of the component parts of the research reactor in their possession, in accordance with the licensee's application dated August 7, 1984, and terminating the Facility Operating License No. CX-10.

The first of these would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By October 18, 1984, the licensee may file a request for a hearing with respect to issuance of either or both of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's

"Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the actions under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); (Babcock & Wilcox Company); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to T. D. Corkran, Esq, Contract Research Division, Babcock & Wilcox Company, 1562 Beeson Street, Alliance, Ohio 44601.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated August 7, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland, this 11th day of September 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 84-24697 Filed 9-17-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published August 21, 1984 (49 FR 33187). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk(*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the October 1985 ACRS full Committee meeting can by obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

GESSAR II, September 20 and 21, 1984, *Los Angeles, CA*—POSTPONED.

Fire Protection, September 26, 1984, Washington, DC. The Subcommittee will review the actuation of fire protection systems and the effect on various safety systems throughout nuclear plants.

Reactor Radiological Effects, September 27 and 28, 1984, Washington, DC. On Thursday, the Subcommittee will (1) continue its discussion of NRC Staff proposed amendments to 10 CFR Part 20 to specify residual radioactive contamination limits, and (2) be briefed by and hold discussions with the NRC Staff on the status of the following Generic Safety Issues: Radiation Protection Plans, Reactor Coolant Activity Limits for Operating Reactors, Control Room Habitability, Iodine Spiking, and Radiation Source Control. On Friday, the Subcommittee will be briefed by and hold discussions with (1) the NRC Staff on its evaluation of TMI-2 cleanup endpoint alternatives, and (2) DOE on its systematic approach regarding reactor safety and radiation protection research.

Reactor Operations, October 9, 1984, Washington, DC. The Subcommittee will review the NRC Staff recent experiences at operating nuclear power plants.

Combined Reliability and Probabilistic Assessment/Limerick, October 9 and 10, 1984, Washington, DC. The Subcommittees will begin their review of the probabilistic risk assessment (PRA) for the Limerick plant and to complete its review of the Standard Review Plan items outstanding on the Limerick operating license (OL) review.

Human Factors, October 10, 1984, Washington, DC. The Subcommittee will explore experience levels or reactor operators, especially at new plants scheduled to come on line. Updates on other activities such as training and qualifications package and the Human Factors Program Plan may be appropriate.

Emergency Core Cooling Systems, October 16 and 17, 1984, Washington, DC. The Subcommittee will continue its review of the joint NRC/Babcock and Wilcox Owners Group/B&W/EPRI integral test program.

Combined GESSAR II/Reliability and Probabilistic Assessment, October 18 and 19, 1984, location to be determined. This will be the first in a series of meetings to review the General Electric Standard Safety Analysis Report to extent the Final Design Approval so that it will be applicable to future plants. The discussions on October 18 will focus on deterministic/SRP type issues. The discussions on October 19 will focus on the GESSAR II treatment of severe accidents and the Probabilistic Risk Assessment performed in connection with the GESSAR II design.

Braidwood Station, Date to be determined (October/November), Washington, DC. The Subcommittee will continue to review the application for an operating license for the Braidwood Plant.

Combined Reactor Operations/ Reliability and Probabilisitic Assessment, November 14 1984, Washington, DC. The Subcommittees will discuss current status of the work related to steam generator overfill.

Emergency Core Cooling Systems, November 28, 1984, Washington, DC. The Subcommittee will discuss (1) the Yankee Atomic Electric request for an exemption to Appendix K to 10 CFR 50.46 and (2) analysis work performed as part of the ATWS resolution effort.

Decay Heat Removal Systems, November 29, 1984 (tentative), Washington, DC. The Subcommittee will continue the review of the NRC Staff effort to resolve USI A-45, "Shutdown Decay Heat Removal Requirements."

Air Systems, November 29 and 30, 1984, Washington, DC. The Subcommittee will review the report to the NRC Working Group on Control Room Habitability.

Metal Components, Date to be determined (November), Washington, DC. The Subcommittee will review draft report on pipe break, pipe crack implementation document (NUREG-0313, Rev. 2), proposed PTS Rule, and degraded bolting.

Westinghouse Water Reactors, Date to be determined (November, tentative), Washington, DC. The Subcommittee will begin its review of the Westinghouse Advanced Pressurized Water Reactor for Preliminary Design Approval.

Hope Creek Generating Station Unit 1, Date to be determined (November/ December), Salem County, NJ. The Subcommittee will discuss certain design changes and modification for the Hope Creek Generating Station.

Seismic Design of Piping, Date to be determined (November/December), Washington, DC. The Subcommittee will review draft reports issued by the NRC Piping Review Committee on Dynamic Loads and Load Combinations and Seismic Design requirements of piping.

Combined GESSAR II/Reliability and Probabilistic Assessment, December 4 and 5, 1984, location to be determined. This will be the second in a series of meetings to review the General Electric Standard Safety Analysis Report to extend the Final Design Approval so that it will be applicable to future plants. The meeting will focus on the GESSAR II treatment of severe accidents and the Probabilistic Risk Assessment performed in connection with the GESSAR II design. External events will be considered.

Safeguards and Security, December 12, 1984, Washington, DC. The Subcommittee will review design features for protection against sabotage at commercial nuclear power reactors, to explore the potential consequences of successful sabotage at nonpower reactors, and to hear how the NRC Staff reviews and evaluates licensees' security plans.

Electrical Systems, Date to be determined, Washington, DC. The Subcommittee will discuss Westinghouse Advanced Pressurized Water Reactor Integrated Control and Protection System.

Palo Verde Nuclear Generating Station, Date to be determined, Maricopa County, AZ. The Subcommittee will review the final reports for various construction deficiencies and the results of the preoperational testing as requested in ACRS letter dated December 15, 1981.

Electric Systems, Date to be determined, Washington, DC. The Subcommittee will discuss the recent plant experience with the loss of AC power.

ACRS Full Committee Meeting

October 11-13, 1984: Items are *tentatively* scheduled.

*A. *Consideration of Class 9 Accidents*—Discuss ACRS comments regarding the frequency and severity of nuclear power plant accidents that involve severe core damage.

*B. *Backfitting of Nuclear Power Plants*—Discuss proposed NRC procedures for backfitting nuclear power plants.

*C. *BWR Pipe Cracks*—Discuss proposed NRC procedures (NUREG-0313, Rev. 2) regarding inspection and repair of primary coolant system pipe cracking in boiling water reactors.

*D. *Qualifications of Nuclear Power Plant Personnel*—Discuss proposed ACRS comments regarding requirements for operating experience of nuclear power plant operators.

*E. *Pressurized Thermal Shock*—Discuss results of research applicable to this matter and proposed NRC rule (10 CFR Part 50) regarding this topic.

*F. *Operating Experiences at Nuclear Facilities*—The members will hear and discuss reports by representatives of the NRC Staff regarding recent abnormal events and incidents at nuclear facilities.

*G. *Unresolved Safety Issues*—Discuss ACRS comments regarding evaluation of generic safety and their selection as USI's.

*H. *ACRS Subcommittee Activities*—The members will hear and discuss reports of assigned ACRS subcommittee activities regarding nuclear power plant safety including such items as quality assurance in design and construction of nuclear power plants, potential system interactions of fire protection systems, PRA evaluation of nuclear power plants, BWR pipe cracking, maintenance practices at foreign nuclear facilities, and shutdown decay heat removal provisions in foreign nuclear power plants.

*I. Future ACRS Activities—The members will discuss anticipated ACRS subcommitte activities and items proposed for consideration by the full committee including preparation of the ACRS annual report to the U.S. Congress regarding the NRC Safety Research Program and the anticipated scope and nature of long-range committee activities.

November 1-3, 1984—Agenda to be announced.

December 13-15, 1984—Agenda to be announced.

Dated: September 12, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-24686 Filed 9-17-84; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, SG 301-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Standard Format and Content Guide for Access Authorization Plans for Nuclear Power Plants" and is intended for Division 5, "Materials and Plant Protection." It is being developed to describe the standard format and content of information required in the access authorization plan submitted as part of an application for a license to operate a nuclear power plant.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by November 15, 1984.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 11th day of September 1984.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of Risk Analysis and Operations, Office of Nuclear Regulatory Research.

[FR Doc. 84-24695 Filed 9-17-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14153; 812-5632]

Vanguard Special Tax-Advantaged Retirement Fund, Inc., et al.; Application for Order Exempting Applications and Approving Certain Affiliated Transactions

September 12, 1984.

Notice is hereby given that The Wellington Fund, Inc., Windsor Fund, Inc., Ivest Fund, Inc., Gemini Fund, Inc., Explorer Fund, Inc., W.L. Morgan Growth Fund, Inc., Wellesley Income Fund, Inc., Vanguard Fixed Income Securities Fund, Inc., Vanguard Money Market Trust, Qualified Dividend Portfolio I, Inc., Qualified Dividend Portfolio II, Inc., Vanguard Index Trust, Vanguard Municipal Bond Fund, Inc., Trustees' Commingled Equity Fund, Inc., Vanguard Qualified Dividend Portfolio III, Inc. (the "Funds"), Vanguard Special Tax-Advantaged Retirement Fund (the "Retirement Fund"), and The Vanguard Group, Inc. (together with the Funds and the Retirement Fund, "Applicants"), 1300 Morris Drive, P.O. Box 876, Valley Forge, Pennsylvania, 19482, filed an application on July 11, 1983, and amendments thereto on January 19, and August 17, 1984, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of Section 12(d)(1) of the Act, and pursuant to section 17(d) of the Act and Rule 17d-1 thereunder to permit Applicants to establish and operate the Vanguard Special Tax-Advantaged Retirement Fund as hereinafter described. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for applicable authority.

The Funds are registered diversified, management investment companies, each a no-load, open-end fund, except for Gemini Fund, Inc. The Vanguard Group, Inc. ("Vanguard Group"), a wholly and jointly owned subsidiary of the Funds, provides corporate management, administrative, transfer agency, and distribution services to the Funds pursuant to an agreement ("Agreement") approved by shareholders of each constituent member of the Vanguard Funds. Vanguard Group provides such services on an at-cost basis to the Funds and provides investment supervision to four of them on an at-cost basis. Subject to approval by the Funds, Vanguard Group may contract with others to provide similar services similar with all revenues derived therefrom applied to reduce the cost of the Funds to operate Vanguard Group. Registered as an investment adviser under the Investment Advisers Act of 1940, and as a transfer agent under the Securities Exchange Act of 1934 ("1934 Act"), Vanguard Group has two wholly owned subsidiaries: Vanguard Marketing Corporation, a registered broker-dealer under the 1934 Act, and Vanguard Fiduciary Trust Company, a trust company organized under the Banking Code of the Commonwealth of Pennsylvania.

Vanguard Group's operations have been, Applicants state, conducted in accordance with the terms of a Commission order dated November 3, 1983 (Investment Company Act Release No. 13613), which permitted the Funds to increase their capital contributions to Vanguard Group. The Board of Directors of the Funds, the Board of Trustees of the Retirement Fund, and the Board of Directors of Vanguard Group consist presently of the same individuals, eight of whom have no affiliation with the Funds of Vanguard Group other than as Directors or Trustees.

Applicants have registered the Retirement Fund as a non-diversified, open-end management investment company, and propose to register its shares under the Securities Act of 1933. The Retirement Fund is primarily intended as a diversified investment program for investors qualifying under the tax deferred retirement plan provisions of the Internal Revenue Code. Its first series will concentrate its portfolio investments in several specified Funds (two common stock funds a bond fund, and a money market fund); subsequent series will have different portfolio combinations in the Funds.

The Retirement Fund will enter into a Special Servicing Agreement ("Special Agreement") with Vanguard Group whereby Vanguard Group will provide dividend disbursing, shareholder servicing, and transer agent service. The Retirement Fund will not be a party to the Agreement nor a member of the Funds. Investment decisions of the Retirement Fund will be made by its Board of Trustees; however, the Declaration of Trust authorizes the Board to retain an investment adviser, provided an order from the Commission so authorizing is obtained, and shareholder approval is given. Applicants state there is no present intention for the Retirement Fund to retain an investment adviser.

Applicants represent that the Special Agreement provides that the Retirement Fund will pay for services to be rendered by Vanguard Group or reimburse Vanguard Group for payments for services obtained from other persons only to the extent that the aggregate value of such amount exceeds the value of the benefits that are expected to inure to Vanguard Group and the Funds from the operation of the Retirement Fund. Should the direct financial benefits to the Funds and Vanguard Group exceed the aggregate of such costs (which Applicants expect), then the Retirement Fund will not be charged for the services. For example, Applicants state that they believe that administrative savings will result from maintaining one set of shareholder accounts in the Retirement Found and one account for the Retirement Fund in each underlying Fund, rather than multiple shareholder accounts for each underlying fund. Applicants expect that the use of the underlying Funds' portfolios to manage the investment of assets will avoid duplicative costs that would arise from operating another active portfolio. Applicants also believe that the cost of distributing shares of one retirement fund will be less than the cost of marketing multiple funds to retirement investors. Furthermore, Applicants argue that the Funds will profit through the Retirement Fund's operations as a result of lower advisory fee rates by virtue of declining fee schedules, and other beneficial economies of scale. Applicants believe the above stated and other benefits will be substantial and will serve to reduce or eliminate costs incurred to operate the Retirement Fund. Applicants have agreed to have the Retirement Fund's Board of Trustees (the common board also serving all the Funds) monitor the experience of the Retirement Fund for the first two fiscal years of its existence to determine whether the cost savings experienced by the Other Vanguard Funds and the Retirement Fund from operation of the Retirement Fund as a fund holding company is as anticipated. Should the Board conclude that operation of the Retirement Fund does not result in economic benefits to all shareholders, Applicants have undertaken to so notify the Commission. Other advantages cited by Applicants to support its proposal include the convenience and economy of obtaining a diversified investment vehicle suitable for retirement savings, since many potential shareholders in the Fund could not economically maintain an account in several individual Funds.

Applicants note that section 12(d)(1) of the Act is intended to prevent the duplicative costs and other adverse consequences to investors incident to the pyramiding of investment companies. Applicants submit that their proposal is structured so as to eliminate the negative aspects of fund holding companies. For example, with respect to duplicative and excessive costs and fees to investors, Applicants point out that, since both the Retirement Fund and the underlying Funds are no-load funds, duplicative sales charges will not occur. In addition, Applicants state that duplicative advisory fees caused by investment company layering will not be present here because the Retirement Fund does not intend to pay any advisory fee other than fees charged by the underlying Funds. Section 12(d)(1) was also intended to preclude excessive and duplicative administrative expenses. Applicants argue that the administrative costs of the Retirement Fund under the Special Agreement will be, at most, nominal and will be fully off-set by other economic benefits to shareholders.

Applicants further note that another concern of section 12(d)(1) was the adusive control problems resulting from the concentration of voting power in a fund holding company or from the threat of large-scale redemptions by the fund holding company. To prevent the former problem, Applicants have consented to the voting provisions of section 12(d)(1)(E) of the Act. The Retirement Fund will vote its shares in each Fund in proportion to the vote of all other shareholders in that Fund. As for the threat of large-scale redemptions, Applicants have agreed that the Retirement Fund will not acquire more than ten percent of the shares of any one underlying Fund.

To further lessen potential abuses, Applicants have agreed to limit the authority of the Retirement Funds to shift assets among the underlying Fund, absent a fundamental policy change requiring shareholder approval.

Applicants state that the range of assets allocated to each underlying Fund from any series of the Retirement Fund will not exceed 25 percent of that series' assets. Each underlying Fund will thereby be assured, Applicants assert, of a consistent pattern of investments of the Retirement Fund's assets, altered only by such fundamental policy changes.

Applicants submit that the purposes and policies fairly intended by section 12(d)(1) of the Act are not applicable to the proposed transaction, and that, therefore, this is an appropriate instance for the Commission to exercise its authority pursuant to section 6(c) of the Act to exempt Applicants from the provisions of section 12(d)(1).

Applicants are also seeking an order under section 17(d) of the Act and Rule 17d–1 thereunder approving certain affiliated transactions associated with their proposal. The Special Agreement, Applicants represent, permits the Retirement Fund to use the "Vanguard" name provided the Special Agreement remains in effect and the Retirement Fund's assets are invested solely in shares of the Funds (less monies reserved to meet current expenses and redemptions). The Funds benefit, Applicants state, from the infusion of additional capital. Proper use of the name "Vanguard" is assured because the investment performance of the Retirement Fund reflects the achievements of the underlying Funds and because Vanguard Group, under the Special Agreement, directs the daily operations of the Retirement Fund. Simultaneously, the Retirement Fund benefits through marketing advantages and identification with Vanguard Group.

Applicants represent that the services provided by Vanguard Group to the Retirement Fund will avoid duplicative costs, and are at a rate less than the market rate for comparable services. Applicants submit that the Funds will not be disadvantaged by the arrangement because the Retirement Fund's assets invested in the underlying Funds will share proportionately in the costs of operating Vanguard Group, and that the Funds will also benefit from the greater economies of scale generated by the increased asset base. Lastly, Applicants represent that shareholder and account distribution expenses of the selected Funds arising from sales to the Retirement Fund will be *de minimis*, so the arrangement helps assure that the investment of assets in the Retirement Fund and then in the underlying Funds will be on a basis fair to all parties.

Applicants believe the proposed arrangement is consistent with the provisions, policies and purposes of the Act and no less advantageous to any one of the Applicants and that therefore, pursuant to section 17(d) and Rule 17d–1, the Commission should issue an order approving the proposed arrangement.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 9, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, of fact or law that are disputed, to the Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, the Commission will consider whether to issue an order granting the application or, upon request or on its own motion, set the application down for a hearing. At that time the Commission will consider whatever additional documentation Applicants may file supporting the analysis set forth in the application (such documentation will be inserted into the application's official file maintained at the Commission and made available to the public).

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24621 Filed 9–17–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14155; 811–3417]

The Chesapeake Money Fund; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

September 12, 1984.

Notice is hereby given that The Chesapeake Money Fund ("Applicant"), 4550 Montgomery Avenue, Suite 1000N, Bethesda, Maryland 20814, registered under the Investment Company Act of 1940 ("Act") as an open-end diversified, management investment company, filed an application on August 8, 1984, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which registered under the Act and filed a registration statement pursuant to section 8(b) of the Act on March 16, 1982, has never made a public offering of its securities, has fewer than 100 securityholders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. The application further states that Applicant does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that the Applicant has been dissolved under state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unles the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24686 Filed 9–17–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23415; 70–7012]

Northeast Utilities et al; Proposed Issuance and Sale of Notes to Banks

September 12, 1984.

In the Matter of Northeast Utilities, Western Massachusetts Electric Co., 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Co., Selden Street, Berlin, Connecticut 06037.

Northeast Utilities ("NU"), a registered holding company, and two of its subsidiary companies, The Connecticut Light and Power Company ("CL&P") and Western Massachusetts Electric Company ("WMECO") have filed a proposal with the Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

CL&P and WMECO propose to issue and sell revolving notes and term notes under a credit agreement (the "New Credit Agreement") under which CL&P and WMECO may borrow up to an aggregate of $150 million from a syndicate of commercial banks (the "Banks"). The New Credit Agreement is intended to supplement an existing credit agreement under which CL&P and WMECO may borrow up to $200 million from a different syndicate of banks (which includes certain of the Banks) (HCAR No. 22689 (November 2, 1982)). Neither of the applicants intends to make any borrowings under the New Credit Agreement until the entire amount available under the existing credit agreement has been borrowed and is outstanding. The New Credit Agreement, therefore, will provide back-up credit support for the applicants' construction programs.

Under the New Credit Agreement, CL&P and WMECO may borrow, on a first-come, first-served basis, up to the maximum amount committed for both applicants, up to $150 million for CL&P and up to $45 million for WMECO. Borrowings under the New Credit Agreement will be on a revolving basis through July 10, 1988, unless an applicant elects to convert all or any portion of the amount which it may borrow to a term loan or loans on or before July 10, 1988. Borrowings, whether revolving or term, may be repaid in whole or in part without penalty, and any amounts not converted to term notes may be reborrowed until July 10, 1988. Any revolving borrowings would mature on July 10, 1988. Any term borrowings outstanding on July 10, 1988, would mature on July 10, 1990, and would amortize in four (4) equal semiannual installments commencing January 10, 1989.

Any borrowings outstanding shall bear interest at the following rates: through July 10, 1987, at a rate equal to the Base Rate, and from July 11, 1987, until maturity, at a rate equal to 102 percent of the Base Rate. The Base Rate is the higher of (i) Continental Illinois National Bank and Trust Company of Chicago's floating prime rate or (ii) one half of 1 percent per annum above the latest three week moving average of secondary market offering rates in the United States for three month certificates of deposit as published weekly by the Federal Reserve Bank of New York. So long as the credit available under the New Credit Agreement is not utilized, CL&P and WMECO will pay a commitment fee of one quarter of 1 percent per annum on the average unused portion of the commitment. If either should ever make a borrowing under the New Credit Agreement, the commitment fee will automatically increase to three eighths of 1 percent per annum on the average unused portion of the commitment from the date of the borrowing to July 10, 1988, and, in addition, there will be a retroactive adjustment to the commitment fee previously paid or payable, such that, for the preceding twelve (12) months or the time from the effective date of the New Credit Agreement to the time of borrowing, whichever is shorter, the adjusted commitment fee will be equal to three eighths of 1 percent per annum times the total amount available under the New Credit Agreement.

The Banks have requested NU to execute and deliver an undertaking in support of the New Credit Agreement. The undertaking is substantially the same as the undertaking given by NU in support of the Existing Credit Agreement.

The funds to be derived by CL&P and WMECO from the issue and sale of the revolving notes or term notes under the New Credit Agreement will be applied, together with other funds available to these companies, only to pay current construction expenses and operating expenses and to repay short-term debt. CL&P's construction program expenditures for 1984 and 1985 are estimated to be $556,192,000 and $430,359,000, respectively (including allowance for funds used during construction ("AFUDC")). WMECO's construction program expenditures for 1984 and 1985 are estimated to be $111,670,000 and $85,047,000, respectively (including AFUDC).

The proposal and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 9, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24685 Filed 9-17-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21303; File No. SR-MSE-84-6]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inc.; Relating to Amendments to MSE's Arbitration Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1984, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

Attached to the filing as Exhibit is the text of the proposed amendment to Article VIII, Rule 24 of the Rules of the Midwest Stock Exchange, Incorporated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statement concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purposes of the proposed rule changes are to: (i) Permit the simplified small claims procedures to be used in disputes involving up to $5,000; (ii) permit the filing of certain cases even though more than six years shall have elapsed from the occurrence of the event giving rise to the dispute; (iii) permit additional peremptory challenges in cetain cases and specifying that there are unlimited challenges for cause; (iv) permit the arbitrators to bar certain defenses at hearings when they have not been pleaded; (v) permit the Arbitration Director to make preliminary determinations regarding severance; (vi) permit amendments after a responsive pleading has been filed; and (vii) raise fees in selected cases.

The proposed changes are consistent with section 6(b)(5) of the Securities Exchange Act of 1934, in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes.

(B) Self-Requlatory Organization's Statement of Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comment have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th St., NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th St., NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 9, 1984.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 10, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24687 Filed 9-17-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21305; File No. SR-AMEX-84-24]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating To Changes to Rule 601 (Panel of Arbitrators), Rule 602 (Designation of Arbitrators), Rule 604 (Submission Limitations), Rule 605 (Initiation of Proceedings), Rule 614 (Amendments), Rule 618 (Schedule of Fees), Rule 619 (Simplified Procedure), and Rule 620 (Member Small Claims Procedure)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 31, 1984, the American Stock Exchange, Inc. ("Amex" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Amex is proposing to amend its arbitration rules to (i) conform them to recent changes in the securities industry's Uniform Arbitration Code concerning public customer versus member arbitrations and (ii) to expedite the handling of member versus member controversies. The text of the proposed amendments is attached as Exhibit A to this Form 19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose.

I. *SICA Rule Changes.* A uniform arbitration code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the Amex, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of public customer versus member arbitration procedures. The proposed rule changes are intended to conform the Amex's arbitration rules to recent amendments to the Uniform Code approved by SICA.

1. *Challenges to the Panel's Composition.* Presently, a peremptory challenge cannot be made in small claims proceedings and is limited, when available, to only one per party. In addition, the rules do not state that each party has unlimited challenges for cuase, although this has been SICA policy. Rule 602(e) is proposed to be amended to give each party the right to one peremptory challenge, even in small claims proceedings, and to permit additional peremptory challenges in cases involving multiple parties if the Director of Arbitration determines that to be in the "interests of justice." Lastly, the rule would specifically state that there will be unlimited challenges for cause.

2. *Time Limitations:* Currently, the six year statute of limitations to commence an arbitration proceeding applies even if a court thereafter attempts to direct a case to arbitration. In addition, under the current rule, the time limitations for commencing a suit in court is not tolled (suspended) until *all* the parties to an arbitration have filed duly executed Submission Agreements.

The proposed amendment to Rule 604(a) prevents the six year time limitation on arbitrations from barring the submission of a claim which is directed to arbitration by a court. Rule 604(d) is proposed to be amended to provide that where permitted by law, the statute of limitations for a court proceeding will be tolled when only a claimant, rather than all parties, files a submission agreement. This will prevent a case from being time-barred due to difficulties in obtaining the signature of the opposing party. In this event, the six year time limitation on submissions will be extended for such period as the court retains jurisdiction.

3. Answer—Defenses: At present, it is only the claimant, and not the respondent, who is required to specify the relevant facts in an arbitration proceeding. While the respondent is required to designate all available defenses in his answer, respondents frequently limit their written defense to a general denial and wait for the hearing to disclose the actual, more specific defense.

In addition, under the current rule, the respondent is not required to specify the relevant facts that it will rely upon at the hearing. This often results in delay caused by discovery requests and may prevent the panel from understanding the arguments before the hearing.

Proposed amendments to Rule 605(b) would permit the arbitrators, within their discretion, to (i) bar a respondent, responding claimant, cross-claimant or third party respondent from presenting any facts or defenses at the hearing if that party pleads only a general denial as an answer, and (ii) bar that party from presenting facts or defenses at the hearing if they have not been included in the answer and the arbitrators believe these facts to be relevant and the defenses available at the time the answer was filed.

4. *Joining and Consolidating*: Rule 605(c) deals with the joining and consolidation of claims but does not provide for consolidating or severing claims involving multiple claimants, respondents or third party respondents. A proposed amendment to Rule 605(c) would permit the Director of Arbitration to determine preliminarily whether such parties should proceed in the same or separate arbitrations.

5. *Amendments to Pleadings*: Presently, a party may not amend its pleadings once responsive pleadings have been received, except when permitted by the arbitration panel. Rule 614 is proposed to be amended to permit amended pleadings, as a matter of right, prior to the appointment of a panel. Once a panel is appointed, no new or different pleading may be filed, unless it is responsive to an amended pleading permitted under the revised rule or unless the panel so permits.

6. Schedule of Fees: Filing fees are purposely low so that customers are not discouraged from commencing an arbitration proceeding. The schedule of such fees is based on the amount in dispute but does not approximate the Exchange's costs in administering arbitration proceedings. Presently, the maximum filing fee, for claims over $100,000, is $550 per session and the maximum fee which can be awarded by the arbitrators in their decision is also $550 per session. Lastly, no rule permits the arbitrators to assess fees if a matter has been settled or withdrawn after the commencement of the first hearing session.

Proposed amendments to Rule 618 (a), (b) and (f) would raise filing fees in virtually all cases to keep pace with the rising costs of administering arbitration proceedings. The maximum filing fee would be raised to $750 per session but would remain significantly lower than costs related to court proceedings. The amendments would also permit fees to be assessed by the arbitrators in any matter settled or withdrawn subsequent to the first hearing session. In addition, the adoption of a uniform schedule of filing fees by the SROs will discourage forum shopping by claimants.

7. *Small Claims:* Proposed amendments to Rule 619 would raise the jurisdictional limit for small claims proceedings from $2,500 to $5,000, exclusive of interest and costs. The rule is also proposed to be amended to include a filing fee schedule. The fees for small claims would be $15 for claims of $1,000 or less, $25 for claims of more than $1,000 to $2,500, and $100 for claims of more that $2,500 to $5,000. Presently the fee is $15 for all small claims proceedings. Since approximately 10% of this past year's cases are within the $2,500 to $5,000 range, the amendments will lower the Exchange's costs by permitting the selection of fewer arbitrators in those cases. The increased fee will not be unfair to claimants since it is only $10 more than is presently imposed.

II. *Member Controversies.*

1. *Industry Arbitrators:* When a business dispute arises between members of the Exchange, the panel selected to hear the matter is comprised entirely of industry arbitrators. Currently, Rule 601 defines Group 1 industry arbitrators as "members, partners of member firms and officers of member corporations." A less restrictive definition would permit the Exchange to select more representative industry panels and facilitate the selection of panels, particularly in out-of-town hearings. For example, an account executive, branch manager or bank office employee may have excellent securities experience but for whatever reason may not be an "officer or partner" of a member organization. Since registered employees are permitted to serve on Exchange disciplinary panels when the respondent is an employee, they should also be permitted to serve on arbitration panels. The Amex is therefore proposing to amend Rule 601 to enlarge the definition of industry arbitrators to "members and persons associated with members and member organizations." This definition will satisfy the Exchange's objectives while assuring that all panel members have some nexus to the Amex.

2. *Number of Arbitrators for Member Controversies:* Rule 602(b) requires three arbitrators for member controversies between $2,500 and $100,000 and five arbitrators for controversies exceeding $100,000. The proposed amendment to that rule states that "at least three but not more than five arbitrators" can hear member cases of $10,000 or more. This change would enable the Exchange to use three member panels in cases (involving over $100,000) where five would now be required. The adoption of this amendment would: (1) Reduce the Exchange's cost in administering arbitrations by reducing the number of honorariums paid; (2) reduce the scheduling difficulties encountered when trying to get five arbitrators and the parties to agree on a hearing date; and (3) reduce the caseload since more arbitrators could be appointed to more cases. Reducing the required number of arbitrators to three for any member controversy over $10,000 would also be consistent with arbitration procedures at other forums, such as the American Arbitration Association.

3. *Member Small Claims Procedure:* Rule 620(a) states that there shall be one arbitrator for member controversies not exceeding $5,000. A proposed amendment to the rule would raise the amount in controversy to $10,000.

Typically, a number of member controversies are in the $5,000-$10,000 range and most cases involve straightforward factual situations (*e.g.*, failure to pay brokerage commissions, overbilling). This amendment would thus reduce the Exchange's costs for administering claims between $5,000 and $10,000 without compromising the arbitration process since three arbitrators would not be needed to hear such matters.

(2) Basis.

The proposed amendments are consistent with section 6(b) of the Securities Exchange Act of 1934, in general, and Section 6(b)(5) in particular, in that they promote just and equitable principles of trade and protect investors and the public interest by insuring that members, member organizations and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule changes will impose any burden on competition because (a) the SICA proposed rule changes will be equally applicable to all participants in the securities industry and (b) the member controversy proposed rule changes simplify existing procedures to facilitate the prompt resolution of disputes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

II. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 9, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 10, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24660 Filed 9-17-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21304; File No. SR-MSE-84-7]

Self-Regulatory Organizations; Proposed Rule Change By Midwest Stock Exchange, Inc.; Relating to Proposed Fee Schedule for Late Filings of Financial and Operational Reports

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1984, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit is the text of the proposed amendment to MSE Article XI, Rule 4, Interpretations and Policies .02.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A primary responsibility of the Exchange is to enforce compliance by its members with the provisions of the Securities Exchange Act of 1934 (the Act), the rules and regulations thereunder and the rules of the Exchange. The Exchange is proposing to establish a fee schedule for late filings of monthly, quarterly and annual financial and operational reports from members which are required to file such reports under applicable Exchange and SEC Rules.

The proposed late charges are designed to encourage prompt filings of monthly, quarterly and annual financial and operational reports. Timely filings by members will allow the Exchange to fulfill its responsibility under the Act to review and evaluate members' financial and operational condition. This will allow the Exchange adequate time to initiate appropriate surveillance programs for members determined to be approaching financial and/or operational difficulties.

In addition, the reports mentioned above are used to determine whether members who are both MSE members and Midwest Clearing Corporation (MCC) participants have contributed adequate MCC Participants Fund deposits, based upon a review of the members' financial condition and activity with MCC.

The proposed late charges are consistent with section 6 of the Act in that it is designed to encourage prompt compliance by Exchange members with the rules and regulations of the SEC and the rules of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th St., NW., Washington, D.C. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 9, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 10, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-[illegible] Filed 9-17-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Eagle Ventures, Inc.; Surrender of License

[License No. 05/10-0104]

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1984)), Eagle Ventures, Inc. (Eagle), 700 Soo Line Building, Minneapolis, Minnesota 55402, incorporated under the laws of the State of Minnesota has surrendered its License No. 05/10-0104, which was issued by SBA on May 28, 1962.

Eagle has complied with all conditions set forth by SBA for surrender of its license.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above cited Regulation, the License of Eagle is hereby accepted effective July 26, 1984 and it is no longer licensed to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-24671 Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0268]

Equity Capital Corp. of Texas; Surrender of License

Notice is hereby given that pursuant to § 107.105 of the Small Business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1984). Equity Capital Corporation of Texas (Equity), 5333 Spring Valley Road, Dallas, Texas 75240, incorporated under the laws of the State of Texas has surrendered its License No. 06/06-0268, which was issued by SBA on September 21, 1983.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above cited regulations, the license of Equity is hereby accepted effective September 4, 1984, and it is no longer licensed to operate as a small business investment company.

Dated: September 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-24670 Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0158]

Golder, Thoma Capital Co.; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration's (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105(1984)), Golder, Thoma Capital Co. (Golder), 120 South LaSalle Street, Chicago, Illinois 60603, incorporated under the laws of the State of Illinois has surrendered its License No. 05/05-0158, which was issued by SBA on August 31, 1981.

Golder has complied with all conditions set forth by SBA for surrender of its license.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above cited Regulation, the License of Golder is hereby accepted effective July 26, 1984 and it is no longer licensed to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-24669 Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0234]

Mid America Venture Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On June 20, 1984, a notice was published in the Federal Register (49 FR 25334) stating that an application has been filed by Mid America Venture Capital Corporation, 500 West Broadway, Louisville, Kentucky 40202 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company.

Interested parties were given until close of business July 20, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-0234 on September 5, 1984, to Mid America Venture Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: September 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-[illegible] Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0230]

North Riverside Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On May 4, 1984, a notice was published in the Federal Register (49 FR 19175), stating that North Riverside Capital Corporation, located at 5775-D Peachtree Dunwoody Road, Atlanta, Georgia 30342, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1984), for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business on June 4, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 04/04-0230 to North Riverside Capital Corporation, on August 24, 1984.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-[illegible] Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0186]

U.P. Investment Corp.; Application for a License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1984)), by U.P. Investment Corp., 2415 14th Avenue, South, Escanaba, Michigan for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended, (15 U.S.C. et seq.).

The proposed officers, directors, and shareholders are:

Name and address	Title	Percent of direct/indirect ownership
Edward A. Bruhnke, 2415 14th Ave., South, Escanaba, MI 49829.	Director	
Peter P. Cambier, Central Upper Peninsula, Development Center, Inc., 2415 14th Ave., South, Escanaba, MI 49829.	Manager	
Eugene C. Gauthier, 1002 South 10th St., Escanaba, MI 49829.	Director	
Herbert E. Heger, 1312 Wisconsin Ave., Gladstone, MI 49827.	Secretary/Treasurer/Director.	
Forrest A. Henslee, 2415 14th Ave., South, Escanaba, MI 49829.	President/Director.	
Edgar A. Larche, 2415 14th Ave., South, Escanaba, MI 49829.	Director	
David J. Nemacheck, 2415 14th Ave., South, Escanaba, MI 49829.	Director	
James L. Smith, 2415 14th Ave., South, Escanaba, MI 49829.	Director	
Matt N. Smith, 2415 14th Ave., South, Escanaba, MI 49829.	Director	[1] 8
Joseph F. Stankowicz, 2415 14th Ave., South, Escanaba, MI 49829.	Vice President	
Detroit and Northern Savings and Loan Association, 2325 Ludington St., Escanaba, MI 49829.	Shareholder	10
First National Bank & Trust Co. of Escanaba, Escanaba, MI 49829.	Shareholder	15
First National Bank of Gladstone, 823 Delta Ave., Gladstone, MI 49837.	Shareholder	5
Gladstone State Bank, 104 South 10th St., Gladstone, MI 49837.	Shareholder	5
Northern Michigan Bank of Escanaba, 723 Ludington St., Escanaba, MI 49829.	Shareholder	15
State Bank of Escanaba, 112 North 11th St., Escanaba, MI 49829.	Shareholder	15
Escanaba Foundation, 230 Ludington St., Escanaba, MI 49829.	Shareholder	35
Michigan Financial Corp., 101 West Washington St., Marquette, MI 49855.	100 pct. shareholder of First National Bank & Trust Co. of Escanaba.	[1] 15
Northern Michigan Corp., 723 Ludington Street, Escanaba MI 49829.	100 pct. shareholder of Northern Michigan Bank of Escanaba.	[1] 15

[1] By attrition.

The services of Peter P. Cambier are provided by the Central Upper Peninsula Business Development Center, Inc. (the Center), pursuant to an agreement which provides for, among other things, the day to day management of the Applicant by the Center which has been licensed by SBA as a Section 503 Development Company.

The Applicant will begin operations with a capitalization of $500,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Escanaba, Michigan.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 6, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-24672 Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/07-0079]

United Capital Corp. of Illinois; Surrender of License

Notice is hereby given that United Capital Corporation of Illinois, 2001 Foothill Road, P.O. Box 109, Genoa, Nevada 89411, incorporated under the laws of the State of California has surrendered its License No. 09/07-0079, issued by the Small Business Administration on July 10, 1970.

United Capital Corporation of Illinois has complied with all the conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the Regulations promulgated thereunder, the surrender of the license of United Capital Corporation of Illinois is hereby accepted and it is no longer licensed to operate as a small business investment company, effective June 30, 1984.

(Catalog of Federal Domestic Assistance Program No. 59.011.) Small Business Investment Companies)

Dated: September 11, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-24673 Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

Georgia; Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Adivisory Council, located in the geographical area of Atlanta, Georgia, will hold a public meeting from 9:00 a.m. to 4:00 p.m., on Thursday, October 25, 1984, at the Royal Savannah Inn & Conference Center, 231 West Boundary Street, Savannah, Georgia 31401, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Clarence B. Barnes, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., Atlanta, Georgia 30309—(404) 881-4749.

Dated: September 12, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-24677 Filed 9-17-84; 8:45 am]

BILLING CODE 8025-01-M

Mississippi; Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Jackson, Mississippi, will hold a public meeting at 9:00 a.m. on Friday, September 28, 1984, at the Ramada Inn, Route 80 East, Vicksburg, Mississippi, in the Audubon Room, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S.

Small Business Administration, 322 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269–0396, telephone (601) 960–4363.

Dated: September 11, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84–24678 Filed 9–17–84; 8:45 am]

BILLING CODE 8025–01–M

South Dakota; Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, will hold a public meeting on Friday, October 5, 1984, from 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101 Security Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336–2980, Ext. 231.

Dated: September 11, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84–24679 Filed 9–17–84; 8:45 am]

BILLING CODE 8025–01–M

Wyoming; Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Casper, Wyoming, will hold a public meeting at 9 a.m. on Monday, October 1, 1984, at the Wort Hotel, 50 North Glenwood, Jackson, Wyoming, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Paul Nemetz, District Director, U.S. Small Business Administration, Federal Building, Room 4001, 100 East B Street, P.O. Box 2839, Casper, Wyoming 82601 (307) 328–5761.

Dated: September 11, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84–24676 Filed 9–17–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–84–17]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 8, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 12, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24222	AVIATECA	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 727 aircraft in noncompliance with the operating noise limits until December 31, 1987.
24234	AERONICA	do	To allow petitioner to operate one Stage 1 Boeing 720 aircraft in noncompliance with the operating noise limits to Miami airport until January 1, 1987.
24221	Japan Air Lines Co. Ltd.	do	To allow petitioner to operate Stage 1 DC–8 aircraft on charter flights in noncompliance with the operating noise limits until December 31, 1987.
24229	Capitol Air, Inc.	do	To allow petitioner to operate Stage 1 DC–8 aircraft to/from Puerto Rico in noncompliance with the operating noise limits until hush kits are installed.
24231	Rich Int'l. Airways, Inc.	do	To allow petitioner to operate two Stage 1 DC–8–62 aircraft in noncompliance with the operating noise limits until June 1, 1985.
24230	Aeroservicios Ecuatorianos	do	To allow petitioner to operate one Stage 1 DC–8–55F aircraft in noncompliance with the operating noise limits until December 31, 1987, or until quiet nacelles are available for its aircraft.
24224	Transbrasil	do	To allow petitioner to operate one Stage 1 Boeing 707 aircraft in noncompliance with the operating noise limits until July 1, 1986, or until it retrofits or replaces its aircraft, whichever is earlier.
24232	Aeromexico	do	To allow petitioner to operate five Stage 1 DC–8–51 aircraft in noncompliance with the operating noise limits until December 31, 1987.
23925	Gulfstream Aerospace Corp.	14 CFR 23.49(b)(1)	To permit type certification of Gulfstream Model 1500, single engine, pressurized fan jet airplanes with a stall speed greater than 61 knots.
24214	EG&G Special Projects Inc.	14 CFR 125.327(a)(8)	To allow petitioner to comply with § 121.571 regarding the use of fire extinguishers. Also, to allow flight attendants to be thoroughly trained in their location and use rather than briefing all passengers.
24206	Steelcase, Inc.	14 CFR Parts 21 and 91	To allow petitioner to operate Falcon 20 and Cessna Citation III aircraft utilizing the provisions of minimum equipment lists.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
24204	Airevac, Inc.	14 CFR 43.3(b)	To allow petitioner to remove and install aircraft parts in its commercially operated Mitsubishi MU2 aircraft when they are to be used in air ambulance service.
23644	Dow Chemical Co.	14 CFR 21.181	To amend Exemption 3833 to allow petitioner to operate an AMD-BA Falcon 50 aircraft utilizing the provisions of a minimum equipment list.
24199	Conner Aviation	14 CFR 135.183(b)(3)	To allow operation of Gates Learjet 35A aircraft up to flight level 410 without either pilot being required to wear an oxygen mask.
24094	David Alan Smith	14 CFR 135.243(a)	To allow petitioner to serve as pilot in command in scheduled commuter operations holding a commercial pilot certificate with an instrument rating. Although petitioner successfully completed practical tests, he did not meet the minimum age requirement for issuance of an airline transport pilot certificate.
24200	MCI Communications Corp.	14 CFR 21.181	To allow petitioner to operate a Falcon 50 aircraft utilizing the provisions of a minimum equipment list.
23261	Atlantic Richfield Co.	14 CFR Parts 21 and 91	To extend Exemption 3614 which expires September 30, 1984 to allow petitioner to operate B-727 aircraft utilizing the provisions of a minimum equipment list.
24203	Dunn & Bradstreet	do	To allow petitioner to operate a Gulfstream Airspace GIII Model 1159A aircraft utilizing the provisions of a minimum equipment list.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23987	Surinam Airways Ltd.	14 CFR Part 91 Subpart E, § 91.303	To allow petitioner to operate two DC-8 aircraft until December 31, 1987, in noncompliance with the operating noise limits. Denied 8/30/84.
23955	Aer Turas Teoranta	14 CFR 91.303	To allow petitioner to operate one DC-8-63F until June 30, 1985, in noncompliance with the operating noise limits. Denied 8/31/84.
24001	TAP Air Portugal	do	To allow petitioner to continue to operate noncompliant airplanes into the U.S. until December 31, 1987. Denied 8/27/84.
23984	Transportes Aereo RIOPLATENSE, S.A.C.e.I.	do	To exempt petitioner from the January 1, 1985, noise level compliance date. Denied 8/27/84.
23999	Aerotransportes Entre Rios S.R.L.	do	To exempt petitioner from the January 1, 1985, noise level compliance date. Denied 8/27/84.
23988	Air Haiti, S.A.	do	To exempt petitioner from the January 1, 1985, noise level compliance date. Denied 8/29/84.
23953	Caribbean Air Cargo Co., Ltd.	do	To exempt petitioner from the January 1, 1985, noise level compliance date. Denied 9/29/84.
23994	Atlantic Richfield Co.	do	To exempt petitioner from the January 1, 1985, noise level compliance date. Denied 8/29/84.
23926	Dept. of Natural Resources, State of Wisconsin	14 CFR 91.73 (a) and (d)	To permit the operation of aircraft at night without lighted position lights and anti-collision lights. Denied 8/28/84.
23938	Flying Tiger Line,	14 CFR 121.583 and 121.547	To permit petitioner to provide free transportation for employee dependents on its B-727-100 freighter aircraft. Partial Grant 8/30/84.
21015	Ransome Airlines	14 CFR 135.63(c)(8)	Extension of Exemption 3316 to permit petitioner, during scheduled passenger-carrying operations conducted under Part 135, to take off with a load manifest lacking the identification of crewmembers and their crew position assignments subject to certain conditions. Granted 8/31/84.
15590	Emery-Riddle Aeronautical Univ.	14 CFR Portions of Part 141	To Extend Exemption 2329A to allow petitioner to continue to train students to a performance standard. Granted 8/31/84.
24095	Air Transport Systems	14 CFR 135.261(b)	To allow petitioner to conduct air ambulance flights without complying with the duty time and rest requirements of that section. Granted 9/5/84.
23771	Cessna Aircraft Co.	14 CFR 91.213	To amend Exemption 4050 to add the Cessna S550 (Citation SII). This would allow the Citation SII to be operated under Part 91 without a second in command. Granted 9/5/84.
24219	Eastern Airlines, Inc.	14 CFR Part 121, Appendix H	To exempt petitioner from a specific provision of Appendix H which limits the conduct of Phase IIA training and checking utilizing a Phase I simulator to 3.5 years from the date such approval was received from FAA. Granted 8/31/84.
24218	Pan Am World Airways, Inc.	do	To exempt petitioner from a specific provision of Appendix H of Part 121 which limits the conduct of Phase IIA training and checking utilizing a Phase I simulator to 3.5 years from the date such approval was received from the FAA. Granted 8/31/84.
18855	Helicopter Asc. Int'l	14 CFR Portions of Part 135	Extension of Exemption 2695D, to allow members of petitioner's association and any other Part 135 helicopter operator to operate certain aircraft without performing certain aircraft modifications, hiring additional required pilots and without complying with certain performance, operational and maintenance requirements. Granted 8/30/84.
17399	Flying Tigers	14 CFR 121.583(a)(8)	To permit petitioner to transport employees/dependents on its DC-8 cargo flights. Granted 8/30/84.

[FR Doc. 84-24577 Filed 9-17-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; McLean, Woodford, Marshall, and LaSalle Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a draft supplement to the Final Environmental Impact Statement will be prepared for a four-lane highway from Federal-aid Interstate 55 (FAI-55) near Normal in McLean County to FAI-80 in LaSalle County, Illinois. The proposed project would be a part of Federal-aid Primary Route 412 (FAP 412).

FOR FURTHER INFORMATION CONTACT: James C. Partlow, District Engineer, Federal Highway Administration, 320 West Washington Street, 7th Floor, Springfield, Illinois 62701, Telephone: (217) 492-4622. R.H. Blasius, District Engineer, Illinois Department of Transportation, 700 East Norris Avenue, Ottawa, Illinois 61350, Telephone: (815) 434-6131.

SUPPLEMENTARY INFORMATION: A Draft Environmental Impact Statement fot the section of Federal-aid Primary 412 from FAI-55 near Normal in McLean County to FAI-80 in LaSalle County, Illinois was approved for circulation on March 5, 1976. During preparation of the final EIS for this action, it became apparent that funding and farmland impacts were major concerns on the southern portion of the project from U.S. 51 near Oglesby to I-55 near Normal. However, there were no similar major concerns on the northern section from I-80 to U.S. 51 near Oglesby; thus, the State decided to seek approval to proceed with design for the northern section only. The preferred alternative for this section was identified in a portion of the FEIS entitled Supplement I. The FEIS, inlcuding Supplement I, was approved on May 30, 1979. Design and construction have proceeded for the portion of the project discussed in Supplement I.

This notice deals with the preparation of the second draft supplement to the approved final EIS and presents alternative alignments for FAP 412 from U.S. 51 near Oglesby to I-55 north of Normal. To ensure that the EIS addressed logical termini, the original termini for the study will be used in this supplement. The EIS will present the current status of the portion of the project approved in Supplement I.

Supplement II will study the alternatives for upgrading approximately 51 miles of U.S. 51 to a four-lane highway with either freeway or expressway standards. Consideration will be given to utilizing as much of the existing U.S. 51 alignment and right-of-way as possible (including urban designs through intervening towns on the expressway alternative). The proposed project would provide a more efficient and safer transportation system.

Alternatives under consideration for this project include: (1) Upgrading U.S. 51 to a four-lane fully access-controlled freeway, utilizing as much of the existing U.S. 51 alignment and right-of-way as possible; (2) upgrading U.S. 51 to a four-lane partially access-controlled expressway, utilizing as much of the existing U.S. 51 alignment and right-of-way as possible; (3) constructing a fully access-controlled freeway on new alignment west of exisiting U.S. 51; (4) do nothing (no-build).

A formal scoping process will be undertaken as part of this project. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and individuals who have previously expressed interest in the proposed action. The first formal scoping meeting is expected to be conducted in early Fall, 1984.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplement EIS should be directed to the FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: September 10, 1984.

James C. Partlow,

District Engineer, Springfield, Illinois.

[FR Doc. 84-24606 Filed 9-17-84; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

Solicitation of Proposals for Grants; Section 3(a)(1)(C) Technology Introduction Program

AGENCY: Urban Mass Transportation Administration, DOT

ACTION: Notice.

SUMMARY: The Urban Mass Transportation Administration (UMTA) announces in this notice that it is soliciting proposals for grants under section 3(a)(1)(C), the Technology Introduction Program, of the Urban Mass Transportation Act of 1964, as amended, (UMT Act) for fiscal year 1985 funding. UMTA will select from among the proposals received, contact the submitting parties and request complete grant applications from them.

Proposers are reminded that many projects funded under section 3(a)(1)(C) are also eligible for funding under section 9 of the Act. UMTA encourages proposers to use, to the maximum extent possible, the funding available under section 9. Details on the funding sources are available at the appropriate UMTA Regional Office.

DATES: Proposals are due for the section 3(a)(1)(C) program by December 17, 1984.

ADDRESSES: Proposals for section 3(a)(1)(C) grants should be sent to the appropriate UMTA Regional Office.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to the appropriate UMTA Regional Office.

Section 3(a)(1)(C): Technology Introduction Program

Section 3(a)(1)(C) of the UMT Act, 49 U.S.C. 1602(a)(1)(C), authorizes the Secretary of Transportation to make grants or loans to assist public agencies in financing the introduction into public transportation service of new technology in the form of innovative and improved products.

UMTA's objective in financing new technology in fiscal year 1985 is to encourage transit suppliers to produce and transit operators to use, innovative technology that will promote the following emphasis areas:

- *Safety:* Technology such as fire detection/suppression systems, emergency response/rescue equipment, devices to reduce on board and boarding injuries.
- *Revenue Security:* Technology such as strip magnetic card equipment, bill handling equipment, vehicle-to-bank money handling equipment.
- *Energy Cost Reduction:* Technology such as solid state inverters, converters, controllers, alternative fuels (e.g. methanol), energy storage and regeneration systems.
- *Maintenance Cost Management:* Technology such as diagnostic equipment, and low cost maintenance management information systems, brake retarders, brake slack adjusters, and air conditioning screw compressors.

UMTA May Also Consider Other Areas in This Year's Technology Introduction Program

To meet its objective in financing new technology, UMTA will provide technical and financial assistance for an eligible agency to purchase and evaluate in revenue service limited pre-production quantities of improved products to increase confidence in operational performance and reliability. This evaluation will provide a sound and valid empirical basis for cost-effective tradeoffs in transit equipment selection decisions.

UMTA intends to publish a formal circular describing the Technology Introduction Program. In the interim, prospective applicants are referred to the **Federal Register** notice of January 1981 (46 FR 5832) which describes the background and purpose of the program. For purposes of evaluation, proposals should contain a detailed project description, a brief project abstract, budget, outline of benefits, market potential, evaluation plan, and a discussion of the degree of development of the technology. Proposals must also include the costs and plans for data collection and evaluation and the development of a preliminary report. A complete grant application is not needed at this time. Proposers are reminded that section 3(a)(1)(C) project funding is based on a 75 percent Federal and 25 percent local source of funds.

Proposers not selected for participation in earlier section 3(a)(1)(C) announcements, may, by submitting letters of continuing interest in lieu of new proposals, revise earlier submittals for consideration in fiscal year 1985.

Ralph L. Stanley,

Urban Mass Transportation, Administrator.

[FR Doc. 84-24627 Filed 9-17-84; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 27]

Ideal Mutual Insurance Co.; Surety Companies Acceptable on Federal Bonds; Correction

At 49 FR 31190, dated August 3, 1984, Treasury published notification of the termination of Ideal Mutual Insurance Company's certificate of authority. Paragraph two of that notice stated:

With respect to any bonds currently in force with Ideal Mutual Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company.

This paragraph is hereby revised to:

With respect to any bonds currently in force with Ideal Mutual Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226, telephone (202) 634-5745.

Dated: September 6, 1984.

Marcus W. Page,

Deputy Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-24644 Filed 9-17-84; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 182
Tuesday, September 18, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Consumer Product Safety Commission	1
Equal Employment Opportunity Commission	2
Federal Reserve System	3
Federal Trade Commission	4
Nuclear Regulatory Commission	5
Postal Service	6

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:15 a.m., Friday, September 14, 1984.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS: TO BE CONSIDERED:

FY 86 Budget

The Commission will continue its consideration of the Budget for Fiscal Year 1986.

The Commission voted unanimously that agency business required holding this meeting without seven day advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84-24763 Filed 9-14-84; 2:31 pm]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, September 18, 1984.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 84-6-FOIA-154-CL, concerning a request for information from a closed ADEA file.
4. Freedom of Information Act Appeal No. 84-6-FOIA-110-HQ, concerning a request for information relating to two EEOC Requests for Contract Proposals.
5. Freedom of Information Act Appeal No. 84-040-FOIA-080-NY, concerning a request for one sentence from a charge file.
6. Freedom of Information Act Appeal No. 84-07-FOIA-78-HU, concerning a request for records from a Title VII charge file.
7. Proposed Semiannual Regulatory Agenda.

Closed

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commisson at (202) 634-6748.

This Notice Issued September 11, 1984.

Dated: September 11, 1984.

Treva McCall,
Executive Secretary to the Commission.

[FR Doc. 84-24730 Filed 9-14-84; 11:30 am]

BILLING CODE 6750-06-M

3

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 24, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel action (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 14, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 24818 Filed 9-14-84; 4:11 pm]

BILLING CODE 6210-01-M

4

FEDERAL TRADE COMMISSION

TIME AND DATES: 10:00 a.m., Tuesday, September 18, 1984.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Oral Presentations to the Commission in connection with the Protein Supplements Proposed Trade Regulation Rule.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 532-1892, Recorded Message: 532-3806.

Emily H. Rock,
Secretary.

[FR Doc. 84-24778 Filed 9-14-84; 2:58 pm]

BILLING CODE 6750-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 17, 24, 1984, and October 1, 8, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 17

Wednesday, September 19

10:00 a.m.
Quarterly Progress Report on Safety Goal Evaluation Report (Public Meeting)

Thursday, September 20

10:00 a.m.
Industry Views and Public Interest Group Comments on Decommissioning (Public Meeting)
2:00 p.m.

Uranium Mill Tailings Litigative Strategy (Closed—Ex. 10)

3:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Friday, September 21

9:50 a.m.

Affirmation Meeting (Public Meeting) (if needed)

10:00 a.m.

Discussion of Board Order in Shoreham (Open/Closed to be determined)

2:00 p.m.

Discussion of Remaining Questions on Backfitting (Public Meeting)

Week of September 24

Tentative

Thursday, September 27

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of Octoberr 1

Tentative

Tuesday, October 2

10:00 a.m.

Briefing/Possible Vote on UCS 2.206 Petition on TMI-1 Emergency Feedwater (Public Meeting)

2:00 p.m.

Continuation of 9/5 Discussion of Indian Point Probabilistic Risk Assessment (Public Meeting)

Wednesday October 3

2:00 p.m.

Discussion of Reexamination of Exemption Process (Public Meeting)

Thursday, October 4

10:00 a.m.

Discussion/Possible Vote on Full Power Operating License for Callaway-1 (Public Meeting)

2:00 p.m.

Semi-Annual Briefing on Appraisal of Operating Experience (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Friday, October 5

9:30 a.m.

Staff Briefing and Discussion on Requirements for Senior Managers (Public Meeting)

Week of Octoberr 8

Tentative

Tuesday, October 9

10:00 a.m.

Discussion of Severe Accident Program for Nuclear Power Reactors—Revised Policy Statement (Public Meeting)

2:00 p.m.

Discussion of Proposed Rule on Decommissioning Nuclear Facilities (Public Meeting)

Wednesday, October 10

10:30 a.m.

Meeting with Advisory Panel on TMI-2 Cleanup (Public Meeting)

2:00 p.m.

Discussion/Possible Vote on Full Power Operating License for Catawba (Public Meeting)

Thursday, October 11

2:00 p.m.

Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Friday, October 12

10:00 a.m.

NUMARC Briefing on Fitness for Duty, Training and Requirements for Senior Managers (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: September 14, 1984.

George T. Mazuzan,

Office of the Secretary.

[FR Doc. 84-24792 Filed 9-14-84; 3:45 pm]

BILLING CODE 7590-01-M

5

POSTAL SERVICE

(Board of Governors)

Notice of Vote to Close Meeting

At its meeting on September 10, 1984, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for October 2, 1984, in Cleveland, Ohio. The meeting will involve: (1) A continuation of the discussion of strategies and positions in connection with possible continued collective bargaining negotiations, pursuant to chapter 12 of title 39 Unted States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which expired in July 1984; and (2) consideration of the Postal Rate Commission's September 7, 1984, Recommended Decision in Docket No. R84-1, the omnibus rate case.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, McKean, Peters, Ryan, Sullivan, Voss and Waldman; Postmaster General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; General Counsel Cox; Senior Assistant Postmasters General Coughlin and Morris; and Counsel to the Governors Califano.

As to the first of these agenda items, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

As to the second agenda item, the Board is of the opinion that public access to the discussions would be likely to disclose information that will become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirements of the Government in the Sunshine Act, because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c) (3), (9) (B) and (10) of title 5 and sections 410(c) (3) and (4) of title 39, United States Code, and sections 7.3 (c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84-24719 Filed 9-14-84; 8:45 am]

BILLING CODE 7710-12-M

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federal register

Tuesday
September 18, 1984

Part II

Department of Commerce

National Telecommunications and Information Administration

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15 CFR Part 2301

Public Telecommunications Facilities Program; Interim Revision of Rules

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 40896–4096]

Public Telecommunications Facilities Program; Interim Revision of Rules

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Interim rules.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is announcing interim revision of its rules which govern the Public Telecommunications Facilities Program (PTFP). The revision is necessary to clarify areas where applicants have had difficulties.

NTIA intends to issue Final Rules after it has received and evaluated public comments. Organizations desiring to file applications with NTIA should develop their applications according to the rules and priorities set out herein.

DATES: To give applicants for grants during 1985 sufficient time to prepare their applications, the Interim Rules will become effective October 1, 1984. Comments must be filed no later than November 1, 1984. Reply comments must be filed no later than December 1, 1984.

ADDRESS: Persons interested in commenting on the Interim Rules must send three copies of any comments to: Office of the Chief Counsel, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4717, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Persons desiring further information regarding the Rules should contact the Office of the Chief Counsel, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4717, Washington, D.C. 20230. Telephone: (202) 377–1816.

SUPPLEMENTARY INFORMATION:

Interim Rules

NTIA has completed two grant cycles since the last revision of its PTFP Rules. During these cycles, we have become cognizant of several areas which seem to cause confusion. Our intent is to clarify these areas to allow potential grantees more easily to understand the requirements and facilitate their applications. The proposed changes to the Rules will allow for more uniformity and clarity in administering the program. The major areas which have been clarified include:

1. Making applicant eligibility for planning grants and project eligibility language more consistent with the law and NITA practices.
2. What constitutes a complete application and distinguishes it from an application that is deficient.
3. What does filing a timely application mean and how it is to be delivered in a timely manner.
4. How to amend an application.
5. How to reactivate a deferred application.
6. How to request special consideration.
7. Expanded discussions on control and use of equipment, eligible equipment items, and non-eligible equipment items.
8. Expanded discussions on the close-out and monitoring procedures for a project.

Under Executive Order (E.O.) 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of E.O. 12291 and therefore subject to the requirement that a Regulatory Impact Analysis be performed. This regulation is not major because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, * * *; or (3) significant adverse effects on competition, employment, investment, productivity or innovation * * *." Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget (OMB) for review, as required by E.O. 12291.

The interim rules described above relate to a Federal grant-in-aid program; thus, under section 553(a)(2) of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), they may be issued and made effective immediately without notice of proposed rulemaking, opportunity for comment, or 30-day deferral of effectiveness after publication. However, NTIA believes the public interest will be best served by making these interim rules effective October 1, 1984, by accepting comments and reply comments by the deadlines specified above under the heading "**DATES**," and by issuing Final Rules based on evaluation of those comments.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to these interim rules because, as explained above, the rules were not required to be promulgated as proposed rules before issuance as final rules by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. Neither an initial nor final Regulatory Flexibility Analysis was prepared.

As a final matter, pursuant to the Paperwork Reduction Act of 1980, OMB reviewed the information collection and recordkeeping requirements contained in NTIA's rules as set out in the PTFP Report and Order, 44 FR 30898 (1979). The amendments of NTIA's regulations contained in the Interim Rules do not alter the Agency's already approved information collection or recordkeeping requirements. Therefore, the collection of the information required by rules, or revised by the interim revisions, are already approved by the Director of the Office of Management and Budget, OMB Control No. 0660–0001 and OMB Control No. 0660–0003.

The publication requirement in § 2301.9 while not a new requirement, was never approved by OMB. It has now been submitted to OMB for approval. Comments on this information collection may be directed to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for Department of Commerce.

List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting and recordkeeping requirements, Telecommunications.

Dated: September 12, 1984.

David J. Markey,

Administrator.

Part 2301 is added to Title 15 of the CFR to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—General

Sec.
2301.1 Purpose and scope.
2301.2 Other pertinent rules and regulations.
2301.3 Definitions.

Subpart B—Eligibility and Application Procedures

2301.4 Who can get a PTFP grant and what can they use it for?
2301.5 How do I file an application?
2301.6 What happens if my application is incomplete or untimely?
2301.7 What if I want to change some of the information in my application?
2301.8 Service of applications.
2301.9 Publication of filing.
2301.10 Closing date.
2301.11 Federal Communications Commission authorization.
2301.12 What happens after I file an application?
2301.13 Do I have a right to appeal?
2301.14 Can members of the public comment on applications?
2301.15 What does the Agency do with these comments?

Sec.
2301.16 Coordination with interested agencies and organizations.
2301.17 Funding criteria for construction applications.
2301.18 Funding criteria for planning applications.
2301.19 Action on all applications.

Subpart C—Program Purposes and Special Consideration

2301.20 Program purposes.
2301.21 Special consideration.

Subpart D—Federal Financial Participation

2301.22 Amount of the Federal grant.
2301.23 Payment of the Federal grant.
2301.24 Items and Costs ineligible for Federal funding.

Subpart E—Accountability for Federal Funds

2301.25 Retention of records.
2301.26 Copies of planning studies; Final certification of construction projects.
2301.27 Annual status report for construction grants.

Subpart F—Control and Use of Facilities

2301.28 What conditions are attached to the Federal grant?
2301.29 Nondiscrimination; Rules incorporated by reference.
2301.30 How can a grant be terminated?
2301.31 Equipment.
2301.32 Waiver.

Appendix A to Part 2301

Authority: Public Telecommunications Financing Act of 1978, 47 U.S.C. 390, *et seq.*; as amended by the Public Broadcasting Amendments Act of 1981.

Subpart A—General

§ 2301.1 Purpose and scope.

These rules prescribe policies and procedures to insure the fair, equitable, and uniform treatment of applications for planning and construction grants for public telecommunications facilities. They implement the provisions of Part IV of Title III of the Communications Act of 1934, as amended.

§ 2301.2 Other pertinent rules and regulations.

Other rules and regulations pertinent to applications for the operation of noncommercial educational broadcast stations and public broadcast stations are contained in the rules and regulations of the Federal Communications Commission 47 CFR Part 1 (Practice and procedure); Part 2 (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations); Part 17 (Construction, Marking and Lighting of Antenna Structures); Part 3, Subpart E (Television Broadcasting Stations); Part 73 (Radio Broadcast Services); and Part 74 (Experimental Auxiliary and Special Broadcast and Other Program Distribution and Services.)

§ 2301.3 Definitions.

"Act" means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390–94 and 397–99, as amended.

"Administrator" means the Assistant Secretary for Communications and Information of the U.S. Department of Commerce.

"Advertisement" means any message or other programming material which is broadcast or otherwise transmitted in exchange for remuneration, and which is intended: to promote any service, facility, or product offered by any person who is engaged in such offering for profit; to express the views of any person with respect to any matter of public importance or interest except where prohibited by law.

"Agency" means the National Telecommunications and Information Administration of the U.S. Department of Commerce.

"Commission" means the Federal Communications Commission.

"Construction" (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

"de novo" means anew, afresh, or for a second time.

"Federal interest period" means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the completion date of the project.

"Nonbroadcast" means a system for the distribution of electronic signals by a means other than broadcasting. Examples of nonbroadcast are ITFS, SCA, teletext, and cable.

"Noncommercial educational broadcast station" or a "public broadcast station" means a television or radio broadcast station which is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial programs.

"Noncommercial telecommunications entity" means any enterprise which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and which has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

"Nonprofit" (as applied to any foundation, corporation, institution or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Operational cost" means those approved costs incurred in the operation of an entity or station such as overhead, labor, material, contracted services and including capital outlay and debt service.

"Preoperational expenses" means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing public telecommunications facilities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

"PTFP" means the Public Telecommunications Facilities Program.

"PTFP Director" means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

"Public telecommunications entity" means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunications services to the public.

"Public telecommunications facilities" means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to, studio equipment, cameras, microphones, audio and video storage or reproduction equipment, signal processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving

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equipment, cable television equipment, optical fiber communications equipment and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

"Public telecommunications services" means noncommercial instructional, community service, public service, public affairs, educational and cultural radio and television programs, that may be transmitted by means of electronic communications by a public telecommunications entity.

"State" includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"System of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Who can get a PTFP grant and what can they use it for?

(a) Eligibility of applicants—In order to apply for and receive a PTFP grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes;

(5) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious to plan for the provision of public telecommunications services;

(6) A state or local government or agency or a political or special purpose subdivision of a state.

(b) Eligibility of projects—An applicant which is eligible under paragraph (a) of this section, may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities into areas currently receiving public telecommunications services;

(4) The development of public telecommunications facilities owned by, operated by, or available to minorities and women;

(5) The improvement of the capabilities of existing public broadcast stations to provide public telecommunications services.

(c) In addition any applicant, whose proposal requires an authorization from the Commission, must be eligible to receive such authorization.

(d)(1) If a prospective applicant is unsure whether it is eligible to receive a PTFP grant or whether its proposed project is eligible for PTFP funding, the prospective applicant may seek a determination from the Agency at any time, except during the period between the closing date for the filing of applications and the publication by the Agency of the list of applications which the Agency has accepted for filing.

(2)(i) To obtain an eligibility determination from the Agency, a prospective applicant must send a letter requesting an eligibility determination to the PTFP Director, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(ii) In this letter the prospective applicant must:

(A) Describe the proposed project;

(B) Include a copy of the organization's articles of incorporation and by-laws, or other similar documentation, which specifies the nature and powers of the prospective applicant; and

(C) If the prospective applicant is a nonprofit foundation, corporation, institution, or association, provide a copy of a letter from the Internal Revenue Service granting the prospective applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or similar documentation.

(3) A favorable eligibility determination does not guarantee that the Agency will accept an application for filing or award a grant.

(4) An applicant may appeal an unfavorable eligibility determination to the Administrator under § 2301.13.

§ 2301.5 How do I file an application?

(a) *New applications.* To apply for a PTFP grant an applicant must file a *timely* and *complete* application. A prospective applicant may obtain an approved Agency application form from the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(1) To file a *timely* application an applicant must file an application on or before the closing date set for the filing of applications by the Administrator under § 2301.10 of the rules. The application must:

(i) Be addressed to the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230;

(ii) All applications, whether mailed or hand delivered must be received in the Department of Commerce directed to PTFP, Room 4625, no later than 5:00 p.m. on the closing date.

(2) To file a *complete* application, the applicant must submit an original and one copy of the Agency application form with the signature of an officer of the applicant, who is legally authorized to sign for the applicant with the assurances and other information described below:

(i) Assurances—

(A) The applicant is an eligible entity as described in § 2301.4(a) of the rules;

(B) The facilities to be acquired and installed under the project will be owned or leased (as consistent with § 2301.24) by the applicant;

(C) The applicant will control the operation of, and maintain, any public telecommunications facilities obtained with PTFP funds during the period of Federal interest;

(D) The applicant will have when needed the necessary funds to construct any public telecommunications facilities for which the Agency has granted matching funds;

(E) The applicant will have the funds necessary to operate and maintain those facilities once constructed;

(F) The applicant will use PTFP funded facilities and any monies generated through the use of PTFP funded facilities primarily for public telecommunications purposes;

(G) The applicant will not use or allow the use of any PTFP funded facilities for other than public telecommunications purposes when such uses would interfere with the use of the facilities for the provision of public telecommunications services;

(H) The applicant has participated (or, in the case of a planning grant, will participate) in comprehensive planning for such public telecommunications facilities, including community involvement, an evaluation of alternate technologies and coordination with state telecommunications agencies, if any;

(I) The applicant has taken into account all non-Federal financial sources available for the project and the non-Federal share stated by the applicant as being available for use in the project is the maximum amount available from such sources;

(J) The applicant will make the most economical and efficient use of the grant;

(K) The applicant will hold appropriate title or lease to the site on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect, and remove such apparatus, sufficient to assure the continuity of operation for a period of ten (10) years following the completion of the project;

(L) During the period in which the applicant possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the applicant may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian;

(M) The applicant will maintain insurance to protect the Federal investment from perils for the 10-year term of the Federal investment subject to § 2301.29(b)(7);

(N) The applicant will abide by the current reporting requirements of § 2301.27 as amended:

(ii) Other information—

(A) A brief narrative statement (of not more than four (4) pages) describing the proposed project with particular attention to the funding criteria;

(B) A copy of the applicant's articles of incorporation, by-laws, board of directors, and other similar documentation specifying the nature and powers of the applicant;

(C) If the applicant is a nonprofit foundation, corporation, institution, or association, a copy of a letter from the Internal Revenue Service granting the applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code; or other legal documentation of nonprofit status;

(D) A copy of any environmental impact statement or other environmental assessment document prepared in connection with the proposed projects as may be required by any Federal, state, or local law or regulation;

(E) If the application is for a construction project, a five (5) year plan outlining the applicant's projected facilities requirements and the projected costs of those facilities;

(F) If the application is for a construction project, information relating to the applicant's evaluation of alternate technologies available in the service area and the extent to which there is no duplication of services;

(G) An inventory of all public telecommunications facilities (if any) with manufacturers model number, production year, and the date of acquisition of the equipment which is currently owned by the applicant;

(H) If special consideration is requested under section 392(f) of the Act, information detailing the basis for the request on the form provided by the Agency;

(I) A statement by the applicant certifying that the applicant has served copies of its application on each of the entities required under § 2301.8 of this part with a copy of the letters transmitting the application to the entities served;

(J) A statement by the applicant certifying that the applicant is causing to be published in a newspaper of general circulation in the community to be served the notice required in § 2301.9 of the rules and two copies of the notice as it is to appear in the newspaper with notations of the dates on which the notice is to be or has been published;

(K) An opinion letter from the applicant's attorney stating that the applicant will have fee simple title or a long-term lease (e.g., a ten-year lease) or an option to obtain same to any real or personal property necessary for the installation of major fixed equipment (such as a broadcast transmitter or tower);

(L) Meaningful documentation, including as necessary the proper FCC authorization cited in §§ 2301.8 and 2301.11, supporting the applicant's request for equipment to render the proposed service. If applicable in certain cases where equipment is requested, documentation indicating excessive downtime or high incident of repair;

(M) A full and detailed explanation of any discrimination complaints filed against it before any governmental agency.

(b) *Deferred applicant.* (1) An applicant may reactivate an application deferred by the Agency during the prior year under § 2301.19, if the applicant has not substantially changed the stated purpose of the application.

(2) To reactivate a deferred application, the applicant must file a written request with the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, D.C. 20230. The request must be *timely* and *complete.* In addition, all deferred applications will be subject to § 2301.4 eligibility determination de novo.

(i) To file a *timely* request, an applicant must file the request on or before the date established as the closing date for the filing of applications under § 2301.10 of the rules. The request must:

(A) Be addressed to the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, D.C. 20230;

(B) All reactivated applications, whether mailed or hand delivered, must be received no later than 5:00 p.m. of the closing date.

(ii) To file a *complete* request, the applicant must submit an original and one copy of the following:

(A) Sections I, II, III, and IV of Part I of the approved Agency application form with the original signature of an officer of the applicant, who is legally authorized to sign for the applicant, a notation of the file number of the earlier application and the current filing date of the amendment;

(B) A brief narrative statement (not more than four (4) pages) describing the proposed project, submitted on the current application form;

(C) An update of availability of operating funds and the necessary non-Federal share of the project;

(D) A revised listing of current eligible project costs, if necessary;

(E) A revised inventory of all public telecommunications facilities currently owned by the applicant (applicants having previously submitted an inventory need only submit updated information);

(F) If the application is for a construction project, a revised five (5) year plan outlining the applicant's projected facilities requirements, and the projected costs of such facilities (applicants having previously submitted a five (5) year plan may submit amendments, which update the plan and do so as not to include the current year);

(G) Current information relating to the applicant's evaluation of alternate technologies available in the service area and the extent to which there is duplication of services;

(H) If special consideration is requested under 47 U.S.C. 293(f) of the Act, current information detailing the basis for the request on the form provided by the Agency;

(I) A statement by the applicant certifying that the applicant has served copies of its reactivated application on each of the entities required under § 2301.8 of this part with a copy of the letters transmitting the application to the entities served;

(J) A statement by the applicant certifying that the applicant is causing to be published in a newspaper of general circulation in the community to be served the notice required in § 2301.9 of the rules and two copies of the notice as it is to appear in the newspaper with notations of the dates on which the notice is to be or has been published;

(K) A full and detailed explanation of any descrimination complaints filed against it before any governmental agency.

(c) *Additional information*—(1) The Agency may request from the applicant any additional information which the Agency deems necessary or pertinent.

(2) Applicants must promptly provide any additional information which the Agency requests as being necessary or pertinent.

(Approved by the Office of Management and Budget under OMB Control No. 0660–0003)

§ 2301.6 What happens if my application is incomplete or untimely?

(a) *Incomplete applications.* The Agency will return any application which it has found to be incomplete.

(b) *Untimely applications.* The Agency will return any application, substantial amendment to an application or request to reactivate a deferred application which is filed after the closing date.

(c) Applicants, whose applications the Agency returns as being incomplete, may appeal the action to the Administrator under § 2301.13. Applicants, whose applications the Agency returns as being untimely, may not appeal the Agency's action.

§ 2301.7 What if I want to change some of the information in my application?

(a) An applicant, which has filed a *timely* and *complete* application (or request seeking renewed consideration of a deferred application) which results in minor deficiencies may submit minor changes to its application or submit additional information at any time up to 45 calendar days after the closing date for the filing of applications.

(b) To make minor changes to its application, an applicant must submit an original and one copy of the following to the address specified in § 2301.5(a)(1) of this part:

(1) A letter describing in detail the information or documentation which the applicant is making to its application;

(2) Any new material or altered material;

(3) A certification that it has filed a copy of the notice on each of the entities requred under § 2301.8.

(c) Applicants may not submit substantial amendments to their applications (amendments which substantially change the nature or scope of the proposed project) after the closing date.

(d) Applicants which have deferred applications on file with the Agency and submit substantial amendments to their deferred applications will be considered as a new application and must comply with § 2301.5.

§ 2301.8 Service of applications.

On or before the closing date, an applicant which files an application, or an applicant seeking renewed consideration of a deferred application, or a substantial amendment to an application with the PTFP, must serve a copy of its application, request, or substantial amendment and any subsequent amendment(s) of the application on:

(a) The state or local agency (if any) having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state and the community to be served by the proposed projects;

(b) In the case of an application for a construction grant for which Commission authorization is necessary, the Secretary, Federal Communications Commission, Washington, DC 20554;

(c) The state telecommunications agency (if any) in the state in which the channel associated with the project is assigned by the Commission, if the channel in question is assigned jointly to communities in different states, the state agency (if any) in each of the states concerned;

(d) The state telecommunications agency (if any) in any state, any part of which is located within the service area of the proposed facility;

(e) The state office established to review applications under Executive Order 12372, if the state has established such an office and wishes to review these applications.

§ 2301.9 Publication of filing.

On or before the closing date, all applicants must cause to be published in a newspaper of general circulation in the community(ies) to be served, a notice that it has filed an application.

(a) The notice must contain:

(1) The name of the applicant;

(2) The address of the applicant's office where a copy of the application is available to the public;

(3) A brief description of the proposed project; and

(4) The address to which commenting parties should send their comments: Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution, NW., Room 4625, Washington, DC 20230.

(b) The notice must be published once a week for two consecutive weeks.

(c) The applicant must submit two copies of the notice as it is to appear or has appeared in the newspaper to the Agency (at the address provided in paragraph (a)(4) of this section) with notations of the dates of publication.

§ 2301.10 Closing date.

The Administrator shall select and publish in the **Federal Register** a date by which applications for funding in a current fiscal year are to be filed.

§ 2301.11 Federal Communications Commission authorization.

(a) Each applicant whose project requires Commission authorization must file an application for that authorization on or before the closing date for filing of PTFP applications. We recommend submission of applications to the Commission 60 days prior to the PTFP closing date. Such applications should be clearly marked to identify them as a PTFP applicant.

(b) Any Commission authorization required for the project must be in the name of the applicant for the PTFP grant.

(c) If the project is to be associated with an existing station, Commission operating authority for that station must be current and valid.

(d) For any project requiring a new authorization or authorizations from the Commission, the applicant must file with the Agency a copy of each Commission application and any amendments thereto.

(e) If the applicant fails to file the required Commission application or applications by the closing date established pursuant to § 2301.10 of these rules, or if the Commission returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may return the application for Federal financial assistance to the applicant.

(f) No grant will be awarded until confirmation has been received from the Commission that any necessary authorization will be issued.

§ 2301.12 What happens after I file an application?

After the closing date, the Agency will examine each application for timeliness, completeness, eligibility, and Commission authorization.

(a) If the Agency finds that an application is untimely or incomplete, it will return the application to the applicant and inform the applicant that its application was untimely or incomplete and will not be considered during the present cycle.

(b) If the Agency identifies minor deficiencies, it will notify the applicant and hold the application for 45 calendar days after the closing date to allow the applicant time to correct these deficiencies. If, after this time, the application is still deficient, the Agency will return the application to the applicant and inform the applicant that its application was deficient and will not be considered during the present cycle.

(c) When the Agency finds that either the applicant or the project is ineligible, it will return the application to the applicant and inform the applicant that it or its proposed project is ineligible.

(d) If the Agency finds that a proposed project requires authorization from the Commission and that the applicant did not tender its application for Commission authorization, the Agency will return the application. In returning an application under this paragraph, the Agency will inform the applicant that the Agency cannot consider that applicant's application for a grant during the present grant cycle, because the applicant did not file an application for authority with the Commission.

(e) The Agency will publish a notice in the **Federal Register** listing all applications accepted for filing. Acceptance of an application for filing does not preclude subsequent return or disapproval of an application, nor does it assure that any particular application will be funded. It merely qualifies that application to compete for funding with other applications accepted for filing.

§ 2301.13 Do I have a right to appeal?

(a) Within 15 calendar days after the date on which the Agency sends a written notice to an applicant denying the eligibility of the applicant or the applicant's project, or notifying an applicant that its application is incomplete, the applicant may file a written notice of appeal with the Administrator. The notice of appeal must contain a statement by the applicant showing its basis for appealing the Agency's action—i.e., showing that the denial of eligibility or determination of incompleteness is factually or legally incorrect. (If the applicant relies on any written documents or other materials to refute the Agency's action, the applicant should list each item and attach a copy of each item or indicate that the Agency has a copy of the item in its possession.)

(b) Upon receipt of the notice of appeal, the Administrator will review the appeal in consultation with the Chief Counsel and the PTFP Director and will render a decision within 30 calendar days.

(c) If the Administrator sustains the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant.

(d) All decisions of the Administrator made under paragraph (b) of this section are final.

§ 2301.14 Can members of the public comment on applications?

(a) Any interested party may file comments with the Agency supporting or opposing an application setting forth the grounds for support or opposition, and a certification that a copy of the comments have been mailed (or otherwise provided) to the applicant. Persons commenting on applications must send their comments to: Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(b) Persons filing comments on applications must do so:

(1) After the applicant files its application with the PTFP; and

(2) Within 15 calendar days after the Agency publishes a notice of acceptance of applications in the **Federal Register**.

(c) Within 30 calendar days after the Agency publishes a notice of acceptance of applications in the **Federal Register**, an applicant may file a reply to any comments opposing its application.

(d) The time periods referred to in paragraphs (a) and (b) of this section may be extended by the Director if good cause is shown.

§ 2301.15 What does the Agency do with these comments?

(a) The Agency will incorporate all comments from the public and any replies to those comments from an applicant in the official application file.

(b) An applicant or an objecting party may not appeal to the Administrator the determination of the Agency to grant or not grant a particular application.

§ 2301.16 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult with:

(a) The Commission, with respect to functions which are of interest to or affect functions of the Commission;

(b) The Corporation for Public Broadcasting, public broadcasting agencies, organizations, other agencies, and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act; the state office established to review applications under Executive Order 12372, if the state has established such an office and wishes to review these applications.

§ 2301.17 Funding criteria for construction applications.

In determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5;

(b) The program purposes set forth in § 2301.20 as well as the specific program priorities set forth in the Appendix of these Rules;

(c) The adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area; and the availability of necessary funds for capital expenditures;

(d) The extent to which non-Federal funds will be used to meet the total cost of the project;

(e) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(ies) to be served by the proposed public telecommunications service;

(2) Evaluated alternate technologies, the bases upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available;

(3) Provided meaningful documentation of applicant's equipment requirements;

(4) Provided meaningful documentation of community support for the service to be provided (such as letters from key elected/appointed policy-making officials, from agencies for whom the applicant producers or will produce programs or other materials);

(f) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned (or controlled) by minorities and women;

(g) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(h) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(i) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(j) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(k) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any;

(l) The extent to which the applicant's proposed five (5) year facilities plan required by section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations;

(m) The readiness of the Commission to grant any necessary authorization.

(n) The urgency for funding based on justification of needs.

§ 2301.18 Funding criteria for planning applications.

In determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in § 2301.5;

(b) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(c) The qualifications of the proposed planner to provide a public telecommunications facilities plan;

(d) The extent to which the planning project's proposed procedural design assures that the applicant would obtain adequate:

(1) Financial, human and support resources necessary to conduct the plan,

(2) Coordination with other telecommunications entities at the local, state, regional and national levels,

(3) Evaluation of alternate technologies and existing services, and

(4) Participation by the public to be served (and by minorities and women in particular) in the planning of the project;

(e) The extent to which the applicant has engaged in pre-planning studies to determine the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary for the project);

(f) The extent to which the proposed procedure and timetable are feasible and can achieve the expected results.

§ 2301.19 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments and replies filed by interested parties and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration pursuant to § 2301.5; or

(3) Return the application to the applicant with a notice of the grounds and reasons.

(b) Upon the Agency's approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each state educational television radio or telecommunications agency, if any, in any state, any part of which lies within the service area of the applicant's facility;

(3) The Commission; and

(4) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

(c) If the Agency awards a grant, the grant award document will include grant terms and conditions set forth in Subpart D of the rules and whatever other provisions are required by Federal law or regulations, or may be deemed necessary or desirable for the achievement of the purposes of the program.

Subpart C—Program Purposes and Special Consideration

§ 2301.20 Program purposes.

(a) The following criteria, listed in order of priority, shall govern the Agency's determination to fund an application and the amount of the grant awarded:

(1) Whether the application will provide new public telecommunications facilities to extend service to areas not currently receiving such services.

(2) Whether the application will result in the expansion of the service areas of existing public telecommunications entities.

(3) Whether the application will result in the improvement of the capabilities of existing public broadcasting stations or new public broadcasting stations to provide public telecommunications services.

(b) Notwithstanding the purposes among applications listed in paragraph (a) of this section, the Agency may utilize appropriated funds to award grants to applicants who are otherwise eligible for funding, but do not fall within any of the purposes listed in paragraph (a) of this section. Grants made pursuant to this paragraph must fulfill the overall objectives of the Act.

§ 2301.21 Special consideration.

In assessing applications, the Agency will give special consideration to applications which foster ownership/control of, operation of, and participation in public telecommunications entities by minorities and women. NTIA interprets the words "ownership" and "owned" as meaning "control" of an entity "through the possession or exercises of the normal incidents of ownership, participation of the governing board, holding of corporate offices, etc.," and to accord special consideration only where women and/or minorities are either in legal (i.e., more than fifty percent) or actual control of the entity. We will consider the applicant's reported composition of its governing body and the individuals who hold management-level and policymaking positions. The percentage of ownership/control, operation, and participation must be denoted on the Agency's special consideration exhibit form.

Subpart D—Federal Financial Participation

§ 2301.22 Amount of the Federal grant.

(a) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the grant award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) *Construction grants.* (1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the grant award document, except that such amount shall not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching

requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(c) If the actual costs incurred in completing the planning or construction project are less than the estimated project costs, which were the basis for the Agency's determination of the initial grant award, the Agency shall reduce the amount of the final grant award so that the final grant award bears the same ratio to the actual cost of the project as the initial grant award bore to the estimated total project costs. In no case will the final grant award exceed the initial grant award.

(d) Project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the effective closing date.

(e) NTIA will specify the effective date of the acceptance for filing in the **Federal Register** notice required under § 2301.12 of the rules.

§ 2301.23 Payment of the Federal grant.

(a) The Agency will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this part. Additionally, with regard to a public telecommunications entity requiring Commission authorization, the Agency will not make any payment until it receives confirmation from the Commission that the Commission has granted any necessary authorization.

(b) After the conditions indicated in paragraph (a) of this section have been satisfied, the Agency will make payment to the grantee in such installments consistent with the percentage of project completion, as the Agency may determine. (As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.)

(c) When an applicant completes a construction protect, the Agency will assign a completion data which the Agency will use to calculate the termination date of the Federal interest period. (The completion date will be the date on which the grantee certifies in writing that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.28. If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.)

§ 2301.24 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under tha Act:

(a) *Equipment and supplies:* (1) Vehicles, including those in which mobile equipment is mounted or carried;

(2) Broadcast receiving equipment such as television receivers FM receivers, (except as required by good engineering practices for monitoring the origination or off-air transmission of signals, including vertical interval or subcarrier receivers and decoders for handicap and/or telemetry use, or satellite receivers);

(3) Modifying or strengthening the applicant's tower to accommodate antennas of commercial entities, however strengthening or modifying a commercial entity's tower to accommodate a public broadcasting entity is acceptable;

(4) Equipment for motion picture or still photography or processing, including sound synchronization;

(5) Manual film or tape editing equipment, film, recording tape, reels, cartridge tapes, tape or record cleaning equipment;

(6) Scenery and props, art and graphics supplies and equipment;

(7) Sound insulation devices, cycloramas, draperies, studio clocks and systems, blackboards, office intercoms, telephones and telephone systems, furniture, and the like, excepting consoles required to mount equipment such as audio consoles and video switchers;

(8) Production devices such as prompting systems, timers, on-air lights, background projection systems, sound effects, and the like;

(9) Office equipment, printing and duplication supplies; except for those leased for planning projects under section 392(c) of the Act;

(10) Maintenance equipment such as hand and power tools, storage cabinets and maintenance services and supplies;

(11) Air conditioning for control or equipment rooms, studios, transmitter buildings, mobile units and other operational rooms and offices (except that the cost to provide ventilation of eligible project apparatus as required by good engineering practice and documented in the application is an eligible installation cost);

(12) Equipment and costs involved to provide primary power to the facility up to the output of the main power panel, including transformers, regulators (except those required by good engineering practice to stabilize transmitter RF output), primary power generators and related equipment (except where primary power is not available or it can be documented as being unusable for broadcast);

(13) Expendable items, including spare recording heads, spare lenses, spare circuit components, alignment tapes and other kits normally considered spares except for transmitters spare parts kits and tubes;

(14) Redundant equipment such as spare transmitters or costs associated with same, back-up microwave equipment except for the main studio to transmitter link as required by good engineering practice, auto-logging equipment for remote control interfacing and terminals associated with same;

(15) Such other equipment and supplies as the Agency may determine prior to the award of a grant.

(b) *Other expenses:* (1) Buildings and modifications to buildings to house eligible equipment and fences surrounding them are not themselves eligible for funding under this program, except that small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities are eligible for funding;

(2) Land and land improvements;

(3) Salaries of personnel employed by an operating public telecommunications entity and other operational costs, except for planning projects under section 392(c) of the Act, and for construction-related activities as defined in section 397(l) of the Act and § 2301.3 of the rules;

(4) Moving costs required by relocation;

(5) Such other expenses as the Agency may determine prior to the award of a grant.

Subpart E—Accountability for Federal Funds

§ 2301.25 Retention of records.

(a) Each recipient of assistance under this program shall keep intact and accessible the following records:

(1) A complete and itemized inventory of all public telecommunications facilities under the control of the grantee, whether or not financed, in whole or in part, with Federal funds;

(2) Complete, current and accessible financial records which fully disclose the total amount of the project; the amount of the grant; the disposition of the grant proceeds; and the amount, nature and source of non-Federal funds associated with the project.

(3) All records specified in Office of Management and Budget Circulars A-102 (for State and local governments) and A-110 (educational institutions, hospitals and nonprofit organizations).

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records.

§ 2301.26 Copies of planning studies; Final certification of construction projects.

(a) Upon completion of a planning project, the grantee must promptly provide to the Administrator two copies of any study conducted in whole or in part with funds provided under this program by sending the copies to the Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(b) Upon completion of a construction project, the grantee must:

(1) Certify that the grantee has completed the acquisition and installation of the project equipment in accordance with the project as approved by the Agency and has complied with all terms and conditions of the grant as specified in § 2301.5;

(2) Certify that the grantee has obtained any necessary Commission authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same.

(3) Certify that the facilities have been acquired, are in operating order and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency and document same; and

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty and provide the Agency with a copy of their insurance policy.

(Approved by the Office of Management and Budget under OMB Control No. 0660-0001)

§ 2301.27 Annual status report for construction projects.

For construction projects, the grantee must file with the Agency during the ten (10) year period commencing with the date of completion of a project, an annual status report on or before each April 1 following completion of the project. In the annual report, the grantee must:

(a) Specifically address the conditions attached to the grant as specified in § 2301.28;

(b) Report any changes from the date of completion of the project or date of previous annual report in the manner of compliance with § 2301.28;

(c) Certify that the grantee continues to meet the conditions attached to the grant as specified in § 2301.28.

(Approved by the Office of Management and Budget under OMB Control No. 0660-0001)

Subpart F—Control and Use of Facilities

§ 2301.28 What conditions are attached to the Federal grant?

When an applicant is awarded a Federal grant under the PTFP, the applicant (now the grantee) takes the grant subject to certain conditions concerning the use of the Federal monies and the equipment obtained with those monies. These conditions are:

(a) In order to assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the period of Federal interest, all grantees shall:

(1) Execute and record a document establishing that the Federal government has a priority lien on any facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located.

(2) A certified copy of the recorded lien shall be filed with the Administrator ninety days after the grant award is received.

(3) The continuing period of Federal interest shall be no less than 10 years from the date of completion of the project.

(b) During the construction of a project and the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.4 above;

(2) Obtain and continue to hold any necessary Commission authorization(s);

(3) Use the Federal grant funds for which the grant was made and for the items of apparatus and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the Agency in writing;

(4) Use the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public of any advertisement, except as permitted by law or as authorized by the Commission;

(6) Hold appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate, inspect and remove such apparatus, sufficient to assure continuity of operation of the facility;

(7) Maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project, if they receive express written approval for this different policy from the Director. In addition, each grantee must send a copy of their current insurance coverage with each Annual Report;

(8) Within 30 calendar days of the award date, the recipient shall submit, in triplicate to the Public Telecommunications Facilities Program, a construction schedule or a revised planning timetable which will include the information requested in the grant terms and conditions in the award package;

(9) Comply with the provision of the Office of Management and Budget Circulars A-102 (for state and local governments) and A-110 (for institutions of higher education, hospitals and other nonprofit organizations) for the procurement of equipment and services funded in whole or in part with Federal monies;

(10) Interest earned on advances of Federal funds shall be remitted to the Agency except for interest earned on advances of states or instrumentalities of a state as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Pub. L. 93-638);

(11) In advertising for bids for the purchase of apparatus, the grantee shall state the Federal Government has an interest in facilities purchased with Federal funds under this program which begins with the purchase of the facilities and continues for ten (10) years after the completion of the project;

(12) In complying with the financial and performance reporting requirements of Attachments H and I of Office of Management and Budget Circular A-110 and the grant terms and conditions, the

grantee shall submit performance reports and the required financial reports on a calendar year quarterly basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof. Reports are due no later than 30 days following the end of each reporting period;

(13) Promptly complete the project and place the public telecommunications facility into operation;

(14) Permit inspections during normal working hours by the Agency and the Comptroller General of the United States or their duly authorized representatives, of the public telecommunications facilities acquired with Federal financial assistance or of any books, documents, papers, and records relating to those facilities;

(15) Ensure that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination under any program or activity for which the applicant receives funding under this Act (Title VI of the Civil Rights Act of 1964 as implemented by Department regulations 15 CFR Subtitle A, Part 8);

(16) Ensure that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subject to discrimination under any educational program or activity for which the applicant receives funding under the Act (Title IX of the Education Amendment of 1972, as amended);

(17) Ensure that no otherwise qualified individual shall, solely by reason of handicap, be excluded from the participation in, be denied the benefits of or be subjected to discrimination under any program or activity for which the applicant receives funding under this Act (section 504 of the Rehabilitation Act of 1973, as amended);

(18) The Agnecy will allow the acquisition of facilities by lease; however, there are several provisions which must be followed:

(i) The lease must be for a term of years not greater than the useful life of the equipment.

(ii) The cost of the lease must not be more than the total of the non-Federal share of the matching funds.

(iii) The actual amount of the lease must not be more than the outright purchase price would be.

(iv) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal Government through the Agency has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(19) During the period in which the grantee possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian.

§ 2301.29 Nondiscrimination; Rules incorporated by reference.

(a) The Agency shall enforce Title VI of the Civil Rights Act of 1964, as implemented by Department regulations, 15 CFR Subtitle A, Part 8, which is hereby incorporated in this part by reference.

(b) The Agency shall enforce Title IX of the Education Amendments of 1972, as amended. Department implementing regulations have not yet been adopted, but will be incorporated by reference in this part upon their adoption.

(c) The Agency shall enforce section 504 of the Rehabilitation Act of 1973, as amended. Department implementing regulations have been proposed, 43 FR 53765, published November 17, 1978. Final regulations will be incorporated by reference in this part.

(d) The Agency shall enforce the Age Discrimination Act of 1975, as amended. Department implementing regulations have not yet been adopted, but will be incorporated by reference upon their adoption.

§ 2301.30 How can a grant be terminated?

(a) *Termination for cause.* If a grantee fails to meet any condition attached to the grant, as specified in § 2301.28 of this Part, the Agency may take any appropriate action including, but not limited to:

(1) Suspending a particular grant and withholding further payments under that grant, pending corrective action by the grantee;

(2) Prohibiting a grantee from incurring additional obligations of funds, pending corrective action by the grantee;

(3) Where the grantee cannot (or will not) comply with the condition (or conditions) attached to a particular grant, terminating the grant and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grant bore to the project;

(4) Where the condition (or conditions) is also attached to other grants which the grantee has received from the Agency, suspending payments under all these other grants;

(5) Where the condition (or conditions) is also attached to other grants which the grantee has received from the Agency, terminating all these other grants and requiring the grantee to repay the Federal Government an amount bearing the same ratio to the fair market value of the facilities at the time of termination as the Federal grants bore to the projects for which they were granted.

(b) *Termination for convenience.* When the Agency and the grantee agree that the continuation of the project would not produce beneficial results commensurate with the expenditure of further Federal funds, the parties may terminate the grant, in whole or in part, with all the conditions and on an effective date to which the parties have mutually agreed in writing.

(c) *Termination by transfer.* When the Agency and grantee agree in writing the grant may be terminated by transferring the Federal interest in PTFP funded equipment to other eligible equipment presently owned or to be purchased by a grantee with non-Federal monies.

(1) Equipment previously funded by PTFP which is within the Federal interest period, may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(2) Equipment is not transferrable until after the third anniversary of the PTFP certified date of completion of the funded project.

(3) The same item can be used only once to substitute for the Federal interest; however, it may be used to cover equipment transferred from one or more grants if the request for each is submitted at the same time.

(4) A lien on equipment transferred to the Federal interest must be recorded in accordance with 15 CFR 2301.28 of the PTFP Regulations. A copy of the lien document must be filed with the PTFP within 60 days of the date of approval of the transfer of Federal interest.

(5) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in that equipment must be at least equal to the Federal interest in the original equipment.

(d) *Termination by buy-out.* A grantee may terminate the PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

(e) Procedures for transfer or buy-out—

(1) Grantees requesting a transfer or buy-out of PTFP funded equipment must submit such requests on a form provided by the Agency. (OMB Control No. 0660-0003)

(2) In either case, the amount of the Federal interest must be determined by

negotiation between PTFP and the grantee and agreed upon by the Director.

§ 2301.31 Equipment.

All equipment, which a grantee acquires under this program, shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment which is compatible with broadcast equipment wherever the two types of apparatus interface.

§ 2301.32 Waiver.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act.

Appendix A to Part 2301

Priority I—*Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area.* Within this category, we establish two subcategories:

A. *Projects which include local origination capacity.* This category includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects which do not include local origination capacity.* This category includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

Under priority IB, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent. (An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.)

Priority II—*Replacement of Basic Equipment of Existing Essential Broadcast Facilities.* Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast facilities which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included.) Additionally, applicants must show that the facility is the only public telecommunications facility providing a signal to a geographical area or the only facility with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential facilities. Where an applicant seeks to "improve" basic equipment in its facility (i.e., where the equipment is not "worn out"), or where the applicant is not an essential facility, NTIA would consider the applicant's project under Priority IV.

Priority III—*Establishment of First Local Origination Capacity in a Geographical Area.* Projects in this category include the planning or construction of facilities to bring the first local origination on capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility.)

Priority IV—*Replacement and Improvement of Basic Equipment for Existing Broadcast Facilities.* Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., conversions to color, stereo, etc.; improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the quipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs.)

Priority V—*Augmentation of Existing Broadcast Station Facilities.* Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or either to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases. In any fiscal year, NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals do not clearly fall within any of the listed priorities but whose application, by virtue of their unique or innovative nature, would further the overall objectives of the Act. Such projects include, among other things, the planning and construction of facilities to provide significantly different additional services for which a clear and substantial community need can be demonstrated (e.g., service to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text.)

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Part III

Department of Labor

Office of the Secretary

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29 CFR Part 20

Debt Collection Act of 1982; Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest, Penalties and Administrative Costs; Proposed Rules

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Proposed Rule; Disclosure of Information to Credit Reporting Agencies

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97-365), and other applicable authority, authorizes the Federal government to disclose to credit reporting agencies information concerning claims owed the United States by debtors. This proposed rule establishes the procedures the Department of Labor will follow in making disclosures of information on debtors to credit reporting agencies.

DATE: Comments, in duplicate, must be received on or before November 2, 1984.

ADDRESS: Send comments to: Dennis McDaniel, Office of the Solicitor, Department of Labor, Room N2428, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dennis McDaniel, telephone (202-523-7721).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) amends the Federal Claims Collection Act of 1966 to authorize the Federal government to employ various debt collection techniques commonly available to the private sector. Among these techniques are those for disclosing the names, debt information, and the addresses of individuals to consumer credit reporting agencies and use of collection agencies.

Section 3 of the Debt Collection Act, and other applicable authority, permits agencies to disclose information to credit reporting agencies. To insure against indiscriminate disclosures of consumer debt information, the Debt Collection Act places limitations on the disclosure process affecting both the timing and content of the disclosure.

This proposed rule establishes the procedures the Department of Labor will employ to disclose information on individual debtors to consumer credit reporting agencies, and commercial debtors to commercial credit reporting agencies.

Executive Order 12291

The proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Claims, Credit, Administrative practice and procedure.

Accordingly, Subtitle A of Title 29 of the Code of Federal Regulations is proposed to be amended as set forth below.

Part 20 consisting of Subpart A, at this time, is added to Title 29 Subtitle A to read as follows. Subparts B and C are added to Part 20 elsewhere in Part III of this issue.

PART 20—DEBT COLLECTION ACT OF 1982

Subpart A—Disclosure of Information to Credit Reporting Agencies

Sec.

20.1 Purpose and scope.
20.2 Definitions.
20.3 Agency responsibilities.
20.4 Determination of delinquency; notice.
20.5 Examination of records relating to the claim; opportunity for full explanation of the claim.
20.6 Opportunity for repayment.
20.7 Review of the obligation.
20.8 Disclosure to credit reporting agencies.
20.9 Waiver of credit reporting.
20.10 Responsibilities of the Assistant Secretary for Administration and Management.

Authority: Pub. L. 97-365, Oct. 25, 1982; 96 Stat. 1749; 31 U.S.C. 3711 *et seq.*

Subpart A—Disclosure of Information to Credit Reporting Agencies

§ 20.1 Purpose and scope.

The regulations in this subpart establish procedures to implement section 3 of the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3711(f). This statute, and other applicable authority, authorizes Department heads to disclose to credit reporting agencies information concerning claims owed the United States under programs administered by the Department head. This disclosure is limited to certain information and must be in accordance with procedures set forth in the Debt Collection Act and other applicable laws. This subpart specifies the agency procedures and debtor rights that will be followed in making a disclosure to a credit reporting agency.

§ 20.2 Definitions.

For purposes of this subpart—

(a) The term "commercial debt" means any non-tax business debt in excess of $100, arising from loans, loan guarantees, overpayments, fines, penalties or other causes.

(b) The term "consumer debt" means any non-tax debt of an individual in excess of $100, arising from loans, loan guarantees, overpayments, fines, penalties, or other causes.

(c) A debt is considered delinquent if it has not been paid by the date specified in the agency's initial demand letter (§ 20.4), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under payment agreement with the Department of Labor, or any agency thereof.

(d) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

§ 20.3 Agency responsibilities.

(a) As authorized by law, each Department of Labor agency may report all delinquent consumer debts to consumer credit reporting agencies and may also report all commercial debts to appropriate commercial credit reporting agencies.

(b) Information provided to a consumer credit reporting agency on delinquent consumer debts from a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, must be maintained by the Department of Labor in accordance with that Act, except as otherwise modified by law. Furthermore, no disclosure may be made until the appropriate notice of system of records has been amended in accordance with 5 U.S.C. 552a(e)(11).

(c) The Assistant Secretary for Administration and Management, or his or her designee, shall have the responsibility for obtaining satisfactory assurances from each credit reporting agency to which information will be provided, concerning compliance by the credit reporting agency with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and any other Federal law governing the provision of credit information.

(d) The information disclosed to the credit reporting agency is limited to: (1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual, (2) the amount, status, and history of the claim, and (3) the Department of Labor agency or program under which the claim arose.

(e) The agency official providing information to a credit reporting agency: (1) Shall promptly disclose to each credit reporting agency to which the original disclosure was made, any substantial change in the status or amount of the claim; and (2) shall within 30 days whenever feasible, or otherwise promptly verify or correct, as appropriate, information concerning the claim upon the request of any such credit reporting agency for verification of any or all information so disclosed.

(f) Each Department of Labor agency is responsible for ensuring the continued accuracy of calculations and records relating to its claims, and for the prompt notification to the credit reporting agency of any substantial change in the status or amount of the claim. The agencies shall promptly follow-up on any allegation made by a debtor that the records of the agency concerning a claim are in error. Agencies should respond promptly to communications from the debtor, within 30 days whenever feasible.

(g) The agency official responsible for providing information to a consumer credit reporting agency shall take reasonable action to locate the individual owing the debt prior to disclosing any information to a consumer credit reporting agency.

§ 20.4 Determination of delinquency; notice.

(a) The agency head (or designee) responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor or the consequences of failure to cooperate. In accordance with guidelines established by the Assistant Secretary for Administration and Management, a total of three progressively stronger written demands at not more than 30–day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) Prior to disclosing information to a credit reporting agency in accordance with this subpart, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the claim is valid and overdue. In cases where the debt arises under programs of two or more Department of Labor agencies, or in such other instances as the Assistant Secretary for Administration and Management or his or her designee may deem appropriate, the Assistant Secretary, or his or her designee, may determine which agency or official, shall have responsibility for carrying out the provisions of this subpart.

(c) In accordance with guidelines established by the Assistant Secretary for Administration and Management, the agency official responsible for disclosure of the debt to a consumer credit reporting agency shall send written notice to the individual debtor informing such debtor:

(1) Of the basis for the indebtedness;

(2) That the payment of the claim is overdue;

(3) That the agency intends to disclose to a consumer credit reporting agency, within not less than sixty days after sending such notice, that the individual is responsible for such claim;

(4) Of the specific information intended to be disclosed to the credit reporting agency;

(5) Of the rights of such debtor to a full explanation of the claim, to dispute any information in the records of the agency concerning the claim, and of the name of an agency employee who can provide a full explanation of the claim;

(6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and,

(7) Of the date on which or after which the information will be reported to the credit reporting agency.

(d) Where the disclosure concerns a commercial debt, the responsible agency head (or designee) shall send written notice to the commercial debtor informing such debtor of the information discussed in paragraphs (c) (1), (4), (5) and (6) of this section.

(e) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to waiver, assessment of interest, penalties and administrative costs, administrative offset, and salary offset to the extent that such inclusion is appropriate and practicable.

(f) The responsible agency head (or designee) shall exercise due care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(g) To the extent that the requirements under this section have been provided to the debtor in relation to the same debt under some other statutory or regulatory authority, the agency is not required to duplicate such efforts.

§ 20.5 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the notice specified in § 20.4, the debtor may request to examine and copy the information to be disclosed to the consumer credit reporting agency, in accordance with 5 U.S.C. 552a.

§ 20.6 Opportunity for repayment.

The Department of Labor agency responsible for collecting the claim shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the head of the agency and is in a written form signed by such debtor. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

§ 20.7 Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the responsible agency of the initial decision concerning the existence or amount of the debt.

(b) The debtor seeking review shall make the request in writing to the reviewing official or employee, not more than 15 days from the date the initial demand letter was received by the debtor. The request for review shall state the basis for challenging the initial determination. If the debtor alleges that specific information to be disclosed to a credit reporting agency is not accurate, timely, relevant or complete, such debtor shall provide information or documentation to support this allegation.

(c) The review shall ordinarily be based on written submissions and documentation by the debtor. However a reasonable opportunity for an oral hearing shall be provided an individual debtor when the responsible agency determines that (1) an applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (2) and individual debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or (3) in other situations in which the agency deems an oral hearing appropriate. Unless otherwise required by law an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the reviewing official should carefully document all significant matters discussed at the hearing.

(d) Upon receipt of a timely request for review, the agency shall suspend its schedule for disclosure of a delinquent consumer debt to a consumer credit reporting agency until such time as a final decision is made on the request.

(e) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, this notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to credit reporting agencies. The notification shall, also if appropriate, indicate any changes in the information to be disclosed to the extent such information differs from that provided in the initial notification.

(f) Nothing in this subpart shall preclude an agency, upon request of the debtor alleged by the agency to be responsible for a debt, or on its own initiative, from reviewing the obligation of such debtor, including an opportunity for reconsideration of the initial decision concerning the debt, and including the accuracy, timeliness, relevance, and completeness of the information to be disclosed to a credit reporting agency.

(g) To the extent that the requirements under this section have been provided to the debtor in relation to the same debt under some other statutory or regulatory authority, the agency is not required to duplicate such efforts.

§ 20.8 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Assistant Secretary for Administration and Managment, the responsible Department of Labor agency shall make the disclosure of information on the debtor to the credit reporting agency. Such disclosure to consumer credit reporting agencies shall be made on or after the date specified in the § 20.4 notification to the individual owing the claim, and shall be comprised of the information set forth in the initial determination, or any modification thereof.

(b) This secion shall not apply to individual debtors when—

(1) Such debtor has repaid or agreed to repay his or her obligation, and such agreement is still valid, as provided in § 20.6; or

(2) Such debtor has filed for review of the claim under § 20.7(b), and the reviewing official or employee has not issued a decision on the review.

(c) In addition, the agency may determine not to make a disclosure of information to a credit reporting agency when the agency, on its own initiative, is reviewing and has not concluded such review of its initial determination of the claim under § 20.7(f).

§ 20.9 Waiver of credit reporting.

The agency head (or designee) may waive reporting a commercial debt or delinquent consumer debt to a credit reporting agency, if otherwise appropriate and if reporting the debt would not be in the best interests of the United States.

§ 20.10 Responsibilities of the Assistant Secretary for Administration and Management.

The Assistant Secretary for Administration and Management, or his or her designee, shall provide appropriate and binding, written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Assistant Secretary shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this regulation, including the designation of credit reporting agencies authorized to receive and disseminate information under this subpart.

Signed at Washington, D.C., this 13th day of September.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-24660 Filed 9-17-84; 8:45 am]

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29 CFR Part 20

Debt Collection Act of 1982; Proposed Rule; Administrative Offset

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the Federal government to collect debts owed it by means of administrative offset. This proposed rule establishes the procedures the Department of Labor will follow in making an administrative offset.

DATES: Comments, in duplicate, must be received on or before November 2, 1984.

ADDRESS: Send comments to: Dennis McDaniel, Office of the Solicitor, Department of Labor, Room N-2428, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dennis McDaniel, telephone (202-523-7721).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) amends the Federal Claims Collection Act of 1966 to authorize the Federal government to employ various debt collection techniques commonly available to the private sector. Among these techniques are those for the administrative offset against payments to be made to a debtor by the United States on such matters as on a federal loan, contract or grant, or on an income maintenance payment, using procedures established by section 10 of the Debt Collection Act.

This proposed rule establishes the procedures the Department of Labor will employ in making an administrative offset.

Executive Order 12291

The proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Claims, Credit, Administrative practice and procedure.

Accordingly, Part 20 of Title 29 of the Code of Federal Regulations is proposed to be amended as set forth below.

Subpart B is added to read as follows:

PART 20—DEBT COLLECTION ACT OF 1982

* * * * *

Subpart B—Administrative Offset

Sec.

20.19 Purpose and scope.
20.20 Definitions.
20.21 Agency responsibilities.
20.22 Notifications.
20.23 Examination of records relating to the claim; opportunity for full explanation of the claim.
20.24 Opportunity for repayment.
20.25 Review of the obligation.
20.26 Request for waiver or administrative review.
20.27 Cooperation with other DOL agencies and federal agencies.
20.28 DOL agency or organization holding funds of the debtor.
20.29 Notice of offset.
20.30 Multiple debts.
20.31 Administrative offset against amounts payable from Civil Service Retirement and disability fund.
20.32 Liquidation of collateral.
20.33 Collection in installments.
20.34 Exclusions.
20.35 Additional administrative collection action.
20.36 Prior provision of rights with request to debt.
20.37 Responsibilities of the Assistant Secretary for Administration and Management.

Authority: Pub. L. 97–365, Oct. 25, 1982; 96 Stat. 1749; 31 U.S.C. 3711 *et seq.*

* * * * *

Subpart B—Administrative Offset

§ 20.19 Purpose and scope.

The regulations in this subpart establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. 3716(d). Among other things, this statute authorizes the head of each agency to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the government who were charged with the responsibility to discover and collect such debts. This subpart specifies the agency procedures that will be followed by the Department of Labor for an administrative offset.

§ 20.20 Definitions.

For purposes of this subpart—

(a) The term "administrative offset" means the withholding of money payable by the United States to or held by the United States on behalf of a person to satisfy a debt owed the United States by that person; and

(b) The term "person" does not include any agency of the United States, or any state or local government.

(c) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

§ 20.21 Agency responsibilities.

(a) Each Department of Labor agency which has delinquent debts owed under its program is responsible for collecting its claims by means of administrative offset, in accordance with guidelines established by the Assistant Secretary for Administration and Management.

(b) Before collecting a claim by means of administrative offset, the responsible agency must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Department's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset in every instance in which there is an available source of funds. Agencies may also consider whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Before advising the debtor that the delinquent debt will be subject to administrative offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Assistant Secretary for Administration and Management, or his or her designee, may deem appropriate, the Assistant Secretary, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Administrative offset shall be considered by agencies only after attempting to collect a claim under section 3(a) of the Federal Claims Collection Act, except that no claim under this Act that has been outstanding for more than 10-years after the Government's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

§ 20.22 Notifications.

(a) The agency head (or designee) responsible for carrying out the provisions of this subpart with respect to the debt shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In accordance with guidelines established by the Assistant Secretary for Administration and Management, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) In accordance with guidelines established by the Assistant Secretary for Administration and Management, the agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

(1) Of the nature and amount of the indebtedness;

(2) That the agency intends to collect, as appropriate, interest, penalties and administrative costs; and, in accordance with guidelines of the Assistant Secretary for Administration and Management, of the applicable standards for collecting such payments;

(3) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand-delivered);

(4) Of the agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(5) Of the debtor's entitlement to waiver, where applicable, and of the debtor's rights in conjunction with waiver;

(6) Of the debtor's opportunity to enter into a written agreement with the agency to repay the debt;

(7) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy the agency records with respect to the claim and to dispute any information in the records of the agency concerning the claim;

(8) Of the debtor's rights to administrative appeal or review with respect to the claim and how such review shall be obtained; and

(9) Of the date on which or after which an administrative offset will begin.

(c) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, salary offset, and assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(e) The agency responsible for collecting the claim shall, in the initial demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

§ 20.23 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the initial demand letter specified in § 20.22, the debtor may request to examine and copy agency records pertaining to the debt.

§ 20.24 Opportunity for repayment.

(a) The Department of Labor agency responsible for collecting the claim shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 20.25 Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the responsible agency of the determination concerning the existence or amount of the debt.

(b) The debtor seeking review shall make the request in writing to the reviewing official or employee, not more than 15 days from the date the initial demand letter was received by the debtor. The request for review shall state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall provide information or documentation to support this allegation.

(c) The review shall ordinarily be based on written submissions and documentation by the debtor. However a reasonable opportunity for an oral hearing shall be provided an individual debtor when the reponsible agency determines that (1) an applicable statue authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (2) an individual debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or (3) in other situations in which the agency deems an oral hearing appropriate. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the reviewing official should carefully document all significant matters discussed at the hearing.

(d) Agencies may effect an administrative offset against a payment to be made to a debtor prior to the completion of the due process procedures required by this subpart, if failure to take the offset would substantially prejudice the agency's ability to collect the debt; for example, if the time before the payment is to be made would not reasonably permit the completion of due process procedures. Offset prior to completion of due process procedures must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not owed to the agency should be promptly refunded.

(e) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, this notification shall inform the debtor of the scheduled date on or after which administrative offset will begin. The notification shall also, if appropriate, indicate any changes in the information to the extent such information differs from that provided in the initial notification under § 20.22.

(f) Nothing in this subpart shall preclude an agency, upon request of the debtor alleged by the agency to be responsible for a debt, or on its own initiative, from reviewing the obligation of such debtor, including an opportunity for reconsideration of the determination concerning the debt, and including the accuracy, timeliness, relevance, and completeness of the information on which the debt is based.

§ 20.26 Request for waiver or administrative review.

(a) If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano* v. *Yamasaki,* 442 U.S. 682 (1979)), then collection action must be suspended until either (1) the agency has considered the request for waiver/review, or (2) the applicable time limit for making the waiver/review request, as prescribed in the agency's regulations, has expired and the debtor, upon proper notice, has not made such a request.

(b) If the applicable waiver/review statute is "permissive," that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/review request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(1) There is a reasonable possibility that waiver will be granted, or that the debt (in whole or in part) will be found not owing from the debtor;

(2) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(3) Collection of the debt will cause undue hardship.

(c) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request in the event the agency acts favorably on it, collection action should ordinarily be suspended, without regard to the factors specified in paragraph (b) of this section, unless it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection.

§ 20.27 Cooperation with other DOL agencies and federal agencies.

(a) Appropriate use should be made of the cooperative efforts of other DOL agencies and Federal agencies in effecting collection by administrative offset. Generally, agencies should comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States, unless the requesting agency has not complied with the applicable regulations or the request would otherwise be contrary to law or the best interests of the United States.

(b) Unless otherwise prohibited by law, a DOL agency may request that monies due and payable to a debtor by another DOL agency or a Federal agency outside the Department be administratively offset in order to collect debts owed the creditor DOL agency by the debtor. In requesting an administrative offset, the creditor DOL agency must provide the DOL agency or other Federal agency holding funds of the debtor with written certification stating (1) that the debtor owes the creditor agency a debt (including the amount of debt); and (2) that the creditor agency has complied with the applicable Federal Claims Collection Standards, including any hearing or review.

§ 20.28 DOL Agency as organization holding funds of the debtor.

(a) Whenever a DOL agency is holding funds of a debtor from which administrative offset is sought by another DOL agency or other Federal agency, the DOL agency holding funds should not initiate the requested offset until it has been provided by the creditor organization with an appropriate written certification that the debtor owes a debt (including the amount) and that applicable provisions of the Federal Claims Collection Standards have been fully complied with.

(b) Moreover, the DOL agency holding funds of the debtor should determine whether collection by offset would be in the best interests of the United States; for example, is the debtor is a contractor for the DOL agency holding funds, whether administrative offset would impair the contractor's ability to perform under the terms of the contract. The creditor organization should be notified promptly of the determination.

§ 20.29 Notice of offset.

Priro to effecting an administrative offset, the agency holding funds of a debtor should advise the debtor of the impending offset. This notice should state that the debtor has been provided his/her rights under the Federal Claims Collection Standards, that a determination has been made that collection by administrative offset would be in the best interests of the United States, the amount of the offset, and the source of funds from which the offset will be made.

§ 20.30 Multiple debts.

When collecting multiple debts by administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 20.31 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, agencies may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, an agency shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The requesting agency has complied with all applicable statutes,

regulations, and procedures of the Office of Personnel Management; and

(3) The requesting agency has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards, including any required hearing or review.

(c) Once an agency decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable due process procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) In accordance with procedures established by the Office of Personnel Management, agencies may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

(e) If the requesting agency collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the agency shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

§ 20.32 Liquidation of collateral.

An agency holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. The agency should provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 20.33 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Agencies should obtain and may require financial statements from debtors who represent that they are unable to pay the debt in one lump sum. Agencies which agree to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA-70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, agencies should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 20.34 Exclusions.

(a) Agencies are not authorized by section 10 of the Debt Collection Act of 1982 (31 U.S.C. 3716) to use administrative offset with respect to (1) debts owed by any State or local Government; (2) debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or (3) any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority, pursuant to this paragraph or agency regulation established pursuant to such other statutory authority.

(b) This section should not be construed as prohibiting use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in the preceding paragraph unless the debt "arose under" those laws.

(c) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

§ 20.35 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

§ 20.36 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, the agency is not required to duplicate those efforts before taking administrative offset.

§ 20.37 Responsibilities of the Assistant Secretary for Administration and Management.

The Assistant Secretary for Administration and Management, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Assistant Secretary shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this regulation.

Signed at Washington, D.C., this 13th day of September 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-24662 Filed 9-17-84; 8:45 am]

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29 CFR Part 20

Debt Collection Act of 1982; Proposed Rule; Interest, Penalties and Administrative Costs

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the Federal government to assess interest, penalties and administrative costs against debtors with respect to debts owed the United States. This proposed rule establishes the standards and procedures the Department of Labor will utilize in assessing such charges under the Debt Collection Act.

DATES: Comments, in duplicate, must be received on or before November 2, 1984.

ADDRESS: Send comments to: Dennis McDaniel, Office of the Solicitor, Department of Labor, Room N-2428, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dennis McDaniel (202—523-7721).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) amends the Federal Claims Collection Act of 1966 to authorize the Federal government to assess interest, penalties and administrative costs on delinquent debts owed to the United States. Such charges are to be assessed at the rates established by and in accordance with the terms of the Debt Collection Act, unless otherwise provided by law. It should be noted that where another rate, other than the Debt Collection Act rate, is specifically established by law with respect to a certain delinquent debt, that rate will be assessed by the Labor Department on the debt; however, these regulations will otherwise apply to such an assessment, unless otherwise provided by law.

This proposed rule establishes the policies and procedures the Department of Labor will employ in assessing interest, penalties and administrative costs with respect to delinquent debts arising under programs of the Department of Labor.

Executive Order 12291

The proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule does not, in itself, impose any regulatory requirements that will have a significant economic impact upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that we included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Claims, Credit, Administrative practice and procedure.

Accordingly, Part 20 of Title 29 of the Code of Federal Regulations is proposed to be amended as set forth below.

Subpart C is added to read as follows:

PART 20—DEBT COLLECTION ACT OF 1982

* * * * *

Subpart C—Interest, Penalties and Administrative Costs

Sec.
20.50 Purpose and scope.
20.51 Agency responsibilities.
20.52 Notification of charges.
20.53 Second and subsequent notifications.
20.54 Delivery of notices.
20.55 Accrual of interest.
20.56 Rate of interest.
20.57 Assessment of administrative costs.
20.58 Application of partial payments to amounts owed.
20.59 Waiver.
20.60 Exemptions.
20.61 Responsibilities of the Assistant Secretary for Administration and Management.

Authority: Pub. L. 97-365, Oct. 25, 1982; 96 Stat. 1749; 31 U.S.C. 3711, *et seq.*

* * * * *

Subpart C—Interest, Penalties and Administrative Costs

§ 20.50 Purpose and scope.

The regulations in this subpart establish the policies and procedures to implement section 11 of the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3717. Among other things, this statute authorizes the head of each agency to assess interest, penalties and administrative costs against debtors with respect to delinquent debts arising under the agency's program. This subpart establishes the standards and procedures that will be followed by the Department of Labor in assessing such charges.

§ 20.51 Agency responsibilities.

(a) The Department of Labor agency responsible for administering the program under which a delinquent debt arose shall assess interest and related charges on the debt, in accordance with guidelines established by the Assistant Secretary for Administration and Management. In the case where a debt arises under the program of two or more Department of Labor agencies, or in such other instances as the Assistant Secretary for Administration and Management, or his or her designee, may deem appropriate, the Assistant Secretary, or his or her designee, may determine which agency, or official, shall have responsibility for carrying out the provisions of this subpart.

(b) Before assessing any charges on a delinquent debt, the responsible agency must notify the debtor of the Department's policies for assessing interest, penalties and administrative costs and must ensure that the debt is overdue for the respective periods specified in these regulations.

(c) Each Department of Labor agency is responsible for ensuring the continued accuracy of calculations and records relating to its assessment of changes, and for the prompt notification of the debtor of any substantial change in the status or amount of the claim. As appropriate, the Agencies should promptly follow-up on any allegation made by a debtor that principal or charges is in error. Agencies should respond promptly to communication from the debtor, within 30 days whenever feasible.

§ 20.52 Notification of charges.

The agency head (or designee) responsible for carrying out the provisions of this subpart shall mail or hand-deliver an initial demand for payment to the debtor. In the initial demand, the debtor shall be notified that interest on the debt will start to accrue from the date on which the notice is mailed or hand-delivered, but that payment of interest will be waived if the debt is paid by the due date, or within 30 days of the date of notice, if no due date is specified. The initial demand shall also state that administrative costs of recovering the delinquent debt will be assessed if payment is not received by the due date.

§ 20.53 Second and subsequent notifications.

(a) In accordance with guidelines established by the Assistant Secretary for Administration and Management, the responsible agency head (or designee) shall send progressively stronger second and subsequent demands for payment, if payment or other appropriate response is not received within the time specified by the initial demand. Unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, the second and subsequent demands shall generally be made at 30 day intervals from the first, and shall state that a 6 percent per annum penalty will be assessed after the debt has been delinquent 90 days, accruing from the date it became delinquent. The second and subsequent demands shall also identify the amount of the interest then accrued on the debt, as well as administrative costs thus far assessed. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) Agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Deprtment, pertaining to waiver of the indebtedness, administrative offset, salary offset and disclosure of information to credit reporting agencies, to the extent that such inclusion is appropriate and practicable.

§ 20.54 Delivery of notices.

The responsible agency head (or designee) shall exercise due care to ensure that demand letters are dated and mailed or hand-delivered on the same day that they are actually dated.

If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

§ 20.55 Accrual of interest.

Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency.

§ 20.56 Rate of interest.

(a) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the **Federal Register** (as of the date the notice is sent), unless another rate is specified by statute, regulations or preexisting contract condition. The Office of the Assistant Secretary for Administration and Management will notify agencies promptly of the current Treasury rate. The responsible agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States, and such rate is agreed to by the Assistant Secretary for Administration and Management (or his designee). The rate of interest prescribed in section 6621 of the Internal Revenue Code shall be sought for backwages recovered in litigation by the Department.

(b) The rate of interst as initially assessed shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the agency may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed.

(c) Interest shall not be assessed on interest, penalties or administrative costs required by this subpart. However, if the debtor defaults on a previous repayment agrement, charges which accrued but were not collected under the defaulted agrement shall be added to the principal to be paid under a new repayment agreement.

§ 20.57 Assessment of administrative costs.

(a) The Department of Labor agency responsible for collecting the claim shall assess against debtors charges to cover administrative costs incurred as a result of the delinquent debt; that is, the additional costs incurred in processing and handling the debt because it became delinquent. Calculation of administrative costs shall be based on cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency.

(b) In addition to assessing the costs listed in the administrative cost fee schedule, the responsible agency may include the costs incurred in obtaining a credit report in using a private debt collector, to the extent they are attributable to delinquency.

(c) The Assistant Secretary for Administration and Management shall issue each year a schedule providing the costs associated with various common activities required to collect delinquent debts.

§ 20.58 Application of partial payments to amounts owed.

When a debt is paid in partial or installment payments, amounts received by the responsible agency should be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

§ 20.59 Waiver.

(a) The Department of Labor agency responsible for collecting the claim shall waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. This 30-day period may be extended for another 30 days on a case-by-case basis, if the agency reasonably determines that such action is appropriate, and is in accordance with these regulations. Also, the responsible agency may waive charges assessed under this subpart, based on criteria specified in the Federal Claims Collection Standards relating to the compromise of claims (without regard to the amount of the debt), or if the agency determines that collection of these charges would be against equity and good conscience or not be in the best interest of the United States. Waiver under the first sentence of this paragraph is mandatory. Under the second and third sentences waiver is permissive and may be exercised only in accordance with the standards set by these regulations.

(b) Agencies may waive interest and other charges under appropriate circumstances, including, for example, (1) pending consideration of a request for reconsideration, administrative review, or waiver under a permissive statute, (2) if the agency has accepted an installment plan, there is no fault or lack of good faith on the part of the debtor, and the amount of interest is large enough in relation to the size of the debt and the amount of the installments that the debtor can reasonably afford to pay so that the debt can never be repaid, or (3) if repayment of the full amount of the debt is made after the date upon which interest and other charges became payable and the estimated costs of recovering the residual interest balance exceed the amount owed the Agency.

(c) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended.

§ 20.60 Exemptions.

(a) The provisions of 32 U.S.C. 3717 do not apply: (1) To debts owed by any State or local government; (2) to debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of), October 25, 1982; (3) to debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or, (4) to debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) Agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 20.61 Responsibilities of the Assistant Secretary for Administration and Management.

The Assistant Secretary for Administration and Management, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Assistant Secretary shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this regulation.

Signed at Washington, D.C., this 13th day of September.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-24684 Filed 9-17-84; 8:45 am]

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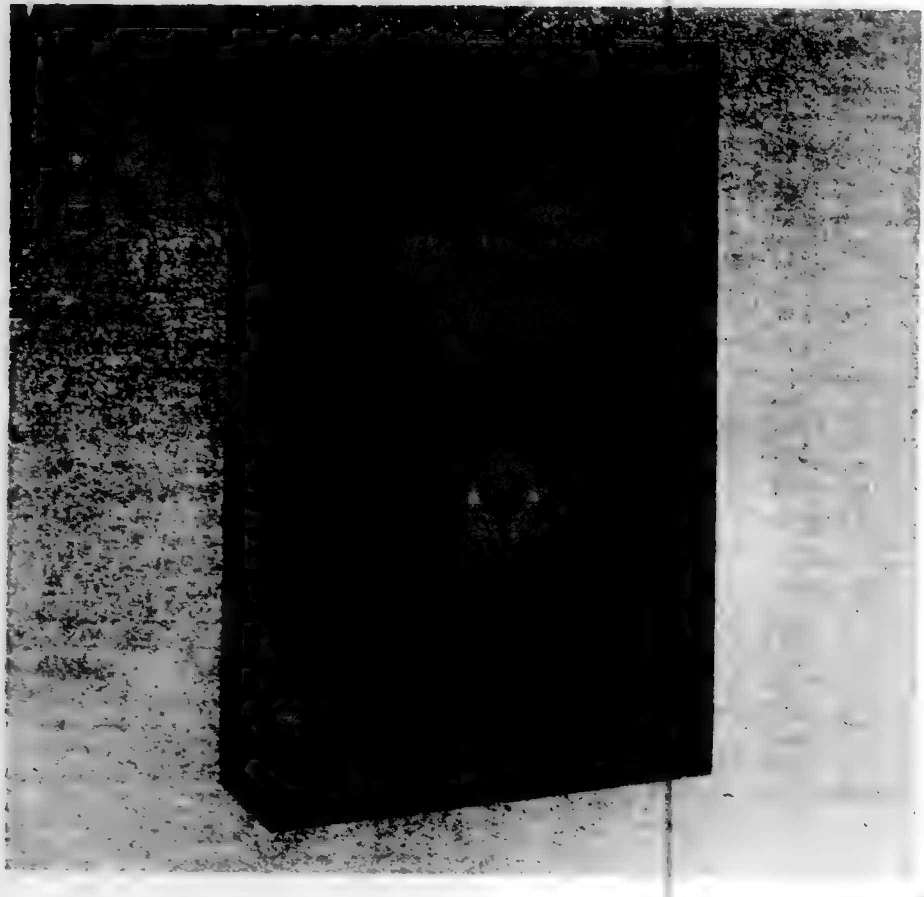

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-345]

Citrus Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Domestic Quarantine Notices" by adding a new "Subpart Citrus Canker." This new subpart prohibits the interstate movement from anywhere in Florida of articles designated as regulated articles except under certain conditions. This action is necessary as an emergency measure to prevent the artificial spread of citrus canker into noninfested areas of the United States.

DATES: Effective date of this amendment September 14, 1984. Written comments concerning this interim rule must be received on or before November 19, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728 Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glenn Lee, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. Due to the possibility that citrus canker could be spread artificially to certain noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

This document amends the "Domestic Quarantine Notices" in 7 CFR Part 301 by adding Federal regulations captioned "Subpart Citrus Canker".

Citrus canker, *Xanthomonas campestris* pv *citri* (Hasse) Dawson, is a devastating bacterial disease which is known to infect plants and plant parts of citrus and citrus relatives (Family Rutaceae). Strains of citrus canker can cause defoliation and other serious damage to the leaves, twigs, and fruit of such plants. It can be a very aggressive disease. It can rapidly infect plants and plant parts, and can cause the destruction of entire citrus growing areas. The establishment of citrus canker in the United States would present a severe threat to citrus producing industries in the United States and pose a burden to interstate and international commerce.

An infestation of citrus canker was found in plants in a nursery in Polk County, Florida on August 27, 1984. As a result of investigations and surveys by inspectors of Plant Protection and Quarantine (PPQ), a unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, and officials of the Florida Division of Plant Industry (FDPI), a unit within the Florida Department of Agriculture and Consumer Services, it has been determined that plant cuttings from infested nursery stock and plants exposed to infected nursery stock have been sent to over 40 other nurseries and numerous commercial citrus groves for planting in at least 17 counties in Florida. These surveys and investigations are continuing, but complete identification of all areas in Florida to which the citrus canker infestation has spread are not yet determined.

Further, the strain of the bacterial pathogen which causes the form of citrus canker now in Florida has not previously been described. However, intensive pathological studies are underway to determine the full host range, possible effect on fruit, and other pathological characteristics of this particular strain.

Officials of PPQ and FDPI have begun an intensive citrus canker eradication program in the infested areas in Florida. However, since this disease could have spread throughout the State, it is necessary to designate the entire State of Florida as a quarantined area and regulate the interstate movement of certain articles from any place in Florida in order to prevent the artificial spread of the citrus canker to noninfested areas in other States. Accordingly, this document, as an emergency measure, establishes "Subpart—Citrus Canker" for the purpose of preventing the artificial spread of the citrus canker.

Prohibition

Section 301.75 provides that no common carrier or other person shall move interstate from any quarantined area any regulated article except in accordance with conditions explained below.

Definitions

Section 301.75-1 contains, for informational purposes, definitions of the following terms: "Citrus Canker," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited Permit," "Moved," "Movement or Move," "Person," "Plant Protection and Quarantine," "Quarantined Area," "Regulated article", and "State." These terms are defined in accordance with definitions and authority set forth in the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee) and the Plant Quarantine Act (7 U.S.C. 161, 162).

Regulated Articles

Section 301.75–2 designates the following articles as regulated articles:

(a) Plants and any plant parts, including fruit and seeds, of any of the following:

Calamondin orange (*Citrus mitis*)
Citrus citron (*Citrus medica*)
Grapefruit (*Citrus paradisi*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*)
Lime (*Citrus aurantifolia*)
Mandarin orange (tangerine) (*Citrus reticulata*)
Pummelo (*Shaddock*) (*Citrus maxima*)
Sour orange (*Citrus aurantium*)
Sweet orange (*Citrus sinensis*)
Tangelo (*paradisi x. c. reticulata*)
Temple orange (*reticulata x. c. sinensis*)
Trifoliata orange (*Poncirus trifoliata*)

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) when it is determined by an inspector that it presents a risk of spread of the citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this Subpart.

Based on research and experience, the articles listed in § 301.75–2(a) as regulated articles are articles that are likely to cause the artificial spread of the citrus canker. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the citrus canker, these articles are regulated by paragraph (b). These articles would have to be determined to present a risk of spread of the citrus canker by an inspector on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any would present such a risk. There is authority to regulate nonlisted products, articles, or means of conveyance as set forth in § 301.75(b) on an emergency basis in sections 105 and 106 of the Federal Plant Pest Act. If it appears that these additional products, articles, or means of conveyance generally present a risk of spreading citrus canker, an amendment to this rule to include such items in the list of regulated articles will be considered.

Quarantined Areas

Section 301.75–3(a) designates the entire State of Florida as a quarantined area. Also § 301.75–3(b) provides that:

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area upon a determination that an infestation of citrus canker exists. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this Subpart. As soon as practicable, such area shall be added to the list in paragraph (a) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

It is necessary to designate all of Florida as a quarantined area because as explained above, citrus canker could have spread throughout the State. Also, it is necessary to establish the criteria in paragraph (b) for adding areas as quarantined areas on a temporary basis in order to advise persons of action that will be taken if the citrus canker is found to have spread to other areas.

Movement of Regulated Articles for Experimental or Scientific Purposes

Section 301.75–4 provides that:

A regulated article may be moved interstate from a quarantined area if:

(a) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(b) Moved pursuant to a Departmental permit issued for such article by the Deputy Administrator;

(c) Moved in accordance with conditions specified on the Departmental permit and found by the Deputy Administrator to be adequate to prevent the spread of citrus canker i.e., conditions of treatment, processing, growing, shipment, disposal; and

(d) Moved with a Departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such article.

These requirements are in accord with the intent of the Federal Plant Pest Act and the Plant Quarantine Act to allow special provisions for movement of articles for experimental or scientific purposes. The conditions for movement are required to be specified on the permit in order to assure that they will be understood and followed.

Movement of Certain Regulated Articles Under Limited Permit

Section 301.75–5 provides that:

(a) Fruit designated as a regulated article may be moved interstate from a quarantined area to any State of Territory other than American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, or Texas if moved pursuant to a limited permit issued pursuant to paragraph (b) of this section and attached in accordance with § 301.75–7 and if not unloaded in any of the jurisdictions listed in the paragraph without permission from an inspector.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines that the fruit originated in an area found to be free of citrus canker disease based on surveys conducted by inspectors appointed by the Deputy Administrator,

(2) Determines that the fruit is free of leaves, litter, and stems other than stems less than one inch in length attached to the fruit, and

(3) Determines that the fruit has been treated by a thorough wetting with a solution containing 200 parts per million active chlorine for a period of at least two minutes.

Fruit is being harvested and there is a need to establish provisions allowing the interstate movement of such fruit if it can be moved without causing a significant risk of spreading citrus canker. Compliance with the provisions in § 301.75–5 would be adequate to allow the movement of fruit without a significant risk of causing the spread of citrus canker. The survey provisions are designed to ensure that the fruit originates in an area where citrus canker does not exist. The other provisions in Section 301.75–5 are precautionary measures designed to help ensure the citrus canker is not spread to commercial citrus producing areas. The destination and unloading requirements are designed to ensure that the fruit will not be shipped to States or Territories where commercials citrus is grown. The provisions concerning leaves, litter, and stems are added because there is no need for such leaves, litter and stems to accompany the fruit. The chlorine provisions are added to ensure that any surface bacteria that might be present on the fruit would be destroyed.

Section 301.75–6 provides that any person who desires a limited permit to move regulated articles should request services from an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote is added for informational purposes to indicate how to contact the inspectors and how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.75–7 requires the limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring services of an inspector can obtain them before the intended movement date.

Section 301.75-8 explains the Department's policy that services of an inspector needed in order for a person to comply with the provisions of the regulations are provided without cost during normal business hours but that any other incidental costs or charges shall not be the responsibility of the Department.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to his interim rule, In order to help prevent the spread of citrus canker, immediate action is warranted to regulate the movement of regulated articles.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the final Regulatory Impact Analysis, if required, will address the issues required in sections 603 and 604.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural Commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Citrus Canker.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended by adding a new "Subpart—Citrus Canker" to read as follows:

Subpart—Citrus Canker

Sec.
301.75 Prohibition.
301.75-1 Definitions.
301.75-2 Regulated articles.
301.75-3 Quarantined areas.
301.75-4 Movements of certain regulated articles for experimental or scientific purposes.
301.75-5 Movements of regulated articles under limited permit.
301.75-6 Assembly and inspection of regulated articles.
301.75-7 Attachment and disposition of limited permits.
301.75-8 Costs and charges.

Authority: Secs. 8 and 9, 37 Stat. 318, as amended, secs. 105 and 106, 71 Stat. 32 71 Stat. 33 (7 U.S.C. 161, 162, 150dd, 150ee); 7 CFR 2.17, 2.51, and 371.2(c).

Subpart—Citrus Canker

§ 301.75 Prohibition.[1]

No common carrier or other person shall move interstate from any quarantined area any regulated article except in accordance with the conditions prescribed in this Subpart.

§ 301.75-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this Subpart, shall be construed respectively to mean:

Citrus canker. The plant disease caused by the bacteria, *Xanthomonas campestris* pv. *citri* (Hasse) Dawson, in any stage of development.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employer of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

Infestation. The presence of the Citrus canker or the existence of circumstances that make it reasonable to believe that the citrus canker is present.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of this Subpart.

Interstate. From any State into or through any other State.

Limited Permit. A document which is issued for a regulated article by an inspector which represents that such regulated article is eligible for interstate movement in accordance with § 301.75-5.

Moved. Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

Movement or move. The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Quarantined area. Any State, or any portion thereof, listed in § 301.75-3(a) or otherwise designated as a quarantined area in accordance with § 301.75-3(b).

Regulated article. Any article specified in § 301.75-2(a) or otherwise designated as a regulated article in accordance with § 301.75-2(b).

State. Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

§ 301.75-2 Regulated articles.

The following are designated as regulated articles:

(a) Plants and any plant parts, including fruit and seeds, of any of the following:

Calamondin orange (*Citrus mitis*)
Citrus citron (*Citrus medica*)
Grapefruit (*Citrus paradisi*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*)
Lime (*Citrus aurantifolia*)
Mandarin orange (tangerine) (*Citrus reticulata*)
Pummelo (*Shaddock*) (*Citrus maxima*)
Sour orange (*Citrus aurantium*)
Sweet orange (*Citrus sinensis*)
Tangelo (*paradisi x. c. reticulata*)
Temple orange (*reticulata x. c. sinensis*)
Trifoliata orange (*Poncirus trifoliata*)

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of the citrus canker and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the provision of this Subpart.

§ 301.75-3 Quarantined areas.

(a) The entire State of Florida.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area upon a determination that an infestation of citrus canker exists. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this Subpart. As soon as practicable, such area shall be added to the list in paragraph (a) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

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[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) and section 10 of the Plant Quarantine Act (7 U.S.C. 164a).

§ 301.75-4 Movements of certain regulated articles for experimental or scientific purposes.

A regulated article may be moved interstate from a quarantined area if—

(a) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(b) Moved pursuant to a Departmental permit issued for such article by the Deputy Administrator;

(c) Moved in accordance with conditions specified on the Departmental permit and found by the Deputy Administrator to be adequate to prevent the spread of citrus canker, i.e., conditions of treatment, processing, growing, shipment, disposal; and

(d) Moved with a Departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such article.

§ 301.75-5 Movements of regulated articles under limited permit.

(a) Fruit designated as a regulated article may be moved interstate from a quarantined area to any State or Territory other than American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, or Texas, if moved pursuant to a limited permit issued pursuant to paragraph (b) of this section and attached in accordance with § 301.75-7, and if not unloaded in any of the States or Territories listed in this paragraph without permission from an inspector.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines that the fruit originated in an area found to be free of citrus canker disease based on surveys conducted by inspectors appointed by the Deputy Administrator;

(2) Determines that the fruit is free of leaves, litter, and stems other than stems less than one inch in length attached to the fruit, and

(3) Determines that the fruit has been treated by a thorough wetting with a solution containing 200 parts per million active chlorine for a period of at least two minutes.

§ 301.75-6 Assembly and inspection of regulated articles.

(a) Any person who desires to move interstate a regulated article accompanied by a limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector [2] to take any necessary action under this Subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

§ 301.75-7 Attachment and disposition of limited permit.

(a) A limited permit required for the interstate movement of a regulated article, at the times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided however,* that the requirements of this section may be met by attaching the limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the limited permit or shipping document to identify such article.

(b) The limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.75-8 Costs and charges.

The service of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions in this subpart, other than for the services of the inspector.

Done at Washington, D.C., this 14th day of September, 1984.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 84-24832 Filed 9-18-84; 8:45 am]

BILLING CODE 3410-34-M

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[2] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Final rule.

SUMMARY: The final rule would increase the reserve base quantity for the 1984-85 fiscal period to 2.38 percent of the total base quantities currently issued to cranberry producers. This rule is designed to update and expand base quantities for the benefit of producers. It is also intended to facilitate the appropriate and equitable operation of the cranberry marketing order with the establishment in the future of any marketable quantity and annual allotment.

EFFECTIVE DATE: September 19, 1984..

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice of the proposal to revise § 929.153 was published in August 16, 1984 **Federal Register** (49 FR 32771). The proposal provided interested persons the opportunity to comment on the proposal. No such comments were received.

The final rule is issued under amended marketing agreement and Order No. 929, as amended (7 CFR Part 929). The order regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action was recommended by the Cranberry Marketing Committee.

Each year prior to May 1, the committee considers its marketing policy for the coming season and estimates the marketable quantity. If the Secretary finds from such recommendation of the committee or from other available information that limiting the quantity of cranberries that may be purchased or handled on behalf of growers would tend to effectuate the declared policy of the act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's base quantity pursuant to § 929.48.

Such base quantity is issued to growers: (a) Based on their production during the period 1968–69 through 1973–74; (b) as result of transfers of base quantities from other growers; or (c) as part of an annual reserve of at least two percent of the total base quantities. Such reserve shall be used for the issuance of base quantities to new producers and adjustments in base quantities for existing producers with 25 percent being made available for new producers and 75 percent available for adjustments for existing producers. Any unallocated portion of the 25 percent available to new producers may at the discretion of the committee be prorated among eligible existing producers on an equitable basis. Section 929.48 also provides that a condition for the continuing validity of a producer's base quantity is the production of cranberries thereunder in a proprietary capacity. If no bona fide effort is made to produce and sell cranberries thereunder for five consecutive seasons, commencing with the 1978–79 season, the base quantity may be reduced or declared invalid due to lack of use and cancelled at the end of the fifth season of nonproduction. The committee shall establish criteria, subject to approval by the Secretary, whereby the committee may determine whether a bona fide effort has been made to produce and sell cranberries produced on the producer's own acreage.

Section 929.153 implements § 929.48 of the order. It prescribes procedures governing the allocation of reserve base quantity to cranberry producers and establishes an annual base quantity reserve equal to two percent of the aggregate base quantities. Also § 929.153 provides that the base quantity of a grower who has made no bona fide effort to producer and sell cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth season.

On February 22, 1984, the Cranberry Marketing Committee held its annual winter meeting to formulate its marketing policy for the 1984–85 crop. It determined that since demand exceeded supply, implementation of § 929.49 (i.e. the establishment of a marketable quantity and annual allotment) was not recommended. In order to update its base quantities in preparation for any future recommendation for such a marketable quantity, however, the committee also determined that 12,133 barrels of base quantity were held by growers who had not produced cranberries on the corresponding acreage for the requisite five years and should be redistributed to growers requesting base from the annual base quantity reserve. Also, the committee recommended that an additional two percent of the total base be issued to qualified new and existing growers who applied for it pursuant to § 929.153. All qualified new growers who applied for base quantities were granted them by the committee since such applications represented less than 25 percent of the two percent reserve. The committee recommended that the remainder of that reserve, and the reclaimed bases of 12,133 barrels, be redistributed to qualified existing growers who applied for additional bases.

Section 929.48(b)(1) specifies that the reserve shall include any base quantity that becomes available due to any reduction or invalidation because of non-use of base quantity. Thus, the net effect of the severel committee recommendations is that there should be a total increase of base of 2.38 percent. Therefore, the final rule would increase the annual reserve applicable to the 1984–85 crop year to 2.38 percent. Such increase makes additional quantities of base quantity available to new and existing growers, and insures that base remain only with growers who are making a bona fide effort to produce cranberries. By so doing, the change would provide the appropriate updating of base quantities necessary for any future establishment of a marketable quantity and annual allotment.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because it is appropriate that this final rule be established as soon as possible in order that base quantities may be issued to growers prior to harvest which is expected to begin about September 15, 1984. Also, this would insure timely issuance of allotment bases and, thus, would provide for the proper administration of the order. The provisions in the final rule are the same as those in a proposed rule which was published in the **Federal Register**, and which provided a 10-day comment period. It is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, New York.

PART 929—[AMENDED]

This final rule amends § 929.153 (7 CFR Part 929) by revising paragraph (a) to read as follows:

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1984–85 crop year, the reserve base quantity shall be 2.38 percent.

* * * * *

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: September 14, 1984.

Thomas R. Clark,

Deputy Director,

Fruit and Vegetable Division.

[FR Doc. 84-[illegible] Filed 9-18-84; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

Community Facilities Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) amends its regulations regarding loans and grants for Community Facility Projects. The action is being taken to include the incomes of single-person house-holds in determining interest rates and the amount of grant funds an applicant can receive. Also, this action eliminates the term "nonfarm family" in order to accurately describe the source of the poverty line as prescribe by the Office of Management and Budget. The intended effect of this action is to more effectively serve the needs of rural

communites participating in FmHA's Community Facility programs.

EFFECTIVE DATE: October 3, 1984. All loans and grants where the notice of approval has not been mailed to the applicant before the effective date must comply with these regulations.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, D.C. 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, organizations, government agencies, or geographic regions. There will be no adverse affects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to rural communities.

The FmHA programs and projects which are affected by this Instruction are subject to State and local review under Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act. The Catalog of Federal Domestic Assistance programs affected are No. 10.418, Water and Waste Disposal Systems for Rural Communities and No. 10.423, Community Facilities Loans. This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Charles W. Shuman, Administrator, has determined that the action will not have a significant economic impact on a substantial number of small entities because the action will only affect a small number of rural communities.

This action requires no change in recordkeeping or reporting requirements imposed upon the public.

This action amends FmHA's policies for making loans and development grants. These loans and grants assist in financing the development cost of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

Comments: A proposed rule was published in the **Federal Register** (49 CFR Part 9190) on March 12, 1984. That proposal provided for a 30-day comment period through April 11, 1984. Twenty-six comments were received within the comment period.

Twenty-four out of the twenty-six comments received were in favor of the proposed rule. Two comments stated that a State's total median income be used in lieu of a State's nonmetropolitan median income. The FmHA is only authorized to finance projects in rural areas. The use of nonmetropolitan median income more realistically represents the median income of rural areas.

Another comment stated that median household income in several counties would be higher than the median family income figure. FmHA recognizes that there will be some areas where this will be true. However, the other comments received stated that in most cases the proposed change would be more representative of the incomes in rural areas. Therefore, the changes are being finalized as proposed and incorporate a final rule published in the **Federal Register** (49 FR, No. 69, Pages 13862 to 13863) on April 9, 1984.

FmHA amends Subpart A of Part 1942 as follows:

1. Section 1942.5(b)(1)(ii)(D) is revised to change the number and title of Form FmHA 442–51, "Water and Waste Disposal Development Grant Summary" to Form FmHA 1942–51, "Water and Waste Disposal Grant Determination."
2. Section 1942.17 (c)(2)(iii)(C)(*2*) and (c)(2)(iii)(C)(*3*) to make the selection priorities criteria consistent with the use of median household income in other sections.
3. Section 1942.17(f)(2) is renumbered.
4. Section 1942.17(f)(2)(ii) is revised to reference median household income and take out the word "nonfarm".
5. Section 1942.17(f)(3) is revised and renumbered to reference median household income.
6. Section 1942.17(f)(4) is renumbered and revised.
7. Section 1942.17(f)(6) is revised.

FmHA amends Subpart H of Part 1942 as follows:

1. Section 1942.355(a)(12) is revised to reference median household income.
2. In Section 1942.356(a), the title of Form FmHA 1942–51 is changed from "Water and Waste Disposal Development Grant Summary" to "Water and Waste Disposal Grant Determination."
3. Section 1942.356(b) is revised to incorporate the use of median household income.
4. Section 1942.356(b)(2) is revised by eliminating reference to median family income.
5. Section 1942.356(b)(2)(i) is revised to take out the word "nonfarm".
6. Section 1942.356 (b)(2)(i), (b)(2)(ii) and (b)(2)(iii) are revised to reference median household income.
7. Section 1942.356(b)(3) is revised to reference median household income.
8. Sections 1942.356 (b)(4)(i) and (b)(4)(ii) are revised to reference median household income.
9. Section 1942.356(b)(7) is revised to reference median household income.

List of Subjects in 7 CFR Part 1942

Community development Grant programs—Housing and community development, Rural areas, Waste treatment and disposal—Domestic Water supply—Domestic.

Accordingly, FmHA amends Subparts A and H of Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations, as follows:

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

§ 1942.5 [Amended]

1. In § 1942.5(b)(1)(ii)(D), change "Form FmHA 442–51, "Water and Waste Disposal Development Grant Summary" to "Form FmHA 1942–51, "Water and Waste Disposal Grant Determination."

2. § 1942.17 is amended by revising paragraphs (c)(2)(iii)(C)(*2*) and (c)(2)(iii)(C)(*3*) and redesignating paragraphs (f)(2) as (f)(4), (f)(3) as (f)(2), (f)(4) as (f)(3) and by revising new paragraphs (f)(2)(ii), (f)(3), (f)(4), and (f)(6) to read as follows:

§ 1942.17 Appendix A—Community Facilities.

* * * * *

(c) * * *
(2) * * *
(iii) * * *
(C) * * *

(*2*) More than the poverty line but less than 85% of the State's nonmetropolitan median household income—20 points.

(3) Between 85% and 100%, inclusive, of State's nonmetropolitan median household income—15 points.

* * * * *

(f) * * *

(2) * * *

(ii) The median household income of the service area is below the poverty line for a family of four as prescribed by the Office of Management and Budget (OMB) as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is not more than 85 percent of the nonmetropolitan median household income of the State.

(4) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraphs (f)(2) or (3) of this section. It may be adjusted as provided in paragraph (f)(5) of this section.

* * * * *

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area and the nonmetropolitan median household income for the State will be determined from income data from the most recent decennial census of the U.S. This data will normally be published or unpublished Bureau of the Census data and may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reason will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Such information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. Updating income data for the median household income of the service area and the nonmetropolitan median household income of the State should be done concurrently, using data from the same year.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

3. Section 1942.355 is amended by revising paragraph (a)(12) to read as follows:

§ 1942.355 Grant limitations.

(a) * * *

(12) Pay any costs of a project when the median household income of the service area is more than 85 percent of the nonmetropolitan median household income of the State.

* * * * *

4. Section 1942.356(a) is amended by changing the title of Form FmHA 1942–51 from "Water and Waste Disposal Development Grant Summary" to "Water and Waste Disposal Grant Determination."

5. Section 1942.356 is amended by revising the introductory paragraph of paragraph (b), paragraph (b)(2), (b)(3), (b)(4)(i) and (b)(4)(ii), and (b)(7) to read as follows:

§ 1942.356 Determining the need for development grants.

* * * * *

(b) Grants will be used for water and waste disposal projecets serving the most financially needy communities to reduce user costs to be reasonable level for farmers, ranchers, and rural residents. Other rural users whose needs are met or, if there is no meter, could be met by a single residential-size water meter may also be considered eligible. For example, a user on a water system may be considered for a grant when the water needs of the waste user are met or could be met by such residential-size meter. This method of computing grants will be used for all water and waste disposal projects. Reasonable user rate is defined as that which is not less than existing prevailing rates in communities being served by an established system constructed at similar cost per user and having similar economic conditions. User costs shall include charges, taxes, and assessments attributable to the project. An exception to the reasonable user rate may be granted by the FmHA National Office in justifiable cases for areas of extremely low income when it is necessary to meet the needs of a particular community. Such an exception will only be considered when comparable systems are not available or the user rates from the comparable systems appear to be too high for the average user for the applicant, and the median household income in the applicant service area is less than $4,000. When it is determined that such an exception should be considered, the FmHA State Director will submit information household income of the service area, and user rate and median household incomes of other like or most similar communities in the region, employment conditions, and any other information to justify the recommendation for the exception.

* * * * *

(2) Ordinarily, an applicant will be considered for grant assistance only when the debt service portion of the average annual user cost for either water or waste service, for only those users in the applicant service area, exceeds the following percentages:

(i) .5 percent when the median household income of the service area is below the poverty line. The poverty line will be that income prescribed by the Office of Management and Budget for a nonfarm family of four, as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

(ii) 1.0 percent when the median household income of the service area is not more than 85 percent of the nonmetropolitan median household income of the State.

(iii) No FmHA grant funds will be used in any project when the median household income of the service area is more than 85 percent of nonmetropolitan median household income of the State.

(3) The median household income of the service area and the State's nonmetropolitan median household income will be determined in accordance with paragraph (b)(7) of this section. Except as provided for in paragraphs (b), (b), (5), and (6) of this section, the grant will not exceed an amount necessary to reduce the debt service portion of the average annual user not be used to result in a rate below that deemed to be reasonable as defined in paragraph (b) of this section. However, an exception to the reasonable user rate may be authorized by the FmHA National Office in accordance with paragraph (b) of this section.

(4) * * *

(i) Be considered as part of the total

by averaging the median household incomes of the systems involved and averaging the debt service portion for the particular service of the other system; or

(ii) Consider the median household income and the debt service portion for the particular service for each entity separately.

* * * * *

(7) The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area or those reference communities used in comparing the proposed system with similar systems, and the nonmetropolitan median household income for the State will be determined from income data from the most recent decennial census of the U.S. This data will normally be published or unpublished Bureau of the Census data and may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of Census, or other reliable sources. If there is reason to believe that the census data is not an accurate representation of the media household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Such information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. Updating income data for the median household income of the service area and the nonmetropolitan median household income of the State should be done concurrently, using data from the same year.

* * * * *

Authorities: (7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70).

Dated: May 17, 1984.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 84-24835 Filed 9-18-84; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 84-085]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Lethal Avian Influenza interim rule by deleting from the list of quarantined areas the area in Virginia that was designated as a quarantined area. This action is necessary because it has been determined that lethal avian influenza no longer exists in Virginia. The effect of this action is to delete unnecessary prohibitions and restrictions on the interstate movement of live poultry and certain other items from the previously quarantined area in Virginia.

DATES: Effective date is September 14, 1984. Written comments must be received on or before November 19, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. H. A. McDaniel, Chief Staff Officer, Technical Support Staff, VS, APHIS, USDA, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8087.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Lethal Avian Influenza" interim rule which is set forth in 9 CFR Part 81 (48 FR 51422-51423, 51798, 52420-52427, 52885-52887, 53586, 53678-53679, 53679-53681, 53997, 54574-54575, 55402-55405, 55722, 57474-57475, 49 FR 368-369, 2742-2744, 3494, 3839-3845, 5723-5724, 7978-7979, 8412-8415, 8582-8583, 13863-13864, 19288-19289, 19500-19501, 24011-24013, 31055-31057, 34804-34806).

Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

Effect of designation as a Quarantined Area

With certain exceptions, the interim rule provides that the following articles designated as prohibited articles are prohibited from being moved interstate from a quarantined area:

(1) Live poultry,

(2) Manure from poultry, and

(3) Litter that has been used by poultry.

The interim rule also provides, with certain exceptions, that the following articles designated as restricted articles are allowed to be moved interstate from a quarantined area only in accordance with certain conditions:

(1) Poultry carcasses or parts thereof,

(2) Eggs from poultry, and

(3) Coops, containers, troughs or other accessories that have been used in the handling of poultry or poultry eggs.

Prior to the effective date of this document, an area in Albermarle, Augusta, Frederick, Greene, Madison, Page, Rappahannock, Rockingham, Shenandoah, and Warren Counties in Virginia was designated as a quarantined area. This document amends the interim rule by deleting this area in Virginia from the list of quarantined areas. With this action there is no longer any area in Virginia designated as a quarantined area. Extensive surveys have been conducted on commercial and noncommercial poultry premises in the previously quarantined area in Virginia. These surveys indicate that there are no lethal avian influenza virus or antibodies in poultry within the previously quarantined area and that lethal avian influenza no longer exists in Virginia. Under the circumstances there is no longer a basis for imposing prohibitions or restrictions on the movement of live poultry or other items from any area in Virginia because of lethal avian influenza.

With the deletion of the area in Virginia from the list of quarantined areas, an area in Berks, Chester, Dauphin, Lancaster, Lebanon, and Schuylkill Counties in Pennsylvania is the only area that remains designated as a quarantined area because of lethal avian influenza.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from Virginia, and to benefit Virginia by declaring that lethal avian influenza no longer exists in Virginia.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action relieves restrictions on the movement of live poultry and certain other items from portions of Albermarle, Augusta, Frederick, Greene, Madison, Page, Rappahannock, Rockingham, Shenandoah, and Warren Counties in Virginia. The poultry industry in the area in Virginia released from quarantined area status represents less than 1 percent of the poultry industry in the United States.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

Under the circumstances referred to above, § 81.4 of 9 CFR Part 81 is amended by removing paragraph (b).

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 2, 65 Sfat. 693; secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C. this 14th day of September 1984.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84-24634 Filed 9-18-84; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule eliminating financial qualification review and findings for electric utilities that are applying for operating licenses for utilization facilities if the utility is a regulated public utility or is authorized to set its own rates. The final rule also restates a requirement for financial qualification review and findings for electric utilities that are applying for construction permits.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, (202-634-1493).

SUPPLEMENTARY INFORMATION: In FR Doc. 84-24084 appearing on page 35747 in the issue of Wednesday, September 12, 1984, make the following correction:

The effective date should read October 12, 1984.

Approved: September 12, 1984.

John C. Hoyle,

Assistant Secretary.

[FR Doc. 84-24791 Filed 9-18-84; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 84-510]

Federal Savings and Loan System; Status and Priority of Accounts and Deposits in Federal Associations

September 13, 1984

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations to clarify that accounts and deposits in a Federal association are debts of the association having the same priority as claims of general creditors of the association.

EFFECTIVE DATE: September 19, 1984.

FOR FURTHER INFORMATION CONTACT: Judith K. Gunderson, Attorney, Office of General Counsel (202) 377-6442), Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Regulations of the Federal Savings and Loan System ("Federal Regulations") formerly included, at § 545.1-2(c) (12 CFR 545.1-2(c)), a provision establishing accounts and deposits in a federal association as debts of the association, having the same priority as claims of general creditors of the association. When the Board amended Part 545 of the Federal Regulations to implement the new powers granted federal associations by the Garn-St Germain Depository Institutions Act of 1982, former § 545.1-2(c) was inadvertently deleted. Board Resolution No. 83-241 (April 26, 1983), 48 FR 23032 (May 23, 1983).

As expressed in the preamble to the revision of Part 545, with respect to savings accounts issued by federal associations, the Board intended to delete only those provisions of Part 545 which addressed matters within a federal association's discretion as an account-issuing institution. The status and priority to be accorded accounts in federal associations is not a matter within an association's discretion but is, rather, one that the Board has addressed elsewhere in the Federal Regulations: § 552.8(d) (12 CFR 552.8(d)) provides that accounts in a federal stock association are debts of the association having the same priority as claims of general creditors, and the Federal Mutual Charter set forth in § 544.1 of the Federal Regulations (12 CFR 544.1) includes a parallel provision. Therefore, in order to clarify that accounts in all federal associations have the same status and priority as debts of federal associations, the Board has determined it necessary to amend Part 545 of the Federal Regulations by reinstating former § 545.1-2(c) with minor changes in language to parallel § 552.8(d) and the similar provision contained in the Federal Mutual Charter.

The Board finds that observance of the notice and comment procedure prescribed by 5 U.S.C. 553(b) (1982), and 12 CFR 508.12 and 508.13 (1984), and the delay of the effective date pursuant to 5 U.S.C. 553(d) (1982) and 12 CFR 508.14 (1984) is unnecessary since the amendment simply clarifies the Board's existing regulations.

List of Subjects in 12 CFR Part 545

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 545, Subchapter C, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

Amend § 545.11 by designating the present text of § 545.11 as paragraph (a) and adding a new paragraph (b) as follows:

§ 545.11 Insured accounts.

* * * * *

(b) *Status and priority of savings deposits and accounts.* In the event of voluntary or involuntary liquidation, dissolution, or winding up of the association, or in the event of any other situation in which the priority of savings deposits and accounts is in controversy, such savings deposits and accounts shall, to the extent of their withdrawable value, be debts of the association having the same priority as debts of general creditors who have no priority, other than from consensual subordination, over other general general creditors. Savings deposits of mutual associations shall have the same right to share in the remaining assets of the association that savings share accounts would have.

(Sec. 5, 48 Stat 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR, 1943-1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-24771 Filed 9-18-84; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 564

[No. 84-509]

Federal Savings and Loan Insurance Corporation; Settlement of Insurance

September 13, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending the regulations of the FSLIC concerning the settlement of insurance on accounts in insured institutions in default, in order to provide a procedure whereby the holder of such an account can obtain agency reconsideration of a determination that all or a portion of such account is uninsured.

DATES: Effective September 19, 1984. Comments due by November 19, 1984.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Judith K. Gunderson, Attorney, Office of General Counsel (202-377-6442), or Mary A. Creedon, Director, Insurance Division, Office of the FSLIC (202-377-6620), Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C., 20552.

SUPPLEMENTARY INFORMATION: Section 405(b) of the National Housing Act directs the Corporation, in the event of a default by an institution the accounts of which are insured by the FSLIC ("insured institution"), to make payment of insurance on accounts and permits the Corporation to requiring the filing of proofs of claims prior to paying insurance. 12 U.S.C. 1728(b) (1982). Section 564.1 of the Regulations of the FSLIC ("Insurance Regulations") provides that, in the event of a default by an insured institution, the Corporation shall determine from the books and records of the institution or otherwise the insured members of the institution and the amount of each insured member's account(s), and shall give each insured member notice of the time and place of payment of insurance on accounts. 12 CFR 564.1(a)(1984). The Board, as operating head of the FSLIC, has delegated on a case-by-case basis the authority to settle and pay insurance, in accordance with section 405 of the National Housing Act and its implementing regulations, to the Director, Deputy Director, an Associate Director, or the Director of the Insurance Division, Office of the FSLIC.

In their present forms, section 405(b) of the National Housing Act and § 564.1 of the Insurance Regulations neither preclude reconsideration by the agency of insurance determinations nor provide a formal mechanism for such reconsideration. The recent increase in the number of inquiries by accountholders as to the availability of administrative review of insurance determinations indicates the desirability of adopting a formal appeals procedure. The Board is therefore amending § 564.1 to provide a two-step process to be followed by the FSLIC in making determinations on the extent of insurance on accounts.

New paragraph (d) of § 564.1 delegates authority to the Director or Acting Director of the Insurance Division, Office of the FSLIC ("Director of the Insurance Division"), to notify accountholders in an insured institution in default of the time and place of the FSLIC's payment of insurance on accounts, and to make initital determinations regarding the extent of insurance in accordance with the principles for determining insurance coverage set forth in Part 564 of the Insurance Regulations. The determination by the Director of the Insurance Division will specify the bases on which the determination was made and will be provided to the accountholder in writing. An accountholder who disagrees with the determination by the Director of the Insurance Division may request reconsideration of that determination by the Director or Acting Director of the Office of the FSLIC ("Director"). The Director will reconsider only those determinations as to which a request for reconsideration is substantial, *i.e.*, is in writing, seasonably filed, sets forth an issue of law or fact which was not addressed, or in the Director's opinion was not adequately addressed in the prior determination, and is consistent with one of the regulatory bases in Part 564 for entitlement to insurance. The Director's determination regarding the substantiality of a request for reconsideration, as well as the Director's determination of the extent of FSLIC insurance in those cases in which the request for reconsideration is found to be substantial, will be provided to the accountholder in writing. In the event the Director determines that a request for reconsideration presents a significant issue of agency policy, that issue will be referred to the Board for decision. Pursuant to the Board's authority under section 17(a) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1437(a) (1982)), as operating head of the FSLIC, to authorize the performance of functions of the FSLIC by the Board's officers, employees, agents, or administrative units, the determination by the Director or Acting Director of the Insurance Division in the absence of a request for reconsideration, and the Director's determinations as to the substantiality of a request for reconsideration and the existence of a significant issue of agency policy, and on reconsideration of a determination by the Director of the Insurance Division, shall constitute final action by the FSLIC.

Due to the number of requests by uninsured accountholders for administrative review of insurance determinations made as a result of previous payments of insurance, the Board has determined to make the appeal process established by new paragraph (d) of § 564.1 available to any uninsured accountholder in an insured institution placed into receivership after September 19, 1981. This period corresponds to the three-year statute of limitations set forth in section 405(c) of the National Housing Act (12 U.S.C. 1728(c) (1982)) on actions brought against the FSLIC to enforce claims to insurance and to the three-year period during which accountholders are required to present their claims for insurance under §§ 549.5 and 549.5–1 of the Regulations for the Federal Savings and Loan System (12 CFR 549.5, 549.5–1 (1984)) and § 563a.9 of the Insurance Regulations (12 CFR 569a.9 (1984)). Neither the adoption of this regulation nor the Director's decision to consider a request for reconsideration shall waive, extend or toll any of these statutes of limitations.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) (1982), and 12 CFR 508.12 and 508.13 (1984), and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 (1984), is unnecessary for the following reasons: (1) the amendment is liberalizing and it is in the public interest for it to take effect at the earliest feasible time in order to accommodate the interests of accountholders who have requested agency reconsideration of prior insurance determinations; and (2) the amendment relates to internal agency procedures regarding the settlement of FSLIC insurance. The Board is, however, soliciting public comments on the amendment so that it will have the benefit of these views in considering whether revision of the amendment is necessary or appropriate.

List of Subjects in 12 CFR Part 564

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 564, Subchapter D, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOANS INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

Amend § 564.1 by adding a new paragraph (d), as follows:

§ 564.1 Settlement of insurance upon default.

* * * * *

(d) *Processing of insurance claims. (1) Delegations of authority.* The Director or Acting Director of the Insurance Division of the Office of the Federal Savings and Loan Insurance Corporation ("Director of the Insurance Division") or his or her designee is authorized to give written notice to each insured member of the time and place of settlement of insurance, as required by paragraph (a) of this section, and to make determinations with respect to insurance claims pursuant to the principles set forth in this Part. The Director or the Acting Director of the Office of the Federal Savings and Loan Insurance Corporation ("Director") is authorized to reconsider determinations by the Director of the Insurance Division and to make determinations on reconsideration with respect to insurance claims pursuant to the principles set forth in this part. Pursuant to the authority granted the Board by 12 U.S.C. 1437(a), such determinations, to the extent specified in this section, shall constitute the final action of the Corporation.

(2) *Determination by the Director of the Insurance Division.* In the event the Director of the Insurance Division shall determine that all or a portion of an accountholder's account is uninsured, the Director of the Insurance Division shall so notify the accountholder in writing, stating the reason(s) for such determination, and shall provide the accountholder with a certificate of claim in liquidation in the amount of the uninsured account from the Corporation, in its capacity as receiver for the insured institution in default, to enable the accountholder to share in the proceeds of the liquidation of the institution, if any, up to the amount of the uninsured account. Unless the accountholder requests reconsideration of the determination in the manner provided in paragraph (d)(3) of this section, such determination shall be final.

(3) *Request for reconsideration.* (i) Within 60 days after receipt of a determination by the Director of the Insurance Division that all or a portion of an accountholder's account is uninsured, such accountholder may obtain reconsideration of the initial determination by filing with the Director a written request for reconsideration: *Provided,* that with respect to determinations made in connection with payments of insurance by the Corporation on accounts in insured institutions in default before September 19, 1984, but after September 19, 1981, the 60-day period for requesting reconsideration by the Director shall commence on September 19, 1984.

(ii) Within 30 days of receipt of a request for reconsideration, the Director shall notify the accountholder, in writing, whether the request is considered to be substantial.

(iii) A request will be considered substantial only in those instances where the request is in writing; timely filed; sets forth an issue of law or fact which was not addressed or, in the opinion of the Director, was not adequately addressed in the determination by the Director of the Insurance Division; and which is consistent with one of the regulatory bases set forth in this Part for entitlement to insurance; and includes all of the following:

(*a*) A statement of the facts on which the claim for insurance is based;

(*b*) The specific reason(s) for the determination to which the accountholder objects, and the basis for the objection(s), including citations to applicable statutes and regulations; and

(*c*) Copies of the records of the accountholder maintained in good faith and in the regular course of business which support the accountholder's claim to insurance and which have not previously been submitted to the Corporation.

(iv) The Director's determination whether a request for reconsideration is "substantial" shall be final. If the Director determines that a request for reconsideration is not substantial, then the determination by the Director of the Insurance Division shall constitute the final determination with respect to the extent of insurance effective as of the date of the Director's determination regarding the substantiality of the request for reconsideration.

(4) *Reconsideration by the Director.* (i) Upon determining that a request for reconsideration is substantial, the

Director shall so notify the accountholder in writing. Within 90 days of the date of such notice, the Director shall determine the extent of the accountholder's insurance pursuant to the principles set forth in this Part, or if the Director determines that a request for reconsideration presents a significant policy issue, the Director shall refer that issue to the Board for decision, and shall notify the accountholder that an issue has been referred to the Board. The Board's decision on the issue shall be applied by the Director in determining the extent of insurance. The determination by the Director on reconsideration shall be final, and shall be provided to the accountholder in writing, stating the reason(s) for the determination. If the Director determines that the accountholder is entitled to the amount of insurance claimed or a portion thereof, upon payment of insurance the accountholder shall promptly surrender to the Corporation the certificate of claim in liquidation provided to the accountholder in connection with the initial determination.

(ii) The Corporation shall, from time to time, make available a digest of its final determinations with respect to insurance claims.

(Sec. 308, Pub. L. 96–221; secs. 401, 402, 403, 405, 48 Stat. 1255, 1256, 1257, 1259, as amended; 12 U.S.C. 1724, 1725, 1726, 1728; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board

J. J. Finn,

Secretary.

[FR Doc. 84–24770 Filed 9–18–84; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ANE–12; Amdt. 39–4921]

Lycoming Reciprocating Engines; Airworthiness Directives

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment revises an existing Airworthiness Directive (AD) applicable to certain Lycoming reciprocating engines which requires replacement of existing cylinders with a new engine cylinder assembly. The AD is necessary to prevent cracking of cylinder heads which could lead to cylinder burn through, engine failure and potential engine fire. In order to reduce these risks, cylinders are to be replaced with cylinders which have improved fatigue properties. This revision lists applicable engine S/Ns, adds applicable aircraft, makes minor editorial changes, and provides for approval of equivalent means of compliance.

DATES: Effective—September 20, 1984.

Compliance is required as set forth in the AD.

Comments related to the amendment must be received on or before October 9, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Office of Regional Counsel, Attn: Rules Docket No. 84–ANE–12, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be inspected weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Irving Mankuta, ANE–174, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: Inspection of cylinder assemblies of an Avco Lycoming LTIO/TIO–540–V2AD engine in an airplane with 442 hours total time uncovered cracks in all intake valve seat areas. This inspection was prompted by findings of cylinder head cracks in the area of the intake valve seat during the 150-hour endurance test of a new series engine which was being tested with the same cylinder assemblies as the LTIO/TIO–540–V2AD. A second engine from the same airplane referenced above was removed and subjected to test stand operation. Total time on this engine at present is 700 hours without failure.

The inspection of the LTIO/TIO–54–V2AD engine was a precautionary measure unrelated to any service failure. Furthermore, this engine successfully passed a 150 hour endurance test during its certification. In addition, uncovering the cracks requires destructive testing since they are not detectable visually. Nevertheless, crack propagation could lead to cylinder burn through, engine failure and potential fire damage.

Since the situation existed that might result in loss of an aircraft, immediate adoption of this regulation was required. The amendment was published in the **Federal Register** on Thursday, September 6, 1984 at 49 FR 35083. After publication of the AD, the agency determined that certain minor editorial changes should be made to the AD to clarify its applicability, and to provide for approval of an equivalent means of compliance with the AD.

For the reasons stated in the preamble to the original Airworthiness Directive at 49 FR 35083 it is found that notice and public procedures hereon are impractical and good cause exists for making this revision effective in less that 30 days.

Request for Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedures, comments are invited on the rule.

When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Send comments to Federal Aviation Administration, Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

List of Subjects in 14 CFR Part 39

Engine, Aircraft, Aviation safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revising Amendment 39–4907 to read as follows:

AVCO LYCOMING: Applies to Avco Lycoming model TIO–540–V2AD engines Serial Numbers L–8620–61A and below and model LTIO–540–V2AD Serial Numbers L–2820–68A and below, having P/N LW–18852 cylinder assemblies. These engines are installed in Piper PA–31P–350 "Mojave" aircraft.

Compliance is required as indicated, unless already accomplished. Cracks have occurred in the area of the intake valve seat of the cylinder head in the above engine models.

To prevent possible failure of the engine cylinder assembly, P/N LW–18852, accomplish the following:

(a) Within the next 50 hours of time-in-service after the effective date of this AD, or prior to accumulating 550 hours time-in-service, whichever occurs later, replace all P/N LW-18852 cylinder assemblies with P/N LW-19281 cylinder assemblies which are included in kit P/N LW-19297-S. Cylinder part number identification is located on the cylinder head casting in the rocker box area.

(b) In accordance with FAR 21.197 and 21.199, the aircraft may be flown to a location where the inspections or alterations required by this AD can be performed.

(c) An equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office.

This amendment becomes effective on September 20, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft.

It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Burlington, Massachusetts, on September 12, 1984.

Jack A Sain,

Acting Director, New England Region.

[FR Doc. 84-24724 Filed 9-18-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 83F-0006]

Indirect Food Additives: Polymers; Acrylonitrile/Styrene Copolymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of certain acrylonitrile/styrene copolymers to fabricate beverage bottles. This action responds to a petition filed on behalf of the Monsanto Co.

DATES: Effective September 19, 1984; objections by October 19, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 177.1040 effective on September 19, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 4, 1983 (48 FR 9376), FDA announced that a petition (FAP 3B3690) had been filed on behalf of Monsanto Co., 800 North Lindberg Blvd., St. Louis, MO 63167, proposing that § 177.1040 (21 CFR 177.1040) of the food additive regulations be amended to provide for the safe use of beverage containers fabricated from certain acrylonitrile/styrene copolymers.

I. Regulatory History

Acrylonitrile is a chemical which is polymerized in the presence of other chemicals, such as butadiene and styrene, to form copolymers which may be used as articles or components of articles intended to contact food. Acrylonitrile-butadiene, acrylonitrile-styrene, and acrylonitrile-butadiene-styrene copolymers were used as components of food packaging prior to the passage of the Food Additives Amendment of 1958. The Copolymers given clearance by FDA prior to 1958 are considered to be "prior-sanctioned" food ingredients and are listed under § 181.32 *Acrylonitrile copolymers and resins* (21 CFR 181.32).

Following enactment of the Food Additives Amendment of 1958, acrylonitrile copolymers were regulated under numerous food additive regulations. In 1973, FDA received a food additive petition for use of acrylonitrile as a packaging material that disclosed a previously unknown problem concerning migration of the acrylonitrile monomer. Data in the petition derived from analytical procedures with greatly enhanced sensitivity showed migration of acrylonitrile monomer to foods packaged in acrylonitrile copolymers. At the time, the primary toxicity information on acrylonitrile monomer was an unpublished chronic rat feeding study entitled "The Pharmacology and Toxicity of Acrylonitrile and Acrylon" by P.E. Tullar, George Washington University, November 1947. This study was, however, inadequate to define accurately a no-effect level for acrylonitrile monomer because of the use of animals of one sex (male) and the small number of animals fed. The possibility, raised by the investigator, that acrylonitrile monomer might be a carcinogen could not be confirmed because of the inadequacies of the study and a lack of an apparent dose response. The only other pertinent studies known at that time were chronic feeding studies utilizing the dog and the rat, carried out by the U.S. Public Health Service (PHS). These studies were completed, but no final reports were written. There were, however, inadequate raw data available from the PHS studies to confirm the Tullar conclusion that acrylonitrile monomer might be a carcinogen.

FDA decided to obtain additional data concerning the migration and toxicity of acrylonitrile monomer. In the **Federal Register** of November 4, 1974 (39 FR 38907), FDA proposed (1) to list prior-sanctioned acrylonitrile copolymers and (2) to interim list acrylonitrile copolymers pending receipt of additional data concerning migration of acrylonitrile monomers and the results of new toxicology tests.

In the **Federal Register** of June 14, 1976 (41 FR 23940), FDA published final § 180.22 (21 CFR 180.22) that interim listed acrylonitrile copolymers as articles or components of articles for use in contact with food. As a provision of the continued listing of acrylonitrile copolymers, the following toxicological data were required (§ 180.22(e)):

(1) Lifetime feeding studies with a mammalian species, preferably with animals exposed in utero to the chemical, (2) studies of multigeneration reproduction with oral adminstration of the test material, (3) assessment of teratogenic and mutagenic potentials, (4) subchronic oral administration in a nonrodent mammal, (5) tests to determine any synergistic toxic effects between acrylonitrile monomer and cyanide ion, and (6) a literature search on the effects of chronic ingestion of hydrogen cyanide.

In response to the interim regulations, the required toxicological tests were undertaken. On November 9, 1976, the Manufacturing Chemists Association, now the Chemical Manufacturers Association, submitted to FDA a final report of its testing of acrylonitrile monomer for teratogenic effects. The Manufacturing Chemists Association's test was performed by gavage administration of acrylonitrile monomer into four groups of rats at dosages of 0, 10, 25, and 65 milligrams per kilogram of body weight. FDA concluded that this test showed some teratogenic responses at dose levels of 25 and 65 milligrams per kilogram of body weight of the test animals. The dose level of 10 milligrams per kilogram showed no evidence of teratogenicity.

On January 14, 1977, the Manufacturing Chemists Association submitted to FDA a 13-month interim report on an ongoing 2-year study in which acrylonitrile monomer was incorporated into the drinking water of rats at concentrations of 0, 35, 100, and 300 parts per million. The report of the study at 13 months indicated significantly lowered body weight, pathologic changes in the gastric epithelium, increased incidence of masses in the ear duct, and proliferative lesions of the central nervous system of rats. The report also showed a higher incidence of subcutaneous masses in the mammary region of the test animals.

FDA evaluated the teratology study and the 13-month interim report of the 2-year feeding study in rats. The agency concluded that the amount of acrylonitrile monomer permitted to migrate to food should be reduced for all acrylonitrile copolymers in food-contact situations and that use of the copolymer as a beverage bottle should be stayed in the interest of public safety. In the **Federal Register** of March 11, 1977 (48 FR 13562), FDA proposed to reduce the maximum acrylonitrile monomer migration from acrylonitrile copolymers to food to a level of 50 parts per billion. In the same issue of the **Federal Register** (48 FR 13546), the agency published a stay of the regulations permitting use of acrylonitrile copolymers as beverage bottles based in part on the objections by the Natural Resources Defense Council (NRDC). The Monsanto Co., a manufacturer of acrylonitrile copolymer bottles, objected to the stay and sought judicial review before the United States Court of Appeals for the District of Columbia (*Monsanto Co.* v. *Gardner*, C.A. No. 77–1245 (D.C. Cir. 1977)).

The court found that the Commissioner of Food and Drugs could not stay the regulations on the basis of the objections filed by NRDC (June 14, 1977; 41 FR 23940). The court ordered a prompt hearing on the Monsanto objections, and set a date, later extended to September 19, 1977, for issuance of a final decision. This proceeding was held, and a decision issued, pursuant to the court's order.

In the **Federal Register** of April 1, 1977 (42 FR 17529), the Commissioner issued a notice of hearing on this matter. The participants in the hearing were FDA's Bureau of Foods (now the Center for Food Safety and Applied Nutrition), NRDC, and, for the manufacturers of acrylonitrile bottles, Monsanto Co., Borg-Warner Corp., and Vistron Corp. Following a formal evidentiary public hearing, the Administrative Law Judge issued an Initial Decision on August 4, 1977, finding that acrylonitrile copolymers used to fabricate beverage containers are food additives that have not been shown to be safe. The manufacturers excepted to the Initial Decision and appealed it to the Commissioner. In their replies, the Bureau of Foods and NRDC requested that the Commissioner affirm the Initial Decision with clarifications or additional findings.

In the **Federal Register** of September 23, 1977 (42 FR 48528), FDA published its Final Decision on acrylonitrile copolymers used to fabricate beverage containers. That document discussed at length the pertinent data from the formal evidentiary public hearing and that document is incorporated by reference in this final rule. In that document, the agency affirmed generally the decision of the Administrative Law Judge. As a result of this decision, the agency revoked all beverage container uses of acrylonitrile copolymers, effective December 22, 1977.

In November 1977, the various groups that were affected by the agency's final decision of September 23, 1977, appealed the decision to the U.S. Court of Appeals for the District of Columbia Circuit (*Monsanto Company, et al.* v. *Kennedy, et al.*, Court of Appeals No. 77–2023 and Consolidated Case Nos. 77–2024, 77–2026, and 77–2032). The appellants requested that the decision be remanded to FDA on the basis of a "new" Monsanto bottle from which Monsanto said there was no migration of acrylonitrile monomer.

On November 6, 1979, the United States Court of Appeals for the District of Columbia Circuit upheld the agency's decision that the "old" Monsanto bottle was a food additive. See *Monsanto* v. *Kennedy*, 613 F.2d 947 (D.C. Cir. 1979).

With respect to the "new" bottle, the Court of Appeals stated that "If these assertions [concerning no migration at very low residual acrylonitrile monomer (RAN) levels] can be demonstrated to the satisfaction of the Commissioner, a modification of the current regulation is a likely corollary." 613 F.2d at 953. The court further stated that "the Commissioner would have latitude to issue a statement of policy based upon the results of the proceeding or remand that would specify what in his review (sic) was an acceptable RAN level. This would serve a technology-forcing objective." 613 F.2d at 954. The court also held that "there is latitude inherent in the statutory scheme to avoid literal application of the statutory definition of 'food additive' in those *de minimis* situations that, in the informed judgement of the Commissioner, clearly present no public health or safety concerns." 613 F.2d at 954.

Following the court decision, Monsanto Co. requested a formal advisory opinion that the "new" acrylonitrile/styrene copolymer bottles "* * * are not food additives because there is *no* migration from such containers * * *." The agency evaluated the initial submission and additional scientific data and arguments in a second submission. FDA concluded that the scientific evidence did not demonstrate that there was no migration of acrylonitrile monomer from the new bottles.

The agency found that the new bottle is a food additive because there is a reasonable expectation of the migration of acrylonitrile monomer and other constituents from the acrylonitrile/styrene copolymer bottle. The agency also stated that "[t]his conclusion should not be interpreted as precluding the approval of a food additive regulation for the beverage container use of the new Cycle-Safe bottle based upon a risk assessment approach." Finally, the agency stated that "a food additive petition is the appropriate way to assemble the needed information and to obtain an amendment to § 177.1040 to provide for the safe use of the new Cycle-Safe bottle." (See Docket No. 80A–0109, Dockets Management Branch.)

Monsanto chose to accept FDA's recommendation concerning the filing of a food additive petition for the new Cycle-Safe bottle and submitted a petition for use of the new bottle on November 30, 1982. The new petition is the subject of this final rule.

A. Description of Acrylonitrile Copolymer Beverage Bottles

The acrylonitrile/styrene copolymer beverage bottles (acrylonitrile/styrene bottles) described in the petition are fabricated from copolymer resins consisting of approximately 70 parts by weight acrylonitrile units and approximately 30 parts by weight styrene units. These copolymer resins are formed by chemically reacting acrylonitrile monomer and styrene monomer under controlled conditions in the presence of appropriate catalysts. Subsequent processing reduces the levels of unreacted constituents. After compounding with adjuvants, such as colorants, the bottles are molded.

These high nitrile polymers have application for packaging carbonated beverages, in part, because they are an excellent barrier to permeation of carbon dioxide gas out of the bottle (and permeation of oxygen into the bottle). The same molecular properties of the high nitrile polymers that are responsible for the barrier properties also result in relatively slow diffusion rates for residual impurities, as compared to low nitrile polymers and some other common types of food-contact polymers, such as polyethylene.

Residual amounts of reactants, impurities in the reactants, side reaction products, decomposition products, and manufacturing aids are commonly found as contaminants in all chemical products, even in highly purified reagent grade chemicals. This high nitrile (acrylonitrile/styrene) copolymer contains residual amounts of impurities such as acrylonitrile monomer, styrene monomer, hydrogen cyanide, catalyst residues, and the recently found impurities acetonitrile, propionitrile, and isobutyronitrile. Although levels of these impurities do not exceed the low part per million range, these impurities are likely migrants because of their small molecular size. Consequently, Monsanto submitted extraction experiments on these constituents as part of this petition and an earlier petition (FAP 5B3056), which resulted in the current regulation of this polymer at § 177.1040(c)(1). As previously explained, the agency revoked the beverage container use of the polymer regulated in § 177.1040(c)(1) as part of the Final Decision in the acrylonitrile copolymer beverage bottle hearing, effective December 22, 1977.

Subsequent to the issuance of the 1977 Final Decision, the petitioner changed the polymer manufacturing process to reduce the level of residual acrylonitrile monomer in the bottle wall. This change reduced the migration potential of acrylonitrile monomer which, as discussed below, is considered to be a carcinogen. Currently, § 177.1040(c)(1) limits to 80 parts per million the amount of residual acrylonitrile monomer in the finished bottle. Acrylonitrile bottles manufactured between May 1975 and February 1977 contained an average of 15.3 parts per million of residual acrylonitrile monomer. Process improvements have lowered the residual acrylonitrile monomer to less than 0.1 part per million. Monsanto's current petition proposes a specification of 0.1 part per million maximum residual acrylonitrile monomer in the finished bottle. The process improvements have also significantly reduced the level of residual styrene.

In general, Monsanto has reported that it has not detected the migration of impurity constituents under test conditions. The limit of reliable measurement of the analytical methods used in these tests was usually in the range of 5 to 50 parts per billion. For most impurities, the limit of reliable measurement of the analytical method for the new bottle was about the same as for the old bottle. The old bottle was considered safe except for the concern for acrylonitrile monomer migration into beverages.

Monsanto did not submit extraction experiments on styrene for the new bottle, but extraction is expected to be lower as a result of significantly reduced residual styrene. The nitriles, acetonitrile, propionitrile, and isobutyronitrile, were only recently discoverd in the bottle wall. Short-term extraction experiments demonstrated that migration of these substances did not exceed the low part per billion range.

The substantial lowering of the residual acrylonitrile monomer level in the bottle wall has resulted in a large reduction in the potential exposure to acrylonitrile monomer by migration from the bottle wall into the beverage. As part of the earlier formal advisory opinion request, Monsanto submitted migration study results covering a wide range of residual acrylonitrile monomer levels that demonstrate the relationship between the level of residual acrylonitrile monomer and the migration of acrylonitrile monomer. The results show that extraction levels, after 6 months at 73 °F with 3 percent acetic acid, drop from approximately 24 parts per billion acrylonitrile monomer for 11.5 parts per million residual acrylonitrile monomer in the bottle wall to approximately 3 parts per billion acrylonitrile monomer for 3.3 parts per million acrylonitrile monomer in the bottle wall. A second series of 6 month, 3 percent acetic acid extraction experiments done at 90 °F showed that migration dropped from approximately 4.4 parts per billion acrylonitrile monomer for 0.67 part per million residual acrylonitrile monomer in the bottle wall to approximately 0.3 part per billion acrylonitrile monomer for 0.12 part per million residual acrylonitrile monomer in the bottle wall. Monsanto reported an acrylonitrile monomer extraction level of <0.1 part per billion for residual acrylonitrile monomer of <0.1 part per million based on a claimed analytical method sensitivity of <0.1 part per billion.

The agency concludes that Monsanto's data demonstrate that acrylonitrile/styrene bottles with residual acrylonitrile monomer <0.1 part per million yield not more than 0.16 part per billion acrylonitrile monomer migration under these extraction conditions. As compared to the bottles Monsanto was producing in 1976 which contained 15 parts per million residual acrylonitrile, Monsanto has achieved substantially more than a hundredfold reduction in acrylonitrile monomer extraction by reducing residual acrylonitrile monomer to <0.1 part per million in the bottle wall.

B. Evaluation of the Safety of Acrylonitrile/Styrene Copolymer Beverage Bottle

1. Statutory Safety Requirements

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless the data presented to FDA establish that the food additive is safe for that use. The concept of safety embodied in this requirement was explained in the legislative history of the Food Additives Amendment of 1958. "Safety requires proof beyond a reasonable certainty that no harm will result from a proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (S. Rep. No. 2284, 85th Cong., 2d Sess. 1 (1958.) This definition of safety is incorporated in FDA's food additive regulations (21 CFR 170.3(i)). The Delaney anticancer clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act), provides further that no food additive can be deemed to be safe if it is found to induce cancer when ingested by man or animal.

2. Prior Action by FDA

In the past, FDA has often refused to list a use of a food additive or color additive that contained or was suspected to contain minor amounts of a carcinogenic chemical, even if the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical, but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6

published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent.

Since that decision, FDA has approved the use of various color additives including D&C Green No. 5 (47 FR 24278; June 4, 1982), and D&C Red No. 6 and D&C Red No. 7 (47 FR 57681; December 28, 1982), on the same basis. FDA has also approved the use of three food additives that contain or might contain trace amounts of carcinogenic chemicals as a byproduct impurity or as a result of the use of the chemical in the manufacture of the food additives: Polyamide-epichlorohydrin resin (49 FR 13021, April 2, 1984; 48 FR 37617, August 19, 1983); ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol (48 FR 44203, September 28, 1983); and 2,2'oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)-propionate] (49 FR 13018, April 2, 1984; 49 FR 37615, August 19, 1983).

In brief, the agency believes that the Delaney anticancer clause is not triggered unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer but that contains a carcinogenic constituent may properly be evaluated under the general safety clause of the statute, using risk assessment procedures, to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive. This approach to regulating carcinogenic constituents of additives that are not themselves shown to cause cancer was recently upheld in the case of *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). The *Scott* case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which, as explained above, contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

The agency's approach to regulating carcinogenic constituents is also consistent with the decision in *Monsanto* v. *Kennedy*, 613 F.2d 947, 954 (D.C. Cir. 1979). In *Monsanto*, the court held that FDA has discretion to find that low-level migration into food of substances from food-packaging materials is so insignificant as to present no public health or safety concern. *Id.* This holding supports the agency's conclusion that, in appropriate circumstances, it can make a similar finding about a carcinogenic constituent or impurity.

The agency is confident that it possesses the capacity (through the use of extrapolation procedures) to assess adequately the upper limit or risk presented by the use of a food additive that has not been shown to be a carcinogen but that does contain a carcinogenic impurity. The estimate of the risk is likely to be exaggerated because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to conclude that a substance is safe under specific conditions of use. (FDA has also explained the basis for this approach in the advance notice of proposed rulemaking on its policy for regulating carcinogenic chemicals in food and color additives published in the **Federal Register** of April 2, 1982 (47 FR 14464).)

At issue here is the potential exposure to acrylonitrile monomer, which has been found to be a carcinogen. Acrylonitrile monomer is an impurity present in the acrylonitrile/styrene copolymer resin as a result of its intended use as a reactant in the manufacture of the food-contact copolymer. The acrylonitrile/styrene copolymer resin cannot be produced without some residual acrylonitrile monomer remaining in the bottle wall. This unreacted byproduct is one of numerous low-level impurities in the acrylonitrile/styrene copolymer resin, all of which are an integral part of the copolymer resin and are typical of the chemical impurities resulting from the chemical reactions used to produce many packaging materials. Not only would it be contrary to the language of the statute to attempt to regulate each of these numerous impurities as food additives, but it would also be impractical. Although the number of constituents that are detectable are continually increasing with advances in analytical methodology, it is not currently possible to identify completely all of the constituents that become components of food as a result of the use of an indirect additive. The agency does not believe that Congress intended that every chemical impurity with no intended use or function in the finished packaging material, such as the acrylonitrile monomer, be regulated as a separate food additive. Rather, it is far more likely that Congress intended that the finished packaging material, i.e., the acrylonitrile/styrene copolymer resin, be regulated as a food additive, and impurities, such as the acrylonitrile monomer, be regulated as constituents of the additive.

The Delaney anticancer clause does not apply in this case because there are no data to indicate the finished acrylonitrile/styrene copolymer resin induces cancer (although the acrylonitrile/styrene copolymer has not been tested for carcinogenic potential). In the current petition, Monsanto submitted nitrogen analyses on the total nonvolatile residue of 3 percent acetic acid bottle extracts to detect migration of acrylonitrile/styrene oligomers and higher acrylonitrile/styrene copolymers (which would have a slower rate or migration that the acrylonitrile/styrene oligomers). Nitrogen, an element present in acrylonitrile, was not detected in these extracts at a sensitivity of 4 parts per billion. Oligomers/polymers, such as these, that are unlikely to decompose on ingestion, usually display a low order of toxicity. Thus, at the low part per billion level of potential migration demonstrated here for acrylonitrile/styrene oligomers and polymers, the agency does not ordinarily require chronic toxicity studies, particularly studies for carcinogenic potential (Kokoski, C.J., "Regulatory Food Additive Toxicology" presented at the Second International Conference on Safety Evaluation and Regulation of Chemicals, October 24, 1983, Cambridge, MA.) The agency has no reason to suspect this acrylonitrile/styrene copolymer resin to be a carcinogen; therefore, no carcinogenicity testing of it is necessary.

C. Toxic Properties of Acrylonitrile

The interim acrylonitrile copolymer regulation (§ 180.22) required performance of a number of toxicity studies on acrylonitrile as discussed above. Based on these and other available studies, acrylonitrile was found to result in a multiplicity of toxic effects including mutagenicity, teratogenicity, and carcinogenicity. Of the observed toxic effects, carcinogenesis yields the lowest acceptable exposure level.

Acrylonitrile has been reported to be carcinogenic in six recent rat bioassays, in four of which the acrylonitrile was administered in the drinking water. In one 2-year drinking water study performed by Dow Chemical Co. (sponsored by the Chemical Manufacturers Association), acrylonitrile was studied in Sprague-Dawley rats at 35 parts per million, 100 parts per million, and 300 parts per million. The Center's Cancer Assessment Committee's (the committee) review of the data from the study concluded that the astrocytomas of the central nervous system, carcinoma of the Zymbal's gland (ear canal), papillomas and carcinomas of the stomach, and papillomas and carcinomas of the tongue were clearly associated with the acrylonitrile treatment in both male and female animals. Carcinomas of the small intestine and carcinomas of the mammary gland were also significantly increased in female animals. Treatment-related effects were observed at all dose levels. In a 2-year drinking water study performed by Bio/dynamics, Inc. (sponsored by Monsanto), acrylonitrile was studied in Fischer 344 rats at 1 part per million, 3 parts per million, 10 parts per million, 30 parts per million, and 100 parts per million. The Center's committee found that there were significant acrylonitrile treatment-related increases in tumor incidence for astrocytomas of the central nervous system and papillomas and carcinomas of Zymbal's gland in male and female animals. Statistically significant tumorigenic effects were observed at 10 parts per million, 30 parts per million, and 100 parts per million dose levels. In another 2-year drinking water study sponsored by Monsanto at Bio/dynamics, Inc., acrylonitrile was studied in Spartan Sprague-Dawley rats at 1 part per million and 100 parts per million. The study was terminated early (19 months for females and 22 months for males due to low survival rates). The per 100 parts million acrylonitrile treatment was associated with a significantly higher incidence of tumors in the brain, Zymbal's gland, and stomach. The fourth drinking water study where acrylonitrile administration was found to induce cancer was a three-generation reproduction study performed at Litton Bionetics for the Chemical Manufacturers Association. In this study on Charles River rats, a significant increase in astrocytoma (brain) and Zymbal's gland carcinoma was observed after approximately 45 weeks acrylonitrile treatment at 500 parts per million.

Monsanto also sponsored a 2-year gavage (stomach tube) study in rats at Bio/dynamics, Inc. Acryloitrile was administered to Spartan Sprague-Dawley rats at 0.1 milligram per kilogram per day and 10.0 milligrams per kilogram per day, 5 days per week. Due to poor survival in the high-dose group, the study was terminated at 20 months. Acrylonitrile treatment significantly increased tumor incidence at the 10.0 milligrams per kilogram per day dose level at the following tissue sites: central nervous system, ear canal, stomach, intestine, and mammary gland.

Finally, the Chemical Manufacturers Association sponsored a 2-year acrylonitrile inhalation study on Spartan Sprague-Dawley rats at Dow Chemical Co. Treatment groups were exposed to 20 parts per million and 80 parts per million of acrylonitrile for 6 hours per day, 5 days per week. At the 80 parts per million dose level, acrylonitrile exposure significantly increased tumor incidence in the brain, ear canal, small intestine, tongue, and mammary gland.

In summary, acrylonitrile is a potent carcinogen inducing tumors at a number of sites in the rat. Similar carinogenic responses have been observed in numerous studies, including acrylonitrile administered by ingestion and inhalation, and in several strains of the rat. The carcinogenic effects of acrylonitrile are consistently reproduced.

Numerous epidemiology studies have been done on workers exposed to acrylonitrile. None of these studies, however, definitively establishes acrylonitrile to be a human carcinogen. Many of these studies suffer from one or more of the following problems: small cohort size, short period of exposure, uncertainties about the duration and severity of the exposure, and confounding factors such as potential exposure to other carcinogens, such as vinyl chloride and β-naphthylamine, and cigarette smoke. The Environmental Protection Agency (EPA) has done a comprehensive review of 10 epidemiology studies. ("Health Assessment Document for Acrylonitrile," EPA-600/8-82-007F, October 1983, pp. 13-118.) EPA found six studies to be inconclusive. EPA found the data in the remaining four studies to "consistently demonstrate a statistically significant risk of lung cancer in various subgroups of the populations studies." But the problems were sufficient in three of the four studies "to cast doubt on the finding of significantly elevated risks of lung cancer found in each study." The remaining study, where an elevated lung cancer rate was reported, is the O'Berg study of Dupont acrylonitrile workers. (O'Berg, M.T., "Epidemiologic Study of Workers Exposed to Acrylonitrile," *Journal of Occupational Medicine*, 22:245, 1980.) Since respiratory cancer is at issue here, the effect of smoking behavior on the cancer incidence is important. Subsequent to publication of the O'Berg paper, EPA's Cancer Assessment Group assessed the effect of smoking on expected respiratory cancer rates. EPA found that possible differences in smoking behavior between acrylonitrile workers and the control cohort could not account for the significantly higher cancer rate found by O'Berg in the acrylonitrile workers. EPA concluded that O'Berg's observations "constitute significant evidence that acrylonitrile is likely to be a human carcinogen."

D. Application of Risk Assessment in This Rulemaking

Because acrylonitrile monomer in present in minor amounts as a residual impurity in this acrylonitrile/styrene copolymer resin, use of this resin in beverage containers may result in exposure to very small amounts of acrylonitrile monomer. The agency concludes, as in the D&C Green No. 6, D&C Green No. 5, and 2,2'-oxamidobis[ethyl 3-(3,5-di-*tert*-butyl-4-hydroxyphenyl)-propionate] rulemaking proceedings, that it can use risk assessment procedures to provide a basis for deciding whether there is a reasonable certainty of no harm from exposure to acrylonitrile from the use of Monsanto's acrylonitrile/styrene copolymer resin to fabricate beverage bottles.

The risk evaluation of acrylonitrile consists of two parts: (1) Assessment of probable exposure to acrylonitrile monomer from the beverage bottle use of acrylonitrile/styrene copolymer resin, and (2) extrapolation of the risk from acrylonitrile monomer observed in bioassays to the conditions of probable exposure to humans.

1. Exposure to acrylonitrile

The calculation of estimated exposure to acrylonitrile monomer from use of the acrylonitrile/styrene bottle can be divided into two parts: (1) potential acrylonitrile monomer concentration in beverages and (2) beverage consumption.

a. *Potential Acrylonitrile Monomer Concentration in Beverages.* As discussed above, Monsanto submitted data concerning the migration of acrylonitrile monomer from the acrylonitrile bottle into 3 percent acetic acid (a carbonated soft drink simulant). These data indicate that after storage for 6 months at 90 °F acrylonitrile migration does not exceed 0.16 part per billion. The 0.16 part per billion level does not represent analytically observed acrylonitrile, but rather it represents the lowest level at which acrylonitrile, could be detected by Monsanto's analytical method based on the extraction data submitted by Monsanto.

Although storage for 6 months at 90 °F facilitates measurement of extracted acrylonitrile monomer, it exaggerates actual use conditions. The average storage time and temperature conditions are expected to be considerably lower, particularly for high beverage consumers who would have the greatest potential acrylonitrile monomer exposure. For example, the average distribution time, to the consumer, for soft drinks is 1 month (in summer 87.9 percent less than 1 month old and in winter 61.6 percent less than 1 month old). (Labuza, T.P., "Shelf-Life Dating of Foods," Food and Nutrition Press, Inc., Westport, CT, 1982, pp. 480–482.) Daily home storage temperature generally is considerably less than 90 °F. Most grocery stores are air conditioned in the summer and at least in the south many warehouses are also cooled. (Labuza, *ibid.*)

The agency has concluded that some adjustment in the acrylonitrile monomer migration figure is necessary because of the difference between the test extraction conditions and actual use conditions. Because no acrylonitrile extraction experiments were conducted under actual use conditions, the agency has made an extrapolation of the potential migration of acrylonitrile at shorter storage times from the data submitted by Monsanto involving storage for 6 months at 90 °F. This extrapolation was based on all of the extraction data submitted by Monsanto and the known migration behavior of small molecules. This extrapolation yields a potential acrylonitrile monomer concentration in the beverage of 0.055 part per billion. (Memorandum dated January 18, 1982, Michael Flood, Food Additive Evaluation Branch, FDA.) The agency believes that this estimate more accurately reflects the potential migration of the acrylonitrile monomer under actual storage conditions.

b. *Beverage Consumption.* The second part of the exposure estimate involves beverage consumption. The agency has estimated that average high user consumption is not likely to exceed three 12-ounce soft drinks per day, i.e., 1,060 grams per day. The following was among the data considered in arriving at this estimate.

Based on 1977–1978 surveys, the Market Research Corp. of America (MRCA) calculated a 90th percentile consumption of nonalcoholic beverage (food category number 23) of 419 grams per day for users. MRCA's value is based on a 14-day menu census of almost 9,000 consumers of soft drinks, 2 years of age and older.

In 1977–1978, the U.S. Department of Agriculture (USDA) also performed a food consumption survey. USDA computed a 90th percentile consumption of 556 grams per day for carbonated soft drinks based on consumption over a 3-day period by more than 19,000 users.

Industry sales information also provides beverage consumption data. The National Soft Drink Association (NSDA) reported estimated 1980 per capita soft drink consumption (based on sales) of 409.6 12-ounce containers (about 382 grams per day per capita). The industry analyst, John Maxwell of the trade journal *Beverage Industry* (April 1984, p. 17), has estimated 1983 per capita soft drink consumption as 41.6 gallons (about 414 grams per day per capita). *Beverage Digest* (Vol. 4, No. 8, April 27, 1984) projected 1990 per capita consumption as 54.7 gallons (about 544 grams per day per capita).

The MRCA and USDA surveys indicate that the ratio of 90th percentile to mean consumption is in the range of 2.0 to 2.5. Using this range, 90th percentile soft drink consumption would be in the range 764 to 955 grams per day using the NSDA 1980 per capita consumption, 828 to 1,035 grams per day using John Maxwell's (1983) per capita estimate, and 1,088 to 1,360 grams per day using *Beverage Digest's* projection for 1990. Considering such consumption estimates and allowing for growth in soft drink consumption, the agency estimates that high users are unlikely to exceed 1,060 grams per day.

While a high consumer of soft drinks might average 1,060 grams per day over extended periods, it is unlikely for individuals to average 1,060 grams per day consumption of soft drinks from these acrylonitrile/styrene copolymer bottles through at least 1990 due to market considerations. In 1982, the soft drink market was divided among the following broad package types (in percent of fluid ounces sold): Glass (34.9 percent), cans (26.9 percent), bulk (22.6 percent), and polyethylene terephthalate plastic (15.6 percent) (*Beverage Industry,* March 1984, p. 33). Thus, soft drinks are available in a variety of containers in addition to any that might eventually be packaged in the acrylonitrile/styrene copolymer bottles. For individuals to average 1,060 grams per day soft drink consumption over a lifetime from acrylonitrile/styrene copolymer bottles, they must not only be a long-term high user of these beverages, but acrylonitrile/styrene copolymer plastic bottles would probaby need to package a substantial fraction of the soft drinks produced.

Polymer production can provide another measure of exposure. In the petition, Monsanto estimates worldwide use of this bottle resin as 30 million pounds per year by about 1990. Thirty million pounds of resin is sufficient to bottle 150 to 225 million liters of soft drinks depending on bottle size (assuming the container is not a laminate structure and is for single-service use). This amount of soft drink constitutes less than two-thirds of 1 percent of the 1983 U.S. soft drink production and would be much less on a worldwide basis. Based on these data, FDA estimates that the individual lifetime-averaged consumption of soft drinks in acrylonitrile/styrene bottles would not exceed 25 grams per day. This estimate assumes that the soft drinks packaged in these acrylonitrile/styrene bottles are consumed uniformly by 10 percent of the U.S. population (10 percent population estimate), and that the same individuals consume these soft drinks every year.

The validity of this estimate depends primarily on the assumption that production of the acrylonitrile/styrene bottle in the United States will not substantially exceed 30 million pounds per year. Specialization of the market, e.g., narrow geographical localization of the acrylonitrile/styrene bottle market, might also affect this estimate. The "25 gram per day" estimate could therefore possibly underestimate consumption. However, as discussed above, the agency has made a consumption estimate of 1,060 grams per day of soft drink for high use consumers of soft drinks in all containers. This beverage consumption estimate provides for a substantial margin of error, including the possibility that acrylonitrile/styrene bottles will be used to package a large fraction of soft drinks at some time in the future.

The "1,060 grams per day" estimate is equivalent to assuming that an average of approximately one-third of a 3,000-gram daily diet is packaged in these acrylonitrile/styrene bottles. Because this estimate assumes that the acrylonitrile bottle will capture at least a substantial fraction of the beverage market, it must be viewed as a worst-case estimate for the foreseeable furture.

c. *Dietary Exposure to Acrylonitrile.* An estimate of the dietary exposure to the acrylonitrile monomer resulting from approval of the acrylonitrile/styrene bottle involves consideration of the level of acrylonitrile monomer in the beverage and the amount of beverage consumed over a given time period. Based on the potential level of 0.055 part per billion acrylonitrile monomer in beverages and the worst-case estimate (1,060 grams per day) of beverage consumption from this bottle, the potential lifetime-average individual dietary exposure to acrylonitrile monomer is 0.058 microgram per day. For the 10 ercent population estimate (25 grams per day) of beverage consumed from this bottle, the potential lifetime-average individual dietary exposure to acrylonitrile monomer is 0.0014 microgram per day.

2. Extrapolation of Risk for Acrylonitrile Monomer

The second part of the evaluation of risk presented by the potential migration of acrylonitrile monomer from the acrylonitrile/styrene bottle is an extrapolation from the actual compound-related incidence of cancer (risk) found in appropriate cancer studies to risk under the conditions of probable exposure for humans. The Center's committee chose the Chemical Manufacturers Association/Dow drinking water and the Monsanto/Biodynamics multidose drinking water studies in rats as appropriate studies for assessing the carcinogenic potency of acrylonitrile monomer and risk extrapolation. (Cancer Assessment Committee Meeting Report dated November 24, 1981.) Both these studies provide several dose levels with increasing tumor incidence. These studies also involved the lowest level test doses in which carcinogenic effects were observed. The Center's committee considered these two studies to contain the best available animal data for assessing low exposure risk from ingestion of acrylonitrile monomer. The available epidemiology data on acrylonitrile workers are not appropriate for quantitative risk assessment due, in part, to the large uncertainty in the worker exposure (concentration in air and duration).

The Center's committee used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low potential doses that might be encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and is likely, in fact, to exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data.

For each study, the committee determined the significant acrylonitrile monomer treatment-related tumors. In the Monsanto/Biodynamics study, there are astrocytomas of the central nervous system and papillomas and carcinomas of Zymbal's gland of the ear canal. In the Chemical Manufacturers Association/Dow study the acrylonitrile monomer treatment-related tumors are astrocytomas of the central nervous system, carcinomas of the Zymbal's gland, papillomas and carcinomas of the tongue, papillomas and carcinomas of the stomach, carcinomas of the small intestine (female only), and carcinomas of the mammary gland (female only). For each dose/sex group of animals, the committee computed the number of animals bearing these significant tumors. The incidences were corrected for missing tissues and early death. Linear extrapolation to low dose was performed for each sex in each study. The calculations were also performed by combining risks determined for each tumor site. Both approaches yielded similar results. Although the Monsanto/Biodynamics study used a dose level 35-fold lower than the Chemical Manufacturers Association/Dow study and these studies were on different strains of rats, the cancer potencies calcuated from these two studies are within a factor of two. The committee concluded from its quantitative risk assessment that acrylonitrile monomer exposure corresponding to an upper limit individual lifetime risk of 10^{-6}, i.e., 1 in 1 million, is about 0.5 to 1.0 microgram per day.

From this risk assessment and using linear extrapolation, FDA calculated the upper limit individual lifetime risk for the acrylonitrile monomer exposure estimated to result from use of the acrylonitrile/styrene bottle. The agency calculated an upper limit risk for the worst-case estimated exposure to acrylonitrile monomer discussed above, i.e., 1,060 grams per day of soft drink for acrylonitrile/styrene bottles containing 0.058 microgram per day acrylonitrile monomer. The upper limit individual lifetime risk from the "worst-case" potential exposure is about 5.8×10^{-8} to $1.2 \times ^{-7}$, or less than 1 in 8 million. The upper limit individual lifetime risk is about 1.4×10^{-9} to 2.8×10^{-9}, or less than 1 in 360 million, for the "10 percent population" estimate, i.e., 25 grams per day soft drink (from acrylonitrile bottles) containing 0.0014 microgram per day acrylonitrile monomer based on 30 million pounds per year resin production. Because of the numerous conservatisms in the worst-case exposure estimate, lifetime-averaged individual exposure to acrylonitrile monomer is expected to be substantially less than the estimated daily intake (0.058 microgram per day acrylonitrile monomer), and, therefore, the calculated upper bound risk would be less. The agency concludes that there is a reasonable certainty of no harm from exposure to acrylonitrile monomer that might result from the proposed use of this acrylonitrile/styrene copolymer beverage bottle.

In concluding that potential exposure to acrylonitrile monomer from use of the acrylonitrile/styrene bottle is safe, FDA considered the possibility of exposure to minor amounts of acrylonitrile monomer as a result of current food-contact uses of acrylonitrile copolymers other than the use in beverage bottles. As discussed previously, a variety of acrylonitrile copolymers are regulated under numerous food additive regulations or are considered prior sanctioned. Acrylonitrile copolymers have been interim listed since 1976.

Acrylonitrile copolymers have never been a major food-packaging material. Probably the largest food-packing use of acrylonitrile copolymers was the use of acrylonitrile-butadiene-styrene containers as one-half pound margarine tubs. Acrylonitrile migration from these tubs also was relatively high, e.g., 25 parts per billion acrylonitrile monomer under typical use conditions. (Memorandum dated April 29, 1980, Charles Breder, Indirect Additives Laboratory, FDA.) However, acrylonitrile-butadiene-styrene margarine tubs were abandoned several years ago according to the National Association of Margarine Manufacturers. (Letter dated November 29, 1983, S. Riepma, President, National Association of Margarine Manufacturers, to R. Williams, FDA.) Acrylonitrile-butadiene-styrene has apparently not been used to package margarine for the past 3 years according to recent information from members of the Society of the Plastics Industry, Inc. (Letter dated November 11, 1983, Jerome Heckman, Keller & Heckman, to Terry Troxell, FDA.) These members also stated that no company is known to be planning to reintroduce acrylonitrile-butadiene-styrene or other acrylonitrile copolymer containers into this market. A limited 1983 FDA sampling of retail stores in the Washington, DC, area supports these statements. (Memorandum dated January 20, 1983, Charles Breder, Indirect Additives Laboratory, FDA.)

Currently the major food packaging use of acrylonitrile copolymers appears to be the use of an acrylonitrile copolymer barrier resin for blister-type luncheon meat packages. (Letter dated May 26, 1983, Jerome Heckman, Keller & Heckman, to Gerad McCowin, FDA, and attached survey.) The Canadian Food and Drug Directorate tested luncheon meat packaged in a laminate consisting of an acrylonitrile-based copolymer layer and a food-contact polyethylene layer. No detectable acrylonitrile monomer was found in the slice of meat in contact with the acrylonitrile resin package using analytical methodology sensitive to a level of 2 parts per billion.

(Page, B. D. and Charbonneau, C. F., "Improved Procedure for the Determination of Acrylonitrile in Foods—Application to Meat," 1984 preprint.) Thus, the agency expects migration of residual acrylonitrile monomer into the meat to be relatively low. In a recent limited FDA sampling of Washington, DC, area retail stores, only 1 of 16 different manufacturer's blister-pack meat products was packaged in an acrylonitrile copolymer package. (Memorandum dated April 23, 1984, Charles Breder, Indirect Additives Laboratory, FDA.) In this case, the acrylonitrile copolymer was separated from direct food contact by another polymer layer.

A preliminary review of the current use of acrylonitrile copolymers for food packaging and other food-contact uses, including those permitted by this final rule, gives no reason to expect dietary exposure to acrylonitrile to be unsafe. The agency is reviewing the regulated uses of acrylonitrile copolymers and is developing a proposal to amend the acrylonitrile copolymer regulations to ensure that dietary acrylonitrile monomer exposure from probable use of all acrylonitrile copolymers under the food additive regulations, including those permitted by this final rule, will remain safe in the future.

The agency found the upper limit individual lifetime risk from potential acrylonitrile monomer exposure from the acrylonitrile/styrene bottle to be less than 1 in 8 million for the worst-case assumption where about one-third of the average daily diet is packaged in this bottle. This translates to a risk estimate of about 1 in 3 million for total dietary exposure, i.e. assuming that acrylonitrile packages all foods in a 3,000-gram per day diet and that the level of acrylonitrile monomer in food is 0.055 part per billion. This "1 in 3 million" risk is also considered safe by the agency.

3. Safety of Other Possible Migrants

The safety of the potential exposure to the other possible migrants from the acrylonitrile/styrene copolymer bottle was established prior to issuance of the existing regulation (§ 177.1040(c)(1)) for this polymer. The agency has again evaluated the available toxicity data on the other possible migrants, including the recently found nitriles: Acetonitrile, propionitrile, and isobutyronitrile. The agency has determined that the relatively low potential exposure to these other possible migrants does not pose a hazard to the public health.

The agency, therefore, concludes that the proposed nonalcoholic beverage use of the acrylonitrile/styrene copolymer is safe and that the food additive regulations should be amended as set forth below.

E. Specifications

The agency is establishing specifications to ensure that acrylonitrile monomer migration does not exceed the levels considered in determining that it could be safely used. Although research analytical methods have demonstrated that acrylonitrile monomer migration does not exceed 0.16 part per billion (6 month extraction at 90 °F) from these bottles, compliance analytical methods are not available at this time to determine acrylonitrile monomer in food simulating solvents (or beverages) at sub-part per billion levels. Monsanto, however, submitted data establishing the relationship between acrylonitrile monomer extraction levels and residual acrylonitrile monomer levels in its acrylonitrile bottles. The agency has analyzed beverage bottles supplied by Monsanto and has confirmed that these bottles contain residual acrylonitrile monomer at no greater than 0.1 part per million. The agency has concluded that the maximum 0.1 part per million acrylonitrile in this acrylonitrile/styrene barrier resin correlates with potential migration of acrylonitrile monomer of 0.055 part per billion. This level of potential migration was used in the risk assessment discussed above. Therefore, the agency is establishing, as a specification, 0.10 part per million maximum residual acrylonitrile monomer in the acrylonitrile/styrene copolymer in finished containers.

To ensure that the barrier properties, and, therefore, the low rate of acrylonitrile monomer migration demonstrated in the petition, are maintained when formulated with optional adjuvants and/or other polymeric resins, the agency is establishing a maximum carbon dioxide permeability specification.

In addition, the agency is correcting a printing error in § 177.1040(c)(1) that occurred in the 1977 edition in the Code of Federal Regulations (CFR). As originally published, the specification for styrene content in the polymer described in § 177.1040(c)(1) was 28–34 parts by weight of styrene. In the 1977 CFR and subsequent editions of the CFR, the styrene content was listed as 23–34 parts by weight of styrene. FDA is also updating the regulations to incorporate dual metric and English measurements.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The environmental impact of approval of acrylonitrile copolymer carbonated beverage and beer bottles was thoroughly considered in FDA's 1976 final environmental impact statement on plastic bottles for carbonated beverages and beer. FDA's final environmental impact statement covered the environmental impacts of marketing both acrylonitrile copolymer and polyethylene terephthalate beverage bottles, although FDA's 1977 environmental impact determination (42 FR 9227) addressed the continued use of only nonacrylonitrile beverage bottles. The determination was not applicable to acrylonitrile copolymer beverage bottles because the Commissioner decided to stay the food additive regulations permitting their use due to questions about whether safe conditions of use existed. Consequently, the use of the acrylonitrile/styrene bottles requested in this petition cannot be approved without a decision on the environmental consequences of such approval.

To determine whether to prepare a supplemental environmental impact statement or a finding of no significant impact for the approval of the acrylonitrile/styrene bottle, FDA must determine if (1) there are substantial changes in the proposed action that are relevant to environmental concerns, or (2) there are significant new circumstances or information that are relevant to environmental concerns and that bear on the proposed action or its impacts (40 CFR 1502.9(c)(1) (i) and (ii)).

The agency has prepared an environmental assessment, which evaluates the potential environmental effects of approval of the acrylonitrile/styrene bottle. In preparing the environmental assessment, FDA considered the new information that might bear on the conclusions in the final environmental impact statement.

The environmental assessment identifies two beneficial environmental effects that would result from approval of the acrylonitrile/styrene bottle. One beneficial effect is increased energy conservation. To the extent that the acrylonitrile/styrene bottle replaces refillable glass bottles, energy use will increase. However, as the acrylonitrile/styrene bottle is expected to replace primarily nonrefillable glass bottles, which require more energy to produce and market, this increase in energy use will be offset. Additional energy savings are likely because the acrylonitrile/styrene bottle will provide energy recovery from incineration. Overall, a net savings in energy is expected. The second beneficial effect is increased safety, as the number of injuries resulting from breakage of glass beverage bottles will be reduced.

The environmental assessment identifies four adverse environmental effects that would result from approval of the acrylonitrile/styrene bottle. These adverse effects include increased manufacturing effluents and emissions, increased litter, increased volume of solid waste, and the risk of exposure to toxic combustion gases from improperly operating incinerators and possibly small fires and open dumps. The extent of the increase in manufacturing effluents and emissions, litter, and volume of solid waste will depend on the extent to which the acrylonitrile/styrene bottle replaces aluminum cans, which have a higher recycle rate, and refillable glass bottles. The magnitude of this increase is not expected to be large because, as noted above, the acrylonitrile/styrene bottle is expected to replace primarily nonrefillable glass bottles.

With regard to combustion, the frequency of exposure to toxic gases in dangerous concentrations would be slight. Ten percent or less of municipal solid waste is incinerated, and indiscriminate burning of plastic bottles is probably not common practice.

However, independent of the extent to which the acrylonitrile/styrene bottle replaces other container types, there will be increased air emissions of acrylonitrile associated with manufacture. A risk assessment done by the U.S. Environmental Protection Agency for FDA has, however, demonstrated that the maximum individual cancer risk now presented by the highest risk acrylonitrile monomer and resin facilities would not be significantly increased as a result of FDA approval of the acrylonitrile/styrene bottle. The U.S. Environmental Protection Agency plans to deal with areas in which a risk is created by the presence of an acrylonitrile-emitting facility by working with all States with such facilities to establish State regulations that will lower exposure to and risk from acrylonitrile to acceptable levels. Technology requirements under new source review programs for volatile organic chemicals would ensure that acrylonitrile air emissions and risks from these emissions for any new acrylonitrile monomer or acrylonitrile/styrene copolymer resin plants would be reduced to acceptable levels before the plant begins operations. Moreover, to mitigate adverse impacts from manufacture, the petitioner has stated that emissions will be controlled.

Regardless of whether the acrylonitrile/styrene bottle replaces refillables or only other throwaways, the acrylonitrile/styrene bottle will be noticeably present in litter, including the litter in National parks, recreation areas, and public lands.

FDA expects the magnitude of all environmental effects, adverse and beneficial, to be less now than would have occurred at the time of the 1976 final environmental impact statement because the currently estimated market volume of the acrylonitrile/styrene copolymer resin for bottle use is substantially less than estimated at that time. In addition, adverse effects from manufacturing would be less because specific standards have been adopted since 1976 to control release of chemicals into the environment and workplace, and further controls are expected. Adverse effects from combustion would also be less because many incinerators operating improperly in the mid-1970's have been shut down due to difficulties and/or expenses associated with meeting air emission requirements, there have been improvements in incineration technology since the mid-1970's and burning in open dumps has been reduced since 1976.

FDA has carefully evaluated new information bearing on the conclusions in the 1976 final environmental impact statement. Based on the considerations listed above, FDA concludes that approval of the acrylonitrile/styrene bottle will not have a significant impact on the quality of the human environment and that a supplemental environmental impact statement is not required. FDA will reexamine this conclusion if the market volume estimates prove to be inaccurate, if air emission regulations are not adopted, or if new information becomes available suggesting that this action will have significant environmental impacts.

The agency's finding of no significant impact and the environmental assessment supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 177 is amended in § 177.1040 by revising the introductory text of paragraph (b)(2) and by revising paragraphs (c) and (e), to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1040 Acrylonitrile/styrene copolymer.

* * * * *

(b) * * *

(2) The optional adjuvants for the acrylonitrile/styrene copolymer identified in paragraph (c) (1) and (3) of this section are as follows:

* * * * *

(c) *Specifications.*

Acrylonitrile/styrene copolymers	Maximum residual acrylonitrile monomer content of finished article	Nitrogen content of copolymer	Maximum extractable fractions at specified temperatures and times	Conformance with certain specifications
1. Acrylonitrile/styrene copolymer consisting of the copolymer produced by polymerization of 66–72 parts by weight of acrylonitrile and 28–34 parts by weight of styrene; for use with food of type VI–B identified in table 1 of sec. 176.170(c) of this chapter under conditions of use C, D, E, F, G described in table 2 of sec. 176.170(c) of this chapter.	80 ppm[1]	17.4 to 19 pct	Total nonvolatile extractives not to exceed 0.01 mg/in^2 surface area of the food contact article when exposed to distilled water and 3 pct acetic acid for 10 d at 66 °C (150 °F). The extracted copolymer shall not exceed 0.001 mg/in^2 surface area of the food contact article when exposed to distilled water and 3 pct acetic acid for 10 d at 66 °C (150 °F)[1]	Minimum number average molecular weight is 30,000.[1]

Acrylonitrile/styrene copolymers	Maximum residual acrylonitrile monomer content of finished article	Nitrogen content of copolymer	Maximum extractable fractions at specified temperatures and times	Conformance with certain specifications
2. Acrylonitrile/styrene copolymer consisting of the copolymer produced by polymerization of 45–65 parts by weight of acrylonitrile and 35–55 parts by weigh of styrene; for use with food of types, I, II, III, IV, V, VI (except bottles), VII, VIII, and IX identified in table 1 of sec. 176.170(c) of this chapter under conditions B (not to exceed 93 °C (200 °F)), C, D, E, F, G described in table 2 of sec. 176.170(c) of this chapter.	50 ppm[1]	12.2 to 17.2 pct	Extracted copolymer not to exceed 2.0 ppm in aqueous extract or *n*-heptane extract obtained when 100 g sample of the basic copolymer in the form of particles of a size that will pass through a U.S. Standard Sieve No. 6 and that will be held on a U.S. Standard Sieve No. 10 is extracted with 250 mil of deionized water or reagent grade *n*-heptane at reflux temperature for 2 h.[1]	Minimum 10 pct solution viscosity at 25 °C (77 °F) is 10cP.[1]
3. Acrylonitrile/styrene copolymer consisting of the copolymer produced by polymerization of 66–72 parts by weight of acrylonitrile and 28–34 parts by weight of styrene; for use with food of type VI–B identified in table 1 of sec. 176.170(c) of this chapter under conditions of use C, D, E, F, G described in table 2 of sec. 176.170(c) of this chapter.	0.10 ppm (calculated on the base of the weight of the acrylonitrile copolymer resin in the finished articles).[2]	17.4 to 19 pct	Total nonvolatile extractives not to exceed 0.01 mg/in^2 surface area of the food contact article when exposed to distilled water and 3 pct acetic acid for 10 d at 66 °C (150 °F). The extracted copolymer shall not exceed 0.001 mg/in^2 surface area of the food contact article when exposed to distilled water and 3 pct acetic acid for 10 d at 66 °C (150 °F).[1]	Maximum carbon dioxide permeability at 23 °C (73 °F) for the finished article is 0.04 barrer.[3]

[1] Use methods for determination of residual acrylonitrile monomer content, maximum extractable fraction, number average molecular weight, and solution viscosity, titled: "Determination of Residual Acrylonitrile and Styrene Monomers-Gas Chromatographic Internal Standard Method"; "Infrared Spectrophotometric Determination of Polymer Extracted from Barex 210 Resin Pellets"; "Procedure for the Determination of Molecular Weights of Acrylonitrile/Styrene Copolymers," and "Analytical Method for 10% Solution Viscosity of Tyril," which are incorproated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), 200 C Street SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

[2] As determined by the method titled "Headspace Sampling and Gas-Solid Chromatographic Determination of Residual Acrylonitrile in Acrylonitrile Copolyemr Solutions," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), 200 C Street SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

[3] As determined on appropriately shaped test samples of the article or acrylonitrile copolymer layer in a multilayer construction by ASTM method D-1434-82, "Standard Method for Determining Gas Permeability Characteristics of Plastic Film and Sheeting," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), 200 C Street SW., Washington, DC 20204, and the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

* * * * *

(e) Acrylonitrile copolymer identified in this section may be used to fabricate beverage containers only if they comply with the specifications of item 3 in paragraph (c) of this section.

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 19, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective September 19, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: September 6, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 84–24702 Filed 9–14–84; 12:00 pm]

BILLING CODE 4160–01–M

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21 CFR Parts 600, 803, 1002, and 1003

[Docket No. 79N–0182]

Medical Device Reporting

Correction

In FR Doc. 84–23910 beginning on page 36326 in the issue of Friday, September 14, 1984, make the following corrections:

1. On page 36326, first column, in the third line of the **DATES** section, "November 13, 1984" should read "December 13, 1984".
2. On page 36348, second column, in the second line from the top of the page, "November 13, 1984" should read "December 13, 1984".
3. On page 36351, third column, in the effective date paragraph, "November 13, 1984" should read "December 13, 1984".

BILLING CODE 1505–01–M

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21 CFR Part 1240

[Docket No. 81N–0204C]

Notice of Public Hearing To Receive Information on Whether Milk and Milk Products Sold for Human Consumption Should Be Pasteurized; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) is rescheduling the September 28, 1984, informal public hearing for the presentation of information, data, and views on whether there is a need to require pasteurization of milk and milk products sold for human consumption. FDA scheduled the informal public hearing on September 28, 1984, by a notice published in the **Federal Register** of August 3, 1984. Because of the large number of requests for appearance, FDA will hold the informal public hearing on October 11 and 12, 1984.

DATES: Oral notice of participation, except for those notices of appearance already received by FDA, for the October 11 and 12, 1984, hearing must be telephoned to the contact person listed below no later than October 3, 1984. The informal public hearing will commence at 11 a.m. on October 11, 1984, and continue at 8 a.m. on October 12, 1984. A written statement for the record by individuals who will not be able to attend in person, and additional comments, data, or other information may be submitted by October 29, 1984.

ADDRESSES: The October 11 and 12, 1984, hearing will be held in the Hubert Humphrey Bldg., 1st Floor Auditorium, 200 Independence Ave. SW., Washington, DC 20201. Written statements for the record, written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: C. K. Gund, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 1984 (49 FR 31065), FDA announced that it would hold on September 28, 1984, an informal legislative-type hearing under 21 CFR Part 15 to provide interested persons an opportunity to present information, data, and views on the following issues:

1. Whether the consumption of raw milk, including certified raw milk, and raw milk products is of public health concern; and
2. If the answer to issue 1 is yes, whether requiring pasteurization of raw milk, including certified raw milk, and raw milk products is the most reasonable regulatory option.

A large number of requests for participation have been submitted. Two requests for participation have asked that the hearing be extended an additional day. One request asked that the hearing be held on a different day because September 28 is a religious holiday. In light of these requests, FDA has concluded that it should reschedule the hearing to allow the appropriate time for all participants to attend on consecutive days. One request not only asked the agency to extend the hearing an additional day but also to hold the hearing at other locations across the country. Regrettably, FDA must deny this particular request because of limited resources. However, the agency encourages all interested persons to submit written statements and views on the issues.

Interested persons who have already submitted a request to appear on the previously scheduled day, September 28, need not telephone the contact person listed above unless he or she cannot attend on either October 11 or 12, 1984.

Because of the shortness of time between the publication of this **Federal Register** notice and October 11, 1984, interested persons who want to appear at the informal hearing should call the contact person listed above no later than October 3, 1984. They should provide the contact person with the approximate amount of time they need to present his or her views. FDA will prepare a hearing schedule showing the time allotted to each participant, file the schedule with the Dockets Management Branch, and mail a copy to each participant.

For other procedural and related information regarding the informal hearing on the issues of pasteurization of milk, see the notice published in the **Federal Register** of August 3, 1984 (49 FR 31065).

Dated: September 13, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24884 Filed 9-17-84; 10:49 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7965]

Income Taxes; Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form

Correction

In FR Doc. 84-22291 beginning on page 33228 in the issue of Wednesday, August 22, 1984, make the following corrections:

§ 1.163-5 [Corrected]

1. On page 33233, in § 1.163-5(c)(2)(v)(A), third column, seventh line, "of" should have read "for".

2. In the same column, in § 1.163-5(c)(2)(v)(B), sixth line, "of" should have read "if".

3. Also in § 1.163-5(c)(2), on page 33234, first column, the first complete paragraph now designated as "(v)" should have been designated as "(vi)".

BILLING CODE 1505-01-M

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26 CFR Part 35a

[T.D. 7967]

Employment Taxes; Application of the Repeal of 30 Percent Withholding by the Tax Reform Act of 1984 and of Information Reporting and Backup Withholding in Light of Such Repeal

Correction

In FR Doc. 84-22292 beginning on page 33239 in the issue of Wednesday, August 22, 1984, make the following corrections.

1. On page 33239, third column, six lines from the bottom, "lending" should have read "legending".

§ 35a.9999-5 [Corrected]

2. On page 33240, in § 35a.9999-5(a), A-2., second column, fourth line, "of" should have read "or".

3. On page 33241, in § 35a.9999-5(a), A-3., first column, eighth line, "of" should have read "or".

BILLING CODE 1505-01-M

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26 CFR Part 1

[T.D. 7973]

Income Tax; Treatment of Transfer of Property Between Spouses, Tax Treatment of Alimony and Separate Maintenance Payments, and Dependency Exemption in the Case of Child of Divorced Parents.

Correction

In FR Doc. 84-23129 beginning on page 34451 in the issue of Friday, August 31, 1984, make the following corrections:

1. On page 34451, second column, twelfth line, "on" should have read "or".

§ 1.71-IT [Corrected]

2. On page 34455, in § 1.71-IT(a) A-2(f), first column, in the fifth line, insert "6" between "the" and "post".

3. On page 34457, in § 1.71-IT(d) Q-21, second column, first line, "you" should have read "the".

4. On page 34458, in § 1.71-IT(d) A-24, first column, thirtieth line, "required" should have read "reduced".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket Nos. AM600MD/AM601MD/AM602MD[1]; A-3-FRL-2673-5]

Revision of Maryland State Implementation Plan; 1982 Ozone and Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving the 1982 Maryland State Implementation Plan (SIP) revision for Ozone and Carbon Monoxide. This revision meets all the requirements of the Clean Air Act and EPA policy. The Ozone (O_3) and Carbon Monoxide (CO) SIP revision provides for attainment and maintenance of the primary National Ambient Air Quality Standards (NAAQS) for O_3 and CO as required

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[1] Due to a recent reorganization at the EPA Region III Office, the prefix to the docket numbers has changed from the previous "AW" designation to "AM".

under Part D of the Clean Air Act Amendments of 1977. Also, EPA is no longer taking action to impose on Maryland funding limitations and a construction moratorium as proposed in the August 3, 1983 **Federal Register** Notice (48 FR 35312).

EFFECTIVE DATE: This action is effective September 19, 1984.

ADDRESSES: Copies of the revision and the accompanying support documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, Sixth & Walnut Streets, Philadelphia, PA 19106. ATTN: James B. Topsale, P.E. (3AM13)

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

The Office of the Federal Register, 100 L Street NW., Room 8401, Washington, DC 20480.

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale, P.E. (3AM13) at the EPA address indicated above or by phone at 215/597-4553. Please reference the EPA docket numbers in all correspondence.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1984, EPA published a Notice in the **Federal Register** (49 FR 8610) with a determination that both the Maryland portion of the National Capital Interstate (AM601MD) and the Metropolitan Baltimore Intrastate (AM600MD) Air Quality Control Regions (AQCRs) had met the Part D requirements of the Clean Air Act (CAA) for Ozone (O_3) and Carbon Monoxide (CO). The Notice was a final rulemaking action which approved all of Maryland's 1982 State Implementation Plan (SIP) revisions except for the Inspection and Maintenance (I/M) program and the revised schedule for the adoption of additional controls measures for sources of Volatile Organic Compounds (VOC).

A second March 8, 1984, notice (49 FR 8634) proposed approval of proposed I/M regulations submitted to EPA on May 4, June 13, and June 16, 1983, by the State. The Agency also proposed approval of the I/M program's enforcement mechanism, based on the proposed regulations and the State's commitment to additional enforcement procedures in an August 23, 1983, letter from the Maryland Department of Transportation (DOT). The notice also proposed approval of a December 23, 1983, revised schedule for the adoption of additional control measures for sources of VOCs. EPA's proposal was based on a procedure known as "parallel processing," under which a SIP revision not yet adopted by a State is proposed for approval by EPA on the basis that the final revision adopted by the State is not substantially different from that initially submitted by the State. No comments were received on the proposed rulemaking.

In an August 3, 1983, **Federal Register** notice (48 FR 35312), EPA proposed to impose Clean Air Act funding limitations and a construction moratorium in Maryland based on the State's failure to meet its approved I/M schedule. The Maryland I/M program subsequently became operational on February 1, 1984.

EPA Actions

Funding Limitations and Construction Moratorium

Because the State has now fully implemented its I/M program, EPA will take no further action to impose the funding limitations and construction moratorium proposed in the August 3, 1983, notice.

Ozone and Carbon Monoxide SIP Evaluation/Approval

On September 16 and November 25, 1983, the Maryland DOT announced the adoption of final I/M regulations. On September 30, 1983, the Maryland Department of Health and Mental Hygiene (DHMH) also announced the adoption of final I/M regulations. These final regulations were submitted to EPA as SIP revisions on October 14, 1983, and August 13, 1984. In addition, on August 25, 1983, the Maryland DHMH submitted final I/M enforcement procedures. Since these regulations and procedures are substantially the same as those proposed for approval by EPA on March 8, 1984, and because the I/M program is now fully implemented, the Agency is today taking final action to approve the I/M program. EPA is also taking final action to approve the revised VOC additional control schedule, as proposed. Because all other portions of Maryland's 1982 SIP revisions have previously been approved, EPA is therefore today approving the State's 1982 ozone and carbon monoxide SIPs in their entirety.

Conclusion

This approval is based on EPA's determination that the plan meets the requriements of sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. Under Executive Order 12291, today's action is not "Major". Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).) The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: Sections 110(a), 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502 and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 13, 1984.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Title 40, Part 52, Subpart V of the Code of Federal Regulations is amended as follows:

Subpart V—Maryland

Section 52.1070 is amended by adding the following sentence to the end of paragraph (c)(71).

§ 52.1070 Identification for plan.

* * * * *

(c) * * *

(71) * * * On May 4, 1983, and June 13 and 16, 1983, the State submitted amended I/M regulations. A revised schedule for the adoption of controls for VOC sources was submitted on December 23, 1983.

[FR Doc. 84-24786 Filed 9-18-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-2673-6]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This final rulemaking action revises the Total Suspended Particulates (TSP) attainment status designation for the City of Marinette, Wisconsin from unclassified to attainment. This revision is based on a redesignation request from the Wisconsin Department of Natural Resources (WDNR), dated June 21, 1983, and on supporting technical data submitted by the Department. Under the Clean Air Act, an attainment status designation can be changed if warranted by the available data. In today's action, USEPA is approving the redesignation as requested by the State of Wisconsin.

EFFECTIVE DATE: This final rulemaking becomes effective on October 19, 1984.

ADDRESSES: Copies of the redesignation request, the technical support documents, public comments, and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION: In the March 1, 1984, **Federal Register** (49 FR 7608), USEPA proposed to revise the attainment status designation of Marinette, Wisconsin, from unclassified to attainment for Total Suspended Particulates (TSP). This revision is based on two factors: (1) A June 21, 1983, request from the WDNR to revise the Section 107 attainment status designation for Marinette; and (2) a technical support document containing a summary of the most recent 8 consecutive quarters of TSP ambient air quality data collected from five monitoring sites in Marinette. Additional technical information was provided by the WDNR on October 7, 1983, and January 25, 1984. A detailed discusssion of USEPA's proposed approval, and the reasoning behind it, can be found in the March 1, 1984, notice of proposed rulemaking (49 FR 7608).

Public Comments

During the public comment period two organizations, the ANSUL Company and the Marinette Area Chamber of Commerce (MACC), submitted comments to USEPA. These comments, and USEPA's responses to these comments, are summarized below.

Comment: MACC and ANSUL both supported the redesignation to attainment. MACC also noted that six additional months of monitoring data (through the end of 1983), showing no violoations, are now available from all three monitoring sites located within the City. Thus, there are 11 consecutive quarters of ambient air quality data available from two monitoring sites and 7 nonconsecutive (6 consecutive) quarters available from the third site.

Response: USEPA acknowledges the additional data and agrees that it further supports the redesignation to attainment.

Comment: ANSUL claimed that its 1977–1978 monitoring program was specifically designed to monitor potential emissions from removal of the salt pile and, thus, was inadequate to monitor TSP concentrations for Marinette as a whole.

Response: USEPA maintains that these data adequately reflect valid ambient TSP concentrations for a portion of the Marinette area. Therefore, they should be considered in evaluating the attainment/nonattainment status of Marinette.

Comment: ANSUL claimed that none of the TSP recorded at the monitors could be attributed to fugitive emissions resulting from removal of the salt pile, based on the results of filter analyses conducted during 1977–1978.

Response: The issue at hand is whether the TSP NAAQS are currently being attained, and whether they will continue to be maintained. Based on the available data, USEPA has determined that the City of Marinette is now in attainment of the TSP NAAQS. To explain the improvement in TSP ambient concentrations, it is necessary to know the causes behind the exceedances that occurred previously. The exceedances report prepared by WDNR (see Table 2 of USEPA's February 6, 1984, Technical Support Document) identifies ANSUL's fugitive emissions, among other sources, as being responsible for the previous exceedances. Based on the source-monitor geometry and the wind direction, as well as the filter analyses, USEPA believes that fugitive emissions from the ANSUL salt pile did contribute to the previously monitored TSP concentrations. It should be noted that the ANSUL salt pile has been removed, and is no longer a source of fugitive emissions.

Conclusion

The available ambient air quality data show that no violations of the TSP standards have occurred since 1978. Eleven consecutive quarters of recent data (April 1981–December 1983), showing no violations, are available from two sites in Marinette, and 7 nonconsecutive quarters of recent data (April–August 1981, and July 1982–December 1983), showing no violations, are available from a third site in Marinette. In addition, emission reductions resulting from implemented control measures ensure that the NAAQS will continue to be maintained. Therefore, USEPA is revising the designation of the City of Marinette, Wisconsin, defined at 40 CFR 81.350, from unclassified to "better than the national standards" (attainment) for TSP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: September 13, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 81.350—Wisconsin, the attainment status designation table for Total Suspended Particulates (TSP) is amended by revising the designation for Marinette County, as follows:

§ 81.350 [Amended]

* * * * *

WISCONSIN—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
AQCR 237:				
* * *	*	*	*	*
Marinette County				X
* * *	*	*	*	*

[FR Doc. 84-24756 Filed 9-18-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62037A; FRL-2672-6]

Polychlorinated Biphenyls Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyl (PCB) regulations. The test method designated "ASTM D 1796-68" has been revised by ASTM. EPA, having offered opportunity for public comment is now amending §§ 761.19 and 761.20 to reflect this revision.

DATE: This final rule is effective September 19, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 1, 1984 (49 FR 22836), EPA announced that the test method "ASTM D 1796-68 Standard Test Methods for Water and Sediment in Crude Oils and Fuel Oils by Centrifuge" had been revised. The new designation for the test method is "ASTM D 1796-83 Standard Test Methods for Water and Sediment in Crude Oils and Fuel Oils by Centrifuge." The public was given 30 days to comment. The comment period ended on July 2, 1984. No comments were received.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Incorporation by reference.

(Sec. 6, 90 Stat. 2020 (15 U.S.C. 2065))

Dated: September 10, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 761—[AMENDED]

Therefore, Part 761 of Title 40 of Chapter I is amended as follows:

§ 761.19 [Amended]

1. In § 761.19(b), the entry for "ASTM D 1796-68" is changed to read "ASTM D 1796-83."

§ 761.60 [Amended]

2. In § 761.60(a)(3)(iii)(B)(*6*), the reference "ASTM D 1796-68" is changed to read "ASTM D 1796-83."

[FR Doc. 84-24630 Filed 9-18-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6621]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 287-0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the Community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communites listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entires to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry read as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Idaho, Power	Unincorporated areas	160219	Aug. 1, 1984, Emerg	
Missouri, Jasper	Carterville, city of	290180B	Jan. 17, 1977, Emerg., July 16, 1984, Reg., July 16, 1984, Susp., July 26, 1984, Rein.	Dec. 28, 1973 and Feb. 6, 1976.
New York:				
Essex	St. Armand, town of	361157A	Aug. 10, 1984, Emerg	Oct. 25, 1974 and July 2, 1976.
Fulton	Northampton, town of	361400A	do	Jan. 31, 1975 and Aug. 6, 1976.
Texas, Fayette	Unincorporated areas	480815A	Aug. 13, 1984, Emerg	Jan. 24, 1978.
Georgia, Pierce	do	130151	do	Aug. 13, 1976.
Texas:				
Denton	The Colony, city of	481581	Aug 16, 1984, Emerg	
Refugio	Bayside, town of	481586	do	
Georgia, Rabun	Clayton, city of	130157A	Aug. 13, 1984, Withdrawn	May 24, 1974 and Jan. 16, 1976.
Utah, Utah	Linden, city of	490210	Aug. 14, 1984, Emerg	June 21, 1978.
Idaho, Lewis	Craigmont, city of	160166	Aug. 20, 1984, Emerg	June 25, 1976.
Texas, Sabine	Pineland, city of	480998	Aug. 24, 1984, Emerg	Oct. 22, 1976.
Florida, Lake	Howey-in-the-Hills, town of	120565B	July 18, 1979, Emerg., Aug. 15, 1984, Reg., Aug. 15, 1984, Susp., Aug. 30, 1984, Rein.	Mar. 2, 1979.
Alabama:				
Lowndes	Unincorporated areas	010272B	Dec. 11, 1975, Emerg., Aug. 15, 1984, Reg., Aug. 16, 1984, Susp., Aug. 31, 1984, Rein.	Nov. 29, 1974 and Feb. 3, 1974.
Elmore	Millbrook, city of	010370B	Oct. 18, 1979, Emerg., Aug. 15, 1984, Reg., Aug. 15, 1984, Susp., Aug. 31, 1984, Rein.	Sept. 15, 1978.
Florida, Nassau	Unincorporated areas	120170B	July 9, 1971, Emerg., Aug. 15, 1984, Reg., Aug. 15, 1984, Susp., Aug. 31, 1984, Rein.	Nov. 29, 1974 and Feb. 4, 1977.
Region II				
New York:				
Chautauqua	Ellicott, town of	361073A	Aug. 1, 1984, Suspension withdrawn	Dec. 6, 1974.
Dutchess	Pawling, village of	361517A	do	Feb. 7, 1975.
Do	Tivoli, village of	361507A	do	Dec. 20, 1974.
Region III				
Pennsylvania:				
Chester	Honey Brook, township of	422280A	do	Dec. 6, 1974.
Do	West Nantmeal, township of	421489B	do	Dec. 13, 1974 and Jan. 23, 1981.
Region VI				
Texas:				
Montgomery	Unincorporated areas	480483C	do	Apr. 25, 1978 and Mar. 25, 1980.
Do	Roman Forest, city of	481536A	do	
Region VIII				
Montana, Gallatin	Unincorporated areas	300027B	do	May 16, 1978.
Region IX				
Arizona, Pima	Marana, town of	040118B	do	Dec. 17, 1973, May 15, 1979, and Apr. 17, 1980.
California, San Luis Obispo	Pismo Beach, city of	060309A	do	Mar. 26, 1976.
Nevada, Washoe	Unincorporated areas	320019B	do	Feb. 28, 1978.
Region X				
Idaho, Bonner	do	160206B	do	Oct. 25, 1977.
Oregon:				
Coos	Coos Bay, city of	410044B	do	Aug. 23, 1974 and Mar. 25, 1977.
Do	Lakeside, city of	410278B	do	Nov. 22, 1977.
Do	North Bend, city of	410048B	do	June 28, 1974 and July 11, 1975.
Linn	Scio, city of	410144A	do	Nov. 22, 1974.
Washington, King	North Bend, city of	530085B	do	May 17, 1974 and May 7, 1976.
Region I				
Vermont, Washington	Berlin, town of	500106B	Aug. 15, 1984, Suspension withdrawn	Feb. 15, 1974 and Sept. 13, 1977.
Region II				
New York:				
Dutchess	Dover, town of	361335A	do	Dec. 6, 1974.
Westchester	Peekskill, city of	360924B	do	May 31, 1974 and Oct. 24, 1975.
Rensselaer	Schodack, town of	361169A	do	Jan. 31, 1975.
Orange	Walden, village of	360635B	do	Mar. 8, 1974 and Sept. 19, 1975.
Region IV				
Alabama, Coosa	Unincorporated areas	010052B	do	Dec. 27, 1974, June 10, 1976, and Feb. 3, 1978.
Florida:				
Citrus	do	120063B	do	Dec. 20, 1974 and Nov. 4, 1977.
Do	Crystal River, city of	120049B	do	Mar. 26, 1976 and Nov. 30, 1979.
Georgia, Stephens	Unincorporated areas	130381A	do	Feb. 20, 1976.
Region V				
Ohio, Allen	Fort Shawnee, village of	390611C	do	Oct. 18, 1974, June 4, 1976, and Dec. 12, 1980.
Wisconsin:				
Clark	Thorp, city of	550058B	do	May 24, 1974 and June 4, 1976.
Dodge and Fond du Lac	Waupun, city of	550108	do	Jan. 9, 1974, June 25, 1976, June 9, 1978, and Feb. 23, 1979.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region VI				
Texas, Montgomery	Woodbranch Village, city of	480694A	do	July 2, 1976.
Region X				
Oregon:				
Coos	Bandon, city of	410043B	do	Dec. 28, 1973 and Apr. 16, 1976.
Harney	Burns, city of	410084B	do	Nov. 30, 1973 and Jan. 30, 1976.
Klamath	Chiloquin, city of	410111B	do	Nov. 30, 1973 and Nov. 14, 1975.
Umatilla	Stanfield, city of	410213B	do	Nov. 9, 1974 and Jan. 2, 1976.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: September 13, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–24740 Filed 9–18–84; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 64

[Docket No. FEMA 6622]

Suspension of Community Eligibility Under the National Flood Insurance Program; New York, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287–0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (46 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed communituy.

List of Subject in 44 CFR Part 64

Flood Insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date ¹
REGION II					
New York:					
Cayuga	Genoa, Town of ²	360111B	Feb. 1, 1977, Emerg., Nov. 4, 1983 Reg., Sep. 19, 1984, Susp.	June 18, 1976 and Nov. 4, 1983	Sept. 19, 1984.
Do	Locke, Town of ²	360114B	Apr. 4, 1975, Emerg., Nov. 4, 1983 Reg., Sept. 19, 1984, Susp	June 11, 1976 and Nov. 4, 1983	Do.
Do	Niles, Town of ²	360119B	July 21, 1975, Emerg., Feb. 6, 1984, Reg., Sept. 19, 1984, Susp.	Aug. 9, 1974, June 18, 1976 and Feb. 6, 1984.	Do.
Do	Scipio, town of ²	360122B	May 9, 1977, Emerg., Dec. 23, 1983, Reg., Sept. 19, 1984 Susp.	May 31, 1974, May 28, 1976, and Dec. 23, 1983.	Do.
Do	Sempronius, Town of ²	360123B	Jan. 7, 1976, Emerg., Nov. 4, 1983, Reg., Sept. 19, 1984 Susp.	May 31, 1974, May 28, 1976, and Nov. 4, 1983.	Do.
Do	Venice, Town of ²	360130B	Sept. 11, 1975, Emerg., Dec. 23, 1983, Reg., Sept. 19, 1984, Susp.	June 28, 1974 and Dec. 23, 1983	Do.
Otsego	Maryland, Town of	361272A	Aug. 30, 1976, Emerg., Sept. 19, 1984, Susp.	Oct. 18, 1974 and June 25, 1976	Do.
REGION V					
Indiana, Clark	Utica, Town of	180487A	Feb. 12, 1982, Emerg., Feb. 12, 1982, Reg., Sept. 19, 1984 Susp.	Feb. 12, 1982	Do.
Ohio, Hamilton	St. Bernard, City of	390235B	May 13, 1984, Emerg., Sept. 19, 1984, Reg., Sept. 19, 1984 Susp.	May 10, 1974 and Apr. 9, 1976	Do.
Wisconsin:					
Iowa	Avoca, Village of	550173B	June 26, 1974, Emerg., Sept. 19, 1984, Reg., Sept. 19, 1984 Susp.	Jan. 9, 1974 and May 14, 1976	Do.
Waupaca	Clintonville, City of	550494A	April 2, 1974, Emerg., Sept. 19, 1984 Reg., Sept. 19, 1984, Susp.	July 30, 1976	Do.
Sauk	North Freedom, Village of	550399C	Apr. 22, 1975, Emerg., Sept. 19, 1984, Reg., Sept. 19, 1984 Susp.	Dec. 17, 1973, Nov. 24, 1975, and Feb. 6, 1976.	Do.
Do	West Baraboo, Village of	550407	July 24, 1975 Emerg., Sept. 19, 1984, Reg., Sept. 19, 1984, Susp.	Jan. 16, 1974, and June 11, 1976	Do.
REGION VII					
Iowa, Linn	Fairfax, City of	190190B	Jan. 20, 1975, Emerg., Sept. 19, 1984, Reg., Sept. 19, 1984, Susp.	May 3, 1974 and Dec. 5, 1975	Do.
Kansas, Miami	Osawatomie, City of	200223	June 13, 1974, Emerg., Sept. 19, 1984, Reg., Sept. 19, 1984, Susp.	Jan. 23, 1974 and Apr. 2, 1976.	Do.
REGION X					
Oregon, Malheur	Jordan Valley, City of	410150A	Sept. 4, 1975, Emerg., Sept. 19, 1984 Reg., Sept. 19, 1984 Susp.	Feb. 7, 1975	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.

[2] Minimal conversions.

Code for reading 4th column. Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: September 13, 1984.

Jeffery S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-24739 Filed 9-19-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-670]

Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission makes editorial corrections to a rule appearing in an appendix of a document which was published in the **Federal Register.** This erratum adds language inadvertently omitted from § 73.3526 of the Commission's Rules and amends an incorrect reference therein.

FOR FURTHER INFORMATION CONTACT: Thomas S. Walsh, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of revision of programming and commercialization policies, ascertainment requirements and program log requirements for commercial television stations; MM Docket No. 83-670.

Released: September 11, 1984.

In the above captioned *Report and Order* released August 21, 1984 (MM Docket No. 83-670, FR Doc. 84-22415) and published in the **Federal Register** on August 23, 1984 at 49 FR 33588, item 7 of Appendix A (pertaining of § 73.3526) inadvertently deleted references to paragraph (a)(15) of the rule and also improperly refers to the "annual problems/programs list" as the "annual issues/programs list".

A. On page 33603, middle column, the amendatory language in item 7 is corrected to read:

"7. 47 CFR 73.3526 is amended by revising paragraph (a), paragraph (a)(8) and paragraph (e), by adding a Note following paragraph (a)(8), by removing paragraphs (a)(9), (a)(10), (a)(11) and (a)(12) and by redesignating paragraphs (a)(13), (a)(14) and (a)(15) as paragraphs (a)(9), (a)(10) and (a)(11) respectively, to read as follows:"

* * * * *

B. On page 33603, in § 73.3526, the introductory text of paragraph (a) is corrected by revising it to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) *Records to be maintained.* Every applicant for a construction permit for a new station in the commerical broadcast services shall maintain for public inspection a file containing the material described in paragraph (a)(1) of this section. (Every permittee or licensee of an AM, FM or TV station in the commercial broadcast services shall maintain for public inspection a file containing the material described in paragraphs (a) (1), (2), (3), (4), (5), (6), (7) and (11) of this section. In addition, every permittee or licensee of a TV station shall maintain for public inspection a file containing material described in paragraphs (a) (8) and (9) of this section; every permittee or licensee of an AM or FM station shall maintain for public inspection a file containing material described in paragraph (a)(10) of this section. The material to be contained in the file is as follows:

* * * * *

C. On page 33603, in § 73.3526, the note following paragraph (a)(8) is revised to read as follows:

(a) * * *

(8) * * *

Note.—The first quarterly filing is to include at least the past three months of a station's programming peformance. If the last annual problems/programs list was filed more than three months prior to October 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and October 1, 1984.

* * * * *

D. On page 33603, in § 73.3526, paragraph (e) is corrected by revising it to read as follows:

* * * * *

(e) *Period of retention.* The records specified in paragraph (a)(4) of this section shall be retained for periods specified in § 73.1940 (2 years). The manual specified in paragraph (a)(6) of this section shall be retained indefinitely. The letters specified in paragraph (a)(7) of this section shall be retained for the period specified in § 73.202 (3 years). The issues/program list specified in paragraphs (a) (8) and (10) of this section shall be retained for the term of license (5 and 7 years, respectively). The certification specified in paragraph (a)(11) of this section shall be retained for the period specified in § 73.3580 (for as long as the application to which it refers). The records specified in paragraphs (a) (1), (2), (3), and (5) of this section shall be retained as follows:

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-24595 Filed 9-18-84; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 49, No. 183
Wednesday, September 19, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM-20-15]

Edison Electric Institute (EEI) and Utility Nuclear Waste Management Group (UNWMG); Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking from Edison Electric Institute (EEI) and Utility Nuclear Waste Management Group (UNWMG).

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated July 31, 1984, which was filed with the Commission by Michael A. Bauser on behalf of EEI and UNWMG. The petition was docketed by the Commission on July 31, 1984, and has been assigned Docket No. PRM-20-15. The petitioners request that the Commission issue a regulation governing the disposal of low-level radioactively contaminated waste oil from nuclear power plants by establishing radionuclide concentrations in waste oil at which disposal may be carried out without regard to the radioactive material content of the waste.

DATE: Submit comments by November 19, 1984. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given as to comments received on or before this date.

ADDRESSES: All persons who desire to submit written comments concerning the petition for rulemaking send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition write to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition, copies of comments, and the accompanying document to the petition may be inspected and copied for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

I. Background

The petitioners stated that when the Commission published its final rule creating 10 CFR Part 61 (December 27, 1982; 47 FR 57446), the Commission noted that numerous commentors had requested that it develop a "de minimis" standard which would permit certain wastes to be disposed of by less restrictive means than existing practices. At that time, the Commission expressed its agreement that establishment of such de minimis standards would reduce disposal and long-term site maintenance costs, help preserve disposal capacity for wastes with higher activity levels, enhance overall stability of disposal facilities and tend to reduce groundwater migration impacts. The Commission also expressed its willingness "to accept petitions for rulemaking . . . for declaring certain waste streams to be of no regulatory concern," and identified some of the information necessary to support such a petition.

More recently, the Advisory Committee on Reactor Safeguards (ACRS) recommended that de minimis levels or radiation exposure be established. Presently, certain criteria defining regulatory cutoff levels for radioactively contaminated waste exists in 10 CFR 20.306, which authorizes the disposal of liquid scintillation media and animal tissue containing no greater than 0.05 microcurie per gram of H-3 or C-14 without regard to their radioactivity. The petitioners stated that it was also their understanding that the draft proposed revisions to 10 CFR Part 20 defined de minimis exposure as that exposure to radiation which would present a calculated risk of biological harm so low, relative to the risks faced routinely from daily activities, that the risk from radiation would be a trifle and of no regulatory concern. The petitioners stated that they understood that a numerical dose level of one mrem was determined to represent the de minimis level of radiation exposure.

II. Waste Oil at Nuclear Power Plants

Each year, the petitioners state, quantities of waste oil containing very low levels of radioactive contamination are produced at nuclear power plants. The principal sources of the waste oil are primary system pump motors (including reactor coolant pumps) at pressurized water reactors (PWRs), and turbine and pump motors, such as recirculation and feedwater pump motors, at boiling water reactors (BWRs). Waste oil also collects in turbine and radwaste building sumps, equipment drain trays, and during maintenance operations (miscellaneous waste oils).

Radioactivity levels for sources of waste oil, such as pump turbines and motors at both PWRs and BWRs are typically in the 10^{-7} to $10^{-4}\mu$ Ci/ml range with Mn-54, Co-58, Co-60, Cs-134 and Cs-137 the dominant radionuclides. Miscellaneous waste oils at PWRs and BWRs—from sumps, drains, etc.,—generally contain the same dominant radionuclides, but concentrations are more variable, typically ranging from $10^{-7}\mu$ Ci/ml to $10^{-4}\mu$ Ci/ml. These often are oil-water mixtures. Prior processing might be necessary before disposal by some of the methods addressed in the petition.

Currently, according to the petitioners, the only generally approved disposal method for low-level radioactively contaminated waste oil involves absorption or solidification, transportation to, and burial at a licensed disposal facility. Disposal of waste oil in this manner is costly, inconsistent with the NRC's policy in favor of volume reduction, and represents an inefficient use of Commission, licensee, and burial site resources.

III. Petitioners Solution to this Problem

The petitioners state that waste oil, under certain conditions, may be disposed of in a considerably more efficient manner, while providing adequate protection for both the environment and public health and safety. Data on generation rates, radionuclide concentrations and content were gathered from 15 operating plants, including 29 units (16 PWRs and 13 BWRs). A number of specific disposal methods were considered individually, as follows:

1. To burn the oil on the nuclear reactor site in a controlled location.
2. To burn the oil off site.
3. To spray it on an unpaved road, as is done for dust control.
4. To solidify it and bury it in a landfill.
5. To recycle it in the same manner as is done commercially with waste oil.

The ultimate objective was to identify mechanisms by which waste oil at specific levels of contamination could be disposed of in an efficient, environmentally acceptable, cost-beneficial manner while assuring that the postulated radiation dose does not exceed the regulatory cutoff level.

The detailed analysis which forms the basis of the petition is found in the report entitled "Development of Recommended Regulatory Cutoff Levels for Low-Level Radioactively Contaminated Oils from Nuclear Power Plants." This report was prepared for the UNWMG by OTHA, Inc., in October 1983. The report notes that it is possible to specify limiting gross activity levels for each disposal method. Specifically, waste oils can be disposed of via the six disposal methods set out in the proposed amendment.

IV. Proposed Amendment to 10 CFR Part 20

The petitioners request amendment of 10 CFR Part 20 as follows:

1. Redesignate existing paragraphs (c) and (d) and (e), respectively; and add paragraph (c) to § 220.306 to read as follows:

(c) Waste oil not exceeding the following gross activity limits by the indicated methods, provided that, the total quantity of oil disposed of at a single location by methods (1), (2), (3), and (6) either not exceed 1,000 gallons per year; or that the sum of the ratios of each radionuclide present to the concentration of that radionuclide in Part 20, Appendix E, not exceed the value of 1,000 divided by the number of gallons disposed of per year at that location, i.e.:

$$\sum_{i} \frac{\text{Concentration of radionuclide i}}{\text{radionuclide i Part 20, App. E concentration}} \leq \frac{1{,}000}{\text{volume of gallons disposed of at location (gal/yr)}}$$

Disposal method	Gross activity limit μCi/cm³
(1) Burn on-site, short stack	4×10^{-6}
(2) Burn on-site, tall stack	4×10^{-5}
(3) Burn off-site, short stack	4×10^{-6}
(4) Spray on road	3×10^{-6}
(5) Solidify-Bury	4×10^{-6}
(6) Recycle	6×10^{-6}

2. Add a new Appendix E to read as follows:

APPENDIX E—CONCENTRATION LIMITS FOR WASTE OIL DISPOSAL UNDER THE PROVISIONS OF 10 CFR 20.306(C) BY ELEMENT AND DISPOSAL METHOD

Nuclide	Concen. limit (pCi/cm3)	Disposal scenario
Ag110m	$5.9x10^{1}$	Recycle.
	$2.4x10^{2}$	Burn offsite-short stack.
	$2.4x10^{3}$	Burn onsite-short stack.
	$2.9x10^{3}$	Spray on road.
	$2.4x10^{4}$	Burn onsite-tall stack.
	$7.3x10^{5}$	Solidify-bury/landfill.
Ce141	$1.9x10^{2}$	Recycle.
	$1.9x10^{4}$	Burn offsite-short stack.
	$9.6x10^{4}$	Spray on road.
	$1.9x10^{5}$	Burn onsite-short stack.
	$1.9x10^{6}$	Burn onsite-tall stack.
	$1.0x10^{12}$	Solidify-bury/landfill.
Ce144	$6.5x10^{2}$	Burn offsite-short stack.
	$3.3x10^{2}$	Recycle.
	$6.5x10^{3}$	Burn onsite-short stack.
	$1.5x10^{4}$	Spray on road.

APPENDIX E—CONCENTRATION LIMITS FOR WASTE OIL DISPOSAL UNDER THE PROVISIONS OF 10 CFR 20.306(C) BY ELEMENT AND DISPOSAL METHOD—Continued

Nuclide	Concen. limit (pCi/cm3)	Disposal scenario
	$6.5x10^{4}$	Burn onsite-tall stack.
	$2.2x10^{8}$	Solidify-bury/landfill.
Co58	$1.5x10^{3}$	Recycle.
	$2.2x10^{3}$	Burn offsite-short stack.
	$7.5x10^{3}$	Spray on road.
	$2.2x10^{4}$	Burn onsite-short stack.
	$2.2x10^{5}$	Burn onsite-tall stack.
	$1.6x10^{8}$	Solidify-bury/landfill.
Co60	$3.9x10^{1}$	Burn offsite-short stack.
	$6.3x10^{1}$	Recycle.
	$1.6x10^{2}$	Solidify-bury/landfill.
	$3.9x10^{2}$	Burn onsite-short stack.
	$3.1x10^{3}$	Spray on road.
	$3.9x10^{3}$	Burn onsite-tall stack.
Cr51	$4.9x10^{3}$	Recycle.
	$1.8x10^{5}$	Burn offsite-short stack.
	$2.4x10^{5}$	Spray on road.
	$1.8x10^{6}$	Burn onsite-short stack.
	$1.8x10^{7}$	Burn onsite-tall stack.
	$1.0x10^{13}$	Solidify-bury/landfill.
Cs134	$8.9x10^{1}$	Recycle.
	$1.2x10^{2}$	Burn offsite-short stack.
	$1.2x10^{3}$	Burn onsite-short stack.
	$1.7x10^{3}$	Solidify-bury/landfill.
	$4.4x10^{3}$	Spray on road.
	$1.2x10^{4}$	Burn onsite-tall stack.
Cs137	$8.1x10^{1}$	Burn offsite-short stack.
	$2.1x10^{2}$	Solidify-bury/landfill.
	$2.5x10^{2}$	Recycle.
	$8.1x10^{2}$	Burn onsite-short stack.
	$8.1x10^{3}$	Burn onsite-tall stack.
	$1.3x10^{4}$	Spray on road.
Fe55	$2.6x10^{4}$	Burn offsite-short stack.

APPENDIX E—CONCENTRATION LIMITS FOR WASTE OIL DISPOSAL UNDER THE PROVISIONS OF 10 CFR 20.306(C) BY ELEMENT AND DISPOSAL METHOD—Continued

Nuclide	Concen. limit (pCi/cm3)	Disposal scenario
	$2.6x10^{5}$	Burn onsite-short stack.
	$1.8x10^{6}$	Solidify-bury/landfill.
	$2.3x10^{6}$	Spray on road.
	$2.6x10^{6}$	Burn onsite-tall stack.
	$1.0x10^{12}$	Recycle.
Fe59	$1.3x10^{2}$	Recycle.
	$3.0x10^{3}$	Burn offsite-short stack.
	$6.6x10^{3}$	Spray on road.
	$3.0x10^{4}$	Burn onsite-short stack.
	$3.0x10^{5}$	Burn onsite-tall stack.
	$3.7x10^{11}$	Solidify-bury/landfill.
Mn54	$1.8x10^{2}$	Recycle.
	$6.2x10^{2}$	Burn offsite-short stack.
	$6.2x10^{3}$	Burn onsite-short stack.
	$9.1x10^{3}$	Spray on road.
	$6.2x10^{4}$	Burn onsite-tall stack.
	$5.2x10^{6}$	Solidify-bury/landfill.
Nb95	$2.1x10^{2}$	Recycle.
	$6.1x10^{3}$	Burn offsite-short stack.
	$1.0x10^{4}$	Spray on road.
	$6.1x10^{4}$	Burn onsite-short stack.
	$6.1x10^{5}$	Burn onsite-tall stack.
	$1.0x10^{12}$	Solidify-bury/landfill.
Ni63	$8.5x10^{3}$	Solidify-bury/landfill.
	$2.1x10^{4}$	Burn offsite-short stack.
	$2.1x10^{5}$	Burn onsite-short stack.
	$2.0x10^{6}$	Spray on road.
	$2.1x10^{6}$	Burn onsite-tall stack.
	$1.0x10^{12}$	Recycle.
Pr143	$2.6x10^{4}$	Burn offsite-short stack.
	$2.6x10^{5}$	Burn onsite-short stack.
	$2.6x10^{6}$	Burn onsite-tall stack.
	$1.3x10^{7}$	Spray on road.
	$1.0x10^{12}$	Recycle.
	$1.0x10^{12}$	Solidify-bury/landfill.
Te127	$1.1x10^{5}$	Recycle.
	$4.2x10^{5}$	Burn offsite-short stack.
	$5.3x10^{6}$	Spray on road.
	$4.2x10^{7}$	Burn onsite-short stack.
	$4.2x10^{8}$	Burn onsite-tall stack.
Rb86	$1.7x10^{2}$	Recycle.
	$8.8x10^{3}$	Burn offsite-short stack.
	$8.4x10^{4}$	Spray on road.
	$8.8x10^{4}$	Burn onsite-short stack.
	$8.8x10^{5}$	Burn onsite-tall stack.
	$1.0x10^{12}$	Solidify-bury/landfill.
Te127m	$1.7x10^{3}$	Burn offsite-short stack.
	$1.7x10^{4}$	Burn onsite-short stack.
	$1.7x10^{5}$	Burn onsite-tall stack.
	$9.7x10^{5}$	Recycle.
	$1.3x10^{6}$	Spray on road.
	$3.3x10^{7}$	Solidify-bury/landfill.
Te139	$1.5x10^{2}$	Recycle.
	$7.4x10^{4}$	Spray on road.
	$1.3x10^{7}$	Burn offsite-short stack.
	$1.3x10^{8}$	Burn onsite-short stack.
	$1.3x10^{9}$	Burn onsite-tall stack.
Te29m	$1.4x10^{2}$	Recycle.
	$3.8x10^{3}$	Burn offsite-short stack.
	$3.8x10^{4}$	Burn onsite-short stack.
	$6.9x10^{4}$	Spray on road.
	$3.8x10^{5}$	Burn onsite-tall stack.
	$1.0x10^{12}$	Solidify-bury/landfill.
Ru103	$3.0x10^{2}$	Recycle.
	$7.6x10^{3}$	Burn offsite-short stack.
	$1.5x10^{4}$	Spray on road.
	$7.6x10^{4}$	Burn onsite-short stack.
	$7.6x10^{5}$	Burn onsite-tall stack.
	$1.0x10^{12}$	Solidify-bury/landfill.
Ru106	$5.9x10^{2}$	Burn offsite-short stack.
	$7.1x10^{2}$	Recycle.
	$5.9x10^{3}$	Burn onsite-short stack.
	$1.4x10^{4}$	Spray on road.
	$5.9x10^{4}$	Burn onsite-tall stack.
	$4.7x10^{5}$	Solidify-bury/landfill.
Sr89	$3.1x10^{3}$	Burn offsite-short stack.
	$3.1x10^{4}$	Burn onsite-short stack.
	$4.9x10^{5}$	Spray on road.
	$1.9x10^{6}$	Recycle.
	$2.1x10^{6}$	Burn onsite-tall stack.
	$2.9x10^{10}$	Solidify-bury/landfill.
Sr90	$3.8x10^{1}$	Solidify-bury/landfill.
	$7.1x10^{1}$	Burn offsite-short stack.
	$7.1x10^{2}$	Burn onsite-short stack.
	$4.1x10^{3}$	Spray on road.
	$7.1x10^{3}$	Burn onsite-tall stack.

APPENDIX E—CONCENTRATION LIMITS FOR WASTE OIL DISPOSAL UNDER THE PROVISIONS OF 10 CFR 20.306(c) BY ELEMENT AND DISPOSAL METHOD—Continued

Nuclide	Concen. limit (pCi/cm3)	Disposal scenario
	$1.0x10^{11}$	Recycle.
Y91	$2.9x10^{3}$	Burn offsite-short stack.
	$2.9x10^{4}$	Burn onsite-short stack.
	$4.4x10^{4}$	Recycle.
	$2.9x10^{6}$	Burn onsite-tall stack.
	$4.4x10^{6}$	Spray on road.
	$6.2x10^{9}$	Solidify-bury/landfill.
Zn65	$2.7x10^{3}$	Recycle.
	$1.0x10^{3}$	Burn offsite-short stack.
	$1.0x10^{4}$	Burn onsite-short stack.
	$1.3x10^{4}$	Spray on road.
	$1.0x10^{6}$	Burn onsite-tall stack.
	$5.8x10^{8}$	Solidify-bury/landfill.
Zr95	$2.1x10^{3}$	Recycle.
	$3.4x10^{3}$	Burn offsite-short stack.
	$1.1x10^{4}$	Spray on road.
	$3.4x10^{4}$	Burn onsite-short stack.
	$3.4x10^{6}$	Burn onsite-tall stack.
	$4.0x10^{9}$	Solidify-bury/landfill.

The petitioners conclude that both the Commission and the ACRS have expressed support for the development of regulatory cutoff levels. The Commission, in particular, the petitioners note, has invited petitions for rulemaking of particular waste streams which might be considered below regulatory concern, and has formulated some criteria identifying exposure levels deemed de minimis, and certainly below regulatory concern.

Waste oil generated in nuclear power plants, the petitioners state, appears to be particularly suitable for such treatment, because current methods of disposal are unnecessarily costly, inconsistent with NRC policy favoring volume reduction, and represent an inefficient use of NRC, licensee, and burial site resources. The petitioners conclude that the 1 mrem/year standard is a conservative value which is consistent with current NRC policy.

Dated at Washington, DC, this 12th day of September 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-24796 Filed 9-18-84; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization

AGENCY: Farm Credit Administration.

ACTION: Proposed rule comment period extension.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board ("Federal Board"), published for comment proposed amendments to its regulations concerning changes to Federal land bank association ("FLBA") and production credit association ("PCA") charters in the **Federal Register** on July 20, 1984 (49 FR 29404). The FCA gives notice that the original comment period is hereby extended to November 5, 1984, because of requests for additional time to comment.

DATE: The period for receipt of written comments is extended from September 19, 1984, to November 5, 1984.

ADDRESS: All comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all written communications received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Tom Holland, Office of Examination and Supervision, (703) 883-4033

or

Kenneth L. Peoples, Office of the General Counsel, (703) 883-4024

SUPPLEMENTARY INFORMATION: On July 20, 1984, the FCA published in the **Federal Register** proposed revisions to its regulations concerning the procedures for amending FLBA and PCA charters, including those related to mergers and consolidations of like associations. Since that time, the FCA has received several comments requesting additional time to respond to the proposed rules due to their complexity, particularly the financial disclosure required to be made to stockholders.

The FCA does not believe the financial disclosure requirements for merger or consolidations to be unfamiliar to Farm Credit System institutions or to be more complex than financial reporting required by other regulatory agencies in similar circumstances. However, because FCA has previously issued financial disclosure guidelines to address many of these concerns, the FCA believes the delay in the rulemaking process is outweighed by the potential for more constructive comments. Accordingly, the FCA decided to extend the comment period until November 5, 1984. During the extended comment period the FCA will continue to review proposed mergers consistent with the related guidelines issued on February 24, 1984.

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 84-24836 Filed 9-18-84; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 376

[Docket No. 40110-4107]

Amendments of the Distribution License Procedure

Correction

In FR Doc. 84-24126 beginning on page 35790 in the issue of Wednesday, Septemeber 12, 1984, make the following corrections:

1. On page 35794, second column, the fourth line from the bottom should read "and (d)(3)(iv) are revised; and ".
2. On the same page, third column, in the fifth line from the bottom, the parenthetical expression should read "(end-users)".
3. On page 35797, third column, in the second line of the paragraph for commodity 1733A, insert a comma after the word "materials".
4. On the same page and in the same column, in the fourth line of the paragraph for the commodity 4755B, "10—*" should read "10^{-*}".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-233; (West Virginia—5)]

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR

271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendations of the State of West Virginia Office of Oil and Gas that the "Maxton" zone, "Little Lime" zone, "Blue Monday" zone, "Big Lime" zone, "Keener" zone, "Big Injun" zone, and "Squaw" zone be designated as tight formations under § 271.703(d).

DATE: Comments on the proposed rule are due on October 29, 1984.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 1, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

Notice of Proposed Rulemaking by Director , OPPR

In the matter of High-Cost Gas Produced from Tight Formations; Docket No. RM79–76–233, (West Virginia—5).

Issued: September 14, 1984.

I. Background

On July 24, 1984, the State of West Virginia Office of Oil and Gas (West Virginia) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the "Maxton"zone, "Little Lime" zone, and "Blue Monday" zone of the Mauch Chunk Group, the "Big Lime" zone and "Keener" zone of the Greenbrier Group, and the "Big Injun" zone and "Squaw" zone of the Pocono Group in central West Virginia, be designated as tight formations. This Notice of Proposed Rulemaking is hereby issued under §271.703(c)(4) to determine whether West Virginia's recommendation that the "Maxton" zone, "Little Lime" zone, "Blue Monday" zone, "Big Lime" zone, "Keener" zone, "Big Injun" zone, and "Squaw" zone be designated as tight formations should be adopted. West Virginia's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

West Virginia recommends that the "Maxton" zone, "Little Lime" zone, and "Blue Monday" zone of the Mauch Chunk Group, the "Big Lime" zone and "Keener" zone of the Greenbrier Group, and the "Big Injun" zone and "Squaw" zone of the Pocono Group, all of Mississippian age and located in certain areas of Braxton and Clay Counties, West Virginia, be designated as tight formations. The total area covered by this recommendation is approximately 867 square miles. (A more detailed description of the recommended area and the excluded areas is contained in the recommendation on file with the Commission.)

The "Maxton" zone refers to a number of different productive sandstones within the Mauch Chunk Group of late Mississippian age. The "Maxton" zone lies immediately below the "Salt Sands" zone of the Pottsville Group of Pennsylvanian age. The sands of the "Maxton" zone are white to gray, fine-grained, and range in thickness from approximately 20 to 130 feet. The average depth to the top of the "Maxton" zone is approximately 1,550 feet.

The "Little Lime" zone lies immediately below the "Maxton" zone within the Mauch Chunk Group. The "Little Lime" zone is dark gray to dark brown, fossiliferous, with interbeds of micaceous siltstone or shale, and ranges in thickness from 15 to 35 feet. The average depth to the top of the "Little Lime" zone is approximately 1,650 feet.

The "Blue Monday" zone lies immediately below the "Little Lime" zone and is the basal sandstone of the Mauch Chunk Group. The sand of the "Blue Monday" zone is light gray to yellow, fine-grained, calcereous, and may thicken to as much as 45 feet, with an average thickness ranging from 20 to 25 feet. The average depth to the top of the "Blue Monday" zone is approximately 1,685 feet.

The "Big Lime" zone lies immediately below the "Blue Monday" zone and is the uppermost driller's pay of the Greenbrier Group. The "Big Lime" zone is pinkish gray to pale brown, fossiliferous, locally sandy to dolomitic, and ranges in thickness from 80 to 220 feet. The average depth to the top of the "Big Lime" zone is approximately 1,735 feet.

The "Keener" zone lies immediately below the "Big Lime" zone and is also included in the Greenbrier Group. The sand of the "Keener" zone is light gray, very fine-grained, argillaceous, calcereous, and ranges in thickness from zero to approximately 20 feet. The average depth to the top of the of the "Keener" zone is approximately 1,845 feet.

The "Big Injun" zone lies immediately below the "Keener" zone and is the uppermost driller's pay of the Pocono Group. The sand of the "Big Injun" zone is light to medium gray, very fine-to-fine-grained, argillaceous, glauconitic, calcereous, locally dolomitic with interbeds of micaceous shale and siltstone, and ranges in thickness from 30 to 60 feet. The average depth to the top of the "Big Injun" zone is approximately 1,865 feet.

The "Squaw" zone lies immediately below the "Big Injun" zone of the Pocono Group. The sand of the "Squaw" zone is white to tan, coarse-grained, a delta channel deposit, and ranges in thickness from zero to approximately 40 feet. The average depth to the top of the "Squaw" zone is approximately 2,025 feet.

III. Discussion of Recommendation

West Virginia claims in its submission that evidence gathered and presented in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

West Virginia further asserts that existing state law and established casing procedures assure protection of all fresh water zones.

Accordingly, under the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97 [Reg. Preambles 1977–1981], FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by West Virginia that the "Maxton" zone, "Little Lime" zone, "Blue Monday" zone, "Big Lime" zone, "Keener" zone, "Big Injun" zone, and "Squaw" zone, as described and delineated in West Virginia's recommendation filed with the Commission, be designated as tight formations under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 29, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-233 (West Virginia—5), and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than October 1, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts West Virginia's recommendation.

Kenneth A. Williams,
Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(205) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

* * * * *

(205) *The "Maxton", zone, "Little Lime" zone, and "Blue Monday" zone of the Mauch Chunk Group, the "Big Lime" zone and "Keener" zone of the Greenbrier Group, and the "Big Injun" zone and "Squaw" zone of the Pocono Group in Portions of Braxton and Clay Counties, West Virginia.* RM79-76-233 (West Virginia—5).

(i) *"Maxton" zone of the Mauch Chunk Group.*

(A) *Delineation of formation.* The "Maxton" zone underlies the "Salt Sands" zone of the Pottsville Group of Pennsylvanian age and overlies the "Little Lime" zone of the Mauch Chunk Group of Mississippian age.

(B) *Depth.* The average depth to the top of the "Maxton" zone is approximately 1,550 feet.

(ii) *"Little Lime" zone of the Mauch Chunk Group.*

(A) *Delineation of formation.* The "Little Lime" zone underlies the "Maxton" zone and overlies the "Blue Monday" zone of the Mauch Chunk Group.

(B) *Depth.* The average depth to the top of the "Little Lime" zone is approximately 1,650 feet.

(iii) *"Blue Monday" zone of the Mauch Chunk Group.*

(A) *Delineation of formation.* The "Blue Monday" zone underlies the "Little Lime" zone and overlies the "Big Lime" zone of the Greenbrier Group.

(B) *Depth.* The average depth to the top of the "Blue Monday" zone is approximately 1,685 feet.

(iv) *"Big Lime" zone of the Greenbrier Group.*

(A) *Delineation of formation.* The "Big Lime" zone underlies the "Blue Monday" zone and overlies the "Keener" zone of the Greenbrier Group.

(B) *Depth.* The average depth to the top of the "Big Lime" zone is approximately 1,735 feet.

(v) *"Keener" zone of the Greenbrier Group.*

(A) *Delineation of formation.* The "Keener" zone underlies the "Big Lime" zone and overlies the "Big Injun" zone of the Pocono Group.

(B) *Depth.* The average depth to the top of the "Keener" zone is approximately 1,845 feet.

(vi) *"Big Injun" zone of the Pocono Group.*

(A) *Delineation of formation.* The "Big Injun" zone underlies the "Keener" zone and overlies the "Squaw" zone of the Pocono Group.

(B) *Depth.* The average depth to the top of the "Big Injun" zone is approximately 1,865 feet.

(vii) *"Squaw" zone of the Pocono Group.*

(A) *Delineation of formation.* The "Squaw" zone underlies the "Big Injun" zone and overlies the "Weir" zone of the Pocono Group.

(B) *Depth.* The average depth to the top of the "Squaw" zone is approximately 2,025 feet.

[FR Doc. 84-36797 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 667

[FHWA Docket No. 84-15]

Public Lands Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA requests comments on proposed revisions to its regulation on Public Lands Highways. Public Lands Highways are Federal-aid highways which are bounded on both sides by unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations. The regulation specifies procedures for allocation of funds and project administration and provides guidance on eligibility of work. The proposed revisions are intended to bring the existing regulation up to date considering recent legislative and administrative changes in the program.

DATE: Comments must be received by October 19, 1984.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 84-15, Federal Highway Administration, Room 4205, HCC-10, 400 7th Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering, (202) 426-0450, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The policies, procedures and requirements for administering the Public Lands Highways program are set forth in 23 CFR Part 667. In carrying out the requirements of section 126(a) of Pub. L.

97–424, 96 Stat. 2113, to provide funds to pay for the cost of construction and improvement of Public Lands Highways, the Secretary of Transportation is authorized by 23 U.S.C. 315 to prescribe and promulgate rules and regulations. This authority is delegated to the Federal Highway Administrator by 49 CFR 1.48. The regulation, 23 CFR Part 667, establishes the authority and responsibility of the Federal Highway Administrator to allocate funds on the basis of need as determined upon application of the State highway agency (SHA). It is necessary to have candidate projects sufficiently outlined in writing to permit comparison and selection.

Periodically FHWA solicits candidate projects for Public Lands Highways funding. Upon submission of candidates by the SHA's, FHWA makes selections based on need and other criteria according to the information provided. The Public Lands Highways program is part of the Federal Lands Highways program which provides for a coordinated effort for construction of forest highways, public lands highways, park roads, parkways and Indian reservation roads. Maintenance provisions of legislation have been deleted and although rehabilitation type activities may be funded, maintenance, per se, is no longer eligible. The Public Lands Highways part of the Federal Lands Highways program provides funds only for roads on a Federal-aid system which are bounded on both sides by Federal lands. The FHWA allocates Public Lands Highways funds to the States, on the basis of need in such States as determined by FHWA upon application of the SHA. Preference is given to those projects which significantly benefit or improve Federal land and resource management activities. Since candidate projects are on Federal-aid systems, appropriate classes of regular Federal-aid funds as well as other classes of Federal Lands funds are available which permits greater flexibility in the development of viable improvements.

Summary of Revisions

The proposed revisions are intended to bring the existing regulations up to date considering recent legislative and administrative changes in the program. Specifically, the proposed changes include (1) recent legislative provisions in the 1982 Surface Transportation Assistance Act (Pub. L. 97–424, 96 Stat. 2113) for giving preference to projects which significantly benefit or improve Federal land and resource management activities, and removing maintenance as an eligible category of work, (2) deletion of the consideration previously given to the needs of FHWA direct Federal forces to perform work, (3) internal FHWA administrative changes to centrally allot funds to the Associate Administrator for Engineering and Operations to simplify the allocation procedure, (4) clarification of the wording of several sections to assure candidate projects are within Federal lands, on a public road and on the Federal-aid system, and (5) clarification of the criteria on which the review of candidate projects are based to accurately reflect the priority of factors considered.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The revisions proposed in this document are primarily technical in nature, provide language clarifications, and provide a more current delineation of legislative mandates. The revisions will impose no additional burdens on the States or local agencies and could reduce implementation burdens by providing a more current and simplified regulation. For these reasons, the anticipated economic impact, if any, will be minimal. Therefore, a full regulatory evaluation is not required. For the same reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Since the revisions being proposed are primarily procedural in nature, it has been determined that a 30-day comment period provides adequate time for the public to respond.

In consideration of the foregoing and under the authority of 23 U.S.C. 202(c), 204, and 315; 49 CFR 1.48(b); the FHWA proposes to revise Part 667 of title 23, Code of Federal Regulations, to read as set forth below.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 667

Grant programs—transportation, Highways and roads, Public lands.

Issued on: September 11, 1984.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

It is proposed to revise Part 667 to read as follows:

PART 667—PUBLIC LANDS HIGHWAYS

Sec.
667.1 Purpose.
667.3 Allocation of funds.
667.5 Project procedures.
667.7 Eligibility.

Authority: 23 U.S.C. 202(c), 204 and 315; and 49 CFR 1.48(b).

§ 667.1 Purpose.

The purpose of this regulation is to outline procedures to be followed in administering Public Lands Highways funds.

§ 667.3 Allocation of funds.

(a) Funds authorized for Public Lands Highways shall be allocated among the States on the basis of need as determined by the Federal Highway Administrator upon application of the State highway agency (SHA). Preference will be given to those projects which significantly benefit or improve Federal land and resource management.

(b) Periodically a call will be issued by the Federal Highway Administration (FHWA) to the respective SHA's for candidate projects.

(c) All candidate projects submitted in response to the above call will be reviewed by FHWA Washington Headquarters and a priority of need determined on the basis of supporting information submitted with the application dealing with the following considerations:

(1) Relationship to Federal land and resource management plans and activities including traffic carrying capacity and other effects on land use and resource development,

(2) Current status and adequacy of the present road with regard to capacity and safety,

(3) Relationship of proposed improvement to the adequate development of a complete highway section, and

(4) Schedule for physical construction; particularly, how soon physical construction will begin.

(d) After reviewing the applications based on the above criteria, the FHWA will also give some consideration to the equitable distribution to States of available funds.

§ 667.5 Project procedures.

(a) Except as noted herein, work is to be administered by the SHA in accordance with Federal-aid procedures applicable to Federal-aid primary projects or by FHWA in accordance with procedures applicable to forest highway projects. The method chosen will be determined by agreement between the SHA and the FHWA Division Administrator.

(b) The Administrator's approval of a specific project constitutes program approval, there is no need for subsequent inclusion in the statewide program of projects. Funds will be centrally allotted to the Associate Administrator for Engineering and Operations who will advise the appropriate Regional Administrator of the amount allocated for the approved project and that obligations may be processed against the central allotment up to the amount allocated for that project.

(c) Upon receipt of advice of project approval, the project should be advanced expeditiously. Projects may be constructed through contracts awarded by competitive bidding unless the FHWA Division Administrator (or Division Engineer) finds that another method is in the public interest for a particular project.

(d) The amount of Public Lands Highways funds available for the construction of a specific project is limited to the amount of funds allotted for that project. No fund transfers or changes to project termini or description as approved by the Administrator will be permitted without prior approval from Washington Headquarters.

§ 667.7 Eligibility.

(a) Funds authorized for public Lands Highways are available for public roads on the Federal-aid system which are entirely within Federal lands. (1) Funds may be used for contruction, including preliminary engineering but excluding rights-of-way.

(2) Funds may also be used for construction of adjacent vehicular parking areas, scenic easements, and sanitary, water and fire control facilities.

[FR Doc. 84–24758 Filed 9–18–84; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–124–76]

Distributions in Redemption of Stock To Pay Death Taxes; Proposed Rulemaking

Correction

In FR Doc. 84–22324 beginning on page 33277 in the issue of Wednesday, August 22, 1984, make the following corrections.

1. On page 33277, second column, eighth line, "December 3, 1976" should have read "December 31, 1976".
2. On the same page, third column, third complete paragraph, third line, "section 303(a)(2)(A)" should have read "section 303(b)(2)(A)".
3. In the same column, fifth complete paragraph, third line from the bottom, "is" should have read "in".

§ 1.303–1 [Corrected]

4. On page 33279, in § 1.303–1(a)(5), first column, tenth line from the bottom, "of" should have read "or".
5. On page 33280, in § 1.303–1(d)(4), Example (1), ninth line, "has" should read "had".

BILLING CODE 1505–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–200]

Occupational Exposure to Ethylene Oxide

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: On June 22, 1984, the Occupational Safety and Health Administration (OSHA) published a final standard for ethylene oxide (EtO) that established a permissible exposure limit of 1 part EtO per million parts of air determined as an 8-hour time—weighted average (TWA) concentration (49 FR 25734). The standard also includes provisions for methods of exposure control, personal protective equipment, measurement of employee exposure, training, signs and labels, medical surveillance, regulated areas, emergencies and recordkeeping. The basis for this action was a determination by OSHA, based on human and animal data, that exposure to EtO presents a carcinogenic, mutagenic, genotoxic, reproductive, neurologic, and sensitization hazard to workers.

During the rulemaking proceedings that led to the establishment of the 1 ppm TWA, the issue of whether there was a need for a short-term exposure limit (STEL) for worker protection from EtO was raised. OSHA reserved decision on the adoption of a STEL at the conclusion of the rulemaking in order to permit peer review of OSHA's preliminary decision and to review more fully the arguments and pertinent data regarding the STEL issue. To date, the comments of about half of the peer reviewers on the data in the record pertaining to the STEL have been received. This notice solicits public comment both on the reviewers' analyses of the available data and on the issue of whether OSHA should adopt a STEL.

DATE: Comments in response to this notice must be submitted by November 5, 1984.

ADDRESS: Comments should be submitted in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket H–200, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N 3641, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Events Leading to this Action

On January 26, 1982, OSHA published an Advance Notice of Proposed Rulemaking (47 FR 3566) announcing its intention to conduct a reevaluation of its existing EtO standard of 50 ppm as a TWA. In addition to a request for public comment on the adequacy of 50 ppm as a TWA, comment was also solicited on the question of the necessity of a STEL as follows:

> Is a short-term or ceiling limit for EtO exposures necessary and why, and what would be the technological and economic feasibility of complying with that limit?

On April 21, 1983, OSHA published a Notice of Proposed Rulemaking for EtO that proposed to reduce the permissible 8-hour TWA for EtO from 50 ppm to 1 ppm (48 FR 17284). Although a specific STEL for ETO was not proposed, public comment on that issue was solicited by the following questions:

> **Is a short-term or ceiling exposure limit for EtO exposure necessary for the PEL or action level in view of recent information regarding increased spontaneous abortions and chromosome changes in workers exposed to EtO? What monitoring methods and control technology are available to meet such a short-term limit and what would be the economic burdens, if any, of such a limit?**

and,

> **What are the most suitable methods for determining compliance with EtO permissible exposure limits (PEL's) of 0.5 and 1 ppm as 8-hour time-weighted averages and for ceilings ranging from 5 to 50 ppm for 30 minutes or less? What are the problems associated with such monitoring methods? Do they require special training or experience? Are there serious limitations as to the accuracy or precision of the available sampling techniques?**

Numerous comments and other data were received by OSHA in response to the STEL qustions set forth in the ANPR and NPR (Ex. 168). Analysis of these data resulted in OSHA including a STEL provision, with an accompanying rationale, in a draft version of the final standard dated June 14, 1984 (Ex. 167B). However, the final EtO rule published on June 22, 1984 (49 FR 25734) reserved decision on the question of whether the standard should contain a STEL (Ex. 167A).

Upon its review of comments submitted by the Office of Management and Budget (OMB) pursuant to Executive Order 12291 (Ex. 162), OSHA determined that certain issues relating to a STEL were important and merited further consideration. In particular, questions concerning the following issues merit more deliberate review:

—Quantification of the risk avoided by issuance of the STEL, in light of the requirement of the new standard to meet a 1 ppm PEL;
—The need for a STEL given current exposures and the 1 ppm PEL of the new standard;
—The appropriateness of relying on studies by Hemminki, Yager, and Johnson & Johnson as partial support for the issuance of a STEL.
—A decision by ACGIH not to recommend a STEL for EtO; and
—The economic and technical feasibility of a STEL without the use of respirators.

To develop the fullest possible administrative record, both OSHA's draft final standard (Ex. 167B) and OMB's comments (Ex. 162) as well as all other exhibits in the docket relating to the STEL (compiled as Ex. 168), have been submitted to a number of scientifically qualified peer reviewers for comment, analysis, and criticism. The peer reviewers have filed statements that have been placed in the public docket.

Public comments on the statements filed by the peer reviewers and on the issues raised by OMB on the June 14, 1984 draft standard are solicited by this notice. After reviewing the comments submitted, OSHA will publish a reasoned decision on the STEL and related issues in the **Federal Register**.

OSHA notes that the June 22, 1984 final standard does not require installation of engineering controls to meet the TWA until one year from the August 21, 1984 effective date of the standard. A decision on these STEL issues will be made in advance of that compliance deadline.

As stated in the June 22 final rule for EtO, OSHA anticipated the possibility that the peer review and public comment might result in adoption of a STEL. OSHA noted that if that were to occur, the deadline for compliance with the STEL would be the same as for compliance with the TWA—namely one year from the August 21, 1984 effective date of the standard. Comments on the feasibility of this schedule are also invited.

II. Identification of Peer Reviewers

OSHA requested peer review of the STEL data by 23 individuals and organizations. As noted above, these reviewers were provided with OSHA's June 14, 1984, draft final standard (Ex. 167B), OMB's comments (Ex. 162), and all other data in EtO Docket H–200 pertaining to the STEL issue (Ex. 168). Reviewers were asked to provide comment on those aspects of the STEL issue that were within their area of expertise (toxicology, epidemiology, industrial hygiene, etc.). OSHA contacted the following peer reviewers (A number in parenthesis in the list below reflects OSHA's receipt of the person's review and the exhibit number of that review in Docket H–200. Reviews received subsequent to publication of this notice will be entered into the docket upon receipt.):

Elliot Harris, Ph.D., Deputy Director, National Institute for Occupational Safety and Health (Ex. 181)
Ralph Allen, President, American Academy of Industrial Hygiene (Ex. 175)
Vern Carter, Ph.D., College of Veterinary Medicine, Ohio State University (Ex. 178)
William Kelly, Executive Director, American Conference of Governmental Industrial Hygienists
Dr. Donald Hoops, Executive Director, American Academy of Occupational Medicine
Dr. L.B. Russell, President, Environmental Mutagen Society
Matilda Babbitz, Executive Director, American Association of Occupational Health Nurses (Ex. 180)
Dr. Fred Oehme, President, Society of Toxicology
Dr. John Crum, Executive Director, American Chemical Society (Ex. 170)
Richard Adamson, Ph.D., National Cancer Institute (Ex. 172)
David P. Rall, M.D., Ph.D., National Institute of Environmental Health Sciences (Ex. 171)

The following 12 members of the Department of Labor's National Advisory Committee on Occupational Safety and Health were also requested to review and submit comments on the STEL issue:

Frank R. Barnako, Chairman of the Board, National Safety Council (Ex. 174)
Joyce C. Hearn, Representative, South Carolina Legislature
Sidney Shindell, M.D., Chairman, Department of Preventive Medicine, The Medical College of Wisconsin (Ex. 176)
Robert B. Taylor, Director, Division of Occupational Safety and Health, Tennessee Department of Labor
Tom Baker, President, Baker Electric Company
Bruce W. Karrh, M.D., General Director, Medical, Safety and Fire Protection, E.I. DuPont DeNemours and Co., Inc. (Ex. 173)
John J. Donlon, Business Manager, Colorado Building and Construction Trades Council
R.V. Durham, Director, Safety and Health Department, International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America (Ex. 179)
B. Gawain Bonner, Director, Safety and Health, Tenneco, Inc.
Ronald H. Davis, Vice President, Industrial Relations, Carolina Steel Corporation
Marcus M. Key, M.D., Professor of Occupational Medicine, The University of Texas Health Sciences Center (Ex. 177)
William E. McCormick, Former Managing Director, American Industrial Hygiene Association

III. Public Participation

Interested persons are invited to submit written comment on the statements filed by the peer reviewers and the issues raised by OMB. Comments should be sent in quadruplicate to the Docket Officer at the address noted at the beginning of this document where they will be available for inspection and copying. Comments must be submitted by November 5, 1984. The comments received in response to this notice will be carefully reviewed and, along with other relevant material in the record, will be used by OSHA to arrive at a final determination as to whether it is necessary and appropriate to adopt a STEL for occupational exposure to EtO, and, if so, what the STEL should be.

This notice was prepared under the direction of Robert Rowland, Assistant

Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act (84 Stat. 1593; 29 U.S.C. 655).

List of Subjects in 29 CFR Part 1910

Occupational safety and Health.

Signed at Washington, D.C., this 14th day of September 1984.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 84-24848 Filed 9-18-84; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2671-5]

Approval and Promulgation of Implementation Plans; Maine—Particulate Emissions Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maine. These statewide revisions will require fuel burning equipment to meet more stringent particulate emissions limits. The intended effect of this action is to ensure maintenance of air quality standards as required under Section 110 of the Clean Air Act.

DATES: Comments must be received or before October 19, 1984.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and Maine Department of Environmental Protection, Bureau of Quality Control, Ray Building, Hospital Street, Augusta, Maine 04330.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough (617) 223-4870.

SUPPLEMENTARY INFORMATION: On January 11, 1983 and March 29, 1984 the Commissioner of the Maine Department of Environmental Protection (DEP) submitted revisions to Chapter 103, "Fuel Burning Equipment Particulate Emission Standard," of the Maine SIP. The new particulate emission limits are equivalent to or more stringent than the present SIP regulation. The new regulation sets separate emission limits for coal, oil, wood and multiple fuel-fired boilers; the present SIP contains one limit for all source categories.

Proposed Limits for Existing Sources

Existing sources are defined as those which applied for an air emissions license before December 22, 1982 which is the date on which the Maine DEP adopted revisions to Chapter 103 "Fuel Burning Equipment Particulate Emission Standard."

The present Maine SIP limits particulate emissions from all fuel burning equipment rated at 150 million Btu per hour or greater to 0.30 pounds per million Btu. For equipment rated at under 150 million Btu per hour the limits are increasingly less stringent as the rated capacity decreases. The new regulation sets more stringent limits for certain categories of existing sources. Table 1 compares the current SIP to the proposed revisions.

TABLE I.—PARTICULATE EMISSION LIMITS FOR EXISTING SOURCES

Source category	Design capacity (MM Btu/hr)	SIP emission limit (lbs. particulate/MM Btu)	Proposed revision (lbs particulate/MM Btu).
1. Oil, gas, petroleum burning.	Less than 150.	0.30 or greater.[1].	0.20.
	150 or greater.	0.30	0.20
2. Coal burning.	Less than 60.	0.30	
	50 or greaterD0.30 or greater[1]. 0.30	0.08	
3 Wood burning (wood, bark, chips, sawdust, pulp mill sludge, forest products including those with oil firing capabilities).	Less than 150.	0.30 or greater[1].	0.30 or greater[1].
	150 or geater.	0.30	0.30.

[1] A sliding scale is used to determine emission limits for sources rated at less than 150 million Btu per hour.

Any petroleum burning source that cannot achieve the 0.20 pounds per million Btu emission limit may operate at a higher emission rate not to exceed 0.30 pounds per million Btu if it installs automatic fuel viscosity controls and combustion efficiency instrumentation.

Proposed Emission Limits for New Sources

New sources are those which apply for air emissions license after December 22, 1982. Current SIP limits for new sources and proposed revisions are shown in Table 2.

TABLE 2.—PARTICULATE EMISSION LIMITS FOR NEW SOURCES

Source category	Design capacity (MM Btu/hr)	SIP emission limit (lbs. particulate/MM Btu)	Proposed revision (lbs particulate/MM Btu).
1. Oil, gas, petroleum burning.	Less than 50	0.30 or [1] greater.	0.12
	50 to less than 250.	0.30 or [1] greater.	0.08
	Greater than 250.	0.30	0.06
2. Coal burning	Less than 50	0.30 or [1] greater.	0.30
	50 to less than 250.	0.30 or [1] greater.	0.08
	250 or greater	0.30	0.05
3. Biomass boiler (wood, bark, coal sludge, petroleum product alone or in combination).	Less than 50	0.30 or [1] greater.	0.30
	50 to less than 250 when burning primary fuel or within range of design rate proportions.	0.30 or [1] greater.	0.08
	50 to less than 250 when burning other than the primary fuel or outside the range of design rate proportions.	0.30 or [1] greater.	0.10
	250 or greater when burning the primary fuel or within the range of design rate proportions.	0.30	0.06
	250 or greater when burning other than the primary fuel or outside the range of design rate proportions.	0.30	0.10
	Greater than 50 and using a venturi scrubber providing 75% sulfur dioxide removal.	0.30	0.10
4. Solid Waste Burning.	Less than 50	.08 grains per dry standard cubic foot.	0.30
	50 to less than 250.	do	0.20
	250 or greater	do	0.10

[1] A sliding scale is used to determine emission limits for sources rated at less than 150 million Btu per hour.

New Source Performance Standards (NSPS) for incinerators apply to solid waste burning sources if more stringent. The NSPS particulate emission limit is 0.08 grains per dry standard cubic foot and applies to incinerators charging greater than 50 tons per day. NSPS for other source categories will also apply if more stringent than the revised chapter 103.

Any source which is considered new (i.e. applies for a license after December 22, 1982) but is installing previously owned equipment may be exempt from the proposed emission limits in Table 2 and will be subject to case-by-case emission limitations which may not be less stringent than emission limits for existing sources (Table 1).

New oil, gas and petroleum burning sources rate at exactly 250 million Btu per hour were inadvertently omitted. This omission must be addressed by DEP before EPA issues a final approval of Chapter 103.

Proposed Action

EPA is proposing to approve the revisions to Chapter 103, "Fuel Burning Equipment Particulate Emission Standard" because the emission limits in all cases are at least as stringent as the present SIP limits. DEP must address oil, gas and petroleum product burning sources rated at exactly 250 million Btu per hour before EPA can publish a final rulemaking.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. These revisions are being proposed pursuant to Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

Dated: August 3, 1984.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 84–24497 Filed 9–18–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[EPA Docket No. AM012WV; A-3-FRL-2673-1]

State of West Virginia; Proposed Revision of the West Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On August 14, 1980, at 45 FR 54042, EPA approved, with certain conditions, West Virginia's revised State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards for Total Suspended Particulates (TSP). One of the conditions EPA established was that West Virginia revise Regulation VII and submit this revision and associated test procedures, to EPA as a SIP revision. EPA has reviewed these test procedures from West Virginia and is proposing its approval in this Notice.

DATE: Comments must be submitted on or before October 19, 1984.

ADDRESSES: Copies of West Virginia's Test Procedures for Regulation VII are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, PA 19106, Attn: Denis M. Zielinski

West Virginia Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25312, Attn: Mr. Carl G. Beard, II.

All comments on the proposed revision submitted within thirty (30) days of publication of this notice will be considered and should be directed to Mr. Glenn Hanson, Chief, PA/WVA Section, EPA Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, EPA Docket No. AM012WV.

FOR FUTHER INFORMATION: Denis M. Zielinski (3AM11) at the EPA, Region III address above or call (215) 597-2906.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 required States to submit revised State Implementation Plans (SIP's) for all areas where National Ambient Air Quality Standards (NAAQS) have not been attained. West Virginia submitted a SIP revision to EPA as required for attainment of the TSP NAAQS's. EPA approved this SIP revision, with certain conditions, in a notice published at 45 FR 54042, August 14, 1980. One of the conditions in the SIP was that West Virginia was to revise its Regulation VII—"To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations".

On September 20, 1983 (48 FR 42813), EPA approved the revision of Regulation VII with certain conditions. This approval did not include the associated compliance test procedures and EPA conditioned approval upon submittal by West Virginia of the associated test procedures now being proposed for approval today.

On January 31, 1984, West Virginia submitted emergency regulations and TP-4—"Compliance Test Procedures For Regulation VII—'To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations' ". On June 13, 1984, West Virginia notified EPA that the test procedures submitted on January 31, 1984 were the final submittal.

EPA has reviewed West Virginia's test procedures and has determined them to be acceptable. Therefore, EPA is proposing to approve these test procedures as a revision to the West Virginia SIP.

EPA invites the public to comment on whether the test procedures should be approved. Comments should be submitted to the address given above.

EPA's final decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the revision conforms to the requirements of section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Regional Administrator has certified that this SIP revision will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: August 15, 1984.

Sheldon M. Novick,

Acting Regional Administrator.

[FR Doc. 84–24750 Filed 9–18–84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[EPA Docket Nos. AM049, 50, 51, 52, 56 and 57 MD; A-3-FRL-2673-7]

Proposed Approval of Revisions to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On December 13, 1983 and April 6, 1984, the Maryland Air Management Administration submitted to EPA proposed revisions to the Maryland State Implementation Plan (SIP) in the form of a Plan for Compliance (PFC) for each of the following Companies: General Motors Corporation, GM Assembly Division (Baltimore City Plant); American Can Company (Baltimore City); National Can Corporation (Baltimore County); Crown Cork and Seal Company, Inc. (Baltimore City) and Continental Can Company, (Baltimore City).

The proposed PFCs require compliance by each of the companies with all applicable provisions of the Code of Maryland Regulations (COMAR) governing the emission of Volatile Organic Compounds (VOC). The proposed PFCs for the American Can Company, National Can Corporation, Crown Cork and Seal Company, and the Continental Can Company also require compliance with the applicable Maryland regulations which govern Visible Emissions (VE).

EFFECTIVE DATE: Comments must be submitted on or before October 19, 1984.

ADDRESSES: Copies of the proposed SIP revisions and the accompanying support documents are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM13), Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106, Attn: Mr. James Topsale, P.E.

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, Attn: Mr. George Ferreri

All comments on the proposed revision submitted within 30 days of publication of this Notice will be considered and should be directed to Mr. James Sydnor, Chief, Maryland, Virginia, Delaware, District of Columbia Section at the EPA, Region III address stated above. Please reference the EPA Docket Numbers found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Mr. James Topsale, P.E. or Mr. Paul Racette at the Region III address stated above or telephone 215/597-4553.

SUPPLEMENTARY INFORMATION:

Background

This proposed SIP revision consists of Plans for Compliance (PFCs) in the form of Consent Orders between the 5 companies and the Maryland Department of Health and Mental Hygiene (DHMH). The proposed PFCs require that each company come into full compliance with the Code of Maryland Regulations (COMAR) for Volatile Organic Compounds (VOC).

In the cases of the National Can Corporation, American Can Company, Crown Cork and Seal Company, and the Continental Can Company, the PFCs ensure compliance with the COMAR Visible Emission (VE) regulations. A summary of the control strategies for each company is as follows:

[AM049MD]

General Motors Corporation, Baltimore City

The General Motors Corporation (GM) PFC ensures that the requirements of COMAR 10.18.21.03B (Control of VOC Emissions from Automotive and Light Duty Truck Coating) and COMAR 10.18.21.13 (Control of VOC Emissions from Miscellaneous Metal Coating) will be met as expeditiously as possible. The PFC includes control strategies for the prime coat, primer-surfacer, final repair coating, and topcoat, along with an outline for developing control strategies for the hi-temp anti-corrosion coating, anti-corrosion wax, zinc-rich primers, and coatings for steering columns.

GM plans to control prime coat emissions through the use of a new electrodeposition (ELPO) facility. GM had originally planned to build the ELPO facility in 1980, but due to the economic downturn, construction was cancelled. Presently, the company has decided to produce a new downsized van that will require the major capital investment of an ELPO facility. Construction of this facility was scheduled to be initiated on April 1, 1984. The facility will be completed by December 31, 1984, when GM will be in compliance with COMAR 10.18.21.03B for the prime coat. This date is consistent with the EPA Policy Statement for Automobile Assembly Plant Paint Shop Operations, 46 FR 51386, October 20, 1981. The policy statement allows compliance date extensions until 1984 for companies installing ELPO facilities, in order to defer significant capital expenditures and to allow time for installation. GM will also achieve compliance for the primer-surfacer and the final repair coatings by December 31, 1984. This will be accomplished through the development of low solvent coatings that meet the requirements of COMAR 10.18.21.03B.

GM plans to achieve compliance for the topcoat coatings by December 31, 1986. Their topcoat facilities are being modified to utilize base coat/clear coat (BC/CC) topcoat technology. Due to the need for additional time to develop BC/CC technology that would produce compliance coatings, EPA in the October 20, 1981 Policy Statement granted an extension period to automobile paint shop operations.

GM's December 31, 1986 compliance date is consistent with the allowed extension period. GM will achieve compliance through the evaluation of alternative control techniques, including applying solventborne coatings with improved transfer efficiencies and booth or oven emission abatement. As further low solvent coating development programs evolve, compliance coatings that are production-ready by 1986 are to be utilized by GM in their modified plant as a part of the developing BC/CC technology.

The PFC also contains provisions for ensuring compliance with COMAR ⅛10.18.21.13B, as applicable, for GM's hi-temp anti-corrosion coatings, anti-corrosion wax, zinc-rich primers, and the coating for steering columns. By April 1, 1984 GM will advise the DHMH of the anticipated coating usage, and solvent content of each of these four miscellaneous metal coating operations.[1] Within ninety (90) days after this notification, the DHMH will determine the applicability of these coatings to the requirements of COMAR 10.18.21.13B, and advise GM of which coatings need to be replaced. Within sixty (60) days of the receipt of this determination, GM shall submit a compliance schedule which shall call for the utilization of these required compliance coatings as expeditiously as practical, but in no case shall the schedule extend beyond December 31, 1986.

[AM050MD]

The American Can Company, Baltimore City

The American Can Company (American Can) must meet the requirements of COMAR 10.18.21.04B (Control of VOC Emissions from Can Coating) and COMAR 10.18.06.02B (Control of Visible Emissions). Their PFC includes control strategies for end-seal/sheet base coatings and inside body spray and side seam stripe coatings. Compliance is to be achieved by the development of low solvent replacement coatings. As these coatings are developed into low solvent form, they are tested in commercial trials to evaluate their acceptability as a replacement coating. By September 30, 1984, any of the materials to be converted to low solvent coatings must be formulated into production text packs. By December 31, 1985, American Can shall be in compliance with all the requirements of COMAR 10.18.21.04 either by converting the end-seal compounds and sheet base coating materials to low solvent coatings or by converting a sufficient number of these materials to low solvent coatings so that the entire can manufacturing operation shall be in compliance by utilizing a daily production weighted averaging technique. This averaging technique is outlined in EPA's Policy Memorandum of December 8, 1980, 45 FR 80824. The December 31, 1985 compliance deadline is consistent with EPA's Policy Memorandum for Can Coating Operations of March 3, 1982, 47 FR 10293.

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[1] In GM's April 10 letter to the DHMH, the company noted that the anti-corrosion wax, zinc-rich primers, and coatings for steering columns will not be used at the facility. They also noted that the hi-temp anti-corrosion coating does not contain VOCs. Based on the GM letter, Section (4)E of the PFC may no longer be applicable.

If American Can decides that compliance cannot be achieved solely through the use of low solvent coatings, control equipment shall be purchased and installed. This equipment shall consist of a fume incinerator. American Can has submitted dates for applying for a permit to construct, issuing purchase orders, initiating construction, completing construction, and achieving compliance. American Can shall achieve compliance by the designated December 31, 1985 deadline if control equipment is necessary.

[AW051MD]

The National Can Corporation, Baltimore City

The National Can Corporation (National Can) must meet the requirements of COMAR 10.18.21.04B and COMAR 10.18.06.02B. Their PFC includes control strategies for end-seal compound and sheet base coatings. Compliance is to be achieved by the development of low solvent replacement coatings. By September 30, 1984, National Can will have evaluated all of their coating materials to determine which materials must be replaced by a low solvent coating. As these materials are developed into low solvent form, they are tested in commercial trials to evaluate their acceptability as a replacement coating. By September 30, 1984, any of the materials to be converted to low solvent coatings must be formulated into production test packs. By December 31, 1985, National Can shall be in compliance with all the requirements of COMAR 10.18.21.04 either by converting the end-seal compound and sheet base coating to low solvent coatings or by converting a sufficient number of these materials to low solvent coatings so that the entire can manufacturing operation shall be in compliance by utilizing a daily production weighted averaging technique. This averaging technique is outlined in EPA's Policy Memorandum of December 8, 1980, 45 FR 80824. The December 31, 1985 compliance deadline is consistent with EPA's Policy Memorandum for Can Coating Operations of March 3, 1982.

If National Can decides that compliance cannot be achieved solely through the use of low solvent coatings, control equipment shall be purchased and installed. National Can has submitted dates for applying for a permit to construct, initiating construction, and completing construction and achieving compliance. National Can shall achieve compliance by the designated December 31, 1985 deadline if control equipment is necessary.

[AW056,57MD]

Crown, Cork and Seal Company, Baltimore City, Continental Can Company, Baltimore City

The Crown, Cork and Seal Company (Crown, Cork and Seal) and Continental Can Company (Continental Can) have submitted PSCs that are similar to those submitted by National Can and American Can. Crown Cork and Seal (AW057MD) must meet the requirements of COMAR 10.18.21.04B, COMAR 10.18.21.13C and COMAR 10.18.06.02B, while Continental Can (AM056MD) must meet the requirements of COMAR 10.18.21.04B and COMAR 10.18.06.02B. Crown, Cork and Seal's PFC includes control strategic for end-seal compound, sheet base coat, and crown manufacturing, while Continental Can's PFC includes control strategies for end-seal compound and sheet base coat. As was described for National and American Can, compliance is to be achieved by the development of low solvent coatings. These coatings are tested in commercial trials to evaluate their acceptability. By September 30, 1984 each company will have formulated into production test packs any of the materials to be converted into low solvent form. By December 31, 1985, each of these companies shall be in compliance with all of the required regulations. This will be achieved with the low solvent coating technology, and the daily production weighted averaging technique as it is needed.

If compliance cannot be achieved solely through the use of low solvent coatings, each company shall purchase and install control equipment. Each company has submitted dates for applying for permits to construct, initiating construction, completing construction and achieving compliance. The two companies shall achieve compliance by the designated December 31, 1985 deadline if control equipment is necessary.

EPA Evaluation

Based on our review of these PFCs, EPA is today proposing to approve them as SIP revisions. The State of Maryland has certified that, after adequate public notice, hearings were held with respect to these proposed SIP revisions in Baltimore, Maryland on September 15, 1983 and January 12, 1984. Public Notices for GM and National Can were published on August 15, 1983, and for American Can on August 8, 1983. Public notices for Continental Can and Crown Cork and Seal were published on December 9, 1983 and December 14, 1983, respectively.

EPA's approval of these PFCs is based in part on the State's demonstration that the Reasonable Further Progress (RFP) curve will not be adversely affected by the plans, and on evidence that the plans will require compliance as expeditiously as possible. The DHMH has determined that each of the 5 PFCs will maintain RFP in reducting VOC emissions in the Metropolitan Baltimore Intrastate Air Quality Control Region. The DHMH has estimated VOC Emissions for each company for 1980, 1981, and 1987, and has demonstrated that each company will effectively reduce VOC Emissions over the eight year period, with full compliance being achieved by, or before, 1987. In the Metropolitan Baltimore Instrastate Air Quality Control Region VOC Emissions, as a result of the five PFCs, will be reduced from 14,070 tons VOC/year in 1980 to 3,980 tons VOC/year in 1987, resulting in a 10,090 tons VOC/year incremental reduction in total regional VOC emissions. The conclusions concerning the expeditiousness of the PFCs are based upon detailed discussions with each company and on the EPA policy statements for Can Coating Operations and Automobile

Assembly Plant Operations that are sited in this Notice.

Each company is committed to submit to the DHMH either quarterly or semi-annual progress reports consisting of the reporting requirements specified in each company's PFC. Additionally, each company must notify the DHMH immediately of any inability to meet the increments of progress required by the PFCs, including the reasons for non-compliance with requirements.

Conclusion

The Regional Administrator's decision to propose approval of the PFCs is based on a determination that the SIP revisions meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The Public is invited to submit, to the address stated above, comments on whether the proposed revisions to the State of Maryland's SIP should be approved.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Pursuant to the provisions of 5 U.S.C. 605(b), the Regional Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1982).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. (sections 7401–7642).

Dated: June 11, 1984.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 84-24754 Filed 9-18-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Federal Information Resources Management Regulation (FIRMR); Publication of Integrated Provisions

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking and availability of drafts of Block "C" segment.

SUMMARY: This notice announces the availability of the Block C portion of the proposed integrated text to be published as Amendment 1 to the FIRMR. No changes will be made in authorities, policies, or procedures from those contained in codified portions of the Federal Procurement Regulations (FPR) and Federal Property Management Regulations (FPMR) from which the provisions are derived. Nevertheless, users may desire to become acquainted with the manner in which the integration is made. While comment and review is not solicited, all comments and suggestions received will be considered.

DATE: Any comments on the proposed provisions should be submitted in writing to the Policy Branch, OIRM at the address shown below on or before October 19, 1984. FIRMR Block C and the applicable FIRMR Part number must be cited in all correspondence related to this notice.

ADDRESS: Comments should be submitted to the General Services Administration, KMPP, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Leticia Boddie, Policy Branch, Office of Information Resources Management, telephone 202 566–0194 or FTS, 566–0194. A single copy of any of the parts comprising Block C is available upon request; please specify the part(s) desired.

SUPPLEMENTARY INFORMATION: GSA has established (49 FR 20994, May 17, 1984) the FIRMR to provide a single regulation for use by Federal agencies governing certain of their information activities. Text was published for only Part 201-1. An amendment to the FIRMR is under development to publish an integrated FIRMR text for codified Federal Procurement Regulations (41 CFR Subparts 1-4.11, 1-4.12, and 1-4.13) and Federal Property Management Regulations (41 CFR Parts 101-35, 101-36, 101-37). The third of four blocks of integrated FIRMR text has been drafted. Block C consists of five FIRMR parts. Each part includes derivation and distribution tables relating FIRMR sections to FPR/FPMR sources. Block C also includes two temporary regulation actions to present temporary provisions changed to be consistent with the integrated text.

List of Subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

Authority: 201(c), 63 Stat. 390; 40 U.S.C. 486(c).

The parts in Block C are—

Part 201-21—Telecommunications Management Programs
Part 201-38—Management of Telecommunication Resources
Part 201-39—Major Changes and New Installations of Telecommunication Resources
Part 201-40—Contracting for Telecommunication Resources
Part 201-41—Routine Changes and Use of the Federal Telecommunications System (FTS)

The proposed temporary regulations in Block C are—

Proposed Temp. Reg. 3 (Reissue of FPMR Temp. Reg. F-502 provisions)
Proposed Temp. Reg. 4 (Reissue of FPR Temp. Reg. 51 and Supp. 2 to Temp. Reg. 51 provisions)

Dated: September 7, 1984.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 84-24758 Filed 9-18-84; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Remove Three Palau Birds From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to remove the Palau fantail (*Rhipidura lepida*), the Palau ground-dove (*Gallicolumba canifrons*), and the Palau owl (*Pyroglaux* (=*Otus*) *podargina*) from the protection of the Endangered Species Act of 1973, as amended. This action is being taken because these species are distributed throughout their former range, are found in relatively high numbers, and are faced with no foreseeable threat. They suffered population reductions in southern Palau during World War II, but have increased in these areas since then.

DATES: Comments must be received by November 19, 1984. Public hearing requests must be received by November 5, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, Endangered Species, Department of the Interior, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Willian F. Shake, Assistant Regional Director—Federal Assistance, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

SUPPLEMENTARY INFORMATION:

Background

Palau Fantail or Melimdelebteb

The fantail (*Rhipidura lepida*) is an old world flycatcher of the family Muscicapidae. It is common in the forests of Palau, and is presently distributed throughout its former range. It is found on all the major islands from Babeldaob to Peleiu, and on many of the smaller limestone islands between. The fantail inhabits all forest types except mangrove, and shows a preference for mixed second-growth stands with a thick and well developed understory. Early accounts suggest the fantail was common in the mid-1800's (Finsch, 1875), rare in 1931 (Coultas *in* Baker, 1951), and uncommon in 1945 on islands damaged by World War II (Baker, 1951).

Surveys completed by the Trust Territory Conservation Office in 1977–78 show that the fantail is common and widespread, and in fact is now most abundant on Peleliu, an island that was heavily damaged during the war. Observations by visiting ornithologists in the 1970's confirm the general abundance of the fantail (Pratt *et al.*, 1980).

Palau Ground-Dove or Omekrenguk

The Palau ground-dove (*Gallicolumba canifrons*) inhabits dense to open forest of rocky limestone substrates. Its historical and present range includes the many limestone islands from Koror to Angaur. A few birds have also been recorded from the large volcanic island of Babeldaob. Past accounts indicate the ground-dove has always been uncommon, particularly on war-damaged islands after World War II (Baker, 1951). Accurate assessments of the ground-dove's status are hindered by its inaccessible habitat, its low density, and its soft and infrequently voiced call. In surveys conducted by the Trust Territory Conservation Office from 1977–79, the ground-dove was found to be uncommon but widespread within its range on all the limestone islands within its original range. Island populations that were depressed in 1945 have recovered. A minimum of 15 birds was estimated to remain on Peleliu in 1945 (Baker, 1951), but the recent survey shows a population of over 150 on that one island.

Though uncommon to rare, the dove's low density is apparently natural and probably due to the living requirements of the species. There appears to be no imminent threats to the population. The many limestone islands that constitute the primary range are a *de facto* refuge. The ground-dove's small size, inaccessible habitat, and low, scattered numbers all make the bird an unsought game species.

Palau Owl or Chesuch

The Palau owl (*Pyroglaux* (=*Otus*) *Podargina*) is abundant and inhabits all the major islands from Babeldaob to Angaur. It resides in all forest types, including mangroves. The owl is a vocal species, and can be readily located by its loud and persistent calls that are voiced during the night. The owl has always been reported as common, though immediately after World War II it was rare on islands of southern Palau affected by the war (Marshall, 1949; Baker, 1951). It was thought that the owl had continued to decrease after World War II, possibly as a result of its feeding on the introduced coconut rhinoceros beetle (*Oryctes rhinoceros*), but since the 1960's the owl has steadily increased in numbers (Owen *in* Pratt *et al.*, 1980). (The beetle apparently is swallowed whole and kills the owl by piercing the stomach of the owl. Today, it is found in high densities. On Peleliu only 4 pairs could be located in 1945; the population in 1978 was estimated at over 300 on this island, and over 10,000 throughout the archipelago. The population appears to be secure and stable.

Neither the fantail, the ground-dove, nor the owl are sought as game species, and are not especially persecuted by humans. In the past, all three species have been protected by Trust Territory laws. Thses laws are slated to be adopted by the new government of Palau upon termination of the Trust. The new constitution of Palau bans personal possession of firearms, making it illegal to hunt with firearms. The forest habitat for these species is relatively secure. The high limestone islands should remain in a natural state; these generally have poor access, are preciptous, and have a rocky substrate that is unsuitable for agriculture or other types of development. On the main island of Babeldaob, a more extensive road system is planned, but a major portion of the island should remain in a forested condition. Populations of all three species do not appear to be threatened by disease, predation, or other nautral or manmade factors.

The Palau fantail, Palau ground-dove, and Palau owl were classified as endangered June 2, 1970 (35 FR 8495). No critical habitat was designated. This delisting action will merely acknowledge the fact that these species are not threatened or endangered and remove them from protection under the Endangered Species Act fo 1973, as amended (16 U.S.C. . 1531 *et seq.*).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR 424.11; under revision to accommodate the 1982 Amendments) set forth the procedures for listing, reclassifying, or removing species from the Federal lists. The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provision of the Act would present an overwhelming and overriding risk to man. The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). The data used to support a removal must be the best scientific and commercial data available to substantiate that the species is neither endangered nor threatened. Fctors leading to delisting include extinction, recovery of the species, or the original data for classification were in error. The factors in Section 4(a)(1) and their application to the Palau fantail, Palau ground-dove, and Palau owl are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The three Palau birds are all forest species. About 75 percent of Palau is forested, and much of this forest should remain intact in future years, particularly on the many small, inaccessible islands between Koror and Peleliu. Despite relatively rapid development at present, much of the growth is concentrated around the capital of Koror and on the upper savannas of Babeldaob, where there is little forest habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None of the three Palau birds are utilized for these purposes. Occassionally, the Palau owl is taken for a pet and the Palau ground-dove is taken incidental to hunting for the Micronesian pigeon (*Dacula oceanica*). These losses are few and are not considered a threat to the population.

C. Diseasu or Predation

Populations of all three species appear to be stable, and neither disease nor predation is thought to pose a threat at present.

D. The Inadequacy of Existing Regulatory Mechanisms

All three species are protected by local regulations. Recently a ban on personal possession of firearms was enacted in Palau, which may further reduce any illegal taking of these and other bird species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

There are no other known factors that are affecting the continued existence of the three Palau species.

In summary, the Palau fantail, Palau ground-dove, and Palau owl appear to have recovered on islands damaged during World War II. The original status information was meager and more recent and complete information is now available. These three Palau species are presently distributed throughout their former habitat and have stable populations that survive at or near their respective carrying capacities. They thus appear no longer to meet the definitions of threatened or endangered species.

Effects of the Rule

The rule merely acknowledges that the Palau fantail, Palau ground-dove, and Palau owl are not threatened with becoming endangered or in danger of extinction and that further protection under the Act is not required. Those prohibitions and conservation measures under the Act, sections 7 and 9, in particular, would no longer be applicable to these species if this rule is made final. As there were no specific preservation or management programs for the species in effect, there will be no impact or any agency or idividuals.

Public Comments Solicited

The Service intends that any rule finally adopted will be as accurate and effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. The principal information that would affect this rule is evidence that these species are still under some threat to their continued existence. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data pertaining to any threat (or lack thereof) to the three Palau species;

(2) Additional information concerning the range and distribution of these species; and

(3) Current or planned activities in the subject area and their possible impacts on these three Palau species.

Final promulgation of the regulation on the three Palau species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal (see **DATES**). Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97332.

National Environmental Policy Act

The Fish and Wildlife service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Baker, R.H. 1951. The avifauna of Micronesia, its origin, evolution, and distribution. Univ. of Kansas Publ. 3(1):1–359.

Finch, O. 1875. On the ornithology of the South Sea Islands, Vol. 1. The birds of the Palau Islands. Journal of the Godeffroy Museum 8:1–51. (in German)

Marshall, J. T., Jr. 1949. The endemic avifauna of Saipan, Tinian, Guam, and Palau. Condor 51:200–221.

Pratt, H.D., J. Engbring, P.L. Bruner, and D.G. Berret. 1980. Notes on the taxonomy, natural history, and status of the resident birds of Palau. Condor 82:117–131.

Author

The primary author of this proposed rule is John Engbring, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, P.O. Box 50167, Honolulu, Hawaii 96850.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.)*.

§ 17.11 [Amended]

2. It is proposed to amend § 7.11(h) by removing the following entries, in alphabetical order under BIRDS, from the List of Endangered and Threatened Wildlife: Fantail, Palau; Ground-dove, Palau; and Owl, Palau.

Dated: August 21, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–24768 Filed 9–18–84; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Warner Sucker Proposed Threatened Status and Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Service extends the comment period for the Warner sucker proposed rule. The Service has received requests to extend this period so that additional data may be submitted concerning the proposed threatened status and critical habitat for this species.

DATES: The public comment period is reopened September 19, 1984. Comments from all interested parties must be received on or before Monday, October 29, 1984, in order to ensure consideration.

ADDRESSES: Comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: William F. Shake, Assistant Regional Director, Federal Assistance, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule published May 21, 1984 (49 FR 21383) for the Warner sucker invited public comments. In the **Federal Register** of August 13, 1984 (49 FR 32320) the Service reopened the comment period until September 13, 1984 and announced a public hearing. The public hearing was held on August 29, 1984, in Lakeview, Oregon. As a result of public comments received during the current comment period, the Service reopens the comment period to October 29, 1984.

Author

The primary author of this notice is Carolyn Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 12, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–24769 Filed 9–18–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 183
Wednesday, September 19, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Import Quotas on Sugar for Fiscal Year 1985

AGENCY: Office of the Secretary, UDSA.

ACTION: Notice.

SUMMARY: This notice establishes the annual quota year sugar import quota (October 1, 1984 through September 30, 1985) at 2,552,000 short tons, raw value.

EFFECTIVE DATE: October 1, 1984.

ADDRESS: Mail comments to Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, UDSA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, dated May 5, 1982, amended Headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS) to establish a system of import quotas for foreign sugar coming into United States. Under the terms of Headnote 3, the Secretary of Agriculture established an annual sugar import period of October 1–September 30 beginning October 1, 1982. (47 FR 34812.)

For the 1984 quota year the quota was 3,052,000 short tons, raw value.

For the 1985 quota year the quota level is 2,552,000 short tons, raw value.

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that a quota of 2,552,000 short tons, raw value of sugar as described in items 155.20 and 155.30 of the TSUS may be entered or withdrawn from warehouse for consumption during the period October 1, 1984 through September 30, 1985. Of the 2,552,000 short tons, raw value, 2,000 short tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Headnote 3.

I have also determined that this quota amount gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS is modified to read as follows:

3. (a) The total amount of sugars, sirups and molassess described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse for consumption, between October 1, 1984 and September 30, 1985, inclusive, shall not exceed in the aggregate 2,552,000 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 2,550,000 short tons, raw value, and the remaining 2,000 short tons, raw value, may only be used for the importation of "specialty sugars," as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote.

Signed at Washington, D.C., on September 14, 1984.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 84–24817 Filed 9–14–84; 4:03 pm]

BILLING CODE 3410-10-M

Forms Under Review by Office of Management and Budget

September 14, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W, Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Cooperative Service

Marketing of Grain by Regional Cooperatives
Annually
Businesses or other for-profit; 16 responses; 48 hours; not applicable under 3504(h)
David Cummins (202) 382–1762

Larry K. Roberson,

Acting Clearance Officer.

[FR Doc. 84–24636 Filed 9–18–84; 8:45 am]

BILLING CODE 3410-01-M

Packers and Stockyards Administration

Deposting of Stockyard

It has been ascertained, and notice is hereby given, that the livestock market named herein, originally posted on the respective date specified below as being subject to the Packers and Stockyards

Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under said Act and is, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
MO-258 Uder Brothers Livestock Auction Co., Lebanon, Missouri.	Oct. 19, 1983.

Notice or other public procedure has not proceded promulgation of the foregoing rule. There is not legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register.** This notice shall become effective upon publication in the **Federal Register.**

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*)

Done at Washington, D.C., this 13th day of September 1984.

Jack W. Brinckmeyer,

Chief Financial Protection Branch Livestock Marketing Division.

[FR Doc. 84-24833 Filed 9-18-84; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Challis National Forest Grazing Advisory Board; Meeting

The Challis National Forest Advisory Board will meet at 1:00 p.m., MDT, on October 11, 1984 at the Challis National Forest Supervisor's Office, Challis, Idaho. The purpose of this meeting is to discuss, and receive advice and recommendations for, the utilization of range betterment funds, and development of allotment management plans for Fiscal Years 1985 and 1986.

The meeting will be open to the public. Persons who wish to attend should notify Ralph Jenkins at the Challis National Forest Supervisor's Office, Challis, Idaho (208/879-2285). Written statements may be filed with the committee before or after the meeting.

Dated: September 10, 1984.

Jack E. Griswold,

Forest Supervisor.

[FR Doc. 84-24775 Filed 9-18-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Senior Executive Service (SES); Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

Hugh L. Brennan
Guy W. Chamberlin, Jr.
David L. Edgell
David Farber
J. Michael Farren
H. Stephen Halloway
Thomas F. Mefford
Nancy A. Richards
Otto J. Wolff

Jo Ann Sondey-Hersh,

Executive Secretary, Office of the Secretary, Performance Review Board.

FR Doc. 84-24837 Filed 9-18-84; 8:45 am]

BILLING CODE: 3510-BS-M

International Trade Administration

Certain Carbon and Alloy Steel Products Producers, Prospects for Adjustment Assistance for Firms

The Department of Commerce, pursuant to section 264 of the Trade Act of 1974, has conducted a study of firms producing certain carbon and alloy steel products. Such a study is required whenever the U.S. International Trade Commission (USITC) completes an investigation under Section 201 of the Trade Act with an affirmative finding.

In its report issued July 24, 1984, the USITC determined by a three to two vote that plates; sheet and strip; wire and wire products; structural shapes and units; and semi-finished products were being imported into the United States in such increased quantities as to threaten serious injury to the domestic industry producing like or directly competitive articles. Three Commissioners recommended the imposition of a 5-year program of tariffs and quotas; two Commissioners recommended no relief.

Section 264 requires the Department to review existing programs which could assist the domestic industry. Four federal agencies have financial or technical assistance program that might assist the orderly adjustment of firms.

Under section 251 of the Trade Act of 1974, a firm may petition the Department of Commerce to be certified as eligible to apply for trade adjustment assistance; certification requires that increased imports of articles like or directly competitive with those produced by the petitioning firm contributed importantly to: (1) Absolute declines in sales or production, or both, and (2) the separation, or threat of separation, of a significant number or proportion of its workers. A trade-impacted producer may petition the Department for certification at any time regardless of whether a petition has been filed under section 201.

As of August 1, five domestic firms have been certified as eligible to receive Trade Adjustment Assistance. Based on employment, sales, production and import data obtained by the USITC in its investigation, it appears likely that several firms could receive certification for adjustment assistance. However, more definite numbers cannot be determined without more specific company financial and other data.

The program of adjustment assistance for firms authorized by the Trade Act under Title II, Chapter 3, and administered by the International Trade Administration (ITA) in the Department of Commerce, may provide either financial assistance or technical assistance, or both. Financial assistance to firms may take the form of direct loans or loan guarantees, or both, and may be used for the acquisition, construction, installation, modernization, expansion, or conversion of fixed assets, or for working capital necessary for a firm to implement its adjustment plan. Technical assistance may be used for management and operational assistance, feasibility studies and related research to aid in developing and implementing a firm's recovery plan.

Title XXV of the Omnibus Budget Reconciliation Act of 1981 added section 265 to Chapter 3 of Title II of the Trade Act which provides for technical assistance, on such terms as the Secretary of Commerce deems appropriate, for the establishment of industry-wide programs "for new product development, new process development, export development or other uses consistent with the purposes" of Title II. The technical assistance may be provided through existing agencies or private channels or by grants, contracts, or cooperative arrangements to associations, unions, or other nonprofit industry organizations in which a substantial number of firms have been certified as eligible to apply for adjustment assistance. Expenditures were authorized up to $2,000,000 annually per industry.

Under the Public Works and Economic Development Act of 1965

(PWEDA), as amended, also administered by the Department of Commerce, direct and indirect assistance to firms is available without Trade Act certification. Firms located in EDA-designated "redevelopment areas" and "economic development centers" can benefit directly from business development loans and guarantees. There is doubt, however, as to EDA's ability to provide loan or guarantee assistance this fiscal year (FY 1984) or thereafter. It may be possible for firms also to benefit indirectly from public works financing. Under PWEDA neither grants, loans nor guarantees can be used to assist industries found to have long-term over capacity. However, PWEDA does not authorize technical assistance to firms regardless of location, and grants of loanable funds to communities with actual or threatened unemployment.

The Farmers Home Administration (FmHA) of the Department of Agriculture has a program which may benefit firms in the industry. Loan guarantees are available to business located in areas other than cities with a population over 50,000. As with EDA business loans, however, these guarantees are not available to firms in industries characterized by long-term over capacity. FmHA can also make loans to public bodies, such as local governments and development organizations, in areas other than cities of over 20,000 population.

The Small Business Administration (SBA) administers three programs of potential assistance to small business. It is unlikely that many domestic producers of the products for which injury was found, except wire products, would qualify as a "small business" under the SBA definition.

Additional copies of the report, "Prospects of Adjustment Assistance for Firms Producing Certain Carbon and Alloy Steel Products" are available from Ralph Thompson, Office of Metals, Minerals and Commodities, U.S. Department of Commerce, Room 2898, Washington, DC 20230, telephone 202-377-0606.

Dated: August 29, 1984.

David K. Diebold,

Deputy Assistant Secretary for Trade Development.

[FR Doc. 84-24742 Filed 9-18-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products From the People's Republic of China

September 14, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 20, 1984. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

A CITA directive establishing import limits for specified categories of cotton and man-made fiber textile products, including Categories 363 and 645/646, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1984, was published in the **Federal Register** on December 22, 1983 (48 FR 56626). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, the Government of the People's Republic of China has notified the Government of the United States of its intention to use flexibility in the form of swing to be applied to the current-year limits for these categories. The limit for Category 645/646 (man-made fiber sweaters) is being increased from 619,030 dozen to 649,982 dozen. The limit for Category 363 (terry and other pile towels) is being reduced to account for the increase applied to Category 645/646 from 18,456,958 numbers to 16,176,928 numbers.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 14, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain specified categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1983.

Effective on September 20, 1984, the directive of December 19, 1983 is hereby further amended to adjust the previously established restraint limits for Categories 363 and 645/646 to the following under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983:[1]

Category	Adjusted 12-Mo. limit[1]
363	16,176,928 numbers.
645/646	649,982 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-24714 Filed 9-18-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Ada Board[1]

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Ada Board has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

The Board will provide the Under Secretary of Defense, Research and Engineering, with a balanced source of advice and information regarding the technical and policy aspects of the Ada Program. This input is essential to achieving the establishment and utilization of a common computer language. The Board will serve the public interest by providing a source of expert advice in accordance with the Defense Standardization Program and the American National Standards Institute (ANSI) procedures.

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[1] The Agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] Ada is a registered trademark of the U.S. Government—Ada Joint Program Office.

FOR FURTHER INFORMATION CONTACT: John Wilson, Office of the Assistant Secretary of Defense (Comptroller), 695–4281.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24841 Filed 9-18-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Atmospheric Obscuration; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Atmospheric Obscuration will meet in closed session in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review their findings and observation of the atmospheric obscuration phenomenon and consider what actions and activities might be appropriate for the Department of Defense to take in future response to the atmospheric obscuration phenomenon.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 17, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24840 Filed 9-18-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board will meet in closed session in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/Command, Control and Communications, and Technology Issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: October 23–24, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24839 Filed 9-18-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 11, 1984.

The USAF Scientific Advisory Board Ad Hoc Committee on Advanced Air Vehicle Surveillance and Warning Technologies will meet at the Pentagon on October 11 (8:30 a.m.–4:30 p.m.) and October 12 (8:30 a.m.–4:00 p.m.) 1984 to review surveillance technologies and system concepts for application to air vehicle detection systems.

This meeting will involve classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph 1 thereof, and will therefore be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84-24772 Filed 9-18-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review.

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Control Number

Government-Industry Data Exchange Program (GIDEP) Annual Progress Report

DD 2166

Government sponsors provide GIDEP information free of charge to participating industry and government activities. All activities use the information to maximum extent possible and report data utliization on DD 2166 to provide demonstrated accomplishment of program objectives. The reports are summarized in annual report to Program Manager for possible modifications and revisionst to program scope, policies and procedures.

Businesses or other for profit; Federal agencies or employees; 1040; 1040

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Captain B. A. Butcher, Naval Material Command (Code MAT 06B), Washington, D.C. 20360, telephone (202) 692–1106.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24842 Filed 9-18-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Amendment of Meeting Agenda

SUMMARY: This document is intended to notify the general public of changes in the agenda of a meeting of the National

Advisory Council on Women's Educational Programs and its Executive, Civil Rights, Federal Policies, Practices and Programs, and WEEA Committees as published in 49 FR 34556 on August 31, 1984.

The Council will meet from 8:45 a.m. until 10:00 a.m. in the U.S. Capitol and will recess for site visits from 10:00 a.m. until 12:00 noon and from 1:45 p.m. until 4:00 p.m. on September 20, 1984. All other dates, times, and locations remain the same.

FOR FURTHER INFORMATION CONTACT: Sally Todd, Deputy Director, National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C., 20004, (202) 376-1038.

Signed at Washington, D.C., on September 14, 1984.

Patricia A. Jensen,

Executive Director.

[FR Doc. 84-24615 Filed 9-18-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP84-654-000]

Algonquin Gas Transmission Co.; Application

September 13, 1984.

Take notice that on August 17, 1984, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP84-654-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant: (1) To render additional firm sales service under Applicant's established Rate Schedule F-1, (2) to make adjustments to the hourly delivery provision and to add a monthly minimum commodity bill provision to Applicant's Rate Schedule F-1 and (3) to construct and operate facilities necessary to render the additional firm sales service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to receive an additional 90 billion Btu equivalent of natural gas per day from Texas Eastern Transmission Corporation (TETCO)[1] and redeliver such additional quantities under Applicant's Rate Schedule F-1, less an amount required for additional system fuel, to the following 16 customers:

Customer	Maximum daily quantities (million Btu)		
	Additional F-1	Existing F-1	Total F-1 after expansion
1. Bay State Gas Company	6,529	33,434	39,963
2. Boston Gas Company	24,814	127,059	151,873
3. Bristol and Warren Gas Company	385	1,972	2,357
4. Colonial Gas Company	2,262	11,577	13,839
5. Commonwealth Gas Company	13,860	70,981	84,841
6. The Connecticut Light & Power Company	10,061	51,519	61,580
7. Connecticut Natural Gas Corporation	7,353	37,655	45,008
8. Fall River Gas Company	1,940	14,606	16,546
9. Town of Middleborough, Massachusetts	165	845	1,010
10. New Jersey Natural Gas Company	1,180	6,106	7,286
11. City of Norwich, Connecticut	875	4,478	5,353
12. Orange & Rockland Utilities, Inc.	[illegible]	5,089	6,073
13. The Pequot Gas Company	110	560	670
14. Providence Gas Company	10,704	54,814	65,518
15. South County Gas Company	239	1,221	1,460
16. The Southern Connecticut Gas Company	5,843	29,921	35,764
Total	87,304	451,837	539,141

Applicant states that the proposed additional F-1 quantities are to be made available to the aforementioned customers at an even hourly rate, which Applicant states is the same basis on which TETCO would make the gas available to Applicant under TETCO's existing Rate Schedule DCQ-D. Applicant proposes to make the following adjustments to the provisions of Rate Schedule F-1 to conform with the provisions of TETCO's Rate Schedule DCQ-D:

1. Rate Schedule F-1 contains the following provision (Section 2, Applicability and Character of Service) related to hourly deliveries:

> "Seller shall not be obligated to deliver to Buyer under this Rate Schedule in any single hour more than Buyer's Maximum Hourly Quantity; but Seller will make hourly deliveries to Buyer without regard to such limitation to the extent that, in Seller's sole judgment, it can do so without impairment to its other obligations. Buyer's Maximum Hourly Quantity shall be 6 percent of Buyers Maximum Daily Quantity for all nominated daily deliveries up to Buyer's Maximum Daily Quantity in effect on August 1, 1984 (Existing MDQ). For nominated daily deliveries in excess of the Existing MDQ, Buyer's Maximum Hourly Quantity shall be 6 percent of the Existing MDQ plus 4.17 percent of the nominated daily delivery in excess of the Existing MDQ."

Applicant proposes that for incremental daily deliveries in excess of the currently effective maximum daily quantity, the obligation be changed from the 6 percent per hour amount to a uniform hourly amount (*i.e.*, 1/24th rate or 4.17 percent per hour). Applicant alleges that this lower hourly quantity permits certain economies in construction of facilities proposed herein.

2. TETCO'S Rate Schedule DCQ-D, under which Applicant would purchase the incremental supply, contains a minimum monthly commodity charge applicable to usages at less than 75 percent load factor during any month. The current supply for sales under Rate Schedule F-1 is obtained by purchases under TETCO's Rate Schedule GS-D which contains no minimum commodity charge and Rate Schedule DCQ-D which contains the aforesaid 75 percent minimum monthly requirement. However, the mix of the two has provided, in the past, a sufficiently low composite requirement so that Applicant did not provide for incurrence of this gas cost; and the problem has not arisen in the past. The composite monthly load factor requirement has been approximately 34 percent. However, under the proposal herein the mix of GS and DCQ gas changes materially, with a resulting composite monthly load factor requirement of approximately 41 percent, as shown below. At the new level, Applicant alleges that the possibility increases that this contingent gas cost could actually occur during a month—particularly an off-peak month. Accordingly, Applicant proposes to add a provision to its tariff providing that in the event this contingent gas cost actually does occur it would be reimbursed by those Rate Schedule F-1 customers who, during that month, took gas under Rate Schedule F-1 (and including Applicant's Rate Schedule I-1 takes during that month) which were less than 41 percent load factor use of that customer's maximum daily quantity.

	Load factor requirement (million Btu)	
	Present	Proposed
GSA contract demand	242,269	242,269
DCQ contract demand	203,907	293,907
Total	446,176	536,176
Percent DCQ to Total	45.7	54.8
Percent DCQ × 75 percent Monthly Load Factor	34.2	41.1

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[1] TETCO is currently seeking Commission authorization in Docket No. CP84-429-000 to sell the subject additional volumes to Applicant.

3. TETCO's Rate Schedule DCQ–D, under which the incremental supply is to be purchased, provides an availability of 365 days use of the contract demand. Based upon this, Applicant has advised its customers that upon commencement of service contemplated by this application, it would increase the relationship between annual firm entitlement and maximum daily quantity under Applicant's Gas Rate Schedule F–1 to 280 days usage.

4. Exhibit N of Applicant's application shows that with the proposed facilities, system cost exceeds system revenues, indicating the need for a rate adjustment. Applicants states that such rate adjustment would be the subject of a rate proceeding where individual rate levels would be determined.

To accomplish revised sales delivery obligations, Applicant proposes herein to constuct and operate facilities at an estimated cost of $72,932,742 as follows:

Proposed facilities	Estimated cost
1. Pipelines:	
Approximately 15.6 miles of 30-inch loop in New Jersey	$20,624,000
Approximately 4.4 miles of 10-inch E–1 system loop in Connecticut	2,834,000
Approximately 3.9 miles of 10-inch G–2 system loop in Rhode Island	2,492,000
Approximately 2.5 miles of 12-inch G–10 system loop in Massachusetts	1,768,000
Approximately 11.5 miles of pipeline retest and regulatory installation J–1 system	2,063,000
2. Compressors:	
Install three 3830 horsepower compressors at proposed compressor station in Southeast New York	24,961,000
Install one 3830 horsepower compressor at existing compressor station in Cromwell, Connecticut	7,945,000
Modify process piping at existing compressor station in Stony Point, New York	1,755,000
Modify process piping at existing compressor station in Burrillville, Rhode Island	1,283,000
3. Meter Stations: Miscellaneous modifications	1,405,000
4. Allowance for funds used during construction	5,660,800
5. Total Facility Cost	72,790,800
6. Commission Filing Fees	141,942
Total Cost	72,932,742

Applicant proposes initially to finance the estimated $72,932,742 cost of constructing the proposed facilities through revolving credit arrangements, short-term loans, and funds on hand, with permanent financing to be undertaken at a later date as part of Applicant's overall long-term financing program.

Applicant submits that the proposed service to be rendered pursuant to the authorization requested herein is required by the present and future public convenience and necessity. Applicant states that TETCO has not expanded its base-load Rate Schedule DCQ service to Applicant since 1969. Since that time, Applicant alleges that Applicant's New England markets have been expanding. Applicant states in its application that additional gas to be made available form TETCO and, in turn, Applicant would enable Applicant's resale customers to render more reliable service to gas users in their New England markets and enhance their ability to cope with delivery requirements.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24703 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-651-000]

ANR Pipeline Co.; Application

September 13, 1984.

Take notice that on August 15, 1984, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-651-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to provide a transportation service for American Petrofina Company of Teras (Fina) on behalf of Cosden, Inc. (Cosden), all as more fully set forth in the application on file with the Commission and open for public inspection.

Applicant states that it entered into a transportation agreement (Agreement) with Fina on June 4, 1984, in which it agreed to receive, transport, and redeliver up to 13 billion Btu of natural gas per day. Applicant indicates that it would receive the gas from Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), for the account of Final at a subsea tap in High Island Area Block 546, offshore Texas, and deliver thermally equivalent quantities to Louisiana Resources Company (LRC) at Cameron Parish, Louisiana, to make redeliveries to Faustina Pipe Line Company (Faustina) at Vermilion Parish, Louisiana. It is stated that Faustina would then deliver thermally equivalent volumes to Cosden's facility near Carville, Iberville Parish, Louisiana. It is further stated that Fina has agreed to pay Applicant 16.17 cents per million Btu of gas transported through the High Island Offshore System; 10.2 cents per million BTU of gas transported through Applicant's own facilities to LRC for Fina's account; 1.25 cents per Mcf in payment of the funding unit for the Gas Research Institute. In addition, it is indicated that LRC and Faustina would receive 10.39 cents and 17.88 cents per million Btu, respectively, for their service. It is further indicated that the term of the Agreement would commence on the date of initial deliveries, and continue for a period of two years thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24704 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-699-000]

Colorado Interstate Gas Co.; Application

September 13, 1984.

Take notice that on September 7, 1984, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP84-699-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to all its present resale customers under a new discount rate schedule, Rate Schedule SDR-1, through September 30, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that since 1979 its annual sales volume had declined substantially with no forecast of recovery of these markets in the near future. It is stated a decrease in sales volume has occurred each year, dropping from 397,000,000 Mcf in 1979 to 276,000,000 Mcf in 1983. The largest single year reduction occurred in 1983, it is claimed, when sales volume fell approximately 47,000,000 Mcf from 323,000,000 Mcf in 1982, a reduction of 14.5 percent. Applicant states further, that in its major service area, all of 1983 was 12 percent colder than a normal year in contrast to 1982 which was less than 4 percent below normal. It is asserted that although the extreme weather conditions in December 1983 resulted in sales 8,000,000 Mcf higher than December 1982, sales for all of 1983 fell short of sales during 1982.

It is alleged that projections of sales for 1984 indicate a continuation of the downward trend with sales volumes estimated to be 259,000,000 Mcf. These declines have occurred, it is asserted, even though the residential and commercial customer growth in Applicant's major market areas has increased an aggregate of approximately 13 percent during the 1979-1983 period.

Applicant states the continuing decline of sales volumes has the potential to increase its exposure to possible take-or-pay liabilities under certain of its gas purchase contracts. To counter this exposure, Applicant claims, it has taken aggressive action to reduce the potential take-or-pay liability, while at the same time making sustained efforts to retain sales. The actions claimed by Applicant are:

1. Reducing gas prices. Applicant states that on August 15, 1984, it filed with the Commission for authority to reduce its natural gas rates by $19.8 million annually effective October 1, 1984. It is said this is the fourth price reduction filed by Applicant in the past two years resulting in a total decrease of approximately 60 cents per Mcf.
2. Renegotiating gas purchase contracts.
3. Releasing certain gas under contract.
4. Concurrently filing special discount Rate Schedule AF-1 for which reauthorization is sought in Docket No. CP84-700-000.

Applicant indicates proposed Rate Schedule SDR-1 would be an effort to retain sales by providing an incentive price for volumes of gas purchased by its customers which are in excess of a predeterimed threshold volume. The threshold volume would be 90 percent of each customer's annual purchase volume based upon the transmission system sales volume. Should Rate Schedule SDR-1 be in effect for a period of less than one year, the threshold volume would be prorated for the appropriate period.

The discount price would apply only to sales in excess of the threshold volume and further would exclude purchases under any other discount rate schedule. Applicant proposes that the Rate Schedule SDR-1 rate be established as 15 cents per Mcf less than its Rate Schedule G-1 commodity rate.

Applicant estimates that in 1983 it lost approximately 20,000,000 Mcf of sales because of gas-on-gas competition. Applicant claims proposed Rate Schedule SDR-1 coupled with price reductions would make the price of its gas more competitive with gas from external sources.

It is stated proposed Rate Schedule SDR-1 is designed to increase competitiveness by offering Applicant's customers an incentive to purchase increased volumes of gas from Applicant at reduced rates through existing facilities and delivery points. The aggregate volume that Applicant sells to any cutomer under Rate Schedule SDR-1, combined with that Customer's purchases under other applicable rate schedules, would not be permitted to exceed the authorized entitlements for such customer.

Applicant asserts Rate Schedule SDR-1 would benefit its customers by providing a reduced purchase price for all volumes purchased in excess of the threshold volume. Applicant claims this price reduction would be absorbed by its accepting a reduced margin, and it would not impose any additional cost to offset the lower price. Any additional sales would benefit all of Applicant's customers by reducing potential take-or-pay exposure, it is claimed. Thus, it is asserted, any gas sales made under Rate Schedule SDR-1 which otherwise would have been sold under another existing rate schedule would only affect Applicant through receipt of a reduced margin. Applicant states its customers stand only to gain without any risk imposed by the implementation of proposed Rate Schedule SDR-1.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24706 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-700-000]

Colorado Interstate Gas Co.; Application

September 13, 1984.

Take notice that on September 7, 1984, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP84-700-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to all its present resale customers under a new discount rate schedule, Rate Schedule AF-1, through September 30, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that since 1979 its annual sales volume has declined substantially with no forecast of recovery of these markets in the near future. It is stated a decrease in sales volume has occurred each year, dropping from 397,000,000 Mcf in 1979 to 276,000,000 Mcf in 1983. The largest single year reduction occurred in 1983, it is claimed, when sales volume fell approximately 47,000,000 Mcf from 323,000,000 Mcf in 1982, a reduction of 14.5 percent. Applicant states further, that in its major service area, all of 1983 was 12 percent colder than a normal year in contrast to 1982 which was less than 4 percent below normal. It is asserted that although the extreme weather conditions in December 1983 resulted in sales 8,000,000 Mcf higher than December 1982, sales for all of 1983 fell short of sales during 1982.

It is alleged that projections of sales for 1984 indicate a continuation of the downward trend with sales volumes estimated to be 259,000,000 Mcf. These declines have occurred, it is asserted, event though the residential and commercial customer growth in Applicant's major market areas has increased an aggregate of approximately 13 percent during the 1979-1983 period.

Applicant states the continuing decline of sales volumes has the potential to increase its exposure to possible take-or-pay liabilities under certain of its gas purchase contracts. To counter this exposure, Applicant claims, it has taken aggressive action to reduce the potential take-or-pay liability, while at the same time making sustained efforts to retain sales. The actions claimed by Applicant are:

1. Reducing gas prices. Applicant states that on August 15, 1984, it filed with the Commission for authority to reduce its natural gas rates by $19.8 million annually effective October 1, 1984. It is said this is the fourth price reduction filed by Applicant in the past two years resulting in a total decrease of approximately 60 cents per Mcf.
2. Renegotiating gas purchase contracts.
3. Releasing certain gas under contract.
4. Concurrently filing special discount Rate Schedule SDR.1 for which authorization is sought in Docket No. CP84-699-000.

Applicant indicates Rate Schedule AF-1 is an additional effort by it to retain sales by providing an incentive price for its customers with qualifying end-users. The incentive price would be applicable only when the end-user purchases natural gas in excess of 150 Mcf per day from Applicant's customer, notifies the customer that an alternative fuel source offers a lower cost and that the end-user would be switching to an alternative fuel or alternate natural gas supply source. End-users currently using an alternative fuel would qualify the customer for the Rate Schedule AF-1 rate provided the end-user switched to natural gas because of this incentive rate.

It is claimed Applicant's market areas are not in locations with heavy industrial loads and that, because of the limited opportunity to supply industrial end-users with natural gas, Applicant believes the retention of such existing end-users and possible addition of end-users now using alternative fuel would be vital to prevent further reductions in its sales.

Applicant estimates that in 1983 it lost approximately 20,000,000 Mcf to gas-on-gas competition, 80 percent or 16,000,000 Mcf of which was to large end-users. It is claimed the proposed Rate Schedule AF-1, coupled with price reductions by Applicant, would make the price of Applicant's gas more competitive with gas from external sources.

Rate Schedule AF-1 would consist of an incentive price of 15 cents per Mcf less than the Rate Schedule G-1 commodity rate. The resale customer would be a contributor under Rate Schedule AF-1 wherein it would provide a discount of 2 cents per Mcf to the end-user in addition to the reduced price for those purchases from Applicant. Applicant claims that its customer would benefit from the increased sales level and should have significant interest in supporting the special discount rate program.

The aggregate volume that Applicant would sell to any customer under Rate Schedule AF-1, combined with that customer's purchases under the other applicable rate schedules, would not be permitted to exceed the authorized entitlements for such customer.

It is alleged Rate Schedule AF-1 would benefit Applicant's resale customers by providing a reduced purchase price for all volumes purchased that are attributable to a qualifying end-user. Applicant states its price reduction would be absorbed by its accepting a reduced margin and would not affect any customer by imposing additional cost to offset the lower price. It is asserted sales made pursuant to Rate Schedule AF-1 would benefit all of Applicant's customers by reducing potential take-or-pay exposure. Applicant claims the proposed Rate Schedule AF-1 cannot adversely affect any of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1984, file with the Federal Energy Regualtory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regualtory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion belives that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-24706 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-112-001]

Columbia Gas Transmission Corp.; Amendment of Request Under Blanket Authorization

September 13, 1984.

Take notice that on August 24, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-112-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue to transport natural gas on behalf of Certainteed Corporation (Centainteed) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By request noticed on January 13, 1984, in Docket No. CP84-112-000, pursuant to the prior notice and protest procedure set forth in § 157.205 of the Commission's Regulations Columbia was authorized to transport up to 800 dt equivalent of natural gas per day through October 9, 1984, to Certainteed's York, Pennsylvania, plant.

Comumbia proposes to continue the transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-24707 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-188-001]

Columbia Gas Transmission Corp.; Amendment to Request Under Blanket Authorization

September 13, 1984.

Take notice that on August 24, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-188-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue to transport natural gas on behalf of Mar-Zane, Inc. (Mar-Zane), under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By request noticed on January 13, 1984, in Docket No. CP84-188-000, pursuant to the prior notice and protest procedure set forth in § 157.205 of the Commission's Regulations Columbia was authorized to transport up to 150 dt equivalent of natural gas per day through October 3, 1984, to Mar-Zane's Haydenville, Ohio, plant.

Columbia proposes to continue the transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-24708 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-662-000]

Columbia Gulf Transmission Co.; Application

September 13, 1984.

Take notice that on August 24, 1984, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP84-662-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Mountain Fuel Resources, Inc. (Mountain Fuel), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on an interruptible, best-efforts basis, 20,000 Mcf per day of Mountain Fuel's gas from the tailgate of Chevron's Carter Creek plant in Section 6, Township 18 North, Range 119 West, Uinta County, Wyoming, and to redeliver equivalent volumes to Mountain Fuel at the interconnection of Applicant's and Mountain Fuel's facilities in Section 16, Township 17 North, Range 119 West, Uinta County, Wyoming. The redelivered volumes would be reduced to reflect the retention by Applicant of 1.05 percent of the total volume of gas received at the receipt point as fuel and unaccounted-for volumes, it is explained.

Applicant states that Mountain Fuel would pay Applicant a rate of 6.16 percent per Mcf of gas (at 14.73 psia) for gas received for transportation at the receipt point.

It is explained that the service would continue in effect for a period of 20 years from the date of initial delivery and from year to year thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24709 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4799-002]

Commonwealth of Pennsylvania; Surrender of Exemption

September 14, 1984.

Take notice that the Commonwealth of Pennsylvania, Exemptee for the proposed Nockamixon Dam Project No. 4799, requested by letter dated August 17, 1984, that its exemption be terminated. The order granting exemption was issued on September 14, 1983. The project would have been located on Tohickom Creek in Bucks County, Pennsylvania. Exemptee has not started project construction.

The Exemptee filed the request on August 17, 1984, and the surrender of the exemption for Project No. 4799 is deemed accepted as of August 17, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24710 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5530-002]

Commonwealth of Pennsylvania Department of Environmental Resources; Surrender of Exemption

September 14, 1984.

Take notice that the Commonwealth of Pennsylvania Department of Environmental Resources, Exemptee for the George B. Stevenson Project No. 5530, has requested that its exemption be terminated. The order granting exemption for Project No. 5530 was issued on February 2, 1984. The project would have been located on the First Fork Sinnemahoning Creek, in Cameron County, Pennsylvania. Exemptee has not started project construction.

The Exemptee filed the request on August 17, 1984, and the surrender of the exemption for Project No. 5530 is deemed accepted as of August 17, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24711 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-657-000]

El Paso Natural Gas Co.; Application

September 13, 1984.

Take notice that on August 21, 1984, El Paso Natural Gas Company (Applicant), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP84-657-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Arizona Public Service Company (Arizona) for resale to Salt River Project Agricultural Improvement and Power District (Salt River) and pursuant to section 7(c) for permission to deliver natural gas for sale directly to Salt River through the use of existing pipeline and metering facilities in Maricopa County, Arizona, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that pursuant to a gas sales agreement (agreement), dated February 1, 1970, as amended, among Applicant, Arizona and Salt River, which comprises special Rate Schedule X-7 to Applicant's FERC Gas Tariff, Third Revised Volume No. 2, Applicant constructed and operates certain pipeline and metering facilities and sells and delivers up to 47,248,879 Mcf of natural gas per year to Arizona, inlcuding gas destined for resale to Salt River for use in Salt River's Cross Cut, Kyrene and Agua Fria electric generating power plants in Maricopa County. It is further stated that by letter, dated December 20, 1983, Applicant has given notice of its intention to terminate the agreement as of December 31, 1984.

Applicant also states that as provided by a letter of intent, dated August 3, 1984, Applicant and Salt River will execute an agreement to provide for the direct sale by Applicant of gas not to exceed 92,900 Mcf per day, to Salt River for utilization at the Cross Cut, Kyrene and Agua Fria plants.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commissions's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24712 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-70-000]

El Paso Electric Co.; Application

September 14, 1984.

Take notice that on September 4, 1984, El Paso Electric Company (Applicant) filed an application and an amendment on September 5, 1984, with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to Section 204 of the Federal Power Act to issue and sell in October 1984 in a negotiated private placement up to $50,000,000 principal amount of first mortgage bonds and applying for an exemption of the transaction from the competitive bidding requirements of the Commission. The Company is also requesting that the Commission authorize it to negotiate the placement of the first mortgage bonds with a single placement agent.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before October 4, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24713 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-669-000]

Freeport Pipeline Co.; Application

September 13, 1984.

Take notice that on August 27, 1984, Freeport Pipeline Company (Applicant), 601 Poydras Street, New Orleans, Louisiana 70130 filed in Docket No. CP84-669-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in place and discontinue the operation of facilities and the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by order issued April 14, 1982, in Docket No. CP81-419-000, it was authorized to retain in place 6.58 miles of 10-inch pipeline and 1.48 miles of 6-inch pipeline and to transport natural gas from Exxon Corporation's (Exxon) platforms in Grand Isle Block 16 Field L and Grand Isle Block 18 Field A, offshore Louisiana, to Freeport Sulphur Company's (Freeport Sulphur) offshore sulphur mine at Grand Island Block 9 in state waters in the Gulf of Mexico. Applicant further states that the natural gas so transported by it has been purchased from Exxon by Freeport Sulphur pursuant to a gas sales contract providing for termination when Exxon's post-January 1974 deliveries reach 24, 691,977 Mcf.

Applicant states that Freeport Sulphur ceased taking deliveries of the Exxon gas on July 24, 1984, on the basis that the total quantity available under the contract has been delivered. It is further stated that in view of the termination of the Exxon gas sales contract, and as a result of the unavailability to Freeport Sulphur of adequate reserves in the producing area served by the subject pipeline facilities, Freeport Sulphur has contracted with intrastate suppliers to provide all future requirements of natural gas at the Grand Isle mine.

Applicant asserts that the facilities proposed to be abandoned in place are no longer required.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24714 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-57-011]

KN Energy, Inc.; Amendment

September 13, 1984.

Take notice that on August 21, 1984, KN Energy, Inc. (Petitioner), P.O. Box 15265, Lakewood, Colorado 80125, filed in Docket No. CP75-57-011 an amendment to the petition to amend the order issued May 11, 1977 [1] in Docket No. CP75-57, as amended, pursuant to section 7(c) of the Natural Gas Act to reflect an agreement dated May 31, 1984, between Petitioner and Montana-Dakota Utilities Co. (MDU) which reduces MDU's right to purchase gas under a gas sales, transportation, and gas exchange agreement (agreement), dated May 10, 1974, between Petitioner and MDU, and also increases MDU's facility charge to Petitioner, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Petitioner states that the May 31, 1984, amendment reduces MDU's right to purchase exchange gas produced by Petitioner, or a subsidiary of Petitioner, from 15 percent to 7½ percent. Petitioner further states it would reduce MDU's right to purchase exchange gas which is purchased by Petitioner from any non-affiliated producer in the Bowdoin area of mutual interest from 50 percent to 25 percent.

Petitioner avers that the May 31, 1984, amendment would change the formula used to calculate Petitioner's monthly payment to MDU for additional facilities, which Petitioner elected to have MDU construct pursuant to the agreement, by increasing the cost of capital rate from 9.75 percent to 11.76 percent (return on net investment), plus 7.65 percent to reflect a 50 percent composite statutory federal and state income tax rate imposed on net income less related interest deductions, for a new total rate of 19.41 percent. Petitioner further avers that the proposed changes in the cost of capital rate would reflect the level of return and taxes authorized by the Commission in

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[1] This proceeding was commenced before the F.P.C. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

MDU's last general rate case in Docket No. RP82-61-000.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commision's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24715 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP74-322-001]

Michigan Gas Storage Co.; Petition To Amend

September 13, 1984.

Take notice that on August 17, 1984, Michigan Gas Storage Company (Petitioner), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP74-322-001 a petition to amend the order issued November 10, 1977, in Docket No. CP74-322, *et al.*, pursuant to section 7(c) of the Natural Gas Act so as to remove the 52,000,000 Mcf transportation limitation on natural gas sold by Northern Michigan Exploration Company (Northern Michigan) from three lease blocks in offshore Louisiana, to Consumers Power Company (Consumers), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that the November 10, 1977, order, authorized Northern Michigan to sell natural gas to its parent, from three lease blocks located offshore Louisiana. It is further stated that the order authorized Trunkline Gas Company (Trunkline) to transport the subject as from Northern Michigan to Petitioner at the existing Consumers-Trunkline interconnection on the Indiana-Michigan border and authorized Petitioner to transport the gas from Trunkline to Consumers. In the November 10, 1977, order, the Commission limited the transportation and sale to 52,000,000 Mcf of the estimated proven reserves attributable to Northern Michigan's working interest in the three lease blocks.

Petitioner asserts that subsequent to the issuance of the November 10, 1977, order, Northern Michigan's original estimates of proven reserves have proven to be conservative. It is further asserted that Northern Michigan currently estimates that the 52,000,000 Mcf ceiling could be reached during 1986 and projects that total proven reserves from the lease block would amount to approximately 70,000,000 Mcf. Petitioner seeks amendment of the November 10, 1977, order to allow it to transport on behalf of Consumers all natural gas produced from Northern Michigan's working interests in the subject lease blocks. Petitioner avers that the elimination of the 52,000,000 Mcf limitation in its certificate would not require any change in any existing facilities and Petitioner would continue to have pipeline capacity sufficient to transport gas from Northern Michigan to consumers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Oct. 3 1984, flew the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385-211) and the Regulations under the Natural Gas Act (18 CFR 157-10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24716 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-667-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

September 13, 1984.

Take notice that on August 24, 1984, Northern Natual Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-667-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for American Petrofina Company of Texas (Fina), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant and Fina are parties to a gas purchase contract dated March 17, 1977, providing for the sale by Fina to Applicant of natural gas from High Island Area Block A-571 (HIA-571) offshore Texas.

Applicant states that it is obligated by the gas purchase contract to purchase 90% of Fina's HIA-571 deliverability. However, Applicant explains that it is presently experiencing a situation where its natural gas supplies under contract exceed its market requirements and it is unable to purchase the minimum contract volume. Applicant states that this excess supply situation is expected to continue through the summer of 1986, at which time Applicant would be required to contract for new gas supplies in order to meet the 1986 winter market requirements.

Applicant states that, in an effort to reduce its take-or-pay exposure during this temporary excess supply situation, it has entered into a temporary limited release from gas purchase contract with Fina dated March 16, 1984. It is stated that the release contract provides for the release of one-third of Fina's HIA-571 deliverability presently under contract to Applicant for a two-year period and the reduction of Applicant's purchase obligation under the gas purchase contract from the original 90% to 75% of the HIA-571 deliverability for the remaining term of the contract.

In return, it is stated, Applicant has entered into a gas transportation agreement with Fina dated March 18, 1984, as amended August 14, 1984, wherein Applicant has agreed to transport, on a best-effort basis, up to 13,000 Mcf of the released natural gas per day for the account of Fina from the HIA-571 production platform. Applicant states that it would redeliver thermally equivalent volumes to ANR Pipeline Company at the interconnection of the HIA-571 lateral and High Island Offshore System (HIOS) in HIA-546 for the account of Fina for further transportation through HIOS.

Applicant states that it will charge Fina 3.9 cents per Mcf of gas received at HIA-571 based upon its system-wide cost of service allocation factors in Applicant's currently effective rate settlement in Docket No. RP82-71, approved by Commission order dated April 28, 1983.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1984, file with the Federal Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24717 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-668-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

September 13, 1984.

Take notice that on August 24, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-668-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Northwest Central Pipeline Corporation (northwest Central) and the construction of facilities to facilitate such transportations, all as more fully set forth in the application which is on file with the Commission and open to pubic inspection.

Applicant proposes to transport natural gas for Northwest Central pursuant to the terms of a gas transportation agreement between Applicant and Northwest Central dated May 29, 1984. Applicant would transport natural gas for Northwest Central to and from Northern Gas Product's (NGP) Bushton Extraction Plant located in Ellsworth County, Kansas. Such transportation service is said to be necessary to accomodate a sales agreement between Northwest Central and NGL Production Company (NGL) whereby Northwest Central has agreed to sell up to sell up to 20,000 Mcf per day of natural gas to NGL for the purpose of extracting liquefiable hydrocarbons at the Bushton Extraction Plant.

Applicant would transport up to 100,000 Mcf per day of natural gas from two existing interconnections between Applicant and Northeast Central in Burton County, Kansas, to the suction side of NGP's Bushton Extraction Plant where such gas would be processed. Applicant would then transport the residue from such natural gas from the discharge side of NGP's Bushton Extraction Plant for redelivery to Northwest Central at a proposed interconnection to be constructed between Applicant and Northwest Central located in Bushton County, Kansas. Applicant estimates the cost to construct the proposed interconnection to be $151,200.

Applicant proposes to charge Northwest Central 1.70 cents per Mcf of gas transported to the suction side of NGP's Bushton Extraction Plant or 2.05 cents per Mcf gas transported to the suction side of NGP's Bushton Extraction Plant for ultimate delivery to the proposal delivery point between Applicant and Northwest Central in Barton County, Kansas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rule.

Take further notice that, pursuant to the authority contained in and subject to the jurisdication conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene if filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24727 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5553-002]

Pennsylvania Department of Environmental Resources; Surrender of Exemption

September 14, 1984.

Take notice that Pennsylvania Department of Environmental Resources, Exemptee for the Pymatuning Dam Project No. 5553, has requested that its exemption be terminated. The order granting exemption for Project No. 5553 was issued March 6, 1984. The project would have been located on the Shenango River in Crawford County, Pennsylvania. Exemptee has not started project construction.

The Exemptee filed the request on August 17, 1984, and the surrender of the exemption for Project No. 5553 is deemed accepted as of August 17, 1983, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24728 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-461-000]

Western Power, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 14, 1984.

On August 23, 1984, Western Power, Inc. (Applicant) of P.O. Box 31359, 1914 North 34th Street, Seattle, Washington 98103-1359 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 15.5 megawatt hydroelectric facility will be located near the North Fork Skykomish River in Snohomish County, Washington.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intevenue or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24729 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-666-000]

ANR Pipeline Co.; Request Under Blanket Authorization

September 14, 1984

Take notice that on August 24, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-666-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that ANR proposes to transport natural gas on behalf of Fostoria Glass Company (Fostoria) under the authorization issued In Docket No. CP 82-480-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, ANR proposes to transport up to 1,000 dt equivalent of natural gas per day for Fostoria through June 30, 1985. ANR states that the gas to be transported would be pruchased from ANR Gathering Company (Gathering) and would be used primarily as fuel in process equipment and boilers in Fostoria's Moundsville, West Virginia, facility. ANR states that it would recieve the gas existing delivery points on its system and redeliver such gas to Columbia Gas Transmission Corporation (Columbia). It is explained that pursuant to the agreement, ANR would take receipt of the purchased volumes which Fostoria would cause Gathering to tender to ANR For Fostoria's account at a point of interconnection of the pipeline system of ANR and the production facilities of Gathering in the States of Kansas, Oklahoma and Texas. ANR states it would transport and deliver equivalent volumes to columbia for Fostoria's account at an existing point of interconnection of the pipeline systems of columbia and ANR in Paulding County, Ohio. ANR is advised that Columbia would provide additional transportation for or on behalf of Fostoria.

As consideration for providing the transportation service ANR states that it would charge 54.7 cents per dt equivalent for all gas transported and delivered to Columbia for Fostoria's account which rate is based upon ANR's rate schedule EUT-1 on file in its FERG Gas Tariff, Original Volume No. 1.

Any person or the Commission's staff may, wihtin 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24802 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-44-001]

Columbia Gas Transmission Corp. Amendment to Request Under Blanket Authorization

September 14, 1984.

Take notice that on August 29, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-44-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Locke Insulators, Inc. (Locke), under the certificate issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to continue transporting natural gas to Locke's Baltimore, Maryland, plant until June 30, 1985, instead of the October 4, 1984, termination date authorized in Docket No. CP84-444-000 under the prior notice procedure by notice issued December 27, 1983. Columbia also requests authorization for an increase in volumes transported from 800 million Btu on an average day to 1.132 billion Btu and from 288 billion Btu on an annual basis to 413 billion Btu. It is stated that the peak day quantity would remain at 1.4 billion Btu. It is also stated that the end-use of the gas would include process gas as well as boiler fuel instead of boiler fuel only as authorized in Docket No. CP84-44-000. Columbia asserts that in all other respects the transportation would remain the same as authorized in Docket No. CP84-44-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the

Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24803 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-256-003]

Columbia Gulf Transmission Co.; Petition To Amend

September 14, 1984.

Take notice that on August 6, 1984, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP79-256-003 a petition to amend the order issued April 24, 1979, in Docket No. CP79-256-000 as amended October 16, 1981, in Docket No. CP79-256-002 pursuant to Section 7(c) of the Natural Gas Act, so as to authorize the substitution of a transportation arrangement for the present transportation and exchange arrangement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued April 24, 1979, as amended by order issued October 16, 1981, it is stated, the Commission authorized Columbia Gulf to deliver, for the account of Gulf Oil Corporation (Gulf) approximately 86,000 Mcf of natural gas per day to a point near Venice, Plaquemines Parish, Louisiana, said gas being all of Columbia Gulf's affiliate's gas from Exxon Company, U.S.A.'s Grand Isle processing plant (Grand Isle plant) and all or part the gas transported through the Project 37 pipeline. In exchange, it is indicated, equivalent volumes were to be delivered by Gulf, from its production in Eugene Island Block 238, offshore Louisiana, to a point near Erath, Vermilion Parish, Louisiana. It is further indicated that Columbia Gulf was authorized to receive from Gulf an additional 40,000 Mcf of gas per day at Erath. Columbia Gulf was then to transport said excess volumes to a delivery point near St. Landry, St. Landry Parish, Louisiana, and receive 11.67¢ per Mcf of gas received and transported, it is explained.

Due to operational problems, Columbia Gulf proposes that the exchange be converted to a straight transportation arrangement. It is averred that Columbia Gulf would receive, on a best-efforts basis, up to 100,000 Mcf of gas per day from Gulf near Erath, Vermilion Parish, Louisiana, and redeliver, for the account of Gulf, equivalent volumes of gas, less retainage, to an interconnection with Texas Eastern Transmission Corporation's facilities near Venice, Plaquemines Parish, Louisiana. Columbia Gulf proposes to charge 3.94 cents per Mcf of gas for its service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Oct. 4, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24804 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-33-000 and 001]

El Paso Natural Gas Co.; Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustments

September 13, 1984.

Take notice that on August 31, 1984, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates for jurisdictional gas service rendered to customers served by its interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1, which Section 19 also applies to certain special rate schedules contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2A.

The filing reflects an increase in the purchased gas cost of $0.0910 per dth and a decrease of $0.2058 per dth in the surcharge rate for a net adjustment in El Paso's currently effective rate which is a decrease of $0.1148 per dth attributable to the PGA.

To implement the instant notice of change in rates, El Paso tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Third Revised Sheet No. 100; Second Revised Sheet No. 640.
Third Revised Volume No. 2	Twenty-eighth Revised Sheet No. 1-D.
Original Volume No. 2A	Twenty-ninth Revise Sheet No. 1-C.

El Paso requests that the Commission grant waiver of its applicable rules, regulation and orders as may be necessary to permit the tendered revised tariff sheets to become effective on October 1, 1984.

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 20, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24805 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-49-000]

El Paso Natural Gas Co. v. Wagner & Brown; Complaint

Issued: September 14, 1984.

On August 31, 1984, El Paso Natural Gas Company (El Paso) filed a complaint under Rule 206 of the Commission's Rules of Practice and

Procedure [1] against Wagner & Brown. The complaint concerns sales of gas Wagner & Brown makes to El Paso from three wells in Oklahoma [2] and whether the sales violate the provisions of the Natural Gas Policy Act of 1978 (NGPA).[3]

El Paso's complaint arises from actions by Wagner & Brown under its gas purchase agreement with El Paso dated April 17, 1979, as supplemented on August 16, 1979. El Paso claims that this agreement contains a take-or-pay provision which obligates El Paso to purchase and receive or pay for whether or not received, a minimum quantity of gas per day (80 percent of the aggregate maximum delivery capacity of the wells to deliver gas at the delivery point(s)). El Paso claims that, subject to certain exceptions listed in the contract, if it fails to purchase and receive any gas during any year, it must pay to Wagner & Brown an amount which is the difference between the price for the minimum quantities of gas and the price for the quantities of gas actually purchased and received by El Paso.

El Paso further states that while it has the right to make up any deficiency payments by receiving, without charge, the quantities of gas it paid for but did not take, that these make-up volumes are not considered to be part of the minimum quantities of gas which El Paso is required to buy under the agreement. Furthermore, El Paso's make-up rights terminate under the contract on July 24, 1989. El Paso asserts that due to the current decline in the demand for gas, its takes under the contract did not equal the aggregate maximum delivery capacity during 1982 and 1983. Wagner & Brown have allegedly demanded payment from El Paso in the amount of $2,514,047.14, for deficiencies in those years. El Paso has refused to pay, and Wagner & Brown has filed suit against El Paso to recover this amount.[4] El Paso claims that it may never be able to fully recover these payments.

El Paso alleges that receipt by Wagner & Brown of the deficiency amount would violate the NGPA because (1) Wagner & Brown would receive payment in excess of the applicable maximum lawful price for those volumes of gas actually delivered due to the inability of El Paso to fully recover the claimed deficiency payments; and (2) Wagner & Brown would receive an interest benefit attributable to the deficiency payments made up under the terms of the agreement, which interest would exceed the applicable maximum lawful prices for the gas when delivered. El Paso therefore requests the Commission issue an order declaring that Wagner & Brown's demand for deficiency payments under the gas purchase agreement constitute an unlawful demand for payment of a price in excess of the applicable maximum lawful prices under the NGPA, and that the Commission order Wagner & Brown to cease and desist from making its demands for such payments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions should be filed within 30 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24806 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-121-000]

Michigan Gas Storage Co.; Filing

September 13, 1984.

Take notice that on September 5, 1984, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Room 1011B, Jackson, Michigan 49201 filed, pursuant to 18 CFR part 154, a Docket No. RP84-121-000, an Application for a rate for transportation and compression service at Applicant's Freedom Compressor Station, all as more fully set forth in the Application, which is on file with the Commission and available for public inspection.

Specifically, Applicant requests Commission approval of:

1. Rate Schedule "T-2" which will apply to gas (a) which a customer, qualified under PanMark (or equivalent), Order 319 or 319-A, Order 234-B or Section 311 of the Natural Gas Policy Act, delivers or causes to be delivered to Applicant at the inlet of Applicant's Freedom Compressor Station, and (b) which Applicant transports through that station and redelivers to such customer or its designee at the outlet of the station, and (c) the transportation of which involves none of Applicant's other facilities; and

2. The classifications, practices, rules and regulations affecting such rates, charges, and services.

The application is one of two being filed concurrently by Applicant. Both are for transportation-type services. Applicant states that because the services involve different parts of Applicant's system, two separate rates were necessary to reflect properly the costs of providing the services. Applicant further states that only one of these rates would be charged in any particular transaction. The proposed rate under the "T-2" tariff would be 3.25¢ per MMBtu.

Pursuant to 18 CFR 154.51, Applicant seeks a waiver of the requirements of 18 CFR 154.22, so that the rate proposed here may go into effect on September 12, 1984. Absent a waiver allowing an earlier effective date, Applicant proposed that the rate be effective on October 5, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 20, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24807 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-122-000]

Michigan Gas Storage Co.; Filing

September 13, 1984.

Take notice that on September 5, 1984, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Room 1011B, Jackson, Michigan 49201 filed, pursuant to 18 CFR Part 154, in Docket No. RP84-122-000 an Application for a total system transportation rate all as more fully set forth in the Application, which is on file with the Commission and available for public inspection.

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[1] 18 CFR 385.206 (1983).

[2] The wells are the Bryant Unit 21 No. 1 Well, the State of Oklahoma 16 No. 1 Well and the State of Oklahoma 14 No. 2 Well.

[3] 15 U.S.C. 3301-3432 (1982).

[4] Wagner & Brown v. El Paso Natural Gas Company, No. C-84-43, Disirict Court of Roger Mills County, Oklahoma.

Specifically, Applicant requests Commission approval of:

1. Rate Schedule "T-3" which would apply to transportation of gas for any customer that is qualified to receive gas under PanMark (or equivalent), Order 319 or 319-A, Order 234-B or Section 311 of the NPGA; and

2. The classifications, practices, rules and regulations affecting such rates, charges, and services.

The application is one of two being filed concurrently by Applicant. Both are for transportation-type services. Applicant states that because the services involve different parts of Applicant's system, two separate rates were necessary to reflect properly the costs of providing the services. Applicant further states that only one of these rates would be charged in any particular transaction. The proposed rate under the "T-3" tariff is 1.85¢ per MMBtu. If incidental storage is required in order to make daily receipts equal daily deliveries, then the proposed rate would be increased by 1.83¢ per MMBtu.

Pursuant to 18 CFR 154.51 Applicant seeks a waiver of the requirements of 18 CFR 154.22, so that the rate proposed here may go into effect on September 12, 1984. Absent a waiver allowing an earlier effective date, Applicant proposed that the rate be effective on October 5, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 20, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24808 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-671-000]

National Fuel Gas Supply Corp.; Application

September 14, 1984.

Take notice that on August 27, 1984, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP84-671-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and permission and approval for the abandonment of certain existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to replace a 2.3-mile segment of its 20-inch pipeline designated as Line N, which is located in Center Township, Beaver County, Pennsylvania. National Fuel advises that the replacement and realignment is proposed because of the deteriorating condition of the pipeline segment and because several residences have been constructed in close proximity to such pipeline segment. National Fuel explains that the 20-inch replacement pipe would bypass the residential area along a route covering 2.7 miles. It is stated that the total estimated cost of acquiring the necessary right-of-way and constructing the new facilities is $618,800, which cost would be financed with internally generated funds and/or interim short-term bank loans. The application reflects that the northerly directed section of the project would be constructed in a right-of-way adjacent to an existing pipeline of Columbia Gas Transmission Corporation.

According to the proposal, the deteriorated pipeline segment would be abandoned in place.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 4, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24809 Filed 9-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-670-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

September 14, 1984.

Take notice that on August 27, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-656-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Pabst Brewing Company (Pabst) under its certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated July 11, 1984, among Panhandle, Central Illinois Light Company (CILCO) and Pabst, Panhandle proposes the transportation of up to 1,200 Mcf of natural gas per day on an interruptible basis from a point of interconnection with Mobil Oil Corporation in Dewey County, Oklahoma, and a point of interconnection to be constructed with Consolidated Fuel Supply Company in Ellis County, Oklahoma. Panhandle states that it would deliver such gas, less a four percent reduction for fuel, to CILCO at Panhandle's Peoria sales station in Tazewell County, Illinois. CILCO, it is asserted, would deliver the gas to Pabst at its plant in Peoria, Illinois, for use as boiler fuel.

Panhandle states that the annual volume of gas to be transported is 178,850 Mcf. It is further stated that the average day flow is approximately 490 Mcf and peak day flow is 1,200 Mcf. It is asserted that this service is conditioned upon the availability of capacity sufficient to provide service without detriment or disadvantage to Panhandle's existing customers.

Panhandle submits that the transportation charge is based upon its Rate Schedule OST which rate is currently 42.0 cents plus 1.24 cents GRI surcharge for each million Btu delivered within the contract entitlement transportation quantity. It is explained that to the extent the total quantity of all transport gas delivered on any day exceeds the contract entitlement transportation quantity the rate applicable to such excess volume would be Panhandle's OST–E rate, currently 87.0 cents plus 1.24 cents GRI surcharge per million Btu.

It is stated that Panhandle would construct and operate a measuring station and appurtenant facilities at a point of receipt in Ellis County, Oklahoma, at an approximate cost of $19,000.

Panhandle further indicates it may need to add and/or delete receipt and/or delivery points upon mutual agreement of the parties and has agreed to comply with certain filing agreements in implementing these changes. It advises that within 30 days following the addition or deletion of any suppliers or receipt or redelivery points, Panhandle would file the following information:

(1) Copy of the gas purchase contract between the seller and the end-user;

(2) Statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

(3) Statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) Statement that the gas is not committed or dedicated within the meaning of NGPA Section 2(18);

(5) Location of the receipt/delivery points being added or deleted and the name of the producer/supplier;

(6) Where an intermediary participates in the transaction between the seller and the end-user, the information required by Section 157.209(c)(1)(ix);

(7) Identity of any other pipeline involved in the transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24810 Filed 9–18–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84–633–000]

Public Service Company of New Mexico; Cancellation

September 14, 1984.

Take notice that on August 29, 1984, Public Service Company of New Mexico (PNM) tendered for filing a notice of cancellation of FPC Rate Schedule No. 20, between PNM and Pacific Power & Light Company and FPC Rate Schedule No. 21 between PNM and Idaho Power Company.

PNM requests an effective date of August 20, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24811 Filed 9–18–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84–655–000]

Southern Natural Gas Co.; Request Under Blanket Authorization

September 14, 1984.

Take notice that on August 20, 1984, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP84–655–000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Southern proposes to operate new sales taps for service to United States Steel Corporation (USS), an existing direct sale customer, under the authorization issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states it was authorized by order issued October 29, 1969, in Docket No. CP70–7 (Phase II) to transport gas and to operate facilities for deliveries to USS at six delivery points in Jefferson County, Alabama, for use by USS in its mills for the manufacture and/or finishing of steel and steel products in Jefferson County. Southern further states it proposes to operate six sales taps and appurtenant facilities for delivery of gas to USS, said sales taps to serve as additional points of delivery to USS under a direct sales agreement between Southern and USS dated May 14, 1982, as amended. It is stated that operation of the proposed sales taps would enable USS to utilize volumes of gas it is authorized to purchase under the May 14, 1982, agreement to operate at other business locations in addition to those located in Alabama.

Southern states that the proposed sales taps would be the existing facilities located at (1) the point of interconnection between the facilities of Sea Robin Pipeline Company (Sea Robin) and Columbia Gulf Transmission Company (Columbia Gulf) at the terminus of Sea Robin's offshore pipeline near Erath in Vermilion Parish, Louisiana (Erath Delivery Point); (2) the point of interconnection between the jointly-owned facilities of Southern and ANR Pipeline Company (ANR) and Southern's Shadyside Compressor Station in St. Mary parish, Louisiana

(Shadyside Delivery Point); (3) the point of interconnection between Southern's pipeline and Texas Eastern Transmission Corporation's (Texas Eastern) 36-inch pipeline in Iberville Parish, Louisiana (White Castle Delivery Point); (4) the point of interconnection between an existing meter located near milepost 34.4 on Southern's 24-inch Duck Lake-Franklinton Loop Line and Acadian Gas Pipeline System's (Acadian) 16-inch pipeline in Iberville Parish, Louisiana (Carrville Delivery Point); (5) the flange or weld connecting the pipeline facilities of Transcontinental Gas Pipe Line Corporation (Transco) with the outlet of Southern's meter in Livingston Parish, Louisiana (Livingston Delivery Point); and (6) the point of interconnection between the facilities of Southern and Natural Gas Pipeline Company of America (Natural) located near the outlet of Texaco Inc.'s Henry Plant in Vermilion Parish, Louisiana (Henry Plant Delivery Point). USS has indicated to Southern that the sales volumes would be transported from the Erath, Shadyside, White Castle, Carrville, Livingston, and Henry Plant Delivery Points by Columbia Gulf, ANR, Texas Eastern, Acadian, Transco, and Natural, respectively, for delivery to USS to be used for operations in Indiana, Ohio, and Pennsylvania.

It is stated that USS is entitled under the May 14, 1982, agreement, as amended, to purchase from Southern at the old and new delivery points a quantity of gas not to exceed USS's total requirements as set forth in the Index of Requirements in Southern's currently effective FERC Gas Tariff. Except at the Carrville Delivery Point where deliveries are limited to 60,000 Mcf per day, USS may purchase the maximum amount at any delivery point or at any combination of delivery points, it is asserted.

Southern states that USS would pay a negotiated rate under the May 14, 1982, agreement, as amended, that tracks changes in the price payable under Southern's Rate Schedule OCD–2.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24812 Filed 9–18–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-953-000, et al.]

TCPL Resources U.S.A. Ltd., d.b.a. Wessely Energy Co. (Wessely Energy Corp.), et al.; Applications for "Small Producer" Certificates [1]

September 14, 1984.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS72-953-000	[1] 9-6-84	TCPL Resources U.S.A. Ltd., d.b.a. Wessely Energy Co. (Wessely Energy Corp.), 2001 Bryan Tower—Suite 953, Dallas, TX 75201.
CS84-114-000	8-27-84	Edwards & Leach Oil Co., 600 Triad Center, 501 Northwest Expressway, Oklahoma City, OK 73118.
CS84-115-000	8-28-84	Encino Energy & Development Corp., 333 Clay Street—Suite 4400, Houston, TX 77002.
CS84-117-000	8-31-84	Thelma W. Bauerdorf and Constance B. Cartwright, TTS U/W George F. Bauerdorf, 9363 Wilshire Blvd., Beverly Hills, CA 90210.
CS84-118-000	8-31-84	Combined Resources Corp., 2431 E. 61st St.—Suite 400 Tulsa, OK 74136.
CS84-119-000	9-6-84	Bogert Oil Co., 2601 NW. Expressway—Suite 901W, Oklahoma City, OK 73112.

[1] Wessely Energy Corp.'s assets were purchased effective July 1, 1984, by TCPL Resources U.S.A. Ltd., and the surviving entity is TCPL Resources U.S.A. Ltd., d.b.a. Wessely Energy Co.

[FR Doc. 84–24813 Filed 9–18–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-675-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

September 14, 1984.

Take notice that on August 29, 1984, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP84-675-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap to supply natural gas for an eligible end-user under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate a 2-inch sales tap to supply an estimated 275 Mcf of natural gas per day for the manufacture of asphalt to the Dickenson-Bowen Asphalt plant (Dickenson-Bowen) through Entex, Inc. (Entex), a distributor, under United's Rate Schedule DG–N. The sales tap would be located on United's Jackson-McComb 6-inch Line in McComb Summit, Pike County, Mississippi.

It is stated that service through the proposed sales tap would not cause an increase in Entex's contractual maximum daily quantity nor its entitlements under United's effective curtailment plan. Further, United states that it has sufficient capacity to provide the proposed service without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24814 Filed 9–18–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30236A; FRL–2670–1]

American Cyanamid Co.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces approval of an application by American Cyanamid Co. to conditionally register the pesticide product Arsenal ™ containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail:

Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 25, 1984 (49 FR 3136), which announced that American Cyanamid Co., PO Box 400, Princeton, NJ 08540, had submitted an application to conditionally register the pesticide product Arsenal" a herbicide containing 27.6 percent of the active ingredient 2-4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl-3-pyridinecarboxylic acid with 2-propanamine (1:1) an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

The application was approved on July 31, 1984 for general use on noncropland areas. The product was assigned EPA Registration No. 241–273.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703–557–3262) within 30 days after registration date in accordance with section 3(c)(2) of FIFRA. Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should:

(1) Identify the product name and registration number and

(2) Specify the data or information desired.

(Sec. 3(c)(4)(5) FIFRA, as amended)

Dated: August 29, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84–24365 Filed 9–18–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No.: FEMA–REP–5–IL–5]

The Illinois Plan for Radiological Accidents Site-Specific for the Byron Nuclear Power Plant; Certification of FEMA Findings and Determination

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Illinois submitted its plans relating to the Byron Nuclear Power Plant to the Director of FEMA Region V on March 28, 1984, for FEMA review and approval. On June 18, 1984, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Byron facility, and an evaluation of the full participation exercise conducted on November 15, 1983, in accordance with section 350.9 of the FEMA rule, and a report of the public meeting held on December 8, 1983, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Byron Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria of NUREG–0654/FEMA/REP–1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the Byron Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–5–IL–5 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

Dated: September 13, 1984.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84–24738 Fild 9–18–84; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOME LOAN BANK BOARD

Mitchell Home Savings and Loan Association, Mitchell, SD; Appointment of Receiver

Correction

In FR Doc. 84–23908 appearing on page 35693 in the issue of Tuesday, September 11, 1984, make the following correction. At the end of the fifth line of text add "Home Loan Bank Board appointed the Federal".

BILLING CODE 1505–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R-0505]

Fee Schedules for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee Schedule for Electronic Services.

SUMMARY: On January 18, 1984, the Board requested comment on a revised fee structure for the Federal Reserve's wire transfer of funds service and on the establishment of a monthly fee for institutions possessing an electronic connection with the Federal Reserve. After consideration of the comments received, the Board has approved the following fixed monthly fees for electronic connections:

Type of connection	Monthly fees	
	All priced services, except dedicated ACH connections	Dedicated ACH connections[1]
Dedicated leased line	$300	$200
Multi-drop leased line	225	180
Dial-up line	60	48

[1] The fees for dedicated ACH connections reflect the 80 percent recovery rate to be in effect in 1985 under the current pricing policy for the ACH service. The current daily fee of $0.75 assessed for ACH electronic deliveries will be eliminated on January 2, 1985.

EFFECTIVE DATE: January 2, 1985.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202/452-2231), or Florence M. Young, Program Manager (202/452-3955), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Elaine M. Boutilier, Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On January 18, 1984, the Board issued for public comment a proposal to assess fixed monthly fees to all depository institutions having an electronic connection with the Federal Reserve for one or more priced services,[1] (49 FR 2828). The following fees were proposed:

Type of connection	Monthly fees	
	All priced services, except dedicated ACH and security transfer connections[1]	Dedicated ACH connections[2]
Computer interface	$1,400	$840
Leased line	350	210
Dial up	75	45

[1] No fixed fees for dedicated security connections were proposed pending a review of the fee structure for security transfer services.

[2] The fees proposed for dedicated ACH connections reflected the 60 percent recovery rate for the service in effect at the time of the proposal.

In conjunction with implementing the fixed monthly fees, it was also proposed that:

- The fee for orginating or receiving a basic wire transfer of funds be reduced from $0.65 per transfer;
- The fee for originating a book-entry security transfer be maintained at $3.00 per transfer; and
- The proposed, daily $0.75 electronic delivery fee for the ACH service be eliminated.

Forty-eight comments were received from the public on the proposal. Thirteen commenters, primarily high-volume users of electronic payment services, supported the proposed fee schedule, while 35 respondents opposed it. At the same time, 21 commenters favored the concepts underlying the proposal. These commenters believed that the proposed fee structure would result in a more equitable assessment of the cost of providing electronic services across the various classes of users, but they questioned the level of the proposed fees or suggested alternative fee structures.

Opponents of the proposal believed that the fixed fees would substantially increase the costs of using Federal reserve services for low and medium volume users; inhibit growth in the use of electronic services; discourage use of more sophisticated data processing equipment; result in cross-subsidies among and within user classes, and negatively affect competition among depository institutions and between the Federal Reserve and privately operated funds transfer networks.

Transaction Fee

During the period January through July 1984, the Reserve Banks have reported a net revenue surplus of $4.4 million for the wire transfer of funds and net settlement. This surplus is attributable to Reserve Banks costs lower than orignally projected and a volume of transfers higher than projected. As a result, as previously announced, the Board believes it appropriate to implement the reduction in the basic transaction fee for originating or receiving a funds transfer from $0.65 to $0.60, effective September 27, 1984. (49 FR 35866)

Electronic Connection Fees

The comments received on the proposal to assess fixed monthly fees fell into four broad categories: (1) The impact of the proposed fee on users of electronic services; (2) the basic for establishing the proposed fees; (3) the equity of the proposal; and (4) its effect on the competitive environment.

1. Impact of Proposed Fees

An analysis of the impact on users of the wire transfer service indicated that only the highest volume users within the computer-interface and leased-line connection categories would have realized cost savings. On the other hand, the cost per transaction for low-volume users would have increased significantly.

It appears that the impact of the proposed fees might have caused on-line institutions that process fewer than one transfer per day to revert to off-line status, or some on-line institutions might have reconsidered the type of connection that they use. Therefore, the amount of the proposed monthly fee was re-evaluated.

Institutions considering a conversion from off-line to on-line status would consider not only the impact of the fixed monthly fee on their transaction costs, but also the cost of acquiring the hardware needed for an electronic connection, estimated at about $250 to $300 per month. Considering these two added costs, it would become cost effective for an off-line institution to establish an on-line connection when its volume of funds transfers reached a level of three to four transfers per day as opposed to a volume of two to three transfers per day under the current fee schedule. This small change would not appear to be a significant deterrent to the use of electronic connections, because depository institutions would likely consider other electronic services, in addition to the wire transfer of funds service, that are available to on-line institutions.

With respect to the proposal's impact on increasing the use of electronic transmissions for the ACH service, the proposed $45 monthly fee for a dial-up ACH connection[2] was higher than the current ground delivery fee of $1.75 per day or $36.75 per month. This disparity between the electronic connection fee and the current ACH ground delivery fee will be addressed when 1985 fees for the ACH service are established.

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[1] Priced services include the automated clearing house, wire transfer of funds, net settlement, book-entry securities, check collection, definitive safekeeping, and noncash collection.

[2] The majority of ACH connections are dial-up connections rather than leased-line connections.

2. Basis for Establishing Fees

The cost base used to develop the proposed fees included: (1) Intradistrict communications costs, which consist primarily of lines, modems, concentration equipment, and back-up facilities; (2) the costs of testing computer-interface connections; and (3) the cost of computer software necessary for on-line institutions using terminals to interface with the Federal Reserve.

The costs of intradistrict communications networks are directly attributable to providing electronic services to depository institutions. Thus, these costs are properly included in the cost base. On an institution basis, dedicated leased lines, which provide uninterruptable service to a single location, are typically the most costly, while dial-up lines are shared by a large number of users and are typically the least costly.

With respect to back-up connections, a variety of approaches are currently used to back up primary dedicated and multi-drop, leased-line connections. Because the Reserve Banks are in the process of re-evaluating the nature of their back-up facilities and the method by which charges for these facilities should be imposed, these costs are not covered by the revised fees.

Testing costs are incurred for computer-to-computer interfaces when an institution modifies its software or implements new software. Additionally, when the Reserve Banks implement new data communications protocols, install new software, or modify their software, institutions with computer interfaces must test with the Federal Reserve. Because testing expenses are not recurring monthly expenses and because depository institutions incur expenses when the Federal Reserve needs to test, testing costs are included in the revised cost base. Instead, the costs associated with testing will be monitored, and if testing cost for certain institutions exceed a normal range, consideration may be given to recovering such costs explicitly.

The cost of developing and maintaining the computer software provided by the Reserve Banks to institutions using terminals, like computer-interface testing expenses, are not on-going costs and are not directly related top the maintenance of an electronic connection. Therefore, it is appropriate to exclude these costs in determining the revised fees.

3. Equity of the Proposal

Assessing fixed fees for services whose cost structures consists of high proportion of fixed costs results in fee schedules that reflect the costs of serving both high and low-volume users of the service. Because the revised fee schedule eliminates costs that are not recurring monthly costs, these fees will be more equitable for both low and high-volume users of electronic services.

With respect to potential inequities that uniform fixed fees might create among institutions due to their locations, the Reserve Banks have designed their intradistrict communications networks in ways that tend to equalize the cost of serving institutions located in various geographic regions, including the extensive use of shared lines and the installation of concentration equipment. Fees for electronic payment services have been set at uniform levels to ensure that Federal Reserve fees do not adversely affect competition among depository institutions for national corporate customers.

4. Effect on Competitive Environment

Because the expected revenue would amount to about 10 percent of total costs, including the PSAF, for the wire transfer of funds service and the proposed reduction in the basic fee to originate or receive a wire transfer of funds would be only $0.05, it is unlikely that the proposed fee schedule would have had an adverse effect on competitive balance. Additionally, some privately operated networks assess fixed fees to their users.

With regard to the concern about competition among depository institutions, Federal Reserve fees are generally a small percentage of a depository institution's total costs. While the proposal would increase the costs incurred by some low-volume users of electronic services, modifying the composition of the cost base had reduced the per transaction impact across the various classes of users. Therefore, it is unlikely that the fixed monthly fees will negatively affect competition amoung depository institutions.

Alternative Fee Structures

Retaining the fee structure currently in place was compared with alternative fee structures proposed by commenters. These alternatives included implementing transaction fees that would vary by type of connection, and assessing each institution the actual costs of intradistrict communications networks, in conjunction with uniform transaction fees.

Fixed costs constitute a significant percentage on the total cost incurred in providing electronic services. Transaction fees based on average processing costs tend to assess high-volume users charges that are greater than the costs of providing services to them and to assess low-volume users charges that are less than the costs of the services provided. It was for this reason that the proposed changes to the current fee structure were made.

Implementing transaction fees that vary by type of connection would create incentives for depository institutions to upgrade their electronic connection in order to reduce the costs they incur in using Federal Reserve services. This is expected because institutions with computer-interface connections process high volumes of transactions and use fixed resources intensively, which would result in low transaction fees. Conversely, institutions with dial-up connections process low volumes of transactions and use fixed resources less intensively. Therefore, transaction fees for dial-up connections would be high. Fees for medium-volume, leased-line users would fall between the two extremes. Thus, institutions would have an economic incentive to upgrade their electronic connections. Such upgrades, however, would increase the Federal Reserve's costs of providing electronic services and over the long run also increase costs for all users of its services.

Assessing the actual costs of intradistrict communications networks to individual on-line institutions would appear to be unduly complex because of the number of shared lines linking depository institutions to the Federal Reserve.

Conclusion

The analysis of alternative fee structures for electronic services indicated that assessing fixed monthly fees to depository institutions based on the type of electronic connection with the Federal Reserve would result in a fee structure that more closely reflected the cost structure for electronic services and would be more equitable than the current fee structure.

Because intradistrict communications costs are directly attributable to the provision of electronic services, only the costs of the lines, modems, and concentration equipment as well as the administrative expenses incurred in managing the network were included in the cost base used to establish fixed fees. Further, because the type of line used to link a depository institution to the Federal Reserve is more directly related to the service level provided to depository institutions than the type of equipment an institution installs, the fixed monthly fees will be assessed based on the type of line used.[3]

After consideration of comments received, the Board has approved the fee schedule appearing at the beginning of this notice. In order to provide depository institutions sufficient time to reassess the cost effectiveness of their current electronic connection with the Federal Reserve, and to provide them with sufficient opportunity to take these fees into account in planning for 1985, the Board has determined to establish an effective date for the electronic connection fee schedule of January 2, 1985.

By order of the Board of Governors of the Federal Reserve System, September 13, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 24731 Filed 9-18-84; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York; to engage *de novo* through its subsidiary, Chase Manhattan Financial Center, Inc., in operating an industrial loan and thrift company as authorized by Minnesota law including making and acquiring for its own account and for the account of others, secured and unsecured loans and other extensions of credit, such as consumer and business lines of credit, and installment loans; acting as insurance agent for credit life and disability insurance directly related to such lending activities; and the acceptance of deposits and similar instruments (other than "demand deposits").

Board of Governors of the Federal Reserve System, September 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24736 Filed 9-18-84; 8:45 am]

BILLING CODE 6210-01-M

First National State Bancorp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the office of the Board of Governors not later than October 11,1984.

A. **Federal Reserve Bank of New York** (A Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First National State Bancorporation*, Newark, New Jersey; to engage through a national bank subsidiary, FNS Bank of New York, New York, New York, in consumer and mortgage lending, trust services and deposit-taking, including demand deposits; serving the New York City area.

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[3] The types of connections are as follows:

Dedicated leased lines provide uninterruptable service to a single institution and are typically the most costly connections on an institution basis. Approximately 20 dedicated leased-line connections are currently in place.

Multi-drop leased lines provided uninterruptable service to a group of institutions that share a primary circuit. This type of connection is less costly on an institution basis. Nearly 1,200 multi-drop leased lines are current in place.

Dial-up lines are based on the telephone companies' WATS and 800 services. These are the least costly connections. Over 3,500 institutions obtain electronic services through the use of dial-up lines.

Board of Governors of the Federal Reserve System, September 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24732 Filed 9-18-84; 8:45 am]

BILLING CODE 6210-01-M

Metropolitan Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 11, 1984.

A. **Federal Reserve Bank of Clevland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Metropolitan Bancorp, Inc.*, Lima, Ohio; to acquire 100 percent of the voting shares of United National Bank, Convoy, Ohio.

B. **Federal Reserve Bank of St. Louis** Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Junction City Bancshares, Inc.*, Junction City Arkansas; to become a bank holding company by acquiring at least 89 percent of the voting shares of Union State Bank, Junction City, Arkansas.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Anchor Bankcorp, Inc.*, Wayzata, Minnesota; to acquire 97 percent of the voting shares of Exchange State Bank, St. Paul, Minnesota.

D. **Federal Reserve bank of Dallas** (Anthony J, Montelaro, Vice President) 400 South Akard Street, Dallas Texas 75222:

1. *Georgetown National Bank Holding Company*, Georgetown, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Georgetown National Bank, Georgetown, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *CoBank Financial Corporation*, San Luis Obispo, California; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce Bank of San Luis Obispo, N.A., San Luis Obispo, California.

Board of Governors of the Federal Reserve System, September 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24733 Filed 9-18-84; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in the making of commercial loans, and other activities specified below. The proposed subsidiary will not engage in deposit-taking transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related by banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the publication unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than October 11, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfold, Virginia; to engage *de novo* through a national bank subsidiary, Sovran Bank (Maryland), N.A., Rockville, Maryland, in the acceptance of time and savings deposits (excluding NOW accounts), safe deposit business, making and servicing loans, trust company functions, leasing personal or real property, data processing, insurance sales, management consulting, issuance of money orders, savings bonds and travelers checks, real estate appraising, securities brokerage, and underwriting and dealing in government obligations and money market instruments; serving Rockville, Maryland, and surrounding areas.

Board of Governors of the Federal Reserve System, September 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24734 Filed 9-18-84; 8:45 am]

BILLING CODE 6210-01-M

Texas Valley Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1984.

A. **Federal Reserve Bank Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Valley Bancshares, Inc.*, Weslaco, Texas; to engage *de novo* through its subsidiary, Texas Valley Information Systems, Weslaco, Texas, in providing data processing services to businesses on their payables, receivables, inventory, accounting records, or any financial reports; data terminals to businesses to transmit their data to the computer center; businesses to prepare and imput their data to the data center; provide hardware and/or software for financial reporting to businesses; sales and service of microcomputers and software at the retail level; and training and education seminars in the use of microcomputers, data base terminals and other hardware.

Board of Governors of the Federal Reserve System, September 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24736 Filed 9-18-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Child Support Enforcement Research and Demonstration Grants; Availability of Fiscal Year 1984 Grant Funds

On June 26, 1984, the Acting Director of the Office of Child Support Enforcement (OCSE) gave notice in the **Federal Register** (Vol. 49, No. 124, p. 26147) of the availability of fiscal year 1984 funds for child support enforcement research and demonstration (R&D) grants. Funding for those grants is authorized under Section 1110 of the Social Security Act. Program priorities for funding were: Study of Alternative Approaches to User Fees for Applicants of Non-AFDC Services (OCSE 84-1) and Evaluation of the Usage and Effectiveness of Medical Support Requirements (OCSE 84-2).

The closing date for receipt of applications for fisal year 1984 given in the previous **Federal Register** announcement was August 27, 1984. This notice extends the closing date of the above named grant applications to September 20, 1984. Applicants are referred to the previous announcement for application details. Pursuant to Section 2331 of the Deficit Reduction Act of 1984, Pub. L. 98-369, for-profit organizations may now apply for these grants.

Dated: September 13, 1984.

Martha A. McSteen,

Acting Director, Office of Child Support Enforcement.

[FR Doc. 84-24654 Filed 9-18-84; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced.

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. October 4, 9 a.m., October 5, 8 a.m., Bldg. 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 4, 9 a.m. to 10 a.m.; open committee discussion, October 4, 10 a.m. to 11 a.m.; closed presentation of data, October 4, 11 a.m. to 4:30 p.m.; closed committee deliberations, October 5, 8 a.m. to 9 a.m. and 1 p.m. to 4:45 p.m.; open committee discussion, October 5, 9 a.m. to 12 m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. On October 4, the committee will receive a general briefing on the kinds of issues it will be faced with in the future. On October 5, the committee will discuss the Finnish field trials with H. Influenzae Vaccine, Type B.

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to pending investigational new drugs and license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. October 22 and 23, 9 a.m., Auditorium, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 22, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; open public hearing, October 23, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; George C. Murray, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 20, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 22, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and neodymium:yttrium-aluminum-garnet (Nd:YAG) lasers, and may discuss specific PMA's for these devices. The committee and FDA staff will discuss current knowledge and findings of Nd:YAG laser clinical experiences and will consider whether revisions to the guidance document are appropriate. If discussion of all pertinent IOL or Nd:YAG laser issues is not completed, discussion will be continued the following day. On October 23, the Committee will discuss PMA's for contact lenses and other ophthalmic devices and requirements for PMA approval. Copies of the revised draft guidelines for class III contact lenses may be obtained before the meeting by contacting George C. Murray (address above). Copies of these revised draft guidelines will also be available both days at the meeting.

Closed committee deliberations. On October 22, the committee will conduct reviews of PMA's for IOL's and Nd:YAG lasers. On October 23, the committee may discuss trade secret or confidential commercial information relevant to PMA's for contact lens or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1-hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guidelines concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a person nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 14; 1984.

Mark Novitch

Acting Commission of Food and Drugs

[FR Doc. 84–24865 Filed 9–18–84; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Availability of Funding for FY 1984 Targeted Assistance Grants for Services to Refugees and Entrants in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), SSA, HHS.

ACTION: Notice of availability of funding for FY 1984 targeted assistance grants for services to refugees and entrants in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 1984 targeted assistance project grants for services to refugees and Cuban and Haitian entrants under the Refugee Resettlement Program (RRP) and Cuban/Haitian Entrant Program (CHEP).

Application Deadline: States should submit applications for grants under this notice at least 60 days prior to the time that the first qualifying county or local jurisdiction would require funds. No applications will be accepted later than April 1, 1985. Applications not meeting this requirement will not be considered and will be returned to the sending agency.

FOR FURTHER INFORMATION CONTACT: Sara Stone, Grants Management Office, Office of Refugee Resettlement, 330 C Street, SW., Room 1229, Switzer Building, Washington, D.C. 20201, Telephone (202) 245–1832.

Background Information

Original notices of proposed funding for refugee and entrant social services and targeted assistance were published in the **Federal Register** on February 13, 1984 (49 FR 5383), and February 28, 1984 (49 FR 7297), respectively. Subsequently, a question arose as to the total funding available for these activities in FY 1984 under the Second Continuing Resolution (Pub. L. 98–151). Pending final resolution of this question, ORR notified all States eligible to receive targeted assistance grants to submit applications by August 20, 1984, for the amounts which had been specified in the February 28 notice in order to assure that available funds could be awarded before the expiration of their availability at the end of FY 1984 (September 30, 1984).

In the Second Supplemental Appropriation Act, 1984, Congress has specified the funding amount available and has extended until September 30, 1985, the date by which ORR must award Targeted Assistance funds, including the targeted assistance grants funded under this notice.

Since it is no longer necessary either for ORR to award targeted assistance grants or for States to begin targeted assistance projects prior to October 1, 1984, we have extended the deadline for applications until April 1, 1985. If a State has previously submitted an acceptable application, it need now submit only a revised budget to that application and the additional information specified in Section IX, below, in order to qualify for the higher amount specified by this notice. However, if a State should choose to revise its application in order to take advantage of opportunities afforded as a result of the expanded authorization period, it may do so within the time constraints established above.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the availability of funds for targeted assistance grants for services to refugees and Cuban and Haitian entrants in counties where, because of factors such as unusually large regfugee and entrant populations, high refugee and entrant concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

ORR is making available under this notice a total of approximately $60,200,000 in funds for targeted assistance for refugees and entrants in local areas of high need.

Notice of proposed availability of funds was published in the **Federal Register** for public comment on February 28, 1984 (49 FR 7297). No major changes have been made in the program as a result of comment on the previously published proposal. However, several modifications and clarifications and some technical changes were made in response to comments.

Revisions which have been made include the following: (1) The funds allocated under this notice have been increased from $40,000,000 to approximately $60,200,000. (2) The amount of a local allocation which may be used for administrative costs has been increased from 10% to 15% for local areas eligible to receive allocations of $500,000 or less, with a sliding scale (described in Section IX, below) for local areas eligible to receive between $500,001 and $900,000 (in order to provide an increase in the absolute amount available for administration as allocations increase), and with local areas eligible to receive $900,001 or more remaining at the 10% figure proposed in the previous notice. (3) The previous notice proposed that non-employment-related activities, if proposed in a local plan to meet extreme and unusual need, be subject to ORR prior approval. The present notice removes this requirement and, instead, allows up to 15% of a local area's allocation to be used for non-employment-related services to meet extreme and unusual needs, provided such needs are clearly demonstrated and such use is approved by the State. A State may request a waiver in order to be able to allow a county to use more that 15% for non-employment-related services. ORR will approve such a request only in the most extreme circumstances of need. (4) A requirement has been added that a State consult with local targeted assistance entities in the development of the State's application.

The purpose of the targeted assistance grants is to provide to refugees and Cuban and Haitian entrants, through a process of local planning and implementation, direct services which are intended to result in economic self-sufficiency and reduced dependency, and to address extreme and unusual needs of these populations. Funds awarded under this program are intended to support projects which directly enhance refugee and entrant employment potential and increase the ability of refugees and entrants to find and retain jobs, and to provide special services, identified below, where essential to the adjustment of refugees/entrants in targeted assistance communities. Innovative approaches to accomplish these objectives are encouraged.

The award of funds to States under this targeted assistance program will be generally related to the existence and relative extent of refugee and entrant need in each qualifying county, as indicated by a qualificaiton and allocation formula (described in this notice), and to the completeness of applications as described in Section IX, below.

To be considered complete an application package must consist of a signed original and two copies. All application packages must be received by the U.S. Department of Health and Human Services, SSA, Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 300 C Street, SW., Washington, D.C. 20201.

Applications Delivered By Hand

An application that is hand-delivered should be taken to the U.S. Department of Health and Human Services, Social Security Administration, Office of Refugee Resettlement, Grants Management Office, Room 1229, Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

The Grants Management Office will accept a hand-delivered application between 8:30 am and 5:00 pm Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays.

Applications delivered by hand must be received no later than 5:00 p.m. of the application deadline specified by this notice.

Applications Delivered By Mail

A formal grant application sent by mail must be addressed as indicated above.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service. Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local post office. Applicants are encouraged to use registered or at least first class mail. Applications must be postmarked no later than the application deadline specified by this notice.

II. Discussion of Comments Received

Thirty-one comments were received in response to the notice of proposed availability of funds of FY 1984 targeted assistance. The comments supported the overall targeted assistance program as proposed in the February 28, 1984, notice. Most of the commenters expressed concern about specific aspects of the program as proposed and some included recommendations for particular revisions. These are summarized below and are followed in each case by the Department's response.

Adequacy of Formula Allocations

Comment: More than half of the commenters expressed dissatisfaction with the overall amount of funds which was indicated in the proposal as available for FY 1984 targeted assistance grants.

Response: The amount of funds which was stated as available for targeted assistance grants in the proposal was determined as part of an overall refugee program strategy for distributing resources according to recongizable needs of a national resettlement program. Originally approximately $20,000,000 was proposed to be set aside from TA funds in order to prevent service disruption which may have been caused by the mid-year announcement of social service funds much lower than that which States had anticipated. Since the publication of that proposal, the amount of funds available for refugee/entrant social services has increased from $44,400,000 to $71,700,000. This change removes the need for allocating targeted assistance funds to prevent serious disruption in State social service programs. Therefore, an amount equivalent to that available for targeted assistance in FY 1983—$60,200,000—is being announced under this notice for the combined refugee/entrant targeted assistance program.

Comment: Many commenters complained that the proposed formula and data base do not accurately reflect the true needs of their communities relative to others in the program. In particular, they argued for improvements through recognition of the following claims: (1) The proposal does not take into account time-expired refugees (i.e., refugees who have been in the U.S. more than 3 years); (2) the proposal does not take into account population changes which may have occurred since the previous year through secondary migration.

Response: As has been stated elsewhere (47 FR 42634 and 48 FR 24996), ORR has done, and continues to do, its best to use data which are both accurate and based upon measures which equitably reflect the needs of refugees and entrants. The limitations of data sources prevent ORR from obtaining valid and reliable measures of actual refugee and entrant populations in specific jurisdictions. This is in large part due to the inability of any existing data source to track movement of refugees within States as well as across State boundaries. We believe that the allocation approach which was presented in the proposal is a reasonable and fair means of determining overall relative need among targeted assistance areas nationally.

We would also point out that the retention of the FY 1983 targeted assistance allocation approach does, in fact, take into account time-expired refugees and entrants for purposes of FY 1984 funding. The FY 1980 refugee and entrant arrival cohort, which at over 350,000 individuals is by far the largest annual cohort and constitutes 46% of all refugees and entrants not yet eligible for citizenship, was included in the FY 1984 targeted assistance allocation precisely because of its size, the arrival rate which it represents, and the fact that most State and local governments feel an immediate need to provide targeted services of refugees and entrants in this group. Removal of this cohort from consideration would have significantly affected most targeted assistance areas, and would not have been responsive to ongoing refugee and entrant needs which were evident in FY 1983 targeted assistance plans.

We recognize that secondary migration has occurred in some areas since FY 1983 and that with the previously proposed amounts, which represented reductions in actual amounts available, this constituted a special unmet need. Under the current notice, amounts remain at the FY 1983 level, even though portions of the population in qualifying areas have availed themselves of targeted assistance programs already. We believe, therefore, that no additional amount is needed above the present increase of about 50% over the allocation levels proposed in the previous notice.

Allowable Services

Comment: Comments were received from a variety of agencies and interested parties regarding the desirability of allowing, without special waivers (which would have been required under the previous notice), the provision of some services not specifically related to client employment, but for which extreme and unusual need can be demonstrated. Most commenters stated that such flexibility should be available to the local targeted assistance authorities without being considered outside the legitimate scope of services of the program. However, some commenters also indicated that the employment focus of targeted assistance should be protected from diversion to a myriad of special interests and, therefore, that a ceiling should be established on the percentage of funds that would be available for purposes other than employment.

Response: The Department recognizes that in many targeted assistance areas special circumstances do exist which are generally related to the adjustment of refugees and/or entrants in the community, but which cannot be resolved through additional support of employment services per se. While maintaining a recognition that the primary goal of targeted assistance is to provide specialized employment services for selected portions of the refugee/entrant population in local areas of high need, we agree with the suggestion that we should address other service needs that are critical to the adjustment of refugees and entrants. For this reason, the proposal has been amended to include non-employment services as allowable under a local targeted assistance plan. Included in this change are any services made available under section 412(c)(3) of the Immigration and Nationality Act (as amended by the Refugee Act of 1980, Pub. L. 96–212) to include health, mental health, education, and social services. The use of targeted assistance funds for this purpose is restricted to 15% of the local allocation amount unless a State requests and receives approval from ORR to use a larger percentage. Local targeted assistance plans may contain proposals for services to address extreme and unusual needs up to 15% without requesting ORR approval.

Comment: A few commenters requested further clarification as to the allowability of support services and the nature of their linkage to employment services.

Response: The Department's intent in allowing supporting services to be funded under targeted assistance is to reduce the possibility that primary employment services might not be utilized to full advantage by potential clients because of lack of access or other conflicts. The availability of day care, transportation, or other services which are specifically and absolutely necessary to enable refugees or entrants in the targeted population to participate in employment services is viewed as fundamental to the success of the targeted assistance program. These same services, however, should not be construed as allowable under targeted assistance if they are to be made available to the general refugee/entrant population. The section of this notice which relates to allowability of support services has been revised to comply with the commenters' request for clarification.

Application and Local Plan Development Process

Comment: A few commenters indicated that in order for State agencies and local entities to coordinate their roles in targeted assistance this year, there should be some discussion of concepts and intentions prior to the development of the State application. This consultation would help ensure that the local plan review criteria and other aspects of the State's application, once approved, would be more smoothly and successfully implemented.

Response: While the notice as proposed contained no provision which prevented State-local consultation during the development of State applications, we believe that it is an important element in the overall process of targeted assistance planning. Therefore, the proposal has been amended to include a provision that the State include in its application an assurance that it has consulted with the local targeted assistance entity during the development of that application.

Comment: Several commenters advised that the use of July 15, 1984, proposed in the February notice as a deadline for the receipt of targeted assistance applications from States, presupposed a specific publication date for a final notice. They suggested that, whatever the publication date, States should be allowed a full 60 days during which to develop their applications. A few commenters also stated that ORR should guarantee in this notice a specific number of days (30 was suggested) during which ORR would review State applications and award the State targeted assistance grant.

Response: We agree that an adequate period for the development of applications is essential. Therefore, we allowed more than 60 days from our direct notification to States on June 6 until a due date of August 20 and have subsequently been able to extend the period until the later date specified by this notice. ORR regrets that it cannot guarantee the award of a State's targeted assistance grant within a particular time, since such a commitment would presuppose the completeness and allowability of State applications. ORR will make every effort to review and make awards for acceptable State grant applications on a timely basis and to notify a State as soon as possible if problems arise during the review of its application.

Reporting Requirements

Comment: A few commenters noted the advantages of greater specificity and standardization in the targeted assistance reporting requirements. One commenter provided a list of key outcome measures for consideration and also included a list of suggested definitions for those data elements.

Response: We agree that greater specificity of data elements, to include definition of measures, would avoid confusion among grantees and subgrantees and improve ORR's ability to report on the program. In the proposal, ORR specifically requested comment on a list of six data elements which were thought to clarify the reporting requirements that exist for the current targeted assistance program (Form ORR 12, OMB No. 0960–0334). Positive repsonse to this in both written comment and in subsequent discussions with representatives of State and local governments has led us to conclude that the use of more specific reporting guidelines is warranted. ORR will seek the necessary approval from the Office of Management and Budget (OMB) for issuing such guidelines. These reporting guidelines will not be in effect unless and until they are approved by OMB.

Administrative Costs

Comment: Several comments were received regarding the need for a higher percentage allowance for local administrative costs. One commenter argued that the amounts allowed for State (as opposed to local) administrative costs should have a numerical cap which would have the effect of reducing the percentage for States with large targeted assistance grants.

Response: We have concluded that the 10% level of funding previously proposed for local administration of FY 1984 targeted assistance programs could be inadequate in areas which receive small awards. Therefore, we have revised the provision in this notice relating to local administrative costs to allow a variable rate according to the size of the amount allocated to the locality by the formula. Thus, any local area with an allocation of $500,000 or less will be allowed to claim up to 15% of its allocation amount for administration. For each $100,000 increment above $500,000, the local administration allowance would be one (1) percentage point less (e.g., up to $600,000 would be allowed 14%). Local targeted assistance areas with allocations of $900,001 or more would be allowed to claim up to 10%, as was previously the rule for all areas. We believe that this schedule will provide funds at a level necessary to carry out the full responsibilities of administering the local targeted assistance program.

We do not agree with the suggestion that State administrative allowances, which were proposed at 5% of the State's grant award, be reduced or capped. The FY 1984 targeted assistance program requires the assumption of considerable responsibility on the part of the State in order that the program be implemented and monitored properly. The proposed amount is appropriate to this task.

Comment: Many commenters requested clarification of the allowability of planning costs, for both States and local administering agencies.

Response: Planning costs may be claimed by State administering agencies as pre-award costs, provided that they are directly attributable to local consultation, application development, and other activities specifically related to these. Planning costs will be considered administrative costs and will be included in the administrative ceiling as provided in this notice. States are authorized to charge these costs against their FY 1983 targeted assistance grants *prior* to the issuance of FY 1984 targeted assistance awards. Upon issuance of those awards, such charges must be offset from the FY 1984 targeted assistance administrative budget.

Local planning costs will also be considered administrative costs and should be included in the local administrative cost ceiling as indicated in this notice. The period during which local planning costs would be allowed is to be defined by the State in its application to ORR.

III. Authorization

Targeted assistance projects will be funded under the authority of section 412(c) of the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980 (Pub. L. 96–212), 8 U.S.C. 1522(c), and section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c) of the INA, as cited above.

IV. Eligible Grantees

The Department is limiting eligible grantees to those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5. Eligibility for targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

Under this notice, State agencies will submit a single application on behalf of all county governments of the qualified counties in that State. The application will contain assurances, plans, and descriptive information pertaining to the State's role as grantee and to its implementation of the FY 1984 targeted assistance program through the review and approval of county targeted assistance plans and the transfer of targeted assistance funds to qualified counties.

Subsequent to the acceptance of the State's application by ORR, local targeted assistance plans which are developed by the county government or other designated entity would be submitted to and reviewed by the State. These plans would propose targeted assistance projects based upon the special needs and capabilities of the targeted refugee and entrant populations, and must give due consideration to the availability of local employment opportunities and outcomes of previously funded projects. Such plans must be developed in cooperation with voluntary refugee resettlement agencies, the business community, refugees and entrants, and public officials in that area.

In the absence of a statewide county system, or in the absence of an appropriate county-level refugee program agent or agency and with the concurrence of the county government, the State may designate a city or other governmental entity or may procure for the services either a private for-profit or nonprofit organization, to administer the targeted assistance funds for a qualified local area.

In submitting its application, the State agency must provide assurances (described in Section IX, below) that targeted assistance funds will be made available to counties in a timely manner, in allocated amounts, and for purposes most appropriate to the nature and extent of need as indicated by each county in its targeted assistance plan. In this regard, the State review of county plans is intended to ensure that targeted assistance programs address identifiable needs in a programmatically sound manner. It is not intended, however, that the local determination of needs and responses to those needs would be removed through a State's exercise of its review responsibility under this program.

The State agency is also required to assure that amounts allocated to counties or other qualifying local entities under targeted assistance would not be used to offset funds that have otherwise been obligated to such jurisdictions.

A State's application must also include a description of its plan for the review and approval of county targeted assistance plans; its specifications and requirements for county plans with regard to identification of priority services and target populations, procurement, monitoring and evaluation, and reporting; and a timetable of its process for implementing the FY 1984 targeted assistance program. States may apply for a grant of up to eighteen months. Grant periods must begin no later than September 30, 1985.

Applications submitted in response to this notice are not subject to review by State and areawide Clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Aid Programs."

V. Qualification and Allocation Formula

The Director of ORR considers any county which qualified for targeted assistance funds in FY 1983 (as announced for refugees at 48 FR 24986, June 3, 1983, and for entrants at 48 FR 34127, July 27, 1983) as qualified for funds available under this proposal. The Director is making $80,193,534 in funds available to States with qualified counties on an allocation basis in direct proportion to the total amount allocated to each State under both refugee and entrant targeted assistance programs in FY 1983. The amount allocated for each qualified county is also in direct proportion to each county's FY 1983 allocation. No deviation from the amounts allocated for counties may be made by a State without written concurrence from the affected county.

This qualification and allocation approach is believed to be most appropriate for the FY 1984 targeted assistance program for several reasons: First, the basic purpose of the targeted assistance program for this year is the same as was the purpose of the FY 1983 program. Second, the needs of refugees in targeted assistance areas, as identified in the county plans for the FY 1983 program, are extensive. Even a completely successful implementation of the FY 1983 program would not reduce those needs to a degree which would remove the necessity of continuing the program. Third, those areas which qualified for targeted assistance funds in FY 1983 are areas which continue to receive large numbers of refugees through the family reunification priority of new arrivals. This tends to maintain the service and employment market problems associated with the scale of the local resettlement which largely contributed to the need for targeted assistance initially. Finally, as described below, no other counties or county areas would have qualified under the formula this year (even with some liberalizing adjustments) that did not already qualify last year.

For the FY 1984 targeted assistance program, an initial list of counties was developed and screened according to the qualification criteria used in FY 1983. All counties that received awards for targeted assistance in FY 1983 for either refugees or entrants were included. In addition, ORR consulted with State refugee program officials to obtain their suggestions of additional counties for consideration. ORR also screened data on refugee arrivals in FY 1983 to identify counties that might have received significant numbers of refugees for the first time. A list of 70 counties (including Washington, D.C.) was derived from this review.

Analysis of the new data for the 70 counties indicated that no jurisdiction would qualify in FY 1984 that had not previously received targeted assistance funds in FY 1983. Further tests were performed to determine whether any area had approached qualification during the past year. This was found not to be the case. Therefore, a continuation of FY 1983 qualification was determined to be most appropriate for targeted assistance in FY 1984.

Under the previous, FY 1983, refugee targeted assistance program, a two-stage formula for qualification for, and allocation of, targeted asistance funds was utilized. The first stage of the formula defined the qualification of counties for targeted assistance through the use of four equally-weighted criteria which had been selected to collectively indicate local conditions and problems which the proposed program was intended to address. In order to qualify for application for targeted assistance funds, a county (or group of adjacent counties within the same Standard Metropolitan Statistical Area, or SMSA) was required to be above the median or above a selected cutoff point of jurisdictions for which data were reviewed in three of the four following criteria: (1) The number of refugees placed in the county during Federal fiscal years 1980–1982; (2) the ratio of the overall county population to the refugees in item (1), above; (3) the number of refugees in the county who were receiving cash assistance under the programs of aid to families with dependent children program (AFDC), including the unemployed parent (UP) portion of that program, and refugee cash assistance (RCA) on October 1, 1982; and (4) the ratio of refugees in item (3) to the number of refugees in item (1). A county which placed above the cutoff point in any three of the above categories qualified to apply for targeted assistance funds. It was then included in the list of qualifying localities for determination of its targeted assistance allocation.

The second stage of the FY 1983 targeted assistance formula was designed to reflect the relative level of need for funds among those counties which qualified to apply under the formula's first stage. The relative degree of need of each qualified locality was indicated by the number of refugees residing in that locality who were not self-sufficient. The Department thus noted the following single criterion as the basis for the allocation of targeted assistance funds among the eligible counties: The number of refugees residing in the county who had been in the United States 36 months or less and who were receiving cash assistance under AFDC, AFDC-UP, or RCA on October 1, 1982. (These data were adapted to represent refugee need for targeted assistance on a basis which makes some adjustment for the variation in caseloads caused by State-to-State assistance program differences. Estimates were calculated to provide funds to qualifying counties in States which do not have AFDC-UP, or in which refugee inclusion under AFDC-UP is non-existent or minimal, in order to provide an equitable level of funding in all qualifying localities, regardless of differences in Federal-State assistance program availability.) A county's allocation was, therefore, the proportion of available funds which equaled that county's proportion of all such refugee recipients residing in all counties which had qualified to apply for targeted assistance funds under the first stage of the formula.[*]

ORR believes that the adoption of this same approach for targeted assistance in FY 1984 is desirable because the circumstances of need remain parallel with last year and because program continuity under circumstances of ongoing need has been a major concern of commenters on previous **Federal Register** notices of funding availability published by ORR.

While recognizing that differing views may exist, we believe that these measurable criteria comprise good indicators of high-need counties and that the proposed cutoff points established a reasonable basis for identifying those counties which had and still have the greatest need for targeted assistance funds. The basic intent of the targeted assistance program remains: To concentrate available funds in those areas where there are appfeciable numbers fo unemployed and dependent refugees and entrants on whose behalf special self-support efforts are required.

VI. Allocation Amounts

The allocation amounts available for FY 1984 refugee and entrant targeted assistance are shown in Table 1.

TABLE 1.—COUNTIES WHICH QUALIFY FOR THE FY 1984 TARGETED ASSISTANCE PROGRAM AND ALLOCATION AMOUNTS

County, state	Allocation amount
Alameda CA	$1,483,669
Contra Costa CA	424,217
Fresno CA	819,281
Los Angeles CA	7,492,324
Merced CA[a]	1,000,000
Orange CA	3,333,843
Riverside/San Bernardino CA	423,226
Sacramento CA	1,269,875
San Diego CA	2,484,814
San Francisco CA[b]	1,928,314
San Joaquin CA	1,281,378
Santa Clara CA	2,481,839
Stanislaus CA	231,842
Denver CO[c]	500,518
Washington DC	54,738
Broward FL	832,484
Dade FL	14,458,016
Hillsboro FL	281,618
Palm Beach FL	345,833
Honolulu HI	551,152
Cook/Kane IL	2,588,995
Sedgwick KS	540,500
Orleans LA[d]	421,467
Montgomery/Prince Georges MD	512,735
Middlesex MA	405,046
Suffolk MA	929,612
Hennepin MN	653,096
Ramsey MN	918,292
Jackson MO[e]	316,209
Essex NJ	138,747
Hudson NJ	928,433
Union NJ	186,377
New York NY[f]	2,071,504
Multnomah OR[g]	1,407,416
Philadelphia PA	953,382
Providence RI	688,095
Harris TX	1,129,253
Salt Lake UT[h]	343,292
Arlington VA	594,857
Fairfax VA[i]	717,333
King/Snohomish WA	1,713,650
Pierce WA	356,222

[a] Merced County, which received a seperate targeted assistance grant for this amount in FY 1983, is included in the FY 1984 targeted assistance program for purposes of administrative efficiency, and will be included in California's State targeted assistance application.

[b] Includes Marin and San Mateo Counties.

[c] Includes Adams, Arapahoe, and Boulder Counties.

[d] Includes Jefferson Parish.

[e] Includes Wyandotte County, KS.

[f] Includes the five boroughs.

[g] Includes Clackamas and Washington Counties and Clark County, WA.

[h] Includes Davis and Utah Counties.

[i] Includes the independent cities of Alexandria, Fairfax, and Falls Church.

VII. Allowable Activities

Allowable activitiesunder the FY 1984 targeted assistance program include any activity permissible under section 412(c) of the INA which is directly related to the furtherance of refugee economic self-sufficiency by aiding refugees in finding and retaining jobs, increasing refugee employability potential, and/or enhancing refugee job market possibliities. Creative approaches to such activities are encouraged. Allowable activities include, for example, job development, job placement, business and employer incentives (such as on-site employee orientation and vocational English training, or bilingual supervisor assistance), business technical assistance, short-term job training specifically related to opportunities in the local economy, and on-the-job training. Use of targeted assistance funds for venture capital, either as grants or loans, to provide working capital associated with the acquisition of land, buildings, equipment or the operating budget for a business (except in the case of equipment or business operating budgets required for a specific traiing activity) is specifically not allowed. Proposals which include voluntary corporate participation and a generally high degree of business and refugee group involvement are especially welcomed.

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[*] Targeted assistance funds were allocated for entrants to qualifying counties on a per capita basis because other types of data that might have indicated need were not available for all areas and therefore could not be utilized uniformly.

Stipends or needs-based payments to program participants are allowed if no other source of support is available to them and it can be demonstrated that support is essential to their participation in a job preparation or training project. In any case, no more than 30% of funds used for this program component are allowed to be used for such payments. Essential support services, such as day care and transportation, are allowable only when it is demonstrated that they are directly related to the employment of those idetified as the target populations, or are a necessary component in the employability plan of those targeted assistance clients.

Also allowable are other services which are not directly related to the employement of individual clients but which are nonetheless identified and demonstrated in the county plan to be essential services in addressing extreme and unusual needs of the refugee and/or entrant population in the targeted assistance area. Subject to State review and approval, a maximum of 15% of the allocation amount for each area maybe used in funding these services. In the event that the State wishes to support a local area's request to allocate more than 15% of its funds for non-employment-related services, the State must seek formal approval of ORR. Since ORR discourages such arrangements, only the most extreme need will be considered adequate justification to support the requests. Allowable services under this special needs provison could include any activity allowable under section 412(c)(3) of the INA. In order to justify the provision of services for extreme and unusual needs, a county plan must identify the target population and clearly demonstrate the nature and extent of the needs, and must describe how the use of targeted assistance funds for the proposed purposes contributes to the adjustment of the refugee/entrant population in the community.

VIII. Application and Implementation Process

Under the FY 1984 targeted assistance program, States apply for and receive grant awards on behalf of qualified counties in the State. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans. On the basis of the acceptability of these county plans, the State will award the appropriate amount of funds to each qualified county or local administering entity.

States are allowed to submit applications to ORR at any time from the date of previous written notification to States until the application deadline specified by this anouncement. Reasonable and identifiable planning costs may be incurred by the State during this period. The award of funds to States with acceptable applications will then be made as soon as possible after such determination, but in any case by September 30, 1985.

Upon notification of the acceptability of its application and the award of funds, a State will notify the qualified counties in its jurisdiction that it is able to review proposed county plans for the use of FY 1984 targeted assistance funds. Due dates, consultation and review procedures, and other aspects of the process of county plan development and submission must be established by the State and included in a timetable in its own application to ORR. However, a State is required to award the appropriate allocation amount to a county in sufficient time to allow continuity of services which were initiated with FY 1983 funds and which the State determined to be acceptable in its county plan review.

States may apply for a grant of up to eighteen months, with the grant period ending no later than March 31, 1987. Except for planning, application preparation and review, procurement processes, and funding for new or expanded activities, States and local areas must use funds awarded under the FY 1983 targeted assistance awards prior to using funds issued under FY 1984 targeted assistance awards.

It should be noted that in instances where a State will act as the local administering entity and/or provider of direct services, ORR will receive, review, and determine acceptability of individual, local targeted assistance plans. This review process will parallel that of the normal State review of county-administered plans. ORR requests that States which are administering local targeted assistance programs submit their plans to ORR for review and approval at least 60 days prior to the desired date of program implementation.

IX. Application Content

In applying for targeted assistance funds, a State agency is required to provide the following:

1. Assistance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs—e.g., social services, cash and medical assistance, etc.

2. Assurance that the State has consulted with targeted assistance entities (counties) in its development of State application guidelines.

3. A description of the State's guidelines for the required content of county targeted assistance plans. Acceptable county plans must minimally include the following:

a. Procedures for carrying out a local planning process for determining targeted assistance priorities and service strategies. All local targeted assistance plans will be developed through a planning process that involves, in addition to presentatives of the local planning agency, representatives of the private sector (for example, private employers, Private Industry Council, Chamber of Commerce, etc.), leaders of refugee/entrant community-based organizations, voluntary resettlement agencies where such exist, and other public officials associated with social services and employment agencies.

b. Assurance that all services will be provided by qualified providers (public or private, non-profit or for-profit, agencies or individuals).

c. Identification of refugee/entrant populations to be served by targeted assistance projects, including approximate numbers of clients to be served, a description of characteristics and needs of targeted populations, priortization of refugee/entrant clients to be served, and justification for the designation of specific client populations.

d. Identification and justification of specific strategies to meet needs of targeted populations. These should be justified where possible through analysis of strategies and outcomes from projects previolusly implemented under the FY 1983 targeted assistance program, the regular refugee social service programs, and any other services available to the refugee population.

e. Relationship of proposed FY 1984 targeted assistance projects to FY 1983 funded projects. Identify procedures which will prevent any duplication of services to individual clients should any components of the two grants overlap.

f. Relationship of targeted assistance projects to other services available to refugees/entrants in the county including State-allocated ORR social service programs.

g. Justification for support services as they relate to the removal of barriers to employment of the specified targeted populations.

h. Analysis of available empoyment opportunities and relationship of targeted assistance strategies to local employment opportunities. Examples of acceptable analyses of employment opportunities might include a review of studies conducted by the city/county or State institutions on employment opportunity forcasts which would be appropriate to the refugee population, surveys of presently effective employment service providers, and employers or potential employers of refugee clients.

i. Statement of projected performance outcomes for each program component including the number of full-time unsubsidized job placements, placements with at least 90 days' retention on the job, etc., at six and twelve month periods.

j. Monitoring and oversight responsibilities to be carried out by county or qualifying local jurisdiction.

k. Reporting requirements including at a minimum, the frequency of submissions and data elements outlined in (i) above.

l. Justification for any service not directly related to the employment of individual clients as addressing extreme and unusual needs of the refugee and/or entrant population. Adequate justification must include a discussion of the extent of extreme and unusual need and indicate number of refugees/entrants to be served, absence of or limited availability of necessary resources, and the expected results from the provision of the proposed services without specific ORR prior approval, a maximum of 15% of the allocation amount for each targeted area is allowed.

m. Program component summary which includes a justification for the projected allocation for the component, including relationship of funds allocated to numbers of clients served, characteristics of clients, projected outcomes and cost per placement. In addition, the program component summary should describe specific services or activities inclusive of equipment for training purposes and stipends (if applicable), duration of training and services, ancillary services or subcomponents such as day care or language training, and any other activities relevant to determining the basis for the projected cost of the component. Such justification shall constitute the basis for determing the reasonablenees of the costs of the services in relationship to client needs and outcomes.

n. Assurance that the local administrative budget will be limited to the amount available as indicated in the schedule below:

TABLE 2.—SCHEDULE OF ALLOWABLE ADMINISTRATIVE COST AMOUNTS

Allocation amount for local targeted assistance area	Allowable percentage for administrative costs (percent)	Maximum amount for administrative costs
$500,000 or below	15	$75,000
500,001 to $600,000	14	84,000
$600,001 to $700,00	13	91,000
$700,001 to $800,000	12	96,000
$800,001 to $900,000	11	99,000
$900,001 and above	10	(1)

Depends on allocation.

Note.—The Targeted Assistance grants are cost-based awards. Neither a State nor a county is "entitled" to a certain amount for administrative costs. Rather, administrative cost requests should be based on and defended as projections of actual needs. The amounts shown above reflect only the maximum which may be claimed.

o. Assurance from States that elect to administer the program directly or otherwise to provide direct service to the refugee/entrant population (with the concurrence of the county), that the State will not request or use targeted assistance funds for program services in the target area for which it will serve as administering entity until the local targeted assistance plan has been reviewed and approved by ORR. The State must provide ORR with the same information required above under Point 3 for review and prior approval. The State should provide ORR with this plan at least 60 days prior to the date of desired program implementation.

4. A description of the process for awarding funds to the local area, to include:

a. An identification of the local administering entity, procedures for selection of such if other than local government, and award instrument to be used.

b. Assurance that any deviation from having the qualified county administer the TA grant occurs with the concurrence and approval of the designated county or qualified local jurisdiction.

c. A workplan which describes major activities and timetables for their completion, including identification of the period during which local entities could incur planning costs.

d. Procedures for the review and approval of local plans. At a minimum, these procedures must enable the State to ensure that all elements required under (3) above have been met and that an objective review process is carried out consistent with State requirements.

e. A timetable indicating the approximate dates by which qualifying counties shall receive FY 1984 funds.

f. Assurance that no county will receive funds for new or continuing projects until such time as funds for such continuing projects have been obligated and demonstrable evidence (based on at least 6 months project activity) exists that such projects should be continued or expanded, should the county so decide.

g. Other requirements which the State considers appropriate to assure an orderly funding process which accommodates the need to provide timely funding without prematurely funding projects or activities for which FY 1983 funds could be used, where limited project activity has occurred, or where performance assessments cannot be made.

5. A description of the State's plan for monitoring and evaluating the targeted assistance programs. Plan must minimally include the following:

a. Provision for consolidating program data to measure overall progress of program—i.e., number of persons being removed from cash assistance, number of persons in target populations securing employment with 90-day retention.

b. Provision for verifying and assessing quality of data submitted, corrective actions to be taken, and followup.

c. Provision for relating program data with financial data to determine service costs as well as cost effectiveness of service components.

d. Provision for timely submission of complete, accurate, and unduplicated outcome data on all components of individual targeted assistance plans so that categories or types of projects can be tracked and assessed.

e. Description of State's plan for fiscal and programmatic monitoring of local projects.

f. Description of the State's procedures for reviewing changes in county plans which require prior approval in accordance with 45 CFR Part 74, Subpart L and the appropriate cost principles. The State agency shall assume with the receipt of its FY 1984 targeted assistance award all programmatic responsibility for issues relating to FY 1983 awards to qualifying local jurisdictions. These responsibilities shall cover determinations about modifications to an approved scope of work and amendments to grant awards. Where modifications involve grant period or carry-over the State agency shall require the concurrence of ORR in order to effect such changes in either FY 1983 and 1984 awards.

6. Projected line item and budget justification of State administrative costs not to exceed 5% of the total award.

7. Assurance that the State will adhere to the provisions of its approved Cost Allocation Plan for Public Assistance Programs as mandated under 45 CFR Part 95, Subpart E.

8. Assurance that the State make available to the county or designated local entity not less than 95% of the amount of its formula allocation for purposes of implementing the activities proposed in its plan.

9. Assurance that the State will not support county administrative costs in excess of those amounts allowed under this Notice.

10. Assurance that the State will follow or mandate that its subrecipients will follow appropriate procurement standards in the acquisition of services. Applicable standards are outlined in Subpart P of the Department's grants administration regulations 45 CFR Part 74. In essence, this subpart provides that agencies of government (e.g., State, county) follow the provisions of Attachment O of OMB Circular A-102 and that non-profit organizations follow provisions of Attachment O of OMB Circular A-110. Both attachments are included as appendices to 45 CFR Part 74. The exception would involve a situation in which an agency of government (e.g., State, county) sought to acquire services from another agency of government (e.g., county or county welfare agency). In such cases, the procurement standards of the agency of government (State, county) acquiring the services would apply.

11. The following additional information is required from States which have already filed applications for the amounts which were specified in the February 28 notice: (1) A revised projected line item budget and justification of State administrative costs not to exceed 5% of the total award, reflecting the higher amounts specified in this notice; and (2) any revision in the grant period applied for in conformity with this notice.

X. Review, Technical Assistance, and Award Procedure

Applications will be reviewed on a non-competitive basis to determine acceptability. Such determination will be based on the completeness of the submission (according to the requirements of section IX, above). The Department will provide technical assistance to the applicant if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance if requested by the applying State agency. Final determination as to the acceptability of applications is at the discretion of the Director of ORR.

IX. HHS Regulations That Apply

The following HHS regulations apply to grants under this Notice:

42 CFR Part 441, Subparts E and F, Services: Requirements and limits applicable to specific services—Abortions and Sterilizations,

45 CFR Part 16, Department grant appeals process,

45 CFR Part 74, Administration of grants,

45 CFR Part 75, Informal grant appeals procedures,

45 CFR Part 80, Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare effectuation of Title VI of the Civil Rights Act of 1964,

45 CFR Part 81, Practice and procedure for hearings under Part 80 of this title,

45 CFR Part 84, Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance,

45 CFR Part 95, Subpart E, General Administration—Grant Programs (Public assistance and medical assistance)—Cost Allocation Plans.

XII. Reporting and Recordkeeping

Section IX of this announcement establishes application and reporting requirements that require review and approval by OMB under the Paperwork Reduction Act and 5 CFR Part 1320.

Applications for these grants are to be submitted on Form SSA-96 (with recently redesigned face page, form 424) which has current OMB approval (0960-0184). In completing Form SSA-96, States must address the criteria listed in Section IX.

Financial reporting is to be provided semiannually on Standard Form 269 (80-R0180). These reporting requirements directly follow Departmental grants administration regulations at 45 CFR Part 74.

ORR currently requires grantees to report semiannually on their oversight of the implementation of county plans for targeted assistance, and expects to issue guidelines regarding specific data elements on services provided and employment objectives achieved with these guidelines as indicated under section 3507 of the Paperwork Reduction Act of 1980 and 5 CFR Part 1320. Grantees will be notified at such time as this approval is provided.

(No Catalog of Federal Domestic Assistance number has been assigned)

Dated: September 7, 1984.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

[FR Doc. 84-24786 Filed 9-18-84; 8:45 am]

BILLING CODE 4190-11-M

Refugee Resettlement Program; Formula for Allocations to States of FY 1984 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), SSA, HHS.

ACTION: Final notice.

SUMMARY: This notice establishes the formula for allocation to States of FY 1984 funds for social services under the Refugee Resettlement Program (RRP). The formula yields the allowable allocation of FY 1984 refugee and Cuban/Haitian entrant social service funds for each State participating in the RRP.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: David Howell (202) 245-1923.

SUPPLEMENTARY INFORMATION: Notice of the proposed formula for the allocation of FY 1984 social service funds was published in the **Federal Register** on February 13, 1984 (49 FR 5383). Since that date, the Congress has clarified that the amount available for funding for refugee/entrant social services during FY 1984 is $71,700,000, rather than $44,400,000 as originally announced.

This increased amount removes the necessity of creating a hold-harmless supplement through the use of targeted assistance funds, as anticipated in the proposal. No other major changes have been made in the formula allocations as a result of comment on the previously published proposal. However, one modification (the addition of a hold-harmless provision under the MAA allocation) and some technical changes were made.

I. Amounts Available for Allocation

The Office of Refugee Resettlement (ORR) will make available $71,700,000 in FY 1984 refugee/entrant social service funds and $77,500,000 in FY 1984 refugee/entrant targeted assistance funds. (A total of $4,000,000 of the FY 1984 appropriation of $81,500,000 in targeted assistance funds was approved by Congress for reprogramming to a separate budget category for Preventive Health Care.) This determination has been made based upon a clarification by Congress that the amount of funds available under the Second Continuing Resolution for FY 1984 (Pub. L. 98-151) for social services and targeted assistance be at the same level as in FY 1983. Funding allocations for targeted assistance are announced in a separate notice.

Of the total of $71,700,000 in social service funds, the Director of ORR will make available to States during FY 1984 $70,205,739 for purposes of providing social services to refugees and entrants. Separate announcements have been made for additional funds not included in this notice.

All allocation figures include both refugees and entrants, since both populations may be served through funds addressed in this notice.

Of the $70,205,739 covered by this notice, the Director will allocate funds directly to States in the following manner:

- $60,000,000 will be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. less than 3 years as of October 1, 1983.
- $290,576 of the available social services funds will be allocated to States which have particular needs associated with small refugee/entrant populations in order to provide a floor of $75,000 for States with fewer than 500 refugees/entrants.
- $6,598,475 of the available social service funds will be used to assure that, under the revised allocations, no State's allocation is below the proposed amount announced in the notice of February 13.
- $3,316,688 of the available social service funds will be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a $5,000 floor and funds to hold harmless those States which received MAA incentive grants from ORR in FY 1983) in order to provide targeted service funds as an incentive for States to fund refugee/entrant mutual assistance associations (MAA's). States have been notified that a written assurance that these funds will be used for MAA's is required in order for a State to receive these funds. Separate guidance has been provided to States regarding this assurance.

The amount of social service funds being allocated under the formula is $60,290,576 (including adjustments to provide a minimum of $75,000 to each State, but excluding the separately-formulated MAA incentive supplements), an amount more than $3,000,000 greater than the $57,012,067 announced for formula allocation in the February 13 notice of proposed availability of funds for refugee and entrant social services. Nevertheless, a few States would receive less under the FY 1984 formula than had been announced in the February 13 proposal. This change results from the fact that a few States have considerably lower 3-year population bases (FY 1981-1982-1983) as applicable to the FY 1984 formula than they had as applicable to the FY 1983 formula, and the fact that the amounts indicated in the previous proposal were determined by providing a hold-harmless level of funding equal to 90% of each State's FY 1983 formula award amount.

We believe that reductions which would result from application of the FY 1984 population base reflect a reduced level of need for social service funds on the part of the affected States, relative to that of other States in the program. In this sense, we believe that it would have been both appropriate and fair to follow the formula allocation schedule if early notice had been provided. However, some States would receive a lower amount under the FY 1984 allocation formula in this notice than the amount expected under the February proposal (equal to 90% of their FY 1983 awards) due to changes in the population base, as indicated above. These States would experience reductions in relation to the funding amounts which they had anticipated and against which they had been planning throughout most of the current fiscal year if the FY 1984 formula were strictly followed. Therefore if a State is scheduled in this notice for a formula allocation lower than its hold-harmless amount as previously announced in the February 13 notice, ORR is providing a supplementary amount, $6,598,475, that will bring the actual FY 1984 social service award to the higher, previously announced, level. See Table 1, below.

ORR also believes that the continued and/or increased utilization of refugee mutual assistance associations in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. Therefore, $3,316,688 in social service funds will be awarded specifically for these organizations as an optional award to any State which would use the funds for this purpose and has complied with the Guidelines issued by the Director on July 2, 1984, for participation in this program.

The approximately $1,500,000 remaining in social service funds will be used on a discretionary basis to carry out individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program in service delivery and self-support, as described in the previous notice.

II. Discussion of Comments Received

Twenty-six comments were received during the public comment period in response to the notice of the proposed formula for the allocation to States of FY 1984 funds for social services for refugees and Cuban/Haitian entrants. Many of the commenters expressed concern about the proposed approach to social service allocations and some included recommendations for particular changes. These are summarized below and are followed in each case by the Department's response.

Comment: Some commenters objected to the amount of funds ($44.4 million) which was announced as available for social serivces in FY 1984.

Response: In order to provide a context for the discussion of the proposed formula for social service allocations, the notice included a statement of available funds under the Second Continuing Resolution for FY 1984 (Pub. L. 98-151). The notice indicated that the Continuing Resolution (CR) level for social services had been calculated by the Department based on the same assumptions as were used in the FY 1983 budget request. This calculation produced a CR level of $44.4 million, which is $27.3 million below the FY 1983 level.

Since the publication of the notice of proposed availability of funds, the Congress clarified its intent that the amount available for social services under the Continuing Resolution in FY 1984 is $71,700,000.

Comment: Most of the commenters who objected to the social service funding level, above, disagreed with the necessity of using targeted assistance funds to prevent a severe reduction in available social service funding. The proposal stated that about $16.6 million of available targeted assistance funds would be used to provide States with allocation adjustments, if necessary, to help maintain service program stability. While not all commenters objected to the idea of providing an adjustment, most stated that such an allocation should not be necessary (given their a priori disagreement with the funding level) and that they did not want targeted assistance funds to be used for that purpose.

Response: As a result of the change in the amount of available funds from $44,400,000 to $71,700,000, the need to use targeted assistance funds to ensure social service program stabilitly no longer exists. This part of the proposal has been removed from the present announcement.

Comment: A few commenters expressed dissatisfaction with the population base used in the formula. Those commenters stated that the 3-year base is too short and does not provide sufficient funds for refugees who have been in the country longer than three years.

Response: The Department has argued elsewhere (47 FR 22566; 47 FR 42634; 48 FR 24996; as well as the proposal under discussion at 49 FR 5383) that the 3-year population base is a sound approach to social service allocation because (1) it reflects population trends over a period of time in which refugees have the greatest need for services, (2) it is not subject to the instability of short-term biases, (3) it provides some incentive for States to use their program funds for priority services, and (4) it is consistent with program policies and priorities of ORR to provide services to refugees in order that they become self-sufficient as quickly as possible. The Department continues to believe that the 3-year population base is most appropriate for the allocation of social service funds.

It should be noted that an extension of the population base to a longer period would not have the effect that most of the commenters (who are from States with relatively few Cuban or Haitian entrants) appear to anticipate since the inclusion of the more than 130,000 entrants who arrived in FY 1980 would result in a lower social service formula allocation to most States.

The Department believes that the targeted assistance allocations provide the most appropriate means of addressing needs based on longer term populations.

Comment: Several commenters indicated that they found the proposed amounts to be inequitable. They cited differences in State percentages of refugees versus percentages of funding amounts as evidence that the proposal, by using the 90% (of the FY 1983 formula allocation) hold-harmless, does not distribute funds on the basis of population alone.

Response: The formula allocation of $60,000,000 under the present notice removes the need for the types of formula adjustments which led to such concern.

Comment: A few commenters objected to the proposed use of approximately $3,300,000 for the purpose of providing incentive funds for States to involve refugee mutual assistance associations (MAA's) in service delivery. Others supported the proposal strongly but believed that in cases where the proposed formula would allow an amount to a State lower than that which it received in FY 1983 under a national competitive program for the same purpose, the previous, higher, amount should be continued.

Response: Although in many areas little involvement of refugee mutual assistance associations has been achieved, the Department believes that the development of this service resource is an important part of the continued progress of refugees. Ethnicity-based self-help is a well-established and proven phenomenon of many groups throughout the United States. The use of refugee program funds to further this kind of activity for recently-arrived refugee groups, at a State's discretion, is a simple and effective means of encouraging the programmatic involvement of those groups in their own adjustment.

The Department does not intend to discourage those States which have previously worked with MAA's to include them in current service activities. Therefore we concur with the recommendation to provide FY 1984 funding for those States at a level not less than the amount they received under the MAA incentive grant program in FY 1983. We have thus added funds to the national MAA allocation total and have amended the allocations to the eleven States which otherwise would have suffered losses.

III. Allocation Formula

Of the funds available for FY 1984 for social services, $60,000,000 will be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System; the resultant per capita amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1983, adjusted for estimated secondary migration.

4. The calculation above will yield the formula allocation for each State. As necessary, adjustments will be made to provide a floor and to provide no less than the amount announced at 49 FR 5385, February 13, 1984, Table 1, in order to prevent service disruption.

5. MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States.

While the formula is based on the 3-year refugee and entrant population, social service programs are not limited to refuges who have been in the U.S. only three years. States may provide services without regard to an indiviudal refugee's or entrant's length of residence. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1984 are based on data from the ORR Refugee Data System, adjusted as of October 1, 1983, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after 9/30/80. Slight changes have been made in the estimated State refugee population totals since the publication of the proposed formula on February 13, 1984, to reflect new data received. Two States submitted late data on secondary migration on Form ORR-11, so a new set of adjustments for secondary migration was calculated and applied to all States. Two States submitted convincing evidence of larger time-eligible populations than had been estimated previously, and their population estimates were revised accordingly.

For fiscal year 1984, ORR's formula allocations to the States for support services for refugees are based on the numbers of refugees who arrived and on the numbers of entrants who arrived or were resettled during the preceding three fiscal years: 1981, 1982, and 1983. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between 10/1/80 and 9/30/83 who are thought to be living in each State as of 10/1/83. The population estimates for the FY 1984 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

Estimates have been developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. In doing so, ORR excluded from the population totals nationwide 11,912 refugees who were resettled subject to a full Federal match of $1,000 under ORR's matching-grant program with national voluntary refugee resettlement agencies. The social service funds available to serve non-matching-grant refugees are limited and are, therefore, directed to the areas where those refugees live.

Table 1 below, shows the estimated three-year populations, as of October 1, 1983, of all refugees and entrants (col. 1), excluding those matching-grant refugees discussed above; the formula amounts which the population estimates yield (col. 2); the additional allocations required to provide a minimum $75,000 floor and to assure that no State receives less than the amount previously announced (col. 3); the allocation amounts (col. 4) after allowing for the minimum amounts and the adjustment so that no State receives less than the amount announced at 49 FR 5385, February 13, 1984, Table 1; and, the amounts available as an incentive to States to use MAA's as service providers (col. 5).

V. Allocation Amounts

The following allocation amounts are available for refugee social services in FY 1984:

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE ALLOCATIONS, BY STATE, FOR FY 1984

State	Formula population (1)	Social service formula amount (2)	Additional allocation to reach proposed level [a] (3)	Total allocation (4)	MAA incentive award (5)
Alabama	1,255	$230,770	$0	$230,770	$11,539
Arizona	2,674	491,696	0	491,696	35,000
Arkansas	1,187	218,266	0	218,266	10,922
California	104,367	19,191,049	0	19,191,049	959,825
Colorado	5,144	945,881	0	945,881	47,306
Connecticut	4,071	748,577	0	748,557	37,431
Delaware	69	12,688	[c] 62,312	75,000	5,000
Dist. Columbia	2,075	381,552	0	381,552	75,000
Florida	20,219	3,717,878	[a] 5,022,787	8,740,665	185,906
Georgia	5,190	954,339	0	954,339	72,072
Hawaii	2,182	401,227	[b] 65,838	467,065	20,071
Idaho	639	117,500	0	117,500	5,874
Illinois	13,043	2,398,352	0	2,398,352	119,962
Indiana	1,551	285,199	0	285,199	14,256
Iowa	2,909	534,908	[b] 78,988	613,896	26,756
Kansas	4,335	797,122	0	797,122	39,861
Kentucky	949	174,508	[b] 7,026	181,529	8,755
Louisiana	4,724	868,651	0	868,651	43,435
Maine	898	165,125	0	165,125	8,260
Maryland	4,595	844,931	0	844,901	42,246
Massachusetts	9,721	1,787,502	0	1,787,502	89,393
Michigan	5,698	1,047,751	0	1,047,751	52,498
Minnesota	7,875	1,448,058	[a] 629,563	2,077,621	75,000
Mississippi	807	148,392	0	148,392	7,423
Missouri	3,283	603,679	0	603,679	30,186
Montana	192	35,305	[b] 54,695	90,000	5,000
Nebraska	1,033	189,948	0	189,948	9,501
Nevada	1,103	202,820	0	202,820	10,144
New Hampshire	408	75,023	0	75,023	5,000
New Jersey	4,678	860,193	[a] 256,507	1,116,700	43,030
New Mexico	1,123	206,498	[b] 46,854	253,352	10,332
New York	18,402	3,383,766	0	3,383,766	169,259
North Carolina	2,412	443,520	0	443,520	22,183
North Dakota	645	118,603	0	118,603	5,936
Ohio	4,205	773,217	0	773,217	75,000
Oklahoma	3,628	667,118	0	667,118	48,809
Oregon	6,456	1,187,132	[a] 171,747	1,358,879	74,895
Pennsylvania	9,988	1,836,598	0	1,836,597	91,852
Rhode Island	4,177	768,069	0	768,069	75,000
South Carolina	1,135	208,704	0	208,704	10,438
South Dakota	436	80,172	[b] 9,828	90,000	20,000
Tennessee	2,648	486,915	0	486,915	24,348
Texas	23,554	4,331,120	0	4,331,120	216,649
Utah	3,603	662,521	[b] 2,350	664,871	66,900
Vermont	240	44,131	[c] 30,869	75,000	5,000
Virginia	10,768	1,980,024	0	1,980,024	99,021
Washington	12,448	2,288,944	0	2,288,944	114,585
West Virginia	203	37,328	[c] 37,672	75,000	5,000
Wisconsin	3,191	586,762	[b] 291,987	878,749	75,000
Wyoming	108	19,859	[c] 55,141	75,000	5,000
Guam	55	10,113	[c] 64,887	75,000	5,000
Totals	326,299	60,000,000	6,889,051	66,889,051	3,316,688

[a] As proposed at 49 FR 5385, February 13, 1984, Table 1.

[b] Amount allocated to provide no less than the amount announced at 49 FR 5385, February 13, 1984, Table 1.

[c] Amount allocated to provide a $75,000 floor to States with fewer than 500 refugees/entrants.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: September 7, 1984.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

[FR Doc. 84-24786 Filed 9-18-84; 8:45 am]

BILLING CODE 4190-11-M

National Institutes of Health

National Cancer Institute; Meeting of National Cancer Advisory Board and Board Subcommittees

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, September 24-26, 1984, National Cancer Institute, James A. Shannon Building (Building 1), Wilson Hall, Third Floor, National Institutes of Health, Bethesda, Maryland 20205. Meetings of Subcommittees of the Board will be held September 23-25 at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 522b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winfred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meetings and rosters of Board members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5147) will furnish substantive program information.

This notice was not published within the customary scheduled period because of the time frame involved in setting up the meeting and the agenda.

Name of Committee: *National Cancer Advisory Board.*

Dates of meeting: September 24-26, 1984.

Place of meeting: James A. Shannon Building (Building 1), Wilson Hall, Third Floor, National Institutes of Health.

Open:

September 24, 8:30 a.m.—recess.

September 26, 8:30 a.m.—adjournment.

Agenda

Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; the White House and Health Science Policy; New NCI Mechanisms Update; the NIH Peer Review Appeals System; NCAB Subcommittee Structure; and reports of the Subcommittees of the Board.

Closed session: September 25, 8:30 a.m.—recess.

Closure reason: To review grant applications.

Name of Committee: *Subcommittee on Cancer Control and the Community.*

Date of meeting: September 23, 1984.

Place of meeting: Building 31, A Wing, Conference Room 11A10, National Institutes of Health.

Open: September 23, 6:30 p.m.—adjournment.

Agenda

To discuss DRGs—impact on cancer care and patients on clinical trial.

Name of Committee: *Subcommittee on Special Actions for Grants.*

Date of meeting: September 25, 1984.

Place of meeting: James A Shannon Building (Building 1), Wilson Hall, Third Floor, National Institutes of Health.

Closed: September 25, 8:30 a.m.—recess.

Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program Numbers: 13.392, project grants in cancer construction. 13.393, project grants in cancer cause and prevention. 13.394, project grants in cancer detection and diagnosis. 13.395, project grants in cancer treatment. 13.396, project grants in cancer biology. 13.397, project grants in cancer centers support. 13.398, project grants in cancer research manpower. 13.399, project grants and contracts in cancer control)

Dated: September 12, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-25053 Filed 9-18-84; 11:40 am]

BILLING CODE 4140-01-M

Meeting of National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on September 25 and 26, 1984 in Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 25 from 8:30 a.m. to 12:00 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available.

Meeting of the full Council and its subcommittees will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The following subcommittees will be closed to the public on September 25, 1984, from 1:00 p.m. to adjournment: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on September 26, from 8:30 a.m. to approximately 12:00 p.m.

The full Council will then be open for the reports of the Division Directors on September 26 from approximately 1:00 p.m. to adjournment at 3:30 p.m.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Acting Executive Secretary, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 637, Bethesda, Maryland 20205 (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building, 31, Room 9A47, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5765.

(Catalog of Federal Domestic Assistance Program No. 13.846-849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 12, 1984.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 84-25052 Filed 9-18-84; 11:40 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-81470]

Notice of Proposed Withdrawal and Opportunity for Public Meeting, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides an opportunity for public comment pursuant to a proposed withdrawal and reservation of lands requested by the United States Coast Guard on May 31, 1983, for a radio facility to support icebreaker, search and rescue communications, C-130 aircraft support and environmental protection activities.

EFFECTIVE DATE: September 19, 1984; comments must be received on or before December 18, 1984.

ADDRESS: Comments and meeting requests should be sent to: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271-5060.

SUPPLEMENTARY INFORMATION: Coast Guard, Department of Transportation, filed an application to withdraw the following described land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Umiat Meridian

T. 23 N., R. 18 W.,

Beginning at a True Point of Beginning located approximately 2,527.5 ft. West of the U.S. Coast and Geodetic Survey Station "Pt. Barrow South Base" as outlined in PLO 2344 and on the southern boundary of Tract "A" of the U.S. Air Force Reserve: Thence West approximately 2,160 ft. along the southern boundary of Tract "A" to the southwest corner of Tract "A"; Thence West approximately 2,700 ft. to a point; Thence South 4,800 ft. to a point; Thence East 4,860 ft. to a point; Thence North 4,800 ft. to the True Point of Beginning.

The area described contains approximately 536 acres located near Point Barrow, Alaska.

The purpose of the proposed withdrawal is to maintain a radio facility to support icebreaker, search and rescue communications, C-130 aircraft support, and environmental protection activities.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are licenses, permits, cooperative agreements, or other discretionary land use authorizations of a temporary nature.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the applicant agency.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 84-24796 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-JA-M

[F-81469]

Notice of Proposed Withdrawal and Opportunity for Public Meeting, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides an opportunity for public comment pursuant to a proposed withdrawal and reservation of lands requested by the National Oceanic and Atmospheric Administration, on May 16, 1983, for a Geophysical Monitoring for Climatic Change Observatory.

EFFECTIVE DATE: September 19, 1984; comments must be received on or before December 18, 1984.

ADDRESS: Comments and meeting requests should be sent to: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271-5060.

SUPPLEMENTARY INFORMATION: On May 16, 1983, the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Umiat Meridian

T. 23 N., R. 18 W.,

Beginning at corner No. 1, approximately 18 chains N. 22°18' W. from the USC&GS "Point Barrow-South Base 1945 Monument." From the initial point South 37.88 chains to corner No. 2; East 30.3 chains to corner No. 3; North 37.88 chains to corner No. 4; West 30.3 chains to corner No. 1, the place of beginning.

The area described contains approximately 115 acres, near Point Barrow, Alaska.

The purpose of the proposed withdrawal is for the Geophysical Monitoring for Climatic Change Observatory.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 84-24790 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-JA-M

[N-39138]

Order Providing for Opening of Lands; Nevada

September 10, 1984.

1. In a donation of land made under Sec. 205 of the Federal Land Policy Management Act of October 21, 1976 (90 Stat. 2755; 43 U.S.C. 1715) the following land, including minerals, has been conveyed to the United States:

A parcel of land situated in the N½ of the NW¼ of Section 25, T. 18 N., R. 24 E., M.D.B. & M., and being more particularly described as follows:

Beginning at the section corner common to sections 23, 24, 25 and 26, T. 18 N., R. 24 E., M.D.B . & M., thence due East for a distance of 2258.31 feet, thence South 68°59′ West for a distance of 2419.25 feet, thence due North for a distance of 867.64 feet, to the point of beginning, containing 22.28 acres, more or less.

A parcel of land situated in the SE¼ of the SE¼ of the SE¼ of Section 23, T. 18 N., R. 24 E., M.D.B. & M., and being more particularly described as follows:

Beginning at the section corner common to sections 23, 24, 25 and 26, T. 18 N., R. 24 E., M.D.B. & M., thence due North for a distance of 203.64 feet, thence South 68°59′ West for a distance of 583.71 feet, thence due North 89°24′ East for a distance of 544.91 feet, to the point of beginning, containing 1.27 acres, more or less.

These lands are located in Lyon County, Nevada.

2. Upon acceptance of title, the subject land became part of the public lands administered by the Bureau of Land Management. At 9:00 a.m. on October 19, 1984 the land described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable laws. All valid applications received prior to 9:00 a.m. on Octobber 19, 1984 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on October 19, 1984, the land will be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing and material sale laws.

4. Inquiries concerning the lands should be addressed to the District Manager, 1050 E. William Street, Suite 335, Carson City, NV 89701.

William J. Malencik,

Deputy State Director, Operations.

[FR Doc. 24801 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-HC-M

Notice of Realty Action; Exchange of Public Lands; Cibola County, NM

AGENCY: Bureau of Land Management, Albuquerque District Office, Interior.

ACTION: Notice of realty action on proposed land exchange.

SUMMARY: This notice is to advise the public that the Albuquerque District of the Bureau of Land Management (BLM) is proposing to exchange 160 acres of public land in Cibola County, New Mexico for 160 acres of private land in the same section.

SUPPLEMENTARY INFORMATION: The BLM has determined that the 160 acres of public land described below are suitable for exchange under Sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

T. 8 N., R. 16 W., NMPM
Sec. 28, E½E½.

In exchange for these lands the Federal Government will obtain 160 acreas of private land from Norman Allen and his wife Aurora Vighi Allen described as follows:

T. 8 N., R. 16 W., NMPM
Sec. 28, S½NW¼, W½SW¼.

The purpose of this exchange is for the BLM to acquire the Ojo Pueblo Cultural Site, which is currently on the New Mexico Register of Historic Places and eligible for the National Register. No mineral values will be exchanged.

This exchange is consistent with recommendation L.6.1. In the BLM Management Framework Plan that was approved on February 1, 1983. That recommendation identified these public lands as being suitable for disposal. The public interest will be well served by making this exchange. The value of the lands to be exchanged is approximately equal, but the area will be adjusted or money will be used to equalize the values upon completion of the final appraisal.

This Notice of Realty Action will also be published once a week for three consecutive weeks in a newspaper of general circulation in the area of the lands to be transferred in the proposed exchange.

The terms and conditions applicable to this exchange are:

(1) A right-of-way shall be reserved thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

(2) All mineral deposits shall be reserved in the lands so patented and to its persons authorized by, the rights to prospect for, mine and remove such deposits, from the same under applicable law.

(3) All the geothermal steam and associated geothermal resources shall be reserved on the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits, upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1920 (84 Stat. 1566).

(4) A right-of-way 50 feet in width and approximately 1,320 feet in length shall be reserved across the public lands being conveyed in this exchange for use as a road by the United States of America, its licensees and permittees, including the right of access for the general public to other lands owned, administered or controlled by the United States.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Albuquerque District Office, Rio Puerco Resource Area, 3550 Pan American Freeway, N.E., Albuquerque, New Mexico 87107.

For a period of 60 days interested parties may submit comments to the District Manager at (P.O. Box 6770) 505 Marquette, N.W., Albuquerque, New Mexico 87197. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director this realty action will become the final determination of the Department of the Interior.

Michael F. Reitz,

District Manager (Acting).

[FR Doc. 84-24800 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-FB-M

Filing of Plat of Survey; Montana

SUMMARY: Plat of survey of the lands described below accepted August 15, 1984, will be officially filed in the Montana State Office effective 8 a.m. on November 7, 1984.

Principal Meridian, Montana

T. 4 N., R. 31 E.

This plat, in two sheets, represents the dependent resurvey of a portion of the First Standard Parallel North through Ranges 30 and 31 East; portions of the south, east, and west boundaries; and a portion of the subdivisional lines; and the survey of the subdivision of sections 10, 12, 16, 24 and 34, Township 4 North, Range 31 East, Principal Meridian, Montana. The area described is in Yellowstone County.

This survey was requested by the Lewistown District Office to facilitate their administrative needs.

EFFECTIVE DATE: November 7, 1984.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

DATED: September 5, 1984.

Linda M. Wagner,

Chief, Branch of Records.

[FR Doc. 84-24774 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-DN-M

[C-38719]

Colorado; Invitation for Coal Exploration License Application; Getty Coal Co.; Correction

The Notice of Invitation for coal exploration license application published Monday, August 6, 1984, page 31344, contains an incorrect land description in the second column (FR Doc. 84-20706). The description of lands in Sec. 24, T. 4 N., R. 87 W., 6th P.M. included in the application should read:

Sec. 24, all the S½S½NW¼NW¼, S½N½S½S½, S½S½S½, and that part of the S½S½NE¼SE¼ and the N½N½SE¼SE¼ lying south of a line beginning at the southwest corner of the N½N½SE¼SE¼ of Sec. 24, thence N. 63°16′ W. approximately 1473 feet to the northeast corner of the S½S½NE¼SE¼ of said section; and that portion of lands lying below the bottom of the Wadge coal seam in the SW¼NW¼, S½S½NE¼SW¼, NW¼SW¼, N½N½S½SW¼, S½N½NE¼SE¼, N½S½NE¼SE¼, S½S½NW¼SE¼, N½N½SW¼SE¼, and that part of the S½S½NE¼SE¼ and the N½N½SE¼SE¼ lying north of the line described herein.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 84-24773 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-JB-M

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet October 18–20, 1984. The meeting will be held at the Sally Port Inn, 2000 North Main, Roswell, New Mexico. Meeting hours on Thursday, October 18, will be from 3:30 to 5:00 p.m., following the Council's field tour of public lands in New Mexico. On Friday, October 19, the meeting hours will be 8:00 a.m. to 5:00 p.m., and on Saturday, October 20, the Council will meet from 8:00 a.m. to 12:00 noon. The proposed agenda for the meeting is:

Thursday, October 18: Afternoon meeting of Council subcommittees (Energy and Minerals, Renewable Resources, Lands, and Legislative/Administrative) following Council field tour.

Friday, October 19: Morning: Address by Assistant Secretary of the Interior for Land and Minerals Management; Panel discussion on oil, gas and potash development on the public lands; Panel discussion on user cooperation on the public lands; Meetings of Council subcommittees.

Afternoon: Public statement period; Report on previous Council resolutions and setting of dates and locations for future Council sessions; Meetings of Council subcommittees.

Saturday, October 20: Morning: Final meetings of Council subcommittees; Discussion of subcommittee recommendations and passing of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be provided for members of the public to make oral statements to the Council, beginning at 1:30 p.m., Friday, October 19. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by October 12 to the Bureau of Land Management's New Mexico State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: October 18, 19 and 20—Council Meeting. October 19—Public Statements.

ADDRESS: Copies of public statements should be mailed by October 12 to: Director, New Mexico State Office (912), Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504.

FOR FURTHER INFORMATION CONTACT: Karen Salter, Washington, D.C. Office, BLM. Telephone (202) 343-2054; or Sally Wisely, Public Affairs Chief, New Mexico State Office, BLM, Telephone (505) 988-6316.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of the Bureau.

Dated: September 14, 1984.

Robert F. Burford,

Director.

[FR Doc. 84-24843 Filed 9-18-84, 8:45 am]

BILLING CODE 4310-84-M

[AA-6661-C]

Alaska Native Claims Selection; Eklutna, Inc.

On August 16, 1984, Decision to Issue Conveyance (DIC) was issued to Eklutna, Inc., for the surface estate of certain lands in the vicinity of Eklutna, notice of which was published in the **Federal Register** (49 FR 32801-32802).

The purpose of this decision is to vacate in its entirety the DIC of August 16, 1984, due to errors in adjudication. A new decision will be issued at a later date.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-24781 Filed 9-18-84 8:45 am]

BILLING CODE 4310-84-M

[F-14944-B]

Alaska Native Claims Selection; Tozitna, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Tozitna, Limited, notice of which was published in the **Federal Register** (49 FR 31500) on August 7, 1984, is amended by deleting certain third-party interests.

Upon issuance, the amended DIC will be published once a week, for four (4) consective weeks, in the TUNDRA TIMES. Copies of the amended DIC can be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until October 19, 1984 to file an appeal on the issue in the amended DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Convenyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (1983)(as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Except as amended, the decision, notice of which was given August 7, 1984, is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-24780 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-JA-M

Utah; Classification Decision for State Indemnity Selection

1. The following described lands have been examined and found suitable for transfer to the State of Utah.

They are hereby classified for indemnity selection pursuant to sections 2275 and 2276 of the Revised Statutes as amended (43 U.S.C. Secs. 851, 852), and the regulations thereunder (43 CFR 2621):

T. 28 S., R. 22 E., SLM, Utah
  Sec. 6, SE¼NW¼.
  Containing 40 Acres.

2. The purpose of the indemnity selection is to allow the State of Utah to secure the benefits they are entitled to from a land grant made by Congress under the provisions of Section 6 of the Utah Statehood Act of July 16, 1894, (28 Stat. 109).

If there are no adverse comments received, it will be held that the lands are classified 60 days from date of publication of this notice in the **Federal Register** and this classification action will become the final determination of the Department of the Interior. Classification is pursuant to Title 43 Code of Federal Regulation, Subpart 2400 and section 7 of the Act of June 28, 1934.

4. Any existing grazing use authorized by license or permit from the Bureau of Land Management will be terminated if the lands are transferred out of Federal ownership. The State shall honor all leases, permits, contracts, and terms and conditions of user agreements on United States' lands.

5. Detailed information concerning the indemnity selection and proposed transfer to the State of Utah is available for review at the Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111 (801-524-4245).

Dated: September 11, 1984.

Roland G. Robison,

State Director.

[FR Doc. 84-24782 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-DQ-M

Utah; Initial Classification Decision for State Indemnity Selection

The following described lands (U-52762) have been examined and found suitable for transfer to the State of Utah.

They are hereby classified for indemnity selection pursuant to Sections 2275 and 2276 of the revised Statutes as amended (43 U.S.C. 851, 852), and the regulations thereunder (43 CFR Part 2621):

Salt Lake Meridian, Utah

T. 2 S., R. 4 E.,
  Sec. 7, lots 17, 18, 19, 20, 22, 23, 26, 27;
  Sec. 18, lots 1, 2, 3, 4, 9, 17, 18, 20, 21, 22.

All public lands within the following legal description:

T. 2 S., R. 4 E.,
  Sec. 10, SE¼NW¼;
  Sec. 11, SW¼NE¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, SE¼SW¼;
  Sec. 14, S½SW¼;
  Sec. 15, NW¼NW¼, SE¼;
  Sec. 22, W½SE¼NE¼, E½SW¼NE¼, NE¼NE¼;
  Sec. 23, NW¼NW¼
  Approximately 558.37 acres.

The purpose of the indemnity selection is to allow the State of Utah to secure the benefits they are entitled to under the provisions of section 6 of the Utah Statehood Act of July 16, 1984 (28 Stat. 109).

Any existing grazing use authorized by license or permit from the Bureau of Land Management will be terminated if the lands are transferred out of Federal ownership. The State shall honor all leases, permits, contracts, and terms and conditions of user agreements on United States' lands.

If and when selections are approved and certified to the State, the selected lands will be subject to all valid existing rights. Furthermore, any lands encumbered with a mineral lease or permit are subject to a reservation to the United States of all oil and gas, coal, and potash, with the right of the lessee to utilize as much of the surface as is necessary for proper mining operations, until the lease or permit is terminated.

Should an entire mineral lease or permit be encompassed by the area of the selection, the state of Utah will succeed to the position of the United States. The following described parcels of lands have been determined to be unsuitable for indemnity selection under the Act:

Salt Lake Meridian, Utah

T. 2 S., R. 3 E.,
  Sec. 13, NE¼NW¼.

All public lands within the following legal description:

T. 2 S., R. 4 E.,
  Sec. 9, SE¼SE¼;
  Sec. 10, W½SW¼;
  Sec. 10, S½NE¼;
  Sec. 11, N½NW¼SW¼, SW¼NW¼SW¼;
  Sec. 14, NE¼, NE¼NW¼, NW¼SW¼;
  Sec. 15, SW¼NW¼, W½SW¼;
  Sec. 22, NW¼NW¼;
  Sec. 23, SW¼NW¼;
  Sec. 24, lot 2, SE¼NW¼, NE¼SW¼, SE¼SW¼.

The above lands are encumbered with valid mining claims.

T. 2 S., R. 5 E.,
  Sec. 6, lot 5.

The above land is private, not Federal land.

Approximately 245.11 acres.

Detailed information concerning the indemnity selection and proposed transfer to the State of Utah is available for review at the Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111 (801-524-4245).

Dated: September 11, 1984.

Roland G. Robison,

State Director.

[FR Doc. 84-24783 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 016 and 026, Blocks 30 and 31, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on September 10, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at

/OL 49 SS 183 S E 19 984 JMI

the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: September 10, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-24776 Filed 9-18-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-204]

Certain Pull-Type Golf Carts and Wheels Therefor; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 8, 1984, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of Ajay Enterprises Corporation, 1501 E. Wisconsin Street, Delavan, Wisconsin 53115, and Spherex, Incorporated, Shepherds Island, Seabrook, New Hampshire 03872. The complaint alleges unfair methods of competition and unfair acts in the importation of certain pull-type golf carts and wheels therefor into the United States, or in their sale, by reason of alleged (1) reverse passing off; (2) false and deceptive advertising; (3) pirating of trade dress; and (4) infringement of the claim of U.S. Letters Patent Des. 259,195. The complaint further alleges that the effect or tendency of the alleged unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

FOR FURTHER INFORMATION CONTACT: Robert D. Litowitz, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4693.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 5, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain pull-type golf carts and wheels therefor into the United States, or in their sale, by reason of alleged (1) passing off; (2) false and deceptive advertising; (3) common law trademark infringement; and (4) infringement of the claim of U.S. Letters Patent Des. 259,195, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Ajay Enterprises Corporation, 1501 E. Wisconsin Street, Delavan, Wisconsin 53115

Spherex, Incorporated, Shepherds Island, Seabrook, New Hampshire 03872

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ren Shyan Enterprise Co., Ltd., 137-1 Hua Cheng Road, Hsin Chuang, Taipei, Hsien, Taiwan

Diversified Products, Inc., 309 Williamson Avenue, Opelika, Alabama 36802

(c) Robert D. Litowitz, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

By order of the Commission.

Issued: September 10, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24824 Filed 9-18-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Notice of Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement:

CTT Tools, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on September 12, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: September 12, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24823 Filed 9-18-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-148 (Final)]

Fresh Cut Roses From Colombia; Determination

On the basis of the record[1] developed in investigation No. 731-TA-148 (Final), the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury,[2] nor is the establishment of an industry in the United States materially retarded, by reason of imports from Colombia of fresh cut roses, provided for in item 192.18 of the Tariff Schedules of the United States (TSUS), which the Department of Commerce has found are being, or are likely to be, sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this final investigation, effective March 14, 1984, following a preliminary determination by the Department of Commerce that imports of fresh cut roses from Colombia are being, or are likely to be, sold in the United States at LTFV. Commerce's preliminary determination was published in the **Federal Register** on March 14, 1984.

Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of April 4, 1984 (49 FR 13440). The hearing was held in Washington, D.C. on July 30, 1984, and all persons who requested the opportunity were permitted to appear in person or through counsel. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting held on August 28, 1984.

On September 30, 1983, petitions were filed with the Commission and the U.S. Department of Commerce by counsel on behalf of Roses, Inc. The petitions alleged that fresh cut roses imported from Colombia were being, or were likely to be, sold in the United States at LTFV, and that such imports were causing material injury or the threat thereof to the U.S. industry producing fresh cut roses. Accordingly, the Commission instituted investigation No. 731-TA-148 (Preliminary) to determine whether there was a reasonable indication that an industry in the United States was materially injured or was threatened with material injury, or whether the establishment of an industry was materially retarded, by reason of imports of such merchandise.

In November 1983 the Commission notified the Commerce Department of its affirmative determination with respect to the preliminary investigation of imports from Colombia. Notice of the Commission's preliminary determination was published in the **Federal Register** of November 25, 1983 (48 FR 53188). As a result, Commerce continued its investigation into alleged LTFV sales of fresh cut roses from Colombia. Commerce's final determination with respect to LTFV imports from Colombia was published in the **Federal Register** of August 1, 1984 (49 FR 30765).

The Commission transmitted its report on this investigation to the Secretary of Commerce on September 10, 1984. A public version of the Commission's report, Fresh Cut Roses from Colombia (investigation No. 731-TA-148 (Final), USITC Publication 1575, September 1984), contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: September 10, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24825 Filed 9-18-84; 8:45 am]

BILLING CODE 7020-02-M

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[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes dissenting and Vice Chairman Liebeler not participating.

[Investigation No. 731-TA-200 (Preliminary)]

Radial Ply Tires for Passenger Cars From the Republic of Korea; Determination

On the basis of the record[1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of new (not including recapped) pneumatic radial tires of rubber or plastics for passenger cars, provided for in item 772.51 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Background

On July 20, 1984, counsel for The Armstrong Rubber Co., Cooper Tire & Rubber Co., The Firestone Tire & Rubber Co., The B.F. Goodrich Co., and The Goodyear Tire & Rubber Co., filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that imports of new radial ply tires for passenger cars are being sold in the United States at LTFV and that such imports are causing material injury, or threatening to cause material injury, to the domestic industry producing such merchandise. Accordingly, effective July 20, 1984, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on July 31, 1984 (49 FR 30605). The conference was held in Washington, D.C., on August 13, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on September 4, 1984. A public version of the Commission's report, *Radial Ply Tires For Passenger Cars From the Republic of Korea* (investigation No. 731–TA–200 (Preliminary), USITC Publication 1572, 1984), contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: September 4, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-24826 Filed 9-18-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-237; Sub-1X]

Pend Oreille Valley Railroad Inc.; Discontinuance of Service Exemption; in Pend Oreille County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the discontinuance of service by Pend Oreille Valley Railroad, Inc. over 61.1 miles of track between Newport and Metalline Falls in Pend Oreille County, WA.

DATES: This exemption will be effective on September 19, 1984. Petitions to reopen must be filed on October 9, 1984.

ADDRESSES: Send pleadings to Docket No. AB-237 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Fritz R. Kahn, 1660 L St., NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 12, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-24779 Filed 9-18-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances, Elkins-Sinn, Inc.; Application; Extension of Time for Filing Comments

On July 27, 1984, a notice of the filing of an application for registration as an importer of the Schedule II controlled substance Fentanyl (9801) by Elkins-Sinn, Inc. was published in the **Federal Register** in accordance with 21 CFR 1311.42 (49 FR 30258). The period for comments, objections, or requests for hearing closed on August 30, 1984.

Due to the interest expressed by other pharmaceutical manufacturers, the comment period will be extended to Friday, September 28, 1984. Written comments, objections or requests for a hearing should be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203).

Dated: September 14, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-24757 Filed 9-18-84; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on October 4-5, 1984, from 9:30 a.m.-5:00 p.m. in Room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

A portion of this meeting will be open to the public on October 4 from 9:30 a.m.-12:00 noon and from 2:30-5:00 p.m. and on October 5 from 9:30 a.m.-5:00 p.m. to discuss Visual Artists Fellowships, Art in Public Places, Visual Artists Organizations and FY 86 Guidelines.

The remaining sessions of this meeting on October 4 from 12:00 noon-1:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: September 13, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–24737 Filed 9–18–84; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on October 10, 1984, Room 1167, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, October 10, 1984—1:00 p.m. Until the Conclusion of Business

The Subcommittee will explore experience levels of reactor operators, especially at new plants scheduled to begin operation in the near future. Updates on other activities such as the training and qualifications package and the Human Factors Program Plant may be appropriate.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., e.d.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 14, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84–24790 Filed 9–18–84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20 issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would (1) modify the Technical Specifications for Palisades to add the radiological effluent technical specifications (RETS) necessary to implement the requirements of 10 CFR Part 50 Appendix I in accordance with the licensee's application for amendment dated July 31, 1984. The submittal replaces the request for amendment dated June 4, 1976 and March 12, 1979 which was noticed in the Monthly **Federal Register** on August 23, 1983 (48 FR 38398). The amendment provides new Technical Specification sections for the Appendix A Technical Specifications defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring, for concentration, dose and treatment of liquid, gaseous and solid wastes, and for total dose. The existing Technical Specifications on "Effluent Release" and "Environmental Monitoring Program" and the Special Technical Specifications on radiological effluents and monitoring have been reformatted and included in the revised Appendix A Technical Specifications.

The proposed amendment also modifies Technical Specification change requests that are awaiting NRC approval. It replaces (2) Section 3.0.1, 3.0.2, 3.0.3 and 3.0.4 of the licensee's August 21, 1980 change request, that was noticed in the monthly **Federal Register** Notice on November 22, 1983 (48 FR 52810), by adding a revised section delineating the applicability of the Limiting Conditions for Operation. The proposed amendment also modifies (3) the licensee's November 5, 1982 change request that was noticed in the monthly **Federal Register** Notice on November 22, 1983 (48 FR 52811) by locating all process monitor operability and surveillance requirements in the appropriate tables generated as part of the RETS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards of no significant hazard consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (ii) of actions likely to involve no significant hazards considerations relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specification: for example, a more stringent surveillance requirement.

The licensee's proposed amendment would add limiting conditions for operation and surveillance requirements not presently included in the Technical Specifications. The proposed amendment, therefore, falls within the category of the cited example and the staff proposes to determine that the amendment would involve a no significant hazards consideration determination.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 19, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition shall specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, not withstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment unitl the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-600 [in Missouri (800) 342-6700]. The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to Walter A. Paulson: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Dated at Bethesda, Maryland, this 13th day of September, 1984.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84-24793 Filed 9-18-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; McGuire Nuclear Station, Units 1 and 2; Notice of Environmental Assessment and Finding of No Significant Impact

Environmental Assessment

Identification of Proposed Action: The amendment would permit the increase in the licensed storage capacity from 500 spent fuel assemblies to 1463 spent fuel assemblies for each McGuire spent fuel pool. This would extend the full core discharge capability for each generating unit from the year 1990 to the year 2010.

The Need for the Proposed Action: On April 17, 1977, President Carter issued a policy statement on commercial reprocessing of spent nuclear fuel which effectively eliminated reprocessing as part of the relatively near term nuclear fuel cycle. On October 18, 1977, the Generic Environmental Statement for Mixed Oxide proceedings were deferred indefinitely. The combined effect of this national policy was to leave operating nuclear plants, like McGuire, without a repository in the near-term for the spent fuel previously generated or being generated. Thus, additional reracking of the McGuire spent fuel pools to further increase its storage capacity is required in order to provide onsite spent fuel storage capacity until offsite storage or disposal capacity is available.

Environmental Impacts of the Proposed Action

A. Radiation Exposure

Occupational Exposure: The licensee has estimated that the radiation doses incurred by workers taking part in the McGuire 1 & 2 spent fuel pool modification will be 15 person-rems. This is a small fraction of the total annual dose from routine occupational radiation exposure at the plant. Operation of the plant with additional spent fuel in the spent fuel pool is not expected to increase the occupational dose by more than 1% of the present average total collective annual occupational dose at this facility.

Public Exposure: The staff has completed an analysis of radiation exposure experience, based on estimate source terms and assessment of public doses resulting from 38 prior spent fuel pool modifications at 37 plants.

Estimated doses to a hypothetical maximally exposed individual at the boundary of a plant site, during such modifications, have fallen within a range of 0.00004 to 0.1 millirem per year, with an average dose of 0.02 millirem per year. Similarly, estimated total doses to the population within a 50-mile radius of these plants have fallen within a range from 0.0001 to 0.1 person-rem per year, with an average population dose of 0.006 person-rem per year. Doses at these levels are essentially unmeasurable.

Based on the manner in which the licensee will perform the modification; our previous evaluation of their radiation protection/as low as reasonable achievable (ALARA) program during the licensing process; the radiation protection measures proposed for the modification task, including radiation, contamination, and airborne radioactivity monitoring; and relevant experience from other operating reactors that have performed similar spent fuel pool modifications, the staff concludes that adequate radiation protection measures have been taken to assure worker protection, and the McGuire spent fuel pool modification can be performed in a manner that will ensure that doses to workers and the general public will be ALARA.

Additionally, we have estimated the increment in onsite occupational dose during normal operations after the pool modification as a result of the proposed increase in stored fuel assemblies. This estimate is based on information supplied by the licensee for occupancy times and for dose rates in the spent fuel area from radionuclide concentrations in the spent fuel pool (SFP) water. The spent fuel assemblies themselves contribute a negligible amount to dose rates in the pool area because of the depth of water shielding the fuel. Based on present and projected operations in the spent fuel pool area, we estimate that the proposed modification should add less than one percent of the total annual occupational radiation exposure at both units. The small increase in radiation exposure should not affect the licensee's ability to maintain individual occupational doses to as low as is reasonably achievable levels and within the limits of 10 CFR Part 20. Thus, we conclude that storing additional fuel in the two pools will not result in any significant increase in doses received by workers.

Based on this review of historical data, we conclude that for the proposed spent fuel pool expansion at McGuire, the additional dose to the total body that might be received by an individual at the site boundary, and by the population within a 50-mile radius, respectively, would be less than or equal to 0.1 millirem and 0.1 person-rem per year, respectively. These doses are very small compared to annual exposure to natural background radiation in the United States, which varies from about 70 millirems per year to about 300 millirems per year depending on geographical location. (Reference: "Natural Radiation Exposure in the United States," Donald T. Oakley, U.S. Environmental Protection Agency, Office of Radiation Programs (ORP/SID 72–1), June 1972).

B. Radioactive Wastes

The plant contains radioactive waste treatment systems designed to collect and process the gaseous, liquid and solid waste that might contain radioactive material. The radioactive waste treatment systems are evaluated in the Final Environmental Statement (FES) dated April 1976. There will be no change in the waste treatment systems described in Section 3.2.3 of the FES because of the proposed spent fuel pool (SFP) rerack.

Radioactive Material Released to the Atmosphere: The present licensed storage capacity is 500 spent fuel assemblies for each SFP. The proposed amendments would increase the licensed storage capacity to 1463 spent fuel assemblies for each SFP. This would extend the full core discharge capability for each generating unit from the year 1990 to the year 2010.

With respect to releases of gaseous materials to the atmosphere, the only radioactive gas of significance which could be attributable to storing additional spent fuel assemblies for a longer period of time would be the noble gas radionuclide Krypton-85 (Kr–85). Experience has demonstrated that after spent fuel has decayed 4 to 6 months, there is no longer a significant release of fission products, including Kr–85, from stored spent fuel containing cladding defects. To determine the average annual release of Kr–85, we assume that all of the Kr–85 released from any defective fuel discharged to the SFP will be released prior to the next refueling. The enlarged capacities of the pools has no effect on the calculated average annual quantities of Kr–85 released to the atmosphere each year.

Iodine–131 releases from spent fuel assemblies to the SFP water will not be significantly increased because of the expansion of the fuel storage capacity since the Iodine–131 inventory in the fuel will decay to negligible levels between refuelings.

Most of the tritium in the SFP water results from activation of boron and lithium in the primary coolant and this will not be affected by the proposed changes. A relatively small amount of tritium is contributed during reactor operation by fissioning of reactor fuel and subsequent diffusion of tritium through the fuel and the Zircaloy cladding. Tritium release from the fuel essentially occurs while the fuel is hot, that is, during operations and, to a limited extent, shortly after shutdown. Thus, expanding the SFP capacity will not significantly increase the tritium activity in the SFP.

Storing additional spent fuel assemblies is not expected to increase the bulk water temperature during normal refuelings above the value of 150°F used in the design analysis. Therefore, it is not expected that there will be any significant change in the annual release of tritium or iodine as a result of the proposed modifications from that previously evaluated in the FES.

Solid Radioactive Wastes: The concentration of radionuclides in the pool water is controlled by the filters and the demineralizer and by decay of short-lived isotopes. The activity is highest during refueling operations when reactor coolant water is introduced into the pool, and decreases as the pool water is processed through the filters and demineralizer. The increase of radioactivity, if any, due to the proposed modification, should be minor because of the capability of the cleanup system to continuously remove radioactivity in the SFP water to acceptable levels.

We do not expect any significant increase in the amount of solid waste generated from the SFP cleanup systems due to the proposed modification. The amount of solid waste is assumed to increase by one resin bed (50 cubic feet) and one spent filter cartridge (10 cubic feet) per year due to the increased operation of the SFP cleanup system for each unit. The annual average volume of solid waste shipped offsite for burial from a typical PWR is approximately 20,000 cubic feet. If the storage of additional spent fuel does increase the amount of solid waste by an average of about 60 cubic feet (120 cubic feet solidified) per year per generating unit, the increase in total waste volume shipped from the McGuire Nuclear Station would be less than 1% and would not have any significant additional environmental impact.

If the present spent fuel racks to be removed from the SFP of Unit 1 because of proposed modification are contaminated, they may be disposed of as low level solid waste (approximately 14,000 cubic feet). We also assumed that approximately 325 filters from the portable vacuum cleaner (approximately 1,600 cubic feet of waste) will need to be disposed of because of the rerack. Therefore, we have estimated that approximately 16,000 cubic feet of solid radwaste will be removed from Unit 1 because of the proposed modifications. Averaged over the lifetime of the station, this would increase the total waste volume shipped from the station by less than 2%. This will not have any significant additional environmental impact.

Radioactive Material Released to Receiving Waters: There should not be a significant increase in the liquid release of radionuclides from the plant as a result of the proposed modifications. Because the SFP cooling and cleanup systems operate as a closed system, only water originating from cleanup of SFP floors and resin sluice water need be considered as potential sources of radioactivity.

It is expected that neither the quantity nor activity of the floor cleanup water will change as a result of these modifications. The SFP demineralizer resin removes soluble radioactive materials from the SFP water. These resins are periodically sluiced with water to the spent resin storage tank. The amount of radioactivity on the SFP demineralizer resin may increase slightly due to the additional spent fuel in the pool, but the soluble radioactive material should be retained on the resins. If any radioactive material is transferred from the spent resin to the sluice water, it will be removed by the liquid radwaste system. After processing in the liquid radwaste system, the amount of radioactivity released to the environment as a result of the proposed modification would be negligible.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated April 1976 related to this facility.

Agencies & Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated February 17, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland, this 14th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-24796 Filed 9-18-84; 8:45 am]

BILLING CODE: 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Notice of Denial of Amendment to Facility Operating License No. NPF-3 and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by the licensees for an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The licensees' application for amendment was dated November 5, 1982, and was modified by submittals dated July 1, 1983 and August 18, 1983. Notice of consideration of issuance of an amendment in response to a portion of this application was published in the **Federal Register** on February 24, 1984 (49 FR 7045). No comments were received and the amendment was issued on July 18, 1984. The February 24, 1984 notice indicated that a portion of the licensees' application was not being considered at that time but would be considered separately.

The amendment as proposed by the licensees would have (a) changed the period of time allowed to bring the facility to hot standby and shutdown modes (unless otherwise specified in individual technical specifications) when a Limiting Condition for Operation is not satisfied, (b) added a new Limiting Condition for Operation which delineates additional conditions to be satisfied for continued operation when a normal or emergency power source is unavailable, (c) clarified the requirement to perform a required surveillance within the specified time interval to meet operability requirements and (d) allowed a 12-hour grace period delaying immediate shutdown requirements in the event a required surveillance is missed due to administrative error. On July 18, 1984, Amendment 71 was issued modifying the Technical Specifications as considered in the February 24, 1984 **Federal Register** Notice (changes a, b, and c above).

The Commission has determined, however, that the request to allow a grace period for a missed surveillance has limited applicability and is subject to possible misinterpretation. Therefore, the Commission has decided to deny the licensees' request. The licensees were notified of the Commission denial and the reasons for the denial by letter.

By October 19, 1984 the licensees may request a hearing with respect to the denial described above, and any person whose interest may be affected by this proceeding may file a written petition for leave to intevene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date.

Copies of any petitions should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Edq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

For further details with respect to this action, see (1) the application for amendment dated November 5, 1982, as supplemented July 1, 1983, and August 18, 1983, and (2) the Commission's letter to Toledo Edison Company dated September 12, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of September 1984

For the Nuclear Regulatory Commission.

Sydney Miner,

Acting Chief Operating Reactors Branch No. 4 Division of Licensing.

[FR Doc. 84-24794 Filed 9-18-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, October 4, 1984
Thursday, October 11, 1984
Thursday, October 18, 1984
Thursday, Octoer 25, 1984

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20451, (202) 632-9710.

Dated: September 13, 1984.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 84-24725 Filed 9-18-84; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21316; File No. SR-AMEX-84-25]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating to AUTOCLEAR ODD-LOT

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. has determined to establish as a permanent floor-wide enhancement to the Exchange's Post Execution Reporting (PER) system the AUTOCLEAR ODD-LOT program, which uses universal contra clearing names in the reporting and comparison of odd-lot market orders executed through PER.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange plans to implement a permanent floor-wide enhancement to the AUTOCLEAR system (see SR-AMEX-84-1 and Amendment 1 thereto), which uses universal contra clearing names in the reporting and comparison of equity market and limit orders executed through the Post Execution Reporting (PER) system. The new feature, called AUTOCLEAR ODD-LOT, will provide an automatic comparision of odd-lot market orders processed through PER.

Currently, AUTOCLEAR provides an automatic comparison of executed post-opening market orders of up to 300 shares and limit orders of up to 500 shares (the present PER parameters) by substituting universal contras for actual clearing names of the parties in the reporting and comparision procedures. Universal contras are presently used by the Exchange for round-lot market and limit orders processed by the AUTOPER system and for trades executed through the Intermarket Trading System and Opening Automated Reporting Services ("OARS"). In view of the efficiencies afforded by automatic comparison, the Exchange has determined to extend AUTOCLEAR service to the comparison procedures for odd-lot market orders processed through PER.

AUTOCLEAR ODD-LOT will submit clearance input for odd-lot transactions for participating firms as well as the specialist. The system will also automatically report to the Exchange each odd-lot purchase and sale on behalf of the specialist as required by Rule 191.

The Exchange expects AUTOCLEAR ODD-LOT to benefit participating member organizations by virtually eliminating uncompared trades, or "DK's" for odd lot executions. The program will be gradually phased-in until all specialist units participating in the AUTOCLEAR program are included.

(2) Basis

The implementation of AUTOCLEAR ODD-LOT is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designated to facilitate transactions in securities and perfect the mechanism of a free and open market. Further, by eliminating uncompared trades, the use of universal contras will afford more accurate reporting of small routine orders and will thus result in more efficient and effective market operations, consistent with section 11A(a)(1)(B) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will create no burden on competition and in fact will enhance the Exchange's competitive status by providing the Exchange with a faster, more efficient, and more accurate order-handling system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 10, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 12, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24743 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21317; File No. SR-AMEX-84-22]

Self-Regulatory Organizations; Proposed Rule Change; American Stock Exchange, Inc.; Relating to Changes to Rule 481 (Advertising, Market Letters, Sales Literature, Research Reports and Writing Activities), Paragraph 9495 (Commentary) (Standards for Advertising, Market Letters, Sales Literature, Research Reports, Radio, Television and Writing Activities), Paragraph 9496 (Commentary) (Outside Writing, Speaking, Teaching Activities), Rule 425 ("Long" Sales), and Rule 323 (Keeping Copies of Guide)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice if hereby given that on August 13, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The American Stock Exchange, Inc. ("Amex" or the "Exchange") is proposing to amend Rule 481 and delete Paragraphs 9495 and 9496 (Commentary) to update and consolidate Exchange requirements and standards governing member organizations' communications with the public; to delete Rule 425 to eliminate an out-of-date rule governing "long" sales; and to amend Rule 323 to eliminate the requirement that members and member organizations retain current Amex Guides in every branch office.

II. Self-Regulatory Organization's Statement of the Terms of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Communication With the Public.—Amex Rule 481 requires that all communications to the public by Exchange members and member organizations be reviewed by member organization management prior to dissemination in light of Exchange standards provided in Paragraph 9495. Specifically, each advertisement, market letter, research report and all sales literature prepared by a member or member organizations for general distribution to the public must be approved in advance by a member, allied member or a competent authorized delegate and retained for a three year period. Research reports are subject to dual approval requirements and must also be approved or prepared by a supervisory analyst acceptable under the provisions of Rule 343 (Supervisory Analysts).

Paragraph 9495 (Commentary) sets forth standards for advertising, market letters, sales literature, research reports, radio, television and writing activities, and establishes guidelines for speeches and lecture activities made to the public by personnel of member organizations.

Paragraph 9496 (Commentary) defines criteria for outside"[1] writing, broadcasting, speaking and teaching activities of member organization personnel.

It is proposed that Paragraph 9495 be amended and consolidated into Rule 481 to streamline Exchange requirements and standards for member organizations' communications with the public and to eliminate outdated or duplicative provisions Paragraph 9496 would be redundant and is proposed to be deleted.

The major changes resulting from this proposal would be: (1) To replace specific definitions of such terms as advertisements, market letters, and sales literature with the term "communications" thereby eliminating confusion as to in which category specific communications belong; (2) to permit *one* person, a supervisory analyst, to approve research reports rather than two as currently required;[2] (3) and to permit, in instances where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in a research report to be *co-approved* by a product specialist designated by the member organization.

This last proposal is intended to alleviate concerns of supervisory analysts whose expertise is limited to securities, by allowing their firm to designate a "co-approver" with expertise in the subject matter of the report. These changes will simplify administrative procedures for members and member organizations.

In addition, general and specific standards for all communications presently listed in Paragraph 9495.10 would be consolidated into Rule 481. The general standards are revised to specify that no communication shall contain untrue statements, omissions of material facts, false or misleading statements, promises of specific results, exaggerated or unwarranted claims etc. Additional minor revisions are made to update the specific standards. For example, when a communication recommends the purchase or sale of a specific security, disclosure will now be required if the member organization or its employees involved in the preparation or issuance of a communication have *positions* in any securities or options of the recommended issuer or if a member, allied member or employee is a director of a corporation whose security is being recommended. Other changes in language are made to conform to the uniform SRO rule concerning options communications and past performance. (See, *e.g.* Amex Rule 991.04(c)).

"Standards for Speaking Activities" currently in Paragraph 9495 Commentary .20 will be deleted and replaced by Commentary .20 to Rule 481 (Other Communication Activities), which will require member organizations to establish specific written procedures for supervision and approval of such activities.

Long Sales.—Amex Rule 425 specifies the conditions under which a customer is deemed to be "long" and eligible to effect a long sale of a security. For example, the customer may be "long" the security in his account at the member organization or another broker-dealer. If the customer does not comply with the specified conditions and fails to deliver the stock sold to the selling member organization within a "reasonable" period of time, the firm is required to buy in the customer, *i.e.*, close the transaction by purchasing securities of like kind and quantity. The rule was adopted in 1968 at a time when failure to deliver was a serious problem resulting from customer delays in making prompt deposit of securities sold. Today, however, the establishment of securities depositories and improved automated clearance and settlement procedures have greatly alleviated the problem. Further, in 1972, the Securities and Exchange Commission adopted Rule 15c3–3(m) which requires that if the securities which are sold are not delivered *within 10 days*, rather than a "reasonable" time period, the customers are to be "bought in". Therefore, a specific Exchange rule addressing this problem is no longer necessary and it is proposed that Rule 425 be rescinded.

Keeping Copies of Guide.—Amex Rule 323 requires members and member organizations maintaining customer offices to maintain in each branch office a current copy of the American Stock Exchange Guide. Member firms have questioned the necessity and cost of maintaining updated guides at each branch office, pointing out that, as a practical matter, branch offices rely either on their firm's internal supervisory manuals or their compliance and other supervisory personnel for assistance with the Exchange's rules. It is proposed that this requirement be deleted and Rule 323 be amended to require each member and member organization to keep and maintain only one current copy of our Guide.

(2) Basis

The proposed amendments are consistent with Section 6(b) of the Exchange Act, in general, in that they are designed to ensure that the Exchange's rules remain up-to-date and are consistent with Sections 6(b)(1) and 6(b)(5), in particular, in that they help enforce compliance with Exchange rules and eliminate regulation not related to the purposes of this Act.

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[1] "Outside" writing or broadcasting activities are those "other than in the regular conduct of a securities business."

[2] Since the competency of supervisory analysts is tested by the Exchange their review is sufficient for approval of research reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments create no new regulations and will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by October 10, 1984.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

September 13, 1984.

[FR Doc. 84-24616 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21321; File No. SR-AMEX-84-27]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Modification of the Oil and Gas Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or the "Exchange") proposes to modify its Oil and Gas Index ("XOI") by (i) changing the index from a market weighted index to a price weighted index, and (ii) reducing the number of component stocks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

First, the Exchange proposes to change XOI from a market-weighted to a price weighted index. However, the Exchange does not anticipate that the pattern of movement of the new index will diverge substantially from that of the present index (based on historical data).[1] Further, the Exchange proposes to reduce the number of component stocks from twenty-nine to fifteen, to include within the index only the larger oil producing companies with the least diversification. Thus, companies which engage in substantial gas exploration, production and drilling activities have been deleted from the index to make it a purer oil index. The index will be called the "Oil Index."

The Exchange believes that changing to a price weighted calculation will reduce distortions in the index which have, any may arise from special situations in component stocks, such as mergers and acquisitions. Price weighting may reduce the distortions that can otherwise arise in a market weighted index by substantially reducing the impact of the highest weighted stocks in such an index. For example, in the Oil and Gas Index, Exxon (which currently has the highest percentage weighting of all the component stocks) represents approximately 20% of the index. However, in the price weighted Oil Index, the highest priced stock would be Sun Company, representing only 8.7% of the index value. (Calculations as of 8/29/84.)

The proposed component stocks of the new index are:

Amerada Hess (AHC)
Atlantic Richfield (ARC)
British Petroleum (BP)[2]
Chevron (CHV)
Exxon (XON)
Mobil (MOB)
Occidental Petroleum (OXY)
Philips Petroleum (P)
Royal Dutch (RD)
Standard Oil of Indiana (SN)
Standard Oil of Ohio (SOH)
Sun Company (SUN)
Texaco (TX)
Texas Oil & Gas (TXO)
Unocal Corporation (UCL)

The stocks which are proposed to be deleted are:

Apache Corporation (APA)
Diamond Shamrock (DIA)
Imperial Oil, Ltd. Cl. A (IMO.A)
Inexco Oil (INX)
Kerr McGee (KMG)
Louisiana Land (LLX)
Mesa Petroleum (MSA)
Mitchell Energy (MND)

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[1] Graphs depicting the price movement of the original Oil & Gas Index and the proposed Oil Index are available for inspection in the Commission's Public Reference Room and at the principal office of Amex.

Noble Affiliates (NBL)
Pennzoil (PZL)
Pogo Producing (PPP)
Sabine Corporation (SAB)
Shell Oil (SUO)
Superior Oil (SOC)
Tosco Corporation (TOS)

The smaller number of component stocks and the change to price weighting is expected to facilitate those investors and traders wishing to hedge their options positions with a small group of component stocks.

In order to implement the modification to the index with the least potential investor confusion, the Exchange may delist outstanding April XOI series which have no open interest. After the October expiration, this will leave the Janaury XOI series outstanding. The Exchange plans to change the symbol for the outstanding series to XOZ, the "Z", as always, alterting the investing public that an adjustment has been made. At the same time, the Exchange will begin to disseminate the new price-weighted index (as well as XOZ), which will be based on the sum of the component stocks on August 27, 1984 divided by 4.631. The Oil Index value was 125 at the close of the market on August 27, 1984. (The Oil and Gas Index closed at 116.56 on that day.) The exchange also plans to list a full range of expiration months—November and December, 1984 and January, April and July, 1985—for the Oil Index as soon as Commission approval is received.

All rules applicable to price weighted industry indices would apply to the listing and trading of the Oil Index, and thus no rule changes are required. Accordingly, position and exercise limits will remain at 8,000 contracts.

The propsed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange in that they provide for the orderly introduction of the Oil Index.

Therefore, the proposed rule changes are consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competiton

The AMEX believes that the proposed rule changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange's Stock Selection and New Products Committees, both composed of members and representatives of member firms, endoresed the proposed rule change.

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 10, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 13, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24821 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23418; (70-7020)]

Mississippi Power & Light Co.; Notice of Proposed Issuance and Sale of First Mortgage Bonds

September 13, 1984.

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a proposal with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

MP&L proposes to issue and sell, subject to Rule 50 under the Act as modified by HCAR No. 22623, not more than $105 million aggregate principal amount of its first mortgage bonds to be issued in one or more series from time to time not later than December 31, 1985. The bonds will be issued under MP&L's Mortgage and Deed of Trust, dated as of September 1, 1944, to Irving Trust Company, Trustee, as heretofore supplemented and as to be further supplemented.

MP&L also intends to establish one or more new series of its Preferred Stock, Cumulative, $100 Par Value, which will consist in the aggregate of not more than 250,000 shares, and proposes to issue and sell, in one or more sales from time to time not later than December 31, 1985, said preferred stock, subject to Rule 50 under the Act as modified by HCAR No. 22623. MP&L may include provisions for an adjustable dividend rate for one or more series of the preferred stock.

It is stated that MP&L believes that the sale(s) of one or more series of bonds and/or preferred stock may require the assistance of underwriters, dealers, or agents, depending on market conditions at the time of the offering thereof, or that a private placement of one or more series of bonds and/or preferred stock may result in more favorable terms to the company than would result from a public offering. Accordingly, MP&L may amend its proposal to seek an exception from Rule 50 so that it may offer such series of bonds and/or preferred stock through either a negotiated public sale(s) or a private sale(s).

The net proceeds derived from the issuance and sale of bonds and/or preferred stock will be used for the financing in part of MP&L's construction program and for other corporate purposes.

The proposal and any amendments thereto are available for public inspection through the Commission Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 10, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24620 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14157; 811-3123]

APPA—Great Century Money Market Fund, Inc.; Filing of Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

September 12, 1984.

Notice is hereby given that APPA—Great Century Money Markey Fund, Inc. ("Applicant") 292 Madison Avenue, New York, NY 10017, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on June 26, 1984, for an order, pursuant to section 8(f) of the Act, declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the relevant provisions.

Applicant, incorporated under the laws of the State of Maryland, states that it filed its Notificatin of Registration on Form N-8A on December 17, 1980. Applicant also states that its registration statement, filed under the Securities Act of 1933, was declared effective on June 11, 1981, and an initial public offering commenced immediately thereafter.

The application indicates that Applicant's board of directors resolved, at a special meeting held on February 10, 1983, to approve the proposed Plan of Liquidation and Dissoulstion, which, on April 29, 1983, the majority of Applicant's shareholders also approved. Applicant states that, subsequent thereto, distributions were made to all shareholders at a net asset value of $1.00 per share.

The application further indicates that Applicant has no assets, debts, or outstanding liabilities remaining, and it is not a party to any litigation or administrative proceeding. Applicant states that it had no securityholders at the time of filing of the application. Applicant further states that within the last 18 months it has not transferred any of its assets to a separate trust, and that it is not now engaged, nor does it propose to engage, in any business activity other than that necessary to wind-up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 8, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the spcific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attoney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own moton.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirly E. Hollis,

Acting Secretary.

[FR Doc. 84-24767 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14158; 812-5918]

John Hancock U.S. Government Guaranteed Mortgages Trust et al.; Application for an Order Exempting Applicants

September 12, 1984.

In the Matter of John Hancock U.S. Government Guaranteed Mortgages Trust, John Hancock Place, P.O. Box 111, Boston, MA 02117 and John Hancock Distributors, Inc., John Hancock Place, P.O. Box 21, Boston, MA 02117.

NOTICE IS HEREBY GIVEN that John Hancock U.S. Government Guaranteed Mortgages Trust (the "Fund"), a diversified, open-end investment company registered under the Investment Company Act of 1940 (the "Act"), and John Hancock Distributors, Inc. ("Distributor"), underwriter for shares of the Fund (collectively, "Applicants"), filed an application on August 10, 1984, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicants from the provisions of section 22(d) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for further information as to the provisions which are relevant to a consideration of this application.

The Fund was organized in 1980 by John Hancock Advisers, Inc. ("Adviser"), an indirect, wholly-owned subsidiary of John Hancock Mutual Life Insurance Company ("John Hancock"), a Massachusetts mutual life insurance company. Distributor, a wholly-owned subsidiary of Adviser, has entered into an underwriting agreement with the Fund.

Applicants request exemption from section 22(d) of the Act to permit funds derived from death claims and matured endowments of fixed dollar policies and from proceeds of variable and universal life insurance policies issued by John Hancock and John Hancock Variable Life Insurance Company, to be applied to the purchase of shares of the Fund within the first 60 days after the date of the check in payment of such insurance at a sales charge equal to one-half the rate otherwise applicable. Applicants state that pursuant to the underwriting agreement, the sales charge ranges from 8% to 1% as a percentage of the offering price depending upon the amount invested.

Applicants assert that purchasers of shares of the Fund who apply insurance proceeds of a fixed dollar insurance policy, matured endowment, or a variable or universal life insurance policy to make the purchase of shares of the Fund have paid premiums on such policies that include a sales expense component larger than the sales charge applicable to the purchase of shares of the Fund. Applicants also represent that less selling effort and expense is involved in applying the proceeds of such policies to the purchase of shares of the Fund than in making an initial sale of such shares. Applicants further assert that one-half of the normal sales charge appropriately reflects the selling effort and expense involved.

Applicants submit that the policy underlying section 22(d) of providing for the orderly distribution of mutual fund shares would not be frustrated by the granting of the requested exemption because the class of people involved is well-defined by factors external to the distribution process such as the availability of certain death benefits. Applicants further submit that the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person wishing to request a hearing on the application may, not later than October 8, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24785 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13233]

Standard Oil Co.; Application and Opportunity for Hearing

September 13, 1984.

Notice is hereby given that Standard Oil Company, an Indiana corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of Citibank, N.A. ("Citibank") under indentures of the Company dated January 15, 1968 (the "1968 Indenture") and as of August 1, 1974 (the "1974 Indenture"), the trusteeship of Citibank under the indenture of the Company dated as of August 1, 1977 (the "1977 Indenture") and the trusteeship of Citibank under an indenture dated as of February 1, 1983 (the "1983 Indenture") among Amoco Australia Limited (since renamed BP Oil Distribution Limited), Amoco Holdings Pty. Limited, as guarantor (Amoco Holdings Pty. Limited, since renamed BP Oil Distribution Holdings Proprietary Limited, or any other company assuming the obligations of guarantor under the 1983 Indenture being the "Primary Guarantor"), and Citibank is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as successor trustee under the 1968 and 1974 Indentures or as trustee under the 1977 and 1983 Indentures.[1] The 1968, 1974 and 1977 Indentures were heretofore qualified under the Act.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting, interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same issuer are outstanding, it the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

In support of its application the Company alleges that:

1. The Company has outstanding as of August 8, 1984 $144,166,000 aggregate principal amount of its 6 percent Debentures Due 1998 (the "6% Debentures") issued under the 1968 Indenture between the Company and the First National Bank of Chicago ("FNBC"). FNBC was subsequently succeeded by Northern Trust Company ("Northern Trust") as successor trustee under the 1968 Indenture. The 6% Debentures were registered under the Securities Act of 1933, as amended (the "Securities Act") (File No. 2-27988), and the 1968 Indenture was qualified under the Act (File No. 22-4854).

2. The Company has outstanding as of August 8, 1984 $83,293,000 aggregate principal amount of its Floating Rate Notes Due 1989 (the "Floating Rate Notes") issued under the 1974 Indenture between the Company and FNBC. FNBC was subsequently succeeded by Northern Trust as successor trustee under the 1974 Indenture. The Floating Rate Notes were registered under the Securities Act (File No. 2-51667), and the 1974 Indenture was qualified under the Act (File No. 22-7999).

3. The Company has outstanding as of August 8, 1984 $400,000,000 aggregate principal amount of its 7⅞% Debentures Due 2007 (the "7⅞% Debentures") issued under the 1977 Indenture between the Company and Citibank. The 7⅞% Debentures were registered under the Securities Act (File No. 2-59457), and the 1977 Indenture was qualified under the Act (File No. 22-9282).

4. Pursuant to the 1983 Indenture and the guarantee agreement dated as of February 1, 1983 (the "Guarantee Agreement"), Amoco Austrialia Limited issued $50,000,000 aggregate principal amount of 9-⅞% Bearer Notes due 1990, which are guaranteed by the Primary Guarantor (the "Guaranteed Notes"), which guarantee is jointly and severally guaranteed by Amoco Internation Finance Corporation and the Company. As of August 8, 1984 $50,000,000 aggregate principal amount of the Guaranteed Notes were outstanding. Inasmuch as the Guaranteed Notes were offered and sold outside the United States, its territories and possessions to persons who are not nationals or residents thereof, the Guaranteed Notes were not registered under the Securities Act and the 1983 Indenture, under which Citibank acts as Trustee, was not qualified under the Act.

5. Northern Trust, on May 18, 1984, gave written notice to the Company of its intention to resign as trustee under the 1968 and 1974 Indentures. The Company has requested Citibank to accept appointment as successor trustee under the 1968 and 1974 Indentures.

6. Section 7.08 of the 1974 Indenture provides in part as follows:

> (a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 7.08, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting

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[1] An application pursuant to section 310(b)(1)(ii) of the Act in connection with Citibank's trusteeship under the 1977 Indenture and the 1983 Indenture was granted by the Commission by order dated April 5, 1983.

interest or resign in the manner and with the effect specified in Section 7.10. * * *.

(c) For the purpose of this Section 7.08 the Trustee shall be deemed to have a conflicting interest if

(1) The Trustee is trustee under another indenture under which any other securities * * * of the Company, are outstanding * * * *provided* that there shall be excluded from the operation of this paragraph any other indenture or indentures under which other securities * * * of the Company, are outstanding if

(i) This Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indenture Act of 1939, unless the the Securties and Exchange Commission shall have found and declared by order pursuant to subsection (b) of Section 305 or subsection (c) of Section 307 of the Trust Indenture Act of 1939 that differences exist between the provisions of this indenture and the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture and such other indenture or indentures, or

(ii) The Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such Indentures; *provided, further,* that there shall be excluded from the operation of this paragraph * * * the Indenture dated January 15, 1968, under which the Company's 6% Debentures Due 1988 are outstanding;

Section 7.08 of the 1968 Indenture and Section 7.08 of the 1977 Indenture are substantially the same as section 7.08 of the 1974 Indenture, except for reference to the 1968 Indenture.

7. Citibank's acting as successor trustee under both the 1968 and 1974 Indentures is permitted by (1) Section 7.08 of the 1974 Indenture because of the explicit reference to the 1968 Indenture contained therein, and (2) Section 7.08 of the 1968 Indenture because both of these indentures are wholly unsecured and the 1974 Indenture was qualified after the date of the 1968 Indenture.

8. Acceptance by Citibank of the appointment as successor trustee under the 1968 Indenture and the 1974 Indenture may involve Citibank in a conflict of interest (a) within the meaning of Section 7.08 of the 1977 Indenture with respect to the 1968 and 1974 Indentures since such section does not explicitly exclude from the operation of paragraph (c)(1) thereof the 1968 and 1974 Indentures and (b) within the meaning of Section 7.08 of the 1968 and 1974 Indentures with respect to the 1983 Indenture since the 1983 Indenture has not been qualified under the Act and is not the subject of any other proceeding of the Commission.

9. The Company's obligations with respect to the 6% Debentures, the Floating Rate Notes, the 7⅞% Debentures and the Guaranteed Notes are wholly unsecured and rank on parity with each other. The only material differences between the provisions of the 1968 and 1974 Indentures and the 1977 and 1983 Indentures, and between the rights of holders of the 6% Debentures and the Floating Rate Notes, and the holders of the 7⅞% Debentures and the Guaranteed Notes, relate to the fact that the Company is the guarantor with respect to the Guaranteed Notes but is the primary obligor under the 1968 and 1974 Indentures, and also relate to aggregate principal amounts, dates of issue, denominations, events of default, maturity and interest payment dates, interest rates, redemption or prepayment procedures, Trustee's reports, restrictions on transferability, provisions relating to the non-United States offering of the Guaranteed Notes, sinking fund provisions, and other provisions of a similar nature. Any such differences and any other differences in the provisions of the 1968 and 1974 Indentures and the 1977 and 1983 Indentures are unlikely to cause any conflict of interest between the respective trusteeships of Citibank under said Indentures.

10. The Company is not in default under the 1968, 1974, 1977 or 1983 Indentures.

11. The Company has waived (a) notice of hearing, (b) hearing on the issues by its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission at 450 Fifth Street, NW., Washington, D.C. 20549.

NOTICE IS FURTHER GIVEN that an order granting the application may be issued by the Commission at any time on or after October 8, 1984, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Act. Any interested person may, not later than October 8, 1984 at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request shall be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24786 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21314; File No. SR-MSRB-84-13]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

September 12, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on September 7, 1984, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB Rule G-4, which concerns statutory disqualifications, by replacing a reference to a rescinded Commission rule with a reference to the currently applicable rule. Specifically, the proposed rule change would refer to Rule 19d-3 under the Act instead of former Rule 15b8-2 under the Act, a rescinded SECO rule, as the basis for applying for relief from certain disqualifications.

This proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of this notice is expected to be made in the **Federal Register** during the week of September 17, 1984. Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Comments should refer to File No. SR-MSRB-84-13.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the MSRB.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-[illegible] Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21320; Filed No. S7-820]

Self-Regulatory Organization; Receipt of an Amendment to the Options Price Reporting Authority Plan

September 13, 1984.

On August 27, 1984, the participants in the Options Price Reporting Authority ("OPRA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information,"[1] which was submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act ("OPRA Plan").[2]

I. Description of the Amendment

OPRA proposes to establish a new fee to be imposed upon those OPRA Subscribers who have indirect access (via a vendor-supplied feed) to the high speed OPRA feed or to a comparable bulk feed of OPRA information. OPRA indicates that the fee will not apply to subscribers who receive processed OPRA information from a vendor under a typical service agreement whereby the processed information is accessed by the subscriber via vendor-supplied interrogation or display devices, nor will it apply to subscribers who access OPRA information via a direct connection to the OPRA processor and who are subject to the OPRA Direct Access Charge. The new fee is proposed to be established at a monthly rate of $[illegible].

II. Purpose of the Amendment

OPRA indicates the purpose of the proposed Indirect Access Fee is to allocate fairly OPRA's administrative costs among those persons whose indirect access to a bulk feed of OPRA information imposes special costs upon OPRA, but who are not subject to the Direct Access Charge.

III. Manner of Implementation of the Amendment

The proposed new fee will be implemented by amending Section 3 of the existing Vendor Agreement[3] to prohibit vendors from providing a bulk feed to subscribers unless the subscriber has entered into a contract with OPRA.[4]

IV. Request for Comment

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. In order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their comments to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, within 21 days from the date of publication of this notice in the **Federal Register**. The amendment to the OPRA Plan will be available for public inspection in the Commission's public reference room. All communications should refer to File No. S7-820.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[5]

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24760 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

[2] The Commission previously, by order, granted registration to OPRA as a securities information processor. At that time, OPRA's functions were limited to the collection and dissemination of options last sale reports. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4369. In order to comply with the procedures of Rule 11Aa3-2 applicable to the establishment of fees of exclusive securities processors, OPRA has filed this fee as a Plan amendment under the Rule.

[3] *See* Exhibit A of OPRA's submission filed August 27, 1984 ("Plan Amendment").

[4] *Id.* Exhibit B.

[5] 17 CFR 200.30-3(a)(27).

[Release No. [illegible]; File No. SR-SCCP-84-6]

Self-Regulatory Organization; Filing and Order Approving on an Accelerated Basis a Proposed Rule Change of Stock Clearing Corporation of Philadelphia

September 12, 1984.

The Stock Clearing Corporation of Philadelphia ("SCCP") on August 17, 1984, submitted a proposed rule change to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The Commission is publishing notice of the proposed rule change to solicit comments. Also, the Commission believes that Commission approval of the proposal on an accelerated basis is necessary to enable SCCP municipal securities broker and dealer participants to comply with recent Municipal Securities Rulemaking Board initiatives requiring use of clearing agency automated comparison systems.[1]

The proposal enables SCCP to provide its participants with automated comparison services for municipal securities transactions. SCCP has entered into a Trade Comparison Linkage Agreement ("Agreement") with the National Securities Clearing Corporation ("NSCC"). This agreement enables SCCP to link its automated municipal securities comparison system to NSCC's automated municipal securities comparison system.[2]

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[1] As of August 1, 1984, municipal securities brokers and dealers or their clearing agents that participate in registered clearing agencies that provide automated comparison services must use those services to compare certain municipal securities transactions. *See* Municipal Securities Rulemaking Board ("MSRB") Rule G-12, as approved by the Commission in Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983).

[2] *See* Securities Exchange Act Release No. 20978 (May 18, 1984), 49 FR 22426 (May 29, 1984), which permanently approved implementation of NSCC's Municipal Bond Processing System, including its Municipal Comparison Only Member ("MCOM") feature. NSCC acts as the central processing hub for all registered clearing agencies linked to its Municipal Bond Processing System. In addition, the linkages enable municipal securities brokers and dealers at one clearing agency to compare trades with other municipal brokers and dealers at other clearing agencies. Other registered clearing agencies that are linked to NSCC's Municipal Securities Processing System include Pacific Clearing Corporation ("PCC") and Midwest Clearing Corporation ("MCC") (*see* Securities Exchange Act Release No. 21120 (July 6, 1984), 49 FR 28650 (July 12, 1984)); and The Depository Trust Company (*see* Securities Exchange Release Nos. 21164 (July 23, 1984), 49 FR 30267 (July 27, 1984) and 21270 (August 31, 1984), 49 FR 35456 (September 7, 1984)).

Under the proposal, SCCP participants each day submit to SCCP trade data on municipal securities transactions. SCCP then transmits this data to NSCC for comparison. The results of NSCC's comparison processing are transmitted back to SCCP, which uses this data to make daily reports to SCCP participants reflecting their compared trades, uncompared trades and advisory trades. SCCP participants then use NSCC's efficient supplemental comparison procedures to resolve uncompared trades.[3] Trade resolution inputs are submitted to SCCP, transmitted by SCCP to NSCC, and the results of NSCC's processing are transmitted back to SCCP and, through SCCP, to its participants.

The proposal provides that compared trades must settle on a trade-for-trade basis.[4] SCCP sends to its participants Receive/Deliver Tickets on T+4 that include necessary trade information and delivery instructions. If both sides of the trade are SCCP and Philadelphia Depository Trust Company ("Philadep") participants, SCCP's proposal enables those participants to book-entry settle Philadep-eligible municipal securities issues. If the *contra* side to the compared trade is not an SCCP participant but is a participant of another clearing agency that provides automated municipal securities comparison services, the *contra* side will receive its Receive/Deliver Tickets from its clearing agency. Those parties then must settle the transaction under applicable MSRB rules.[5]

SCCP states in its filing that its proposal is consistent with Section 17A of the Act because it will provide automated comparison services for the first time to SCCP municipal securities broker and dealer participants and will enable those participants to comply with MSRB Rule G-12. For these reasons, SCCP has requested accelerated approval of its proposal.

The Commission agrees with SCCP that the proposal is consistent with Section 17A of the Act and therefore should be approved. Implementation of SCCP's automated municipal securities comparison system and its link to NSCC's Municipal Bond Processing System completes the configuration of the National Municipal Securities Comparison System. SCCP now joins DTC, MCC, PCC and NSCC in providing the municipal securities industry with uniform, automated, efficient municipal securities comparison services. Thus, SCCP participants now will be able to use efficient automated comparison services for their municipal securities trades. No longer will they need to use antiquated manual comparison procedures for most municipal securities trades.[6] The Commission notes, however, that SCCP's proposal is only SCCP's first step to automate municipal securities processing. SCCP intends in the near future to upgrade its municipal securities processing system to provide comparison services to MCOMs [7] and to enable participants to use SCCP's continuous net settlement system ("CNS") to settle municipal securities transactions.[8] The Commission also believes that the proposal will not burden SCCP participants. Indeed, most SCCP participants are familiar with the proposed municipal securities comparison procedures because they are almost identical to NSCC's OTC comparison procedures. Most SCCP participants participate in the OTC market and submit their OTC transactions for comparison through SCCP to NSCC's National OTC Comparison System, for which NSCC is the central information processor.

For the reasons stated below, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publishing notice of the filing. Accelerated approval will enable SCCP participants, at the earliest possible date, to use automated, efficient comparison services for municipal securities transactions as contemplated by MSRB Rule G-12.

You can submit written comment within 21 days after this Order is published in the **Federal Register**. Please refer to File No. SR-SCCP-84-6, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of SCCP.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretory.

[FR Doc. 84-24788 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organization; Boston Stock Exchange Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

September 13, 1984.

In the Matter of Applications of the Boston Stock Exchange Incorporated; for unlisted trading privileges in certain securities; Securities Exchange Act of 1934.

The above named national securites exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Midcom Corp.
  Common Stock, No Par Value (File No. 7-7869)
Montana-Dakota Utilities Co.
  Common Stock, $10.00 Par Value (File No. 7-7870)
Mary Kay Cosmetics
  Common Stock, $.10 Par Value (File No. 7-7871)
Mesa Offshore Trust
  Units of Beneficial Interest, No Par Value (File No. 7-7872)

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[3] SCCP's initial and supplemental comparison procedures are nearly identical to NSCC's comparison procedures for over-the-counter ("OTC") transactions and equity transactions executed on national securities exchanges other than the New York and American Stock Exchanges. *See* NSCC Procedures Part II. C. Thus, SCCP participants can take advantage of such suplemental trade comparison mechanisms as demand As-of's.

[4] Under trade-for-trade settlement, parties to the trade settle directly with each other. SCCP does not net or guarantee settlement obligations. Regular-way compared trades submitted on the first business day after trade date ("T+1") settle on T+5. As-of trades, which are submitted on T+2 or later, settle two business days after the trade is compared.

[5] SCCP's proposal also enables its participants to use SCCP's Correspondent Delivery and Collection Service ("CDCS") for physically settling municipal securities transactions between SCCP participants and third parties that are not SCCP participants.

[6] An SCCP municipal securities broker or dealer participant that trades with a municipal securities broker or dealer that is not a direct or indirect clearing agency participant will be unable to use SCCP's automated trade comparison service. Under MSRB Rule G-12(f)(iii), a municipal securities broker or dealer, which clears a transaction through a clearing agent that is a clearing agency participant, is deemed to be a clearing agency participant regarding that transaction, *i.e.*, an indirect clearing agency participant.

[7] *See* note 2 *supra*.

[8] NSCC and MCC already provide CNS processing for certain municipal securities transactions.

McIntyre Mines, Ltd.
  Common Stock, No Par Value (File No. 7-7873)
Mercury Savings & Loan Assoc.
  Common Stock, $1.00 Par Value (File No. 7-7874)
Mission West Properties
  Common Stock, No Par Value (File No. 7-7875)
Newpark Resources, Inc.
  Common Stock, $2.00 Par Value (File No. 7-7876)
Nutri/Systems, Inc.
  Common Stock, $.01 Par Value (File No. 7-7877)
Novo Industries A/S
  American Depository Receipts, 10 Kroner (File No. 7-7878)
Nevada Power Co.
  Common Stock, $1.00 Par Value (File No. 7-7879)
Triton Energy Co.
  Common Stock, $1.00 Par Value (File No. 7-7880)
Orion Pictures Corp.
  Common Stock, $.25 Par Value (File No. 7-7881)
Ozark Air Lines, Inc.
  Common Stock, $.50 Par Value (File No. 7-7882)
Action Industries
  Common Stock, $.10 Par Value (File No. 7-7883)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24701 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organization; Philadelphia Stock Exchange; Application for Unlisted Trading Privileges and of Opportunity for Heraring

September 13, 1984.

In the Matter of Application of the Philadelphia Stock Exchange; for unlisted trading privileges in certain securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Purolator Courier Corp.
  Common Stock, $1.00 Par Value (File No. 7-7884)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1984, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if its finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24782 Filed 9-18-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cleveland-Hopkins International Airport—FAA Acceptance of Noise Exposure Map Under 14 CFR Part 150

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its acceptance of noise exposure maps submitted by Cleveland-Hopkins International Airport (CLE) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the CLE noise exposure maps is July 3, 1984.

FOR FURTHER INFORMATION CONTACT: Michael C. Rose, Airports Planner, AGL-611.1, Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has accepted the noise exposure maps for Cleveland-Hopkins International Airport effective July 3, 1984.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

Cleveland-Hopkins International Airport submitted to the FAA on November 17, 1983, and November 30, 1983, noise exposure maps, descriptions, and other documentation. It was requested that the FAA accept this material as a noise exposure map as described in Section 103(a)(1) of the Act. The FAA has completed its review of the noise exposure maps and related descriptions submitted by Cleveland-Hopkins International Airport. The specific maps under consideration are depicted in Exhibits 8 and 11 in the technical report titled, "FAR Part 150 Noise Exposure Map Project", prepared September 1983. The FAA has accepted these materials as the noise exposure maps for Cleveland-Hopkins International Airport effective July 3, 1984.

FAA's acceptance of an airport operator's noise exposure map is limited to the determination that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of the program.

Questions may arise concerning the precise relationship of specific properties to the noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act. It should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's acceptance of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agnecies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the accepted noise exposure maps, and the FAA's evaluation of the maps, are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800, 800 Independence Avenue, SW, Room 615, Washington, D.C. 20591

Federal Aviation Administration, Great Lakes Regional Office, AGL–600, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 8800 Beck Road, Belleville, Michigan 48111

Cleveland-Hopkins International Airport, Department of Port Control, Terminal Building, 5300 Riverside Drive, Cleveland, Ohio 44135.

Questions may be directed to the individual named above under the heading "For Further Information Contact".

Issued in Des Plaines, Illinois, on September 7, 1984.

Peter A. Serini,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 84–24720 Filed 9–18–84; 8:45 am]

BILLING CODE 4910–13–M

Draft Advisory Circular 27–X, Certification of Normal Category Rotorcraft and Draft Change 2, Advisory Circular 29–2, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting, availability of draft advisory circulars (AC), and request for comments.

SUMMARY: The proposed drafts of AC 27–X, Certification of Normal Category Rotorcraft, and Change 2, AC 29–2, Certification of Transport Category Rotorcraft, provide guidance material for demonstrating compliance with the requirements of Parts 27 and 29 of the Federal Aviation Regulations (FAR). The FAA is sponsoring a meeting and requesting comments from the public concerning the draft AC material.

DATES: Comments must identify file AC 27–X or AC 29–2, Change 2, and comments must be received by January 31, 1985.

The public meeting will be held January 10 and 11, 1985, beginning at 8:30 a.m. and adjourning at 4:30 p.m. each day.

ADDRESSES: The meeting will be held in the Training Room, Building 3B, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas. Comments may be mailed to FAA, Helicopter Policy and Procedures Staff, ASW–110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. John Swihart, Aerospace Engineer, Helicopter Policy and Procedures Staff, ASW–110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101 telephone (817) 877–2585 or FTS 734–2585.

SUPPLEMENTARY INFORMATION: Draft copies of proposed AC 27–X are being mailed to all known affected industry and government entities, both foreign and domestic. Draft copies of AC 29–2, Change 2, are not presently available, but the copies will be mailed to the concerned entities by late October. Any interested person not receiving a copy of draft AC 27–X or Change 2, AC 29–2, should contact the person named under "**FOR FURTHER INFORMATION CONTACT.**"

Comments Invited

Interested persons are invited to submit comments on these proposed drafts. Comments received may be inspected at the offices of the Helicopter Policy and Procedures Staff, ASW–110, 2nd Floor, Building 3A, Room 235, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, between 8 a.m. and 4:30 p.m. on weekdays, except Federal holidays. The objective of the public meeting is to allow interested persons the opportunity to express their comments. Discussion of draft AC 27–X will begin at 8:30 a.m. on January 10, 1985, and it is anticipated that discussion of draft Change 2, AC 29–2, will begin on the morning of January 11, 1985.

Issued in Fort Worth, Texas, on September 10, 1984.

F. E. Whitfield

Acting Director, Southwest Region.

[FR Doc. 84–24722 Filed 9–18–84; 8:45 am]

BILLING CODE 4910–13–M

Nickel Cadmium Vented Rechargeable Aircarft Batteries (Non-Sealed, Maintainable Type); Availability of Technical Standard Order and Request for Commnet

AGENCY: Federeal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Proposed TSO-C107 prescribes the minimun performance standard that nickel cadmium vented rechargeable aircraft batteries (non-sealed, maintainable type) must meet in order to be identified with the marking "TSO-C107."

DATE: Comments must identify the TSO file number and be received on or before December 17, 1984.

ADDRESS: Send all comments on the proposed Technical Standard Order to: Federal Aviation Administration, Policy and Procedures Branch, AWS–110, Aircraft Engineer Division, Office of Airworthiness—File No. "TSO-C107.", 800 Independence Avenue, SW., Washington, D.C. 20591.

Or deliver comments to: Room 335, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426–8395.

Comments received on the proposed Technical Standard Order may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO may be obtained by contacting the person under "For Further Information Contact." TSO-C107 references Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 8033 dated February 15, 1981 for the minimum performance standard and Radio Technical Commission for Aeronautics (RTCA) Document No. DO-160A dated January 1980 for the environmental conditions and test procedures. SAE AS 8033 may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096. RTCA Document No. DO-160A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C., 20005.

Issued in Washington, D.C. on September 10, 1984.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division.

[FR Doc. 84-24723 Filed 9-18-84; 8:45 am]

BILLING CODE 4910-13-M

Water Survival Staff Study; Availability and Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments on FAA Water Survival Staff Study.

SUMMARY: The FAA staff study examines the history of air carrier water accidents and considers the magnitude of the problem as well as potential ameliorative measures. The study focuses on survivable accidents, since revised water survival equipment requirements or rescue procedures would have little effect in nonsurvivable accidents. The study reviews safety options such as improved ground-side rescue capability and on-board equipment which is accessible from outside the accident aircraft.

DATE: Comments should identify the "Water Survival Staff Study" and be received on or before November 19, 1984.

ADDRESS: Send all comments on the staff study to: Federal Aviation Administration, Office of Airworthiness, Technical Analysis Branch, AWS-120, 800 Independence Avenue SW., Washington, D.C. 20591.

Or deliver comments to: Room 335, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Dr. William Shepherd, Federal Aviation Administration, Office of Aviation Medicine, AAM-550, 800 Independence Avenue SW., Washington, D.C. 20591, Telephone: (202) 426-3433.

Comments received on the staff study may be inspected at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, D.C. 20591, between 8:30 a.m. and 4:30 p.m. daily (except holidays).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1980, the Airline Pilots Association (ALPA) transmitted to the FAA a petition for rulemaking dealing with the general question of post-crash water survival. The ALPA petition proposed regulatory revisions dealing with the Federal Aviation Regulations, Parts 1, 25, 121, 135, and 139. The staff study presents a summary of the ALPA petition. The ALPA petition was denied on November 30, 1982, citing the ongoing research program, which is the subject of the staff study report, and the need for further information before any regulatory action could be taken. The staff study was divided into three phases; (1) water landing scenario definition, (2) airport criteria analysis, and (3) equipment and procedures analysis. In addition, cost-benefit analyses were performed.

The study found that survivable water accidents are relatively rare, and are characterized by inadvertent, unplanned water contact, rather than planned ditchings. These accidents usually occurred close to an airport on approach or departure. Impact forces are usually high in this type of accident, since the aircraft is typically not configured for a water landing as would be the case in a planned ditching. Consequently, the aircraft fuselage would be expected to break up and sink rapidly leaving mobile survivors little time or ability to obtain on-board survival equipment. The study report recommends, among other things, that airport operators prepare for rapid water rescue in cases where signficant bodies of water lie adjacent to, or near their airports.

Comments Invited

To help mold FAA policy on overwater survival, the agency is interested in receiving comments on the staff study report and its findings. Interested persons are invited to submit such written data, views or arguments as they may desire. Comments should identify the "Water Survival Staff Study" and be submitted to the address above.

How To Obtain Copies

A copy of the Water Survival Staff Study may be obtained by contacting the person under **FOR FURTHER INFORMATION CONTRACT.**

Issued in Washington, D.C., September 12, 1984.

J. A. Pontecorvo,

Acting Director, Office of Airworthiness.

[FR Doc. 84-24721 Filed 9-18-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Martin, St. Lucie, and Indian River Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will not be prepared for a proposed highway project in Martin, St. Lucie, and Indian River Counties, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone (904) 681-7244.

SUPPLEMENTARY INFORMATION: A Notice of Intent to Prepare an Environmental Impact Statement (EIS) for a proposed highway project in Martin, St. Lucie, and Indian River Counties was issued on June 21, 1982 and published in the July 1, 1982 **Federal Register.** The proposed improvement would have provided for the reconstruction of U.S. Route 1 (State Road 5) from Cove Road in Martin County through St. Lucie County to 17th Street in Vero Beach in Indian River County, a distance of 37.5 miles.

This study was supposed to identify the transportation needs for this 37 mile corridor. Another purpose of the study was to develop and evaluate the various alternatives for satisfying these needs. The FHWA and Florida Department of Transportation recently concluded that this environmental study was not the appropriate process to use to identify the transportation needs for this corridor. A transportation study will be conducted for this corridor to determine the transportation needs in lieu of the previous environmental study. For this reason, the Notice of Intent is hereby rescinded.

Issued on: September 6, 1984.

P.E. Carpenter,

Division Administrator, Tallahassee, Florida.

[FR Doc. 84-24777 Filed 9-18-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 27-84]

September 13, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Notes of September 30, 1986, Series Y-1986 (CUSIP No. 912827 RF 1). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent to the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States securities, and the terms and conditions of such outstanding issue are otherwise identical to the terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular plus accrued interest from the last preceding interest payment date on the outstanding securities.

2. Description of Securities

2.1. The securities will be dated October 1, 1984, and will bear interest from that date, payable on a semiannual basis on March 31, 1985, and each subsequent 6 months on September 30 and March 31 until the principal becomes payable. They will mature September 30, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, September 19, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 18, 1984, and received no later than Monday, October 1, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Monday, October 1, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 27, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, October 1, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registed in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,
Fiscal Assistant Secretary.

[FR Doc. 84-24789 Filed 9-18-84; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 183
Wednesday, September 19, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49, Monday, August 27, 1984, p. 33971.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, September 24, 1984, at 11:00 a.m.

CHANGES IN THE MEETING: The meeting on rule enforcement reviews has been rescheduled for Friday, September 28, 1984 at 11:30 a.m.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84–24938 Filed 9–17–84; 2:50 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 33971, August 27, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Monday, September 24, 1984.

CHANGES IN THE MEETING: The meeting on the briefing on the National Futures Association has been rescheduled for Friday, September 28, 1984.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84–24939 Filed 9–17–84; 2:50 pm]

BILLING CODE 6351-01-M

3

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 14, 1984, 49 F.R. 36190.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: September 19, 1984, 9:00 a.m.

CHANGE IN THE MEETING: The Commission meeting to be held on September 19, 1984 at 9:00 a.m. has been changed to September 20, 1984 at 9:00 a.m.

Francis C. Hurney,

Secretary.

[FR Doc. 84–24951 Filed 9–17–84; 3:53 pm]

BILLING CODE 6730-01-M

4

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 11-84]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Tuesday, Sept. 25, 1984 at 10:30 a.m.

Subject Matter

Consideration of Final Decisions issued under the Second Czechoslovakian Claims Program, Proposed Decisions issued under the Vietnam Claims Program (Public Law 96–606), and decisions involving claims for prisoner of war compensation.

Subject matter listed above, not disposed of at the schduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111–20th Street, NW., Room 409, Washington, D.C. 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C., on September 10, 1984.

Judith H. Lock,

Administrative Officer.

[FR Doc. 84–24952 Filed 9–17–84; 3:53 pm]

BILLING CODE: 4410-01-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-44]

TIME AND DATE: 9:30 a.m., Tuesday, September 25, 1984.

PLACE: Room 331, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Dialyzers using patented telescoping for fluid lines (Docket No. 1094).
5. Investigation 731–TA–149 [Final] (Barium Chloride from the People's Republic of China) — briefing and vote.
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason. Secretary, (202) 523–0161.

[FR Doc. 84–24827 Filed 9–14–84; 4:27 pm]

BILLING CODE 7020-02-M

6

LEGAL SERVICES CORPORATION

Board of Directors Meeting

PREVIOUSLY ISSUED: September 4, 1984 (Published 49 FR 35069, September 5, 1984)

PREVIOUSLY ANNOUNCED TIME AND DATE: It will commence at 9:30 a.m. and continue until all official business is completed; Friday, September 14, 1984.

CHANGE IN NOTICE: Addition under **STATUS OF MEETING:**

By authority of Title 29 Section 523 of the District of Columbia Code (the District of Columbia Nonprofit Corporation Act), some members of the Board of Directors of the Legal Services Corporation participated in the meeting by means of conference telephone communication.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272–4040.

DATE ISSUED: September 14, 1984.

Donald P. Bogard,

President.

[FR Doc. 84–24850 Filed 9–17–84; 10:09 am]

BILLING CODE 6820-35-M

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federal register

Wednesday
September 19, 1984

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32
Refuge Specific Hunting Regulations;
Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge Specific Hunting Regulations

AGENCY: Fish and Wildlife Service.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is revising 50 CFR Part 32 to delete the provision that requires the issuance of special hunting regulations on an annual basis. Also, the term "special regulations" is replaced by a more appropriate term "refuge specific regulations." General provisions concerning baiting and the use of tree stands for hunting on national wildlife refuges are added to § 32.2. In addition, refuge specific hunting regulations governing hunting on refuges replace the interim hunting regulations that were issued in 1982. This rule deletes § 32.5 which is duplicative of § 32.12 and was erroneously inserted into Part 32.

EFFECTIVE DATE: October 19, 1984.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (telephone 202-343-4311).

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains the provisions that govern hunting on national wildlife refuges. Hunting is regulated on refuges for three basic reasons: (1) To properly manage the wildlife resource, (2) to protect other refuge values, and (3) to ensure refuge user safety. On many refuges, the Service policy of adopting the State hunting regulations is often an adequate way of meeting these objectives, but on other refuges it is necessary for the Service to issue hunting regulations in addition to State regulations to ensure that the Service meets its management responsibilities.

Section 32.3 contains the provision that requires the publication of hunting regulations for a given refuge on an annual basis. These regulations are generally limited to one season and historically have not been permanently codified in Title 50 of the Code of Federal Regulations. The Service implemented this provision in 1980 when the Department of the Interior revised and reorganized Title 50 of the Code of Federal Regulations. Since then, the Service has added more than 100 refuges to the lists of areas open to hunting in Part 32. Also, the authority to issue these regulations has been centralized in the Office of the Assistant Secretary for Fish and Wildlife and Parks which ensures the standardization of these refuge hunting regulations throughout the National Wildlife Refuge System. For these reasons, the provision in § 32.3 that requires annual publication of refuge hunting regulations has become a costly administrative burden and has adversely affected their timely issuance. Therefore, the Service is deleting this provision and issuing the refuge specific hunting regulations listed in this rule. With the codification of these regulations, they will remain in place and control hunting activities on a given refuge, unless and until they are amended by subsequent regulations published in the **Federal Register**.

The hunting regulations that have been developed for individual refuges are referred to as "special regulation" in Part 32. These "special regulations" are similar in effect to any other regulation used to govern an activity or use on national wildlife refuges, and they have no "special" value as the term implies. Therefore, the Service proposes a technical amendment to change the term "special regulation" in Part 32 to "refuge specific regulations" to clarify the fact that these hunting regulations govern individual hunt programs on particular refuges.

This rulemaking contains refuge specific hunting regulations only for refuges that have been opened in previous rulemakings and does not add any refuges to the list of those open to hunting. This rulemaking represents an administrative technical amendment that is designed to place the regulations governing hunting refuges in the Code of Federal Regulations. In the absence of such refuge specific hunting regulations, hunting on national wildlife refuges is permitted subject to State and Federal laws and regulations including the general provision of 50 CFR Part 32.

Section 32.2 contains the general provisions that govern hunting on national wildlife refuge areas. This rulemaking adds two new provisions that govern baiting for purposes of upland and big game hunting and the use of tree stands. While baiting for purposes of migratory game bird hunting is prohibited (50 CFR 20.21), the baiting of resident game for hunting purposes is practiced in some States. Even though baiting may be an acceptable practice on a Statewide basis, the effects of baiting on a relatively small area such as a refuge can detract from a refuge's wildlife management program. For example, baiting can attract wildlife from adjacent nonrefuge lands, thereby altering normal concentrations of both refuge and nonrefuge wildlife populations and restricting legitimate harvest of wildlife outside of the refuge. By providing an artificial food supply, baiting can also alter behavioral patterns of target wildlife species or attract nontarget species in undesirable numbers both of which could conflict with refuge management objectives. Therefore, the Service is adding a general provision to § 32.2 for big game and upland game hunting that prohibits the unauthorized distribution of bait and the hunting over bait on all wildlife refuge areas.

Hunting programs on refuges are managed so that minimal disturbances to refuge habitat occur. Hunting from trees is a common practice, and injury to trees can be avoided if the equipment used to support a hunter does not penetrate through the bark of the tree. Therefore, the Service is adding to § 32.2 a general provision that prohibits the use of nails, wire, screws or bolts to attach stands to trees and prohibits the hunting from a tree into which a metal object has been driven to support a hunter.

The Service last published hunting regulations on September 13, 1982 (47 FR 40298). Those hunting regulations have been standardized and simplified and are presented in this rule. The Service is deleting the annual publication provision which will permit the codification of these standardized regulations in sections 32.12, 32.22 and 32.32. Therefore, this rulemaking supersedes the interim refuge hunting regulations issued on September 13, 1982 (47 FR 40298).

Only minor technical and administrative changes have been made to the proposed refuge specific hunting regulations in this final rule. Most changes were made to clarify the regulations, except that in the proposed rule, a restriction on teal hunting was erroneously included in the refuge specific regulations for Delta National Wildlife Refuge. This restriction has been dropped from the final rule. Additionally, steel shot requirements have been added to cetain refuge specific regulations. An explanation as to why these requirements have been added and which refuge regulations are involved can be found in the Service response to substantive issue number 15 in the "Responses to Commemts Received" section.

This rulemaking also deletes § 32.5 which was added to Part 32 when migratory game bird hunting regulations for Ravalli NWR were incorrectly designated as § 32.5 in a rule published on July 10, 1973 (38 FR 18379).

Section-by-Section Analysis

Section 32.2 General provisions.

Paragraph (e) requires hunters to comply with the terms and conditions authorizing access or use of the national wildlife refuge area. This paragraph is revised to expressly require compliance with the terms and conditions of permits issued by the Service to authorize an individual's participation in a refuge hunt program.

The term "special regulations" is replaced by "refuge specific regulations" in paragraph (f) for the purposes of clarity. Also, the last sentence in paragraph (f) which states that special regulations are not codified is replaced by one that states that refuge specific hunting regulations are codified in §§ 32.12, 32.22 and 32.32.

A new paragraph (h) is added to prohibit the unauthorized baiting and hunting over bait on wildlife refuge areas, and a new paragraph (i) is added to prohibit the use of nails, wire, screws or bolts to attach stands to trees and to prohibit the hunting from a tree into which a metal object has been driven to support the hunter.

Section 32.3 Procedure for publication of special regulations.

The terms "special regulations" and "special hunting regulations" are replaced wherever they are used in this section by the term "refuge specific hunting regulations."

Paragraph (a) of this section is revised to permit the issuance of refuge specific hunting regulations for a refuge at the time of publication of the opening of that refuge to migratory game bird, upland game and/or big game hunting.

Paragraphs (b) and (e) are deleted because these provisions contain requirements relating to the annual publication of refuge specific hunting regulations. Also, the statement that special regulations are not codified is deleted from paragraph (g).

Paragraph (h) is revised to clarify the provision that enables the Service to properly manage refuges under unforeseen circumstances. When unanticipated changes occur in wildlife populations, habitat conditions or other factors affecting a refuge's wildlife resources, changes in the existing refuge specific regulations or new conditions can be imposed during the hunting season. These changes will be made only under the conditions noted above and will be in force for the one hunting season to which they are applied.

Section 32.5 Special regulations; migratory game birds.

This section is deleted. It was added to Part 32 in 1973 by the publication of special regulations for migratory game bird hunting at Ravalli National Wildlife Refuge (NWR), Montana (38 FR 18379). This document incorrectly designated § 32.5 as the section for special regulations for migratory game bird hunting. The current section reference for such regulations is 32.12.

Responses to Comments Received

A careful review of all the public comments identified a number of substantive issues concerning the proposed rulemaking. The following is a listing of each substantive issue that was raised by the public.

1. The length of the comment period for the proposed rule was not long enough, and background information for each refuge hunt was not located in one particular office for public review.

Service Response: The Service believes that 30 days was a sufficient period of time to respond to the proposed rule. The proposed regulations were similar to those that were issued as interim regulations on September 13, 1982. Although the public was asked to comment on these interim regulations, no comments were received. Additionally, the regulations in the proposed rule are concise and consistent for all the refuges listed, and the conditions of the hunt are listed in an orderly and easily followed format. Finally, the public is familiar with these regulations and has hunted under the same or similar regulations in the past.

The hunting programs governed by the proposed regulations were subject to public review when they were first proposed. Background information for any of the refuge hunting programs has been and is available from the appropriate Fish and Wildlife Service regional office. To consolidate all of the background information in one particular office would not be practicable.

2. The proposed regulations will illegally transfer the authority for managing Federal lands to the States.

Service Response: The proposed regulations do not transfer Service authority to the States to manage the National Wildlife Refuge System. The Service incorporates State regulations because the bag limits, seasons and other State regulations vary from year to year. The Service has been incorporating State regulations into national wildlife refuge hunting regulations since 1960. By doing so, the Service does not in any way abrogate its authority for managing refuge lands. Under the proposed hunting regulations the Service maintains its authority to enforce all State and Federal game regulations on national wildlife refuges.

3. Dropping the annual publication requirement for refuge specific regulations and codifying them will remove the Service's flexibility in dealing with changing wildlife population and habitat conditions.

Service Response: The Service will maintain its regulatory flexibility in responding to changes in wildlife populations and habitat conditions with codified refuge specific hunting regulations. Under the proposed rule, the refuge specific regulations will remain in effect until they are amended by rulemaking. Amendments will be made whenever needed to reflect changing conditions. Amending codified regulations will involve the same procedures used to issue regulations on an annual basis. Reissuing regulations only for those refuges that need them will make the Service more responsive to situations involving changing habitate and wildlife populations than if the Service maintained the burden of issuing regulations for all the refuges on an annual basis.

4. The current Fish and Wildlife Service attitude is that hunting on refuges is permissible unless it is demonstrably incompatible.

Service Response: In many cases, refuges are established for purposes that are very broad, such as Great Dismal Swamp which was established "for the conservation and management of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive education" (Pub. L. 93–402). In these situations, hunting not only serves as a recreational opportunity for the public, but it is used for the conservation and management of wildlife resources which is a purpose for which the refuge was established. The Service recognizes hunting as an acceptable, traditional and legitimate form of wildlife-oriented recreation and permits hunting on refuges where it is compatible with the purposes for which the refuges were established.

5. The requirements of 50 CFR 31.1 and 31.2 have not been met.

Service Response: 50 CFR Part 31 is limited to recognizing general authority to dispose of surplus wildlife and lists hunting as one method of control and disposition. The Service's procedure for permitting public hunting on refuges is set forth in 50 CFR Part 32. The rule involves the policy and regulations set forth in Part 32 which essentially require that hunting be consistent with the principles of sound wildlife management and otherwise be in the public interest. Generally, the Service permits the taking of game species under the bag limits set by the States.

6. Data was not provided to demonstrate that proposed regulations will involve only minor changes in public use.

Service Response: Hunter visits to national wildlife refuges during the 1980–81, 1981–82 and 1982–83 hunting seasons were 1,113,000, 1,007,000 and 1,120,000 visits, respectively. Since the proposed regulations are similar to those used during the 1982–83 season the Service concludes that the rule will involve only minor changes in public use.

7. Sport hunting on refuges is illegal.

Service Response: The Refuge Recreation Act states that the Secretary of the Interior is authorized to administer refuges for public recreation. The Refuge System Administration Act states that the Secretary is authorized to permit the use of any area within the Refuge System for any purpose, including hunting. Thus, Congress clearly intended that recreation be an important part of a refuge management program to the extent that it can be made compatible with and reconciled as incidental to the primary purposes of a refuge. This was affirmed in the decision of the U.S. District Court for the District of Columbia on February 8, 1973, in the matter of *The Humane Society of the United States v. Morton* (Civil Action No. 3627) where the court found that public hunting on Great Swamp, Eastern Neck and Chincoteague National Wildlife Refuges was a valid and legal form of public recreation on these refuges.

8. The proposed hunting regulations show little evidence of effort to provide protection for endangered and threatened species from potential adverse impacts of the hunting programs.

Service Response: When a plan is developed for hunting on a refuge, the plan considers the potential impact upon any endangered or threatened species that might use the refuge, and the Service complies with the Endangered Species Act by doing section 7 analyses. Restrictions are placed on hunting programs through the use of refuge specific regulations whenever necessary to ensure that the hunting program will not affect endangered or threatened species. Though it is difficult to discern which of the proposed hunting regulations are directed toward avoiding a potential effect on endangered species, the protection of endangered and threatened species is encompassed in these regulations.

9. The proposed regulations show vague and inconsistent wording throughout.

Service Response: The intent of the regulations is to provide the legal basis for enforcing the refuge specific hunting regulations. Since refuge resources vary throughout the National Wildlife Refuge System, the restrictions necessary to protect the resources can not always be stated in the same language. The regulations must be taken in the context of what type of hunting is being permitted on a given refuge and how they relate to State and other Federal regulations. The Service provides a refuge hunting leaflet for each refuge which specifies the details of the hunts in an informative manner for the general public.

10. The proposed regulations for deer hunting at Loxahatchee National Wildlilfe Refuge are inadequate.

Service Response: Under the regulation issued for last year's hunt, the U.S. District Court for the Southern District of Florida, in the matter of *The Humane Society of the United States v. Watt* (Case No. 83–8581–CIV–JLK), found that deer hunting was compatible with the purposes for which the refuge was established. If deer hunting continues at this refuge, the Service believes that these regulations, State regulations and other Federal regulations will ensure that such a hunt is compatible with refuge purposes and will provide the necessary protection for endangered species, other wildlife populations and refuge habitat.

11. The proposed regulations for waterfowl hunting at Brigantine National Wildlife Refuge are not adequate for the protection of the peregrine falcon and the black duck.

Service Response: Under the present waterfowl hunting program, the Service believes that State and other Federal regulations provide adequate protection for the black duck and peregrine falcon. The Service's Migratory Bird Management Office has determined that a portion of the black duck population can be harvested through hunting, and 60% of the refuge will be closed to all migratory waterfowl hunting which will provide an adequate resting area for migratory waterfowl that use the refuge during the hunting season.

The necessary precautions are being taken to preclude any impact the waterfowl hunting program might have on the peregrine falcon. These precautions include the restriction of no hunting within 1½ miles of the peregrine falcon nesting structure and include varying methods of informing hunters of the presence of the peregrine falcon on the refuge.

12. The prohibition against baiting on national wildlife refuges would conflict with State law in States where baiting for certain game species is permitted, and if prohibited on refuges where baiting is permitted on surrounding lands, baiting would draw wildlife from the refuge.

Service Response: Where State law is not sufficient to meet the management needs of the National Wildlife Refuge System, the Service promulgates regulations that are more restrictive than State law and regulations. The intent of this general provision is to provide a uniform refuge policy regarding baiting, because the effects of baiting for resident game hunting on a relatively small area such as a refuge can detract from a refuge's wildlife management program.

13. The baiting prohibition lacks any *scienter* requirement.

Service Response: The Service realizes the problems that enforcement of this type of regulation can bring about. Nonetheless, the Service policy regarding the enforcement of the baiting regulation must be consistent with enforcement of the Service's migratory bird baiting regulations until an adequate solution to this problem is found.

14. The restrictions on tree stands should not apply to those that may scrape the outer layer of bark without permanently damaging the tree.

Service Response: The general provision to govern the use of tree stands on refuges is not intended to prohibit the use of these types of portable tree stands.

15. One commenter suggested that the steel shot requirements should not be codified, and another suggested that steel shot requirements should be codified even if State regulations require the use of steel shot on certain refuges.

Service Response: In most cases, the basis for the steel shot regulations in the rule was a specific State regulation, a Federal regulation (50 CFR Part 20) and/or a demonstrated lead poisoning problem. The Service was not consistent in listing the steel shot requirements for all the refuges that have this requirement in the proposed rule, and this resulted in some confusion to those not completely familiar with State and Federal regulations. Therefore, the Service has determined that it would be in the public's interest to list the steel shot requirements in the refuge specific regulations for all the refuges where it is required. Thus, the steel shot requirements, based on refuges lying in non-toxic shot zones listed in 50 CFR Part 20, have been added to the refuge specific regulations in this final rule for the following refuges: Bombay Hook, Prime Hook, Shiawassee, Mingo, Swan Lake, Upper Mississippi Wild Life and Fish Refuge, Ottawa, Iroquois, Montezuma and Erie National Wildlife Refuges. A steel shot requirement, based on State regulation, has also been added to the refuge specific regulations in this final rule for Las Vegas National Wildlife Refuge.

The Service is assessing the need for steel shot regulations on several refuges. If these studies warrant the removal of these regulations, their removal from the Code of Federal Regulations involves the same procedures that will be necessary to amend the refuge specific regulations. Thus, codifying the steel shot regulations will not hinder the amendment of these regulations.

16. There is no provision for hunting by falconry on refuges.

Service Response: The Service recognizes falconry as a legal means of taking wildlife as set forth in 50 CFR Part 21 and appropriate State laws. Falconry may be permitted on refuges to take game where it is permitted by State law and the refuge is open for hunting.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary, under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to, hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act authorizes the Secretary of the Interior to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. In some cases, refuge specific hunting regulations are included as a part of the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the affected national wildlife refuges were established. Compliance with the Refuge Administration and Refuge Recreation Acts is ensured when the hunting plans are developed, and the determinations required by these acts are made prior to the addition of the refuge to the lists of areas open to hunting in 50 CFR.

It has heretofore been determined that, with respect to each of the refuges listed below, hunting in accordance with the pertinent refuge specific regulations is compatible with the purposes for which each refuge was established, and further that such recreational use of each refuge will not interfere with the primary purpose for which it was established. Funds are available for the development, operation and maintenance of this form of recreation.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Service is deleting its requirement for annual publication of refuge specific hunting regulations in favor of codifing these regulations in 50 CFR. As described above, the elimination of this administrative burden will benefit the Federal Government and affected individuals. In addition, the Service is revising and replacing the refuge specific hunting regulations that were issued in September 1982. These actions will not significantly alter existing refuge hunting programs and, therefore, are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Hunter surveys	1018-0044
Special use permits	1018-0046
Hunter reservation/application/blind assignment	1018-0047
Weapon qualification	1018-0050

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76-59) was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1977 (41 FR 51131). Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(c)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when the hunting plans are developed, and the determinations required by these acts are made prior to the addition of the refuge to the lists of areas open to hunting in 50 CFR. Also, refuge specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of the refuge. The changes in the general provisions governing hunting on national wildlife refuges and the refuge specific hunting regulations in this rulemaking do not significantly alter the existing use of national wildlife refuges.

Richard Prietsche, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C., is the primary author of this proposed rulemaking document.

Where permits are required for a particular refuge hunt, this condition generally refers to a Service issued permit. A State issued permit may, however, be required in lieu of or in addition to a Service permit. Information regarding permits and the conditions that apply to individual refuge hunts and a map of the hunt area are available at refuge headquarters. This information can also be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses list below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232; telephone (503) 231-6214

Region 2—Arizona, New Mexico, Oklahoma and Texas Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; telephone (505) 766-2324

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; telephone (612) 725-3507

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico and Tennessee Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; telephone (404) 221-3538

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; telephone (617) 965-5100

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; telephone (303) 234-4608

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State hunting regulations. There are no refuge specific hunting regulations for these refuges) Assistant Regional Director—Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; telephone (907) 786-3542.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

PART 32—[AMENDED]

For the reasons set forth in the preamble, Part 32, Subchapter C, Chapter I of Title 50 Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 32 reads as follows:

Authority: Section 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb, unless otherwise noted.

2. Section 32.2 is amended by revising paragraphs (e) and (f) and adding new paragraphs (h) and (i) to read as follows:

§ 32.2 General provisions.

* * * * *

(e) Each person shall comply with the terms and conditions authorizing access or use of wildlife refuges, including the terms and conditions under which hunting permits are issued.

(f) Each person shall comply with the provisions of any refuge specific regulations governing hunting on the wildlife refuge area. Regulations, special conditions and maps of the hunting areas for a particular wildlife refuge are available at that area's headquarters. In addition, refuge specific hunting regulations for migratory game bird, upland game and big game hunting are codified in §§ 32.12, 32.22 and 32.32, respectively.

* * * * *

(h) The unauthorized distribution of bait and the hunting over bait is prohibited on wildlife refuge areas.

(i) The use of nails, wire, screws or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter is prohibited on wildlife refuge areas.

3. Section 32.3 is revised to read as follows:

§ 32.3 Procedures for publication of refuge specific hunting regulations.

(a) Refuge specific hunting regulations are issued only at the time of or after the determination and publication of the opening of a wildlife refuge area to migratory game bird, upland game or big game hunting.

(b) Refuge specific hunting regulations may contain the following items:

(1) Wildlife species that may be hunted,

(2) Seasons,

(3) Bag limits,

(4) Methods of hunting,

(5) Description of areas open to hunting, or

(6) Other provisions as required.

(c) Refuge specific hunting regulations will not liberalize existing State laws or regulations.

(d) Refuge specific hunting regulations are subject to change and the public is invited to submit suggestions and comments for consideration at any time.

(e) Refuge specific hunting regulations are initially published in the daily issue of the **Federal Register** and are subsequently codified in 50 CFR 32.12, 32.22 or 32.32.

(f) Refuge specific hunting regulations may be amended or new conditions imposed at any time during the hunting season when unpredictable changes occur in wildlife populations, habitat conditions or in other factors affecting a refuge's wildlife resources. Changes in refuge specific hunting regulations made under the conditions noted above can be in force only for the one season to which the changes apply.

§ 32.5 [Removed]

4. Remove § 32.5 from text and table of contents in Part 32.

5. Sections 32.12, 32.22 and 32.32 are revised to read as follows:

§ 32.12 Refuge specific regulations; migratory game birds.

(a) *Alabama—Wheeler National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(b) *Alabama and Georgia—Eufaula National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting of ducks and coots is permitted only on Mondays, Wednesdays and Saturdays until noon.

(3) Hunting is not permitted outside the area assigned to the hunting parties.

(4) Duck and coot hunters must use and be in possession only of shells containing steel shot.

(5) Hunters are required to check in and out of the refuge.

(6) Checking bagged game is required.

(c) *Arizona and California*—(1) *Cibola National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, gallinules and geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Special Use Permits are required for all hunting guides.

(ii) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farm worker.

(iii) Neither hunters nor dogs may enter closed areas to retrieve game.

(iv) Pits or permanent blinds are not permitted.

(v) The following additional restrictions apply to Zone II A:

(A) During the waterfowl season, Farm Unit 2 is closed to dove hunting until noon each day.

(B) In Farm Unit 2, waterfowl hunters must remain within 50 feet of designated stations while hunting except when actively retrieving downed birds.

(C) During the goose season, waterfowl hunters may use or possess no more than 10 shells per day except that the shell limit ends at noon daily in the Hart Mine Marsh Area.

(2) *Havasu National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, gallinules, geese and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Neither hunters nor dogs may enter closed areas to retrieve game.

(ii) Pits and permanent blinds are not permitted.

(iii) The following regulations apply only to Pintail Slough (all refuge lands north of the north dike):

(A) Permits are required for waterfowl hunting.

(B) Dove hunting is permitted only during the September season.

(3) *Imperial National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, gallinules, geese and common snipe is permitted on designated areas of the refuge subject to the following condition: Pits and permanent blinds are not permitted.

(d) *Arkansas*—(1) *Felsenthal National Wildlife Refuge.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is not permitted during the special teal season.

(iii) Hunting of ducks and coots is permitted until noon each day.

(iv) Only portable blinds are permitted.

(v) Blinds, boats and decoys must be removed from the refuge following each day's hunt.

(2) *Holla Bend National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Overflow National Wildlife Refuge.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is not permitted during the special teal season.

(iii) Hunting of ducks and coots is permitted until noon each day.

(iv) Only portable blinds are permitted.

(v) Blinds, boats and decoys must be removed from the refuge following each day's hunt.

(4) *White River National Wildlife Refuge.* Hunting of doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Tuesdays, Thursdays and Saturdays until noon.

(iii) Hunting is not permitted during the special teal season.

(iv) Snipe, woodcock, dove and coot may be taken only when their seasons coincide with the refuge waterfowl hunting season.

(v) Only portable blinds are permitted.

(vi) Blinds and decoys must be removed from the refuge following each day's hunt.

(e) *California*—(1) *Clear Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following condition: Air-thrust and inboard water-thrust boats are not permitted.

(2) *Colusa National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge.

(3) *Delevan National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge.

(4) *Kern National Wildlife Refuge.* Hunting of geese, ducks, coots and gallinules is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters assigned to the spaced blind unit must travel to and from parking areas and blind sites with firearms unloaded.

(ii) Hunters assigned to the spaced blind unit must remain within 100 feet of the numbered steel post (blind site) except when pursuing cripples, placing decoys or traveling to and from the parking area.

(5) *Kesterson National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Only portable blinds and temporary blinds constructed of natural materials are permitted.

(ii) Portable blinds must be removed from the refuge following each day's hunt.

(iii) The construction and use of permanent blinds are not permitted.

(6) *Lower Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) In the controlled waterfowl hunting area, entry permits are required for the first 2 days of the waterfowl season for all hunters 16 years of age or older. Hunters under the age of 16 hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Waterfowl, coot, gallinule and snipe shooting hours end at 1:00 p.m. daily on all California portions of the refuge.

(iii) Possession of firearms in posted retrieving zones is not permitted except unloaded firearms may be taken through these zones when in transit to or from the hunting areas.

(iv) Decoys may not be set in retrieving zones.

(v) Air-thrust and inboard water-thrust boats are not permitted.

(7) *Modoc National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the first weekend only.

(ii) After the first weekend of the open season, hunting is permitted only on Tuesdays, Thursdays and Saturdays.

(iii) In the designated spaced blind area, hunters must remain within 50 feet of the established blind stake for the blind assigned to them.

(8) *Sacramento National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Firearms must be unloaded while being transported between parking areas and blind sites.

(ii) Snipe hunting is not permitted in the spaced blind unit.

(iii) Hunters assigned to the spaced blind unit are restricted to their assigned blind except for retrieving downed birds, placing decoys or traveling to and from the parking area.

(iv) Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

(9) *Salton Sea National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters using the Union Tract must use goose decoys.

(ii) Hunters must hunt from assigned blinds or stakes except when shooting to retrieve crippled birds.

(10) *San Francisco Bay National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters may retrieve birds that fall into an area that is closed to hunting, provided that all weapons are left within a legal hunting area.

(ii) Only portable blinds and temporary blinds constructed of natural materials are permitted.

(iii) The construction and use of permanent blinds are not permitted.

(iv) Digging into levees is not permitted.

(v) Nonmotorized boats may be used on all 9 ponds for setting out and retrieving decoys or for retrieving downed waterfowl. Nonmotorized boats may also be used for hunting on Ponds 1, 2, 3, 4, 5, and 6 of the Mowry Slough Unit.

(vi) All decoys, boats and other personal property must be removed from the refuge following each day's hunt.

(11) *San Luis National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Only portable blinds and temporary blinds constructed of natural materials are permitted.

(ii) The construction and use of permanent blinds are not permitted.

(iii) Portable blinds must be removed from the refuge following each day's hunt.

(12) *Sutter National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge.

(13) *Tule Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) In the controlled waterfowl hunting area, entry permits are required for the first 2 days of the waterfowl season for all hunters 16 years of age or older. Hunters under the age of 16 hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Hunting of waterfowl, coot, gallinule and snipe is permited until 1:00 p.m. each day.

(iii) In designated spaced blind areas, possession of any loaded firearms more than 100 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

(iv) Possession of firearms in posted retrieving zones is not permitted except unloaded firearms may be taken through these zones when in transit to and from the hunting areas.

(v) Decoys may not be set in retrieving zones.

(vi) Air-thrust and inboard water-thrust boats are not permitted.

(f) *Colorado*—(1) *Alamosa National Wildlife Refuge.* Hunting of mourning doves, geese, ducks, coots, mergansers and common snipe is permitted on designated areas of the refuge subject to the following conditions: Common snipe and mourning dove hunting are permitted only during the waterfowl hunting season.

(2) *Browns Park National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge.

(3) *Monte Vista National Wildlife Refuge.* Hunting of mourning doves, geese, ducks, coots, mergansers and common snipe is permitted on designated areas of the refuge subject to the following condition: Common snipe and mourning dove hunting are permitted only during the waterfowl hunting seasons.

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Hunting of mourning doves, rails, gallinules, woodcock, crows and common snipe is permitted only on the South Upland Hunting Area.

(iii) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(iv) Hunting is not permitted from March 1 through August 30.

(2) *Prime Hook National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Hunting of mourning doves, woodcock, crows and common snipe is permitted on the North Hunting Area.

(iii) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(iv) Hunting is not permitted from March 1 through August 30.

(h) *Flordia*—(1) *Chassahowitzka National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(iii) Only temporary blinds are permitted.

(iv) Decoys must be removed from the refuge following each day's hunt.

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of ducks, moorhens, purple gallinules, woodcock, rails, coots and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is not permitted during quota deer hunts.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Only temporary blinds are permitted.

(v) Decoys must be removed from the refuge following each day's hunt.

(3) *Loxahatchee National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted Wednesday through Sunday except the refuge is closed to hunting on Christmas Day.

(iii) Hunting is not permitted during the special teal season.

(iv) Hunters must use and be in possession only of shells containing steel shot.

(v) Guns must be unloaded and cased or dismantled when outside the hunt area and when the boat is enroute to or from the hunting area.

(vi) Only temporary blinds are permitted.

(4) *Merritt Island National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Wednesdays, Thursdays, Fridays and Saturdays until 1:00 p.m. Hunting is permitted until sunset on Sundays and the last day of the State waterfowl season.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Decoys, boats and other personal property must be removed from the refuge following each day's hunt.

(v) Only temporary blinds built of native vegetation are permitted.

(i) *Georgia and South Carolina—Savannah National Wildlife Refuge.* Hunting of ducks, coots and snipe is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted only on Tuesdays, Thursdays and Saturdays until noon.

(3) Hunters must use and be in possession only of shells containing steel shot.

(4) Decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(j) *Idaho*—(1) *Bear Lake National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats are not permitted.

(2) *Camas National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge.

(3) *Deer Flat National Wildlife Refuge.* Hunting of geese, ducks, coots, common snipe and doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Only ducks and coots may be hunted on the Lake Lowell sector.

(ii) Only portable and temporary blinds constructed of natural materials are permitted.

(iii) The construction and use of permanent hunting blinds are not permitted.

(4) *Grays Lake National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Motorized boats are not permitted.

(5) *Kootenai National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Tuesdays, Thursdays, Saturdays and Sundays.

(ii) Hunters are limited to the use and/or possession of no more than 25 shells per day.

(iii) All firearms must be unloaded when in the posted retrieving zone for purposes of retrieving downed birds or traveling to or from the hunting area.

(6) *Minidoka National Wildlife Refuge.* Hunting of geese, ducks, and coots is permitted on designated areas of the refuge.

(k) *Illinois*—(1) *Chautauqua National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only in the area outside the main dike in the Liverpool Lake section and north of the entrance to the north ditch known as Goofy Ridge Ditch.

(ii) The retrieval zone is limited to the river side of the main dike.

(iii) Only temporary structures or blinds constructed of native materials are permitted.

(2) *Crab Orchard National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditons:

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville Public, and Greenbriar Road areas from sunrise to 12:00 noon each day during the goose season. Goose hunting on these areas, including lake shorelines, is permitted only from existing refuge established blinds.

(ii) During the goose season, on Grassy, Orchard, Sawmill and Turkey Islands, hunters may hunt only from blinds provided by the refuge. Only hunters occupying these blinds are allowed on the islands during the goose hunting season.

(iii) Waterfowl hunters must use and be in possession of only shells containing steel shot.

(iv) Only portable or temporary blinds may be used. Blinds and pits may not be located beyond the shoreline of refuge waters.

(v) Blinds must be removed or dismantled at the end of each day's hunt.

(l) *Iowa—De Soto National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted until noon each day from November 1 through the end of the waterfowl hunting season.

(3) Hunters must use and be in possession only of shells containing steel shot.

(4) Hunters may not use or possess more than 25 shells per day.

(m) *Iowa, Illinois, and Missouri—Mark Twain National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the Big Timber Division and Turkey and Otter Islands subject to the following conditions:

(1) Only temporary wood or brush blinds are permitted.

(2) Blinds cannot be locked or otherwise sealed against public entry.

(3) Blinds are open to the public on a first-come-first-serve basis if not occupied 30 minutes after the start of the legal shooting hours.

(n) *Iowa, Illinois, Minnesota, and Wisconsin—Upper Mississippi River Wildlife and Fish Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for Potter's Marsh in Pool 13 except during the early teal season.

(ii) Waterfowl hunters must use and be in possession only of shells containing steel shot on those portions of the refuge in the States of Iowa, Minnesota and Wisconsin.

(o) *Kansas*—(1) *Kirwin National Wildlife Refuge.* Hunting of mourning doves, ducks, geese, coots and common snipe is permitted on designated areas of the refuge.

(2) *Quivira National Wildlife Refuge.* Hunting of mourning dove, geese, ducks, coots, rails, common snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Waterfowl hunters must use and be in possession of only shells containing steel shot.

(p) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Duck hunting is not permitted during the special teal season.

(ii) Hunting is permitted until noon each day.

(iii) Only temporary blinds are permitted.

(2) *D'Arbonne National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted until noon each day.

(ii) Boats, decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(3) *Delta National Wildlife Refuge.* Hunting of ducks, geese and coots is permitted on designated areas of the

refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays and Sundays until noon during the State duck season.

(ii) Only temporary blinds are permitted.

(iii) Blinds and decoys must be removed from the refuge following each day's hunt.

(4) *Lacassine National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted Wednesday through Sunday except that hunting is permitted daily during teal season.

(ii) Hunting ends at noon each day.

(iii) Hunters may not enter the hunt area before 4 a.m.

(iv) Hunting is not permitted within 50 yards of a canal or waterway.

(v) Hunters must use and be in the possession only of shells containing steel shot.

(vi) Hunting parties must be spaced 150 yards apart. The first hunter(s) to arrive at a pond or blind site holds that site until the hunt is completed.

(vii) Decoys and portable blinds must be removed from the refuge following each day's hunt.

(viii) Only portable blinds and blinds constructed from native vegetation are permitted.

(5) *Sabine National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays and Sundays except that hunting is permitted daily during the entire western zone teal season.

(ii) Hunting is permitted until noon each day.

(iii) Hunting is not permitted during the goose-only season and on Christmas Day.

(iv) Hunters must use and be in possession only of shells containing steel shot.

(v) Hunters are required to check in and out of the refuge.

(vi) Checking bagged game is required.

(vii) Only portable blinds and blinds constructed of native vegetation are permitted.

(viii) Decoys and portable blinds must be removed from the refuge following each day's hunt.

(6) *Tensas River National Wildlife Refuge.*

Hunting of ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of ducks and coots is permitted only on Tuesdays, Thursdays, Saturdays and Sundays until noon each day.

(iii) Hunting is not permitted during the special teal season and the refuge deer hunts.

(7) *Upper Ouachita National Wildlife Refuge.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of ducks and coots is permitted until noon each day.

(ii) Boats, decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(iii) Woodcock hunting is permitted during the State season.

(q) *Maine—Rachel Carson National Wildlife Refuge.* Hunting of waterfowl and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting of sea ducks is permitted when their open season coincides with the regular waterfowl season.

(3) Hunters may not fire or possess more than 25 shells per day.

(r) *Massachusetts*—(1) *Oxbow National Wildlife Refuge.* Hunting of woodcock and snipe is permitted on designated areas of the refuge subject to the following condition: Vehicles are restricted to the designated parking area that is accessible from the Still River Depot Road. Entry by routes other than Still River Depot Road is not permitted.

(2) *Parker River National Wildlife Refuge.* Hunting of waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The areas open to hunting are the Pine Island Hunting Area (Area A), Parker River Hunting Area (Area B), Nelson's Island Hunting Area (Area C) and the Youth Hunting Area (Area D).

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Hunters using Area B must set out waterfowl decoys and hunt within 50 yards of these decoys.

(v) Boat access is not permitted on Area C but is required on Area A. Boats may be launched or landed during the open season on waterfowl by persons authorized to participate in refuge hunting programs. Access to Area B is permitted by foot from the refuge parking lot off Marsh Avenue or via boat.

(s) *Michigan*—(1) *Seney National Wildlife Refuge.* Hunting of woodcock and Wilson's snipe is permitted on designated ares of the refuge.

(2) *Shiawassee National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(t) *Minnesota*—(1) *Sherburne National Wildlife Refuge.* Hunting of ducks, coots, rails, woodcock and Wilson's snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Field possession of migratory game birds is not permitted on refuge areas closed to migratory game bird hunting.

(ii) Only nonmotorized boats are permitted, and they must be launched at designated access sites.

(iii) Boats, decoys and blinds must be removed from the refuge following each day's hunt except for blinds made entirely of marsh vegetation.

(2) *Tamarac National Wildlife Refuge.* Hunting of geese, ducks, coots, rails, woodcock and Wilson's snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is in accordance with White Earth Reservation regulations on those portions of the Reservation that are a part of the refuge.

(ii) Blinds must be removed from the refuge following each day's hunt except for blinds made entirely of marsh vegetation.

(u) *Mississippi*—(1) *Hillside National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for dove hunting.

(ii) Duck and coot hunting is permitted until noon each day.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following condition: Duck and coot hunting is permitted until noon each day.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted until noon each day.

(4) *Noxubee National Wildlife Refuge.* Hunting of ducks and coots is permitted

on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Mondays, Wednesdays and Saturdays until noon.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Hunters are required to check in and out of the refuge.

(5) *Panther Swamp National Wildlife Refuge.* Hunting of ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Duck and coot hunting is permitted until noon each day.

(6) *Yazoo National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Doves may be taken when the dove hunting season coincides with the refuge squirrel and rabbit hunting seasons.

(v) *Missouri*—(1) *Mingo National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(2) *Swan Lake National Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(w) *Montana*—(1) *Benton Lake National Wildlife Refuge.* Hunting of geese, ducks and coot is permitted on designated areas of the refuge subject to the following special conditions:

(i) Only nonmotorized boats are permitted.

(ii) Waterfowl hunting is not permitted after November 30.

(2) *Black Coulee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

(3) *Bowdoin National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditons:

(i) Hunters are required to check in and out of the refuge.

(ii) Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

(4) *Creedman Coulee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower motors are not permitted.

(5) *Hewitt Lake National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower motors are not permitted.

(6) *Lake Mason National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: The use of motorized boats is not permitted.

(7) *Lake Thibadeau National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

(8) *Lee Metcalf National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters may not use or possess more than 25 shells per day.

(ii) Shooting is permitted only from or within 10 feet of designated blinds.

(9) *Red Rocks Lake National Wildlife Refuge.* Hunting of geese, ducks, coots and mergansers is permitted on designated areas of the refuge.

(x) *Nebraska—Valentine National Wildlife Refuge.* Hunting of mourning doves, geese, ducks and coots is permitted on designated areas of the refuge.

(y) *Nevada*—(1) *Pahranagat National Wildlife Refuge.* Hunting of doves, geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) A permit is required for all dove hunters, 14 years of age or older, for hunting from opening day through the following Monday.

(ii) Only nonmotorized boats or other motorless flotation devices are permitted on the refuge hunting area during the migratory waterfowl hunting season.

(2) *Ruby Lake National Wildlife Refuge.* Hunting of geese, ducks, coots, gallinules and common snipe is permitted on designated areas of the refuge.

(z) *New Jersey*—(1) *Barnegat National Wildlife Refuge.* Hunting of rails, gallinules, waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) In Hunting Area A, hunting is restricted to designated units and each unit is limited to a maximum of 4 hunters.

(ii) In Hunting Area B, hunting is restricted to designated sites with each site limited to a maximum of 4 hunters.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Hunters are limited to 25 shells per day.

(v) Permanent blinds and pit blinds are not permitted.

(2) *Brigantine National Wildlife Refuge.* Hunting of rails, gallinules, waterfowl and coots is permitted on designated areas of the refuge subject to the following condition: Hunters must use and be in possession of only shells containing steel shot.

(aa) *New Mexico*—(1) *Bitter Lake National Wildlife Refuge.* Hunting of mourning doves, geese, ducks, coots and lesser sandhill cranes is permitted on designated areas of the refuge subject to the following conditions:

(i) During the waterfowl season, hunters must use and be in possession only of shells containing steel shot while hunting on the South Refuge Unit (Area C).

(ii) Permanent blinds and pit blinds are not permitted.

(iii) Neither hunters nor dogs may enter closed areas to retrieve game.

(2) *Bosque del Apache National Wildlife Refuge.* Hunting of mourning and white-winged doves and snow, blue and Ross' geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for goose hunting.

(ii) Goose hunters are required to successfully complete a U.S. Fish and Wildlife Service migratory bird identification and hunter training program prior to the hunt.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(3) *Las Vegas National Wildlife Refuge.* Hunting of mourning doves, ducks and Canada geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(4) *Sevilleta National Wildlife Refuge.* Hunting of mourning and white-winged doves, geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters or dogs may not enter closed areas to retrieve birds.

(ii) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(iii) Permanent blinds and pit blinds are not permitted.

(bb) *New York*—(1) *Iroquois National Wildlife Refuge.* Hunting of migratory game birds is permitted in designated areas of the refuge subject to the following conditions:

(i) Permits are required for waterfowl hunting.

(ii) Hunting of woodcock and crow is permitted during the regular seasons except that crow hunting is not permitted from March 1 through September 30.

(iii) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(2) *Montezuma National Wildlife Refuge.* Hunting of migratory waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted on Tuesdays, Thursdays and Saturdays by reservation only.

(ii) The first Sunday of the season is reserved for the Young Waterfowlers Training Program Hunt.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(cc) *North Carolina*—(1) *Cedar Island National Wildlife Refuge.* Hunting of ducks, coots, and geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters must use and be in possession only of shells containing steel shot.

(ii) Only portable blinds are permitted.

(iii) Blinds must be removed from the refuge following each day's hunt.

(2) *Mattamuskeet National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is only permitted during the eight two-day hunts that occur during the last State waterfowl season and during the youth hunt that is held on the Friday and Saturday following Thanksgiving.

(iii) Shooting hours for the first day of the youth hunt begin at 1:00 p.m. Shooting hours for the other hunts end at noon each day.

(iv) Hunters are required to check in and out of the refuge.

(v) Hunters must use and be in the possession only of shells containing steel shot.

(vi) A recreation user fee is required prior to hunting.

(3) *Pee Dee National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from opening day of the State season through the last Saturday in September.

(4) *Swanquarter National Wildlife Refuge.* Hunting of ducks, coot, and geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters must use and be in possession only of shells containing steel shot.

(ii) Only portable blinds are permitted.

(iii) Blinds must be removed from the refuge following each day's hunt.

(dd) *North Dakota*—(1) *J. Clark Salyer National Wildlife Refuge.* Hunting of ducks, geese, mergansers and coots is permitted in designated areas of the refuge.

(2) *Lake Alice National Wildlife Refuge.* Hunting of mourning doves, ducks, geese, mergansers and coots is permitted on designated areas of the refuge subject to the following condition: Possession of firearms in retrieving zones is not permitted.

(ee) *Ohio—Ottawa National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(ff) *Oklahoma*—(1) *Sequoyah National Wildlife Refuge.* Hunting of doves and waterfowl is permitted on designated areas of the refuge subject to the following condition: Waterfowl hunters must use and be in possession only of shells containing steel shot.

(2) *Tishomingo National Wildlife Refuge.* Hunting of mourning doves and waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) The Tishomingo Wildlife Management Unit is open as posted by signs and/or indicated on refuge leaflets, permits and maps.

(ii) In Zone 1, only duck and coot hunting is permitted.

(iii) Duck or coot hunters may not use or possess more than 25 shells per day.

(iv) Goose hunting is only permitted in Zone 2 and only from the goose blinds provided.

(v) Goose hunters may not use or possess more than 6 shells per day.

(vi) Hunters are required to check in and out of the refuge.

(3) *Washita National Wildlife Refuge.* Hunting of geese and sandhill cranes is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(gg) *Oregon*—(1) *Ankeny National Wildlife Refuge.* Hunting of doves, pigeons, geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

(ii) Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

(iii) Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.

(iv) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(v) Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

(2) *Baskett Slough National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

(ii) Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.

(iii) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(iv) Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

(3) *Cold Springs National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays.

(ii) Only shoreline hunting is permitted.

(iii) Waterfowl hunters are required to space themselves a minimum of 200 yards apart.

(iv) The use of boats is not permitted.

(4) *Deer Flat National Wildlife Refuge.* Hunting of doves, geese, ducks, coots and common snipe is permitted on the Snake River sector subject to the following conditions:

(i) The construction and use of permanent hunting blinds are not permitted.

(ii) Hunters may use portable blinds and temporary blinds constructed of natural materials.

(5) *Klamath Forest National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: The use of air-thrust and inboard water-thrust boats is not permitted.

(6) *Lewis and Clark National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge.

(7) *Lower Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Possession of firearms in posted retrieving zones is not permitted except that unloaded firearms may be taken through these zones when in transit to or from the hunting areas.

(ii) Decoys may not be set in retrieving zones.

(iii) The use of air-thrust and inboard water-thrust boats is not permitted.

(8) *Malheur National Wildlife Refuge.* Hunting of doves, geese, ducks, coots, common snipe and pigeons is permitted on designated areas of the refuge subject to the following condition: Motorized boats are not permitted.

(9) *McKay Creek National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the opening weekend of the season.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays.

(iii) Waterfowl hunters are required to space themselves a minimum of 200 yards apart.

(iv) The use of boats is not permitted.

(10) *Umatilla National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting on the McCormack Unit.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays, except on Christmas Day, on the McCormack Unit.

(iii) Waterfowl hunting parties in the Boardman Unit are required to space themselves a minimum of 200 yards apart.

(iv) Hunting on the McCormack Unit is permitted only from designated blinds or within 50 feet of numbered posts.

(v) Hunters may not possess or use more than 25 shells per day on the McCormack Unit.

(11) *Upper Klamath National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: The use of air-thrust and inboard water-thrust boats is not permitted.

(12) *William L. Finley National Wildlife Refuge.* Hunting of doves, pigeons, geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

(ii) Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

(iii) Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.

(iv) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(v) Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

(hh) *Pennsylvania—Erie National Wildlife Refuge.* Hunting of migratory game birds and crows is permitted on designated areas of the refuge subject to the following conditions:

(1) Field possession of migratory game birds is not permitted in areas of the refuge closed to migratory game bird hunting.

(2) Hunting of crows is not permitted from March 1 through August 31.

(3) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(ii) *South Carolina—*(1) *Cape Romain National Wildlife Refuge.* Hunting of rails is permitted on designated areas of the refuge.

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of mourning doves and woodcock is permitted in designated areas of the refuge subject to the following conditions:

(i) Dove hunting is permitted during that portion of the state season that follows Thanksgiving Day.

(ii) Hunting is permitted Monday through Saturday only.

(3) *Santee National Wildlife Refuge.* Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Waterfowl hunting is permitted only in October during the State season.

(iii) Waterfowl hunting is permitted until noon each day.

(iv) The refuge dove season opens with the state season and ends September 30.

(v) Permanent blinds are not permitted.

(vi) Decoys and non-native blind materials must be removed from the refuge following each day's hunt.

(jj) *South Dakota—Sand Lake National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge.

(kk) *Tennessee—Lower Hatchie National Wildlife Refuge.* Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is permitted until noon each day.

(2) Hunters must use and be in possession only of shells containing steel shot.

(3) Only portable blinds and blinds made of native vegetation are permitted.

(4) Portable blinds and decoys must be removed from the refuge following each day's hunt.

(ll) *Texas—*(1) *Anahuac National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required to hunt on certain portions of the hunting area on weekend days.

(ii) The refuge unit located north of Onion Bayou, formerly known as the Barrow Ranch, is open to hunting only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR § 25.31.

(iii) Hunting is permitted until noon except early teal season hunting hours are sunrise until 12 noon.

(iv) Hunters must use and be in possession only of shells containing steel shot.

(v) Pits and permanent blinds are not permitted.

(2) *Big Boggy National Wildlife Refuge.* Hunting geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(ii) Pits and permanent blinds are not permitted.

(3) *Brazoria National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunters must use and be in possession only of shells containing steel shot.

(ii) Pits and permanent blinds are not permitted.

(4) *Hagerman National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Hunters are required to check in and out of the refuge.

(5) *McFaddin National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required to hunt on certain portions of the hunting area.

(ii) Hunting is permitted only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR § 25.31.

(iii) Hunting is permitted until noon each day.

(iv) Hunters must use and be in possession only of shells containing steel shot.

(v) Pits and permanent blinds are not permitted.

(vi) Airboats must be direct propeller drive with propeller 48 inches or less in length. Engines may not exceed two cylinders and 484 cc displacement.

(6) *San Bernard National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting in the Special Waterfowl Hunting Area (SPHW).

(ii) The refuge is closed to hunting on Thanksgiving and Christmas Days.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Pits and permanent blinds are not permitted.

(7) *Texas Point National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Mondays, Wednesdays and Saturdays. Hunting is not permitted on Christmas Day.

(ii) Hunting is permitted until noon each day.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Pits and permanent blinds are not permitted.

(v) Airboats must be direct propeller drive with propeller 48 inches or less in length. Engines may not exceed two cylinders and 484 cc displacement.

(mm) *Utah*—(1) *Bear River Migratory Bird Refuge.* Hunting of ducks, geese, coots and tundra swans is permitted on desingated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Hunters must use and be in possession only of shells containing steel shot.

(2) *Fish and Wildlife National Refuge.* Hunting of ducks, coots and mergansers is permitted on designated areas of the refuge.

(3) *Ouray National Wildlife Refuge.* Hunting of ducks, coots and mergansers is permitted on designated areas of the refuge.

(nn) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required to hunt in the portion of the refuge known as Patrick Marsh-Charcoal Creek (southwest of Route 78).

(2) On those areas of the refuge where a permit is not required, stake blinds may be constructed in accordance with state regulations.

(3) Blinds must be removed from the refuge by May 15.

(4) The portion of the refuge known as Webb Marsh, which includes Long Marsh Bay and Channel, Brush Creek and Metcalfe Island, is reserved for the Young Waterfowlers Training Program.

(5) Hunting in Webb Marsh is permitted from designated blinds on Saturdays and Sundays until 11 a.m. from the beginning of the state waterfowl hunting season through the first five weekends of the season.

(6) Young waterfowl hunters are limited to the use and possession of 25 shells each.

(oo) *Washington*—(1) *Columbia National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required for hunting in Marsh Unit I and Farm 226–227 except that permits are not required for Marsh Unit I after 12:00 p.m.

(ii) In Marsh Unit I and Farm Unit 226–227, hunting is permitted only on Wednesdays, Saturdays and Sundays.

(2) *Columbian White-Tailed Deer National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge.

(3) *Conboy Lake Wildlife Refuge.* Hunting of doves, pigeons, geese, ducks, coots, common snipe is permitted on designated areas of the refuge.

(4) *McNary National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Advance reservations are required for hunting refuge farm circles in the McNary Division.

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays and state holidays.

(iii) Only the five most upstream islands on the Hanford Islands Unit are open to hunting.

(5) *Ridgefield National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) An advance permit is required to hunt before 10 a.m.

(ii) Hunting is permitted every other day as prescribed by the refuge hunt schedule.

(iii) Hunters must use and be in possession only of shells containing steel shot.

(iv) Hunters may not use or possess more than 25 shells per day.

(v) A recreational user fee is required prior to hunting.

(6) *Toppenish National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas subject to the following condition: Hunting of geese, ducks, coots and common snipe is permitted only within 50 feet of the numbered posts assigned to each hunter.

(7) *Umatilla National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) In the Patterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays.

(ii) Waterfowl hunters must space themselves a minimum of 200 yards apart.

(iii) Hunters in the Ridge Unit must hunt within 50 feet of numbered posts.

(iv) Hunters may not use or possess more than 25 shells per day in the Patterson Slough Unit.

(8) *Willapa National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Hunting in the Riekkola Unit is permitted only on Wednesdays and Saturdays

(iii) A recreation user fee is required prior to entrance into the Riekkola Unit hunting area.

(pp) *Wyoming*—(1) *Pathfinder National Wildlife Refuge.* Hunting of geese, ducks, mergansers and coots is permitted on designated areas of the refuge.

(2) *Seedskadee National Wildlife Refuge.* Hunting of mourning doves, geese, ducks, coots and mergansers is permitted on designated areas of the refuge.

§ 32.22 Refuge specific regulations; upland game.

(a) *Alabama*—(1) *Blowing Wind Cave National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: The refuge is cooperatively managed as part of the Sauty Creek Wildlife Management Area and State regulations apply entirely to this area.

(2) *Choctaw National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and rabbit is permitted during the State season only through the Saturday preceding Christmas Day.

(iii) Hunting of raccoon and opossum is permitted only during February.

(3) *Eufaula National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted from the first day following the close of the State waterfowl season through the end of the respective seasons.

(4) *Wheeler National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following special conditions:

(i) Permits are required.

(ii) Hunting of squirrel is permitted during October when State seasons are open.

(iii) Hunting of raccoon and opossum is permitted only during February.

(iv) Hunting of rabbits is permitted from February 15 through the end of February.

(b) *Arizona—Kofa National Wildlife Refuge.* Hunting of quail, cottontail rabbit, coyote, fox and bobcat is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting of cottontail rabbit, coyote, fox and bobcat is permitted from the opening day of the State quail season through February 28 except as provided in item (2).

(2) Hunting of coyote, fox and bobcat is not permitted during the deer season except that deer hunters with valid Unit 45A, 45B and 45C deer permits may take these predators until a deer is taken.

(3) Hunting is not permitted in the area known as Crystal Hill Campground.

(c) *Arizona and California*—(1) *Cibola National Wildlife Refuge.* Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) During the waterfowl season, hunting of quail and rabbit is not permitted in Farm Unit 2 before noon.

(ii) Hunting of cottontail rabbit is permitted from September 1 through the last day of the State quail season.

(iii) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farmworker.

(2) *Havasu National Wildlife Refuge.* Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of quail is not permitted on Pintail Slough which includes all refuge lands north of the north dike and west of Highway 95.

(ii) Hunting of cottontail rabbit in Pintail Slough is permitted only during September.

(iii) Only shotguns and bows and arrows are permitted.

(3) *Imperial National Wildlife Refuge.* Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

(d) *Arkansas*—(1) *Big Lake National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, beaver and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and beaver is permitted from the opening day of the State fall squirrel season through October 31. Rabbit may also be taken when the State rabbit season coincides with the dates above.

(2) *Felsenthal National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following conditions:

(i) permits are required.

(ii) Hunting of quail, squirrel and rabbit is permitted during the State fall seasons except during the refuge deer gun and muzzleloader hunts.

(iii) Hunting of raccoon and opossum is permitted the first four days and last six days of the State season.

(iv) Beaver and nutria may be taken during the daylight hours of any refuge hunt.

(3) *Holla Bend National Wildlife Refuge.* Hunting of raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters are required to check in and out of the refuge.

(4) *Overflow National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of quail, squirrel and rabbit is permitted during the State fall seasons except during the refuge deer gun and muzzleloader seasons.

(iii) Hunting of raccoon and opossum is permitted the first four days and last six days of the State season.

(iv) Beaver and nutria may be taken during the daylight hours of any refuge hunt.

(5) *Wapanocca National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the raccoon hunt.

(ii) Hunting of squirrel, rabbit and beaver is permitted from October 1 through November 15.

(iii) Hunting of raccoon and opossum is permitted from October 15 through October 31.

(6) *White River National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and rabbit is permitted from the beginning of the State fall seasons through October 31. Squirrel and rabbit may also be taken when their respective State season coincides with refuge archery and waterfowl hunts, but they must be taken with weapons legal for those hunts.

(iii) Hunting of racoon and opossum is permitted during the first six days of the State season.

(iv) Beaver may be taken during any refuge hunt with weapons legal for those hunts.

(e) *California*—(1) *Colusa National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(2) *Delevan National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(3) *Kern National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Pheasant hunting is not permitted in the spaced blind unit.

(4) *Lower Klamath National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) In the controlled pheasant hunting area, entry permits are required throughout the pheasant season for all hunters 16 years of age or older. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Possession of firearms in posted retrieving zones is not permitted except that unloaded firearms may be taken through these zones when in transit to and from hunting areas.

(5) *Merced National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(6) *Sacramento National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: A special one-day pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

(7) *San Luis National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(8) *Sutter National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(9) *Tule Lake National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) In the controlled pheasant hunting area, entry permits are required throughout the pheasant season for all hunters 16 years of age or older. Hunters under the age of 16 hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

(ii) Possession of firearms in posted retrieving zones is not permitted except that unloaded firearms may be taken through these zones when in transit to and from hunting areas.

(f) *Colorado*—(1) *Alamosa National Wildlife Refuge.* Hunting of pheasant, cottontail rabbit, black-tailed and white-tailed jackrabbit is permitted on designated areas of the refuge subject to the following conditions: Hunting is permitted only when the respective State season coincides with the refuge waterfowl hunting season.

(2) *Arapaho National Wildlife Refuge.* Hunting of sage grouse and sharptailed grouse is permitted on designated areas of the refuge.

(3) *Browns Park National Wildlife Refuge.* Hunting of cottontail rabbit is permitted on designated areas of the refuge.

(4) *Monte Vista National Wildlife Refuge.* Hunting of pheasant, cottontail rabbit, black-tailed and white-tailed jackrabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only when the respective State season coincides with the refuge waterfowl hunting season.

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the South Upland Hunting Area.

(ii) Hunting is not permitted from March 1 through August 30.

(2) *Prime Hook National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on the North Hunting Area.

(ii) Hunting is permitted from ½ hour before sunrise to ½ hour after sunset.

(iii) Hunting is not permitted from March 1 through August 30.

(h) *Florida*—(1) *Chassahowitzka National Wildlife Refuge.* Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted during the State deer archery, muzzleloading and general gun seasons.

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted from the day after the State general deer gun season through the last day of the State squirrel season except that upland game may be taken by archery and big game quota hunters while hunting big game.

(iii) After the State deer season closes, dogs are permitted for quail hunting.

(3) *St. Marks National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, and armadillo is permitted in designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted Friday through Sunday from the first Friday in November through the last Sunday in February except during refuge big game hunts and Christmas and New Year's Day.

(iii) A portion of the refuge is cooperatively administered as part of the Aucilla Wildlife Management Area. State regulations apply entirely to this area.

(i) *Georgia—Piedmont National Wildlife Refuge.* Hunting of quail, squirrel and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is not permitted during refuge deer hunts.

(j) *Idaho*—(1) *Bear Lake National Wildlife Refuge.* Hunting of partridge, grouse and cottontail rabbits, including pygmy rabbits, is permitted on designated areas of the refuge.

(2) *Camas National Wildlife Refuge.* Hunting of pheasant and grouse is permitted on designated areas of the refuge.

(3) *Deer Flat National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of pheasant, quail and partridge is permitted on the Lake Lowell sector only during the waterfowl hunting season.

(ii) Shooting hours on the Lake Lowell sector are the same as those for waterfowl hunting.

(iii) Hunting is not permitted on the Snake River sector from February 1 through May 31.

(4) *Kootenai National Wildlife Refuge.* Hunting of ruffed, spruce and blue grouse is permitted subject to the following condition: Hunting is permitted only on that portion of the refuge west of the West Side Road.

(5) *Minidoka National Wildlife Refuge.* Hunting of pheasant, partridge and cottontail rabbits, including pygmy rabbit, is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only during the waterfowl season.

(k) *Illinois—Crab Orchard National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Hunting is not permitted from sunrise to noon on the refuge controlled goose hunting areas during the goose hunting season.

(l) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is permitted on the Big Timber Division, including Turkey and Otter Islands.

(2) Hunting of squirrel only is permitted on the Gardner and Keithsburg Divisions from the opening of the State season through September 30.

(3) Dogs may not be used to hunt, pursue or retrieve squirrels.

(m) *Illinois, Iowa, Minnesota and Wisconsin—Upper Mississippi River Wild Life and Fish Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is not permitted between March 1 and the opening of the State fall hunting seasons except that hunting of wild turkey is permitted during the State spring turkey season.

(2) Hunting is not permitted on the Goose Island Closed Area in Pool 8.

(3) Hunting is permitted on other areas that are closed during the waterfowl hunting season and are designated by signs as "Area Closed" beginning the day after the close of the applicable State duck hunting season.

(n) *Indiana—Muscatatuck National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only from sunrise to sunset.

(o) *Kansas*—(1) *Flint Hills National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Dogs may not be used for hunting furbearing animals or nongame animals.

(2) *Kirwin National Wildlife Refuge.* Hunting of pheasant, quail, prairie chicken, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of rabbits and squirrels is permitted only during that portion of the State "small game season" that occurs during the State "upland game season."

(3) *Quivira National Wildlife Refuge.* Hunting of pheasant, bobwhite, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of squirrel and rabbit is permitted from September 1 through the close of either the State waterfowl season or upland game bird season whichever is later.

(p) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge.* Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting of squirrel is permitted from the fourth Saturday in August through October 15.

(2) Hunting of raccoon is permitted on four consecutive nights beginning on the last Wednesday in September and the first Wednesday in October.

(3) Hunting of raccoon is permitted from 7:30 pm to midnight.

(4) There is no bag limit for raccoons.

(5) Checking of bagged raccoon is required.

(q) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Dogs are permitted for rabbit hunting after the close of the last deer season.

(ii) Hunting of raccoon and opossum is permitted only during October.

(2) *Catahoula National Wildlife Refuge.* Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the opening day of the State season through October 31.

(3) *D'Arbonne National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of raccoon and opossum is permitted only during January.

(ii) Feral hogs may be taken during all refuge hunts.

(4) *Delta National Wildlife Refuge.* Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the day after the waterfowl season closes through the remainder of the State season.

(5) *Tensas River National Wildlife Refuge.* Hunting of squirrel, rabbit and raccoon is permitted on designated areas of the refuge subject to the following conditions.

(i) Permits are required.

(ii) Hunting is not permitted during the refuge deer gun hunts.

(iii) Hunting of squirrel and rabbit is permitted from the first Saturday in October through the Wednesday preceding Thanksgiving Day. Hunting of rabbit is also permitted from January 21 through the first Sunday in February.

(iv) Hunting of raccoon is permitted for nine days beginning the day after the last refuge rabbit season ends.

(6) *Upper Ouachita National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of raccoon and opossum is permitted from January 15 through January 31.

(ii) Feral hogs may be taken during all refuge hunts.

(r) Maine—Rachel Carson National Wildlife Refuge. Hunting of ring-necked pheasant and ruffed grouse is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(s) *Massachusetts—Oxbow National Wildlife Refuge.* Hunting of upland game birds and small game is permitted on designated areas of the refuge subject to the following conditions:

(1) Shotguns only are permitted.

(2) Vehicles are restricted to the designated parking area that is accessible from the Still River Depot Road. Entry by routes other than Still River Depot Road is not permitted.

(t) *Michigan—Seney National Wildlife Refuge.* Hunting of grouse and snowshoe hare is permitted on designated areas of the refuge subject to the following condition: Snowshoe hare hunting is permitted from December 1 through the end of February.

(u) *Minnesota*—(1) *Big Stone National Wildlife Refuge.* Hunting of gray partridge, ring-necked pheasant, gray and fox squirrel, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge.

(2) *Rice Lake National Wildlife Refuge.* Hunting of ruffed grouse, spruce grouse, gray and fox squirrel, cottontail rabbit and snowshoe hare is permitted on designated areas of the refuge.

(3) *Sherburne National Wildlife Refuge.* Hunting of ruffed grouse, ring-necked pheasant, gray and fox squirrel, snowshoe hare, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge.

(4) *Tamarac National Wildlife Refuge.* Hunting of ruffed grouse, gray and fox squirrel, cottontail rabbit, jackrabbit and snowshoe hare is permitted on designated areas of the refuge subject to the following condition: Hunting is in accordance with White Earth Indian Reservation regulations on those parts of the Reservation that are a part of the refuge.

(v) *Mississippi*—(1) *Hillside National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Hunting of raccoon and opossum is permitted from sunset to one hour before sunrise.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of quail, squirrel, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Hunting of raccoon and opossum is permitted from sunset to one hour before sunrise.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Hunting of raccoon and opossum is permitted from sunset to one hour before sunrise.

(4) *Noxubee National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: The bag limit for raccoon is one per day and the possession limit is two.

(5) *Panther Swamp National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon and opossum is permitted on designated areas of the refuge.

(6) *Yazoo National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, opossum and furbearers is permitted on designated areas of the refuge subject to the following special conditions:

(i) Permits are required.

(ii) Hunting of squirrel and rabbit is permitted through the third Friday in November.

(iii) Hunting of rabbit is permitted again beginning the second Saturday in February.

(iv) Hunting of raccoon and opossum is permitted the last four days of the February State season.

(v) Beaver, nutria, muskrat, bobcat and coyote may be taken in season during any refuge hunt.

(w) *Missouri—Mingo National Wildlife Refuge.* Hunting of squirrel and turkey is permitted on designated areas of the refuge subject to the following conditions:

(1) Turkey hunting is permitted only during the State spring firearm and fall archery seasons.

(2) Hunting of squirrel is permitted from the opening of the State season through September 30.

(3) Hunters are required to check in and out of the refuge.

(x) *Montana*—(1) *Benton Lake National Wildlife Refuge.* Hunting of pheasant and partridge is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through November 30.

(ii) Hunting is permitted from one-half hour before sunrise to sunset.

(2) *Bowdoin National Wildlife Refuge.* Hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox and coyote is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of fox and coyote is permitted from December 1 to March 1.

(ii) Hunters are required to check in and out of the refuge.

(3) *Charles M. Russell National Wildlife Refuge.* Hunting of upland game birds, turkey and coyote is permitted on designated areas of the refuge.

(4) *Hailstone National Wildlife Refuge.* Hunting of upland game birds is permitted on designated areas of the refuge.

(5) *Lake Mason National Wildlife Refuge.* Hunting of upland game birds is permitted on designated areas of the refuge.

(6) *Medicine Lake National Wildlife Refuge.* Hunting of pheasant, sharp-tailed grouse and Hungarian partridge is permitted on designated areas of the refuge.

(7) *War Horse National Wildlife Refuge.* Hunting of upland game birds is permitted on designated areas of the refuge.

(y) *Nebraska*—(1) *Crescent Lake National Wildlife Refuge.* Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Valentine National Wildlife Refuge.* Hunting of pheasant, sharp-tailed grouse and prairie chicken is permitted on designated areas of the refuge.

(z) *Nevada*—(1) *Pahranagat National Wildlife Refuge.* Hunting of pheasant, quail, grouse, partridge and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

(2) *Sheldon National Wildlife Refuge.* Hunting of quail, grouse and partridge is permitted on designated areas of the refuge.

(aa) *New Mexico*—(1) Bitter Lake National Wildlife Refuge. Hunting of quail, ring-necked and white-winged pheasant, quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of jackrabbit and cottontail rabbit is permitted only during the State quail season.

(ii) Hunters must use and be in possession of only shells containing steel shot in the South Unit (Area C) during waterfowl seasons.

(iii) Only shotguns and bows and arrows are permitted.

(2) *Bosque del Apache National Wildlife Refuge.* Hunting of quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of jackrabbit and cottontail rabbit is permitted only during the State quail season.

(ii) Only shotguns and bows and arrows are permitted.

(bb) *New York*—(1) *Iroquois National Wildlife Refuge.* Hunting of upland game birds, small game mammals, legally hunted furbearers and unprotected wildlife is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of raccoon.

(ii) Hunting is not permitted from March 1 through September 30.

(2) *Montezuma National Wildlife Refuge.* Hunting of gray squirrel, cottontail rabbit, raccoon and fox is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of raccoon.

(ii) Hunting is permitted from the third Sunday in December through the close of the respective State seasons.

(cc) *North Carolina—Pee Dee National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting of squirrel, raccoon and opossum is permitted from the first day of the State season through the third Friday in November, except during deer gun hunt dates.

(2) Hunting of quail is permitted from February 1 through February 14.

(3) Hunting of rabbit is permitted from February 15 through the end of the State season.

(dd) *North Dakota*—(1) *Arrowwood National Wildlife Refuge.* Hunting of pheasant, grouse, Hungarian partridge and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from the day after the State deer gun season through the regular State late upland game season.

(2) *J. Clark Salyer National Wildlife Refuge.* Hunting of pheasant, partridge, grouse and turkey is permitted on designated areas of the refuge.

(3) *Lake Alice National Wildlife Refuge.* Hunting of upland game and fox is permitted on designated areas of the refuge.

(4) *Lostwood National Wildlife Refuge.* Hunting of sharp-tail grouse and Hungarian partridge is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is not permitted on the portion of the refuge south of Highway 50 during the State deer gun season.

(ii) Hunting is permitted on the portion of the refuge north of Highway 50 only after the close of the State deer gun season.

(5) *Tewaukon National Wildlife Refuge.* Hunting of ring-necked pheasant is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted beginning the third day after the start of either the State late archery deer season or the normal State late pheasant season whichever is later.

(6) *Upper Souris National Wildlife Refuge.* Hunting of sharp-tailed grouse and Hungarian partridge is permitted on designated areas of the refuge subject to the following conditions:

(i) Designated areas are closed during the waterfowl and deer gun season.

(ii) Blaze orange vest and cap are required during the deer gun season.

(ee) *Oklahoma*—(1) *Sequoyah National Wildlife Refuge.* Hunting of squirrel, quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

(2) *Tishomingo National Wildlife Refuge.* Hunting of quail, squirrel and rabbit is permitted on the Tishomingo Wildlife Management Unit of the refuge subject to the following conditions:

(i) Hunting of upland game is not permitted in the goose hunting zone during the goose hunting season.

(ii) Hunters are required to check in and out of the refuge.

(3) *Washita National Wildlife Refuge.* Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

(ff) *Oregon*—(1) *Ankeny National Wildlife Refuge.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through October 31.

(ii) Hunters must check in and out of the refuge by use of self-service permits.

(2) *Baskett Slough National Wildlife Refuge.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through October 31.

(ii) Hunters must check in and out of the refuge by use of self-service permits.

(3) *Cold Springs National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays beginning at noon each day.

(ii) Hunting of rabbit is permitted only during the State waterfowl season.

(iii) Hunting is permitted only by shotgun and bow and flu-flu arrow.

(4) *Deer Flat National Wildlife Refuge.* Hunting of upland game is permitted on the Snake River Sector subject to the following condition: Hunting is not permitted from February 1 through May 31.

(5) *Hart Mountain National Antelope Refuge.* Hunting of partridge and quail is permitted on designated areas of the refuge.

(6) *Lower Klamath National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Possession of firearms in posted retrieving zones is not permitted except unloaded firearms may be taken through these zones when in transit to and from hunting areas.

(7) *Malheur National Wildlife Refuge.* Hunting of pheasant, quail, partridge, coyote and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of pheasant, quail, partridge and rabbit is permitted during the last nine days of the State pheasant season in designated zones of Blitzen Valley east of Highway 205. Hunting is also permitted on Malheur Lake during the waterfowl hunting season.

(ii) Hunting of coyote and rabbit is permitted from September 1 to January 31 on the refuge area west of Highway 205.

(8) *McKay Creek National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for both days on opening weekend.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, and State holidays beginning at noon each day.

(iii) Hunting of rabbit is permitted only during the State waterfowl season.

(iv) Hunting is permitted by shotgun and bow and flu-flu arrow only.

(9) *Umatilla National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting on the McCormack Unit for both days on opening weekend.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays, except Christmas Day, in the McCormack Unit.

(iii) Hunting of rabbit is permitted only during the State waterfowl season.

(iv) Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

(10) *William L. Finley National Wildlife Refuge.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted through October 31.

(ii) Hunters much check in and out of the refuge by use of self-service permits.

(gg) *Pennsylvania—Erie National Wildlife Refuge.* Hunting of grouse, pheasant, quail, squirrel, rabbit, woodchuck, raccoon, skunk, fox and opossum is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required for hunting fox and racooon.

(2) Hunting is not permitted from March 1 through August 31.

(hh) *South Carolina*—(1) *Cape Romain National Wildlife Refuge.* Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of squirrel and raccoon is permitted only during the refuge deer season.

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of quail, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for raccoon and opossum hunting.

(ii) Hunting of raccoon and opossum is permitted from March 1 through March 10.

(ii) *South Dakota*—(1) *Lacreek National Wildlife Refuge.* Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

(2) *Sand Lake National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(3) *Pocasse National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(jj) *Tennessee*—(1) *Hatchie National Wildlife Refuge.* Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: The State fluorescent orange requirements for the deer season applies to small game hunters on the refuge during the refuge firearms deer hunts.

(2) *Lake Isom National Wildlife Refuge.* Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of squirrel is permitted from the fourth Saturday in August through October 15.

(ii) Hunting of raccoon is permitted on four consecutive nights beginning on the last Wednesday in September and again on four consecutive nights beginning on the first Wednesday in October.

(iii) Hunting of raccoon is permitted from 7:30 p.m. to midnight.

(iv) Checking of bagged raccoon is required.

(3) *Tennessee National Wildlife Refuge.* Hunting of squirrel and raccoon is permitted on designated areas of the refuge.

(kk) *Texas—Hagerman National Wildlife Refuge.* Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunters are required to check in and out of the hunt area.

(2) Only shotguns and bows and arrows are permitted.

(ll) *Utah*—(1) *Bear River Migratory Bird Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunters are required to check in and out of the refuge.

(ii) Hunters must use and be in the possession of only shells containing steel shot.

(2) *Ouray National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge.

(mm) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following special condition: The use of rifles is not permitted on that portion of the refuge lying east of the Missisquoi River.

(nn) *Washington*—(1) *Columbia National Wildlife Refuge.* Hunting of pheasant, quail, partridge and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of upland game birds and rabbit is permitted only during State seasons that run concurrently with the State waterfowl season.

(ii) Only shotguns and bows and arrows are permitted.

(2) *Conboy Lake National Wildlife Refuge.* Hunting of grouse, pheasant, quail and partridge is permitted on designated areas of the refuge.

(3) *McNary National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted by shotgun or bow and flu-flu arrow only on Wednesdays, Saturdays, Sundays and State holidays beginning at noon each day.

(ii) Hunting of rabbit is permitted only during the State waterfowl season.

(4) *Toppenish National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only by shotgun or bow and flu-flu arrow beginning at noon each day.

(ii) Hunting of rabbit is permitted only during the State waterfowl season.

(5) *Umatilla National Wildlife Refuge.* Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only by shotgun or bow and flu-flu arrow beginning at noon each day.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays and State holidays in the Patterson Slough Unit.

(iii) Hunting of rabbit is permitted only during the State waterfowl season.

(6) *Willapa National Wildlife Refuge.* Hunting of blue and ruffed grouse is permitted on the Long Island Unit subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(oo) *Wisconsin*—(1) *Horicon National Wildlife Refuge.* Hunting of ring-necked pheasant, gray partridge, squirrel and cottontail rabbit is permitted subject to the following condition: Hunting is permitted from the opening of the respective State season through the State deer firearms season.

(2) *Necedah National Wildlife Refuge.* Hunting of small game is permitted on designated areas of the refuge.

(pp) *Wyoming*—(1) *Pathfinder National Wildlife Refuge.* Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge.

(2) *Seedskadee National Wildlife Refuge.* Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge.

§ 32.32 Refuge-specific regulations; big game.

(a) *Alabama*—(1) *Choctaw National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunting is permitted from the opening day of the State season through the Saturday before Christmas Day.

(2) *Eufaula National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Archery hunting is permitted during the State archery and gun season.

(iii) Checking of bagged game is required.

(3) *Wheeler National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject the following conditions:

(i) Permits are required.

(ii) Bow hunting is permitted during the first four weeks of the State season.

(iii) Hunting with bows and arrows and flintlock firearms is permitted during the last two weeks of the State season.

(iv) All hunters are required to wear an outergarment containing a minimum of 144 square inches of daylight fluorescent orange material visible from any angle during any refuge deer gun hunt.

(b) *Arizona*—(1) *Cabeza Prieta National Wildlife Refuge.* Hunting of desert bighorn sheep is permitted on designated areas of the refuge subject to the following condition: Entry permits are required.

(2) *Havasu National Wildlife Refuge.* Hunting of desert bighorn sheep is permitted on designated areas of the refuge subject to the following condition: Hunting is only permitted on the part of the Bill Williams Unit south of the Planet Ranch Road in Unit 44A.

(3) *Kofa National Wildlife Refuge.* Hunting of mule deer and desert bighorn sheep is permitted on designated areas of the refuge.

(c) *Arizona and California*—(1) *Cibola National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge subject to the following conditions:

(i) During the waterfowl season, hunting of deer is not permitted on Farm Unit 2 before 12:00 p.m. each day.

(ii) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farmworker.

(iii) Only antlered deer may be taken.

(2) *Imperial National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(d) *Arkansas*—(1) *Big Lake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunting is permitted from November 1 through December 31.

(2) *Felsenthal National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted from the opening day of the State season through January 31.

(iii) Muzzleloader hunting is permitted on the fourth Friday and Saturday in October.

(iv) Hunting of antlerless deer is permitted during the Thanksgiving Day Holiday deer gun hunt.

(3) *Holla Bend National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunters are required to check in and out of the refuge.

(4) *Overflow National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted from the opening day of the State season through October 31.

(iii) Muzzleloader hunting is permitted on the fourth Friday and Saturday in October.

(5) *White River National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The youth/adult hunt is permitted on the Friday and Saturday after Thanksgiving Day.

(iii) During the youth/adult deer hunt, all hunters over 15 years of age must be accompanied by at least one and not more than two youths, ages 15 and under.

(iv) Archery hunting is permitted from the opening day of the State season through October 31 and from the first Saturday in January through January 31.

(v) Muzzleloader hunting is permitted the last two days of the State's first muzzleloader deer season.

(vi) Hunting of deer with modern guns is permitted on the first Friday and Saturday of the first State deer gun season.

(vii) The bag limit for all deer gun hunts is one deer of either sex per hunt.

(viii) Hunting of turkey is permitted Wednesday through Saturday of the State spring season.

(ix) Checking of bagged game is required.

(e) *California—Clear Lake National Wildlife Refuge.* Hunting of pronghorn antelope is permitted on the controlled "U" Unit of the refuge subject to the following conditions:

(1) The unit is open to hunting only during the first 2 weekends of the State season.

(2) Access to the unit is permitted only through the gate located on Clear Lake Road.

(f) *Colorado*—(1) *Arapaho National Wildlife Refuge.* Hunting of pronghorn antelope is permitted on designated areas of the refuge.

(2) *Browns Park National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(g) *Delaware*—(1) *Bombay Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Prime Hook National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(h) *Florida*—(1) *Chassahowitzka National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is pemitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Lake Woodruff National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on the first sixteen days of the State archery season.

(iii) Two four-day blackpowder hunts are permitted beginning on the Thursdays immediately before and after the State blackpowder hunt.

(iv) During all hunts, hunters are required to remain on their stand from one-half hour before sunrise until 9:00 a.m.

(3) *Lower Suwannee National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting during the general gun season is restricted to the first 10 consecutive days of the State season and to 10 consecutive days beginning the second Saturday in December.

(4) *Loxahatchee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted for six consecutive days beginning on the first Saturday in November.

(iii) One deer may be taken. Deer may be of either sex.

(iv) Buckshot, crossbows and handguns are not permitted.

(v) Guns must be unloaded and cased or dismantled when outside the hunting area and when the boat is enroute to or from the hunting area.

(5) *St. Marks National Wildlife Refuge.* Hunting of white-tailed deer, turkeys and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted for 10 consecutive days beginning the first Friday in November.

(iii) A hogs only hunt is permitted for two consecutive days beginning the third Friday in November.

(iv) A bucks only hunt using bows and/or muzzleloaders is permitted for two consecutive days beginning the third Friday after Thanksgiving.

(v) Two 2-day buck only hunts are permitted beginning on the second and fourth Saturdays in January.

(vi) Turkey hunting is permitted for nine consecutive days beginning the fourth Friday in March.

(vii) A portion of the refuge is cooperatively administered as part of the Aucilla Wildlife Management Area, and State regulations apply entirely to this area.

(6) *St. Vincent National Wildlife Refuge.* Hunting of white-tailed deer, turkey and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(ii) The bag limit for white-tailed deer and turkey is one of either sex during the archery and primitive weapons hunts.

(iii) Hunters are required to check in and out of the refuge.

(iv) During the archery and primitive weapons hunts, hunters must remain on their stands from one-half hour before sunrise to 9:00 a.m. unless a deer is taken.

(i) *Georgia*—(1) *Blackbeard Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted for three consecutive days beginning the fourth Monday in October and for three consecutive days beginning the fourth Friday in November.

(iii) Two deer may be taken. Deer may be of either sex.

(iv) Hunters are required to check in and out of the refuge.

(v) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(2) *Harris Neck National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on the fourth Saturday in September.

(iii) Shotgun hunting is permitted on the third Saturday in December.

(iv) Two deer may be taken. Deer may be of either sex.

(v) Only shotguns are permitted during the gun hunt.

(vi) Hunters are required to check in and out of the refuge.

(vii) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(3) *Okefenokee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on Thursday, Friday and Saturday during the State archery season.

(iii) Shotgun hunting is permitted on the Cowhouse Island Unit on the first Saturday of the State firearm season and on alternate Saturdays thereafter through December 31.

(iv) Shotgun hunting is permitted on the Pocket Unit on the first Saturday of November and December.

(v) Shotgun hunting is permitted on the Suwannee Canal Recreation Area on the first and second Thursdays and Fridays of the State firearm season.

(vi) Deer of either sex may be taken.

(vii) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(4) *Piedmont National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) A bucks only hunt is permitted for three consecutive days beginning on the first Thursday in November.

(iii) A primitive weapons hunt of deer is permitted for three consecutive days beginning on the third Thursday in October. Bucks taken during this hunt must have 3 or more points on one side or must be antlerless.

(iv) A general gun hunt of deer is permitted on the second and third Saturday in November and the first Saturday in December.

(v) Three 3-day turkey hunts are permitted beginning on the first, second and third Thursdays in April.

(vi) Only still hunting is permitted.

(5) *Wassaw National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted on three consecutive days beginning the second Friday in November. Primitive weapons are also permitted on the third day of this hunt.

(iii) Gun hunting is permitted on two consecutive days beginning the second Friday in December.

(iv) Two deer may be taken. Deer may be of either sex.

(v) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(vi) Hunters are required to check in and out of the refuge.

(j) *Georgia and South Carolina—Savannah National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted for seven consecutive days beginning the fourth Monday in October.

(3) Only shotguns and bows and arrows are permitted.

(4) Hunters are required to wear a visible outergarment made of daylight fluorescent orange material.

(k) *Idaho*—(1) *Deer Flat National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on the Snake River Sector.

(2) *Kootenai National Wildlife Refuge.* Hunting of deer, elk, black bear, moose and mountain lion is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on that portion of the refuge that lies west of the West Side Road.

(l) *Illinois*—(1) *Crab Orchard National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) A special permit issued by the Illinois Department of Conservation is required.

(2) Hunting is permitted only during the State shotgun and bow and arrow seasons.

(3) Hunters using Area II are required to check in at the refuge fire station prior to hunting.

(4) Hunting is permitted only from ground level.

(m) *Illinois, Iowa, Minnesota and Wisconsin—Upper Mississippi River Wild Life and Fish Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting is not permitted on the Goose Island Area in Pool 8.

(2) Hunting of deer is permitted on other areas that are closed during the waterfowl hunting season and are designated by signs as "Area Closed" beginning the day after the close of the applicable State duck hunting season.

(3) Construction or use of permanent blinds, platforms or ladders is not permitted.

(4) All stands must be removed from the refuge at the end of each day's hunt.

(n) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Hunting with shotgun only is permitted on portions of the Gardner Division. A valid State-issued shotgun deer permit with Mark Twain National Wildlife Refuge designated on it is required. Hunting is permitted during a portion of the November Illinois shotgun season. Hunting is permitted from 6:30 a.m. to 3:00 p.m.

(2) Hunting of white-tailed deer is permitted in designated areas on the Timber Division and Turkey and Otter Islands during the State season.

(3) Archery hunting of white-tailed deer on the Gardner Division is permitted during a portion of the Illinois archery deer season. A valid State-issued shotgun deer permit with Mark Twain National Wildlife Refuge designated on it is required.

(o) *Iowa—DeSoto National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Only archery hunting is permitted.

(3) The construction or use of permanent blinds, platforms or ladders is not permitted.

(4) All stands must be removed from the refuge by the close of the season.

(p) *Kansas*—(1) *Flint Hills National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following condition: The use of rifled firearms is not permitted.

(2) *Kirwin National Wildlife Refuge.* Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions: Only archery hunting of deer is permitted.

(q) *Louisiana*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer, turkey and unmarked feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Only still hunting is permitted.

(ii) Unmarked feral hogs may be taken only during the refuge deer seasons.

(2) *Catahoula National Wildlife Refuge.* Hunting of white-tailed deer and unmarked feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the youth gun hunt.

(ii) The youth gun hunt for persons age 15 and under is permitted on the first and second Saturdays of November.

(iii) Deer (bucks only) and unmarked feral hogs may be taken during the youth gun hunt.

(iv) Muzzleloader hunting for deer (bucks only) and unmarked feral hogs is permitted for 5 consecutive days beginning the Saturday after Thanksgiving Day.

(v) Only still hunting is permitted.

(vi) Checking of bagged game is required.

(3) *D'Arbonne National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Hunting of deer with guns is permitted through the Saturday after Thanksgiving Day.

(4) *Tensas River National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Either-sex deer hunting is permitted within the framework of State regulations.

(iii) The bag limit for all gun hunts is one deer per day. Deer may be of either sex.

(iv) Hunters are required to check in and out of the refuge.

(v) Checking of bagged game is required.

(5) *Upper Ouachita National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: The refuge gun season for deer closes the Saturday after Thanksgiving Day.

(r) *Maine*—(1) *Moosehorn National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Rachel Carson National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Only shotguns, muzzleloading rifles, compound and long bows and arrows are permitted.

(s) *Maryland*—(1) *Eastern Neck National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Blackwater National Wildlife Refuge.* Hunting of sika and white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(t) *Michigan*—(1) *Seney National Wildlife Refuge.* Hunting of deer and bear is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting of deer with bow and arrow only is permitted from the opening of the State season through November 12 and from December 1 through the end of the State deer archery season.

(ii) Hunting of bear is permitted with gun or bow and arrow only.

(iii) The use of dogs while hunting bear is not permitted.

(2) *Shiawassee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(u) Minnesota—Agassiz National Wildlife Refuge. Hunting of white-tailed deer and moose is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(2) *Big Stone National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(3) *Rice Lake National Wildlife Refuge.* Hunting of white tailed-deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(4) *Sherburne National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, platforms or ladders is not permitted.

(ii) All stands must be removed from the refuge at the end of each day's hunt.

(5) *Tamarac National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is in accordance with White Earth Reservation regulations on those portions of the Reservation that are a part of the refuge.

(ii) The construction or use of permanent blinds, platforms or ladders is not permitted.

(iii) All stands must be removed from the refuge at the end of each day's hunt.

(v) *Mississippi—Hillside National Wildlife Refuge.* Hunting of white tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting with guns.

(ii) The youth deer hunt for persons age 15 and under is permitted for two consecutive days beginning on the third Saturday in November. Only such youths may carry, handle or discharge firearms during this hunt.

(iii) General gun hunt is permitted for two consecutive days beginning on the third Friday in December.

(iv) Only still hunting is permitted.

(2) *Mathews Brake National Wildlife Refuge.* Hunting of white tailed-deer is permitted on designated areas of the refuge subject to the following condition: Only archery hunting is permitted.

(3) *Morgan Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery and primitive weapons hunting are permitted except for the antlerless deer hunt with modern guns.

(ii) Permits are required for hunting antlerless deer with modern guns.

(iii) Only still hunting is permitted.

(4) *Noxubee National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only shotguns are permitted for turkey hunting.

(iii) Checking of bagged game is required.

(iv) Only portable stands are permitted.

(5) *Panther Swamp National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for hunting antlerless deer with modern guns.

(ii) The youth deer hunt for persons age 15 and under is permitted for two consecutive days beginning on the day following Thanksgiving Day. Only the youth may carry, handle or discharge firearms during this hunt.

(iii) Only still hunting is permitted.

(iv) Only shotguns are permitted for turkey hunting.

(6) *Yazoo National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The youth deer hunt for persons age 15 and under is permitted for three consecutive days beginning with Thanksgiving Day.

(iii) During the youth deer hunt only the youth may carry, handle and/or discharge the firearm.

(iv) Muzzleloader deer hunting is permitted the first six days of the State season excluding Sunday.

(v) General gun deer hunting is permitted the first Saturday of the State season following the muzzleloader hunt.

(vi) Hunting of turkey is permitted each Friday and Saturday during the State April season.

(vii) Only shotguns are permitted for turkey hunting.

(viii) The bag limit for turkey is one bearded turkey, and the bag limit for all deer hunts is one deer.

(ix) Only still hunting is permitted.

(x) Hunters are required to check in and out of the refuge.

(xi) Checking of bagged game is required.

(w) *Missouri*—(1) *Mingo National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Hunters are required to check in and out of the refuge.

(iii) The construction or use of permanent blinds, platforms or ladders is not permitted.

(iv) All stands must be removed from the refuge by the close of the season.

(2) *Swan Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only primitive weapons are permitted for hunting on designated areas of the refuge.

(x) *Montana*— (1) *Charles M. Russell National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following special conditions:

(i) Hunting of coyotes is permitted from the first day of the general Statewide antelope season through February 5.

(ii) Off-road retrieval of downed game by motor vehicle is not permitted.

(2) *Lee Metcalf National Wildlife Refuge.* Hunting of white-tailed and mule deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Firearms are not permitted.

(iii) Hunters are required to check in and out of the refuge.

(3) *Medicine Lake National Wildlife Refuge.* Hunting of deer and antelope is permitted on designated areas of the refuge.

(4) *Red Rocks Lake National Wildlife Refuge.* Hunting of deer, elk, moose and pronghorn antelope is permitted on designated areas of the refuge.

(y) *Nebraska*—(1) *Crescent Lake National Wildlife Refuge.* Hunting of white-tailed deer, mule deer and pronghorn antelope is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Checking of bagged game is required.

(2) *DeSoto National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted on the area located west of the Missouri River. Firearms are not permitted on this area.

(iii) Muzzleloader hunting of deer is permitted on the area located in the central portion of the refuge. Entry to this hunting area is permitted one hour before shooting hours. All permit holders and their vehicles must be out of the designated shooting hunting area no later than one hour after sunset.

(iv) The construction or use of permanent blinds, platforms or ladders is not permitted.

(v) All stands must be removed from the refuge by the close of the season.

(3) *Valentine National Wildlife Refuge.* Hunting of white-tailed deer and mule deer is permitted on designated areas of the refuge.

(z) *Nevada*—(1) *Desert National Wildlife Refuge.* Hunting of bighorn sheep is permitted on designated areas of the range subject to the following conditions:

(i) Bighorn sheep guides are required to obtain a Special Use Permit prior to taking clients on to the range.

(ii) Only bighorn sheep tag holders may possess or carry a firearm or bow that must be a legal weapon as defined by State regulations.

(iii) Natural mortalities or "pickup heads" found on the range are government property and possession or removal of them from the range is not permitted.

(2) *Sheldon National Wildlife Refuge.* Hunting of deer, antelope and bighorn sheep is permitted on designated areas of the refuge.

(aa) *New Jersey—Great Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(bb) *New Mexico*—(1) *Bitter Lake National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(2) *Bosque del Apache National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge subject to the following condition: Permits are required for hunting in the Bottomlands Management Hunt Unit.

(cc) *New York*—(1) *Iroquois National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(2) *Montezuma National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(dd) *North Carolina*—(1) *MacKay Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Pee Dee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the gun hunts.

(ii) Muzzleloader hunting is permitted the first Tuesday after Veterans Day, the first Monday, Tuesday, Friday and Saturday of the State November regular gun season and Thanksgiving Day, which is a youth hunt day.

(iii) One deer may be taken during each gun hunt. Deer may be of either sex.

(iv) Archery hunting for deer is permitted the entire State season.

(3) *Pungo National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Gun hunting is permitted on four consecutive Fridays and Saturdays beginning with the second Friday of October.

(iii) Only shotguns and primitive weapons are permitted during the gun hunts.

(v) Archery hunting is permitted during the State season.

(ee) *North Dakota*—(1) *Arrowwood National Wildlife Refuge.* Hunting of deer is permitted on designated areas subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

(2) *Audubon National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Refuge and State permits are required for the first one and a half days of the State gun season.

(ii) Hunting with bow and arrow is permitted only from noon of the day following the close of the State deer firearms season through the close of the State archery season.

(3) *Chase Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

(4) *Des Lacs National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Refuge and State permits are required for the first one and a half days of the State gun season.

(ii) Only persons with valid permits are permitted on the refuge during the first one and one half days of the season.

(iii) Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following deer gun season.

(5) *J. Clark Salyer National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(6) *Lake Alice National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted on the refuge's Special Archery Unit.

(ii) Only portable devices or natural materials for temporary blinds and tree stands are permitted.

(7) *Lake Nettie National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted only from noon of the day following the close of the State deer firearms season until the close of the State archery serson.

(8) *Lake Zahl National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only archery hunting is permitted.

(ii) Hunting is not permitted from the opening day of the State waterfowl season through the close of the State deer gun season.

(9) *Long Lake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season and it is permitted following the deer gun season.

(10) *Lostwood National Wildlife Refuge.* Hunting of deer only is permitted on designated areas of the refuge subject to the following conditions:

(i) Refuge and State permits are required for the first one and one half days of the State gun season.

(ii) Only persons with valid permits are permitted on the refuge during the first one and one half days of the season.

(11) *Slade National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

(12) *Tewaukon National Wildlife Refuge.* Hunting of white-tailed deer is permittted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only during the State late archery deer season.

(ii) In those years when a pheasant hunt is permitted, the refuge deer season closes the day before the pheasant season begins. If the State's late pheasant and deer seasons begin on the same day, deer hunting only is permitted for the first two days after which the refuge pheasant season begins.

(13) *Upper Souris National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge.

(ff) *Okahoma*—(1) *Salt Plains National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Tishomingo National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Hunters are required to check in and out of the hunt area.

(3) *Wichita Mountains Wildlife Refuge.* Hunting of elk white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(gg) *Oregon*—(1) *Deer Flat National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on the Snake River Sector.

(2) *Hart Mountain National Antelope Refuge.* Hunting of deer, antelope and bighorn sheep is permitted on designated areas of the refuge.

(3) *Malheur National Wildlife Refuge.* Hunting of deer and antelope is permitted on designated areas of the refuge.

(4) *William L. Finley National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Only shotgun and archery hunting are permitted.

(ii) Hunters must check in and out of the refuge by use of self-service permits.

(hh) *Pennsylvania—Erie National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Target practice or random shooting is not permitted.

(2) The construction or use of permanent blinds, platforms and scaffolds is not permitted.

(ii) *South Carolina*—(1) *Cape Romain National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Two six-day hunts are permitted beginning on the first Mondays in November and December.

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted from the third Monday in October through the following Saturday.

(ii) Hunting with bows and arrows and muzzleloading firearms is permitted from the last Monday in October through the following Friday.

(iii) Hunting with modern rifles and shotguns is permitted for three consecutive days beginning on the Wednesday of the week preceding Thanksgiving Day.

(iv) Checking the bagged deer is required.

(v) In addition to the State bag limits, one antlerless deer may be taken during each of the three hunt seasons.

(vi) Only still hunting is permitted.

(vii) Hunters are required to wear a visible outergarment made of daylight fluorescent orange material.

(3) *Pinckney Island National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted on the second Saturday in October and the third Saturday in November.

(iii) Only shotguns are permitted.

(iv) Two deer may be taken. Deer may be of either sex.

(v) Hunters are required to check in and out of the refuge.

(vi) Hunters are required to remain on their stands from one-half hour before sunrise until 9:00 a.m. and from two hours before sunset until sunset unless a deer is taken.

(vii) Hunters are required to wear a visible outergarment made of daylight fluorescent orange material.

(4) *Santee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting on the Cuddo Unit is permitted from the third Monday in October through the following Saturday.

(iii) Primitive weapons hunting on the Cuddo Unit is permitted from the fourth Monday in October through the following Saturday.

(iv) Primitive weapons hunting on the Pine Island Unit is permitted from the second Monday in October through the following Saturday.

(v) Hunters are required to check in and out of the refuge.

(vi) All hunters are required to wear a visible outergarment made of daylight fluorescent orange material during the gun hunts.

(jj) *South Dakota*—(1) *Lacreek National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

(2) *Sand Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(3) *Pocasse National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(4) *Waubay National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(kk) *Tennessee*—(1) *Hatchie National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for the firearms deer hunt.

(ii) Checking of bagged deer taken during the firearms hunt is required.

(iii) Gun hunting is permitted on two consecutive days beginning on the fourth Saturday in October.

(iv) Archery hunting is permitted for the first 16 days of the State season.

(v) One deer may be taken. Deer may be of either sex.

(2) *Lower Hatchie National Wildlife Refuge.* Hunting of white-tailed deer, turkey and feral hogs is permitted on designated areas of the refuge.

(3) *Tennessee National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required for the turkey, primitive weapons and conventional gun deer hunts.

(ll) *Texas*—(1) *Aransas National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) The entire refuge or any portion thereof may be immediately closed to hunting in the event of the appearance of whooping crane in the hunt area.

(ii) Hunters are required to report at designated check station(s) upon entering and leaving the refuge.

(iii) Permits are required for the firearms hunt.

(iv) Firearms hunting is permitted the first five days of the State season.

(v) The bag limit for the firearms hunt is two deer per hunter. Sex and age limits for deer are set annually by the refuge manager.

(vi) Hunters are required to wear international orange caps and vests.

(vii) Archery hunting is permitted the first Saturday of the State season through the second Sunday of the State season.

(viii) Deer may not be removed from the refuge without a metal transportation seal being attached to the carcass by a refuge officer.

(ix) Hunters shall be at least 12 years of age. Hunters between the ages of, and including, 12 and 17 must hunt under the supervision of an adult 21 years of age or older.

(2) *Hagerman National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

(3) *Laguna Atascosa National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Archery hunting is permitted in mid-October on specified days listed in the refuge hunt brochure.

(iii) Firearms hunting is permitted in early December on specified days listed in the refuge hunt brochure.

(iv) The bag limit for the firearms hunt is two deer. Sex and age limits for deer are set annually by the refuge manager.

(v) Hunters are required to wear international orange caps and vests.

(vi) Deer may not be removed from the refuge without a metal transportation seal being attached to the carcass by a refuge officer.

(vii) Hunters shall be at least 12 years of age. Hunters between the ages of, and including, 12 and 17 must hunt under the supervision of an adult 21 years of age or older.

(mm) *Utah—Ouray National Wildlife Refuge.* Hunting of mule deer is permitted on designated areas of the refuge.

(nn) *Vermont—Missisquoi National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only shotguns may be used on that part of the refuge east of the Missisquoi River.

(oo) *Virginia*—(1) *Chincoteague National Wildlife Refuge.* Hunting of sitka and white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(2) *Presquile National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Great-Dismal Swamp National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the

refuge subject to the following condition: Permits are required.

(pp) *Washington*—(1) *Columbia National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only shotgun and archery hunting are permitted.

(2) *Conboy Lake National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

(3) *Umatilla National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted by shotgun only beginning at noon each hunt day.

(ii) Hunting is permitted on the Patterson Slough Unit on Wednesdays, Saturdays, Sundays and State holidays.

(4) *Willapa National Wildlife Refuge.* Hunting of deer, elk and bear is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only archery hunting is permitted.

(iii) Hunting is permitted only on the Long Island Unit.

(qq) *Wisconsin*—(1) *Horicon National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only during the early archery and State firearms seasons.

(ii) The construction and use of permanent blinds, platforms or ladders is not permitted.

(iii) All stands must be removed from the refuge following each day's hunt.

(2) *Necedah National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Discharging a firearm from across, down or alongside roads and trails is not permitted.

(ii) The construction or use of permanent blinds, platforms or ladders is not permitted.

(iii) All stands must be removed from the refuge following each day's hunt.

(rr) *Wyoming*—(1) *National Elk Refuge.* Hunting of elk is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunters may not be let out of vehicles on refuge roads.

(iii) Shooting from or across refuge roads and parking areas is not permitted.

(iv) The use of citizen band (CB) radios in the hunt area is not permitted.

(2) *Pathfinder National Wildlife Refuge.* Hunting of pronghorn antelope and deer is permitted on designated areas of the refuge.

(3) *Seedskadee National Wildlife Refuge.* Hunting of pronghorn antelope and mule deer is permitted on designated areas of the refuge.

Authority: (16 U.S.C. 460k, 668dd).

Dated: August 29, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–24681 Filed 9–18–84; 8:45 am]

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Wednesday
September 19, 1984

Part III

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 304

Child Support Enforcement Program: Cost of Services for Non-AFDC Families; Reduction of Program Expenditures by Fees and Other Income; and Procedures for Case Assessment and Prioritization; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302 and 304

Child Support Enforcement Program; Cost of Services for Non-AFDC Families; Reduction of Program Expenditures by Fees and Other Income

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rules.

SUMMARY: These regulations amend OCSE regulations at 45 CFR Parts 302 and 304 to implement section 171(a)(3) of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982, section 2333(c) of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981 and section 3(c) of Pub. L. 98–378, the Child Support Enforcement Amendments of 1984. They revise 45 CFR 302.33 to require States to charge an application fee for furnishing non-AFDC child support enforcement (IV–D) services and to permit States to allow the jurisdiction that collects support for the State to retain any application fee collected. Application fees must be paid by the individual applying for services or paid by the State out of its own funds and may be recovered from the absent parent. These regulations permit States to recover actual or standardized costs and any fees collected to cover administrative costs under the IV–D State plan either from the individual who owes a support obligation to a non-AFDC family receiving IV–D services, or from the non-AFDC individual receiving the services. In the latter case, costs may be recovered directly from the individual or by deducting costs from the support collected. If costs are recovered from the non-AFDC individual receiving IV–D services, the IV–D agency must have in effect a procedure for informing other States and all persons authorized within the State to establish an obligation for support that costs will be recovered from the non-AFDC individual. In addition, the State must notify the individual (either the non-AFDC individual or the absent parent) from whom costs will be recovered. If an applicant for non-AFDC services assigns support rights to the State, the IV–D agency must inform the applicant that the assignment is not a condition of eligibility for IV–D services and may have the effect of making the support debt dischargeable in bankruptcy.

These regulations also require States to reduce the total expenditures they report for a quarter by the total amount of any fees collected and any other income (e.g., interest earned on collections prior to distribution) generated by service provided both in AFDC and non-AFDC cases under the title IV–D State plan.

We published a Notice of Proposed Rulemaking in the **Federal Register** on September 15, 1983 (48 FR 41450.) The comments received on that notice, our responses to the comments, and several changes made to the regulations as a result of those comments are discussed below.

We believe the changes made to these regulations to implement the application fee provisions of sections 3 (c) and (f) of Pub. L. 98–378, effective October 1, 1985, are expressly required by the statute and are non-discretionary in nature. However, anyone who wishes to comment on this portion of the regulation may do so during the next 60 days. If necessary, we will revise the regulation in response to comments received.

EFFECTIVE DATE: September 19, 1984 except for 45 CFR 302.33(c)(2) which is effective on October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Michael P. Fitzgerald, Policy Branch, OCSE (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981

Section 2333 of Pub. L. 97–35 amended title IV–D of the Social Security Act (the Act) regarding the cost of services for non-AFDC families and the reduction of expenditures by fees and other income generated under the IV–D program. All of the amendments of section 2333 were repealed or amended by Pub. L. 97–248, discussed below, except for the amendment of section 455(a) of the Act.

Section 455(a) of the Act was amended to require the Secretary, in determining the total amount expended by a State during a quarter, to exclude the total amount of any fees collected or other income resulting from services provided both in AFDC and non-AFDC cases under the title IV–D State plan.

Section 2336(a) of Pub. L. 97–35 provided that the amendments contained in section 2333 had an effective date of October 1, 1981, unless the Secretary of Health and Human Services (HHS) authorized a State to postpone the effective date because State law prohibited it from implementing the amendments on October 1, 1981.

Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982

Section 171 of Pub. L. 97–248 also amended title IV–D of the Act regarding the cost of services for non-AFDC families. Section 171(a)(2) of Pub. L. 97–248 repealed the provision in section 454(6)(B) of the Act, added by section 2333 of Pub. L. 97–35, which prohibited States from charging an application fee when the non-AFDC family requests that the IV–D agency only collect support on its behalf. Section 171(b)(1) of Pub. L. 97–248 repealed section 454(19) of the Act, added by section 2333 of Pub. L. 97–35, which had required States to impose a ten percent fee on absent parents to cover costs in excess of the application fee for providing services to non-AFDC families. Section 171(a)(3) amended section 454(6)(C) of the Act to permit States providing IV–D services to non-AFDC individuals who request them to recover costs incurred in excess of the application fee either from the absent parent who owes a support obligation or from the non-AFDC individual who is receiving the IV–D services. If costs are recovered from the non-AFDC individual receiving IV–D services, the IV–D agency must have in effect a procedure for informing all persons authorized within the State to establish support obligations that it will recover costs from the non-AFDC individual. Before enactment of Pub. L. 97–248, section 454(6)(C), as revised by Pub. L. 97–35, had permitted only the State that made a collection in a non-AFDC case to retain the fee imposed against the parent owing the support.

The amendments made by section 171 of Pub. L. 97–248 were effective August 13, 1981, unless, in accordance with section 176 of Pub. L. 97–248, the Secretary of HHS determined that State legislation was required before a State could comply with the changes made by section 171. If the Secretary so determined, the amendments would be effective in the State at the end of the first session of the State legislature which began after October 1, 1982, or which began prior to October 1, 1982 and remained in session for at least 25 calendar days after that date.

Pub. L. 98–378, the Child Support Enforcement Amendments of 1984.

Section 3(c) of Pub. L. 98–378 amends section 454(6)(B) of the Act regarding the imposition of the application fee. First, the amendment requires the State to charge an application fee for IV–D services under title IV–D of the Act which must be paid by the individual applying for IV–D services, recovered from the absent parent, or paid by the State out of State funds. Second, the amendment specifies that State funds used to pay the application fee are not program expenditures under the IV-D State plan but are program income. Third, the amendment requires the application fee to be a flat dollar amount not to exceed $25, or the State may vary the amount of the application fee not to exceed $25 based on the non-AFDC individual's ability to pay. The Secretary may raise or lower the upper limit of the fee to reflect future increases or decreases in administrative costs.

Section 21(d) of Pub. L. 98-378 amends section 454(6) of the Act by redesignating clause (C) as clause (D). Section 3(f) of Pub. L. 98-378 amends section 454 of the Act to allow States to permit the jurisdiction that collects support for the State to retain any application fee collected under section 454(6)(B) of the Act.

These amendments are effective on October 1, 1985 (except the amendment made by section 21(d), which is applicable after December 31, 1985), unless the Secretary of HHS determines that State legislation is required before a State can comply with the requirements. If the Secretary so determines, the amendments would be effective in the State no later than the beginning of the fourth month that begins after the end of the first session of the State legislature which ends on or after October 1, 1985. The term "session" means a regular, special, budget or other session of a State legislature.

Section 7 of Pub. L. 98-378 amends section 457(c) of the Act to require the State to continue to collect current support payments from the absent parent for the first five months following the family's ineligibility for AFDC. This amendment is effective October 1, 1984 and it will be implemented in regulations about to be published by the Department.

New Regulatory Provisions at 45 CFR 302.33

OCSE has revised 45 CFR 302.33 to implement the statutory amendments and to make other clarifying changes to the regulation. In the first clarification, we revised § 302.33(a) to clearly indicate the services available under that section and the individuals who are eligible to receive such services. Other changes to § 302.33 are discussed below.

Definitions

In § 302.33(b) we define the term "applicant's income" as the disposable income available for the applicant's use under State law. The State must consider the applicant's income when determining the non-AFDC application fee according to the fee schedule that States may use under § 302.33(c)(1)(ii) and (c)(2)(iv)(B). The fee schedule was formerly at § 302.33(b)(2)).

Application Fee for Non-AFDC Families

Currently, 45 CFR 302.33(b) (redesignated here as § 302.33(c)(1)) permits States to charge an application fee for any IV-D services provided to non-AFDC individuals. To be consistent with the amendment made by section 3 of Pub. L. 98-378, we have amended this provision to indicate that it remains in effect until October 1, 1985.

Prior to its current revision, section 454(6)(B) of the Act permitted the IV-D agency to charge an application fee to each non-AFDC individual who applies for IV-D services. To charge a fee, a State had to elect to do so in its IV-D State plan and indicate in its plan whether it would charge a flat fee not to exceed $20 or a fee based on a fee schedule that took into account the income of each applicant for IV-D services.

To implement the new section 454(6)(B) of the Act, the regulations at § 302.33(c)(2) require the State IV-D agency to charge an application fee in all case for IV-D services under § 302.33. Under § 302.33(c)(2)(i), the State IV-D agency may collect the application fee from the individual who is applying for IV-D services or pay the application fee out of State funds. The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing support enforcement services and pay the recovered amount to the applicant or to itself if it paid the fee. If a State elects to pay the application fee, the regulations at § 302.33(c)(2)(iii) specify that State funds used to pay the application fee are not program expenditures under the IV-D State plan but are program income under § 304.50. (See the discussion below under the heading "New Regulatory provisions at 45 CFR 304.50" for details regarding the treatment of program income.)

The regulations at § 302.33(c)(2)(iv) specify that the application fee charged under § 302.33(c)(2) must be, on a statewide basis, either a flat dollar amount not to exceed $25 (or a higher or lower amount the Secretary determines to be appropriate for any fiscal year to reflect increases or decreases in administrative costs) or an amount based on a fee schedule not to exceed the flat dollar amount. The fee schedule must be based on the applicant's income. We will issue a notice of proposed rule making to elicit comments on a proposed method of determining the maximum allowable application fee.

To implement section 3(f) of Pub. L. 98-378, which amends section 454 of the Act, the regulations at § 302.33(c)(2)(v) permit the State IV-D agency to allow the jurisdication that collects support for the State to retain any application fee collected under this section. The application fee retained under § 302.33(c)(2)(v) must be treated as program income in accordance with § 304.50.

Recovery of Costs in Non-AFDC Cases

To implement the revised section 454(6)(C) of the Act (redesignated and hereafter referred to as section 454(6)(D)), the regulations at § 302.33(d)(1) permit the IV-D agency to elect in its State plan, on a statewide basis, to recover costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan either: (1) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services; or (2) from the non-AFDC individual on whose behalf the IV-D agency is providing services, either directly or by reducing the amount of the support collection made on the family's behalf.

Section 302.33 previously provided for recovery of costs in excess of the application fee. In determining the costs subject to cost recovery in non-AFDC cases, OCSE policy requires the States to deduct the amount of any fees collected to cover administrative costs under the IV-D State plan from costs incurred in providing IV-D services. To clarify the relationship between fees and costs that may be recovered in non-AFDC cases, § 302.33(d)(1) specifies that a State may only recover costs which exceed the amount of any fees collected to cover administrative costs under the IV-D State plan. The fees include the application fee collected under § 302.33(c), the fee for Federal Parent Locator Service locate only request prescribed in § 303.70(e)(2), any other fees authorized under title IV-D of the Act, and any fees collected from the custodial parent under State law. The late payment fee prescribed in the new section 454(21) of the Act is not included because the fee is in the nature of a penalty and is collected for purposes other than to cover administrative costs in an individual case. These fees are, however, subject to the amended section 455(a), implemented by § 304.50, and must be deducted from administrative costs.

The State may recover costs from non-AFDC individuals who are receiving IV-D services only if the State has in effect a procedure for informing other States and all persons authorized within the State to establish a support obligation that costs will be recovered from those individuals. State procedures should include notification to all persons authorized to make such orders whenever a State elects to recover costs or ceases the practice of cost recovery. States may establish their own procedures for informing persons authorized to make such orders.

In recovering costs from the non-AFDC individual on whose IV-D services are being provided, States may deduct costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan from the support collected on behalf of the individual or directly from the individual. This allows a State to recover costs from the support collected for as long as collections are made by the State, and then to attempt to recover any remaining unreimbursed costs directly from the individual.

To respond to States' concerns that the calculation of actual costs on a case by case basis is time consuming and costly and to encourage States to recover costs and improve the cost-effectiveness of the program, we revised § 302.33(d)(1) to permit the IV-D agency on a case by case basis to recover either actual or standardized costs. If a State recovers standardized costs, it must comply with the requirements in § 302.33(d)(2) and develop a written methodology to determine standardized costs which are as close to actual costs as is possible and make the methodology available to anyone upon request. In either case, we encourage States to strive to minimize costs so as not to discourage the application for services by those most in need of them.

Section 302.33(d)(3) prohibits the IV-D agency from treating any amount collected from an absent parent as recovered costs except amounts which exceed the total amount of current support owed by the absent parent. OCSE policy requires child support collections received for non-AFDC cases established under 45 CFR 302.33 to be considered first as payment on the current support obligation. Support collected up to the amount of the current obligation must be passed on to the family.

If, under § 302.33(d)(1)(ii), the State elects to recover costs from the individual receiving IV-D services, § 302.33(d)(4) then permits the IV-D agency to attempt to obtain reimbursement from the absent parent for the individual who is receiving IV-D services. This allows States that elect to recover costs from the individual receiving IV-D services to reduce the impact of cost recovery on that individual. Reimbursement from the absent parent to the custodial parent in this situation may not be considered child support payments.

Section 302.33(d)(5) requires the IV-D agency that elects to recover costs to notify, as appropriate, either the non-AFDC individual who has applied for IV-D services or the individual who owes a support obligation to the non-AFDC family that costs will be recovered. In interstate cases, the IV-D agency where the case orignated must notify applicants of the States that recover costs. Section 302.33(d)(6) requires the IV-D agency to notify the IV-D agencies in other States if it recovers costs from the individual receiving IV-D services.

The changes discussed under the heading "Application Fee for Non-AFDC Families" and above regarding cost recovery in excess of fees were not included in the Notice of Proposed Rulemaking. The Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds that a notice of proposed rulemaking is unnecessary, impracticable or contrary to the public interest, it may dispense with the notice if it incorporates a brief statement in the final regulations of the reasons for doing so.

The Department finds that there is good cause to dispense with proposed rulemaking procedures with respect to these changes. We find that publication of these changes in proposed form would be unnecessary for the following reasons. A new § 302.33(c)(2) implements the new State plan requirements at section 454(6)(B) of the Act and the sentence following section 454(21) of the Act. These new statutory provisions are nondiscretionary in nature and the regulation merely follows the statute. Section 302.33(d)(1) is revised to specify that the State may only recover costs incurred in excess of any fees collected to cover administrative costs incurred in providing IV-D services. This change incorporates the requirements of section 455(a) of the Act.

Assignment of Support Rights in Non-AFDC Cases

Section 302.33(e)(1) (formerly § 302.33(d)) allows the IV-D agency to take an assignment of support rights from a non-AFDC individual who applies for IV-D services. Such an assignment does not constitute an assignment under 45 CFR 232.11 and may not be a condition of eligibility for receiving IV-D services. Since § 302.33(e)(1) indicates that an individual applying for IV-D services is not required to make an assignment of support rights as a condition of eligibility for IV-D services, the regulations at § 302.33(e)(2) require the IV-D agency to so inform such individual prior to the taking of an assignment. This change was made in response to comments received on the proposed rule. (See Discussion of Comments.) Section 302.33(e)(2) further requires the IV-D agency to inform any individual making an assignment in a non-AFDC case that the assignment may have the effect of making the support debt dischargeable in bankruptcy.

New Regulatory Provisions at 45 CFR 304.50

The amended section 455(a) of the Act requires the Secretary, in determining the total amount expended by a State during a quarter, to exclude any fees collected or other income resulting from services provided in AFDC and non-AFDC cases under the title IV-D State plan. Therefore, States must reduce their expenditures by: (1) The total non-AFDC application fees collected under 45 CFR 302.33(c); (2) the total fees collected for non-AFDC Federal Parent Locator Service locate-only requests under 45 CFR 303.70(e)(2); (3) any fees collected under State law; (4) any costs recovered from collection such as those recovered under 45 CFR 302.33(d) and 302.51(e)(2); (5) late payment fees collected in accordance with the new section 454(21) of the Act; and (6) other income resulting from services provided in AFDC and non-AFDC cases under the title IV-D State plan, in accordance with section 455(a) of the Act. OCSE issued an Action Transmittal (OCSE-AT-82-8) on September 3, 1982 on the reduction of expenditures by fees and other income.

To implement in regulations the amendment made to section 455(a) of the Act by section 2333(c) of Pub.L. 97-35 and section 171(b)(2) of Pub.L. 97-248, we added a new § 304.50, Treatment of Program Income, which requires States to exclude from their IV-D expenditure claims any fees which are collected under the title IV-D State plan and any income (e.g., interest earned on collections prior to distribution) generated as a result of IV-D activities. This applies to fees or income in both AFDC and non-AFDC cases.

Discussion of Comments

We received nineteen comments in response to the Notice of Proposed Rulemaking. Ten State agencies, one county executive, one domestic relations agency, one family court, one governor, one private individual, one judge and three legal advocacy groups submitted comments.

General Comments (45 CFR 302.33)

1. *Comment:* One State objected to the application fee and recovery of costs provisions of the regulations because these options apply to all non-AFDC cases and could place a financial burden on individuals in need of IV–D services.

Response: Neither section 454(6) of the Act nor 45 CFR 302.33 require a State to collect an application fee or recover costs of providing services to non-AFDC individuals. However, section 454(6)(B) and the implementing regulations at § 302.33(c)(2) require the State to charge an application fee for IV–D services beginning October 1, 1985. Under this requirement, the fee must be paid by the individual applying for IV–D services or by the State itself. If a State elects to impose the application fee on the individual who applies for IV–D services, the fee should be paid at the time of application. A State could avoid the financial burden referred to by the commenter of paying the application fee at the time of application by electing to pay the fee itself.

Under section 454(6)(D) of the Act and 45 CFR 302.33(d), a State that elects in its State plan to recover costs in excess of any fees collected to cover administrative costs under the IV–D State plan may recover costs either from the absent parent or from the individual who has filed an application for IV–D services. By recovering costs from the absent parent, a State would avoid imposing an additional financial burden on the custodial parent. In any event, a State that elects to recover costs must pursue cost recovery in all non-AFDC cases.

2. *Comment:* One State suggested that the costs of providing services to non-AFDC individuals could be controlled better by limiting the availability of IV–D services to families who cannot afford to hire private attorneys than by the application fee and recovery of costs provisions of the regulations.

Response: Section 454(6)(A) of the Act and 45 CFR 302.33(a) require the State to make IV–D services available to any individual not receiving assistance under the AFDC program who files an application for IV–D services with the IV–D agency. Thus, IV–D services must be made available to any non-AFDC individual who files an application regardless of the applicant's ability to hire a private attorney. Congress enacted the mandatory application fee and optional recovery of costs provisions in section 454(6) of the Act to allow States to offset some of the costs incurred in providing IV–D services to non-AFDC individuals.

3. *Comment:* One family court asked if the regulations only provide for the imposition of an application fee and recovery of costs if the State collects support. One legal advocacy group suggested that the regulations prohibit the State from collecting the application fee or recovering costs unless the amount of support collected exceeds the application fee and any additional costs incurred.

Response: Under § 302.33(c)(2), a State must charge an application fee for each non-AFDC case. If the State elects to collect the application fee from the individuals applying for services, the fee should be collected at the time of application to ensure that the fee is paid in accordance with section 454(6)(B) of the Act.

The regulations at 45 CFR 302.33(d)(1) permit the State to elect in its State plan to recover any costs in excess of any fees collected to cover administrative costs under the IV–D State plan from the absent parent or from the individual who has filed an application for IV–D services. Under this provision, a State that recovers costs from the non-AFDC individual may recover costs from any support collected on behalf of the individual or directly from the individual. Although a State may recover all costs directly from the individual, we expect many States to recover costs from any support collected as long as collections are made by the State and then attempt to recover any remaining unreimbursed costs directly from the individual. A State that elects under 45 CFR 302.33(d)(1) to recover costs from the absent parent is prohibited under § 302.33(d)(3) from treating any amount collected from the absent parent as recovered costs except amounts that exceed the current support owed by the absent parent.

Definitions (45 CFR 302.33(b))

4. *Comment:* One legal advocacy group recommended that the proposed definition of the term "applicant's income" be changed to "the disposable income actually available to the applicant" because the proposed definition may allow the State to include income that is not available to the applicant.

Response: We believe that the definition of the term "applicant's income" at 45 CFR 302.33(b) adequately ensures that any State which charges the individual applying for services the application fee in accordance with § 302.33(c) only consider disposable income actually available to the applicant under State law.

Application Fee (45 CFR 302.33(c))

5. *Comment:* One legal advocacy group suggested that the regulations be revised to require the States to waive the application fee for former AFDC recipients and other individuals who would be discouraged from applying for IV–D services by a fee. A second legal advocacy group suggested that the regulations be revised to require States to give non-AFDC applicants the option of paying the application fee at the time of application for IV–D services or having the fee deducted from collected support. A third legal advocacy group suggested that the regulations be revised to require the States to suspend the application fee for individuals who show, at the time of application for IV–D services, that they cannot afford to pay the fee and collect the suspended application fee by retaining a portion of each child support arrearage payment.

Response: As indicated under the response to comment number 1, beginning October 1, 1985, the State must charge an application fee for IV–D services. However, the regulations at § 302.33(e)(2)(i) specify that the State may collect the application fee from the individual who is applying for IV–D services or pay the fee itself. Thus, the State can pay the fee for individuals who would be discouraged from applying for IV–D services by a fee. In addition, the regulations at § 302.33(c)(2)(iv)(B) permit a State that elects to impose an application fee on the individual who applies for IV–D services to collect a fee based on the applicant's income.

The revised section 457(c)(1) of the Act requires the State to continue to collect current support payments from the absent parent after the family ceases to receive AFDC for a period not to exceed the first five months following the family's ineligibility for AFDC. In this situation, the family is not required to file an application for IV–D services under § 302.33. In addition, the revised section 457(c)(2) of the Act permits States to continue to provide this service after the five-month period upon authorization from the family. States are also prohibited from requiring any formal application or imposing any application fee in cases where the State IV–D agency is authorized to continue to collect and distribute support.

States that elect to collect the application fee from the non-AFDC applicant can permit the applicants to decide whether to pay the application fee at the time of application for IV–D services or have the fee deducted from collected support. The fee must be collected, however, and we recommend that the State collect the application fee from the AFDC individual at the time of application for IV–D services to ensure that the fee is paid in accordance with section 454(6)(B) of the Act. Permitting the States that elect to collect the application fee from the non-AFDC individual to determine whether or not to suspend a non-AFDC individual's application fee based on ability to pay and to collect the fee by retaining a portion of each child support payment does not relieve the State from its liability to treat such fees as program income whether collected or not.

6. *Comment:* One legal advocacy group suggested that States be encouraged to charge the application fee to the obligor.

Response: There is no basis in the statute for imposing a fee upon the obligor. We believe that charging a reasonable application fee to an individual applying for IV–D services is not overly burdensome. Thus, the regulations at § 302.33(e)(2)(1) do not permit the States to charge the application fee to the obligor.

Section 454(6)(B) of the Act and the regulations at § 302.33(c)(2) require the States to charge an application fee for IV–D services beginning October 1, 1985. Under this requirement, the application fee must be "paid" by the individual applying for IV–D services or "paid" by the State itself. However, the statute and the regulations at § 302.33(c)(2)(ii) also permit the States to "recover" the application fee from the obligor and pay any recovered amount to the applicant or itself if it paid the fee. There is no provision in the Act for the fee to be "paid" by the absent parent directly. Section 454(6)(B) clearly requires that the fee must be imposed. Under certain circumstances it would be impossible to charge the absent parent the fee, e.g., paternity not established (i.e. no "parent" to charge) or absent parent out-of-state (i.e. beyond the State's jurisdiction to charge).

7. *Comment:* Two legal advocacy groups recommended that the regulations be revised to raise the maximum flat application fee to $30 instead of $40 because many non-AFDC individuals cannot afford to pay a $40 application fee. One legal advocacy group suggested that because the preamble to the proposed regulations does not provide any information on whether the cost of providing IV–D services has doubled, the $20 maximum flat application fee should be raised to $30 instead of $40.

Response: We agree that the $40 application fee may be too high for some individuals to afford to pay. Therefore, we have revised the maximum flat application fee to $25. This is consistent with the new statute which is not effective until October 1, 1985, and it will permit States that wish to charge fees immediately to develop forms and procedures which will be in accordance with § 302.33(c)(2) when it becomes effective.

Beginning October 1, 1985, the revised section 454(6)(B) of the Act and § 302.33(c)(iv)(A) permit the States to charge a flat application fee not to exceed $25 or any higher or lower amount set by the Secretary. The Secretary may, in accordance with section 454(6)(B) of the Act, adjust the maximum allowable fee prescribed in § 302.33(c)(2)(A) upward or downward to reflect increases or decreases in administrative costs.

The regulations at § 302.33(c)(2)(i) permit the State to collect the mandatory application fee from the individual who is applying for IV–D services or pay the application fee out of State funds in accordance with statewide standards. The State may pay the fee for non-AFDC individuals who cannot afford to pay it.

8. *Comment:* One legal advocacy group recommended that the regulations be revised to specify that application fees based on fee schedules cannot exceed the maximum flat application fee.

Response: Section 302.33(c) specifies that the fee schedule must be based on each applicant's income as defined in § 302.33(b) and cannot exceed $25 or any other amount set by the Secretary to reflect changes in program costs. Under these provisions, the fee schedule cannot place a substantial burden on non-AFDC applicants at the lower end of the economic scale.

Recovery of Costs (45 CFR 302.33(d))

9. *Comment:* One State commented that the proposed regulations at 45 CFR 302.33(d) preclude cost-effective cost recovery and do not properly implement section 454(6)(C) (redesignated as 454(6)(D)) of the Act.

Response: We believe that the regulations at 45 CFR 302.33(d) permit the States to recover costs in a cost-effective manner and properly implement the new section 454(6)(D) of the Act. Section 454(6)(D) of the Act permits a State to elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV–D State plan either from the absent parent or from the individual who has filed an application for IV–D services. To implement the new section 454(6)(D) of the Act, the regulations at 45 CFR 302.33(d) permit the same. Under this provision, the IV–D agency may recover on a case by case basis either actual or standardized costs incurred in excess of the application fee. We believe that section 454(6)(D) of the Act permits us to allow States to recover standardized costs in accordance with 45 CFR 302.33(d) (1) and (2). We also believe that the recovery of standardized costs is the most cost-effective means of recoving costs in accordance with section 454(6)(D) of the Act.

10. *Comment:* One State commented that the types of cost recovery prescribed in the regulations may not be considered by the State's Supreme Court as consistent with the State Constitution.

Response: As indicated in the response to comment number 9, we believe that the recovery of costs provisions at 45 CFR 302.33(d) properly implement the new section 454(6)(D) of the Act as amended by section 171(a)(3) of Pub. L. 97–248 and the new statute.

Since the regulations at 45 CFR 302.33(d) implement an optional State plan provision, the State is not required to recover costs. Thus, a State that is prohibited by State law or a court ruling from recovering costs may elect in its State plan not to recover costs. A State that wishes to recover costs would have to revise any State law that prohibits cost recovery.

11. *Comment:* One State asked whether the proposed regulations permit a State to recover costs if an application fee is not charged.

Response: Section 454(6)(D) of the Act and the implementing regulations at 45 CFR 302.33(d) permit a State to elect in its State plan to recover any costs in excess of any fees imposed to cover administrative costs under the IV–D State plan incurred in providing IV–D services to non-AFDC applicants. If a State elects in its State plan not to charge an application fee prior to October 1, 1985, but to recover costs, the State may recover any costs incurred in providing IV–D services to non-AFDC applicants.

12. *Comment:* One family court, one legal advocacy group and one State recommended that we restrict the recovery of costs in interstate cases. Suggestions included allowing either the initiating or responding State to recover costs, amending the regulations to permit only the initiating State to recover costs in interstate cases when the State elects to do so in its State plan,

and prohibiting the recovery of costs in interstate cases.

Response: A State that elects to recover costs must attempt to recover costs in all cases filed in the State or referred from another State either from each absent parent obligated to pay support or from each individual receiving IV-D services. In addition, if two States incur costs in an interstate non-AFDC case, both States are entitled to recover costs from a resident or non-resident if recoveries are provided for under their respective State plans and the proper notification has been given to the non-AFDC applicant as required under § 302.33(d)(5). In response to these comments, we have decided to make explicit in regulations that this notification requirement is applicable in interstate cases as well as intrastate cases. We believe this policy is consistent with Congressional intent as long as any State involved in providing IV-D services only seeks to recover costs associated with any service actually provided. In so doing, no individual would be charged more than is necessary to recover the cost of providing services in his or her case.

13. *Comment:* One State asked whether the phrase "* * * informing all persons authorized within the State to establish a support obligation that the State will recover costs from that individual" in the preamble of the proposed regulations means informing all authorized persons that the State intends to recover costs from *all* individuals who contract with the State for IV-D services, or informing all authorized persons regarding each individual non-AFDC applicant by name.

Response: The statement in the preamble means that the State must have implemented a procedure for informing all persons authorized to establish a support obligation that the State will recover costs from *all* individuals who have filed an application for IV-D services.

14. *Comment:* One legal advocacy group suggested that the regulations at 45 CFR 302.33(d)(1)(ii) be revised to specify the procedures States must use to ensure that all individuals authorized within the State to establish an obligation for support are notified that the State recovers costs from the individual receiving IV-D services.

Response: We believe that the flexibility and discretion the regulations give the States to establish their own procedures for informing persons authorized to establish support orders is consistent with the corresponding statutory provision at section 454(6)(D)(ii) of the Act. States may contact the appropriate OCSE Regional Office for assistance in establishing a procedure that meets the notification requirement. Since § 302.33(d)(1)(ii) is a IV-D State plan requirement, the OCSE Audit Division will, as part of its compliance audits, determine whether each State that elects to recover costs from the individual receiving IV-D services meets the requirements in the regulation. If the audit findings indicate that a State is not meeting the notice requirements in § 302.33(d)(1)(ii), the appropriate OCSE Regional Office will work with the State to take corrective action as soon as possible.

15. *Comment:* One legal advocacy group recommended that the regulations prohibit the State from recovering costs from any non-AFDC individual receiving support collection services until the case returns to the court or other decisionmaker for enforcement or modification.

Response: Section 454(6)(D) of the Act, which permits States to recover costs incurred in providing IV-D services to non-AFDC individuals, does not prohibit the recovery of costs on cases that require only collection of support. Therefore, States may recover actual or standardized costs associated with any service provided. If the only service being provided is collection of support, costs associated with the service should be minimal. We believe that a reasonable cost recovery program is not likely to place an undue burden on non-AFDC individuals who apply for IV-D services because they will receive services from the IV-D agency which may not be available to them from any other source at a comparable cost.

16. *Comment:* Two legal advocacy groups recommended that the regulations specify the maximum amount a State can deduct from support collections as recovered costs. Suggestions included permitting States to retain up to five percent of each support collection as recovered costs and specifying that a State cannot retain more than 50 percent of support payments applied to arrearages.

Response: Section 454(6)(D) of the Act allows States to recover any costs in excess of any fees imposed to cover administrative costs under the IV-D State plan and does not limit the amount that may be withheld from support collected on behalf of non-AFDC individuals receiving IV-D services. Although § 302.33 does not set a maximum amount a State may deduct from support collections, the State may only recover on a case by case basis either actual or standardized costs in accordance with § 302.33(d)(2). A State that recovers costs may retain a flat percentage of support collected as long as the recovery of costs does not exceed the actual or standardized costs incurred in a given case and does not place an undue burden on the individual receiving IV-D services. A State that elects to retain a flat percentage of each non-AFDC collection must periodically reconcile the amount retained with costs as determined by the standardized or actual method. Therefore, the withholding of a flat percentage would cease when the amounts withheld equaled the standardized or actual amounts charged by the State. The flat percentage of support retained is a matter to be determined by the State in accordance with these requirements.

17. *Comment:* One family court commented that the regulations permit the recovery of costs from support payments, but do not ensure that the total current support amount is paid to the payee.

Response: If a State elects to recover costs from the absent parent, the regulations at § 302.33(d)(3) prohibit the IV-D agency from treating any amount collected from the absent parent as recovered costs except amounts that exceed the amount of current support owed. Under this option, the State must give priority to the current support obligation. Support collected up to the amount of the current support obligation must be paid to the family. Otherwise, we believe, the State would in effect be recovering costs from the family receiving non-AFDC services.

If a State elects to recover costs from the individual who files an application for IV-D services, the State may under § 302.33(d)(1)(ii) recover costs directly from the individual or from the support collected on behalf of the individual. This is consistent with section 454(6)(D)(ii) of the Act. There is no requirement that the total current support amount be paid to the payee if this statutory option is selected.

18. *Comment:* Two legal advocacy groups recommended that, because it is often the obligor's malfeasance that necessitates IV-D services, the regulations should indicate a preference for recovering costs from the obligor.

Response: Under section 454(6)(D) of the Act and 45 CFR 302.33(d)(1), any State that opts to recover costs may recover them from the absent parent or from the individual who applies for IV-D services. The statute does not indicate that there is any preference which should be given to recovering costs from the obligor. However, the State that elects to recover costs from the individual receiving IV-D services in accordance with 45 CFR 302.33(d)(1)(ii) may attempt to obtain reimbursement from the absent parent for the individual receiving IV–D services in accordance with § 302.33(d)(4). We believe that this provision will reduce the burden of cost recovery on the non-AFDC individual receiving IV–D services.

19. *Comment:* One family court and two legal advocacy groups recommended that the regulations address the recovery of costs on a cost per service basis. Suggestions included specifying the services for which State can recover costs, establishing the maximum amount that a State can charge for each service, prohibiting the State from charging the costs of enforcement and collection services against the applicant more than once, and specifying how often a State can charge for enforcement or collection activity.

Response: 45 CFR 302.33(d)(1) permits a State to collect on a case by case basis either excess actual or standardized costs from the absent parent or from the individual receiving IV–D services. A State that chooses to recover standardized costs must develop a written methodology to determine standardized costs which are as close to actual costs as possible. The State could develop a written methodology for determining the average cost per service as illustrated in the preamble to the proposed regulation.

The costs of providing IV–D services vary from State to State. Costs such as salaries, benefits and other administrative expenses incurred in providing a IV–D services such as enforcement must be considered in determining actual costs or establishing standardized costs which are as close to the actual costs incurred as possible. Therefore, we believe it is impossible to establish a standard cost per service in Federal regulations because of the various situations that exist.

A State that develops average costs per service as part of a written methodology to recover standardized costs may recover costs each time the service is provided. For example, suppose the average cost of taking enforcement action is $50. If the State takes enforcement action twice in a case, the State may recover $100. Alternatively, a State that determines standardized costs under § 302.33(d)(2) may develop an average cost of providing a service per case. For example, if the average cost of providing collection services on a IV–D case is $80 and the State provides collection services to a case, the State will only recover $80 regardless of how often or how long it provides collection services.

20. *Comment:* One State objected to the methodology for determining standardized costs presented in the proposed regulations because it requires the calculation of costs on a case by case basis which is a very labor intensive process.

Response: We believe that the calculation of standardized costs on a case by case basis is less costly and time consuming than calculating actual costs on a case by case basis. We expect many States to adopt this option because it will result in the recovery of standardized costs in a given case that closely reflect the costs of services provided in that case.

21. *Comment:* Two legal advocacy groups recommended that the regulations be revised to require States that elect to recover standardized costs to do so based on the income of either the non-AFDC individual receiving IV–D services or the absent parent responsible for the costs of providing IV–D services.

Response: The State has discretion in determining the rate at which it will recover costs as long as the criteria developed are used throughout the State and do not discourage the application for services by those most in need of them. Thus, the State could use the average income of those non-AFDC individuals receiving IV–D services from whom it will recover costs as a criterion for determining the rate of recovery. There is no provision in the statute for basing costs on the income of the absent parent.

22. *Comment:* One State suggested that the proposed regulations be revised to permit States to impose a flat percentage fee for non-AFDC service that does not exceed the average costs of such services.

Response: The regulations at 45 CFR 302.33(d)(2) require a State that elects to recover standardized (or average) costs to develop a written methodology to determine standardized costs which are as close to actual costs as is possible. In addition, the State must reconcile the amount recovered to the standardized (or average) costs of providing IV–D services at some point on a case by case basis.

Once a State has determined standardized costs in accordance with § 302.33(d)(2), the State may collect these costs on a case by case basis by the retention of a flat percentage of support collected as long as the amount recovered does not exceed the costs incurred in a given case. A State that recovers costs by the flat percentage method must closely monitor its cost recovery activities to ensure that it does not recover amounts in excess of incurred costs in any individual case.

23. *Comment:* One legal advocacy group recommended that the regulations require States that develop a written methodology under the proposed 45 CFR 302.33(d)(2) to make the methodology available to individuals upon request.

Response: We agree that the regulations should require the State that elects to recover standardized costs to make the written methodology available to individuals upon request. The individual receiving IV–D services, the individual who owes support and any other party interested in the welfare of the child have a legitimate interest in reviewing the method used to establish standardized costs. Therefore, we have revised 45 CFR 302.33(d)(2) to specify that a State which develops a written methodology for determining standardized costs must make the methodology available to any individual upon request.

24. *Comment:* One State suggested that, because the procedure described in the proposed regulations at 45 CFR 302.33(d)(4) involves recovery of costs from the custodial parent while attempting to recover costs from the absent parent, the provision should be revised to provide that the State will first attempt to recover costs from the absent parent before it recovers costs from the custodial parent. One family court indicated that the proposed § 302.33(d)(4) is impractical.

Response: The regulations at § 302.33(d)(4) provide that a State that recovers costs under § 302.33(d)(1)(ii) may attempt to obtain reimbursement from the individual who owes a support obligation for any costs paid by the individual receiving IV–D services and pay all amounts so obtained to the latter individual. As indicated in the preamble to the proposed regulations, this would allow States that elect under § 302.33(d)(1)(ii) to recover costs from the individual receiving IV–D services to reduce the impact of cost recovery on that individual. Costs recovered from the absent parent in this situation may not be considered child support payments. Although this option involves some additional costs, we believe that it will be selected by some States.

A State that wants to recover costs without placing a burden on the non-AFDC family, as suggested by the first commenter, should opt to recover costs from the absent parent under § 302.33(d)(1)(i).

25. *Comment:* One legal advocacy group and one State recommended that the proposed regulations at § 302.33(d)(5) be revised to require a IV–

D agency that elects to recover costs to notify both the custodial parent and absent parent.

Response: Previous regulations at § 302.33(c) required a IV–D agency that elected to recover costs from support collections to notify each non-AFDC individual for whom IV–D services are being provided of that fact. Under this provision, the IV–D agency only sent notices to individuals affected by cost recovery. We continue to believe that only the individual affected by a State's decision to recover costs should be notified. Therefore, the regulations at 45 CFR 302.33(d)(5) require a State that elects to recover costs to notify, as appropriate, either the individual who has filed an application for IV–D services or the individual who owes a support obligation to a non-AFDC family receiving IV–D services that costs will be recovered.

Assignment (45 CFR 302.33(e))

26. *Comment:* One State commented that the provision in the regulations that requires the State to inform any individual about to make an assignment of support rights that the assignment may have the effect of making a support debt dischargeable in bankruptcy will burden the State and discourage individuals from applying for IV–D services.

Response: Even though the assignment is for collection purposes only and transfers no property right to the State, we are aware of bankruptcy proceedings in which substantial amounts of past due support assigned to the State by non-AFDC individuals under § 302.33(e) were discharged. Since the non-AFDC individual and family may be adversely affected by an assignment of support rights, the regulations at 45 CFR 302.33(e)(2) require the IV–D agency to inform all non-AFDC individuals applying for IV–D services that any assignment of support rights to the State may result in a support debt being discharged if the debtor declares bankruptcy.

27. *Comment:* One legal advocacy group suggested that the proposed 45 CFR 302.33(e)(1) be revised to specify that the IV–D agency must inform each individual who applies for IV–D services that failure to make an assignment of support rights will not effect that individual's eligibility for IV–D services.

Response: We agree that the individual who applies for IV–D services needs to know that his or her failure to make an assignment of support rights will not affect his or her eligibility for IV–D services. We revised 45 CFR 302.33(e)(2) to specify that, before the applicant for IV–D services makes an assignment of support rights, the IV–D agency must inform the individual that the assignment is not a condition of eligibility for IV–D services.

Treatment of Program Income (45 CFR 304.50)

28. *Comment:* One State commented that, because the Federal government reduces the quarterly IV–A grant award advanced to the State by the anticipated Federal share of IV–D AFDC collections for the upcoming quarter, it would be inequitable for the Federal government to demand a share of any interest earned on IV–D AFDC collections. One State, one county executive, one domestic relations agency and one judge also expressed concern about this provision.

Response: Quarterly IV–A grant awards to the State are reduced by the Federal government by the estimated net Federal share of IV–D AFDC collections exclusive of any interest earned by the State on such collections. Section 455(a) of the Act requires the States to reduce their quarterly expenditure claims for Federal funding by the total amount of any fees collected or other income resulting from services provided under the IV–D State plan. The term "income" includes any interest income earned by a State on collections made under the IV–D State plan. Thus, under regulations at 45 CFR 304.50(b), any interest earned on IV–D AFDC collections before those collections are distributed in accordance with section 457 of the Act and the implementing regulation at 45 CFR 302.51 must be excluded from the State's quarterly expenditure claims for Federal IV–D funding.

29. *Comment:* One individual suggested that, because interest income may be construed as exempt from the requirement to exclude earned income from quarterly expenditure claims for Federal funding, the proposed regulations at 45 CFR 304.50(b) should be revised to specify interest income.

Response: We agree that interest income could possibly be construed as exempt from the proposed § 304.50(b). Therefore, we revised the final 45 CFR 304.50(b) to require the IV–D agency to exclude from its quarterly expenditure claims an amount equal to all interest and other income earned during the quarter resulting from services provided under the IV–D State plan.

30. *Comment:* One State suggested that the proposed 45 CFR 304.50(b) be revised to delete the word "earned" to conform the provision to section 455(a) of the Act.

Response: Section 455(a) of the Act requires the States to exclude from their quarterly expenditure claims for Federal funding any fees collected or other income resulting from services provided under the IV–D State plan. We believe that the term "income," as used in section 455(a) of the Act, includes earned income such as interest earned by a State on IV–D collections because interest earned on such collections is a direct result of State collection and distribution services. Once the State makes a IV–D collection, any interest earned prior to the completion of the distribution process (that is, from the date of collection until the date the Federal government receives from the State a IV–A expenditure report that reduces State IV–A expenditures by the net Federal share of IV–D AFDC collections) must be excluded from the State's quarterly claims for Federal funding. Thus, the regulations at 45 CFR 304.50(b) require the State to exclude from its quarterly expenditure claims all interest and other income earned during the quarter resulting from services provided under the IV–D State plan.

Paperwork Reduction Act

These regulations at 45 CFR 302.33 information collection requirements which are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. These requirements have not yet been approved by OMB and are therefore not effective. The Department will publish a notice in the Federal Register regarding the effective date of these requirements once OMB approval has been obtained.

List of Subjects in 45 CFR Parts 302 and 304

Child welfare, Grant programs/Social programs.

Regulatory Impact Analysis

In developing Pub. L. 97–248, the Congress used figures developed by the Congressional Budget Office which indicate that the revised application fee and recovery of costs provisions will provide savings in the range of $11 to $16 million annually during fiscal years 1984 and 1985. The Department estimates that the mandatory application fee provisions of section 3 of Pub. L. 98–378 will provide savings of $10 million annually during fiscal years 1986 and 1987. These estimated savings represent 9 to 15 percent of total non-AFDC expenditures. These figures do not represent changed costs as such, but a change in payor from the general taxpayer to the users of these services. These changes may have some beneficial effect on private sector providers of similar services, but we do not believe it will be substantial. In addition to these changes in structure and magnitude of fees and cost recovery, States may realize some actual administrative cost savings by moving from a case-by-case to standardized procedure for calculating costs. However, we expect that these savings will not exceed several million dollars annually.

For the reasons stated above, the Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section 1 of the Executive Order. Further the Secretary certifies that these regulations will not have significant economic impact on a substantial number of small entities, and do not require a regulatory flexibility analysis as provided in Pub. L. 96-345, the Regulatory Flexibility Act of 1980.

PART 302—[AMENDED]

1. 45 CFR 302.33 is revised to read as follows:

§ 302.33 Individuals not otherwise eligible for paternity and support services.

(a) *Availability of services.* The State plan must provide that the support collection or paternity determination services established under the plan shall be made available to any individual not receiving assistance under the Aid to Families with Dependent Children (AFDC) program who files an application for the services with the IV-D agency.

(b) *Definitions.* For purposes of this section:

"Applicant's income" means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed $25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for IV-D services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

(ii) The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed $25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs); or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who has filed an application for IV-D services under this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under this section.

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency must notify, consistent with the option selected, either the individual who has filed an application for IV-D services or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the applicant of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(e) *Assignment.* (1) The IV-D agency may take an assignment of support rights from an individual who applies for services under this section. However, as assignment by an individual under this section does not constitute an assignment under § 232.11 of this title and may not be a condition of eligibility for services under this section.

(2) Before the applicant for IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section and may have the effect of making the support debt dischargeable in bankruptcy.

2. 45 CFR Part 304 is amended by adding a new § 304.50 to read as follows:

§ 304.50 Treatment of program income.

The IV-D agency must exclude from its quarterly expenditure claims an amount equal to:

(a) All fees which are collected during the quarter under the title IV-D State plan; and

(b) All interest and other income earned during the quarter resulting from services provided under the IV-D State plan.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and secs. 454(6) and 455(a) of the Social Security Act (42 U.S.C. 654(6) and 655(a))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: May 21, 1984.

Martha A. McSteen,

Acting Director, Office of Child Support Enforcement.

Approved: August 24, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-24745 Filed 9-18-84; 8:45 am]

BILLING CODE 4190-11-M

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45 CFR Part 303

Procedures for Case Assessment and Prioritization

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This document establishes in regulation the authority for States to prioritize their Child Support Enforcement program caseloads. The purpose of this regulation is to permit States to implement case prioritization procedures that provide for the review and management of cases and to establish basic requirements that States' prioritization systems must meet. We published a Notice of Proposed Rulemaking on Procedures for Case Assessment and Prioritization in the **Federal Register** on April 29, 1983 (48 FR 19424). We received many substantive comments in response to the proposed rule resulting in a number of revisions. This document responds to the comments received and discusses the revisions made as a result of the comments.

EFFECTIVE DATE: September 19, 1984; except for § 303.10(b)(6) which contains information collection requirements under review by the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Marianne Rufty, (301) 443-5350, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Boulevard, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

This final rule is implemented under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act. We believe this rule is necessary for the efficient operation of the Child Support Enforcement program under title IV-D of the Act.

Section 454(4) of the Act requires each State plan for child support to provide that the State "will *undertake* * * * (A) in the case of a child born out of wedlock * * * to establish the paternity of such child * * * and (B) in the case of any child * * * to secure support for such child * * *" (emphasis added). However, there is no provision in title IV-D of the Act or its legislative history that specifies in what order a State must process cases in order to carry out this responsibility. In addition, section 452(a)(1) of the Act requires OCSE to establish standards for program operations. We believe, therefore, that ample statutory authority exists to promulgate regulations that would allow States to implement case prioritization systems to manage their caseloads while continuing to achieve the program goals of locating parents, establishing paternity and securing support. Since we believe that all cases should receive some level of effort to achieve the desired program goal, we want to ensure that these regulations are not construed to imply that it would be permissible for States to neglect or exclude certain cases or classes of cases.

Relationship to the Child Support Enforcement Amendments of 1984

The Child Support Enforcement Amendments of 1984 (Pub. L. 98-378) requires States to develop and implement a variety of measures to increase program performance while allowing States considerable flexibility in the way they operate their programs. This regulation complements the new legislation because it offers States an additional means of enhancing the effectiveness and efficiency of their operations by improving the management of cases.

Provisions of the Final Rule

This part of the preamble contains the section-by-section provisions of the final rule. Under each final provision, we discuss the related proposed provision, the comments received on that provision, and our responses to those comments. A large number of substantive comments were received on the proposed rule—20 letters from State IV-D agencies, four from various other State offices, two from advocacy groups and two from a concerned citizen. Many of the comments were related and resulted in elements of several of the proposed requirements being discussed under one final requirement.

Section 303.10(a): "The IV-D agency may implement a case assessment and prioritization system statewide or in a particular political subdivision of the State to manage its caseload."

The proposed § 303.10(a) gave States the option to implement case prioritization procedures to manage their cases, including AFDC, non-AFDC and interstate cases. We wanted to provide States with a management tool that could be used to improve the effectiveness of establishing paternity and securing support for children. In addition, because of caseload and geographic variations within a State, we felt that States should have the flexibility to implement one statewide system or separate systems within political subdivisions, provided that all cases within the State or political subdivision are included in that system.

Several commenters, including one advocacy group, recommended that this regulation be made a State plan requirement under 45 CFR Part 302. Two commenters recommended that we develop a corresponding audit regulation under 45 CFR Part 305 so that OCSE auditors would have a basis for evaluating a State's prioritization system. The advocacy group also felt that, by allowing States to develop multiple local prioritization systems, States could avoid the statewideness requirements and make a "geographic crazyquilt" of eligibility.

The State plan requirement at 45 CFR 302.39 specifies that the IV-D agency must comply with the standards for program operations prescribed in 45 CFR Part 303. We believe this is sufficient to ensure State compliance with the requirements of case prioritization in § 303.10. This arrangement is consistent with OCSE policies published in a final rule in the **Federal Register** on June 8, 1982, in which we specified our intent to remove all nonstatutory State plan requirements from 45 CFR Part 302 and place them in 45 CFR Part 303, Standards for Program Operations.

More importantly, OCSE auditors evaluate States' programs to ensure State plan requirements in 45 CFR Part 302 are being met. If a State adopts a case prioritization system, the State must continue to meet the requirements in Part 302 which include performing all of the functions of the program, that is, locating the absent parent, establishing paternity and establishing and enforcing support obligations for AFDC and non-AFDC cases. If an audit reveals that a State did not work certain classes of cases, such as paternity or non-AFDC cases, using case prioritization to justify its action, the State would be subject to the penalty under 45 CFR 305.50 for failure to have an effective program.

With respect to the comment on statewideness as it affects eligibility, caseloads differ significantly between regions of the country and even within the boundaries of a particular State. Urban areas may have a proportionately higher percentage of paternity cases than rural areas. A particular community may have proportionately fewer non-AFDC cases than another or a disproportionate number of incoming interstate support cases. The characteristics of the cases themselves also differ significantly. There may be proportionately more single women with children than married women with children applying for services in one area versus another. One area may have proportionately more cases requiring support orders to be established than cases with existing orders.

We believe that a State that opts to implement one prioritization system or multiple systems will do so for the purpose of managing its caseload, not for limiting IV–D services to certain applicants. States are required to undertake to secure support and establish paternity in all cases. However, they may use various case characteristics, depending upon caseload demographics, to determine the order in which cases will be worked. In our view, this does not in any way affect eligibility for IV–D services.

Thus, we made no substantive changes to the proposed § 303.10(a) as a result of the above-mentioned comments. To improve readability, several clauses referencing those cases that must be included in the State's system were moved from this paragraph to the new § 303.10(b)(2). In addition, we added the phrase "statewide or in a particular political subdivision of the State" to the proposed paragraph (a) so that States are aware of the flexibility they may have in designing a system or various systems (provided that all cases within the State or political subdivision are included in that system) to manage their cases.

General comments received on the proposed regulations and our responses follow:

Comment: Although many States generally supported the concept of prioritization, seven State IV–D agencies said that the proposed regulations interfere with the State's current practice in whole or in part.

Response: States primarily objected to the restrictions in the proposed §§ 303.10(b)(2) through 303.10(b)(6) either because the State's internal organizational structure or its current operating prioritization system could not be adjusted to meet these requirements. We replaced the requirement that States must prioritize cases within each of the basic service categories with the requirement that States must ensure that no program service is systematically excluded and deleted the requirement that States establish priority I, II, and closed status categories. As a result, a State that opts to prioritize will need to make few, if any, adjustments to its operation or current prioritization scheme. The specific provisions that were revised or deleted are discussed in more detail below.

Comment: Two State agencies and one public interest law firm expressed support for the rule as written.

Response: Our intent in writing the proposed rule was to allow States the flexibility to implement case prioritization systems to manage their caseloads while continuing to achieve the program goals of locating parents, establishing paternity and securing support for children.

Other States objected strongly to the specificity of the requirements contained in the proposed rule. In effect, States felt that these requirements were too restrictive and would impose additional staff and paperwork burdens on an already overburdened system.

Therefore, we decided to replace the requirement for prioritization within service categories with the requirement that States ensure that no program service is systematically excluded and delete the requirement to establish status categories so that States would have the flexibility to operate various types of prioritization systems.

Comment: Seven State IV–D agencies requested that we withdraw the regulations.

Response: Our initial reasons for promulgation regulations in this area are still valid. Some States would like to implement prioritization systems but are reluctant to do so without regulatory authority. Many others are currently operating systems to rank their caseloads without guidelines. Therefore, we continue to believe that it is in the best interest of the program to publish regulations on case prioritization. However, we chose to make prioritization optional so that States may adopt procedures only when they believe such procedures will improve the operation of their programs.

This document establishes in regulation, the authority for States to prioritize their caseloads while preserving the statutory requirement that States will undertake to establish paternity and secure support for children with respect to whom an assignment is effective and for children in non-AFDC cases.

We received many comments on the proposed regulations. The majority of the comments concerned specific requirements that States viewed as too restrictive, burdensome and costly. We replaced the requirement of prioritization within each of the basic service categories with the requirement that States ensure that no program service is systematically excluded and deleted the requirement to establish case status categories of priority I, II and closed. Thererfore, we belive that the regulations contained in this document will be much more acceptable to those States that suggested the regulations be withdrawn.

Comment: An advocacy group was concerned that the preamble to the proposed rule used "age of the child" as an example of a success indicator in the paternity service category and failed to mention cases that are approaching the statute of limitations (as ones that should be processed before others in this category).

Response: We did not wish to infer that there is only one success indicator per service category or to give the impression that "age of the child" is an especially reliable indicator for success in the paternity service category. We agree with the commentor that the "key evidentiary element in a paternity case is a simple scientific [blood] test, of very high probative value, that does not deteriorate over time." Therefore, we urge States to give special priority under their criteria to cases that are approaching the statute of limitations.

Section 303.10(b)(1): "Develop written procedures for the evaluation and prioritization of cases upon receipt and upon becoming aware of changes in case circumstances."

The proposed § 303.10(b)(1) required States to develop written procedures and success indicators for the evaluation and prioritization of all cases only upon receipt. The purpose of requiring States to write procedures was to ensure that the ranking and processing of cases would be uniform and equitable according to prescribed State or local standards. In addition, OCSE would have a basis for reviewing a State's prioritization system to verify that States do not neglect or exclude any class of services required by the Act.

No comments were received on the proposed § 303.10(b)(1). Comments received on the proposed § 303.10(b)(7), however, affected our decision to revise the proposed § 303.10(b)(1).

Section 303.10(b)(7) required States to reevaluate cases if their potential for successful resolution changed because of new or updated absent parent information. Our intention in proposing this requirement was to protect cases from never being worked because they were initially given low priority at intake.

Two State agencies felt that the proposed § 303.10(b)(7) would ensure that cases are reviewed but that it is burdensome in conjunction with the proposed § 303.10(b)(6), the periodic review of cases requirement.

We continue to believe that it is important to provide protection for those cases that experience a change in case circumstances. Therefore, we retained the substance of the proposed § 303.10(b)(7) and, in effect, strengthened this requirement by combining it with the new § 303.10(b)(1).

Thus, in addition to requiring States to have written procedures for prioritization of cases at intake, the new § 303.10(b)(1) requires States to write procedures for reviewing the priority given to cases for which new case information is obtained. A case might be moved up or down in its ranking based on this review. We strongly urge States to develop and implement information exchange systems that will be used to update case information on a routine basis and include reference to these systems in their written procedures. For instance, if there is an exchange of absent parent information between the State's unemployment office and the IV-D agency, the State's written procedures should explain the mechanism used and the type of information received. We recommend that all States include in their procedures a description of the information exchange system in use between the State's IV-A and IV-D agencies.

Section 303.10(b)(2): "Include all of its cases in the system, including cases referred from the IV-A agency under § 235.70 of this title, cases in which applications for services are received under § 302.33 of this chapter, and cases referred from other States for assistance under § 302.36 of this chapter."

The proposed § 303.10(b)(2) required States to include both AFDC and non-AFDC cases in implementing procedures. Our purpose in proposing that States include both caseloads in the same system was to ensure that non-AFDC cases would not be excluded or neglected as a result of the implementation of these procedures.

Eight State IV-D agencies commented on the proposed § 303.10(b)(2). Two felt that non-AFDC cases should not be prioritized when a State charges non-AFDC individuals an application fee and/or recovers the costs of services provided. One of these two stated that, if non-AFDC applicants pay for service, they have a right to expect service. The other six commenters opposed using the same prioritization system and criteria for both caseloads because their current practice is to maintain distinct program areas and procedures for each caseload. We will respond to the States' concerns separately.

First, can a State prioritize a non-AFDC case if it charges a non-AFDC individual an application fee and/or recovers the costs of services provided? Yes. If a State opts to prioritize its caseload, non-AFDC cases must be included in the system. Upon review of all intake information, the IV-D agency may determine that a case has poor potential for successful resolution and may decide to process other cases with higher potential for success before that one. Even if States do not prioritize cases, a similar situation may occur when no immediate action can be taken after an application has been filed. In either instance, no further costs will be charged to the applicant until services have been provided.

Secondly, must a State use the same prioritization system and criteria for AFDC and non-AFDC cases? In order to protect cases from being excluded or receiving a lower priority as a class, we require the State to include all cases in its prioritization system. To ensure equal treatment of both caseloads, States must use the same evaluative criteria for both. The State's written procedures must ensure that neither the non-AFDC caseload nor the AFDC caseload will be given a lesser priority than the other one.

We have not substantially changed the proposed § 303.10(b)(2) as a result of the above mentioned comments. As noted above, to clarify what cases a State must include in its system, we added language that was deleted from the proposed § 303.10(a). We also replaced the word "procedures" with the word "system" for editorial reasons. Therefore, the new § 303.10(b)(2) continues to require that a State, opting to adopt a case prioritization system, must include *all* cases in that system.

Section 303.10(b)(3): "Ensure that no service required to be provided under the IV-D State plan will be systematically excluded by the prioritization system, including locating the absent parent, establishing paternity and establishing and enforcing support obligations."

The proposed § 303.10(b)(3) required States to examine and prioritize cases within each of the program service categories, based on the success indicators that States developed for each service. Our purpose in proposing that States prioritize cases within each of the service categories was to ensure that no program service or class of cases would be overlooked or excluded, particularly the more involved cases such as paternity.

We will first address comments to the proposed § 303.10(b)(3) and, as a result of those comments, our revisions to this requirement. Secondly, we will respond to those States that recommend prioritization based on collection potential instead of prioritization based on success indicators developed for each service category.

With respect to the proposed § 303.10(b)(3), five State IV-D agencies felt that prioritization within categories would be both costly and duplicative. As cases progressed through the services, case assessment and prioritization would occur each time the case entered and exited the necessary program service category. States argued that this process would result in unnecessary administrative costs. In addition, States describe the process as burdensome and unresponsive to their current situation of limited resources.

We agree that objections concerning prioritization within service categories have merit and have therefore revised the proposed § 303.10(b)(3) by replacing the requirement that States must prioritize within service categories based on success indicators with a requirement that States that adopt prioritization systems must ensure that no program service is systematically excluded as a result of these systems. The new § 303.10(b)(3) allows States to implement systems that are more responsive to their needs while continuing to support our intent of ensuring that no program service or class of cases is overlooked or excluded in a State as a result of case prioritization. We believe that the statutory requirement that States must undertake to establish paternity and to secure support for children will further ensure that these important program goals are not neglected.

Three State IV-D agencies recommended that cases be prioritized based on collection potential. States may include collection potential among their overall prioritization criteria. However, States may *not* orient their programs entirely toward financial output by focusing solely on the amount of support or dollar amount that may be obtained in each case. A sole focus on collections would be discriminatory, particularly if immediate collection potential was the only consideration. This could result in the State IV-D agency failing to comply with the requirements of its IV-D State plan in the sense that certain functions of the program, such as paternity establishment, might be ignored. If all factors are the same, (for example, the absent parent can be located and the evidence of support liability is strong), cases should be given equal priority for establishment and enforcement of a support order regardless of the absent parent's income or financial resources.

We want States to consider a variety of factors when developing their prioritization criteria. If obtaining a support obligation, however small the amount, enables a family to become self-sufficient, that case could be processed before others. If a voluntary wage assignment is obtainable, that case could receive immediate attention.

It is not our intention to allow States to neglect or exclude any class of cases from receiving IV-D services as a result of implementing prioritization systems. We promulgate these regulations to allow States the flexibility to implement systems to manage their caseloads. To accomplish this, we believe it is important for States to focus on those factors or case characteristics that have proven reliable with respect to securing support and establishing paternity.

Section 303.10(b)(4): "Notify all applicants for services that the information they provide, either initially or subsequently, may affect the relative priority given to their cases.

We added this requirement as a result of several comments received from an advocacy group that is concerned about protections for IV-D applicants under State and local case prioritization systems. In effect, the advocacy group felt that the IV-D agency should notify all applicants about the priority that has been assigned to their cases. In addition, they believed that the regulation should allow applicants the opportunity to request a hearing to dispute the priority.

We do not recommend notifying applicants individually about their rank in the State's prioritization process because we believe that requirements now contained in this document provide sufficient protection and because individual notifications of the rank assigned to a case would be impractical given the dynamics of any effective case prioritization system. We envision case priorities to be continually fluctuating and responsive to case changes. If individual notifications of rank assigned and hearings were required for each change in priority, the system would rapidly become inoperable. However, under § 303.10(b)(6), we are requiring that notice be given to low priority cases to encourage them to timely provide any information that may result in reclassification of the case. We discuss paragraph (b)(6) in more detail below.

Since we believe that obtaining quality information is a major factor in determining the priority order of a case, we added the new § 303.10(b)(4). This will ensure that all applicants know the importance of giving quality information to the IV-D agency because cases will be assessed based upon that information and processed in accordance with the State's written prioritization procedures. These procedures should be made available to any concerned individual upon request. Informing applicants that quality information may effect the priority order of their cases could be accomplished by revising AFDC and non-AFDC application forms to inform applicants about quality information or by notifying each applicant individually.

Section 303.10(b)(5): "Prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information."

The proposed § 303.10(b)(4) required States to ensure that each case would receive a mimimum level of effort. We wanted States to make an affirmative effort to obtain the best information possible before placing the case within its prioritization scheme. For example, States should verify the information forwarded by the IV-A agency, especially when that information appears on its face to be incomplete, inaccurate or incorrect.

We received comments from eleven State IV-D agencies on this requirement. Some States objected strenuously to the proposed § 303.10(b)(4) on the basis that it would be totally impractical and inefficient and would impose additional staffing burdens on an already overburdened system. Another State felt that this requirement was not cost beneficial nor would it allow efficient use of staff time, especially if a separate IV-D interview has to be conducted before prioritizing. Still another believed that to do something in every case would negate the benefits of prioritization which should be to select one case for processing before another because that case has a higher potential for successful resolution.

We do not see the proposed § 303.10(b)(4) as burdensome to States because we believe that securing the best information possible before working the case as a matter of State practice is an effective program technique. Although the proposed rule mentioned interviewing the custodial parent as a method for obtaining the best available information, we did not mean for States to interview applicants in every case. We want States to pay particular attention to IV-A referral information and when that information is inadequate, contact the custodial parent or other sources (such as State motor vehicle offices or U.S. Post Offices) by phone, mail or interview to verify the accuracy of the referral data and/or to obtain better, more up-to-date information. We believe that efforts to secure the best information possible before prioritizing the case will enhance the benefits of the State's prioritization system. Even though staff time and resource may initially be expended in an effort to obtain the best information, both the State and the case benefit in the long term when the case is given a proper priority for processing from the beginning. To eliminate ambiguity in the interpretation of the term "minimum level of effort," however, we revised the proposed § 303.10(b)(4) to explicitly refer to reviewing all intake information for accuracy and completeness and, when additional information is needed, States must attempt to secure that information. In addition, we have changed this regulation to be more explicit about what is meant by a "minimum level of effort" so that cases will be prioritized in an equitable and efficient manner. We believe that obtaining the best information possible before prioritizing the case is also consistent with the statutory requirement to undertake to secure support and to establish paternity for children in AFDC and non-AFDC cases.

Section 303.10(b)(6): Establish a mechanism for the periodic review of low priority cases and for notifying the custodial parent in these cases that new information may result in a higher priority for the case.

The proposed paragraph (b)(5) required States to establish status categories of priority I, II, and closed. We prescribed certain status categories because we believed that States needed guidelines with respect to the development of the categories and the types of cases that should be assigned to each category. Based on the comments received on the proposed § 303.10(b)(5), which we discuss later in this section, we deleted that requirement.

The proposed § 303.10(b)(6) required States to establish mechanisms to periodically review priority II cases. Priority II cases were defined in the preamble to the proposed regulations as those "cases in which the probability of successfully providing the necessary service is low at the time of referral but in which case circumstances have potential for change." Our intention in proposing this requirement was to protect cases from never being worked because they were initially given low priority at intake.

Five State IV-D agencies felt that the periodic review of priority II cases was in conflict with the intent of the proposed regulation which was to permit States to concentrate resources on cases with the greatest potential for success. One State questioned how IV-D agencies with their current staffing shortages could be expected to peform periodic reviews of priority II cases without removing the emphasis from priority I cases.

We continue to believe that periodic review of cases that are initially given low priority is an essential element in any effective prioritization system. It assures applicants for services that, although their case may have poor potential for case resolution at intake, the case will be looked at again, at a later date, to re-evaluate its potential based on any change in case circumstances. Upon reevaluation, a case's processing order might change resulting in securing a paternity determination and/or support establishment and collection.

To further assure that low priority cases will be re-evaluated where appropriate, we have specified that States notify those custodial parents whose case is given low priority within the State's system. The notice should ask the custodial parent to keep the IV-D agency informed of any new absent parent information that may change the priority order of the case. We believe this notice requirement supports both the periodic review requirement under this paragraph and the case review requirement which was moved to paragraph (b)(1). In effect, the notice provides a mechanism for assuring that custodial parents who want their cases to have the highest priority possible will be encouraged to come forward with new information such as the return of the absent parent to the jurisdiction because the custodial parent is frequently in the best position to obtain this information.

The new § 303.10(b)(6) deletes reference to the priority II status category and instead uses the term periodic review of low priority cases. As discussed below, we deleted the status category requirement in the proposed paragraph (b)(5)).

Six State IV-D agencies objected to the proposed § 303.10(b)(5) which required States to establish status categories of priority I, II, and closed. One State felt that the formation of subsystems of cases was not sound management practice, especially when inadequate funding exists to increase staff to handle these subsystems. Other States objected to our definition of the "closed" status category because they felt it was too limiting and would result in an overly large priority II status category.

Another IV-D agency felt that the status categories interferred with the State's current system, which they described as much more sensitive to caseload realities than those proposed.

Upon consideration of the comments, we believe that a variety of different schemes of status categories is possible and that it is not necessary to regulate in this area. States that implement a case management system will automatically establish certain categories to distinguish higher potential cases from lower potential cases. Therefore, to give States the flexibility to develop status categories that meet their needs, we are deleting the proposed § 303.10(b)(5).

OMB Review

These regulations at 45 CFR 303.10(b)(6) contain information collection requirements which are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. These requirements have not yet been approved by OMB and are therefore not effective. The Department will publish a notice in the **Federal Register** regarding the effective date of these requirements once OMB approval has been obtained.

Regulatory Impact Analysis

No significant costs will result from this final rule. Also, States' prioritization systems are expected to increase collections to the extent that such collections will more than offset any implementation costs. The Secretary has determined that this document, which responds to the comments received on the proposed rule, is not a major rule as described by Executive Order 12291. In addition, the Secretary certifies that for the reason stated above, these regulations will not have a significant economic impact on a substantial number of small entities and, therefore, will not require a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980.

List of Subjects in 45 CFR Part 303

Child welfare, Grant programs—social programs.

PART 303—[AMENDED]

45 CFR Part 303 is amended by adding a new § 303.10 to read as follows:

§ 303.10 Procedures for case assessment and prioritization.

(a) The IV-D agency may implement a case assessment and prioritization system statewide or in a particular political subdivision of the State to manage its caseload.

(b) In implementing a case assessment and prioritization system, the IV-D agency must:

(1) Develop written procedures for the evaluation and prioritization of cases upon receipt and upon becoming aware of changes in case circumstances;

(2) Include all of its cases in the system, incuding cases referred from the title the IV-A agency under § 235.70 of this title, cases in which applications for services are received under § 302.33 of this chapter, and cases referred from other States for assistance under § 302.36 of this chapter.

(3) Ensure that no service required to be provided under the IV-D State plan will be systematically excluded by the prioritization system, including locating the absent parent, establishing paternity, and establishing and enforcing support obligations.

(4) Notify all applicants for services that the information they provide, either initially or subsequently, may affect the relative priority given their cases.

(5) Prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information.

(6) Establish a mechanism for the periodic review of low priority cases and for notifying the custodial parent in these cases that new information may result in a higher priority for the case.

(Section 1102 of the Social Security Act (42 U.S.C. 1302), section 452(a) of the Social Security Act (42 U.S.C. 652(a)), and section 454(4) of the Social Security Act (42 U.S.C. 654(4))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: June 20, 1984.

Martha A. McSteen,

Acting Director, Office of Child Support Enforcement.

Approved: August 24, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-24744 Filed 9-18-84; 8:45 am]

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federal register

Wednesday
September 19, 1984

Part IV

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303, 304, 305, and 307

Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 301 302, 303, 304, 305, and 307

Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would implement the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378), which amend title IV–D of the Social Security Act (the Act). A new section 466 of the Act requires all States to enact laws requiring the use of certain procedures in their Child Support Enforcement programs. The procedures are: income withholding; expedited processes for establishing and enforcing child support obligations; State income tax refund offsets; liens against property; extended paternity statute of limitations; imposition of security, bond or guarantee; providing information to consumer reporting agencies; and including provision for withholding from wages in child support orders issued or modified in the State. These proposed rules prescribe the requirements a State must meet in order to be in compliance with section 466. Also they set forth the basis on which an exemption from certain provisions of the new law will be granted. This section is effective October 1, 1985.

The new law replaces the current incentive to States equal to 12 percent of AFDC collections with a new system, effective October 1, 1985, which will reward States based on both AFDC and non-AFDC collections. These proposed rules set forth the requirements of that new system.

These proposed regulations also implement the statutory provision which reduces Federal funding to States for administrative costs under the Child Support Enforcement program from 70 to 66 percent at a rate of two percent every other year beginning in FY 1988. The Statute also authorizes 90 percent funding for the costs of hardware in the operation of computerized support enforcement systems as of October 1, 1984.

The new law requires States to collect and distribute child support in cases where they are making foster care maintenance payments under title IV–E of the act, as of October 1, 1984. These proposed rules detail requirements for support collection and distribution by IV–D agencies in foster care maintenance cases.

The amended statute extends the Federal tax refund offset process to permit collection of past-due support owed beginning in tax year 1985 for non-AFDC individuals. These proposed regulations would implement that process.

Finally, these proposed regulations would implement additional statutory provisions which: require State to continue to collect support payments without requiring an application or imposing an application fee when an AFDC family ceases to receive assistance payments; delete the requirement that States exhaust all State parent locator resources before submitting a request to the Federal Parent Locator Service (PLS); require States to collect spousal support if it is included in the child support order; require States to publicize the availability of support enforcement services; require States, at least annually, to send a notice of support payments collected to AFDC recipients; require States to establish guidelines for child support award amounts within the State; permit States to impose late payment fees on individuals who owe overdue support; permit States to track and monitor support payments through public agencies upon request; and require the Governor of each State to appoint a State Commission on Child Support. These sections have varying effective dates.

DATES: Consideration will be given to comments received by November 19, 1984. Public hearings will be held on October 10, 12, 15, and 17, 1984. For times and locations see Supplementary Information.

ADDRESSES: Address comments to Director, Office of Child Support Enforcement, Department of Health and Human Service, Room 1010, 6110 Executive Boulevard, Rockville, Maryland 20852. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's office at the above address. For locations of public hearings see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: At (301) 443–5350:

Pierre Mooney (Mandatory State procedures, foster care)
Marianne Rufty (Reduced Federal funding levels, incentive payments, public hearings)
Mike Fitzgerald (90 percent funding for automated systems hardware)
Carol Jordan (Remaining provisions)

SUPPLEMENTARY INFORMATION:

Public Hearings

To obtain the broadest public participation possible on these proposed rules, we will conduct four public hearings on the dates and at the times and locations listed in the chart below. Any individual who wishes to comment on the contents of this document at any of the hearings must register at least three days prior to the hearing with the appropriate Regional Office contact designated on the chart below. At the time of registration, we ask that prospective participants give identifying information such as name, organization, if any, address and telephone number to the Regional Office contact so that participants can be properly introduced at the hearing.

Comments must be limited to these proposed rules, their implementation, and specific recommendations for change within the constraints of the new law and the Act. Keep in mind that where the statute is explicit, the corresponding regulations will often be reiteration of the statute. Since we have no authority to change the statute, your presentations and written comments should address only those areas where the statute provides discretion and where we have authority to change the corresponding regulations.

Presentations are limited to 10 minutes. In addition, we encourage participants, to submit written comments in support of their oral presentations to the Regional Office contact at the address given in the chart below. We will also accept written comments at the hearings from any participants who would like to submit them. Written comments from individuals not planning to participate in the hearings should be submitted to the address given above for other commenters.

To clarify presentations, we may ask questions. We cannot, however, address participant's concerns regarding these proposed regulations or respond to questions at the hearings. Instead, we will consider comments and recommendations received at the public hearing and written comments, suggestions and recommendations received at the address given above in the final version of these rules.

Date and time	Location of public hearing	Regional Office contact and address
Oct. 10, 1984, 8:30 a.m.	Dirksen Federal Bldg., Court Room 2525, 219 South Dearborn, Chicago, ILL 60604.	Mr. Kent Wilcox (or) Ms. Gwen Hardaway, Region V, Office of Child Support Enforcement, 10 West Jackson Blvd., 4th floor, Chicago, Illinois 60604, Phone: (312) 886-5425.
Oct. 12, 1984, 8:30 a.m.	Dallas City Hall Council Chambers, 1500 Marilla, Dallas, TX 75201.	Ms. Tomasia Pinter, Region VI, Office of Child Support Enforcement, Room 8-A-20, 1100 Commerce Street, Dallas, Texas 75242, Phone: (214) 767-3749.
Oct. 15, 1984, 8:30 a.m.	Seattle Center, Mercer Street, Between 3rd & 4th Avenue North, Mercer Forum, Room I and II, Seattle, WA 98121.	Mr. Vince Herberholt (or) Ms. Charlene Allen, Region X, Office of Child Support Enforcement, Third & Broad Bldg., Mail Stop 415, Seattle, Washington 98121, Phone: (206) 442-0943.
Oct. 17, 1984, 8:30 a.m.	Dept. of Health and Human Services, North Auditorium, Room 1081, 330 Independence Avenue SW., Washington, D.C. 20201.	Ms. Catherine McAuliffe, DHHS, Office of Child Support Enforcement, Room 1010, 6110 Executive Blvd., Rockville, Maryland 20852, Phone: (301) 443-1981.

If additional copies of this document are needed, please contact the National Reference Center by calling 301-443-5106 or write: National Reference Center, Office of Child Support Enforcement, 6110 Executive Boulevard, Rockville, Maryland 20852.

Introduction

This notice of proposed rulemaking implements those statutory provisions which require regulation with several exceptions. Revisions to the audit, compliance and penalty provisions of the Act will be implemented in a separate proposed rule. The requirement that the Secretary publish regulations requiring State IV-D agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost will be implemented in final regulations about to be published by the Department. The requirement that States must continue to provide Medicaid benefits for four calendar months beginning with the first month of AFDC ineligibility will be published in a separate rule. Revised section 454(6)(B) of the Act, which requires the State to charge a mandatory application fee, not to exceed $25, for furnishing IV-D services to individuals who are not AFDC applicants or recipients, will be implemented in final regulations on recovery of costs in non-AFDC cases (see notice of proposed rulemaking at 48 FR 41450, September 15, 1983).

We do not address special project grants to promote improvements in interstate enforcement or extension of the demonstration authority under section 1115 of the Act to State Child Support Enforcement programs in these proposed regulations because we do not believe regulatory action in these areas is necessary at this time. In addition, statutory changes involving modifications in the content of the Secretary's annual report and availability of social security numbers are not included in these proposed rules because we believe current regulations adequately cover these provisions. The remaining major segments of the law requiring regulation are discussed separately in these proposed rules. The effective dates for each statutory provision are set forth within the appropriate discussion.

The Child Support Enforcement Amendments of 1984 are comprehensive amendments to the Act. For the most part, these proposed regulations parallel explicit statutory provisions. In drafting these proposed regulations, we attempted to give States flexibility, within the framework of the Act, to vary their legislative and administrative structures in response to different State program needs.

Mandatory State Procedures

Since the inception of the Federal Child Support Enforcement program there has been a marked difference in the level of success of the programs operated by the various States. In the nine years the Federal program has been in existence, certain procedures which have noticeably increased the effectiveness of State programs have been identified. As a result of this experience, Congress has enacted sections 454(20) and 466 of the Act to require all State to implement these proven procedures by October 1, 1985. However, if a State demonstrates to the Secretary that State legislation is required to conform the State plan to one or more of the requirements of the new statute, the State's plan shall not be regarded as failing to comply solely by reason of its failure to meet the requirements imposed by the new amendments until four months after the end of the first session of the State's legislature which ends on or after October 1, 1985.

These proposed regulations: (A) require that a State plan for child support enforcement must provide that the State has in effect laws governing the mandatory enforcement procedures specified in the new section 466 of the Act; (B) specify how a State should proceed in order to obtain an exemption from one or more of these procedures and the basis for granting exemptions; and (C) specify the criteria that a State must meet in implementing the mandatory enforcement procedures.

State Plan Requirement (§ 302.70)

A new 45 CFR 302.70 contains the State plan requirement for the use of mandatory practices to improve program effectiveness as specified in the new paragraph 454(20) of the Act. The definition of "overdue support" from the new section 466(e) of the Act that is applicable to all mandatory practices is added to the general definitions section found in 45 CFR 301.1. "Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of the child or for the absent parent's spouse (or former spouse) with whom the child is living, if and to the extent that a spousal support obligation has been established and the child support obligation is being enforced under the State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence, but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the four procedures to which overdue support applies under section 466 (i.e., State income tax offset, liens against property, giving security or posting a bond to guarantee payment of support, and making information available to consumer reporting agencies).

Under proposed § 302.70(a), a State plan for child support enforcement must provide that the State has in effect and has implemented laws and procedures specified with section 466(a) of the Act for : (1) Carrying out a program for the withholding of amounts from the wages of individuals to comply with support orders; (2) establishing and enforcing support orders by expedited processes; (3) obtaining overdue support from State income tax refunds in cases where support is assigned to the State under sections 402(a)(26) or 471(a)(17) of the Act and where support is collected under section 454(6) of the Act; (4) imposing liens against real or personal property for amounts of overdue support; (5) establishing a child's paternity up to the child's 18th birthday; (6) requiring the absent parent to give security, post a bond or give some guarantee to secure payment of overdue support; (7) making available to consumer reporting agencies at their request information regarding the amount of support owed by an absent parent if the amount is more than $1,000 or at the option of the State if the amount is less than $1,000; and (8) including a provision for wage withholding in child support orders issued or modified in the State.

Section 466 requires States to use procedures 3, 4, 6 and 7 except when they determine that the procedures are inappropriate in an individual case. Using guidelines generally available in the State, States must take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations in determining whether use of a particular procedure is inapprorpriate in an individual case. We have implemented this requirement in proposed § 302.70(b). Under § 302.70(c), State laws enacted to implement these effective practices must give States sufficient authority to comply with the requirements contained in 45 CFR 303.100 through 303.105. We have not included a section under Part 300 of the regulations on paternity establishment up to the child's 18th birthday because including the requirement under § 302.70 is adequate to regulate this mandatory procedure.

The new section 466(d) of the Act allows the Secretary of HHS to grant a State (or a political subdivision with respect to expedited process) an exemption from enacting and using any of the procedures mandated by the new law if the State demonstrates that the procedure would not increase the effectiveness and efficiency of the State's Child Support Enforcement program. Such demonstration must be supported through the presentation of data pertaining to caseloads, processing time, administrative costs, average support collections or other actual or estimated data that the Secretary may require. The Secretary will review the exemption periodically and terminate it if circumstances, including effectiveness, should change.

We are proposing in the new § 302.70(d)(1) that a State may request an exemption from the State plan requirements of paragraph (a) by submitting a request for exemption to the appropriate Regional Office. Under this process, a State may also request an exemption from the requirement for expedited process for a political subdivision of the State. Under § 302.70(d)(2), we propose that the Secretary will grant an exemption for up to three years upon a clear demonstration by the State that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. We are proposing that to support an exemption, the information required by the new section 466(d) of the Act must be provided and documented by the State. Because the Congress has given the Secretary discretion to determine whether or not to grant an exemption, disapproval by the Secretary of a request for exemption is not subject to appeal.

The proposed § 302.70(d)(3) provides for review by the Secretary and termination of the exemption for the State (or political subdivision in the case of expedited process) if the State cannot demonstrate that it continues to warrant an exemption in accordance with paragraph (d). Under proposed paragraph (d)(4), a State must request an extension of an exemption 30 days prior to the end of the exemption period granted by the Secretary by submitting current data that demonstrates that compliance with the required procedure will not increase the efficiency and effectiveness of its Child Support Enforcement program. We will issue an action transmittal to States containing instructions for requesting an exemption.

Procedures for Wage or Income Withholding (§ 303.100)

The new section 466 of the Act requires that States provide for by law and have in effect two distinct procedures for dealing with wage withholding. The first, required under section 466(a)(1) and (b) of the Act, pertains only to cases being enforced through the IV–D agency. Under this requirement, States must have and use a procedure that requires wage withholding to be triggered in IV–D cases whenever an arrearage accrues that is equal to the amount of support payable for one month. Withholding is to begin without amendment to the order or further action by the court. Section 466(b) also specifies other elements of the withholding system for IV–D cases such as the basis for appeal, maximum amounts of withholding, imposing fines on noncooperative employers and so forth.

The second procedure, required by section 466(a)(8) of the Act, must provide that all new or modified orders issued in the State include a provision in the order for wage withholding when an arrearage occurs. The intent of the second required State procedure is to ensure that orders not being enforced through the IV–D agency will include in them the authority necessary to permit wage withholding to be initiated by someone other than the IV–D agency (e.g., a private attorney).

The specific requirements for applying wage withholding that are set out for IV–D cases do not apply to wage withholding that ensues solely from the inclusion of a wage withholding clause in an order. States are free to establish the conditions and procedures to be applied for wage of withholding for cases not being enforced through the IV–D agency. It is likely that most States will conform these conditions and procedures to those required to be used for IV–D cases. Should the conditions and provisions of the two required procedures differ, however, the procedures required to be used for IV–D cases must be applied in IV–D cases. For example, if an order calls for withholding to begin when the arrearage amount equals the amount payable for two months in accordance with the State's procedure for orders not being enforced under title IV–D, withholding must still begin after one month's arrearage accrues in accordance with the State procedure that applies to all IV–D cases, if that order is now being enforced under the States IV–D plan.

We propose implementing new sections 466(a)(1) and (8) and (b) of the Act which provide for withholding of income or wages of individuals who owe overdue support by adding a new section 45 CFR 303.100, Procedures for wage or income withholding. To implement section 466(b)(1) of the Act, the proposed § 303.100(a)(1) requires that States must ensure that in the case of each absent parent subject to a support order in the State which is being enforced under the State plan, so much of his or her wages must be withheld as is necessary to comply with the order. In addition to withholding the amount due for current support, proposed paragraph (a)(2) requires the State to withhold an additional amount of wages to be applied toward liquidation of arrearages. Proposed paragraph (a)(3) limits the total amount withheld for support and other purposes to an amount not to exceed the maximum permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

In accordance with section 466(b)(2) of the Act, proposed § 303.100(a)(4) requires that the State law be designed so that, in the case of a support order being enforced under the State plan, withholding occurs without the need for any amendment to the support order involved or any further action by the court or entity that issued it. This blanket provision of State law must apply to both existing and new support orders.

Section 466(a)(8) of the Act and § 303.100(h), which implements the second required State procedure discussed above, provide that new or modified support orders established after the effective date of the new law must have a specific provision for withholding. As stated earlier, this is to ensure that withholding as a means of collecting support is available if arrearages occur without the necessity of applying for IV-D services. Notwithstanding, if a new or modified support order does not include a provision for withholding and the order is being enforced by the IV-D agency, withholding must occur as required in § 303.100 (a) through (g).

To implement the requirements under section 466(b)(3) of the Act for triggering withholding, proposed § 303.100(a)(4) requires that the State take steps to begin withholding on the date on which the parent fails to make payments in an amount equal to one month's support obligation. This does not mean that the individual must miss paying the support obligation for one month. Any combination of unpaid support totalling one month's accrued arrearages would trigger a withholding. Paragraph (a)(4) would also permit the State to take steps to implement the withholding at any earlier time that is in accordance with State law or that the absent parent may request. This means that a State could use withholding to collect support in all cases if it chose to do so.

Section 466(b)(4) of the Act and proposed § 300.100(a)(5) require that withholding be carried out in full compliance with all procedural due process requirements under the State's laws. Section 300.100(a)(6) requires States to have procedures for terminating the withholding promptly, in accordance with section 466(b)(10 of the Act. For instance, a State would terminate a withholding when there is no further support obligation or when the whereabouts of the child and custodial parent are unknown preventing the forwarding of payments. In paragraph (a)(7), we propose to require States to have procedures for promptly refunding to individuals monies that have been improperly withheld.

Under section 466(b)(4), States must provide notice to an individual before notifying the individual's employer concerning a withholding. The notice must inform the individual of the intent to withhold and of the procedures to follow to contest the withholding. An individual may contest the withholding only on the basis of a mistake of fact. If the individual contests the proposed withholding, the State must determine whether or not the withholding will occur and, if so, notify the individual, within no more than 45 days after the provision of the advance notice, of the timeframe within which the withholding is the begin. To implement these requirements, § 303.100 (b) and (c) set forth the criteria that States must meet in giving advance notice and providing an opportunity to contest the withholding. In proposed paragraph (b)(1), States must provide advance notice to the absent parent of the delinquency of support payments and the potential withholding. The notice must inform individuals: (1) of the amount to be withheld; (2) that the withholding applies to current and subsequent periods of employment; (3) of the methods available for contesting the withholding on the grounds that the withholding is not proper because of mistakes of fact; (4) of the period within which the State must be contacted in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin the withholding; and (5) of the actions the State will take if the individual contests the withholding. Although we are not specifying a period of time within which an individual must notify the State to contest the withholding, States should establish a standard time period (for example, 10 days) that would allow them to complete all required action within the statutory 45-day limit contained in paragraph (c).

As specified in section 466(b)(4) of the Act, proposed paragraph (b)(2) exempts from the advance notice requirements any State which has a withholding system in effect as of August 16, 1984, if the system provides, on that date and afterwards, any other procedures necessary to meet the State's procedural due process requirements.

Paragraph (c) would require that States establish procedures for use when an absent parent contests a withholding. At a minimum, the procedures must provide that the State, within 45 days of giving advance notice to the individual, will: (1) Give the individual an opportunity to present his or her case; (2) decide if the withholding will occur based on an evaluation of the facts; and (3) notify the individual whether or not the withholding is to occur and if so, include in the notice the timeframe within which withholding will begin and the information provided to the employer in the notice required in paragraph (d).

When the absent parent does not contest the withholding or has exhausted all procedures established by the State in accordance with paragraph (c), the State must give notice of the withholding to the employer, in accordance with section 466(b)(6)(A) of the Act and § 303.100(d). Clear Congressional intent in the Conference report indicates that Federal employees are subject to the withholding provisions of the new statute. Therefore, in cases involving Federal employees and members of the uniformed services, the notice to the employer must be directed to the appropriate designated official identified in: Appendix A of 5 CFR Part 581 for Federal employees; 32 CFR 54.6(g) of proposed regulations issued October 18, 1982 (47 FR 46297) for members of the military; 42 CFR 21.74 for members of the Public Health Service; and 33 CFR 54.07 for members of the Coast Guard. In cases involving members of the uniformed services, requests for withholding must meet the requirements in the above regulations.

Section 466(b)(6) of the Act sets forth specific requirements with repect to notice to the employer as well as responsibilities of the employer and the State in withholding wages. To meet these requirements, the notice to the employer must contain the elements listed in the proposed § 303.100(d)(1). Under paragraph (d)(1)(i) the notice would require the employer to withhold the amount specified in the notice (and include a statement that the amount acutally withheld for support and for other purposes may not be in excess of the amount allowed under section 303(b) of the Consumer Credit Protection Act.) Under paragraph (d)(1)(ii), the notice would instruct the employer to pay the amount to the State (or other individual or entity that the State designates) at the same time the employee is paid. Under paragraph (d)(1)(iii), the State may allow the employer to deduct a fee established by the State and specified in the notice for the administrative costs of each withholding. Under this provision, the State must specify that the fee be withheld from the absent parent's wages in addition to the amount to be withheld to satisfy support.

Under proposed paragraph (d)(1)(iv), the notice must state that the withholding is binding on the employer until further notice by the State. In addition, proposed paragraph (d)(1)(v) requires the notice to specify that the employer is subject to a fine for discharging, refusing to employ or taking disciplinary action against an individual because of a withholding. Proposed paragraph (d)(1)(iv) requires the notice to specify that, if the employer fails to withhold wages, the employer is liable for any amounts up to the accumulated amount the employer should have withheld. In the proposed paragraph (d)(1)(vii), the withholding would have priority over any other legal process under State law against the same wages as required by section 466(b)(7) of the Act. This means that an employer must withhold amounts for support before complying with any other legal process imposed in accordance with State law. In proposed paragraph (d)(1)(viii), employers may combine withheld amounts in a single payment for each appropriate agency requesting withholding and separately identify the portion of the payment which is attributable to each individual employee, in accordance with section 466(b)(6)(B) of the Act.

In § 303.100 (d)(1)(ix) to (d)(1)(xi) and (d)(2), we propose requirements that are not specified in the statute. Therefore, we are using the authority granted to the Secretary under section 1102 of the Act to propose some general requirements to facilitate withholding. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act.

The proposed paragraph (d)(1)(ix) would require that in cases where there is more than one order for withholding against a single employee under § 303.100 the employer must comply on a "first-come-first served" basis and must honor all withholdings to the extent that the total amount withheld from the absent parent's wages does not exceed the limits under seaction 303(b) of the Consumer Credit Protection Act (15 U.S. C. 1673(b)). Paragraph (d)(1)(x) would require the employer to implement the withholding no later than the first period that occurs after 14 days from the mailing date on the notice. In paragraph (d)(1)(xi), we propose that employers must notify the State promptly of the termination of the individual's employment and provide the individual's last known address and the name and address of the individual's new employer, if known. We believe these requirements will ensure the proper implementation of withholding.

Paragraph (d)(2) would require that, if the absent parent changes employment within the State while the withholding is in effect, the State must notify the new employer, in accordance with the requirements of paragraph (d)(1), that the withholding is binding on the new employer.

Section 303.100(e) of the proposed rule outlines the procedures for the administration of withholding as provided by section 466(b)(5) of the Act. Under proposed § 303.100(e)(1), a State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track and monitor support payments or establish or permit the establishment of alternative procedures for the collection and distribution of amounts withheld by an entity other than a designated public agency. Proposed paragraph (e)(2) requires the State disignee under (e)(1) to distribute amounts withheld promptly in accordance with section 457 of the Act and related regulations. A State may contract with private firms for the collection and distribution of withheld amounts. If a State contracts with a private firm, the State must reduce its IV–D expenditures by any interest earned by the firm on withheld amounts in the same manner as it would for interest earned on any other IV–D transactions. This is in accordance with section 455 of the Act. Under this requirement, a State may allow the firm to keep interest earned as payment for services provided, but the interest amount must be deducted from the State's IV–D expenditures.

The new section 466(b)(8) gives a State the option to expand its withholding system to include withholding from forms of income other than wages in order to ensure that support owed by absent parents will be collected regardless of the nature of their income-producing activities. Proposed § 303.100(f) implements this optional provision.

Under proposed § 303.100(g)(1), we are implementing the requirement in section 466(b)(9) that States extend their withholding systems to include withholding in cases where the support orders wher issued in other States. As specified in the statute, this provision is necessary to ensure that support owed to children and their custodial parents will be collected without regard to the residence of the absent parent.

Although the requirements contained in proposed §303.100 (g)(2) through (g)(7) are not specifically required by the statute, we believe they are necessary for the proper implementation of the statute and to clarify the responsibilities of each State involved in an interstate withholding. We are, therefore, using the authority granted to us under section 1102 of the Act to impose these requirements.

In paragraph (g)(2), we propose to require that the State law require employers within the State's jurisdiction to comply with a withholding notice. Under paragraph (g)(3), we are proposing to require that once withholding in a particular case is required, the IV–D agency of a State where a support order is entered must notify the IV–D agency of any other State in which the absent parent is employed in order to ensure interstate withholding. We would require this notification to contain all the information necessary to carry out the withholding, including the amount to be withheld. Paragraph (g)(4) would require the State in which the individual is employed to implement withholding promptly upon receipt of the notice to withhold from the State where the order is entered.

Since the State where the absent parent is employed must carry out the withholding with the employer, in paragraph (g)(5) we propose to require that State to provide the advance notice to the absent parent, the opportunity to contest the withholding and the notice to the employer. In addition, under paragraph (g)(5), when an absent parent terminates employment within the State, that State must notify the State where the support order was entered that the absent parent is no longer employed in the State and provide the name and address of the absent parent and new employer, if known. This will allow the State where the support order was entered to notify the new State where the absent parent is currently employed to implement withholding. Under paragraph (g)(6), all procedural due process requirements of the State where the absent parent is employed woudd apply. Finaliy, paragraph (g)(7) would provide that, except for specifying when the withholding shall apply and the amount to be withheld, the law and procedures of the State where the absent parent is employed shall apply.

Expedited Processes

We propose to implement the requirements of the new section 466(a)(2) by adding a new 45 CFR 303.101, Expedited processes. In this proposed section we require States to have in effect and use expedited processes for the establishment and enforcement of support orders. Paragraph (a) of § 303.101 defines a number of terms applicable to the section.

To implement the specific requirements of section 466(a)(2) of the Act, proposed paragraph (b)(1) requires States to have in effect and use either administrative or quasi-judicial processes to establish and enforce support orders. The State may use expedited processes for paternity establishmnent as well. A State may not simply enact a law authorizing the use of expedited process but must in fact use it in lieu of full judicial process to ensure speedier processing of support establishment and enforcement actions. Under proposed paragraph (b)(2), use of a State's generally applicable full judicial process is limited to appellate review of actions taken under expedited process. Proposed paragraph (b)(3) specifies requirements for notice to the absent parent. In paragraph (b)(4), we are proposing that under expedited process orders must have the same force and effect under State law as orders established by full judicial process. Under proposed paragraph (b)(5), the State's processes must ensure that the rights of the individuals involved are protected. And in paragraph (b)(6), we propose that a State must use expedited processes for cases from its own State and from other States.

Paragraph (c) contains proposed requirements for administrative process. Under these requirements a State must use the formula for setting support order amounts required for administrative process under § 302.53 and have and use certification procedures for hearing officers. Paragraph (c)(3) requires the administrative agency to use the State's generally applicable administrative procedures and paragraph (c)(4) requires the administrative agency to provide the absent parent with a copy of the order.

Paragraph (d) contains our proposals regarding quasi-judical processes. We provide that judge surrogates must be used in a system of quasi-judicial process and that their delegated authority must include, at a minimum, the following functions: taking testimony and establishing a record; evaluating evidence and making initial decisions or recommendations; and accepting a voluntary acknowledgment of support liability and approving stipulated agreements to pay child support. The experience of States which use some form of expedited process has shown that judge surrogates must have authority to perform at least these functions. States may expand the authority of judge surrogates to include enforcement of support obligations and issuance of default judgments or may delegate more authority to the surrogates based on their particular needs. For example, where a high percentage of absent parents fail to appear for hearings, as State might delegate the authority to issue bench warrants or default orders to judge surrograte. A State must delegate enough authority to judge surrogates to allow them to perform in a truly expedited manner.

Under proposed § 303.10(e), in accordance with the statute, a State would be granted an exemption from the requirements of § 303.101 for a political subdivision on the basis of the political subdivision's effectiveness and timeliness of support order issuance and enforcement in the same manner that States would be granted exemptions from required procedures in accordance with § 302.70(c).

State Income Tax Refund Offset

We are implementing the new section 466(a)(3) by adding a new 45 CFR 303.102 which sets out the criteria for implementing State income tax refund offset procedures. The offset process is mandatory for all appropriate IV–D cases, including AFDC, non-AFDC and foster care maintenance cases regardless of whether they are intrastate cases or interstate cases referred from other States.

Section 303.102(a) specifies which overdue support qualifies for offset. Paragraph (a)(1) would clarify that overdue support in all IV–D cases qualifies for State income tax offset. Paragraph (a)(2) specifies that overdue support qualifies for offset if the State does not determine that the case is inappropriate for use of this procedure using guidelines it may develop which are generally available in the State. We have given States maximum flexibility to set which overdue support qualifies for offset to permit each State to establish the most effective and efficient procedures for offsetting State income tax refunds. We recognize that one set of criteria in Federal regulations will not be suitable for all States.

Paragraph (b)(1) would require the IV–D agency to establish procedures to ensure that amounts referred for offset have been verified and are accurate. The proposed regulations do not specify the procedures States must use to ensure accuracy, since procedures may vary from State to State. Paragraph (b)(2) would require the IV–D agency to notify the appropriate State office or agency of any significant reductions in amounts referred for offset.

Under § 302.102(c), a State must inform non-AFDC individuals in advance that the State may first use any offset amount to satisfy any unreimbursed AFDC or foster care maintenance payments. This is in accordance with current policy which allows States to use overdue support collected in non-AFDC cases either to satisfy unreimbursed assistance or to pay non-AFDC individuals.

In accordance with section 466(a)(3)(A) of the Act, proposed § 303.102(d) requires States to send advance notice to the absent parent of the referral for offset and provide an opportunity to contest it. Section 303.102(e)(1) would require States to establish procedures for contesting the referral for offset. Paragraph (e)(2) would require States to have a mechanism for promptly reimbursing the absent parent if the offset amount is found to be in error or to exceed the amount of overdue support. Paragraph (e)(3) would require States to establish procedures, with respect to joint refunds, for ensuring that the absent parent's spouse has an opportunity to request a share of the refund, if appropriate, in accordance with State law.

Section 303.102(f) allows a State to deduct from the amount collected in a non-AFDC IV–D case a reasonable fee to cover the cost of collecting overdue support using State income tax refund offset, in accordance with section 466(a)(3)(B) of the Act

Section 303.102(g) sets forth the requirements specified in section 466(a)(3)(B) of the Act for distribution of amounts offset. Paragraph (g)(1) requires States to distribute amounts collected from State tax refund offsets in a timely manner as overdue support. This paragraph also requires the State to credit amounts offset on individual IV–D payments records. In AFDC or foster care maintenance cases, distribution procedures at §§ 302.51(b) (4) and (5) or 302.52(b)(3), respectively, are applicable because the State must treat amounts collected under the State tax refund offset as past-due support. Under § 302.51(b)(4), amounts collected in an AFDC case are retained by the State as reimbursement for past assistance payments. Section 302.51(b)(5) provides that any excess amounts remaining after the State is reimbursed in an AFDC case shall be paid to the family. Under §302.52(b)(3), which governs distribution in foster care maintenance cases, the distribution is the same as for AFDC cases. Under § 303.102(g)(2), if the amount collected is in excess of amounts required to be distributed, the excess amount must be refunded to the absent parent within a reasonable period.

Section 303.102(h) requires the State IV–D agency to request that notice of the absent parent's home address and social security number or numbers be sent by the State agency responsible for processing State income tax refunds to the State IV–D agency that requested the offset and the State IV–D agency enforcing the support order. This provision is required by the new statute in section 466(a)(3)(C).

Imposition of Liens

We are implementing the new section 466(a)(4) by adding a new 45 CFR 303.103, Procedures for the imposition of liens against real and personal property. In accordance with the new statute under paragraph (a) of this section must have in effect and use procedures for the imposition of liens against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State. Under paragraph (b), this procedure is applicable for cases not deemed inappropriate under guidelines that may be developed by the State made generally available.

Posting Security, Bonds or Guarantees

We are proposing to implement the requirements of the new section 466(a)(6) by adding a new 45 CFR 303.104, Procedures for posting security, bond or guarantee to secure payment of overdue support. In proposed § 303.104(a), States must have in effect and use procedures under which absent parents must post security, bond, or give some other guarantee to secure payment of overdue support. This procedure is applicable for cases not considered inappropriate under the State's generally available guidelines. Examples of appropriate cases might be those in which the absent parent is self-employed or realizes income from commissions or other irregular payments, unless the income realized is so small that it would be counter-productive to require security because the cost of meeting the security would preclude payment of the support obligation. States should screen cases for use of this procedure very carefully in order to use it to its fullest advantage.

In accordance with the new statute, proposed paragraph (b) requires a State to give the absent parent advance notice, in full compliance with the State's procedural due process requirements, of the requirement to post security, bond or give some other guarantee and of the methods to use to contest the action. Under proposed paragraph (c), this procedure is applicable for cases not deemed inappropriate under guidelines that may be developed by the State and made generally available.

Making Information Available to Consumer Reporting Agencies

We propose to implement the requirement of the new section 466(a)(7) by adding a new 45 CFR 303.105, Procedures for making information available to consumer reporting agencies. Under § 303.105(a), we define "consumer reporting agency" to mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. This definition is mandated by the statute and found in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

Under proposed paragraph (b), in accordance with section 466(a)(7) of the Act, States must use this procedure when an absent parent is more than $1,000 in arrears and information regarding the amount of overdue support owed by these absent parents is requested by such agencies. The cases in which information is sent to the consumer reporting agency may be further limited by the State under generally available guidelines used to determine cases inappropriate for this procedure.

The use of such procedures is optional to the State in cases where the absent parent is less than $1,000 in arrears. Under proposed paragraph (c), in accordance with the statute, States would have the option to charge the agency a fee for providing this information. Any fee charged would be limited to the actual cost of providing the information. Under this requirement, a State may establish a uniform fee to be applied in all cases or develop a fee schedule based on the volume of requests. Paragraph (d) requires the State to provide the absent parent an advance notice and an opportunity to contest the accuracy of the information. Paragraph (e) requires the State to comply with all applicable procedural due process requirements of the State before releasing the information. The requirements imposed in paragraph (d) and (e) are required by the statute.

The requirements of this section do not preclude a State from obtaining information from consumer reporting agencies.

Distribution

We are revising 45 CFR 302.51(a) to provide a paragraph (a)(1) that the date of collection in interstate cases is the date the collection is received by the responding State, except as provided in paragraph (a)(2). Under the current § 302.51(a), the date of collection is the date the initiating State receives the collection.

Under paragraph (a)(2), we are proposing to make the date of collection date for amounts withheld by employers under withholding procedures the date the employer withholds the absent parent's wages to meet the support obligation. We are making these changes under the authority of section 1102 of the Act in order to distribute payments as current support in interstate cases and in cases where multiple withholding payments are submitted in a lump sum to the IV–D agency. Thus, the IV–D agency will be able to distribute these payments as intended by the statute and to avoid possible inequities resulting from delays in forwarding payments by employers or responding States in interstate cases.

Incentive Payments

Under current section 458 of the Act, States and political subdivisions that enforce and collect support are eligible to receive as an incentive 12 percent of collections made on behalf of AFDC families. States deduct the incentive payment from the Federal share of collections before reimbursing the Federal government for its contribution toward the AFDC assistance payment. The incentive payment is thus set at a fixed rate of the support collection.

The fixed incentive payment rewards States for collections made in AFDC cases, but it does not encourage States to improve program efficiency and effectiveness. The great variance in the efficiency and effectiveness of Child Support Enforcement programs operated by States has become a matter of increasing concern. This disparity has led to a search for ways in which Federal funding might be used to encourage improvement in the performance of State Child Support Enforcement programs.

To encourage and reward States that operate Child Support Enforcement programs in an efficient and effective manner and to stimulate collections, Congress added a new section 454(22) and revised section 458 of the Act. Effective October 1, 1985, section 458 will replace the current incentives system with a new system under which States will receive a minimum incentive payment based on amounts collected on behalf of AFDC families and on behalf of non-AFDC families. States could also receive additional amounts above the minimum payment if their performance meets the criteria established by Congress and promulgated in this document. In addition, section 454(22) requires the State to pass through an appropriate share of its incentive payment to those political subdivisions within the State that financially participate in the program. Since the emphasis of the new system is on program performance, we believe that States will be encouraged to select and develop more effective and efficient methods of operating their programs.

Section 5(c)(2)(A) of the new statute provides that through FY 1985, States will receive incentives on AFDC collections made, including the first $50 collected which is returned to the family in accordance with section 457(b) of the Act as amended by section 2640(b) of the Deficit Reduction Act of 1984. Prior to this provision, incentives were paid only on collections retained to reduce or repay assistance payments.

Revised section 458(b)(4) provides for a transition between the current funding system (12 percent incentives and 70 percent Federal matching rate) and the new system which becomes effective October 1, 1985. Under the transition provision, in FY 1986 and FY 1987, States will be paid an amount equal to the greater of the amount they qualify for under the new incentive and Federal matching rate system or 80 percent of the amount that they would have received under the 12 percent incentive payment (as amended by the new statute to allow incentives to be paid on amounts collected, including the $50 which is passed through to the family under the Deficit Reduction Act of 1984 (P.L. 98-369)) and 70 percent matching rate system, had they remained in effect as they were in effect for FY 1985.

We proposed to implement the new section 454(22) and the revised section 458 of the Act by adding a new § 302.55 and revising § 303.52, Incentive payments to States and political subdivisions. In accordance with the new State plan requirement in section 454(22), the proposed § 302.55 would require the State plan to provide that, in order for the State to be eligible to receive incentive payments under § 303.52, if one or more political subdivisions participate in the cost of carrying out the IV-D program, those subdivisions shall be intitled to receive an appropriate share of any incentive payment made to the State for the period, as determined by the State in accordance with § 303.52(d), taking into account the efficiency and effectiveness of the political subdivision in carrying out its activities under the IV-D State plan. For example, the State may determine the appropriate share of each locality that participates in the costs of the program using a formula such as the one specified in statute and contained in this document at § 303.52(b). We strongly recommend that if States use that formula, they supplement each locality's share, if necessary, so that localities receive the total incentive payment which would be computed for their performance with respect to the criteria in § 303.52(d).

The revised section 458 of the Act is implemented by revising the current § 303.52. Paragraph (a) of the proposed § 303.52 contains four definitions. The definition of "political subdivision" is unchanged from the current § 303.52. To clarify the use of the terms "AFDC collections," "non-AFDC collections" and "total IV-D administrative costs," we added definitions of these terms to the proposed § 303.52(a). The definitions of AFDC and non-AFDC collections reflect the provision in section 458(b) which allows States to count collections made in foster care maintenance cases as AFDC collections for purposes of calculating incentive payments.

Proposed paragraph (b) provides that OCSE will pay an incentive payment to a State for each fiscal year in recognition of AFDC collections and of non-AFDC collections. Under paragraph (b)(1), a portion of the State's incentive payment would be computed as a percentage of its AFDC collections, and a portion of its incentive payment would be computed as a percentage of its non-AFDC collections. The percentage, determined separately for AFDC and non-AFDC incentives, is based on the ratio of the State's AFDC and non-AFDC collections to the State's total IV-D administrative costs, in accordance with section 458(c) of the Act. The percent of collections payable as an incentive to a State in a given fiscal year is specified in the schedule contained in paragraph (b)(1). To implement section 458(b) of the Act, each State will receive an incentive payment of at least six percent of its AFDC and non-AFDC collections. The schedule also sets forth increased incentive payments equal to 6.5 percent of each type of collection if the ratio of AFDC or non-AFDC collections to total IV-D administrative costs equals at least 1.4. An additional incentive of one-half of one percent of AFDC and non-AFDC collections, up to a limit of 10 percent, will be paid for each full two-tenths by which the ratio exceeds 1.4. These two provisions governing increased incentive payments implement section 458(c) of the Act.

Under § 303.52(b)(2), we propose that the ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs would be truncated at one decimal place, since rounding is not permitted under the statute. For example, a State would receive an incentive of seven percent of its AFDC collections if the ratio of AFDC collections to total IV-D administrative costs was 1.79, because in order to receive an incentive of 7.5 percent, the ratio must be at least 1.8

As provided under section 458(b), paragraph (b)(3) provides that the portion of the incentive payment paid to a State for non-AFDC collections may not exceed the portion paid the State for AFDC collections in FY 1986 and 1987. However, in FY 1988, the non-AFDC portion of the incentive may equal 105 percent of the AFDC portion of the incentive; in FY 1989, the non-AFDC portion may equal 110 percent of the AFDC portion of the incentive; and in FY 1990 and thereafter, it may equal 115 percent of the AFDC portion of the State's incentive payment.

Under the proposed paragraph (b)(4), we have listed conditions that apply in the calculation of incentive payments. In paragraph (b)(4)(i), we would specify that collection distributed and expenditures claimed by a State in a specifici fiscal year will be those used to calculate the ratio under the proposed paragraph (b)(1).

In proposed paragraph (b)(4)(ii), both the responding State and the initiating State receive credit for collections made interestate cases. This provision, which implements section 458(d), is designed to encourage State to work interestate cases. It also represents a significant change from current law under which only the responding State receives the incentive payment.

In paragraph (b)(4)(iii), we would exclude fees paid by individuals, recovered costs and program income such as interest earned on collections from IV-D expenditures when computing incentives. Excluding these amounts from IV-D expenditures is provided for in section 455(a) of the Act. Section 455(a) requires the Secretary, in determining the total amount expended by a State during a quarter, to exclude the total amount of any fees collected or other income resulting from services provided for both AFDC and non-AFDC cases under the title IV-D State plan. As provided for in section 458(c), proposed paragraph (b)(4)(iv) allows States to exclude laboratory costs incurred in determining paternity from their total IV-D administrative costs when computing incentives. Congress provided this option in an effort to encourage States to pursue paternity cases which may not be cost-effective initially but which may pay off over a longer period of time and which also benefit the child. Lastly, under the proposed paragraph (b)(4)(v), States must add amounts expended by the State in carrying out specific interestate projects which are provided for under section 455(e) of the Act to their IV-D administrative expenditures when computing incentives. This is in accordance with section 455(e)(4) of the Act.

Under the proposed § 303.52(c)(1), we would estimate the amount of the incentive payment to be received by a State for the upcoming year, in accordance with section 458(e) which requires the Secretary to estimate the incentive payment due a State based on the best information available. In order to obtain this information, however, the reports currently submitted by the State must be revised. A revision is currently in process and will be submitted separately to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

In paragraph (c)(2), we are proposing that States include one-quarter of the estimated annual incentive payment amount in their quarterly collection report which will result in a reduction to the Federal share of AFDC collections reported for that quarter. We are making this proposal because section 458(e) of the Act provides that estimated incentive be paid quarterly and because this practice is being used currently by States to obtain the 12 percent fixed incentive. Adjustments for any overpayments or underpayments which might have been made in prior quarters would be made in the following fiscal year. Thus, States will know in advance an estimate of the incentive playment they can expect to receive for a year which will allow them to budget for their title IV-D programs with some degree of certainty.

The proposed paragraph (c)(3) provides that OCSE would calculate the State's actual incentive payment for the fiscal year after the end of the current fiscal year based on State performance data. If adjustments to the estimate made at the beginning of the fiscal year are necessary, the State's IV-A grant award would be reduced or increased to ensure that the State receives the appropriate incentive payment.

Proposed paragraphs (c) (4) and (5) contain the special conditions relating to the payment of incentives during FY 1985, FY 1986, and FY 1987 which are specified in section 458(b)(4) of the Act and section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984, and described earlier in this preamble.

In accordance with section 454(22) of the Act, proposed § 303.52(d) would require States to calculate and promptly pay incentive payments to political subdivisions that participate in the costs of the IV-D program. Under the proposed paragraph (d)(1), we would require the State to develop a standard methodology for passing through an appropriate share of its incentive payment to political subdivisions that participate in the costs of the IV-D program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by the political subdivisions. Since many localities perform a substantial amount of work in the enforcement and collection of support, Congress specified in section 454(22) that they must receive an appropriate share of the State's incentive payment, if they participate in program costs. Therefore, under proposed paragraph (d)(1) States must develop a standard methodolgy that best fits their needs.

The proposed paragraph (d)(2) would require the State to seek local participation in the development of its standard methodology. We are proposing this requirement because we believe that local participation will ensure that the metholdogy is both fair and equitable. To comply with this requirement, States may use whatever rulemaking process that inludes an opportunity for review and comment that is available under State law or submit a draft methodology to participation localities for review and comment.

Lastly, in § 303.52(e) we propose to require that States continue to use the time frame for the transmission of interstate collections and the codes required under the current § 303.52. Thererfore, responding jurisdictions would be required to forward collections to the intitiating State within 10 days and include the code identifying the collecting State or political subdivision as defined by the Federal Information Processing Standards Publication or in the Worldwide Geographical Location Codes.

Reduction in the Federal Matching Rate

Federal funding is available to States for administrative costs incurred pursuant to a State plan for child support enforcement approved under title IV-D of the Act. This funding is authorized by section 455(a)(1) of the Act. Revised section 455(a)(1) reduces the Federal funding rate from 70 to 66 percent over a three-year period beginning in FY 1988.

Federal funding at the 70 percent rate would be available for FY 1983 through FY 1987. The rate of 68 percent applies to FY 1988 and FY 1989. Each fiscal year thereafter the matching rate will be 66 percent. We are implementing this change by defining the term "applicable matching rate" in 45 CFR Part 301 and substituting that phrase for the phrase "70 percent rate" wherever it appears in 45 CFR Parts 304 and 307. Also, we are making a conforming change to § 305.22, State financial participation, to specify that the State share in funding the administrative costs of the program will increase from 30 to 34 percent over the same period.

Collection of Past-Due Support From Federal Income Tax Refunds

Revised section 464 of the Act provides for the use of Federal income tax refund offsets to collect past-due support owed in non-AFDC and foster care cases, as well as AFDC cases. Previously, this means of collection was available for AFDC cases only. The statutory amendments apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1991.

The proposed regulations would implement revised sections 454 and 464 of the Act by amending § 303.72, the current regulation governing the use of Federal income tax refund offset. The proposed regulations do not amend § 302.60, the State plan requirement section, because § 302.60 is written broadly enough to cover submittal of AFDC, foster care maintenance and non-AFDC cases for refund offset.

Current § 303.72(a) defines "past-due support." We have moved the definition to § 301.1 because it applies to all sections in the regulations governing Federal tax refund offset. We also added a sentence to the definition which, in non-AFDC cases, limits past-due support which may be referred for Federal income tax refund offset to support due a minor child. Spousal support due in non-AFDC cases may not be referred for Federal tax refund offset. Section 303.72(b) contains the criteria for determining which past-due support qualifies for Federal tax refund offset. Current § 303.72(b)(1) states, in part, that past-due support qualifies for offset if the support has been assigned to the State making the referral. The proposed regulations would implement revised section 464(a) of the Act by redesignating that portion of § 303.72(b)(1) as § 303.72(a)(1) and revising it to permit States to refer amounts for offset if there has been an assignment under § 232.11 or section 471(a)(17) of the Act or an application for IV-D services under § 302.33 filed with the State IV-D agency. The remainder of current § 303.72(b)(1) which requires States to make reasonable efforts to collect the amount of an obligation using methods available under State law is moved to a new paragraph (a)(2) under the proposed regulations. This paragraph would be revised to provide that the IV-D agency, the client, or the client's representative must have made reasonable efforts to collect the amount of the obligation, using methods available under State law, as appropriate. This is necessary to prevent the IRS from becoming the collector of first resort.

The proposed regulations at § 303.72(a)(3) require the amount referred for offset in AFDC and foster care maintenance cases to be at least $150 as specified in current regulations for AFDC cases. The proposed regulations redesignate current § 303.72(b) (3) through (5) as § 303.72(a) (3)(ii), (5) and (6). These paragraphs require any past-due support referred for offset in AFDC and foster care maintenance cases to have been delinquent for three months or longer, require the State to verify the accuracy of the name, social security number and arrearage amount in all cases and provide that the IRS must have received notification of liability for past-due support in all cases.

Proposed § 303.72(a)(4) requires, in non-AFDC cases: that the support is due to or on behalf of a minor; that the State which refers the past-due support for offset has a support order; that the amount of past-due support is at least $500; at State option, that the amount has accrued since the State IV-D agency began to enforce the support order; and the State has checked its records to determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family. Section 464(c) limits the amount referred for offset in non-AFDC cases to support due to or on behalf of a minor. Spousal support owed in non-AFDC cases may not be referred for Federal income tax refund offset. Section 464(b)(2) of the Act imposes the $500 minimum amount to be referred for offset in non-AFDC cases and allows States to limit amounts referred to those accrued since the State began to enforce the order.

We have proposed the requirement that there be a support order in the State that refers the past-due support for offset in a non-AFDC case, using the Secretary's authority under section 1102 of the Act, to ensure, to the extent possible, that amounts referred for offset are accurate and that disputes can be resolved. In many non-AFDC cases, direct payments will have been made to the family and there may be equitable defenses asserted (e.g., denial of visitation, acquiescence, payments in king) that would not be available in an AFDC case. Since a State which has a support order will have personal jurisdiction over the absent parent, and will be accustomed to dealing with these various defenses, that State is in the best position to resolve any problems concerning the collection of past-due support. We are interested in receiving comments on this requirement and, in particular would like to know whether States and other interested parties find it unnecessarily restrictive for non-AFDC cases or would prefer to extend the requirement to AFDC cases as well.

We have also used the Secretary's authority section 1102 of the Act to require States to check their records for assigned AFDC or foster care maintenance arrearages in non-AFDC cases. It is possible that a non-AFDC individual who has applied for IV-D services and is seeking Federal tax refund offset to satisfy past-due support may provide, locate or other information which the State previously lacked and therefore was unable to collect assigned arrearages which accrued when the non-AFDC individual was receiving AFDC or foster care maintenance payments.

Current § 303.72(c) sets forth requirements for notification to OCSE of liability for past-due support. Paragraph (c)(1), which requires IV-D agencies to submit to OCSE, by October 1 of each year, a notification on magnetic tape of liability for past-due support, is redesignated as paragraph (b)(1) and would be revised by subsituting the October 1 submittal data with the date specified by OCSE in instructions. Paragraph (c)(2), redesignated as paragraph (b)(2), would be revised by adding a paragraph (b)(2)(v) to require the notification of liability for past-due support to indicate for each delinquency whether the past-due support is due a non-AFDC individual who applies for services under § 302.33. Therefore, the State must certify for offset separately amounts to satisfy assigned AFDC and foster care arrearages and other arrearages due in non-AFDC case. Paragaph (b)(3) contains the current provision in paragraph (c)(3) concerning additional information a State may include in the notification of liability for past-due support.

Current § 303.72(d), governing review of requests for offset is redesignated as § 303.72(c) and paragraph (d)(2), redesignated as paragraph (c)(2), would be revised by deleting "December 1." Current § 303.72(e), governing notification of changes in case status, is redesignated as § 303.72(d) and minor editorial changes would be made for consistency.

Current § 303.72(f) redesignated as § 303.72(e), requires OCSE or the State IV-D agency to send a pre-offset notice. Section 464(a)(3) of the Act specifies that the notice must include a statement informing the absent parent of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of past-due support and the procedures to be followed in the case of a joint return to protect the share of the refund which is payable to another person. Section 303.72(e) implements the requirement for advance notice to the absent parent, including the procedures and deadlines for responding to the notice. These requirements provide the absent parent with an opportunity to be heard if he or she does not agree that past-due support is owed or that the amount being referred for offset is accurate. In addition, § 303.72(e)(1) would require the State or OCSE to include a statement in the notice that, in the case of a joint return, the IRS will contact the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. Section 464(a) (1) and (2) of the Act specify that the IRS will notify the taxpayer that the withholding has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to secure his or her proper share of the refund. Determination of the proper share of a refund depends on the community property laws of the jurisdiction where the absent parent and spouse reside. Proposed § 303.72(e)(2) sets forth IRS procedures with respect to notice at the time of offset.

The proposed regulations revise paragraph (g)(1) (redesignated as paragraph (f)(1)) to require States to take steps to investigate any complaint concerning a tax refund which may be or has already been offset. The time frames for contesting the action must be specified in the notice required in § 303.72(e)(1). This paragraph currently requires only that the IV–D agency investigate any complaint from an absent parent concerning a tax refund which has been offset. We proposed the revision because the State IV–D agency is required to notify the absent parent in the pre-offset notice of the right to contest the State's determination that past-due support is owed or the amount of past-due support. Since the IV–D agency will be responsible for accurately submitting amounts to be collected by refund offset, it is important for the State to give the absent parent an opportunity to furnish as much information as possible to avoid making incorrect submittals. It there is an opportunity to contest the offset action within a specified time, any errors can be corrected before amounts are paid to the family. Accuracy is essential for States in the Federal, as well as State, income tax refund offset process.

OMB Circular A–87 (Cost Principles for State and Local Governments) Attachment B, Section D(1), precludes Federal funding for "any loss arising from uncollectable accounts and other claims, and related costs." In addition section 1102 of the Act requires the Secretary to establish rules necessary for efficient administration of the program. Therefore, costs incurred by States as a result of tax refund offset payments to individuals which are subsequently determined to be erroneous and which the State in unable to recoup from the individual may not be claimed as administrative costs under the VI–D program as these are not appropriate expenditures for which Federal funding is available.

Current paragraph(h)(1) is redesignated as paragraph (g)(1) and would be amended to require that collections made as a result of refund offset in AFDC and non-AFDC cases shall be distributed as past-due support under § 303.51(b) (4) and (5). A new paragraph (g)(2) would require that collections made as a result of refund offset where there has been an assignment of this support obligation in a foster care maintenance case under section 471(a)(17) of the Act be distributed under the proposed § 302.52(b)(3). Under these provisions, a State must apply amounts offset to AFDC and foster care assigned arrearages first and only pay the non-AFDC family any amounts offset which have not been assigned. Although this distribution order is not specifically mandated in the Act, amended section 6402(c) of the Internal Revenue Code 1954 requires the IRS apply amounts offset first to satisfy past-due support assigned to the State in AFDC and foster care maintenance cases. We believe Congress intended this distribution order to be followed by States. Therefore, under the authority granted to the Secretary in section 1102 of the Act, we propose to require States to apply amounts offset first to past-due support assigned to the State. These regulations would add a new paragraph (g)(3) to require States to inform individuals who apply for non-AFDC offset services how the amounts offset will be distributed.

Section 464(a)(3)(D) of the Act requires a State, in any case in which an amount is offset and the State subsequently determines that the amount certified for offset was in excess of the amount owed at the time of offset, to pay the excess to the absent parent or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return. We would revise § 303.72(h)(2), redesignated as § 302.72(g)(4), to require IV–D agencies to repay excess amounts offset to the absent parent or the parties filing a joint return within a reasonable period in accordance with State law.

Section 464(a)(3)(B) of the Act provides that, when the Secretary of the Treasury offsets a refund that is based on a joint return, the Secretary of the Treasury shall notify the State that the offset is being made from a refund based upon a joint return and shall furnish the State with the names and addresses of each taxpayer filing the joint return. In the case of an offset made to satisfy past-due support in a non-AFDC case, the State may delay distribution of the offset amount until the State is notified that the other person filing the joint return has received his or her proper share of the refund, but the delay may not exceed six months. Section 464(a)(3)(C) of the Act provides that, when an offset is made, if the absent parent's spouse filing the joint return takes appropriate action to secure his or her proper share of the refund that was offset, the Secretary of the Treasury will pay the spouse his or her share of the refund and deduct that amount from amounts payable to the State agency.

To implement section 464(a)(3)(B), proposed § 302.72(g)(5) permits States to delay distribution in non-AFDC cases for a period not to exceed six months from the date the State is informed that an offset is being made from a refund based on a joint return. States may wish to send absent parents a second notice at the time of offset to inform them that, unless the absent parent contacts the State within a certain period of time to contest the offset, the State will distribute the amount offset to the family. This may encourage prompt filing of amended returns.

The proposed regulations would redesignate § 303.72(h)(3), which requires that offset amounts be applied only to satisfy arrearages specified in the advance notice to the absent parent, as § 303.72(g)(6), with minor editorial changes for consistency.

In accordance with section 464(b)(2)(B) of the Act, the proposed regulations revise § 303.72(i), redesignated as § 303.72(h)(1), to permit the Secretary of the Treasury to impose a fee on the IV–D agency not to exceed $25 for each non-AFDC case submitted. Amended section 464(b)(1) of the Act provides that any fee paid to the Secretary of the Treasury may be used to reimburse appropriations which bore all or part of the cost of applying offset procedures. Section 454(6)(C) of the Act permits the State to impose a fee of not more than $25 in any case where the State requests offset from a Fedral income tax refund to satisfy non-AFDC past-due support. To implement section 454(6)(C), proposed § 303.72(h)(2) requires the State to inform any individual who applies for services under § 302.33 of the amount of any non-AFDC user's fee charged for submitting past-due support for Federal tax refund offset, if the State IV–D agency chooses to charge a fee. The fee may not exceed $25.

Under the authority in section 1102 of the Act, we are proposing the requirements in § 303.72(i) to clarify treatment of interstate non-AFDC cases in which past-due support is referred for offset. Paragraph (i)(1) would require a State without a support order in a non-AFDC case in which support otherwise qualifying for referral for offset is owed, to request a State where there is a court or an administrative order ro refer that amount for offset. Paragraph (i)(2) would require the State which receives such a request to determine if there is past-due support qualifying for offset, to notify OCSE of liability for past-due support and changes in case status, to notify the absent parent (and spouse, if appropriate) in advance of the referral for offset, to provide the absent parent with an opportunity to contest the referral, to forward amounts offset to the State where the custodial parent applied for IV–D services after the 6-month delay, if appropriate, to refund excess offset amounts to the absent parent, and to notify the State requesting the referral for offset of the amount of any adjustment made by IRS to the amount offset. The State which refers the past-due support for offset must also pay the fee imposed by the IRS.

The State where the custodial parent applied for IV-D services may charge the fee for referral for offset and must forward the amount collected to the State submitting the case for offset, and must pay amounts offset to the custodial parent. The State where the custodial parent resides would be liable to the State which referred the case to IRS for the amount of any adjustments. We believe that the State which takes the custodial parent's application is in the best position to recover these funds, and that the State with the support order is in the best position to verify arrears, handle complaints, and make prompt refunds to the taxpayer. The proposed rule also requires each State to comply with instructions issued by the Office governing the necessary action and responsibilities of each State.

Under the new provisions for incentives, beginning October 1, 1985, both States in an interstate case would receive incentives on these non-AFDC collections.

We are particularly interested in receiving comments on these requirements and any suggestions for processing these cases that would ensure access to this enforcement technique for those entitled to it, while minimizing administrative burdens on States and ensuring that the rights of absent parents are protected.

In accordance with section 464(a)(2)(B) of the Act, proposed § 303.72(j) limits offset of Federal tax refunds to satisfy past-due support in non-AFDC cases to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Collection and Distribution of Support in Foster Care Maintenance Cases

Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, transferred the AFDC foster care program from title IV-A of the Act to a new title IV-E and authorized Federal matching funds for this newly designated program. Because the foster care program was no longer funded or administered under title IV-A, the provision for assignment of support rights by recipients of AFDC required by section 402(a)(26) of the Act was no longer applicable for foster care cases. This meant that title IV-D child support services were not available to title IV-E foster care cases except as non-AFDC cases. In order to receive IV-D services as a non-AFDC case, the child's parent, legal guardian or the entity given custody of the foster child by judicial determination had to apply to the IV-D agency in accordance with section 454(6) of the Act. To remedy this problem, Congress, effective October 1, 1984, added a new section 471(a)(17) of the Act to require States to take all steps, where appropriate, to secure an assignment of support rights on behalf of a child receiving foster care maintenance payments under title IV-E of the Act and amended sections 454(4)(B), 456(a), 457 and 464(a) of the Act to require IV-D agencies to collect and distribute child support for IV-E foster care maintenance cases.

We propose to implement the provisions of the new section 457(d) which generally parallels the distribution patterns specified for other IV-D collections by amending a number of sections of the IV-D program regulations and adding a new § 302.52, Distribution of support collected in title IV-E foster care maintenance cases. Under proposed § 302.52(a), a State plan for child support must provide that the support collections in foster care maintenance cases must be distributed in accordance with § 302.51(a). The provisions of § 302.51(a) are general procedures applicable to distribution of support collected in AFDC cases. They require amounts collected to be treated first as payment on the required support obligation for the month in which the support is collected and, if there is excess over the monthly support obligation, it must be treated as payment on the required support obligation for previous months. Section 301.51(a) allows States the option of rounding off converted amounts to whole dollars for distribution purposes. As amended by these proposed regulations, it would also provide that the collection date is the date the collection is received by the IV-D agency or the legal entity of the State or political subdivision making the collection on behalf of the IV-D agency, except that, in the case of a wage withholding, the date of collection is the date the employer withholds the wage and, in an interstate cases, the date of collection is the date the responding State receives the collection.

We believe that distribution of collections in fosters care maintenance cases would be facilitated by following the above requirements. Therefore, under the authority granted to the Secretary by section 1102 of the Act, we propose the general requirements of § 302.51(a) be applied to support collection made in foster care maintenance cases.

In accordance with section 457(d) of the Act, § 302.52(b) contains procedures specific to the distribution of support collections in foster care maintenance cases. Under proposed paragraph (b)(1), amounts paid on required support obligations on behalf of children for whom foster care maintenance payments are being made under title IV-E must be retained by the State to reimburse it for foster care maintenance payments. The IV-D agency would be required to determine the Federal share of these collections so that the State could reimburse the Federal government to the extent of its participation in financing the foster care maintenance payments.

Under proposed paragraph (b)(2), if the amount collected is in excess of the monthly amount of the foster care maintenance payment but not the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care. The State agency must then use the excess in a manner it determines to be in the best interests of the child. Although we believe the State agency should have wide latitude in determining how this amount might be used in the child's best interest, we have included the two options which are included in the statute: (1) Setting aside such amounts for the child's future needs; or (2) making all or part of the money available to the person responsible for meeting the child's day-to-day needs to be used for the child's benefit.

Under proposed paragraph (b)(3), if the amount collected exceeds the amount required to be distributed under paragraphs (b) (1) and (2), the State must retain the excess to reimburse itself for past unreimbursed foster care maintenance payments made under title IV-E or past unreimbursed assistance rendered by the AFDC program under title IV-A. The IV-D agency would be required to determine the Fedral share of these collections so that the State could reimburse the Federal government to the extent of its participation in the assistance payments under title IV-A and foster care maintenance payments under title IV-E. Proposed paragraph (b)(4) requires that any balance after the satisfaction of any unreimbursed payments must be paid to the State agency responsible for supervising the child's placement and care to be used in the child's best interests.

In paragraph (b)(5), we proposed to require that no payment can be considered a future payment unless the absent parent's assigned support obligations under sections 402(a)(26) and 471(a)(17) of the Act are fully satisfied. This is necessary for the proper implementation of the distribution procedures required by section 457(d) of the Act.

We are proposing in § 302.52(c)(1) to give State IV–D agencies the option of continuing to collect child support in IV–E foster care maintenance cases for up to five months after the child has been terminated from the foster care program and returned to the family. Prior to the enactment of title IV–E of the Act, a large portion of these cases would have been AFDC foster care cases which would have been eligible for continued IV–D services. We, therefore, believe that it would be consistent to continue IV–D services for up to five months after foster care termination unless the custodial parent refuses the services. Consequently, we are using the authority granted to the Secretary by section 1102 of the Act to give States this option. Under § 302.52(c)(2), after the five-month period the IV–D agency could, upon request of the individual, continue to collect support and pay any amount collected to the family in accordance with the requirements for nonAFDC cases under § 302.33. Section 302.52(c)(3) clarifies that amounts collected during the period specified in paragraph (c) must be reported an non-AFDC collections.

Lastly, in § 302.52(d), we are proposing that, after the termination of the assignment made under section 471(a)(17) of the Act, States are required to attempt to collect amounts of accrued unpaid support which have been assigned. Amounts collected must be distributed as past-due support in accordance with paragraph (b)(3) and a State must give priority to collection of current support in this type of cases. This requirements is consistent with the distribution process in section 457 of the Act.

We also propose to amend § 302.31(a)(1) to require States to establish paternity of a child born out of wedlock with respect to whom there is an assignment under section 471(a)(17) of the Act. Although establishment of paternity in foster care maintenance cases is not specifically mandated in the amendments to the statute, we believe Congress intended that all IV–D services be available in foster care maintenances cases, as was the case prior to enactment of title IV–E of the Act. We are also making a similar technical change to § 305.5. Since establishment of paternity is a necessary prerequisite to securing support, we are using the Secretary's authority under section 1102 of the Act to include these provisions.

In order to implement the State plan requirement in the revised section 454(4)(B) of the Act, we are proposing to amend § 302.31(a)(2) to require a State plan for child support to provide that a State IV–D agency must undertake to secure support in cases where there is an assignment under section 471(a)(17) of the Act.

We propose to delete § 302.31(b)(1), which now provides that the IV–D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV–A agency that there has been a finding of good cause for failure to cooperate pursuant to section 402(a)(26)(B) of the Act, except as provided under paragraph (c). We believe paragraphs (b)(1) and (c), discussed below, are redundant.

Section 454(4)(B) was also amended to exempt States from securing support in foster care maintenance cases if the IV–A or IV–E agency determines that it is against the best interests of the child to do so. Consistent with this statutory requirement, we propose to amend § 302.31(b)(2) to require that, upon receiving notice from the IV–A or IV–E agency that there has been a claim of good cause, the IV–D agency will suspend all activities to establish paternity or secure support in a foster care case until notified of a final determination by the IV–A or IV–E agency. Paragraph (b)(2) has been redesignated as paragraph (b). Further, under paragraph (c), we propose that a IV–D agency will not undertake to establish paternity or secure support in a foster care case for which it has received notice from the IV–A or IV–E agency that there has been a finding of good cause, unless there has been a determination by a State or local IV–A or IV–E agency that support enforcement could proceed without the participation of the relative.

To implement the revised section 456(a) of the Act, 45 CFR 302.50(a) is amended to provide that support rights assigned to the State under section 471(a)(17) of the Act constitute an obligation owed to the State by the individual responsible for providing the support. Changes to the regulations necessary to authorize offset of Federal income tax refunds to satisfy past-due support in foster care maintenance cases are discussed under the section of the preamble entitled "Collection of Past-Due Support from Federal Income Tax Refunds."

To ensure that required standards for program operations under 45 CFR Part 303 are established for foster care maintenance cases, we propose to expand the applicability of §§ 302.2 through 303.5 by deleting references to cases referred to the IV–D agency "pursuant to § 235.70 of this title." Since § 235.70 applies only to AFDC cases, by deleting reference to it in the introductory language of these sections, we have expanded the applicability of these sections to all cases referred to the IV–D agency, i.e., AFDC, non-AFDC, foster care maintenance and interstate cases.

Since the collection and distribution of child support in foster care cases will be undertaken as a part of a State's IV–D State plan, we propose to amend § 304.20, Availability and rate of Federal financial participation, by revising paragraph (a)(1) to provide that Federal financial participation is available for necessary expenditures under a State title IV–D plan for the support enforcement services and activities provided in foster care cases where there is an assignment under section 471(a)(17) of the Act. We propose to revise § 304.20(b)(1)(viii)(D) to include the procedures used to transfer collections from the IV–D agency to the IV–E agency.

Finally, we propose to amend §§ 305.25, 305.27 and 305.38 to include foster care maintenance cases in the program audit.

Computerized Support Enforcement Systems

We propose to revise 45 CFR Part 307, published in the **Federal Register** on August 22, 1984 (49 FR 33255) to implement the amendments made by section 6 of Pub. L. 98–378. Effective October 1, 1984, section 454(16) of the Act permits States to use computerized support enforcement systems to facilitate the development and improvement of the procedures to improve program effectiveness required under section 466(a) of the Act. Currently, § 307.10 requires each CSES funded at the 90 percent rate to: (1) Be planned, designed, developed, installed or enhanced in accordance with an APD approved under § 307.15; and (2) control, account for, and monitor all the factors in the support collection and paternity determination process under the plan. To implement revised section 454(16) of the Act, the proposed new § 307.10(b) permits a CSES established under § 307.10(a) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) of the Act through: (1) The monitoring of support payments; (2) the maintenance of accurate records on support payments; and (3) the prompt notice to appropriate officials of any support arrearages. We encourge States to develop or enhance statewide CSESs that encompass the procedures referred to above because the automation of such procedures will contribute to efficient and effective program operations. (See the discussion below regarding the availablity of Federal funding at the 90 percent rate for these activities.)

The revised section 455(a)(3) of the Act (redesignated as section 455(a)(1)(B) of the Act) allows 90 percent Federal funding to expand the CSES to cover the procedures to improve program effectiveness required under section 466(a) of the Act. Currently, § 307.30(a) provides that 90 percent Federal funding is available for the planning, design, development, installation or enhancement of a CSES that meets the requirements specified in § 307.10. This requirement has been redesignated as the proposed § 307.30 (a)(2) and § 307.10 has been redesignated at § 307.10 (a). To implement revised section 455(a)(1)(B) of the Act, we have added to § 307.30(a)(2) that Federal funding at the 90 percent rate is also available for the optional expansion of the system as discussed above.

Currently, § 307.30(b) provides that 90 percent Federal funding is only available in expenditures for the rental or purchase of hardware or proprietary software used for the planning, dsign, development, installation or enhancement of a CSES described in § 307.10. Ninety percent Federal funding is not available in expenditures for hardware incurred during the operation of a CSES. Revised section 455(a)(1)(B) of the Act allows 90 percent Federal funding in expenditures incurred for the full cost of the hardware components of a system that meets the requirements prescribed in section 454(16) of the Act. Therefore, we are proposing in § 307.30(b) to make Federal funding available at the 90 percent rate in expenditures for the rental or purchase of hardware for the operation of a CSES as described in § 307.10 (a) or § 307.10 (a) and (b). We believe that this change will encourage States to develop statewide CSESs. Ninety percent Federal funding is available in expenditures for hardware as described above incurred on or after October 1, 1984.

The revised section 455(a)(1)(B) of the Act and the proposed § 307.30(b) are silent regarding the availability of Federal funding at the 90 percent rate in expenditures for the rental or purchase of proprietary software. Nonetheless, we believe that enhanced Federal funding should be available for the rental or purchase of proprietary software used for the planning, design, development, installation, enhancement or operation of a CSES to the extent the software is use to operate hardware related to the CSES. Traditionally, the Department has issued instructions that prescribe the availability and rate of Federal funding for systems-related costs. We plan to revise our instructions to the States regarding the availability of Federal funding for CSESs to address the availability of 90 percent Federal funding for the rental or purchase of proprietary software.

We propose to make the following technical changes to the CSES regulations to conform with the changes discussed above. We propose to revise § 307.15, Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP, by amending paragraphs (a), (a)(2) and (a)(5) to indicate that an APD must address the requirements in § 307.10(a) and the optional provision in § 307.10(b) when the State elects to meet such provisions. These changes reflect the proposed § 307.10. We also propose to amend § 307.15 by redesignating the citation "§ 307.10" as § 307.10(a) in paragraph (b)(7) of the section. This change also reflects the proposed amendments to § 307.10

We are proposing to amend § 307.25, Review of computerized support enforcement systems eligible for 90 percent FFP, by revising paragraph (b) to indicate that the review of a CSES will include the optional provision prescribed in the proposed § 307.10(b) when a State has elected to meet that provision. Lastly, we are proposing to amend § 307.35, Federal financial participation at the 70 percent rate for computerized support enforcement systems, by revising the title and paragraph (a) to indicate that Federal funding is available at the applicable matching rate for the operation of systems that encompass the optional provision prescribed in § 307.10(b).

Publicizing Support Enforcement Services

Effective October 1, 1985, new section 454(23) of the Act requires States to regularly and frequently publicize through public service announcements the availability of support enforcement services. To implement this State plan requirement, proposed § 302.30 requires States to publicize support enforcement services available under the IV–D State plan through public service announcements on a regular and frequent basis. In accordance with section 454(23), announcements must include information concerning any application fees and a telephone number or address for obtaining further information. This proposed regulation would not require IV–D agencies to conduct extensive or costly public relations or advertising campaigns. A number of States have already developed imaginative and effective public service announcements for television and radio which inform the public that title IV–D services are available to those who need them. The publicity required by these regulations would increase public awareness of available support enforcement services in all States. Federal matching funds would be available for these expenditures.

Mandatory Collection of Spousal Support

Effective October 1, 1985, section 454(4)(B) and 454(6) of the Act require States to collect spousal support if a support order has been established, the child and spouse are living in the same household, and the support obligation established with respect to the child is being enforced under the State's IV–D plan. This amendment clarifies that spousal support must be collected only where child support is being collected along with spousal support. Prior to this amendment, collection of spousal support was optional for States.

Sections 302.17 and 302.31 would be revised to require States to collect spousal support when it is part of the support order. References to collecting spousal support at State option would be deleted from current regulations. In addition, minor editorial changes would be made to these sections. No changes are necessary to § 302.33, Individuals not otherwise eligible for paternity and support services, which specifies requirements for non-AFDC cases, because there is no reference to optional collection of spousal support in this section.

Accessing the Federal Parent Locator Service (PLS)

Amended section 453(f) of the Act permits States to access the Federal PLS without first exhausting States parent locator resources, effective August 16, 1984. These proposed regulations would delete § 302.35(d) which requires the State to make efforts to locate an absent parent through State resources before submitting a request to the Federal PLS. However, the State PLS is an important tool for locating absent parents and the State should use this resource and any other locate procedures whenever it is efficient to do so. In some situations, information from State resources may be more timely and therefore of greater value than Federal PLS information. This regulation provides States with the flexibility to use both the State and Federal PLS to their maximum effectiveness.

Continuing IV–D Services for Families That Lose AFDC Eligibility

Effective October 1, 1984, section 457(c)(1) of the Act requires States to continue to collect support payments for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the title IV–A program (a total of five months after the final AFDC payment) and pay all amounts collected representing current support to the family. Prior to this amendment, the State had the option to continue to collect support payments for this five-month period. Proposed § 302.51(e) is revised to require (instead of permit) the IV–D agency to collect current support payments during this five-month period. During this period, a State may not recover costs from either parent. An AFDC family will generally benefit from the continuation of title IV–D enforcement services after they cease to receive AFDC payments. For example, continuing enforcement by the State IV–D agency will help prevent collections from lapsing and the family from returning to the AFDC rolls.

Revised section 457(c)(2) of the Act and § 302.51(e)(2) of the regulations address State action after the five-month collection period described above. Under current regulations at § 302.51(e)(2), if the IV–D agency is authorized by the individual on whose behalf the collection will be made to continue to collect current support payments from the absent parent, the IV–D agency collects such support amounts and pays the net amount collected to the family after deducting, at State option, any costs incurred in making the collection from the amount of any recovery made. Section 454(6)(C) of the Act, as amended by Pub. L. 97–248, permits States to recover costs from either the absent parent or the custodial parent.

In accordance with revised section 457(c)(2) of the Act, proposed § 302.51(e)(2) prohibits States from requiring any formal application or imposing any application fee in cases where the State IV–D agency is authorized to continue to collect and distribute support payments after a family ceases to receive AFDC payments. The proposed regulations would continue to allow States to recover costs incurred in collection of such support from either the absent parent or the custodial parent because revised section 457(c)(2) of the Act specifies that amounts collected be paid to the family on the same basis as they are paid in other non-AFDC IV–D cases. Proposed paragraph (e)(3) requires States to report collections under paragraph (e) as non-AFDC collections.

We also made a technical revision to § 302.32(b) to specify that the IV–D agency will notify the family that it will continue to collect and distribute current child support payments pursuant § 302.51(e)(1). Paragraph (b) currently indicates that the family will be notified if the State will continue to provide services.

Notice of Collection of Assigned Support

Effective October 1, 1985, revised section 454(5) of the Act requires States, at least annually, to provide notice of the amount of assigned support payments collected to current or former AFDC recipients. To implement this State plan requirement, proposed new § 302.54, Notice of collection of assigned support, requires States to provide an annual notice of the amount of support collected during the past year to individuals who has assigned rights to support under § 232.11. This notice must be sent to current AFDC recipients and former AFDC recipients for whom an assignment of support is still effective. We recommend that the notice contain the period for which payments were collected and a telephone number or address for obtaining further information. Under § 302.54(b), we propose that the notice must list separately support payments collected for each absent parent when more than one absent parent owes support to the family and indicate the amount of support collected which was paid to the family.

State Guidelines for Child Support Awards

We propose to implement the new section 467 of the Act by adding a new $302.56, Guidelines for setting child support awards. As required in section 467, proposed § 302.56(a) specifies that, as a condition for approval of its State plan, a State must establish guidelines by law or by judicial or administrative action for amounts of child support obligations set within the State. Section 467 of the Act also requires a State to make these guidelines available to all judges and other officials who have the power to determine child support awards, although the guidelines need not be made binding on them, and to furnish the Secretary with copies of its guidelines. These requirements are implemented by proposed § 302.56 (b) and (c). Although section 467 is not effective until October 1, 1987, States are encourage to begin their consideration of appropriate guidelines as soon as possible. The guidelines developed by the State in accordance with § 302.56 may be used as the formula required under § 302.53. Under § 302.53, when there is no court order covering a support obligation, there must be a formula to be used by the State in determining the amount of the support obligation.

Imposition of Late Payment Fee on Absent Parents Who Owe Overdue Support

Also effective August 16, 1984, new section 454(21) of the Act allows a State IV–D plan to provide for the imposition of late payment fees on individuals who owe overdue support. We propose to implement the new section 454(21) by adding a new § 302.75, Procedures for the imposition of late payment fees on absent parents who owe overdue support. In proposed § 302.75(a), the State plan may provide for imposition of a fee on absent parents who owe overdue support in cases in which the IV–D agency is attempting to collect support. In paragraph (b)(1) if a State opts to impose a fee, in accordance with section 454(21)(A), the fee shall be uniformly applied in an amount equal to at least 3 percent but not more than 6 percent of the amount of overdue support. In paragraph (b)(2), we propose that the fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of overdue support. Further, the fee may only be collected after the full amount of overdue support is paid (as required by section 454(21)(B)) and after any requirements under State law for notice to the absent parent have been met. In accordance with section 454(21)(B) of the Act, under proposed paragraph (b)(3), collection of the fee may not directly or indirectly reduce the amount of overdue support paid to the individual to whom it is owed. Under proposed paragraph (b)(4), if the State imposes a late payment fee, it must be imposed in foster care, AFDC and non-AFDC cases. In accordance with section 454 of the Act, under proposed paragraph (b)(5), a State may allow fees collected to be retained by the jurisdiction making the collection. Finally, in paragraph (b)(6), States must reduce their IV–D expenditures by any late payments fees collected. Excluding fees collected is required under section 455 of the Act. Only support which becomes overdue for any month beginning after August 16, 1984 is subject to the late payment fee.

Payment of Support Through the IV-D Agency or Other Entity

We propose to implement the new section 466(c) by a new 45 CFR 302.57. Procedures for the payment of support through the IV-D agency or other entity. In proposed paragraph (a) of the new section, in accordance with the statute, States may have in effect and use procedures for the payment of support through the State IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the custodial parent or the absent parent regardless of whether or not arrearages exist or withholding procedures have been instituted. In paragraph (b), we propose that if a State implements these procedures, the State must monitor all amounts paid and dates of payments and record them on individual IV-D payment records, ensure prompt payment to the custodial parent when appropriate, and charge the parent requesting this service an annual fee not to exceed the lesser of $25 or the actual costs incurred by the State, in accordance with the statute.

State Commissions on Child Support

Section 15 of the new law requires the Governor of each State to appoint a State Commission on Child Support. The Commission must include representation from all aspects of the child support system and examine the functioning of the State child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children. The commissions must submit to the Governor and make available to the public, reports on their findings and recommendations no later than October 1, 1985. Costs of operating the commissions are not eligible for Federal matching.

The Secretary may waive the requirement for a commission at the request of a State if it is determined that the State has in place objective standards for child support obligations, has had a commission or council within the last five years, or is making satisfactory progress toward fully effective child support enforcement. This requirement is implemented in § 304.95.

Paperwork Reduction Act

The following sections of these proposed regulations contain information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 Pub. L. 96-511):

§ 302.17
§ 302.30
§ 302.31
§ 302.32(b)
§ 302.50(a)
§ 302.51(a) and (e)
§ 302.52
§ 302.54
§ 302.54(a)
§ 302.55
§ 302.56
§ 302.57
§ 302.70
§ 302.70(d)
§ 302.75
§303.52 (c)(2), (d)(2), and (e)(2)
§303.72 (b), (c)(2) and (4), (d)(1) and (2), (e)(1) and (2), (g)(3), (h)(2) and (i)(1) and (2)(v)
§303.100 (b)(1), (c)(3), (d)(1) and (2) and (g)(3)
§303.101 (b)(3), (c)(4) and (d)(1)(i)
§303.102 (b)(2), (c), (d) and (h)
§303.104 (b)
§303.105 (b) and (d)
304.95 (d) and (f)
307.10 (b)(3)
307.15 (a)(2) and (5)

As required by section 3504(h) of Pub. L. 96-511, we have submitted a coyp of these proposed regulations to OMB for its review of the information collection requirements listed above. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of information and Regulatory Affairs, OMB, New Executive Office Building [Room 3208], Washington, D.C. 20503 ATTN: Desk Officer for HHS.

Economic Impact

The Child Support Enforcement program was established under title IV-D of the Act by the Social Services Amendments of 1974, for the purposes of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child support. The IV-D program collected $2.03 billion in FY 1983–$880 million on behalf of children receiving AFDC and $1.15 billion on behalf of children not receiving AFDC. State and local expenditures amounted to $716 million. Collections for AFDC families are used to offset the costs of assistance payments made to such families. In FY 1983, the program recovered nearly 5.3 percent of the $12 billion paid to AFDC families, and thousands of families were able to leave the welfare rolls.

The intent of the new law, which this rule implements, is to increase the effectiveness of the Child Support Enforcement program by requiring all States to adopt certain procedures that have been found to be successful in several of the States, by emphasizing the need to serve all families and by changing the incentive system for State participation. As discussed below, the statute has broad impacts, affecting Federal, State, and local participants in the program, employers of absent parents, and the families themselves. One immediate result will be lower welfare costs to the taxpayer. Although hard data are not available, it is expected that the mandatory procedures will result in increased collections and decreased administrative costs. But even more important will be the impact on families. As a more effective support collection system is established, parents may be deterred from deserting their families and more children will be spared the finanical effects of family breakup. Neither the extent nor the value of these effects can be measured.

For the most part,the proposed rule merely restates provisions of the new statute and does not result in any cost or other impacts on its own. The principal impacts of the statute are on Federal and State budgets and State operations. Federal and State expenditures are projected to increase by about $100 million over the five-year period FY 1985 to 1989, an average annual impact of $20 million. Savings will result from the increase in child support collections due to the implementation of the required State enforcement procedures and assumed decline in attendant court and other administrative costs. The additional child support collections on behalf of AFDC families are estimated to be about $42 million in FY 1986 and increasing to nearly $70 million in FY 1989. In addition, non-AFDC collections are expected to increase approximately $350 million per year as a result of the new statute.

A number of provisions of the new law are likely to result in a significant increase in the number of non-AFDC families in the program. The number of non-AFDC families participating in the program is expected to double by FY 1989 from the FY 1983 level of 500,000. The costs of providing services for the additional families is projected to be $15–20 million in FY 1985, rising to nearly $150 million by FY 1989. Although the statute requires the States to impose an application fee for non-AFDC families to recover some of these costs, the Department believes that in most cases actual costs will exceed the $25. However, the Department also believes that costs will also be partially offset as a result of reduced public assistance expenditures for these families, including reductions in Medicaid. (As discussed earlier, the application fee provision will be implemented separately and is not contained in this document.)

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

—An annual effect on the economy of $100 million or more;
—A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
—Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Virtually all of the economic impact discussed above is a direct result of legislative provisions rather than of regulatory provisons. However, in additon to those provisions that are a direct result of the statute, the proposed rule contains several provisons that are included at the discretion of the Secretary.

The proposed § 302.52 gives the States the option of continuing to collect child support in IV-E foster care cases after the child has been terminated from the foster care program and returned to the family. This proposal, which is similar to the mandatory collection provisions for AFDC families in § 302.51(e), is expected to have an insignificant effect on State and Federal expenditures. Since the cost of providing collection services is minimal, additional child support collections are expected to exceed related expenditures.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not result in a significant impact on substantial number of small entities. The primary impact is on State governments and individuals and results from restating the provisions of the statute. Those provisions that have any impact on small entities are discussed below.

As stated above, the proposed § 302.52(c) gives the State the option of continuing to collect child support in IV-E foster care cases after the child has been terminated from the foster care program and returned to the family. We believe that the impact on the legal community of the provision will be minimal because children receiving IV-E services are from low income families. Normally, such families cannot afford private attorney fees.

The proposed § 303.52 prescribes a new incentive system that will award the States and political subdivisions based on AFDC, foster care and non-AFDC collections. The Department estimates that the States and political subdivisions will receive an additional $23 million in incentive payments for FY 1986 increasing to $44 million for FY 1989. A significant portion of the additional incentives will be retained by the States. We cannot determine the amount of additional incentives that will be paid to political subdivisions or the economic effect of such payment on political subdivisions. However, even if there were a significant effect on a substantial number of political subdivisions, that effect is the result of the new law, and not these regulatory provisions.

The proposed § 303.100 requires the employer to withhold from the individual's wages the amount specified in a notice from the State. The proposed regulations further permit, at State option, the employer to charge a reasonable fee, as determined by the State, for administrative costs incurred for each withholding. These regulatory provisions which implement statutory requirements are expected to have a minimal economic impact on employers because the costs of withholding amounts from the wages of employees will in most instances be offset by fees charged by employers to employees subject to wage withholding and because employers are used to withholding employee wages for other purposes.

Private attorneys whose practices are based on a large number of child support cases could possibly be affected by the required State procedures prescribed in the proposed §§ 303.100 through 303.105. These procedures, which implement statutory provisions in section 466 of the Act, may make IV-D services at both the State and local levels more attractive to custodial parents. However, we believe that the impact on private attorneys will be minimal because many custodial parents who avail themselves of IV-D services have small incomes and are unable to afford the fees of private attorneys. In any event, these impacts result from the statutory provisions rather than these proposed rules.

List of Subjects

45 CFR Parts 301, 302, 303, and 304

Child welfare, Grant programs—social programs.

45 CFR Part 305

Child welfare, Grant programs—social programs, Accounting.

45 CFR Part 307

Child welfare, Grant programs—social programs, Computer technology.

PART 301—[AMENDED]

1. 45 CFR 301.1 is amended by inserting the following definition of the term "Applicable matching rate" after the definition of the term "Act" and the definition of the terms "Overdue support" and "Past-due support" after the definition of the term "Office":

§ 301.1 General definitions.

* * * * *

"Applicable matching rate" means the rate of Federal funding of State IV-D programs' administrative costs for the appropriate fiscal year as follows:

FY 1983 through FY 1987, 70 percent
FY 1988 and FY 1989, 68 percent
FY 1990 and thereafter, 66 percent

* * * * *

"Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child, which is owed to or on behalf of the child, or for the absent parent's spouse (or former spouse) with whom the child is living, only if a support obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the four procedures required under § 302.70(a) (3), (4), (6), and (7) of this chapter to which this definition applies.

"Past-due support" means the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child or of a child and the parent with whom the child is living, which has not been paid. For purposes of referral for Federal income tax refund offset of support due and individual who has applied for services under § 302.22 of this chapter, "past-due support" is limited to support owed to or on behalf of a minor child.

* * * * *

PARTS 302 THROUGH 305—[AMENDED]

2. 45 CFR Parts 302 through 305 are amended as follows:

A. By revising § 302.17 to read as follows:

§ 302.17 Inclusion of State statutes.

The State plan shall provide a copy of State statutes, or regulations promulgated pursuant to such statutes and having the force of law (including citations of such statutes and regulations), that provide procedures to determine the paternity of a child born out of wedlock, to establish the child support obligation of a responsible parent, and to enforce a support obligation, including spousal support if appropriate.

B. By adding a new § 302.30 to read as follows:

§ 302.30 Publicizing the availability of support enforcement services.

The State plan shall provide that the State will publicize regularly and frequently the availability of support enforcement services under the plan through public service announcements. Publicity must include information on any application fees which may be imposed for such services and a telephone number or postal address where further information may be obtained.

C.1. By revising § 302.31 to read as follows:

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

(1) In the case of a child born out of wedlock with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. This includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan.

(b) Upon receiving notice from the IV-A or IV-E agency that there has been a claim of good cause under § 232.40 of this title, the IV-D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the IV-A or IV-E agency.

(c) The IV-D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV-A or IV-E agency that there has been a finding of good cause pursuant to §§ 232.40 through 232.49 of this title unless there has been a determination by the State or local IV-A or IV-E agency that support enforcement may proceed without the participation of the caretaker or other relative. If there has been such a determination, the IV-D agency will undertake to establish paternity or secure support but may not involve the caretaker or other relative in such undertaking.

§ 302.32 [Amended]

C.2. By substituting the word "that" for the word "if" in the last sentence of § 302.32(b).

§ 302.35 [Amended]

D. By removing § 302.35(d).

E. By revising § 302.51(a) and (e) to read as follows:

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a) For the purposes of distribution under this section, amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months. (The IV-D agency may round off the converted amount to whole dollar amounts for the purposes of distribution under this section § 302.52 and § 303.52.) The date of collection shall be the date on which the payment is received by the IV-D agency or the legal entity of the State or political subdivision actually making the collection on behalf of the IV-D agency, except that:

(1) For purposes of interstate collections, the date of collection shall be the date on which the payment is recieved by the IV-D agency of the State in which the collection is made, except as provided in paragraph (a)(2).

(2) For purposes of wage withholding, the date of collection shall be the date the employer withholds the wages to meet the support obligation.

* * * * *

(e) Whenever a family for whom support payments have been collected and distributed under the title IV-D State plan ceases to receive assistance under the title IV-A State plan, the IV-D agency must:

(1) Continue to collect current support payments from the absent parent for a period not to exceed three months from the month following the month in which the family ceased to receive assistance under the title IV-A State plan, and pay all amounts so collected to the family;

(2) At the end of the five-month period, if the IV-D agency is authorized to do so by the individual on whose behalf the collection will be made, continue to collect current support payments from the absent parent and pay any amounts collected to the family in accordance with the requirements of § 302.33 of this part, except that the IV-D agency may not require any formal application or impose any application fee; and

(3) Report collections under this paragraph as non-AFDC collections.

* * * * *

§§ 302.50, 304.20, 305.25 and 305.27 [Amended]

F. By inserting the phrase "or section 471(a)(17) of the Act" immediately after the phrase "§ 232.11 of this title" in the following sections: Sections 302.50(a), 304.20(a)(1), 305.25(a)(1) and 305.27(a).

G. By adding a new § 302.52 to read as follows:

§ 302.52 Distribution of support collected in Title IV-E foster care maintenance cases.

The State plan shall provide as follows:

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated in accordance with the provisions of § 302.51(a) of this part.

(b) The amounts collected as support by the IV-D agency under the State plan on behalf of children for whom the State is making foster care maintenance payments under the title IV-E State plan and for whom an assignment under section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) Any amount that is collected in a month which represents payment on the required support obligation for that month shall be retained by the State to reimburse itself for foster care maintenance payments. Of that amount retained by the State as reimbursement

for that month's foster care maintenance payment, the State IV–D agency shall determine the Federal government's share so that the State may reimburse the Federal government to the extent of its participation in financing of the foster care maintenance payment.

(2) If the amount collected is in excess of the monthly amount of the foster care maintenance payment but not more than the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care under section 472(a)(2) of the Act. The State agency must use the money in the manner it determines will serve the best interests of the child including:

(i) Setting aside amounts for the child's future needs; or

(ii) Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

(3) If the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2) of this section, but not the total unreimbursed foster care maintenance payments provided under title IV–E or unreimbursed assistance payments provided under title IV–A, the State shall retain the excess to reimburse itself for these payments. Of the amounts retained by the State, the State IV–D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments.

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best interests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under § 232.11 of this title and sections 471(a)(17) of the Act for the current month and all past months.

(c) When the State ceases to make foster care maintenance payments under title IV–E for a child for whom the State has collected and distributed support payments under the title IV–D State plan and the child returns to his or her family, the IV–D agency:

(1) May continue to collect current support payments from the absent parent for a period of time not to exceed three months from the month following the month in which the State ceases to make foster care maintenance payments for the child under the title IV–E State plan and pay all amounts so collected to the family;

(2) May continue to collect current support payments from the absent parent after the end of the five-month period, if the IV–D agency is authorized to do so by the individual on whose behalf the collection will be made, and must pay any amount collected to the family in accordance with the requirements of § 302.33 of this part; and

(3) Must report collections under this paragraph as non-AFDC collections.

(d) When a State ceases making foster care maintenance payments under the State's title IV–E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV–D agency shall attempt to collect such unpaid support. Under this requirement:

(1) Any collection made by the State under this paragraph must be distributed in accordance with paragraph (b)(3) of this section; and

(2) For those cases in which collections are authorized under paragraph (d) of this section, priority shall be given to collection of current support.

H. By adding a new § 302.54 to read as follows:

§ 302.54 Notice of collection of assigned support.

(a) The State plan shall provide that the IV–D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(b) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

I. By adding a new § 302.55 to read as follows:

§ 302.55 Incentive payments to States and political subdivisions.

In order for the State to be eligible to receive any incentive payments under § 303.52 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52(d) of this chapter, taking into account the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan.

J. By adding a new § 302.56 to read as follows:

§ 302.56 Guidelines for setting child support awards.

(a) Effective October 1, 1987, as a condition for approval of its State plan, the State shall establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons.

(c) The State must include a copy of the guidelines in its State plan.

K. By adding a new § 302.57 to read as follows:

§ 302.57 Procedures for the payment of support through the IV–D agency or other entity.

(a) The State may have in effect and use procedures for the payment of support through the State IV–D agency or the entity designated by the State to administer the State's withholding system upon the request of either the absent parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted.

(b) If the State opts to establish procedures described in paragraph (a) of this section, the State must:

(1) Monitor all amounts paid and the dates of payments and record them on an individual IV–D payment record.

(2) Ensure prompt payment to the custodial parent when appropriate.

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs.

L. By adding a new § 302.70 to read as follows:

§ 302.70 Required State statutes.

(a) *Required statutes.* The State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

(1) Procedures for carrying out a program of withholding under which new or existing support orders are subject to the State law governing withholding so that a portion of the absent parent's wages may be withheld,

in accordance with the requirements set forth in § 303.100 of this chapter;

(2) Expedited process to establish and enforce child support obligations having the same force and effect as those established through full judicial process, in accordance with the requirements set forth in § 303.101 of this chapter;

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV–A or IV–E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under § 302.33 of this part, in accordance with the requirements set forth in § 303.102 of this chapter.

(4) Procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support, in accordance with the requirements set forth in § 303.103 of this chapter;

(5) Procedures for the establishment of paternity for any child at any time prior to the child's 18th birthday;

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support, in accordance with the procedures set forth in § 303.104 of this chapter;

(7) Procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies, in accordance with § 303.105 of this chapter; and

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under § 302.33 of this part, in accordance with § 303.100(h) of this chapter.

(b) A State need not apply a procedure required under paragraphs (a) (3), (4), (6) or (7) of this section in an individual case if the State determines that it is not appropriate using guidelines generally available in the State which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations.

(c) State laws enacted under this section must give States sufficient authority to comply with the requirements of §§ 303.100 through 303.105 of this chapter.

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraphs (a) (1) through (8) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2), an exemption from any of the requirements of paragraphs (a) (1) through (8) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. Demonstration of the program's efficiency and effectiveness must be shown by actual, or, if actual is not available, estimated data pertaining to caseloads, processing times, administrative costs, and average support collections or such other actual or estimated data as the Office may request. The State must establish a clear case that the program's effectiveness would not improve by using these procedures. Disapproval of a request for exemption is not subject to appeal.

(3) *Review of exemption.* The exemption is subject to continuing review by the Secretary and may be terminated upon a change in circumstances or reduced effectiveness in the State or political subdivision, if the State cannot demonstrate that the changed circumstances continue to warrant an exemption in accordance with this section.

(4) *Request for extension.* The State must request an extension of the exemption by submitting current data in accordance with paragraph (d)(2) of this section 30 days prior to the end of the exemption period granted under paragraph (d)(2) of this section.

M. By adding a new § 302.75 to read as follows:

§ 302.75 Procedures for the imposition of late payment fees on absent parents who owe overdue support.

(a) The State plan may provide for imposition of late payment fees on absent parents who owe overdue support.

(b) If a State opts to impose late payment fees—

(1) The late payment fee must be uniformly applied in an amount not less than 3 percent nor more than 6 percent of the overdue support.

(2) The fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee may be collected only after the full amount of overdue support is paid and any requirements under State law for notice to the absent parent have been met.

(3) The collection of the fee must not directly or indirectly reduce the amount of current or overdue support paid to the individual to whom it is owed.

(4) The late payment fee must be imposed in cases where there is an assignment under § 232.11 of this title or section 471(a)(17) of the Act or where an application for services has been filed under § 302.33 of this part.

(5) The State may allow fees collected to be retained by the jurisdiction making the collection.

(6) The State must reduce its expenditures claimed under the Child Support Enforcement program by any fees collected under this section in accordance with section 455 of the Act.

§§ 303.2 through 303.5 [Amended]

N. By removing the phrase "pursuant to § 235.70 of this title" in §§ 303.2 through 303.5.

O. By revising § 303.52 to read as follows:

§ 303.52 Incentive payments to States and political subdivisions.

(a) *Definitions.* For the purposes of this section:

"AFDC collections" means support collections satisfying an assignment support obligation under §323.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

"Non-AFDC collections" means support collections satisfying a support obligation which has not been assigned under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section and collections made under §§ 302.51(e) and 302.52(c) of this chapter.

"Political subdivision" means a legal entity of the State as defined by the State, including a legal entity of the political subdivision so defined, such as a Prosecuting or District Attorney or a Friend of the Court.

"Total IV–D administrative costs" means total IV–D administrative expenditures claimed by a state in a specified fiscal year adjusted in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) *Incentive payments to States.* The Office shall compute incentive payments for States for fiscal year in recognition of AFDC collections and of non-AFDC collections.

(1) A portion of a State's incentive payment shall be computed as a percentage of the State's AFDC collections, and a portion of the incentive payment shall be computed as a percentage of its non-AFDC collections. The percentages are

determined separately for AFDC and non-AFDC portions of the incentive. The percentages are based on the ratio of the State's AFDC collections to the States's total administrative costs and the State's non-AFDC collections to the State total administrative costs and the State's non-AFDC collections to the State's total administrative costs in accordance with the following schedule.

Ratio of collections to total IV-D administrative costs	Percent of collection paid as an incentive
Less than 1.4	6.0
At least 1.4	6.5
At least 1.6	7.0
At least 1.8	7.5
At least 2.0	8.0
At least 2.2	8.5
At least 2.4	9.0
At least 2.6	9.5
At least 2.8	10.0

(2) The ratios of the State's AFDC and non-AFDC collections to total IV-D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-AFDC collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its AFDC collections, as follows:

(i) 100 percent in fiscal years 1986 and 1987;

(ii) 105 percent in fiscal year 1988;

(iii) 110 percent in fiscal year 1989; and

(iv) 115 percent in fiscal year 1990 and thereafter.

(4) In calculating the amount of incentive payments, the following conditions apply:

(i) Only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;

(ii) Support collected by one State on behalf of children or children and parents residing in another State shall be treated as having been collected in full by each State;

(iii) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be excluded from total IV-D administrative costs;

(iv) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV-D administrative costs; and

(v) Amounts expended by the State in carrying out a special project under section 455 (e) of the Act shall be included in the State's total IV-D administrative costs.

(c) *Payment of incentives.* (1) The Office will estimate the total incentive payment that each State will receive for the upcoming fiscal year.

(2) Each State will include one-quarter of the estimated total payment in its quarterly collection report which will reduce the amount that would otherwise be paid to the Federal government to reimburse its share of assistance payments under §§ 302.51 and 302.52 of this chapter.

(3) Following the end of a fiscal year, the Office will calculate the actual incentive payment the State should have received based on the reports submitted for that fiscal year. If adjustments to the estimate made under paragraph (c)(1) of this section are necessary, the State's IV-A grant award will be reduced or increased because of over- or under-estimates for prior quarters and for other adjustments.

(4) For FY 1985, the Office will calculate a State's incentive payment based on AFDC collections without regard to the $50 disregard provision added by the Deficit Reduction Act of 1984.

(5) For FY 1986 and 1987, a State will receive the higher of the amount due it under the incentive system and Federal matching rate in effect as of FY 1986 or 80 percent of what it would have received under the incentive system and Federal matching rate in effect during FY 1985.

(d) *Pass through of incentives to political subdivisions.* The State must calculate and promptly pay incentives to political subdivisions as follows:

(1) The State IV-D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(2) To ensure that the standard methodology developed by the State reflects local participation, the State IV-D agency must submit a draft methodology to participating political subdivisons for review and comment or use the rulemaking process available under State law to receive local input.

(e) *Time frames and use of codes.* (1) A State or political subdivision that makes a collection on behalf of another State, political subdivision of another State or an individual who resides in another State who has applied for IV-D services shall transmit the entire amount of the collection to the location specified by the State where the case originated, no later than 10 days after the end of the month in which the collection was made.

(2) The collecting State or political subdivision forwarding a support collection to another State or political subdivision must include, as appropriate, the code identifying the collecting State or political subdivision as defined in:

(i) The Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards; or

(ii) The Worldwide Geographical Location Codes issued by the General Services Administration.

(3) The State or political subdivision where the case originated shall use the codes to track the collection.

P. By revising § 303.72 to read as follows:

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) *Past-due support qualifying for offset.* Past-due support qualifies for offset if:

(1) There has been an assignment of the support rights under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or an application for IV-D services filed with the IV-D agency under § 302.33 of this chapter.

(2) The IV-D agency, the client, or the client's representative has made reasonable efforts to collect the amount of the obligation, using methods available under State law, as appropriate.

(3) For support which has been assigned to the State under § 232.11 of this title or section 471(a)(17) of the Act:

(i) The amount of the support is not less than $150.

(ii) The support has been delinquent for three months or longer.

(4) For support owed in cases where an application for IV-D services is filed with the IV-D agency pursuant to § 302.33 of this chapter:

(i) The support is owed to or on behalf of a minor child;

(ii) There is a support order which has been issued in the State;

(iii) The amount of support is not less than $500;

(iv) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(v) The State has checked its records to determine if an AFDC or foster care maintenance assigned arrearage exists with respect to the non-AFDC individual or family.

(5) Before submittal, the State IV–D agency has verified the accuracy of the name and social security number of the absent parent and the accuracy of the past-due support amount. If the State IV–D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the Treasury as prescribed by paragraph (c)(2) of this section.

(b) *Notification to OCSE of liability for past-due support.* (1) A State IV–D agency shall submit a notification (or notifications) of liability for past-due support on magnetic tape to the Office by the submittal date specified by the Office in instructions.

(2) The notification of liability for past-due support shall contain with respect to each delinquency:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes.

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV–D case number and the FIPS code for the local IV–D agency where the case originated.

(c) *Review of requests by the Office.* (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the Treasury and will notify the State IV–D agency in writing of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in consultation with the State IV–D agency.

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV–D agency with a written explanation of why the request could not be transmitted to the Secretary of the Treasury.

(d) *Notification of changes in case status.* (1) The State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset,and when it receives the offset amount from the IRS.

(2) The State IV–D agency shall, within timeframes established by the Office in instructions, notify the Deputy Director in writing of any decrease in, or elimination of, an amount referred for collection by Federal tax refund offset if the decrease is significant according to guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) *Notices of offset.* (1) *Advance.* The Office, or the State IV–D agency if it elects to do so, shall send a written advance notice to inform an absent parent that the amount of his or her past-due support will be referred to the IRS for collection by Federal tax refund offset. The notice must include a statement informing absent parents of their right to contest the State's determination that past-due support is owed or the amount of past-due support and of the procedures and deadlines for responding to the notice. The notice must specify that, in the case of a joint return, the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. If the IV–D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) *At offset.* The IRS will notify the absent parent that the offset has been made. The IRS will also notify any individual who filed a joint return with the absent parent of the steps to take in order to secure a proper share of the refund.

(f) *Complaint procedure.* (1) Upon receipt of a complaint from an absent parent concerning a tax refund which may be or already has been offset, the State IV–D agency shall take steps to investigate the complaint to determine its validity.

(2) If the complaint from an absent parent concerns a joint tax return, the State IV–D agency shall refer the absent parent to the IRS.

(3) If the offset is found to have exceeded the amount of the past-due support owed, the State IV–D agency shall take steps to refund the excess amount to the absent parent as specified in paragraph (g) of this section in accordance with procedures that include a mechanism for promptly reimbursing the absent parent.

(g) *Distribution of collections.* (1) Collections received by the IV–D agency as a result of refund offset to satisfy AFDC or non-AFDC past-due support shall be distributed as past-due support as required under § 302.51(b) (4) and (5) of this chapter.

(2) Collections received by the IV–D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b)(3) of this chapter.

(3) The IV–D agency must inform individuals who apply for services under § 302.33 of this chapter in advance that amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under § 232.11 of this title or section 471(a)(17) of the Act.

(4) If the amount collected is in excess of the amounts required to be distributed under §§ 302.51(b) (4) and (5) or 302.52(b)(3) of this chapter, the IV–D agency must repay the excess to the absent parent whose refund was offset or jointly to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution for a period not to exceed six months from notification.

(6) Collections from offset may be applied only against the past-due support which was specified in the advance notice described in paragraph (e)(1) of this section.

(h) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the IRS for the full cost of the offset procedure, shall be billed and collected from the IV–D agency by the Secretary of Health and Human Services or designee and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. The fee which the Secretary of the Treasury may impose with respect to non-AFDC submittals shall not exceed $25 per submittal.

(2) The State IV–D agency may charge an individual who applies for services under § 302.33 of this chapter a fee not to exceed $25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(i) *Offset of Federal tax refunds in interstate non-AFDC cases.*

(1) If a support order has not been issued in a State where support is owed to an individual who has applied for services under § 302.33 of this part, the

State must take the application and corroborating information and must refer the non-AFDC offset request to a State in which there is a support order for referral for offset in accordance with the requirements of this section.

(2) Upon receipt of a request for referral for offset non-AFDC past-due support from a State where the custodial parent has applied for IV-D services, the State in which there is a support order must:

(i) Determine if the support qualifies for offset, in accordance with paragraph (a) of this section;

(ii) Meet the requirements in paragraphs (b), (d), (e)(1), (f) and (g)(4) of this section;

(iii) Forward the amount due the custodial parent to the State where the custodial parent applied for IV-D services, in accordance with paragraphs (g) (5) and (6) of this section;

(iv) Pay the fee required under paragraph (h)(1) of this section; and

(v) Notify the State where the custodial parent applied for IV-D services of the amount of any adjustment to the offset made by IRS.

(3) The State requesting referral for offset:

(i) May charge the individual who applied for IV-D services a fee, in accordance with paragraph (h)(2) of this section, and must forward the amount collected as a fee to the State referring the past-due support for offset;

(ii) Must distribute amounts offset received from the State which referred the past-due support for offset, in accordance with paragraph (g)(1) of this section; and

(iii) Upon receipt of notice under paragraph (i)(2)(v) of this section that the IRS has adjusted an offset amount, is liable to the State which referred the past-due support for offset for any adjustments made by the IRS.

(4) Each State involved in a referral of non-AFDC past-due support for offset must comply with instructions issued by the Office governing this type of referral.

(j) *Limitation of referral for offset of non-AFDC past-due support.* Offset of Federal income tax refunds to satisfy past-due support in non-AFDC cases is limited to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Q. By adding new §§ 303.100 through 303.106 to read as follows:

§ 303.100 Procedures for wage or income withholding.

(a) *Withholding requirement.* (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of arrearages.

(3) The total amount to be withheld under paragraphs (a) (1) and (2) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any further action by the court or entity that issued it. The State must take steps to implement the withholding and to send the advance notice required under paragraph (c) of this section on the date on which the parent fails to make payments in an amount equal to the support payable for one month, but may take such steps to implement withholding at such earlier date that is in accordance with State law or that the absent parent may request.

(5) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(6) The State must have procedures for promptly terminating the withholding, for example when there is no longer a support obligation or the whereabouts of the child(ren) and custodial parent are unknown.

(7) The State must have procedures for promptly refunding to absent parents amounts which have been improperly withheld.

(b) *Advance notice to absent parent.* (1) The State must send advance notice to the absent parent regarding the delinquency of support payments and the potential withholding. The notice must inform the absent parent:

(i) Of the amount that will be withheld;

(ii) That the provision for withholding applies to any current or subsequent priod of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (c) of this section.

(2) The requirement for advance notice to the absent parent does not apply in the case of any State which has a withholding system in effect on August 16, 1984 if the system provides on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(c) *State procedures when the absent parent contests withholding:* The State must establish procedures for use when an absent parent contests the withholding. Within 45 days of advance notice to the absent parent under paragraph (b) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case; and

(3) Notify the absent parent whether or not the withholding is to occur and if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (d) of this section.

(d) *Notice to the employer.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) That the amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the State at the same time the absent parent is paid, unless the State directs that payment be made to another individual or entity;

(iii) That, in addition to the amount withheld under paragraph (d)(1)(i) of this section, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That if the employer fails to withhold wages in accordance with the provisions of the notice, the employer is liable for any amount up to the accumulated amount the employer should have withheld from the absent parent's wages;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same wages;

(viii) That the employer may combine withheld amounts from absent parents' wages in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual absent parent;

(ix) That if there is more than one order for withholding against a single absent parent under this section, the employer must comply on a "first-come-first-served" basis and must honor all withholdings to the extent that the total amount withheld from the absent parent's wages does not exceed the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(x) That the employer must implement withholding no later than the first pay period that occurs after 14 days following the date the notice was mailed; and

(xi) That the employer must notify the State promptly when the absent parent terminates employment and provide the absent parent's last known address and the name and address of the absent parent's new employer, if known.

(2) If the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer in accordance with the requirements of paragraph (d)(1) of this section that the withholding is binding on the new employer.

(e) *Administration of wage withholding procedures.* (1) The State must designate a public agency, or private entity that is publicly accountable, administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments.

(2) The State's designee under paragraph (e)(1) of this section must distribute amounts withheld promptly in accordance with section 457 of the Act and §§ 302.33, 302.51 and 302.52 of this chapter. The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(f) *Income withholding.* The State may extend its system of withholding to include withholding from forms of income other than wages.

(g) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) When withholding is required in a particular case, the State where the support order was entered must notify the IV-D agency of the State in which the absent parent is employed to ensure interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount to be withheld.

(4) Withholding must be implemented promptly by the State in which the absent parent is employed upon receipt of the notice required in paragraph (g)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Provide notice to the absent parent in accordance with the requirements in paragraph (b) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding in accordance with paragraph (c) of this section; and

(iii) Provide notice to the employer in accordance with the requirements of paragraph (d) of this section.

(iv) Notify the State where the support order was entered when the absent parent terminates employment within the State and provide the name and address of the absent parent and new employer, if known.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the absent parent is employed.

(7) Except with respect to when withholding must be implemented and the amount to be withheld, which are controlled by the State where the support order was entered, the law and procedures of the State in which the absent parent is employed shall apply.

(h) *Provision for withholding in new or modified child support orders.* Child support orders issued or modified in the State must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV-D services. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

§ 303.101 Expedited processes.

(a) *Definitions.* "Administrative agency" means the agency designated by the State to establish and enforce support obligations using administrative process.

"Administrative process" means a statutory system granting authority to an administrative agency to determine paternity and to establish and enforce support orders.

"Default order" means an order issued as a result of the failure of an individual to respond to notice or appear at an administrative or quasi-judicial hearing.

"Expedited process" means an administrative or quasi-judicial process which reduces the processing time of support order establishment and enforcement efforts pursued through full judicial process.

"Hearing officer" means a person granted authority by State statute to preside over administrative hearings and issue administrative orders.

"Judge surrogates" means court masters, referees, court commissioners or others who may be authorized to hold hearings, make decisions, and issue or recommend support orders.

"Order by administrative process" means an order made or entered in writing which has the same force and effect under State law as an order established under judicial process.

"Quasi-judicial" means expedited processes in effect under the State judicial system.

"Stipulated agreement" means an agreement by an individual acknowledging a support obligation and a willingness to meet it, approved by a judge or judge surrogate.

(b) *General provisions.*

(1) The State must have in effect and use either administrative or quasi-judicial processes as specified under this section to establish or modify and enforce support orders. The State may include paternity establishment in the expedited process in effect in the State. If the State has in effect and uses administrative process, it must meet the requirements of paragraphs (b) and (c) of this section. If the State has in effect and uses quasi-judicial process, it must meet the requirements of paragraphs (b) and (d) of this section.

(2) A State's use of its generally applicable judicial processes is limited to appellate review of support orders established or enforcement actions

taken by administrative or quasi-judicial process.

(3) Under administrative or quasi-judicial process, a State must notify the absent parent of the following:

(i) The names of the children for whom support is sought;

(ii) The rights of the absent parent, including the rights to a hearing and to be accompanied by an attorney;

(iii) That a default order can be entered if the absent parent does not respond to the notice;

(iv) That the absent parent must respond within a reasonable period of time specified by the State; and

(v) The right to appeal to a court of competent jurisdiction.

(4) Orders established by administrative or quasi-judicial process must have the same force and effect under State law as orders established by full judicial process within the State.

(5) The State must establish and use expedited processes which ensure that the rights of the absent parents involved are protected.

(6) Under administrative or quasi-judicial process, a State must establish and use processes for the enforcement of support orders from its own State and from other States.

(c) *Administrative process.* If administrative process is used:

(1) The administrative agency must use the formula developed in accordance with § 302.53 of this chapter to establish or modify support orders.

(2) The State must establish and use written procedures for the certification of hearing officers based on qualifications including knowledge, training and experience.

(3) The administrative agency must use the State's generally applicable administrative procedures.

(4) The administrative agency must provide the absent parent with a copy of the administrative order.

(d) *Quasi-judicial process.* If quasi-judicial process is used:

(1) The State must establish and enforce support obligations using judge surrogates whose delegated authority must include at a minimum:

(i) Authority to take testimony and establish a record;

(ii) Authority to evaluate evidence and make initial decisions; and

(iii) Authority to accept voluntary acknowledgement of support liability and to approve stipulated agreements to pay support, and, if the State establishes paternity using quasi-judicial process, authority to accept voluntary acknowledgment of paternity.

(e) *Exemption for political subdivisions.* A State may be granted an exemption from the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision, in accordance with the provisions of § 302.70(d) of this chapter.

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) *Overdue support qualifying for offset.* Overdue support qualifies for State income tax refund offset if:

(1) There has been an assignment of the support obligation under §232.11 of this title or section 471(a)(17) of the Act to State making the request for offset or an application for IV-D services filed with the IV-D agency under § 302.33 of this chapter; and

(2) The State does not determine, using guidelines it may develop which are generally available in the State, that the case is inappropriate for application of this procedure.

(b) *Accuracy of amounts referred for offset.* The IV-D agency must establish procedures to ensure that:

(1) Amounts referred for offset have been verified and are accurate; and

(2) The appropriate State office or agency is notified of any significant reductions in (including an elimination of) an amount referred for collection by State income tax refund offset.

(c) *Notice to custodial parent in non-AFDC cases.* In non-AFDC cases, the State must inform the non-AFDC custodial parent in advance that the State may first use any offset amount to satisfy any unreimbursed AFDC and foster care maintenance payments which have been provided to the family.

(d) *Advance notice to absent parent.* The State must send a written advance notice to inform the absent parent of the referral for State income tax refund offset and of the opportunity to contest the referral.

(e) *Procedures for contesting offset and for reimbursing excess amounts offset.* (1) The State must establish procedures, which are in full compliance with the State's procedural due process requirements, for an absent parent to use to contest the referral of overdue support for State income tax refund offset.

(2) If the offset amount is found to be in error or to exceed the amount of overdue support, the State IV-D agency must take steps to refund the excess amount in accordance with procedures that include a mechanism for promptly reimbursing the absent parent.

(3) The State must establish procedures for ensuring that, in the event of a joint return, the absent parent's spouse can apply for a share of the refund, if appropriate, in accordance with State law.

(f) *Fee for non-AFDC cases.* In non-AFDC cases, the State may deduct from the amount offset a reasonable fee to cover the cost of collecting overdue support using State tax refund offset.

(g) *Distribution of collections.* (1) In a timely manner, and after deducting any fee imposed in a non-AFDC case by the State under paragraph (f) of this section, a State must distribute collections received as a result of State income tax refund offset for an AFDC or non-AFDC case under § 302.51(b) (4) and (5) of this chapter, or for a foster care maintenance case under § 302.52(b)(3) of this chapter, and must credit amounts offset on individual IV-D payment records.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the absent parent whose State income tax refund was offset within a reasonable period in accoedance with State law.

(h) *Information to the IV-D agency.* The State IV-D agency must request that notice of the absent parent's home address and social security number or numbers be sent by the State agency responsible for processing the State tax refund offset to the agency that requested the offset and the agency that is enforcing the support order.

§ 303.103 Procedures for the imposition of liens against real and personal property.

(a) The State shall have in effect and use procedures which require that a lien will be imposed against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State.

(b) The State may develop guidelines which are generally available in the State to determine whether the case is inappropriate for application of this procedure.

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

(a) The State shall have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure payment of overdue support.

(b) The State must provide advance notice to the absent parent regarding the deliquency of the support payment and the requirement of posting security, bond or guarantee, and inform the absent parent of his or her rights and the methods available for contesting the impending action, in full compliance with the State's procedural due process requirements.

(c) The State may develop guidelines which are generally in the State to determine whether the case is inappropriate for application of this procedure.

§ 303.105 Procedures for making information available to consumer reporting agencies.

(a) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) For cases in which the amount overdue support exceeds $1,000, the IV-D agency must have in effect procedures to make information available to consumer reporting agencies upon their request regarding the amount of overdue support owed by an absent parent. The procedures may include use of guidelines that are generally available in the State to determine whether application of this procedure is inappropriate in a particular case. In cases in which the overdue support is less than $1,000, these procedures are at the option of the State.

(c) The State IV-D agency may charge the agency a fee not to exceed the actual cost of the State of providing the information under paragraph (b) of this section.

(d) The IV-D agency must provide advance notice to the absent parent who owes the support concerning the proposed release of the information to the consumer reporting agency and must inform the absent parent of the methods available for contesting the accuracy of the information.

(e) The IV-D agency must comply with all of the procedural due process requirements of State law before releasing the information.

R. By revising the introductory text of § 304.20 (b), (b)(1), (b)(1)(viii) and (b)(1)(viii)(D) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(b) Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program, except any expenditure incurred in providing location services to individuals listed in § 302.35(c)(4) of this title, including the following:

(1) The administration of the State Child Support Enforcement program, including but not limited to the following:

* * * * *

(viii) The establishment of agreements with agencies administering the State's title IV-A and IV-E plans in order to establish criteria for:

* * * * *

(D) The procedures to be used to transfer collections from the IV-D agency to the IV-A or IV-E agency before or after the distribution described in § 302.51 or § 302.52, respectively, of this chapter.

S.1. By substituting the phrase "applicable matching rate" for "70 percent rate" wherever it appears in 45 CFR Part 304.

S.2. By adding a new § 304.95 to read as follows:

§ 304.95 State Commissions on Child Support.

(a) As a condition of the State's eligibility for Federal payments under title IV-A or D of the Act for quarters beginning more than 30 days after August 16, 1984, and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall appoint a State Commission on Child Support.

(b) Each State Commission appointed under paragraph (a) of this section shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) Each State Commission shall examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State IV-A or D plan and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under paragraphs (c) and (d) of this section, shall be considered as expenditures qualifying for Federal payments under title IV-A and D of the Act or be otherwise payable or reimbursable by the United States or any agency thereof.

(f) A State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply, if the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) Has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations;

(2) Has established within the five years prior to August 1984 a commission or council with substantially the same functions as the State Commissions provided for under this section; or

(3) Is making satisfactory progress toward fully effective child support enforcement and will continue to do so.

T. By revising § 305.22(a) to read as follows:

§ 305.22 State financial participation.

* * * * *

(a) A State must participate financially by incurring the applicable State share of the program's administrative costs as follows:

FY 1983 through FY 1987—30 percent
FY 1988 and FY 1989—32 percent
FY 1990 and thereafter—34 percent; and

* * * * *

§ 305.28 [Amended]

U. By inserting a comma and the reference "302.52" after the reference "302.51" wherever it appears in § 305.28.

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PART 307—[AMENDED]

3. 45 CFR Part 307 is amended as follows:

A. By amending § 307.10 by redesignating the introductory phrase as paragraph (a); paragraphs (a) and (b) as paragraphs (a) (1) and (2); paragraphs (b)(1) through (13) as paragraphs (a)(2)(i) through (xiii); and paragraph (b)(4)(i) through (iv) as paragraphs (a)(2)(iv)(A) through (D); changing the reference to paragraph (b)(1) in the old paragraph (b)(2) to (a)(2)(i); and adding a new paragraph (b) to read as follows:

§ 307.10 Computerized support enforcement programs.

* * * * *

(b) A State computerized support enforcement system established under paragraph (a) of this section may facilitate the development and improvement of the income withholding and other procedures required under section 466(a) of the Act and § 302.70 and §§ 303.100 through 303.105 of this chapter through:

(1) The monitoring of support payments;

(2) The maintenance of accurate records of support payments; and

(3) The prompt notice to appropriate officials of any support arrearages.

B. By amending § 307.15 by substituting the phrase "§ 307.10(a)" for "§ 307.10" wherever it appears in paragraph (b)(7) and revising paragraph (a) and paragraphs (b)(2) and (b)(5) to read as follows:

§ 307.15 Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

(a) *Approval of an APD.* The Office shall not approve the initial and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10(a) of this part and the optional provision in § 307.10(b) of this part when elected by the State. Conditions for APD approval are specified in this section.

(b) * * *

(2) The APD must specify how the objectives of the computerized support enforcement system in § 307.10 will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 301.10(a) and the functional requirements of § 307.10(b) when elected by the State and how the system will encompass all political subdivisions in the State within a reasonable period of time.

* * * * *

(5) The APD must contain a description of each component within the proposed computerized support enforcement system as required by § 307.10(a) and the optional component of § 307.10(b) when elected by the State and must describe information flows, input data, and output reports and uses;

* * * * *

C. By amending § 307.25 by revising paragraph (b) to read as follows. The introductory text of the section is shown for the convenience of the reader and contains no changes.

§ 307.25 Review of computerized support enforcement systems eligible for 90 percent FFP.

The Office will on a continuous basis review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized support enforcement systems developed under § 307.10 of this part to determine the extent to which such systems:

* * * * *

(b) Meet the conditions in § 307.10(a) and the optional provision of § 307.10(b) when elected by the State.

D. By amending § 307.30 by revising paragraphs (a)(2) and (b) to read as follows:

§ 307.30 Federal financial participation at the 90 percent rate for computerized support enforcement systems.

(a) * * *

(2) The Office determines:

(i) The system meets the requirements specified in § 307.10(a); or

(ii) The system meets the requirements specified in § 307.10(a) and the optional provisions in § 307.10(b).

* * * * *

(b) *Reimbursement of hardware.* FFP at the 90 percent rate is available in expenditures for the rental or purchase of hardware for the planning, design, development, installation, enhancement or operation of a computerized support enforcement system as described in § 307.10(a) or § 307.10(a) and (b).

* * * * *

E. By amending § 307.35 by revising the title, the introductory text, and paragraph (a) to read as follows:

§ 307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

Federal financial participation at the applicable matching rate is available only in computerized support enforcement systems expenditures for:

(a) The operation of systems that meet the requirements specified in § 307.10(a) of this part and the optional provision of § 307.10(b) when elected by the State if the conditions for ADP approval in § 307.15 of this part are met;

* * * * *

F. By substituting the phrase "applicable matching rate" for "70 percent rate" wherever it appears in Part 307.

(Sec. 1102 of the Social Security Act) (42 U.S.C. 1302) and secs. 403(h), 404(d), 452(a), 453, 454, 455, 457, 458, 466 and 467 of the Social Security Act (42 U.S.C. 603(h), 604(d), 652(a), 653, 654, 655, 657, 658, 666 and 667)

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: August 15, 1984.

Martha A. McSteen,
Director, Office of Child Support Enforcement

Approved: August 24, 1984.

Margaret M. Heckler,
Secretary.

[FR Doc. 84–24746 Filed 9–18–84; 8:45 am]

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Wednesday
September 19, 1984

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 75, 76, and 304

Removal of Architectural Barriers to the Handicapped Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 75, 76 and 304

Removal of Architectural Barriers to the Handicapped Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary publishes for comment proposed regulations to govern a State formula grant program for the elimination of architectural barriers to handicapped individuals. The Removal of Architectural Barriers to the Handicapped program provides grants to State educational agencies (SEAs) to assist them in making subgrants to local educational agencies (LEAs) and intermediate educational units (IEUs) to alter existing buildings and equipment. These proposed regulations include application requirements, an allocation formula, and funding activities that are allowable under this program.

DATE: Comments must be received on or before November 19, 1984.

ADDRESS: Comments should be addressed to: Dr. David Rostetter, Office of Special Education Programs, Department of Education, 400 Maryland Ave., SW., Switzer Building, Room 3607, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Jones, Telephone (202) 732–1128.

SUPPLEMENTARY INFORMATION:

A. Overview of the Program

The Removal of Architectural Barriers to the Handicapped program is authorized by section 607 of the Education of the Handicapped Act (EHA), 20 U.S.C. 1406, as amended by section 5 of the Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, December 2, 1983. As amended, section 607 provides that:

(a) The Secretary is authorized to make grants and to enter into cooperative agreement with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act approved August 12, 1968 (Pub. L. 90–480), relating to architectural barriers.

(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

Pub L. 98–8, commonly referred to as the Emergency Jobs Bill, enacted on March 24, 1983, provides $40 million to carry out the provisons of section 607. The funds will remain available until expended.

The Architectural Barriers Act of 1968 (ABA), Pub. L. 90–480, 42 U.S.C. 4151–4157, requires various Federal agencies—not including the Department of Education—to prescribe such standards for the design, construction, and alteration of certain buildings as may be necessary to ensure that handicapped individuals will have ready access to and use of those buildings. These agencies include the General Services Administration (GSA), the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Service.

Section 607 of the EHA authorizes the alteration of existing buildings and equipment in accordance with standards promulgated under the ABA. The alteration of existing buildings and equipment under this part must be consistent with the standards adopted by the GSA on August 7, 1984 (49 FR 31528) and incorporated by reference at 41 CFR 101–19.603 (49 FR 31625; August 7, 1984). The GSA standards must be modified as appropriate to take into account the age groups of individuals who will benefit under this program.

The Secretary proposes to amend the definition of "State-administered program" in 34 CFR 76.1(b) to "State formula grant program" to more accurately reflect the basis for the distinction between the coverage of Part 75 of EDGAR and Part 76 of EDGAR to the programs of the Department.

The proposed regulations established a State formula grant program. This is consistent with the revisions to Section 607 of the EHA made by the Education of the Handicapped Act Amendments of 1983. As amended, Section 607 authorizes the Secretary to give grants to SEAs for the removal of architectural barriers. SEAs then give subgrants to LEAs and IEUs. In order to establish administration procedures for this program that are consistent with procedures used for the Department's other State formula grant programs, 34 CFR 76.102(x) is redesignated as § 76.102(y), and a new provision is added at 34 CFR 76.102(x).

This new provision adds the application submitted by a State under the Removal of Architectural Barriers to the Handicapped program to the Education Department General Administrative Regulations (EDGAR) definition of "state plan." As a result of this amendment, all the administrative procedures set out in the EDGAR which govern State plans apply to the Removal of Architectural Barriers to the Handicapped program.

The authorizing statute for this program does not include a formula for distributing funds. The Secretary proposes, however, to amend the definitions of "direct grant program" and "State formula grant program" at 34 CFR 75.1(b) and 76.1(b), respectively, to include programs which contain a regulatory formula for distributing funds. In addition, conforming amendments are made to 34 CFR 76.260.

B. Summary of These Proposed Regulations

1. Subpart A—General

Subpart A describes the basic purpose of the Removal of Architectural Barriers to the Handicapped program. This subpart identifies the parties that are eligible to receive grants. Other Federal regulations which apply to this program are also listed. In addition, Subpart A contains definitions of several terms that apply to this program, and commonly-used acronyms. The proposed definition for "alteration" in this subpart is the definition used under 36 CFR 1190.3 (Architectural and Transportation Barriers Compliance Board, Minimum Guidelines for Accessible Design). The definitions of "equipment," "handicapped children," "intermediate educational unit," "related services," and "special education" under section 602 of the EHA are used for this program. The Secretary especially invites comments on the proposed definition of "alteration."

2. Subpart B—How does an SEA Apply for a Grant?

Subpart B sets forth the requirement that an SEA must meet in order to receive a grant under this program, including program assurances and application requirements. Assurances included in this subpart incorporate requirements under section 607 of the EHA, EDGAR, and Pub. L. 98–8. The use of assurances in the program application relieves the paperwork burden on SEAs since they will not need to submit detailed information to demonstrate how applicable statutory and regulatory requirements will be met.

In its application for program funds, each SEA must assure that the quality of the environment will be assessed according to provisions in the National Environmental Policy Act of 1969 and Executive Order 11514. *See* 34 CFR 75.601, as incorporated by 34 CFR 76.600([illegible]. In addition, the SEA must provide the Secretary with the information required under 34 CFR 75.602(a) (*Preservation of historic sites*). The Secretary will notify SEA's of the date on which they must submit a summary of this information to the Department.

The SEA must also assure that special consideration will be given to projects in areas experiencing high rates of unemployment. The legislative history of Pub. L. 98-8 includes this provision for making section 607 awards under that appropriation. *See* Senate Report No. 98-17 (1983), pp. 33-34. Section 101(c) of Pub. L. 98-8 requires that, to the extent practicable, funds authorized by the Act be used in a manner which maximizes immediate creation of new employment opportunties to individuals who were unemployed at least 15 of the 26 weeks immediately preceding the March 24, 1983, date of its enactment.

In its application, an SEA must describe the general areas to be funded under this program. The SEA need not describe specific projects, nor does it submit blueprints to the Secretary for approval.

3. Subpart C—How Does the Secretary Make a Grant to an SEA?

Section 607 of the EHA does not provide a formula for allocating available funds among eligible States. Section 304.20 of the proposed regulations sets out two alternative formulas for determining the amount of funds each State will receive under the program. The first formula is based on the number of handicapped children in each particpating State, as determined under Part B of the EHA and the State agency program for handicapped children under Section 146 of Title I of the Elemenatary and Secondary Education Act of 1965. The second formula is based on the number of school-age children in each participating State. The Secretary particularly invites comment on the appropriateness of these or other funding formulas.

Section 304.21 describes how excess funds are reallocated.

4. Subpart D—How Does an Applicant Apply to an SEA for a Subgrant?

Subpart D specifies the information which LEAs and IEUs must include in applications for subgrants. Readers should note that the EDGAR definition of "local educational agency" (34 CFR 77.1(c)) is substantively the same as the definition of that term under section 602(a)(8) of the EHA, and includes any public institution having administrative control and direction of a public elementary or secondary school. Consequently, State agencies and other public institutions which are legally responsible for education of handicapped children are eligible for subgrants under this program.

5. Subpart E—How Does an SEA Make a Subgrant?

Subpart E describes the methods an SEA will use to approve or disapprove applications for subgrants from LEAs and IEUs. The proposed regulations permit a State to establish criteria for awarding subgrants. This subpart includes the critiera for determining the amount of subgrants and procedures for reallocating funds.

6. Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?

Subpart F describes the provisions with which recipients must comply as a condition of receiving funds under the Removal of Architectural Barriers to the Handicapped program.

The Secretary encourages States to use their funds for activities that will—

(1) Make available to handicapped children the variety of educational programs and services available to non-handicapped children in the area served by the LEA or IEU;

(2) Provide non-academic and extracurricular services and activities in a manner that affords handicapped children opportunity for participation in those services and activities; and

(3) Provide accessibility to handicapped individuals involved in the education of handicapped children or eligible to participate in programs administered by LEAs and IEUs.

The Secretary particularly invites public comment on whether these activities are appropriate priorities for projects, and whether the final regulations should require SEAs to give priority to applications that propose these project activities.

7. Subpart G—What are the Administrative Responsibilities of an SEA?

Subpart G describes the amount of grant funds that the SEA can use for administrative costs including, among other things, technical assistance to, and monitoring of, participating LEAs and IEUs.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

These regulations authorized assistance to local educational agencies (LEAs) through a State formula grant program that imposes minimal burdens on participating LEAs. The Secretary, therefore, certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before November 19, 1984 will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period, in Room 3531, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Paperwork Reduction Act

The information collection requirements contained in these proposed rules will be sent to OMB for review under the provisions of section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Comments concerning information collection requirements *only* should be addressed to the Office of Information and Regulatory Affairs, Office of

Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education. All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 304

Education, Education of handicapped, Grants program—education, Local educational agency, School, School construction, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.155: Removal of Architectural Barriers to the Handicapped)

Dated: September 13, 1984.

T. H. Bell,
Secretary of Education.

PART 75—[AMENDED]

The Secretary proposes to amend Parts 75 and 76 and to add a new Part 304 to Title 34 of the Code of Federal Regulations as follows:

1. Section 75.1 is amended by revising paragraph (b) to read as follows:

§ 75.1 Programs to which Part 75 applies.

* * * * *

(b) If a direct grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "direct grant program" includes any grant program of the Department other than a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

* * * * *

2. The table following § 75.1 is amended by removing the following language from the list in Section IV.C. Education of the Handicapped Programs:

"Removal of Architectural Barriers to the Handicapped"; "Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406)"; "None"; "None".

PART 76—[AMENDED]

3. Section 76.1 is amended by revising paragraph (b) to read as follows:

§ 76.1 Programs to which Part 76 applies.

* * * * *

(b) If a State formula grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State formula grant program" means a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

* * * * *

4. The table following § 76.1 is amended by adding the following language to the list in Section B. Education of the Handicapped Programs:

"Removal of Architectural Barriers to the Handicapped"; "Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406)"; "Part 304"; "84.155".

* * * * *

5. Section 76.102 is amended by redesignating paragraph (x) as paragraph (y) and adding a new paragraph (x) to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

* * * * *

(x) *Removal of Architectural Barriers to the Handicapped.* The application under Section 607 of the Education of the Handicapped Act.

6. The table following § 76.125 is amended by adding the following language to the list under "Education for the Handicapped Programs": "84.155 Removal of Architectural Barriers to the Handicapped"; "Section 607, Education of the Handicapped Act (20 U.S.C. 1406)"; "304".

7. Section 76.260 is revised to read as follows:

§ 76.260 Allotments are made under program statute or regulations.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute or implementing regulations for the program.

(b) Any reallotment to other States will be made by the Secretary in accordance with the authorizing statute or implementing regulations for that program. (20 U.S.C. 3474(a))

8. A new Part 304 is added to Title 34 of the Code of Federal Regulations, as follows:

PART 304—REMOVAL OF ARCHITECTURAL BARRIERS TO THE HANDICAPPED PROGRAM

Subpart A—General

Sec.
304.1 The Removal of Architectural Barriers to the Handicapped program.
304.2 Applicability of regulations in this part.
304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.
304.4 Definitions.
304.5 Acronyms that are used.
304.6–304.9 [Reserved]

Subpart B—How Does an SEA Apply for A Grant?

304.10 Submission of an SEA application.
304.11 Content of SEA application.
304.12–304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to an SEA?

304.20 Amount of an SEA's grant.
304.21 Reallocation of excess funds.
304.22–304.29 [Reserved]

Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?

304.30 Submission of an application to the SEA.
304.31 LEA and IEU applications.
304.32–304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

304.40 Amount of a subgrant to an LEA or IEU.
304.41 Reallocation of excess funds.
304.42–304.49 [Reserved]

Subpart F—What Conditions Must be Met by an SEA, LEA, or IEU?

304.50 Standards for the removal of architectural barriers.
304.51 Project priorities.
304.52 Project requirements.
304.53–304.59 [Reserved]

Subpart G—What are the Administrative Responsibilities of an SEA?

304.60 Amount available for SEA administration.
304.61 Administrative responsibilities and allowable costs.
304.62–304.69 [Reserved]

Authority: Sec. 607, Education of the Handicapped Act (20 U.S.C. 1406); sec. 101(c), Pub. L. 98–8, 97 Stat. 31–32 (1983), unless otherwise noted.

Subpart A—General

§ 304.1 The Removal of Architectural Barriers to the Handicapped program.

The purpose of this part is to provide financial assistance to State educational agencies and, through them, to local educational agencies and intermediate educational units to remove architectural barriers to the handicapped.

(20 U.S.C. 1406)

§ 304.2 Applicability of regulations in this part.

This part applies to assistance under section 607 of the Education of the Handicapped Act.

(20 U.S.C. 1406)

§ 304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.

The following regulations apply to assistance under the Removal of Architectural Barriers to the Handicapped program:

(a) The regulations in this Part 304.

(b) The Education Department General Administrative Regulations (EDGAR) set out in the following parts of Title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants);

(2) Part 76 (State-administered Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review).

(20 U.S.C. 1406; 20 U.S.C. 3474(a))

§ 304.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Fiscal year
Grant
Local education agency
Project
Public
Secretary
State
State educational agency
Subgrant

(U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5(a), 300.7, 300.13, and 300.14:

Handicapped children
Intermediate educational unit
Related services
Special education

(20 U.S.C. 1401(a)(1), (16, (17), (22))

(c) *Other definitions that apply to this part.* In addition to the definitions referred to in paragraphs (a) and (b), the following definitions apply to this part:

(1) "Alteration" means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural repairs. It does not include normal maintenance, reroofing, or changes to mechanical systems.

(36 CFR 1190.3)

(2) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

(20 U.S.C. 1401(a)(5), 1406)

§ 304.5 Acronyms that are used.

The following acronyms are used in this part:

"IEU" stands for intermediate educational unit.

"LEA" stands for local educational agency.

"SEA" stands for State educational agency.

(20 U.S.C. 1406)

§§ 304.6–304.9 [Reserved]

Subpart B—How Does an SEA Apply for a Grant?

§ 304.10 Submission of an SEA application.

In order to receive funds under this part, an SEA must submit an application to the Secretary for review and approval.

(20 U.S.C. 1406)

§ 304.11 Content of SEA application.

(a) Each SEA shall include in its application assurances that—

(1) Funds received under this part will be used to pay the costs of altering existing buildings and equipment in accordance with the standards in § 304.50;

(2) In using funds appropriated under Pub. L. 98–8, special consideration will be given to projects in areas experiencing high rates of unemployment; and

(Pub. L. 98-8, "Education for the Handicapped", 97 Stat. 27 (1983); S. Rep. No. 17, 98th Cong., 1st Sess. 33–34 (1983))

(3) Funds provided under this part that are appropriated under Pub. L. 98–8 will, to the extent practicable, be utilized in manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks immediately preceding March 24, 1983 (the date of enactment of Pub. L. 98–8).

(Pub. L. 98-8, section 101(c); 97 Stat. 31–32 (1983))

(b) Each SEA application must also include the following information:

(1) A description of the goals and objectives to be supported by the grant in sufficient detail for the Secretary to determine what will be achieved with the grant.

(2) The estimated number of LEAs and IEUs that will receive subgrants, and a description of the procedures and criteria the SEA will use to award subgrants to LEAs and IEUs, including any priorities established by the SEA under § 304.51(b) (*see* § 304.40 and Subpart F, "What Conditions Must Be Met by an SEA, LEA, or IEU?").

(20 U.S.C. 1406)

§§ 304.12–304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to an SEA?

§ 304.20 Amount of an SEA's grant.

[Option 1]

(a) The amount of an SEA's grant under this part is determined by—

(1) Dividing the number of handicapped children in that State by the total number of handicapped children in all States submitting approvable applications under this part; and

(2) Multiplying that fraction by the amount of funds available for grants under this part.

(b) For the purpose of this section, the term "handicapped children" means the number of handicapped children determined by the Secretary—

(1) Under section 611 of the Act, to be receiving special education and related services; or

(2) In average daily attendance at schools for handicapped children operated or supported by a State agency within the meaning of section 146 of Title I of the Elementary and Secondary Education Act of 1965.

[Option 2]

The Secretary awards to each State submitting an approvable application an amount which bears the same ratio to the amount of available funds as the school-age population of that State bears to the school-age population of all States submitting approvable applications.

(20 U.S.C. 1406)

§ 304.21 Reallocation of excess funds.

The Secretary may reallocate funds—or portions of those funds—made available to an SEA under this part if the Secretary determines that the SEA cannot use the funds in a manner consistent with the requirements of applicable statutes or this part. Any reallocation is made on the same basis as grants are determined under § 304.20.

(20 U.S.C. 1406)

§§ 304.22–304.29 [Reserved]

Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?

§ 304.30 Submission of an application to the SEA.

In order to receive funds under this part for any fiscal year, an LEA or IEU shall submit an application for a subgrant to the appropriate SEA.

(20 U.S.C. 1406, 3474(a))

§ 304.31 LEA and IEU applications.

An LEA or IEU shall include in its application any information that is required by the SEA in order to fulfill its responsibilities under this part.

(20 U.S.C. 1406, 3474(a))

§§ 304.32–304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

§ 304.40 Amount of a subgrant to an LEA or IEU.

(a) The SEA shall determine the amount of a subgrant to an LEA or IEU based on—

(1) The size, scope, and quality of the proposed project; and

(2) Any other relevant criteria developed by the SEA and included in the SEA application approved by the Secretary.

(b) The SEA may establish minimum and maximum amounts for subgrants.

(20 U.S.C. 1406)

§ 304.41 Reallocation of excess funds.

(a) The SEA may reallocate funds provided for subgrants under this part if an LEA or IEU cannot use the funds in a manner consistent with the requirements of section 607 of the Education of the Handicapped Act and requirements in this part.

(b) The SEA shall reallocate funds in accordance with the criteria and priorities for approving subgrants in its approved application.

(20 U.S.C. 1406)

§§ 304.42–304.49 [Reserved]

Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?

§ 304.50 Standards for the removal of architectural barriers.

The alteration of existing buildings and equipment under this part must be done consistently with standards adopted by the General Services Administration (GSA) under Pub. L. 90–480, the Architectural Barriers Act of 1968. However, the dimensions set out in those standards must be modified as appropriate considering the age groups of the individuals who will use the buildings or equipment.

Note.—On August 7, 1984, the GSA adopted new standards under the Architectural Barriers Act (49 FR 31528) and incorporated them by reference at 41 CFR 101–19.603 (49 FR 31625).

(20 U.S.C. 1406)

§ 304.51 Project priorities.

An SEA may establish priorities for the use of funds made available under this part. The SEA may, for example, give special consideration to projects that will meet the special needs of urban or rural locations, or that will facilitate the transition of handicapped children and individuals from school to work.

(20 U.S.C. 1406)

§ 304.52 Project requirements.

To the extent practicable, funds made available under this part that are appropriated under Pub. L. 98–8 must be utilized to create new employment opportunities for the unemployed, as required by Pub. L. 98–8, section 101(c).

(Pub. L. 98–8, sec. 101(c); 97 Stat. 31–32 (1983))

§§ 304.53–304.59 [Reserved]

Subpart G—What Are the Administrative Responsibilities of an SEA?

§ 304.60 Amount available for SEA administration.

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part.

(20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(b) Technical assistance that an SEA provides to LEAs and IEUs with respect to the requirements of this part.

(20 U.S.C. 1406)

§§ 304.62–304.69 [Reserved]

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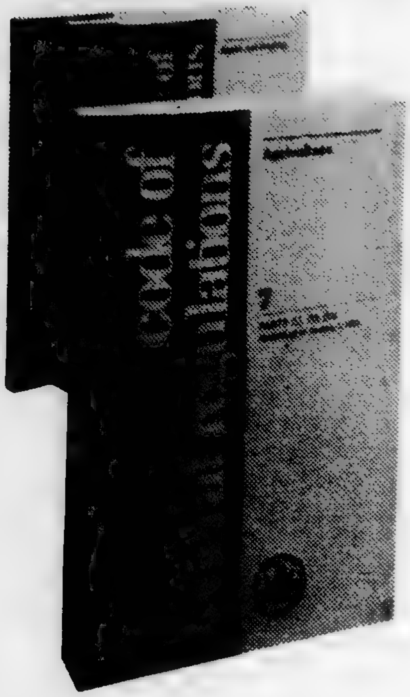

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Government Procurement
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Income Taxes
  Internal Revenue Service

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Title 3—

The President

Memorandum of September 18, 1984

Steel Import Relief Determination

Memorandum for the United States Trade Representative

Pursuant to Section 202(b)(1) of the Trade Act of 1974, (P.L. 93–618, 88 Stat. 1978), I have determined the actions I will take with respect to the report of the United States International Trade Commission (USITC) dated July 24, 1984 concerning carbon and alloy steel.

I have determined today under Section 203 of the Trade Act that import relief is not in the national economic interest for the following reasons:

1. In responding to this pressing import problem, we must do all we can to avoid protectionism, to keep our market open to free and fair competition, and to provide certainty of access for our trading partners. This Administration has repeatedly, and most recently at the London Economic Summit, committed itself to "resist continuing protectionist pressures, to reduce barriers to trade, and to make renewed efforts to liberalize and expand trade in manufactures, commodities and services."

2. It is not in the national economic interest to take actions which put at risk thousands of jobs in steel fabricating and other consuming industries or in the other sectors of the U.S. economy that might be affected by compensation or retaliation measures to which our trading partners would be entitled.

3. This Administration has already taken many steps to deal with the steel import problem. In 1982, a comprehensive arrangement restraining steel imports from the European Community was negotiated. This Administration has also conducted an unprecedented number of antidumping and countervailing duty investigations of steel imports, in most cases resulting in the imposition of duties or a negotiated settlement. In addition, the governments of Mexico and South Africa have unilaterally imposed voluntary restraint on exports, leading to the termination of unfair trade complaints.

However, I have decided to establish a government policy for the steel industry. I believe that this new policy is the best way to respond to the legitimate concerns of the domestic industry while maintaining access to our market for those who trade fairly.

I am directing you to coordinate and direct the implementation of this policy for the U.S. steel industry which includes the following elements:

1. The United States Trade Representative (USTR) will negotiate "surge control" arrangements or understandings and, where appropriate, suspension agreements with countries whose exports to the United States have increased significantly in recent years due to an unfair surge in imports—unfair because of dumping subsidization, or diversion from other importing countries who have restricted access to their markets. The USTR will negotiate additional such arrangements and understandings, if necessary, to control new surges of imports that result from subsidizing, dumping or other unfair or restrictive trade practices during the next five years. If agreements cannot be reached to control new surges from countries that are guilty of unfair practices, the President will use his authority under the unfair trade laws including Section 301 of the Trade Act of 1974 to assure that these countries do not maintain unrestricted access to the United States market.

2. The United States Trade Representative will reaffirm existing measures with countries that have voluntarily restrained their exports to our market, and will take necessary steps to ensure the effectiveness of these measures. Specifically the Administration will support legislation in the Congress to make enforceable at our borders all voluntary agreements and "surge control" arrangements.

3. The United States Trade Representative will consult with our trading partners to seek the elimination of trade distortive and trade restraining practices in other markets to lead to the liberalization of steel trade around the world.

4. The Department of Commerce will continue to rigorously enforce our unfair trade laws. Further, the Department of Commerce and the United States Trade Representative will self-initiate unfair trade cases including antidumping, countervailing duty and Section 301 actions when appropriate.

5. The United States International Trade Commission will be asked to monitor the efforts of the steel industry to adjust and modernize, and to prepare an annual report for the President on those efforts.

6. The Secretary of Commerce will establish an interagency group to analyze all U.S. government domestic tax, regulatory and antitrust laws and policies which could hinder the ability of the steel industry to modernize.

7. The Secretary of Defense and the Federal Emergency Management Agency will analyze domestic steel plate rolling capacity in relationship to emergency needs, and to recommend to the President appropriate actions if deficiencies are found to exist.

8. The Secretary of Labor will work with state and local governments to develop a program to assist workers in communities adversely affected by steel imports.

9. The United States Trade Representative will closely monitor the trade elements of this program and the resultant import trends and report them to the President on a quarterly basis.

The Administration's hope is that this combination of actions, taken without protectionist intention or effect would enable one of the United States' most basic and vital industries to return to a level playing field, one in which steel is traded on the basis of market forces, not government intervention, and one in which the market would seek a return to a more normal level of steel imports, or approximately 18.5 percent, excluding semi-finished steel.

This determination is to be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 18, 1984.

[FR Doc. 84-25181
Filed 9-18-84; 4:40 pm]
Billing code 3195-01-M

Editorial note: The text of identical letters, dated Sept. 18, 1984, to the Speaker of the House of Representatives and the President of the Senate on the import relief determination is printed in the *Weekly Compilation of Presidential Documents* (vol. 20, no. 38).

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-343]

Corn Cyst Nematode; Affirmation of Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule which was published in the **Federal Register** on May 1, 1984, and which amended the domestic quarantine notices by adding a new subpart, captioned "Corn Cyst Nematode". This action is necessary to prevent the artificial spread interstate of corn cyst nematode, *Heterodera zeae*, a dangerous plant pest.

EFFECTIVE DATE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: E. Elliott Crooks, Senior Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8249.

SUPPLEMENTARY INFORMATION:

Background

Corn cyst nematode, *Heterodera zeae*, is a cyst-forming nematode that attacks the roots of host plants such as corn, barley, oats and sorghum. The nematode bores into the roots of the plants and feeds on the juices resulting in poor root development and poor plant growth. If allowed to become established in the United States it could cause severe crop losses. The corn cyst nematode is spread artificially through the movement of infested soil and equipment carrying infested soil.

Corn cyst nematode was recently discovered in several counties in the State of Maryland and on May 1, 1984, the U.S. Department of Agriculture (USDA) published in the **Federal Register** (49 FR 18463–18468) a document which added a new Subpart 301.90, captioned "Corn Cyst Nematode", to the domestic quarantine notices (7 CFR 301). This subpart quarantined the State of Maryland for corn cyst nematode, designated certain areas in Maryland as "regulated areas", designated certain articles as "regulated articles", and established regulations governing the interstate movement of regulated articles from regulated areas.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as an emergency measure in order to prevent the artificial spread interstate of corn cyst nematode, a dangerous plant pest.

Comments were solicited for 60 days after publication of the amendment. One written comment in support of the interim rule was received during this comment period. Further, the factual situations which were set forth in the document of May 1, 1984, still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

The rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100,000 dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment only affects the interstate movement of regulated articles from a portion of Cecil, Harford, Kent, and Queen Annes Counties in Maryland. Further, based on information from the Maryland Department of Agriculture and the USDA Extension Service, it appears that fewer than 30 entities move regulated articles interstate from the regulated areas. This compares with approximately 200 small entities that move regulated articles interstate from other parts of Maryland, and with several hundred small entities that move such articles interstate from nonregulated areas in other States.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Corn cyst nematode, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 18463–18468 on May 1, 1984, is adopted as a final rule.

Authority: Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); sections 105 and 106, 71 Stat. 32, 71 Stat. 33 (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 14th day of September 1984.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-24829 Filed 9-19-84; 8:45 am]

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7 CFR Part 301

[Docket No. 84-342]

European Larch Canker; Expansion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends "Subpart—European Larch Canker" of the domestic quarantine notices by expanding previously designated

regulated areas in Hancock and Washington Counties in Maine, and by designating previously nonregulated areas of Knox, Lincoln, and Waldo Counties in Maine as regulated areas. This action is necessary as an emergency measure in order to prevent the artificial spread of European larch canker, a dangerous plant disease, into noninfested areas of the United States. The effect of this amendment is to impose certain restrictions on regulated articles moving interstate from the regulated areas.

DATES: Effective date of amendment September 20, 1984. Written comments concerning this final rule must be received on or before November 19, 1984.

ADDRESS: Written comments concerning this rulemaking should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected in Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: E. Elliott Crooks, Senior Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8249.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. This action is necessary to prevent the artificial spread interstate of European larch canker, *Lachnellula willkommii* (Dasycypha).

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

European larch canker, *Lachnellula willkommii* (Dasycypha), is a serious plant disease caused by a fungus that can kill mature and immature species of the genus *Larix* (Larch) and *Pseudolarix* (Golden larch). In parts of Europe, it has eliminated European larch as a plantation species. Eurpoean larch canker was first discovered in the United States in Massachusetts in 1927. It was declared eradicated in 1965 after cutting and burning larch in the infested area over a period of several years. The disease is spread naturally for short distances by wind dispersed spores. There is a potential threat to several million acres of Western larch in the United States due to the artificial spread associated with the interstate movement of regulated articles.

Infestations of European larch canker were recently been discovered for the first time in Hancock and Washington Counties in Maine. Based on these findings, an emergency rulemaking document, effective upon publication, was published in the **Federal Register** on May 4, 1984 (49 FR 18989–18995). This document amended the domestic quarantine notices (7 CFR Part 301) by adding a new subpart, captioned "European Larch Canker" (7 CFR 301.91 *et seq.;* referred to below as regulations) which, among other things, designated a portion of Hancock and Washington Counties as regulated areas in § 301.91-3(c).

The portion of Hancock and Washington Counties designated as a regulated area by the May 4, 1984 rulemaking document remains infested at this time. However, surveys and field observations conducted by the U.S. Department of Agriculture (USDA) and the Maine Forest Service indicate that European larch canker has spread beyond the outer perimeter of the regulated area in Hancock and Washington Counties and into areas of Knox, Lincoln, and Waldo Counties in Maine. Therefore, in order to prevent further spread of the European larch canker it is necessary as an emergency measure to amend § 301.91-3 of the regulations by expanding the portion of Hancock and Washington Counties previously designated as regulated areas, and designating portions of previously nonregulated areas of Knox, Lincoln, and Waldo Counties in Maine as regulated areas.

Designation of Areas as Regulated Areas

As an emergency, certain European larch canker regulated areas in Hancock and Washington Counties in Maine are expanded as set forth below:

The European larch canker regulated area in Hancock County, Maine, previously described as "The entire townships of Gouldsboro, Sullivan, Winter Harbor, 7th Southern Division, 9th Southern Division, 10th Southern Division, and 16th Middle Division.", is expanded and redescribed as "The entire townships of Gouldsboro, Serrento, Sullivan, Winter Harbor, 7th Southern Division, 9th Southern Division, 10th Southern Division, and 16th Middle Division."

The European larch canker regulated area in Washington County, Maine, previously described as "The entire townships of Addison, Beals, Centerville, Charolotte, Cherryfield, Columbia, Columbia Falls, Cutler, Debolis, Dennysville, East Machias, Eastport, Edmunds, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion, Marshfield, Milbridge, Northfield, Plantation 14, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, Trescott, Whiting, Whitneyville, 18th Eastern Division, 18th Middle Division, and 19th Middle Division.", is expanded and redescribed as "The entire townships of Addison, Baring, Beals, Calais City, Centerville, Charolotte, Cherryfield, Columbia, Columbia Falls, Cooper, Cutler, Debolis, Dennysville, East Machias, Eastport, Edmunds, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion, Marshfield, Meddybemps, Milbridge, Northfield, Plantation 14, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, Trescott, Whiting, Whitneyville, 18th Eastern Division, 18th Middle Division, and 19th Middle Division."

Also, as an emergency measure, the following areas in Maine, which were previously nonregulated areas, are designated as European larch canker regulated areas:

Knox County. The entire townships of Appleton, Camden, Cushing, Friendship, Hope, Owls Head, Rockland City, Rockport, South Thomaston, St. George, Thomaston, Union, Warren, and Washington.

Lincoln County. The entire townships of Bremen, Bristol, Damariscotta, Jefferson, Nobleboro, South Bristol, Somerville, and Waldoboro.

Waldo County. The entire townships of Lincolnville and Searsmont.

An area is designated as a regulated area if it is determined that it is an area in which European larch canker has been found, or an area in which the Deputy Administrator has reason to believe European larch canker is present, or an area deemed necessary to regulate because of its proximity to infestations of European larch canker, or its inseparability for quarantine enforcement purposes from localities where European larch canker has been found.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have no significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment only affects the interstate movement of regulated articles from portions of Hancock, Knox, Lincoln, Waldo, and Washington Counties in Maine by imposing restrictions on the movement of such articles. Further, information from the Maine Forest Service and the USDA Forest Service, indicates that the items designated as regulated articles (namely, logs, pulpwood, branches, twigs, plants, scion and other propagative material from larch trees) have little commercial value, and there is very little interstate movement of these regulated articles for commercial purposes or otherwise.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, European larch canker, Plant diseases, Plants (agriculture), Quarantine, Transportation.

PART 301—[AMENDED]

Accordingly, § 301.91 of the European larch canker quarantine and regulations (7 CFR 301.91-3(c)) revises the list of regulated areas in Maine to read as follows:

§ 301.91-3 Regulated areas.

* * * * *

(c) The areas described below are designated as regulated areas: *Maine*

Hancock County. The entire townships of Gouldsboro, Serrento, Sullivan, Winter Harbor, 7th Southern Division, 9th Southern Division, 10th Southern Division, and 16th Middle Division.

Knox County. The entire townships of Appleton, Camden, Cushing, Friendship, Hope, Owls Head, Rockland City, Rockport, South Thomaston, St. George, Thomaston, Union, Warren, and Washington.

Lincoln County. The entire townships of Bremen, Bristol, Damariscotta, Jefferson, Nobleboro, South Bristol, Somerville, and Waldoboro.

Waldo County. The entire townships of Lincolnville and Searsmont.

Washington County. The entire townships of Addison, Baring, Beals, Calais City, Centerville, Charolotte, Cherryfield, Columbia, Columbia Falls, Cooper, Cutler, Debolis, Dennysville, East Machias, Eastport, Edmunds, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion, Marshfield, Meddybemps, Milbridge, Northfield, Plantation 14, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, Trescott, Whiting, Whitneyville, 18th Eastern Division, 18th Middle Division, and 19th Middle Division.

Authority: Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); secs. 105 and 106, 71 Stat. 32, and 33 (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 14th day of September 1984.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-24830 Filed 9-19-84; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 83-019F]

Import Inspection System

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On April 16, 1984, USDA published a proposal to update the Federal meat and poultry products inspection regulations to reflect the use of an automated system developed in recent years that supports the inspection of imported meat and poultry products. It uses a centralized data source and has been programmed to support the application of statistically based random sampling techniques in imported product inspection, using factors such as a foreign plant's compliance history and the nature and volume of product shipped from a foreign plant to determine sampling intensity. USDA received no comments on its proposal and has determined that the proposal should be made a final rule.

EFFECTIVE DATE: October 22, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Grace M. Clark, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a "major" rule under Executive Order 12291. The rule amends the regulations to better reflect the Agency's current practice of using statistically sound sampling plans (already generally authorized in 9 CFR 318.2(c)) to make more efficient and effective use of inspectors performing import inspection.

The computerized system currently used by USDA permits ports of entry and circuits to share imported product information readily and to concentrate inspection resources in areas of greatest risk. Under the system formerly used to inspect imported product, each port of entry and circuit acted independently, which increased the probability of unnecessary duplicative inspection and delayed action against foreign establishments failing to meet U.S. standards.

This final rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

The automated support system for the inspection of imported meat and poultry products has been in use since January 1979, so the principal effect of this final rule will be to make inspection regulations for imported products compatible with current practice.

Background

On April 16, 1984, USDA published in the **Federal Register** (49 FR 14963) a proposed rule to update the Federal meat and poultry products inspection regulations to reflect the use of an automated inspection system developed in recent years that supports the inspection of imported meat and poultry products.

The Food Safety and Inspection Service (FSIS) is responsible for, among other things, ensuring the wholesomeness and appropriate labeling of imported meat and poultry products prepared in foreign countries eligible to export to the United States. Port-of-Entry (POE) inspection in the United States by USDA is actually reinspection of product previously inspected in the country of origin and serves as a means for assuring that the foreign country's system of inspection continues to produce product that meets the same standards "at least equal to" those applied to product produced by inspected establishments in the United States.

In 1978, the Automated Import Inspection System (AIIS) was developed. Since its institution in 1979, it has provided a data base which has allowed POE's to share information on inspection results for all imported meat and poultry product. The AIIS also prescribes statistically valid sampling plans, based on plants' performance records and the nature and volume of the product shipped from foreign plants. In addition, the AIIS keeps track of imported product at all locations. If a problem is found in product at one port, the system permits rapid location of shipments from the plant involved at other ports.

On June 15, 1983, the Comptroller General issued a report to the Congress of the United States on the need for improved management of the import meat inspection system. He expressed the opinion that Part 327 of the Federal meat inspection regulations (9 CFR Part 327) should refer to the use of variable sampling rate inspection, even though authority for statistical sampling has been established (9 CFR 318.2(c)). The Administrator of FSIS determined that in addition to that amendment, other provisions of Part 327 needed to be changed since they incorrectly indicate that all lots of various products, such as imported boneless manufacturing meat, are sampled. In addition, it was determined that, although the present text of the import provisions of the poultry products inspection regulations would appear to permit the use of the AIIS, including variable sampling rate inspection, § 381.199(a) of the poultry products inspection regulations (9 CFR 381.199(a)) should be modified to identify the automated system and to assure parallelism between the Federal meat inspection regulations and the poultry products inspection regulations in this area. A provision presently in the poultry products inspection regulations requiring small lots to be moved to the location of the nearest inspector for inspection purposes has no comparable provision in the Federal meat inspection regulations and is being deleted.

Comments on the Proposed Rule

FSIS did not receive any comments in response to the proposed rule.

Final Rule

After careful consideration of all relevant information available to FSIS, the Administrator has determined that the proposed rule should be published as a final regulation as set forth below.

List of Subjects in 9 CFR Parts 327 and 381

Automated Import Inspection System (AIIS), Imported products, Inspection procedures, and Meat inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 reads as follows:

Authority.—34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Section 327.6 (9 CFR 327.6) is amended by redesignating paragraph (a) as (a)(1); adding paragraphs (a) (2), (3) and (4); and revising paragraphs (i) and (j) to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

(a)(1) * * *

(2) Every lot of product shall routinely be given visual inspection by an inspector for appearance and condition, and checked for certification and label compliance.

(3) The computerized Automated Import Information System (AIIS) shall be consulted for further inspection instructions. The AIIS will assign inspection levels and procedures based on established sampling plans and established product and plant history.

(4) When the inspector deems it necessary, the inspector may sample and inspect lots not designated by AIIS.

* * * * *

(i) A sampling inspection shall be made, as provided in paragraph (a) of this section, of foreign chilled fresh or frozen fresh meat, including defrosting if necessary to determine its condition. Inspection standards for foreign chilled fresh or frozen fresh meat shall be the same as those used for domestic chilled fresh or frozen fresh meat. (See § 327.21)

(j) Foreign canned products are required to be sound, healthful, wholesome, and otherwise not adulterated at the time they are offered for importation into the United States, *Provided,* That other requirements of this Part are met, the determination of the acceptability of the product and the condition of the containers shall be based on the results of an examination of a statistical sample drawn from a lot as provided in paragraph (a) of this section. If the inspector determines, on the basis of sample examination, that the product does not meet the requirements of the Act and regualtions thereunder, the lot shall be refused entry. However, a lot rejected for container defects but otherwise acceptable may be reoffered for inspection under the following conditions:

(1) If the number and kinds of container defects found in the original sample do not exceed limits specified for this purpose in USDA guidelines; and

(2) If the defective cans in the lot have been sorted out and reexported or destroyed under the supervision of an inspector.

* * * * *

3. Section 327.12(c) of the Federal meat inspection regulations (9 CFR 327.12(c)) is revised to read as follows:

§ 327.12 Foreign canned or packaged products bearing trade labels; sampling and inspection.

* * * * *

(c) Samples shall be taken from foreign canned products or packaged products as required by § 327.6 (a) and (j) of this part.

§ 327.21 [Amended]

4. Section 327.21(a)(2) of the Federal meat inspection regulations (9 CFR 327.21(a)(2)) is revised to read as follows:

(a) * * *

(1) * * *

(2) Imported frozen boneless manufacturing meat shall be sampled as required by § 327.6(a) of this part, and the samples defrosted for inspection. The inspector will select from a lot the appropriate number of cartons specified by the table of sampling plans contained in the current U.S. Department of Agriculture Meat and Poultry Inspection Manual.[1] The total sample for inspection will consist of the necessary number of 12-pound units drawn from these cartons. The 12-pound units selected will be completely defrosted and examined.

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PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 reads as follows:

Authority: Sec. 14 of the Poultry Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*); the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450); and subsection 21(b) of the Water Pollution Control Act, as amended by Pub. L. 91-224 and by other laws (33 U.S.C. 1254).

2. Section 381.199(a) of the Federal poultry products inspection regulations (9 CFR 381.199(a)) is amended by redesignating and revising paragraph (a) as (a)(1) and adding paragraphs (a) (2), (3) and (4) to read as follows:

§ 381.199 Inspection of imported poultry products.

(a)(1) Except as provided in § 381.209 of this Part, and paragraph (c) of this section, all slaughtered poultry and poultry products offered for importation from any foreign country shall be inspected by a Program inspector before they shall be allowed entry into the United States.

(2) Every lot of product shall routinely be given visual inspection by an inspector for appearance and condition, and checked for certification and label compliance.

(3) The computerized Automated Import Information System (AIIS) shall be consulted for further inspection instructions. The AIIS will assign inspection levels and procedures based on established sampling plans and established product and establishment history.

(4) When the inspector deems it necessary, the inspector may sample and inspect lots not designated by AIIS.

* * * * *

Done at Washington, D.C., on September 4, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-24907 Filed 9-19-84; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-82-AD; Amdt. 39-4917]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which requires inspection of the trailing edge flap tracks for cracks. This action is prompted by a recent report of cracking and failure of the forward end of one trailing edge flap track. This recent service experience has shown that the fail-safe bar is ineffective at the forward end of the flap track. Accordingly, this amendment adds inspections to the forward end of the flap track. The failure of the forward end of the flap track could cause the trailing edge flap to separate from the airplane.

DATE: Effective September 27, 1984.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168

SUPPLEMENTARY INFORMATION: AD 76-03-06, Amendment 39-2516 (40 FR 57811, December 12, 1975), requires repetitive inspection of the flap tracks every 2000 flights, for cracks emanating from all fastener holes in the track webs. There has been a new report of cracking and failure of the forward end of a trailing edge flap track. The cracking originated from pitting corrosion within the bore of the first and second fastener holes. The rate of crack growth indicates that additional inspections of the forward end of the flap track are needed. The fail-safe bar was ineffective since the track failed through the hole of the first fastener which attaches the fail-safe bar to the track. Although the flap did not separate from the airplane, failure of the flap track could result in separation of the flap under certain normal flight conditions. Separation of a flap from the airplane could jeopardize continued safe flight by causing either partial loss of roll control or structural damage to the stabilizer.

Since this condition is likely to exist or develop on other Boeing Model 747 airplanes of the same type design, and since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:.

Boeing: Applies to those Boeing Model 747 series airplanes certificated in all categories, listed in Boeing Alert Service Bulletin 747-57A2229 dated August 10, 1984, or later FAA approved revisions, that have the reworked and interim production flap tracks in positions Number 1 through 8. Part numbers are listed in the Service Bulletin for the affected flap tracks.

Note.—The inspections specified in this airworthiness directive (AD) are in addition to the inspections currently required by AD 83-21-02 (48 FR 48220).

To prevent failure of the trailing edge flap tracks, accomplish the following:

A. Within 100 landings after the effective date of this AD, unless already accomplished within the last 200 landings, and at intervals thereafter not to exceed 300 landings, visually inspect for cracks the flap track lower flanges and vertical webs at the front end, adjacent to bolts number 1 through 3 in accordance with Alert Service Bulletin 747-57A2229, initial release or later FAA approved revisions. Cracked parts must be replaced prior to further flight.

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[1] Copies of such table are available, upon request, from Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Note.—These are the bolts that pass through both the flap track and the front end of the fail-safe bar. Inspection of the flap track may be performed by borescope through access holes in the flap track fairing adjacent to the front of the track. The proper location and diameter for the access holes is provided in the Service Bulletin.

B. Within the next 300 landings after the effective date of this AD, unless already accomplished within the last 1700 landings, and at intervals thereafter not to exceed 2000 landings, visually inspect the flap track webs for cracks emanating from all fastener holes not previously inspected under paragraph A., above, in accordance with Boeing Service Bulletin 747-57-2146, dated February 27, 1976, or later FAA approved revisions. Cracked parts must be replaced prior to further flights.

C. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

D. On request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times in this AD, if the request contains substantiating data to justify the increase for the operator.

E. Aircraft may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

F. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes Airworthiness Directive (AD) 76-03-06, Amendment 39-2516 (40 FR 57811; December 12, 1975).

This amendment becomes effective September 27, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 7, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24883 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-23-AD; Amdt. 39-4918]

Airworthiness Directives: British Aerospace (BAe) Viscount Model 700 Series and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspections, replacement, and modification of certain components on British Aerospace, Aircraft Group, Viscount airplanes, as necessary, to detect and prevent certain unsafe conditions. These conditions are the subject of mandatory corrective actions required by the United Kingdom Civil Aviation Authority (CAA) and relate to components of the hydraulic system, entry and cargo doors, and the rudder. This action is taken to preclude failure of these components.

DATE: Effective October 22, 1984.

ADDRESSES: The Preliminary Technical Leaflets specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. James Leeder, Foreign Aircraft Certification Branch, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431-2826. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of inspections, replacements, and modifications which they have imposed on Viscount Model 700 and 800 series airplanes operated under registry of the United Kingdom to correct certain unsafe conditions which may exist.

The requirements presented in this AD are based on the notifications from the CAA in accordance with the bilateral agreement and are related to the following unsafe conditions:

A. Loss of hydraulic system fluid due to premature failure of bolts on hydraulic system micron filter which could result in loss of brakes. (Reference: Preliminary Technical Leaflet (PTL), No. 177, Issue 1, for all Model 800 series; and PTL No. 308, Issue 1, for all Model 700 series airplanes.)

B. Possible loss of, or damage to, entrance doors and rear freight door which could result in depressurization. (Reference: BAe Modification No. D.3051, Issues 1 and 2, and PTL No. 235, Issue 3, for all Model 700 series airplanes.)

C. Possible damage to rudder mechanism due to parts remaining in service beyond their estimated life expectancy of 30,000 hours which could result in a jammed rudder. (Reference: PTL No. 311, Issue 1, for all Model 700 series; and PTL No. 180, Issue 1, for all Model 800 series airplanes.)

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring accomplishment of the previously mentioned inspections and modifications was published in the **Federal Register** on April 30, 1984 (49 FR 18312). The comment period closed on June 19, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that 29 U.S. registered airplanes will be affected by this AD, that it will take approximately 79 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $1,245 per airplane. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $127,745. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the

Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace Viscount: Applies to Model 700 and 800 series airplanes, certificated in all categories, as indicated in each paragraph below. To prevent failure of certain components in the hydraulic system, entry and cargo doors, or rudder mechanism, accomplish the following within the compliance time specified in each paragraph below, unless previously accomplished:

A. For all Model 700 series pre-Modification D.2883 and for Model 800 series pre-Modification FG.1553 which are equipped with hydraulic system Micronic Filters, Part Numbers A6301, A6302, or A5641, inspect and replace hydraulic filter attachment bolts in accordance with Preliminary Technical Leftlet (PTL) No. 308 for all Model 700 series and PTL No. 177 for all 800 series airplanes, both dated February 7, 1979, within 1,000 hours time is service after the effective date of this AD.

B. Inspect and modify entrance and cargo doors of Model 700 series airplanes in accordance with PTL No. 235, Issue 3, dated December 8, 1966, within 350 hours time in service after the effective date of this AD. Subsequent inspections, as denoted in paragraph 4.2 of the PTL, must be accomplished at intervals not to exceed 350 hours from the previous inspection. Modify Model 700 series airplanes in accordance with the instructions in BAe bulletin for Modification No. D.3051, Issue 1, dated April 23, 1962, and Issue 2, dated May 17, 1978, within 350 hours time in service after the effective date of this AD, for all entrance and cargo door bolt sleeves.

C. Replace rudder spigot and mounting block on Model 700 series and Model 800 series airplanes in accordance with PTL No. 311, Issue 1, and PTL No. 180, Issue 1, respectively, both dated May 22, 1981, at or before 29,500 hours total time in service or within the next 500 hours after the effective date on this AD, whichever occurs later.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and modifications required by this AD.

This amendment becomes effective October 22, 1984.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Viscount airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been place in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 7, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24884 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-28-AD; Amdt. 39-4919]

Airworthiness Directives: Gates Learjet Model 24, 25, 28, 29, 35, 36, and 55 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires modification of the aileron trim tab on certain Gates Learjet Model 24, 25, 28, 29, 35, 36, and 55 series airplanes. The manufacturer has determined that the aileron trim tab balance weight is insufficient to meet the failsafe requirements of the Federal Aviation Regulations. This action is needed to prevent possible flutter in the event of a failure or disconnect in the trim tab system.

DATE: Effective October 22, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and airplane modification kits (AMK) may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277; telephone (316) 946-2000. This information is also contained in the Airworthiness Rules Docket which is located in the Office of the Regional Counsel, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin D. Beene, Airframe Branch, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring replacement of the aileron trim tab balance weight on certain Gates Learjet Model 24, 25, 28, 29, 35, 36, and 55 series airplanes was published in the Federal Register on May 24, 1984 (49 FR 21937). The comment period closed July 16, 1984. The FAA determined that this action was necessary to provide a failsafe/flutter-free trim tab system. Recent extensive flutter investigations conducted by Gates Learjet to validate the effectiveness of the design static balance revealed that additional weight is required to prevent aileron trim tab flutter in the event of a failure or disconnect of the tab connecting rod.

Interested persons were afforded an opportunity to comment on the proposed AD. The only respondent concurred with the proposed AD.

Approximately 900 airplanes on the U.S. Registry will be affected by this AD. It will take approximately 17 manhours per airplane to accomplish the required actions at an average labor cost of $35 per manhour. Parts are estimated at $23 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $556,200. For these reasons, this rule is not considered to be major under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Gates Learjet: Applies to the following model/series airplanes certificated in all categories except airplanes modified in accordance with Supplemental Type Certificate SA944NW (Dee Howard XR Modification). Compliance required as indicated unless already accomplished.

Model	Serial Nos.
24	100 thru 357.
25	003 thru 369.
28	001 thru 005.
29	001 thru 004.
35	001 thru 514.
36	001 thru 053.
55	001 thru 105.

To prevent aileron/trim tab flutter due to a failure or disconnect of the tab control system, accomplish the following:

A. Within the next 600 hours time in service, or the next aileron/trim tab removal or rebalance, whichever occurs first, replace the trim tab balance weight and rebalance the left aileron in accordance with the instructions in Gates Learjet Corporation Airplane Modification Kit Number AMK 83-3 for Models 24, 25, 28, 29, 35, and 36; and AMK 55-83-3 for Model 55.

B. Special flight permits may be issued in accordance with FAR 21.197 to operate airplanes to a base in order to comply with the modification requirements of this AD.

C. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. These documents may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

This amendment becomes effective October 22, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85).

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Gates Learjet Model 24, 25, 28, 29, 35, 36, or 55 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 7, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24885 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-24-AD; Amdt. 39-4916]

Airworthiness Directives; Ayres Corporation Model S2R-R1820 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), 84-09-03, applicable to certain Ayres Corporation Model S2R-R1820 airplanes and codifies the corresponding emergency AD letter dated May 7, 1984, into the **Federal Register.** It requires visual inspection and modification of the forward fuselage upper longerons. The AD is needed to prevent failure of both forward fuselage upper longerons which could result in separation of the engine in flight.

DATES: *Effective:* September 21, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84-09-03, issued May 7, 1984.

Compliance: As prescribed in body of AD.

ADDRESSES: Ayres Corporation Service Bulletin No. SB-AG-16 dated April 1, 1984, applicable to this AD may be obtained from Ayres Corporation, P.O. Box 3090, Albany, Georgia 31706; Telephone (912) 883-1440.

A copy of this service bulletin is also contained in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Buckley, Aerospace Engineer, Altanta Aircraft Certification Office, ACE-120A, Central Region, Federal Aviation Administration, 1075 Innerloop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: There have been reports of cracks through the full circumference of the forward fuselage upper tubular longerons just aft of the engine mount attachment structure on Ayres Model S2R-R1820 airplanes. Failure of these longerons could cause structural failure of the attachment of the engine mount to the fuselage with the resulting separation of the engine from the airplane. The FAA determined that this unsafe condition is likely to exist or develop in other airplanes of the same type design, that immediate corrective action was required, notice and public procedure thereon were impractical and contrary to public interest and good cause existed to make the AD effective immediately. Accordingly, on May 7, 1984, priority letter AD 84-09-03 was issued and made effective immediately as to all known U.S. owners and operators of certain Ayres Corporation Model S2R-R1820 airplanes. The AD required the visual inspection and modification of the forward fuselage upper longerons. AD action was necessary to prevent failure of both forward fuselage upper longerons which could result in separation of the engine in flight. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons who did not receive the letter notification.

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Ayres Corporation: Applies to Model S2R-R1820 (S/N's R1820-001DC through S/N R1820-031DC) airplanes, certificated in any category:

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the fuselage upper longerons, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed ten (10) hours time-in-service, visually check the forward fuselage upper longerons for cracks in accordance with the following:

(1) Remove the fuselage side skins located between the wing upper surface and the hopper to obtain access to the upper longerons from the firewall to the cockpit.

(2) Check the longerons in the following areas: (Same as shown in Figure 1 of Ayres Corporation Service Bulletin No. SB-AG-16 dated April, 1, 1984).

(i) Area between upper engine mount and first hopper attachment bracket.

(ii) Each vertical and diagonal tube intersection at the upper longeron.

(iii) Each hopper attachment bracket.

This check may be accomplished by the holder of at least a private pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by that person.

(b) If cracks are found as a result of any check required by paragraph (a), prior to further flight, install the tubular split-sleeve modification (P/N CK-AK-19) on both upper longerons in accordance with Ayres Corporation Service Bulletin No. SB-AG-16, dated April 1, 1984.

(c) Within one hundred (100) hours time-in-service after the effective date of this AD, install the tubular split-sleeve modification (P/N CK-AG-19) on both upper longerons in accordance with Ayres Corporation Service Bulletin No. SB-AG-16, dated April 1, 1984.

(d) The checks required by paragraph (a) may be discontinued when the tubular split-sleeve modification (P/N CK-AG-19) is incorporated.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where the modification required by this AD may be accomplished.

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA Central Region; Telephone (404) 763-7428.

(Secs. 331(a), 601 and 603 of the Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Publ L. 97-449, January 12, 1983) § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective September 21, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84-09-03, issued May 7, 1984.

Issued in Kansas City, Missouri, on September 6, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-24879 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ASW-29; Amdt. 39-4914]

Airworthiness Directives; Hiller Model UH-12D and UH-12E Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes a currently effective airworthiness directive (AD) which requires a one-time inspection and repair or replacement, if necessary, of an engine mount fitting on certain Hiller Model UH-12 series helicopters converted to turbine power. This superseding AD is required because an engine mount fitting has failed, necessitating expansion of the original AD to include repetitive inspections for the purpose of detecting fatigue cracks in the engine mount fitting area. This AD requires repetitive inspections, or replacement, if necessary, of affected engine mounts of certain Hiller Model UH-12D and UH-12E series helicopters to preclude failure of the engine mount which could result in loss of the helicopter.

DATE: *Effective:* September 20, 1984.

Compliance schedule: As prescribed in body of the AD.

ADDRESSES: The applicable service information may be obtained from Hiller Helicopters, 2075 West Scranton Avenue, Porterville, California 93257.

A copy of the service information may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Richard Yarges, Aerospace Engineer, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, Northwest Mountain Region, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Telephone (206) 431-2925.

SUPPLEMENTARY INFORMATION: This amendment supersedes Amendment 39-3538 [44 FR 50035; August 27, 1979], AD 79-18-01, currently requiring a one-time inspection and repair or replacement, as necessary, of an engine mount fitting on certain Hiller Model UH-12 series helicopters.

AD 79-18-01 is the result of cracks detected in the outer gimbal forward attach fitting of Hiller engine mount Part No. 63181-5. The applicability of AD 79-18-01 is limited to Hiller Model UH-12D and Model UH-12E series helicopters which have been converted to turbine power under Soloy Conversions, Ltd., Supplemental Type Certificate (STC) SH177WE or SH178WE.

Because of a recent accident which resulted from the failure of this attach fitting due to progressive fatigue cracking, the FAA has determined that repetitive inspections are necessary.

Therefore, AD 79-18-01 is being superseded by a new AD requiring repetitive inspections for evidence of fatigue cracks on all outer gimbal forward attach fittings of engine mount Part No. 63181-5, installed on Hiller Model UH-12D and UH-12E series helicopters converted to turbine power, without exception.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It is certified that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by deleting Amendment 39-3538, AD 79-18-01, and adding the following new airworthiness directive:

Hiller Helicopters, a subsidiary of Rogerson Aircraft Corp (formerly Hiller Aviation): Applies to Model UH-12D and UH-12E series helicopters equipped with engine mount Part No. 63181-5 certificated in any category which have been converted to turbine power by STC SH177WE or SH178WE.

Compliance is required as indicated (unless already accomplished).

(a) Within the next 20 hours time in service after the effective date of this AD, and thereafter at intervals not to exceed 600 hours' time in service from the last inspection, remove the paint from the outer gimbal forward attach fitting of the Hiller engine mount Part No. 63181–5 and dye penetrant or magnetic particle inspect the gusset weld beads for cracks on both the front and back sides of the gusset.

(b) If cracks are found, replace the engine mount Part No. 63181–5 before further flight.

(c) Prior to or immediately following installation or reinstallation of engine mount Part No. 63181–5 in any of the Model UH–12 series helicopters listed above, perform the inspection required by paragraph (a) of this AD.

(d) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

This supersedes Amendment 39–3538 [44 FR 50035; August 27, 1979], AD 79–18–01.

This amendment becomes effective September 20, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Issued in Fort Worth, Texas, on September 4, 1984.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84–24851 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–CE–22–AD; Amdt. 39–4915]

Airworthiness Directives; Walter Kidde and Overland Aviation Services Co. Explosive Cartridges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Walter Kidde and Overland Aviation Services Co. aircraft fire extinguisher discharge cartridges which requires inspection for the presence of aluminum foil in the electrical receptacles of these cartridges installed in some air carrier and general aviation aircraft. The aluminum foil used as a safety measure during shipping and handling of the explosive cartridges has been left on the terminals of the electrical receptacle when the cartridge is installed in the aircraft fire extinguisher bottles. The aluminum foil may short out the terminals and cause the cartridge not to fire, thus preventing the fire extinguisher from discharging. The required action will detect and correct this condition.

DATES: *Effective Date:* September 21, 1984.

Compliance: As indicated in the body of the AD.

ADDRESSES: Walter Kidde Telex PS–317, applicable to this AD, may be obtained from Walter Kidde, Division of Kidde, Inc., Wilson, North Carolina 27893; Information respecting the Overland Aviation Cartridges may be obtained from Overland Aviation Services Co., 10271 Bach Blvd., St. Louis, Missouri 63132.

FOR FURTHER INFORMATION CONTACT: Arthur W. Nelson, ACE–140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1075 Innerloop Road, College Park, Georgia 30337; Telephone number (404) 763–7435.

SUPPLEMENTARY INFORMATION: For many years it has been an accepted industry practice to insert aluminum foil in the electrical receptacle of an explosive cartridge used to discharge fire extinguisher bottles as a safety measure during shipping and handling. This is done by both the manufacturers and the users (i.e., during routine fire extinguisher maintenance). Some of the cartridges had a warning tag installed by the manufacturer which stated, "All aluminum foil must be removed from electrical receptacle (connector) prior to mating of a cartridge with (fire extinguisher) container." Others did not have the warning tag. Recently, a shorting cap has been developed for certain cartridges that eliminates both the need to use the foil and the addition of the warning tag. It has always been the responsibility of the end user to remove the shorting device when the cartridge is installed in the aircraft. Some Walter Kidde cartridges were shipped with both a shorting cap and aluminum foil without the warning tag. Cartridges were also shipped with the aluminum foil in the connector, no shorting caps and no warning tag.

Recently, McDonnell Douglas Corporation installed cartridges in the fire extinguishers on several DC–10 aircraft by removing the shorting cap but not the aluminum foil. When the problem was discovered, they issued Service Bulletins calling for a one-time inspection of all cartridges on DC–8, DC–9 and DC–10 aircraft to ensure that the foil is removed. It is possible that other airframe manufacturers and aircraft operators which utilize fire extinguishers with discharge cartridge Kidde Part Numbers 873571, 876296, 897776, 898558, and Overland Aviation Part Numbers OA841155, OA873571, OA876296 and OA876299 are also failing to remove this foil during installation. Testing results indicate aluminum foil in the electrical receptacles may result in shorting the cartridge and cause the fire extinguisher to be inoperative. This situation would not be detected by any on-board test. Also, it is not possible to isolate the existence of foil to any lot number or manufacture date. The only positive method of determining the existence of foil is to remove the electrical lead to the installed subject connectors and conduct a one-time visual inspection to ensure that the aluminum foil is not present.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other products of the same design, an AD is being issued requiring a one-time inspection of Walter Kidde P/N 873571, 876296, 897776 and 898558 fire extinguisher cartridges manufactured prior to July 1984, and Overland Aviation Service Co. P/N OA891155, OA873571, OA876296 and OA876299 fire extinguisher cartridge manufactured prior to August 7, 1984, installed on any airplane. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13), is amended by adding the following new AD:

Walter Kidde and Overland Aviation Service Co.: Applies to Walter Kidde discharge cartridges Part Number (P/N) 873571, 876296, 897776 and 898558 manufactured prior to July 1984, and Overland Aviation Service Co. discharge cartridges P/N OA841155, OA873571, OA876296 and OA876299 manufactured prior to August 7, 1984.

Compliance: Required within thirty (30) calendar days or at installation on any aircraft, whichever occurs later, unless already accomplished.

To prevent hazards in flight associated with the non-operation of the fire extinguisher caused by non-firing of the discharge cartridge(s), accomplish the following:

(a) Pull the applicable circuit breakers and disconnect the fire extinguisher bottle electrical plugs from the discharge cartridge. Inspect the electrical receptacle of the cartridge for compressed aluminum foil, which may have the appearance of solder and remove if present. Reinstall the plug and reset the applicable circuit breaker.

(b) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1075 Innerloop Road, College Park, Georgia 30337; Telephone (312) 694-7357.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 as amended U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on September 21, 1984.

Issued in Kansas City, Missouri, on September 6, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-24878 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 84-ACE-04]

Alteration of Transition Area; Fairfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Fairfield, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Fairfield Municipal Airport, Fairfield, Iowa, utilizing the Ottumwa, Iowa, VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Fairfield, Iowa, Municipal Airport is being established utilizing the Ottumwa VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at Fairfield, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 21072 and 21073 of the **Federal Register** dated May 18, 1984, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Fairfield, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the proposed rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, by altering the following transition area:

Fairfield, Iowa

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Fairfield Municipal Airport (Latitude: 41°03'15"N, Longitude: 91°58'40"W); and within 3 miles each side of the 186° bearing from Fairfield Municipal Airport, extending from the 6-mile radius area to 11 miles south of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

This amendment becomes effective at 0901 g.m.t. December 20, 1984.

Issued in Kansas City, Missouri, on September 4, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-24881 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemptions From Speculative Position Limits for Certain Spread Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is amending certain of the previously adopted federal speculative position limits in domestic agricultural commodities. These amendments provide for a limited exemption from the federal speculative position limits for positions spread between options on a futures contract and the underlying futures contract pursuant to Commission-approved exchange rules.

DATE: These rules shall be effective October 22, 1984.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, at the above address. Telephone: (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Background

On July 11, 1984, the Commodity Futures Trading Commission ("Commission") proposed amendments to the federal speculative limits in certain domestic agricultural commodities. These proposed amendments were made in light of the Commission's previously adopted amendments to its regulations governing a three-year pilot program which permitted the trading of commodity options in domestic agricultural commodities. 49 FR 2752.[1] Included in this pilot program for options on futures contracts in domestic agricultural commodities are those commodities enumerated in section 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1983).[2] The pilot program for options on these contracts was included in the existing regulatory structure for exchange-traded options where possible.

Speculative position limits, either federal or exchange-set, are required for all designated contracts. Federal speculative position limits have long been established for many domestic agricultural commodities. *See*, Part 150 of the Commission Rules, 17 CFR Part 150 (1983). For those commodities which do not have federal limits, exchanges are required to establish speculative limits by exchange rule. *See*, Commission Rule 1.61, 17 CFR 1.61. Because the federal speculative limits were adopted during a period in which options on those contracts were statutorily barred, federal limits do not extend to options on domestic agricultural commodities.[3] Nor do the federal speculative limits provide specifically for futures/options spreads, as they do for spreading between certain futures contracts.

Commission Rule 1.61, 17 CFR 1.61, provides that exhanges must submit for Commission approval pursuant to Section 5a(12) of the Act, 7 U.S.C. 7a(12) (1983), exchange rules establishing speculative position limits for futures contracts and options not having federal or exchange-set speculative limits. In addition to exchange rules providing for limits on the net maximum long or short positions which any one person may hold or control, Rule 1.61 requires that contract markets describe an appropriate method of enforcement of speculative position limits, including procedures for determining the applicability of, and compliance with, rules concerning hedging or other exemptions.

II. Proposed Rules

The rules as proposed provided for a limited exemption from federal speculative position limits for positions spread between options on a futures contract and the underlying domestic agricultural futures contract pursuant to Commission-approved exchange rules. The Commission provided for a thirty-day comment period on these proposed rules. In response, the Commission received comments from a grain marketing cooperative, a large agri-business company and two commodity futures exchanges.

In general, the first two commentors opposed the rules as proposed. They reasoned that, in light of the pilot nature of the option program, a cautious approach not permitting any revisions to federal limits should be followed at this time. In particular, one commentor stated that the proposed rules would exacerbate the "depth of apprehension and mistrust which presently exists within the farming community and grain business regarding the futures exchanges in Chicago." This commentor opined that implementation of the proposal would increase the volatility of the futures markets. The second commentor stated that the federal speculative limits "were set in place in an effort to prevent market distortion and possible manipulation" and questioned the Commission's rationale that increased speculative position limits for spread positions are appropriate in light of the reduced net exposure from such positions. It continued that such spreads may have a distorting relationship on the various price differentials and on the flat prices of the contracts in each leg of the spread.

The Commission recognizes that generally spread positions are not entirely without risk or that they lack the ability to affect prices. In explaining the proposed rule, the Commission noted that each leg of a spread represents a "one sided" position in the market in which it is placed and that extraordinarily large spread relationships have the potential of distorting price relationships. 48 FR 28254. The Commission also noted that this concern was particularly relevant for agricultural commodities. Accordingly, the Commission stated that exemptions or higher speculative limits for spread positions should be established with caution and in that regard provided an explanation of the salient features of exchange exemptive procedures it contemplated would be approved by the Commission.

Moreover, although the main rationale for federal speculative limits is to prevent sudden or unreasonable or unwarranted price movements arising from excessive speculation, the Commission has recognized that the overall impact of excessively large speculative limits applies to both their initial market effect and to the subsequent impact from a speculator's possibly over-extended position. Thus, the Commission has maintained in reviewing currently extant exchange-set speculative limits that such limits should also take into account the net financial exposure of traders under such limits as well as the liquidity of the affected markets.

With respect to the argument that, because the options program is new, the Commission should not undertake this rulemaking at this time, the Commission notes that it has proceeded most cautiously in establishing the pilot option program. However, as discussed above, higher speculative limits for spread positions are a well accepted practice in both futures and options trading and existing federal regulations currently permit higher position limits for certain spread positions. Accordingly, the Commission does not view such a provision as experimental, particularly when viewed in the context of the stringent guidelines for Commission approval of proposed exchange spreading exemptions which are discussed below. Moreover, the Commission notes that the current federal speculative position limits for "outright" or "one-sided" positions in futures contracts are unaffected by these amendments in that such limits continue to apply to all outright futures positions including those which may result from the exercise of an option.

The futures exchange's comments were generally favorable to the Commission's initiative, supporting the concept of the exemption for futures/options spreads and the concept that the exemption would be made pursuant to Commission-approved exchange rules. The exchange took exception, however, to certain technical aspects of the proposed rules and of the guidelines provided by the Commission for the elements which should be included in acceptable exchange rules.

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[1] These amendments were adopted subsequent to the repeal of a statutory bar to such options trading found in Section 4c of the Commodity Exchange Act, 7 U.S.C. 6c (1978). *See*, Section 206 of the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2204, 2301 (1983).

[2] These commodities are wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Irish potatoes, wool, wool tops, fat and oil (including lard, tallow, cotton seed oil, peanut oil, soybean oil, and all other fats and oils), cotton seed meal, cotton seed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

[3] Federal speculative position limits apply to grain, cotton, rye, soybeans, eggs, potatoes, corn, and wheat. Of these commodities, barley and flaxseed (grains), rye, and eggs are no longer actively traded.

In this regard the exchange commentor questioned the Commission's guidelines involving what trading strategies are contemplated to be included as exempted spread or arbitrage positions. The Commission in its explanation of the proposed rules explained that exempted spread or arbitrage positions should be limited under exchange rules to futures/options positions on the same board of trade in the same commodity, which are, as a totality, offsetting. 49 FR 28254. The exchange commentor suggested that a spread and arbitrage exemption should nonetheless be permitted on a discretionary basis between inter-commodity and inter-exchange spreads and that positions which are delta-neutral should be included within the class of transactions for which an automatic, predetermined exemptive level is established. Delta-neutral option/futures spreads are positions on the opposite side of the market in which the number of option contracts is such that the total change in price of the option positions will closely offset the change in price of the futures position.

As explained below, the Commission has reconsidered the criteria listed in its explanation of the proposal and believes that a delta-equivalent system of evaluating futures/options spread positions and not an automatic one-to-one spread position exemption[4] is the more appropriate means to lessen any possible harmful market effects from these exemptions.[5]

In this connection, however, the Commission notes that in reviewing exchange rules submitted for its approval, it will rigorously scrutinize the exchanges submission under paragraph (d)(4) of Commission Rule 1.61 concerning the method of enforcement. The Commission believes that inclusion of any spread exemptions on a delta-equivalent basis must be pursuant to a specific, readily enforceable system for identifying and monitoring those positions which are delta-neutral. In addition, because delta relationships between futures and options vary over time and between specific combinations of instruments, the Commission will scrutinize carefully any proposed rules concerning the manner in which persons subject to such exemptions would be required to maintain compliance with the applicable limit.

With respect to inter-commodity spreads, the Commission does not necessarily disagree with the commentor's observation that such positions may result in less risk exposure than one-sided or outright positions. However, the Commission believes that such positions offer the potential for significantly more market exposure and impact than the limited, intra-commodity spread positions between instruments having the same delivery months contemplated under the proposed rules. Moreover, it should be noted that for the options pilot program for non-domestic agricultural commodities the Commission has not approved any exchange rules which would exempt or otherwise provide higher speculative limits for inter-commodity spread positions between options or between options and futures contracts. Accordingly, the Commission has determined not to amend the proposed rules to recognize inter-commodity spreading at this time. However, during the trading of the options pilot program for agricultural commodities the Commission staff will monitor the nature and potential impact of any intra-commodity spread exemptions granted pursuant to these amendments as a possible basis for the future consideration of permitting inter-commodity exemptions.

The Commission has also considered the exchange commentor's views on the advisability of spreads between futures and options traded on different boards of trade and determined not to incorporate those suggestions in these rules at this time. The Commission noted in proposing these rule amendments that:

> All position levels set by the exchange, whether a predetermined absolute level for all traders, or an individual level on a case-by-case basis, must take into account, where applicable, the size of each leg of a spread and its relationship to crop years as well as the relative financial exposure of the trader *and the liquidity of the affected markets.*
> 49 FR 28254 (emphasis added.)

Although federal speculative limits provide higher position limits for such inter-market spreads between grain contracts, they have been set in view of the liquidity of each of the relevant contract markets. In the case of exchange-set speculative limits, it is not clear that such considerations concerning the relative liquidity of a second contract market can, or should, be made by the exempting contract market. Accordingly, the Commission believes that exemptions from applicable existing federal limits in such instances are inappropriate, and therefore any possible anticompetitive effect from the lack of an inter-exchange spread exemption is more than outweighed, under Section 15 of the Act, by the objectives and policies of the Act furthered by this restriction.

The other exchange which commented on this proposal is not designated as a contract market in any domestic agricultural commodity. Its comments were more general, advocating that this approach be adopted for all commodities and that floor traders be exempt from speculative position limits. As the Commission noted above, the concepts underlying this rule are not novel and follow that which is already permitted for options under Commission Rule 1.61. Moreover, the Commission does not agree that a blanket exemption for floor traders' positions is warranted since the commentor failed to demonstrate that the impact of such positions is different from that of any other speculator.

III. Guidelines for Exchange Rules

In view of the issues raised by the commentors as well as its own further consideration of the rules as proposed, the Commission wishes to clarify further the strict criteria by which it will evaluate proposed exchange rules for spread exemptions during the pilot program for options on agricultural commodities. These guidelines are as follows.

First, the Commission contemplates that any exchange rules it approves for purposes of affording exemptions or higher position limits for futures/options spreads will be confined to those cases where both legs pertain to the same delivery month in the underlying futures contract. The Commission believes that this is necessary to ensure that the spread positions in fact will be as a totality, offsetting, and to minimize the possibility that the separate legs of the spread become economically independent and thereby exert an undesirable effect on the pricing in the futures and options markets. The Commission will rigorously review any proposed deviation from this guideline to ensure that the proposal nonetheless meets the criteria that such spreads be offsetting.

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[4] In the explanation accompanying the proposal the Commission stated that for "predetermined and preapproved" spread or arbitrage exemptions, exchanges might include pursuant to this rule exemptions for conversions, reverse conversions and *one to one futures options spreads*. 45 FR 28254. (emphasis added) However, upon further consideration, the Commission believes that a nominal specification of one futures contract-to-one options contract is not sufficient to assure that futures/options spread positions are economically balanced and that a specification of delta-neutrality is more appropriate to achieve this objective.

[5] In this respect, one commentor pointed out that the guidelines in the proposal concerning one-to-one futures options spreads.

Applies a literal interpretation of its requirement that all exempted spreads be totally offsetting which ignores those trading strategies which result in real, instead of merely facial, offsetting.

Second, exchange rules approved by the Commission must provide exemptions or higher limits for only those positions which are economically balanced arbitrage or spread positions, *e.g.*, conversions, reverse conversions, or "delta neutral" spread positions. This will ensure that positions acquired under the exemption in fact will be offsetting, and not for the purpose of acquiring additional futures position which, because of the lack of economic balance, are essentially one-sided.

The requirement that such positions be ofsetting as a totality, through the use of a delta neutral system, for example, is necessary because these rules involve exemptions from speculative limits on futures as well as on options.[6] Thus, exchange rules which provide for exemptions based on their delta neutrality will be consistent with this guideline, but those for simple one-to-one positions will not be. The Commission is modifying the rules as proposed to reflect specifically the requirement that the legs of the spread or arbitrage positions be offsetting.

Third, as noted in the explanation of the rules as proposed, the Commission anticipates that the exchange rules which can be approved pursuant to these amendments to Part 150 will provide for a limitation on the size of futures positions which can be acquired in connection with a predetermined and preapproved futures/options spread or arbitrage exemption. The Commission will review these limitations in view of the liquidity of the relevant futures market. Those transactions not within the enumerated class must be approved by the exchange on a case-by-case basis taking into account, among other things, the liquidity of the affected markets and the relative financial exposure of the trader. In this connection, in considering whether to approve exchange rules which allow individual exemptions which are not specifically enumerated as to type or amount, the Commission will require exchange rules to detail the specific criteria to be considered by the exchange in determining the nature and amount of such exemptions. These criteria must be sufficiently specific to assure the Commission that the objectives of the position limits in Section 150 of the Regulations are met on a continuous basis.

IV. Related Issue: Regulatory Flexibility Act.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting rules, consider their impact on small businesses. The Commission has previously determined that large traders are not "small entities" for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). The requirements of the RFA therefore do not apply to traders who are trading at levels high enough to trigger these exemptions. Accordingly, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 150

Commodity exchange rules, Speculative position limits, Spreading exemptions from speculative position limits, Commodity futures.

In consideration of the foregoing and pursuant to the authority in Sections 4a, 4c(b), 4c(c), and 8a of the Commodity Exchange Act, as amended, 7 U.S.C. 6a, 6c(b), 6c(c), and 12a (1982), the Commission amends Part 150 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. Section 150.1 is amended by redesignating paragraph (a)(1) as paragraph (a) introductory text and revising it as follows; by redesignating paragraph (a)(2) as paragraph (a)(1), and by adding new paragraph (a)(2) follows:

§ 150.1 Limits on position in grain for futures delivery.

(a) Position limits. The limit on the maximum net long or net short position which any one person may hold or control under contracts for futures delivery for grain on or subject to the rules of any one contract market except as specifically authorized by paragraph (a)(1) of this section is 2,000,000 bushels in any one future or in all futures combined.

(1) * * *

(2) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

2. Section 150.2 is amended by adding new paragraph (a)(1) as follows:

§ 150.2 Limits on positions in cotton for future delivery.

(a) * * *

(a)(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and options contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

3. Section 150.4 is amended by adding new paragraph (a)(1) as follows:

§ 150.4 Limits on positions in soybeans for future delivery.

(a) * * *

(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

4. Section 150.10 is amended by adding paragraph (a)(2) as follows:

§150.10 Limits on positions in potatoes for future delivery.

(a) * * *

(2) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraphs (a) and (a)(1) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this chapter.

* * * * *

5. Section 150.11 is amended by adding paragraph (a)(1) as follows:

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[6] Among other things, one major objective of specifying speculative limits on options contracts is to ensure that trading activity in options do not undermine the primary market for futures contracts. 46 FR 50944. In this respect it should be noted that although the Commission has previously approved rules which provide for specific enumerated exemptions or higher speculative limits levels for options positions which are spread against futures contracts, none of these previous rules exempted positions from exchange specified speculative position limits on the futures side of the spread.

§ 150.11 Limits on positions in corn for future delivery.

(a) * * *

(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraph (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this chapter.

* * * * *

6. Section 150.12 is amended by adding paragraph (a)(1) as follows:

§150.12 Limits on positions in wheat for future delivery.

(a) * * *

(1) To the extent that the positions held or controlled by any person are spread or arbitrage positions between futures and option contracts traded on the same board of trade in any one commodity which are as a totality offsetting, the limit on net positions set forth in paragraphs (a) of this section may be exceeded on such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.61 and 1.41 of this Chapter.

* * * * *

Issued in Washington, D.C. on September 14, 1984.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84-24949 Filed 9-19-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM84-20-000; Order No. 396]

Delegation to the General Counsel

Issued: September 14, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Effective September 15, 1984, the Office of Opinions and Review (OOR) will be merged into the Office of the General Counsel (OGC). As a result of this reorganization, the functions previously delegated to the Director of OOR are redelegated to the General Counsel or his designee. The final rule amends the delegations of authority to reflect this reorganization.

EFFECTIVE DATE: September 15, 1984.

FOR FURTHER INFORMATION CONTACT: Albert J. Francese, Rulemaking and Legislative Analysis Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Summary

On August 27, 1984, the Chairman of the Federal Energy Regulatory Commission (Commission) announced the merger of the Office of Opinions and Review (OOR) into the Office of the General Counsel (OGC), effective on September 15, 1984. As a result of this reorganization, the functions previously delegated to the Director of OOR will be redelegated to the General Counsel.

This final rule codifies, in 18 CFR 375.309, this redelegation of authority to the General Counsel. This final rule also removes § 375.310 in its entirety. That section contains the now-superseded delegations of authority to OOR. In making these revisions, the Commission is not substantively changing the authorities that have been previously delegated by the Commission.

II. Effective Date

Pursuant to 5 U.S.C. 553(b) (1982), this rule is issued without prior notice and comment because it is a rule of agency organization, procedure or practice. Because the rules are necessary to conform the Commission's regulations to existing internal agency practices and to provide the public with essential guidance concerning Commission reorganization, the Commission finds good cause under 5 U.S.C. 553(d) (1982) to make this rule effective immediately upon issuance.

List of Subjects in 18 CFR Part 375

Authority delegations (Government Agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Part 375 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 375—[AMENDED]

1. Part 375 is amended as follows:

a. The authority citation continues to read as follows for Part 375:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

b. In § 375.309, paragraph (e) is revised and a new paragraph (f) is added to read as follows:

§ 375.309 Delegations to the General Counsel

* * * * *

(e) Designate presiding officers for proceedings under Subpart I and Subpart J of Part 385 of this chapter, who shall have all the authorities and duties vested in presiding officers by those rules and other applicable rules in conducting proceedings pursuant to section 503(c) and section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.* and section 502(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*

(f) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303, 381.304, and 381.405 of this chapter in accordance with § 381.106 of this chapter.

§ 375.310 [Removed]

C. Section 375.310 is removed.

[FR Doc. 84-24666 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Sulfadimethoxine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's), one held by Bayvet Division of Miles Laboratories, Inc., providing for use of Suldixine™ (sulfadimethoxine) Tablets for treating bacterial infections in dogs and two held by Beecham Laboratories, Division of Beecham, Inc., for use of Sudine® (sulfadimethoxine) Tablets and Symbio® (sulfadimethoxine) Injection for treating bacterial infections in dogs and cats. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of these NADA's.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Bayvet's NADA 13-602 for Suldixine™ (sulfadimethoxine) Tablets and Beecham's NADA 13-526 for Sudine® (sulfadimethoxine) Tablets and NADA 13-527 for Symbio® (sulfadimethoxine) Injection. This document removes those portions of the regulations that reflect approval of these NADA's

List of Subjects

21 CFR Part 520

Animal drugs, oral use.

21 CFR Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), Parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.2220b [Amended]

1. In Part 520, § 520.2220b *Sulfadimethoxine tablets and boluses* is amended by removing paragraphs (b) (2) and (4) and (e)(2)(i) and designating paragraphs (b)(2) and (e)(2)(i) as [Reserved].

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 522, § 522.2220 *Sulfadimethoxine injection* is amended by revising paragraph (b)(2) and (3)(i) to read as follows:

§ 522.2220 Sulfadimethoxine injection.

* * * * *

(b) * * *

(2) *Sponsors.* See No. 000859 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) It is used or intended for use in the treatment of sulfadimethoxine-susceptible bacterial infections in dogs.

* * * * *

Effective date. October 1, 1984.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: September 7, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-24088 Filed 9-19-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[T.D. 7977]

Personal Services Income of Nonresident Alien Individuals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to exemptions from the withholding of income tax from the independent personal services income of nonresident alien individuals. The document also contains final regulations to clarify the procedure for obtaining, and the duty of a withholding agent when an alien individual requests, an exemption from withholding pursuant to a tax treaty. The changes are made because the existing regulations impose certain withholding requirements that may be reduced or eliminated without adversely affecting compliance with the tax laws. The regulations provide guidance to alien individuals who wish to take advantage of the liberalized rules and to withholding agents who will receive requests for treaty exemptions with respect to the personal services income of nonresident alien individuals.

DATE: The amendments are effective December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Carol T. Doran of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1983, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1441, 1461, and 1462, the Employment Tax Regulations (26 CFR Part 31) under section 3401, and the Regulations on Procedure and Administration (26 CFR Part 301) under section 7605 and 7701, all of the Internal Revenue Code of 1954. A public hearing was neither requested nor held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Discussion

Section 1441 of the Code requires that 30 percent of amounts paid to a nonresident alien individual as compensation for independent personal services be withheld by the person paying the amount (the withholding agent) to the individual. Section 1441(c)(4) of the Code gives the Service the authority to exempt, by regulations, compensation for personal services of a nonresident alien individual from 30 percent withholding. The final regulations revise existing exemptions and provide additional exemptions from withholding to alleviate overwithholding which results when tax is withheld at the 30 percent rate even though the taxpayer is subject to tax at an effective rate of less than 30 percent because the income is effectively connected with conduct of a U.S. trade or business.

The new exemptions from withholding may be obtained in two ways. Under one method, described in § 1.1441-4(b)(4), the 30 percent amount would initially be withheld in full from all payments of compensation except the final payment. Prior to receipt of the final payment, the individual may appear at an Internal Revenue Service district office and have his or her tentative income tax calculated. The individual would receive a letter from the Service stating the amount of income that is exempt from withholding and the amount, which would otherwise be withheld as tax from the final payment, that could be paid to the nonresident alien due to the exemption. Upon presentation of the letter, the withholding agent would be authorized to adjust the amount of tax withheld from the final payment. An income tax return must be filed at the usual time. A refund of any additional amounts of withheld tax in excess of the individual's liability could be obtained at that time.

Under the second method, described in § 1.1441-4(b)(3), the individual may enter into an agreement with the Service as to the amount of tax to be withheld, before actually receiving any payments. The agreement would take into account the anticipated gross income, personal exemptions, certain expenses of the alien individual, relevant income tax treaty provisions, and the appropriate rate of tax. The procedures for entering into this withholding agreement would be set forth by the Service.

The final regulations also revise and clarify existing procedure with respect to a request by a nonresident alien individual under § 1.1441-4(b)(2) for an exemption from withholding on compensation for independent personnel services because of an income tax treaty or personal exemption amount. The final regulations require the alien individual to use a form developed by the Internal Revenue Service. The withholding agent must be reasonably satisfied that, based on the information supplied on the form, the individual's compensation qualifies for the exemption. The withholding agent must indicate his or her acceptance on the form and forward a copy to the Director of the Foreign Operations District 10 days prior to the effective date of the exemption. If the withholding agent is not reasonably satisfied that the alien is entitled to a treaty exemption, the agent is not relieved of liability for withholding the full 30 percent. The regulation thus adopts the standard for withholding agents found in Rev. Rul. 76-224, 1976-1 C.B. 268.

The proposed regulations proposed to revise § 1.1441-3(f) to provide that domestic partnerships must withhold 30 percent on all actual distributions to nonresident alien partners. One commentor suggested that this expansion of the withholding obligation was too broad in that it required withholding on income that is effectively connected with the conduct of a U.S. trade or business. The commentor suggested that the withholding requirement be limited to those distributions which represent income items described in paragraphs (a) and (b) of § 1.1441-2. The suggestion was adopted.

Miscellaneous updating, clarifying, and corrective changes to the withholding regulations also are adopted.

Regulatory Flexibility Act and Executive Order 12291

The Secretary of the Treasury has certified that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6), and a Regulatory Flexibility Analysis is not required. The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Paperwork Reduction Act of 1980

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of this regulation is Carol T. Doran of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.861-1—1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, Sources of income, United States investments abroad.

26 CFR 1.1441-1—1.1465-1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 31, and 301 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

§ 1.871-6 [Amended]

Paragraph 1. Paragraph (c) of § 1.871-6 is amended by removing "§ 1.1465.1" and inserting in its place "§ 1.1441-7".

§ 1.1441-2 [Amended]

Par. 2. Section 1.1441-2(c)(1) is amended by removing the phrase "as amended," in the first sentence and inserting in its place the phrase "as amended (8 U.S.C. 1101(a)(15)(F) or (J)).".

Par. 3. Paragraphs (f) and (h) of section 1.1441-3 are revised to read as follows:

§ 1.1441-3 Exceptions and rules of special application.

* * * * *

(f) *Partnerships and fiduciaries.* Domestic partnerships are required to withhold the tax at source under § 1.1441.1 on items of income described in paragraphs (a) and (b) of § 1.1441-2 that are included in the distributive share (including amounts that are not actually distributed) of a member of such partnership who is a nonresident alien individual, nonresident alien or foreign fiduciary of a trust or estate, foreign partnership, or foreign corporation. Resident or domestic fiduciaries of trusts and estates are required to withhold the tax at source under § 1.1441-1 on all items of income described in paragraphs (a) and (b) of § 1.1441-2 that constitute gross income from sources within the United States (including amounts that are not actually distributed) of beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations. Because the gross income allocable to a partner and the income includable in the gross income of the beneficiary cannot be determined until the end of a taxable year of the partnership, trust, or estate, the partnership and the fiduciary of a trust or estate shall withhold under this section on all distributions to such partners and beneficiaries during the taxable years to the extent such distributions include items of income described in paragraphs (a) and (b) of § 1.1441-2. If the tax on actual distributions exceeds the tax on amounts includable in the gross income of the partner or beneficiary, the partner or beneficiary may file a claim for refund together with appropriate supporting evidence in accordance with paragraph (h) of this section. If a partnership or a fiduciary withholds under this section on a distributive partnership share or distributable net income of a trust or estate before the income is actually distributed to a partner or beneficiary, then withholding is not required when such income is subsequently distributed. Income described in paragraphs (a) and (b) of § 1.1441-2 that is paid to a foreign partnership or to a nonresident alien or foreign fiduciary is subject to withholding under § 1.1441-1 even though the members of the partnership or the beneficiaries of the trust or estate are individuals who are citizens or residents of the United States or are domestic corporations.

* * * * *

(h) *Claims for refund.* A claim for refund referred to in paragraph (b) (1), (c) (3), (d) (1), or (f) of this section shall be made in accordance with the provisions of §§ 301.6402–2 and 301.6402–3 of this chapter (Regulations on Procedure and Administration).

* * * * *

§ 1.1441–4 [Amended]

Par. 4. Section 1.1441–4 is amended as follows:

1. Paragraph (a)(1) is amended as follows:

a. The first sentence is amended by removing the word "his" and inserting in its place the phrase "the person's", removing the word "he" and inserting in its place the phrase "the person" and removing the phrase "subparagraph (2) of this paragraph" and inserting in its place the phrase "paragraph (a)(2) of this section".

b. The second sentence is amended by removing the word "subparagraph" and inserting in its place the words "paragraph (a)(1)".

c. The following sentences are added immediately before the last sentence: "In determining whether services are performed by a foreign corporation or by an individual, see Revenue Ruling 74–330, 1974–2 C.B. 278, and Revenue Ruling 74–331, 1974–2 C.B. 282. For rules with respect to compensation for personal services performed by an individual, see paragraph (b) of this section."

2. The first sentence of paragraph (a)(2) is amended by removing the phrase "subparagraph (1) of this paragraph" and inserting in its place the phrase "paragraph (a)(1) of this section".

3. Paragraphs (b)(1) and (b)(2) are revised and new paragraphs (b)(3), (b)(4), and (b)(5) are added, the revised and new paragraphs to read as set forth below.

4. Paragraph (f)(1) is amended by removing the words "International Operations" in the first sentence and inserting in their place the words "the Foreign Operations District", and by removing the words "International Operations" both times they appear in the last sentence and inserting in their place both times the words "the Foreign Operations District".

5. Paragraph (f)(2) is amended as follows:

a. The first sentence of subdivision (i) is amended by removing the phrase "subparagraph (1) of this paragraph" and inserting in its place the phrase "paragraph (f)(1) of this section", and by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District".

b. The last sentence of subdivision (i) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District".

c. The first sentence of subdivison (ii) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District", and by adding the words "or her" immediately after the word "his".

d. The second sentence of subdivision (ii) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District".

e. The first sentence of subdivision (iii) is amended by removing the words "International Operations" both times they appear and inserting in their place both times the words "the Foreign Operations District".

6. The second sentence of paragraph (g) is amended by adding the phrase "or her" immediately after the word "his", and by adding the phrase "or she" immediately after the word "he".

7. The heading of paragraph (i) is revised to read: *"Income of foreign central bank of issue or Bank for International Settlements."*

8. The first sentence of paragraph (i)(2) is amended by removing the phrase "subparagraph (1) of this paragraph" and inserting in its place the phrase "paragraph (i)(1) of this section".

§ 1.1441–4 Exemptions from withholding.

* * * * *

(b) *Compensation for personal services of an individual*—(1) *Exemption from withholding.* Withholding is not required under § 1.1441–1 from salaries, wages, remuneration, or any other compensation for personal services of a nonresident alien individual if such compensation is effectively connected with the conduct of a trade or business within the United States and—

(i) Such compensation is subject to withholding under section 3402, relating to withholding of tax at source on wages, and the regulations thereunder.

(ii) Such compensation would be subject to withholding under section 3402 but for the provisions of section 3401(a) (other than paragraph (6) thereof) and the regulations thereunder.

(iii) Such compensation is for services performed by a nonresident alien individual who is a resident of Canada or Mexico and who enters and leaves the United States at frequent intervals.

(iv) Such compensation is, or will be, exempt from the income tax imposed by chapter 1 of the Code by reason of a provision of the Internal Revenue Code or a tax treaty to which the United States is a party or

(v) Such compensation is paid after January 3, 1979 as a commission or rebate paid by a ship supplier to a nonresident alien individual, who is employed by a nonresident alien individual, foreign partnership, or foreign corporation in the operation of a ship or ships of foreign registry, for placing orders for supplies to be used in the operation of such ship or ships with the supplier. See section 162(c) and the regulations thereunder for denial of deductions for illegal bribes, kickbacks, and other payments.

(2) *Manner of obtaining withholding exemption under tax treaty*—(i) *In general.* In order to obtain the exemption from withholding by reason of a tax treaty, provided by paragraph (b)(1)(iv) of this section, a nonresident alien individual must submit a statement (described in paragraph (b)(2)(ii) of this section) to each withholding agent from whom amounts are to be received. A separate statement must be filed for each taxable year of the alien individual. If the withholding agent is satisfied that an exemption from withholding is warranted (see paragraph (b)(2)(iii) of this section), the statement shall be accepted in the manner set forth in paragraph (b)(2)(iv) of this section. The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted statement is forwarded to the Director of the Foreign Operations District.

(ii) *Statement claiming withholding exemption.* The statement claiming an exemption from withholding shall be made on Form 8233. Form 8233 may be used for claiming exemption from withholding under tax treaties to which the United States is a party or with respect to the personal exemption amount described in § 1.1441–3(e)(2). Form 8233 shall be dated, signed by the person claiming the exemption from withholding, and verified by a declaration that the statements are made under the penalties of perjury. Form 8233 shall contain—

(A) The individual's name, address, United States taxpayer identification number, and United States visa number, if any,

(B) The country that issued the individual's passport and the number of such passport, or the individual's permanent address if a citizen of Canada or Mexico.

(C) The taxable year for which the statement is to apply, the compensation to which it relates, and the amount (or estimated amount if exact amount not known) of such compensation,

(D) A statement that the individual is not a citizen or resident of the United States,

(E) The number of personal exemptions claimed by the individual,

(F) A statement as to whether the compensation to be paid to him or her during the taxable year is or will be exempt from income tax and the reason why the compensation is exempt,

(G) If the compensation is exempt from withholding by reason of an income tax treaty to which the United States is a party, the tax treaty and provision under which the exemption from withholding is claimed and the country of which the individual is a resident, and

(H) Sufficient facts to justify the claim in exemption from withholding.

(iii) *Review by withholding agent.* The exemption from withholding provided by paragraph (b)(1)(iv) of this section shall not apply unless the withholding agent accepts (in the manner provided in paragraph (b)(2)(iv) of this section) the statement on Form 8233 supplied by the nonresident alien individual. Before accepting the statement the withholding agent must examine the statement. If the withholding agent knows or has reason to know that any of the facts or assertions on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption cannot be readily determined, the withholding agent may not accept the statement on Form 8233 and is required to withhold under this section. If the withholding agent accepts the statement and subsequently finds that any of the facts or assertions contained on Form 8233 may be false or that the eligibility of the individual's compensation for the exemption can no longer be readily determined, then the withholding agent shall promptly so notify the Director of the Foreign Operations District by letter, and the withholding agent is not relieved of liability to withhold on any amounts still to be paid. If the withholding agent is notified by the Foreign Operations District that the eligibility of the individual's compensation for the exemption is in doubt or that such compensation is not eligible for the exemption, the withholding agent is required to withhold under this section. The rules of this paragraph are illustrated by the following examples.

Example 1. C, a nonresident alien individual, submits Form 8233 to W, a withholding agent. The statement on Form 8233 does not include all the information required by paragraph (b)(2)(ii) of this section. Therefore, W has reason to know that he or she cannot readily determine whether C's compensation for personal services is eligible for an exemption from withholding and, therefore, W must withhold.

Example 2. D, a nonresident alien, is performing services for W, a withholding agent. W has accepted a statement on Form 8233 submitted by D, according to the provisions of this section. W receives notice from the Internal Revenue Service that the eligibility of D's compensation for a withholding exemption is in doubt. Therefore, W has reason to know that the eligibility of the compensation for a withholding exemption cannot be readily determined, as of the date W receives the notification, and W must withhold tax under section 1441 on amounts paid after receipt of the notification.

Example 3. E, a nonresident alien individual, submits Form 8233 to W, a withholding agent for whom E is to perform personal services. The statement contains all the information requested on Form 8233. E claims an exemption from withholding based on a personal exemption amount computed on the number of days E will perform personal services for W in the United States. If W does not know or have reason to know that any statement on the Form 8233 is false or that the eligibility of E's compensation for the withholding exemption cannot be readily determined, W can accept the statement on Form 8233 and exempt from withholding the appropriate amount of E's income.

(iv) *Acceptance by withholding agent.* If after the review described in paragraph (b)(2)(iii) of this section the withholding agent is satisfied that an exemption from withholding is warranted, the withholding agent may accept the statement by making a certification, verified by a declaration that it is made under the penalties of perjury, on Form 8233. The certification shall be—

(A) That the withholding agent has examined the statement,

(B) That the withholding agent is satisfied that an exemption from withholding is warranted, and

(C) That the withholding agent does not know or have reason to know that the individual's compensation is not entitled to the exemption or that the eligibility of the individual's compensation for the exemption cannot be readily determined.

The exemption from withholding becomes effective for payments made at least ten days after a copy of the accepted statement is mailed in a proper manner by the withholding agent to the Director of the Foreign Operations District, pursuant to paragraph (b)(2)(v) of this section.

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted by him or her to the Director of the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225, within five days of his or her acceptance. The Director of the Foreign Operations District may review the forms so submitted. The withholding agent shall retain a copy of Form 8233.

(3) *Withholding agreements.* Compensation for personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441–1 if an agreement is reached between the Director of the Foreign Operations District and the alien individual with respect to the amount of withholding required. Such agreement shall be available in the circumstances and in the manner set forth by the Internal Revenue Service, and shall be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current taxable year.

(4) *Final payment exemption*—(i) *General rule.* Compensation for independent personal services of a nonresident alien individual who is engaged during the taxable year in the conduct of a trade or business within the United States may be wholly or partially exempted from the withholding required by § 1.1441–1 from the final payment of compensation for independent personal services. This exemption does not apply to wages. This exemption from withholding is available only once during an alien individual's taxable year and is obtained by the alien individual presenting to the withholding agent a letter in duplicate from a district director stating the amount of compensation subject to the exemption and the amount that would otherwise be withheld from such final payment under section 1441 that shall be paid to the alien individual due to the exemption. The alien individual shall attach a copy of the letter to his or her income tax return for the taxable year for which the exemption is effective.

(ii) *Final payment of compensation for personal services.* For purposes of this paragraph, final payment of compensation for personal services means the last payment of compensation, other than wages, for personal services rendered within the United States that the individual expects to receive from any withholding agent during the taxable year.

(iii) *Manner of applying for final payment exemption.* In order to obtain the final payment exemption provided by paragraph (b)(4)(i) of this section, the nonresident alien individual (or his or her agent) must file the forms and provide the information required by the district director. Ordinary and necessary business expenses may be taken into account if substantiated to the satisfaction of the district director. The alien individual must submit a statement, signed by him or her and verified by a declaration that it is made under the penalties of perjury, that all the information provided is true and that to his or her knowledge no relevant information has been omitted. The information required to be submitted includes, but is not limited to—

(A) A statement by each withholding agent from whom amounts of gross income effectively connected with the conduct of a trade or business within the United States have been received by the alien individual during the taxable year, of the amount of such income paid and the amount of tax withheld, signed and verified by a declaration that it is made under penalties of perjury;

(B) A statement by the withholding agent from whom the final payment of compensation for personal services will be received, of the amount of such final payment and the amount which would be withheld under § 1.1441-1 if a final payment exemption under paragraph (b)(4)(i) of this section is not granted, signed and verified by a declaration that it is made under penalties of perjury;

(C) A statement by the individual that he or she does not intend to receive any other amounts of gross income effectively connected with the conduct of a trade or business within the United States during the current taxable year;

(D) The amount of tax which has been withheld (or paid) under any other provision of the Code or regulations with respect to any income effectively connected with the conduct of a trade or business within the United States during the current taxable year;

(E) The amount of any outstanding tax liabilities (and interest and penalties relating thereto) from the current taxable year or prior taxable periods; and

(F) The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the individual's residence, and a statement of sufficient facts to justify an exemption pursuant to such treaty.

(iv) *Letter to withholding agent.* If the district director is satisfied that the information provided under paragraph (b)(4)(iii) of this section is sufficient, the district director will, after coordination with the Director of the Foreign Operations District, ascertain the amount of the alien individual's tentative income tax for the taxable year with respect to gross income that is effectively connected with the conduct of a trade or business within the United States. After the tentative tax has been ascertained, the district director will provide the alien individual with a letter to the withholding agent stating the amount of the final payment of compensation for personal services that is exempt from withholding, and the amount that would otherwise be withheld under section 1441 that shall be paid to the alien individual due to the exemption. The amount of compensation for personal services exempt from withholding under this paragraph (b)(4) shall not exceed $5,000.

Example 1. On July 15, 1983, B, a nonresident alien individual, appears before a district director with the information required by paragraph (b)(4)(iii) of this section. B has received personal service income in 1983 from which $3,000 has been withheld under section 1441. On August 1, 1983, B will receive $5,000 in personal service income from W. B does not intend to receive any other income subject to U.S. tax during 1983. Taking into account B's substantiated deductible business expenses, the district director computes the tentative tax liability on B's income effectively connected with the conduct of a trade or business in the United States during 1983 (including the $5,000 payment to be made on August 1, 1983) to be $3,300. B does not owe U.S. tax for any other taxable periods. The amount of B's final payment exemption is determined as follows:

(*1*) The amount of total withholding is $4,500 ($3,000 previously withheld plus $1,500, 30% of the $5,000 final payment);

(*2*) The amount of tentative excess withholding is $1,200 (total withholding of $4,500 minus B's tentative tax liability of $3,300); and

(*3*) To allow B to receive $1,200 of the amount which would otherwise have been withheld from the final payment, the district director allows a withholding exemption for $4,000 of B's final payment. W must withhold $300 from the final payment.

Example 2. The facts are the same as in Example 1 except B will receive a final payment of compensation on August 1, 1983, in the amount of $10,000 and B's tentative tax liability is $3,900. The amount of B's final payment exemption is determined as follows:

(*1*) The amount of total withholding is $6,000 ($3,000 previously withheld plus $3,000, 30% of the $10,000 final payment);

(*2*) The amount of tentative excess withholding is $2,100 (total withholding of $6,000 minus B's tentative tax liability of $3,900); and

(*3*) To allow B to receive $2,100 of the amount which would otherwise be withheld from the final payment, $7,000 of the final payment would have to be exempt from withholding; however, as no more than $5,000 of the final payment can be exempt from withholding under this paragraph (b)(4), the district director allows a withholding exemption for $5,000 of B's final payment. B must file a claim for refund at the end of the taxable year to obtain a refund of $600. W must withhold $1,500 from the final payment.

(5) *Requirement of return.* The tentative tax determined by the district director under paragraph (b)(4)(iv) of this section or by the Director of the Foreign Operations District under the withholding agreement procedure of paragraph (b)(3) of this section shall not constitute a final determination of the income tax liability of the nonresident alien individual, nor shall such determination constitute a tax return of the nonresident alien individual for any taxable period. An alien individual who applies for or obtains an exemption from withholding under the procedures of paragraphs (b) (2), (3), or (4) of this section is not relieved of the obligation to file a return of income under section 6012.

§ 1.1441-5 [Amended]

Par. 5. Section 1.1441-5 is amended as follows:

1. Paragraph (a) is amended by inserting the words "or she" following the word "he" in the first sentence.

2. Paragraph (c) is amended by removing the words "International Operations" and inserting in their place the words "the Foreign Operations District", and by adding at the end: "The original statement shall be retained by the withholding agent.".

§ 1.1441-6 [Amended]

Par. 6. Section 1.1441-6 is amended by adding to the end of paragraph (c)(1) the following: "Form 1001 shall not be used to secure a reduced rate of, or exemption from, withholding on independent personal services income. See § 1.1441-4(b)(2).".

Par. 7. A new § 1.1441-7 is added immediately after § 1.1441-6 to read as follows:

§ 1.1441-7 General provisions relating to withholding agents.

(a) *Withholding agent defined*—(1) *In general.* For purposes of chapter 3 of the Code, the term "withholding agent" means any person who pays or causes to be paid an item of income specified in § 1.1441-2 to (or to the agent of) a nonresident alien individual, a foreign partnership, a nonresident alien or foreign fiduciary of a trust or estate, or a foreign corporation, and who is required to withhold tax under sections 1441, 1442, 1443, or 1451 from such item of income. Any person who meets the definition of a withholding agent is required to file the returns prescribed by § 1.1461-1. For example, an employer (as defined in § 31.3401(d)-1 of this chapter), to the extent the employer pays remuneration for services performed by a nonresident alien individual in the United States and such remuneration is excepted from the term "wages" under § 31.3401(a)(6)-(1) (c) or (e) of this chapter, must file a return as required by § 1.1461-2(c)(1).

(2) *United States obligations.* If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States shall be assumed and discharged by:

(i) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt,

(ii) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise,

(iii) Each Federal Reserve Bank, for interest paid by it, whether by check or otherwise, or

(iv) Such other person as may be designated by the Commissioner.

(b) *Person designated to act for withholding agent*—(1) *Notice of duly authorized agent.* A withholding agent (including a state or possession of the United States or any agency or instrumentality thereof) that appoints a duly authorized agent to act on its behalf under the withholding provisions of chapter 3 of the Code is required to file a notice of such appointment with the Director of the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225. Such notice must be filed before the first payment with respect to which the authorized agent acts as such.

(2) *In general—liability of withholding agent.* If a duly authorized agent has become insolvent or for any other reason fails to make payment of money deposited with it by the withholding agent to pay tax required to be withheld under chapter 3 of the Code, or of money withheld under such chapter, the withholding agent is not discharged of its liability under such chapter since the authorized agent is merely the agent of the withholding agent.

(3) *Tax-free covenant bonds—liability of withholding agent.* If the duly authorized agent designated by a withholding agent to act for it has not withheld any tax from the income nor received any funds from the withholding agent to pay the tax which the withholding agent assumed in connection with its tax-free covenant bonds, then that authorized agent cannot be held liable for the tax assumed by the withholding agent merely by reason of the appointment as duly authorized agent. The withholding agent remains liable under chapter 3 of the Code since the duly authorized agent is merely the agent of the withholding agent.

(c) *Payments other than money.* In any case where income is payable in any medium other than money the withholding agent shall not release the property so received until the property has been converted into funds sufficient to enable the withholding agent to pay over in money the tax required to be withheld under chapter 3 of the Code with respect to such income.

§ 1.1461-1 [Amended]

Par. 8. Section 1.1461-1 is amended by removing the phrase "Director of International Operations, Internal Revenue Service, Washington, D.C. 20225," in paragraph (f)(3) and inserting in its place the phrase "Internal Revenue Service Center, Philadelphia, PA. 19255.".

Par. 9. Section 1.1461-2 is amended by revising paragraph (b) through (e) to read as follows:

§ 1.1461-2 Return of tax withheld.

* * * * *

(b) *Form 1042*—(1) *Filing requirement.* Every withholding agent shall make on or before March 15 an annual return on Form 1042 of the tax required to be withheld under chapter 3 of the Code during the preceding calendar year. Form 1042 is required to be made in respect of a calendar year, even though no tax was required to be withheld under such chapter during such year, if the withholding agent is required by paragraph (c)(1) of this section to make an information return on Form 1042S with respect to any payments made during such year. Form 1042 shall be filed with the Internal Revenue Service Center, Philadelphia, PA. 19255. The return shall be prepared in duplicate and shall include such information as is required by the form and accompanying instructions. If an adjustment is required on Form 1042 because of repayments of withheld tax pursuant to paragraph (a)(1) of § 1.1461-4, only the aggregate amount of such adjustment shall be shown thereon and no itemized explanation of such aggregate amount shall be required to accompany such form. See paragraph (b) of § 1.1461-4. If, pursuant to paragraph (a)(2) of § 1.1461-3, any additional amount of tax is required to be paid to the Internal Revenue Service Center, Philadelphia, PA. for the preceding calendar year when filing Form 1042, no itemized explanation of such additional payment of tax shall be required to accompany such form. The duplicate copy of Form 1042 shall be retained by the withholding agent.

(2) *Summary of accompanying forms.* Form 1042 shall be accompanied by the original copies of all Forms 1042S which were prepared by the withholding agent during the previous calendar year, including such forms upon which income exempt from withholding of tax is reported. The forms so forwarded with Form 1042 are not required to be listed thereon; but they shall be summarized on Form 1042 in the manner prescribed thereon and in the instructions applicable thereto. The exemption and reduced rate certificates, such as Form 1001A-D or Form 1001A-J, referred to in paragraph (g)(2) of § 1.1461-1 are not required to accompany, or to be summarized on, Form 1042.

(c) *Form 1042S*—(1) *Filing requirement.* Every withholding agent shall make on or before March 15 an annual information return on Form 1042S of all items of income specified in § 1.1441-2 paid during the previous calendar year to nonresident alien individuals, foreign partnerships, nonresident alien or foreign fiduciaries of a trust or estate, or foreign corporations if such items consist of—

(i) Amounts upon which tax would have been required to be withheld under chapter 3 of the Code,

(ii) Amounts upon which tax would have been required to be withheld under such chapter but for an exclusion from gross income applicable under any income tax treaty to which the United States is a party,

(iii) Amounts upon which tax would have been required to be withheld under such chapter but for the provisions of any specific complete or partial exemption from withholding applicable under the authority of any regulation under this title or any ruling or procedure of the Commissioner, or

(iv) Amounts in respect of which tax withheld under such chapter has, pursuant to such authority, been released or refunded to the payee by the withholding agent.

All amounts shall be shown in U.S. currency. Notwithstanding subdivisions (i) through (iv) of this subparagraph (1), income paid to nonresident alien individual, foreign partnerships, nonresident alien or foreign fiduciaries of a trust or estate, or foreign corporations and required to be shown on Form W-2, or in the case of income paid prior to January 1, 1972, on Form 1001 (or on any special variation of Form 1001 referred to in paragraph (i) of

§ 1.1461-1, or the substitute thereof) is not required to be shown on Form 1042S. However, a return under this subparagraph is required on Form 1042S (rather than on Form W-2) in respect of amounts which otherwise would be required to be shown on Form W-2 solely by reason of § 1.6041-2 (relating to return of information as to payments to employees) or § 1.6052-1 (relating to information regarding payment of wages in the form of group-term life insurance). The original Form 1042S shall accompany Form 1042 and shall be filed with the Internal Revenue Service Center, Philadelphia, PA 19255.

(2) *Information to be furnished.* (i) Form 1042S shall include such information as is required by the form and accompanying instructions.

(ii) If a Form 1042S is prepared in respect of an item of income upon which tax has not been withheld under chapter 3 of the Code, a brief statment as to the authority for such failure to withhold shall be made upon the form itself. If necessary, however, a separate statement as to such authority may be attached to the original copy of the Form 1042S.

(iii) If a Form 1042S is prepared in respect of compensation from which the personal exemption is deducted in accordance with paragraph (e) of § 1.1441-3, the amount of the compensation allocable to labor or personal services performed within the United States, together with the amount of the deduction for the prorated personal exemption, shall be shown on a separate statement attached to the original copy of that form

(iv) If any certificate, statement, letter, or form relating to an exemption (as described in § 1.1441-4) is filed with or presented to a withholding agent, such certificate, statement, letter, or form shall be attached to each Form 1042S relating to the income subject to the exemption.

(3) *Manner of preparing Form 1042S.* (i) Form 1042S shall be prepared with respect to all payments of any item of income made during the calendar year to the same payee in the manner prescribed by the form and accompanying instructions. Payment of an item of income to a nominee or representative for the benefit of other persons in respect of whom Form 1042S are required may not be shown on a single Forms 1042S but must be identified with the ultimate recipients of the income if such information is known to the payer of the income.

(ii) The duplicate copy of Form 1042S shall be furnished to the payee indicated thereon, and a copy shall be retained by the withholding agent.

(4) *Alternative methods.* To the extent that the withholding agent's system of record keeping makes impractical the use of Form 1042S in the manner prescribed by paragraph (c)(3) of this section, he may devise and submit for the prior annual approval of the Commissioner a variation of Form 1042S which will include the information required by paragraph (c)(2) of this section and which will substantially comply with the requirements of paragraph (c)(3) of this section. Request for such approval shall be sent to: Internal Revenue Service, Attn: Substitute Forms Program, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 and shall be accompanied by an explanation as to why such variation is necessary.

(d) *Information to be furnished by Commissioner.* If a foreign country has entered into an income tax treaty with the United States which provides for the mutual exchange of information, the Commissioner shall, as soon as practicable after the close of a calendar year during which the treaty is in effect, transmit to the appropriate authority designated in the treaty with that country the information contained in Forms 1042S showing a payee with an address in the country. This information is not to be furnished to any such foreign country, however, if the Commissioner ascertains through appropriate channels that the information is not required by that country.

(e) *Penalties.* For penalties and additions to the tax attaching upon failure to comply with this section, see sections 6651, 6656, 6676, and 7203.

* * * * *

§ 1.1461-3 [Amended]

Par. 10. Section 1.1461-3 is amended by removing the phrase "Director, Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19155," in the first sentence of paragraph (a)(1)(i) and in paragraph (a)(2) and inserting in lieu thereof the phrase "Internal Revenue Service, Center, Philadelphia, PA 19255,".

§ 1.1462-1 [Amended]

Par. 11. Section 1.1462-1(b) is amended by moving the word "his" in the last sentence and inserting in its place the phrase "the taxpayer's".

§ 1.1465-1 [Removed]

Par. 12. Section 1.1465-1 is removed.

Employment Tax Regulations

PART 31—[AMENDED]

Par. 13. Paragraph (a) of § 31.3401(a)(6)-1(a) is revised to read to set forth below.

§ 31.3401(a)(6)-1 Remuneration for services of nonresident alien individuals paid after December 31, 1966.

(a) *In general.* All remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, if such remuneration otherwise constitutes wages within the meaning of § 31.3401(a)-1 and if such remuneration is effectively connected with the conduct of a trade or business within the United States, is subject to withholding under section 3402 unless excepted from wages under this section. In regard to wages paid under this section after February 28, 1979, the term "nonresident alien individual" does not include a nonresident alien individual treated as a resident under section 6013 (g) or (h).

* * * * *

Regulations on Procedure and Administration

PART 301—[AMENDED]

§ 301.7605-1 [Amended]

Par. 14. Paragraph (b) of § 301.7605-1 is amended by adding a sentence at the end thereof to read as follows: "The inspection of a taxpayer's books of account pursuant to the procedures of § 1.1441-4(b) (3) and (4) is not an inspection of a taxpayer's books of account for purposes of section 7605(b) and this section."

Par. 15. Section 301.7701-16 is revised to read as follows:

§ 301.7701-16 Other terms.

For a definition of the term "withholding agent" see § 1.1441-7(a). Any other terms that are defined in section 7701 and that are not defined in §§ 301.7701-1 to 301.7701-15, inclusive, shall, when used in this chapter, have the meanings assigned to them in section 7701.

This Treasury decision is issued under the authority contained in sections 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954. Approved by the Office of Budget and Management under control number 1545-0795.

Approved: September 4, 1984.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–24880 Filed 9–19–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Approval of Permanent Program Amendment From the State of West Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by West Virginia as an amendment to the State's permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes a program for blaster training, examination and certification.

West Virginia submitted the proposed program amendment on January 12, 1984. OSM published a notice in the **Federal Register** on January 31, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 3882–3883). The public comment period ended March 1, 1984. On June 18, 1984, the State submitted additional proposed regulations and other information to address certain issues raised during the review of the January 12, 1984, proposed amendment. These issues were presented to the State in letters from OSM dated March 9, April 5, and May 22, 1984 (Administrative Record Nos. WV 575, 579 and 580). A public comment period for this additional information was announced in the **Federal Register** on July 12, 1984 (49 FR 28418). The comment period for this additional information ended on July 27, 1984.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, with certain exceptions and is approving it based on the correction of certain deficiencies. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action.

EFFECTIVE DATE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: John Heider, Acting Field Office Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301; Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

The West Virginia program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5915–5956). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the West Virginia program can be found in the January 21, 1981, **Federal Register.**

II. Submission of Revisions

On January 12, 1984, West Virginia submitted statute and regulations and other material which would establish requirements for the training, examination and certification of blasters working in surface coal mining operations. These materials were later supplemented by additional information submitted by the State on June 18, 1984. The proposed modifications include:

- Current surface mining law and regulations providing authority for a blaster training, examination and certification program;
- Proposed regulations governing the standards for certification of blasters, hereafter referred to as the June 18 proposed regulations;
- Current mining law providing authority and procedures for withdrawal of certification and penalties;
- Current regulations providing administrative procedures relating to appeals;
- Current mining regulations defining certain terms used throughout the proposed blaster program;
- Current regulations specifying safety training requirements for West Virginia miners;
- A proposed training outline for blaster training;
- A study guide for blaster training;
- A comparison of State and Federal regulations for blaster certification.

At the time of the Secretary's approval of the West Virginia program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the West Virginia program, the Secretary specified that West Virginia would be required to adopt such provisions following promulgation of the Federal standards (46 FR 5931, January 21, 1981).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training, examination and certification of blasters at 30 CFR Chapter M (48 FR 9486). The Federal rules require each State to design and implement its own blaster certification program. Under the Federal rules, each State must develop the method of training, examining, and certifying blasters which best meets local needs within the Federal regulatory framework. The Federal rules require training, field experience, and a written examination, and specify certain other requirements.

The Federal rules at 30 CFR 850.12 require the State regulatory authority to develop a program and submit it to OSM as a proposed program amendment within 12 months after the publication date of the Federal rules. The Federal rules at 30 CFR 816.61(c) further provide that no later than 12 months after the State's blaster certification program has been approved by OSM, all blasting operations in the State shall be conducted under the direction of a certified blaster.

On January 31, 1984, OSM, published a notice in the **Federal Register** announcing receipt of the West Virginia amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 3882–3883). The public comment period ended March 1, 1984. An opportunity to request a public hearing was provided, but none was requested.

On June 18, 1984, the State submitted additional proposed regulations and other information to address certain issues raised during the review of the January 12, 1984, proposed amendment. These issues were presented to the State in letters from OSM dated March 9, April 5, and May 22, 1984 (Administration Record Nos. WV 575, 579 and 580). A public comment period for this addtional information was announced in the **Federal Register** on July 12, 1984 (49 FR 28418). The comment period for this additional information ended on July 27, 1984.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by West Virginia on January 12, 1984, as modified on June 18, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII, with certain exceptions, as discussed below.

A. General

The West Virginia submission provides that the West Virginia Department of Mines, in accordance with Section 20–6–34 of the West Virginia Surface Coal Mining and Reclamation Act, will be responsible for the training, examination and certification of blasters within the State.

In it's letter of June 18, 1984, the State proposed that mandatory training as required by 30 CFR 850.13(b) could be accomplished by way of any of three methods. The first would be to attend the classroom training sponsored by the West Virginia Department of Mines and provided through the facilities of the State Vocational Education office as specified in the State's proposed regulations. The second method of satisfying the training provisions would be to conduct a self-study program using the "Study Guide for West Virginia Surface Mine Blasters". The third method would be to attend a certified blaster training session conducted by an explosives manufacturer. The applicant for certification would indicate on the application for the blaster certification exam which type of training he or she had received.

The Director has carefully considered these three options and finds that only the first method of training will satisfy the provisions of 30 CFR 850.13(b) at this time. The second option, self-study, is a viable alternative to classroom training. However, the self-study program must utilize training materials which will provide instruction in all areas required by 30 CFR 850.13(b) and the State must develop a procedure to verify that the self-study has actually been conducted. The Study Guide for West Virginia Surface Mine Blasters was reviewed by OSM and determined to lack instruction in several areas required by 30 CFR 850. These areas were addressed by the State in a pre-submission letter dated July 21, 1983 (Administrative Record Number WV 592). This letter provided that the topics not addressed by the Study Guide would be provided by the training course to be conducted by the State. This action resolved the issue as it related to the classroom training to be provided by the State. However, before the Director can approve the use of the State's proposed self-study program using the Study Guide alone, the Study Guide must be revised to provide coverage of all the topics of 30 CFR 850.13(b). The second concern with the self-study concept relates to verification that the applicant for certification has actually completed the required study. The procedure proposed by West Virginia requires only that the applicant indicate that he has completed the study. The State must revise the Study Guide and develop a system for verifying that self-study has occurred prior to certification of an individual under this concept. West Virginia may not use the proposed self-study procedures until the Study Guide for West Virginia Surface Mine Blasters is revised to include all of the topics included in 30 CFR 850.13(b), procedures are developed to verify that the self-study has been conducted and both have been reviewed and approved by the Director.

The third method of training proposed by West Virginia relates to completion of a training course presented by an explosives manufacturer. West Virginia may not accept training conducted by an explosives manufacturer until procedures have been developed by the State to certify that the training meets the requirements of 30 CFR 850.13(b), a process for verifying completion of the course is developed and both have been reviewed and approved by the Director.

B. West Virginia Administrative Regulations, Department of Mines, Chapter 22–4, Series , Rules and Regulations Governing the Standards for Certification of Blasters, Submitted June 18, 1984

1. Section 3.01(A) of the June 18 proposed regulations provides that no later than one year after the effective date of the regulations, a certified blaster will be responsible for the handling and use of explosives for each and every blast in accordance with the blasting plan approved for the permit. The requirements for approval of a blasting plan are contained in Section 4C.01 of the West Virginia Surface Mining Reclamation Regulations, Chapter 20–6 Series VII (1983) as approved by the Secretary on November 16, 1983. These regulations inappropriately relate the blasting performance standards including the blasting plan requirements, to blasts of more than five pounds of explosives or blasting agent. In addition, the blasting plan requirements of Section 4C.01 relate only to blasting operations on surface mines. The requirements do not apply to blasting operations conducted on underground mining operations. Therefore, the provision of 3.01(A) could be interpreted to apply only to blasting conducted on surface operations. The Director finds that this provision is less effective than the Federal regulations at 30 CFR Part 850 and is requiring a program amendment to provide that blaster certification requirements will apply to all blasting operations required by 30 CFR 850.

2. Section 3.01(A) of the June 18 proposed regulations specifies that persons seeking to become certified blasters must complete such training as required by the regulations. Section 3.01(B) provides that training requirements shall include those subject areas set forth in Section 5.02(A)(1) and 5.03(A)(1). The Director finds that the West Virginia regulation includes all the topics required by 30 CFR 850.13(b) and therefore is no less effective than the Federal rule.

3. Section 3.01(A) of the June 18 proposed regulations set forth the requirements necessary for a person to become a certified blaster. The regulations require that a person must: (1) have had at least one year active blasting experience within the past three years; (2) hold a current permit issued by the State Fire Marshall's Office; and (3) have demonstrated his knowledge and skill of the use, handling and storage of explosives and all State and Federal laws pertaining thereto by completing such training and certification examinations as may be required by the State regulations. Applicants will be examined by the West Virginia Department of Mines as set forth in Section 5.03. The Director finds that these provisions are no less effective than 30 CFR 850.14 which sets forth the minimum requirements for examination of candidates for blaster certification.

4. Sections 6 and 7 of the June 18 proposed regulations set forth the requirements for certification and recertification. Section 7.01 provides that a blaster must be recertified every three years by submitting validated documentation to the Department of Mines of conformance with the requirements of Section 3.01. The requirements of Section 3.01 are discussed in Finding 3 above. In addition, validated proof of one shift of refresher training within the previous 12 months must be submitted unless the applicant has completed one year of active blasting experience within the previous 12 months. Applicants for recertification must also meet the conditions of certification specified in Section 6.01 of the regulations. Reexamination of a certified blaster is

required following the second consecutive certification. The Director finds that these provisions are no less effective than the Federal rules at 30 CFR 850.13(a) and 850.13(c).

5. Section 8.01 of the June 18 proposed regulations specifies that a blaster shall, upon request by an authorized representative of the Division of Reclamation, West Virginia Department of Natural Resources, the West Virginia Department of Mines or OSM, exhibit his or her certificate and that certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the Department of Mines. Section 8.02 specifies that a blaster's certification shall not be transferred or assigned. Section 8.03 specifies that blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster. The Director finds these provisions to be no less effective than 30 CFR 850.15(d) and 850.15(e), which specify conditions of certification and requirements for the protection of certification.

6. Part 3 of West Virginia Administrative Regulations, Department of Mines, Chapter 22–4, Series 34 (1982) sets forth the provisions applicable to proceedings initiated to withdraw a blaster's certification. The regulation provides that the Board of Appeals of the West Virginia Department of Mines, following written notice and opportunity to respond, will evaluate all charges and, if appropriate, schedule a hearing. At the conclusion of the hearing, if the Board finds that the certification should be suspended or revoked, it shall enter an order to that effect. Section 8.04 of the June 18 proposed regulations provides that proceedings may be initiated to withdraw certification for neglect or failure to perform duties mandated by Articles 1 and 2 of Chapter 22 of the West Virginia Code, regulations promulgated thereto; Article 6, Chapter 20 of the West Virginia Code and regulations promulgated thereto or the June 18 proposed regulations. Section 22–1–20(d) of the West Virginia Code provides that whoever knowingly makes any false statement, representation or certification in any application shall be guilty of a misdemeanor. The conviction of any person under this provision shall result in the revocation of any certification. The Director finds these provisions no less effective than 30 CFR 850.15 (b)(1)(i), (h)(1)(iii), (b)(1)(ii), (b)(2), and (b)(3).

7. Section 6.01(B) of the June 18 proposed regulations provides that addiction to alcohol, narcotics or other dangerous drugs shall cause any blaster's certification already in force to be suspended or revoked. The Director finds that this provision is less effective than 30 CFR 850.15(b)(1)(ii) and is requiring a program amendment to provide for suspension or revocation of a blaster's certification for unlawful use of alcohol, narcotics or other dangerous drugs in the work place.

8. The West Virginia amendment fails to require that the blasting crew or others who assist in the use of explosives and are not certified blasters, receive direction and on-the-job training from a certified blaster as required by 30 CFR 850.13(a)(2). The Director finds that the lack of this provision is not as effective as 30 CFR 850 and is requiring a program amendment to include this provision.

IV. Public Comments

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, acknowledgements were received from the Department of the Army, Office of the Chief of Engineers; the Department of Energy; the Department of the Interior, Bureau of Land Management and the National Park Service; and, the Department of Labor, Mine Safety and Health Administration. The comments were limited and did not identify any deficiencies in the proposed program amendment. The only additional public comment was received from the West Virginia Surface Mining and Reclamation Association. Their comment consisted of a copy of an article which appeared in an industry publication concerning an address made by Mr. Bill Raney of the Association. The address contained no substantive comments concerning the West Virginia blaster certification program.

The disclosure of Federal agency comments is made pursuant to Section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the January 12, 1984, amendment, as modified on June 18, 1984, to the West Virginia program. As indicated above, there are three provisions which are less effective than SMCRA and the Federal regulations and require revision. These provisions are discussed in Findings B.1., B.7. and B.8. above. These provisions must be corrected by the State and submitted as a program amendment by [60 days following publication]. In addition, two methods for satisfying the training provisions of 30 CFR Part 850, as discussed in Finding A. above may not be utilized until the State makes the necessary revisions and they are approved by the Director. The Director is amending Part 948 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exempt from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exemption from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1984.

John D. Ward,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

1. 30 CFR Part 948 is amended by adding a new § 948.15 as follows:

§ 948.15 Approval of regulatory program amendments.

(a) The following amendment submitted to OSM on January 12, 1984, as modified on June 18, 1984, is approved effective September 20, 1984: West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22–4 Series ——, submitted to OSM on June 18, 1984, and all other items as submitted by West Virginia on January 12, 1984, and modified on June 18, 1984. This approval is contingent on promulgation of the above referenced proposed regulations.

(b) [Reserved]

2. 30 CFR Part 948 is amended by adding a new § 948.16 as follows:

§ 948.16 Required program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following program amendments by November 19, 1984:

(a) Amend its program to require that all persons responsible for the use of explosives on or after 12 months following September 20, 1984, shall be certified in accordance with 30 CFR 850.12(b).

(b) Amend its program to provide that a blaster's certification may be suspended or revoked for unlawful use of alcohol, narcotics or other dangerous drugs in the work place as required by 30 CFR 850.15(b)(1)(ii).

(c) Amend its program to require that the blasting crew or others who assist in the use of explosives and are not certified blasters, receive direction and on-the-job training from a certified blaster as required by 30 CFR 850.13(a)(2).

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 84–24913 Filed 9–19–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3–84–37]

Special Anchorage Area; Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Superintendent, U.S. Coast Guard Academy, the Coast Guard is establishing a special anchorage area just north of the causeway leading to the Academy Sailing Center at Jacobs Rock, Thames River, New London, Connecticut. During the sailing season, the Academy has insufficient dock space to accommodate all of its boats. This situation has resulted in the mooring of some boats to mooring buoys in the area being designated as a special anchorage area. This area has been used for this purpose for the past four years. This area is well away from the navigational channel and not within the normal area of recreational navigation on the Thames River due to its position directly adjacent to the Jacobs Rock causeway. The establishment of this special anchorage area should not create any safety, security or environmental hazards. The effect of this action will eliminate the requirement for displaying anchor lights by Academy and Academy-related boats, which generally use this area as an anchorage or mooring area during the sailing season.

EFFECTIVE DATE: October 22, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. R.F. Valderrama, Ports and Waterways Specialist, Commander (mpv-p), Third Coast Guard District at (212) 668–7179.

SUPPLEMENTARY INFORMATION: On July 12, 1984 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (49 FR 28419). Interested persons were requested to comment and no comments were received. Accordingly, no changes have been made to the rule as proposed.

Drafting Information

The drafters of this regulation are Mr. R.F. Valderrama, Ports and Waterways Specialist, project officer for Commander (mpv-p), Third Coast Guard District, and Mrs. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The major purpose for the special anchorage area is to officially recognize the long-standing use of this area by Academy boats. Since primarily Academy or Academy-related boats will use this area, and since the location of the area is well out of the normal navigation area of the river, this special anchorage area will have little or no economic impact on the general public. It will have a slight economic impact on Academy operations, since the elimination of lighting requirements for boats at anchor will slightly reduce the cost of the Academy sailing program.

Since the impact is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended by adding § 110.52(c) and Note to read as follows:

§ 110.52 Thames River, New London, Conn.

* * * * *

(c) Area No. 3. An area on the westerly side of the Thames River in the vicinity of Jacobs Rock, the location of the U.S. Coast Guard Academy Sailing Center, bounded as follows: Beginning at the point on the shore where the north side of the Jacobs Rock causeway meets the western shoreline; thence northerly along the western shore of the Thames River a distance of 200 yards: thence 090°, 240 yards; thence 180°, 200 yards to the Jacobs Rock causeway; thence westerly along the causeway to the point of beginning.

Note.—The area designated by paragraph (c) of this section is principally for the use of U.S. Coast Guard Academy and Academy-related boats. Temporary floats or buoys for marking anchors may be used. The anchoring of vessels and the placing of moorings will be under the jurisdiction and at the discretion of the Chief, Waterfront Branch, U.S. Coast Guard Academy, New London, Connecticut.

(33 U.S.C. 2030, 2035 and 2071; 49 CFR 1.46; and 33 CFR 1.05–1(g))

Dated: September 14, 1984.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander. Third Coast Guard District.

[FR Doc. 84–24943 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 1–84–10R]

Drawbridge Operation Regulation; Acushnet River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Bedford Area Chamber of Commerce, the Coast Guard is changing the regulations for the Route 6 bridge over the Acushnet River, between New Bedford and Fairhaven. This change is being made because frequent openings of the drawspan result in a backup of vehicles along Route 6, a major roadway in the area. These backups have a

significant impact on the businesses located along the roadway in the vicinity of the bridge. This action will establish more uniform vehicular traffic movement along Route 6, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: October 22, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Naulty, Chief, Bridge Branch, First Coast Guard District, Boston, MA 02114 (617–223–0645).

SUPPLEMENTARY INFORMATION: Notification of the proposed rulemaking was published by the First Coast Guard District in a public notice on 8 May 1984, and in the **Federal Register** (49 FR 19848). Interested persons were given until 25 June 1984 to respond.

Drafting Information

The principal persons involved in drafting this rule are: William J. Naulty, Chief, Bridge Branch, First Coast Guard District; and Lieutenant Commander James M. Collin, Project Attorney, Assistant Legal Officer, First Coast Guard District.

Discussion of Comments

There were 12 responses to the public notices. Four responses indicated acceptance of the proposed regulations as published. Seven responses indicated an adverse impact to the seafood industries located upstream of the bridge. The Massachusetts Department of Public Works, owner of the bridge, was critical of the 15 minute maximum time suggested for each opening.

The seafood industries are dependent on the movement of vessels with drafts greater than 15 feet. The passage of these vessels through the bridge depends on the tide. If a tide is missed because the draw is closed a vessel would have to remain in the harbor until the next favorable tide. The current regulations require that the draw be opened on call for the passage of larger vessels. To minimize impact on these vessels the requirement for on call openings for larger vessels has been added to the proposal.

When the bridge is opened, there is a backup of vehicles in each direction. The extent of the backup is determined by the length of time or the frequency of the openings. A scheduled hourly opening will provide for the passage of vessels and also allow adequate movement of vehicular traffic.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The amended regulations are not expected to change the volume of traffic along Route 6. They are expected to improve access to and egress from the various business establishments in the vicinity of the bridge. The improved traffic pattern will permit shopping at any hour instead of off peak hours. The regulations provide minimal interruption to navigation. This will not hamper the operation of the marine oriented businesses located above the drawbridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in CFR Part 117

Bridges.

PART 117—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations is amended by revising § 117.585, as follows:

§ 117.585 Acushnet River.

(a) The drawspan will be opened promptly, provided proper signal is given, on the following schedule:

(1) On the hour between 6:00 a.m. and 10:00 a.m. inclusive;

(2) At a quarter past the hour between 11:15 a.m. and 6:15 p.m. inclusive.

(3) At all other times on call.

(b) The draw will be opened at any time for vessels whose draft exceeds 15 feet, for vessels owned or operated by the U.S. Government, the State of Massachusetts, or by local authorities.

(c) Each opening of the draw, from the time vehicular traffic flow is stopped until the flow resumes, shall not exceed 15 minutes except for vessels whose draft exceeds 15 feet or in extraordinary circumstances.

(d) The Massachusetts Department of Public Works shall keep posted in a conspicuous location on the upstream and downstream sides of the bridge, where it can be read easily at any time, a copy of the regulations in this subpart.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3)).

Dated: September 4, 1984.

R.A. Bauman,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 84–24946 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Hampton Roads, VA, Reg. 84–10]

Safety Zone Regulations; Entrance to Chesapeake Bay, Thimble Shoals Channel, Fort Story, Cape Henry, VA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters off Fort Story, Cape Henry, Virginia, near the southern entrance to the Chesapeake Bay. This zone is needed to protect watercraft and their occupants from potential hazards associated with Joint Service Military Operations involving numerous military and civilian vessels, floating and submerged pipelines, and temporary pier installations. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 7:00 AM, Eastern Daylight Time, September 18, 1984. It terminates at 6:00 PM Eastern Standard Time, October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.A. Sande, Chief, Port Operations Department, Coast Guard Marine Safety Office, Hampton Roads, Norfolk, Virginia 23510, (804) 441–3296.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard watercraft and their occupants from the hazards associated with military vessel operations scheduled for the waters off Fort Story, Cape Henry, Virginia.

Drafting Information

The drafter of this regulation is Lieutenant J. J. Kelly, project officer for the Captain of the Port.

Discussion of Regulation

The hazard requiring this regulation is expected to commence on 18 September 1984 at 7:00 AM and terminate at 6:00 PM on 30 October 1984. In order to safeguard watercraft and their occupants, no person may enter into, remain in, or operate any vessel within this safety zone unless specifically authorized by the Captain of the Port, Hampton Roads, Virginia.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T544 to read as follows:

165.T544 Safety Zone: Chesapeake Bay, Thimble Shoals Channel, Fort Story, Cape Henry, Virginia.

(a) *Location.* The following area is a safety zone: All waters within a one and one-eighth mile radius of the Cape Henry Lookout Tower located at 36-55-48 N, 76-01-56 W.

(b) Regulations:

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: September 14, 1984.

U.S. Coast Guard.

D.C. O'Donovan,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 84-24946 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-2673-8]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a consolidated permit and emissions trading program for the Lane Regional Air Pollution Authority (LRAPA) as revisions to the Oregon State Implementation Plan (SIP). This program, consisting of amended LRAPA rules, in conjunction with provisions of the State of Oregon Department of Environmental Quality (DEQ) rules, is the same as the current, EPA-approved program operated by DEQ. These amended rules were submitted on March 2, 1983 by DEQ, after adequate opportunity for public, private, and industry input, to transfer the permitting programs required under Sections 110, Part C, Subpart 1, and Part D of the Clean Air Act (hereinafter the Act) and the emissions trading program to LRAPA. EPA's approval authorizes LRAPA, rather than DEQ, to issue all of the permits required under the Act and to approve emissions trading transactions within the boundaries of Lane County.

EFFECTIVE DATE: This action will be effective on November 19, 1984 unless notice is received before October 22, 1984 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal thirty-day comment period on this action.

ADDRESSES: Copies of materials submitted to EPA may be examined during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, 522 SW. Fifth, Yeon Building, Portland, Oregon 97207

Copy of the State's submittal may be examined at:

The Office of Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Comments should be addressed to: Laurie M. Krahl Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442-1980, (FTS) 399-1980.

SUPPLEMENTARY INFORMATION:

I. Background

On August 13, 1982 (47 FR 35191) EPA approved a consolidated permit and emissions trading program for the State of Oregon. This program was incorporated in the rules of the Oregon Department of Environmental Quality (DEQ) and was applicable statewide. On March 2, 1983, DEQ submitted amended rules of the Lane Regional Air Pollution Authority (LRAPA), a local air pollution agency in Lane County, as revisions to the SIP in order to transfer the authority to administer the approved permit and emissions trading program to LRAPA.

II. Plan Revisions

The submitted LRAPA rule revisions consist of: (1) An amended Title 22 "PERMITS," specifically, revisions to Sections 22-001 through 22-065, new Sections 22-400 through 22-440, and new definitions which will be relocated into Title 11 "DEFINITIONS" at a later date; and (2) new Sections 32-100 through 32-104 of Title 32 "EMISSION STANDARDS," and new definitions which will be relocated into Title 11 "DEFINITIONS" at a later date. The new Sections 22-400 through 22-440 contain the provisions for Prevention of Significant Deterioration permits, nonattainment area permits, offsets, and emission reduction credit banking. The new Sections 32-100 through 32-104 contain the provisions for plant site emission limits and alternative emission controls (bubbles). The LRAPA rules do not duplicate certain provisions of the DEQ rules, specifically: EPA approval of modified or alternate models; provisions for fugitive and secondary emissions; provisions for stack heights and dispersion techniques; ambient air quality standards; PSD increments; PSD Class I areas; and PSD redesignation procedures. Therefore, the statewide DEQ rules for these provisions remain applicable in Lane County and will be utilized in the LRAPA program.

As with the DEQ rules, the LRAPA definitions of the terms "dispersion technique," "good engineering practice stack height," and "nonattainment area" do not satisfy EPA requirements. Therefore, in order to be consistent with the August 13, 1982 approval of the DEQ rules, EPA is: (1) Taking no action at this time on the definitions of "dispersion technique" and "good engineering practice stack height" (EPA will take action on revised definitions when LRAPA rules implementing Section 123 of the Act are submitted); and (2) approving the permit rules with the understanding that LRAPA will adopt, and DEQ will submit to EPA, a revised definition of "nonattainment area". Also, the LRAPA permit rules would include marine vessel emissions in the review of new or modified major sources and, as with the DEQ rules, EPA is deferring action on the permit rules to the extent that they apply to marine vessel emissions.

Finally, the LRAPA definition of "major modification" does not contain a provision for netting transactions which would ensure that creditable decreases have the same qualitative significance for public health and welfare as proposed increases (40 CFR 51.24(b)(3)(vi)(c)). However, EPA has recently proposed to rescind this provision, which would make the LRAPA rules approvable (48 FR 38742, August 25, 1983). As such EPA is proposing to approve the LRAPA rules with the understanding that (1) if, after EPA rulemaking is completed, the provision has not been rescinded, LRAPA will submit a revision to its rules to add such a provision, and (2) until such time as the EPA provision is rescinded, LRAPA will operate its program consistent with the EPA provision.

These issues are discussed further in a Technical Support Document which is contained in the docket for this rulemaking and is available at the locations listed in the "**ADDRESSES**" section.

Under this program, Lane County will be issuing permits and establishing emission limitations that may be affected by the current judicial review of stack height regulations promulgated by EPA on February 8, 1982 (47 FR 5864). For this reason, EPA has requested that the state include the following caveat in all potentially affected permit approvals until the judicial process is completed and the stack height regulations either upheld by the court or revised by EPA:

> In approving this permit, Lane Regional Air Pollution Authority has determined that the application complies with the applicable provisions of the stack height regulations promulgated by EPA on February 8, 1982 (47 FR 5864). Portions of these regulations have been overturned by a panel of the U.S. Court of Appeals for the D.C. Circuit. *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir., 1983). That court decision has been appealed to the U.S. Supreme Court by a group of affected industries. Consequently, this permit may be subject to modification when the judicial process is completed and any regulations revised in response. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

Lane County made an enforceable commitment to include this caveat in all affected permits by letter dated June 20, 1984. This letter is part of the SIP revision EPA is approving today.

III. Summary of Action

EPA views as noncontroversial and routine the approval of local agency programs which are the same as the state agency programs in the Federally-approved SIP. EPA today is therefore approving, without prior proposal, the following as revisions to the Oregon SIP:

(1) Title 22 "PERMITS" of the Lane Regional Air Pollution Authority Rules, submitted on March 2, 1983, except to the extent that they apply to marine vessel emissions and except the definitions of "dispersion technique" and "good engineering practice stack height". This approval is made with the understanding that LRAPA will adopt, and DEQ will submit, a revised definition of "nonattainment area" which includes areas designated under section 107(d) of the Act; and

(2) Title 32 "EMISSION STANDARDS" Sections 32-100 through 32-104 of the Lane Regional Authority Rules, submitted on March 2, 1983.

Through this approval action, EPA recognizes that only LRAPA permits, issued pursuant to the Federally-approved Permits rule and in conjunction with the Federally-approved DEQ rules, are necessary for the construction, operation or modification of stationary sources in Lane County as required by section 110, Part C, Subpart 1 (PSD) and Part D (pertaining to nonattainment areas) of the Act. Furthermore, EPA recognizes that most LRAPA permits, issued pursuant to the Federally-approved Permits and Plant Site Emission Limit rules and in conjunction with the Federally-approved DEQ rules, are revisions to the Federally-approved SIP which are enforceable by EPA at the time of permit issuance and do not require case-by-case EPA approvals. This includes all emissions trading actions (netting, offsets, banking and bubbles) except Alternative Emission Controls (Bubbles) for sulfur dioxide or total suspended particulates which involve trades where the sum of the increases in emissions exceeds 100 tons per year.*

The public should be advised that this action will be effective on November 19, 1984. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of the revisions approved herein, the action on those revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on those revisions and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under sections 110, 161, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget (OMB) for review.

(Sec. 110(a), 160 to 169, 171 to 173, and 301(a) of the Clean Air Act (42 U.S.C. 7410(a), 7470 to 7479, 7501 to 7503, and 7601(a)))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Intergovernmental relations.

Dated: September 13, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Oregon was approved by the Director of the Federal Register on July 1, 1982.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart MM—Oregon

1. In § 52.1970, paragraph (c)(62) is added as set forth below:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(62) Title 22 "PERMITS" of the Lane Regional Air Pollution Authority Rules, except to the extent that they apply to marine vessel emissions and except the definitions of "dispersion technique" and "good engineering practice stack height", and Title 32 "EMISSION STANDARDS" Sections 32-100 through 32-104 of the Lane Regional Authority Rules, submitted by the State Department of Environmental Quality on March 2, 1983; clarifying letter dated June 20, 1984.

2. Section 52.1987 is amended by designating the existing paragraph as (a) and adding paragraph (b) as follows:

§ 52.1987 Significant deterioration of air quality.

* * * * *

(b) The Lane Regional Air Pollution Authority rules for permitting new and modified major stationary sources (Title

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* EPA is currently reassessing whether emissions trading rules, that it has already approved—like Oregon's, are consistent with EPA's emissions trading policies. The Agency may, in the future, take action to remedy any inconsistencies that it discovers. EPA believes, however, that during this interim reassessment period it may approve local rules that are the same as the statewide trading rules already in the EPA-approved SIP, regardless of potential inconsistencies between the statewide rules and current EPA emissions trading policies, because approval of those local rules would not substantively change the SIP.

22 PERMITS) are approved, in conjunction with the Oregon Department of Environmental Quality rules, in order for the Lane Regional Air Pollution Authority to issue prevention of significant deterioration permits within Lane County.

3. Section 52.1988 is amended by designating the existing paragraph as (a) and adding paragraph (b) as follows:

§ 52.1988 Air contaminant discharge permits.

* * * * *

(b) Emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the Lane Regional Air Pollution Authority in accordance with the provisions of the Federally-approved Permits rule (Title 22) and Plant Site Emission Limit rules (Title 32, Sections 32–100 through 104) and in conjunction with the Federally-approved DEQ rules, except alternative emission limits (bubbles) for sulfur dioxide or total suspended particulates which involve trades where the sum of the increases in emission exceeds 100 tons per year, shall be the applicable requirements of the Federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of Section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

[FR Doc. 84–24753 Filed 9–19–84; 8:45 am]

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40 CFR Part 710

Toxic Substances Control Act; Inventory Reporting Regulations

[OPTS–211013; FRL–2674–5]

Denial of Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of Citizen's Petition.

SUMMARY: This notice announces EPA's decision to deny a citizen's petition submitted by the Society of the Plastics Industry (SPI) under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620). SPI requested that EPA amend its Inventory reporting rule (40 CFR Part 710) by deleting the designation of inorganic glasses as mixtures and by excluding from the Inventory a category of substances SPI calls structural polymers (which would include inorganic glasses) by classifying them as not being chemical substances, *per se*, for purposes of the Inventory. EPA has concluded that available information does not support the requested amendments and that such amendments are procedurally inappropriate for the relief sought. Therefore, EPA is denying SPI's petition.

ADDRESS: Copies of the petition and all related information are located in: Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20460.

They are available for review and copying from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460. Toll Free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 8(b) of TSCA requires EPA to "compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States." Substances which do not appear on this list are subject to premanufacture notification (PMN) under section 5(a) of TSCA. EPA promulgated a rule, published in the **Federal Register** of December 23, 1977 (42 FR 64572) (40 CFR Part 710), which, among other things, required certain persons to report their activities as manufacturers, importers, or processors of chemical substances in U.S. commerce, except those substances specifically excluded from reporting by the rule or TSCA. From this reporting EPA compiled the list of chemical substances referred to as the TSCA Chemical Substances Inventory (hereafter the Inventory).

Section 710.4 of the Inventory reporting rule excluded several general categories of chemical substances from reporting for, and thus from listing on, the Inventory. EPA indicated that these substances would also be excluded from PMN requirements. Among these were: (1) mixtures of chemical substances (40 CFR 710.4(c)(2)) and (2) chemical substances which were not manufactured or processed for distribution in commerce as chemical substances, *per se*, and which had no commercial purpose separate from the substance, mixture, or article of which they may be a part, including imported articles as well as substances formed incidental to the manufacture, processing, or storage of other substances (40 CFR 710.4(d) (1) through (8)). When EPA promulgated the PMN reporting rule in 1983, it concluded that substances thus excluded from the Inventory would not be subject to PMN requirements (see 40 CFR 720.30).

On June 15, 1984, SPI petitioned EPA under section 21 of TSCA to amend the Inventory reporting rule by: (1) modifying the note at 40 CFR 710(c)(2) to delete inorganic glasses from the rule's illustrative list of mixtures, and (2) adding a paragraph (9) to 40 CFR 710.4(d) to exclude from Inventory reporting a category of substances that SPI calls structural polymers, which would include inorganic glasses.

The SPI petition proposes that the requisite characteristic properties of structural polymers be high molecular weight, water insolubility, thermoplasticity, non-reactivity in use, and end use application as an element of manufactured items.

SPI contends that commercial inorganic glasses and the other substances in SPI's structural polymer category have similar structural and end use characteristics and should be treated in a like manner for purposes of the Inventory reporting rule and PMN reporting. Most of the substances that comprise SPI's proposed structural polymer category (other than inorganic glasses) were subject to reporting under the Inventory reporting rule and are subject to PMN requirements if they are not on the Inventory.

Commercial inorganic glasses were designated as mixtures in the rule and thus were exempt from reporting for and listing on the Inventory. However, the components of such mixtures were required to be reported under the rule. Mixtures are defined at 40 CFR 710.2(g) as "any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction." Further, mixtures include combinations of substances that occur as a result of a chemical reaction if none of the substances comprising the combination is a new chemical substance and if the combination could have been commercially manufactured without a chemical reaction at the time of the combination. Mixtures are also exempt from PMN requirements (see 40 CFR 720.30(b)). SPI asserts in its petition that EPA erred in designating inorganic glasses as mixtures for purposes of the Inventory and failed to provide technical justification to support that designation.

SPI also asserts that substances included in its structural polymer category should be excluded from the Inventory because they are not chemical substances, *per se*, for purposes of the Inventory. SPI contends that structural polymers are not produced for commercial purposes separate from their end use as elements of manufactured items which, SPI believes, sets them apart from other substances on the Inventory.

II. Decision

EPA has reviewed the SPI petition and its supporting materials and has concluded that the Agency did not err in categorizing commercial inorganic glasses as mixtures and the thermoplastic polymers in SPI's structural polymers category as reportable chemical substances for purposes of the Inventory reporting rule, for the reasons set forth below.

SPI has failed to provide the Agency with sufficient evidence indicating either that commercial inorganic glasses should not be considered mixtures for purposes of the Inventory reporting rule and PMN requirements or that such glasses would be more accurately categorized as chemical substances, i.e. thermoplastic polymers. EPA believes that there was significant evidence supporting the Agency's classification of glasses as mixtures at the time the Inventory reporting rule was promulgated, that no new developments, discoveries, or data have been presented to the Agency to cause it to alter its position, and that, therefore, the preponderance of available evidence continues to support the Agency's position.

Contrary to SPI's assertions, glasses are customarily considered to be mixtures by the industry and in relevant scientific literature (Refs. 6, 7, and 8). Also, for example, the Encyclopedia of polymers Science and Technology (Ref. 9), a comprehensive compilation of polymers materials, lists no entry under glass and in a discussion about reinforcing fibers states that glasses "can be regarded as supercooled liquids." The SPI petition does not offer significant evidence to the contrary. The Agency believes that the few sources cited in SPI's petition, and several others located in the Agency's research, use the term polymer only in its broadest sense and for descriptive purposes in reference to the three dimensional structure of glass. These comparisons alone cannot reasonably be employed to support SPI's position that glass has the structural, physical, and chemical properties associated with chemical substances like commercial organic thermoplastic polymers. The Agency believes that the sources cited in the SPI petition are less compelling than the numerous sources that support the view that inorganic glasses are mixtures and lend little support to SPI petition that inorganic polymers should be classified with thermoplastic polymers.

EPA believes that commercial inorganic glasses satisfy both the generally-accepted definition of mixtures and the definition at 40 CFR 710.2(q) of the Inventory reporting rule. In addition, glasses exhibit significantly different properties than thermoplastic polymers, particularly in the way that each is formed and in their respective structures and physical and chemical properties.

Glasses and thermoplastic polymers are formed by different processes. Commercial glasses are typically formed when a network former, such as silica (SiO_2), is melted at very high temperatures, for example in excess of 1200° C for silica. In the molten state, the three dimensional network stucture of silica loosens or opens up through the rupturing of the network's bonds. The oxides of one or more metal or other element are added to the melt, go into solution, and are mixed or dispersed throughout the silica. The result is a uniform distribution at the molecular or ionic level of these substances in the silica network; this is the primary basis for the generally accepted concept that glass is a mixture of oxides that have been brought into mutual solution in the process of melting. What is formed is a true solution which is converted to the "glassy" state when the molten mix is cooled rapidly.

A thermoplastic polymer is typically formed by a chemical reaction that involves the condensation or addition of organic substances capable of combining with one another to form molecular chains of varying lengths. These reactions exhibit characteristics of typical chemical reactions in that they may involve significant changes in enthalpy, form byproducts, be accompanied by side reactions, and require the use of initiators, catalysts, and other components. The result is a chemical substance, *per se*.

The structures of glass and thermoplastic polymers are fundamentally different. Glass, as it is being formed in the molten state, is a three-dimensional network consisting of atoms of metals, oxygen, and other elements. It cannot be represented by a specific molecular formula of the constituent elements. Molten glass exhibits mixed bonding, with ionic and covalent bonds that are continuously ruptured and reformed because of the high level of thermal vibrational energy. When the molten glass is converted to the glassy or solid state, ruptured bonds in the silica network are permanently reformed. In the glassy state, the network becomes rigid, imparting to the glass the properties of a solid at normal temperatures. The atoms remain uniformly dispersed in the three dimensional network.

Thermoplastic polymers typically consist of linear chains of carbon atoms of varying length and molecular weight. They are organic molecules of definite composition that have been formed in a polymerization reaction. The carbon atoms in the chain are covalently bonded to one another. There are no cross-linkages between the chains of a thermoplastic polymer.

Glasses are non-stoichiometric combinations of the oxides used in their manufacture. Therefore, like other mixtures, the relative concentrations of the components of glass can be varied endlessly within the limits of the mutual solubilities of the oxides. Because of this, the physical properties of glasses are continuously variable. For example, a different glass with different physical properties results when an additional amount of an oxide of a metal or other element is added to a molten glass. By contrast, the arrangement or ordering of precursor molecules in a polymer chain and the properties of a commercial thermoplastic polymer are fixed once the chemical reaction involved in the synthesis of the polymer is complete.

The bonds in solid glass are very stable at normal temperatures, but when glass is melted bonds are ruptured and the glass becomes fluid and flows readily. On the other hand, the flow properties of thermoplastic polymers are due to the fact that above some temperature individual molecules can overcome intermolecular attractions and slide past one another. Under pressure the polymer can be molded or formed as desired. Therefore, it is clear that the mechanisms responsible for the flow properties of glass and thermoplastic polymers are different and that no common property of "thermoplasticity" can validly be employed to establish a close relationship between the two distinctly different classes of materials, as is suggested by SPI's petition.

In addition, EPA finds no factual evidence in the petition supporting SPI's contention that structural polymers should be classified as not being chemical substances, *per se*, for purposes of the Inventory under 40 CFR 710.4(d). Unlike the substances excluded from reporting for and listing on the Inventory under § 710.4(d), the substances in SPI's structural polymer category are chemical substances or mixtures produced with specific commercial intent and sold in commerce as chemical substances or mixtures. Further, the Agency does not agree with SPI's contention that the substances in its structural polymer category are unique simply because they are produced for no commercial purpose separate from their end use as elements of manufactured items. Numerous chemical substances that were reported for the Inventory and that do not fall within SPI's structural polymer category exhibit a similar characteristic. The Agency did not classify substances under § 710.4(d) for administrative expediency, as is implied in SPI's petition.

Also, EPA believes that even if the factual assertions in SPI's petition regarding whether glasses are "structural polymers" and not mixtures and such structural polymers should be removed from the Inventory were correct, the remedy sought by the petition is inappropriate for several reasons. First, EPA has concluded that the sole TSCA effect of SPI's petition would be to exempt the substances in SPI's structural polymer category from the PMN requirements of section 5 of TSCA (This conclusion is supported by comments on the SPI petition received from the Man-Made Fiber Producers Association). Indeed, the Agency would also need to amend the language of the final PMN rule (40 CFR 720.30), that presently does not exclude structural polymers from PMN reporting, to parallel any changes in the Inventory reporting rule. Exempting substances from PMN is properly accomplished through the provisions of section 5(h) of the Act, which provides specific guidelines and requirements for considering substances for exemptions, rather than through an amendment to the Inventory reporting rule. EPA has recently reviewed a broader class of polymeric substances for a section 5(h)(4) exemption and has pending a final rule which would exempt a substantial number of substances in SPI's structural polymer category from full PMN reporting requirements.

Secondly, the Inventory reporting rule, which SPI seeks to have amended, set forth procedures for reporting for the Inventory. Reporting ended more than 5 years ago. EPA will not retroactively modify the reporting procedures of a final rule if the amendments would have no effect on such reporting, and SPI admits in its petition that the changes it proposes would not likely result in any changes to the Inventory chemical substances listings.

Finally, even if its factual assertions were correct and its procedural remedy were appropriate, amending the Inventory reporting rule in the manner SPI requests would do little to achieve SPI's stated goal of reaching a resolution which "formally recognizes and documents the understanding that structural polymers do not have the potential to pose unreasonable risks." Regardless of the accuracy of that statement, decisions relating to reporting for or listing on the Inventory under the reporting rule were not based on assessments of potential risk, whereas consideration of risk is essential to a PMN exemption under section 5(h)(4). Therefore, the only things at issue in this petition are factual questions regarding whether commercial inorganic glasses and organic structural polymers were appropriately categorized for purposes of the Inventory and procedural issues regarding the appropriateness of SPI's requested remedy.

Accordingly, SPI's petition for amendments to the TSCA Inventory reporting rule is denied.

III Record for the Petition

The following documents constitute the record for this action:

(1) SPI Petition to EPA, dated July 5, 1984.

(2) Amendment to SPI Petition, dated August 9, 1984.

(3) Official Rulemaking Record from "Inventory Reporting Regulations," published in the **Federal Register** of December 23, 1977 (42 FR 64572).

(4) Record of Meeting with Chemists from Corning Glass, July 2, 1984.

(5) Public Comments on the Petition.

(6) "Chemistry of Glasses," A. Paul, London, Chapman and Hill, 1982.

(7) "Modern Glass Practice," S.R. Scholes, Boston, Cahner's, 1975.

(8) "Encylopedia of Technology," Vol. 11, Kirk-Othmer, New York, John Wiley and Sons, 1980.

(9) "The Encyclopedia of Polymer Science and Technology," Bikales, New York, Interscience, 1976.

These references are available in room E–107 for review and copying from 8 a.m to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 710

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirement, Inventory.

(15 U.S.C. 2620)

Dated: September 11, 1984.

Alvin L. Alm,

Acting Administrator.

[FR Doc. 84–24922 Filed 9–19–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 747

[OPTS–61010; TSH–FRL 2637–3]

Mixed Mono and Diamides of an Organic Acid Restrictions on Use in Metalworking Fluids

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediately effective proposed rule.

SUMMARY: EPA is proposing a rule under section 6(a) of the Toxic Substances Control Act (TSCA), which is effective immediately under section 5(f)(2) of TSCA. The proposed rule will remain in effect until EPA promulgates a final rule. The rule applies to the new chemical substance which was the subject of premanufacture notice (PMN) P–84–529, submitted under section 5(a) of TSCA. The rule prohibits the addition of any nitrosating agent, such as nitrites, to the chemical substance know generically as mixed mono and diamides of an organic acid when it is or could be used in metalworking fluids. The rule also requires distributors of the substance to notify customers of the restrictions of the rule through letters sent prior to shipment of the substance and to notify machine shop workers of the health hazard through labels on metalworking fluids containing the substance. EPA believes that the unrestricted distribution of the substance in commerce and its unrestricted processing and use in combination with nitrosating agents will present an unreasonable risk of injury to human health before a final rule can be promulgated under section 6 of TSCA to protect against this risk.

DATES: This rule is effective September 20, 1984. Written comments and requests for a public hearing must be submitted by November 19, 1984. A public hearing will be held, only if requested, beginning on December 3, 1984.

ADDRESS: Comments should be sent in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

Comments must include the docket control number OPTS–61010. Comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107 at the address given above.

Requests for a public hearing must be submitted to the above address and should reference the docket control number OPTS–61010. The time and location of the public hearing, if requested, will be announced in the future. Any person wishing information on the time and location of the hearing should contact the TSCA Assistance Office at the address and telephone number under "For Further Information Contact" below.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(f)(2) of TSCA authorizes the Administrator to issue a proposed rule under section 6(a) of TSCA to apply to a chemical substance which is the subject of a premanufacture notice. Such a rule may be issued if the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the substance presents or will present an unreasonable risk of injury to health or the environment before a final rule promulgated under section 6 can protect against such risk. The section 6(a) rule may, among other things, require that a chemical substance be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal as prescribed by the Agency; the Agency may also restrict the processing and use of the chemical substance. Pursuant to section 5(f)(2), a rule thus proposed under section 6(a) is immediately effective upon its publication in the **Federal Register.**

Substances covered by a proposed section 6(a) rule immediately effective upon publication pursuant to section 5(f)(2) are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances covered by such a proposed rule are also subject to TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127, and 127.8 (48 FR 34734, August 1, 1983). EPA regulations discussing TSCA's import requirements appear at 40 CFR Part 707, published in the **Federal Register** of December 13, 1983 (48 FR 55462).

II. Regulatory Background

A. PMN Background

On March 26, 1984, a PMN was received by the Agency and subsequently designated P-84-529. The specific identity of the substance, generically identified as mixed mono and diamides of an organic acid, was claimed confidential. EPA announced receipt of this PMN in the **Federal Register** of April 6, 1984 (49 FR 13744). The original 90-day review period would have expired on June 23, 1984. The submitter suspended the review period for 90 days on May 23, 1984, to provide EPA time to develop this proposed rule. The review period now expires on September 21, 1984.

The notice submitter claimed the specific chemical identity and production volume as confidential business information. The notice submitter specified that the substance will be manufactured for use as a corrosion inhibitor for aqueous systems. It may be used in metalworking fluid systems.

Because the specific chemical identity of the substance is confidential, it will be referred to by its generic name or PMN number in this preamble and the proposed rule. No test data on the substance were submitted with the PMN.

B. Related Rulemaking Activity

EPA has proposed two rules virtually identical to this proposed rule under section 6(a) of TSCA, made immediately effective under section 5(f) of TSCA, which were published in the **Federal Register** of January 23, 1984 (49 FR 2762) and June 14, 1984 (49 FR 24658), respectively. The January 23, 1984 rulemaking involves two new chemical substances, one of which, P-83-1005 (identified generically as triethanolamine salt of tricarboxylic acid) can be used as a corrosion inhibitor in aqueous metalworking fluids. The other, P-83-1062 (identified generically as tricarboxylic acid), is used as an intermediate to produce P-83-1005. The June 14, 1984 rulemaking involves P-84-310, identified generically as triethanolamine salt of a substituted organic acid which can also be used as a corrosion inhibitor in aqueous metalworking fluids. The risks presented by the unrestricted processing, distribution in commerce, and use of P-83-1005 and P-84-310 and virtually identical to those presented by P-84-529, and EPA is proposing the same regulatory approach to deal with those risks. Consequently, the discussion in this preamble, and the structure of this rule, are nearly identical to those for P-83-1005, P-83-1062, and P-84-310. Persons interested in this rulemaking may also be interested in the related rulemaking activity. EPA will, to the extent feasible, consider comments on all the rules in reaching decisions on the final rules.

The Agency is also considering proposing a rule under sections 6(a) and 8(a) of TSCA to impose reporting and/or recordkeeping requirements on manufacturers, importers, processors, and distributors of P-83-1005, P-83-1062, P-84-310, and P-84-529. Comments on the immediately effective proposed rule for P-84-529 may include discussion of possible approaches to reporting and recordkeeping for P-83-1005, P-83-1062, P-84-310 and P-84-529.

III. Reasons for Proposing the Rule

Metalworking fluids containing P-84-529 generally would not require addition of nitrosating agents, such as nitrites, to perform effectively. Based on the use patterns of similar substances, however, EPA believes that such addition of nitrosating agents could occur in practice. The Agency has determined that the diamide contained in P-84-529 will hydrolyze during use under high temperatures to amines and in the presence of nitrosating agents will be nitrosated to form N-nitrosodiethanolamine (NDELA), (Refs. 22, 29, and 30), which has been shown to be carcinogenic in animals.

Furthermore, excess amines and amine salts of the organic acid contained in P-84-529 in the presence of nitrosating agents will also be nitrosated to form NDELA.

The Agency believes that occupational exposures to NDELA due to the use of metalworking fluids containing P-84-529 together with nitrosating agents will subject workers to carcinogenic risks. NDELA is expected to be formed and to be absorbed via all routes (lungs, gastrointestinal tract, and skin). The Agency has therefore concluded that the unrestricted processing, distribution in commerce, and use of P-84-529 will present a unreasonable risk of injury to health before a final rule could be promulgated under section 6 of TSCA to protect against the risk.

EPA also believes that processing and use restrictions, and appropriate warnings and instructions to notify processors and users of the risks of combining P-84-529 with nitrosating agents, will protect persons from any unreasonable risk resulting from exposure to NDELA. In the absence of nitrosating agents, NDELA is not expected to be formed in metalworking

fluids containing P–84–529. Detailed technical information supporting the discussion which follows is contained in the Technical Support Document available in the record of this rulemaking.

A. Formation of NDELA

Like P–84–529, nitrites are corrosion inhibitors. Corrosion inhibitors, including nitrites, are frequently added to water-based metalworking fluids to extend the useful lifetimes of the fluids (Ref. 7), and to impart some specific corrosion inhibiting properties. The Agency has information that the addition of nitrites to metalworking fluids routinely occurs, both by formulators (processors) and users (Ref. 7).

The formation of N-nitrosamines in commercial metalworking fluids is well established (Ref. 8). The addition of nitrites to an aqueous metalworking fluid generates direct nitrosating agents, such as nitrous acid (HONO) or dinitrogen trioxide (N_2O_3), which may directly transform (nitrosate) secondary, tertiary, and certain primary amines to N-nitrosamines (Refs. 33 and 35). the Agency has concluded that, under conditions of use in metalworking fluids, diamides will hydrolyze under high temperatures to amines and in presence of nitrosating agents will be nitrosated to form NDELA. This conclusion is supported by Podall (Refs. 29 and 30) and March (Ref. 22), demonstrating that diamides can be hydrolyzed and nitrosated to form NDELA. Furthermore, excess amines and amine salts of the organic acid contained in P–84–529 in the presence of nitrosating agents will also be nitrosated to form NDELA (Reft. 30).

If P–84–529 is used without nitrites, as intended by the PMN submitter, there is expected to be no risk from nitrosamine formation. However, EPA believes that some processors and users could economically use P–84–529 as a co-corrosion inhibitor in metalworking fluids which contain nitrites (Ref. 8). Likewise, EPA believes that metalworking fluid formulations containing P–84–529 may subsequently have nitrites added to them because it is a common industry practice to add corrosion inhibitors, including nitrites, to existing metalworking fluids (Ref. 7). EPA is not aware of any reason that these practices might not occur.

EPA has been unable to determine the exact amounts of NDELA which will form if metalworking fluid formulations containing P–84–529 are used in conjunction with nitrosating agents. However, it is clear that, over time and during use, significant quantities of NDELA could be formed, limited only by the amounts of P–84–529 and nitrites available. A substantial number of people involved in metalworking practices may be exposed to varying levels of NDELA for significant periods of time, thereby experiencing potentially increasing risks.

B. Absorption of NDELA

Edwards et al. (Ref. 6) demonstrated the absorption of NDELA through the skin of humans wearing an NDELA-contaminated facial cosmetic by measuring NDELA in the urine of exposed humans. In addition, Bronaugh et al. (Ref. 2) showed that NDELA can penetrate isolated human epidermis *in vitro*. Two other studies have shown absorption of NDELA through the skin of several different animal species. Marzulli et al. (Ref. 23) showed dermal absorption using monkeys and pigs, and Lijinsky et al. (Ref. 20) achieved similar results using rats. There are no data regarding the absorption of NDELA following inhalation exposure. However, EPA believes it is reasonable to conclude that the absorption of NDELA by this route will be at least equivalent to that observed following the dermal administration of NDELA as a solution in metalworking fluids.

The Agency has concluded that the NDELA to which workers may be exposed via the inhalation route (due to the volatilization of the substance from metalworking fluids or to the formation of mists of NDELA-containing fluids generated during metalworking operations) will also be absorbed via the lungs and the gut.

C. Adverse Health Effects of NDELA—Laboratory Data

Laboratory data indicate that among the nitrosamines, NDELA is one of the most potent carcinogens in animals. NDELA has been shown to elicit nasal carcinomas and tracheal papillary tumors when administered to hamsters by subcutaneous injection (Ref. 12). In addition, hepatocellular carcinomas were induced in rats following oral administration of NDELA (Ref. 4). A more recent and comprehensive study by Preussman et al. (Ref. 32) has confirmed the positive findings of Druckrey et al. (Ref. 4). EPA has concluded that NDELA is carcinogenic in animals and, for regulatory purposes under TSCA, is presumed to be carcinogenic in humans.

D. Use Practices

Because of general concerns about the formation of N-nitrosamines during use of metalworking fluids, EPA has been studying metalworking industry practices for some time. EPA has concluded that processors of metalworking fluid concentrates (i.e., persons who formulate the concentrates) routinely add corrosion inhibitors, for example nitrites, to such concentrates to impart corrosion inhibiting properties to the fluid (Ref. 7). Typically, these corrosion inhibitors are added to concentrates in ranges of 1 to 10 percent (Ref. 7). Such use of nitrites has a long history in metalworking and in the formulation of metalworking fluid concentrates.

In machine shops and other metalworking operations, corrosion inhibitors, including nitrites, are routinely available and used by the workers to impart corrosion inhibiting properties. EPA's analysis has shown that workers commonly add corrosion inhibitors, such as nitrites, to metalworking fluids during metalworking operations, particularly to restore the corrosion inhibiting properties of a fluid that has been used for some time (Ref. 7). Historical use of nitrites in metalworking fluids has made the addition of nitrites during metalworking operations a common practice. The PMN submitter states that P–84–529 is intended to be used without nitrites.

EPA believes that there are two possible scenarios where P–84–529 could be used in the presence of nitrites.

First, the good performance provided by P–84–529 could lead a formulator to replace an existing specialty corrosion inhibitor with P–84–529 to improve performance (Ref. 8). Thus P–84–529 could be used in a nitrite-containing fluid.

Secondly, P–84–529 could come into contact with nitrites at the user sites. It is a common industry practice to add corrosion inhibitors to metalworking fluids to improve or maintain corrosion inhibition properties during use (Ref. 24 and 36). Potassium or sodium nitrites may be among the corrosion inhibitors added in such a manner (Ref. 7).

Accordingly, processors and users could add nitrites to metalworking fluids containing P–84–529 during formulation or use in accordance with normal industry practices.

E. Potential Worker Exposures

EPA examined the possible exposure of workers to P–84–529 contained in metalworking fluids and to NDELA in fluids containing P–84–529 and nitrites. The Agency determined that potential dermal and respiratory exposure of machine shop workers to NDELA is expected to be significant.

1. *Exposure during manufacturing and processing.* The PMN submitter has indicated that when P–84–529 is used as an additive in the preparation of a rust inhibiting package, the concentration of P–84–529 in the package will be 25 to 30 percent. P–84–529 will be manufactured and processed into a rust inhibiting package at one site. During manufacturing EPA estimates two workers may be exposed for 3 hours per day for up to 2 days per year at one site. During processing EPA estimates two workers may be exposed for 3 hours per day for up to 15 days per year at one site. The manufactured P–84–529 will contain no nitrites. Thus, exposures to P–84–529 alone are not of concern. The rust inhibiting package is then sold to 50 to 100 formulators who process the package into a metalworking fluid concentrate containing 2 to 3 percent of P–84–529.

During processing of the package into a metalworking fluid concentrate EPA estimates two workers may be exposed for 3 hours per day for up to 50 days per year per site.

Typical metalworking fluid concentrates to which P–84–529 might be added usually contain 1 to 10 percent of corrosion inhibitor (Ref. 7). Since nitrites are commonly used for this purpose, it is probable that some metalworking fluid concentrates to which P–84–529 would be added may also contain nitrites. However, processing workers who formulate and package metalworking fluid concentrates containing both nitrites and P–84–529 are not expected to be exposed to NDELA because diamides contained in P–84–529 are not expected to hydrolyze to amines at ambient temperatures.

2. *Exposure during use.* Metalworking fluid concentrates containing P–84–529 would primarily be used in machine shops. The major exposure to NDELA would occur during metalworking operations. The concentrate containing 2 to 3 percent of P–84–529 will be diluted with water to .05 to .3 percent for use in machine shops. Addition of corrosion inhibitors, including nitrites, to such waterbased metalworking fluids is a common practice in machine shops. Neither the Agency nor the PMN submitter knows of any reason why nitrites could not be added to a fluid containing P–84–529. The Agency has concluded that as many as 10,000 workers could be exposed to metalworking fluids containing P–84–529 and nitrosating agents, such as nitrites, at the maximum projected manufactured volume (Ref. 42).

Workers' hands and arms are routinely exposed to metalworking fluids in machine shops. This exposure results from handling machined parts coated with the fluids during metalworking operations, contact with contaminated equipment, maintenance, and cleanup operations. Workers are not expected to avoid contact with the metalworking fluids because the fluids are non-irritating to the skin (aside from allergic dermatitis which may develop over prolonged periods of exposure), and the workers are generally not aware of the hazards associated with these fluids. In addition, gloves decrease the dexterity needed when handling machined parts and are, therefore, not worn. Thus the Agency believes that workers could be dermally exposed each workday to potentially significant levels of the NDELA formed in metalworking fluids containing both P–84–529 and nitrosating agents.

Workers could also be exposed to NDELA generated in metalworking fluids via inhalation of mists generated during machining operations (Ref. 16). Workers using metalworking fluids containing P–84–529 and nitrosating agents could also be exposed to smaller amounts of NDELA from inhalation of NDELA vapors. The workers in machine shops do not wear respirators that would protect against such exposure to NDELA.

F. Carcinogenic Risk in Humans

Because NDELA, a known carcinogen, will form if nitrosating agents are added to metalworking fluids containing P–84–529, workers in machine shops will be exposed to potentially significant amounts of NDELA in such metalworking fluids through dermal contact with the fluids and inhalation of fluid mists and NDELA vapors. Because NDELA is absorbed in significant amounts through the skin, lungs, and gastrointestinal tract, EPA has concluded that machine shop workers may experience a significant risk of cancer from using such metalworking fluids.

G. Economic and Health Benefit Considerations

1. *Substitutes for nitrites and P–84–529.* The submitter states that P–84–529 may function as a corrosion inhibitor in metalworking fluids. EPA believes that there are numerous potential substitutes for nitrites that could be used in metalworking fluids containing P–84–529 without presenting any risk from formation of nitrosamines. These substitutes generally fall into the following groups:

a. Tall oil fatty acids, alkanolamine reaction products.

b. Borates and boron/nitrogen compounds.

c. Petroleum sulfonates.

d. Carboxylates.

EPA believes that substances in the groups listed above could also serve as substitutes for P–84–529, if necessary (Ref. 8).

Chemical substances within these groups are commercially available and currently in use in metalworking fluids. They could provide some, if not all, of the property advantages of P–84–529. The prices of substitutes are generally competitive with the price of the PMN substance.

2. *Cost of controls.* EPA is proposing that processors and users of metalworking fluids which contain P–84–529 be prohibited from adding nitrosating agents, including nitrites, to such fluids. EPA is also proposing that distributors of P–84–529, or any product containing P–84–529, who distribute the substance in commerce in such a manner that it could be used in metalworking fluids notify customers through a letter of the requirements of the rule and confirm receipt of the letter in writing. EPA is also proposing that distributors of P–84–529 in metalworking fluids label containers of those fluids.

EPA has concluded that there is little, if any, cost associated with prohibiting the addition of nitrosating agents to metalworking fluids containing P–84–529 (Ref. 8). P–84–529 is intended to be marketed as a corrosion inhibitor. If used alone in a metalworking fluid without the addition of nitrosating agents, P–84–529 should provide the needed corrosion inhibition without any change in performance. If additional corrosion inhibitors are desired in the metalworking fluid, substitutes for nitrosating agents are readily available, though possibly at somewhat greater cost.

EPA has concluded that the present value of the cost of notifying customers through labels and/or letters in accordance with the rule will add less than $0.001 per gallon of the PMN substance or to the final formulated metalworking fluids.

EPA does not believe that such letters and labels will make the substance or resulting products any less competitive than other corrosion inhibitors or metalworking fluids. Indeed they may attract buyers interested in avoiding use of nitrites (Ref. 7).

3. *Health benefits.* The controls proposed in this rule would minimize any risk to machine shop workers of cancer resulting from exposure to NDELA formed in metalworking fluids containing P–84–529. These benefits cannot be quantified.

4. *Economic impacts.* EPA selected an approach for regulating P–84–529 which is the least burdensome method of providing the health benfits of minimizing, if not eliminating, the risk associated with use of P–84–529 in combination with nitrites. Other alternatives available to EPA, such as banning P–84–529 or requiring exposure controls, may provide the same health benefits, but probably would keep P–84–529 from being introduced into the market. Taking no regulatory action would not provide these health benefits.

Introduction of P–84–529 into the market as a corrosion inhibitor for metalworking fluids may present benefits to the PMN submitter and society. P–84–529 may present property benefits over some existing products now on the market. EPA's selected approach is expected to provide almost all of the benefits of allowing the substance on the market.

EPA realizes that there could be some adverse impact on the marketability of the substance resulting from this rulemaking. EPA believes that most of this impact would result from the loss of market to those who would use the substance in combination with nitrites. EPA believes this form of loss of market would be slight and is a desirable outcome of this rulemaking. Some unintended loss in market may also result due to the existence of this regulation.

As discussed above, the cost of complying with the section 5(f)(2) rule is not expected to be significant. Most of the impact on the marketability of the substance is not expected to result from these compliance costs.

Other methods of regulating the substance, such as a ban or exposure controls, would impose significant costs on the PMN submitter and others. While taking no regulatory action would impose no costs, the health benefits of reduced risk would be lost.

H. The Section 5(f) Finding

Section 5(f)(1) of TSCA authorizes EPA to take action with respect to a new chemical substance which is the subject of a PMN. The Agency can take such action if it "has a reasonable basis to conclude" that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities "presents or will present an unreasonable risk of injury to health or the environment before a rule promulgated under section 6 can protect against such risk." There are two components to this finding, as follows:

1. *Unreasonable risk.* TSCA does not specifically define the term "unreasonable risk." However, the legislative history makes clear that a determination of whether a risk is unreasonable requires a balancing of the probability and severity of harm from the substance against the costs of the regulatory action to society. Congress recognized that the implementation of the unreasonable risk standard "will of necessity vary depending on the specific regulatory authority which the Administrator seeks to exercise" (Ref. 17).

With respect to a new chemical substance that is the subject of a PMN, EPA will have less complete information and experience upon which to base a regulatory action than for a chemical substance which has been in commerce for some time. However, it is clear that Congress intended EPA to exercise authority under section 5(f) of TSCA for new substances which will pose unreasonable risks.

In this instance, EPA has concluded that NDELA will form when P–84–529 is used in the presence of nitrosating agents. Since the substance has not been tested, EPA is unable to quantify exactly how much NDELA will form in such fluids. Different amounts of P–84–529 may be used in different formulations of metalworking fluids, and different types and amounts of nitrites or other nitrosating agents may be added to such fluids. Time, temperature, and conditions of use are also variables in determining the amount of NDELA that might be formed in a specific metalworking fluid.

EPA has a strong basis for concluding that NDELA poses a carcinogenic hazard and that if it gets onto workers' skin, into their lungs, or into their gastrointestinal tracts, it will be absorbed and, with chronic exposure, will very likely cause cancer.

The extent to which workers will be exposed to NDELA as a result of the introduction of P–84–529 is unknown because exposure to the substance has not been monitored. However, EPA has based its exposure analysis on knowledge of the use of metalworking fluids of this type, and the types and quantity of exposure which result.

In light of the potentially significant risk of cancer to workers using metalworking fluids containing P–84–529 and nitrosating agents and the low cost of the regulatory controls chosen, EPA has concluded, in accordance with section 5(f)(1) of TSCA, that processing, distribution in commerce, and use of P–84–529 without processing and use restrictions and notification requirements will present an unreasonable risk of injury to human health.

Because little specific data is available, EPA's exposure analysis is based on general knowledge of exposure to similar substances in metalworking fluids. Thus, EPA's risk findings are, to a certain degree, speculative. However, EPA believes that even if exposure to NDELA in metalworking fluids containing P–84–529 and nitrosating agents such as nitrites were low, such exposure would still lead to a risk to the health of machine shop workers which is unreasonable in light of the extremely low cost of eliminating that risk entirely.

2. *Need for expedited action.* Action under section 5(f) of TSCA also requires a finding that the unreasonable risk will occur before a rule promulgated under section 6 of TSCA can protect against the risk. Unless it is clear that, because of special circumstances, the exposures of concern will not occur for an interval during which EPA could conduct an ordinary section 6 rulemaking, EPA is authorized to determine that immediate control is necessary to protect against the risk.

In this instance, in accordance with section 5(f)(1), EPA has concluded that the risk of exposure to NDELA and the resulting risk of cancer in machine shop workers would begin as soon as these workers are exposed to metalworking fluids containing P–84–529 and nitrosating agents such as nitrites. EPA has concluded that processors who formulate metalworking fluid concentrations may add nitrites or other nitorsating agents to formulations containing P–84–529 once distribution of the substance begins. In addition, based on routine workplace practices in metalworking operations, in particular in machine shops, EPA has concluded that, even if the formulated metalworking fluid concentrates containing P–84–529 are not sold with nitrites, workers are likely to add corrosion inhibiting agents, such as nitrites, to those fluids during use in the workplace. Thus, the risk of NDELA formation and exposure to workers will begin immediately.

A typical section 6 rulemaking could take at least a year, and probably more, to complete. Thus, unless section 5(f) authority is invoked, machine shop workers would be at risk from exposure for a considerable length of time.

Even though cancer results from chronic exposure, EPA believes it is appropriate to use the authority of section 5(f) to deal with such a risk. Congress intended that EPA pay special attention to risks of cancer and make every effort to ensure that such risks are not unreasonable.

IV. Alternatives Considered

A. TSCA Alternatives

EPA considered other possible approaches to ensuring the protection of human health. These alternatives were discussed in detail in the preambles to both the January 23, 1984 rulemaking for P–83–1005 and P–83–1062 (49 FR 2712) and the June 14, 1984 rulemaking on P–84–310 (49 FR 24658).

B. Non-TSCA Alternatives

In response to the first section 5(f) action for the chemical substances identified as P–83–1005 and P–83–1062, comments questioned whether the Agency should have referred these substances under section 9(a) of TSCA to the Occupational Safety and Health Administration for action under the Occupational Safety and Health Act. EPA considered such an action for those substances and for the second section 5(f) action on P–84–310, but decided that TSCA was the more appropriate authority to deal effectively with the risks posed by these substances. See the preamble to the rulemaking on P–84–310, published in the **Federal Register** of June 14, 1984 (49 FR 24658), for a complete discussion.

V. Regulatory Investigation of Metalworking Fluids

The Agency's actions on P–84–529, P–84–310, P–83–1005, and P–83–1062 reflect its concern about the potential human health risk posed by exposure to nitrosamines in metalworking fluids in general. The Agency is conducting a regulatory investigation into any unreasonable risks to human health posed by nitrosamines in synthetic and semisynthetic metalworking fluids. This investigation may culminate in the promulgation of a rule under section 6 of TSCA addressing nitrosamine-related health risks posed by existing metalworking fluids. Such a rule could render this proposed rule, and the proposed rules for P–83–1005, P–83–1062, and P–84–310 redundant or obsolete. If so, EPA may in the future incorporate these rules into the generic section 6 rule or revoke them entirely.

Refer to Unit V of the preamble of the **Federal Register** notice of January 23, 1984 (49 FR 2762) for P–83–1005 and P–83–1062 and Unit V of the preamble of the **Federal Register** notice of June 14, 1984 (49 FR 24658) for P–84–310 for further information on the general investigation of metalworking fluids.

VI. Exemptions to the Rule

Persons who process, distribute in commerce, or use P–84–529 would not be subject to the restrictions of this proposed rule if:

1. They manufacture, import, process, distribute in commerce, and use the substance in small quantities solely for research and development in accordance with TSCA section 5(h)(3).
2. They manufacture, import, process, distribute in commerce, and use the substance only as an impurity.
3. They import, process, distribute in commerce, or use the substance only as part of an article.

EPA has designated these three exemptions because in these three situations the substance is unlikely to present a risk.

4. The process or distribute the substance in commerce solely for export from the United States and, when distributing in commerce, label it in accordance with section 12(a)(1)(B) of TSCA.

EPA has included an exemption for P–84–529 when it is processed or distributed in commerce solely for export. As discussed above in Unit III.F.1 of this preamble, EPA is not concerned about worker exposure NDELA during processing of P–84–529 with nitrosating agents because of the high temperature required to form amines and the length of time required for NDELA to form. Rather, EPA has placed restrictions on adding nitrosating agents to P–84–529 during processing to protect workers who will use metalworking fluids containing P–84–529. Similarly, the restrictions on distribution of P–84–529 in commerce, i.e. notification letters and labels on containers of metalworking fluids, are designed to inform processors, users, and other distributors of the restrictions of the rule—again to protect workers who will use metalworking fluids containing P–84–529. Section 12(a) of TSCA exempts substances processed or distributed in commerce solely for export from regulation under section 6 unless EPA finds that the activities will present an unreasonable risk of injury to health or the environment in the United States. In this case, if the use of P–84–529 will occur outside the United States, there is no unreasonable risk in the United States.

The proposed rule defines "process or distribute in commerce solely for export" in a similar fashion to the definition of "manufacture solely for export" used in the PMN rule (40 CFR 720.3(s)). All processing must be performed at sites under the control of the processor, distribution in commerce is limited to purposes of export, and the substance may not be used by the processor or distributor other than in small quantities solely for research and development. However, such exempt exports remain subject to export notification under section 12(b) of TSCA.

VII. Procedures for Informing Persons of the Existence of This Rule

The final rule will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR).

EPA intends to publish information concerning the final rule, and this immediately effective proposed rule, in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances (OTS). EPA may also use the TSCA Chemical Substance Inventory to inform persons of the existence of the final rule through a footnote to the chemical identity of the chemical substance subject to the rule. The footnotes would refer to an Inventory Appendix which would give a **Federal Register** or CFR citation for the final rule.

Determining whether a chemical substance is subject to the rule is more difficult when the identity of the chemical substance is confidential. In this case, the chemical identity of P–84–529 was claimed confidential in the PMN. EPA is proposing to keep the specific identity of the substance confidential in the final rule. The substance would be referred to by a generic chemical name and PMN number. On the printed version of the Inventory, there would be a footnote indicating that the chemical substance masked by the generic name is subject to the rule.

Any person proposing to manufacture or import a chemical substance within the generic name of P–84–529 for the first time would ask EPA whether its chemical substance is on the Inventory. To make such a request, the person would have to show EPA that the person has a *bona fide* intent to manufacture or import the substance in question. Under either 40 CFR 710.7(g)(2) of the Inventory Reporting Rules or 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules, which were published in the **Federal Register** of May 13, 1983 (48 FR 21722), EPA would evaluate the inquiry and would answer the inquiry by either informing the requester that the substance is on the Inventory or informing the requester that sufficient information has not been furnished to show a *bona fide* intent to manufacture or import the substance in question. In the first case, EPA is proposing to tell the manufacturer or importer, as well, whether the substance is subject to this rule.

This procedure would allow manufacturers and importers to determine whether they are subject to the rule while protecting confidential business information from unnecessary disclosure.

The existing *bona fide* procedure can be used only by manufacturers and importers. EPA believes that, since manufacturers and importers who distribute the substance will be required to notify customers about the rule, processors, distributors, and users buying the substance will be aware, through the letters and labels, that the substance is subject to this rule and will not need to use a *bona fide* procedure.

Because EPA is not proposing a separate *bona fide* procedure for processors, distributors, and users to determine whether the substances they process, distribute, and use are subject to this rule, EPA is proposing to hold processors, distributors, and users liable for violations of the rule only if they are also manufacturers or importers of the substance, or if they have received the letters and labels specified in the rule. Thus, compliance by processors, distributors, and users will be dependent upon the notification and labeling requirements of the rule which will flow initially from manufacturers and importers.

VIII. The Section 5(f) Rulemaking Process

Under section 5(f)(2) of TSCA, after making the appropriate statutory findings discussed in Unit III.H of this preamble, EPA may issue a proposed rule under section 6(a). Such a proposed rule is effective upon publication in the **Federal Register.** The rulemaking procedures that would apply to an ordinary section 6(a) rule apply to a section 6(a) rule effective upon publication under section 5(f), except that section 5(f)(2) incorporates the provisions of section 6(d)(2)(B) of TSCA. EPA will thus follow its general section 6 rulemaking procedures in 40 CFR Part 750 subject to specific section 6(d)(2)(B) requirements.

Section 6(d)(2)(B) of TSCA provides that EPA must give interested persons prompt notice of the action, provide a reasonable opportunity for a hearing in accordance with section 6(c) (2) and (3), and either promulgate the rule as proposed, or with modification, or revoke it. However, unlike an ordinary section 6(c) rulemaking in which EPA would schedule the hearing after allowing written comment, section 6(d)(2)(B) proves that, if a person requests a hearing, EPA must begin the hearing within 5 days of the request, unless EPA and the person making the request agree upon a later date. Section 6(d)(2)(B) further provides that EPA must promulgate a final rule, or revoke the proposed rule, within 10 days of the conclusion of the hearing.

For this rulemaking, EPA has established the following schedule: To provide a reasonable opportunity for comment by all interested persons, EPA will accept written comments for 60 days from the date of publication of this **Federal Register** notice. A legislative hearing is scheduled to begin 14 days after the end of the 60-day comment period. The hearing will be held only if EPA receives a formal request from an interested person by the end of the 60-day comment period. If a hearing is requested, interested persons will be given an opportunity to present information. Fourteen days after the conclusion of the initial hearing, EPA will hold a cross-examination hearing, but only if an opportunity for cross-examination is requested by an interested person within 7 days of the time the full transcript of the initial hearing becomes available and EPA grants the request. Within 14 days of the close of the initial hearing, or within 14 days of the close of the cross-examination hearing if such a hearing is held, reply comments may be submitted. After that 14-day period, the hearing is officially concluded, and EPA will promulgate the final rule or revoke it within 10 days.

EPA requests that all interested persons adhere to this schedule to allow all persons an adequate opportunity to comment and participate. However, if a person comes in at any time during the 60-day period and requests an immediate hearing, EPA is required to begin the hearing within 5 days of the request. If so, EPA will be forced to cut short the written comment period and proceed with the hearing. EPA will give as much notice as possible of any such hearing request and any change in the rulemaking schedule.

IX. The Rule

A. Proposed Rule Language

This proposed rule is structured as follows: The chemical substance is described in paragraph (a). Paragraph (b) contains applicable definitions. Paragraphs (c) and (d) contain processing and use prohibitions and warning and instructions requirements. Paragraph (e) sets forth the procedures for determining whether a substance is subject to the rule and discusses processor, distributor, and user liability. Paragraph (f) sets out activities that are exempt from the rule. Paragraph (g) describes enforcement provisions applicable to the rule.

EPA invites comments on all aspects of the proposed rule language.

B. Discussion of Provisions

The proposed rule applies to P-84-529. EPA has decided to require that letters be sent to customers receiving the substance and that labels be used on metalworking fluids containing the substance because processors, distributors, and users are unlikely to become aware of the processing and use restrictions in this rule when they buy the substance or products containing the substance unless they receive adequate notice of the rule provisions. Absent such notice, EPA believes unintentional noncompliance with the processing and use restrictions would be widespread, and the rule would be difficult to enforce. Accordingly, a letter and label will make them aware of this rule and its requirements.

For purposes of notifying distributors and processors of P-84-529 before it is formulated into metalworking fluids, EPA is proposing that distributors (beginning with manufacturers and importers) send to each customer, and confirm receipt in writing prior to the first shipment of the product containing P-84-529, a notice letter alerting the customer to the rule and explaining its provisions. The written confirmation of receipt may consist of the return receipt from a letter sent by certified mail, registered mail, or overnight express, a copy of the notification letter itself signed by the recipient and returned to the distributor, or any other written memorial confirming receipt of the letter. EPA is not, by specifying that the confirmation of receipt shall be in writing, requiring any new information to be generated by distributors or recipients of the new chemical substance.

EPA concluded that this approach would be much more effective in achieving compliance with the rule than requiring labels on each container of the shipment because management at a formulator (processor) or distributor site would be responsible for the decision to formulate metalworking fluids or further distribute products. Workers likely to read a label would have no control over those operations.

On the other hand, in the machine shop use situation, EPA wants to ensure that both the management and the individual workers who may add nitrites to a metalworking fluid as part of a standard operating procedure are aware of the restrictions of the rule. Accordingly, EPA is proposing that distributors (including processors) send to the users' management a notice letter, and confirm receipt in writing prior to the first shipment of the product containing P-84-529. The distributors must also label individual containers of metalworking fluids containing P-84-529 to protect and inform users.

Although the proposed rule requires that one notice letter be sent prior to the first shipment of P-84-529, the Agency is considering requiring more frequent use of the letters. Additional letters could be required either upon the lapse of a specified period of time after the first shipment or with each shipment. For example, discrete shipments of P-84-529 might be ordered by a company and used on different production lines over time such that the contents of the notice letter might be communicated by management only to the workers on the first production line, and not to subsequent users. Such a finding would support the use of the letters with each shipment. A finding that worker turnover could lead to P-84-529 being used by workers who have not received adequate warning of the possible health risks from management would support the use of additional letters upon the lapse of a specified period of time after the first shipment. The Agency solicits comments on these alternative approaches.

The rule also requires any person who distributes in commerce a metalworking fluid containing P-84-529 to affix a label to each container. The label must contain a warning statement consisting only of the following language:

> WARNING! Do Not Add Nitrites to This Metalworking Fluid under Penalty of Federal Law. Addition of nitrites leads to formation of a substance known to cause cancer. This product is designed to be used without nitrites.

See the preamble to the June 14, 1984, rulemaking for P-84-310 for a discussion of possible additions to the letter or label.

The PMN submitter indicated in the PMN that P-84-529 can also be used in other aqueous applications. In that use, addition of nitrites is unlikely, and EPA has no concern for such use of P-84-529. However, it is possible that P-84-529 will be marketed in forms in which it could be used either in metalworking fluids or in other applications, for example, hydraulic fluids. For this reason, EPA is proposing that the processing restrictions and letter notification requirements apply when P-84-529 is processed or distributed in commerce in any form in which it could become a component of a metalworking fluid regardless of whether that use is intended by the processor or distributor.

C. Immediately Effective Provisions

All the provisions of the proposed rule, promulgated under the authority of section 6(a) of TSCA, are in effect as of this publication in the **Federal Register** and will remain in effect until EPA promulgates the final rule as provided by section 5(*f*) of TSCA.

X. Enforcement

It is unlawful for any person to fail or refuse to comply with any rule promulgated under section 6 of TSCA. Distribution in commerce of the chemical substance without letter notification and labeling, as required by the rule, is a violation of section 15. Processing and use of P-84-529 in violation of the rule is a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

1. Use for commercial purposes, a chemical substance or mixture which such person knew or had reason to know was processed or distributed in commerce in violation of this rule.

2. Fail or refuse to permit entry or inspection as required by section 11 of TSCA.

3. Fail or refuse to permit access to or copying of records, as requred by section 11 of TSCA.

Violations may be subject to both criminal and civil liability. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations of the rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of the rule and seizing chemical substances processed or distributed in violation of the rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies.

XI. Confidential Business Information

A. Public Comments

1. Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2.

2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

B. Disclosure of Specific Chemical Identity

The specific chemical identity of the new chemical substance that is the subject of this proposed rule was claimed confidential in the PMN. While EPA has authority under section 14(a)(4) of TSCA to disclose information relevant in a proceeding under TSCA notwithstanding its confidentiality, EPA has determined initially that disclosure of the specific identity of P-84-529 is not necessary to conduct this rulemaking proceeding or to comply with the rule.

The generic name which the PMN submitter has authorized EPA to use in this rulemaking reveals the relevant aspects of the molecule in question, in particular the diamides components of P-84-529. EPA believes that interested parties will thus have an adequate opportunity to comment on all aspects of the proposed rule.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-61010). The record includes the basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

A. Categories of Information

1. The PMN for this substance.

2. The **Federal Register** notice of receipt of the PMN.

3. The Economic Analysis of this proposed rule.

4. The Technical Support Document (Risk Assessment).

5. OMB Comments on the proposed rule, if any, and EPA's response.

6. The proposed rule, published in the **Federal Register** of January 22, 1984, for two new chemical substances, P-84-1005, identified generically as triethanolamine salt of tricarboxylic acid, and P-84-1062, identified generically as tricarboxylic acid.

7. The proposed rule published in the **Federal Register** of June 14, 1984 for the new chemical substance P-84-310.

identified generically as triethanolamine salt of a substituted organic acid.

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A public version of this record from which confidential business information is deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in the OTS Public Information Office, Rm. E–107, 401 M St., SW., Washington, D.C.

EPA will identify the complete rulemaking record by the date of promulgation. The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not have a significant impact on a substantial number of small entities. Even though many machine shops may be small businesses, EPA has concluded that there is little, if any, cost associated with prohibiting the addition of nitrosating agents to metalworking fluids containing P–84–529. EPA does not believe that the required letters and labels will make the substances or resulting products any less competitive than other corrosion inhibitors or metalworking fluids, and may attract buyers interested in avoiding nitrites. The cost of complying with the section 5(f) rule is not expected to be significant.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the information collection provisions of a proposed rule must be submitted to OMB for approval. The proposed section 5(f) rule requires no "collection of information" as that term is defined in the Paperwork Reduction Act. The rule requires distributors to transmit information supplied by the Agency to the recipients of P–84–529 via warning labels and letters, and to confirm receipt of the information. No new information need be generated by the distributors of the chemical substance nor are reporting or recordkeeping requirements imposed under this rule. The proposed section 5(f) rule is therefore not reviewable under the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 747

Chemicals, Environmental protection, Hazardous materials, Metalworking fluids.

Dated: September 13, 1984.

William D. Ruckelshaus,

Administrator.

PART 747—[AMENDED]

Therefore, it is proposed that proposed Part 747 [1] of Chapter I of Title 40 be amended by adding § 747.115 to read as follows:

§ 747.115 Mixed mono and diamides of an organic acid.

This section identifies activities with respect to a chemical substance which are prohibited and requires that warnings and instructions accompany the substance when distributed in commerce.

(a) *Chemical substance subject to this section.* The following chemical substance, referred to by its premanufacture notice number and generic chemical name, is subject to this section: P–84–529, mixed mono and diamides of an organic acid.

(b) *Definitions.* Definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section unless otherwise specified in this paragraph. In addition, the following definitions apply:

(1) The terms "Act," "article," "chemical substance," "commerce," "importer," "impurity," "Inventory," "manufacturer," "person," "process," "processor," and "small quantities solely for research and development" have the same meaning as in § 720.3 of this chapter.

(2) "Metalworking fluid" means a liquid of any viscosity or color containing intentionally added water used in metal machining operations for the purpose of cooling, lubricating, or rust inhibition.

(3) "Nitrosating agent" means any substance that has the potential to transfer a nitrosyl group (–NO) to a primary, secondary, or tertiary amine to form the corresponding nitrosamine.

(4) "Process or distribute in commerce solely for export" means to process or distribute in commerce solely for export from the United States under the following restrictions on domestic activity:

(i) Processing must be performed at sites under the control of the processor.

(ii) Distribution in commerce is limited to purposes of export.

(iii) The processor or distributor may not use the substance except in small quantities solely for research and development.

(c) *Use limitations.* (1) Any person producing a metalworking fluid, or a product which could be used in or as a metalworking fluid, which includes as one of its components P–84–529, is prohibited from adding any nitrosating agent to the metalworking fluid or product.

(2) Any person using as a metalworking fluid a product containing P–84–529 is prohibited from adding any nitrosating agent to the product.

(d) *Warnings and instructions.* (1) Any person who distributes in commerce P–84–529 in a metalworking fluid, or in any form in which it could be used as a component of a metalworking fluid, must send to each recipient of P–84–529 and confirm receipt in writing prior to the first shipment to that person:

(i) A letter that includes the following statements:

> A substance, identified generically as mixed mono and diamides of an organic acid, contained in the product (*insert distributor's other identifier for product containing P–84–529*) has been regulated by the Environmental Protection Agency, at 40 CFR 747.115, as published in the Federal Register of September 20, 1984. A copy of the regulation is enclosed. The regulation prohibits the addition of any nitrosating agent, including nitrites, to the mixed mono and diamides of an organic acid, when the substance is or could be used in metalworking fluids. The addition of nitrites or other nitrosating agents to this substance leads to formation of a substance known to cause cancer in laboratory animals. The mixed mono and diamides of an organic acid has been specifically designed to be used without nitrites. Consult the enclosed regulation for further information.

(ii) A copy of this § 747.115.

(2)(i) Any person who distributes in commerce a metalworking fluid containing P–84–529 must affix a label to each container containing the fluid.

(ii) The label shall contain a warning statement which shall consist only of the following language:

> WARNING! Do Not Add Nitrites to This Metalworking Fluid under Penalty of Federal Law. Addition of nitrites leads to formation of a substance known to cause cancer. This product is designed to be used without nitrites.

(iii) The first work of the warning statement shall be capitalized, and the type size for the first word shall be no smaller than six point type for a label five square inches or less in area, ten point type for a label above five but below ten square inches in area, twelve point type for a label above ten but below fifteen square inches in area, fourteen point type for a label above fifteen but below thirty square inches in area, or eighteen point type for a label over thirty square inches in area. The type size of the remainder of the warning statement shall be no smaller than six point type. All required label text shall be of sufficient prominence, and shall be placed with such conspicuousness relative to other label text and graphic material, to insure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

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[1] **Editorial Note:** Part 747 was added as an immediately effective proposed rule on January 23, 1984, at 49 FR 2762.

(e) *Liability and determining whether a chemical substance is subject to this section.* (1) If a manufacturer or importer of a chemical substance which is described by the generic chemical name in paragraph (a) of this section makes an inquiry under § 710.7(g) of this chapter or § 720.25(b) of this chapter as to whether the specific substance is on the Inventory and EPA informs the manufacturer or importer that the substance is on the Inventory, EPA will also inform the manufacturer or importer whether the substance is subject to this section.

(2) Except for manufacturers and importers of P-84-529, no processor, distributor, or user of P-84-529 will be in violation of this section unless that person has received a letter specified in paragraph (d)(1) of this section or a container with the label specified in paragraph (d)(2) of this section.

(f) *Exemptions.* A person identified in paragraphs (c) and (d) of this section is not subject to the requirements of those paragraphs if:

(1) The person manufactures, imports, processes, distributes in commerce, or uses the substance only in small quantities solely for research and development and in accordance with section 5(h)(3) of the Act.

(2) The person manufactures, imports, processes, distributes in commerce, or uses the substance only as an impurity.

(3) The person imports, processes, distributes in commerce, or uses the substance only as part of an article.

(4) The person processes or distributes the substance in commerce solely for export and, when distributing in commerce, lables the substance in accordance with section 12(a)(1)(B) of the Act.

(g) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act [15 U.S.C. 2614].

(2) Failure or refusal to permit access to or copying of records, as required under section 11 of the Act, is a violation of section 15 of the Act [15 U.S.C. 2614].

(3) Failure or refusal to permit entry or inspection, as required under section 11 of the Act, is a violation of section 15 of the Act [15 U.S.C. 2614].

(4) Violators may be subject to the civil and criminal penalties in section 16 of the Act [15 U.S.C. 2615] for each violation.

(5) EPA may seek to enjoin the processing, distribution in commerce, or use of a chemical substance in violation of this section; act to seize any chemical substance processed, distributed in commerce, or used in violation of this section; or take other actions under the authority of sections 7 and 17 of the Act [15 U.S.C. 2605 and 2616].

(Secs. 5 and 6, Pub. L. 94-469, 90 Stat. 2112 and 2020 (15 U.S.C. 2604 and 2605))

[FR Doc. 84-25079 Filed 9-19-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6566

[A-12836, A-12871, A-12874, A-12957, A-12966, A-13020, A-17713, A-19249]

Arizona; Partial Revocation of Water Power Designation No. 5, 6, and 7; Revocation of Power Site Reserve Nos. 446, 447, 451, 490, 605, and Power Site Classification Nos. 210 and 329

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will revoke four Executive orders and six Secretarial orders as they affect approximately 62,000 acres of public land withdrawn for power site reserves, water power designations and power site classifications. These withdrawals are all within Grand Canyon National Park in northwestern Arizona and are situated within a quarter mile of the Colorado River. As National Park lands they will remain closed to surface entry, mining and mineral leasing.

EFFECTIVE DATE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Dean Bibles, State Director, Bureau of Land Management, Arizona State Office, P.O. Box 16565, Phoenix, Arizona 85011, 602-241-5501.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714 and Section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended 16 U.S.C. 818, and pursuant to the Determination of the Federal Energy Regulatory Commission in DA Nos. 158, 159, and 160 Arizona, it is ordered as follows:

1. Executive Order of September 5, 1914, creating Power Site Reserve No. 446, as interpreted by Orders of October 14, 1924, October 28, 1940, and October 2, 1959; Executive Order of October 23, 1914, creating Power Site Reserve No. 451, as interpreted by Secretarial Order of November 22, 1934; Executive Order of May 11, 1915, creating Power Site Reserve No. 490 as interpreted by Secretarial Order of October 14, 1924; Executive Order of April 28, 1917, creating Power Site Reserve No. 605 as interpreted by Secretarial Order of May 12, 1928, October 14, 1924 and October 18, 1928; and Secretarial Order of July 16, 1914, creating Power Site Reserve 447 as interpreted by Secretarial Order of October 14, 1924, and October 2, 1959, and partially revoked by Public Land Order 3975 of April 8, 1966, and Presidential Proclamation 3889 of June 20, 1969; three Secretarial Orders of February 9, 1917, creating Water Power Designation Nos. 5, 6, and 7 as interpreted by Secretarial Order of October 14, 1924; Secretarial Order of January 7, 1929, creating Power Site Classification 210 as interpreted by Order of July 27, 1962; and Secretarial Order of March 11, 1942, creating Power Site Classification 329, are hereby revoked as they affect the following:

All lands lying within the boundaries of the Grand Canyon National Park as described under the Act of February 26, 1919 (40 Stat. 1175; 16 U.S.C. 221), revised by the Act of February 25, 1927 (44 Stat. 1238; 16 U.S.C. 221a), and enlarged by the Acts of March 7, 1928 (45 Stat. 234; 16 U.S.C. 221e) and January 3, 1975 (88 Stat. 2089; 16 U.S.C. 228a).

The areas described aggregate approximately 62,000 acres in Coconino and Mohave Counties, Arizona.

Dated: September 14, 1984.

William Clark,

Secretary of the Interior.

[FR Doc. 84-25016 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Part 582

[Docket No. 84-25]

Certification of Company Policies and Efforts To Combat Rebating in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: These Final Rules modify the Commission's regulations requiring the filing of certifications of company practices to combat rebating in the foreign commerce of the United States to bring them into conformity with the Shipping Act of 1984 which expands the application of the annual certification requirement from vessel operating common carriers to all common carriers.

DATES: Final Rules effective October 22, 1984, except § 582.3 which will become effective December 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984 (1984 Act) (46 U.S.C. app. 1701–1720) was enacted on March 20, 1984 and became effective on June 18, 1984.

Section 15(b) of the 1984 Act (46 U.S.C. app. 1714(b)) makes substantive changes to the previous requirements of section 21(b) of the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. 820(b)), regarding the certification of company policies and efforts to combat rebating in the foreign commerce of the United States. The fundamental change is the expansion of the certification requirements to all common carriers from the former limited application to vessel operating common carriers only.

On May 29, 1984, the Commission published in the **Federal Register**, 49 FR 22294, an Interim Rule and Request for Comments which implements the 1984 Act's certification requirements. The Interim Rule reflected changes in definitions and application contained in the 1984 Act, particularly the requirement that every non-vessel-operating common carrier (NVO), as well as every vessel operating common carrier, in the foreign commerce file an annual anti-rebating certification.

The Interim Rule also reflected the altered statutory scheme of the 1984 Act under section 15(b) which permits the Commission to require certification from "any shipper, shippers' association, marine terminal operator, ocean freight forwarder or broker." The Interim Rule did not require periodic certifications from entities other than those mandated by statute, but provided that the Commission, "in its discretion", could make such requirements applicable to shippers, shippers' associations, marine terminal operators, freight forwarders and brokers.

Comments in response to the Interim Rule and Request For Comments were received from five parties. Sea-Land Service, Inc. and The National Maritime Council filed comments supporting adoption of the Interim Rule as a Final Rule.

NAVTRANS International Forwarding, Inc. (NAVTRANS), a licensed ocean freight forwarder and subsidiary of North American Van Lines, opposes the Interim Rule with respect to its discretionary application to ocean freight forwarders in 46 CFR 582.2. NAVTRANS points out that it is required to file an annual, anti-rebating certification on March 1 of each year under 46 CFR 510.35 of the Commission's current freight forwarder regulations, and maintains that the requirement of certification of the same basic information at the Commission's discretion under 46 CFR 582.2 would be "costly, unnecessary and administratively burdensome."

Section 582.5(b) of the Interim Rule makes clear that the certifications which may be required from persons enumerated in section 582.1 will be occasional rather than periodic, since they are to be submitted "on the date designated" and "thereafter, as the Commission may direct." The requirement for annual certifications from ocean freight forwarders is continued in Docket No. 84–19, *Licensing of Ocean Freight Forwarders*, and the regulations at 46 CFR Part 510 promulgated therein 49 FR 36296, Sept. 14, 1984. In view of the continuing requirement for both annual certification and notification to shippers under those rules, we agree with NAVTRANS that the inclusion in this Rule of freight forwarders among those from whom the Commission may occasionally require certification under section 582.2 is unnecessary and duplicative. We therefore have deleted the reference to freight forwarders in section 582.2 of the Final Rule. We have, however, added a new paragraph (b) to section 582.1, *Scope*, cross-referencing the anti-rebating certification requirements for freight forwarders contained in 46 CFR Part 510.[1]

The Inter-American Freight Conference (IAFC) submitted comments suggesting several technical amendments to the Interim Rule and taking issue with the penalties established in section 582.1(b) and the requirement of § 582.4 that a new certificate be filed upon appointment of a new Chief Executive Officer (CEO) of a common carrier.

IAFC argues that, because the general penalty of no more than $25,000 per day for violations of the 1984 Act wilfully and knowingly committed is established for violations for which no other penalty is provided, it is inapplicable to section 15(b) which contains a specific penalty of no more than $5,000 per day for failure to file an anti-rebating certificate.

We agree that the language "unless otherwise provided in this Act" would appear to preclude application of the $25,000 penalty for wilful and knowing violations of sections specifying lesser penalties. We have, therefore, deleted the $25,000 penalty provision from the Final Rule, thereby limiting the penalty for failure to file the required reports to $5,000 for each day the violation continues.

In response to IAFC's comments, we have also deleted from the Final Rule § 582.4 [2] which required that a certificate be filed each time a new CEO is appointed. While the rules in § 582.2 require that the CEO act as certifying official, the CEO's responsibility in this regard is to act as authorized spokesman for the corporation. Because the certification is filed on behalf of the company, not the individual officer, we see no need for renewal upon each change of personnel.[3] The technical wording changes suggested by IAFC to assure that the language of the regulations tracks the statute have also been adopted.

The North European Conferences (Conferences) filed joint comments generally supporting the Commission's Interim Rule and urging adoption as a Final Rule.[4] The Conferences, however, propose significant additional coverage and enforcement mechanisms. The Conferences urge the Commission to actively enforce the anti-rebating certification requirement and to issue and enforce a variety of new regulations against foreign-domiciled NVO's operating in the U.S. import trades, foreign-domiciled, as well as domestic, cargo brokers and freight forwarders, and shippers' associations. The thrust of these proposals is that the anti-rebating certification requirements should be applied equally to the U.S. import and export trades, and that various enforcement mechanisms are available to accomplish that end. While the Conferences' proposals appear to raise legitimate issues, they exceed those noticed in the Interim Rule, and therefore are beyond the scope of this proceeding. The Commission will consider making these proposals the subject of rules in a separate proceeding.

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[1] The existing paragraph (b) of § 582.1 is being redesignated as paragraph (c) without change.

[2] Section 582.5 of the Interim Rule is hereby renumbered as § 582.4.

[3] In doing so, we reverse a decision we made in adopting the original anti-rebating certification rules issued under the 1916 Act, based on statutory language similar to that of the 1984 Act. We simply see no regulatory purpose to be served by continuation of this requirement: *CF.* Docket 79–65, 45 FR 12794, (1980).

[4] The North European Conferences are: North Atlantic United Kingdom Freight Conference, North Atlantic French Atlantic Freight Conference, North Atlantic Continental Freight Conference, North Atlantic Baltic Freight Conference, Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference, Continental North Atlantic Westbound Freight Conference, North Atlantic Westbound Freight Association, United Kingdom & U.S.A. Gulf Westbound Rate Agreement, Continental-U.S. Gulf Freight Association, Gulf-United Kingdom Conference, Gulf European Freight Association, North Europe-U.S. South Atlantic Rate Agreement and U.S. South Atlantic-Europe Rate Agreement.

One additional item needs be addressed. Section 582.2 of the Interim Rule required that every common carrier submit an annual anti-rebating certificate by its Chief Executive Officer, and § 582.3 required that each common carrier file by September 18, 1984 a provision in each of its tariffs noting, *inter alia*, that "such [anti-rebating] policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR Part 582." No comment was received with respect to the interrelationship of these provisions, or their relationship to the certifications previously filed by vessel operating common carriers pursuant to the 1916 Act and the Commission's regulations which were codified at 46 CFR Part 552. We note, however, that the certification requirements of the two Acts being almost identical, it appears to be duplicative and unnecessary to require vessel operating common carriers who filed an anti-rebating certification on or before May 15, 1984 to file an additional certification before September 18, 1984 merely to comply with the recitation to be filed in their tariffs by that date that their compliance with the 1984 Act has been certified to the Commission. The Commission will, therefore, regard the anti-rebating certificate filed by each vessel operating common carrier on or before May 15, 1984 under the 1916 Act to constitute compliance with the requirement of the 1984 Act and § 582.2 for the 1984 annual certificate.

The NVO certification, being a new requirement, is a different matter. The Interim Rule required an NVO to file an anti-rebating policy statement in its tariff on or before September 18, 1984. Because that statement must make reference to the fact that a CEO certification has been filed with the Commission, it was our intention that the CEO certification also be filed on or before September 18, 1984. It now appears, however, that some confusion or uncertainty exists regarding what was actually required from NVO's by the Interim Rule. As a result and to allow NVO's adequate time to comply with the newly imposed certification requirement, the date by which NVO's must file the initial CEO certification and the date for all common carriers (including NVO's) to file the tariff provision under the 1984 Act shall be deferred until December 15, 1984. Further certifications will be required on May 15, 1985 and each subsequent May 15.

The Federal Maritime Commission has determined that this final rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 46 CFR Part 582

Cargo, Cargo vessels, Exports, Foreign relations, Freight forwarders, Imports, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Water carriers, Water transportation.

These final rules are subject to review and editing of form before publication in the Code of Federal Regulations. Users are requested to notify the Commission of any omissions and typographical-type errors in order that corrections can be made before the Commission's CFR book goes to press in January 1985.

For the reasons set out in the preamble, and pursuant to the authority set forth in the Authority Citation, Part 582 of Subchapter D, Chapter IV of Title 46, Code of Federal Regulations is revised to read as follows:

PART 582—CERTIFICATION OF COMPANY POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

Sec.
582.1 Scope.
582.2 Form of certification.
582.3 Tariff notification.
582.4 Reporting requirements.
582.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix A to 46 CFR Part 582—Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

Authority: 5 U.S.C. 553; secs. 2, 3, 8, 10, 13, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, 1714, 1715, and 1716).

§ 582.1 Scope.

(a) The requirements set forth in this part are binding upon every common carrier by water in the foreign commerce of the United States and, at the discretion of the Commission, will be applicable to any shipper, shippers' association, marine terminal operator, or broker.

(b) Information obtained under this part will be used to maintain continuous surveillance over common carrier activities and to provide a deterrent against rebating practices. Failure to file the required reports may result in a civil penalty of not more than $5,000 for each day such violation continues.

Note.—Ocean freight forwarders certify their anti-rebating polices and efforts pursuant to §§ 510.21 and 510.25 of this chapter.

§ 582.2 Form of certification.

The Chief Executive Officer, *i.e.* the most senior officer within the company designated by the board of directors, owners, stockholders or controlling body as responsible for the direction and management of the company, of each common carrier and, when so ordered at the discretion of the Commisson, the Chief Executive Officer of any shipper, shippers' association, marine terminal operator or broker, shall file with the Secretary, Federal Maritime Commission, a written certification, under oath, as set forth in the format in Appendix A to this part attesting to the following:

(a)(1) That it is the stated policy of the filing company that the payment, solicitation or receipt of any rebate by the company, which is unlawful under the provisions of the Shipping Act of 1984, is prohibited; and

(2) That such company policy was promulgated recently (together with the date of such promulgation) to each owner, officer, employee, and agent thereof;

(b) The details of the efforts made within the company or otherwise to prevent or correct illegal rebating; and

(c) That the filing company will fully cooperate with the Commission in its efforts to end those illegal practices.

§ 582.3 Tariff notification.

(a) Each common carrier shall file a provision in each of its tariffs that shall read substantially as follows:

(Name of Company) has a policy against the payment of any rebate by the company or by any officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the

Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR Part 582.

(b) When the common carrier's tariff is a conference or rate agreement tariff, the common carrier shall ensure that the conference or rate agreement publishes the common carrier's tariff provision set forth in paragraph (a) of this section in the tariff.

(c) The anti-rebate tariff provision, as set forth in paragraph (a) of this section, shall be effective upon filing.

§ 582.4 Reporting requirements.

(a) Every common carrier required by this part to file a written certification as provided for in § 582.2 shall file such certification on or before May 15 of each year.

(b) Every person other than a common carrier who is ordered by the Commission to file a written certification under § 582.2 shall file the initial certification on the date designated by the Commission and, thereafter, as the Commission may direct.

§ 582.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement.

Section	Current OMB control No.
582.2 through 582.4	3072-0026

Appendix A to 46 CFR Part 582—Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

(Name of Filing Company)

Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

Pursuant to the requirements of section 15(b) of the Shipping Act of 1984, and Federal Maritime Commission regulations promulgated pursuant thereto, (46 CFR Part 582), I , Chief Executive Officer of (name of company), state under oath that:

1. It is the policy of (name of company) that the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of the Shipping Act of 1984 is prohibited.

2. On or before , 19 , such company policy was promulgated to each owner, officer, employee and agent of (name of company) who is directly or indirectly connected with commercial ocean shipping, import or export sales or purchasing.

3. [Set forth the details of measures instituted by the filing company otherwise to eliminate or prevent the payment of illegal rebates in the foreign commerce of the United States].

4. (Name of company) affirms it will fully cooperate with the Federal Maritime Commission in any investigation of illegal rebating and with the Commission's efforts to end such illegal practices.

Chief Executive Officer

Subscribed and sworn to before me this day of 19 .

Notary Public

By the Commission.

Francis C. Hurney,
Secretary.

[FR Doc. 84-25023 Filed 9-19-84; 8:45]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Amdt. 195-32; Docket No. PS-79]

Transportation of Hazardous Liquids by Pipeline, Qualification of Welders

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Final rule.

SUMMARY: This amendment incorporates by reference Section IX of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) into Part 195 for qualification of welders. Welder qualification is presently limited to Section 3 of API Standard 1104 under Part 195. Allowing the use of the ASME Code for welder qualification when necessary and appropriate to do so will bring the requirements for hazardous liquid pipelines into line with 49 CFR Part 192, the Federal safety standards for gas pipelines.

EFFECTIVE DATE: October 22, 1984.

FOR FURTHER INFORMATION CONTACT: William A. Gloe, (202) 426-2082, regarding the content of this amendment, or the Dockets Branch, (202) 426-3148, regarding copies of the amendment or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1983, Mr. T.M. Stratton of the ARCO Oil and Gas Company, Aurora, Colorado, petitioned for a rule change to § 195.222, Welders: Testing, to allow the qualification of welders under Section IX of the ASME Code as an alternative to Section 3 of API 1104. API 1104 (the 15th edition) is the applicable Standard for Welding Pipelines and Related Facilities incorporated by reference in 49 CFR Part 195 for welder qualification (Section 3) and for standards of acceptability of welds (Section 6). API 1104 is also the applicable standard for pipeline welding for gas pipelines, Sections 3 and 6 similarly incorporated by reference into Part 192. In addition, Part 192 incorporates Section 2 for qualification of welding procedures. The other basic difference in welding requirements between the two Federal standards is that Part 192 incorporates by reference the ASME Code (1977 edition) for qualification of welding procedures and for welder qualification. The reason for allowing the use of the ASME Code under Part 192 and not under Part 195 is simply that the two Federal standards were based on industry consensus standards in effect at the time of issuance and the two industry standards also differed at that time. The 1967 edition of ANSI/ASME B31.4 (the USAS B31.4) was used as a basis for Part 195, and the 1968 edition of ANSI/ASME B31.8 (the USAS B31.8) was used as a basis for Part 192. ANSI/ASME B31.4, the industry standard for Liquid Petroleum Transportation Piping Systems, has since been revised to incorporate the ASME Code for welding procedure and welder qualification as an alternative to API 1104, using the ASME Code when the provisions are appropriate for the welding to be done.

Notice of Proposed Rulemaking (NPRM)

An NPRM published on May 10, 1984 (49 FR 19875), proposed to incorporate the ASME Code into Part 195 for welder qualification, based on the ARCO Oil and Gas Company petition. As justification in part, ARCO asserted that Part 195 should allow the use of the same provisions for welder testing that apply under ANSI/ASME B31.4, the industry standard for petroleum piping systems. The currently referenced edition of ANSI/ASME B31.4 (1977) allows welder testing under the ASME Code as well as under API 1104. The notice stated that API 1104 and the ASME Code have applied for gas pipelines since issuance of the Department of Transportation (DOT) regulations in 1970, and there has been no problem, either in compliance, enforcement, or the appropriate use of either standard.

Discussion of Comments

Seven letter comments were received in response to the notice, one from the American Petroleum Institute (API), one from the Interstate Natural Gas Association of America, and five from oil and gas transportation operators. All commented favorably on the proposal to incorporate the ASME Code for welder qualification. One commenter, however, Mobil Oil Exploration & Producing Southeast, Inc., objected to listing the 1977 edition in the DOT regulations because the ASME Code has been revised, and suggested listing the "latest edition" only, without specifying the date of that edition. Though the 1983 edition of the ASME Code (with a 1984 supplement) is now the latest edition, incorporation of an edition later than 1977 was not discussed in the NPRM or considered by the Technical Hazardous Liquids Pipeline Safety Standards Committee (THLPSSC). Therefore, without further notice of review before the THLPSSC, a later edition may not be incorporated in the final rule. Also, MTB has no firm indication at this time that incorporating the 1977 edition imposes an actual burden on any operator with regard to qualification of welders. Moreover, six out of seven of the commenters to the notice did not object to listing the 1977 edition and the API made specific reference to the 1977 edition in their comment letter. For these reasons and for consistency with Part 192 for gas pipelines, the final rule incorporates the 1977 edition of the ASME Code. The final rule, however, recognizes earlier editions that could not have been incorporated into Part 195 by the language, "* * * a welder qualified under an earlier edition than listed in § 195.3 may weld but may not requalify under that earlier edition.

Advisory Committee Review

Section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2003(b)) requires that the proposed amendment to § 195.222 be submitted for consideration by a 15-member advisory committee composed of persons knowledgeable about the transportation of hazardous liquids by pipeline. The committee considered the substance of the proposed amendment, as set forth in a Regulatory Project at a meeting in Washington, D.C., on December 7, 1983. In its report, dated March 7, 1984 (a copy of which is in the docket), the committee states:

> This item for discussion proposes to add Section IX of the ASME Boiler Code (to) Part 195 for welder qualification, bringing Part 195 up to date with other standards and providing flexibility to the operator, who can determine where the ASME code is appropriate and where API 1104 is appropriate. It is agreed that the change had no adverse impact on safety standards, provides flexibility, giving judgement to the operator, and brings regulation into line with practice in the field.

The language used in the Regulatory Project for the proposed § 195.222 differed from the final rule in containing the phrase "whichever is appropriate for the type of welding to be performed" to differentiate between qualification under API 1104 or the ASME Code. Review of that phrase during the committee meeting, however, generally shows that the wording is not necessary and that the decision of which standard to use is left up to the operator. For this reason, and because the scope of each standard clearly defines the appropriate use, the phrase is omitted from the final rule.

Classification

This final rule is considered to be nonmajor under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The rule merely modifies Part 195 requirements on welder qualification to be consistent with Part 192 and the commonly used industry codes.

Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 195

Ammonia, Petroleum, Pipeline safety, Welders: Testing.

PART 195—[AMENDED]

On the basis of the foregoing, MTB amends Title 49 of the Code of Federal Regulations, Part 195, as follows:

1. By revising § 195.222 to read:

§ 195.222 Welders: Testing.

Each welder must be qualified in accordance with section 3 of API Standard 1104 or section IX of the ASME Boiler and Pressure Vessel Code, except that a welder qualified under an earlier edition than listed in § 195.3 may weld but may not requalify under that earlier edition.

2. Section 195.3 is amended by revising paragraph (c)(2) to incorporate Section IX of the ASME Boiler and Pressure Vessel Code as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(2) American Society of Mechanical Engineers:

(i) ASME Boiler and Pressure Vessel Code, Section VIII, "Pressure Vessels Division 1" (1977).

(ii) ASME Boiler and Pressure Vessel Code, Section IX, "Welding Qualifications" (1977).

* * * * *

(49 U.S.C. 2002; 49 CFR 1.53, and Appendix A of Part 1)

Issued in Washington, D.C., on September 14, 1984.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84–25017 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 31230–254]

Tanner Crab off Alaska; Notice of Season Opening

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season opening.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the desired harvest level of *Chionoecetes opilio* Tanner crab in the Northern Subdistrict of the Bering Sea District in Registration Area J has not yet been achieved and that additional fishing time is necessary if *C. opilio* stocks are to be fully utilized. The Secretary of Commerce therefore issues this notice opening the fishing season for *C. opilio* in the Northern Subdistrict by vessels of the United States until midnight December 31, 1984. This action is intended as an appropriate management measure to achieve the optimum yield.

DATE: This notice is effective 12:00 noon, Alaska Daylight Time (ADT) September 15, 1984. It was filed for public inspection with the Office of the Federal Register on September 17, 1984. Public comments on this notice of season opening are invited until October 1, 1984.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries

Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. ADT weekdays) at: (1) The NMFS Kodiak Field Office, ADF&G Building, Kashevaroff and Mission Roads, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Building 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907–486–4791.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f)(1) establishes six districts within Registration Area J. One of these is the Bering Sea District, which is further divided into three subdistricts for the purpose of better monitoring the fishery to conserve smaller units of crab stocks. One of these is the Northern Subdistrict, for which a desired harvest level of 24 million pounds of *C. opilio* is estimated, based on 1983 NMFS trawl abundance surveys.

The ending date of the fishing season for *C. opilio* normally is August 1. The 1984 season was extended by notice until August 22, 1984 (49 FR 30203, July 27, 1984), in response to requests from the North Pacific Fishing Vessel Owner's Association and the fishing industry for more fishing time in which to harvest the resource. The fishery was closed on that date to coordinate enforcement of the State of Alaska's blue king crab fishery, which was opened as scheduled on September 1, 1984. The notice extending the *C. opilio* season stipulated that the Regional Director would evaluate the results of the extended season and would reopen the fishery if further harvest was warrented. The total 1984 harvest of *C. opilio* in the Northern Subdistrict through August 22, 1984, was about 335,000 pounds, which is only about 1.4 percent of the 24 million pounds available for harvest.

Fishermen and processors have requested the Regional Director to reopen the fishery to allow additional opportunity to harvest the available resource. Because substantial amounts of *C. opilio* are unharvested, the current condition of *C. opilio* stocks remain good, a situation that was not anticipated at the beginning of the fishing year. The Secretary, therefore, reopens the fishery for *C. opilio* in the Northern Subdistrict [as described at § 671.26(f)(1)(vi)(C)] until midnight, December 31, 1984, when inclement weather and ice conditions will normally force this fishery to close.

This opening will be effective after this notice is filed for public inspection with the Office of the Federal Register and it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of season opening may be submitted to the Regional Director at the address stated above. If comments are received, a notice will be published in the Federal Register confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Northern Subdistrict will be subject to underharvest unless this season opens promptly. Loss of fishing time could have an adverse economic impact on Tanner crab fishermen and processors, many of whom have already been affected by declines in king crab stocks. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under 50 CFR 671.27 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 14, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-[illegible] Filed 9-17-84; 11:14 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 184
Thursday, September 20, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Docket No. AO-144-A14-RO1]

Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Further Extension of Time for Filing Briefs.

SUMMARY: This extension of time is necessary to allow interested persons additional time to prepare and file briefs with respect to a hearing held on a proposed marketing agreement and amendments to the marketing order regulating the handling of lemons grown in California and Arizona.

DATE: The date by which written briefs must be postmarked is extended to October 15, 1984.

ADDRESS: Interested persons may send written briefs to the Hearing Clerk, Room 1077-South Building, USDA, Washington, D.C. 20250, where they will be available for inspection during business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, USDA, AMS, Washington, D.C. 20250, Telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: On February 28, 1984, the Administrative Law Judge presiding over the hearing on a proposed marketing agreement and amendments to the marketing order regulating the handling of lemons grown in California and Arizona set July 16, 1984, as the date by which interested persons could file briefs with respect to the hearing. Notice of the aforementioned hearing was published in the December 13, 1983, issue of the **Federal Register** (48 FR 55472).

Subsequently, a number of persons requested additional time to review the hearing record and prepare their briefs. Accordingly, on July 11, 1984, (49 FR 28566), the time for the filing of written briefs by all interested persons was extended to September 15, 1984.

A request for further extension of time to review the hearing record and prepare brief has been received. Accordingly, the time for the filing of written briefs by all interested persons is hereby extended to October 15, 1984.

List of Subjects in 7 CFR Part 910

Marketing orders, California, Arizona, Lemons.

(Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674)

Dated: September 18, 1984.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 84–25179 Filed 9–19–84; 9:05 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–98–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series B2 and B4 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require repetitive inspections and operational tests of the tailplane trim actuators on certain Airbus Industrie Model A300 series B2 and B4 airplanes. Incidents of broken actuator gears, damaged seals, and other in-service difficulties concerning the actuators have been reported. These actions are necessary to prevent jammed control surfaces which could lead to hazardous flight conditions.

DATES: Comments must be received no later than November 9, 1984.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France, or may also be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–98–AD, 17900 Pacific Highway South, C–68966, Seattle Washington 98168.

Discussion

The French Civil Aviation Authority (DGAC) has issued a Consigne de Navigabilite which mandates compliance with Airbus Industrie Service Bulletins A300–27–130 and A300–27–132, and Lucas Aerospace Service Bulletins 723–27–584 and 723–27–582. Two items concerning the tailplane trim actuators can lead to hazardous flight condition, namely:

A. Tests done by the manufacturer have shown the potential for a dormant failure mode on the autuators' control valves. This condition can lead to jammed control surfaces. Airbus Industrie Service Bulletin A300-27-132 prescribes repetitive operational tests on the actuators.

B. Broken actuator gears, damaged seals, and other in-service difficulties concerning the actuators have been reported. Airbus Industrie Service Bulletin A300-27-130 and Lucas Aerospace Service Bulletins 723-27-582 and 723-27-584 prescribe repetitive inspections of the actuators and component replacement and repairs, as necessary.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspections and operational tests of the tailplane trim actuators to prevent jammed control surfaces.

It is estimated that 33 U.S. registered airplanes would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $13,200. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Part 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Airbus Industrie: Applies to model A300 B2 and B4 series airplanes, certificated in all categories. To detect failure of the trim actuators for the horizontal stabilizers, accomplish the following within 120 days after the effective date of this AD or upon reaching the number of hours time in service specified in the service bulletins, whichever occurs later, unless previously accomplished.

A. Inspect, test, repair, and modify, as necessary, the tailplane trim actuators, in accordance with the service bulletins listed below:

Airbus Industrie A300-27-130, Revision 2, dated October 10, 1980
Airbus Industrie A300-27-132, Revision 4, dated October 30, 1981
Lucas Aerospace 723-27-584, dated January 5, 1980
Lucas Aerospace 723-27-582, Revision 1, dated July 27, 1979

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department Transportation Regulatory Policies and Procedures (44 FR 110034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, September 10, 1984.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24858 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-95-AD]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require replacement of O-rings used in evacuation slide and slide/raft pressure regulators on Boeing Model 47 airplanes equipped with B.F. Goodrich slides and slide/rafts. This AD is prompted by several inflation malfunctions experienced by operators which have resulted in delayed inflation or non-inflation of the units following deployment. This situation could jeopardize successful emergency evacuation of an airplane.

DATES: Comments must be received on or before November 9, 1984. Compliance required within one year of the effective date of the AD.

ADDRESSES: The service documents cited in this AD may be obtained upon request from the B.F. Goodrich Engineered Products Group, Aerospace Defense Division, Akron, Ohio 44318, or the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, ANM-120S, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All comunications received on or before the closing date for comments, specified above, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Attention: Airworthiness Rules Docket No. 84-NM-

95–AD, Office of the Regional Counsel, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Four operators have reported multiple inflation malfunctions of B.F. Goodrich evacuation slides and slide/rafts installed on Boeing Model 747 airplanes. These malfunctions are caused by decomposition of the O-rings in the pressure regulators installed on evacuation slides and slide/rafts (part numbers as indicated in the service bulletins referenced in this AD). The O-rings can chemically decompose and become bonded to the pressure regulator cylinder, thereby inhibiting actuation of the inflation mechanism. This can result in delaying or preventing inflation of the slide or slide/raft following deployment. This malfunction has been experienced in service and during tests conducted by airlines and the airplane manufacturer. Delays in inflation ranged from a few seconds to several minutes. In some cases, inflation was prevented entirely.

Since any delay or failure of inflation of the slides or slide/rafts could jeopardize successful evacuation of an airplane, an AD is being proposed which would require replacement of pressure regulator O-rings in accordance with B.F. Goodrich Service Bulletins 25–084, 25–088, and 25–090.

It is estimated that 150 planes of U.S. Registry would be affected by this AD. Approximately 40 manhours, at an average labor cost of $40 per manhour, would be required to modify each airplane. The cost of parts is estimated at $700 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $345,000.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Acordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 747 airplanes equipped with B.F. Goodrich evacuation slides and slide/rafts, part numbers (P/N) as specified in B.F. Goodrich service bulletins noted below. Compliance required as indicate.

To assure proper inflation of slides and slide/rafts, within one year after the effective date of this amendment, accomplish the following unless previously accomplished.

A. For airplanes equipped with the B.F. Goodrich slides or slide/rafts noted in B.F. Goodrich Service Bulletin 25–090, Revision 1, dated May 10, 1984, replace pressure regulator O-rings in accordance with the service bulletin or later FAA approved revisions.

B. For Boeing Model 747–300 airplanes equipped with B.F. Goodrich slides, P/N 7A1323, accomplish regulator replacement in accordance with B.F. Goodrich Service Bulletin 25–084, dated November 7, 1983, or later FAA approved revisions.

C. For airplanes equipped with slide/rafts installed in accordance with Supplemental Type Certificates (STC) SA574GL, SA575GL, SA744GL, or SA745GL, accomplish pressure regulator O-ring replacement in accordance with B.F. Goodrich Service Bulletin 25–088, Revision 1, dated May 9, 1984, or later FAA approved revisions.

D. An alternate means of compliance which provides an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

E. Aircraft may be ferried to a base for maintenance in accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations.

All persons affected by this directive who have not already received B.F. Goodrich Service Bulletin 25–084, 25–088, and 25–090, may obtain copies upon request to B.F. Goodrich Engineered Products Group, Aerospace Defense Division, Akron, Ohio 44318, or Boeing Commercial Airplane Company, P. O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on September 10, 1984.

Leroy A. Keith,

Acting Director Northwest Mountain Region.

[FR Doc. 84–24853 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–79–AD]

Airworthiness Directives; British Aerospace Model BAe–146 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This amendment proposes an airworthiness directive (AD) applicable to certain BAe–146 airplanes which would require a one-time inspection of the escape chute girt bars on the passenger/service doors to insure they are properly assembled. There have been two reported cases of the girt bar becoming detached from the floor brackets during a demonstration of the escape chute operation, resulting in separation of the chute from the airplane. Loss of the escape chute could prevent safe emergency evacuation of the airplane.

DATES: Comments must be received no later than October 9, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, DC 20041, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-79-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority (CAA), which is the civil airworthiness authority for the United Kingdom, has classified British Aerospace BAe-146 Alert Service Bulletin 52-A14 as mandatory.

There have been two reported cases of the door girt bars becoming detached from the floor brackets during demonstration of escape chute operation, resulting in separation of the chute from the aircraft. There is evidence to show that this was a result of incorrect assembly of one of the girt bar stop bolts. It is necessary to examine all girt bars to ensure that these bolts have been assembled correctly.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the door girt bars for correct assembly.

It is estimated that eight airplanes of U.S. Registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are not required. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,200. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 airplanes as listed in British Aerospace Alert Service Bulletin 52-A14 dated June 6, 1984, certificated in all categories. Compliance is required within 30 days after the effective date of this AD. To prevent loss of the emergency escape chute, accomplish the following, unless previously accomplished.

A. Inspect the passenger/service door girt bars for correct assembly in accordance with British Aerospace Alert Service Bulletin 52-A14, dated June 6, 1984. Reassemble as required by the service bulletin. Prior to installation, replacement girt bars must also be inspected in accordance with the service bulletin.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model BAe-146 airplanes are operated by small entities. A copy of a draft regulatory evaluation has been prepared for this action and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 6, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24880 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-87-AD]

Airworthiness Directives; British Aerospace Model HS/BH/DH 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require modification of the electrical power supply system in certain British Aerospace Model HS 125 series airplanes to ensure that electrical power is available to the audio communication system in the event of a principal electrical (PE) bus failure. This action is necessary to avoid loss of audio system communication between flight crew, ground personnel, and other aircraft. In certain weather conditions, this communication breakdown has the potential for creating a flight hazard.

DATES: Comments must be received no later than November 9, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-87-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Airworthiness Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, informed the FAA of an unsafe condition on certain British Aerospace Model HS/BH/DH 125 Series airplanes which must be corrected by complying with Bristish Aerospace HS 125 Service Bulletin 23-21-(8765). The unsafe condition and corrective action are described as follows:

In the event of a principal electrical (PE) bus failure, the audio system communication between the flight crew, ground personnel, and other aircraft would be lost. These airplanes normally fly in airspace that contains a high number of other aircraft and usually fly under IFR conditions. The loss of communication with airport tower personnel would make the congested airspace near the airport unsafe. To prevent loss of communication from occurring, British Aerospace HS 125 Service Bulletin 23-21-(8765) prescribes incorporation of fuse or circuit breaker linking changes so that electrical power for the audio communication system is transferred from the PE bus to the principal service (PS) electrical bus if PE bus failure occurs. The manufacturer has issued paragraphs 2 and 3 of the service bulletin in the form of supplements, applicable to individual or grouped aircraft; this was necessary due to variations in the audio integrating systems. The serial numbers of the airplanes affected by Service Bulletin 23-21-(8765) and the corresponding supplements are listed in Planning Information of the service bulletin.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist on airplanes of this model registered in the United States, an AD is proposed that would require the previously mentioned corrective action.

It is estimated that 86 U.S. registered airplanes would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Parts are estimated at $100 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $15,480. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to British Aerospace Model HS/BH/DH 125 series airplanes with the serial numbers listed in the applicability statement of British Aerospace HS 125 Service Bulletin 23-21-(8765), dated March 22, 1983. Compliance is required within 180 days after the effective date of this AD unless previously accomplished. To prevent failure of the audio communication system, accomplish the following:

A. Modify the power supply system in accordance with the accomplishment instructions of the service bulletin.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, British Aerospace Model HS/BH/DH 125 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 10, 1984.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24854 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-80-AD]

Airworthiness Directives: Canadair Model CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601) Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require removing paint from the wing center section lower surface if that surface is not properly finished. This surface must be finished using an aluminum loaded paint and primer, or left unpainted. This action is necessary to provide adequate lightning protection for the lower wing center section skin surface and prevent sparking in the fuel tank.

DATES: Comments must be received no later than October 10, 1984.

ADDRESSES: The applicable drawings specified in this AD may be obtained upon request from Canadair Limited, 1800 Laurentien Blvd., Saint-Laurent, Quebec, Canada H4R 1K2, or may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–80–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion:

The Canadian Department of Transport (DOT) has issued AD CF–84–06, requiring removal of any incorrect finish applied to the lower wing center section surface of Model CL–600–1A11 and CL–600–2A12 airplanes within six calendar months. This finish must be removed and replaced with an aluminum loaded paint or, alternatively, the surface must be left unpainted. Until the finish modification is accomplished, a placard must be installed in the cockpit prohibiting flight into areas where lightning conditions are known to exist.

Tests and analysis indicate that the skin thickness of the lower wing center section, which is between .050 and .060 inches, may not be adequate to protect the fuel tank at that location from lightning swept strokes, if a paint with insufficient conductivity is applied, since stroke attachment may build up enough energy to cause sparking on the inside of the fuel tank which could ignite vapors.

The Canadian DOT issued AD CF–84–06, which requires removal of the wing center section lower surface paint if the surface was improperly finished.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed which requires the proper finishing of the wing center section lower surface.

It is estimated that approximately 50 airplanes would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Materials are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $110,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Canadair: Applies to all Canadair Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) airplanes certificated in all categories. Compliance is required as indicated unless already accomplished. To provide adequate lightning protection for the wing center section lower skin in the area of the center wing fuel tank (i.e., forward, center, aft lower wing panels between wing stations 65 left and 65 right), accomplish the following:

A. Within 30 days after the effective date of this AD, unless the center wing fuel tank skin surface is unpainted or has been painted in accordance with NOTE 11 of Canadair Drawing 600–40452 or 601–40452, install a locally manufactured placard on the left hand main instrument panel using letters of ⅛-inch minimum height, which reads as follows: "NOT APPROVED FOR FLIGHT INTO AREAS WHERE LIGHTING CONDITIONS ARE KNOWN TO EXIST."

B. Within the next six calendar months after the effective date of this AD, ensure that the center wing fuel tank lower skin surface is either unpainted or painted with an aluminum loaded paint and primer, in accordance with NOTE 11 of Canadair Drawings 600–40452 or 601–40452.

C. Upon completion of paragraph B, above, remove placard installed in accordance with paragraph A., above.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Canadair CL 600 or CL 601 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 10, 1984.

Leroy A. Keith,

Acting Director Northwest Mountain Region.

[FR Doc. 84–24852 Filed 9–19–84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84–NM–88–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the battery charger on certain McDonnell Douglas Model DC–9 and C–9 (Military) airplanes. Six incidents of battery charger failures have been recently reported. Since all six failed battery chargers showed evidence of overheat, this action is necessary to prevent the potential for a localized fire and the potential loss of both the Battery Direct and Battery Buses which provide emergency electrical power.

DATES: Comments must be received no later than November 9, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-88-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During the period March 9, 1983, through March 19, 1984, five DC-9 operators have reported six battery charger failure incidents that have been attributed to failure of electromagnetic interference (EMI) filter capacitor C17 in the Sundstrand P/N 26340061-04 battery charger. Capacitor C17 is an 8 mfd, 200 Vdc metalized polycarbonate capacitor. Although all six reported failures were discovered on the ground, this type of failure can occur in flight. Five of the six battery charger failures were discovered when smoke was observed coming from the EE compartment where the battery charger and the main aircraft batteries are located. The other battery charger failure was discovered when the battery charger circuit breaker had opened. All of the failed battery chargers showed evidence of overheat.

In three incidents, the battery meter shunt S4-1 opened, acting as a fuse between the main aircraft batteries and the failed battery charger. The opened battery meter shunt electrically disconnected the Battery Direct Bus from the main aircraft batteries resulting in the loss of both the Battery Direct and Battery Buses.

Sundstrand's investigations of the failed battery chargers revealed that the primary cause of all the failures was the failure of EMI filter capacitor C17. When C17 failed, the capacitor's metallic case ruptured, forcing its positive cap and terminal into contact with a ground terminal mounted adjacent to the capacitor, and shorting the output of the battery charger. This also caused a short circuit with only the filter choke in series with the main aircraft batteries. This fault resulted in extreme heat generation and combustion of adjacent epoxy encapsulated components within the battery charger.

Therefore, in consideration of the potentially hazardous consequence of this type of fault, the proposed AD is considered to be necessary. Sundstrand Service Bulletin 26340061-24-2 dated Feburary 24, 1984, as referenced by McDonnell Douglas DC-9 Service Bulletin 24-73, dated March 21, 1984, was released to modify the Sundstrand P/N 26340061-04 battery chargers. The modification consists of removing EMI filter capacitor C17 from all Sundstrand P/N 26340061-04 battery chargers. Analysis and testing has indicated that capacitor C17 is not required for EMI suppression. The proposed AD has two compliance periods in which to modify the battery chargers; the shorter compliance period is required for battery chargers having certain specific capacitors which have demonstrated a higher failure rate than the others. The affected battery chargers' serial numbers are listed in Section I, paragraph 4.A. of Sundstrand Service Bulletin 26340061-24-2. The longer compliance period is required for all other Sundstrand P/N 26340061-04 battery chargers.

Cost Estimate

The estimated costs associated with the proposed AD are as follows: Six hundred forty-seven airplanes of U.S. Registry are affected which would require approximately one manhour per airplane to accomplish the modification at an average labor charge of $40 per manhour. Based upon these figures, the economic impact of this proposed AD on U.S. operators is estimated to be $25,880.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive (AD):

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) airplanes, certificated in all categories, equipped with Sundstrand P/N 26340061-04 battery charger. Compliance required as indicated, unless previously accomplished.

To prevent the potential for a localized fire and the potential loss of the Battery Direct and Battery Buses which provide emergency electrical power, accomplish the following:

A. Within 90 days after the effective date of this AD, modify Sundstrand P/N 26340061-04 battery chargers whose serial numbers are listed in Section I, paragraph 4.A. of Sundstrand Service Bulletin 26340061-24-2 dated February 24, 1984, in accordance with the Accomplishment Instructions of the Sundstrand service bulletin as referenced by McDonnell Douglas DC-9 Service Bulletin 24-73, dated March 21, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within 180 days after the effective date of this AD, modify all other Sundstrand P/N 26340061-04 battery chargers not affected by paragraph A. of this AD, in accordance with the Accomplishment Instructions of Sundstrand Service Bulletin 26340061-24-2 dated February 24, 1984, as referenced by McDonnell Douglas DC-9 Service Bulletin 24-73, dated March 21, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 and C-9 (Military) airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 10, 1984.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24655 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-2]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several airways located in the vicinity of Athens, GA, by deleting some alternate airway segments and renumbering other alternate airway segments. This action supports our agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System. This notice is one of three parts. Airspace Dockets numbered 84-AWA-1 and 84-AWA-3 are the remaining two parts.

DATES: Comments must be received on or before October 29, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-2, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of Athens, GA, by deleting all alternate route designations, renumbering some airway segments and revoking airway segments that are not required. This action supports our agreement with ICAO to eliminate all alternate route designations from the National Airspace System. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V-49 [Revised]

From Vulcan, AL, via Decatur, AL; Nashville, TN; Bowling Green KY; Mystic, KY; to Nabb, IN.

V-51 [Amended]

By removing the words "Harris; Hinch Mountain, TN, including a west alternate from the INT Anderson, SC, 274° and Athens 340° radials to Hinch Mountain via INT Anderson 274° and Hinch Mountain 160° radials; Livingston, TN; "and substituting the words "Harris; Hinch Mountain, TN; Livingston, TN"

V-66 [Amended]

By removing the words "Raleigh-Durham, NC, including a south alternate from Athens, GA, to Raleigh-Durham via INT Athens 092° and Greenwood, SC, 240° radials, Greenwood and Sandhills, NC; " and substituting the words "Raleigh-Durham, NC;"

V-400 [New]

From Athens, GA, via INT Athens 092°T(092°M) and Greenwood, SC, 240°T(241°M) radials; Greenwood; Sandhills, NC; to Raleigh-Durham, NC.

V-35 [Amended]

By removing the words "Fort Myers; St. Petersburg, FL, including a W alternate; via INT Fort Myers 311° and Sarasota, FL, 156° radials, Sarasota, St. Petersburg; INT St. Petersburg 350° and Cross City, FL, 168° radials; Cross City, including an E alternate via Gainesville, FL; "and "Holston Mountain, TN, including a west alternate via INT Sugarloaf Mountain 329° and Holston Mountain 203° radials; Glade Spring, VA;" and substituting the words "Fort Myers; St Petersburg, FL; INT St. Petersburg 350°T(349°M) and Cross City, FL, 168°T(167°M) radials; Cross City, FL;" and "Holston Mountain, TN; Glade Spring, VA;"

V-364 [New]

From Sugarloaf Mountain, NC, via INT Sugarloaf Mountain 329°T(331°M) and Holston Mountain, TN, 203°T(207°M) radials; Holston Mountain.

V-20 [Amended]

By removing the words "Spartanburg, SC, including a north alternate from Montgomery to Spartanburg Via INT Montgomery 029° and Chattanooga, TN, 189° radials; INT Chattanooga 189° and Rome, GA, 252° radials; Rome; INT Rome 060° and Toccoa, GA, 258° radials; Toccoa to Spartanburg;" and substituting the words "Spartanburg, SC;"

V-415 [New]

From Montgomery, AL, via INT Montgomery 029°T(028°M) and Chattanooga, TN, 189°T(188°M) radials; INT Chattanooga 189°T(188°M) and Rome, GA 252° radials; Rome; INT Rome 060°T(059°M) and Toccoa, GA, 258°T(258°M) radials; Toccoa; to Spartanburg, SC.

V-417 [New]

From Monroe, LA, via INT Montgomery 105°T(099°M) and Jackson, MS. 256°T(251°M) radials; Jackson. From Meridian, MS; Tuscaloosa, AL; Vulcan, AL; Rome, GA; INT Rome 060°T(059°M) and Electric City, SC, 274°T(274°M) radials; INT Electric City 274°T(274°M) and Athens, GA, 340°T(340°M) radials; Athens; INT Athens 109°T(109°M) and Augusta, GA, 294°T(298°M) radials; Augusta; INT Augusta 146°T(152°M) and Allendale, SC, 273°T(274°M) radials; Allendale; to Charleston, SC.

V-427 [New]

From Monroe, LA, via INT Monroe 075°T(069°M) and Jackson, MS, 286°T(281°M); to Jackson.

V-18 [Amended]

By removing the words "Jackson, MS, including a N alternate and also a S alternate; Meridian, MS, including a S alternate; Tuscaloosa, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; INT Atlanta 089° and Augusta, GA, 278° radials; Augusta, including a north alternate from Vulcan to Augusta, via Rome, GA, INT Rome 060° and Anderson, SC, 274° radials; INT Anderson 274° and Athens, GA, 340° radials; Athens, and INT Athens 109° and Augusta 294° radials; INT Augusta 103° and Charleston, SC, 296° radials; Charleston, including a S alternate from Augusta to Charleston via INT Augusta 148° and Allendale, SC, 273° radials, and Allendale, "and substituting the words "Jackson, MS; Meridian, MS; Tuscaloosa, AL; Vulcan, AL; Talladege, AL, Atlanta, GA; INT Augusta 089°T(089°M) and Augusta, GA, 278°T(282°M) radials; Augusta; INT Augusta 103°T(107M) and Charleston, SC, 296°T(298°M) radials; Charleston,"

V-94 [Amended]

By removing the words "Monroe, LA; Greenville, MS, including a S Alternate; Holly Springs, MS, including a N alternate via INT Greenville 021° and Holly Springs 268° radials;" and substituting the words "Monroe, LA; Greenville, MS; Holly Springs, MS;"

V-397 [New]

From Monroe, LA, via INT Monroe 056°T(050°M) and Greenville, MS, 207°T(203M); Greenville; INT Greenville 021°T(017°M) and Holly Springs, MS, 268°T(265°M) radials; to Holly Springs.

V-97 [Amended]

By removing the words "From Miami, FL; La Belle, FL, including an E alternate via INT Miami 337° and La Belle 124° radials; St. Petersburg, FL;" and substituting the words "From Miami, FL, via La Belle, FL; St. Petersburg, FL;"

V-157 [Amended]

By removing the words "Miami, FL; La Belle, FL;" and substituting the words "Miami, FL; INT Miami 337°T(337°M) and La Belle, FL, 124°T(123°M) radials; La Belle;"

V-441 [Amended]

By removing the words "Ocala, including an E alternate via INT St. Petersburg 040° and Ocala 182° and substituting the words "to Ocala"

V-152 [Amended]

By removing the words "Ormond Beach, including a S alternate via Lakeland, FL, Orlando, FL; INT Orlando 049° and ormond Beach 161° radials." and substituting the words "Ormond Beach."

V-533 [New]

From St. Petersburg, FL, via Lakeland, FL; Orlando, FL; INT Orlando 049°T(049°M) and Ormond Beach, FL, 161°T(161°M) radials; to Ormond Beach.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on September 6, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-24882 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 84N-0094]

Pickled Cucumbers; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY; The Food and Drug Administration (FDA) is terminating consideration of the establishment of a U.S. standard for pickled cucumbers based on the Codex Alimentarius Commission Standard for Pickled Cucumbers (Codes Standard 115-1981) (Codex standard) because there is neither sufficient interest nor need to warrant proposing a U.S. standard for this food.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 1984 (49 FR 17519), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex Standard for Pickled Cucumbers and to comment on the desirability of and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission.

Two comments were received from a trade association and a food producer in response to the advance notice of proposed rulemaking. Both comments opposed the establishment of a U.S. standard of identity for pickled cucumbers.

Having considered all the comments received, FDA has concluded that there is neither sufficient interest nor need to warrant proposing a U.S. standard at this time for pickled cucumbers under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of developing a U.S. standard for pickled cucumbers based on the Codex standard. This action is without prejudice to further consideration of the development of a U.S. standard for pickled cucumbers upon appropriate justification.

FDA will inform the Codex Alimentarious Commission that an imported food that complies with the requirements of the Codex Standard for Pickled Cucumbers may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: September 13, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24875 Filed 9-19-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 155 and 158

[Dockets No. 84N-0086]

Edible Fungi and Fungus Products; Termination of Consideration of Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of the establishment of a U.S. standard for edible fungi and fungus products based on the Codex General Standard for Edible Fungi and Fungus Products (Codex Standard 38-1981) (Codex standard) because there is neither sufficient interest nor need to warrant proposing a U.S. standard for this food.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 19, 1984 (49 FR 15568), FDA published an advance notice of proposed rulemaking that offered interested persons an opportunity to review the Codex General Standard for Edible Fungi and Fungus Products and to comment on the desirability of and need for a U.S. standard for this food. The Codex standard was submitted to the United States for consideration for acceptance by the Joint Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission. No comments were received in response to the advance notice of proposed rulemaking.

Having received no comments or other relevant information, FDA has concluded that there is neither sufficient interest nor need to warrant proposing a U.S. standard at this time for edible fungi and fungus products under the authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commission of Food and Drugs has terminated consideration of developing a U.S. standard for edible fungi and fungus products based on the Codex standard. This action is without prejudice to further consideration of the development of a U.S. standard for edible fungi and fungus products upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex General Standard for Edible Fungi and Fungus Products may move freely in interstate commerce in this country, providing it complies with applicable U.S. laws and regulations.

Dated: September 13, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24870 Filed 9-19-84; 8:45am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 220, 221, 231, and 232

[Docket No. R-84-1165; FRL-1871]

Mortgagor Risk on HUD-Insured Projects

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD regulations governing the insurance of mortgages for newly constructed and substantially rehabilitated multifamily rental housing (Parts 207, 220, 221, and 231) and nursing homes (Parts 232) would be amended by this proposed rule. The regulations currently permit profit-motivated and limited distribution mortgagors to obtain insured, non-recourse loans of up to 90 percent of value or replacement cost. This proposed rule would change this policy by limiting mortgages for such mortgagors to 85 percent of value or replacement costs, *except* in any case where the mortgagor agrees either to accept limited personal liability for loan repayment or to establish a special rent-up escrow.

DATES: *Comments due:* November 19, 1984.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, Room 6132, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755-6500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The HUD General Insurance Fund has sustained substantial net losses in recent years. The Department has determined that, as part of an effort to curtail such losses in the future, its risks under a number of the multifamily mortgage insurance programs covered by the Fund must be diminished.

HUD has considered two basic approaches to improving its multifamily mortgage insurance programs. One approach would be to increase the HUD mortgage insurance premium (MIP) to a level more reflective of actual claims experience under the programs. A second approach would be to institute program changes designed to discourage defaults and to help assure the financial viability of newly constructed or substantially rehabilitated projects. Recognizing that a significant increase in the MIP could have an adverse effect on the feasibility of projects, HUD has decided not to raise the MIP at this time. Instead, the Department proposes to pursue the latter of these two approaches.

The Department has concluded that the key to reducing the number of multifamily mortgage insurance claims is to provide an inducement to mortgagors to strengthen their motivation to avoid mortgage defaults. HUD therefore proposes to require profit-motivated and limited distribution mortgagors, the primary users of the multifamily mortgage insurance programs, to assume a greater share of the financial risk associated with the development and operation of their HUD-insured projects.

This rule would prohibit a profit-motivated or limited distribution mortgagor from obtaining a HUD-insured mortgage covering a multifamily rental housing project, nursing home or intermediate health care facility which is in excess of 85 percent of value or replacement cost, as the case may be, *unless* the mortgagor agrees either to (1) escrow an amount equal to three percent of the mortgage amount to provide additional security against shortfalls in project income before achievement of sustaining occupancy, *or* (2) assume personal liability for repayment of a percentage of the outstanding mortgage amount, determined in accordance with the following sliding scale:

Loan-to-value (cost)	Percent personal liability
More than 85% but not more than 86%	2
More than 86% but not more than 87%	4
More than 87% but not more than 88%	6
More than 88% but not more than 89%	8
More than 89% but not more than 90%	10

A mortgagor choosing the escrow option would be required to have the full three percent available for project use by the time of initial endorsement. The escrow could be funded only by cash or an unconditional, irrevocable letter of credit, except that, for the period between initial and final endorsement, the mortgagee could permit the mortgagor to satisfy the escrow requirement by providing a personal note in the necessary amount executed by the individuals comprising the mortgagor entity (excluding limited partners) with such individuals being jointly and severally liable. The full amount of the escrow would be required to remain available for project use (i.e., to cover project costs, including debt service, if project revenues were insufficient to do so) until the project achieved sustaining occupancy and showed a positive cash flow for a period of 120 days, at which time one half of the escrow balance could be released with HUD approval; the remainder of the escrowed funds could be released 120 days thereafter, provided that HUD determined there had been no interruption in the sustaining occupancy and positive cash flow condition of the project. If, at any time after initial endorsement and before such final release of the escrow, the mortgagee claimed insurance benefits as a result of a default, the mortgagee's insurance benefits would be reduced, in accordance with 24 CFR 207.259(b)(2)(iii) or 207.259(c), by the amount of the escrow balance.

A mortgagor selecting the option of limited personal liability would execute a mortgage or deed of trust note and mortgage or deed of trust containing a provision requiring personal liability based on the total unpaid mortgage indebtedness at the time of default. Consequently, the promissory note would contain provisions describing recourse as well as nonrecourse liability. Under these circumstances, the Internal Revenue Service has ruled that the note will be treated for purposes of Treas. Reg. section 1.752–1(e) as two separate obligations, one of which will be treated as a recourse obligation and the other as a nonrecourse obligation. Therefore, a limited partner's basis for his limited partnership interest may be increased by his proportionate share of that part of the original amount of the promissory note that is treated as a separate nonrecourse liability. See Rev. Rul. 84–118, 1984–32 I.R.B. 14.

As a technical matter, this rule also corrects certain inaccurate cross references contained in §§ 207.258(b)(4)(iv) and 207.259(b)(2)(iii) of Part 207.

The provisions of this proposed rule do not apply, as drafted, to the Parts 251 and 255 coinsurance programs. The Department intends, however, to add such provisions in the final rule and invites public comment on this question.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation, issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a number of optional ways to meet its requirements, and the additional investment or risk imposed on small mortgagors or mortgagees is not considered substantial.

This rule was listed as item number 74 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15923) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.129, 14.134, 14.135, 14.137, 14.138, 14.139, and 14.155.

List of Subjects

24 CFR Part 207

Mortgage insurance, Mobile home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs: housing and community development, Projects.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 231

Aged, Mortgage insurance.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: health, Loan programs: housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, 24 CFR Parts 207, 220, 221, 231 and 232 are proposed to be amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. In § 207.4, paragraph (a)(1) is revised to read as follows:

§ 207.4 Maximum mortgage amounts.

(a) * * *

(1)(i) In the case of a public nonprofit mortgagor, or in the case of a limited dividend public mortgagor or a private mortgagor meeting the requirements of § 207.19(g), 90 percent of the estimated value (90 percent of replacement cost if the project is located in Alaska or Guam) of the project;

(ii) In the case of a limited dividend public mortgagor or a private mortgagor not meeting the requirements of § 207.19(g), 85 percent of the estimated value (85 percent of replacement cost if the project is located in Alaska or Guam) of the project; or

* * * * *

2. In § 207.19, paragraph (g) is revised to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(g) *Additional obligation of mortgagor.* To obtain a mortgage amount greater than 85 percent of value (85 percent of replacement cost, where appropriate), the mortgagor shall, in addition to making any other deposits and assurances required under paragraph (c) of this section, at or before initial endorsement in insurance of advances cases (initial/final endorsement in insurance on completion cases), either:

(1) Deposit with the mortgagee in a special escrow an amount equal to three percent of the original principal amount of the mortgage. Such amount may be reduced at final endorsement in insurance on advances cases if, as a result of cost certification, there is a reduction in the original principal amount of the mortgage. Such fund shall be available, if necessary, to help cover operating and maintenance expenses of the project before its achievement of sustaining occupancy and a positive cash flow. Upon a finding by the Commissioner that the condition of the project is such that sustaining occupancy and a positive cash flow have been achieved and have been maintained for a period of at least 120 days, one half of the balance in the fund may be released to the mortgagor. Upon a further finding by the Commissioner that sustaining occupancy and positive cash flow continue to be maintained for a period of at least 120 days thereafter, the remaining balance of the fund may be released to the mortgagor. In lieu of a cash deposit, the mortgagee may accept an unconditional, irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder. The mortgagee may also, for the limited period between initial and final endorsement of the mortgage in insurance of advances cases, accept the personal note of the mortgagor in lieu of a cash deposit or an unconditional, irrevocable letter of credit. The note must be executed by the individuals comprising the mortgagor entity, that is, the principal officers of a corporate mortgagor or the general partners of a partnership mortgagor, which individuals shall be jointly and severally liable under the note. In the event of a default resulting in the mortgagee's claim for insurance benefits during any time when this special escrow is in effect, the balance in the escrow will be treated as a cash item and the mortgagee's insurance benefits shall be reduced by the amount of such balance in accordance with § 207.259(b)(2)(iii) or § 207.259(c) of this part, or;

(2) Accept personal liability, as evidenced by appropriate provision in the mortgage or deed of trust note and the mortgage or deed of trust, based on the total unpaid mortgage indebtedness at the time of default, in the following percentages:

Loan-to-value (cost)	Percent personal liability
More than 85% but not more than 86%	2
More than 86% but not more than 87%	4
More than 87% but not more than 88%	6
More than 88% but not more than 89%	8
More than 89% but not more than 90%	10

(3) The provisions of this paragraph (g) shall also apply to public mortgagors that are limited dividend corporations.

3. In § 207.258, paragraph (b)(4)(iv) is revised to read as follows:

§ 207.258 Insurance claim requirements.

* * * * *

(b) * * *

(4) * * *

(iv) All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee) under paragraph (b)(5) of this section.

* * * * *

4. In § 207.259, paragraph (b)(2)(iii) is revised to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(b) * * *

(2) * * *

(iii) The sum of the cash items retained by the mortgagee under § 207.258(b)(5), except the balance of the mortgage loan not advanced to the mortgagor.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

5. In § 220.508, paragraphs (a) through (c) are revised to read as follows:

§ 207.508 Maxiumum mortgage amount—loan-to-value limitations.

* * * * *

(a) *Approved new construction.* 85 percent (90 percent in the case of a public nonprofit mortgagor, or in the case of a limited dividend public mortgagor or a private mortgagor meeting the requirements of § 207.19(g)) of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed, if the project is approved for mortgage insurance before the beginning of construction. The replacement cost of the property or project (1) may include the land, the proposed physical improvements, utilities within the boundaries of the property or project, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner and (2) shall include an allowance for builder's and sponsor's profit and risk to be detemined by totaling the foregoing items, with the exception of the land, and applying the percentage or percentages specified in § 220.513.

(b) *Nonapproved new construction.* 85 percent (90 percent in the case of a public nonprofit mortgagor, or in the case of a limited dividend public mortgagor or a private mortgagor meeting the requirements of § 207.19(g)) of the Commissioner's estimate of the value of the property or project when the proposed improvements are completed, if the project is under construction and was not approved for mortgage insurance before the beginning of construction.

(c) *Repair and rehabilitation.* 85 percent (90 percent in the case of a public mortgagor or in the case of a limited dividend public mortgagor or a private mortgagor, meeting the requirements of § 207.19(g)) of the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property or project before repair and rehabilitation.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

6. In § 221.514, paragraphs (a)(2) (ii) and (iii), and (a)(3) and (a)(4) are revised to read as follows:

§ 221.514 Maximum mortgage amounts.

(a) * * *

(2) *New construction.*

(i) * * *

(ii) In the case of new construction where the mortgage is to be insured under section 221(d)(3) or section 221(d)(4) and the mortgagor is a general or a limited distribution mortgagor, 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 221.531(d) or § 221.532(d)) of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost (A) may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner and (B) shall include an allowance for builder's and sponsor's profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner after determining such allowance is unreasonable, prescribes a lesser percentage.

(iii) In the case of new construction where the mortgage is to be insured under section 221(d)(4), (A) if the mortgagor is a nonprofit, public, or cooperative mortgagor, 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed, (B) if the mortgagor is a builder-seller or investor-sponsor mortgagor, 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 221.532(d)) of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(3) *Repair or rehabilitation.* (i) In the case of a project which is to be repaired or rehabilitated where the mortgage is to be insured under section 221(d)(3) and the mortgagor is a nonprofit, public, or cooperative mortgagor, the sum of the estimated cost of the repairs or rehabilitation of the project and the Commissioner's estimate of the value of the property before repairs or rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated where the mortgage is to be insured under section 221(d)(3) or section 221(d)(4) and the mortgagor is a general, limited distribution, builder-seller or investor-sponsor mortgagor, 85 (90 percent in the case of a mortgagor meeting the requirements of § 221.531(d) or § 221.532(d)) of the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(iii) In the case of a project which is to be repaired or rehabilitate where the mortgage is to be insured under section 221(d)(4) and the mortgagor is a nonprofit, public, or cooperative mortgagor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(4) *Purchase from local public agency.* If the mortgage involves the financing of the purchase of property which has been rehabilitated by a local public agency with federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949, the mortgage shall not exceed the following amounts:

(i) Where the purchaser is a mortgagor other than a general or limited distribution mortgagor and the mortgage is to be insured under section 221(d)(3), the appraised value of the property as of the date the mortgage is accepted for insurance, or the actual cost of acquisition, whichever amount is the lesser.

(ii) Where the purchase is a general or limited distribution mortgagor, 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 221.531(d) or § 221.532(d)) of the appraised value of the property, as of the date the mortgage is accepted for insurance, or 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 221.531(d) or § 221.532(d)) of the actual cost of acquisition as approved by the Commissioner, whichever amount is the lesser.

(iii) Where the purchaser is other than a general or limited distribution mortgagor and the mortgage is to be insured under section 221(d)(4), 90 percent of the appraised value of the property, as of the date the mortgage is accepted for insurance, or 90 percent of the actual cost of acquisition as approved by the Commissioner, whichever amount is the lesser.

* * * * *

7. In § 221.531, paragraph (d) is revised to read as follows:

§ 221.531 Supervision applicable to general mortgagors.

* * * * *

(d) *Additional obligation of mortgagor.* Where the mortgage amount is greater than 85 percent of replacement cost, the mortgagor shall, in addition to making any other deposits and assurances required under this part, at or before initial endorsement in insurance of advances cases (initial/final endorsement in insurance on completion cases) either:

(1) Deposit with the mortgagee in a special escrow an amount equal to three percent of the original principal amount of the mortgage. Such amount may be reduced at final endorsement if, as a result of cost certification, there is a reduction in the original principal amount of the mortgage. Such fund shall be available, if necessary, to help cover operating and maintenance expenses of the project before its achievement of sustaining occupancy and a positive cash flow. Upon a finding by the Commissioner that the condition of the project is such that sustaining occupancy and a positive cash flow have been achieved and have been maintained for a period of at least 120 days, one half of the balance in the fund may be released to the mortgagor. Upon a further finding by the Commissioner that sustaining occupancy and positive cash flow continue to be maintained for a period of at least 120 days thereafter, the remaining balance of the fund may be released to the mortgagor. In lieu of a cash deposit the mortgagee may accept an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a

demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder. The mortgagee may also, for the limited period between initial and final endorsement of the mortgage in insurance of advances cases, accept the personal note of the mortgagor in lieu of a cash deposit or an unconditional, irrevocable letter of credit. The note must be executed by the individuals comprising the mortgagor entity, that is, the principal officers of a corporate mortgagor or the general partners of a partnership mortgagor, which individuals shall be jointly and severally liable under the note. In the event of a default resulting in the mortgagee's claim for insurance benefits during any time when this special escrow is in effect, the balance in the escrow will be treated as a cash item and the mortgagee's insurance benefits shall be reduced by the amount of the such balance in accordance with § 207.259(b)(2)(iii) or § 207.259(c) of this chapter or;

(2) Accept personal liability, as evidenced by appropriate provision in the mortgage or deed of trust note and the mortgage or deed of trust, based on the total unpaid mortgage indebtedness at the time of default, in the following percentages:

Loan-to-cost	Percent personal liability
More than 85% but not more than 86%	2
More than 86% but not more than 87%	4
More than 87% but not more than 88%	6
More than 88% but not more than 89%	8
More than 89% but not more than 90%	10

8. Section 221.532 is amended by adding at the end thereof the following new paragraph (d):

§ 221.532 Supervision applicable to limited distribution mortgators.

* * * * *

(d) *Additional obligation of mortgagor.* To obtain a mortgage amount greater than 85 percent of value (85 percent of replacement cost, where appropriate), the mortgagor shall, in addition to making any other deposits and assurances required under this part, at or before initial endorsement in insurance of advances cases (initial/final endorsement in insurance on completion cases), either:

(1) Deposit with the mortgagee in a special escrow an amount equal to three percent of the original principal amount of the mortgage. Such amount may be reduced at final endorsement if, as a result of cost certification, there is a reduction in the original principal amount of the mortgage. Such fund shall be available, if necessary, to help cover operating and maintenance expenses of the project before its achievement of sustaining occupancy and a positive cash flow. Upon a finding by the Commissioner that the condition of the project is such that sustaining occupancy and a positive cash flow have been achieved and have been maintained for a period of at least 120 days, one half of the balance in the fund may be released to the mortgagor. Upon a further finding by the Commissioner that sustaining occupancy and positive cash flow continue to be maintained for a period of at least 120 days thereafter, the remaining balance of the fund may be released to the mortgagor. In lieu of a cash deposit the mortgagee may accept an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder. The mortgagee may also, for the limited period between initial and final endorsement of the mortgage in insurance of advances cases, accept the personal note of the mortgagor in lieu of a cash deposit or an unconditional, irrevocable letter of credit. The note must be executed by the individuals comprising the mortgagor entity, that is, the principal officers of a corporate mortgagor or the general partners of a partnership mortgagor, which individuals shall be jointly and severally liable under the note. In the event of a default resulting in the mortgagee's claim for insurance benefits during any time when this special escrow is in effect, the balance in the escrow will be treated as a cash item and the mortgagee's insurance beneifts shall be reduced by the amount of such balance in accordance with § 207.259(b)(2)(iii) or § 2107.259(c) of this chapter or;

(2) Accept personal liability, as evidenced by appropriate provision in the mortgage or deed of trust note and the mortgage or deed of trust, based on the total unpaid mortgage indebtedness at the time of default, in the following percentages:

Loan-to-cost	Percent personal liability
More than 85% but not more than 86%	2
More than 86% but not more than 87%	4
More than 87% but not more than 88%	6
More than 88% but not more than 89%	8
More than 89% but not more than 90%	10

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

9. In § 231.3, paragraph (b)(2) is revised to read as follows:

§ 231.3 Maximum mortgage amounts—new construction.

* * * * *

(b) * * *

(2) 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 207.19(g)) of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed if executed by a Private Mortgagor-Profit. The replacement cost may include land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builders and sponsors profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner, after certifying such allowance is unreasonable, prescribes a lesser percentage.

* * * * *

10. Section 231.4 is amended by revising paragraphs (a)(2), (b)(2)(ii) and (b)(3)(ii) to read as follows:

§ 231.4 Maximum mortgage amounts—rehabilitation projects.

(a) * * *

(2) *Private Mortgagor—Profit.* For a Private Mortgagor-Profit, 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 207.19(g) of the Commissioner's estimate of the value of the project after the completion of the rehabilitation.

(b) * * *

(2) * * *

(ii) *Profit mortgagor.* If the mortgagor is a profit mortgagor, the Commissioner's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 207.19(g)) of the Commissioner's estimate of the fair market value of such land and improvements before the repair or rehabilitation.

(3) * * *

(*ii*) *Profit mortgagor.* If the mortgagor is a profit mortgagor:

(*a*) 85 percent (90 percent in the case of a mortgagor meeting the requirements of § 207.19(g)) of the Commissioner's estimate of the cost of the repair or rehabilitation, plus (*b*) **85 percent (90 percent in the case of a mortgagor meeting the requirements** of § 207.19(g)) of (*1*) the actual purchase price of the land and improvements, or (*2*) the Commissioner's estimate of the fair market value of such land and improvements before the repair or rehabilitation, whichever is the lesser.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

11. Section 232.30 is revised to read as follows:

§ 232.30 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of 85 percent (90 percent where the mortgagor is a private nonprofit corporation or association or a mortgagor meeting the requirements of § 232.61(e)) of the Commissioner's estimate of the value of the property or project, including equipment to be used in its operation, when the proposed improvements are completed and the equipment is installed.

12. Section 232.61 is revised by adding a new paragraph (e) at the end thereof to read as follows:

§ 232.61 Equity requirements.

* * * * *

(e) *Additional obligation of mortgagor.* In addition to the funds referred to in paragraphs (a) and (b) of this section, where the mortgagor is a general or limited distribution mortgagor as described in § 221.510 of this chapter, the mortgagor must, in order to obtain a mortgage amount greater than 85 percent of value or replacement cost, at or before initial endorsement of the mortgage for insurance in insurance of advances cases (initial/final endorsement in insurance on completion cases), either:

(1) Deposit with the mortgagee in a special escrow an amount equal to three percent of the original principal amount of the mortgage. Such amount may be reduced at final endorsement if, as a result of cost certification, there is a reduction in the original principal amount of the mortgage. Such fund shall be available, if necessary, to help cover operating and maintenance expenses of the project before its achievement of sustaining occupancy and a positive cash flow. Upon a finding by the Commissioner that the condition of the project is such that sustaining occupancy and a positive cash flow have been achieved and have been maintained for a period of at least 120 days, one half of the balance in the fund may be released to the mortgagor. Upon a further finding by the Commissioner that sustaining occupancy and positive cash flow continue to be maintained for a period of at least 120 days thereafter, the remaining balance of the fund may be released to the mortgagor. In lieu of a cash deposit the mortgagee may accept an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder. The mortgagee may also, for the limited period between initial and final endorsement of the mortgage in insurance of advances cases, accept the personal note of the mortgagor in lieu of a cash deposit or an unconditional, irrevocable letter of credit. The note must be executed by the individuals comprising the mortgagor entity, that is, the principal officers of a corporate mortgagor or the general partners of a partnership mortgagor, which individuals shall be jointly and severally liable under the note. In the event of a default resulting in the mortgagee's claim for insurance benefits during any time when this special escrow is in effect, the balance in the escrow will be treated as a cash item and the mortgagee's insurance benefits shall be reduced by the amount of such balance in accordance with § 207.259(b)(2)(iii) or § 207.259(c) of this chapter or;

(2) Accept personal liability, as evidenced by appropriate provision in the mortgage or deed or trust note and the mortgage or deed of trust, based on the total unpaid mortgage indebtedness at the time of default, in the following percentages:

Loan-to-value	Percent personal liability
More than 85% but not more than 86%	2
More than 86% but not more than 87%	4
More than 87% but not more than 88%	[illegible]
More than 88% but not more than 89%	[illegible]
More than 89% but not more than 90%	10

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: September 13, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-24857 Filed 9-19-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1-83-3R]

Enlargement of Special Anchorage Area in Salem Harbor, Salem, MA

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of proposed rulemaking.

SUMMARY: On 1 November 1983, the Coast Guard published a Notice of Proposed Rulemaking regarding the expansion of the existing Special Anchorage Area in Salem Harbor. Salem Harbor is bordered on the western shore by the city of Salem, Massachusetts and on the eastern shore by the town of Marblehead, Massachusetts. The proposed change appeared in Volume 48 of the **Federal Register** pages 50360 and 50361. Subsequent comments received by this office have prompted the withdrawl of the Salem portion of that rule. The Marblehead portion has been established separately as a Final Rule; 49 FR 24722 dated 15 June 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Bradley N. Balch, (617) 223-1470.

SUPPLEMENTARY INFORMATION:

Drafting Information

The persons responsible for drafting this notice are Lieutenant Commander Bradley N. Balch, Project Officer, U.S. Coast Guard, Marine Safety Office, 447 Commercial Street, Boston, Massachusetts and Lieutenant Commander Robert F. Duncan, Project Attorney, Commander (dl), First Coast Guard District, 150 Causeway Street, Boston, Massachusetts.

Discussion

Salem City Ordinance (SEC 6-10) prohibits lobstering by any method in a Designated Anchorage. If the proposed anchorages were established, it would effectively eliminate lobstering from the majority of Salem Harbor. This would impose an economic burden on local lobstermen and possibly seiners, who presently fish this area, by restricting potential harvesting areas that are now available for that purpose. In addition there may be costs imposed on the residents adjoining the shore by increased traffic flow and parking demand as well as other public services. A total of 17 letters have been received concerning this proposed rule change. Sixteen letters are negative and one positive. The contents of these letters are as follows:

a. Four (4) letters indicated the increase in moorings would create a service traffic problem and a general increase in conjestion in the local area.

b. Five (5) letters addressed the concerns of commercial fishermen in the Salem Harbor area. The lobstermen would be directly affected, however the Seiner's, who supply inexpensive bait to the lobstermen, would be hindered by a potential increase in moorings.

c. Three (3) letters expressed concern over the increase in commercialism in the Winter Island, Cat Cove area.

d. Four (4) letters addressed all areas of concern mentioned above.

e. One (1) letter in favor of the proposal was received.

f. One (1) petition was received that stated "We, as residents of the City of Salem, would like to go on record as being opposed to the U.S. Coast Guard's proposal to expand the Special Anchorage area of Salem Harbor and Cat Cove." Signed by Ninty Four (94) area individuals.

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46, 33 CFR 1.05-1(g))

Dated: September 17, 1984.

R.A. Bauman,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 84-24947 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 200, 204, and 298

Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981; Extension of Comment Period

AGENCY: Department of Education.

ACTION: Notice of extended comment period.

SUMMARY: This notice is to inform the public that the comment periods on the Notices of Proposed Rulemaking (NPRMs) for Chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981 have been extended 45 days in order to provide the public with additional time to prepare and submit their views. These NPRMs implement changes made to Chapters 1 and 2 by the Education Consolidation and Improvement Act of 1981 Technical Amendments.

The NPRM for Chapter 2 (34 CFR Part 298) was published in the **Federal Register** on July 10, 1984 at 49 FR 28212. The comment period, scheduled to end August 24, 1984, has been extended to end October 8, 1984.

The NPRMs for Chapter 1 (34 CFR Parts 200 and 204) were published in the **Federal Register** on August 9, 1984 at 49 FR 31914 and 31918, respectively.

DATES: The comment period, scheduled to end September 24, 1984, has been extended to end November 8, 1984.

FOR FURTHER INFORMATION CONTACT:

Chapter 1: Dr. Bruce Gaarder, (202) 245-9846.

Chapter 2: Mr. Allen King, (202) 245-7965.

(Catalog of Federal Domestic Assistance Nos. 84.010, Educationally Deprived Children—Local Educational Agencies; 84.011, Educationally Deprived Children—Migrants; 84.012, Educationally Deprived Children—State Administration; 84.009, Programs for Education of Handicapped Children in State Operated or Supported Schools; 84.013, Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children; 84.151, Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: September 17, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-24950 Filed 9-19-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2673-4]

National Emission Standards for Hazardous Air Pollutants Proposed Standards for Inorganic Arsenic

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of Public Comment Period on new information.

SUMMARY: The period for receiving written comments on the proposed national emission standards for inorganic arsenic emissions from low-arsenic throughput primary copper smelters is being reopened. EPA is extending the public comment period for the limited purpose of allowing comment on EPA's analyses of new information concerning arsenic emissions and control costs for low-arsenic throughput primary copper smelters.

DATE: Comments must be postmarked on or before November 5, 1984.

ADDRESS: Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 410 M Street, SW., Washington, D.C. 20460. Specify the following Docket Number: A-80-40 High-Arsenic and Low-Arsenic Copper Smelters.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Chaput, Standards Development Branch, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION: On June 5, 1980, EPA listed inorganic arsenic as a hazardous air pollutant under Section 112 of the Clean Air Act. On July 20, 1983, EPA proposed several rulemaking actions in the **Federal Register** (48 FR 33112), one of which was a national emission standard for inorganic arsenic emissions from low-arsenic primary copper smelters. The public comment period for the proposed standards, which was extended twice at the request of members of the public, ended on January 31, 1984.

A number of commenters on the proposed standards for low-arsenic throughput primary copper smelters commented that EPA's estimates of arsenic emissions at these smelters were too high and the estimates of control costs were too low. The information submitted by the commenters was analyzed, and, where necessary, EPA requested addition information to substantiate or clarify that provided, during the public comment period. EPA subsequently reevaluated the cost and emission estimates for these facilities using the new information as well as the previously available information on low-arsenic primary copper smelters. As a result, significant changes have been made to some estimates of emissions and control costs that EPA cited at proposal. In addition, one commenter also requested that, if the final standard is based on information not presented at proposal, EPA provide an opportunity to comment on the new information before making a final decision. Because of the changes and EPA's desire to ensure that the standards are based on the most complete and accurate information available, EPA is reopening the public comment period until November 5, 1984. Comments must be limited to EPA's additional analyses of costs and emissions; the comment period for all other aspects of the rulemaking ended January 31, 1984. EPA has placed the relevant comment summaries and the additional analyses in the public docket (Item No. IV-B-32 of Docket A-80-40).

Refinement in Emission and Cost Estimates Since Proposal

Several copper companies commented that EPA had overestimated the amount of arsenic in materials smelted at several of their smelters and, hence, overstated emissions from the smelters. Comments of this type were received for ASARCO's El Paso and Hayden smelters, Kennecott's Hayden, McGill, and Garfield smelters, and Phelps Dodge's Morenci and Ajo smelters.

For each of these smelters, EPA reviewed the information on which the proposal emission estimates were based in light of the comments submitted. Where judged appropriate, revisions to the proposal estimates were made. All of the revised estimates of inorganic arsenic emissions are lower than the proposed estimates with the exception of the Kennecott-Hayden estimates, which are unchanged. The revised emission estimates reflect changes in the assumed arsenic content of smelter feed and the estimated smelting furnace arsenic volatilization rate, smelter configuration, or the emission capture efficiency. The revised arsenic balances show reduced emission rates from the smelting furnaces and converters.

ASARCO, Kennecott, and Phelps Dodge also commented that EPA's estimates of control costs were understated and based on faulty assumptions. These companies submitted their estimates of emission control costs for six of their smelters.

In several cases, EPA obtained from the companies additional information on their cost estimates. EPA reviewed the cost information supplied by the companies and analyzed the difference between these estimates and those made by EPA at proposal. Factors contributing to the cost differences included: (1) site-specific factors requiring modification of the converter secondary hood design; (2) installation of new ductwork and fans rather than reuse of existing equipment; (3) different assumptions regarding the control systems needed; and (4) different assumptions for the annualized cost capital recovery factor (i.e., the interest rate and equipment service life). For each smelter, EPA reviewed the reasonableness of the companies' assumptions and reevaluated the control costs. Because of this reanalysis, the control cost estimates for converter operations and matte and slag tapping operations generally were increased over the estimates presented at proposal.

The revised emission and cost estimates are summarized in Table 1 and 2. Tables 1 presents the revised estimates for applying secondary inorganic arsenic emission controls to converter operations and represents an update of Table III-1 of the preamble for the proposed standards (48 FR 33143). Table 2 presents the control cost and emission estimates for matte and slag tapping operations and represents an update of Table III-2 of the proposal preamble (48 FR 33144).

Reopening of The Public Comment Period

As discussed earlier, EPA is reopening the public comment period for the limited purpose of allowing comment on the revised control costs and emission estimates for low-arsenic throughput primary copper smelters. The bases of the estimates presented in Tables 1 and 2 and the supporting information have been placed in the public docket (Item No. IV-B-32 of Docket A-80-40). To allow time for review of this material and for preparing comments, EPA is reopening the public comment period until November 5, 1984.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride, Arsenic.

Dated: September 7, 1984.

John C. Topping, Jr.,

Assistant Administrator for Air and Radiation.

TABLE 1. REVISED ENVIRONMENTAL AND COST IMPACTS ASSOCIATED WITH SECONDARY INORGANIC ARSENIC EMISSION CONTROL SYSTEMS FOR CONVERTER OPERATIONS

Smelter	Arsenic content of feed, percent	Arsenic feed rate to converters, kilogram per hour	Potential secondary arsenic emissions, milligram per year	Baseline secondary arsenic emissions, milligram per year	Predicted secondary arsenic emission reduction, milligram per year	Annualized control costs, $1,000	Cost per unit emission reduction, dollars per milligram arsenic
ASARCO—El Paso[a]:							
(1)	0.5	96.9	96.3	13.3	3.7	379	102,430
(2)	0.5	96.9	24.6	3.4	1.0	379	379,000
ASARCO—Hayden	0.42	63.4	10.2	5.4	4.4	796	181,365
Kennecott—McGill	0.033	9.3	10.1	10.1	9.2	2,201	239,240
Kennecott—Hayden	0.015	7.2	6.5	6.5	5.9	2,140	362,710
Phelps Dodge—Douglas	0.03	4.2	4.1	4.1	3.7	2,943	795,405
Inspiration—Miami	0.033	5.7	1.9	1.9	1.7	2,943	1,731,000
Phelps Dodge—Morenci	0.006	1.9	1.9	1.9	1.7	3,432	2,019,000
Kennecott—Utah (Garfield)	0.144	14.7	1.5	1.5	1.4	2,028	1,449,000
Phelps Dodge—Hidalgo	0.018	2.2	1.2	1.2	1.1	1,745	1,586,000
Tennessee Chemical—Copperhill	0.0004	0.7	0.65	0.65	0.58	1,278	2,203,000
Magma—San Manuel	0.006	0.6	0.55	0.55	0.50	3,979	7,958,000
Phelps Dodge—Ajo	0.015	0.8	0.52	0.52	0.47	1,562	3,323,000
Kennecott—Hurley	0.0005	0.8	0.46	0.46	0.42	2,296	5,467,000
Copper Range—White Pine	0.006	0.5	0.30	0.30	0.27	1,278	4,733,000
Total							

[a] El Paso figures represent secondary arsenic emissions based (1) on an emission factor for uncontrolled converter fugitive emissions of 15% of the arsenic contained in the primary converter process gases and, (2) on a 3.75% emission factor. These figures are estimated by EPA to represent the upper and lower bounds of uncontrolled converter fugitive emissions at ASARCO—El Paso.

TABLE 2. REVISED ENVIRONMENTAL AND COST IMPACTS ASSOCIATED WITH SECONDARY INORGANIC ARSENIC EMISSION CONTROL SYSTEM FOR MATTE AND SLAG TAPPING OPERATIONS

Smelter	Arsenic process rate, kilogram per hour	Potential arsenic emission, milligram per year	Baseline arsenic emissions, milligram per year	Predicted arsenic emission reduction, milligram per year	Annualized control costs 1,000	Cost per unit emission reduction, dollars per milligram arsenic
ASARCO—Hayden	98.2	6.5	1.1	0.	0	
ASARCO—El Paso	102.1	6.7	0.8	0.	0	
Kennecott—Utah (Garfield)	40.4	2.0	2.0	1.7	1,914	1,126,000
Kennecott—Hayden	9.4	0.9	0.9	0.78	257	329,490
Inspiration—Miami	19.8	0.8	0.8	0.69	261	378,260
Phelps Dodge—Douglas	10.4	0.6	0.4	0.32	514	1,606,000
Kennecott—McGill	5.6	0.3	0.3	0.26	257	988,460
Phelps Dodge—Morenci	5.0	0.3	0.3	0.26	514	1,977,000
Phelps Dodge—Hidalgo	4.9	0.3	0.3	0.26	257	988,460
Phelps Dodge—Ajo	1.8	0.1	0.1	0.09	257	2,856,000
Kennecott—Hurley	1.6	0.1	0.1	0.09	265	2,944,000
Tennessee Chemical Copperhill	1.1	0.09	0.09	0.08	257	3,213,000
Magma—San Manuel	1.0	0.08	0.08	0.07	514	7,343,000
Copper Range—White Pine	0.6	0.06	0.06	0.05	257	5,140,000

[FR Doc. 84-24749 Filed 9-19-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[Docket No. DCO/IV/8401; A-4-FRL-2675-8]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Memphis-Shelby County Health Department to Bryce Corporation, Memphis, TN

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an Administrative Order issued by the Memphis-Shelby County Health Department (MSCHD) to Bryce Corporation (Bryce). The Order requires Bryce to bring air emissions from its papercoating lines and flexographic printing presses in Memphis, Tennessee, into compliance with air pollution control regulations contained in the federally approved Tennessee State Implementation Plan (SIP) by December 31, 1985. Because the Order has been issued to a major source of air pollution and permits a delay in compliance with provisions of the SIP, the Administrative Order must be approved by EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 22, 1984.

ADDRESSES: Comments should be submitted to Director, Air and Waste Management Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia, 30365. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd Ledbetter, Chief, Northern Compliance Unit, Air Compliance Section, Air Management Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone Number (404) 881-4298.

SUPPLEMENTARY INFORMATION: Bryce Corporation operates four (4) papercoating presses, one (1) rotogravure press and three (3) flexographic printing presses at its plants located at Delp Street and Old Lamar Street in Memphis, Tennessee, for the purpose of producing flexible packaging materials. As this source is unable to comply with the requirements contained in the Tennessee SIP, the Memphis-Shelby County Health Department (MSCHD), Air Programs Branch, had been negotiating with this source on a compliance plan since 1981, without resolution. Subsequently, EPA issued a Notice of Violation for all of the above-listed operations on June 22, 1983, to Bryce Corporation. The coating operating was to have been in compliance in November 1981, and the remaining presses by December 1982. The MSCHD submitted a compliance plan including a compliance schedule in July 1983, and continued to work out the problems until the DCO was finalized in April 1984, and subsequently amended on August 29, 1984.

The Order under consideration addresses VOC emissions from the four (4) coaters (laminators), one (1) rotogravure press and three (3) flexographic printing presses. These emission points are subject to the following: Coating Operations—Rule 1200-3-18-.06 of the Tennessee Air Quality Act (TAQA) and Section 3-22 Memphis City Code (MCC), which limits emissions to 2.9 pounds of VOC per gallon of coating; Rotogravure Press Rule 1200-3-18-.29 TAQA and Section 3-22 MCC, which require a 65% reduction of VOC's; and Flexographic Presses—Rule 1200-3-18-.29 TAQA and Section 3-22 MCC, which require a 60% reduction in VOC's. These regulations limit the emissions of VOC's and are part of the federally approved Tennessee State Implementation Plan. The Order requires final compliance with the above regulations by December 31, 1985, through the implementation of the following schedule for the construction or installation of control equipment or reformulation:

The rotogravure and flexographic printing presses;

Option A—Using 25% or less VOC and 75% or more water-December 31, 1985

Option B—Using 60% Non-Volatile Materials-December 31, 1985

Option C—Add on controls if Option A and B are not developed

(1) Final plans for contol system by

June 1, 1985
(2) Begin construction by August 1, 1985
(3) Final compliance by December 31, 1985

Option D—Alternate emissions limitation–approved by the MSCHD and EPA—December 31, 1985.

The laminators (paper-coaters) achieved compliance by August 1, 1984. This was achieved by averaging all coating used across all coaters on a daily basis. All compliance determinations will be made on a daily basis.

The source has consented to the terms of the Order and has agreed to meet the Order's increments during the period of this informal rulemaking. The source is required to submit quarterly reports beginning with August 1984, and continuing through December 1985, indicating progress toward each milestone in the schedule of compliance. If any delay is anticipated in meeting said milestones, Bryce Corporation shall immediately notify the MSCHD in writing of the anticipated delay and reasons therefor. Notification of the delay shall not excuse the delay. In addition, Bryce Corporation shall submit, no later than five (5) days after the deadline for completing each milestone required by the above schedule, certification to the MSCHD whether or not such milestone has been met.

As an interim control measure, VOC's from the rotogravure and flexographic printing presses shall not exceed 2.01 pounds of VOC per ream on a daily basis between January 1985 and December 30, 1985. The laminators were emitting no more than 1.73 pounds of VOC per ream as of August 1, 1984. There are no interim opacity limits.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable state air pollution control regulation(s), it must be approved by EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the Order only if it satisfies the appropriate requirements of this subsection. EPA has tentatively determined that the above-referenced Order satisfies these legal requirements.

If the submitted Administrative Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation(s) covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Tennessee SIP. Compliance with the proposed Order will not exempt the company from the requirements contained in any subsequent revision to the SIP which is approved by EPA.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority:—42 U.S.C. 7413, 7601.

Dated: September 5, 1984.

John A. Little,

Acting Regional Administrator Region IV

[FR Doc. 84-24932 Filed 9-19-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50517; FRL-2674-3]

Alkyl Aryl Phosphine; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P-83-1023 and a TSCA section 5(e) consent order issued by EPA. The Agency is concerned that the substance may present an unreasonable risk to human health if the significant new uses occur.

DATE: Written comments should be submitted by November 19, 1984.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-50517. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107 at the address given above. For further information regarding the submission of comments containing confidential business information (CBI) see unit XIII of the preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB control number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 CFR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5 (e) and (f). If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs are covered by TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127 and 127.28 published in the **Federal Register** of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appears at 40 CFR Part 707 published in the **Federal Register** of December 13, 1983 (48 FR 55462).

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble. Interested persons should refer to that document for a detailed discussion of the general provisions.

III. Summary of This Proposed Rule

The chemical substance subject to this proposed rule is identified generically as alkyl aryl phosphine. It was the subject of PMN P–83–1023. EPA is proposing to designate the following as significant new uses of the substance: (1) Manufacturing, importing, or processing of the substance without establishing and enforcing a program whereby workers who may be exposed to the substance were (a) a National Institute for Occupational Safety and Health (NIOSH) approved air-supplied positive pressure respirator, as set forth in the Occupational Safety and Health Administration standards prescribed in 29 CFR 1910.134 (respirators offering a greater degree of protection, i.e., full hood, may be substituted), and (b) protective clothing and gloves which have been determined to be impervious to the substance, (2) manufacturing or importing amounts of the substance exceeding those allowed to be manufactured or imported by the PMN submitter under the terms of the section 5(e) consent order, and (3) distribution in commerce by any person, including importers, processors, and distributors, without affixing a label to each container of P–83–1023. The label would contain the following statement:

> WARNING. Chemical similar in structure have been found to cause neurotoxic effects. Avoid breathing dust and prevent all contact with skin. Wear a NIOSH-approved respirator. Wear impervious gloves and protective clothing. Wash thoroughly after handling and before eating, drinking, or smoking. Use only with adequate ventilation.

The first word on the label would be capitalized, and the type size of the first word would be no smaller that six point type for a label five square inches or less in area, ten point type for a label above five but below ten square inches in area, twelve point type for a label above ten but below fifteen square inches in area, fourteen point type for a label above fifteen but below thirty square inches in area, or eighteen point type for a label over thirty square inches in area. The type size of the remainder of the warning statement would be no smaller than six point type. All required label text would be of sufficient prominence, and would be placed in such conspicuousness relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

IV. Background

On August 4, 1983, EPA received a PMN which the Agency designated as P–83–1023. EPA announced receipt of the PMN in the **Federal Register** of August 12, 1983 (48 FR 36647). The notice submitter stated that the substance will be used as an industrial catalyst.

The notice submitter claimed the following as CBI: company name, the specific chemical identity, impurities, byproducts, specific uses, production volume, certain process information, and customer identity. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on whether the maintenance of CBI in this proposed rule has adversely impacted upon the ability of interested parties to provide comment. For purposes of clarity, this substance will be referred to by its generic chemical name and PMN number.

In the PMN, the notice submitter included test data on P–83–1023 which are summarized below:

LD_{50} rat—oral—1 g/kg
LD_{50} rabbit—dermal—2 g/kg
Irritation—rabbit (skin)—Transient
Irritation—rabbit (eye)—Slight
Ames Salmonella (Battery)—Negative (with/without activation)

The notice submitter also provided a report on a study in which dogs were exposed via oral and inhalational routes to an analogue of P–83–1023. EPA is not disclosing the identity of the analogue because to do so might reveal the identity of P–83–1023.

EPA's general literature search provided no additional information on the toxicity of the substance. The Agency did, however, acquire additional data pertaining to the toxicity of the analogue.

EPA believes that P–83–1023 may present a neurotoxic hazard. The substance is expected to be absorbed via all routes to exposure. The analogue has been demonstrated to be neurotoxic based upon data reporting both functional and pathological effects in animals. The subacute neurotoxicity data on the analogue establishes an estimated no observable effect level (NOEL) of 10 mg/m^3. Because the biochemical mechanism of the neurotoxicity of the analogue is unknown, there is no basis for determining what impact the structural differences between P–83–1023 and the analogue may have on the expression of neurotoxicity. For this reason, the Agency is unable to determine the neurotoxic potential of P–83–1023 despite submission by the notice submitter of a subacute neurotoxicity study for the analogue.

During review of the PMN, the Agency concluded that the uncontrolled manufacture, processing, distribution in commerce, and use of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment will protect persons exposed to the substance from any unreasonable risk. The Agency negotiated a section 5(e) consent order with the notice submitter which requires certain protective equipment and labeling, and restricts manufacture and distribution in commerce, including production volume, until data are available to more accurately determine the risk associated with P–83–1023. The order also includes certain aquatic release and waste disposal controls which are not a part of this SNUR. A reevaluation of the available data indicates that the imposition of such controls is no longer supported. Accordingly, the Agency will, at the request of the PMN submitter, amend the section 5(e) consent order. The order became effective January 19, 1984.

By issuing a section 5(e) consent order which allows controlled commercial production and distribution of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data are submitted. At the same time, such an approach protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) orders apply to the notice submitter. When the notice submitter commences commercial manufacture of the substance and submits a notice of commencement of manufacture or import to EPA, the Agency will add the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture or process the substance without controls. Therefore, EPA is proposing to designate those uses described in Unit II of this preamble as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance; if necessary, action can then be taken to ensure that persons will not be exposed to levels of P–83–1023 that are potentially hazardous. Since the original PMN submitter is required to perform testing when the cumulative production volume reaches a specified level, it is advisable that potential manufacturers or importers check with the Agency before undertaking any testing in support of a SNUR notice.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this substance, EPA considered relevant information about the toxicity of the substance and potential exposures associated with possible uses (such as uses other than those allowed under the section 5(e) order) and including the four factors listed in section 5(a)(2) of TSCA. In particular, EPA considered the extent to which potential uses might change the magnitude and duration of exposure of humans to P–84–1023. Based on these considerations, EPA proposes to define the significant new uses as set forth in Unit III of this preamble.

EPA has already determined in the section 5(e) order that unrestricted manufacture, processing, distribution in commerce, and use of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the uses of the substance would be significant.

VI. Alternatives

EPA considered regulatory alternatives to a SNUR to ensure protection of human health.

1. One alternative EPA considered would be to promulgate a section 8(a) reporting rule for the substance. Under such a rule, EPA could require any person to report to EPA before manufacturing, importing, or processing the substance. Because the substance is subject to a section 5(e) order, the small business exemption of section 8(a) would not apply. However, the use of section 8(a) rather than section 5(e) SNUR authority has drawbacks in this particular instance. If EPA received a report under section 8(a) indicating that a person intended to manufacture or process the substance for those uses defined in Unit III of this preamble, the Agency could not take immediate action under section 5(e), as it can under a SNUR, and therefore would not be able to regulate the substance pending development of information. Rather in a situation such as this, EPA would have to consider regulating the substance under TSCA section 6 which would require a separate rulemaking action. Moreover, in view of the current lack of health effects data on P–84–1023, EPA first would likely have to obtain test data on the substance under section 4 of TSCA to support an action under section 6. This approach could allow unnecessary risks to human health during the time needed for data development. In addition, the original notice submitter would be at a competitive disadvantage because the section 5(e) order applies only to that company. It is not the intent of EPA in the PMN process to create unfair marketplace disruptions.

2. The Agency also has the authority to regulate substances under section 6 of TSCA. However, the Agency may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "present[s] or will present" an unreasonable risk of injury to health. There is insufficient information to perform a reasoned evaluation of the health effects of P–83–1023 at this time. Therefore, the Agency cannot state with certainty that the substance presents or will present an unreasonable risk. In this instance, because the Agency has issued a section 5(e) order, EPA can state that the substance "may present" an unreasonable risk of injury to health. However, the Agency cannot regulate the substance under section 6 at this time.

3. As an alternative to the proposed significant new use definitions, the Agency is considering defining as a significant new use the failure to establish a program whereby the substance is treated as a hazardous chemical substance under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standards (29 CFR 1900.1200). In all labels, material safety data sheets, and employee training programs, the substance would be required to be identified as a suspect neurotoxicant. In addition, employees who may be exposed to the substances would be required to wear respirators, gloves, and protective clothing specified in this proposed rule.

4. The Agency is also considering creating an abbreviated review for persons who propose to employee alternative exposure controls or worker protection equipment which may provide equivalent protection. Under this approach, the significant new uses would be defined as the failure to establish a program whereby persons who may be exposed to the substance are required to use the respirators, gloves and protective clothing specified in this proposed rule or employ alternative exposure controls and/or protective equipment which provide the "equivalent" protection. Persons would be required to notify EPA of the alternative controls to receive (in a specified time period which is shorter than 90 days) confirmation from the Agency that the protection provided by the equipment is "equivalent." If EPA determined that the protection was not "equivalent," significant new use reporting would be required.

EPA invites comments on this proposal and the alternatives.

VII. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA, that in addition to the requirements in § 721.17, the following records be maintained for 5 years after the date of their creation, by persons who manufacture, import, or process P–83–1023:

1. The names and addresses of persons required to use protective equipment who have been so informed.
2. Results of respirator fit tests for those persons who have been required to use respirators.
3. Any determination that clothing and gloves are impervious to P–83–1023.
4. Dates of shipment of containers of P–83–1023.
5. Manufacture and import volume records.

As an alternative, the Agency is considering requiring manufacturers and processors of the substance who do not trigger the SNUR reporting requirement to maintain records demonstrating their compliance with the SNUR. Therefore, manufacturers and processors would have the discretion to determine which records are needed to show compliance. To provide guidance, the Agency would provide examples of the types of records which would adequately demonstrate compliance.

Recordkeeping requirements are expected to encourage compliance with this proposed rule when promulgated and to support EPA's enforcement efforts. The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them.

Although section 5(a)(2) of TSCA does not explicitly provide for recordkeeping of the type in paragraph (b)(2) of § 721.140, EPA finds that such recordkeeping is necessary to implement and enforce effectively the requirements of the SNUR. Two TSCA authorities support the recordkeeping in this proposed rule. First, EPA believes there is inherent authority in section 5 of TSCA to require the keeping of records reasonably necessary to implement the mandate of section 5. EPA has already exercised this authority in the PMN rule recordkeeping requirements in 40 CFR 720.70 and in 721.17 of the general SNUR provisions. Clearly, there is no way to determine whether a manufacturer, importer, or processor is undertaking a significant new use of the type defined in this proposed rule unless the manufacturer, importer, or processor is required to keep records of its activities to show that the significant new use has not occurred. EPA would otherwise be unable to determine whether a violation has occurred, unless the manufacturer, importer, or processor was observed in violation.

Second, section 8(a) of TSCA provides broad authority for EPA to require manufacturers, importers, and processors of chemical substances to keep records. Generally, a section 8(a) recordkeeping requirement does not apply to small manufacturers, importers, and processors, but in this case a section 5(e) order is in effect for the chemical substance in question. Thus, under section 8(a)(3)(A)(ii) of TSCA, EPA can require recordkeeping by small manufacturers, importers, and processors as well and is proposing to do so.

VIII. Exemptions To Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions in Subpart B. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722) including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, EPA lacks the authority under section 12(a) of TSCA to require reporting of such manufacture or processing for a significant new use because EPA does not yet have sufficient information to make the "will present an unreasonable risk" finding necessary to regulate a substance manufactured or processed solely for export. However, persons must notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, the substance would be exempt from reporting under this SNUR if a person manufactures (the term manufacture includes import) or processes the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such manufacture and processing would be for use in the U.S.

IX. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter begins manufacture of the substance, the submitter will send EPA a notice of commencement of manufacture, and the substance will be added to the inventory. The notice submitter is prohibited by the section 5(e) order from undertaking any of the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that when the chemical substance subject to this SNUR is added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are no longer "new" at the time the rule is promulgated as final. EPA finds that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption, and persons who commence a proposed significant new use do so at their own risk.

Because the identity of P–83–1023 is confidential, any person who proposes to manufacture or import P–83–1023 is unlikely to know that the substance is on the Inventory and, therefore, is likely to submit a *bona fide* request under either 40 CFR 710.7(e) or 720.85(b) to determine whether the substance is on the Inventory. If EPA determines that the person has a *bona fide* intent to manufacture or import the substance and that the substance the person proposes to manufacture or import is P-83-1023, EPA will inform the person that the substance is subject to this proposal. This will give the person adequate notice of this proposal, will give the person an adequate chance to comment, and will help prevent the potential disruption.

X. Determining When Use Is Subject to This Proposal

EPA has codified procedures at § 721.6 under which any person who intends to manufacture, import, or process a chemical substance within the generic chemical name identified in this proposal would be able to ask EPA whether or not their chemical substance is subject to a SNUR. The process for doing so is very similar to the process required for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(g)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules as published in the **Federal Register** of May 13, 1983 (48 FR 21722). The Agency does not intend to modify these procedures for this proposal.

EPA is proposing significant new use which is confidential. This is the first SNUR EPA has proposed in which it is proposing to keep a specific significant new use concerning production volume confidential in the final rule. For the same reasons that EPA believes it is appropriate to keep the specific chemical identity confidential, EPA believes it is appropriate to keep the production volume limit imposed on the PMN submitter by the section 5(e) order confidential. EPA is proposing that this significant new use would remain confidential in the final rule. EPA specifically requests comments on this issue.

Therefore, EPA is proposing to reveal the specific production volume described in paragraph (a)(2)(ii) of the rule only to a manufacurer or importer who has shown a *bona fide* intent to manufacture or import the substance under the procedure in § 721.6 of the general SNUR provisions. Thus, if the manufacturer or importer is told that the substance in question is on the Inventory and subject to this SNUR, the person will also be told the production volume in paragraph (a)(2)(ii). This will enable the manufacturter or importer to determine whether a SNUR notice will be necessary.

As an alternative to this approach, EPA considered requiring a manufacturer or importer to show not only a *bona fide* intent to manufacture or import the substance, but also to show the specific volume the person intends for the substance. EPA would then tell the manufacturer or importer whether the volume intended would be a significant new use under the SNUR. EPA has not adopted this approach for the proposal because the Agency believes it would involve a greater burden on manufacturers or importers potentially subject to the SNUR and would provide little additional confidentiality protection.

XI. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, a more reasoned evaluation of the risks posed by this substance would require additional data on neurotoxicity. These data might be generated by a subchronic neurotoxicity test in a sensitive species (either cat or dog). These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notice submitters to test the substance for these concerns. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e)

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XII. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized below.

Subsequent to promulgation of this SNUR, the Agency believes there are three potential outcomes: (1) A manufacturer, importer, or processor could choose to manufacture, import, or process P-83-1023 under the terms of the SNUR and, thereby, avoid submitting a SNUR notice. (2) A manufacturer, importer, or processor could decide to manufacture, import, process or distribute in commerce P-83-1023 for one or more of the defined new uses. The manufacturer, importer, or processor would then be required to file a SNUR notice. (3) A manufacturer, importer, or processor could elect not to manufacture, import, or process the substance because of the restrictions imposed by the SNUR. The costs of the outcomes are summarized below.

Should a company decide to produce P-83-1023 for uses other than those described in Unit III of this preamble, it will not incur the cost of submitting a SNUR notice. The cost to the company will be those costs associated with the cost of protecive equipment, the cost of labeling for those engaged in distribution in commerce, costs associated with recordkeeping, and any indirect cost incurred as a result of the production volume limitation. In relation to protective equipment, the Agency, for the purposes of its analysis, assumed 5 workers would be exposed to P-83-1023 for a period of 30 days each year. Actual exposure data has been claimed as CBI by the submitter. Each worker will be required to wear a NIOSH-approved full-face piece, positive pressure, air-supplied respirator and gloves and protective clothing which have been deemed to be impervious to P-83-1023. The annual cost of outfitting one worker is $648. For 5 workers, the annual cost would be $3,240. Assuming a 10 percent discount rate, and a 10 year economic life for P-83-1023, the present value of protective equipment for 5 workers is $19,909. An American Society for Testing and Materials Impermeability Test could cost $350 per substrate. The present value of providing respirator fit testing over a 10 year period for 5 workers ranges from $2,100 to 2,500. The present value of total cost is $23,869. The present value of the cost of maintaining records has been estimated by EPA at $1,460. Once the SNUR has been promulgated EPA will incur only enforcement costs.

Under the second outcome, a manufacturer, importer, or processor may wish to engage in one of the significant new uses described in Unit III of this preamble. In this case, the manufacturer, importer, or processor would be required to submit a SNUR notice. The Agency has estimated that the direct cost associated with filing a SNUR notice ranges from $1,375 to $7,950. The submitter may also incur up to a 3.2 percent reduction in profits due to delays in manufacture, import, or processing and the cost of regulatory follow-up if any. In addition to the cost of filing the SNUR notice, a submitter may incur additional costs associated with alternative protective equipment, process or engineering controls, and/or testing. The costs attributable to generating other test data cannot be estimated with the potential exception of the subchronic neurotoxicity test. This test is estimated to cost $90,000 in 1983 dollars. Since the original PMN submitter is required, however, to perform testing when the cumulative production volume reaches a specified level, it is advisable that potential PMN manufacturers, importers, and processors check with the Agency before undertaking any testing.

The third outcome would involve some companies finding the cost of controlling exposure too expensive to justify production or processing. Under this outcome, a company would not incur any direct costs as a result of the SNUR. The company and society could lose benefits that would have been derived from the manufacture or processing of P–83–1023. However, the fact that the original PMN submitter intends to produce and process P–83–1023 with the protective equipment in place indicates that the intended use of P–83–1023 will still return an acceptable profit.

The Agency has not attempted to quantify the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before significant health effects can occur. The proposal and promulgation of the SNUR provides the benefits of reduced health risks until production or processing of P–83–1023 ceases.

XIII. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIV. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

XV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS—50517). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for this substance.
2. The **Federal Register** notice of receipt of the PMN.
3. A copy of the section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. The toxicity support document for the section 5(e) order.
6. The economic support document for the section 5(e) order.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays in the OTS Public Information Office, Rm. E–107, 401 M St., SW., Washington, D.C.

XVI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, requires a regulatory impact analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit XII of the preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

Information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2070–0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 12, 1984.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, it is proposed that Part 721 of Chapter I of Title 40 be amended by adding § 721.140 to read as follows:

§ 721.140 Alkyl aryl phosphine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its PMN number and generic chemical name is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: P–83–1023, alkyl aryl phosphine.

(2) The significant new uses are:

(i) Manufacture, import, or processing the chemical substance without establishing and enforcing a program whereby workers who may be exposed to the substance wear (A) a National Institute of Occupational Safety and Health approved air-supplied positive pressure respirator as set forth in Occupational Safety and Health Administration standards prescribed in 29 CFR 1010.134 (respirators offering a greater degree of protection, i.e. full hood, may be substituted), and (B) protective clothing and gloves which have been determined to be impervious to the substance under the conditions of exposure, including the duration of exposure, either by evaluating the specifications of the equipment supplier or testing the equipment under the conditions of exposure.

(ii) Manufacturing or importing, by any single manufacturer or importer, amounts of the substance greater than those allowed in the consent order for Premanufacture Notice P–83–1023, dated January 19, 1984, issued under section 5(e) of the Act.

(iii) Distribution in commerce by any person, including importers, processors, and distributors, without affixing to each container of the substance, a label which complies with the following:

(A) The label contains the following statement:

> WARNING. Chemicals similar in structure have been found to cause neurotoxic effects. Avoid breathing dust and prevent all contact with skin. Wear a NIOSH-approved respirator. Wear impervious gloves and protective clothing. Wash thoroughly after handling and before eating, drinking, or smoking. Use only with adequate ventilation.

(B) The first word on the label is capitalized, and type size of the first word is no smaller than six point type for a label five square inches or less in area, ten point type for a label above five but below ten square inches in area, twelve point type for a label above ten but below fifteen square inches in area, fourteen point type for a label above fifteen but below thirty square inches in area, or eighteen point type for a label over thirty square inches in area. The type size of the remainder of the warning statement is no smaller than six point type.

(C) All required label text is of sufficient prominence, and is placed with such conspicuousness relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Identifying Production Volume Limit.* If EPA informs a manufacturer or importer under § 721.6 that a chemical substance is subject to this section, EPA will also inform the manufacturer or importer of the specific production volume limit in paragraph (a)(2)(ii) of this section.

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for five years from their creation:

(i) The names of persons who have been required to wear protective equipment and who have been so informed.

(ii) Results of respirator fit tests where appropriate.

(iii) Glove and clothing imperviousness determinations.

(iv) Dates of shipment of containers of the substance.

(v) Production volume records.

(Secs. 5, 8 Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

[FR Doc. 84–24928 Filed 9–19–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Threatened Status and Critical Habitat for the Desert Dace (Eremichthys acros)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of threatened status and critical habitat for the desert dace, and that the comment period on the proposal will be reopened. This hearing and reopening of the comment period will allow comments on this proposal from all interested parties.

DATES: The public comment period is reopened September 20, 1984. The public hearing will be held from 7 to 9 p.m. on Wednesday, October 10, 1984, at the Humboldt County Library, Winnemucca, Nevada. The comment period on the proposal, which closed on July 30, 1984, is reopened until October 22, 1984.

ADDRESSES: The Humboldt County Library, 85 East 5th Street, Winnemucca, Nevada 89445. Comments should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnonah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Don Sada, Project Leader, U.S. Fish and Wildlife Service, Great Basin Complex, 4600 Kietzke Lane, Building C, Reno, Nevada 89502.

SUPPLEMENTARY INFORMATION:

Background

The desert dace is endemic to a series of thermal spring habitats in the Soldier Meadows area of Humboldt County, Nevada. This fish is threatened by water diversion, exotic species, and geothermal exploration and development. A proposal of threatened status with critical habitat for the desert dace was published in the **Federal Register** (49 FR 22355) on May 29, 1984.

The Endangered Species Act requires that a public hearing be held if requested within 45 days of the publication of the proposed rule. On July 12, 1984, a public hearing on this proposal was requested by Mr. James A. Callahan, Attorney at Law, on behalf of Mr. Ken Earp, owner of Soldier Meadows Ranch. The hearing will be held from 7 to 9 p.m., on Wednesday October 10, 1984, at the Humboldt County Library, Winnemucca, Nevada. Those parties wishing to make statements for the record should have available a copy of their statement to be presented to the Service at the start of the hearing. Oral statements may be limited to five or ten minutes, if the number of parties present necessitate some limitation. There are no limits to the length of written comments or those mailed to the Service.

In order to accommodate the hearing, the Service also reopens the public comment period for the proposal. Written comments may now be submitted until October 22, 1984, to the Regional Director, U.S. Fish and Wildlife Service, at the above address.

Author

The primary author of this notice is Carolyn Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.;* Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish marine mammals, Plants, (agriculture).

Dated: September 14, 1984.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-24936 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 184
Thursday, September 20, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Proposed Posting of Stockyards; Arkansas et al.

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AR-161—Cattleman's Commission Co., Batesville, Arkansas
KY-171—Choates Stockyards Upton, Kentucky
MO-260—Diamond Feeder Pig and Hog Auction Diamond, Missouri
WI-139 Equity Livestock Auction Market Lancaster, Wisconsin

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Chief, Financial protection Branch, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, by October 5, 1984.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Chief of the Financial Protection Branch during normal business hours.

Done at Washington, D.C., this 12th day of September, 1984.

Jack W. Brinckmeyer,
Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84-24906 Filed 9-19-84; 8:45]

BILLING CODE 3410-02-M

Soil Conservation Service

Dunloup Creek Watershed, WV; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service.

ACTION: Notice.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622); the Soil Conservation Service, U.S. Department of Agriculture, gives notice of the intent to deauthorize Federal funding for the Dunloup Creek Watershed project, Fayette and Raleigh Counties, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone: 304-291-4151.

SUPPLEMENTARY INFORMATION: A determination has been made by Rollin N. Swank that the proposed works of improvement for the Dunloup Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Rollin N. Swank, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 13, 1984.

Paul S. Dunn,
Acting State Conservationist.

[FR Doc. 84-24935 Filed 9-19-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration [A-427-030]

Large Power Transformers From France; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On March 1, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from France. The review covers the one known exporter of this merchandise to the United States and consecutive periods from November 1, 1971, through May 31, 1983.

We gave interested parties an opportunity to comment on the preliminary results. At the request of both the petitioner and the respondent, we held a public hearing on April 9, 1984. We also held a conference on April 6, 1984, solely for the presentation of views on the appropriate method of adjustment for differences in the efficiency of transformers. As a result of our review of the comments received, we have changed the margins from those presented in the preliminary results of review.

EFFECTIVE DATE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: Carol Mitchell or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 7639) the preliminary results of its administrative review of the antidumping finding on large power transformers from France (37 FR 11772, June 14, 1972). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of large power transformers ("transformers"), that is, all types of transformers rated 10,000 KVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination rectifier-transformer units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of this merchandise to the United States, Alsthom-Atlantique, and consecutive periods from November 1, 1971, through May 31, 1983.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the petitioner, Westinghouse Electric Corporation, and the respondent, Alsthom-Atlantique, we held a public hearing on April 9, 1984.

In addition, on April 6, 1984, we held a conference with all interested parties in all of the outstanding transformer cases solely for the presentation of views on the appropriate method for adjustment for differences in the efficiency of transformers.

We received comments in that conference from Westinghouse, Alsthom, Tokyo Shibaura Electric Co., Ltd., Hitachi, Ltd., Industrie Elettriche di Legnano, Fuji Electric Co., Ltd., Ansaldo Componenti, SpA., and General Electric Co.

Comments 1 through 18 pertain to general issues and Comments 19 through 52 pertain to technical issues involving specific sales covered in this review.

Comment 1: Alsthom argues that it qualifies for revocation of the finding and that the Department has illegally denied Alsthom's request for revocation. Specifically, Alsthom argues that the Department cannot consider Alsthom transformers sold to the United States and not yet imported in making the determination on revocation. Westinghouse argues that the Department properly considered Alsthom transformers sold but not yet imported and agrees with the Department's decision not to revoke the finding.

Department's Position: While Alsthom has arguably met the minimum requirements for revocation, we will not consider revocation of the finding until U.S. entry occurs for Alsthom units sold in January 1979. To issue a revocation based upon the absence of U.S. sales, when sales have been made but the merchandise has not yet been shipped, would contradict the Commerce Regulations.

We cannot make the determination required by section 353.54 of the Commerce Regulations, that sales are no longer being made at less than fair value, until we evaluate the transformers sold by Alsthom to the United States in 1979, now in production and scheduled for shipment sometime in the future.

Comment 2: Westinghouse argues that the Department is required to review, for cash deposit purposes, all large power transformer entries, even those the Customs Service might have erroneously liquidated without any calculation of whether any antidumping duties were due. Westinghouse specifically requests that the Department review Alsthom's U.S. sales of 2 transformers in 1969, 4 transformers in 1978, and 3 transformers in 1979. Alsthom argues that the Department has no legal authority to review, for cash deposit purposes, large power transformers that may have been liquidated.

Department's Position: The Customs Service liquidated the entries of the transformers sold in 1969 prior to the date of the finding, and under the then existing law those units were not subject to the finding. As for the transformers sold in 1978 and 1979, section 751 of the Tariff Act of 1930 ("the Tariff Act") requires that we determine the foreign market value and U.S. price of each entry and any amount "by which the foreign market value of each such entry exceeds the United States price of the entry." That determination is then "the basis for assessment of antidumping duties * * * and for deposits of estimated duties." The rate set for deposits of estimated duties is the weighted-average of the assessment amounts for those entries.

Although certain entries may have been subject to assessment under the antidumping finding, Customs liquidated them without reference to the finding. As the liquidation of those entries is final, they are no longer subject to the assessment of antidumping duties. Review of entries not subject to assessment of duties is unnecessary and unreasonable in this case, as there are unliquidated entries that are subject to assessment, and determinations as to these entries provide the appropriate basis for assessment of duties and for deposits of estimated duties.

As the history of this and other antidumping cases involving large power transformers amply reveals, assessment of antidumping duties on transformers is a lengthy and complex process. Review of liquidated entries solely for purposes of setting the case deposit rate would cause undue delay and would likely be a pointless exercise, as we have no reason to believe that the respondent's pricing policies for entries that were liquidated without antidumping review differed from pricing policies for those that remain available for review. The respondent certainly could not have known that the Customs Service would liquidate certain units without reference to the antidumping finding.

In sum, we do not believe that we are required, by statute or regulation, to perform the nugatory act of reviewing entries when duties cannot be assessed, nor to set the deposit rate on the basis of assessments that cannot be made. Our position does not prejudice any of the parties involved because the finding remains in place and each unliquidated entry will be assessed the appropriate amount of antidumping duties.

Comment 3: Alsthom contests the Department's use of the Westinghouse Pricing Rules ("WPR") and any efficiency formula to adjust for physical differences between the transformers being compared, arguing that the Department unnecessarily and unlawfully departs from the procedures prescribed in the statute and the regulations. However, given the delay that would result from a review at this time based on constructed value, Alsthom agrees to the use of the WPR procedure in this review, provided the Department incorporates certain technical adjustments in its calculations.

Westinghouse argues that the Department is statutorily precluded from proceeding with assessment using constructed value methodology because there are home market sales of similar merchandise available for comparison purposes. Moreover, Westinghouse argues that any attempt to construct a value for individually designed and manufactured transformers would result in arbitrary assignment of costs. Given the general consensus of the parties to the large power transformer proceedings that the use of the WPR is a reasonable and accurate method to account for physical differences in merchandise, Westinghouse argues that the Department must continue to use the WPR. Westinghouse, however, cautions the Department against using the WPR and then also making non-WPR adjustments in its calculations.

Department's Position: We agree with Westinghouse that the home market merchandise chosen by us for comparison is such or similar within the meaning of the Tariff Act. Due to the complexity of transformer design, and the fact that each transformer is custom designed to the specifications of individual customers, the Department has established a reasonable and uniform WPR methodology by which differences in physical characteristics can be quantified.

While use of the WPR does not account for every possible difference in the merchandise, and we make other adjustments when appropriate, parties to the large power transformer proceedings generally agree that this methodology reasonably permits derivation of a foreign market value adjusted for differences in the merchandise.

The Department is acting in accord with the statute and regulations in this proceeding. However, we recognize that the methodology applies here is peculiar to these proceedings and will not necessarily be applied in other proceedings.

Comment 4: Westinghouse and Alsthom both maintain that the Department's step-by-step procedure for comparing large power transformers requires some basic corrections. Westinghouse argues that the Department's current procedure improperly applied the WPR ratio to items not included within that ratio and failed to apply the ratio to items properly included.

Westinghouse recommends the Department's adoption of the following procedure:

1. Develop a theoretical WPR price for the selected home market transformer.
2. Develop a theoretical WPR price for the U.S. transformer.
3. Use theoretical prices developed in steps 1 and 2 to derive a ratio of theoretical WPR prices (US/HM).
4. Adjust the actual sales prices of the selected home market transformer to an ex-factory, packed price.
5. Adjust the actual sales price of the U.S. transformer to an ex-factory, packed price.
6. Adjust the actual ex-factory sales price of the home market transformer to account for differences between the home market unit and the theoretical unit, including:
   a. The value of credit extended/advance payments received on the home market sale;
   b. Those circumstances of sale increasing or decreasing the price received for the home market unit;
   c. Cost-based adjustments for physical characteristics of the home market unit not covered by the WPR;
   d. Packing of the home market unit.
7. Adjust for differences in efficiency between the U.S. and home market units.
8. Adjust the price of the home market unit for inflation between home market and U.S. shipment dates.
9. Apply the theoretical ratio derived in step 3 to the home market price derived in step 8.
10. Convert the ratio-adjusted home market price derived in step 9 to U.S. dollars.
11. Adjust the home market price derived in step 10 for differences between the U.S. sale and the adjusted home market transaction, including:
    a. The value of credit extended/advance payments received on the U.S. sale;
    b. those circumstances of sale increasing or decreasing the price received for the U.S. unit;
    c. cost-based adjustments for physical characteristics of the U.S. unit not covered by the WPR;
    d. packing of the U.S. unit.
12. Subtract the U.S. price (step 5) from the adjusted home market price (step 11) to arrive at a margin stated in U.S. dollars.
13. Divide the dollar margin obtained in step 12 by the price derived in step 5 to determine the percent margin.

Alsthom argues that the Department failed to apply the ratio to the proper adjusted home market price and that the Department, in its application of the procedure, failed to follow its own logic.

Department's Position: We generally agree that the Westinghouse proposed procedure would result in a more accurate comparison. However, we do not agree that a separate adjustment in steps 6 and 11 for the value of credit extended/advance payments received on the home market sale and U.S. sale is needed because the Department considers adjustments for differences in credit terms to be circumstance of sale adjustments already accounted for in step 6b and 11b. Similarly, we do not agree that a separate adjustment in step 8 is necessary for differences between home market and U.S. shipment dates because the Department will consider an inflation adjustment in step 6c or 11c, as appropriate. For further discussion of the inflation adjustment, *see* Comment 9.

Our adoption of this new step-by-step procedure incorporates Alsthom's recommended approach.

Comment 5: Toshiba argues that, because the Department calculates the adjustment for efficiency on the basis of the home market price before the adjustment for differences in physical characteristics, the derived efficiency adjustment should then be applied to the home market price before, and not after, the adjustment to the home market transformer for differences in physical characteristics.

Department's Position: We agree.

Comment 6: Westinghouse argues that the Department should make an efficiency adjustment in every case where there is a difference in the efficiency ratings of the two transformers being compared because manufacture of a more efficient transformer involves higher costs. Toshiba implicitly agrees that an efficiency adjustment should be made but contends that our consideration of such an adjustment should not influence selection of the most similar home market transformer to be used for comparison purposes except where all other rating factors for two home market transformers are the same. Hitachi and Fuji also agree that an efficiency adjustment should be made.

Alsthom and Ansaldo oppose the possible inclusion of an efficiency adjustment. Alsthom argues that the 1968 WPR makes no allowance for efficiency and, therefore, if the Department uses the 1968 WPR in its analysis, it should only use the 1968 WPR and no adjustment for efficiency should be made. Ansaldo agrees with Alsthom who argues more generally that there can be no valid comparison of the efficiency of two transformers. Legnano and G.E. did not comment on whether an efficiency adjustment should be made in the Department's analysis.

Department's Position: Although the Department uses the 1968 WPR to adjust for differences in the physical characteristics in the compared transformers, such use does not preclude additional adjustments for significant differences not covered by the 1968 WPR. In making an efficiency adjustment we account for differences in the power rating, basic insulation level, and frequency of the compared transformers. We agree with Toshiba that consideration of efficiency differences generally should not affect our selection of the most similar home market transformer used for comparison.

Comment 7: Westinghouse, while recognizing that we could use the 1978 version of the WPR to make efficiency adjustments, recommends that the Department continue to make efficiency adjustments with a modified version of our current formula. Toshiba argues against use of the later WPR to make efficiency adjustments because that methodology is not explained in the WPR and, therefore, is difficult to understand. Hitachi strongly objects to the use of the later WPR in the current administrative review and maintains that, because the company has determined its bid prices using the Department's current efficiency formula, equity prohibits any change at this time. Any revised formula should only be applied in the next administrative review. Fuji argues for continued use of the current efficiency formula with some possible revision. If an efficiency adjustment is made, Ansaldo opposes use of any standard efficiency formula because efficiencies vary considerably depending on the type of transformer, its intended use, and the particular manufacturer. Ansaldo, therefore, submits that efficiency adjustments should be calculated on a case-by-case basis using actual facts and not a standard formula.

Alsthom states that use of the 1968 WPR for some calculations, and the 1978 WPR for others, is unacceptable cross-fertilization that impairs the adequacy of either one. However, if an efficiency adjustment is to be made, Alsthom would prefer the use of the 1978 WPR to a formula developed by the Department. Legnano and G.E. did not comment on whether the 1978 WPR should be used to adjust for efficiency differences.

Department's Position: Because there is a general consensus not to use the 1978 WPR to make this adjustment, the Department will continue to adjust for differences in transformer efficiencies using a modified form of its existing efficiency formula.

Comment 8: The Department received specific comments on the Department's existing efficiency formula and specifically the part of the formula used to adjust the kVA ratings to a common temperature rise, the part used to adjust the kVA ratings to a common system frequency, the part used to adjust no-load losses to a common system frequency, the part used to adjust no-load losses to a common kVA base, the part used to adjust load losses to a common temperature base, the definition of percent no-load losses, the definition of the percent load losses, the definition of the product factor, the ratio of iron no-load losses, the ratio of coil load losses, the cost of core steel and copper in the home market transformer, and the materials cost of the home market transformer.

In addition, the Department requested and received additional comments on the relationship between average temperature and hot-spot temperature rises, the relationship between losses and kVA, the relationships between losses and BIL, and the cost of core and coils.

Department's Position: As a result of our analysis of the comments received, we have revised the efficiency formula as follows:

Efficiency Adjustment

I. Adjustment of kVA to a common winding temperature rise.

55 °C = 60 °C kVA/1.06; 65 °C kVA/1.12; 70 °C kVA/1.18; 75 °C kVA/1.24

II. Adjustment of kVA to a common frequency.

60 Hz kVA = 1.20 × 50 Hz kVA

III. Adjustment of no-load loss to a common frequency.

60 Hz N.L.L. = 1.3 × 50 Hz N.L.L.

IV. Adjustment of no-load loss to a common kVA base.

60 Hz N.L.L. @ kVA_{US} = 60 Hz. N.L.L. @ $\text{kVA}_{\text{HM}} \times (\text{kVA}_{\text{US}}/\text{kVA}_{\text{HM}})^{0.75}$

V(a). Adjustment of no-load loss to a common BIL base when BILs are different and high voltage classes are the same.

60 Hz N.L.L. @ BIL_{US} = 60 Hz N.L.L. @ kVA_{US} & $\text{BIL}_{\text{HM}} \times (0.7\ \text{BIL}_{\text{US}}/\text{BIL}_{\text{HM}} + 0.3)$

V(b). See correction to loss product factor where BILs and high voltage classes are both different, as presented in XII.

VI. Adjustment of load loss to a common temperature base if not given at 75 degrees centigrade.

75 °C L.L. = $(\text{XX °C } I^2R \times T_{75}/T_{XX}) + (\text{XX °C EL} \times T_{XX}/T_{75})$

Where

I^2R = resistance losses

EL = measured eddy losses = load losses − I^2R

I = rated current

R = measured d-c resistance

T = absolute temperature = °C + 273

I^2R is assumed to be 80 percent of load loss if I^2R and EL cannot be determined.

VII. Adjustment of load losses to a common frequency.

60 Hz L.L. = $(I^2R + 1.44\ \text{EL}) \times 50$ Hz L.L. = 1.09 × 50 Hz L.L. if I^2R and EL cannot be determined.

VIII. Adjustment of load losses to a common kVA base.

60 Hz L.L. @ kVA_{US} = 60 Hz L.L. @ $\text{kVA}_{\text{HM}} \times (\text{kVA}_{\text{US}}/\text{kVA}_{\text{HM}})^{0.75}$

IX. Calculation of percent no-load loss.

$$\%\ \text{N.L.L.} = \frac{\text{N.L. kW @ 55 °C and 60 Hz}}{\text{kVA @ 55 °C and 60 Hz}} = \frac{\text{V(a)}}{\text{II}}$$

X. Calculation of percent load loss.

$$\%\ \text{L.L.} = \frac{\text{L.L. kW @ 55 °C and 60 Hz}}{\text{kVA @ 55 °C and 60 Hz}} = \frac{\text{VIII}}{\text{II}}$$

XI. Calculation of loss product factor.

P.F. = % N.L. × % L.L. = (IX) × (X)

XII. Adjustment of percent no-load loss and percent load loss if both BILs and high voltage classes are different.

$$\text{(A)}\ \%\ \text{N.L.}_{\text{HM1}} = \frac{\text{N.L. kW @ 55 °C and 60 Hz}}{\text{KVA @ 55 °C and 60 Hz}} = \frac{\text{IV}}{\text{II}}$$

$$\text{(B) \% L.L.}_{HM1} = \frac{\text{L.L. kW @ 55 °C and 60 Hz}}{\text{KVA @ 55 °C and 60 Hz}} = \frac{\text{VIII}}{\text{II}}$$

(C) $\text{Ratio} = \text{\% L.L.}_{HM1} / \text{\% N.L.}_{HM1} = \text{XII(B)}/\text{XII(A)}$
(D) $\text{P.F.}_{HM1} = \text{\% N.L.}_{HM1} \times \text{\% L.L.}_{HM1} = \text{XII(A)} \times \text{XII(B)}$
(E) $\text{P.F.}_{HM2} = \text{P.F.}_{HM1} \times (\text{BIL}_{US}/\text{BIL}_{HM})^{m}$
Where m
=0.25 for BIL comparisons @ 825 kV and below
=0.50 for BIL comparisons @ 825 kV and above
=0.38 for BIL comparisons between BILs above and below 825 kV
(F) $\text{\% N.L.}_{HM2} = (\text{P.F.}_{HM2}/\text{Ratio})^{0.5}$
(G) $\text{\% L.L.}_{HM2} = \text{\% N.L.}_{HM2} \times \text{Ratio}$

XIII. Calculation of the ratio of no-load losses.

$R_{core} = \text{\% N.L.}_{US}/\text{\% N.L.}_{HM} = \text{IX}_{US}/\text{IX}_{HM}$ or $\text{IX}_{US}/\text{XII(F)}_{HM}$

XIV. Calculation of the ratio of load losses.

$R_{coil} = \text{\% L.L.}_{US}/\text{\% L.L.}_{HM} = \text{X}_{US}/\text{X}_{HM}$ or $\text{X}_{US}/\text{XII(G)}_{HM}$

XV. Calculation of the cost of the core in the HM unit.

Core cost = ex-factory price × (.35) × (.40)

XVI. Calculation of the cost of the coils in the HM unit.

Coil cost = ex-factory price × (.35) × (.15)

XVII. Calculation of the core and coil cost of the equivalent HM unit.

$$\text{Equivalent core and coil cost} = \frac{\text{(XV)}}{(R_{core})^{0.5}} + \frac{\text{(XVI)}}{R_{coil}}$$

XVIII. Calculation of the adjustment to price for efficiency.

Adjustment (±) = Equiv. C&C cost (XVII) − C&C cost (XV + XVI)

Comment 9: Westinghouse argues that an inflation adjustment must be made in each comparison in this review to ensure that the foreign market value is contemporaneous with the U.S. price. Westinghouse argues that the adjustment must be based on differences in the shipment dates of the transformers compared. Westinghouse suggests that such an adjustment be calculated applying the escalation provisions in Alsthom's home market contracts. Alsthom contends that an inflation adjustment is unnecessary in those comparisons involving home market transformers DO/44 613/1 and H 11500.

Department's Position: Because of the unique nature of the merchandise (i.e., large unit values for individual transformers and the paucity of sales) the Department has expanded its usual period for determining contemporaneous sales. In order to compensate for this expansion, an adjustment for inflation is appropriate. Where there was a time gap between production of the home market and U.S. transformers during which there was a significant escalation in costs for the later unit produced, we have made an inflation adjustment applying the escalation provisions in the pertinent Alsthom home market contract. While we have based our adjustment on differences in contract dates, we have accounted for differences in shipment dates.

Comment 10: Westinghouse argues that the Department cannot be satisfied that it has obtained correct data for all but two of the U.S. transformers until Alsthom explains discrepancies between Westinghouse calculated customs values for these units and contract prices reported for them by Alsthom.

Department's Position: We are satisfied that we have based our calculations on correct data. Westinghouse erroneously assumes that the Customs Service calculates customs duties based upon a "transaction" or "customs value", when, in fact, the entered value of the transformer serves as the proper basis for calculation of such duties. Westinghouse also incorrectly used the Department's March 5, 1984, non-confidential Margin Calculation Report, a document whose figures are ranged within ±10 percent of the actual confidential data, in its calculation of the reported values for these transformers.

Comment 11: Westinghouse argues that Alsthom must not be allowed the benefit of adjustments for physical features not reported prior to verification. Additionally, Westinghouse contends that, without good reason, we should not use packing cost figures provided by Alsthom at verification which are significantly more favorable than those contained in Alsthom's response. Westinghouse submits that Alsthom had numerous opportunities to supply correct information and that allowance of such adjustments would encourage incomplete and inaccurate responses.

Department's Position: Regarding our acceptance in our calculation of unreported physical features, we do stress accurate and complete reporting of information prior to verification. However, Alsthom did report one of the features in dispute in a pre-1983 submission, and then omitted it in a revised 1983 submission. As for the others, where we determine that a respondent in these transformer cases has made a good-faith timely effort to respond to our requests for complex technical data, we will consider making adjustments for physical features not reported prior to verification. In this review we have included the physical features not reported prior to verification.

Regarding the use of packing costs provided at verification, where the verified cost figures differed from reported information, we are satisfied with the explanations given for the discrepancies. Therefore, we have used the verified information in our calculations.

Comment 12: Westinghouse argues that an oil adjustment pursuant to WPR 48–420, Section 1, should be made to the theoretical price, and not to the actual price of the home market unit. If we treat the oil adjustment as a non-WPR adjustment, Westinghouse argues that we must use actual costs and not the WPR.

Department's Position: We agree and have made any oil adjustment to the theoretical price.

Comment 13: Westinghouse argues that, if we make non-WPR adjustments, we must also adjust for differences between IEC and ANSI standards. Specifically, Westinghouse requests adjustments for impedance tolerance, impulse testing, and insulation on four home market transformers with identification numbers H. 11500, H 21890, H 21910, and 44775–1, and for impulse testing, insulation, and short-circuit strength on home market transformer DO/44 613/1.

Department's Position: We have reviewed both the ANSI and IEC standards and have determined that no adjustments are necessary for differences between those standards for the items specified by Westinghouse.

Comment 14: Westinghouse submits that the Department erred in using an actual cost estimate, rather than extrapolating from the WPR, to make an adjustment for the performance of a zero-sequence impedance test on home market transformers H 21890 and H 21910.

Department's Position: We agree and have changed our calculation accordingly.

Comment 15: Westinghouse argues that the Department erred in not making a 15 percent adjustment to the U.S. mobile transformers for special construction pursuant to WPR 48–420, Section 7, Rule 17. Westinghouse states such an adjustment is appropriate because the mobile transformers contain many expensive special design features, including special fitted tank construction, bushing construction and placement, complex wiring configurations, special cooling and piping, and special load tap changing equipment, placement and gearing. Alsthom argues that, because our technical consultant reviewed relevant documentation and did not make such an adjustment in the preliminary results, such an adjustment should not be made.

Department's Position: We erred in not including a 15 percent adjustment and have changed our calculation on the U.S. mobile transformers.

Comment 16: Westinghouse argues that the Department, in making an actual cost adjustment to the U.S. mobile transformers for the supply of a spare cooler and spare gaskets, erred in basing the adjustment on WPR theoretical values. Westinghouse submits that we should make those adjustments using actual costs. If actual costs are unavailable, Westinghouse suggests that we can use WPR values, but only as an adjustment to the theoretical price.

Department's Position: We agree that we erred in treating WPR theoretical values as if they were actual costs. Using actual costs, we have accounted for those and other spare parts on the U.S. mobile transformers. In our final calculations we have used actual costs to account for any supply of spare parts with transformers being used for comparison.

Comment 17: Westinghouse argues that the cost of a no-load tap changer with external handwheel drives is greater than the cost of a no-load tap changer with terminal boards and links and that the Department should make an adjustment based on actual costs.

Department's Position: For each of the U.S. mobile transformers we have accounted for any difference in cost within the 15 percent special construction adjustment we made pursuant to WPR 48–420, Section 7, Rule 17. Because the customer specified that the tap changers be externally mounted, thus requiring use of external handwheel drives, inclusion of this item within the 15 percent adjustment for special construction is appropriate. For the U.S. transformer H 11280 no adjustment is warranted because the comparable home market transformer H 11500 has similar equipment.

Comment 18: Westinghouse argues that, because the verification report states that Alsthom engineers admitted to the Department that an impluse test and sound level test had been performed on the U.S. mobile transformers, the Department erred in not making an adjustment for performance of these tests, even though no test results appear either on the nameplate or in the test report.

Department's Position: We disagree with Westinghouse's restatement of the facts and with its conclusion. First, although the nameplates contain technical information, they do not indicate whether or not Alsthom performed impluse or sound level tests. Westinghouse's assertion that absence of test information on a nameplate indicates an incomplete record is unsupported.

Second, the verification report does not contain a conclusive statement by an Alsthom engineer that Alsthom performed these tests. The report however, indicates that an Alsthom engineer stated that these tests were probably performed on certain transformers. Because we have no documentary evidence that Alsthom performed these tests, and because we cannot rely on a personal recollection of what may have occurred over ten years ago, we have not made any adjustments for performance of these tests.

Comment 19: Westinghouse questions the veracity of price information submitted on U.S. transformers H 66820-01 and H 66820-02. Alsthom maintains that there is no reason to question the value of these transformers.

Department's Position: We are deferring our review of these two transformers pending further investigation.

Comment 20: Westinghouse argues that the Department did not properly account for the high accuracy class on the bushing current transformers ("BCTs") on U.S. transformers H 66820-01 and H 66820-02. Westinghouse argues that WPR 48–420, Section 8, Rule 2 requires a $9,504 adjustment for the six high voltage BCTs, a $1,977 adjustment for the three low voltage bushings, and a $659 adjustment for the neutral bushing.

Department's Position: Because we are deferring completion of our review of these two units (*see* Comment 19), we need not address this comment at this time.

Comment 21: Westinghouse argues that the Department did not correctly account for the extra creep bushings on U.S. transformers H 66820-01 and H 66820-02, and submits that the Department should extrapolate from the WPR to make the adjustment.

Department's Position: See position in Comment 20.

Comment 22: Westinghouse argues that the Department erred in calculating the adjustment for the impedance limits under WPR 48–420, Section 5, Rule 22 and that a 6 percent, rather than 14 percent, adjustment is warranted onb home market transformer 4475–1.

Department's Position: See position in Comment 20.

Comment 23: Westinghouse argues the Department, using WPR 48–420, Section 9, erred in its calculation of the equipment charge for the load tap changing adjustment on the four U.S. mobile units D765/D815.

Department's Position: We disagree. We calculated the equipment charge using the maximum current and the kilovolt range for both legs of the transformer. We note that, while our mathematical calculation was correct, the document disclosed to and reviewed by Westinghouse contained a typographical error, in that 1.5 should have read 3.

Comment 24: Westinghouse argues that we should make a 14 percent adjustment for impedance limits pursuant to WPR 48–420, Section 7, Rule 11 on U.S. mobile transformers D765/D815.

Department's Position: We disagree and have made no adjustment for impedance limits. The guaranteed impedance of these transformers is 10 percent at 15 MVA on a 75 degrees centigrade base or 16.67 percent at 25 MVA on a 75 degrees centigrade base. Adjusting to a 55 degrees centigrade base, the impedance is 13.44 percent at 25 MVA. For 450 kV BIL/150 kV BIL transformers without load tap changing equipment, the standard impedance range for which no adjustment is required is 11 to 16.5 percent. To determine the range for those transformers with load tap changing equipment, 0.5 percent must be added to each end of the range, for a result of 11.5 to 17 percent. Because the impedance on these mobile transformers is 13.44

percent and, therefore, falls within the range, no adjustment is appropriate.

Comment 25: Westinghouse argues that the Department erred in making no adjustment for the customer-specified special bushings on U.S. transformers D765/D815, and maintains that the Department should make a $1,326 adjustment for the three high voltage bushings, a $1,218 adjustment for the three low voltage bushings, and a $575 adjustment for the neutral bushing.

Department's position: The outline drawing shows that Alsthom supplied 123 kV/400A, 550 kV BIL high voltage bushings, and WPR 48–420, Section 8, Rule 12 does not allow an adjustment for such high voltage bushings. Because ANSI standards require continuous operation at no load at 110 percent voltage, we have applied Rule 12 using the BIL bushing selection so long as the voltage rating did not exceed 110 percent of that listed in the WPR.

We agree with Westinghouse that an adjustment is necessary for the three 36 kV/1600A, 200 kV BIL low voltage bushings supplied by Alsthom. However, we disagree with Westinghouse's application of WPR 48–420, Section 8, Rule 12. Rule 12 requires a 200 BIL bushing to be priced at $516 and a standard bushing at $236. The Correct adjustment is, therefore, for the difference, which is $280 per bushing, or $840 per transformer.

Similarly, applying the rule for calculating the adjustment for a special neutral bushing, a 200 BIL bushing is priced at $516 and a standard 110 BIL neutral bushing at $131. The corrrect adjustment is, therefore, $385 per transformer.

Comment 26: Westinghouse argues that the Department erred in making its adjustment on home market transformer H 21890 for two external low voltage bushing current transformers, using an actual cost based on WPR 48–620. Westinghouse recommends that this adjustment be made in the theoretical price calculation.

Department's Position: We agree and have changed our calculation accordingly. We also made this correction on home market transformer H 21910.

Comment 27: Westinghouse argues that the Department erred in making an 11 percent adjustment for impedance limits on home market transformer H 21890, in that WPR 48–420, Section 7, Rule 11 requires at percent adjustment.

Department's Position: We agree and have changed our calculation accordingly.

Comment 28: Westinghouse argues that no sound level adjustment is required on home market transformer H 21890.

Department's Position: We disagree. The customer specified a sound level of 71 db with a 2 db tolerance. Considering the tolerance, the sound level was below the standard NEMA sound level by 1 db. WPR 48–420, Section 7, Rule 14 requires a 1 percent adjustment.

Comment 29: Westinghouse argues that the Department erred in calculating the adjustment on U.S. transformer D691 for impedance limits under WPR 48–420, Section 7, Rule 11, and submits that a 14 percent, not 18 percent, adjustment is warranted under the rule.

Department's Position: We agree that we misapplied the rule, but we have determined that an 11 percent, not a 14 percent, adjustment is correct. While Westinghouse calculated impedance limits using a tested impedance of 9.17 percent, we have recalculated impedance limits using a guaranteed impedance of 8.7 percent.

Comment 30: Westinghouse argues that the Department erred in making a 2 percent, rather than a 4 percent, adjustment for additional taps on U.S. transformer D690, pursuant to WPR 48–420, Section 7, Rule 2. Westinghouse states that this transformer consists of two sections of high voltage winding, each with 6 taps, for a total of 12 taps. Westinghouse submits that the rule requires 8 of the 12 taps to be multiplied by ½ percent to determine the amount of the adjustment.

Department's Position: We agree that a 4 percent adjustment is appropriate but disagree with Westinghouse's application of the rule. The transformer has 3 multiples, each with 4 taps, not 2 sections, each with 6 taps.

Comment 31: Westinghouse argues that a 14 percent adjustment for the high voltage series multiple connection, and a 6 percent adjustment for the low voltage series multiple connection, are required for U.S. transformer D690, pursuant to WPR 48–420, Section 7, Rule 3.

Department's Position: We agree that a 6 percent adjustment is appropriate for the low voltage series multiple connection, but we have made only a 10 percent adjustment for the high voltage series multiple connection. Because this transformer features three multiples with one voltage required to be available, Note 2 to WPR 48–420, Section 7, Rule 3 does not apply. Therefore, Rule 3 requires only a 10 percent adjustment.

Comment 32: Because the verification report states that the high voltage bushing current transformers had an accuracy class of 10 L 800, and documents for U.S. transformer D690 show 450 kV BIL, and not 350 kV BIL, high voltage bushings, Westinghouse argues that a $3,561 adjustment, not a $594 adjustment, is warranted pursuant to WPR 48–420, Section 8, Rule 2.

Department's Position: While Westinghouse is correct that 450 kV BIL bushings were supplied with that unit, we disagree with Westinghouse's reading of the pertinent documents and its recommended adjustment. The verification report contained a typographical error; the nameplate and outline drawing clearly show that the high voltage bushing current transformers provided were of a standard 10 L 200 accuracy class. The proper adjustment pursuant to WPR 48–420, Section 8, Rule 2 is $1,977.

Comment 33: Westinghouse argues that the 3 low voltage bushing current transformers provided on U.S. transformer D690 were of higher than standard accuracy and that a $1,977 adjustment, not a $594 adjustment, is appropriate under WPR 48–420, Section 8, Rule 2.

Department's Position: We agree and have changed our calculation accordingly.

Comment 34: Westinghouse argues that the Department erred in not making a $1,319 adjustment for the orange paint used on U.S. transformers D690 and D691, pursuant to WPR 48–420, Section 8, Rule 7.

Department's Position: Because the customer specified that orange paint be used on those transformers and orange paint is considered special under WPR 48–420, we agree and have changed our calculations accordingly.

Comment 35: Westinghouse argues that the Department erred in not making a $249 adjustment on U.S. transformer D690, for the three non-standard low voltage bushings, and a $147 adjustment for one non-standard neutral bushing, pursuant to WPR 48–420, Section 8, Rule 12, Table A.

Department's Position: We agree that those adjustments should be included, but we disagree with Westinghouse's application of the rule. The winding current on the neutral bushing is greater than 600 amperes; therefore, we treated the neutral bushing and low voltage bushings as the same and made a $332, not a $396, adjustment.

Comment 36: Westinghouse argues that the Department erred on home market transformer H 21910 in calculating the special impedance adjustment, pursuant to WPR 48–420, Section 7, Rule 11. Under that rule a 2 percent, not a 4 percent, adjustment is warranted.

Department's Position: We agree that a 2 percent adjustment for special impedance is appropriate.

Comment 37: After the Department adjusts home market transformer H 21910 for differences between ANSI and IEC standards, Westinghouse argues the adjustment for load tap changing equipment pursuant to WPR 48–420 would be $34,101.

Department's Position: We disagree because we have not adjusted for differences between ANSI and IEC standards (*see* Comment 13). However, because we agree with Westinghouse that a 2 percent adjustment pursuant to WPR 48–420, Section 7, Rule 11 is appropriate (*See* Comment 36), we have recalculated the load tap changing equipment adjustment to be $34,496.

Comment 38: Alsthom argues that the Department erroneously deducted certain charges for duty and freight twice on U.S. transformer DO/87 569/1.

Department's Position: We agree and have changed our calculation accordingly.

Comment 39: For U.S. transformer DO/87 569/2, with its 9.6 percent impedance, Westinghouse argues that we erred in making a 5 percent adjustment for impedance limits under WPR 48–620, Section 5, Rule 22, Table A.

Department's Position: We agree and have changed our calculation accordingly.

Comment 40: Alsthom argues that an $8,180 adjustment to home market transformer DO/44 613/1 for storage is incorrect because the cited amount reflects an increase in profit due to delayed delivery and is not an expense associated with storage. Westinghouse agrees with the Department that an adjustment is appropriate when a customer requests and pays for storage.

Department's Position: We do not agree that the price paid to Alsthom for storage represents an increase in profit due to delayed delivery. Because the contract explicitly established a $8,180 charge for storage, this is a directly related selling expense for which an adjustment is appropriate.

Comment 41: Westinghouse submits that Alsthom's information on ocean and inland freight charges for U.S. transformers DO/87 569/1 and DO/87 569/2 is either incorrect or incomplete because there is a significant difference in these shipment charges for two essentially identical transformers.

Department's Position: We have confirmed that there was a significant difference in the shipping rates. The two transformers were shipped a year apart. At the same time, we have changed our calculations to reflect shipping charge information that the respondent failed to provide in its response.

Comment 42: Alsthom argues that the Department erred in using a temperature coefficient of 1.18, rather than 1.12, on home market transformer DO/44 613/1, because the higher coefficient does not take into account the reduced differential between the winding hot-spot temperature and the winding average temperature.

Department's position: We disagree. Because the differential can be controlled by design modifications other than by reducing the winding average temperature rise, we have accounted for the differential within the six percent adjustment under WPR 48–620 for each 5 degree centigrade change in average temperature rise.

Comment 43: Alsthom and Westinghouse argue that the Department erred in making an adjustment for the Schnabel tank associated with home market transformer DO/44 613/1 based on the cost of the tank. Alsthom argues that we should have applied WPR 48–620, Section 5, Rule 28, because a Schnable tank is special construction within the meaning of this rule. Westinghouse argues that a Schnabel tank is not special within the meaning of the rule and, further, that no adjustment is necessary because the customer did not explicitly specify Schnabel car shipment. Alternatively, Westinghouse contends that any adjustment must be based upon actual costs.

Department's Position: We determined that the customer specified shipment by road and rail, and that Schnabel tank design was not common for Alsthom and, thus, constituted a special design requiring significant departure from standard construction. Therefore, we agree with Alsthom and have allowed a 15 percent adjustment.

Comment 44: Westinghouse argues that we incorrectly included a 10 percent adjustment for relative impedance on home market transformer DO/44 613/1. Westinghouse asserts that WPR 48–420, Section 5, Rule 23 does not apply to this autotransformer.

Department's Position: We agree and have changed our calculation accordingly.

Comment 45: Westinghouse argues that a sound level adjustment of 1 percent, not 6 percent, is appropriate under WPR 48–620, Section 5, Rule 25 on Home market transformer DO/44 613/1.

Department's Position: We disagree. The customer specification requires an 82 db sound level with all coolers in operation but allows a ±2 db tolerance. The specification also sets an 84 db limit with the transformer vector-loaded at 300 MVA and 105 percent voltage. Because this requirement results in a equivalent sound level limit of 82 db, we have made a 4 percent adjustment under Rule 25.

Comment 46: Westinghouse argues that U.S. transformer H 11500 should be evaluated as having a high voltage winding of 650 kV BIL, unless Alsthom produces design calculations and manufacturer's insulation drawings which demonstrate that the unit was actually designed for a high votage winding of 750 kV BIL. Westinghouse further contends that a 3 percent, not 4 percent, adjustment is warranted for the high voltage connection on the 650 kV BIL transformer under WPR 48–420, Section 7, Rule 7. Alsthom maintains that the customer specifications show that the U.S. unit was designed for 750 kV BIL and that the customer required the testing to be performed at a reduced voltage.

Department's Position: We agree that the customer specifications show that the U.S. unit was designed for a high voltage winding of 750 kV BIL and that the customer required the testing be performed at a reduced voltage. Therefore, we have changed our calculation to reflect evaluation of this unit at 750 kV BIL. We have included a 4 percent adjustment for the high voltage connection pursuant to Rule 7.

Because the unit received an impulse test at a reduced level, WPR 48–420, Section 8, Rule 8 considers such testing to be for quality control and requires a $395 adjustment, rather than a $1,187 adjustment. Because we consider the unit to have been designed for a high voltage winding of 750 kV BIL, we have eliminated the $1,524 adjustment for special bushings under WPR 48–420, Section 8, Rule 12.

Comment 47: Alsthom disputes the figures we used for freight and insurance on U.S. transformer H 11280–01. Alsthom states that the amounts used were estimates and not actual figures. Alsthom argues that the correct total amount is $7,021.03.

Department's Position: We will not use such selective new information submitted by a respondent after publication of our preliminary results. In its response to our questionnaire Alsthom reported freight and insurance charges of $8,470.00. Further, at varification Alsthom furnished documents supporting the reported freight charges, with no mention that the figures were estimates.

Comments 48: Westinghouse argues that the Department erred by not including a 2 percent adjustment on U.S. transformer H 11280–01 for a low voltage winding of 150 kV BIL, pursuant to WPR 48–420, Section 7, Rule 8.

Department's Position: We agree and have changed our calculation accordingly.

Comment 49: Because Westinghouse believes the Department's current methodology to account for differences in efficiency between U.S. and home market units does not fully account for loss differentials, Westinghouse disagrees with our selection of home market transformer H 11500 for comparison purposes.

Department's Position: In its correspondence Westinghouse stressed the importance of comparing transformers with similar efficiencies, but stated that this particular home market transformer would be acceptable for comparison. We maintain that, in this instance, the home market transformer we selected for comparison purposes is appropriate.

Comment 50: Westinghouse argues that we should not adjust home market transformer H 11500 for the limit on transfer voltage because Alsthom did not report this ground shield feature prior to varification. If we persist and make such an adjustment, Westinghouse argues that it should be based on actual cost or, only if that is unavailable, it should be based on WPR 48–420, Section 7, Rules 11 and 12 pertaining to special impedence. Applying these rules as a last resort, Westinghouse submits that an 11 percent adjustment would be appropriate. Westinghouse contends that the Department erred in using the WPR rules to estimate an actual cost adjustment of 14 percent.

Consistent with its general argument that the Department ought to strictly apply the WPR and make no adjustments outside the WPR, Alsthom submits that a 15 percent adjustment based on WPR 48–420, Section 7, Rule 17 might be more appropriate than the 14 percent that we used as an actual expense.

Department's Position: We consider an adjustment for the ground shield to be appropriate even though Alsthom did not report its existance prior to verification (*see* Comment 11).

Considering Westinghouse's comments, we have made an 8 percent adjustment based on WPR 48–420, Section 7, Rules 11 and 12. We estimated that the gap between the windings for a 750 kV BIL transformer needs to be increased by 32 percent in order to achieve the required 46 kV limit on transfer voltage between the high and low voltage windings. According to WPR 48–420, Section 7, Rule 11, the impedance range for this transformer is 8.1 to 12.15 percent. Accounting for the gap, the adjusted impedance range is 10.69 to 16.04. Given that the equivalent impedance of this transformer on a 55 degree centigrade base is 8.585, the ratio of adjusted impedance is 8.585 to 10.69, or 80 percent. WPR 48–420, Section 7, Rule 12, Table B, requires an 8 percent adjustment for impedance 80 to 84 percent below minimum standard. Therefore, we consider an 8 percent adjustment, rather than either an 11 percent or a 15 percent adjustment, to be appropriate.

Comment 51: Westinghouse argues that the Department cannot justify its use of a 7.8 percent adjustment for escalation on home market transformer H 11500 because the figure is an unverified estimate. Westinghouse argues that a 13 percent adjustment more closely approximates Alsthom's actual cost experience than the 7.8 percent adjustment used.

Department's Position: A 7.8 percent adjustment is appropriate. This figure is based on application of the escalation formula in the sales contract and relevant cost indices.

Comment 52: Alsthom submits that adjustment for a special warranty on home market transformer H 11500 is appropriate, under WPR 48–420, Section 10, Rule 1.

Department's Position: We disagree. Because there was no discernible difference in warranty expenses associated with the U.S. and home market transformers, we do not consider an adjustment to be appropriate.

After publication of the preliminary results, we discovered several mathematical, clerical, and substantive errors.

On U.S. transformer H 11280–01 we included an $1,322 adjustment in the theoretical price for a 7-day recording oil thermometer. Because we considered the cost estimate provided by Alsthom for this item to be unreasonably low, we extrapolated from the WPR to make this adjustment.

On U.S. transformer DO/87 569/2 we have recognized that the contract price included the supply of oil and have changed our calculation accordingly.

On home market transformer H 11500 we erred in using $653, rather than $751, for the adjustment for oil, and have changed our calculation accordingly.

In certain preliminary calculations we used incorrect currency exchange rates and we have adjusted our calculations accordingly.

For home market transformer 44775–1 we have determined that the sound level was 1 db below the NEMA standard, after considering that the customer allowed for a 2 db tolerance. Pursuant to WPR 48–620, Section 5, Rule 25, we have changed our adjustment for sound level on this unit from 3 percent to 1 percent.

Final Results of the Review

As a result of adjustments based on the comments received and certain mathematical, clerical and substantive errors, we have changed our calculations and we determine that the following margins exist for Alsthom:

Period	Margin (percent)
Nov. 1, 1971 to Oct. 22, 1972	72.85
Oct. 24, 1972 to Aug. 28, 1974	54.24
Aug. 29, 1974 to May 31, 1983	1.82

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the most recent of the above margins shall be required on shipments of French large power transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department is beginning immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

September 14, 1984.

[FR Doc. 84–24896 Filed 9–19–84; 8:45 am]

BILLING CODE 3510–DS–M

[A-583-081]

Polyvinyl Chloride Sheet and Film From Taiwan; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Preliminary results of administrative review of antidumping finding and tentative determination to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers the 28 known manufacturers and/or exporters and one known third-country reseller of this merchandise to the United States currently covered by the finding and the period June 1, 1982, through May 31, 1983. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during the period. Where company-supplied information was inadequate or no information was received in response to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

The Department has tentatively determined to revoke the finding with respect to Fashion Plastics Fabrication Co. Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 7640-1) the final results of its last administrative review of the antidumping finding on polyvinyl chloride sheet and film from Taiwan (43 FR 28457, June 30, 1978) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of unsupported, flexible, calendered polyvinyl chloride ("PVC") sheet, film and strips, over 6 inches in width and over 18 inches in length, and at least 0.0002 inch but not over 0.020 inch in thickness, currently classifiable under items 771.4312 and 774.5595 of the Tariff Schedules of the United States Annotated.

The review covers the 28 known manufacturers and/or exporters and one known third-country reseller of Taiwanese PVC sheet and film to the United States currently covered by the finding and the period June 1, 1982, through May 31, 1983.

Ten Firms did not ship Taiwanese PVC sheet and film to the United States during the period. The estimated antidumping duties cash deposit rate for those firms will be the most recent rate for each firm. Sixteen firms failed to respond to our questionnaire or provided inadequate responses to our questionnaire. For those non-responsive firms we used the best information available to determine the assessment and estimated antidumping duties cash deposit rates. The best information available is the highest rate for responding firms with shipments.

The Department will not cover the following two firms in this review or future section 751 reviews because those firms do not export to the United States merchandise covered by the finding.

C.Y.&C. Manufacturing Corp.
Mike Hung Products Co., Ltd.

This is not a proposal to revoke the finding with respect to these two firms. Should these firms begin exporting the covered merchandise to the U.S., we shall treat them as new exporters.

We are denying a request for revocation by Taur Yang Enterprises Co., Ltd. because that firm failed to respond to our questionnaire.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the ex-factory, f.o.b. or c.i.f. packed price either to an unrelated purchaser in the United States or to an unrelated Taiwanese trading company for export to the United States, as appropriate. Where applicable, deductions were made for ocean freight, insurance, foreign inland freight, and export license fees. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price when there were sufficient quantities of such or similar merchandise sold in the home market to provide a basis for comparison, or prices to third countries, when there were insufficient quantities of such or similar merchanside sold in the home market to provide a basis for comparison, both as defined in section 773 of the Tariff Act.

Third-country or home market price was based on the f.o.b. delivered price to unrelated purchasers with adjustments, where applicable, for inland freight, insurance, ocean freght, brokerage fees and differences in packing. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 1, 1982, through May 31, 1983:

	Margin (percent)
Manufacturer/exporter:	
Asiam International Inc	[1] 11.37
Berlin International Taiwan Corp	12.04
Brave Dragon Industry Ltd	12.04
Collins Co., Ltd	[1] 5.9
Diamond Shamrock Trading Corp	[1] 0
Essex Sporting Goods	12.04
Fashion Plastics Fabrication Co	[1] 5.9
Kangel Enterprises, Inc	[1] 11.37
Long Joy Enterprises Co., Ltd	12.04
Long-Prosper Enterprises Co., Ltd	12.04
Nan Lung Plastics Co., Ltd	12.04
Odin Industries Co., Ltd	[1] 11.37
Pleasure Time Products Inc	12.04
Progress Plastics Co., Ltd	0
Reey Plastic Co., Ltd	0
San Ching Plastics	12.04
Sequence Co., Ltd	[1] 0
Taur Yang Enterprises Co., Ltd	12.04
The Orchard Corp. of Taiwan, Ltd	12.04
Orchard-Highest International Development Corp	12.04
Orchard/Digest International Development Corp	12.04
Truly Enterprises Co., Ltd	12.04
Union Industries Limited	[1] 11.37
Wan Cheng Lung Trading Co., Ltd	12.04
Winport Marketing Ltd	[1] 0
Yeal Fung Enterprises Co., Ltd	12.04
Yung Chieh Enterprises Co., Ltd	[1] 0
Yunloon Enterprises Co., Ltd	12.04
Third-country reseller/country: Hop Kee Hong/Hong Kong	12.04

[1] No shipments during the period.

Fashion Plastics Fabrication Co. has applied for revocation and, as provided for in § 353.54(e) of the Commerce Regulations, Fashion Plastics has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding under circumstances as specified in the written agreement. Fashion Plastics has not shipped this merchandise to the United States for a period of over four years.

Therefore, we tentatively determine to revoke in part the finding on PVC sheet and film from Taiwan with respect to Fashion Plastics Fabrication Co. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise exported by this firm entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1983, and who is unrelated to any reviewed firm, a cash deposit of 12.04 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese PVC sheet and film entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and § 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

September 12, 1984.

[FR Doc. 84-24897 Filed 9-19-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcement of laboratory accreditation actions for August 1984.

The laboratories named below have been newly accredited under the National Voluntary Laboratory Accredition Program (NVLAP). Also listed are the NVLAP Codes for the test methods for which the laboratories have been accredited. The test method designations and titles of these test methods are set out in a **Federal Register** notice dated January 20, 1984 (49 FR 2496-2498).

Commercial Products LAP

D/L Laboratories, 116 East 16th Street, New York, NY 10003
Saul Spindel—Phone: 212-777-4410

Paints and Related Coatings and Materials

Measurements of Intrinsic Physical Properties

09/A01-09/A02
09/A04-09/A05
09/A07-09/A08
09/A10-09/A18
09/A20-09/A22
09/A25-09/A26
09/A28

Measurements of Performance and Performance Change

09/B01-09/B20
09/B23-09/B27
09/B29-09/B35
09/B37-09/B42

Measurement of Chemical Properties and Compositions

09/C09
09/C12
09/C26-09/C30
09/C37
09/C39-09/C40

Test Sample Conditioning and Preparation

09/D01-09/D06
09/D10-09/D11
09/D13-09/D14
09/D16

Chemray Coatings Corp., 150 Lincoln Blvd., Middlesex, NJ 08846
Frederick W. Armstrong, Jr.—Phone: 201-469-1110

Paints and Related Coatings and Materials

Measurements of Intrinsic Physical Properties

09/A02-09/A05
09/A07-09/A14
09/A17-09/A22
09/A25-09/A28

Measurements of Performance and Performance Change

09/B02-09/B03
09/B05
09/B09-09/B11
09/B13-09/B18
09/B20
09/B23-09/B26
09/B29-09/B31
09/B34
09/B38
09/B41-09/B42

Measurement of Chemical Properties and Compositions

09/C01-09/C02
09/C04
09/C06-09/C15
09/C17
09/C19
09/C21-09/C22
09/C26
09/C28-09/C34
09/C39

Test Sample Conditioning and Preparation

09/D01-09/D04
09/D08-09/D09
09/D11
09/D13-09/D14
09/D16

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899; (301) 921-3431.

Dated: September 17, 1984.

Ernest Ambler,

National Bureau of Standards.

[FR Doc. 84-24926 Filed 9-19-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Membership of National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Membership of NOAA Performance Review Boards; correction.

SUMMARY: This document corrects a notice of membership of National Oceanic and Atmospheric Administration Performance Review Boards that appeared beginning at page 32781 in the **Federal Register** of Thursday, August 16, 1984 (84–21762). Make the following corrections on page 32782, Group B, Leo Palensky, title should read Director, National Capital Administrative Support Center; Mirco P. Snidero, title should read Director, Regional Administrative Support Center Operations Office.

FOR FURTHER INFORMATION CONTACT: Robert P. Gajdys, Personnel Officer, NOAA, 6010 Executive Boulevard, Rockville, Maryland 20852, (301) 443-8781.

Dated: September 14, 1984.

Thomas E. Sides,

Acting Director, Office of Administrative and Technical Services.

[FR Doc. 84–24889 Filed 9–19–84; 8:45 am]

BILLING CODE 3510-08-M

Issuance of Permit; Southwest Fisheries Center

On July 26, 1984, Notice was published in the **Federal Register** (49 FR 30088) that an application had been filed with the National Marine Fisheries Service by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for scientific research and to enhance the propagation and survival of the species.

Notice is hereby given that on September 12, 1984, and as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to the Southwest Fisheries Center, subject to certain conditions set forth therein.

As required by the Endangered Species Act of 1973, issuance of this permit is based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

The Permit and documentation relating to the Permit are available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service,
3300 Whitehaven Street NW.,
Washington, DC; and

Regional Director, National Marine
Fisheries Service, Southwest Region,
300 South Ferry Street, Terminal
Island, California 90731.

Dated: September 12, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–24982 Filed 9–19–84; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit; Zeedierenpark Harderwijk B.V.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as autorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Zeedierenpark Harderwijk B. V. (P237B).

b. Address: Strandboulevard 8341AB, Postbus 9114 Harderwijk, Holland.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Atlantic bottlenose dolphin (Tursiops truncatus)—6.

4. Type of Take: Captive Maintenance.

5. Location of Activity: Mississippi Sound.

6. Period of Activity: 4 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdication of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Head of the Division of Area Protection and Species Conservation of the Dutch Government have been found appropriate and sufficent to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service,
3300 Whitehaven Street NW.,
Washington D.C.; and

Regional Director, Southeast Region,
National Marine Fisheries Service,
9450 Koger Boulevard, St. Petersburg,
Florida 33702.

Dated: September 17, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-24663 Filed 9-19-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

September 14, 1984.

The Department of Defense Computer Security Center has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

New (One-Time)

DoD Automated Information Systems Security Survey

Survey information required to assess security posture of approximately 2,500 contractor sites' automated information systems (AIS) processing classified defense information. Assessment will be used to recommend changes in policy/organization/programmatic aspects of AIS to ensure security measures keep pace with anticipated AIS expansion in late 1980's and beyond.

DoD Contractors: 2,500 responses; 1,650 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694-0187.

A copy of the information collection proposal may be obtained from A.F. Williams, OPI, Room 2A340, Pentagon, Washington, D.C. 20301, telephone (202) 697-1481.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24689 Filed 9-19-84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

September 14, 1984.

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Defense Financial And Investment Review Data Collection Package

The Defense Financial And Investment Review (DFAIR) is chartered to conduct a study of contract pricing, financing, and profit policy. To help in assessing these policies, DFAIR is requesting selected major defense firms to provide financial data about their defense subsidiaries.

Major Defense Contractors

Responses Requested: Approximately 120

Burden Hours: 89,100

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301-1155, telephone (202) 694-0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. J. M. Sousa, DFAIR, Room 105, 1735 N. Lynn St., Plaza West Building, Arlington, VA 22209-2005, telephone (703) 695-5828.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-24690 Filed 9-19-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, sections 1-15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Viral & Rickettsial Diseases.

Date of Meeting: October 15 & 16, 1984.

Time and Place: 0830 hours, Room 3092, Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda

This meeting will be open to the public from 0830-0945 hours on October 15, for the administrative review and discussion of the scientific research program of the Viral & Rickettsial Diseases Group, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and Sections 1-15 of Appendix, the meeting will be closed to the public from 1000-1630 hours on October 15, and from 0900-1200 hours on October 16, for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20307 (202/576-2436) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski,

Colonel, MSC Assistant Deputy Commander.

[FR Doc. 84-24601 Filed 9-19-84; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday & Friday, 11 & 12 October 1984.

Times of Meeting: 0830–1700 hours, both days (Closed).

Place: 11 October 1984: Ft. Detrick & Ft. Meade, Md., 12 October 1984: Langley, VA & the Pentagon.

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will meet for classified briefings and discussions, and tour the facilities. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 84–24963 Filed 9–19–84; 8:45 am]

BILLING CODE 3710–08–M

Defense Contract Audit Agency

Membership of the Defense Contract Audit Agency (DCAA), Performance Review Board

AGENCY: Defense Contract Audit Agency, Department of Defense.

ACTION: Notice of membership of the Defense Contract Audit Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Contract Audit Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Contract Audit Agency.

EFFECTIVE: September 20, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Kriesch, Personnel Management Specialist, Office of the Director of Personnel, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, VA (202) 274–5798 or 274–5799.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been reappointed to serve as members of the Performance Review Board. They will serve a one-year term, effective upon publication of this notice.

Mr. Robert G. Bordley, Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency

Mr. John J. Quill, General Counsel, Defense Legal Service

Mr. Raymond E. Schmidt, Director, Audit Policy, Office of the Assistant Secretary (Comptroller), Office of the Secretary of Defense

Edward J. Migliore,

Acting Assistant Director, Resources.

[FR Doc. 84–24894 Filed 9–19–84; 8:45 am]

BILLING CODE 3620–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Department of the Army (DA) Permit for a Proposed Resort Hotel Affecting the Waters of the United States, in Waiulua Bay, Waikoloa, South Kohala, Island of Hawaii, State of Hawaii

AGENCY: Army Corps of Engineers, Honolulu District, Pacific Ocean Division, Fort Shafter, Hawaii, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. Description of the Proposed Action

The applicant, Transcontinental Development Co., proposes a 1,250-room resort hotel and associated amenities on approximately 60 acres of land adjacent to Waiulua Bay. The hotel is intended to draw additional visitors to the South Kohala District of the Island of Hawaii. It would accomplish this by providing a complex with sufficient size, unique features, recreational amenities, and marketability to be economically competitive in the world tourism market.

The project will involve the excavation of a 4-acre salt water recreational lagoon and will require the filling of anchialine ponds on the site. These activities require a DA permit under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (U.S.C. 1344).

2. Description of Reasonable Alternatives

Because the project is in its preliminary planning stages, details on reasonable alternatives have not been finalized. The applicant is in the process of determining various alternatives, which may include:

a. No action alternative.

b. An alternate site for the resort hotel.

c. Alternate layout of structures or a reduction in scope of the development to minimize impacts on the anchialine ponds and Waiulua Bay.

d. Alternate uses of the aquatic sites.

3. Description of the Scoping Process for the DEIS

a. The public and affected Federal, State and local agencies, and other interested private organizations and parties are invited to provide comments identifying specific concerns which should be addressed in the DEIS. Upon preparation of the DEIS, a public notice shall be issued summarizing the facts of the case and announcing the availability of the DEIS. If a public hearing is requested, it will be held after completion of the DEIS. A public notice announcing the time, date, location and nature of the hearing would be issued at least 30 days prior to the hearing date.

b. The DEIS to be prepared should also satisfy the State of Hawaii's requirement for an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes, and the State Environmental Quality Commission's *Environmental Impact Statement Regulations*.

c. The significant issues to be analyzed in the DEIS will include:

(1) Impacts of the project on the coastal zone.

(2) Impacts of project location in the tsunami hazard zone.

(3) Project impacts on flora and fauna and rare or endangered species.

(4) Impacts on surface water runoff and drainage on coastal water quality.

(5) Coastal water quality and oceanographic impacts.

(6) Air quality and noise impacts.

(7) Direct and cumulative impacts on anchialine ponds at the project site and along the coastline.

(8) Aesthetic considerations.

(9) Socio-economic impacts, including impacts on public facilities such as transportation and utilities.

(10) Impacts on historic, archaeological and paleontological resources.

(11) Impacts on land-use.

(12) Recreational impacts.

4. It is estimated that the DEIS will be made available to the public in late 1984 or early 1985.

ADDRESS: Questions about the proposed action and DEIS can be answered by:

Mr. Stanley T. Arakaki, Chief, Operations Branch, U.S. Army Corps of Engineers, Room 205, Building 230, Fort Shafter, Hawaii 96858–5440, Telephone (808) 438–9258.

Dated: September 11, 1984.

Michael M. Jenks,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 84–24956 Filed 9–19–84; 8:45 am]

BILLING CODE 3710–NH–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Hydropower Project on Pine Creek Lake, McCurtain and Pushmataha Counties, Oklahoma

AGENCY: Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. Proposed Action: The proposed action is to install hydropower facilities at the Pine Creek project. This includes raising the crest of the uncontrolled spillway to maintain the existing flood control capability. In addition, a reregulation dam downstream is being considered to facilitate withdrawal of hydropower releases to meet existing water supply requirements. Pine Creek lake was completed for full flood control regulation in June 1969.

2. Reasonable Alternatives: The alternatives that will be evaluated include one no action alternative and three action alternatives. The no action alternative (without condition) would continue the operation of the project as currently authorized with the top of the summer conservation pool at elevation 438.0 feet National Geodetic Vertical Datum (NGVD) and the top of the flood control pool at 480.0 feet NGVD. Ultimate development includes a conservation pool elevation of 443.5 feet NGVD. The three action alternatives consist of (1) raising the top of the power pool to elevation 448.0 feet NGVD and installing a 10 megawatt (MW) hydropower unit, (2) raising the top of the power pool to elevation 454.0 feet NGVD and installing a 20 MW hydropower unit, and (3) raising the top of the power pool to elevation 460.0 feet NGVD and installing a 20 MW hydropower unit. Currently, alternative 2 is being favored because it appears to be the National Economic Development Plan. The alternative with power pool elevation 448.0 feet NGVD and a 10 MW hydropower unit would cause fewer environmental impacts. None of the alternatives would require land acquisition. The top of the flood control pool and the new spillway crest, would be 481.2, 482.9, 484.9 feet NGVD respectively.

3. Scoping Process: a. Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techniques including one formal public meeting, meetings with local interest groups, and meetings with local news media were employed to involve Federal, State, and local agencies, citizen committees, organizations, and the public in the planning studies.

b. Significant Issues Requiring In-Depths Analysis. None.

c. Assignments. The US Fish and Wildlife Service will provide formal consultation as outlined in the Fish and Wildlife Coordination Act and section 7 of the Endangered Species Act. The US Soil Conservation Service will report on prime and unique farmlands, Pub. L. 97–98.

d. Environmental Review and Consultation Requirements. The draft environmental impact statement will be circulated for review and all comments will be incorporated into the final environmental impact statement.

4. A scoping meeting will not be held.

5. Estimated date when the DEIS will be available to the public: January 1985.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, US Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa, OK 74121–0061, (918) 581–7857—FTS 745–7857.

Dated: September 12, 1984.

N.J. Arens,

Lieutenant Colonel, CE, Deputy District Engineer.

[FR Doc. 84–24957 Filed 9–19–84; 8:45 am]

BILLING CODE 3710–39–M

DEPARTMENT OF EDUCATION

Talent Search and Educational Opportunity Centers Programs; Application Preparation Workshops

AGENCY: Department of Education.

ACTION: Notice of Dates and Locations for Application Preparation Workshops.

SUMMARY: The Assistant Secretary for Postsecondary Education will conduct Application Preparation Workshops to assist prospective applicants to develop applications for grants under the Talent Search and Educational Opportunity Centers Programs.

DATES: Workshops are scheduled to be held on October 3, 4, 17, and 19.

ADDRESSES: The locations for the workshops are as follows:

October 3 and 4

Washington, D.C.
Hyatt Regency Capitol Hill, New Jersey Avenue, NW.
Host Person: Mr. Walter Lewis, Chief, Education Outreach Branch (202) 245–2165

October 17:

Atlanta, Georgia
Atlanta University, Robert W. Woodruff Library Exhibition Hall, Upper Level 111 Chestnut Street, S.W. (Corner of Chestnut and Bechwith Streets)
Host Person:
Mr. Marvin King, Morris Brown College, (404) 525–7831 ext. 250 or 252

October 17

Dallas, Texas
Bishop College, Recital Hall, Price-Branch Classroom Building, 3857 Simpson Stuart Road, Dallas, Texas
Host Person: Dr. Burtis Robinson, Director, Upward Bound Project, (214) 372–8766 or 8796

October 19

Chicago, Illinois
Roosevelt University, Room 320, 430 S. Michigan Avenue
Host Person: Dr. Clifton Washington, Director, Learning Resource Center, (312) 341–3877

October 19

San Francisco, California
University of San Francisco, Parina Lounge, University Center, Main Entrance, Golden Gate Avenue and Kitteridge
Host Person: Ms. Janice Cook, Director, Upward Bound Project, (415) 666–6476.

The host person listed for each workshop location will assist you if you need directions to the workshop site.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Lewis, Chief, Education Outreach Branch, Division of Student Services, Room 3060, ROB–3, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2165.

SUPPLEMENTARY INFORMATION: Each application workshop will last approximately a half day. The presentation will include a review of the requirements for filing applications for the Talent Search and Educational Opportunity Centers Programs and a review of the program regulations. In addition, there will be a discussion of the suggested application development guide. The Washington, D.C. workshop will begin at 1:30 p.m. on October 3. Each of the other workshops will begin with registration at 8:30 a.m. and presentations are scheduled from approximately 9:00 to 1:00 p.m. Time will be provided in the afternoon for informal discussions and questions and answers.

There is no registration fee for the workshops.

(Catalog of Federal Domestic Assistance Numbers: 84.044 Talent Search Program; 84.066 Educational opportunity Centers Program)

Dated: September 14, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–24953 Filed 9–19–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Second Report to Congress on Status of Natural Gas Markets; Public Comments

AGENCY: Office of Policy, Planning, and Analysis, DOE.

ACTION: Notice requesting written comments.

SUMMARY: The Department of Energy (DOE) is soliciting written comments assessing the current and future status of natural gas markets. The DOE has the responsibility under Section 123 of the Natural Gas Policy Act (NGPA) to prepare two reports on the domestic natural gas market and to seek public comment when preparing each report. The first report was completed in July, 1984 ("First Report Required by Section 123 of the Natural Gas Policy Act of 1978"). The second report will be transmitted to the President and Congress by January 1, 1985. The report and comments will discuss: (1) Natural gas prices, (2) natural gas supply and demand, (3) competitive conditions and market forces in the natural gas industry, and (4) the relative balance or imbalance of supply and demand in both the short-run and the long-run.

DATE: Written comments must be received by November 5, 1984.

ADDRESS: Written comments must be submitted to: Stephen T. Minihan (Acting Director, Division of Oil and Gas Analysis, Office of Policy, Planning, and Analysis), Forrestal Building, Room 7H–034, PE–14, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6423.

FOR FURTHER INFORMATION CONTACT:

Stephen T. Minihan (Acting Director, Division of Oil and Gas Analysis, Office of Policy, Planning, and Analysis), Forrestal Building, Room 7H–034, PE–14, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6423.

James K. White (Assistant General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E–042, GC–15, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The DOE has the responsibility under Section 123 of the Natural Gas Policy Act (NGPA) to prepare two reports on the domestic natural gas market. The reports will discuss natural gas prices, natural gas supply and demand, competitive conditions and market forces in the natural gas industry, and the balance or imbalance between supply and demand. The first report was transmitted to the President and Congress in July 1984. The second report will provide an update of conditions in the natural gas market and will review the major conclusions of the first report. The second report will be transmitted to the President and the Congress by January 1, 1985.

Section 123(b) requires the DOE to seek public comment during the preparation of each report. The DOE is preparing the second report and requests written comments on the subjects cited above.

The relationship between natural gas supply and demand depends critically on the characteristics of federal regulations and policies governing the natural gas market. For this reason the DOE report will examine natural gas prices, supply, demand, competitive conditions, market forces, and equilibria under a range of alternative federal policies.

DOE will examine these topics within the context of three alternatives depicting the range of potential policies that may govern the natural gas market in the coming years. The three gas market policy alternatives are (1) partial deregulation, (2) permanent extension of NGPA controls, and (3) comprehensive deregulation. "Partial deregulation" assumes gas will be decontrolled as scheduled in the NGPA. "Permanent extension of NGPA controls" assumes the current deregulation provisions of the NGPA are repealed and the gas industry continues to operate under current wellhead regulations. "Comprehensive deregulation" assumes all domestic gas is decontrolled.

These three alternatives are the same alternatives considered in the first report. However, the second report will update natural gas prices and take into account recent changes in the natural gas market.

The NGPA Conference Report (Report No. 95–1752) states that "The reports are required to include an evaluation of whether a supply/demand balance exists in natural gas markets at the time of the reports, and/or whether that balance is expected to exist in the future." In evaluating whether an equilibrium exists between supply and demand, DOE will look at current natural gas production and consumption, and also will examine the prospects for a balance between supply and demand over the longer term. Like the first report, which projected supply and demand to 1995, the second report will use 1995 to illustrate the longer-term balance or imbalance of supply and demand.

Matters of Particular Interest

Commentors are invited to discuss any matters which may help the Department prepare an informative report for the President and the Congress. Comments on the analysis and conclusions presented in "The First Report Required by Section 123 of the Natural Gas Policy Act of 1978" would be especially helpful. The Executive Summary of the First Report is attached as an appendix to this Notice. Given rapidly changing market conditions, commentors are encouraged to provide any new information not available earlier this year. In addition, we seek specific comments on the following questions:

(1) What are the likely trends in U.S. natural gas reserve additions, production, consumption, and prices under the three alternative policies over the next decade?

(2) What effect will recent changes in Canadian natural gas export policy have on the U.S. natural gas market, including competition, prices, reserve additions, consumption, and production?

(3) To what extent have producers and pipelines renegotiated domestic and import contracts in 1984? Have producers and pipelines renegotiated take-or-pay requirements, indefinite price escalators, and minimum bill requirements? How will the renegotiation that has already occurred affect the gas market? What are the impediments to further renegotiations?

(4) Have recent actions such as spot market transactions, Special Marketing Programs (SMP), blanket certificate carriage arrangements, and off-system sales programs increased competition in the natural gas market and resulted in lower gas prices? Do any of these activities offer a near-term alternative to contract renegotiation?

(5) How have FERC Order 380, spot market arrangements, and changing distribution company rate stuctures affected various customer class rates? Are transportation rates and distribution company rates being reduced as rapidly by competitive market pressures as are purchased gas costs?

(6) How competitive are the transportation and distribution sectors of the natural gas industry? Describe the nature of the competition. For example, to what extent do distributors compete with residual fuel dealers and pipelines with other pipelines? What barriers to competition exist? For example, to what extent and under what circumstances

have pipelines refused to carry gas for others?

Comment Procedures

Any person who wishes to file written comments with the DOE must make such filing with the Acting Director, Division of Oil and Gas Analysis by November 5, 1984 at: Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6423. The filing should be labeled "NGPA Section 123 Comments." Seven copies of the comments should be included. Any submission including information considered confidential by the person furnishing it must be so identified on the first page of the document. Only one copy of the comments should include the confidential information. The DOE reserves the right to determine the confidential status of the information and treat it according to our determination. All comments (with confidential material excluded) received by the DOE will be available for public inspection in the Public Reading Room, Room 1E–190, of the Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on September 17, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

Appendix to the Federal Register Notice for the Second Section 123 Report—Executive Summary from "The First Report Required by Section 123 of the Natural Gas Policy Act," DOE/PE–0054, July 1984

Executive Summary

Section 123 of the Natural Gas Policy Act of 1978 (NGPA) requires the Department of Energy to submit two reports on the natural gas market to the President and Congress. This is the first report.

This report examines the current conditions in the natural gas market and analyzes the future effects of three alternative natural gas policies in terms of prices, supply, demand, competitive conditions, market forces, and market equilibrium.

The report concludes that gas prices will not rise significantly or "fly up" after January 1, 1985, when partial decontrol becomes effective under the NGPA. The report also concludes that current federal regulations have inhibited the gas market from responding efficiently to changing market conditions and that the entire Nation would benefit from comprehensive deregulation legislation in the following ways:

- Economic benefits of $33.6 billion to $48.7 billion as a result of greater efficiency, higher domestic gas production, and lower payments for gas and oil imports.
- Recovery of an additional 27 trillion to 48 trillion cubic feet of domestic low-cost, old gas supplies that would not be produced under the NGPA.
- Lower consumer prices for natural gas—$0.56 per thousand cubic feet lower in 1985 than under the NGPA, and $0.27 to $0.45 thousand cubic feet lower from 1986 to 1995 than under the NGPA.
- Higher levels of both domestic gas consumption and domestic gas production than under the NGPA.
- Greater flexibility in the gas market to adjust to changing circumstances, thereby preventing the recurrence of shortages and surpluses.

Current Conditions in the Natural Gas Market

Natural Gas Prices

In 1983, increase in average wellhead and retail natural gas prices moderated for the first time since the NGPA was enacted in 1978. For the years 1979 to 1982, the annual increase in average wellhead gas prices ranged from 14.1 percent to 24.2 percent in real terms. In 1983, wellhead prices increased by only 2.4 percent in real terms.

The cause of this moderation in gas prices was a decline in demand for gas that was largely due to low fuel oil prices, conservation, and reduced industrial activity. In early 1983, average residual fuel oil prices fell below average prices paid by industrial users for gas purchased directly from pipeline companies. This encouraged many industrial gas users to switch to oil at a time when industrial gas use was already low due to economic conditions.

The moderation in natural gas price increases was long overdue and had been delayed by federal regulation of the domestic gas market. Specifically, high take-or-pay provisions engendered by federal wellhead price controls, restricted access to interstate pipeline capacity, and federal restrictions on "gas on gas" competition at the burner tip prevented a timely adjustment in natural gas prices. Natural gas prices continue to be substantially above market-clearing levels because of federal regulation of the domestic gas market.

Under current regulations, natural gas prices are projected to remain stable throughout 1984.

Natural Gas Supply and Demand

Natural gas use peaked in 1979 at 20.2 trillion cubic feet and has steadily declined since then. The major reasons for this decline have been decreasing oil prices, increasing conservation by gas users, and reduced industrial activity.

From 1980 to 1983, annual gas use by the industrial and electric utility sectors declined by more than 2 trillion cubic feet, or about 22 percent. These sectors are sensitive to the relative prices of gas and oil and have the capacity to switch quickly to the less expensive of the two fuels. From 1980 to 1983, gas use in the residential and commercial sectors declined by just over 4 percent. Fuel switching is less prevalent in these sectors; conservation accounts for most of the decline.

Although natural gas use has declined substantially in recent years, the domestic supply of natural gas has remained relatively constant. In a deregulated market, such a condition would have caused natural gas prices to fall. But in the regulated domestic market, prices continued to increase and a surplus developed. The primary causes of the surplus are federal regulations and restricted access to available interstate pipeline capacity. If access were not restricted, competition in the natural gas market would cause natural gas prices to decline.

In 1983, surplus deliverability was estimated to be 3 trillion to 5 trillion cubic feet. Under current federal regulations, surplus deliverability will decline to 1 trillion to 3 trillion cubic feet in 1984, largely because of reductions in natural gas exploration and increased gas consumption.

Responses of Producers and Pipeline Companies to Current Market Conditions

In an attempt to stem declining demand and to keep gas competitive with fuel oil, producers and pipeline companies have taken some actions to reduce take-or-pay liabilities and to lower purchased gas costs. The producer and pipeline company responses to changing market conditions are much less extensive than those that would occur in a deregulated market, but they have had some effect.

Contract Renegotiation. Declining demand in 1982 and 1983, combined with high take-or-pay levels in producer-pipeline contracts, led to a situation in which gas pipeline companies had made more than $700 million in prepayments by early 1983. The prepayment liabilities could grow as large as $10 billion by 1985. Some pipeline companies have been able to use market-out clauses in existing contracts to lower prices and to renegotiate contract terms to reduce minimum take levels. Some producers have forgiven pipeline companies part of their prepayment liabilities or significantly reduced prepayment liabilities in return for reciprocal treatment in the future.

Special Marketing Programs. Many producers and pipeline companies have used Special Marketing Programs (SMP's) to retain or regain price-sensitive industrial sales and to reduce take-or-pay liabilities. SMP's give pipeline companies the opportunity to lower prices and increase sales to eligible customers (those who can switch from gas to oil use) without renegotiating contracts. Like contract renegotiation, SMP's are the result of strong competitive market forces at work in the natural gas market, and they are another indication that the natural gas industry can make certain arrangements to lower prices when the regulatory barriers to such arrangements are eliminated. The effectiveness of current programs has been severely limited by regulations administered by the Federal Energy Regulatory Commission (FERC), and restrictions on access to interstate transmission capacity. Pipeline companies may also restrict SMP's by limiting the form and duration of the SMP's.

At present, FERC's policy is to approve only those programs that result in net benefits to all of a pipeline company's customers, including those who do not have access to SMP gas. While FERC may act to protect the interests of gas consumers who lack alternatives to their present source of gas supply, restricting SMP's prevents the minimization of gas costs that would occur through competition between gas suppliers. The interests of all gas consumers are best served if pipeline and distribution companies protect their markets by lowering gas costs through competition rather than by relying on regulation. Competition imposes strong pressures on pipeline companies to renegotiate contracts and to reduce their cost of service.

Contract Carriage. The response of gas prices to market conditions also was limited by restrictions on the use of available transportation capacity. Although the transmission of gas owned by others, or contract carriage, increased between 1978 and 1981, it fell slightly in 1982. There are strong indications that the voluntary contract carriage that was provided in 1982 was inadequate. First, many pipeline companies had substantial excess capacity during 1982 as a result of declining demand. Second, most of the producers and consumers who filed public comments during the preparation of this report cited restricted access to the transportation network as the greatest barrier to competition in the natural gas industry.

Future Gas Market Conditions Under Alternative Federal Policies

The three natural gas policy alternatives analyzed in this report are (1) partial deregulation, (2) permanent extension of NGPA controls and expansion of price controls to include deep gas, and (3) comprehensive deregulation. The first alternative assumes that NGPA partial decontrol will occur as scheduled on January 1, 1985. Under this alternative, we estimate that 40 percent to 50 percent of domestic natural gas production would remain under price controls. The second alternative assumes that the current deregulation provisions of the NGPA are repealed and that all domestic natural gas production is subject to price controls. The third alternative assumes deregulation of wellhead prices, mandatory contract carriage, and repeal of demand restraints.

Natural gas wellhead prices are projected to rise only 2.5 percent in 1985 if no new legislation is enacted and the partial price decontrol provisions of the NGPA become effective on January 1, 1985. The slight rise in average wellhead prices will be due to increasing demand and the limited ability to bring the gas surplus to market under partial decontrol in 1985. While indefinite price escalator clauses in existing contracts will allow some wellhead prices to increase substantially upon partial decontrol, the increase in such contract prices as well as average wellhead prices will be limited because the volume of gas subject to contract-induced price fly-up is small, and greater market flexibility will encourage producers and pipeline companies to adjust prices in response to competitive forces. Under this policy alternative, price controls will remain on old gas, causing 27 trillion to 48 trillion cubic feet of low-cost, old gas reserves to be abandoned. In addition, the gas market will be prevented from responding efficiently to changing conditions, causing shortages and surpluses in the future.

Prices would rise substantially in 1985 if NGPA price controls were permanently extended and expanded. Permanent price controls would encourage producers and pipeline companies to maintain existing inflexible contracts and to sign new inflexible contracts. Price controls and inflexible contracts would prevent the market from making the adjustments needed to avoid future imbalances between supply and demand. Permanent extension of NGPA price controls would restrict domestic production and would eventually cause gas shortages. Lack of mandatory contract carriage of gas by interstate pipeline companies would inhibit consumer access to available, low-cost supplies of gas.

In contrast, comprehensive deregulation would stimulate greater competition, price flexibility, and old gas production, thereby causing average consumer prices to fall $0.27 to $0.56 per thousand cubic feet below prices under the NGPA. Comprehensive deregulation would increase low-cost gas production by 27 trillion to 48 trillion cubic feet compared to the other two policies.

Furthermore, under comprehensive deregulation, annual domestic gas production would be about 1 trillion cubic feet higher than under NGPA partial decontrol.

Economic growth will cause gas consumption to increase under all three policies during the 1980's. This growth will eventually eliminate the current surplus deliverability, but how quickly this market adjustment occurs depends on which policy alternative is enacted. The surplus is likely to be depleted in 1985 under comprehensive deregulation, in 1987 under NGPA partial decontrol, and in 1989 under permanent extension of price controls.

By restricting domestic gas production, wellhead price controls subsidize foreign gas and oil producers. Under extended price controls, consumers would pay $20.8 billion more for gas imports between 1985 and 1995 than under NGPA partial decontrol. Under comprehensive deregulation, however, consumers would pay $6 billion less for gas imports than under the NGPA during this period. From 1985 to 1995, oil imports would average 300,000 to 400,000 barrels per day less under comprehensive deregulation than under extended controls and partial decontrol.

Under comprehensive deregulation, greater domestic production and lower imported gas and oil payments would provide net national economic benefits of $33.6 billion compared to partial decontrol between 1985 and 1995. Under permanent extension of NGPA price controls, lower domestic production and higher imported gas and oil payments would lead to net national economic losses of $15.1 billion compared to NGPA partial decontrol between 1985 and 1995.

Only under comprehensive deregulation—which includes deregulation of all wellhead prices, mandatory contract carriage, and repeal of demand restraints—would an efficient equilibrium between supply and demand be achieved and maintained. Wellhead price controls and restricted access to interstate transmission capacity caused shortages in the past as well as the current surplus. Partial decontrol under the NGPA is one step toward solving the problems of the current gas market, but only comprehensive deregulation would prevent the Nation from continuing to swing back and forth between costly shortages and inefficient surpluses. Only comprehensive deregulation would provide adequate natural gas supplies at reasonable prices.

[FR Doc. 84-25062 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Japan

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves the reprocessing of the U.S.-supplied fuel at the Tokai reprocessing facility in Japan. This subsequent arrangement would extend the U.S.–Japan Joint Determination, that safeguards may be effectively applied to the reprocessing at the Tokai facility of U.S. supplied fuel, from December 31, 1984 to December 31, 1985.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: September 14, 1984.

Dr. H.A. Merklein,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 84-24802 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a grant providing support to the Garfield County, Colorado, Department of Development, for support in the Development of Alternative Fuels Data Base. The grant is valued at $120,000 and is for a 24-month period.

Procurement Request Number: 01-84FE60562.000.

Project Scope: The objective of this grant award is to support the Garfield County Department of Development in developing an information base of verified data that is not only technical and financial, but also includes knowledge that guides policy and regulation in such areas as environment, land and water management, licensing and socio-economic development. This award is restricted to Garfield County Department of Development because much of the commercial oil shale development that is or has been active, as well as proposed, involves development in Garfield County, and the County has a wealth of experience in dealing with developers and the growing federal, state and local entities.

FOR FURTHER INFORMATION CONTACT: Thomas E. Brown, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone No.: (202) 252-1026.

Issued in Washington, D.C., on September 12, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 84-24979 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order; Empire Gas Corp.

AGENCY: U.S. Department of Energy, Economic Regulatory Administration.

ACTION: Notice of proposed remedial order to Empire Gas Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Empire Gas Corporation, Highway 5 South, Lebanon, Missouri 65536. This Proposed Remedial Order alleges violations in the pricing of motor gasoline of 10 CFR 210.92 and 10 CFR 212.93 for the period May, 1978 through February, 1979. The principal amount of the alleged violations for this period is $818,412.00.

A copy of the Proposed Remedial Order, with confidential information deleted may be obtained from: David H. Jackson, Director, Kansas City Office, ERA (816) 374-2092. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri, on the 4th day of September, 1984.

David H. Jackson,

Director, Kansas City Office, Office of Special Counsel, Economic Regulatory Administration.

[FR Doc. 84-24902 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; Lantern Petroleum Corp., and John Mills

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Lantern Petroleum Corporation, and John Mills. This Proposed Remedial Order alleges pricing violations in the amount of $534,881.38 plus interest in connection with the resale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period August 1978 through March 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mary Johnson, Economic Regulatory Administration, Department of Energy, 1341 W. Mockingbird Lane, Suite 200E, Dallas, Texas 75247 or by calling (214) 767-7483. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room: 6E-066, Washington, D.C. 20585, in accordance with 10 CFR § 205.193.

Issued in Dallas, Texas, on the 5th day of September 1984.

Ben Lemos,

Director, Dallas Field Office, Economic Regulatory Administration.

[FR Doc. 84-24903 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Objection To Proposed Remedial Orders Filed With the Office of Hearings and Appeals; Week of September 3 Through September 7, 1984

During the week of September 3 through September 7, 1984, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 12, 1984.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Clark Oil & Refining Corp., Milwaukee, WI; Apex Oil Co., Richmond Heights, MO; HRO-0249

On September 6, 1984, Clark Oil Refining Corporation (Clark) 8530 West National Avenue, Milwaukee, Wisconsin 53201, and Apex Oil Company (Apex) 7930 Clayton Road, Richmond Heights, Missouri 63117 filed a Notice of Objection to an amended Proposed Remedial Order which the DOE Office of Special Counsel of the Economic Regulatory Administration (ERA) issued to the firm on August 1, 1984.

In the amended PRO the ERA found that during the period October through December 1973, Clark violated 6 CFR 150.355-56 and 10 CFR 212.83 when it failed to reduce its claimed crude oil costs by the amount of compensation it received for the sale or exchange of fee-free licenses, and that Clark probably continued to make such violations until December 1980. Apex is alleged to share joint and several liability for these violations. According to the PRO the Clark violations resulted in the overstatement of Clark's crude costs for the relevant month(s) of measurement. The PRO requires Clark to revise its monthly refiner reports for the period of price controls, and to recalculate its total costs available for recovery. Any resulting overcharges would be determined by the Office of Hearings and Appeals.

[FR Doc. 84-24976 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board: Demand Subpanel of the Energy R&D Stategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Demand Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board.

Date and Time: October 30, 1984—8:30 a.m.–5:00 p.m.

Place: U.S. Department of Energy, 1000 Independent Avenue, SW., Room 4A-110, Washington, D.C. 20585.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Automotive Research Needs.
- Cogeneration Research.
- Behavioral Science Research.
- Report Outline.
- Status of Staff Studies.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 12, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff Office of Energy Research.

[FR Doc. 84-24977 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board; Infrastructure Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Infrastructure Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date and Time: October 30, 1984—9:00 a.m.–5:00 p.m.

Place: Stone and Webster Engineering Corporation, Suite 550, 1675 I Street, NW., Washington, D.C. 20006.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-5444.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda

- Institutional Issues.
- Report on Support Studies.
- Progress Report to be submitted to the Energy Research Advisory Board.
- Public comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 12, 1984.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84-24978 Filed 9-19-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-173-001]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Request Under Blanket Authorization

September 14, 1984.

Take notice that on September 10, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-173-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to amend the authorization granted under Tennessee's blanket certificate issued in Docket No. CP84-173-000 to provide authorization for the transportation of natural gas from two additional points of receipt, to provide for flexible authority to add and delete sources of gas and delivery points, and to extend the term of its transportation service through December 31, 1984, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it filed on January 4, 1984, a request for blanket certificate prior notice authorization to transport natural gas for United States Steel Corporation (U.S. Steel) pursuant to a gas transportation agreement dated November 4, 1983, in Docket No. CP84-173-000. Tennessee states that U.S. Steel purchases gas from Delhi Gas Pipeline Corporation (Delhi), an intrastate pipeline company, which delivers the gas purchased by U.S. Steel to Ozark Gas Transmission System (Ozark) for the account of Tennessee. Tennessee asserts it uses its capacity entitlement in Ozark to facilitate this transportation service. Tennessee states it transports all such gas purchased by U.S. Steel through Ozark to Natural Gas Pipeline Company of America (Natural) at an existing point of interconnection White County, Arkansas, which transports such gas and delivers it to Columbia Gulf Transmission Company (Columbia Gulf) in Cameron Parish, Louisiana. It is stated that Columbia Gulf transports a portion of the gas to Columbia Gas Transmission Corporation (Columbia Gas), which transports that portion of the gas to Columbia Gas of Ohio, Inc., for delivery to U.S. Steel's Lorain and Haverhill, Ohio, plants. It is stated that the remaining portion of gas is delivered by Columbia Gulf to Transcontinental Gas Pipe Line Corporation (Transco) at a point of interconnection in Evangeline Parish, Louisiana. It is stated that Transco transports this remaining portion to Philadelphia Electric Company for delivery to U.S. Steel at the Fairless, Pennsylvania, plant.

Tennessee seeks authorization for the following two additional points of receipt: (1) an existing point of interconnection between the facilities of Ozark and Oklahoma Natural Gas Company in sec. 5, T. 7 N. R.21 E., Haskell County, Oklahoma, and (2) an exisitng point of interconnection between the facilities of Ozark and Delhi in sec. 5, T. 3 N. R.14 E., Pittsburg County, Oklahoma.

Additionally, Tennessee requests "flexible authority" to add and/or delete sources of gas and/or receipt/delivery points and agrees to undertake certain filing requirements in the implementation of such "flexible authority". Tennessee asserts that any changes in gas suppliers and/or receipt/delivery points would be on behalf of the same end-user at the same end-use locations and would be within the maximum daily volume authorized.

Tennessee further requests authorization to transport gas for U.S. Steel through December 31, 1984. It is stated that this extension is requested pursuant to an amendment dated August 23, 1984, to the November 4, 1983, agreement.

In all other respects, it is said, the transportation service would be rendered under the same terms and conditions authorized previously in Docket No. CP84-173-000

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25038 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-468-000]

Union Texas Petroleum; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 17, 1984.

On August 24, 1984, Union Texas Petroleum (Applicant), located at P.O. Box 52087 Lafayette, Louisiana 70505, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 1.455 MW topping-cycle cogeneration facility, located in a rural area near Sulphur, Louisiana, will use natural gas to fuel engine-generator sets for power production. Waste heat from the generator's prime movers will be reclaimed, and utilized to satisfy the heat requirements of processing crude oil. Generated power from the facility is to be used throughout the facility to operate pumping and production equipment. Excess power will be sold to a commercial utility company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25039 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

Central Vermont Public Service Corp.; Filing

[Docket No. ER84-642-000]

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 97. The proposed changes would decrease revenues from jurisdictional sales and service by $352 for the twelve month period ending October 31, 1984.

CVPS states that the change is proposed in accordance with Article III of CVPS's Power Transmission Contract with Village of Ludlow Electric Light Department which provides that charges will be updated annually to incorporate CVPS' cost experience for the preceding calendar year. CVPS proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Village of Ludlow Electric Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24990 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-643-000]

Central Vermont Public Service Corp.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 31, 1984, tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 89. The proposed changes would decrease revenues from jurisdictional sales and service by $16,033 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Vermont Electric Cooperative, Inc. which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Vermont Electric Cooperative, Inc. and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24991 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-644-000]

Central Vermont Public Service Corp.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 111. The proposed changes would increase revenues from jurisdictional sales and service $13,292 for the twelve month period ending October 31, 1984.

Central Vermont states that the changes are proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Village of Hyde Park Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Village of Hyde Park Water and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24992 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-645-000]

Central Vermont Public Service Corp.; of Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 106. The proposed changes would increase revenues from jurisdictional sales and service by $33,230 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Village of Johnson Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Village of Johnson Water and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24993 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-646-000]

Central Vermont Public Service Corp.; Filing

September 17, 1984

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 92. The proposed changes would not change revenues from jurisdictional sales and service for the twelve month period ending October 31, 1984. No transactions under the contract have occurred during the preceding twelve months.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Lyndonville Electric Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Lyndonville Electric Department and the Vermont Public Service Board.

Any person wishing to become a party must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North

Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24994 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-647-000]

Central Vermont Public Service Corp.; Filing

September 17, 1984

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 96. The proposed changes would increase revenues from jurisdictional sales and service by $47,472 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Village of Ludlow Electric Light Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Village of Ludlow Electric Light Department and the Vermont Public Service Board.

Any person wishing to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24995 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-652-000]

Central Vermont Public Service Corp.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 110. The proposed changes would increase revenues from jurisdictional sales and service by $10 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Village of Hyde Park Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Village of Hyde Park Water and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24996 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-653-000]

Central Vermont Public Service Corp.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing changes in its Electric Service Rate Schedule FERC No. 93. The proposed changes would decrease revenues from jurisdictional sales and service by $41 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Lyndonville Electri Department which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Lyndonville Electric Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24997 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-641-000]

Delmarva Power & Light Co.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Delmarva Power & Light Co. (Delmarva) tendered for filing proposed changes in its FERC Rate Schedule No. 69. Under the changes, Delmarva would provide partial requirements service at 138 kV instead of 34.5 kV when the City of

Newark, Delaware completes the installation of its first 138 kV/34.5 kV transformer and would also provide temporary transformer firming service to the City of Newark pending completion of Newark's construction of a second transformer. Completion of the first 138 kV/34.5 kV transformer is scheduled to take place on or about December 31, 1984. Delmarva's filing also contains a revision of its Transmission Service Rate Schedule to include a rate for transmission voltage service.

Copies of this filing were served upon the City of Newark and the Delaware Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24998 Filed 9–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL84–41–000]

Neisler, Inc.; Filing

September 17, 1984

Take notice that on August 27, 1984, Neisler, Inc., (Neisler) submitted for filing its petition for declaratory order pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure.

Neisler requests that this Commission issue an order declaring that the Brushy Mountain hydroelectric generating facility (Project) was built prior to enactment of the Federal Power Act (FPA) and that no changes have been implemented which would significantly modify the Project's pre-1935 design operation or involve the construction of any dam or project works across, along, over, in or on a navigable water of the United States.

Neisler also requests that the order state that the Lower Little River is not a navigable water of the United States as defined in the Federal Power Act and that Neisler will not be engaged in any "post-1935 construction" as that term has been defined by the Commission and the courts, neither will the Project affect the interests of interstate or foreign commerce.

Neisler further requests that the order state that Neisler is not required to file either a declaration of interest under Section 23(b) of the FPA or for a license or exemption under the FPA for the project and that Neisler is not subject to the Commission's jurisdiction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–25001 Filed 9–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–546–000]

Pacific Power & Light Co.; Order Accepting Rates for Filing Subject to Refund or Adjustment, Noting Intervention, Providing Additional Opportunity for Comment, and Deferring Further Procedures

Issued September 14, 1984.

On July 17, 1984, Pacific Power & Light Company (PP&L) filed a Revised Appendix 1 for the State of Idaho to Exhibit C of its Residential Purchase and Sale Agreement with the Bonneville Power Administration (BPA),[1] together with BPA's report on the Average System Cost (ASC) rate pursuant to the Pacific Northwest Electric Power Planning and Conservation Act[2] and the Commission's implementing regulations. The filing, as adjusted by BPA to conform to the approved ASC methodology, reflects PP&L's increased ASC for exchange sales in the State of Idaho as of January 26, 1984.

Notice of PP&L's filing was published in the Federal Register on July 30, 1984, with comments due on or before August 8, 1984.[3] On July 27, 1984, the Direct Service Industrial Customers (DSIs) of BPA filed a timely motion to intervene. The DSIs express an interest in the outcome of PP&L's rate determination and state that there are a number of issues which they wish to raise with regard to the filing. However, while they mention functionalization of certain costs, they have not gone into any detail. A copy of the DSIs' comments to BPA on the PP&L filing is attached to the DSIs' intervention. The DSIs indicate a desire to comment on issues raised by other parties and further state that they may later request a hearing or oral argument.

On August 6, 1984, BPA filed a timely intervention. BPA expresses an interest in the outcome of PP&L's rate determination and states that it will respond to any issues raised by intervenors in the proceeding, it may request an opportunity for oral argument on issues of fact or law.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed interventions of BPA and the DSIs serve to make them parties to this proceeding.

Although the DSIs make reference to aspects of PP&L's filing in their pleading, they state no substantive position on any particular issue.[4] We recognize that the DSIs and other intervenors have filed similar pleadings in a number of prior dockets involving ASC filings. A limited pleading was adequate under the interim ASC rule since its primary function was to establish intervenor status and protect rights pending development of final procedures. However, since the issuance of a final ASC rule in Order No. 337,[5] the Commission has had to focus on specific outstanding issues not resolved by the rule. Thus, Order No. 337 required that, if the parties wished to pursue a particular matter, they must supplement their original pro-forma pleadings providing a list of specific issues, the revenue impact of each issue, and the basis for their stated positions.

If ASC filings are to be processed expeditiously and the Commission is to retain any flexibility in determining what procedural or substantive course is warranted in a given case, there is every reason to now require that such specification of positions be forthcoming from the outset. Therefore, we take this opportunity to advise potential intervenors in future ASC cases that we will expect a clear identification of contested issues in their initial pleadings. However, inasmuch as the DSIs (and PP&L) have not previously been informed of this approach, we shall provide the parties with a further opportunity to present their cases before we determine how to proceed in this docket. In the meantime, we shall accept PP&L's submittal for filing and defer any decision as to further procedures. As provided in the ASC rule (18 CFR 35.31(c)), the revised ASC rate shall remain subject to refund or other adjustment pending final Commission action.

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[1] *See* Attachment for rate schedule designations.

[2] 16 U.S.C. 839.

[3] 49 FR 30357 (1984).

[4] Although not reiterated in its intervention, BPA's position is effectively reflected in its report on and adjustments to PP&L's rate proposal.

[5] Docket No. RM81–41–000, Sales of Electric Power to Bonneville Power Administration: Methodology and Filing Requirements; Final Rule (FERC Statutes and Regulations ¶ 30,506.)

The Commission orders:

(A) PP&L's revised ASC rate is hereby accepted for filing, to become effective as of January 26, 1984, subject to refund or other adjustment.

(B) The DSIs and PP&L shall have fifteen (15) days from the date of this order in which to supplement their pleading or objections to (1) identify all issues which they contest, (2) explain the basis for any proposed adjustment, and (3) demonstrate associated revenue calculations; all parties shall thereafter have fifteen (15) days in which to respond to the initial comments of any other party.

(C) Pending receipt and review of the information set forth in Paragraph (B) above, further action in this docket is hereby deferred.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Pacific Power & Light Company

Docket No. ER84-546-000

Rate Schedule Designations

Designation	Description
Supplement No. 33 to Supplement No. 3 to Pacific Power & Light Company/Bonneville Power Administration Service Agreement under Pacific Northwest Electric Power Planning and Conservation Act FERC Electric Tariff Original Volume No. 1 (Supersedes Supplement No. 24 to Supplement No. 3).	Revised ASC for Idaho Jurisdiction with BPA Report.

[FR Doc. 84-25002 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-639-000]

Puget Sound Power & Light Co., Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 30, 1984, Puget Sound Power & Light Company (Puget) tendered for filing proposed changes in its Rate Schedule FPC No. 55. The schedule provides that nonfirm energy will be sold at such times and in such amounts as the Company in its sole discretion determines. Therefore, estimates of transactions or revenues under this schedule would not be applicable and would be impossible to make.

The reasons for the proposed change in the rates is to reflect actual costs of the Company's Colstrip Unit No. 3 coalfired generating resource.

Puget requests an effective date of July 30, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed or or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25003 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-640-000]

Tampa Electric Co., Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Tampa Electric Company (Tampa) tendered for filing Service Schedule X providing for extended economy interchange service between Tampa and the City of Kissimmee Electric Utilities (Kissimmee). Tampa states that Service Schedule X is submitted for inclusion as a supplement under the existing agreement for interchange service between Tampa and Kissimmee, designated as Tampa's Rate-Schedule FERC No. 16.

Tampa proposes an effective date of August 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served on Kissimmee and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25004 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-467-000]

Eastman Kodak Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 17, 1984.

On August 24, 1984, Eastman Kodak Company (Applicant), located at 343 State Street, Rochester, New York 14650, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 167 NW topping-cycle cogeneration facility is located at 1699 Lake Avenue, Rochester, New York. The facility consists of five 1400 psig boilers, four 800 psig boilers, one 400 psig boiler and four 260 psig standby boilers supplying five 1400 psig turbine generators, four 800 psig turbine generators and two 260 psig turbine generators. The turbine generators supply extraction and exhaust steam for production processes, plant heating, mechanical drives and refrigeration. The primary energy source of the facility is coal.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24999 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-306-001]

Enterprise Products Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 17, 1984.

On August 27, 1984, Enterprise Products Company (Applicant), located at 2727 North Loop West, P.O. Box 4324 Houston, Texas 77210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at FM 1942 and Hatcherville Road, Mont Belvieu, Texas 77580. The facility will consist of a combustion turbine generator unit, which will have its exhaust heat directed to the waste heat recovery/hot oil system of a natural gas liquids fractionator. The useful thermal energy output will be used to provide process heat for the fractionator. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 5 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25000 Filed 9-19-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53064; FRL-2673-3]

Premanufacture Notices; Monthly Status Report for July 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for July 1984.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E-107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53064]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-229, 401 M Street, SW., Washington, DC 20460, (202-382-3736).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 stat. 2010 (15 U.S.C. 2504)), will identify: (a) PMNs received during July; (b) PMNs received previously and still under review at the end of July; (c) PMNs for which the notice review period has ended during July; (d) chemical substances for which EPA has received a notice of commencement to manufacture during July and (e) PMNs for which the review period has been suspended. Therefore, the July 1984 PMN Status Report is being published.

Dated: September 12, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, July 1984

I. 131 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity and generic name	FR citation	Expiration date
84-899	Generic name: Polyether polyol oligomer	49 FR 28617 (7/13/84)	Sept. 29, 1984.
84-900	1,3,5-Triazine-2,4,6 (1H,3H,5H)-trione, 1,3,5-tris (2,3-dibromopropyl)-	49 FR 28617 (7/13/84)	Do
84-901	Bis (tetrabromobisphenol A)Bis(tribromophenyl) ethylenetetracarbonate	49 FR 28617 (7/13/84)	Sept. 30, 1984.
84-902	Hexabromodiphenyl amine	49 FR 28617 (7/13/84)	Do.
84-903	N-methylhexabromodiphenyl amine	49 FR 28617 (7/13/84)	Do.
84-904	Generic name: Unsaturated polyester resin	49 FR 28617 (7/13/84)	Do.
84-905	Generic name: Rosin modified phenolic resin	49 FR 28617 (7/13/84)	Do.
84-906	Generic name: Unsaturated polyester resin	49 FR 28617 (7/13/84)	Do.
84-907	Generic name: Rosin modified phenolic resin	49 FR 28617 (7/13/84)	Do.
84-908	Generic name: Functional polyester	49 FR 28617 (7/13/84)	Do.
84-909	Generic name: Modified alkyd resin	49 FR 28617 (7/13/84)	Do.
84-910	Phenol, *p*-allyl	49 FR 28617 (7/13/84)	Do.
84-911	Cyclododecane, (2-methoxyethoxy)-	49 FR 28617 (7/13/84)	Do.
84-912	Benzoxazolium, 5-chloro-2-[2-[[5-chloro-3-(4-sulfobutyl)-2(3H)-benzoxazolylidene]methyl]-1-butenyl]-3-(4-sulfobutyl)-, triethyl ammonium salt.	49 FR 28618 (7/13/84)	Oct. 2, 1984.

I. 131 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
84-913	Generic name: N,N'-bis(2-(2-(3-alkyl) thiazoline)vinyl)-1,4-phenylene diamine double salt.	49 FR 28618 (7/13/84)	Do.
84-914	Benzoic acid, 4-hydroxy-3-methoxy-, ethyl ester	49 FR 28618 (7/13/84)	Do.
84-915	Generic name: Acrylic modified alkyd resin	49 FR 28618 (7/13/84)	Do.
84-916	Generic name: Mixed chromium complexes of substituted hydroxyphenyl azo hydroxynaphthalenes, amine salts.	49 FR 29451 (7/20/84)	Oct. 3, 1984.
84-917	Generic name: Mixed chromium complexes of substituted hydroxyphenol azo hydroxynaphthalenes, sodium salts.	49 FR 29451 (7/20/84)	Do.
84-918	Generic name: Urethane-ester polymer	49 FR 29452 (7/20/84)	Do.
84-919	Generic name: Urethane-ester polymer	49 FR 29452 (7/20/84)	Do.
84-920	Generic name: Urethane-ester polymer	49 FR 29452 (7/20/84)	Do.
84-921	Generic name: Hydroxyl functional styrene-acrylic polymer	49 FR 29452 (7/20/84)	Oct. 6, 1984.
84-922	3,5-dinitrobenzyl chloride	49 FR 29452 (7/20/84)	Do.
84-923	Generic name: Polyurethane prepolymer	49 FR 29452 (7/20/84)	Do.
84-924	Generic name: Substituted anthraquinone	49 FR 29452 (7/20/84)	Oct. 7, 1984.
84-925	Generic name: Substituted substituted anthraquinone	49 FR 29452 (7/20/84)	Do.
84-926	Generic name: Hydroxyl-terminated poly(oxyalkylene) polyol	49 FR 29452 (7/20/84)	Do.
84-927	Generic name: Carbopolycyclic alkenyl ether	49 FR 29452 (7/20/84)	Do.
84-928	Polymer: 2-Butenedioic acid (Z)-, monomethyl ester, polymer with ethenylbenzene, 2,5-furandione and (Z)-1-methylpropyl hydrogen 2-butene-dioate, potassium hydroxide.	49 FR 29452 (7/20/84)	Do.
84-929	Polymer: 2-Butenedioic acid (Z)-, monomethyl ester, polymer with ethenylbenzene, 2,5-furandione and (Z)-1-methylpropyl hydrogen 2-butenedioate, sodium hydroxide.	49 FR 29452 (7/20/84)	Do.
84-930	Polymer: 2-Butenedioic acid (Z)-, monomethyl ester, polymer with ethenylbenzene, 2,5-furandione and (Z)-1-methylpropyl hydrogen 2-butenedioate, ammonium hydroxide	49 FR 29452 (7/20/84)	Do.
84-931	Polymer: 2, Butenedioic acid (Z)-, monomethyl ester, polymer with ethenylbenzene, 2,5-furandione and (Z)-2-methylpropyl hydrogen 2-butenedioate, potassium hydroxide.	49 FR 29452 (7/20/84)	Do.
84-932	Polymer: 2, Butenedioic acid (Z)-, monomethyl ester, polymer with ethenylbenzene, 2,5-furandione and (Z)-2-methylpropyl hydrogen 2-butenedioate, sodium hydroxide.	49 FR 29453 (7/20/84)	Do.
84-933	Polymer: 2, Butenedioic acid (Z)-, monomethyl ester, polymer with ethenylbenzene, 2,5-furandione and (Z)-2-methylpropyl hydrogen 2-butenedioate, ammonium hydroxide.	49 FR 29453 (7/20/84)	Do.
84-934	Generic name: Polyamide		
84-935	Generic name: Polyamide	49 FR 29453 (7/20/84)	Do.
84-936	Generic name: Aromatic keto-ester	49 FR 29453 (7/20/84)	Do.
84-937	Polymer of Desmodur W, teracol 650, hydroxy ethyl acrylate, jeffamine.	49 FR 29453 (7/20/84)	Do.
84-938	Polymer of hydroxy ethyl acrylate, polyisocyanate T 1890/100.	49 FR 29453 (7/20/84)	Do.
84-939	Generic name: Polymer of Desmodur W, caprolactone diol, hydroxy ethyl acrylate, jeffamine	49 FR 29453 (7/20/84)	Do.
84-940	Generic name: Vinyl acetate-acrylic copolymer	49 FR 29453 (7/20/84)	Do.
84-941	Generic name: Substituted polyisobutenylsuccinimide	49 FR 29453 (7/20/84)	Do.
84-942	Generic name: Acrylated epoxysilicone	49 FR 29453 (7/20/84)	Oct. 8, 1984.
84-943	Generic name: Aromatic alkyl ether	49 FR 29453 (7/20/84)	Do.
84-944	Generic name: Aromatic alkyl ether	49 FR 29453 (7/20/84)	Do.
84-945	Generic name: Trisubstituted aminobenzoic acid ester	49 FR 29453 (7/20/84)	Do.
84-946	Generic name: Modified epoxy resin solution	49 FR 29453 (7/20/84)	Oct. 9, 1984.
84-947	Generic name: Modified pigment yellow 12	49 FR 30238 (7/27/84)	Oct. 10, 1984.
84-948	Oxidase alcohol	49 FR 30239 (7/27/84)	Do.
84-949	Generic name: Modified expoxy resin	49 FR 30239 (7/27/84)	Do.
84-950	Generic name: Dimer acids, monocarboxylic acid, polyamines polyamide resin	49 FR 30239 (7/27/84)	Do.
84-951	Generic name: Substituted aminobenzoic acid ester	49 FR 30239 (7/27/84)	Do.
84-952	Generic name: Ketimine	49 FR 30239 (7/27/84)	Do.
84-953	Generic name: Reacted epoxy resin	49 FR 30239 (7/27/84)	Oct. 13, 1984.
84-954	Generic name: Substituted aromatic	49 FR 30239 (7/27/84)	Do.
84-955	Generic name: Modified polyester resin	49 FR 30239 (7/27/84)	Do.
84-956	Generic name: Polyester resin	49 FR 30239 (7/27/84)	Do.
84-957	Generic name: Polyester resin	49 FR 30239 (7/27/84)	Do.
84-958	Generic name: Modified polymer of styrene with alkyl acrylate and alkyl methacrylate	49 FR 30239 (7/27/84)	Do.
84-959	Generic name: Substituted polyamine	49 FR 30239 (7/27/84)	Oct. 14, 1984.
84-960	Generic name: Complex polyurethane	49 FR 30239 (7/27/84)	Do.
84-961	Generic name: Modified polymer of styrene with alkyl methacrylates	49 FR 30239 (7/27/84)	Do.
84-962	Generic name: Metal salt of phosphoric acid ester	49 FR 30240 (7/27/84)	Do.
84-963	6-Nitro-2(3H)-benzoxazolone	49 FR 30240 (7/27/84)	Do.
84-964	Generic name: Disubstituted hexanamide	49 FR 30240 (7/27/84)	Do.
84-965	Generic name: Alkyd resin	49 FR 30240 (7/27/84)	Do.
84-966	Generic name: Oligomieric diol	49 FR 30240 (7/27/84)	Do.
84-967	Generic name: Polyether urethane polymer	49 FR 30240 (7/27/84)	Do.
84-968	Generic name: Alkyl ester	49 FR 30240 (7/27/84)	Do.
84-969	Generic name: Modified sodium polyacrylate	49 FR 30240 (7/27/84)	Do.
84-970	Generic name: Substituted sodium sulfosuccinamate	49 FR 30240 (7/27/84)	Do.
84-971	Generic name: 2-propanol-1,1 thiobis, oxirane extended, alkyl terminated	49 FR 30240 (7/27/84)	Do.
84-972	Generic name: Epoxidized alcohol	49 FR 30240 (7/27/84)	Do.
84-973	Generic name: Substituted triazine	49 FR 30240 (7/27/84)	Do.
84-974	Generic name: Acrylic ester terpolymer	49 FR 30240 (7/27/84)	Do.
84-975	Generic name: Polymer of aliphatic diamines, and alkanediol polyester, a monoalcohol polyether, a metal salt of an alkenediol polyether, and aliphatic diisocyanate.	49 FR 30241 (7/27/84) 49 FR 30241 (7/27/84)	Do. Oct. 15, 1984.
84-976	Generic name: Polyamic acid		
84-977	Generic name: Aluminum modified long oil alkyd 85% in white spirit	49 FR 30241 (7/27/84)	Do.
84-978	Generic name: Polyurea polyurethane polymer	49 FR 30241 (7/27/84)	Oct. 16, 1984.
84-979	Generic name: Polyurea polyurethane polymer	49 FR 30241 (7/27/84)	Do.
84-980	Generic name: Polyurea polyurethane polymer	49 FR 30241 (7/27/84)	Do.
84-981	Generic name: Polyether poylol oligomer	49 FR 30241 (7/27/84)	Do.
84-982	1,3-bis(1-phenylethyl)benzene	49 FR 30241 (7/27/84)	Do.
84-983	Generic name: Polyester resin based on mixed phthalic acids and mixed polyols	49 FR 30241 (7/27/84)	Do.
84-984	Generic name: Modified polyester polyurethane	49 FR 30241 (7/27/84)	Do.
84-985	Generic name: Modified terpolymer of maleic anhydride, styrene and 1-substituted alkene, sodium salt.	49 FR 31136 (8/3/84) 49 FR 31137 (8/3/84)	Oct. 17, 1984. Do.
84-986	4,4'-bis[4-(3-acetylamino-4-(4,8-disulfo-2-naphthylazo))anilino-6-(3-carboxypyridinio)-1,3,5-triazin-2-ylamino)-2,2'-disulfostilbene dihydroxide hexasodium salt.	49 FR 31137 (8/3/84)	Oct. 20, 1984.
84-987	2,4-bis[4-(3-acetylamino-4-(4,8-disulfonate-2-naphthylazo)anilino]-6-(3-carboxypridinio)-1,3,5-triazin-2-ylamino]benzenesulfonate-dihydroxied=pentasodium.	49 FR 31137 (8/3/84)	Do.
84-988	Hexasodium salt = 1,4-bis[4-(3-carboxypyridinio)-6-[3,6-disulfo-8-hydroxy-7-(2-sulfophenylazo)-1-naphthylamino)-1,3,5-triazine-2-ylaminio]benzene-dihydroxide.	49 FR 31137 (8/3/84)	Do.
84-989	4-amino-3,6-bis[5-[4-(3-carboxypridinio)-6-(4-chloro-3-sulfonateanilino)-1,3,5-triazin-2-ylamino]-2-sulfonato-phenylazo]-5-hydroxy-2,7-naphthalene-disulfonate-dihydroxid, hexasodium.	49 FR 31137 (8/3/84)	Do.

I. 131 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH—Continued

PMN No.	Identity and generic name	FR citation	Expiration date
84-990	[2-[alpha[3-[4-(3-carboxypyridinio)-6-(2-chloro-5-sulfoanilino)-1,3,5-trazin-2-ylamino]-2-hydroxy-5-sulfophenylazo]benzylidene hydrazino]-4-sulfobenzoato-(0,0')(5)]copper (II) acid trisodium salt hydroxide.	49 FR 31137 (8/3/84)	Do.
84-991	Cellulose, acetate propenoate, [(1-oxo-2-propenyl)amino] methyl ether	49 FR 31137 (8/3/84)	Oct. 21, 1984.
84-992	Generic name: Polyurethane polymer	49 FR 31137 (8/3/84)	Do.
84-993	1,3-phenylene-bis(3-methyl-1-phenylpentylidene) bis-lithium	49 FR 31137 (8/3/84)	Do.
84-994	Generic name: Modified corn oil	49 FR 31137 (8/3/84)	Do.
84-995	Generic name: Aromatic substituted ammonium sulfimide	49 FR 31137 (8/3/84)	Do.
84-996	Generic name: Poly alkyl benzene sulfonic acid	49 FR 31137 (8/3/84)	Oct. 22, 1984.
84-997	Generic name: Poly alkyl benzene sulfonic acid	49 FR 31138 (8/3/84)	Do.
84-998	Generic name: Poly alkyl benzene sulfonic acid	49 FR 31138 (8/3/84)	Do.
84-999	Generic name: Poly alkyl benzene sulfonic acid	49 FR 31138 (8/3/84)	Do.
84-1000	Generic name: Benzene alkyl sulfonic acid	49 FR 31138 (8/3/84)	Do.
84-1001	Generic name: Ethoxylated sorbitol, fatty acid ester	49 FR 31138 (8/3/84)	Oct. 23, 1984.
84-1002	Generic name: Hydroxyl-terminated poly(oxyalkylene)polyol containing polyurea	49 FR 31138 (8/3/84)	Do.
84-1003	Generic name: Hydroxyl-terminated poly(oxyalkylene)polyol containing polyurea	49 FR 31138 (8/3/84)	Do.
84-1004	Generic name: Dihydroxyalkylamine	49 FR 31138 (8/3/84)	Do.
84-1005	Generic name: Alkyl amine derivative	49 FR 32110 (8/10/84)	Oct. 24, 1984.
84-1006	Terpolymer of isoprene, styrene and alpha-methylstyrene	49 FR 32110 (8/10/84)	Do.
84-1007	Generic name: 3-alkyl-2-(2-anilino)vinyl thiazo-linium salt	49 FR 32110 (8/10/84)	Do.
84-1008	Generic name: Alkyl thiadiazole	49 FR 32110 (8/10/84)	Do.
84-1009	Generic name: Aliphatic polycarbonate urethane	49 FR 32110 (8/10/84)	Do.
84-1010	Generic name: Aliphatic polycarbonate urethane	49 FR 32110 (8/10/84)	Do.
84-1011	Generic name: Aliphatic polyester urethane	49 FR 32110 (8/10/84)	Do.
84-1012	Generic name: Aliphatic polyester urethane	49 FR 32110 (8/10/84)	Do.
84-1013	Generic name: Aliphatic polyether urethane	49 FR 32111 (8/10/84)	Do.
84-1014	Generic name: Aliphatic polyether urethane	49 FR 32111 (8/10/84)	Do.
84-1015	Generic name: Modified acrylamide polymer	49 FR 32111 (8/10/84)	Do.
84-1016	Generic name: Modified acrylamide polymer	49 FR 32111 (8/10/84)	Do.
84-1017	Generic name: Modified acrylamide polymer	49 FR 32111 (8/10/84)	Do.
84-1018	Generic name: Urethane adduct	49 FR 32111 (8/10/84)	Oct. 27, 1984.
84-1019	Generic name: Polysubstituted alkyl thiocyanate	49 FR 32111 (8/10/84)	Do.
84-1020	Generic name:Isophthalic polyester	49 FR 32111 (8/10/84)	Do.
84-1021	Generic name: Modified styrene-divinylbenzene polymer	49 FR 32111 (8/10/84)	Do.
84-1022	Generic name: Modified styrene-divinylbenzene polymer	49 FR 32111 (8/10/84)	Do.
84-1023	Quadpolymer of isoprene, 1,3-butadiene, styrene and alpha-methylstyrene	49 FR 32111 (8/10/84)	Oct. 28, 1984.
84-1024	Generic name: Alkyl substituted 4-amino, 1-8 naphthalimide	49 FR 32111 (8/10/84)	Do.
84-1025	Generic name: Modified essential oil	49 FR 32111 (8/10/84)	Do.
84-1026	Generic name: Phenol, benzylic ether	49 FR 32111 (8/10/84)	Do.
84-1027	Generic name: Sulfurized reaction products of animal oil, vegetable fatty ester, olefin and turpentine.	49 FR 32111 (8/10/84)	Do.
84-1028	1,4 dimethylol cyclohexane ethoxylate propoxylate	49 FR 32112 (8/10/84)	Do.
84-1029	Generic name: Polyether aromatic isocyanate terminated prepolymer	49 FR 32112 (8/10/84)	Do.

II. 102 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
84-794	Generic name: Benzoselenazole based cyanine dye	49 FR 24782 (6/15/84)	Aug. 29, 1984.
84-795	Generic name: Carbomonocyclic, carbopolycyclic polyester	49 FR 24782 (6/15/84)	Do.
84-796	Generic name: Polyfunctional aziridine	49 FR 24782 (6/15/84)	Sept. 1, 1984.
84-797	N-ethyl-N-(4-nitrophenyl) ethanamide	49 FR 24782 (6/15/84)	Do.
84-798	N-[4-(ethylamino)phenyl]methansulfonamide	49 FR 24783 (6/15/84)	Do.
84-799	N-ethyl-4-nitrobenzeneamine	49 FR 24783 (6/15/84)	Do.
84-800	Generic name: Pentasubstituted naphthalenecarboxamide	49 FR 24783 (6/15/84)	Do.
84-801	N-ethyl-N-[4-[(methylsulfonyl]amino]phenyl] ethanamide	49 FR 24783 (6/15/84)	Do.
84-802	Generic name: Aromatic diamine polymer with epoxy phenol novolac	49 FR 24783 (6/15/84)	Sept. 2, 1984.
84-803	Generic name: Modified alkylphenol resin	49 FR 24783 (6/15/84)	Do.
84-804	Generic name: Modified alkylphenol resin	49 FR 24783 (6/15/84)	Do.
84-805	Generic name: Mofified alkylphenol resin	49 FR 24783 (6/15/84)	Do.
84-806	Generic name: Modified alkylphenol resin	49 FR 24783 (6/15/84)	Do.
84-807	Generic name: Modified alkylphenol resin	49 FR 24783 (6/15/84)	Do.
84-808	Generic name: Modified alkylphenol resin	49 FR 24783 (6/15/84)	Do.
84-810	Generic name: Mixture of saturated terpenes	49 FR 24783 (6/15/84)	Do.
84-811	Generic name: Polysiloxane resin	49 FR 24783 (6/15/84)	Do.
84-812	Generic name: Acrylourethane	49 FR 24784 (6/15/84)	Do.
84-813	Generic name: Disubstituted, phenyl propanol	49 FR 24784 (6/15/84)	Do.
84-814	Generic name: Polysubstituted polypol	49 FR 24784 (6/15/84)	Do.
84-815	Polycaprolactone diol, adduct with modified 4,4'-diphenylmethane diisocyanate and polypropoxylated glycerol	49 FR 24784 (6/15/84)	Sept. 3, 1984.
84-816	Generic name: Organophosphonium salt	49 FR 24784 (6/15/84)	Do.
84-817	Generic name: Metallic alkyl alkoxides complex	49 FR 24784 (6/15/84)	Do.
84-818	Generic name: Metallic alkyl alkoxides complex	49 FR 24784 (6/15/84)	Do.
84-819	Generic name: Metallic alkyl alkoxides complex	49 FR 24784 (6/15/84)	Do.
84-820	Generic name: Phosphonium salt	49 FR 24784 (6/15/84)	Do.
84-821	Generic name: Acrylic modified epoxy resin	49 FR 24784 (6/15/84)	Sept. 4, 1984.
84-822	Generic name: Modified styrene-divinylbenzene polymer	49 FR 24784 (6/15/84)	Do.
84-823	Generic name: Substituted stilbene	49 FR 24784 (6/15/84)	Do.
84-824	Generic name: Brominated aromatic	49 FR 25676 (6/22/84)	Sept. 5, 1984.
84-825	Generic name: Polymer of substituted polyalkylene polyamine and substituted alkane, alkyl carboxylate	49 FR 25676 (6/22/84)	Do.
84-826	Generic name: Polymer of aliphatic polyamines, dihaloalkane, aliphatic diacid	49 FR 25676 (6/22/84)	Do.
84-827	Generic name: Polymer of aliphatic polyamines, dihaloalkane, organic diamine	49 FR 25677 (6/22/84)	Do.
84-828	Generic name: Polymer of substituted polyalkylene polyamine and substituted alkane	49 FR 25677 (6/22/84)	Do.
84-829	Generic name: Polymer of adipic acid, polyalkylene glycol and alkanepolyol	49 FR 25677 (6/22/84)	Sept. 8, 1984.
84-830	Generic name: Sytrene, nitrile, acrylic copolymer	49 FR 25677 (6/22/84)	Do.
84-831	Generic name: Styrene acrylic copolymer	49 FR 25677 (6/22/84)	Do.
84-832	Generic name: Acrylic polymer	49 FR 25677 (6/22/84)	Do.
84-833	Generic name: Substituted anthraquinone	49 FR 25677 (6/22/84)	Do.
84-834	Generic name: Trisazo dye	49 FR 25677 (6/22/84)	Do.

II. 102 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
84-835	Generic name: Trisazo dye	49 FR 25677 (6/22/84)	Do.
84-836	Generic name: Trisazo dye	49 FR 25677 (6/22/84)	Do.
84-837	Generic name: Polyurea urethane	49 FR 25677 (6/22/84)	Do.
84-838	Generic name: Tetrasubstituted naphthalenecarboxamide	49 FR 25677 (6/22/84)	Do.
84-839	Generic name: Polyfunctional aziridine	49 FR 25677 (6/22/84)	Do.
84-842	Generic name: Disubstituted benzothiazolium salt	49 FR 25678 (6/22/84)	Sept. 9, 1984.
84-843	Generic name: Modified epoxy prepolymer	49 FR 25678 (6/22/84)	Do.
84-844	Generic name: Amine salt of a styrene-divinyl benzene ion exchange resin	49 FR 25678 (6/22/84)	Sept. 10, 1984.
84-845	Generic name: Vinyl trialkoxy silane	49 FR 25678 (6/22/84)	Do.
84-846	Generic name: Fatty acids, compound with diamines	49 FR 25678 (6/22/84)	Do.
84-847	Generic name: Acrylic copolymer, sodium salt	49 FR 25678 (6/22/84)	Do.
84-848	Generic name: Alkyl thiophosphate amine salt	49 FR 25678 (6/22/84)	Sept. 11, 1984.
84-849	Generic name: Fatty polyacrylate	49 FR 25678 (6/22/84)	Do.
84-850	Generic name: Fatty acrylate polymers	49 FR 25678 (6/22/84)	Do.
84-851	Generic name: Alkyl phosphate amine salts	49 FR 26800 (6/29/84)	Sept. 12, 1984.
84-852	Generic name: Functional polymer of mixed acrylate and methacrylate based monomers	49 FR 26801 (6/29/84)	Do.
84-853	Generic name: Aromatic sulfonate of substituted phenylazo substituted heteromonocycle	49 FR 26801 (6/29/84)	Do.
84-854	(1,1':3',1''-terphenyl)-2'-ol,5'-(octadecyloxy), 4-n-octadecyloxy-2,6-diphenylphenol	49 FR 26801 (6/29/84)	Do.
84-855	Generic name: Blocked isocyanate	49 FR 26801 (6/29/84)	Do.
84-856	Generic name: Blocked isocyanate	49 FR 26801 (6/29/84)	Do.
84-857	Polymer of: epichlorohydrin-bisphenol-A polymer, bisphenol-A, ethyltriphenylphosphonium iodine, formaldehyde, n-butyl alcohol, triethyl amine and phthalic anhydride.	49 FR 26801 (6/29/84)	Do.
84-858	Generic name: Polyalkylene glycol ether acrylate	49 FR 26801 (6/29/84)	Do.
84-859	Generic name: Halophthalimide	49 FR 26801 (6/29/84)	Sept. 15, 1984.
84-860	Generic name: Disubstituted nitrobenzene	49 FR 26801 (6/29/84)	Sept. 16, 1984.
84-861	2[(2-hydroxy-1,1-bis(hydroxymethyl)ethyl)-amino]-ethanesulfonic acid, sodium salt (1:1)	49 FR 26801 (6/29/84)	Do.
84-862	4-(2-hydroxyethyl)piperazine-1-ethanesulfonic acid, sodium salt (1:1)	49 FR 26801 (6/29/84)	Do.
84-863	Generic name: Portein crosslinked by a poly (aliphatic)isocyanate	49 FR 26801 (6/29/84)	Do.
84-864	Generic name: Viny acetate-acrylate copolymer	49 FR 26801 (6/29/84)	Sept. 17, 1984.
84-865	Generic name: ((Alkyl)(alkyl)amino)polyalkoxy ether sulfate halfester	49 FR 26802 (6/29/84)	Do.
84-866	Generic name: Alkyl methacrylate polymer	49 FR 26802 (6/29/84)	Do.
84-867	Generic name: Alkyl methacrylate polymer	49 FR 26802 (6/29/84)	Do.
84-868	Generic name: Alkyl methacrylate polymer	49 FR 26802 (6/29/84)	Do.
84-869	4-(Acetylamino)-3-nitrobenzoic acid	49 FR 26802 (6/29/84)	Sept. 18, 1984.
84-870	Generic name: Disubstituted nitrobenzoic acid	49 FR 26802 (6/29/84)	Do.
84-871	Generic name: Disubstituted benzotriazole	49 FR 26802 (6/29/84)	Do.
84-872	Polymer of: epsilon-caprolactam, isophorone diisocyanate, dibutyl tin dilaurate, polycaprolactone triol	49 FR 28614 (7/13/84)	Sept. 19, 1984.
84-873	Generic name: Organo alumino silicate	49 FR 28614 (7/13/84)	Do.
84-874	Generic name: Hydroxyl-terminated polyurethane	49 FR 28614 (7/13/84)	Sept. 22, 1984.
84-875	Generic name: Isocyanate-terminated polyurethane	49 FR 28614 (7/13/84)	Do.
84-876	Generic name: Hydroxypropyl methylcellulose	49 FR 28614 (7/13/84)	Sept. 23, 1984.
84-877	Generic name: Polyamide polyether polymer	49 FR 28614 (7/13/84)	Do.
84-878	Generic name: Modified melamine/formaldehyde/alcohol resin	49 FR 28614 (7/13/84)	Do.
84-879	Generic name: Substituted heterocycle	49 FR 28614 (7/13/84)	Do.
84-880	Generic name: Modified melamine formaldehyde polymer	49 FR 28614 (7/13/84)	Do.
84-881	Generic name: Modified polymer of styrene with alkyl acrylate and alkyl methacrylates	49 FR 28615 (7/13/84)	Do.
84-882	3,5-dichloro-2-hydroxybenzenesulfonate, disodium	49 FR 28615 (7/13/84)	Do.
84-883	1,10-phenanthroline 1:1 salt with p-toluenesulfonic acid (p-TSA)	49 FR 28615 (7/13/84)	Do.
84-884	Generic name: 1-methyl-1-phenylethyl peroxyester	49 FR 28615 (7/13/84)	Do.
84-885	Generic name: Carboxylic acid chloride	49 FR 28615 (7/13/84)	Do.
84-886	Generic name: Triazine derivative	49 FR 28615 (7/13/84)	Sept. 24, 1984.
84-887	Generic name: Alkanedioic acid, alkyloxy sulfonyl, ammonium salt	49 FR 28615 (7/13/84)	Do.
84-888	Generic name: Substituted styrene	49 FR 28615 (7/13/84)	Do.
84-889	Generic name: Substituted benzaldehyde	49 FR 28615 (7/13/84)	Do.
84-890	Generic name: Substituted polystyrene	49 FR 28615 (7/13/84)	Do.
84-891	Generic name: Epoxy polyurethane	49 FR 28615 (7/13/84)	Sept. 25, 1984.
84-892	Generic name: Quaternized urethane compound	49 FR 28615 (7/13/84)	Do.
84-893	Generic name: Blocked diisocyanate	49 FR 28615 (7/13/84)	Do.
84-894	Generic name: Aromatic amine derivative	49 FR 28615 (7/13/84)	Do.
84-895	Generic name: Substituted-substituted benzenesulfonic acid coupled with substituted-substituted benzenes and substituted naphthalenedisulfonic acid, sodium salt.	49 FR 28616 (7/13/84)	Do.
84-896	Indole-3-acrylic acid	49 FR 28616 (7/13/84)	Sept. 26, 1984.
84-897	3,3',5,5''-tetramethylbenzidine dihydrochloride	49 FR 28616 (7/13/84)	Do.
84-898	Generic name: Polyester polyol	49 FR 28617 (7/13/84)	Do.

III. 113 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)

PMN No.	Identity/generic name	FR citation	Expiration date
80-146	Phosphorodithioic acid *O,O'*-di (isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters, zinc salt	45 FR 49153 (7/23/80)	July 29, 1984.
80-147	Phosphorodithioic acid *O,O'*-di (isohexyl, isoheptyl, isooctyl, isononyl, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Do.
84-111	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-112	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-113	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-114	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-115	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-116	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-117	Generic name: Substituted aromatic polymer	48 FR 50946 (11/4/83)	Do.
84-277	Generic name: Spiroglycol	48 FR 57619 (12/30/83)	July 20, 1984.
84-351	Generic name: Substituted benzophenone	49 FR 4256 (2/3/84)	July 5, 1984.
84-415	Chemically exfoliated vermiculite	49 FR 6993 (2/24/84)	July 12, 1984.
84-418	Generic name: Methyl ester of dicarboxylic acid	49 FR 7654 (3/1/84)	July 7, 1984.
84-430	Generic name: Substituted cyclopropane-carboxylic acid	49 FR 7656 (3/1/84)	July 21, 1984.
84-535	Generic name: Alkali metal polycarboxylate	49 FR 13745 (4/6/84)	July 25, 1984.
84-543	Glycine N-[4-[2[4-[1-amino-8 hydroxy-7-phenylazo-3,6-disulfonaphth 2-yl]azo]phenyl]-1,3 benzodiazole-6-yl]azo-3 hydroxyphenyl]-, a trisodium salt.	49 FR 14802 (4/13/84)	July 27, 1984.
84-555	Generic name: Alkylarylphosphonium halide	49 FR 14803 (4/13/84)	July 1, 1984.

III. 113 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
84-556	Generic name: Polyurethane polymer	49 FR 14803 (4/13/84)	Do.
84-557	Generic name: Substituted alkane diol	49 FR 14803 (4/13/84)	Do.
84-559	Generic name: Acrylated copolymer	49 FR 14804 (4/13/84)	Do.
84-560	Generic name: Acrylate copolymer	49 FR 14804 (4/13/84)	Do.
84-561	Generic name: Low molecular weight modified polyacrylate	49 FR 14804 (4/13/84)	July 2, 1984.
84-562	Polymer of: bromine, polystyrene	49 FR 14804 (4/13/84)	July 2, 1984.
84-563	1,3-phenylene bis (phenyl methanone)	49 FR 14804 (4/13/84)	Do.
84-564	1,3-di (1-phenyl-1-hydroxyethyl)benzene	49 FR 14804 (4/13/84)	Do.
84-565	Polymer of: alpha methyl styrene, 2-ethyl hexyl acrylate, hydroxy ethyl acrylate, cumene hydroperoxide, epsilon caprolactone, stannous octoate.	49 FR 14804 (4/13/84)	Do.
84-566	Polymer of: N-(isobutoxymethyl)acrylamide, methyl methacrylate, 2-ethyl hexyl acrylate, acrylic acid, t-butyl peroctoate	49 FR 14804 (4/13/84)	Do.
84-567	Generic name: 2-propenenitrile, polymer with disubstituted 1,3-butadiene	49 FR 14804 (4/13/84)	Do.
84-568	Generic name: Substituted tall oil polymer	49 FR 14804 (4/13/84)	Do.
84-570	Generic name: Alkyl substituted 4-amino, 1-8 naphthalimide	49 FR 14804 (4/13/84)	Do.
84-571	Benzene, 1,1'-ethylidenebis	49 FR 16833 (4/20/84)	July 4, 1984.
84-572	2, 5, 6-trimethyl-4-hepten-1-al	49 FR 16833 (4/20/84)	July 18, 1984.
84-573	3-L-n-menthoxypropane-1,2--diol	49 FR 16834 (4/20/84)	Do.
84-574	Vanillyl n-butyl ether	49 FR 16834 (4/20/84)	Do.
84-575	Acetyl dimethyl tetrahydronaphthaindane	49 FR 16834 (4/20/84)	Do.
84-576	4,4',6-trimethyl-2-(1-propenyl)-1,13-dioxane (cis and trans)	49 FR 16834 (4/20/84)	Do.
84-577	Methyl-2-(2-methyl-3-hydroxy-1-pentenyl)bicyclo (2,2,1)-5-heptene	49 FR 16834 (4/20/84)	Do.
84-578	Methoxy dimethyl tricyclo (5,2,1,0,^{2},^{6})decene	49 FR 16834 (4/20/84)	Do.
84-579	Generic name: Substituted alkenol	49 FR 16834 (4/20/84)	July 7, 1984.
84-584	Generic name: Methyl alkanoate ester	49 FR 16834 (4/20/84)	Do.
84-586	Generic name: Alkyl phosphate salt of polyamino amide	49 FR 16835 (4/20/84)	Do.
84-587	Generic name: Alkyl phosphate salt of polyamino amide	49 FR 16835 (4/20/84)	Do.
84-588	Generic name: Alkyl phosphate salt of polyamido polyamine	49 FR 16835 (4/20/84)	Do.
84-589	Generic name: Hydrazone	49 FR 16835 (4/20/84)	Do.
84-590	Generic name: Azo pigment	49 FR 16835 (4/20/84)	Do.
84-592	Generic name: Alkylated biphenyl	49 FR 16835 (4/20/84)	July 8, 1984.
84-593	Generic name: Diazotization product of substituted benzamide and substituted pyridine	49 FR 16835 (4/20/84)	Do.
84-594	Generic name: Dimer acids, dicarboxylic acid, diamines polyamide resin	49 FR 16835 (4/20/84)	Do.
84-595	Generic name. Polyester resin	49 FR 16835 (4/20/84)	Do.
84-596	2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-6-((2-hydroxy-5-sulfophenyl)azo) potassium salt	49 FR 16835 (4/20/84)	Do.
84-598	Generic name: Alkoxy functional alkyl substituted silicone resin	49 FR 16835 (4/20/84)	July 9, 1984.
84-599	Generic name: Acrylic resin	49 FR 15835 (4/20/84)	July 10, 1984.
84-600	Generic name: Acrylic resin	49 FR 16835 (4/20/84)	Do.
84-601	Generic name: Terpene ester	49 FR 18034 (4/26/84)	July 11, 1984.
84-602	Generic name: Polymerester	49 FR 18034 (4/26/84)	July 14, 1984.
84-603	Generic name: Polymerester	49 FR 18034 (4/26/84)	Do.
84-604	Generic name: Polymer from alkane diols, alkanedioic acid and a carbomonocyclic acid	49 FR 18034 (4/26/84)	Do.
84-605	Generic name: Polyester	49 FR 18034 (4/26/84)	Do.
84-606	Generic name: Polyester of aliphatic polyols, tall oil fatty acids, and aromatic dibasic acids	49 FR 18034 (4/26/84)	Do.
84-607	Generic name: Polyester polymer derived from glycols and diols and cyclic and alkyl dicarboxylic acids	49 FR 18034 (4/26/84)	July 15, 1984.
84-609	Generic name: Styrenated drying oil alkyd resin	49 FR 18034 (4/26/84)	Do.
84-610	Generic name: Polymer of acrylic acid, acrylic acid esters, and maleic anhydride	49 FR 18034 (4/26/84)	Do.
84-611	Generic name: Copolymer of acrylic acid, acrylic acid esters and maleic anhydride	49 FR 18035 (4/26/84)	Do.
84-612	Generic name: Isocyanato functional polycarbamoyl (polyalkylene oxide)oligomer	49 FR 18035 (4/26/84)	July 16, 1984.
84-613	Generic name: Isocyanato functional polycarbamoyl (polyalkylene oxide)oligomer	49 FR 18035 (4/26/84)	Do.
84-614	Generic name: Isocyanato functional polycarbamoyl ricinoleate	49 FR 18035 (4/26/84)	Do.
84-615	Generic name: Isocyanato functional polycarbamoyl (polyalkylene oxide)oligomer	49 FR 18035 (4/26/84)	Do.
84-616	Generic name: Isocyanato functional polycarbamoyl (polyalkylene oxide-co-ricinoleate)oligomer	49 FR 18035 (4/26/84)	Do.
84-617	Generic name: Isocyanato functional polycarbomoyl (polyalkylene oxide-co-ricinoleate)oligomer	49 FR 18035 (4/26/84)	Do.
84-618	Generic name: Isocyanato functional polycarbomoyl (polyalkylene oxide-co-ricinoleate)oligomer	49 FR 18035 (4/26/84)	Do.
84-619	Generic name: Tetrasubstituted indolium salt	49 FR 18035 (4/26/84)	Do.
84-620	Generic name: Disubstituted propenone	49 FR 18035 (4/26/84)	Do.
84-621	Reaction product of phthalocyanine, chlorosulfonic acid, phosphorus trichloride and p-aminophenol-beta-sulphate ethyl sulfonate, potassium salt.	49 FR 22866 (6/1/84)	July 17, 1984.
84-622	Alkyl polyether	49 FR 18035 (4/26/84)	Do.
84-623	Generic name: Cross-linked copolymer of 2 propenamide and 2 propenoic acid sodium salt	49 FR 18035 (4/26/84)	Do.
84-624	Generic name: Cyclic and aliphatic unsaturated ketones	49 FR 19111 (5/4/84)	July 18, 1984.
84-625	Generic name: 1,3 benzenedicarboxylic acid polymer with 1,2 propanediol, adipic acid, other dicarboxylic acids and polyols	49 FR 19111 (5/4/84)	Do.
84-626	Generic name. Organotin compound	49 FR 19111 (5/4/84)	Do.
84-627	Generic name: Organotin compound	49 FR 19111 (5/4/84)	Do.
84-628	Generic name: Modified methacrylate copolymer	49 FR 19111 (5/4/84)	Do.
84-629	Generic name: Modified epoxy resin	49 FR 19111 (5/4/84)	Do.
84-630	Generic name: Fatty alcohol, phthalic acid diester	49 FR 19111 (5/4/84)	Do.
84-631	Generic name: Trisubstituted benzenesulfonic acid derivative	49 FR 19111 (5/4/84)	Do.
84-632	Generic name: Diisocyanate polyether urethane prepolymer	49 FR 19111 (5/4/84)	July 21, 1984.
84-633	Polymer of: vinyl chloride, dimethyl ester of maleic acid, diethyl ester of maleic acid	49 FR 19111 (5/4/84)	Do.
84-634	Void		
84-635	Void		
84-636	Void		
84-637	Generic name: Modified acrylic resin	49 FR 19112 (5/4/84)	July 22, 1984.
84-638	Polymer of: neopentyl glycol, 1,6-hexanediol, isophthalic acid, butyl stannoic acid, adipic acid, phthalic anhydride and trimellitic anhydride.	49 FR 19112 (5/4/84)	Do.
84-639	Generic name: Aliphatic aromatic polyamic acid polymer	49 FR 19112 (5/4/84)	Do.
84-640	Void		
84-641	Invalid		
84-642	Cesium hydrogen carbonate (carbonic acid monocesium salt)	49 FR 19112 (5/4/84)	Do.
84-643	Copper permanganate	49 FR 19112 (5/4/84)	Do.
84-644	Zinc permanganate hexahydrate	49 FR 19112 (5/4/84)	Do.
84-645	Generic name: Terephthalic acid and aliphatic dicarboxylic acid polymer with polytetramethylene ether glycol and alkane diols	49 FR 19112 (5/4/84)	Do.
84-646	Generic name: Terephthalic acid and aliphatic dicarboxylic acid polymer with polytetramethylene ether glycol and alkane diols	49 FR 19112 (5/4/84)	Do.
84-647	Generic name: Styrene acrylate acrylic acid copolymer	49 FR 19112 (5/4/84)	Do.
84-648	Polymer of: neopentyl glycol, trimethylol propane, phthalic anhydride, maleic anhydride	49 FR 19113 (5/4/84)	July 23, 1984.
84-652	Generic name: Perfluoroalkyl phosphate	49 FR 19113 (5/4/84)	July 24, 1984.
84-653	Generic name: Perfluoroalkyl phosphate ammonium salt	49 FR 19113 (5/4/84)	Do.
84-654	Generic name: Magnesium carboxylate	49 FR 19113 (5/4/84)	Do.
84-655	Generic name: Cerium salt of fatty acid	49 FR 19113 (5/4/84)	Do.

III. 113 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
84-656	Generic name: Substituted ammonium phenyl-phosphonate	49 FR 19113 (5/4/84)	Do.
84-657	Generic name: Sulfonated amino naphthalene	49 FR 19113 (5/4/84)	Do.
84-658	Polymer of: epsilon-caprolactam, 2,4, toluene diisocyanate, epsilon-caprolactam triol	49 FR 19113 (5/4/84)	Do.
84-659	Generic name: Iron complex of a substituted phenyl azo	49 FR 19113 (5/4/84)	Do.
84-661	Generic name: Polyuethane plastics	49 FR 20061 (5/11/84)	July 25, 1984.
84-662	Generic name: Polyol resin	49 FR 20061 (5/11/84)	Do.
84-663	Generic name: Halogenated vinyl monomer	49 FR 20061 (5/4/84)	Do.
84-666	Generic name: Starch, 2 diethylaminoethylether hydrochloride, 2 acetamido-N-(2-substituted alkyl-) N-methylether	49 FR 20061 (5/11/84)	Do.
84-667	Generic name: Polyester from carbomonocyclic acid and alkylene glycol	49 FR 19114 (5/4/84)	July 22, 1984.
84-668	Generic name: Polyester from carbomonocyclic ester and alkylene glycol	49 FR 19114 (5/4/84)	Do.
84-670	Generic name: Polymer with methyl methacrylate, butyl acrylate, methacrylic acid and hydroxy acrylic monomers	49 FR 20061 (5/11/84)	July 29, 1984.
84-671	Generic name: Substituted-[4,5-dihydro-3-methyl-5-oxo-(substituted carbomonocylic)-1H-pyrazol-4-yl)azo]-benzenesulfonic acid	49 FR 20061 (5/11/84)	Do.
84-674	Cuprate(2), [substituted[[[3-(dimethylamino)propyl]amino]sulfonyl]-29H,31H-pnthalocyanine-substituted-sulfonato(4-)-N^{29},N^{30},N^{31},N^{32}]-, sodium formate.	49 FR 20062 (5/11/84)	Do.
84-675	4-Benzoyl-N,N,N-trimethylbenzenemethanaminium chloride	49 FR 20062 (5/11/84)	July 30, 1984.
84-676	Generic name: Methacrylate copolymer	49 FR 20062 (5/11/84)	July 31, 1984.

IV. 28 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Chemical identification	FR citation	Date of commencement
81-652	Generic name: Carbocyclic diisocyanate	47 FR 1020 (1/8/82)	June 12, 1984.
82-560	Generic name: Polymer of the homopolymer of hexane, 1,6-diisocyanato-, substituted alkyl alkanoates and a benzene derivative	47 FR 35334 (8/13/82)	June 15, 1984.
83-346	Polymer of 2-propenoic acid, 2-methyl-, methyl ester and 1,3-butyleneglycol diacrylate	48 FR 862 (1/7/83)	July 1, 1984.
83-681	Generic name: Carbocyclic isoyanate	48 FR 21376 (5/12/83)	June 12, 1984.
83-886	Generic name: Carbocyclic diol	48 FR 32381 (7/15/83)	June 8, 1984.
83-887	Generic name: Carbocyclic isocyanate	48 FR 32381 (7/15/83)	June 12, 1984.
83-889	Generic name: Carbocyclic urethane	48 FR 32382 (7/15/83)	Do.
83-891	Generic name: Carbocyclic urethane	48 FR 32382 (7/15/83)	Do.
83-943	Generic name: Vinyl aromatic methacrylate Polymer	48 FR 33533 (7/22/83)	June 18, 1984.
83-978	Generic name: Aromatic copolyester	48 PR 34507 (7/29/83)	Oct. 27, 1983.
83-992	Generic name: Copolymer of styrene and an alkyl methacrylate	48 FR 35713 (8/5/83)	June 21, 1984.
83-1043	Generic name: Hydrogen <2-[2-[a[2-hydroxy-3,5-substituted phenyl azo]-arylhydrazino]-4-substitutedaryl]cuprate, sodium salt	48 FR 37700 (8/19/83)	May 10, 1984.
83-1183	Generic name: Substituted polyalkylene polyamine	48 FR 41644 (9/16/83)	June 5, 1984.
84-32	Generic name: Aminomethylene phosphonic acid	48 FR 48865 (10/21/83)	Do.
84-174	Generic name: Titanium (4+) mixed alcohol complex	48 FR 50950 (11/4/83)	May 29, 1984.
84-210	Generic name: 4-substituted benzoyl chloride	48 FR 53162 (11/25/83)	June 20, 1984.
84-308	Generic name: Benzeneamine, 2-substituted-4-2[2-(5-substituted-2,3-dihydro-1,3,3-trialkyl-1H-indol-2-yl)ethenyl]-	49 FR 932 (1/6/84)	May 30, 1984.
84-336	Polymer of melamine, formaldehyde, o,p, toluenesulfonamide, methyl glucoside, sodium hydroxide, guanidine carbonate, magnesium bromide.	49 FR 3524 (1/27/84)	July 20, 1984.
84-337	Polymer of phenol, nonyl phenol, formaldehyde, methyl glucoside, sodium carbonate, ammonium sulfamate	49 FR 3524 (1/27/84)	July 5, 1984.
84-339	Polymer of phenol, nonly phenol, formaldehyde Reax 27D, methyl glucoside, sodium carbonate	49 FR 3525 (1/27/84)	Nov. 1984.
84-436	Cyano ethyl pullulan	49 FR 7656 (3/1/84)	June 12, 1984.
84-455	Generic name: Substituted tetrazole	49 FR 9015 (3/9/84)	May 29, 1984.
84-472	Generic name: Acrylic copolymer	49 FR 9954 (3/16/84)	June 4, 1984.
84-536	Generic name: Short oil coconut alkyd resin based on phthalic anhdride and mixed polyols	49 FR 13745 (4/6/84)	June 26, 1984.
84-540	Generic name: Siloyanes and silicones, dimethyl, methylfluoroalkyl	49 FR 13746 (4/6/84)	July 1, 1984.
84-545	Generic name: Mixed acrylic ester copolymer with monobasic acid modified alkyd resin	49 FR 14803 (4/13/84)	June 28, 1984.
84-550	Generic name: Soybean-tung polyurethane varnish	49 FR 14803 (4/13/84)	July 2, 1984.
84-553	Polymer of ethenyl benzene, isooctyl 2-propenoate, peroxide(3,3,5-trimethylcyclohexylidene)bis(1,1-dimethylethyl)	49 FR 14803 (4/13/84)	July 11, 1984.

V. 94 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED

PMN No.	Identity/generic name	FR citation	Date suspended
83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 46371 (10/18/82)	Oct. 22, 1982.
83-333	Generic name: Reaction product of polycyclesulfonic acid salt with phoshorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bisulfite alkali.	48 FR 73 (1/3/83)	Mar. 14, 1983.
83-401	Generic name: Naphthalenetrisulfonic acid, chlororriazinylamino-methoxymethylphenylazo-	48 FR 5304 (2/4/83)	Aug. 18, 1983.
83-418	Generic name: Benzenedisulfonic acid, chlorotriazinylaminodimethylphenylazo-sulfonaphthaleneazo-	48 FR 5306 (2/4/83)	Do.
83-461	Generic name: Substituted alkoxy silane	48 FR 7300 (2/18/83)	Apr. 25, 1983.
83-534	Generic name: Subsbtuted mono azo aromatic	48 FR 17385 (4/22/83)	July 5, 1983.
83-569	Generic name: Chromium complex of substituted phenolazosulfonaphthol with naptholazosulfonaphthol	48 FR 20490 (5/6/83)	Aug. 5, 1983.
83-677	Generic name: Chromium complex of substituted alkylaminoformimidphenol with sulfonaptholazosulfophenylpyrazolone	48 FR 20491 (5/6/83)	Do.
83-755	4-hydroxy-6-phenylaminonaphthalene-2-sulfonic acid	48 FR 24967 (6/3/83)	Aug. 17, 1983.
83-770	Generic name: Cobalt complex of a substituted phenolazonaphthol	48 FR 24968 (6/3/83)	Aug. 15, 1983.
83-771	Generic name: Chromium complex of substituted phenolazoalkylarylamino-formimidphenol with sulfonaphthylazosulfonaphthol	48 FR 24968 (6/3/83)	Do.
83-831	Generic name: Diazo solvent red dye	48 FR 29055 (6/24/83)	Sept. 9, 1983.
83-860	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30435 (7/1/83)	Sept. 21, 1983.
83-875	4-(2-cyano-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino]benzene	48 FR 31462 (7/8/83)	Do.
83-876	4-(2-cyano-4-nitrophenylazo)-[N,N-bis(2-propionyloxyethyl)amino]-3-chlorobenzene	48 FR 31462 (7/8/83)	Do.
83-913	Generic name: Copper sulfonylphenazopolyhydroxy phenazobenzoate	48 FR 32383 (7/15/83)	Oct. 1, 1983.
83-1006	Generic name: (Amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, and (amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, salts with sodium and potassium.	48 FR 36648 (8/12/83)	Oct. 14, 1983.
83-1007	Generic name: (Substituted)-(substituted)-hydroxy-naphthalenesulfonic acid, sodium salts	48 FR 36648 (8/12/83)	Do.
83-1012	Generic name: Bis(sulfophenylchlorotriazineaminosulfophenylazo) hydroxyaminodisulfonaphthalene	48 FR 36648 (8/12/83)	Oct. 24, 1983.
83-1018	Generic name: Substituted-napthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazo)phenyl] derivative	48 FR 36649 (8/12/83)	Do.
83-1029	Generic name: Substituted heterocycle	48 FR 37699 (8/19/83)	Nov. 3, 1983.
83-1033	Generic name: C_{6-8} carboxylic acid	48 FR 37700 (8/19/83)	Dec. 8, 1983.
83-1157	Generic name: Substituted oxirane	48 FR 41642 (9/16/83)	Feb. 2, 1984.
83-1162	Generic name: Substituted pyridine	48 FR 41643 (9/16/83)	Nov. 29, 1983.
83-1163	Generic name: Substituted pyridine	48 FR 41643 (9/16/83)	Do.
83-1222	Generic name: Substituted alkyl halide	48 FR 43399 (9/23/83)	Feb. 2, 1984.
83-1227	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.

V. 94 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Date suspended
83-1228	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
83-1229	Generic name: Perhalo alkoxy ether	48 FR 43399 (9/23/83)	Do.
83-1238	Generic name: Substituted anthraquinone	48 FR 43400 (9/23/83)	Dec. 9, 1983
84-7	N,N,N',N'-tetraglycidyl-1,3-bisaminomethyl cyclohexane	48 FR 46853 (10/14/83)	Dec. 21, 1983.
84-15	Generic name: Substituted heterocyclic metal complex	48 FR 48864 (10/21/83)	Jan. 3, 1984.
83-17	Generic name: Substituted heterocyclic metal complex	48 FR 48 (10/21/83)864	Mar. 1, 1984.
84-18	1(1,1 dimethylethoxy)-propan-2-ol	48 FR 48864 (10/21/83)	Jan. 6, 1984.
84-36	Generic name: Substituted heterocyclic metal complex	48 FR 48866 (10/21/83)	Mar. 1, 1984.
84-50	Generic name: Substituted heterocyclic metal complex	48 FR 50952 (11/4/83)	Do.
84-64	Generic name: Substituted-phenylamino monochloro-triazinylamine sulfophenylazo-substituted disulfonaphthalenylazo-naphthalene-disulfonic acid, hexasodium salt	48 FR 50953 (11/4/83)	Jan. 5, 1984.
84-66	Generic name: Substituted anthraquinone arylamine	48 FR 50953 (11/4/83)	Dec. 28, 1983.
84-99	Generic name: Hydroxylalkyl ether	48 FR 50945 (11/4/83)	Jan. 11, 1984.
84-108	Generic name: Trisubstituted heterocyclic disubstituted monocycle	48 FR 50945 (11/4/83)	Mar. 3, 1984.
84-121	Generic name: Substituted heterocyclic metal complex	48 FR 50946 (11/4/83)	Mar. 1, 1984.
84-224	Generic name: Alkoxylated bisphenol A, inorganic ester, monoethanolamine salt	48 FR 55332 (12/12/83)	Apr. 2, 1984.
84-274	Poly (OXY-1,4-butanediyl)-X-(1-OXO-2-propenyl)-w-[—1-XO-2-propenyl)OXY]-	48 FR 57619 (12/30/83)	Mar 7, 1984.
84-306	Benzoic acid, 2-(((2-((2-methyl-1-oxo-2-propenyl)oxy)ethyl)amino)carbonyl)oxy-, methyl ester	49 FR 932 (1/6/84)	Mar. 22, 1984.
84-307	2-propenoic acid, 2-methyl-, 2-((hexahydro 2- oxo-1H-azepin-1-yl)carbonyl)amino)ethyl ester	49 FR 932 (1/6/84)	Do.
84-341	Poly[oxy(1-oxo-1,6-hexanediyl)], alpha-hydro- omega-hydroxy-, ester with 3-hydroxy-2,2-dimethylpropyl 3-hydroxy-2,2-dimethylpropanoate (2:1), di-2-propenoate.	49 FR 3525 (1/27/84)	May 3, 1984.
84-342	Poly[oxy(1-oxo-1,6-hexanediyl)], alpha-(1-oxo-2-propenyl)-omega-[(tetrahydro-2-furanyl)methoxy]-	49 FR 3525 (1/27/84	) Do.
84-343	Poly[oxy(1-oxo-1,6-hexanediyl)], alpha-hydroxy-omega-hydroxy-, ester with 2,2'[oxybis (methylene)]bis[2-(hydroxymethyl)-1,3-propane-diol 2-propenoate.	49 FR 3525 (1/27/84)	Do.
84-344	2-propenoic acid, [2-[1,1-dimethyl-2-[(1-oxo-2-propenyl]oxy]ethyl]-5-ethyl-1,3-dioxan-5-yl] methyl ester	49 FR 3525 (1/27/84)	May 4, 1984.
84-356	Generic name: Polyaromatic urethane poly (unsaturated) ester	49 FR 6991 (2/2/84)	Apr 26, 1984.
84-375	Generic name: Sodium salt of alkyl dithiocar carbamates	49 FR 4981 (2/9/84)	May 11, 1984.
84-376	Generic name: Aryl esters of alkyl dithiocarbamates	49 FR 4981 (2/9/84)	Do.
84-378	Generic name: Aromatic sulfonate of substituted heteropolcycle	49 FR 6161 (2/17/84)	Apr 30, 1984.
84-379	Generic name: Aromatic sulfonate of substituted heteropolycycle	49 FR 6161 (2/17/84)	Do.
84-380	Generic name: Aromatic sulfonate of substituted heteropolycycle	49 FR 6161 (2/17/84)	Do.
84-382	2-propenoic acid 3-(2-hydroxyethoxy) 3-oxypropyl ester	49 FR 6161 (2/17/84)	June 11, 1984.
84-391	Generic name: Cuprate(5-), [5-hydroxy-2-[[4-[[5-hydroxy-6-[[2-methoxy-5-(substituted)phenyl]azo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl)amino)]-1,3,5-triazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalene-disulfonato(7-)], pentasodium.	49 FR 6162 (2/17/84)	Apr. 27, 1984.
84-392	Generic name: Alkoxylated cycloaliphatic diamine	49 FR 6162 (2/17/84)	Do.
84-393	Generic name: 2-Chloro-N-methyl-N-substituted acetamide	49 FR 6162 (2/17/84)	Apr. 24, 1984.
84-416	Dimethylbis(N-ethylacetamido)silane	49 FR 6993 (2/24/84)	May 11, 1984.
84-417	Generic name: Substituted phenol	49 FR 6993 (2/24/84)	May 1, 1984.
84-425	Generic name: Alkyl arylphosphonium salt	49 FR 7655 (3/1/84)	Apr. 13, 1984
84-460	Copper ferrocyanide salt of C. I. basic green I. and C. I. basic yellow I	49 FR 9015 (3/9/84)	May 9, 1984.
84-461	Copper ferrocyanide salt of C. I. basic blue II	49 FR 9015 (3/9/84)	Do.
84-462	Generic name: Substituted urethane ester	49 FR 9015 (3/9/84)	May 21, 1984.
84-464	Generic name: Halogenated aromatic ether	49 FR 9015 (3/9/84)	May 23, 1984.
84-467	Generic name: Hydrogen 2-[alpha-(2-hydroxy-3-sulfo-5-ethenylsulfonyphenylazo)-benzilidene-hydrazino]-5-=substituted, cuprate, sodium salt.	49 FR 9016 (3/9/84)	July 6, 1984.
84-482	Urea, condensate with poly[oxy(methyl-1,2-ethanedil), alpha-(2-aminomethylethyl)-omega-(2-aminomethylethoxy)	49 FR 9955 (3/16/84)	June 1, 1984.
84-485	Generic name: Poly(oxy-1,2-ethanediyl)alpha-acyl-w-alkyl	49 FR 11010	June 4, 1984.
84-491	Generic name: Substituted aliphatic acid halide	49 FR 11010 (3/23/84)	June 4, 1984.
84-492	Generic name: Substituted hydroxylamine	49 FR 11010 (3/23/84)	Do.
84-496	Generic name: Fatty alcohol, ethoxylated, propoxylated, fatty acid ester	49 FR 13746 (4/6/84)	June 1, 1984.
84-527	Generic name: Unsaturated amino alkyl ester salt	49 FR 13745 (4/6/84)	June 15, 1984.
84-537	Generic name: Unsaturated amino ester salt	49 FR 13745 (4/6/84)	Do.
84-538	Generic name: Disubstitutedsulfamoylcarbomonocycle azo substituted naphthalene sulfonic acid	49 FR 13745 (4/6/84)	June 21, 1984.
84-558	Generic name: Carboxylated alkane diol	49 FR 14803 (4/13/84)	June 27, 1984.
84-569	Generic name: Polychlorinated alkylated aromatic hydrocarbon	49 FR 14804 (4/13/84)	July 2, 1984.
84-591	Generic name: Sodium salt of an alkylated, sulfonated aromatic	49 FR 16835 (4/20/84)	July 5, 1984.
84-597	Generic name: Blocked aliphatic polyisocyanate	49 FR 16835 (4/20/84)	July 19, 1984.
84-606	Generic name: Substituted oxazinium salt	49 FR 18034 (4/26/84)	July 13, 1984.
84-649	Generic name: Chromate, bis(substituted substituted phenolato)inorganic salts	49 FR 19113 (5/4/84)	July 20, 1984.
84-650	Generic name: Chromate, bis(substituted substituted substituted pyrazolyl), sodium	49 FR 19113 (5/4/84)	Do.
84-651	Generic name: Chromate, bis(substituted substituted naphthalenolato)sodium	49 FR 19113 (5/4/84)	Do.
84-660	Generic name: Substituted aryl olefin	49 FR 19114 (5/4/84)	July 17, 1984.
84-664	Generic name: Chromate, (substituted substituted phenolato)(substituted substituted substituted substituted phenolato)sodium	49 FR 20061 (5/11/84)	July 20, 1984.
84-665	Generic name: Chromate, bis(substituted substituted substituted phenolato), sodium	49 FR 20061 (5/11/84)	Do.
84-669	Oleic, linoleic, palmitic acid ester of ethoxylated $C_{12}C_{14}$ alcohols	49 FR 20061 (5/11/84)	July 18, 1984.
84-673	Generic name: Chromate (substituted naphthalenolato)(substituted substituted naphthalenolato) inorganic salts	49 FR 20061 (5/11/84)	July 20, 1984.
84-688	2-Thiazolium, 2,2'-[(2-carboxy-p-phenylene) bis (iminovinylene)] bis [3-ethyl] diiodide triethylamine salt	49 FR 21114 (5/18/84)	July 27, 1984.
84-698	Generic name: 9,10-Anthracenedione sulfonic acid, sodium salt	49 FR 22129 (5/25/84)	July 25, 1984.
84-742	Generic name: Cross-linked modified polyvinyl amide	49 FR 22666 (6/1/84)	July 23, 1984.
84-809	Generic name: Polyesterimide resin	49 FR 24783 (6/15/84)	July 10, 1984.
84-840	Generic name: Modified epoxy resin	49 FR 25677 (6/22/84)	July 20, 1984.
84-841	Generic name: Modified epoxy resin	49 FR 25678 (6/22/84)	Do.

[FR Doc. 84-24751 Filed 9-19-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-395]

Atchafalaya Savings and Loan Association, Morgan City, LA; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 10, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Atchafalaya Savings and Loan Association, Morgan City, Louisiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Dallas, 500 East John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261–9026.

By the Federal Home Loan Bank Board.

J.J. Finn,
Secretary.

[FR Doc. 84-25011 Field 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-396]

First Federal Savings and Loan Association of Colorado Springs, Colorado Springs, CO; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Colorado Springs, Colorado Springs, Colorado for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Wasington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Topeka, Post Office Box 176, Topeka, Kansas, 66601.

By the Federal Home Loan Bank Board.

J.J. Finn,
Secretary.

[FR Doc. 84-25012 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-397]

First Federal Savings and Loan Association of Council Bluffs, Council Bluffs, IA; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Council Bluffs, Council Bluffs, Iowa, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

By the Federal Home Loan Bank Board.

J.J. Finn,
Secretary.

[FR Doc. 84-25013 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-391]

First Federal Savings and Loan Association of Nacogdoches, Nacogdoches, TX; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Nacogdoches, Nacogdoches, Texas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, 500 E. John Carpenter Freeway, P.O. Box 619026, Dallas, Ft. Worth, Texas 75261.

By the Federal Home Loan Bank Board.

J.J. Finn,
Secretary.

[FR Doc. 84-25007 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-399]

Freedom Federal Savings and Loan Association, Oak Brook, IL; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Freedom Federal Savings and Loan Association, Oak Brook, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Chicago, Illinois, 60601.

By the Federal Home Loan Bank Board.

J.J. Finn,
Secretary.

[FR Doc. 84-25015 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-392]

Frontier Federal Savings and Loan Association, Ponca City, OK; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 10, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Frontier Federal Savings and Loan Association, Ponca City, Oklahoma, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, P.O. Box 176, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-25008 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-398]

Home Federal Savings and Loan Association, Jonesboro, AR; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association, Jonesboro, Arkansas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, 500 East John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-25014 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-394]

Pioneer Federal Savings and Loan Association, Clearwater, FL; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 16, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pioneer Federal Savings and Loan Association, Clearwater, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-25010 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-393]

Valley Federal Savings and Loan Association, Easton, PA; Final Action Approval of Conversion Application

Date: September 14, 1984.

Notice is hereby given that on August 13, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Valley Federal Savings and Loan Association, Easton, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Pittsburgh, 11 Stanwix Street, 4th Floor, Gateway Center, Pittsburgh, Pennsylvania 15222.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-25009 Filed 9-19-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Village Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 11, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Village Financial Corporation,* Gilford, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Village Bank & Trust Company, Gilford, New Hampshire.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *National State Bancorporation,* Elizabeth, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The National State Bank of Elizabeth, New Jersey, Elizabeth, New Jersey.

C. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Comp One Corporation,* Piqua, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Piqua National Bank and Trust Company, Piqua, Ohio.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Banquers Holding Company,* Kenner, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Bankers Trust of Louisiana, Kenner, Louisiana.

2. *Whitney Holding Corporation,* New Orleans, Louisiana; to acquire 100 percent of the voting shares of The National Bank of Commerce in Jefferson Parish, Jefferson, Louisiana.

E. **Federal Reserve Bank of Chicago** (Franklin B. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Clintonville Bancshares, Inc.,* Clintonville, Wisconsin; to become a bank holding company by acquiring 83 percent or more of the voting shares of Dairyman's State Bank, Clintonville, Wisconsin.

2. *Plano Bancshares, Inc.,* Plano, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Plano, Plano, Illinois.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President),

400 South Akard Street, Dallas, Texas 75222:

1. *Union Central Corporation*, Temple, Texas; to become a bank holding company by acquiring 93 percent of the voting shares of The First State Bank, Granger, Texas.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Biltmore Bank Corp.*, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Biltmore National Bank, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, September 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24904 Filed 9-19-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grant for Venereal Disease Professional Education; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1985 for a Project Grant for Venereal Disease Professional Education to be funded under the Venereal Disease Control Grant Program as described in the Catalog of Federal Domestic Assistance Number 13.978. This program is authorized by section 318(c) of the Public Health Service Act, as amended (42 U.S.C. 247c(c)). Regulations governing Grants for Venereal Disease Control Programs are codified in Part 51b, Subpart D of Title 42, Code of Federal Regulations.

The objective of this grant program is to reduce morbidity and mortality from venereal disease by meeting the 1990 Objectives for the Nation to prevent cases and their complications. The professional education segment of the grant program is designed to meet the 1990 Objective for the Nation which states that 95 percent of health providers seeing suspected cases of sexually transmitted disease (STD) will be capable of diagnosing and treating all diseases and syndromes that fall within that definition. This will be accomplished by training, educating, and updating STD clinical personnel in the public and private sectors and demonstrating quality standards for the care of patients with STD. The achievement of the 1990 Objective to improve clinical capability and the other Objectives to reduce STD cases and complications are mutually dependent and are national in scope; therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of the local STD program and that both are coordinated with CDC to assure that the total training environment represents a national model. The objective of this specific grant offering is to establish an STD Prevention/Training (P/T) Center in the Southeastern United States to serve the clinical training needs of personnel primarily, although not exclusively, from that area. Any State or political subdivision of a State in Region IV of the Department of Health and Human Services (i.e., Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee) is eligible to apply for a grant. Applications may be submitted either as a competing new grant application or as a competing supplemental application to a current statewide 318(c) project grant awarded for venereal disease control activities.

Approximately $125,000 will be available in Fiscal Year 1985 to make one new grant award. The initial grant will begin January 1, 1985. A 1- to 5-year project period will be established for a new grant; for competing supplemental awards, the budget and project periods will coincide with those of the existing 318(c) grant for STD control activities. Continuation awards covering 12-month project periods will be made on the basis of satisfactory progress in meeting project objectives, compliance with the two CDC documents entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) and "Quality Assurance Guidelines for STD Clinics, 1982" (Clinic QAG), and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Applications submitted for competition must include a description of the following:

1. Evidence that the State/local health department administration is committed to working toward meeting the 1990 Objectives for the Nation, and specifically that 1990 Objective which relates to STD diagnosis and treatment. This requires a willingness to adhere to the Clinic QAG in providing diagnostic and treatment services and the P/T Center Guidelines in the training of health personnel.

2. A description of how the applicant will effectively coordinate P/T Center activities with the basic control components of the local STD program and coordinate both with CDC to assure that the total training environment represents a national model.

3. Evidence of support, experience, and a firm interest in participating, from a local university medical school. This activity requires a significant STD training component within the medical school and a liaison relationship between the faculty members and the local STD/VD program and its clinic(s).

4. Existence of sufficient medical school-health department liaison activities to develop and implement STD curricula in the proposed clinician training program.

5. The geographic location of the proposed P/T Center and its advantage for accessibility by students without competing with existing STD training sites.

6. Possible impact, both positive and negative, that the conduct of the proposed training initiative might have upon the objectives of the established State/local STD control program.

7. A detailed budget and justification of the grant funds requested.

Funds will not be awarded for the purchase of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T Center should be located in the health department facility. If a portion of available funds are requested to renovate existing space, the applicant must submit appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

Grant applications will be reviewed and evaluated according to the following criteria:

1. Does the applicant convey a satisfactory commitment from the State/local health department administration toward meeting the 1990 Objectives for the Nation, and specifically, that objective related to preparing health providers to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities?

2. Does the applicant satisfactorily describe how P/T Center activities will be effectively coordinated with the basic control components of the local STD program and how both will be coordinated with CDC to assure that the total training environment represents a national model?

3. Is the patient volume, the demographic variety of patients, and the morbidity at the proposed P/T Center clinic sufficient to support and stimulate the learning process?

4. Does the applicant adequately assure that STD diagnostic and treatment services will be provided principally in accordance with the Clinic QAG, in particular:

a. Will there be adequate space, staff, and hours of service (including evening sessions) to accommodate patient volume?

b. Will there be a continuity of patient care with no interim daily shutdowns?

c. Will clinic management responsibility be assigned to one person with clinical and/or administrative skills and experience?

d. Will diagnosis and treatment be provided for most STD's and their syndromes (e.g., syphilis, gonorrhea, nongonococcal urethritis, pelvic inflammatory disease, herpes, trichomoniasis, human papilloma virus, scabies, etc.)?

e. Will a nurse clinician or nurse clinician and physician assistant model of care be used?

f. Will an integrated flow be used which minimizes the number of patient stops and the amount of patient waiting time?

g. Will patients be seen, regardless of sex, by the next available clinician?

h. Will confidentiality be observed during both patient registration and patient care service delivery?

i. Will a standardized (e.g., "checkoff") STD medical record be employed?

j. Will there be an on-site laboratory facility which offers a range of available stat tests for commonly seen STD?

k. Will there be a quality assurance procedure through which clinical care is audited systematically and the proficiency of stat laboratory activities are assessed periodically through smear/culture and serologic test correlations?

l. Will CDC diagnostic guidelines be used (e.g., bimanual examinations for women, complete genital examinations for males)?

m. Will the policies and procedures of the STD clinic harmoniously complement the activities of the disease intervention outreach component of the program?

n. Will CDC recommended treatment schedules be used?

4. Does the applicant adequately assure that the development and operation of the clinical training component of the proposed P/T Center will be according to the P/T Center Guidelines, in particular:

a. Will there be adequate training space and assurances that it will be available for all scheduled courses?

b. Will classroom space be adequately furnished and equipped?

c. Will a P/T Center coordinator be identified or provided for through a proposal to create and fill the position?

d. Will a clerical resource be identified to assist the P/T Center coordinator or be provided for through a proposal to create and fill such a position?

e. Will the curricula be developed according to P/T Center Guidelines?

f. Will the clinic and stat laboratory practicum be structured so that participants are provided "hands-on" practice?

g. Will there be an evaluation of participant and medical school teaching faculty performance?

h. Will a minimum of 400 hours of instruction be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described in the P/T Center Guildelines?

5. Is there a commitment in principle from a local university medical school to participate with the applicant in establishing a P/T Center which addresses:

a. Part-time of a liaison/coordinating person (A physician, preferably a physician in the second or third year of a fellowship), with the expense of instructional services covered by the most cost-effective mechanism possible.

b. The medical school's participation in the development of curriculum governed by the P/T Center Guidelines.

c. A minimum of 400 hours of instruction be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described in the P/T Center Guidelines.

d. The medical school faculty assistance in clinic practicum through the use of residents or fellows.

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum.

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the P/T Center for training and clinic practicum.

6. Is the site of the proposed P/T Center sufficiently near other Southeastern STD project areas? Convenience should be a factor in attracting clinical training candidates from these localities and accessibility by car should be a reasonable option (since driving has been the common mode of travel used by people throughout Region IV to attend these courses)?

7. Is the location of the proposed P/T Center convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport?

8. Is there a constructive relationship between the proposed P/T Center and the needs, plans, and objectives of the State/local STD Program?

9. Is there a complementary relationship between the proposal to establish a P/T Center and other types of training which are currently being provided in the locality?

10. Is the budget request clearly explained, adequately justified, reasonable, cost-effective, and consistent with the intended use of grant funds?

In addition, it may be necessary for the Program Services Branch, Division of Sexually Transmitted Diseases, CDC, to conduct a site visit to assess the STD clinic(s), physical alteration plans, and organizational relationships of the proposed P/T Center.

The original and one copy of the application must be submitted to William B. Lyons, Executive Officer, Pubic Health Service, HHS Regional Office, Room 1110, 101 Marietta Tower, Atlanta, Georgia 30323, on or before 4:30 p.m. (e.s.t) on November 15, 1984.

Deadlines. Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date, or

2. Sent on or before 4:30 p.m. (e.s.t.) on November 15, 1984 and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications. Applications which do not meet the criteria in either paragraph 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and Regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974.

Information on application procedures, copies of application forms, copies of application guidelines, and other material may be obtained from

William B. Lyons, Executve Officer, Public Health Service, HHS Regional Office, Room 1110, 101 Marietta Tower, Atlanta, Georgia 30323, or by calling (404) 221–5917 or FTS 242–5917. Technical assistance may be obtained from Cheryl A. Blackmore, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329–2558 or FTS 236–2558

Dated: September 12, 1984.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 84–24841 Filed 9–19–84; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Suldixine Tablets™, Sudine® Tablets, Symbio® Injection; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's), one held by Bayvet Division of Miles Laboratories, Inc., and two held by Beecham Laboratories, Division of Beecham, Inc. The NADA's cover Bayvet's Suldixine™ (sulfadimethoxine) Tablets for treating bacterial infections in dogs and Beecham's Sudine® (sulfadimethoxine) Tablets and Symbio® (sulfadimethoxine) Injection for treating bacterial infections in dogs and cats. The sponsors requested the withdrawal of approval.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1846.

SUPPLEMENTARY INFORMATION: Bayvet Division of Miles Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, is sponsor of NADA 13–602 for Suldixine™ (sulfadimethoxine) Tablets originally approved on June 13, 1967, for treating bacterial infections in dogs. By letter dated May 10, 1984, Bayvet requested withdrawal of approval of the NADA because the drug is no longer being marketed and waived the opportunity for a hearing.

Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, is sponsor of NADA 13–526 for Sudine® (sulfadimethoxine) Injection for treating bacterial infections in dogs and cats. NADA 13–526 was originally approved on February 1, 1963, and NADA 13–527 was originally approved on July 26, 1963. By letter of June 1, 1984, Beecham requested withdrawal of approval of the NADA's because the drugs are no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 13–602 for Suldixine™ (sulfadimethoxine) Tablets, NADA 13–526 for Sudine® (sulfadimethoxine) Tablets, and NADA 13–527 for Symbio® (sulfadimethoxine) Injection is hereby withdrawn, effective October 1, 1984.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect these approvals.

Dated: September 7, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–24869 Filed 9–19–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84P–0277]

Canned Green Beans Deviating From Identify Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Truitt Brothers, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 19, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Truitt Brothers, Inc., P.O. Box 309, Salem, OR 97308, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the test product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120 with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Truitt Brothers Plant, Salem, OR 97308.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 19, 1984.

Dated: September 12, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–24871 Filed 9–19–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84P–0278]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Lakeside Packing Co. and Continental Can Co.. Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 19, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Lakeside Packing Co., P.O. Box 1127, Manitowoc, WI 54220, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the test product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Lakeside Packing Co. Plant, Manitowoc, WI 54220.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 19, 1984.

Dated: September 12, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-24872 Filed 9-19-84; 8:45 am]

BILLING CODE 4160-10-M

[Docket No. 84P-0279]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Rogers Walla Walla and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 19, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Rogers Walla Walla, P.O. Box 996, Walla Walla, WA 99362, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonable necessary to retain the green color of the test product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Rogers Walla Walla Plant, Milton-Freewater, OR 97862.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 19, 1984.

Dated: September 12, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-24873 Filed 9-19-84; 8:45]

BILLING CODE 4160-01-M

[Docket No. 84P-0281]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Friday Canning Corp. and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 19, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Friday Canning Corp., 150 West First St., Box 129, New Richmond, WI 54017, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the test product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Friday Canning Corp. plant, Cambria, WI 53923.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced into interstate commerce, but no later than December 19, 1984.

Dated: September 12, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-24674 Filed 9-19-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Hill-Burton Program; Medical Facility Construction and Modernization; Federal Right of Recovery and Calculation of Interest Charges

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: On July 18, 1984, the President signed the Deficit Reduction Act of 1984. The law contains several provisions affecting medical facilities which are assisted under the Hill-Burton Program and which transfer ownership or control or cease to be used as medical facility. These provisions include authority to waive the Federal right of recovery and methods of calculating interest when recovery is not waived.

FOR FURTHER INFORMATION CONTACT: Richard R. Ashbaugh, Assistant Surgeon General, Acting Associate Director for Health Facilities, Bureau of Health Maintenance Organization and Resources Development, 5600 Fishers Lane, Room 11-03, Rockville, Maryland 20857, Attention: Lynn Rothberg, 301 443-3466.

SUPPLEMENTARY INFORMATION: Section 2381 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended Sections 609 and 1622 of the Public Health Service (PHS) Act (42 U.S.C. 291; 300s-la), the sections relating to recovery of Federal funds from assisted facilities. Generally, these sections provide for recovery of the Federal share whenever there is a change of status in the facility, i.e., a transfer of ownership or control to a proprietary (private profitmaker) or when the use of the facility is changed.

The amendments to sections 609 and 1622 may be summarized as follows:

(1) The transferor of facility must provide written notice to the Secretary of a sale or transfer within 10 days of the sale or transfer;

(2) The owner of a facility, the use of which is changed, must provide written notice to the Secretary within 10 days of the change;

(3) For facilities that take longer than 180 days from the date of the change of status to negotiate a recovery amount, interest will begin to accrue on the eventual recovery amount beginning 180 days after receipt of the notice by the Secretary;

(4) For facilities that fail to notify the Department of Health and Human Services of a change in status (sale, transfer, or change of use) within 10 days of the change, interest will begin to accrue on the date of the change of status; and

(5) Proprietary entities that buy or obtain control of a Hill-Burton facility may be granted a waiver of recovery by the Secretary if the facility establishes an irrevocable trust in accordance with the statute that pays for medical care delivered to persons unable to pay.

Section 609 and 1622 of the PHS Act as amended continue to assert the Government's right of recovery on any facility that changes to ineligible control or use at any time within 20 years after the completion of construction. The most common cause for recovery has been sale or lease to an entity not originally eligible to have received Hill-Burton assistance, most commonly proprietary or investor-owned entities. Section 609 and 1622 also provide a general basis for calculating recovery claims, and provide for waiver of recovery if the Secretary determines there is good cause for other use of the facility.

Public Law 98-369 applies to Hill-Burton facilities as of July 18, 1984, the date of enactment of the law. Consequently, interest charges as specified in the law will be applied to recovery actions that are pending after that date. In the case of facilities which changed status before the date of enactment, interest would not begin to accrue until 30 days after enactment; but in no case earlier than 180 days from the date of the change of status regardless of when the facility notified the Secretary of the change.

The amendments to sections 609 and 1622 of the PHS Act now allow the Secretary the option of waiving recovery in situations where recovery was previously required. Accordingly, for a buyer to be eligible for a waiver of recovery, an irrevocable trust must be established to pay for care provided to those unable to pay. The buyer must establish this trust in an amount equal to the greater of (a) twice the amount of the remaining Hill-Burton uncompensated care obligation, or (b) the amount that would have been due under recovery. In addition to establishing a trust and complying with the Hill-Burton uncompensated services regulations, the new owner must also agree to comply with the Hill-Burton community service regulations (42 CFR Part 124, Subpart G).

The law requires that regulations be developed and published to implement the waiver option. This option will not be available to any facility that has entered into a recovery agreement.

In addition to the provisions described above, the amendments also require that the Secretary conduct a study to determine whether the Hill-Burton uncompensated services regulations should distinguish between hospitals and long-term care facilities assisted under Titles VI and XVI of the PHS Act.

Recovery provisions of section 609 also apply to those grant program projects which operated in conjunction with Hill-Burton, providing health facility construction grants approved under the signature authority of the Secretary (HHS/HEW). Section 609 is applicable to those projects aided either solely by the Hill-Burton program and/or one of the following programs: Public Works Acceleration Act of 1962, Pub. L. 87-658 (42 U.S.C. 2641 et seq.); District of Columbia Medical Facilities Construction Act of 1968, 82 Stat. 631 (Pub. L. 90-457); and Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.).

In addition, the following Federal grant programs are subject to the provisions of section 609 if the funds from the program provided supplementary assistance to Hill-Burton projects: Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, et seq.); and Local Public Works Capital Development and Investment Act of 1976 (Pub. L. 94-369).

Dated: September 10, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84-24867 Filed 9-19-84; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 29-30, 1984, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The Committee will meet in Building 31, Conference Room 6, C Wing.

The entire meeting will be open to the public from 9:00 AM to 5:00 PM on October 29, and from 8:30 AM to adjournment on October 30, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-1817, will furnish substantitve program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 12, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-24910 Filed 9-19-84; 8:45 am]

BILLING CODE 4140-01-M

Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, October 29-30, 1984, Conference Room 3, 1st Floor, A-Wing, Building 31, National Institutes of Health, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Monday, October 29, and from 8:30 a.m. to adjournment on Tuesday, October 30, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Public Inquiry and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. G. C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C-12, Federal Building, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: September 12, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-24911 Filed 9-19-84; 8:45 am]

BILLING CODE 4140-01-M

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended at 48 FR 54538, December 5, 1983), is amended to reflect the transfer of the health facilities construction activities under Titles VII and VIII from the Division of Facilities Financing to the Division of Facilities Conversion and Utilization in the Office of the Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development.

Under Section HB-10, Organization and Functions, make the following amendments:

1. In the statement for the Division of Facilities Financing, delete item number (4) and renumber (5) thru (8) to (4) thru (7) respectively.

2. In the statement for the Division of Facilities Conversion and Utilization, delete the "and" before item number (11), change the period at the end of item number (11) to a semicolon, and add the following after item (11):

"and (12) in close coordination with the Bureau of Health Professions, HRSA, develops regulations, policies, and procedures for administering and nonitoring health professions educational and nurse training facilities construction grant or loan programs."

Dated: August 10, 1984.

Robert Graham, M.D.,

Administrator, Health Resources and Services Administration.

[FR Doc. 84-24940 Filed 9-19-84; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-84-1451]

Advisory Committee on Contract Document Reform: Meeting

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of meeting of the Advisory Committee on Contract Document Reform.

SUMMARY: The eighth meeting of the Committee on Contract Document Reform has been scheduled for Tuesday, September 25, 1984 at 9:30 a.m. in the Under Secretary's Conference Room (10106) at the Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

The purpose of the meeting is to discuss and analyze suggested amendments to contract document clauses.

This meeting is open to the public. Any interested persons may attend, appear before, or file statments with the Committee. Oral statements may be made at the meeting at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Peter Tropp, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, Telephone: (202) 755-5561 (This is not a toll-free number).

Dated: September 17, 1984.

Philip Abrams,

Under Secretary, Department of Housing and Urban Development.

[FR Doc. 84-[illegible] Filed 9-19-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-84-1448]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatment of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Requisition of Funds, Requisition for Partial Annual Contributions (HAPP)
Office: Housing
Form number: HUD-52663
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 13,112
Status: Revision
Contact: Myra Newbill, HUD, (202) 755-5720;
Robert Neal, OMB, (202) 395-7316

Proposal: Inspection Form: Section 8 Existing Housing Program
Office: Housing
Form number: HUD-52580
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 400,000
Status: Revision
Contact: Gerald Benoit, HUD, (202) 755-5433;
Robert Neal, OMB, (202) 395-7316

Proposal: Section 8 Housing Assistance Payments Program—Report on Program Utilization—Existing Housing
Office: Housing
Form number: HUD-52683/52684
Frequency of submission: Quarterly
Affected public: State or Local Governments
Estimated burden hours: 16,000
Status: Revision
Contact: Myra Newbill, HUD, (202) 755-5720;
Robert Neal, OMB, (202) 395-7316

Proposal: Monthly Digest of Current Housing Situation—Quarterly Supplement
Office: Housing
Form number: HUD-2499 and 2499-A
Frequency of submission: Monthly and Quarterly
Affected public: Businesses or Other For-Profit
Estimated burden hours: 800
Status: Extension
Contact: John N. Dickie, HUD, (202) 755-7272;
Robert Neal, OMB, (202) 395-7316

Proposal: Voucher for Payment of Annual Contributions, HAPP (Housing Assistance Payments Program), and Operating Statement
Office: Housing
Form number: HUD-52681/52682
Frequency of submission: On Occasion
Affected public: State and Local Governments
Estimated burden hours: 19,558
Status: Revision
Contact: Myra Newbill, HUD, (202) 755-5720;
Robert Neal, OMB, (202) 395-7316

Proposal: Certification/Recertification of Tenant Eligibility and Worksheets for Computing Gross/Net Family Contribution
Office: Housing
Form number: HUD-50059, 50059 a, b, c, d, e, f, and g; and 50059 REF a, b, c, d, and f.
Frequency of submission: Annually
Affected public: Individuals or Households and Businesses or other For-Profit
Estimated burden hours: 2,96,333
Status: Revision
Contact: Judy Lemeshewsky, HUD, (202) 755-6870;
Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-24858 Filed 9-19-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1447]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Existing Housing Assistance Payments Program—Application for Existing Housing
Office: Housing
Form number: HUD-52515
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated burden hours: 6,000
Status: Revision
Contact: Myra Newbill, HUD, (202) 755-7707;
Robert Neal, OMB, (202) 395-7316.

Proposal: Section 8 Existing Housing Allowances for Tenant Furnished Utilities and Other Services
Office: Housing
Form number: HUD-52667
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated burden hours: 14,000
Status: Revision
Contact: Gail Williamson, HUD, (202) 755-6596;
Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 30, 1984.

Dennis F. Gear,
Director, Office of Information Policies and Systems

[FR Doc. 84-24659 Filed 9-19-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-1446]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgage Insurance—Single Family Claims Without Conveyance of Title
Office: Housing
Form number: None
Frequency of submission: On Occasion
Affected public: Business or other for-profit
Estimated burden hours: 31,000
Status: Revision
Contact: Sally McCormick, HUD, (202) 755-6672;
Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 27, 1984.

Dennis F. Gear,
Director,
Office of Information Policies and Systems.

[FR Doc. 84-24660 Filed 9-19-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-1445]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C, 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grant States Program
Office: Community Planning and Development
Form Number: None
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 26,400
Status: Revision
Contact: Bryant Monroe, HUD, (202) 755–6322;
Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 21, 1984.

Dennis F. Geer,

Director Office of Information Policies and Systems.

[FR Doc. 84–24861 Filed 9–19–84; 8:45 am]

BILLING CODE 4210–31–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–84–1449; FR–1987]

Announcement of the Local Property Urban Homesteading Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of solicitation for applications to participate in the Local Property Urban Homesteading Demonstration Program.

SUMMARY: HUD is soliciting applications from States and units of general local government to participate in a Local Property Urban Homesteading Demonstration Program. This Demonstration will encourage States and units of general local government to develop effective programs to use unoccupied, one- to four-family housing units that are in the process of public lien foreclosure (not necessarily meaning that the legal proceedings have commenced) by providing Section 810 funds for the acquisition of these local properties which are suitable for an urban homesteading program, as authorized by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181). Approved applicants (recipients) will be expected to provide program administration, interim property management, assurance of rehabilitation financing, and homeowner training and technical assistance.

DATE: Proposal due date: An application to participate in the Local Property Urban Homesteading Demonstration Program must be received by HUD or postmarked by 5:00 p.m. on October 22, 1984.

ADDRESSES: HUD requests two copies of the applications. One copy shall be sent to the HUD Field Office having jurisdiction over the applicant, attention Director, Community Planning and Development, and the other copy shall be sent to HUD Headquarters, listed below:

FOR FURTHER INFORMATION CONTACT: Richard R. Burk, Director, Urban Homesteading Program, or Lou Thompson, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington D.C. 20410, telephone (202) 755–5324. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

Section 810 of the Housing and Community Development Act of 1974 authorizes the HUD Urban Homesteading Program under which States and units of general local government acquire HUD-owned, unoccupied, unrepaired single family properties for no consideration. The States and local governments transfer the properties for a nominal consideration to individuals and families conditioned on their being rehabilitated and occupied as a principal residence for a period of three years (now five years). Subsequent amendments to Section 810 expanded the program to include the transfer of single family properties owned by the Secretary of Agriculture and the Administrator of Veterans Affairs. For these Federally-owned properties, funds appropriated for the Section 810 Urban Homesteading Program are used by HUD to reimburse the applicable Federal agency's housing loan fund for the value of the property transferred.

The Section 810 amendments contained in the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, Sec. 122) focused the priority of the Urban Homesteading Program toward providing homeownership opportunities for those individuals and families most in need of housing. They also give homesteaders three years to rehabilitate the property in order to let homesteaders use sweat equity in lieu of more expensive contract labor to do the needed rehabilitation work. The occupancy requirement was extended from three to five years. Additionally, the 1983 amendments authorized HUD to undertake a Local Property Urban Homesteading Demonstration Program under a new Section 810(i).

HUD is statutorily mandated to give a preference to demonstrations "involving the acquisition of properties that become available in satisfaction of public liens such as tax liens" (Section 810(i)(2)). To implement this provision for the demonstration, HUD will select only those applicants whose program designs limit acquisition to these properties. (See paragraph 2 of the "Program Requirements" section of this Notice.)

Purpose of Demonstration

Property abandonment is a serious problem for cities. It causes rapid decline of neighborhoods, decreases the local tax base, lowers property values, and increases costs (both public and private) to implement corrective measures. States and localities need to think more broadly about their abandonment problems and to develop strategies to reduce abandonment. The Local Property Urban Homesteading Demonstration Program is another mechanism that recipients may use to assist in their anti-abandonment efforts.

The purpose of the Local Property Urban Homesteading Demonstration Program is to test the feasibility of recipients (States and units of general local government) acquiring for homesteading use properties that are in the process of tax foreclosure. Recipients are encouraged to develop ways to acquire the properties prior to completion of the foreclosure process. In this regard, the Department is concerned that the often lengthy public lien foreclosure process may contribute to greater deterioration and abandonment of local properties than is necessary. While the Department recognizes that the public lien foreclosure procedures are designed to protect property owners from immediate loss of their properties and therefore their investments, the slowness of the process may create incentives for owners to disinvest and drain their properties of any or all economic value before they can become available for acquisition and future re-use by another owner.

The Department encourages recipients to select properties that are in the early stages of foreclosure, so that little deterioration has occurred and the rehabilitation costs will be affordable to homesteaders. This can be done through direct negotiation with the owner at any time during the foreclosure process. With respect to specific property eligibility requirements, see paragraph 2 under "Program Requirements."

Program Requirements

1. Eligible Applicants

Any State or unit of general local government as defined in 24 CFR Part 590 may apply to participate in the Local Property Urban Homesteading Demonstration Program. Preference will be given to applicants that submit innovative proposals meeting the purpose of the demonstration. Applicants need not have an existing urban homsteading program; however, those with existing homesteading programs may find it easier to develop applications because of their experience with the various legal and administrative problems involved and because of their already existing capacity to supervise and manage homesteading activities.

2. Eligible Properties

Any one- to four-family residence that is (a) "in the process of tax foreclosure," (b) not occupied by a person legally entitled to reside there, (c) in need of repair, and (d) designated by the recipient for use in a local property urban homesteading program, may be acquired using Section 810 funds (and any other available funds that the recipient may provide for acquisition). The recipient, or its agency designated to carry out the demonstration, must acquire unencumbered, fee simple title to the property, so that it is able to convey such title to the homesteader upon completion of the 5-year homesteading period and the other obligations of the homesteader agreement. (See paragraph 6.g. below.)

For the purpose of this demonstration, property "in the process of tax foreclosure" means property (a) for which taxes are delinquent and constitute a lien on the property, and (b) which is substantially within the tax foreclosure process, although not necessarily subject to judicial foreclosure proceedings. Since it is not possible in this Notice to specify a definition which would work in each community, each applicant shall submit its own proposed definition for HUD approval. Each applicant should review applicable laws and in its application propose an appropriate minimum level of involvement in the tax foreclosure process suitable for both the demonstration and local procedures and circumstances.

3. Eligible Costs

No local program administrative costs or costs of property rehabilitation may be paid with Section 810 funds. Costs payable from Section 810 funds are limited to the following:

(a) The actual cost of acquisition of unencumbered title to the property, which shall not exceed the greater of either the appraised as-is value of the property or the amount of the tax lien; however, in no case shall the cost of acquisition exceed $15,000 for a one-unit family residence and an additional $5,000 for each additional unit of two- to four-family residences.

"Appraised as-is value of the property" is defined as the fair market value of the property in its existing condition prior to acquisition, without the projected rehabilitation or improvements in the target neighborhood as determined by a qualified appraiser.

(b) Other reasonable costs related to property acquisition and closing that are customary charges paid by a purchaser of real property for the jurisdiction; for example, closing fees, acceptable title evidence, title policy, legal fees. These related costs may be added to the otherwise eligible amounts under paragraph (a).

4. Eligible Homesteaders

Homesteaders shall be "lower income families" as defined in Section 3(b)(2) of the United States Housing Act of 1937, which includes single person households. Generally, this means that the family's annual income does not exceed 80% of the median income for the area, adjusted for family size as determined by the Secretary. For the Demonstration, the family's annual income, permissible adjustments to income, and the median income for the area shall be determined in accordance with the requirements for the Section 8 Program in 24 CFR Part 813.

5. Resources Provided by HUD

HUD will set aside up to $1,000,000 of the amount appropriated under Urban Homesteading for each of Fiscal Years 1984 and 1985 for States and units of general local government to purchase one- to four-family residential properties, suitable for a local property urban homesteading program meeting the standards of this Notice. The cost of evaluating this demonstration is included in the set aside amount.

6. Local Property Demonstration Program Design

Each applicant has flexibility to design its program to meet local needs within the parameters of the demonstration. However, all program designs must contain the following:

a. *Property Selection:* (1) Properties must be in such condition that a lower income family can afford to make repairs and operate the property.

(2) No property may be selected which at the time of purchase is occupied by a person legally entitled to reside there, in order to avoid displacement of property owners and tenants.

(3) Recipients shall select properties that are in the process of tax foreclosure, as described in paragraph 2, Eligible Properties. Recipients shall describe their method for selecting eligible properties and identify the stage(s) in the process of tax foreclosure at which properties will be acquired.

(4) Recipients shall assist HUD in the environmental review process under 24 CFR Part 50, to the extent applicable. Before any specific property is acquired, the recipient shall submit to HUD a draft environmental review prepared in accord with Subpart E and Section 58.40, 24 CFR 58, which is the equivalent of 24 CFR Part 50 (relevant sections).

The recipient's environmental review should address acquisition and any expected rehabilitation activity. However, the recipient may report activities as categorically excluded under 24 CFR 58.35 and those which it finds do not trigger requirements under the authorities listed at 24 CFR 58.35. The review should include an assessment for activities, if any, not categorically excluded, and state the nature of activities, if any, that trigger one or more of the related authorities. The resulting review is to be transmitted to HUD, which will complete the final review, including public notice or consultation requirements, if any. HUD will notify the recipient of its review and any conditions. In preparing its review documents, the recipient may prepare a single review for each program property or a combined review covering all program properties in the same neighborhood, area or jurisdiction.

b. *Area Selection:* Recipients shall designate defined target areas where abandonment is taking place, and any other urban homesteading and community development activities which will complement the efforts of this demonstration.

c. *Rehabilitation Financing:* The recipient shall develop procedures to undertake, or to assist the homesteader in arranging financing for, the rehabilitation required under the homesteader agreement.

d. *Homesteader Selection:* All homesteaders shall be lower income individuals or families, as described in paragraph 4 above. The program shall provide equitable procedurs for selecting homesteaders which:

(1) Exclude those who own other residential property, except as otherwise approved by HUD on a case-by-case basis in writing where hardship would result; and

(2) Take into account the prospective homesteader's capacity to make or cause to be made the repairs and improvements required under the homesteader agreement (see Rehabilitation Standards below).

(3) In selecting homesteaders, recipients shall:

(a) Comply with the requirements of Title VI of the Civil Rights Act of 1964; Executive Order 11063; Title VIII of the Civil Rights Act of 1968; section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975 which prohibit discrimination on the basis of sex, race, religion, color, national origin, handicap, or age in any program or activity under this demonstration; and

(b) Employ affirmative marketing procedures in the advertising of homesteading properties. In order to provide all persons an opportunity to participate in the Urban Homesteading Program, the recipient shall advertise and use media, including minority outlets, that will reach persons least likely to apply for participation.

e. *Rehabilitation Standards:* (1) All properties shall be rehabilitated to repair all defects in the property that pose a substantial danger to health or safety within one year of the date of initial conveyance to the homesteader, and to meet applicable local standards for decent, safe, and sanitary housing within three years after the date of initial conveyance to the homesteader. Recipients are encouraged to experiment with amending property or code standards, changing material specifications, streamlining processing and inspections, limiting fees, and taking other actions to reduce costs.

(2) All rehabilitation activity on properties acquired under this demonstration shall comply with the Lead-Based Poising Act (42 (U.S.C. 4801, et seq.) and the HUD Lead-Based Paint Regulations, 24 CFR Part 35 to:

(i) Assure the elimination of the immediate lead-based paint hazards; and

(ii) Notify potential homesteaders of the hazards of lead-based paint poisoning in residential units constructed before 1950.

(3) Rehabilitation activity that meets the definition of "substantial improvement" in the National Flood Insurance Program regulations at 44 CFR 59.1 must meet the floodproofing standards of the National Flood Insurance Program if the property is located in a designated Flood Hazard Area.

(4) Rehabilitation activity that affects property included in or eligible for the National Register of Historic Places must be planned in accord with the Secretary of the Interior's *Standards for Rehabilitation*; and the State Historic Preservation Officer must be given an opportunity to comment on work affecting such historic property.

(5) All rehabilitation activity must comply with any energy conservation measures designated by the recipient as part of the repairs;

f. *Conditional Conveyance:* The recipient shall provide for the conditional conveyance of properties to homesteaders without any substantial consideration. The Department interprets "without any substantial consideration" to be $1 or the lowest amount required by State law to support a valid conveyance.

g. *Homesteader Agreement:* The recipient must provide for the execution, concurrently with or as a part of the conditional conveyance, of a Homesteader Agreement between the recipient and the homesteader which shall require the homesteader to:

(1) Repair all defects that pose a substantial danger to health and safety within one year from the date of initial conveyance of the property to the homesteader;

(2) Make or cause to be made additional repairs and improvements necessary to meet the applicable local standards for decent, safe, and sanitary housing within 3 years from the date of initial conveyance of the property to the homesteader and to comply with any energy conservation measures designated by the recipient as part of the repairs;

(3) Occupy the property as principal residence for not less than five consecutive years from the initial date of occupancy except as otherwise approved by HUD on a case-by-case basis under emergency conditions making compliance with this requirement infeasible;

(4) Permit inspections at reasonable times by employees or designated agents of the recipient to determine compliance with the agreement;

(5) Surrender possession of, and any interest in, the property upon material breach of the Homesteader Agreement (including default on any rehabilitation financing secured by the property as determined by the recipient in accordance with this Notice).

h. *Fee Simple Title:* The program shall provide for the conveyance of fee simple title to the property from the recipient to the homesteader without consideration upon compliance with the terms of the conditional conveyance and the homesteader agreement.

i. *Self-Help and Sweat Equity:* HUD encourages recipients to permit self-help and sweat equity in connection with the demonstration. The recipient shall identify the degree to which self-help and sweat equity are permitted in its program. Although the terms self-help and sweat equity are frequently used interchangeably, self-help is the more general term. Sweat equity projects normally involve homesteader participation in the physical rehabilitation and construction work itself, while self-help may take other forms: participating in planning, designing, decision making, or management, for example.

j. *Homesteader Training/Technical Assistance:* Participating recipients shall provide training and technical assistance when appropriate for homesteaders performing sweat equity and self-help. Additional training and technical assistance are encouraged for long-term home maintenance and management.

k. *Citizen Participation:* Recipients shall offer to meet with or invite written comments from community and neighborhood groups in connection with developing the application.

l. *Interim Liability:* By accepting title to a property for homesteading, the recipient shall assume liability for injury or damage to persons or property by reason of defect in the dwelling, its equipment or appurtenances, or for any other reason related to ownership of the property.

7. Application Requirements for Demonstration

a. Applicants interested in participating in the Local Property Demonstration Program must submit an application (Standard Form 424) to the HUD Field Office having jurisdication no later than 30 days from the effective date of this Notice. (See Proposal Due Date, above.) The application shall include in 20 pages or less the following:

(1) A description of the program design in Item 6.

(2) A description of how the applicant's participation in the Demonstration will complement any other anti-abandonment strategies that it already has.

(3) An estimate of the amount of Section 810 funds required to acquire properties, and an estimate of the number of properties and dwelling units the applicant expects to obtain during the Demonstration. In the case of recipients with existing local urban homesteading programs, the number of local properties identified must be in addition to the average number of local properties conveyed under the existing program during the previous three years.

(4) A description of the financing mechanisms proposed to assist homesteaders.

(5) A description of any local resources for acquisition, rehabilitation, homesteading implementation, training, and technical assistance.

(6) A management and work plan with schedules for implementing all program tasks.

(7) A map of the applicant's jurisdiction designating target areas.

(8) Designation of the public agency responsible for implementing the demonstration, including its administrative, managerial, and legal relationship to the applicant, and a description of its experience in acquisition/rehabilitation/homesteading/training and technical assistance, or a similar program that is providing or assisting homeownership for lower income persons.

(9) Certifications: The applicant shall certify that:

(a) Submission of the application is authorized under State and local law) as applicable) and the applicant, or its designated agency, possesses the legal authority to carry out the Local Property Urban Homesteading Demonstration in accordance with this Notice; and

(b) The applicant will conduct and administer its local property urban homesteading program and, if applicable, ensure that its designated public agency conducts and administers its program in accordance with the requirements of this Notice.

(10) A definition of property in the process of tax foreclosure applicable to the jurisdiction. This involves reviewing applicable laws and defining a minimum point in the tax foreclosure process wherein the applicant will become involved in acquiring a property. (See paragraph 2, Eligible Properties.)

(11) Any additional documentation HUD requests.

8. Application Review and Approval Procedures

The application review will be conducted by HUD Field Office staff and Headquarters staff. The overall quality of each design will be the predominant factor in our selection process. In evaluating designs of equal quality, we will attempt to maximize variation and thereby improve the scope of information from the Demonstration. This will permit HUD to formulate policy providing the most assistance to other States and units of general local government with similar problems.

a. Applications will be reviewed by HUD Field Office staff, and the Manager will make recommendations to the Assistant Secretary for Community Planning and Development, through the Regional Administrator, within 20 calendar days of the original due date of the application.

The Field Office evaluation shall consider:

(1) The feasibility of the program design and the probable ability of the applicant to immediately implement and successfully carry it out on schedule, given the resources available.

(2) The relevance of the applicant's stated experience with homesteading or other similar programs that provided homeownership opportunities for lower income persons.

(3) The supply of properties not occupied by a person legally entitled to reside there that are in the process of tax foreclosure and that meet the other property selection criteria (see paragraph 6(a) above).

(4) The soundness of the Section 810 funding request and the applicant's statement of any other resources for acquisition, rehabilitation financing, training, etc.

(5) The previous experience of the Field Office with the applicant in Community Development, Housing, and Fair Housing and Equal Opportunity matters;

(6) The overall judgment of the Field Office on whether and how well the proposed program will achieve the purpose of the demonstration.

b. The Assistant Secretary for CPD will review the Field Office recommendations and make final selections of recipients within 15 days of the Field Office submissions. Preference will be given to applications in which the applicant (in the case of a State application, the localities) will forgive all or part of the taxes owed as part of its contribution to the demonstration. Approximately 5 applicants will be selected.

c. Within 30 days after the announcement of the recipients, HUD will reserve Section 810 funds for the recipient and execute and transmit to the recipient a Local Property Urban Homesteading Agreement in the form prescribed by HUD. This agreement will then be executed by the State or unit of general local government, and the designated independent public agency, if any, and returned to HUD.

d. Recipients shall begin acquiring properties for his demonstration within 45 days from the date HUD obligates funds (see paragraph e. below). All acquisition shall be completed within two years after the date of obligation. Transfers of properties from the recipient to homesteaders shall occur within 90 days from acquisition by the recipient of unencumbered title, except where a longer period is approved by HUD.

e. Upon receipt of an executed agreement by HUD's Accounting Division, Section 810 funds will be obligated for the recipient in the amount specified in the agreement. This is the maximum amount that will be available to the locality to acquire properties. A letter of credit will be issued for the amount obligated. To acquire properties, the recipient may draw down on its letters of credit in amounts that exceed $5,000, for payment of eligible costs as described in paragraph 3 of the "Program Requirements" portion of this Notice.

9. Local Property Urban Homesteading Agreement

The homesteading agreement will be executed by HUD and the recipient, and any designated independent public agency, prior to any obligation of Section 810 funds. The homesteading agreement shall provide for remedial actions for violation of the conditions of the Demonstrations, including reimbursement to HUD, where appropriate.

10. Monitoring and Reporting and Amendments

a. HUD staff will monitor each recipient's progress. Each recipient shall report quarterly on its problems and experiences in a format prescribed by HUD. HUD will require approval of changes in the program designs previously approved, to the extent specified in the Local Property Urban Homesteading Agreement.

b. As required by Congress, HUD will evaluate the demonstration. Participating States and units of general local government shall cooperate with HUD by providing needed information and by facilitating HUD's access to the homesteaders, and the to the recipients' financial records.

c. HUD will report to Congress on the results of the demonstration program by December 31, 1985.

11. Waiver Authority

HUD may waive any requirement of this Notice not required by law whenever it determines that undue hardship would result from applying the requirement or where applying the requirement would adversely affect achievement of the purpose of the demonstration.

12. Retention of Records

The recipient shall maintain adequate financial records, property closing documents, supporting documents, statistical records, and all other records pertinent to the local property urban homesteading demonstration for one year after conveyance of fee simple title to the homesteader.

13. Audit

a. *Access to records.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of the recipient pertaining to funds or property transferred under this Notice, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

b. *Audit.* The recipient's financial management system shall provide for audits in accordance with audit guidelines prescribed by Office of Management and Budget (OMB) Circular A-102, Attachment P—Audit Requirements.

Other Matters

Pursuant to the provisions of 5 U.S.C. Section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities because of the low funding level of the demonstration and the anticipated selection of only 5 entities.

This Notice does not constitute a "major rule" as that term is defined in Section (b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the Notice indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

This Notice does not significantly affect the environment. A Finding of No Significant Impact respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures (24 CFR Part 50). A copy of this Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at Room 10278, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410–7000.

The Catalogue of Federal Domestic Assistance program number and title are 14.222, Urban Homesteading.

Authority: Section 810(i) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 13, 1984.

Jacks R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84–24863 Filed 9–19–84; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N-84-1450; FR-2021]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice sets the deadline dates for filing applications for funds from the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1985. Applications are required in order to provide HUD with the information necessary to rate the proposed project(s) and to assure HUD that the necessary citizen participation has taken place.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia A.B. Brown, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410, (202) 755–6092. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This notice sets the deadline dates for submitting applications for the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. These dates apply only to applications submitted by Indian Tribes and Alaskan Native Villages for Fiscal Year 1985.

The field responsibility for the administration of the program is divided among the following offices: Region V Office of Indian Programs (OIP) in Chicago, responsible for all HUD Indian program activities within Region I–V, plus the State of Iowa; Oklahoma City Office, responsible for all HUD Indian program activities in the States of Arkansas, Texas, Oklahoma, Kansas, Louisiana and Missouri; Region VIII OIP in Denver, responsible for all HUD Indian program activities in Region VIII, plus the State of Nebraska; Region IX OIP in Phoenix, responsible for all HUD Indian program activities in Region IX, plus the State of New Mexico; Region X OIP in Seattle, responsible for all HUD Indian program activities in Region X with the exception of the State of Alaska; and the Anchorage Office, responsible for all HUD Indian and Alaskan Native program activities in the State of Alaska.

As of the publication date of this notice, applications will be accepted by HUD.

Final Dates for Submission

Offices	No later than—[1]
Region V, OIP	Jan. 11, 1985.
Oklahoma City Office	Dec. 7, 1984.
Region VIII, OIP	Mar. 15, 1985.
Region IX, OIP	Feb. 15, 1985.
Region X, OIP	Dec. 17, 1984.
Anchorage Office	Jan. 28, 1985.

[1] Applications must be received or postmarked no later than the date specified. Applications received or postmarked after the deadline will not be considered.

Tribes and Villages submitting applications for this program must do so on HUD forms approved by the Office of Management and Budget under OMB Control Number 2506–0043. These forms request information which is necessary to rate the proposed project(s) and which assures HUD that the necessary citizen participation has taken place. Forms will be provided by the appropriate HUD Field Offices.

(Catalog of Federal Domestic Assistance number is 14.223)

(Sec. 107, of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); Sec. 7(d), of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: September 13, 1984.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84–24862 Filed 9–19–84; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–35082]

Conveyance of Public Lands; Order Providing for Opening of Lands, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 139,760.26 acres of public lands out of Federal ownership. This action will also open 139,009.37 acres of reconveyed lands to surface entry.

EFFECTIVE DATE: October 29, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. (Telephone 503–231–6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 139,760.26 acres of lands in Harney, Lake, and Malheur Counties, Oregon, from Federal to State ownership with a reservation of all minerals to the United States.

2. In the exchange, the lands described in the State of Oregon Deed dated April 30, 1984, have been reconveyed to the United States. The deed has been recorded in the Harney County Courthouse on May 7, 1984, in book 120, page 705. The lands contained in the deed aggregate 139,009.37 acres (130,159.99 acres in Harney County, 3,720 acres in Lake County, and 5,129.38 acres in Malheur County).

3. The mineral estate in the following described lands is already in United States ownership and remains open to operation of the United States mining laws and mineral leasing laws:

Willamette Meridian

T. 30 S., R. 32 E.,
  Sec. 34, SE¼NE¼ and E½SE¼;
  Sec. 35, S½SW¼, NE¼SE¼, and S½SE¼;
  Sec. 36, E½, E½NW¼, and SW¼.
T. 31 S., R. 33 E.,
  Sec. 18, SE¼;
  Sec. 19, NE¼NE¼;
  Sec. 20, W½NE¼, SE¼NE¼, NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼.
T. 30½ S., R. 34 E.,
  Sec. 28, SW½ and W¼SE¼;
  Sec. 29, SE¼;
  Sec. 32, N½NE¼;
  Sec. 33, NW¼NE¼, N½NW¼, and SW¼NW¼.
T. 22 S., R. 35 E.,
  Sec. 15, S½;
  Sec. 20, SE¼NE¼, SE¼SW¼, and SE¼;
  Sec. 21;
  Sec. 22, W½;
  Sec. 27, N½NW¼ and SW¼NW¼;
  Sec. 28, N½NE¼, SE¼NE¼, and SE¼SW¼;
  Sec. 29, NW¼NE¼ and N½NW¼.
T. 23 S., R. 37 E.,
  Sec. 31, lots 1, 2, and 3, E½, and E½W½.
T. 24 S, R. 37 E.,
  Sec. 6, lot 1.

The areas described aggregate 4,729.30 acres in Harney and Malheur Counties, Oregon.

4. The mineral estate in the reconveyed lands, except as provided in paragraph 3, was not reconveyed to the United States and remains out of Federal ownership.

5. At 8:30 a.m., on October 29, 1984, the reconveyed lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 29, 1984, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: September 11, 1984.

L.D. Morrison,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. [illegible] Filed [illegible]; [illegible] am]

BILLING CODE [illegible]

[U–47396]

Notice of Realty Action Sale of Public Lands in Washington County, UT

AGENCY: Bureau of Land Mangement, Interior.

ACTION: It is proposed to sell 40 acres of public land under the authority of Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713). The land is described as the NW¼SE¼ of Section 17, Township 42 South, Range 16 West, SLBM. Method of sale will be by sealed bids subject to a preference consideration to allow Norman Gubler and Emil Gubler Estate to meet the high bid. Minimum acceptable bid will be $40,000.

The sale will be held at 2:00 p.m. on November 30, 1984, at the BLM Dixie Resource Area Office, 225 North Bluff, St. George, Utah.

SUMMARY: The land has been identified for disposal by the Management Framework Plan for the Virgin River Planning Unit and the Land Report prepared for the Dixie Withdrawal Revocation. There are no significant or critical resource values present. It has been determined to meet disposal criteria of the Federal Land Policy and Management Act, Section 203(a)(1) in that it is difficult and not economical to manage.

The tract contains improvements consisting of a sprinkler system and agricultural development authorized under a previous Bureau of Reclamation agricultural lease.

DATE: Comments should be submitted within 45 days from the date of this notice.

ADDRESS: Comments should be sent to: Area Manager, Dixie Resource Area Office, Bureau of Land Management, 225 North Bluff, P.O. Box 726, St. George, Utah 84770. Detailed information concerning the sale and bidding procedure is available at the Dixie Resource Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for surface estate only.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of

the United States, Act of August 30, 1980 (43 U.S.C. 945).

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any action by the District Manager, this notice will become the final determination of the Department of the Interior.

Dated: September 14, 1984.

Morgan S. Jensen,

District Manager.

[FR Doc. 84–24848 Filed 9–19–84; 8:45 am]

BILLING CODE 4310–DQ–M

[ORE–016183B, ORE–016183D]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a land withdrawal for recreation sites in the Roseburg and Medford Districts continue for an additional 20 years. The lands would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

The Bureau of Land Management proposes that the existing land withdrawal made by Public Land Order No. 3869 of November 12, 1965, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved total 1,451.23 acres within Douglas, Jackson, Josephine, and Klamath Counties, Oregon.

The purpose of the withdrawal is to protect 17 separate recreation sites within the Roseburg and Medford Districts. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: September 13, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–25042 Filed 9–10–84. 8.45 am]

BILLING CODE 4310–33–M

Oregon: Wild Horse Gathering Schedule Meeting Notice

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Burns District Office: Statewide Wild Horse Gathering Schedule Public Meeting.

SUMMARY: In accordance with Pub. L. 92–195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY 85 and 86.

DATE: October 3, 1984—9:00 A.M. to 11:00 A.M.

ADDRESS: The meeting will take place at the Harney County Courthouse in Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720—Telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in Fiscal Year 1985 and 1986 will be discussed along with other aspects of gathering and the adoption process.

The gathering schedule listed below is subject to change depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

GATHERING SCHEDULE FOR FISCAL YEARS 1985 AND 1986

Fiscal year and herd area		Estimate No to gather
1985	Sheepheads/Heath Creek [1]	450
1985	Riddle Mountain	140
1985	Beatty Butte	249
1985	Browns Valley	42
1985	South Steens (Skull Creek)	259
	Total	1,140
1986	Basque	71
1986	Palomino Buttes	56
1986	Cold Springs	304
1986	East Warm Springs	180
1986	Sand Springs	432
	Total	1,043

[1] The public notice for this herd gathering was covered in a separate public meeting on September 17, 1984 in Vale, Oregon

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, 74 South Alvord, Burns, Oregon 97720, by October 1, 1984. Written statements must also be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: September 14, 1984.

Joshua L. Warburton,

District Manager.

[FR Doc. 84–25041 Filed 9–19–84; 8:45 am]

BILLING CODE 4310–33–M

[Designation Order NV–050–8401]

Nevada Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Designation Decisions.

SUMMARY: All public lands administered by BLM in the 3,097,131 acre Stateline-Virgin Valley Planning area of the Las Vegas District are hereby designated open, limited, or closed to off-road motorized vehicle use in accordance with executive orders and as a result of the Bureau's Planning System.

SUPPLEMENTARY INFORMATION: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited, or closed to off-road motorized vehicle use.

The 3,097,131 acre area affected by the designations is known as the

Stateline-Virgin Valley Planning Units, which include all public lands in Clark County, Nevada. These designations are a result of resource management decisions made in the 1984 Clark County Management Framework Plan III. Comments and recommendations which came as a result of the Clark County Coordinated Resource Management and Planning effort as well as other written responses influenced the designation decisions. The Coordinated Resource Management and Planning effort consisted of a committee of interested citizens representing 36 groups and clubs, 17 federal, state and local agencies, and numerous individual citizens representing at least 26 separate resource interests. This committee held 16 public meetings and working sessions, 5 sub-committee meetings, 3 planning meetings, and 5 field trips to selected areas of concern. These designations are published as final today. Under 43 CFR 4.2 an appeal may be filed within 30 days with the Interior Board of Land Appeals.

A. *Open Designation.* Areas which are designated open comprise approximately 1,182,646 acres. Open designation was determined to be appropriate for these public lands since off-road vehicle use is an important recreational activity and is essential for the conduct of other authorized resource uses.

B. *Limited Designation.*

1. Use limited to existing roads, trails, courses and sand washes—841,283 acres.

a. The Gold Butte area is located 70 miles northeast of Las Vegas, Nevada. It is bounded by the Nevada-Arizona border on the east, the Virgin River-Overton Arm on the north and west and Lake Mead National Recreation Area on the south and west. This designation is made for the protection of small game, desert tortoise and bighorn sheep habitat. Additionally, no high speed competitive events will be allowed.

b. Buffington Pockets-Colorock Quarry is located 35 miles northeast of Las Vegas, Nevada in the Muddy Mountains. It consists of the access corridors into Colorock Quarry and Buffington Pockets and the areas one mile on either side of these roads. This designation is made to protect the geologic and archeological features of the area. Additionally, no high speed competitive events will be allowed.

c. The Spring Mountains are adjacent to the west side of Las Vegas, Nevada. The area boundaries are the 5,000 foot elevation line on the southwest and west, Highway 95 on the north and northeast, the Pahrump Highway on the south, and the Las Vegas Valley Subunit boundary on the east excluding Red Rock Canyon Recreation Lands. The designation is made to maintain the high recreational and scenic values of the area. Additionally, no high speed competitive events will be allowed except for high speed, street legal, rally events on Bureau of Land Management's (BLM) Trout Canyon to Lovell Canyon road.

2. Limited Season of Use—189,101 acres.

a. The Pahranagat-Meadow Valley Wash area is 20 miles northwest of Moapa, Nevada. It is bounded on the east by the escarpment of the Upper Mormon Mesa, excluding the area north of Ferrier; on the south by I-15, Highway 7 and Pahranagat Wash north of Highway 7, excluding Arrow Canyon; on the west by Highway 93; and, on the north by the Lincoln County line. High speed competitive events can only occur from November to April and are limited to two, non-pre-run, motorcycle events per year and one, pre-run, dune buggy event per year. The dune buggy race will take place on a designated route along old U.S. 93 and old Highway 7. These limitations are applied to minimize conflicts with bighorn sheep migrations and critical summer habitat.

b. McCullough Pass, located 37 miles south of Las Vegas, Nevada, is closed to competitive events during July and August to eliminate conflicts with bighorn sheep migration.

c. The southern Spring Mountain Range and Bird Spring Range are centered 35 miles southwest of Las Vegas, Nevada. The area is bounded by the 5,000 foot elevation line on the west side of the southern Spring Mountains, the 4,000 foot elevation line on the west side of the Bird Spring Range, by the Nevada-California border on the south, the 4,000 foot elevation line on the east and the Pahrump Highway and the southern border of Red Rock Canyon Recreation Lands on the north. The area is closed to all pre-run events, November through January, and limited to three pre-run events, May through August, to minimize conflicts with bighorn sheep migrations and critical bighorn and quail summer habitat.

3. Use limited to designated roads only—61,861 acres.

Red Rock Canyon Recreation Lands is located 20 miles west of Las Vegas, Nevada. Vehicle use in this area is permitted on designated roads only. All roads closed to vehicle use will be posted. Road closures will be for the protection of the unique natural character of the area and the high recreational value it supports. To protect its high archeological values, Brownstone Canyon in the northeast corner is closed to vehicles except for maintenance and, by permit, special handicapped or senior citizen groups. Additionally, no high speed competitive events will be permitted north of the Pahrump Highway.

4. Limited type of use—438,842 acres.

a. The southern Eldorado Valley and northern Piute Valley area is located 50 miles southeast of Las Vegas, Nevada. The area is bounded on the north by the Nelson graded road and the common line between T.25S. and T.26S., on the west by the lower flanks of the South McCullough Range, on the southwest by the Nevada-California border, on the southeast by the crucial desert tortoise habitat area and Highway 95, and on the northeast by the Lake Mead National Recreation Area boundary. The area is limited as follows to protect small game and desert tortoise habitat.

(1) *Non-Spectator Speed Events* (Motorcycles).

Limited to 200 entrants; no pre-running; avoid scheduling events on opening weekend of game seasons.

(2) *Sport Car Rallies* (street legal only).

Limited to 200 entrants; designated routes only.

(3) *Non-Speed Events* (All types of vehicles).

Limited to 200 entrants; avoid scheduling events on opening weekend of game seasons; no multiple lapped events.

(4) *Spectator Speed Events* (4 × 4s, Dune buggies, Motorcycles).

Limited to 200 entrants; pre-running is limited to the week before the event.

b. Southern Piute Valley-Laughlin area is located 85 miles southeast of Las Vegas, Nevada and encompasses lands south of the Searchlight Township limited area, east of Highway 95, north of the Nevada border and west of Lake Mead National Recreation Area. The area is limited to protect small game and desert tortoise habitat. The limitations on (1) *Non-Spectator Speed Events;* (2) *Sport Car Rallies;* and, (3) *Non-Speed Events* are identical to those listed above under 4a. — The Southern Eldorado Valley and Northern Piute Valley area. In addition, (4) *Spectator Speed Events* are limited as follows: limited to 200 entrants; existing roads, trails and dry washes only; only one event per year; use limited to period between the close of quail hunting season and March 15; start-finish, pitting and spectator areas will be designated within T.32S., R.66E., Sec. 9, 14, 15 and 16 if on public land; four laps only; and, pre-running is limited to one week prior to the event.

c. The Bird Spring Range and Southern Spring Mountain Range area surrounds Goodsprings, Nevada, east of the 4,000 foot elevation line, west of Interstate 15, south of the Pahrump Highway and north of the California border. High speed competitive events are limited to existing roads, trails, courses and sand washes. This designation is made to protect desert tortoise habitat.

5. Limited to non-conflicting use in bighorn sheep habitat—6,085 acres.

The River Mountains are located 20 miles southeast of Las Vegas, Nevada and are bounded by Lake Mead National Recreation Area on the east, Boulder City, on the south and Henderson on the west and north. The area above the 2,400 foot elevation line is limited to vehicle use which will not conflict with bighorn sheep management.

6. Limited to non-speed competitive and non-competitive use—169,518 acres.

a. Frenchman Mountain is located 10 miles due east of Las Vegas, Nevada. It comprises approximately 12 sections in the southwest corner of T.20S., R.63E. No high speed competitive events will be allowed to protect this area's natural qualities and to act as a buffer for the proposed Wetlands Park.

b. The Las Vegas Sub-Unit (City of Las Vegas, North Las Vegas, and urban townships), Boulder City and Henderson, Nevada areas comprise the urban and adjacent areas around each of these cities. Use is limited to non-speed competitive and non-competitive events to protect air quality in the urban areas.

c. Base of the Arrow Canyon Range west to the Desert Game Range area is centered approximately 40 miles north/northeast of Las Vegas, Nevada and includes the Starvation Flat area south of Highway 7 south to the bend in Highway 93, including portions of the North Las Vegas Range and Hidden Valley. To protect bighorn sheep migration routes, areas of archeological significance, and desert tortoise habitat, use is limited to non-speed competitive and non-competitive use except for an approved corridor along the east side of Highway 93 on the future power line road.

d. Arrow Canyon is located 18 miles northwest of Glendale, Nevada. The area between the upper sand dune and the dam is limited to protect riparian habitat and archeological resources.

7. Limited to non-competitive use—115,717 acres.

a. Desert Wetlands Park—Rainbow Gardens area is located 10 miles east/southeast of Las Vegas, Nevada. It includes the Las Vegas Wash drainage and Rainbow Gardens due north of Las Vegas Wash. The limitation is to protect the unique geologic formations of Rainbow Gardens and the riparian habitat of the wash area.

b. The Searchlight Township limited area is approximately 64 square miles around Searchlight, Nevada. It is limited to reduce air pollution and noise pollution around the residential area.

c. The upper Mormon Mesa is centered 10 miles northwest of Glendale, Nevada. The area is bounded on the west by the Mormon Mesa escarpment, on the north by the Clark-Lincoln County line, on the east by the Carp-Elgin Road and on the south by a line one quarter mile north of Interstate 15. The limitation is to protect bighorn sheep and desert tortoise habitat.

8. Limitations to protect crucial desert tortoise habitat—88,750 acres.

a. Areas west of I–15, south of the Pahrump Highway, east of the Bird Spring Range and north of the California border.

No more than 3 laps; designated pitting areas; use limited to October–April; confined to existing roads, courses, trails, and sand washes; maximum of 3 events per year.

b. Area south of Jean, east of I–15, west of the South McCullough Range and north of the Nevada–California border.

No more than 3 laps; designated pitting areas; used limited to October–April; confined to existing roads, courses, trails and sand washes.

c. Southern Eldorado Valley and northern Piute Valley area.

(1) *Non-Spectator Speed Events* (Motorcycles).

Limited to 200 entrants; no pre-running; avoid scheduling on opening weekend of game seasons; no more than 3 laps; designated pitting areas; use limited to October to April; confined to existing roads, trails, courses and sand washes.

(2) *Sport Car Rallies* (street legal only).

Limited to 200 entrants; designated routes only; use limited to October to April.

(3) *Non-Speed Events.*

Limited to 200 entrants; avoid scheduling on opening weekend of game seasons; no multiple lapped events; use limited to October to April.

(4) *Spectator Speed Events.*

Limited to 200 entrants; pre-running is limited to the week before the event; no more than 3 laps; designated pitting areas; use limited to October to April; confined to existing roads, courses, trails and sand washes.

d. Southern Piute Valley.

Limitations are identical to those of 8c—Southern Eldorado Valley except that non-spectator speed events are limited to three events per year and spectator speed events are not permitted.

e. Areas adjacent to the south and east sides of the Moapa Indian Reservation.

Existing courses only for competitive events; designated pitting areas; no more than 4 laps; avoid creation of new trails by non-ORV users such as seismic crews.

f. Pahranagat/Meadow Valley Wash.

Use limited to November to April; only two, non-pre-run motorcycle races per years; only one, pre-run dune buggy race per year to take place on a designated route which will include old U.S. 93; no more than 3 laps; designated pitting areas; confined to existing roads, trails and sand washes.

C. *Closed Designation.* The 3,308 acre Hidden Valley area is located in the south Muddy Mountains, 33 miles northeast of Las Vegas, Nevada. All motorized use is prohibited in this area to protect the significant archeological values and maintain the natural geologic character of the area.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. Maps delineating these areas and an environmental assessment describing the impact of these designations are available for inspection during regular business hours (7:30 a.m.–4:15 p.m.), Monday through Friday, at the offices listed below.

ADDRESS: For further information about these designations, contact either of the following Bureau of Land Management Officials:

District Manager, Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126, (702) 388–6403

Area Manager, Stateline Resource Area Office, 801 E. Stewart Avenue, P.O. Box 7384, Las Vegas, NV 89125, (702) 388–6627.

Kemp Conn,
District Manager, Las Vegas District.

[FR Doc. 84–24803 Filed 9–19–84; 8:45 am]

BILLING CODE 4310–HC–M

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Advisory Council.

DATE: October 18 and 19, 1984.

ADDRESS: El Capitan Lodge, 540 F Street, Hawthorne, Nevada.

SUMMARY: At 9:00 a.m. October 18 the Council will begin a field trip of several cultural resource sites in Mineral County, Nevada. At 7:30 p.m. the Council will convene its business meeting. Topics on the agenda will include cultural resources management, area of critical environmental concern, and comments from the public (9:00 p.m.). The field trip will be continued in the morning of October 19. Anyone may attend the meeting and field trip but must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Steve Weiss, BLM Public Information Officer, 1050 E. Williams St., Suite 335, Carson City, NV 89701, (702) 882-1631.

Norman L. Murray,

Acting District Manager.

[FR Doc. 84-24980 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-HC-M

[C-0125239; C-28262]

Proposed Continuation of Reclamation Withdrawals, Colorado

September 13, 1984.

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that the two land withdrawals made in connection with the Silt Project be continued for 20 years. The lands in both withdrawals will remain closed to surface entry and mining. They have been and remain open to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: All comments should be addressed to State Director, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303-294-7626.

The Bureau of Reclamation proposes that the existing land withdrawals made by Secretarial Order of October 22, 1940, and public land order 4384, dated March 19, 1968, be continued for a period of 20 years in accordance with Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The two orders currently withdraw 514.55 acres of public land. The land is located in T. 5 S., Rgs. 92 and 93 W., Sixth Principal Meridian, Colorado.

The purpose of the withdrawals is to protect the Rifle Gap Dam and Reservoir Site, Silt Project, and segregate the land from operation of the public laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publicatin of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-24981 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-JB-M

Idaho Falls District; Medicine Lodge Draft Resource Management Plan and Environmental Impact Statement, Public Hearings and DRMP/DEIS Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Draft Resource Management Plan/Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft resource managemant plan (RMP) and environmental impact statement (EIS) for proposed management of public lands in the Medicine Lodge Resource Area. The draft RMP and EIS describes and analyzes five alternatives for managing 648,700 acres of public land. In addition to the lands within the Medicine Lodge Resource Area, grazing will be analyzed on 72,053 acres of the Twin Buttes Allotment in the Big Butte Resource Area.

—Alternative A represents the existing situation and will serve as the baseline for analyzing other alternatives. The present level of management on the public lands would be continued. No wilderness study areas would be recommended for wilderness designation. As defined by BLM policy, Alternative A is the proposed action for livestock grazing.

—Alternative B would favor higher livestock stocking levels, more range improvements, land transfer for agricultural developoment and transfer of isolated or difficult to manage parcels out of federal ownership. Restrictions on mining, mineral leasing, mineral material removal, and off-road-vehicle use would be minimized. No wilderness study areas would be recommended as suitable for wilderness designation.

—Alternative C is BLM's Preferred Alternative. A variety of resource uses would be allowed. Production and use of commodity resources and commercial use authorizations would occur, while protecting fragile resources and critical wildlife habitat, preserving natural systems and cultural values and allowing for nonconsumption resource uses. A balanced approach to multiple use would be pursued. No wilderness study areas would be recommended as suitable for wilderness designation.

—Alternative D is the partial wilderness alternative which recommends part of the Sand Mountain and Snake River WSAs as suitable for wilderness designation. All use levels except for wilderness, energy and minerals, and lands would remain the same as for Alternative C, the preferred Alternative.

—Alternative E would protect fragile resources and wildlife habitat, preserve natural systems and favor nonconsumptive resource uses. Management direction would favor habitat management to increase wildlife populations, protection of wilderness qualities and opportunities for general dispersed recreation. Under this alternative, all of both WSAs would be recommended suitable for wilderness designation.

Three Areas of Critical Environmental Concern (ACEC) totaling 36,120 acres would be designated under Alternative C, the BLM's preferred alternative, and would also be designated under Alternatives D and E. The ACECs and use limitations are listed below.

North Menan Butte, 1,120 acres. This unique geologic feature has been designated a National Natural Landmark and has been closed to grazing. Designation as an ACEC would include no grazing, no surface occupancy for mineral leasing, withdrawal from mineral entry, and no ORV use.

Snake River, 10,000 acres. This portion of the South Fork of the Snake

River has been identified as a sensitive ecosystem. Designation as an ACEC would.include withdrawal from woodland management. 4,300 acres are currently withdrawn from locatable mineral entry and an additional 5,700 acres would be withdrawn.

Nine Mile Knoll, 25,000 acres. Wildlife habitat is a primary concern and much of the area has already been nominated for designation as a National Natural Landmark. Designation as an ACEC would include closing the area to vehicles from December 1 to March 31 of each year to protect critical winter range for elk, deer and moose.

Copies of the Draft RMP/EIS are available for review at the following locations:

Idaho Falls District Office, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, Telephone: (208) 529-1020
Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706, Telephone: (208) 334-1770
Public Affairs, Bureau of Land Management, Interior Building, 18th and C St., Washington, D.C. 20240, Telephone: (202) 343-9435

DATES: Written comments on the Draft RMP/EIS are invited and should be submitted by December 27, 1984. Two public hearings will be held to receive written and oral comment on the Draft RMP/EIS. A public hearing will be held on November 7, 1984 at 7:30 p.m. in the Courtroom at the Fremont County Courthouse in St. Anthony, Idaho. A second public hearing will be held on November 8, 1984 at 7:30 p.m. in meeting room "A" at the Idaho Falls Public Library in Idaho Falls, Idaho.

ADDRESS: Written comments should be submitted to District Manager, Attn: MLRMP/EIS, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen or Donald L. Watson, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, Telephone: (208) 529-1020.

SUPPLEMENTARY INFORMATION: individuals wishing to testify may do so by appearing at the hearing place previously specified. Persons wishing to give testimony may be limited to 10 minutes with written submissions encouraged.

Dated: September 14, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84-[illegible] Filed 9-19-84; 8:45 am]

BILLING CODE 4310-[illegible]

Intent To Prepare a Planning Amendment for the Parker Mountain Management Frame-Work Plan In Wayne to Garfield Counties, UT; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of July 6, 1984 notice.

SUMMARY: The following lands are to be added to the **Federal Register** Notice on July 6, 1984—page 27828, Intent to prepare a Planning Amendment for the Parker Mountain Management Frame-Work Plan in Wayne to Garfield Counties, Utah:

T. 30 S., R. 5 E.
  Sec. 10, NW¼SE¼.
T. 29 S., R. 5 E.
  Sec. 33, W½SW¼NE¼NW¼SE¼, W½NE¼NW¼NW¼SE¼, NW¼NW¼NW¼SE¼, S½NW¼NW¼SE¼, SW¼NW¼SE¼, NW¼SE¼NW¼SE¼, S½SE¼NW¼SE¼, SW¼SE¼.

Dated: September 14, 1984.

Donald L. Pendleton,

District Manager.

[FR Doc. 84-24958 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-DO-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 071, Block 11, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 12, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 12, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-25034 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Negotiate Concession Contract; International Leisure Hosts, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice was given in the July 13, 1984, **Federal Register**, pages 28631 and 28632, Vol. 49, FR Document 84-18589, that the National Park Service is proposing to negotiate a concession contract authorizing International Leisure Hosts, Inc., to continue to provide lodging, food, retail merchandising and gasoline facilities and services for the public at John D. Rockefeller Memorial Parkway, Wyoming for a period of fifteen (15) to twenty-five (25) years from January 1, 1985, depending on the magnitude of the investment.

All interested parties were to submit their proposals on or before September 11, 1984. However, it has been determined that it would be in the best interest of all interested parties to provide additional time within which to submit proposals on the proposed contract negotiation.

To be considered and evaluated, all proposals must now be postmarked or hand delivered to the Regional Director, Rocky Mountain Region, National Park Service, 655 Parfet Street, Denver, Colorado 80225, on or before the thirtieth (30th) day following publication of this notice.

Interested parties should contact the Regional Director at the foregoing address for information regarding the requirements of the proposed contract.

Dated: September 14, 1984.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 84-24895 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-70-M

Appalachian National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Appalachian National Scenic Trail Advisory Council will be held in Rangeley, Maine on October 18, from 8:30 a.m. to 5:00 p.m. The agenda of the meeting will include a review of current Appalachian Trail protection and management issues.

The meeting will be open to the public, although space will be limited. Persons will be accommodated on a first-come, first-served basis. Any person may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements may contact David A. Richie, Project Manager, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425, at Area Code (304) 535-2346.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the above address. Copies of the minutes will also be available from Room 3120, Interior Building, 18th and C Streets, NW, Washington, D.C. 20240, and at the headquarters of the Appalachian Trail Conference, Washington Street, Harpers Ferry, West Virginia 25425.

Dated: September 13, 1984.

David A. Richie,

Project Manager.

[FR Doc. 84-25005 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-70-M

Kenai Fjords National Park; Environmental Impact

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Final Environmetal Assessment/General Management Plan, and a Finding of No Significant Impact (FONSI).

SUMMARY: This notice announces the availability of the final environmental assessment/general management plan and a finding of no significant impact (FONSI) for Kenai Fjords National Park.

The draft environmental assessment/general management plan was made available for public and Conservation System Unit Review. Comments were received and considered.

It is the National Park Service's decision to select the alternative which appears as part of the final general management plan to serve as the guideline for the management of Kenai Fjords National Park for the next five to ten years.

ADDRESSES: Public reading copies of the environmental assessment/general management plan will be available for review at the following locations:

1. Parks and Forests Information Center 2525 Gambell Street, Anchorage, Alaska 99503-2892
2. Headquarters, Denai Fjords National Park, Sward, Alaska 99664
3. Department of the Interior, Central Library, Washington, D.C. 20240
4. Interior Resources Library, Federal Building, 701 C Street, Anchorage, Alaska 99513

Copies of the FONSIs are available uon request from; National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107 Anchorage, Alaska 99503-2892.

Dated: September 12 1984.

Roger J. Contor,

Regional Director, Alaska.

[FR Doc. 84-25006 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Proposed Irrigation Ratesetting Policy; Intent To Extend the Written Comment Period on Water Service Ratesetting Policy; Central Valley Project, California

The Department of the Interior, through the Bureau of Reclamation, has developed an irrigation water ratesetting options paper for the Central Valley Project (CVP). The paper was prepared pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), Pub. L. 84-643 (70 Stat. 483), Pub. L. 88-44 (77 Stat. 68), and the Reclamation Reform Act of 1982, title II, Pub. L. 97-293 (96 Stat. 1263).

The proposed ratesetting policy options document has been developed to implement the ratesetting provisions of the Reclamation Reform Act, to ensure adequate returns to the Treasury, and to provide equitable charges among water users for services received. This proposed policy is formalized and is available for review by interested parties. The policy options document reviews some water rate history and discusses the need for a standard ratesetting policy. The calculations illustrating irrigation water rates are included for review. Those calculations reflect applications of the proposed policy options to the rate calculations for the project.

The proposed policy options paper includes recommended policy as well as several feasible alternatives for consideration. Sample calculations which demonstrate the impacts of the proposals are provided to enhance understanding of the alternatives.

The **Federal Register** announcement of public hearings and the original written comment period was published in Volume 49, No. 73, page 14811 dated Friday, April 13, 1984. In response to numerous requests, the comment period for receipt of written comments was extended to August 31, 1984. That extension was published in Volume 49, No. 128, page 27221 dated Monday, July 2, 1984. Due to the need for interested parties to further review information provided to them and to consolidate their comments on the proposed policy options paper, the comment period for receipt of written comments is now extended to September 21, 1984.

Copies of the draft policy may be obtained without charge by writing to the Regional Director, Bureau of Reclamation, Water Rate Policy (MP-440), 2800 Cottage Way, Sacramento, CA 95825. Questions by telephone should be directed to Mr. Merv deHaas at (916) 484-4878.

Dated: September 14, 1984.

Richard Atwater,

Commissioner of Reclamation.

[FR Doc. 84-24677 Filed 9-19-84; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228

NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Class I Annual Report Motor Carrier of Passengers
OMB Form No.: 3120-0021
Agency Form No.: MP-1
Frequency: Annually
Respondents: Class I Carriers of Passengers
No. of Respondents: 66
Total Burden Hrs.: 2,442

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Uniform System of Accounts—Motor Carriers of Passengers
OMB Form No.: 3120-0105
Agency Form No.: N/A
Frequency: Annually
Respondents: Motor Carrier of Passengers
No. of Respondents: 66
Total Burden Hrs.: 8,976

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Uniform System of Accounts—Motor Carriers of Property
OMB Form No.: 3120-0106
Agency Form No.: N/A
Frequency: Quarterly/Annually
Respondents: Motor Carrier of Property
No. of Respondents: 2,606
Total Burden Hrs.: 367,446

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Uniform System of Accounts—Railroads
OMB Form No.: 3120-0107
Agency Form No.: N/A
Frequency: Annually
Respondents: Railroads with Revenues over $50 million
No. of Respondents: 37
Total Burden Hrs.: 48,840

James H. Bayne,
Secretary.

[FR Doc. 84-24898 Filed 9-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte Nos. 274 and 282; Sub-Nos. 10 and 3]

Environmental Notices in Abandonment and Rail Exemption Proceedings, and Railroad Consolidation Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: By decision served and published April 17, 1984 (49 FR 15087), the Commission adopted regulations requiring rail carrier applicants in abandonment and exemption proceedings to issue environmental notices directly to the appropriate State agency. That decision requested each State to designate a single agency to receive the notice and to provide this information by May 18, 1984. A list of State agencies is published in this notice.

EFFECTIVE DATE: October 19, 1984.

FOR FURTHER INFORMATION CONTACT: Wayne Michel, (202) 275-7657.

SUPPLEMENTARY INFORMATION: We are publishing a list of the State agencies designated to receive environmental notices (See Appendix). In those instances where more than one agency was selected by the State, we have chosen the agency that will receive the notice. If a State failed to provide us with this information by May 18, 1984, the notice will be served on the governor or chief executive officer of that State.

Decided: September 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,
Secretary.

Appendix

Alabama Department of Environmental Management, 2721 Gunter Park Drive, Montgomery, AL 36130
Attn: Marilyn G. Elliott, Permit Coordinator

Alaska Department of Environmental Conservation, 437 E Street, Anchorage, AK 99501
Attn: Robert Martin

Arizona Department of Transportation, Transportation Planning Division, 206 South 17th Avenue, 310B, Phoenix, AZ 85007

Arkansas Highway and Transportation Department, P.O. Box 2261, Little Rock, AR 72203

Chief, Railroad Operations & Safety Branch, California Public Utilities Commission, 1390 Market Street, San Francisco, CA 94102

Public Utilities Commission, 1580 Logan St., Office Level II, Denver, CO 80203

Bureau of Planning & Research, Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, CT 06109

Mrs. Francine Booth, Federal Aid Coordinator, Budget Office, State Single Point of Contact, P.O. Box 1401, Dover, DE 19903

Mayor, 1350 Pennsylvania Avenue, NW., Washington, DC 20004

Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, FL 32301
Attn: Ron Fahs

Transportation Rates and Services Division, Georgia Public Service Commission, 244 Washington Street, SW., Atlanta, GA 30334

State of Idaho Transportation Department, P.O. Box 7129, Boise, ID 83707
Attn: Ronald K. Kerr, Principal Planner

State Historic Preservation Office, Department of Conservation, 605 State Office Bldg., 400 South Spring Street, Springfield, IL 62706

Indiana Department of Transportation, Suite 300, 143 West Market Street, Indianapolis, IN 46204
Attn: Roland Jr. Mross, Director

Office of the General Counsel, Iowa Department of Transportation, Transportation Regulation Authority, 507 Tenth Street, Des Moines, IA 50319

Kansas State Historical Society, 120 West Tenth Street, Topeka, KS 66612

Director, Division of Transportation, Kentucky Transportation Cabinet, State Office Building, Frankfort, KY 40622

Chief of Technical Studies, Department of Transportation & Development, Capitol Station, P.O. Box 44245, Baton Rouge, LA 70804

Transportation Services Division, Maine Department of Transportation, State Office Building, Augusta, ME 04333

Director, State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, MD 21201

Executive Office of Environmental Affairs, 100 Cambridge Street, Boston, MA 02202

Michigan Department of Transportation, Bureau of Urban and Public Transportation, Box 30028, Lansing, MI 48909

Rail Manager, Minnesota Department of Transportation, Transportation Building, Room 820, St. Paul, MN 55155

Mississippi Public Service Commission, P.O. Box 1174, Jackson, MS 39205

Mr. Robert N. Hunter, Chief Engineer, Missouri Highway and Transportation Dept., P.O. Box 270, Jefferson City, MO 65102

William J. Fogarty, Transportation Division, Department of Commerce, 1424 9th Avenue, Helena, MT 59620-0401

The Nebraska State Historical Society, 1500 R Street, Lincoln, NE 68508

State Office of Community Services, Capitol Complex, Carson City, NV 89710

New Hampshire Department of Transportation, 85 Loriden Road, John O. Morton Building, Concord, NH 03301
Lawrence Schmidt, Director, Planning Group, Office of the Commissioner, Department of Environmental Protection, CN 402, Trenton, NJ 08625
State Planning Officer, State Capitol, 403 Capitol Building, Santa Fe, NM 87501
State Clearing House, Division of Budget, State Capitol, Albany, NY 12224
North Carolina State Clearinghouse, 116 West Jones Street, Raleigh, NC 27611
North Dakota Public Service Commission, State Capitol Building, 12th and 13th Floors, Bismarck, ND 58505
Ohio Department of Transportation, P.O. Box 899, Columbus, OH 43216-0899
Oklahoma Corporation Commission, Transportation Division, Railroad Department, Jim Thorpe Building, Oklahoma City, OK 73105
Public Utility Commissioner, Rail/Air Program, Labor & Industries Building, Salem, OR 97310
Department of Environmental Resources, Third and Reily Streets, P.O. Box 1467, Harrisburge, PA 17120
Rail Projects Coordinator, Rhode Island Department of Transportation, State Office Building, Providence, RI 02903
The Honorable Richard W. Riley, Governor, Attn: Mr. Donald N. Tudor, Director, Governor's Division of Transportation, Edgar A. Brown Building, 1205 Pendleton Street-Suite 476, Columbia, SC 29201
South Dakota Department of Environmental Protection, Foss Building, Pierre, SD 57501
Bureau of Waterways & Rail Transportation, Tennessee Department of Transportation, 1 Commerce Place, Suite 900, Nashville, TN 37219
William Nicholas, TENRAC, Office of the Governor, State Capitol Post Office Box 12428, Austin, TX 78711
Office of Planning and Budget, State Capitol Building, Salt Lake City, UT 84114
Attn: Carolyn Wright
Director, State Planning Office, Pavillion Building, Montpelier, VT 05602
Department of Highways & Transportation, 1401 E. Broad Street, Richmond, VA 23219
State Historic Preservation Officer, Office of Archaeology and Historic Preservation, 111 West 21st, Olympia, WA 98504
West Virginia Railroad Maintenance Authority, P.O. Box 490, Moorefield WV 26836
State of Wisconsin, Department of Transportation Analysis and Review, 4802 Sheboygan Avenue, P.O. Boc 7916, Madison, WI 53707
State Planning Coordinator's Office, 2320 Capitol Avenue, Cheyenne, WY 82002

[FR Doc. 84-24906 filed 9-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-20X)]

Rail Carriers; Grand Trunk Western Railroad Co.—Abandonment—In Bay County, MI; Exemption

The Grand Trunk Western Railroad Company (GTW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exemption Abandonments.*

The line to be abandoned is that portion of the former Michigan Central Mackinaw Branch (Bay City Belt) between milepost 0.0 and milepost 4.0, a total distance of 4.0 miles in Bay County, MI.

GTW has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition of use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on October 22, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by October 1, 1984, and petitions for reconsideration, including enviromental, energy, and public use concerns, must be filed by October, 10, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John C. Danielson, 131 West Lafayette Blvd., Detroit, MI 48226.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 13, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-25054 Filed 9-19-84; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Federal Advisory Committee Act; Meeting

September 17, 1984.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), notice is hereby given that the Shipbuilding Panel of the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet Monday and Tuesday, October 1-2, 1984. The panel, chaired by Dr. Don Walsh, will meet in San Francisco, CA. For the exact location of the meeting please call Steven Anastasion at 202/653-7818. This work session, which will be open to the public, will convene at 9:00 a.m. and adjourn at 5:00 p.m. on both days.

Persons desiring to attend will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman of the Shipbuilding Panel, Dr. Don Walsh, in advance of the meeting. The Chairman retains the prerogative to impose limits on the duration of oral statements and discussion. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion or Ms. Linda K. Glover, the Staff Member for the Shipbuilding Panel. The mailing address is NACOA, 3300 Whitehaven Street, NW., Suite 438, Page Building #1, Washington, DC 20235.

Dated: September 17, 1984.

Steven N. Anastasion,

Executive Director.

[FR Doc. 84-24974 Filed 9-19-84; 8:45 am]

BILLING CODE 3510-12-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on October 9, 1984, Room 1046, 1717 H Street, NW, Washington, DC.

This meeting will address recent events at operating nuclear power plants. The exact incidents to be explored are not as yet known. Should these events involve proprietary information, safeguards information, or information submitted in confidence by a foreign government it will be necessary to close that protion of the meeting to public attendance. However, to the extent practical, this meeting will be open to pubic attendance and any closed sessions will be held so as to minimize inconvenience to members of the public.

The agenda for subject meeting shall be as follows:

Tuesday, October 9, 1984—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the NRC Staff recent experiences at operating nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, Subcommittee consultants, and others.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John C. McKinley (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 14, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84–24984 Filed 9–19–84; 8:45 am]

BILLING CODE 7590-01-M

Availability of NUREG-1061 Volume 1, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee Volume 1: Investigation and Evaluation of Stress-Corrosion Cracking in Piping of Boiling Water Reactor Plants"

The Nuclear Regulatory Commission announces the availability of NUREG–1061, Volume 1, "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee: Investigation and Evaluation of Stress-Corrosion Cracking in Piping of Boiling Water Reactor Plants" which was prepared by the Task Group on Pipe Cracking of the NRC Piping Review Committee.

The U.S. NRC Piping Review Committee was established by the Executive Director for Operations of the USNRC to make a comprehensive review of the NRC requirements in the area of nuclear power plant piping. The Task Group on Pipe Cracking was assigned the review of the stress-corrosion cracking problem and to make recommendations on the approach to deal with the problem. This report presents specific conclusions and recommendations that are tied closely to relevant regulatory and staff positions.

This report covers aspects such as the causes and descriptions of the intergranular stress corrosion cracking (IGSCC) phenomena; current status of pipe cracking in BWR's; nondestructive examinations of piping weldments; inspection of piping for IGSCC; decisions and criteria for replacement, repair or continued operation without repair; risk related to the presence of IGSCC; and a value-impact assessment of IGSCC.

Public comments on NUREG–1061, Volume 1 are solicited, and any comment received within 45 days of the date of the **Federal Register** notice will be considered for the revision of the implementation document NUREG–0313, "Technical Report on Materials Selection and Processing Guidelines for BWR Collant Pressure Boundary Piping."

Comments and/or questions should be directed to B.D. Liaw, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301–492–4360.

Free single copies of the report may be requested for public comment by writing to the Publications Service Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 19th day of September 1984.

R.H. Vollmer,

Cochairman, NRC Piping Review Committee.

L. Shao,

Cochairman, NRC Piping Review Committee.

[FR Doc. 84–24985 Filed 9–19–84; 8:45 am]

BILLING CODE 7590–01–M

South Carolina Electric & Gas Co., South Carolina Public Service Authority, Virgil C. Summer Nuclear Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

Environmental Assessment

Identification of Proposed Action: The NRC is considering a proposed license amendment which would permit the increase in the licensed spent fuel storage capacity from 682 spent fuel assemblies to 1276 spent fuel assemblies for the V.C. Summer spend fuel pool. This would extend the full core discharge capability for the V.C. Summer facility from the year 1993 to the year 2008.

The Need for the Proposed Action: Disposal of V.C. Summer spent nuclear fuel is scheduled to be carried out by the Department of Energy in or after 1998 in accordance with Public Law 97–425; Nuclear Waste Policy Act of 1982. As V.C. Summer spent fuel may not be accorded a high priority under the DOE program, the licensee is seeking to provide a spent fuel storage capacity to support approximately twenty-five years of nominal operation. No other contractual arrangements exist for the interim storage or reprocessing of spent fuel from V.C. Summer Nuclear Station. The fuel discharge schedule indicates that with the high density spent fuel racks, loss of full core discharge capability (FCDC) will occur in 2008.

Alternatives to Increased Spent Fuel Storage: Alternatives to the proposed increase of onsite spent fuel storage have been considered. These alternatives are as follows:

- *Shipment of fuel to a reprocessing or independent spent fuel storage/disposal facility.*

No commercial spent fuel reprocessing facilities are presently operating in the United States. The licensee has made contractual arrangements whereby spent nuclear fuel and/or high level nuclear waste will be accepted and disposed of by the U.S. Department of Energy; but such services are not expected to be available before 1998. The V.C. Summer Nuclear Station existing spent fuel storage capacity will not provide full core discharge capability beyond 1993. Spent fuel acceptance and disposal by the Department of Energy is not, therefore, an alternative to increased on-site pool storage capacity for the period before 1998 at the earliest.

- *Not operating the plant after the current spent fuel storage capacity is exhausted.*

As indicated in NUREG–0575, "Final Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," the replacement of nuclear power by coal-generating capacity would cause excess mortality to rise from 0.59–1.70 to 15–120 per year for 0.8 GWY(e). Based on these facts, not operating the plant or shutting down the plant after exhaustion of spent fuel discharge capacity are not viable alternatives to high density storage in the spent fuel pool. The prospective 1983 expenditure of approximately $1.4 million for the high density racks is small compared to the estimated value of replacement power equivalent to the plant's energy output; approximately $9 million per month in 1983 and between $18.1 and $22.7 million per month in 1990–1991.

Occupational Radiation Exposures: The staff has evaluated the radiation protection aspects of the licensee's plans to modify the spent fuel pool.

The spent fuel pool at Summer has never been used to store irradiated fuel assemblies and contains only a minimal amount of contamination. Radiation levels have been measured at three (3) depths within the pool and a maximum exposure rate of 0.5 mR/hr has been detected at the bottom of the pool Because of the low exposure rates, personnel exposure from the rerack operations is expected to be minimal. However, the licensee has taken measures to ensure that personnel exposures to divers working in the spent fuel pool are ALARA. These measures include:

(1) Reviewing all procedures for removing and installing the racks with the diving contractor,

(2) All work will be done under the radiation work permit (RWP) program to ensure that doses are ALARA,

(3) All divers will be issued personnel dosimetry and any doses received will be carefully monitored,

(4) Vacuums will be used to clean the floors of the spent fuel pool after the removal of the old racks.

The licensee does not expect any significant increase in radiation levels due to the buildup of radioactive crud along the side of the pool. If crud buildup eventually becomes a major contributor to pool radiation levels, measures will be taken to reduce such exposure rates. The purification system for the pool includes filters and demineralizers to remove crud and will be operating during the modification of the pool.

The licensee performed a three-dimensional shielding analysis on the spent fuel pool assuming the pool is filled to capacity with the proposed storage densification arrangement. This analysis shows that radiation exposure rates will be less than 1 mR/hr on the outside of the pool walls and at the pool surface from the stored spent fuel. This radiation level meets the V.C. Summer design radiation zoning for the fuel handling building. The shielding analysis was performed using the shielding codes recommended by the NRC staff in NUREG–0800 and therefore, is acceptable.

SCE&G has presented the following plans for the removal and disposal of the existing racks. The present racks will be unbolted and removed from the pool by divers and using a temporarily installed crane. The old racks will receive an initial high pressure water spray in the decontamination pit to remove the majority of the surface contamination. The exposure rate from this surface contamination is estimated to be less than 2 mR/hr while the radiation level of the racks is estimated to be 0.5 mR/hr. The racks will be temporarily stored in the fuel handling building. SCE&G is considering several options for removing the racks which include: contractor removal, in-house decontamination and disposal, and in-house decontamination and storage on site for possible future use. The staff will monitor the final disposals of these racks.

Based on our review of the Summer SFP modification description and relevant experience from other operating reactors that have performed similar modifications, the staff concludes that the licensee's modification can be performed within the limits of 10 CFR Part 20 and in a manner that will maintain doses to workers ALARA.

We have estimated the increment in occupational dose during normal operations, after the pool modification, resulting from the proposed increase in stored fuel assemblies. The spent fuel assemblies contribute a negligible amount to dose rates in the pool area because of the depth of water shielding the fuel; the major source of exposure is the radionuclide concentrations in the pool water. The most significant contributor to the radionuclides is the movement of fuel rather than the number of fuel assemblies in the pool. Thus the additional assemblies will add a negligible amount to area dose rates. Based on present and projected operations in the spent fuel pool area and experience from similar modifications, we estimate that the proposed modification should add less than one percent to the total annual occupational radiation dose to plant personnel. The small increase in radiation dose should not affect the licensee's ability to maintain individual occupational doses within the limits of 10 CFR Part 20, and ALARA.

Radioactive Waste Treatment Systems: The plant contains waste treatment systems designed to collect and process the gaseous, liquid and solid waste that might contain radioactive material. The waste treatment systems are evaluated in the Final Environmental Statement (FES) dated May 1981. There will be no change in the waste treatment systems described in the FES because of the proposed modification.

Radioactive Material Released to the Atmosphere: With respect to releases of gaseous materials to the atmosphere, the only radioactive gas of significance which could be attributable to storing additional fuel assemblies for a longer period of time would be the noble gas radionuclide Krypton–85 (Kr–85). Experience has demonstrated that after spent fuel has decayed 4 to 6 months, there is no longer a significant release of fission products, including Kr–85, from stored fuel containing cladding defects. An average of 70 fuel assemblies are expected to be stored following each refueling. Since space must be reserved to accommodate a complete reactor core unloading operation (157 fuel assemblies), the useful pool capacity is 1119 fuel assemblies. For the Virgil C. Summer Station, one full core storage capability will be maintained until after the sixteenth refueling cycle estimated for Spring 2008. Up to this date, the oldest spent fuel will have been stored for approximately 24 years.

We assumed that all of the Kr–85 that is going to leak from defective fuel is going to do so in the interval between refuelings. The assumption is conservative and maximizes the amount of Kr–85 to be released. Our calculations show that the maximum expected release of Kr–85 from one refueling cycle (70 assemblies) is approximately 86.7 curies. Accordingly, the enlarged capacity of the pool has no significant effect on the greatest release rate of Kr-85 to the atmosphere each year. Thus, we conclude that the proposed modifications will have insignificant effect on offsite exposures.

Iodine–131 releases from spent fuel assemblies to the SFP water will not be significantly increased because of the expansion of the fuel storage capacity since the Iodine–131 inventory in the fuel will decay to negligible levels between refuelings for each unit.

Most of the tritium in the SFP water results from activation of boron and lithium in the primary coolant and this will not be affected by the proposed changes. A relatively small amount of tritium is contributed during reactor operation by fissioning of reactor fuel and subsequent diffusion of tritium through the fuel and the Zircaloy cladding. Tritium release from the fuel essentially all occurs while the fuel is hot, that is, during operations and, to a limited extent, shortly after shutdown. Thus, expanding SFP capacity will not increase the tritium activity in the SFP.

Storing additional spent fuel assemblies is not expected to increase the bulk water temperature during normal refuelings above the 150 °F used in the design analysis. Therefore, it is not expected that there will be significant change in the annual release of tritium or iodine as a result of the proposed modifications from that previously evaluated in the FES.

Solid Radioactive Waste: The concentration of radionuclides in the pool water is controlled by the filters and the demineralizer and by decay of short-lived isotopes. The activity is highest during refueling operations when reactor coolant water is introduced into the pool, and decreases as the pool water is processed through filters and demineralizer. The increase of radioactivity, if any, due to the proposed modification, should be minor because of the capability of the cleanup system to continuously remove radioactivity in the SFP water to acceptable levels.

The licensee states that the amount of solid waste expected to be generated by the spent fuel pool cleanup system is approximately 54 cubic feet per year. The licensee does not expect that this SFP modification will result in any significant increase in this amount of solid waste generated from the spent fuel pool cleanup system. We agree with the licensee and note that should there be an increase in spent fuel pool resin waste generation, the total would still be within those values estimated in the FES.

The present spent fuel racks have not been exposed to spent fuel and, consequently, are only minimally contaminated. Removal and disposal of these existing racks will have minor radiological impact. The disposition of these racks has not been determined by the licensee. However, should the present racks be shipped to an ultimate burial site, the additional quantity of solid waste is not expected to be environmentally burdensome.

Radioactive Material Released to Receiving Waters: Since the SFP cooling and cleanup system operates as a closed system, only water originating from cleanup of SFP floors and resin sluice water need be considered as potential sources of radioactivity.

It is expected that neither the quantity nor activity of the floor cleanup water will change as a result of this modification. The SFP demineralizer resin removes soluble radioactive material from the SFP water. These resins are periodically sluiced with water to the spent resin storage tank. The amount of radioactivity on the SFP demineralizer resin may increase slightly due to the additional spent fuel in the pool, but the soluble radioactive material would be retained on the resins. If any radioactive material is transferred from the spent resin to the sluice water, it will be removed by processing through the liquid radwaste system. Therefore, because of the liquid waste processing system that captures radioactive material, it is not expected that any additional radioactivity in liquid form will be released to the environment resulting from the proposed modification.

Non-Radiological Effluents: The only non-radiological discharge altered by the fuel pool modification is the waste heat. After ten years out of the reactor the rate of heat generation of the fuel is small. After shutdown, radioactive decay within the fuel continues to produce some heat. The rate of heat generation from within the fuel assemblies decreases approximately exponentially after reactor shutdown, decreasing significantly in the first few days. Although heat will continue to be released by the older fuel, the maximum design basis heat load (16.1 × 10^6 Btu/hr) for the expanded fuel pool, when full, will be within about six percent of the design basis heat load for the fuel pool when full as currently configured. The small contribution of heat of the older spent fuel assemblies as described above will be negligible in comparison to the total rate of heat discharge from the V.C. Summer Nuclear Station to the Monticello Reservoir. The total station heat discharge rate will be essentially unchanged from about 6.7 × 10^9 Btu/hr.

There will be no effect on the chemical quality of discharges to the Monticello Reservoir. Increasing the storage capacity of the pool will not result in any change in chemical usage or discharge. No changes will be needed in the NPDES Permit or in any other EPA or state certificates.

Cask Drop Accident: The spent fuel cask will not be lifted more than 30 ft. above an unyielding surface (except over the flooded cask loading pit which is effectively equivalent to a 30 ft. drop in air) during the entire transfer operation under normal operating conditions. On this basis, no radiological release is anticipated from such a drop, and, therefore, no doses need be evaluated.

Fuel Handling Accident: For a fuel handling accident, it is assumed that a fuel assembly is dropped by the refueling crane into the reactor core or spent fuel pool. The staff's review indicates that the proposed spent fuel pool modification does not increase radiological consequences of fuel handling accidents considered in the staff Safety Evaluation Report of February 1981, since this accident would still result in, at most, release of the gap activity of one fuel assembly due to the limitation on available impact kinetic energy.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statements dated January 1973 and May 1981 related to this facility.

Agencies & Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact: Based upon the foregoing environmental assessment, we conclude that the proposed license amendment to increase the storage capacity of the spent fuel pool will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the request for amendment dated January 23, 1984, as supplemented March 6, April 4, and 17, May 11, 18 and 30, July 10 and 31 (two letters), and August 8 and 17, 1984, which is available for public inspection at the

Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29810.

Dated at Bethesda, Maryland, this 17th day of September 1984.

For The Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84–24986 Filed 9–19–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–77 and DPR–79, issued to Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

The amendments would permit a revision to the Physical Security Plan to provide a more efficient security operation at the Sequoyah facilities. The revised plan, proposed by the license, would reduce the size of the protected area secured by the plant's security force, allowing an improved concentration of security personnel and hardware around the vital areas. No facet of plant operations will be affected by the changes. Other changes include organizational revisions and security responsibilities of personnel affected by the reorganization. While under the proposed security plan, certain currently implemented measures would be eliminated that would constitute a reduction in security effectiveness, the licensee has proposed additional measures and methods to satisfy the regulatory requirements of 10 CFR Part 70. The staff's preliminary views indicate that, with the proposed changes, the requirements of Part 73 will remain satified. These changes were requested in the licensee's application for amendments dated June 13, 1984.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration. One of the examples of actions likely to involve no significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the changes are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Another example is purely administrative changes to the Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The proposed changes involved here are similar to these examples in that there is some reduction in security effectiveness and administrative changes are being proposed for the implementation of the new security plan. Accordingly, the Commission has made an initial determination that the above changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission with not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By October 22, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specifically. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). the Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Herbert S. Sanger, Jr., Esq., General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Dated at Bethesda, Maryland, this 14th day of September 1984.

For the Nuclear Regulatory Commission.

Carl R. Stahle,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-24966 Filed 9-19-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co. (North Anna Power Station Units Nos. 1 and 2); Exemption

I

The Virginia Electric and Power Company (the licensee) holds Facility Operating License Nos. NPF-4 and NPF-7 which authorize the operation of the North Anna Power Station Units Nos. 1 and 2, respectively (the facility). The facility consists of two pressurized water reactors located at the licensee's site in Louisa County, Virginia. The licenses provide, among other things, that they are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

10 CFR 50.54(q) requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F of Appendix E requires each licensee to conduct an emergency preparedness exercise at least annually and to include participation of State and local governments within the plume exposure pathway Emergency Planning Zone (EPZ) at least biennially.

The licensee's letter of February 17, 1984 requested that an exemption be granted to the schedular requirements of 10 CFR Part 50, Appendix E, section IV.F, as it applies to the forthcoming November 15, 1984 emergency preparedness exercise to be held at North Anna. At the time of the licensee's request the applicable regulation required participation by State and local governments annually. The licensee bases this request for exemption on discussions with representatives of the Commonwealth of Virginia and of the Federal Emergency Management Agency (FEMA). In the subject discussions, the Commonwealth of Virginia requested that a date of November 15, 1984 be established for the 1984 North Anna exercise to allow time for installation of a computer network system within all local jurisdictions within the 10-mile EPZ. The computer network will be interconnected with the VEPCO Emergency Operations Facility and the State Emergency Operations Center for the purpose of providing rapid data flow and offsite dose projection calculations.

The previous emergency exercise was held in June 1983. Although deficiencies were identified, FEMA determined that they did not detract from the overall demonstrated capability to protect the health and safety of the public. The NRC staff has reviewed the results of the 1983 exercise and agrees with the FEMA finding.

The Commission has recently changed its requirements concerning State and local government participation in emergency exercise from annual to biennial under conditions set forth in the revised rule (49 FR 27733). Thus, no exemption is required to permit an exercise with State and local participation to be conducted in November 1984. However, the licensee does not wish to conduct a separate annual exercise of its plan without state and local participation, when a full exercise with state and local participation will be conducted shortly in November 1984. Thus, to this extent an exemption is still required.

The staff has also reviewed the schedules of past exercises at North Anna and has determined that the North

Anna exercise dates have consistently fallen within the prescribed limits and that there is no specific pattern showing either intentional or inadvertent exceeding of the intended annual exercise requirement. Furthermore, to require literal compliance with section IV.F of Appendix E to 10 CFR Part 50 would be undesirable since a better exercise can take place once the computer network system is installed and an integrated exercise occurs which involves, VEPCO, State and local government participants.

Based on the above, the staff concludes that scheduling the North Anna emergency preparedness exercise for November 15, 1984, will not adversely affect the overall state of emergency preparedness at the North Anna site. Therefore the requested exemption from the schedular requirements of 10 CFR Part 50, Appendix E, section IV.F, should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption requested by the licensee's February 17, 1984 letter is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the licensee is authorized to conduct the 1984 annual North Anna facility emergency exercise and related drills in November 1984.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (49 FR 36039).

For further details with respect to this action, see the licensee's request dated February 17, 1984 that is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 13th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84-24987 Filed 9-19-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Routine Use

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of notices of systems of records and two proposed new routine uses for two systems.

SUMMARY: This notice provides an up-to-date complete text, with some minor administrative changes, of the Office of Personnel Management's notices of its nine Government-wide systems of records and two of its central systems. This notice also proposes two new routine uses for the systems of records identified as "OPM/internal-5, Pay, Leave, and Travel Records" and "OPM/GOVT-3, Records of Adverse Actions and Actions Based on Unacceptable Performance." This action effects the administrative changes and makes readily available in one issue of the **Federal Register** an accurate and complete text of these notices (except OPM/INTERNAL-1) for use by covered individuals and agency Privacy Act offices.

DATES: The notices with the non-substantive administrative changes are effective on September 20, 1984. The proposed new routine uses will become effective, without further notice, on November 5, 1984, unless comments dictate otherwise.

ADDRESS: Written comments on the proposed new routine uses may be sent or delivered to: the Assistant Director for Workforce Information, Room 5415, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Workforce Records Management Division, (202) 632-5433.

SUPPLEMENTARY INFORMATION: In calendar years 1982 and 1983, the Office of Personnel Management (*hereafter referred to as the Office*) made both substantive and non-substantive changes to its nine Government-wide systems and two of its central systems. Thus, to have a complete copy of the notices, a user would need to have several different **Federal Register** notices for each system. To ensure that users have a copy of the current text of each of the notices, the Office is publishing the complete text of these 11 system notices with additional non-substantive administrative changes.

The Office is also proposing new routine uses for two of its system of records identified as "OPM/INTERNAL-1, Pay, Leave, and Travel Records" and "OPM/GOVT-3, Records of Adverse Actions and Actions Based on Unacceptable Performance." The proposed new routine use for the OPM/INTERNAL-1 system is necessary to permit disclosure of data to implement the provisions of the Debt Collection Act with regard to furnishing information to collection agents or to effect salary offset.

The routine use for the OPM/GOVT-3 system is the same routine use currently in place for the system of records identified as "OPM/GOVT-2, Employee Performance File System Records." The Office considers that effective personnel management includes the use of records (1) to ensure correct personnel actions; (2) to provide conditions that aid agency missions; and (3) to foster public confidence in a particular agency and in the whole Government. The Office believes that the disclosures to be permitted under this routine use will assist in effective personnel management; therefore, the disclosures are compatible with the purpose for maintaining the records. The specific conditions for making disclosures and the limited retention span for these records provide adequate protection of employee privacy.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

The Office makes the following administrative changes to the notices of 11 of its Privacy Act system of records and also proposes two new routine uses for the systems of records identified as "OPM/INTERNAL-1, Pay, Leave, and Travel Records" and "OPM/GOVT-3, Records of Adverse Actions and Actions Based on Unacceptable Performance."

OPM/INTERNAL-1

SYSTEM NAME:

Pay, Leave, and Travel Records. (Complete text appears at 48 FR 37117, August 16, 1983.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

u. To disclose relevant and necessary financial records to a Federal agency or to a person or organization contracting with a Federal agency for rendering collection services or salary/administrative offset under the purview of sections 5, 10, and 13 of the Debt Collection Act of 1982.

* * * * *

OPM/CENTRAL-1

SYSTEM NAME:

Civil Service Retirement and Insurance Records.

SYSTEM LOCATION:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415. Certain records pertaining to State income tax withholdings from annuitant payments are located with State Taxing Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former Federal employees and members of Congress who performed service subject to the Civil Service Retirement (CSR) system.

b. Current Federal employees who have:

(1) Performed Federal service subject to the CSR system other than with their present agency; or

(2) Filed a designation of beneficiary for benefits payable under the CSR system; or

(3) Requested the Office to review claims for health benefits made under the Federal Employees Benefits Program; or

(4) Filed a service credit application with former Federal service; or

(5) Filed an application for disability retirement with the Office and are awaiting final decision, or whose disability retirement application has been disapproved by the Office.

c. Former Federal employees who died subject to or who retired under the CSR system, or their surviving spouses and/or children, who have received or are receiving CSR benefits, Federal Employees Group Life Insurance benefits, or Federal Employees Health Benefits.

d. Former Federal employees who died subject to or who retired under a Federal Government retirement system other than the CSR system, or their surviving spouses and/or children, who have received or are receiving Federal Employees Group Life Insurance benefits and/or Federal Employees Health Benefits.

e. Applicants for Federal employment found unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises those retirement service history records of employees' service in the Federal Government other than that for the agency in which they may presently be employed. Also included in the system are current personnel data pertaining to active United States Postal Service employees who, by virtue of the provisions set forth in 5 U.S.C. 2105(e), are not considered civil service employees. It also contains information developed in support of claims for benefits made under the retirement, health benefits, and life insurance programs for Federal employees that the Office administers. Also included are medical records and supporting evidence on those individuals whose application for disability retirement has been rejected. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or the Office, are included in this system. These records contain the following information:

a. Documentation of Federal service subject to the CSR system.

b. Documentation of service credit and refund claims made under the CSR system.

c. Documentation of voluntary contributions made by eligible individuals.

d. Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims (after receipt by the Office), and designations of beneficiary.

e. Claim review files pertaining to requests that claims made under the Federal Employee Health Benefits program be reviewed by the Office.

f. Documentation of continuing coverage for life insurance and health benefits for annuitants and their survivors under a Federal Government retirement system other than the CSR system, or for compensationers and their survivors under the Office of Workers Compensation Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 3301 and chapters 83, 87, and 89 of title 5, United States Code; Pub. L. 83–598, 84–356, 86–724, and 94–455, and Executive Order 9397.

PURPOSES:

These records provide information and verification on which to base entitlement and computation of CSR and survivors' benefits, Federal Employees Health benefits and enrollments, and Federal Employees Group Life Insurance benefits, and to withhold State income taxes from annuitant payments. These records also serve to review rejection of applicants for Federal employment on medical suitability grounds. These records also may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under the Office's or the recipients' benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers' Compensation Programs; Veterans Administration Pension Benefits Program; HHS' Social Security Old Age, Survivor and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian employee retirement programs (other than the CSR system); or other national, State, county, municipal, or other publicly recognized charitable or social security administrative agency.

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provide to assure positive identification of an individual on whom a department or agency maintains retirement or insurance records, the fact that an individual is or is not on the retirement rolls, and, if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954, as amended.

g. To disclose to the Department of the Treasury information necessary to issue benefit checks.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains, and who is found by a court or the Office Medical Officers to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant, or former employee, for enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under:

(1) Fitness for duty examination procedures; or

(2) Agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence other than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Office becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested relevant to the Office determination on an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefits program, to the extent necessary to identify the individual and the type of information requested.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

n. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

o. To disclose information to another Federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

p. To disclose to a Federal agency, in response to its request, information in connection with (1) the hiring, retention, separation, or retirement of an employee; (2) the issuance of a security clearance; (3) the reporting of an investigation of an employee; (4) the letting of a contract; (5) the classification of a job; or (6) the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the Office determines that the information is relevant and necessary to the requesting agency's decision on the matter.

q. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compling descriptive statistics, and making analytical studies to support the function for which the records were collected and maintained.

s. By the Office, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

u. To disclose to another agency, or to an instrumentality of any governmental jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Office specifying the particular portion(s) of the record desired (including an address) and the law enforcement activity for which the record is sought.

v. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information to provide consideration in connection with the collection of a debt due the United States.

w. To disclose information in valid emergency situations when consent cannot readily be obtained and instant action is required, to persons who have a need to know, if the particulars of the disclosure then are transmitted to the subject's last known address.

x. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

y. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

z. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

aa. To disclose to a Federal agency, in response to its request, the present address of a former employee and any other information the agency needs to contact the former employee concerning a possible threat to his or her health or safety.

bb. To disclose to an allottee, as defined in 5 CFR 831.1501, the name, address, and the amount withheld from an annuitant's benefits, pursuant to 5 CFR 831.1501 *et seq.* as an allotment to that allottee to implement the program of voluntary allotments authorized by 5 U.S.C. 8345(h).

cc. To disclose to a State agency responsible for the collection of State income taxes the information required by an Agreement to Implement State Income Tax Withholdings from Civil Service Annuities entered pursuant to section 1705 of Pub. L. 97–35 to implement the program of voluntary State income tax withholding required by 5 U.S.C. 8345(k).

dd. To disclose to the Social Security Administration, the social security numbers of civil service annuitants to determine (1) their vital status as shown in the Social Security Administration Master Records; (2) whether recipients of the minimum annuity are receiving at least the Special Primary Insurance Amount benefit from the Social Security Administration; and (3) whether civil service retirees with post-1956 military service credit are receiving benefits from the Social Security Administration.

ee. To disclose to a requesting agency, organization, or individual, the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from, a health hazard while employed in the Federal work force to protect the health and safety of the affected employees.

ff. To disclose information contained in the Retirement Annuity Master File; including the name, social security number, date of birth, sex, the Office's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees to agencies participating in the "Federal Employees Receiving Government Assistance" Matching Project conducted by the President's council on Integrity and Efficiency to help eliminate fraud and abuse in the benefit programs administered by agencies within the Federal Government and to collect debts and overpayments owed to the Federal Government. (47 FR 8438, February 26, 1982.)

gg. To disclose information contained in the Retirement Annuity Master File, including the name, social security number, date of birth, sex, the Office's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees and their survivors to requesting States to help eliminate fraud and abuse in the benefit programs administered by the States (and by those States to local governments) and to collect debts and overpayments owed to those governments and their components. (48 FR 12828, March 25, 1983).

hh. To disclose to a Fedeeral agency, a person or an organization contracting with a Federal agency for rendering collection services within the purview of section 13 of the Debt Collection Act of 1982, in response to a written request from the head of the agency or his or her designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (1) The debtor's name, address, social security number, and other information necessary to establish the identity of the individual; (2) the amount, status, and history of the claim; and (3) the agency or program under which the claim arose.

ii. To disclose information contained in the Retirement Annuity Master File, upon written request, to state tax administration agencies, for the express purpose of ensuring compliance with state tax obligations by persons receiving benefits under the Civil Service Retirement System, and to prevent fraud and abuse, but only the following data elements: name, correspondence address, date of birth, sex, social security account number, annuity rate, commencing date of benefits, and retirement code (type of retirement).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, discs, and in folders.

RETRIEVABILITY:

These records are retrieved by the name, social security number, date of birth, and/or claim number of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, life insurance, health benefits, and tax withholdings are maintained permanently. Medical suitability records are maintained for 18 months. Requests for review of health benefits claims are maintained up to 3 years. Disposal of manual records is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social security number.

d. Name and address of office in which currently and/or formerly employed in the Federal service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social security number.

d. Name and address of office in which currently and/or formerly employed in the Federal service.

e. Annuity, service credit, or voluntary contributions, account number, if assigned.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORDS PROCEDURE:

Individuals wishing to request amendment of their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including former names.

b. Date of birth.

c. Social security number.

d. Name and address of office in which currently and/or formerly employed in the Federal service.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

a. The individual to whom the information pertains.

b. Agency pay, leave, and allowance records.

c. GSA National Personnel Records Center.

d. Federal civilian retirement systems.

e. Military retired pay system records.

f. Office of Workers' Compensation Benefits Program.

g. Veterans Administration Pension Benefits Program.

h. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.

i. Health insurance carriers and plans participating in the Federal Employee Health Benefits Programs.

j. The Office of Federal Employees Group Life Insurance.

k. Office of Personnel Management Government-wide System (OPM/GOVT-1) covering Official Personnel Folders.

l. The individual's co-workers and supervisors.

m. Physicians who have examined or treated the individual.

OPM/CENTRAL-6

SYSTEM NAME:

Adminstrative Law Judge Application Records.

SYSTEM LOCATION:

Assistant Director Office of Administrative Law Judges, Staffing Group, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for Administrative Law Judge positions in the Federal service or who are employees or former employees in Administrative Law Judge positions in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information on the education and training, employment history and earning, appraisals of past performance, convictions for offenses against the law, results of written tests, appraisals of potential, rating and ranking determinations and appeals of such determinations, honors, awards, or fellowships, and other background and biographical data on persons who are or were employees in Administrative Law Judge positions in the Federal service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1305, 3105, and 3344.

PURPOSES:

These records serve as a basis for rating and ranking applicants for Administrative Law Judge positions in the Federal service, documenting the rating and ranking assigned, processing an appeal of a rating or ranking determination, and referring the ranked candidates to Federal agencies for employment consideration. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To refer applicants to Federal agencies for employment consideration for Administrative Law Judge positions.

b. To refer current and former Administrative Law Judges to Federal agencies for consideration for detail, transfer, reassignment, reinstatement, or reemployment, as applicable.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source (e.g., references, employers, educational institutions or applicant/appellant review panel members) from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

g. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

h. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. By the Office in the production of summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer disks, cards, lists, forms, and in file folders.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual to whom they pertain.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for 7 years. Expired records are shredded or burned.

SYSTEM(S) MANAGER AND ADDRESS:

Assistant Director, Office of Administrative Law Judges, Staffing Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified.

a. Full name and date of birth.

b. Social security number.

RECORD ACCESS PROCEDURE

Specific materials in this system have been exempted from Privacy Act requirements at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act," indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to other non-exempt records about them should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified.

a. Full name and date of birth.

b. Social security number.

An individual requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act requirements regarding amendment of records at 5 U.S.C. 552a(d). The section of this notice titled "Systems Exempted from Certain Provisions of the Act," indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of other non-exempt records should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified.

a. Full name and date of birth.

b. Social security number.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information he or she supplied, except for information on vouchers or otherwise provided that is:

a. Supplied by references, employers, or educational institutions listed by the applicant; or

b. Supplied by other sources whom the Office believes have information relevant to a decision regarding the qualifications, ratings, or ranking of the applicant or appellant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempt to the extent that the release of the material to the individual whom the information is about would:

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

For material in this system meeting these criteria, the Office has claimed the (k)(5) exemption from the following provisions of the Act:

a. 5 U.S.C. 552a(c)(3)—This provision concerns providing an accounting of disclosures to the individual whom the records are about;

b. 5 U.S.C. 552a(d)—This provision regards access to and amendment of records.

This system contains testing and examining materials used solely to determine individual qualifications for appointment in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examining material and information, when the disclosure of the material would compromise the objectivety or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which related to access to and amendment of records.

OPM/GOVT-1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Office and with Personnel Officers or other designated offices of the local installation of the department or agency that currently employes the individual. When agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPF) are located at the National Personnel Records Center, General Services Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered records, but which may be retained in the OPF or elsewhere during employment, and which are also included in this system, may be retained by agencies for a period of time after the employee leaves service.

The use of the phrase "long-term" to describe right-hand-side OPF records is used throughout since these records are not actually permanently retained. The term "temporary" is used when referencing left-hand-side OPF records and all other records not filed in the OPF but covered by this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home residence, mailing address, social security number, and home telephone. This system includes contents of the OPF as specified in Federal Personnel Manual Supplement 293-31. Records in this system are:

a. Records reflecting work experience, educational level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about: Past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, Office approval of disability retirement applications, retirement, and removals.

c. Records on enrollment or declination of enrollment in the Federal Employees Group Life Insurance Program and Federal Employee Health Benefit programs, as well as forms showing designation of beneficiary.

d. Records of a medical nature, including records compiled during an agency initiated fitness-for-duty examination or request for approval of disability retirement. Such medical records are to be retained in separate envelopes from the OPF and include records of medical examination that are to remain as a long-term record in the OPF (see "Retention and Disposal" section).

Note.—This system does not cover agency dispensary or patient treatment records or records of drug or alcohol abuse counseling or other such counseling records, nor does it include performance appraisal and related documents maintained in an envelope in the OPF or filed on the left side of an OPF. These latter records are covered by the OPM/GOVT-2, Employee Performance File System Records.

e. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note.—Some of these records may also become part of the OPM/CENTRAL-7 Intergovernmental Personnel Act Assignment of Records System.

f. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

Note.—Some of these records may also become part of the OPM/CENTRAL-3 Federal Executive Development Records or OPM/CENTRAL-13 Senior Executive Service Records systems.

g. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel programs designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

h. Records contained in the Central Personnel Data File (CPDF) maintained by the Office and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 292–1.

i. Records on the Senior Executive Service (SES) maintained by agencies for use in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to the Office's Workforce Effectiveness and Development Group for implementing the Office's oversight responsibilities concerning the SES.

j. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note.—Alternatively, such records may be retained by an agency payroll office and thus subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT-1 system does not cover general agency payroll records.

k. To the extent that the records listed here are also maintained in an agency automated personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance appraisal and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT-2 system) maintained by agencies at field/administrative offices remote from where the original records exists are considered part of this system.

Note.—It is not the intent of the Office to limit this system of records only to those physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Excecutive Orders 9397, 9830, and 12107.

PURPOSES:

The OPF and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and the agencies for the Office in accordance with Office regulations and instructions. The OPF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with General Services Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

Temporary documents on th left side of the OPF may pertain to a formal action but do not constitute a record of it nor make a substantial contribution to the employee's long-term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To discuss information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide colleges and university officials with information about their students working under Cooperative Education, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to: the Department of Labor, Veterans Administration, Social Security Administration, Department of Defense, Federal agencies that have special civilian employee retirement programs; or a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., State unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits programs of the Office or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

f. To disclose to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

i. To consider employees for recognition through quality step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefits.

m. To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

p. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

q. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

s. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

t. When an individual to whom a record pertains is mentally incompetent or under other legal disability information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

u. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under:

(1) Fitness-for-duty examination procedures; or

(2) Agency-filed disability retirement procedures.

v. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

w. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force.

x. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve, to assure continuous mobilization readiness of Ready Reserve units and members.

y. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Veterans Administration, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

z. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

aa. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

bb. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

cc. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

dd. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local governments) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (e.g., to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval) to obtain accreditation or other approval rating and only to the extent that the information disclosed is relevant and necessary for that purpose.

ee. To disclose information to any member of an agency's Performance Review Board or other board or panel (e.g., one convened to select or review nominees for awards of merit pay increases) when the member is not an official of the employing agency; information would then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

ff. To disclose information to the Federal Acquisition Institute (FAI) about Federal employees in procurement occupations and other occupations whose incubents spend the predominant amount of their work hours on procurement tasks; provided that the FAI shall only use the data for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the **Federal Register** of February 7, 1980 (45 FR 8399).

gg. To disclose information contained in the CPDF including the name, social security number, date of birth, sex, annual salary, service computation date of basic active service date, separation or retirement date, veteran's preference, retirement status, oocupational series, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan statistical area, special program identifier, and submitting office number of all Federal employees to agencies participating in the "Federal Employee Receiving Government Assistance" Matching Program conducted by the President's Council on Integrity and Efficiency to help eliminate fraud and abuse in the benefit program administered by agencies within the Federal Government and to collect debts and overpayments owed to the Federal Government.

hh. To disclose information contained in the CPDF including the name, social security number, date of birth, sex, annual salary, separation or retirement date, retirement status, occupational series, position occupied, work schedule (full time, part time, intermittent), agency identifier, geographic location (duty station location), metropolitan statistical area, special identifier, and submitting office number of Federal employees to requesting States (and, upon specific approval, by those States to local governments) for use in computer matching to help eliminate fraud and abuse in the benefit programs administered by the States and to collect debts and overpayments owed to those governments and their components.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processible storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

a. Long-term Records. The OPF is retained by the employing agency as long as the individual is employed with that agency. Medical records are kept separately from the OPF while the individual is employed by an agency. When the individual transfers to another Federal agency or to another appointing office, the OPF, with the long-term medical records inserted in a separate envelope, is sent to that agency or office. Other medical records covered by this system; i.e., fitness-for-duty examinations, are considered temporary in nature. Such records, when not submitted to the Office for retention in a disability retirement file (or submitted, but the Office does not approve retirement), shall be destroyed no later than 6 months after closing action on the case or sooner at the discretion of the agency.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Record Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule (GRS) 1.

b. Other Records. These records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

c. Records contained on computer processible media within the CPDF (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS-1, such records may not be used in making decisions concerning employees.

SYSTEM MANAGERS AND ADDRESS:

Assistant Director for Workforce Information, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate Office or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees should contact one of the Office's regional or area offices (see list of regional office addresses in the Appendix), or, as explained in the Note below, the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).
b. Date of birth.
c. Social security number.
d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).
e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).
b. Date of birth.
c. Social security number.
d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).
e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

Note. An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) for a copy of a specific OPF document or for a transcript of his or her own employment history complied from documents in the OPF. The transcript includes the individual's name; date of birth; social security number; all past grades held, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request to NPRC for access to copies of all records maintained in his or her OPF. Though NPRC stores and services the OPF's of former Federal employees covered by this system, that record remains the property of the Office, and such requests will be handled and processed by the OPM office nearest to where the requester lives. (See list of OPM regional office addresses in the Appendix).

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager and not the Office. Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).
b. Date of birth.
c. Social security number.
d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).
e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

Note. Under no circumstances shall former employees direct a request for amendment to records in the OPF to the NPRC or to the Office's regional or area offices. NPRC only stores and services the OPF's on former Federal employees covered by this system, and the Office's regional or area offices process only access requests. Processing under the amendment provisions of the Privacy Act will be handled only by the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.
b. Physicians examining the individual.
c. Educational institutions.
d. Agency officials and other individuals or entities.
e. Other sources of information for long-term records maintained in an employee's OPF, in accordance with Federal Personnel Manual, Chapter 293.

OPM/GOVT-2

SYSTEM NAME:

Employee Performance File System Records.

SYSTEM LOCATION:

Records maintained in this system may be located as follows:

a. In an Employee Performance File (EPF) maintained in the agency office responsible for maintenance of the employee's Official Personnel Folder (OPF) or other agency-designated office. This includes those instances where the agency uses an envelope within the OPF in lieu of a separate EPF folder.

b. In the EPF of Senior Executive Service (SES) appointees where the agency elects to have the file maintained by the Performance Review Boards required by 5 U.S.C. 4314(c)(1), or the administrative office supporting the Board.

c. In any supervisor/manager's work folder maintained in the office by the employee's immediate supervisor/manager or, where agencies have determined that records management is better served, in such folders maintained for supervisors/managers in a central administrative office.

d. In an agency's automated personnel records system.

e. In an agency microformed EPF.

Note.—Originals or copies of records covered by this system may be located in more than one location, but if they become part of an agency internal system (e.g., administrative or negotiated grievance file), those copies then would be subject to the agency's internal Privacy Act implementation guidance insofar as they are used within the agency's system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees (including SES appointees). Records on former non-SES employees will generally be retained no longer than 1 year after the employee leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. 4314.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system, wherever they are maintained, may include any or all of the following:

a. Annual summary performance appraisals issued under employee (including SES and Merit Pay) appraisal systems and any document that indicates that the appraisal is being challenged under administrative procedures (e.g., when the employee files a grievance on the appraisal received).

b. A document (either the summary appraisal form itself or a form affixed to it) that identifies the job elements and the standards for those elements upon which the appraisal is based.

c. Supporting documentation for employee appraisals, as required by agency appraisal systems or implementing instructions, and which may be filed physically with the appraisal of record (e.g., productivity and quality control records, records of employee counseling, individual development plans, or other such records as specified in agency issuances and maintained; e.g., in a work folder by supervisors/managers at the work site).

d. Records on SES appraisals generated by Performance Review Boards, including statements of witnesses and transcripts of hearings.

e. Written recommendations for awards, removals, demotions, denials of within-grade increases, reassignments, training, pay increases, cash bonuses, or other performance-based actions (e.g., nominations of SES employees for Meritorious or Distinguished Executive), including supporting documentation.

f. Statements made (either on or appended to the performance appraisal document) by the employee (e.g., a statement of disagreement with the appraisal or recommendation), in accordance with agency performance appraisal plans and implementing instructions, regarding an appraisal given and any recommendations made based on them.

Note.—When a recommendation by a supervisor/manager or a statement made by the employee regarding the appraisal issued (or copy thereof) becomes part of another Government-wide system or internal agency file (e.g., an SF 52 filed in an OPF when the action is effected or when documents or statements of disagreement are placed in a grievance file), that document then becomes subject to that system's notice and appropriate Office or employing agency Privacy Act requirements, respectively, for the system of records covering that file.

g. Records created by Executive Resource Boards regarding performance of an individual in an executive development program.

h. Records needed to support removal for unsatisfactory performance during the supervisory or managerial probationary period, the SES appointment probationary period, or the employee's initial period of probation after appointment.

i. Notices of commendations (which are not considered a permanent OPF document), recommendations for training, such as an Individual Development Plan, and advice and counseling records that are based on work performance.

j. Copies of supervisory appraisals uses in considering employees for promotion or other position changes originated in conjunction with agency merit promotion programs when specifically authorized for retention in the EPF or work folder.

k. Performance-related material that may be maintained in the work folder to assist the supervisor/manager in accurately assessing employee performance. Such material may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee's duties, employee locator information, information regarding specific employee problems, and other such records that agencies determine to be appropriate for retention in the work folder.

l. Standard Form 7B cards.

Note.—To the extent that performance records covered by this system are maintained in either an EPF, supervisor/manager work folder, or an agency's automated or micoform record system, they are considered covered under this system of records. Further, when copies of records filed in the employee's OPF are maintained as general records related to performance (item k. above), those records are to be considered as being covered by this system and not the OPM/GOVT-1 system.

This notice does *not* cover these records (or copies) when they become part of a grievance file or 5 CFR Parts 432, 752, or 754 file (documents maintained in these files are covered by the OPM/GOVT-3 system of records, while grievance records are covered under an agency-specific system), or when they become part of an appeal or discrimination complaint file as such documents are considered to be part of either the system of appeal records under the control of the Merit Systems Protection Board (MSPB) or discrimination complaints files under the control of the Equal Employment Opportunity Commission (EEOC).

When an agency retains copies of records from this system in another system or records, not covered by this or another OPM, MSPB, or EEOC Government-wide system notice, the agency is solely responsible for responding to any Privacy Act issues raised concerning these documents.

The Office has adopted a position that when supervisors/managers retain personal "supervisory" notes, i.e., information on employees that the agency exercises no control and does not require or specifically describe in its performance appraisal system, which remain solely for the personal use of the author and are not provided to any other person, and which are retained or discarded at the author's sole discretion, such notes are not subject to the Privacy Act and are, therefore, not considered part of this system. Should an agency choose to adopt a positon that such notes are subject to the Act, that agency is solely responsible for dealing with Privacy Act matters, including the requisite system notice, concerning them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1104, 3321, 4305, and 5405 of title 5, U.S. Code, and Executive Order 12107.

PURPOSE:

These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available: (1) To agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to officials of the MSPB, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and other functions as promulgated in 5 U.S.C. 1205, 1206, and 1209 or for such other functions as may be authorized by law.

b. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal Affirmative Action programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

c. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

d. To consider and select employees for incentive awards, quality step increases, merit pay or other pay bonuses, and other honors and to publicize those granted. This may include disclosure to public and private organizations, including news media, which grant or publicize employee awards or honors.

e. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

f. To disclose to an agency in the executive, legislative, or judicial branch, or to the District of Columbia's Government in response to its request, or at the initiation of the agency maintaining the records, information in connection with: The hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant, or other benefits by the requesting agency; or the lawful statutory, administrative, or investigative purposes of the agency to the extent that the information is relevant and necessary to the decision on the matter.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. to provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

j. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

k. By the Office or employing agency to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose pertinent information to the appropriate Federal (including offices of Inspector General), State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency maintaining the record becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

m. To disclose information to any member of an agency's Performance Review Board or other board or panel (e.g., one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for approving or recommending performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, envelopes, and on magnetic tapes, disks, microfilm, or microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual on whom they are maintained

SAFEGUARDS:

Records are maintained in file folders or envelopes, on magnetic tape, disks, or microforms and are stored in locked desks, metal filing cabinets, or in a secured room with access limited to those whose official duties require access. Additional safeguarding procedures include the use of sign-out sheets and restrictions on the number of employees able to access automated records through use of access codes and logs.

RETENTION AND DISPOSAL:

a. Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and on other employees for 3 years, except as shown in b below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the data subject.

b. Appraisal of unacceptable performance and related documents, pursuant to 5 U.S.C. 4303(d), are destroyed after the employee completes 1 year of acceptable performance from the date of the proposed removal or reduction-in-grade notice. (Destruction to be no later than 30 days after the year is up.)

c. When a career appointee in the SES accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder remains active so long as the employee remains employed under the Presidential appointment and elects to have certain provisions of 5 U.S.C. relating to the Service apply.

d. When an incumbent of the SES transfers to another position in the Service, either with the same or a different agency, all performance documents 5 years old or less are transferred in the performance folder or envelope with the individual's OPF.

e. Some performance-related records (e.g., documents maintained to assist rating officials in appraising performance or recommending remedial actions or to show that the employee is currently licensed or certified) may be destroyed after 1 year.

f. Where any of these documents are needed in connection with administrative or negotiated grievance procedures, or quasi-judicial or judicial proceedings, they may be retained as needed beyond the retention schedules identified above.

g. Generally, agencies retain records on former employees for no longer than 1 year after employee leaves.

Note.—When an agency retains an automated or microform version of any of the above documents, retention of such records longer than shown is permitted (except for those records subject to 5 U.S.C. 4303(d)) for agency use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Workforce Information, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individual wishing to inquire whether this system contains information about them should contact their servicing personnel office, supervisor/manager, Performance Review Board office, or other agency designated office maintaining their performance-related records where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social security number.

c. Position occupied and unit where employed.

RECORDS ACCESS PROCEDURE:

Individuals wishing access to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social security number.

c. Position occupied and unit where employed.

Individuals requesting access to records must also comply with the Office's Privacy Act regulations or verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should contact the appropriate office indicated in the Notification Procedure section where they are or where employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social security number.

c. Position occupied and unit where employed.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

a. Supervisors/managers.

b. Performance Review Boards.

c. Executive Resource Boards.

d. Other individuals or agency officials.

e. Other agency records.

f. The individual about whom the records pertain.

OPM/GOVT-3

SYSTEM NAME:

Records of Adverse Actions and Actions Based on Unacceptable Performance.

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service (SES) employees) against whom such an action has been proposed or taken in accordance with Parts 432, 752, or 754 of the Office's regulations (5 CFR Parts 432, 752, or 754).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions and actions based on unacceptable performance. The records include copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witnesses, hearing notices, reports, and agency decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4303, 7504, 7514, and 7543.

PURPOSE:

The records result from the proposal, processing, and documentation of these actions either taken by the Office or agencies against employees in accordance with Parts 432, 752, or 754 of the Office's regulations (5 CFR Parts 432, 752, or 754).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, presecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the MSPB, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

m. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties of reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

n. To disclose information to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commissions. Such disclosures may be made only when the disclosing agency determines that: (1) The records are properly constituted in accordance with the Office or employing agency requirements; (2) the records are accurate, relevant, timely, and complete; and (3) the disclosure is in the best interests of the Government. When the agency's cooperation with the private sector entity, through the exchange of individual records, directly benefits the agency's completion of its mission, enhances the agency's personnel management functions, or increases the public confidence in the agency's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity, are to be furnished.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the names and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action or a performance-based removal or demotion action are disposed of 4 years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Planning and Evaluation, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415 for actions taken under Parts 432, 752 (Subparts A through D only), and 754. Associate Director, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415 for actions taken against SES appointees under Subparts E and F, Part 752.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an adverse or performance-based action file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel or designated office where the actions were processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

OPM/GOVT-4

SYSTEM NAME:

Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.

SYSTEM LOCATION:

Director, Office of Government Ethics, Office of Personnel Management, 1717 H Street, NW, Washington, D.C. 20419, and designated agency ethics offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on: The President, Vice President, and candidates for those offices; officers and employees, including special

Government employees, whose positions are classified at grades GS–16 and above or at an equivalent rate under another pay schedule; individuals who are classified at GS–16 and above or in equivalent positions who provide staff functions in support of an advisory committee composed of at least one special Government employee; officers or employees in a position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16; Administrative Law Judges; excepted service employees in positions that are of a confidential or policymaking nature unless an employee or groups of employees are exempted by the Director of the Office of Government Ethics; each member of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 31, United States Code; the Postmaster General, the deputy Postmaster General, Governor of the Board of Governors of the U.S. Postal Service and each officer or employee of the U.S. Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS–16; the Director of the Office of Government Ethics and officials designated to act as agency ethics officers (designated agency ethics officials); and nominees for positions requiring Senate confirmation. This system includes both former and current employees in these categories who have filed financial disclosure statements under the requirements of the Ethics in Government Act of 1978, as amended, or who otherwise come under the requirements of the Act. For administering all provisions of the Ethics in Government Act of 1978, as amended, the system may contain information on any officer or employee of the executive branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains: Financial information such as salary, dividends, receipts from the purchase or sale of land, exchange of property, spouse's and children's interest earnings, funds from trust accounts, gifts, reimbursements, interest on property, and compensation for duties performed; information on liabilities in excess of $10,000; information about positions as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business, non-profit organization, labor organization, or educational institution; information about non-Government employment agreements, such as leaves of absence to accept Federal service, continuation of payments by non-Federal former employers, and participation in prior non-Federal employer welfare and benefit plans; and information about assets placed in trust pending disposal; and other documents developed by the Director of the Office of Government Ethics, or agency ethics officials in administering the Ethics in Government Act of 1978, as amended. Such other documents may include, but will not be limited to, information necessary for the rendering of advice or formal advisory opinions, or the resolution of complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–521, Ethics in Government Act of 1978, as amended.

PURPOSE:

These records are maintained to meet the requirements of the Ethics in Government Act of 1978, Pub. L. 95–521, as amended, regarding the filing of financial status reports and reports concerning certain agreements between the covered individual and any prior private sector employer. Such statements and related records are required to assure compliance with the Act and to preserve and promote the integrity of public officials and institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose any and all of the information furnished by the reporting official, in accordance with provisions of section 205 of the Ethics in Government Act of 1978, to any requesting person.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are generally maintained for a period of 6 years after filing, except when filed by a nominee for an appointment requiring confirmation by the Senate when the nominee is not appointed and Presidential and Vice-Presidential candidates who are not elected. In these cases, the record is destroyed 1 year after the date the individual ceased being under Senate consideration for appointment or is no longer a candidate for office. Destruction is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the Office of Government Ethics, Office of Personnel Management, 1717 H Street, NW, Washington, DC 20419.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

a. For records filed directly with the Office of Government Ethics, contact the system manager.

b. For records filed with designated agency ethics officials or the Secretary concerned, contact the designated agency ethics official or Headquarters, department or agency, Wasington, DC (ZIP code).

c. For records filed with the Federal Election Commission by candidates for President or Vice President, contact the Staff Director, Federal Election Commission, 1325 K Street, NW, Washington, DC 20463.

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate office listed above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate office as shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

Individuals requesting access to information not generally available to the public under the Act, must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate office shown in the Notification Procedure section.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person, such as a trustee, attorney, accountant, or relative.

b. Federal officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflict of interests and persons contacted during any investigation of the allegations.

OPM/GOVT-5

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Associate Director, Staffing Group, Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415, OPM regional and area offices (see list of OPM regional office addresses in the Appendix), and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including: Name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and to certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases. This system includes such records as:

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on: the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability.

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because reduction in force, transfer or discontinuance of function, or reorganization.

g. Records containing non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

Note 1.—The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personal identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 2.—To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. Sections 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license grant or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

i. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

j. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years: e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent offical records when hired while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Staffing Group, Office of Personnel Management, 1900 E Street NW, Washington, D.C. 20415

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified.

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date or record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken.

Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 291.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of materials exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

Note.—In responding to an inquiry or a request for access or amendment, Resource Specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from: The individual to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies and Office records, and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would:

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.
b. Assessment center exercises.
c. Assessment center exercise reports.
d. Assessor guidance material.
e. Assessment center observation reports.
f. Assessment center summary reports.
g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.
h. Item analyses and similar data that contain test keys.
i. Ratings given for validating examinations.
j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.
k. Rating sheets.
l. Test booklets, including the written instructions for their preparation.
m. Test item files.
n. Test answer sheets.

OPM/GOVT-6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Office of Staffing Policy, Staffing Group, Office of Personnel Management, Room 3G29, 1900 E Street, NW, Washington, D.C. 20415, the Office's regional offices (see list of regional office addresses in the Appendix), and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. Sections 1303 and 3301.

PURPOSES:

These records are collected, maintained, and used by the Office or employing agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational measurement and selection methods. Such research includes studies extending over a period of time (longitudinal studies). Race and national origin data are used by agencies to evaluate the role of examinations in the total employee selection process. Use of these race and national origin data is limited to such evaluation and oversight projects conducted by the employing agencies or the Office. The records may also be used by the Office or employing agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board, including the Office of the Special Counsel, in connection with actions by offices relating to allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

f. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETENTION AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards, disks, and magnetic tape.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Staffing Policy, Staffing Group, Office of Personnel Management, 1900 E. Street, NW, Washington D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the Office's regional office servicing the state where they are employed (see list of the Office's regional office addresses in the Appendix), or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the test validation research study in which the individual participated.

d. Social security number.

e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the test validation research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the test validation research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Individual applicants, including Federal, State, and local government employees; supervisors; assessment center assessors; and agency or Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOVT–1 and OPM/GOVT–7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examining materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k) (6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.

b. Assessment center exercises.

c. Assessment center exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples, and simulations, miniature training and evaluation exercises, structured interviews, and reports.

h. Item analyses and similar data that contain test keys.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Ratings sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

OPM/GOVT-7

SYSTEM NAME:

Applicant Race, Sex, National Origin, and Disability Status Records.

SYSTEM LOCATION:

Records in this system may be located in the following offices:

a. Office of Staffing Policy, Staffing Group, Office of Personnel Management, Room 3G29, 1900 E Street NW., Washington, D.C. 20415.

b. Office of Affirmative Employment Programs, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

c. The Office's regional offices (see list of regional office addresses in the Appendix) and any register-holding area offices under the jurisdiction of a regional office.

d. Agency Personnel, Equal Employment Opportunity, or Federal Equal Opportunity Recruitment Program offices or other designated offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including:

a. Applicants for examinations administered either by the Office or by employing agencies.

b. Applicants on registers or in inventories maintained by the Office and subject to its regulations.

c. Applicants for positions in agencies having direct hiring authority and using their own examining procedures in compliance with the Office regulations.

d. Applicants whose records are retained in an agency's Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups).

e. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's name; social security number; date of birth; statement of major fields of study; type of current or former Federal employment status (e.g., career or temporary); applications showing work and education experience; and race, sex, national origin, and disability status data.

Note.—The race and national origin information in this system is obtained by three alternative methods: (1) Use of the Office's form on which individuals identify themselves as to race and national origin; or (2) by visual observation (race) or knowledge of an individual's background (national origin); or (3) at the agency's option, from the OPM/GOVT–1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 256, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7201, Sections 4A, 4B, 15A(1) and (2), 15B(11), and 15D(11); Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38297 *et seq.* (August 25, 1979); 29 CFR 1613.301; and 5 CFR 720.301.

PURPOSES:

These records are used by OPM and agencies to:

a. Evaluate personnel/organizational measurement and selection methods.

b. Implement and evaluate agency affirmative employment programs.

c. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files).

d. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.

e. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the Authority section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979.)

f. Enable reports to be prepared regarding breakdowns by race, sex, and national origin of applicants (by exams taken, and on the selection of such applicants for employment).

g. To locate individuals for personnel research.

Note.—These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status, does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities promulgated in Reorganization Plan No. 1 of 1978, in connection with agency Equal Employment Opportunity programs.

b. To disclose information to the Merit Systems Protection Board, including the Office of the Special Counsel, in response to its request in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206 or as may be authorized by law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program, to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to be judicial proceeding or in order to comply with the issuance of a subpoena.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on magnetic tape and disks.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in locked metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for 2 years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. When records are needed in the course of an administrative procedure or litigation, they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes and disks are erased.

Note.—When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Staffing Policy, Staffing Group, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information about them should contact the system manager, the Office's regional offices (see list of the Office's regional offices in the Appendix) covering the state where the application for Federal employment was filed, or the personnel, Equal Employment Opportunity, or Equal Employment Opportunity Recruitment office or other designated office at the agency where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The Office or employing agency where they are employed or submitted the information.

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The Office's or employing agency where they are employed or submitted the information.

e. Signature.

An individual requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified.

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The Office or employing agency where they are employed or submitted the information.

e. Signature.

An individual requesting amendment must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on such forms as Personnel Research Questionnaire 79-1 (OPM Form 1377), Background Survey Questionnaire 79-2 (OPM Form 1386), or equivalent forms, or is obtained directly from other agency or Office records (e.g., race, sex, national origin, and disability status data may be obtained from the OPM/GOVT-1, General Personnel Records system).

OPM/GOVT-8

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests.

SYSTEM LOCATION:

Individual agency ethics offices or other designated agency offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and employees who are required by their agency under Executive Order 11222 and 5 CFR Part 735 to file such statements. The system includes both former and current Federal employees in these categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements of personal and family holdings and other interests in business enterprises and real property; listings of creditors and outside employment; opinions of counsel; and other information related to conflict of interest determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSES:

These records are maintained to meet requirements of Executive Order 11222 on the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of conduct for Government employees contained in the Executive order and title 18 of the U.S.C., and to determine if a conflict of interest exists between the employment of individuals by the Federal Government and their personal employment and financial interests. To enable the Director of the Office of Government Ethics, to ensure that these purposes are met, agency maintained records are to be made available to that office on request.

Note.—When an agency is requested to furnish such records to the Director of the Office of Government Ethics, such a disclosure is to be considered as made pursuant to provisions of the Privacy Act (5 U.S.C. 552a(b)(1)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These statements and amended statements required by or pursuant to Executive Order 11222, Part IV, are to be held in confidence and no information shall be disclosed except:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

d. By the National Archives and Records Service (General Services Administration) in record management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in locked metal file cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed when 6 years old; except that documents needed in an on-going investigation will be retained until no longer needed in the investigation. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the Office of Government Ethics, Office of Personnel Management, 1717 H Street NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Ethics Officer at the agency where the reports were filed.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the Ethics Officer at the agency where the reports were filed. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORDS PROCEDURE:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the Ethics Officer at the agency where the reports were filed.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative.

b. Federal officers who review the statements to make conflict of interest determinations.

c. Persons alleging conflicts of interests and persons contacted during any investigation of the allegations.

OPM/GOVT-9

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

SYSTEM LOCATION:

These records are located at the Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415, the Office's regional offices (see list of the Office's regional office addresses in the Appendix), agency personnel offices (or other designated offices), and Federal records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have filed a position classification appeal or a job grading appeal with Agency Compliance and Evaluation, Office of Personnel Management; an OPM regional office; or with their agency.

b. Current and former Federal employees who have filed a retained grade or pay appeal with Agency Compliance and Evaluation, Office of Personnel Management; or an Office's regional office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. The records may include information and documents regarding a personnel action of the agency involved and the decision or determination rendered by an agency regarding the classifying or grading of a position or whether an employee is to remain in a retained grade or pay category. This system may also include transcripts of agency hearings and statements from agency employees.

Note.—This system notice also covers agency files created when (a) an employee appeals a position classification or job grading decision to the Office or within the agency regardless of whether that agency appeal decision is further appealed to the Office; and (b) an employee files a retained grade or pay appeal to the Office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 5112, 5115, 5346, and 5366 of title 5, U.S.C.

PURPOSE:

These records are primarily used to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating a position classification appeal, job grading appeal, or retained grade or pay appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retention, or assignment of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the classifying of positions, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

g. By the Office or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requsted in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, SAFEGUARDS, AND RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, disks, and microfiche.

RETRIEVAL:

These records are retrieved by the subject individual's name, and the name of the employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in locked metal filing cabinets or in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records related to position classification appeal, job grading appeal, and retained grade or pay appeal files are maintained for 7 years after closing action on the case. Records are destroyed by shredding, burning, or erasing as appropiate.

SYSTEM MANGER(S) AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact:

a. For records pertaining to retained grade or pay appeals, contact the system manager or the appropriate Office's regional office.

b. For records pertaining to a position classification appeal or job grading appeal, where the appeal was made only to the Office, contact the system manager or the Office's regional office, as approprate (see list of the Office's regional office addresses in the Appendix).

c. For records pertaining to a position classification appeal or job grading appeal filed only with an agency, contact the agency personnel officer or other designated officer.

d. For records pertaining to a position classification appeal or a job grading appeal filed with both the agency and the Office, contact the agency personnel officer or other designated officer or the system manager or the Office's regional office, as appropriate.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

RECORD ACCESS PROCEDURE:

Individuals who have filed a position classification appeal, job grading appeal, or a retained grade or pay appeal, must be provided access to the record. However, after the appeal has been closed, an individual may request access to the official copy of the records by writing the official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name

b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or the Office records related to the action.

c. Statements from employees or testimony of witnesses.

d. Transcript of hearings.

Appendix

Chicago Region

John Kluczynski Building, 230 South Dearborn Street, Chicago, IL 60604
Area Offices
Illinois—219 So. Dearborn Street, Chicago, IL 60604
Indiana—U.S. Courthouse and Federal Building, 46 East Ohio Street, Indianapolis, IN 46204
Michigan—477 Michigan Avenue, Room 565, Detroit, MI 48226
Minnesota—Federal Building, Room 501, Fort Snelling, Twin Cities, MN 55111
Ohio—U.S. Courthouse and Federal Building, Room 507, 200 West 2nd Street, Dayton, OH 45402

Denver Region

Building 20, Denver Federal Center, Denver, CO 80225
Area Offices
None

Dallas Region

1100 Commerce Street, Dallas, TX 75242
Area Offices
Louisiana—Federal Building, 610 South Street, New Orleans, LA 70130
New Mexico—421 Gold Avenue SW, Albuquerque, NM 87102
Oklahoma/Arkansas—200 NW 5th Street, Oklahoma City, OK 73102
Texas—643 E. Durango Blvd., San Antonio, TX 78205

New York Region

Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278
Area Offices
New Jersey—Peter W. Rodino, Jr. Federal Building, 970 Broad Street, Newark, NJ 07102
New York—U.S. Courthouse and Federal Building, 100 So. Clinton Street, Syracuse, NY 13260
Puerto Rico—Federico Degetau Federal Office Building, Carlos E. Chadron Street, Hato Rey, PR 00918

Philadelphia Region

William J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, PA 19106
Area Offices
Maryland—Edward A. Garmatz Federal Building and Courthouse, 101 W. Lombard Street, Baltimore, MD 21201
Pennsylvania—Federal Building 1000 Liberty Avenue, Pittsburgh, PA 15222
Virginia—Federal Building, 200 Granby Mall, Norfolk, VA 23510

St. Louis Region

300 Old Post Office Building, 815 Olive Street, St. Louis, MO 63103
Area Offices
Kansas—120 South Market Street, Wichita, KS 67202
Missouri—East 12th Street, Kansas City, MO 64106

San Francisco Region

525 Market Street, 23rd Floor, San Francisco, CA 94105
Area Offices
Arizona—522 North Central Avenue, Phoenix, AZ 85004
California
—845 South Figueroa Street, Los Angeles, CA 90017
—1029 J Street, Room 202, Sacramento, CA 95814
—880 Front Street, San Diego, CA 92188
Hawaii—300 Ala Moana Blvd., Box 50028, Honolulu, HI 96850

Seattle Region

Federal Building, 26th Floor, 915 2nd Avenue, Seattle, WA 98174
Area Offices
Alaska—Federal Building and Courthouse, 700 C Street, Box 22, Anchorage, AK 99513
Oregon—Federal Building, Room 376, 1220 SW. 3rd Street, Portland, OR 97204

Atlanta Region

Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303
Area Offices
Alabama—Sutherland Building, 806 Governors Drive SW., Huntsville, AL 35801
Florida—Federal Building, 80 N. Hughey Avenue, Orlando, FL 32801
North Carolina—310 New Bern Avenue, P.O. Box 25069, Raleigh, NC 27611
South Carolina—Federal Office Building, 334 Meeting Street, Charleston, SC 29403
Tennessee—100 North Main Building, Memphis, TN 38103

Boston Region

John W. McCormack Post Office and Courthouse, Boston, MA 02109
Area Offices
Connecticut—Federal Building, 450 Main Street, Hartford, CT 06103
Massachusetts—3 Center Plaza, Boston, MA 02108
New Hampshire—Federal/Post Office Building, Portsmouth, NH 03801

[FR Doc. 84-24844 Filed 9-19-84; 8:45 am]
BILLING CODE 6325-01-M

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), this notice announces a request submitted to Office of Management and Budget (OMB) for renewal to continue to collect data on the Monthly Report of Federal Civilian Employment (SF 113-A). The information that is collected monthly provides a timely count of Government-wide employment, payroll, turnover, and employment ceiling-related data. Uses of the data include publishing the *Monthly Release of Federal Civilian Workforce Statistics;* answering data requests from the Congress, White House, OMB, other Federal agencies, the media, and the public; providing head-count employment ceiling-related data required by OMB; and serving as benchmark data for quality control of the Central Personnel Data File. For copies of the clearance package, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

DATE: Comments on this proposal should be received by October 1, 1984.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, D.C. 20415

And

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: John P. Weld, (202) 632-7720.

Office of Personnel Management
Donald J. Devine,
Director.

[FR Doc. 84-24876 Filed 9-19-84; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Hearings on Possible U.S. Responses To Restore the Balance of International Trade Concessions if the European Communities Should Implement Their Proposal To Impose New Restrictions on Imports of Certain Corn Products Which are Exported by the United States

SUMMARY: This publication gives notice that the Trade Policy Staff Committee will conduct public hearings on possible U.S. responses to restore the balance of international trade concessions if the European Communities (EC) should implement their proposal to impose new restrictions on imports of certain corn products which are exported by the United States.

1. Public Hearings

The Chairman of the Trade Policy Staff Committee invites public comments on possible U.S. responses to restore the balance of international trade concessions if the EC should implement their proposal to impose new restrictions on imports of certain corn products which are exported by the United States. Such comments will be considered by the Executive Branch in preparing for further discussions with the EC about their proposal. The Committee is inviting specific comments on the effect of the EC proposal on U.S. trade interests, products of export interest to the EC on which the United States might impose retaliatory import restrictions, and products of export interest to the United States on which the United States might request compensatory EC import liberalization.

Interested parties are invited to present testimony or submit written comments on this issue.

2. Requests To Participate in the Public Hearings

Hearings will be held on October 9, 1984, beginning at 2 p.m. in room 403, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW., Washington, DC and will continue on October 10. Parties wishing to testify orally at the hearings must provide written notification of their intention by noon, October 1, 1984 to Carolyn Frank, TPSC Secretary (Office of the United States Trade Representative, room 500, 600 17th Street, NW., Washington, DC 20506) giving:

(1) Their names, addresses and telephone numbers; and

(2) A brief summary of their presentation.

Those parties presenting oral testimony must submit a complete written statement in 20 copies by noon October 4.

Remarks at the hearings should be limited to no more than a 15 minute summary of the written statement to allow for possible questions from the Chairman and the interagency panel. Participants should provide twenty typed copies of their oral presentation at the time of the hearings.

Persons not wishing to participate at the hearings may submit a written statement, in twenty copies, by October 11 to the TPSC Secretary at the address noted above.

Parties are referred to section 2003 of Title 15 of the Code of Federal Regulations for the Committee's rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information and other procedures related to TPSC hearings.

3. Background

By agreement with the United States and other Contracting Parties to the General Agreement on Tariffs and Trade (GATT), the EC currently maintains a zero duty on imports of certain corn products chiefly used in animal feeds.

On April 12, 1984, the EC proposed to withdraw the GATT commitment to unconditional duty-free treatment of these imports, and to impose limits on the quantities of each of these products which could be imported duty-free. The EC is not obligated to implement its proposal, nor is there a specified time within which the EC must act, if at all.

The annual quantities of each product in question which could continue to be imported into the EC free of duty under the EC proposal are as follows:

EC tariff No.	EC product description	Quantity
23.03	Beet-pulp, bagasse and other waste of sugar-manufacture; brewing and distilling dregs and waste; residues of starch manufacture and similar residues:	
	A. Residues from the manufacture of starch from maize (excluding concentrated steeping liquors), of a protein content, calculated on the dry product:	
	II. Not exceeding 40 pct by weight.	3,000,000 metric tons.
	B. Other:	
	II. Other	40,000 metric tons.
23.04	Oil-cake and other residues (except dregs) resulting from the extracting of vegetable oils:	
	B. Other:	
	—oil cake of maize sprouts of a fat content by weight, calculated on the dry product:	
	. . . of less than 3 pct	750,000 metric tons.
	. . . of not less than 3 pct but not more than 8 pct.	350,000 metric tons.
	—Other	No limit.

In accordance with GATT rules, the EC has offered to negotiate this proposal with the United States, which is the major supplier of these products to the EC. Under GATT rules the EC must offer compensation to the United States, in the form of reductions in other EC trade barriers of interest to the United States, in order to restore the balance of trade concessions if the EC decides to implement the proposed new restriction. If the United States does not agree to the EC compensatory offer, then GATT rules permit the United States to impose retaliatory restrictions so as to restore the balance of trade concessions between the United States and the EC.

The United States vigorously opposes any restriction or impairment of the tarifff concessions by the EC, and is seeking to persuade the EC not to implement this action. However, if the EC should finally implement these restrictions to take countermeasures.

Under the rules of GATT Article XXVIII, compensation or retaliation on other products should be substantially equivalent in trade effect to the concessions withdrawn. For illustrative purposes, U.S. exports to the EC of the products that would be affected were valued at almost 800 million dollars in 1983. Further, GATT rules provide that the adjournment of tariff concessions would be applied on a most-favored-nation basis, i.e., to trade with all GATT Contracting Parties. In order to avoid undue effects on third countries, it is normal that retaliation concentrate on products primarily supplied by the country taking the adverse action.

Should retaliation be necessary, authorities available under U.S. law includes sections 125 and 301 of the Trade Act of 1974.

4. Comments

Comments are particularly invited on—

(a) The effect the EC's proposed action would have on U.S. interests.

(b) Products exported by the United States on which we might request new concessions from the EC as compensation.

(c) Products exported to the U.S. by the EC against which the United States could impose retaliatory restrictions.

5. Additional Information

Any questions with regard to this issue should be directed to Len Condon, Agricultural and Commodity Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. 20506; telephone, (202) 395-5006.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

[FR Doc. 84-24927 Filed 9-19-84; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Docket No. A84-15; Order No. 577]

East Orwell, Ohio 44034 (Mr. & Mrs. John Demeter, Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: September 14, 1984.

Docket No. A84-15.

Name of affected Post Office: East Orwell, Ohio 44034.

Name(s) of Petitioner(s): Mr. & Mrs. John Demeter.

Type of determination: Closing.

Date of filing of Appeal papers: September 12, 1984.

Categories of Issues Apparently Raised

1. Effect on Community Serviced by Office [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner(s). In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 27, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Cyril J. Pittack,
Acting Secretary.

Appendix

September 12, 1984—Filing of petition.

September 14, 1984—Notice and order of filing of appeal.

October 9, 1984—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

October 17, 1984—Petitioners' participant statement or initial brief [*see* 39 CFR 3001.115(a) and (b)].

November 6, 1984—Postal Service answering brief [*see* 39 CFR 3001.115(c)].

November 21, 1984—(1) Petitioners' reply brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

November 28, 1984—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].

January 10, 1984—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 84-24888 Filed 9-19-84; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14159; 812-5864]

The Empire Builder Tax Free Bond Fund, et al.; Filing of Application for an Amended Order Exempting Applicants

September 13, 1984.

Notice is hereby given that The Empire Builder Tax Free Bond Fund (formerly named ITB Empire Tax Free Income Fund), 60 State Street, Boston, Massachusetts 02109; and Investment Trust of Boston—Massachusetts Tax Free Income Fund ("Applicants"), filed an application on May 31, 1984, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), amending a previous order of the Commission (Investment Company Act Release No. 13655) and exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit certificate holders of certain unit investment trusts to invest dividend distributions and capital distributions (including capital gains distributions) received from such unit investment trusts in shares of Applicants with a reduced sales load equal to 1½% of the public offering prices for shares of the Applicants. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable Sections.

According to the application, each of the Applicants is a Massachusetts business trust registered pursuant to Section 8 of the Act as an open-end, non-diversified, management investment company. Applicants state that their Registration Statements on Form N–1 under the Act and the Securities Act of 1933 have become effective. Applicants' manager is Moseley Capital Management Inc., a wholly-owned subsidiary of Moseley, Hallgarten, Estabrook & Weeden Holding Corporation, whose principal operating subsidiary is Moseley, Hallgarten, Estabrook & Weeden Inc. ("Moseley, Hallgarten"), a full service New York Stock Exchange Member firm. ITB Distributors Inc. ("Principal underwriter") is the principal underwriter for each of the Applicants. The Empire Builder Tax Free Bond Fund is intended for New York investors seeking high current income exempt from federal income tax and New York State and City personal income taxes. Investment Trust of Boston—Massachusetts Tax Free Income Fund is intended for Massachusetts investors seeking high current income exempt from federal income tax and Massachusetts personal income taxes.

Applicants request an exemption from Section 22(d) of the Act to permit certificate holders of unit investment trusts sponsored or co-sponsored by Moseley, Hallgarten or by other broker-dealers with which the Principal Underwriter has agreements pertaining to the sale of shares of the Applicants to such certificate holders, to invest dividend distributions and capital distributions (including capital gains distributions) received from such unit investment trusts in shares of the Applicants with a reduced sales charge equal to 1½% of the public offering prices for shares of the respective Applicants.

Applicants state that the proposed sale of their shares at reduced sales charges is intended to make such shares available at competitive prices to such investors in unit investment trusts. Applicants assert that since certificate holders of unit investment trusts have already received selling services, either from an affiliate of the Principal Underwriter or from a dealer with which the Principal Underwriter has a dealer agreement, relating to an investment in a portfolio of tax exempt income producing securities in connection with their investment in the unit investment trust, a lesser sales effort is required in order to obtain a commitment to purchase shares of the Applicants. Applicants further assert that in the case of income distributions, such investors are generally independently seeking opportunities to reinvest dividend distributions. Since such certificate holders have generally already paid a sales load in investing in unit investment trusts equivalent to that which an investor would initially pay when investing in shares of the Applicants, Applicants believe that it is inappropriate to impose the full sales charge with respect to sales in connection with the reinvestment of unit investment trust dividend and capital distributions.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the divison of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24934 Filed 9–19–84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21289; SR–NYSE–84–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

September 5, 1984.

On July 12, 1984, the New York Stock Exchange, Incorporated ("NYSE"), 11 Wall Street, New York, NY 10005, submitted a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder,[1] to authorize NYSE member firms to use, for certain options orders, the NYSE's Designated Order Turnaround ("DOT") and Limit Order Turnaround ("LMT") Systems and the NYSE's Opening Automated Report Service ("OARS"). The Commission solicited comments on the proposal but received none.[2]

The DOT and LMT Systems would enable members electronically, through their own order processing systems, to route certain designated options market and limit orders directly to the appropriate specialist location for execution in accordance with standard auction market procedures. In addition, these systems electronically generate and forward to the originating member firm completed execution reports. The proposal authorizes member firms to use these systems for all post-opening day market and day limit orders in any option series, of no more than 100 contracts each. The proposed rule change also provides that options specialists guarantee the execution prices they report through the DOT System up to ⅛ point away from the execution price, even if erroneous.

With regard to those options orders entered into the System prior to the opening of trading, OARS would continuously calculate and display electronically (via the specialist's computer terminal) the number of buy and sell contracts, and any remaining imbalance, in each options series. In addition, OARS will capture all day market orders, of no more than 100 contracts each, entered into the System prior to the opening of trading. OARS also generates and sends execution reports to the originating member firms.

In addition, the NYSE proposal provides that specialists will not levy any fee or commission on member firms for the handling of market orders, executed at the opening and during the day, and immediately executable limit orders, as defined by the NYSE. The NYSE indicates that this provision in its rule proposal corresponds to the Exchange's current policy of not charging commissions on the execution of orders in equity securities through the DOT System. The NYSE indicates that, because limit orders are more difficult to execute and, generally, take a longer period of time to process, the specialist may charge a commission for any option LMT order which remains unexecuted after a predetermined period of time (currently designated at two minutes) has elapsed after the order enters the System. The proposal to charge a fee for limit orders that remain unexecuted after two minutes have elapsed corresponds to the policy set in place for the execution of limit orders for equity securities under the DOT System. *See* SR-NYSE-84-21; Securities Exchange Act Release No. 21197 (August 2, 1984), 49 FR 31792 (August 8, 1984).[3]

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[1] *See* Securities Exchange Act Release No. 21157 (July 20, 1984), 49 FR 30271 (July 27, 1984).

[2] The application of the DOT system to options trading is, however, discussed in the comment letter to the Commission by the Philadelphia Stock Exchange, Inc. ("Phlx") concerning the NYSE proposal to trade options on individual listed securities ("Phlx comment letter"). *See* File No. SR-NYSE–84–3, letter to George A. Fitzsimmons, Secretary, SEC, from Nicholas A. Giordano, President, Phlx, dated July 27, 1984; and note 3 *infra*.

Currently, the DOT and LMT Systems and OARS are used by NYSE member firms exclusively for certain designated equity security orders. In general, the options DOT and LMT Systems and OARS will perform the same functions in regard to order routing and reporting and trade comparison as the current system for equity securities.[4] The options DOT and LMT Systems will use the equity systems' computer hardware and facilities. In order to participate in the options DOT and LMT Systems and OARS, members that already use these services for equity securities need make only minor software modifications in their systems. Nevertheless, in some respects, the options DOT and LMT Systems represent a technological advancement over the current systems for equities. For example, the options DOT and LMT Systems will permit orders entered through the System to be displayed on the specialists' computer terminal on the Exchange floor. In addition, all system communications, including OARS orders, and all reports and cancellations, will be computerized.

The application of the DOT and LMT Systems and OARS to options transactions should enable member firms to experience more timely and cost efficient execution of their options orders. In addition, the increased use of automated facilities by member firms to place orders, and by specialists to report executions, and cancel or obtain information on any order in the System, should further enhance the timeliness of options transactions as well as the accuracy with which they are handled. Furthermore, the 100 contract limitation on the size of options orders to be entered into the System is appropriate, at least initially, because of the lack of experience with the new System. As the NYSE indicates in its filing, this restriction should provide members with sufficient flexibility, while simultaneously limiting the potential financial risk to member firms and specialists.

In its filing, the NYSE asserts its beliefs that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular Sections 11A(a)(1) and 17A(a)(1), which provide that "new data processing and communications techniques create the opportunity for," respectively, "more efficient and effective market operations" and "more efficient, and "more efficient, effective, and safe procedures for clearance and settlment." The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, in that it provides more rapid, efficient and cost-effective options executions and reports and thus facilitates transactions on the exchange. The Commission further finds that the proposed rule change is consistent with Section 6(b)(8) of the Act, in that it does not impose any burden on competition not necessary or appropriate in furtherance of the Act.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24933 Filed 9-19-84; 8:45 am]

BILLING CODE 8010-01-M

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[3] In the Phlx comment letter, the DOT system is referred to as "another instance of unfair or anticompetitive behavior designed to utilize the NYSE's primary equity market's resources to become dominant in the options market." The Phlx focus is on the "free service" provided NYSE member firms under the DOT system. The Phlx erroneously argues that, while floor brokerage commissions are levied for limit orders on the equity side, no brokerage commissions are to be charged for options orders. As indicated above, under certain circumstances, fees will be charged on both options and equity orders executed through the DOT System.

The Commission believes that by enhancing the cost efficiency and timeliness of certain options orders executed through the DOT and LMT Systems and OARS, the NYSE proposal should enable it to fairly compete more effectively with other options exchanges that have automated order routing and execution capabilities. *See, e.g.,* the American Stock Exchange, Inc.'s ("Amex") Amex Options Switch ("AMOS") System and the Chicago Board Options Exchange, Inc.'s ("CBOE") Order Support System ("OSS"). In addition, the NYSE's proposal to impose fees, under certain circumstances, on limit orders executed through the System, is virtually identical to provisions presently in place for AMOS on Amex. Moreover, with respect to this particular proposed rule change, the Commission notes that the competitive impact, if any, is quite limited because the NYSE currently is authorized to trade options on three contracts—the NYSE Composite Index, the NYSE (double value) Composite Index, and the "New" AT&T Companies Index. Indeed, the Phlx did not even comment on this particular rule change, but rather raised its concern in the context of the NYSE trading options on individual equities.

[4] Because options settle on a next-day basis and equities on a five-day basis, however, clearance and settlement procedures will differ between the options and equity systems.

[5] *See* discussion *supra* at note 3.

[Rel. No. 23420; 70-7022]

American Electric Power Co., Inc. Aep Generating Co.; Proposal To Dispose of and Acquire Pollution Control Facilities, and Guaranty Pollution Control Bonds

September 14, 1984.

AEP Generating Company ("AEGCO"), and its parent American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, have proposed a transaction with this Commission subject to sections 9(a), 10, 12(b), and (d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 thereunder.

By prior Commission Order, AEGCO acquired one-half undivided interest in the Rockport Generating Station ("Plant") along with Indiana & Michigan Electric Company ("I&ME"), also a subsidiary of AEP, which includes responsibility for 50% of the costs associated with disposing of and acquiring certain water pollution control devices ("Project") (HCAR No. 23399, August 17, 1984). AEGCO now proposes to enter into an Agreement of Sale ("Agreement") with the City of Rockport, Indiana ("City") providing for the construction and installation of the Project by the City, and the issuance by the City of pollution control revenue bonds ("Bonds") to finance the Project.

The Bonds will be issued in an initial principal amount of up to $150 million ("Series A") and additional bonds in principal amounts which, when added to the principal amount of the Series A Bonds, are sufficient to cover the cost of construction of the Project. It is currently estimated that the Cost of Construction of the Project will amount to $150 million. The proceeds of the sale of the Series A Bonds will be deposited by the City with Lincoln National Bank and Trust Company of Fort Wayne, as Trustee ("Trustee"), under an indenture to be entered into between the City and such Trustee, ("Indenture") pursuant to which the Series A Bonds are to be issued and secured. Such proceeds will be applied to payment of the cost of construction of the Project. The Agreement also will provide for the sale of the Project to AEGCO, the payment by AEGCO of the purchase price of the Project, and the assignment and pledge to the Trustee of the City's interest in, and of the monies receivable by the City under, the Agreement.

The proceeds received by AEGCO in reimbursement of its cost of construction of the Project are to be applied to the payment of outstanding bank loans of AEGCO and for construction and other corporate purposes. At June 30, 1984, such outstanding bank loans of AEGCO amount to $435 million.

The Agreement will provide that each installment of the purchase price for the Project payable by AEGCO will be in such amount (together with other monies held by the Trustee under the Indenture for that purpose) as will enable the City to pay, when due and payable, (i) the interest of the Series A Bonds, any additional Bonds and any refunding Bonds, (ii) the principal amount of the Series A Bonds, any additional Bonds and any refunding Bonds payable at the time of their respective stated maturities and (iii) amounts, including any accrued interest, payable in connection with any mandatory redemption of the Series A Bonds, any additional Bonds or any refunding Bonds. The Agreement will also obligate AEGCO to pay the fees and charges of the Trustee, as well as certain administrative expenses of the City.

AEGCO shall have the option to repay the purchase price of the Project in whole upon the occurrence of certain events by paying amounts sufficient to redeem all the Bonds then outstanding, the fees and expenses of the Trustee, and all other amounts payable under the Indenture, or at any time by depositing monies in the Bond Fund (as defined in the Indenture) or delivering to the Trustee governmental obligations sufficient in either case to provide for the release of the Indenture in accordance with its terms. Upon prepayment of the entire purchase price of the Project, AEGCO may terminate the Agreement. AEGCO may also prepay the purchase price of the Project in part, such payments to be paid to the Trustee for deposit in the Bond Fund and credited against the purchase price and used for the redemption or purchase of outstanding Bonds in the manner and to the extent the outstanding Bonds are redeemable or subject to purchase as provided in the Indenture.

AEGCO will convey the Project, to the extent that it has already been constructed and is then in place at the Plant site ("Existing Facilities"), and AEGCO will be entitled under the Agreement to be reimbursed from the proceeds of the Bond for its costs of construction. The Existing Facilities will thereupon become a part of the Project which AEGCO will repurchase from the City pursuant to the Agreement.

It is contemplated that the Series A Bonds will be sold by the City pursuant to arrangements with an underwriter or a group of underwriters. In accordance with the laws of the State of Indiana, the interest rate to be borne by the Series A Bonds will be fixed by or on behalf of the Common Council of the City. While AEGCO will not be a party to the underwriting arrangements for the Series A Bonds, the Agreement will provide that the terms of Series A Bonds and their sale by the City shall be satisfactory to AEGCO. AEGCO understands that interest on the Series A Bonds will be exempt from federal income taxation under the provisions of Section 103 of the Internal Revenue Code of 1954, as amended. It is not possible to predict precisely the interest rate which may be obtained in connection with the issuance of the Series A Bonds. However, AEGCO has been advised that, depending on maturity and other factors, the annual interest rates on obligations, interest on which is so tax exempt, historically have been and can be expected at the time of issuance of the Series A Bonds to be 2½% to 5% lower than the rates of obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

The Series A Bonds will be dated as of the date of issuance, will bear interest therefrom payable on April 1 and October 1, 1985, and will mature on October 1, 1985. It is expected that the Series A Bonds will not be redeemable at the option of the City prior to April 1, 1985, except under certain circumstances.

The Indenture contemplates that one or more series of Bonds may be issued with a guaranty, letter of credit, insurance policy, first mortgage bond or other collateral or instrument of credit enhancement provided by a person other than the City to afford additional security for the Bonds of such series. In connection with the issuance of the Series A Bonds, it is proposed that AEP will execute a Guaranty Agreement to the Trustee providing that AEP shall absolutely and unconditionally guarantee payment of the interest, principal and premium, if any, on the Series A Bonds. The management of AEP believes that the furnishing of such guaranty will permit the Series A Bonds to be sold upon more favorable terms and accordingly will be in the best interests of consumers and investors and consistent with sound and prudent financial policy.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 3, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25020 Filed 9-19-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21328; File No. SR-OCC-84-13]

Filing and Immediate Effectiveness of Proposed Rule Change by the Options Clearing Corporation

September 14, 1984.

On August 24, 1984, The Options Clearing Corporation ("OCC") filed a proposed rule change (SR-OCC-84-13) with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OCC's proposal enables OCC to clear options trades effected through several automated trading systems of the New York Stock Exchange, Incorporated ("NYSE").[1] OCC has entered into an

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[1] The Commission authorized the NYSE to process option transactions through its DOT, LMT and OARS systems in Securities Exchange Act Release No. 21289 (September 5, 1984).

Omnibus Account Agreement ("Agreement") with the NYSE and Stock Clearing Corporation ("SCC"), a wholly-owned subsidiary of NYSE, to establish omnibus accounts for each NYSE system.[2] Initially, the proposed clearing arrangement will be limited to non-equity options transactions.

The Agreement provides that OCC will consider SCC to be an OCC clearing member and will treat each omnibus account as a specialist's account.[3] Reports of matched trades effected through NYSE's automated systems will designate the omnibus account for that system as the *contra* party to the trade. OCC expects that opening and closing transactions settling in each omnibus account on any trading day will fully offset each other. As a result, SCC should not have open positions in such accounts and will not have settlement obligations to OCC. Nevertheless, transactions might not fully offset each other because of erroneous trade reports, OCC trade rejections or other reasons. If open positions do result, the Agreement requires SCC to satisfy related premium settlement obligations and OCC margin deposit requirements. Accordingly, like other OCC clearing members, SCC must maintain settlement accounts with a clearing bank as required by OCC Rule 203. Furthermore, pursuant to the Agreement, SCC will promptly close any such open positions by submitting an adjustment instruction to OCC or by executing a closing transaction on the NYSE for the appropriate omnibus account.

Although SCC is treated as a clearing member under the Agreement, OCC has modified the financial safeguarding mechanisms surrounding SCC's membership. Under the Agreement, NYSE guarantees the timely performance of SCC's obligations, including its premium payment and OCC margin obligations. The Agreement also requires SCC to make clearing fund contributions, including the minimum initial contribution of $100,000 to OCC's Non-Equity Securities Clearing Fund. Moreover, if SCC wishes to clear equity options, it will also need to deposit the initial minimum deposit of $10,000 to the Stock Clearing Fund.[4]

Because SCC is an NYSE facility and not a broker-dealer, OCC believes that several OCC Rules should not apply to SEC.[5] For instance, the Agreement does not subject SCC to Chapter XII of OCC's Rules, which authorizes OCC to discipline members for violating OCC's Rules, By-Laws and Agreements. OCC also will not require SCC to comply with Chapter III of its Rules, which contains OCC's net capital and financial responsibility requirements. Nevertheless, upon OCC's request, SCC will be required to demonstrate its ability to meet its settlement obligations on a timely basis. OCC also will not require SCC to pay any clearing fees.

OCC believes that its proposed rule change is consistent with the purposes and requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (the "Act") because it facilitates the clearance and settlement of options transactions effected through NYSE's automated trading systems. In addition, OCC states that its safeguarding mechanisms and the financial guarantee provided by NYSE should adequatley protect the securities and funds in OCC's custody or control or for which it is responsible.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–OCC–84–13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25022 Filed 9–19–84; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 14160; 812–5713]

Salomon Brothers Mortgage Securities, Inc.; Filing of an Application for an Order of the Commission Pursuant to Section 6(c) of the Act Exempting Applicant From All Provisions of the Act

September 14, 1984.

Notice is hereby given that Salomon Brothers Mortgage Securities, Inc. ("Applicant"), RepublicBank Dallas Tower, Suite 4110, Dallas, Texas 75210, a Delaware corporation which is an indirect wholly-owned subsidiary of Phibro-Salomon Inc., filed an application on November 29, 1983, and an amendment thereto on July 25, 1984, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act for the complete text of the provisions referred to herein and in the application.

According to the application, the Applicant's activities are limited by its Certificate of Incorporation to (i) acquiring, owning, holding, pledging and otherwise dealing with "fully modified pass-through" mortgage-backed certificates ("GNMA Certificates") guaranteed by the Government National Mortgage Association ("GNMA"); (ii) issuing and selling debt securities that are collateralized by GNMA Certificates and have been rated in the highest bond rating category of two nationally recognized statistical rating agencies; and (iii) activities incidental to the foregoing. Applicant may not otherwise trade or deal in securities or engage in any other activity.

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[2] OCC states that it will establish identical omnibus account arrangements for other options exchanges' automated trading systems.

[3] For example, like "regular" specialist's accounts, OCC will have the right to net purchase transactions against writing transactions in each omnibus account. *See* OCC Rule 601 (a) and (b) for a detailed description of OCC's margin calculation for specialist's accounts.

[4] OCC also will require SCC, as a clearing member, to make other Non-Equity Securities and Stock Clearing Fund contributions required by OCC Rule 1001. For each clearing fund, the required monthly contribution will be (a) the initial requirement ($100,000 and $10,000 respectively), or (b) 5%, or a higher percentage determined by OCC's Board of Directors, of SCC's average daily aggregate margin requirement for the related type of option contracts (non-equity or stock) outstanding during the preceding calendar month. Interpretation and Policy .01 to OCC Rule 1001 increases the percentage to 7%.

[5] OCC also is making exceptions for SCC from other OCC Rules and By-Laws, such as Article III relating to the composition and election of an OCC clearing member's Board of Directors.

Applicant proposes to issue and sell, in series, GNMA-collateralized obligations (the "Bonds"). Each series of Bonds will be issued pursuant to an indenture (the "Indenture") qualified under the Trust Indenture Act of 1939 and will be secured by the assignment and physical delivery to the trustee (the "Trustee") under the Indenture of a fixed portfolio of GNMA Certificates purchased with the proceeds of the sale of such Bonds, by the monthly distributions received on such GNMA Certificates and by the income derived from the reinvestment of such distributions. Each portfolio of GNMA Certificates will consist of GNMA Certificates representing the entire issue of a particular underlying mortgage pool ("whole-pool GNMA Certificates") and GNMA Certificates representing an undivided fractional interest in an underlying mortgage pool ("partial-pool GNMA Certificates"). Applicant represents that at the date of issuance, each portfolio of GNMA Certificates will have an outstanding principal balance in excess of the principal amount of the related series of Bonds and that thereafter, no GNMA Certificates will be added, withdrawn or substituted as collateral for that series of bonds. According to Applicant, the distributions on the mortgages underlying each portfolio of GNMA Certificates, together with the reinvestment earnings on such distributions (at the assumed rate of return specified in the Indenture), will be sufficient, regardless of the rate of prepayments on the underlying mortgages, to make timely payments of interest and principal on the related series of Bonds. Applicant represents that distributions on the GNMA Certificates will be invested in U.S. Government obligations and certain other instruments acceptable to the two rating agencies rating the Bonds and such investments will mature on or prior to the next payment date for the related series of Bonds which will occur no less frequently than semi-annually. Applicant further represents that the collateral pledged as security for one series of Bonds will serve as collateral only for that series of Bonds.

Applicant states that it believes that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that it be exempted from the requirements of the Act so long as it conducts its business in the manner described. Applicant maintains that since the Bonds will have fixed interest rates, will not be convertible into any other obligation of the Applicant (or any other person), will not be redeemable by Bondholders, and will not otherwise grant Bondholders an equity interest in the GNMA Certificates pledged as security for such Bonds, the debt obligations proposed to be issued do not raise the problems of inequitable pricing, excessive or hidden sales loads or churning of accounts associated with some early unit investment trusts. It is asserted that applicant cannot affect the timely payment of a series of Bonds, since, under the Indenture, the portfolio of pledged GNMA Certificates must be physically delivered to the Trustee immediately following the issuance of a series of Bonds and may not thereafter be altered in any respect. In addition, distributions received on the GNMA Certificates and the reinvestment income thereon will, pursuant to the Indenture, be paid directly to the Trustee, and payment of the scheduled distributions on the GNMA Certificates will be guaranteed by the United States. Finally, Applicant submits that granting the application is appropriate in view of the public interest in increasing the financing available for residential housing. According to Applicant, collateralized-mortgage obligations (such as the Bonds) attract new, lower-cost capital to the residential mortgage market, increase the liquidity of the primary and secondary mortgage markets, and give thrift institutions and home builders greater flexibility in the types of mortgages they can offer. The Applicant believes that these new sources of funds and the resulting increase in liquidity will tend to reduce mortgage interest rates and increase new housing construction. To this end, Applicant agrees to first seek to obtain and pledge newly issued GNMA Certificates as collateral for each series of Bonds. However, to the extent the use of newly issued GNMA Certificates is impracticable in light of price or availability, Applicant will obtain and pledge other GNMA Certificates to fully collateralize a series of Bonds.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley Hollis,

Acting Secretary.

[FR Doc. 84-25021 Filed 9-19-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Advent V Capital Co. LP; Issuance of License To Operate as a Small Business Investment Company

[License No. 01/01-0331]

On June 22, 1984, a notice was published in the **Federal Register** (49 FR 25729) stating that an application had been filed by Advent V Capital Co. LP, 45 Milk Street, Boston, Massachusetts 02109, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies [13 CFR 107.102 (1984)] for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business on July 23, 1984, to submit their written comments to SBA. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, after having considered the application and all other pertinent information, SBA issued license No. 01/01-0331 to Advent V Capital Co. LP to operate as a SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 14, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-25027 Filed 9-19-84; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The Small Business Administration Region VII Advisory Council, located in the geographical area of Cedar Rapids, Iowa, will hold a public meeting at 9:00 a.m., on Wednesday, October 24, 1984, at the Junior Achievement Building, 330 Collins Road, NE., Cedar Rapids, Iowa, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Ralph W. Potter, District Director, U.S. Small Business Administration, 337 Collins Road, NE., Cedar Rapids, Iowa 52402, telephone number (319) 399-2571.

Dated: September 14, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-25031 Filed 9-19-84; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 10:30 a.m. on Thursday, October 25, 1984, at the Fu Ling Restaurant, 970 North Broadway, Los Angeles, California 90012, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071; Telephone No. (213) 688-2977.

Dated: September 14, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-25030 Filed 9-19-84; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m., on Thursday, October 18, 1984, in Room 752 U.S. Courthouse Building, West 920 Riverdale Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, Room 651 U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington 99210, telephone (509) 456-3781.

Dated: September 14, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-25028 Filed 9-19-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-070]

Coast Guard Academy Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Tuesday and Wednesday October 30-31, 1984. The session on Tuesday will be held from 1:00-2:00 p.m. An open session will also be held on Wednesday from 10:00 to 11:30 a.m. The agenda for this meeting consists of the following items:

1. Faculty.
2. Curricula.

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75-38 to advise on the course of instruction at the Academy, and to make recommendations as necessary.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the hearing. Those who would like to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Capt. David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444-8275.

Dated: September 14, 1984.

B.L. Stabile,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 84-24944 Filed 9-19-84; 8:45 am]

BILLING CODE 4910-14-M

[CGD 84-071]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on 11 October 1984 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. The agenda for the meeting follows:

1. TSAC discussion and/or recommendations concerning the following past agenda items:

(a) Recent International Maritime Organization Meeting Developments
(b) Intervals for Drydocking and Tailshaft Requirements on Inspected Vessels
(c) Boundary Lines
(d) Great Lakes Limited Loadlines Routes
(e) Air Quality: Vapor Control/Vapor Recovery
(f) Licensing of Pilots; Manning of Vessels—Pilots
(g) Qualifications of Persons in Charge of Oil Transfer Operations
(h) Licening of Officers and Operators
(i) Seafarers Health Improvement Plan

2. New Agenda Items:

(a) Coast Guard Contracting of Short Range Aids to Navigation
(b) Blind Bend Whistle Signal on Rivers
(c) International Regulations for Preventing Collisions at Sea, 1972; Vertical Sector Requirements for Lights on Unmanned Barges
(d) Vessel Bridge-to-Bridge Radiotelephone Communications on the Great Lakes
(e) Uninspected Vessels—Coast Guard/OSHA Jurisdiction (Information item)
(f) Waste Reception Facilities (Briefing on Status of Proposed Rule)
(g) Identification of Critical Navigation Areas on Western Rivers; NTSB Recommendation M-83-093

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Secretary no later than the day before the meeting.

FOR FURTHER INFORMATION CONTACT: Executive Secretary, Towing Safety

Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593, (202) 426–1477.

Dated: September 17, 1984.

C.M. Holland,

Captain, U.S. Coast Guard, Executive Secretary, Towing Safety Advisory Committee.

[FR Doc. 84–24942 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Draft Environmental Impact Statement; New London County, CT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a draft environmental impact statement will be prepared for a proposed highway project in New London County, Connecticut.

FOR FURTHER INFORMATION CONTACT: David R. Billings, Environmental Engineer, Federal Highway Administration, 1 Hartford Square West, South Building, Hartford, Connecticut 06114, Telephone (203) 722–2437 or James F. Sullivan, Director, Office of Environmental Planning, Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109, Telephone (203) 566–5704.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Connecticut Department of Transportation, will prepare a draft environmental impact statement (DEIS) on a proposal to construct Route 11 in New London County, Connecticut.

The purpose of the DEIS is to analyze environmental impacts which may occur as a result of implementation of the project and to gain input relating to the alternatives under consideration. The DEIS will consider the alternatives of: (1) Do Nothing, (2) Improve Existing Facilities, (3) Mass Transit, and (4) Various Expressway Locations.

The proposed construction will begin at the interchange of the existing Route 11 expressway with Route 82 in Salem, and will extend 10 miles southerly through Montville to Interstate 95 in Waterford.

This proposal has an extensive history of coordination with Federal, State, local, and regional agencies and organizations. A DEIS for this project was prepared and circulated for public review on October 9, 1979. Public hearings and informational meetings concerning traffic, engineering, environmental, social, economic, and land use issues were held in 1978 and 1979. Due to the passage of time, during which extensive local and regional coordination has taken place, a new DEIS will be prepared. Since the full range of issues relating to this project have been identified, formal scoping meetings are not deemed necessary at this time.

Agencies, organizations and individuals interested in submitting comments or questions on the proposed action should contact the FHWA or Connecticut Department of Transportation at the address provided above before 45 days from this publication date.

Issued on: September 12, 1984.

James J. Barakos,

Division Administrator, Hartford, Connecticut.

[FR Doc. 84–24949 Filed 9–19–84; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 14, 1984.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0074
Form Number: IRS Form 1040 and Related Schedules A, B, C, D, E, F, G, R, SE, & W
Type of Review: Revision
Title: U.S. Individual Income Tax Return
Clearance Officer : Garrick Shear (202) 566–6254, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph Maty,

Departmental Reports, Management Office.

[FR Doc. 84–24981 Filed 9–9–84; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on November 7, 1984, at 9:00 a.m., the Portland, Oregon Regional Office Station Committee on Educational Allowances shall at Room 1427, Federal Building, 1220 SW., Third Avenue, Portland, Oregon, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Phagan's Central Oregon Beauty College, Bend, Oregon, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: September 12, 1984.

Jack G. McReynolds,

Director, VA Regional Office, 1220 SW. Third Avenue, Portland, Oregon 97204.

[FR Doc. 84–25035 Filed 9–19–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 184
Thursday, September 20, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, September 25, 1984.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 84-07–FOIA–142–CH, concerning a request for information from a charge file.
4. Freedom of Information Act Appeal No. 84–06–FOIA–77–HU, concerning internal memoranda and investigator's note in a closed age case.
5. Freedom of Information Act Appeal No. 84–5–FOIA–113–CL, concerning a request for ADEA charge files which are administratively closed.
6. Freedom of Information Act Appeal No. 84–6–FOIA–64–SL, concerning a request for documents from an ADEA charge file.
7. Freedom of Information Act Appeal No. 84–7–FOIA–90–DA, concerning a request for a copy of a Title VII charge file.
8. Freedom of Information Act Appeal No. 84–6–FOIA–42–NO, concerning a request for a copy of 3 Title VII files.
9. Freedom of Information Act Appeal No. 84–7–FOIA–128–HQ, concerning a request for settlement information from a Title VII Commissioner's charge.
10. Proposed TERO Contracts for Fiscal Year 1985.
11. Proposed State and Local Program Contracts for Fiscal Year 1985.
12. Proposed Certification for the South Carolina Human Affairs Commission.
13. Proposed Revision to Federal Sector EEO Regulations.
14. Proposed Semi-Annual Regulatory Agenda.

Closed

1. Litigation Authorizaiton; General Counsel Recommendations.
2. Proposed Decisions, Settlements, and Subpoenas.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634–6748.

This Notice Issued September 18, 1984.

Dated: September 18, 1984.

Teva McCall,

Executive Secretary to the Commission.

[FR Doc. 84–25075 Filed 9–18–84; 1:33 pm]

BILLING CODE 6750–06–M

2

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From September 13th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the September 13, 1984 Open Meeting and previously listed in the Commission's Notice of September 6, 1984.

Agenda, Item No, and Subject

Common Carrier—2—Title: In the Matter of Interconnection Arrangements Between and Among Domestic and International Record Carriers. Summary: The Commission will consider whether to institute a rulemaking proceeding to investigate the need to extend under Section 201(a) certain interconnection arrangements it prescribed in its Interim Order. These interconnection arrangements are tied to Sections of the Record Carrier Competition Act of 1981, that sunset on December 29, 1984. (Deleted at the request of Common Carrier Bureau)

Common Carrier—3—Title: Second Report and Order, General Docket No. 80–112. Summary: The Commission will consider adopting rules to allow the use of lotteries for the selection of Multichannel Multipoint Distribution Service licensees. (Deleted at the request of the Office of Commissioner Rivera)

Common Carrier—4—Title: American Telephone and Telegraph Co., Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell and U.S. West—Accounting instructions for the judgment and other costs associated with the *Litton Systems* antitrust lawsuit. Summary: The Commission will consider the adoption of an Order to establish the proper accounting for an antitrust judgment and to clarify the accounting and disclosure requirements for litigation costs. (Deleted at the request of Common Carrier Bureau)

Private Radio—1—Title: Petitions for Partial Reconsideration requesting that repeater subband frequencies 52–54 MHz (6 meters) be made available for RACES in declared national emergencies. Summary: The Commission will consider whether to grant or deny the subject petitions and whether to amend the rules to include additional 6-meter repeater subband frequencies for RACES operations in wartime. (Dleted at the request of the Office of Commissioner Dawson)

Private Radio—2—Title: *Memorandum Opinion and Order* in the Matter of Licenses issued to Reuters Limited for Operation of 2.5–2.69 GHz Private Operational-Fixed Microwave Service Stations. Summary: The FCC will consider Reuters Limited's Application for Review of the Private Radio Bureau's order which set aside thirteen licenses granted to Reuters Limited and accorded Associated Information Services Corporations mutually exclusively status with the Reuters applications.

Mass Media—7—Title: A petition for reconsideration of the denial of the peition to deny filed against the renewal applications of WELR (AM & FM), Roanoke, Alabama, co-filed by the Concerned Citizens of Roanoke, Roy Terry, the National Black Media Coalition, and Puria W. Marshall and various related pleadings. Summary: The Commission considers a petition for reconsideration of the denial of a petition to deny the license renewal applications of WELR (AM & FM), Roanoke, Alabama. (Deleted at the request of Mass Media Bureau)

Issued: September 13, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–25047 Filed 9–18–84; 11:16 am]

BILLING CODE 6717–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 24, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,102–SR: American Bank & Trust Company, New York, New York

Memorandum re: Amendments to the Corporation's General Travel Regulations (GRT's).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)((6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 17, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–25063 Filed 9–18–84; 1:32 pm]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, September 24, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Investors Thrift, an operating noninsured industrial bank located at 2 City Boulevard East, Orange, California.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 17, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–25064 Filed 9–18–84; 1:32 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:05 a.m. on Saturday, September 15, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Community Bank & Trust Company, Enid, Oklahoma, which was closed by the Oklahoma State Bank Commissioner on Friday, September 14, 1984; (2) accept the bid for the transaction submitted by the First National Bank and Trust Company of Enid, Enid, Oklahoma; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 17, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–25065 Filed 9–18–84; 1:32 pm]

BILLING CODE 6714–01–M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 25, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, September 27, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

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STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion 1984-42, Carl C. Perkins, Congressional Candidate
Finance Committee Report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 84-25080 Filed 9-18-84; 2:26 pm]
BILLING CODE 6715-01-M

7

FEDERAL RESERVE SYSTEM

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, September 26, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 18, 1984.

James McAfee,
Associate Secretary of the Board

[FR Doc. 84-25117 Filed 9-18-84; 3:25 pm]
BILLING CODE 6210-01-M

8

AFRICAN DEVELOPMENT FOUNDATION

Board Meeting

TIME: 4:00 p.m.

DATE: September 28, 1984.

PLACE: 1724 Massachusetts Avenue, N.W., Suite 200, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Chairman's Report.
2. Program Committee Report, Dr. Blackshear, Chairman.
   A. Update FY 1984 approved grants.
   B. Discussion of philosophical issues regarding grant-funding process.
3. President's Report.
4. External Relations Committee Report, Mr. Arterbery, Chairman.
5. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Ms. Marge Cook, 634-9853.

Percy C. Wilson,
Vice Preisent.
September 18, 1984.

[FR Doc. 84-25076 Filed 9-19-84; 10:23 am]
BILLING CODE 6116-01-M

federal register

Thursday
September 20, 1984

Part II

Environmental Protection Agency

40 CFR Part 133

Secondary Treatment Regulation; Final Rule

40 CFR Part 122

National Pollutant Discharge Elimination System; Final Rule

40 CFR Part 133

Secondary Treatment Regulation; Availability of Comments and Additional Opportunity To Comment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 133

[WH-FRL-2600-1]

Secondary Treatment Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the secondary treatment regulation to reflect changes required by section 23 of the "Municipal Wastewater Treatment Construction Grant Amendments of 1981," (Pub. L. 97-117) and experience with the secondary treatment regulation by EPA and the States. The final rule makes the following changes in response to the 1981 Amendments.

- Defines a category of facilities eligible for treatment equivalent to secondary treatment as those facilities that use a trickling filter (TF) or waste stabilization pond (WSP) as a principal treatment process, and which cannot consistently meet secondary treatment requirements.
- Defines the minimum level of effluent quality attainable by such facilities during a 30-day period as an average value not to exceed 45 milligrams per liter (mg/l) for the pollutant parameters biochemical oxygen demand, 5-day (BOD_5) and suspended solids (SS), an average 7-day value for BOD_5 and SS not to exceed 65 mg/l and a percentage removal of BOD_5 and SS not less than 65 percent (30-day average).
- Provides procedures by which National Pollutant Discharge Elimination System (NPDES) permitting authorities may establish alternative State requirements (ASR) for facilities providing treatment equivalent to secondary treatment.
- Requires that the case-by-case adjustment of NPDES permits for publicly owned treatment works (POTWs) reflect the performance or design capbilities of the facility, and assures that water quality is not adversely affected, where treatment equivalent to secondary treatment is provided.
- Removes the 2 million gallons per day (mgd) flow limitation for WSPs eligible for adjustment of SS effluent limitations.

The final rule also amends the regulation to allow NPDES permitting authorities the option of substituting carbonaceous biochemical oxygen demand, five-day ($CBOD_5$) for BOD_5. Where the $CBOD_5$ parameter is used, the oxygen demand from secondary treatment is defined as a level of effluent quality that does not exceed an average $CBOD_5$ concentration of 25 mg/l in a period of 30 consecutive days and 40 mg/l in a period of 7 consecutive days. The $CBOD_5$ parameter may also be used by permitting authorities to establish effluent requirements for facilities providing treatment equivalent to secondary treatment.

The final rule adds a definitions section to the secondary treatment regulation for key terms and makes minor editorial changes.

These regulations were proposed for public comment in the **Federal Register** of November 16, 1983 (48 FR 52258 and 48 FR 52272).

EFFECTIVE DATE: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation will be considered issued for purposes of judicial review at 1:00 pm Eastern time October 4, 1984. The final regulation shall become effective November 5, 1984. In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical or nonsubstantive nature on the final regulation may be submitted on or before November 20, 1984. The effective date of this regulation will not be delayed by consideration of such comments.

Under section 509(b)(1) of the Clean Water Act (the Act), any petition for judicial review of this regulation must be filed in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Act, the regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce its requirements.

ADDRESSES: The record for this rulemaking will be available for public review in the EPA's Public Information Reference Unit, Room 2004, 401 M St., SW, Washington, D.C. 20460. Copies of the "Technical Support Document for Regulations Under Section 304(d)(4)," may be obtained from the National Technical Information Service, Springfield, Virginia, 22161, (703) 487-6000.

FOR FURTHER INFORMATION CONTACT: William Kramer, Facility Requirements Division (WH-595), Environmental Protection Agency, Washington, D.C., 20460, (202) 382-7277.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** Section of this preamble describes the legal authority and background for these amendments, summarizes the final regulation and changes from the proposed regulation, responds to public comments received on the proposed rulemaking and gives highlights on implementation of the regulation. The abbreviations, acronyms and other terms used in the **SUPPLEMENTARY INFORMATION** section are defined in Appendix A of this notice.

More detailed information on the following topics related to this rulemaking was included in the preamble to the proposed regulation: the legislative history of the Clean Water Act and the Municipal Wastewater Construction Grant Amendments of 1981; an overview of biological treatment systems; a technical discussion of alternative oxygen demand parameters for secondary treatment; and the data collection and analysis which supports this regulation. The above information, while still pertinent, is not reprinted to avoid duplication. The previous **Federal Register** notices for the proposed regulation (48 FR 52258 and 48 FR 52272) should be consulted for further information on these topics.

Also published elsewhere in today's **Federal Register** are final revisions to permit program requirements (40 CFR Part 122) that allow NPDES permits to be modified to reflect the limits contained in these revisions to the secondary treatment regulation.

Information in this premable is presented in the following order:

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I. Introduction

A. Statutory Authority

Section 301(b)(1)(B) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(b)(1)(B), requires that publicly owned treatment works (POTWs) achieve effluent limitations based upon secondary treatment as defined by the Administrator of EPA pursuant to section 304(d)(1) of the Act. Section 304(d)(1), 33 U.S.C. 1314(d)(1), requires that the Administrator publish information on the degree of effluent reduction attainable through the application of secondary treatment within 60 days of enactment and from time to time thereafter.

Section 304(d)(4) of the Act, 33 U.S.C. 1314(d)(4), as amended by section 23 of the "Municipal Wastewater Treatment Construction Grant Amendments of 1981" (Pub. L. 97-117), (hereafter referred to as "1981 Amendments"), deems such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters as the equivalent of secondary treatment, and directs the Administrator to provide guidance under section 304(d)(1) on design criteria for such facilities, taking into account pollutant removal efficiencies. Section 304(d)(4) further requires that water quality not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

B. Previous Regulation

The secondary treatment regulation was originally promulgated on August 17, 1983 [38 FR 22298]. Generally, it established levels of effluent quality for the parameters biochemical oxygen demand, SS, fecal coliform bacteria, and pH. Special consideration was provided for facilities subject to wet weather flows from combined sanitary and storm sewers, and facilities receiving high strength industrial wastes.

Two subsequent amendments promulgated on July 26, 1976 [41 FR 30788] and October 7, 1977 [42 FR 5665] provided for: (1) Deletion of the fecal coliform bacteria limitations and clarification of the pH requirement, and (2) special consideration for the SS effluent limitations applicable to WSPs with wastewater flows of less than 2 mgd.

The secondary treatment regulation defines "secondary treatment" as attaining an average effluent quality for both biochemical oxygen demand, five-day (BOD_5) and SS of 30 mg/l in a period of 30 consecutive days, an average effluent quality of 45 mg/l for the same pollutants in a period of 7 consecutive days, and 85 percent removal of the same pollutants in a period of 30 consecutive days. The effluent values for pH must be maintained between 6.0 and 9.0 unless certain demonstrations are made.

The regulation provided special consideration in three instances:

(1) Where secondary treatment works are affected by wet weather flows due to combined sewers, the percentage removal requirements may be adjusted;

(2) Where industrial contributions exceed 10 percent of the design flow, and the discharge of BOD_5 and SS by the industrial contributor permitted under sections 301(b)(1)(A)(i) or 306 of the Act would be less stringent than secondary treatment requirements, the 30-day and 7-day requirements for BOD_5 and SS may be adjusted; and

(3) Where WSPs are the sole process used for secondary treatment and wastewater flows are less than 2 mgd, Regional Adminstrators and State Directors may adjust the SS effluent limitations to reflect the effluent quality achieved 90 percent of the time within a State or appropriate contiguous geographic area.

The regulation (§ 133.104(a)) requires the use of sampling and testing procedures for BOD_5 and SS specified in guidelines promulgated pursuant to sections 304(h) and 402 of the Act (40 CFR Part 136). The secondary treatment regulation also allowed use of chemical oxygen demand (COD) or total organic carbon (TOC) testing as a substitute for BOD_5 when a long-term BOD: COD or BOD: TOC correlation has been demonstrated.

II. Background

A. The Clean Water Act—Pub. L. 92-500 and EPA Response

Sections 301, 304 and 402 of the Act provide the basic structure for translating Congress' broad goal of eliminating "the discharge of pollutants into the navigable waters," [35 U.S.C. 1251(a)(1)] into specific requirements that must be met by individual point sources. Section 301(b) of the Act authorizes the Administrator to set effluent limitations for categories of point sources. For POTWs, section 301(b)(1)(B) of the Act requires the achievement of effluent limitations based on secondary treatment as defined by the Administrator in section 304(d)(1) of the Act.

Section 304 of the Act contains requirements for the Administrator to follow in issuing regulations, information and guidelines. In Section 304(d)(1) of the Act, the Administrator is directed to publish information on the "degree of effluent reduction attainable through application of secondary treatment."

Section 402 of the Act authorizes the establishment of the National Pollutant Discharge Elimination System (NPDES), under which every point source discharger of pollutants is required to obtain a permit. The permit requires the discharger to meet all the applicable requirements specified in regulations issued under §§ 301 and 304 of the Act.

With the exception of the SS adjustment for WSPs, the previous secondary treatment regulation did not address the type of technology used to achieve secondary treatment requirements.

B. Municipal Wastewater Treatment Construction Grants Amendments of 1981—Section 23 of Pub. L. 97-117

The full text of section 23 of Pub. L. 97-117 reads as follows:

> (4) For the purposes of this subsection [section 304(d)], such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objective of the Act, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment. [33 U.S.C. 1314(d)(4)]

The legislative history for section 23 shows that Congress was concerned that EPA had not "sanctioned" the use of certain biological treatment techniques that are effective in achieving significant reductions of BOD and SS for secondary treatment. The amendment seeks to avoid the construction of costly new facilities where an alternative treatment technology, such as a TF and WSP, could achieve significant biological treatment. The legislative history supports the conclusion that the amendment would apply primarily to smaller communities, which could use TFs and WSPs that are not capable of consistently meeting effluent limitations based on current secondary treatment requirements, but still achieve significant biological treatment.

The Agency determined that it should consider the following based on the legislative history of section 23 of Pub. L. 97-117:

(a) Facilities deemed equivalent to secondary treatment consist of biological treatment facilities that are capable of achieving significant reductions in BOD and SS, but cannot consistently achieve existing secondary treatment requirements;

(b) Oxidation ponds and lagoons [i.e., waste stabilization ponds] and TFs are noted as examples of such facilities in both the Act and legislative history;

(c) Sophisticated and costly facilities built to achieve the current secondary treatment requirements are contrasted with "equivalent" biological facilities and technologies that are cheaper, easier to operate, but cannot consistently meet the current secondary treatment requirements;

(d) EPA has discretion under section 304(d)(1) of the Act in defining "facilities deemed equivalent to secondary treatment" and the degree of effluent reduction attainable by such facilities, but should also establish the criteria for such facilities based on design and pollutant removal efficiencies;

(e) The regulations should address variations in plant performance caused by geographic, climatic, or seasonal conditions;

(f) The provisions should be especially useful to smaller communities; and

(g) The use of an approach that sets technology-based effluent limitations based on assimilative capacity of receiving waters was rejected, and a "technology-based approach" maintained, but implementation of these provisions must include assurances that water quality will not be adversely affected.

C. Use of the $CBOD_5$ Parameter

The BOD_5 pollutant parameter (and its associated testing procedure) has been widely used to determine the operating efficiency and effluent quality of wastewater treatment facilities. The oxygen demand for the BOD_5 parameter is primarily exerted through the metabolism of organic matter by carbonaceous bacteria (resulting in a carbonaceous biochemical oxygen demand or CBOD), although an additional nitrogenous oxygen demand (NOD) may also be exerted through the action of nitrogenous bacteria that oxidize ammonia nitrogen to nitrate in a two-stage process known as nitrification. Commonly accepted water quality modeling and analytic techniques used to determine required treatment levels (i.e., secondary or more stringent levels) consider CBOD and NOD separately. Secondary treatment requirements are based on controlling the oxygen demand due to the carbonaceous component of the organic material in the effluent because secondary treatment facilities can effectively remove carbonaceous organic material but may not consistently remove ammonia.

Problems have arisen with the use of the BOD_5 test in many newer municipal secondary facilities. When sufficient numbers of nitrifying bacteria are present in the test sample they can exert a signifcant NOD in the BOD_5 test that would not be exerted in their absence. Since many of the factors conducive to improved secondary effluent quality are also conducive to the growth of nitrifying bacteria, the BOD_5 test can erroneously indicate poorer effluent quality when effluent quality and plant performance have actually improved. The phenomenon occurs in many newer secondary facilities. The Agency is aware that some facilities are being intentionally operated in a mode that inhibits the growth of nitrifying bacteria to improve BOD_5 test results and show compliance with secondary treatment requirements. These procedures usually result in poorer effluent quality (although BOD_5 test results indicate the opposite) and may often result in greater sludge production and higher operation and maintenance costs.

Alternative BOD testing procedures have been developed to correct for unintended measurement of NOD in the BOD_5 test. The use of a nitrification inhibiting agent was described in *Standard Methods of the Examination of Water and Wastewater, 15th ed.*

(American Public Health Association, Washington, D.C. 1980). The nitrification inhibited BOD_5 test or carbionaceous biochemical oxygen demand (CBOD$_5$ test, allows the oxygen demand due to metabolization of carbonaceous organic matter to be expressed, but eliminates any extraneous measurement of NOD. As a result a $CBOD_5$ test can be expected to provide a more consistent basis for evaluating plant performance and effluent quality.

In late July, the Agency amended to pollutant sampling and testing procedure regulation (40 CFR Part 136), which, among other things, included testing procedures for measuring $CBOD_5$ based on the *Standard Method* procedures.

The Agency is allowing substitution of the $CBOD_5$ parameter for the BOD_5 parameter, because it believes that this parameter is a better reflection of the understood meaning of secondary treatment in terms of measuring the removal of carbonaceous organic materials by secondary treatment for certain POTWs. In addition, the Agency believes that implementation of $CBOD_5$ test procedures should eliminate the counter-productive operating practices that were noted above since incidental nitrification will no longer affect test results.

D. The Proposed Regulation—November 16, 1983

Proposed amendments to the secondary treatment regulation defining "equivalent treatment" were published in the **Federal Register** of November 16, 1983. A separate notice was published on that date to proposed amendments in response to the "1981 Amendments" and to allow use of the $CBOD_5$ pollutant parameter (48 FR 52258 and 48 FR 52272, respectively). This notice is the final rulemaking for both of these proposals. It should be noted that while today's final regulation includes a requirement that facilities providing treatment equivalent to secondary treatment achieve a 30-day average percent removal not less than 65 percent (§ 133.105 (a)(3), (b)(3) and (e)(1)(iii)), elsewhere in today's **Federal Register** the Agency is publishing a notice soliciting public comment on proposed revisions to the percent removal requirements in the secondary treatment regulation. The Agency has included the 65 percent removal requirement in today's final regulation to parallel the structure of the existing secondary treatment requirement for a percent removal, i.e., 85 percent (§ 133.102 (a)(3) and (b)(3)). The notice of availability solicits additional public comment on amendments to the percent removal requirement—both 85 percent and 65 percent. The Agency expects to promulgate a final decision on the percent removal issue within the next nine months.

The comment period for both proposals closed January 16, 1984. However, a number of comments were received after that date. All comments, including those received after January 16, 1984, were fully considered as part of the final rulemaking. A total of 75 comments were received in response to the proposed amendments implementing Pub. L. 97–117. Thirty comments were received in response to the proposal to allow use of $CBOD_5$. The changes to the proposals resulting from these comments, as well as a summary response to all comments, are discussed in the following sections of this notice.

The preamble for the proposed regulation pertaining to Pub. L. 97–117 also requested comments on the percent removal requirements for BOD_5 and SS in the secondary treatment regulation. Comments were requested of five questions designed to gather more information on use of the percent removal requirement. Since the agency did not make a specific proposal on the percent removal requirement and several commenters requested such a proposal prior to any final rulemaking, we are not promulgating any final revisions to the percent removal requirement at this time. The Agency will make its final decision on amendments to the percent removal requirement following the notice mentioned above and an opportunity for public comment.

III. Summary of Final Regulations and Changes From the Proposal

A. Changes From the Proposal

Since the regulation was proposed, it has been changed to respond to public comments. The reasons for the changes are discussed in more detail in sections IV and VI of the preamble.

Sections 133.101(f), 133.101(g), 133.105(d), 133.105(e)(1) and 133.105(e)(2)—The word "achieved" has been changed to "achievable" in the phrases "effluent concentration consistently achievable" and "effluent values achievable".

Section 133.103(b)—As proposed, this provision previously allowed adjustment of the 30-day BOD_5 and SS Concentration limitations where POTW's receive industrial wastes for which direct discharge standards are less stringent than the secondary treatment requirements. The provision has been modified to also allow adjustments under comparable circumstances for POTW's regulated by equivalent treatment standards or $CBOD_5$ standards. The provision also has been modified by adding a reference to section 301(b)(2)(E) of the Clean Water Act which will be the basis for an industrial discharger's effluent limitations for BOD_5 or SS for permits written after July 1, 1984.

Section 133.103(c)—As proposed, this provision previously allowed SS adjustments for WSPs which are the "sole" process used for secondary treatment. The phrase "sole process" has been changed to "principal process" to be consistent with the definition of facilities eligible for the equivalent treatment requirement (§ 133.101(g)(2)).

Section 133.105—The word "and" in the second sentence in § 133.105 has been changed to "or" to clarify that the provisions in §§ 133.103, 133.105(c) or 133.105(d) may be used individually to adjust the requirements for equivalent treatment in § 133.105 (a), (b), and (c).

Section 133.105(d)—This section has been changed to require the permitting authority to provide notice and opportunity for public comment when setting alternative State requirements for treatment equivalent to secondary treatment.

Section 133.105(e)—A new subsection has been added to allow case-by-case adjustment of the $CBOD_5$ values up to a maximum of 40 mg/l (30-day average) and 60 mg/l (7-day average) when $CBOD_5$ limits are used for equivalent treatment processes (i.e., TFs and WSPs). The provision also allows $CBOD_5$ to be used to set an ASR for treatment equivalent to secondary treatment.

Section 133.105(f)—Proposed as § 133.105(e) and redesignated as (f) in the final regulation, this subsection has been revised to more clearly state the requirement that the permitting authority may not establish limitations less stringent than the limitations required by § 133.105(a)–(e). The words "registered engineer's" have been changed to "permitting authority's" to clarify the intended meaning.

B. Summary of Final Regulation

Today's final rulemaking for the secondary treatment requirements involves the following amendments the Agency believes address the requirements of section 304(d)(4) of the Act: (1) A definition of "significant biological treatment" (§ 133.101(k)); (2) a definition of "facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)); (3) new provisions (§ 133.105 (a), (b) and (c)) which define the effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment; (4) new provisions (§ 133.105(d)) that set forth criteria that a permitting authority could use to establish alternative State requirements; (5) provisions for adjusting permits may be adjusted for equivalent facilities (§ 133.105(f)); and (6) changes to the eligibility requirements for adjusting the SS values achievable by WSPs (§ 133.103(c)).

The final rulemaking also provides permitting authorities the option to substitute $CBOD_5$ for BOD_5 by: (1) Defining the level of effluent quality achievable by application of secondary treatment in terms of $CBOD_5$ (§ 133.102(a)(4)), and (2) allowing the $CBOD_5$ parameter to be used for setting effluent limitations for treatment equivalent to secondary treatment (§ 133.105(e)).

Other amendments include the addition of definitions for key terms (§ 133.101), the addition of necessary cross-references to new provisions, and the elimination of redundant text. Such changes are not substantive in nature. The complete regulation, including unchanged regulatory language, is being printed for the sake of completeness to the reader. Except as noted for certain TF and WSP facilities and the optional use of the $CBOD_5$ parameter, the current secondary treatment requirements are not changed by this rulemaking.

1. Definition of Facilities Eligible for Treatment Equivalent to Secondary Treatment

The final rule uses the following criteria (§ 133.101(g)) to define a category of existing facilities that provide treatment equivalent to secondary treatment: (a) The facilities cannot consistently achieve secondary treatment as currently defined, (b) the facilities employ either a TF or a WSP as the principal biological treatment process, and (c) the facilities provide for significant biological treatment of raw wastewater (at least 65 percent removal of BOD_5).

a. *Inability of Facility to Consistently Achieve Secondary Treatment.* Under the final provisions (§ 133.101(g)(1)), only those TF and WSP facilities that cannot consistently meet secondary treatment requirements are eligible for a relaxation of the secondary treatment requirements.

b. *Use of TF or WSP as Principal Process.* An eligible facility must use a TF or WSP as the principal process for providing significant biological treatment (§ 133.101(g)(2)). The term "principal process" is used to indicate the major biological treatment components that are directly in the treatment process train, rather than ancillary components. By focusing on "principal" processes, the regulation does not exclude those facilities that incorporate minor components for improved treatment, e.g, the addition of covers, chemical feeds, solids contact processes for TF, or the addition of sand filters or aeration for WSPs, provided that the TF or WSP unit is the principal process that results in significant removal of BOD_5.

c. *Significant Biological Treatment.* Equivalent treatment works must provide significant biological treatment of wastewater. This provision ensures that the facilities applying for permit adjustments provide a level of treatment significantly beyond that achieved through primary treatment, i.e., physical separation and removal of grit, coarse sands, settleable, and floatable materials. Thus, TF and WSP facilities that do not provide significant biological treatment, e.g., roughing filters or equalization basins, do not meet the definition of significant biological treatment (§ 133.101(k)).

2. Minimum Level of Effluent Quality Attainable

Except for SS values for WSPs (§ 133.103(c)), the final rule defines treatment equivalent to secondary treatment attainable by TF and WSP facilities as a minimum level of effluent quality not to exceed 45 mg/l for BOD_5 and SS during a 30-day period, a minimum level not to exceed 65 mg/l for BOD_5 and SS during a 7-day period, and 65 percent removal of BOD_5 and SS on a 30-day average basis (§ 133.105 (a) and (b)). The 65 percent removal requirement is being promulgated as an interim final provision of the rule because the Agency is still considering amending the applicability of both the 85 percent and the 65 percent removal requirements. The Agency recently published a Notice of Availability soliciting additional public comment on this issue. The existing pH requirements for secondary treatment are not adjusted (§ 133.105(c)). Under § 133.105(b), the SS values for WSPs are established in accordance with existing § 133.103(c). Applicable SS values established under § 133.103(c) were published on November 27, 1978 [43 FR 55279] and are reprinted as Appendix B to this preamble as guidance. See section IV.F.1. of this preamble for a more complete explanation of SS values for WSPs.

3. Alternative State Requirements

The final rule allows the permitting authority to recommend (subject to EPA approval when the State is the permitting authority) alternative State requirements (ASR) for the 30-day and 7-day effluent BOD_5 and SS concentrations based on effluent concentrations consistently achieved through proper operation and maintenance of the "median" facility in a sample of facilities meeting the definition of "facilities eligible for treatment equivalent to secondary treatment" (§ 133.105(d)). This provision allows the permitting authority to account for geographic, seasonal and climatic conditions affecting plant performance. The permitting authority will provide notice and opportunity for comment before establishing an ASR.

4. NPDES Permit Adjustments

Specific numeric effluent limitations for an eligible facility would be established on a case-by-case basis by the permitting authority based on the design or performance capabilities of the given facility (§ 133.105(f)). In no case can the minimum levels of effluent quality established at the national level or an approved ASR level (133.105(a)–(e)) be exceeded or water quality be adversely impacted.

5. Substitution of $CBOD_5$

This final rulemaking provides permitting authorities the option of substituting the pollutant parameter $CBOD_5$ for the pollutant parameter BOD_5 in permits for secondary treatment facilities (§ 133.102(a)(4)). In substituting the $CBOD_5$ parameter for the BOD_5 parameter, the effluent concentrations specified in paragraphs 133.102(a)(1) and (a)(2) for BOD_5 are replaced with average $CBOD_5$ effluent concentrations of: (1) 25 mg/l in a period of 30 consecutive days (§ 133.102(a)(4)(i)); and (2) 40 mg/l in a period of 7 consecutive days (§ 133.102(a)(4)(ii)). $CBOD_5$ effluent concentrations for equivalent treatment processes (i.e., TFs and WSPs) can be set on a case-by-case basis where data are available up to 40 mg/l in a period of 30 consecutive days and 60 mg/l in a period of 7 consecutive days (§ 133.105(e)(1)). The $CBOD_5$ parameter can also be used to set ASR for treatment equivalent to secondary treatment where concurrent BOD_5 and $CBOD_5$ data are available (§ 133.105(e)(2)).

6. Suspended Solids Limits for WSPs

In 1977 EPA amended the secondary treatment regulation to allow an adjustment of the SS effluent limitations where a WSP is used as the sole treatment process, provided that the wastewater flow was less than 2 mgd. This final regulation eliminates the 2 mgd "cap" (§ 133.102(c) for reasons discussed at 48 FR 52255. The final regulation also changes the reference in the existing § 133.103(c) to BOD_5 effluent quality achieved by WSPs from § 133.102(a) ("Secondary Treatment") to § 133.105(a) ("Treatment Equivalent to Secondary Treatment").

7. Definitions

The final rule contains a "Definitions" section (§ 133.101) that allows shorthand reference to key terms. Where appropriate, the previous regulation now uses definitions to eliminate redundancies. For example, the terms "30-day average" and "7-day average" have been used in place of longer statements. Changes to the previous language in §§ 133.102 and 133.103 have been made for consistency and are not substantive in nature. In addition, cross-references have been added in previously promulgated sections of the regulation to reflect new amendments. For example, under the provisions for WSPs, references are made to § 133.105 ("Treatment Equivalent to Secondary Treatment").

IV. Responses to Comments on the Proposed Regulation

The Agency has responded to all comments raised by the public during the comment period. Responses to the comments are contained in a separate document, available at the address noted at the beginning of this preamble. This section of the preamble will set out and address those comments that have raised significant issues.

A. Definition of Trickling Filters (TFs) and Waste Stabilization Ponds (WSPs) as Facilities Eligible for Treatment Equivalent to Secondary Treatment

The Agency defined "facilities eligible for treatment equivalent to secondary treatment" as including either a TF or WSP as the principal treatment process in the system (§ 133.101(g)). A number of commenters objected to the inclusion of TFs and/or WSPs because such processes are capable of achieving present secondary treatment requirements. Other commenters objected to the definition being too restrictive, i.e., it should have included other treatment processes in addition to TFs and WSPs. These commenters suggested adding processes that provide significant biological treatment to equivalent technologies such as activated sludge, other fixed growth systems and physical-chemical treatment. Some commenters believed the definition should include industrial treatment plants.

These comments address one of the major issues in the proposed amendments to the secondary treatment regulation. The Agency collected extensive data and performed detailed analyses in reaching its determination regarding what facilities should be defined as providing treatment equivalent to secondary treatment. The preamble to the proposal discussed this work in detail but it is appropriate to review that work here as a further explanation of the basis for the Agency's selection of TFs and WSPs as those treatment processes equivalent to secondary treatment.

The Agency believes that any relaxation of secondary treatment requirements under section 23 of Pub. L. 97–117 by deeming a facility provides treatment equivalent to secondary treatment must be based on: (1) A determination that secondary treatment requirements cannot be met consistently through the use of a given biological treatment process, and (2) for such biological treatment process, a determination that a given facility cannot consistently achieve secondary treatment requirements. The following discussion describes the methodology by which a treatment process would be classified as capable of providing either "treatment equivalent to secondary treatment," or as capable of providing "secondary treatment" and the basis of determining the level of effluent quality that is attainable by facilities that: (1) Use an equivalent treatment process, and (2) cannot consistently achieve secondary treatment requirements.

In developing the definition of "facilities eligible for treatment equivalent to secondary treatment," the Agency took into account the specific references in the Act to biological treatment, TF's, WSP's, and oxidation ditches. As a further refinement and to ensure consideration of other types of biological treatment systems, EPA studied 324 existing biological treatment facilities to determine whether differences in wastewater characteristics, treatment process, design, size and age of facility, location, climate, or cost factors required the development of separate standards for certain classes of facilities.

The Agency analyzed at least two years of performance records from each facility, and described the operational limitations, process variability, and process reliability of each facility with respect to meeting the existing secondary treatment requirements. The sample included the following process types and number of facilities: conventional activated sludge (66), contact stabilization activated sludge (57,) extended aeration activated sludge (28), oxidation ditches (28), rock media TF's (64), plastic media TF's (17), rotating biological contactors (27), and WSP's (37).

The performance data for each of the 324 facilities in the data base were analyzed to estimate an effluent quality value which the given facility rarely exceeds on a monthly basis. Each of the facilities in the sample was classified by type of treatment process.

In accordance with the methodology described in more detail in the "Technical Support Document," the Agency concluded that TF and WSP treatment processes could not consistently meet secondary treatment requirements; thus, the TF and WSP treatment processes were classified as equivalent treatment processes. This classification is thus consistent with the statutory language that references oxidation ponds, lagoons and TF's.

Using the same methodology, the Agency concluded that oxidation ditches, although they are referenced in the statute, could consistently achieve an effluent quality equal to or better than current secondary treatment requirements. Further, the legislative history characterizes equivalent treatment processes as: (1) Simpler, more energy efficient and easier to operate than standard methods, and (2) unable to meet secondary performance standards consistently. [S. Rep. No. 97-204, 97th Cong., 1st Sess. 18 (1981); H.R. Rep. No. 97–30, 97th Cong. 1st Sess. 34–35 (1981).] The Agency finds that oxidation ditches are appropriately classified as a treatment process capable of meeting the current secondary treatment requirements. All other biological treatment processes were likewise found to be capable of consistently achieving secondary treatment requirements, and are thus classified as treatment processes capable of providing secondary treatment.

The Agency has thoroughly considered all the comments on this issue and has concluded that its methodology and decisions were appropriate and correct. The Agency has not made changes in the treatment processes it defines as equivalent to secondary treatment.

The legislative intent of Congress behind the 1981 Amendments to the Act were aimed at providing relief for smaller communities. The Senate Report specifically states that the 1981 amendments only address municipal wastewater treatment. It is clear that equivalent technologies should not be applied to industrial facilities. Section 304(d) of the Act requires that the EPA publish information on the degree of effluent reduction attainable through application of secondary treatment. The factors considered in setting effluent limitations for industrial dischargers under section 304(b) of the Act are distinct from those of the 304(d) criteria. In consideration of these statutory differences, EPA clearly has authority to establish different effluent limitations for municipal and industrial discharges.

B. Water Quality Impacts

Some commenters expressed concern that allowing less stringent limits for TFs and WSPs would adversely affect water quality.

Section 23 of Pub. L. 97–117 requires the Agency to assure that water quality will not be adversely affected by deeming facilities equivalent to secondary treatment. The Agency believes that the regulation includes a number of measures which will prevent such adverse affects on water quality. The measures include: (1) An "anti-backsliding" provision which holds facilities to their present level of treatment capability when it is better than that specified for equivalent treatment and (2) development of permit limits for new TFs and WSPs to assure that such facilities are designed and operated in accordance with current design practice. In addition, the Agency's permit regulations currently require that any effluent limitations established in NPDES permits result in compliance with applicable water quality standards. Thus, no adjustment of a TF's or WSP's effluent limitations is allowed where a violation of water quality standards would result. Permit writers are also encouraged to develop seasonal permits for equivalent treatment processes to assure that a facility is operated at its maximum capability throughout the year.

C. Categorization of Processes Equivalent to Secondary Treatment

Other commenters opposed the establishment of a category of treatment processes equivalent to secondary treatment because they believe that determination of permit limitations based on a facility's capabilities: (1) Places permit writers and permittees in adversarial positions and (2) creates inequities among communities and from State-to-State.

The Agency notes that section 23 of Pub. L. 97–117, in deeming TFs and WSPs the equivalent of secondary treatment, effectively requires EPA to establish in 40 CFR Part 133 a category of processes which cannot consistently meet the current secondary treatment requirements. We believe that the regulations' use of existing permit procedures will help to minimize difficulties with implementation since permittees, States, and EPA already have considerable experience with these procedures. The States and EPA already have issued, and will continue to provide, guidance to permit writers on specific permit procedures and performance capabilities of TFs and WSPs to help assure consistency in implementing the equivalent treatment provisions. Furthermore, as noted in section IV.F.5, the Agency has taken a number of steps in developing and implementing this regulation to minimize inequities. A discussion of these measures is presented in that section.

D. Discharge Requirements for Ocean Dischargers and Facilities With Increases in Wet Weather Flows

The Agency also received comments which indicated a need to develop separate criteria for ocean dischargers and for POTWs which are subject to short term increases in flow during wet weather.

Variances from secondary treatment for ocean dischargers have been addressed by Congress in section 301(h) of Pub. L. 92–500 and the regulations promulgated by the Agency to implement section 301(h) already provide procedures by which separate criteria can be established for ocean dischargers. The deadline for 301(h) applications was December 29, 1982 (section 301(j)(1)(A)).

With regard to increases in flow during wet weather, § 133.103(a) of this regulation provides for special "wet weather" consideration for treatment works which receive flows from combined sewers. The Agency is also considering proposals to change the percent removal requirement of the regulation.

E. Applicability to New Facilities

A number of commenters stated differing views on whether the definition of facilities eligible for treatment equivalent to secondary treatment should include new facilities. Six commenters agreed with the EPA Science Advisory Board position stated in the preamble to the proposed regulation that new TFs can be designed to meet the current secondary treatment requirements and thus should not be eligible for equivalent treatment requirements. Three commenters took a similar position concerning new WSPs. One commenter stated that applying the equivalent treatment requirements to new TFs and WSPs would cause a major shift away from activated sludge processes. The commenter believed this to be inappropriate because of recent improvements in the activated sludge process in terms of its feasibility for small communities. Other commenters took the opposite view concerning new facilities. Three commenters indicated that equivalent treatment standards need to be applied to new TFs and WSPs to ensure their future use by small communities. One commenter believed even more aggressive measures need to be taken to encourage use of new TFs and WSPs.

EPA feels it is necessary and appropriate to allow equivalent treatment requirements for new TFs and WSPs in order to ensure their continued use. The Agency believes it is the clear intent of section 23 of Pub. L. 97–117 to encourage continued use of TFs and WSPs, particularly because of the energy, cost and operational benefits they offer for small and moderate-sized communities. The Agency also believes that the construction of new TFs and WSP has been limited since 1972 because they have difficulty in meeting the current secondary treatment regulation. While the Science Advisory Board is correct in asserting that new TFs can be designed to meet the existing secondary treatment requirements, it appears that such processes are often considered not as reliable as other secondary treatment processes.

The requirement that the permitting authority set standards for new TFs and WSPs based on current design practice will ensure that such facilities are designed and operated to their full capability. The Agency further believes that while it is important to actively encourage new TFs and WSPs, such measures will not cause a major shift away from other processes such as activated sludge. Section 23 of Pub. L. 97–117 was intended primarily to recognize that smaller communities using TFs or WSPs generally have less capability to meet secondary treatment standards than large communities have to achieve more stringent levels of treatment. Activated sludge and other currently used biological and physical-chemical treatment processes will undoubtedly continue to be widely applied, particularly by larger and more densely settled communities, because of their smaller land requirements and their adaptability to the variety of situations encountered by municipal dischargers.

F. BOD and SS Limitations for Treatment Equivalent to Secondary Treatment

1. Appropriateness of Selected Limitations

Nineteen commenters agreed that the BOD_5 and SS limitations proposed for treatment equivalent to secondary treatment (§§ 133.105 (a), (b) and (c)) are a correct and reasonable characterization of TF and WSP performance capability. Wisconsin indicated that all TFs and WSPs in Wisconsin are capable of achieving the existing 30 mg/l BOD_5 and SS limitations with only minor excursions.

While the State of Wisconsin disagreed with the effluent concentrations specified for equivalent treatment on the grounds that TFs and WSPs in its State could do better, four other States which did similar analyses indicated that the values in § 133.105 are an accurate description of TF and WSP performance in their States. EPA does not dispute the analysis done by the State of Wisconsin, but attributes this difference primarily to the variations in design criteria used in various States. The values indicated in § 133.105 were developed from a nationwide sampling of facilities and could logically differ from the values observed in a particular State.

2. Case-by-Case Approach to BOD and SS Limitations

Several commenters did not support the proposed effluent limitations in § 133.105 and suggested alternatives for determining the treatment requirements for equivalent treatment on a case-by-case basis. The comments included the following recommendations: (a) Retain existing secondary treatment requirements and allow case-by-case adjustments based on facility's capability and the effects of climate on its operation; (b) case-by-case adjustments should not exceed a facility's present mass discharge assuming 30 mg/l BOD_5 and SS were being achieved and should be allowed only after assuring that existing secondary treatment limits cannot be achieved through industrial pretreatment and/or reasonable additions to the facility; (c) case-by-case adjustments should be temporary and require achieving the existing 30 mg/l BOD_5 and SS within 5–10 years; and (d) case-by-case adjustments should be based on a certification of meeting specified design and operation criteria instead of numerical limits.

The use of a case-by-case approach as suggested by several commenters does not disagree in principle with the method selected by the Agency to implement the equivalent treatment provisions. The differences are mainly in the degree to which the case-by-case approach is applied and the criteria used in applying the case-by-case decisions. The case-by-case aspects of the equivalent treatment methodology being promulgated by EPA include: (1) Use of technology based "not to exceed" effluent limitations which allows States the flexibility to set their standards at any appropriate value between the existing secondary treatment requirements and the national limits for equivalent treatment; (2) and anti-backsliding requirement to hold facilities to their existing level of treatment when it is more stringent than the national or State requirements for TFs and WSPs; (3) use of the permitting authority's experience for setting requirements for new TFs and WSPs that could be more stringent than national or State levels if achievable based on the permitting authority's assessment of design capability and geographical and climatic conditions; (4) authorization of alternative State requirements to account for variations in performance from State-to-State, and (5) assuring compliance with applicable water quality standards when permit limitations for equivalent treatment facilities are established or revised. The Agency, however, believes that it is also important to establish numerical values which describe TF and WSP performance on a nationwide and, where appropriate, Statewide basis. These values, which can be applied directly to many facilities eligible for permit adjustments, greatly speed and simplify the permitting and compliance monitoring processes and provide a relative degree of national and Statewide consistency.

The Agency does not agree with the comment which advocated limiting the mass discharge from facilities using equivalent treatment limitations to the existing level based on achieving 30 mg/l BOD_5 and SS. The comment that permit limitations should revert back to existing secondary requirements recommends a similar approach. Such requirements would provide only limited relief to those facilities which are presently underloaded or can significantly reduce influent flows by means of sewer rehabilitation or water conservation. The Agency does not believe that such limited measures are consistent with the intent of Congress in enacting section 23 of Pub. L. 97–117. As indicated elsewhere in this notice, the anti-backsliding requirement of § 133.105(f) will minimize any increases in mass loadings resulting from implementation of these provisions. Also assurances that water quality standards must be maintained will preclude increases in mass loadings which could be detrimental to receiving waters.

One of these same commenters recommended that adjustments for equivalent treatment be allowed only after assuring that the existing secondary treatment limits cannot be achieved through industrial pretreatment and/or reasonable additions to the facility (i.e., chemical addition for TFs or aeration for WSPs). The Agency agrees that, where applicable, permitting authorities must consider the effect of pretreatment as part of their determination of "effluent values achieved through proper operation and maintenance of the treatment works" (§ 133.105(e)). As discussed elsewhere in this section of the preamble, the Agency's position on additions to TFs and WSPs is that additions should be used where necessary for a TF or WSP facility to meet its applicable standards, but should not be required for all facilities.

3. Seasonal Effluent Limitations

Five commenters recommended use of seasonal effluent limitations for equivalent treatment (i.e., allow less stringent limits only during cold weather) to assure maximum performance of facilities on a year round basis.

The Agency agrees that permit writers should consider seasonal effluent limitations on a case-by-case basis. Seasonal limitations are particularly encouraged in those situations where significant improvement in effluent quality can be achieved to enhance receiving water quality. However, requiring seasonal limitations for all dischargers would unnecessarily complicate the permitting process while achieving only relatively minor reductions in the amount of pollutants discharged. Seasonal limitations are also discussed in other parts of this notice.

4. Use of 7 and 30 Consecutive Day Averages

Two commenters objected to specification of 7 and 30 consecutive day averages because their use would require continuous calculation of rolling averages if applied directly for permit monitoring and compliance purposes. These commenters believe that it is more appropriate to use weekly and monthly averages in the secondary treatment regulations. Similarly, one commenter stated that the 7-day average is not meaningful for smaller facilities which sample two times per month or less.

The Agency believes that the use of 7 and 30 consecutive day averages is necessary to accurately analyze and describe treatment plant performance for standard setting purposes. However, this does not preclude the current practice of using appropriate calendar measurements for permit monitoring and compliance. Thus the regulation being promulgated today in no way impairs the permit writers ability to use permit monitoring and compliance procedures appropriate for small facilities.

5. Sixty-Five Percent Removal

Two commenters disagreed with the 65 percent removal requirement in the equivalent treatment limitations and stated that percent removal is not an appropriate measure of acceptable treatment performance.

The Agency included a percent removal requirement in the equivalent treatment limitations to parallel the current definition of secondary treatment. The Agency selected 65 percent based on removal efficiencies studied prior to proposal (see 48 FR 52264). However, the Agency recognizes that certain equivalent treatment facilities with very dilute influents may experience difficulties with the 65 percent removal requirement which are similar to those resulting from the 85 percent removal requirement for secondary treatment. A recently published Notice of Availability solicits additional comment on the percent removal requirements in the secondary treatment regulation.

6. Setting Standards Based on the Median Facility

Seven commenters disagreed with setting the effluent limitations for equivalent treatment based on the performance of the median facility. Four of the commenters took the view that use of the median facility is too restrictive and excludes 50 percent of the plants eligible for equivalent treatment requirements. The other three commenters took the opposite position. These commenters believed that use of the median facility is not sufficiently restrictive and gives the impression that too many TFs and WSPs cannot meet the existing secondary treatment requirements.

The analysis used to develop effluent limitations for equivalent treatment (i.e., 95th percentile value for the median facility) was selected by the Agency because it is a statistically valid method for assessing the performance of wastewater treatment facilities.

In this analysis, the number of facilities which cannot achieve the effluent requirements are reduced because the median value is based on only those TFs and WSPs which were not achieving the existing secondary treatment requirements. Furthermore, States have the authority to set alternative requirements where the national values do not adequately account for TF or WSP performance in their State. Likewise, it is also agreed that a significant number of facilities are by definition capable of better performance than effluent limitations which are set by using the median facility. However, the regulation being promulgated today holds facilities to their existing level of performance when they are achieving better effluent quality than allowed for equivalent treatment.

7. Operation and Design of Facilities

Two commenters questioned whether the facilities used for the analysis were properly designed and operated. Another commenter suggested that EPA evaluate the design and operation of the facilities considered in the analysis to determine why those in group A (average BOD and SS less than or equal to 30 mg/l) performed better than those in group B (average BOD and SS greater than 30 mg/l).

Where a particular facility had erratic or questionable performance data, the design and operational criteria were individually evaluated. Using this procedure, a number of facilities were excluded from the analysis because they were not properly designed or operated.

However, it was not practical nor necessary for the Agency to conduct a detailed evaluation of design and operational criteria for all 324 facilities used in the analysis.

8. Distinguishing Between Different TFs and WSPs

One commenter suggested that the analysis should distinguish between different types of TFs and WSPs (i.e., standard rate and high rate TFs and facultative and aerated WSPs).

The Agency agrees that performance capabilities vary for different types of TFs and WSPs. However, other factors such as climate and State design standards can also similarly affect performance capability. For this reason separate analyses and limitations which account for all the factors that affect TF and WSP performance would not be practical for setting national standards. However, the permitting authority may consider such factors when setting limitations for individual facilities or developing alternative State requirements.

9. Statistical Analysis

Several commenters questioned why the 90th percentile is used for setting SS for WSPs (§ 133.103(c)) and the 95th percentile is used for equivalent treatment limitation (§ 133.105).

The 95th percentile/median facility methodology requires at least two years of data for a statistically significant number of facilities. These data were available in the case of the limitations developed for treatment equivalent to secondary treatment. Only a limited amount of data were available to set SS limitations for WSPs on a State-by-State basis in 1977 when these limitations were set. A more rigorous analysis using the 95th percentile value for the median facility is possible for other pollutant parameters for which there is design and operational control, such as BOD$_5$ and SS from TFs and BOD$_5$ from WSPs.

10. Separate BOD and SS Limitations

One commenter stated that the BOD and SS limitations should be developed separately. Using this approach, BOD and SS limitations would not necessarily be the same numerical values.

The Agency performed separate analyses for BOD$_5$ and SS limitations. While the derived values were not exactly the same, they were close enough to result in the same numerical values when rounded off for the purpose of standards setting. This result is consistent with the fact that the ratio of SS to BOD in biological secondary effluents is typically 1:1, except for WSPs, where the ratio can be 3:1 or greater. This fact is currently addressed by higher State-by-State SS limits set in accordance with § 133.103(c).

G. Alternative State Requirements (ASRs)

1. The Process

Several commenters supported the proposed ASR approval methodology. One commenter objected and suggested that States should apply to EPA with supporting data for ASRs and that EPA should then propose and promulgate ASRs once the satisfied values are correct. Further, the commenter suggested that ASRs should have an expiration date, in order to keep the public involved and have flexibility to allow for changes in the state-of-the-art.

We cannot concur with the suggestion for EPA promulgation because the proposed process will provide for full public involvement and a promulgation requirement would unnecessarily add to the Agency's burden of issuing regulations at a time when the Agency is attempting to streamline its existing regulations and avoid unnecessary new ones and delegate water quality management program administration to the States.

The Agency intends that the ASR approval process will be similar to the process used in setting SS limitations for WSPs. The State shall submit preliminary data and analysis to the Agency to insure that the State's preliminary assessment is correct. Upon preliminary review by the Agency, the State must provide notice and opportunity for public comment on its proposed ASR. After considering the public comments, the State will then resubmit its data and analysis on the proposed ASR for final EPA approval. The EPA Regional Office will notify the State of approval. The Agency, will publish the approved ASRs in the **Federal Register** as a notice to the public.

Regarding the suggested promulgation of a date by which ASRs must be submitted for approval, we believe this would be too rigid and unnecessary. EPA will amend the secondary treatment regulation, including allowances for State adjustments, from time to time as the state-of-the-art changes. The ASR methodology also allows States to request EPA approval for revised ASRs at any time additional data becomes available.

2. ASR Methodology and State Flexibility

Two commenters said the Agency should give States flexibility in establishing ASRs.

We believe that the regulations provide sufficient flexibility. The Agency has specified the overall approach in § 133.105(d) and provided guidance on statistical sampling and analysis in the technical support document. This avoids unnecessarily rigid requirements for the analytical process and at the same time assures that the States will be reasonably consistent in their approaches.

3. ASR Guidelines

One commenter called for EPA issuance of specific ASR guidelines for use by the States in establishing alternative requirements; these guidelines should be publicly reviewed prior to their use by the States.

The Agency believes that the ASR guidelines in the technical support document are sufficently detailed to assure reasonable consistency among the States. More specific detailed ASR guidelines might not apply to some State situations and their specificity might actually curtail their usefulness. Furthermore, the requirement in § 133.105(d) that ASRs must be approved by EPA provides an additional check to assure that States have properly implemented the ASR methodology. Under the adopted approach, the ASR requirements and guidelines are actually part of the regulations and the technical support document. Thus, these requirements and guidelines have already been publicly reviewed prior to application.

4. Winter Data and ASRs

One commenter noted that ASR methodology would result in an extreme value if only wintertime data were used for the 20 data points necessary to determine the 95th percentile. Using this approach, the ASR would be the second highest value occurring during five years of wintertime operation.

We agree. The Agency intended that representative year-round data (i.e., data for all seasons for at least 20 consecutive months) be used to determine 95th percentile performance of a given treatment facility.

5. Contiguous Geographical Area

One commenter asked whether the reference to "appropriate contiguous geographical area" requires one State to use another State's data in establishing ASR's, particularly when the neighboring State's design criteria are less stringent?

The Agency's answer to this question is no. A State is allowed, but not required, to use data from adjacent States for its ASR analysis.

H. NPDES Permit Adjustments

1. Objections to the Regulation's Anti-Backsliding Provisions

Several commenters favored allowing equivalent treatment facilities producing higher quality effluents than the "not to exceed" 45 mg/l, 30-day average limits to blackslide to this limit. They believe this anti-backsliding provision (§ 133.105(f)(1)) is inequitable for facilities which have made a concentrated effort to maximize treatment and unnecessarily complicates the permit writer's task since it is doubtful that the State, EPA, and the community will all agree on what standards an existing facility can meet.

The Agency strongly supports retention of the anti-backsliding provision in this regulation because it ensures that for facilities at design flow, levels of effluent quality that are already achieved by a facility must be maintained to avoid increased pollutant loads. (Underloaded facilities are further addressed in the next section.) Further, some TFs designed to meet effluent limitations more stringent than the 45 mg/l, 30-day average limits, have involved investments in special features, additional facilities or added capacities necessary to ensure attainment of the limits. Allowing such facilities to backslide would negate the pollution control benefits produced by the investments in those extra features. We note that the permitting authority will make the final decision as to the effluent quality attainable from an existing facility.

2. Anti-Backsliding Relative to Additional Flows

Several commenters observed that if effluent limitations for facilities which are presently below design capacity are set at the level of their current performance, these facilities would be restricted from accepting the additional flows for which they were designed. They favored setting effluent limitations achievable at design capacity.

The anti-backsliding provision of the NPDES permit adjustment process does not restrict an underloaded facility from moving toward its design capacity as the commenters suggest. If a plant is currently underloaded in terms of its design conditions, it is appropriate for the permit effluent limitations to reflect the actual flow condition plus the expected increase during the permit term. For most facilities with minor flow increases over the permit term, the expected flow volume approach should be adequate for permitting. However, in some situations such as new facilities, permits with a two-tier permit approach could be used. The two-tier permit would have separate permit limits for the current flow condition and the ultimate flow expected during the permit term (pollutant limits established for the ultimate flow must be as least as stringent as the limits established for the current flow). In no case can the pollutant limits be less stringent than allowed by Part 133.

The Agency notes that it is clearly not our intent that the above approach be used for facilities which are presently at their design capacity. Permit limits for facilities which are at design capacity must require that the present level of treatment be maintained. These facilities will not be allowed to "backslide" to 45 mg/l BOD_5 and SS as a means of allowing additional flows to the plant.

3. By-Passing

Another commenter noted that some facilities eligible for equivalent treatment requirements are presently by-passing wastewater flows in order to achieve the present secondary treatment limitations. This commenter supported adjusting effluent limitations for these facilities to those achievable when treating presently by-passed flows. We agree that the effluent limitations should be adjusted to account for those attainable when the by-passed flows are treated.

4. Minor Components Which Improve Performance

One commenter notes that the preamble to the proposed regulation indicates that TF/WSP facilities with "add-ons" (i.e., covers for TFs and sand filters or aeration for WSPs) are not excluded from the provisions for equivalent treatment. The preamble also states that add-ons can significantly improve TF/WSP performance at a relatively low cost. This commenter requested the Agency's position concerning add-ons, particularly whether the improved performance resulting from add-ons should be considered when setting the equivalent treatment limitations for a facility.

The Agency's position is that where add-ons are already in place for existing equivalent facilities, the permitting authority generally should consider the performance of the overall treatment facility including the add-ons, when setting the effluent limitations. However, in the case of chemical addition for trickling filters, facility performance can be determined without considering the chemical addition because the Agency would not want to force continued use of chemical addition in light of its high operation costs and adverse impacts on sludge management. The permitting authority need not consider the increased performance capabilities resulting from add-ons when setting effluent limitations for new equivalent treatment facilities. Nevertheless, for new facilities, advances in the state-of-the-art (e.g., use of plastic media to improve the efficiency of the biological reaction or flocculation channels to improve clarifier efficiency) should be considered where data are available to the State for standards-setting purposes.

One commenter stated that the Agency should not require the use of add-ons for TF/WSP unless needed for water quality purposes. As previously discussed, the Agency does not require the use of add-ons for new TF/WSP but does require accounting for their performance effects in establishing effluent limitations for existing equivalent treatment facilities. We agree, however, that add-ons should be actively encouraged as means of allowing smaller communities to use TFs or WSPs to meet more stringent water quality-based limitations.

5. Permitting New Facilities

Several commenters noted that the procedure for establishing effluent limitations for new facilities is unclear and that new facilities can be designed to achieve different levels of treatment. They asked when the level of treatment for new facilities would be set (i.e., prior to design or after operation commences) and who would set the discharge standards (i.e., the permitting authority or the design engineer). They also noted that use of the term "registered engineer" in § 133.105(e)(2) incorrectly implies that the design engineer, not the permitting authority, establishes permit limitations for new facilities receiving equivalent treatment standards.

The Agency concurs that procedures for setting limits for new equivalent treatment facilities should be clarified and has done so as explained below. First, we have always intended that the permitting authority, not the design engineer, should establish the limits for such facilities based on its permitting experience. The regulations have been changed to clarify this point. Second, the permitting authority, using the criteria in § 133.105(f)(2), should develop separate sets of effluent limitations to be applied to new TFs and WSPs within a State or contiguous geographical area. Third, in developing these standards, the permitting authority should analyze performance data in its State or geographical/climatic region for recently constructed facilities, and consider advances in the State-of-the-art as reflected in the Agency's technical bulletins and technology transfer publications. We suggest an analysis of performance data for recently built facilities similar to that the Agency used for setting the standards in the regulation for existing facilities. This analysis should be done initially by each State at the time this regulation is promulgated and from time-to-time thereafter to account for any advances in technology. The results of these analyses (in terms of achievable effluent quality for new TFs and WSPs) would be disseminated to municipal officials and design engineers within the State for planning and design purposes.

Additional guidance on setting permit limitation for new TFs and WSPs is contained in the Technical Support Document. As indicated in that document, the permitting authority's assessment of TF and WSP performance, based on current design practice, should be done initially by each State at the time this regulation is promulgated and from time-to-time thereafter to account for any advances in technology.

Finally, the implementation of the proposed rule will not alter the typical facility planning process as it now exists. When a community undertakes its analysis to determine the most cost-effective treatment process, the community's engineer will estimate the costs of building a TF facility based upon achieving effluent standards specified by the NPDES permitting authority. Should the community choose to build a TF facility, the community's engineer must then design the facility to comply with the standard set by the permitting authority.

6. Inequities From Case-by-Case Decisions

Two commenters suggested the Agency should guard against the inequity of "penalizing" facilities already in compliance while "rewarding" other facilities not in compliance with less stringent standards (particularly those discharging to the same stream). They said more specific guidance is necessary to avoid inconsistencies and inequities among States and among facilities.

Since we share these equity concerns, we have taken steps to minimize inequities although they cannot be entirely avoided. First, effluent limitations for new equivalent treatment facilities will be set uniformly on a State or area-wide basis. While effluent limit differences may result where States set alternative requirements, we anticipate that relatively few States will exercise this option and that ASRs will only marginally exceed the national values. In the vast majority of cases, any differences will be limited by the 45 mg/l BOD_5 and SS values set in the regulation. Effluent limit differences among existing facilities based on the anti-backsliding provisions will exist. However, these differences will be limited largely to variations of operation and maintenance requirements and costs among facilities. Such variations among equivalent treatment facilities would not be great because wide disparities of operation and maintenance costs would not be expected within similar types and sizes of facilities.

7. Assuring That Water Quality Will Not Be Adversely Impacted

Some commenters asked that the Agency clearly articulate that permit adjustments for equivalent treatment will not be allowed if water quality will be adversely impacted; the procedure for providing this assurance must be clearly specified and implemented prior to making individual permit adjustments.

The Agency shares this concern and has therefore already included a provision in its NPDES permit regulations requiring that any effluent limitations established in permits result in compliance with applicable water quality standards, State effluent requirements, and other provisions of the Act.

I. Two MGD Flow Limitation for WSPs Eligible for Effluent SS Adjustments

Some commenters opposed the proposed removal of the 2 mgd flow limitation for WSP effluent. They noted that removing the "cap" will provide an incentive for construction of these facilities in areas which would have otherwise installed more effective systems. Further, applying equivalent treatment requirements (i.e., BOD_5 and SS limits for both TF and WSP) to larger facilities could cause serious environmental harm; equivalent treatment requirements should be limited to small facilities (i.e., 2 to 3 mgd).

The Agency believes that the legislative history for Pub. L. 97–117 encourages the use of TF and WSP technologies, and indicates that they would be particularly useful in small communities. The legislative history did not, however, suggest limiting application of these technologies to any particular size of community or flow.

Agency experience with WSPs indicates that very few WSPs have been constructed to handle flows in excess of 2 MGD. WSPs are not generally considered cost-effective for large flows due to the large land areas required. In addition, the WSP effluent strength would still be restrained by the local water quality standards.

One commenter asked whether removal of the 2 mgd flow cap applies to both aerobic and facultative WSPs. The Agency's answer is yes. WSPs include pond types in accordance with the terminology section of the EPA technical bulletin, "Wastewater Treatment Ponds" (EPA 430/9–74–011). Specifically included are aerated as well as facultative ponds.

J. Requests for Clarification of Regulation Language or Structure

1. Suspended Solids (SS) Limitations

One commenter requested clarification of the regulation language to indicate whether SS limitations for ponds could exceed the 45 mg/l, 30-day average value set for trickling filters. The commenter advocates such flexibility.

Wastewater stabilization ponds SS limitations may exceed the 30-day average, 45 mg/l SS limit where alternative limits are specified in accordance with 133.103(c). (See § 133.105(b)). A notice of EPA approved alternative SS limits for WSPs was published in the **Federal Register** on November 27, 1978 (43 FR 55279), and is reprinted as Appendix B of this preamble. These alternative limits are listed on a State-by-State basis and reflect the site-specific nature of each geographical area with respect to the characteristics which influence WSP suspended solids. In summary, the State now has three options for setting SS limitations for WSPs: (1) Use the existing values previously set under § 133.103(c) and published Appendix B to this Notice; (2) reevaluate pond SS data for their State under the revised § 133.103(c) and request EPA approval to use a different value than indicated in Appendix B; or (3) set the limitations at any value between those specified in § 133.102(b) (i.e., 30 mg/l, 30-day average and 45 mg/l, 7-day average) and those specified in § 133.105(b) (i.e., 45 mg/l, 30-day average and 65 mg/l, 7-day average).

One commenter suggested that the pH limitation does not need to be listed as part of the equivalent treatment requirements because it is the same as the pH requirement for secondary treatment facilities. We disagree with this suggestion; the equivalent treatment provision includes a specific reference to the pH requirements to clearly indicate that these requirements, even though unchanged, apply to eligible TFs and WSPs.

2. Implementation and Applicability

One commenter asked what limits would apply where a new equivalent treatment process is installed to treat all or part of the flow at a facility that formerly used the activated sludge process exclusively. Similarly, another commenter noted that equivalent treatment standards should be allowed for new TF/WSP which replace existing activated sludge facilities when water quality will not be adversely impacted. The commenter observed that significant savings in energy and operating costs would result.

The Agency's response is that effluent limits would be set in accordance with the regulation provisions for new equivalent treatment processes. As discussed elsewhere in this section of the preamble, the permitting authority would use its judgment based on performance capabilities of similar facilities in its State or region to establish effluent limitations for new facilities.

A commenter suggested clarifying the point that the use of a minimum of two years of data to assess a facility's performance was for standard setting purposes only and not for compliance purposes. The commenter noted that such a requirement would interfere with compliance and enforcement efforts. We agree that the two year data collection effort for a large group of facilities focused on standard setting only. Timely enforcement and compliance decisions for individual facilities must depend on a shorter term data base.

One commenter asked, when septic tank effluent collection systems are used in conjunction with trickling filters and ponds, will the pollutant removals achieved by the on-lot septic tanks be credited toward the 65 percent removal required for equivalent treatment?

The Agency's answer to this question is yes, provided that the wastewater influent flow from the septic tanks are properly accounted for and documented. The Agency agrees that the pollutant removals provided by onsite systems such as septic tanks, could be accounted for in the calculation of percent removal where reliable compliance monitoring data for the onsite systems can be assured. In such situations the influent flows from the onsite systems would need to be properly accounted for and documented. This would require a relatively complex monitoring and data gathering effort by the POTW authority. Furthermore, such an arrangement is only feasible in cases where the POTW authority is responsible for the operation and maintenance of both the onsite systems and the central treatment pond (as in the case of special districts set up to handle onsite systems).

3. Construction Grants Funding

Some commenters asked, what level of construction grant funding will be allowed for new facilities in States which have stringent requirements for equivalent treatment than the national values, and will advanced treatment reviews be required for these facilities?

In response to these questions, new equivalent treatment facilities with effluent limits more stringent than the "not to exceed" values for equivalent treatment would be fully eligibile for grant funding. Further, advanced treatment reviews will be required only as provided in the Advanced Treatment Policy published in the **Federal Register** on May 21, 1984, at 49 FR 21462.

4. Construction Grants Priority Lists

One commenter concluded that the proposed change in secondary treatment effluent limitations for TFs will probably result in the removal of many old outdated TF facilities from the construction grants priority list. Many of these facilities (normally over 10–15 years old), are probably nearing the end of their design life, and they will eventually need to be replaced. At that time the municipality may have to pay the entire cost. Therefore, deferral could result in greater economic hardship for the municipality.

We concede that deferral of replacement of trickling filters could result in increased capital costs which the municipality must bear if Federal funding becomes unavailable. Nevertheless, this capital cost increase would be largely offset by two factors. First, with the new regulations in effect, the municipality could likely build a replacement trickling filter or pond with lower capital and operation costs than otherwise required for a secondary treatment facility. Second, during the deferral period the municipality will have realized monetary benefits from the foregone increased operation and maintenance costs for the prospective replacement secondary treatment facility.

5. Special Considerations

Two commenters suggested that § 133.103(b) be amended to add a reference to section 301(b)(2)(E) of the Clean Water Act.

The Agency agrees with the commenters and has added the reference to section 301(b)(2)(E). Section 133.103(b) allows for upward adjustment of POTW permit limitations for BOD_5 and SS in cases where the POTW receives wastes from an industrial category that would be allowed less stringent limitations for BOD_5 and SS than allowed under the secondary treatment regulation, if the industry was a direct discharger subject to limitations based on best practicable control technology currently available (BPT) (section 301(b)(1)(A)(i)), or new source performance standards (section 306). Referencing section 301(b)(2)(E) recognizes that for permits written after July 1, 1984, the BOD_5 and SS percent limitations will be based on best conventional pollutant control technology (BCT) rather than BPT.

K. Optional Substitution of $CBOD_5$ Parameter for BOD_5 Parameter

1. Comments on the Use of the $CBOD_5$ Parameter

Thirty four commenters supported use of the $CBOD_5$ to measure performance of secondary treatment facilities. Three commenters opposed use of the $CBOD_5$ measure of treatment plant performance in lieu of the traditional BOD_5 measure. One commenter noted that the "1981 Amendments" do not authorize a change in the BOD test procedure.

We agree that these amendments do not specifically authorize such a change. Nevertheless, the Clean Water Act gives the Agency administrative authority to make technical changes, such as that for the BOD parameter, in the secondary treatment regulations as necessary. Specifically, section 304(d)(1) directs the Administrator to publish within 60 days (and from time to time thereafter) information on the degree of effluent reduction attainable through the application of secondary treatment.

2. Need For More Research

Another commenter called for more research and a more extensive data base before allowing use of the $CBOD_5$ test. The commenter's data shows that the standard method test for inhibited BOD affects the carbonaceous oxidation reaction as well as inhibiting nitrification.

We do not concur because the preponderance of the available research literature conclusively shows that the chemical used for inhibiting nitrification 2-chloro-6 trichloromethyl pridine (TCMP) in the standard method test for inhibited BOD_5 does not significantly affect the carbonaceous oxidation reaction during the 5-day test period. Although TCMP does inhibit carbonaceous oxidation somewhat for tests longer than 5 days, it still affects the carbonaceous reaction less than other possible inhibitors.

One commenter advocated investigating the effects of nitrite in the inhibited $CBOD_5$ test before adopting the $CBOD_5$ parameter for measuring secondary treatment plant performance. This commenter noted that a significant amount of nitrite remains in the effluent of the treatment plant where he is the chief operator. He pointed out that, because TCMP does not inhibit the conversion of nitrite to nitrate, use of the Standard Methods $CBOD_5$ test procedure does not indicate the true $CBOD_5$ for wastewaters where nitrite is present.

We agree that the Standard Methods $CBOD_5$ test procedure does not effectively inhibit the conversion of nitrite to nitrate and could result in less accurate results when used on wastewaters with significant amounts of nitrite present. However, we believe that the situation cited by the commenter is fairly unique and may be a result of the particular operating conditions for his facility (i.e., limited oxygen to complete the nitrification reaction or presence of a substance which selectively inhibits the conversion of nitrite to nitrate). Virtually all the municipal wastewater data reviewed by the Agency indicated little or no nitrite was present in nitrified effluents. For this reason the Agency believes that a change or delay in implementing the $CBOD_5$ provisions of the secondary treatment regulation is not warranted. We recommend that the commenter consider applying to EPA for an alternative test procedure as provided for by § 136.4 of the Agency's regulations on test procedures for the analysis of pollutants (40 CFR Part 136).

3. When to Use the $CBOD_5$ Test

Another commenter stated that the inhibited test is needed to measure $CBOD_5$ only if a facility's effluent is partially nitrified. To support this belief, the commenter observes that well designed and operated facilities which nitrify should achieve complete nitrification, thereby eliminating ammonia that could affect standard BOD test results. He therefore concludes that partial nitrification results from design or operational deficiencies and that such problem facilities should be evaluated to improve operation and maintenance rather than changing to an inhibited ($CBOD_5$) test procedure.

The Agency cannot concur with that line of reasoning for two reasons. First, Agency performance data for well operated secondary treatment plants shows that partial as well as "complete" nitrification often occurs during warm weather. Oxidation of the substantial ammonia remaining within a sample of a partially nitrified effluent will markedly increase apparent BOD_5 measures with the standard BOD_5 test. Second, even when "complete nitrification" occurs, the remaining ammonia nitrifying and bacteria in the effluent sample in combination with ammonia from the test dilution water can measurably affect standard BOD test results.

4. Optional Substitution of $CBOD_5$ Parameter for BOD_5 Parameter

Several commenters favored mandatory substitution of the $CBOD_5$ parameter. They noted that years of research and actual field experience have shown that $CBOD_5$ is the only proper indicator of oxidation of organic pollutants in the secondary treatment process. They concluded that, without an across-the-board substitution, the existence of two secondary treatment BOD standards and the potential for inconsistent application by permitting authorities, will generate significant additional confusion, operational difficulties and administrative problems. Also, by making the $CBOD_5$ test procedure optional, they stated that the Agency is merely shifting responsibility for deciding on the appropriate procedure to the States, many of which will not adopt the $CBOD_5$ parameter even though CBOD is the technically correct measure. These commenters noted further that measures can be taken to overcome potential problems associated with mandatory use of the $CBOD_5$ test. These include: (a) Requiring both BOD_5 and $CBOD_5$ tests for a time to avoid any discontinuity in data when switching to the $CBOD_5$ test and (b) changing permits when they are reissued to avoid the administrative burden of changing all permits at one time.

The Agency agrees the $CBOD_5$ test is a more accurate measure of organic carbonaceous oxygen demand than the BOD_5 test. Nevertheless, at this time the Agency decided not to require an across-the-board mandatory substitution of the $CBOD_5$ for the BOD_5 parameter because it believes that problems arising from the use of the BOD_5 parameter may not be experienced in all cases. Furthermore, some States may wish to evaluate the impact of nitrogenous oxygen demand on BOD tests before deciding to use $CBOD_5$. The current proposal allows States to change to the $CBOD_5$ parameter wherever the BOD test provides erratic results and, at the same time, gives them administrative flexibility in writing their permits.

5. Need to Consider Nitrogenous Oxygen Demand (NOD)

Several commenters expressed their concern that NOD exerted by secondary plant effluents in the receiving waters be properly accounted for. Some of these commenters, while agreeing that the inhibited ($CBOD_5$) test is the correct measure of $CBOD_5$, noted that a $CBOD_5$ standard ignores the major oxygen demand exerted by ammonia in municipal wastewater. They concluded therefore that secondary treatment standards should include limitations for NOD as well as $CBOD_5$. Others stated the Agency should require ammonia measurements for water quality modelling and regulatory purposes whenever the $CBOD_5$ test is used. This would allow NOD impacts to be correctly assessed.

We agree that NOD accounts for the majority of the oxygen demand remaining in the effluent once secondary treatment is achieved. However, we do not concur with the notion that a $CBOD_5$ standard ignores the major NOD exerted by ammonia as well as the conclusion derived therefrom that secondary treatment standards should include NOD as well as $CBOD_5$ limits. While ammonia in wastewater may potentially exert significant NOD, NOD in the receiving waters depends on the characteristics of those waters as well as the ammonia concentration of the effluent. In fact, many waters under certain temperature, flow and other conditions exhibit low NOD (nitrification). Some waters exhibit little or no NOD under all conditions. Therefore, the determination of whether NOD reduction is required should be a case-by-case decision for each receiving water segment, and should not be applied across-the-board. If the permitting authority determines that dissolved oxygen (DO) criteria for a specific receiving water would be violated by a discharge of secondary effluent, then treatment more stringent than secondary, with NOD (ammonia) reduction as appropriate, will be required. With or without the $CBOD_5$ provisions in the secondary treatment regulation, permitting authorities would use similar procedures to determine that the receiving water is indeed effluent limited, e.g., NOD is not causing violations of DO criteria.

Regarding the comment advocating requirements for effluent ammonia measurements whenever the $CBOD_5$ test is used, we agree that such measurements should be taken wherever ammonia could cause violations of water quality standards. In fact, such measurements are required for these conditions. The need for measurements, however, does not depend on the testing procedure used, i.e., $CBOD_5$ or BOD_5, but on the NPDES permit requirement set for such discharges.

One commenter supported, as a prerequisite for using the $CBOD_5$ parameter, site specific evidence that NOD is causing higher BOD_5 values so that the alternate test will not be used to obscure non-compliance due to inadequate treatment.

The Agency notes that the regulation allows, but does not require, the permitting authority to use the $CBOD_5$ test on a site specific basis where NOD in the effluent is shown to be a problem. We do not believe such site specific evidence should be required because the $CBOD_5$ test, even if universally applied, provides a much more accurate, reliable measure of oxygen demand created by carbonaceous organic pollutants than the BOD_5 test. In fact, the BOD_5 test may give erratic or misleadingly high BOD_5 values when nitrification or incipient nitrification occurs in the treatment facility. This situation can and often does lead to large BOD_5 values for high quality effluent, particularly during warm weather when nitrification is most likely, contrasted with lower BOD values for poorer quality effluent from treatment facilities lacking nitrification capability. To avoid any unintentional tendency toward non-compliance or standard relaxation due to use of the $CBOD_5$ parameter, the Agency has set an effluent standard of 25 mg/l for $CBOD_5$ compared with a standard of 30 mg/l or higher for the BOD_5 parameter. This 5 mg/l difference reflects results of the Agency's comparative statistical analysis of BOD_5 versus $CBOD_5$ test results for a selected group of secondary plants operated during cool weather conditions. This analysis is explained in greater detail elsewhere in this section of the preamble.

L. $CBOD_5$ Effluent Limitations

1. The 25 mg/l (30-Day Average) $CBOD_5$ Effluent Limitation

Several commenters opposed setting a more stringent $CBOD_5$ standard than the 30 mg/l standard for BOD_5 and suggested instead a simple substitution of $CBOD_5$ for BOD_5, with the secondary treatment definition remaining at 30 mg/l of $CBOD_5$. These commenters cited several reasons for their position. First, the BOD_5 test and secondary treatment standards for BOD_5 have always intended to measure CBOD only. Substituting the $CBOD_5$ test procedure merely provides a more accurate measure of what has always been intended. Second, a more extensive data base is needed before deciding on a 5 mg/l difference between $CBOD_5$ and BOD_5. EPA should run a series of side-by-side tests on a number of municipal effluents to conclusively determine what difference, if any, there is between $CBOD_5$ and BOD_5 values. Third, the Agency should have analyzed the difference, if any, between $CBOD_5$ and BOD_5 values for facilities where BOD_5 results were affected by nitrification. The uninhibited BOD_5 values for these facilities would be greater than 30 mg/l (e.g., 35 mg/l). Applying the 5 mg/l difference to these facilities would give a $CBOD_5$ standard equal to or greater than the BOD_5 standard (e.g., 35 mg/l

BOD_5 minus 5 mg/l equals 30 mg/l $CBOD_5$). Fourth, correctly performed tests on non-nitrified effluents will give identical BOD_5 and $CBOD_5$ results. The critical period is warm weather when nitrification is occurring; at this time the difference is much greater than 5 mg/l. Finally, because the standard deviation of BOD_5/$CBOD_5$ test results is relatively great (i.e., not a high degree of statistical accuracy), the 5 mg/l difference is not statistically valid.

We have no basis for agreeing or disagreeing with the first point, since the Agency did not specifically evaluate NOD effects on BOD testing at the time the secondary treatment standards were set. However, we do not agree simple substitution of $CBOD_5$ for BOD_5 is correct because it is likely that the BOD_5 data used to set the 30 mg/l BOD_5 (i.e., the $CBOD_5$ standard equal to 30 mg/l) standard inadvertently included some NOD. Even though the frequency of the NOD effects on BOD_5 testing has increased in recent years, we believe that partial nitrification may have been occurring at some of the treatment plants initially considered in setting the secondary treatment standards. Thus, it is likely that the BOD_5 standard would have been slightly less than 30 mg/l if only CBOD was actually measured as intended. The 5 mg/l difference between BOD_5 and $CBOD_5$ measurement determined by the Agency from side-by-side BOD_5/$CBOD_5$ supports this view.

In regard to the second point, EPA has analyzed parallel BOD_5 and $CBOD_5$ data from secondary treatment facilities achieving at least the 30 mg/l BOD_5 requirements for BOD_5. These data were obtained for 26 facilities under critical cool weather conditions similar to those governing the 30 mg/l BOD_5 standard. Under cool weather conditions, which typically govern design of secondary treatment facilities, populations of nitrifying bacteria would be low and incipient nitrification would be minimal. The Agency used simple linear regression analyses to express the best fit of the $CBOD_5$ and BOD_5 data in terms of a linear equation. The several analyses showed a close fit between the data and line of best fit as indicated by coefficients of determination ranging from 0.89 to 0.93 (1.0 represents perfect fit and 0.0 represents no fit). These analyses provided a solid basis for predicting $CBOD_5$ values ranging from 24–27 mg/l corresponding to a BOD_5 value of 30 mg/l for a well operated secondary treatment plant operated during cool weather (wastewater temperature less than 20 °C). Accordingly, the Agency believes the selected 25 mg/l $CBOD_5$ value represents a statistically valid equivalent to a 30 mg/l BOD_5 value for cool weather plant operation when nitrifier bacteria populations are low; therefore, the 25 mg/l $CBOD_5$ parameter is appropriate and necessary to prevent any unintentional relaxation of secondary treatment performance requirements that might otherwise result from changing to the $CBOD_5$ standard.

The third unintentionally misstates the issue. The $CBOD_5$ parameter should not be set based on the significant nitrification expected at a secondary treatment facility during warm weather because secondary treatment standards are set on the basis of the most critical cool weather conditions when nitrification is minimal. Therefore, the Agency analyzed the parallel $CBOD_5$ and BOD_5 data accordingly. Further, BOD_5 test results are usually erratic when nitrification or incipient nitrification occurs during warm weather. Therefore, little or no correlation exists between warm weather BOD_5 and $CBOD_5$ data.

The commenters' fourth point is that correctly performed tests on non-nitrified effluents will give identical BOD_5 and $CBOD_5$ results. We agree this statement is theoretically true for non-nitrified effluents without the presence of nitrifier bacteria. However, as indicated by the Agency's parallel $CBOD_5$ and BOD_5 data, enough nitrifiers are usually present in secondary effluents during cool weather to measurably increase the uninhibited BOD_5 measurement a small amount above that for $CBOD_5$. The Agency believes this is a particularly important point since this phenomenon most likely had a similar effect on the data used to initially set the 30 mg/l BOD_5 standard in the secondary treatment regulation. We also acknowledge that the difference between BOD_5 and $CBOD_5$ during warm weather when nitrification is occurring is often much greater than 5 mg/l. In fact, under these conditions the value of one parameter cannot be reliably estimated based on data for the other.

In regard to the fifth point, we concede that the derivation of the 5 mg/l difference between the BOD_5 and $CBOD_5$ parameters is not statistically precise. Nevertheless, the several analyses collectively indicate that the actual difference is lilely to be between 3 and 6 mg/l. The adopted difference of 5 mg/l therefore represents a reasonable estimate.

2. Alternatives to the Uniform 25 mg/l $CBOD_5$ Effluent Limitation

One commenter supported allowing States to set $CBOD_5$ standards comparable to the 30 mg/l BOD_5 standard instead of the optional uniform 25 mg/l $CBOD_5$ standard established by the Agency. Another commenter favored allowing the permitting authority to set comparable $CBOD_5$ standards on a facility-by-facility basis.

We believe these comments have some merit. However, application of a uniform standard for $CBOD_5$ less than that for BOD_5 will prevent unintentional relaxation of secondary treatment requirements where States choose to use the $CBOD_5$ test. Also, State-by-State or case-by-case standard setting, with resource requirements for supporting data collection and analysis, may discourage some permitting authorities from adopting the $CBOD_5$ parameter.

3. $CBOD_5$ Standards for Equivalent Treatment Processes

Some commenters advocated application of the $CBOD_5$ standard for TFs and WSPs, with this standard remaining at the 45 mg/l (30-day average) value adopted for BOD_5.

We agree in part with this comment. The Agency should not prevent application of the $CBOD_5$ parameter to TFs and WSPs because it is more accurate than the BOD_5 standard. A numerical $CBOD_5$ standard for TFs and WSPs was not intentionally excluded from the proposed rulemaking. The Agency had calculated the proposed CBOD numbers of 25 mg/l based on its studies of existing secondary treatment facilities concentrating on application of the $CBOD_5$ standards to those facilities. The Agency agrees with the comments, however, the regulation should allow each permitting authority the flexibility to adopt for TFs and WSPs either the 25 mg/l $CBOD_5$ parameter (30-day average) applied to secondary treatment facilities or to set higher $CBOD_5$ standards for TFs and WSPs in the range of 25 mg/l to 40 mg/l, after the permitting authority has collected and analyzed parallel $CBOD_5$ and BOD_5 data submitted by the permittee. The range cap of 40 mg/l, 5 mg/l less than the 45 mg/l BOD_5 standard, reflects results of the Agency's analyses of parallel BOD_5 and $CBOD_5$ data for secondary facilities. Those analyses showed that $CBOD_5$ results will be a small amount (5 mg/l estimate) less than those for BOD_5 during cool weather. We expect the $CBOD_5$ test results for TF/WSP would be a small amount less than parallel BOD_5 values. States are also permitted to use $CBOD_5$ to develop alternative requirements for treatment equivalent to secondary treatment. (See §§ 133.105(e) (1) and (2).)

4. Use of $CBOD_5$ for Advanced Treatment Limitations

Some commenters asked for clarification concerning the use of $CBOD_5$ for advanced treatment effluent limitations and whether States have authority to use the $CBOD_5$ parameter to set effluent limitations more stringent than secondary treatment. One commenter asked what, if any, difference between BOD_5 and $CBOD_5$ limitations would apply to advanced treatment (more stringent than secondary $CBOD_5$) limitations (i.e., comparable to the 5 mg/l difference between BOD_5 and $CBOD_5$ for secondary).

Concurrent promulgation of this regulation and the Agency's permit regulations, in addition to promulgation of final changes to the Part 136 test procedures regulation, now allow use of the $CBOD_5$ parameter for all municipal facilities including advanced treatment, secondary treatment and equivalent treatment facilities.

First, we note that nothing in this final rulemaking changes current Agency policies or procedures with regard to advanced treatment permits or requirements. We have, however, provided the following discussion to clarify the use of $CBOD_5$ for advanced treatment limitations. With the concurrent promulgation of this regulation and the Agency's permit regulations, and subsequent promulgation of final changes to the Part 136 test procedures regulation, permitting agencies can use $CBOD_5$ limitations and monitoring procedures for secondary, equivalent treatment and advanced treatment municipal permits.

The Agency notes that advanced treatment effluent limitations are derived through the water quality analysis process called a wasteload allocation. The equations used for the DO analysis part of the wasteload allocation include a term, $CBOD\mu$, which represents the ultimate carbonaceous oxygen demand of the wastewater effluent. The wasteload allocation determines the allowable value of the $CBOD\mu$ term for a given DO criterion for the receiving water. In turn, the permit writer translates the $CBOD\mu$ term into the $CBOD_5$ term included in the permit by applying the appropriate $CBOD\mu$: $CBOD_5$ ratio (the Agency's wasteload allocation guidance explains these ratios). Accordingly, advanced treatment effluent limitations for $CBOD_5$ are simply and directly derived from the wasteload allocation process.

If the permit would include BOD_5 rather than $CBOD_5$ term, no technically correct method exists to account for the NOD_5 component of BOD_5 in translating the wasteload allocation result for $CBOD\mu$ to BOD_5. This situation occurs primarily because the wasteload allocation must represent critical conditions, generally including low stream flows and warm receiving water temperatures. During such warm weather periods, wastewater effluent, particularly advanced treatment effluents, are at least partially nitrified (ammonia oxidized to nitrate) and nitrifiers are present in the effluents. As explained previously, such effluents will produce erratic and unpredictable BOD_5 test results because they include widely varying NOD_5 components. Thus, an across-the-board numerical adjustment (such as the 5 mg/l adjustment for secondary treatment during cool weather) cannot be reliably applied to translate either $CBOD\mu$ or $CBOD_5$ values for warm weather to BOD_5 results. Given the above, the Agency recommends that advanced treatment permits include the $CBOD_5$ parameter. If the BOD_5 parameter is nevertheless used instead, the permitting authority should use analyses of performance data for the treatment facilities or similar facilities, along with its judgment, for translating wasteload allocation results into the permits' BOD_5 limitations.

M. Comments on Portions of the Regulation Not Addressed by the Proposed Rulemaking

Some comments addressed the SS limitations for ponds. One commenter favored allowing SS adjustments for WSP preceded by other treatment processes. We disagree because the amended secondary treatment regulations for ponds published November 7, 1977, allowed adjustment of the SS limitations for WSPs only where they are the principal process used for secondary treatment. That amendment did not apply to polishing or holding ponds preceded by other biological or physical/chemical treatment processes. The Agency concludes there is not a basis for removing this restriction.

Another commenter suggested that States will have to re-evaluate WSP suspended solids limitations because the criteria for developing these limits change under the proposal. The Agency neither intends nor do the regulations require the States to re-evaluate SS limitations for WSP even though the regulation now includes a new "not to exceed" 45 mg/l BOD_5 limit (30-day average) for WSPs. Nevertheless, when reviewing its BOD_5 limits for WSPs, the State may, and is indeed encouraged to, review its SS limits as well. An additional explanation of SS limits for WSPs is presented in section IV.F.1. of this preamble.

One commenter noted the "proposed limit" of 95 mg/l for WSPs suspended solids for the State of California is too stringent because a number of California WSPs exceed that value part of the year. We would note that the 95 mg/l limit for California is an already established limit. The State may review this limit whenever it believes such review is necessary.

V. Implementation of Final Regulations

A. Treatment Equivalent to Secondary Treatment

1. Modification of Effluent Ranges

The final regulations establish a minimum level of effluent quality attainable by treatment equivalent to secondary treatment (proposed §§ 133.105 (a), (b) and (c)) with further provision that individual permits be adjusted to reflect plant performance capabilities (§ 133.105(f)). As an alternative to the effluent concentrations for BOD_5 and SS specified in §§ 133.105 (a)(1), (a)(2), (b)(1) and (b)(2), the permitting authority can recommend alternative effluent requirements that reflect the performance of TF and WSP facilities within a State, more accurately than the national limits. This provision (§ 133.105(d)) provides States with the flexibility to take into account additional local factors, and thus be consistent with Congressional intent that the Agency consider geographic, climatic, and seasonal factors affecting plant performance.

The WSP permit adjustment for SS concentrations (§ 133.103(c)) provides a precedent for allowing States to participate in setting an ASR by assessing the performance of local treatment works. In order to implement a similar process in an expedited manner, the regulation authorizes a Regional Administrator or if appropriate a State director, subject to EPA approval, to determine the effluent concentrations consistently achieved by TF and WSP facilities in accordance with a methodology set forth in §§ 133.105(b), 133.101(f), and 133.101(g). EPA retains responsibility for approving any ASR suggested by a State, and may veto any non-conforming permit (40 CFR 123.44(c)).

A Regional Administrator, or State, would have to demonstrate that: (1) Only TF and WSP facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)) are included in the analysis, and (2) the recommended

ASR should reflect the effluent concentrations consistently achieved by the median facility in a representative sample of facilities within a State or appropriate contiguous geographical area. Application of the criteria ensure that alternative requirements are developed in the same manner as used by EPA in developing the national numbers. In developing alternative requirements, Regional Administrators and States may consider disaggregation of the sample of eligible facilities based on significant differences in climate (or geography), seasonal performance, or variations in the type of TF or WSP employed. For each disaggregated sample, however, the criteria specified in § 133.105(d) would have to be satisfied.

The permitting authority should submit data to the Agency for a preliminary analysis to see if the permitting authority has performed the proper analysis. After preliminary review the permitting authority must provide notice and opportunity to comment on its initial findings and proposed ASR. After considering the comments the permitting authority will submit its data and analysis and proposed ASR to the Agency for final approval. Upon final approval of the ASR, the Agency intends to publish values in the Federal Register. Since the implementation of the alternative State requirements provision would involve application of the regulatory criteria set forth in proposed § 133.105(d) during the NPDES permit process, EPA will not be proposing or promulgating the approved ASR.

2. Case-by-case Adjustments of NPDES Permits

In the preamble for the proposed regulation, the Agency stated that it may be more appropriate to promulgate the proposed provisions on permit adjustments (§ 133.105(f)) as an amendment to the permit regulation (40 CFR Part 122). None of the commenters expressed an opinion on this matter. The Agency has decided to promulgate the provisions on permit adjustments for treatment equivalent to secondary treatment as part of the secondary treatment regulation. This is being done so that all the regulatory provisions specifically for establishment of treatment equivalent to secondary treatment are promulgated in one place in the Code of Federal Regulations.

a. *Performance and Design Capability Factors.* For facilities that meet the eligibility requirements (§ 133.101(g)), the regulations allow the permitting authority to set more stringent effluent limitations for an individual treatment facility based on the performance capabilities of the treatment works (§ 133.105(f)). However, in no case would the individual NPDES effluent limitations be set at values less stringent than those established at the national levels (§§ 133.105 (a), (b), and (c)) or those established through procedures for alternative State requirements (§ 133.105(d)). (For those TF and WSP facilities that do not meet the eligibility requirements, i.e., a TF that can consistently achieve the current secondary treatment requirements, the permit would not be adjusted.)

These provisions are intended to ensure that increased concentrations of pollutants do not result from facilities that are currently achieving a significantly higher degree of pollutant removal than would be allowed at the minimum level of established effluent quality, i.e., 45 mg/l BOD_5 and SS on a 30-day average basis. It is important to note here that the essence of the permit adjustment procedure is not to sanction increased levels of pollutant discharges, but to encourage the continued use of existing facilities using equivalent treatment processes and minimize unnecessary or untimely facility upgrading. Thus, levels of effluent quality that are already achieved by a facility must be maintained (§ 133.105(f)(1)).

The effluent limitations should reflect the effluent quality achievable by a facility based on present performance capabilities. However, if a plant is currently underloaded in terms of its design conditions, it is appropriate for the permit effluent limitations to reflect the actual flow conditions plus the expected increase during the permit term. For most facilities with minor flow increases over the permit term, the expected flow volume approach should be adequate for permitting. However, in some situations such as new facilities, permits with a two-tier permit approach could be used. The two-tier permit would have separate permit limits for the current flow condition and the ultimate flow expected during the permit term (pollutant limits established for the ultimate flow must be as least as stringent as the limits established for the current flow). In no case can the pollutant limits be less stringent than allowed by Part 133.

b. *NPDES Permits for New Facilities.* In developing permits for new TF and WSP facilities, the permitting authority should consider the ultimate design capability of the treatment process, geographical and climatic conditions and the performance capabilities of recently constructed facilities in similar situations. Data available in the technical support document and record for this regulation provide an indication of the performance capabilities of recently constructed facilities using TF and WSP processes.

As indicated in the technical support document, the Agency believes that on a national basis new TFs are capable of achieving 30 day average values of at least 35 mg/l BOD_5 and SS. This recognizes that new facilities can perform better than their predecessors, but is also consistent with the intent of section 23 of Pub. L. 97–117 to encourage lower cost and simpler technologies for small and moderate sized communities.

However, it must also be recognized that due to varying temperature conditions, particularly when minimum influent wastewater temperatures are in the range of 13 °C or less, even new TFs may not be able to consistently achieve 30 day average values of 35 mg/l for BOD_5 and SS.

The permitting authority's assessment of TF and WSP peformance, based on current design practice, should be done initially by each State at the time this regulation is promulgated and from time-to-time thereafter to account for any advances in technology. The results of these analyses (in terms of achievable effluent quality for new TFs and WSPs) then should be made available to municipal officials and design engineers within the State for planning and design purposes.

c. *Water Quality Assurances.* Section 23 of Pub. L. 97–117 (section 304(d)(4) of the Act) requires that assurances be made that water quality will not be adversely affected by deeming facilities as the equivalent of secondary treatment. The Agency's NPDES permit regulations already require that any permit effluent limitations result in compliance with applicable water quality standards, State effluent requirements, and other provisions of the Act (see 40 CFR 122.44 at 48 FR 14169, and 40 CFR 124.53).

d. *Seasonal Permits.* EPA recognizes that the performance of equivalent treatment processes such as TFs and WSPs may be affected by differences in temperature, and thus, such facilities may exhibit variation in performance depending on geographical, climatic, or seasonal factors. For a given facility, there may be significant differences in performance from one period of the year to another. In implementing § 133.105(f), the Agency encourages permit writers to develop seasonal permits that would reflect such differences in performance where the differences are significant. If a seasonal permit is developed, a specific time period, during which the different effluent limitations would apply, should be established based on historical records for either mean monthly ambient air temperature or effluent wastewater temperature.

B. Substitution of CBOD$_5$

1. Process for Revising NPDES Permits

Under this final rule, NPDES permitting authorities are allowed to substitute the CBOD$_5$-based effluent concentrations and testing procedures in place of existing BOD$_5$ requirements in secondary treatment and equivalent NPDES permits. Due to the large number of municipal permits that could be potentially impacted by this rule, the preferred method of implementation is to revise the permit limitations at the time of normal permit reissuance.

Elsewhere in today's **Federal Register**, the Agency is promulgating changes to the NPDES Permit Regulations (40 CFR 122.62) that allow municipalities to request permit modification prior to reissuance. Therefore, permittees who wish to request modification prior to reissuance may do so, but must submit their requests for modification within 90 days of publicaton (40 CFR 122.6(a)(3)(i)(C)).

2. Water Quality Related Issues

Permit writers must determine whether treatment more stringent than secondary treatment is needed to achieve water quality standards. If a permitting authority determines that State water quality standards for the receiving water would be violated by a discharge of secondary effluent, then States' similar procedures will be used to determine that the receiving water is indeed effluent limited, *e.g.*, NOD is not causing water quality violations. Where concerns exist that the NOD present in secondary effluent may result in adverse effects on water quality and designated uses of receiving waters, the State should consider whether the stream classification should be changed from effluent limited to water quality limited. This rule applies only to those cases where the technology-based standard of secondary treatment was considered and found to be sufficient to protect water quality and ensure compliance with water quality standards.

3. Sampling and Testing Procedures

The secondary treatment regulation requires the use of sampling and testing procedures in accordance with 40 CFR Part 136. As noted above, the Agency expects to promulgate the addition of a CBOD$_5$ test to the list of EPA approved procedures in August of this year. Both the preamble and cited references for the rulemaking for 40 CFR Part 136 will describe the test procedure for CBOD$_5$ and its rationale.

40 CFR Part 136 includes procedures that are specified in the publication *Standard Methods for the Examination of Water and Wastewater*. The fifteenth edition of *Standard Methods* recommends that BOD$_5$ tests performed on secondary effluents or samples seeded with secondary effluents use a nitrification inhibitor to properly measure the CBOD$_5$ of the effluent. The inhibitor used in the *Standard Methods* test and included in 40 CFR Part 136 is 2-chloro-6(trichloromethyl) pyridine (TCMP).

VI. Discussion of Changes From the Proposed Regulation

As summarized in section III.A., the Agency has made some changes to the regulation as proposed. The following discussion explains the intent and basis of each change.

A. Permit Adjustments

Subsection 133.105(e) as proposed has been redesignated as (f) in the final regulation. The proposal provided that a "registered engineer" would evaluate the design capability of a new treatment process in establishing effluent limitations. The Agency has deleted this term and provided that the "permit authority" shall determine the appropriate effluent limitation based on consideration of the design capability of the treatment process (§ 133.105(f)(2)). This change was made in response to public comments. Many commenters expressed confusion that the term "registered engineer" implied that a private consulting engineering firm was to be evaluating the treatment process in setting permit limitations. The Agency agrees with the comments that the wording, as proposed, could be easily misinterpreted and that the permitting authority is fully capable of evaluating the effluent limitations. We never intended that any entity other than the permitting authority should be responsible for setting permit limits. Therefore, § 133.105(f)(2) has been changed accordingly.

The Agency has also modified the language in both § 133.105(f) (1) and (2) to clarify that the permitting authority may not set an effluent limitation for an existing or new facility less stringent than allowed in § 133.105 (a) through (e). This does not represent a substantive change from the intent of the subsection as proposed but merely clarifies the relationship between subsections (f) and (a) through (e). Subsection 133.105(f) provides that permits for new and existing facilities that provide treatment equivalent to secondary treatment may be written more stringent than the limitations provided in § 133.105 (a) through (e) but in no case less stringent than such limitations.

Finally, the modifications to § 133.105(f) clarify that permitting authorities must require effluent limitations more stringent than the limitations allowed in § 133.105 (a) through (e) if the permitting authorities determine such more stringent limitations are achievable based on the determinations as required by § 133.105(f) (1) and (2). Subsection 133.105(f)(1) is the anti-backsliding provision upon which the Agency received extensive comment. The Agency has not changed the anti-backsliding provision and the modification in the language of § 133.105(f)(1) only clarifies the implementation of the anti-backsliding provision and makes no substantive change. The modification to the language in § 133.105(f)(2) makes this subsection consistent with subsection (f)(1) and clarifies the factors to be considered by the permitting authority in setting effluent limitations for new facilities. No substantive change from the proposal was intended.

B. CBOD$_5$ Limitations for TFs and WSP

The proposed regulation included an amendment adding § 133.102(a)(4) authorizing a permitting authority to allow the use of the CBOD$_5$ parameter rather than BOD$_5$ for measuring oxygen demand from secondary treatment. As proposed, § 133.102(a)(4) only addressed using CBOD$_5$ in evaluating secondary treatment, establishing limits of 25 mg/l and 85 percent removal for the 30-day average and 40 mg/l for the 7-day average. Public comments raised the issue that the use of the CBOD$_5$ parameter should also be allowed for TFs and WSPs as facilities providing treatment equivalent to secondary treatment. The Agency agreed with those comments and has therefore added the new § 133.105(e)(1) in the final rule allowing the use of the CBOD$_5$ parameters for TFs and WSPs.

Addition of the new § 133.105(e)(1) is consistent with the Agency's decision to give permitting authorities the option of using CBOD$_5$ for measuring oxygen demand from secondary treatment at POTWs. Since the use of the CBOD$_5$ parameter may be more accurate than the BOD$_5$ standard, its use should also be authorized for POTWs using TFs and WSPs. The Agency has established a 40 mg/l 30-day average and 60 mg/l 7-day average as the maximum CBOD$_5$

allowed in TFs and WSPs (§ 133.105(e)(1)). These limits are 5 mg/l less than the 45 mg/l and 65 mg/l BOD$_5$ standards for TFs and WSPs, thereby reflecting the same level of reduction required for secondary treatment when using the CBOD$_5$ parameter.

C. Industrial Wastes

The secondary treatment regulation currently provides for the upward adjustment of the 30 mg/l and 45 mg/l limits in subsection 133.102 (a) and (b) under certain conditions related to large flows of industrial wastes into a POTW (§ 133.103(b)). This provision accounts for the situation where POTWs receive industrial wastes for which direct discharge standards are less stringent than the secondary treatment requirements. Some commenters noted that this provision for adjustments is equally applicable to TFs and WSPs providing treatment equivalent to secondary treatment. The Agency agreed and has modified § 133.103(b) to allow adjustment of limitations in § 133.105 (a)(2) and (b)(2) if those are the limitations applicable to the POTW. Additionally, § 133.103(b) has been modified to include § 133.102(a)(4) (i) and (ii) and 133.105(e)(1) (i) and (ii) if the POTW limitations are based on the use of the CBOD$_5$ parameter.

The changes to § 133.103(b) do not substantively change its applicability. The changes merely continue the applicability of the provisions in § 133.103(b) to all qualifying POTWs. Currently the provisions of § 133.103(b) apply to any POTW that receives the specified types of industrial wastes. Since today's amendments to the secondary treatment regulation establish different limitations for "treatment equivalent to secondary" and allow use of the CBOD$_5$ parameter, it was necessary to modify § 133.103(b) to continue its applicability to all POTWs that receive the specified types of industrial wastes. These modifications merely continue the Agency policy currently stipulated in § 133.103(b).

D. Public Comment on ASRs

Subsection 133.105(d) has been changed by adding the words "and after notice and opportunity for public comment." The Agency received comments on the proposed ASR development and approval process requesting an opportunity for the public to comment on a proposed ASR. The rule as proposed required EPA approval of an ASR, however, it did not provide that the State or EPA solicit public comment before approval. The Agency agrees that there should be an opportunity for the public to comment on proposed ASRs. Therefore, the Agency has changed § 133.105(d) to require that either the State or Regional Administrator, whichever is developing the ASR, provide notice and opportunity to the public to comment on the proposed ASR.

E. "Principal" Treatment Process

The proposed definition of "facilities eligible for treatment equivalent to secondary treatment" includes a TF or WSP be used as the "principal" treatment process (§ 133.101(g)(2)). The Agency is including this definition unchanged in the final amendments. One commenter, however, noted that an analogous provision in the current regulations relating to WSPs includes the requirements that the WSP be the "sole" treatment process (§ 133.103(c)) and that use of two different terms raised some confusion. The Agency does not intend that a different requirement be imposed under §§ 133.101(g)(2) and 133.103(c), and has therefore changed the word "sole" in § 133.103(c) to read "principal." This change makes the two provisions compatible and is consistent with the Agency's current interpretation of § 133.103(c). The Agency never intended that a WSP be the exclusive treatment process before § 133.103(c) could apply. The Agency has always encouraged the use of "supplemental" or "add-on" components in conjunction with WSPs (i.e., aeration or simple filters), when the WSP was the principal treatment process. This change in § 133.103(c) is consistent with Agency policy.

F. Reference to Best Conventional Pollutant Control Technology (BCT)

The Agency recognized in response to two public comments that § 133.103(b) should be amended to add a reference to BCT limitations for BOD$_5$ and SS. Permits written under the current § 133.103(b) allow an upward adjustment of a POTW BOD$_5$ and SS permit limitations if the POTW receives industrial wastes from a category that would allow less stringent BOD$_5$ and SS limitations if the category was a direct discharger. The regulation references sections 301(b)(1)(A)(i) and 306 which are the statutory bases for BPT effluent limitations and new source performance standards. These permits may remain in effect for up to five years. Since permits written after July 1, 1984 will base BOD$_5$ and SS limitations for direct dischargers on BCT rather than BPT, the Agency has amended § 133.103(b) to include the reference to section 301(b)(2)(E), the statutory basis for BCT. The Agency does not consider this a substantive change but merely an updating of § 133.103(b) to include the reference to all applicable statutory provisions.

G. Effluent Values and Concentrations "Achievable"

A final modification has been made in §§ 133.101(f), 133.101(g), 133.105(d), 133.105(f) (1) and (2) by changing the word "achieved" to "achievable." The word "achievable" more accurately reflects the assessments that are to be made in establishing effluent limitations for treatment equivalent to secondary treatment. For example, § 133.101(f) as proposed refers to determining effluent quality "achieved" but provides that unrepresentative samples should be excluded. Therefore, the Agency believes that the correct term for the number to be derived is the effluent quality "achievable", rather than achieved. The changes in the other subsections result in similar clarification of the intended limitation to be derived. This change is consistent with the Agency's original intent and does not represent a substantive change in the Agency's view.

VII. Regulatory Reviews

A. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the regulation impact analysis requirements of the Order or whether it may follow other development procedures. The Agency has determined that this regulation is not a major rule within the scope of E.O. 12291. This final rulemaking was submitted to the Office of Management and Budget (OMB) for review as required under E.O. 12291.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit a copy of any proposed rule which contains a collection of information requirement to the Director of OMB for review and approval. The Agency determined that a new collection of information requirement is involved by the provisions authorizing ASRs, 40 CFR 133.105(d). Comments were requested on the Agency's proposed information collection requirements. Based on the comments received there will be few, if any, States developing an ASR, which significantly reduces the information collection requirement, originally estimated in the proposed regulation.

The information collection requirements contained in this rule have been approved by the OMB under provisions of the paperwork Reduction

Act and have been assigned OMB control number 2040–0051.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA to assess the impact of its regulatory proposals on "small entities." No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The secondary treatment amendments promulgated today will allow permitting authorities to modify discharge requirements for many small communities that use TF and WSP treatment technologies. In most cases where requirements are modified, the costs of construction of new facilities, and operation and maintenance costs of existing facilities, will be eliminated or reduced. The estimates of the ultimate benefits that will accrue to small communities as a result of these amendments are uncertain because of the flexibility provided and inherent resulting difficulties in estimating cost impacts. Although precise quantification of costs and benefits is not possible, the Agency believes that this rulemaking will have a net beneficial effect result in cost savings of approximately $1.6 billion based on Needs Survey data.

For operational facilities that meet the criteria for treatment equivalent to secondary treatment (§§ 133.101(g) and 133.105), communities may seek adjustment of NPDES permits where current requirements are not being met. The Agency estimates that the final rule will enable over 3,900 facilities to experience significant cost savings through deferral or elimination of costly capital improvements while continuing to meet approved water quality standards.

For new TF and WSP facilities, the adjustments from secondary treatment requirements will be based on the permitting authority assessment of the design capabilities of the proposed facility. This provision should result in the expanded use of these less expensive wastewater treatment technologies, and the initial capital investment will be less than under previous requirements. This should also results in lower EPA grant awards in many cases, releasing funds for additional projects that may not have been funded except for this cost savings measure. Additional operation and maintenance savings may also result as well.

Today's rulemaking also allows substitution of $CBOD_5$ standards for the existing BOD_5 standards. This provision is applicable to all POTWs and we expect that some small communities may request this change. The use of the $CBOD_5$ parameter and testing procedures, moreover, may result in substantial capital or operations and maintenance cost savings at some locations. By using the $CBOD_5$ parameter and testing procedures some communities may be able to demonstrate that planned treatment facility upgradings are in fact unnecessary. Furthermore, the Agency expects that some communities will also realize benefits from the use of $CBOD_5$ through more accurate measurements of effluent quality and elimination of the incentive to operate plants in a counter-productive manner to meet BOD_5 limits, e.g., prevention of nitrification in facilities.

The Agency believes that today's regulation will not result in any significant economic impact on small communities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this amendment will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 133

Publicly owned treatment works, Waste treatment and disposal, Water pollution control.

Dated: September 12, 1984.

William D. Ruckelshaus,

Administrator.

Appendix A—Abbreviations, Acronyms and Terms Used in This Notice

Act—The Clean Water Act.

Agency—The United States Environmental Protection Agency.

BCT—Best Conventional Pollution Control Technology.

BPT—Best Practicable Control Technology.

BOD—A pollutant parameter for the biochemical oxygen demand of wastewater, which typically includes both a carbonaceous and a nitrogenous portion.

BOD_5—The BOD exerted in a 5-day period.

BOD_u—The ultimate or long-term BOD of wastewater, which will be exerted if sufficient reaction time is allowed.

CBOD—The carbonaceous portion of the BOD of wastewater.

$CBOD_5$—The CBOD exerted in a 5-day period.

$CBOD_u$—The ultimate or long-term CBOD of wastewater, which will be exerted if sufficient reaction time is allowed. Typically, $CBOD_u$ is equal to 1.5 times the $CBOD_5$.

CWA—The Clean Water Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 [33 U.S.C. 1251 *et seq.*], as amended by the Clean Water Act of 1977 [Pub. L. 95–217] and the Municipal Wastewater Treatment Construction Grant Amendments of 1981 [Pub. L. 97–117].

EPA—The United States Environmental Protection Agency.

mgd—Million gallons per day.

mg/l—Milligrams per liter.

MCD-53—"Innovative and Alternative Technology Assessment Manual," [EPA 430/9–78–009, MCD-53, 1980].

NOD—The nitrogenous portion of the BOD of wastewater.

NPDES permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

OMB—Office of Management and Budget.

POTW—Publicly owned treatment works.

SS—Suspended solids.

Standard Methods—Standard Methods for the Examination of Water and Wastewater, 15th ed. (American Public Health Association, Washington, D.C. 1980).

TF—Trickling filter.

Technical Support Document—"Technical Support Document for Regulations under section 304(d)(4)."

WSP—Waste stabilization pond.

1981 Amendments—The Municipal Wastewater Treatment Construction Grant Amendments of 1981 [Pub. L. 97–117].

Appendix B—Suspended Solids Limitations for Wastewater Treatment Ponds [1] [Source: 43 FR 55279, November 27, 1978]

Location	Suspended Solids Limit [2] (mg/l)
Alabama	90.
Alaska	70.
Arizona	90.
Arkansas	90.
California	95.
Colorado:	
Aerated ponds	75.
All others	105.
Connecticut	N.C.
Delaware	N.C.
District of Columbia	N.C.
Florida	N.C.
Georgia	90.
Guam	N.C.
Hawaii	N.C.
Idaho	N.C.
Illinois	37.
Indiana	70.
Iowa:	
Controlled discharge, 3 cell	Case-by-case but not greater than 60.
All others	80.
Kansas	80.
Kentucky	N.C..
Louisiana	90.
Maine	45.
Maryland	90.
Massachusetts	N.C.
Michigan: Controlled seasonal discharge:	
Summer	70.
Winter	40.
Minnesota	N.C.
Mississippi	90.
Missouri	80.
Montana	100.
Nebraska	80.
North Carolina	90.
North Dakota:	
North and East of Missouri River	60.
South and West of Missouri River.	100.
Nevada	90.
New Hampshire	45.
New Jersey	N.C.
New Mexico	90.
New York	70.
Ohio	65.
Oklahoma	90.

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[1] The values set for Iowa and Virginia incorporate a specific case-by-case provision.

Location	Suspended Solids Limit [2] (mg/l)
Oregon:	
East of Cascade Mts	85.
West of Cascade Mts	50.
Pennsylvania	N.C.
Puerto Rico	N.C.
Rhode Island	45.
South Carolina	90.
South Dakota	120.
Tennessee	100.
Texas	90.
Utah	N.C.
Vermont	55.
Virginia:	
East of Blue Ridge Mts	60.
West of Blue Ridge Mts	78.
East slope counties: Loudoun, Fauquier, Rappahannock, Madison, Green, Albemarle, Nelson, Amherst, Bedford, Franklin, Patrick.	Case-by-case application of 60/78 limits.
Virgin Islands	N.C.
Washington	75.
West Virginia	80.
Wisconsin	60.
Wyoming	100.
Trust Territories and N. Marianas	N.C.

Notes: N.C.—nochange from existing criteria.

[2] Thirty consecutive day average or average over the period of discharge when the duration of the discharge is less than 30 days.

40 CFR Part 133 is revised to read as follows:

PART 133—SECONDARY TREATMENT REGULATION

Sec.
133.100 Purpose.
133.101 Definitions.
133.102 Secondary treatment.
133.103 Special considerations.
133.104 Sampling and test procedures.
133.105 Treatment equivalent to secondary treatment.

Authority: Secs. 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501 of the Clean Water Act [Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Amendments of 1981]; 33 U.S.C. 1311(b)(1)(B); 1314(d)(1) and (4); 1318; and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 95 Stat. 1623, Pub. L. 97–117.

§ 133.100 Purpose.

This part provides information on the level of effluent quality attainable through the application of secondary or equivalent treatment.

§ 133.101 Definitions.

Terms used in this part are defined as follows:

(a) *"7-day average."* The arithmetic mean of pollutant parameter values for samples collected in a period of 7 consecutive days.

(b) *"30-day average."* The arithmetic mean of pollutant parameter values of samples collected in a period of 30 consecutive days.

(c) *"Act."* The Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended).

(d) *"BOD_5."*) The five day measure of the pollutant parameter biochemical oxygen demand (BDO).

(e) *"$CBOD_5$."* The five day measure of the pollutant parameter carbonaceous biochemical oxygen demand ($CBOD_5$).

(f) *"Effluent concentrations consistently achievable through proper operation and maintenance."* (1) For a given pollutant parameter, the 95th percentile value for the 30-day average effluent quality achieved by a treatment works in a period of at least two years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and (2) a 7-day average value equal to 1.5 times the value derived under paragraph (f)(1) of this section.

(g) *"Facilities eligible for treatment equivalent to secondary treatment."* Treatment works shall be eligible for consideration for effluent limitations described for treatment equivalent to secondary treatment (§ 133.105), if:

(1) The BOD_5 and SS effluent concentrations consistently achievable through proper operation and maintenance (§ 133.101(f)) of the treatment works exceed the minimum level of the effluent quality set forth in § §133.102(a) and 133.102(b),

(2) A trickling filter or waste stabilization pond is used as the principal process, and

(3) The treatment works provide significant biological treatment of municipal wastewater.

(h) *"mg/l."* Milligrams per liter.

(i) *"NPDES."* National Pollutant Discharge Elimination System.

(j) *"Percent removal."* A percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the 30-day average values of the raw wastewater influent pollutant concentrations to the facility and the 30-day average values of the effluent pollutant concentrations for a given time period.

(k) *"Significant biological treatment."* The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of a least 65 percent removal of BOD_5.

(l) *"SS."* The pollutant parameter total suspended solids.

§ 133.102 Secondary treatment.

The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the parameters—BOD_5, SS and pH. All requirements for each parameter shall be achieved except as provided for in §§ 133.103 and 133.105.

(a) *BOD_5.*

(1) The 30-day average shall not exceed 30 mg/l.

(2) The 7-day average shall not exceed 45 mg/l.

(3) The 30-day average percent removal shall not be less than 85 percent.

(4) At the option to the NPDES permitting authority, in lieu of the parameter BOD_5 and the levels of the effluent quality specified in paragraphs (a)(1), (a)(2), and (a)(3), the parameter $CBOD_5$ may be substituted with the following levels of the $CBOD_5$ effluent quality provided:

(i) The 30-day average shall not exceed 25 mg/l.

(ii) The 7-day average shall not exceed 40 mg/l.

(iii) The 30-day average percent removal shall not be less than 85 percent.

(b) *SS.*

(1) The 30-day average shall not exceed 30 mg/l.

(2) The 7-day average shall not exceed 45 mg/l.

(3) The 30-day average percent removal shall not be less than 85 percent.

(c) *pH.* The effluent values for pH shall be maintained within the limits of 6.0 to 9.0 unless the publicly owned treatment works demonstrates that: (1) inorganic chemicals are not added to the waste stream as part of the treatment process; and (2) contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

§ 133.103 Special considerations.

(a) *Combined sewers.* Treatment works subject to this part may not be capable of meeting the percentage removal requirements established under §§ 133.102(a)(3) and 133.102(b)(3), or §§ 133.105(a)(3) and 133.105(b)(3) during wet weather where the treatment works receive flows from combined sewers (*i.e.*, sewers which are designed to transport both storm water and sanitary sewage). For such treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage removal level can be defined, and if so, what the level should be.

(b) *Industrial wastes.* For certain industrial categories, the discharge to navigable waters of BOD_5 and SS permitted under sections 301(b)(1)(A)(i), 301(b)(2)(E) or 306 of the Act may be less stringent than the values given in §§ 133.102(a)(1), 133.102(a)(4)(i), 133.102(b)(1), 133.105(a)(1), 133.105(b)(1) and 133.105(e)(1)(i). In cases when wastes would be introduced from such an idustrial category into a publicly owned treatment works, the values for BOD$_5$ and SS in §§ 133.102(a)(1), 133.102(a)(4)(i), 133.102(b)(1), 133.105(a)(1), 133.105(b)(1), and 133.105(e)(1)(i) may be adjusted upwards provided that: (1) the permitted discharge of such pollutants, attributable to the industrial category, would not be greater than that which would be permitted under sections 301(b)(1)(A)(i), 301(b)(2)(E) or 306 of the Act if such industrial category were to discharge directly into the navigable waters, and (2) the flow or loading of such pollutants introduced by the industrial category exceeds 10 percent of the design flow or loading of the publicly owned treatment works. When such an adjustment is made, the values for BOD$_5$ or SS in §§ 133.102(a)(2), 133.102(a)(4)(ii), § 133.102(b)(2), 133.105(a)(2), 133.105(b)(2), and 133.105(e)(1)(ii) should be adjusted proportionately.

(c) *Waste Stabilization Ponds.* The Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in § 133.105 (b)(1), (b)(2), and (b)(3) for treatment works subject to this part, to conform to the SS concentrations achievable with waste stabilization ponds, provided that: (1) waste stablization ponds are the principal process used for secondary treatment; and (2) operation and maintenance data indicate that the SS values specified in § 133.105 (b)(1), (b)(2), and (b)(3) cannot be achieved. The term "SS concentrations achievable with waste stabilization ponds" means a SS value, determined by the Regional Administrator, or, if appropriate, State Director subject to EPA approval, which is equal to the effluent concentration achieved 90 percent of the time within a State or appropriate contiguous geographical area by waste stabilization ponds that are achieving the levels of effluent quality for BOD$_5$ specified in § 133.105(a)(1). [cf. 43 FR 55279].

§ 133.104 Sampling and test procedures.

(a) Sampling and test procedures for pollutants listed in this part shall be in accordance with guidelines promulgated by the Administrator in 40 CFR Part 136.

(b) Chemical oxygen demand (COD) or total organic carbon (TOC) may be substituted for BOD$_5$ when a long-term BOD:COD or BOD:TOC correlation has been demonstrated.

§ 133.105 Treatment equivalent to secondary treatment.

This section describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)) in terms of the parameters—BOD$_5$, SS and pH. All requirements for the specified parameters in paragraphs (a), (b), and (c) of this section shall be achieved except as provided for in § 133.103, or paragraphs (d), (e) or (f) of this section.

(a) *BOD$_5$.*

(1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(b) *SS.* Except where SS values have been adjusted in accordance with § 133.103(c):

(1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(c) *pH.* The requirements of § 133.102(c) shall be met.

(d) *Alternative State Requirements.* Except as limited by paragraph (f) of this section, and after notice and opportunity for public comment, the Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) of this section for trickling filter facilities and in paragraphs (a)(1) and (a)(2) of this section for waste stabilization pond facilities, to conform to the BOD$_5$ and SS effluent concentrations consistently achievable through proper operation and maintenance (§ 133.101(f)) by the median (50th percentile) facility in a representative sample of facilities within a State or appropriate contiguous geographical area that meet the definition of facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)).

(The information collection requirements contained in this rule have been approved by OMB and assigned control number 2040–0051.)

(e) *CBOD$_5$* Limitations:

(1) Where data are available to establish CBOD$_5$ limitations for a treatment works subject to this section, the NPDES permitting authority may substitute the parameter CBOD$_5$ for the parameter BOD$_5$ In §§ 133.105(a)(1), 133.105(a)(2) and 133.105(a)(3), on a case-by-case basis provided that the levels of CBOD$_5$ effluent quality are not less stringent than the following:

(i) The 30-day average shall not exceed 40 mg/l.

(ii) The 7-days average shall not exceed 60 mg/l.

(iii) The 30-day average percent removal shall not be less than 65 percent.

(2) Where data are available, the parameter CBOD$_5$ may be used for effluent quality limitations established under subsection (d) of this section. Where concurrent BOD effluent data are available, they must be submitted with the CBOD data as a part of the approval process outlined in subsection (d).

(f) *Permit Adjustments.* Any permit adjustment made pursuant to this Part may not be any less stringent than the limitations required pursuant to § 133.105(a)–(e). Furthermore, permitting authorities may require more stringent limitations when adjusting permits if: (1) for existing facilities the permitting authority determines that the 30-day average and 7-day average BOD$_5$ and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations, or

(2) For new facilities, the permitting authority determines that the 30-day average and 7-day average BOD$_5$ and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, considering the design capability of the treatment process and geographical and climatic conditions, would enable the treatment works to achieve more stringent limitations.

[FR Doc. 84-24845 Filed 9-19-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 122

[WH-FRL-2600-1]

National Pollutant Discharge Elimination System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising a permit program requirement for the National Pollutant Discharge Elimination System (NPDES). The final rule implements Section 23 of Municipal Wastewater Treatment Construction Grants Amendments of 1981 to the Clean Water Act and the revisions to the Secondary Treatment Regulation (40 CFR Part 133) published elsewhere in today's **Federal** Register. EPA proposed these changes to

the NPDES regulations on November 16, 1983 (49 FR 52258). The rule will allow NPDES permits to be modified or reissued to include less stringent limits based upon the revised secondary treatment requirements.

DATES: The effective date of this regulation is November 5, 1984.

In accordance with 40 CFR 100.01 (45 FR 26098, April 17, 1980), these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on October 5, 1984. In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulation may be submitted on or before November 20, 1984. The effective date of this regulation will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical and nonsubstantive nature should be addressed to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division [EN-336], Office of Water Enforcement and Permits, Environment Protection Agency 401 M Street, SW., Washington, D.C. 20460. Telephone: (202) 426-4793.

SUPPLEMENTARY INFORMATION: Section 301(b)(1) of the Clean Water Act (CWA) requires all publicly owned treatment works (POTWs) to achieve effluent limitations based on secondary treatment or more stringent water quality standards. These effluent limitations are imposed in permits issued to dischargers under the National Pollutant Discharge Elimination System (NPDES). EPA and States approved to administer the NPDES Program have issued permits to existing POTWs with conditions based upon the secondary treatment definition in the existing Secondary Treatment Regulation (40 CFR Part 133). On November 16, 1983, EPA proposed revisions to the secondary treatment requirements in Part 133 based upon section 23 of the "Municipal Wastewater Treatment Construction Grants Amendments of 1981" to the CWA (48 FR 52258). These CWA amendments deemed such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters as the equivalent of secondary treatment and directed EPA to provide guidance on design criteria for such facilities, taking into account pollutant removal efficiencies. EPA proposed Part 133 revisions to carry out this directive. Elsewhere in today's **Federal Register**, EPA is publishing final rules revising Part 133.

The current NPDES regulations do not authorize permits to be modified or reissued to incorporate changes to the secondary treatment requirements insofar as these may be less stringent then the existing permit effluent limitations. Section 122.44(1) prohibits reissuance of a permit upon expiration with any condition less stringent than those in the expiring permit unless cause for permit modification under § 122.62 exists. The current regulations do not provide any cause for permit modification that would allow less stringent permit limitations to be imposed based upon changes to the secondary treatment regulations. Thus, even if permittees would qualify for less stringent requirements as a result of today's revision to the secondary treatment requirements, the existing NPDES regulations would not allow implementation of the revision through changes to permit conditions.

EPA, therefore, proposed to revise § 122.62(a)(3)(i) to allow a POTW to request permit modification to incorporate new effluent limitations in accordance with the revised Secondary Treatment Regulation. Permittees must request the modification within 90 days of publication in the **Federal Register** of revised secondary treatment rules. Under § 122.44(1), that change would also allow the Director to reissue a permit upon expiration with limitations less stringent than those in the expiring permit to the extent authorized by the revised secondary treatment standards. This proposal was also intended to make EPA's approaches to promulgated technology-based standards consistent for POTWs and for industrial dischargers. The current EPA policy in the NPDES regulations allows industrial permits to be modified or reissued at the permittee's request when EPA promulgates effluent limitations guidelines to replace previous guidelines on which the permit was based that were withdrawn, modified, or revised (§ 122.62(a)(3)).

EPA received only two comments on the proposal to revise the NPDES regulations. One commenter noted that many minor POTWs affected by the revision would be required to comply with the secondary treatment standards in their existing permits until permit reissuance since it is not likely that their permits would be modified during the term to incorporate revised secondary treatment standards. As the commenter observed, since modifying POTW permits based upon today's change could requrie significant resources, EPA may not be able to modify all permits prior to expirations. However, EPA will attempt to deal with all permit modification requests as expeditiously as possible so that permittees may benefit from any changes to permit limitations.

Another commenter disagreed with the statement in the proposal that the revision would make consistent EPA's treatment of industrial and municipal dischargers. The commenter stated that because industrial permits could only be made less stringent if they were based upon promulgated effluent guidelines, the policy would unfairly treat industry dischargers with permits based upon the permit writer's best professional judgment (BPJ) under section 402(a)(1) of the CWA. EPA proposed changes to the industrial anti-backsliding policy in 40 CFR 122.44(1) on November 18, 1982 (47 FR 52072). The Agency will fully address its anti-backsliding policy as it applies to BPJ permits for industrial dischargers in that rulemaking. However, as discussed above, today's rulemaking is consistent with the Agency's approach to modification of permits based upon promulgated technology-based standards.

For the reasons discussed above, EPA has decided to promulgate the final rule as proposed. This revision is essential if today's changes to the Part 133 secondary treatment definition are to have any meaning. The Agency's rationale for promulgating the final revisions to Part 133 is discussed elsewhere in today's **Federal Register**.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This amendment will allow permittees to obtain less stringent limitations in their NPDES permits and will thereby reduce burdens. The regulation does not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*, EPA submitted a copy of the proposed rule and supporting documents on collection of information requirements to the Director of OMB for review and approval. No comments were received. EPA is submitting a copy of the final rule and supporting documents on the information collection requirement to the Director of OMB.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's amendment would allow permittees to obtain less stringent effluent limitations and would therefore reduce costs and burdens for them. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this amendment will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

Dated: September 12, 1984.

William D. Ruckelshaus,

Administrator.

These regualtions contained in 40 CFR Part 122 are amended as follows:

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Section 122.62 is amended by revising paragraph (a)(3)(i)(A) as follows:

§ 122.62 Modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(3) * * *

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under Part 133; and

* * * * *

[FR Doc. 84-24846 Filed 9-19-84; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 133

[WH-FRL-2674-1]

Secondary Treatment Regulation; Availability of Comments and Additional Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of comments and additional opportunity to comment.

SUMMARY: On November 16, 1983, the EPA proposed to amend the secondary treatment regulation (48 FR 52258). That notice of proposed rulemaking also solicited public comment on the issue of modifying the percent removal requirement in the current regulation. The regulation defines secondary treatment for publicly owned treatment works (POTWs) as the achievement of 30 mg/l biochemical oxygen demand, 5-day (BOD_5) and suspended solids (SS) or 85 percent removal of those pollutants on a 30 day average, whichever is more stringent. The notice of proposed rulemaking solicited public comments on the problems related to meeting the percent removal requirement and on five options the Agency was considering for amending the percent removal requirement (48 FR 52267–52269). The Agency has now compiled and is considering the public comments. The Agency is publishing today's notice summarizing the initial public comments and providing the public an additional opportunity to comment specifically on the one option the Agency is most seriously considering for amending the percent removal requirement.

DATE: Written comments on this notice must be submitted on or before Novbember 19, 1984.

ADDRESSES: Comments on this notice should be addressed to: Central Docket Section [A-130], Attention: Docket No. G-81-3, Environmental Protection Agency, Washington, D.C. 20460. The public may inspect the complete record for this rulemaking and all comments received in response to this notice at: Central Docket Section, Gallery 1, West Tower Lobby, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., business days.

FOR FURTHER INFORMATION CONTACT: William Kramer, Office of Water Program Operations [WH-595], Environmental Protection Agency, Washington, D.C. 20460, (202) 382-7277.

SUPPLEMENTARY INFORMATION:

A. Background on the Problems Associated With the Percent Removal Requirements

Four EPA documents that provide background on the problems associated with the percent removal requirement are included as part of the Docket: two draft technical reports from 1979 and 1980 entitled "Evaluation of Infiltration/Inflow (I/I) Program" (these documents present an overview of information on the effectiveness of measures to reduce I/I in sewer systems), a recently completed study: "Determination of Excessive/Nonexcessive Inflow Rates;" and the "Technical Support Document for the Amendment to the Percent Removal Requirement," July 1984, (which summarizes the data collected and the analytical approach used to develop the options considered by the Agency).

1. Percentage Removal Requirements

The Administrator of the EPA has defined the requirements of secondary treatment for POTWs as the achievement of 30 mg/l BOD_5 and SS or 85 percent removal of those pollutants on a 30 day average, whichever is more stringent (40 CFR 133.102 (a) and (b)). These limits are based on what were previously believed to be typical POTW influent concentrations of 200 mg/l for BOD_5 and SS. This requirement has caused a number of problems for POTWs which receive less concentrated influent. Less concentrated influent is usually caused by infiltration and inflow (I/I) in the sewer system. For purposes of this notice, less concentrated influent shall mean wastewaters with influent concentrations of less than 200 mg/l for BOD_5 and SS. Additionally, many POTWs with less concentrated influent may be forced, under the current percent removal requirement, to provide treatment more stringent than 30 mg/l BOD and SS.

The 85 percent removal requirement was originally established to achieve two basic objectives: (1) To help encourage municipalities to correct excessive I/I to their sanitary sewer systems, and (2) to help prevent intentional dilution of influent wastewater. However, in POTWs with dilute influent which is not attributable to excessive I/I or intentional dilution, the percent removal requirement will result in forcing "advanced treatment." Advanced treatment generally refers to additional treatment processes which achieve significantly greater pollutant removals than secondary treatment processes alone (e.g., filtration, chemical addition or two-stage biological treatment).

In addition to the existing 85 percent removal requirement in the secondary treatment regulation, the amendments proposed for public comment on November 16, 1983 would allow separate effluent requirements for POTWs based on the carbonaceous BOD_5($CBOD_5$) parameter and for POTWs employing technologies equivalent to secondary treatment (i.e., trickling filters (TFs) and waste stabilization ponds (WSPs)). The proposed 30-day average effluent limitations for $CBOD_5$ and equivalent treatment provisions each include an effluent concentration requirement and a percent removal requirement. The proposed 30-day average limitations are: (1) 25 mg/l and 85 percent removal for POTWs using the $CBOD_5$ parameter (proposed § 133.102(a)(4)) and (2) no less stringent than 45 mg/l and 65 percent removal of BOD_5 and SS for equivalent treatment (proposed §§ 133.105(a) and 133.105(b)).

The wastewater concentration at which the percent removal requirement becomes the controlling factor is lower in the case of the proposed equivalent treatment standards than it is for the existing secondary treatment requirements. However, imposition of the equivalent treatment percent removal requirements can have the same effect of forcing advanced treatment where these more dilute influents do occur. Furthermore, it is likely that some communities could be forced to abandon or greatly modify existing equivalent treatment facilities in order to comply with the percent removal requirements.

2. Correction of Infiltration and Inflow (I/I)

Infiltration is water other than wastewater that enters a sewer system from the ground through such means as defective pipes, pipe joints, connections or manholes. Inflow is water other than wastewater that enters a sewer system from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage.

Under the Clean Water Act (33 U.S.C. 1281(g)(3)) and EPA's construction grants program (40 CFR 35.2005(b)(16) and 35.2120), grants for the construction of treatment works cannot be made unless an applicant has demonstrated that the sewer system is not or will not be subject to "excessive" I/I. For the purposes of the construction grants program, the Agency has defined excessive I/I as quantities of I/I which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs of correcting the I/I conditions to the total costs of transportation and treatment of the I/I.

The percent removal requirement acts to hold a POTW to a more stringent level of treatment until such time as the causes of the less concentrated wastewater are corrected. The feasibility of this regulatory approach is based on an assumption that a municipality will be able to implement corrective measures to reduce I/I that are less costly than the alternative of providing additional hydraulic capacity in the sewer system and at the treatment plant.

EPA initially believed that a substantial portion of the I/I problem (from 70 to 100 percent) could be corrected through cost-effective sewer system rehabilitation. However, more recent information ("Evaluation of Infiltration/Inflow Program," draft technical reports, 1979, 1980) indicates that available infiltration correction techniques are far less effective than initially predicted, and that the actual portion of infiltration amenable to correction may be in a range from zero to 40 percent. As a result, even large expenditures for correction of sewer leakage may result in relatively small ultimate reduction of infiltration, while influent BOD_5 and SS concentrations remain below 200 mg/l.

3. Expected Influent Concentrations under Allowable I/I Conditions

Although influent wastewater for POTWs is often characterized as typically having concentrations of 200 mg/l for BOD_5 and SS, less concentrated influent wastewaters are likely even when facilities receive flows from properly maintained sewer systems. The Agency has determined that a properly maintained sewer system may have a base flow of up to 120 gallons per capita per day (gpcd). While some infiltration would be occurring, the infiltration would be considered nonexcessive and no further correction work would be required if domestic wastewater plus nonexcessive infiltration is less than 120 gpcd. (40 CFR 35.2005(b) (28) and 35.2120)

For inflow, no further correction work would be required (i.e., the inflow is not excessive) if the total flow to the treatment plant (i.e., inflow plus wastewater plus infiltration) is less than 275 gpcd and this flow does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These operational problems may include surcharging, backups, bypasses, and overflows. (The figure 275 gpcd is based on a recently completed EPA study: "Determination of Excessive/Nonexcessive Inflow Rates," May 1984 and is expected to be amended into the construction grants regulation.)

The Agency has determined that in systems without excessive I/I, an influent strength of less than 200 mg/l for BOD_5 and SS could be expected. Where a sewer system is subject to higher levels of infiltration that cannot be economically or effectively eliminated (40 CFR 35.2005(b)(16)), or nonexcessive inflow during storm events, the influent strength could be well below 200 mg/l for BOD_5 and SS. Thus, the existing and proposed percent removal requirements, based on assumed 200 mg/l BOD_5 and SS concentrations, could require more stringent limitations for BOD_5, $CBOD_5$ and SS than the corresponding concentration based limitations, even though cost-effective I/I correction had been implemented.

4. Typical Influent Concentrations

As discussed above, influent strength to POTWs without large industrial contributions will generally have concentrations less than 200 mg/l for BOD_5 and SS. In fact, the data compiled by the Agency for the "Technical Support Document" shows that more than 75 percent of the facilities (without large industrial contributions) studied had influent strengths of less than 200 mg/l for BOD_5 and SS. Approximately 40 percent of the facilities had influent strengths less than 150 mg/l for BOD_5 and SS. The study also identified a subgroup of facilities with influent concentrations equal to or less than 200 mg/l which produced monthly effluent concentrations equal to or less than 30 mg/l BOD_5 and SS. For six of the eight process categories, the 85 percent removal requirements for BOD_5 or SS were not met at least 20 percent of the time when 30 mg/l was being achieved for these parameters. Furthermore, for three of the process categories, the 85 percent removal requirements for BOD_5 or SS were not met approximately 50 percent of the time when 30 mg/l was being achieved. The complete table on percent removal performance is presented below:

PERCENT OF MONTHS AVERAGE PERCENT REMOVAL IS LESS THAN 85 PERCENT FOR PLANTS WITH INFLUENT LESS THAN OR EQUAL TO 200 MG/L AND MONTHLY EFFLUENT IS LESS THAN OR EQUAL TO 30 MG/L

Process category	percent		Months considered—total months	
	BOD	TSS	BOD	TSS
Trickling Filter-Rock	54.0	52.1	700/1423	836/1423
Trickling Filter-Plastic	60.4	40.8	212/366	226/366
Act. Sludge-Conventional	20.1	18.3	1040/1481	926/1481
Act. Sludge-Con. Stab	18.6	20.4	729/1239	784/1239
Act. Sludge-Ext. Aeration	7.6	19.4	432/617	397/617
R.B.C.	35.9	35.9	409/549	435/549
Oxidation Ditch	6.6	15.0	331/557	341/577
Stabilization Ponds	48.6	14.3	37/373	7/373

Thus, for many of the facilities in this representative sample with secondary treatment limitations would be expected to provide a level of treatment more stringent than 30 mg/L for BOD_5 and SS under the 85 percent removal requirement. Likewise a significant number of facilities with $CBOD_5$ or equivalent treatment limitation would be expected to provide more stringent levels of treatment than would otherwise be required by the concentration-based limitations.

B. The Agency's Previous Actions

As part of the November 16, 1983 Notice of Proposed Rulemaking (48 FR 52258), the Agency requested comments on several questions to determine the nature of the problem caused by the existing percent removal requirement in 40 CFR Part 133 and what changes should be made to the requirement. A summary of comments on these questions and the Agency's responses is included in section C of this notice.

The November 16, 1983 Notice of Proposed Rulemaking also requested comments on five options for modifing the percentage removal requirement. The Agency stated that one, or some combination, of these options might be selected for a final regulation if the Agency determined that changes to the percent removal requirement were necessary. A summary of comments on these options and the Agency's preliminary response are also included in section C of this notice. Section D discusses the option the Agency is most seriously considering to amend the percent removal requirement.

C. Summary of Comments on the Modification of the Percentage Removal Requirements

As indicated above, the Agency requested public comment on five questions to better understand the severity of the problems caused by the percent removal requirement and on five options for remedying the problems. This section provides a summary of the comments received on those questions and options and, where appropriate, the Agency's preliminary response. All comments are available for inspection at EPA's Central Docket. Any comments already received will be considered as part of the final rulemaking and do not need to be resubmitted. However, additional comments are encouraged.

1. Comments on Specific Questions Posed by the Agency

The following is an overview of the comments that the Agency received on various questions to determine whether the severity of the less concentrated influent wastewater problem warrants changes in the percent removal requirements. The Agency's first question was whether measures to correct I/I are as efficient as previously assumed. The vast majority of those responding stated that correction of I/I was not as effective as previously assumed. Many stated that I/I correction was very difficult to achieve, especially for flows associated with short-term storm events. A few commenters stated that correction of infiltration is not as effective as previously assumed but inflow could be corrected in most cases. These commenters agreed with the Agency assessment that the actual portion of infiltration amenable to correction may be in the range from zero to 40 percent.

Second, the Agency questioned whether sewer systems with nonexcessive quantities of I/I have influent BOD_5 concentrations of 200 mg/l or will the concentrations be significantly less. Virtually all of the commenters indicated that the influent concentrations for many systems with nonexcessive I/I would be less than 200 mg/l. One of these commenters, who did an extensive study of his system and supplied the data to EPA, indicated that his community's influent concentrations were significantly less than 200 mg/l BOD_5 and SS even though the wastewater was from residential areas served by new sewers with minimum infiltration.

Another commenter summarized data collected from 17 POTWs which indicated that more than 75 percent of the facilities studied had influent BOD_5 or SS concentrations less than 200 mg/l and that the flow-weighted averages for all 17 facilities were 150 mg/l for BOD_5 and 135 mg/l for SS. One State agency indicated that the overwhelming majority of facilities in their State have influent wastewaters with less than 200 mg/l BOD_5 and SS, that some are less than 100 mg/l and that the typical influent wastewater concentration in the State is approximately 130 to 140 mg/l BOD_5 and SS. Several POTW operators also provided data from their facilities which indicated that influent concentrations were below 200 mg/l even though I/I was nonexcessive.

One commenter responded that there will be times when the influent BOD_5 and SS concentrations will be less than 200 mg/l and other times when it will be more than 200 mg/l. Another commenter stated that the variations of the influent BOD_5 and SS concentrations below and above 200 mg/l will depend on where the sewers are in relation to the groundwater table (i.e., sewer systems below the groundwater table experience a significant reduction of influent BOD_5 and SS concentrations due to infiltration.

The Agency next asked whether the typical influent of a municipal treatment plant was less than 200 mg/l BOD_5 and SS. The majority of the responses indicated that this was true and several supplied supporting data. A few commenters stated that the influent concentration would vary with precipitation and the specific plant involved. A few municipal authorities responded that the influent BOD_5 and SS to their treatment plants are equal to or greater than 200 mg/l.

The fourth question was whether the retention of the percent removal requirement would cause overly stringent treatment requirements for some facilities which cannot economically or effectively reduce I/I or other extraneous flow. All of the commenters stated that overly stringent treatment will result for some facilities if the percent removal requirement is not changed. A number of these commenters gave examples of the effluent limitations which would apply to their facilities based on achieving 85 percent removal (e.g., in one case, 21 mg/l BOD_5 and 24 mg/l SS). Many of the commenters went so far as to say that advanced treatment processes would be needed if some relief was not provided. This includes one commenter who indicated that two facilities which were part of a study he conducted are presently using tertiary filters to achieve 85 percent removal.

The Agency finally asked if other regulatory mechanisms would be more effective than the percent removal requirement to prevent deliberate dilution. Generally, the commenters recommended that controls other than a percent removal requirement are preferable and could be applied through the NPDES permit framework. Most commenters suggested the Agency promulgate a regulation that provides a direct prohibition against deliberate dilution. Several suggested that a mass or flow limit be employed to remedy the problem.

The public's response confirmed the Agency's position that some change is needed to the percent removal requirements. I/I cannot be corrected as effectively as previously assumed. The vast majority of POTWs have influent BOD_5 and SS concentrations below 200 mg/l, such less concentrated wastewaters occurring even when sewer systems do not have excessive I/I. The comments also confirmed the Agency's position that the retention of the current percent removal requirement would cause overly stringent levels of treatment and result in the use of advanced treatment processes in some cases.

2. Responses to Various Options Proposed by the Agency

The five options offered by the Agency for modifying the percent removal requirement for secondary treatment in the November 16, 1983 Notice of Proposed Rulemaking were:

(1) Eliminate the mandatory requirement, but provide substitute language allowing an NPDES permitting authority to establish percent removal requirements for BOD_5 and SS;

(2) Modify the requirement so that it applies on an annual average basis instead of applying on a 30-day average basis;

(3) Modify the requirement to provide for a percent removal of BOD_5 and SS on a 30-day average that is less than 85 percent;

(4) Retain the 85 percent removal requirement, but allow the substitution of either a flow limit or a mass loading limit for BOD_5 and SS;

(5) Determine percentage removal requirements on a case-by-case basis using the design removal efficiency for BOD_5 and SS.

The Agency expressed a preference for either Option 1 or 4. The Agency supported Option 1 because it provides the permitting authority the greatest flexibility in adjusting the percent removal requirement for facilities that are meeting 30 mg/l BOD_5 and SS but that cannot meet the percent removal requirement. The Agency supported Option 4 because a mass limit or flow limit would help to ensure against intentional dilution. Under both Options 1 and 4, the percent removal requirement would remain in effect for those facilities that do not need relief.

The overwhelming consensus expressed by the commenters was to provide some relief from the percent removal requirement, whether by eliminating it (Option 1) or by adjusting it to allow for some flow limit or mass loading limit substitution (Option 4). The consensus was that the original objective of the percent removal requirement to encourage correction of excessive I/I can be achieved more effectively through other means which would work in conjunction with one of the preferred options.

Many who favored Option 1 believed that the current percent removal requirement is arbitrary and does not adequately reflect the influent wastewater concentrations experienced by many POTWs. Those commenters favored allowing the permit authority to set a percent removal on a case-by-case basis.

Those favoring Option 4 felt that case-by-case mass limits would more accurately represent the capability of specific treatment systems to remove pollutants and is thus consistent with a true technology-based standard. The Agency has used the principle of Option 4 in preparing the preferred option discussed in section D of this notice.

In addition to the comments received on option preference, two commenters expressed concern that the options listed for modifying the percent removal requirement did not provide sufficient detail for commenters to respond adequately. These commenters stated that one option should be presented to allow for meaningful public participation prior to any final rulemaking on percent removal. They also stated that a more careful evaluation of the percentage removal issue is needed prior to any rulemaking.

These commenters further stated that all of the options for modifying the percent removal requirement (with the possible exception of Option 4) would cause a great increase in the permissible discharge of BOD_5 and SS. Their position was that the burden should be on the discharger, not the permitting authority, to show that the increase in BOD_5 and SS resulting from adjustment of percent removal requirements would not cause water quality problems.

The Agency intended the November 16, 1983 Notice of Proposed Rulemaking to serve as a forum for comments on various options and questions on the percent removal requirement to allow for further determination of the extent of the problem and its resolution. This notice provides an additional opportunity for comment on the Agency's preferred option which was derived from the comments received on the proposed rule and subsequent study of the percent removal problem. The Agency has conducted an extensive evaluation to determine if there is a problem with the percent removal requirement for facilities with less concentrated influent. The Agency's data supports the conclusion that there is a problem and the public comments submitted in response to the November 16, 1983 Notice of Proposed Rulemaking also supported the Agency's findings. The commenters' concerns that the burden of proof be on the permittee and that water quality problems not result from any permit adjustment are addressed by the fact that water quality standards always must be met (40 CFR 122.44(d)).

D. The Preferred Option

Based on the comments received on the previous options and further Agency study of the issue, the Agency has selected an option to revise the percent removal requirements in 40 CFR Part 133 and is asking for additional public comment on that selected option. The selected option is based on Option 4 presented in the November 16, 1983 Notice of Proposed Rulemaking. The option would amend the "Special Considerations" section of the Regulation (§ 133.103) by adding a new paragraph (d) as follows:

> (d) *Less Concentrated Influent Wastewater.* The Regional Administrator or, if appropriate, State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133,102(b)(3), 133,105(a)(3), 133,105(b)(3), and 133,105(e)(1)(iii), provided that the permittee satisfactorily demonstrates that: (1) the treatment works is consistently meeting its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wasterwater, (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration based-standards, and (3) the less concentrated influent wastewater is not the result of excessive I/I. The determination of whether the less concentrated wastewater is the result of excessive I/I will use the definition of excessive I/I in 40 CFR 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

The term "significantly more stringent limitations" means: (1) BOD_5 and SS limitations necessary to meet the percent removal requirement would have to be at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations (e.g., less than 25 mg/l in the case of the secondary treatment limits for BOD_5 and SS), or (2) the percent removal limitations in §§ 133.102 and 133.105, if such limits would, by themselves, force significant construction or other significant capital expenditure. Costs for operation, maintenance or replacement (as defined in 40 CFR 35.2005(b)(30) & (36)) necessary to meet the applicable percent removal requirements would not be grounds for consideration of an adjustment. Although these provisions would allow the percent removal requirement for equivalent technologies to be adjusted below 65 percent in certain extreme cases where very dilute influents occur during wet seasons, the 65 percent removal criterion would still be used in determining whether a facility is providing "significant biological treatment" (proposed § 133.101(k)).

If an existing treatment works would not have to "achieve significantly more stringent limitations" (as defined above) in order to meet its percent removal requirements, the treatment works would have to meet the applicable percent removal requirement (i.e., 85 percent or 65 percent respectively). Agency experience has shown that well designed, operated and maintained secondary and equivalent facilities which are otherwise meeting their BOD_5 and SS limits generally will be able to achieve somewhat more stringent limitations without using advanced treatment processes. For example, activated sludge processes are generally capable of achieving at least 25 mg/l BOD_5 and SS, particularly when the influent concentrations for these parameters are less than 200 mg/l (and provided that the facility is not hydraulically overloaded).

To show that the less concentrated influent wastewater is not the result of excessive I/I, the POTW authority would be required to submit information to the permitting authority that documents the flow to the facility (based on representative facility flow records and discharge monitoring reports) and the population of the service area. This information must demonstrate that the flows to the facility do not exceed the 120 and 275 gpcd values used in the specifications for nonexcessive infiltration and nonexcessive inflow. Information submitted must also verify that the facility does not have chronic operational problems due to hydraulic overloading. If the POTW authority cannot demonstrate that the facility is not subject to excessive I/I, it must then submit an evaluation survey of its sewer system that defines the I/I problem through flow monitoring, identifies the quantities of I/I, if any, that can be more economically eliminated from the sewer system than transported and treated at the plant, and presents a sewer rehabilitation plan and schedule to implement measures to correct excessive I/I. The following guidance on conducting a sewer evaluation survey and cost-effectiveness analysis has been published by EPA: "Handbook for Sewer System Evaluation and Rehabilitation" (EPA 430/9–75–021) and "Construction Grants 1982 (CG–82)" (EPA 430/9–81–020), or when published "Construction Grants 1985 (CG–85)" (EPA 430/9–84–004). This guidance is available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

When adjusting the present removal requirement for a particular facility, the permitting authority would base the revised percent removal requirement or mass loading limit on the values achievable through proper operation and maintenance of the facility. In cases where less concentrated influents are a result of seasonal increases in flow, the permitting authority would consider seasonal permit limits to allow revised requirements only during those periods when increased flows or lower influent concentrations are occurring (e.g., lower percent removal or mass limits would apply only during certain months. An example of such a condition is the seasonal increase in flow from the elevated groundwater levels during wet seasons.

The preferred option recognizes that the percent removal requirement is a valuable regulatory tool but will allow for substitution of either a lower percent removal or a mass loading limit as the situation dictates. This flexibility provides relief to facilities that are experiencing various degrees of less concentrated influent and cannot meet the present percent removal requirement.

The Agency believes that this amendment will better reflect the influent strengths actually occurring and recognize the limited effectiveness of I/I correction. There will be greater flexibility given to be permitting authority by allowing use of a case-by-case analysis to adjust the percent removal requirements where the 85 percent requirement cannot be met. This same approach been successful in allowing special consideration for adjusting percent removal requirements for combined sewer systems (§ 133.103(a)).

Adjustments of the percent removal requirements in NPDES permits would be made on a case-by-case basis, based on the removal capability of the POTW, influent wastewater concentration and the I/I situation. The concentration limits in the permit would remain the same.

E. Remaining Actions

The Agency is publishing elsewhere in today's **Federal Register** the final rulemaking on limitations for treatment equivalent to secondary treatment and $CBOD_5$. The 65 percent removal requirement for equivalent treatment will be promulgated as an interim final provision of that rule to reflect this notice's solicitation of additional comment on amendments to the percent removal requirement. The Agency will publish the final rule on the percent removal requirements following review of the comments received.

Dated: September 12, 1984

Henry L. Longest II

Assistant Administration for Water.

[FR Doc. 84–24846 Filed 9–19–84; 8:45 am]

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federal register

Thursday
September 20, 1984

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Recombinant DNA Research; Notice of Proposed Actions Under Guidelines

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20205, on October 29, 1984, from 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public to discuss:

Report of the Working Group on Release into the Environment;

Report of the Working Group on Human Gene Therapy;

Amendment of Guidelines; and

Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the chair.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs forthe guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: September 12, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–24904 Filed 9–19–84; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on October 29, 1984, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by October 22, 1984.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m. Comments received by close of business October 24, 1984, will be reproduced and distributed to the RAC for consideration at its October 29, 1984, meeting.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the Guidelines for Research Involving Recombinant DNA Molecules.

I. Proposed Amendment of Section III–D of the Guidelines.

In a letter dated August 21, 1984, Mr. C. Searle Wadley and Dr. John H. Keene of Abbott Laboratories, North Chicago, Illinois, propose that the following sentence be added to Section III–D of the Guidelines:

> Although these experiments are exempt, it is recommended that they be performed at the appropriate biosafety level for the host or recombinant organism (for biosafety levels see "Biosafety in Microbiological and Biomedical Laboratories").

In support of their proposal, Mr. Wadley and Dr. Keene state that it would be advisable to recommend that appropriate biosafety levels be considered for those recombinant experiments that are exempt from the Guidelines.

II. Proposed Addition of Prohibited Experiments to the Guidelines.

Mr. Jeremy Rifkin of the Foundation on Economic Trends, Washington, D.C., submitted the following letter, dated August 21, 1984, to NIH:

> I am formally requesting that the following item be placed on the agenda for the October 29, 1984 meeting of the Recombinant DNA Advisory Committee of the National Institutes of Health.
>
> It has come to our attention that the National Institutes of Health and the National Science Foundation are helping to fund specific experiments by Dr. Ralph Brinster of the University of Pennsylvania in which human genes regulating growth hormone is being injected in to sheep and pig embryos with the express purpose of incorporating these human genes permanently into the germ line of these other mammalian species. These experiments are currently being conducted, in part, with the assistance and cooperation of the USDA at its agricultural experimental station at Beltsville, Maryland.
>
> If successful, these experiments would represent the second time in history that a segment of the genetic make-up of homo-sapiens has been permanently transferred into the genetic make-up of another species. The Brinster team has already successfully transferred the human growth hormone gene into the germ line of mice. Thus, a dramatic new technological threshold has been crossed, making it imperative that the Federal Government act immediately and expeditiously to establish a policy in regard to such experimentation.
>
> Therefore, I am proposing the following amendment to the NIH guidelines for recombinant DNA experimentation:
>
> The NIH prohibits any experimentation involving the transfer of a genetic trait from one mammalian species into the germ line of another unrelated mammalian species. "Unrelated" shall be defined as any two species that cannot mate and produce one generation of offspring either in the wild or under pre-existing domestic breeding programs.
>
> This NIH guideline shall encompass all mammalian species, including homo-sapiens. Upon adoption of this guideline by the NIH, said agency shall immediately discontinue funding any current experimental research involving the transfer of genetric traits from one mammalian species into the germ line of another unrelated mammalian species and shall instruct all institutions receiving NIH

grants that any such experimentation using private funds shall be grounds for the immediate suspension of all NIH research grants to the institution. This amendment shall also cover all private companies who are signatories of license agreements with NIH funded institutions where said agreements contain clauses requiring the licensee to adhere to the NIH guidelines involving recombinant DNA experimentation.

The intent of this amendment to the NIH guidelines is to protect the biological integrity of every mammalian species. Existing Federal policy, as reflected in many Federal statutes, protects the integrity and well being of species. The crossing of species borders and the incorporation of genetic traits from one species directly into the germ line of another species represents a fundamental assault on the principle of species integrity and violates the right of every species to exist as a separate, identifiable creature.

Certainly most human beings would condemn any attempt to introduce animal genes permanently into the germ line of homo-sapiens. We would abhor any such experiment as a gross and unconscionable violation of our telos as a species. In like manner this amendment establishes the principle that similar experiments between all other mammalian species be condemned and outlawed on the same grounds, i.e., that such an intrusion violates the telos of each species and is to be condemned as morally reprehensible.

As to non-mammalian species, the same principle of species integrity ought to apply. Therefore, I am proposing that in addition to the adoption of the above amendment to the NIH guidelines, the RAC immediately establish a working sub-group whose purpose will be to propose any additional protocols or guidelines that might be necessary to ensure compliance with the spirit of the above amendment in regard to the protection of the gem line of all species.

On August 23, 1984, Mr. Rifkin submitted an additional letter to NIH:

I am submitting an additional item for placement on the agenda for the October 29, 1984 meeting of the Recombinant DNA Advisory Committee of the National Institutes of Health. The following amendment to the NIH guidelines should be raised for discussion and debate along with the proposed amendment which I forwarded to you in my letter dated August 21, 1984. I would like this enclosed amendment to be considered first on the agenda and the amendment in my August 21 letter to be considered second.

The amendment shall read as follows:

The National Institutes of Health prohibits any experimentation involving the transfer of a genetic trait from a human being into the germ line of another mammalian species. The National Institutes of Health also prohibits any experimentation involving the transfer of a genetic trait from any mammalian species into the germ line of a human being. Furthermore, the National Institutes of Health considers any such experimentation involving the transfer of genetic traits between animal and human germ lines to be morally and ethically unacceptable.

Thank you for your time and consideration on this matter.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the offical government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: September 10, 1984.

Bernard Talbot, M.D., Ph.D.,

Acting Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. 84-24912 Filed 9-19-84; 8:45 am]

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Part IV

United States Information Agency

48 CFR Ch. 19

Acquisition Regulation; Proposed Rule

UNITED STATES INFORMATION AGENCY

48 CFR Ch. 19

Acquisition Regulation; Establishment of Chapter 19

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on the United States Information Agency proposal to establish the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of the Federal Acquisition Regulation System (48 CFR). The IAAR will implement and supplement the FAR and will supersede the current IAPR Procurement Regulation (41 CFR Chapter 19).

DATES: Comments are due on or before October 22, 1984.

ADDRESS: Office of Contracts, Policy and Procedures Staff, U.S. Information Agency, Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Ms. Mary H. Wood, (202) 653-5570.

SUPPLEMENTARY INFORMATION: The draft IAAR is being made available for review and comment in accordance with OFPP Policy Letter 83-2 (48 FR 24492, June 1, 1983). The draft IAAR is based primarily on the current USIA Procurement Regulations (41 CFR Chapter 19). Generally, this proposed rule does not contain substantive new material It is therefore certified that the draft IAAR will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Further, the draft IAAR is a procurement regulation exempted from the requirements of Executive Order 12291 by the Director, OMB.

Title 48 of the Code of Federal Regulations is amended as set forth below:

List of Subjects in 48 CFR Ch. 19

Government procurement.

It is proposed to amend Title 48 by establishing Chapter 19 to read as follows:

CHAPTER 19—UNITED STATES INFORMATION AGENCY

SUBCHAPTER A—GENERAL

Part 1901—United States Information Agency Acquisition Regulation System
Part 1902—Definitions of Words and Terms
Part 1903—Improper Business Practices and Personal Conflicts of Interest
Part 1904—Administrative Matters

SUBCHAPTER B—ACQUISITION PLANNING

Part 1909—Contractor Qualifications
Part 1910—Specifications, Standards and Other Purchase Descriptions
Part 1912—Contract Delivery or Performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 1913—Small Purchase and Other Simplified Purchase Procedures
Part 1917—Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1919—Small Business and Small Disadvantaged Business Concerns
Part 1922—Application of Labor Laws to Government Acqusitions

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 1927—Patents, Data and Copyrights
Part 1932—Contract Financing

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 1942—Contract Administration

SUBCHAPTER H—CLAUSES AND FORMS

Part 1952—Solicitation Provisions and Contract Clauses
Part 1953—Forms

SUBCHAPTER A—GENERAL

PART 1901—UNITED STATES INFORMATION AGENCY ACQUISITION REGULATION SYSTEM

Sec.
1901.000 Scope of Part.

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.
1901.102 Authority.
1901.103 Applicability.
1901.104 Issuance.
1901.104-1 Publication and code arrangement.
1901.104-2 Arrangement of regulations.

Subpart 1901.4—Deviations from the FAR

1901.401 Definition.
1901.403 Individual deviations.
1901.404 Class deviations.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.
1901.602 Contracting officers.
1901.602-1 Authority.
1901.670 Ratification of unauthorized commitments.
1901.670-1 Authority.
1901.670-2 Definitions.
1901.670-3 Procedures.
1901.670-4 Limitations on exercise of authority.
1901.670-5 Nonratifiable commitments.

Authority: 40 U.S.C. 486(c).

1901.000 Scope of Part.

This part describes the method by which the United States Information Agency implements and supplements the Federal Acquisition Regulation and contains policies and procedures that implement and supplement Chapter 1 of the Federal Acquisition Regulation.

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

This subpart establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of the Federal Acquisition Regulation System (48 CFR Chapter 19) and states the relationship of the IAAR to the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1.

1901.102 Authority.

The USIA Acquisition Regulation is prescribed by the Director of the United States Information Agency pursuant to the authority of the Reorganization Plan No. 2 of 1977 and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

1901.103 Applicability.

Except where a deviation is specifically authorized in accordance with Subpart 1901.4 or otherwise authorized by law, the FAR and the IAAR govern all USIA acquisitions within the United States.

1901.104 Issuance.

1901.104-1 Publication and code arrangement.

(a) The IAAR is published in the **Federal Register** and, in cumulative form in the Code of Federal Regulations (CFR).

(b) The IAAR is issued as Chapter 19 of Title 48, CFR.

1901.104-2 Arrangement of regulations.

The IAAR uses the same numbering system and arrangement used in the FAR. Where the IAAR implements the FAR, it is numbered and captioned to correspond to the FAR. Wher there is no corresponding material in the FAR, numbers beginning with 70 or higher are assigned to the IAAR supplementing part. Where the subject matter in the FAR requires no implementation, the IAAR contains no corresponding part.

Subpart 1901.4—Deviations from the FAR

1901.401 Definition.

A deviation is defined in the same terms as that contained in FAR 1.401.

1901.403 Individual deviations.

Deviations from the IAAR or the FAR in individual cases shall be authorized by the Agency Procurement Executive or a designee unless FAR 1.405(e) is applicable. The request shall cite the specific part of the IAAR or FAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reason for the action requested.

1901.404 Class deviations.

Class deviations affecting more than one contracting action shall be authorized only by the Agency Procurement Executive, unless FAR 1.405(e) is applicable, and shall be subject to the limitations set forth in FAR 1.404. Requests shall include the same information as cited in 1901.403.

Subpart 1901.6—Contracting authority and responsibilities

1901.601 General.

The Director, Office of Contracts, is designated the Agency Procurement Executive. The Agency Procurement Executive is delegated the full delegable authority of the Director of this Agency with respect to the acquisition of goods and services by contract, grants, cooperative agreements and such other methods as may be prescribed in the FAR. The Agency Procurement Executive is delegated overall responsibility by the Director for the Agency's contracting activities.

1901.602 Contracting officers.

1901.602-1 Authority.

USIA Contracting Officers designated by name on Certificates of Appointment by the Agency Procurement Executive are authorized to enter into, administer, and terminate contracts and make related determinations and findings, subject to all requirements and limitations set forth in the Certificate of Appointment. A list of USIA employees who have been appointed as Contracting Officers and the limits of their authroity is available from the Policy and Procedures Staff, Office of Contracts.

1901.670 Ratification of unauthorized commitments.

1901.670-1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 1901.670-4, the HCA may ratify an unauthorized commitment, provided:

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The HCA could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

1901.670-2 Definitions.

"Ratification," as used in this section, means that act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, mneans an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1901.670-3 Procedures.

USIA components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims.

1901.670-4 Limitations on exercise of authority.

The authority in 1901.670-1 may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made; and

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

1901.670-5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 1902—DEFINITIONS OF WORDS AND TERMS

Subpart 1902.1—Definitions

1902.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

"Agency" means the United States Information Agency, acting through any of its duly authorized officials.

"Agency Procurement Executive" means the Director, Office of Contracts.

"AR/CO" means Authorized Representative of the Contracting Officer (See 1942.202-70).

"Contracting activity" means the Office of Contracts which has the responsibility to contract for the acquisition of supplies and services (including construction) and execute grants and cooperative agreements.

"Head of the agency" means the Agency Director and Deputy Director or the Associate Director for Management; and the term "authorized representative" means any person, persons or board (other than the contracting officer) authorized to act for the Head of the Agency.

"Head of the Contracting Activity (HCA)" means the head of each USIA office or division who has overall responsibility for managing the contracting activity with a written delegation of authority from the Head of the Agency or the Agency Procurement Executive.

"Purchasing Activity" means an office with one or more Level I or Level II Small Purchases Contracting Officer(s) exercising limited redelgations of contracting officer authority.

"USIA" means the United States Information Agency.

(40 U.S.C. 486(c))

PART 1903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.
1903.000 Scope of Part.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.
1903.101-2 Solicitation and acceptance of gratuities by Government personnel.
1903.101-3 Agency regulations.
1903.103 Independent pricing.
1903.103-2 Evaluating the certification.

Subpart 1903.2—Contractor Gratuities to Governmental Personnel

1903.203 Reporting suspected violations of the gratuities clause.
1903.204 Treatment of violations.

Subpart 1903.3—Reports of Suspected Antitrust Violations

1903.301 General.

Subpart 1903.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

1903.670 Contracts between USIA and former employees.

Authority: 40 U.S.C. 486(c).

1903.000 Scope of part.

This Part implements FAR Part 3, cites USIA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.

1903.101-2 Solicitation and acceptance of gratuities by Government personnel.

USIA employees and their spouses, minor children, and members of their households may not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from or on behalf of a USIA contractor. This general prohibition does not apply to the following:

(a) Gifts, gratuities, favors, entertainments, loans or any other thing of monetary value received on account of close family or personal relationships, when the circumstances make it clear that it is the relationship rather than the business of the persons concerned which is the motivating factor;

(b) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(c) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(d) Acceptance of rates and discounts offered to employees as a class. Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(e) Contractor provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. Unless prior approval of the Agency Procurement Executive has been obtained, a full report of the circumstances of the acceptance shall be made to the employee's supervisor for inclusions in the contractor's file.

1903.101-3 Agency regulations.

(a) *General.* USIA regulations on Employee Responsibilities and Conduct are contained in 22 CFR Part 10. All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions. Any questions concerning them shall be referred to the Agency's Office of the General Counsel.

(b) *Non-disclosure of proposed acquisitions.* Agency personnel, particularly requirements officers, project officers, technical staff and their supervisors often need to discuss standard commercial products or services, new manufacturing techniques, processes and equipment with members of industry in their efforts toward the goal of obtaining a quality product or service for the Agency. During these discussions, Agency personnel shall not disclose any information on a specific acquisition, especially its funding and scheduling. Information on proposed acquisitions shall be released to all prospective contractors in a common solicitation at the same time.

1903.103 Independent pricing.

1903.103-2 Evaluating the certification.

Whenever an offer is rejected under FAR 3.103-2 or the Certificate of Independent Price Determination is suspected of being false, the Contracting Officer shall report the situation to the Inspector General through the Agency Procurement Executive for referral to the Attorney General in accordance with FAR 3.303.

Subpart 1903.2—Contractor Gratuities to Government Personnel

1903.203 Reporting suspected violations of the Gratuities clause.

USIA personnel, particularly Contracting Officers, shall promptly report, by memorandum, suspected violations of the Gratuities clause in solicitations or contracts to the Agency Procurement Executive.

1903.204 Treatment of violations.

Suspected violations shall be treated as provided in the USIA debarment and suspension procedures in Subpart 1909.4.

Subpart 1903.3—Reports of Suspected Antitrust Violations

1903.301 General.

The Contracting Officer shall report any instances of suspected collusion or other violations of antitrust laws in connection with competitive acquisitions to the General Counsel through the Agency Procurement Executive for possible referral to the Attorney General in accordance with FAR Subpart 3.3.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

To avoid potential conflicts of interest or the appearance of preferential treatment, it is USIA policy not to award contracts, purchase orders, grants or cooperative agreements to Government employees or their family members or business concerns owned or controlled by Government employees or their family members. Exceptions to this policy must be approved by the Agency Director or Agency Procurement Executive and supported by written Findings and Determination. A contract with an employee for services may result in violation of the dual salary compensation statutes (5 U.S.C. 5533). Nothing in this paragraph is intended to render inapplicable the conflict of interest prohibition set out in 18 U.S.C. 208.

Subpart 1903.670—Contracts Between USIA and Former Employees

To avoid conflicts of interest or the appearance of preferential treatment, purchase orders, contracts, grants or cooperative agreements with former employees of USIA, or with firms in which former employees or their family members are known to have controlling interest, may be entered into in the two years following separation from employment only with the written approval of the Agency Director. A written justification shall be made a part of the file. The justification must address the issue of conflict of interest and conclude that it does not exist; or that in spite of its existence, the Agency's ability to meet its mission would be seriously harmed without the award.

PART 1904—ADMINISTRATIVE MATTERS

Subpart 1904.70—Procurement Requests

1904.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with Agency procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

(40 U.S.C. 486(c))

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

Subpart 1909.4—Debarment, Suspension, and Ineligibility

Sec.
1909.403 Definitions.
1909.404 Consolidated list of debarred, suspended, and ineligible contractors.
1909.406 Debarment, suspension, and ineligibility.
1909.406–3 Procedures.

Authority: 40 U.S.C. 486(c).

Subpart 1909.4—Debarment, Suspension, and Ineligibility

1909.403 Definitions.

The Agency Procurement Executive, is designated the "debarring official" and the "suspending official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405–1(b), 9.405–2, 9.406–1(c), and 9.407–1(d).

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure that the list is used effectively.

(b) The Agency Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406–3 Procedures.

(a) *Investigation and referral.* Any officer of the Agency that becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Agency Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Agency Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Agency Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Agency Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the office of the General Counsel and Congressional Liaison, Associate Director, Bureau of Management, and an Officer of the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Agency Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarring/suspending official's decision.* The debarring/suspending official's final decision shall be made in writing in accordance with FAR 9.406–3 and notice of the decision will be given in accordance with FAR 9.406–3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

§ 1910.011 Solicitation provisions and contract clauses.

The Contracting Officer shall include the provision at 1952.210–70, Brand Name or Equal, in solicitations for which a brand name or equal purchase is used.

(40 U.S.C. 486(c))

PART 1912—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1912.70—Delays

1912.701 Delays.

The Contracting Officer shall insert the clause at 1952.212–70 in all USIA contracts.

(40 U.S.C. 486(c))

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1913.1—General

Sec.
1913.106 Competition and price reasonableness.
1913.106.70 Data to support small purchases over $1,000.
1913.107 Solicitation and evaluation of quotations.

Subpart 1913.2—Blanket Purchase Agreements

1913.20 General.
1913.203 Establishment of blanket purchase agreements.
1913.203–1 General.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.
1913.405 Procedures.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.
1913.505–2 Agency order forms in lieu of

Optional and Standard Forms.

Authority: 40 U.S.C. 486(c).

Subpart 1913.1—General

1913.106 Competition and price reasonableness.

1913.106-70 Data to support small purchases over $1,000.

Form IA-21, Abstract of Quotations (see 1953.370-21) may be used to satisfy documentation requirements of FAR 13.106(c).

1913.107 Solicitation and evaluation of quotations.

(a) Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an equivalent form has been authorized for use by the procurement executive. (See also FAR 53.103.) Exceptions under this subpart shall be processed through the procurement executive.

(b) Quotations on standard contractor quotation forms may be accepted when they provide sufficient information for fair and equal competitive evaluation.

Subpart 1913.2—Blanket Purchase Agreements

1913.20 General.

The head of the contracting activity may require that only contracting officers make purchases under a blanket purchase agreement.

1913.203 Establishment of blanket purchase agreements (BPAs).

1913.203-1 General.

Blanket purchase agreements shall be established and administered in accordance with Agency instructions.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $150 ($300) under emergency conditions).

1913.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with documentation requirements.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505-2 Agency order forms in lieu of Optional and Standard Forms.

(a) Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an equivalent form has been authorized for use by the Agency Procurement Executive (or Designee). Exceptions may be granted, on a case by case basis, in order to accommodate computer-generated purchase order forms. Exception approval for over printing (FAR 53.104) is not needed.

(b) USIA Form IA-44 (See 1953.370-44) is authorized for use when obtaining nonpersonal services on an intermittent basis for such services as script writers, translaters, narrators, etc.

PART 1917—SPECIAL CONTRACTING METHODS

Subpart 1917.1—Multiyear Contracting

1917.102 Policy.

When consistent with section 304(b) of Pub. L. 97-241, the Agency head may approve multiyear contracts up to five years.

(40 U.S.C. 486(c))

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1919.2—Policies

Sec.
1919.201 General policy.
1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

Authority: 40 U.S.C. 486(c).

Subpart 1919.2—Policies

1919.201 General policy.

The Director, Office of Contracts shall also serve as the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact of general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Agency in discussions with other Government agencies on small and small disadvantaged business matters.

PART 1922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1922.3—Contract Work Hours and Safety Standards Act

Sec.
1922.305 Contract Clauses.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

Subpart 1922.10—Service Contract Act of 1965

1922.1070 Clause for contracts over $2,500.

Authority: 40 U.S.C. 486(c).

Subpart 1922.3—Contract Work Hours and Safety Standards Act

1922.305 Contract clause.

The Contracting Officer shall insert the clauses at 1952.222-82 and 1952.222-83 in lieu of the clause at FAR 52.22-4 until such time as the latter is updated to reflect the requirements of DOL Regulations, 29 CFR 5.5(c), implemented by FPR Temp. Reg. 70, dated June 28, 1983.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

(a) Except as required by 1922.470(b), every construction contract in excess of $2,000 (or of such other amount as may be specifically indicated) for work within the United States shall include the following clauses:

Davis-Bacon Act (40 U.S.C. 276a—276a-7) clause of 1952.222-70.
Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) clause at 1952.222-71.
Apprentices and Trainees clause at 1952.222-72.
Payrolls and Basic Records clause at 1952.222-73.
Compliance with Copeland Act Requirements clause at 1952.222-74.
Withholding clause at 1952.222-75.
Subcontracts clause at 1952.222-76.
Contract Termination; Debarment clause at 1952.222-77.
Disputes Concerning Labor Standards clause at 1952.222-78.
Compliance with Davis-Bacon and Related Act Requirements clause at 1952.222-79.
Certification of Eligibility clause at 1952.222-80.

(b) Every construction contract in excess of $2,000 for work outside the

United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR Subpart 22.3, shall include the Work Hours and Safety Standards Act Overtime Compensation clause at 1952.222–71.

Subpart 1922.10—Service Contract Act

1922.1070 Clause for contract over $2,500.

The Contracting Officer shall insert in full text the clause at 1952.222–81, Service Contract Act of 1965, As Amended, in solicitations and contracts, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1927—PATENTS, DATA AND COPYRIGHTS

Subpart 1927.4—Rights in Data and Copyrights

Sec.

1927.400 Scope of subpart.
1927.401 Definitions.
1927.402 Policy.
1927.403 Procedures.
1927.404 Acquisition of data.
1927.405 Solicitation provisions and contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 1927.4—Rights in Data and Copyrights

1927.400 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to (a) rights in data and copyrights and (b) requirements for data.

1927.401 Definitions.

"Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

"Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited rights," as used in this subpart, means the rights of Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

"Unlimited rights," as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1927.402 Policy.

It is necessary for the U.S. Information Agency in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of USIA activities; insure appropriate utilization of the results of research, development, and demonstration activities; and meet other programmatic and statutory requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and maintain the Government's ability to obtain access to or use of such data. The protection of this data by the Government is necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between the Government's needs and the contractor's property rights and economic interests.

1927.403 Procedures.

(a) *General.* All contracts that require data be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from formal advertising that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1952.227–71, Rights in Technical Data—General, where determined appropriate by the Agency as discussed in paragraph (b) below, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c) and (d) below.

(b) *Basis Rights in Data.*—(1) *Summary.* The clause at 1952.227–71, Rights in Technical Data—General, is structured to strike a balance between USIA's needs in carrying out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualified as limited-rights data or restricted computer software (see paragraph (b)(2) below for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that USIA is to acquire with unlimited rights (see paragraph (b)(3) below). The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to USIA, or when USIA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b) (4) and (5) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) below.) This clause also includes rights in the Government. (See paragraph (b)(6) below.) This clause also includes authorized (see paragraph (b)(7) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) below); addresses the contractor's right to release, publish or use certain data involved in contract performance (see paragaph (b)(9) below); and provides for the possibility for the Government to inspect certain data at the contractor's facility (see paragraph (b)(10) below).

(2) *Alternate definition of limited-rights data.* In the clause at 1952.227-71, Rights in Technical Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, the contracting officer may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this alternate definition may be used where the principal purpose of a contract does not involve the development, use or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socioeconomic reports, educational material, health and safety information, management analysis, and related matters.

(3) *Unlimited-rights data.* Under the clause at 1952.227-71, Rights in Technical Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) below for copyrighted data: (i) Data first produced in the performance of a contract; (ii) form, fit, and function data delivered under contract; (iii) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair delivered under a contract; and (iv) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) below rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1952.227-71, Rights in Technical Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if and USIA specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the contractor (i.e., withhold, or deliver with limited rights) are provided for in paragraph (g) of the clause at 1952.227-71, Rights in Technical Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Subparagraph (g)(2) of this clause enables USIA selectively to obtain the delivery of withheld or withholdable data with limited rights. The limitations on the Governments right to use and disclose limited-rights data when the clause is used are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described below.

(ii) The Limited-rights data delivered to the Government with the Limited Rights Notice contained in subparagraph (g)(2) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be selected by an agency and added to the Limited Rights Notice of subparagraph (g)(2) of the clause:

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the USIA program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(iii) As an aid in determining whether the clause should be used with the provision at 1952.227-70, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-71, Rights in Technical Data—General.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1952.227-71, Rights in Technical Data—General, permits the contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if USIA specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the contractor (i.e. withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1952.227-71, Rights in Technical Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used are set forth in "Restricted Rights Notice" that the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(ii) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is a acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which USIA acquired the software.

(iii) The restricted rights set forth in 1927.403(b)(5)(ii) above are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified in the contract. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See paragrah (d)(2) below.)

(iv) As an aid in determining whether the clause should be used the provision at 1952.227-70, Notification of Limited-Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-71, Rights in Technical Data—General. In addition, the need should be considered during negotiations of a contract, particularly if negotiations are based on an unsolicited proposal.

(6) *Copyrighted data.*—(i) Data first produced in the performance of a contract. (A) In order to enhance the transfer to dissemination of information produced at Government expense, contractors may be permitted to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1952.227-71, Rights in Technical Data—General. This right is granted in subparagraph (c)(1) of the clause for any data first produced under the contract. USIA may, however, specifically exclude items or categories of data from the right of the contractor to establish claim to copyright when appropriate; for example, where the data is to be disseminated in useful form by the Government. Also, agencies having programs for the transfer or dissemination of information resulting from its programs may, by use of the clause, include a substitute subparagraph (c)(1) in the clause to limit the right of the contractor granted in subparagraph (c)(1) to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth in paragraph (b)(6)(i)(B) below.

(B) Usually permission for a contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless: (*1*) The data consists of a report that represents the official views of USIA or that USIA is required by statute to prepare; (*2*) the data is intended primarily for internal use by the Government; (*3*) the data is of the type that USIA itself distributes to the public under an established program; or (*4*) USIA determines their limitation on distribution of the data is in the national interest.

(C) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1952.227-71, Rights in Technical Data—General. However, USIA may on a case-by-case basis or on a class basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if USIA determines that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(ii) Data not first produced in the performance of a contract. (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C 401 or 402 without either: Acquiring for, or granting to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) if included in the clause at 1952.227-71, Rights in Technical Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded opportunity to correct it in accordance with 1927.403(b)(8). Otherwise, data delivered with a copyright notice of 17 U.S.C., 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in paragraph (b)(6)(i)(A) above, without disclosure limitations or restrictions.

(C) If contractor action causes limited rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge the applicable copyright license.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1952.227-71, Rights in Technical Data—General, the right either to return to the contractor data containing markings not authorized by that clause or to cancel or

ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to substantiate the propriety of the markings. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the makings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The above procedures may be modified in accordance with USIA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1952.227-71, Rights in Technical Data—General, without a limited-rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within six months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(ii) The contracting officer may also (A) permit correction at the contractor's expense of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1952.227-71, Rights in Technical Data—General, paragraph (d) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used by the contractor in the performance of a contract; however, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the contractor agrees to treat the data in accordance with such markings, unless otherwise specifically authorized in writing by the contracting officer.

(ii) USIA may, on a case-by-case basis, or on a class basis, place further limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute or publish any data first produced (but not data specifically used) in the performance of the contract. Such restrictions are not to be imposed on a class basis unless they are pursuant to statutory requirements, determined to be necessary in the furtherance of USIA mission objectives, or determined to be necessary in support of specific USIA programs.

(10) *Inspection of data at the contractor's facility.* USIA may obtain the right to inspect data at the contractor's facility by use of paragraph (j) of the clause to provide that right in the clause at 1952.227-71, Rights in Technical Data—General. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause, or any data specifically used in the performance of the contract. Such inspection may be made by the contracting officer or representative for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(c) *Production of special works.* (1) The clause at 1952.227-73; Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

(i) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptions, and the like;

(ii) Histories of the respective agencies, departments, services, or units thereof;

(iii) Works pertaining to recruiting, morale, training, or career guidance;

(iv) Surveys of Government establishments;

(v) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(vi) The compilation of reports, studies, surveys, or similar documents that do not involve research, development, or experimental work performed by the contractor;

(vii) The collection of data containing identifiable personal information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(viii) Investigatory reports; or

(ix) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(d) *Acquisition of existing data other than limited-rights data*—(1) *Existing audiovisual and similar works.* The clause at 1952.227-74, Rights in Data—Existing Works, is for the use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are: (i) Means of exhibition or transmission, (ii) time, (iii) type of audience, an (iv) geographical location. If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), the clause at 1952.227-73 Rights in Data—Special Works, is to be used. (See 1927.403(c).)

(2) *Separate acquisition of existing computer software.* (i) If the contract is for the separate acquisition of existing computer software, no specific contract clause contained in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software, and must contain terms obtaining sufficient rights for the Government to fulfill the need for which the software is being acquired. The restricted rights set forth in 1927.403(b)(5) should be used as a guide and are usually the minimum the Government should accept. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commerical lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (d)(2)(i) above. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commerical sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commerical agreement shall be addressed in the contract, and the contract terms shall take precedence over the vendor's standard commerical agreement.

(iii) If a prime contractor under a contract containing the clause at 1952.227-71, Rights in Technical Data—General, with subparagraph (g)(3) in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to the Government, the contracting officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of subparagraph (g)(3) in a collateral agreement incorporated in and made part of the contract. (See also 1927.403(b)(5).)

(3) *Other existing works.* (i) Except for existing audiovisual and similar works pursuant to paragraph (d)(1) above, and existing computer software pursuant to paragraph (d)(2) above, no clause contained in this subpart need be included in: (A) Contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e. the off-the-shelf purchase of such items), unless reproduction rights of such items are to be obtained; or (B) contracts resulting from formal advertising that require only existing data to be delivered unless reproduction rights for such data (other than limited-rights data) are to be obtained. If reproduction rights are to be obtained, such rights nust be specifically set forth in the contract.

1927.404 Acquisition of data.

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e. data requirements); and those contract terms whose purpose is to define the respective rights of the Government and the contractor in such data (i.e. data rights). This section relates to data requirements; 1927.403 relates to the data rights.

(2) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restriction to be imposed on the contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1952.227-72, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under the clause at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Technical Data—General clause in the contract and data authorized to be withheld under that clause will not be required to be delivered under this Additional Data Requirements clause.

1927.405 Solicitation provisions and contracts clauses.

(a) *Rights in Technical Data—General.* (1) The contracting officer shall insert the clause at 952.227-71, Rights in Technical Data—General (see 1927.403(b)), in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1927.403(c);

(ii) For the separate acquisition of existing works, as described in 1927.403(d);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see paragraph (h) below;

(iv) For architect-engineer services or construction work, in which case the contracting officer may prescribe different clauses (see paragraph (i) below), but the clause at 1952.227-71, Rights in Technical Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work.

(2) If the contracting officer determines, in accordance with 1927.403(b)(2), to adopt the alternate definition of "Limited Rights Data" the clause at 1952.227-71 shall also be used.

(3) If USIA needs to obtain the delivery of limited-rights data (see 1927-403(b)(4), the contracting officer shall assure that the purposes, if any, for which limited-right data is to be disclosed outside the Government are included in the "Limited Right Notice" of subparagraph (g)(2) of the clause in accordance with 1927.403(b)(4). The contract may exclude identified items of data from delivery under subparagraph (g)(2) of the clause.

(4) If the Agency needs to obtain the delivery of restricted computer software, any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract.

(5) If USIA wishes to limit the automatic right of the contractor to establish claim to copyright subsisting in data first produced in the performance of the contract, to scientific and technical articles based on or derived from the work performed under the contract and published in academic, technical, or professional journals, the clause provides such limitation. The subparagraph (c)(1) does, however, allow the contracting officer to give permission to the contractor to establish claim to copyright subsisting in other data first produced in the performance of the contract, either at the time of contracting or subsequently during contract performance, in accordance with 1927.403(b)(6).

(6) If USIA needs to have the right to inspect certain data at a contractor's facility, (see 1927.403(b)(10)), the clause provides for such right, including the limitations thereon. Inspection may be by the contracting officer or representative and may be made at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not to be subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(b) If USIA desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1952.227-70, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1952.227-71 Rights in Technical Data—General.

(c) The contracting officer shall insert the clause at 1952.227-72, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 1927.404.) This clause may also be used in other contracts when considered appropriate. If the clause at 1952.227-71, Rights in Technical Data—General, is used in the contract, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraphs (g)(2) or (g)(3) of the clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used" in subparagraph (a) thereof if delivery of such data is not necessary to meet the Government's requirements for data.

(d) The contracting officer shall insert the clause at 1952.227-73, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of data. Examples of such contracts are set forth in 1927.403(c). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(e) The contracting officer shall insert the clause at 1952.227-74, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1927.403(d)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 1952.227-73, Rights in Data—Special Works shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(f) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1927.403(d)(2).

(g) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exists prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1927.403(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1927.403(d)(3).)

(h) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of 1927.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(i) The contracting officer may prescribe, as appropriate, clauses consistent with the policy in 1927.402 in contracts for architect-engineer services and construction work.

(j) The Contracting Officer shall insert the clause at 1952.227-75, Disposition of Prints and Videotape Recordings in License Agreements which limit the period for distribution and exhibition of video-tape programs and films.

PART 1932—CONTRACT FINANCING

Subpart 1932.1—General

1932.111 Contract clauses.

(a) The contracting officer shall insert one of the clauses at 1952.232-70 and 1952.232-71 Payment Due Date, in solicitations and contracts. The contracting officer shall select the clause that is applicable to the type of supplies or services being procured.

(b) The contracting officer shall insert the clauses 1952.232-72, Interest on Overdue Payments, in solicitations and contracts.

(c) The contracting officer shall insert the clause at 1952.232-73, Invoice Requirements in solicitations and contracts for supplies or services which require the submission of invoices.

(d) The contracting officer shall insert the clause at 1952.232-74, Method of Payment, in all solicitations and contracts, except those which are subject to simplified small purchase procedures.

(40 U.S.C. 486(c))

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1942—CONTRACT ADMINISTRATION

Subpart 1942.2—Assignment of Contract Administration

1942.202-70 Authorized Representative of the Contracting Officer (AR/CO).

A Contracting Officer may designate any properly qualified Government employee to act as the Authorized Representative of a Contracting Officer (AR/CO). Such designation shall apply to a single contract, must be in writing, and shall define the scope and limitations of the Authorized Representative's authority. The instrument designating an AR/Co shall not contain authority to sign or agree to any contract or major modification to a contract. Contractual commitments shall be made only by a duly certified contracting officer. The Contracting Officer shall insert the clause at 1952.242-70, Authorized Representative of the Contracting Officer, in solicitations and contracts when an individual is to be selected and designated by the contracting officer to perform administration of a given contract(s).

SUBCHAPTER H—CLAUSES AND FORMS

PART 1952—SOLICITATION PROVISIONS AND CONTRACTS CLAUSES

Sec.
1952.000 Scope of Part.

Subpart 1952.1—Instructions For Using Provisions and Clauses

1952.102-1 Incorporation by reference.
1952.104 Procedures for modifying and completing provisions and clauses.

Subpart 1952.2—Texts of Provisions and Clauses

1952.210-70 Brand name or equal (Aug. 84).
1952.212-70 Notice of delay (Aug. 84).
1952.222-70 Davis-Bacon Act (Aug. 84).
1952.222-71 Contract Work Hours and Safety Standards Act overtime compensation (40 U.S.C. 327-333) (Aug. 84).
1952.222-72 Apprentices and trainees (Aug. 84).
1952.222-73 Payroll and basic records (Aug. 84).
1952.222-74 Compliance with Copeland Act requirement (Aug. 84).
1952.222-75 Withholding (Aug. 84).
1952.222-76 Subcontracts (Aug. 84).
1952.222-77 Contract termination; debarment (Aug. 84).

Sec.
1952.222-78 Disputes concerning labor standards (Aug. 84).
1952.222-79 Compliance with Davis-Bacon and related act requiements (Aug. 84).
1952.222-80 Certification of eligibility (Aug. 84).
1952.222-81 Service Contract Act of 1965 (Aug. 84).
1952.222-82 Contract Work Hours and Safety Standard Act-overtime compensation (40 U.S.C. 327-333)-(Non-construction only).
1952.222-83 Payrolls and basic records (Non-construction only).
1952.227-70 Notification of limited rights data and restricted computer software (Aug. 84).
1952.227-71 Rights in technical data—General (Aug. 84).
1952.227-72 Additional data requirements (Aug. 84).
1952.227-73 Rights in data-special works (Aug. 84).
1952.227-74 Rights in data—existing works (Aug. 84).
1952.227-75 Disposition of prints and videotape recordings (Aug. 84).
1952.232-70 Payment due date-F.O.B. destination or F.A.S. vessel (Aug. 84).
1952.232-71 Payment due date-F.O.B. origin (Aug. 84).
1952.232-72 Interest on overdue payments (Aug. 84).
1952.232-73 Invoice requirements (Aug. 84).
1952.232-74 Method of payment (Aug. 84).
1952.242-70 Authorized Representative of the Contracting Officer (Aug. 84).

Authority: 40 U.S.C. 486(c).

1952.000 Scope of Part.

This part implements and supplements FAR Part 52 which sets forth solicitation provisions and contract clauses for use in the acquisition of personal property and nonpersonal services (including construction).

Subpart 1952.1—Instructions for using provisions and clauses

1952.102-1 Incorporation by reference.

IAAR provisions and clauses that are familiar to both USIA personnel and Agency contractors may be incorporated by reference, except when a provision or clause requires completion by the offeror or prospective contractor or contains an Agency authorized deviation.

1952.104 Procedures for modifying and completing provisions and clauses.

IAAR provisions and clauses shall not be modified (see FAR 52.101(a)) unless authorized by the Director, Office of Contracts, and when so authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1952.2—Texts of Provisions and Clauses

1952.200 Scope of subpart.

This subpart sets forth the full text of all IAAR provisions and clauses.

1952.210-70 Brand name or equal (Aug. 84).

As prescribed in 1910.011 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

Brand Name or Equal (Aug. 84)

(As used in this clause the term "brand name" includes identification of products by make and model.)

A. If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Solicitations offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

B. Unless the offeror clearly indicates in the offer that an "equal" product is being offered, the offer shall be considered as offering a brand name product referenced in the solicitation.

C. 1. If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the government and will be based on information furnished by the offeror or identified in the offer as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting activity. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of the offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

2. If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i)

include in the offer a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

3. Modifications proposed after date for receipt of offers to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of Clause)

1952.212-70 Notice of delays (Aug. 84)

As prescribed at 1912.70, insert the following clause in all contracts:

Notice of Delay (Aug. 1984)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contrator shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of Clause)

1952.222-70 Davis-Bacon Act (40 U.S.C. 276a-276a-7) (Aug. 84).

As prescribed in § 1922.403(a) the contracting officer shall insert the following clauses:

Davis-Bacon Act (40 U.S.C. 276a-276a-7) (Aug. 84)

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more that one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. *Provided*, That the Secretary of Labor has found, upon written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(e) Paragraphs (a) through (d) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of Clause)

1952.222-71 Contract Work Hours and Safety Standards Act overtime compensation (40 U.S.C. 327-333) (Aug. 84.).

As prescribed at 1022.403(a), the contracting officer shall insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) (Aug. 84)

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever, is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222-72 Apprentices and trainees (Aug. 84).

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Apprentices and Trainees (Aug. 84)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination of the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of Clause)

1952.222-73 Payrolls and basic records (Aug. 84).

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Payrolls and Basic Records (Aug. 84)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprenctices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls

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to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall be set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, Government Printing Office. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "Payrolls and Basic Records" and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of Clause)

1952.222-74 Compliance with Copeland Act requirement (Aug. 84).

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Compliance With Copeland Act Requirement (Aug. 84)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(End of Clause)

1952.222-75 Withholding (Aug. 84).

As prescribed in 1922.222-403(a), the contracting officer shall insert the following clause:

Withholding (Aug. 84)

The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Prime Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of Clause)

1952.222-76 Subcontracts (Aug. 84).

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Subcontracts (Aug. 84)

The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," Compliance with Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination-Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," and such other clauses as the Contracting Officer may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

(End of Clause)

1952.222-77 Contract termination; debarment (Aug. 84).

As prescribed in 1922.403(a) the contracting officer shall insert the following clause:

Contract Termination; Debarment (Aug. 84)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of Clause)

1952.222-78 Disputes concerning labor standards (Aug. 84).

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Disputes Concerning Labor Standards (Aug. 84)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222-79 Compliance with Davis-Bacon and Related Act requirements (Aug. 84).

As prescribed in 1922.403(a), the contracting officer shall insert the following clauses:

Compliance with Davis-Bacon and Related Act Requirements (Aug. 84)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of Clause)

1952.222-80 Certification of eligibility (Aug. 84).

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Certification of Eligibility (Aug. 84).

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person of firm who has a interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of Clause)

1952.222–81 Service Contract Act of 1965 (Aug. 84).

As prescribed in 1922.1006 insert the following clause:

Service Contract Act of 1965, as Amended (Aug. 84)

(a) This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215–0150.)

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative of the employees themselves, shall be submitted by the contractor to the contracting officer no latter than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division. Employment Standards Administration. U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or i any other case where a contractor succeeds a contract under which th eclassification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employes commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2) (i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determination to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined comformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe

benefits provided for in such collective bargaining agreements, to which such employee under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH [illegible]) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with safety and health standards applied under 29 CFR Part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 4.6(g)(1) (i) through (iv) approved by the Office of Management and Budget under OMB control number 1215–0017 and section 4.6(g)(1) (v) and (vi) approved under OMB control number 1215–0150.):

(i) Name and address and social security number of each employee.

(ii) The correction work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates and fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to 4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay under paid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to compy with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall deemed to refer to the subcontractor, except in the term "Government prime contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent provision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(l)(1) if wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (44.173 of Regulations, 29 CFR Part 40, the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations 29 CFR Part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92–473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annual, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, That the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; (approved by the Office of Management and Budget under OMB control number 1215–0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6 and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222–82 Contract Work Hours and Safety Standards Act—overtime compensation (40 U.S.C. 327–333) (Non-construction only).

As prescribed at 1922.305 insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327–333)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), is subject to the following provisions end to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever, is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) and this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractor to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provision set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222-83 Payrolls and basic records (Non-construction only).

As prescribed in 1922.305 insert following clause:

Payrolls and Basic Records (Aug. 84)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, and transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(End of Clause)

1952.222-70 Notification of limited rights data and restricted computer software (Aug. 84).

As prescribed in 1922.405(b) insert following provision in solicitation that include the clause at 1952.227-71, Rights in Technical Data—General:

Notification of Limited Rights Data and Restricted Computer Software (Aug. 84)

(a) This solicitation sets forth the Government's known requirements for data. Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Technical Data—General clause paragraph (g)(1) that is to be included in this contract. Under this clause a contractor may withhold from delivery data that qualifies as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. This clause also may be used with paragraph (g)(2) and/or paragraph (g)(3) to obtain delivery of limited rights data or restricted computer software with limited rights or restricted rights if such delivery is determined to be necessary. In addition, use of paragraph (j) provides the Government with the right to inspect such data at the contractor's facility.

(b) As an aid in determining the Government's need to include one or more of the above paragraphs of the clause in the contract, the offeror's to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited data or restricted computer software, or identify which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

End of Provision

1952.227-71 Rights in technical data—general (Aug. 84)

As prescribed in 1927.405(a)(1) insert the following clause:

Rights in Technical Data—General (Aug. 84)

(a) *Definitions.* "Commercial Computer Software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations: for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government, except as may otherwise be provided in the contract.

"Limited Rights Data", as used in this clause, means unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights. The word *unpublished,* as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights techncial data to or for the Government under a contract does not, in itself, constitute release to the public.

"Restricted Rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a Government contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components, and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see subdivision (b)(2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting, corrections or changes to Government-furnished data or computer software;

(vi) data pertaining to end-items components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure.

(2) The Contractor shall have the right to—

(i) Protect from unauthorized disclosure and use that data which is limited rights data or restricted computer software to the extent provided in paragraph (g) below;

(ii) Substantiate use of, add or correct limited rights or restricted rights notices and to take other appropriate action, in accordance with paragraphs (e) and (f) below;

(iii) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) *Copyright:*

(1) *Data first produced in the performance of this contract.* Except as otherwise specifically provided in this contract, the Contractor may, with the prior written approval of the Contracting Officer, establish claim to copyright subsisting in any data first produced in the perfomance of this contract. When claim to copyright in made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; *provided, however,* that if such data is computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.*

(1) All data first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or equity in such data. Except for his or her own internal use, the Contractor shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others so to do, without the prior written consent of the Government or until such time as the Government may have released such data to the Public.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, the Contracting Officer may either return the data to the Contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The Contracting Officer makes written inquiry to the contractor concerning the propriety of the markings, providing the Contractor 30 days to respond; and

(ii) The Contraor fails to respond within the 30 day period (or longer time approved by the Contracting Officer for good cause shown), or the Contractor's response fails to substantiate the propriety of the markings.

(2) The Contracting Officer shall consider the Contractor's reponse, if any, and determine whether the markings shall be concelled or ignored. The Contracting Officer shall furnish written notice to the Contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(f) *Omitted or incorrect markings.*

(1) Data delivered to the Government without any notice authorized by paragraph (g) below, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's

expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) When technical data other than that listed in subdivision (b)(1), above is specified to be delivered under this contract and qualifies as either limited rights data or restricted computer software the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under the Contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited rights data and not restricted computer software.

(g)(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraph (e) and (f) above, in accordance with such Notice:

Limited Rights Notice (Aug. 84)

(a) This data is submitted with limited rights under Government contract No. (subcontract, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the Contractor, be used for purposes of manufacture not disclosed outside the Government; except that the Government may, if necessary, disclose this data outside the Government for the following purposes, if applicable, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

[Note: The Contracting Officer shall select only those purposes from (A) through (E) which are appropriate and necessary to the specific procurement.]

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the Government's program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of Notice)

(g)(3) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notices:

Restricted Rights Notice (May 84)

(a) This computer software is submitted with restricted rights under Government contract No. ——— (and subcontract ———, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) and (4) above, provided the Government makes such disclosure subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) above.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form) (Date)

Use, reproduction, or disclosure is subject to restrictions set forth in contract No. (and subcontract ——— if appropriate) with ——— (name of Contractor and subcontractor).

(End of Notice)

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Government.

(j) *Inspection of data at the Contractor's facility*

The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, at all reasonable times up to 3 years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld under subparagraph (g)(1) of this clause, or any data specifically used in the performance of this contract, for the purpose of evaluating work performance or verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data. Where the Contractor whose data is to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternative inspector.

(End of Clause)

1952.227-72 Additional data requirements (Aug. 84).

As prescribed in 1927.405(c), insert the following clause in solicitations and contracts involving experimental, developmental or research work, except those awards using small purchase procedures. This clause may be used in solicitations and contracts for other types of work after consultation with legal counsel:

Additional Data Requirements (Aug. 84)

(a) In addition to the data (as defined in the Rights in Technical Data—General clause included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Technical Data—General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Technical Data—General clause of this contract, or data which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in (a) above.

(End of Clause)

1952.227-73 Rights in data-special works (Aug. 84)

As prescribed in 1927.405(d) insert the following clause:

Rights in Data—Special Works (Aug. 84)

(a) *Definitions.*

"Data," as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Unlimited rights", as used in this clause, means rights of the Government to use disclose, reproduce, prepared derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) below for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) below.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) below.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) below, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* (i) The Contractor agrees not to assert, establish, or authorize other to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without the prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 to such data when delivered to the Government and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (i) above, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, of such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above.

(d) *Release and use restriction.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor release, reproduce, distribute or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of Clause)

1952.227-74 Rights in data—existing works (Aug. 84).

As prescribed in 1927.405(e) insert the following clause:

Rights in Data—Existing Works (Aug. 84)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and other acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works distribute to the public and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract or for which this clause is specifically made applicable.

(b) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of Clause)

1952.227-75 Disposition of prints and videotape recordings (Aug. 84).

As prescribed in 1927.405(j) insert the following clause in License Agreements:

Disposition of Prints and Videotape Recordings (Aug. 1984)

If the Agency elects to discontinue distribution and exhibition hereunder, or upon expiration of the term of this License Agreement, the Agency will destroy all prints and erase all videotape recordings of the Film. A certificate(s) attesting to such destruction and/or erasure will be furnished the Licensor upon its written request.

(End of Clause)

1952.232-70 Payment due date—F.O.B. Destination or F.A.S. Vessel (Aug. 84).

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on an F.O.B. Destination or F.A.S. Vessel basis or in service contracts for nonrecurring work payable upon completion of performance. Contracts providing advance payments or contracts for utilities covered by tariff are excluded:

Payment Due Date (Aug. 84)

A. Payments under this contract will be due on the ——* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies or services are accepted by the Government.

B. For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the ——** calendar day after the date of delivery of the supplies or completion of service performance in accordance with the terms of the contract.

C. If the supplies or services are rejected for failure to conform to the technical requirements of the contract, such as damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies or satisfactory completion of the services.

D. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

**The contracting officer should insert a number (e.g., 15 days, unless some other number of days is necessary).

1952.232-71 Payment due date—F.O.B. Origin (Aug. 84).

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on an F.O.B. Origin basis with inspection and acceptance at source and proof of shipment (e.g., a GBL) is to be required to be furnished with the invoice and in nonpersonal service contracts when the contractor's invoice covers services performed on a recurring basis with periodic billings:

Payment Due Date (Aug. 84)

A. Payments under this contract will be due on the ——* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The invoice must include proper documentation that the supplies have been delivered to and accepted for shipment by an approved carrier; or in the case of services, that the services have been rendered and accepted.

(B) However, when the contract specifies that inspection and acceptance will take place at the ultimate destination point, payment for items shipped F.O.B. Origin will not constitute final acceptance.

C. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

1952.232-72 Interest on overdue payments (Aug. 84).

As prescribed in 1932.111(b), insert the following clause in solicitations and contracts for supplies and services, including construction, and in leases of real property.

Interest on Overdue Payments (Aug. 84)

(a) The Prompt Payment Act, Pub. L. 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract, except contracts providing advance payments or contracts for utilities covered by tariff, and requires the payment to contractors of interests on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of Clause)

1952.232-73 Invoice Requirements (Aug. 84).

As prescribed in 1932.111(c), insert the following clause in solicitations and contract for supplies or services which require the submission of invoices:

Invoice Requirements (Aug. 84)

Invoices shall be submitted in an original and one (1) copy of the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number, or other authorization for delivery of property or services.

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms, and such other substantiating documentation or information as required by the contract.

(5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(End of Clause)

1952.232-74 Method of payment (Aug. 84).

As prescribed in 1932.111(d), insert the following clause in solicitations and contracts:

Method of Payment (Aug. 84)

A. Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

B. The Contractor shall forward the following information in writing to the Contracting Officer not later than 7 days after receipt of notice of awards:

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contracted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(a) Address and telegraphic abbreviation of the correspondent financial institution.

(b) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

C. Any changes to the information furnished under paragraph B. of this clause shall be furnished to the Contracting Officer in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

D. The document furnishing the information required in paragraph B. and C. must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(End of Clause)

1952.242-70 Authorized Representative of the Contracting Officer (Aug. 84).

As prescribed in 1942.202-70 insert the following clause in solicitations and contracts:

Authorized Representative of the Contracting Officer (Aug. 84)

The Contracting Officer will appoint by a letter an Authorized Representative of the Contracting Officer (AR/CO) who will be given the responsibility of ensuring that the work conforms to the requirements of the contract and such other responsibilities as are specifically identified in the letter of authorization. The AR/CO *shall not* have the authority to make changes in the scope or terms and conditions of the contract; *only* the Contracting Officer has such authority. THE RESULTANT CONTRACTOR IS HEREBY FOREWARNED THAT IT MAY BE HELD FULLY RESPONSIBLE FOR ANY CHANGES NOT AUTHORIZED IN ADVANCE, IN WRITING, BY THE CONTRACTING OFFICER, AND MAY BE DENIED COMPENSATION FOR ANY ADDITIONAL WORK PERFORMED WHICH IS NOT SO AUTHORIZED.

(End of Clause)

PART 1953—FORMS

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of Subpart.
1953.370 USIA forms.

Authority: 40 U.S.C. 486(c).

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of subpart.

This subpart contains illustrations of some forms referenced in this IAAR.

1953.370 USIA forms.

This section contains illustrations of USIA forms references in this IAAR.

Note.—IAAR forms are not published in the **Federal Register** of in the Code of Federal Regulations. Forms may be obtained by writing: Office of Contracts, United States Information Agency, Washington, DC 20547. For the convenience of the user, a list containing section numbers, form numbers and form titles appears below:

Sec.

1953.370–21 USIA Form IA–21, Abstract of Quotations.
1953.370–44 USIA Form IA–44, Requisition-Purchase Order-Invoice for Professional Services.

Philip R. Rogers,

Director, Office of Contracts.

[FR Doc. 84–25611 Filed 9–19–84; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Parts 406, 407, 408, 409, 411, 422, 424, 426, 430, 431, 432, and 439

Best Conventional Pollutant Control Technology, Effluent Limitation Guidelines; Notice of Data Availability Concerning Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 406, 407, 408, 409, 411, 422, 424, 426, 430, 431, 432, and 439

[FRL-2667-2]

Best Conventional Pollutant Control Technology Effluent Limitation Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability concerning proposed rules.

SUMMARY: The purpose of this notice is to: (1) Announce possible changes to the Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines published October 29, 1982 (47 FR 49176); (2) make available new POTW data and analyses EPA is considering using in the final BCT methodology; and (3) present the results of the possible revisions to the two BCT tests. The Agency now expects to use new data concerning the cost of publicly owned treatment works (POTWs) in the promulgation of the final methodology, and to make other changes in response to public comments on the 1982 proposal. Consequently, this notice provides an additional opportunity for public comment.

DATES: Comments must be submitted on or before November 19, 1984.

ADDRESSES: Comments should be mailed or delivered to Ms. Debra Maness, Attn: Comments on BCT Notice of Availability, U.S. Environmental Protection Agency (WH-586), 401 M Street, SW., Washington, D.C. 20460. A technical report supporting this notice may be obtained by calling or writing Ms. Dena Caldwell, U.S. Environmental Protection Agency (WH-586), 401 M Street, SW., Washinton, D.C. 20460, (202) 382-5397. Full documentation is available for public inspection at U.S. EPA Headquarters, 401 M Street, SW., Rm 2404 (Rear), Public Information Reference Unit.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Maness, Office of Analysis and Evaluation, (202) 382-5385.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Introduction

Best Conventional Pollutant Control Technology (BCT) effluent limitations are not an additional effluent limitation for industrial dischargers, but rather replace Best Available Technology Economically Achievable (BAT) effluent limitations for the control of conventional pollutants. Effluent limitations representing BCT may not be less stringent than Best Practical Control Technology Currently Available (BPT). Conventional pollutants can be controlled to more stringent levels than BCT for dischargers in areas where water quality concerns require more control than afforded by the technology-based BCT requirements.

B. History

1. Previous Proposal

On October 29, 1982, EPA published its proposed methodology to determine the reasonableness of BCT effluent limitations (47 FR 49176).

At the same time, EPA proposed BCT effluent limitations for the following industry categories: Dairy Products Processing, Grain Mills, Canned and Preserved Fruits and Vegetables Processing, Canned and Preserved Seafoods Processing, Sugar Processing, Cement Manufacturing, Feedlots, Inorganic Chemicals Manufacturing, Phosphate Manufacturing, Ferroalloy Manufacturing, Glass Manufacturing, Timber Products, Pulp, Paper and Paperboard, Builders' Paper and Board Mills, Meat Products, Metal Finishing, and Ore Mining and Dressing.

2. Previous Notice of Availability

On June 2, 1983 EPA indicated its intent to use new cost information on publicly owned treatment works (POTWs) for the final methodology (48 FR 24742). On September 16, 1983, EPA withdrew the notice pending a reevaluation of whether to use the information in this rulemaking (48 FR 44091). At the same time, EPA also informed the public that if the Agency determined that the data used in the October 1982 proposal were valid, EPA would promulgate the BCT methodology without reopening the comment period.

C. Purpose of This Notice

This notice serves three purposes.

First, it alerts the public to possible changes to the BCT methodology in response to substantial comment on the October 1982 proposal. EPA is considering five significant changes to the BCT methodology. These changes affect the stringency of BCT limitations that would be promulgated. Section II details these changes. The Agency believes that the changes in methodology produce results that are consistent with the statute and with Congressional intent.

While the specific effluent limitations discussed in this notice pertain to the secondary industries, the Pulp and Paper industry, and Pharmaceutical Manufacturing industry, all direct dischargers for which BCT limitations have not already been promulgated should comment on this notice. As the Agency has indicated in prior notices of the BCT methodology, this is the opportunity to comment on the methodology itself. The only issue in future rulemakings or permitting proceedings is the application of the methodology to the specific industry.

Second, this notice makes available new POTW data and analyses EPA plans to use in the final BCT methodology. As a result of the analysis and evaluation performed on the two sets of POTW cost data (the data used in the 1982 proposal and the data noticed for comment in June 1983), EPA determined that neither set of data was appropriate for this rulemaking. Subsequently, EPA has been working to develop new POTW cost data. In addition, in order to base the BCT methodology on annual average effluent levels instead of 30-day maximum effluent limitations (see Section II), EPA has analyzed data on POTW effluent levels at the secondary treatment and advanced secondary treatment levels. Discussions of both the cost and effluent level analyses appear in Section III of this notice.

Finally, this notice presents the results of the above changes to the two BCT tests and summary information on the resulting BCT effluent limitations for a number of industry categories. The resulting BCT benchmarks for the two tests appear in Section IV of this notice; industry category information appears in Section V.

Following analysis of the comments we receive on this notice, the Agency may publish a final BCT methodology and final effluent limitations for the industries mentioned above. Alternatively, the Agency may repropose the methodology and/or the effluent limitations.

II. Planned Changes to the BCT Methodology in Response to Comment

A. Public Comments

EPA received public comments from 44 representatives from industry and one state environmental protection agency. These comments addressed a wide variety of issues, ranging from EPA's methodology for setting national BCT effluent limitations to issues relating to NPDES permitting. This notice addresses only the major changes EPA is considering making in the BCT methodology. EPA will fully respond to all comments when the BCT methodology is promulgated.

This section begins with a summary of the 1982 proposed methodology. For further detail, the reader should refer to the 1982 Federal Register notice (47 FR 49176). The rest of this section summarizes the major changes EPA is considering making to the BCT methodology. The BCT methodology proposed in 1982 consists of two parts: a POTW test and an industry cost-effectiveness test.

B. Summary of 1982 Proposed Methodology

1. The POTW Test

This test compares the cost for industry to remove an additional pound of conventional pollutants to the cost incurred by POTWs for removing an additional pound of conventional pollutants. Conventional pollutants include biochemical oxygen-demanding pollutants, suspended solids, oil and grease, and pH. The test is carried out by comparing a POTW's cost of pollutant removal in going from secondary treatment to advanced secondary treatment (the POTW benchmark) with an industry's cost in going from BPT to BCT.

The POTW costs were estimated by using cost curves developed by EPA for the "Construction Grants Needs Survey." Effluent reduction for conventional pollutants was computed by taking the difference between the national 30-day maximum effluent limitations for secondary treatment of 30 mg/l of biochemical oxygen demand (BOD) and 30 mg/l of total suspended solids (TSS) and the best performance level for advanced secondary treatment of 10 mg/l of BOD and 10 mg/l of TSS. The cost and effluent reduction were calculated for four sizes of POTWs and "flow-weighted" to arrive at one POTW benchmark. EPA proposed a POTW benchmark of $0.27 per pound in 1976 dollars.

EPA calculated the industrial costs as the difference between the annual costs in going from BPT to the candidate BCT technology level(s). For secondary industries, this level was the BAT level that was promulgated prior to enactment of BCT; for primary industries (for which there were generally no pre-existing BAT limitations) the Agency considered several candidate technology levels for BCT. All candidate technology levels were evaluated, unless there were other reasons for rejection the technology level unrelated to the BCT methodology. The industry calculations were computed for each subcategory within an industrial point source category.

In determining industrial costs and effluent reduction, EPA used data drawn from EPA development documents for each of the industry categories. EPA calculated annual costs by including operation and maintenance costs, interest, and amortization of capital investment. Effluent reductions were computed in the following manner. EPA calculated the incremental removal as the difference between the annual pounds discharged after compliance with BPT and the pounds discharged after compliance with each candidate BCT technology level. These removals were based on the regulatory limits established for the discharge of each pollutant (the 30-day maximum effluent limitations).

If the cost for a subcategory in going from BPT to the candidate BCT was lower than the POTW benchmark of $0.27 per pound, the test was passed; if it was higher, EPA proposed to set BCT effluent limitations equal to those for BPT. Those subcategories that passed were then evaluated in the second test.

2. The Industry Cost Test

The industry cost test compares industry's incremental cost per pound in going from pre-BPT to BPT levels with the incremental cost in going from BPT to BCT. This ratio, the latter divided by the former, is compared against an industry cost benchmark, which is also based on POTW cost and effluent data.

In establishing the annual cost per pound for "pre-BPT to BPT," EPA used two different treatment levels for pre-BPT, depending on data availability. Where possible, pre-BPT was based on cost and effluent data for treatment-in-place levels at the time BPT limitations were developed for the individual industry. If these data were not available, EPA used an assumption of no treatment of wastewater (raw wasteload) for pre-BPT. For either level, the pre-BPT effluent levels were based on annual averages rather than 30-day maximum effluent limitations.

The industry calculations were compared to the industry cost benchmark, which was based on POTW cost and effluent data. EPA computed this benchmark by dividing the incremental cost per pound in going from secondary treatment to advanced secondary treatment by the incremental cost per pound in going from primary treatment to secondary treatment.

The proposed benchmark was 1.43. If an industry subcategory calculation was lower than the benchmark, the candidate technology passed the test and EPA proposed BCT effluent limitations based on the candidate technology. If the calculation for the candidate technology was higher, the candidate technology failed the test and EPA proposed BCT effluent limitations equal to those for BPT.

C. Choice of AST Effluent Level

1. Public Comment

The State of Vermont commented that the selection of 10 mg/l as the achievable advanced secondary treatment effluent concentration for both BOD and TSS was not representative of POTW performance at advanced secondary treatment. The State noted that the operational definition of advanced secondary treatment has been described in EPA documents as ranging from 10 mg/l to 25 mg/l (for both BOD and TSS) rather than as a single, legally defined value, such as 30 mg/l for secondary treatment. Furthermore, the State concluded that 30 mg/l for secondary treatment is an average level of performance since it is a national standard; on the other hand, 10 mg/l for advanced secondary treatment represents a best performance system.

The American Paper Institute submitted a rebuttal comment to that of the State of Vermont, asserting that there was no need for EPA to change the definition of advanced secondary treatment.

2. Planned Change.

EPA reexamined the data and is considering a revision to the definition of advanced secondary treatment. The revised effluent concentrations would be 20 mg/l each, for BOD and TSS. EPA believes that the level represents typical permit limitations for advanced secondary treatment facilities. This conclusion is discussed in Section III.

D. Use of Pre-BPT and Pre-Secondary Treatment Levels

1. Public Comments

Commenters complained that EPA's inconsistent definition of pre-BPT treatment levels would result in an inconsistency in BCT indusltrial calculations. They noted that these inconsistencies would lead to misleading conclusions regarding the cost per pound of BPT effluent limitations and bias the industry cost test against certain industries.

When EPA selected pre-BPT levels for industrial categories and subcategories, it attempted to choose treatment levels existing at the time of the development of BPT effluent limitations. Commenters criticized the subjectivity involved in selecting that treatment level. They also pointed out that this "treatment-in-place" level could not be developed for all industry categories and that EPA had to assume no treatment for certain industries. By using both "treatment-in-place" and raw wasteloads, EPA introduced inconsistencies and biases that were based only on whether an industry had substantially complied with BPT effluent limitations before their promulgation or on availability of data to perform the calculations. Commenters asserted that these factors should not be a consideration in determining the stringency of BCT effluent limitations.

Commenters suggested two ways to improve this computation. First, some commenters suggested that EPA collect new data to employ the "treatment-in-place" method for all industry categories. Second, other commenters suggested that EPA switch all calculations to a raw wasteload basis (no treatment of wastewater).

2. Planned Change

EPA agrees with the criticisms and believes that the extent of treatment installed by industrial facilities prior to BPT should not be a consideration in establishing BCT. Therefore, the Agency is considering establishing the pre-BPT treatment level as raw wasteload for all industries for both the cost and effluent reduction calculations. At the same time, EPA also recognizes that the primary treatment level for POTWs cannot be considered to be equivalent to raw wasteload for industry. Hence, EPA is considering using raw wasteload instead of primary treatment in calculating both POTW cost and effluent reduction. EPA believes these two changes together would address the concerns of commenters while maintaining consistency between POTW and industry calculations.

E. Use of 30-Day Maximum Effluent Limitations

1. Public Comments

EPA received several comments opposing EPA's use of 30-day maximum effluent limitations for some of the effluent reduction calculations.

Commenters claimed that the use of 30-day maximum effluent levels biases the test against industries with "variability factors" larger than those for a POTW. A "variability factor" is the ratio of 30-day maximum effluent levels compared to long-term effluent levels. The use of 30-day maximum levels was said to bias the test against the industry by overstating the incremental pounds of pollutants removed by treatment technologies relative to the POTW benchmark.

For industry calculations, the commenters also noted that EPA based removals on 30-day maximum effluent limitations for BPT and BCT levels, while using annual average effluent levels for pre-BPT levels (both treatment-in-place and raw wasteload). This was said to bias the dollar per pound calculations for both the BPT and BCT incremental treatment levels. The calculation overstates the actual pounds removed annually in going from BPT to BCT levels, and understates the actual pounds in going from pre-BPT to BPT levels.

Commenters suggested several ways to correct these biases. They all focused on the use of long-term performance data.

For the POTW cost per pound calculations, one commenter claimed that the difference was insignificant between utilizing annual average effluent levels and 30-day maximum effluent limitations.

2. Planned Change

EPA recognizes the merits of these comments. In evaluating how to respond to these comments, EPA began with the premise that the calculations for the BCT benchmarks and those for each industrial subcategory should be made as consistent as possible. Despite comments stating that the use of 30-day maximum effluent limitations versus annual averages is insignificant for POTW calculations, EPA's analysis shows that it does have a substantial effect on the calculation of the BCT benchmarks.

EPA is considering changing the calculations in the following manner. For the industrial calculations, EPA would switch from using maximum 30-day effluent limitations at the BPT and BCT levels to annual average effluent levels. The raw wasteload (the new definition of pre-BPT) would also be calculated using annual average effluent levels. For the POTW calculations, EPA would use annual average effluent levels for raw wasteload, secondary treatment, and advanced secondary treatment. The derivation and discussion of these levels for POTWs is presented in Section III.

F. The Two-Tier Approach

1. Public Comments

As noted above, one commenter suggested that where EPA lacks the data for annual average effluent levels for BPT and BCT, EPA should attempt to estimate them from 30-day maximum effluent limitations

2. Planned Change

For secondary industries, EPA can only perform the industry calculations at BPT and BCT levels using the 30-day maximum effluent limitations and at raw wasteload (the pre-BPT level) using annual average effluent. This is due to data constraints for some of the regulations developed in the mid-1970s.

To reduce the possible bias that would exist if EPA used BCT benchmarks based on annual averages, EPA is considering establishing a second tier of BCT benchmarks that correspond to the industry calculations. EPA would use 30-day maximum effluent limitations for secondary treatment and advanced secondary treatment and annual averages for raw wasteload in deriving this second set of BCT benchmarks. This solution provides for a "second tier" of industries where EPA believes that the time and resources needed to solve the data problem by re-estimating the industry calculations are prohibitive. Table 1 summarizes EPA's "two tier" approach.

G. Use of POTW Cost Curves

1. Public Comments

Commenters opposed EPA's use of actual plant costs in deriving the POTW cost curves. Commenters believed that site-specific factors dwarfed the cost differentials associated with improving POTW effluent performance in going from secondary treatment to advanced secondary treatment.

Commenters also asserted that EPA's use of POTW cost indices to express costs in various years' dollars caused distortions in the indexed BCT benchmarks. Commenters suggested modifying the use of these indices, or switching to a different index, such as the Construction Cost Index from *Engineering News Record.*

2. Planned Change

As explained further in Section III, EPA plans to revamp the POTW cost basis for the BCT benchmarks by no longer using the POTW cost curves that were proposed. EPA's new approach employs design cost estimates for specific POTW model plants.

TABLE 1.—THE "TWO-TIER" APPROACH FOR BCT INDUSTRY CATEGORIES EFFLUENT LEVEL DETERMINATIONS

	Tier 1—annual average effluent data is available	Tier 2—annual average effluent data is not available
Industry Calculations		
Raw waste load	Annual average effluents.	Annual average effluents.

TABLE 1.—THE "TWO-TIER" APPROACH FOR BCT INDUSTRY CATEGORIES EFFLUENT LEVEL DETERMINATIONS—Continued

	Tier 1—annual average effluent data is available	Tier 2—annual average effluent data is not available
Best practicable technology (BPT).	Annual average effluents.	30-day maximum effluent limitations.
Best conventional technology (BCT).	Annual average effluents.	30-day maximum effluent limitations.
BCT Benchmarks		
Raw wasteload	Annual average effluents.	Annual average effluents.
Secondary treatment.	Annual average effluents.	30-day maximum effluent limitations.
Advanced secondary treatment.	Annual average effluents.	30-day maximum effluent limitations.

This approach eliminates the problems caused by site-specific factors. EPA is also modifying its use of the POTW cost indices to mitigate the distortions in the indexed BCT benchmarks. The following section details the new POTW cost estimation approach.

III. New Data and Analysis

A. New POTW Cost Data and Analysis

1. POTW Cost Data in the BCT Methodology

The BCT methodology requires that the cost and level of reduction of conventional pollutants for industrial dischargers be compared to the cost and level of reduction to remove the same pollutants by publicly owned treatment works. For POTW costs, the Agency is essentially retaining the same approach used in the October 1982 proposal (described at 47 FR 49196). We continue to estimate the incremental cost to reach advanced secondary treatment for five flow sizes of POTWs. The major change in our approach is that we are now using design estimates for model plants instead of the empirical data used at proposal.

2. Planned Changes in Using Cost Data

The first step in the calculations is to determine the flow sizes for which we will estimate costs, because POTW costs vary with flow size. Table 2 presents a distribution, by flow, of POTWs in the United States. This distribution is based on the number of POTWs operating or under construction in 1980, as reported in the "1980 Needs Survey" (FRD–23; EPA 430/9–81–008, February 10, 1981).

TABLES 2.—POTW SIZE DISTRIBUTION

	Size range by flow (mgd)					
	0 to 0.105	0.106 to 1.05	1.06 to 10.5	10.6 to 50.2	50.3 & greater	All plants
Number of plants	5,021	7,033	2,686	415	96	15,251
Total flow	259	2,675	8,836	9,290	13,354	34,415
Average flow	0.0515	0.3803	3.290	22.39	139.1	2.257
Weighting factor	.0075	.0777	.2567	.2700	.3880	.9999

SOURCE: The 1980 Needs Survey (FRD–23; EPA 430/9–81–008, February 1981).

The POTW cost estimates used in the proposal were based on cost curves for the flow range of 1–50 million gallons per day (mgd) because the data in that range were most reliable. Four plant sizes were used to represent the five size categories in the Needs Survey. We are now using five model plant sizes; each is approximately equal to the average flow in the size category. For the 0–0.105 mgd size group, the model plant is 0.052 mgd; for the 0.106–1.05 mgd size group, the model group plant is 0.38 mgd; for the 1.06–10.5 mgd size group, the model plant is 3.3 mgd; for the 10.6–50.2 mgd size group, the model plant is 25 mgd; and for the 50.2 and greater mgd size group, the model plant is 140 mgd.

The POTW cost comparison figure is based on weighting the cost per pound of conventional pollutants removed by POTWs according to the size distribution of POTWs in the United States. The second step, therefore, is to determine the weighting factor for each model plant. The calculation of weighting factors is the same as in the proposal. The factors, shown on the last line of Table 2, are calculated by dividing the total flow for each size group by the total flow for all POTWs.

As in the proposal, the POTW costs used in estimating the cost of pollutant removal are the total annual costs of constructing and operating a secondary treatment plant, and the total annual costs of upgrading that system to advanced secondary treatment. We are now calculating that increment using model plant costs. Total annual costs include capital charges, interest, and operation and maintenance costs. Capital costs are amortized over 30 years at a 10 percent interest rate, as defined in the October 1982 proposal. The model plant costs are indexed to 1976 third quarter dollars and to other years' dollars to facilitate comparison of the benchmark to various industry calculations.

3. Cost Data Previously Used

For the October 1982 proposal, the Agency based its estimates of POTW costs on information from two EPA documents (FRD 11, EPA 430/9–80–003, April 1980 and FRD 22, EPA 430/9–81–004, September 1981). At that time, those documents provided current information regarding the costs of constructing and operating POTWs. In 1983, more up-to-date cost information was available, and on June 2, 1983, the Agency issued a Notice of Availability on the new cost data; the notice indicated EPA's intent to use the new data to promulgate the BCT methodology (48 FR 24742).

After the Notice of Availability was published, EPA became aware that the new data might not be appropriate for use in the BCT methodology. In the analysis of the construction cost data, it appeared that the editing criteria that were used to define secondary treatment systems and advanced secondary treatment systems might have been inaccurate or inconsistent. The cost of secondary treatment and advanced secondary treatment may also have varied substantially due to site-specific factors. The resulting difference in costs between secondary treatment and advanced secondary treatment might, therefore, have been unsuitable for use in the BCT methodology. The Agency also realized that the data used at propsal in October 1982 might be subject to similar analytical problems. Consequently, in September 1983, the Agency withdrew the newer data (48 FR 44091) to further evaluate the data and determine whether the data are appropriate for the BCT methodology.

EPA concluded that it was necessary to use a different data source for POTW costs. The approach we are using is to develop POTW model plant costs specifically for this rulemaking.

4. Treatment Level Definitions for Model Plants

The model plants are municipal wastewater treatment facilities with specifications for size, basic design, general operating conditions, and required effluent levels.

The design criteria for secondary treatment call for the plant to start operating in 1977, which parallels the time for compliance with BPT effluent limitations guidelines by industrial dischargers. Also, the specific design criteria for the model plants reflect technology that was current in 1977. The maximum 30-day effluent limitations for secondary treatment are 30 mg/l BOD and 30 mg/l TSS.

The design criteria for advanced secondary treatment reflect an existing facility being modified to achieve more stringent effluent levels. The Agency set forth three effluent levels for defining advanced secondary treatment. For each of these effluent levels, we determined a treatment technology that could be used to upgrade the secondary POTW to meet the more stringent effluent limits. The three effluent levels are: (1) 20 mg/l BOD and 20 mg/l TSS, (2) 15 mg/l BOD and 15 mg/l TSS, and (3) 10 mg/l BOD and 10 mg/l TSS.

We considered the frequency of each of these levels in data from more than 900 POTWs (EPA 430/9-81-004), and 20 mg/l BOD is the most common permit level for plants beyond secondary treatment. For this reason, the Agency believes that the best definition of advanced secondary treatment is 20 mg/l BOD and 20 mg/l TSS, and the incremental cost calculations described below reflect the additional technology needed to achieve that particular effluent level.

5. Treatment Technologies for Model Plants

The biological treatment technology we specify in calculating the cost of secondary treatment is activated sludge. Various sludge disposal methods are used, depending on the size of the model plant.

To upgrade the secondary POTW to meet effluent limitations of 20 mg/l BOD and 20 mg/l TSS, the treatment technology is chemical addition. We recognized that secondary treatment plants may achieve better performance than 30 mg/l BOD and 30 mg/l TSS and might intermittently achieve 20 mg/l BOD and 20 mg/l TSS without additonal technology. With the constraint that the existing facility was built in 1977, however, the Agency believes that consistent performance at the more stringent level can only be achieved with additional treatment and, therefore, additional cost. To upgrade the POTW to 15 mg/l BOD and 15 mg/l TSS, the additional technology is filtration, and to achieve 10 mg/l BOD and 10 mg/l TSS, the additional technolgy includes both filtration and chemical addition. To achieve any of the advanced secondary limitations, the additional technology is added to the secondary POTW; the additions are not cumulative.

6. New POTW Cost Data

The Agency selected four firms to estimate the model plant costs. Each is a nationally recognized expert in designing municipal wastewater treatment facilities. The four firms are Sverdrup and Parcel and Associates, Inc., E. C. Jordan Co., Camp Dresser and McKee Inc., and J. M. Smith and Associates Consulting Engineers. The first three firms estimated costs for the three largest model plant sizes. The fourth firm, using EPA planning level estimates, provided costs for the two smallest plant sizes. Each firm estimated costs for secondary treatment and for each of the upgrades to advanced secondary treatment.

A summary of results is shown in Table 3. The three estimates of total annual costs for secondary treatment for the largest model plant are $43.0 million, $36.2 million, and $27.7 million. While there are some differences, all three are valid estimates of the cost of achieving the specified effluent level. The Agency believes that the differences in cost estimates are explained by differences in engineering philosophies. While the basic design criteria and general operating conditions were the same for all three firms, the specific design criteria were determined by each firm, according to their best judgment, experience, and expertise. Comparisons for specific processes show that differences exist in the choice of equipment, size and operating specifications of equipment, structures that house the processes, and plant layout. These differences are reflected by differences in both capital and operating costs.

TABLE 3.—POTW TOTAL ANNUAL COST ESTIMATES TO ACHIEVE SECONDARY TREATMENT AND THE INCREMENTAL COST TO UPGRADE TO ADVANCED SECONDARY TREATMENT

[1984 dollars, in millions]

	Size of model plant (mgd)				
	0.052	0.38	3.3	25	140
Total annual cost to achieve secondary treatment (30/30):					
JMS	0.07	0.27			
CDM			3.34	12.19	43.02
ECJ			1.96	8.31	27.74
S&P			1.69	8.25	36.16
Incremental cost to upgrade to advanced secondary treatment (20/20):					
JMS	0.0	0.0			
CDM			0.11	0.84	4.23
ECJ			0.12	0.39	1.24
S&P			0.32	1.53	7.37

Key: JMS: J.M. Smith and Associates Consulting Engineers.
CDM: Camp Dresser and McKee Inc.
ECJ: E.C. Jordan Co.
S&P: Sverdrup and Parcel and Associates, Inc.

The Agency believes that each estimate is a fair representation of the cost of building and operating a secondary treatment facility. Similarly, we believe that the various incremental costs are realistic estimates for upgrading from secondary treatment to advanced secondary treatment. To calculate the benchmark, therefore, we should use all of the firms' estimates. The following section describes various methods for using the three estimates of total annual costs for the three largest plant sizes. The smaller model plants, for which we have single cost estimates, are then incorporated in the benchmark calculations (see Secion IV).

Each firm initially provided capital costs and operation and maintenance costs expressed in 1984 dollars. These estimates are then indexed to other years' dollars, from 1975 to 1984. We used the same basic approach to indexing as in the proposal with minor changes. The result is an indexed capital cost and an indexed operation and maintenance cost. Then, as shown in Table 3, the total annual cost is calculated as the sum of operation and maintenance costs and amortized capital costs.

7. Approaches for Using the New POTW Cost Data

The Agency is considering several statistical approaches to consolidate the data from the three firms. By using all of the estimates, we are best able to incorporate each firm's engineering judgment.

The approaches we are considering include arithmetic averages, median values, estimates from regression equations of each firm's data, and regression equations combining all of the data. A detailed discussion of all of the approaches and the results are included in the Record.

Our preferred approach is to compute mean costs (arithmetic average) for each model plant size. The mean incorporates all of the data, weights each firm's estimates equally, and thus represents the average of the best estimates. By using this approach, we have a single annual cost estimate at each effluent level and at each flow size. Then, the incremental cost to be used in benchmark calculations is the additional cost needed to upgrade treatment from secondary to advanced secondary. Table 4 presents a summary of the incremental costs for each model plant size, based on the mean costs. These values are used to calculate the benchmarks in this notice (see Section IV).

The benchmark calculations also require an estimate of the pounds of pollutants removed for a specific effluent level. As stated in Section II above, the Agency is considering using the long-term average effluent level for this calculation. Finding the long-term value is discussed in detail in Section III-B, below.

TABLE 4.—TOTAL ANNUAL MEAN COST

[1976 dollars, in millions]

Size of plant (mgd)	Secondary treatment (30 mg/l BOD and 30 mg/l TSS)	Advanced secondary treatment (20 mg/l BOD and 20 mg/l TSS)	Incremental cost
0.052	0.04	0.04	0
0.38	0.16	0.16	0
3.3	1.35	1.45	0.10
25	5.53	6.06	0.53
140	20.55	22.98	2.43

B. New POTW Effluent Data and Analysis

1. Use of Long-Term Average Effluent Levels

In addition to the new POTW cost data discussed in Section III–A, the Agency is considering using a different source of POTW effluent data for calcuating the benchmarks. Also, as mentioned in Section II, the Agency is considering using long-term average effluent concentrations instead of 30-day maximum effluent concentrations. The long-term averages in this notice are derived from actual performance data for both secondary treatment and advanced secondary treatment. This section describes how we determine the long-term average for each treatment level.

2. Analysis of POTW Performance Data.

We are considering using performance data from a data base that includes information from more than 900 wastewater treatment facilities. The data were reported by the Agency in 1981 and represent a range of plant sizes and treatment technologies (FRD 22; EPA 430/9–81–004, September 1981). The focus of this data collection effort was POTW operation and maintenance costs. The data base also contains influent and effluent BOD and TSS concentrations, flow data, and permit information. Much of the performance data is presented in monthly averages for 12 consecutive months. These data are used to estimate the average concentrations of BOD and TSS in the effluent wastewaters of well-operated POTWs with secondary and advanced secondary treatment.

The long-term performance for secondary treatment is based on the actual performance of secondary treatment plants in the data base. We define secondary treatment plants with the following editing criteria. First, the plants with less than 12 months of performance data are excluded. Second, the plants with specialized nutrient removal as part of their treatment systems are excluded. Third, the permit limitation for BOD is 30 mg/l. Fourth, the actual monthly average effluent levels for BOD and TSS are 30 mg/l or lower. Fifth, which is an exception to the fourth editing criteria, one monthly average effluent value of either BOD or TSS can exceed 30 mg/l. When all of the conditions are met, we have plants whose permit limitations are characteristic of secondary treatment, and they are generally in compliance with those permits. By including plants with one monthly violation, we increase the number of plants in the group without sacrificing clarity of the secondary treatment definition. The long-term average performance for secondary treatment plants is then calculated as the average of all of the monthly performance data for the plants identified as secondary treatment.

EPA recently completed another study that considers the definition of secondary treatment by effluent level. This information is included in the Record (see "Technical Support Document for Proposed Regulations under section 304(d)(4)," July 1983). The Agency's preliminary analysis indicates that this newer information is consistent with the long-term averages used here. Additional information on specific POTW performance and reliability studies are also included in the Record.

A similar procedure is followed to estimate the average effluent BOD and TSS concentrations for advanced secondary treatment. The editing criteria are similar to those used to define secondary treatment except that the permit limitation for effluent BOD is 20 mg/l. The permit concentration must be achieved for both BOD and TSS, except for one monthly violation of either BOD or TSS. Then, the long-term average is the average of actual performance data for those advanced secondary treatment plants. The same procedure is used for other performance levels of advanced secondary treatment, such as 15 mg/l or 10 mg/l.

In addition to the criteria described above, the Agency considered other preformance-related measures, such as the percentage of design flow actually being treated by the plant, the BOD removal percentage, and the influent BOD concentrations. The Agency's analysis shows these other criteria are either statistically insignificant or not relevant for calculating the long-term performance levels for the BCT benchmarks.

3. Results of Long-Term Performance Analysis

A summary of the findings is presented in Table 5. For secondary treatment plants, the result is a long-term average of 12.99 mg/l BOD and 12.78 mg/l TSS, based on 92 plants. For advanced secondary treatment, the long-term average is 8.26 mg/l BOD and 8.02 mg/l TSS, based on 27 plants. These long-term effluent levels, rather than the 30-day maximum values used at proposal, are used to calculate the number of pounds removed at each effluent level.

TABLE 5.—LONG-TERM AVERAGE EFFLUENT LEVELS FOR POTWs

Effluent level	Number of plants included in calculation	30-day maximum concentration (mg/l)		Long-term average concentration (mg/l)	
		BOD	TSS	BOD	TSS
Raw waste				210.0	210.0
Secondary treatment	92	30.0	30.0	12.99	12.78
Advanced secondary treatment	27	20.0	20.0	8.26	8.02

IV. Summary of Benchmark Calculations

A. POTW Test

The first test compares an industry cost for removing conventional pollutants beyond BPT to a POTW cost benchmark for removing conventional pollutants beyond secondary treatment. As discussed previously, EPA is considering three changes that affect the calculations presented in this notice. First, the POTW cost estimates are based on the model plant costs. Second, the number of pounds of pollutants removed by POTWs is based on annual averages, not 30-day maximum effluent levels. Third, the definition of advanced secondary treatment for a POTW is based on maximum 30-day effluent limitations of 20 mg/l BOD and 20 mg/l TSS.

The calculations for incremental annual costs are discussed in Section III–A, above. The number of pounds of pollutants removed is calculated by multiplying the POTW flow by the difference in pollutant concentrations between levels of POTW performance. For the POTW cost benchmark, the change in concentration is from secondary treatment to advanced secondary treatment. Using the annual average effluent level, this change in concentration is from 12.99 to 8.26 mg/l for BOD and from 12.78 to 8.02 mg/l for TSS (as shown in Table 5). Thus, the total change in concentration for both pollutants is 9.49 mg/l. The pounds of pollutant removed for each of the model

VOL
49
SS
184
S E
20
984
UMI

plant sizes is shown in Table 6. The incremental pollutant removals range from 1.5 thousand pounds per year for the 0.052 mgd model plant to 4.0 million pounds per year for the 140 mgd model plant.

TABLE 6.—INCREMENTAL POLLUTANT REMOVAL: SECONDARY TREATMENT TO ADVANCED SECONDARY TREATMENT

Flow size (mgd)	Pollutants removed (million pounds of BOD and TSS)
0.052	0.0015
0.38	.0110
3.3	.0954
25	.723
140	4.05

The next step in the calculations is to determine the incremental cost of removal. For each flow size, we divide the incremental annual cost (Table 4) by the incremental pollutant removal and weight the results by the factors shown in Table 2. These calculations are summarized in Table 7.

TABLE 7.—SUMMARY OF POTW BENCHMARK CALCULATIONS: SECONDARY TREATMENT TO ADVANCED SECONDARY TREATMENT

[1976 dollars]

Flow size (mgd)	Incremental annual cost (in millions)	Incremental annual removal (million pounds)	Dollar per pound	Weighting factor	Weighted dollars per pound
0.052	0.0	0.0015	0	0.0075	0
0.38	0.0	.0110	0	.0777	0
3.3	.105	.0954	1.10	.2567	0.28
25	.526	.723	0.73	.2700	.20
140	2.43	4.05	0.60	.3880	.23
Total					.71

The result of this series of planned changes to the methodology, in 1976 third quarter dollars, would be a POTW benchmark of $0.71 per pound. The benchmark is indexed for other time periods in Table 8. If the analogous cost per pound removed for industry results in a value that is lower than the POTW benchmark, the industry result passes the POTW test and the second test is considered.

TABLE 8.—POTW BENCHMARKS FOR VARIOUS TIME PERIODS

Year	Quarter			
	1st	2nd	3rd	4th
1976	0.68	0.69	0.71	0.72
1978	0.79	0.81	0.83	0.84
1980	0.98	1.00	1.02	1.04
1982	1.17	1.18	1.20	1.21
1984	1.25			

The final POTW benchmark selected by the Agency will be based on a consideration of the possible changes to the methodology discussed in this notice and on the public comments we receive. Some of the alternatives discussed in the notice would increase the POTW benchmark. For example, if a more stringent definition of advanced secondary treatment were selected, some direct dischargers would be faced with additional controls for conventional pollutants based on BCT. The POTW benchmarks based on other alternatives are presented in the Record.

B. Industry Cost Test

For the second test, EPA uses an industry cost benchmark that compares the cost per pound of removing conventional pollutants beyond secondary treatment to the cost per pound in reaching secondary treatment. The changes that would affect this calculation are the same as those affecting the first test plus one additional change: The starting point for calculating the cost per pound in reaching secondary treatment is raw wasteload instead of primary treatment. A similar change would be made for industry calculations; that is, each industry's ratio for this cost test would compare the cost per pound of removing pollutants beyond BPT to the cost per pound of reaching BPT from their raw wasteload. The following paragraphs in this section outline the calculations for the industry cost test, based on the above discussion.

For each flow size, we calculate the following ratio: incremental dollars per pound for upgrading secondary treatment to advanced secondary treatment divided by the dollars per pound to achieve secondary treatment from raw wasteload. The first value in this ratio is the incremental cost per pound for upgrading secondary treatment to advanced secondary treatment. The calculations for this incremental cost are described above for the first test (the POTW benchmark), and a summary of those calculations for each flow size is shown in Table 7.

The second value in the ratio is the cost per pound to achieve secondary treatment from raw wasteload. As part of the new cost data, we have estimates of the costs to achieve secondary treatment, and these costs (originally shown in Table 4) are repeated in the second column of Table 9.

TABLE 9.—INCREMENTAL ANNUAL COST PER POUND OF REMOVAL: RAW WASTELOAD TO SECONDARY TREATMENT

Flow size (mgd)	Incremental annual cost ($ 1976, in millions)	Incremental annual removal (million pounds)	Dollar per pound removed (1976 dollars)
0.052	0.041	0.062	.66
0.38	.157	.456	.34
3.3	1.35	3.96	.34
25	5.53	30.0	.18
140	20.55	168	.12

The incremental pollutant removals are again calculated by multiplying the POTW flow by the difference in pollutant concentrations. The influent concentration for raw waste at the model plants is estimated to be 210 mg/l BOD and 210 mg/l TSS. The "1980 Needs Survey" reports influent BOD and TSS concentrations of 205 and 230 mg/l, respectively. Another Agency study ("Fate of Priority Pollutants in Publicly Owned Treatment Works," EPA 440/1–82–303, September 1982) reports concentrations of 218 and 201 mg/l for BOD and TSS, respectively. The influent concentrations we are using here (210 and 210 mg/l) are based on the Agency's interpretation of these data, and these concentrations are annual averages. Thus, the change in concentration from raw wasteload to secondary treatment is from 210 to 12.99 mg/l for BOD and from 210 to 12.78 mg/l for TSS. Thus, the total change in concentration for both pollutants for the increment of raw waste to secondary treatment is 394.23 mg/l. This change in concentration is multiplied by flow to calculate the number of pounds removed by secondary treatment. These results are shown in the third column of Table 9. The dollar per pound values for each size are then calculated by dividing the incremental cost by the incremental removal. The results are shown in the final column of Table 9.

The remaining industry cost benchmark calculations are summarized in Table 10. For each flow size, the cost per pound for the increment of secondary treatment to advanced secondary treatment is divided by the cost per pound for the increment of raw waste to secondary treatment. Those cost ratios are multiplied by the weighting factors for each size, and the total of the weighted ratios is the industry cost benchmark. The result, if we change the methodology as described, would be a benchmark of 3.81. If the analogous ratio for an industry subcategory is lower than 3.81, it would pass the second test.

TABLE 10.—SUMMARY OF INDUSTRY COST BENCHMARK CALCULATIONS

Flow (mgd)	Incremental cost per pound (1976 dollars)		Cost ratio	Weighting factor	Weighted ratio
	Raw waste-load to secondary treatment	Secondary treatment to advanced secondary treatment			
0.052	0.665	0	0	0.0075	0
.36	.345	0	0	.0777	0
3.3	.340	1.10	3.23	.2567	0.83
25	.184	.728	3.95	.2700	1.07
140	.122	.601	4.92	.3880	1.91
Total					3.81

The final industry cost benchmark, like the POTW benchmark, will be selected by the Agency based on a consideration of the possible changes to the methodology and the public comments we receive in response to the notice. It is possible, by using some of the alternatives, that the industry cost benchmark will be higher than that shown in this notice. If the final methodology contains a higher industry cost benchmark, then it is also possible that more industry subcategories will pass the BCT cost test and have BCT effluent limitations more stringent than BPT.

V. Results of Industry Comparisons

A. Status and Background

As stated in Section I, this notice presents the results of the two BCT cost tests for some secondary industries and for two primary industries: Pharmaceutical Manufacturing and Pulp, Paper, and Paperboard. The results in this section are based on the methodology and benchmark calculations described in earlier sections of this notice. Different decisions on the methodological issues discussed in this notice would lead to different benchmarks and hence, different effects on industries.

B. Secondary Industries

One major purpose of the October 1982 proposal was to review BAT limitations that had been established for the secondary industries. Some subcategories were excluded from the proposal because the Agency rejected the candidate BCT technologies due to technical or economic impact considerations. The subcategories that were excluded from analysis in 1982 proposal for those reasons are also excluded here. The reader is referred to that notice for further discussion. The results of the current analysis appear in Table 11. The calculations for each industry subcategory (i.e., the industry values that are compared to the benchmarks) are included in the Record. Table 11 is a summary of whether the industry calculations exceed the benchmarks.

TABLE 11.—SECONDARY INDUSTRY RESULTS FOR BCT EFFLUENT LIMITATION GUIDELINES

Industry subcategory	Sizes (if any)	BCT limitations	
		Equal to BPT	Equal to BAT
GRAIN MILLS—PART 406			
Corn dry milling	S,L	X	
Bulgar wheat		X	
Parboiled rice		X	
Ready-to-eat ceral	S,M,L	X	
Wheat starch and gluten		X	
CANNED AND PRESERVED FRUITS AND VEGETABLES—PART 407			
Apple juice	S,L	X	
Apple products	S,L	X	
Citrus products	S,L	X	
Frozen potato products	S,L	X	
Dehydrated potato products	S,L	X	
Canned and preserved fruits		X	
Canned and preserved vegetables		X	
Canned and miscellaneous specialities		X	
CANNED AND PRESERVED SEAFOOD PROCESSING—PART 408			
Farm-raised catfish	S,M,L	X	
West coast hand-butchered salmon	S,L	X	
Pacific coast hand-shucked oyster			X
Atlantic and Gulf Coast hand-shucked oyster			X
Nonalaskan scallop			X
Abalone processing			X
SUGAR PROCESSING—PART 409			
Bet sugar		X	
Crystalline cane sugar	S,L	X	
Liquid cane sugar		X	
CEMENT MANUFACTURING PART—411			
Leaching		X	
PHOSPHATE MANUFACTURING—PART 422			
Sodium phosphates	XS,S,M,L		
FERROALLOY MANUFACTURING—PART 424			
Open electric furnaces, wet		X	
Covered electric furnaces and other smelting operations		X	
Slag processing			X
Covered calcium carbide furnaces, wet		X	
Electrolytic manganese		X	
Electrolytic chromium		X	
GLASS MANUFACTURING—PART 426			
Plate glass		X	
Float glass		X	
Automotive glass tempering		X	
Automotive glass laminating		X	
Glass container manufacturing		X	
Glass tubing (Danner) manufacturing		X	
Television picture tube		X	
Incandescent lamp		X	
MEAT PRODUCTS—PART 432			
Small processor			X
Renders			X

As noted in Section II, the BCT test is performed for secondary industries by comparing the appropriate benchmarks to the costs and removals associated with the previous BAT limitations. If the BAT level of control passes the BCT test, then BCT is set equal to BAT. If the BAT level fails, then BCT is set equal to BPT. For many of the secondary industry subcategories, the effluent data is limited to 30-day maximum concentrations; long-term average concentrations are not available. In those cases, the appropriate POTW benchmarks are the second tier benchmarks, which are based on 30-day maximum concentrations. Thus, the comparisons of industry calculations to benchmarks are made of a consistent basis. The second tier POTW benchmark, in 1976 dollars, is $0.34 per pound, and the second tier industry cost benchmark is 1.67.

The results indicate that establishing BCT limitations at the BAT level of control would be reasonable for eight subcategories; that is, eight subcategories pass both BCT tests. The Agency estimates that total annual costs for compliance would be $5 million (1982 dollars). In the October 1982 proposal, the Agency determined that the same eight subcategories would have BCT limitations established at the BAT level of control.

C. Primary Industries

Table 12 presents the results of the BCT cost tests for the Pulp, Paper, and Paperboard industry and for the Pharmaceutical Manufacturing industry. EPA proposed BCT limitations for the Pharmaceutical Manufacturing industry in a separate notice on November 26, 1982 (47 FR 53584). Then, in a Notice of Availability on March 9, 1984, EPA announced its intention to revise the proposed BCT limitations (49 FR 8967). The cost data and industry calculations that underlie the results for Pharamaceutical Manufacturing in Table 12 may not necessarily reflect all of the comments the Agency has received in response to the Notice of Availability. Similarly, the cost data used for the Pulp, Paper, and Paperboard industry are not final and may also be revised. The results in Table 12, therefore, are preliminary and may change when the Agency completes its analysis of compliance costs for those industries in response to prior comments. The results are also dependent on the final choice of methodology.

TABLE 12.—PRIMARY INDUSTRY RESULTS FOR BCT EFFLUENT LIMITATION GUIDELINES

Industry subcategory	BCT test	
	Pass (technology option)	Fail
PULP, PAPER AND PAPERBOARD—PART 430		
Unbleached Kraft	X (1)	
Paperboard from wastepaper		X
Dissolving Kraft		X
Market bleached Kraft	X (1)	
BCT bleached Kraft		X
Fine bleached Kraft		X
Papergrade sulfite (blow pit wash)	X (1)	
Dissolving sulfite pulp		X
Groundwood—TMP	X (1)	
Groundwood—CMN paper		X
Groundwood—Fine papers		X
Soda		X
Deink	X (1)	
Nonintegrated—Fine papers	X (1)	
Nonintegrated—Tissue papers	X (1)	
Tissue from wastepaper	X (1, 4*)	
Papergrade sulfite (drum pit wash)	X (1)	
Unbleached Kraft and semichemical	X (1)	
Semichemical		X
Wastepaper—Molded products		X
Nonintegrated—Filter and nonwoven papers		X
Nonintegrated—Lightweight paper		X
Nonintegrated—Paperboard		X
PHARMACEUTICALS MANUFACTURING—PART 439		
Fermentation	X (1, 2*)	
Extraction		X
Chemical synthesis	X (1, 2*)	
Mixing/compounding formulation		X

Note: Where more than one BCT technology option passes the BCT test, an asterisk (*) indicates the option EPA plans to select. See text.

The most stringent technology option that passes the BCT test provides the basis for setting BCT limitations. Where more than one technology option passes for a subcategory, an asterisk in Table 12 denotes the most stringent option. If all technology options fail the BCT test, then BCT limitations for that subcategory will be set equal to BPT.

If the BCT methodology is revised as indicated in previous sections, the results for the primary industries indicate that ten subcategories of Pulp, Paper, and Paperboard industry pass both BCT tests; hence, BCT limitations for those subcategories would be more stringent than BPT. The Agency estimates that total annual costs for these subcategories would be $80 million (1982 dollars). In the October 1982 proposal, four subcategories were designated for BCT limitations more stringent than BPT.

BCT limitations more stringent than BPT would also be reasonable for two subcategories in the Pharmaceutical Manufacturing industry. Total annual costs for the Pharmaceutical Manufacturing industry would be estimated to be $7 million (1982 dollars).

VI. Request for Comments

EPA invites public participation in response to this Notice of Data Availability. Additional information on the new data and the alternatives considered is available in the Record. EPA has compiled some of the supporting reports and analysis in a document, "Selected Background Documents for the Notice of Data Availability for BCT Methodology." The Agency alerts the public to the availability of this information, which may be obtained by calling or writing to Ms. Dena Caldwell, Environmental Protection Agency (WH-586), 401 M Street, SW., Washington, D.C. 20460, (202) 382-5397. The Agency is particularly interested in receiving comments on the following issues.

1. The BCT methodology involves a chain of numerous steps. In this notice we discuss each of the steps in the methodology, the changes we are considering making to those steps, and our reasons for making those changes. The results of the methodology are highly sensitive to decisions on the individual steps. Some decisions, in fact, could result in substantially different benchmarks requiring different levels of control than would the benchmarks presented in this notice. The Agency solicits comment on the appropriateness of the results that flow from the changes we are considering. In particular, we solicit comment on the level of the benchmarks.

2. POTW costs are based on design estimates for model plants instead of the empirical data used at proposal. The Agency solicits comment on the development of the model plants and the underlying technical assumptions for secondary treatment and advanced secondary treatment.

3. The Agency is considering a variety of statistical approaches for using the model plant cost estimates. The results in this notice are based on using the mean cost for each performance level. The Agency solicits comments on this choice of approach.

4. The Agency is considering using long-term average effluent levels instead of 30-day maximum effluent levels for calculating the benchmarks. For this notice, we use an extensive data base of POTW performance data to determine the long-term averages for secondary treatment and advanced secondary treatment. We solicit comment on the editing criteria used to define secondary treatment and advanced secondary treatment plants. We are also interested in supplemental information to EPA's data base or alternative sources of data for determining long-term POTW performance for both secondary treatment and advanced secondary treatment plants.

Alternative data bases must demonstrate that the plants are representative. Further, the data base must contain daily or monthly performance data for at least one year for both BOD and TSS, and it must specify the design effluent levels for BOD and TSS. While not essential, the following information would be helpful: description of treatment technology, influent characteristics, permit limitations for BOD and TSS, design capacity, and actual flow. If commenters wish to provide data that can be used to supplement EPA's data base, the same data requirements apply. We wish to emphasize the need for the data to be representative of secondary or advanced secondary treatment.

5. The Agency is considering defining advanced secondary treatment with 30-day maximum effluent limitations of 20 mg/l BOD and 20 mg/l TSS. These concentrations are the most representative of the values specified in permits of advanced secondary treatment facilities. The agency Invites comment on the use of this performance level for advanced secondary treatment.

Dated: August 29, 1984.

Henry L. Longest II,

Acting Assistant Administrator, Office of Water.

[FR Doc. 24037 Filed 9-19-84; 8:45 am]

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
Vol. 49, No. 185
Friday, September 21, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment revises and updates Civil Service regulations on the Prevailing Rate Systems to implement existing law and to make the regulations more clear and up to date. These revisions add a new section on payment of premium pay for Federal Wage System (FWS) employees working flexible and compressed work schedules (5 U.S.C. 8331(13) and 8332(b)(5)); clarify creditable service entitlements; and clarify environmental differentials and their relationship to basic pay. These changes either implement new law or are editorial in nature; they do not involve any policy changes.

EFFECTIVE DATE: October 22, 1985.

FOR FURTHER INFORMATION CONTACT: Richard W. Newbold, (202) 632-7830.

SUPPLEMENTARY INFORMATION: At 49 FR 602 dated January 5, 1984, the Office of Personnel Management proposed this regulation, with a 60-day comment period. This regulation revises and updates the basic provisions of the Prevailing Rate Systems under sections 5343 and 5346 of title 5, United States Code, as amended by Pub. L. 92-392, August 19, 1972. Responses were received from two labor organizations and one agency—no additions, deletions, or changes were recommended.

Executive Order 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are editorial changes that will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

PART 532—PREVAILING RATE SYSTEMS

Accordingly, OPM amends Part 532 of Title 5 of the Code of Federal Regulations as follows:

1. Section 532.417 is amended by revising paragraphs (c)(4) and (c)(6) and adding (c)(9) to read as follows:

§ 532.417 Within-grade increases.

* * * * *

(c) * * *

(4) A period of military service when:

(i) An employee is on leave of absence to perform such service and returns to pay status through the exercise of a restoration right provided by law, Executive order, or regulation; or

(ii) A former employee is reemployed with the Federal Service not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year. Military service means honorable active service in the Armed Forces, in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the Environmental Science Services Administration after June 30, 1961, but does not include service in the National Guard, except when ordered to active duty in the service of the United States.

* * * * *

(6) Time during which an employee is performing service, which is creditable under section 8332(b) (5) or (7) of title, 5, United States Code;

* * * * *

(9) Time during which an employee is temporarily employed by another agency in a position covered by this subpart.

2. In § 532.511, paragraph (c) is revised to read as follows:

§ 532.511 Environmental differentials.

* * * * *

(c) *Basic pay.* Environmental differential pay is part of basic pay and shall be used to compute premium pay (pay for overtime, holiday, or Sunday work) from which retirement deductions are made and group life insurance is based. It is not part of basic pay for purposes of lump-sum annual leave payments and severance pay nor is its loss an adverse action.

3. Section 532.513 is added to Part 532 to read as follows:

§ 532.513 Flexible and compressed work schedules.

Federal Wage System employees, other than Nonappropriated Fund employees of the Armed Forces as defined in 5 U.S.C. 2105(c), who are authorized to work flexible and compressed work schedules under sections 6122 and 6127 of 5 U.S.C. shall be paid premium pay in accordance with the provisions of subchapter II of chapter 61 of title 5, United States Code. Subpart D of Part 610 of this title supplements that subchapter and must be read with it.

(5 U.S.C. 5343)

[FR Doc. 84-25170 Filed 9-20-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Definitions

Correction

In FR Doc. 84-24225 beginning on page 36067 in the issue of Friday, September 14, 1984, make the following corrections:

§ 800.0 [Corrected]

1. On page 36068, third column, "of" should read "or" in the third line of

§ 800.0(b)(5), and in the fourth line of § 800.0(b)(7).

2. On page 36071, first column, in the fourth line of § 800.0(b)(83), "889" should read "88".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 482]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 230,598 cartons during the period September 23–29, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 23, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on September 18, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.782 is added as follows:

§ 910.782 Lemon Regulation 482.

The quantity of lemons grown in California and Arizona which may be handled during the period September 23, 1984, through September 29, 1984, is established at 230,598 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: September 19, 1984.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–25258 Filed 9–20–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 371

[Docket Nos. RM80–36–001; RM80–36–002; and RM80–36–003]

Generic Determination of Rate of Return on Common Equity for Electric Utilities

Issued: September 17, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Rehearing for Purposes of Further Consideration.

SUMMARY: On July 18, 1984, the Federal Energy Regulatory Commission (Commission) issued Order No. 389, a final rule that added a new Part 37 to establish procedures for determining benchmark rates of return on common equity for jurisdictional electric utilities and for applying them in individual cases.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Fred A. Wolgel, Office of the General Counsel, Rulemaking and Legislative Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20428, 357–8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On July 18, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule on the generic determination of rate of return on common equity for electric utilities. 49 FR 29946 (July 25, 1984) (Order No. 389, Docket No. RM80–36–000). This rule established procedures for determining benchmark rates of return on common equity for jurisdictional electric utilities and for applying them in individual cases.

The Commission has received three timely petitions for rehearing on this final rule.[1] To have sufficient time to consider the issues in these petitions, the Commission will grant rehearing of the final rule solely for the purpose of such further consideration. This action does not constitute a grant or denial of any petition on its merits, either in whole or part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to these petitions will be entertained by the Commission because this Order does not grant rehearing on any substantive issue.

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[1] The petitions are: (1) Petition for Rehearing by Allegheny Electric Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Oglethorpe Power Corporation, Old Dominion Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., South Mississippi Electric Power Association, Southern Maryland Electric Cooperative, Inc., and Wolverine Electric Cooperative (Docket No. RM80–36–001); (2) Application of the Edison Electric Institute for Rehearing of Order No. 389 (Docket No. RM80–36–002); and (3) Motion to Intervene Out of Time and Petition for Rehearing of the Attorney General of the State of Rhode Island (Docket No. RM80–36–003).

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84-25029 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 84-195]

Change in the Customs Service Field Organization; Philadelphia Consolidation

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule and solicitation of comments.

SUMMARY: This document amends the Customs Regulations to change the Customs Service field organization by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry into a single port of entry with headquarters in Philadelphia. The consolidated port area includes the geographical territory of the existing three ports and the geographical limits of the City of Salem, New Jersey. Because Salem was not part of the original proposal and thus, the public was unable to comment upon this aspect, comments are invited regarding Salem's inclusion within the consolidated port area of Philadelphia.

EFFECTIVE DATES: The consolidation will be effective October 22, 1984. However, comments regarding the inclusion of Salem New Jersey, within the consolidated port area of Philadelphia, Pennsylvania, will be received on or before November 20, 1984

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8157).

Background

SUPPLEMENTARY INFORMATION: As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a notice of proposed rulemaking in the **Federal Register** on August 5, 1983 (48 FR 35666), proposing to amend § 101.3(b), Customs Regulations (19 CFR 101.3(b)), by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry into a single port of entry with headquarters in Philadelphia. The consolidated port area would have included the geographical territory of the existing three ports.

One particular benefit for Customs is that reimbursable travel expenses would be reduced 75–80 percent while the Customs response time would be decreased. Vessel entry activities would be reduced substantially for both vessel agents and the shipping industry. Vessel entrance and clearance would be facilitated for both vessel agents and their accounts at reduced costs.

Five comments were received in response to the proposal. Four commenters objected to any reduction in service at Chester. However, there will be no reduction in service. Customs service will continue to be provided at Chester, as appropriate, after the consolidation. The fifth comment was from the Bureau of the Census, regarding the possible loss of individual port vessel statistics after the consolidation. Census and Customs personnel will resolve this issue.

These amendments differ slightly from the notice proposing the change in that the geographical limits of the consolidated port area of Philadelphia have been extended to include Salem, New Jersey. Because Salem was not part of the original proposal, and thus, the public was unable to comment upon this aspect, comments are invited regarding Salem's inclusion within the consolidated port area of Philadelphia. If any changes are required after analysis of any comments received, another document will be published in the **Federal Register**. Thus, this document amends § 101.3(b), Customs Regulations (19 CFR 101.3(b)), to change the Customs field organization by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry and the geographical territory of Salem, New Jersey, into a single port of entry with headquarters in Philadelphia.

Changes in the Customs Service Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449), the geographical limits of the consolidated port of Philadelphia, Pennsylvania, are as follows:

The ports of Philadelphia, Pennsylvania (comprising the territory within the corporate limits of Philadelphia, Pennsylvania, Camden, Gloucester City, and Salem, New Jersey, the territory within the limits of the Boroughs of Brooklawn, National Park, and Paulsboro, and the Townships of West Deptford and Greenwich, all in New Jersey, the Borough of Folcroft and the Townships of Darby and Tinicum, all in Pennsylvania, and the territory between the Delaware River and U.S. Highway No. 13, in Bucks County, Pennsylvania, from the corporate limits of Philadelphia to and including Morrisville, Pennsylvania, and the territory between the Delaware River and U.S. Highway No. 130 and U.S. Highway No. 206, in Camden, Burlington, and Mercer Counties, New Jersey, from the corporate limits of Camden, New Jersey, to and including Trenton, New Jersey), Chester, Pennsylvania (comprising the territory within the corporate limits of Chester, Pennsylvania, the territory within the limits of the Boroughs of Marcus Hook, Trainer, Upland, Parkside, Eddystone, and the Townships of Lower Chichester and Ridley, all in Pennsylvania, and the territory extending along the Pennsylvania side of the Delaware River from Darby Creek to the Delaware State line, a distance of approximately 10 miles), and Wilmington, Delaware (comprising the territory within the corporate limits of Wilmington, Delaware, the territory within the limits of New Castle, Newport, and Claymont, Delaware, and the territory within the limits of Carneys Point and Deep Water Point, New Jersey, and the territory lying between U.S. Highway No. 13 and the Delaware River, from the corporate limits of Wilmington to the Chesapeake and Delaware Canal, Delaware).

Comments

While adopting these amendments, consideration will be given to any written comments timely submitted to the Commissioner of Customs relating specifically to the inclusion of Salem, New Jersery, within the consolidated port area of Philadelphia. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229. If any changes are required after analysis of any comments received regarding the inclusion of Salem, New Jersey, within the Philadelphia port consolidation, another document will be published in the Federal Register.

Executive Order 12291

Because these amendments relate to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to that Executive Order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final requlatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Philadelphia and Chester, Pennsylvania; Wilmington, Delaware; and Salem, New Jersey; areas, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Lists of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

§ 101.3 [Amended]

To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), in the Philadelphia, Pennsylvania, Customs district of the Northeast Region, is amended in the following manner:

1. By removing the words "PHILADELPHIA, PA., including Camden and Gloucester City, N.J., and territory described in E.O. 7840, Mar. 15, 1938; 3 FR 687; T.D. 53738 and T.D. 54303," under the column headed "Ports of entry" and inserting, in their place, the words "PHILADELPHIA—CHESTER, PA. AND WILMINGTON, DEL., including Camden, Gloucester City, and Salem, N.J., and territory described in T.D. 84-   ".

2. By removing the words "Chester, Pa. (E.O. 7706, Sept. 11, 1937; 2 FR 1848).".

3. By removing the words "Wilmington, Del., including territory described in T.D. 54202 (E.O. 4496, Aug. 12, 1926).".

William van Raab,
Commissioner of Customs.

Approved: September 7, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-25112 Filed 9-20-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 446 and 546

[Docket No. 83N-0285]

Antibiotic Drugs; Updating and Technical Changes; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended that antibiotic drug regulations by making corrections, updatings, and minor noncontroversial technical changes in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human and veterinary drugs. This document corrects several sections in which certain sentences were inadvertently omitted from the text.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-30122 appearing on page 51292 in the issue of Tuesday, November 8, 1983, the following corrections are made.

1. On page 51293 in the second column:

§ 446.167 [Corrected]

a. In § 446.167 *Oxytetracycline hydrochloride capsules,* paragraph (b)(3) is corrected by adding a sentence at the end of the paragraph to read as follows: "The quantity *Q* (the amount of oxytetracycline dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes."

§ 446.181d [Corrected]

b. In § 446.181d *Tetracycline hydrochloride tablets,* paragraph (b)(3) is corrected by adding a sentence at the end of the paragraph to read as follows: "The quantity *Q* (the amount of tetracycline hydrochloride dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes."

§ 446.181e [Corrected]

c. In § 446.181e *Tetracycline hydrochloride capsules,* paragraph (b)(4) is corrected by adding two sentences at the end of the paragraph to read as follows: "The quantity *Q* (the amount of tetracycline hydrochloride dissolved), except for the 500-milligram capsule, is 60 percent within 30 minutes and 85 percent within 60 minutes. For the 500-milligram capsule, the quantity *Q* is 50 percent within 30 minutes, 70 percent within 60 minutes, and 85 percent within 90 minutes."

§ 546.110d [Corrected]

2. On page 51294 in the first column, in § 546.110d *Chlortetracycline hydrochloride tablets,* paragraph (b)(4) is corrected by adding a sentence at the end of the paragraph to read as follows: "The quantity *Q* (the amount of tetracycline hydrochloride dissolved) is 60 percent within 30 minutes and 85 percent within 60 minutes."

Dated: September 17, 1984.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25103 Filed 9-20-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Dexamethasone Acetate, Nitrofurathiazide, Griseofulvin, Undecylenic Acid and Tetracaine Hydrochloride Otic Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that section which reflects approval of a new animal drug application (NADA) held by Schering Corp. providing for topical use of a prescription otic suspension containing dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, and tetracaine

hydrochloride for treating cats for otitis externa. In a notice published elsewhere in this issue of the **Federal Register**, FDA if withdrawing approval of this NADA.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Schering's NADA 12-890 for Fulvidex* Otic Suspension. This document removes the regulation that reflects approval of this NADA.

List of Subjects in 21 CFR Part 524

Animal drugs, topical.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.541 [Removed]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), Part 524 is amended by removing § 524.541 *Dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, tetracaine hydrochloride otic suspension.*

Effective date: October 1, 1984.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: September 14, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–25101 Filed 9–20–84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 555

Chloramphenicol Drugs for Animal Use; Chloramphenicol Oral Solution; Removal of Regulation

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing that portion of the animal drug regulations which reflects approval of the new animal drug application (NADA) providing for prescription use of chloramphenicol oral solution in dogs for treatment of infections of the respiratory and urinary tract, and enteritis and tonsillitis caused by susceptible organisms. The sponsor International Multifoods Corp., requested withdrawal of approval.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of International Multifoods' NADA 55-003 for Tevcocin* (chloramphenicol) Oral Solution for prescription use in dogs. The sponsor voluntarily requested withdrawal of approval because the product is no longer being marketed. This document amends the animal drug regulations to remove that portion of 21 CFR 555.110c reflecting approval of the NADA.

List of Subjects in 21 CFR Part 555

Animal drugs, Antibiotics, chloramphenicol.

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

§ 555.110c [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), Part 555 is amended in § 555.110c *Chloramphenicol oral solution* in paragraph (c)(2)(i) by removing the sponsor number "012518".

Effective date: October 1, 1984.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: September 14, 1984.

Lester M. Crawford, ,

Director, Center for Veterinary Medicine.

[FR Doc. 84–25099 Filed 9–20–84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1304

Records and Reports of Registrants; Changes in Registrant Requirements

AGENCY: Department of Justice, Drug Enforcement Administration.

ACTION: Final rule.

SUMMARY: This is a Final Rule issued by the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration amending 21 CFR 1304.38(a) to include reporting requirements for categories of drugs which are listed in Schedules III and IV of the Psychotropic Convention of 1971, and Schedule IV of the Single Convention on Narcotic Drugs of 1961. An amendment to 1304.39(b) to simplify and reduce the current reporting system and the removal of reporting under 1304.40.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Alfred A. Russell, Chief, Regulatory Support Section, Office of Diversion Controls, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, (202-633-1570).

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** on November 8, 1983 (48 FR 51329), proposing rulemaking to include reporting requirements for categories of drugs which are listed in Schedules III and IV of the Psychotropic Convention of 1971 and Schedule IV of the Single Convention on Narcotic Drugs of 1961, simplifying the current reporting system, discontinuing a portion of the reporting burden and providing an opportunity for any interested party to submit comments or objections in writing regarding the proposal on or before January 9, 1984.

One comment in response to the proposal was received from Hoffman-La Roche, Inc., Nutley, New Jersey. Hoffman-La Roche was concerned that the proposal was not consistent with the changes in the reporting requirements included in the ARCOS Reporting Manual (October, 1982) and that the Psychotropic Convention requires only yearly reports where the proposal sets quarterly reports. Based upon those comments, Hoffman-La Roche proposed that the rule should be more specific and the information should be collected on a yearly basis.

It appears that Hoffman-La Roche misunderstood the proposal. The amendments are consistent with the existing regulations which set the general reporting requirements with the specific reporting instructions set forth in the ARCOS Reporting Manual. Due to the complexities of the reporting system, the detailed reporting instructions cannot be set forth in the regulations; the regulations merely set the overall requirements. These amendments, though more generally stated, are consistent with the ARCOS Reporting Manual.

The yearly reporting to the International Narcotics Control Board is required under the Psychotropic Convention; however, yearly submissions have always been required under the Single Convention on Narcotic Drugs. The quarterly reporting set forth in the proposed rule is to ensure that the voluminous information can be collected, collated, input into the computer system, quality controlled and analyzed in a timely manner for submission to the international bodies each year. This activity could not be performed in a timely manner if reported only on a yearly basis. In addition, yearly reporting for only a portion of the information would be inconsistent with the quarterly reporting on the remaining information and would result in confusion for the reporting industry.

List of Subjects in 21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

No further comments nor objections were received, nor were there any requests for a hearing, and in view thereof, under the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control, the Deputy Assistant Administrator hereby orders that Part 1304 of Title 21, Code of Federal Regulations be amended as follows:

1. Section 1304.38 is amended by revising the introductory text of the section and paragraph (a), and adding the OMB control number to the end of this section to read as follows:

§ 1304.38 Reports from manufacturers of bulk materials or dosage units.

Each person who is registered to manufacture controlled substances in bulk or dosage form shall report as follows:

(a) *Substance covered.* Reports shall include data on each controlled substance listed in Schedules I and II, on each narcotic controlled substance listed in Schedules III, IV and V, and on each psychotropic controlled substance listed in Schedules III and IV as identified below:

Schedule III

(1) Benzphetamine;
(2) Cyclobarbital;
(3) Glutethimide;
(4) Methylprylon; and
(5) Phendimetrazine.

Schedule IV

(1) Barbital;
(2) Diethylproprion (Amfepramone);
(3) Ethchlorvynol;
(4) Ethinamate;
(5) Lefetamine (SPA);
(6) Mazindol;
(7) Meprobamate;
(8) Methylphenobarbital;
(9) Phenobarbital;
(10) Phentermine; and
(11) Pipradrol.

Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

* * * * *

(Approved by the Office of Management and Budget under OMB Control No. 1117–0003)

2. Section 1304.39 is amended by revising paragraph (b) and adding the OMB control number to read as follows:

§ 1304.39 Reports from packagers and labelers.

* * * * *

(b) *Transactions reported.* Reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, return from a customer, or supply by the Federal Government and each reduction from inventory (identifying whether it is, e.g., by sale or transfer, sampling, theft, destruction, or seizure by Government agencies). These reports shall be filed every month not later than the 15th day of the month succeeding the month for which it is submitted; except that a registrant may be given permission to file more frequently or less frequently (but not less than quarterly), depending on the number of transactions being reported each time by that registrant.

* * * * *

(Approved by the Office of Management and Budget under OMB Control No. 1117–0003)

§ 1304.40 [Removed]

§§ 1304.41 and 1304.42 [Redesignated §§ 1304.40 and 1304.41]

3. Section 1304.40, Reports from importers and exporters is hereby removed and existing §§ 1304.41 and 1304.42 are hereby redesignated §§ 1304.40 and 1304.41, respectively.

The Deputy Assistant Administrator hereby certifies that this final rule will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This action effects an overall reduction in registrant reporting requirements.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of the Executive Order 12291, this action has been submitted for review by the Office of Management and Budget, and approval of that Office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

Dated: August 27, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84–24925 Filed 9–20–84; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

26 CFR Part 601

[T.D. ATF–184]

Statement of Procedural Rules

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule reflects a functional shift within ATF for responsibility for and management of seized personal property and forfeiture regulations from ATF's regional administrative offices to its Headquarters' Office of Law Enforcement.

EFFECTIVE DATE: This final rule is effective on September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7123).

SUPPLEMENTARY INFORMATION: In order to provide maximum efficiency in the processing of seized property, responsibility for the seized property and forfeiture functions has been centralized in AFT Bureau Headquarters' Office of Law Enforcement. Therefore, the regional administrative officer, who previously managed this function, no longer has this authority. The authority for administering this regulation now resides with the Director of ATF or his delegate in ATF Headquarters' Office of Law Enforcement, under a Treasury memorandum dated September 16, 1983.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C 553 or any other law.

Executive Order 12291

Because this document relates to agency organization and management, it is not subject to the requirements of Executive Order 12291 pursuant to section 1(a)(3) thereof.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Notice and Public Participation

This final notice is promulgated without notice and public procedure, as required by 5 U.S.C. 553(b), because it is a rule of procedure.

Drafting Information

The principal author of this document is Gayle P. Miller of the Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Authority delegations, Seizures and forfeitures, Surety bonds.

Authority

This regulation is issued under the authority contained in 5 U.S.C. 301, 552. Accordingly, Title 26, Code of Federal Regulations, is amended as follows:

PART 601—STATEMENT OF PROCEDURAL RULES

§ 601.327 [Amended]

1. Section 601.327(c) is amended by deleting the term "regional administrative officer" and substituting therefore "the Director or his delegate."

Signed: August 17, 1984.

Robert J. Maxwell,

Acting Director.

Approved: September 7, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 84–25040 Filed 9–20–84; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 72

[T.D. ATF–183]

Disposition of Seized Personal Property

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule reflects a functional shift within ATF for responsibility for and management of seized personal property regulations from ATF's regional administrative offices to its Headquarters' Office of Law Enforcement.

EFFECTIVE DATE: This final rule is effective on September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7123).

SUPPLEMENTARY INFORMATION: In order to provide maximum efficiency in the processing of seized property, responsibility for the seized property function has been centralized in ATF Bureau Headquarters' Office of Law Enforecement. Therefore, the regional officials entitled regional regulatory administrator and regional administrative officer, who previously managed this function, no longer have this authority. Further, the regional director position has been abolished due to a Bureau reorganization. The authority for administering these regulations now resides with the Director of ATF or his delegate in ATF Headquarters' Office of Law Enforcement, under a Treasury memorandum dated September 16, 1983.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

Because this document relates to agency organization and management, it is not subject to the requirements of Executive Order 12291 pursuant to section 1(a)(3) thereof.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Notice and Public Participation

This final notice is promulgated without notice and public procedure, as required by 5 U.S.C. 553(b), because it is a rule of procedure.

Drafting Information

The principal author of this document is Gayle P. Miller of the planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 72

Administrative practice and procedure, Authority delegations, Seizures and forfeitures, Surety bonds.

Authority

These regulations are issued under the authority contained in 18 U.S.C. 921, 18 U.S.C. 1261, 26 U.S.C. 7805, 49 U.S.C. 786. Accordingly, Title 27, Code of Federal Regulations, is amended as follows:

PART 72—DISPOSITION OF SEIZED PERSONAL PROPERTY

§ 72.11 [Amended]

1. Section 72.11 is amended by deleting the definitions of the regional administrative officer and the regional regulatory administrator.

§§ 72.22, 72.23, 72.26, 72.36, 72.40, and 72.63 [Amended]

2. Sections 72.22(a)(3), 72.23, 72.28, 72.36, 72.40(b), and 72.63(c)(2) are amended by deleting the term "regional director" and substituting therefor "the Director or his delegate."

§§ 72.22, 72.23, 72.26, 72.39, 72.40, 72.61, 72.65, and 72.68 [Amended]

3. Sections 72.22(a) (5) and (6), 72.23, 72.26, 72.39 (a) (3) and (b), 72.40(b), 72.61, 72.65, and 72.68 are amended by deleting the term "regional administrative officer" and substituting therefor "the Director or his delegate."

§ 72.22 [Amended]

4. Section 72.22(b) is amended by deleting the term "Regional Counsel" and substituting therefor the "Chief Counsel or his delegate."

Signed: August 17, 1984.

Robert J. Maxwell,

Acting Director.

Approved: September 7, 1984.

John M. Walker Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-25048 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Notice of Suspension of Current Rulemaking and Extension of Deadline for Submission of Program Amendments to the Texas Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to suspend current rulemaking and extend the deadline for Texas to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On March 1, 1984, Texas submitted to OSM an amendment to its approved regulatory program which was intended to implement the Federal requirements for a blaster training, examination and certification program. In its subsequent review of the proposed amendment, OSM identified several deficiencies and pointed these out to the State. On June 25, 1984, OSM received a letter from Texas which requested a six-month extension of the deadline for submission of a blaster program in order that Texas might adequately address and respond to the issues raised by OSM. Texas requested a six-month extension in order to prepare documentation on the issues raised by OSM and to prepare any necessary revisions to the program. Texas also requested suspension of the current rulemaking on this subject. On August 2, 1984, OSM published in the **Federal Register** (49 FR 30972) a proposed suspension of rulemaking and extension of deadline for program amendment. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State a six-month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581-7658.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Texas' program, the applicable date was 12 months after the publication date of OSM's rule, or March 4, 1984.

On March 1, 1984, Texas submitted an amendment to its approved program which was intended to implement the Federal requirements for a blaster training, examination and certification program. OSM published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49 FR 10943). In its subsequent review of the proposed amendment, OSM identified several deficiencies and pointed these out to the State.

On June 25, 1984, Texas advised OSM that it would require a six-month extension of the deadline for resubmission of a blaster program in order that Texas might adequately address and respond to the issues raised by OSM. Texas requested the six-month extension in order to prepare documentation on the issues raised by OSM and to prepare any necessary revisions and additions to the program. Texas also requested suspension of the current rulemaking on this subject.

In the August 2, 1984 **Federal Register** (49 FR 30972), OSM sought comment on suspension of the current rulemaking and a six-month extension for Texas to resubmit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending September 5, 1984. No comments were submitted to OSM during the comment period.

Section 850.12(b) of the Federal regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Director's Determination

In accordance with the State's request, the Director has decided to suspend the current rulemaking and extend the deadline for Texas to submit a proposed blaster training program until March 21, 1985 to resubmit rules governing a blaster certification and training program consistent with Federal requirements.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority.—Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.)*.

Dated: September 18, 1984.

John D. Ward

Acting Director, Office of Surface Mining.

PART 943—TEXAS

30 CFR Part 943 is amended by adding a new section 943.16 to read as follows:

§ 943.16 Required program amendments.

Pursuant to 30 CFR 732.17, Texas is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By March 21, 1985, Texas shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84-25114 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Notice of Extension of Deadline for Submission of Program Amendments to the Wyoming Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Wyoming to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. Wyoming requested a six month extension of time until October 14, 1984, for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program within twelve months after program approval or within twelve months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State a six-month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328-5830.

SUPPLEMENTARY INFORMATION:

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Wyoming, the applicable date is 12 months after publication of the Federal rules, or April 14, 1984.

Wyoming advised OSM that it would be unable to meet the April 14, 1984 deadline and requested an additional six months to develop and adopt a blaster certification program.

The Wyoming Department of Environmental Quality, Land Quality Division, the regulatory authority for Wyoming's program submitted to OSM a request for a six month extension until October 14, 1984, to submit final rules addressing the blaster certification program. Additional time was needed in order to develop the blaster certification program in conjunction with the Office of the Wyoming Mine Inspector and Western Wyoming College and to execute a "Memorandum of Understanding" with both parties.

In the August 2, 1984 **Federal Register** (49 FR 30973), OSM proposed an extension until October 14, 1984 for Wyoming to submit to OSM final rules addressing the blaster certification program. Public comment on this proposal was sought for 30 days ending September 4, 1984. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for Wyoming to submit a proposed blaster certification program until October 14, 1984. This extension will allow the Wyoming Department of Environmental Quality, Land Quality Division, to develop, in conjunction with the Office of the Wyoming Mine Inspector and Western Wyoming College, an adequate blaster training and certification program.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority.—Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: September 18, 1984.

John D. Ward,

Acting Director, Office of Surface Mining.

PART 950—WYOMING

30 CFR Part 950 is amended by adding a new section 950.16 to read as follows:

§ 950.16 Required program amendments.

Pursuant to 30 CFR 732.17, Wyoming is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By October 14, 1984 Wyoming shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84-25115 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2675-6]

Prevention of Significant Deterioration (PSD) of Air Quality; Supplemental Delegation of Authority to North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: On September 16, 1976, the State of North Carolina requested partial delegation of the Prevention of Significant Air Quality Deterioration (PSD) program from EPA. On November 24, 1976, EPA granted such delegation to the State. A review of the above request for partial delegation, EPA's granting of delegation, and EPA's February 23, 1982, approval of North Carolina's PSD regulation (2D .0530) at 47 FR 7836, has led us to the conclusion that further delegation of EPA's PSD authority should be delegated to the State. This notice addresses delegation of EPA's authority to issue modifications to Federally issued PSD permits. By letter dated June 8, 1984, the State of North Carolina was delegated authority to modify Federally issued PSD permits in the State.

EFFECTIVE DATE: This supplemental delegation of authority to North Carolina was effective on June 8, 1984.

ADDRESSES: Copies of the requests for the delegation of authority and EPA's letters of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All requests for modifications to Federally issued PSD permits in the State of North Carolina should be submitted to: Mr. Fin Johnson, Chief, Air Quality Section, Division of Environmental Management, North Carlina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

SUPPLEMENTARY INFORMATION: On September 16, 1976, the State of North Carolina requested partial delegation of the Prevention of Significant Air Quality Deterioration (PSD) program from EPA. On November 24, 1976, EPA granted such delegation to the State. On February 23, 1982, EPA approved North Carolina's PSD regulation, 2D .0530, at 47 FR 7836. Our review of the aforementioned has led us to the conclusion that further delegation of part of EPA's PSD authority should be made to the State. This notice addresses delegation of EPA's authority to issue modifications to Federally issued PSD permits.

In the State of North Carolina's original request for PSD authority, they asked that a condition be included to make it clear that PSD permits issued by EPA to sources in North Carolina would continue to rest within the authority of EPA.

In EPA's November 26, 1976, response, the Agency reserved "authority under 40 CFR 52.21(e)(1)(v) (1977) to take final action on an application," i.e., to issue the permit. (Since there are no different formal procedures for issuing modifications to PSD permits set forth in the PSD regulations, EPA looks generally to the procedures for original issuance in modifying permits.)

Furthermore, EPA's November 1976 delegation reserved "its authority to take enforcement action under 40 CFR 52.21(e)(2) (1977)," in a related response to North Carolina's September 1976 concerns, and EPA also reserved ultimate authority "on any matter involving interpretation of 40 CFR 52.01 and 52.21 . . ."

The North Carolina PSD regulation (2D .5530) which EPA approved on February 23, 1982, at 47 FR 7836, is silent on the issue of authority to modify EPA-issued permits and the notice itself implies that the State's PSD permitting authority under that regulation is *prospective only:* EPA's approval of these regulations means that the State of North Carolina will *now* have authority to issue PSD permits to sources *locating* in the State." (Emphasis added.)

Significantly, even this authority is not completely transferred to the State since, as the notice explains, under certain contingencies having to do with the State's 90-day processing requirements, the authority to issue (or modify) PSD permits in the State—even to modify those the State originally issued—will revert to EPA.

On February 7, 1984 the State of North Carolina submitted a preliminary determination and proposed to approve a modification to a Federally issued PSD permit (PSD-NC-056) for the Diamond Shamrock Corporation located in Castle Hayne, North Carolina. Since the original partial delegation of authority and subsequent adoption of PSD regulations as part of the State Implementation Plan (SIP) were silent on the issue of whether the State has legal authority to modify Federally issued permits, EPA concluded that the State should be the lead agency for issuing modifications to Federally issued PSD permits.

By letter dated June 8, 1984, EPA notified the State of North Carolina of its decision to delegate authority to the State to modify Federally issued PSD permits within the State, subject to the limitations set forth immediately herein above.

This supplemental delegation was effective immediately and there was no requirement that the State notify EPA of its acceptance. The June 1984 letter indicated that unless EPA received from the State written notice of objections within ten (10) days of the date of receipt of that letter, the State would be deemed to have accepted all terms of the delegation. No objections were received by EPA from the State.

The Office of Management and Budget has exempted this delegation from the requirements of Section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, and 7601).

Dated: September 12, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 84-24930 Filed 9-20-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[Docket No. ACB-NY 8401; A-2-FRL-2675-7]

Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to the State of New York

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS). On March 8, 1984, in accordance with the agreement set out in EPA's previous delegation letter of July 14, 1983 (48 FR 46535, October 13,

1983). EPA informed the State of New York of those additions, changes and revisions which had occurred since the last delegation (from June 10, 1984 through January 31, 1984) and offered delegation of those additions, changes and revisions which EPA determined the State of New York had the authority to implement and enforce. On May 29, 1984, the State of New York accepted delegation of the new NSPS subparts and the revisions to the previously delegated NSPS and NESHAPS standards which EPA offered in its March 8, 1984 letter. The State of New York now has authority to implement and enforce these standards. Applications, reports and other submittals required under these regulations should now be sent to the State's Department of Environmental Conservation.

EFFECTIVE DATE: June 6, 1984.

ADDRESSES: Applications, reports and other submittals required under those NSPS and NESHAPS categories for which the State of New York has delegation should be addressed to the appropriate regional office of the New York State Department of Environmental Conservation or the central office at 50 Wolf Road, Albany, New York 12233, Attention: Division of Air, Bureau of Source Control.

FOR FURTHER INFORMATION CONTACT: F. W. Giaccone, Chief, Air Compliance Branch, EPA Region II, telephone (212) 264-9627 or FTS 264-9627.

SUPPLEMENTARY INFORMATION: On July 10, 1983 EPA and the New York State Department of Environmental Conservation (DEC) entered into a delegation agreement whereby, among other things, EPA would offer, every six months, delegation of those new categories of NSPS and NESHAPS standards that were promulgated by EPA during that six month period and that EPA found DEC had the authority to implement and enforce. Additionally, by this July 10, 1983 delegation agreement, EPA was to inform DEC of any changes or revisions to previously delegated NSPS or NESHAPS categories. Subsequently, DEC would accept delegation of these changes and revisions if DEC did not decline such delegation.

On March 8, 1984, EPA informed DEC of the new NSPS categories and those changes to previously delegated NSPS and NESHAPS categories.

On April 18, 1984 and again on May 29, 1984, the DEC responded to EPA's offer of delegation of the new NSPS Subparts RR, WW, and XX and the previously undelegated NSPS Subparts D and GG by accepting delegation of these NSPS Subparts. DEC also accepted delegation of all changes and revisions to the previously delegated NSPS and NESHAPS categories. DEC now has the authority to implement and enforce all NSPS and NESHAPS standards promulgated prior to February 1, 1984 except the following:

NSPS

40 CFR Part 60 Subpart Da
40 CFR Part 60 Subpart VV

NESHAPS

40 CFR Part 61 Subpart M 145, 146, 147, 150 & 152

Effective immediately, all applications, reports, correspondence and other submittals required under the categories of NSPS and NESHAPS delegated to the State of New York should be sent to the address listed above.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: August 28, 1984.

Richard T. Dowling,
Acting Regional Administrator.

[FR Doc. 84-24931 Filed 9-20-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 147

[WH-FRL-2567-6]

North Dakota Department of Health; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule; Approval of State Program.

SUMMARY: The State of North Dakota has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, III, IV, and V injection wells. After careful review of the application and comments received from the public, the Agency has determined that the State's program to regulate Classes I, III, IV, and V injection wells meets the requirements of section 1422 of the Act. Therefore, this application is approved.

EFFECTIVE DATE: This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on October 5, 1984, and shall become effective on that date.

FOR FURTHER INFORMATION CONTACT: Patrick A. Crotty, Chief, Ground Water Section, Drinking Water Branch, Water Management Division, U.S. Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. PH (303) 837-2731. Copies of the responsiveness summary of the public hearing are available from the above address.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of North Dakota was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under section 1422 on November 12, 1982, for the approval of a UIC program governing Classes I, III, IV, and V injection wells. The program would be administered by the North Dakota Department of Health (NDDH). On December 23, 1982, EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the North Dakota UIC program submitted by the (47 FR 57302). A public hearing was held on January 25, 1983, in Bismark, North Dakota.

After careful review of this application, I have determined that the North Dakota UIC program submitted by the NDDH to regulate Classes I, III, IV, and V injection wells meets the requirements of section 1422 of the SDWA, and hereby approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of North Dakota.

This approval will be codified in 40 CFR Part 147.1751. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

In this application, North Dakota chooses not to assert jurisdiction over Indian lands or reservations for purposes of its UIC program. Therefore, the EPA will, at a future date, prescribe a UIC program governing injection wells on any Indian lands or reservations.

Since this approval, in large part, simply ratifies State regulations and requirements already in effect under State law, EPA is publishing this approval effective immediately. This will enable North Dakota to begin immediately issuing UIC permits for Classes I, III, IV, and V injection wells under the Federally approved program. Currently there are 2 Class I wells, 4 Class III wells, and approximately 96 Class V wells in the State.

List of Subjects in 40 CFR Part 147

Indians—lands, Water Supply, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Incorporation by reference.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1422 of the Safe Drinking Water Act of the application by the North Dakota Department of Health will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: September 5, 1984.

William D. Ruckelshaus,
Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart JJ—North Dakota

Amend 40 CFR Part 147 by revising § 147.1751 and by adding and reserving § 147.1752 as follows:

§ 147.1751 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Department of Health, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on September 21, 1984; the effective date of this program is October 5, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Dakota. This incorporation by reference was approved by the Director of the Federal Register effective October 5, 1984.

(1) North Dakota Century Code Sections 38–12–01, 38–12–03 (1980);

(2) North Dakota Century Code Sections 61–28–02, 61–28–06 (Supp. 1981);

(3) North Dakota Administrative Code Sections 33–25–01–01 through 33–25–01–18 (North Dakota State Health Department Underground Control Program) (1983);

(4) North Dakota Administrative Code Sections 43–02–02–01, 43–02–02–12, 43–02–02–16 through 43–02–02–26, 43–02–02–29, 43–02–02–31, 43–02–02–35 (North Dakota Geological Survey Subsurface Mineral Exploration and Development) (1978);

(5) North Dakota Administrative Code Sections 43–02–02–1–01 through 43–02–02–1–18 (North Dakota Geological Survey—Undergound Injection Control Program) (1984);

(b) *Other Laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) North Dakota Environmental Law Enforcement Act of 1975, North Dakota Century Code Sections 32–40–01 to 32–40–11 (1976);

(2) North Dakota Century Code, Ch. 38–12 (Regulation, Development, and Production of Subsurface Minerals) (1979);

(3) North Dakota Century Code Ch. 61–28 (Control, Prevention, and Abatement of Pollution of Surface Waters) (1981);

(4) North Dakota Administrative Code Article 33–22 (Practice and Procedure) (1983).

(c) The Memorandum of Agreement between EPA Region VIII and the North Dakota Department of Health, signed by the EPA Regional Administrator on May 18, 1984.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

§ 147.1752 EPA-administered program—Indian lands. [Reserved]

(42 U.S.C 300, Safe Drinking Water Act, Sec. 1422)

[FR Doc. 84–23929 Filed 9–20–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SWH-FRL-2676-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today granting final exclusions for the solid wastes generated at three particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "site-specific basis" from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous waste under 40 CFR Part 261.

EFFECTIVE DATE: September 21, 1984.

ADDRESS: The public docket for these final exclusions is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington D.C. 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free (800) 424–9346 or at (202) 382–3000. For technical information contact Mr. Myles Morse, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M

Street, SW., Washington, D.C. 20460. (202) 475-8551.

SUPPLEMENTARY INFORMATION: On March 9, 1984, EPA proposed to exclude specific wastes generated by: (1) Union Carbide Corporation, located in Taft, Louisiana; (2) Kay-Fries, Inc., located in Stoney Point, New York; and (3) the Metropolitan Sewer District of Greater Cincinnati (MSD), located in Cincinnati, Ohio from the lists of hazardous wastes (see 49 FR 8962). This action was taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their waste from hazardous waste control. In their petitions, these companies have argued that the waste, for which the exclusion was requested, was nonhazardous based on the criteria for which the waste was listed.

The purpose of today's action is to make final that proposal and to make the exclusions effective immediately. More specifically, today's rule allows these facilities to manage the waste, for which an exclusion was requested, as a non-hazardous waste, in accordance with any conditions of the exclusion. These exclusions remain in effect unless: (1) They are granted for a one-time disposal of a specific volume of waste or (2) the waste varies from that originally described in the petition (*i.e.* the waste is altered as a result of changes in manufacturing or treatment process).[1] In addition, generators still are obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

The final exclusions granted here therefore apply only when the waste is under Federal jurisdiction. In unauthorized States, these wastes are excluded from Federal control. In authorized States, however, only the State can decide whether to exclude a hazardous waste from the State RCRA program. State control of these wastes thus is not nullified by the granting of a Federal exclusion. Petitioners are urged to contact their State regulatory authority for the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Union Carbide Corp., Taft, Louisiana
Kay-Fries, Inc., Stoney Point, New York
Metropolitan Sewer District of Greater Cincinnati, Cincinnati, Ohio

I. Union Carbide Corporation

A. Proposed Exclusion

Union Carbide Corporation (UCC) has petitioned the Agency to exclude approximately 11,000 cubic yards of acrolein-contaminated soil at its facility in Taft, Louisiana from EPA Hazardous Waste No. P003. The contaminated soil was generated as a result of a storage tank rupture and subsequent fire at UCC's facility.

At the time of the initial petition (March 1983), UCC identified two areas of contamination. One area was found to contain acrolein levels far in excess of 20 ppm. A second, outlying area exhibited acrolein levels below 20 ppm and is proposed to be left in place. UCC proposed to treat the area of higher concentration (approximately 6,000 cubic yards of soil) by mixing the soil with lime and aerating it in six inch layers; this treatment, UCC argued, would decrease acrolein levels below 9 ppm. (This treatment already has been completed under an emergency permit issued by EPA Region VI.) The remaining 5,000 cubic yards of soil was claimed by UCC to contain only non-hazardous levels of acrolein (*i.e.,* less than 20 ppm) and would continue to degrade naturally in the environment. (This degradation has occurred, according to tests submitted by the petitioner, and the concentration of acrolein in this area also is less than 9 ppm.)

In support of their petition, UCC submitted information demonstrating that their contaminated soil is not acutely hazardous, that the degradation rate of acrolein in lime-treated soil is rapid (*i.e.,* the treatment employed by UCC would destroy the contaminant of concern), and that human exposure to acrolein from these wastes would be extremely low based on a modeling effort, using reasonable worst case assumptions, that calculated the fate and transport of acrolein to surface water (via filtration and stormwater runoff), to ground water (via infiltration), and to air (via long and short-term wind dispersion). In addition, UCC submitted representative field sampling data indicating that the acrolein already had degraded to very low levels. (Although not required, UCC also submitted data demonstrating that this soil does not contain other toxic components.) See 49 FR 8963–8964 (March 9, 1984), for a more detailed explanation of why EPA proposed to grant UCC's petition.

B. Agency Response to Comments

Two comments were received regarding Union Carbide's proposed exclusion. One commenter expressed concern that the initial concentration of acrolein in the soil at the site had not been reported and without this data an optimal cleanup strategy could not be determined.

It should be noted that the concentration of acrolein in the lime-treated soil and had been reported by the petitioner from non-detectable (less than 1 ppm) to 9 ppm, while untreated soil contained acrolein concentrations as high as 1000 ppm. The Agency is concerned about the effectiveness of different clean-up strategies; however, this evaluation was not considered as part of the delisting decision. Rather, the cleanup strategy was evaluated by the EPA Regional Office before issuance of the emergency treatment permit.[2]

The delisting petition was evaluated on the merits of whether the residue that resulted from treatment remains hazardous. Based on the data submitted in the petition, the Agency believes that UCC has demonstrated that the waste is non-hazardous.

The other commenter expressed concern over insufficient explanation of the treatment process, lack of pilot scale verification, and the need for additional sampling to assure that there was less than 9 ppm of acrolein in the soil.

The Agency believes that a more detailed description of the treatment process is not necessary since the treatment process simply involves excavation of the contaminated soil, mixing with lime, and respreading the mixture in 6 inch layers. UCC, however, did investigate the effect of several bases, soil moisture, and field application method on the polymerization rate of acrolein.[3] The results of this investigation indicated that the proposed treatment method was very effective at removing acrolein from soil. Again, the actual treatment of the contaminated soil was regulated by the conditions of the emergency treatment permit rather than the delisting decision. The treatment method and known half-life of acrolein under alkaline conditions along with sampling data in Union Carbide's petition, however, support the claim that acrolein is rapidly degraded. Therefore, the Agency believes that the description of the process and field verification data submitted by Union Carbide are reasonable and representative and feels that additional explanation and demonstration are not necessary.

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[1] The current exclusion only applies to the process covered by the original demonstration. A facility may file a new petition if it alters its process; however, the facility must treat its waste as hazardous until a new exclusion is granted.

[2] A long evaluation process of different treatment methods was not practical. Since base-catalyzed polimerization of acrolein is rapid and effective at removing acrolein, the Region issued UCC the emergency treatment permit using that method.

[3] This information was submitted as Confidential Business Information (CBI) by Union Carbide.

With respect to additional sampling, the Agency believes that the sampling plan used by UCC was more than adequate. An imaginary grid was used as prescribed by *Test Methods for Evaluating Solid Waste (SW-846)*, to collect in excess of 100 non-biased samples. UCC sampled the damage area completely, that is, rather than collecting from random sampling points from the grid, all intersecting grid points were sampled. After treatment these samples showed such extremely low variability that the Agency is able to characterize the acrolein level in the contaminated soil as less than 2 ppm, with a ninety-five percent degree of confidence.

C. Final Agency Decision

Based on the low concentrations of acrolein in these soils (*i.e.*, less than 9 ppm in both areas),[4] the low likelihood of human exposure to acrolein in these wastes using a reasonable worst case disposal scenario,[5] and the relatively short half-life of acrolein (less than 22 days), the Agency is granting a final exclusion from EPA Hazardous Waste No. P003 to Union Carbide for approximately 11,000 cubic yards of contaminated soil from both areas, as described in their petition.

II. Kay-Fries, Inc.

A. Proposed Exclusion

Kay-Fries has petitioned the Agency to exclude its filter press sludge and its biological aeration sludge (presently contained in its holding lagoon) from EPA Hazardous Waste Nos.: F003 and F005 based on their non-ignitability and on the low concentration of the listed solvents in these wastes.[6] All solvents used in Kay-Fries' process are recovered actively within the process, with the exception of methanol, thus allowing only minor volumes of the solvents to enter the wastewater treatment system. In addition, it is claimed that all these solvents are easily degraded in the biological aeration lagoon used by Kay-Fries. (See 49 FR 8964–8965, March 9, 1984 for a more detailed explanation of why EPA proposed to grant Kay-Fries' petition.)

B. Agency Response to Public Comments

There were no comments on the proposed exclusion of these wastes.

C. Final Agency Decision

Kay-Fries' claim were substantiated. First, representative samples of these wastes tested for ignitability demonstrated that the wastes exhibited no flash point. Secondly, analyses of filter press samples and the lagoon sludge indicated maximum toluene concentrations of 0.1 ppm and 0.149 ppm, respectively. These levels are far below that which would be considered significant.[7] (See 49 FR 8964.) (Kay-Fries also submitted data on the other non-listed hazardous constituents which reasonably may be expected to be present in the waste. This data indicated that no other hazardous constituents were present in these wastes at concentrations of regulatory concern.)

Based on the non-ignitability of the waste and the low levels of toluene in the wastes, the Agency is granting a final exclusion to Kay-Fries, Inc. for its biological aeration lagoon sludge (contained in their holding lagoon) and its filter press sludge from EPA Hazardous Waste Nos. F003 and F005 at its Stoney Point, New York facility. This exclusion remains in effect as long as Kay-Fries does not alter the processes which generate the waste.

III. Metroplitan Sewer District of Greater Cincinnati

A. Proposed Exclusion

The Cincinnati Metropolitan Sewer District (MSD) has petitioned the Agency to exclude (on a one-time basis) sluiced bottom ash contained in two on-site lagoons. MSD burns hazardous wastes F001, F002, F003, F004, and F005 along with sewage sludge.[8] The mixed ash is slurried with wastewater from the municipal wastewater treatment plant and pumped to the lagoons for de-watering. MSD has requested delisting for the contents of both lagoons, which together contain approximately 50,000 cubic yards of ash.

MSD claims that the ash in these lagoons is non-hazardous due to the destruction of the hazardous constituents during combustion. MSD further claims that 99.75 percent of the incinerated waste which produces this ash is municipal waste, while only 0.25 percent of the incinerated waste is inductrial waste (of which a smaller percentage are the listed hazardous wastes). MSD also provided data which indicates non-detectable concentrations of the listed solvents, except for methylene chloride; methylene chloride levels ranged from non-detectable to 1.9 ppm in the ash (See 49 FR 8965). (MSD also submitted data on the other listed hazardous constituents which reasonably may be expected to be present in the waste. This data indicated that the waste contained in the South Lagoon contains certain polynuclear aromatic compounds (PNAs) which may be of environmental concern.) See 49 FR 8965–8966 (March 9, 1984), for a more detailed explanation of why EPA proposed to grant MSD's petition.

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[4] The Agency has evaluated the chronic toxicity of acrolein and has established an Acceptable Daily Intake for humans of 1.1 mg/day. (See Summary of Current Acceptable Daily Intakes (ADI's) for oral exposure, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, Cincinnati, Ohio, November 29, 1983). If all the acrolein in the soil migrates at the same time (a worst case assumption) the maximum concentration of acrolein in the leachate will be about 18 mg/l, assuming a maximum soil concentration of 9 mg/kg and a soil pore volume of 50%. Attenuation and dilution are expected to reduce the concentration of acrolein in the leachate by at least one to two orders of magnitude, *i.e.*, to less than 1.8 mg/l. Furthermore, acrolein is expected to hydrolize in water; thus, reducing even further the concentration expected in the drinking water, to less than the ADI. The Agency, therefore, considers the maximum levels of acrolein in the soil, 9 mg/kg, relatively low.

[5] The model used by UCC, although site-specific, is consistent with other models (*i.e.*, Darcy's Law for ground and surface water and a Gaussian Distribution Model for air) developed by the Agency for similar evaluations. As part of the Agency's evaluation, since site-specific factors cannot be considered, various generalized worst case parameters were substituted into the models to determine whether there was any potential for acrolein to reach levels of concern. The Agency used much lower dilution factors (10% of what was claimed by UCC), assumed no degradation of acrolein during transport, and used higher soil permeabilities (10 × higher than values measured at the site). By using non-site-specific worst case values, the agency determined that the concentration of acrolein in the ground and surface waters and the air at the site still would be less than any health based standard.

[6] In particular, the two sludges Kay-Fries requested be excluded contained the following solvents: F003-ethyl acetate, methyl isobutyl ketone, and methanol; and F005-toluene. Both sludges contain the F003 and F005 wastes. Toluene is the only solvent in the F005 listing, used by Kay-fries. Its concentration in the waste is primarily of concern due to toxicity. The other solvents used are listed only because of their ignitability.

[7] The Agency has established an Ambient Water Quality Criteria for toluene of 14.3 mg/l (See Ambient Water Quality Criteria for Toluene, EPA 440/5–80–075, October 1980). If all of the toluene in the waste migrates at the same time (a worst case assumption), the maximum concentration of toluene in the leachate will be about 0.4 mg/l, assuming a maximum waste concentration of 0.2 mg/kg and an average waste pore volume of 50%. Since the maximum leachate concentration is well below the water quality criteria the Agency feels the level of toluene in these wastes are relatively low.

[8] In particular, MSD has requested exclusion of the sluiced ash which contains all the solvents listed in F001, F002, F003, and F005 in the two impoundments.

B. Agency Response to Public Comments

One commenter raised serious concerns over the presence of the PNAs in MSD's waste in the South Lagoon and the potential harm the waste may present to human health and the environment because of their known or suspected carcinogenicity. In addition, the commenter was concerned that the Agency had not yet performed the necessary studies to determine whether the PNAs should be added as a basis for listing the waste.

The Agency believes that the concentration of known or suspected carcinogenic PNAs in the sluiced ash contained in the North Lagoon are not of regulatory concern since only very low levels of the PNAs were found in the waste (see Agency Decision below). The Agency has not determined yet, however, whether the level of PNAs found in the waste of the South Lagoon are of environmental concern. Therefore, the Agency shares the commenter's concern and is defering any action until those PNA levels (*i.e.*, chrysene 17.5 ppm, benzo(a)pyrene 16.66 ppm, etc.) can be further evaluated. At this time, the Agency has not completed its investigation to determine whether these toxicants should be included as a basis for listing. We expect, however, to make this determination over the next several months. At that time, we will decide whether to modify the listing; until this decision is made, however, we believe it inappropriate to exclude the waste from regulatory control.

C. Final Agency Decision

The Agency believes that MSD has demonstrated successfully that the sluiced bottom ash contained in the North Lagoon is non-hazardous due to very low levels of the listed solvents. All of the analyses provided by MSD indicated non-detectable levels of solvents in the waste (except for methylene chloride); the maximum level of methylene chloride found in the waste (*i.e.*, less than 2.0 ppm) also is not considered significant.[9] The data submitted by MSD for the other hazardous constituents found in the waste also indicates that the ash is non-hazardous and, as such, the Agency believes should be excluded from hazardous waste control.[10]

Therefore, the Agency is granting a final exclusion to MSD for the waste contained in the North Lagoon (which contain EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005) at its Cincinnati, Ohio location.

The Agency also believes that the level of solvents found in the South Lagoon are not of regulatory concern. As discussed earlier, however, the Agency has concerns about the potentially toxic level of PNAs in the South Lagoon. Since the Agency is considering including these toxicants as a basis for listing this waste, the Agency is *not* making any final decision on the sluiced bottom ash contained in the South Lagoon. This analysis will include a review of available toxicity information, the determination of specific retardation factors for PNAs on soils and ash, and an evaluation of PNA concentrations in various types of incineration ash. The Agency is planning to complete this study in the fall and is, therefore, delaying its decision until this comprehensive analysis can be conducted. Therefore, the waste in the South Lagoon remains hazardous and must be managed in accordance with the Subtitle C hazardous waste regulations.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to the regulations take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient lead time to prepare to comply with major new regulatory requirements. Today's amendment, however, reduces, rather than increases, the existing requirements for persons generating hazardous waste. In addition, if the amendment promulgated today did not become effective for six months after promulgation there would be unnecessary disruption in the implementation of the regulation. In light of the hardship that would be imposed by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, EPA believes it appropriate to make this rule effective immediately. In addition, for the reasons stated above, EPA believes that under 5 U.S.C. 553(d) this rule may be made effective immediately.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

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[9] The Agency has evaluated the chronic toxicity of methylene chloride and has established an Acceptable Daily Intake for humans of 13 mg/day. (See Summary of Current Acceptable Daily Intakes (ADI's) for oral exposure, Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, Cincinnati, Ohio, November 29, 1983). If all of the methylene chloride in the waste migrates at the same time (a worst case assumption) the maximum concentration in the leachate will be about 4 mg/1, assuming a maximum concentration of 2 mg/kg in the waste and an average waste pore volume of 50%. Attenuation and dilution are further expected to reduce the concentration of methylene chloride by one to two orders of magnitude, *i.e.*, to less than 0.40 mg/1. Since this concentration is one order of magnitude less than the ADI, the Agency considers the maximum level of methylene chloride in the ash, 2 ppm, relatively low.

[10] The concentrations of PNAs in the waste in the North Lagoon ranged from non-detectable (*i.e.*, less than .01 ug/gm) to a maximum of 0.47 ug/gm (see 49 FR 8966, March 9, 1984). The Agency's Office of Health and Environmental Assessment (OHEA) Carcinogen Assessment Group (CAG) has evaluated 54 chemicals for their relative carcinogenic potencies (see Health Assessment Document for Ethylene Oxide, EPA 600/8–84–009A, April, 1984) and has determined that the slope of the dose response curve for Benzo(a)pyrene is 11.5 mg/kg/day. Since the risk of obtaining one additional cancer is equal to the product of the slope of the curve and the dose, there would be one additional cancer in a million at a dose of .006 ug/day for an average adult. It is also known, however, that PNAs are very insoluble in water, and are strongly absorbed on particulates, which renders them immobile. There retardation factors are usually estimated to be well in excess of 1000. (See the RCRA Risk Cost Analysis Model, March 1, 1984.) Therefore, assuming other PNAs behave similarly to benzo(a) pyrene, the Agency believes that these wastes, which contain less than 6 ug/gm of PNAs, are not of regulatory concern.

This regulation, therefore, does not require a regulatory flexibility analysis.

This action is exempt from review under Executive Order 12291.

VI. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: September 12, 1984.

Jack W. McGraw,

Acting Assistant Administrator.

PART 261—[AMENDED]

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

1. The authority citation for Part 261 read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912, 6921, and 6922].

2. Section 261.31 is amended by adding the following introductory text before the table to read as follows:

§ 261.31 Hazardous wastes from non-specific sources

The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix XI.

* * * * *

3. Section 261.32 is amended by adding the following introductory text before the table to read as follows:

§ 261.32 Hazardous wastes from specific sources

The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix IX.

* * * * *

4. Section 261.33 is amended by revising the introductory text to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix IX.

* * * * *

5. Appendix IX is added to Part 261 to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Kay-Fries, Inc.	Stoney Point, NY.	Biological aeration lagoon sludge and filter press sludge generated after September 21, 1984, which contain EPA Hazardous Waste Nos. F003 and F005 as well as that disposed of in a holding lagoon as of September 21, 1984.
Metropolitan Sewer District of Greater Cincinnati.	Cincinnati, OH	Sluiced bottom ash sludge (approximately 25,000 cubic yards), contained in the North Lagoon, on September 21, 1984, which contains EPA Hazardous Wastes Nos. F001, F002, F003, F004, and F005.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
(Reserved)		

TABLE 3.—WASTES EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
Union Carbide Corp.	Taft, LA	Contaminated soil (approximately 11,000 cubic yards), which contains acrolein in concentrations of less than 9 ppm.

[FR Doc. 84–24929 Filed 9–20–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[SWH–FRL–2646–2]

Amendment to National Oil and Hazardous Substance Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. This document amends the National Priorities List ("NPL"), which was promulgated as Appendix B of the NCP on September 8, 1983. CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The NPL constitutes this list and is being revised to meet those requirements.

DATES: The promulgation date for this amendment to the NCP shall be September 21, 1984. Under section 305 of CERCLA, amendments to the NCP cannot take effect until Congress has had at least 60 "calendar days of continuous session" from the date of promulgation in which to review the amended Plan. Since the actual length of this review period may be affected by Congressional action, it is not possible at this time to specify a date on which the NPL will become effective. Therefore, EPA will publish a **Federal Register** notice at the end of the review period announcing the effective date of this NPL. EPA notes, however, that the legal effect of a Congressional veto pursuant to section 305 has been placed in question by the recent decision, *Immigration and Naturalization Service* v. *Chadha*, 103 S. Ct. 2764 (1983). Nonetheless, the Agency has decided, as a matter of policy, to submit the NPL for Congressional review. If, however, public health or environmental concerns indicate the necessity for the Agency to initiate remedial action at any of the sites that have been placed on the NPL before the expiration of the time period specified in section 305, such actions will be taken.

ADDRESSES: The public docket for the NCP will contain Hazard Ranking System (HRS) score sheets for all sites on the NPL, as well as a "Documentation Record" for each site, describing the information used to compute the scores. The main docket is located in Room S325, Waterside Mall, 401 M Street, SW, Washington, DC 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for copies of these documents should be directed to EPA at the above address. The EPA Regional Offices maintain dockets concerning the sites located in their Regions. Addresses for the Regional Office dockets are:

Peg Nelson, Region I, U.S. EPA Library, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/223–5791;
Audrey Thomas, Region II, U.S. EPA Library, 26 Federal Plaza, 10th Floor, New York, NY 10278, 212/264–2881;
Diane McCreary, Region III, U.S. EPA Library, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, 215/597–0580;

Carolyn Mitchell, Region IV, U.S. EPA Library, 345 Courtland Street, NE, Atlanta, GA 30365, 404/881-4216;

Lou Tilly, Region V, U.S. EPA Library, 230 South Dearborn Street, Chicago, IL 60604, 312/353-2022;

Nita House, Region VI, U.S. EPA Library, First International Building, 1201 Elm Street, Dallas, TX 75270, 214/767-7341;

Connie McKenzie, Region VII, U.S. EPA Library, 324 East 11th Street, Kansas City, MO 64106, 816/374-3497;

Delores Eddy, Region VIII, U.S. EPA Library, 1860 Lincoln Street, Denver, CO 80295, 303/844-2560;

Jean Circiello, Region IX, U.S. EPA Library, 215 Freemont Street, San Francisco, CA 94105, 415/974-8076;

Julie Sears, Region X, U.S. EPA Library, 1200 6th Avenue, Seattle, WA 98101, 206/442-1289.

FOR FURTHER INFORMATION CONTACT: C. Scott Parrish, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548-E), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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II—Purpose of the NPL
III—Implementation
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VIII—Updates and Deletions
IX—Regulatory Impact Analysis
X—Regulatory Flexibility Act Analysis

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implemented responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP includes criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable at least 400 sites be designated individually on this National Priorities List (NPL). Section 105(8)(B) also requires that the list of priorities be revised at least annually. EPA has included on the NPL releases and threatened releases not only of designated hazardous substances, but of any "pollutant or contaminant" which presents an imminent and substantial danger to the public health or welfare. CERCLA requires that the NPL be included as part of the NCP. On September 8, 1983, EPA amended the NCP by adding the NPL, consisting of 406 sites, as Appendix B. On that same day, EPA proposed to amend Appendix B to add an additional 133 sites to the NPL. Of that number, four sites (San Gabriel Sites 1, 2, 3 and 4) have already been added to the NPL on May 8, 1984. Today, the Agency is revising Appendix B by adding 128 sites to the NPL. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

II. Purpose of the NPL

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d. Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site on the NPL is intended primarily to guide EPA in determining which sites warrant further investigation in order to assess the nature and extent of the public health and environmental risks associated with the site and to determine what response action, if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site.

In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. Neither can the HRS itself determine the appropriate remedy for a site. The information collected to develop HRS scores to choose sites for the NPL is not sufficient in itself to determine the appropriate remedy for a particular site. After a site has been included on the NPL, EPA generally will rely on further, more detailed studies conducted at the site to determine what response, if any, is appropriate. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies EPA may conclude that it is not desirable to conduct response action at some sites on the NPL because of more pressing needs at other sites. Given the limited resources available in the Hazardous Substance Response Fund established under CERCLA, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that no action is needed at a site because the site does not present a significant threat to public health, welfare or the environment.

III. Implementation

EPA's policy is to pursue cleanup of hazardous waste sites using all appropriate response and/or enforcement actions which are available to the Agency. Publication of sites on the NPL will serve as notice to any potentially responsible party that the Agency may initiate Fund-financed response action. The Agency will decide on a site-by-site basis whether to take enforcement action or to proceed directly with Fund-financed response actions and seek recovery of response costs after cleanup. To the extent feasible, once sites are listed on the NPL EPA will determine high priority candidates for Fund-financed response action and enforcement action through State or Federal initiative. The determinations will take into account which approach is more likely to accomplish cleanup of the site while using the Fund's limited resources as efficiently as possible.

In many situations, it is difficult to determine whether private party response through enforcement measures of Fund-financed response and cost recovery will be the more effective approach in securing site cleanup until studies have been completed indicating the extent of the problem and alternative response actions. Accordingly, the Agency plans to proceed with remedial investigations and feasibility studies at sites as quickly as possible. (See the NCP, 40 CFR 300.68, and the preamble, 47 FR 31180, July 16, 1982, for a more detailed discussion of remedial investigations and feasibility studies.)

Funding of response actions for sites will not necessarily take place in order of the sites' ranking on the NPL. EPA does intend in most cases to set priorities for remedial investigations and feasibility studies largely on the basis of relative position on the list and the States' priorities simply because at this early stage these may be the only sources of information regarding the risks presented by a site. Funding for the design and construction of remedial measures is less likely, however, to be done according to relative position on the list. State assurances that cost sharing and other State responsibilities will be met are prerequisites for construction of remedial measures. Taking those factors into account, EPA will base priorities for design and construction on impacts on public health and the environment, as indicated by the HRS scores and other available information, and on a case-by-case evaluation of economic, engineering, and environmental considerations.

Revisions to the NPL such as today's rulemaking will tend to result in moving some previously listed sites to a lower position on the NPL. If EPA has initiated remedial action such as a remedial investigation or feasibility study at a site, the Agency does not intend to cease such actions in order to determine whether a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding remedial actions once they have been initiated regardless of whether higher scoring sites are later added to the NPL.

The NPL does not determine priorities for removal actions; EPA may take removal actions at any site, whether listed or not, that meets the criteria of §§ 300.65–300.67 of the NCP. Likewise, EPA may take enforcement actions under applicable statutes against responsible parties regardless of whether the site is listed on the NPL, although the focus of EPA's enforcement actions will be on NPL sites.

IV. Process for Establishing the NPL

Section 105(8) of the CERCLA contemplates that the States will identify the majority of candidate sites for the NPL according to EPA criteria, although EPA also has independent authority to consider sites for listing. For that reason, most of the sites on the NPL were evaluated by the States in accordance with the HRS and submitted to EPA. In some cases, however, EPA Regional Offices, independent of these State efforts, scored other sites using the HRS. For all sites considered for this update of the NPL, including those scored by the States, EPA reviewed the HRS evaluations and conducted quality assurance audits. These audits are intended to ensure accuracy and consistency in HRS scoring among the various EPA and State offices.

On September 8, 1983, EPA proposed the first revision to the NPL in the **Federal Register** (48 FR 40674). Of the 133 sites proposed, 131 had received HRS scores of 28.50 or higher; one site was designated by the State as its top priority and, according to CERCLA, must be included among the top 100 sites; and one site was proposed for listing on the basis of a future NCP amendment which will delineate additional criteria for listing sites on the NPL. The cutoff score of 28.50 points was the same cutoff chosen for the initial NPL (see 47 FR 58476, December 30, 1982, and 48 FR 40658, September 8, 1983). The cutoff score was selected because it would yield an initial NPL of at least 400 sites as suggested by CERCLA, not because of any determination that sites scoring less than 28.50 did not present a significant risk to human health, welfare or the environment.

The public comment period on the proposed rule ended November 8, 1983. EPA considered all comments received by March 30, 1984. Based on the comments received on the September 8, 1983, proposed rule, as well as further investigation by EPA and the States, EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to public comments and explanations of any score changes made as a result of such comments, are addressed in the "Support Document for the Revised National Priorities List—1984." This document is available for review in the EPA dockets in Washington, DC and the Regional Offices.

One commenter disagreed with EPA's approach for selecting sites for the NPL update. The commenter was concerned over the lack of a permanent and consistent rationale for the NPL cutoff score of 28.50. The commenter said that the threshold should be based on risk, not on the need to include a specified number of sites. The commenter suggested that EPA should begin to address this issue for long-range planning purposes in its implementation of CERCLA. The commenter expressed concern that EPA and others may "erroneously assume there is an automatic need to continually replenish the list." The commenter said that if sites posing minimal or non-existent risks continue to be added to the NPL, the public could be misled about the nature of the risks, and unnecessary demands could be placed on public and private resources.

In response, EPA selected the 28.50 score for the initial NPL because it would yield a list of at least 400 sites as required in section 105(8)(B) of CERCLA. The decision to retain the 28.50 cutoff score for the first update was based on the absence of any scientific evidence of an alternative HRS threshold score. EPA has not made a determination that sites scoring less than 28.50 do not present a significant risk to human health, welfare, or the environment.

The HRS was designed to use information such as that collected during a site inspection in order to allow EPA to include sites which have not been extensively investigated. As stated in the Preamble to the NCP (47 FR 31188), the requirements of section 105(8)(A) of CERCLA to list national priorities would not be met if EPA waited until extensive information has been generated for all releases. Consequently, the HRS does not measure absolute risks associated with a site. EPA believes that such a risk assessment would require significantly greater time and funds than are presently required for placing a site on the NPL. The HRS does distinguish relative risks among sites and does identify sites that appear to present a significant risk to public health, welfare, or the environment.

A much more detailed investigation is conducted following a site's listing on the NPL. Decisions on the type and extent of actions to be taken at these sites are made in accordance with the criteria contained in subpart F of the NCP. These more detailed studies would determine if sites posing minimal or nonexistent risks had been included on the NPL. In response to the commenter's concerns, EPA could conclude after further analysis that no action is needed at such a site because it does not present a significant threat to public health, welfare, or the environment.

EPA has initiated a preliminary study to characterize the potential threats from sites that score below the cutoff score of 28.50. Generally, these are sites that potentially affect fewer people, or where there is less opportunity for exposure. EPA has acknowledged that in limited circumstances it may be appropriate to consider other criteria than simply a sufficiently high HRS total score for purposes of listing sites on the NPL. These criteria, described in the Preamble to the first NPL update (48 FR 40676, September 8, 1983) were the basis for proposing the Quail Run Mobile Manor, Missouri site for inclusion on the NPL. Although the NCP does not currently include provisions to add sites on the basis of these criteria, EPA intends to modify the NCP in such a way that Quail Run and other similar sites will qualify for the NPL.

EPA considered several alternatives for adding sites to the NPL: (1) Maintaining the size of the list at approximately 400 sites by raising the threshold HRS score and removing lower-scoring sites from the list; (2) allowing the list to expand in a limited way by raising the threshold score but not removing lower-scoring sites from the list; and (3) maintaining the threshold score of 28.50 and allowing the size of the NPL to be determined by the number of sites exceeding the threshold score. EPA selected the third approach in order to be consistent at all sites and to give equal treatment to all interested parties. EPA's decision was not based on a need to replenish the list. The list is growing because EPA and the States continue to identify candidates as a result of their investigative programs.

Some commenters stated that certain specific sites not included in the September 8, 1983, proposed rule should be on the NPL. EPA and States are evaluating those sites and will propose any sites that meet EPA's criteria in future updates.

V. Contents of the NPL

As noted above, CERCLA requires that the NPL include, if practicable, at least 400 sites. The NPL amendment published today contains a total of 538 entries, including 128 new sites. Each entry contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. For informational purposes, each entry is accompanied by a notation on the current status of response and enforcement activities at the site. The definitions of the status codes are described more fully below.

The new sites added to the NPL are incorporated into the previously promulgated NPL in order of their HRS score (except where EPA modified the order to reflect top priorities designated by States, as discussed in the following paragraph). Those new sites are also listed separately in Table 2. The NPL is presented in groups of 50 sites to emphasize the fact that minor differences in HRS scores do not necessarily represent significantly different levels of risk. EPA considers the sites within a group to have approximately the same priority for response actions.

Section 105(8)(B) of CERCLA requires that, to the extent practicable, the NPL include within the 100 highest priorities at least one facility designated by each State as representing the greatest danger to public health, welfare, or the environment among known facilities in the State. The Agency did not require States to rely exclusively on the HRS in designating their top priority sites, and the HRS scores of some of these sites did not place them among the first 100. These lower-scoring State priority sites are listed at the bottom of the first 100 sites. All top priority sites designated by States are indicated by asterisks.

For informational purposes, the NPL includes several categories of notation reflecting the status of response and enforcement actions based on the Agency's most current information. Because a site's status may change periodically, these notations may become outdated. Site status will be noted in the following categories: Voluntary or Negotiated Response (V); Federal and State Response (R); Federal or State Enforcement (E); and Actions to be Determined (D). Each category is explained below.

Voluntary or Negotiated Response (V)

Sites are included in the Voluntary or Negotiated Response category if private parties are taking response actions pursuant to settlement agreements or consent orders to which EPA is a party. Voluntary or negotiated cleanup may also include actions taken pursuant to a consent decree reached after EPA has commenced an enforcement action. This category of response may include remedial investigations, feasibility studies, and other preliminary work, as well as actual cleanup.

Federal and State Response (R)

The Federal and State Response category includes sites at which EPA or State agencies have commenced or completed removal or remedial actions under CERCLA, including remedial investigations and feasibility studies (see NCP, § 300.68 (f)–(i), 47 FR 31217, July 16, 1982). For purposes of this classification, EPA considers the response action to have commenced when EPA has obligated funds. For some sites in this category EPA may follow remedial investigations and feasibility studies with enforcement actions, at which time the site status would change to "Federal or State Enforcement."

Federal or State Enforcement (E)

This category includes sites where the United States or the State has filed a civil complaint or issued an administrative order. It also includes sites at which a Federal or State court has mandated some form of non-consensual response action following a judicial proceeding. It does not, necessarily, include all sites at which preliminary enforcement activities are underway. A number of sites on the NPL are the subject of enforcement investigation or have been formally referred to the Department of Justice for enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, such sites are not included in the enforcement category.

Actions to be Determined (D)

This category includes all sites not listed in any other category. A wide range of activities may be in progress for such sites. The Agency may be considering whether to undertake response action, or may be conducting an enforcement investigation. EPA may have referred a case involving the site to the Department of Justice prior to formal commencement of enforcement action. Other examples of actions not covered in other categories include investigations to determine the source of a release in areas adjacent to or near a Federal facility or cleanup operations by responsible parties that are not covered by consent orders, consent decrees, or settlement agreements.

VI. Eligibility

CERCLA restricts EPA's authority to respond to the release of certain substances into the environment, and explicitly excludes some substances from the definition of release. In addition, as a matter of policy, EPA may choose not to respond to certain types of releases under CERCLA because existing regulatory or other authority under other Federal statutes provides for an appropriate response. Where such other authorities exist, and the Federal government can undertake or enforce cleanup pursuant to a particular established program, listing on the NPL to determine the priority or need for response under CERCLA may not be appropriate. EPA has therefore chosen not to consider certain types of sites for the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency will consider listing them on the NPL.

This section discusses the comments received on these categories of releases and the Agency's decisions with respect to including them on the NPL.

Releases of Radioactive Materials

Section 101(22) of CERCLA excludes several types of releases of radioactive materials from the statutory definition of "release." These releases are therefore not eligible for CERCLA response actions or inclusion on the NPL. The exclusions apply to the following: (1) Releases of source, by-product or special nuclear material from a nuclear incident if these releases are subject to financial protection requirements under section 170 of the Atomic Energy Act; and (2) any release of source, by-product, or special nuclear material from any processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Accordingly, such radioactive releases have not been considered eligible for the NPL. As a policy matter, EPA has also chosen not to list releases of source, by-product, or special nuclear material from any facility with a current license issued by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has full authority to require cleanup of releases from such facilities. Formerly licensed facilities whose licenses no longer are in effect will, however, be considered for listing.

Some commenters took issue with EPA's position on releases of radioactive materials in presenting the following arguments: (1) EPA should not include facilities on the NPL that hold a current license issued by a State pursuant to a delegation of authority from the NRC pursuant to section 274 of the Atomic Energy Act (42 U.S.C. 2021); (2) EPA should not include sites containing radioactive materials on the NPL because other Federal authorities, such as UMTRCA, provide adequate authority to control releases from such sites; and (3) HRS scores do not accurately reflect the real hazards presented by radioactive sites especially when the releases are within radiation limits established by NRC pursuant to the Atomic Energy Act. These comments reiterate points made when the first NPL was published. EPA's response (48 FR 30661, September 8, 1983) remains unchanged. Regarding the points that facilities regulated by States should not be included on the NPL, one commenter said that EPA is incorrect as to the control exercised by the NRC in such agreement States and that such State controls are adequate. EPA on the other hand believes that if such controls are adequate, then the sites will not have sufficiently high HRS scores to warrant including them.

Releases From Federal Facilities

CERCLA section 111(e)(3) prohibits use of the Fund for remedial actions at Federally owned facilities. EPA has not listed any sites where the release clearly resulted solely from a Federal facility, regardless of whether contamination remains on-site or has migrated off-site. EPA did, however, consider eligible for inclusion on the NPL sites where it was unclear whether the Federal facility was the sole source of contamination based on the rationale that if some other source were also responsible, EPA might be authorized to respond. In these situations, the off-site contaminated area associated with this type of release was considered eligible for inclusion. Sites previously, but not currently, owned by the Federal government were also considered eligible. Finally, sites not owned by the Federal government but where the Federal government may have contributed to a release were also eligible.

EPA chose not to list releases coming solely from Federal facilities because EPA lacks response authority and because Executive Order 12316 (46 FR 42237, August 20, 1981) assigns the responsibility for cleanup of these sites to the responsible Federal agency. EPA incorporated this position into the NCP, at § 300.66(e)(2) (47 FR 31215, July 16, 1982). However, after further consideration of this policy, the Agency concluded that it may be useful for informational purposes to include Federal facility sites on the NPL and will propose a future amendment to the NCP to permit the Agency to do so. EPA intends to consider Federal facilities in the next update proposal.

Indians Lands

Sites on Indian lands are currently eligible for inclusion on the NPL. EPA is developing a discovery and investigation program for evaluating potential sites on Indian lands. The Agency urges commenters to submit information on any sites which they feel may need to be evaluated for future updates to the NPL.

RCRA Sites

As stated in EPA's previous NPL rulemaking (48 FR 40658, September 8, 1983), both CERCLA and the Resource Conservation and Recovery Act (RCRA) contain authorities applicable to hazardous waste facilities. These authorities overlap for certain sites. Accordingly, where a site consists only of regulated units of a RCRA facility operating pursuant to a permit or imterim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA except as provided in the paragraph that follows. The Land Disposal Regulations under RCRA (40 CFR Parts 122, 260, 264, and 265) gives EPA and the States authority to control active sites through a broad program which includes monitoring, compliance inspections, penalties for violations, and requirements for postclosure plans and financial responsibility. RCRA regulations require a contingency plan for each facility. The regulations also contain ground water protection standards (40 CFR Part 264 Subpart F) that cover detection monitoring, compliance monitoring (if ground water impacts are identified) and corrective action for releases within the boundaries.

These monitoring and corrective action standards apply to all "regulated units" of RCRA facilities, i.e., any part of the waste treatment, storage, or disposal operation within the boundaries of the facility that accepted waste after January 26, 1983, the effective date of the Land Disposal Regulations (47 FR 32349, July 26, 1982). Even if the unit ceases operation after this time, EPA has the authority to require it to obtain a permit, and the monitoring and corrective action requirements could therefore be enforced by this mechanism. Given this alternative authority to ensure cleanup, regulated units of RCRA facilities generally are not included on the NPL. If the facility is abandoned or lacks sufficient resources and the RCRA corrective action requirements cannot be enforced, EPA will consider listing the site on the NPL for possible response under CERCLA. This policy is applicable not only to sites subject to EPA-administered hazardous waste programs but also to sites in States that administer programs approved by EPA. In the latter instance, close Federal control is ensured by the comprehensiveness of the program elements required of all State programs along with EPA's authority to enforce State program requirements directly if the State fails to do so. EPA does, however, consider eligible for listing on the NPL those RCRA facilities where a significant portion of the release appears to come from "non-regulated units" of the facility (that is, portions that ceased operation prior to January 26, 1983).

Releases of Mining Wastes

Some commenters expressed their views that CERCLA does not authorize EPA to respond to releases of mining wastes and, therefore, sites involving mining wastes should not be included on the NPL. The commenters argued that it is unclear if CERCLA was intended to address the type of waste problem, characterized by low concentrations and large volumes, associated with mining waste. The commenter believed the HRS is not an appropriate tool to estimate the risk to health and the environment presented by mining waste sites. Finally, the commenters stated that the mining waste sites are generally in rural areas, so that no sizable target populations are affected.

These comments also were received during the previous rulemaking and EPA's response to these comments (48 FR 40663, September 8, 1983) remains unchanged. Some commenters raised a new issue related the EPA's authorities to respond to mining sites; that is, certain sites do not pose imminent hazards, thus, should not have been included on the NPL or are not eligible. EPA believes that if the substance involved at a site is a "hazardous substance," the Agency can respond to any release, or any threatened release, without any need to determine that a threshold level of hazard is present. With respect to pollutants or contaminants, EPA does not agree that response authority is limited to releases that pose an imminent and substantial danger. Section 104(a)(1)(B) of CERCLA clearly states that response is authorized for any release that "may" present an imminent and substantial danger, and is not limited to those that actually do present such danger. More importantly, response is authorized not only for releases, but for any "substantial threat of release." As one example, the East Helena site in Montana presents at least a substantial threat of release, as indicated by the fact that its HRS score was based on the potential for a release, which resulted in a score high enough to place it on the NPL.

Regarding the issue of whether the HRS is appropriate for evaluating mining sites, one commenter elaborated on the point that HRS does not use information on the concentrations of the substances involved and that mineral substances do not pose the same risks as man-made chemicals. In response, the commenters have presented no information that would support a contention that concentrations of hazardous substances in discharges from mining sites are lower than from other types of sites or are too low to cause problems. The toxicity values specified in the HRS instructions, including those for mineral substances, are derived from standard references in the field of toxicology. Concentrations at which various health effects occur are the basis for assigning toxicity values to various mineral substances. The fact that these standard texts assign the highest toxicity values to some mineral substances contradicts the position set forth by the commenter. Furthermore, EPA believes that there is ample evidence that the concentrations and amounts of pollutants and contaminants discharged by mining sites can and do have a significant impact on public health and the environment. As the commenter pointed out, mining sites tend to generate extremly large quantities of wastes. Thus, even if the concentration of hazardous substances in the wastes are low, as the commenter contends, the total quantities of substances available to be discharged into the environment are high. Finally, as the commenter's own studies demonstrate, the two most important factors in determining whether a mining site is included on the NPL are whether the site is known to be discharging into the environment and the size of and distance to the potentially affected populations. EPA believes that these are reasonable factors to use in assessing sites.

Sites Which May Be Cleaned Up by Responsible Parties

Some commenters said that EPA should not include on the NPL those sites associated with known active waste sources with identified responsible parties because such listing misrepresents the amount of Fund money required for response actions and may give an unduly negative impression with respect to ongoing cleanup activities. One commenter suggested deleting from the NPL sites undergoing such cleanups. Another commenter said that EPA should not include on the NPL those sites where the responsible parties are "acting appropriately." Other commenters said that EPA should not have included certain sites on the NPL because responsible parties had concluded agreements with State agencies or the Federal government providing for response actions.

In developing the policy on eligibility for the NPL, EPA considered several alternatives for excluding sites where private parties might be performing cleanup. The Agency decided, however, that making such exclusions was not the best approach, taking into account the purpose of the NPL as stated in the legislative history of CERCLA, the objectives of protecting public health and the environment, and the need to administer the program consistently. The NPL is primarily for informational purposes (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)). The Agency believes that even where a site is undergoing response actions, interested parties such as neighboring residents may need to know about the threats posed by that site relative to other sites. In addition, the Agency believes that including sites on the NPL until appropriate cleanup actions have been completed will provide more incentives for early and effective actions than the alternatives such as excluding sites where responsible parties have agreed to begin cleanup. Another consideration is that the comprehensiveness and effectiveness of such agreements will vary considerably among States, and in some cases agreements may not be completely consistent with the standards of the NCP. Excluding sites on the basis of the financial resources of responsible parties may establish a dual standard that is unfair to small businesses. Furthermore, some financially viable responsible parties have refused to undertake response actions. Finally, excluding sites on the basis of financial resources of potentially responsible parties would necessitate identification of those parties and comparison of their resources with potential cleanup costs before listing them on the NPL, which EPA believes would significantly increase the costs of the NPL, and seriously delay its implementation. Accordingly, consistent with previous Agency policy, EPA has decided not to exclude any sites based on the financial resources of responsible parties or their willingness to respond to releases.

Sites Which Are Difficult to Address

One commenter said that "unbounded or unmanageable sites, such as well fields" should not be included on the NPL. In response, EPA believes that unless a remedial investigation and feasibility study has been completed at a site, it is not possible to specify whether a site presents a manageable problem. Furthermore, at many of those sites where commonly applied remedial actions are infeasible, some response actions short of waste removal or source controls, e.g., providing alternative water supplies, may be appropriate. EPA believes that the technologies for response actions have been developing rapidly; a response which was infeasible in the past may become feasible in the near future. Finally, with the case specifically mentioned, wellfields, the Agency has generally found the need for CERCLA response particularly acute since this generally involves contamination of public water supplies. Hence, EPA has not attempted to exclude sites which are especially difficult to address through current response technologies.

Noncontiguous Facilities

Section 104(d)(4) of CERCLA authorizes the Federal government to treat two or more noncontiguous facilities as one for purposes of response, if such facilities are reasonably related on the basis of geography or their potential threat to public health, welfare, or the environment. As previously stated (48 FR 65058, September 8, 1983), for purposes of the NPL, EPA has decided that in most cases such sites should be scored and listed individually because the HRS scores more accurately reflect the conditions at the sites if each is scored individually. In other cases, however, the nature of the operation that created the sites and, possibly, the nature of the appropriate response may indicate that two geographically separate properties should be treated as one site for purposes of listing. EPA has done so for some sites previously listed separately on the NPL.

Factors relevant to such a determination may include whether the two or more areas were operated as parts of a single unit. Another factor is whether contamination from the two or more sites is threatening the same part of an aquifer or surface water body. Finally, EPA will also consider the distance between the noncontiguous sites and whether the target population (i.e., within 3 miles) is essentially the same or substantially overlapping for the sites.

One commenter, Governor Bond of Missouri, submitted the 33 known dioxin sites in that State as a single site on the NPL. Using characteristics from various sites, he assigned a single HRS score to the 33 sites. Governor Bond maintained that the dioxin was produced by a single waste generator and that the sites had a common method of disposal. According to the Governor, by treating the sites individually EPA has complicated negotiations for health studies, development of cost recovery suits, and the State's accounting procedures.

EPA carefully considered the Governor's proposal and, taking into account the factors discussed above, decided that his reasons did not warrant consolidating the 33 sites into a single site. The sites are dispersed over a wide area of the State and affect different target populations. The 33 sites generally comprised different disposal operations rather than parts of the same facility. Many of the 33 sites would not individually score high enough to be on the NPL and, thus, the overall score for the 33 sites would be misleading. EPA has also concluded that listing the 33 sites as a single site on the NPL is not a prerequisite for developing a consolidated response strategy for the Missouri dioxin sites. Many of these sites may qualify for Fund-financed removal actions. The Agency is currently evaluating ways of coordinating possible response strategies at these sites to alleviate the problems which Governor Bond has identified.

Another commenter expressed the view that any grouping of noncontiguous sites would be inappropriate. EPA disagrees. In some instances the property boundaries or other factors commonly used to define a site may not be very useful or reasonable for determining if a problem involves one site or several. One example is the Minker/Stout/Romaine Creek site in Missouri where dioxin contaminated soils were used as fill in several yards in a residential neighborhood. Even though the contaminated areas are not contiguous and the properties involved have several different owners, the Agency determined that the site was really a single operation, that the same target populations might be affected, and that there is no logic to support treating the various areas as separate sites. Given the many factors involved in making such determinations and the differing importance that each factor may take on in various situations, the Agency must weigh each situation individually to determine if noncontiguous disposal areas are a single site or several.

Where EPA determines, based on the above considerations, that two or more noncontiguous locations are most logically considered as a single site, they will appear as a single site on the NPL. While the listing suggests prospective response actions, it does not prescribe them; EPA may decide that response efforts should be distinct and separate for the two locations. Also, EPA may decide to respond to several sites listed separately on the NPL with a single response if it appears cost-effective to do so.

Scoring of Air Releases

A comment was received concerning how past air releases are scored. Language in the preamble to the final NCP caused a commenter on the Bayou Sorrell, Louisiana site to question whether past air releases may properly be included in a site's HRS score. This issue is discussed in detail in the "Support Document for the revised National Priorities List—1984" for the Bayou Sorrell site. However, the main points of this issue are presented in the following discussion.

EPA believes that past air releases are included in a site's HRS score. The HRS stipulates that a site is to be scored for an air release if data "show levels of a contaminants at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of the occurrence (47 FR 31236). According to the HRS as established in the NCP revisions, therefore, the single evidence of an air release such as that which occurred at Bayou Sorrell, requires that the site be scored as having an observed release to air. This approach to scoring has been clarified by EPA's stated policy that sites are to be scored on the basis of conditions existing before any remedial measures were performed. This policy was clearly stated at the time of promulgation of the NCP revisions (47 FR 31188), and EPA considers it to be firmly established as part of the HRS. In addition, the Agency has attempted to clarify further the reasons for this policy in subsequent statements (48 FR 40664–5).

Several considerations underlie the policy. Actions by States to conduct or enforce cleanup might be discouraged if partial cleanup of a site could reduce the score such that the site would not be eligible for the NPL.

Another concern is that responsible parties might be encouraged to conduct minimal, incomplete cleanup actions at sites that might reduce the HRS score but fail to remedy the problems completely. For example, a site may present problems in all three routes—ground water, surface water, and air, and only the air route is remedied. In such a situation, because the partial cleanup could leave significant health threats unaddressed, the site would not be scored on the basis of the latest conditions, but rather on the basis of conditions existing prior to the remedy of the air route (48 FR 40664).

A third consideration is that the HRS was designed according to the reasonable approximations of risk that could be derived from certain basic conditions at a site as they existed prior to any cleanup actions. Where the data on a site reflect conditions after some cleanup actions, the assumptions upon which the HRS was designed may no longer be appropriate, and the score would not represent an approximation of risk that is accurate or consistent with scores for other sites. All three of these considerations are explained in detail in the preamble to the initial NPL (48 FR 40664–5).

Another consideration is that the level of scrutiny provided by the HRS and the NPL listing process, while sufficient to provide a general approximation of risks and comparison among sites, is not sufficiently detailed to evaluate the adequacy of cleanup actions. The HRS was designed to take into account as many factors regarding the condition of sites and the risk they present as can be considered simply and for many sites across the country. It does not take into account factors that the Agency believes would require sophisticated data or analysis. In developing the HRS, EPA considered evidence that a release above background has occurred is relatively easily determined. However, the Agency determined that evidence as to whether past cleanup actions are sufficient to have eliminated the release and potential for future releases is much more difficult to obtain and evaluate, and therefore chose not to include consideration of this factor in the HRS. Likewise, the Agency decided not to require evidence of frequency and continuation of a release, as explained in the promulgation of the HRS (47 FR 31188). To do otherwise would render the NPL process unnecessarily expensive and time-consuming, which would divert funds from cleanup activities and impede the progress of the program. EPA recognizes that these considerations are very relevant to determining the risks presented by a site and the remedies, if any, that should be conducted. Factors of this type, however, are intended to be evaluated after the NPL listing process has identified a limited number of sites as potential problems. Having taken this approach in the HRS, EPA must apply it consistently to individual sites.

A commenter on the Bayou Sorrell, Louisiana site cited preamble language which states that "air releases must currently exist, must be measured, and must not be caused by disturbances from investigations" (47 FR 31189). EPA believes that the commenter took this language out of context. Read in context, it in no way contradicts the Agency's policies of scoring on the basis of a single observation and scoring on the basis of conditions existing before any cleanup actions.

The portion of the preamble (47 FR 31189) containing this language was written in response to comments arguing that the HRS should provide for scoring for the potential of a release, rather than only scoring when an actual release is observed. The HRS does score for potential releases in the ground water and surface water routes if no actual release has been observed. For the air route, however, EPA believed that evidence of the potential for an air release could not be easily established and would be too tenuous a possibility to warrant taking it into account. Therefore, in order to calculate any score at all for the air route, an actual release must be observed. By stating that air releases must "currently exist," EPA was attempting to explain that the release must have actually occurred, rather than being merely a potentiality. This interpretation is consistent with the actual HRS instructions, which require "data that show levels of a contaminant at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of occurrence" (47 FR 31236).

Any other interpretation of this language would be illogical. If the word "current" were to be interpreted as meaning "today," then an observed release to air would have to be continually updated and redocumented. This would not only entail considerable expense but would also allow the assignment of an observed release to the air to be negated by a removal or remedial action. The Agency has consistently scored sites on the basis of conditions before removal or remedial actions, as explained in 48 FR 40664.

VII. Changes From the Proposed NPL

The Agency received a total of 128 comments on the proposed NPL update. Of these, 112 comments pertained to 50 of the proposed sites. The remainder of the comments addressed sites that were not proposed or generic or technical issues that were not site specific. General comments on the NPL are addressed throughout this preamble. Significant comments regarding specific sites are addressed in the "Support Document for the Revised National Priorities List—1984." A number of the site-specific comments addressed similar issues, and EPA's rationale for addressing those issues is presented in this section. Many of the issues raised in comments are the same as those raised previously and discussed in the previous final rulemaking on the NPL (48 FR 40658, September 8, 1983). The Agency's positions on these issues remains unchanged.

Waste Quantity

A number of commenters said that the waste quantity values assigned under the HRS were too high because EPA had included the non-hazardous constituents of the hazardous substances in calculating the quantity of waste located at the facility. Commenters raised similar issues when the first NPL was published (48 FR 40658, September 8, 1983), and EPA's response remains unchanged.

Consideration of Flow Gradients

In some instances commenters maintained that, based upon their conclusions regarding prospective movement of contaminants in ground waters, the values assigned by EPA to population served by ground water are too high. The commenters said that EPA should only count the population using those wells which they believed would be affected by the releases. As was the case with the waste quantity issue, this issue was addressed and resolved when the NPL was first promulgated (48 FR 40658). The rationale for the Agency's approach is futher discussed in the preamble to the NCP (47 FR 31190–91, July 16, 1982) and is equally applicable now. The HRS specifies that all the population using the aquifer of concern within 3 miles of the facility should be included in the calculations of population served by ground water. The Agency's approach is based on the difficulty of predicting precisely the movements of ground water based on the limited amount of data consistently avaliable at the time of HRS scoring. Furthermore, in establishing the rating scales, the Agency took into account the fact that most wells within 3 miles would not be affected. If EPA were to establish rating scales based only on the populations that have been or are certain to be affected, the scales would have assigned high values for much smaller populations then those specified in the current HRS. Another consideration is that population using the aquifer is a measure of the value of the ground water to the local population. Thus, even if EPA determines at a specific site that currently operating wells will not be affected, taking current water use into account is important because it allows the Agency to indirectly estimate the potential uses of the resource.

Scoring on the Basis of Current Conditions

Many commenters felt that EPA should take current conditions into account when scoring sites where response actions have reduced the hazards posed by the site. For the ground water, surface water, and air pathways, EPA scored sites for inclusion in the NPL based on the hazards that existed before any response actions were initiated. This policy was explained in the preamble to the final revisions to the NCP (47 FR 31187, July 16, 1982). At that time the Agency explained that public agencies might have been discouraged from taking early response if such actions could lower the HRS score and prevent a site from being included on the NPL. Another reason, stated in the Preamble to the NCP, is that EPA does not want to encourage incomplete solutions that might leave significant health threats unaddressed. EPA is also concerned that if a site is rescored taking the response actions into account, the drop in score that may result might not reflect a commensurate reduction in the level of risk presented by a site. EPA has elaborated on this rationale in the Preamble to the previous NPL final rule (48 FR 40658, September 8, 1983), and the Agency's position remains unchanged.

Where response actions have already been initiated by private parties or another agency, listing such sites will enable EPA to evaluate the need for a more complete response. Inclusion on the NPL therefore does not reflect a judgment that responsible parties are failing to address the problems. The Agency believes, therefore, that this approach is appropriate, and consistent with the purpose of the NPL as stated in the legislative history of CERCLA.

This policy is also relevant to evaluating the waste management practices at a facility for the purpose of assigning a score for the "containment" factor as a part of the "Route Characteristics" score for a site. Some commenters said the EPA should have considered corrective actions at sites in assigning containment values. In response, the containment values were designed to allow EPA to evaluate the likelihood of a release occurring in light of the measures taken to prevent such a release (e.g., infiltration controls designed to prevent leachate generation). If such controls are not operational until some time after disposal, then the likelihood of a release is high, and subsequent installation of the controls does not alter that fact. Thus, in scoring the containment factor EPA has considered only those waste management practices that clearly have been applied in a timely manner.

Small Observed Release

Some commenters maintained that EPA incorrectly assigned values for observed releases to ground waters because the measured concentrations of the substances involved were below the regulatory limits specified under the Safe Drinking Water Act or other Federal and State laws. Their comments reiterate comments made when the first NPL was published. EPA's response (48 FR 40658, September 8, 1983) remains unchanged.

Some commenters submitted data showing lower concentrations of contaminants in the environment than EPA or the States had found in previous analyses; in some instances the data indicated the absence of any contaminants at the time of sampling. These commenters suggested that EPA had erred in assigning an observed release. In all such instances EPA carefully reviewed the original EPA or State data as well as that furnished by the commenters. In those cases where EPA determined that the original data substantiating the observed releases were valid, EPA assigned values based on that data even if subsequent sampling failed to detect the same contaminants. Such an approach is consistent with the HRS and recognizes that many releases vary in concentration through time or occur sporadically. Thus, negative results during one or more sampling intervals cannot refute a finding, when based on valid sampling and analyses, that an observed release has occurred.

Several commenters questioned the validity of the sampling and analytical data used to establish observed releases, particularly in instances where the amount of contaminant detected in a sample is near the detection limit of the appropriate analytical method. As stated in the HRS (47 FR 31224), the standard requirement for establishing an observed release is that the measured concentration of a contaminant in a sample must be significantly higher than background concentrations of the contaminant in other samples from the site. The methodologies used to establish background levels and to determine significantly higher concentrations are explained below in response to these comments.

In cases in which a specific contaminant is not detected in some site samples, the background level of that contaminant is assumed to be some unknown value less than the detection limit. Any measurable quantity of contaminant in the site samples is considered significantly higher than the background and provides the basis for scoring an observed release. The validity of these assumptions is supported by the statistical analysis used to establish detection limits for the analytical methodology.

In situations in which a specific contaminant is detected in all site samples, an observed release is sometimes more difficult to determine than in the case where the substance is not detected in background samples. Generally, there are insufficient numbers of samples from a site to apply conventional statistical tests for significance. The scorer must often rely on inspection of the data to evaluate whether an observed release has occurred. If the data cluster into a group of high values and a group of lower values, particularly if the high values are attributed to sampling locations that appear to be downgradient of a site, an observed release is confirmed. If the analytical results from only one sampling location are significantly higher than from all other locations, an observed release has also ocurred. However, if the contaminant concentrations are similar among background and monitoring wells within a 10 to 20 percent range, for example, EPA generally cannot state conclusively that an observed release has occurred. In addition, low concentrations (e.g., less than 10 parts per billion) of phthalates and other substances very commonly found in ground water are examined very carefully along with any other evidence that might tend to corroborate or disprove that a release has occurred.

Summary of Score Changes

For the 133 sites proposed on September 8, 1983, a total of 14 HRS scores changed on the basis of the Agency's reviews of comments and other information (Table 1). For 12 sites, the changes had no effect on listing; however, some of these changes resulted in the site being placed in different groups. For two sites, final HRS scores were below 28.50 and the sites will not be included on the NPL at this time. For four sites, the Agency is still considering the comments received.

TABLE 1.—HRS SCORE CHANGES

State city and county	Site name	HRS score	
		As proposed	Revised
Region II			
New Jersey:			
Shamong Township	Ewan Property	45.08	50.19
Florence Township	Florence Land Recontouring	58.79	47.39
Mount Holly	Landfill & Development Co	31.09	33.62
Region III			
Delaware: Delaware City	Old Brine Sludge Landfill	40.32	14.49
Pennsylvania: Williams Township	Industrial Lane (Chrin)	41.12	42.47
Region IV			
Florida: Medley	Pepper Steel & Alloy	32.11	31.92
Region V			
Indiana: Indianapolis	Reilly Tar & Chemical	42.82	34.03
Minnesota:			
Faribault: Nutting Truck & Caster.	42.38	37.89	
New Brighton	MacGillis & Gibbs Co./Bell Lumber & Pole Co	52.53	48.33
Ohio: Dayton	Powell Road Landfill	30.86	31.62
Wisconsin: Milwaukee	Moss American	43.53	32.14
Region VI			
Oklahoma: Tulsa County	Compass Industries (Avery Drive)	33.83	36.57
Region X			
Idaho: Pocatello	Pacific Hide & Fur Recycling Co	44.52	42.30
Washington: Roy	Rosch Property	29.31	10.36

In addition, on September 8, 1983, EPA deferred rulemaking on a total of seven sites that had been included in the first proposed rule for the NPL, December 30, 1982 (47 FR 58476). Those sites are listed below along with the originally proposed scores and the final scores.

State	Site name	Proposed score	Final score
Arizona	Kingman Airport Industrial Area.	40.02	8.45
Kentucky	Airco	35.19	33.29
Louisiana	Bayou Sorrel	45.58	34.09
Michigan	Clare Water Supply	32.38	36.43
Michigan	Electrovoice	29.77	35.38
Michigan	Littlefield Township Dumps	32.09	26.48
Michigan	Whitehall Wells	29.85	35.45

Proposed NPL Sites with Scores Below 28.50. The following sites will not be included on the NPL because the final HRS scores are below 28.50:

State and Site Name

Arizona—Kingman Airport Industrial Area (proposed 12/30/82).
Delaware—Old Brine Sludge Landfill.
Michigan—Littlefield Township Dump (proposed 12/30/82).
Washington—Rosch Property.

Sites Still Under Consideration. In the case of the following sites, EPA was unable to reach a final decision on listing in time for this publication:

State and Site Name

Georgia—Olin Corporation (Areas 1, 2, & 4).
Missouri—Quail Run Mobile Manor.
Oklahoma—Sand Springs.
Texas—Pig Road.

Regarding Quail Run Mobile Manor, the site does not meet the criteria currently specified in the NCP for including a site on the NPL. The Agency does, however, intend to modify the NCP in such a way that Quail Run and other similar sites will qualify for the NPL. Regarding the Sand Springs and Olin Corporation (Areas 1, 2, & 4) sites, EPA has determined that the HRS scoring documents for these sites, on which the September 8, 1983, Notice of Proposed Rulemaking (48 FR 40674) was based, were not in the public docket and were not available to the public during the 60-day comment period for this rule. Thus, EPA is seeking further public comment on these sites for a period of 60 days following publication of this notice. Interested parties may inspect the HRS scoring documents for these sites in the EPA Headquarters or Region IV (Olin Corporation) and Region VI (Sand Springs) dockets. In the case of Pig Road site, the Agency has determined that further sampling and laboratory analysis will be necessary to determine the appropriate HRS scores. Interested persons may obtain copies of that sampling and analysis data when it becomes available by notifying the EPA Region VI docket of their intent to provide further comments on that site. EPA will announce deadlines for comments on the Pig Road site in a later notice. EPA will continue to evaluate these sites and announce its decisions in subsequent NPL rulemaking.

Name Revision

In some instances EPA has determined that the names of sites should be revised to more accurately reflect the location or nature of the problem. Those name revisions are listed below:

State	Site name for proposed NPL	New site name
New Hampshire	Kearsage Metallurgical Corp.	Kearsarge Metallurgical Corp.
New Jersey	Chemical Leaman Tank Liners, Inc.	Chemical Leaman Tank Lines Inc.
Texas	Compass Industries.	Compass Industries (Avery Drive)
Montana	East Helena Smelter.	East Helena site

In addition, the name of the Toms River Chemical, New Jersey site promulgated on September 8, 1983 (48 FR 40674) has been changed to the Ciba-Geigy Corporation site.

Additional Criteria for Listing

In the September 8, 1983, proposed rule to update the NPL (48 FR 40674), EPA invited comments on the general issue of alternative criteria for selecting sites for the NPL in addition to the HRS and State's top priority designations. EPA has concluded that at some sites remedial actions may be the only adequate response, but that these sites will not score sufficiently high to be included on the NPL. That can occur where the type of problem (e.g., direct contact), is usually addressed through removal actions, and thus the HRS total score does not reflect the associated risks. EPA cited Quail Run Mobile Manor, in Gray Summit, Missouri, as an example and included that site in the proposed update to the NPL. EPA intends to propose an amendment to the NCP to authorize consideration of additional criteria.

Several commenters addressed the issue of additional criteria. One expressed interest in the specifics of the proposed amendment and suggested that it include a clear statement of goals and an explanation of where emergency and removal authority will "prove inadequate." The commenter also suggested that criteria for extraordinary listings require "a demonstration for each proposed site that remedial action, as opposed to other types of response action, is necessary and an actual health threat beyond some threshold exists."

Another commenter stated that EPA's invitation to provide comments on additional criteria for listing "belies the Agency's assertion that the HRS is effective in approximating risks and raises the questions as to the overall validity of the HRS/MITRE model in assessing risks at any site." The same commenter suggested that the additional criteria be the subject of a detailed separate notice of proposed rulemaking, so that the overall effectiveness of the HRS can be examined.

In response, EPA does intend to publish a separate notice of proposed rulemaking revising the NCP to incorporate additional criteria for listing. EPA is developing such a notice, and the comments received so far have been useful for defining the issues. When that rule is proposed, EPA will seek further public comment on the additional criteria. The full scope of that proposed revision has not been determined. EPA disagrees with the commenter's assertion that inviting comment on the additional criteria raises questions regarding the validity of using the HRS to assess risks at any site.

Since EPA is still working on revising the NCP and establishing additional criteria for listing, the Agency will not at this time complete rulemaking on Quail Run, which was included in the September 8, 1983, proposed rule.

VIII. Updates (Additions and Deletions) to the NPL

CERCLA requires that the NPL be revised or updated at least once per year. The Agency plans to identify, consider, and propose additional sites for NPL updates as it has in the past. States have the primary responsibility for identifying sites, computing HRS scores, and providing that information to EPA. EPA Regional Offices may assist in investigation, sampling, monitoring, and scoring, and may in some cases consider candidate sites on their own initiative. In advance of each update publication, EPA will notify the States of the closing dates for submission of proposed additions (or deletions, as discussed below) to EPA. EPA will exercise quality control and quality assurance to verify the accuracy and consistency of scoring. The Agency will then propose the new sites that appear to meet the criteria for listing and solicit public comment on the proposal. Based on comments, and any further review by EPA, the Agency will determine final scores and in the next update publication will include on the final NPL any sites that score high enough for listing.

In addition to these periodic updates, EPA believes it may be appropriate in rare instances to add sites to the NPL individually as in the case of the Times Beach site in Missouri.

One commenter said that EPA should clarify whether it will follow notice and comment rulemaking procedures in future updates. The commenter said that such rulemaking might have a substantial impact on private parties and that EPA should adhere to the Administrative Procedures Act. In response, EPA intends to continue seeking public comment prior to final rulemaking on the NPL updates as long as most response actions are not significantly delayed as a result. The Agency reserves the right to depart from that general approach should a situation require expedited rulemaking.

Deletion of Sites

There is no specific statutory requirement that the NPL be revised to delete sites. However, EPA has decided to consider deleting sites to provide incentives for cleanup to private parties and public agencies. Furthermore, deleting sites allows the Agency to give notice that the sites have been cleaned up and gives the public an opportunity to comment on those actions. EPA does not consider this policy to be binding, and may revise it to provide for deletion of sites based on other factors in appropriate cases.

EPA will consider deleting sites at which any of the following criteria have been met:

(1) EPA, in consultation with the State, has determined that responsible parties have completed all appropriate response actions.

(2) EPA, in consultation with the State, has determined that all appropriate Fund-financed response actions have been completed and that no further cleanup by responsible parties is appropriate.

(3) Based on a remedial investigation, EPA in consultation with the State has determined that the facility poses no significant threat to public health, welfare, or the environment and, therefore, construction of remedial measures is not appropriate.

Although there are not any deletions included in this rulemaking, EPA intends to publish a notice of proposed rulemaking and solicit public comments on rulemaking actions to delete sites in future updates. EPA is considering some alternative approaches, but for now the Agency will follow the procedures specified in the guidance memorandum, "Interim Procedures for Deleting Sites from the National Priorities List," March 27, 1984. This document is available in the EPA dockets (see addresses section of this announcement).

Rescoring Sites

EPA expects that updates to the NPL will be solely for the purposes of adding sites to or deleting sites from the NPL. The current EPA position, which will serve as guidance for individual listing and deletion decisions, is that EPA will not rescore sites that previously had been placed on the NPL.

Several commenters presented suggestions to the contrary. Some recommended that EPA revise HRS scores periodically to reflect the results of cleanup activities, and suggested deleting any site whose HRS score dropped below the cutoff. Other commenters pointed out that new data gathered on a site might alter previous assumptions in scoring, and suggested continual rescoring to reflect any new data for purposes of adjusting a site's position on the list or deleting it if the score fell below the cutoff.

Another commenter suggested that EPA reevaluate all HRS scores, preferably after a thorough site investigation. The commenter said that this process would help assure that sites most in need of remedy would be identified and that the process would allow the deletion of sites placed on the list due to scoring based on incorrect facts.

EPA believes that the current approach of scoring by EPA or the States, EPA quality assurance review, public comment on the scoring, and EPA review of the comments provides adequate safeguards against incorrect site scores. EPA's experience to date indicates that very few scores, if any, would be lowered sufficiently to remove sites from the NPL if EPA were to do as the commenter suggests. On the other hand, many site scores would increase somewhat if the commenters' approach were followed. Moreover, the alternative recommended by the commenter would significantly increase the time and resources needed to develop the NPL.

EPA believes that a number of important factors support its current position that site on the final NPL should not be rescored for future updates. With respect to sites where response actions have been taken, the HRS was not designed to reflect completeness of cleanup, and therefore should not be used as a tool for deleting sites from the list or altering their relative ranking based on response actions. If response actions were taken into account in scoring, the lower HRS score that results might not reflect a commensurate reduction in the endangerment presented by the site. The result might be to delete sites where cleanups have not been completed, thereby removing incentives for further response and giving incentives for selecting cleanups primarily designed to result in score reductions as opposed to risk reductions.

In addition to the foregoing reasons, other considerations justify the current position not to rescore sites after final listing. These considerations apply not only to cleanup situations but also to situations where a score might be affected by new information about a site or by detection of an error in the original calculations. The process established by EPA for developing the NPL is comprehensive, involving initial scoring, public proposal, consideration of public comment, re-examination of data and scores, final score calculation, and inclusion on the final NPL. Given this level of scrutiny, and the time and expense involved in scoring sites, EPA finds it necessary to rely upon the interested public to identify factors pertinent to HRS score in a timely manner. EPA believes that it is appropriate to consider inclusion of a site on the final NPL to end the scoring process.

Furthermore, as described in Part II of this preamble, the purpose of the NPL is primarily informational, to serve as a tool for EPA to identify sites that appear to present a significant risk to public health or the environment, for purposes of deciding which sites to investigate fully and determine what response, if any, is appropriate. EPA believes that it is most consistent with that statutory purpose to cease the costly and time-consuming efforts of site scoring once a site is on the NPL. Rather than spend the limited resources of the Fund on rescoring, the Agency prefers to use all available resources to clean up sites.

EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. Since HRS scores alone do not determine the priorities for actual response actions, any new data or revealed errors indicating that a site is either more or less of a problem than reflected in the HRS score will be taken into account and the priority for response adjusted accordingly. If the new information indicates that the site does not present a significant threat to health, welfare, or the environment, the site may meet one of the EPA criteria for deletion regardless of any original or revised HRS score.

In conclusion, EPA does not currently plan to rescore sites once they have been included on the final NPL because: (1) The HRS was not designed to reflect reductions in hazard resulting from cleanup; (2) EPA does not want to create the incentive for incomplete cleanup actions; (3) the Fund must be conserved and focused on further investigation and cleanup; (4) the NPL serves as a guide to EPA and does not determine liability or the need for response; and (5) any new information can be used to adjust response priorities or to delete a site without recalculating the HRS score. Actual decisions on the appropriate treatment of individual sites, however, will be made on a case-by-case basis, with consideration of this policy and any other appropriate factors.

IX. Regulatory Impact Analysis

The cost of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below, and therefore the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. The EPA has conducted a preliminary analysis of the economic implications of today's amendment to the NCP. The EPA believes that the kind of the economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA. The Agency believes the anticipated economic effects related to adding 128 sites to the NPL can be characterized in terms of the conclusions of the earlier regulatory impact analysis. At proposal, the Agency noted that a more extensive analysis of the economic impacts of the NCP would be prepared in the future and would accompany publication of future major amendments to the NCP. The Agency expects to propose major amendments to the NCP and a more comprehensive economic analysis will be made available for comment at that time.

Costs

The EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake response action, nor does it require any action by a private party or determine their liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in a listing rulemaking.

The major events that follow the listing of a site on the NPL are a responsible party search and a Remedial Investigation/Feasibility Study (RI/FS) which determines whether response actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

Costs associated with responsible party searches are generally borne by EPA. Responsible parties may bear some or all the costs of the RI/FS, design and construction, and O&M, or the costs may be shared by EPA and the States on a 90%: 10% basis (50%:50% in the case of state-owned sites). Additionally, States assume all costs for O&M activities after the first year at sites involving fund-financed remedial actions.

Rough estimates of the average total per-site and total costs associated with each of the above activities are presented below. At this time EPA is unable to predict what portions of the total costs will be borne by responsible parties, since the distribution of costs depends on the extent of voluntary and negotiated response and the successfulness of cost recovery actions where such actions are brought.

Cost category	Average total cost per site *
RI/FS	$800,000
Remedial design	440,000
Remedial action	7,200,000
Initial remedial measures (IRM) at 10 pct of sites	80,000
Net present value of O&M (over 30 years)	4,100,000

*1948 U.S. Dollars.

SOURCE: OERR budget figures (assumes $6.5 million Federal share for remedial action).

Costs to States associated with today's amendment arise from the statutory State cost-share requirement of (1) 10 percent of remedial implementation (remedial action and IRM) and O&M costs at privately-owned sites, and (2) 50 percent of the remedial planning (RI/FS and remedial design), remedial implementation and O&M costs at publicly-owned sites. Using the assumptions developed in the 1982 RIA, we can assume that 90 percent of the 128 sites added to the NPL in this amendment will be privately-owned and 10 percent will be publicly-owned. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial actions at all 128 sites would be $212 million.

The act of adding a hazardous waste site to the NPL does not necessarily cause firms responsible for the site to bear costs. Nonetheless, listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary, and made on a case-by-case basis.

Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of response costs, but the Agency considers such factors as: The volume and nature of the wastes contributed; the strength of the evidence linking the wastes at the site to the parties; ability to pay, inequities and aggravating circumstances; and other factors when deciding whether and how to proceed against potentially responsible parties.

Economy-wide effects of this amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment come in the form of increased health and environmental protection as a result of increased public awareness of potential hazards and the additional response actions at hazardous waste sites. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, torts, and/or enforcement action. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional NPL remedies, there will be lower human exposure to high risk chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that each dollar expended for a response puts someone to work directly or indirectly (through purchased materials).

X. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities the Act refers to small businesses, small governmental jurisdiction, and non-profit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The listing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of clean-up costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate a number of businesses affected. In addition, we cannot define what is "small" for the wide variety of potentially affected firms.

The Agency does expect that certain industries and small firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 128 sites, or the NPL as a whole, to have a significant economic impact on small business as a whole when they are considered as a nation-wide group.

In any case, economic impacts would only occur through enforcement and cost recovery actions which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay. The impacts (from cost-recovery) on small governments and non-profit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

PART 300—[AMENDED]

Appendix B of 40 CFR Part 300 is amended by adding the following sites to the National Priorities List:

Dated: September 11, 1984.

Alvin L. Alm,

Acting Administrator.

BILLING CODE 6560-50-M

GROUP 1

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
25	03	PA	Tysons Dump	Upper Merion Twp	R
29	08	MT	East Helena Site	East Helena	E
37	06	TX	Geneva Industries/Fuhrmann Energy	Houston	R E
41	02	NJ	Vineland Chemical Co., Inc.	Vineland	V
45	02	NJ	Shieldalloy Corp.	Newfield Borough	R E
49	05	WI	Omega Hills North Landfill	Germantown	D

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NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES.

GROUP 2

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
54	05	OH	United Scrap Lead Co., Inc.	Troy	D
59	05	WI	Janesville Old Landfill	Janesville	D
61	04	SC	Independent Nail Co.	Beaufort	D
62	04	SC	Kalama Specialty Chemicals	Beaufort	E
63	05	WI	Janesville Ash Beds	Janesville	D
65	05	OH	Miami County Incinerator	Troy	R E
67	05	WI	Wheeler Pit	La Prairie Township	D
97	04	MS	Flowood Site *	Flowood	D

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GROUP 3

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
108	02	NY	Hudson River PCBs	Hudson River	R E
113	01	CT	Old Southington Landfill	Southington	V E
122	10	ID	Union Pacific Railroad Co.	Pocatello	D
124	04	AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh	D
130	05	MN	St. Regis Paper Co.	Cass Lake	V
133	04	GA	Hercules 009 Landfill	Brunswick	D
144	05	WI	Muskego Sanitary Landfill	Muskego	D
148	02	NJ	Ventron/Velsicol	Wood Ridge Borough	R E

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GROUP 4

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
151	04	SC	Koppers Co., Inc (Florence Plant)	Florence	E
153	02	NJ	Nascolite Corp.	Millville	V R
163	02	NJ	Ewan Property	Shamong Township	D
165	05	MN	Boise Cascade/Onan/Medtronics	Fridley	E
168	02	NJ	Delilah Road	Egg Harbor Township	R E
169	03	PA	Mill Creek Dump	Erie	R
173	05	WI	Schmalz Dump	Harrison	D
180	08	CO	Lowry Landfill	Arapahoe County	V R E
181	05	MN	MacGillis & Gibbs/Bell Lumber	New Brighton	E
188	04	SC	Wamchem, Inc.	Burton	D
189	02	NJ	Chemical Leaman Tank Lines, Inc.	Bridgeport	D
190	05	WI	Master Disposal Service Landfill	Brookfield	E
192	02	NJ	Florence Land Recontouring LF	Florence Township	R E
198	02	NJ	W. R. Grace & Co. (Wayne Plant)	Wayne Township	R
200	04	SC	Leonard Chemical Co., Inc.	Rock Hill	E

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GROUP 5

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
204	04	AL	Stauffer Chem (Cold Creek Plant)	Bucks	D
212	05	OH	South Point Plant	South Point	D
214	03	PA	Dorney Road Landfill	Upper Macungie Twp	R
215	05	IN	Northside Sanitary Landfill, Inc	Zionsville	E
220	09	CA	Atlas Asbestos Mine	Fresno County	D
221	09	CA	Coalinga Asbestos Mine	Coalinga	D
238	05	MN	Joslyn Manufacturing & Supply Co.	Brooklyn Center	E
243	05	MN	Arrowhead Refinery Co.	Hermantown	R

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GROUP 6

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
253	01	MA	Iron Horse Park	Billerica	D
256	05	WI	Kohler Co. Landfill	Kohler	D
260	05	WI	Lauer I Sanitary Landfill	Menomonee Falls	E
262	05	MN	Union Scrap	Minneapolis	E
263	02	NJ	Radiation Technology, Inc.	Rockaway Township	E
268	03	PA	Industrial Lane	Williams Township	R
269	05	WI	Onalaska Municipal Landfill	Onalaska	D
273	10	ID	Pacific Hide & Fur Recycling Co.	Pocatello	R E
277	02	PR	Vega Alta Public Supply Wells	Vega Alta	R
278	05	MI	Sturgis Municipal Wells	Sturgis	D
279	05	MN	Washington County Landfill	Lake Elmo	D
286	02	PR	Upjohn Facility	Barceloneta	V
288	03	PA	Henderson Road	Upper Merion Twp	R
290	06	LA	Petro-Processors	Scotlandville	V R E
296	03	PA	East Mount Zion	Springettsbury Twp	R

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GROUP 7

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
301	02	NY	General Motors (Cent Foundry Div)	Massena	R
314	05	MN	Whittaker Corp.	Minneapolis	D
316	01	CT	Kellogg-Deering Well Field	Norwalk	V R E
320	04	AL	Olin Corp. (McIntosh Plant)	McIntosh	D
327	04	FL	Tri-City Oil Conservationist, Inc	Tampa	R
331	05	WI	Northern Engraving Co.	Sparta	D
335	01	NH	Kearsarge Metallurgical Corp.	Conway	V E
336	04	SC	Palmetto Wood Preserving	Dixianna	D
337	05	MI	Clare Water Supply	Clare	V
340	05	MN	Morris Arsenic Dump	Morris	R
348	05	MN	Perham Arsenic Site	Perham	R

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GROUP 8

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
354	05	MN	Nutting Truck & Caster Co.	Faribault	V D
362	01	NH	Savage Municipal Water Supply	Milford	D
363	05	IN	Poer Farm	Hancock County	R
365	06	TX	United Creosoting Co.	Conroe	R
370	05	WI	City Disposal Corp. Landfill	Dunn	D
371	02	NJ	Tabernacle Drum Dump	Tabernacle Twp	E
372	02	NJ	Cooper Road	Voorhees Township	D
376	04	FL	Cabot/Koppers	Gainesville	R
380	06	OK	Compass Industries (Avery Drive)	Tulsa	R
385	05	MN	General Mills/Henkel Corp.	Minneapolis	V
389	09	CA	Del Norte Pesticide Storage	Crescent City	R
390	02	NJ	De Rewal Chemical Co.	Kingwood Township	D
392	04	GA	Monsanto Corp. (Augusta Plant)	Augusta	D
393	01	NH	South Municipal Water Supply Well	Peterborough	D
397	05	WI	Eau Claire Municipal Well Field	Eau Claire	D
398	04	GA	Powersville Site	Peach County	D
400	05	MI	Metamora Landfill	Metamora	D

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GROUP 9

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
401	05	MI	Whitehall Municipal Wells	Whitehall			E	
403	02	NJ	Diamond Alkali Co.	Newark	V	R	E	
405	05	MI	Electrovoice	Buchanan				D
406	02	PR	Fibers Public Supply Wells	Jobos				D
409	05	WI	Mid-State Disposal, Inc. Landfill	Cleveland Township		R		
410	08	CO	Broderick Wood Products	Denver		R	E	
413	02	NJ	Woodland Route 532 Dump	Woodland Township				D
414	05	IN	American Chemical Service, Inc.	Griffith				D
422	06	LA	Bayou Sorrell	Bayou Sorrell		R	E	
427	05	WI	Lemberger Transport & Recycling	Franklin Township			E	
430	10	WA	Queen City Farms	Maple Valley	V			
431	05	WI	Scrap Processing Co., Inc.	Medford			E	
435	02	NJ	Hopkins Farm	Plumstead Township				D
437	05	IN	Reilly Tar (Indianapolis Plant)	Indianapolis				D
440	02	NJ	Wilson Farm	Plumstead Township				D
450	09	CA	Koppers Co.,Inc. (Oroville Plant)	Oroville			E	

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GROUP 10

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
452	03	PA	Walsh Landfill	Honeybrook Township		R		
453	02	NJ	Landfill & Development Co.	Mount Holly			E	
454	02	NJ	Upper Deerfield Township Slf	Upper Deerfield Twp	V		E	
459	04	KY	Airco	Calvert City				D
463	01	MA	Sullivan's Ledge	New Bedford				D
465	05	IN	Bennett Stone Quarry	Bloomington			E	
467	04	AL	Stauffer Chem (Le Moyne Plant)	Axis				D
469	04	SC	Geiger (C & M Oil)	Rantowles				D
470	05	WI	Moss-American(Kerr-McGee Oil Co.)	Milwaukee				D
471	05	WI	Waste Research & Reclamation Co.	Eau Claire			E	
473	05	MN	St. Louis River Site	St. Louis County			E	
476	03	PA	Berks Sand Pit	Longswamp Township		R		
479	04	FL	Hipps Road Landfill	Duval County		R		
480	04	FL	Pepper Steel & Alloys, Inc.	Medley		R		
482	05	WI	Oconomowoc Electroplating Co. Inc	Ashippin			E	
485	05	OH	Powell Road Landfill	Dayton				D
487	08	CO	Lincoln Park	Canon City				D
491	02	NJ	Woodland Route 72 Dump	Woodland Township				D
494	10	OR	United Chrome Products, Inc.	Corvallis		R		
497	03	PA	Taylor Borough Dump	Taylor Borough		R		

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NOTE: GROUP REFERS TO THE NPL GROUP WITH SIMILAR HRS SCORES.

GROUP 11

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
502	05	MI	Burrows Sanitation	Hartford			E	
529	05	WI	Delavan Municipal Well #4	Delavan				D
532	10	WA	American Lake Gardens	Tacoma	V			
533	10	WA	Greenacres Landfill	Spokane County				D

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GROUP 1

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
1	02	NJ	Lipari Landfill	Pitman	V	R	E	
2	03	DE	Tybouts Corner Landfill *	New Castle County		R	E	
3	03	PA	Bruin Lagoon	Bruin Borough		R		
4	02	NJ	Helen Kramer Landfill	Mantua Township		R		
5	01	MA	Industri-Plex	Woburn	V	R	E	
6	02	NJ	Price Landfill *	Pleasantville		R	E	
7	02	NY	Pollution Abatement Services *	Oswego		R		
8	07	IA	LaBounty Site	Charles City	V	R	E	
9	03	DE	Army Creek Landfill	New Castle County				D
10	02	NJ	CPS/Madison Industries	Old Bridge Township			E	
11	01	MA	Nyanza Chemical Waste Dump	Ashland		R		
12	02	NJ	Gems Landfill	Gloucester Township		R		
13	05	MI	Berlin & Farro	Swartz Creek	V	R	E	
14	01	MA	Baird & McGuire	Holbrook		R	E	
15	02	NJ	Lone Pine Landfill	Freehold Township		R		
16	01	NH	Somersworth Sanitary Landfill	Somersworth		R		
17	05	MN	FMC Corp. (Fridley Plant)	Fridley	V			
18	06	AR	Vertac, Inc.	Jacksonville	V	R	E	
19	01	NH	Keefe Environmental Services	Epping		R	E	
20	08	SD	Whitewood Creek *	Whitewood	V			
21	08	MT	Silver Bow Creek	Sil Bow/Deer Lodge		R		
22	06	TX	French, Ltd.	Crosby		R		
23	01	NH	Sylvester *	Nashua		R	E	
24	05	MI	Liquid Disposal, Inc.	Utica		R		
25	03	PA	Tysons Dump	Upper Merion Twp		R		
26	03	PA	McAdoo Associates *	McAdoo Borough		R		
27	06	TX	Motco Inc. *	La Marque		R		
28	05	OH	Arcanum Iron & Metal	Darke County		R		
29	08	MT	East Helena Site	East Helena			E	
30	06	TX	Sikes Disposal Pits	Crosby		R		
31	04	AL	Triana/Tennessee River	Limestone/Morgan	V		E	
32	09	CA	Stringfellow *	Glen Avon Heights		R	E	
33	01	ME	McKin Co.	Gray		R		
34	06	TX	Crystal Chemical Co.	Houston		R	E	
35	02	NJ	Bridgeport Rental & Oil Services	Bridgeport		R	E	
36	08	CO	Sand Creek Industrial	Commerce City			E	
37	06	TX	Geneva Industries/Fuhrmann Energy	Houston		R	E	
38	01	MA	W. R. Grace & Co. (Acton Plant)	Acton	V		E	
39	05	MN	Reilly Tar (St. Louis Park Plant)	St. Louis Park		R		
40	02	NJ	Burnt Fly Bog	Marlboro Township		R	E	
41	02	NJ	Vineland Chemical Co., Inc.	Vineland	V			
42	04	FL	Schuylkill Metals Corp.	Plant City				D
43	05	MN	New Brighton/Arden Hills	New Brighton		R	E	
44	02	NY	Old Bethpage Landfill	Oyster Bay	V			
45	02	NJ	Shieldalloy Corp.	Newfield Borough		R	E	
46	04	FL	Reeves SE Galvanizing Corp.	Tampa				D
47	08	MT	Anaconda Co. Smelter	Anaconda	V	R	E	
48	10	WA	Western Processing Co., Inc.	Kent	V	R	E	
49	05	WI	Omega Hills North Landfill	Germantown				D
50	04	FL	American Creosote Works	Pensacola		R		

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GROUP 2

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
51	02	NJ	Caldwell Trucking Co.	Fairfield		R		
52	02	NY	GE Moreau	South Glen Falls	V		E	
53	05	IN	Seymour Recycling Corp. *	Seymour	V	R	E	
54	05	OH	United Scrap Lead Co., Inc.	Troy				D
55	06	OK	Tar Creek (Ottawa County)	Ottawa County		R		
56	07	KS	Cherokee County	Cherokee County		R		
57	02	NJ	Brick Township Landfill	Brick Township	V			
58	05	MI	Northernaire Plating	Cadillac		R	E	
59	05	WI	Janesville Old Landfill	Janesville				D
60	10	WA	Frontier Hard Chrome, Inc.	Vancouver		R		
61	04	SC	Independent Nail Co.	Beaufort				D
62	04	SC	Kalama Specialty Chemicals	Beaufort			E	
63	05	WI	Janesville Ash Beds	Janesville				D
64	04	FL	Davie Landfill	Davie				D
65	05	OH	Miami County Incinerator	Troy		R	E	
66	04	FL	Gold Coast Oil Corp.	Miami	V			
67	05	WI	Wheeler Pit	La Prairie Township				D
68	09	AZ	Tucson Intl Airport Area	Tucson	V	R		
69	02	NY	Wide Beach Development	Brant		R		
70	09	CA	Iron Mountain Mine	Redding		R		
71	02	NJ	Scientific Chemical Processing	Carlstadt			E	
72	08	CO	California Gulch	Leadville			E	
73	02	NJ	D'Imperio Property	Hamilton Township		R		
74	05	MI	Gratiot County Landfill *	St. Louis	V			
75	01	RI	Picillo Farm *	Coventry		R	E	
76	01	MA	New Bedford Site *	New Bedford	V	R	E	
77	06	LA	Old Inger Oil Refinery *	Darrow		R		
78	05	OH	Chem-Dyne *	Hamilton	V	R	E	
79	04	SC	SCRDI Bluff Road *	Columbia	V	R	E	
80	01	CT	Laurel Park, Inc. *	Naugatuck Borough			E	
81	08	CO	Marshall Landfill *	Boulder County			E	
82	05	IL	Outboard Marine Corp. *	Waukegan		R	E	
83	06	NM	South Valley *	Albuquerque		R	E	
84	01	VT	Pine Street Canal *	Burlington				D
85	03	WV	West Virginia Ordnance *	Point Pleasant		R		
86	07	MO	Ellisville Site *	Ellisville		R		
87	08	ND	Arsenic Trioxide Site *	Southeastern N.D.		R		
88	09	TT	PCB Wastes *	Pacific Trust Terr		R		
89	03	VA	Matthews Electroplating *	Roanoke County		R		
90	07	IA	Aidex Corp. *	Council Bluffs		R	E	
91	09	AZ	Mountain View Mobile Homes *	Globe		R	E	
92	09	AS	Taputimu Farm *	American Samoa		R		
93	04	TN	North Hollywood Dump *	Memphis		R		
94	04	KY	A.L. Taylor (Valley of Drums) *	Brooks		R		
95	04	NC	PCB Spills *	210 Miles of Roads		R	E	
96	09	GU	Ordot Landfill *	Guam		R		
97	04	MS	Flowood Site *	Flowood				D
98	08	UT	Rose Park Sludge Pit *	Salt Lake City	V			
99	07	KS	Arkansas City Dump *	Arkansas City		R		
100	09	CM	PCB Warehouse *	Marianas		R		

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GROUP 3

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
101	05	MN	Oakdale Dump	Oakdale	V		E	
102	05	IL	A & F Material Reclaiming, Inc.	Greenup	V	R	E	
103	03	PA	Douglassville Disposal	Douglassville		R		
104	02	NJ	Krysowaty Farm	Hillsborough		R		
105	05	MN	Koppers Coke	St. Paul				D
106	01	MA	Plymouth Harbor/Cannon Engnrng	Plymouth		R	E	
107	10	ID	Bunker Hill Mining & Metallurg	Smelterville			E	
108	02	NY	Hudson River PCBs	Hudson River		R	E	
109	02	NJ	Universal Oil Products(Chem Div)	East Rutherford			E	
110	09	CA	Aerojet General Corp.	Rancho Cordova			E	
111	10	WA	Com Bay, South Tacoma Channel	Tacoma		R	E	
112	03	PA	Osborne Landfill	Grove City			E	
113	01	CT	Old Southington Landfill	Southington	V		E	
114	02	NY	Syosset Landfill	Oyster Bay				D
115	09	AZ	Nineteenth Avenue Landfill	Phoenix			E	
116	10	OR	Teledyne Wah Chang	Albany				D
117	02	NY	Sinclair Refinery	Wellsville		R	E	
118	04	AL	Mowbray Engineering Co.	Greenville		R		
119	05	MI	Spiegelberg Landfill	Green Oak Township		R		
120	04	FL	Miami Drum Services	Miami		R	E	
121	02	NJ	Reich Farms	Pleasant Plains		R	E	
122	10	ID	Union Pacific Railroad Co.	Pocatello				D
123	02	NJ	South Brunswick Landfill	South Brunswick	V			
124	04	AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh				D
125	04	FL	Kassauf-Kimerling Battery	Tampa		R		
126	05	IL	Wauconda Sand & Gravel	Wauconda		R		
127	01	NH	Ottati & Goss/Kingston Steel Drum	Kingston	V	R	E	
128	05	MI	Ott/Story/Cordova	Dalton Township		R	E	
129	02	NJ	NL Industries	Pedricktown			E	
130	05	MN	St. Regis Paper Co.	Cass Lake	V			
131	02	NJ	Ringwood Mines/Landfill	Ringwood Borough	V			
132	04	FL	Whitehouse Oil Pits	Whitehouse		R		
133	04	GA	Hercules 009 Landfill	Brunswick				D
134	05	MI	Velsicol Chemical (Michigan)	St. Louis	V		E	
135	05	OH	Summit National	Deerfield Township	V	R	E	
136	02	NY	Love Canal	Niagara Falls		R	E	
137	05	IN	Fisher-Calo	LaPorte	V		E	
138	04	FL	Pioneer Sand Co.	Warrington		R	E	
139	05	MI	Springfield Township Dump	Davisburg		R		
140	03	PA	Hranica Landfill	Buffalo Township				D
141	04	NC	Martin Marietta, Sodyeco, Inc.	Charlotte				D
142	04	FL	Zellwood Ground Water Contam	Zellwood		R		
143	05	MI	Packaging Corp. of America	Filer City		R		D
144	05	WI	Muskego Sanitary Landfill	Muskego				D
145	02	NY	Hooker (S Area)	Niagara Falls	V		E	
146	03	PA	Lindane Dump	Harrison Township				D
147	08	CO	Central City-Clear Creek	Idaho Springs		R		
148	02	NJ	Ventron/Velsicol	Wood Ridge Borough		R	E	
149	04	FL	Taylor Road Landfill	Seffner			E	
150	01	RI	Western Sand & Gravel	Burrillville		R	E	

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GROUP 4

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
151	04	SC	Koppers Co., Inc (Florence Plant)	Florence			E	
152	02	NJ	Maywood Chemical Co.	Maywood/Rochelle Pk			E	
153	02	NJ	Nascolite Corp.	Millville	V	R		
154	06	OK	Hardage/Criner	Criner		R	E	
155	05	MI	Rose Township Dump	Rose Township		R		
156	05	MN	Waste Disposal Engineering	Andover	V		E	
157	02	NJ	Kin-Buc Landfill	Edison Township	V	R	E	
158	05	OH	Bowers Landfill	Circleville		R		
159	02	NJ	Ciba-Geigy Corp.	Toms River				D
160	05	MI	Butterworth #2 Landfill	Grand Rapids			E	
161	02	NJ	American Cyanamid Co.	Bound Brook			E	
162	03	PA	Heleva Landfill	North Whitehall Twp		R		
163	02	NJ	Ewan Property	Shamong Township				D
164	02	NY	Batavia Landfill	Batavia			E	
165	05	MN	Boise Cascade/Onan/Medtronics	Fridley			E	
166	01	RI	L&RR, Inc.	North Smithfield			E	
167	04	FL	NW 58th Street Landfill	Hialeah		R	E	
168	02	NJ	Delilah Road	Egg Harbor Township		R	E	
169	03	PA	Mill Creek Dump	Erie		R		
170	04	FL	Sixty-Second Street Dump	Tampa		R		
171	05	MI	G&H Landfill	Utica		R		
172	02	NJ	Metaltec/Aerosystems	Franklin Borough		R	E	
173	05	WI	Schmalz Dump	Harrison				D
174	02	NJ	Lang Property	Pemberton Township				D
175	02	NJ	Sharkey Landfill	Parsippany Troy Hls		R		
176	09	CA	Selma Treating Co.	Selma			E	
177	06	LA	Cleve Reber	Sorrento		R		
178	05	IL	Velsicol Chemical (Illinois)	Marshall	V			
179	05	MI	Tar Lake	Mancelona Township		R		
180	08	CO	Lowry Landfill	Arapahoe County	V	R	E	
181	05	MN	MacGillis & Gibbs/Bell Lumber	New Brighton			E	
182	02	NJ	Combe Fill North Landfill	Mount Olive Twp		R		
183	01	MA	Re-Solve, Inc.	Dartmouth		R	E	
184	02	NJ	Goose Farm	Plumstead Township		R	E	
185	04	TN	Velsicol Chem (Hardeman County)	Toone				D
186	02	NY	York Oil Co.	Moira		R	E	
187	04	FL	Sapp Battery Salvage	Cottondale		R	E	
188	04	SC	Wamchem, Inc.	Burton				D
189	02	NJ	Chemical Leaman Tank Lines, Inc.	Bridgeport				D
190	05	WI	Master Disposal Service Landfill	Brookfield			E	
191	07	KS	Doepke Disposal Site (Holliday)	Johnson County		R		
192	02	NJ	Florence Land Recontouring LF	Florence Township		R	E	
193	01	RI	Davis Liquid Waste	Smithfield		R	E	
194	01	MA	Charles-George Reclamation Lf	Tyngsborough		R	E	
195	02	NJ	King of Prussia	Winslow Township				D
196	03	VA	Chisman Creek	York County		R		
197	05	OH	Nease Chemical	Salem				D
198	02	NJ	W. R. Grace & Co. (Wayne Plant;	Wayne Township		R		
199	02	NJ	Chemical Control	Elizabeth		R	E	
200	04	SC	Leonard Chemical Co., Inc.	Rock Hill			E	

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GROUP 5

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
201	05	OH	Allied Chemical & Ironton Coke	Ironton	V			
202	05	MI	Verona Well Field	Battle Creek		R		
203	01	CT	Beacon Heights Landfill	Beacon Falls		R	E	
204	04	AL	Stauffer Chem (Cold Creek Plant)	Bucks				D
205	05	MN	Burlington Northern (Brainerd)	Brainerd/Baxter				D
206	03	PA	Malvern TCE	Malvern				D
207	02	NY	Facet Enterprises, Inc.	Elmira	V			
208	03	DE	Delaware Sand & Gravel Landfill	New Castle County		R		
209	04	TN	Murray-Ohio Dump	Lawrenceburg	V		E	
210	05	IN	Envirochem Corp.	Zionsville	V	R	E	
211	05	IN	MIDCO I	Gary		R	E	
212	05	OH	South Point Plant	South Point				D
213	04	FL	Coleman-Evans Wood Preserving Co.	Whitehouse			E	
214	03	PA	Dorney Road Landfill	Upper Macungie Twp		R		
215	05	IN	Northside Sanitary Landfill, Inc	Zionsville			E	
216	04	FL	Florida Steel Corp.	Indiantown				D
217	09	AZ	Litchfield Airport Area	Goodyear/Avondale		R	E	
218	02	NJ	Spence Farm	Plumstead Township		R		
219	06	AR	Mid-South Wood Products	Mena		R	E	
220	09	CA	Atlas Asbestos Mine	Fresno County				D
221	09	CA	Coalinga Asbestos Mine	Coalinga				D
222	04	FL	Brown Wood Preserving	Live Oak	V		E	
223	02	NY	Port Washington Landfill	Port Washington	V			
224	02	NJ	Combe Fill South Landfill	Chester Township		R		
225	02	NJ	JIS Landfill	Jamesburg/S. Brnswck			E	
226	03	PA	Centre County Kepone	State College Boro			E	
227	05	OH	Fields Brook	Ashtabula		R		
228	01	CT	Solvents Recovery Service	Southington	V		E	
229	08	CO	Woodbury Chemical Co.	Commerce City		R		
230	01	MA	Hocomonco Pond	Westborough		R		
231	04	KY	Distler Brickyard	West Point		R		
232	02	NY	Ramapo Landfill	Ramapo	V			
233	09	CA	Coast Wood Preserving	Ukiah			E	
234	02	NY	Mercury Refining, Inc.	Colonie			E	
235	04	FL	Hollingsworth Solderless Terminal	Fort Lauderdale				D
236	02	NY	Olean Well Field	Olean		R		
237	04	FL	Varsol Spill	Miami	V	R		
238	05	MN	Joslyn Manufacturing & Supply Co.	Brooklyn Center			E	
239	08	CO	Denver Radium Site	Denver		R		
240	04	FL	Tower Chemical Co.	Clermont		R	E	
241	07	MO	Syntex Facility	Verona	V		E	
242	08	MT	Milltown Reservoir Sediments	Milltown		R		
243	05	MN	Arrowhead Refinery Co.	Hermantown		R		
244	02	NJ	Pijak Farm	Plumstead Township		R		
245	02	NJ	Syncon Resins	South Kearny		R		
246	09	CA	Liquid Gold Oil Corp.	Richmond			E	
247	09	CA	Purity Oil Sales, Inc.	Malaga		R		
248	01	NH	Tinkham Garage	Londonderry		R		
249	04	FL	Alpha Chemical Corp.	Galloway				D
250	02	NJ	Bog Creek Farm	Howell Township		R		

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GROUP 6

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
251	01	ME	Saco Tannery Waste Pits	Saco		R		
252	04	FL	Pickettville Road Landfill	Jacksonville				D
253	01	MA	Iron Horse Park	Billerica				D
254	03	PA	Palmerton Zinc Pile	Palmerton		R		
255	05	IN	Neal's Landfill (Bloomington)	Bloomington	V		E	
256	05	WI	Kohler Co. Landfill	Kohler				D
257	01	MA	Silresim Chemical Corp.	Lowell		R	E	
258	01	MA	Wells G&H	Woburn		R	E	
259	02	NJ	Chemsol, Inc.	Piscataway				D
260	05	WI	Lauer I Sanitary Landfill	Menomonee Falls			E	
261	05	MI	Petoskey Municipal Well Field	Petoskey			E	
262	05	MN	Union Scrap	Minneapolis			E	
263	02	NJ	Radiation Technology, Inc.	Rockaway Township			E	
264	02	NJ	Fair Lawn Well Field	Fair Lawn	V			
265	05	IN	Main Street Well Field	Elkhart	V			
266	05	MN	Lehillier/Mankato Site	Lehillier		R		
267	10	WA	Lakewood Site	Lakewood			E	
268	03	PA	Industrial Lane	Williams Township		R		
269	05	WI	Onalaska Municipal Landfill	Onalaska				D
270	02	NJ	Monroe Township Landfill	Monroe Township			E	
271	02	NJ	Rockaway Borough Well Field	Rockaway Township				D
272	05	IN	Wayne Waste Oil	Columbia City			E	
273	10	ID	Pacific Hide & Fur Recycling Co.	Pocatello		R	E	
274	07	IA	Des Moines TCE	Des Moines		R		
275	02	NJ	Beachwood/Berkley Wells	Berkley Township		R		
276	02	NY	Vestal Water Supply Well 4-2	Vestal			E	
277	02	PR	Vega Alta Public Supply Wells	Vega Alta		R		
278	05	MI	Sturgis Municipal Wells	Sturgis				D
279	05	MN	Washington County Landfill	Lake Elmo				D
280	09	AZ	Indian Bend Wash Area	Scottsdale/Tempe		R	E	
281	09	CA	San Gabriel Valley (Area 1)	El Monte		R		
282	09	CA	San Gabriel Valley (Area 2)	Baldwin Park Area		R		
283	10	WA	Com Bay, Near Shore/Tide Flats	Pierce County		R	E	
284	05	IL	LaSalle Electric Utilities	LaSalle		R		
285	05	IL	Cross Brothers Pail (Pembroke)	Pembroke Township		R		
286	02	PR	Upjohn Facility	Barceloneta	V			
287	09	CA	McColl	Fullerton		R	E	
288	03	PA	Henderson Road	Upper Merion Twp		R		
289	10	WA	Colbert Landfill	Colbert		R		
290	06	LA	Petro-Processors	Scotlandville	V	R	E	
291	02	PR	Frontera Creek	Rio Abajo				D
292	02	PR	Barceloneta Landfill	Florida Afuera				D
293	03	MD	Sand, Gravel & Stone	Elkton		R		
294	05	MI	Spartan Chemical Co.	Wyoming			E	
295	02	NJ	Roebling Steel Co.	Florence		R		
296	03	PA	East Mount Zion	Springettsbury Twp		R		
297	04	TN	Amnicola Dump	Chattanooga				D
298	02	NJ	Vineland State School	Vineland		R		
299	03	PA	Enterprise Avenue	Philadelphia		R		
300	01	MA	Groveland Wells	Groveland		R	E	

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GROUP 7

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
301	02	NY	General Motors (Cent Foundry Div)	Massena		R		
302	04	SC	SCRDI Dixiana	Cayce		R	E	
303	07	MO	Fulbright Landfill	Springfield				D
304	03	PA	Presque Isle	Erie				D
305	02	NJ	Williams Property	Swainton		R		
306	02	NJ	Renora, Inc.	Edison Township				D
307	02	NJ	Denzer & Schafer X-Ray Co.	Bayville				D
308	02	NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown				
309	05	IN	Ninth Avenue Dump	Gary	V		E	
310	06	AR	Gurley Pit	Edmondson				D
311	01	RI	Peterson/Puritan, Inc.	Lincoln/Cumberland	V		E	
312	07	MO	Times Beach Site	Times Beach		R		
313	05	MI	Wash King Laundry	Pleasant Plains Twp				D
314	05	MN	Whittaker Corp.	Minneapolis				D
315	05	MN	NL Industries/Taracorp/Golden	St. Louis Park	V			
316	01	CT	Kellogg-Deering Well Field	Norwalk	V	R	E	
317	01	MA	Cannon Engineering Corp. (CEC)	Bridgewater		R	E	
318	02	NY	Niagara County Refuse	Wheatfield				D
319	04	FL	Sherwood Medical Industries	Deland				D
320	04	AL	Olin Corp. (McIntosh Plant)	McIntosh				D
321	05	MI	Southwest Ottawa County Landfill	Park Township			E	
322	02	NY	Kentucky Avenue Well Field	Horseheads		R		
323	02	NJ	Asbestos Dump	Millington		R		
324	04	KY	LEE'S LANE LANDFILL	LOUISVILLE		R	E	
325	06	AR	Frit Industries	Walnut Ridge	V		E	
326	05	OH	Fultz Landfill	Jackson Township				D
327	04	FL	Tri-City Oil Conservationist, Inc	Tampa		R		
328	05	OH	Coshocton Landfill	Franklin Township		R	E	
329	03	PA	Lord-Shope Landfill	Girard Township			E	
330	10	WA	FMC Corp. (Yakima Pit)	Yakima	V			
331	05	WI	Northern Engraving Co.	Sparta				D
332	01	MA	PSC Resources	Palmer	V			
333	05	MI	Forest Waste Products	Otisville		R		
334	03	PA	Drake Chemical	Lock Haven		R		
335	01	NH	Kearsarge Metallurgical Corp.	Conway	V		E	
336	04	SC	Palmetto Wood Preserving	Dixianna				D
337	05	MI	Clare Water Supply	Clare	V			
338	03	PA	Havertown PCP	Haverford		R		
339	03	DE	New Castle Spill	New Castle County				D
340	05	MN	Morris Arsenic Dump	Morris		R		
341	05	IN	Lake Sandy Jo (M&M Landfill)	Gary		R		
342	05	IL	Johns-Manville Corp.	Waukegan	V	R	E	
343	05	MI	Chem Central	Wyoming Township				D
344	05	MI	Novaco Industries	Temperance			E	
345	02	NJ	Jackson Township Landfill	Jackson Township			E	
346	05	MI	K&L Avenue Landfill	Oshtemo Township	V		E	
347	10	WA	Kaiser Aluminum Mead Works	Mead	V			
348	05	MN	Perham Arsenic Site	Perham		R		
349	05	MI	Charlevoix Municipal Well	Charlevoix		R		
350	02	NJ	Montgomery Township Housing Dev	Montgomery Township				D

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E = FEDERAL AND STATE ENFORCEMENT; D = ACTIONS TO BE DETERMINED.
* = STATES' DESIGNATED TOP PRIORITY SITES.

GROUP 8

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
351	02	NJ	Rocky Hill Municipal Well	Rocky Hill Borough	E
352	02	NY	Brewster Well Field	Putnam County	R
353	02	NY	Vestal Water Supply Well 1-1	Vestal	R
354	05	MN	Nutting Truck & Caster Co.	Faribault	V D
355	02	NJ	U.S. Radium Corp.	Orange	R
356	06	TX	Highlands Acid Pit	Highlands	R
357	03	PA	Resin Disposal	Jefferson Borough	D
358	08	MT	Libby Ground Water Contamination	Libby	D
359	04	KY	Newport Dump	Newport	E
360	03	PA	Moyers Landfill	Eagleville	R E
361	04	FL	Parramore Surplus	Mount Pleasant	D
362	01	NH	Savage Municipal Water Supply	Milford	D
363	05	IN	Poer Farm	Hancock County	R
364	05	MI	Hedblum Industries	Oscoda	D
365	06	TX	United Creosoting Co.	Conroe	R
366	08	WY	Baxter/Union Pacific Tie Treating	Laramie	D
367	02	NJ	Sayreville Landfill	Sayreville	D
368	01	NH	Dover Municipal Landfill	Dover	R
369	02	NY	Ludlow Sand & Gravel	Clayville	R
370	05	WI	City Disposal Corp. Landfill	Dunn	D
371	02	NJ	Tabernacle Drum Dump	Tabernacle Twp	E
372	02	NJ	Cooper Road	Voorhees Township	D
373	07	MO	Minker/Stout/Romaine Creek	Imperial	R
374	01	CT	Yaworski Waste Lagoon	Canterbury	R E
375	03	WV	Leetown Pesticide	Leetown	R
376	04	FL	Cabot/Koppers	Gainesville	R
377	02	NJ	Evor Phillips Leasing	Old Bridge Township	D
378	03	PA	Wade (ABM)	Chester	R E
379	03	PA	Lackawanna Refuse	Old Forge Borough	R E
380	06	OK	Compass Industries (Avery Drive)	Tulsa	R
381	02	NJ	Mannheim Avenue Dump	Galloway Township	D
382	02	NY	Fulton Terminals	Fulton	R
383	01	NH	Auburn Road Landfill	Londonderry	R E
384	03	WV	Fike Chemical, Inc.	Nitro	E
385	05	MN	General Mills/Henkel Corp.	Minneapolis	V
386	05	OH	Laskin/Poplar Oil Co.	Jefferson Township	R E
387	05	OH	Old Mill	Rock Creek	R
388	07	KS	Johns' Sludge Pond	Wichita	V E
389	09	CA	Del Norte Pesticide Storage	Crescent City	R
390	02	NJ	De Rewal Chemical Co.	Kingwood Township	D
391	02	NJ	Swope Oil & Chemical Co.	Pennsauken	V R
392	04	GA	Monsanto Corp. (Augusta Plant)	Augusta	D
393	01	NH	South Municipal Water Supply Well	Peterborough	D
394	01	ME	Winthrop Landfill	Winthrop	E
395	06	AR	Cecil Lindsey	Newport	R
396	05	OH	Zanesville Well Field	Zanesville	D
397	05	WI	Eau Claire Municipal Well Field	Eau Claire	D
398	04	GA	Powersville Site	Peach County	D
399	05	MI	Grand Traverse Overall Supply Co.	Greilickville	D
400	05	MI	Metamora Landfill	Metamora	D

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GROUP 9

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #
401	05	MI	Whitehall Municipal Wells	Whitehall	E
402	05	MN	South Andover Site	Andover	D
403	02	NJ	Diamond Alkali Co.	Newark	V R E
404	05	MI	Kentwood Landfill	Kentwood	E
405	05	MI	Electrovoice	Buchanan	D
406	02	PR	Fibers Public Supply Wells	Jobos	D
407	05	IN	Marion (Bragg) Dump	Marion	R
408	05	OH	Pristine, Inc.	Reading	E
409	05	WI	Mid-State Disposal, Inc. Landfill	Cleveland Township	R
410	08	CO	Broderick Wood Products	Denver	R E
411	05	OH	Buckeye Reclamation	St. Clairsville	D
412	06	TX	Bio-Ecology Systems, Inc.	Grand Prairie	R
413	02	NJ	Woodland Route 532 Dump	Woodland Township	D
414	05	IN	American Chemical Service, Inc.	Griffith	D
415	01	VT	Old Springfield Landfill	Springfield	R E
416	02	NY	Solvent Savers	Lincklaen	R E
417	03	VA	U.S. Titanium	Piney River	R E
418	05	IL	Galesburg/Koppers Co.	Galesburg	D
419	02	NY	Hooker (Hyde Park)	Niagara Falls	V E
420	05	MI	SCA Independent Landfill	Muskegon Heights	E
421	09	CA	MGM Brakes	Cloverdale	E
422	06	LA	Bayou Sorrell	Bayou Sorrell	R E
423	05	MI	Duell & Gardner Landfill	Dalton Township	R
424	02	NJ	Ellis Property	Evesham Township	R
425	04	KY	Distler Farm	Jefferson County	R
426	10	WA	Harbor Island (Lead)	Seattle	D
427	05	WI	Lemberger Transport & Recycling	Franklin Township	E
428	05	OH	E.H. Schilling Landfill	Hamilton Township	D
429	05	MI	Cliff/Dow Dump	Marquette	R E
430	10	WA	Queen City Farms	Maple Valley	V
431	05	WI	Scrap Processing Co., Inc.	Medford	E
432	06	NM	Homestake Mining Co.	Milan	V E
433	05	MI	Mason County Landfill	Pere Marquette Twp	E
434	05	MI	Cemetery Dump	Rose Center	R
435	02	NJ	Hopkins Farm	Plumstead Township	D
436	01	RI	Stamina Mills, Inc.	North Smithfield	R E
437	05	IN	Reilly Tar (Indianapolis Plant)	Indianapolis	D
438	01	ME	Pinette's Salvage Yard	Washburn	R
439	06	TX	Harris (Farley Street)	Houston	V E
440	02	NJ	Wilson Farm	Plumstead Township	D
441	03	PA	Old City of York Landfill	Seven Valleys	E
442	05	IL	Byron Salvage Yard	Byron	R
443	03	PA	Stanley Kessler	King of Prussia	E
444	02	NJ	Friedman Property	Upper Freehold Twp	R
445	02	NJ	Imperial Oil/Champion Chemicals	Morganville	
446	02	NJ	Myers Property	Franklin Township	R
447	02	NJ	Pepe Field	Boonton	D
448	05	MI	Ossineke Ground Water Contam	Ossineke	E
449	03	WV	Follansbee Site	Follansbee	D
450	09	CA	Koppers Co., Inc. (Oroville Plant)	Oroville	E

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GROUP 10

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
451	05	MI	U.S. Aviex	Howard Township			E	
452	03	PA	Walsh Landfill	Honeybrook Township		R		
453	02	NJ	Landfill & Development Co.	Mount Holly			E	
454	02	NJ	Upper Deerfield Township Slf	Upper Deerfield Twp	V		E	
455	06	NM	AT & SF (Clovis)	Clovis	V		E	D
456	02	NY	American Thermostat Co.	South Cairo			E	
457	04	TN	Lewisburg Dump	Lewisburg				D
458	05	MI	McGraw Edison Corp.	Albion			E	
459	04	KY	Airco	Calvert City				D
460	03	PA	Metal Banks	Philadelphia	V			
461	04	KY	B.F. Goodrich	Calvert City				D
462	05	MI	Organic Chemicals, Inc.	Grandville			E	
463	01	MA	Sullivan's Ledge	New Bedford				D
464	02	PR	Juncos Landfill	Juncos	V	R		
465	05	IN	Bennett Stone Quarry	Bloomington			E	
466	04	FL	Munisport Landfill	North Miami				D
467	04	AL	Stauffer Chem (Le Moyne Plant)	Axis				D
468	02	NJ	M&T Delisa Landfill	Asbury Park	V			
469	04	SC	Geiger (C & M Oil)	Rantowles				D
470	05	WI	Moss-American(Kerr-McGee Oil Co.)	Milwaukee				D
471	05	WI	Waste Research & Reclamation Co.	Eau Claire			E	
472	10	OR	Gould, Inc.	Portland			E	
473	05	MN	St. Louis River Site	St. Louis County			E	
474	05	MI	Auto Ion Chemicals, Inc.	Kalamazoo		R		
475	04	SC	Carolawn, Inc.	Fort Lawn		R	E	
476	03	PA	Berks Sand Pit	Longswamp Township		R		
477	05	MI	Sparta Landfill	Sparta Township			E	
478	05	IL	ACME Solvent (Morristown Plant)	Morristown		R		
479	04	FL	Hipps Road Landfill	Duval County		R		
480	04	FL	Pepper Steel & Alloys, Inc.	Medley		R		
481	01	ME	O'Connor Co.	Augusta				D
482	05	WI	Oconomowoc Electroplating Co. Inc	Ashippin			E	
483	05	MI	Rasmussen's Dump	Green Oak Township		R		
484	03	PA	Westline Site	Westline		R		
485	05	OH	Powell Road Landfill	Dayton				D
486	05	MI	Ionia City Landfill	Ionia		R		
487	08	CO	Lincoln Park	Canon City				D
488	05	IN	Wedzeb Enterprises, Inc.	Lebanon			E	
489	02	PR	GE Wiring Devices	Juana Diaz	V			
490	05	OH	New Lyme Landfill	New Lyme		R		
491	02	NJ	Woodland Route 72 Dump	Woodland Township				D
492	02	PR	RCA Del Caribe	Barceloneta				D
493	03	PA	Brodhead Creek	Stroudsburg		R		
494	10	OR	United Chrome Products, Inc.	Corvallis		R		
495	05	MI	Anderson Development Co.	Adrian			E	
496	05	MI	Shiawassee River	Howell			E	
497	03	PA	Taylor Borough Dump	Taylor Borough		R		
498	03	DE	Harvey & Knott Drum, Inc.	Kirkwood		R		
499	04	TN	Gallaway Pits	Gallaway		R	E	
500	05	OH	Big D Campground	Kingsville			E	

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GROUP 11

RANK	EPA REG	ST	SITE NAME *	CITY/COUNTY	RESPONSE STATUS #			
501	03	DE	Wildcat Landfill	Dover		R		
502	05	MI	Burrows Sanitation	Hartford			E	
503	03	PA	Blosenski Landfill	West Cain Township		R		
504	03	DE	Delaware City PVC Plant	Delaware City	V			
505	03	MD	Limestone Road	Cumberland		R	E	
506	02	NY	Hooker (102nd Street)	Niagara Falls			E	
507	03	DE	New Castle Steel	New Castle County				D
508	06	NM	United Nuclear Corp.	Church Rock		R	E	
509	06	AR	Industrial Waste Control	Fort Smith		R	E	
510	09	CA	Celtor Chemical Works	Hoopa		R		
511	04	AL	Perdido Ground Water Contam	Perdido				D
512	02	NY	Marathon Battery Corp.	Cold Springs		R		
513	03	PA	Lehigh Electric & Engineering Co.	Old Forge Borough		R	E	
514	05	OH	Skinner Landfill	West Chester				D
515	04	NC	Chemtronics, Inc.	Swannanoa				D
516	07	MO	Shenandoah Stables	Moscow Mills			E	
517	06	LA	Bayou Bonfouca	Slidell		R		
518	03	VA	Saltville Waste Disposal Ponds	Saltville		R		
519	03	PA	Kimberton Site	Kimberton Borough				D
520	03	MD	Middletown Road Dump	Annapolis		R	E	
521	10	WA	Pesticide Lab (Yakima)	Yakima				D
522	05	IN	Lemon Lane Landfill	Bloomington		R		
523	10	ID	Arrcom (Drexler Enterprises)	Rathdrum				D
524	03	PA	Fischer & Porter Co.	Warminster	V			
525	09	CA	Jibboom Junkyard	Sacramento		R		
526	02	NJ	A. O. Polymer	Sparta Township			E	
527	02	NJ	Dover Municipal Well 4	Dover Township				D
528	02	NJ	Rockaway Township Wells	Rockaway		R		
529	05	WI	Delavan Municipal Well #4	Delavan				D
530	09	CA	San Gabriel Valley (Area 3)	Alhambra		R		
531	09	CA	San Gabriel Valley (Area 4)	La Puente		R		
532	10	WA	American Lake Gardens	Tacoma	V			
533	10	WA	Greenacres Landfill	Spokane County				D
534	06	TX	Triangle Chemical Co.	Bridge City		R	E	
535	02	NJ	PJP Landfill	Jersey City			E	
536	03	PA	Craig Farm Drum	Parker				D
537	03	PA	Voortman Farm	Upper Saucon Twp		R		
538	05	IL	Belvidere Municipal Landfill	Belvidere		R		

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[FR Doc. 84-24747 Filed 9-20-84; 8:45 am]

BILLING CODE 6560-50-C

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amdt. H-149]

Screening of Excess Real Property

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This amendment gives Federal agencies that sponsor public benefit disposals at less than fair market value an opportunity to make a recommendation to the disposal agency that the highest and best use of excess real property is for a specific public benefit purpose. Under this amendment, recommendations concerning the potential of excess real property for public benefit use will be solicited concurrently with the 30-day Federal agency utilization screening period. The intended effects of this amendment are to provide for the earliest possible highest and best use determination for excess Federal real property and to expedite the formulation of an appropriate disposal plan.

EFFECTIVE DATE: The regulation is effective September 21, 1984.

FOR FURTHER INFORMATION CONTACT: James H. Pitts, Office of Real Property, (202) 535-7067.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-47

Surplus government property, Government property management.

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

For the reasons set forth in the preamble, 41 CFR Part 101-47 is amended as follows:

1. The authority citation for Part 101-47 is as follows:

Authority: Sec. 205(c) (40 U.S.C. 486(c)).

Subpart 101-47.2—Utilization of Excess Real Property

2. Section 101-47.203-5 is amended by revising paragraph (d) to read as follows:

§ 101-47.203-5 Screening of excess real property.

* * * * *

(d) Concurrently with the 30-day Federal agency use screening period, those Federal agencies that sponsor public benefit disposals at less than fair market value as permitted by the statutory authorities in § 101-47.4905 may provide the disposal agency with a recommendation, together with a brief supporting rationale, as illustrated in § 101-47.4909, that the highest and best use of the property is for a specific public benefit purpose. The recommendation may be made by the agency head, or designee, and will be considered by the disposal agency in its final highest and best use analysis and determination. After a determination of surplus has been made, if the disposal agency agrees with a sponsoring Federal agency that the highest and best use of a particular property is for a specific public benefit purpose, local public bodies will be notified that the property is available for that use.

Subpart 101-47.49—Illustrations

3. Section 101-47.4909 is added to read as follows:

§ 101-47.4909 Highest and best use.

(a) Highest and best use is the most likely use to which a property can be put, so as to produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g. zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

(b) An analysis and determination of highest and best use is based on information compiled from the property inspection and environmental assessment. Major considerations include:

(1) Present zoning category (check one or more as appropriate).

Industrial .... ——
Single family residential .... ——
Multiple family residential .... ——
Commercial/retail .... ——
Warehouse .... ——
Agriculture .... ——
Institutional or public use .... ——

Other (specify) ————

Not zoned .... ——
Zoning proceeding pending Federal disposal .... ——

Category proposed ————

(2) Physical characteristics. (Describe land and improvements and comment on property's physical characteristics including utility services, access, environmental and historical aspects, and other significant factors) ————

(3) Area/neighborhood uses (check one or more as appropriate).

Single family residential .... ——
Multiple family residential .... ——
Industrial .... ——
Office .... ——
Retail or commercial .... ——
Farmland .... ——
Recreational/park area .... ——

Other (specify) ————

(4) Existing neighboring improvements (check one or more as appropriate).

Deteriorating .... ——
Stable .... ——
Some recent development .... ——
Significant recent development .... ——

Vicinity improvements:
——Dense ——Moderate ——Sparse —— None

(5) Environmental factors/constraints adversely affecting the marketability of the property (check one or more as appropriate).

Severe slope or soil instability .... ——
Road access .... ——
Access to sanitary sewers or storm sewers .... ——
Access to water supply .... ——
Location within or near floodplain .... ——
Wetlands .... ——
Tidelands .... ——
Irregular shape .... ——
Present lease agreement or other possessory non-Federal interest .... ——
Historic, archeological or cultural .... ——

Contamination or other hazards .... ___

Other (specify) ___

Comments on adverse conditions ___

(6) Former Government uses (check one or more as appropriate).

Office .... ___
Industrial .... ___
Warehouse or storage .... ___
Residential .... ___
Retail/commercial .... ___
Agricultural .... ___

Specify other uses below, such as airport, health, education, recreation and special military facilities— ___

(c) Determination of highest and best use (check one or more as appropriate).

Single family residential .... ___
Multiple family residential .... ___
Industrial .... ___
Office .... ___
Retail or commercial .... ___
Agricultural .... ___
Warehouse/storage .... ___
Transportation .... ___
Historic monument .... ___
Recreation/park .... ___
Health .... ___
Education or related institutional use .... ___
Airport .... ___
Wildlife Conservation .... ___
Public utility .... ___

Other (include general public or governmental). ___

Remarks: ___

(d) Are significant costs required to make property conform to highest and best use (i.e. demolition of existing improvements, relocation of existing improvements, etc.)?

Remarks: ___

(e) Can a knowledgeable cost estimate be given in reference to paragraph d above? (Enter figure).

Yes ($) .... ___
No .... ___

(f) Is the property located adjacent to or inside the boundaries of a State park, forest or recreational area?

Yes .... ___
No .... ___

Remarks ___

Dated: August 27, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–25110 Filed 9–20–84; 8:45 am]

BILLING CODE 6820–96–M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program; Appendix A: Georgia

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management is establishing the location of five new offices for filing of applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective September 21, 1984. In view of the need for its publication without an opportunity for prior comment, comments will still be received and considered. To be timely, comments must be received on or before October 22, 1984.

ADDRESS: Send or deliver comments to: Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, 1900 E Street, NW, Room 5532, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brooks, Coordinator, Voting Rights Program, (202) 632–5544.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Baldwin, Chattahoochee, Jefferson, Pike and Worth Counties, Georgia, as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to Section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to Section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because its purpose is the addition of five new locations to the list of counties in the regulations concerning OPM's responsibilities under that Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

Donal J. Devine,

Director.

Accordingly, the Office of Personnel Management amends 45 CFR 801.202, Appendix A, by alphabetically adding Baldwin County, Chattahoochee County, Jefferson County, Pike County, and Worth County, Georgia, to read as follows:

PART 801—VOTING RIGHTS PROGRAM

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

Georgia

County; Place for filing; Beginning date.

* * * * *

Baldwin—ASCS, Post Office Building, 110 Handcock Street, Room 206, Milledgeville, Georgia; Chattahoochee—U.S. Post Office Lumpkin Highway, Cusseta, Georgia; Jefferson—Post Office Building Room 4, 131 W. Broad Street, Louisville, Georgia; Pike—ASCS, Pike County Agriculture Building, Gwyn Street, Zebulon, Georgia; Worth—ASCS, Worth County ASCS Building, 501 N. Henderson, Sylvester, Georgia. Upon publication.

* * * * *

(5 U.S.C. 1103; secs. 7,9,79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g)

[FR Doc. 84-25171 Filed 9-20-84; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-1295; RM-4583]

FM Broadcast Station in Red Bluff, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Class B Channel 239 for Channel 240A at Red Bluff, California, and modifies the Class A license, accordingly, in response to a petition filed by Wireless Associates.

EFFECTIVE DATE: November 20, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Red Bluff, California) MM Docket 83-1295, RM-4583.

Adopted: September 12, 1984.

Released: September 14, 1984.

By the Chief, Policy and Rules Division.

1. In response to a petition filed by Wireless Associates ("petitioner") [1], the Commission adopted the *Notice of Proposed Rule Making*, 48 FR 55588, published December 14, 1983, proposing to substitute Class B Channel 239 for Channel 240A at Red Bluff, California. The *Notice* also proposed to modify the petitioner's Class A license for Station KALF(FM) to specify operation on Channel 239. Supporting comments were filed by the petitioner. There were no oppositions to the proposal.

2. In comments, the petitioner restated its intention to convert from a Class A to Class B facility, if no other interest is expressed in Channel 239, and if the proposal is adopted.

3. After consideration of the proposal, we conclude that the public interest would be served by the channel substitution at Red Bluff, in order to provide an increase in coverage by the petitioner's station. Red Bluff is located in Zone II, approximately 12.5 miles north of the 40th parallel which divides Zones 1-A and II, and would normally be assigned Class C channel. Here, however, Class B Channel 239 can be assigned to Red Bluff, with a site restriction of 17.1 miles southwest of the city [2], in accordance with §§ 73.202(a) and 73.205 of the Rules. This restriction will also avoid a short spacing to Station KPAY-FM (Channel 236), Chico, California.

4. Additionally, we have authorized in paragraph 5 a modification of petitioner's license for Station KALF(FM), Red Bluff, California, to specify operation on Channel 239, since there has been no other expressions of interest in the Class B channel. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

5. Accordingly, pursuant to the authority found in section 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective November 20, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Red Bluff, California	239, 272A

6. It is further ordered, pursuant to the authority contained in § 316 of the Communications Act of 1934, as amended, that the license of Station KALF(FM), Red Bluff, California, is modified to specify operation on Channel 239, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25080 Filed 9-20-84; 8:45 am]

BILLING CODE 6712-01-M

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[1] Petitioner is the licensee of Station KALF(FM), Red Bluff, California.

[2] The petition was filed prior to March 1, 1984, therefore, this location does not allow for a 16 km buffer zone to Station KBOY-FM, Medford, Oregon, as provided for in BC Docket 80-90 *Memorandum Opinion and Order*, 49 FR 10260, published March 20, 1984.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Fifteen National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule adds fifteen refuges to the lists of open areas for migratory game bird hunting, upland game hunting, big game hunting, and/or sport fishing. The Secretary has determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest. The Secretary has further determined that such uses are compatible with the major purposes for which each refuge was established. The hunting of migratory game birds, upland game and big game, and/or sport fishing would provide additional public recreational opportunities.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: James Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: National wildlife refuges are closed to hunting and sport fishing until opened by rulemaking. The Secretary may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purposes for which refuge areas were established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. Some of these hunting programs require refuge specific hunting regulations. These regulations are included in this rulemaking also. On August 20, 1984, a rule was published (49 FR 33027) that proposed the addition of the fifteen refuges cited below to the lists of areas open to migratory game bird hunting, upland game hunting, big game hunting and/or sport fishing. The Department received written comments regarding the opening of these refuges to hunting and fishing, and these are considered in the following section.

Responses to Comments Received

A careful review of all the public comments identified a number of issues concerning the proposed rulemaking. The following is a listing of each issue that was raised by the public and the Service's response.

1. A lead poisoning problem is likely to develop at Alligator River NWR and Chincoteague NWR. These refuges should be designated as non-toxic shot zones at the outset of the migratory waterfowl hunting program.

Service Response: The Service policy regarding the use of non-toxic shot on national wildlife refuges was delineated by the Director to the regional directors in his January 27, 1983, memorandum, a part of which follows: "Non-toxic shot will be required for waterfowl hunting *only* if a lead poisoning problem has been documented in the area where waterfowl hunting will take place. Evidence of a lead poisoning problem must be documented as verified deaths or high levels of lead in soft tissues (e.g., 6 ppm net weight in liver or 0.5 ppm in blood) in conjunction with gross lesions and chemical signs of lead poisoning." We are not aware of evidence of the above situation at either Alligator River NWR or Chincoteague NWR.

2. Sport hunting on refuges is illegal.

Service Response: The Refuge Recreation Act states that the Secretary of the Interior is authorized to administer refuges for public recreation. The National Wildlife Refuge System Administration Act, as amended, states that the Secretary is authorized to permit the use of any area within the Refuge System for any purpose, including hunting. Thus, Congress clearly intended that recreation be an important part of a refuge management program to the extent that it can be made compatible with the primary purposes of a refuge. This was affirmed in the decision of the matter of *The Humane Society of the United States* v. *Morton* (Civil Action No. 3627) where the court found that public hunting on Great Swamp, Eastern Neck, and Chincoteague National Wildlife Refuges was a valid and legal form of public recreation on these refuges.

3. Data was not offered to back up the summary assertions that hunting is compatible on the refuges and that funds are available to administer the programs.

Service Response: The proposed rule contained a compatibility and funding statement for each refuge listed in the rule. The purpose for which each refuge was established, and a brief description of how each hunting program is compatible with these purposes was discussed. A funding estimate for the hunting programs on each refuge was also presented in that rule. The environmental assessments and hunting plans for each refuge were also available to the public at the time of publication of the proposed rule. The Service believes that these documents contain the necessary data to judge the compatibility of these hunting programs.

4. The requirements of 50 CFR 31.1 and 31.2 have not been met.

Service Response: 50 CFR Part 31 is limited to recognizing general authority to dispose of surplus wildlife and lists hunting as one method of control and disposition. The Service's procedure for permitting public hunting on refuges is set forth in 50 CFR Part 32. This rule involves the policy and regulations set forth in Part 32 which essentially require that hunting be consistent with the principles of sound wildlife management and otherwise be in the public interest.

5. The regulations governing the proposed hunting programs will illegally transfer the authority for managing Federal lands to the States.

Service Response: The regulations governing the hunting programs do not transfer Service authority for managing national wildlife refuges. National wildlife refuges are opened to hunting and hunting is managed in accordance with the Secretary's authority under the National Wildlife Refuge System Administration Act, as amended, and the Refuge Recreation Act. Once the Secretary has made the mandated determinations under the above mentioned authorities, it is the policy of the Department to conduct hunting programs within the framework of State laws and regulations and to impose additional requirements, where necessary, as refuge specific regulations. This policy is clearly stated in 50 CFR 32.2(d), "Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulation." Under the regulations that will govern these hunts the Service maintains its authority to enforce all State and Federal game regulations on national wildlife refuges.

6. The regulations governing the proposed hunting programs show little evidence of effort to provide protection for endangered and threatened species from potential adverse impacts of the hunting programs.

Service Response: When the hunting plans and environmental assessments for the hunting programs were developed, consideration was given to the potential impact upon any endangered or threatened species that might use the refuge. Where it was necessary, the Service complied with the Endangered Species Act by preparing Section 7 analyses. The hunting programs were developed to minimize any potential impact on endangered and threatened species, and when they were needed, refuge specific regulations were imposed to ensure that these hunting programs will not affect endangered or threatened species.

7. Land owners adjacent to Chincoteague NWR and Cross Creeks NWR objected to hunting activities near their property.

Service Response: The Service recognizes that some people may object to hunting near their property, but the Service feels that the hunting programs developed for Chincoteague NWR and Cross Creeks NWR will not adversely effect adjacent land owners. The waterfowl hunting program at Chincoteague NWR will carefully control the number and location of the hunters on the refuge, therefore, practically eliminating any adverse impact on adjacent land owners. Waterfowl hunting at Cross Creeks NWR will generally occur a good distance inside refuge boundaries and should not impact nearby land owners. Deer hunting at Cross Creek NWR is limited to archery hunting, and the upland game hunting program is limited to squirrel hunting at this time. It is unlikely that these activities will adversely impact adjacent land owners.

6. The ten day comment period for the proposed rule did not allow a sufficient time for the public to respond.

Service Response: The Service received eight written responses regarding this rule. This number of responses is similar to those received by the Service during a thirty day comment period for a previous rulemaking (49 FR 22819) that opened thirteen refuges to hunting and fishing. Thus, judging from the number of comments received on this rule, the Service believes that the ten day comment period was adequate. In addition, the public living in the vicinity of the refuges where these hunting and fishing programs are being instituted were given notice of this action, and in many cases, their input was sought during the planning stages of these programs. The short comment period for this rule was necessary in order to conduct some of the new hunting programs within the State seasons that occur during the months of September and October, and to avoid confusing the public in regards to the scheduling of these hunts.

Conformance with Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established. (The compatibility determination for each refuge is discussed below.) In addition, the Act provides that the taking of migratory game birds will be permitted on no more than 40 percent of any area that has been designated as an inviolate sanctuary for migratory game birds. Of the refuges that are opened to the hunting of migratory birds by this rule, Chincoteague and Hatchie National Wildlife Refuges were originally established as inviolate sanctuaries for migratory birds. This rule opens less than 40 percent of the above mentioned refuges to migratory game birds and therefore conforms to this provision of the Act.

The Refuge Recreation Act authorizes the Secretary of the Interior to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that the Secretary shall determine that funds be made available for the development, operation, and maintenance of these permitted forms of recreation, prior to initiating such uses of refuge areas.

In accordance with the Refuge Administration Act and the Refuge Recreation Act, the Secretary of the Interior has determined that these openings for hunting and fishing are compatible with the primary purposes for which each of the refuges was established. The hunting and fishing programs will be consistent with State and Federal (migratory game bird) regulatory frameworks which are developed specifically to ensure conservation of fish and wildlife populations. A discussion of the compatibility of the hunting and fishing programs with the purposes for which each refuge was established and the availability of funding for each program follows:

Alligator River NWR was established for the conservation of fish and wildlife by donation under the provisions of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742f(b)). Conservation of fish and wildlife involves the perpetuation of fish and wildlife habitat and populations. Migratory game bird, upland and big game hunting and sport fishing at Alligator River NWR will result in only minor temporary disturbances to refuge habitat and limited harvest of wildlife. Implementation of these hunting and fishing progams will be an integral part of the management of refuge fish and wildlife populations. These programs will utilize a renewable resource while maintaining balanced fish and wildlife populations and their habitats. Therefore, the opening of Alligator River NWR to migratory game bird, upland game and big game hunting and sport fishing will be compatible with the purposes for which the refuge was established and will be in compliance with the Refuge Administration Act. Funds are available for the administration of these hunting and fishing programs.

Chincoteague NWR was established by the Migratory Bird Conservation Commission for the conservation of migratory birds. Migratory game bird hunting will be limited to the recently acquired area known as Wildcat Marsh. Wildcat Marsh comprises 492 acres of the 9,931-acre refuge, or less than five percent of the total refuge area, and complies with the 40% provision of the Refuge Administration Act. Hunting will be from established blinds and hunter numbers will be restricted. Travel to blinds will be over established pathways and will result in only minimal disturbance to refuge habitat. Migratory waterfowl hunting regulations regulate the seasons, bag limits and the number of hunters to ensure the conservation of waterfowl populations, including black duck populations. Moreover, waterfowl hunting will be structured to have a positive effect on refuge habitat by dispersing snow geese which will help to limit excessive use of the marsh vegetation by snow geese that has caused a thinning of the Spartina grasses called "eat out" areas. Under these conditions, hunting will be consistent with the conservation of migratory birds, including the perpetuation of migratory bird habitat and populations. Therefore, the opening of Chincoteague NWR to migratory game bird hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of this hunting program will be less than $8,000. Within the annual refuge budget of approximately $701,000, the necessary funds are available for the administration of the migratory game bird hunting program. Therefore, the opening of Chincoteague NWR to migratory game bird hunting is in compliance with the Refuge Recreation Act.

Cross Creeks NWR was established under Pub. L. 83–780, Senate Document No. 81 and Public Land Order 4560, for the purpose of transferring refuge lands to the Service as mitigation for the loss of waterfowl habitat at Kentucky Woodlands NWR. Upland and big game hunting will occur in habitat not normally used by migratory waterfowl. Migratory game bird hunting will be space and time zoned to ensure that only minimal disturbances will occur to the overall migratory bird population. Waterfowl use might decrease slightly in the part of the refuge open to migratory game bird hunting, but this will only involve temporary daytime disturbances. Under these conditions, the proposed hunting programs will be consistent with the conservation of migratory birds, including the perpetuation of migratory bird habitat and populations. Therefore, the opening of Cross Creeks NWR to migratory game bird, upland game and big game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $20,000. Within the annual refuge budget of approximately $230,000, the necessary funds are available for the administration of the migratory game bird, upland game and big game hunting programs. Therefore, the opening of Cross Creeks NWR to these hunting programs is in compliance with the Refuge Recreation Act.

Fox River NWR was acquired with Land and Water Conservation Funds in 1979 to preserve and enhance the wetland and adjacent upland habitat found along the Fox River; to preserve and enhance wildlife populations through habitat preservation, restoration and management; to protect habitats of endangered and threatened species; and for purposes of research, outdoor recreation, environmental education and other public uses. Big game hunting will be used to manage the refuge deer population which has increased, since the establishment of the refuge, to the point where it is having an adverse impact on refuge habitat and crops on neighboring private lands. Reducing the deer population and maintaining it at optimum levels will ensure the preservation and enhancement of refuge wildlife populations and habitat. In addition, opening the refuge to big game hunting will make the area available to an important form of outdoor recreation. Therefore, the opening of Fox River NWR to big game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $4,000. Within the annual refuge complex budget of approximately $328,000, the necessary funds are available for the administration of the big game hunting program. Therefore, the opening of Fox River NWR to big game hunting is in compliance with the Refuge Recreation Act.

Hatchie NWR was established by the Migratory Bird Conservation Commission for the conservation of migratory birds. Migratory game bird hunting will be permitted on approximately 350 acres of the 4,662-acre refuge, or less than 10% of the total refuge area. This hunting area will be outside the area that is intensively managed for migrating and wintering waterfowl. Hunting will be limited to half-day hunts on three days of the week during the State season, so that waterfowl will be assured opportunities to utilize the hunting area without being disturbed. Waterfowl use might decrease slightly in the part of the refuge open to hunting, but this will involve only temporary daytime disturbances. Under these conditions, hunting will be consistent with the conservation of migratory birds, including the conservation of migratory bird habitat and populations. Therefore, the opening of Hatchie NWR to migratory game bird hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the hunting program will be less than $1,500. Within and annual refuge budget of approximately $220,000, the necessary funds are available for the administration of the migratory game bird hunting program. Therefore, the opening of Hatchie NWR to migratory game bird hunting is in compliance with the Refuge Recreation Act.

Lacassine NWR was established by Executive Order 7780 as a refuge and breeding ground for migratory birds and other wildlife. Like other national wildlife refuges established as refuge and breeding grounds, Lacassine NWR was created primarily to safeguard wildlife populations and their habitats and is not intended to be a "safe haven" for individual animals. Thus, the use of hunting as a refuge management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. Big game hunting on Lacassine NWR will occur primarily on spoil banks and levees throughout the refuge with little disturbance to this habitat. Big game hunting will occur in October prior to the use of the refuge by large numbers of migratory waterfowl and there will be no significant disturbance to the waterfowl. Therefore, the opening of Lacassine NWR to big game hunting is compatible with the purpose for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the hunting program will be less than $8,000. Within the annual refuge budget of approximately $268,000, the necessary funds are available for the administration of the big game hunting program. Therefore, the opening of Lacassine NWR to big game hunting is in compliance with the Refuge Recreation Act.

Necedah NWR was established by Executive Order 8065 as a refuge and breeding ground for migratory birds and other wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats and are not intended to be "safe havens" for individual animals, the use of hunting as a refuge management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. Migratory game bird hunting on Necedah NWR will be permitted on approximately 4,000 acres of the refuge that have recently come under Service management. The Service will implement a permit system to limit the number of hunters using the area at any one time. Under this system, only minor temporary disturbances to other refuge wildlife and their habitat will occur. Therefore, the opening of Necedah NWR to migratory game bird hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the migratory game bird hunting program will be less than $10,000. Within the annual refuge budget approximately $233,000, the necessary funds are available for the administration of the migratory game bird hunting programs. Therefore, the opening of Necedah NWR to migratory game bird hunting is in compliance with the Refuge Recreation Act.

Optima NWR was established through a cooperative agreement with the Department of the Army for the development, conservation and management of wildlife resources. Migratory game bird hunting for mourning dove and upland game hunting for quail, rabbit and pheasant will be managed as an intergral part of a comprehensive refuge wildlife management program. The individual hunting programs are consistent with State and Federal regulatory frameworks which are developed specifically to ensure the conservation of fish and wildlife populations. Therefore, the opening of Optima NWR to migratory game bird and upland game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $8,000. Within the annual refuge complex budget of approximately $230,000, the necessary funds are available for the administration of migratory game bird and upland game hunting programs. Therefore, the opening of Optima NWR to migratory game bird and upland game hunting is in compliance with the Refuge Recreation Act.

Ouray NWR was established by the Migratory Bird Conservation Commission for the conservation of migratory birds. Sport fishing will occur primarily during July through September when waterfowl use of the Green River is minimal and waterfowl production will not be affected. Similarly, sport fishing will have no effect on bald eagle use of the river, which occurs during a period from December through April. Therefore, the opening of Ouray NWR to sport fishing is compatible with the purposes for which the refuge was established would be in compliance with the Refuge Administration Act. The annual cost of this sport fishing program will be less than $4,000. Within the annual refuge budget of approximately $203,000, the necessary funds are available for the administration of the sport fishing program. Therefore, the opening of Ouray NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pea Island NWR was established by Executive Order 7864 as a refuge and breeding ground for migratory birds and other wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. Upland game hunting on Pea Island NWR will result in temporary disturbances to vegetation, but this impact will be minimized by limiting the number of hunters and the frequency of hunts. Hunting will also be limited to high marsh and upland areas where the impact on waterfowl use will be minimal. Therefore, the opening of Pea Island NWR to upland game hunting is compatible with purposes for which the refuge was established and is in compliance with Refuge Administration Act. The annual cost of the hunting program will be less than $3,000. Within the annual refuge budget of approximately $166,000, the necessary funds are available for the administration of the upland game hunting program. Therefore, the opening of Pea Island NWR to upland game hunting is in compliance with the Refuge Recreation Act.

Reelfoot NWR was established by a cooperative agreement with the State of Tennessee for the benefit of wintering waterfowl and other wildlife species. Big game hunting will be used to manage the refuge deer population which, if it continues growing at its present rate, will have an adverse impact on refuge habitat and agricultural crops. Proper management of the refuge deer population will benefit diverse refuge habitat and other wildlife species. Big game hunting will occur in November prior to the period of intensive migratory waterfowl use and will be zoned so that only minor temporary disturbances to waterfowl and their habitat will occur. Therefore, the opening of Reelfoot NWR to big game hunting is compatible with the purpose for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the big game hunting program will be less than $5,000. Within the annual refuge budget of approximately $273,000, the necessary funds are available for the administration of the big game hunting program. Therefore, the opening of Reelfoot NWR to big game hunting is in compliance with the Refuge Recreation Act.

Santee NWR was established by a cooperative agreement with the South Carolina Public Service Authority to alleviate the loss of natural waterfowl habitat by the construction of hydroelectric power and navigation projects on Lakes Marion and Moultrie. The refuge primarily serves as a winter sanctuary for migratory waterfowl. Upland game hunting will occur before and after the critical wintering period for migratory waterfowl. Time and space zoning will be implemented to ensure that the hunting program does not conflict with the management of other wildlife species on the refuge. Therefore, the opening of Santee NWR to upland game hunting will be compatible with the primary purposes for which the refuge was established and will be in compliance with the Refuge Administration Act.

The annual cost of administering this hunt program will be $6,000. Within the annual refuge budget of approximately $242,000, the necessary funds are available for the administration of the upland game hunting program. Therefore, the opening of the Santee NWR to upland game hunting is in compliance with the Refuge Recreation Act.

Savannah NWR was established as a refuge and breeding ground for birds and wild animals by Executive Order 5748. This action revoked Executive Order 4626 which had previously established the refuge. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a refuge management tool is in keeping with refuge purposes to conserve wildlife populations and habitat. When wildlife and the habitats are properly managed, they produce game populations from which a certain segment can be taken without affecting population trends. Savannah NWR reflects this situation. Upland and big game hunting on the refuge will utilize game species without affecting population trends and, further, will protect refuge habitat and dikes from hog depredation. Therefore, the opening of Savannah NWR to upland and big game hunting is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $6,000. Within the annual refuge complex budget of approximately $896,000, the necessary funds are available for the administration of the upland and big game hunting programs. Therefore, the opening of Savannah NWR to these hunting programs is in compliance with the Refuge Recreation Act.

Trempealeau NWR was established by Executive Order 7437 as a refuge and breeding ground for migratory birds and other wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a refuge management tool is in keeping with refuge wildlife conservation purposes. Migratory game bird, upland game and big game hunting and sport fishing at Trempealeau NWR will be limited to specific areas of the refuge, so that only minor temporary disturbances will occur to refuge habitat and wildlife. For example, the areas where cormorants and ospreys nest will be closed to sport fishing. In addition, migratory game bird, upland and big game hunting will be limited to areas where there will be minimal disturbance to waterfowl. The implementation of these hunting programs will be an integral part of the management of refuge wildlife populations. For example, big game hunting will be used to reduce the deer population which at the present time exceeds the carrying capacity of refuge habitat. Migratory game bird and upland game hunting will also utilize a renewable resource while maintaining balanced wildlife populations on the refuge. Therefore, the opening to Trempealeau NWR to migratory game bird, upland and big game hunting and sport fishing is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of these hunting programs will be less than $8,000. Within the annual refuge budget of $135,000, the necessary funds are available for the administration of the migratory game bird, upland and big game and sport fishing programs. Therefore, the opening of Trempealeau NWR to these hunting and sport fishing programs is in compliance with the Refuge Recreation Act.

Wertheim NWR was established as a migratory bird sanctuary by donation under the provisions of section 5 of the Migratory Bird Conservation Act (16 U.S.C. 715). Sport fishing will cause only minor temporary disturbances to refuge wildlife. Access to fishing areas along the bank of the Carmans River would be limited to foot trails, and only nonmotorized boats will be permitted to launch from the refuge. Therefore, the opening of Wertheim NWR to sport fishing is compatible with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The annual cost of the sport fishing program will be less than $1,000. Within the annual refuge budget of $255,000, the necessary funds are available for the administration of the sport fishing program. Therefore, the opening of Wertheim NWR to sport fishing is in compliance with the Refuge Recreation Act.

In summary, the Service has determined that these hunting and fishing programs will be appropriate incidental or secondary uses of these refuges; will be compatible with and would not interfere with the primary purposes for which these refuges were established; will be biologically sound and compatible with the principles of sound wildlife management; and will not be inconsistent with any other previously authorized Federal programs or with the primary objectives of these refuges. The Service has further determined that funds are available for administration of these programs, and that these programs will otherwise be in the public interest in that they will provide needed recreational opportunities without impairment of the resource.

Hunting plans are developed for each hunting program on a refuge prior to the opening of the refuge to hunting. In some cases, refuge specific hunting regulations are included as a part of the hunting plan to ensure the compatibility of the hunting programs with refuge purposes. For this reason, refuge specific regulations that are necessary for the proposed hunting programs are also included in this rulemaking.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the opening of these refuges to hunting and fishing will generate approximately 74,000 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases such as for food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $1.9 million, or substantially less than $100 million. In addition, since these estimated receipts will be spread over 12 States, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small business, organizations and governmental jurisdictions. The proposed opening will provide recreational opportunities and generate economic benefits that would otherwise exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal Government to implement activities under this rule would be less than income generated from the implementation of these hunting and/or sport fishing programs.

Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Hunter surveys	1018-0044
Special Use Permits	1018-0046
Hunter reservation/application/blind assignment	1018-0047
Weapon Qualification	1018-0050

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" (FES 76-59) was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), environmental assessments and Findings of No Significant Impact have been prepared for these openings. Section 7 evaluations have been prepared where appropriate pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543). These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, or by mail, addressing the Director at the address above.

Richard Frietsche, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National wildlife refuge system, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National wildlife refuge system, Wildlife refuges.

These hunting and fishing programs will provide needed recreational opportunities without impairment of refuge resources. In view of the rapidly approaching seasons there is an immediate need to place these regulations (which relieve restrictions) into effect. Thus the Department has concluded that good cause exists within the meaning of 5 U.S.C. 553 (d)(3) and (b)(B) of the Administrative Procedure Act to make these regulations effective upon publication in the **Federal Register**.

Parts 32 and 33 of Chapter I of Title 50 of the Code of Federal Regulations are amended as set forth below:

1. The authority citation for Part 32 reads as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654 as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb, unless otherwise noted.

2. The authority citation for Part 33 reads as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2 48 Stat. 402, as amended, 451, 1270, sec. 4, 76 Stat. 654; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb, unless otherwise noted.

3. Section 32.11 is amended by adding Alligator River MWR, NC; Optima NWR, OK; Cross Creeks NWR and Hatchie NWR, TN; Chincoteague NWR, VA; and Neceedah NWR and Trempealeau NWR, WI alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

North Carolina

* * * * *

Alligator River National Wildlife Refuge.

* * * * *

Oklahoma

* * * * *

Optima National Wildlife Refuge.

* * * * *

Tennessee

* * * * *

Cross Creeks National Wildlife Refuge.
Hatchie National Wildlife Refuge.

* * * * *

Virginia

* * * * *

Chincoteague National Wildlife Refuge.

* * * * *

Wisconsin

* * * * *

Necedah National Wildlife Refuge.
Trempealeau National Wildlife Refuge.

* * * * *

4. Section 32.12 is amended by redesignating paragraphs (ff)(1) through (ff)(3) as paragraphs (ff)(2) through (ff)(4), respectively; by adding a new paragraph (ff)(1); by redesignating paragraphs (kk)(1) through (kk)(4) as paragraphs (kk)(3)(i), (kk)(3)(ii), (kk)(3)(iii) and (kk)(3)(iv), respectively; by adding new paragraphs (kk)(1) and (kk)(2); by redesignating paragraphs (oo) and (pp) as paragraphs (pp) and (rr), respectively; and by adding new paragraphs (oo), (qq)(1) and (qq)(2) as follows:

§ 32.12 Refuge specific regulations; migratory game birds.

* * * * *

(ff) *Oklahoma*—(1) *Optima National Wildlife Refuge.* Hunting of mourning doves is permitted on designated areas of the refuge.

* * * * *

(kk) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted only on Wednesdays, Thursdays, Saturdays, and Sundays during the regular duck season.

(iii) Hunters are required to check in and out of the refuge.

(iv) Hunters must use and be in possession of only shells containing steel shot.

(2) *Hatchie National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge, subject to the following conditions:

(i) Hunting is permitted only on Tuesdays, Thursdays, and Saturdays until noon.

(ii) Only portable blinds and blinds made of native vegetation may be used.

(iii) Portable blinds and decoys must be removed from the refuge following each day's hunt.

(iv) Hunters must use and be in possession of only shells containing steel shot.

* * * * *

(oo) *Virginia—Chincoteague National Wildlife Refuge.* Hunting of migratory game birds is permitted on Wildcat Marsh subject to the following condition: Permits are required.

* * * * *

(qq) *Wisconsin*—(1) *Necedah National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Waterfowl hunters must use and be in possession of only shells containing steel shot.

(2) *Trempealeau National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Waterfowl hunters must use and be in possession of only shells containing steel shot.

* * * * *

5. Section 32.21 is amended by adding Savannah NWR, GA and SC; Alligator River NWR and Pea Island NWR, NC; Optima NWR, OK; Santee NWR, SC; Cross Creeks NWR, TN; and Trempealeau, WI alphabetically by State as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Georgia

* * * * *

Savannah National Wildlife Refuge.

* * * * *

North Carolina

* * * * *

Alligator River National Wildlife Refuge.
Pea Island National Wildlife Refuge.

* * * * *

Oklahoma

* * * * *

Optima National Wildlife Refuge.

* * * * *

South Carolina

* * * * *

Savannah National Wildlife Refuge.
Santee National Wildlife Refuge.

* * * * *

Tennessee

* * * * *

Cross Creeks National Wildlife Refuge.

* * * * *

Wisconsin

Trempealeau National Wildlife Refuge.

* * * * *

6. Section 32.22 is amended by redesignating paragraphs (i)(1) and (i)(2) as paragraphs (i)(1)(i) and (i)(1)(ii); by adding a new paragraph (i)(2); by redesignating paragraphs (cc)(1), (cc)(2) and (cc)(3) as paragraphs (cc)(2)(i), (cc)(2)(ii) and (cc)(2)(iii), respectively; by adding a new paragraph (cc)(1); by redesignating paragraphs (ee)(1) through (ee)(3) as paragraphs (ee)(2) through (ee)(4), respectively; by adding a new paragraph (ee)(1); by adding new paragraphs (hh)(3) and (hh)(4); by redesignating paragraphs (jj)(1) through (jj)(3) as paragraphs (jj)(2) through (jj)(4), respectively; by adding a new paragraph (jj)(1); and by adding a new paragraph (oo)(3) as follows:

§ 32.22 Refuge specific regulations; upland game.

* * * * *

(i) * * *

(2) *Savannah National Wildlife Refuge.* Hunting of squirrels and rabbits is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted for seven consecutive days beginning the fourth Monday in October.

* * * * *

(cc) *North Carolina*—(1) *Pea Island National Wildlife Refuge.* Hunting of pheasant and rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of pheasant is permitted on Saturdays from the last Saturday in October through the second Saturday in December and on two days beginning Thanksgiving Day. Hunting of rabbit is also permitted when the above dates coincide with the State rabbit season.

(iii) Only shotguns are permitted.

* * * * *

(ee) *Oklahoma*—(1) *Optima National Wildlife Refuge.* Hunting of pheasant, bobwhite and scaled quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

* * * * *

(hh) * * *

(2) * * *

(3) *Santee National Wildlife Refuge.* Hunting of bob-white quail, gray squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting of gray squirrel is permitted through September 30.

(iii) Hunting of quail and rabbit is permitted only during February.

(iv) Hunting of raccoon and opossum is permitted from March 1 through March 10.

(4) *Savannah National Wildlife Refuge.* Hunting of squirrels and rabbits is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Hunting is permitted for seven consecutive days beginning the fourth Monday in October.

* * * * *

(jj) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of squirrel is permitted on designated areas of the refuge subject to the following special condition: Hunting is permitted through October 31.

* * * * *

(oo) * * *

(2) * * *

(3) *Trempealeau National Wildlife Refuge.* Hunting of ring-necked pheasant, ruffed grouse, gray and fox squirrels and cottontail rabbits is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on that portion of the refuge lying north and west of the Green Bay and Western Railroad right-of-way.

* * * * *

7. Section 32.31 is amended by adding Savannah NWR, GA; Reelfoot NWR, KY; Lacassine, LA; Alligator River NWR, NC; Cross Creek NWR and Reelfoot NWR, TN; and Fox River NWR and Trempealeau NWR, WI alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Georgia

* * * * *

Savannah National Wildlife Refuge.

* * * * *

Kentucky

* * * * *

Reelfoot National Wildlife Refuge.

* * * * *

Louisiana

* * * * *

Lacassine National Wildlife Refuge.

* * * * *

North Carolina

* * * * *

Alligator River National Wildlife Refuge.

* * * * *

Tennessee

* * * * *

Cross Creeks National Wildlife Refuge.
Reelfoot National Wildlife Refuge.

* * * * *

Wisconsin

* * * * *

Fox River National Wildlife Refuge.
Trempealeau National Wildlife Refuge.

* * * * *

8. Section 32.32 is amended by redesignating paragraphs (q)(4) and (q)(5) as paragraphs (q)(5) and (q)(6); by adding a new paragraph (q)(4); by redesignating paragraphs (r) through (rr) as paragraphs (s) through (ss), respectively; by adding a new paragraph (r). Also, newly designated paragraphs (ll)(1) through (ll)(3) are redesignated as paragraphs (ll)(2) through (ll)(4), respectively, and a new paragraph (ll)(1) is added; newly designated paragraphs (rr)(1) and (rr)(2) are redesignated as paragraphs (rr)(2) and (rr)(3) and new paragraphs (rr)(1) and (rr)(4) are added to read as follows:

§ 32.32 Refuge specific regulations; big game.

* * * * *

(q) * * *

(3) * * *

(4) *Lacassine National Wildlife Refuge.* Hunting of white-tailed deer is pemitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted from October 1 through October 31.

(ii) Only archery hunting is permitted.

(r) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Hunting is permitted for two consecutive days beginning on the first Saturday in November and for two consecutive days beginning on the third Saturday in November.

(3) One deer of either sex may be taken.

(4) Hunters are required to check in and out of the refuge.

* * * * *

(ll) *Tennessee*—(1) *Cross Creeks National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only during the archery season.

(ii) Checking and tagging of bagged deer is required.

* * * * *

(rr) *Wisconsin*—(1) *Fox River National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) The construction or use of permanent blinds, platforms or ladders is not permitted.

* * * * *

(4) *Trempealeau National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A refuge permit is required for archery hunting, and a valid State permit for Quota Area 61B is required for the firearms deer hunt.

(ii) Firearms hunting is permitted during the first two days of the State firearms deer season. The taking of deer is permitted only by shotgun or muzzleloader.

(iii) Archery hunting is permitted only during the December State season, and only on part of the refuge lying west of the auto tour road.

(iv) The construction or use of permanent blinds, platforms, or ladders is not permitted.

(v) Portable blinds or platforms must be removed from the refuge after each day's hunt.

* * * * *

9. Section 33.4 is amended by adding Wertheim NWR, NY; Alligator River NWR, NC; Ouray NWR, UT; and Trempealeau NWR, WI alphabetically by State as follows:

§33.4 List of open areas; sport fishing.

* * * * *

New York

* * * * *

Wertheim National Wildlife Refuge.

* * * * *

North Carolina

* * * * *

Alligator River National Wildlife Refuge.

* * * * *

Utah

* * * * *

Ouray National Wildlife Refuge.

* * * * *

Wisconsin

* * * * *

Trempealeau National Wildlife Refuge.

* * * * *

Dated: September 11, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-25032 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 49, No. 185
Friday, September 21, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for October 1984 through March 1985 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due not later than September 28, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agriculture Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of October 1984 through March 1985.

All persons who desire to submit written data, views or arguments in connection with the proposed revision should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than September 28, 1984. The period for filing views is limited because a longer period would not provide the time needed to complete the required procedures and include October 1984 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of October 1984 through March 1985. The specific revisions would increase the diversion limitation percentages for the months of October and November 1984 by 10 percentage points from the present 40 percent to 50 percent. For the months of December 1984 through March 1985, the diversion allowances would be increased 20 percentage points, from 40 percent to 60 percent.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase or decrease the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc., a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of October and November 1984, the percentage of allowable diversions be increased 10 percentage points, and for the period December 1984 through March 1985, the diversion limits be increased 20 percentage points.

The cooperative states that for the period in question, the order provisions require more milk to move through pool plants than is necessary to meet the fluid, or bottling, requirements of the market. The cooperative cites improved milk quality as a result of less pumping and more economic hauling as the benefits to be gained from the proposed temporary relaxation. According to the cooperative, the financial status of its producer members may be jeopardized unless the more economic hauling practices resulting from increased diversion allowances can be adopted.

The cooperative also states that diversion percentages should be the reciprocal of supply plant shipping percentages in order to allow the maximum amount of milk to move directly to manufacturing. The 50-percent diversion limits for October and November, and 60-percent for the period December 1984 through March 1985, would complement the 50-percent (temporarily revised) supply plant requirement for October and November and the 40-percent supply plant standard for December through March.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of October 1984 through March 1985 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on September 17, 1984.

Edward T. Coughlin,
Director, Dairy Division.

[FR Doc. 84-25081 Filed 9-20-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1079

Milk in the Iowa Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Iowa Federal milk marketing order for the months of October and November 1984. The proposed suspension would increase the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. A cooperative association requested suspension in order to achieve added economies in disposing of reserve milk supplies.

DATE: Comments are due not later than September 28, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building; U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of October and November 1984:

In § 1079.13(d) (2) and (3) the words "the months of" and the words "through November" as they appear in each subparagraph.

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October in the suspension period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Associated Milk Producers, Inc. (AMPI), an association of producers, operates plants regulated by the Iowa milk order. The cooperative has requested that the 50 percent diversion limitation be suspended for September, October, and November 1984. The remaining diversion provisions in the order would permit a greater portion of a handler's producer milk receipts to be moved directly from farms to nonpool manufacturing plants and still be priced under the order.

The cooperative notes that the 50 percent limit on diversions to nonpool plants is inadequate to permit efficient handling of milk that is not needed for fluid milk uses. For example, a supply plant must ship at least 35 percent of its milk supply to other plants to qualify as a pool plant. However, with diversions limited to 50 percent, the other 15 percent must be received at the supply plant and then transferred to a nonpool plant. AMPI contends that the extra handling involved adversely affects milk quality (more pumping than if diverted), and is an uneconomic means of pooling reserve milk supplies. Suspending the 50 percent diversion limit would alleviate these concerns and allow improved efficiencies, thus increasing returns to producers, according to the cooperative.

Under the conditions cited by AMPI, a suspension of the 50 percent limitation of the diversion provisions may be appropriate so that producer milk receipts not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. A suspension of the 50 percent limitation may tend to improve efficiencies in disposing of the market's reserve milk supplies.

It should be noted that the suspension request is being considered for October and November only. There is not enough time to complete the procedural requirements and still suspend the provisions for September, if the suspension is warranted.

Also, pool plant handlers should be aware that suspension of the 50 percent limitation would not mean that the diversion limit would then be 70 percent. The effective diversion limit, if a suspension is granted for October and November, would be the reciprocal of the pool performance standards. For example, a supply plant would still have to ship 35 percent of its receipts; thus, the effective diversion limit would be 65 percent rather than 70 percent.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C., on September 18, 1984.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 84-25178 Filed 9-20-84; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 83-041P]

Authorization To Manufacture Brands or Other Marking Devices Containing Inspection Legend

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would require manufacturers of brands or other marking devices containing specified official inspection legends to obtain a certificate issued by the Food Safety and Inspection Service (FSIS) that would authorize manufacture of these devices. Manufacturers would be required to mark on each such device they manufacture under this authorization a permanent identifying serial number which manufacturers would also list on the certificate. The devices, along with a copy of the completed certificate, would be returned to the FSIS employee identified on the certificate (normally the plant inspector-in-charge). The proposed regulations are needed to strengthen the Department's control over the manufacture and distribution of brands and other marking devices and thereby help prevent their illegal use.

The proposal would also make minor revisions to the regulations to clarify language, to update them and to make

certain provisions conform to statutory language.

DATE: Comments must be received on or before December 20, 1984.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Robert W. Gonter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7745.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has determined that this proposed rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrators, FSIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The manufacturers and the meat and poultry establishments would be required to fill out sections of the authorization certificate for orders of new brands or other marking devices and to keep the certificate on file. The costs of the proposed rule would primarily result from the expense of executing and filing the authorization forms required by this regulation and from the required marking with a permanent identifying number those devices made after the effective date of the rule. These costs would be incurred by both the manufacturer and/or the establishment, but the ultimate amount and proportion of costs between the manufacturer and the establishment cannot be determined. There would be no cost involved in obtaining authorization forms since FSIS would provide them.

The estabishments would bear an additional cost of either replacing or marking with a permanent identifying number those brands or other marking devices which are not already marked with a number. The establishments would have 1 year after the rule's effective date to mark or replace the devices.

All of the above costs have been estimated to be minimal, while the benefits from improving control over the maufacture and distribution of such devices is expected to be considerable.

Paperwork Requirements

The recordkeeping and reporting requirements contained in this proposed regulation will be submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments should be sent in duplicate to the Regulations Office, referring to the docket number located in the heading. Any persons desiring an opportunity for oral presentation of views must make such request to Robert W. Gonter so that arrangements may be made. FSIS will make a transcript of all oral presentations. Comments submitted pursuant to this proposal will be made available for public inspection in the Regulations Office, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Department inspects meat and poultry products, including imported products, that are subject to inspection under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Inspections are conducted by Food Safety and Inspection Service (FSIS) inspectors at official establishments or at official import inspection establishments at ports of entry. Products which pass inspection are identified with an official inspection legend, which appears on containers and certain enclosures of inspected and passed meat and poultry products, and is branded directly onto meat carcasses and parts. For example, a brand for cattle carcasses inspected and passed by an FSIS inspector bears a circular legend showing "U.S. INSP'D & P'S'D" and the establishment's assigned number.

Investigations by law enforcement officials over the past 20 years have shown that illegal meat distribution activities have frequently utilized a marking device to brand or otherwise mark meat and poultry products and their containers in order to deceive prospective buyers into believing that products had been inspected and passed by Federal inspectors. During this time, FSIS has developed various techniques to discover when operators were using brands or other marking devices illegally. However, the Department has statutory authority to control these devices which has not yet been exercised.

Part of the Department's statutory authority to control these devices dates from 1967. As a result of the exposure of a number of illegal meat distribution activities in the 1960's, the Wholesome Meat Act of 1967 made major revisions to Federal laws concerning meat inspection. The Act included a provision which clarified and strengthened the applications of then current prohibitions against counterfeiting labels, certificates or official marks, including legends, to brand manufacturers and printers. Section 11(a) of the Federal Meat Inspection Act (21 U.S.C. 611(a)) provides, "No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary." Almost identical language was later included in the Poultry Products Inspection Act by section 9 of the Wholesome Poultry Products Act of 1968 (21 U.S.C. 458).

When the Department revised the Federal meat inspection regulations to implement the statutory revisions of the Wholesome Meat Act, the Department considered regulatory changes which would tigthen controls over the manufacture and distribution of brands and other marking devices containing official inspection legends. The Department determined at that time, however, that it would not exercise its authority to impose these tighter controls.

In the past few years, the Agency has found the operators of clandestine meat distribution activities in possession of brands that were made by brand manufacturers and delivered to official establishments but never surrendered to the USDA inspector as required. In a September 1983 Congressional hearing held in Philadelphia concerning an illegal branding operation that resulted in uninspected and unpassed product being sold and distributed as federally inspected and passed product, the House Subcommittee on Livestock, Dairy and Poultry expressed interest in improving the Agency's security over the devices used to imprint inspection legends.

Proposal

These events have made it apparent that the Agency needs to expand its use of available authority and refocus its enforcement techniques to prevent these operations by regulating the source of marking devices.

Current meat inspection regulations require an official establishment or official import inspection establishment to supply brands or other marking devices containing an official inspection legend for marking product. The brands and devices are required to be used under the supervision of an inspector, and while not in use are required to be kept in the inspector's possession under lock and key (9 CFR 316.4).

The current regulations allow the manufacture of brands or other marking devices which contain the official inspection legend for a particular establishment without the prior authorization if the devices are made as samples for approval by the FSIS Administrator. Once the establishment obtains initial approval of such a brand or other marking device, the regulations provide that new devices "exactly similar to" the original may be made without obtaining further approvals (9 CFR 317.3). The poultry products inspection regulations contain a section similar to § 317.3, except that it does not refer to brands since they are not used to mark poultry (9 CFR 381.131). The provisions of §§ 317.3 and 381.131 have had the effect of allowing the manufacture of brands or other marking devices without any prior authorization.

The Agency has concluded that the current regulations do not adequately control the manufacture or distribution of brands or other marking devices containing an official inspection legend because establishments are able to order such marking devices without the knowledge of FSIS, and there is no assurance that the devices are turned over to inspectors for custody.

This proposal would require manufacturers of brands or other marking devices bearing specified official inspection legends to have a signed authorization certificate from FSIS before manufacturing such devices; all orders for such marking devices by an establishment would have to be accompanied by the certificate. A copy of the certificate that the Agency proposes to use and for which it is seeking approval from the Office of Management and Budget is printed below. When in final form, the certificate will show the seal of the Department.

BILLING CODE 3410-DM-M

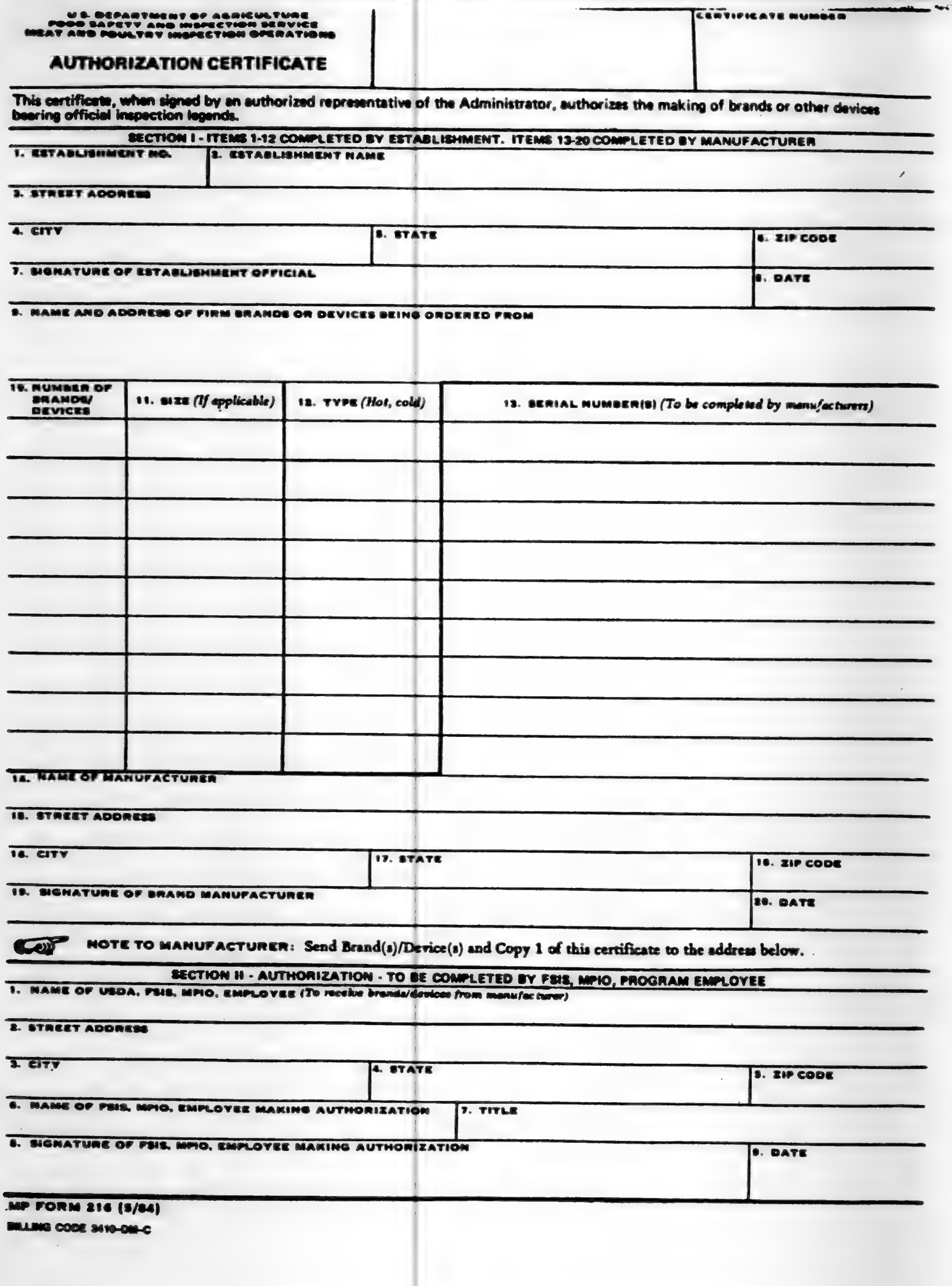

U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
MEAT AND POULTRY INSPECTION OPERATIONS

AUTHORIZATION CERTIFICATE

CERTIFICATE NUMBER

This certificate, when signed by an authorized representative of the Administrator, authorizes the making of brands or other devices bearing official inspection legends.

SECTION I - ITEMS 1-12 COMPLETED BY ESTABLISHMENT. ITEMS 13-20 COMPLETED BY MANUFACTURER

1. ESTABLISHMENT NO.
2. ESTABLISHMENT NAME
3. STREET ADDRESS
4. CITY
5. STATE
6. ZIP CODE
7. SIGNATURE OF ESTABLISHMENT OFFICIAL
8. DATE
9. NAME AND ADDRESS OF FIRM BRANDS OR DEVICES BEING ORDERED FROM

10. NUMBER OF BRANDS/ DEVICES	11. SIZE *(If applicable)*	12. TYPE *(Hot, cold)*	13. SERIAL NUMBER(S) *(To be completed by manufacturers)*

14. NAME OF MANUFACTURER
15. STREET ADDRESS
16. CITY
17. STATE
18. ZIP CODE
19. SIGNATURE OF BRAND MANUFACTURER
20. DATE

☞ NOTE TO MANUFACTURER: Send Brand(s)/Device(s) and Copy 1 of this certificate to the address below.

SECTION II - AUTHORIZATION - TO BE COMPLETED BY FSIS, MPIO, PROGRAM EMPLOYEE

1. NAME OF USDA, FSIS, MPIO, EMPLOYEE *(To receive brands/devices from manufacturer)*
2. STREET ADDRESS
3. CITY
4. STATE
5. ZIP CODE
6. NAME OF FSIS, MPIO, EMPLOYEE MAKING AUTHORIZATION
7. TITLE
8. SIGNATURE OF FSIS, MPIO, EMPLOYEE MAKING AUTHORIZATION
9. DATE

MP FORM 216 (5/84)

BILLING CODE 3410-DM-C

The certificate would be identified with a certificate number and indicate the quantity and type of brands or other marking devices ordered by the establishment. An FSIS employee and the establishment would complete and sign a portion of the certificate; both would keep a copy of the certificate, and two copies would be forwarded to the brand or marking device manufacturer with the establishment's order. The manufacturer would engrave or otherwise mark each brand or other marking device ordered with a permanent, unique serial number and complete the FSIS authorization certificate by listing on it the number marked on each device. The manufacturer would keep one copy of the certificate and return the other with the device to the FSIS employee whose name and address is given on the certificate as the recipient of the device. In practice, the plant inspector-in-charge normally would be both the FSIS employee who signs the authorization and the FSIS recipient of the device, but in some instances, as when a new establishment does not yet have an inspector assigned to it, other FSIS employees may be involved.

The numbers engraved on the brands or other marking devices and listed on the certificates would allow an inspector to keep an accurate record of all such marking devices made for the establishment. If a brand or other marking device becomes worn out, destroyed, or lost, an inspector should note this on the certificate listing that device. During an investigation, if it were necessary to determine whether a brand or other marking device suspected of being used illegally was forged or illegally diverted from an establishment, the records could help trace the source of the device.

If the proposal is adopted, the Agency would allow each manufacturer to develop its own serial numbering system. In order to ensure that each brand or other marking device is uniquely identified, the manufacturer would indicate on the brand or device, perhaps as part of the serial number, that it was made by that manufacturer. The Agency believes that it is unnecessary to go further by assigning serial numbers to the manufacturers. Assigning numbers would impose an unneeded complication and cost to the Agency and, especially, to the manufacturers, without any apparent benefits. The simplest and least costly numbering system for a manufacturer to implement would presumably be to assign numbers based on the order in which it manufactures marking devices. If the Agency were to assign numbers, it could not duplicate this simple numbering system because the Agency cannot reasonably ensure that a manufacturer receives or fills orders for marking devices in the same order that serial numbers would be assigned. The Agency invites comments concerning its proposed policy on assignment of serial numbers.

In the case of brands or other marking devices ordered from manufacturers before the effective date of the proposed regulations, establishments would be required to mark, under the direction of an inspector, such devices with permanent identifying numbers or obtain replacement devices within one year.

The proposed rule would apply to devices containing only certain specified official inspection legends. The Agency is primarily interested in controlling the use of inspection legends allowed under the regulations to be applied to products and containers by hand devices, such as brands and rubber stamps, because these devices are small and easily transportable and concealable. Therefore, the proposed rule would apply to devices for applying the legend branded on cattle, sheep, swine and goat carcasses and parts of carcasses (9 CFR 312.2(a)); the legend stamped on burlap, muslin, cheesecloth, heavy paper, or other acceptable materials that enclose cattle, sheep, swine and goat carcasses and parts (9 CFR 312.2(a)); the legend used on meat food products in animal casings (9 CFR 312.2(a)); the legend branded on horse carcasses and parts of such carcasses (9 CFR 312.3(a)) and nonhorse equine carcasses and parts of such carcasses (9 CFR 312.3(b)); the legends branded or stamped on imported meat and meat food products or their containers (9 CFR 312.7); and the legend stamped on containers of imported poultry products (9 CFR 381.102).

The proposed controls would not apply to devices for applying: (1) Legends appearing on containers and labels for containers of inspected and passed products of cattle, sheep, swine and goats shown in § 312.2(b) since these legends must be printed by mechanical means and not by hand stamps; (2) legends appearing on containers of poultry products shown in § 381.96 since they may not be applied by rubber stamps (these legends may be applied to shipping containers by stencil, but such stencils are bulky devices not easily transported or concealed); and (3) the horse meat food product and nonhorse equine meat food product official inspection legends shown in § 312.3 since, in practice, establishments mechanically pre-print such legends on containers, boxes and labels, even though the regulations do not limit application of these equine meat food product legends to mechanical, nonhand-stamp methods.

The proposed rule would revise 9 CFR 317.3(b), which currently regulates the manufacture of labels, brands or other marking devices bearing the official inspection legend used on meat and meat food products, and 9 CFR 381.131, which regulates the manufacture of labeling and other devices bearing the official poultry products inspection legend or other official inspection mark, by creating § 317.3(c) and § 381.131(b) to regulate the manufacture of marking devices containing the legends described above to which the proposed rule would apply.

The Agency recognizes that the proposed rule will not be a complete deterrent to the illegal use of devices imprinting inspection legends, but it will make it more difficult for those with criminal intentions to counterfeit or purchase such marking devices for the purpose of using them in their illegal activities.

A number of minor, related changes would also be made to the regulations under this proposal. The provision in § 317.3(b) that allows the manufacture of new supplies of labels and other marking devices "of a character exactly similar to" approved labels and devices would be revised by deleting the quoted phrase. This language adds nothing to the meaning of the provision and has caused unnecessary confusion. This language does not appear in the analagous provision of the poultry products inspection regulations (9 CFR 381.131). Additionally, current language in § 317.3 and § 381.131 would be revised to more closely conform to the language in the provisions of the Federal Meat Inspection Act (21 U.S.C. 611(a)) and the Poultry Products Inspection Act (21 U.S.C. 458(b)) from which these regulations are derived. Any unnecessary inconsistencies between the language in § 317.3 and § 381.131 would be removed. In addition, the proposed rule would revise § 381.102 of the poultry products inspection regulations. Figure 5 of that regulation shows an obsolete official inspection legend for marking poultry products offered for entry into the United States. The Agency no longer uses the name of the port or geographical area on the legend to identify where the product was inspected. Instead, the number of the official establishment or official import established where the product was inspected is used. The proposed rule would show the legend currently in use.

List of Subjects in 9 CFR Parts 317 and 381

Official inspection marks and devices, meat inspection

Proposed Rules

Accordingly, Part 317 of the Federal meat inspection regulations (9 CFR Part 317) and the Federal poultry products inspection regulations (9 CFR Part 381) would be revised to read as follows:

PART 317—[AMENDED]

1. The authority citation for Part 317 is:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; (21 U.S.C. 601 *et seq.*); 33 U.S.C. 1254.

2. In § 317.3 revise paragraph (b) and add new paragraph(c) as follows:

§ 317.3 Approval of abbreviations of marks of inspection; preparation of marking devices bearing inspection legend without advance approval prohibited; exception.

* * * * *

(b) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without further approval by the Administrator. The provisions of this paragraph apply only to labels, or other marking devices, bearing or containing an official inspection legend shown in § 312.2(b), § 312.3(a) [only the legend appropriate for horse meat food products], or § 312.3(b) [only the legend appropriate for nonhorse equine meat food products], or any abbreviations, copy or representation thereof.

(c) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a brand or other marking device containing an official inspection legend, or simulation thereof, shown in § 312.2(a), § 312.3(a) [only the legend appropriate for horse carcasses and parts of horse carcasses], § 312.3(b) [only the legend appropriate for nonhorse equine carcasses and parts of nonhorse equine carcasses] or § 312.7(a).

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the brand or other marking device, bearing a certificate serial number and a letterhead and the seal of the United States Department of Agriculture. The certificate authorizes the making of only the brands or other marking devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall both keep a copy and the remaining two copies shall be given to the brand or other marking device manufacturer.

(3) The manufacturer of the brands or other marking devices shall engrave or otherwise mark each brand or other marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each brand or other marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the brands or other marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such brands or other marking devices bear identifying numbers, within 1 year after the effective date of this paragraph (c), an establishment shall either replace each such brand or other marking device which does not bear an identifying number, or, under the direction of the inspector-in-charge, mark such brand or other marking device with a permanent identifying number.

PART 381—[AMENDED]

3. The authority citation for Part 381 reads as follows:

Authority: 71 Stat. 447, 448, as amended [21 U.S.C. 463, 468]; 76 Stat. 663, [7 U.S.C. 450 *et seq.*].

§ 381.102 [Amended]

4. Section 381.102 (9 CFR 381.102) would be revised to show the new Figure 5; redesignate footnote 2 as footnote 1 and revise new footnote 1 as follows:

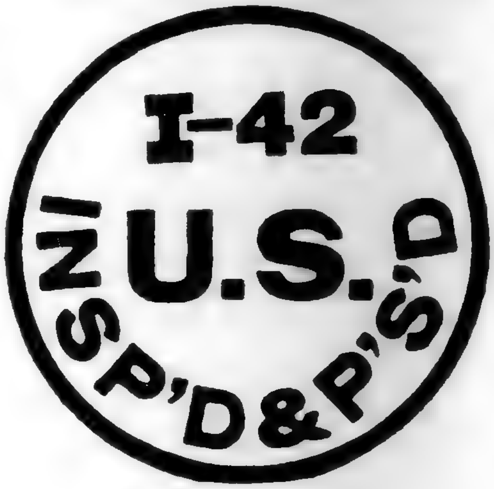

FIGURE 5

[1] The number "I–42" is given as an example only. The establishment number of the official establishment or official import inspection establishment where the product was inspected shall be shown on each stamp impression.

5. Section 381.131 (9 CFR 381.131) would be revised to read as follows:

§ 381.131 Preparation of labeling or other devices bearing official inspection marks without advance approval prohibited; exceptions.

(a) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without further approval of the Administrator. The provisions of this paragraph do not apply to marking devices containing the official inspection legend shown in Figure 5 of § 381.102.

(b) No brand manufacturer, printer or other person shall cast, print, lithograph, or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a marking device containing the official inspection legend shown in Figure 5 of § 381.102 or any simulation of that legend.

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the marking device, bearing a certificate serial number and a letterhead and the

seal of the United States Department of Agriculture. The certificate authorizes the making of only the devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall both keep a copy and the remaining two copies shall be given to the marking device manufacturer.

(3) The manufacturer of the marking devices shall engrave or otherwise mark each marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such marking devices bear identifying numbers, within 1 year after the effective date of this paragraph (b), an establishment shall either replace each such marking device that does not bear an identifying number, or, under the direction of the inspector-in-charge, mark such a marking device with a permanent identifying number.

Done at Washington, DC, on: September 4, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84–24908 Filed 9–20–84; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-84-9]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before November 20, 1984.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB–10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on September 14, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24420	Assoc. of Flight Attendants (AFA)	*Description of petitions:* To require airlines to measure and limit carry-on baggage prior to boarding. *Regulation affected:* 14 CFR 121.589. *Petitioner's reason for rule:* Carry-on baggage would have to be measured, and taken together would have to fit within the dimensions of 9" x 16" x 20". However, if the baggage would obviously fit within these dimensions, it would not have to be measured. If an airline could demonstrate to the agency that it has additional space available on its aircraft, then the airline could in addition measure and allow garment bags with a width of less than 3" aboard the aircraft. This rule is necessary to fulfill the purpose of existing regulations governing screening of carry-on baggage, and to eliminate existing hazards due to excess carry-on baggage on board aircraft.
24171	National Rifle Assoc. (NRA)	*Description of petitions:* To require all airlines to establish a procedure to allow a person carrying an unloaded firearm in his baggage who goes through the metal detector and who is discovered to have the firearm in his baggage to check the baggage at the aircraft. *Regulation Affected:* 14 CFR 108.9. *Petitioner's reason for rule:* The reason for the rule change is the fact that current rules do not take into account people who are transporting unloaded firearms in baggage they wish to, or must, check at the place of loading and not at the check-in counter. There have been numerous instances in which individuals who are transporting unloaded firearms in baggage which they intended to check at the airline counter, and who, either because they were late for their flight or because the airline had no counter at which the baggage could be checked, have been arrested and charged with a violation of 49 U.S.C. 1471(L)(1)(A) even though they had not "attempted to board" an aircraft.
24236	Eastern Air Lines, Inc	*Description of Petitions:* To amend this section so as to remove the present exception under which the hourly flight limitations at Newark Airport (§ 93.123) do not apply at this time. *Regulation affected:* 14 CFR 93.133, Subpart K. *Petitioner's reason for rule:* With this change, the high density rule will be in effect at all three New York airports (Kennedy, LaGuardia and Newark) and the FAA proposal in Docket 24206 that would impose new regulations at the three New York airports should be withdrawn. In sum, ATC problems in the New York area relating to all three airports will be addressed under the same high density rule which has been in effect for many years (14 CFR Part 93, Subpart K) and not the proposed FAA regulations in Docket 24206.
24193	Republic Airlines, Inc	*Description of petitions:* To commence proceedings for the adoption of a rule for the temporary, limited redistribution of slots at the High Density Airports so designated under 14 CFR Part 93, Subpart K. The rule would also allow the intra- and inter-airport trading of slots at the High Density Airports and would prohibit the tying, either directly or indirectly, of any other consideration to a trade transaction. *Regulation affected:* 14 CFR Part 93, Subpart K.

PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the petition
		Petitioner's reason for rule: The purpose is to allow new entrants and growing incumbents a limited opportunity to enter and grow at High Density Airports while also recognizing the interests of incumbent air carriers. Such an opportunity does not realistically exist under the current airline scheduling committee process. This proposal is intended as an alternative to the 100 percent grandfathering-buy/sell proposal contained in Notice 84-6, Docket 24105. Requiring carriers to purchase a scarce resource from their competitors who received the resource for free is highly inequitable, particularly when purchasing the resource is the only likely means of obtaining it. The proposal retains substantial grandfathering in recognition of the extensive disruptions which would result if all slots were subject to redistribution. The proposed redistribution should introduce flexibility into the system without the harmful effects of a buy-sell mechanism, particularly when carriers are allowed to trade slots on an inter-airport basis, as Republic has proposed. Republic is not wedded to the specific percentages or mechanics of its proposal; rather, it is concerned that the FAA has not previously considered or given interested parties any opportunity to comment formally on an alternative allocation concept to that proposed in Notice 84-6. Under Republic's proposed redistribution mechanism, each incumbent carrier having more than 12 slots at a given airport would put up 5 percent of those slots for redistribution at the annual redistribution session administered by the airline scheduling committee for that airport. No incumbent carrier would be required to relinquish in the aggregate more than 10 percent of the slots it held at a given airport as of the date of the first annual redistribution session. The 5 percent (rounded to the nearest even number) which each carrier would annually relinquish would be determined by lottery. All incumbents and "new entrants" (carriers not serving the airport and having the necessary CAB authority and FAA certificate as of the date of the redistribution session) would have their names placed on a list on a ranking determined by random lottery. Fifty percent of the slots to be redistributed would then be selected by new entrants and incumbents having 12 or fewer slots at the airport, in the order of their ranking on the list. A carrier would select 2 slots at a time but no more than 4 slots total during this first phase of the redistribution. During the second phase of the redistribution, the remaining 50 percent of the slots plus slots not selected during the first phase would be redistributed to new entrants and all incumbents in the order of their rankings on the list. Carriers would select 2 slots at a time.

[FR Doc. 84-25024 Filed 9-20-84; 8:45 am]

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14 CFR Part 39

[Docket No. 84-CE-27-AD]

Airworthiness Directives; Piper PA-20, PA-22, PA-23, PA-24, PA-25, PA-36, PA-44 Series and All Models PA-30, PA-31P and PA-39 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposed to adopt a new Airwothiness Directive (AD), applicable to Piper PA-20, PA-22, PA-23, PA-24, PA-25, PA-36, PA-44 series and all Piper Models PA-30, PA-31P and PA-39 airplanes. This AD would require installation of a brake operation warning placard. A ground operation accident occurred because the pilot improperly operated the brake system. This action will assure that the pilot is informed on proper brake operation.

DATES: Comments must be received on or before November 15, 1984..

ADDRESSES: Piper Aircraft Corporation Service Bulletin No. 771, dated May 19, 1984, concerning this AD may be obtained from Piper Aircraft Corporation, Lock Haven, Pennsylvania 17745, or the Rules Docket at the addresses below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Tunjian, Airframe Section, ANE-170, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submittted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments recieved. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy fo this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention Airworthiness Rules Docket No. 84-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

An accident occurred involving a Piper Model PA-23 airplane. The pilot set the airplane parking brake and routinely started the engines. After starting the engines, he discoverd that the airplane was rolling toward an unattended airplane. The pilot reported that he stood on his toe (wheel) brakes while he attempted to reset the parking brake, but no effective braking was realized. The Piper Model PA-23 airplane collided with the other airplane. Investigation of the wheel brake system of the Piper Model PA-23 airplane found that, because of the inherent characteristics of the system, no braking will occur if the brakes are applied while the parking brake handle is pulled and held. This arrangement was found to be common to numerous Piper model airplanes. The manufacturer issued Service Bulletin No. 711, dated May 19, 1984, which provides instructions for the installation of a placard on the pilot's instrument panel warning against using improper procedures in applying the parking brake.

Since the condition described is likely to exist or develop in other Piper PA-20, PA-22, PA-23, PA-24, PA-25, PA-36, PA-44 series and Models PA-30, PA-31P and PA-39 airplanes of the same design, the AD would require installation of the aforementioned warning placard on these airplanes. The FAA has determined there are approximately 29,000 airplanes affected by the proposed AD. The cost of installing the placard requested by the proposed AD is estimated to be $3 per airplane. The total cost is estimated to be $87,000 to the private sector. The cost of compliance with this AD on each airplane is so small that it will not have a significant financial impact on any small entities owning these airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) by adding the following new AD:

Piper: Applies to PA-20 series (S/Ns 20-1 and up), PA-22 series (S/Ns 22-1 and up), Models PA-23/PA-23-160 (S/Ns 23-1 and up), Pa-23-25 (S/Ns 27-1 and up), PA-24, PA-24-250/260 (S/Ns 26-1 and up), PA-25, PA-25-235/260 (S/Ns 25-1 and up), PA-30 (S/Ns 30-1 and up), PA-39 (S/Ns 39-1 and up), PA-31P (S/Ns 31P-1 and up), PA-36-285/300 (S/Ns 36-736001 and up), PA-36-375 (S/Ns 36-7802001 and up), PA-44-180 (S/Ns 44-7995001 and up), and PA-44-180T (S/Ns 44-8107001 and up) airplanes certificated in any category.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To insure proper brake operation accomplish the following:

(a) Install a Piper Part Number 81090-02 placard in a central location on the pilot's instrument panel in full view of the pilot.

(b) The airplane may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin, Valley Stream, New York 11581, telephone (516) 791-6680.

Piper Aircraft Corporation Service Bulletin No. 771, dated May 19, 1984, covers the subject matter of this AD.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); § 11.85 of the Federal Aviation Regulations (14 CFR Sec. 11.85))

Issued in Kansas City, Missouri, on September 13, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-25026 Filed 9-20-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 23

Draft Advisory Circular on Human Exposure to Impact; and a Preview of the Agency's Crash Dynamics Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to issue an Advisory Circular; and outline of the agency's crash dynamics program.

SUMMARY: The FAA has prepared an Advisory Circular that provides reasonable estimates of impact injury criteria for humans. The Advisory Circular is the first result being announced from the agency's crash dynamics engineering and development program. In addition, the FAA gives a preview of its intentions to issue guidance material regarding analytical methods to estimate the likely response of human/seat restraint systems in a "survivable" impact and intentions to establish state-of-the-art seat and occupant restraint system design standards. This is the beginning of an effort which will progressively disclose the results of several years of research; it gives the general public, especially the aviation industry, an opportunity to participate in the development of rules and guidance material that will affect the future crashworthy design of civil aircraft and appliances, especially seats and occupant restraint systems.

DATES: Commenters must identify file number 21-XX (AAC-119) and comments must be received on or before December 31, 1984.

ADDRESS: Send all comments on the draft Advisory Circular to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. 21-XX (AAC-119), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

Or deliver comments to: Room 335D, 800 Independence Ave., SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur J. Hayes, Technical Analysis Branch, AWS-120, Telephone (202) 426-8374.

Comments received on the draft Advisory Circular and the agency's crash dynamics program may be inspected, before and after the closing date for comments, in Room 335D, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION: The agency's well-documented crash dynamics engineering and development program, which has as a goal an increased occupant protection level in a survivable impact, has reached a stage of development where it is appropriate to solicit formal public comments on the initial results of this program.

This annoncement is the first of at least four planned announcements which will progressively request comments on available results of the agency's crash dynamics engineering and development program. This announcement presents the overall structure of the crash dynamics program and makes available for public comment a draft Advisory Circular on human impact injury criteria. Subsequent announcements will address aircraft crash scenarios, analytical modeling techniques, and the agency's direction and intent with respect to potential regulatory action and Technical Standard Orders (TSO).

It is recognized that each category of civil aircraft could possess differing impact dynamics characteristics and these differences will be addressed in subsequent related announcements. This announcement deals with generic issues which are believed applicable for all categories of civil aircraft.

Crash Dynamics Program

The elements of the agency's crash dynamics engineering and development program and program logic are addressed herein. The agency's crash dynamics program has been structured to develop the technical data base and methodologies necessary to assess the dynamic impact environment and occupant survivability characteristics of civil aircraft. The technical data base includes elements such as the quantification of the impact characteristics of current aircraft, the development of analytical modeling techniques, full scale component and aircraft impact testing, the assessment of human impact injury criteria, and most importantly, the analysis and correlation of all the above data elements to develop updated industry design standards. It is noteworthy that the completion of any one data element in the agency's crash dynamics program will not by itself constitute the justification for any regulatory change proposal. The FAA will place each program data element in its proper perspective, and only after a complete analysis of the comprehensive technical data base and assessment of public comments on that element can any regulatory proposal be considered.

The current crash dynamics engineering and development program, depicted generically in Figure 1, and in an expanded form for transport airplanes in Figure 2, is a joint FAA/National Aeronautics and Space Administration (NASA) effort supported by extensive industry participation (Reference 14). A systems analysis approach is used wherein the crash event itself is directly related to the airframe/occupant response and an established performance criteria. The systems analysis concept recognizes the importance of rationally considering all of the technical disciplines in the development of industry state-of-the-art design standards so those standards can be achievable and will provide an increased occupant protection level in a survivable impact.

A key element included in the crash dynamics program is the development, and more importantly, the correlation of analytical methods with full-scale testing since it is recognized that every new aircraft cannot be evaluated by a full-scale impact test. Past engineering and development programs did not always incorporate parallel full-scale test and analytical efforts but were mainly full-scale test oriented. Consequently, the results were applicable only for a particular crash event and aircraft configuration. Analytical tools were unavailable to assess other crash events or aircraft configurations. The current crash dynamics program includes integrated full-scale test and analytical methdology development/correlation efforts and is expected to provide the means to predict the impact characteristics of current and future aircraft configurations for a range of crash events. These validated analytical tools will then be available for use in the early stages of aircraft development and can be used to assess the occupant protection system design features of those aircraft.

A brief status of some of the major program elements follows. These items are expanded later in this announcement.

- Representative civil aircraft impact characteristics and crash scenarios have been established and are being further evaluated for quantification.
- A review of the current impact dynamics analytical methods has found that significant improvements have been made in recent years aided by increased digital computer capabilities. The current impact dynamics analytical methodologies developed for small airplane and helicopter applications are being expanded and further developed for transport airplane applications and these tasks are in progress.
- A comprehensive component and full-scale impact test program has been nearly completed to provide the necessary data base for correlation with the developing analytical methodologies.
- Acceptance levels/performance criteria have been evaluated and are the subject of a draft Advisory Circular regarding human impact injury criteria announced herein.
- Completion of the agency's planned crash dynamics engineering and development program and the comprehensive analysis of the resultant data base should provide the means to establish industry state-of-the-art design standards, to assess the adequacy of the current regulatory requirements, and to establish related aircraft regulatory requirements where deemed necessary.

Crash Scenarios Development

The evaluation of the impact characteristics of civil aircraft was one of the first tasks in the agency's crash dynamics engineering and development program. That evaluation defined the scope of the engineering and development program and led to the definition of various crash scenarios. These crash scenarios are key elements for they define the potential design envelopes that must be known prior to initiating any full-scale aircraft impact test programs or developing methodologies to analyze a crash event.

A comprehensive evaluation of the transport category aircraft accident data files of domestic and foreign aviation authorities, manufacturers, and miscellaneous sources representing a period of 20 years of operation, has been completed with the purpose of defining representative crash scenarios. These data, which are available for public review, are currently being further analyzed by the FAA to quantify crash scenarios so they may become the basis of future design objectives.

Comparable undertakings are ongoing for small airplane and rotorcraft. In fact, the General Aviation Safety Panel in conjunction with the general aviation community has made use of much of the FAA/NASA analytical methodology and full-scale impact test results in formulating a dynamic test criteria applicable for small airplane seats. The General Aviation Safety Panel has submitted a recommendation that rulemaking action be initiated to incorporate a dynamic test criteria for small airplane seats in Federal Aviation Regulations (FAR) Part 23 (14 CFR Part 23). The content of that recommendation will be analyzed by the FAA, and the results of the agency's analysis will be the subject of a future announcement in the **Federal Register.**

The current crash scenario studies have revealed that the prevention of both impact injuries and post impact fires must be considered to achieve improved occupant survivability in survivable crash events. The agency's overall crashworthiness program is structured to consider both of these tasks. The agency's crash dynamics program discussed herein addresses the prevention of impact injuries. The post impact fire issue is the subject of another parallel FAA engineering and development program.

Analytical Methods

The development and correlation of analytical methods with the integrated full-scale impact tests are the keystones of the agency's crash dynamics engineering and development program for the establishment of updated industry design standards; and methods of demonstrating compliance with those standards may be dependent on the available analytical tools.

The agency intends to develop and dessiminate to the aircraft industry the analytical tools which may be used to analyze a crash event. The development of high speed digital computers and advanced analytical methods jointly provide the analytical tools required to perform a quantitative evaluation of a crash event.

The development of analytical methods is essential to meet two crash dynamics program goals.

The primary goal is the establishment of updated industry design standards and their respective regulatory requirements. To establish design standards it is essential to understand the mechanics and interrelationship of the crash event, the aircraft structure/

furnishings, and the occupants. Analytical methods provide cost effective means to evaluate the myriad variations in crash events, airframe structural differences, and occupants' responses to those variables that must be evaluated to develop meaningful design standards which will meet the goal of improving occupant survivability to a crash event. It is envisioned that analytical parametrical studies, supported and validated by the full-scale impact tests, will be the means by which the FAA will develop those design standards. Some preliminary analytical studies have been completed and the final analytical iterations will be started after completion of the full-scale tests and their correction with the analytical methodologies.

Secondly, these analytical tools may also be used to assess the impact characteristics of an aircraft/occupant protection system in the early design stages of the aircraft by providing the capability of directly relating the crash event to an occupant's response to that event and to respective acceptance/performance criteria. This analytical capability provides a means to access an aircraft/occupant protection system early in the design of that system and then facilities modification of the system that may be necessary to comply with any amended regulatory requirements.

Two of the best examples of current impact dynamics analytical methods being evaluated for application to civil aircraft are digital computer programs KRASH and DYCAST.

Program KRASH is a well-documented hybrid three dimensional mathematical modeling technique which has been used extensively by the FAA Technical Center, contractors, and the U.S. Army in evaluating the impact characteristics of small airplane and helicopter structures (References 5, 6, and 7).

Program DYCAST is a dynamic nonlinear finite element program being developed by the Grumman Aerospace Corporation as part of a joint NASA/FAA program in small airplane crashworthiness (Reference 9).

These analytical impact dynamics computer programs can be used to obtain the overall aircraft response to a crash event.

The final goal of an analysis of a crash event is the determination of the occupants' responses and their respective potentials for injury. The FAA also participated in the development of seat/occupant computer models which can be used to assess occupants' responses and their respective injury potentials in a crash event. Digital computer program SOMLA (Reference 8) has been developed and validated for that purpose and is now believed user ready as a design tool for small airplane seats. An expanded version of digital computer program SOMTA is currently being developed for application to transport airplane seats.

Near term impact analysis of civil aircraft will most likely use a combination of the models discussed herein. Further development of the impact dynamics analytical methodoligies by industry, combined with the next generation of high speed digital computers, should greatly advance this newly developing technology.

The FAA intends to use impact dynamics analytical techniques in its assessment and development of any industry state-of-the-art design standards and respective regulatory requirements. A subsequent announcement planned for the Spring of 1985 will be published in the **Federal Register** and will further discuss the subject of impact dynamics analytical techniques. That announcement will also request public comments on a draft Advisory Circular that will provide guidance regarding the application and limitations of impact dynamics analytical techniques.

Full-Scale Impact Tests

A series of component and full-scale aircraft impact tests has been included in the agency's overall aircraft crashworthiness engineering and development program. The full-scale impact tests are joint FAA/NASA/Department of Defense efforts with extensive industry participation.

The impact test specimens were typically instrumented with an array of accelerometers, load cells, displacement transducers, and photographic equipment necessary to record the impact environment experienced by the airframe, occupants, and major interior components. These data are being used in an effort to validate the impact dynamics analytical tools under development (References 10, 11, 12, and 13).

The full-scale impact tests, which are an experimental means of obtaining crash pulse data, provide quantitative data which have been used to demonstrate the predictive capability of the impact dynamics analytical tools by correlating test/analytical fuselage and cabin floor responses. Measured cabin floor pulses and passenger seat/occupant response data have also been used to assess the validity of the airframe/floor interface and seat/occupant mathematical models under development.

The FAA believes that the combination of passenger seat dynamic tests, the fuselage section drop tests, and the full-scale impact tests included in the crash dynamics engineering and development program have provided a comprehensive experimental data base which has had a synergistic effect in the development of the impact dynamics analytical tools.

Acceptance Levels/Performance Criteria

A definition of acceptance levels/performance criteria is required to judge the impact characteristics of an aircraft/occupant protection system. The establishment of human impact injury criteria, which may be used to form bases for acceptance levels/performance criteria, was one of the more challenging tasks facing the FAA. A general misconception is the belief that injury criteria for humans exposed to impact are well defined and that the aviation community is not making proper use of this well-defined data. In reality, the FAA finds that there is limited knowledge in this area. Most human tolerance data were obtained from tests which used young healthy male military volunteers and restraint systems typical of those found on military aircraft ejection seats. While such tolerance studies have been invaluable in demonstrating the operational feasibility of military systems (usually involving ejection from high speed aircraft), they are of only limited usefulness in the present effort. The volunteer subjects were not representative of the population involved in civil aviation which includes large numbers of females and older people, the restraint systems were not representative of the relatively simple systems acceptable for civil aircraft operations, and most importantly, the tolerable (non-injury) endpoints established by voluntary exposure to impact have limited application for the performance assessment of systems intended to reduce fatal injuries in survivable impacts.

It is recognized, however, that a wealth of data exists which describes injury criteria found useful in the performance assessment of occupant protective equipment in severe impacts. These data have been applied successfully to improve occupant survivability and injury reduction characteristics of automobiles that use restraint systems similar to those in civil aircraft. These data have been reviewed; and the most significant have been assembled citing their application and limitations in the draft Advisory Circular which is a part of this announcement.

Design Standards/Regulatory Intent

The agency's crash dynamics engineering and development program, as described herein, is a comprehensive effort which considers in concert all of the technical disciplines that are required to assess the impact characteristics of an aircraft/occupant protection system.

All key program elements intrinsically possess a two-way interface. This interface provides cross-check paths between key program elements. The planned interrelationship assures that all analytical methods are correlated with one or more full-scale tests and that all key elements are rationally related to adjoining elements.

Completion of the agency's crash dynamics program and subsequent data correlation, which will be the culmination of several years of reserch, should lead to the establishment of updated industry design standards and analytical methodologies and should assist in defining future engineering and development needs. The form of design standards (Advisory Circulars, handbooks, TSO's, etc.) and the need for any regulatory action will be dependent on the program findings. Any contemplated regulatory action would be based on a comprehensive analysis of all of the data elements (including public comments) and would be consistent with the regulatory philosophy and policies followed in the establishment of other recent industry state-of-the-art design standards which were related to newly developed technology. With assistance from the aviation industry, it is also envisioned that any newly developed impact technology and design standards will be continuously reviewed for appropriateness and application.

The FAA is actively analyzing all program data elements related to its crash dynamics engineering and development program. Upon completion of that analysis, its findings, supported by their respective data elements and their relationship to any proposed regulatory direction, will be announced in the **Federal Register** in a timely manner as they become available. Regulatory requirements for seats for all aircraft are currently being assessed and, where deemed necessary, amended regulatory requirements will be proposed in the Spring of 1985. When the regulatory requirements are proposed, the present FAA crash dynamics program will be completed.

References

1. *Aircraft Crash Survival Design Guide,* (Volumes I–V); Simula, Inc.; USARTL–TR–79–22(A–E); Applied Technology Laboratory, U.S. Army Research and Technology Laboratories (AVRADCOM); Fort Eustis, Virginia 23604; 1980.

2. *Human Exposure to Impact With Two Point (Lapbelt) and Three Point (Lapbelt and Diagonal Shoulder Belt) Restraint Systems;* Chandler, R.F., Gowdy, R.V.; Memorandum No. AAC–119–83–7; Protection and Survival Laboratory, Civil Aeromedical Institute, Mike Monroney Aeronautical Center, Federal Aviation Administration; Oklahoma City, Oklahoma 73125; August 31, 1983.

3. *Human Tolerance to Impact Conditions as Related to Motor Vehicle Design;* SAE J885; Society of Automotive Engineers, Warrendale, Pennsylvania 15096; April 1980.

4. *Proceedings of the Stapp Car Crash Conference;* Society of Automotive Engineers, Warrendale, Pennsylvania 15096 (published annually since 1966 by the SAE under various SP numbers).

5. Gamon, M.A., "Genral Aviation Airplane Structural Crashworthiness User's Manual, Volume I, Program 'KRASH' Theory"; Report No. FAA–RD–77–189, i; February 1978; For sale by the National Technical Information Service, Springfield, Virginia 22161.

6. Gamon, M.A., et al., "General Aviation Airplane Structural Crashworthiness User's Manual, Volume II, Input-Output, Techniques and Applications"; Report No. FAA–RD–77–189, iii; February 1978; For sale by the National Technical Information Service, Springfield, Virginia 22161.

7. Wittlin, G., "General Aviation Airplane Structural Crashworthiness User's Manual, Volume III, Related Design Information"; Report No. FAA–RD–77–189, iii; February 1978; For sale by the National Technical Information Service, Springfield, Virginia 22161.

8. Laananen, D.H., et al., "Computer Simulation of an Aircraft Seat and Occupant in a Crash Environment"; DOT/FAA/CT–82/33–1, Volumes I and II; March 1983; For sale by the National Technical Information Service, Springfield, Virginia 22161.

9. Pifko, A.B., et al., "DYCAST—A Finite Element Program for the Crash Analysis of Structures"; Contract NASI–13148; April 1982. (This computer program will be made available to the public in October 1984 through: Cosmic, 112 Barrow Hall, University of Georgia, Athens, Georgia 30602.)

10. Cominsky, A., "Transport Aircraft Accident Dynamics"; Report No. FAA–RD–74–12; March 1982; For sale by the National Technical Information Service, Springfield, Virginia 22161.

11. Widmayer, E., et al., "Commercial Jet Transport Crashworthiness"; Report No. DOT–FAA–CT–82–86; April 1982; For sale by the National Technical Information Service, Springfield, Virginia 22161.

12. Wittlin, G., et al., "Analytical Modeling of Transport Aircraft Crash Scenarios To Obtain Floor Pulses"; Report No. DOT/FAA/CT–83–23; April 1983; For sale by the National Technical Information Service, Springfield, Virginia 22161.

13. Wittlin, G., et al., "Transport Aircraft Crash Dynamics"; Report No. DOT/FAA/CT–82/69; March 1982; For sale by the National Technical Information Service, Springfield, Virginia 22161.

14. Soltis, S., "Status of FAA Crash Dynamics Program—Transport Category Aircraft"; SAE 821483; Ocober 1982; For sale by the Society of Automotive Engineers, Warrendale, Pennsylvania 15096.

BILLING CODE 4910-13-M

FAA CRASH DYNAMICS PROGRAM RELATES A CRASH EVENT TO AN ESTABLISHED PERFORMANCE CRITERIA

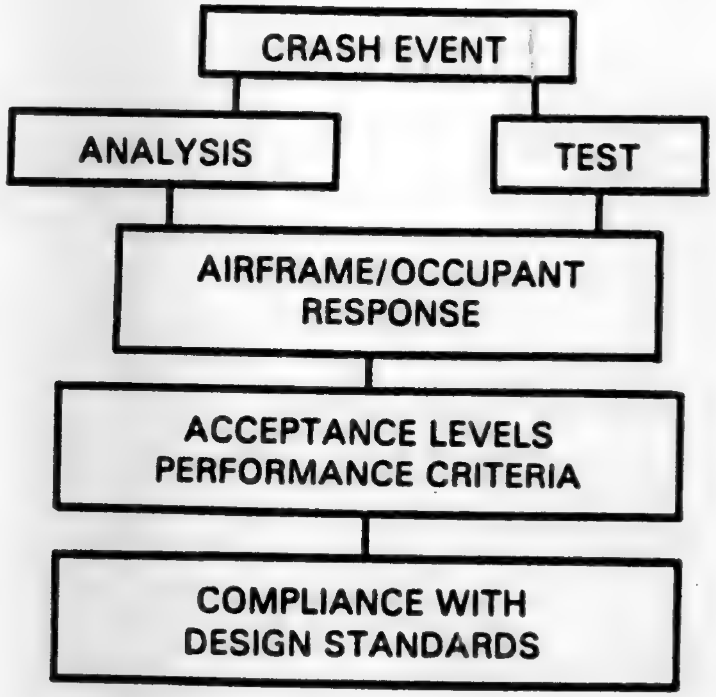
CRASH EVENT
ANALYSIS
TEST
AIRFRAME/OCCUPANT RESPONSE
ACCEPTANCE LEVELS PERFORMANCE CRITERIA
COMPLIANCE WITH DESIGN STANDARDS

Figure 1

FAA Crash Dynamics Engineering and Development Program

Transport Airplanes

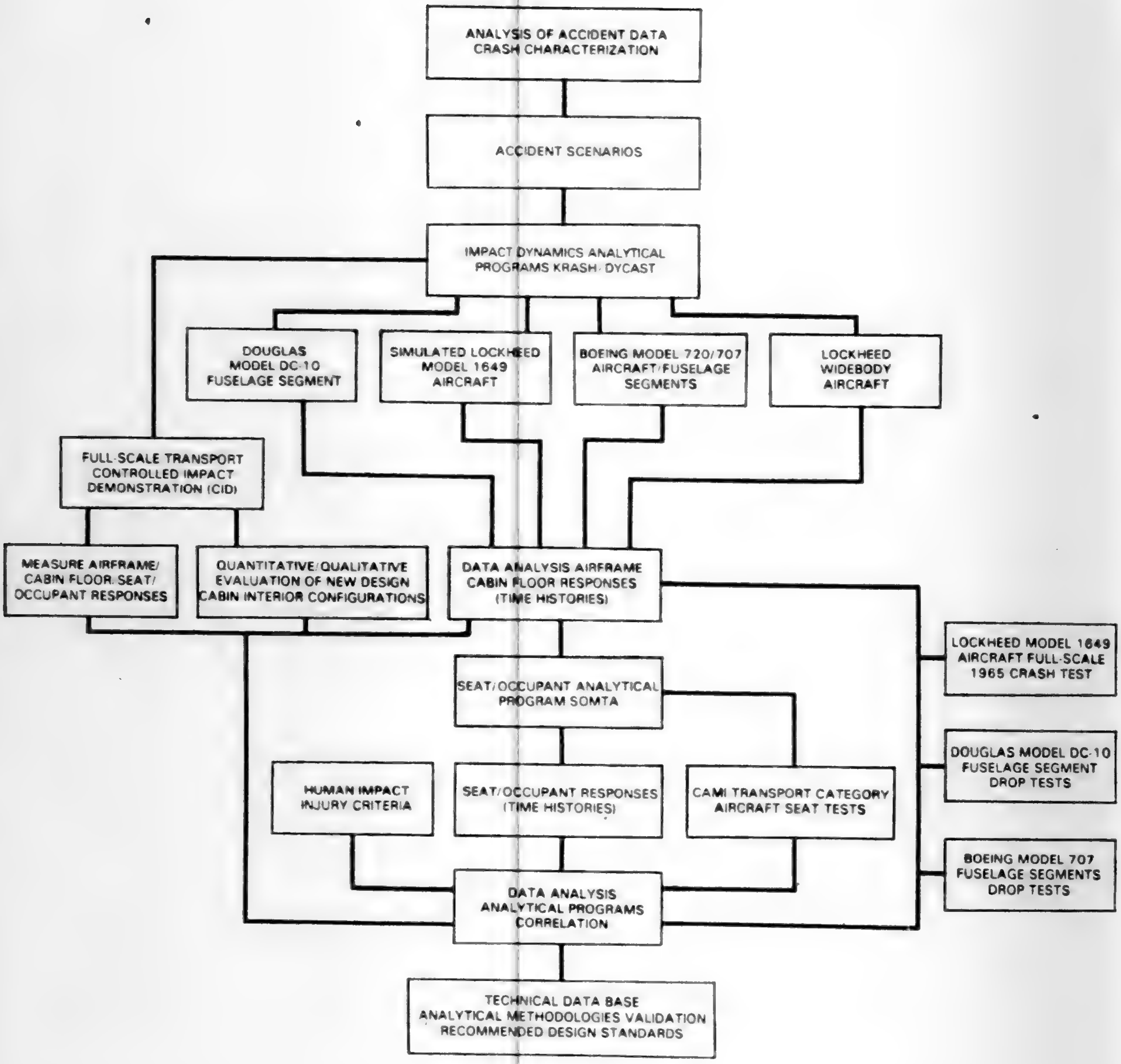
ANALYSIS OF ACCIDENT DATA
CRASH CHARACTERIZATION
ACCIDENT SCENARIOS
IMPACT DYNAMICS ANALYTICAL PROGRAMS KRASH/DYCAST
DOUGLAS MODEL DC-10 FUSELAGE SEGMENT
SIMULATED LOCKHEED MODEL 1649 AIRCRAFT
BOEING MODEL 720/707 AIRCRAFT/FUSELAGE SEGMENTS
LOCKHEED WIDEBODY AIRCRAFT
FULL-SCALE TRANSPORT CONTROLLED IMPACT DEMONSTRATION (CID)
MEASURE AIRFRAME/CABIN FLOOR/SEAT/OCCUPANT RESPONSES
QUANTITATIVE/QUALITATIVE EVALUATION OF NEW DESIGN CABIN INTERIOR CONFIGURATIONS
DATA ANALYSIS AIRFRAME CABIN FLOOR RESPONSES (TIME HISTORIES)
LOCKHEED MODEL 1649 AIRCRAFT FULL-SCALE 1965 CRASH TEST
SEAT/OCCUPANT ANALYTICAL PROGRAM SOMTA
DOUGLAS MODEL DC-10 FUSELAGE SEGMENT DROP TESTS
HUMAN IMPACT INJURY CRITERIA
SEAT/OCCUPANT RESPONSES (TIME HISTORIES)
CAMI TRANSPORT CATEGORY AIRCRAFT SEAT TESTS
BOEING MODEL 707 FUSELAGE SEGMENTS DROP TESTS
DATA ANALYSIS ANALYTICAL PROGRAMS CORRELATION
TECHNICAL DATA BASE
ANALYTICAL METHODOLOGIES VALIDATION
RECOMMENDED DESIGN STANDARDS

Figure 2

18

BILLING CODE 4910-13-C

Comments Invited

Although the FAA welcomes comments on its whole crash dynamics program at any time, the FAA plans to make completed elements of this effort available periodically for specific detailed public comment. Interested persons are invited to comment on the draft Advisory Circular and crash dynamics program by submitting such written data, views, or arguments as they may desire. Commenters should identify Advisory Circular file number 21-XX (AAC-119) and comments should be submitted to the address specified above. All comments received on or before the closing date specified above for comments will be considered by the Director of Airworthiness before using the final Advisory Circular.

How To Obtain Copies

A copy of the draft Advisory Circular may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, D.C., on September 14, 1984.

M.C. Beard,

Director of Airworthiness.

[AC 21-XX (AAC-119)]

Subject: Injury Criteria for Human Exposure to Impact

1. *Purpose.* This advisory circular describes a range of impact trauma which may be used to establish bases for acceptance levels/performance criteria in the evaluation of occupant survivability characteristics in civil aircraft.

2. *Related Federal Aviation Regulations (FAR) Sections.* Sections 23.561, 23.785, 25.561, 25.563, 25.785, 25.801, 25.803, 27.561, 27.785, 27.801, 29.561, 29.563, 29.785, 29.801, and 29.803.

3. *Related Reading Material.*

a. *Aircraft Crash Survival Design Guide,* (Volumes I-V), Simula Inc., USARTL-TR-79-22(A-E), Applied Technology Laboratory, U.S. Army Research and Technology Laboratories (AVRADCOM), Fort Eustis, Virginia, 23604. 1980.

b. *Bioastronautics Data Book,* NASA SP-3006, National Aeronautics and Space Administration, Washington, D.C. 20546, 1973.

c. *Human Tolerance to Impact Conditions as Related to Motor Vehicle Design,* SAE J885, Society of Automotive Engineers, Warrendale, Pennsylvania 15096, April 1980.

d. *Whole Body Tolerance to Impact with Lap Belt-Only Restraint,* Laananen, Simula, Tempe, Arizona 85282.

e. *Human Exposure to Impact with Two Point (Lapbelt) and Three Point (Lapbelt and Diagonal Shoulder Belt) Restraint Systems,* Chandler, R.F., Gowdy R.V., Memorandum No. AAC-119-83-7, Protection and Survival Laboratory, Civil Aeromedical Institute, Mike Monroney Aeronautical Center, Federal Aviation Administration, Oklahoma City, Oklahoma 73125, August 31, 1983.

f. *Human Survival in Aircraft Emergencies,* Yost, C.A., Oates, R.W., National Aeronautics and Space Administration, Washington, D.C. 20546, January 1969.

g. *Proceedings of the Stapp Car Crash Conference,* Society of Automotive Engineers, Warrendale, Pennsylvania 15096, (published annually since 1966 by the SAE under various SP numbers).

h. *Impulse Analysis of Airplane Crash Data with Consideration Given to Human Tolerance,* Huey D. Carden (NASA Langley), SAE 830748, Society of Automotive Engineers, Warrendale, Pennsylvania 15096, April 1983.

Note.—Initial inquiries for any reading material in this paragraph may be directed to the address in the applicable subparagraph.

4. *Background.* The scientific study of human exposure to impact began during World War II when ejection seats were developed for high speed aircraft. The work of Geertz and Ruff in Germany developed basic criteria which are still in use today for evaluating seat and restraint performance. After the War, the work was expanded by Stapp and other scientists working primarily for the military services. Eiband provided a concise summary of this early work. The concern for automobile crash safety which developed during the 1950's and 1960's resulted in a great expansion of studies to increase impact injury protection offered to a civil population. Guidelines for the application of these studies' findings to Army helicopters is found in the Aircraft Crash Survival Design Guide; and for automobiles, in various Society of Automotive Engineers documents and in the Federal Motor Vehicle Safety Standards. The developments can also be followed in the Proceedings of the Stapp Car Crash Conferences, published annually by the Society of Automotive Engineers since 1966.

5. *Definitions.*

a. *Human Tolerance.* Whole body human tolerance limits result from tests with voluntary human subjects who are exposed to increasingly severe impacts while being held by a specific seat and restraint system. The level of the impacts is increased until a subject feels that further tests would be unacceptable. Injury is seldom the endpoint for such tests, but when injury occurs it is often accidental and has always been minor in nature. Tolerance limits from such testing have limited general application for systems intended to protect humans against serious injury or death for they represent a voluntarily accepted impact level and not an impact level representative of serious injury or death.

b. *Injury criteria.* Injury criteria describe the trauma limits of individual human body components. These are more generally applicable to a variety of impact injury protection system designs. To provide data for protection against serious injury or death, biological surrogates are used instead of human subjects in tests; however, correlation of data between the biological surrogates and living humans is difficult. Moreover, for evaluating the performance of a protection system, an anthropomorphic test device (ATD) may be used instead of a biological surrogate, and the ATD is only a rudimentary representation of the human body. Impact injury criteria should be expressed in parameters which can be measured on an ATD.

c. *Anthropomorphic Test Device (ATD).* An ATD is a dummy used in place of a human for evaluation of impact in jury protection systems. While there have been many dummy types manufacturered, the only standardized adult size ATD generally available in the United States is the one described by 49 CFR 572. This device, commonly called the Part 572 dummy, provides only approximate correlations with humans, and considerable resources are being expended to develop better ATD's. Impact injury criteria determined using biological subjects should be expressed in parameters which can be measured on an ATD.

6. *Discussion.*

a. *Goals.*

(i) The goal of this advisory circular is to provide guidance regarding useful human impact injury data which may be used to establish bases for acceptance levels/performance criteria in the evaluation of occupant survivability characteristics in civil aircraft. *The human impact injury data provided herein are neither design criteria nor goals,* for it should be accepted that impact injury protection is a systems consideration with the human occupant as only one element in the system. Aircraft designs that absorb impact energy, help control the impact environment, maintain adequate living space, provide egress pathways for rapid evacuation, and use fire resistant systems to provide adequate time for egress contribute much to occupant survivability. The occupant protection system elements, which are closest to an occupant, such as occupant/seat restraints, equipment, and furnishings, play a major role in injury protection. It is the proper interaction of all these and related elements which should be addressed to provide improvement in occupant protection against injury.

(ii) The goal of any impact injury protection system should be to reduce the level of injury insofar as possible; from fatal to non-life threatening to serious to minor to none. The extent to which progress can be made along that chain depends on many factors:

(A) Personal characteristics (age, sex, physical condition) of the occupant influence the ability to withstand the force of impact;

(B) Restraint system design details govern the placement of loads on the body at locations and at levels where loads can be most readily taken;

(C) Orientation of the impact vector relative to the occupant governs which components of the body are most highly stressed;

(D) A seat, which can provide distribution of load over the body and absorption of energy, may reduce the stress on the body;

(E) If the occupant/seat restraint does not preclude secondary impact of an occupant with the interior of a passenger compartment, then the ability of the cabin interior to distribute the impact load over the body segments and absorb energy influences the stress generated on the body from secondary impact; and

(F) Finally, the characteristics of the impact pulse, such as impact velocity and the "shape" of the time history of the acceleration (including duration, maximum levels, effective onset rate, etc.), influence the stress in the body.

b. *Whole Body Impact Tolerance.*

(i) *Considering the many factors influencing the ability of a system to protect against impact injury, any simple statement of tolerance should be heavily conditioned.* Eiband, in 1959, attempted to compile a summary of the knowledge existing at that time relative to human tolerance to impact and attempted to present it in a simple form. He chose to represent each test result as a point on a log-log plot of acceleration vs. duration. The value of acceleration (or deceleration) chosen for this point was the maximum acceleration measured in the test, and the duration was the duration of that maximum acceleration. This approach was effective at that time because most of the test data was obtained for ejection seat tests, where the acceleration pluse was roughly trapezoidal in shape, and could be fairly represented by duration and magnitude of the maximum acceleration; however, if the pulse shape deviates significantly from a trapezoidal or square shape, this method becomes ineffective. For example, the triangular pulse shape often recommended as representative of aircraft crash deceleration would not even appear on a log-log plot since the peak deceleration has no duration. Also, a deceleration pulse with a superimposed short duration spike would be characterized by the amplitude and duration of the peak acceleration of the spike, and all other characteristics, such as velocity change or energy, would be ignored. Indeed, such a pulse would appear to be no different than a pulse composed only of the spike. This advisory circular will retain the log-log format, but will interpret the data according to a method recently used by the Army in evaluating energy absorbing seat performance. This method measures, and plots, the duration of all acceleration levels which appear in the acceleration pulse of the test. Thus the test is represented as a curve, rather than just a single point on the log-log plot. A series of tests will appear as a family of curves, and the tangent to those curves represents an envelope of the maximum acceleration and duration of maximum acceleration to which a human was exposed in the test series. While this provides a more universal means of including a variety of pulse shapes, it cannot consider all of the factors previously mentioned. Also, since it retains the log-log tolerance format originally proposed by Eiband, it suffers from the same possible misinterpretation that any test or crash, which can be plotted within the tolerance curve, is tolerable without regard to velocity change.

(ii) The voluntary exposure areas of Figures 1 through 4 represent the acceleration levels and durations which have been tolerated by volunteer human subjects using the restraint concept indicated. The areas titled "low probability of life threatening injury" in Figures 2 and 4 represent accidental exposure of humans which resulted in reversible injuries.

c. *Impact Injury Criteria.* Of more importance for evaluating the performance of impact injury protection systems are measurements which can be made during testing. Historically, measurements of acceleration have been used as impact injury criteria, but these measurements have only been made popular by the ready availability of accelerometers rather than the significance of acceleration as a factor in injury. In short duration accelerations, such as occur in impacts (less than 0.02 second, for example), the injury limit is body structural, and this limit would be expressed better in terms of stress or strain. In any event, it should be understood that there are no universally accepted handbook values for impact injury criteria in the sense that there are handbook values for the properties of materials used in the construction of aircraft. Injury is a progressive occurrence, and the rate of progression varies with a number of factors which have not yet been completely understood. Also, impact injury criteria are not design criteria in the sense that they can be used during the design of an aircraft in the same manner as the properties of materials are used. Instead, such injury criteria must be viewed as test measurements which can be used to determine if an impact protection system is likely to have achieved some level of success. If a minimum level of protection has been established by regulatory requirements, as has been generated by the rulemaking process for the automotive industry or by military specifications for defense suppliers, then the criteria and methods of demonstrating compliance with those criteria are defined. In the absence of such a definitive process, the responsibility for the selection of injury criteria pertinent to a particular application and the development of appropriate test procedures to demonstrate that the injury criteria have been met falls on the manufacturer of the system. To assist in this effort, the following subparagraphs summarize some of the more important concepts for injury criteria which may, depending on the application, be of importance in the development of impact injury protection systems for civil aircraft. Other concepts, as well as arguments for and against most of the concepts presented here, can be found in the literature.

(i) *Head Injury.* Injuries to the head can be fractures or concussions. The mechanism of injury depends on the energy of the impact, the rotational and translational movement of the head relative to the body, the characteristics of the impacted surface (area, shape and load distribution properties, for example), and the site and direction of the load (force) vector relative to the head. The Wayne State University Concussion Tolerance Curve (WSUCTC), proposed by Lissner, et al., in 1960, forms the basis for most current head injury criteria. Gadd devised a weighted impulse criterion to define a Severity Index (GSI) to represent the WSUCTC, so that a GSI less than 1000 represented the limit for skull fracture from localized impacts against a hard surface, and a GSI less than 1500 represented a concussion injury limit for distributed or non-contact blows to the head. An alternate representation of the WSUCTC, suggested by Versace, led to the Head Injury Criterion (HIC) specified in Federal Motor Vehicle Safety Standard (FMVSS) No. 208. The HIC requires a measurement in g's of the resultant acceleration at the center of mass of the head to be inserted into the following equation:

$$HIC = \left\{ (t_2 - t_1) \left[\frac{1}{t_2 - t_1} \int_{t_1}^{t_2} a(t)\, dt \right]^{2.5} \right\}_{max} < 1000$$

where a(t) is the time history of the acceleration at the center of mass of the head measured with a system having a frequency response of 1000Hz, t_1 and t_2 are the initial and final times (seconds) during a pulse interval, and a value of 1000 is the limit for head injury. Although usually not specified in the criterion, this limit is most useful with pulse intervals not greater than 0.05 seconds.

(ii) *Chest Injury.* Upper torso injuries include both skeletal and soft tissue injury mechanisms. Neathery suggested that chest deflection showed good correlation with blunt frontal impacts and recommended a sternal deflection limit of 75mm for representing severe, not life-threatening, chest injury for a 45 year old mid-sized male. The primary problem with a deflection measurement is in making a single measurement which is descriptive of the complex thorax behavior under all conditions of impact. The same problem exists with a single acceleration measurement, such as used in limits which state ". . . shall not exceed 60 g's except for intervals whose cumulative duration is not more than 3 milliseconds", and is compounded by the difficulty of correlating an acceleration measurement with injury. Eppinger suggested an alternate, easily measured criteria, shoulder belt load, as a means of predicting thoracic fractures in cadaver tests (with consideration of cadaver weight and age at death). He suggested that a 5.8 to 6.7kN upper torso diagonal belt force would produce the minimum average number of fractures in the automobile fatality population in a 13.4 m/s frontal crash with a particular belt restraint system. This approach is conditioned by the understanding that belt loads are also strongly influenced by belt geometry, a factor not represented in the analysis.

(iii) *Abdominal Injury.* The clinical literature provides extensive documentation of the serious, life threatening injuries which can result from blunt abdominal trauma; however, the research accomplished to date to define abdominal injury criteria has been limited, and no practical criteria have evolved. Thus, considering the potential severity of abdominal loading, the only suitable recommendation is to avoid applying loads to the abdomen. In particular, a safety belt should be designed so that it does not slip from the pelvis to the abdomen.

(iv) *Leg Injury.*

(A) Early studies by Patrick, et al., used embalmed cadavers with head, chest, and knees striking lightly padded load cells during sled tests. They concluded that a load of 6.2 kN represented a conservative value for overall injury threshold for the patella-femur-pelvis complex. More recent studies by Melvin, et al., using unembalmed cadavers and an impactor with 25mm of energy absorbing padding, indicated a threshold of fracture of 13.3kN, with a threshold impactor momentum of 180–220Ns necessary to cause fracture. The current limit specified in FMVSS 208 is 10kN which is suggested as being appropriate criteria in aircraft. These studies concerned impacts which were essentially in line with the femur.

(B) Concentrated loading of the patella by impactors having circular or ring shapes less than 16mm in diameter demonstrated failures as low as 2.5kN, with patella damage varying dramatically with impact velocity.

(C) Transverse loading of the lower leg was reported by Young to result in tibia fracture at force levels from 4.45 to 6.67kN. Kramer, et al., found a 50 percent fracture limit of the lower leg to lie between 3.3 and 4.4kN, depending on the diameter of the impacting cylinder.

(v) *Spinal Injury.*

(A) Damage to the vertebral column, particularly to the upper lumbar and lower thoracic segments, occurs frequently where severe impact force is directed parallel to the spine. Stech and Payne modeled this impact as a single lumped-mass, damped-spring system, assuming that the total body mass which acts on the vertebrae to cause injury can be represented by one rigid mass. The model is used to predict the maximum deformation and the associated force of the spring (representing the vertebral column) for an input acceleration-time history measured on the structural seat pan of an ejection seat. The injury criterion which results is called the Dynamic Response Index (DRI). DRI limits for uniaxial spinal compression fractures of military aircrew have been suggested as follows:

DRI = 18.0 implies less than 5 percent risk of injury

DRI = 20.4 implies less than 20 percent risk of injury

DRI = 23.0 implies greater than 50 percent risk of injury

While the DRI has been successfully used for several military programs, these programs have also used well designed restraint systems to avoid bending loads on the spinal column which are not always possible in civil systems. Moreover, few civil aircraft seats have well defined structural seat pans on which representative accelerations can be measured. In an attempt to overcome these problems, Chandler conducted tests using a modified Part 572 ATD with a load cell inserted into the pelvis at the base of the rubber "lumbar" cylinder of the dummy. He found that, under a variety of test conditions with a military type seat, a pelvic compression load of 6.7kN correlated with a DRI of 19, indicating a low to moderate risk of injury. Since loads from the restraint system which would cause spinal compression would most likely be reflected in an increased pelvic load, this measurement may have more general application and is suggested for use in aircraft.

(B) Models which are, in effect, limited to one injury indicator for spinal column injury cannot predict the complex stress distribution which exists in this complex structure. Several more sophisticated models have been suggested, but there is no general consensus of more representative injury criteria. In any event, the measurements which can be made during a test will probably limit any proposed criteria to axial and shear loads and moments and torque in practice.

(vi) *Restraint Effectiveness and Other Criteria.* There are several other criteria for effective protection against impact injury which cannot be defined by numerical limits. Among the more important of these are:

(A) The restraint system should be designed to encourage its frequent and proper use by an occupant. Restraints which are complex, uncomfortable, or unduly restrictive to normal operational functions of the occupant are unlikely to be successful.

(B) Restraints should fit the size range of occupants that are likely to use the system. Misfit restraint systems can cause injury; for example, a diagonal belt which bears against the side of the head can promote neck injury if vertical impact takes place; a diagonal belt which passes below the center of mass of the upper torso-head-neck complex may allow the torso to rotate out of the restraint and increase the potential of either impact with the aircraft interior or injury from spinal column torque, etc.

(C) Restraints should apply loads to the body areas most able to withstand the loads (i.e., pelvis or shoulders), and should not move from those areas during the impact.

(D) Seats and restraints should distribute their load over a maximum body contact area to reduce concentrated load on the body.

(E) The seat and restraint system should provide as much uniform load distribution to the body as possible to limit relative displacement of the body segments.

(F) Elasticity of elements in the restraint and seat allows body motion and can increase impact severity. For example, long lengths of restraint webbing stretch more than short webbing lengths and allow more occupant motion.

(vii) *Accepted Injury Criteria.* The following documents contain injury criteria and test procedures which have been accepted by user groups and have served as guidance for establishing similar criteria for civil aircraft crash injury protection systems:

(A) Federal Motor Vehicle Safety Standard No. 201, Occupant protection in interior impact (49 CFR 571.201), contains criteria for head impact with instrument panels and seat backs.

(B) Federal Motor Vehicle Safety Standard No. 202, Head Restraints (49 CFR 571.202), contains criteria for head restraints intended to reduce neck injury in rear-end collisions, and may be applicable to rear facing seat head rest design in aircraft.

(C) Federal Motor Vehicle Safety Standard No. 203, Impact protection for the driver from the steering control system (49 CFR 571.203), contains criteria to minimize chest, neck, and facial injuries resulting from impact with the steering control.

(D) Federal Motor Vehicle Safety Standard No. 208, Occupant crash protection (49 CFR 571.208), contains criteria for the head, thorax, and upper legs to minimize injury in an automobile crash.

(E) Military Specification 58095(AV), General Specification for Crashworthy, Non-Ejection, Aircrew Seat System (MIL-S-58095(AV)), contains specifications for limiting spinal injury created by whole body vertical acceleration.

(viii) *Suggested Numerical Values for Aircraft Use.* The following subparagraphs summarize the impact injury data that are suggested herein for use in assessing the performance of impact injury protection systems in civil aircraft. It is not intended that all of the suggested performance criteria should be sued in every case to assess each impact injury protection system. When regulatory requirements are established, specific performance criteria most likely will also be defined. In the absence of a definitive regulatory requirement, a manufacturer should select appropriate performance criteria, develop appropriate test procedures for the particular application, and demonstrate that the selected performance criteria have been met.

(A) Whole body tolerance—

(*1*) $-G_x$ (2 points restraint) Figure 1.

(*2*) $+G_x$ (2 points restraint) Figure 2.

(*3*) $-G_y$ (2 points restraint) Figure 3.

(*4*) $-G_x$ (3 points restraint) Figure 4.

(B) Head injury—HIC < 100 ($t_2 - t_1 <$ 0.05 seconds).

(C) Chest injury—Diagonal shoulder belt load—7.8 Kn (1,750 lb.).

(D) Abdominal Injury—No quantiative data suggested.

(E) Leg injury—

(*1*) In line with femur—10 kN (2,250 lb.).

(*2*) Patella (concentrated load)—2.5 kN (560 lb.).

(*3*) Transverse (lower leg)—4.45 kN (1,000 lb.).

(F) Spinal injury—Pelvic compression load—6.7. kN (1,500 lb.).

BILLING CODE 4910-13-M

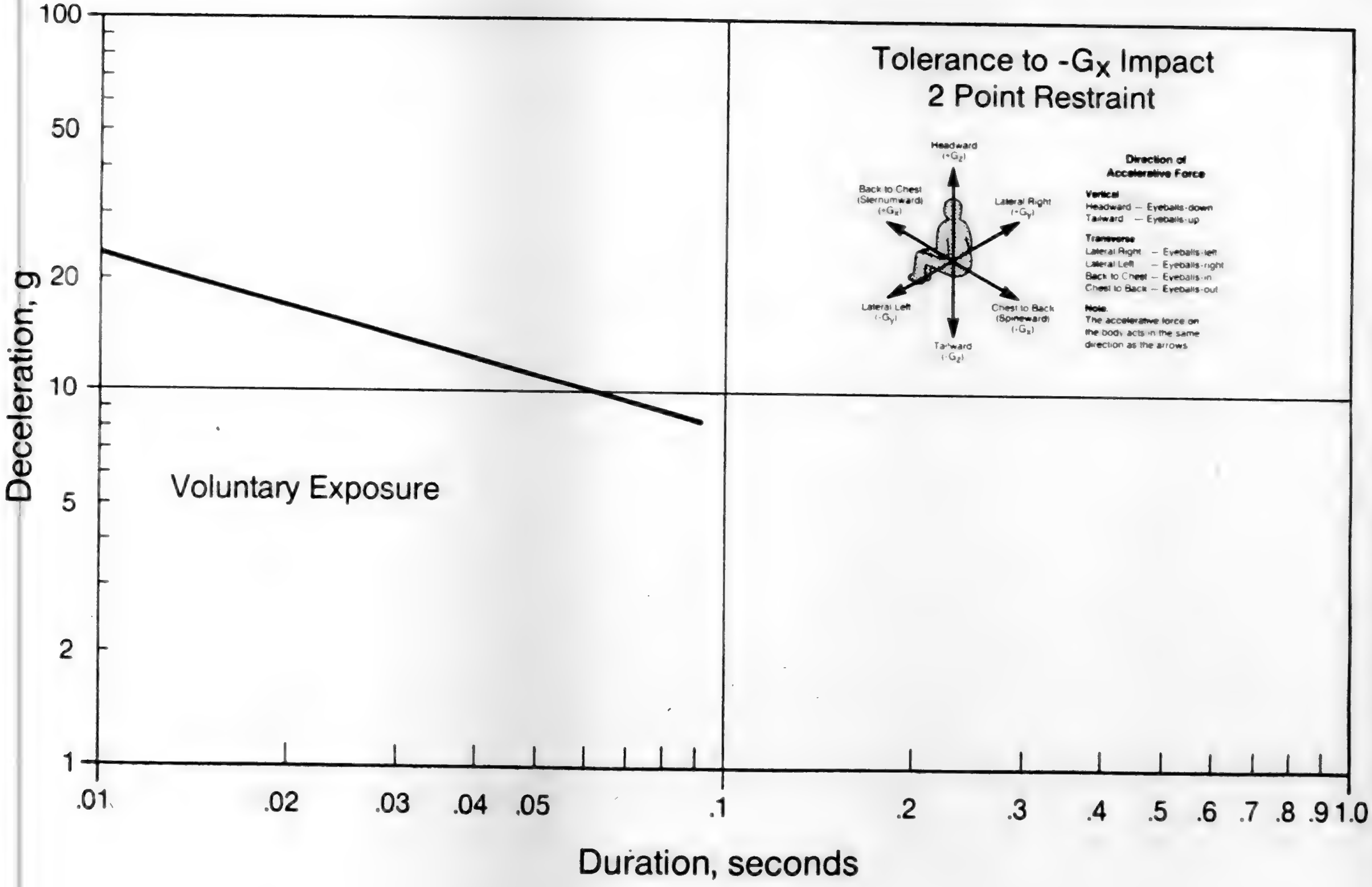
Tolerance to $-G_x$ Impact
2 Point Restraint
Headward ($+G_z$)
Back to Chest (Sternumward) ($+G_x$)
Lateral Right ($+G_y$)
Lateral Left ($-G_y$)
Chest to Back (Spineward) ($-G_x$)
Tailward ($-G_z$)
Direction of Accelerative Force
Vertical
Headward — Eyeballs-down
Tailward — Eyeballs-up
Transverse
Lateral Right — Eyeballs-left
Lateral Left — Eyeballs-right
Back to Chest — Eyeballs-in
Chest to Back — Eyeballs-out
Note.
The accelerative force on the body acts in the same direction as the arrows
Voluntary Exposure
Deceleration, g
100
50
20
10
5
2
1
.01
.02
.03
.04
.05
.1
.2
.3
.4
.5
.6
.7
.8
.9
1.0
Duration, seconds

Figure 1

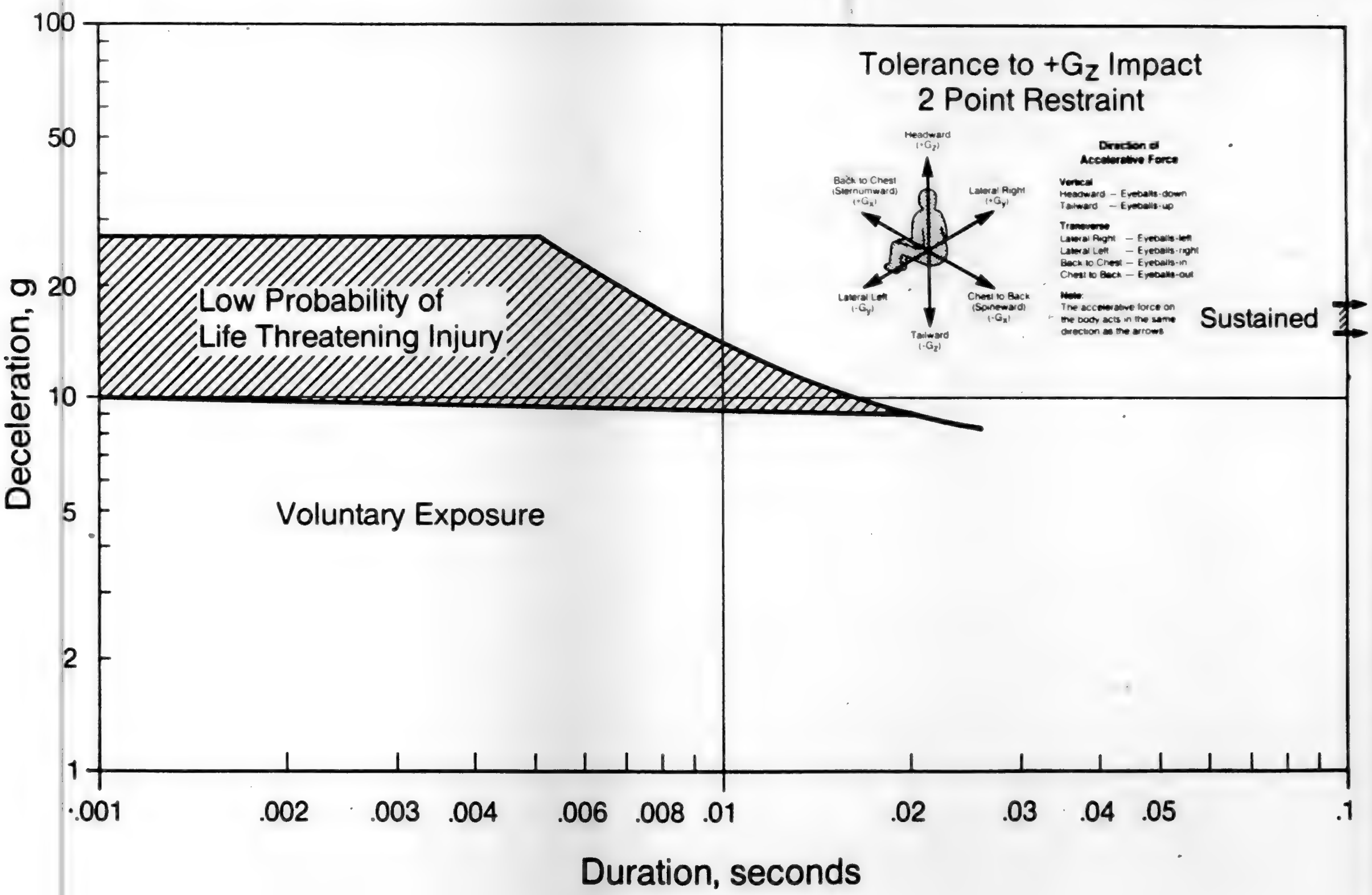
Tolerance to $+G_Z$ Impact
2 Point Restraint
Headward ($+G_z$)
Back to Chest (Sternumward) ($+G_x$)
Lateral Right ($+G_y$)
Lateral Left ($-G_y$)
Chest to Back (Spineward) ($-G_x$)
Tailward ($-G_z$)
Direction of Accelerative Force
Vertical
Headward — Eyeballs-down
Tailward — Eyeballs-up
Transverse
Lateral Right — Eyeballs-left
Lateral Left — Eyeballs-right
Back to Chest — Eyeballs-in
Chest to Back — Eyeballs-out
Note:
The accelerative force on the body acts in the same direction as the arrows
Sustained
Low Probability of Life Threatening Injury
Voluntary Exposure
Deceleration, g
100
50
20
10
5
2
1
.001
.002
.003
.004
.006
.008
.01
.02
.03
.04
.05
.1
Duration, seconds

Figure 2

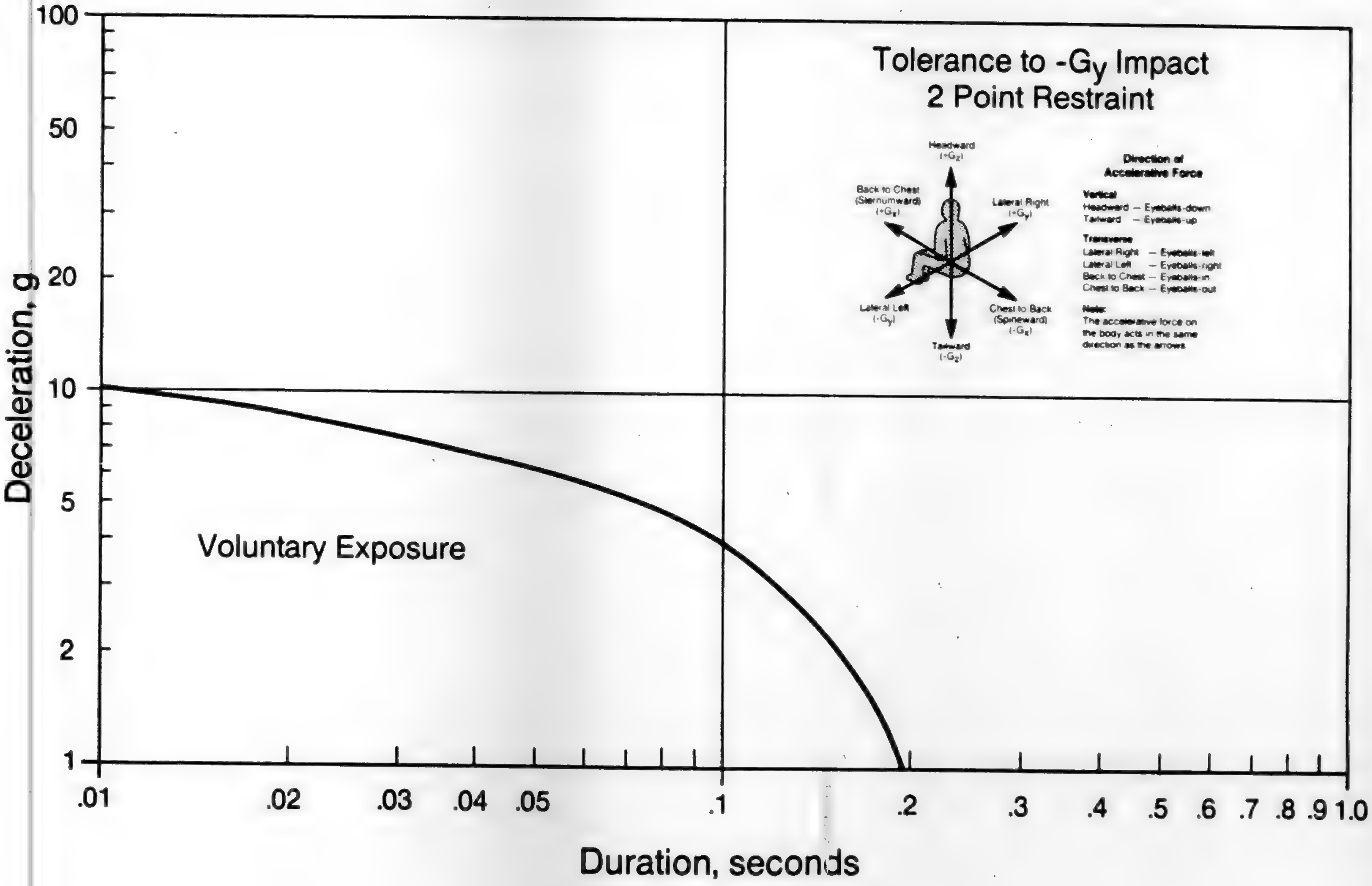
Tolerance to -Gy Impact
2 Point Restraint
Headward (+Gz)
Back to Chest (Sternumward) (+Gx)
Lateral Right (+Gy)
Lateral Left (-Gy)
Chest to Back (Spineward) (-Gx)
Tailward (-Gz)
Direction of Accelerative Force
Vertical
Headward — Eyeballs-down
Tailward — Eyeballs-up
Transverse
Lateral Right — Eyeballs-left
Lateral Left — Eyeballs-right
Back to Chest — Eyeballs-in
Chest to Back — Eyeballs-out
Note:
The accelerative force on the body acts in the same direction as the arrows.
Voluntary Exposure
Deceleration, g
100
50
20
10
5
2
1
Duration, seconds
.01
.02
.03
.04
.05
.1
.2
.3
.4
.5
.6
.7
.8
.9
1.0

Figure 3

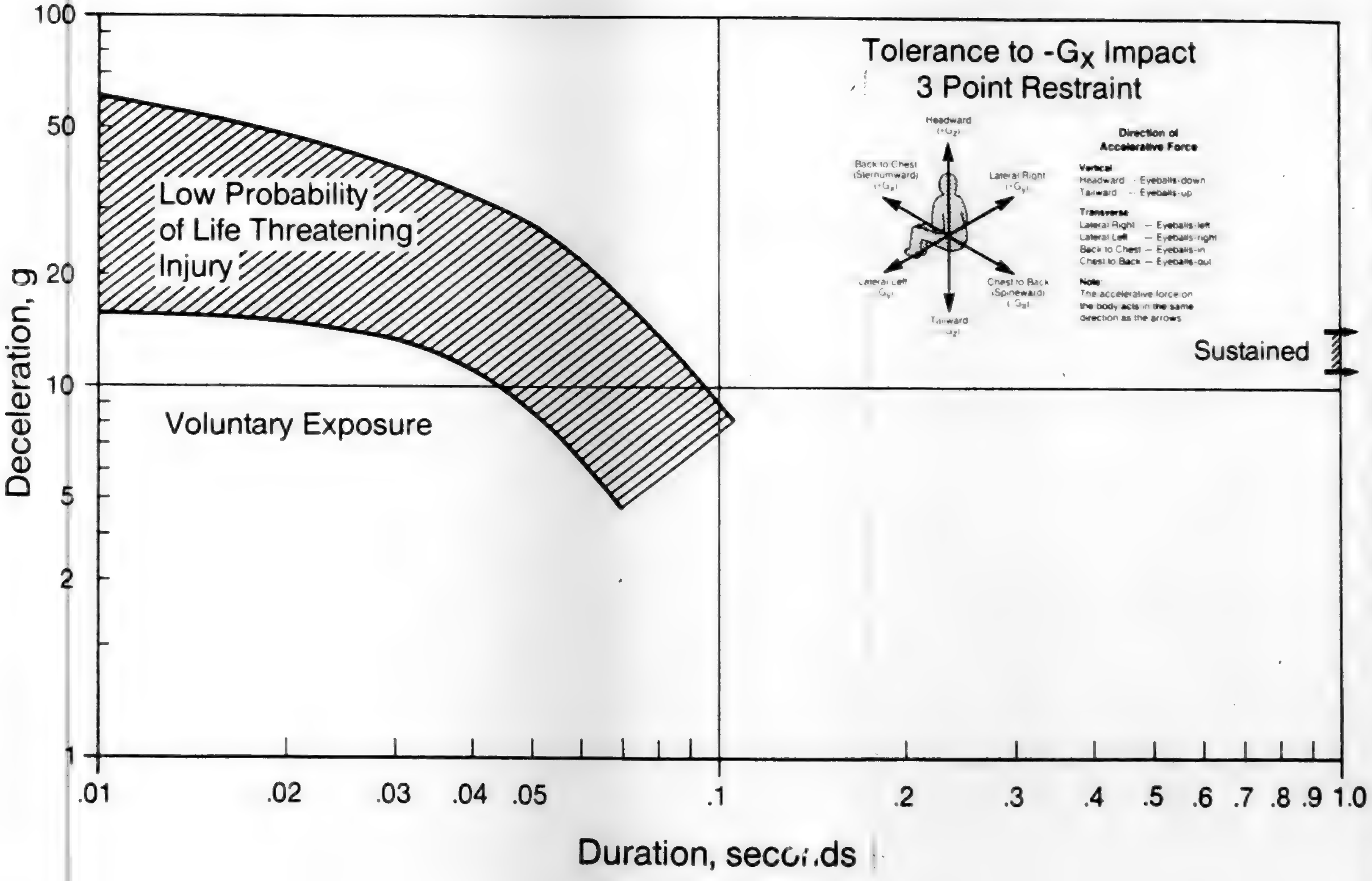

Figure 4

[FR Doc. 84-25025 Filed 9-20-84; 8:45 am]

BILLING CODE 4910-13-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–1232; RM–4569]

FM Broadcast Station in Grass Valley and Chester, CA

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: Action taken herein denies the request of Eric R. Hilding to substitute Channel 280A for Channel 255 at Chester, California, and to assign Channel 256 to Grass Valley, California. The assignment at Grass Valley could have provided that community with its second local FM assignment (first wide-area) while deleting the first local allocation at Chester.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Grass Valley and Chester, California) MM Docket No. 83–1232, RM–4569.

Adopted: September 12, 1984.
Released: September 18, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 53722, published November 29, 1983, seeking comments on the request of Eric R. Hilding ("Hilding" or petitioner") to substitute Channel 280A for Class C Channel 255 at Chester, California, and the assignment of Channel 256, as a Class B, to Grass Valley, California, as that community's second local FM allocation. Hilding filed comments reaffirming his intent to apply for the channel, if assigned. Additionally, he filed reply comments addressing his continued support for the reassignment and suggesting the assignment of two Class C2 channels at Chester. Comments in opposition to the proposal were filed by: Teresa R. and Michael E. Worrall ("Worralls"), applicants for Channel 255 at Chester; Nevada County Broadcasters, Inc. ("Nevada County"), licensee of Station KNCO–FM (Channel 232A), Grass Valley; and Chester Coleman ("Coleman"), a prospective applicant for Channel 255 at Chester. Radio Santa Cruz ("Santa Cruz"), licensee of Station KSCO–FM, Santa Cruz, California, filed comments requesting that a site restriction be imposed on Channel 256 at Grass Valley, if assigned, so as to permit Station KSCO–FM to proceed with its planned modification of its present facilities.

2. The *Notice* was issued on the premise that Channel 255 at Chester was unapplied for since its inclusion in the FM Table in September, 1982.[1] The Worralls state in their opposition that they filed an application (File No. 831026AH) for use of the channel at Chester on October 26, 1983, six days prior to the adoption of the instant *Notice*. They point out that they were the party which sought the Chester assignment and their interest in use of the channel has not changed. The delay in filing their application, they state, was caused solely by the difficulty in finding a suitable transmitter site and that they filed their application as soon as a site became available. They therefore oppose the requested deletion of Channel 255 at Chester, which they claim will provide a first aural service to Chester and surrounding communities.

3. Coleman, in his opposition, states that he is interested in providing FM service to the Chester area and is planning to file an application for use of the frequency. He goes on to state that due to the terrain of the area, a Class A frequency would not allow use of an antenna of sufficient power and height to reach the population located in the valleys surrounding Chester. Nevada County opposes the deletion of the Chester assignment as the Commission has on file an application for use of the frequency, thereby negating the premise for the *Notice* and further states that a Class C frequency is required to provide service to the sparsely populated area surrounding Chester. According to Nevada County, the facilities proposed by the Worralls would provide service to an area of 8,296 square miles with a population of 48,764 persons, while a Class A frequency would provide service to only 700 square miles, a reduction in coverage of 91%.

4. Hilding, in his reply comments, admits that he was unaware of the filing of the Worrall's application. However, he argues that even though there is an application pending before the Commission for use of Channel 255 at Chester, his request should still be granted. He states that a Class B assignment at Grass Valley would provide "certain 'regional' service coverage for the population base in community areas removed from Grass Valley with similar FM service terrain considerations, as in the Chester area". Additionally, as Grass Valley currently has assigned to it only one FM station, a Class A facility, it would provide the community with a needed diversity of service. He goes on to claim that since there are two expressed interests in providing Chester with FM service, his proposal of substituting two channels (albeit of a lower class) for Channel 255 would satisfy both interests and avoid the need for a comparative hearing which would delay a first local service to Chester for as long as three years. Hilding further states that his proposal is in conformance with the Commission's priorities in the assignment of FM channels.

5. In an effort to satisfy the desire of Hilding for the assignment of a Class B frequency at Grass Valley, the staff has conducted a channel search and found that no alternative Class B or B1 frequencies are available. However, we have found that there are several Class A frequencies for Grass Valley. The Commission's criteria for evaluating conflicting proposals was set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982), as follows:

(1) First full-time aural service.
(2) Second full-time aural service.
(3) First local service.
(4) Other public interest matters.

Grass Valley receives full-time service from both a local AM and FM station. Chester, on the other hand, will receive a first local service when Channel 255 is activated. As stated earlier, the Commission currently has on file an application by the Worralls and has been advised by Coleman that he is also planning to file an application for the Chester assignment. Therefore, we look to the petitioner to provide us with overriding reasons why Grass Valley should be preferred over Chester for use of the higher powered channel. Hilding merely states that the benefits which would accrue to Chester by utilization of a Class C channel, such as regional service to communities isolated from the community of license by terrain characteristics, is also present at Grass Valley and that the assignment would provide for a diversity of service. While not disputing the population and area which will receive service from the Class C facility at Chester, Hilding states that the population of Grass

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[1] See, *Report and Order*, BC Docket 82–149, 47 FR 32541, published July 28, 1982.

Valley, which is the larger of the two, should additionally be combined with that of Nevada City, California, a community 5 miles away, but part of the Grass Valley "metro area." This area of 7,463 persons receives service from only one commercial FM station. We note that noncommercial educational Station KVMR-FM, Channel 208B, licensed to The American Victorian Museum, is licensed to serve Nevada City, thereby providing the "metro area" with local service from one full-time AM station and two full-time FM stations, albeit one a noncommercial facility. Hilding's argument that two channels (Class C2 or A) should be assigned to Chester to avoid a comparative hearing between the Worralls and Coleman is inappropriate. We have no expression of interest in a second FM channel at Chester and we would not ordinarily make an additional allotment without such interest.

6. Based on the above discussion, we find that Hilding has not met, the burden of justifying a reassignment of a channel for which an application is pending and for which no equivalent channel is available. See, *Martin and Salyersville, Kentucky,* 50 R.R. 2d 502 (1981). As stated in paragraph 4, *infra,* there are several Class A frequencies which are available for assignment at Grass Valley which could provide the diversity of service which Hilding states in needed. Therefore, we find that the public interest would best be served by retaining the Class C Channel 255 assignment at Chester, for which an application is pending. We will not assign a second Class A frequency to Grass Valley as neither Hilding nor any other party has expressed a desire to operate on such a frequency.

7. Accordingly, it is ordered, that the petition of Eric R. Hilding to assign Channel 256 to Green Valley is denied.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25051 Filed 9-20-84; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 185
Friday, September 21, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Western Spruce Budworm Insect Control; Pacific Northwest Region—Baker, Clackamas, Crook, Deschutes, Grant, Hood River, Harney, Jefferson, Morrow, Multnomah, Union, Umatilla, Wasco, Wheeler Counties, OR; Yakima, and Okanogan Counties, WA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the control of Western Spruce Budworm Insect Infestations on National Forest lands; lands administered by the Bureau of Indian Affairs and The Bureau of Land Management, U.S. Department of Interior; certain other lands administered by the State of Oregon and State of Washington, and certain lands of cooperating private landowners.

A range of alternatives for control of the Western Spruce Budworm insect will be considered, including the application of chemical and/or biological insecticides and the alternative of taking no action for control.

Federal, State, and Local agencies, potential private cooperators, and individuals and organizations who may be interested in or affected by the decision will be invited to participate in the Scoping process.

This process will include:

1. Identification of those issues to be addressed.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Determination of potential Cooperating agencies and the assignment of responsibilities.

The Bureau of Indian Affairs, and Bureau of Land Management, U.S. Department of Interior; The Department of Natural Resources, State of Washington; and the Department of Forestry, State of Oregon will be invited to participate as cooperating agencies to evaluate the potential impacts of the insect infestation and impacts of various control alternatives on the lands and resources managed by these agencies. Impacts considered will include economical, biological, physical and social effects of the various alternatives.

Public meetings may be held near population centers affected by the infestation, and if so, such meetings will be announced in newspapers of general circulation in the area.

Initial analysis will focus on the cost of control versus the benefit values. This analysis may show costs to be in excess of benefits. If so, or if other analyses indicate that an Environmental Impact Statement is not needed, this Notice will be cancelled. Full analysis is expected to take 3 months and a Draft Environmental Impact Statement should be available on or about January 1, 1985.

Written comments and questions about the proposed action and Environmental Impact Statement should be directed to V.R. Turnbull, La Grande Ranger Station, Wallowa-Whitman National Forest, Rt 2, Box 2108, La Grande, Oregon 97850, telephone (503) 963–7186.

Dated: September 14, 1984.

James C. Space,

Acting Regional Forester.

[FR Doc. 84–25189 Filed 9–20–84; 8:45 am]

BILLING CODE 3410-11-M

Wolf Creek Valley Winter Sports Site; San Juan National Forest Mineral County, CO; Intent To Prepare an Environmental Impact Statement

The Forest Service, Department of Agriculture, with the Federal Highway Administration, Department of Transportation, in cooperation with other federal, state, and local agencies, will prepare an environmental impact statement concerning development of the proposed Wolf Creek Valley Winter Sports Site.

Westfork Investment, Ltd., proposes to develop an alpine skiing area with attendant facilities on both public and private lands. The area proposed for development, identified as Windy Pass in the San Juan National Forest Land and Resource Management Plan, is located 12 miles northeast of Pagosa Springs on U.S. Highway 160. Proposed development would occur in phases beginning with four lifts to accommodate 4000 skiers. At project completion, capacity would be 11,000 skiers, and would be served by 14 chairlifts and 3 gondolas.

The base area as proposed is located immediately adjacent to the skiing access lifts. About one mile of U.S. Highway 160 is proposed to be relocated or redesigned. The highway relocation would occur exclusively on private land owned by the proponent. The Federal Highway Administration is responsible for making a decision on this part of the proposed action.

The environmental analysis of the proposal is being assisted and coordinated by the Joint Review Committee, which was established and provided for in a Memorandum of Understanding dated August 27, 1984. Members of the Committee include representatives of the USDA Forest Service; State of Colorado; Mineral County, Colorado; Archuleta County, Colorado; and Westfork Investment, Ltd.

The altenatives of no action and of permitting development as proposed will be analyzed. Additional mountain development and transportation alternatives may also be identified and analyzed.

The National Environmental Policy Act (NEPA) requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process is called scoping. On July 25 and 26, 1984, the Joint Review Committee sponsored public scoping meetings in the Towns of Creede and Pagosa Springs, respectively, to identify issues and concerns related to the proposal. Scoping continued through the month of August with the Joint Review Committee receiving written responses from interested individuals. While no future scoping meetings are planned, issues and concerns relative to the proposal will continue to be received by the Joint Review Committee an additional 30 days from the date of this publication.

John R. Kirkpatrick, San Juan National Forest Supervisor, is the responsible official.

The draft Environmental Impact Statement is expected to be available for public review in June 1985. The final Environmental Impact Statement is scheduled to be filed by January 1986. A Record of Decision will be issued by the USDA Forest Service when the final Environmental Impact Statement is released. The Federal Highway Administration will release a Record of Decision approximately 30 days thereafter. If the decisions allow, construction could begin during the summer of 1986.

Questions about the proposed action and Environmental Impact Statement should be directed to Ron Doering, Pagosa Ranger District, San Juan National Forest, P.O. Box 310, Pagosa Springs, CO. 81147. Phone (303) 264–2268.

Dated: September 13, 1984.

John R. Kirkpatrick,

Forest Supervisor.

[FR Doc. 84-25194 Filed 9-20-84; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Central Electric Power Cooperative, Inc.; Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to proposed financing assistance to Central Electric Power Cooperative, Inc. (Central), of Columbia, South Carolina, for the construction of 35 miles of 69 kV transmission line in Chester and Lancaster Counties, South Carolina. The FONSI includes a distribution substation to be constructed by the Fairfield Electric Cooperative, Inc., (Fairfield) of Winnsboro, South Carolina. Central's line will serve this substation.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment and Central's Borrower's Environmental Report (BER) may be reviewed in the office of Chief, Distribution and Transmission Engineering Branch, Southeast Area—Electric, REA, Room 0262, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382-8436, or at the office of Central (Mr. Patrick T. Allen, Manager), 121 Greystone Boulevard, Columbia, South Carolina 29202, telephone (803) 779-4975.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by Central and has determined that it represents an accurate evaluation of the environmental impact of the proposed project. The project consists of the construction of a 35 mile, 69 kV transmission line using single pole and H-frame structures on a 100 foot wide right-of-way. The line will be connected at the existing Cauthen Substation near Lancaster, South Carolina, and the existing Chester Substation near Chester, South Carolina. At the approximate mid-point of the line, Fairfield proposes to construct a distribution substation near Richburg, South Carolina. The new substation will require a 2 acre site.

REA has prepared an Environmental Assessment concerning the proposed project including the new distribution substation. REA concluded that its proposed financing assistance would not be a major Federal action significantly affecting the quality of the human environment after considering the project's potential impacts on resources including federally listed threatened and endangered species, wetlands, floodplains, prime farmland and cultural resources. The project will have no impact to federally listed threatened and endangered species, coastal zone management areas, coastal barrier resource areas or wild and scenic rivers. The 100-year floodplain, wetlands, and prime farmland are within the proposed transmission line corridor, which includes the substation site, and will be affected by the placement of transmission line support structures. The proposed distribution substation to be constructed by Fairfield is not sited in the 100-year floodplain or wetlands but is located on prime farmland. REA has determined that there are no practicable alternatives for locating transmission line support structures in the 100-year floodplain or in wetlands and that all practicable measures to minimize harm to these areas will be implemented. REA has also determined that there is a demonstrated, significant need for locating these structures in prime farmlands and there is no practicable alternative to such usage. Prior to the approval of the construction of the distribution substation by Fairfield, REA will determine if a practicable alternative site that avoids prime farmland exists. The need for the substation has been demonstrated. The proposed corridor does not contain known resources listed or proposed to be listed on the National Register of Historic Places. Central has agreed to consult with the South Carolina State Historic Preservation Officer in the event any resources are discovered and to minimize any effects.

Alternatives to the proposed project were considered which included no action, new generation facilities, conservation, replacing conductors on existing lines to increase capacity, various line routes, and various construction methods and materials. REA has determined that the proposed project is an environmentally acceptable alternative because it best meets the needs of Central and its member system, Fairfield, with a minimum of adverse impacts.

REA has independently evaluated the proposed project and has concluded that approval of financing assistance for it would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement is not necessary.

This program is listed in the catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

Dated: September 18, 1984.

Jack Van Mark,

Acting Administrator.

[FR Doc. 84-25182 Filed 9-20-84; 8:45 am]

BILLING CODE 3410-15-M

Oglethorpe Power Corporation; Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA's Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to possible financing assistance for proposed construction by Oglethorpe Power Corporation (OPC) of two 230 kV transmission lines from Plant Vogtle to Goshen Substation in Richmond and Burke Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) and OPC's Borrower's Environmental Report (BER) may be reviewed in the Office of the Chief, Distribution and

Transmission Engineering Branch, Southeast Area—Electric, Room 0262, South Agriculture Building, REA, Washington, D.C. 20250, telephone (202) 382–8436, or at the Office of OPC (Mr. F.F. Stacy, Jr., Manager), 2100 East Exchange Place, Tucker, Georgia 30085–1349, telephone (404) 496–7600.

SUPPLEMENTARY INFORMATION: REA has reviewed OPC's BER and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The proposed lines will be 19.1 miles long and will be constructed in the existing cleared and maintained right-of-way of the Vogtle to Goshen Transmission Line No. 1. REA determined that the proposed project is not likely to affect any threatened or endangered species or critical habitat; will have no effect upon a river section in the Nationwide Inventory of Wild and Scenic Rivers; will not occur in a coastal barrier and will not directly affect the coastal zone.

The proposed transmission lines will cross approximately 30 acres of floodplains, 24 acres of wetlands, and 350 acres of prime farmland and forestland. Much of these areas can be spanned, however, there is no practicable alternative to locating in a wetland or floodplain and all practicable means to minimize harm will be taken. The proposed project also will convert a small amount of important farmland and forestland to other uses, but there is a demonstrated, significant need for and no practicable alternative to the proposed action.

No cultural resources, listed on the National Register of Historic Places, are on or near the proposed transmission corridor. The existing right-of-way is being surveyed for archeological resources, and if any resources are identified, the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) will be followed. No construction will begin until the proposed project is in compliance with the Advisory Council regulations.

Alternative transmission connection plans to various substations were considered. Since at least three high capacity lines are needed to connect Plant Vogtle, Unit 1 to the system, the no action alternative was not considered. When Goshen was chosen as a connection for both lines, alternative routes for the proposed transmission lines were not considered since they could be constructed within the cleared and maintained right-of-way of Vogtle to Goshen Transmission Line No. 1.

Based upon OPC's BER and supporting documents, REA prepared an EA concerning the proposed project and its impacts. In accordance with REA's 7 CFR Part 1794, OPC advertised and requested comments on the environmental aspects of the proposed project. No comments were received. REA concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not necessary.

This program is listed in the Catalog of Federal Domestic Assistance as 18.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 18, 1984.

Jack Van Mark,

Acting Administrator.

[FR Doc. 84–25180 Filed 9–20–84; 8:45 am]

BILLING CODE 3410–15–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended September 14, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (See 14 CFR 302.1701 et. seq.)

Date filed	Docket No.	Description
Sept. 11, 1984	42483	Continental Air Lines, Inc., c/o Emory N. Ellis, Esq. Fulbright & Jaworski, 1150 Connecticut Avenue., NW., Washington, D.C. 20036 Motion of Continental Air Lines, Inc. to file late; and Application of Continental Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Regulations applies for a certificate of public convenience and necessity authorizing service between Houston, Texas, and London, United Kingdom (Gatwick). Answers may be filed by September 25, 1984.
Sept. 12, 1984	42485	Milton Air, Inc., c/o Suzette Matthews, Straus and Matthews, P.C. 1001 Connecticut Avenue, NW., Suite 335, Washington, D.C. 20036. Application of Milton Air, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Board's Regulations requests permanent authority to provide foreign air transportation of property and mail as follows: Between a point or points in the United States to Barranquilla, Bogota, Cali and Cartegna, Colombia. Answers due October 10, 1984
Sept. 10, 1984	42477	Air Atonabee Limited, d/b/a City Express, c/o Victor Pappalardo, 545 Lakeshore Blvd., Toronto, Ontario Canada M8V 1A3. Application of Air Atonabee Limited, d/b/a City Express pursuant to section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit authorizing non-scheduled or charter foreign air transportation between any point or points in Canada and any point or points in the United States using large aircraft. Answers may be filed October 9, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–25185 Filed 9–20–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42262]

Westates Airlines; Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated: Washington, D.C., September 12, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-25184 Filed 9-20-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, the pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:30 p.m. and will end at 9:30 p.m., on October 10, 1984, at the Quality Inn, Route 1 South, North Brunswick, New Jersey 08902. The purpose of the meeting is to discuss updated information on training and trends related to domestic violence.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Eastern Regional Office at (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 18, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-25186 Filed 9-20-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate meetings of the CAC of the AEA, CAC of the AMA, CAC or the ASA, and the CAC on Population Statistics. The joint meeting will convene on October 11, 1984, at the Twin Bridges Marriott Hotel, 333 Jefferson Davis Highway, Arlington, Virginia 22202.

The CAC of the AEA is composed of 15 members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau.

The CAC of the AMA is composed of 15 members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 15 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of six members appointed by the Secretary of Commerce and nine members designated by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the combined meeting that will begin at 9 a.m. and end at 12:15 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and Bureau organization, budget and program developments, and other topics of current interests: (2) upcoming Census Research Conference; (3) update on 1990 census planning and operations; (4) update on the Survey of Income and Program Participation; and (5) data user services program to disseminate information including a demonstration of the CENDATA on-line information retrieval system.

The agendas for the four committees in their separate meetings that will begin at 1:30 p.m. and end at 5 p.m. on October 11, 1984, are as follows;

The CAC of the ASA: (1) Census Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC of the ASA, (2) data collection in a changing environment (joint with the CAC on Population Statistics), (3) a structural system for editing economic data (joint with CAC of the AEA and CAC on Population Statistics), and (4) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC of the ASA that will begin at 8:45 a.m. and adjourn at 3:15 p.m. is: (1) Requisite planning and research relating to a decision on census adjustment for 1990 (joint with the CAC on Population Statistics), (2) preliminary estimates for the National Crime Survey using regression and time series, (3) a linear model approach to the estimation of survey redesign effects, (4) development and discussion of Committee recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC on Population Statistics: (1) Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC on Population Statistics, (2) data collection in a changing environment (joint with the CAC of the ASA), (3) a structural system for editing economic data (joint with CAC of the AEA and CAC of the ASA), and (4) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC on Population Statistics that will begin at 8:45 a.m. and adjourn at 3:15 p.m. is: (1) Requisite planning and research relating to a decision on census adjustment for 1990 (joint with the CAC of the ASA), (2) demographic research at the Census Bureau, (3) statistical programs on aging (joint with the CAC of the AMA), (4) development and discussion of Committee recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC of the AMA: (1) Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC of the AMA, (2) China industrial census workshop, (3) expanded services—research activities, (4) 1987-Standard Industrial Codes revision, and (5) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC of AMA that will begin at 9 a.m. and adjourn at 3:15 p.m. is: (1) Ecomomic and agriculture censuses—past accomplishments, future plans (joint with the CAC of the AEA); (2) proposes quality improvements in foreign trade statistics (joint with the CAC of the AEA); (3) how the Bureau markets its products; (4) statistical programs on aging (joint with CAC on Population Statistics); (5) development and discussion of Committee recommendations; and (6) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC of the AEA: (1) General discussion and Bureau activities of special interest—China workshop and the upcoming Economic Data Review Conference, (2) Quarterly Financial Report—new directions, (3) a structural system for editing economic data (joint with the CAC of the ASA and CAC on Population Statistics), and (4) data suppression and confidentiality (joint with all committees).

The agenda for the October 12 meeting of the CAC of the AEA that will begin at 9 a.m. and adjourn at 3:15 p.m. is: (1) Economic and agriculture censuses—past accomplishments, future plans (joint with the CAC of the AMA); (2) proposed quality improvements in foreign trade statistics (joint with the CAC of the AMA); (3) measuring capacity utilization—proposed improvements; (4) linking census of construction to value in place data; (5) development and discussion of Committee recommendations; and (6) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

All meetings are open to the public, and a brief period is set aside on October 12 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Liaison Office at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact the Committee Liaison Office, Mr. Melvin Hendry, Bureau of the Census, Room 3061, Federal Building 3, Suitland Maryland. (Mailing address: Washington, D.C. 20233). Telephone (301) 763–3856.

Dated: September 17, 1984.

C. L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 84–25072 Filed 9–20–84; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 40–84]

Foreign-Trade Zone 70, Detroit, MI; Application for Reorganization

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70 in Detroit, requesting authority to reorganize its zone project within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 4, 1984. The applicant is authorized to make this proposal under Chapter 447, Act 154, Michigan Public Acts of 1963 (MSA 21.302(1)).

On July 21, 1981, the Board authorized GDFTZ to establish a foreign-trade zone project in the Detroit area (Board Order 176, 46 FR 38941, 7/30/81). General-purpose zone facilities are located at a 5-acre site within the Clark Street Port facility in downtown Detroit, and at a 5.5-acre distribution complex at 6700 Chase Road in Dearborn.

The reorganization would involve deleting the Dearborn site, expanding the Clark Street Port zone site, and adding two public warehousing sites. Added to the Clark Street Port site would be a 2-acre open-storage area on Scotten Street between Fort and Jefferson, and a 10-story, one million square foot warehouse at Clark and Jefferson Streets. The expanded areas will be operated by the present operator: Detroit Marine Terminals, Inc.

One of the new proposed zone sites is a 10,000 square foot warehouse at 28601 Hildebrandt, Romulus, near Detroit's Airport, operated by W.F. Whelan Company, Inc. The other new proposed zone facility involves the warehousing facilities of Lutheran Brothers, Inc., at 2030 Howard Street, within the Westside Industrial Park, Detroit, one half mile from the Ambassador Bridge to Canada. The facility involves a 30,000 square foot building and a 7-story, 1.2 million square foot building. The reorganization/expansion is being requested to improve zone services to the area's business firms.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; William Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Ave., Detroit, MI 48226; and Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

Comments concerning the proposed zone reorganization are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 22, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office,
Federal Bldg., Room 445, 231 W.
Lafayette St., Detroit, MI 48226
Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 1529,
14th and Pennsylvania, NW.,
Washington, D.C. 20230

Dated: September 14, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84–25166 Filed 9–20–84; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 41–84]

Foreign-Trade Zone 81, Portsmouth, NH; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Hampshire State Port Authority (Port Authority), grantee of Foreign-Trade Zone 81, requesting authority to expand the zone to include industrial park sites in Portsmouth and Dover, New Hampshire, adjacent to the Portsmouth Customs port of entry, and an industrial park site in Manchester, New Hampshire, adjacent to the Lawrence Customs port of entry.

The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 CFR Part 400). It was formally filed on September 5, 1984. The applicant is authorized to make this proposal under Section 271–A:11 of the New Hampshire RSA.

On January 20, 1983, the Board authorized the Port Authority to establish a foreign-trade zone in the Portsmouth area (Board Order 207, 48 FR 4308, 1/31/83). The general-purpose zone is at the Port Authority's deepwater port facility on Portsmouth Harbor.

The proposed zone expansion will provide industrial park space for zone users at three locations in southwestern

New Hampshire. The first proposed site is at the 175-acre Portsmouth Industrial Park on Lafayette Road in Portsmouth. The second expansion site is at the 50-acre Crosby Industrial Park on Crosby Road in Dover. The third new zone site involves a 1469-acre tract known as the Old Grenier Air Force Base in Manchester, which is being developed as an industrial/commercial complex.

The proposed zone expansion areas involve a mix of vacant and occupied space, with a number of the current tenants interested in using zone procedures. The Port Authority will administer zone operations throughout the zone project.

In accordance with the Board's regulations an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02210; and Colonel Carl B. Sciple, Division Engineer, U.S. Army Engineer Division New England, 424 Trapelo Rd., Waltham, MA 02254.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed below and postmarked on or before October 24, 1984.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 80 Daniel Street, P.O. Box 567, Portsmouth, NH 03801
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, NW., Room 1529, Washington, D.C. 20230

Dated: September 14, 1984

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 84-25167 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 42-84]

Foreign-Trade Zone 31, Granite City, IL (St. Louis Customs Port of Entry); Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-City Regional Port District (Port District), grantee of Foreign-Trade Zone 31, requesting authority to expand the zone to include an additional warehouse building in Granite City, within the St. Louis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (18 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 7, 1984. The applicant is authorized to make this proposal under Section 1, Illinois P.A. 79-613.

The Port District received authority from the Board to establish a foreign-trade zone in the Illinois portion of the St. Louis port of entry area (Board Order 122, 42 FR 46568, 9/16/77). The zone project currently involves a 47-acre industrial tract in the Port District's harbor area and a 90,000 square foot warehouse at 1603 State Street, which was activated in March 1981.

The expansion would add to the zone's approved space a 330,000 square foot warehouse at 1100 Niedringhaus Avenue, Granite City, two blocks from the State Street zone site. The proposed zone facility is owned and operated by Fox Industries, the current zone operator. The purpose of the expansion is to provide zone space to users who cannot be accommodated at the current site.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; William L. Duncan, District Director, U.S. Customs Service, North Central Region, 120 South Central Av., St. Louis, MO 63105; and Colonel Gary D. Beech, District Engineer, U.S. Army Engineer District St. Louis, 210 Tucker Blvd., N., St. Louis, MO 63101.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 25, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Suite 400, 120 South Central Ave., St. Louis, MO 63105
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: September 14, 1984.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 84-25168 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 43-84]

Foreign-Trade Zone 86, Tacoma, WA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puget Sound Foreign-Trade Zone Association (PSFTZ), grantee of Foreign-Trade Zone 86 in Tacoma, requesting authority to expand its zone at the Port of Tacoma, within the Tacoma Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-82u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 10, 1984. The applicant is authorized to make this proposal under Section 24.46.020 of the Revised Code of Washington.

On July 20, 1983, the Board authorized PSFTZ to establish a foreign-trade zone in the Tacoma port of entry (Board Order 216, 48 FR 34794, 8/1/83). The zone currently involves 15.9 acres within the 2100 Port of Tacoma, a deepwater port terminal and industrial park complex.

PSFTZ is now requesting authority to expand its zone to include an additional 622 acres in the Port of Tacoma. The additional acreage involves the portions of the Port's Industrial Development District which have the most potential for zone development. It will allow PSFTZ to offer zone services to the prospective users which cannot be accommodated at the existing zone site. Among the prospective users is an automobile processing and accessorization operation, which will use 54 acres in the new area.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Robert Hardy, District Director, U.S. Customs Services, Pacific Region, 2039 Federal Office Bldg., 909 First Av., Seattle, WA 98174; and Colonel Roger F. Yankoupe, District Engineer, U.S. Army Engineer District Seattle, P.O. Box C-3755, Seattle, WA 98124.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 26, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Lake Union Bldg., Room 706, 1700 Westlake Ave., North, Seattle, WA 98109

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: September 14, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-25169 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 271]

Resolution and Order Approving the Application of the Oklahoma City Port Authority for a Foreign-Trade Zone in Oklahoma City, OK

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Oklahoma City Port Authority, filed with the Foreign-Trade Zones Board (the Board) on August 29, 1983, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Oklahoma City, Oklahoma, within the Oklahoma City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate and Maintain a Foreign-Trade Zone in Oklahoma City, OK

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Oklahoma City Port Authority (the Grantee) has made application (filed August 29, 1983, Docket 33–83, 48 FR 40289) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Oklahoma City, within the Oklahoma City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations 915 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 106 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 14th day of September 1984, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-25175 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 270]

Resolution and Order Approving the Application of the Rhode Island Port Authority and Economic Development Corporation for a Foreign-Trade Zone in Providence and North Kingstown, RI

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Rhode Island Port Authority and Economic Development Corporation, a Rhode Island public corporation, filed with the Foreign-Trade Zones Board (the Board) on July 7, 1983, and amended on February 13, 1984, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Providence and North Kingstown, Rhode Island, adjacent to the Providence Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Providence and North Kingstown, RI

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Rhode Island Port Authority and Economic Development Corporation (the Grantee) has made application (filed July 7, 1983, Docket 21–83, 48 FR 32205; and amended February 13, 1984, 49 FR 5981) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Providence and North Kingstown, Rhode Island, adjacent to the Providence Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 105 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 13th day of September 1984, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-25174 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-233-410]

Preliminary Affirmative Countervailing Duty Determination: Portland Hydraulic Cement From Costa Rica

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determination.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to the manufacturers, producers, or exporters in Costa Rica of portland hydraulic cement, as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 15 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of portland hydraulic cement which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this product in the amount equal to the estimated net bounty or grant. If this investigation proceeds normally, we will make our final determination by November 28, 1984.

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3003 or 377-1778.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Costa Rica of portland hydraulic cement (cement) as described in the "Scope of Investigation" section of this notice.

We find the net estimated bounty or grant to be 15 percent *ad valorem*.

Case History

On June 21, 1984, we received a petition from the Puerto Rican Cement Co., Inc. and the San Juan Cement Co., Inc. filed on behalf of the U.S. industry producing portland hydraulic cement.

The petition alleges that the government of Costa Rica bestows bounties or grants upon the production or exportation of cement within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and on July 11, 1984, we initiated a countervailing duty investigation (49 FR

29117). We stated that we would issue a preliminary determination on or before September 14, 1984.

Costa Rica is not a "country under the Agreement" within the meaning of section 701(b) of the Act and, therefore, section 303 of the Act applies to this investigation. Since the merchandise being investigated is nondutiable, but there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury determination for nondutiable merchandise from Costa Rica, the domestic industry is not required to allege that, and the United States International Trade Commission is not required to determine whether, imports of this product cause or threaten to cause material injury to a U.S. industry.

On July 23, 1984, we presented questionnaires concerning the allegations in the petition to the governmnent of Costa Rica in Washington, D.C. On August 23, 1984, we received a response to our questionnaire from the government of Costa Rica and the only cement manufacturer in Costa Rica to export cement to the United States, Industria Nacional de Cemento, S.A.

Scope of Investigation

The product covered by this investigation is portland hydraulic cement, other than white non-staining portland cement which is currently imported under item 511.1440 of the *Tariff Schedules of the United States Annotated* (TSUSA).

The period for which we are measuring bounties or grants is October 1, 1982 to September 30, 1983. For the preliminary determination we are measuring bounties or grants on the basis of benefits received by Industria Nacional de Cemento, S.A.

Analysis of Programs

In its response, the government of Costa Rica provided data for the applicable period. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Program Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Costa Rica of portland hydraulic cement under the program discussed below:

A. *Tax Credit Certificates (CATS).* Petitioners alleged that in 1972 the government of Costa Rica passed Law 5162 to promote nontraditional exports by offering eligible companies tax credit certificates, in the amount of 15 percent of the f.o.b. value of the exported goods, that may be used in the payment of direct and indirect taxes.

The government of Costa Rica said the purpose of the CAT program is to enable domestic manufacturers who are subject to a high rate of taxation on income to compete in export markets with foreign firms with lower tax rates. Since the government of Costa Rica did not represent the program to be a non-excessive rebate of indirect taxes as permitted by the General Agreement on Tariffs and Trade, we preliminarily determine that the program is a bounty or grant as defined by the countervailing duty law. Accordingly, for the purpose of this preliminary determination we find the entire amount of the tax credit certificate, 15 percent, to be a bounty or grant as best information available.

II. Program Preliminarily Determined Not To Confer Bounties Grants

We preliminarily determine that the following program does not confer bounties or grants to cement manufacturers, producers or exporters in Costa Rica:

A. *Port Rates.* Petitioners allege that the cement company receives preferential port rates for exports of cement. According to the response of the government of Costa Rica, there are no preferential port rates. Port rates were said by the government of Costa Rica to be developed after surveying and analyzing costs. Rates for bagged merchandise, such as cement, were not provided to a specific enterprise, industry or group thereof. Therefore, we preliminarily determine that these port rates do not constitute a bounty or grant.

III. Programs Preliminarily Determined Not To be Used

We preliminarily determine that the following programs have not been used by cement manufacturers, producers, or exporters in Costa Rica:

A. *Export Processing Zones.* Petitioners allege that in 1981 the government of Costa Rica established a system of free tax zones for companies handling, processing, and manufacturing products for export. These companies are said to be exempt from taxes on profits derived from exports; taxes, duties and fees on the importation of raw materials, goods and packaging for use in the handling, processing or manufacture or products for export; export taxes and duties; taxes on capital and net assets; and sales taxes, consumer taxes and duties levied on remittances abroad.

The government response said that there was no company manufacturing, producing or exporting cement from an export zone and supplied a statement from the manager of Corporacion De La Zona Franca De Expertacion to that effect. The exporting cement company denied that it operated in a free trade zone.

B. *Preferential Interest Rates.* Petitioners allege that the cement company has received assistance in financing from the government of Costa Rica. According to the responses, no assistance in financing has been received by the cement company.

C. *Subsidized Warehousing.* Petitioners allege that the cement company used subsidized warehousing in exporting cement to the United States. According to the response warehousing is not used for the export of cement to the United States.

D. *Other Tax Reductions.* Petitioners allege that the government of Costa Rica provides tax reductions for the export of cement. According to the response, the cement company did not receive any tax reductions attibutable to its export shipments.

E. *Certificates for Increasing Exports (CIEX).* Petitioners allege that the government of Costa Rica promotes exports of domestic manufactured products by offering eligible exporters certificates for increasing exports (CIEX). A CIEX is a tax exempt, noninterest, freely negotiable, bearer document which is payable in cash for one year.

The government of Costa Rica response said that this program had never been funded by the Central Bank. It further said that there were never any beneficiaries of this program. The exporting cement company denied participating in this program.

F. *Accelerated Depreciation.* Petitioners allege that the government of Costa Rica provides benefits in the form of accelerated depreciation to the cement company. According to the response, the cement company used straight line depreciation, a standard depreciation schedule under the tax laws.

Verification

In accordance with section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cement from Costa Rica which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in

the Federal Register, and to require a cash deposit or bond for each such entry of the merchandise in the amount of 15 percent ***ad valorem.***

This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on October 12, 1984, at the U.S. Department of Commerce, Room 3092, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by October 5, 1984. Oral presentations will be limited to issues raised in the briefs.

All written views by those not participating in the hearing should be filed in accordance with 19 CFR 355.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: September 14, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–25163 Filed 9–20–84; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Wayne State University, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 83–324R. Applicant: Wayne State University, Department of Chemistry, Detroit, MI 48202. Instrument: GC/Mass Spectrometer, MS80. Original notice of this resubmitted application was published in the **Federal Register** of October 31, 1983.

Docket No.: 84–267. Applicant: Albert Einstein Medical Center, Northern Division, York & Tabor Roads, Philadelphia, PA 19141. Instrument: Electron Microscope, Model H–600–2 with Accessories. Manufacturer: Hitachi, Japan. Intended use: Examination of biological material, human and animal tissues, for the purposes of (a) diagnosis of disease and (b) medical research. Experiments including animal experiments will be conducted to study ultrastructural changes occurring during disease, with the purpose of understanding human disease and improving treatment plans. In addition, the instrument will be used in teaching pathology fellows and residents the subcellular structure of tissue, the technical details of tisssue preparation and instrument operation. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84–269. Applicant: University of Maryland, 5401 Wilkens Avenue, Catonsville, MD 21228. Instrument: Electron Microscope, Model EM 10CA/C/CR with Accessories. Manufacturere: Carl Zeiss, West Germany. Intended use: Study of biological cells, and more especially a part of the cell known as the cytoplasmic matrix and the study of biological tissues that have been embedded and cut into thin sections. Educational purposes—Provide instruction to biological science students in the basic principles of microscope design and operation. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84–275. Applicant: Yale University, Department of Physiology, 333 Cedar Street, New Haven, CT 06510. Instrument: Micromanipulator, Model PM 20(B) with Accessories. Manufacturer: Vertrieb Biomedizinischer Geraete, West Germany. Intended use: Measurement of intracellular potentials in mammalian kidney cells. Experiments are designed to investigate how ions are transported across kidney tubules, e.g., how is sodium reabsorbed or potassium secreted by the distal tubule? Ion substitution experiments coupled with intracellular microelectrode studies will give an invaluable insight, and answer many questions related to this problem. Application received by Commissioner of Customs: August 6, 1984.

Docket No.: 84–281. Applicant: Research Foundation of SUNY, P.O. Box 9, Albany, NY 12201. Instrument: GC/Mass Spectrometer System, Model MS80. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended Use: Research purposes: Studies of metabolic, hormonal and immunologic factors connected with multiple systems organ failure in trauma septic patients. *In vivo* studies of the biosynthesis and genetics of hemoglobin using stable isotope labeled amino acid tracers. Structural studies on altered glycopeptide cell surface components and growth receptors. Characterization of the structure of glycosaminoglycans. Investigation of a series of modified oligonucleotides as anti-cancer drugs. Structural analysis of a synthetic peptide. Studies to determine the metabolism and toxicokinetics of TCDD involving both *in vivo* and *in vitro* experiments with animals with widely varying LD50s. Educational purposes: Provide students in biophysics courses with basic theoretical and practical understanding of the principles of modern GC–MS instruments. Application received by Commissioner of Customs: August 17, 1984.

Docket No.: 84–282. Applicant: Ames Laboratory—USDOE, Iowa State University, 152 Spedding Hall, Ames, IA 50011. Instrument: Inductively Coupled Plasma (ICP) Mass Spectrometer. Manufacturer: Sciex, Inc., Canada. Intended use: Research purposes:

(1) Elemental, isotopic, and organic analysis by ICP mass spectrometry.

(2) Chromatographic and batch-type sample introduction devices with ICP mass spectrometry.

(3) Atomization, ionization, and energy transfer processes in ICPs.

(4) Ion-electron recombination, oxide ion formation, charge transfer, and possible electron impact processes during extraction of the ion sample into the mass spectrometer.

Most of the above research will be performed by graduate students. Advanced undergraduate students will also use the instrument for research. Application received by Commissioner of Customs: July 25, 1984.

Docket No.: 84–283. Applicant: The University of Texas at Dallas, (Programs in Biology), P.O. Box 830688, Richardson, TX 75083–0688. Instrument: Circular Dichroism Spectrophotometer, Model J500C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: Studies of nucleic acids, proteins, and other biological molecules. Experiments are to be conducted to place solutions of the biological molecules in the beam of the instrument and measure the circular dichroism at wavelengths in the range of 180 to 700 nm. The objectives to be pursued are:

i. To develop quantitative methods of assessing the structures of nucleic acids (DNA and RNA) and proteins.

ii. To study how small changes in the solution environment affects the structures of biological molecules.

iii. To study how the structures of nucleic acids and proteins depend upon the sequences of nucleotides and amino acids, respectively.

iv. To investigate the chemical interactions between the nucleotide and amino acid subunits in complexes of nucleic acids and proteins.

v. To compare the predicted and experimental structures of molecules such as DNA, RNA, and proteins.

Application received by Commissioner of Customs: August 24, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-25077 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DS-M

[A 475-017]

Pads for Woodwind Instrument Keys From Italy; Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Antidumping Duty Order.

SUMMARY: In separate investigations, the United States Department of Commerce and the United States International Trade Commission (ITC) have determined that pads for woodwind instrument keys from Italy are being sold at less than fair value and that sales of pads for woodwind instruments keys from Italy are materially injuring a United States industry. Therefore all entries, or warehouse withdrawals, for consumption of pads for woodwind instrument keys from Italy made on or after April 25, 1984, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register,** will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries of the subject merchandise, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: September 21, 1984.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is pads for woodwind instrument keys currently provided for under item number 726.70 of the Tariff Schedules of the United States (TSUS). These pads are affixed to the keys of various woodwind instruments, e.g., saxophones, clarinets, oboes, and flutes.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on April 25, 1984, the Department published its preliminary determination that there was reason to believe or suspect that pads for woodwind instrument keys from Italy are being sold at less than fair value (49 FR 17791). On Juuly 11, 1984, the Department published its final determination that these imports were being sold at less than fair value (49 FR 28295).

On August 23, 1984, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that imports of pads for woodwind instrument keys from Italy are materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pads for woodwind instrument keys from Italy. The antidumping duties will be assessed on all instrument pads entered, or withdrawn from warehouse, for consumption on or after April 25, 1984, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register.**

On and after the date of publication of this notice, United States Cusonms officers must require, at the same time as importers would normally deposit estimated Customs duties on the subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins set forth below:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Luciano Pisoni Fabbrica Accessori Strumenti Musicali	1.16
Pads Manufacture, s.r.l.	1.02
All other manufacturers/producers/exporters	1.16

This determination constitutes an antidumping order with respect to pads for woodwind instrument keys from Italy, pursuant to section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), we hereby give notice that we are commencing an administrative review of this order on September 21, 1984. For further information regarding this review, contact Bill Matthews at (202) 377-3601.

We have deleted from the Commerce Regulations, Annex 1 to 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated lists of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Department of Commerce Regulations (19 CFR 353.48).

Dated: September 12, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-25090 Filed 9-20-84; 8:45]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Receipt of Application for General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone during 1984 and 1985 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

The International Trading and Shipping Agency, Inc. of New York has applied on behalf of Portuguese ship owners for a Category 1: "Towed or Dragged Gear" general permit to take 20 small cetaceans, 40 northern sea lions, 4 northern fur seals and 20 harbor seals in the course of joint venture processing operations for pollock and cod in the North Pacific Ocean and Bering Sea.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Interested parties may submit written comments on this application within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: September 17, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-25173 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Import Restraint Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 17, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1984. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

The Governments of the United States and Mexico have exchanged letters amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, to increase, among other things, the designated consultation level for men's and boys' wool suits in Category 443 to 3,500 dozen. Agreement was also reached to establish a designated consultation level of 435,000 pounds for cotton diapers in Category 359pt. (only T.S.U.S.A. number 383.5095) and a specific limit for Category 359pt. (other than diapers) at 900,000 pounds. All of these changes apply to goods produced or manufactured in Mexico and exported during 1984. Accordingly, the Chairman of CITA is directing the Commissioner of Customs to adjust the levels to the designated amounts.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 17, 1984.

Committee for the Implemenation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 9, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during 1984.

Effective on September 21, 1984, you are directed to amend the directive of December 9, 1983 to increase the level established for wool textile products in Category 443 to the following:

Category	Amended 12-month restraint level [1]
443	3,500 dozen.

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1983.

Also effective on September 21, 1984, you are directed further to amend the directive of December 9, 1983 to establish separate restraint limits for cotton textile products in parts of Category 359, as follows:

Category	Amended 12-month restraint level [1]
359pt.[2]	435,000 pounds.
359pt.[3]	900,000 pounds.

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1983.

[2] In Category 359, only T.S.U.S.A. number 383.5095.

[3] In Category 359, all T.S.U.S.A. numbers except that listed in footnote 2.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-25082 Filed 9-20-84; 8:45 am]

BILLING CODE 3510-DR-M

Amending the Export Visa and Quota Requirements for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in the Philippines

September 17, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 21, 1984. For further information contact Carl Ruths, International Trade Specialist (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines provides, among our other things, that quotas for certain cotton and man-made apparel categories be charged on the basis of the size of the garment. Infants' garments, sizes 0-6X, are chargeable to the "traditional" (T) segment of certain categories, while girls' and women's garments, sized over 6X, are to be charged to the "non-traditional" (NT) segments of those categories.

A CITA directive of November 21, 1979 established, effective on January 1, 1980, a visa and exempt certification mechanism for cotton, wool and man-made fiber textile and apparel products exported from the Philippines which are subject to the terms of the bilateral agreement (See 44 FR 68005).

At the request of the Government of the Republic of the Philippines, CITA is directing the U.S. Customs Service to permit entry for the remainder of 1984 of boyswear in sizes 0-7, exported in 1983 and 1984, in Categories 335, 336, 337, 341, 342, 348, 352, 359, 635, 636, 637, 641, 642, 646, 648, 652 and 659, which is visaed with a "T", provided such goods are included in a shipment predominantly consisting of sizes 0-6X. For the remainder of 1984 these goods will be charged to the limits established for the "traditional" (T) segments of the indicated categories.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 17, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of November 21, 1979, as amended by directive of June 27, 1984, which directed you to charge apparel products in Categories 335, 336, 337, 341, 342, 348, 352, 359, 635, 636, 637, 641, 642, 646, 648, 652, and 659, produced or manufactured in the Philippines and exported on and after April 5, 1984, to the appropriate segment of these categories based on the sizes of the garments, rather than on the assignment of TSUSA numbers. It also further amends, but does not cancel, the directive of December 16, 1983, which established limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1984.

Effective on September 21, 1984 and extending through December 31, 1984, the directive of June 27, 1984, is amended to permit entry of boyswear in sizes 0–7, exported during 1983 and 1984 in Categories 335, 336, 337, 341, 342, 348, 352, 359, 635, 636, 637, 641, 642, 646, 648, 652, and 659, which is visaed with a "T", provided such goods are included in a shipment predominantly consisting of sizes 0–6X.

Also effective on September 21, 1984 and until December 31, 1984, the directive of December 16, 1983 is further amended to provide that charges for boyswear in sizes 0–7, exported during 1984, shall be charged to the limits established for the "T" segments of the affected categories.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–25076 Filed 9–20–84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1984 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 21, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 11, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 20048) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the service listed.

c. The actions will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1984:

SIC 7349

Janitorial/Custodial, Griffiss Air Force Base, New York

C.W. Fletcher,

Executive Director.

[FR Doc. 84–25116 Filed 9–20–84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Military Traffic Management Command; Directorate of Personal Property

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Notice of announcement of an approved OMB number for Tender of Service and Letter of Intent for Personal Property Household Goods and Unaccompanied Baggage.

SUMMARY: Under the Paperwork Reduction Act of 1980, the Office of Management and Budget has approved the requirement and provided approval for OMB number 0702–0022, expiration date, May 31, 1987, for the Tender of Service (Appendix A) and the Letter of Intent (Appendix B) of the Personal Property Traffic Management Regulation (DOD 4500.34–R).

This OMB number covers all forms within both appendices. Therefore, carriers are not required to reflect this OMB number on LOIs filed at installations.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Gaige, HQ, Military Traffic Management Command, ATTN: MT–PPM (Room 410), 5611 Columbia Pike, Falls Church, Virginia 22041, (202) 756–1600.

Nathan R. Berkley,

Colonel, GS, Director of Personal Property.

[FR Doc. 84–25157 Filed 9–20–84; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army

Army Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Pharmacology.

Date of Meeting: 25 October 1984.

Time and Place: 0830 hours, Room 3092, Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: This meeting will be open to the public from 0830–0945 hours on 25 October for the administrative review and discussion of the scientific research program of the Pharmacology Group, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1–15 of Appendix, the meeting will be closed to the public from 1000–1630 hours for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20307 (202/576–2436) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski,

Colonel, MSC Assistant Deputy Commander.

[FR Doc. 84–25125 Filed 9–20–84; 8:45 am]

BILLING CODE 3710-08-M

Army Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Trauma.

Date of Meeting: 18 and 19 October 1984.

Time and Place: 0830 hours, Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed Agenda: This meeting will be open to the public from 0830–1045 hours on 18 October for the administrative review and discussion of the scientific research program of the Trauma Group, Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1–15 of Appendix, the meeting will be closed to the public from 1100–1700 hrs on 18 October and from 0830–1645 hrs on 19 October for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Ryan Neville, Assistant Director, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800 (415/561–4367) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski,

Colonel, MSC, Assistant Deputy Commander.

[FR Doc. 84–25124 Filed 9–20–84; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet October 12, 1984, at the United States Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:55 a.m., October 12, 1984, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

The further information concerning this meeting contact: Rear Admiral Robert W. McNitt, U.S. Navy (Retired), Secretary to the Board of Visitors, Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402, (301) 267–4361.

Dated: September 17, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–24901 Filed 9–20–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 22, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting Burden; and/or (7) Recordkeeping Burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copie of the requests are available from Margaret Webster at the address specified above.

Dated: September 18, 1984.

Ralph J. Olmo,

Acting Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension

Title: Application for Grants under the Law School Clinical Experience Program

Agency Form Number: ED 595

Frequency: Annually

Affected Public: State or Non-Profit Institutions of Higher Education

Reporting Burden: Responses: 100; Burden Hours: 2,500

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The application is utilized to obtain information from institutions of higher education required by authorizing legislation and program regulations to conduct a competitive evaluation process and to award grant funds.

Type of Review Requested: Extension

Title: Application Form for the Strengthening, Special Needs, and Challenge Grant Programs

Agency Form Number: ED 851, 852, and 853

Frequency: Annually

Affected Public: State or Non-Profit Institutions of Higher Education

Reporting Burden: Responses: 1,000; Burden Hours: 20,000

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information is needed in order for the Department to conduct a competition for the Program funds. Field readers and program officials will use the information to establish a rank-order of applications for funding purposes. The respondents are Institutions of Higher Education.

Type of Review Requested: Extension

Title: Financial Status and Performance Reports under the Veterans Cost-of-Instruction Program

Agency Form Number: ED 269–1 and 269–2

Frequency: Annually

Affected Public: State or Non-Profit Institutions of Higher Education

Reporting Burden: Responses: 862; Burden Hours: 862

Recordkeeping Burden: Recordkeepers: 862; Burden Hours: 3,448

Abstract: The Reports are used to obtain information from grant recipients to document that Federal funds were expended in accordance with all applicable laws and regulations and to assess the accomplishment of project goals and objectives.

Type of Review Requested: Extension

Title: Application for Grants under the Talent Search Program

Agency Form Number: ED 872

Frequency: Annually

Affected Public: Individuals or Households; Non-profit Institutions, State and Local Governments

Reporting Burden: Responses: 300; Burden Hours: 10,200

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The form requests programmatic and budgetary information from eligible applicants so that the Department of Education program officers and non-federal reviewers will have relevant information to make funding decisions. The collected information will also be used to determine compliance with funding criteria.

Type of Review Requested: Extension

Title: Application for Noncompeting Continuation Grants for the Special Services for Disadvantaged Students Program

Agency Form Number: ED 1251

Frequency: Annually

Affected Public: State or Local Governments; Non-Profit Institutions

Reporting Burden: Responses: 662; Burden Hours: 6,600

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Information requested from eligible institutions of higher education is needed to provide Department program officers with necessary information to make funding decisions and to determine compliance with legislation and program regulations.

Type of Review Requested: Extension

Title: Application (Program Announcement) for Grants and Contracts for the Minority Institutions Science Improvement Program (MISIP)

Agency Form Number: ED 0007

Frequency: Annually

Affected Public: Businesses or Other Institutions; Non-profit Institutions

Reporting Burden: Responses: 150; Burden Hours: 6,450

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The application is utilized to obtain information from minority institutions, eligible non-profit scientific professional societies, and colleges and universities as required by authorizing program regulations to conduct a competitive evaluation process and to award grants and contracts.

Type of Review Requested: Extension

Title: Application for Grants for the Education for the Public Service Fellowships Program

Agency Form Number: ED 404

Frequency: Annually

Affected Public: Non-Profit Institutions; Individual or Households

Reporting Burden: Responses: 117; Burden Hours: 2,340

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The application is utilized to obtain information from institutions of higher education required by authorizing law and program regulations in order to conduct a competitive evaluation process and to award grant funds.

Type of Review Requested: Extension

Title: Application for Fulbright Seminars Abroad Program

Agency Form Number: ED 356 and 356–1

Frequency: On Occasion

Affected Public: Individuals or Households

Reporting Burden: Responses: 1,000; Burden Hours: 1,000

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This information collection instrument will be used by applicants under the Fulbright Seminars Abroad Program which provides opportunities for U.S. educators to participate in a variety of topical, short-term training seminars worldwide.

Type of Review Requested: Revision

Title: Evaluation Training Activities on the Title IV Student Financial Assistance Programs

Agency Form Number: ED 786

Frequency: On Occasion

Affected Public: Individuals or Households

Reporting Burden: Responses: 42,420; Burden Hours: 10,605

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Collection of this information helps to determine the effectiveness of student financial aid training activities and whether the activities are being targeted to the group(s) with the greatest need. Participants in training activities include high school counselors and financial aid, fiscal, and administrative officials at postsecondary educational institutions.

Type of Review Requested: Revision

Title: Application for the Educational Opportunity Centers Program

Agency Form Number: ED 343

Frequency: Annually

Affected Public: Individuals or Households; Non-profit Institutions

Reporting Burden: Responses: 120; Burden Hours: 4,080

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information is needed in order to conduct a national competition for the Educational Opportunity Centers Program funds. Field readers and program staff will use the information to evaluate applications, establish a slate, and award grants.

Type of Review Requested: Revision

Title: Application for the Supplemental Funds Program for Cooperative Education

Agency Form Number: ED 524

Frequency: Annually

Affected Public: Non-Profit Institutions

Reporting Burden: Responses: 524; Burden Hours: 786

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The application is needed by colleges and universities to apply for funds authorized under Title IV-C, H.E.A. of 1965, as amended. Application information is used to reallot unused College Work-Study funds to colleges and universities to initiate, improve, or expand cooperative education projects.

Type of Review Requested: Reinstatement

Title: Continuation Application for Grants Under Upward Bound Program

Agency Form Number: ED 1251

Frequency: Annually

Affected Public: State or Local Governments; Non-profit Institutions

Reporting Burden: Responses: 423; Burden Hours: 6,345

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The application is needed to conduct a continuation competition for program year 1985–86 for the 423 multi-year Upward Bound projects.

Office of Postsecondary Education

Type of Review Requested: Extension

Title: Program Announcement—Mina Shaughnessy Scholars Program

Agency Form Number: ED 0006

Frequency: Annually
Affected Public: State or Local Governments; Non-profit institutions; Small businesses or organization
Reporting Burden: Responses: 722; Burden Hours: 19,300
Recordkeeping Burden: Recordkeepers: 722; Burden Hours: 19,300

Abstract: This program is an annual grant competition designed to solicit applications from postsecondary institutions which propose to designate a Shaughnessy Scholar to improve educational practice through individual projects. This information request is necessary to determine which applications will receive grant awards.

[FR Doc. 84-25183 Filed 9-20-84; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education

AGENCY: Department of Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule of a hearing of the Intergovernmental Advisory Council on Education. Notice of this hearing is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 26, 1984.

ADDRESS: Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, Washington 98104.

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street SW., Room 513, Washington, D.C. 20202 (202) 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The Intergovernmental Advisory Council on Education will conduct a Public Hearing on October 26, 1984. The hearing schedule is as follows:

9:30 a.m.—Educational Partnerships
11:00 a.m.—Student Achievement and Discipline
2:00 p.m.—Higher Education Reauthorization Proposals
3:30 p.m.—Press Availability

Individuals, organizations, and associations need to register for the October 26 hearing. To register due to limited space and time, write or call Ms. Laverne Johnson, Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202, (202) 472-6464. (Testifers will be limited to five (5) minutes. Each testifier must provide written comments. Those wishing to submit comments only may do so by mailing them to Ms. Johnson.)

Records are kept of all Council proceedings and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202.

Signed at Washington, D.C. on Monday, September 17, 1984.

A. Wayne Roberts,
Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 84-25088 Filed 9-20-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. INCENT]

Implementation of the Industrial Incentive Rate for the Direct-Service Industrial Customers of the Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Industrial Incentive Rate Implementation.

SUMMARY: BPA took final action on September 1, 1984, to implement the Industrial Incentive Rate for a 6-month period for its direct service industrial customers (DSIs). The Industrial Incentive Rate is a reduced rate which was designed to increase BPA's revenues during periods of adverse market conditions for the aluminum industry. The incentive rate was also intended to stimulate industrial production in the Pacific Northwest. This incentive rate represents a discount averaging 5 mills per kilowatthour from the Standard Industrial Rate, the industrial rate currently in effect. BPA's industrial customers have committed to purchasing 2640 megawatts on a take-or-pay basis under the Industrial Incentive Rate. BPA projects that implementation of this rate will increase total BPA revenues by $7.5 million during the 6-month period over what they would otherwise have been expected to be. This notice is not required by statute and is provided simply as a courtesy.

Responsible Official: Janet W. McLennan, Assistant Power Manager for Natural Resources and Public Services, is the official responsible for implementaion of the Industrial Incentive Rate.

DATES: The rate will be in effect from September 1, 1984, through February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn W. Baker, Bonneville Power Administration, Public Involvement—ALP, P.O. Box 12999, Portland, Oregon 97212. Portland callers should dial 230-3478. Oregon callers outside of Portland may use the toll-free line 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Arthur A. Harlow, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4131.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-434-6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

Since January, U.S. market aluminum prices have fallen from approximately 77¢ per pound to current levels of 50-55¢ per pound. As a result of these poor market conditions, several of BPA's DSI customers curtailed from earlier production levels and were considering further reductions in load. The Industrial Incentive Rate was provided in BPA's 1983 Wholesale Power Rate Schedules to protect BPA's revenues should economic conditions adversely affect the DSIs and cause them to curtail their purchases from BPA.

The 1983 General Rate Schedule Provisions state that BPA is to apply the rate only if total BPA revenues under the Industrial Incentive Rate are projected to be greater than they would be if the DSIs were served under the Standard Industrial Rate. To make that determination BPA is to conduct a study. If that study demonstrates that adoption of a reduced rate would increase total BPA revenues, the rate identified in the study would be BPA's proposed Industrial Incentive Rate.

On August 2, 1984, BPA published an initial Industrial Incentive Rate feasiblity study which concluded that it was appropriate for BPA to propose to implement the Industrial Incentive Rate at a level equivalent to a 5-mill discount from the Standard Industrial Rate. BPA then solicited comments on its proposal for a 3-week period, August 2, 1984, through August 24, 1984. BPA also held a public information and comment forum on August 15, 1984, to discuss the proposal.

Following the comment period, BPA evaluated the comments received on the proposal and a draft incentive rate contract. An Evaluation of the Record and a revised contract were subsequently prepared. BPA then solicited committed load levels from the DSI's. Upon receipt of those commitment levels, BPA conducted a final revenue analysis to determine the projected impact of those commitments on BPA's total revenues. The revenue analysis showed that BPA's total revenues would increase by $7.5 million if BPA were to adopt the Industrial Incentive Rate. BPA then issued the Administrator's Record of Decision (ROD) which concluded that BPA should implement the Industrial Incentive Rate at the level proposed in the initial feasibility study.

II. Final Action

On September 1, 1984, BPA adopted an Industrial Incentive Rate which results in a discount of approximately 5 mills per kilowatthour from the average Standard Industrial Rate. The Industrial Incentive Rate will be in effect for 6 months, beginning September 1, 1984. During this time the DSI's have committed to purchasing 2640 megawatts on a take-or-pay basis. In December 1984, BPA will review the appropriateness of making a new incentive rate offer for the period March 1, 1985, through June 30, 1985.

Copies of the feasibility study, the incentive rate contract, the transcript from the public hearing, and the ROD are available from the BPA Public Involvement office, at the address and phone numbers listed above.

Issued in Portland, Oregon, on September 11, 1984.

Peter T. Johnson,
Administrator.

[FR Doc. 84-25061 Filed 9-20-84; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective October 1, 1984. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE-034, Washington, D.C. 20585, Telephone: (202) 252-6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	4.01
Arizona [1]	4.01
Arkansas [1]	3.85
California	3.91
Colorado [2]	3.96
Connecticut [1]	4.30
Delaware [1]	4.16
Florida	4.15
Georgia [1]	4.26
Idaho [2]	3.96
Illinois [1]	4.20
Indiana [1]	4.26
Iowa [1]	3.96
Kansas [1]	3.96
Kentucky [1]	4.29
Louisiana [1]	3.89
Maine [1]	4.30
Maryland [1]	4.16
Massachusetts	4.06
Michigan [1]	4.20
Minnesota	3.79
Mississippi [1]	4.29
Missouri [1]	3.96
Montana [2]	3.96
Nebraska [2]	3.96
Nevada [1]	4.01
New Hampshire [1]	4.30
New Jersey [1]	4.16
New Mexico	3.60
New York	4.10
North Carolina [1]	4.26
North Dakota [1]	3.96
Ohio	4.03
Oklahoma [1]	3.89
Oregon [1]	4.01
Pennsylvania	4.12
Rhode Island [1]	4.30
South Carolina [1]	4.26
South Dakota [1]	3.96
Tennessee [1]	4.29
Texas	3.89
Utah [2]	3.96
Vermont [1]	4.30
Virginia [1]	4.29
Washington [1]	4.01
West Virginia [1]	4.20
Wisconsin [1]	4.20
Wyoming [2]	3.96

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM-79-21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during July 1984 was $32.24 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective October 1, 1984, is $7.23 per million BTU's.

Section III—Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous states on a permament basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industiral users in the months of May 1984, June 1984, and July 1984.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective October 1, 1984 (shown in Section I), are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, May 1984, June 1984, and July 1984. Reported prices for sales in May 1984 were ajdusted by the percent change in the natiowide volume-weighted average price from May 1984 to July 1984. Prices for June 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from June 1984 to July 1984. The volume-weighted 3-month average of the adjusted May 1984 and June 1984, and the reported July 1984 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of May 1984, June 1984, and July 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending September 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by *Platt's* for the month of July 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut
Maine
Massachusetts
New Hampshire
New York
Rhode Island
Vermont

Region B

Delaware
Maryland
New Jersey
Pennsylvania

Region C

Alabama
Florida
Georgia
Mississippi
North Carolina
South Carolina
Tennessee
Virginia

Region D

Illinois
Indiana
Kentucky
Michigan
Ohio
West Virginia
Wisconsin

Region E

Iowa
Kansas
Missouri
Minnesota
Nebraska
North Dakota
South Dakota

Region F

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G

Colorado
Idaho
Montana
Utah
Wyoming

Region H

Arizona
California
Nevada
Oregon
Washington

Issued in Washington, D.C., September 18, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84-25206 Filed 9-20-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-532-002]

ANR Pipeline Co.; Tariff Filing Pursuant to Order Issuing Certificate of Public Convenience and Necessity

September 18 1984.

Take notice that on September 11, 1984, ANR Pipeline Company (ANR) (formerly Michigan Wisconsin Pipe Line Company) tendered for filing Original Sheet Nos. 2149 through 2157 to be designated as Rate Schedule X-141 under First Revised Volume No. 2 of its FERC Gas Tariff.

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[1] Large Industiral User—A person/firm which purcahses No. 6 fuel oil in quantites of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

ANR states that Rate Schedule X-141 has been filed pursuant to authorization granted April 17, 1984, in Docket No. CP83-532-000. Pursuant to such authorization, ANR will transport up to 25,000 Mcf of natural gas per day on a contract demand basis for Mid Louisiana Gas Company (Mid Louisiana). The terms of the transportation agreement dated June 20, 1983, between ANR and Mid Louisiana, provide for ANR to receive up to 25,000 Mcf of natural gas per day at an existing undersea valve on ANR's 20-inch offshore pipeline system in Eugene Island Block 34, offshore Louisana. From such point, ANR will transport the gas onshore and deliver thermally equivalent volumes to Mid Louisiana, reduced by three percent for compressor fuel usage. The points of redelivery are: (1) An existing interconnection between the pipeline systems of ANR and Mid Louisiana in Franklin Parish, Louisiana, and (2) an existing meter station located in Tensas Parish, Louisiana, where ANR will cause Locust Ridge Gas Company to make redeliveries to Mid Louisiana for ANR's account. ANR will charge Mid Louisiana $5.21 per month for each Mcf of contract demand as modified by the settlement of Docket No. RP82-80-000, pursuant to ordering paragraph (c) in the order issued April 17, 1984, in Docket No. CP83-532-000.

ANR has requested that Rate Schedule X-141 be accepted for filing and made effective June 5, 1984, the date of commencement of firm transportation service.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426 in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determing the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25127 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82-542-008]

ANR Pipeline Co.; Tariff Filing Pursuant to Order Approving Settlement Agreement

September 18, 1984.

Take notice that on September 11, 1984, ANR Pipeline Company ("ANR") (formerly Michigan Wisconsin Pipeline Company) tendered for filing First Revised Sheet Nos. 19a, 19b, 57, 58 and 59 to its F.E.R.C. Gas Tariff, Original Volume No. 1, proposed to be effective August 21, 1984.

ANR states that the purpose of this filing is to reflect the Federal Energy Regulatory Commission's ("Commission") approval on August 21, 1984 of a Stipulation and Agreement filed on June 26, 1984. Essentially, the settlement provides that ANR shall be granted a certificate to sell gas under the DF-1 rate schedule for a trial period beginning on the date the Commission approves the settlement and ending on October 31, 1984, or such later date as the Commission may prescribe. The Commission's approval specified the October 31, 1984 date. Any participant, including ANR, may petition the Commission to extend the term of service under the DF-1 rate schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25128 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-858-000]

ANR Pipeline Co., Application

September 18, 1984.

Take notice that on August 22, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-858-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to provide a gas transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application indicates that Shell Onshore Partnership (Shell) has committed to Southern production from its interest in the natural gas reserves in the Alcorn filed in Clairborne and Jefferson Counties, Mississippi. The application further indicates that the Alcorn field is remotely located relative to Southern's facilities and Southern has solicited the assistance of both ANR and Locust Ridge Gas Company (Locust Ridge) to assist in the receipt of the Alcorn gas supplies. The arrangement contemplates transportation of the gas supplies through the existing facilities of Locust Ridge between the Alcorn field and the easterly terminus of ANR's Holly Ridge lateral in Tensas Parish, Louisiana, and from such point, ANR's redelivering the supplies by displacement to Southern's Shadyside compressor station in St. Mary Parish, Louisiana.

ANR states that its portion of the arrangement is set forth in transportation agreement dated September 12, 1983, which provides that ANR will take receipt of up to 4,000 Mcf of natural gas per day (the contract demand). Concurrently, ANR states, it will redeliver by displacement thermally equivalent volumes to Southern which will be reduced by one percent of the quantities received as compensation for its compressor fuel usage. As consideration for providing the service, ANR states, Southern has agreed to pay it $2.36 per month for each Mcf of contract demand.

On January 12, 1984, ANR and Locust Ridge commenced the transportation service pursuant to ANR's blanket certificate in Docket No. CP81-504-000 and Locust Ridge's blanket certificate in Docket No. CP80-561-000.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for ANR to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25129 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-179-023]

Arizona Public Service Co.; Compliance Filing

September 18, 1984.

Take notice that on July 26, 1984, Arizona Public Service Company (APS) submitted for filing its compliance report pursuant to the Commission's Opinions Nos. 193 and 193-A issued October 19, 1983 and December 19, 1983, respectively.

APS states that pursuant to the instruction in the Commission's Letter of Acceptance and as ordered in Opinion No. 193, the required refunds (including interest) have been forwarded to each entitled customer.

APS further states that although the Commission's acceptance letter of June 12, 1984 contained no mention of the disposition of rates for the Town of Wickenburg, a refund has been made to Wickenburg in accordance with the Company's intent as stated in our June 27, 1984 letter to the Director, Office of Electric Power Regulation.

APS also submitted a copy of the report showing the computation of refund amounts and a summary showing the total refund due each customer.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 3, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25130 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-638-000]

Central Vermont Public Service Corp.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 30, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Sales Agreement (the Agreement) between the Central Maine Power Company (CMP) and CVPS. The Agreement, dated April 1, 1984, provides for the sale of energy (a Transaction) from the CVPS system to CMP and the purchase by CMP of energy from the CVPS system.

CVPS states that the Agreement provides that the parties will determine prior to 11:00 AM daily and weekly at 11:00 AM on Saturday during the term of the Agreement whether it is economically advantageous to the parties that a sale, pursuant to the Agreement, take place during that day of the week.

CMP shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by CMP for the preceding month by the energy reservation charge in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental energy cost adjusted for transmission losses to the delivery point.

CVPS requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as their respective Public Service Boards. CVPS further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25131 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-648-000]

Central Vermont Public Service Corp.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 88. The proposed changes would increase revenues from jurisdictional sales and service by $204,130 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Vermont Electric Generation and Transmission Cooperative, Inc. which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Vermont Electric Generation and Transmission Cooperative, Inc. and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 84-25132 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-649-000]

Central Vermont Public Service Corp.; Filing

September 19, 1984

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 107. The proposed changes would decrease revenues from jurisdictional sales and service by $239 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Village of Johnson Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Village of Johnson Water and Light Department and Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25133 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-650-000]

Central Vermont Public Service Corp.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 102. The proposed changes would decrease revenues from jurisdictional sales and service by $324 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Rochester Electric Light and Power Company which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Rochester Electric Light and Power Company and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25134 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-651-000]

Central Vermont Public Service Corp.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Central Vermont Public Service Corporation (Central Vermont) tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 101. The proposed changes would decrease revenues from jurisdictional sales and service by $671 for the twelve month period ending October 31, 1984.

Central Vermont states that the change is proposed in accordance with Article III of Central Vermont's Power Transmission Contract with Allied Power and Light Department which provides that charges will be updated annually to incorporate Central Vermont's cost experience for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1984.

Copies of this filing were served upon the Allied Power and Light Department and the Vermont Public Service Board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25135 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-105-001]

Columbia Gas Transmission Corp.; Amendment to Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 24, 1984, Columbia Gas Transmission Coporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-105-001 a request pursuant to § 157.205 of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue to transport natural gas on behalf of Certainteed Corporation (Certainteed) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By request noticed on December 22, 1983, in Docket No. CP84-105-000, pursuant to the prior notice and protest procedure set forth in § 157.205 of the Commission's Regulations, Columbia was authorized to transport up to 645 dt equivalent of natural gas per day through October 10, 1984, to Certainteed's Milan, Ohio plant. Columbia proposes to continue the transportation through June 30, 1985 on the same terms and conditions as the existing transportation authority.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25136 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-663-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 24, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP84-663-000 a request pursuant to 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Fostoria Glass Company (Fostoria) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 518 dt equivalent of natural gas per day for Fostoria through June 30, 1985. Columbia states that the gas to be transported would be purchased from ANR Gathering Company (ANR Gathering) and would be used as process gas and boiler fuel in Fostoria's Moundsville, West Virginia, plant.

Columbia states that it would receive the gas at existing delivery points on its system from ANR Gathering and redeliver the gas to Mountaineer Gas Company (Mountaineer), the distribution company serving Fostoria, near Moundsville, West Virginia. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt equivalent exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Rate Schedule TS-1 of Columbia's FERC Tariff, Original Volume No. 1-A. Columbia also states that it would collect the GRI funding unit charge of 1.21 cents per dt.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25137 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-71-000]

Consumers Power Co.; Application

September 18, 1984.

Take notice that Consumers Power Company ("Consumers Power") on September 10, 1984, filed an application for authority to issue securities under section 204 of the Federal Power Act.

Consumers Power proposes to enter into a Construction Financing Agreement (the "Construction Financing Agreement") with a special purpose corporation (the "Company") for the purpose of financing various items of property intended to be used in the operation of Consumers Power's business. The Company will enter into a Credit Agreement (the "Credit Agreement") with the Toronto-Dominion Bank, Chicago Branch ("Toronto-Dominion"). Pursuant to the Credit Agreement, Toronto-Dominion will accept a note from the Company which in aggregate amount will not exceed $55,000,000. The commitment will be available to the Company until 364 days from the date of execution and delivery of the Construction Financing Agreement.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests shall be filed on or before October 9, 1984. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25138 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-72-000]

The Kansas Power and Light Co.; Application

September 18, 1984.

Take notice that on September 10, 1984, the Kansas Power and Light Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than 1,000,000 shares of Common Stock, par value $5.00 per share, pursuant to Applicant's Automatic Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before October 3, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25139 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-677-000]

K N Energy, Inc.; Request Under Blanket Authorization

September 18, 1984

Take notice that on August 30, 1984, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84-677-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add two delivery points to Peoples Natural Gas Company, a Division of InterNorth, Inc. (Peoples), under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to add for two years two delivery points to Peoples to the already existing two delivery points for the sale and delivery of Peoples' present contract demand of 8,000 Mcf per day at Goodland and Garden City, Kansas. Applicant states that the proposed delivery points would be located where Applicant's facilities presently interconnect with pipeline facilities of Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), in Seward and Kearny Counties, Kansas. Applicant indicates that it would deliver the gas to Northern for the account of Peoples at these two proposed delivery points.

Applicant states that the total contract demand to be delivered to Peoples would not change under the subject proposal and that Applicant's existing tariff does not prohibit the addition of delivery points. It is further stated that the proposal would be accomplished without detriment or disadvantage to Applicant's other customers and that it would have no impact on Applicant's peak day and annual deliveries. It is indicated that no new facilities would be required for this proposal.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25140 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-55-000 and Docket No. TA84-2-55-001]

Mountain Fuel Resources, Inc.; Tariff Filing

September 18, 1984.

Take notice that on September 12, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance Second Substitute Twenty-First Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1 and Substitute Original Sheet No. 13 to its FERC Gas Tariff, First Revised Volume No. 1.

Resources states that it has agreed to revise its calculation of the Unrecovered Purchase Gas Cost Adjustment to reflect the exclusion of $39,000 of Order No. 93 costs for the months of September, October, and November, 1983, and to include $3,340 in carrying charges related to Order No. 93 retroactive payments booked to Account No. 191, but never paid.

Resources states that Second Substitute Twenty-First Revised Sheet No. 7 of Original Volume No. 1 reflects a change in the amortization rate to $(0.2042)/Mcf from the $(0.1877)/Mcf rate shown on Twenty-First Revised Sheet No. 7.

Resources states that Substitute Original Sheet No. 13 of First Revised Volume No. 1 reflects a change in the amortization rate to $(0.01877)/Dth from the $(0.01726)/Dth rate shown on Original Sheet No. 13.

Resources further states that it has revised its Base Cost of Purchased Gas as Adjusted downward by a net of $2,364,000 to reflect, in its forecast of gas costs, the exclusion of certain tax reimbursements included in the original filing. This results in a reduction in the commodity component of the Gas Cost Adjustment shown on Substitute Original Sheet No. 13 of $(0.03193)/Dth from $(0.22218)/Dth to $(0.25411)/Dth.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25141 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-368-000]

Northwest Central Pipeline Corp.; Application

September 18, 1984.

Take notice that on April 26, 1984, Northwest Central Pipeline Corporation (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP84-368-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment by reclaim of a 71 horsepower compressor unit and appurtenant facilities in Franklin County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authority to abandon by reclaim a 71 horsepower rental compressor unit and appurtenant facilities which were installed in 1977 to compress gas purchased from E.W. Hawes in Franklin County, Kansas. It is stated that such facilities are no longer necessary as E.W. Hawes informed Applicant of his intent to abandon the sale to Applicant by letter dated February 16, 1984. Subsequent to said date, it is stated, Applicant was informed that E.W. Hawes was succeeded in interest by Texxon Energy Corporation.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25142 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-685-000]

Northwest Central Pipeline Corp.; Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 24, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP84-665-000 a request pursuant to § 157.205 of the Regulations Under the Natural Gas Act (18 CFR 157.205) that Northwest Central proposes to abandon in place or by reclaim approximately 4.0 miles of 12-inch lateral line and appurtenant facilities in Oklahoma County, Oklahoma, and the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that its West Edmond 12-inch pipeline and appurtenant facilities are no longer required as a part of its transmission system. The estimated cost to reclaim these facilities is $8,000 with an estimated salvage value of $1,965. The pipeline was originally constructed in 1946 and is obsolete. Customers affected by this proposal have either requested that their service be terminated or they would continue to be serviced by a local natural gas transmission company, it is alleged.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25143 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-21-000]

PacifiCorp, Doing Business as Pacific Power & Light Co.; Application

September 18, 1984.

Take notice that on September 10, 1984, PacifiCorp, doing business as Pacific Power & Light Company (Pacific), a Maine corporation, qualified to transact business in the states of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office in Portland, Oregon, filed an application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, seeking an order authorizing it to purchase from the General Service Administration the Cottage Grove substation in the vicinity of Cottage Grove, Oregon.

Any person desiring to be heard or to make any protest with reference to this application should, on or before October 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to this proceeding. Persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25144 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-656-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

September 18, 1984.

Take notice that on August 21, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-656-000 a request pursuant to § 157.206 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of a shipper end-user under its certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle requests authority to transport gas on behalf of Sherex Chemical Company, Inc. (Sherex), pursuant to a transportation agreement dated July 12, 1984, among Panhandle, Sherex, and Central Illinois Light Company (CILCO). The agreement provides for Panhandle to receive from Consolidated Fuel Supply, Inc. (Consolidated), from which Sherex purchases the gas, a transportation quantity of up to 900 Mcf per day on an interruptible basis at an existing point of interconnection between Panhandle and Mobil Oil Corporation (Mobil) at the tailgate of Mobil's Northeast Trail Plant in Dewey County, Oklahoma, and at a proposed to-be-constructed receipt point between Panhandle and Consolidated, or its designee, in Ellis County, Oklahoma. Panhandle would then transport and redeliver such gas, less a four percent reduction for fuel, to an existing point of interconnection between the facilities of Panhandle and CILCO in Tazewell County, Illinois. CILCO would make ultimate delivery of the gas to Sherex for use at its Mapleton, Illinois, plant. An affidavit is included in the request wherein Sherex states that the gas will be used to provide process heating, to produce steam, and to generate nitrogen for chemical production.

Sherex is an existing end-user customer of CILCO, and CILCO is an existing jurisdictional customer of Panhandle. Sherex purchases the gas under a June 14, 1984, contract on a first sale basis from Consolidated. Consolidated in turn purchases the gas from Mobil in Dewey County and from Hawkins Oil & Gas, Inc., in Ellis County.

Panhandle proposes an initial transportation rate of 42 cents plus a 1.24-cent GRI surcharge per MMBtu transported. The transportation agreement provides for such rate (the OST rate) to be charged for volumes transported within the contract entitlement transportation quantity (CETQ). Volumes transported in excess of the CETQ would be billed at the OST–E rate, currently 87 cents plus the 1.24-cent GRI surcharge for each MMBtu. The OST and OST–E rates are effective pursuant to Panhandle's FERC Gas Tariff, Original Volume No. 1, Rate Schedules OST and OST–E, respectively.

Additionally, Panhandle requests "flexible authorization" to add or delete sources of supply or receipt/delivery points.

The interconnection and measuring station proposed to be constructed in Sec. 19, T.19N., R.24W., Ellis County, Oklahoma, is estimated by Panhandle to cost approximated $19,000. Sherex is required by the transportation agreement to reimburse Panhandle for all such costs which are incurred in establishing the points(s) of receipt and/or redelivery.

Any person or the Commission's staff may, within 45 day safter issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25145 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF84-4011-000]

Southwestern Power Administration; Filing

September 18, 1984.

Take notice that on August 3, 1984, the Deputy Secretary by Delegation Order No. 0204–108, confirmed and approved on an interim basis effective August 1, 1984, on extension of the Southwestern Power Administration (SWPA) System rates. This approval extends through September 30, 1984.

Southwestern's System rates were approved on a final basis in Docket No. EF83–4011–000 by the Federal Energy Regulatory Commission (FERC) by Order isued August 1, 1983, for a period to end July 31, 1984.

Southwestern has proposed an extension of the existing rate for the period ending September 30, 1986. To allow sufficient time for internal review of this proposal at the departmental level, this interim extension was approved for a limited time.

Confirmation and approval of the extension of existing rates on a final basis is requested pursuant to authority granted the FERC by Delegation Order No. 0204–108, for a period ending September 30, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25146 Filed 9-20-84; 8:45 am]

Billing Code 6717-01-M

[Docket No. EF84-4012-000]

Southwestern Power Administration, Filing September 17, 1984.

Take notice that the Deputy Secretary, U.S. Department of Energy, on August 29, 1984, submitted to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, extension of the following Southwestern Power Administration System rates:

Rate Schedule P–4, Peaking Power
Rate Schedule F–4A, Firm Power
Rate Schedule F–4B, Firm Power through Oklahoma Companies
Rate Schedule EE–2 (Revised), Excess Energy
Rate Schedule IC–2 (Revised), Interruptible Capacity

The existing System rates were confirmed and approved on a final basis by the Commission in Docket No. EF83–4011–000 for the period August 1, 1983, through July 31, 1984, and were extended on an interim basis by the Deputy Secretary of Energy through September 30, 1984, in Rate Order No. SWPA–15. The Deputy Secretary of Energy has confirmed and approved an extension of the rates on an interim basis for the period October 1, 1984, through September 30, 1986, in Rate Order No. SWPA–16 and has submitted the rates to the Commission for confirmation and approval on a final basis for the same period.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All such petitions or protests should be filed on or before October 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25147 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-55-058]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Filing

September 18, 1984.

Take notice that on September 7, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following proposed tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Second Revised Sheet Nos. 86 and 402
Third Revised Sheet No. 400
Fourth Revised Sheet No. 78

Tennessee states that the purpose of these tariff sheets is to reflect the substitution of EnergyNorth as the recipient of certain natural gas sales and transportation services previously provided for Gas Service Inc. and Manchester Gas Company and to revise and consolidate existing Daily Volume Limits by Delivery Point.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25148 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP73-297-004]

Texas Eastern Transmission Corp.; Petition to Amend

September 17, 1984.

Take notice that on August 23, 1984, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP73-297-004 a petition to amend the order issued December 10, 1973,[1] as amended, in Docket No. CP73-297 pursuant to section 7 of the Natural Gas Act so as to authorize the exchange of natural gas between Texas Eastern and Natural Gas Pipeline Company of America (Natural) at additional points of delivery in Kenedy and Wharton Counties, Texas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Eastern states that the December 10, 1973, order, as amended, authorizes Texas Eastern and Natural to exchange up to 15,000 Mcf of natural gas per day. Texas Eastern proposes that the order further be amended to provide two additional points of delivery, as follows: (1) Pursuant to a January 4, 1983, amendment Texas Eastern would deliver exchange gas to Natural at the inlet of Natural's existing measuring facilities on the outlet of the Sarita Gasoline Plant in Kenedy County, Texas, and (2) pursuant to a September 15, 1983, amendment, Texas Eastern would deliver exchange gas to Natural at an existing point of interconnection between the pipeline facilities of Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Natural located near Hungerford, Wharton County, Texas. Exchange of natural gas at the Wharton delivery point was implemented under Order No. 60, it is explained.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25149 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

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[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. RP84-124-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 18, 1984.

Take notice that on September 10, 1984 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Thirty-First Revised Sheet No. 15 to its FERC Gas Tariff, Second Revised Volume No. 1. The Tariff Sheet is proposed to be effective September 10, 1984.

Transco states that the submitted tariff sheet is being filed in compliance with the provisions of § 154.111(a)(3) of the Commission's Regulations recently adopted pursuant to Order No. 380 issued May 25, 1984 in Docket No. RM83-71-000. Said provisions require pipelines to file revised tariff sheets to separately state the cost of purchased gas and fuel. Transco further states that it has reflected on Sheet No. 15 its adjusted unit current gas cost per dt which includes the cost of purchased gas and fuel included in its rates which became effective May 1, 1984.

Transco states that copies of the filing are being mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25150 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01

[Docket No. RP84-126-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 18, 1984.

Take notice that on September 11, 1984, Transcontinental Gas Pipe Line Corporation (Transco) filed certain tariff sheets to its FERC Gas Tariff, Original

Volume No. 2, proposed to be made effective October 11, 1984. Transco states that such tariff sheets provide for changes in the rates applicable to Transco's Rate Schedules X-152, X-197, X-215, X-218 and X-248 under which Transco provides transportation services to Florida Gas Transmission Company, Amoco Production Company and Southern Natural Gas Company. Transco further states that the tariff filing is being made to bring the subject rate schedules into harmony with Transco's currently effective rates for upstream deliveries within Transco's production area and that the proposed rate changes will eliminate inequities in the rates Transco charges for the same or similar services.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 2.14 and Rule 2.11 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-25151 Filed 9-20-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-687-000]

Trunkline Gas Co. Application

September 18, 1984.

Take notice that on September 4, 1984, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-687-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application on file with the Commission and open for public inspection.

The application states that pursuant to a transportation agreement dated January 30, 1984, Trunkline has agreed to transport up to 30,000 Mcf of natural gas per day on an interruptible basis on behalf of Columbia. Trunkline would receive the gas for Columbia's account on High Island Offshore System. Trunkline would deliver gas to Columbia at an existing point of interconnection with Columbia Gulf Transmission Company (Columbia Gulf) in St. Mary Parish, Louisiana. Columbia would pay Trunkline 24.41 per Mcf for this service.

It is stated that the term of the transportation agreement is from the date of execution of the service proposed herein until January 30, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the approproate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commision by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-25152 Filed 9-20-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-656-000]

Union Electric Co.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Union Electric Company (Union) tendered for filing a Letter Agreement revising the Seasonal Base Amount under Service Schedule C to the Interconnection Agreement dated November 1, 1969 between the Tennessee Valley Authority and Central Illinois Public Service Company, Illinois Power Company, and Union.

Union requests an effective date of November 1, 1984, and indicates that the Letter Agreement provides for reducing the Seasonal Base Amount available capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-25153 Filed 9-20-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER83-429-001]

Wisconsin Power & Light Co.; Compliance Refund Filing

September 18, 1984.

Take notice that on August 3, 1984, Wisconsin Power and Light Company (Wisconsin Power) submitted for filing its compliance refund report pursuant to the Commission's settlement approval dated June 21, 1984.

The refund report consists of:

Section

A—Refund
B—Monthly Revenue/Refund Summary by W-1, W-2 and W-3 Customers
C—Monthly Revenue Determination by Customers at Under Bond Rates

D—Monthly Revenue Determination by Customer at Settlement Rates Approved June 21, 1984
E—Rate Schedules and Fuel Adjustment Factors Used to Compute: Under Bond Revenues; June 21, 1984 Approved Revenues
F—Proration of Nuclear Fuel Disposal Costs to W-2 Customers
G—Description of Interest Calculation

Wisconsin Power states that the refunds due each customer were delivered on July 20, 1984, with interest paid through July 20, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, on or before October 3, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25154 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-654-000]

Yankee Atomic Electric Co.; Filing

September 17, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Yankee Atomic Electric Company (Yankee) tendered for filing proposed changes in its rate scheduled related to increased estimates of the costs of decommissioning the Yankee facility in Rowe, Massachusetts. The proposed changes would increase revenues from jurisdictional sales and service by $497,000 based on the 12-month period ending December 31, 1985. Yankee also proposes to obtain approval for automatic future adjustments to reflect changes in certain elements of the cost of decommissioning the Yankee plant and to discontinue collecting from ratepayers amounts representing federal income taxes on decommissioning expenses. Yankee proposes to amend the trust indenture to expand the range of permissible investments.

The sponsoring utilities of the Yankee plant are:

New England Power Company
Connecticut Light & Power Company
Boston Edison Company
Central Maine Power Company
Western Massachusetts Electric Company
Public Service Company of New Hamsphire
Montaup Electric Company
Cambridge Electric Light Company
Central Vermont Public Service Corporation
Commonwealth Electric Company

Yankee proposes an effective date of November 1, 1984.

Copies of the filing were served upon Yankee's sponsoring utilities and the pertinent state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding, Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25155 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-646-000 and CP83-464-001]

Zenith Natural Gas Co.; Application and Petition to Amend

September 17, 1984.

Take notice that on August 13, 1984, Zenith Natural Gas Company (Applicant), South Hutchinson, Kansas 67505, filed in Docket No. CP84-646-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas and construct and operate metering facilities necessary to make a direct sale of natural gas, and in Docket No. CP83-464-001 a petition to amend Applicant's blanket certificate issued in Docket No. CP84-464-000 pursuant to Subpart F of Part 157 of the Commission's Regulations, all as more fully set forth in the application and petition which are on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas and to construct and operate metering facilities necessary to make a new direct end-user sale to Doskocil Companies Incorporated (Doskocil) for use in Doskocil's plant in Reno County, Kansas. Applicant states that it would deliver the gas to Panhandle Eastern Pipe Line Company (Panhandle) for transportation to a delivery point connection to Doskocil. Applicant further states that Doskocil would reimburse Applicant for such facilities. Estimated daily and annual deliveries are stated to be 750 Mcf land 180,000 Mcf of gas, respectively, and would be made from the general system supply of Applicant. It is further submitted that Applicant has adequate supplies of gas for its existing customers and Doskocil.

Applicant, in addition, requests amendment of its blanket certificate issued in Docket No. CP83-464-000 which would permit prior-notice authorization pursuant to § 157.205 of the Commission's Regulations of sales and taps and related facilities, as well as construction and operation thereof where new service to new customers is involved. Applicant states that it operates a small natural gas system within a limited geographic area, and use of the notice procedure for sales taps for new service would expedite future authorization to sell its limited amount of available gas supply.

Any person desiring to be heard or to make any protest with reference to said application and petition should on or before October 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25156 Filed 9-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 1930-001, et al.]

Hydroelectric Applications (Southern California Edison Co., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No: 1930-001.

c. Date Filed: February 16, 1984.

d. Applicant: Southern California Edison Company.

e. Name of Project: Kern River No. 1 Project.

f. Location: On Kern River, near Bakersfield, in Kern County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Umbaugh, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

i. Comment Date: October 25, 1984.

j. Description of Project: The proposed amendment to Southern California Edison Company's (SCE) existing licensed Project No. 1930 would consist of: (1) Adding four generating units with a total installed capacity of 300 kW to the existing Kern River No. 1 Powerhouse; (2) raising by approximately 5 feet the existing tailrace wall; and (3) adding a 200-foot-long, 12-kV transmission line to connect to an existing SCE transmission line. The project cost has been estimated to be about $1.08 million. No additional recreational facilities are proposed by SCE.

k. This notice also consists of the following standard paragraphs: B, C and D1.

2a. Type of Application: Amendment of License.

b. Project No: 2515-000.

c. Date Filed: March 12, 1984.

d. Applicant: The Potomac Edison Company.

e. Name of Project: Harper's Ferry.

f. Location: On the Potomac River in Jefferson County, West Virginia and Washington County, Maryland.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert R. Winter, The Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740.

i. Comment Date: October 29, 1984.

j. The Proposed Amendment: The Licensee requests revision of the project description and project boundary to reflect: (1) Sale of two 1-acre parcels of land to 2 adjacent land owners; (2) sale to the United States, to be used by the National Park Service as part of its adjacent Harper's Ferry National Historical Park of all project civil works, including the dam, canal, and tailrace, and all remaining project lands with the exception of that land surrounding the powerhouse. The total land to be conveyed is about 50 acres. The conveyance of civil works and lands would not result in any change in project works or project operation.

k. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: Amendment of License.

b. Project No: 2574-000.

c. Date Filed: March 23, 1984.

d. Applicant: Milstar Manufacturing Corporation.

e. Name of Project: Lockwood.

f. Location: Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-925(r).

h. Contact Person: Mr. John S. Readnour, Assistant General Counsel, Central Maine Power Company, Edison Drive, Augusta, Maine 04336.

i. Comment Date: October 26, 1984.

j. Description of Project: The existing project consists of: (1) A 225-foot-long concrete overflow dam and a 650-foot-long concrete overflow dam, connected by a small island, each dam being 14.3 feet high, topped by 15-inch flashboards; (2) an 81.5-acre reservoir at an elevation of 52.16 feet m.s.l.; (3) headgates; (4) a 450-foot-long forebay canal; (5) a 50-foot by 170-foot powerhouse containing six turbine/generator units having an installed capacity of 5.4 MW, operating under a 21-foot head; and (6) appurtenant facilities.

The licensee proposes to costruct the following new facilities: (1) An intake gate; (2) a 38.5-foot by 34-foot powerhouse containing one turbine/generator unit rated at 1,750 kW, to be located near the southwest corner of the existing forebay canal; (3) a 110-foot-long tailrace; (4) a 1,000-foot-long, 12.47-kV transmission line; and (5) appurtenant facilities.

The additional hydraulic capacity (1,200 cfs) provided by the proposed expansion would allow use of a greater range of river flows. This addition would not alter the existing dams or raise the reservoir beyond the level currently licensed. The project will continue to operate as a run-of-river facility.

The proposed facilities would add 22,000 MWh to the average annual generation of the project. Total annual generation would be approximately 53,000 MWh.

k. Purpose of Project: Project power is and will continue to be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

4a. Type of Application: License (5 MW or Less).

b. Project No: 3610-005.

c. Date Filed: April 6, 1984.

d. Applicant: Banister Development Ltd.

e. Name of Project: Banister Hydroelectric Project.

f. Location: On the Banister River in Halifax County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Peter C. Lesch, Gallagher, Boland, Meiburger & Brosnan, 821-15th Street, NW., Washington, D.C. 20005.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam which is approximately 669 feet long and 41 feet high; (2) an existing reservoir with a surface area of 355 acres and a storage capacity of 3,510 acre-feet at normal powerpool elevation of 350 feet m.s.l.; (3) an existing powerhouse which would contain 2 generating units rated at 320 kW and 1 generating unit rated at 780 kW, for a total installed capacity of 1,420 kW; and (4) a proposed 400-foot, 4,160 volt transmission line, which would be connected to Virginia Electric Power Company's substation located adjacent to the dam; and (5) appurtenant facilities. The estimated average annual energy output for the project is 5,500,000 kWh.

Banister Dam is owned by the County of Halifax, Virginia.

k. Purpose of Project: Power generated at the project would be sold to Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

5a. Type of Application: License (Over 5 MW).

b. Project No.: 4620-001.

c. Date Filed: November 30, 1983.

d. Applicant: Carrasan Power Company.

e. Name of Project: Horsepasture Hydroelectric Power Project

f. Location: On the Horsepasture River in Transylvania County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Keith Guthrie, VanNess, Feldman, Sutcliffe, Curtis, & Levenberg, 1050 Thomas Jefferson Street, NW., Washington, D.C. 20007.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed reinforced concrete diversion structure, which would be 140 feet long and 14.5 feet high. The diversion structure would contain a 24-inch by 24-inch opening controlled by a sluice gate to maintain the minimum flow and to reduce sediment build-up. The diversion structure would be constructed integrally with an intake structure, which would be 40 feet long and 20 feet high. The water would be diverted pass the diversion structure, through the intake structure, to the penstock; (2) a proposed impoundment or reservoir created by the diversion and intake structure, with a surface area of 6.15 acres and a storage capacity of 29 acre-feet at powerpool elevation of 2,860 feet m.s.l.; (3) a proposed reinforced concrete training (retaining) wall, which would be 60 feet long and 14.25 feet high. The training wall would be located east of the intake structure, and would be used to divert fish, sediment, logs, aquatic organisms and other objects away from the intake structure; (4) a proposed 54-inch-diameter steel penstock, which would be approximately 13,140 feet long. The penstock diverges into two penstocks just before entering the powerhouse; (5) a proposed cast-in-place concrete powerhouse containing 2 generating units rated at 5.87 MW each for a total installed capacity of 11.74 MW; (6) a proposed tailrace, which consist of a stilling basin and a spillway. The tailrace water empties into a trapezoidal canal, which is approximately 190 feet long and 11.5 feet deep; (7) a proposed 44-kV transmission line, which would be approximately 10 miles long; and (8) appurtenant facilities. The estimated average energy output for the project is 36,803 MWh.

k. Purpose of Project: The power generated at the project would be sold to Duke Power Company and North Carolina Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B & C.

6a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 6228-002.

c. Date Filed: April 10, 1984.

d. Applicant: Charter Township of Cascade, Kent County, Michigan.

e. Name of Project: Cascade Dam.

f. Location: On the Thornapple River in Kent County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael J. Zimmer, Wickwire, Gavin & Gibbs, P.C., Suite 700, 1819 L Street, NW., Washington, D.C. 20036.

i. Comment Date: October 25, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing dam consisting of two earthen embankments and a concrete spillway. The dam is approximately 41 feet high and 550 feet long; (2) an existing reservoir with a surface area of 300 acres and a storage capacity of 2,800 acre-feet at powerpool elevation of 663.5 feet m.s.l.; (3) an existing powerhouse that would contain 1 proposed generating unit rated at 1,000 kW; (4) a proposed 300-foot, 46-kV transmission line; and (5) appurtenant facilities.

The dam is owned by the Charter Township of Cascade, Kent County, Michigan.

The estimated average annual energy output for the project is 7,500,000 kWh.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

7a. Type of Application: Exemption (5MW or Less).

b. Project No.: 6757-003.

c. Date Filed: May 7, 1984.

d. Applicant: C.T.I.P., Inc.

e. Name of Project: Dog River Project.

f. Location: On the Dog River in the Village of Northfield, Washington County, Vermont.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Robert P. Lord, Sr., C.T.I.P., Inc., 7 Belknap Avenue, Northfield, Vermont 05663.

i. Comment Date: October 25, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high, 90-foot-long concrete dam; (2) a reservoir with a surface area of 1.6 acres, a storage capacity of 8 acre-feet, and a normal water surface elevation of 689 feet m.s.l.; (3) an existing intake structure; (4) an existing 7-foot-diameter, 40-foot-long steel penstock; (5) an existing powerhouse containing two generating units (one proposed, one existing) with a total installed capacity of 228 kW; (6) an existing tailrace; (7) an existing transmission line; and (8) appurenant facilities. The Applicant estimates the annual generation would be 200,000 kWh.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3A.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and oepration of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

8a. Type of Application: License (5 MW or Less).

b. Project No.: 7490-001.

c. Date Filed: February 2, 1984.

d. Applicant: Commonwealth Hydroelectric, Inc.

e. Name of Project: Embrey Dam Hydroelectric Project.

f. Location: On the Rappahannock River in Stafford and Spotsylvania Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C.791(a)–825(r).

h. Contact Person: John K. Pollock, President, Commonwealth Hydroelectric, Inc., Route 1, Box 413, Afton, Virginia 22920.

i. Comment Date: November 8, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing reinforced concrete dam, which is approximately 22 feet high and 769 feet long; (2) an existing reservoir with a surface area of 80 acres and a storage capacity of 750 acre-feet at elevation of 52 feet m.s.l.; (3) a proposed reinforced concrete powerhouse containing 2 generating units rated at 1,500 kW each for a total installed capacity of 3,000 kW; (4) an existing power canal, which is 200 feet long and 24 feet high; (5) a proposed 34.5–kV transmission line that will interconnect with Virginia Electric & Power Company's line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 13,000,000 kWh.

The Embrey Dam is owned by the City of Fredericksburg, Virginia.

k. Purpose of Project: Power generated at the project would be sold to Virginia Electric & Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

9a. Type of Application: License (Under 5 MW).

b. Project No: 7978-000.

c. Date Filed: January 12, 1984 and supplemented May 21, 1984.

d. Applicant: Boulder Hydro.

e. Name of Project: Boulder Hydro Project.

f. Location: On the Boulder Creek and Copper Creek near Maxville, Granite County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. F. Lee Tavenner, Star Route, Hall, Montana 59837.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed run-of-river project would be located on 875 acres of federal lands entirely within the Deerlodge National Forest, Philipsburg District, Montana, and would consist of: (1) The proposed Boulder Creek diversion dam facilities consisting of a wooden dam approximately 1-foot-high and 15-foot-long having a small impoundment with negligible storage capacity and a proposed 6,400-foot-long and 18-inch diameter pipeline segment; and (2) the proposed Copper Creek diversion dam facilities consisting of a wooden dam approximately 1-foot-high and 12-foot-long having a small impoundment with negligible storage capacity and a proposed 1,750-foot-long and 15-inch diameter pipeline segment. At a point approximately 2,800 feet from the proposed powerhouse, the proposed Boulder Creek and Copper Creek pipeline segments join together and feed water into: (3) a third proposed segment of 3,000-foot-long and 18-inch diameter pipeline. This third pipeline segment leads to: (4) A proposed concrete powerhouse which would return the water back into Boulder Creek and which would contain one Pelton-type turbine and generator with an installed capacity of 500 kW; (5) a proposed 500-foot-long 25-kV transmission line to be connected into Montana Power Company's distribution system; and (6) appurtenant facilities. The Applicant estimates an average annual generation of 1,700 MWh. All project energy would be sold to Montana Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

10a. Type of Application: Exemption Under 5MW.

b. Project No: 8122-001.

c. Date Filed: August 16, 1984.

d. Applicant: R & D Power Company.

e. Name of Project: Placerville.

f. Location: On Iowa Canyon Creek, near Placerville, in El Dorado County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Mr. Ronn Coldiron, R & D Power Company, P.O. Box 4254, Mountain View, California 94040.

i. Comment Date: October 26, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An intake structure at an existing pool on Iowa Canyon Creek at elevation 2,000 feet msl; (2) a 40-inch-diameter, 11,080-foot-long headrace; (3) a 4-foot-deep, 12-foot-square concrete surge tank; (4) a 24-inch-diameter, 680-foot-long penstock; (5) a powerhouse containing a single turbine-generator unit with a rated capacity of 450 kW and an average annual generation of 0.656 GWh; (6) a concrete tailrace discharging to the South Fork American River; and (7) 1,000 feet of 12.0 kV transmission line to connect the project to a Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The project would be located on lands of Eldorado National Forest.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

11a. Type of Application: Preliminary Permit.

b. Project No: 8283-000.

c. Date Filed: May 3, 1984.

d. Applicant: Winnepisseoge Power Corporation.

e. Name of Project: Tilton/Northfield.

f. Location: Winnipesaukee River in Belknap County, New Hampshire.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Anthony Turchin, Winnepisseoge Power Corporation, P.O. Box 134, Franklin, New Hampshire 03235.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) Reconstruction of a breached, 140-foot-long, 10-foot-high, log crib and timber dam with 4-foot-high flashboards owned by the Applicant; (2) restoration of the historical 8.1-acre reservoir at an elevation of 456.25 m.s.l. from the current 452.25 m.s.l. elevation with virtually no pondage; (3) two proposed 6-foot high rip rap walls, with the northern wall being 584 feet long and the southern wall being 320 feet long; (4) a proposed powerhouse on the northern side containing three 200-kW turbine/generator units and a proposed powerhouse on the southern side containing two 200/kW turbine/generator units, for a total installed capacity for the development of 1.0 MW; (5) a proposed underground, 4.16-kV, 30-foot-long transmission line; and (6) appurtenant facilities. The estimated average annual generation would be 4,500 MWh.

k. Purpose of Project: Project power would be sold to Public Service Company of New Hampshire.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $22,000.

12a. Type of Application: Preliminary Permit.

b. Project No: 8306-000.

c. Date Filed: May 14, 1984.

d. Applicant: Donald K. Szarmach and Edward D. Szarmach.

e. Name of Project: Beardsley Park.

f. Location: On the Pequonnock River in Fairfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Donald K. Szarmach, 2295 Nichols Avenue, Stratford, Connecticut 06497.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 23.3-foot-high and 151-foot-long Beardsley Park Dam with a crest elevation of 48.37 feet mean sea level; (2) new 2-inch-high flashboards; (3) a small reservoir with a surface area of 2.67 acres; (4) an existing 103-foot-long channel at the west side of the dam; (5) a new concrete powerhouse with an installed capacity of 111 kW; (6) a new 250-foot-long and 1308-kV transmission line; and (7) other appurtenances. Existing facilities are owned by the City of Bridgeport. Applicant estimates an average annual generation of 350,049 KWh.

k. Purpose of Project: Project energy would be sold to Connecticut Light and Power or to United Illuminating.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 1 year during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,500.

13a. Type of Application: Preliminary Permit.

b. Project No: 8322–000.

c. Date Filed: May 25, 1984.

d. Applicant: China Flat Company.

e. Name of Project: Corona Power Project.

f. Location: On Cedar Creek, near town of Salyer, within the Six Rivers National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Albert E. Hodgson, China Flat Company, P.O. Box 269, Willow Creek, California 95573.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 10-foot-long diversion dam on Cedar Creek at elevation 3,350 feet msl; (2) a 3-foot-diameter, 13,000-foot-long diversion conduit; (3) a 2-foot-diameter, 6,500-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 3,000 kW operating under a head of 2,600 feet; and (5) an approximately 4,000-foot-long, 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 18 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

14a. Type of Application: Preliminary Permit.

b. Project No: 8326–000.

c. Date Filed: May 29, 1984.

d. Applicant: Windsor Machinery Company, Inc. and GSA International Corporation.

e. Name of Project: Hollowbrook Project.

f. Location: On the Hollow Creek in City of Peekskill, Westchester County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert A. Olson, ELI Corporation, 21 Green Street, Concord, New Hampshire 03301.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 75-foot-long concrete gravity dam; (2) a reservoir having a surface area of 4 acres, a storage capacity of 16-acre-feet, and normal water surface elevation of 35 feet msl; (3) a proposed 5-foot-diameter, 92-foot-long reinforced concrete penstock; (4) a proposed powerhouse containing one generating unit with an installed capacity of 75 kW; (5) an existing 4.8-kV transmission line 60 feet long; and (6) appurtenant facilities. The Applicant estimates the annual generation would be 350,000 kWh. The existing dam and project facilities are owned by the City of Peekskill, New York.

k. Purpose of Project: All project energy generated would be sold to Consolidated Edison Company of New York.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $14,000.

15a. Type of Application: Preliminary Permit.

b. Project No: 8346–000.

c. Date Filed: June 4, 1984.

d. Applicant: Charleroi Associates.

e. Name of Project: Monongahela Lock & Dam No. 4.

f. Location: On the Monongahela River in the Charleroi, Washington and Westmoreland Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Joel Kirk Rector, Charleroi Associates, CFS Financial Corporation, 324 South State Street No. 500, Salt Lake City, Utah 84111.

i. Comment Date: November 8, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Monongahela Lock & Dam No. 4 and Reservoir and would consist of: (1) A 12-foot-diameter, 10-foot-long steel penstock; (2) a proposed powerhouse containing two generating units having a total installed capacity of 10,000 kW; (3) existing tailrace; (4) a proposed 2,500-foot-long, 12.5-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the annual generation would be 50 GWh.

k. Purpose of Project: All project energy generated would be sold to either a local utility or a municipality.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $115,000.

16a. Type of Application: License (Under 5 MW).

b. Project No: 8350–000.

c. Date Filed: June 6, 1984.

d. Applicant: Littleville Power Company, Inc.

e. Name of Project: Littleville Dam.

f. Location: Middle Branch of the Westfield River in Hampden and Hampshire Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Peter Tucker, 9 Orange Street, Marcellus, New York 13108 and David Newman, P.O. Box 550, Westfield, Massachusetts 01086.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers' Littleville Lake Dam and outlet works and would consist of: (1) New trashracks; (2) a new 4-foot-diameter and 52-foot-long steel penstock; (3) a new reinforced concrete powerhouse, with 2 turbine-generator units, with a total installed capacity of 1,060 kW; (4) a new 200-foot-long tailrace; (5) a new substation; (6) a new 13.8-kV and 3,500-foot-long transmission line; and (7) other appurtenances.

Applicant estimates an average annual generation of 3,050,000 kWh.

k. Purpose of Project: Project energy would be sold to Western Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

17a. Type of Application: Preliminary Permit.

b. Project No: 8368-000.

c. Date Filed: June 18, 1984.

d. Applicant: Seaward Development-Hart Island Associates.

e. Name of Project: Hart Island Project.

f. Location: On the Connecticut River in Sullivan County, New Hampshire and Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: E.J. Garceau, Seaward Construction Co., Inc., P.O. Box 1011, Portsmouth, NH 03801.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A new 50-foot-high and 1300-foot-long concrete dam with a gated spillway; (2) a proposed reservoir having a surface area of 850 acres, a storage capacity of 12,500-acre-feet and a normal water surface elevation of 325.0 feet msl; (3) a proposed intake structure; (4) a proposed powerhouse containing one generating unit having an installed capacity of 20 MW; (5) a proposed tailrace; (6) a proposed transmission line; and (7) appurtenant facilities. The Applicant estimates the annual generation would be 95,000 MWh.

k. Purpose of Project: All project energy generated would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $400,000. In the work plan, the Applicant proposes to take a few drill holes and auger holes to determine the character and depth of overburden and bedrock. The applicant does not expect to disturb or alter any lands or water but if any lands should become altered or disturbed it would be adequately restored.

18a. Type of Application: Preliminary Permit.

b. Project No: 8384-000.

c. Date Filed: June 22, 1984.

d. Applicant: Bel Air Hydropower Associates.

e. Name of Project: Atkisson Dam Project.

f. Location: On the Winters Run and the Plumb Tree Run, in Harford County, Maryland.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert Hedden, Hedden Group, Ltd., 1701 Frederick Road, Baltimore, MD 21228.

i. Comment Date: November 13, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Atkisson Dam and Reservoir and would consist of: (1) A proposed 6-foot-diameter, 30-foot-long steel penstock; (2) a proposed powerhouse containing two generating units having a total installed capacity of 250 kW and; (3) appurtenant facilities. The Applicant estimates the annual generation would be 800,000 kWh.

k. Purpose of Project: All project energy generated would be sold to Baltimore Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $25,000.

19a. Type of Application: Preliminary Permit.

b. Project No: 8387-000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEK, Inc.

e. Name of Project: Vega Dam.

f. Location: On Plateau Creek, in Mesa County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Flake H. Wells, III, PRODEK, Inc., P.O. Box 12608, El Paso, Texas 79912.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Vega Dam and Reservoir and would consist of: (1) A new powerhouse located at the stilling basin of the dam; (2) a second powerhouse located at the existing concrete wasteway with the total rated capacity of both powerhouses—each containing one or more generating units—being 650 kW; (3) an existing 7.2-kV, 14-mile long transmission line owned by Grand Valley Rural Power Lines, Inc.; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2.3 GWh.

k. Purpose of Project: The energy derived from the proposed project would be sold to an established electric utility.

l. This notice also consists of the following standard paragraphs: A5, A7, B, D, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates the cost of the work to be performed under the preliminary permit would be $90,000.

20a. Type of Application: Preliminary Permit.

b. Project No: 8390-000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEK, Inc.

e. Name of Project: Paonia Dam.

f. Location: On Muddy Creek in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, III, Post Office Box 12608, El Paso, Texas 79912.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation Paonia Dam and would consist of: (1) A welded steel pressure pipe extending the existing pipe; (2) a new powerhouse containing one or more generating units having a total rated capacity of 1,670 kW; (3) an existing 7.2 kV, 3-mile-long transmission line owned by Delta-Montrose Rural Power Lines Association; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7.7 GWh.

k. Purpose of Project: The most likely market for the energy derived from the proposed project would be an established electric utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would consist of engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000 to $90,000.

21a. Type of Application: Preliminary Permit.

b. Project No: 8391-000.

c. Date Filed: June 22, 1984.

d. Applicant: PRODEK, INC.

e. Name of Project: Silver Jack Dam.

f. Location: On Cimarron Creek, in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Flake H. Wells, III, PRODEK, INC., P.O. Box 12608, El Paso, Texas 79912.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Silver Jack Dam and reservoir and would consist of: (1) A new powerhouse containing one or more generating units having a total rated capacity of 1 MW; (2) an existing 7.2-kV, 3-mile-long transmission line owned by Delta-Montrose Electric Association; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2.5 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be an established operating utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $65,000.

22a. Type of Application: Preliminary Permit.

b. Project No: 8429-000.

c. Date Filed: July 13, 1984.

d. Applicant: Aliceville Hydro Associates.

e. Name of Project: Aliceville Lock and Dam Hydro Project.

f. Location: On the Tombigbee River near Pickensville, Pickens County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Ave., Suite 409, Annapolis, Maryland 21403.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Aliceville Lock and Dam and an existing 6,000-foot-long and 180-foot-wide diversion channel, and would consist of: (1) A new powerhouse approximately 200 feet by 200 feet located on the west side of the river in the existing diversion channel; (2) a proposed 44-kV transmission line approximately 10 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates the total installed plant capacity to be 10 MW with an annual power generation of approximately 27 GWh. All power generated would be sold to Alabama Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $150,000.

23. a. Type of Application: Preliminary Permit.

b. Project No.: 8432-000.

c. Date Filed: July 17, 1984.

d. Applicant: Cook Electric.

e. Name of Project: Hurricane Creek.

f. Location: In Wallowa National Forest, On Hurricane Creek a tributary of the Wallowa River, in Wallowa County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Dale Hatch, Cook Electric Incorporated, P.O. Box 1071, Twin Falls, Idaho 83303-1071.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high concrete intake at elevation 5,120 feet; (2) a 11,880-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing four generating units with a capacity of 3,950 kW and an average annual generation of 16,230 MWh; and (4) a 16,900-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $27,800. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

24. a. Type of Application: Preliminary Permit.

b. Project No.: P-8437-000.

c. Date Filed: July 16, 1984.

d. Applicant: Jerry B. Buckley.

e. Name of Project: Devils Gate Water Power.

f. Location: On Clear Creek, in Clear Creek County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: William J. Kenney, Esq., Suite 209, 2600 Virginia Ave., NW., Washington, D.C. 20037.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of all new construction facilities as follows: (1) A concrete overflow structure, approximately 25-feet long by 5-feet high; (2) an impoundment of approximately 0.2 acre-feet and normal water surface elevation of approximately 9040 feet, m.s.l.; (3) approximately 7200 feet of penstock, 42-inches in diameter; (4) a powerhouse approximately 20-feet by 40-feet, housing four turbine/generator units with a total installed capacity of 3,000 kW; (5) a tailrace channel about 50-feet long; (6) about 300-feet of 25-kV transmission line; and (7) appurtenant facilities. Applicant estimates that the average annual energy generation would be 8,000,000 kWh.

k. Purpose of Project: The applicant anticipates that project energy will be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $15,000 to $25,000.

25a. Type of Application: Preliminary Permit.

b. Project No: 8443-000.

c. Date Filed: July 17, 1984.

d. Applicant: Poorman Hydro.

e. Name of Project: Poorman Creek.

f. Location: On Poorman Creek, South Fork Poorman Creek, Devil Canyon and Deadman Canyon in Nevada County, California; within Tahoe National Forest.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James Haggard, 748 West Street, Redding, California 96001.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) An intake structure diverting water from Poorman Creek at elevation 3,470-foot into a 12,600-foot-long, 42-inch-diameter conduit; (2) an intake structure diverting water from South Fork Poorman Creek at elevation 3,400 feet, into a 4,800-foot-long, 30-inch-diameter conduit; (3) a 700-foot-long, 42-inch-diameter penstock; (4) Powerhouse No. 1 at elevation 3,015 feet; (5) an intake structure diverting water from Poorman Creek at elevation 3,005 feet, into a 10,500-foot-long, 48-inch-diameter conduit which would also carry the discharge from Powerhose No. 1; (6) an intake structure diverting water from Devil Canyon at elevation 3,200 feet, into a 6,800-foot-long conduit; (7) an intake structure diverting water from Deadman Canyon at elevation 3,185 feet into a 100-foot-long conduit; (8) a 2,700-foot-long, 42-inch-diameter penstock, (9) Powerhouse No. 2 at elevation 2,700 feet; and (10) a 0.625-mile-long transmission line connecting Powerhouse No. 1 and a 0.825-mile-long transmission line connecting Powerhouse No. 2 to an existing Pacific Gas and Electric Company (PG&E) transmission line. The total installed capacity of Powerhouse No. 1 and Powerhouse No. 2 would be 2,000 kW.

k. Purpose of Project: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would conduct engineering, hydrological, economic and environmental studies; conduct negotiations with the utility; and prepare FERC license application. No new roads are required to conduct the studies. The cost of studies to be completed for preliminary permit is estimated to be $25,000.

The estimated 20 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

26 a. Type of Application: Preliminary Permit.

b. Project No: 8451-000.

c. Date Filed: July 20, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Upper Power Project.

f. Location: On Slate Creek, near town of Lamoine, within Shasta-Trinity National Forest, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, California 96002–2319.

i. Comment Date: November 23, 1984.

k. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 60-foot-long diversion dam on Slate Creek at elevation 4,000 feet; (2) a 3-foot-diameter, 21,000-foot-long diversion conduit; (3) a 3-foot-diameter, 7,600-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 5,000 kW operating under a head of 1,880 feet; and (5) an approximately 5.5-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 14 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $127,600.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

27 a. Type of Application: Preliminary Permit.

b. Project No: 8452-000.

c. Date Filed: July 20, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: South Power Project.

f. Location: On South Fork Slate Creek, near town of Lamoine, within Shasta-Trinity National Forest, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, California 96002–2319.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 42-foot-long diversion dam on South Fork Slate Creek at elevation 2,680 feet; (2) a 20-inch-diameter, 2,060-foot-long diversion conduit; (3) a 20-inch-diameter, 3,065-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 450 kW operating under a head of 520 feet; and (5) an approximately 5-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.2 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $61,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

28 a. Type of Application: Preliminary Permit.

b. Project No: 8453-000.

c. Date Filed: July 20, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: North Power Project.

f. Location: On North Fork Slate Creek, near town of Lamoine, within the Shasta-Trinity National Forest, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, California 96002–2319.

i. Comment Date: November 15, 1984.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 36-foot-long diversion dam on North Fork Slate Creek at elevation 3,150 feet; (2) a 14-inch-diameter, 1,015-foot-long diversion conduit; (3) a 14-inch-diameter, 5,696-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 450 kW operating under a head of 1,230 feet; and (5) an approximately 4.5-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric

Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.2 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application estimated cost of $58,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

29 a. Type of Application: Preliminary Permit.

b. Project No: 8472-000.

c. Date Filed: July 30, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Kutras Power Project.

f. Location: On Clear Creek, near French Gulch, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Ave., Redding, California 96002–2319.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 86-foot-long diversion dam on Clear Creek at elevation 2,860 feet; (2) a 42-inch-diameter, 3,850-foot-long diversion conduit; (3) a 42-inch-diameter, 26,700-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,960 kW operating under a head of 840 feet; and (5) an approximately 14-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 13.9 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $191,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

a. Type of Application: Preliminary Permit.

b. Project No: 8476–000.

c. Date Filed: July 30, 1984.

d. Applicant: Gardner O. Davis & Anne Davis.

e. Name of Project: Davis Hydroelectric Project.

f. Location: On Mill Seat Creek, near Shingletown, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gardner & Anne Davis, P.O. Box 354, Shingletown, California 96088.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed project would consist of: (1) A 12-foot-long, 4-foot-deep inlet structure on Mill Seat Creek at an approximate elevation of 3,540 feet; (2) a 3-foot-diameter, 290-foot-long conduit; (3) a 3-foot-diameter, 40-foot-long penstock; (4) a powerhouse with a total installed capacity of 15 kW operating under a head of 5.5 feet; and (5) an approximately 600-foot-long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 79,000 kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of an 18-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $30,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

a. Type of Application: Preliminary Permit.

b. Project No: 8485–000.

c. Date Filed: August 1, 1984.

d. Applicant: Rocky Mountain Hydro, Inc.

e. Name of Project: Bradbury.

f. Location: At Bradbury Dam on the Santa Ynez River, near Santa Ynez, in Santa Barbara County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael L. Raisch, 4065 South Roslyn Street, Denver, Colorado 80237

i. Comment Date: November 16, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's (USBR) Bradbury Dam (formerly Cachuma Dam) outlet works and would consist of: (1) Modification of the existing valve house to divert flow normally discharged through hollow jet valves to a hydraulic turbine; (2) a powerhouse containing a single turbine-generator unit with an installed capacity of 500 kW and producing an estimated average annual generation of 3.0 GWh; and (3) a 0.3-mile-long, 12.5-kV transmission line. The proposed project would be located entirely on USBR lands. Project power would be sold to a private or public utility. All reservoir releases through the powerhouse will be determined by the USBR and Santa Ynez Water Conservation Districts release requirements.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

32a. Type of Application: Preliminary Permit.

b. Project No: 8499–000.

c. Dated Filed: August 7, 1984.

d. Applicant: City of Redding, California.

e. Name of Project: Spring Creek Pumped Storage.

f. Location: On Spring Creek and Sacramento River, near Keswick, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Courtney, City Manager, City of Redding, 760 Parkview Avenue, Redding, California 96001.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed pumped storage project would consist of: (1) a storage reservoir on Spring Creek formed behind a 120-foot-high dam with a surface area of 33 acres, an active storage capacity of 1,700 acre-feet, and a normal surface elevation between 1,760 and 1,640 feet msl; (2) an 8-foot-wide, 10-foot-high, 660-foot-long intake structure; (3) a 200-foot-long intake conduit with a hydraulic capacity of 1,650 cfs; (4) a 20-foot-diameter, 8,800-foot-long penstock; (5) a powerhouse/pump station containing motor/generator and pump/turbine units with a total installed capacity of 110 MW and producing an estimated average annual generation of 480 GWh; and (6) a 3-mile-long, 115-kV transmission line to interconnect the project to an existing 60-kV City of Redding line which would be upgraded to 115-kV. The project would pump water from Lake Keswick on the Sacramento River to supplement Spring Creek's inflow to the proposed reservoir. Stored water would be released for power generation during peak demand periods. The project would be partially located on U.S. Bureau of Reclamation lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies of $590,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

33a. Type of Application: Preliminary Permit.

b. Project No: 8503–000.

c. Dated Filed: August 9, 1984.

d. Applicant: Noble Ridge Hydro, Ltd.

e. Name of Project: Noble Ridge.

f. Location: On Beegum Creek, near Platina, in Tehama County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: November 19, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 5-foot-high diversion weir located across Beegum Creek at elevation 1,855 feet msl; (2) a 9,150-foot-long pipeline with a hydraulic capacity of 170 cfs; (3) a 48-inch-diameter, 475-foot-long penstock; (4) a powerhouse with an installed capacity of 3.2 MW located at elevation 1,630 feet msl; and (5) 2.0 miles of 12.5-kV transmission line to interconnect the project with an existing Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The project would generate an average 15.8 GWh of energy annually. The project would occupy Bureau of Land Management and Trinity National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies of $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

34a. Type of Application: Preliminary Permit.

b. Project No: 8518–000.

c. Date Filed: August 13, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Hamilton Branch.

f. Location: On Hamilton Branch, near Westwood, in Lassen County, California.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002.

i. Comment Date: November 16, 1984.

j. Description or Project: The proposed project would consist of: (1) An intake structure located 300 feet southwest of Indian Ole Dam at elevation 5, 043 feet msl; (2) a screened siphon inlet structure constructed within Mountain Meadows Reservoir; (3) utilization of the existing Pacific Gas and Electric Company's (PG&E) intake tower and discharge gate located at Indian Ole Dam as an alternative to (1) and (2) above; (3) and 84-inch-diameter, 5,560-foot-long diversion conduit; (4) and 84-inch-diameter, 5,420-foot-long steel pipe penstock; (5) a powerhouse located on Hamilton Branch at elevation 4,925 feet msl with an installed capacity of 1,600 kW and producing an estimated average annual generation of 11.2 GWh; and (6) 1,000 feet of 12.0-kV transmission line to interconnect to an existing PG&E line. The project would utilize waters released from Mountain Meadows Reservoir by PG&E for use in their existing Hamilton Branch powerhouse and would be designed so as to not interfere with existing reservoir operations.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $76,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

35 a. Type of Application: Preliminary Permit.

b. Project No: 8537–000.

c. Date Filed: August 20, 1984.

d. Applicant: Pure Energy Company.

e. Name of Project: Patria.

f. Location: On Wolf Creek, near Bridgeport, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, P.O. Box 11154, Beverly Hills, California 90213.

i. Comment Date: November 13, 1984.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 5-foot-high diversion weir located across Wolf Creek at elevation 8,200 feet msl; (2) a 12-inch-diameter, 6,400-foot-long penstock; (3) a powerhouse with an installed capacity of 450 kW located at elevation 6,850 feet msl; and (4) 2.0 miles of 12.5-kV transmission line to interconnect the project with an existing Southern California Edison Company (SCEC) line. Project power would be sold to SCEC. The project would generate an average 1.3 GWh of energy annually. The project would occupy Toiyabe National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $70,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either: (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*)-Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 18, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–25159 Filed 9–20–84; 8:45 am]

BILLING CODE 6717–01–M

Bonneville Power Administration

Residential Weatherization Contract Amendments Containing Retroactive Reimbursement Provisions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Residential Weatherization Contract Amendments.

SUMMARY: In accordance with the terms of the Settlement Agreement in *Pennwalt* v. *Johnson*, Docket Nos. 83–7732 and 84–7050, U.S. Court of Appeals for the Ninth Circuit, Bonneville Power Administration gives notice that it intends to issue an amendment to its existing Long-Term Residential Weatherization Contract That provides for retroactive payment for wall insulation and previously restricted house tightening measures for the period beginning December 5, 1980, to the effective date of the amendment.

Responsible Official: Mr. Steven G. Hickok, Assistant Administrator for Conservation, is the official responsible for Conservation Acquisition Contracts.

DATES: BPA intends to issue Residential Weatherization Contract Amendment containing retroactive reimbursement provisions no later that September 28, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon, 97212; telephone 503–230–3478. Oregon callers outside of Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. Paul Johnson, Program Manager for Residential Weatherization, 1002 NE Holladay Street, Portland, Oregon 97208, 503–230–4125.

Issued in Portland, Oregon on September 14, 1984.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 84–22013 Filed 9–20–84; 11:33 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–2676–2]

Availability of Environmental Impact Statements Filed September 10, 1984, Through September 14, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

EIS No. 840408, Draft, FHW, MN, TH-33 Improvements, I–35 to TH–53, Carlton and St. Louis Counties, Due: November 5, 1984, Contact: Roger Borg (612) 725–7001.

EIS No. 840409, Final, FHW, CO, South Platte River Crossing, Construction, Platte Canyon Road to Santa Fe Drive, Arapahoe and Jefferson Counties, Due: October 22, 1984, Contact: Kenneth Downey (303) 234–4425.

EIS No. 840410, Final, FHW, FL, 39th Avenue Improvement, I–75 to Gainesville Regional Airport, Alachua County, Due: October 22, 1984, Contact: P.E. Carpenter (904) 681–7223.

EIS No. 840411, Final, BLM, NV, Egan Resource Area, Resource Management Plan, White Pine, Nye and Lincoln Counties, Due: October 22, 1984, Contact: Howard Hedrick (702) 289–4865.

EIS No. 840412, Final, EPA, KS, Metropolitan Topeka Wastewater Treatment Facilities, Grant, Shawnee County, Due: October 22, 1984, Contact: Mary O'Donnell (816) 375–5593.

EIS No. 840413, Final, FHW, OR, Corvallis-Lebanon Highway/OR–34 Improvements, Lake Creek to Pacific Highway/I–5, Linn County, Due: October 22, 1984, Contact: Dale Wilken (503) 399–5749.

EIS No. 840414, Draft, USN, ATL, VA, Navy Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS II), Operation, Chesapeake Bay and Atlantic Ocean, Due: November 5, 1984, Contact: Lt. Cdr. Arnold R. Gritzke (202) 692–2096.

EIS No. 840415, DSuppl, COE, CA, Walnut Creek Flood Control Plan, Contra Costa County, Due: November 21, 1984, Contact: Mike Welsh (916) 840–2456.

EIS No. 840416, DSuppl, COE, CA, Sacremento River Bank Protection, Project, Butte and Glenn Counties, Due: November 21, 1984, Contact: Mike Welsh (916) 440–2456.

Amended Notices:

EIS No. 840392, Draft, FS, UT, WY, Wasatch-Cache National Forest Land and Resource Management Plan, Published FR 9–7–84—Officially WITHDRAWN.

EIS No. 810577, Draft, SCS, IA, Hacklebarney Watershed Protection Plan, Adams and Montgomery Counties, Published FR 7–31–81—Officially Withdrawn.

Dated: September 21, 1984.

Dave Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84–25126 Filed 9–20–84; 8:45 am]

BILLING CODE 6560–50–M

[AH–FRL 2676–4]

Air Pollution Control; Control Techniques Guideline Document VOC Emissions From Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of final control techniques guideline (CTG) document.

SUMMARY: Final CTG documents for control of volatile organic compounds (VOC) from volatile organic liquid (VOL) storage in floating and fixed roof tanks is available. The final CTG document provides guidance for the States in determining reasonably available control technology (RACT) for VOC emissions from VOL storage in floating and fixed roof tanks.

ADDRESSES: Copies of the final CTG document may be obtained by contacting the Environmental Research Library (MD–35), (919) 541–2777, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Please refer to "Guideline Series—Control of Volatile Organic Compound Emissions from Volative Organic Liquid Storage in Floating and Fixed Roof Tanks," EPA–450/3–84–005. Comments received on the draft CTG document are attached as an appendix to the final CTG document and are also available for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday, at the Chemicals and Petroleum Branch, Room 730, U.S. Environmental Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. J.F. Durham, (919) 541–5671, Chemicals and Petroleum Branch (MD–13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On August 22, 1983 (45 FR 38086), the EPA announced the availability for public review of the draft CTG document for VOC emissions from internal and external floating roof tanks and fixed roof tanks storing VOL.

The draft CTG defined reasonably available control technology (RACT) for fixed roof tanks as the installation of an internal roof with gasketed fittings. For tanks which already have internal floating roofs, the draft CTG defined RACT as gasketed fittings on the roof. For external floating roof tanks RACT was defined as the installation of secondary seals. The RACT size cutoff for fixed and internal floating roof tanks was 40,000 gallons and the vapor pressure cutoff was 1.0 psia. The RACT size and vapor pressure cutoffs for external floating roof tanks were 40,000 gallons and 1.5 psia, respectively.

Twenty-eight comment letters were received from industry representatives, trade groups, and State regulatory agencies. The major comments concerned the annual turnover rate used in determining the RACT tank size and vapor pressure cutoffs. Several commenters stated that the emission estimates in the draft CTG for some fixed roof tanks are too high because they are based on uncharacteristically high turnover rates. The cost effectiveness of RACT for fixed roof tanks is sensitive to the number of turnovers, the tank size, the product vapor pressure, and the product value. These parameters can vary considerably from tank to tank. For these reasons, the final CTG provides States with procedures for calculating emissions reductions and cost effectiveness of RACT for individual tanks. States are given the discretion to establish their own cutoffs based on their control needs and their judgments about reasonable cost effectiveness.

Other changes made to the draft CTG document in response to comments primarily concerned the cost of the seals used in the cost-effectiveness calculations. These changes included an increase in the installed capital cost for liquid-mounted primary seals and a decrease in the lifetime of the primary seal.

The CTG document is part of the third group of CTG documents published to assist the States in determining RACT for various stationary sources of VOC emissions. CTG documents provide State and local air pollution control agencies with an initial information base for proceeding with their own analysis of RACT for specific source categories of VOC emissions located within areas where an extension was granted for the attainment of the national ambient air quality standard (NAAQS) for ozone. The CTG documents review existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions.

This CTG is not a "rule" as defined by the Administrative Procedure Act (5 U.S.C. 551 et seq.). It is a "rule" for purposes of Executive Order 12291, because it is designed to implement an EPA policy. Under Executive Order 12291, the EPA must judge whether a rule is "major" and, therefore, subject to the requirements of a regulatory impact analysis. The CTG documents are not "major rules" because they do not impose any new requirements. This notice and the final CTG document were submitted to the Office of Management and Budget (OMB) for review. Any comments from the OMB to the EPA and any EPA responses to those comments are available for public inspection. See the **ADDRESSES** section of this notice for the times and addresses.

Dated: July 25, 1984.

John C. Topping, Jr.,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84–25108 Filed 9–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00182; PH-FRL 2677-2]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meetings of Working Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

DATES: The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, October 9 and 10, 1984. The Working Committee on Registration and Classification will meet on Thurday and Friday, October 11 and 12, 1984. The meetings of both committees will start at 8:30 a.m. each day. The final meeting will conclude by 12 noon Friday, October 12.

ADDRESS: The meetings will be held at: Econo Lodge, 1076 Williston Rd., South Burlington, VT, (802-863-1125).

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096.

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Authority of State inspectors with EPA credentials on Federal lands.
2. Wood preservatives certification and training.
3. Compound 1080 certification and training update.
4. Proposed University of Minnesota and Texas A&M University grain fumigation symposium.
5. Disposal matters, including EPA-State Ad Hoc Group activities and January 1985 symposium.
6. Ground water protection matters, including EPA strategy, pesticide label requirements, and joint EPA-State protocol for priority concerns.
7. Chemigation matters, including the planned EPA policy statement, the proposed survey, and the proposed training manual.
8. OPP comments on AAPCO bulk pesticide storage guidelines.
9. Vegetable oil as a diluent: status of EPA policy document.
10. Guideline air levels for termiticides and fumigants.
11. Agricultural worker protection fact sheets status report.
12. Training material repository status report.
13. Suspended and cancelled pesticide publication status report.
14. Certification and training funding concerns.
15. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Registration of chlorine gas for swimming pools.
2. Use of termiticides at less than label dosage.
3. LIP Notice for currently registered grain fumigants.
4. Standard Operating Procedure for the rescission of Restricted Use Pesticide classification.
5. Labeling of products used in irrigation systems.
6. Development of a policy to strengthen EPA's oversight of advertising of pesticide registrations and land uses.
7. Procedures for transmitting Experimental Use Permit information to the States.
8. Clarification of the definition of plant growth regulators.
9. Use of vegetable oil as a diluent: status of EPA policy document.
10. Unenforceable label language.
11. Establishment of group tolerances by the rulemaking process.
12. Classification of granular formulations of certain agricultural pesticides; classification of uses of certain grain fumigants.
13. Audit of section 24(c) registrations issued by States.
14. Agricultural worker protection fact sheets status report.
15. Availability of the final printed label to the States.
16. Section 18 negotiated rulemaking.
17. Status of data requests for use of chlordane/heptachlor to control termites in institutional structures.
18. Tamper proof bait boxes.
19. Other topics as appropriate.

Dated: September 13, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-25217 Filed 9-20-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 84-865, et al.; File Nos. BPCT-831205KH, et al.]

Agape Communications, Inc. et al.; Hearing Designation Order

In re Applications of Scott Neisler (MM Docket No. 84-865, File No. BPCT-831205KH), Agape Communications, Inc. (MM Docket No. 84-866, File No. BPCT-840313KE), Jimmy Allison (MM Docket No. 84-867, File No. BPCT-840404KG), Gabriel Broadcasting Company, Inc. (MM Docket No. 84-868, File No. BPCT-840413KF), State W. Alexander, III, et. al. d/b/a Piedmont Crescent Broadcasting Company (MM Docket No. 84-869, File No. BPCT-840413KH), Lenore Tucker and Poplar Apartment, Inc. d/b/a Belmont Telecasters, Ltd. (MM Docket No. 84-870, File No. BPCT-840413LA), Elyse G. Wander d/b/a Wander Broadcasting of Belmont (MM Docket No. 84-871, File No. BPCT-840413LB), Acts of Metrolina, Inc. (MM Docket No. 84-872, File No. BPCT-840413LC), Metro Broadcasting, Ltd. (MM Docket No. 84-873, File No. BPCT-840413LD), For construction permit, Belmont, North Carolina.

Adopted: August 31, 1984.

Released: September 14, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 46, Belmont, North Carolina: petitions to deny the applications of Scott Neisler (Neisler), Gabriel Broadcasting Company, Inc. (Gabriel),[1] Piedmont Crescent Broadcasting Company (Piedmont) and Belmont Telecasters, Ltd. (Telecasters) filed by WCCB-TV, Inc. (WCCB), licensee of Station WCCB-TV, Charlotte, North Carolina; and related pleadings.

2. Charlotte is within the predicted Grade A contour of Neisler's, Piedmont's and Telecaster's proposed facilities. Therefore, WCCB claims standing as a "party in interest" under Section 309(d) of the Communications Act, as amended, on the grounds that it would compete with the successful applicant for audience and revenues. Piedmont and telecasters dispute WCCB's claim of standing, contending that WCCB has not demonstrated that it will suffer economic harm by a grant of either application. Since WCCB and the applicants will compete in the same

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[1] WCCB's petition to deny Gabriel's application states that Gabriel's proposed transmitter site is short-spaced under Section 73.610 of the Commission's Rules. Gabriel amended its application on June 4, to comply with § 73.610. Accordingly, the petition will be dismissed as moot, as to Gabriel.

market, WCCB may suffer a diversion of revenues to the successful applicant for Channel 46. Therefore, we find that WCCB has standing. *F.C.C.* V. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693 (1940); *Marion U. Moore*, 16 FCC 2d 351, 352 (1969).

3. WCCB filed the petition to deny Neisler's application on April 16, 1984. The petitioner alleges that Neisler has not answered item 5(a), Section II, FCC Form 301, as to each general and limited partner and has, therefore, failed to establish his legal qualifications. WCCB further alleges that Neisler is in violation of § 73.3518 of the Commission's Rules as to inconsistent applications, because Neisler has filed a low power television application for Channel 46, Belmont, North Carolina. Finally, WCCB contends that Neisler's staffing proposal is unrealistic because it cannot be effectuated with a staff of less than 5 full-time employees.

4. Neisler's low power television application was dismissed for lack of the engineer's original signature. However, even if that were not the case, the filing of a full service television application and a low power television application is not inconsistent with the Commission's Rules. If the low power station were to go on the air first, it would provide service until a full service station was granted authorization. With reference to Neisler's staffing proposal, the application form no longer asks for the total number of employees, indicating a lessened Commission interest in this area. Clearly, the experience of the broadcaster after the beginning of operation will dictate the precise number of employees. In some cases, however, staffing issues have been specified where applicants coupled long broadcast weeks, including extensive local originations, with a staffing plan of less than five employees. A concern in such cases is that the low number of employees may have been selected to avoid filing Section VI of the application as to equal employment opportunities. We believe EEO programs should be considered at the application stage. In this case, however, Neisler reviewed his staffing plans, submitted an amendment stating that he will increase the number of employees to meet his needs, and submitted a Section VI for review. Given the Commission's lessened concern in this area, we conclude that no staffing issue is warranted in the circumstances presented.

5. In Section I, item 1. Neisler indicates that the applicant is a limited partnership. Neisler is a 55% general partner and, by amendment on April 13, 1984, Jigger Robinson is shown as a 45% general partner. Neisler did not indicate that the partnership had changed from a limited to a general partnership, nor has he identified the limited partners. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Corporate Ownership and Disclosure*, 55 R.R. 2d 1465 (1984) (reconsideration pending), the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and" if the limited partner is not involved in any material respect in the business or operation of the station." *Id.* at 1485 and § 73.3615(a)(2). Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there may be no need to provide information as to the limited partners if Neisler can submit the necessary certifications and other information as to any cross-interests as described below. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Accordingly, Neisler will be required either to state that the limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature or extent of the limited partner's interest.

6. WCCB alleges that Piedmont's application violates the "one-to-a-market" rule (§ 73.3555 of the Commission's Rules) as well as the television-cable TV cross-ownership rule (§ 76.501 of the Rules). Robert R. Hilker and William R. Rollins are limited partners in Piedmont, each having a 40% equity interest. Hilker is also Chief Executive Officer, Treasurer, Assistant Secretary, Director and 51.68% stockholder of Central Broadcasting Company (Central), licensee of Station WCGC(AM), Belmont, North Carolina. Rollins is Chief Operating Officer, President, Secretary, Assistant Treasurer, Director and 18.16% stockholder of Central. Hilker also owns 10% of the stock of Lake Cable TV, Inc., operator of cable television systems in various communities which would be within the predicted Grade B contour of the proposed Belmont television station. WCCB also asserts that, under Note 4 to Section 73.3555 of the Rules, those seeking new UHF stations in a market, and who control an existing radio station in that market, must submit a showing as to why common ownership of the radio station and the proposed new UHF station would be consistent with the public interest. No such showing has been submitted in this case, so WCCB urges that the application must be dismissed. WCCB also notes that Messrs. Hilker and Rollins will contribute 80 percent of the equity for the new station, another limited partner will pay in 15 percent, while the general partner will contribute only five percent. Given the large amount of equity contributed by Messrs. Hilker and Rollins, WCCB concludes that they will be able to control the finances of the proposed station and hence should be considered to have control. Last, WCCB asserts that the Commission has reviewed in hearing putative passive interests to determine whether there is a violation of the multiple ownership rules and their underlying policies. WCCB urges such a hearing in this case.

7. In opposition, Piedmont observes that passive investment interests are considered nonattributable under the multiple ownershp rules. It has certified that its limited partnership agreement is consistent with the ULPA, so Piedmont concludes that the investment of Messrs. Hilker and Rollins must be considered passive. Piedmont also asserts that the petitioner's allegations have become moot because of an amendment to the application in which Messrs. Hilker and Rollins state that if Piedmont is the successful applicant in the comparative proceeding, they will divest all interests in station WCGC "if such a divestiture is required by the Commission's Rules." Such representations, according to Piedmont, have been found sufficient to remove any attribution of the Hilker-Rollins interests for the purposes of the comparative hearing.

8. As noted the Commission has expressly held that limited partnership interests are nonattributable where the limited partnership agreement comports with the ULPA and the limited partner is not "involved in any material respect in the business or operation of the station." Para. 5, *supra*. Although Piedmont has certified as to its conformance to the ULPA, it has not shown that the limited partners will not be "materially

involved." Accordingly, an issue will be specified. However, the issue need not be tried if the neccessary certification is submitted. In setting its new attribution standards, however, the Commission did not revise its cross-interest policy. *Id.* at 1490. The Commission has previously reviewed in a hearing the passive investments of the owner of a radio station in a new UHF station in the same area. *Cleveland Television Corporation,* 91 FCC 2d 1129 (Rev. Bd. 1982), *aff'd,* FCC 83–235, released May 18, 1983, aff'd, 732 F.2d, 962 (D.C. Cir. 1984). In that case, the owner of a radio station would be contributing up to 44 percent of the paid-in capital for a new UHF station in the same market, but held only nonvoting stock.[2] Another experienced broadcaster, but without any broadcast interests in the area of the proposed new television station, would be contributing up to 55 percent of the paid-in capital. It was the intention of the majority owner to insulate totally the nonvoting shareholder from "any responsibility for or involvement in the operation" of the proposed station. 732 F.2d at 967–68. In these circumstances, the Commission and the court affirmed the Review Board's finding of no violation of the cross-interest policy.

9. In this case, the general partner will provide only five percent of the paid-in capital, while the two limited partners of concern here will provide 80 percent. According to Section II of the application, the limited partners are also officers, directors and shareholders of several other broadcast licensees and appear to be actively engaged in the day-to-day operation of those stations, serving as chief executive and operating officers. The general partner is a news director at one of those stations and does not appear to have any other broadcast interests. There is nothing to indicate, as there was in *Cleveland Television,* that Messrs. Hilker and Rollins will be "totally insulated" from the operation of the proposed station. Although the ULPA does provide significant insulation by itself, limited partners are not "totally insulated" from the affairs of the partnership. Specifically, Section 303 of the ULPA permits limited partners to be contractors, agents or employees of the partnership, and further permits "consulting with and advising the general partner with respect to the business of the limited partnership" by the limited partners. In the circumstances presented, we believe that a full record, developed in a hearing, is required. Given the control of station WCGC(AM) by Messrs. Hilker and Rollins, a cross-interest issue will be specified.

10. That conclusion is not altered by the offer of Messrs. Hilker and Rollins to divest their interests in the Belmont radio station "if required by the Commission's Rules." The Rules do not *require* divestiture. Instead, they provide that the owners of a radio station may apply for a new UHF station in the same area, if they accompany the application with a showing that the public interest will be served by the combined ownership. As noted above, we believe that there is a concern on that question in this case, and we cannot rule that the public interest will be served without the benefit of the hearing record. Further, the goal of Piedmont appears to be not to have the interest in the Belmont radio station attributable under the comparative issue. We note, in that regard, that even where the interests are found not to contravene the cross-interest policy and the public interest, the interests in the Belmont station may still weigh in the comparative balance. *Cleveland Television Corp.,* above.

11. An extensive discussion of the applicability of the cross-interest policy to Mr. Hilker's ten percent interest in the cable television systems is not needed. We know of no case where the Commission applied the cross-interest policy where both interests were nonattributable under the multiple ownership rules. As stated previously, Mr. Hilker's interest as a limited partner in Piedmont is nonattributable. His interest in the cable television systems appears nonattributable as well. The application sets out Mr. Hilker's ownership interest in Lake Cable TV, Inc, but no position as an officer or director is indicated. For the communities listed,[3] our records list the franchise holder to be Lakeside Cable TV, Inc., which we assume to be the same entity. It appears, however, that Lakeside Cable is controlled by an 80 percent shareholder. Because a greater than 50 percent interest exists, Mr. Hilker's ten percent interest is nonattributable. *Corporate Ownership and Disclosure,* 55 RR 2d at 1475. We conclude that no cross-interest issue should be raised as to the cable television interest. If our assumption as to the ownership of the cable system is materially in error, a motion to enlarge issues by competitors may be in order.

12. In its petition to deny Telecasters' application, WCCB alleges that a grant of the application would violate the duopoly and concentration of control provisions of the multiple ownership rule, Section 73.3555. The allegation is based on the following facts. Telecasters is a limited partnership. Ms. Lenore Tucker is its sole general partner with a 20 percent equity interest. Its single 80 percent limited partner is Poplar Apartments, Inc., which in turn is owned 50 percent each by Katherine R. Everett and her son, Robinson O. Everett. In addition, the Everetts each own 15.9 percent of the stock of Guilford Telecasters, Inc., licensee of Station WGGT(TV), Greensboro, North Carolina. The Grade B contours of Station WGGT(TV) and the proposed station will overlap, forming the basis for the alleged duopoly violation. Further, the Everetts have a combined controlling interest in American Telecasters, Inc., which in turn is the sole stockholder of the permittees of Stations WKJA(TV), Wilmington, North Carolina, and WFCT(TV), Fayetteville, North Carolina. The petitioner asserts that the grant of Telecasters' application would place the Everetts in the position of having substantial interests in four North Carolina television stations. These four stations, when all are operational, will reach an estimated 31 percent of the population of North Caroline, allegedly resulting in an undue concentration of control.

13. As noted above, the Everetts' interests in Telecasters' application is as limited partners, which do not trigger the duopoly rule. Further, in its recent action repealing the regional concentration of control rule, *Multiple Ownership—Regional Concentration of Control,* 55 RR 2d 1389 (1984), the Commission stated:

> We believe that the significant expansion in both broadcast and non-broadcast media voices documented herein substantially alters the delicate balance of competing interests that underlies the current regional concentration of control provisions. In our view, this development, taken together with the effectiveness of our other multiple ownership rules in preventing adverse diversity and economic competition effects in regional markets, convinces us that the clear costs associated with our regional ownership limitations are no longer warranted.

Although the quotation is directed at the precise language of the former regional concentration rule, the thoughts expressed are also relevant here. WCCB's allegations go solely to the ownership of television stations. It does not allege that the Everetts and their associates control other broadcast, newspaper or cable television interests in the state. There are at least 20 commercial and ten noncommercial educational television stations operating within the state in which the Everetts have no interest. The four stations, when all are operational, will reach only 31 percent of the State's population. Even if we were to assume, for the purpose of discussion, that all four stations will be entirely controlled by the Everetts, the low percentage of the State's population covered, the absence of any interests in other media, and the numerous other competing television stations compel a conclusion that no undue concentration of control contrary to the public interest will result.

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[2] Although *Cleveland Television* involved nonvoting preferred shares, we believe that the underlying analysis is fully applicable to this case, which involves limited partners.

[3] The communities are Cornelius, Davidson and Hunterville, North Carolina. Commercial publications consolidated all these communities under the heading for Mooresville, North Carolina.

14. An 80 percent limited partnership interest in the applicant, which is nonattributable, coupled with the combined 31.8 percent interest held by the Everetts in the licensee of WGGT(TV), could raise cross-interest questions in some circumstances. In revising its attribution standards, however, the Commission stated that all cross interests are reportable, if they fall "within the geographic limits of the cross-interest policy." *Corporate Ownership and Disclosure,* 55 RR 2d at 1490. The "geographic limits" have never been precisely stated, but the Commission has generally referred to stations "in substantially the same market" or in "substantially the same area." *See, e.g., Farmville Broadcasting Co.,* 47 FCC 2d 463, 464 (1974); *Guy S. Erway,* 90 FCC 2d 750, 752 (Rev. Bd. 1980). In this case, the transmitter locations of the two stations are about 85 miles apart. The proposed Belmont station will be located in the Charlotte-Gastonia Standard Metropolitan Statistical Area (SMSA), while Station WGGT(TV) is in the Greensboro/High Point/Winston-Salem SMSA. These two SMSA's are separated by the Salisbury-Concord SMSA. Further, Arbitron and our own cable television rules treat Charlotte and Greensboro/High Point/Winston-Salem as separate markets. 47 CFR 76.51(a). Neither the applicant nor the petitioner has provided figures as to the degree of overlap, but it appears that WGGT(TV)'s Grade B contour will encompass roughly no more than 15 percent of the area within the Grade B contour of the proposed station. Because cross-interest concerns are limited to stations serving substantially the same market or the same area, we cannot find, in the circumstances presented, that the cross-interest policy applies in this case. Accordingly no issue will be specified.

15. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve.[4] Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

16. No determination has been made that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

17. Since grant of either Agape Communications, Inc.'s (Agape) or Telecasters' applications would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules, Agape and Telecasters are each required to submit the environmental impact information described in § 1.1311. Accordingly, Agape and Telecasters will each be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Television Branch, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.,* 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.,* 83 FCC 2d 337 (1980).

18. Jimmy Allison proposes to mount his antenna on the tower of WLTC(AM), Gatonia, North Carolina. Accordingly, in the event of a grant of Allison's application, the construction permit will be conditioned to require Allison to demonstrate that installation of his antenna will not alter the radiation pattern of Station WLTC(AM).

19. Jimmy Allison is a limited partnership. However, only the general partners have been identified. Allison will be required to submit the certification, statement and/or information required by paragraph 5, above, to the presiding Administrative Law Judge within 20 days after this Order is released.

20. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

21. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each applicant would consitute a hazard to air navigation.

2. If a final environmental impact statement is issued with respect to Agape Communications, Inc. or Belmont Telecasters, Ltd. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether either proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, either applicant is qualified to construct and operate as proposed.

3. To determine with respect to Piedmont Crescent Broadcasting Co., whether grant of the application would be consistent with § 73.3555 of the Commission's Rules and with the Commission's cross-interest policy and, if not, whether the ownership, operation or control of WCGC(AM) and the proposed television station would be consistent with the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

22. It is further ordered, that the Federal Aviation Administration is

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[4] Piedmont has not submitted the area and population within its predicted Grade B contour (Section V–C, Item 10, FCC Form 301). Telecasters has not submitted the population within its predicted Grade B contour. Piedmont and Telecasters will each be required to submit an amendment showing the required information, to the presiding Administrative Law Judge, within 20 days after this Order is released.

made a party respondent to this proceeding with respect to issue 1.

23. It is further ordered, that the petition to deny filed by WCCB-TV against the Scott Neisler application is denied and the petition to deny filed by WCCB-TV against the Piedmont Crescent Broadcasting Co. application is granted to the extent indicated and otherwise is denied.

24. It is further ordered, That WCCB-TV, Inc.'s petition to deny Gabriel Broadcasting Co., Inc.'s application is dismissed as moot.

25. It is further ordered, That WCCB-TV, Inc.'s petition to deny Belmont Telecasters, Ltd.'s application is denied.

26. It is further ordered, That Piedmont Crescent Broadcasting Company and Belmont Telecasters, Ltd. shall each, within 20 days after this Order is released, submit an amendment showing the information required by Section V-C, Item 10(e), FCC Form 301, to the presiding Administrative Law Judge.

27. It is further ordered, That Agape Communications, Inc. and Belmont Telecasters, Ltd. shall each, within 20 days after this Order is released, submit an amendmetn with an environmental narrative statement in accordance with Section 1.1311 of the Commission's Rules, to the presiding Administrative Law Judge, with a copy to the Chief, Television Branch.

28. It is further ordered, That in the event of a grant of Jimmy Allison's application, the construction permit shall be conditioned as follows:

> During installation of the antenna authorized herein, AM station WLTC, Gastonia, North Carolina, shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements of the AM antenna shall be made. The results shall be submitted to the Commission, along with a tower sketch of the installation, in an application for the AM station to return to the direct method of power determination.

29. It is further ordered, that Scott Neisler and Jimmy Allison shall each submit the certification, statement and/or information required by paragraphs 5 and 15, respectively, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

30. It is further ordered, That WCCB-TV, Inc. is made a party respondent in this proceeding with respect to the application of Piedmont Crescent Broadcasting Co.

31. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

32. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-25057 Filed 9-20-84; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-830421AF; MM Docket Nos. 84-75, et al.]

New FM Stations; Dragon Communications, Inc.; Applications for Consolidated Hearing

(1) The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city, and State	File No.	MM Docket No.
A. Dragon Communications, Inc.; Ocean View, DE.	BPH-830421AF	84-875
B. Suzanne E. Purcell dba. Mid-Ocean Broadcasting; Ocean View, DE	BPH-831201AF	84-876
C. Honeycomb Broadcasting, Inc.; Ocean View, DE.	BPH-831201AH	84-877
D. Daryl Hagens and Dein Schult, dba. Ocean View Broadcasting; Ocean View, DE.	BPH-831202AE	84-878
E. Susan Marie Beth Romaine; Ocean View, DE.	BPH-831202AH	84-879
F. Seashore Broadcasting Co.; Ocean View, DE.	BPH-831202AM	84-880
G. DGR Communications, Inc.; Ocean View, DE.	BPH-831202AO	84-881
H. Susan S. Libermán and Wanda Lynne Dayton dba. Ocean View Broadcasting Co.; Ocean View, DE.	BPH-831202AR	84-882
I. Leigh Sandoz Leverrier; Ocean View, DE.	BPH-831202AS	84-883

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue is question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, D, H
2. (See Appendix), I
3. Comparative, All
4. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

2. If a formal environmental impact statement is issued with respect to (I) Leverrier which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 84-25056 Filed 9-20-84; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order; Full Gospel Church of the Living God, Inc., et al.

In re Applications of Full Gospel Church of the Living God, Inc. (File No. BPET-831104KE), Palm Beach County Educators Broadcasting, Inc. (MM Docket No. 84-863, File No. BPET-840103KH), Acorn TV in Action for Communities (MM Docket No. 84-864, File No. BPET-840104KF), For Construction Permit for New TV Station, Boca Raton, Florida.

Adopted: August 30, 1984.

Released: September 14, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of Full Gospel Church of the Living God, Inc. (Full Gospel), Palm Beach County Educators Broadcasting,

Inc. (Educators), and Acorn TV in Action for Communities (Acorn) for authority to construct a new noncommercial educational television station on Channel 63, Boca Raton, Florida; and (2) informal objections to the Full Gospel and Acorn applications, filed by Goldcoast Educational Television System, Inc. (Goldcoast), a consortium of public agencies.

2. In its informal objection, Goldcoast charges that the Full Gospel and Acorn applications should be dismissed because those applicants do not propose a cognizable educational purpose as defined in Section 73.621 of the Commission's Rules for noncommercial educational broadcast stations. Goldcoast also claims that neither applicant has demonstrated its financial qualifications.

3. Channel 63, Boca Raton, Florida, is reserved for use by a noncommercial educational broadcast station only, and only non-profit educational institutions or organizations are eligible to apply, the latter upon a showing that the proposed station will be used for the advancement of an educational program. Neither applicant purports to qualify as an educational institution (school). As an organizational applicant, Full Gospel has not demonstrated that its proposed facilities would be used in the furtherance of an overall educational objective. An organization with religious purposes can qualify as an educational applicant if its primary purpose is educational, albeit with a religious aspect to the educational activity, *Bible Moravian Church, Inc.*, 28 FCC 2d 1 (1971). We look to the application as a whole to determine, as between the religious purposes and the educational purposes, which is essential and which is incidental. If, as in *Bible Moravian Church, supra*, the educational thrust is but incidental to and supportive of the religious function, the organization is not an educational one. An applicant must also submit evidence that its officers, directors, and members of its governing board are broadly representative of the educational, cultural, and civic groups in the community. Section II, Question 10, FCC Form 340. Based on the information contained in the application, it appears that Full Gospel's board members are all of the same profession.[1] The applicant says that the board members are "actively involved in the cultural and civic groups in the community," but this does not meet the standard that the members of the board must be "broadly representative" of the civic cultural, and educational elements of the community. Such statements are not sufficient to meet the Commission's requirements. For the reasons stated, Full Gospel has failed to show that it is qualified to operate on a reserved channel. Accordingly, its application will be dismissed.

4. In support of its contention that it is a qualified educational organization, Acorn has set forth a statement showing that it has an educational goal and that the proposed station would be used to further an educational program. It has furnished a proposed weekly program schedule clearly indicating its educational nature. Its governing board consists of persons who appear to be broadly representative of the educational cultural and civic segments of the community. We conclude, therefore, that Acorn qualifies as an educational organization and is eligible to operate on a reserved channel.

5. Goldcoast's effort to have Acorn's application dismissed on the grounds that Acorn is not financially qualified must fail. Acorn has certified that it is financially qualified and Goldcoast has alleged no facts to show that the certification is false. Goldcoast's allegations are the result of speculation. Consequently, no financial issue will be specified.

6. Goldcoast alleges that the engineering data in the Full Gospel and Acorn applications are identical. Goldcoast has not indicated the significance of this fact and we find none. It is not alleged that any Commission rule or policy has been violated. Moreover, since both specified the same site, it should not be surprising that the engineering data is identical or similar.

7. Section 73.685(f) of the Commission's rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Acorn has not supplied this data. Accordingly, Acorn will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

8. Applicants for new broadcast stations are required to give local notice of the filing of their applications, in accordance with Section 73.3580 of the Commission's Rules. They must then file proof of publication of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Acorn has done either. If it has not already done so, Acorn will be required to file a statement that it has or will comply with the public notice requirement with the Administrative Law Judge within 20 days of the release of this Order.

9. No determination has been made that the tower height and location proposed by Educators would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

10. Educators' antenna is to be mounted on the existing tower of AM station WSBR, Boca Raton, Florida. Therefore, in order to ensure that the AM pattern will not be adversely affected, a grant of the application will be appropriately conditioned.

11. Acorn proposes a directional antenna and electrical beam tilt, but does not provide the exhibits required by Item 9, Section V–G, FCC Form 340. Accordingly, the applicant will be required to submit the appropriate exhibits to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

12. The applications of Educators and Acorn propose transmitters which will generate a field strength in excess of 50 mV/m over the Commission's Fort Lauderdale, Florida, monitoring station. There is, therefore, a potential for serious adverse effects on our monitoring operations. In the event of a grant of either application, the construction permit shall be appropriately conditioned.

13. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

14. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of Educators and Acorn are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Educators would constitute a hazard to air navigation.

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[1] There are three board members, all clergymen.

2. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

3. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

4. To determine whether the factors in the record demonstrated that one applicant will provide a superior non-commercial educational broadcast service.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

15. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

16. It is further ordered, that the application of Full Gospel is dismissed.

17. It is further ordered, that the objection filed by Goldcoast is granted to the extent indicated herein and otherwise IS DENIED.

18. It is further ordered, that Acorn shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge within 20 days of the date of the release of this Order.

19. It is further ordered, that Acorn shall file a certification with the presiding Administrative Law Judge, within 20 days after this Order is released, that it has or will comply with § 73.3580 of the Commission's Rules.

20. It is further ordered, that Acorn shall submit the appropriate exhibit to Section V–G, Item 9, FCC Form 340, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

21. It is further ordered, that grant of a construction permit to Educators will be subject to the following condition:

> During installation of the antenna authorized herein, AM station WSBR shall determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values within authorized limits. Upon completion of the installation, common point impedance measurements on the AM antenna shall be made and a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

22. It is further ordered, that in the event of a grant of either application, the construction permit shall contain the following condition:

> The authority granted herein is subject to the condition that, in the event of interference to monitoring, direction finding, or related operations at the Federal Communications Commission's Fort Lauderdale Monitoring Station, caused by either spurious or harmonic radiation, the permittee shall take such immediate corrective action as is necessary to eliminate the interference. This shall include responsibility for furnishing, installing and adjusting filter circuits, shielding, or other corrective devices which may be necessary to minimize harmonic or spurious radiation. If these measures fail to eliminate the interference, the permittee shall either reduce power or cease operation immediately.

23. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

24. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84–25056 Filed 9–20–84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0018.

Title: National Flood Insurance Program Annual Report (Biennial Report).

Abstract: The Federal Emergency Management Agency (FEMA) requires that community participating in the National Flood Insurance Program, submit a biennial report on progress made in local floodplain management. The use of a simple, standard format facilitates FEMA's reporting of response, thus enhancing the reports value as management tool.

Type of respondents: Individuals or households, State or Local governments.

Number of respondents: 17,600.

Burden hours: 8,800.

Copies of the above information collection request and supporting statement can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm., 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 12, 1984.

Walter A. Girstantas,,

Director, Administrative Support.

[FR Doc. 84–25046 Filed 9–20–84; 8:45 am]

BILLING CODE 6718-01-M

Colorado; Amendment to Notice of a Major-Disaster Declaration

[FEMA–719–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Colorado (FEMA–719–DR), dated July 27, 1984, and related determinations.

DATED: September 14, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: The notice of a major disaster for the State of Colorado, dated July 27, 1984, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 27, 1984: Dolores, Hinsdale, Montrose, and Saguache Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Dennis H. Kwiatkowski,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-25045 Filed 9-20-84; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 14.

Public Health Service

National Institutes of Health

Subject: NON-A NON-B Hepatitis: Donor Survey—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Centers for Disease Control

Subject: Monitoring System for Adverse Events following Immunization (Revision)—(0920-0039)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Medical Device Reporting (0910-0156(c))—New Collection
Respondents: Manufacturers or importers of medical devices
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Post Certification Revisit Report
Respondents: State survey agencies
Subject: Statement of Deficiencies and Plan of Corrections (HCFA 2567) and Continuation Sheet (HCFA 2567A)
Respondents: State agency surveyors
Subject: Survey of Independent Health Plans
Respondent: Independent Insurers
OMB Desk Officer: Fay S. Iudicello

Human Development Services

Subject: Quarterly Statement of Expenditures for Foster Care and Adoption Assistance (0980-0131)—Extension
Respondents: States
Subject: Quarterly Estimate of Expenditures for Foster Care and Adoption Assistance (0980-0130)—Extension
Respondents: States
Subject: WIN Certification Report (117-A), Certification Record (SAU-4); WIN Grant Change Report (117-B); WIN Grant Change Record (IM-9)-(0980-0157)—Extension
Respondents: States
OMB Desk Officer: Robert Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: September 11, 1984.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-24820 Filed 9-20-84; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Mine Health Research Advisory Committee Diesel Subgroup and X Ray Surveillance Subgroup; Open Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meetings:

Diesel Subgroup of the Mine Health Research Advisory Committee

Date: October 10, 1984.

Time: 9:00 a.m. to 12:00 noon.

Place: Meeting Room B-2, Sheraton Inn Lakewood, 360 Union Boulevard, Lakewood, Colorado 80228.

Purpose: This Committee subgroup is charged with determining if there is a scientific basis for developing a recommendation on the use of diesel equipment in underground mining operations and defining the limitations of current knowledge, and recommending areas of research for NIOSH, if any, taking into account other investigators' ongoing and planned research.

Viewpoints and suggestions from users of diesel equipment, manufacturers of diesel equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Dr. Roy Fleming at the address below in order to be assured appropriate time for presentation. Four copies of the text of the presentation should be provided to the subgroup chairperson, Mr. William Burgess, Polaroid Corporation, 300 Fifth Avenue—5H, Waltham, Massachusetts 20054, prior to or at the subgroup meeting.

X-Ray Surveillance Subgroup of the Mine Health Research Advisory Committee

Date: October 10, 1984.

Time: 9:00 a.m. to 12:00 noon.

Place: Meeting Suite 312, Sheraton Inn Lakewood, 360 Union Boulevard, Lakewood, Colorado 80288.

Purpose: This Committee subgroup is charged with determining if a recommendation should be made to NIOSH for the Institute to conduct the entire x-ray surveillance program for coal miners. If so, the subgroup is to define the criteria that should be met to justify the initiation and continuation of this program by NIOSH in terms of factors such as participation rate, detection rate of disease, and transfer rate to less dusty jobs. Other issues, such as quality of films and linkage of the surveillance program with a compensation program, are also to be discussed.

Viewpoints and suggestions from manufacturers of x-ray equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Dr. Roy Fleming at the address below in order to be assured appropriate time for presentation. Four copies of the text of the presentation should be provided to the subgroup chairperson, Dr. Nicholas Sargent, University of Southern California, School of Medicine, Department of Radiology, 1200 North State Street, Los Angeles, California 90033, prior to or at the subgroup meeting.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 3053, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Phone: (404) 329-3343.

The Mine Health Research Advisory Committee (MHRAC) was established by the Federal Mine Safety and Health Act of 1977. The Committee is charged with advising the Secretary of Health and Human Services on matters involving or related to mine health research. The subgroups, composed of members of the MHRAC, will provide reports to the full Committee at a future meeting. Each subgroup will give a status report on its activities to the MHRAC in the afternoon of October 10, 1984, during the Committee's October 10–11, 1984, meeting.

Dated: September 17, 1984.

Jeffrey P. Koplan, M.D.,

Acting Director, Centers for Disease Control.

[FR Doc. 84–25043 Filed 9–20–84; 8:45 am]

BILLING CODE 4160–19–M

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: October 10–11, 1984.

Place: Meeting Room B–2, Sheraton Inn Lakewood, 360 Union Boulevard, Lakewood, Colorado 80228.

Time and Type of Meeting:

Closed, 1:00 p.m. to 1:30 p.m.—October 10

Open, 1:30 p.m. to 4:30 p.m.—October 10

Open, 9:00 a.m. to 4:30 p.m.—October 11

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 3053, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Phone: (404) 329–3343.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda

Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; status reports from diesel and x-ray surveillance subgroups; update on NIOSH mining research; and a comprehensive discussion of silicosis as a health hazard in mining, including historical perspective, sources of exposure, analytical procedures, epidemiologic studies, animal studies, diagnosis of silicosis, prevention strategies, and research needs. Beginning at 1:00 p.m. through 1:30 p.m., October 10, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and paticipation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: September 17, 1984.

Jeffrey P. Koplan, M.D.,

Acting Director, Centers for Disease Control.

[FR Doc. 84–25044 Filed 9–20–84; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 77P–0403 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for six organizations that manufacture and produce laser light shows, light show projectors, or both. The projector provides a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information".

ADDRESS: The applications and all correspondence on the various applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), each of the six organizations listed in the table below has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the table below, and the effective date of the variance as specified in the table below.

Docket No.	Manufacturing organization	Demonstration laser product	Effective date/termination date
77P-0403 (extension)	Laser Productions, 3075 Blaine St., Coconut Grove, FL 33133.	Laser Productions projectors, models 2001 and Orion, and laser light shows incorporating these projectors assembled and produced by Laser Productions.	June 18, 1984 to May 1, 1986.
79P-0346 (extension)	Laser Vision Productions, Inc., 132½ West 24th St., New York, NY 10017	Laser Vision Productions, Inc. laser light shows incorporating the firm's class IV model ALVA 2000 series and/or IKON L-174 series, laser projectors or display devices.	July 2, 1984 to May 19, 1986.
80P-0350 (extension)	Agence Publicitaire Le P.G., de Granby, Inc., 89, rue Alexandra, Granby (Quebec), Canada J2G2PH.	Super Laser Light Show, assembed and produced by Agence Publicitaire Le P.G. de Granby, Inc.	July 18, 1984 to July 18, 1985.
83V-0385	Red Parrott Caberet, Inc., 617 West 57th St., New York, NY 10019.	Red Parrott Gaberet, laser light show incorporating the class IV Foursight Visual System Model 118 ion laser projector and control console.	July 18, 1984 to July 18, 1986.
84V-0190	Quadram Corp., 4355 International Blvd., Norcrost, GA 30093.	Quadram Corp., laser light displays using the Ad Laser ALS-5100-2B laser projector.	June 22, 1984 to June 22, 1985.
84V-020	Alaska Laser Knights, Inc., d.b.a. Spenardo divinci's 8241 Summerset Drive, Anchorage, AK 99502.	Alaska Laser Knights, Inc. laser light shows using the Laser Media LMS projector system	June 28, 1984 to June 28, 1986.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 17, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25033 Filed 9-20-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0280]

Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Allen Canning Co. and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 20, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Allen Canning Co., 305 East Main, P.O. Box 250, Siloam Springs, AR 72761, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Allen Canning Co. plant, Siloam Springs, AR 72761.

The principal display panel of the label states the product name as "Cut Green Beans" and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 20, 1984.

Dated: September 12, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25102 Filed 9-20-84; 8:45 am]

BILLING CODE 4160-01-M

Fulvidex® Otic Suspension; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Schering Corp. providing for use of Fulvidex® Otic Suspension (dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, tetracaine hydrochloride) for treating cats for acute otitis externa and adjunctive therapy in treating choronic otitis externa complicated by sensitive organisms. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033, is sponsor of NADA 12-890. The NADA provides for prescription use of Fulvidex® (dexamethasone acetate, nitrofurathiazide, griseofulvin, undecylenic acid, tetracaine hydrochloride) Otic Suspension to treat cats for acute otitis externa and as adjunctive therapy in treating chronic otitis externa complicated by sensitive organisms. The NADA was originally approved November 30, 1961, for treating dogs and cats.

By letter of May 2, 1984, the sponsor requested withdrawal of approval of the NADA because the drug is no longer being manufactured or marketed, and waived an opportunity for hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR. 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR

514.115), notice is given that approval of NADA 12-890 and all supplements for Fulvidex® Otic Suspension is hereby withdrawn, effective October 1, 1984.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulation that reflects this approval.

Dated: September 14, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-25100 Filed 9-20-84; 8:45 am]

BILLING CODE 4160-01-M

International Multifoods' Tevcocin® (Chloramphenicol) Oral Solution; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by International Multifoods Corp. providing for use of Tevcocin® (chloramphenicol) Oral Solution for prescription use in dogs for treatment of infections of the respiratory and urinary tract, and enteritis and tonsillitis caused by susceptible organisms. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: International Multifoods Corp., P.O. Box 2942, 8th & Marquette Sts., Minneapolis, MN 55402, is sponsor of NADA 55-003 providing for use of Tevcocin® (chloramphenicol) Oral Solution for prescription use in dogs for treatment of infections of the respiratory and urinary tract, and enteritis and tonsillitis caused by susceptible organisms. The NADA was originally approved June 24, 1969.

Approval of this NADA has been codified in the Code of Federal Regulations in 21 CFR 555.110c. In its letter of February 27, 1984, to the Center for Veterinary Medicine, International Multifoods voluntarily requested withdrawal of approval of the NADA under 21 CFR 514.115(d) because the sponsor is discontinuing marketing of the product.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55-003 and all supplements for International Multifoods' Tevcocin® (chloramphenicol) Oral Solution is hereby withdrawn, effective October 1, 1984.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulation that reflects this approval.

Dated: September 14, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-25098 Filed 9-20-84; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Filing of Annual Reports

Pursuant to sections 10(d) and 13 of the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the annual reports for the committees listed below have been filed with the Library of Congress. Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or on weekdays, at the Department Library, North Building, Room 1436, Washington, D.C. 20201, between 9:00 a.m. and 4:30 p.m.

Ad Hoc Working Group to Develop Radioepidemiological Tables
Advisory Committee to the Director, NIH
Aging Review Committee
Allergy and Immunology Study Section
Allergy, Immunology, and Transplantation Research Committee
Animal Resources Review Committee
Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee
Bacteriology and Mycology Study Section
Behavioral and Neurosciences Study Section
Behavioral Medicine Study Section
Biochemical Endocrinology Study Section
Biochemistry Study Section
Biomedical Library Review Committee
Biomedical Sciences Study Section
Biometry and Epidemiology Contract Review Committee
Bio-Organic and Natural Products Chemistry Study Section
Biophysical Chemistry Study Section
Biopsychology Study Section
Biotechnology Resources Review Committee
Blood Diseases and Resources Advisory Committee
Board of Regents of the National Library of Medicine
Board of Scientific Counselors, Division of Cancer Biology and Diagnosis
Board of Scientific Counselors, Division of Cancer Etiology
Board of Scientific Counselors, Division of Cancer Prevention and Control
Board of Scientific Counselors, Division of Cancer Treatment
Board of Scientific Counselors, National Eye Institute
Board of Scientific Counselors, National Heart, Lung, and Blood Institute
Board of Scientific Counselors, National Institute on Aging
Board of Scientific Counselors, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases
Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases
Board of Scientific Counselors, National Institute of Child Health and Human Development
Board of Scientific Counselors, National Institute of Dental Research
Board of Scientific Counselors, National Institute of Environmental Health Sciences
Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke
Board of Scientific Counselors, National Library of Medicine
Breast Cancer Task Force Committee
Cancer Center Support Review Committee
Cancer Clinical Investigation Review Committee
Cancer Control Grant Review Committee
Cancer Control Intervention Programs Review Committee
Cancer Education Review Committee
Cancer Preclinical Program Project Review Committee
Cancer Regional Studies Review Committee
Cancer Research Manpower Review Committee
Cancer Resources and Repositories Contracts Review Committee
Cancer Therapeutics Program Project Review Committee
Cardiology Advisory Committee
Cardiovascular and Pulmonary Study Section
Cardiovascular and Renal Study Section
Cellular and Molecular Basis of Disease Review Committee
Cellular Biology and Physiology Study Section
Chemical Pathology Study Section
Clinical Applications and Prevention Advisory Committee
Clinical Cancer Program Project Review Committee
Clinical Sciences Study Section
Clinical Trials Committee
Clinical Trials Review Committee
Communicative Disorders Review Committee
Developmental Therapeutics Contracts Review Committe, NCI
Diagnostic Radiology Study Section
Endocrinology Study Section
Environmental Health Sciences Review Committee
Epidemiology and Disease Control Study Section
Epilepsy Advisory Committee
Experimental Cardiovascular Sciences Study Section
Experimental Immunology Study Section
Experimental Therapeutic Study Section
Experimental Virology Study Section
Frederick Cancer Research Facility Advisory Committee

General Clinical Research Centers Committee
General Medical A Study Section
General Medical B Study Section
General Research Support Review Committee
Genetic Basis of Disease Review Committee
Genetics Study Section
Hearing Research Study Section
Heart, Lung, and Blood Research Review Committee A
Heart, Lung, and Blood Research Review Committee B
Hematology Study Section
Human Development and Aging Study Section
Human Embryology and Development Study Section
Immunobiology Study Section
Immunological Sciences Study Section
Mammalian Genetics Study Section
Maternal and Child Health Research Committee
Medicinal Chemistry Study Section
Mental Retardation Research Committee
Metabolism Study Section
Metallobiochemistry Study Section
Microbial Physiology and Genetics Study Section
Microbiology and Infectious Diseases Advisory Committee
Minority Access to Research Careers (MARC) Review Committee
Molecular and Cellular Biophysics Study Section
Molecular Biology Study Section
Molecular Cytology Study Section
National Advisory Allergy and Infectious Diseases Council
National Advisory Child Health and Human Development Council
National Advisory Council on Aging
National Advisory Dental Research Council
National Advisory Environmental Health Sciences Council
National Advisory Eye Council
National Advisory General Medical Sciences Council
National Advisory Neurological and Communicative Disorders and Stroke Council
National Advisory Research Resources Council
National Arthritis Advisory Board
National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council
National Cancer Advisory Board
National Diabetes Advisory Board
National Digestive Diseases Advisory Board
National Heart, Lung and Blood Advisory Council
National Institute of Dental Research Programs Advisory Committee
National Institute of Dental Research Special Grants Review Committee
NCI Thyroid/Iodine—131 Assessments Committee
Neurological Disorders Program—Project Review A Committee
Neurological Disorders Program—Project Review B Committee
Neurological Sciences Study Section
Neurology A Study Section
Neurology B Study Section
Nutrition Study Section
Oral Biology and Medicine Study Section
Orthopedics and Musculoskeletal Study Section
Pathobiochemistry Study Section
Pathology A Study Section
Pathology B Study Section
Pharmacological Sciences Review Committee
Pharmacology Study Section
Physical Biochemistry Study Section
Psysiological Chemistry Study Section
Physiology Study Section
Population Research Committee
President's Cancer Panel
Pulmonary Diseases Advisory Committee
Radiation Study Section
Recombinant DNA Advisory Committee
Reproductive Biology Study Section
Research Manpower Review Committee
Respiratory and Applied Physiology Study Section
Scientific Programs Advisory Committee, NINCDS
Sensory Disorders and Language Study Section
Sickle Cell Disease Advisory Committee
Social Sciences and Population Study Section
Surgery and Bioengineering Study Section
Surgery, Anesthesiology and Trauma Study Section
Toxicology Study Section
Tropical Medicine and Parasitology Study Section
Virology Study Section
Vision Research Program Committee
Visual Sciences A Study Section
Visual Sciences B Study Section

Dated: September 14, 1984.

James B. Wyngaarden, M.D.,
Director, NIH.

[FR Doc. 84–25087 Filed 9–20–84; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of committees of the National Institute of Allergy and Infectious Diseases for October 1984.

These meetings will be open to the public to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. Portions of these meetings will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual grant applications and contract proposals. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Thomas Flavin, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Microbiology and Infectious Diseases Research Committee.

Executive Secretary: Dr. M.S. Quraishi, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496–7465.

Dates of Meeting: October 4–5, 1984.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

Open: October 5, 1984, 8:30 a.m.—10:30 a.m.

Agenda: Reports by Program Director and Branch Chief on Committee concerns followed by Program concept clearances.

Closed: October 4, 1984, 8:30 a.m.—recess. October 5, 1984, 10:45 a.m.—adjournment.

Closure Reason: To review grant applications.

Name of Committee: Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee.

Executive Secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496–7966.

Date of Meeting: October 18–19, 1984.

Place of Meeting: Building 60, Choir Room, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

Open: October 19, 1984, 9:55 a.m.—adjournment.

Agenda: Reports by Program Director and Branch Chief on Committee concerns.

Closed: October 18, 1984, 8:30 a.m.—adjournment. October 19, 1984, 8:30 a.m.–9:55 a.m.

Closure Reason: To review grant applications.

Name of Committee: Transplantation Biology and Immunology, Subcommittee of the Allergy, Immunology, and Transplantation Research Committee.

Executive Secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496–7966.

Dates of Meeting: October 22–23, 1984.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, Bethesda, MD 20205.

Open: October 22, 1984–3:15 p.m.—adjournment.

Agenda: Reports of Program Director and Branch Chief on Committee concerns.

Closed: October 22, 1984, 8:30 a.m.—3:15 p.m. October 23, 1984, 8:30 a.m.—adjournment.

Closure Reason: To review grant applications and contract proposals.

Dated: September 12, 1984.

(Catalog of Federal Domestic Assistant Programs Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institute of Health)

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-25084 Filed 9-20-84; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological and Communicative Disorders and Stroke; Epilepsy Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Epilepsy Advisory Committee, National Institute of Neurological and Communicative Disorders and Stroke, October 29 and 30, 1984, in Room B119, Federal Building, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 3:00 p.m. on October 29, 1984, to discuss research progress and research plans related to the Institute's epilepsy program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 3:00 p.m. on October 29, 1984, to adjournment on October 30, 1984, for review of preclinical and clinical compounds of the Antiepileptic Drug Development Program. This review and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. B.G. White, Acting Chief, Epilepsy Branch, Convulsive, Developmental, and Neuromuscular Disorders Program, NINCDS (Federal Building, Room 114), National Institutes of Health, Bethesda, MD 20205; telephone 301/496-6691, will provide summaries of the meeting, rosters of the committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research.)

Dated: September 12, 1984.

Betty Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-25085 Filed 9-20-84; 8:45 am]

Billing Code 4140-01-M

National Library of Medicine; Board of Regents, the Extramural Programs Subcommittee, and the Lister Hill Center Subcommittee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on October 18-19, 1984, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the Extramural Programs Subcommittee of the Board of Regents and the Lister Hill Center Subcommittee on the preceding day, October 17, 1984, from 2:00 to 4:00 p.m., in the 5th-floor Conference Room, and from 2:00 to 5:00 p.m., in the 7th-floor Conference Room of the Lister Hill Center Building, respectively. The meeting of the Board will be open to the public from 9:00 a.m. to 3:30 p.m. on October 18 and from 9:00 a.m. to 11:30 a.m. on October 19 for administrative reports and program discussions. The entire meeting of the Lister Hill Center Subcommittee will be open to the public for a discussion of goals and objectives of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the entire meeting of the Extramural Programs Subcommittee on October 17 will be closed to the public, and the regular Board meeting on October 19 will be closed from 11:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: September 12, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-25083 Filed 9-20-84; 8:45 am]

BILLING CODE 4140-01-M

Review of Grant Applications and Contract Proposals; Meetings

Pursuant to Pub. L 92-463, notice is hereby given for meetings of several committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Biometry and Epidemiology Contract Review Committee.

Dates: October 25-26, 1984.

Place: National Institutes of Health, Building 31A, Conference Room 4, 9000 Rockville Pike, Bethesda, MD 20205.

Times: Open: October 25, 8:30 a.m.—9:00 a.m.

Agenda: A review of administrative details.

Closed: October 25, 9:00 a.m.—recess. October 26, 8:30 a.m.—adjournment.

Closure Reason: To review contract proposals.

Executive Secretary: Dr. Wilna Woods, Westwood Building, Room 807, National Institutes of Health, Bethesda, MD 20205. Phone: 301/496-7153.

Name of Committee: Clinical Cancer Program Project Review Committee.

Dates: November 29–30, 1984.

Place: Biscayne Bay Marriott Hotel and Marina, 1600 North Bayshore Boulevard, Miami, Florida 33132.

Times: Open: November 29, 8:30 a.m.—10:00 a.m.

Agenda: Reports by the Director, Division of Extramural Activities; the Chief, Grants Review Branch; the Executive Secretary; and the Chairman; and a review of administrative details.

Closed: November 29, 10:00 a.m.—recess. November 30, 8:30 a.m.—adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. M. Wayne Hurst, Westwood Building, Room 848, National Institutes of Health, Bethesda, MD 20205. Phone: 301/496-7924.

(Catalog of Federal Domestic Assistance Number 13.397, project grants in cancer center support, National Institutes of health)

Dated: September 12, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-25086 Filed 9-20-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Auburn Dam Task Force Committee; Public Hearing

Notice is hereby given in accordance with the Federal Advisory Committee Act, as amended, that a meeting of the Auburn Dam Task Force Committee will be held at 3 p.m., Thursday, October 4, 1984, in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California. The purpose of this meeting is to present an overview of the project and receive public comments.

The meeting will be open to the public.

Further information concerning this meeting may be obtained from Richard Atwater, Special Assistant to the Commissioner, Bureau of Reclamation, 18th and C Streets, NW., Washington, D.C. 20240 (202-343-4115).

Dated: September 14, 1984.

Jed Christensen,

Deputy Assistant Secretary for Water and Science.

[FR Doc. 84-25268 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Application for Permit; Cincinnati Zoo

Notice is hereby given that an applicant has applied in due form for a permit to import polar bears (*Ursus maritimus*) as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant: Cincinnati Zoo, 3400 Vine Street, Cincinnati, OH 45220.
2. Type of Permit: Public display and propagation.
3. Name and Number of Animals; polar bear (*Ursus maritimus*) 1.1.
4. Type of Activity: Import.
5. Location of Activity: Import from the Vienna Zoo, Austria.
6. Period of Activity: 1 year.

The purpose of this application is to import for public display and enhancement of propagation and survival.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned APP# 0917BM. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hering on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statement and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in room 601, 1000 N. Glebe Road, Arlington, VA.

Dated: September 19, 1984.

R.K. Robinson,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 84-25094 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Torrence M. Hunt, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Torrence M. Hunt, Pittsburgh, PA; APP No. 5611BM

The applicant requests a permit to import one male bontebok (*Damaliscus d. dorcas*) trophy culled from the ranch of M. J. D'Alton, Bredasdorp, South Africa for enhancement of propagation and survival of the herd.

Applicant: Bertha Daharsh, Gothenburg, NE; APP No. 5480BM

The applicant request a permit to import 10–12 specimens of the following pheasants: bar-tailed (*Syrmaticus humiae*), Elliot's (*S. ellioti*) and brown-eared (*Crossoptilon crossoptilon*) from Marsh Barton, Lakefield, Ontario, Canada, for enhancement of propagation and survival.

Applicant: Los Angeles Zoo, Los Angeles, CA; APP No. 4558BM

The applicant requests a permit to import nine radiated tortoises [*Geochelone* (=*Testudo*)*radiata*] from Jersey Wildlife Preservation Trust, Channel Islands, Great Britain for enhancement of propagation.

Applicant: Hubert Wells Thousand Oaks, CA; APP No. 4577BM

The applicant requests a permit to export 14 captive-bred wolves (*Canis lupus*) to Canada to film a movie, "Clan of the Cave Bear" for the purpose of conservation education.

Applicant: William Gruenerwald, Colorado Springs, CO: APP No. 5651BM

The applicant requests a permit to import one captive-bred African wild ass (*Equus africanus somalicus*) from Stuttgart, West Germany for enhancement of propagation and survival.

Applicant: New England Regional Primate Research Center, Harvard Medical School, Southborough, MA; APP No. 5703BM

The applicant requests a permit to import ten wild caught cotton-top tamarins (*Saguinus oedipus*) from the University of Bristol Medical School, Bristol, England for scientific research and enhancement of propagation and survival.

Applicant: Puerto Rico Department of Natural Resources, Pta. de Tierra, PR; APP No. 9715BL

The applicant requests an amendment to his application for a permit to take (capture, tag and release) specimens of the following sea turtles: Kemp's (=Atlantic) Ridley (*Lepidochelys kempii*), leatherback (*Dermochelys corriacea*), loggerhead (*Caretta carretta*), green (*Chelonia mydas*) and Olive (=Pacific) Ridley (*Lepidochelys olivacea*) for scientific research and enhancement of propagation and survival.

Applicant: Department of Natural Resources, Division of Sanctuaries and Wildlife Refuges, San Juan, PR; APP No. 9716BL

The applicant requests a permit to take (capture, band, release) Mona Island yellow-shouldered black birds (*Agelaius xanthamos monensis*) for scientific research and enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT 2/APP number when submitting comments.

Dated: September 17, 1984.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-25086 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Knoxville Zoological Park

Notice is hereby given that an applicant has applied in due form for a permit to import a polar bear as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant: Knoxville Zoological Park, P.O. Box 6040, Knoxville, TN 37914.
2. Type of Permit: Import.
3. Name and Number of Animals: Polar bear (*Ursus Maritimus*)–1–.
4. Type of Activity: Public display.
5. Location of Activity: Knoxville Zoological Park.
6. Period of Activity: One year.

The purpose of this application is to import one captive-born male polar bear cub from the Moscow Zoo, USSR for public display and captive propagation.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned APP# 3479BM. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statement and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in room 601, 1000 N. Glebe Road, Arlington, VA.

Dated: September 18, 1984.

R.K. Robinson,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 84-25093 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Intent To Hold Scoping Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to hold scoping meetings and extension of comment period.

SUMMARY: This notice announces the intent of the Department of the Interior to hold additional scoping meetings for the preparation of the supplement to the *Federal Coal Management Program Environmental Statement* (EIS). The notice of intent to prepare this supplement appeared in the **Federal Register** (Vol. 49, page 34976) on September 4, 1984, under the heading of the Department of the Interior, Office of the Secretary. Scoping meetings will be held on September 25, 1984, at the Clarion Hotel, 3203 Quebec Street, Denver, Colorado, and in Room 7000, Main Interior Building, 18th and C Streets, NW., Washington, DC, on October 2, 1984. This notice announces expansion of the scoping meeting sites to include Santa Fe, New Mexico and Billings, Montana on October 9, 1984, and Salt Lake City, Utah on October 10, 1984.

DATES: October 9, 1984, (Santa Fe, New Mexico and Billings, Montana) at 1:00 p.m. and October 10, 1984, (Salt Lake City, Utah) at 9:00 a.m. and 1:00 p.m. The afternoon sessions will continue until all persons who wish to speak have had an opportunity to do so.

ADDRESS: The meetings will be held at the following locations:

Santa Fe, New Mexico
Sheraton Inn, 750 North Saint Francis Drive

Billings, Montana
Bureau of Land Management, Granite Tower Building, 222 North 32nd Street, 6th floor conference room

Salt Lake City, Utah
Bureau of Land Management, University Club Building, 136 East South Temple, 13th floor conference room

FOR FURTHER INFORMATION CONTACT: Andrew Strasfogel, (202) 343–4537.

SUPPLEMENTARY INFORMATION: On August 30, 1984, the Department of the Interior announced its intent to prepare a supplement to the *Federal Coal Management Program Environmental Statement* (April 1979). The supplement will analyze as its proposed action the potential impacts on the human environment of continuing the coal program identified in the 1979 EIS as the Preferred Program and revised to reflect rule changes promulgated in 1982 and 1983, changes in policies and procedures resulting from recent program reviews, and current projections of national and regional needs for coal. Proposed alternatives are emergency and preference right leasing only, leasing by application, and no Federal leasing. The draft is expected to be available for public comment on February 1985.

Preliminary concerns identified by the Department to date include the demand and production projections and their role in the coal program, the role of preference right lease applications in the program, and enviromental protection provisions of the preferred program.

Public involvement is invited to determine the scope and significant issues to be analyzed in this supplement. Public participation has been invited in requests for written comments on the range of issues to be addressed and the significant issues relating to the proposed action. The comment period, originally scheduled to end October 4, 1984, is hereby extended to October 12, 1984. Comments are to be addressed to Director (650), Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240. Comments may be hand-delivered to Room 3610 in the Main Interior Building at that address.

The Department is soliciting oral comments through scoping meetings to be held in Denver, Colorado, on September 25, 1984, and in Washington, DC, on October 2, 1984. In additon to these meetings, the Department has also decided to hold scoping meetings at three additional locations at the places and times noted above. Members of the public, special interest groups, State and local government representatives, and representatives of other Federal agencies are invited.

The following procedures are requested:

Individuals who wish to speak are to register in person prior to the start of the meeting at which they wish to speak.

Each person may speak only once.

Speakers are to limit comments to 10 minutes.

Speakers are asked to provide a written text of their comments, either at the meetings or by October 12, 1984.

The order of speakers will be selected at random from the register.

Dated: September 20, 1984.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 84–25319 Filed 9–20–84; 9:54 am]

BILLING CODE 4310–84–M

Federal Coal Management Program Environmental Statement; Intent To Hold Scoping Meetings

AGENCY: Interior.

ACTION: Notice of intent to hold scoping meetings.

SUMMARY: This notice announces the intent of the Department of the Interior to hold additional scoping meetings for the preparation of the supplement to the *Federal Coal Management Program Environmental Statement* (EIS). The notice of intent to prepare this supplement appeared in the **Federal Register** (Vol. 49, page 34976) on September 4, 1984, under the heading of the Department of the Interior, Office of the Secretary. These scoping meetings will be held in Washington, D.C., on October 2, 1984. The notice for the scoping meetings to be held on September 25, 1984, in Denver, Colorado, was primted in the **Federal Register** (Vol. 49, page 36021) on September 13, 1984.

DATES: October 2, 1984, at 9:00 a.m. and 1:00 p.m. The afternoon session will continue until all persons who wish to speak have had an opportunity to do so.

ADDRESS: The meetings will be held in Room 7000, Main Interior building, 18th and C Streets NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Andrew Strasfogel, (202) 343–4537.

SUPPLEMENTAL INFORMATION: On August 30, 1984, the Department of the Interior announced its intent to prepare a supplement to the *Federal Coal Management Program Environmental Statement* (April 1979). The supplement will analyze as its proposed action the potential impacts on the human environment of continuing the coal program identified in the 1979 EIS as the Preferred Program and revised to reflect rule changes promulgated in 1982 and 1983, changes in policies and procedures resulting from recent program reviews, and current projections of national and regional needs for coal. Proposed alternatives are emergency and preference right leasing only, leasing by application, and no Federal leasing. The draft is expected to be available for public comment in February 1985.

Preliminary concerns identified by the Department to date include the demand and production projections and their role in the coal program, the role of preference right lease applications in the program, and environmental protection provisions of the preferred program.

Public involvement is invited to determine the scope and significant issues to be analyzed in this supplement. Public participation has been invited in requests for written comments on the range of issues to be addressed and the significant issues relating to the proposed action. These comments were invited by October 4, 1984, and are to be addressed to Director (650), Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240. Comments may be hand-delivered to Room 3610 in the Main Interior Building at that address.

The Department is also soliciting oral comments through scoping meetings to be held in Denver, Colorado, on September 25, 1984. In addition, the Department has decided, in response to extensive requests, to hold scoping meetings in Washington, D.C., at the place and time noted above. Members of the public, special interest groups, State and local government representatives, and representatives of other Federal agencies are invited.

The following procedures are requested:

Individuals who wish to speak are to register in person prior to the start of the meeting at which they wish to speak.

Each person may speak only once.

Speakers are to limit comments to 10 minutes.

Speakers are asked to provide a written text of their comments, either at the meeting or by October 4, 1984.

The order of speakers will be selected at random from the register.

Dated: September 14, 1984.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 84–25037 Filed 9–20–84; 8:45 am]

BILLING CODE 4310–84–M

[S 811, S 1201, and S 3733A]

California; Termination of Classifications for Multiple Use Management

September 14, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates in their entirety three classifications of public land for multiple use management, affecting a total of approxiamtely 73,422 acres located in areas of the Ukiah District of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 484–4431.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management's classifications for multiple use management, the descriptions of which are contained in the following previously published **Federal Register** notices, are hereby terminated in their entirety:

Ukiah District

S 811 dated March 29, 1968.
33 FR 5371 ((Apr. 4, 1968) FR Doc. 68–4000).

The lands described in the above-referenced document aggregate approximately 30,133 acres in Lake, Colusa, Yolo, and Napa Counties, lying south of the Mendicino National Forest and north of Lake Berryessa in the Knoxville, Rocky/Cache Creek and Indian Valley areas.

S 1201 dated March 29, 1968.
33 FR 5371 ((Apr. 4, 1968) FR Doc. 68–4001).

The lands described in the above-referenced document aggregate approximately 37,685 acres in Lake, Napa, Yolo, Solano, Sonoma, and Mendicino Counties in the Geysers Geothermal Area around Mount St. Helena and the Calistoga Area, and lands aroung Lake Berryessa, including Cedar Roughs and Berryessa Peak.

S 3733 A dated October 30, 1970.
35 FR 17064 ((Nov. 5, 1970) FR Doc. 70-14842).

The lands described in the above-referenced document aggregate approximately 5,604 acres of scattered tracts located throughout Napa, Yolo, Solano, Lake and Colusa Counties.

1. All lands are located in the Mount Diablo Base Meridian. Specific land description of each classification is available for inspection at the California State Office in Sacramento and Ukiah District Office of the Bureau of Land Management.

2. The classification orders segregated the public lands from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C. sec. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171), including approximately 1,415 acres from mining. A modification, published in the **Federal Register** on March 11, 1981, Vol. 46, No. 47, at pages 16137 and 16138, subsequently terminated the aforementioned mineral entry segregation (affecting S 811). The orders, otherwise, did not segregate from mining and mineral leasing.

3. At 10:00 a.m. on October 29, 1984, the segregative effect imposed by the classifications will terminate.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Ed Hastey,
State Director.

[FR Doc. 84-25071 Filed 9-20-84; 8:45 am]
BILLING CODE 4310-40-M

[R 573, R 598, S 965, S 2404, and S 3579]

California; Partial Termination of Classifications for Multiple Use Management

September 14, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates five classifications of public land for multiple use management as they affect approximately 232,920 acres in areas of the Bakersfield and Carson City Districts of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 484-4431.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated January 3, 1983, the Bureau of Land Management's classifications for multiple use management, the descriptions of which are contained in the following previously published **Federal Register** notices, are hereby terminated in their entirety *except* as otherwise indicated below.

R 573 and R 598 dated March 19, 1968.
33 FR 4997 ((Mar. 26, 1968) FR Doc. 68-3579).

The lands described in the above-referenced document aggregate approximately 24,821.68 acres in Kern County within the South Sierra Foothills Planning Area of the Caliente Resource Area (over a broad area near Lake Isabella).

The classification will remain in effect as to the following described land:

Mount Diablo Meridian

T. 26 S., R. 32 E.,
  Sec. 25, SE¼;
  Sec. 36, N½NE¼ and SE¼.

Containing 400 acres of public land.

S. 965 dated January 10, 1968.

33 FR 704 ((Jan. 19, 1968) FR Doc. 68-664), as amended on July 16, 1970, by **Federal Register** publication of July 23, 1970, Vol. 35, No. 142 at page 11823; September 14, 1970, by **Federal Register** publication of September 22, 1970, Vol. 35., No. 184, at page 14732, as corrected; November 20, 1970, by **Federal Register** publication of November 26, 1970, Vol. 35, No. 230, at page 18130.

The lands described in the above-referenced document aggregate approximately 123,963 acres in San Benito, Fresno, Monterey, Madera, and Merced Counties.

The classification will remain in effect as to the following described land:

Mount Diablo Meridian

All public lands in:
T. 9 S., R. 22 E.,
  Secs. 26, 27, 33, 34, and 35.
T. 10 S., R. 22 E.,
  Secs. 1, 2, 3, 4, 9, 10, 11, and 15.
T. 18 S., R. 11 E.,
  Sec. 1, S½S½SW¼;
  Sec. 10, S½SE¼SE¼;
  Sec. 11, lots 3, 4, NE¼SW¼, S½SW¼, and NW¼SE¼;
  Sec. 12, lots 1, 2, 3, and NE¼;
  Sec. 14, N½NW¼NW¼;
  Sec. 15, N½NE¼ and E½NE¼NW¼.
T. 18, S., R. 12 E.,
  Sec. 4, NW¼SW¼, S½SW¼, and SW¼SE¼;
  Sec. 5, lots 5 and 12;
  Sec. 7, lot 2, S½SW¼NE¼, SE¼NE¼, SE¼NW¼, N½NE¼SW¼, and N½N½SE¼;
  Sec. 8, lots 5, 7, 9, and N½NW¼SW¼;
  Sec. 9, lots 1 to 11, inclusive, and lots 14 to 17, inclusive;
  Sec. 10, lots 4, 5, 6, 7, S½SW¼NW¼NW¼, SW¼NW¼, S½NE¼SE¼NW¼, NW¼NW¼SE¼NW¼, S½NW¼ SE¼NW¼, S½SE¼NW¼, S½SW¼, and SE¼SE¼;
  Sec. 14, lots 2, 3, and NW¼.

Containing approximately 8,619 acres in Fresno, Merced, and San Benito Counties.

S 2404 dated March 27, 1969.
34 FR 6124 ((Apr. 4, 1969) FR Doc. 69-3926).

The lands described in the above-referenced document aggregate approximately 38,815 acres in Alpine and Mono Counties.

The classification will remain in effect as to the following described land:

Mount Diablo Meridian

All public lands in:
T. 10 N., R. 20 E.,
  Sec. 3, lots 2 and 3, W½ lot 9, W½E½ lot 9, lots 10 to 14, inclusive, W½SW¼, and W½E½SW¼;
  Sec. 4, lots 5 to 8, inclusive, E½ lot 9, E½ lot 10, E½ lot 11, lots 17 and 18, and S½SE¼;
  Sec. 8, NE diagonal ½ of SE¼;
  Sec. 9, SW¼;
  Sec. 10, E½SE¼SE¼;
  Sec. 11, W½NW¼NE¼, NE¼NW¼, E½NW¼NW¼, E½SW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, E½NW¼SW¼, SW¼SW¼, and W½SE¼SW¼;
  Sec. 14, W½NW¼NW¼;
  Sec. 15, NE¼NE¼ and E½NE¼SW¼;
  Sec. 22, SW¼SE¼;
  Sec. 26, NW¼NW¼;
  Sec. 27, N½NE¼.
T. 11 N., R. 20 E.,
  Sec. 32, W½SW¼.

Aggregating approximately 2,120 acres in Alpine County.

S 3579 dated October 15, 1970.
35 FR 6596 ((Oct. 24, 1970) FR Doc. 70-14334).

The lands described in the above-referenced document aggregate approximately 56,619 acres in Mono County.

The classification will remain in effect as to the following described land:

Mount Diablo Meridian

T. 4 N., R. 25 E.,
  Sec. 26, SW¼SW¼;
  Sec. 27, SE¼SE¼;
  Sec. 34, NE¼NE¼;
  Sec. 35, NW¼NW¼.

Aggregating 160 acres of public land.

1. Land description of the terminated portions of the classifications is

available for inspection at the California State Office in Sacramento and respective District Offices.

2. The above-referenced classification orders segregated the public lands from appropriation under the agricultural land laws (43 U.S.C., Chs. 7 and 9; 25 U.S.C. sec. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171), including approximately 7,966 acres from mining. The orders, otherwise, did not segregate from mining and mineral leasing.

3. Except for the lands that remain classified, as described above, at 10:00 a.m. on October 29, 1984, the segregative effect imposed by the above-referenced classification orders will terminate.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Ed Hastey,
State Director.

[FR Doc. 84-25070 Filed 9-20-84; 8:45 am]
BILLING CODE 4310-40-M

Preparation of a Resource Management Plan/Environmental Impact Statement for Box Elder County, UT

September 14, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) Salt Lake District, intends to prepare a Resource Management Plan/Environmental Impact Statement for Box Elder County in northern Utah. Of the county's 3,580,160 acres, there are 1,043,926 acres of BLM lands, 172,413 acres of State lands, 1,971,245 acres of private lands, and 392,576 acres of other Federal lands. The RMP/EIS will analyze planning alternatives for the public lands in Box Elder County.

Three issues have been identified and will be addressed in the RMP/EIS along with others that may be identified. The issues are: (1) Land-ownership/use conflicts; (2) livestock grazing/wildlife habitat/watershed; (3) mineral development.

The disciplines to be represented on the interdisciplinary team are range conservationist, wildlife biologist, recreation planner, realty specialist, geologist, and watershed specialist.

Public participation activities will include requests for written comments, a public hearing, review of the preliminary RMP/draft EIS and a 30 day protest period after the proposed RMP/final EIS is released. The dates, times and locations of public participation activities will be announced through the media and mailings to interested parties prior to each activity.

FOR FURTHER INFORMATION CONTACT: Dennis Oaks, Team Leader for the Box Elder RMP/EIS, Salt Lake District Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Planning criteria and other documents relevant to the planning and EIS process can be examined at the Salt Lake District during regular business hours from 7:30 a.m. to 4 p.m., Monday through Friday.

Frank W. Snell,
District Manager.

[FR Doc. 84-25067 Filed 9-20-84; 8:45 am]
BILLING CODE 4310-DQ-M

Revocation of the Beckwourth Peak Known Geothermal Resources Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Revocation of the Beckwourth Peak Known Geothermal Resources Area.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by Section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and degelations of authority in 220 Departmental Manual 4.1 H, and Secretarial Orders 3071 and 3087, the following described lands are hereby revoked as the Beckwourth Peak Known Geothermal Resources Area, effective August 17, 1984:

(5) California

BECKWOURTH PEAK KNOWN GEOTHERMAL RESOURCES AREA

Mount Diablo Meridian, California

T. 22 N., R. 14 E.,
  Sec. 3, 4, 9, inclusive.
T. 23 N., R. 14 E.,
  Sec. 34, inclusive.

The revoked area described contains 2,558 acres, more or less

The subject lands will be made available to the first qualified applicant under regulations appearing in 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California State Office, Division of Mineral Resources, 2800 Cottage Way, Sacramento, California 95825, (916) 484-4515.

Dated: September 13, 1984.

Robert M. Anderson,
Deputy State Director, Mineral Resources.

[FR Doc. 84-25069 Filed 9-20-84; 8:45 am]
BILLING CODE 4310-1291-M

[Serial No. C-38485]

Realty Action; Determination of Land Suitable for Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Determination of land suitable for exchange under the authority of sections 205, 206, 302(b), and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732, and 1740).

SUMMARY: Approximately 355 acres of public land under the jurisdiction of the Bureau of Land Management located near Burns, Colorado, in Eagle County have been determined suitable for exchange. The determination of suitability has abeen made in response to a Bureau-benefiting exchange proposal received from Mr. John Benton on behalf of Benton Land and Livestock Company. In the proposal, Mr. Benton has offered to exchange approximately 340 acres located near Burns, Colorado, in Eagle County. The exchange proposal has been made to facilitate the consolidation of land holdings and thus increase managerial efficiency and the public values of natural resources found on the land being considered for exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The following is a list of public land determined suitable for exchange.

OFFERED PRIVATE LAND

Parcel and legal description	Acres
Sixth Principal Meridian:	
A—T. 2 S., R. 84 W., sec. 31, W1/2SW1/4, S1/2NW1/4	160
B—T. 2 S., R. 86 W., sec. 24, NW1/4SE1/4; sec. 13, SE1/4SE1/4; sec. 24, E1/2 NE1/4	160
C—T. 2 S., R. 85 W., sec. 4, lots 20 and 22 of tract 41	20.27
Total Acres Offered Private Land	340.27

SELECTED BLM LAND

Parcel, and legal description	Acres
Sixth Principal Meridian:	
1—T. 2 S., R. 85W., Sec. 8, lots 1 and 4	55.12
2—T. 2 S., R. 86 W., sec. 7, lot 20; sec. 8 lots 1, 2, and 3; sec. 17, lots 1, 2, and 3	73.62

SELECTED BLM LAND—Continued

Parcel, and legal description	Acres
3—T. 2 S., R. 84 W., sec. 17, lot 4, SW1/4 NE1/4	50.66
4—T. 3 S., R. 85 W., sec. 1, lots 5, 6, 7, 8, and 9	130.26
5—T. 3 S., R. 85 W., sec. 12, SE1/4NW1/4	40.00
6—T. 2 S., R. 85 W., sec. 13, lot 11	5.47
Total Acres BLM Selected Land	355.17

Terms and Conditions

The following reservations for existing uses and users will be made in the patent issued for public lands.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1980 (43 U.S.C. 945).

2. Oil and Gas leases: C-38980, C-20818, C-36936, C-33608, and C-34926

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered at filed and shall be returned to the applicant. This segregation will expire two years form the date of publication of this notice.

Those non-Federal lands described above subject to prior Federal reserved minerals are hereby segregated to the extent that such interests will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

Further Information and Public Comment

Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, Glenwood Springs, Colorado. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Dated: August 29, 1984.

Dick Freel,

Associate District Manager, Grand Junction Office.

[FR Doc. 84-25190 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-JB-M

Salt Lake District; District Multiple Use Advisory Council Meeting

September 14, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Multiple Use Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Salt Lake District Multiple Use Advisory Council will be held on October 18, 1984.

The meeting will consist of a tour of the public lands in Tooele County and will begin at 8:30 a.m. at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119. It is open to the public.

Anyone wishing to attend should contact Scott Brayton at (801) 524-5348 by October 14, 1984 so adequate transportation arrangements can be made.

Frank W. Snell,

District Manager.

[FR Doc. 84-25060 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-DQ-M

[W-86214]

Wyoming; Realty Action Exchange of Public Land in Cherry County, Nebraska for Private Lands in Cherry County, NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, W-86214.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Sixth Principal Meridian

T. 33 N., R. 33N., R. 32 W.,
Sec. 31, Lots 1, 3, 4.
Total: 118.83 Acres.

Only the surface and not the mineral estate will be exchanged on the public land.

In exchange for these lands, the United States will acquire from Marvin C. Westcott, West Speer Ranch, P.O. Box 530, Holdrege, NE 68949 the surface estate of the following described lands:

Sixth Principal Meridian

T. 31 N., R. 31 W.,
Sec. 6, Lots 5, 6; E1/2 SW1/4.
Total: 109.36 Acres.

The purpose of the exchange is to consolidate the surface estate of both the Federal Government and Marvin C. Westcott, and eliminate private inholdings within the Samuel R. Mckelvie National Forest. The exchange is consistent with the Bureau's planning for the land involved. The public interest will be served by completing the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money up to 25 percent of the total value will be used to equalize the values upon completion of the final appraisal of the lands.

Exchange Terms and Conditions

Any patent issued will be subject to all valid existing rights. Patent Reservations include:

(1) A reservation for ditches and canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 USC 945).

(2) All minerals shall be reserved to the United States, together with the right to prospect for, mine or remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document is available for review at the Newcastle BLM Office, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701 (phone (307) 746-4453).

(3) Any patent issued will be subject to oil and gas lease W-63962.

Publication of this Notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the Notice segregates the lands from the use applied for in the application. The segregation effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such lands upon publication in the **Federal Register** of a termination of the segregation or two (2) years from the date of publication, whichever occurs first.

Date

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Casper District Office, 951 Rancho Road, Casper Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and will issue a final determination.

Dated: September 14, 1984.

Leslie A. Olver,

Acting District Manager.

[FR Doc. 84-25074 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4822, Block 274, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 14, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 14, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-25066 Filed 9-20-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Decision-Notice OP2 MCF-15925; Vol. OP2-456]

Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 14, 1984.

By the Commission.

James H. Bayne,

Secretary.

Volume OP2-456

MC-F-15925 BLUE & WHITE LINES, INC. (BLUE) (516 West Plank Road, Altoona, PA 16602)—CONTROL—LINCOLN COACH LINES (LCL) and LINCOLN COACH TRAVEL, INC. (LCT) (12681 Route 30 West, Irwin, PA 15642-0369) Filed September 12, 1984. Representative: S. Berne Smith, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108-1166. Blue, a motor common carrier, seeks authority to acquire control of LCL and LCT through the purchase of the issued and outstanding capital stock of the two motor carriers. Dennis R. Long, who controls Blue through ownership of a majority of its issued and outstanding capital stock, seeks approval to acquire control of LCL and LCT through the transaction. LCL holds authority under No. MC-120083 and subs thereunder to transport passengers over regular routes between various points in Pennsylvania, and passengers over irregular routes, in charter and special operations, between points in the United States. LCT holds authority under No. MC-157167 (Sub-No. 1) to transport passengers over irregular routes, in charter and special operations, between points in the United States.

Dennis R. Long controls Blue and Blue & White Lines of Florida, Inc., both of which operate as motor common and contract carriers of passengers, in interstate or foreign commerce, under authorities issued in No. MC-46614 and subs and No. MC-158455, respectively.

Note.—This notice does not purport to be a complete description of the operating rights of the carriers involved.

[FR Doc. 84-25096 Filed 9-20-84; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Brooks Associates, Inc., a Pennsylvania corporation, 3445 S. Front Street, Philadelphia, PA 19148.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

(i) Brooks Provisions, Inc., a Pennsylvania corporation

(ii) DeBro Transporation Co., Inc., a New Jersey corporation.

1. Parent company and address of principal office: Foodland Distributors, 12701 Middlebelt Road, Livonia, MI 48150.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: (i) Foodland Transportation, Inc.; Michigan.

James H. Bayne,

Secretary.

[FR Doc. 84-25097 Filed 9-20-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree Lodging Pursuant to Clean Air Act; Armstrong World Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Armstrong World Industries, Inc.* (Armstrong) Civil Action No. 84-1554 was lodged on September 4, 1984, with the United States District Court for the Eastern District of Pennsylvania.

This case arises under the Clean Air Act wherein the United States filed the complaint to enjoin Armstrong from operating certain sources, i.e., surface coating processes and graphic arts systems, that emit volatile organic compounds in violation of the Clean Air Act of the Pennsylvania State Implementation Plan as found at 25 Pa. Code sections 129.52(b) and 129.66(a). The proposed decree sets forth schedules whereby Armstrong will install and equip the appropriate sources with pollution control equipment. The decree also provides for the replacement of non complying coatings with complying coatings as an alternative means of compliance.

Please note that Appendix A to the Proposed Consent Decree was ordered filed under seal by the Court on September 4, 1984. As such, copies of the proposed decree will not contain Appendix A.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Armstrong World Industries, Inc.*, D.J. Ref. 90-5-2-652.

The proposed decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, attention: Margaret L. Hutchinson, Esq., 3310 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 and at the Region III Office of the Environmental Protection Agency, attention: James Baker, Esq., 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1714, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, include a check in the amount of $2.60 ($0.10) per page reproduction charge payable to the Treasurer of the United States.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-25098 Filed 9-20-84; 8:45 am]

BILLING CODE 4410-01-M

First Modification To Consent Decree Pursuant to the Clean Water Act; City of Sandpoint and the State of Idaho

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 22, 1984 a proposed First Modification to the Consent Decree entered on November 12, 1981, in *United States* v. *City of Sandpoint and The State of Idaho,* Civil Action No. 78-2095 was lodged with the United States District Court for the District of Idaho. The November 12, 1981, Consent Decree required the City of Sandpoint to, *inter alia,* employ 5 full-time personnel to operate the municipal sewage plant and pump stations, insure that at least one of the five operators was certified by the State of Idaho as a "level four" operator, perform specific plant maintenance at intervals specified in Appendix A to the Decree, comply with interim effluent limitations until December 31, 1984, at which time the City would be required to comply with more stringent limitations contained in its NPDES permit, and complete construction of improvements to the City's treatment plant by September 30 1984. The proposed First Modification to the Consent Decree reduces the number of plant operators required from five to four, defers the requirement for a "level four" operator until March 15, 1985 the date upon which the upgraded treatment facilities are expected to be in full operation, revises maintenance requirements, extends the date for completion of the upgraded treatment facilities to November 30, 1984, extends the date for final compliance with the City's NPDES permit until March 15, 1985, and provides for stipulated penalties in varying amounts for any failures by the City to comply with the provisions of the Decree.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed First Modification to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *The City of Sandpoint and The State of Idaho*, DJ Reference 90-5-1-1-1114A.

The proposed First Modification to the Consent Decree may be examined at the Office of the United States Attorney, Federal Building, 550 West Fort Street, Boise, Idaho, and at the Region X Office of the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington. Copies of the proposed First Modification to the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, 9th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed First Modification to the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *City of Sandpoint and The State of Idaho*, DJ Reference 90-5-1-1-1114A, and include a check in the amount of $2.80 (0.10 per page reproduction charge) payable to the United States Treasury.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-25089 Filed 9-20-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under section 1-5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register** February 27, 1980 (45 FR 12769), will meet on October 10, 1984, starting at 10:00 a.m. in Room C2318, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

I. Call to Order
II. Approval of Minutes of last meeting
III. Election of Vice Chairman
IV. Announcements
  A. Reappointments
  B. 39th Annual Federal Safety and Health Conference
V. Medical Records Retention system
VI. Reports:
  A. Interdisciplinary Committee on Fleet Safety
  B. Interdisciplinary Committee on Hazard Abatement
  C. Interdisciplinary Committee on Education
  D. President's 3% Reduction Goal
VII. Proposed change to FACOSH's Articles of Organization
VIII. New Business
IX. Adjournment

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business October 5, 1984, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business October 5, 1984. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue, NW., Room N3613, Washington, D.C. 20210, telephone (202) 523-9329.

Signed at Washington, D.C. this 18 day of September 1984.

Robert A. Rowland,

Assistant Secretary.

[FR Doc. 84-25207 Filed 9-20-84; 8:45 am]

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-138; Exemption Application No. D-5043 et al.]

Grant of Individual Exemptions; Randall W. Smith, M.D., A.P.C., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Randall W. Smith, M.D., A.P.C., Defined Benefit Pension Plan (the Plan) Located in San Diego, California

[Prohibited Transaction Exemption 84-138; Exemption Application No. D-5043]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed lease (the Lease) by the Plan of a six acre parcel of unimproved real property (the Property) to Randall W. Smith, M.D. and Florence E. Smith (the Smiths), disqualified persons with respect to the Plan; (2) the possible purchase by the Plan of the Smiths' leasehold interest in the Property pursuant to the terms of the Lease; and (3) a guarantee by the Smiths to the Plan with respect to the future disposition of the Property by the Plan, provided that the terms of such transactions are at least as favorable to the Plan as those which the Plan could receive in similar transactions with an unrelated party.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 13, 1984 at 49 FR 32278.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

MJM Investments, Inc. Money Purchase Pension Plan and Defined Benefit Trust (the Plans) Located in Los Altos, California

[Prohibited Transaction Exemption 84-139; Exemption Application No. D-5232]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale by the Plans of a parcel of real property (the Property) located in Los Altos Hills, California, to John and Susan J. Barbour (the Barbours) for $330,000, provided this amount is not less than the fair market value of the Property at the time of the sale; and (2) the extension of credit by the Plans to the Barbours in connection with the sale, under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 14, 1984 at 49 FR 32477.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Money Purchase Pension Plan of Charles C. Osborn, M.D., Inc. (the Plan) Located in Verdugo City, California

[Prohibited Transaction Exemption 84-140; Exemption Application No. D-5306]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $62,000 on October 1, 1983 by the Plan to Kathleen Eason and David Anthony Yaniro (the Borrowers), to enable the Borrowers to purchase certain property from Dr. Charles C. Osborn, under the terms described in the notice of proposed exemption, provided the terms of the loan were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of the loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 13, 1984 at 49 FR 32283.

Effective Date: This exemption is effective October 1, 1983.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Dalton Obstetrics & Gynecology, P.C. Money Purchase Pension Plan and Dalton Obstetrics & Gynecology, P.C. Profit Sharing Plan (the Plans) Located in Dalton, Georgia

[Prohibited Transaction Exemption 84-141; Exemption Application No. D-5355 and D-5356]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a certain parcel of real property (the Property) by the individually directed accounts (the Accounts) of J. Larry Sanders, M.D. in the Plans to Dr. Sanders, a trustee of the Plans, at the higher of: (a) The appraised fair market value of the Property or (b) the total expenditures incurred by the Accounts in connection with the acquisition and holding of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 13, 1984 at 49 FR 32284.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

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[1] Since Dr. Smith is the sole shareholder of Randall W. Smith, A.P.C. and the only participants in the Plan are Dr. Smith and Florence E. Smith, his wife, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act), pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transactions which is the subject of the exemption.

Signed at Washington, D.C., this 18th day of September 1984.

Elliott I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-25186 Filed 9-20-84; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3450]

Proposed Exemptions; Southmark Realty Advisers, Inc.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Southmark Realty Advisers, Inc. (Southmark) Located in Dallas, Texas

[Application No. D-3450]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Units of the Funds

The restrictions of section 406(a)(1)(A) through (D) of the Act and section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of the Funds between Southmark and an employee benefit plan that is participating in the Fund (Participating Plan) where Southmark provides or will provide investment management services and therefore is or will be a fiduciary, provided that:

(a) Each purchase and sale is authorized in writing by a fiduciary of a Participating Plan who is independent of Southmark and any of its affiliates;

(b) Not more than 5 percent of a Participating Plan's assets are invested in the Fund; and

(c) The applicable conditions set forth in Section V of this exemption are met.

Section II—Exemption for Certain Transactions Involving Collective Investment Funds Sponsored by Southmark

(a) *General Exemption.* The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section V are met.

(1) *Transactions Between Parties in Interest and the Funds.* Any transaction between a party in interest with respect to a Participating Plan and the Fund, or any acquisition, sale, leasing or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition, sale, lease or holding—

(A) The party in interest is not Southmark or one of its affiliates, and

(B) The interest of the Participating Plan together with the interests of any other plans maintained by the same employer or employee organization in the Fund does not exceed 10 percent of the total of all assets in the Fund.

(2) *Acquisitions, Sales, Leasing or Holding of Employer Securities and Employer Real Property.*

(A) Except as provided in subparagraph (B) of this paragraph, any acquisition, sale, leasing or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraph (a)(1) of this Section II, if no commission is paid to Southmark or to any affiliate of Southmark or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property, and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The employer real property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Southmark nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either

(1) The Fund owns the obligation at the time the Participating Plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

(2) Immediately after acquisition of the obligation by the Fund: (AA) Not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by a Participating Plan, and (BB) at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Southmark, its affiliates and any Fund maintained by Southmark or its affiliates shall be considered to be persons independent of the issuer if Southmark is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subparagraph (A) of this paragraph shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Southmark or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Southmark or its affiliate has investment discretion.

(C) For the purposes of the exemption contained in subparagraph (A) of this paragraph, the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) *Special Exemptions.* The restrictions of section 406(a) and section 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) shall not apply to the transactions described below, if the conditions of Section V are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party in interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund,

(B) The party in interest is not Southmark, any affiliate of Southmark, or another Fund, and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Management of Real Property.* Any services provided to the Fund by Southmark or by an affiliate of Southmark in connection with the management of the real property owned by the Fund, if:

(A) The compensation paid to Southmark or its affiliate does not exceed the compensation charged by qualified, unaffiliated persons for performing similar services in the area in which the Fund property is located; and

(B) The provision of such services and the fees paid are negotiated, approved and monitored by a majority of the independent Fund trustees (the Independent Trustees).

(3) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) *Brokerage Fees.* The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (F) shall not apply to any services provided to the Fund by Southmark or by an affiliate of Southmark in connection with the acquisition or sale by the Fund of real property, if:

(1) The commission paid to Southmark or its affiliate either by the Fund or a third party seller does not exceed the commission that would be paid to an unrelated third party in an arm's-length transaction; and

(2) The provision of such services and the commissions paid by the Fund are negotiated, approved and monitored by a majority of the Independent Trustees.

Section III—Excess Holding Exemption For Participating Plans

The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if—

(a) The acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by the Fund,

(b) The requirements of either paragraph (a) (1) or (2) of Section II of this exemption are met, and

(c) The applicable conditions set forth in Section V of this exemption are met.

Section IV—Transactions With Persons Who Are Parties in Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers

The restrictions of section 406(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the code by reason of section 4975(c)(1) (A) through (D) of the code shall not apply to any transaction between the fund and a person who is a party in interest with respect to a Participating Plan that has an interst in the Fund, if—

(a) The person is a party in interest (including a fiduciary) soley by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both , and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(b) The person is not southmark or any affiliate thereof; and

(c) The person is a party in interest with respect to a Participating Plan, which Participating Plan's interest in the Fund, together with the interest(s) held by any other plans maintained by the same employer or employee organization, does not exceed 20 percent of the total assets fo the Fund.

Section V—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires that consent of Southmark or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) Southmark or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in subsection (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Southmark or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (c) below.

(c)(1) Except as provided in paragraph (2) below and notwithstanding any provisions of subsections (a)(2) and (b) of section 503 of the Act, the records referred to in subsection (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan, or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) above shall be authorized to examine trade secrets of Southmark or its affiliates, or commercial or financial information which is privileged or confidential.

Section VI—Defintions and General Rules

For purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partners in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

For the purposes of this subsection (a), the term "affiliate" shall not be limited to persons or entities that are in existence on the effective date of this exemption.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) The term "Fund" means any collective investment fund that is currently managed by Southmark or its affiliates and any collective investment fund that may hereafter be established and managed by Southmark or its affiliates, provided that in all material respects such Funds will be similar. The term "Funds" shall mean all of the collective investment funds.

(e) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or any acquisition is made, on or after the date of granting of this exemption, or a renewal that requires the consent of the Fund occurs on or after the date of granting of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction or holding exempt by virtue of Section II(a)(1) and IV at such time as the interest of any Participating Plan exceeds the percentage interest limitations of Sections II(a)(1) and IV respectively, unless no portion of such excess results from the purchase of an additional interest in the Fund by such Participating Plan. For this purpose, purchases do not include the reinvestment of Fund earnings. Nothing in this subsection (e) shall be construed to exempt a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(f) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

(g) The term "Independent Trustee" means a party who: (1) Is not otherwise affiliated with the Fund's investment manager, broker or property manager, (2) is not a fiduciary of any Participating Plan, (3) is not subject to the authority or control of the Fund's investment manager, broker or property manager or their affiliates, and (4) has acknowledged in writing his or her acceptance of the fiduciary obligations and agreed not to participate in any decision with respect to any transaction in which the Independent Trustee has an interest that might affect his or her best judgment.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption (PTE) 80–51, (45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicant has requested relief are similar to those which are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

On March 13, 1984, the Department granted class relief (PTE 84-14, 49 FR 9494) for a number of transactions where the subject plan assets were under the management of a qualified professional asset manager (QPAM) which is independent of the parties in interest with whom it will deal. Southmark has reviewed the terms of this class exemption and represents that neither Southmark itself nor its affiliates qualify as a QPAM as defined by that exemption.

Summary of Facts and Representations

1. Southmark, a Texas corporation with its principal offices in Dallas, Texas, was formed in 1982 for the purpose of managing and operating real estate investments owned by the Funds described herein. It is an investment advisor that is registered under the Investment Advisors Act of 1940. Southmark is a wholly-owned subsidiary of Southmark Corporation, a Georgia corporation with assets of approximately $458,000,000 and shareholders' equity exceeding $149,000,000 as of June 30, 1982.

Neither Southmark nor any of its affiliates currently acts as an investment manager or advisor of any pension plan or other entity that is a potential investor in the Funds. If Southmark or an affiliate does become an investment manager or advisor of a potential investor to the Funds, it will not in such fiduciary capacity place managed assets or give investment advice to such potential investor to purchase units in the Funds. An affiliate of Southmark had previously acted as a general partner in a real estate limited partnership that was intended to have as limited partners pension plans and other entities that would have been potential investors in the Funds. While this limited partnership did not commence investment activities and was terminated, Southmark expects that it or an affiliate may in the future again act as a general partner in a similar investment vehicle. If Southmark or an affiliate does act as general partner in a similar investment vehicle, it will not invest any of the investment vehicle's assets in the Funds. Similarly, it will not cause the Funds to invest in such investment vehicle.

2. The first Fund, Southmark Realty Investors Equity Fund-I (Fund-I) will offer tax exempt entities, principally Participating Plans, a vehicle whereby they can make equity investments in a large (initially at least $20,000,000) diversified portfolio of improved real property. Southmark expects to organize additional Funds with substantially the same terms and conditions as Fund-I.

3. Fund-I will be organized in the form of a group trust as defined in Rev. Rul. 81-100, IRB 1981-13, 32. Each investor must be an employee benefit trust exempt from tax under section 501(a) of the Code as a trust qualified under section 401(a) of the Code and must have total net assets of at least $10,000,000. Each investing plan must also represent, in accordance with Federal securities law, that its investment in Fund-I (or in any subsequent Fund) constitutes no more than 5 percent of the plan's total assets. Pursuant to the proposed subscription agreement, Fund-I will be adopted as part of each Participating Plan. Interests in Fund-I will be evidenced by units of beneficial interest. Fund-I will receive income from the properties in which it invests and pass through the entire amount thereof, less expenses, to the Participating Plans.

4. Fund-I will be a closed-end fund with a minimum capitalization of $20,000,000 and a maximum of $100,000,000. The price per unit will be $500,000 and the minimum purchase will be two units.[1] The offering period for Fund-I units will commence at a future date as yet unspecified. If Southmark participates in the placement of Fund-I units, no commissions or fees will be paid to Southmark for such services. No investments will be made by Fund-I until subscriptions for units have reached $20,000,000. Subscription proceeds received during the offering period will be held by a bank or trust company and invested in short term securities (other than securities issued by Southmark or its affiliates). If Fund-I does not receive the minimum amount of subscriptions within the offering period, it will refund all subscription proceeds, plus interest, as soon as practicable. The offering memorandum by which interests in Fund-I will be offered to employee benefit plans which are potential investors will describe the management, operation, investment objectives and income tax consequences of Fund-I and the compensation received by Southmark and its affiliates. The offering memorandum will be provided to the appropriate plan fiduciary prior to such plan's investment in Fund-I.

5. Fund-I will have a definite term which will expire approximately 10 years after it becomes operational unless shortened or lengthened by the consent of investors owning at least 60 percent of the outstanding units of Fund-I. On the expiration of this term, the Trustees will liquidate the remaining assets and distribute the net proceeds to Fund-I investors. As required by Rev. Rul. 81-100, the interest of any Participating Plan in Fund-I is not transferable or assignable to third parties. Plan fiduciaries desiring to invest assets in Fund-I will be fully advised that only long-term investment in Fund-I should be considered. If a Participating Plan wishes to dispose of its investment, it may apply to the Trustees for redemption of its units beginning approximately three (3) years after the close of the offering period. Redemption will be made at the unit values as of the valuation date preceding the date on which redemption occurs. Redemption may take up to 30 months at the discretion of Southmark. In addition, Participating Plans may acquire additional units in Fund-I from a redeeming plan.[2] A Participating Plan seeking to purchase such additional units will make a cash contribution to Fund-I equal to the redemption value of the units to be redeemed.

6. The Fund-I Group Trust Agreement provides for seven Trustees initially. At least four of the initial Trustees (and at all times a majority of the Trustees) will be unaffiliated with Southmark or its affiliates (Independent Trustees). Those persons selected by Southmark to be Independent Trustees will have substantial real estate or economics experience and have held either a senior executive or academic position in one of these fields. In the event that one or more of the Independent Trustees resigns or otherwise ceases to serve in such capacity, those remaining Independent Trustees must select a successor Independent Trustee(s). If at any time there are no remaining

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[1] If a potential Participating Plan's assets are less than $20,000,000, the 5 percent plan asset investment limit will control. Such plan would, at Southmark's discretion, be permitted to purchase a single $500,000 unit.

[2] The Department would note, however, that Section I(b) of the proposed exemption would limit the availability of relief to situations where a Participating Plan's investment does not exceed 5 percent of its assets. Additionally, the relief under Sections II(a) and IV is limited to where a Participating Plan's investment (together with the investment of any plan sponsored by the same employer or employee organization) does not exceed 10 percent or 20 percent respectively of all assets in the Fund.

Independent Trustees, the successor Independent Trustees will be selected by a majority of the Trustees then in office. Neither Southmark nor its affiliates will have any authority to remove the Independent Trustees. Under the Fund-I Group Trust Agreement, any Trustee can be removed only by the vote or consent of the Participating Plans holding 60 percent or more of the outstanding units. Compensation for services to Fund-I by the Independent Trustees will be calculated under a formula contained in the Group Trust Agreement ($20,000 per year plus $1,000 for each meeting in excess of 10 meetings per year). After five years, the fees will increase in proportion to the annual increase in the Consumer Price Index for the prior year. To insure that the Independent Trustees understand their role and accept their fiduciary obligations, the applicant agrees that it will cause each Independent Trustee to acknowledge in writing his or her acceptance of the fiduciary responsibilities that an Independent Trustee will incur. This written acknowledgement will include a statement that an Independent Trustee will not participate in any decision with respect to any transaction in which the Independent Trustee has an interest which might affect his or her best judgement.

7. None of the Trustees nor any of the employees, officers or directors or shareholders of Southmark will own equity interests in Fund-I. Also, there are no interlocking directorships involved, that is, none of the individual Trustees nor any of the employees, officers, directors or shareholders of Southmark serve as fiduciaries of the Participating Plans, or as directors or officers of the sponsors of such plans.

8. Southmark's duties as investment manager of Fund-I will include the management and operation of Fund-I and the acquisition and disposition of all properties on behalf of Fund-I. For its services as investment manager, Southmark will be paid a fee of 1.2 percent per annum of the aggregate purchase price of units subscribed for in Fund-I for a period ending with the earlier of the following two events—either the subscription to a percentage as stated in Fund-I documents or the third anniversary of the last day of the offering period for such fund. On the expiration of the earlier of the two periods, Southmark will be paid a fee of 1.2 percent per annum of the net asset value of Fund-I as of December 31 of the prior year. For the purposes of this net asset value computation:

(a) Properties will be valued on the basis of the most recent appraised value determined by an independent appraiser, or if any properties have not theretofore been appraised, such properties shall be valued at cost; and (b) all other assets of Fund-I shall be valued at fair market value as of fee computation date.

9. Southmark proposed to have its affiliates provide real estate brokerage services in connection with properties purchased, owned or sold by Fund-I. Brokerage services would include screening, qualifying, soliciting and negotiating with potential sellers, buyers and lessees of properties owned or desired by Fund-I and negotiating with actual lessees of properties owned by Fund-I that desire to renew their leases.[3] The applicant represents that for a brokerage firm to effectively represent its client and find suitable sellers, buyers and lessees, that firm must first expend a substantial amount of time, effort and energy to learn the investment needs and criteria of the client. It is further represented that many firms do not have the sophistication or financial capacity to become sufficiently knowledgeable about Fund-I's affairs in the anticipation of possibly earning one or two future brokerage fees. The applicant states that Southmark's affiliates already would have the necessary level of sophistication and knowledge of Fund-I's needs and would provide it immediately whenever Fund-I needed it.

10. Southmark would also proposed to provide real property management services including contracting for property maintenance and repair, tenant supervision, periodic property inspection, rent collection, bookkeeping and lease preparation. Southmark believes that it would be in the best interests of the Participating Plans for its affiliates which are experienced property managers to provide property management services to Fund-I. Many unaffiliated property management companies are merely independent real estate brokers who maintain limited property management departments. Southmark must make frequent demands for market information, budgets and comparative cost information as required for new tenants. Slow response times from small unsophisticated or disinterested property management companies would decrease the efficiency of the operation of Fund-I and therefore, the net return to the Participating Plans.

11. The Independent Trustees, however, are free to consider any property manager or real estate broker and are not required to consider Southmark or an affiliate as the first choice for any particular service. In the event Southmark or an affiliate is chosen to perform property management and/or real estate brokerage services, all such transactions between Southmark or its affiliates and Fund-I must be conducted on an arm's-length basis and reflect the best interests of Fund-I. Accordingly, the Independent Trustees will have the authority and obligation to negotiate, approve and monitor each property management and brokerage agreement. Specifically, the majority of the Independent Trustees must approve the appointment of Southmark or an affiliate as a real estate manager or real estate broker with respect to each property, and must negotiate and approve the terms of each appointment, including the term of any property management contract or real estate brokerage agreement between Fund-I and Southmark or its affiliates. The Independent Trustees may retain consultants unrelated to Southmark or its affiliates to assist in carrying out the full range of their responsibilities including, but not limited to, the gathering of information and presenting recommendations upon which the Independent Trustees will base their decisions regarding the terms or compensation schedules of such agreements. The compensation paid will not exceed that charged by qualified, unaffiliated persons performing similar services for similar properties in the geographical area where the property is located. The Independent Trustees will also monitor the performance standards negotiated under the property management and real estate brokerage agreements to ensure that they are adhered to. All agreements will be "reasonable" as that term is used in section 408(b)(2) of the Act and its accompanying regulations,[4] including the ability of the Independent Trustees to terminate such agreements.

With regard to property management, in accordance with what the applicant represents is standard real estate practice, the real property manager will receive a fixed percentage of the rents from the property plus reimbursement for direct expenses. In determining the percentage of rents to be paid, the Independent Trustees will survey unrelated management firms that manage property of the same type in the area in which the property is located. Based on the survey and on their own real estate expertise, the Independent Trustees will determine the rates to be paid to the affiliated property manager and the terms of the management agreement.

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[3] However, real estate brokerage commissions will only be earned on purchases and sales of property by the Fund. See paragraph 13 below for a discussion of leasing commissions.

[4] 29 CFR 2550.408b–2, 42 FR 32389, June 24, 1977.

With regard to brokerage commissions, in accordance with what the applicant represents is standard real estate practice, such commissions will be negotiated and approved by the Independent Trustees based upon similar commissions for similar properties in the same geographical area and also based upon their real estate expertise. Since brokerage commissions are paid by the seller of the subject property, such commissions may be paid either by the Fund or by a third party, depending upon who is the seller.

12. In any year in which any of the Trustees is affiliated with Southmark or in which Southmark or one of its affiliates provides property management or real estate brokerage services, the Independent Trustees will review the fee and/or commission structure being charged by Southmark. If the Independent Trustees determine that such fees and/or commissions are (or are likely to be) greater than the amount of fees and/or commissions being paid to investment managers of other income-producing real estate funds for tax-exempt investors, then the Independent Trustees must cause Southmark to employ an independent consultant to review each of the fees and/or commissions being paid to Southmark and make recommendations for modification. In addition, at the request of Participating Plans holding not less than 60% of the outstanding units of Fund-I (but not more often than annually), an independent consultant selected by the investors may review the management fees being charged by Southmark. Any such consultant report shall be circulated to each Participating Plan. No statutory or administrative exemptive relief would be available for the receipt of any fees by Southmark which are determined to be in excess of reasonable fees.

13. Finally, Fund-I may not pay Southmark or an affiliate leasing commissions or lease renewal commissions, regardless of whether Southmark or an affiliate is hired as a real property manager, a real property broker, or both. The applicant represents that such commissions are normally paid to independent property managers and brokers. Thus, the applicant represents that since independent property managers and brokers usually receive lease commissions and lease renewal commissions, the appointment of Southmark or an affiliate as property manager or broker should create a benefit to the Fund-I in addition to those described above.

14. The properties in which Fund-I will invest will be leased to various tenants which may include employers or their affiliates whose plans have invested in Fund-I, persons providing services to such plans and fiduciaries of such plans. While any given lease typically would account for a small percentage of rental income to Fund-I, and the participation of a party in interest is proportionately small, it would be necessary without an exemption to examine every prospective tenant or property in which Fund-I has an interest to ascertain whether that tenant is a party in interest with respect to any Participating Plan. The applicant represents that the end result of the failure to grant the proposed exemption could be the denial of leases to qualified tenants or the failure to purchase valuable properties, with a commensurate injury to the Participating Plans.

15. Any employees benefit plan that considers investment in Fund-I will receive a copy of the notice of pendency and the exemption with the offering memorandum and an accompanying letter that states how fees and/or commissions to affiliated property managers and brokers will be determined. Neither statutory nor administrative exemptive relief would be available for the receipt of any fees and/or commissions by an affiliated property manager or broker that are determined to be in excess of reasonable compensation.

16. Within 120 days after the end of each fiscal year, each Participating Plan will receive from the Trustees a balance sheet, profit and loss statement, and statement of change in financial position of Fund-I as prepared by a certified public accountant who is unrelated to Southmark and its affiliates. The Participating Plans will also receive a statement of fees and/or commissions paid to Southmark. Within 60 days of the end of each quarter, the Trustees will distribute a quarterly balance sheet and a statement of all realty purchased during that quarter. From time to time, the Trustees will provide whatever other information is reasonably requested by a Participating Plan. Appraisals of Fund-I properties will be made at least annually by independent appraisers. These appraisals will be included in the above-described annual reports.

17. Fund-I will be audited annually by an independent, national accounting firm and the Participating Plans will be provided with reports containing the audited financial statements. The independent accountant will also: (a) Recompute Southmark's investment management fee to confirm that it is in compliance with the investment management agreement; (b) perform reasonableness tests on property management fees and real property brokerage commissions to confirm that these fees and/or commissions conform to the terms of the respective service contracts and agreements; (c) confirm all aspects of sales of properties to Fund-I; and (d) perform tests to ensure compliance with the Act, the Code, and any applicable prohibited transaction exemption. Furthermore, because Southmark will be a registered investment advisor under the Investment Advisors Act of 1940, certain of its activities and operations are regulated by the Securities and Exchange Commission and subject to periodic examination.

18. It is contemplated that one or more additional Funds similar to Fund-I will be organized from time to time. The Trustees may serve in the same capacity for some of the additional Funds. Other persons, who also would be officers and/or directors of Southmark or their affiliates, may also be appointed as Trustees. Southmark will be the investment manager for each of the additional Funds to be covered by the requested exemption. The applicants state that such additional Funds will, in all material respects, be similar to Fund-I.

19. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (a) All decisions to invest in the Funds will be made by knowledgeable fiduciaries of large employees benefit plans who are unrelated to Southmark or its affiliates on the basis of a detailed private placement memorandum supplied to them prior to investment; (b) an independent accountant will audit the operation of the Funds on an annual basis; (c) Participating Plans will annually be provided with certian investment performance information; (d) all services to be performed by Southmark and its affiliates will be subject to and controlled by agreements, the terms of which (including fees and/or commissions) will be disclosed to investors prior to initial investment, and negotiated, approved and monitored by the Independent Trustees; and (e) each of the protections provided to the

Participating Plans and their participants and beneficiaries by PTE 80–51 will be satisified for transactions involving parties in interest with respect to such plans, except that the Funds are privately maintained.

Notice to Interested Persons: Because all plan participants and beneficiaries whose plans participate in the Funds could conceivably be interested persons, the Department has determined that the only practical form of notice is by publication in the **Federal Register**.

For Further Information Contact: Mr. Paul R. Antsen of the Department, telephone (202) 523–6915. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately described all material terms of the transactions which is the subject of the exemption.

Signed at Washington, D.C., this 18th day of September, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–25187 Filed 9–20–84; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–54]

Final Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R–81; Union Carbide Subsidiary B, Inc.

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Amendment to Facility Operating License No. R–81 for the Union Carbide Subsidiary B, Inc. (UCS) research reactor located in Sterling Forest, New York.

The amendment will renew the Operating License until June 30, 2000, in accordance with the licensee's application dated May 23, 1980, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance published in the **Federal Register** on August 1, 1980 at 45 FR 51320.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

Summary of Environmental Impacts As Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1961. The environmental impacts associated with the continued operation of the UCS facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the UCS reactor for an additional 16 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the Technical Specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) The expected consequences of a broad spectrum of postulated credible accidents have been considered, emphasizing those likely to cause loss of integrity of fuel-element cladding. The staff performed conservative analyses of the most serious credible accidents and detemined that the calculated potential radiation doses in unrestricted areas are small fractions of 10 CFR Part 20 allowable doses;

(c) The systems provided for control of radiological effluents can be operated to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA); and

(d) The licensee's Technical Specifications, which provide limiting conditions for the operation of the facility, are such that there is a high degree of assurance that the facility will be operated safely and reliably.

For further details with respect to this proposed action, see the application for license renewal dated May 23, 1980, as supplemented, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG–1059).

The Environmental Assessment is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTENTION: Director, Division of Licensing.

Copies of NUREG–1059 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 14th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84–25158 Filed 9–20–84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-13258]

Continental Home Finance Corp.; Application and Opportunity for Hearing

September 18, 1984.

Notice is hereby given that Continental Home Finance Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of First National Bank of Minneapolis ("First Minneapolis") under an existing indenture that has been qualified under the Act and another indenture which will be qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Minneapolis from acting as trustee under either such indenture.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding.

However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) The Applicant has entered into an Indenture, dated as of May 1, 1982, as amended (the "Indenture"), with First Minneapolis, as trustee. Pursuant to such Indenture, the Applicant issued on June 17, 1982, July 29, 1982, November 8, 1982, January 13, 1983, April 15, 1983, June 23, 1983, August 18, 1983, December 22, 1983, February 24, 1984 April 12, 1984, and July 6, 1984, respectively, $6,400,000 principal amount of its 14¾% Insured Mortgage Backed Bonds, Series A, $5,600,000 principal amount of its 14½% Insured Mortgage Backed Bonds, Series B, $1,777,000 principal amount of its 13% Insured Mortgage Backed Bonds, Series 1982 III, $9,350,000 principal amount of its 12% Insured Mortgage Backed Bonds, Series C, $14,110,000 principal amount of 12% Insured Mortgage Backed Bonds, Series D, $8,590,000 principal amount of its 12% Insured Mortgage Backed Bonds, Series E, $8,820,000 principal amount of its 13% Insured Mortgage Backed Bonds, Series F, $10,065,000 principal amount of its 12.9% Insured Mortgage Backed Bonds, Series G, $10,830,000 principal amount of its 12⅝% Insured Mortgage Backed Bonds, Series H, $10,485,000 principal amount of its 12⅞% Insured Mortgage Backed Bonds, Series I, $8,580,000 principal amount of its 13⅞ Insured Mortgage Backed Bonds, Series J. All such bonds are registered under the Securities Act of 1933.

(2) Each of the above referenced series of bonds is secured by separate collateral consisting principally of a group of mortgage loans. The Indenture requires that the mortgage loans deposited as collateral for each series have on the issue date an aggregate principal balance and an aggregate Mortgage Value (as defined in the Indenture) both equal to at least 100% of the aggregate principal amount of the bonds of the series. The mortgage loans produce, together with other collateral required to be deposited as a condition to issuance of the series, a cash flow sufficient to amortize the bonds of the series through redemption and payment at their stated maturity (30 years from the date of issuance) and to support all interest payments required to be made on the bonds of the series while they are outstanding in accordance with the amortization thus provided. Blanket Mortgage Insurance, Special Hazard Insurance, a Fidelity Bond and an Errors and Omissions Policy are required to be maintained with respect to the mortgage loans securing all series of bonds as a pool under the Indenture. The Indenture expressly prohibits any of the mortgage loans pledged thereunder as security for one series of bonds to be pledged as security for any other series or any other indebtedness of the Applicant.

(3) The Applicant plans to continue issuing, from time to time, additional series of such bonds. In connection therewith, the Applicant anticipates filing with the Commission a registration statement on Form S–3 within the next few weeks. Such registration will refer to an Indenture, to be dated as of September 1, 1984 ("Indenture #2"), proposed to be entered into between the Applicant and First Minneapolis, as trustee. Each series of bonds will be secured by separate collateral consisting principally of a group of mortgage loans. Indenture #2 will require that the mortgage loans deposited as collateral for each series of bonds will have, on the issue date, an aggregate Mortgage Loan Value (as defined in Indenture #2), together with other funds held or to be received by the Trustee with respect to such series of bonds, at least equal to 100% of the aggregate principal amount of the bonds of the series. The mortgage loans will produce, together with other collateral required to be deposited as a condition to the issuance of the series, a cash flow sufficient to amortize the bonds of the series through redemption and payment at their stated maturity. It is anticipated that Blanket Mortgage Insurance, Special Hazard Insurance, a Fidelity Bond and an Errors and Omissions Policy shall be required to be maintained with respect to the mortgage loans securing all series of bonds as a pool under Indenture #2. Indenture #2 will expressly prohibit any of the mortgage loans pledged thereunder as security for one series of bonds to be pledged as security for any other series or any other indebtedness of the Applicant.

(4) The Applicant is not in default under the Indenture.

(5) Such differences as exist between the Indenture and Indenture #2 are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First Minneapolis from acting as Trustee under Indenture #2.

(6) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the

Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may, not later than October 15, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25160 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 931; 803-38]

TCW Asset Management Co.; Filing of Application for an Order for Exemption Granting Confidential Treatment of an Exhibit to the Application

September 14, 1984.

Notice is hereby given that TCW Asset Management Company ("Applicant"), a California corporation, 400 South Hope Street, Los Angeles, CA 90071, filed an application on May 15, 1984, and an amendment thereto on September 10, 1984, requesting an order of the Commission pursuant to section 206A of the Investment Advisers Act of 1940 (the "Act"), exempting certain performance-based fee arrangements entered into by a limited partnership of which TCW Partners (a general partnership composed of Applicant and certain of its officers will be the general partner from the provisions of section 205(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicant states that it is an investment adviser registered with the Commission and a wholly-owned subsidiary of Trust Company of the West, a trust company organized under the laws of the State of California. Applicant and certain of its associated persons propose to establish the TCW Special Placements Fund I, a California limited partnership (the "Partnership"). Applicant will manage the Partnership through TCW Partners, a California general partnership which will act as the general partner (the "General Partner") of the Partnership. Applicant will be the managing partner of the General Partner and will have full charge of the overall management, conduct, administration and operation of the Partnership's investments. Several of Applicant's officers will be the individual general partners of the General Partner. Except in certain limited circumstance involving a change in control of Applicant, the individual partners of the General partner will not have authority to manage the Partnership except in their capacities as officers of Applicant.

Applicant states that the investment objective of the Partnership is to provide its limited partners with a current return on investment with the opportunity for substantial capital appreciation. The Partnership will invest primarily in: (1) Convertible debt, (2) debt purchased in conjunction with equity securities, and (3) equity securities, all of which will be purchased in private placement transactions. Up to 5% of the Partnership's assets may be invested in other types of investments. It is anticipated that a substantial portion of the Partnership's assets may be invested in securities issued in transactions involving leveraged buyouts.

Applicant states that securities purchased by the Partnership will be sold at such times as the General Partner deems advantageous to the Partnership. It in anticipated that a substantial portion of the investments of the Partnership will be disposed of between 4 to 7 years after the establishment of the Partnership. Proceeds from the sale of the Partnership's will not be reinvested but will be distributed to the partners. The Partnership will have a limited term of up to 12 years which may be extended for a period of up to 3 years with the approval of limited partners holding two-thirds of the Units of the Partnership. Investments not sold by the termination of the Partnership will be distributed in kind upon termination.

Applicant states that participation in the Partnership will consist of no more than 300 units (the "Units") of $1 million each, with a minimum subscription in the Partnership by each prospective limited partner of 2 Units. Transfer of Units in the Partnership will be restricted, and no limited partner will be allowed to withdraw its capital before the termination of the Partnership. The General Partner will contribute in cash to the capital of the Partnership the greater of $450,000 or 1% of the total capital contributed to the Partnership. Thus the General Partner's capital account will be allocated at least 1% of the Partnership's profits and losses.

Applicant represents that Units will be offered and sold pursuant to Regulation D under the Securities Act of 1933, as amended (the "Securities Act"). Limited partners will be sophisticated institutional investors that regularly deal in investments of this type, such as pension plan trusts, charitable trusts, foundations and endowments and insurance companies. Each limited partner will qualify as an accredited investor within the meaning of Regulation D under the Securities Act. Units may also be sold to sophisticated individual investors who have a net worth (or a joint net worth with their spouse) at the time of investment in excess of $10,000,000 and whose investment in the Partnership represents no more than 15% of the gross value of the assets in which such investors (and spouse) have a beneficial interest. The Partnership will be exempt from registeration as an investment company by reason of section 3(c)(1) of the Investment Company Act of 1940 as amended (the "Investment Company Act"). The total number of limited partners will not exceed 100 persons and no limited partner will be permitted to contribute more than 10% of the Partnership's initial capital if such an investment would cause the Partnership to be required to register under the Investment Company Act.

Applicant states that the General Partner will value the assets of the Partnership quarterly and each time an investment sold by the Partnership generates capital gains of more than $5 million. In the latter case, and for the year-end valuation of the Partnership, the General Partner will engage nationally recognized independent appraisers or investment bankers to value the non-publicly traded assets of the Partnership. At least once a quarter, limited partners will receive distributions of their allocations of cash revenues of the Partnership including proceeds from repayments of debt principal; dispositions of investments, and interest and dividend payments (reduced by expenses of the Partnership and the General Partner's management fees), all calculated on a cash basis.

Applicant states that the General Partner's management fee will be 1¾% of each contribution to the Partnership per year for the first three years thereafter, and 1% per year of the lesser of the cost or value of the assets held by the Partnership derived from the contribution after that. The management fee will be payable quarterly in advance. All expenses, other than organizational expenses, incurred in connection with the business of the Partnership, including legal and auditors' fees, costs of valuing the assets of the Partnership, insurance costs, finders' and brokers' fees and all other transactional costs associated with the purchase and sale of investments, will be borne by the Partnership.

Applicant states that in addition to its share of the Partnership's profits and losses based on its capital contribution, the General Partner will receive 20% of each realized capital gain of the Partnership and 20% of all unrealized capital gains at the time of termination of the Partnership; provided, however, that in no event will the 20% of realized or unrealized capital gains allocated to the General Partner exced 20% of the amount, if any, by which the value of the assets of the Partnership (as of the date of allocation), plus the amount of proceeds from the sale of assets of the Partnership previously distributed by the Partnership to the limited partners and plus the amount of capital contributions previously returned to the limited partners exceeds the total amount of capital contributions originally contributed to the Partnership. The limited partners will be allocated the balance of all profits and losses of the Partnership in accordance with the number of Units each of them holds. If debt and equity securities are purchased in a single transaction, then the cost of that investment will be allocated to the debt securities up to their face amount solely for the purpose of determining capital gains. Applicant requests an exemption from the provisions of section 205(l) of the Act to the extent necessary to permit it and its associated persons to receive the proposed share of the profits of the Partnership.

Applicant also requests an order under section 210 of the Act for confidential treatment of the Partnership Agreement designated as Exhibit A to the application. Applicant states that the essential terms of the Partnership Agreement have been disclosed in this application; the Partnership Agreement itself constitutes trade secret or commercial or financial information that is provileged and confidential; there will be no public offering of the partnership interests and prospective investors will be provided with a copy of the Partnership Agreement.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 9, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Secruities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25161 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21329; SR-PSE-84-14]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

September 17, 1984.

The Pacific Stock Exchange, Inc. ("PSE") 618 South Spring Street, Los Angeles, CA 90014, submitted on July 31, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend its procedures pertaining to its securities communication, order routing and execution system (SCOREX).[1] The PSE, on a one-year pilot basis, is decreasing the time during which the specialist may remove an order from the system for manual execution from the current thirty second exposure time to fifteen seconds.[2] The Exchange has stated that if a specialist elects to remove an order from the system for manual execution, the specialist will be obligated, as is currently the practice, to provide a price which is as least as good as the price assigned by the system at the time the order is removed.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 21206, August 3, 1984) and by publication in the **Federal Register** (49 FR 31971, August 14, 1984). No comments were received with respect to the proposed rule change.

The Commission understands that SCOREX orders on the PSE will continue to be subject to all PSE rules governing the conduct of its auction market. In this regard, the Commission expects that SCOREX orders will be executed pursuant to the PSE's rules governing the priority of bids and offers on its floor (*e.g.*, PSE Rule 1, Section 12(e)). The Commission believes the proposed reduction of SCOREX's exposure period theoretically could diminish opportunities for SCOREX orders to interact with interest on the PSE floor. For this reason, the Commission believes that approval of the proposed rule change on a pilot basis is appropriate. In this regard, the Commission will conduct discussions with the PSE during the one year pilot program in an attempt to assess the effect of the 15 second exposure period.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

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[1] As described in Rule III, Section 12(a) of the PSE rules, the SCOREX system currently is available to all members organizations and provides automatic executions of market orders up to 1099 shares at the best available price represented by all Intermarket Trading System ("ITS") exchange participants.

A portion of the proposed rule change relating to an increase in the size of market orders which may be automatically executed in SCOREX from 599 to 1099 shares was granted accelerated approval in Securities Exchange Act Release No. 21206, August 3, 1984; 49 FR 31971, August 9, 1984.

[2] *See* letter from Jerry M. Gluck, Vice President and General Counsel, PSE, to Richard T. Chase, Associate Director, Division of Market Regulation, dated September 11, 1984. In its letter, the PSE states that it does not object to implementing a one-year pilot program providing that it retains the right to request permanent approval of this portion of the proposed rule change prior to the expiration of the pilot program.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25162 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21324; File No. SR-BSE-84-5]

Self-Regulatory Organizations; Proposed Change by Boston Stock Exchange, Inc.; Relating to an Amendment to the Rule Governing Dealings on the Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), Notice is hereby given that on August 23, 1984 the Boston Stock Exchange Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange Inc. proposes to amend Chapter I-B, Section 3, of its Rules relating to Dealings on the Floor of the Exchange to allow orders to be transmitted to the Floor of the BSE directly from foreign exchanges approved by the Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change is designed to allow orders transmitted directly from the trading floor of a foreign exchange approved by the BSE Board of Governors to the trading floor of the BSE for execution. Transactions will be limited to those transmitted by foreign brokers doing business on the floor of a recognized foreign exchange. If the proposed rule is approved the BSE is considering establishing an electronic linkage with the floor of a Canadian stock exhange. The BSE has reached agreement, in principle, with The Montreal Exchange to establish such a linkage.

Under the proposed arrangement members of The Montreal Exchange will direct orders to the floor of the BSE through electronic terminals located on the Floor of The Montreal Exchange. Such orders shall be received at the BSE on an electronic terminal and directed to the appropriate BSE specialist for execution. A report of each trade shall then be issued to the Montreal member through the same facilities. Trade recording and comparison shall be at the BSE. However, clearing of all trades performed shall be performed by the National Securities Clearing Corp. ("NSCC"). Each Montreal member shall maintain membership at NSCC either directly or through representation by the Canadian Depository System ("CDS"). It is understood that CDS and NSCC have reached agreement whereby CDS will act as clearing representative for certain Canadian broker/dealers. In either case the BSE trade report will be transmitted to NSCC and reported to the appropriate account for settlement at NSCC pursuant to a standard RIO agreement. The BSE shall bill the Montreal member for standard trade recording and value charges. The Montreal Exchange has agreed to guarantee the trade obligations of its members.

The BSE and The Montreal Exchange each maintain surveillance programs to safeguard the integrity of the trading process. Both have agreed to cooperate fully in the investigation of questions regarding the propriety of any trade. In addition it is contemplated that The Montreal Exchange and the BSE shall establish a joint committee to oversee implementation of the linkage and resolve any disputes which may arise.

Initially, the linkage will entail the routing of orders in Canadian national stocks to the BSE. The BSE expects that, if operationally successful, the program would be expanded to include order flow in other securities eligible for trading on the BSE. The rule change and linkage will enable the BSE to attract additional orderflow which in turn enhances the depth and liquidity of the markets of BSE specialists.

(b) The bases under the Act for the proposed Rule change are section 6(b)(5) and 11(b) since the Rule change will serve to enhance the national market system by enabling the Boston Stock Exchange Specialists to attract order flow and thereby make more liquid and competitive markets in securities in which they are registered.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe the proposed amendment imposes any burden on competition. The BSE believes that additional orders generated by this proposal will enhance competition in the market place and thus result in a direct benefit to the investing public.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, participants, or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by October 12, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 14, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25092 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21327 File No. SR-NYSE-84-27]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.; Proposed New Rule 476A, Providing for the Imposition of Fines for Minor Violations of Rules of the New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Change

The proposed rule change authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a Hearing Panel, to impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. Under the proposal, the Exchange will serve on the person to be fined a written statement setting forth the rule violated, the act or omission constituting the violation, the fine imposed, and the date by which the fine must be paid or the person must contest the matter. The person may pay the fine, thereby waiving his right to a discplinary proceeding under Rule 476 and any review of the matter by a Hearing Panel or the Exchange Board of Directors, or he may contest the fine by submitting a written answer. If the fine is contested, the matter becomes a "disciplinary proceeding" before a Hearing Panel under Rule 476. The Hearing Panel will then determine guilt or innocence and will be free to impose any disciplinary sanction permitted under Rule 476. In such a case, the Hearing Panel will also determine whether the rule violation was minor in nature.

The Exchange will not publicize any matter in which a fine is imposed under Rule 476A, or any matter where a person contests a fine imposed under that Rule and is found guilty of a minor violation by the Hearing Panel, except that the Exchange will make any filing required by Rule 19d-1 under the Securities Exchange Act of 1934 (the Act).

From time to time, the Exchange will prepare and announce to its members and member organizations a list of the Exchange Rules as to which the exchange may impose fines as provided in Rule 476A and such list shall also indicate the fine that may be imposed with respect to the violation of any such rule. The Exchange is not required to impose a fine pursuant to proposed Rule 476A with respect to any violation of any rule included in such list and shall be free, whenever it determines that a rule violation is not minor in nature, to commence a disciplinary proceeding under Rule 476.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The Text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide the Exchange with an efficient means for imposing appropriate and meaningful sanctions for minor rule violations that do not warrant the commencement of a disciplinary proceeding before a Hearing Panel under existing Rule 476. While a full disciplinary proceeding is appropriate where relative significant regulatory violations are concerned, the effort, time and expense of those proceedings may be disproportionately burdensome where the rule infraction is clearly minor in nature and is not contested. The proposed rule change is intended to fill this regulatory gap.

Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(6) which requires that Exchange Rules provide that its members and persons associated with its members shall be appropriately disciplined for violation of its rules. Section 6(b)(7) also requires Exchange Rules to provide a fair procedure for the disciplining of members and persons associated with its members and to be in accordance with the provisions of section 6(d) of the Act. The proposed rule change is consistent with these provisions of the Act.

(B) Self-Regulatory Organization's Statement on Burden of Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

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rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 12, 1984. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 14, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25091 Filed 9-20-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/768]

Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas will be held on October 9, 1984, from 9:30 a.m. to 5:00 p.m., and on October 10, 1984, from 9:30 a.m. to 12:00 p.m., and from 1:30 p.m. to 5:00 p.m. at the Woodward Room of the National Wildlife Federation, 1412 16th Street, NW., Washington, D.C.

The October 9 meeting and the morning session of the October 10 meeting will be open to the public, and the public may participate in the discussions subject to instructions of the Committee Chairman. Subjects to be discussed include: Overview of U.S. preparations for the Standing Committee on Research and Statistics (SCRS); Review of research concerning tropical tunas; Report of the Meeting of the Working Group on Juvenile Tropical Tunas; Review of research concerning Billfish; Review of research concerning Bluefin tuna; Report of Bluefin Tuna fishery conducted in the U.S. EEZ and in the Candian Zone; and estimates of Japanese harvest of Tuna and Billfish in the U.S. Atlantic EEZ.

The Advisory Committee will meet in closed session on the afternoon of October 10, 1984. At this session documents classified in accordance with Executive Order 12356 of April 2, 1982 will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure. Accordingly, a determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, S10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information of meeting should be directed to Barbara Rothschild, Office of International Fisheries Affairs, National Marine Fisheries Service, Department of Commerce. She may be reached by telephone on (202) 634-7257.

Dated: September 6, 1984.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 84-25122 Filed 9-20-84; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/767]

Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution Working Group on Reception Facilities; Two Meetings

The Working Group on Reception Facilities of the National Committee for the Prevention of Marine Pollution will conduct an open meeting at 10:00 AM on Friday October 12, 1984 in Room 2415 at Coast Guard Headquarters 2100 2nd Street, SW., Washington, D.C.

The purpose of this meeting is to discuss comments to a notice of proposed rulemaking on regulations implementing MARPOL 73/78 Reception Facilities, published in the **Federal Register** of June 19, 1984 (49 FR 25196).

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant Ellis H. Davison, U.S. Coast Guard Headquarters (G-WPE-3), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone (202) 462-9578.

Subcommittee on Safety of Life at Sea Working Group on Safety of Navigation

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 AM on Tuesday, November 27, 1984, in Room 6319 of the U.S. Coast Guard Headquarters, Transpoint Building, 2100 Second Street, SW., Washington, D.C.

The purpose of the meeting will be to prepare the U.S. position relating to the below listed agenda items to be considered at the 30th Session of the Subcommittee on Safety of Navigation of the International Maritime Organization to be held in London, December 17-21, 1984.

—Routing of Ships
—1972 Collision Regulations
—Standard Marine Navigational Vocabulary
—Search and Rescue
—Ship reporting systems
—Navigational aids and related equipment
—Navigating bridge visibility

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. E.J. LaRue, Jr., U.S. Coast Guard (G-WWM), 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-4958.

Dated: September 11, 1984

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84-25121 Filed 9-20-84; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/766]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Ship Design and Equipment; Two Meetings

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 25, 1984 at 9:30 AM in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting will be to formulate and discuss the United States' positions for the upcoming Twenty-Eighth Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment to be held in March, 1985.

The agenda for this meeting includes the following items:

—Requirements for machinery and electrical installations;
—Maneuverability of ships;
—Safety measures for diving systems;
—Revised standards for Mobile Offshore Drilling Units;
—Helicopter facilities for all types of ships;
—Operating mechanisms and procedures for watertight doors.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain A.E. Henn, U.S. Coast Guard Headquarters, (G-MTH/12), 2100

Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426–2167.

Working Group on the Carriage of Dangerous Goods

The Working Group on the Carriage of Dangerous Goods will conduct an open meeting on October 31, 1984 at 10:00 AM in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting is to discuss:

—Report of the 36th Session of the International Maritime Organization (IMO) Subcommittee on the Carriage of Dangerous Goods held 25 to 29 June 1984;

—Possible United States proposals to the 37th Session of the IMO Subcommittee on the Carriage of Dangerous Goods;

—The United States position on the rewrite of the International Maritime Dangerous Goods (IMDG) Code Stowage and segregation requirements;

—IMO activities of a continuing nature.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant John P. Aherne, U.S. Coast Guard Headquarters, (G–MTH–3/12), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426–1577.

Dated: September 4, 1984.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 84–25120 Filed 9–20–84; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/769]

Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet jointly on October 11, 1984 in Room 330, 1200 19th Street, NW., Washington, D.C., from 9:30 a.m. until 4:30 p.m.

Study Group 10 deals with questions relating to sound broadcasting; Study Group 11 deals with questions relating to television broadcasting. The purpose of the meeting is to discuss the status of preparation and submission of U.S. documents to the final meetings of Study Groups 10 and 11, scheduled for October 16–November 1, 1984 in Geneva. The meeting will take into account all aspects of Study Groups 10 and 11 activities including satellite services and other joint matters of the Study Groups.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520; telephone (202) 632.2592.

Dated: September 10, 1984.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 84–25123 Filed 9–20–84; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 14, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

U.S. Customs Service

OMB Number: 1515–0140

Form Number: None

Type of Review: Revision

Title: Customs Regulations' Amendments Relating to Textiles and Textile Products

Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, D.C. 20229

OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Alcohol, Tobacco and Firearms

OMB Number: New

Form Number: ATF Reporting Requirement Letter Notice 5000/5

Type of Review: New

Title: Implementation of Electronic Fund Transfer (Section 27(c) of the Deficit Reduction Act of 1984, Pub. L. 98–369)

Clearance Officer: Howard Hood (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph Maty,

Departmental Reports Management Office.

[FR Doc. 84–25178 Filed 9–20–84; 8:45 am]

BILLING CODE 4810–25–M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 544; Ref: ATF O 1100.76A]

Authority To Administer Seized Personal Property Program in 27 CFR Part 72, Disposition of Seized Personal Property, and 26 CFR Part 601, Statement of Procedural Rules; Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Law Enforcement) and permits redelegation to other Law Enforcement personnel.

2. *Cancellation.* ATF 0 1100.76, Delegation Order—Authority to Affix Signature—Petitions for Remission or Mitigation of Forfeiture, dated January 6, 1977, is canceled.

3. *Background.* Under the current regulations, certain personnel in the regional offices have responsibility for administering the seized property function. In the interest of efficiency, the responsibility for this function has been centralized in ATF Bureau Headquarters' Office of Law Enforcement, and the regulations are being revised accordingly.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221 dated June 6, 1972, and by 26 CFR 301.7701–9, authority to take final action on the following matters is delegated to the Associate Director (Law Enforcement):

a. To administer the regulations governing the seizure, forfeiture, and disposition of property taken into Bureau custody with respect to liquor, firearms, explosives, ammunition, and tobacco violations.

b. To sign all documents and correspondence relating to petitions for remission or mitigation of forfeiture.

5. *Redelegation.*

a. The authorities in paragraph 4a above may be redelegated to personnel in Bureau Headquarters not lower than the position of seized property examiner.

b. The authorities in paragraph 4b above may be redelegated to personnel in Bureau Headquarters not lower than the position of division chief.

6. *For Information Contact.* Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7123).

7. *Effective Date.* This delegation order becomes effective on September 21, 1984.

Robert J. Maxwell,

Acting Director.

[FR Doc. 84-25066 Filed 9-20-84; 8:45 am]

BILLING CODE 4810-13-M

Customs Service

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Certain Imported Athletic Shoes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party with respect to the tariff classification of certain imported athletic shoes to be donated to the Special Olympics. The petitioner contends that the merchandise is currently incorrectly classified under a duty-free provision of the Tariff Schedules of the United States, and should be reclassified under any of various provisions of the tariff schedules for shoes which carry a specific duty rate. This document invites comments with respect to the correctness of the current classification of the footwear.

DATE: Comments must be received on or before November 20, 1984.

ADDRESS: Comments (preferably in triplicate) may be submitted to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to the tariff classification of certain imported athletic shoes which are to be donated to the Special Olympics.

The subject merchandise is currently classified as being "regalia" under item 851.30, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), a duty-free provision pursuant to a ruling issued by Customs on June 28, 1983 (Headquarters Ruling 071226/171356 TL). Under that ruling, the shoes will be given to children who participate in Special Olympics athletic activities. They will remain the property of the Special Olympics and may be used by the participants for the duration of their involvement in Special Olympics programs. Each pair of shoes is stenciled with the Special Olympics logo. The petitioner contends that the imported athletic shoes do not qualify as "regalia" and should instead be classified under an appropriate tariff provision in Schedule 7, Part 1, Subpart A, TSUS, depending upon the characteristics of the particular shoe. The provisions urged by the petitioner all carry duty rates.

Item 851.30, TSUS, is governed by the headnotes to Part 4, Schedule 8, TSUS. Those headnotes set forth qualifying conditions to be met for all articles classifiable in that Part, including articles considered "regalia." The arguments made by the petitioner against classification of the shoes as "regalia" are all directly reflective of either those headnote requirements, or the superior heading to item 851.30, TSUS, itself. The arguments are:

(1) Special Olympics is not a "nonprofit" institution established for educational scientific, literary, or philosophical purposes, or for the encouragement of the fine arts within the meaning of the superior heading to item 851.30, TSUS;

(2) The imported footwear are articles of "regular wearing apparel" which are not included within the purview of the term "regalia";

(3) They are not "such insignia of rank or office, emblems, or other articles as may be worn upon the person or borne in the hand during public exercises" of an eligible institution within the meaning of Headnote 2, Part 4, Schedule 8, TSUS;

(4) There is no proof that such footwear satisfies the condition that they be worn only during public exercises of the Special Olympics; and

(5) They are not exclusively for the use of the Special Olympics but are for distribution other than by way of transfer permitted by Headnote 1, Part 4, Schedule 8, TSUS.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter Customs invites written comments from interested parties on the classification and appraisement issues.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on regular business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, Washington, D.C. 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: September 12, 1984.

William von Raab,

Commissioner of Customs.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-25111 Filed 9-20-84; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the item on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 17, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Reinstatement

1. Department of Medicine and Surgery
2. Comprehensive Evaluation of Health Services
3. VA Forms 10-1465a and 10-1465b
4. Biannually
5. Individuals or households
6. 37,500 responses
7. 7,980 hours
8. Not Applicable

[FR Doc. 84-25104 Filed 9-20-84; 8:45 am]

BILLING CODE 8320-01-M

Health Services Research and Development Scientific Review and Evaluation Board; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Veterans Administration Health Services Research and Development Service Scientific Review and Evaluation Board for calendar year 1983 has been issued.

This report summarizes activities of the Board on matters related to the review of health services research and development proposals submitted by VA field staff. It is available for inspection at two locations:

Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC 20540; and

Veterans Administration, Office of the Director, Health Services Research and Development Service, Room 653, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 17, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-25106 Filed 9-20-84; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442, of the Lafayette Building, 811 Vermont Avenue, NW, Washington, DC on October 26, 1984, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Civil Enginering Service, Office of Construction, Veterans Administration Central Office (phone 202-389-2864) prior to October 19, 1984.

Dated: September 17, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-25107 Filed 9-20-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92-463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, October 11, 1984, at 2:30 p.m.
Thursday, October 25, 1984, at 2:30 p.m.
Thursday, November 8, 1984, at 2:30 p.m.
Wednesday, November 21, 1984, at 2:30 p.m.
Thursday, December 6, 1984, at 2:30 p.m.
Thursday, December 20, 1984, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 17, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-25105 Filed 9-20-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 185
Friday, September 21, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

September 19, 1984.

FCC to hold open commission meeting, Wednesday, September 26, 1984

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 26, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—Title: Reallocation of additional frequencies in the 470–512 MHz band for public safety use in the Los Angeles area. Summary: The FCC will consider proposing to reallocate Channel 19 frequencies for immediate use by the Los Angeles County Sheriff's Department.

Private Radio—1—Title: Amendment of Part 90 of the Commission's Rules and Regulations to Reserve Frequencies for Emergency Electrical Alarm Protection. Summary: The Commission is considering a request to designate frequencies for use by the central station electrical alarm industry and to allow the use of antenna heights exceeding current limitations.

Private Radio—2—Title: Amendment of Parts 2 and 87 of the Commission's rules regarding aeronautical flight test telemetry (RM-4077). Summary: The Commission will consider whether to adopt a Report and Order regarding the expansion of aeronautical flight test telemetering operations to the 2310–2390 MHz band and the modification of the technical criteria that govern such operations.

Common Carrier—1—Title: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore: Sixth Report and Order (CC Docket No. 79–252). Summary: The Commission will consider whether to adopt a Report and Order that outlines steps for further implementation of its policy of forbearance from requirement of tariffs and facilities authorizations applications from carriers subject to competition.

Common Carrier—2—Title: Memorandum Opinion and Order in the Matters of Pacific Bell, Southern Bell and South Central Bell, Southwestern Bell, New York Telephone and New England Telephone, New Jersey Bell, Northwestern Bell, and Pacific Northwest Bell Petitions for Waiver of Section 64.702 of the Commmission's Rules and Regulations To Provide Certain Types of Protocol Conversion Within Their Basic Telephone Networks. Summary: The Commission will consider whether to waive the *Computer II* Rules to enable the petitioning Bell Operating Companies to provde certain types of protocol conversion within their telephone networks, specifically X.25-to-X.75 protocol conversion.

Common Carrier—3—Title: Second Report and Order, General Docket No. 80–112. Summary: The Commission will consider adopting rules to allow the use of lotteries for the selection of Multichannel Multipoint Distribution Service Licensees.

Common Carrier—4—Title: American Telephone and Telegraph Co., Ameritech, Bell Atlantic, Bellsouth, NYNEX, Pacific Telesis, Southwestern Bell and U.S. West—Accounting instructions for the judgment and other costs associated with the *Litton Systems* antitrust lawsuit. Summary: The Commission will consider the adoption of an Order to establish the proper accounting for an antitrust judgment and to clarify the accounting and disclosure requirements for litigation costs.

Common Carrier—5—Title: Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands (CC Docket No. 83–1376). Summary: The Commission will consider the Petition filed by General Communication Incorporation seeking interim relief pending the development of a long term resolution of the issues raised in the *Notice of Inquiry* in this Docket.

Mass Media—1—Title: Application for Review of a Bureau ruling denying a Fairness Doctrine complaint, filed by Charles E. Littlejohn. Summary: The Mass Media Bureau found that WGTV, Athens, Georgia, made reasonable, good faith efforts to inform the public on Proposed Constitution Amendment 1, which was a ballot issue in the November 2, 1982, Georgia general election.

Mass Media—2—Title: A petition for reconsideration filed by KDBS, Inc., licensee of Stations KDBS and KRRV(FM), Alexandria, Louisiana. Summary: the Commission considers a petition in which the licensee of KDBS and KRRV(FM) seeks reconsideration of the Commission's grant of renewal for less than a full term.

Mass Media—3—Title: Amendment of Parts 2, 73 and 76 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations. Summary: The Commission will consider a *Memorandum Opinion and Order* to address petitions for reconsideration filed by sixteen parties concerning its *Report and Order* authorizing television stations to operate teletext services (BC Docket 81–741).

Mass Media—4—Title: Application for Review (CSR–2543) filed May 7, 1984, by Service Electric Cable TV of New Jersey, Inc. Summary: Service Electric Cable TV of New Jersey, Inc. seeks Commission review of a delegated decision denying Service Electric's request for waiver of the mandatory signal carriage rules.

Mass Media—5—Title: Three Petitions for Reconsideration (CSR–2378) filed by the Council of UHF Broadcasting; by University Television Inc.; and by the Association of Maximum Service Telecasters, Inc., Association of Independent Television Stations, and the National Association of Broadcasters, all seeking reconsideration of the Commission decision in *Monterey Peninsula* TV Cable, 56 RR 2d 159 (1984). Petition for declaratory ruling (CSR–2362), filed by University Television, Inc., licensee of Station KUSI-TV, San Diego, California. Summary: The Commission will consider whether its original decision granting a cable system authority to relocate a UHF television station with mandatory carriage rights to the expanded portion of a cable system's basic tier is in the public interest.

Mass Media—6—Title: Application for review of the Bureau's action denying the application of Holt-Robinson of Texas, Inc. to move the main studio of station KMLT-TV, Marshall, Texas, outside the community of license. Summary: The Commission will consider whether the Bureau properly determined that the applicant failed to demonstrate how moving its main studio outside of Marshall would be in the public interest.

Mass Media—7—Title: Applications of CBS, Inc., Direct Broadcast Satellite Corporation, Graphic Scanning Corporation, RCA American Communications, Inc., and Western Union Telegraph Company for modification of their construction permits to establish Interim Direct Broadcast Satellite Systems and those parties' demonstrations of due diligence in the implementation of their proposed systems, and requests of Satellite Television Corporation, United States Satellite Broadcasting Co., Inc. and Dominion Video Satellite, Inc. for further modification of their Direct Broadcast Satellite System construction permits. Summary: The Commission considers these modification applications and due dilingence demonstrations to determine which of the applicants have met the Commission's requirements and will be assigned DBS channels and orbital positions, as well as the further modification requests by three permittees already assigned channels and orbital positions. The Commission also considers comments by various parties regarding the sufficiency of some of the due diligence demonstrations.

Mass Media—8—Title: Application for Review of the Mass Media Bureau's action filed by Holston Valley Broadcasting Corporation. Summary: The Commission will consider an Application for Review of the Mass Media Bureau's action returning the television translator application of Holston Valley Broadcasting Corporation as unacceptable for filing.

Mass Media—9—Title: Application for review of the Mass Media Bureau's action denying a petition for reconsideration and returning the low power television application of Kinetications, Inc. Subject: The Commission will consider whether the Bureau properly returned the application of Kinetications for a new low power television station as unacceptable for filing.

Mass Media—10—Title: Application for review of Mass Media Bureau action denying a request for reconsideration and reinstatement by numerous low power television applicants for channel 7, Honolulu, Hawaii. Summary: The Commission will consider whether the Mass Media Bureau properly returned 44 low power television applications that lacked supplemental certifications as incomplete.

Mass Media—11—Title: In reapplication by North Texas Media, Inc. for a construction permit for a new FM Station on Channel 256C to serve Lake Dallas-Denton, Texas. Summary: The Commission considers the aforementioned application and an application for review filed by North Texas Media, Inc. seeking reversal of the Mass Media Bureau's action returning the application as unacceptable for filing.

Mass Media—12—Title: The license renewal application of WJRL (AM), Calhoun City, Mississippi; license renewal application of WCSA (AM), Ripley, Mississippi; mutually exclusive application for a construction permit specifying WCSA's frequency and facilities; construction permit application for FM Channel 272, a petition to deny that application and related pleadings; and an application for consent to the assignment of the license of WJRL. Summary: The Commission considers various broadcast applications filed by or associated with Jesse R. Williams, related pleadings, and a mutually exclusive application

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–25255 Filed 9–19–84; 3:53 pm]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

September 19, 1984.

FCC to hold a closed Commission meeting Wednesday, September 26, 1984

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Wednesday, September 26, 1984, following the Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Petition for Extraordinary Relief by Shurberg Broadcasting of Hartford, Inc. and Petition for Special Relief filed by Faith Center, Inc., in the Hartford, Connecticut television renewal proceeding (BC Docket No. 80–730).

Hearing—2—Petition for Allowance of Interlocutory appeal, and request for consent procedures in the A.S.D. Answer Service, Inc., DPLMRS proceeding (Docket Nos. 82–587–90).

Hearing—3—Application for Review in the United Broadcasting Company, Inc., Washington, D.C. FM radio comparative renewal proceeding (BC Docket Nos. 80–479 to 80–481).

Hearing—4—Application for Review in the Pittsfield, Massachusetts, comparative TV proceeding (Docket Nos. 82–420 and 82–421).

These items are closed to the public because they concern Adjudicatory Matters See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission September 18, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider these items in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–25256 Filed 9–19–84; 3:53 pm]

BILLING CODE 6712-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, September 17, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of an application relating to an assisted merger-type transaction (Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii))).

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–25233 Filed 9–19–84; 1:23 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 17, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46, 106-L, Girod Trust Company, San Juan, Puerto Rico

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25234 Filed 9-19-84; 1:23 pm]

BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

September 19, 1984.

TIME AND DATE: September 26, 1984, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

798th Meeting—September 26, 1984

Regular Meeting (10:00 a.m.)

CAP-1: Project No. 4472-003, Niagara Mohawk Power Corporation

CAP-2:

  Project No. 8156-001, James W. Caples

  Project No. 8157-001 and 002, Warren Osborne

CAP-3: Project No. 6939-002, city of Jackson, Ohio

CAP-4: Project No. 7923-002, Magic Water Company, Inc.

CAP-5: Project No. 7737-002, WP, Inc.

CAP-6: Project No. 7592-001, Faulkner Land and Livestock Company, Inc.

CAP-7: Project Nos. 6566-005 and 7348-000, Aquenergy Systems, Inc.

CAP-8: Project No. 2959-006, city of Seattle, Washington

CAP-9: Project No. 7272-000, Atlantic Power Development Corporation

CAP-10: Project No. 108-000, 108-009 and 8286-000, Northern States Power Company (Wisconsin) and Lac Courte Oreilles Band of Lake Superior Chippewa Indians

CAP-11: Docket No. QF84-314-000, Poppy Ridge Partners

CAP-12:

  (A) Docket No. QF84-391-000, Ware Cogen Limited Partnership

  (B) Docket No. QF84-395-001, city of Harrisburg

  (C) Docket No. QF84-396-000, International Business Machines Corporation

  (D) Docket No. QF84-409-000, Cogentrix of North Carolina, Inc.

  (E) Docket No. QF83-425-001, Electrodyne Research Corporation

CAP-13: Docket No. ER84-576-000, Wisconsin Power and Light Company

CAP-14: Docket No. ER84-569-000, Interstate Power Company

CAP-15: Docket Nos. ER84-587-000, ER84-588-000, ER84-589-000, ER84-590-000, ER84-591-000 and ER84-592-000, Indiana & Michigan Electric Company

CAP-16: Docket No. ER84-584-000, Central Power and Light Company

CAP-17: Docket No. ER84-568-000, Gulf States Utilities Company

CAP-18: Docket No. ER84-594-000, Kansas City Power and Light Company

CAP-19: Docket No. ER84-177-003, Duke Power Company

CAP-20: Docket No. ER79-182-009, ER80-106-006, ER82-146-010, EL82-16-002, EL82-27-002 and ER83-437-000, Commonwealth Edison Company

Consent Miscellaneous Agenda

CAM-1: Docket No. RM84-21-000, Rules of Practice and Procedure: Interlocutory Appeals

CAM-2: Docket No. RM83-71-032 and 033, Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

CAM-3: Docket No. GP83-36-000, State of New Mexico, Section 108 NGPA Determination, Mobil Producing Texas and New Mexico, Inc., Brunson Argo No. 9 Well, FERC JD. No. 82-21685

CAM-4: Docket No. GP83-45-000, State of New Mexico, Section 108 NGPA Determination, Tahoe Oil & Cattle Company, Ramsey State No. 1 Well, FERC JD No. 79-09123

CAM-5: Docket No. GP83-53-000, State of Oklahoma, Section 108 NGPA Determination, Ladd Petroleum Corporation, Toews "B" #1 Well, FERC No. JD81-27360

CAM-6: Docket No. GP84-6-000, State of New Mexico, Section 108 NGPA Determination, Marathon Oil Company, L.G. Warlick "C" Well No. 2, FERC JD No. 82-06096

CAM-7: Docket No. GP84-35-000, State of Oklahoma, Oklahoma Corporation Commission, NGPA Section 103 Determination, Southwestern Exploration Consultants, Inc., Audrey No. 2 Well, FERC JD No. 84-0765

CAM-8: Docket Nos. GP83-48-000, State of Oklahoma, Section 108 NGPA Determination, Phillips Petroleum Company, Bacon No. 1 Well, FERC JD No. 83-39094

CAM-9: Docket Nos. RM79-76-205 (Louisiana-2 Addition II), High-Cost Gas Produced From Tight Formations

Consent Gas Agenda

CAG-1: Docket Nos. TA85-1-7-000 and 001 (PGA85-1), Southern Natural Gas Company

CAG-2: Docket Nos. TA85-1-31-000 and 001 (PGA85-1 and IPR85-1), Arkansas Louisiana Gas Company

CAG-3: Docket Nos. TA85-1-32-000 and 001 (PGA85-1), Colorado Interstate Gas Company

CAG-4: Docket Nos. TA85-1-33-000 and 001 (PGA85-1, IPR85-1), El Paso Natural Gas Company

CAG-5: Omitted

CAG-6: Docket Nos. TA85-1-42-000 and 001 (PGA85-1 and IPR85-1), Transwestern Pipeline Company

CAG-7: Docket Nos. TA85-1-62-000 and 001 (PGA85-1), Pacific Offshore Pipeline Company

CAG-8: Docket No. RP84-99-001, Texas Eastern Transmission Corporation

CAG-9: Docket No. RP82-54-014, Colorado Interstate Gas Company

CAG-10: Docket Nos. TA84-2-17-002 and TA84-2-17-003, Texas Eastern Transmission Corporation

CAG-11: Docket Nos. RP83-137-008, TA83-2-29-001, (PGA83-2a, IPR83-2a), TA84-1-29-001 (PGA84-1, IPR84-1, DCA84-1), and TA84-1-29-002 (PGA84-1a), Transcontinental Gas Pipe Line Corporation

CAG-12: Docket No. TA81-1-21-021 and TA81-2-21-021, Columbia Gas Transmission Corporation

CAG-13: Docket No. TA84-2-49-000, Montana Dakota Utilities Company

CAG-14: Docket No. TA84-2-61-000, Bayou Interstate Pipeline Corporation

CAG-15: Docket No. TA84-2-33-007 (PGA84-2b), El Paso Natural Gas Company

CAG-16: Docket Nos. TA84-2-16-001 and TA84-2-16-002 (PGA84-2a), National Fuel Gas Supply Corporation

CAG-17: Docket Nos. TA84-2-40-002 and TA84-2-40-000 (PGA84-2b), Raton Natural Gas Company

CAG-18: Docket No. FA84-8-000, High Island Offshore System

CAG-19: Docket Nos. ST83-692-001, ST83-717-001, ST83-719-001, ST83-720-001, ST83-721-001, ST83-738-001, ST84-14-001, ST84-104-001, ST84-114-001, ST84-157-001, ST84-293-001, ST84-396-001, ST84-427-001, ST84-522-001 and ST84-951-001, Northern Natural Gas Company, Division of Internorth, Inc.

CAG-20: Docket No. ST84-803-000, Delhi Gas Pipeline Corporation

CAG-21: Docket Nos. ST81-280-003 and CP82-206-000, Mustang Fuel Corporation

CAG–22: Docket No. SA82–29–001, W.B. McCarter, Jr., et al.
CAG–23: Docket No. CI84–557–000, Arco Oil and Gas Company, a Division of Atlantic Richfield Company
CAG–24: Docket No. CI84–510–000, Sun Exploration and Production Company
CAG–25: Docket No. CI84–485–000, Amoco Production Company
CAG–26: Docket Nos. RI74–188–039 and RI75–21–034, Independent Oil & Gas Association of West Virginia
CAG–27: Docket No. CP74–314–012, El Paso Natural Gas Company
CAG–28: Omitted
CAG–29: Docket No. CP84–539–000, El Paso Natural Gas Company
CAG–30: Docket Nos. CP81–19–000 Through CP81–19–006, Northwest Pipeline Corporation
  Docket No. TC84–6–000, Southwest Gas Corporation
CAG–31: Docket No. CP84–374–000, United Gas Pipe Line Company
CAG–32: Docket No. CP84–274–000, Consolidated Gas Transmission Corporation
CAG–33: Docket No. CP84–448–000, United Gas Pipe Line Company
CAG–34: Docket No. CP81–188–005, Consolidated Gas Transmission Corporation

I. Licensed Project Matters

P–1: Omitted
P–2: Project No. 3509–006, Little Falls Hydroelectric Associates, a Limited Partnership
P–3:
  Project Nos. 2482–008 and 009, Niagara Mohawk Power Corporation
  Project Nos. 4128–002, 003, 4331–002 and 003, Long Lake Energy Corporation

II. Electric Rate Matters

ER–1: Docket No. ER84–560–000, Union Electric Company
ER–2: Docket No. ER84–574–000, Holyoke Water Power Company and Holyoke Power and Electric Company
ER–3: Docket No. ER84–579–000, AEP Generating Company
ER–4: Omitted

Miscellaneous Agenda

M–1: Docket No. RM84–16–000, Methodology for Sales of Electric Power to Bonneville Power Administration
M–2: Omitted

Gas Agenda

I. Pipeline Rate Matters

RP–1: Omitted
RP–2: Docket No. RP84–85–000, Gas Research Institute
RP–3: Docket Nos. RP84–16–002, RP84–21–003 and RP84–86–001, Locust Ridge Gas Company
RP–4:
  Docket No. ST84–630–001, Delhi Gas Pipeline Corporation
  Docket No. ST84–898–001, PGC Pipeline, a Division of LPC Energy, Inc.
RP–5: Docket Nos. ST81–260–001, 002 and CP82–206–000, Mustang Fuel Corporation

II. Producer Matters

CI–1: Reserved

III. Pipeline Certificate Matters

CP–1: Docket Nos. RP83–14–001, RP83–81–000, CP83–254–000, CP83–254–006, CP83–335–000 and CP83–335–006, Montana Dakota Utilities Company
CP–2: Docket Nos. G–2569–001, G–2569–002, CI64–612–001 and CI64–612–002, Aminoil, Inc.
CP–3:
  Docket No. CP81–107–000, et al., Boundary Gas, Inc.
  Docket Nos. CP84–318–000 and CP84–318–001, Ohio Interstate Pipeline Company
  Docket Nos. CP84–325–000 and CP84–325–001, Natural Gas Pipeline Company of America
  Docket No. CP84–363–000, ANR Pipeline Company
  Docket No. CP84–407–000, Northern Border Pipeline
  Docket No. CP84–540–000, Great Lakes Gas Transmission Company
CP–4: Docket No. CP84–2–000, Columbia Gas Transmission Corporation
CP–5:
  Docket Nos. CI83–289–000 Through 023, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd., and Tenneco West, Inc.
  Docket Nos. RP83–11–000 Through 026 and RP83–30–000, Transcontinental Gas Pipe Line Corporation
  Docket No. CP83–279–002, Producer-Suppliers of Transcontinental Gas Pipe Line Corporation
  Docket No. CP83–340–003, Producer-Suppliers of Transco Gas Supply Company
  Docket Nos. CP83–428–001 and 002, Producer-Suppliers of Transco Supply Company and Transcontinental Gas Pipe Line Corporation
  Docket Nos. CP83–452–000 Through 015, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
  Docket Nos. CP83–502–000 Through 004, 008 and 013, Tennessee Gas Pipe Company, a Division of Tenneco Inc.
  Docket Nos. CP83–333–000 Through 018, Panmark Gas Company
  Docket No. CP83–342–000, Trunkline Gas Company
  Docket No. CP83–343–000, Panhandle Eastern Pipe Line Company
  Docket No. CP83–354–000, Trunkline Gas Company and Panmark Gas Company
  Docket No. CP83–355–000, Panhandle Eastern Pipe Line Corporation and Panmark Gas Company
  Docket Nos. CP84–244–000 and 001, Texas Eastern Transmission Corporation and Producer-Suppliers of Texas Eastern Transmission Corporation
  Docket Nos. CI84–332–000 Through 003, Cities Service Oil and Gas Corporation, Cities Offshore Producton Company and Oxy Petroleum, Inc.
  Docket No. CI84–374–000, TXP Operating Company
  Docket No. CI84–485–000, Amoco Production Company
  Docket No. CP84–539–000, El Paso Natural Gas Company
CP–6: Docket Nos. CP75–23–021 and CP75–120–014, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–25257 Filed 9–19–84; 8:45 am]

BILLING CODE 6717-01-M

6

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: It will commence at 1:30 p.m. and continue until all official business is completed; Saturday, September 29, 1984.

PLACE: Key Bridge Marriott, Potomac Ballroom, 1401 Lee Highway, Arlington, Virginia 22209.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   — August 8, 1984
3. Report from Office of Field Services
4. Report from Office of Information Management
5. Report from Office of General Counsel
   — Regulation 1630

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272–4040.

DATE ISSUED: September 19, 1984.

Donald P. Bogard,

President.

[FR Doc. 84–25254 Filed 9–19–84; 3:33 p.m.]

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federal register

Friday
September 21, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order, 6–84. 49 FR 32473 (1989). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The Numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama:	
AL83–1010	Feb. 2, 1983.
AL84–1030	Sept. 7, 1984.
Arkansas: AR84–4091	Jan. 13, 1984.
Connecticut: CT84–3016	June 8, 1984.
Delaware: DE82–3015	June 4, 1982.
District of Columbia: DC84–3009	Apr. 6, 1984.
Kentucky:	
KY84–1006	Mar. 16, 1984.
KY84–1003	Jan. 9, 1984.
KY84–1010	Mar. 30, 1984.
KY84–1007	Mar. 16, 1984.
KY84–1011	Mar. 23, 1984.
Maryland: MD83–3010	June 3, 1983.
Mississippi:	
MS83–1015	Apr. 1, 1983.
MS83–1014	Mar. 3, 1983.
New Jersey:	
NJ84–3019	July 6, 1984.
NJ84–3020	July 27, 1984.
New Mexico: NM84–4027	May 18, 1984.
Oklahoma:	
OK84–4049	Sept. 7, 1984.
OK84–4050	Do.
Oregon: OR84–5020	June 22, 1984.
Pennsylvania:	
PA84–3012	May 4, 1984.
PA84–3017	June 15, 1984.
Texas:	
TX84–4005	Feb. 22, 1984.
TX84–4037	May 25, 1984.
TX84–4045	Aug. 10, 1984.
TX84–4046	Do.
TX84–4047	Do.
Washington: WA83–5110	June 3, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of Publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Pennsylvania: PA83–3048 (PA84–3035)	Oct. 7, 1983.
Texas:	
TX83–4058 (TX84–4056)	Aug. 5, 1983.
TX83–4079 (TX84–4057)	Oct. 21, 1983.
TX80–4086 (TX84–4058)	Nov. 7, 1980.

Signed at Washington, D.C., this 14th day of September 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. AL83-1010
Mod. # 1
(48 FR 7364-February 2, 1983)
Baldwin, Choctaw, Clarke, Conecuh, Escambia, Marengo, Monroe, Mobile, Washington and Wilcox Counties, Alabama

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS	$12.88	$1.62
ELECTRICIANS: Wiremen	14.46	2.35+ 3%
IRONWORKERS	13.39	1.62
PLUMBERS & PIPEFITTERS	14.13	2.58
PILEDRIVERMEN	13.21	1.62
TRUCK DRIVERS:		
1. Truck Drivers up to but not including 1½ tons	9.37	1.62
2. Truck Drivers 1½ tons up to but not including 5 tons	10.11	1.62
3. Truck Drivers on rated 5 tons or 6 yards and over including heavy equipment such as pole truck, miss or corning wagons, dumpsters, semi drivers, agitators, ross carriers, dempsey dump, euclid trucks, forklift trucks in warehouse and similar equipment such as tractors, ten wheelers, jeeps, or dump trucks, pickup trucks pulling two (2) or four (4) wheel trailers hauling equipment (not applicable to pulling equipment which rolls on its own wheels).	11.81	1.62

Dec. No. AL83-1010
Mod. # 1 Con't

	Basic Hourly Rates	Fringe Benefits
Truck Drivers Con't		
4. Truck and Auto Mechanics	$12.74	$1.62

DECISION NO. AL84-1030
Mod # 1
(49 FR 35481 - September 7, 1984)
Blount . . . Winston Cos., Alabama

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers - Storage Tank Erection & Storage Tank Repair	$12.96	3.375

DECISION #AR84-4091-MOD.#6
(49 FR 1845-Jan. 13, 1984)

UNION AND OUACHITA COUNITES, ARKANSAS

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Electrical Contracts $20,000 or less		
Electricians	$14.71	3-1/4% + 1.00
Cable Splicers	15.01	3-1/4% + 1.00
Electrical Contracts over $20,000		
Electricians	15.50	3-1/4% + 1.00
Cable Splicers	15.80	3-1/4% + 1.00

MODIFICATIONS P. 2

DECISIONNO. KY84-1006
Mod # 3
(49 FR 9997 - March 16, 1984)
WARREN COUNTY, KENTUCKY

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$ 18.05	3.52
IRONWORKERS	10.35	2.17
LABORERS:		
Group 1	10.75	2.20
Group 2	10.90	2.20
Group 3	11.25	2.20
LINE CONSTRUCTION:		
Linemen, line truck, hole digger & cable splicer	13.95	1.05 + 3½%
Groundmen-truck driver with winch	11.86	1.05 + 3½%
Groundmen-truck driver	11.16	1.05 + 3½%
PAINTERS:		
Industrial:		
Brush & Roller	11.85	1.55
Spray & Drywall Finishing	12.10	1.55
Structural Steel, Swing Stage & Chair, Motor Stage	12.20	1.55
Paperhanger	12.35	1.55
Commercial:		
Brush	10.00	1.55
Spray, Sandblast, Boswain Chair or heights over 50'	10.50	1.55
PIPEFITTERS	16.25	3.35
POWER EQUIPMENT OPERATORS:		
CLASS A	14.67	2.48
CLASS B	11.93	2.48
CLASS C	11.16	2.48
ROOFERS:		
Roofers	10.60	1.51
Precast Slab, Slate, Asbestos, Tile	10.85	1.51
Coal Tar Pitch	11.00	1.51
SHEET METAL WORKERS:		
Light Commercial *(See scope of work)	9.00	2.706
ALL Other Bldg. Constr.	17.71	3.26

DECISION NO. KY84-1006
Mod # 3 (Cont'd)

	Basic Hourly Rates	Fringe Benefits

*

SCOPE OF WORK

SHEET METAL WORKERS:
Light Commercial - Defined as single buildings not inside or adjoining an industrial complex and that type work in the following categories: Bowling alleys, chapels, churches, funeral homes, restaurants, service stations, night clubs, pool rooms, nursing homes, skating rinks, storage facilities (45,000 sq. ft. or less), community/all porpose blgs., recreation bldgs.(gyms, spas), branch banks, barber & beauty shops, stores (45,000 sq. ft. or less), garages (body, tire, muffler & service shop), dance halls, nurseries, kindergarden & pre-school centers, open faced shopping centers(10 stores or less), office facilities (less than 45,000 sq.ft. & less than 4 floors above grade), and any other bldg. with 20 tons or less HVAC not exceeding 45,000 sq. ft.

MODIFICATIONS P. 3

DECISION NO. KY84-1003
Mod # 4
(49 FR 9057 - January 9, 1984)
McCracken County, Kentucky

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$ 18.05	3.52
CARPENTERS & LATHERS	14.30	2.17
ELECTRICIANS:		
Industrial:		
Wireman	16.24	1.25 + 13½%
Cable Splicer	16.49	1.25 + 13½%
IRONWORKERS	15.55	2.45
LABORERS:		
Group 1	10.75	2.20
Group 2	10.95	2.20
Group 3	11.25	2.20
MILLWRIGHTS & PILEDRIVERMEN	14.80	2.17
PLUMBERS & PIPEFITTERS:		
Light Commercial *(See Scope of Work)	11.06	2.63
All Other Building Const.	17.51	2.63
POWER EQUIPMENT OPERATORS:		
CLASS A	14.67	2.48
CLASS B	11.93	2.48
CLASS C	11.16	2.48

* SCOPE OF WORK

PLUMBERS & PIPEFITTERS:
Light Commercial - Defined as Construction, remodeling, repairs & service work to commercial bldgs., not to exceed 12 plumbing fixtures per store, plus kitchen equipment for resturants (floor drains & hot water heaters not to be considered as plumbing fixtures); excluding complete shopping centers under initial construction; any single office suite or store for leasor or leasee in any building.

DECISION NO. KY84-1010
Mod # 2
(49 FR 12888 - March 30, 1984)
Fort Campbell (Christian County, Kentucky & Montgomery County, Tennessee)

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$ 18.05	3.52
CARPENTERS, LATHERS & SOFT FLOOR LAYERS	14.30	2.17
ELECTRICIANS:		
KENTUCKY PORTION:		
Industrial:		
Wireman	16.24	1.25 + 13½%
Cable Splicer	16.49	1.25 + 13½%
ELEVATOR CONSTRUCTORS:		
Mechanics	* 12.18	3.00 + a
Helpers	8.53	3.00 + a
Probationary Helpers	6.09	3.00 + a
IRONWORKERS	10.35	2.17
LABORERS:		
Group 1	10.75	2.20
Group 2	10.90	2.20
Group 3	11.25	2.20
MILLWRIGHTS & PILEDRIVERMEN	14.80	2.17
PAINTERS:		
Industrial:		
Brush & Roller	11.85	1.55
Spray & Drywall Finishing	12.10	1.55
Structural Steel, Swing Stage & Chair, Motor Stage	12.20	1.55
Paperhanger	12.35	1.55
Commercial:		
Brush	10.00	1.55
Spray, Sandblast, Boswain Chair or heights over 50'	10.50	1.55
POWER EQUIPMENT OPERATORS:		
KENTUCKY PORTION:		
CLASS A	14.67	2.48
CLASS B	11.93	
CLASS C	11.16	
SHEET METAL WORKERS	14.93	

MODIFICATIONS P. 4

DECISION NO. KY84-1007
Mod # 4
(49 FR 9999 - March 16, 1984)
HARDIN, JEFFERSON, & MEADE COS., KENTUCKY

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$ 18.05	3.52
PLUMBERS & PIPEFITTERS:		
Area 1:		
Pipefitters	16.25	3.35
Area 2:		
Pipefitters	16.85	3.35
Area 3:		
Pipefitters	17.10	3.35
POWER EQUIPMENT OPERATORS:		
CLASS A	14.67	2.48
CLASS B	11.93	2.48
CLASS C	11.16	2.48
SHEET METAL WO		
Light Commercial *(See scope of work)	9.00	2.706
All Other Building Const.	17.71	3.76

*

SCOPE OF WORK

SHEET METAL WORKERS:
Light Commercial - Defined as single buildings not inside or adjoining an industrial complex and that type work in the following categories: Bowling alleys, chapels, churches, funeral homes, restaurants, service stations, night clubs, pool rooms, nursing homes, skating rinks, storage facilities (45,000 sq. ft. or less), community/all porpose blgs., recreation bldgs. (gyms, spas), branch banks, barber & beauty shops, stores (45,000 sq. ft. or less), garages (body, tire, muffler & service shop), dance halls,

DECISION NO. KY84-1007
Mod # 4 (Cont'd)

SCOPE OF WORK - SHEET METAL WORKERS (Light Commercial) (Cont'd)

nurseries, kindergarden & pre-school centers, open faced shopping centers (10 stores or less), office facilities (less than 45,000 sq. ft. & less than 4 floors above grade), and any other bldg. with 20 tons or less HVAC not exceeding 45,000 sq. ft.

DECISION NO. KY84-1011
Mod # 1
(49 FR 11066 - March 23, 1984)
FAYETTE & FRANKLIN COS., KENTUCKY

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$ 18.05	3.52
BRICKLAYERS & STONEMASONS	13.20	1.50
MARBLE, TILE & TERRAZZO WORKERS	12.60	1.50
PUMBERS & PIPEFITTERS:		
Franklin Co. (W 2/3, incl. the City of Frankfurt):		
Pipefitters	17.10	3.35
Plumbers -		
Contracts $100,000 or less	10.68	3.65
Contracts over $100,000.00	16.01	3.65
POWER EQUIPMENT OPERATORS:		
CLASS A	14.67	2.48
CLASS B	11.93	2.48
CLASS C	11.16	2.48
SHEET METAL WORKERS:		
Light Commercial *(See scope of work)	9.00	2.706
All Other Bldg. Constru.	17.71	3.76

MODIFICATIONS P. 5

DECISION NO. KY84-1011
Mod # 1 (Cont'd)

*

SCOPE OF WORK

SHEET METAL WORKERS:
Light Commercial - Defined as single buildings not inside or adjoining an industrial complex and that type work in the following categories: bowling alleys, chapels, churches, funeral homes, restaurants, service stations, night clubs, pool rooms, nursing homes, skating rinks, storage facilities (45,000 sq. ft. or less), community/all porpose blgs., recreation bldgs. (gyms, spas), branch banks, barber & beauty shops, stores (45,000 sq. ft. or less), garages (body, tire, muffler & service shop), dance halls, nurseries, kindergarden & pre-school centers, open faced shopping centers (10 stores or less), office facilities (less than 45,000 sq.ft. & less than 4 floors above grade), and any other bldg. with 20 tons or less HVAC not exceeding 45,000 sq. ft.

DECISION NO. MD83-3010-
MOD. #7
(48 FR 25100-June 3,1983)
ANNE ARUNDREL (EXCLUDING THE D.C. TRAINING SCHOOL) BALTIMORE & BALTIMORE CITY MARYLAND, & FOR HEAVY CONSTRUCTION IN HARFORD & HOWARD COUNTIES, MARYLAND

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$12.21	2.29

DECISION NO. MS83-1015
Mod # 6
(48 FR 14312 - April 1, 1983)
Hinds County, Mississippi

CHANGE:

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Ironworkers	$12.51	2.29
Rodmen	9.00	2.29

DECISION NO. MS83-1014
Mod # 4
(48 FR 12646 - March 3, 1983)
Warren County, Mississippi

CHANGE:

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Ironworkers	$12.51	2.29
Rodmen	9.00	2.29

MODIFICATIONS P. 6

DECISION NO. NJ84-3019 -
MOD. #3
(49 FR 27883 - July 6, 1984)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset Sussex, Union and Warren Counties, New Jersey

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS, STONEMASONS, CEMENT MASONS AND PLASTERERS:		
Zone 4:		
Bricklayers and Stonemasons	16.80	5.05
Zone 6	17.07	3.69
Zone 10	17.08	3.79
Zone 11	17.40	3.37
Zone 12	17.70	4.57
ELECTRICIANS AND CABLE SPLICERS:		
Zone 1	18.78	27.25%

ZONE DESCRIPTION
Bricklayers Stonemason and Plasterers
Zone 6:
Essex (Millburn Twp.) Morris (Gillette and Sterling, Shore Hills Twps.) Union (New Providence, Springfield and Union Twps.)

DECISION NO. NM84-4027 -
MOD. #5
(49 FR 21263 - 5/18/84)
Statewide (excluding Eddy & Lea Cos. for building construction) New Mexico

Add City of Albuquerque to Basing Points for Plumbers-pipefitters classification

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Power Equipment Ops.		
Heavy Construction:		
Group I	$11.03	2.15
Group II	12.17	2.15
Group III	12.25	2.15
Group IV	12.46	2.15
Group V	12.52	2.15
Group VI	12.62	2.15
Group VII	12.72	2.15
Group VIII	13.90	2.15

DECISION NO. NJ84-3019-
MOD. #3 (CONT'D)

ADD:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS, STONEMASONS, CEMENT MASONS AND PLASTERERS:		
Zone 13	17.45	3.32

Zone Descriptions:
Zone 13:
Morris (Morristown Twp.)

DECISION NO. NJ84-3020 -
MOD. #3
(49 FR 30280 - July 27, 1984)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, New Jersey

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Zone 2:		
Composition	16.50	3.50
Slate & Tile	16.625	3.50
IRONWORKERS:		
Zone 2	19.43	7.70

Zone Descriptions:
Carpenters, Millwrights and Insulators:
Zone 2:
Burlington County
Zone 4:
Remainder of Mercer County

DECISION NO. OR84-5020 - Mod #2
(49 FR 25821 - June 22, 1984)
Statewide Oregon

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; STONEMASONS:		
Area 2:		
Projects over $1 million	$17.10	$3.27
CARPENTERS:		
All projects involving the construction, alteration, or repair of buildings, bridges or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities		
Group 1	13.07	4.02
Group 2	13.19	4.02
Group 3	13.27	4.02
Group 4	13.39	4.02
Group 5	13.15	4.02
Group 6	13.23	4.02
CEMENT MASONS:		
Cement Masons	16.49	3.22
Composition Workers and Power Machinery Operators	16.80	3.22
GLAZIERS	16.97	2.88
LATHERS:		
Area 1	13.55	4.87
MASON TENDERS: [1]		
Tenders to bricklayers, tile setters, marble setters and terrazzo workers; topping for cement finishers and mortar mixer (exclude plasterer tender)	14.05	4.06
PAINTERS:		
Area 1:		
Painters and tapers	12.25	1.78
PLASTERERS:		
Area 1	15.30	3.57
PLUMBERS:		
Areas 4, 5, 7, 8: (combined due to merger)	20.48	3.70
Area 1	16.30	4.16
ROOFERS:		
Area 1:		
Roofers	14.60	2.90
Handling coal tar, pitch	16.06	2.90
SPRINKLER FITTERS	19.17	3.23
LINE CONSTRUCTION:		
Area 2:		
Cable Splicers	17.81	2.00+3½%
Journeyman Lineman	16.17	2.00+3½%
Line Equipment Mechanic (right-of-way)	15.30	2.00+3½%
LINE CONSTRUCTION (Cont'd)		
Line Equipment Mechanic (Base Shop)	14.32	2.00+3½
Line Equipment Serviceman	14.32	2.00+3½
Line Equipment Operator	14.56	2.00+3½
Groundman	11.30	2.00+3½
DREDGING:		
Leverman, Hydraulic	17.83	4.35
Leverman, Dipper	18.57	4.35
Assistant Engineer (including Watch Engineer, Welder, Mechanic and Machinist); and Mate	17.26	4.35
Tenderman (Boatman, attending Dredge Plant); Fireman	16.83	4.35
Assistant Mate (Deckhand); and Oiler	16.46	4.35
OMIT:		
CARPENTERS:		
Group 1:		
Omit Drywall & Acoustical applicators only		
ADD:		
DRYWALL & ACOUSTICAL APPLICATOR	14.40	4.02
PLASTERER'S TENDERS [1]	13.56	4.06

FOOTNOTE:

1. All projects involving the construction, alteration, or repair of buildings, bridges or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities. Employees shall be paid 80% of the basic hourly rate plus full fringe (Applies to Mason Tenders and Plasterer's Tenders)

DECISION #OK84-4049-MOD.#1
(49 FR 35473-Sept. 7, 1984)
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfusgee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians		
Area 2	$14.90	3.5% + $2.40
Cable Splicers		
Area 2	15.15	3.5% + 2.40
Tile Layers, Terrazzo Workers, & Marble Masons	16.84	1.50

DECISION NO. PA84-3012
MOD. NO. 2
(49 FR 19200 - May 4, 1984)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ROOFERS:		
Shingle, slate, and Tile	$13.92	2.25
Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean-up debris	6.25	2.25

DECISION #OK84-4050-MOD.#1
(49 FR 35477-Sept. 7, 1984)
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, and Woodward Cos., Oklahoma

CHANGE:

Supersedeas Decision No. OK84-4050 dated Sept. 7, 1984 in 49 FR 35477 supersedes Decision No. OK84-4034 instead of Decision No. OK84-4068.

	Basic Hourly Rates	Fringe Benefits
Electricians		
Area 2	$14.90	3.5% + $2.40
Area 3	14.05	3-1/4% +1.50
Cable Solicers		
Area 2	15.15	3.5% + 2.40

DECISION NO. PA84-3017
MOD. NO. 1
(49 FR 24859 - June 15, 1984)
Berks, Lehigh, & Northampton Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians		
Zone 2	15.41	1.83+ 3½%
ROOFERS:		
Shingle, Slate & Tile	13.92	2.25
Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; cleanup debris	6.25	2.25
Sheet metal workers	15.73	4.92

DECISION NO. TX84-4005 - MOD. #7
(49 FR 7069 - 2/22/84)
Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers	$16.125	2.95
Painters:		
Zone 1:		
Group 1	13.36	1.80
Group 2	13.61	1.80
Group 3	13.48	1.80
Group 4	13.74	1.80
Group 5-Steeple jack work consisting of water towers, smoke stack & breeching, chimneys, flag poles, radio & TV towers, cable work 16' & over above ground where cables are strung to scaffolds & running boards	14.11	1.80

DECISION NO. TX84-4037 - MOD. #3
(49 FR 22191 - 5/25/84)
Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	17.10	2.57
Boilermakers	16.125	2.95

DECISION NO. TX84-4045 - MOD. #1
(49 FR 32168 - 8/10/84)
Travis County, Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers	$16.125	2.95
Electricians & cable splicers	15.60	1.00+ 8-8/10%
Line construction:		
Linemen	16.30	.80+ 3-1/2%
Groundmen	8.15	.80+ 3-1/2%

DECISION NO. TX84-4046 - MOD. #1
(49 FR 32166 - 8/10/84)
Bexar County, Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers	16.125	2.95
Electricians:		
Electricians	15.49	1.00+6%
Cable splicers	15.74	1.00+6%
Elevator constructors:		
Mechanics	14.59	3.29+a
Helpers	70%JR	3.29+a
Helpers (Prob.)	50%JR	
Line construction:		
Lineman	15.85	.80+ 3-1/2%
Cable splicer	16.10	.80+ 3-1/2%
Groundman	8.72	.80+ 3-1/2%

DECISION NO. TX84-4047 - MOD. #1
(49 FR 32167 - 8/10/84)
Lubbock County, Texas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	17.10	2.57
Boilermakers	16.125	2.95

DECISION NO. CT84-3016 - MOD. #7
(49 FR 23980 - June 8, 1984)
Statewide, Connecticut

CHANGE:

MOD. #16 published August 24, 1984 to read MOD. #6

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Mechanic	18.81	3.29+ f+g
Helper	13.17	3.29+ f+g
Prob. Helper	9.405	
PAINTERS:		
Area 1		
Brush	15.60	2.15
Tapers	16.10	2.15
Bosun Chair	16.60	2.15
Spray	20.50	2.15
PLUMBERS & STEAMFITTERS:		
Area 6		
Jobs where total mechanical work exceeds $200,000	18.00	3.83
Jobs where total mechanical work is $200,000 or less	13.50	3.83
TRUCK DRIVERS:		
Class 1	12.03	3.37+s
Class 2	12.13	3.37+s
Class 3	12.18	3.37+s
Class 4	12.23	3.37+s
Class 5	12.28	3.37+s
Class 6	12.33	3.37+s

DECISION NO. DE82-3015 - MOD. #19
(47 FR 24526 - June 4, 1982)
State of Delaware.
On MOD. #18

	Basic Hourly Rates	Fringe Benefits
OMIT:		
CARPENTERS		
Building & Heavy Construction		
New Castle & Kent Counties		
Residential Carpenters	12.23	3.67

DECISION NO. DC84-3009- MOD. #5
(49 FR 13800-April 6, 1984)
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES.

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SHEET METAL WORKERS	$14.83	4.56+d

d-Employer contributes additional 12¢ outside of the District of Columbia

DECISION NO. WA83-5110 - Mod #15
(48 FR 25108 - June 3, 1983)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELEVATOR CONSTRUCTORS:		
Mechanics:		
Area 1	$19.855	a+3.3
Area 2	20.76	a+3.00
PLASTERERS:		
Area 2	17.31	3.62
ROOFERS:		
Area 3:		
Roofers & Waterproofers	18.85	2.5
Slate & Tile Roofers	19.10	2.5

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA COUNTIES: SEE BELOW*
DECISION NO. PA84-3035 DATE: DATE OF PUBLICATION
Supersedes Decision No. PA83-3048 dated October 7, 1983, in 48 FR 45917.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories). Excluding Sewage and Water Treatment Plant Projects.
*Lackawanna, Susquehanna, Wayne and Wyoming.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.33	2.31
BOILERMAKERS	19.33	2.415
BRICKLAYERS & STONEMASONS:		
Lackawanna & Wayne Cos.	15.00	2.68
Susquehanna & Wyoming Counties	15.70	2.00
CARPENTERS:		
LACKAWANNA, Susquehanna, Wayne Counties, and Wyoming County:		
East of Susquehanna River	14.46	2.70
Wyoming County:		
West of Susquehanna River	14.99	2.55
CEMENT MASONS:		
Wyoming, Wayne, Susquehanna Counties, Scranton in Lackawanna Co.	15.65	
Carbondale in Lackawanna Counties	15.00	2.86
ELECTRICIANS:		
Lackawanna, Susquehanna Wayne Counties, and Wyoming County		
East of Susquehanna River	15.25	3.30+ 3%
Wyoming County:		
West of Susquehanna River	15.99	2.70+ 3%
ELEVATOR CONSTRUCTORS	15.60	3.00 +a+b
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	3.00 +a+b
ELEVATORS CONSTRUCTORS' HELPERS (PROB.)	50%JR	
GLAZIERS	13.04	2.90
IRONWORKERS:		
Lackawanna, Wayne and Wyoming Counties		
Structural and Ornamental	17.85	3.70+e
Reinforcing	17.75	3.70+e
Susquehanna County	12.80	

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Lackawanna, Wayne, Susquehanna, & Northern part of Wyoming County:		
Unskilled & Window Cleaners	12.80	2.87
Semi-skilled Laborers; Jackhammer Operators, (each man when two are required for operation of Jackhammer) vibrator and Buster men, Wagon Drill and all men handling Dynamite, Gas Buggies, 2" Pumps and Concrete Mixers (up to 2 bags) and all Pneumatic Tools	12.95	2.87
PLASTER TENDERS & MASONS TENDERS and Handling of all material to be used; Masons and Scaffold Builders	13.20	2.87
NON-METALLIC PIPE LAYERS and making of Joints, Clay, Terra Cotta, Iron-Stone, Vitrified Concrete Handling of Burning Torches; Asphalt or other material	12.95	2.87
SOUTHERN PART OF WYOMING COUNTY:		
Unskilled	12.87	2.80
Semi-skilled laborers; pneumatic and other mechanical tool operator 2" pump or under; Handling and mixing of all material used by Masons from stock pile to Mason Non-matallic Pipelayer & making of Joints, Clay, Terra Cotta, Ironstone, Vitrified Concrete, Handling of Burning Torches; Asphalt or other Hot material, Cement Finishers and Blasters Helpers	13.07	2.80

DECISION NO. PA84-3035

	Basic Hourly Rates	Fringe Benefits
LABORERS: (Continued)		
Southern part of Wyoming County Plasterers' Tenders; Blasters; Wagon Drill Operators	13.19	2.80
Masons Tenders and Scaffold Builders	13.27	2.80
LATHERS	12.04	2.80
LEAD BURNERS	10.75	.66+c
LINE CONSTRUCTION:		
Lineman; Dynamite man	15.99	.80+3 3/8%
Winch Truck	11.29	.80+3 3/8%
Groundman	10.00	.80+3 3/8%
MARBLE SETTERS	13.60	2.50
MILLWRIGHTS:		
Lackawanna, Susquehanna, Wayne Counties, and Wyoming County:		
East of Susquehanna River	15.04	2.70
Wyoming County:		
West of Susquehanna River	16.57	2.55
PAINTERS:		
Brush and Roller	13.65	1.25
Spray	15.15	1.25
Steel	14.65	1.25
PILEDRIVERMAN	14.82	6.16+d
PLASTERERS	16.73	
PLUMBERS	15.24	3.95
POWER EQUIPMENT OPERATORS:		
Group 1	15.89	26.6%+f
Group 2	15.60	26.6%+f
Group 3	14.72	26.6%+f
Group 4	13.95	26.6%+f
Group 5	13.47	26.6%+f
Group 6	12.55	26.6%+f
Group 7	16.14	26.6%+f
Group 7-A	16.41	26.6%+f
Group 7-B	16.64	26.6%+f
ROOFERS:		
Composition & Kettleman	14.42	2.28
SHEET METAL WORKERS	15.92	2.00
SOFT FLOOR LAYERS:		
Lackawanna, Wayne and Susquehanna Counties	14.46	2.70
Wyoming County	12.29	2.55
SPRINKLER FITTERS	16.92	3.23
PIPEFITTERS	14.79	4.35
TRUCK DRIVERS:		
Class I	12.77	
Class II	12.84	
Class III	13.33	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))."

POWER EQUIPMENT OPERATORS - CLASSIFICATIONS

Group 1: Machines doing hook work; Any machine handling machinery; Cable spinning machines; Helicopters; Machines similar to the above

Group 2: All types of Cranes; All types of backhoes; Cableways; Dragline; Keystones; All types of shovels; Derricks; Trench shovels; Trenching machines; Hoist with two towers; Pavers, 21E and over; All types of overhead cranes; Building hoists (double drum); Gradalls; Mucking machines in tunnel; All front end loaders, 3½ cu. yds. and over; Tandem scrapers; Pippin type backhoes; Boat captains; Batch plant operators (concrete); Drills; Self-contained rotary drills; Fork lifts, 20 ft. lift and over; machine similar to the above

Group 3: Conveyors; Building hoists (single drum); Scrapers and Tournapulls; Spreaders; High or low pressure boilers; Concrete pumps; Well drillers; Bulldozers and tractors; Asphalt plant engineers; Roller (high grade finishing); Ditch witch type trencher; All loaders under 3½ cu. yds.; Mechanic-welder; Motor patrols; Drill helper-self contained rotary drills; Core drill operator; Forklift trucks, under 20 ft. lift; Machine similar to the above

Group 4: Welding machines; Well points; Compressors; Pumps; Heaters; Farm tractors; Form line garders; Fine grade machines; Road finishing machines; Concrete breaking machines; Rollers; Seaman pulverizing mixer; Power broom; Seeding spreaders; Tireman (for power equipment); Machines similar to above

Group 5: Fireman, Grease truck

Group 6: Oilers and deck hands (personnel boats); Core drill helper

Group 7: All machines with booms (including jib, masts, leads, etc.); 100 ft. and over

Group 7-A: 150 ft. and over

Group 7-B: 200 ft. and over

TRUCK DRIVERS - CLASSIFICATIONS

Class I - Helper; Stack Body Truck (single axle); Dumpster
CLASS II - Dump Trucks; Tandem and Batch Trucks; Semi-trailers;
CLASS - Agitator Mixer Trucks; Ready mix and Dumpcrete type vehicles Asphalt Distributors; Farm Tractor when used for transportation; Stake Body Truck (tandem)

CLASS III - Eculid type; off-highway Equipment - Back or Belly Dump Trucks and Double Hitched Equipment; Straddle (Ross) carrier; low-bed Trailers

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
b. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.
c. Paid Holidays: A through F and Washington's Birthday, Good Friday; and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday and is avialable for work the days preceding and following the holiday.
d. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day, Labor Day; Presidential Election Day; Veterans' Day, Thanksgiving Day.
e. Employer contributes $3.70 to a combined Health and Welfare and Pension Fund.
f. Paid Holidays: New Year's Day, Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, provided the employee works the day before and after the holiday.

SUPERSEDEAS DECISION

STATE: Texas
COUNTY: Gregg
DECISION NO. TX84-4056
DATE: Date of Publication
Supersedes Decision No. TX83-4058, dated 8/5/83 in 48 FR 35850
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	BASIC HOURLY RATE	FRINGE BENEFITS
BRICKLAYERS	$12.75	
CARPENTERS	10.67	
CEMENT MASONS	9.48	
ELECTRICIANS	14.35	1.00+ 7-1/4%
GLAZIERS	8.73	
IRONWORKERS	9.00	
LABORERS	5.84	
PAINTERS	9.00	
PLUMBERS	9.975	
ROOFERS	9.12	
SHEET METAL WORKERS	7.73	
SOFT FLOOR LAYERS	11.25	
SPRINKLER FITTERS	11.29	
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

[FR Doc. 84-24838 Filed 9-20-84; 8:45 am]

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federal register

Friday
September 21, 1984

Part III

Department of the Treasury

Comptroller of the Currency

12 CFR Part 11

Securities Exchange Act Disclosure Rules; Proposed Rule; Request for Comments

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 11

[Docket No. 84-32]

Securities Exchange Act Disclosure Rules

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Proposed rule; request for comments.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is publishing for comment proposed amendments to its Securities Exchange Act Disclosure Rules adopted under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The Exchange Act requires the Office to issue regulations substantially similar to those adopted by the Securities and Exchange Commission ("SEC") or publish its reasons for not doing so. The proposed amendments are intended to comply with this requirement.

The proposed amendments would simplify a number of disclosure requirements for registration, periodic reporting and proxy solicitation by banks through the adoption of common disclosure items for nonfinancial statements and reports, as well as for financial statements. Where practicable, common requirements applicable to various forms would be centralized for ease of reference. Finally, the Office is proposing that the Securities Exchange Act Disclosure Rules be reformatted in a more logical sequence that will make them easier to understand and use.

DATES: Comments must be received on or before November 20, 1984.

ADDRESS: Interested persons are invited to submit written data, views, or comments regarding the proposed regulation to Docket No. 84-32, Comunications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219. Attention: Lynnette Carter. Telephone: (202) 447-1800. Commments will be available for inspection and photocopying.

The collection of information requirements in the existing rule have been approved by the Office of Management and Budget and given OMB No. 1557-0106. Comments specifically addressing changes in those information collection requirements as described herein should be directed to this Office at the above address and should be submitted to: Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20500 Attention: Desk Office for Comptroller of the Currency.

FOR FURTHER INFORMATION CONTACT: Michael C. Dugas, Securities & Corporate Practices Division, Telephone: (202) 447-1954, and Zane D. Blackburn and Eugene W. Green, Bank Accounting Division, Telephone: (202) 447-0471, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The Office today is proposing certain amendments to its Securities Exchange Act Disclosure Rules ("Rules") which are codified in 12 CFR Part 11 ("Part 11"). The amendments to Part 11 are being proposed pursuant to Section 12(i) of the Exchange Act, 15 U.S.C. 78*l*(i). That section authorizes the Office to administer and enforce Sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, 15 U.S.C. 78*l*, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78o, with respect to national banks and banks operating under the Code of Law for the District of Columbia (collectively referred to as "banks" or "national banks"). Section 12(i) also requires the Office to issue, with respect to national banks, regulations substantially similar to those issued by the SEC under the foregoing sections unless the Office finds that such regulations are "not necessary or appropriate in the public interest or for the protection of investors," and publishes such findings, and the detailed reasons therefor, in the **Federal Register**. Except where noted herein, the amendments proposed today are virtually identical to regulations adopted by the SEC.*

The proposals would eliminate certain inconsistencies in disclosure items. The resulting uniform items, as well as certain other requirements common to various parts of the regulation, would be centralized in a reformatted Part 11. The proposed changes will lessen the burden of some disclosure requirements and facilitate ease of reference in preparing disclosure material.

The substantive proposals include (1) granting immediate relief from certain reporting obligations for banks filing deregistration certifications under Section 12 of the Exchange Act; (2) revising the annual report nonfinancial disclosure requirements for registered national banks to make them consistent with other periodic reporting requirements under Section 13 of the Exchange Act; (3) revising the annual report financial statement disclosure requirements to make them consistent with other financial statement requirements under Section 13 of the Exchange Act and to eliminate certain of those requirements that are duplicative of generally accepted accounting principles; (4) revising the beneficial ownership reporting requirements under Section 13(d), 13(g) and 16(a) of the Exchange Act to reduce the number of required filings and raise the initial threshold for reporting certain shareholder transactions; (5) amending proxy rules relating to proposals of security holders; (6) revising requirements relating to disclosure of executive compensation; (7) amending the pro rata requirements relating to tender offers under Section 14(d) of the Exchange Act to provide for fairer treatment of national bank shareholders; (8) amending certain requirements in the Office's proxy regulations under Section 14(a) of the Exchange Act to improve the communication by banks with beneficial owners of their securities; and (9) making certain technical amendments to conform the Rules of the Office with those of the SEC.

The Office is also requesting comments as to the criteria which should be used for (i) exempting small publicly-held banks from the registration requirements of Section 12(g) and (ii) allowing deregistration of small publicly-held bank registrants.

Also being published are requests for comments on clarification and simplification of certain proxy and information statement disclosure requirements of Part 11 relating to mergers, consolidations, and acquisitions or sales of assets of national banks. Comments are being requested relating to cases where cash is the only form of consideration and relating to "triangular mergers" where the consideration includes shares of a bank holding company that owns the acquiring bank. Comments are also being sought concerning the use of a shortened proxy or information statement for mergers involving national banks which do not have a class of securities registered pursuant to Section 12 of the Exchange Act.

In connection with the proposed amendments to Part 11, the Office is announcing that it plans to conduct an overall review of its 12 CFR Part 16 ("Part 16"), the Securities Offering Disclosure Rules. As part of that review, the Office expects to propose an integration of the Part 16 offering circular disclosure requirements with the disclosure requirements of Part 11.

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*Historically, OCC has not included in Part 11 sections or phrases or SEC regulations applicable only to industries other than banking. See, e.g., 17 CFR 229.101 (c)(1) (i)–(iv), (vi), (viii), (ix), and (xi) (industry segments, raw materials, patents, trademarks, government contracts, research and development, etc.)

The Office believes that centralized disclosure rules in Part 11 would offer the additional advantage of facilitating integration of Part 16 with Part 11.

It should be noted that some of the proposals relating to financial statements—and set forth in reformatted Subparts A and I—were the subject of a notice of proposed rulemaking by this Office published on January 29, 1981 (46 FR 9618) ("January 1981 proposals") and appear as final rules in the Exhange Act disclosure regulations issued by the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.[1] Due to the substantiality of the amendments now being proposed, the Office considers it appropriate to repropose the January 1981 proposals, as subsequently modified because of later SEC action, rather than issue them as final rules at this time. The Office points out, however, that banks have the option of complying with the rules contained in the January 1981 proposals with respect to financial statements for periods ending not earlier than December 31, 1980.

The proposed amendments to Part 11 are discussed below. To facilitate the comment process, the proposed amendments are presented in accordance with the numbering sequence to be used in the reformatted Part 11. Interested parties should refer to the table at the end of this preamble which cross-references the old sections with the proposed new sections.

I. Reformatting of Part 11

The Office is proposing to change the format of Part 11. As reflected below, the reformatted regulation would be set out in a more logical fashion and contain appropriate headings and subheadings in order to make the regulation easier to read and use. There would be separate subparts relating to (i) general provisions, (ii) registration requirements and statements under Section 12 of the Exchange Act, (iii) annual and other bank reports filed pursuant to Section 13 of the Exchange Act, (iv) reports filed by certain shareholders pursuant to Sections 13(d) and 16(a) of the Exchange Act, (v) proxy statement, information statement and election contest requirements pursuant to Section 14(a) and (c) of the Exchange Act, (vi) tender offer requirements pursuant to Section 14(d) of the Exchange Act, and (vii) general requirements concerning registration and reporting.

In addition, with the adoption of a number of uniform disclosure items for bank registration, reporting and proxy forms, the uniform disclosure item requirements have been grouped in appropriate subparts. One subpart (Subpart H) would contain nonfinancial disclosure item requirements common to different forms and would be similar to the SEC's Regulation S–K. A second subpart (Subpart I) would contain disclosure item requirements common to the different financial statement formats that are included in the registration, reporting and proxy forms and would be similar to the SEC's Regulation S–X.

Part 11 was originally adopted in 1964, pursuant to authority in the Securities Act Amendments of 1964, Pub. L. 88–467, 55 Stat. 565 (1964), which authorized the Office to administer and enforce most of the requirements of Sections 12, 13, 14 and 16 of the Exchange Act with respect to national banks. A major objective of the Office in adopting Part 11 was to develop disclosure requirements that take into consideration the particular nature of banks and to structure those requirements in a coherent manner, thereby facilitating banks' compliance with the Exchange Act.

The Office feels that the format adopted in 1964 met that objective well. However, Section 12(i) was amended in 1974 to require the Office to publish regulations substantially similar to those adopted by the SEC. Since then, the SEC has expanded its regulations to the point where the present Part 11 format can not readily accommodate comparable regulations issued by the Office. The Office now considers it appropriate to propose to reformat its regulations, particularly in light of SEC activity.

II. Substantive Proposals

A. General Provisions

Certain provisions in Part 11, such as the definitions contained in 12 CFR 11.2, are of general applicability. In the proposed reformatting of Part 11, such provisions would be grouped together to form a new Subpart A. In addition, the following substantive changes are being proposed.

1. *Definitional amendments.* Several new terms would be added to the definitional section, 12 CFR 11.102, and several existing terms would be revised. First, the Office proposes to define the terms "related parties," and "totally held subsidiary" and to amend the definition of "significant subsidiary" to correspond with changes made by the SEC. *See* the discussion in Section I below concerning "related parties," "significant subsidiary" and "totally held subsidiary." *See also* proposed 12 CFR 11.102(hh), (ii), and (jj).

Second, the Office proposes to amend the definition of " immediate family," in proposed 12 CFR 11.102(k), to conform to changes made by the SEC in Exchange Act Release No. 19570, 48 FR 11104 (March 16, 1983) and to the new definition of that term in § 11.844 concerning disclosure of certain relationships and transactions involving management. *See* Exchange Act Release No. 19290, 47 FR 55661 (December 13, 1982).

Third, the definition of "officer," in proposed 12 CFR 11.102(o), is revised to indicate that the words "officer" and "executive officer" are used interchangeably in Part 11.

Fourth, the office also proposes to amend the definition of the term "verified," when used with respect to financial statements. *See* proposed 12 CFR 11.102(dd). As amended, the term would correspond with proposed clarifying amendments to the financial statement verification requirements reformatted under Subpart I and discussed in this preamble under Section I—Financial Statement Requirements. The amendment would also clarify the extent to which banks have the option of filing either certified, or internally verified, financial statements.

2. *Safe harbor rule projections and information on the effects of changing prices.* The current "safe harbor" for forward looking statements would be expanded to cover information concerning the effects of changing prices disclosed voluntarily by banks in annual reports and certain proxy and information statements. *See* proposed 12 CFR 11.106. This corresponds to changes adopted by the SEC. *See* Exchange Act Release No. 17658, 46 FR 19458 (March 31, 1981).

3. *Requirement to make and keep accurate books, records and accounts.* The Office is proposing rules prohibiting falsification of accounting records and the making of materially false and misleading statements to accountants, in connection with a national bank's disclosure requirements under the Exchange Act. These rules would implement the requirements of section 13(b)(2) of the Exchange Act, and are comparable to regulations adopted by the SEC. *See.* 17 CFR 240.13b2–1 and 240.13b2–2.

B. Registration

1. *Reformatted rules relating to registration of securities.* The reformatted requirements relating to the registration of a class of bank securities pursuant to Section 12 of the Exchange Act would be found in new Subpart B or

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[1] *See* 12 CFR Parts 208 and 335, respectively.

Part 11. The forms for registration of securities of a bank, or an additional class of securities, under Section 12 of the Exchange Act woud be set forth in proposed 12 CFR 11.290 (Form F–1) and proposed 12 CFR 11.291 (form F–10), respectively.

2. *Deregistration.* The Office is proposing a change consistent with SEC regulations in the rule relating to termination of registration under Section 12(g) of the Exchange Act, 15 U.S.C. 78*l*(g). Proposed 12 CFR 11.207(b) would suspend a bank's obligation to file any reports required under Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), immediately upon the filing of a certification that the conditions required for deregistration are present. No change would be made in the conditions required for deregistration.

3. *Exemption for small issuers.* The Office is requesting comments concerning (i) an exemption from the registration requirements under Section 12(g) of the Exchange Act for small publicly-held banks and (ii) an authorization for small publicly-held bank registrants to deregister.

The registration requirements generally apply to banks having more than $1 million in assets and 500 or more shareholders. The SEC has adopted an exemption from registration for issuers having assets of less than $3 million. *See* 17 CFR 240.12g–1. In addition, under another exemption, registrants whose securities are registered with the SEC may terminate such registration if they have fewer than 500 shareholders and their assets have not exceeded $3 million as of the end of each of the last three fiscal years. *See* 17 CFR 240.12g–4. These exemptions were adopted by the SEC to reflect the effect of inflation since Congress enacted the existing statutory criteria in the Securities Acts Amendments of 1964, and thereby alleviate burdens imposed on small businesses in complying with the Exchange Act. *See* Exchange Act Release No. 18647, 47 FR 17046 (April 21, 1982).

The Office requests comments on whether exemptions similar to those contained in SEC Rules 12g–1 and 12g–4 should be adopted for national banks and what asset level should form the basis for the exemption. Suggestions are also requested on criteria, other than asset levels, more particularly suited to publicly-held banks, that should be considered by the Office as a basis for granting exemptions from the registration requirements of, and for permitting deregistration under Section 12(g) of the Act.

C. Annual And Other Bank Reports

1. *Reformatted rules relating to annual, quarterly and current reports.* The continuing disclosure requirements of Section 13(a) of the Exchange Act concerning annual, quarterly and current reports of a national bank would be reformatted in Subpart C of Part 11. The relevant forms for such reports would be set forth in proposed 12 CFR 11.390 (Form F–2 (annual report)), proposed 12 CFR 11.391 (Form F–3 (current report)) and proposed 12 CFR 11.392 (Form F–4 (quarterly report)).

2. *Substantive disclosure changes.* The Office is proposing substantive amendments to the continuing disclosure requirements. These proposals are described in this preamble under Section G—Requirements Concerning Registration and Reporting; Section H—Content of Nonfinancial Statements and Reports; and Section I—Financial Statement Requirements. The proposals correspond to amendments adopted by the SEC.

3. *Interim financial statements.* Among other things, the Office is proposing amendments relating to the presentation of interim financial information in reports and statements required by Part 11. The requirements as to the form and content of interim financial statements would be made uniform and centralized in proposed 12 CFR 11.917. The revised requirements would include an expanded description of the basis upon which banks may determine the adequacy of interim disclosure, a change relating to references by an independent public accountant to review of interim financial statements, a change in dates as of which balance sheets are required in filings on Form F–4, and a clarification of the bases to be used in applying the percentage tests for determining required balance sheet and income statement captions.

In addition, common requirements relating to management's discussion and analysis of interim financial statements would be centralized in proposed 12 CFR 11.833. These requirements would complement the requirements already established for discussions of annual periods by requiring interim period discussions to focus on the same type of information as discussed for annual periods. The interim discussion would not reiterate all of the information presented in the full year discussion, but only material changes in financial condition and results of operations occurring during the periods covered by the interim financial statements. The SEC has adopted a similar requirement with respect to interim financial reporting by industrial companies. *See* Exchange Act Release No. 17524, 46 FR 12480 (February 17, 1981).

4. *Annual report and exhibit requirements.* The Office would amend its requirements relating to the annual report prepared by banks on Form F–2 to correspond to amendments adopted by the SEC. The revised annual report form at 12 CFR 11.390 reflects efforts by the Office to simplify disclosure requirements applicable to banks and, where possible, construct common disclosure requirements for the documents which comprise the Office's disclosure program for publicly-held national banks.

Reflecting changes made by the SEC for the annual report, Form F–2 would be restructured into four parts. As proposed, the first part contains disclosure requirements relating to business, properties, legal proceedings and beneficial ownership. The second part contains requirements relating to market information, selected financial data, management's discussion and analysis of financial information and results of operations, and financial statements. The third part consists of traditional proxy disclosure information relating to directors and executive officers and management remuneration. The fourth part consists of financial statement schedules with amended requirements for exhibits. *See* Exchange Act Release Nos. 17095, 45 FR 58822 (September 5, 1980); 17114, 45 FR 63630 (September 25, 1980); and 17522, 46 FR 11952 (February 12, 1981).

5. *Current report requirements.* Form F–3, the current report, would be amended to correspond to amendments adopted by the SEC. No substantive changes in the events to be reported are being proposed. However, because of the proposed adoption of common disclosure items for financial statements, Item 7 of Form F–3 would be reformatted to reference the pertinent financial statement requirements in new Subpart I.

D. Shareholder Transaction Reports

1. *Reformatting of requirements relating to shareholder transaction reports.* The Office is proposing that the shareholder transaction reporting requirements under Sections 13(d)(1), 13(g) and 16 (a) of the Exchange Act would be reformatted in new Subpart D of Part 11. Relevant forms for reporting such transactions would be set forth in proposed 12 CFR 11.490 (Form F–11 (acquisition statement)), proposed 12 CFR 11.491 (Form F–11A (short form acquisition/ownership statement)), proposed 12 CFR 11.492 (Form F–7

(initial statement of beneficial ownership)), and proposed 12 CFR 11.493 (Form F–8 (statement of change in beneficial ownership)). In addition to the proposed reformatting and changes in the number of F–11's, F–11–A's or amendments thereto, to be filed with our Office from four to three, the Office is proposing two amendments, discussed below, to the shareholder transaction reporting requirements.

2. *Amendment to requirement for reporting beneficial ownership under Section 13(g) of the Act.* The Office proposes in 12 CFR 11.402(b) to eliminate the requirements for filing an annual amendment to Form F–11A when (i) no changes have occurred in the beneficial ownership information therein or (ii) when the change relates solely to a change in the aggregate number of the bank's outstanding shares. This corresponds to the SEC's amendment of Rule 13d–2 under the Act, 17 CFR 240.13d–2. *See* Exchange Act Release No. 19188, 47 FR 49963 (November 4, 1982).

3. *Exemptions of small transactions from the reporting requirements of Section 16(a) of the Act.* Section 16(a) of the Act imposes transactional reporting requirements on directors, officers and certain beneficial shareholders of national banks having a class of equity securities registered under Section 12 of the Act. The qualifying amount of the transaction is $3,000. Reflecting action taken by the SEC in amending Rule 16a–9, 17 CFR 240.16a–9, the Office is proposing to increase the qualifying amount from the current $3,000 to $10,000. *See* 12 CFR 11.410(h); Exchange Act Release No. 18853, 47 FR 29651 (July 8, 1982). The Office is also amending § 11.410(b)(1), and (b)(1)(f) to correspond to rules 16a–2(a) and 16a–6 of the SEC, 17 CFR 240.16a–2(a), 240.16a–6; and § 11.411(c) to correspond to Rule 16b–3, 17 CFR 240.16b–3.

E. Shareholder Meetings

1. *Reformatting of proxy regulations.* The Office is proposing that regulations relating to proxy solicitations, proxy statements and statements where management does not solicit proxies be reformatted in new Subpart E of Part 11. The related form for the proxy statement or information statement (Form F–5) and form for statement in election contests (Form F–6,) would be set forth in proposed 12 CFR 11.590 and proposed 12 CFR 11.591, respectively.

2. *Pro forma financial information.* The Office is revising the disclosure items and instructions in the Form F–5 concerning the presentation of pro forma financial information to correspond with changes made by the SEC in Exchange Act Release No. 18842, 47 FR 29832 (July 9, 1982). These are designed to promote uniformity in the presentation and preparation of *pro forma* financial information.

3. *Relationships with independent public accountants.* The Office proposes to eliminate the requirement, presently in 12 CFR 11.51, Item 8(b), that banks provide certain disclosures regarding non-audit services by independent public accountants. This reflects comparable action taken by the SEC in rescinding Rule 14a–101 under the Exchange Act, 17 CFR 240.14a–101. *See* Exchange Act Release No. 18450, 47 FR 5404 (February 5, 1982).

4. *Annual report to security holders.* The Office is proposing to amend the disclosures required to be made in the annual report to security holders that must accompany or precede any statement furnished on behalf of the bank relating to an annual meeting of security holders at which directors are to be elected. These amendments are being proposed to correspond to the proposed changes in the requirements relating to the annual report on Form F–2. *See* the discussion in Section C above concerning "annual report and exhibit requirements." The amended requirements relating to the annual report to security holders will be codified at 12 CFR 11.503(a).

5. *Material required to be filed.* The Office proposes, in 12 CFR 11.506, to revise the number of copies of preliminary and definitive proxy statements and other soliciting material to be sent to this Office, and to make certain other minor amendments. As proposed, four rather than six copies of such statements and material would be filed with the Office.

6. *Shareholder Communications.* The Office proposes to amend its proxy rules to correspond with amendments to Rule 14a–3, 17 CFR 240.14a–3, in accordance with recommendations of the SEC Advisory Committee on Shareholders Communications. *See* Exchange Act Release Nos. 19291, 47 FR 55491 (December 10, 1982), and 20021, 48 FR 35082 (August 3, 1983). The new requirements would be contained in proposed 12 CFR 11.507(b)(1).

The proposal relates to the inquiry which registered banks, as issuers, must make when they know that their shares are held of record by a broker-dealer or other nominee. The proposed rule would require banks to (i) make this inquiry at least 20 days in advance of the record date of the meeting of security holders, or if inquiry at such time is impracticable, as many days before such meeting as practicable, or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown, and (ii) file a copy of such inquiry with the Office.

The other aspect of the proposal would contain an exception for multiple annual report mailings to the same address, and would relieve registered banks from the duty of delivering a proxy statement or annual report to any shareholder of record where at least two consecutive annual meeting solicitations mailed to the shareholder's address of record have been returned undeliverable, or where all, and at least two, checks (if sent by first class mail) in payment of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable. In addition, an express requirement that banks resume mailings of proxy statements or annual reports once they learn of a security holder's new address, would be added. These changes would be incorporated in 12 CFR 11.503(a). Under 12 U.S.C. 21a and 75, however, banks would still have to mail a "notice" of the meeting to each such shareholder of record.

Certain of the SEC's shareholder communications rules that apply to brokers under Exchange Act Rules 14b–1, 17 CFR 240.14b–1, are not now being proposed. *See* Exchange Act Release No. 20021 (July 28, 1983). The Exchange Act excludes banks from the definition of "broker" and, therefore, from the coverage of Section 14(b) of the Act and Rule 14b–1 issued thereunder.

One SEC amendment not now being proposed relates to inquiries from issuers, pursuant to Rule 14a–3(d), concerning the number of customers who are beneficial owners of the issuers' securities for whom the brokers are holders of record. Under revised Rule 14b–1(a) and (b), brokers are required to:

(A) Respond within seven business days after receipt of such inquiries; and

(B) Forward soliciting materials to the beneficial owners within five business days after receipt of such materials and of assurances of expense reimbursement.

Although bank nominees are not subject to Rule 14b–1, the Office encourages such banks to make every reasonable effort to forward issuers' soliciting materials to the beneficial owners promptly, using the time frame established by Rule 14b–1 as a guide.

In addition, the Office is not now proposing a newly adopted SEC requirement that brokers provide issuers, upon request and assurance of reimbursement of reasonable expenses, with the names, addresses and securities positions of customers who are beneficial owners of the issuer's securities and who have not objected to such disclosure. 17 CFR 240.14b–1(c). Brokers would be required to keep a record of whether or not the beneficial owner has objected to the disclosure of his or her identity, address and securities positions to issuers. 17 CFR 240.17a–3(a)(9). Securities Exchange Act Release No. 20021 (July 28, 1983).

The Office understands that bank nominees are willing to provide issuers with the names, addresses and securities positions of beneficial shareholders, provided adequate safeguards exist and beneficial shareholders have consented. Accordingly, for the time being, bank nominees are encouraged to provide such information, provided that issuers have given assurance of timely reimbursement of reasonable expenses incurred by the bank nominees; that issuers have provided written notification to beneficial shareholders of the limitations on the issuer's use of such information; and that beneficial owners provide written consent to the bank nominee to make such disclosure to issuers for the limited purposes stated.

The Office supports efforts by banks, acting as nominees, to promote more efficent methods of communication between issuers and shareholders. In particular, until rules are promulgated which bring banks under requirements similar to Rule 14b–1, it encourages bank nominees to continue to work with issuer representatives, brokers, exchanges and interested government agencies, such as the SEC, to resolve the complex and technical issues relating to the development of a better system of communicating with beneficial shareholders.

7. *Proposals of Security Holders.* The Office proposes to amend its proxy rules relating to proposals of security holders, to correspond to changes made by the SEC to Rule 14a–8, 17 CFR 240.14a–8. *See* Exchange Act Release No. 34–20091, 48 FR 38218 (August 23, 1983). These changes include: adoption of a minimum investment and holding period test for a shareholder ("proponent") to be eligible to submit a proposal; adoption of a prohibition against the submission of any security holder proposals for inclusion in the bank's proxy soliciting material by a proponent who delivers written proxy materials to holders of more than 25% of a class of a bank's securities; and elimination of the requirement that the proponent notify the bank of his intention to appear personally at the meeting. The amendments would also allow the proponent to arrange, at the outset, to have any person who is permitted under applicable state law, to present the proposal for action at the meeting, extend the deadline for submitting proposals to be included in annual meeting proxy materials from 90 days to 120 days in advance of the date corresponding to the date the materials for the previous annual meeting were released, and reduce the number of proposals that a proponent may submit to a bank in any one year from two to one. Certain other amendments relating to identification, time periods, supporting statements and substantive grounds for omission of security holder proposals are also being proposed. The new requirements would be contained in proposed 12 CFR 11.508.

8. *Pension plan transactions.* Consistent with SEC changes, the Office is proposing to rescind disclosures required by Item 7(f)of Form F–5, 12 CFR 11.51, Item 7(f), regarding transactions with pension or similar plans. Such disclosures appear unnecessary, particularly in light of the regulation of affiliated transactions under the Employee Retirement Income Security Act of 1974. *See* Exchange Act Release No. 19290, 47 FR 55661 (December 13, 1982).

9. *Review of proxy regulations.* The SEC has announced the commencement of a comprehensive review of the rules, forms and schedules relating to the solicitation of proxies. *See* Exchange Act Release No. 18878, 47 FR 31394 (July 20, 1982). As noted in the announcement, the SEC's proxy requirements were adopted in a piecemeal fashion and have been subject to frequent changes. There are certain duplicative requirements in the existing system and proxy statements have become more detailed and complex over the years.

In addition to the above-listed specific proposed changes, the Office believes it appropriate to review in a systematic fashion the requirements and related forms as to the solicitation of proxies. The Office's review will involve an evaluation of existing substantive and procedural provisions and elimination of duplicative or outmoded requirements. Where practicable, the Office would rely upon incorporation by reference and use of uniform disclosure items, which would be set forth in proposed Subpart H, relating to the content of nonfinancial statements and reports, and those proposed in Subpart I, governing financial statements, in order to achieve this objective.

F. Tender Offer Regulations

1. *Reformatting of tender offer requirements.* The Office's tender offer regulations would be reformatted and set forth in a new Subpart F. The tender offer statement form (Form F–13) would be located in proposed 12 CFR 11.690 and the recommendation/solicitation statement (Form F–12) would be set forth in proposed 12 CFR 11.691. In addition, as discussed below, the Office is proposing one substantive amendment to the tender offer requirements.

2. *Proration rights.* The Office proposes to issue a rule which corresponds to amended Exchange Act Rule 14d–8, 17 CFR 240.14d–8, relating to proration rights in tender offers for less than all of the outstanding equity securities of a class. *See* Exchange Act Release No. 19336, 47 FR 57679 (December 28, 1982). Proposed 12 CFR 11.608 would require a bidder who makes a partial tender offer to accept securities on a pro rata basis, according to the number of securities deposited by each depositor, during the period such offer remains open. The present rule does not require the tender offeror to extend the proration period beyond the tenth calendar day following commencement of the tender offer or notification of an increase in the consideration offered. *See* proposed 12 CFR 11.608.

G. Requirements Concerning Registration and Reporting

1. *Reformatting of general requirements relating to registration and reporting.* The Office is proposing to reformat certain general requirements relating to registration and reporting into new Subpart G. The substance of most of these requirements is currently found in 12 CFR 11.4(i)–(w). The following amendments are being proposed.

2. *Timely filing of reports.* The Office is proposing to amend its procedures concerning the timely filing of annual and quarterly reports. Heretofore, banks which sought extensions of filing deadlines were required to apply for Office approval. As proposed in new 12 CFR 11.724, a bank would provide notice to the Office of its inability to file all or any portion of a required report on a timely basis. Under the new procedures, a subsequent filing made after the prescribed due date would be presumed to be filed on a timely basis if: (i) The reasons for the delay were set forth in the notice; and (ii) the subsequent filing were made within a prescribed time period after the due date (15 days in the case of annual reports and 5 days in the

case of quarterly reports). The proposed amendment is substantially similar to one adopted by the SEC. *See* Exchange Act Release No. 16718, 46 FR 23651 (April 8, 1980).

3. *Other amendments.* The Office is also proposing to add §§ 11.701, Scope of Subject; 11.703, Supplemental Information; 11.710, Requirements as to Proper Form; and 11.730, Other Exhibits, to conform to existing SEC regulations.

H. Content of Nonfinancial Statements and Reports

The Office is proposing that certain common substantive disclosure items pertaining to registration, periodic reporting or proxy solicitation by banks be centralized into a separate subpart of Part 11 (Subpart H). To the greatest extent possible the various registration, periodic reporting and proxy solicitation forms would in turn refer back to the pertinent disclosure items in the centralized Subpart H. Amendments to the substantive requirements of Subpart H are described below.

1. *Effects of changing prices.* The Office is proposing to require banks subject to the reporting requirements of Statement of Financial Accounting Standards ("SFAS") No. 33, "Financial Reporting and Changing Prices" of the Financial Accounting Standards Board, to disclose information on the effects of changing prices. This requirement applies only to banks which have, among other things, total assets of more than $1 billion (after deducting accumulated depreciation). The requirement would be contained in new 12 CFR 11.832, and would apply to annual reports and certain proxy statements prepared by such banks. As discussed above, the Office's safe harbor provisions, in new 12 CFR 11.106, have been expanded to include such disclosures.

2. *Executive Compensation.* The Office is proposing amended and retitled disclosure requirements concerning management remuneration to conform to recent changes made by the SEC to Item 402 of Regulation S-K. *See* Exchange Act Release No. 34-20220, 48 FR 44467 (September 29, 1983). The amended requirements, representing substantial changes from the existing management remuneration provisions of 12 CFR 11.51, Item 7, would be contained in proposed 12 CFR 11.842, to be entitled "Executive Compensation." The proposed changes include revising the table to require presentation of information only in the case of cash remuneration rather than all remuneration, and limiting the individual reporting requirements to directors and executive officers with policy-making functions instead of all officers and directors. Another change includes raising the threshold for individual compensation disclosure from $50,000 to $60,000 per year, adopting a disclosure threshold for noncash compensation (i.e. personal benefits) of 10 percent of the compensation reported in the Cash Compensation table or $25,000, whichever is less, and adding an instruction specifying that the bank's aggregate incremental cost is the valuation to be employed in calculating such noncash compensation. The amendments provide for separate disclosures covering plans pursuant to which the bank has paid during the last fiscal year, or proposes to pay in the future, any form of remuneration, including disclosure of amounts of securities, property, cash or other remuneration paid or distributed specifically in connection with such plans. In addition, the amendments would eliminate the requirement for disclosure of amounts allocated to plans, the distribution or unconditional vesting of which is subject to future events, and eliminate disclosure of interest paid on deferred compensation and dividends awarded on restricted stock. The amendments would still require disclosure of the net value realized from the exercise of stock options and stock appreciation rights (SARs), but not of the aggregate amount of securities underlying all unexercised options or SARs and the potential (unrealized) value of such unexercised options or rights. Proposed 11.842(b)(2) would make clear that the requirement to include a pension table only applies to defined benefit and actuarial plans under which benefits are determined primarily by final compensation (or average final compensation) and years of service. Certain other changes including disclosures concerning change of control arrangements, amendments to the general instructions to § 11.842 and conforming amendments to Items 9, 10 and 11 of § 11.590 are also being proposed.

3. *Certain relationships and related transactions.* To conform with recent SEC amendments, the Office is proposing a new disclosure item which would be applicable to proxy statements and periodic reports. This item, captioned "Certain relationships and related transactions" would be codified in 12 CFR 11.844, with appropriate amendments to the proxy statement, Form F-5, and the annual report, Form F-2 to reference the new item.

New § 11.844 would have four parts, requiring disclosures relating to (1) transactions with management and others; (2) business relationships of directors and nominees for directors; (3) indebtedness of management; and (4) transactions with promoters. *See* Exchange Act Release No. 19290, 47 FR 55661 (December 13, 1982). The requirements of proposed § 11.844 are drawn, with certain modifications, from Items 6 and 7 of the current proxy statement, 12 CFR 11.51, Items 6 and 7. Accordingly, appropriate revisions in those items have also been proposed.

4. *Selected Financial Data.* The Office proposes to eliminate the requirement of a detailed five-year Summary of Operations, replacing it with disclosure of Selected Financial Data. This will conform with action taken by the SEC in Exchange Act Release No. 17114, 45 FR 63630 (September 25, 1980). The five-year Summary of Operations is presently required by Item 4 of Form F-2, Item 4 of Form F-4 and Item 14(b) of Form F-5. The deletion of the present summary and the substitution of Selected Financial Data reflects a concern that operations summaries have duplicated information otherwise available in income statements and may have unduly emphasized income over other performance measures. The new requirement is designed to present significant five-year trend data relating to a bank's financial condition and results of continuing operations. The substance of the new Selected Financial Data requirement will be codified at 12 CFR 11.831.

5. *Management's Discussion.* In addition, Forms F-1 and F-2, the annual report to security holders, and proxy statements in which financial statements are included will incorporate a new item captioned Management's Discussion and Analysis of Financial Condition and Results of Operations. This will also conform with action taken by the SEC in Exchange Act Release No. 17114. Major features of this item, which will be codified at 12 CFR 11.833, include discussions of liquidity, capital resources and results of operations, an emphasis on favorable or unfavorable trends and upon the identification of significant events or uncertainties within each area of discussion, information concerning the effects of inflation and changing prices, and the encouragement of projections of other forward-looking information.

I. Financial Statement Requirements

In addition to the amendments to the Part 11 financial statement requirements that were included in the January 1981 proposal, the Office is proposing rules which correspond to SEC amendments to Regulation S-X, 17 CFR Part 210, appearing in Exchange Act Release Nos.

17116, 45 FR 63660 (September 25, 1980); 17117, 45 FR 63682 (September 25, 1980); 17524, 46 FR 12480 (February 17, 1981); 18244, 46 FR 56171 (November 16, 1981); 18842, 47 FR 29832 (July 9, 1982); 19542, 48 FR 9520 (March 7, 1983); and 19570, 48 FR 11104 (March 16, 1983). Among other things, the proposed amendments make clear that the balance sheet and statement of income may be prepared in accordance with the instructions to and may conform to the respective formats of, the Consolidated Report of Condition and Consolidated Report of Income ("Call Reports"), except to the extent revised or expanded financial data is necessary to meet the disclosure standards of the Exchange Act. Banks would retain the option of conforming their financial statements to the format of Article 9 of the SEC's Regulation S-X, 17 CFR Part 210.9. The revised formats for the balance sheet, income statement, and related schedules, respectively, appear at proposed §§ 11.931–11.933.

The financial statement requirements would be centralized in proposed Subpart I. The proposals are described below.

1. *Subpart I.* Proposed Subpart I of 12 CFR Part 11 contains uniform requirements as to the periods to be covered by financial statements in reports filed with the Office and furnished to shareholders under the Exchange Act. Subpart I, at § 11.911, would require that (i) statements of income and statements of changes in financial position be presented for three fiscal years and (ii) balance sheets be prsented as of the end of each of the two most recent fiscal years.

In addition, an analysis of changes in equity capital would be presented for each period (including interim periods) for which an income statement is presented. The Office proposes to eliminate the requirement that this analysis appear as a separate financial statement, if the information can be presented in a note to the financial statements.

Uniform requirements for the form and content of interim period financial statements are proposed in 12 CFR 11.917. The periods for which interim financial statements would be required are addressed in 12 CFR 11.911 and 11.913.

These proposals conform to Regulation S–X amendments issued by the SEC in Exchange Act Release Nos. 17117 and 17524.

2. *Summary of operations.* As a result of action taken by the SEC in Exchange Act Release No. 17114, 45 FR 63630 (September 25, 1980), the Office proposes to eliminate the requirement of a detailed five-year summary of operations. It would be replaced by disclosure of selected financial data and management's discussion and analysis of financial condition and results of operations in proposed §§ 11.831 and 11.833, 12 CFR 11.831 and 11.833, respectively. *See* Section H—Content of Nonfinancial Statements and Reports.

3. *GAAP duplicative requirements.* The Office proposes to eliminate various financial statement rules which are duplicative of generally accepted accounting principles ("GAAP"). Among the disclosure rules to be deleted, in whole or in part, are those relating to accounting principles and practices, and changes therein; translation into U.S. dollars of items denominated in foreign currencies; lease commitments; pension and retirement plans; and capital stock optioned to officers and employees. Under present § 11.7(a) and proposed § 11.920(a), financial statements must conform to GAAP applicable to banks. The Office agrees with the views expressed by the SEC in Exchange Act Release No. 17116 regarding Regulation S–X rules which duplicate GAAP and, therefore, proposes to amend its rules accordingly. However, the Office may from time to time issue releases on accounting principles and practices to be used with respect to specific areas. *See* proposed § 11.920(d).

4. *Related-party transactions.* Proposed § 11.929(g), would require certain note disclosures regarding material related party transactions, including the nature of relationships, descriptions of transactions and amounts involved. This corresponds to the disclosure requirement in Rule 4–08(1) of the SEC's Regulation S-X, 17 CFR 210.4–08(k). *See* Exchange Act Release No. 17116. "Related party" would be defined in 12 CFR 11.102(hh).

5. *Instructions for pro forma financial information.* The Office proposes to add to Part 11 uniform instructions for the presentation and preparation of pro forma financial information. The new rules would be substantially similar to Article 11 of Regulation S-X, 17 CFR 210.11, issued by the SEC in Exchange Act Release No. 18842 and would appear in proposed §§ 11.940–11.942. As is the case with Article 11 of Regulation S-X, the Office's rules would allow presentation of a financial forecast in lieu of certain required pro forma information.

6. *Acquired or to be acquired businesses.* Also in accordance with SEC rule amendments contained in Exchange Act Release No. 18842, the Office is proposing amendments to the requirements for filing financial statements of businesses acquired or to be acquired. *See* proposed § 11.915, 12 CFR 11.915. As is the case with Rule 3–05 of Regulation S-X, 17 CFR 210.3–05, the Office would base the disclosure requirements on the conditions specified in the definition of "significant subsidiary." *See* proposed § 11.102(ii). In applying the "significant subsidiary" test, both Rule 3–05 and the Office's proposed rule use a sliding scale, to determine the requirements for filing, and to determine periods for which financial statements of the business acquired, or to be acquired, must be presented. Historically, the Office has used certain 5 percent tests in determining such requirements whereas the SEC uses 10 percent tests. Compare 12 CFR 11.2(z) *with* 17 CFR 210. 1–02(v)d. The Office believes, however, that the 5 percent test, is unnecessarily restrictive and proposes that the 10 percent test, incorporating a sliding scale, be used to determine such requirements.

7. *Independence and verification requirements.* To conform to SEC amendments in Exchange Act Release No. 19542, to Rule 2–01 of Regulation S-X, 17 CFR 210.2–01, the Office is proposing amendments to the standards for evaluating an accountant's independence. The amendments would redefine the term "member" as used with respect to an accounting firm and clarify the regulation's intent in certain minor respects. *See* proposed 12 CFR 11.903(a)(2).

The Office is proposing clarifying amendments to the rules governing financial statement verification by independent accountants. Part 11 permits the use of a certified public accountant or a "public accountant" who is "in good standing and entitled to practice as such under the laws of the place of his residence or principal office." *See* 12 CFR 11.7 (b)(3)(i)(A). The independence requirement applies to both classes of accountants. *See* 12 CFR 11.7(b)(3)(i)(B). In the proposed reformatting of Part 11, the verification requirements relating to independent accountants are set forth in § 11.903. Minor language changes proposed therein would clarify the fact that when an independent accountant is used for verification purposes, such accountant may be a "public accountant" or "certified public accountant."

The Office is also proposing to clarify the definition of "verified," when used with respect to financial statements. This is in response to a number of misinterpretations by banks of the extent to which they have the option of filing either certified, or internally verified, financial statements. The proposal would clarify the Office's long-standing position that if a bank files certified statements with this Office pursuant to Part 11, all other Part 11 financial statement filings relating to that same reported period muist also be certified. *See* proposed § 11.102(dd) (12 CFR 11.102 (dd)). Banks would retain the option of filing internally verified financial statements covering any periods for which certified statements had not previously been filed.

8. *Definitions.* The Office is proposing to add a new definitional section to Subpart I at 12 CFR 11.901. Included in this section is a definition of "associate" for financial reporting purposes which differs from the definition of "associate" for other purposes in § 11.102(d). This change is made in response to a concern that the use of the broader definition in § 11.102(d), when applied to the financial disclosure requirements, would greatly expand the scope of required disclosure concerning associates, without providing meaningful information to financial statement users under the circumstances. The term "ordinary course of business" is defined to be consistent with the use of that term in § 11.844 concerning disclosure of certain relationships and transactions involving management. These changes conform to certain changes made by the SEC in Exchange Act Release No. 19570.

9. *Other amendments.* In addition to the amendments discussed above, the SEC made certain changes in Regulation S–X to clarify and modify requirements which are presently subject to differing interpretations. *See* Exchange Act Release No. 17116. The Office is also proposing to define the term "totally held subsidiary" to conform with the definition of that term in Article 1 of Regulation S–X. *See* proposed 12 CFR 11.102(jj).

10. *Certain Regulation S–X amendments not adopted.* In Exchange Act Release Nos. 18244 and 19570, the SEC amended Regulation S–X with respect to the requirements for separate financial statements and other financial information of registrants' subsidiaries and "50 percent or less owned persons" ("other persons"). The SEC rules contain detailed criteria for determining whether such information must be presented and detailed specifications regarding the type of information to be disclosed. The Office's present regulations instruct banks to provide, with respect to unconsolidated subsidiaries and other persons, whatever financial information is material to a proper understanding of the financial position and results of operations of the total enterprise. *See, e.g.,* 12 CFR 11.42, Instruction 3 as to Financial Statements. The present regulations also prescribe a tabular presentation of investments in, income from dividends of, and equity in earnings or losses of, subsidiaries and other related parties. *See* 12 CFR 11.71, Schedule V.

The Office is not proposing to conform its reglations to those of the SEC in this area at this time. There are few instances where activities of a bank's unconsolidated subsidiaries or other persons would be of such significance as to require separate disclosure under Regulation S–X standards. Where separate disclosure would be significant to investors, proposed 12 CFR 11.916 and 11.932 would require such disclosure just as Part 11 presently does. The Office believes, however, that adding detailed regulations to Part 11 to cover conditions which rarely exist would make Part 11 unnecessarily complex. For banks seeking guidance in assessing the need for this type of disclosure, the Office recommends that the pertinent provisions of Regulation S–X be used as a guide.

Related SEC amendments in Exchange Act Release Nos. 18244 and 19570, prescribe separate parent company disclosures by bank holding companies which file consolidated financial statements. *See* 17 CFR 210.9–06 and 210.12–04. Such disclosure is required when dividend payments, loans and advances to the holding company by its bank subsidiaries are subject to substantial restrictions imposed by third parties such as regulatory authorities. The Office is not proposing conforming amendments for two reasons. As previously noted, activities of unconsolidated subsidiaries generally are not so significant as to require disclosures about the separate entities. Moreover, since national banks do not own bank subsidiaries, the regulatory and other third party restrictions addressed by the SEC rules will seldom apply. The Office therefore believes that the general disclosure requirements of Part 11 described above, regarding the separate components of a consolidated enterprise, are adequate for bank registrants.

In Exchange Act Release No. 19570, the SEC amended Regulation S–X by transferring certain disclosure requirements from that regulation to Securities Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] ("Guide 3"), codified at 17 CFR Part 231. Those disclosure provisions relate primarily to foreign activities, short-term borrowings and investment portfolio concentrations. The principal effect of those amendments is that registrants can exclude that information from their annual reports to shareholders. Those amendments do not affect registrants which integrate their Form 10–K's and annual reports in a single document.

The Office is formulating a disclosure guide for national banks, comparable to Guide 3, which will address matters that are appropriate for disclosure in the particular context of national banks. When this disclosure guide is published, the Office intends to transfer provisions from Subpart I to the guide in accordance with the SEC's transfer from Regulation S–X to Guide 3. Until then, however, it would be inappropriate to remove such provisions from Subpart I. As noted above, banks which intergrate their Form F–2's (the Office's analog to SEC Form 10–K) and annual reports will not be affected by this postponement of conforming amendments.

III. Disclosure Requirements for Mergers and Similar Transactions

The Office is requesting comments relating to proxy and information statement disclosure requirements for mergers involving national banks. Items 14 and 15 of the present 12 CFR 11.51 ("Items 14 and 15") contain certain proxy and information statement disclosure requirements in connection with mergers, consolidations, and acquisitions or sales of assets (hereinafter collectively referred to as "merger transactions"). The rules are structured to require certain disclosures regarding all banks that are parties to the merger transactions.

The Office's experience has been that banks which are the subject of proposed acquisitions ("target banks") make most use of the proxy statement filings for merger transactions. In most of the cases, target bank shareholders are offered either cash or securities of a bank holding company ("BHC") that owns the acquiring bank which is a party to the merger transaction. Such a merger is often referred to as a "triangular merger."

Where target bank stockholders would receive cash in return for their entire investment, detailed disclosure regarding the acquiring entity are not useful. Item 14, by its terms, would nevertheless call for such disclosure.[3] If a BHC will issue securities to the target bank shareholders, such shareholders would need information about the BHC. Items 14 and 15, however, would only require disclosure relating to the BHC's subsidiary bank that is party to the merger transaction.

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[3] Paragraph (b) of Item 15 also calls for financial statements of the acquiring entity. However, paragraph (c) would allow omission of such information.

A literal reading of Items 14 and 15 in the above-described merger transactions would, therefore, result in disclosures which are unnecessary and possibly confusing for target bank shareholders or omission of information that is essential for such shareholders. In order to prevent those results, the Office has interpreted Items 14 and 15 in the following manner:

(A) Where target bank stockholders will receive only cash in the merger transaction, they need not receive the specified disclosures relating to the acquiring entity; and

(B) Where target bank stockholders will receive securities from a BHC, Item 14 and 15 disclosures should relate to the BHC, rather than its banking subsidiary which is a party to the merger transaction.

The Office's experience has been that bankers and other members of the public generally interpret Items 14 and 15 in the same manner. Consequently, the Office did not change the coverage of these Items in prior rule amendments. In light of the substantial increase in bank merger activity in recent times, however, the Office believes that it may be appropriate to revisit this subject. Accordingly, the Office will consider comments as to whether, and in what manner, the proxy and information statement disclosure rules should be amended to clarify their coverage in the cash and "triangular merger" transactions described above.

In addition, the Office is requesting comments on the content of proxy material relating to mergers involving national banks not registered pursuant to Section 12 of the Exchange Act (nonregistered banks"). Under the Office's merger instructions and procedures for applicants, merger transactions involving nonregistered banks are subject to the proxy disclosure requirements of Part 11.[3]

Although, as a technical matter, all of the proxy and information disclosure requirements apply to mergers involving nonregistered banks, the Office has attempted to administer those requirements in a flexible manner, particularly where one person or group of persons held a controlling interest and a solicitation of proxies was not necessary for the transaction to be approved by shareholders of the target bank. On a case-by-case basis, the Office has permitted shortened proxy and information statements in merger transactions involving nonregistered banks, taking into consideration a number of factors, including the number of minority shareholders, the value of the minority-held shares, the form of consideration, the cost involved in preparing proxy or information statements, and the availability of dissenter's rights for minority shareholders. In light of the increased level of merger activity, the Office is requesting comments on whether specific criteria should be established for determining whether or not all the proxy and information statement disclosure provisions apply to mergers involving nonregistered banks and, if so, what the criteria should be.

For example, should there be a certain minimum criteria for requiring a complete proxy or information statement, such as minimum number of minority shareholders or minimum value of minority-held shares? In addition, would it be appropriate to have a two part format for disclosure to shareholders consisting of a (i) relatively short statement with information essential for shareholder evaluation of the transaction (including information relating to the value and kind of consideration and the rights of dissenting shareholders) and (ii) a statement of additional information to be available upon request at no charge to shareholders? This would be similar in concept to the new prospectus requirements for mutual funds recently adopted by the SEC. *See* Securities Act Release No. 33–6479, 48 FR 22864 (Aug. 19, 1983).

IV. Special Studies

A. Competition

As required by section 23(a)(2) of the Exchange Act, 15 U.S.C. 78w(a)(2), the SEC has specifically considered the impact which the proposed amendments would have on competition and concluded that they imposed no significant burden on competition. In any event, the SEC determined that any possible burden would be outweighed by the benefits of the amendments to investors and registrants. The Office believes the amendments would have no effect upon competition. However, the Office requests comments concerning any impact these amendments may have upon competition.

B. Alternatives Considered

Section 12(i) of the Act requires the Office to issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Except as previously indicated, the Office has no reason to believe that these proposed regulations should not be applicable to banks. Therefore, it is proposing the amendments.

C. Regulatory Impact Analysis

The overall impact of the changes being proposed is burden reducing rather than burden imposing. Therefore a regulatory impact analysis is not required. The Office is considering, and requesting comments on, a flexible regulatory approach which would exempt small publicly-held banks from the registration requirements of the Act or permit such banks to deregister, as the case may be. However, the Office also recognizes that investors in small banks generally have the need for the same quality information provided for investors in large banks. Therefore, the Office deems it appropriate to consider the public comments on this issue before proposing specific rule amendments. It is also requesting comments on a more flexible regulatory approach to proxy and information disclosure requirements relating to merger transactions involving national banks. The Office also requests comments as to whether the proposals published today would impose increased costs or other burdens which are not outweighed by the benefits provided to the banks, investors and the public. The Office specifically requests information from banks concerning projected start-up costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

D. Regulatory Flexibility Act

The Secretary of the Treasury has certified that the proposal, if issued, would not have a significant economic impact on a substantial number of small banks or other entities.

List of Subjects in 12 CFR Part 11

National banks, Securities disclosure rules.

Proposal of Amendments

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

Set forth below is the proposed new format of Part 11 which cross-references the old sections with the proposed new sections.

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[3] *See* Form CC–7023–01. (*General Instructions and Procedures for the Preparation of an Application for Merger, Consolidation, or Purchase of Assets and Assumption of Liabilities (All Hereinafter Referred to as "Mergers" Unless Otherwise Specifically Designated) Pursuant to 12 U.S.C. 215a, 12 U.S.C. 1828(c), and 12 U.S.C. 181*).

	Old section Nos.	New section Nos.
Subpart A—General Provisions		
Scope of part	11.1	11.101.
Definitions	11.2	11.102.
Filing of material with the Comptroller of the Currency	11.3(a)	11.103.
Inspection	11.3(b)	11.104.
Nondisclosure of certain information filed	11.3(c)(1)–(7)	11.105 introductory text, (a)–(g).
Liability for forward looking statements	11.3(e)–(i)	11.106(a)–(e).
Falsification of accounting records		11.107.
Bank's representations in connection with the preparation of required reports and documents.		11.108.
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Subpart B—Registration		
Requirement of registration statement under Section 12 of Exchange Act	11.4(a)(1)–(3)	11.201(a)(1)–(3).
Registration of securities of successor bank	11.4(a)(4)	11.202(a) and (b).
Registration effective as to class or series	11.4(b)	11.203.
Acceleration of effectiveness of registration	11.4(c)	11.204.
Exchange certification	11.4(d)(1)–(7)	11.205(a)–(g).
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Notification of national securities associations		11.208.
Form for registration of securities of a bank under section 12(b) or section 12(g) of the Exchange Act (Form F–1).	11.41	11.290.
Form for registration of additional class of securities of a bank under Section 12(b) or Section 12(g) of the Exchange Act (Form F–10).	11.46	11.291.
Subpart C—Annual and Other Bank Reports		
Requirement of annual reports and annual reports of predecessors	11.4(e)	11.301(a) and (b).
Exception from requirement for annual report	11.4(f)	11.302.
Current reports	11.4(g)(1)	11.303(a)–(g).
Quarterly reports	11.4(h)	11.304(a), [(b) added].
Form for annual report of bank (Form F–2)	11.42	11.390.
Form for current report of a bank (Form F–3)	11.43	11.391.
Form for quarterly report of bank (Form F–4)	11.44	11.392.
Subpart D—Transactions by Certain Shareholders		
Requirement of acquisition statements pursuant to section 13(d) or section 13(g) of the Exchange Act.	11.4(g)(2)(i)–(v)	11.401(a)–(e).
Amendments to acquisition statements	11.4(g)(3)	11.402.
Determination of beneficial ownership	11.4(g)(4)(i)–(iv)	11.403(a)–(d).
Disclaimer of beneficial ownership	11.4(g)(5)	11.404.
Acquisition of securities	11.4(g)(6)(i) and (ii)	11.405(a) and (b).
Exemption of certain acquisitions	11.4(g)(7) introductory text, (i)–(iii)	11.406 introductory text, (a)–(c).
Reports of directors, officers and principal stockholders pursuant to Section 16(a) of the Exchange Act.	11.6(a)–(j)	11.410(a)–(j).
Exemption of certain transactions from Section 16(b) of the Exchange Act	11.6(k)–(s)	11.411(a)–(f).
Exemption of certain securities from Section 16(c) of the Exchange Act	11.6(t)–(v)	11.412(a)–(c).
Acquisition statement to be filed under Section 13(d) of the Exchange Act	11.47	11.490.
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Initial statement of beneficial ownership of equity securities filed under Section 16(a) of the Exchange Act (Form F–7).	11.61	11.492.
Statement of changes in beneficial ownership of equity securities to be filed under Section 16(a) of the Exchange Act (Form F–8).	11.62	11.493.
Subpart E—Shareholder Meetings		
Requirement of proxy/information statement	11.5(a) 1st sentence, 2nd and 3rd sentences, remainder	11.501(a), (b), (c).
Exceptions	11.5(b) introductory text, (1)–(5)	11.502 introductory text, (a)–(e).
Annual report to security holders to accompany statements	11.5(c)	11.503.
Requirements as to proxy	11.5(d)(1)–(5)	11.504(a)–(e).
Presentation of information in statement	11.5(e)(1)–(5)	11.505(a)–(e), [(f) added].
Material required to be filed	11.5(f)(1)–(10)	11.506(a)–(j).
Mailing communications for security holders	11.5(g) introductory text, (1)–(3)	11.507 introductory text, (a)–(c).
Proposals of security holders	11.5(k)	11.508.
False or misleading statements	11.5(h)	11.509(a), [(b) added].
Prohibition of certain solicitations	11.5(j) introductory text, (1) and (2)	11.510 introductory text, (a) and (b).
Special provisions applicable to election contests	11.5(i)(1)–(8)	11.511(a)–(h).
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[Reserved]		11.591.
Form for statement in election contests (Form F–6)	11.52	11.592.
Subpart F—Tender Offers		
Scope and definitions applicable to Subpart F ("Tender Offer Regulations").	11.5(l)(1)–(2)	11.601.
Commencement of a tender offer	11.5(l)(3)–(6), (14)	11.602(a)–(e).
Filing and transmission of tender offer statement	11.5(l)(7)–(9)	11.603(a)–(c).
Dissemination of certain tender offers	11.5(l)(10)–(12)	11.604(a)–(c).
Dissemination of security position listings and related matters	11.5(m)(1)–(7)	11.605(a)–(g).
Disclosure requirements with respect to tender offers	11.5(m)(8)–(12)	11.606(a)–(e).
Additional withdrawal rights	11.5(n)(1)–(4)	11.607(a)–(d).
Pro rata rights	11.5(n)(5)	11.608
Solicitation/recommendation statements with respect to certain tender offer statements.	11.5(n)(6)–(11)	11.609(a)–(f).
Unlawful tender offer practices	11.5(o)(1)–(4)	11.610(a)(1)–(4).
Position of subject bank with respect to a tender offer	11.5(o)(5) and (6)	11.611(a)(1)–(3) and (b).
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	Old section Nos.	New section Nos.
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Tender offer statement to be filed pursuant to section 14(d)(1) of the Exchange Act (Form F-13).	11.54	11.690.
Recommendation/solicitation statement to be filed pursuant to section 14(d)(4) of the Exchange Act (Form F-12).	11.53	11.691.
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Supplemental information		11.703.
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Requirements as to paper; printing and language	11.4(r)(1)–(4)	11.712(a)–(d).
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	Old section Nos.	New section Nos.
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All references within the text to Part II are renumbered appropriately.		

For the reasons set forth in the preamble, it is proposed that the following additional amendments be made to 12 CFR Part 11 as follows:

1. The authority citation for Part 11 reads as follows:

Authority: 15 U.S.C. 78*l*, 78m, 78n, 78p, 78w; 12 U.S.C. 1 *et seq.*

2. By revising the table of contents as follows:

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

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11.101 Scope of part.
11.102 Definitions.
11.103 Filing of material with the Comptroller of the Currency.
11.104 Inspection.
11.105 Nondisclosure of certain information filed.
11.106 Liability for forward looking statements.
11.107 Falsification of accounting records.
11.108 Bank's representations in connection with the preparation of required reports and documents.
11.109 Notice of adjudication.

Subpart B—Registration

11.201 Requirement of registration statement under Section 12 of the Exchange Act.
11.202 Registration of securities of successor bank.
11.203 Registration effective as to class or series.
11.204 Acceleration of effectiveness of registration.
11.205 Exchange certification.
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3. By revising § 11.102 (k), (o) and (dd), and adding § 11.102 (hh), (ii), and (jj), to read as follows:

§ 11.102 Definitions.

* * * * *

(k) *Immediate family.* The term "immediate family" means a person's spouse; parents; children; siblings; mothers and fathers-in-law; sons and daughters-in-law; and brothers and sisters-in-law.

* * * * *

(o) *Officer* or *executive officer.* The term "officer" or "executive officer" means. . . .

* * * * *

(dd) *Verified.* The term "verified," when used with respect to financial statements, means either (1) certified by an independent public accountant or an independent certified public accountant, or (2) signed in accordance with § 11.603 by the person principally responsible for the accounting records of the bank (the "principal accounting officer") and by the person principally responsible for the audit procedures of the bank (the "auditor"); except that the term "verified" shall mean certified by an independent public accountant or independent certified public accountant in any case in which the Comptroller of the Currency so informs the bank concerned, in writing, at least 90 days prior to the end of the fiscal year to which the financial statements will relate, or if financial statements for the most recent fiscal year have been examined and reported on by an independent accountant.

* * * * *

(hh) *Related parties.* The term "related parties" means the bank; its affiliates; principal owners, management, and members of their immediate families; and any other party with which the reporting entity may deal when one party has the ability to prevent the other from fully pursuing its own separate management or operating policies. Related parties also exist when another entity has the ability to prevent transacting parties from fully pursuing their own separate management or operating policies or when another entity has an ownership interest in one of the transacting parties and the ability to prevent one or more of the transacting parties from fully pursuing its own separate interests. For purposes of this definition, the term—

(1) "Principal owner" means either owner(s) of record or known beneficial owner(s) of more than 10% of the voting interests of the reporting entity, and

(2) "Management" means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which such objectives are to be pursued.

(ii) *Significant subsidiary.* The term "significant subsidiary" means a subsidiary meeting any of the following conditions:

(1) The investments in the subsidiary by the bank plus the bank's proportion of the investments in such subsidiary by the bank's other subsidiaries, if any, exceed 10 percent of the equity capital accounts of the bank. "Investments" refers to the amount carried on the books of the bank and other subsidiaries or the amount equivalent to the bank's proportionate share in the equity capital accounts of the subsidiary, whichever is greater. For purposes of determining whether financial statements of a business acquired or to be acquired in a business combination accounted for as a pooling of interests are required pursuant to § 11.915, this condition is also met when the number of common shares exchanged by the bank exceeds 10 percent of its total common shares outstanding at the date the combination is initiated;

(2) The parent's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the parent and its subsidaries consolidated as of the end of the most recently completed fiscal year;

(3) The parent's and its other subsidiaries' equity in the income of the subsidiary before income taxes exceeds 10 percent of the income before taxes of the parent and its consolidated subsidiaries; or

(4) The subsidiary is the parent of one or more subsidiaries and, together with such subsidiaries, when considered in the aggregate, constitutes a significant subsidiary.

Computational note:

For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the parent and its subsidiaries consolidated for purposes of the computation.

2. If income of the parent and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computating average income.

* * * * *

(jj) *Totally-held subsidiary.* The term "totally-held subsidiary" means a subsidiary (1) substantially all of whose outstanding equity securities are owned by its parent and/or the parent's other totally-held subsidiaries; and (2) which is not indebted to any person other than its parent and/or the parent's other totally-held subsidiaries, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, provided that indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment or otherwise is to be excluded.

4. By revising § 11.104 to read as follows:

§ 11.104 Inspection.

Except as provided in § 11.105, all information filed regarding a security registered with the Comptroller will be available for inspection at its office in Washington, DC, in addition copies of the registration statement and reports required by Subparts B and C of this part (exclusive of exhibits), the statements required by § 11.501, and the annual reports to security holders required by § 11.503, will be available for inspection at the District Office in the district in which the bank filing the statements or reports is located.

5. By revising § 11.106 to read as follows:

§ 11.106 Liability for forward-looking statements.

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of a bank, or by an outside reviewer retained by the bank, shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to—

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Comptroller, in Part I of a quarterly report on Form F–4, or in an annual report to shareholders meeting the requirements of § 11.501,

(2)(i) A statement reaffirming the forward-looking statement referred to in paragraph (b)(1) of this section subsequent to the date the document was filed or the annual report was made publicly available, or

(ii) A forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available within a reasonable time after the making of such forward-looking statement, or

(iii) Information relating to the effects of "changing prices" on the bank presented voluntarily or pursuant to section § 11.833, "Management's discussion and analysis of financial condition and results of operations," or § 1.832, "Supplemental financial information," if disclosed in a document filed with the Comptroller or in an annual report to shareholders meeting the requirements of § 11.501.

(c) For the purpose of this section the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in § 11.106(c) (1), (2), or (3).

(d) For the purpose of this section the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course or business, or an artifice to defraud, as those terms are used in the Act or the regulations issued thereunder.

(e) Notwithstanding any of the provisions of § 11.106(a)–(d) this section shall apply only to forward-looking statements made by or on behalf of a bank if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Act and has filed its most recent annual report on Form F–2.

6. By adding § 11.107 to read as follows:

§ 11.107 Falsification of accounting records.

No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act of 1934.

7. By adding § 11.108 to read as follows:

§ 11.108 Bank's representations in connection with the preparation of required reports and documents.

No director or officer of a bank shall directly or indirectly make or cause to be made a materially false or misleading statement to an accountant, or omit to state or cause another person to omit from such statement, any material fact needed to make statements made, in light of the circumstances under which they were made, not misleading, in connection with—

(a) Any audit or examination of the financial statements of the bank required to be made under this part or

(b) The preparation or filing of any document or report required to be filed with the Comptroller of the Currency under this part.

8. By revising § 11.201 to read as follows:

§ 11.201 Requirement of registration statement under Section 12 of the Exchange Act.

Securities of a bank shall be registered under the provisions of either section 12(b) or section 12(g) of the Act by filing a statement in conformity with the requirements of Form F-1 (or Form F-10, in the case of registration of an additional class of securities) within the period of time specified in the Act. No registration shall be required under the provisions of section 12(b) or section 12(g) of the Act of any warrant or certificate evidencing a right to subscribe to or otherwise acquire a security of a bank if such warrant or certificate by its terms expires within 90 days after the issuance thereof.

9. By revising § 11.207(b) to read as follows:

§ 11.207 Deregistration.

* * * * *

(b) The registration of any class of security of a registrant bank which is registered pursuant to section 12(g) of the Act shall be terminated in accordance with the provisions of section 12(g)(4) of the Act, upon certification by the bank to the Comptroller that the number of record holders of such class of security has fallen below 300. Termination of registration shall take effect ninety days, or such shorter period as the Comptroller may determine, after the filing of the certification. The bank's duty to file any report required under Section 13(a) shall be suspended immediately upon such certification; provided further, that if the certification is subsequently withdrawn or denied, the bank shall, within 60 days after the date of such withdrawal or denial, file with the Comptroller all reports which would have been required to be filed had the certification not been filed. If the bank has merged into or consolidated with another bank or banks, such certification shall be filed by the successor bank.

10. By revising § 11.290 to read as follows:

§ 11.290 Form for registration of securities of a bank pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934.

Form F-1: Form for Registration of Securities of a Bank

Pursuant to Section 12 (b) or (g) of The Securities Exchange Act of 1934

(Exact name of bank as specified in its charter)

(Address of principal office including Zip Code)

(I.R.S. Employer Identification No.)

Bank's telephone number, including area code————————

Securities to be registered pursuant to Section 12(b) of the Act:

Title of each class to be so registered	Name of each exchange on which each class is to be registered

Securities to be registered pursuant to Section 12(g) of the Act:

(Title of class)

(Title of class)

General Instructions

A. Rule as to use of Form F-1.

Form F-1 shall be used for registration pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934 of classes of securities of banks for which no other form is prescribed.

B. Application of Subparts A and G.

(a) Subparts A and G of Part 11 contain general requirements which are applicable to registration on any form. These general requirements should be carefully read and observed in the preparation and filing of registration statements on this form.

(b) Particular attention is directed to the formal requirements in Subpart G regarding matters such as the kind and size of paper to be used, the legibility of the registration statement, the information to be given whenever the title of securities is required to be stated, and the filing of the registration statement. The definitions contained in § 11.102 should be especially noted.

C. Preparation of Registration Statement.

(a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the registration statement in accordance with the requirements of §§ 11.711 and 11.712. The registration statement shall contain the item numbers and captions, but the text of the items may be omitted. The answers to the items shall be prepared in the manner specified in § 11.713.

(b) Unless otherwise stated, the information required shall be given as of a date reasonably close to the date of filing the registration statement.

(c) In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

D. Signature and Filing of Registration Statement.

Three complete copies of the registration statement, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with the Comptroller. At least one complete copy of the registration statement, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities is to be registered. At least one complete copy of the registration statement filed with the Comptroller and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

The report shall be signed by the bank, and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorney.

E. Incorporation by Reference.

Attention is directed to § 11.723 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a registration statement.

Information Required in Registration Statement

Item 1. Business.

Furnish the information required by § 11.811.

Item 2. Financial Information.

Furnish the information required by §§ 11.831 and 11.833.

Item 3. Properties.

Furnish the information required by § 11.812.

Item 4. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by § 11.843.

Item 5. Directors and Executive Officers.

Furnish the information required by § 11.841.

Item 6. Executive Compensation.

Furnish the information required by § 11.842.

Item 7. Legal Proceedings.

Furnish the information required by § 11.813.

Item 8. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.

Furnish the information required by § 11.821.

Item 9. Recent Sales of Securities.

Furnish the information required by § 11.871.

Item 10. Description of Registrant's Securities to be Registered.

Furnish the information required by § 11.822.

Item 11. Indemnification of Directors and Officers.

Furnish the information required by § 11.872.

Item 12. Financial Statements and Supplementary Data.

Furnish all financial statements required by Subpart I and the supplementary financial information required by § 11.832.

Item 13. Disagreements With Accountants on Accounting and Financial Disclosure.

Furnish the information required by § 11.834.

Item 14. Certain Relationships and Related Transactions.

Furnish the information required by § 11.844.

Item 15. Financial Statements and Exhibits.

(a) List separately all financial statements and schedules filed as part of the registration statement.

(b) Furnish the exhibits required by § 11.831.

Signatures

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

(Bank) ____________________
Date ____________________
By ____________________
(Signature)[1] ____________________

11. By revising § 11.291 to read as follows:

§ 11.291 Form for registration of additional class of securities of a bank pursuant to section 12(g) of the Securities Exchange Act of 1934 (Form F-10).

Form F-10: For Registration of Additional Classes of Securities Pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934

____

(Exact name of bank as specified in its charter)

____

(Address of principal offices, including Zip Code)

Securities to be registered pursuant to Section 12(b) of the Act:

Title of each class to be so registered	Name of each exchange on which each class is to be registered
....	....
....	....

Securities to be registered pursuant to Section 12(g) of the Act:

____

(Title of class)

____

(Title of class)

General Instructions

A. Rule as to Use of Form F-10

This form may be used for registration of the following securities pursuant to the Securities Exchange Act of 1934:

(a) For the registration pursuant to section 12 (b) of the Act of any class of equity securities of a bank which has one or more other classes of securities registered pursuant to either section 12 (b) or (g) of the Act.

(b) For registration on a national securities exchange pursuant to section 12(b) of the Act of any class of securities of a bank which has one or more other classes of securities so registered on the same securities exchange.

B. Application of Subparts A and G

(a) Subparts A and G of Part 11 contain certain general requirements which are applicable to registration on any form. These general requirements should be carefully read and observed in the preparation and filing of registration statements on this form.

(b) Particular attention is directed to the formal requirements of Subpart G regarding matters such as the kind and size of paper to be used, legibility, information to be given whenever the title of securities is required to be stated, incorporation by reference and the filing of the registration statement. The definitions contained in § 11.102 should be especially noted.

C. Preparation of Registration Statement.

The format of Form F-10 is not to be used as a blank form to be filled in, but only as a guide in the preparation of the registration statement in accordance with the requirements of §§ 11.711 and 11.712. The registration statement shall contain the item numbers and captions, followed by the applicable disclosures. The answers to the items shall be prepared in the manner specified in § 11.713.

D. Signature and Filing of Registration Statement.

Three complete copies of the registration statement, including all papers and documents filed as a part thereof (other than exhibits) shall be filed with the Comptroller and at least one such copy shall be filed with each exchange on which the securities are to be registered. Exhibits shall be filed with the Comptroller and with any exchange in accordance with the Instructions as to Exhibits. At least one copy of the registration statement filed with the Comptroller and one filed with each exchange shall be manually signed. Unsigned copies shall bear printed or typed signatures.

The report shall be signed by the bank, and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal account officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorney.

Information Required in Registration Statement

Item 1. Description of Registrant's Securities to be Registered.

Furnish the information required by § 11.822.

Instruction. If a description of the securities comparable to that required here is contained in any other filing with the Comptroller, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange, and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

Item 2. Exhibits.

Furnish the exhibits required by § 11.861.

Signature

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the bank has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

---

[1] Print the name and title of the signing officer under his or her signature.

(Bank)

Date ______________________

By ______________________

(Signature) *

12. By adding § 11.304(b) to read as follows:

§ 11.304 Quarterly reports.

* * * * *

(b) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form F-4 shall not be deemed to be "filed" for the purpose of Section 18 of the Exchange Act or otherwise subject to the liabilities of that Section of the Act, but shall be subject to all other provisions of the Act.

13. By revising § 11.390 to read as follows:

§ 11.390 Form for annual report of bank (Form F-2).

Form F-2: Annual Report Under Section 13 of the Securities Exchange Act of 1934

For the fiscal year ended

____

____

(Exact name of bank as specified in its charter)

____

(Address of principal office including Zip Code)

____

(I.R.S. Employer Identification No.)

Bank's telephone number, including area code

____

____

Securities registered under section 12(b) of the Act:

Title of each class

____

____

Name of each exchange on which registered

____

____

Securities registered under section 12(g) of the Act:

____

(Title of class)

____

(Title of class)

Indicate by check mark whether the bank (1) has filed all reports required to be filed by Section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes —— No ——

State the aggregate market value of the voting stock held by the non-affiliates of the bank. The aggregate market value shall be computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in § 11.102(b)).

Note.—If a determination as to whether a particular person or entity is an affiliate cannot be made without involving unreasonable effort and expense, the aggregate market value of the common stock held by non-affiliates may be calculated on the basis of assumptions reasonable under the circumstances, provided that the assumptions are set forth in this form.

Documents Incorporated by Reference

List hereunder the folowing documents if incorporated by reference and the Part of the Form F-2 (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; and (2) Any proxy or information statement. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 31, 1980).

General Instructions

A. Rule as to Use of Form F-2.

The format form shall be used for annual reports pursuant to Section 13 of the Exchange Act for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. However, all schedules required by Subpart I may, at the option of the bank be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form F-20.

B. Application of General Rules and Regulations.

(1) Subparts A and G of Part 11 Contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(2) Particular attention is directed to Subpart G which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in § 11.102 should be expecially noted.

C. Preparation of Report.

(1) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of § 11.712. Except as provided in General Instruction E, the answers to the items shall be prepared in the manner specified in § 11.713.

(2) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(3) In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which thev are made, not misleading.

D. Signature and Filing of Report.

Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with the Comptroller. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Comptroller and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

The report shall be signed by the bank and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his or here signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorney.

E. Information to be Incorporated by Reference.

(1) Attention is directed to § 11.723 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.

(2) The information called for by Parts I and II of this form (Items 1 through 9 or any portion thereof) may, at the bank's option, be incorporated by reference from the bank's annual report to security holders furnished to the Comptroller pursuant to § 11.503, or from the bank's annual report to security holders, even if not furnished to the Comptroller pursuant to § 11.503, provided such annual report contains the information required by § 11.503.

Note.—In order to fulfill the requirements of Part I of Form F-2, the incorporated portion of the annual report to security holders must contain the information required by Items 1-3 of Form, F-2, to the extent applicable.

(3) The information required by Part III (Items 10, 11 and 12) shall be incorporated by reference from the bank's definitive proxy statement or definitive information statement (filed or to be filed pursuant to § 11.501) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Comptroller not later than 120-days after the end of the fiscal year covered by the Form F-2. However, if such definitive proxy or information statement is not filed with the Comptroller in the 120-day period, the items comprising the Part III information must be filed as part of the Form F-2, or as an amendment to the Form F-2 under cover of Form F-20, not later than the end of the 120-day period. It should be noted that the information regarding executive officers

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* Print the name and title of the signing officer under his or her signature.

required by § 11.841 may be included in Part I of Form F–2 under an appropriate caption. See Instruction 4 to § 11.841(b).

(4) When the bank combines all of the information in Parts I and II of this form (Items 1 through 9) by incorporation by reference from the bank's annual report to security holders and all of the information in Part III of this form (Items 10, 11 and 12) by incorporation by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding General Instruction C(1), this form shall consist of the facing or cover page, those sections incorporated from the annual report to security to security holders, the proxy or information statement, and the information, if any, required by Part IV of this form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this form and the page and/or pages in the referenced materials where the corresponding information appears.

F. Integrated Reports to Security Holders.

Annual reports to security holders may be combined with the required information of Form F–2 and will be suitable for filing with the Comptroller, if the following conditions are satisfied:

(1) The combined report contains full and complete answers to all items required by Form F–2. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made. If the information required by Part III of Form F–2 is omitted by virtue of General Instruction E, a definitive proxy or information statement shall be filed.

(2) The cover page and the required signatures are included. As appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

Part I

See General Instructions E(2)

Item 1. Business.

Furnish the information required by § 11.811 except that the discussion of the development of the bank's business need only include developments since the beginning of the fiscal year for which this report is filed.

Item 2. Properties.

Furnish the information required by § 11.812.

Item 3. Legal Proceedings.

(a) Furnish the information required by § 11.813.

(b) As to any proceeding that was terminated during the fourth quarter of the fiscal year covered by this report, furnish information similar to that required by § 11.813, including the date of termination and a description of the disposition thereof with respect to the bank and its subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders.

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in § 11.511) terminating any solicitation subject to § 11.511, including the cost or anticipated cost to the registrant.

Instructions:

1. If any matter has been submitted to a vote of security holders other than at a meeting of such security holders, corresponding information with respect to such submission shall be furnised. The solicitation of any authorization or consent (other than a proxy to vote at a stockhloders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered If (i) proxies for the meeting were solicited pursuant to Subpart E of Part 11, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the bank did not solicit proxies and the board of directors as previously reported to the Comptroller was reelected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the bank has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report.

Part II

See General Instruction E(2)

Item 5. Market for the Bank's Common Stock and Related Security Holder Matters.

Furnish the information required by § 11.821.

Item 6. Selected Financial Data.

Furnish the information required by § 11.831.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by § 11.833.

Item 8. Financial Statements and Supplementary Data.

Furnish financial statements meeting the requirements of Subpart I (excluding separate financial statements of businesses acquired or to be acquired (§ 11.915) and pro forma information (§ 11.940)), and the supplementary financial information required by § 11.832. Financial statements of the bank and its subsidiaries consolidated (as required by § 11.503) shall be filed under this item. Other financial statements and schedules required under Subpart I may be filed as "Financial Statement Schedules" pursuant to Item 14—Exhibits, Financial Statement Schedules, and Reports on Form F–3—of this form.

Item 9. Disagreements on Accounting and Financial Disclosure.

Furnish the information required by § 11.834.

Part III

See General Instruction E(3)

Item 10. Directors and Executive Officers of the Bank.

Furnish the information required by § 11.841.

Item 11. Executive Compensation.

Furnish the information required by § 11.842.

Item 12. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by § 11.843.

Item 13. Certain Relationships and Related Transactions.

Furnish the information required by § 11.844.

Part IV

Item 14. Exhibits, Financial Statement Schedules, and Reports on Form F–3.

(a) List the following documents filed as a part of the report:

1. All financial statements.

2. Those financial statement schedules required to be filed by Item 8 of this form, and by paragraph (d) below.

3. Those exhibits required to be filed by § 11.861 and by paragraph (c) below. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. For purposes of all rules concerning incorporation by reference, a financial statement schedule shall constitute and "exhibit."

(b) Reports on Form F–3. State whether any reports on Form F–3 have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

(c) Banks shall file, as exhibits to this form, the exhibits required by § 11.861.

(b) Banks shall file, as financial statement schedules to this form, the financial statements required by Subpart I which are excluded from the annual report to

shareholders by § 11.503. These are: (1) If material to a proper understanding of the financial position and results of operations of the total enterprise, separate financial statements of subsidiaries and consolidated and fifty percent or less owned persons; and (2) schedules.

Signatures

See General Instruction D

Pursuant to the requirements of Section 13 of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Bank)

By ____

(Signature and Title) *

Date ____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title) *

(Date) ____

(Signature and Title) *

(Date) ____

14. By amending § 11.391 by revising Item 7 as follows:

§ 11.391 Form for current report of a bank (Form F-3).

* * * * *

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

List below the financial statements, pro forma financial information and exhibits, if any, filed as a part of this report.

Financial Statements of Businesses Acquired

(1) For any business acquisition required to be described in answer to Item 2 above, financial statements of the business acquired shall be filed for the periods specified in § 11.915.

(2) The financial statements shall be prepared pursuant to Subpart, I, except that supporting schedules need not be filed. A manually signed accountant's report should be provided pursuant to § 11.903.

Pro Forma Financial Information

(1) For any transaction required to be described in answer to Item 2 above, furnish any pro forma financial information that would be required pursuant to Subpart I.

Exhibits

The exhibits shall be furnished in accordance with the provisions of 11.861.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Registrant)

Date ____

By ____

(Signature)*

15. By revising § 11.392 to read as follows:

§ 11.392 Form for quarterly report of bank (Form F-4).

Form F-4; Quarterly Report Under Section 13 of the Securities Exchange Act of 1934 For Quarter Ended ____

(Exact name of bank as specified in its charter)

(I.R.S. Employer Identification No.)

(Address of principal executive offices)

(Zip Code)

Bank's telephone number, including area code ____

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the bank (1) has filed all reports required to be filed by section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes —— No ——

General Instructions

A. Rule for Use of Form F-4.

(1) The format Form F-4 as printed in this regulation shall be used for quarterly reports under Section 13 of the Securities Exchange Act of 1934 filed pursuant to Section 11.304.

(2) A report in this format shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

B. Application of Subparts A and G.

(1) Subparts A and G of Part 11 contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(2) Particular attention is directed to the requirements of Subpart G regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in § 11.102 should be especially noted.

C. Preparation of Report.

(1) The format of Form F-4, as used in this regulation, is not a blank form to be filled in. It is a guide copy to be used in preparing the report in accordance with §§ 11.711 and 11.712. Except as provided in General Instruction D, the answers to the items shall be prepared in the manner specified in § 11.713.

D. Incorporation by Reference.

(1) If the bank makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of this form, the information called for may be incorporated by reference to such published document or statement, in answer or partial answer to any item or items of Part I of this form, provided copies thereof are filed as an exhibit to Part I of the report on this form.

(2) Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of § 11.723.

E. Integrated Reports to Security Holders.

Quarterly reports to security holders may be combined with the required information of Form F-4 and will be suitable for filing with the Comptroller if the following conditions are satisfied:

1. The combined report contains full and complete answers to all items required by Part I of this form. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made.

2. If not included in the combined report, the cover page, appropriate responses to Part II, and the required signatures shall be included in the Form F-4. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

F. Filed Status of Information Presented.

(1) Pursuant to § 11.304(b), the information presented in satisfaction of the requirements of Items (1) and (2) of Part I of this form, whether included directly in a report on this form, incorporated therein by reference from a report, document or statement filed as an exhibit to Part I of this form pursuant to Instruction D(1) above, included in an integrated report pursuant to Instruction E above, or contained in a statement regarding computation of per share earnings or a letter regarding a change in accounting principles filed as an exhibit to Part I pursuant to § 11.861, except as provided by Instruction F(2) below, shall not be deemed filed for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to the other provisions of the Act.

(2) Information presented in satisfaction of the requirements of this form other than those of Items (1) and (2) of Part I shall be deemed filed for the purpose of Section 18 of the Act; except that, where information presented in response to Item (1) or (2) of Part I (or an exhibit thereto) is also used to satisfy Part II requirements through incorporation by

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* Print the name and title of each signing officer under his or her signature.

* Print name and title of the signing officer under his or her signature.

reference, only that portion of Part I (or exhibit thereto) consisting of the information required by Part II shall be deemed so filed.

G. Signature and Filing of Report.

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, need not include exhibits, shall be filed with the Comptroller. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Comptroller and one such copy filed with each exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. Copies not manually signed shall bear typed or printed signatures. In the case where the principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the registrant, one signature is acceptable, provided that the registrant clearly indicates the dual responsibilities of the signatory.

The report shall be signed by the bank, and on behalf of the bank by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors. The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the report. Attention is directed to § 11.711 concerning manual signatures and signatures pursuant to powers of attorneys.

Part I—Financial Information

Item 1. Financial Statements.

Provide the information required by § 11.917.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by § 11.833.

Part II—Other Information

Instruction. The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted, provided the responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the bank, an additional report of the information on this form need not be made. The term "previously reported" is defined in § 11.102. A separate response need not be presented in Part II where the required information is already disclosed in Part I and is incorporated by reference into Part II by means of a statement to that effect.

Item 1. Legal Proceedings.

Furnish the information required by § 11.813. As to such proceedings which have been terminated during the period covered by the report, provided similar information, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Instruction. A legal proceeding need only be reported in the F–4 filed for the quarter in which it first become a reportable event and in subsequent quarters in which there have been material developments. Subsequent Form F–4 filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous report in that year.

Item 2. Changes in Securities.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Defaults Upon Senior Securities.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any bank or any of its significant subsidiaries, the assets of which exceed 10 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days with respect to any class of preferred stock of the bank which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 3 does not apply to default or arrearage on any class of securities held exclusively by, or for the account of, the bank or its totally held subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders.

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) The results of any election of directors, including the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting, including the number of affirmative votes and the number of negative votes cast.

(d) A description of the terms of any settlement between the bank and any other participant (as defined in § 11.102) terminating any solicitation subject to § 11.511, including the cost or anticipated cost to the registrant.

Instructions

1. Furnish corresponding information for other votes by security holders that were not conducted at the meeting. A solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) submitted to Security holders is covered by this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Subpart E of Part 11, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the Board of Directors as previously reported to the Comptroller was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the bank has published a report containing all the information called for by this item, the item may be answered by a reference to the information contained in such report.

Item 5. Other Information.

The bank may, at its option, report under this item any information, not previously reported in a report on Form F–3, or required by this form. If disclosure of such information is made under this item, it need not be repeated in a report on Form F–3 or in a subsequent report on Form F–4.

Item 6. Exhibits and Reports on Form F–3.

(a) Furnish the exhibits required by § 11.881.

(b) Reports on Form F–3. State whether any reports on Form F–3 have been filed during the quarter for which this report is filed, and list the items reported, financial statements filed, and the dates of any such reports.

Signatures *

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date ______

______

(Registrant)

______

(Signature) **

Date ______

______

(Signature) **

16. By amending § 11.401 by revising the last sentence of paragraph (a) and amending the first sentence of paragraph (b) to read as follows:

§ 11.401 Requirement of acquisition statements under section 13(d) of the Act.

(a) * * * Three copies of the statement, including all exhibits, shall be filed with the Comptroller.

(b) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Form F-11 may, in lieu thereof, file with the Comptroller of the Currency within 45 days after the end of the calendar year in which such person became so obligated three copies, including all exhibits, of a short form statement on Form F-11A * * *.

* * * * *

17. By revising § 11.402 to read as follows:

§ 11.402 Amendments to acquisition statements.

(a) *Form F-11.* If any material change occurs in the facts set forth in the statement required by § 11.401(a) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file with the Comptroller and send to the bank as its principal executive office, by registered or certified mail, and to each exchange on which the security is traded, as amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this section. Acquisitions or dispositions of less than such amounts may be materials, depending upon the facts and circumstances. Three copies of each amendment shall be filed with the Comptroller.

(b) *Form F-11A.* Notwithstanding § 11.402(a) and provided that the person or persons filing a statement under § 11.401(b) continue to meet the requirements set forth therein, any person who has filed a short form statement on Form F-11A shall amend such statement within 45 days after the end of each calendar year if, as of the end of such calendar year, there are any changes in the information reported in the previous filing on that form. Provided, however, that such amendment need not be filed with respect to a change in the percent of class outstanding previously reported if such change results solely from a change in the aggregate number of securities outstanding. Three copies of the amendment, including all exhibits, shall be filed with the Comptroller and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required, unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file under § 11.401.

Note.—For persons filing a short form statement pursuant to § 11.401(b), see also § 11.401(b) (2), (3), and (4).

18. By revising § 11.410(b) (1), (f) and (h) to read as follows:

§ 11.410 Reports of directors, officers and principal stockholders pursuant to section 16(a) of the Exchange Act.

* * * * *

(b) *Ownership of more than 10 percent of a class of equity securities.* (1) In determining, for the purpose of section 16(a) of the Act, whether a person is the beneficial owner directly or indirectly, of more than 10 percent of any class of equity securities, such class shall be deemed to consist of the total amount of such class outstanding, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer. However, for the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall be deemed to consist of the amount of voting trust certificates or certificates of deposit issuable with respect to the total amount of outstanding equity securities of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not all of such outstanding securities have been so deposited. For the purpose of this section, a person acting in good faith may rely on the information contained in the latest consolidated financial statement in a registration statement or annual report filed with the Comptroller under the Act with respect to the amount of securites of the class outstanding or in the case of voting trust certificates or certificates of deposit the amount thereof issuable.

* * * * *

(f) *Puts, calls, options, and other rights or obligations subject to section 16(a) of the Act.* (1) The granting, acquisition or disposition of any presently exercisable put, call, option, or other right or obligation to buy securities from, or sell securities to, another person, or any expiration or cancellation thereof, shall be deemed to effect such a change in the beneficial ownership of the securities to which the right or obligation relates as to require the filing of a statement under section 16(a) of the Act.

Notes.—1. If such right or obligation is not initially exercisable, the granting and acquisition thereof shall be reported in a statement filed for the month in which it became exercisable, unless the filing of such statement is otherwise not required.

2. The right of a pledgee or borrower of securities to sell the pledged or borrowed securities is not an option or right to sell securities within the meaning of this section. However, the sale of the pledged or borrowed securities by the pledgee or borrower shall be reported by the pledgor or lender.

3. The right to acquire securities, or the obligation to dispose of securities, in connection with a merger or consolidation involving the issue of the securities is not a right or obligation to buy or sell securities within the meaning of this section

(2) For the purpose of section 16(a) of the Act both the grantor and the holder of any presently exercisable put, call, option or other right or obligation to buy or sell securities shall be deemed to be beneficial owners of the securities shall be deemed to be beneficial owners of the securities subject to such right or obligation until it is exercised or cancelled or expires.

(3) Notwithstanding the foregoing, a statement need not be filed under section 16(a) of the Act: (i) By any person with respect to the acquisition, expiration or cancellation of any nontransferable, qualified, restricted or other stock option granted by the bank, if securities to which the option relates are govered by a plan provided for the benefit of its employees or the employees of its affiliates, and if such plan meets the conditions specified in § 11.411(c) of this chapter or (ii) by any bank with respect to any put, call, option or other right or obligation to buy or sell securities of which it is the issuer.

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* See General Instruction G.

** Print name and title of the signing officer under his or her signature.

Note.—An option, otherwise nontransferable, is deemed to be nontransferable even though it may be disposed of by will or by descent and distribution upon the death of the holder.

(4) Nothing in this section shall be deemed to exempt any person from the duty to file the statements required upon the exercise of any put, call, option, or other right or obligation to buy or sell securities

* * * * *

(h) *Exemption of small transactions from section 16(a) of the Act.* (1) Any acquisition of a bank's securities shall be exempt from section 16(a) of the Act where:

(i) The person effecting the acquisition does not within six months thereafter effect any disposition, otherwise than by way of gift, of securities of the same class, and

(ii) The person effecting such acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of $10,000 for any six-month period during which the acquisition occurs.

(2) Any acquisition or disposition of a bank's securities by way of gift, where the total amount of such gifts does not exceed $10,000 in market value for any six-month period, shall be exempt from section 16(a) of the Act and may be excluded from the computations prescribed in § 11.410(h)(1)(ii).

(3) All persons exempted by § 11.410(h) (1) or (2) shall include in the first report filed by him or her after a transaction within the exemption, a statement showing his or her acquisitions and dispositions for each six-month period or portion thereof that has elapsed since the last filing.

19. By revising § 11.411(c) to read as follows:

§ 11.411 Exemption of certain transactions from section 16(b) of the Exchange Act.

* * * * *

(c) Exemption from section 16(b) of the acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option or similar plans. The following transactions by a director or officer shall be exempt from the operation of section 16(b) of the Act if they occur pursuant to a plan which satisfies the conditions of this subsection: the acquisition of shares of stock, except that stock acquired upon the exercise of an option, warrant or right, shall be exempt only to the extent indicated in the final clause of this sentence; the acquisition, expiration, cancellation or surrender to the bank of a stock option or stock appreciation right; the surrender or delivery to the bank of shares of its stock as payment for the exercise of a stock option for shares of the same class; and the acquisition, upon the exercise of a stock option, of shares of stock equal to the number of shares of the same class surrendered or delivered to the issuer as payment for the exercise of the option. The conditions of this rule that a plan must satisfy in order for the above transactions to be exempt are as follows:

(1) *Approval by security holders.* The plan must be approved, directly or indirectly,

(i) By the affirmative votes of the holders of a majority of the securities of the bank present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State or other jurisdiction in which the bank is incorporated or

(ii) By the written consent of the holders of a majority of the securities of the bank entitled to vote: *Provided, however,* That if such vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 14(a) of the Act at the time of such vote or written consent, the bank shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by the rules and regulations in effect under section 14(a) of the Act at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of the first registration by the bank of an equity security under section 12 of the Act, or the acquisition by the director or officer of the equity security or securities for which exemption is claimed.

Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of the mailing. Three copies of such written information shall be filed with, or mailed for filing to, the Comptroller not later than the date on which it is first sent or given to security holders of the bank. For the purposes of this paragraph, the term "bank" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the bank in connection with the succession. In addition, any amendment to the plan shall be similarly approved if the amendment would materially increase the benefits accruing to participants under the plan, materially increase the number of securities which may be issued under the plan, or materially modify the requirements as to eligibility for participation in the plan.

(2) *Disinterested administrator.* If the selection of any director or officer of the bank to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted under the plan, or if the determination of the number or maximum number of shares of stock which may be allocated to any such director or officer or which may be covered by stock option or stock appreciation rights granted to any such director or officer under the plan is subject to the discretion of any person, then such discretion shall be exercised only as follows:

(i) With respect to the participation of directors—

(A) By the board of directors of the bank, if a majority of the board and a majority of the directors acting in the matter are disinterested persons;

(B) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, if all of its members are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan:

(*1*) Specifies the number of maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and specifies the terms upon which and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, options prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(ii) With respect to the participation of officers who are not directors—

(A) By the board of directors of the bank or a committee of three or more directors;

(B) By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, if all of its members are disinterested persons; or

(C) Otherwise in accordance with the plan, if the plan:

(*1*) Specifies the number or maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to the officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or

(*2*) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time or similar factors.

(iii) The provisions of this paragraph shall not apply with respect to any option or right granted, or other equity security acquired, prior to the date of the first registration of an equity security under section 12 of the Act.

(3) *Plan limitations.* The plan effectively limits, as to each participant or as to all participants, the aggregate dollar amount of stock or the aggregate number of shares of stock which may be allocated, or which may be subject to stock options or stock appreciation rights issued pursuant to the plan. The limitations may be established on an annual basis or for the duration of the plan—whether or not the plan has a fixed termination date—and may be determined by: Fixed or maximum dollar amounts; fixed or maximum number of shares; or by formulas based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provision for adjustment of the plan, of stock allocable, or options outstanding thereunder to prevent dilution or enlargement of rights.

(4) *Defintions.* Unless the context otherwise requires, all terms used in § 11.411(c) shall have the same meaning as in the Act or elsewhere in Part 11. In addition, the following definitions apply:

(i) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings, or similar plan which meets the following conditions:

(A) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities shall be offered or the method by which the price or the amount of the award is to be determined; and

(B) The plan must provide with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan that such option or right is not transferable other than by will or the laws of descent and distribution and that it is exercisable during the employee's lifetime only by the employee or by the employee's guardian or legal representative.

(ii) The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of this § 11.411(c) shall not include:

(A) The election to receive under any plan, compensation in the form of stock or credits therefor: provided, that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and provided further, that such election is irrevocable until at least six months after termination of employment;

(B) The subsequent crediting of such stock;

(C) Any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(D) The fulfillment of any condition to the absolute right to receive such stock; or

(E) The acceptance of certificates for shares of such stock

(iii) The term "disinterested person" used in § 11.411(c)(2) and (5) shall mean an administrator of a plan who, upon exercising discretion in administering the plan is not eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the bank or any of its affiliates that entitle the participants therein to acquire stock, stock options or stock appreciation rights of the bank or any of its affiliates.

(5) *Cash settlements of stock appreciation rights.* Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the operation of section 16(b) of the Act, if all the following conditions are met:

(i) *Information about the bank.*

(A) The issuer of the stock appreciation right has been subject to the reporting requirements of section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed under that section during that year.

(B) The issuer of the stock appreciation right on a regular basis releases for publication quarterly and annual summary statements of operations. This condition shall be deemed satisfied if the specified financial data appears:

(*1*) On a wire service,

(*2*) In a financial news service,

(*3*) In a newspaper of general circulation, or

(*4*) Is otherwise made publicly available.

(ii) *Limitation on the right and any related option.* Neither the stock appreciation right nor any related stock option shall have been exercised during the first six months of their respective terms, except that this limitation shall not apply in the event death or disability of the grantee occurs prior to the expiration of the six-month period.

(iii) *Administration of the plan.* (A) The plan shall be administered by either the board of directors, a majority of which are disinterested persons and a majority of the directors acting on plan matters are disinterested persons, or by a committee of three or more persons, all of whom are disinterested persons;

(B) The board or committee shall have sole discretion either:

(*1*) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or

(*2*) To consent to or diapprove the election of the participant to receive cash in full or partial settlement of the right. Such consent or disapproval may be given at any time after the election to which it relates;

(C) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by the participant of a stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in § 11.411(c)(5)(i)(B) and ending on the twelfth business day following such date. Section 11.411(c)(5)(iii)(C), however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise:

(*1*) Is automatic of fixed in advance under the plan;

(*2*) Is a least six months beyond the date of grant of the stock appreciation right; and

(*3*) Is outside the control of the participant.

(iv) *Compliance with other conditions of § 11.411(c).* The plan under which the stock appreciation rights and any related options are granted shall meet the conditions specified above in § 11.411(c) (1), (2), (3), and (4).

(v) *Limit of the exemption.* Nothing in this § 11.411(c)(5) provides an exemption from section 16(d) for the acquisition of stock upon the exercise of stock appreciation right or a stock option.

20. By revising § 11.501 (a) and (c) to read as follows:

§ 11.501 Requirement of statement.

(a) *Proxy statements.* No solicitation of a proxy with respect to security of a bank registered under section 12 of the Act shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required by Form F-5.

* * * * *

(c) *Statements.* A proxy statement or an information statement required by this paragraph is hereinafter sometimes referred to as a "Statement."

21. By revising § 11.503 to read as follows:

§ 11.503 Annual report to security holders to accompany statements.

(a) Any statement furnished on behalf of the bank that relates to an annual meeting of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders as follows, *Provided, however,* That: a bank is not required to send an annual report to a security holder of record having the same address as another security holder of record, provided that (i) such security holders are not holding such bank's securities in nominee name, (ii) at least one report is sent to a holder of record at that address and (iii) the holders of record to whom a report is not sent agree thereto in writing; and unless state law requires otherwise, a bank is not required to send an annual report or proxy statement to a security holder if (i) an annual report or a proxy statement for two consecutive annual meetings or (ii) all, and at least two, checks (if sent by first class mail) in payment of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable (although a bank's obligation to deliver an annual report or a proxy statement under this section is reinstated once it has such security holder's current address):

(1) The report shall include, for the bank and its subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years and statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Subpart I. The provisions of §§ 11.911, 11.913 to 11.918, and 11.940 shall not apply. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Comptroller may be omitted.

Note.—If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders, provided the bank has obtained from the predecessor accountant a reissued report covering the prior period presented, and the successor accountant clearly indicates in the scope paragraph of his or her report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant, and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Comptroller. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form F-2, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All types shall be leaded at least 2-points.

(3) The report shall contain the Supplementary Financial Information required by § 11.832.

(4) The report shall contain information concerning Disagreements with Accountants on Accounting and Financial Disclosure required by § 11.834.

(5)(i) The report shall contain the Selected Financial Data required by § 11.831.

(ii) The report shall contain Management's Discussion and Analysis of Financial Condition and Results of Operations required by § 11.833.

(6) The report shall contain a brief description of the business done by the bank and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the bank and its subsidiaries.

(7) The report shall identify each of the bank's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

(8) The report shall contain the market price of and dividends on the bank's common equity and related stockholder matters required by § 11.821.

(9) Management's proxy statement, or the report, shall contain an undertaking in boldface or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the bank's annual report of Form F-2, including the financial statements and the financial statement schedules, required to be filed with the Comptroller pursuant to Rule 13a-1 under the Act for the bank's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, a bank need not udertake to furnish without charge copies of all exhibits to its Form F-2, provided that the copy of the annual report on Form F-2 furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the bank will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the bank's reasonable expenses in furnishing such exhibit. If the bank's annual report to security holders complies with all of the disclosure requirements of Form F-2 and is filed with the Comptroller in satisfaction of its Form F-2 filing requirements, such bank need not furnish a separate Form F-2 to security holders who receive a copy of such annual report.

Note.—Pursuant to the undertaking required by the above paragraph (a)(9), a bank shall furnish a copy of its annual report on Form F-2 to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the bank's security holders, the person making the request was beneficial owner of securities entitled to vote at such meeting.

(10) Subject to the foregoing requirements, the report may be in any form deemed suitable by managment and the information required by subparagraphs (a)(5) to (a)(10) may be presented in an appendix or other separate section of the report, provided

that the attention of security holders is called to such presentation.

Note.—Banks are encouraged to utilize tables, schedules, charts, and graphic illustrations to present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

(11) This paragraph (a) shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the bank's proxy statement includes an undertaking in boldface type to furnish such annual report to all persons being solicited, at least 20 days before the date of the meeting.

(b) Three copies of the report sent to security holders pursuant to this rule shall be mailed to the Comptroller solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Comptroller pursuant to § 11.506, whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Comptroller or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the bank specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

Note.—To assist the staff, managements of banks are requested to indicate in a letter transmitting to the Comptroller copies of their annual reports to shareholders or in a separate letter at about the time the annual report is furnished to the Comptroller, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

* * * * *

22. By adding § 11.505(f) to read as follows:

§ 11.505 Presentation of information in proxy or information statement.

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(f) All proxy statements shall disclose on the first page thereof the complete mailing address, including zip code, of the principal executive offices of the bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

23. By amending § 11.506 by revising paragraphs (a), (b), (c) and (e) to read as follows:

§ 11.506 Material required to be filed.

(a) Three preliminary copies of each statement, form of proxy, and other item of soliciting material to be furnished to secuirty holders concurrently therewith, shall be filed with the Comptroller by the bank or any other person making a solicitation subject to this subpart at least ten calendar days (or 15 calendar days in the case of other than routine meetings, as defined below) prior to the date such item is first sent or given to any security holders, or such shorter period prior to that date as may be authorized. For the purposes of this paragraph a routine meeting means a meeting with respect to which no one is soliciting proxies subject to this subpart other than on behalf of the bank and at which the bank intends to present no matters other than the election of directors, election of inspectors of election, or other recurring matters. In the absence of actual knowledge to the contrary, the bank may assume that no other such solicitation of the bank's security holders is being made. In cases of annual meetings, one additional preliminary copy of the statement, the form of proxy, and any other soliciting material, marked to show changes from the material sent or given to security holders with respect to the preceding annual meeting, shall be filed with the Comptroller. If the changes are material, the bank shall file with the Comptroller any explanatory comments which may be of assistance in the expeditious processing of the statement.

(b) Three preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the Comptroller at least two days (exclusive of Saturdays, Sundays, and holidays) prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as may be authorized upon a showing of good cause therefor.

(c) Three copies of each statement, form of proxy, and other items of soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Comptroller not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each exchange upon which any security of the bank is listed.

Note.—The Definitive Statement filed with the Comptroller should be accompanied by a letter indicating any material changes which have been made therein, other than those made in response to the staff's comments, and should also be accompanied by a marked copy of the Definitive Statement indicating all changes made therein.

* * * * *

(e) All copies of material filed under § 11.506 (a) and (b) shall be clearly marked "Preliminary Copies" and shall be for the information of the Comptroller only and shall not be considered available for public inspection before definitive material has been filed with the Comptroller, except that such material may be disclosed to any department or agency of the U.S. Government and to the Congress. The Comptroller may make such inquiries or investigations with respect to the material as may be necessary for an adequate review thereof. All material filed under § 11.506 (a), (b), or (c) shall be accompanied by a statement of the date upon which definitive copies thereof are intended to be, or have been, sent or given to security holders. All material filed under § 11.506(d) shall be accompanied by a statement of the date upon which copies thereof have been or are intended to be released to the individuals who will make the actual solicitation.

24. By revising § 11.507(b) to read as follows:

§ 11.507 Mailing communications for security holders.

* * * * *

(b)(1) If the issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorization are held of record by a broker, dealer, bank or voting trustee, or their nominees, the issuer shall:

(i) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, how many copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, how many copies of the annual report to security holders are needed for transmittal to beneficial owners;

(ii) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (A) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before such meeting as is practicable or (B) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

(iii) Shall supply the record holders of whom the inquiry is made with additional copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in a timely manner, in such quantities, assembled in such form and at such a place as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

* * * * *

25. By revising § 11.508 to read as follows:

§ 11.508 Proposals of security holders.

(a) If any security holder of a bank notifies the issuer of his or her intention to present a proposal for action at a forthcoming meeting of the bank's security holders, the bank shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by § 11.504. Notwithstanding the foregoing, the bank shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (b) and (c) of this section:

(1) *Eligibility.* (i) At the same time he or she submits the proposal, the proponent shall be a record or beneficial owner of at least 1% or $1,000 in market value of securities entitled to be voted at the meeting and have held such securities for at least one year, and shall continue to own such securities through the date on which the meeting is held. If the bank requests documentary support for a proponent's claim of being the beneficial owner of at least $1,000 in market value of such voting securities of the bank or of having been a beneficial owner of the securities for one or more years, the proponent shall furnish appropriate documentation within 14 calendar days after receiving the request. In the event the bank includes the proponent's proposal in its proxy soliciting material for the meeting and the proponent fails to comply with the requirement of continuously holding such securities through the meeting date, the bank shall not be required to include any proposals submitted by the proponent in its proxy materials for any meeting held in the following two calendar years.

(ii) Proponents who deliver written proxy materials to holders of more than 25 percent of a class of the bank's outstanding securities entitled to vote with respect to the same meeting of security holders will be ineligible to use the provisions of § 11.508 for the inclusion of a proposal in the bank's proxy materials. In the event the bank includes a proponent's proposal in its proxy material and the proponent thereafter delivers written proxy materials to the holders of more than 25 percent of a class of the issuer's outstanding securities entitled to vote with respect to such meeting, the bank shall not be required to include any proposals submitted by that proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(2) *Notice and attendance at the meeting.* At the time of submitting a proposal, a proponent shall provide the bank in writing with his or her name, address, the number of the bank's voting securities that he or she holds of record or beneficially, the dates upon which he or she acquired such securities, and documentary support for a claim of beneficial ownership. A proposal may be presented at the meeting either by the proponent or a representative who is qualified under state law to present the proposal on the proponent's behalf at the meeting. In the event that the proponent or the representative fails, without good cause, to present the proposal for action at the meeting, the bank shall not be required to include any proposals submitted by the proponent in its proxy soliciting material for any meeting held in the following two calendar years.

(3) *Timeliness.* The proponent shall submit the proposal sufficiently far in advance of the meeting so that it is received by the bank within the following time periods:

(i) *Annual meetings.* A proposal to be presented at an annual meeting shall be received at the bank's principal executive offices not less than 120 days in advance of a date corresponding to the date of the bank's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year of the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the bank a reasonable time before the solicitation is made.

(ii) *Other meetings.* A proposal to be presented at any meeting other than an annual meeting specified in paragraph (a)(3)(i) of this section shall be received a reasonable time before the solicitation is made.

Note.—In order to curtail controversy as to the date on which a proposal was received by the bank, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(4) *Number of proposals.* The proponent may submit no more than one proposal and a accompanying supporting statement for inclusion in the bank's proxy materials for a meeting of security holders. If the proponent submits more than one proposal, or fails to comply with the 500 word limit mentioned in paragraph (b)(1) of this section, the proponent shall be provided the opportunity to reduce the items submitted by him to the limits required by this rule, within 14 calendar days of notification of such limitations by the issuer.

(b)(1) *Supporting statement.* The bank at the request of the proponent, shall include in its proxy statement a statement of the proponent in support of the proposal, which statement shall not include the name and address of the proponent. A proposal and its supporting statement in the aggregate shall not exceed 500 words. The supporting statement shall be furnished to the bank at the time that the proposal is furnished, and the bank shall not be responsible for such statement and the proposal to which it relates.

(2) *Identification of proponent.* The proxy statement shall also include either the name and address of the proponent and the number of shares of the voting security held by the proponent or a statement that such information will be furnished by the bank to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor.

(c) The bank may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) If the proposal is, under the laws of the bank's domicile, not a proper subject for action by security holders;

Note.—Whether a proposal is a proper subject for action by security holders will depend on the applicable state law. Under certain states' laws, a proposal that mandates certain action by the bank's board of directors may not be a proper subject matter for shareholder action, while a proposal recommending or requesting such action of the board may be proper under such state laws.

(2) If the proposal, if implemented, would require the bank to violate any state law or federal law of the United States, or any law of any foreign

jurisdiction to which the bank is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any state law or federal law of the United States;

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a–9, 17 CFR 240.14a–9, which prohibits false or misleading statements in proxy soliciting materials;

(4) If the proposal relates to the redress of a personal claim or grievance against the bank or any other person, or if it is designed to result in a benefit to the proponent or to further a personal interest, which benefit or interest is not shared with the other security holders at large;

(5) If the proposal relates to operations which account for less than 5 percent of the bank's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the bank's business;

(6) If the proposal deals with a matter beyond the bank's power to effectuate;

(7) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the bank;

(8) If the proposal relates to an election to office;

(9) If the proposal is counter to a proposal to be submitted by the bank at the meeting;

(10) If the proposal has been rendered moot;

(11) If the proposal is substantially duplicative of a proposal previously submitted to the bank by another proponent, which proposal will be included in the bank's proxy material for the meeting;

(12) If the proposal deals with substantially the same subject matter as a prior proposal submitted to security holders in the bank's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding five calendar years, it may be omitted from the bank's proxy materials relating to any meeting of security holders held within three calendar years after the latest such previous submission: Provided, that—

(i) If the proposal was submitted at only one meeting during such preceding period, it received less than five percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than eight percent of the total number of votes cast in regard thereto; or

(iii) If the prior proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; or

(13) If the proposal relates to specific amounts of cash or stock dividends.

(d) Whenever the bank asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Comptroller, not later than 60 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506, or such shorter period prior to such date as the Comptroller or its staff may permit, three copies of the following items: (1) The proposal; (2) any statement in support thereof as received from the proponent; (3) a statement of the reasons why the bank deems such omission to be proper in the particular case; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. The bank shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him or her a copy of the statement of reasons why the bank deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(e) If the bank intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than 10 calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506, or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the bank of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of § 11.509 and the proponent wishes to bring this matter to the attention of the Comptroller, the proponent promptly should provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide the bank with a copy of such letter.

26. By adding § 11.509(b) to read as follows:

§ 11.509 False or misleading statements.

* * * * *

(b) The fact that a proxy statement, form of proxy, or other soliciting material has been filed with or reviewed by the Comptroller or its staff shall not be deemed a finding by the Comptroller that such material is accurate or complete or not false or misleading; or that the Comptroller has passed upon the merits of or approved any statement therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

27. By revising § 11.511(b)(2) to read as follows:

§ 11.511 Special provisions applicable to election contests.

* * * * *

(b) * * *

(2) Such terms do not include—

(i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the performance of duties in the course of such employment, or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties.

(ii) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations, or financial adviser, and whose activities are limited to the performance of duties in the course of such employment.

28. By revising § 11.590 to read as follows:

§ 11.590 Form for proxy statement or statement where management does not solicit proxies.

Information Required in Proxy Statement

Notes.—A. When any item calls for information about any matter to be acted upon which involves other matters about which information is called for by other items of this schedule, the information called for by such other items shall also be given. For example, a merger, consolidation, or acquisition or disposition of assets specified in Item 14, in which the security holders to be solicited will become or continue to be security holders of the surviving or acquiring company, shall be deemed to involve the election of directors if any person who will serve as a director of such company was not elected to such office by the security holders to be solicited. In such case, Items 6 and 7 shall be answered with respect to each such person who will serve as a director of the surviving or acquiring company.

B. Where any item calls for information with respect to any matter to be acted upon at the meeting, such item need be answered in the bank's soliciting material only with respect to proposals to be made by or on behalf of the bank.

C. Except as otherwise specifically provided, when any item calls for information about directors, officers or other persons holding specified positions or relationships during a specific period, the bank shall provide such information about all persons who held any of the specified positions or relationships at any time during that period. However, information need not be included for any portion of the period during which such person did not hold such position or relationship, provided a statement to that effect is made.

Item 1. Revocability of Proxy.

State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limted or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 2. Dissenters' Rights of Appraisal.

Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicated any statutory procedure required to be followed by the dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the persons solicited will be notified of such date.

Instruction. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his or her appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

Item 3. Persons Making the Solicitation.

(a) Solicitations not subject to § 11.511.

(1) If the solicitation is made by the bank, so state. Give the name of any director of the bank who has informed the issuer in writing that he intends to oppose any action intended to be taken by the bank and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the bank, so state and give the names of the persons by whom and on whose behalf it is made.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) Solicitations subject to § 11.511.

(1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the bank or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the bank, state whether reimbursement will be sought from the bank, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the issuer and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the issuer.

Instructions

1. With respect to solicitations subject to § 11.511, costs and expenditures within the meaning of this Item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation. The bank may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to the effect is included in the proxy statement.

2. The information required pursuant to paragraph (6) of Item 3(b) should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

Item 4. Interest of Certain Persons in Matters To Be Acted Upon.

(a) Solicitations not subject to § 11.511.

Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the bank, each person who has been a director or officer of the bank at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the bank, each person on whose behalf the solicitation is made. Any person who would be a participant in a solicitation for purposes of 11.511 as defined in paragraphs (b)(1) (iii), (iv), (v) and (vi) thereof shall be deemed a person on whose behalf the solicitation is made for purposes of this paragraph (a).

(3) Each nominee for election as a director of the bank.

(4) Each associate of the foregoing persons.

Instruction: Except in the case of a solicitation subject to this regulation made in opposition to another solicitation subject to this regulation, this sub-item (a) shall not apply to any interest arising from the ownership of securities of the bank where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) Solicitations subject to § 11.511.

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in §§ 11.51(b)(1) (ii), (iii), (iv), (v) and (vi), in any matter to be acted upon at the meeting, and include with respect to each participant the information, or a fair and adequate summary thereof, required by Items 2(a), 2(d), 3, 4(b) and 4(c) of Form F–6.

(2) With respect to any person, other than a director or officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4 (b) and (c) of Form F–6.

Item 5. Voting Securities and Principal Holders Thereof.

(a) State for each class of voting securities of the bank entitled to be voted at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.

(b) Give the record date that will determine security holders entitled to vote at the meeting. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights: (1) State that they have such rights; (2) briefly describe such rights; (3) state briefly the conditions precedent to the exercise thereof; and (4) indicate if discretionary authority to cumulate votes is solicited.

(d) Furnish the information required by § 11.843(a)(1) to the extent known by the persons on whose behalf the solicitation is made.

(e) Furnish the information required by § 11.843(a)(2).

(f) Furnish the information required by § 11.843(c).

(g) Furnish the information required by § 11.843(b).

Item 6. Directors and Executive Officers.

If action is to be taken with respect to the election of directors, furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each person whose term of office will continue after the meeting. However, if the solicitation is made on behalf of persons other than the bank, the information required need be furnished only as to nominees of the persons making the solicitation.

(a) The information required by § 11.841.

(b) The information required by § 11.844.

Item 7. Executive Compensation.

(See Note C at the beginning of Form F–5.)

Furnish the information required by § 11.842 and Instruction 4 to § 11.813 if action is to be taken with regard to (i) the election of directors, (ii) any bonus, profit sharing or other compensation plan, contract, or arrangement in which any executive director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the bank, the required information need be furnished only for nominees of the persons making the solicitation and for associates of such nominees.

Item 8. Relationship With Independent Public Accountants.

If the solicitation is made on behalf of the bank and relates to an annual meeting of security holders at which directors are to be elected, or if financial statements are included pursuant to Item 15, furnish the following information:

(a) The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed, if different from the accountant selected or recommended for the current year, or if no accountant has yet been selected or recommended for the current year.

(c) If a change(s) in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, and if, in connection with such change(s), a disagreement between the accountant and bank has been reported or was required to be reported on Form F–3 or in the accountant's letter filed as an exhibit thereto, describe the disagreement. Prior to filing the preliminary proxy material with the Comptroller which contains or amends such description, the bank shall furnish the description of the disagreement to any accountant with whom a disagreement has been or was required to be reported. Any such accountant who believes that the description of the disagreement is incorrect or incomplete, may include in the proxy statement a brief declaration, ordinarily expected not to exceed 200 words, of the reasons for that belief. This declaration shall be submitted to the bank within ten business days of the date the accountant receives the bank's description.

(d) The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement if they desire to do so and whether or not such representatives are expected to be available to respond to appropriate questions.

(e) If any change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether such change was recommended or approved by: (1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or (2) the Board of Directors, if the bank has no such committee.

Item 9. Bonus, Profit Sharing and Other Remuneration Plans.

If action is to be taken with respect to any bonus, profit sharing or other remuneration plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will participate therein, indicate the approximate number of persons in each class and state the basis of such participation.

(b) State separately the amounts which would have been distributable under the plan during the last fiscal year of the bank to: (1) All current executive officers as a group; and (2) to all other current officers and directors as a group, and (3) all employees if the plan has been in effect.

(c) State the name and position with the bank of each person specified in § 11.842(a) who will participate in the plan and the amount which each such person would have received under the plan for the last fiscal year of the bank, if the plan had been in effect.

(d) Furnish such information, in addition to that required by this item and § 11.842, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other compensation or incentive plans, now in effect or in effect within the past five years, for: (i) Each director or officer named in answer to § 11.842(a) who may participate in the plan to be acted upon; (ii) all current executive officers of the bank as a group, if any executive officers may participate in the plan, (iii) all other current officers and directors of the bank as a group, if any other officer and director may participate in the plan; and (iv) all employees, if employees may participate in the plan.

(e) If the plan to be acted upon can be amended otherwise than by a vote of stockholders, to increase the cost thereof to the issuer or to alter the allocation of the benefits as among the groups specified in (b), state the nature of the amendments which can be so made.

Instructions

1. The term "plan" as used in this item means any plan as defined in Instruction 5 to § 11.842.

2. If action is to be taken with respect to the amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. The following instructions shall apply to paragraph (d):

(a) Information need only be given with respect to benefits received or set aside within the past five years.

(b) Information need not be included as to payments made for, or benefits to be received from, group life or accident insurance, group hospitalization, group relocation or similar group payments or benefits.

(c) If action is to be taken with respect to any plan in which directors or executive officers may participate, the information called for by § 11.842(b) (1) and (2) shall be furnished for the last five fiscal years of the bank and any period subsequent to the end of the latest such fiscal year, in aggregate amounts for the entire period for each such person and group: (1) As to options granted during the specified period, state the title and aggregate amount of securities subject to options, the average per share exercise price and, if the option price was less than 100 percent of the market value of the security on the date of the grant, such fact and the market price or such date (the title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately); and (2) As to the exercise or realization of options or stock appreciation rights held in tandem with options granted during the specified period or prior thereto, state the net value of the securities (market value less any exercise price) or cash realized during the specified period. If any named person, or any other director or officer, purchased securities through the exercise of options during such period, state the aggregate amount of securities of that class sold during the period by such named person and such other directors and executive officers as a group. The information called for by this Instruction 3(c) is in lieu of the information since the beginning of the bank's last fiscal year called for by § 11.842(d) (1) and (2). If other officers or employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to such other officers or employees, respectively, during the five-year period. If the options were other than "qualified" stock options, incentive stock options, or options granted pursuant to an "employee stock purchase plan," as the quoted terms are defined in Sections 422 through 423 of the Internal Revenue Code, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table illustrated in § 11.842.

4. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506.

Item 10. Pension and Retirement Plans.

If action is to be taken with respect to any pension or retirement plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will be entitled to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(b) State: (1) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; (2) the estimated annual payment to be made with respect to current services; and (3) the amount of such annual payments to be made for the benefit of (i) executive officers, (ii) all other officers and directors, and (iii) employees.

(c) State (1) the name and position with the bank of each person specified in § 11.842(a) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the bank and its subsidiaries for the benefit of such person for the last fiscal year of the issuer if the plan had been in effect, and (3) the amount of the annual benefits estimated to be payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and § 11.842, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other compensation or incentive plans, now in effect or in effect within the past five years, for: (1) Each executive director or officer named in answer to § 11.842(a) who may participate in the plan to be acted upon; (ii) all current executive officers of the bank as a group, if any executive officer may participate in the plan; (iii) all other current officers and directors of the bank as a group, if any other officer or director may participate in the plan; and (iv) all employees, if employees may participate in the plan.

(e) If the plan to be acted upon can be amended, other than by a vote of stockholders, to increase the cost thereof to the bank or alter the allocation of the benefits as between the groups specified in (b)(3), state the nature of the amendments which can be so made.

Instructions

1. The term "plan" as used in this item means any plan as defined in Instruction 5 to § 11.842. Instruction 2 to Item 9 shall apply to this item.

2. The requirements of paragraph (b)(3) or (c)(2) do not apply to payments made on an actuarial basis by any group pension plan which provides fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

3. Instruction 3 to Item 9 shall apply to paragraph (d) of this item.

4. If the plan to be acted upon is set forth separately in a written document, three copies shall be filed with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 11.506.

Item 11. Options, Warrants, or Rights.

If action is to be taken with respect to the granting or extension of any options, warrants or rights to purchase securities of the issuer or any subsidiary, furnish the following information:

(a) State (i) the title and amount of securities called for or to be called for by such options, warrants or rights; (ii) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (iii) the consideration received or to be received by the bank or subsidiary for the granting or extension of the options, warrants or rights; (iv) the market value of the securities called for or to be called for by the options, warrants or rights, as of the latest practicable date; and (v) in the case of options, the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the bank.

(b) State separately the amount of options, warrants or rights received or to be received by the following persons, naming each such person: (i) Each executive officer named in answer to § 11.842(a); (ii) each nominee for election as a director of the bank; (iii) each associate of such directors, executive officers or nominees; and (iv) each other person who received or is to receive 5 percent or more of such options, warrants or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and executive officers of the bank as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and § 11.842 as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other compensation or incentive plans, now in effect or in effect within the past five years, for: (i) Each executive director or officer named in answer to § 11.842 who may participate in the plan to be acted upon; (ii) all current executive officers of the bank as a group, if any executive officer may participate in the plan; (iii) all other current executive officers and directors of the bank as a group, if any other officer or director may participate in the plan; and (iv) all employees if employees may participate in the plan.

Instructions

1. The term "plan" as used in this item means any plan as defined in Instruction 5 to § 11.842.

2. Paragraphs (b) and (c) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

3. Instruction 3 to Item 9 shall apply to paragraph (c) of this item.

4. If the options described in answer to this item are issued pursuant to a plan which is set forth in a written document, three copies thereof shall be filed with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 11.506.

Note.—The bank shall inform the Comptroller of the Currency when the proxy statement in preliminary form is filed, the date the options, warrants or rights and the shares called for thereby will be authorized or created.

Item 12. Authorization or Issuance of Securities Other than for Exchange.

If action is to be taken with respect to the authorization or issuance of any securities other than for exchange for outstanding securities of the bank, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish a description of the securities in the manner required by § 11.290, Item 10 in a registration statement filed pursuant to this part. If the terms of any or all of the securities to be authorized cannot be stated or estimated because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, state that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors of the bank. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, a statement in the form of an opinion of counsel as to the existence and extent of such rights will suffice.

(c) Describe briefly the transaction in which the securities are to be issued, including a statement as to (1) the nature and approximate amount of consideration received or to be received by the bank, and (2) the approximate amount devoted to each purpose, so far as determinable, for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued other than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general effect thereof upon the rights of existing security holders.

Item 13. Modification or Exchange of Securities

If action is to be taken to modify any class of securities of the bank, or to issue or authorize for issuance securities of the bank in exchange for outstanding securities of the bank, furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in § 11.290, Item 10.

(c) State the reasons for the proposed modification or exchange and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement of arrears in dividends or of defaults in principal or interest of the outstanding securities which are to be modified or exchanged.

(e) Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies thereof with the Comptroller in accordance with § 11.506.

Instruction: If the existing security is presently listed and registered on a national securities exchange, state whether the bank intends to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If the bank does not intend to make such application, state the effect of the termination of such listing and registration.

Item 14. Mergers, Consolidations, Acquisitions and Similar Matters.

(See Note A at the beginning of this Form F–5.)

If action is to be taken with respect to any plan for (i) the merger or consolidation of the bank into or with any other person, or of any other person into or with the bank, (ii) the acquisition, by the bank or any of its security holders, of securities of another bank, (iii) the acquisition, by the bank, of any other going business or the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

(a) A brief outline of the material features of the plan. State the reasons for the plan and its general effect upon the rights of existing security holders. If the plan is set forth in a written document, file three copies thereof with the Comptroller at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to § 11.506.

(b) Information essential to an investor's appraisal of the proposed action with respect to the bank and, unless otherwise indicated, each other person which is a party to the transaction, including:

(1) A brief description of the business and property of each such person in substantially the manner required by §§ 11.811 and 11.812.

(2) A brief statement of dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such person, and of the effect of the plan thereon, and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(3) Such information about the proposed management of the surviving bank as would be required by Items 6 and 7 of this Form F–5. Information concerning remuneration of management may be projected for the current year based on remuneration actually paid or accrued by each of the constituent persons during the last calendar year. If significantly different, proposed compensation arrangements should also be described.

(4) A tabulation in columnar form showing the existing and the pro forma capitalization.

(5) Selected financial data pursuant to § 11.831 and book value per common share as of the end of the most recent period for which a balance sheet is required by § 11.911.

(6) Any pro forma financial information required by § 11.940 and pro forma book value per common share as of the end of the most recent period for which a balance sheet is furnished pursuant to § 11.911.

(7) The equivalent share information specified in the instructions below for exchange transactions.

Instructions

1. The following data shall be set forth in comparative columnar form: The historical primary and fully diluted earnings per share before discontinued operations, extraordinary items, or the cumulative effects of accounting changes, as appropriate, and the primary and fully diluted pro forma per share data; cash dividends declared per common share; and book value per common share presented in response to paragraphs (b)(5) and (6) and equivalent share data pursuant to (b)(7) where appropriate.

2. The appropriate equivalent share amounts of the acquired bank shall be calculated by multiplying the appropriate item (the pro forma income (loss) per share before nonrecurring charges or credits directly attributable to the transaction, pro forma book value per share, or the historical dividends per share of the acquiring bank) by the exchange ratio. The per share amounts are thus equated to the respective values for one share of the bank being acquired. In situations where the fiscal year-ends of the banks involved are different, additional historical information should be presented so that equivalent share amounts may be compared for equivalent periods. If the impact of the change transaction is immaterial to the acquiring company, all equivalent share amounts furnished should be determined on the basis of its historical per share data.

3. The information required by this Item 14(b) is required in a statement of the "acquiring" or "surviving" bank only if a "significant" merger or acquisition is to be voted upon. For purposes of this item, the term "significant" merger or acquisition shall mean a transaction where (a) the net book value of assets to be acquired or the amount paid therefor exceeds 5 percent of the equity capital accounts of the acquiring bank, (b) in an exchange transaction, the number of shares to be issued exceeds 5 percent of the outstanding shares of the acquiring bank, or (c) gross operating revenues for the last fiscal year of the person to be acquired exceeded 5 percent of the gross operating revenues for the last fiscal year of the acquiring bank. If less than a "significant" merger acquisition is to be voted upon, only information necessary for the exercise of prudent judgment is required.

4. Paragraph (a) shall not apply if the plan described in answer to paragraph (a) involves only the bank and one or more of its totally held subsidiaries.

(c) For each class of securities of the bank, or of any person specified in paragraph (b), which is admitted to dealing on a national securities exchange or for which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices (or, in the absence of trading in a particular period, the range of the bid and asked prices) for each quarterly period within the last two years. This information may be omitted if the plan involves merely the liquidation or dissolution of the bank.

Item 15. Financial Information.

(a) If action is to be taken on any matter specified in Items 12, 13, or 14, above, furnish verified financial statements of the Bank and its subsidiaries required by Subpart I. One copy of the definitive proxy statement filed with the Comptroller shall include a manually signed copy of the accountant's report. If financial statements required by Subpart I are furnished, also furnish the supplementary financial information required by § 11.832, information concerning disagreements with accountants on accounting and financial disclosure required by § 11.834, and management's discussion and analysis of financial condition and results of operations required by § 11.833. In addition, interim information should be provided in accordance with § 11.913.

(b) Notwithstanding paragraph (a) above, any or all of such financial statements, which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. Such financial statements are deemed material in the usual case involving the authorization or issuance of any material amount of senior securities. They are not deemed material in cases involving the authorization or issuance of common stock, other than in an exchange, merger, consolidation, acquisition, or similar transaction.

(c) If the financial statements are for an annual meeting, they may incorporate by reference any financial statements contained in the annual report sent to security holders pursuant to § 11.503 for that meeting, provided such financial statements substantially meet the requirements of this item.

(d) Financial statements may be omitted for a plan described in answer to Item 14(a), if the plan involves only the bank and one or more of its totally held subsidiaries.

(e) No schedules need be furnished in the proxy statement.

Item 16. Acquisition or Dispostion of Property.

If action is to be taken on the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the bank or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferor or transferee, as the case may be, and the nature of any material relationship of such person to the bank or any affiliate of the bank.

(d) Outline briefly any other material features of the contract or transaction.

Item 17. Restatement of Accounts.

If action is to be taken on the restatement of any asset, capital, or surplus account of the bank, furnish the following information:

(a) The nature of the restatement and the date as of which it is to be effective.

(b) The reasons, briefly stated, for the restatement and for the selection of the particular effective date.

(c) The name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 18. Action with Respect to Reports.

If action is to be taken with respect to any report of the bank or of its directors, officers or committees or any minutes of meeting of its stockholders:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 19. Matters Not Required to be Submitted.

If action is to be taken on any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and the action be taken by the bank in the event of a negative vote by the security holders.

Item 20. Amendment of Charter, By-Laws or Other Documents.

If action is to be taken on any amendment of the bank's charter, by-laws or other documents as to which information is not required above, state briefly the reasons for, and general effect of, such amendment.

Instruction: Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

Item 21. Other Proposed Action.

If action is to be taken on any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 20, inclusive, above.

Item 22. Vote Required for Approval.

For each matter which is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

29. By revising § 11.601 to read as follows:

§ 11.601 Scope and definitions applicable to Subpart F (the "tender offer regulations").

(a) *Scope.* Subpart F shall apply to any tender offer which is subject to section 14(d)(1) of the Act for the securities of a subject bank, including but not limited to, any tender offer made by an affiliate of the bank. Sections 11.610, 11.611, 11.620, 11.630 shall apply to any tender offer for subject bank securities (other than exempted securities) unless otherwise noted therein.

(b) *Definitions.* Unless the context otherwise requires, all terms used in the tender offer regulations have the same meaning as in the Act and in § 11.102. In addition, for purposes of sections 14(d) and 14(e) of the Act and the tender offer regulations, the following definitions apply:

(1) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made.

(2) The term "subject bank" means any national bank or bank operating under the Code of Law for the District of Columbia which is the issuer of securities sought by a bidder pursuant to a tender offer.

(3) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer.

(4) The term "beneficial owner" shall have the same meaning as that set forth in § 11.403. However, for purposes of § 11.603, § 11.609(d) and Item 6 of Form F-13, the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of §11.403(d)(1).

(5) The term "tender offer material" means:

(i) The bidder's formal offer, including all material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent to or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer.

(6) The term "business day" means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12.01 a.m. through 12:00 midnight Eastern time. Any time period computed under section 14(d)(5) or section 14(d)(6) of the Act or under these tender offer regulations, shall begin on the date of the event causing the computation of such time period. If such occurs on other than a business day such period shall begin on and shall include the first business day thereafter.

(7) The term "security position listing" means, with respect to securities of any bank held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the bank's securities and of the participants' respective positions in such securities as of a specified date.

30. By revising § 11.608 to read as follows:

§ 11.608 Exemptions from statutory pro rata requirement.

Notwithstanding the pro rata provisions of Section 14(d)(6) of the Act, if any person makes a tender offer for, or a request or invitation for tenders of less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

31. By adding § 11.701 to read as follows:

§ 11.701 Scope of subject.

The rules contained in this regulation shall govern all registration statements of registered national banks filed pursuant to Section 12(b) and 12(g) of the Act and all reports of registered national banks filed pursuant to Section 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

32. By adding § 11.703 to read as follows:

11.703 Supplemental information.

The Office of the Comptroller of the Currency may request supplemental information concerning the bank, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act.

33. By adding § 11.710 to read as follows:

§ 11.710 Requirements as to proper form.

Every statement or report shall be on the form prescribed by the Comptroller, as in effect on the date of filing. Any statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Comptroller within thirty days after the date of filing.

34. By revising § 11.724 to read as follows:

§ 11.724 Notification of inability to file timely annual or quarterly report or portions thereof.

(a) If all or any required portion of an annual report on Form F-2, or a quarterly report on Form F-4 is not filed within the time period prescribed for such report, the bank, no later than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Comptroller which shall contain disclosure of the inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the bank is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on its prescribed due date if:

(1) The bank files the Form 12b-25 in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The bank represents in the Form 12b-25 that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the bank without unreasonable effort or expense; and

(ii) Either the subject annual report/portion thereof will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report/portion thereof will be filed no later than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the bank, to furnish any required opinion, report or certificate, the Form 12b-25 shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) If a Form 12b-25 filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the bank shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report (required to be filed on Form 8) which includes the previously omitted information, the following statement:

> The following items were the subject of a Form 12b-25 and are included herein: (List Item Numbers).

(e) The provisions of ths section shall not apply to:

(1) Financial statements to be filed by amendment in accordance with § 11.916 or schedules to be filed by amendment in accordance with General Instruction A of Form F-2.

35. By adding § 11.730 to read as follows:

§ 11.730 Additional exhibits.

The bank may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matter to which they refer.

36. By consolidating requirements into a new Subpart H to read as follows:

Subpart H—Content of Nonfinancial Statements and Reports

§ 11.800 General.

This subpart lists and describes topics to be discussed in the nonfinancial statement portions of registration statements under Section 12, annual or other reports under Sections 13 and 15(d), annual reports to security holders and proxy and information statements under Section 14 of the Exchange Act, and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under such Act.

Business

§ 11.811 Description of business.

Describe briefly the business done by the bank and any significant developments or trends in such business occurring over the preceding five years. In describing the business done by the bank, the business of its subsidiaries should be included only insofar as the same is important to an understanding of the character and development of the business conducted by the total enterprise. The description shall also include without limitation, information as to matters such as the following:

(a) The primary business locations of the bank, including the number of banking offices in each city (or county) in the United States in which the bank has offices and the number of banking offices located in each foreign country or jurisdiction.

(b) The competitive conditions and the competitive position of the bank and other financial intermediaries, with which the bank competes, in its service area.

(c) The amount of loan and similar commitments by appropriate categories, (excluding check credit card lines) as of the end of each of the last two fiscal years and with respect to the amount as of the end of the most recent fiscal year, the portion considered to be "firm" and the portion not reasonably expected to be exercised within the current year;

Notes.—1. The categorization may include such items as commercial letters of credit, commitments to grant loans, and commitments to purchase loans, or such other classifications deemed appropriate by the bank. Any specific category representing more than 25 percent of the total commitments shown shall, however, be identified and specific categories representing individually less than 25 percent of the total commitments shown may be aggregated as Other Commitments.

2. If more than 25 percent of the total commitments shown are on terms whereby the prices or interest rates are not to be determined by the market conditions prevailing at the time the commitments are exercised, the amount and a description of such commitments should also be disclosed.

(d) If a material portion of the bank's deposits has been obtained from a single person or a few persons (including Federal, State, and local governments and agencies thereunder), the loss of any of one or more of which would have a materially adverse effect on the business of the bank, or if a material portion of the bank's loan is concentrated within a single industry or group of related industries, a description of such customers, their other relationships, if any, to the bank, and material facts regarding their importance to the business of the bank.

(e) The extent to which the business is or may be seasonal;

(f) The importance of and risks attendant to foreign sources and applications of funds;

(g) The material effects that compliance with Federal, State and local provisions relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the bank and its subsidiaries;

(h) The approximate number of persons employed;

(i) The commercial, consumer, international, trust, and municipal trading services and other business activities of the bank.

§ 11.812 Description of property.

Describe briefly, individually or by categories, (a) properties held in fee, by the bank and its subsidiaries, in which the banking offices are located, indicating any major encumbrances with respect thereto, and (b) other real estate of material value that is owned by the bank. In the event aggregate annual rentals paid during the bank's last fiscal year exceeded 5 percent of its operating expenses, state the amount of such rentals and the average term of the leases pursuant to which such rentals were paid, and the expiration dates of any material leases.

§ 11.813 Pending legal proceedings.

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions

1. No information need be given with respect to proceedings which involve principally claims for damages, if the aggregate amount involved does not exceed ten percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceedings present in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

2. Any material proceedings to which any director, officer, or affiliate of the bank, any person holding beneficially in excess of ten percent of the bank's outstanding stock, or any associate of any such director, officer or security holder, is a party, or has a material interest adverse to the bank or any of its subsidiaries, shall also be described.

3. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the bank or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the equity capital of the bank and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of equity capital on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business": *Provided, however,* That such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; a generic description of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the bank, the effect of such proceedings on the business or financial condition of the bank.

Securities of the Bank

§ 11.821 Market price and dividends on the bank's common equity and related stockholder matters.

(a) *Market information.* For each class of securities to be registered pursuant to Section 12(g) of the Act, state briefly the nature of the trading market, if any, in such securities, including the names of the principal makers and the reported high and low prices for each quarterly period during the past three years.

Instructions

In furnishing high and low bid prices, the bank may rely on quotations published in publications of national circulation, provided the source of the information is identified. If the principal market makers are not known, it will suffice to name three market makers which are believed to be actively engaged in making a market in the securities.

(b) *Holders.* (1) Set forth the approximate number of holders of each class of common equity of the bank as of the latest practicable date.

(2) If the information called for by this paragraph (b) is being presented in a registration statement filed pursuant to the Securities Act or a proxy statement or information statement filed pursuant to the Exchange Act that relates to an acquisition, business combination or other reorganization, indicate the effect of such transaction on the amount and percentage of present holdings of the bank's common equity owned beneficially by—

(i) Any person (including any group as that term is used in Section 13(d)(3) of the Exchange Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's common equity,

(ii) Each director and nominee and

(iii) All directors and officers as a group, and/or the bank's present commitments to issue such persons shares of any class of its common equity.

(c) *Dividends.* (1) State the frequency and amount of any cash dividends declared on each class of its common equity by the bank for the two most recent fiscal years and for any subsequent interim period for which financial statements are required by the General Instructions to Financial Statements in Subpart I of this Part. Where there are restrictions (including, where appropriate, restrictions on the ability of bank's subsidiaries to transfer funds to the bank in the form of cash dividends, loans or advances) that currently materially limit the bank's ability to pay such dividends or that the bank reasonably believes are likely to limit materially the future payment of dividends on the common equity so state, and either (i) describe briefly (where appropriate quantify) such restrictions, or (ii) cross reference to the specific discussion of such restrictions as presented in the Management's Discussion and Analysis of Financial Condition and Results of Operations, prescribed by § 11.833, and to the description of such restrictions required by Subpart I of this part in the bank's financial statements.

(2) Banks having a record of paying no cash dividends although earnings indicate an ability to do so, are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists, are encouraged to make a statement of that fact in the filing. Banks having a history of paying cash dividends also are encouraged to indicate whether they currently expect that comparable cash dividends will continue to be paid in the future and, if not, the nature of the change in the amount or rate of cash dividend payments.

Instructions to § 11.821

1. Banks, the common equity of which is listed for trading on more than one securities exchange registered under the Exchange Act, are required to indicate each such exchange pursuant to paragraph (a); where available, these shall be the prices as reported in the

consolidated transaction reporting system and, where the prices are not so reported, the prices on the most significant (in terms of volume) securities exchange for such shares.

2. Market prices and dividends reported pursuant to this section shall be adjusted to give retroactive effect to material changes resulting from stock dividends, stock splits and reverse stock splits.

3. The computation of the approximate number of holders of bank's common equity may be based upon the number of record holders or also may include individual participants in security position listings. See SEC Rule 17Ad–8 under the Exchange Act. The method of computation that is chosen shall be indicated.

§ 11.822 Description of bank's securities.

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly—

(i) Divided rights;

(ii) Voting rights;

(iii) Liquidation rights;

(iv) Preemptive rights;

(v) Conversion rights;

(vi) Redemption provisions;

(vii) Sinking fund provisions; and

(viii) Liability to further calls or to assessment by the bank.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) Outline briefly any restrictions on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

Instructions

1. This section requires only a brief summary of the provisions that are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

2. If the rights evidenced by the securities being registered are materially limited or qualified by the rights of any other class of securities or by the provisions of any contract or other document, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities being registered. If any securities being registered are to be offered in exchange for other securities, an appropriate description of such other securities shall be given. No information need be given, however, as to any class of securities all of which will be redeemed and retired if appropriate steps to assure such redemption and retirement will be taken prior to registration of the securities being registered.

(b) If long-term debt is being registered, outline briefly the following, if relevant:

(1) Provisions governing interest, conversion, maturity, redemption, amortization, sinking fund, or retirement.

(2) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets or the creation or maintenance of reserves or the maintenance of properties.

(3) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

(4) The name of the trustee and the nature of any material relationship between the trustee and the bank or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and the indemnification the trustee may require before proceeding to enforce the lien.

(5) Provisions governing the kind and priority of any lien, securing the issue, and a brief identification of the principal properties subject to each lien.

Instructions

1. The instructions to § 11.822(a) shall apply to § 11.822(b).

2. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described in answer to paragraph (b)(3).

(c) If securities other than capital stock or long-term debt are being registered, outline briefly the rights evidenced thereby. If subscription warrants or rights are being registered, state the title and amounts of securities called for, the period during which and the price at which the warrants or rights are exercisable.

Instruction

The instructions to § 11.822(a) shall also apply to § 11.822(b).

Financial Information

§ 11.831 Selected financial data.

Furnish in comparative columnar form the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to § 11.831

1. The purpose of the selected financial data is to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2. The following items shall be included in the table of financial data: net operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Banks that are required to provide five-year summary information in accordance with Statement of Financial Accounting Standard No. 33, "Financial Reporting and Changing Prices," may combine such information with the selected financial data provided pursuant to this section.

4. All references to the bank in the table of selected financial data and in this section shall mean the bank and its subsidiaries consolidated.

5. If interim period financial statements are included, or are required to be included by Subpart I, banks should consider whether any or all of the financial data need to be updated for such interim periods to reflect a material change in the trends indicated. When such updating is necessary, banks shall provide information for the comparable prior period unless not necessary to an understanding of such updating information.

§ 11.832 Supplementary financial information.

(a) Selected quarterly financial data. Banks specified in paragraph (c) shall provide the information specified below.

(1) Revenue of gross profit (net revenue less costs and expenses associated directly with or allocated to services rendered), icome (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), and net income (loss), for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Subpart I.

(2) A reconciliation of the data supplied pursuant to this paragraph (a) if different from those previously reported on the Form F–4 filed for any quarter, such as would be the case when

a pooling of interests occurs or where an error is corrected.

(b) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, as enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be followed by the reporting accountant with regard to the data required by paragraph (a) of this section.

(c) Paragraph (a) of this section applies to any national bank that meets both of the following tests:

(1) *First test.* The bank:

(i) Has securities registered pursuant to Section 12(b) of the Exchange Act; or

(ii) Has securities registered pursuant to Section 12(g) of the Exchange Act which also

(A) Are quoted on the National Association of Securities Dealeres Automated Quotation System, and

(B) Meet all the following criteria:

(*1*) Three or more dealers stand willing to, and do in fact, make a market in such stock, including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to Section 5 of the Exchange Act. For purposes of this paragraph, the insertion of quotations into the National Association of Securities Dealers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market;

(*2*) There continue to be 800 or more holders of record, as defined in § 11.102, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock;

(*3*) The bank continues to be a United States corporation;

(*4*) There are 300,000 or more shares outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(*5*) Any two of the three following requirements:

(*i*) The shares described in paragraph (5)(i)(C)(2)(iv) of this item continue to have a market value of at least $2.5 million;

(*ii*) The minimum representative bid price of such stock is at least $5 per share; or

(*iii*) The bank continues to have at least $2.5 million of capital, surplus, and undivided profits.

Instructions to Paragraph (c)(1)(ii)(B)(5)

1. The computation required by paragraph (*5*)(*i*) and (*ii*) shall be based on the average of the closing representative bid prices as reported by the National Association of Securities Dealers Automated Quotation System in accordance with SEC Rule 11Ac1–2 under the Exchange Act of the 20 business days immediately preceding the fiscal year for which the financial statements are required.

2. The computation required by paragraph (*5*)(*iii*) shall be as of the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.

(2) *Second test.* The bank and its consolidated subsidiaries (i) have had a net income after taxes, but before extraordinary items and the cumulative effect of a change in accounting, of at least $250,000 for each of the last three fiscal years; or (ii) had total assets of at least $200,000,000 for the last fiscal year-end.

(d) Information on the effects of changing prices. Information on the effects of changing prices on business enterprises shall be presented by banks subject to the reporting provisions of Statements of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," in accordance with the specific provisions of those Statements.

§ 11.833 Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a) (1), (2) and (3) of this section with respect to liquidity, capital resources and results of operations and also shall provide such other information that the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated.

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in, the bank's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the bank has taken, or proposes to take, to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(2) *Capital resources.* (i) Describe the bank's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated souce of funds needed to fulfill such commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the bank's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-blance sheet financing arrangements.

(3) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the bank's judgment, should be described in order to understand the bank's results of operations.

(ii) Describe any known trends or uncertainties that have had or that the bank reasonably expects will have a material favorable or unfavorable impact on revenues or income from continuing operations. If the bank knows of events that will cause a material change in the relationship between costs and revenue (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship shall be disclosed.

(iii) To the extent that the financial statements disclose material increases in revenue, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of services being sold or to the introduction of new products or services.

(iv) For the three most recent fiscal years of the bank, or for those fiscal years in which the bank has been engaged in business, whichever period is shortest, discuss the impact of inflation and changing prices on the bank's net interest and other operating income and on income from continuing operations.

Instructions to § 11.833(a)

1. The bank's discussion and analysis shall be of the financial statements and of other statistical data that the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations.

Generally, the discussion shall cover the three year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the bank's judgment enhance a reader's understanding. However, where thrend information is relevant, reference to the five year selected financial data appearing pursuant to § 11.831 may be necessary.

2. The purpose of the discussion and analysis shall be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the bank as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided pursuant to this section need only include that which is available to the bank without undue effort or expense and which does not clearly appear in the bank's financial statements.

3. The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes shall be described to the extent necessary to an understanding of the bank's businesses as a whole; provided, however, that if the causes for a change in one line item also relate to other line items, no repetition is required, and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Banks need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in this item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the bank shall indicate those balance sheet conditions or income or cash flow items which the bank believes may be indicators of its liquidity condition. Liquidity generally shall be discussed on both a long-term and short-term basis.

6. Banks are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will impact upon future operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. (See Rule 175 under the Securities Act, § 11.106, and Rule 3b–6 under the Exchange Act and Securities Act Release No. 6084 (June 25, 1979).)

7. Banks that are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," (SFAS 33) may combine such explanations with the bank's discussion and analysis required pursuant to this section or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted, but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made.

8. Banks that are not required to provide supplementary information in accordance with SFAS 33 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the bank in the discussion and in this item shall mean the bank and its subsidiaries consolidated.

(b) *Interim periods.* If interim period financial statements are included, or are required to be included by Subpart I, a management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (b) (1) and (2) of this section. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (a) of this section, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(1) *Material changes in financial condition.* Discuss any material changes in financial conditions from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial conditions from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the bank.

(2) *Material changes in results of operations.* Discuss any material changes in the bank's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the bank is required to, or has elected to, provide an income statement for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the bank has elected to provide an income statement for the twelve month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that twelve month period and the twelve month period ended as of the corresponding interim balance sheet date of the preceding fiscal year. Notwithstanding the above, if for purposes of a registration statement a bank subject to paragraph (b) of § 11.914 provides a statement of income for the twelve month period ended as of the date of the most recent interim balance sheet, provided in lieu of the interim income statements otherwise required, the discussion of material changes in that twelve month period will be in respect to the preceding fiscal year rather than the corresponding preceding period.

Instructions to Paragraph (b) of § 11.833

1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this item. Such discussions may be combined.

2. In preparing the discussion and analysis required by this paragraph (b), the bank may presume that users of the interim financial information have read or have access to the discussion and analysis required by paragraph (a) for the preceding fiscal year.

3. The discussion and analysis required by this paragraph (b) is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes shall be described if they have not already been disclosed; provided, however, that if the causes for a change in one line item also relate to other line items, no repetition is required. Banks need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the financial statements. The information provided shall include that which is available to the bank without undue effort or expense and which does not clearly appear in the bank's condensed interim financial statements.

4. The bank's discussion of material changes in results of operations shall identify any significant elements of the bank's income or loss from continuing operations which do not arise from or are not necessaily representative of the bank's ongoing business.

5. The bank shall discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operations.

6. Banks are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act, Rule 3b–6 under the Exchange Act, § 11.106 and Securities Act Release No. 6084 44 FR 38815 (July 2, 1979).

§ 11.834 Disagreements with former accountants on accounting and financial disclosure.

If, (a) within the twenty-four months prior to the date of the most recent financial statements, a Form F–3 under the Exchange Act reporting a change of accountants has been filed, (b) included in such Form F–3 there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (c) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (d) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

§ 11.841 Directors and executive officers.

(a) *Identification of directors and officers.* List all directors and officers of the bank and all persons chosen to become directors or officers. Indicate all positions and offices with the bank held by each person named. State the age of the persons named, their terms of office, and the periods during which each such person has served. Briefly describe any arrangement or understanding between each director and officer and any other person, pursuant to which such director or officer was selected to serve in that capacity. The term "officer" is defined in § 11.102(q).

Instruction

Do not include any arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

(b) *Identification of certain significant employees.* Where the bank employs persons such as special consultants or attorneys who are not officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of officers.

(c) *Family relationships.* State the nature of any family relationships between any directors, and/or person nominated or chosed by the bank to become a director.

Instruction

The term "family relationships" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(d) *Business experience*—(1) *Background.* Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of this section. The account should set forth each person's principal occupations and employment during the past five years and the name and principal business of any corporation or other organization in which such occupations and employment were carried on, including whether such corporation or organization is a parent, subsidiary or other affiliate of the bank. When an executive officer or person named in response to paragraph (c) of this section has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of prior business experience. Information relating to the level of professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised, is required.

(2) Indicate any other directorships held by each director or person chosen to become a director in any company with a class of securities registered pursuant to Section 12 of the Act.

(e) For each proposed director or officer, describe any of the following events which occurred during the past five years and if they are material:

(1) Such person filed or was served a petition under the Bankruptcy Act or any state insolvency law; or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person or any partnership in which such person was a general partner at or within two years before the time of such filing, or any corporation or business association of which such person was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated of any court of competent jurisdiction permanently or temporarily enjoining such person from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of federal or state securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action, or by a government agency, to have violated any federal or state securities law, and the judgment in such civil action or finding by the government agency has not been subsequently reversed, suspended, or vacated.

Instructions

1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date

shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition becomes final.

2. If any event specified in this subparagraph (d) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the Comptroller at the time of filing, as supplemental information and not as part of the statement, materials to which the omission relates, a description of the event, and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by § 11.841(d) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(f)(1) *Committee.* State whether or not the bank has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

(2) (i) If the bank has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders and, if so,

(ii) Describe the procedures to be followed by shareholders in submitting such recommendations.

(g) *Director attendance.* State the total number of meetings of the Board of Directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which that person has been director) and (2) the total number of meetings held by all committees of the board of which that person served (during the periods served).

(h) *Resignation of directors.* If a director has resigned or declined to stand for re-election to the Board of Directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement. If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(i) Shares voted at last meeting. With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

(1) State in an introductory paragraph the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and (2) disclose in tabular format following such introductory paragraph, the percentage of total shares cast for and withheld from the vote for or, where applicable, cast against each nominee. Groups of classes or series of classes that vote together in the election of a director or directors, shall be treated as a single class for the purpose of the preceding sentence.

Instructions

1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in paragraph (i)(1), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

2. No information need be given unless, with respect to any class of voting stock (or group of classes which voted together), 5 percent or more of the total shares cast for, withheld from, and, where applicable, cast against any nominee, were withheld from or cast against such nominee.

3. If a bank elects less than the entire board of directors annually, disclosure is required as to all directors if 5 percent or more of the total shares cast for and withheld from the vote for, or, where applicable, cast against any incumbent director were withheld from, or cast against the vote for such director at the meeting at which that director was most recently elected.

4. No information need be given if the bank has previously furnished to its security holders a report of the results of the most recent meeting of security holders at which directors were elected which includes: (1) A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each such matter, and (2) the information which would be called for by § 11.841(i). If a bank has previously furnished such results to its security holders, this fact should be set forth in the bank's cover letter accompanying the filing of preliminary proxy materials.

§ 11.842 Executive compensation.

(a) (1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the bank and its subsidiaries during the bank's last fiscal year;

(i) *Five executive officers.* Each of the bank's five most highly compensated executive officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each such person; and

(ii) *All executive officers.* All executive officers as a group, stating the number of persons in the group without naming them.

(2) *Bonuses and deferred compensation.* The Cash Compensation Table also shall include:

(i) All cash bonuses to be paid to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year unless such amounts have not been allocated at such time as compensation disclosure is filed;

(ii) All cash bonuses paid during the last fiscal year for services rendered in all capacities to the bank and its subsidiaries in a previous fiscal year, less any amount relating to the same contract, agreement, plan or arrangement included in the Cash Compensation Table for a prior fiscal year and less any amount that would have been so included but for the fact that the individual was not included in the Cash Compensation Table, as a named individual or as a member of the group, for such prior fiscal year; and

(iii) All compensation that would have been paid in cash to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year but for the fact that the payment of such compensation was deferred.

CASH COMPENSATION TABLE

(A)	(B)	(C)
Name of individual or number in group.	Capacities in which served.	Cash compensation.

Instructions to § 11.842(a)

1. Cash Compensation Table. (A) The bank may include additional columns in the Cash Compensation Table. For example, the bank may segregate cash bonuses and deferred compensation from cash salaries and fees.

(B) Amounts deferred pursuant to Section 401(k) of the Internal Revenue Code are to be included in paragraph (a) for the fiscal year during which they are accrued.

(C) Banks need list in Column (B) of the Cash Compensation Table only those principal capacities served by each of the identified individuals. The cash compensation disclosed, however, must include cash compensation received in all capacities.

2. Persons covered. (A) Paragraph (a) of this section applies to any individual who was an executive officer of the bank at any time during the last fiscal year. Information need not be disclosed, however, for any portion of the period during which such individual was not an executive officer of the bank, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose compensation is to be reported in the Cash Compensation Table, it is not necessary to report compensation that would have been reported in the Table had the individual been included in prior years.

(B) Banks should be flexible in determining which individuals should be named in the Cash Compensation Table in order to ensure that disclosure is made with respect to key policy making members of management. Consideration should be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with such individual's actual level of cash compensation is such that the bank reasonably may conclude that the person is among its five most highly compensated, key policy making executive officers. Under this standard, it may be appropriate, in certain circumstances, to include an executive officer of a subsidiary in the Cash Compensation Table.

(C) In certain circumstances, it may be appropriate for a bank not to include in the Cash Compensation Table an individual who is one of the registrant's five most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (i) The distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (ii) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this section. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms, or operation, in favor of officers or directors of the bank and that are available generally to all salaried employees. The description of each plan shall include the following, except that the description of any defined benefit or actuarial plans need not include the information specified in paragraphs (b)(1)(vi) and (b)(1)(vii) of this section and the description of any stock option and stock appreciation right plan need not include the information specified in paragraph (b)(1)(vii) of this section:

(i) A summary of how the plan operates and who is covered by the plan;

(ii) The criteria used to determine amounts payable, including any performance formula or measure;

(iii) The time periods over which the measurement of benefits will be determined;

(iv) Payment schedules;

(v) Any recent material amendments to the plan;

(vi) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year less any amount relating to the same plan which previously has been disclosed as accrued pursuant to paragraph (b)(1)(vii) of this section or a predecessor provision; and

(vii) Amounts accrued pursuant to the plan for the accounts of the named individuals and group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(2) *Pension table.* As to defined benefit and actuarial plans, other than any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include, as the payment schedule required by paragraph (b)(1)(iv) of this section, a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) to persons in specified compensation and years-of-service classifications. In addition, in furnishing the information required by paragraphs (b)(1)(i)–(v) of this section, include:

(i) The compensation covered by the plan, including the relationship of such covered compensation to the compensation reported in the Cash Compensation Table pursuant to paragraph (a) of this section, and state the current compensation covered by the plan for any individuals named in the Cash Compensation Table whose covered compensation differs substantially (by more than 10 percent) from that set forth in the Cash Compensation Table;

(ii) The estimated credited years of service for each of the individuals named in the Cash Compensation Table; and

(iii) A statement as to the basis upon which benefits are computed (e.g., straight life annuity amounts) and whether or not the benefits listed in the Pension Table are subject to any deduction for Social Security or other offset amounts.

EXAMPLE OF PENSION TABLE

Remuneration	Years of service				
	15	20	25	30	35
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

(3) *Alternative pension plan disclosure.* In furnishing the information required by paragraphs (b)(1) (i)–(v) of this section with respect to defined benefit or actuarial plans under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the individuals named in the Cash Compensation Table pursuant to paragraph (a) of this section.

(4) Stock option and stock appreciation right plans. In addition to providing the information required by paragraphs (b)(1) (i)–(vi) of this section, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) The title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(ii) With respect to the exercise or realization of options or stock appreciation rights held in tandem with options, state the net value of securities (market value less any exercise price) or cash realized during the last fiscal year.

(iii) With respect to plans pursuant to which stock appreciation rights not in tandem with options were granted during the last fiscal year: (A) The number rights granted; and (B) the average per share base price thereof.

(iv) With respect to the exercise or realization of stock appreciation rights not in tandem with options, state the net value of the shares (market price) or cash realized during the last fiscal year.

Instructions to § 11.842(b)

1. Format. With the exception of these pension plans disclosed pursuant to § 11.842(b)(2), the bank may use either a narrative, tabular or other format or combination of formats provided the information so disclosed is clear and understandable. Disclosure required by § 11.842(b)(2), pertaining to certain defined benefit and actuarial plans, is required to be presented in the Pension Table format set forth in that section.

2. Cash paid pursuant to plans. The cash compensation paid pursuant to a plan need not be disclosed as amounts paid or distributed pursuant to § 11.842(b)(1)(vi) of this section if such compensation was included in the Cash Compensation Table pursuant to paragraph (a) of this section and a statement to that effect is made. Similarly, the cash compensation deferred under a deferred compensation plan need not be disclosed as amounts accrued pursuant to § 11.842(b)(1)(vii) of this section if such compensation was included in the Cash Compensation Table and a statement to that effect is made.

3. Definition of "plan." The term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities performance units and performance shares. A plan may be applicable to one person.

4. Pension levels. Compensation set forth in the Pension Table pursuant to § 11.842(b)(2) of this section shall allow for reasonable increases in existing compensation levels; alternatively, banks may present as the highest compensation level in the Pension Table an amount equal to 120 percent of the amount of covered compensation of the most highly compensated individual named in the Cash Compensation Table pursuant to paragraph (a) of this section.

5. Definition of "normal retirement age." The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction because of age.

(c) *Other compensation.* Describe, stating amounts, any other compensation not covered by paragraphs (a) or (b) of this section that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this section unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the Cash Compensation Table for such person pursuant to paragraph (a) of this section, or

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this section and a statement to that effect is made.

Instructions to § 11.842(c)

1. Scope. Compensation to the disclosed pursuant to this paragraph may include, among other things: (a) personal benefits or; (b) securities or property that were paid or distributed other than pursuant to a plan. It does not, in any event, include cash, which is to be disclosed pursuant to either paragraph (a) or (b).

(2) Threshold. If the amount of other compensation for a named individual or the group exceeds the established thresholds, the entire amount of such other compensation must be disclosed pursuant to this paragraph.

3. Valuation. Compensation within paragraph (c) shall be valued on the basis of the bank's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors.* (1) *Standard arrangements.* Describe any standard arrangement, stating amounts, pursuant to which directors of the bank are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the bank was compensated during the bank's last fiscal year for services as a director, stating the amount paid and the name of the director.

(e) *Termination of employment and change of control arrangement.* Describe any compensatory plan or arrangement, including payments to be received from the bank with respect to any individual named in the Cash Compensation Table pursuant to paragraph (a) of this section for the latest or next preceding fiscal year if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the bank and its subsidiaries or from a change in control of the bank to or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

General Instructions to § 11.842

1. Transactions with third parties. This section includes transactions between the bank and a third party where the primary purpose of the transaction is to furnish compensation to any named individual or the group specified in paragraph (a) of this section. No information need be given in response to any paragraph of this section as to any such transaction if the transaction has been reported in response to § 11.844.

2. Exclusions. No information need be given pursuant to this section with respect to interest on deferred compensation if the rate of interest does not exceed prevailing market interest rates either: (1) At the time the interest is accrued or (2) at the time the plan pursuant to which the compensation is deferred was established. Similarly, dividends awarded on restricted stock need not be disclosed provided that the restricted stock is not of a particular class available only to certain employees on a discriminatory basis.

§ 11.843 Principal security holders.

(a) Furnish the following information as of the most recent practicable date:

(1) The name, business address and relationship to the bank of any individual, group, corporation or other entity who owns beneficially, directly or indirectly, more than 5 percent of the bank's outstanding voting securities. The following format should be used:

Name and address	Relationship with bank	Amount beneficially owned	Percent of class beneficially owned
(1)	(2)	(3)	(4)

A footnote to the table should disclose the nature of the beneficial ownership. A disclaimer of beneficial ownership can be added in the footnote with an appropriate explanation indicating the number of shares disclaimed.

Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount of shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in § 11.403.

(2) The amount of each outstanding class of equity securities of the bank beneficially owned, directly or

indirectly, by all directors and officers of the bank, as a group, without naming them. The following format should be used:

Title of class	Amount beneficially owned	Percent of class beneficially owned
(1)	(2)	(3)

A footnote to the table should disclose the nature of the beneficial ownership. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares such persons have the right to acquire beneficial ownership of, as specified in § 11.403.

(b) *Changes in control.* Describe any arrangements, known to the bank, including any pledge by any person of securities of the bank or any of its parents, which may at a subsequent date result in a change in control of the bank. A description is not required of ordinary default provisions contained in any charter, trust indentures or other governing instruments relating to securities of the bank.

Instructions

1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 11.403.

2. For the purposes of this section, beneficial ownership shall be determined in accordance with § 11.403. Include such additional subcolumns or any other appropriate explanation of Column (3) to show amounts for which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, and (4) shared investment power.

3. The bank shall be deemed to know the contents of any statement filed with the Comptroller of the Currency pursuant to Section 13(d) of the Exchange Act. When applicable, a bank may rely upon information set forth in such statements unless the bank knows or has reason to believe that such information is not complete or accurate, or that a settlement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

6. Subsection (b) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. If the holder(s) of voting securities reported pursuant to paragraph (a) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

(c) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person(s), the basis of the control, the date and a description of the transaction(s) which resulted in the change of control, the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control, and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted, provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate the identity of the bank so omitted and shall be filed separately with the Comptroller of the Currency. If the source of all or any part of the funds used to acquire control of the bank was a loan made by a bank as defined by Section 3(a)(6) of the Act, indicate whether there exists any agreement, arrangement, or understanding pursuant to which the bank maintains or would maintain a correspondent deposit account at such lending bank.

Instructions

1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangement or understandings among members of both the former and new control groups and their associates with respect to the election of directors and other matters should be described.

§ 11.844 Certain relationships and related transactions.

(a) *Transactions with management and others.* Describe briefly any transaction, or series of similar transactions, since the beginning of the bank's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the bank or any of its subsidiaries was or to be a party, in which the amount involved exceeds $60,000 and in which any of the following persons had, or is to have, a direct or indirect material interest, naming such person and indicating the person's relationship to the bank the nature of such person's interest in the transaction, the amount of such transaction and, where practicable, the amount of such person's interest in the transaction:

(1) Any director or executive officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is know to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any member of the immediate family of any of the foregoing persons.

Instructions to Paragraph (a) of § 11.844

1. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transactions are among the factors to be considered in determining the significance of the information to investors.

2. For purposes of paragraph (a), a person's immediate family shall include such person's spouse; parents; children; sibling; mothers and fathers-in-law; sons and daughters-in-law; and brothers and sisters-in-law.

3. No information need be given in answer to § 11.844(a) as to any transaction where:

A. The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of sevices as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or government authority.

B. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services.

C. The interest of the specified person arises solely from the ownership or securities of the bank and the specified person receives no extra or special benefits not shared on a pro rata basis.

There may be occasions when the interest of a specified person in a particular transaction or series of transactions is not a direct or indirect material interest. In such cases, information regarding such interest and transaction is not required to be disclosed in response to this paragraph.

4. In computing the amount involved in the transaction or series or similar transactions, include all periodic installments in the case of any lease or other agreement providing for periodic payments or installments.

5. This paragraph calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has position or relationship with a firm, corporation, or other

entity that engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this paragraph if:

A. The interest arises only (i) from such person's position as a director of another corporation or organization which is a party to the transaction; (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (a) (1) through (4) of this section, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership.

B. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in paragraphs (a) (1) through (4) of this section had an interest of less than ten percent; or

C. The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest, in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

6. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction will be indicated.

7. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, other than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the person making such determination.

8. Information shall be furnished in answer to this paragraph with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than ten percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

(b) *Certain business relationships.* Describe any of the following relationships regarding the bank, entities with which it has, does, or will conduct business, and directors or nominees for director that exist, or have existed during the bank's last fiscal year. Indicate the identity of the entity with which the bank has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation. Describe the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year.

(1) The nominee or director is, or during the last fiscal year has been, an executive officer of, or owns or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or to its subsidiaries for property or services in excess of five percent of (i) the bank's or other entity's consolidated gross revenue for its last full fiscal year or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) The nominee or director is, or during the last fiscal year has been, an executive officer of, or owns or during the last fiscal year has owned of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's or other entity's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) The nominee or director is, or during the last fiscal year has been an executive officer of, or owns or during the last fiscal year has owned, of record or beneficially in excess of ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) The nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm which the bank has retained during the last fiscal year or proposes to retain during the current fiscal year, provided, however, That the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for its last full fiscal year;

(5) The nominee or director is or during the last fiscal year has been a partner or executive officer of any investment banking firm which has performed services for the bank other than as a participating underwriter in a syndicate, during the last fiscal year or which the bank proposes to have perform services during the current year, provided, however, that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for its last fiscal year;

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraphs (b) (1) through (5).

Instructions to Paragraph (b) of § 11.644

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity other than the bank for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services, the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with the law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 11.102(ii) provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 11.102(ii).

3. In calculating indebtedness, the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to customary trade terms;

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 11.102(ii), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 11.102(ii).

4. No information called for by paragraph (b) need be given for any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

(c) *Indebtedness of management.* (1) For each of the following specified persons, herein called specified persons, who was indebted to the bank at any time since the beginning of the last full fiscal year to date state:

(i) The largest aggregate amount of indebtedness, including extensions of credit of overdrafts, endorsements or guarantees (in dollar amounts and as a percentage of total equity capital accounts at the time) outstanding at any time during such period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged thereon;

(A) Each director or officer of the bank;

(B) Each nominee for election as director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder");

(D) Any trust or other estate in which any of the persons specified in § 11.844(c)(1)(A) or § 11.844(c)(1)(B) has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity;

(E) Any member of the immediate family of any of the persons specified in paragraph (c)(1) (A) and (B). For purposes of this paragraph the members of a person's immediate family are those persons specified in Instruction 2 to § 11.844(a);

(F) Any corporation or organization (other than the bank or a majority-owned subsidiary of the bank) of which any of the persons specified in paragraph (c)(1) (A) or (B) is an executive officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities.

Instructions

1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this paragraph, unless any of the following are present:

A. The extensions of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

B. The extensions of credit were not made in the ordinary course of business.

C. Such extensions of credit have involved or pressently involve more than a normal risk of collectibility or other unfavorable features, including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

D. The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), (C), (D) or (E) of this paragraph exceeded 10% of the equity capital accounts of the bank at that time or $5 million whichever is less.

Note.—For purposes of this Instruction 2(D) only: (1) the information called for by paragraphs (d)(1) (iii) and (iv) of § 11.844 need not be furnished; (2) a principal security holder shall mean each security holder known to the bank to own of record or beneficially more then five (5) percent of any class of the bank's voting securities; and (3) the name of any associates need not be furnished.

3. If any extension of credit to the specified persons as a group exceeded 20% of the equity capital accounts of the bank at any time since the beginning of the last full fiscal year to date, disclose the maximum aggregate amount of credit to the group during the period, the aggregate amount as a percentage of the equity capital accounts of the bank and include a statement, to the extent applicable, that the bank has had, and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders and their associates, on substantially the same terms, including interest rates, collateral and repayment terms on extensions of credit, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or collectibility or present other unfavorable features.

4. If any indebtedness required to be described arose under section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

5. Notwithstanding the foregoing, any transaction or series of transactions resulting in indebtedness to the bank or its subsidiaries which may be considered material should be disclosed.

6. If the information called for by § 11.844(c) is being presented in Form F-1, 12 CFR 11.290, or an offering circular filed pursuant to 12 CFR Part 16, the information called for shall be presented for the last three full fiscal years in the Form F-1 and for the last two full fiscal years in the offering circular.

7. Where a specified person is an endorser or guarantor on any extension of credit made by the bank or its subsidiaries disclosure should be made to the extent otherwise applicable.

(d) *Transactions with organizers.* Banks that have been organized within the past five years and that are filing a registration statement on Form F-1 under the Exchange Act (12 CFR 11.290) shall:

(1) State the names of the organizers, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the Bank and the nature and amount of any assets, services or other consideration therefor received or to be received by the bank; and

(2) As to any assets acquired or to be acquired by the bank from a organizer, state the amount at which the assets were acquired or are to be acquired and the principal followed or to be followed in determining such amount and identify the persons making the determination and their relationship, if any, with the bank or any promoter. If the assets were acquired by the organizer within two years prior to their transfer to the bank, also state the cost thereof to the organizer.

Instruction to § 11.844

1. No information need be given in response to any paragraph of this section for any remuneration or other transaction reported in response to any other paragraph of this section or § 11.842 for any remuneration or transaction with respect to which information may be omitted pursuant to any other paragraph of §§ 11.844 or 11.842.

2. If the information called for by this section is being presented in a registration statement filed pursuant to the Exchange Act, the period for which the information called for shall be reported is the previous three years.

§ 11.861 Exhibits.

(a) *Exhibits and index required.* (1) Subject to § 11.732 regarding incorporation of exhibits by reference, the exhibits required by the exhibit table shall be filed as indicated as part of the registration statement or report.

(2) Each registration statement or report shall contain an exhibit index, which shall immediately precede the exhibits filed with such registration statement. For convenient reference, each exhibit shall be listed in the exhibit index according to the number assigned to it in the exhibit table. The exhibit index shall indicate, by handwritten, typed, printed, or other legible form of notation in the manually signed original registration statement or report, the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact Shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manualy signed registration statement shall list the page

in the filing where the exhibit index is located. For a decription of each of the exhibits included in the exhibit table, see paragraph (b) of this section.

EXHIBIT TABLE

	Form				
	F-1	F-2	F-3	F-4	F-10
(1) Plan of acquisition, reorganization, arrangement, liquidation or succession	x		x	x	
(2) Articles of incorporation and by-laws	x	x	x	x	
(3) Instruments defining the rights of securities holders, including indentures	x	x	x	x	x
(4) Voting trust agreement	x	x			
(5) Material contracts	x	x			
(6) Letter re change in certifying accountant			x		
(7) Published report regarding matters submitted to vote of security holders				x	

Instructions to the Exhibit Table 1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed.

2. The "X" designation indicates the documents which are required to be filed with each form even if filed previously with another document, provided, however, that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

(b) *Description of exhibits.* Set forth below is an identification of each document listed in the exhibit tables.

(1) *Plan of acquisition, reorganization, arrangement, liquidation or succession.* Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Comptroller.

(2) *Articles of incorporation and by-laws.* The articles of incorporation and by-laws of the bank or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to the articles or by-laws of the bank are filed, there shall also be filed a complete copy of the articles or by-laws as amended.

(3) *Securities and instruments defining the rights of securities holders, including indentures.* (i) Specimens or copies of all securities being registered hereunder, and copies of all constituent instruments defining the rights of holders of long-term debt of the bank and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(ii) There need not be filed, however, (A) any instrument with respect to long-term debt not being registered hereunder if the total amount of securities authorized thereunder does not exceed 25 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis, (B) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the bank of the securities being registered, or (C) copies of instruments evidencing scrip certificates for fractions of shares.

(4) *Voting trust agreement.* Any voting trust agreements and amendments thereto.

(5) *Material contracts.* (i) Copies of every material contract not made in the ordinary course of business that is to be performed in whole or in part at or after the filing of the registration statement or that was made not more than 2 years before such filing and performance of which has not been completed. Only those contracts to which the bank or a subsidiary is a party or has succeeded to a party by assumption or assignment, and in which the bank or such subsidiary has a beneficial interest, need be filed.

(ii) If the contract is such as ordinarily accompanies the kind of business conducted by the bank and its subsidiaries, it is made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(A) Directors, officers, organizers, voting trustees, or security holders named in the statement or report are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(B) It calls for the acquisition or sale of fixed assets for a consideration exceeding 10 percent of the value of all fixed assets of the bank and its subsidaries.

(C) It is a lease under which a significant part of the property described in the statement or report is held by the bank.

(D) The amount of the contract, or its importance to business of the bank and its subsidiaries, is material, and the terms and conditions are of a nature of which investors reasonably should be informed.

(iii) Any bonus or profit-sharing plan, contract, or arrangement shall be deemed material and shall be filed.

(iv) Copies of all amendments or modifications with respect to the foregoing material contracts.

(6) *Letter re change in certifying accountant.* A letter from the bank's former independent accountant regarding its concurrence or disagreement with the statements made by the bank in the current report concerning the resignation or dismissal as the bank's prinicipal accountant.

(7) *Letter re director resignation.* Any letter from a former director which sets forth a description of a disagreement with the bank that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(8) *Published report regarding matters submitted to vote of security holders.* Published reports containing all of the information called for by item 6, instruction 5, of § 11.392.

Miscellaneous

§ 11.871 Recent sales of securities.

Furnish the following information for all securities of the bank sold by the bank within the past three years, or presently proposed to be sold. Include securities issued in exchange for property, services, or other securities.

(a) Give the date of sale, title, and amount of securities sold.

(b) Give the names of the principal underwriters, if any. For any securities sold privately, name the persons or identify the class of persons to whom the securities were sold.

(c) For securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. For any securities sold other than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the bank.

(d) Give a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds have been or are to be used and the approximate amount to be used for each purpose.

Instructions

1. Information need not be set forth for notes, drafts, bills of exchange, or bank acceptances that mature not later than 12 months from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

§11.872 Indemnification of directors.

State the general effect of any charter provision, by law, contract, arrangement, or statute under which any director or officer of the bank is insured or indemnitied in any manner against any liability that he may incur in his capacity as such.

37. By consolidating existing requirements into a new Subpart I to read as follows:

Subpart I—Financial Statement Requirements

Verification of Financial Statements

Note.—The term "verified," as used with respect to financial statements, is defined in § 11.102(gg).

§ 11.900 General rules.

(a) Every verification of financial statements filed under this Part, shall be dated, signed manually, indicate the city and State where issued, and identify without detailed enumeration the financial statements covered by the verification.

(b) If the person or persons making a verification wish to take exception to or express qualifications about the verification, each exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate its effect on the financial statements to which it relates.

§ 11.901 Definitions.

For purposes of Subpart I, the following definitions shall apply:

(a) "Associate" of a person means:

(1) A corporation venture or organization of which such person is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or for which such person serves as trustee or in a similar capacity; and

(3) Any member of the immediate family of any of the foregoing persons.

(b) "Ordinary course of business" means those loans which were made on substantially the same terms, including interest rate and collateral, as those prevailing at the same time for comparable transactions with unrelated persons and did not involve more than the normal risk of collectibility or present other unfavorable features.

§ 11.902 Opinions to be expressed by principal accounting officer and internal auditor.

Every verification by a bank's principal accounting officer and internal auditor shall include their opinions with respect to:

(a) The financial statements covered by the verification and the accounting principles and practices reflected therein; and

(b) The consistency of the application of accounting principles, or any changes in such accounting principles which have a material effect on the financial statements.

§ 11.903 Examination by independent accountants.

(a) *Qualifications of independent accountants.* (1) The Comptroller of the Currency will not recognize any person as an independent public accountant who is not—

(i) Registered or licensed to practice as a public accountant by a regulatory authority of a State; and

(ii) In good standing with such authority as such an accountant.

(2) The Comptroller of the Currency will not recognize any certified public accountant or public accountant as independent of the bank or any of its affiliates who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his/her report, the firm or a member of the firm had, or was committed to acquire, a direct financial interest or any material indirect financial interest; or with which, during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as an organizer, underwriter, voting trustee, director, officer, or employee. A firm's independence will not be deemed to be affected adversely where a former officer or employee of the bank is employed by or becomes a partner, shareholder or other principal in the firm and such individual has been completely disassociated from the bank and its affiliates and does not participate in auditing financial statements of the bank or its affiliates covering any period of his/her employment by the bank. For the purposes of § 11.903(a)(2), the term "member" means all partners, shareholders, and other principals in the firm, any professional employee involved in providing any professional service to the bank, its parents, subsidiaries, or other affiliates, or any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

(3) In determining whether an accountant is, in fact, independent of a particular bank, the Comptroller of the Currency will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that bank or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Comproller of the Currency.

(b) *Representations as to the audit.* The independent accountant's report shall:

(1) State whether the audit was made in accordance with generally accepted auditing standards; and

(2) Designate any auditing procedures generally recognized as normal (or deemed necessary by the accountant under the circumstances of the particular case) that have been omitted, and the reasons for their omission. Nothing in this provision shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinioins required by paragraph (c) of this section.

(c) *Opinions to be expresed.* The independent accountant's report shall clearly state the opinion of the accountant with respect to:

(1) Financial statements covered by the report and the accounting principles and practices reflected therein; and

(2)(i) Consistency of the application of the accounting principles, or

(ii) Any changes in the accounting principles which have a material effect on the financial statements.

(d) *Exceptions.* If the accountant making the report considers that he/she must take exceptions or express qualifications with respect thereto, each exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate its effect on the financial statements to which it relates.

(e) *Examination of financial statements by more than one independent accountant.* If, with respect to the examination of the financial statements of any bank, the principal independent accountant relies on an audit made by another independent accountant of certain of the accounts of the bank or its subsidiaries, the report of the other accountant shall be filed (and the provisions of this section shall be applicable thereto); however, the report of such other accountant need not be filed (1) if no reference is made directly or indirectly to the other accountant's audit in the principal accountant's report, or (2) if, having referred to the other accountant's audit the principal accountant's report indicates an assumption of responsibility for such other accountant's audit. The report of such other accountant is not required to be sent with the annual report to security holders.

(f) *Technical requirements.* The accountant's report shall—

(1) Be dated;

(2) Be signed manually;

(3) Indicate the city and state where issued; and

(4) Identify without detailed enumeration the financial statements covered by the report.

General Instructions as to Financial Statements

§ 11.910 Verification requirement.

Financial statements prepared in accordance with this Subpart shall be verified unless otherwise indicated.

§ 11.911 Consolidated financial statements.

(a) There shall be filed for the bank and its majority-owned bank premises subsidiaries; subsidiaries operating under the provisions of sections 25 or 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations"); and significant subsidiaries, and in the case of paragraph (a)(2) below, the bank's predecessors:

(1) Consolidated balance sheets as of the end of each of the two most recent fiscal years; and

(2) Consolidated statements of income and consolidated statements of changes in financial position for each of the three fiscal years preceding the date of the most recent verified balance sheet being filed.

(b) If the filing, other than a filing on Form F–1 or F–2, is made within 45 days after the end of the bank's fiscal year and verified financial statements for the most recent fiscal year are not available, the filing shall include balance sheets as of the end of the two preceding fiscal years and an additional balance sheet as of an interim date at least as current as the end of the bank's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) is also applicable to filings, other than on Form F–1 or F–2, made after 45 days but within 90 days of the end of the bank's fiscal year, *Provided,* That the following conditions are met:

(1) The bank files annual, quarterly and other reports pursuant to section 13 of the Securities Exchange act of 1934 and all reports due have been filed;

(2) For the most recent fiscal year for which verified financial statements are not yet available, the bank reasonably and in good faith expects to report income, after taxes but before extraordinary items and the cumulative effect of a change in accounting principles; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year, the bank reported income, after taxes but before extraordinary items and the cumulative effect of a change in accounting principles.

(d) For filings made after 45 days, but within 90 days of the end of the bank's fiscal year when the conditions set forth in paragraph (c) of this section are not met, the filing must include the verified balance sheets required by paragraph (a) of this section.

(e) For filings made after 134 days subsequent to the end of the bank's most recent fiscal year, the filing shall also include a balance sheet as of an interim date within 135 days of the date of filing.

(f) Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Comptroller of the Currency on Form F–4.

(g) For the interim period between the date of the most recent verified balance sheet and the date of the most recent interim balance sheet filed, and for the corresponding period of the preceding fiscal year, the bank shall provide statements of income and changes in financial position.

(h) Any interim financial statements provided in accordance with the requirements of this section need not be verified or presented in greater detail than is required by § 11.917.

§ 11.912 Analysis of changes in equity capital.

(a) An analysis of the change in each caption of equity capital presented in the balance sheet shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be filed, with all significant reconciling items described by appropriate captions. State separately the adjustments to the balance at the beginning of the earliest period presented for items which were retroactively applied to periods prior to that period. With respect to any dividends, state the amount per share and in the aggregate for each class of shares.

(b) The analysis required by this section may conform generally to schedule RI–A of the Consolidated Report of Income (FFIEC 033) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

§ 11.913 Age of financial statements at mailing date of proxy or information statement.

(a) If the financial statements in a proxy statement or information statement (each of which is hereinafter referred to in this section as a "statement") are as of a date 135 days or more prior to the proposed mailing date of the statement, the financial statements shall be updated with a balance sheet as of an interim date within 135 days of such mailing date and with statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements need not be verified or be presented in greater detail than is required by § 11.917 and shall be at least as current as the most recent financial statements which have been filed with the Comptroller of the Currency on Form F–4.

(b) When the proposed mailing date of a statement falls between 45 and 90 days after the end of the fiscal year and the bank meets the conditions prescribed under § 11.911(c), the statement need not include financial statements more current than as of the end of the third quarter of the most recently completed fiscal year, unless the verified financial statements for such fiscal year are available. A bank not meeting the conditions prescribed under § 11.911(c) shall include in the statement verified financial statements for the most recent fiscal year.

(c) When a statement is filed near the end of a fiscal year and verified financial statements for that fiscal year are not included, the statement shall be updated with such verified financial statements, if they become available prior to the proposed mailing date of the statement.

§ 11.914 Instructions to income statement requirements.

(a) The statements required shall be prepared in compliance with the applicable requirements of this subpart.

(b) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled, as to total operating income and net income in the statement or in a note thereto, with the amounts previously reported; *provided, however,* That such reconciliations need not be made (1) if they have been made in filings with the Comptroller of the Currency in prior years or (2) the financial statements which are being retroactively adjusted have not previously been made public.

(c) Any non-verified statement for an interim period shall include a statement that all adjustments necessary for a fair presentation of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown, shall be furnished. Refer to § 11.917(b)(6) regarding estimated provisions for expenses which are normally determined at year-end.

§ 11.915 Financial statements of businesses acquired or to be acquired.

(a) *Financial statements required.* (1) The financial statements required by this section shall be for the business acquired, or to be acquired, by the bank.

(2) Financial statements prepared and verified in accordance with this Subpart shall be furnished for the periods specified in paragraph (b) of this section if:

(i) Consummation of a business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a business combination to be accounted for as a pooling of interests has occured or is probable.

(3) If consummation of more than one transaction has occurred or is probable, the required financial statements may be presented on a combined basis, if appropriate.

(4) This section shall not apply to any business which was totally held by the bank prior to consummation of the transaction.

(b) *Periods to be covered.* (1) If securities are being offered to the security holders of the business to be acquired, financial statements for the periods specified in § 11.911 shall be furnished. In all other cases, financial statements shall be filed for the period specified in this paragraph or such shorter periods as the bank has been in existence. The financial statements covering fiscal years shall be verified. The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in § 11.102(ii). The determination shall be made by comparing the most recent annual financial statements of each business acquired (or to be acquired) to the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition.

(i) If none of the conditions specified in § 11.102(ii) exceed the associated 10 percent tests, financial statements are not required. However, if the aggregate impact of the individually insignificant businesses acquired since the date of the most recent verified balance sheet filed for the bank exceeds 20 percent, financial statements covering at least the substantial majority of the businesses acquired, combined if appropriate, shall be furnished. Such financial statements shall be for at least the most recent fiscal year and any interim periods specified in § 11.911.

(ii) If any of the conditions exceed the associated 10 percent tests, but none exceed 20 percent, financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in § 11.911.

(iii) If any of the conditions exceed 20 percent, but none exceeds 40 percent, financial statements shall be furnished for at least the two most recent fiscal years and any interim periods specified in § 11.911.

(iv) If any of the conditions exceeds 40 percent, the full financial statements specified in § 11.911 shall be furnished.

(2) (i) Notwithstanding the requirements in paragraph (b)(1) of this section, separate financial statements of the acquired business need not be presented if the operating results of the acquired business have been reflected in the verified consolidated financial statements of the bank for a complete fiscal year, and such financial statements have already been filed, unless the acquired business is of such significance to the bank that omission of such financial statements would materially impair an investor's ability to understand the historical financial results of the bank. For example, if at the date of acquisition, the acquired business met at least one of the conditions in the definition of significant subsidiary in § 11.102(ii) at the 80 percent level, the income statements of the acquired business should be furnished for such periods prior to the purchase as may be necessary, when added to the time after the purchase for which verified income statements are filed, to cover the equivalent of the period specified in § 11.911.

(ii) A sepearate verified balance sheet of the acquired business is not required when the bank's most recent verified balance sheet required by § 11.911 is for a date after the date the acquisition was consummated.

§ 11.916 Separate statements of unconsolidated subsidiaries and other persons.

(a) There shall be filed such other verified financial statements, or such summarized financial information, with respect to unconsolidated subsidiaries and other persons as is material to a proper understanding of the financial position and results of operations of the total enterprise. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the bank. For purposes of a filing on Form F–2, if the fiscal year of any unconsolidated subsidiary or other person ends no more than 90 days before the filing date, or any time after the filing date, the financial statements required by this section may be filed as an amendment to the Form F–2 within 90 days after the end of such subsidiary's or other person's fiscal year. For purposes of this section and § 11.917, "other persons" includes 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

(b) Where finacial statements of two or more unconsolidated subsidiaries are required under paragraph (a), combined or consolidated statements of such subsidiaries may be filed subject to principles of inclusion and exclusion which clearly exhibit the financial position, changes in financial position and results of operation of the combined or consolidated group. Similarly, where financial statements of two or more other persons are required under paragraph (a) of this section, combined or consolidated statements of such other persons may be filed subject to the same principles of inclusion or exclusion referred to above.

§ 11.917 Interim financial statements.

(a) *Condensed statements.* Interim financial statements shall follow the general form and content of presentation prescribed by the other sections of this subpart with the following exceptions:

(1) Interim financial statements required by this subpart need only be provided for the bank and its consolidated subsidiaries and need not be verified. Separate statements of other entities which may otherwise be required by this subpart may be omitted.

(2) Summarized income statement information shall be given separately for each unconsolidated subsidiary and other person for which separate financial statements would otherwise be required for annual periods.

(3) Interim balance sheets shall include only major captions (*i.e.,* numbered captions) prescribed by § 11.931. Where any major balance sheet caption is less than 10 percent of total assets, and the amount in the caption has not increased or decreased by more than 25 percent since the end of the preceding fiscal year, the caption may be combined with others.

(4) Interim statements of income shall include only major captions prescribed by § 11.932. When any major income statement caption is less than 15 percent of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20 percent as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this test.

(5) The statement of changes in financial position may be abbreviated, starting with a single figure for funds provided by operations and showing other changes individually only when they exceed 10 percent of the average of funds provided by operations for the most recent three years.

(6) Notwithstanding the tests in paragraphs (a) (3), (4) and (5) of this section for combining Items § 11.922 applies, and *de minimis* amounts therefore need not be shown separately.

(7) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Banks may presume that users of the interim financial information have read or have access to the verified financial statements for the preceding fiscal year and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders or latest verified financial statements (such as a statement of significant accounting policies and practices), details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by § 11.926 may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year which have a material impact on the bank. Disclosures should encompass, for example, signficant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant new indebtedness or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding the above, where material contingencies exist, disclosure of such matters shall be provided, even if a signficant change since year end has not occurred.

(8) Detailed schedules otherwise required by this Subpart may be omitted for purposes of preparing interim financial statements.

(b) *Other instructions as to content.* The following additional instructions shall be applicable for purposes of preparing interim financial statements:

(1) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock. The basis of the earnings per share computation shall be stated together with the number of shares used in the computation. The bank shall file, as an exhibit, a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

(2) If, during the most recent intrim period presented, the bank or any of its consolidated subsidiaries entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate comments or comparisons between the separate and consolidated results.

(3) If a material business combination accounted for as a purchased has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of that period. This pro forma information shall at a minimum show:

(i) Total operating income;

(ii) Income before securities gains (losses), extraordinary items and the cumulative effect of accounting changes; and

(iii) Net income.

In addition, the per share amounts shall be shown for paragraphs (b)(3) (ii) and (iii) above.

(4) In addition to meeting the reporting requirements specified by existing standards for accounting changes, the bank shall state the date of any material accounting change and the reasons for making it. In addition, for filings on Form F-4, a letter from the persons who make a verification of the bank's financial statements shall be filed as an exhibit to the first Form F-4 filed subsequent to the date of an accounting change, indicating whether or not the change is to an alternative principle which in their judgment is preferable under the circumstances; except that no such letter need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(5) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with its effect upon net income—total and per share—and upon the balance of undivided profits for any prior period included. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of

such period, similar disclosure of the effect of the change shall be made.

(b) The interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. Furnish any material information necessary to make the information called for not misleading, such as a statement that the results for interim periods are not necessarily indicative of results to be expected for the year.

(c) *Periods to be covered.* The periods for which interim financial statements are to provided in filings other than on Form F-4 are prescribed in §§ 11.911 and 11.913. In filings on Form F-4, financial statements shall be provided as set forth below.

(1) An interim balance sheet as of the end of the most recent fiscal quarter and a balance sheet as of the end of the preceding fiscal year shall be provided. The balance sheet as of the end of the preceding fiscal year may be condensed to the same degree as the interim balance sheet provided. An interim balance sheet as of the end of the corresponding fiscal quarter of the preceding fiscal year need not be provided unless necessary for an understanding of the impact of seasonal fluctuations on the bank's financial condition.

(2) Interim statements of income shall be provided for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ended during the most recent fiscal quarter and for the corresponding preceding period.

(3) Interim statements of changes in financial position shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ending during the most recent fiscal quarter and for the corresponding preceding period.

(d) *Review by independent public accountant.* The interim financial information included in filings with the Comptroller of the Currency need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the bank may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.

(e) *Filing of other interim financial information in certain cases.* The Comptroller of the Currency may, upon the informal written request of the bank, and where consistent with the protection of investors, permit the omission of any of the interim financial information herein required or the filing in substitution therefor of appropriate information of comparable character. The Comptroller of the Currency may also require the filing of other information in addition to, or in substitution for, the interim information herein required in any case where such information is necessary or appropriate for an adequate presentation of the financial condition of any person for which interim financial information is required, or whose financial information is otherwise necessary for the protection of investors.

§ 11.918 Filing of other statements in certain cases.

The Comptroller of the Currency may, upon the request of the bank, and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Comptroller of the Currency may also require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§ 11.919 Schedules to be filed.

(a) The following schedules shall be filed with each balance sheet filed pursuant to this Subpart: Schedule I-Securities, Schedule II-Loans and Lease Financing Receivables; and Schedule III-Commitments and Contingencies.

(b) The following schedules shall be filed with each statement of income filed pursuant to this subpart: Schedule IV-Investments in, Income from Dividends, and Equity in Earnings or Losses of Related Parties; and Schedule V-Charge-Offs and Recoveries and Changes in Allowance for Possible Loan and Lease Losses.

(c) Refer to § 11.933 for requirements as to the format and content of the schedules specified by § 11.919 (a) and (b).

(d) If the information required in any schedule (including the notes thereto) can be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(e) The schedules shall be examined by the independent public accountant if the related financial statements are so examined.

Rules of General Application

§ 11.920 Principles of financial reporting.

(a) Financial statements prepared in accordance with the requirements of this Subpart and filed with the Comptroller of the Currency shall conform to generally accepted accounting principles and practices applicable to banks, except as provided in (d) below.

(b) Financial statements shall be prepared on the basis of accrual accounting whereby all revenues and expenses shall be recognized during the period earned or incurred, regardless of the time received or paid. Statements with respect to the first fiscal year that a bank reports on the accrual basis shall indicate clearly, by footnote or otherwise, the beginning-of-year adjustments that were necessary and their effect on prior financial statements filed under this part.

(c) The term "financial statements," as used in this Subpart, includes all required notes to financial statements and all required schedules.

(d) The Comptroller of the Currency may from time to time issue releases on accounting principles and practices to be used with respect to specific areas.

§ 11.921 Requirements as to form.

(a) Except as otherwise provided on the applicable form, financial statements shall be prepared in accordance with the requirements of Subpart I of this part.

(b) All money amounts required to be shown in financial statements may be expressed in whole dollars or thousands of dollars. If shown in thousands, an indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column.

(c) Negative amounts shall be shown in a manner which clearly distinguishes the negative attribute. When determining methods of display, consideration should be given to the limitations of the reproduction and microfilming processes.

§ 11.922 Items not material.

If the amount that would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth. The combination of insignificant amounts is permitted.

§ 11.923 Inapplicable captions and omission of unrequired or inapplicable financial statements.

No caption need be shown in any financial statement required by the rules set forth in this subpart as to which the items and conditions are not present. Financial statements not required or inapplicable because the required matter is not present need not be filed, but the statements omitted and the reasons for their omission shall be indicated.

§ 11.924 Additional information.

In addition to the information required with respect to any financial statement, further information shall be furnished as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

§ 11.925 Reacquired evidences of indebtedness.

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption.

§ 11.926 Foreign activities.

(a) *General requirement.* Separate disclosure concerning foreign activities shall be made for each period in which either (1) assets, (2) revenue, (3) income (loss) before income tax expense, or (4) net income (loss), each as associated with foreign activities, exceeded ten percent of the corresponding amount in the related financial statements.

(b) *Disclosures.* (1) Disclose total identifiable assets (net of valuation allowances) associated with foreign activities.

(2) For each period for which an income statement is filed, state the amount of revenue, income (loss) before taxes, and net income (loss) associated with foreign activities. Disclose significant estimates and assumptions (including those related to the cost of capital) used in allocating revenue and expenses to foreign activities; describe the nature and effects of any changes in such estimates and assumptions which have a significant impact on interperiod comparability.

(3) The information in paragraph (b) (1) and (2) of this section shall be presented separately for each significant geographic area and in the aggregate for all other geographic areas not deemed significant.

(c) *Definitions.* (1) "Foreign activities" include loans and other revenue producing assests and transactions in which the debtor or customer, whether an affiliated or unaffiliated person, is domiciled outside the United States.

(2) The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of § 11.932.

(3) A "significant geographic area" is one in which assets or revenue or income before income tax or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

§ 11.927 Leased assets and lease commitments.

The financial statement requirements in Statement of Financial Accounting Standards No. 13, "Accounting for Leases," shall be applied in financial statements filed for fiscal years ended after December 24, 1978 with regard to all leases except for companies where a problem, as defined, exists. The problem and its potential impact should be disclosed in the footnotes to the financial statements. For purposes of this section,"problem" is defined as: That situation where capitalization of capital leases, as defined in Statement of Financial Accounting Standards No. 13, would result in the violation or probable future violation, expected to occur prior to fiscal years beginning after December 31, 1980, of a restrictive clause in an existing loan indenture or other agreement.

§ 11.928 General notes to financial statements.

If applicable to the bank for which the financial statements are filed, disclosure specified in the following paragraphs shall be set forth in the appropriate statement or in appropriately captioned notes. The information shall be provided for each statement required to be filed, except that the information required by paragraphs (b), (c), (d), (e), (f) and (h) of this section shall be provided as of the date of the most recent fiscal year-end balance sheet being filed and for paragraph (g) as specified therein. When specific statements are presented separately, the pertinent note shall accompany such statements unless cross-referencing is appropriate.

(a) *Principles of consolidation or combination.* With regard to consolidated or combined financial statements, refer to § 11.929 for requirements for supplemental information in notes to the financial statements.

(b) *Assets subject to lien.* The amounts of assets mortgaged, pledged, or otherwise subject to a lien or security interest shall be designated and the obligation secured thereby, if any, shall be identified briefly.

(c) *Restrictions which limit the payment of dividends by the bank.* (1) Describe the most significant restrictions, other than as reported under paragraph (k) of this section, on the payment of dividends by the bank, indicating their sources, their pertinent provisions, and the amount of surplus and/or undivided profits or net income restricted or free or restrictions.

(2) Disclose the amount of consolidated retained earnings which represents undistributed earnings of 50 percent of less owned persons accounted for by the equity method.

(d) *Commitments and contigent liabilities.* Provide a brief statement as to contingent liabilities not reflected in the balance sheet.

(e) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue or securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated in the notes to the financial statements. If a default or breach exists, but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(f) *Significant changes in bonds, mortgages, and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed shall be stated.

(g) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1) Title of issue of securities called for by warrants or rights outstanding;

(2) Aggregate amount of securities called for by warrants or rights outstanding;

(3) Date from which warrants or rights or exercisable and expiration date;

(4) Price at which warrant or right is exercisable.

(h) *Income tax expense.* (1) Disclosure shall be made, in the income statement or a note thereto, of (i) the components of income (loss) before income tax expense (benefit) as either domestic or foreign and (ii) the components of income tax expense, including (A) taxes currently payable and (B) the net tax effects, as applicable, of timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences where the amount of each such tax effect exceeds 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rates; other differences may be combined).

Note.—Amounts applicable to United States Federal income taxes, to foreign income taxes, and to other income taxes shall be stated separately for each major component. Amounts applicable to foreign income (loss) and amounts applicable to foreign and other income taxes which are less than 5 percent of the total of income before taxes or the component of tax expense, respectively, need not be separately disclosed. For purposes of this rule, foreign income (loss) is defined as income (loss) generated from a bank's foreign operations, *i.e.*, operations that are located outside the United States.

(2) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes of the difference. If no individual reconciling item amounts to more than 5 percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate and the total difference to be reconciled is less than 5 percent of the computed amount, no reconciliation need be provided, unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than 5 percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(i) *Interest Cost.* Disclosure shall be provided for each period for which an income statement is presented of the amount of interest cost incurred and the respective amounts expensed or capitalized.

(j) *Material related party transactions which affect the financial statements.* (1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are materials, individually or in the aggregate. This disclosure should include the following:

(i) The nature of the relationship(s).

(ii) A description of the transactions (summarized when appropriate) for the periods for which an income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements.

(iii) The dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period.

(iv) Amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlements.

(v) Amount of investments in related parties.

(2) In cases where separate financial statements are presented for the bank, certain investees, or subsidiaries, separate disclosure shall be made in such statements of the amounts in the related consolidated financial statements which are (i) eliminated and (ii) not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

(3) Disclosure should be made on the face of the balance sheet, income statement, or (if applicable) statement of changes in financial position for any material related-party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the notes.

(k) *Preferred shares.* (1) Aggregate preferences on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet.

(2) Disclosure shall be made of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceeds the par or stated value of such shares.

§ 11.929 Principles of consolidation or combination.

(a) Consolidated statements generally present more meaningful information to the investor than unconsolidated statements. Except where good reason exists, consolidated statements of the bank and its majority-owned significant subsidiaries should be filed.

(b) Every majority-owned bank-premises subsidiary and every majority-owned subsidiary operating under the provisions of section 25 or section 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations") shall be consolidated with that of the reporting bank irrespective of whether such subsidiary is a significant subsidiary.

(c) If the financial statements of a subsidiary are as of a date or for periods different from those of the bank, such statements may be used as the basis for consolidation of the subsidiary only if the date of such statements is not more than 93 days from the date of the close of the close of the bank's fiscal year; the closing date of the subsidiary is specified; the necessity for the use of different closing dates is explained briefly; and any changes in the respective fiscal periods of the bank and the subsidiary made during the period of report are indicated clearly.

(d) A brief description of the principles followed in consolidating or combining the separate financial statements, including the principles followed in determining the inclusion or exclusion of (1) subsidiaries and (2) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(e) For each consolidated financial statement and for each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Comptroller of the Currency and such change has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If, during the periods of the report there have been any changes in the respective fiscal periods of the persons included, and such changes have a material effect on the financial statements, the changes and their manner of treatment shall be clearly indicated.

(f) In general, there shall be eliminated intercompany items and transactions between persons included in the (1) consolidated financial statements being filed and, as appropriate, (2) unrealized intercompany profits and losses on transactions between persons for which financial statements are being filed and persons the investment in which is presented in such statements by the equity method. If such eliminations are not made, a statement of the reasons and methods of treatment shall be made.

(g) Material related party transactions which affect the financial statements. (1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are material, individually or in the aggregate. This disclosure should include the following: (i) The nature of the relationship(s); (ii) a description of the transactions (summarized when appropriate) for the periods for which an income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements; (iii) the dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period; (iv) amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlements; and (v) amounts of investments in related parties.

(2) Disclosure should be made on the face of the balance sheet, income statement, or statement of changes in financial position, for any material related-party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the notes.

(3) With respect to the classification of current amounts due from or to related parties, consideration should be given to the intent and the financial position of such related parties in determining whether such amounts should be classified as current or long term.

Financial Statement Formats

§ 11.930 General instructions.

The formats in §§ 11.931 and 11.932 are intended to serve as guides for the preparation of the balance sheet and statement of income in accordance with the requirements of this Subpart. The formats for the statement of changes in financial position and (if applicable) the separate statement of changes in equity capital are not set forth herein. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Banks have the option of conforming their financial statement formats to the provisions of Article 9 of Regulation S–X of the Securities and Exchange Commission (17 CFR 210.9) in lieu of the format set forth herein. For detailed instructions as to the required content of general notes to the financial statements, refer to § 11.928.

§ 11.931 Balance sheet.

The balance sheet shall be prepared in accordance with the instructions for the preparation of the Consolidated Report of Condition (FFIEC 031, 032, 033, or 034 as applicable) ("Call Report") except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note.—See § 11.920 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the balance sheet required under this subpart.

Assets

1. *Cash and balances due from depository institutions.*

(a) State separately (1) interest-bearing balances in other banks and (2) noninterest-bearing balances and cash.

(b) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain certain average reserve balances) or compensating balance requirements should be disclosed.

2. *Securities* (a) Include securities held for investment only. Disclose the aggregate book value of investment securities; show on the balance sheet the aggregate market value at the balance sheet date. The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securites of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

3. *Federal funds sold and securities purchased under agreements to resell.*

These amounts should be presented gross and not netted against Federal funds purchased and securities sold under agreements to repurchase.

4. *Loans and lease financing receivables.* Disclose separately (1) total loans and lease financing receivables, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories: (1) Commercial, financial and agricultural, (2) Real estate-construction, (3) Real estate-mortgage, (4) Installment loans to individuals, (5) Lease financing receivables, (6) Foreign, (7) Other (State separately any other loan category regardless of relative size if necessary to reflect any unusual risks or uncertainties such as a substantial portion of total loans which are concentrated in one or a few industries or foreign countries).

(b) A series of categories other than those specified in (a) above may be used to present details of loans if considered a more appropriate presentation.

(c) The amount of foreign loans must be presented if the disclosures specified by § 11.926 are required.

(d) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(e)(1)(i) For each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the latest year) made by the bank or any of its subsidiaries to directors, executive officers, or principal holders of equity securities of the bank or any of its significant subsidiaries, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include the aggregate amount at the beginning of the period, new loans, repayments, and other changes. (Other changes, if significant, should be explained.)

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of equity capital at the balance sheet date.

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) above relates to loans which are nonaccrual, past due (over 90 days) or restructured, as those terms are used in the Call Report, so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(3) Notwithstanding the aggregate disclosure called for by (e)(1) above, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan.

5. *Assets held in trading accounts.* Include securities or any other investments held for trading purposes only.

6. *Premises and fixed assets.*

7. *Other real estate owned.* State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) for each period for which an income statement is required, a reconciliation of any valuation allowance account, including the balance at the beginning and end of the period, provision charged to income, and losses charged to the allowance.

8. *Investments in an indebtedness of unconsolidated subsidiaries and associated companies.*

9. *Customers' liability to the bank on acceptances outstanding.*

10. *Intangible assets.*

11. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds 30 percent of equity capital. The remaining assets may be shown as one amount.

(1) Accrued interest.

(2) Net deferred tax charges.

12. *Total assets.*

Liabilities

13. *Deposits.* (a) Disclose separately the amounts of noninterest bearing deposits and

interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by § 11.926 are required.

(b) State in a note the aggregate amount of (1) time certificates of deposit and (2) other time deposits in denominations of $100,000 or more, in domestic offices and, if § 11.926 applies, foreign offices.

14. *Federal funds purchased and securities sold under agreements to repurchase and other short term borrowings.*

(a) Disclose separately on the balance sheet or in a note, amounts payable for (1) federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper, and (3) other short term borrowings. Disclose any unused lines of credit for short-term financing.

(b) If the average balance outstanding during the period for any category was 30 percent or more of equity capital, provide the following information, with respect to each category, in a note:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end of period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

15. *Demand notes issued to the U.S. Treasury.*

16. *Other borrowed money*—See supplemental instruction to Item 14.

17. *Mortgage indebtedness and obligations under capitalized leases.*

(a) Report the amount of mortgages, liens, or other encumbrances on premises and fixed assets and on other real estate owned for which the bank or its consolidated subsidiaries are liable. If the bank is the lessee on capitalized lease property, include the bank's liability for capitalized lease payments. (See the Call Report Glossary entry for "lease accounting" for a discussion of accounting with bank as lessee.)

(b) State in a note material terms and conditions of each obligation, including (but not limited to): (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity or if maturing serially, a brief indication of the serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; and (6) the amount outstanding at the balance sheet date.

18. *Bank's liability on acceptances executed and outstanding.* Report the amount of liability that is represented by drafts and bills of exchange that have been accepted by the reporting bank, or by others for its account, and that are outstanding. See the Call Report glossary entry for "Bankers Acceptances" for further information.

19. *Notes and debentures subordinated to deposits.*

(a) Report the amount of outstanding notes and debentures (including mandatory convertible debt) that are subordinated to the deposits of the consolidated bank (see the Call Report Glossary entry for "Subordinated Notes and Debentures").

(b) State in a note the material terms and conditions of each obligation including, but not limited to: (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity, or if maturing serially, an indication of serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; (6) the amount outstanding at the balance sheet date; and (7) if convertible, the basis.

20. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 25 percent of the equity capital (except that amounts in excess of 5 percent of equity capital should be disclosed with respect to item (4)). The remaining items may be shown as one amount. (1) Income taxes payable, (2) Deferred income taxes, (3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method, (4) Indebtedness to directors, executive officers, and principal holders of equity securities of the bank or any of its signficant subsidiaries, (5) accounts payable and accrued expenses, (6) commitments and contingent liabilities, minority interest in consolidated subsidiaries.

21. *Total Liabilities.*

22. *Limited-life preferred stock.* Report the amount of any preferred stock that has a stated maturity date that can be redeemed at the option of the holder (excluding those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date). State on the face of the balance sheet the title of each issue, the carrying amount and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (b) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying amount is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (b) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate.

(b) State in a separate note captioned "Redeemable Preferred Stocks": (1) A general description of each issue, including its redemption features (e.g. sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event of a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five year following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed.

Equity Capital

23. *Perpetual preferred stock.* Report the amount of preferred stock that does not have a state maturity date or that cannot be redeemed at the option of the holder (including those issues of preferred stock that automatically convert into common stocks at a stated date). State on the face of the balance sheet, or if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. Show in a note or separate statement the changes in each class of preferred share reported herein for each period for which an income statement is required to be filed.

24. *Common stock.* Report the aggregate par or stated value of outstanding common stock. State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par value per share and the dollar amount thereof. Show also the dollar amount, if any, of each class of shares subscribed to but unissued, and show the deduction of subscriptions receivable therefrom. Disclose in the statement ot a note the changes in the aggregate par or stated value of outstanding common stock for each period for which an income statement is required.

25. *Surplus.*

26. *Undivided profits and capital reserves.* Report the amounts appropriated and unappropriated; restrictions which limit the payment of dividends; and the amount of undivided profits which represents undistributed earnings of 50 percent or less owned companies.

27. *Cumulative foreign currency translation adjustments.* (Not applicable to banks with domestic offices only).

28. *Total equity capital.*

29. *Total liabilities, limited-life preferred stock, and equity capital.*

§ 11.932 Statement of income.

The statement of income shall conform generally to the Consolidated Report of Income (FFIEC 031, 032, 033, or 034 as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note.—See § 11.920 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the statement of income required under this subpart.

1. *Interest income.* Include commitment and origination fees, late charges and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate. Disclose separately.

(a) Interest and fee income on loans.

(b) Income from lease financing receivables.

(c) Interest income on balance due from depository institutions.

(d) Interest and dividend income on securities—Disclose separately (1) taxable interest income, (2) nontaxable interest income, and (3) dividends. State in a note interest and dividend income on

(i) U.S. Treasury securities and U.S. Government agency and corporation obligations.

(ii) Securities issued by states and political subdivisions in the U.S.

(iii) Other domestic securities (debt and equity).

(iv) Foreign securities (debt and equity).

(e) Interest income from assets held in trading accounts.

(f) Interest income on federal funds sold and securities purchased under agreements to resell.

2. *Interest Expense.* Disclose separately.

(a) Interest on deposits.

(i) Interest on time certificates of deposit of $100,000 or more.

(ii) Interest on other deposits.

(b) Expense of federal funds purchased and securities sold under agreements to repurchase.

(c) Interest on demand notes issued to the U.S. Treasury and on other borrowed money.

(d) Interest on mortgage indebtedness and obligations under capitalized leases.

(e) Interest on notes and debentures subordinated to deposits.

3. *Net interest income.*

4. *Provision for loan and lease losses.*

5. *Net interest income after provision for loan and lease losses.*

6. *Noninterest income.* Disclose separately. separately.

(a) Income from fiduciary activities.

(b) Service charges on deposit accounts.

(c) Trading gains (losses) and fees from foreign exchange transactions.

(d) Other foreign transaction gains (losses).

(e) Gains (losses) and fees from assets held in trading accounts. Report the net gain or loss from the sale of assets reportable in § 11.931, item 5, "Assets held in trading accounts," other than those trading gains (losses) and fees relating to foreign exchange transactions reported in item 6(c) above.

(f) Other noninterest income. Report all operating income of the bank not required to be reported in item 1(a) through 1(f) and 6(a) through 6(e). State separately the dollar amount of any individual component of this item which exceeds 25 percent of the total.

7. *Gains (losses) on securities not held in trading accounts.* Report the net gain or loss. Disclose in a note the method used to determine the cost of investments sold and the related income taxes.

8. *Noninterest expense.*

(a) Salaries and employee benefits.

(b) Expenses of premises and fixed assets.

(c) Other noninterest expense. See item 6(f) for threshold for disclosure of individual components.

(d) Total noninterest expense.

(e) Amortization of goodwill.

(f) Minority interest in income of consolidated subsidiaries.

9. *Income (loss) before income taxes and extraordinary items and other adjustments.*

10. *Applicable income taxes (on item 8).*—See § 11.928(h).

11. *Income (loss) before extraordinary items and other adjustments.*

12. *Extraordinary items and other adjustments.*

(a) Extraordinary items and other adjustments, gross of income taxes.

(b) Applicable income taxes (on item 12(a)).

(c) Extraordinary items and other adjustments, net of income taxes.

13. *Net income (loss).* Report the sum of items 10 and 11(c).

14. *Earnings per share data.*

§ 11.933 Schedules.

Schedule I—Securities

Exclude assets held in trading accounts.

	Book value (Col. A)	Market value (Col. B)
1. U.S. Treasury securities		
2. U.S. Government agency and corporation obligations:		
a. All holdings of U.S. Government-issued or guaranteed certificates of participation in pools of residential mortgages		
b. All other		
3. Securities issued by states and political subdivisions in the U.S		
4. Other domestic securities (debt and equity):		
a. All holdings of private (i.e., nongovernment-issued or guaranteed) certificates of participation in pools of residential mortgages		
b. All other		
5. Foreign securities (debt and equity)		
6. Total (sum of items 1 through 5) (Total of column A must equal call report schedule RC, item 2)		
1 Pledged securities		

Schedule II—Loans and Lease Financing Receivables

Net of unearned income and before adjustment for allowance for loan and lease losses. Excluding assets held in trading accounts.

	Book value
1. Loans secured by real estate:	
a. Construction and land development	
b. Secured by farmland (including farm residential and other improvements)	
c. Secured by 1–4 family residential properties	
d. Secured by multifamily (5 or more) residential properties	
e. Secured by nonfarm nonresidential properties	
2. Loans to depository institutions:	
a. To commercial banks in the U.S.:	
(1) To U.S. branches and agencies of foreign banks	
(2) To other commercial banks in the U.S.	
b. To other depository institutions in the U.S.	
c. To banks to foreign countries:	
(1) To foreign branches of other U.S. banks	
(2) To other banks in foreign countries	
3. Loans to finance agricultural production and other loans to farmers	
4. Commercial and industrial loans:	
a. To U.S. addressees (domicile)	
b. To non-U.S. addressees (domicile)	
5. Acceptances of other banks	
6. Loans to individuals for household, family, and other personal expenditures (includes purchased paper)	
a. Credit cards and related plans	
b. Other	
7. Loans to foreign governments and official institutions (including foreign central banks)	
8. Obligations (other than securities) of states and political subdivisions in the U.S.:	
a. Nonrated industrial development obligations	
b. Other obligations (excluding securities)	
9. Other loans:	
a. Loans for purchasing or carrying securities (secured and unsecured)	
b. All other loans	
10. Lease financing receivables (net of unearned income)	
11. Less: Any unearned income on loans reflected in items 1–9 above)	
12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal call report schedule RC, item 4a)	
1. Commercial paper included in call report schedule RC–C	

Schedule III—Commitments and Contingencies

See Call Report, Instructions to Schedule RC–L.

	Dollar amounts
1. Commitments to make or purchase loans or to extend credit in the form of lease financing arrangements (report only the unused portions of commitments that are fee paid or otherwise legally binding)	
2. Futures and forward contracts (exclude contracts involving foreign exchange):	
a. Commitments to purchase	
b. Commitments to sell	
3. Standby contracts and other option arrangements:	
a. Obligations to purchase under option contracts	
b. Obligations to sell under option contracts	
4. Commitments to purchase foreign currencies and U.S. dollar exchange (spot and forward)	
5. Standby letters of credit:	
a. Standby letters of credit:	
(1) To U.S. addressees (domicile)	
(2) To non-U.S. addressees (domicile)	
b. Amount of standby letters of credit in items 5.a.(1) and 5.a.(2) conveyed to others through participations	
6. Commercial and similar letters of credit	
7. Participations in acceptances (as described in the instructions) conveyed to others by the reporting (accepting) bank	
8. Participations in acceptances (as described in the instructions) acquired by the reporting (nonaccepting) bank	
9. Securities borrowed	
10. Securities lent	
11. Other significant commitments and contingencies (list below each component of the item over 25 percent of call report schedule RC, item 28, "Total equity capital")	
1. Loans originated by the reporting bank that have been sold or participated to others during the calendar quarter ending with the report date (exclude the portions of such loans retained by the reporting bank; see instructions for other exclusions)	

Schedule IV—Investments in, Dividend Income From, and Equity in Earnings or Losses of Related Parties

Name of issuer[1]	Percent of voting stock owned Col. A	Total investment Col. B	Equity in underlying net assets at balance sheet date[2] Col. C	Amount of dividends[3] Col. D	Bank's proportionate part of earnings or loss for the period Col. E
Totals					

[1] Group separately securities of (a) subsidiaries consolidated, (b) subsidiaries not consolidated, (c) associated companies, and (d) other related parties. Show shares, bonds, notes and advances separately in each case.

[2] Equity shall include advances and other obligations reported in Column B to the extent recoverable.

[3] State as to any dividends other than cash the basis on which they have been reported as income. If any such dividend received has been credited to income in an amount differing from that charged to surplus or undivided profits by the disbursing subsidiary, state the amount of such difference and explain.

Schedule V—Charge-Offs and Recoveries and Changes in Allowance for Loan and Lease Losses

I. CHARGE-OFFS AND RECOVERIES ON LOANS AND LEASES[1]

	Charge-offs (col. A)	Recoveries (col. B)
1. Real estate loans		
2. Installment loans		
3. Credit cards and related plans		
4. Commercial (time and demand) and all other loans		
5. Lease financing receivables		
6. Total (sum of items 1 through 5)		
1. Loans to foreign governments and official institutions included in part I, items 1 through 4 above		
Item 2 is to be completed only by banks with agricultural loans exceeding five percent of total loans		
2. Agricultural loans included in part I, items 1 through 4 above		

[1] See Call Report, Instructions to Schedule R–B.

II. CHANGES IN ALLOWANCE FOR LOAN AND LEASE LOSSES

	Dollar amounts
1 Balance end of previous calendar year	
2. Recoveries (must equal part I, item 6, column B above)	
3. Charge-Offs (must equal part I, item 6, column A above)	
4 Provision for loan and lease losses (must equal call report schedule RI, item 4)	
5. Adjustments (see instructions for this schedule)	
6. Balance end of current period (sum of items 1 through 5) (must equal call report schedule RC, item 4b)	

Pro Forma Financial Information

§ 11.940 Presentation requirements.

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 11.911, a significiant business combination accounted for as a purchase has occurred;

(2) After the date of the most recent balance sheet filed pursuant to § 11.911, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;

(3) The bank is offering its securities to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied, directly or indirectly, to the purchase of a specific significant business;

(4) The disposition of a significiant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the bank's financial statements included in the filing; or

(5) Other transactions or events have occurred or are probable for which disclosure of pro forma financial information would be material to investors.

(b) A business combination or disposition of a business shall be considered significiant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary under conditions specified in § 11.102(ii); or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 1.102(ii).

(c) When consummation of more than one transaction has occurred or is probable during a fiscal year, the tests of significnace in paragraph (b) above shall be applied to the cumulative effect of those transactions. If the cumulative effect of the transactions is significant, pro forma financial information shall be presented.

(d) For purposes of this section, the term "business" should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

(i) Physical facilities,

(ii) Employee base,

(iii) Market distribution system,

(iv) Sales force,

(v) Customer base,

(vi) Operating rights,

(vii) Production techniques, or

(viii) Trade names.

(e) This section does not apply to transactions between a bank and its totally owned subsidiaries.

§ 11.941 Preparation requirements.

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statement should assist investors in analyzing the future prospects of the bank because they illustrate the possible scope of the change in the bank's historical financial position and results of operations caused by the transaction.

(b) *From and content.* (1) Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. Where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction, (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (*i.e.,* the numbered captions) prescribed by §§ 11.931 and 11.932. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the bank for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded, unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statement, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the Bank within the 12 months succeeding the transaction shall be disclosed separately. It should be clearly indicated that such charges or credits were not considered in the pro forma condensed income statement. If the transaction for which pro forma financial information is presented related to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustment which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the bank, and (iii) factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is required by § 11.911 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable, regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumption involved.

(7) Historical, primarly and fully diluted per share data based on continuing operations (or net income if the bank does not report discontinued operations, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes) for the bank, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed income statement together with the number of shares used to compute such per share data. For transaction involving the issuance of securities, the number of shares used in the calculation of the pro forma per shares outstanding during the period, adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations shall be made which give effect to the range of possible results.

Instructions

1. The historical statement of income used in the pro forma financial information shall not report operations of a segment that has been discontinued, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes. If the historical statement of income includes such items, only the appropriate portion of the statement (and appropriate captions) should be used in preparing pro forma results.

2. For a purchase transaction, pro forma adjustments for the income statement shall include amortization of any intangible asset, depreciation and other adjustments based on the allocated purchase price of net assets acquired. Disclose in a note the effect which the purchase adjustment will have on the reported results of operations for each of the next five years if such adjustments:

(a) Involve a significant write-down of the historical cost of the acquired assets to their fair value at the acquisition date; and

(b) Will have a significant effect on earnings in periods immediately following the acquisition which will be progressively eliminated over a relatively short period.

3. For a disposition transaction, the pro forma financial information shall begin with the historical financial statements of the bank and show the deletion of the buisness to be divested along with the necessary pro forma adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business to be divested, *e.g.,* advertising costs and personnel expenses.

4. When consummation of more than one transaction has occurred or is probable during a fiscal year, the pro forma financial information may be presented on a combined basis; however, in some circumstances, *e.g.,* where some transactions have been consummated and the others are probable, it may be more useful to present the pro forma financial information on a nonaggregated basis, even though some or all of the transactions would not meet the tests of significance individually. For combined presentations, a note should explain the various transactions and disclose the maximum variances in the pro forma financial information which would occur for any of the possible combinations. If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth.

5. Income tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed income statements are presented and should be reflected as a separate pro forma adjustment.

(c) *Periods to be presented.* (1) A pro forma condensed balance sheet as of the end of the most recent period for which a consolidated balance sheet of the bank is required by § 11.911 shall be filed, unless the transaction is already reflected in such balance sheet.

(2)(i) Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the end of the most recent fiscal year to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

(ii) For a business combination accounted for as a pooling of interests, the pro forma income statements (which are in effect a restatement of the historical income statements as if the combination had been consummated) shall be filed for all periods for which historical income statements of the bank are required.

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent fiscal year-end of any other entity involved in the transaction differs from the bank's most recent fiscal year-end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the bank's most recent fiscal year-end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma income statements (*e.g.*, an interim period that is included both as part of the fiscal year and the subsequent interim period)

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed income statement for the most recent twelve-month period, in addition to those required in paragraph (c)(2)(i) of this section, if the most recent twelve-month period is more representative of normal operations.

§ 11.942 Presentation of financial forecast.

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of income required by § 11.941(b)(1).

(1) The financial forecast shall cover a period of at least 12 months from the later of (i) the date of the most recent balance sheet included in the filing or (ii) the consummation date or estimated consummation date of the transaction.

(2) The forecasted statement of income shall be presented in the same degree of detail required by § 11.941(b)(3) for the pro forma condensed statements of income.

(3) Assumptions particularly relevant to the transaction and effects thereof should be clearly set forth.

(4) Historical condensed financial information of the bank and the business acquired or to be acquired, if any, shall be presented for at least a recent 12 month period in parallel columns with the financial forecast.

(b) Such financial forecast shall be presented in accordance with the guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma information required by generally accepted accounting principles.

Dated: June 5, 1984.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 84-24887 Filed 9-20-84; 8:45 am]

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Part IV

Department of Agriculture

Forest Service

National Environmental Policy Act; Revised Implementing Procedures; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed revision.

SUMMARY: The Forest Service proposes to revise Forest Service Manual (FSM) Chapter 1950 and Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures. The revisions emphasize the need to scope proposed actions to determine the extent of environmental analysis required. They also clarify the meaning of categorical exclusions and encourage their use where effects of proposed actions are not significant.

DATE: Comments must be received by November 20, 1984.

ADDRESS: Comments should be sent to R. Max Peterson, Chief (1950), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: David E. Ketcham, Director, Environmental Coordination, (202)447-4708.

SUPPLEMENTARY INFORMATION: FSM 1950 and FSH 1909. 15 contain Forest Service policy and procedural guidelines to implement the National Environmental Policy Act as required by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508). The present direction in FSM 1950 and FSH 1909. 15 was published in the **Federal Register** on November 19, 1981 (46 FR 56998, Part 3).

Consistent with agency directives policy, FSM 1950 is being revised to specify desired results, to minimize procedural detail, to rely as much as practicable on judgment of field professionals, and to permit discretion in achieving on-the-ground results appropriate to local situations and conditions. As proposed, FSM 1950 would contain only that direction needed by line and primary staff officers. The more detailed procedures for environmental analyses and documentation are set forth in the handbook, FSH 1909.15. This includes passages which clarify the Chief's and Secretary's NEPA responsibilities in situations where they have retained decision authority. In addition, portions of the handbook have been reorganized and edited for a more concise, logically ordered presentation. Minor changes are included to keep the handbook consistent with FSM 1950 manual revisions.

The Council on Environmental Quality's regulations and supplementary guidance emphasize that competent scoping is the key to successful environmental analysis and the right kind of documentation. Scoping is the appropriate stage to examine the characteristics of the proposed action and to identify potentially affected and interested agencies and publics, important issues, and a range of reasonable alternatives. For this reason the Forest Service plans to apply appropriate scoping procedures to all proposed actions under NEPA rather than only to those requiring environmental impact statements. This broader application of scoping sets the stage for an efficient, defensible analysis with relevant, concise documentation.

The proposed policy on categorical exclusions clarifies and broadens current direction by allowing responsible officials to exclude from preparation of environmental assessments and environmental impact statements proposed actions not having a significant effect on the human environment. It also expands the listing of typical classes of actions which might be excluded. This will permit agency officials to concentrate valuable time and other resources on proposed actions which will or might have significant effects.

The revision also applies the principles of adoption to existing internal environmental documents. Adoption of our own documents, including environmental assessments, is appropriate when another decisionmaker is responsible for an action that is within the same general area and that is adequately covered by the original document. Incorporation by reference in any environmental document may also be used to prevent duplication of effort.

In order to cover the full extent of the proposed revised procedures, both Forest Service Manual Chapter 1950 and the revised portions of Forest Service Handbook 1909.15 must be reviewed. This notice publishes the entire handbook [1] except for Chapter 60, References.

Comments on the proposed revision are invited and will be considered in the preparation of the final revision of the directives material.

Dated: September 14, 1984.

J. Lamar Beasley,

Deputy Chief.

TITLE 1900—PLANNING

Chapter 1950—Environmental Policy and Procedures

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1950.1—Authority.

1. *The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346).* NEPA encourages the Forest Service to carry out its programs in ways that will create and maintain conditions under which people and nature can exist in productive harmony and fulfill social, economic, and other needs of present and future generations.

NEPA also requires that a systematic, interdisciplinary approach be used in planning and decisonmaking for actions which may have an impact on the human environment. The act further requires detailed statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

2. Council on Environmetal Quality Regulations (40 CFR 1500–1508) for implementing the National Environmental Policy Act.

3. U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR 1b). USDA agencies are directed to develop and implement procedures for compliance with NEPA and seven categories of activities are excluded from documentation.

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[1] Certain handbook exhibits are not published in this proposed revision but will be published in the final revision.

The above authorities and supplementary Council on Environmental Quality guidance are printed in full in Chapter 60 of the Forest Service Environmental Procedures Handbook (FSH 1909.15).

1950.2—Objectives.

1. To consider carefully the environmental consequences of agency planning and decisionmaking.

2. To document environmental considerations adequately.

3. To conduct and document environmental analyses and subsequent decisions efficiently and cost-effectively.

1950.3—Policy.

1. Fully integrate NEPA requirements into agency planning and decisionmaking.

2. Use scoping to determine the depth and breadth of environmental analysis required for all proposed actions and consider whether the analysis needs to be documented.

3. Notify interested and affected publics of the availability of environmental documents (40 CFR 1506.6(b)), records of decision, and decision notices in a manner appropriate to the situation.

4. Make environmental documents, decision notices, and records of decision available to the public free of charge to the extent practicable (40 CFR 1506.6(f)).

5. Apply the concepts of tiering and adoption to both environmental impact statements and environmental assessments (40 CFR 1502.20, 1506.3).

1950.4—Responsibility.

1950.41—Washington Office.

1950.41a—Chief. The Chief is responsible for environmental analysis, documentation, and decisions relating to legislation and national policies, plans, programs, projects, and other actions of national importance where the Chief has reserved jurisdiction.

1950.41b—Director of Enviromenatl Coordination. The Director is the staff official responsible for the establishment of national standards, procedures, and coordination necessary to implement the National Environmental Policy Act for the Forest Service. This includes policies and procedures for conducting social analysis.

The Director also provides liason with the Council on Environmental Quality and consults with the Council on possible referrals (40 CFR 1504) and emergencies (1506.11).

1950.42—Regional Foresters, Station Directors, and Area Director. Regional Foresters, Station Directors, and the Area Director who are delegated responsibility for proposed actions are also responsible for related environmental analyses and documentation (FSM 1220 and 1230). Regional Foresters, Station Directors, and the Area Director may file environmental impact statements directly with the Environmental Protection Agency for actions within their authority. Refer matters requiring consultation with the Council on Environmental to the Washington Office Director of Environmental Coordination.

1950.43—Forest Supervisers, Project Leaders, and State and Private Forestry Field Representatives. Regional Foresters may redelegate responsibility for environmental analyses, documentation and related requirements, and decisions on proposed actions to Forest Supervisors, Project Leaders, and State and Private Forestry Field Representatives.

1950.6—Guidance. Detailed instructions for conducting and documenting environmental analyses and implementing and monitoring proposed actions are presented in FSH 1909.15.

1951—Scoping and Environmental Analysis.

1951.1—Scoping. Use scoping to investigate and identify relevant issues and the extent of analysis required for all proposed actions. Depending on the complexity and nature of the action, scoping varies from a brief consideration of a few pertinent factors in a proposed minor action to full compliance with Council on Environmental Quality scoping regulations for preparation of environmental impact statements.

1951.2—Environmental Analysis. Estimate the physical, biological, social, and economic effects of proposed agency actions on the quality of the human environment and determine if and what types of environmental documents are needed.

1952—Documentation.

1952.1—Environmental impact statements. Prepare environmental impact statements to document the analysis of major federal actions which will have a significant effect on the human environment (40 CFR 1502.3). These documents must meet all requirements of 40 CFR 1502. Actions requiring environmental impact statements include:

1. Proposals for legislation recommended by the Forest Service, when significant effects would result.

2. Regional guides and forest land and resource management plans.

3. Other major actions that would produce significant effects.

1952.2—Categorical exclusion from documentation (40 CFR 1508.4). USDA regulations exclude seven categories of actions from documentation (7 CFR 1b.3) Exclude from documentation in environmental assessments or environmental impact statements other actions which, based on past experience and environmental analysis, will have no significant effect on the human environment, individually or cumulatively.

The guide for exclusion is the significance of the effects of the proposed action, considering both context and intensity (40 CFR 1508.27). Actions which have short-term effects or limited magnitude are normally excluded.

In unusual circumstances, an action listed below may have a significant environmental effect and must be documented in an environmental assessment or environmental impact statement.

Typical classes of actions which might be categorically excluded are:

1. Administrative actions, such as:

a. Road and area closures.

b. Restrictions on travel or use, such as camping, boating, or hunting.

c. Posting signs and markers.

2. Construction of facilities or improvements, consistent with existing management direction, such as:

a. Auxiliary support buildings or other structures.

b. Cattle guards on or adjacent to existing roads.

c. Picnic areas, campgrounds, and nature trails.

d. Fences and gates.

e. Temporary low-standard roads.

3. Renovation, repair, and maintenance activities, not including aerial application of herbicides, to meet applicable standards, such as the following:

a. Buildings and grounds.

b. Roads and rights-of-way.

c. Trails.

d. Campgrounds.

e. Fences.

f. Fire breaks.

g. Range improvements.

4. Vegetation management activities, such as the following, which are limited in scale and duration, primarily using existing roads and facilities, and do not include aerial application of herbicides.

a. Timber stand improvement, including thinning and pruning.

b. Low-impact timber sales, including firewood and salvage.

c. Regeneration.

d. Routine use of prescribed burning.

e. Suppressing poisonous plants and noxious weeds.

5. Routine range management activities, such as:

a. Improving conditions for livestock by fencing, seeding, and installing water facilities.

b. Reissuing grazing permits in areas with established grazing programs.

c. Modifications of grazing permits designed to improve range conditions or improve the efficiency of grazing management that do not substantially change the character of the authorized use.

6. Issuance or modification of special use authorizations such as:

a. Gathering firewood and other plant material.

b. Siting beehives.

c. Outfitting and guiding.

d. Gates and short roads to provide access to private lands and developments.

e. Development of low-impact roads, rights-of-way, or easements.

f. Additional use or limited improvement of existing roads, rights-of-way, and easements.

7. Routine pest management projects not involving aerial application of pesticides, such as:

a. Suppressing nuisance pests; for example, mosquitos, wasps, flies, and chiggers in public use areas.

b. Protecting valuable trees in seed orchards and administrative sites.

8. Low-impact mineral and energy activities, such as:

a. Preliminary exploration; for example, vibroseis operations using existing roads.

b. Activities which do not require a plan of operations under 36 CFR 228.4 and cause no significant surface disturbance; for example, the search for, and occasional removal of, small mineral samples.

9. Fish and wildlife management activities, such as:

a. Habitat improvement.

b. Installing fish ladders.

c. Stocking native or established species.

10. Standard transfer of interests in land, such as:

a. Sales, exchanges, or interchanges pursuant to the Small Tracts Act.

b. Purchases.

c. Statutorily mandated exchanges.

Generally, the nature of a proposed action determines whether or not to document a categorical exclusion. In those situations where environmental assessments have historically been prepared for actions which now may be categorically excluded, a simple note or memorandum in the project file for one or more projects should be adequate. In other situations no documentation is necessary.

1952.3—Environmental Assessments. Prepare environmental assessments to document the analysis of actions that may significantly affect the quality of the human environment, unless the responsible official has decided to prepare an environmental impact statement.

Environmental assessments must meet the purpose and content requirements of 40 CFR 1508.9.

1953—Related documents.

1953.1—Notice of intent. Publish a notice of intent in the **Federal Register** as soon as practicable after the decision to prepare an environmental impact statement.

1953.2—Finding of no significant impact. See 40 CFR 1501.4(e), 1508.13.

1953.3—Decision notice. A decision notice states what the decision was, the reasons for the decision, and whether the decision is subject to appeal. Prepare a decision notice for actions documented in an environmental assessment. The responsible official must sign and date the decision notice on the date the decision is made.

1953.4—Record of decision. In cases where an environmental impact statement has been prepared, the responsible official shall prepare a record of decision. For actions subject to administrative appeal, the responsible official should sign and date the record of decision on the date it is transmitted with the final environmental impact statement to the Environmental Protection Agency and made available to the public (36 CFR 211.18).

For actions not subject to appeal the responsible official signs and dates the record of decision no sooner that 30 days after the notice of availability of the final environmental impact statement is published in the **Federal Register** (40 CFR 1506.10(b)).

1954—Emergency actions (40 CFR 1506.11). Emergencies may require immediate actions, without adequate environmental analysis and documentation, to prevent or reduce risk to public health or safety or serious resource loss. When consultation with the Council on Environmental Quality is anecessary, consult with the Washington Office Director of Environmental Coordination (FSM 1950.41b and 1950.42).

UNTIED STATES DEPARTMENT OF AGRICULTURE; FOREST SERVICE

[FSH 1909.15]

Environmental Policy and Procedures Handbook

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Zero Code

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07—Cross references.

This handbook provides procedural guidance for implementing the National Environmental Policy Act and the Council on Environmental Quality regulations (40 CFR 1500–1508) in Forest Service activities.

The handbook is organized to distinguish clearly between analyzing the effects of proposed actions and documenting the results of such analysis. Chapter 10 sets forth guidelines on the scoping process. Chapter 20 addresses the actual analysis process. Chapters 30 and 40 contain the the documentation requirements for environmental assessments and impact statements. Chapter 50 addresses implementing and monitoring requirements. Chapter 60 includes the text of pertinent laws, regulations, and memoranda and other reference materials needed to carry out the procedures in this handbook.

This handbook is to be used in conjunction with the broad direction set forth in FSM 1950, Environmental Policy and Procedures Manual.

02—Objectives

1. To incorporate environmental considerations into Forest Service planning and decisionmaking in a systematic and cost-effective manner.

2. To provide uniform guidelines and direction for conducting environmental analyses associated with preparing regional guides and forest land and resource management plans, and for carrying out other resource management activities or actions.

03—Policy

04—Responsibility

Line officers are responsible for ensuring that planning and decisionmaking incorporate the procedural direction in this handbook.

05—Definitions

1. *Categorical Exclusion.* (40 CFR 1508.4).

2. *Cooperating Agency.* (40 CFR 1508.5).

3. *Cumulative Impact.* (40 CFR 1508.7).

4. *Decision Notice.* A concise public record of the responsible official's decision when an environmental assessment is prepared.

5. *Effects.* (40 CFR 1508.8).

6. *Environmental Analysis.* An investigation of alternative actions and their predictable environmental effects, including physical, biological, economic, and social consequences and their interactions; short- and long-term effects; and direct, indirect, and cumulative effects. This process provides the information needed for identifying actions which may be categorically excluded, preparing environmental documents, and determining whether an environmental impact statement is required.

7. *Environmental.* (40 CFR 1508.9).

8. *Environmental Design Arts.* Disciplines that directly influence the biological and physical environment as a result of the design of projects of all kinds.

9. *Environmental Documents.* (40 CFR 1508.10).

10. *Environmental Impact Statement.* (40 CFR 1508.11).

11. *Environmentally Preferable Alternative.* The alternative (or alternatives) that best meets the goals of Section 101 of the National Environmental Policy Act (NEPA).

12. *Finding of No Significant Impact. (40 CFR 1508.13).*

13. *Flood Plains.* "Lowland and relatively flat areas adjoining inland and coastal water including, as a minimum, that area subject to a one-percent or greater chance of flooding in any given year" (E.O. 11988).

14. *Human Environement.* (40 CFR 1508.14).

15. *Irreversible.* Describes the loss of future options. Applies primarily to the effects of use of nonrenewable resources, such as minerals or cultural resources, or to those factors that are renewable only over long periods of time, such as soil productivity.

16. *Irretrievable.* Applies to the loss of production, harvest, or use of renewable natural resources. For example, some or all of the timber production from an area is lost irretrievably while an area is serving as a winter sports site. The production lost is irretrievable, but the action is not irreversible. If the use changes, it is possible to resume timber production.

17. *Issue.* A point of discussion, debate, or dispute.

18. *Jurisdiction by Law.* (40 CFR 1508.15).

19. *Lead Agency.* (40 CFR 1508.16).

20. *Legislation.* (40 CFR 1508.17).

21. *Major Federal Action.* (40 CFR 1508.18).

22. *Matter.* (40 CFR 1508.19).

23. *Mitigation.* (40 CFR 1508.20).

24. *NEPA Process.* (40 CFR 1508.21).

25. *Notice of Intent.* (40 CFR 1508.22).

26. *Opportunities.* Possible actions, measures, or treatments that may be taken to address goals and objectives.

27. *Proposal.* (40 CFR 1508.23).

28. *Record of Decision.* A concise public record of a responsible official's decision on actions for which an environmental impact statement was prepared. (40 CFR 1505.2).

29. *Referring Agency.* (40 CFR 1508.24).

30. *Scope.* (40 CFR 1508.25).

31. *Scoping.* Examining a proposed action and its possible effects; establishing the depth of analysis needed; and determining analysis procedures, data needs, and task assignments. Depending on the complexity and nature of the action, scoping varies from a brief consideration of a few pertinent factors in a proposed minor action to full compliance with CEQ direction for EIS preparation (40 CFR 1501.7). Elements of scoping may include exploring the nature of the action, determining the responsible official and cooperating agencies, initiating public involvement, identifying issues, selecting an interdisciplinery team, establishing analysis criteria, exploring possible alternatives and their environmental effects, and making task assignments.

32. *Special Expertise.* (40 CFR 1508.26).

33. *Significantly.* (40 CFR 1508.27).

34. *Substantive Comment.* A comment that provides factual information, professional opinion, or informed judgment germane to the decision under consideration.

35. *Tiering.* (40 CFR 1508.28).

36. *Wetlands.* "Areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction" (E.O. 11990).

06—Overview of process

Exhibits 1 and 2 illustrate the full NEPA process and indicate the normal sequence of actions that occur under various alternatives.

Exhibit 1—The NEPA Process

Exhibit 2—Environmental Analysis, Documentation, and Implementation

07—Cross references

Exhibit 1 provides a quick reference to the sources of direction governing the various activities required for environmental analysis.

Exhibit 1

Chapter 10—Scoping

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12.44—Determine other analysis needs.
13—Inform participants of results of scoping.

Scoping is the procedure by which the Forest Service determines the extent of analysis necessary for an informed decision on a proposed action.

Scoping may be viewed as a form of preliminary environmental analysis. However, for clarity, this handbook distinguishes scoping from the environmental analysis which results from the scoping process.

10.2—Objectives. The Forest Service conducts scoping:

1. To gather the information necessary to determine the degree of analysis required on a proposed action.

2. To help determine if and how the environmental analysis of proposed actions is to be documented.

3. To help determine whether analysis of a proposed action is categorically excluded from documentation.

4. To produce a work plan to guide environmental analysis and documentation, and to assign tasks.

5. To achieve effective use of time and money in conducting environmental analysis.

10.3—Policy. 1. Use scoping to investigate the nature of any proposed action and to determine how much analysis is necessary. The use of scoping is not confined to the preparation of environmental impact statements.

2. Ensure that an appropriate interdisciplinary approach is used in the scoping process (sec. 11.1, 11.7, and 12).

3. Conduct the scoping actions set forth in this chapter commensurate with the complexity of the proposed action. Not all scoping activities are required for all proposed actions.

10.4—Responsibility. The official responsible for a decision on a proposed action shall:

1. Ensure that an appropriate level of scoping occurs.

2. Determine whether an interdisciplinary (ID) team of specialists is needed for further scoping and environmental analysis.

3. Select the ID team and leader using the criteria set forth in section 12.1.

4. Review and approve the ID team's plan of work.

For actions where the Chief or the Secretary is the responsible official, the Washington Office Environmental Coordination Staff participates with appropriate field or other Washington Office Staffs and involves the appropriate Deputy Chief, the Chief, or the Assistant Secretary, as necessary. (FSM 1950.41.)

11—Conduct preliminary scoping

11.1—Organize scoping effort. The National Environmental Policy Act (NEPA) requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decisionmaking that affects the human environment (40 CFR 1501.2(a)). The interdisciplinary approach used in scoping varies according to the judgment of the responsible official.

Where it is necessary to resolve which agency shall be the lead agency for scoping and analysis, follow the direction in section 46.1.

11.11—Use flexible procedures. Because the nature and complexity of a proposed action determines the scope and intensity of the required analysis, there is no single required or prescribed technique. The responsible official may expand, omit, or combine the various steps of the process outlined in this handbook to aid in the understanding of the proposed action and in responding to the issues identified. In each analysis, use previously documented information to avoid duplication of efforts. If there is no longer a need to complete an analysis (because a project application is withdrawn or for other reasons), stop the analysis and inform the interested parties.

11.2—Determine the characteristics of the proposed action and nature of the decision. Important details include:

1. Sponsorship: who wants the action and why.

2. Technical details: phases of activity, equipment used, number and types of employees needed.

3. Time schedules: when the action would begin and end, the duration of major phases.

4. Preliminary estimates of possible environmental effects.

5. Preliminary estimates of public interest in the action and the likelihood of controversy.

6. Type of decision: whether to implement or permit the action, how to do it, or both.

7. Whether or not a categorical exclusion is appropriate.

11.3—Identify agencies involved and responsible officials. The responsible official for proposed actions on National Forest System lands usually is the agency employee who has the delegated authority to make the required decision(s). When an action is proposed, the responsible official must identify other Federal, State, or local agencies with an interest in the action and must estimate the extent of analysis required for an informed decision. The official may base this estimate on existing documentation, personal experience, and consultation with knowledgeable people. At this point, it would be helpful to decide whether an interdisciplinary team is necessary to carry out the remainder of the analysis process or whether a much less formal interdisciplinary approach would suffice (sec. 11.7).

11.4—Determine if existing documents address proposed action. Sometimes a responsible official may determine that an existing environmental document adequately addresses a proposed action. For such actions, the official may adopt the existing document (40 CFR 1506.3) if the official is satisfied with the accuracy and adequacy of the document. In this case, the responsible official must determine if the existing document needs to be recirculated to interested parties (40 CFR 1506.3(b) and (c)). The official must prepare a record of decision or a decision notice with a finding of no significant impact.

Case histories of similar actions may be reviewed for additional information on:

1. Geographic areas and resources that the action is likely to affect.

2. The scale, duration, and intensity of possible effects.

3. Applicable Federal and State laws and regulations.

4. Pertinent documents and other data sources.

Such information should help define the situation and narrow the scope of the environmental analysis. The environmental documents prepared for the proposed action may incorporate these sources by reference. (sections 32.2, Tiering; 32.3, Adoption; and 32.4, Incorporation by Reference.)

11.5—Look for relevant issues. Based on reviews of similar actions, knowledge of the area(s) involved, discussion with community leaders, and/or consultations with experts who are familiar with such actions and their effects, prepare and evaluate a preliminary list of issues and concerns. The goal of preparing this list is to provide an early look at potential issues and to sharpen the focus of the environmental analysis (40 CFR 1501.1(d)).

11.6—Assess public involvement needs and initiate public participation. Review the need for public participation in investigating the scope of the proposed action. Identify agency options for involving potentially interested and affected individuals, organizations, and governments in the analysis process (40 CFR 1506.6). Early in the analysis of proposed actions that may have important or controversial effects, it is essential to:

1. Provide adequate public information about the proposed action.

2. Analyze public reactions: that is, who expects to be affected and how.

3. Consider suggestions offered by those affected.

11.7—Identify skills needed for analysis. Proposals for minor actions, especially those which can be tiered from an existing environmental document (40 CFR 1508.28), may not require the selection of an interdisciplinary team (sec. 11). When there is a need for extensive environmental analysis, select an interdisciplinary team and support staff to provide the required range of skills. The disciplines and skills of this group must be appropriate to the scope of the action and the issues identified (40 CFR 1502.6). The team must have the professional capability to identify and evaluate the potential direct, indirect, and cumulative social, economic, physical, and biological effects of the proposed action and its alternatives (40 CFR 1507.2; 1508.25).

Interdisciplinary teams are not necessary for all analyses. A qualified individual may perform the necessary analysis for simple actions. However, the analysis still must include consideration of the physical, biological, economic, and social factors pertinent to the decision. Team review of the analysis also may satisfy the requirement for use of the interdisciplinary approach. Complex actions normally require a team of specialists representing the necessary disciplines.

11.71—Determine need for interdisciplinary team. Preparation of regional guides and forest plans requires the use of interdisciplinary (ID) teams (36 CFR 219.5) who are responsible for the environmental analysis (40 CFR 1502.6).

12—Proceed to more extensive scoping

The interdisciplinary approach to preparing an environmental impact statement often begins with the responsible official designating an ID team and leader. The team is responsible for conducting extensive scoping and the subsequent environmental analysis, subject to review and approval by the responsible official, and for preparing the environmental documents. A team can integrate its collective knowledge of the physical, biological, economic, and social sciences and environmental design arts into the analysis process. Interaction among team members often provides insight that otherwise would not be apparent.

12.1—Select interdisciplinary team. The responsible official must select the leader and other members of the interdisciplinary team and keep abreast of their work.

1. *Team Leader.* To ensure selection of an effective team leader, consider such factors as the individual's:

a. Degree of working knowledge of the NEPA process.

b. Ability to communicate effectively with team members and the responsible official.

c. Ability to facilitate interaction among team members and agreement on team goals.

d. Ability to organize and interpret information.

e. Past performance in observing time schedules.

2. *Team Members.* In selecting other team members, consider such factors as:

a. Variety of disciplines needed.

b. Manageable numbers of experts.

c. Ability to work as part of a team.

d. Ability to communicate to others information about the field the member represents.

e. Knowledge of and degree of experience in the environmental analysis process.

f. Ability to conceptualize and solve problems.

12.2—Convene interdisciplinary team and assign tasks. The interdisciplinary team continues the scoping at a more specialized level, revising as necessary the:

1. Estimates of the type, scale, and intensity of effects.
2. Public and agency issues, concerns, and opportunities.
3. Public participation procedures.

12.3—Expand public involvement as appropriate. The Council on Environmental Quality (CEQ) regulations require a diligent effort to involve the public in the National Environmental Policy Act process (40 CFR 1506.6). Options include:

1. Analyzing target groups. Identify all potentially affected groups and the nature of their concerns (FSH 1609.13).

2. Developing and implementing a public participation plan. When extensive public involvement is necessary, prepare a formal public participation plan (FSM 1626). The plan may provide for media announcements about the proposed action, public meetings, distribution and collection of public response forms, mailing of responses to inquiries, person-to-person communication, and other activities designed to meet public involvement objectives. Invited participants shall include potentially affected Federal, State, and local agencies, Indian tribes, interested individuals and groups, and others who might be affected by the action or its alternatives. The level of effort to inform and involve the public shall be consistent with the scale and importance of the proposed action and the degree of public interest.

The Public Participant Handbook, FSH 1609.13, provides guidance in identifying and involving the public, preparing public involvement plans, and using public responses in the analysis process.

12.4—Plan for orderly analysis. By focusing the analysis on important issues, scoping can improve the efficiency and effectiveness of the analysis substantially. The scoping process is the time to begin developing criteria, refining issues, and considering possible alternatives and their effects.

12.41—Formulate analysis criteria. Preliminary criteria and standards may be necessary to guide the process. Be sure to consider Forest Service objectives identified in legislation, policies, and plans. These criteria should be redefined as necessary during the course of the analysis.

Frequently, criteria are necessary to govern:

1. Selection of data, sources, and standards of accuracy.
2. Depth or detail of the analysis.
3. Development of a suitable range of alternatives.
4. Evaluation of alternatives.
5. Judgments of the significance of effects (40 CFR 1508.27).

12.42—Formulate issues. Formalize the preliminary lists of important issues, concerns, and opportunities and the analysis criteria, taking public and agency comments into account. These lists define the goals, priorities, and standards for the remainder of the analysis; further adjustments may be necessary as new insights emerge.

12.43—Explore alternatives. For the proposed action consider possible alternatives that are responsive to the issues. Discuss the feasibility and possible effects of these alternatives with potentially affected agencies and public parties. Decide which merit further study and which do not belong in the analysis.

12.44—Determine other analysis needs. During scoping, anticipate later analysis needs and make arrangements for meeting them. These might include:

1. Data needed and their availability.
2. Time and support services available. Time and page limits may be set (40 CFR 1501.7(b)).
3. Other agency needs this analysis can meet.
4. How other agencies might contribute to the analysis.
5. Responsibility for each task not yet assigned.
6. Additional staff support and travel funds needed.
7. The possibility of publishing a notice of intent (to prepare environmental impact statement).

13—Inform participants of results of scoping

After scoping, provide participants with prompt feedback summarizing both the scope and the important issues that the EA or EIS will analyze in depth.

Chapter 20—Environmental Analysis

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21—Continue public involvement as needed.
22—Collect data.
23—Interpret data.
24—Develop alternatives.
24.1—No action alternatives.

24.2—Other alternatives.
25—Estimate effects of each alternative.
26—Evaluate alternatives and identify preferred alternative.

Environmental analysis assesses the nature and significance of the physical, biological, social, and economic effects of a proposed action and its reasonable alternatives. Exhibit 2 in section 06 of zero code shows how environmental analysis relates to other procedures required under the National Environmental Policy Act and its implementing regulations.

21—Continue public involvement as needed

Consistent with the importance of the action, keep the public informed of the progress of the analysis. For major actions, this includes notifying the public that the action is under consideration and providing feedback on the results of scoping and other stages of the analysis. Monitor and consider the wishes and concerns of affected publics, and respond to individual requests for information.

22—Collect data

The type and amount of data to collect depend on the nature of the action, agency objectives, public concerns, opportunities, and the scope of anticipated effects. Focus data collection on the present and expected conditions of those physical, biological, economic, and social factors affecting or affected by the decision. Document assumptions, methods, and data sources used in the analysis. For environmental impact statements, when there are gaps in relevant information or scientific uncertainty see 40 CFR 1502.22(b).

23—Interpret data

Interpret data and information to provide an understanding of current and expected conditions relative to the objectives, issues, and concerns of the action. This may include supply and demand relationships and other relevant physical, biological, economic, and social factors.

24—Develop alternatives

The final array of alternatives must provide different responses to significant issues, objectives, concerns, and opportunities. Consider all reasonable alternatives (40 CFR 1502.14). "The phrase 'all reasonable alternatives' is firmly established in case-law interpreting the NEPA. The phase has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed." (sec. 65.11, ex. 1, 43 FR 55983).

24.1—No action alternatives

Objectives of legislation or higher order Forest Service plans, programs, and policies guide but do not necessarily limit the range of alternatives. Always consider the alternative of taking "no action." The "no action" alternative provides a baseline for estimating the effects of other alternatives. Two distinct interpretations of no action are often possible, depending on the nature of the proposal being evaluated. The first interpretation involves an action such as the updating of a land management plan where ongoing programs initiated under existing legislation, regulations, and budget allocations continue, even as new plans are developed. In these cases no action is "no change" from current management direction or the level of management intensity. Consequently, the responsible official would compare the projected impacts of alternative management schemes to those impacts projected for the existing plan.

The second interpretation of no action is that situation where no action or activity would take place, such as in Federal decisions on proposals for projects.

The extent of analysis necessary for no action depends in part on the extent to which previous analyses and decisions have defined the current program. Compare the environmental effects resulting from no action with the effects of permitting the proposed activity or an alternative activity to go forward. In each case the analysis of the no-action alternative can provide a benchmark, enabling decisionmakers to compare the magnitude of the environmental effects of alternative actions.

24.2—Other alternatives. Develop alternatives fully and impartially. Take care to ensure that the range of alternatives does not foreclosure prematurely any options that might protect, restore, and enhance the environment. Also consider reasonable alternatives outside the jurisdiction of the Forest Service (40 CFR 1502.14(c)). Explain the reasons for eliminating any alternatives originally considered in the analysis for an environmental impact statement (40 CFR 1502.14(a)). Modify alternatives or develop new alternatives as necessary as the analysis proceeds. Alternatives must specify any activities that may produce important environmental changes, and they must include management requirements, mitigation measures, and monitoring of environmental effects.

25—Estimate effects of each alternative

(40 CFR 1502.16 and 1508.8) Estimate the effects of implementing each alternative. Consider direct, indirect, and cumulative effects. For each alternative, effects may be expressed in terms of changes in the physical, biological, economic, and social components of the human environment. The changes should be those associated with implementation of alternatives. When possible, analyze these changes in terms of differences from the present conditions, magnitude, duration, and significance. See section 61 for a list of environmental factors that may change as a result of implementation of the various alternatives.

It is not always necessary to deal with all factors and components of the environment. Consider in detail those effects important to the objectives, issues, concerns, and opportunities identified during scoping.

If indicators of economic efficiency are appropriate, develop them in this step. Also consider unquantified environmental amenities and values.

Although separate analysis is not necessary, be sure to consider the following for all alternatives:

1. Effects on consumers, civil rights minority groups, and women. (Secretary's Memorandum 1662, Supplement 8; OMB Circular A–19, revised; and FSM 1730).
2. Effects on prime farmland, rangeland, and forest land.
3. Effects on wetlands and flood plains.
4. Effects on threatened and endangered species.
5. Effects on cultural resources.

If information about adverse impacts is essential to a reasoned choice among alternatives being considered in an environmental impact statement and is not known, see 40 CFR 1502.22. If the need for an environmental impact statement has not been established already (FSM 1952.1), consider the significance of effects in terms of context and intensity in order to determine if an environmental impact statement is necessary. See 40 CFR 1508.27, "Significantly," for definition of "context" and "intensity."

26—Evaluate alternatives and identify preferred alternative(s)

Using evaluation criteria, compare alternatives on the basis of their effects on the human environment. The evaluation, along with other relevant considerations, provides a basis for identifying the preferred alternative(s).

When the Chief or the Secretary is the responsible official, the Washington Office Environmental Coordination Staff Unit participates with appropriate field or Washington Office Staff Unit(s), appropriate Deputy Chief, Chief, or

Assistant Secretary to identify the preferred alternative(s).

Chapter 30—Environmental Assessments and Related Documents

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33.3—Publication of decision documents on actions of national concern.
33.4—Distribution of decision documents.

31—Documentation of analysis

(FSM 1952.) Document the analysis in an environmental assessment when the analysis indicates that the proposed action is not categorically excluded or to be presented in an environmental impact statement (40 CFR 1509.9). The length and detail of documentation in an environmental assessment may vary according to the complexity of the issues involved in the decision. (An environmental impact statement (EIS) is necessary if environmental analysis reveals that an action significantly affects the quality of the human environment. The responsible official shall publish a notice of intent to prepare an EIS.)

31.04—Responsibility. 1. When the Chief or Secretary is the responsible official, the appropriate field unit prepares documentation with assistance from Environmental Coordination and appropriate Washington Office staff units. Environmental Coordination arranges for processing of documents, and involves appropriate staff units.

2. Contractors or Applicants. (40 CFR 1506.5(b) and (c).) The responsible official may require applicants or contractors to conduct studies to determine the impact of the proposed action of the human environment and to provide data and documentation. When applicants or contractors prepare an environmental assessment, limit their activities to those shown in section 11.3, exhibit 1 for staff, specialists, and interdisciplinary teams participating in the National Environmental Policy Act process.

31.1—Content. (40 CFR 1508.9.) An environmental assessment may be prepared in any format useful to facilitate planning and decisionmaking as long as the requirements of 40 CFR 1508.9 are met. It must include brief discussion of:

1. the need for the proposal.
2. Alternatives as required by section 102(2)(e) of NEPA.
3. Environmental impacts of the proposed action and alternatives.
4. A listing of agencies and persons consulted.

31.2—Processing environmental documents (Reserved).

32—Other considerations in preparing assessments.

32.1—public involvement. See 40 CFR 1506.6

32.2—Tiering. (40 CFR 1502.20 and 1508.28.) Tiering is appropriate for environmental assessments. See section 45.1 for additional information about tiering.

32.3—Adoption. (40 CFR 1506.3.) Adoption is appropriate to environmental assessments as well as environmental impact statements.

32.4—Incorporation of other information by reference. Incorporation by reference is appropriate to EA's as well as EIS's (40 CFR 1502.21).

32.5—Supplements, corrections, and revisions. Supplement, correct, or revise environmental assessments as needed. (section 42.4.)

33—Documentation of decisions.

33.1—Decision notice. A decision notice may be a separate document or combined with a finding of no significant impact.

A decision notice also may be an integral part of brief environmental assessments. Exhibit 1 displays a document which combines a decision notice and a finding of no significant impact. Exhibit 2 contains a sample document which combines an environmental assessment, a decision notice, and a finding of no significant impact.

When the Chief or the Secretary is the responsible official, the appropriate field unit prepares the decison notice with assistance from the Washington Office Environmental Coordination Staff, as necessary. The Environmental Coordination Staff coordinates the review and signing of the decision notice, involving appropriate Washington Office staff units, Deputy Chiefs, the Chief, and the Secretary as necessary.

Exhibit 1—Decision Notice and Finding of No Significant Impact

Decision Notice and Finding of No Significant Impact

Lower Star River Recreation Project, Summit County, Colorado

USDA Forest Service, Star Mountain National Forest

An environmental assessment that discusses proposed recreation development on 150 acres of National Forest lands adjacent to six (6) miles of the Star River is available for public review in the Forest Service Office in Central, Colorado. This project does not involve the use of flood plains and wetlands adjacent to the Star River.

It is my decision to adopt Alternative B for the recreation development and management for these National Forest System lands. This alternative calls for moderate development and use, including two day-use picnic sites, 40 developed camping sites, and 12 miles of nature trails. Alternative B provides for recreation development and use with minimum environmental impacts near a metropolitan area with rapidly increasing demand for recreational opportunities.[1] Other alternatives considered were (A) the no-action alternative which would continue present management, (C) maximum development and use to acommodate 10,000 persons at one time, and (D) an alternative that would allow for day-use only. The assessment evaluates the site-specific design and construction necessary to implement some of the management decisions contained in the Star Mountain National Forest Plan.

The District Ranger is directed to modify Alternative B to initiate a monitoring program to determine annually the effects of project implementation upon the water quality of the Lower Star River. In addition, the use of the area shall be limited to not more than 5,000 persons at one time. Mitigation measures to avoid environmental harm are specified in the environmental assessment.

I have determined that this action would not significantly affect the quality of the human environment. Therefore, and environmental impact statement is not needed. This determination was made considering the following factors:

(a) construction of roads and day-use recreational facilities on 150 acres will have only a slight effect on the ecosystem;

(b) there are no irreversible resource commitments or irretrievable loss of timber production on lands used for roads and parking lots;

(c) there are no apparent adverse cumulative or secondary effects;

(d) the physical and biological effects are limited to the area of planned development and use; and

(e) no known threatened or endangered plants or animals are within the affected area.[2]

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[1] Decision.

[2] List relevant factors that were considered in determining that an environmental impact statement (EIS) was not required (finding of no significant impact).

Project implementation will begin immediately.

This decision is subject to appeal.

Date: September 1, 1984.

William E. Hill,

Forest Supervisor.

Exhibit 2—Environmental Assessment, Decision Notice, and Finding of No Significant Impact

33.2—Finding of no significant impact. (40 CFR 1508.13.) A finding of no significant impact may be included as an integral part of the decision notice or prepared as a separate document attached to the environmental assessment.

33.3—Publication of decision documents on actions of national concern. If the responsible official determines that an environmental impact statement is not necessary but that the effects of the action are of national concern, publish the decision notice and finding of no significant impact in the **Federal Register** and send them to State and areawide clearinghouses. (40 CFR 1506.6(b)(2).)

33.4—*Distribution of decision documents.* (40 CFR 1506.6(b).) In addition to the requirements of sections 33.3 and 51.2a, distribute environmental assessments, decision notices, and findings of no significant impact (FONSI) in a manner designed to inform any parties you believe they might interest or affect. For an action similar to one that normally requires an EIS, or for an action without precedent or for an action involving floodplains, make the decision notice and FONSI available for public review, including State and areawide clearinghouses, for 30 days.

Chapter 40—Environmental Impact Statements and Related Documents

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40.4—Responsibility.

1. When the Chief or the Secretary is the responsible official for an action requiring an environmental impact statement (EIS), the appropriate field unit prepares the necessary documents with assistance from the Washington Office Environmental Coordination Staff and other Washington Office staffs, as necessary.

2. The Washington Office Environmental Coordination Staff coordinates, reviews, and processes documents as necessary (such as filing EIS's with the Environmental Protection Agency (EPA)). When EIS's involve legislation, regulations, multiagency actions at the national level, and Service-wide policies, the Washington Office Staff files them with EPA.

41—Notices of Intent.

41.1—Preparation and filing of notices of intent. (40 CFR 1501.7 and 1508.22.) When it is necessary to prepare an environmental impact statement, prepare a notice of intent. In addition to meeting the requirements of 40 CFR 1508.22, the notice of intent must include the identity of the responsible official(s) and the estimated dates for filing the draft and final environmental impact statement (EIS). Publish the notice of intent in the **Federal Register** immediately after determining that an EIS is necessary except in cases where a lengthy period of time may exist between the determination of need and the actual preparation of the EIS (40 CFR 1507.3(e)). In addition to sending copies to the Office of the Federal Register, send one copy of the notice to the Washington Office (WO) Director of Environmental Coordination for use in reporting to the Department. The WO staff uses the notices of intent (exhibit 1) to develop reports of EIS's under preparation.

When the Chief or the Secretary is the resonsible official, the appropriate field unit prepares the notice of intent as soon as practicable after the decision to prepare an EIS (40 CFR 1501.7, 107.3(e), and FSM 1953.1). Send the notice of intent to the Washington Office of Environmental Coordination for review, processing, and submission to the Office of the Federal Register.

41.2—Federal Register document requirements. Follow these procedures in submitting a notice of intent to the Office of the Federal Register (OFR):

1. *Format.* a. Use 1½-inch left margin and 1-inch right, top, and bottom margins.

b. Double space the document. Indent 5 spaces for each paragraph. Do not include 4 spaces between paragraphs, as is typical in typing other double-space material.

c. If the notice is longer than one page, center page numbers one inch from the bottom of the page, beginning with page 2.

2. *Signature.* a. The signing official must sign the document over his or her own title. The OFR does not accept or publish documents signed by one official acting "for" another official. The signing official must have delegated authority to sign over his or her title.

b. For field issuances, the signing official must sign the original and each

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of the two copies. In the Washington Office, the signing official may sign only the original and the certifying officer certifies the two copies.

c. Stamp or type the signer's name and title below the signature line on all three copies.

d. Enter the date on all three copies.

3. *Copies.* a. The OFR no longer accepts white carbon tissues of originals. Make photocopies or prepare three originals.

b. Do not photocopy documents on both sides of the paper (back-to-back reproduction).

4. *Transmittal.* a. Send original and two copies to the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408.

b. To obtain confirmation of the publication date, attach a note to the notice document giving the name of the Forest Service official and the FTS telephone number the OFR staff is to call, or include this information in a transmittal letter. Exhibit 1 illustrates a properly prepared notice of intent.

Exhibit 1—Notice of Intent

3410–11 [1]

DEPARTMENT OF AGRICULTURE

Forest Service

CLOUD TOP MOUNTAIN ALPINE WINTER SPORTS SITE

Star Mountain National Forest Summit County, Colorado

Notice of Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the proposed Cloud Top Mountain Alpine Winter Sports Site on the Galaxy Ranger District.

The Star Mountain National Forest Land and Resource Management Plan has been prepared.[2] One of the management decisions in the Plan was to study further the development of an Alpine Winter Sports Site on Cloud Top Mountain.

A range of alternatives for this site will be considered. One of these will be nondevelopment of the site. Other alternatives will consider different sizes of development ranging from 4,000 to 10,000 persons at one time. Alternative locations for uphill facilities, ski runs, and support facilities will be considered.

Federal, State and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the potential winter sports site.

The Forest Supervisor will hold public meetings in his office at the Star Mountain National Forest, Central, Colorado at 1:00 p.m., Saturday, November 3, 1981, and at the Summit County Community Center in Central, Colorado, at 7:00 p.m., Wednesday, November 14, 1981.

William Watson, Regional Forester, Rocky Mountain Region, Denver, Colorado, is the responsible official.

The analysis is expected to take about 10 months. The draft environmental impact statement should be available for public review by (month/year). The final environmental impact statement is scheduled to be completed by (month/year).

Written comments and suggestions concerning the analysis should be sent to William Hill, Forest Supervisor, Star Mountain National Forest, Central, Colorado 80000 by December 15, 1984.

Questions about the proposed action and environmental impact statement should be directed to Phil Graham, Recreation Staff Officer, Star Mountain National Forest, phone 303–234–3800.

Dated: October 13, 1984.

William Watson,

Regional Forester.

41.3—Revision of notices of intent. The official responsible for preparation of the EIS must notify the appropriate Regional, Station, or Area Environmental Coordinator and the Washington Office Director of Environmental Coordination whenever information shown in the notice of intent changes. Significant changes may require publishing a revised notice of intent in the **Federal Register** (40 CFR 1501.7 and 1507.3(e)). A revised notice of intent shall reference any previously published document relevant to the action being proposed, including the filing of an EIS.

41.4—Cancellation notice. If, after publication of a notice of intent or distribution of a draft environmental impact statement, the project application is withdrawn or for some other reason a decision is no longer necessary, publish a cancellation notice (exhibit 1) in the **Federal Register** to terminate the process. The cancellation notice must refer to any previously published notice of intent or notice of availability of an environmental impact statement. Prepare and distribute a cancellation notice in the same manner as the notice of intent (section 41).

Exhibit 1—Cancellation Notice

3410–11 [1]

DEPARTMENT OF AGRICULTURE

Forest Service

NORTH SLOPE UNIT PLAN

Star Mountain National Forest Summit County, Colorado

Environmental Impact Statement Cancellation Notice

A draft environmental impact statement (EIS) for the North Slope Unit Plan was distributed to the public and filed with the Environmental Protection Agency on July 19, 1979.

I am terminating the EIS process because the Land and Resource Management Plan for the Star Mountain National Forest will consider the issues and concerns involved in the North Slope Unit Plan.

The Forest Plan will be developed according to the regulations for land and resource management plans for the National Forest System (36 CFR Part 219).

This Forest plan will be completed by December 31, 1983, in accordance with the schedule published in the **Federal Register** July 30, 1979, at 46 FR 47861.

Date: December 15, 1982.

William Watson,

Regional Forester.

When the Chief or the Secretary is the responsible official, the appropriate field unit prepares the notice as soon as there is a decision to terminate the process and sends the cancellation notice to the Washington Office of Environmental Coordination for review, processing, and submission to the Office of the Federal Register.

41.5—Lists of Environmental Impact Statements Under Preparation. Each Regional, Station, and Area Office and the Washington Office keeps a list of environmental impact statements (EIS's) under preparation. Lists are updated with the publication of new notices of intent, revised notices of intent, and cancellation notices (sections 41.1 to 41.4). Exhibit 1 illustrates the required format for a composite list of EIS's under preparation.

Exhibit 1—Composite List of EIS's Under Preparation

42—Environmental impact statements

42.1—General preparation standards.

42.11—Preparation. (FSM 1952.1).

42.12—Page limits. (40 CFR 1502.7).

42.13—Writing. (40 CFR 1502.8).

42.14—Legislative proposals. (40 CFR 1506.8 and FSM 1952.1).

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[1] This Forest Service billing code is shown on all **Federal Register** documents.

[2] Note that the document has only double space between paragraphs, not 3 lines.

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[1] This Forest Service billing code is shown on all **Federal Register** documents.

42.2—Content standards and recommended format. An environmental impact statement must contain the following:

1. *A cover sheet.* (40 CFR 1502.11) In addition to the Council on Environmental Quality requirements, the cover sheet must include the name and title of the responsible official and an abstract of the alternatives considered and the preferred alternative. See exhibit 1 for a cover sheet.

Exhibit 1—Cover Sheet

2. *A summary.* (40 CFR 1502.12).
3. *A table of contents.*
4. *A statement of purpose and need.* (40 CFR 1502.13).
5. *A description and comparison of alternatives, including the proposed action.* (40 CFR 1502.14).
6. *A description of the affected environment.* (40 CFR 1502.15).
7. *A statement of the environmental consequences of the actions.* (40 CFR 1502.16 and 1502.22) The environmental impact statement (EIS) may discuss physical, biological, economic, and social consequences in terms of quantified or relative changes in components of the affected environment. In addition, it is appropriate to discuss the expected outputs—in terms of goods, services, and uses—that will result from implementing each alternative. In presenting outputs, use standard service-wide terminology as set forth in FSH 1309.11, Management Information Handbook, and in FSM 1905. Use the Resources Program planning time periods where appropriate.
8. *A list of preparers.* (40 CFR 1502.17).
9. *A list of agencies, organizations, and persons to whom copies of the statement are sent.*
10. *An index.* (40 CFR 1502.10(j)) All EIS's must include indexes. The purpose of an index is to make the information in the EIS fully available to the reader without delay. See action 62 for preparation of indexes.
11. *An appendix.* (section 42.51b and 40 CFR 1502.18 and 1503.4).

42.21—Incorporation of relevant information by reference. (40 CFR 1502.21).

42.22—Acknowledgement of incomplete or unavailable information. (40 CFR 1502.22).

42.23—Documentation of cost-benefit analysis. (40 CFR 1502.23).

42.24—Identification of methodology and scientific accuracy. (40 CFR 1502.24).

42.25—Identification in draft environmental impact statements of permits necessary to implement proposal. (40 CFR 1502.25).

42.3—Filing, circulation, and availability of environmental impact statements.

42.31—Draft environmental impact statement. (40 CFR 1502.19). After preparation of a draft environmental impact statement (EIS):

1. Circulate a draft EIS to agencies and the public at the same time or before filing it with the Environmental Protection Agency (EPA) in Washington, D.C.
2. Conduct public participation sessions, as appropriate.
3. Review, analyze, evaluate, and respond to substantive comments on the draft EIS. Make copies of all comments available for public and in-Service review in the office of the responsible official or administrative unit affected by the policy, plan, program, or project. (40 CFR 1506.9.)

42.32—Final environmental impact statement. 1. File a final EIS with EPA along with all substantive comments, or summaries thereof, on the draft EIS. The Washington Office files statements involving legislation, regulations, multi-agency national actions, and Service-wide policies with EPA. If the Chief or the Secretary is the responsible official, other levels of the Forest Service may assist with the analysis and preparation of documents.

2. Circulate a final EIS to other agencies and the public at the same time or before filing it with EPA. (40 CFR 1506.10.) If the statement is unusually long, a summary may be circulated instead (40 CFR 1500.4(h)). A summary distributed as a separate document (40 CFR 1502.19) must:

a. State how other agencies and the public can obtain or review the complete EIS.

b. Have a cover sheet attached.

After filing the EIS with the EPA, ensure that a reasonable number of copies of the statement are available free of charge (40 CFR 1506.6(f) and FSM 1950.3(4)).

42.33—Environmental impact statements on Rare II "Further Planning" areas. If the EIS deals with plans or projects that allocate Rare II "Further Planning" Areas to nonwilderness uses, the responsible official may make public distribution of and file the final EIS with EPA in the same manner as for other EIS's. Send five additional copies of the final EIS to the Washington Office Director of Environmental Coordination for transmittal to congressional committees (section 42.34).

42.34—Distribution of environmental impact statements.

42.34a—Draft and final environmental impacts statements.

1. *When responsible official is a field officer.* When the responsible official is the Regional Forester, Station Director, Area Director, or Forest Supervisor, send:

a. Five copies to the Environmental Protection Agency (EPA) in Washington, D.C., for filing purposes. Include a transmittal letter. See exhibit 1 for a sample transmittal letter.

b. Fifteen copies to the Washington Office Director of Environmental Coordination.

c. Two copies of the letter transmitting copies to EPA to the Washington Office.

2. *When the Chief is the responsible official.* When the responsible official is the Chief, send:

a. Twenty copies to the Washington Office. (The Washington Office files five copies with EPA.) (Seventy copies of an EIS are needed for wild and scenic river studies.)

b. One original and two copies of the transmittal letter for transmittal to EPA to the Washington Office for the Chief's signature.

Exhibit 1—Transmittal Letter to EPA

42.34b—Lists. Responsible officials shall ensure the maintenance of lists of individuals, groups, organizations, and government agencies interested in reviewing Forest Service environmental impact statements (EIS's). Regions shall develop specific distribution lists.

Use State and areawide clearinghouses, by mutual agreement, for obtaining reviews of draft EIS's. The responsible official also may communicate directly with appropriate State or local officials or agencies if clearinghouses are unwilling or unable to handle this phase of the process. However, clearinghouses should always receive copies of EIS's.

42.34c—State and local agencies. Regions, Stations, and the Area office shall develop and maintain lists of State and local agencies as supplements to this section.

42.34d—Organizations. Regions, Stations, and the Area office shall develop and maintain lists of organizations as supplements to this section.

42.34e—Individuals. Regions, Stations and the Area office shall develop and maintain, as supplements to this section, lists of individuals who have expressed an interest in receiving Forest Service environmental impact statements (EIS's).

42.34f—Federal agencies. Following is the mandatory distribution list for all EIS's prepared by the Forest Service.

Environmental Protection Agency, Mail Code A-104, Room 2119, 401 M Street, SW., Washington, D.C. 20460
Environmental Protection Agency, Appropriate Regional Offices
Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Room 4256, Washington, D.C. 20240.

Always send copies of EIS's to these agencies by certified mail with a return receipt requested or by other methods of delivery where receipt can be verified. This method also may be desirable for other key recipients. Base any other distribution to Federal agencies on agency expertise and legal jurisdiction. Regions, Stations, and the Area shall use the above list and distribute other EIS's as appropriate. When the Forest Service requests review and comments from any of the above agencies, the addresses, phone numbers, and number of copies to send are shown in section 63.1.

42.4—Corrections, revisions, or supplements. The standards at 40 CFR 1502.9 govern revision of draft EIS's or supplementation of drafts and finals. Use errata sheets to make any necessary corrections to environmental impact statements (EIS's). Draft EIS's may be revised. Use supplements to modify EIS's if necessary. Prepare, circulate, and file supplements and revisions in the same manner as the document being modified.

42.5—Environmental impact statement review and comment procedures.

42.51—Comments on Forest Service environmental impact statements.

42.51a—Draft environmental impact statements. (40 CFR 1503.1(a)). The responsible officer may accept comments on a draft environmental impact statement (EIS) after the end of the review period and before filing the final EIS. If it is too late to incorporate the comments in the final EIS, the responsible official may respond to them on an individual basis.

42.5b—Final environmental impact statements. (40 CFR 1502.9(b) and 1503.4). When the responsible official determines that a summary of responses is appropriate, the summary must reflect accurately all substantive comments received on the draft EIS. Comments that are pertinent to the same subject may be aggregated by categories, but the summary must identify the comment specifically. Avoid a general summary. As a minimum, include in the appendix of a final EIS copies of all comments received on the draft EIS from Federal, State and local agencies, and elected officials. See exhibit 1 for one example of a summary of substantive comments.

Exhibit 1—Summary of Substantive Comment

42.52—Review of other agency environmental impact statements. (40 CFR 1503.2 and 1503.3) Because of special agency expertise, the Forest Service may be asked to review and comment on environmental impact statements (EIS's) prepared by other agencies. Unless otherwise assigned by the Chief, officials in the Washington Office shall review and comment on EIS's prepared on legislative proposals, Service-wide policies, regulations, or national program proposals. The Regional Forester or Area Director in whose Region or Area the proposal is located shall review all other draft and final EIS's prepared by other agencies. When an EIS affects both Regional and Area program responsibilities, the Regional Forester and Area Director shall determine who assumes the lead of responding.

The responsible field unit shall submit comments on other agency EIS's directly to the appropriate agency. Send one copy of the comments to the Washington Office Director of Environmental Coordination. When another agency's EIS involves more than one Region, the Washington Office Director of Environmental Coordination coordinates the responses.

42.52a—Referrals to Council on Environmental Quality. (40 CFR 1504) When Forest Service review of another agency's draft EIS concludes that the proposed action is environmentally unacceptable, follow the procedures set forth in 40 CFR 1504.3(a).

If after receipt of the final EIS the other agency has not remedied the situation or reached an agreement with the Forest Service, follow the procedures set forth in 40 CFR 1504.3 (b). Send the referral to the Washington Office Director of Environmental Coordination for processing. The Director, through the Office of the Secretary, submits the referral to the Council on Environmental Quality.

The 25-day time period is extremely short; therefore, begin referral documentation immediately after determination that the proposal is environmentally unacceptable.

In addition to the requirements of 40 CFR 1504.3(c), the responsible official shall include a letter to the Council on Environmental Quality requesting the referral for signature by the Secretary of Agriculture.

43—Other planning and preparation requirements for environmental impact statements

43.1—Interdisciplinary approach. See section 102(2)(A) of the National Environmental Policy Act (NEPA), as amended, 40 CFR 1502.6, and chapter 10 of this handbook.

43.2—Public involvement. (40 CFR 1501.7, 1502.25, and 1506.6).

43.3—Consultation requirements. (40 CFR 1502.25).

43.4—Elimination of duplication with state and local procedures. (40 CFR 1506.2).

43.5—Federal and federal-state agencies with legal jurisdiction or special expertise. (40 CFR 1503.1) See section 63 for Council on Environmental Quality's list of agencies with jurisdiction by law or special expertise. See section 63.1 for addresses and recommended document distribution.

43.6—Limitation on actions during the environmental analysis and documentation process. (40 CFR 1506.1).

44—Responsibilities when applicants and contractors are involved (40 CFR 1506.5). The responsible official may require project proponents to provide data and documentation for consideration and use in preparing an EIS. When a contractor is to prepare an environmental impact statement, limit the contractor's activities to those of interdisciplinary teams (section 06, exhibit 2) participating in the National Environmental Policy Act process. Applicants or contractors may be required to conduct studies to determine the impact of the proposed action on the human environment.

45—Tiering and adopting other environmental statements

45.1—Tiering. (40 CFR 1502.20). When the responsible official has selected an alternative other than the no-action alternative in a broad program document and a record of decision is prepared, the no-action alternative need not be described in detail in subsequent environmental documents tiered from the parent document unless new information has emerged. Tiered documents may refer to the evaluation of the no-action alternative in the broad program document. However, the decision on site-specific actions must consider the no-action alternative appropriate to that decision.

45.2—Adoption. Use adoption procedures, when applicable, to avoid duplication of effort (40 CFR 1506.3).

46—Determining lead and cooperating agencies

46.1—Lead agency. (40 CFR 1501.5, 1501.6, 1501.7, 1503.1, and 1506.16). If the Forest Service requests the Council on

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Environmental Quality to determine which Federal agency shall be the lead agency, send this request to the Director of Environmental Coordination in Washington, D.C., for processing. Where National Forest System lands are involved, the Forest Service shall exert a strong role in the preparation of environmental documents. If the Forest Service is the lead agency, at the earliest possible time, make a written request of all other Federal agencies with jurisdiction by law or special expertise to become cooperating agencies.

46.2—Cooperating with other agencies. (40 CFR 1501.6, 1503.2, 1503.3, and 1508.5). When National Forest System lands are involved and the Forest Service is not the lead agency, the reponsible official shall request that the Forest Service be a cooperating agency in scoping, environmental analysis, and documentation. There may be other circumstances where the Forest Service should be a cooperating agency, such as in the administration of the forestry incentives programs. The Forest Service may also be a cooperating agency when State and private forest lands are involved.

If the Forest Service is asked to be a cooperating agency and other program commitments preclude being able to become involved, the responsible official shall prepare a reply to this effect. Send copies of this reply to the Council on Environmental Quality and to the Director of Environmental Coordination in Washington, D.C.

47—Documentation of decisions

47.1—Decision. Follow the instructions in exhibit 1 on timing decision and other conditions that must be met for EIS's.

Exhibit 1.—Conditions for Decision

If an EIS is required for—	These conditions must be met prior to a decision—
I. Land and Resource Management Plans for units of the National Forest System. (36 CFR 219);	
A. That *do not* involve RARE II *Further Planning areas.*	1. 90 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
B. That *do* involve RARE II *Further Planning areas.*	1. 90 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
II. Plans (other than land management plans), programs or projects adversely affecting the existing wilderness character of RARE II *Further Planning* areas.	1. 60 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
III. Land management or other plans, programs or projects affecting areas involved in pending legislation for wilderness designation in which either the House or Senate has passed a bill to designate all or any portion of an inventoried roadless area for wilderness or for wilderness study.	1. 60 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
IV. Other plans, programs or projects subject to appeal (namely, 36 CFR 211.18).	1. 60 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared.
V. Actions not subject to appeal, for example, State and Private Forestry and Research programs, etc. (namely, 36 CFR 211.18).	1. 90 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA. 2. A final EIS that responds to comments on the draft EIS has been prepared. 3. 30 days have elapsed since the notice of availability of the draft EIS was published in the **Federal Register** by EPA.[1]

[1] The 90-day period and the 30-day period may run concurrently if a 45-day period for public comment is provided.

47.11—Record of decision. A record of decision is a separate, concise document stating the decision of the responsible official. It must include the official's name, location, administrative unit, and a statement indicating whether or not the decision is subject to appeal as well as meet the requirements of the Council on Environmental Quality regulations at 40 CFR 1505.2.

The responsible official signs the record of decision. For decisions subject to appeal, the date of decision is the date the official transmits the record of decision and the final environmental impact statement (EIS) to the Environmental Protection Agency (EPA) and makes it available to the public.

For decisions not subject to appeal, the responsible official must sign, date, and distribute the record of decision no sooner than 30 days after the notice of availability of the final EIS is published in the **Federal Register**. Distribute the record of decision in the same manner as the final EIS.

When an EIS identifies joint lead agencies, the responsible official from each agency shall sign and date the record of decision for those actions within the authority of each. Each responsible official may prepare separate records of decision. See exhibit 1 for a record of decision.

When the Chief or Secretary is the responsible official, the appropriate field unit prepares the record of decision with assistance from Environmental Coordination. Environmental Coordination coordinates the review and signing of the record of decision, involving the appropriate Washington Office staff unit, Deputy Chief, Chief, or Secretary as necessary.

Exhibit 1.—Record of Decision

47.11a—Distribution of records of decision. Distribute the record of decision to those who have received or have asked to receive the final environmental impact statement (EIS). In addition, the public may be notified as indicated in 40 CFR 1506.6.

Chapter 50—Implementation and Monitoring

Contents

51—Implementing decisions based on environmental assessments.
51.1—Implementation.
51.2—Limitations on implementation.
51.2a—Unprecedented actions or actions similar to those that normally require an environmental impact statement.
51.2b—Actions involving flood plains and wetlands.
52—Implementing decisions based on environmental impact statements.
53—Monitoring.

51—Implementing decisions based on environmental assessments

51.1—Implementation. Implementation of decisions that do not have effects of national concern (section 33.3) or involve flood plains and wetlands (section 51.2b) may take place immediately after signing and dating of the decision notice. Implementation includes responding to any requirements for mitigation or monitoring included in the environmental assessment or decision notice.

51.2—Limitations on implementation.

51.2a—Unprecedented actions or actions similar to those that normally require an environmental impact statement. (40 CFR 1501.4(e)(2).) When a proposed action is similar, or closely similar, to one that normally requires an environmental impact statement or when the nature of a proposed action is without precedent, do not implement the decision until after the decision notice and finding of no significant impact have been available for public review (including State and areawide clearinghouses) for 30 days.

At the end of the 30-day period consider public comment and implement the decision or publish a notice of intent to prepare an environmental impact statement.

51.2b—Actions involving flood plains and wetlands. For actions involving wetlands, do not implement decisions until 30 days after the decision notice has been signed and dated. This delay allows a reasonable period of public review as required by Executive Order 11988 and Executive Order 11990.

52—Implementing decisions based on environmental impact statements. Be sure that the conditions listed in exhibit 1 are met prior to implementation of the decision if an environmental impact statement is prepared. Commitments for mitigation efforts or monitoring activities included in the final EIS and record of decision also must be met.

Exhibit 1—Condition for Implementation

53—Monitoring

(40 CFR 1505.3) Implement and monitor action to ensure that:

1. Environmental safeguards are executed according to plan.

2. Necessary adjustments are made to achieve desired results.

Chapter 60—References

Contents

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This chapter contains various guidelines and reference documents essential to conducting environmental analysis or preparing environmental documents.

61—Environmental factors

The following list identifies environmental factors that may need to be considered in data and information collection during environmental analyses. Few, if any, analyses deal with all of these factors. The classification into physical, biological, economic, and social factors is arbitrary and is not mandatory.

61.1—Physical factors.

1. Location.
2. Geomorphic/physiographic.
a. Geologic hazards.
b. Unique land forms.
3. Climate.
4. Soils.
a. Productivity.
b. Capability.
c. Hazard.
(1) Erodibility.
(2) Mass failure.
5. Minerals and energy resources.
a. Locatable minerals.
b. Leasable minerals.
c. Energy sources.
6. Visual resources.
7. Cultural resources.
a. Archaeological.
b. Historical.
c. Architectural.
8. Wilderness Resources.
9. Wild and scenic rivers.
10. Water resources.
a. Water quality.
b. Streamflow regimes.
c. Flood plains.
d. Wetlands.
e. Ground water recharge areas.
11. Air quality.
12. Noise.
13. Fire.
a. Potential wildlife hazard.
b. Role of fire in the ecosystem.
14. Land use—including prime farm, timber and rangelands.
15. Infrastructure improvements.
a. Roads.
b. Trails.
c. Utility corridors and distribution.
d. Water collection, storage, and distribution.
e. Communications systems.
f. Solid waste collection and disposal.
g. Sanitary waste collection and disposal.
g. Sanitary waste collection and disposal.

61.2—Biological factors.

1. Vegetation.
a. Forest, including diversity of tree species.
b. Rangeland, including conditions and trends.
c. Other major vegetation types.
d. Threatened or endangered plants.
e. Research natural area (RNA) potentials.
f. Unique ecosystems (other than RNA's).
g. Diversity of plant communities.
h. Noxious weeds.
2. Wildlife.
a. Habitat.
b. Populations.
c. Threatened or endangered species.
d. Diversity of animal communities.
e. Animal damage control.
3. Fish.
a. Habitat.
b. Populations.
c. Threatened or endangered species, including State-listed species.
4. Recreation resources (usually a combination of physical and biological factors).
5. Insects and diseases.
6. Exotic organisms; for example, Russian thistle, Siberian ibex.

61.3—Economic factors.

1. Economic base.
2. Employment/unemployment.
3. Housing.
4. Land-use requirements.
5. Community service requirements.
6. Revenue base.
a. Local general government.
b. Special service districts.
7. Plans and programs of other agencies.
8. Income.
a. Sources.
b. Amounts.
c. Distribution.
9. Cost.
a. Financial analysis (who pays for what-when).

61.4—Social factors.

1. Population dynamics.
a. Size (growth, stability, decline).
b. Composition (age, sex, minority).
c. Distribution and density.
d. Mobility.
e. Displacement.
2. Social institutions.
a. Educational.
b. Family.
c. Economic.
d. Political.
e. Military.
f. Religious.
g. Recreation/leisure.
3. Special concerns.
a. Minority (civil rights).
b. Historic/archaeological/cultural.
4. Ways of life—defined by.

a. Subcultural variation.
b. Leisure and cultrural opportunities.
c. Personal security.
d. Stability and change.
e. Basic values.
f. Symbolic meaning.
g. Cohesion and conflict.
h. Community identity.
i. Health and safety.
5. Land tensure and land use.
6. Legal considerations.

62—Indexing standards

Preparation of an index is a specialized task. Consider using an experienced indexer, rather than the author of the environmental impact statement, to prepare the index. The author(s) can assist the indexer by suggesting subject headings and indicating their relative importance. Contacts with local publishing firms, colleges, and universities may be useful in locating experienced indexers.

62.1—Definitions. The following definitions are derived from a publication on British Standards for Indexing (B.S. 3700:1964) and are used in this section of the handbook.

1. *Index.* A systematic guide to the text, comprising a series of entries, with headings arranged in alphabetical order and with references to show where each indexed item appears in the text.

2. *Entry.* A unit of the index consisting of a heading and at least one reference to the location of the item in the text (or with a cross-reference to another entry to the index).

3. *Heading.* The word(s) or symbol(s) selected from, or based on, an item in the text—specifically the initial word or keyword, for example:

Fish
Fishing
Water

4. *Subheading.* The word(s) or symbol(s) under which references in a complex entry are located specifically, for example:

Fish (Heading)
Trout (subheading)
Rainbow (subheading)

5. *Reference.* The number of the section or page where the item is to be found in the body of the material indexed.

6. *Cross-reference.* A direction from one heading or subheading to another heading.

7. *"See" cross-references.* A direction from one heading (after which there are no references) to an alternative heading, under which there are all the relevant references to an item in the text. "See" cross-references usually are for synonyms, or near-synonysm for example, "Impacts, see Effects." Also use "see" cross-references when the "inverted form" of heading is used, for example: Human environment, see Environment, human.

8. *"See also" cross-references.* A direction from one heading (after which there are references) to any additional heading(s) under which further relevant references to an item, in the text are to be found, for example: "Environment, natural (see also Environment, physical) * * * "reference 89". (Note: the reference "89 above indicates that natural environment appears on page 89 of the text.

62.2—Length. The length of an index usually relates to the length of the text material. Because indexes are usually in smaller type than the text, it is customary to express the index length in number of lines and to compare this to the number of lines in the text. Generally, the length of the index shall be from 4 to 8 percent of the number of lines in the document. Example: If an environmental impact statement is 105 pages long (including the Appendix, but not the Table of Contents), and there are 45 lines per page, the total length of the document would be 4,725 lines. The index shall be from 190 to 390 lines in length.

62.3—Layout. Use of the "set out" system of subheadings is recommended. In this system, the heading is flush with the left margin of the list; indent subheadings three spaces, and indent subsubheadings another three spaces. Place comma after headings with subheadings, but not after headings without subheadings. Use a line of dots to connect the headings and the reference. Align references with the right margin of the list. Example:

```
EPA. See Environmental Protection Agency envi-
   ronment,
      Biological ................................... 32–39
      Economic...................................... 17–21
      Human ........................................     2
      Social ....................................... 21–23
Environmental Protection Agency ................. 2, 7, 16
```

If the list of references is too large to fit on one line, list only the first reference on the line which the heading and subsequent references on subsequent lines, for example,

```
Environmental Protection Agency...2, 7, 16,
                             93–95, 101
```

A long series of references is discouraging to readers. If possible, limit the number of references to five for each entry. This can be done, in most cases, by increased use of subheadings.

Use of smaller than normal size type is customary for indexes. Because most environmental impact statements are printed from camera-ready material typed on a standard typewriter, it is possible to create smaller-than-normal size type only by reducing the page of copy to a smaller size before printing. An index originally typed on 12" x " 15¾" paper, with double-size margins, in two columns of material, can be reduced to 8" x 10½" and still be legible.

62.4—Conventional practices. These are generally accepted indexing standards:

1. Leave a blank line between the last heading in one letter of the alphabet and the first heading in the next letter.

2. Use upper and lower case headings as appropriate.

3. The table of contents of the environmental impact statement (EIS) is not subject to indexing.

4. Index footnotes, the bibliography, and the appendix.

5. If paragraphs are numbered, it is permissible to use paragraph numbers as well as the page numbers for references. Place paragraph numbers in parentheses immediately following the heading, for example, Environment, man's (3.25) . . . 36. The introduction to the index should explain that this is the practice followed. If pages are not numbered, references shall be to numbered paragraphs of the EIS. Clearly state this practice at the bottom of each page of the index.

6. Index compound headings of two or more words under the words that are likely to be most useful to prospective readers and that are still consistent with the general construction of the index.

7. Use a noun as the heading, or subheading, rather than an adjective, when choice is available, for example, "criteria, evaluation" rather than "evaluation criteria." If, as in the example above, the term is a subject-matter heading in the EIS, or is otherwise likely to be searched for in the index, use a "see" reference after the heading that begins with the adjective, for example, Evaluation Criteria, see criteria, evaluation."

8. When possible, avoid having separate entries under both the singular and plural forms of a noun. Use "(s)," "(ies)" after the entry and list all appropriate references, for example:

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Index(es)........................................72–91
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9. References:

a. List references in page order, for example, 7, 23, 29, 56.

b. It is permissible, but not necessary, to emphasize "more important" references by underlining them in typed copy, or by printing them in boldface type. The introduction to the index should explain the use of this practice.

c. When there is scattered mention of the subject on several pages, the reference shall list each of the pages, for example, 63, 64, 67, 72.

d. When several pages deal continuously with the subject, the reference shall be to the first and last pages, for example 63–72.

e. When the reference is to a subject that starts on one page and continues to the next page, list both pages for example 63–4.

f. When listing pages, repeat 10's and 100's only when there is any possibility of misunderstanding, for example:

Use 121–6 rather than 121–26, 13–17 rather than 13–7, 97–101 rather than 97–1, or 97–01, 125–31 rather than 123–131

10. Use letter-by-letter alphabetization, particularly for compound word headings; that is, treat all letters in the heading as if they were in a single word. For example, treat Red Cross as if it were spelled redcross. If in doubt about the order of listing of entries, check a current dictionary and use the system used there.

11. Proper names require special attention:

a. Do not invert a proper name just so that the noun is usable as the heading, for example "Desolation Wilderness" is preferable to "Wilderness, Desolation"; or to "Wilderness (Desolation)"; "Sierra Club" is preferable to "Club, Sierra"; "Western Timber Association" is preferable to "Association, Western Timber."

b. For names of people, list the last name before the name and initials, for example: "Peterson, R. Max" or "Peterson, R. M.," rather than "R. Max Peterson" or "R. M. Peterson."

c. If in doubt about the listing of names of people, firms, or organizations, consult the telephone directory for their listing.

12. If initials are used in the text, the index heading also shall use the initials with a "see" reference to the full name, for example:

"EPA, see Environmental Protection Agency"

13. List headings consisting of initials only at the head of the letter division of the index, for example:

EPA, see Environmental Protection Agency environment,	
Biological	32–39
Economic	17–21
Social	21–3
Environmental Protection Agency	2, 7, 16

14. When entries start on one page and continue on the next page, (or start in one column and continue in the next column) repeat the heading followed by "(continued)."

15. When referencing footnotes, follow the page reference with a small "n" for example, 117n.

62.5—Methodology. The following suggestions may be useful when specialist indexing services are not used.

1. Index from final typed copy, not from earlier drafts.

2. Use 3" × 5" cards with a separate entry on each card. Keep the cards arranged alphabetically in a file box.

3. Plan on at least three readings of the text.

4. Determine the approximate length of the index and after completing about one-fourth of the text (on the first review), check the number of entries to see if the length will be approximately that which is desired.

5. Check references carefully during the last review of the text. Check to be sure that a series of "see" references does not take the reader back to the original reference.

6. Carefully proofread the final typed index against the original text.

62.6—References. The following reference may be useful for further understanding of the practice of indexing: Council of Biology Editors, 1983 "CBE Style Manual" Fifth Edition, published by the Council of Biology Editors, Inc. It is possible to purchase the CBE Style Manual by contacting the Special Publication Department of the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, Maryland 20814, (301) 530–7158. They require prepayment.

Revised Table of Contents—FSM 1950

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1955—Emergency actions.
1956—Implementing and monitoring [Are you sure you don't have something to say on these important stages?].

[FR Doc. 84–24980 Filed 9–20–84; 8:45 am]

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Part V

Department of Education

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34 CFR Part 628

Endowment Grant Program; Final Rules

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DEPARTMENT OF EDUCATION

34 CFR Part 628

Endowment Grant Program

AGENCY: Department of Education.

ACTION: Final regulations with comments invited; amendments.

SUMMARY: The Secretary issues final regulations amending regulations for the Endowment Grant Program. The Secretary takes this action in order to correct the text of previously published regulations. The regulations are necessary to implement the Endowment Grant Program, authorized by section 333 of Title III of the Higher Education Act of 1965 (HEA), as amended by the Challenge Grant Amendments of 1983, Pub. L. 98–95.

DATES: *Effective Date:* These regulations take effect either November 5, 1984 or later if the Congress takes certain adjournments. If you want to know the effective date of the regulations, call or write the Department of Education contact person.

Comments on these amendments postmarked on or before October 22, 1984.

ADDRESS: Comments should be sent to Mr. Thomas Keyes, Institutional Aid Program, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Keyes, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024. Telephone: (202) 245–2384.

SUPPLEMENTARY INFORMATION: On July 12, 1984, at 49 FR 28520, the Secretary published final regulations with comments invited for the Endowment Grant Program. The Secretary publishes these amendments to correct and clarify the formula in the selection criteria in § 628.31(a)(4) of the final regulations and to clarify the duration of the period a grantee has to raise matching funds.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations.

The Secretary published a notice of proposed rulemaking for the Endowment Grant Program on March 5, 1984 (49 FR 8184). The comments and the Secretary's responses were summarized in an appendix to the final regulations with comments invited, which was published on July 12, 1984.

An error was contained in the revised formula in § 628.31(a)(4) of the final regulations. Since this error would affect the manner in which the Secretary awards points to an applicant for an endowment grant, it is essential that the Secretary immediately correct the error.

In the preamble to the final regulations, the Secretary explained that the Administration had submitted proposed legislation to the Congress to permit funds appropriated for the Endowment Grant Program to remain available until expended. This was done to allow a granteee eighteen months, from the time it is selected to receive a grant, to raise the required matching funds. Because the Congress has not granted authority for these funds to remain available until expended, the Secretary must change the language in § 628.41(b) to clarify how long the period for raising matching funds may be.

Due to the technical nature of these amendments, the brief time period remaining for application and selection, and previous opportunities afforded for public comment, the Secretary has determined that public comment on these amendments is impracticable, unnecessary, and contrary to the public interest and is not required under 5 U.S.C. 553(b)(B). However, comments on these amendments will be considered along with other comments on the final regulations.

List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Grant Programs—Education.

Dated: September 14, 1984.

T.H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.031 Institutional Aid Programs)

The Secretary amends Part 628 of Title 34 of the Code of Federal Regulations as follows:

PART 628—ENDOWMENT GRANT PROGRAM

1. Identical corrections are made in §§ 628.31(a)(4)(i) and 628.31(a)(4)(ii), appearing in the first column of 49 FR 28523 (July 12, 1984), as follows:

§ 628.31 What selection criteria does the Secretary use in evaluating an application for an endowment grant?

a. The words "change in" in the first line of each paragraph are changed to "amount of".

b. The words "for the four-year period" in the second and third lines of each paragraph are deleted.

c. In the third line of each paragraph, "(i)" is inserted between "(3)" and "of".

d. Following the authority citation insert "(Approved by the Office of Management and Budget under control number 1840–0531.)"

2. In § 628.41 paragraph (b) introductory text is revised to read as follows:

§ 628.41 What are the obligations of an institution that the Secretary selects to receive an endowment grant?

* * * * *

(b) Before the Secretary disburses grant funds and not later than a date established by the Secretary through a notice in the **Federal Register** (which date may not be later than the earlier of the last day of availability of appropriations or eighteen months after an institution has been notified that it has been selected to receive a grant), an institution shall—

* * * * *

[FR Doc. 84–24955 Filed 9–20–84; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Petroleum Dry Cleaners; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2494-7]

Standards of Performance for New Stationary Sources; Petroleum Dry Cleaners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for petroleum dry cleaners were proposed in the **Federal Register** on December 14, 1982 (47 FR 56118). This action promulgates standards of performance for petroleum dry cleaners. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that petroleum dry cleaners cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed petroleum dry cleaner facilities to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: September 21, 1984.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Petroleum Dry Cleaners-Background Information for Promulgated Standards" (EPA-450/3-82-012b). The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A-80-2, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience this will be referred to as "best demonstrated technology".

The best demonstrated technology for petroleum dry cleaners is a combination of work practices and equipment. A performance standard for this source category is not practical due to economic limitations. The instrumentation and procedures for measuring emissions from the affected facilities are well demonstrated; however, the cost of these measurements precludes their use as a compliance provision in regulating the relatively small plants common to the petroleum dry cleaning industry.

The standards require the installation and use of solvent recovery dryers when dryers are installed at affected petroleum dry cleaning plants. In addition, the standards require the use of cartridge filters for each affected plant installing solvent filtration systems, and used filter cartridges must be drained for at least 8 hours in their closed housing prior to disposal.

The standards do not apply to small petroleum dry cleaning plants. To determine whether petroleum solvent washers, dryers, filters, settling tanks, and vacuum stills are subject to these standards, the total dryer capacity of the plant is calculated by adding the manufacturer's rated dryer capacity (kilograms or pounds of clothing articles per load, dry weight) for each existing and proposed new dryer that will be in service after the proposed equipment commences operation. If the total manufacturer's rated dryer capacity is less than 38 kilograms (84 pounds), the proposed new, modified, or reconstructed dry cleaning equipment is exempt from the requirements of the standard.

The owner or operator of an affected recovery dryer is required to conduct an initial 2-week test to demonstrate that the recovered solvent flow rate from the solvent recovery dryer is 0.05 liters per minute or less at the termination of the recovery cycle. The owner or operator also is required to maintain a record of this test. No emission tests are required.

Summary of Environmental, Energy, and Economic Impacts

The standards will reduce the cumulative nationwide VOC emissions from petroleum dry cleaners through the first 5 years following promulgation of the standards by an average of 22,700 megagrams (25,000 tons) or 41 percent, relative to baseline emissions (i.e., emissions in the absence of the standards). In the fifth year following promulgation of the standards, the average reduction in nationwide VOC emissions resulting from the standards will be 7,600 megagrams (8,400 tons). The standards will result in negligible adverse water, noise, radiation, and solid waste impacts.

The standards will reduce the steam and electrical energy consumption at dry cleaning plants affected by the standards by about 187 terajoules (175 billion Btu's) in the fifth year following promulgation of the standards. This reduction in plant energy consumption results from the lower steam and electrical demands of the solvent recovery dryer as compared to those of conventional dryers.

The capital costs for the petroleum dry cleaning industry will increase by $1.6 million in the fifth year following promulgation of these standards. The cumulative capital cost attributable to the standard for all affected facilities constructed through the first 5 years following promulgation will be $8.2 million. The annualized costs for the industry will decrease by $3.6 million in the fifth year following promulgation, as a result of the savings due to the value of the petroleum solvent recovered by the recovery dryer. The 5 year cumulative annualized cost will be a savings of $10.9 million. No adverse economic impacts are expected to result from the promulgated standards.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (46 FR 55000, November 5, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the Petroleum Dry Cleaning standards recommended for proposal. This meeting was held on December 2, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on December 14, 1982 (47 FR 56118). The preamble to the proposed standards discussed the availability of the background information document (BID), "Petroleum Dry Cleaners—Background Information for Proposed Standards," (EPA-450/3-82-012a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The preamble to the proposed regulation provided notice of opportunity for public hearing to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards. No request for public hearing was received. The public comment period was from December 14, 1982 to February 14, 1983.

Four comment letters were received concerning issues relative to the proposed standards of performance for the petroleum dry cleaning industry. The comments have been carefully considered and, where determined to be appropriate, changes have been made in the proposed standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from the petroleum dry cleaning industry, State and local air pollution control agencies, and industry trade associations. A detailed discussion of these comments and responses can be found in the background information document (BID), which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble under the following headings: Safety of Solvent Recovery Dryers, Format for the Exemption, and Leak Detection and Repair.

Safety of Solvent Recovery Dryers

One commenter representing three dry cleaning industry trade associations questioned the safety of solvent recovery dryers, which are required by the standard to control emissions of volatile organic compounds (VOC) from dryers. He acknowledged that the question had been investigated early in the standard development process. At that time, the safety of the recovery dryer was adequately demonstrated by industry operating experience and Factory Mutual Research Corporation's certification that the technology conformed to the National Fire Protection Association's (NFPA) guidelines. However, since proposal of the standard, two explosions of solvent recovery dryers have occurred. The commenter requested, therefore, that no action to finalize the standard be taken until these incidents were fully investigated.

The use of both solvent recovery and conventional dryers presents risks of explosions or fires because petroleum solvent is a highly flammable liquid. Petroleum dry cleaners minimize these incidents by removing metal articles and other objects that might ignite the solvent from clothes prior to dry cleaning. However, when the solvent does ignite, fires tend to occur in conventional dryers while minor explosions tend to occur in solvent recovery dryers. This later tendency led to a careful evaluation of solvent recovery dryer safety before the standards of performance were proposed. The investigation identified 19 cases of solvent recovery dryer explosion. However, in each of these cases the safety features designed into the solvent recovery dryer had safely vented the explosion with only minor damage to the dryer itself.

Factory Mutual Research Corporation's certification for insurance underwriting that solvent recovery dryers complied with the NFPA code in combination with industry operating experience indicated that the safety of solvent recovery dryers was adequately demonstrated to consider them as a basis for standards of performance. As discussed in the **Federal Register** at proposal, however, decisions concerning safety are in the hands of safety officials, and standards of performance will not require the use of any device safety officials consider unsafe.

Since proposing the standard, two explosions of solvent recovery dryers have occurred (see Docket Items IV-B-1 and IV-B-2). These incidents differ from those investigated before proposal of the standards because the force of these explosions reportedly caused the loading door assembly panel to break away from the dryer. The detached panels, weighing about 300 to 400 pounds, were found at a distance of 8 to 10 feet from the dryers.

The domestic recovery dryer manufacturer and Factory Mutual Research Corporation were asked to investigate these explosions and to comment on whether their previous judgments concerning the safety of solvent recovery dryers have changed in light of their new findings. Both the manufacturer and Factory Mutual Research Corporation agreed to do so.

After its investigation, the manufacturer developed a front panel restraining device for use on both existing and new solvent recovery dryers. Factory Mutual tested the modified dryer and concluded that the dryer meets both the NFPA and Factory Mutual's safety codes. As a result, both the manufacturer and Factory Mutual consider that the safety of solvent recovery dryers has been adequately established. Therefore, the basis of the promulgated standard remains the use of a solvent recovery dryer. Further, since the issue of safety of recovery dryers has been resolved through the safety review procedures, no reason exists to delay action on the standard.

Format of the Exemption Level

One commenter requested that the small plant exemption level incorporated into the definition of an affected facility be expressed in terms of dryer capacity rather than solvent consumption as in the proposed standards. The commenter felt that the dryer capacity format would be simpler and easier to apply.

The solvent consumption format for the exemption level in the proposed standards was established in response to industry comments received at the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) meeting in December 1981. As expressed at that time, the primary concerns of the industry were that the exemption level should be: easily understood, unambiguous, and based on a parameter that already exists at the plants rather than a parameter that requires additional monitoring and recordkeeping. The industry felt that annual solvent consumption met these requirements and, as a result, recommended the use of an exemption expressed in terms of annual solvent consumption.

It is clear, however, that an exemption expressed in terms of dryer capacity is better than one expressed in terms of annual solvent consumption. Compared with solvent consumption, dryer capacity requires substantially fewer recordkeeping requirements. The manufacturer's rated capacity is either stamped on the name plate of each individual piece of equipment or readily available from the equipment specifications provided by the manufacturer. The determination of whether the standard applies to a particular facility is made by simple comparison of the rated capacity for the proposed unit (or collective capacities for proposed multiple unit installations) to the applicability criterion. The approach is straightforward and easily verifiable. It also is simpler because no projection of expected future solvent use is required as with solvent consumption. For these reasons, the exemption contained in the final standard is structured in terms of dryer capacity.

The exemption level is 38 kilograms (84 pounds) of manufacturer's rated dryer capacity. This capacity is derived directly from the 60,000 kilograms (132,170 pounds) of clothes cleaned per year breakeven level established in the economic analysis (see derivation in Docket Item No. IV–B–3) and is equivalent to the 17,800 liters (4,700 gallon) per year solvent consumption exemption level in the proposed standard.

The derivation involves assumptions about average or typical operating schedules and load factors (i.e., days per year, loads per day, and the ratio of actual load weight to rated capacity). However, because the economic breakeven analysis incorporates a number of conservative assumptions (including the use of a 5-year amortization period) the standard will not endanger the economic viability of affected dry cleaners. It is important to remember that, at the breakeven point, a dry cleaner that purchases and operates a solvent recovery dryer will have net annualized costs exactly equal to those of purchasing and operating the much less expensive conventional dryer. Moreover, plants with throughput levels near the breakeven level would have essentially the same financial conditions as would plants at the breakeven level. For example, a plant with a throughput of 2,270 kilograms (5,000 pounds) below the 60,000 kilograms (132,170 pound) breakeven level would have a cost increase of $200 compared to the breakeven level. This difference represents less than 1 percent of the plant's earnings. Selection of the 38 kilogram (84 pound) manufacturers' rated dryer capacity criterion, therefore, is reasonable and sufficient to mitigate any adverse economic impacts that could result from the new source performance standard.

The total manufacturers' rated capacity was selected as the basis for the small plant exemption because it is a readily identifiable parameter that is indicative of the actual quantity of clothes cleaned at a particular dry cleaning establishment (i.e., the clothes throughout). The exemption is incorporated into the standard to avoid potential adverse economic impacts on small commercial dry cleaning plants that may not have sufficient revenues to obtain financing for the solvent recovery dryers required by the standard. Because the total manufacturers' rated dryer capacity is an indicator of the clothes throughput level, it is an indicator of the revenues generated by a particular plant and therefore the plant's ability to finance recovery dryers. Because the total plant throughput determines the revenues generated by the plant, it is the total dryer capacity of the plant that has been made the basis for the exemption level. Provisions have been added to the regulation promulgated in today's **Federal Register** to clarify which dryers are considered in determining the total manufacturers' rated dryer capacity.

For a proposed new plant the applicability determination is simple. The total manufacturers' rated dryer capacity is the summation of the name plate capacities of each proposed new dryer. When an existing plant is expanding, the total manufacturers' rated dryer capacity is the summation of the name plate capacities of each proposed new dryer and each existing dryer that will remain in service after the proposed expansion commences operation. In the situation where existing dryers are being replaced, the same "in service" rule applies for the determining applicability. Since the dryer that is being replaced is to be removed from service, its capacity is not included in determining the total manufacturers' rated capacity of the plant.

An existing dryer clearly cannot be in service if it is sold or destroyed. Similarly, an existing dryer should be considered to be out of service if it cannot be repaired. The intent is to include in the calculation of the total manufacturers' rated dryer capacity those dryers that will or could contribute to the plant's overall capacity to dry clean clothes and thereby generate revenues.

The change in the format of the exemption decreases the recordkeeping burden of the standard. To determine whether a facility is qualified for an exemption under the solvent throughput criterion in the proposed standard, the owners or operators were required to maintain records of solvent purchases. Since the format of the exemption has been changed in the final standard to the total manufacturers' rated dryer capacity, the unnecessary solvent purchase recordkeeping requirement has been removed from the standard. Because the manufacturer's rated dryer capacity can be read from the dryer name plate(s) or is readily available from the manufacturer, no special recordkeeping requirement is needed in the final standard.

Leak Detection and Repair

The proposed standard included a provision for periodic inspections of affected facilities and prompt repair of identified petroleum solvent leaks (Reference: Proposed 40 CFR 60.622(c); 47 FR 56127). However, in their review of the standard under Executive Order 12291, OMB found the leak detection and repair provision to be inconsistent with the objectives of the Executive Order. Specifically, OMB suggested that there are sufficient economic incentives for dry cleaners to recover leaking solvent and that a mandatory inspection cycle is unnecessary. While the Agency agrees with OMB that there is a natural economic incentive for inspection and leak repair, some dry cleaners may nonetheless allow leaks to go undetected and unrepaired for longer than economically and evironmentally desirable. Consequently, the Agency has replaced the requirement for mandatory inspection every 15 days with a requirement that equipment manufacturers inform equipment purchasers that the EPA recommends frequent inspections and prompt repair of leaks. This provision requires that the manufacturers of each affected dryer, washer, filter, still, and settling tank constructed after promulgation specify in the operating instructions, and in a conspicuous location on the equipment itself, suggested procedures for inspecting equipment on a 15-day schedule and for repairing identified petroleum solvent liquid and vapor leaks within 15 working days. In addition, the EPA urges State and local air quality regulatory authorities to require 15-day petroleum solvent leak detection and repair for owners and operators of affected facilities under their jurisdiction. The EPA believes that the manufacturers' labeling requirement along with leak detection and repair requirements by the State and local air quality regulatory authorities are adequate to ensure the prompt detection and repair of petroleum solvent leaks and the corresponding reduction in emissions of volatile organic compounds.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review materials [Section 307(d)(7)(A)].

Miscellaneous

The effective date of this regulation is September 21, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, December 14, 1982.

As prescribed by Section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that dry cleaning contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. The economic impact assessment is included in the BID for the proposed standards.

In addition to economics, the cost effectiveness of alternative standards were also evaluated in order to determine the least costly way to reduce emissions and to assure that the controls required by this rule are reasonable relative to other VOC regulations. In this case, the proposed and promulgated standards would reduce the dry cleaners' operating costs and produce an average 5 year total cost effectiveness savings of $470 per megagram of VOC emission reduction. Additional detail on costs can be found in the BID.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart JJJ) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0079.

Under Executive Order 12291, the EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." Because the recommended control equipment results in the recovery of solvent which would otherwise be lost, the effect of this regulation is to reduce costs. No increase in the price of dry cleaning services attributable to implementation of these proposed standards is expected. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Determination of the need to perform a Regulatory Flexibility Analysis is based upon the consideration of three factors: (1) The maximum size of a small business, (2) the number of small businesses affected, and (3) the expected economic impacts.

The Small Business Administration has several definitions for small businesses. In the case of service industries such as petroleum dry cleaners, "small" is defined as having revenues less than or equal to $2 million. Almost all petroleum dry cleaners qualify as small businesses under this definition, except for large industrial plants.

However, as previously discussed, only dry cleaning plants with annual dry cleaning throughputs less than or equal to 62,700 kilograms (138,000 pounds) of articles would have difficulty financing the equipment requirements of these standards. These dry cleaning plants are exempt from the standards. Dry cleaning plants with throughputs above this level would have lower costs and higher profits as a result of the standards. Therefore, because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic Fibers.

Dated: September 6, 1984.

William D. Ruckelshaus,
Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

The Code of Federal Regulations Title 40, Part 60 is amended by adding a new Subpart JJJ as follows:

Subpart JJJ—Standards of Performance for Petroleum Dry Cleaners

Sec.
60.620 Applicability and designation of affected facility.
60.621 Definitions.

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21
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Sec.
60.622 Standards for volatile organic compounds.
60.623 Equivalent equipment and procedures.
60.624 Test methods and procedures.
60.625 Recordkeeping requirements.

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

Subpart JJJ—Standards of Performance for Petroleum Dry Cleaners

§ 60.620 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 38 kilograms (84 pounds): Petroleum solvent dry cleaining dryers, washers, filters, stills, and settling tanks.

(1) When the affected facility is installed in an existing plant that is not expanding the manufacturers' rated capacity of its petroleum solvent dryer(s), the total manufacturers' rated dryer capacity is the summation of the manufacturers's rated capacity for each existing petroleum solvent dryer.

(2) When the affected facility is installed in a plant that is expanding the manufacturers' rated capacity of its petroleum solvent dryers, the total manufacturers' rated dryer capacity is the summation of the manufacturers' rated dryer capacity for each existing and proposed new petroleum solvent dryer.

(3) When the affected facilty is installed in a new plant, the total manufacturers' rated dryer capacity is the summation of the manufacturers' rated dryer capacity for each proposed new petroleum solvent dryer.

(4) The petroleum solvent dryers considered in the determination of the total manufacturers' rated dryer capacity are those new and existing dryers in the plant that will be in service at any time after the proposed new source or modification commences operation.

(b) Any facility under paragraph (a) of this section that commences construction or modification after December 14, 1982, is subject to the requirements of this part.

§ 60.621 Definitions.

As used in this subpart, all terms not defined herein shall have the same meaning given them in the Act and in subpart A of this part.

"Cartridge filter" means a discrete filter unit containing both filter paper and activated carbon that traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Dryer" means a machine used to remove petroleum solvent from articles of clothing or other textile or leather goods, after washing and removing of excess petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Manufacturers' rated dryer capacity" means the dryer's rated capacity of articles, in pounds or kilograms of clothing articles per load, dry basis, that is typically found on each dryer on the manufacturer's name-plate or in the manufacturer's equipment specifications.

"Perceptible leaks" means any petroleum solvent vapor or liquid leaks that are conspicuous from visual observation or that bubble after application of a soap solution, such as pools or droplets of liquid, open containers or solvent, or solvent laden waste standing open to the atmosphere.

"Petroleum dry cleaner" means a dry cleaning facility that uses petroleum solvent in a combination of washers, dryers, filters, stills, and settling tanks.

"Settling tank" means a container that gravimetrically separates oils, grease, and dirt from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Solvent filter" means a discrete solvent filter unit containing a porous medium that traps and removes contaminants from petroleum solvent, together with the piping and ductwork used in the installation of this device.

"Solvent recovery dryer" means a class of dry cleaning dryers that employs a condenser to condense and recover solvent vapors evaporated in a closed-loop stream of heated air, together with the piping and ductwork used in the installation of this device.

"Still" means a device used to volatilize, separate, and recover petroleum solvent from contaminated solvent, together with the piping and ductwork used in the installation of this device.

"Washer" means a machine which agitates fabric articles in a petroleum solvent bath and spins the articles to remove the solvent, together with the piping and ductwork used in the installation of this device.

§ 60.622 Standards for volatile organic compounds.

(a) Each affected petroleum solvent dry cleaning dryer that is installed at a petroleum dry cleaning plant shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be properly installed, operated, and maintained.

(b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal.

(c) Each manufacturer of an affected petroleum solvent dryer shall include leak inspection and leak repair cycle information in the operating manual and on a clearly visible label posted on each affected facility. Such information should state:

> To protect against fire hazards, loss of valuable solvents, and emissions of solvent to the atmosphere, periodic inspection of this equipment for evidence of leaks and prompt repair of any leaks is recommended. The U.S. Environmental Protection Agency recommends that the equipment be inspected every 15 days and all vapor or liquid leaks be repaired within the subsequent 15 day period.

§ 60.623 Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures that have been demonstrated to his satisfaction to be equivalent, in terms of reducing VOC emissions to the atmosphere, to those prescribed for compliance within a specified paragraph of this subpart. The application must contain a complete description of the equipment or procedure; the testing method; the date, time and location of the test; and a description of the test results. Written applications shall be submitted to the Administrator, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(b) The Administrator will make a preliminary determination of whether or not the application for equivalency is approvable and will publish a notice of these findings in the **Federal Register**. After notice and opportunity for public hearing, the Administrator will publish the final determination in the **Federal Register**.

§ 60.624 Test methods and procedures.

Each owner or operator of an affected facility subject to the provisions of § 60.622(a) shall perform an initial test to verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery cycle is no greater than 0.05 liters per minute. This test shall be conducted for a duration of no less than 2 weeks during which no less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate. The suggested point for measuring the flow rate of recovered solvent is from the outlet of the solvent-water separator. Near the end of the recovery cycle, the entire flow of recovered solvent should be diverted to a graduated cylinder. As the recovered solvent collects in the graduated cylinder, the elapsed time is monitored and recorded in periods of greater than or equal to 1 minute. At the same time, the volume of solvent in the graduated cylinder is monitored and recorded to determine the volume of recovered solvent that is collected during each time period. The recovered solvent flow rate is calculated by dividing the volume of solvent collected per period by the length of time elapsed during the period and converting the result with appropriate factors into units of liters per minute. The recovery cycle and the monitoring procedure should continue until the flow rate of solvent is less than or equal to 0.05 liter per minute. The type of articles cleaned and the total length of the cycle should then be recorded.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

§ 60.625 Recordkeeping requirements.

Each owner or operator of an affected facility subject to the provisions of this subpart shall maintain a record of the performance test required under § 60.624.

(Approved by the Office of Management and Budget under the Control Number 2060–0079.)

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414))

[FR Doc. 84-24748 Filed 9-20-84; 8:45 am]

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September 21, 1984

Part VII

Department of the Interior

Minerals Management Service

30 CFR Parts 210, 212, 217, 218, 219, 228, 229, 241, and 243
Implementation of the Federal Oil and Gas Royalty Management Act of 1982; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 210, 212, 217, 218, 219, 228, 229, 241, and 243

Implementation of the Federal Oil and Gas Royalty Management Act of 1982

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule implements in part the Department of the Interior's authorities under the Federal Oil and Gas Royalty Management Act of 1982, which was enacted to ensure that all oil and gas produced on Federal and Indian lands is properly accounted for and that all revenues resulting from that production are collected and distributed properly. This rulemaking applies only to those sections of that Act that establish the duties and responsibilities of the Minerals Management Service Royalty Management Program.

EFFECTIVE DATE: October 22, 1984.

ADDRESS: Any inquiries should be sent to: Deputy Associate Director for Royalty Management Policy, Minerals Management Service (MS 660), 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Orie L. Kelm (703) 860–7511, (FTS) 928–7511.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Robert E. Boldt, Associate Director for Royalty Management, MMS.

I. Background

In mid-1981, the Secretary of the Interior appointed the Commission on Fiscal Accountability of the Nation's Energy Resources (Commission) which produced a report in January 1982 making 60 specific recommendations for improvement to DOI's royalty management effort, including improved accounting, stricter penalty provisions for noncompliance, enhanced site security requirements on Federal and Indian leases, and new methods of seeking out and preventing potential oil theft. The Commission recommended in its final report that the Administration introduce legislation to implement those Commission recommendations which were not authorized by law and to update those statutory provisions which had become outmoded over the years. The Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97–451, 30 U.S.C. 1701 *et seq.*, and subsequently referred to herein as "the Act") serves as the culmination of the efforts of the Department of the Interior to improve the processes by which it collects and accounts for bonuses, rents, and royalties on Federal and Indian oil and gas leases.

On September 20, 1983 (40 FR 42902), the MMS issued proposed regulations to implement its new authorities under the Act. Prior to publishing this proposed rule, the MMS held extensive informal meetings with producers, States, Indian tribes, and other affected groups to receive the maximum possible input on the form of the regulations. In response to the proposed rulemaking, the MMS received comments from 29 lessees and other interested persons. All of these comments were considered carefully in preparing these final regulations. Included in this preamble is a discussion of the important comments on a section-by-section basis.

These rules are not the only rules to be issued under the Act. As the MMS gains experience with compliance problems under the new Auditing and Financial System (AFS) and the Production Accounting and Auditing System (PAAS), it intends to propose additional enforcement and penalty regulations. Other changes to the rules implemented today also may be necessary.

Moreover, the MMS is not the only part of DOI with responsibilities under the Act. The MMS regulations concern royalty on oil and gas production and the collection, accounting, and distribution of royalty and rental payments from Federal and Indian lands. Regulations dealing with other topics within the Act (e.g. lease management and site security) are issued by other offices of DOI. On September 16, 1983 (48 FR 41738), the Bureau of Land Management (BLM) issued proposed rules pertaining to its responsibilities under the Act. Final rules are being issued concurrently with these rules.

II. Summary of Rules Adopted

The following sections summarize the most significant provisions of the regulations being adopted today. Most of the rules being adopted are substantially the same as the proposed rules. Therefore, much of the discussion in the preamble to the proposed rules applies to the final rules. Where significant changes are being made to the final rules, they are discussed in this preamble.

Part 212. The provisions of Part 212, authorized by Section 103 of the Act, reaffirm required recordkeeping, including requirements for the submission of certain data to MMS.

This part indicates the types of records which must be maintained by the lessee, operator, revenue payor, or other person, establishing that these records must be maintained for a 6-year period. A further requirement of this Part is that records be maintained in paper or in a reproducible form such as microfilm, microfiche, or electronic imagery, and be available for inspection and review on a ready basis. Records to be maintained also include computer programs, automated files and systems support documentation.

Part 217. This part is authorized by Section 101 of the Act and establishes the authority of the Secretary to carry out audits on all aspects of the performance of lessees, operators, revenue payors, and other persons (including third parties) under the terms of Federal and Indian oil and gas leases. The part also establishes priority for the reconciliation of all lease accounts specifically identified by a State or Indian tribe as having a significant potential for underpayment.

Part 218. The provisions of Part 218, authorized by Sections 102, 103, and 111 of the Act, deal with the timing and method of royalty payments and establishment of regulations for the submission of royalty payments under the new Auditing and Financial System (AFS) being operated by MMS at its Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

In addition, this part establishes provisions for the payment of interest charges for late or underpaid royalty payments and identifies the way in which such interest charges will be calculated.

A charge of $10.00 may be assessed for reports not received by MMS by the designated due date. A charge of $10.00 may also be assessed for reports that are received by the due date but are incorrect. For purposes of the Auditing and Financial System (AFS), a report is defined as each individual required transaction code for each Accounting Identification Number (AID), Product Code, and Selling Arrangement.

This part further indicates that States will be exempted from interest or penalties found to be payable by the DOI to small refiners if it is determined that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973 with respect to crude oil taken by the Secretary as in-kind royalty oil and then sold to small refiners under the provisions of the Mineral Leasing Act or the Outer Continental Shelf Lands Act.

This part further clarifies that when the Department, as a result of litigation or a negotiated settlement, pays a claim resulting from alleged failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, the portion of that claim which can be identified as having been paid to a State under the shared royalty provisons of the Mineral Leasing Act of 1920 will be deducted from future share revenues to be paid to the State until the State's share of that claim has been satisfied.

Part 219. The regulations for this part, authorized by Sections 104 and 105 of the Act, deal with the timing and payment to States and Indian tribes of their share of MMS collected royalties, rents, and bonuses, and establish the terms under which interest will be paid to a State if mineral revenues are not disbursed promptly, by MMS, in accord with the Act.

This part also describes the types of reports which will be provided to States and Indian tribes, identifying the source of and amounts distributed to the States and Indian tribes on a monthly basis.

Part 228. This part, authorized by Section 202 of the Act, establishes provisions by which States and Indian tribes may enter into cooperative agreements with DOI to conduct audit activities. Under the provisions of the regulations, 50 percent of the cost of cooperative activities carried out under this part would be reimbursed by the Department. The 50 percent share provided by the State or Indian tribes can be provided in cash or in the way of in-kind contributions as defined in normal Government accounting practices.

Under these regulations, a cooperative agreement is for a period of 3 years with a possible extension of an additional 3 years if mutually agreed to by both parties. The regulations also indicate that a State may concurrently carry out activities under both Sections 202 and 205 of the Act.

The proposed rulemaking contained a provision allowing the Secretary to increase funding to a level of 100% for cooperative agreements with certain Indian tribes showing extreme need. Upon reflection, it was decided that the needs to administer such a provision would create an administrative nightmare which would be self-defeating to the coopreative provisions of the Act.

Discussion with representatives of Indian tribes who have indicated an interest in pursuing cooperative agreements under this part indicate willingness to participate at the 50% level assuming the acceptance of in-kind contributions which are authorized by other provisions of this part. Therefore, the provisions authorizing 100% funding has been dropped from the final regulations.

These regulations also indicate, as provided in Section 206 of the Act, that 50 percent of any civil penalty collected by MMS under the activities authorized by Sections 202 and 205 of the Act will be shared with States or Indian tribes. However, the amount of that civil penalty will be deducted from the Federal share of any funding provided for in a cooperative agreement with a State of Indian tribe or a delegation of authority to a State.

These regulations also establish that funding under the provisions of Sections 202 and 205 of the Act is subject to the availability of appropriations.

Part 229. This part, authorized by Section 205 of the Act, establishes regulations dealing with the delegation of certain authorities to the States to conduct investigations and audits with respect to all Federal lands within a State and to those Indian lands for which the State has received specific delegation of authority from the tribe or from individual Indian allottees.

These regulations establish requirements for factfinding and hearings on the part of the Department before a delegation is made to a particular State. These regulations specify that the term of delegation is for a period of 3 years with a possible extension for an additional 3 years on the mutual agreement of both parties. Requirements for recordkeeping and reporting from States involved in a delegation are also included as well as a provision for an annual audit of the State's activities carried out under the provisions of the delegation.

As required by the Act, allowable costs incurred by the State under the delegation of authority will be reimbursed 100 percent by the Federal Government.

Parts 228 and 229. Section 203 of the Act authorizes regulations establishing the types of information which can be provided to States and Indian tribes under a cooperative arrangement dealing with the sharing of trade secrets and proprietary and confidential information.

Part 241. The regulations for Part 241, authorized by Section 109 of the Act, establish the process for the assessment and collection of civil penalties.

The primary intent of the penalty process is to elicit, to the greatest extent possible, voluntary compliance with MMS paying and reporting requirements as reflected by low error rates and timely paying and reporting.

Part 243. The purpose of this section is to provide and appeal mechanism for any MMS Royalty Management Program order or directive.

Sections of the Act for which regulations have not been formulated. There are a number of provisions of the Act for which specific regulations have not been formulated because the statutory language itself is self-explanatory or the language of the Act is advisory and does not require regulatory language to implement it. In other instances, the Department will reference an existing regulation as meeting the requirements of the Act.

Relationships to other statutes and regulations. Regulations are being issued by two separate bureaus of DOI; therefore, certain provisions of the Act will ultimately be implemented by regulations found in 43 CFR and 30 CFR Subchapter B (the offshore operating regulations) as well as in this Subchapter A of 30 CFR which, when fully completed, will provide a compendium of regulations relating to the royalty management process.

The subpart letter designations of the regulations indicate applicability to onshore or offshore matters, or both.

III. Comments Received on Proposed Rules—General

The proposed rulemaking published September 20, 1983, provided for a 30-day public comment period which ended October 20, 1983. All comments received during that time period are addressed in this section, and the text of these regulations has been changed to reflect comments as appropriate.

Two commentors felt that the 30-day comment period was too short. Since the MMS conducted extensive informal discussions with many interested parties prior to formulating the proposed rules, a longer formal public comment period was not considered necessary.

One commentor stated that the regulations should be prospective rather than retroactive.

The MMS agrees and the regulations are prospective with the exception of audits and certain appeals procedures. Audits, by their very nature, must involve looking back at historical records. See preamble § 243.2 for explanation of retroactive application to appeals.

One commentor objected to the burden that the rules will place on small nonoperating lessees and royalty payors, particularly the reporting and paying requirements.

Lessees and royalty payors may elect to have the operator or purchaser submit the required payments and reports to MMS. However, as required by the Act, those assuming paying and reporting obligations must comply with MMS reporting and paying requirements.

Further, the lessee will remain ultimately responsible for all payments and reports from the lease.

IV. Comments Received on Proposed Rules—Specific by Section

Part 210—Forms and Reports

Section 210.51 Payor information forms. Ten commentors found difficulty with the timing of reporting requirements (submission of Form MMS-4025). Most of these commentors noted that the requirement for submission within 30 days after issuance of a new lease or a change in the paying responsibilities of the lease conflicts with § 218.52 which requires notification within 60 days rather than 30 days. All commentors favored the longer 60-day period.

The MMS's new computerized Auditing and Financial System (AFS) cannot properly track payment responsibilities without current and accurate Form MMS-4025 data. Consequently, the MMS must receive these forms within 30 days as required at § 210.51. The MMS understands that all the data required on Form MMS-4025 cannot always be provided within 30 days, especially in the case of newly issued leases. Nevertheless, the MMS will require the submittal of that form with the best data available at the time of submittal (at a minimum, MMS must be told who is to be the interim designated payor). An amended resubmittal should be made at a later date when lessee/payor responsibilities are changed. Section 218.52 has been revised from 60 days to 30 days to conform with § 210.51.

Section 210.52 Report of sales and royalty remittance. Four commentors suggested that changes be made to this section to permit early payments.

The MMS agrees and this has been done.

One commentor suggested that the requirement for payment and reporting by the end of the second month be extended to the first business day of the following month, when the last day of the month falls on a weekend or holiday.

The MMS had to revise this section to eliminate the confusion that was associated with different time requirements for payment and payor information forms. The revised § 210.52 now requires payment by the end of the month following the production month. No extension to the succeeding month will be permitted.

One commentor recommended changing the section to restrict its applicability to rentals from MMS-managed leases and to exclude former BLM leases from Form MMS-2014 and electronic funds transfer requirements.

The MMS agrees in principle with the comment. In April 1984, MMS assumed responsibility for the collection of rentals on nonproducing onshore Federal leases. A new accounting system, the Bonus and Rental Accounting Support System (BRASS), was developed to account for all nonproducing leases. Eventually, most nonproducing leases on which rentals are being paid will be moved to the BRASS system, eliminating the need for the submission of the Form MMS-2014 for rentals from nonproducing leases. In the interim, those nonproducing leases maintained in the AFS will require the submission of Form MMS-2014. Electronic Funds Transfer (EFT) will not be required for the payment of rentals, except for first year rentals paid with the four-fifths portion of the offshore lease bonus bids.

One commentor stated that, contrary to this regulation, payments must continue to be made by the end of the first month following the production month due to the terms of existing leases.

The MMS has revised this part to require payment by the end of the first month following the production month.

One commentor stated that Form MMS-2014 reporting requirements should be expanded to permit submission of the data via magnetic tape.

MMS agrees and the required wording change has been made.

Part 212—Records and Files Maintenance

Section 212.50 Required recordkeeping and reports. Three commentors addressed the 6-year requirement for recordkeeping. One favored it; a second objected to it as being too long; and the third suggested that MMS not have a policy to audit back more than 2 years since older records would be burdensome to retrieve.

The 6-year recordkeeping requirement is provided by Section 103(b) of the Act. A 2-year limitation is impractical and incompatible with statute of limitation requirements found in Federal and State law.

Section 212.51 Records and files maintenance. One commentor stated that NTL-1, 1A, and 5 and the Act as shown in paragraph (a) should not be referenced for recordkeeping requirements. Rather, the commentor states the recordkeeping requirements given at those locations should be fully spelled out in these regulations.

Subsequent changes to the Royalty Management regulations will incorporate the records and files maintenance requirements of existing orders and notices.

One commentor responded favorably to the provision in paragraph (b) that lessees and operators are only required to retain payment records for the period that the recordholders have paying or operating responsibility on the lease. A second objected to this provision stating that lessees should always be responsible for complete recordkeeping for the full 6-year period and also that operators or other persons required to keep records generated during the time they had paying or operating experience be required to keep records for the full 6-year retention period.

Upon reexamination of the wording of paragraph (b), MMS has changed the text of the final regulation. All records pertaining to the lease must be retained for a period of 6 years even if paying or operating responsibilities have ceased. However, the lessee or operator remains responsible only for the records generated during its period of operating or paying responsibility. The text of the subsection has been revised accordingly. MMS has also changed paragraph (c) by adding the term "revenue payor" to make clear that any person or entity who makes mineral revenue payments to MMS, but has no other obligations under the lease, is covered by these regulations.

Three commentors stated that a reasonable period of time should be permitted for producing records since historical records are often stored offsite.

MMS agrees and the wording has been changed accordingly in paragraph (c) of § 212.51.

Part 217—Audits and Investigations

Section 217.50 Audits of records. Three commentors stated that words should be added to this section indicating that no more than one auditing or investigating entity should be conducting an audit at the same time as required by Section 301 of the Act.

Section 301 of the Act "recommends" that care be taken to prevent multiple audits by different entities (MMS, States, OIG, etc.) from taking place concurrently. However, it does not prohibit such concurrent audits. In conformity with the Act, it is the policy of MMS to avoid concurrent or uncoordinated audits, if possible. MMS feels it is unnecessary to state this in the regulations.

One commentor suggested that MMS consider a policy of auditing lease records within 24 months after the end of the reporting period to be audited. It was claimed that audits going back more than 2 years are too burdensome, especially respecting records retrieval.

MMS will make the audits as current as possible but the 6-year audit cycle is in keeping with standard industry and Government auditing practices.

One commentor suggested adding the words "during the time period set out in § 212.50," to the end of the paragraph to clarify that audits will not look back further than the recordkeeping requirements.

The MMS will not audit further back than records are required to be maintained unless the recordholder has been notified in writing of a continued investigation or audit which requires that the records be maintained for a longer period of time. Paragraph (b) of § 212.51 gives sufficient clarification.

One commentor stated that audits should be final so that reaudits would be neither necessary nor authorized by MMS.

MMS agrees that normal practice does not require reaudits, but cannot state that there will never be reaudits.

One commentor stated that 180-days' notice of audit should be given along with information about what specific items will be audited.

A 6-month notice requirement of an impending audit is unreasonable. MMS will give reasonable time for furnishing records, depending on the circumstances of each audit.

Section 217.51 Lease account reconciliation. One commentor stated that the same time constraints should apply to MMS for lessee overpayments as apply to lessees for underpayments in regard to reconciliation of lease accounts.

MMS has a program for reconciling all lease accounts with open balances within a specified period of time. All overpayments, as well as underpayments, will be resolved as a result of that program.

See comments on § 218.54 for further discussion.

Part 218—Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

Section 218.50 Timing of payment. A total of 20 comments were received concerning this issue in paragraph (a). Nineteen commentors supported the proposed change to 60 days in the payment cycle and suggested that the 60-day cycle be made applicable to all Federal and Indian oil and gas leases. One commentor objected to the extension of time from 30 to 60 days for payments on leases.

The commentors in favor of the 60-day payment period would all benefit financially from such an extension. The Federal Government, States and Indian tribes would suffer a loss of substantial revenues. The Government's original proposal to extend the payment period was prompted by its desire to obtain more accurate reporting and payment data from lessees/payors. This was consistent with the recommendations of the Commission on Fiscal Accountability of the Nation's Energy Resources. However, because the huge loss of revenue to the Federal Government, States, and Indian tribes would be so significant as compared to an unknown higher degree of accounting accuracy, the MMS will not extend the payment due date as proposed. The MMS will rely on a system of assessments for incorrect or late reporting and paying. This final regulation is in agreement with present lease payment terms.

One commentor stated that § 218.50(b) was not clear as to whether separate royalty checks or EFT payments would be required for Indian allotted leases and for Indian tribal leases.

MMS has made the required clarifying change now found at § 218.51(f).

One commentor stated that the word "payment" should be inserted instead of "royalty" at subparagraph (b)(2) of § 218.50, because Indian tribes receive payments other than royalties.

MMS agrees and this has been done and moved to paragraph (f) of § 218.51.

One commentor questioned if the term "format" included in subparagraph (b)(3) refers to Form MMS-2014.

The word "format" as used in this subparagraph (now § 218.51(f)(2)) does refer to Form MMS-2014.

Section 218.51 Method of payment. Three commentors requested a change in the text of paragraph (a). Specifically, they asked that we delete the proposed language which was in parentheses: "(OCS bonuses . . . of the Part)" and replace it with a new § 218.51(c) referencing 30 CFR 218.155 (formerly 30 CFR 256.13) which would clarify that payments on nonproducing leases are not required to be made by EFT.

MMS has made a clarifying change. However, a new subsection (c) for this purpose was not deemed necessary.

Two commentors were confused about rental payments for onshore non-producing leases. One contended that they are to be made to BLM (as required by lease terms) and the other was not sure whether they were to be made to BLM or to MMS and, if to MMS, to which MMS office.

Changes that have been made to the section should eliminate that confusion. Beginning in April 1984, all rental payments on *all* nonproducing Federal leases, except first year rentals and bonuses for onshore leases and except for the six excepted land categories listed below, will be paid to MMS-RMAC at Lakewood, Colorado. The six excepted land categories are: Coos Bay—Wagon Road; Oregon and California Grant Lands; Alaska National Petroleum Reserve; Taylor Grazing Act Districts; BLM National Grasslands; and South half of the Red River—Oklahoma Lands.

One commentor suggested that nonproducing lease rental payments be excluded from the EFT requirements.

This has been done. However, such payments can be made by EFT at the option of the payor, if approval is obtained prior to use of EFT from the MMS-RMAC in Lakewood, Colorado.

One commentor stated that there was confusion about the payment level for determining the $50,000 threshold for making payment by EFT. Another commentor objected to combining multiple lease payments to reach an aggregate amount.

Payment level is to be determined by payor number. Whenever the aggregate amount of royalties due on a given day for a single payor (any entity assigned a payor number by MMS) equals or exceeds $50,000, the payment *must* be made by EFT.

One commentor stated that the amount triggering the EFT payment requirement should be $100,000 not $50,000. Another commentor stated that all payors should be allowed to make payments by any payment method they choose providing the payment is timely and in the proper amount.

Neither of the above two comments are acceptable to MMS since the intent of requiring payment of amounts of $50,000 or more by EFT is to ensure the earliest availability of funds to the U.S. Treasury.

Two commentors recommended that the list of alternative methods for remittance of less than $50,000 in paragraph (b) include payment by means of EFT.

The MMS agrees and payment by EFT has been included as an alternative optional method for amounts under $50,000.

One commentor stated that paragraph (b) is unclear as to whether payments could include combined payments from more than one lease.

Payments could include combined payments from more than one lease. See paragraph (f)(2) of § 218.51 of the final rule.

Section 218.52 Designated payor. Five commentors noted that the proposed 60-day period for notifying MMS of paying responsibility or any change in paying responsibility conflicts with the 30 day reporting period at § 210.51.

This section has been amended to 30 days to conform to § 210.51 requirements. For an explanation of the 30-day requirement, see the discussion of comments on § 210.51 given above.

One commentor contended that in the case of joint lessees, no single lessee must be assigned as the "designated payor."

The MMS must have a "payor" or "payors" assigned for the proper operation of its new computerized accounting system.

Section 218.53 Division of interest. Eight commenters stated that MMS should change the provision that division of interest documents be submitted at the end of the second month following the "date of the contract" to the end of the second month following the "date of the first production or sale," since industry practice is not to prepare such documents until production is imminent, particularly in the case of gas.

Four commentors suggested that the time period be extended from 60 days (end of second month) to 120 days for submission of division of interest documents to allow time to resolve problems of title documentation.

One commentor felt that the reference relating division orders to "contracts for sale of products" is misleading. "Contracts for sale of products," the commentor states, are not always identical to division orders describing the leaseholders' interest in the lease. This commentor also felt that the submission of Form MMS-4025 under § 210.51 should provide sufficient information and make the submission of division of interest documents unnecessary.

Four commentors stated that all State laws do not require division of interest documents.

In view of comments received on this issue, MMS will not include the specific requirements for submission of Division of Interest Documents in this rulemaking.

Section 218.54 Late payments and underpayments. One commentor suggested that the regulations be modified to specify that late payments and underpayments be determined at the Accounting Identification Number (AID) level.

MMS disagrees; late payments and underpayments are assessed at the AID, product code, and selling arrangement levels. If all lines on a Form MMS-2014 are paid late, then the late payment billing is rolled up to reflect that the entire Form MMS-2014 is late, rather than identifying every line as being late. In those instances where only certain lines on Form MMS-2014 are reported and paid late, the late payment billing identifies each late line.

Two commentors stated that the same rules and interest rates should apply to overpayments as to underpayments. One other commentor suggested that overpayments be credited against underpayments before assessing any penalties or interest.

In those instances where estimated payments exist, a payor's reported royalties are compared with estimated payments an interest is billed where royalties exceed estimate. In that process, overpayments and underpayments are netted at the payor level for Federal leases and at the lease level for Indian leases prior to calculating interest. In those instances where estimates do not exist, however, each AID is independently reviewed for late payment. There is no offsetting in that case.

One commentor suggested that the interest not be assessed on late payment or underpayments when they are not the fault of the lessee.

MMS agrees. If a late payment or underpayment is not the fault or the lessee in the judgment of MMS, assessment of interest will be waived.

One commentor suggested that the word "daily" be added after the word "computed" in paragraph (c) of the proposed rule.

MMS agrees that daily compounding of interest for late payments and under payments is required by Section 6621 of the Internal Revenue Code.

Section 218.55 Interest payments to Indians. One commentor stated that since Indians will be receiving payments other than royalties, the term "monies" should replace the term "royalties" in paragraph (a) of § 218.55.

Revised paragraph (a) reads: "All interest collected from late payments on Indian tribal or allotted leases will be paid to the tribe or allottee."

Section 218.56 Assessments for incorrect or late reports and failure to report. Eight comments concerning proposed paragraphs (a) and (b) stated that the penalties were too severe because of the line-by-line cumulative/additive nature of the proposed system. One comment stated that the penalties were too small at $10.00 per day and that they should be increased to $50.00 per day and be made mandatory, not discretionary.

The MMS has decided to retain the rule as proposed except for nomenclature changes believing that conscientious payors will not commit sufficient errors to become unduly burdened by assessments while careless payors will be encouraged to improve their paying and reporting by the levying of assessments in a consistent and progressive manner. The commentor believing the assessments were too small apparently failed to note the line-by-line cumlative/additive nature of the system.

Four commentors stated that this section should be deleted because any civil penalty authority of the Secretary related to royalty payment and accounting has been subsumed into and/or preempted by Section 109 of the Act.

MMS disagrees with this interpretation of the Act. Section 304(a) of the Act provides that the penalties and authorities of the Act are supplemental to, and not in derogation of, any penalties or similar authorities in other laws. The Secretary's authority for the assessments provided by §218.56 is derived not from the Act, but from the Secretary's responsibilities to administer the Mineral Leasing Act, the Outer Continental Shelf Lands Act, and other mineral leasing laws.

Section 218.103 Payments to States. One commentor stated it is not clear who is to pay the interest charge to the State. Would it be the entity disputing the monies held in suspense?

MMS has responsibility for paying interest on suspended amounts to the State.

One commentor stated that interest on suspended amounts should be calculated beginning at the time of deposit of the suspended amounts and not beginning on the calendar day that such amounts would normally have been paid to the States as shown in paragraph (c).

MMS disagrees. The Act (Section 104) is clear that interest accrues only *after* a payment is deemed late under the provisions of the legislation dealing with timely payments to the States and tribes.

Section 218.104 Exemption of States from certain interest and penalties. One commentor said the middle sentence of paragraph (b) as proposed should be deleted because it conflicts with § 111(e) of the Act.

The commentor has misread § 111(e). The first sentence of that section deals only with interest or penalties, e.g., treble damages, which might be assessed against the Government. The second sentence of § 111(e) clearly states that the State share in any refunds of overpayments, whether a result of settlement or pursuant to a judicial or administrative order. Paragraph (c) of § 218.104 carries out the intent of the Act in that regard.

Part 219—Distribution and Disbursement of Royalties, Rentals, and Bonuses

Section 219.100 Timing of payment to States. One commenter objected to the definition of the last business day of the month as including the first working day of the succeeding month when the month ends on a weekend or holiday. The commentor contends this is contrary to Section 104(a) of the Act.

The MMS agrees and paragraph (b) has been deleted.

Section 219.101 Receipts subject to an interest charge. Implementation of the provisions of this section is dependent upon the availability of appropriated funds.

One commentor stated that paragraph (a) should be clarified by adding a new paragraph (c) to read as follows:

"(c) Included in paragraph (a) are revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS, which prevented MMS from properly identifying the payment to the proper recipient."

MMS agrees. Paragraph "(c)" has been added accordingly.

One commentor stated that the lessee should not have to pay such interest since it will already have been paid to MMS.

This section does *not* apply to lessees or royalty payors.

Section 219.103 Payments to Indian accounts. One commentor claimed that the proposed "inequitable" changes in payment date (§ 218.50(a)) are compounded by the wording of this section giving the Government an entire month after warranting of funds by the Treasury to effect the distribution of funds to Indian accounts. This commentor contends further that this is contrary to the Act (30 U.S.C. 1714), Section 104(b).

It is the MMS policy to follow the intent of Section 104(b) of the Act which states that "Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received." Section 219.103 reflects this change.

Section 219.104 Explanation of payments to States and Indian tribes. One commentor stated that MMS should provide Indian tribes the same information that MMS is providing to the BIA. That commentor also recommended that the language used should track with that of Section 219.104(a) by reading as follows:

"Explanation of payment reports shall be provided to BIA on behalf of tribes and individual Indain allottees, and directly to tribes, not later than the last business day of the month in which MMS disburses the Indian share of the royalties and related monies."

Where the BIA has a direct trust responsibility for a tribe or allottee, MMS provides data to BIA to support mineral leasing payments. To duplicate this information would create an unnecessary burden on MMS and in some instances on royalty payors. The information is readily available to tribes and allottees from BIA.

Part 228—Cooperative Activities With States and Indian Tribes

Section 228.5 Delegation of authority. One commentor felt that these sections are ambiguous and might permit States or Indian tribes to assess penalties directly instead of MMS.

MMS does not intend to delegate penalty assessment authority to States or Indian tribes.

One commentor expressed concern about the problem of dual or even triple oversight of lessees' activities. The commentor recommended MMS exercise ultimate authority when the overseeing entities are in disagreement.

MMS agrees with this comment and has ultimate responsibility for minimizing duplication. However, MMS does not have responsibility for audits being performed by the Office of the Inspector General.

Section 228.6 Definitions. One commentor stated that specific language should be added to the definition of the word "audit" to clarify the ability of a State to extend the audit process to review the accounting transaction involved in the recording and distribution of Federal mineral royalties, bonuses, and rentals.

MMS disagrees. MMS is subject to audit only by the properly authorized entities established by Congress and the Executive Branch.

One commentor stated that the reconciliation of leases prior to conversion to AFS should be closed for leases previously reported to Los Angeles, Metairie, and Tulsa. Another commentor stated that audits should not be applied retroactively.

MMS agrees in part with the first comment but disagrees with the second. Account reconciliations for accounts formerly managed by Los Angeles, Metairie, and Tulsa have been completed and all accounts reconciled. These leases as well as all other Federal leases will continue to be subject to audit for a 6-year period for other potential audit issues, other than account balances, that may be found.

Section 228.100 Entering into an agreement. Two commentors expressed concern that audits conducted by States or Indian tribes would not be properly regulated by MMS.

MMS believes that adequate controls do exist and that MMS will provide the required oversight. Section 228.104 of the proposed rule is now contained at § 228.100 of the final rule.

Section 228.101 Terms of agreement. This section which was § 228.100 of the proposed rule is now at § 228.101 in the final rule.

Three commentors discussed paragraph (d): One commentor stated that any in-progress audit activity should be completed prior to termination by MMS of a cooperative agreement in order to avoid duplication of effort later.

MMS would endeavor to follow this advice whenever possible but cannot guarantee that it can be accomplished in every situation. Care will be taken to avoid duplication of effort.

One commentor stated that there should be provisions for "emergency" termination of cooperative agreements by MMS in a timeframe shorter than 120 days.

MMS feels that any such provisions would be unfair to States or Indian tribes insofar as MMS had previously determined that they were eligible and able to conduct audits and investigations under the cooperative agreement.

One commentor recommended changing the word "the" in the proposed rule to "any" in the last sentence of paragraph (d) of § 228.101. The commentor suggested this change to provide for the instance where no submission has been made.

MMS agrees and has made the suggested change in paragraph (d) of § 228.101 of the final rule.

Section 228.102 Establishment of standards. This section which was § 228.101 of the proposed rule is now at § 228.102 in the final rule.

Two commentors suggested that a sentence be added to read: "Where an auditor is permanently assigned to a lessee/payor, contact by the State and Indian tribal auditors with the lessee/

payor shall be through the auditor in residence."

MMS agrees. The sentence is added.

One commentor stated support for the provision that State and Indian tribe standards must *not* be more stringent than those of MMS.

MMS agrees. All audit work performed under cooperative audits will follow MMS established standards.

One commentor suggested that draft standards established under this section be published in the **Federal Register** for public comment.

MMS intends to publish the standards for public comment.

Section 228.103 Maintenance of records. This section, which was § 228.102 of the proposed rule, is now at § 228.103 final rule.

One commentor contends that State requirements for recordkeeping must not be more stringent than MMS requirements.

MMS requirements will cover all cooperative audit activities.

Section 228.104 Availability of information. This section, which was § 228.103 of the proposed rule, is now at § 228.104 in the final rule.

Two commentors endorsed the wording of this section. Another commentor suggested it be reworded to more closely conform to the wording of the Act since there is potential for abuse.

The MMS has not changed the wording.

Section 228.105 Funding of cooperative agreements. One commentor requested that MMS put words in this section binding MMS to request budget appropriations for funding cooperative agreements. Another commentor believed that such funding could significantly increase the costs of Government management and that such increases should be avoided. A third commentor believed that the funding limitation of 50 percent should be eliminated in favor of 100 percent Federal funding.

MMS disagrees with these three comments. The Act does not specifically establish a level of funding, and MMS feels that 50 percent of the total cost of a cooperative program supports the cooperative nature of activity, particularly since States share in the revenue derived from the audit. MMS cannot be bound to seek funding for activity as part of the annual budget process. MMS must follow the guidelines established by OMB and the Department in seeking appropriations, a process that cannot be interdicted by regulation.

Section 228.107 Eligible cost of activities. One commentor felt that under paragraph (a) the cost of services or activities that cannot be directly related to the support of the cooperative agreement should not be eligible for funding for Indian tribes.

The rule section already indicates this; no change is required.

Part 229—Delegation to States

Subpart A—General Provisions

One commentor submitted a number of general statements expressing concerns that the States may perform unnecessary, repetitious, and costly audits, unless properly monitored by MMS.

The MMS will regularly monitor the audit work being conducted by a State under the delegation of authority and, if it is found that a State has been abusing its authority, that authority can be revoked by MMS.

Section 229.100 Petition for delegation. Two commentors stated the regulation should use the term "Indian tribe and allottee" rather than "Indian tribe or allottee," since any delegation of authority by the Federal Government over Indian lands must have the approval of the tribal governing body.

MMS agrees. This change has been implemented.

Section 229.103 Terms of delegation. One commentor stated that renewals of the delegations of authority must be the subject of public review.

MMS agrees. A renewal of a delegation would require the same public comment period and hearing process as that which accompanied an original petition for delegation of authority.

Section 229.105 Recordkeeping requirements. One commentor stated that recordkeeping requirements under the delegation to the State must be no more extensive than when these matters are directly under MMS jurisdiction.

All directives affecting recordkeeping during a State-conducted audit will be in compliance with MMS regulations and standards.

Section 229.106 Standards for carrying out delegated authority. One commentor stated that the MMS prescribed standards used for a State to carry out a delegation of authority must be made the subject of public review.

The standards will be published in a rulemaking for public review and comment before authority is delegated to a State.

Section 229.107 Reports from States. One commentor recommended that paragraph (b) of the proposed rule be deleted because it was the intention of Congress to have the Federal jurisdiction, and not the State, handle enforcement actions.

MMS agrees. Enforcement actions are not delegated. Paragraph (b) as proposed has been eliminated.

Section 229.109 Reimbursement for costs incurred by a State under the delegation of authority. Two commentors recommended that this rule include language binding the MMS to request appropriations specifically designated for delegations of authority.

MMS disagrees. See comments made on §§ 228.105 and 228.106.

Section 229.120 Withdrawal of Indian lands from delegated authority. One commentor stated that if an Indian tribe or Indian allottee withdraws its delegation of authority to a State, it may cause an undue burden on industry and subsequently cause a duplication of audit work.

MMS will utilize audit workpapers and reports submitted to the date of termination and will make every effort to avoid duplication.

Part 241—Civil Penalties

Many comments were received on this proposed civil penalties part which suggested that MMS should revise the proposed language for consistency and clarity. More detail was suggested regarding the establishment of penalty amounts and the procedures for creation of a record. Although the penalty provisions are extensively prescribed by Section 109 of the Act, MMS has made revisions to the proposed regulations to provide more detail on notice procedures, penalty assessments, and hearings.

Subpart A—General Provisions

Section 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982. Section 241.20 was originally proposed as § 241.50 and remains unchanged except for the elimination of suspension of operations as a possible penaly. Upon reevaluation it was concluded that such an action would be detrimental not only to the lessee/operator but also to the government. This section authorizes the MMS to impose civil penalties for royalty management violations under the authority of the MLA, OCSLA, and other mineral leasing authorities. These authorities existed prior to the Act and continue to exist as an alternative and additional means of enforcement to the civil and criminal penalties in the Act. Assessment of penalties under these other statutes are subject to less rigorous procedural requirements than those prescribed by the Act. The designation of this section as § 241.20 of Subpart A should clarify that these penalties are not penalties prescribed by the Act. It is not MMS's intention, in most cases, to apply penalties authorized under this section concurrently or in addition to penalties authorized in succeeding sections of this part. These penalties could be used as an alternative or in situations where FOGRMA penalties under § 241.51 do not apply by law, e.g., solid minerals.

Subpart B—Oil and Gas, General

Section 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982. Section 241.51 provides regulations implementing the more complicated civil penalty provisions of the Act. Pursuant to subsection (a), when MMS believes that any person has committed a violation, it will issue a notice of noncompliance specifying the nature of the violation and how it should be corrected. This is the notice required by Section 109(a) of the Act. Service of the notice will be by personal service or registered mail and will be deemed to occur when received or 5 days after mailing, whichever is earlier. As specified in Section 109 of the Act, unless the violation is corrected within 20 days (or such longer period as specified in the notice) from the date of service, the person is liable for a penalty of up to $500 per day for each violation, dating from the date the notice was served. If the violation is not corrected within 40 days, the liability increases to a maximum of $5,000 per day per violation, dating from the date the notice was served.

The regulations provide in paragraph (a)(3)(iii) that if the person served with the notice does not correct the violation within 20 days (or as specified in the notice), he may request a hearing *on the record*, as provided by the Act, by filing a request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior. However, if the violation is corrected within the prescribed period, under the regulations no penalties may be assessed under Section 109(a) of the Act. Consequently, no hearing *on the record* need be provided. Accordingly, if the violation is corrected, the only available appeal will be to the MMS Director and then the Board of Land Appeals, in accordance with the appeals procedures in 30 CFR Part 243.

Subsection (b) of new § 241.51 provides for issuance of a notice of noncompliance for intentional violations. In such circumstances, penalties are increased to $10,000 per day and no period for correction need be provided before liability begins. Pursuant to the Act, penalties accrue from the date the violation began, not the date the notice is served.

If the person who received a notice of noncompliance does not correct the violation within the prescribed period, or if a notice of noncompliance is issued for an intentional violation, then the person is liable for penalties. Pursuant to § 241.51(c), MMS will issue a penalty notice setting forth the amount of penalty applicable for each violation. By way of illustration, if the maximum penalty for a violation is $500 for the first 20 days, and later increases to $5,000 retroactive to the first day of the notice of noncompliance for failure to correct the violation within 40 days, MMS may elect in the penalty notice to set the actual penalty for the particular violation below those maximums. MMS will determine the applicable penalty by taking into account the severity of the particular violation and violator's noncompliance history. Persons who consistently violate the applicable rules will receive higher penalties.

Subsection (d) of § 241.51 has been added to make it clear that any penalties assessed under § 241.51 will be in addition to interest which is owed on any nonpayment or underpayment of royalties and in addition to assessments for late or incorrect reporting. The interest and late or incorrect reporting provisions are in Part 218 which is also incorporated in this rulemaking.

If a person served with a notice of noncompliance requests a hearing, subsection (e) provides that liability for penalties will continue to accrue on a daily basis until the person corrects the violation set forth in the notice of noncompliance. For example, if the violations were nonpayment of royalties on an oil and gas lease, penalties would continue to accrue until the royalties in dispute were received by MMS. Subsection (e) provides further that the Director, MMS, may in certain circumstances suspend the requirement to correct the violations during appeal and accept a bond in lieu of payment. Such a suspension is at the discretion of the Director and will be granted only if the Director determines that suspension will not be detrimental to the lessor and if the lessee submits and MMS accepts a suitable bond. The bond amount must be sufficient to cover the underlying violations, penalties accrued up to the date the bond is accepted, and interest.

MMS may require the bond to be increased when there are increases in the amount of the underlying obligation, penalties or interest. In most instances, MMS will not grant suspensions since the effectiveness of MMS's royalty collection efforts is premised on compliance with its orders during appeal. See also the discussion of § 243.2 in a later section of this preamble.

Subsection (f) sets forth the applicable procedures when a hearing on the record is requested. The hearing will be conducted by an Administrative Law Judge (ALJ) of DOI's Office of Hearings and Appeals, who will issue a decision in accordance with the evidence presented and applicable law. The ALJ's decision may be appealed to the Interior Board of Land Appeals. If the ALJ's decision is not appealed, it becomes a final order. If there is an appeal to the Board, its decision becomes a final order which may be appealed to the District Courts in accordance with subsection (i).

Subsection (g) applies to situations where the person who has received a notice of noncompliance has *not* paid pursuant to the MMS order which initiated the notice and has *not* requested a hearing on the record. Pursuant to section 109(e) of the Act, that person has been "given the opportunity for a hearing on the record" and penalties may be assessed. The assessment will be in the form of an order issued by the MMS Director, with the applicable penalties determined in accordance with the penalty notice previously issued. The penalty assessment will be a final order and, pursuant to the terms of the Act, no further appeal is available since a hearing was not requested when the opportunity was provided. Accordingly, failure to pay the assessment will subject the person to collection action pursuant to Section 109(k) of the Act and subsection (j) of § 241.51 and any other remedies MMS may have available.

Subsection (h) authorizes the Secretary to compromise or reduce civil penalties, as provided in Section 109(g) of the Act.

Section 241.51(i) and (j) set forth the procedures for judicial review and court enforced collection of assessments. The regulations follow the detailed provisions of Section 109(j) and (k) of the Act.

Section 241.52 implements Section 110 of the Act. Any person who commits an act for which a penalty is authorized by Section 109(d) of the Act also will be subject to criminal penalties.

Part 243—Appeals-Royalty Management Program

Section 243.1 Procedures. This section provides that most decisions and orders of the Royalty Management Program may be appealed in accord with the appeal procedures in 30 CFR Part 290. The exception is appeals from FOGRMA penalty assessment orders which must be appealed with the specific appeal procedures of Part 241.

Section 243.2 Effectiveness of Orders or Decision Pending Appeals. This section continues MMS's long-standing practice that compliance with its decisions and orders is not suspended by reason of an appeal being taken. The MMS Director (or the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved) may grant a suspension of an order pending appeal, when, in his or her discretion, it is determined that suspension will not be detrimental to the lessor and the recipient of the order has provided an acceptable bond or other surety adequate to protest MMS. In almost all instances MMS will not grant suspensions, since the effectiveness of MMS's royalty collection efforts is premised on compliance with orders during appeal. Only in the unusual circumstance will MMS grant suspension pending the appeal process.

This provision is being made retroactive to orders and decisions issued by the Royalty Management Program after August 12, 1983. The retroactive effectiveness is necessary for consistent application of MMS's procedure because on that date 30 CFR Section 221.66, the predecessor to new Section 243.2, was unintentionally removed from MMS's regulations along with other rules which were removed by virtue of the transfer of MMS's onshore operational program to the Bureau of Land Management (48 FR 36582, August 12, 1983).

Executive Order 12291

The Department has determined that this rule is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291.

Cooperative agreements and delegations to States have minimal economic effect, as this arrangement primarily addresses who will perform the functions, i.e. the Secretary, State, or Indian tribe.

The cost to the Government in light of the additional mineral revenues generated as a result of audit recoveries has, based on experience, been proven to be cost beneficial and is expected to be so under the provisions of these regulations.

Regulatory Flexibility Act

The Department has determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act. Although the rule establishes certain penalties, if the lessee operator or royalty payor complies with the rules, there will be no penalties. The cost or economic effect of this regulation is soley in the hands of the lessee.

Paperwork Reduction Act of 1980

Although information collection requirements are noted in several parts of this rule, it is done so only for reaffirmation. The purpose of the Act is stated to be, in part, to clarify, reaffirm, expand, and to define the responsibilities and obligations of lessess, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf.

The information collection requirements noted in this rule have been previously authorized or there is no need for authorization as discussed by part/section as follows:

Section 210.51. The information collection requirements contained in this section has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1010–0033.

Section 210.52. The information collection requirement contained in § 210.52 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0022.

Sections 212.50 and 212.51. In the preamble to the proposed rule, these information collection requirements were incorrectly included as being approved under OMB clearance number 1010–0033. The information collection requirements for §§ 212.50 and 212.51 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1010–0022 and 1010–0040.

Sections 228.10 and 229.10. The information collection requirements contained in Parts 228 and 229 will involve fewer than ten (10) respondents annually and consequently do not require approval by the Office of Management and Budget under U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. No detailed statement in accord with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects

30 CFR Part 210

Government contracts, Reporting requirements, Mineral royalties, Continental shelf, Public lands-mineral resources, Geothermal energy.

30 CFR Part 212

Coal, Reporting requirements, Government contracts, Mineral royalties, Public lands-mineral resources.

30 CFR Part 217

Coal, Government contracts, Mineral royalties, Reporting requirements.

30 CFR Part 218

Government contracts, Mineral royalties, Continental shelf, Public lands-mineral resources, Coal, Geothermal energy.

30 CFR Part 219

Mineral royalties, Intergovernmental relations, Penalties.

30 CFR Part 228

Freedom of information, Intergovernmental relations, Investigations, Mineral royalties.

30 CFR Part 229

Intergovernmental relations, Investigations, Mineral royalties.

30 CFR Part 241

Government contracts, Reporting requirements.

30 CFR Part 243

Appeals—Royalty Management Program.

Title 30, Chapter II, of the Code of Federal Regulations is amended as set forth below.

Dated: September 14, 1984.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 210—FORMS AND REPORTS

1. The authority for Part 210 reads as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919

(25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

2. 30 CFR Part 210, Subpart A, § 210.10 is amended by revising the filing date for Form MMS–2014, as given in the "table of forms" from "* * *—due by the end of second month following production month * * *" to "* * *—due by the end of first month following production month * * *".

3. 30 CFR Part 210, Subpart B, is amended by adding §§ 210.50, 210.51, 210.52, and 210.53, to read as follows:

Subpart B—Oil and Gas, General

Sec.
210.50 Required recordkeeping.
210.51 Payor information form.
210.52 Report of sales and royalty remittance.
210.53 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart B—Oil and Gas, General

§ 210.50 Required recordkeeping.

Information required by the MMS shall be filed using the forms prescribed in this Subpart, which are available from MMS. Records may be maintained in microfilm, microfiche, or other recorded media that is easily reproducible and readable.

§ 210.51 Payor information form.

The Payor Information Form (Form MMS–4025) must be filed for each Federal or Indian lease on which royalties are paid. Where specifically determined by MMS, Form MMS–4025 is also required for all Federal leases on which rent is due. The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue source. Form MMS–4025 must be filed no later than 30 days after issuance of a new lease or a modification to an existing lease which changes the paying responsibility on the lease.

§ 210.52 Report of sales and royalty remittance.

A completed Report of Sales and Royalty Remittance (Form MMS–2014) must accompany all payments to MMS for royalties and, where specified, for rents on nonproducing leases. Payors who submit Form MMS–2014 data on magnetic tape will not be required to submit the form itself. Completed Form MMS–2014's (or magnetic tape) for royalty payments including those covering payments by electronic funds transfer, are due by the end of the month following the production month. Where applicable, completed Form MMS–2014's for rental payments are due no later than the anniversary date of the lease. This section does not prohibit payors from making early payments voluntarily.

§ 210.53 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 212—RECORDS AND FILES MAINTENANCE

4. 30 CFR Part 212, Subpart B, is amended by adding §§ 212.50, 212.51, and 212.52, to read as follows:

Subpart B—Oil and Gas, General

Sec.
212.50 Required recordkeeping and reports.
212.51 Records and files maintenance.
212.52 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart B—Oil and Gas, General

§ 212.50 Required recordkeeping and reports.

All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

§ 212.51 Records and files maintenance.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices and orders, and by the various parts of this Chapter. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tape submitted to the Minerals Management Service (MMS) for use in its Auditing and Financial System (AFS) and Production Accounting and Auditing System (PAAS).

(b) *Period for keeping records.* Lessees, operators, revenue payors, or other persons required to keep records under this Section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records. Lessees, operators, revenue payors, or other persons shall maintain the records generated during the period for which they have paying or operating responsibility on the lease for a period of 6 years.

(c) *Inspection of records.* The lessee, operator, revenue payor, or other person required to keep shall be responsible for making the records available for inspection. Records shall be provided at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce historical records.

§ 212.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 217—AUDITS AND INSPECTIONS

5. 30 CFR Part 217 Subpart B, is amended by adding § 217.50 and § 217.51 and 217.52, to read as follows:

Subpart B—Oil and Gas, General

Sec.
217.50 Audits of records.
217.51 Lease account reconciliation.
217.52 Definition.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart B—Oil and Gas, General

§ 217.50 Audits of records.

The Secretary, or his/her authorized representative, shall initiate and conduct audits relating to the scope, nature and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a Federal or Indian oil and gas lease. Audits also will relate to compliance with applicable regulations and orders. All audits will be conducted in accordance with the notice and other requirements of 30 U.S.C. 1717.

§ 217.51 Lease account reconciliation.

Specific lease account reconciliations shall be performed with priority being given to reconciling those lease accounts specifically identified by a State or Indian tribe as having significant potential for underpayment.

§ 217.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

6. The authority for Part 218 reads as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.) as amended; the National Environmental Policy Act of 1969 (42 U.S.C., 4321, et seq.) as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) as amended; the Geothermal Act of 1970 (30 U.S.C. 1001, et seq.) as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

7. 30 CFR Part 218, Subpart B, is amended by adding §§ 218.50, 218.51, 218.52, 218.53, 218.54, 218.55, 218.56, and 218.57, to read as follows:

Subpart B—Oil and Gas, General

Sec.
218.50 Timing of payment.
218.51 Method of payment.
218.52 Designated payor.
218.53 Division of interests. [Reserved]
218.54 Late payments and underpayments.
218.55 Interest payments to Indians.
Sec.
218.56 Assessments for incorrect or late reports and failure to report.
218.57 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart B—Oil and Gas, General

§ 218.50 Timing of payment.

(a) Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. Rental payments are due as specified by the lease terms.

(b) Payments made on a Bill for Collection (Form DI–1040b) are due as specified by the Bill. Bills for Collection will be issued and payable as final collection actions.

(c) All payments to MMS are due as specified and are not deferred or suspended by reason of an appeal having been filed unless such deferral or suspension is approved in writing by an authorized MMS official.

§ 218.51 Method of payment.

(a) *Payment of royalties.* (1) All payors whose aggregated royalty liability to the MMS on the payment due date totals $50,000 or more, must make payment by electronic funds transfer (EFT), utilizing the Federal Reserve Communications System link to the Treasury Financial Communications System, unless otherwise directed by the Secretary. Early payment by other than EFT of a portion of the aggregated royalty liability to avoid remittance by EFT on the payment due date is not permitted. Such early payments are permitted regardless of amount but must be remitted by EFT. Payments to MMS by EFT shall begin only after the payor has received instructions from the MMS Royalty Management Accounting Center (RMAC) in Lakewood, Colorado.

(b) Each payor, whose aggregated remittance for royalties on payment due date is less than $50,000, must use one of the following payment instruments:

(1) Federal Reserve check.
(2) Commercial check.
(3) Money Order.
(4) Bank Draft.
(5) Cashier's check.
(6) Certified check.
(7) Electronic Funds Transfer.

(c) All payment instruments except EFT should be inscribed payable to "Department of the Interior—MMS."

(d) *Payment of rentals.* (1) Payment of rentals to MMS–RMAC (other than the first year rentals) must be made by one of the methods shown in paragraph (b) of this section. First year rentals from offshore leases are paid in accordance with § 218.155.

(e) *Where to pay.* (1) The mailing address for Form MMS–2014 and the applicable payment is: Royalty Management Program, Minerals Management Service P.O. Box 5810 T.A. Denver, Colorado 80217. Use P.O. Box 5640 T.A. with the above address to send payments for Federal non-producing leases not required to be reported on the Form MMS–2014 report.

(2) Payments received after 4:00 p.m. mountain time, are considered next day receipts.

(f) *General payment information.* (1) Payments for offshore and onshore Federal leases shall be segregated from payments for Indian leases. All payments shall be made by one of the methods shown in paragraph (b) of this section. For payments made by EFT, the deposit message shall include information as prescribed by the RMAC.

(2) For Indian payments by check, the following instructions are applicable:

(i) For Indian allotted leases, payments shall be aggregated and identified on a single check for each respective BIA agency/area office having jurisdiction over the lease(s) for which the payment is made.

(ii) For Indian tribal leases, payments shall be aggregated and identified for each respective Indian tribe for whom the royalty is owed.

(iii) When payments are made on an aggregated basis (single check), the payment identification required in paragraphs (f)(2) (i) and (ii) of this section shall be provided in a format to be specified by MMS.

§ 218.52 Designated payor.

(a) When the lessee or revenue payor assigns any paying responsibility to any other entity, MMS must be notified within 30 days of the assignment.

(b) MMS may, by order, designate a lessee or revenue payor on a lease as the single payor for all revenues due and owing from that lease.

§ 218.53 Division of interests. [Reserved]

§ 218.54 Late payments and underpayments.

(a) An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due.

(b) The interest charge on late payments and underpayments shall be at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest will be charged only on the amount of the payment not received.

Interest will be charged only for the number of days the payment is late.

(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

§ 218.55 Interest payments to Indians.

(a) All interest collected from unpaid or underpayments on Indian tribal or allotted leases will be paid to the tribe or allottee.

(b) Any disbursement of Indian mineral revenues not made by the due date as required in § 219.103 of this chapter shall accrue interest.

(c) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(d) The interest shall be payable only for the number of days the disbursement is late.

§ 218.56 Assessments for incorrect or late reports and failure to report.

(a) An assessment of $10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of $10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of reports required for the Auditing and Financial System (AFS), a report is defined as each line item on a Form MMS-2014. The line item consists of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number (AID).

(d) [Reserved.]

(e) An assessment under this section shall not be shared with a State, Indian tribe, or Indian allottee.

§ 218.57 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

* * * * *

§ 218.102 [Amended]

8. 30 CFR Part 218, Subpart C, is amended by removing paragraphs (c) and (d) of § 218.102 and by redesignating paragraph (e) as paragraph (c) of that section.

9. 30 CFR Part 218, Subpart C, is amended by adding § 218.103, 218.104, and 218.105, to read as follows:

Subpart C—Oil and Gas, Onshore

§ 218.103 Payments to States.

(a) Any amount that is payable by MMS to a State but is not paid on the due date, as specified in § 219.100 of this chapter, or that is held in a suspense account pending resolution of a dispute as specified in § 219.101 of this chapter, shall accrue interest payable to the State.

(b) Interest shall be computed at the rate applicable under Section 6621 of the Internal Revenue Code of 1954.

(c) Interest shall be computed only for the number of days the disbursement is late. In the case of suspended amounts subject to interest, it shall be computed beginning with the calendar day following the day that the monies normally would have been paid to the State had they not been in suspense.

§ 218.104 Exemption of States from certain interest and penalties.

(a) States are exempt from being assessed for any interest or penalties found to be due against the Department of the Interior for failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, or any regulation issued by the Secretary of Energy thereunder concerning the certification or processing of crude oil taken in-kind as royalty by the Secretary.

(b) Any State shall be assessed for its share of any overcharge resulting from a determination that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973, as amended. Each State's share shall be assessed against monies owed to the State. Such assessment shall be first against monies owed to such State as a result of royalty audits prior to January 12, 1983, the enactment date of the Federal Oil and Gas Royalty Management Act of 1982, then against other monies owed. The State shall be liable for any balance.

(c) A State's liability for repayment of an overcharge under this section shall exist for any amounts resulting from a judgment in a civil suit or as the result of settlement of a claim through a negotiated agreement. State liability would be offset against future mineral revenue distributions to the State.

§ 218.105 Definitions.

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

§ 218.150 [Amended]

10. 30 CFR Part 218, Subpart D, is amended by removing paragraphs (d) and (e) of § 218.150, and by redesignating paragraph (f) as paragraph (d) of that section.

11. 30 CFR Part 219 is amended by adding Subparts A, B, C, and §§ 219.100, 219.101, 219.102, 219.103, 219.104, and 219.105, to read as follows:

PART 219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

Subpart A—General Provision [Reserved]

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

Sec.

219.100 Timing of payment to States.
219.101 Receipts subject to an interest charge.
219.102 Method of payment.
219.103 Payments to Indian accounts.
219.104 Explanation of payments to States and Indian tribes.
219.105 Definitions.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart A—General Provisions—[Reserved]

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

§ 219.100 Timing of payment to States.

A State's share of mineral leasing revenues shall be paid to the State not later than the last business day of the month in which the United States Treasury issues a warrant authorizing the disbursement, except for any portion of such revenues which is under challenge and placed in a suspense account pending resolution of a dispute.

§ 219.101 Receipts subject to an interest charge.

(a) Subject to the availability of appropriations, the Minerals Management Service (MMS) shall pay the State its proportionate share of any interest charge for royalty and related monies that are placed in a suspense account pending resolution of matters which will allow distribution and disbursement. Such monies not disbursed by the last business day of the month following receipt by MMS shall accrue interest until paid.

(b) Upon resolution, the suspended monies found due in paragraph (a) of this section, plus interest, shall be disbursed to the State under the provisions of § 219.100.

(c) Paragraph (a) of this section shall apply to revenues which cannot be disbursed to the State because the payor/lessee provided incorrect, inadequate, or incomplete information to MMS which prevented MMS from properly identifying the payment to the proper recipient.

§ 219.102 Method of payment.

The MMS shall disburse monies to a State either by Treasury check or by Electronic Funds Transfer (EFT). Should the State prefer to receive its payment by EFT, it should request this payment method in writing to the Minerals Management Service, P.O. Box 5760, Denver, Colorado 80217.

§ 219.103 Payments to Indian accounts.

Mineral revenues received from Indian leases shall be transferred to the appropriate Indian accounts managed by the Bureau of Indian Affairs (BIA) for allotted and tribal revenues. These accounts are specifically designated Treasury accounts. Revenues shall be transferred to the Indian accounts at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which revenues are received by the MMS.

§ 219.104 Explanation of payments to States and Indian tribes.

(a) Payments to States and BIA on behalf of Indian tribes or Indian allottees discussed in this part shall be described in *Explanation of Payment* reports prepared by the MMS. These reports will be at the lease level and shall include a description of the type of payment being made, the period covered by the payment, the source of the payment, sales amounts upon which the payment is based, the royalty rate, and the unit value. Should any State or Indian tribe desire additional information pertaining to mineral revenue payments, the State or tribe may request this information from the MMS.

(b) The report shall be provided to: (1) States not later than the 10th day of the month following the month in which MMS disburses the State's share of royalties and related monies; (2) the BIA on behalf of tribes and Indian allottees not later than the 10th day of the month following the month the funds are disbursed by MMS.

(c) Revenues that cannot be distributed to States, tribes, or Indian allottees because the payor/lessee provided incorrect, inadequate, or incomplete information, preventing MMS from properly identifying the payment to the proper recipient, shall not be included in the reports until the problem is resolved.

§ 219.105 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

12. 30 CFR Part 228 is amended by adding Subparts A, B, C, and §§ 228.1, 228.2, 228.4, 228.5, 228.6, 228.10, 228.100, 228.101 228.102, 228.103, 228.104, 228.105, 228.107, and 228.108, to read as follows:

PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

Subpart A—General Provisions

Sec.
228.1 Purpose.
228.2 Policy.
228.4 Authority.
228.5 Delegation of authority.
228.6 Definitions.
228.10 Information collection requirements.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

228.100 Entering into an agreement.
228.101 Terms of agreement.
228.102 Establishment of standards.
228.103 Maintenance of records.
228.104 Availability of information.
228.105 Funding of cooperative agreements.
228.107 Eligible cost of activities.
228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

Authority: Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart A—General Provisions

§ 228.1 Purpose.

It is the purpose of cooperative agreements to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system as indicated at 30 U.S.C. 1701.

§ 228.2 Policy.

It shall be the policy of DOI to enter into cooperative agreements with States and Indian tribes to carry out audits and related investigations and enforcement actions whenever a State or tribe initiates a request to enter into an agreement and a finding is made that a State or tribe has the ability to carry out cooperative activities in a timely and efficient manner.

§ 228.4 Authority.

The Secretary of the Interior is authorized to enter into cooperative agreements with States and Indian tribes (30 U.S.C. 1732) to share oil or gas royalty management information, and to carry out auditing and related investigation or enforcement activities in cooperation with the Secretary.

§ 228.5 Delegation of authority.

(a) Authority to enter into cooperative agreements to carry out audit and related investigation and enforcement activities with State and tribal governments has been delegated to the Director of the Minerals Management Service (MMS).

(b) Authority to enter into cooperative agreements with State and tribal governments to carry out inspection and related investigation and enforcement activities has been delegated to the Director of the Bureau of Land Management (BLM) and is not covered by this part.

(c) The entry into a cooperative agreement with either MMS or BLM will not affect the ability of a State or Indian tribe to choose to enter into such an agreement with the other agency. A State may enter into a delegation agreement (30 U.S.C. 1735) with MMS to perform certain functions without affecting its ability to enter into a cooperative agreement with either MMS or BLM, or both, to cooperate in the performance of those functions which are not delegated in this part.

§ 228.6 Definitions.

For the purposes of this part, terms shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definition shall apply:

Audit means an examination of the financial accounting and lease related records of the lessee and other interest holders, who by lease or contract pay royalties or are obligated to pay royalties, rents, bonuses or other payments on Federal or Indian leases. An examination is to be conducted in accordance with generally accepted audit standards as adopted by the American Institute of Certified Public Accountants. Activities to be examined which are considered to be an audit function include reconciliation of lease accounts under the Royalty Accounting System; records of lease activities related to Federal leases located within the boundaries of the State entering into a cooperative agreement; records of lease activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the Auditing and Financial System and the Production Accounting and Auditing System, the official accounting systems for royalty reporters and payors maintained by the MMS.

§ 228.10 Information collection requirements.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than ten respondents annually.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

§ 228.100 Entering into an agreement.

(a) A State or Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the governor, tribal chairman, or other appropriate official with delegation authority, to the Director of MMS.

(b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information:

(1) Type of eligible activities to be undertaken.

(2) Proposed term of the agreement.

(3) Evidence that the State or Indian tribe meets, or can meet by the time the agreement is in effect, the standards established by the Secretary for the types of activities to be conducted under the terms of the agreement.

(4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.

§ 228.101 Terms of agreement.

(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable or additional consecutive 3-year periods upon request of the State or Indian tribe which is a party to the agreement.

(b) An agreement may be terminated at any time by mutual agreement and upon any terms and conditions as agreed upon by the parties.

(c) A State or Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.

(d) The MMS may commence termination of an agreement by giving a 120-day written notice of intent to terminate. MMS shall provide the State or Indian tribe with the reasons for the proposed termination in writing if the termination is proposed because of alleged deficiencies by the State or Indian tribe in carrying out the provisions of the agreement. The State or Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. No final action on termination shall be taken until any submission of the State or Indian tribe provided within the above prescribed 60 days has been reviewed by MMS for content or merit.

(e) Termination of a cooperative agreement shall not bar a later request by a State or Indian tribe to enter into a subsequent cooperative agreement.

§ 228.102 Establishment of standards.

The MMS, after consultation with States and Indian tribes, shall establish standards for carrying out the activities under the provisions of this part. The standards will be incorporated into the agreement and shall be no more stringent than those applicable to similar activities of the MMS. The States and Indian tribes shall coordinate their planned auditing activities with MMS. Where an MMS audit team is permanently assigned to a lessee/payor, contact by State and Indian tribal auditors with the lessee/payor shall be through the MMS auditor in residence.

§ 228.103 Maintenance of records.

The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup matrials for a period specified by MMS. All records and support materials must be available for inspection and review by appropriate personnel of DOI including the Office of the Inspector General.

§ 228.104 Availability of information.

(a) Under the provisions of this part, information necessary to carry out the activities authorized under the terms of a cooperative agreement will be provided by DOI to the States and Indian tribes entering into such agreements. The information will consist of data provided from all relevant sources on a lease level basis for leases located within the boundaries of the State or Indian tribe which has entered into the agreement. This information will include any records or data held by the lessee or other person that have not been submitted to MMS, but that affect Federal lease interests and could be required to be submitted under the lease terms or Federal regulations.

(b) None of the provisions of this subpart should be construed as limiting information already being provided to Indian tribes and allottees regarding their lease interests.

(c) Information will be provided by MMS on a monthly basis and will include data on royalties, rents, and bonuses collected on the lease, volumes produced, sales made, value of products disposed of as a sale and used as a basis for royalty calculation, and other information necessary to allow the State or tribe to carry out its responsibilities under the cooperative agreement.

(d) Proprietary data that is made available to a State or tribe under provisions of 30 U.S.C. 1733 shall be subject to the constraints of 18 U.S.C. 1905. To receive proprietary data, the State or tribe must—

(1) Demonstrate what audit, investigation, or litigation under provisions of 30 U.S.C. 1734 is planned for or underway for which this data is essential;

(2) Demonstrate why this particular data is necessary; and

(3) Agree to safeguard proprietary data as provided.

§ 228.105 Funding of cooperative agreements.

(a) The Federal share of funding eligible activities under a cooperative agreement will be limited to not more than 50 percent share of the cost of eligible activities under the terms of the cooperative agreement. The State or tribe may provide its 50 percent share either in cash or in kind. In kind contributions must be found eligible under the terms of the agreement and are subject to examination and evaluation by the Department.

(b) All cooperative agreements under this part are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

§ 228.107 Eligible cost of activities.

(a) Only costs directly associated with eligible activities undertaken by the State or Indian Tribe under the terms of a cooperative agreement will be eligible for sharing. Costs of services or activities which cannot be directly related to the support of the cooperative agreement will not be eligible for Federal funding or for inclusion in the State's 50 percent share or in the Indian Tribe's share.

(b) Eligible costs are the cost of salaries and benefits associated with technical, support, and clerical personnel engaged in eligible activities; direct cost of travel, rentals, and other normal administrative activities in direct support of the project or projects; basic and specialized training for State and tribal participants; and cost of any contractual services which can be shown to be in direct support of the activities covered by the agreement. Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.

§ 228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

As provided at 30 U.S.C. 1736, 50 percent of any civil penalty collected as a result of activities under a cooperative agreement will be shared with the State or Indian tribe performing the cooperative agreement; however, the amount of the civil penalty shared will be deducted from any Federal funding owed under that cooperative agreement. MMS shall maintain records of civil penalties collected and distributed to the States and tribes involved in cooperative agreements. Each quarterly payment of the Federal share of a cooperative agreement will be reduced by the amount of the civil penalties paid to the State or tribe during the prior quarter.

13. 30 CFR Part 229 is amended by adding Subparts A, B, C, and §§ 229.1, 229.2, 229.4, 229.6, 229.10, 229.100, 229.101, 229.102, 229.103, 229.104, 229.105, 229.106, 229.107, 229.108, 229.109, 229.110, and 229.120 to read as follows:

PART 229—DELEGATION TO STATES

Subpart A—General Provisions

Sec.
229.1 Purpose.
229.2 Policy.
229.4 Authority.
229.6 Definitions.
229.10 Information collection requirements.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

229.100 Petition for delegation.
229.101 Fact-finding and hearings.
229.102 Hearings.
229.103 Terms of delegation.
229.104 Evidence of Indian agreement to delegation.
229.105 Recordkeeping requirements.
229.106 Standards for carrying out delegated authority.
229.107 Reports from States.
229.108 Examination of the State activities under delegation.
229.109 Reimbursement for costs incurred by a State under the delegation of authority.
229.110 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.
229.120 Withdrawal of Indian lands from delegated authority.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart A—General Provisions

§ 229.1 Purpose.

The purpose of this part is to promote the effective utilization of the capabilities of the States in developing and maintaining an efficient and effective Federal royalty management system.

§ 229.2 Policy.

It shall be the policy of the Department of the Interior (DOI) to honor any properly made petition from the Chief Executive or other appopriate official of a State seeking delegation of authority under the provisions of 30 U.S.C. 1735 and to make a delegation to conduct audits and related investigations when the Secretary finds that the provisions of 30 U.S.C. 1735 have been complied with or can be complied with by a State seeking the delegation.

§ 229.4 Authority.

The Secretary of the DOI is authorized under provisons of 30 U.S.C. 1735 to delegate authority to States to conduct audits and related investigations with respect to all Federal lands within a State, and to those Indian lands to which a State has received permission from the respective Indian tribe(s) or allottee(s) to carry out audit activities under a delegation from the Secretray.

§ 229.6 Definitions.

The definitions contained in 30 U.S.C. 1702 and in Part 228 of this chapter apply to the activities carried out under the provisions of this part.

§ 229.10 Information collection requirements.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Subpart B—Oil and Gas, General—[Reserved]

Subpart C—Oil and Gas, Onshore

§ 229.100 Petition for delegation.

(a) The governor or other authorized official of any State which contains Federal oil and gas leases, or Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting Federal or Indian oil and gas leases within the State.

(b) A State may enter into a delegation of authority under this part without affecting a State's ability to enter into a cooperative agreement under Part 228 of this chapter.

(c) The Secretary shall carry out all factfinding and hearings he may decide are necessary in order to approve or disapprove the petition.

(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.

(e) No petition may be acted upon by the Secretary until the regulation requirement of § 229.106 of the subpart is effective.

§ 229.101 Fact-finding and hearings.

(a) Upon receipt of a petition for delegation from a State, the Secretary shall appoint a representative to conduct a hearing or hearings to carry out factfinding and determine the ability of the petitioning State to carry out the delegated responsibilities requested in accordance with the provisions of this part.

(b) The Secretary's representative, after proper notice in the **Federal Register** and other appropriate media within the State, shall hold one or more public hearings to determine whether:

(1) The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the purposes of this Part (30 U.S.C. 1735);

(2) The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;

(3) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;

(4) The State's plan to carry out the delegated authority will be in accordance with the MMS standards; and

(5) The State's plan to carry out the delegated authority will be coordinated with MMS and the Office of Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil and gas leases within the State.

§ 229.102 Hearings.

A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.

§ 229.103 Terms of delegation.

(a) Delegations of authority shall be valid for a period of 3 years and may be renewable for an additional consecutive 3-year period upon request of the State and after the appropriate factfinding required in § 229.101. Delegations are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(b) A delegation of authority may be terminated at any time and upon any terms and conditions as mutually agreed upon by the parties.

(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.

(d) The Department may terminate a delegation of authority when it is determined, after opportunity for a hearing, that the State has failed to substantially comply with the provisions of the delegation of authority.

(e) No action to initiate formal hearing proceedings for termination shall be taken until the Department has notified the State in writing of alleged deficiencies and allowed the State 120 days to correct the deficiencies.

(f) Termination of a delegation shall not bar a subsequent request by a State to regain a delegation of authority.

§ 229.104 Evidence of Indian agreement to delegation.

In the case of a State seeking a delegation of authority for Indian lands as well as Federal lands, the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.

§ 229.105 Recordkeeping requirements.

The State shall maintain all records, working papers, reports, and correspondence of individual lessees, operators, and interest holders for review and inspection by representatives of the Secretary including the Office of the Inspector General. All materials must be maintained for a period specified by the Department and shall be maintained by the State in a separate record or file maintenance system in a safe and secure fashion.

§ 229.106 Standards for carrying out delegated authority.

The Department, after proper rulemaking procedure, shall establish uniform minimum acceptable standards for carrying out activities under the provisions of this part. The standards shall be no more stringent than those applicable to similar activities of the Department. Standards shall be promulgated by rule as soon as practicable after the effective date of final issuance of these regulations.

§ 229.107 Reports from States.

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

§ 229.108 Examination of the State activities under delegation.

(a) The Department will carry out an annual examination of the State's delegated activities undertaken under the delegation of authority.

(b) The examination required by this section will consist of a management review and a fiscal examination and evaluation to determine—

(1) That activities being carried out by the State under the delegation of authority meet the standards established by the Department and in particular the provisions of 30 U.S.C. 1735; and

(2) That costs incurred by the State under the delegation of authority are eligible for reimbursement by the Department.

§ 229.109 Reimbursement for costs incurred by a State under the delegation of authority.

(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred for which the State is seeking reimbursement. Only costs as defined under the provisions of 30 U.S.C. 1735 are eligible for reimbursement.

(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.

§ 229.110 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.

Fifty percent of any civil penalty resulting from activities under a delegation of authority shall be shared with the delegated State. However, the amount of the civil penalty shared will be deducted from any Federal funding owed under a delegation of authority under the provisions of 30 U.S.C. 1735. MMS shall maintain records of civil penalties collected and distributed to the States involved in 30 U.S.C. 1735 delegations. Each quarterly payment will be reduced by the amount of the civil penalties paid to the delegated State or tribe during the prior quarter.

§ 229.120 Withdrawal of Indian lands from delegated authority.

If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. Once the petition has been received, the State shall within 30 days cease all activities being carried out under the delegation of authority on the lands covered by the petition for the tribe or allottee.

PART 241—PENALTIES

14. The authority for Part 241 reads as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181, et seq.), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), as amended; section 2 of Reorganization Plan

No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

15. 30 CFR Part 241 Subpart A is amended by adding § 241.20 to read as follows:

§ 241.20 Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

(a) Whenever a lessee, operator, revenue payor, or other authorized person fails to comply with any regulations, orders or notices, the appropriate MMS official shall give the lessee, operator, revenue payor, or other authorized person notice in writing to remedy any violations.

(b) Failure by the lessee, operator, revenue payor, or other authorized person, or other party to complete the necessary remedial action within the time and in the manner prescribed by the notice may subject the lease to cancellation proceedings pursuant to 30 CFR 250.12 for offshore leases, 43 CFR Subpart 3163 and 3108 for Federal onshore leases, or provisions of 25 CFR Indian leases.

(c) The lessee, operator, revenue payor, or other authorized person, shall be subject to a penalty of not more than $500 per day for each day the violation specified in the notice continues beyond the date specified in the notice, not to exceed 60 days. In addition to this penalty or in lieu thereof, MMS can take steps to cancel the lease.

(d) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing.

Hearings shall be held by the appropriate MMS official whose findings shall be conclusive unless an appeal is taken pursuant to 30 CFR Part 243.

16. 30 CFR Part 241 Subpart B is amended by adding §§ 241.50, 241.51, and 241.52 to read as follows:

Subpart B—Oil and Gas, General

Sec.
241.50 Definitions.
241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.
241.52 Criminal penalties.

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart B—Oil and Gas, General

§ 241.50 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

§ 241.51 Civil penalties authorized by the Federal Oil and Gas Royalty Management Act of 1982.

(a)(1) *Notice of noncompliance.* If the MMS believes that any person has failed or refused to comply with any statute, regulation, rule, order, lease, or permit governing the determination and collection of royalties on Federal or Indian lands or on the Outer Continental Shelf, the MMS may issue a notice of noncompliance which shall set forth the nature of the violation and the remedial action required.

(2) The notice of noncompliance shall be served by personal service by an authorized representative of the MMS or by registered mail. Service by registered mail shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(3) When a notice of noncompliance is issued by the MMS under this section:

(i) Unless the violation is corrected within 20 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of service of the notice;

(ii) Unless the violation is corrected within 40 days (or such longer time as specified in the notice) from the date that the notice is served, the person upon whom the notice is served shall be liable for a penalty of up to $5,000 per violation for each day such violation continues;

(iii) If the person upon whom the notice is served does not correct the violation within 20 days (or such longer time as specified in the notice) from the date that the notice is served, such person may, by that date, request a hearing on the record by filing a written request with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(4) If the person upon whom a notice of noncompliance has been served pursuant to paragraph (a)(3) of this section corrects the violations within 20 days (or such longer time as specified in the notice) from the date that the notice is served, no penalties shall be assessed by the MMS under this section and the person shall not be entitled to a hearing on the record provided for in paragraph (a)(3)(iii) of this section. The person may appeal the notice of noncompliance or other disputed MMS decision or order in accordance with the appeals procedures in 30 CFR Part 243.

(b)(1) *Notice of noncompliance for intentional violations.* In addition to the provisions of paragraph (a) of this section, the MMS may issue a notice of noncompliance for intentional violations, which shall set forth the nature of the violation and the remedial action required, to any person who—

(i) Knowingly or willfully fails to make any payment due by the date as specified by statute, regulation, order, or terms of the lease;

(ii) Knowingly or willfully fails to submit or submits false, inaccurate, or misleading data to the MMS in support of a royalty, rental, bonus, or other payment; or

(iii) Knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.

(2) A person served with a notice of noncompliance for an intentional violation under this paragraph shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(3) The notice of noncompliance for intentional violation shall be served in accordance with paragraph (a)(2) of this section.

(4) A person who has been served with a notice of noncompliance for intentional violation issued pursuant to this subsection shall have 20 days from the date of service to file a written request for a hearing on the record with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(c) *Penalty notice.* The MMS shall issue a penalty notice to any person subject to penalties under this section. The penalty notice shall set forth the amount of the penalty applicable for each day that the violation continues. The penalty amount shall be determined by MMS taking into account the severity of the violation and the person's history of noncompliance. The penalty for each day that a violation continues shall not exceed the amounts specified in paragraphs (a) and (b), of this section as applicable.

(d) Penalties imposed under this section shall be in addition to interest assessed on payments not received by the MMS by the due date and assessments for later or incorrect reporting pursuant to Part 218 of this Chapter.

(e) If the person served with a notice of noncompliance requests a hearing on the record pursuant to paragraph (a)(3)(iii) or subparagraph (b)(4) of this section, penalties shall accrue each day until the person corrects the violations set forth in the notice of noncompliance.

The Director, MMS, may suspend the requirement to correct the violations pending completion of the hearings provided by this section, but only if the Director, MMS, suspends the obligation in writing, and then only upon a determination, at the discretion of the Director, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover any disputed amounts plus accrued penalties and interest. The MMS may require, at any time, adjustment in the amount of the bond for increases in the amount of the underlying obligations determined by MMS to be due, for penalties or for interest.

(f) *Hearing.* If a person served with a notice of noncompliance has requested a hearing on the record in accordance with subparagraphs (a)(3)(iii) or (b)(4) of this section, the hearing shall be conducted by an Administrative Law Judge (Departmental), Office of Hearings and Appeals. After the hearing, the Administrative Law Judge shall issue a decision in accordance with the evidence presented and applicable law. Any party to a case adversely affected by a decision of the Administrative Law Judge may appeal that decision to the Interior Board of Land Appeals in accordance with the procedures set forth in 43 CFR Part 4. A decision by the Interior Board of Land Appeals shall be a final order which may be appealed in accordance with paragraph (i) of this section.

(g) The Director of the MMS shall issue an order assessing the penalty, in accordance with the penalty notice, against any person subject to penalties under paragraphs (a) or (b) of this section who does not request a hearing on the record as provided in paragraphs (a)(3)(iii) or (b)(4) of this section. The penalty assessment must be paid within 30 days of its issuance and shall be a final order subject to collection pursuant to the provisions of paragraph (j) of this section.

(h) On a case-by-case basis the Secretary, or his/her authorized representative, may compromise or reduce civil penalties under this section. The amount of any penalty under this section, as finally determined, may be deducted from any sums owing by the United States to the person charged.

(i) Any person who has requested a hearing in accordance with paragraph (a) or (b) of this section within the time prescribed for such a hearing and who is aggrieved by a final order may seek review of such order in the United States District Court for the judicial district in which the violation allegedly took place. Review by the District Court shall be only on the administrative record and not *de novo.* Such action shall be barred unless filed within 90 days after the final order.

(j) If any person fails to pay an assessment of a civil penalty under this section after the order making the assessment has become a final order, and if such person has not filed a petition for judicial review in accordance with paragraph (i) of this section, or, after a court, in an action brought under this section, has entered a final judgment in favor of the Secretary, the Court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in paragraph (i) of this section. The amount of any penalty, as finally determined, may be deducted from any sum owing by the United States to the person charged.

§ 241.52 Criminal penalties.

Any person who commits an act for which a civil penalty is provided at 30 U.S.C. 1719 shall be subject to criminal penalties as provided at 30 U.S.C. 1720.

PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

17. 30 CFR Part 243 is amended by adding Subpart A to read as follows:

Subpart A—General Provisions

Sec.
243.1 Procedure.
243.2 Effectiveness of orders or decisions pending appeal.

Authority: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; section 32, 41 Stat. 450, 30 U.S.C. 189; section 5, 44 Stat. 1058, 30 U.S.C. 285; section 10, 61 Stat. 915, 20 U.S.C. 359; § 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; section 24, 84 Stat. 1573, 30 U.S.C. 1023, 30 U.S.C. 1701 *et seq.*

§ 243.1 Procedure.

Except as may otherwise be provided in Part 241 hereof, an order or decision issued under regulations administered by the Royalty Management Program may be appealed in accordance with the provisions of Part 290 of this Chapter.

§ 243.2 Effectiveness of orders or decisions pending appeals.

Compliance with any orders or decisions, issued by the Royalty Management Program after August 12, 1983, including payments of additional royalty, rents, bonuses, penalties or other assessments, shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, MMS, (or by the Deputy Assistant Secretary for Indian Affairs when Indian lands are involved), and then only upon a determination, at the discretion of the Director or Deputy Associate Secretary for Indian Affairs, that such suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

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Friday
September 21, 1984

Part VIII

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Implementation of the Federal Oil and Gas Royalty Management Act of 1982; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[Circular No. 2553]

Onshore Oil and Gas Operations; Implementation of the Federal Oil and Gas Royalty Management Act of 1982

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking revises the existing regulations by adding new provisions pertaining to operations on onshore Federal and Indian (except Osage) oil and gas leases to implement those portions of the Federal Oil and Gas Royalty Management Act of 1982 which apply to onshore field operations. This final rulemaking does not address those portions of the Federal Oil and Gas Royalty Management Act pertaining to onshore leasing, Outer Continental Shelf operations or revenue accountability, except to the extent that the onshore leasing revenue accountability provisions affect or interact with field operations.

EFFECTIVE DATE: October 22, 1984.

ADDRESS: Inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Eddie R. Wyatt (202) 653–2133

or

Robert C. Bruce (202) 343–8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking that would revise the oil and gas operating regulations to incorporate the operational requirements of the Federal Oil and Gas Royalty Management Act was published in the **Federal Register** on September 16, 1983 (48 FR 41783), with a 45-day comment period. During the comment period, comments were received from 27 different sources; 15 from oil and gas companies; 4 from Indian tribes; 3 from oil and gas industry associations; 1 from an Indian tribal association; 1 from a wildlife association; 1 from a State government; and 2 from Federal agencies. All of the comments were given careful consideration during the decisionmaking process on the final rulemaking. If a change was made in the final rulemaking due to comments, that change is described in this preamble. If no change was made, even though requested by the comments, the reason for not accepting the change is discussed.

General

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) focuses primarily on royalty and rental collection, but also includes provisions relating to on-the-ground operations. As a result of Secretarial Order No. 3087 dated December 3, 1982, and amended on February 7, 1983, the Bureau of Land Management was delegated authority to administer onshore minerals operations and the Minerals Management Service was delegated authority to administer accountability functions. Therefore, the Service has published a companion proposed rulemaking, which amends Title 30 of the Code of Federal Regulations, which addresses the revenue accountability functions affected by the Federal Oil and Gas Royalty Management Act. The Bureau, in addition to this rulemaking, published on February 3, 1984, a proposed rulemaking (48 FR 4217) which addresses the lease reinstatement provisions of title IV of the Act. The changes made by this rulemaking, while substantial, relate to only a portion of the Act and are limited in scope to the sections of the Act that affect operation regulations.

Several comments suggested that the 45-day comment period was not sufficient to permit in-depth analysis of the substantial revisions made by the proposed rulemaking in the existing oil and gas operation regulations and requested an extension of the comment period. The requests for an extension of the comment period were considered, with attention being given to the complexity of the changes made by the proposed rulemaking. A decision was made not to grant the extension, because it is important that the Federal Oil and Gas Royalty Management Act regulations of the Bureau and Service be issued at approximately the same time, and be made effective as soon as possible. Further, the comments received indicate that the public did, in fact, have enough time to do a careful and thorough analysis of the rulemaking. These efforts are appreciated.

One comment raised several policy questions, i.e., the recourse available to an Indian Tribe if the Bureau of Land Management does not conduct inspections that are satisfactory to the Tribe, the presumed denial of proprietary data to a Tribe under the proposed revision of the confidentiality section, the level of communication between the Minerals Management Service and the Bureau and the distribution of civil penalty funds. The comment suggested that the final rulemaking contain provisions covering each of these elements. With the exeption of the provision for safeguarding proprietary information, which is discussed more fully in response to those comments specifically directed to § 3162.8, these questions are policy issues that are more properly considered in other areas rather than as part of this final rulemaking. This final rulemaking prescribes standards for lessees and operators to follow in conducting operations on Federal and Indian oil and gas leases and the Bureau's responsibility for inspecting those operations. Other questions should more properly be addressed in other ways. The rulemaking should not contain additional, inappropriate issues.

Several comments suggested that the proposed rulemaking, particularly with regard to the administrative penalties, exceeds the intent of Congress and the specific provisions of the Federal Oil and Gas Royalty management Act. These comments suggested that the inclusion of items in a listing of common violations does not in and of itself constitute a sufficient reason for those listed items to be considered violations. In preparing the proposed rulemaking and this final rulemaking, the Department of the Interior made every effort to have the rulemaking language track the language of the Act. As part of the preparation effort, consideration was given to the legislative history of the Act in those instances where the provisions of the Act were not clear. It is agreed that the listing of certain actions in a list of violations does not, in and of itself, constitute sufficient reason for that action to be considered a violation. However, each of the violations included in the list of violations currently in use is derived from other regulations, orders or lease terms. Generally, any citation for a violation issued to a lessee will include a reference to the specific provisions violated. The administrative penalties are modified by the final rulemaking and those modifications are discussed in detail later in this preamble.

One comment suggested that the penalty level in the final rulemaking be related to the lease production level to preclude penalties being assessed on a marginally economic lease, thus causing premature abandonment. The suggestion has not been adopted in the final rulemaking because it is not proper to have a dual standard of compliance based on lease economics. However, in response to this comment and others relating to the excessive nature of the penalty provisions in the proposed rulemaking, the final rulemaking includes a cap on the maximum amount of each level of civil penalty. This change will prevent a penalty from becoming overly disproportionate to the original violation while remaining an effective deterrent to continued noncompliance. The final rulemaking includes a cap on most penalties of 60 days from the date of notice or report and on other penalties of 20 days from such date. If corrective action has not occurred when any of the maximums are reached, lease cancellation action shall be initiated. When a transporter's penalty reaches the maximum, action shall be taken to terminate its right to remove and transport productions from Federal and Indian leases within a specified area for a specified period of time.

Another comment discussed the mechanics of filing an application for a permit to drill and the amount of paperwork involved with that application. The provisions of the existing regulations relating to obtaining a permit to drill were not included in the proposed rulemaking. This being the fact, it would be inappropriate to consider any change in those provisions as part of this final rulemaking. However, most of the issues discussed in the comment are addressed in the publication of Operating Order No. 1 in the **Federal Register** of October 21, 1983 (48 FR 1983) corrected December 20, 1983 (48 FR 56226). Thus the issues should have been discussed in connection with that document.

One comment advised that a number of elements were missing from the existing regulations in 43 CFR Part 3160 and were not included in the proposed rulemaking. The comment recommended that these missing elements be added to this final rulemaking, i.e.: requiring the filing of run tickets, meter proving data, royalty rate changes and documentation of theft, venting and flaring gas; setting forth of the responsibility of sub-lessees; monthly reconciliation of accounts; annual audits; role of Indian tribes in joint audits; reference to the Production Accounting and Audit System and the Automated Financial System; acknowledging the power of the tribal/State government as lessors in inspections and investigations; and collecting of interest and penalties on underpaid royalties. Most of the foregoing points are within the jurisdiction of the Minerals Management Service and are covered in the companion rulemaking being issued by the Service. Responsibilities of assignees (sub-lessees) and adjustments of royalty rates on Indian lands fall under the jurisdiction of the Bureau of Indian Affairs and are currently included in 25 CFR Parts 211, 212, 213 and 217. The authority of State government lessors to inspect and regulate operations of their lands is not properly part of this rulemaking because the Bureau of Land Management's authority is limited to Federal and Indian lands, except as authorized by a unit or communitization agreement. Indian tribes are free to conduct whatever investigations and inspections they deem necessary on their lands and in accordance with their own separate authority. However, title II of the Federal Oil and Gas Royalty Management Act and the regulations in 43 CFR Part 3160 only apply to cooperative agreements with Indian tribes to perform those inspections and investigations for which the Bureau of Land Management is responsible.

The following discussion relates to comments that were directed to specific sections of the proposed rulemaking.

Comments

Section 3160.0–5 Definitions.

One comment suggested that authorized representatives be provided with identification which includes indicia of their authority and, further, that they be obligated to protect any proprietary data obtained during an inspection or investigation under the same responsibility as the Secretary of the Interior. The term "authorized officer" refers to a Bureau of Land Management employee who has been delegated authority to perform the duties set out in the regulations. The term "authorized representative" was added as a definition by the proposed rulemaking to refer to someone other than a Bureau employee who is authorized by the Bureau to conduct certain facets of the Bureau's duties. Any such authorized representative will be provided an official identification card which will show the extent of his/her authority. Provisions for the protection of proprietary data will be included in all cooperative agreements, delegations to States and contracts in accordance with specific provisions of the Federal Oil and Gas Royalty Management Act. No change has been made in this term in the final rulemaking.

One comment advised that the definition of the term "lease", when taken in context with the definition of the terms "lease site" and "lessee", is broad enough to include private and State lands included in Federal units and suggested that all the definitions be strictly limited so that they apply only to Federal and Indian leases. The final rulemaking does not adopt the suggestion made by the comment and the definitions are unchanged. The principle of unitization, or other pooling, is that operations on any committed lease are deemed to be on or for the benefit of any other committed lease. Since all committed leases within a communitized area or unit participating area share in the total production from the communitized tract or participating area regardless of the ownership of the mineral estate where the wells are located, the Bureau of Land Management must have some limited authority to obtain needed data and to inspect non-Federal and non-Indian sites to assure that the Federal and Indian interests are protected. This limited authority is spelled out in the formal agreement, i.e., unit, communitization or gas storage. If the agreement fails to provide such limited authority to the Bureau or if the United States merely accepts the agreement rather than formally approving it, usually in the case of nominal Federal or Indian interest ownership therein, these regulations do not apply to operations on private or State lands.

Two comments advised that the definition of the term "lessee" is troublesome. One comment suggested that designated operators be included in the definition of lessees. The other comment suggested that the definition does not precisely track the definition in the Federal Oil and Gas Royalty Management Act, but stated that the major concern with the definition is that notices of penalty should also be sent to the actual lessee if the operator is someone other than the lessee. This term is difficult to define, especially in light of the varying interpretations of the terms "lessee" and "operator" in common usage in various segments of government and industry. While the final rulemaking does not make and change in the definition of the term, there is no intent either to broaden or to restrict the legal definition of the terms "lessee" or "operator", or to define the ultimate responsibilities of the entities involved in lease ownership. It is important to keep in mind that the regulations in part 3160 apply to operations on or for the benefit of Federal and Indian oil and gas leases and are focused on setting standards for those actually conducting those operations. Therefore, as a convenience, the term "lessee" is used in these regulations to include both lessees and operators. In actual practice, the Bureau of Land Management initially will look to the person actually conducting the operations on the lease to correct any violations found or to pay any penalties imposed. If someone other than the lessee is the operator of the lease, copies of the notice of penalty issued to the operator will be mailed to the lessee.

Section 3161.3 Inspection.

One comment suggested that the final rulemaking amend this section by inserting the phrase "or capable of producing" between the word "producing" and the words "or is expected to produce" in the first sentence to clarify that high capacity shut-in leases will receive at least an annual inspection also. This recommended change, while having some merit, was not adopted by the final rulemaking because the language of the proposed rulemaking was taken directly from the Federal Oil and Gas Royalty Management Act.

Several comments on this section suggested that the priorities of inspections on leases be determined only after individual needs were considered. One suggestion was that State and Indian tribe requests for specific inspections receive the highest priority. Another comment suggested that all producing Indian leases should be inspected a number of times each year even though it was acknowledged that the Bureau of Land Management does not have a sufficient number of inspectors to inspect all leases, both Federal and Indian, several times each year. One comment advised that the Federal Oil and Gas Royalty Management Act requires the Director, Bureau of Land Management, to develop guidelines setting forth the coverage and frequency of inspections, but that this aspect was not addressed in the proposed rulemaking. The comment requested that the guidelines be developed and published in the **Federal Register** for public comment. In addition to other comments on the term "inspections", several of the comments requested that the term "significant quantities", used in the term "inspections", be added to the definitions in the final rulemaking and used as the basis for at least annual inspections. The general theme of all of these comments is that inspection frequency and coverage be spelled out in the final rulemaking. These suggestions have not been adopted by the final rulemaking. The regulations in part 3160 only establish minimum standards as to what is to be accomplished. How the standard is to be met is more properly included in manual, instruction memoranda or other internal guidelines. The Bureau has a manual chapter in effect which establishes guidelines concerning what is to be inspected on producing leases. In addition, each Bureau District office prepares an annual inspection plan based on the Bureau's Inspection and Enforcement Strategy, which sets forth the frequency of inspection for leases in that District. The inspection frequency is based on several criteria, such as: (1) Significant production; (2) history on non-compliance; (3) amount of available work force and funding; and (4) a set-aside of time and resources to accommodate requests for specific inspections received from the Minerals Management Service, the States and Indian tribes. The Bureau believes that this system is superior to formalizing the procedures in regulations and that it satisfies the requirements of the Federal Oil and Gas Royalty Management Act.

One comment suggested that standard terms and funding provisions pertaining to cooperative agreements and delegations for inspection authority be added by the final rulemaking. This suggestion was not adopted by the final rulemaking. There are oil and gas operations on Federal lands in 22 different States. In order to accommodate the differing requirements of the many involved States, the regulations are kept as simple as possible, i.e., merely providing the authority to enter into such arrangements in accordance with the Federal Oil and Gas Royalty Management Act, leaving funding, delegation terms and cooperative agreement terms open, constrained only by the specific provisions of the Act applicable thereto.

Several comments expressed concern that inspector qualifications were not part of the proposed rulemaking, nor were they included in the existing regulations in Part 3160. These comments recommended various experience levels, industry training courses that should be taken and demonstration of judgmental capacity that should be included in the final rulemaking as qualification standards for inspectors. These recommendations have not been adopted by the final rulemaking. The Bureau of Land Management acknowledges that an individual does not naturally possess the knowledge needed to be an effective inspector in this program. However, the majority of the inspectors now in the Bureau's District offices were employed by the Geological Survey and the Minerals Management Service. Further, the Bureau has continued Survey/Service training programs and is in the process of developing more intensive training courses, some of which use industry experts as instructors. This training will be available to any State or Indian inspectors as the need arises as a result of cooperative agreements or delegations of authority being completed. Position qualification standards for employment as an inspector are on record as are the standards for promotion of inspectors. These documents and procedures are much too detailed and involved to be included in these operating regulations whose main focus is on standards to be applied to oilfield operations. Further, personnel standards and hiring procedures, which are subject to constant change, do not properly belong in regulations.

Several comments suggested that the term "cooperative agreement site" in the first sentence of § 3161.3(a) of the proposed rulemaking is misleading and confusing due to the use of the term cooperative agreements in the context of inspection functions. This suggestion has been adopted and the final rulemaking deletes this phrase. In addition, the section has been clarified by adding at the end of paragraph (a) language which describes the sites to be inspected.

One comment suggested deleting the figure "1" from the phrase "significant quantities of oil or gas in any 1 year" as it appears in paragraph (a). The final rulemaking adopts this suggestion and deletes the figure "1".

One comment questioned whether the Bureau of Indian Affairs is involved in this section and in other sections of this proposed rulemaking. They suggested this be clarified by including the Bureau of Indian Affairs authorities in this area. The final rulemaking has not adopted this suggestion because Secretarial Order No. 3087, as amended (48 FR 8983), delegates the responsibility for activities covered by part 3160 to the Bureau of Land Management for both Federal and Indian leases. In addition, § 3160.0-3 contains reference to the statutory authority for operations on both tribal and allotted lands.

Section 3162.1 General requirements.

Several comments advised that the requirement to permit inspections of lease sites and records normally kept on those sites is an onerous burden unless limited to normal business hours since it would require operators to maintain supervisory personnel at the lease sites 24 hours a day. While agreeing with the principle raised by the comments, the final rulemaking does not limit the inspection period for all inspections to "normal" business hours. To do so would preclude inspections at other times and also would require prescribing what is meant by the term "normal business hours." However, routine inspections of records will generally be conducted during normal business hours. Therefore, a sentence has been added to the final rulemaking that provides that "(I)nspections involving record examination shall normally be conducted during those hours when responsible persons are expected to be present at the facility being inspected." Drilling and completion operations usually operate 24 hours a day until finished. Truck and pipeline transporters may operate 24 hours a day. In addition, emergency or other investigation processes may require an inspector's presence at a lease site outside of normal business hours.

Several comments suggested that immediate access to leases and records is inconvenient, unsafe for the inspector, causes problems with landowners when other than Federal or Indian surface is involved and creates litigious situations concerning damage to company property or injury to the inspectors, particularly considering that non-Bureau of Land Management employees may be making inspections. The comments recommended that at least a 24-hour notice be given prior to an inspection. The final rulemaking does not accept these recommendations and the provisions for immediate access to the lease sites and records for inspection purposes remain part of the final rulemaking. The language of the final rulemaking follows the language of the Federal Oil and Gas Royalty Management Act. While the recommended 24-hour notification might be in order for routine, detailed producing lease inspections, it is simply not practical to require such notice as a condition precedent to all inspections considering the various types of inspections conducted i.e., non-detailed fly-over or drive-through, rehabilitation of abandoned sites, drilling and workover, meter proving, oil and water spills, accident investigations, transporter documentation and abandonment operations. It is beyond the scope of the regulations in part 3160 to discuss tort liabilities incident to inspection procedures or to attempt to resolve difficulties with surface landowners and, further, it is questionable whether a day's prior notice would actually resolve either of the perceived problems.

One comment advised that a penalty of $10,000 per day for violation of § 3162.1(b) seems excessive. No change has been made in the final rulemaking as a result of this comment since the Federal Oil and Gas Royalty Management Act prescribes a penalty of up to $10,000 per day for such violations. However, neither the Act nor the regulations require the maximum penalty to be assessed in each case.

One comment argues that § 3162.1(b) expands the Bureau of Land Management's right to inspect lease sites to include "records normally kept on the lease" by citing section 103(a) of the Federal Oil and Gas Royalty Management Act which provides the Secretary of the Interior must formally request record examination in conjunction with an audit or investigation and recommends the deletion of the language by the final rulemaking. The final rulemaking does not adopt the recommendation. The Department of the Interior interprets the first sentence of section 103(a) of the Act as requiring the establishment and maintenance of reasonable records by regulation and the second sentence of that section permits examination of those records immediately upon request of a duly authorized inspector.

Section 3162.4–1 Well records and reports.

One comment recommended that the copies of logs required by § 3162.4–1(a) be subject to restrictions pertaining to protection of proprietary data. No change is needed in this section to protect these data because they are already protected by § 3162.8.

Several comments suggested alternatives to reporting by the 5th business day new or resumed production other than that required by § 3162.4–1(b). The Federal Oil and Gas Royalty Management Act is explicit in this regard and the only question open to discussion is how this reporting is to be accomplished. The recommendations made in the comments are addressed as follows: the requirement for reporting by the fifth day applies to wells located on private and State lands which are subject to federally approved unit or communitization agreements under which Federal or Indian leases share in production. This subject is part of a previous discussion pertaining to operations in areas subject to such agreeements. The rulemaking does not limit the reporting requirement only to Federal and Indian lease wells as requested in the comment because section 102(b)(3) of the Act clearly states "* * * begins production on a lease site or allocated to a lease site * * *". The Well Completion Report and Log Form does not provide the needed information, as it reports only that the well has been completed or recompleted for production and not necessarily that it has commenced production. A letter postmarked not later than the 5th business day after production begins will not satisfy the reporting requirement, as the receipt of the data by the Bureau of Land Management would necessarily occur sometime after said 5th business day. The 30-day reporting requirement for monthly reports which appeared in the former 30 CFR Part 221, which now appears at 43 CFR 3162.4–3, does not satisfy the specific reporting requirements of section 102(b)(3) of the Act. The Act specifies that the requirement for reporting by the fifth day is supplemental to and not in lieu of the monthly reporting requirement. The reporting requirement for wells idle more than 90 days is specific in the Act with regard to both new and recompleted wells. The level of violation for knowingly or willfully failing to report new or resumed production is specific in section 109(c)(3) of the Act and, therefore, seems to have been considered very important by the Congress. Thus, the Bureau is reluctant to classify an unintentional violation in this regard as minor. The need for definition of the term "begins production" was consistent in most of the comments. The comments suggested the insertion of words such as "commercial," or "into facilities for which sales can be conducted," or "into permanent facilities". These would not adequately describe what "begins production" means. The final rulemaking does insert the phrase "on which royalty is due" between the words "production" and "anywhere on a lease site" to more properly describe which production must be reported by the 5th business day after "production begins or is resumed."

Consistent comments concerning the language of § 3162.4–1(d) of the proposed rulemaking were to the effect the Bureau of Land Management action is an unjustified, unreasonable and unauthorized extension of the records retention provision of section 103(b) of the Federal Oil and Gas Royalty Management Act. The records retention provisions appear in two sections of the regulations, § 3162.4–1 for well records and reports and § 3162.7–1 for disposition of production. Experience has shown that most lessees routinely maintain records covering the complete history of any well drilled and the production equipment used on the lease for so long as the lessee owns the lease and/or it is producing. This would usually be for the life of the lease since information, including data on dryholes or failures, is essential to continued ownership and operation of the lease.

These are the data that it was anticipated lessees would keep when the records retention provision was added to § 3162.4–1 and the requirement for their retention is authorized by other sources in addition to the Act. In reviewing § 3162.4–1(a), it is noted that "disposition of leasehold products" was included in duplication of § 3162.7–1 so the final rulemaking removes those words from § 3162.4–1(a). However, in response to the comments advising that the provisions for retention of reports were inconsistent, the final rulemaking does modify § 3162.4–1(d) to only require retention for 6 years from the date the records are generated.

While it is believed that good business practice in the operation of Federal and Indian leases will dictate retention of such well records for a longer period, this will no longer be a requirement of the regulations.

Section 3162.7–1 Disposition of production.

Two comments requested that the definition of the term "appropriate law enforcement officer" as used in § 3162.7–1(c) be expanded in the final rulemaking to include tribal law enforcement officers when the operation is on Indian lands. The final rulemaking does not make the requested change. It is beyond the purview of these oil and gas operating regulations to attempt to expand, limit or otherwise delineate the jurisdictional authority of any law enforcement officer. The term "appropriate law enforcement officer," as used in this section, would include tribal law enforcement officers on Indian lands. However, the language is permissive, i.e., those officers may use the regulation as authority, in addition to other authority, but they are not obligated to do so. In addition, the language of the rulemaking is taken directly from the Act.

One comment advised that application of § 3162.7–1(d) must be limited to those leases issued after the effective date of the Federal Oil and Gas Royalty Management Act. The final rulemaking did not adopt this recommended change because section 305 of the Act clearly provides that the provisions of the Act apply to leases issued before, on or after the date of its enactment unless it would result in an alteration of express and specific provisions of a lease issued prior to the effective date of the Act.

Several comments advised that the term "intended first destination" of oil or gas, particularly when transported by pipeline, is very difficult to comply with. The point raised in the comment is well taken. The phrase is derived from sections 102 (c)(1) and (c)(2) of the Federal Oil and Gas Royalty Management Act, but when taken in context with section 103(a), it is apparent that the provision is directed toward data concerning the first purchaser rather than the actual geographic destination. Therefore, the phrase "intended first destination" in the proposed rulemaking has been replaced in the final rulemaking by the phrase "intended first purchaser."

One comment requested that the term "person engaged in transportation of oil or gas" be clarified to indicate whether the transporter or the consignor is the party referred to in the definition. The final rulemaking does not further define this term. In many cases, the consignee, the transporter and the consignor are one and the same corporate entity. In other cases, they are closely related even though separate corporate entities. In still other cases, there are genuine arms-length relationships between some or all of the parties. Finally, in the case of contract truckers, there is no relationship to either the consignee or consignor, except for the contractual obligation. Therefore, both the Federal Oil and Gas Royalty Management Act and this rulemaking are aimed at whatever entity is actually engaged in moving the oil or gas, regardless of whether his/her status is that of a producer, purchaser or merely transporter, or any combination thereof.

One comment suggested dividing paragraph (c) into more readily identifiable and competent segments. The final rulemaking has adopted this suggestion, with the paragraph being divided according to requirements of the **Federal Register**.

Section 3162.8 Confidentiality.

Several comments requested inclusion of the word "audit" with the word "investigation" and discussed the semantics of the two words to show either that they are related in meaning or, alternately, that they are unrelated in meaning. Comments pointed out that section 202 of the Federal Oil and Gas Royalty Management Act uses the words "inspection," "auditing," "investigation" or "enforcement" together. The final rulemaking has not adopted this suggestion. This final rulemaking applies only to matters within the jurisdiction of the Bureau of Land Management. Secretarial Order No. 3087, as amended, delegates the authority for audits solely to the Minerals Management Service. The Bureau, of course, will remain available to the Service as a cooperator in any audit activity in a consultative capacity when needed and requested by the Service. The Bureau considers inspection to be an integral part of any investigation.

One comment discussed the two consecutive 12-month periods of confidentiality in § 3162.8(a) of the existing regulations and seemed to be requesting revisions of that section. The proposed rulemaking did not address § 3162.8(a) and it would be inappropriate to make any substantive revision of that section in this final rulemaking. The final rulemaking does not amend § 3162.8(a).

Several comments expressed concern that the proposed rulemaking would bar Indian tribes from receiving data they need unless they waive their sovereign immunity. Operators expressed concern that confidential data they have provided be protected to the same degree that it has been afforded in the past by Department of the Interior employees. The operators insist that any entity, such as a State, Indian tribe or Indian allottee, and particularly individuals associated with those entities, be accountable for unauthorized disclosure or mis-use of the confidential data. Title II of the Federal Oil and Gas Royalty Management Act relates to cooperative agreements with States and Indian tribes and delegation of authority to the States. Section 203 pertains to information provided under Title II. Within the various divisions of State governments, the States receive the same sensitive data as that received by the Department, though it may not be as concentrated as it is in the files of the Department. The Department has maintained a long-standing policy that Indian tribes and Indian allottees may have access to any data in Departmental files that pertain to their leases. Section 3162.8(a) of the existing regulations applies only to that data specifically requested for an investigation and does not affect that traditional relationship. Sections 3162.8 (e), (f) and (g), as amended by the proposed and final rulemakings, repeat the Federal Oil and Gas Royalty Management Act verbatim as to its application to oil and gas operations. Section 3162.8(e) of the final rulemaking supplements, rather than derogates, the Indian lessor's customary right to data affecting Indian leases. Sections 3162.8 (f) and (g) firmly place responsibility for unauthorized disclosure or misuse of confidential data on all entities, including any individuals conducting investigations, at least equal to that of the United States, its Departments and agencies and its employees. Reference to "this Act" in the last sentence of § 3162.8(g) without firm antecedent in the operating regulations is confusing. The final rulemaking clarifies this sentence by replacing the phrase "this Act" with the phrase "Title II of the Federal Oil and Gas Royalty Management Act."

Section 3163.3 Assessments for noncompliance.

Two comments suggested that certain of the assessments provided for in this section of the existing regulations are *de facto* penalties and should either be removed by the final rulemaking or applied under the procedures prescribed by section 109 of the Federal Oil and Gas Royalty Management Act and § 3163.3 of the existing regulations. The final rulemaking does not adopt either of these suggested changes because such assessments do not constitute penalties. While these assessments may appear to be penalties, they are merely compensation to the United States for damages to resources or existing improvements and the added administrative cost to the United States caused by reason of a lessee's failure to comply with the regulations in this part and the resultant need for regulatory action to obtain a correction of the deficiency. Since the penalty provisions in both the proposed and final rulemakings are imposed for the continued disregard of orders to correct, there is no longer a need to continue assessments during such noncompliance and, therefore, the final rulemaking modifies § 3163.3 to indicate that any assessment for a violation will be a one-time charge.

Section 3163.4–1 Administrative penalties.

This section of the proposed rulemaking drew, by far, the greatest number of comments. All of the respondents, except the four Indian tribes, provided lengthy comments. Many of the comments, including those from oil and gas companies and associates, seemed contradictory in that they criticized the proposed rulemaking for its length and complexity, while at the same time requested more detail or definitions. The following discussion is in response to the points raised in the comments.

The most consistent thread in the comments was to the effect that the Mineral Leasing Act penalties set forth in § 3163.4–1(a) are duplicated by the Federal Oil and Gas Royalty Management Act penalties in § 3163.4–1(b), causing "unconstitutional double jeopardy" for the same violation. The comments requested that the final rulemaking remove § 3163.4–1(a) in its entirety. The penalty system included under both § 3163.4–1 (a) and (b) (1) and (2) of the proposed rulemaking was designated to penalize failure to correct violations and not to penalize the violations themselves. If violations are corrected within the time allowed for such corrections under these sections, then no penalty is assessed. Many of the comments advised that the proposed rulemaking is an unauthorized and illegal expansion of both the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Act. Many of those same comments requested, in the event that both § 3163.4–1(a) and (b) are retained by the final rulemaking, that the phrase "(N)ormally, a penalty would only be assessed for violations involving serious threats to health, safety, property or the environment, or for continuous disregard of orders" appearing in the existing § 3163.4 be reinstated in § 3163.4–1(a) by the final rulemaking or, more explicitly, that § 3163.4–1(a) be limited to forfeiture, cancellation or reinstatement provisions expressly part of the Mineral Leasing Act. Sections 188, 189, 352 and 359 of Title 30 of the United States Code provide the Secretary of the Interior's authority to promulgate the penalties provided in § 3163.4–1(a) of this final rulemaking. The Federal Oil and Gas Royalty Management Act (30 U.S.C. 1753(a)) specifically provided that the new penalties provided in the Act were in addition to existing penalties. While the final rulemaking does not adopt any of these suggestions, several changes have been made in order to provide a more unified system of penalties for continued noncompliance. Procedural requirements set forth in § 3163.4–1(b) of the proposed rulemaking and mandated by the Federal Oil and Gas Royalty Management Act were not repeated under § 3163.4–1(a) of the final rulemaking, as requested by several comments, because such procedural requirements are not mandated by the Mineral Leasing Act as they are in the Federal Oil and Gas Royalty Management Act. The maximum amount of a penalty under § 3163.4–1(a) is modified by the final rulemaking from $1,000 to $500 per day for consistency between the two authorities. In addition, the language of § 3163.4–1(a)(2) of the proposed rulemaking has been revised by the final rulemaking to be consistent with that of § 3163.4–1(b) of the final rulemaking and the original intent. The phrase "may: subject the lessee to a penalty* * *" as it appeared in the proposed rulemaking was misleading since the use of the appropriate tables to determine whether a penalty is to be assessed and its amount is mandatory, not a discretionary action.

Several comments requested that the open-ended beginning time for compliance under § 3163.4–1 of the proposed rulemaking be conformed to the 20-day or longer time frame appearing in § 3163.4–1(b) of the proposed rulemaking. These suggestions have not been adopted by the final rulemaking because there are a number of violations that must not be permitted to continue for 20 days, such as pollution and safety related violations, before corrective action is taken. When such occurances are detected, the Secretary must have the means to compel corrective action immediately. However, to the extent that Congress provided specific penalty authority in section 109 of the Federal Oil and Gas Royalty Management Act, the Secretary no longer needs to rely on the authority of then current mineral leasing laws. Therefore, the final rulemaking has been modified to make it clear that § 3163.4–1(a) penalties only will be used in cases where a violation requires corrective action in less than 20 days and there is a failure to do so within the time allowed. In addition, when such penalties are imposed, they will run through the 20th day of noncompliance when, if not corrected, a penalty under § 3163.4–1(b) will be instituted and will be effective from the date of the original notice. This will eliminate the appearance of double penalties for the same act or failure to correct a deficiency while providing continued authority to require prompt compliance when it is necessary.

One comment suggested that the phrase "or his/her representative" be removed from § 3163.4–1(a) as there is a question as to whether or not an "authorized representative" as defined in this part will have authority to issue orders to a lessee. The final rulemaking has adopted this suggestion and had deleted the language.

As previously stated, all administrative penalties now provide for a maximum amount as well as specific reference to additional actions which are to be instituted should the maximum be reached without the required abatement action.

Several comments advised that the complexity and inflexibility of § 3163.4–1(e) of the proposed rulemaking, redesignated § 3163.4–1(f) by the final rulemaking, will make it difficult to apply and suggested that the methodology of penalty assessment more properly belongs in Bureau of Land Management internal guidance or, if it remains in the regulation, that it should be clearly labeled as guidance rather than as the established standard. Several comments suggested that the penalty provisions of section 109 of the Federal Oil and Gas Royalty Management Act are sufficiently detailed to stand by themselves, if recast in the form of regulations, and there is no need to amplify thereon as was done in the proposed rulemaking. On the other hand, several comments advised that the list of common violations compiled by the Director, Bureau of Land Management, should not be effective until published in the **Federal Register** for public comment and thus, by implication, be made a part of the regulations. The final rulemaking retains the basic penalty determination section of § 3163.4–1(e) of the proposed rulemaking, except that subparagraph (5) and proposed Table A are no longer needed since the $1,000 per day penalties have been eliminated by the final rulemaking. This necessitated redesignating all remaining penalty provisions and Tables in § 3163.4–1(e) of the final rulemaking. The first column of Penalty Conversion Table A in the final rulemaking, Table B in the proposed rulemaking, will now be used for penalties under both §§ 3163.4–1 (a) and (b).

If the level of penalties for failure to correct violations and method of calculating the levels is clearly stated in regulations, everyone involved will be better able to determine whether or not failure to correct a particular action is subject to penalty and whether the level of a penalty is appropriate. This should result in consistent, nationwide application. Further, the provisions of §§ 3463.4–1 (d) and (e) of the final rulemaking are very similar to the existing regulations of the Mine Safety and Health Administration in 30 CFR Part 100 and of the Office of Surface Mining in 30 CFR Part 845 for other mineral operations. Thus, nationwide consistency among mineral commodity operations with respect to penalties is promoted.

Several comments object to the inclusion of the "history of previous violations" provision appearing in § 3163.4–1(e)(4) of the proposed rulemaking and requested clarification or definition of the phrase "operator-by-operator" and "lease-by-lease." One comment advised that the Federal Oil and Gas Royalty Management Act does not authorize creation of a history file. One comment questioned which violations should be counted in such histories, i.e., any Incident of Noncompliance issued, or only those for which a penalty had been paid, and further, if any entry might be expunged from the history when corrections have been made. Several comments suggested that if a history is to be compiled, a 36-month revolving history is too long and that it should not include more than 12 months. Another issue raised by these comments was that the February 1, 1983, commencement date is inappropriate, and that the starting date for the history should not be any earlier than the effective date of this final rulemaking. Finally, one comment advised that it is a point of law that any violation or failure to correct a violation must be adjudicated strictly upon the circumstances applicable to the individual case and that no other action, or inaction, of the person charged may affect that adjudication unless specifically related to the individual infraction at hand. The final rulemaking has not changed the language of § 3163.4–1(e)(4) of the proposed rulemaking. The history of violation concept is referred to in section 101(b)(1) of the Act which outlines the duties of the Secretary of the Interior. It is agreed that it is pertinent to consider only the circumstances at hand in an individual matter to determine whether or not a specific failure to correct a violation has occurred and that other actions or inactions of the person charged with the violation should have no bearing upon that determination. However, it is equally appropriate, once a determination is made that failure to correct a violation has occurred, to include the past history of the person charged in calculating the level of penalty to be applied. Inasmuch as the Act requires only annual inspection, a 12-month revolving period for history of violations would have no meaning, and a 3-inspection cycle is reasonable. The effective date of February 1, 1983, is also reasonable as it is the first day of the month following the enactment of the Federal Oil and Gas Royalty Management Act. The lact of regulations in an intervening period should not derogate the Act's provisions. Finally, the final rulemaking did not change the phrases "lease-by-lease" as was suggested by a few of the comments, but did replace the phrase "operator-by-operator" with the phrase "lessee-by-lessee" for consistency. The widest geographical boundary for accumulation of a history of violations is the lease and if there is more than one operator on that lease, the actions of one will have no bearing on the history of any of the others. In the case of transporters, there is no direct connection with any lease or lease boundary so the geographical boundary chosen was that of the various districts of the Bureau of Land Management.

Several comments made the observation that the Federal Oil and Gas Royalty Management Act requires that notices of proposed penalties be sent by registered mail rather than by certified mail as prescribed in the proposed rulemaking. Several comments also suggested that the final rulemaking should prescribe that any such notice also be sent to the lessee of record, if different from the operator. The term "certified mail" remains in the final rulemaking because the term "registered mail" as used in the Act has been interpreted to mean U.S. Postal Service mail service "Registered Mail, Return Receipt Requested" or "Certified Mail, Return Receipt Requested."

The final rulemaking did not change this section to require that any violation notices be sent to the lessee, if other than the operator, because other sections of the existing regulation require service upon the lessee of record.

One comment requested that the phrase "or by contract or by Secretarially approved tribal ordinance" be added to § 3163.4–1(b)(9) of the proposed rulemaking, designated § 3163.4–1(b)(10) in the final rulemaking, and the phrase "or other payment income" be added to the phrase "royalty income" where it appears in § 3163.4–1(d) (1), (2) and (3) of the proposed rulemaking. The final rulemaking did adopt another recommended change to § 3163.4–1(b)(9) of the proposed rulemaking, redesignated § 3163.4–1(b)(10) by the final rulemaking, which will accommodate tribal ordinances, but did not make the "contact" or "other payment" changes that were requested. The final rulemaking reflects only Bureau of Land Management authorities and responsibilities as they relate to operations per Secretarial Order No. 3087, as amended.

Contract provisions negotiated by Indian tribes under the Indian Mineral Development Act of 1982 are more properly the subject matter of Title 25 of the Code of Federal Regulations and revenue collection is the responsibility of the Minerals Management Service.

Several comments suggested technical or clarification revisions not of a policy or substantive nature. Those suggestions are discussed individually as follows:

In § 3163.4–1(b)(2), the phrase "paragraph (1) of this paragraph" is confusing. The final rulemaking makes only a minor change in this paragraph for clarification because the phrase "corrective action is not taken" as used in section 109(h) of the Federal Oil and

Gas Royalty Management Act has been interpreted to mean corrective action not completed. One comment suggested that the phrase "knowingly and willfully" more properly reflects the intent of Congress that does the phrase "knowingly or willfully" appearing in the Act and in § 3163.4–1 (b)(4) and (b)(5) of the proposed rulemaking. The final rulemaking does not adopt the suggested change because the language of the proposed rulemaking follows the language of the Act which is clear. Another comment suggested that the word "compromise" in § 3163.4–1(b)(7) of the proposed rulemaking, redesignated § 3163.4–1(b)(8) by the final rulemaking, be changed to "remit" as specified in section 109(i) of the Act. The final rulemaking does not make the suggested change because the phrase "compromise or reduce" used in section 109(g) of the Act seems overriding. One comment pointed out that the last sentence of § 3163.4–1(b)(7) of the proposed rulemaking seems out of context. After careful review of § 3163.4–1(b)(7) of the proposed rulemaking, the final rulemaking has added the final sentence of § 3163.4–1(b)(7) of the proposed rulemaking to § 3163.5(c). One comment suggested that the term "in this title" appearing in § 3163.4–1(b)(9) of the proposed rulemaking is much to narrow in scope and more properly should read "in any other provision of law." This suggested change has been adopted by the final rulemaking but redesignated the section as § 3163.4–1(b)(10). Finally, one comment pointed out two errors in Penalty Conversion Table–A in § 3163.4–1(e)(5)(i) of the proposed rulemaking. However, as previously stated, this Table has been eliminated.

Section 3163.5 Assessments and administrative penalties.

Two comments suggested that § 3163.5(a) of the proposed rulemaking be removed and § 3163.5(b) be renumbered as paragraph (a) since the comments had earlier suggested the removal of § 3163.3. The final rulemaking did not adopt the suggested changes since the final rulemaking did retain § 3163.3 for reasons previously discussed in this preamble.

The principal authors of this final rulemaking are Eddie R. Wyatt, Gilbert O. Lockwood and Stephen H. Spector, all of the Washington Office, Bureau of Land Management, assisted by field officials of the Colorado, New Mexico, and Wyoming State offices, and the Office of Legislation and Regulatory Management, Bureau of Land Management and the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Even though the final rulemaking establishes new and substantial penalties for violations of law, regulations, lease terms or directives, the cost or economic effect will be minimal or non-existent so long as lessees and operators comply with the existing requirements or take corrective action in a timely manner. Cooperative agreements with the States or Indian tribes, delegations of authority to the States or contractor performed inspections will have no economic effect or cost to industry as this final rulemaking only addresses who may be authorized to conduct various regulatory activities.

The final rulemaking imposes no additional recordkeeping or reporting requirements requiring additional clearance by the Office of Management and Budget. The change made to § 3162.4–1(d) by the final rulemaking will reduce existing requirements for retention of well records. The information collection requirements have already been approved by the Office of Management and Budget and assigned clearance numbers 1004–0134, 1004–0135, 1004–0136, 1004–0137 and 1004–0138.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—minerals resources, Indian lands—minerals resources, Reporting and recordkeeping requirements.

Under the authority of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) and Executive Order 12291 (46 FR 13193), Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

Dated: August 15, 1984.

Garry E. Carruthers,

Acting Secretary of the Interior.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for Part 3160 is amended by adding the phrase "the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701]; and the Indian Mineral Development Act of 1982 [25 U.S.C. 2102]."

§ 3160.0–5 [Amended]

2. Section 3160.0–5 is amended by:

A. Adding the term *Authorized Representative* to read:

Authorized Representative. Any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation, or contract.

B. Adding the term *Federal Lands* to read:

Federal Lands. All lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

C. Revising the term *Lease* to read:

Lease. Any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas.

D. Removing the term *Leased Lands, Leasehold;*

E. Adding the term *Lease Site* to read:

Lease Site. Any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized pursuant to a lease.

F. Revising the term *Lessee* to read:

Lessee. The party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference throughout this part, the term lessee also refers to and includes the owners of approved operating rights and designated operators.

G. Adding the term *Person* to read:

Person. Any individual, firm, corporation, association, partnership, consortium or joint venture.

3. A new § 3161.3 is added to read:

§ 3161.3 Inspections.

(a) The authorized officer shall establish procedures to ensure that each Federal and Indian lease site which is producing or is expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually. Similarly, each lease site on non-Federal or non-Indian lands subject to a formal agreement such as a unit or communitization agreement which has been approved by the Department of the Interior and in which the United States or the Indian lessors share in production shall be inspected annually whenever any of the foregoing criteria are applicable.

(b) In accomplishing the inspections, the authorized officer may utilize Bureau Personnel, may enter cooperative agreements with States of Indian Tribes, may delegate the inspection authority to any State, or may contract with non-Federal Governmental entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.1 [Amended]

4. Section 3162.1 is amended by designating the existing paragraph as paragraph (a) and adding new paragraph (b) and (c) to read:

(b) The lessee shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders notices or directives.

(c) For the purpose of making any inspection or investigation, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation or otherwise.

§ 3162.4-1 [Amended]

5. Section 3162.4-1 is amended by:

A. Amending paragraph (a) by removing the phrase "disposition of leasehold products" from the first sentence;

B. Revising paragraph (c) to read:

(c) Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160-5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed.

C. Adding a new paragraph (d) to read:

(d) All records and reports required by this section shall be maintained for 6 years from the date they were generated. In addition, if the Secretary, or his/her designee notifies the recordholder that the Department of the Interior has initiated or is participating in an audit or investigation involving such records, the records shall be maintained until the Secretary, or his/her designee, releases the recordholder from the obligation to maintain such records.

§ 3162.7-1 [Amended]

6. Section 3162.7-1 is amended by:

A. Revising paragraphs (c) and (d) to read:

(c) (1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum; the amount, origin, and intended first purchaser of the oil.

(2) Any person engaged in transporting any oil or gas by pipline from any lease site, or allocated to any lease site, shall maintain documentation showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas.

(3) On any lease site, any authorized representative who is properly identified may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(4) Any authorized representative who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) The lessee shall conduct operations in such a manner as to prevent avoidable loss of oil and gas. A lessee shall be liable for royalty payments on oil or gas lost or wasted from a lease site, or allocated to a lease site, when such loss or waste is due to negligence on the part of the lessee of such lease, or due to the failure of the lessee to comply with any regulation, order or citation issued pursuant to this part.

B. Adding a new paragraph (f) to read:

(f) Any records generated under this section shall be maintained for 6 years from the date they were generated or, if notified by the Secretary, or his designee, that such records are involved in an audit or investigation, the records shall be maintained until the recordholder is released by the Secretary from the obligation to maintain them.

§ 3162.7-2 [Amended]

7. Section 3162.7-2 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

§ 3162.7-3 [Amended]

8. Section 3162.7-3 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

9. Section 3162.8 is amended by adding new paragraphs (e), (f) and (g) to read:

§ 3162.8 Confidentiality.

* * * * *

(e) Trade secrets, proprietary and other confidential information obtained pursuant to this part shall be made available to States and Indian Tribes upon their request for the purpose of conducting an investigation if:

(1) such State or Indian Tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an investigation under a cooperative agreement approved by the Secretary, and who need to know;

(2) such State or Indian Tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an investigation or to litigation; and

(4) in the case of an Indian Tribe, such Tribe demonstrates that such information is essential to the conduct of an investigation and waives sovereign immunity by express consent for wrongful disclosure by such Tribe.

(f) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian Tribe of any information provided to such individual, State, or Indian Tribe pursuant to any cooperative agreement or a delegation.

(g) Whenever any individual, State or Indian Tribe has obtained possession of information pursuant to a cooperative agreement or any individual or State has obtained possession of information pursuant to a delegation of authority, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any Department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any Department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information or other confidential information under Title II of the Federal Oil and Gas Royalty Management Act may be required to disclose such information under State Law.

§ 3163.3 [Amended]

10. Section 3163.3 is amended by amending paragraph (e) by removing the last sentence of the introductory paragraph and by inserting immediately prior to the figure "$100" the phrase "or a production facility,".

§ 3163.4 [Amended]

11. Section 3163.4 is amended by removing all after the title and by adding new section 3163.4–1 and 3163.4–2 to read:

§ 3163.4-1 Administrative penalties.

(a) *Mineral Leasing Act* (1) Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, the authorized officer shall give the lessee notice in writing to remedy any defaults or violations.

(2) If there is a failure to complete the necessary remedial action within the time and in the manner prescribed by the notice, the lessee shall be liable for a penalty of not more than $500 per day for each day the violation continues beyond the date specified in the notice through the 20th day of such noncompliance.

(3) A penalty shall be imposed under paragraph (a) of this section for the failure to abate violations which are required to be corrected in less than 20 days from the date of the report or notice.

(4) A notice of proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice on their behalf. Any person authorized by the lessee to submit reports, notices, affidavits, records, or other information required by regulations in this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation pertaining to that lease has been filed, the notice shall be served as previously described. A person charged with a violation and served with a notice of civil penalty under this paragraph may request a technical and procedural review under § 3165.3 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed. Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either file an appeal pursuant to part 4 of this title or pay the civil penalty.

(b) *Federal Oil and Gas Royalty Management Act* (1) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice as previously issued under paragraph (a) of this section. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. This notice shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(2) If the violation specified in paragraph (b)(1) of this paragraph is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of not more than $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report.

(3) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(4) Whenever a transporter fails to permit inspection of proper documentation by any authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(5) Any person who:

(i) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(ii) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, form 3160–5, or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed; shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(6) Any person who:

(i) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(ii) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal of Indian lease site without having valid legal authority to do so; or

(iii) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal of Indian lease site; shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(7)(i) Notice of violation imposed by the authorized officer under this section shall be by personal service or by certified mail. Any person may designate a representative to receive any notice of their behalf. Any person who is authorized by the lessee to submit reports, notices, affidavits, records data or other information required by this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation has been filed, the notice shall be served as previously described.

(ii) A person charged with a violation and served with a notice of civil penalty may request a technical and procedural review under § 3165.3 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed. Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either request a hearing on the record or pay the civil penalty. A request for a hearing shall be filed within the time allowed in the office of the State Director having jurisdiction of the lands covered by the lease. No civil penalty shall be assessed under this section until the person charged with the violation has been given the opportunity for a hearing on the record under Part 4 of this title.

(8) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under paragraph (b) of this section. In compromising or reducing the amount of a civil penalty under paragraph (b) of this section, the Secretary shall state on the record the reasons for his/her determinations.

(9) Any person who has requested a hearing in accordance with paragraph (b)(7) of this section and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

(10) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law.

(11) If the violation continues beyond the 60-day maximum specified in paragraph (b)(2) of this section or beyond the 20-day maximum specified in paragraphs (b)(5) and (b)(6) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(12) If the violation continues beyond the 20-day maximum specified in paragraph (b)(4) of this section, the District Manager shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that District Manager or to remove any crude oil or liquid hydrocarbons allocated to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and the related penalty paid.

(c) If any person fails to pay an assessment of a civil penalty under paragraph (b) of this section after the order making the assessment has become a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by paragraph (b)(9) of this section. Judgment by the court shall include an order to pay.

(d) The common drilling, production and abandonment related violations are categorized into 3 noncompliance ranges. The category for any violation is the gravity level to be used for that violation. Based on individual circumstances and with the appropriate documentation, the gravity of a violation may be upgraded or downgraded by 1 level. The Director shall establish a detailed list of potential violations. The violations shall be either:

(1) A minor violation which does not affect the safety of the workplace, nor does it degrade the environment or affect the amount of royalty income; or

(2) A moderate violation, which if left uncorrected, may eventually affect the safety of the workplace, degrade the environment and/or affect royalty income; or

(3) A major violation which has the immediate potential to affect the safety of the workplace, degrade the environment and/or affect the royalty income.

(e) Determination of Penalty Amount for paragraphs (a) and (b) of this section are as follows:

(1) The amount of the administrative penalty proposed shall be based upon the formula set forth in this subsection. The formula is based on 2 criteria: i.e., the gravity of the violation; and the lessee's or transporter's history of previous violations;

(2) The appropriate number of penalty points shall be assigned to each criterion using the appropriate tables as denoted and the 2 numbers shall then be totaled, and the point accumulation converted into a dollar per day amount by using Penalty Conversion Table A, B, C or D, as appropriate, and the amounts added, if necessary.

(3) Table I—Gravity of the Violation:

Classification	Penalty points
Minor violations	11
Moderate violations	41
Major violations	71

(4) Table II—Lessee's or Transporter's History of Past Violations:

Minor violations .... Number × ½ = ...
Moderate violations .... Number × 2 = ...
Major violations .... Number × 5 = ...
Total—(rounded down to the nearest whole number) (maximum of 29).

History of previous violations standards. History is based on the number of violations issued in a preceding 36-month period beginning February 1, 1983. The history of previous violations may account for a maximum of 29 penalty points. The penalty points shall be calculated on an lessee-by-lessee and lease-by-lease basis and, in the case of transporters, on a transporter-by-transporter basis within the jurisdictional area of each Bureau of Land Management District Office.

(5) Penalty Conversion Table—A (Lessees):

(i) The following penalty conversion tables are for violations not corrected within the time allowed in paragraph (a) of this section, or by the 20th day under paragraph (b)(1) of this section, or by the 40th day under paragraph (b)(2) of this section or such other time period as the authorized officer may specify and shall be used to convert the accumulation of penalty points from Tables I and II above to the appropriate dollar per day proposed penalty.

PENALTY CONVERSION TABLE—A

Points	Not corrected for up to 40 days-penalty/dollars per day under paragraph (a) and/or (b)	Not corrected in 40 days—penalty/dollars per day
40	75	750
41	79	790
42	82	820
43	86	860
44	89	890
45	93	930
46	97	970
47	101	1,010
48	105	1,050
49	109	1,090
50	113	1,130
51	117	1,170
52	122	1,220
53	126	1,260
54	131	1,310
55	135	1,350
56	140	1,400
57	145	1,450
58	150	1,500
59	156	1,560
60	160	1,600
61	166	1,660

PENALTY CONVERSION TABLE—A—Continued

Points	Not corrected for up to 40 days-penalty/dollars per day under paragraph (a) and/or (b)	Not corrected in 40 days—penatly/dollars per day
62	171	1,710
63	177	1,770
64	182	1,820
65	188	1,880
66	194	1,940
67	200	2,000
68	206	2,060
69	212	2,120
70	218	2,180
71	225	2,250
72	233	2,330
73	243	2,430
74	250	2,500
75	258	2,580
76	266	2,660
77	274	2,740
78	282	2,820
79	290	2,900
80	298	2,980
81	306	3,060
82	315	3,150
83	323	3,230
84	332	3,320
85	340	3,400
86	349	3,490
87	358	3,580
88	367	3,670
89	376	3,760
90	385	3,850
91	395	3,950
92	405	4,050
93	415	4,150
94	425	4,250
95	435	4,350
96	448	4,480
97	461	4,610
98	474	4,740
99	487	4,870
100	500	5,000

(ii) In order to focus particularly on serious violations, while also considering an operator's past compliance history, no dollar penalty shall be proposed for violations totaling less than 40 penalty points.

(6) Penalty Conversion Table A (Transporters):

The amount of the proposed civil penalty for failure of a transporter to permit inspection of proper documentation required by paragraph (b)(4) of this section shall be determined by formula based on the following criteria: i.e., the violation shall be considered a major violation (see Table I); and the transporter's history of previous violations (see Table II). Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using the first column of "Penalty Conversion Table A"

(7) Penalty Conversion Table (B):

(i) The amount of the proposed civil penalty for violation of paragraph (b)(5) of this section shall be determined by the formula based on the following criteria; i.e., the specific violation (Table III); and the lessee's history of previous violations (Table II).

(ii) Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using "Penalty Conversion Table B."

TABLE III—TYPE OF VIOLATION

Violation	Penalty points
Fail to permit entry upon the leasehold	70
Fails to permit inspection	60
Knowingly or willfully fails to notify after well begins or resumes production by the 5th business day thereafter	65

(iii) The following penalty conversion table shall be used to convert the accumulation of penalty points from Tables II and III to the appropriate per day proposed monetary penalty.

PENALTY CONVERSION TABLE—B

Points	Penalty dollars per day
60	3,600
61	3,720
62	3,840
63	3,970
64	4,100
65	4,220
66	4,360
67	4,490
68	4,620
69	4,760
70	4,900
71	5,040
72	5,180
73	5,330
74	5,480
75	5,630
76	5,780
77	5,930
78	6,080
79	6,240
80	6,400
81	6,560
82	6,720
83	6,890
84	7,060
85	7,220
86	7,400
87	7,570
88	7,740
89	7,920
90	8,100
91	8,280
92	8,460
93	8,650
94	8,840
95	9,030
96	9,220
97	9,410
98	9,600
99	9,800
100 and above	10,000

(8) Penalty Conversion Table—C:

(i) The amount of the proposed civil penalty for violations of paragraph (b)(6) of this section shall be determined by the formula based on the following criteria: i.e., the specific violation (Table IV); and the lessee's history of previous violations (Table II).

(ii) Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using "Penalty Conversion Table—C."

TABLE IV—TYPE OF VIOLATION

Violation	Penalty points
Knowingly or willfully prepares, maintains or submits false or misleading written information	70
Knowingly or willfuly prepares, maintains or submits inaccurate written information	60
Knowingly or willfully removes, uses or diverts oil or gas from any lease without having legal authority to do so	70
Purchases, accepts, sells, transport or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted	70

(iii) The following penalty conversion table shall be used to convert the accumulation of penalty points from Tables II and IV to the appropriate per day proposed monetary penalty.

PENALTY CONVERSION TABLE—C

Points	Penalty dollars per day
60	9,000
61	9,300
62	9,600
63	9,925
64	10,250
65	10,550
66	10,900
67	11,225
68	11,550
69	11,900
70	12,250
71	12,600
72	12,950
73	13,325
74	13,700
75	14,075
76	14,450
77	14,825
78	15,200
79	15,600
80	16,000
81	16,400
82	16,800
83	17,225
84	17,650
85	18,050
86	18,500
87	18,925
88	19,350
89	19,800
90	20,250
91	20,700
92	21,150
93	21,625
94	22,100
95	22,575
96	23,050
97	23,525
98	24,000
99	24,500
100 and above	25,000

§ 3163.4-2 Criminal penalties.

Any person who commits an act for which a civil penalty is provided in § 3163.4-1(b)(6) of this title shall, upon conviction, be punished by a fine of not more than $50,000 or by imprisonment for not more than 2 years or both.

12. Section 3163.5 is amended by:

A. Revising the title and paragraphs (a) and (b) to read:

§ 3163.5 Assessments and administrative penalties.

(a) Assessments made under § 3163.3 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Administrative penalties under § 3163.4–1 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

B. Adding to the end of paragraph (c) the sentence "The amount of any civil penalty under § 3163.4–1(b) of this title, as finally determined, may be deducted from any sums owing by the United States to the person charged."

13. A new § 3163.6 is added to read as follows:

§ 3163.6 Injunction and specific performance.

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

(1) restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or

(2) compel the taking of any action required by or under the Act or any mineral leasing law of the United States.

(b) A civil action described in paragraph (a) may be brought only in the United States district court of the judicial district wherein the act, omission or transaction constituting a violation under the Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

[FR Doc. 84-25036 Filed 9-20-84; 8:45 am]

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Rules and Regulations

Federal Register
Vol. 49, No. 186
Monday, September 24, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Revision to the U.S. Standards for Corn, U.S. Standards for Sorghum, and U.S. Standards for Soybeans

Correction

In FR Doc. 84-24082 beginning on page 35743 in the issue of Wednesday, September 12, 1984, make the following corrections:

§ 810.557 [Corrected]

1. On page 35744, § 810.557, the heading in the table reading "Maximum limits of—" should appear as follows:

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged kernels		Broken kernels, foreign material, and other grains (percent)
		Total (percent)	Heat damaged (percent)	

§ 810.603 [Corrected]

2. On page 35745, § 810.603, the heading in the table reading "Maximum limits of—" should appear as follows:

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—				
		Splits (percent)	Damaged kernels		Foreign material (percent)	Brown, black, and/or bicolored soybeans in yellow or green soybeans (percent)
			Total (percent)	Heat damaged (percent)		

Also in the fourth column of the table, first entry, "20" should read "2.0".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily increases for the months of October and November 1984 the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status. The revision is made in response to requests by a cooperative association representing producers supplying the market and by a large pool distributing plant operator in order to assure an adequate supply of milk.

EFFECTIVE DATE: September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Temporary Revision of Shipping Percentages: Issued August 27, 1984; published August 30, 1984 (49 FR 34366).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action will provide greater assurance that fluid milk processors will have adequate supplies of milk delivered to their plants to meet the fluid milk needs of their customers and ensure that dairy farmers receive the benefits of having their milk disposed of in the higher-valued uses.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order.

Notice of proposed rulemaking was published in the Federal Register (49 FR 34366) concerning a proposed revision of the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status for the months of September through November 1984. Interested parties were afforded the opportunity to comment on the proposal by submitting written data, views, and arguments. No comments in opposition to the higher shipping standards for the months of October and November were received. Associated Milk Producers, Inc., opposed the higher standard for the month of September.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views and arguments filed thereon, and other available information, it is hereby found and determined that for the months of

October and November 1984 the supply plant shipping percentages set forth in § 1065.7(b) should be increased from the present 40 percent to 50 percent. The temporary revision should not apply during September 1984 because of the limited time that supply plant operators would have available in which to make the increased shipments. As noted by one commentor, a supply plant operator would need to increase plant shipments by 20 percentage points during the last half of September to meet the proposed monthly increase of 10 percentage points.

Pursuant to the provisions of § 1065.7(b)(3), the supply plant shipping percentages set forth in § 1065.7(b) may be increased or decreased by up to 20 percentage points during any month to encourage additional milk shipments needed to assure an adequate supply of milk to fluid milk handlers, or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association which represents a large proportion of the producers supplying the Nebraska-Western Iowa market, and Wells Dairy, Inc., a handler who operates distributing plants pooled under the order, requested that the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to be pooled be increased temporarily from 40 to 50 percent. The proponents of the temporary revision cite declining milk production and increasing Class I disposition in the Nebraska-Western Iowa marketing area. Also, the National Farmers Organization and Gillette Dairy submitted comments in support of the temporary revision.

Mid-Am stated that producer milk pooled under the Nebraska-Western Iowa order during the first seven months of 1984 has decreased by nearly 11 percent from one year ago. According to the cooperative, milk production has declined because of lower prices to producers, higher milk production costs, and the Milk Diversion Program. Mid-Am cited a Cornell University extension report that 30.6 percent of the commercial dairy farmers in Iowa, and 42.3 percent in Nebraska, are participating in the Milk Diversion Program, under which dairy farmers are paid for reducing milk production. At the same time, the cooperative pointed out, the price support level for dairy products has been reduced 50 cents per hundredweight, resulting in uniform prices paid to producers for January-July 1984 that averaged 27 cents lower than uniform prices for the same period of 1983. Mid-Am stated that costs of producing milk have risen over the same period, producing a cost-price squeeze in net dairy farmer income, which is likely to continue and even accelerate the downward trend in milk production.

The cooperative stated that the National Advertising and Promotion Program and the improved economy likely will result in a continuing improvement in Class I sales for the remaining months of 1984. Both Mid-Am and Wells Dairy stated that increased supply plant shipping requirement will assure a continued adequate milk supply for distributing plants in the Nebraska-Western Iowa market. The cooperative pointed out that such a temporary increase will equalize the performance standards for supply plants qualifying for pooling pursuant to § 1065.7(b) with those pooled pursuant to § 1065.7(c).

Producer milk pooled under the Nebraska-Western Iowa order during January-July 1984 has declined from year-earlier levels, with a range by month of 5.1 percent in January to 15.4 percent in June below the same month in the previous year. Meanwhile, Class I disposition in the market during the same period had shown increases for each month ranging from 5.2 percent in July to 13.6 percent in March over year-earlier levels. Under the present supply-demand conditions, it is concluded that a revision of the supply plant shipping requirements by 10 percentage points for the months of October and November 1984 is necessary to assure an adequate supply of milk for fluid use.

It is hereby found and determined that thirty days' notice of the effective date is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions, to maintain orderly marketing in the marketing area, and to assure an adequate supply of milk to fluid milk handlers for the months of October and November 1984;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective for the months of October and November 1984.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the 40 percent pool supply plant shipping percentage requirement in § 1065.7(b) of the order is hereby increased to 50 percent for the months of October and November 1984.

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: September 24, 1984.

Signed at Washington, D.C., on September 18, 1984.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 84–25213 Filed 9–21–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100 and 103

Miscellaneous Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes technical amendments to 8 CFR without changing the substance of the affected provisions by changing the organizational title of the Adjudications and Naturalization Division to Adjudications Division. This change is being made since naturalization is simply one type of adjudication.

EFFECTIVE DATE: September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: On March 30, 1983, at 48 FR 13146, the Service published the reorganization of its Central and Regional Offices that reflected one division under the Office of Examinations to have the organizational title of Adjudications and Naturalization. Since naturalization is simply one type of adjudication, that title has since been changed to Adjudications.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not required as this rule deals solely with agency management and organization.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities. This document is not a rule as defined in section 1(a) of E.O. 12291 as it deals with agency management and organization.

List of Subjects in 8 CFR Parts 100 and 103

Administrative practice and procedure, Authority delegation, Jurisdiction, Organization and functions (government agencies).

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. In § 100.2, paragraph (c)(3)(i) is revised to read:

§ 100.2 Organizations and functions.

* * * * *

(c) * * *

(3) * * *

(i) Adjudications Division,

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. In § 103.1, paragraph (f)(1)(i) is revised to read as follows:

* * * * *

(f) * * *

(1) * * *

(i) Assistant Commissioner for Adjudications.

* * * * *

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103))

Dated: September 14, 1984.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-25118 Filed 9-21-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Part 201

Regulations and Policy Statements

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This document revises and consolidates the regulations concerning weighing practices, scale testing procedures, disclosure of information, and examination of records and property. The document also removes two regulations concerning stockyard services, one regulation concerning the weighing of livestock for purposes other than purchase or sale, and one regulation concerning the wholesomeness of feed furnished livestock. These actions simplify existing regulations by consolidating similar regulations and reduce or eliminate unnecessary regulatory requirements.

EFFECTIVE DATE: October 24, 1984. The incorporation by reference in § 201.71 was approved by the Director of the Federal Register effective October 24, 1984.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, phone (202) 447-6951, or Kenneth Stricklin, Director, Packer and Poultry Division, phone 447-7363.

SUPPLEMENTARY INFORMATION: The proposed changes in the regulations were published in the **Federal Register** on September 20, 1983 (48 FR 42823). At the request of a major trade association representing poultry interests, the deadline for filing comments was extended until December 2, 1983. Thirty-one comments were filed in response to the notice. Of the thirty-one comments filed, twenty-five addressed a single proposal, regulation § 201.82(b), and opposed the proposed change in the wording of that regulation concerning the time of weighing for live poultry. A national packer also commented in opposition to the proposed change in regulation § 201.82(b), but also commented on other proposals. Of the remaining five comments received, two were filed by national trade associations and addressed selected proposals, and the remaining three comments, representing the views of a national farm organization, a national livestock market group, and a State Department of Agriculture, approved all of the proposals.

All comments received were carefully considered by the Administration.

Installation, Maintenance and Use of Scales; Accurate Weights

It was proposed to retain the requirements of the five regulations pertaining to scale accuracy and to the installation, maintenance and use of livestock, monorail and vehicle scales but to consolidate the pertinent provisions specifying those requirements into a single regulation, § 201.71. In addition, it was proposed to remove regulation § 201.72-2, and to incorporate by reference in regulation § 201.71 the applicable requirements contained in the General Code, Scale Code and Weights Code of the 1983 Edition of National Bureau of Standards Handbook 44 concerning specifications, tolerances and other technical requirements for commercial weighing and measuring devices.

Only one comment specifically addressed the proposal, and expressed reservations concerning the incorporation by reference in regulation § 201.71 of the applicable requirements of the 1983 Edition of the National Bureau of Standards Handbook 44 because it is subject to change each year. That comment misconstrues the effect of the proposed incorporation, which is confined to the 1983 edition of the Handbook. If changes are adopted in future editions of the Handbook which affect persons subject to the Act, those changes, if appropriate, can be incorporated into the regulations only after notice and opportunity for comment. It should be noted, however, that all the States in which scales subject to the Packers and Stockyards Act are located follow the requirements of Handbook 44 as their State requirements.

The Administration has concluded that regulation 201.71 will be adopted as a final rule.

Scale Testing and Reports

It was proposed to retain the existing requirements for the testing of scales used to weigh livestock, livestock carcasses or live poultry, but to consolidate those requirements, currently specified in four regulations, into a single regulation. It was also proposed to retain the requirement that copies of the scale test reports be filed with the Administration.

There were no objections to this proposal, but one response questioned the meaning of the term "competent person." Specifically, the response questioned whether the term referred only to an official of a regulatory agency. That term refers to any qualified employee of an independent scale company, a State agency, or a qualified employee of the scale owner.

For the reasons set forth in the proposal of September 20, 1983, the Administration has determined that the scale testing and reporting requirements will be retained and consolidated. Accordingly, regulation 201.72, as proposed, will be adopted as a final rule.

Instructions for Testing Scales and Weighing Livestock, Livestock Carcasses and Live Poultry

It was proposed to retain §§ 201.72–1, 201.73–1, 201.78–1, 201.106–1, 201.106–2, and 201.108–1 of the regulations which contain the technical instructions for proper scale testing and weighing procedures. No comments were received in opposition to this proposal. Accordingly, these regulations will be retained.

Scale Operators To Be Competent

It was proposed to consolidate §§ 201.73, 201.78(b) and 201.108 of the regulations which require that persons subject to the Act employ only qualified persons to operate scales for weighing livestock, livestock carcasses or live poultry. It was also proposed to eliminate the requirement that weighmasters be rotated in their duties. No comments were received which specifically addressed this proposal, and for the reasons set forth in the notice, the regulations will be consolidated as regulation § 201.73.

Reweighing Livestock and Live Poultry

Sections 201.76 and 201.109 of the regulations require that persons subject to the Act, and their employees, shall reweigh livestock or live poultry at the request of authorized representatives of the Secretary. It was proposed to consolidate the two regulations and to include language to make clear that livestock carcasses are subject to reweighing upon proper request. No comments specifically addressing this proposal were received. Accordingly, the two regulations will be consolidated and revised as a final rule in regulation 201.76.

Weighing Other Than for Purchase or Sale; Stockyard Services; Wholesome Feed and Water

It was proposed to remove §§ 201.77, 201.79, 201.80 and 201.84 of the regulations which concern weighing for purposes other than purchase or sale, the furnishing of facilities and services at stockyards, the withholding of stockyard services, and the wholesomeness of feed and water furnished livestock. No comments were received in opposition to the proposed removal, and the four regulations will therefore be removed.

Suspended Registrants

It was proposed to retain regulation § 201.81, which prohibits persons subject to the Act from employing any person who is suspended as a registrant to perform activities in connection with livestock transactions during the period of suspension.

Only one comment specifically addressed this proposal, and questioned whether the regulation would prevent persons subject to the Act from employing suspended registrants in a capacity other than that which they were engaged in at the time of their suspension.

It is the position of the Administration that a suspended registrant should not be employed to perform any activities related to livestock transactions which are subject to the jurisdiction of the Secretary under the Act, including buying and selling livestock in any capacity or furnishing stockyard services. This regulation is necessary to insure the effectiveness of suspensions ordered by the Secretary, and to prevent circumvention of suspension orders through a myriad of direct and indirect devices.

The Administration has concluded that the prohibition of regulation 201.81 will be retained, but the regulation will be revised to make clear that the regulation prohibits the employment of suspended registrants to perform activities only in connection with or related to livestock transactions subject to the jurisdiction of the Secretary under the Act.

Handling and Weighing Livestock and Live Poultry

It was proposed to consolidate the requirements of regulation 201.82 and regulation 201.110 into a single regulation. Under the proposal, regulation 201.110 would be revised and consolidated as regulation 201.82(b).

Responses to the proposal were initially due on or before November 21, 1983. Three comments were received during the initial comment period, including one from a national farm organization, generally supporting all of the changes proposed in the notice. On November 16, 1983, a letter was received from the National Broiler Council requesting an extension of time in which to file responses to the proposal. An extension was granted to December 2, 1983. After the extension was granted, twenty-six comments were received from members of the poultry industry in opposition to the proposed change in wording in regulation 201.82(b). Nine of the twenty-six comments received were filed on behalf of a single poultry firm. In addition, comments were filed by 10 other poultry processors, by five state poultry associations, by one regional association, and by one national poultry association.

Based on the comments received, the proposal to revise the language of regulation 201.82(b) was perceived as imposing a new, more stringent requirement than currently imposed by regulation 201.110. This was not the intent of the agency. The change to more specific language was for the purpose of clarification. The current regulation pertaining to the weighing of live poultry requires that live poultry be weighed "as promptly as possible after the poultry is loaded * * *." In administering this requirement over the past several years the agency has consistently interpreted § 201.110 as requiring live poultry to be weighed promptly upon arrival at the processor's plant. Such an interpretation is consistent with the existing regulation.

The Administration's review of industry weighing practices confirms that this is already the predominant practice in the industry.

In view of the foregoing and the fact that live poultry is not always transported directly to a processing plant after loading, the Administration has concluded that the present wording of regulation 201.110 shall be retained. The Administration's existing interpretation of the requirements of this regulation will not change for those dealers and handlers transporting live poultry directly to their plants for slaughter.

Accordingly, the Administration has determined that regulation 201.82(a), as proposed, will be adopted as a final rule. Regulation 201.82(b), as proposed, will not be adopted as a final rule. However, the current wording of regulation 201.110 will be consolidated in regulation 201.82 as part (b).

Furnishing Business Information; Inspection of Records and Property

It was proposed to retain regulation 201.94 which requires persons subject to the Act to give to the Secretary, in writing or otherwise, and under oath if requested, any information concerning their business subject to the Act. It was also proposed to consolidate §§ 201.95 and 201.103 of the regulations which require persons subject to the Act to permit authorized representatives of the Secretary to enter their place of business during ordinary business hours to examine and copy their records and to inspect their facilities.

One comment specifically addressing these proposals was received. That comment objected the the deletion of the word "proper" from the phrase "upon proper request" in regulation 201.95. That deletion was inadvertent and the consolidated rule retains the phrase "upon proper request." It was also suggested in the same comment that it would be appropriate to include the phrase "upon proper request" in regulation 201.94. The Administration agrees that any request must be in conformance with its statutory authority, and the suggested modification will be adopted.

Accordingly, regulation 201.94, with the amendment noted above, will be retained and §§ 210.95 and 201.103 of the regulations, with the amendment noted above, will be consolidated as proposed.

Information Not To Be Disclosed

It was proposed to consolidate §§ 201.96 and 201.104 of the regulations which prohibit the unauthorized disclosure of business information. One comment questioned whether the regulation would prohibit the unauthorized disclosure of information voluntarily given to the Administration by a person subject to the Act either during the course of an investigation, in response to an informal request, or under other similar circumstances. The Administration believes that the regulation prohibits the disclosure of all information received either through voluntary submission or pursuant to lawful process. All information received by the Administration in connection with its enforcement of the Act is "information given * * * pursuant to the Act and regulations * * *."

Accordingly, §§ 201.96 and 201.104 of the regulations will be consolidated as regulation 201.96 and adopted as a final rule.

Annual Reports

It was proposed to retain regulation 201.97 which requires the filing of annual reports by packers, stockyard owners, market agencies and dealers. No comments were received in opposition to the annual report requirement and for the reasons set forth in the proposal, regulation 201.97 will be retained.

Packers and Dealers Not To Charge Commission, Yardage or Other Service Charges

It was proposed to retain regulation 201.98 of the regulations, which prohibits packers and dealers, in connection with the purchase of livestock, from assessing the sellers of livestock any fee such as yardage, commission or other service charges.

One comment was received in opposition to the proposal, and expressed the view that the Administration should not prohibit a marketing device merely because that device "may" be used to obtain an unfair competitive advantage.

The principal reason advanced by the Administration in support of the regulation is that buyers of livestock provide no service to sellers in connection with their livestock purchases and are therefore not entitled to assess such charges. In addition, the assessment of such fees is frequently a deceptive pricing divice and an unfair competitive practice.

The Administration does not believe that the comment filed in opposition to the proposal has merit, and regulation 201.98 will be retained as proposed.

Packer Purchasing Livestock on a Carcass Basis

Two comments were filed in opposition to the proposed retention of regulation 201.99, which specifies requirements applicable to purchases of livestock on a carcass weight or carcass grade and weight basis. One comment recommended that the regulation should require only reasonable uniformity of hooks, rollers and gambrels. In its enforcement of regulation 201.99, the Administration allows a tolerance of plus or minus two ounces for such equipment. Therefore, only "reasonable" uniformity is in fact required. The other comment questioned the Administration's authority to impose such a limitation on the rights of parties to agree to forms of grade and weight transactions based on weights other than hot carcass weights. Regulation 201.99 was adopted on the basis of an extensive record, including substantial input from all sectors of the livestock and packing industries, studies conducted by the Administration, and public hearings. The arguments advanced here in opposition to regulation 201.99 were also advanced when the regulation was first proposed for adoption, and the Administration's reasons for adopting § 201.99 are set forth in great detail in the **Federal Register** of February 9, 1968. (33 FR 2762).

The Administration is convinced that those reasons remain equally valid today. Accordingly, regulation 201.99 will be retained as proposed, and the proviso in paragraph (d) will be deleted.

Records To Be Furnished Poultry Growers and Sellers

It was proposed to retain regulation 201.100 which specifies the information to be furnished poultry growers and sellers. No comments were received in opposition to this proposal, and regulation 201.100 will be retained.

Statement With Respect To Insolvency

It was proposed to retain § 203.10 of the Statements of General Policy. This policy statement defines the test for insolvency which will be applied under the Packers and Stockyards Act. No comments were received concerning the proposed retention of this policy statement and the continued application of the current ratio test in the determination of insolvency. Accordingly, policy statement 203.10 will be retained as proposed.

Executive Order

It has been determined that the regulations relating to the weighing, scale testing, and services of market agencies, dealers, packers and live poultry dealers or handlers are not "major" rules as defined by section 1(b) of E.O. 12291.

The rules will not have an annual effect on the economy of $100 million or more, will not result in major increase in costs or prices for consumers, individual industries, Government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, regulatory impact analyses are not required.

Regulatory Flexibility Act

B.H. (Bill) Jones, Administrator, Packers and Stockyards Administration has determined that these rules will not have a significant economic impact on a

substantial number of small entities. These rules, would remove several restrictions on the business activities of market agencies and greatly simplify and clarify the regulations.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in these rules have been approved by the Office of Management and Budget (OMB) and have been assigned clearance numbers 0590–0001 and 0590–0003.

List of Subjects in 9 CFR Part 201

Packers, Reporting and recordkeeping requirements, Scales, Stockyards, Weighing.

PART 201—[AMENDED]

Accordingly, Part 201, Chapter II of Title 9 of the Code of Federal Regulations, is amended as set forth below.

1. Section 201.71 is revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers and live poultry dealers or handlers to weigh livestock, livestock carcasses or live poultry for the purpose of purchase, sale, acquisition or settlement shall be installed, maintained and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code and Weights Code of the 1983 Edition of National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices", (Sections 1 and 2) which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on October 24, 1984. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.** Handbook 44 is subject to change annually. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, D.C. 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers and live poultry dealers or handlers to weigh livestock or live poultry for the purpose of purchase, sale, acquisition or settlement shall be equipped with a printing device which shall be used for recording weight values on a scale ticket or other document used for this purpose.

(c) All vehicle scales used to weigh livestock or live poultry for purposes of purchase, sale, acquisition or settlement shall be of sufficient length and capacity to weigh the entire vehicle as a unit: Provided, That a trailer may be uncoupled from the tractor and weighed as a single unit.

(d) No scale shall be operated or used by any stockyard owner, market agency, dealer, packer or live poultry dealer or handler to weigh livestock, livestock carcasses or live poultry for purposes of purchase, sale, acquisition or settlement unless it has been found upon test and inspection, as specified in § 201.72 of the regulations, to be in a condition to give accurate weight. If a scale is inspected or tested and found incorrect or inaccurate or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and met all accuracy requirements specified in the regulations.

2. Section 201.72 is revised to read as follows:

§ 201.72 Scales; testing of.

(a) Each stockyard owner, market agency, dealer, packer or live poultry dealer or handler who weighs livestock or live poultry for purposes of purchase, sale, acquisition, or settlement, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations at least twice during each calendar year at intervals of approximately six months. More frequent test will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer and live poultry dealer or handler who weighs livestock, livestock carcasses or live poultry for purposes of purchase, sale, acquisition or settlement shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer or handler shall retain one copy of the test and inspection report and shall file one copy with the regional office for the region in which the scale is located.

(c) When the scales used for weighing livestock, livestock carcasses or live poultry are tested and inspected by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting test and inspection of scales shall be accepted in lieu of the forms prescribed for this purpose by the Administrator if such forms contain substantially the same information.

(Approved by the Office of Management and Budget under control number 0590–0001)

§ 201.72–2 [Removed]

3. In Part 201, § 201.72–2 is removed.

4. Section 201.73 is revised to read as follows:

§ 201.73 Scale operators to be qualified.

Stockyard owner, market agencies, dealers, packers and live poultry dealers or handlers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses or live poultry for the purpose of purchase, sale, acquisition or settlement, and they shall require such employees to operate the scales in accordance with the regulations.

§§ 201.74 and 201.75 [Removed]

5. In Part 201, §§ 201.74 and 201.75 are removed.

6. Section 201.76 is revised to read as follows:

§ 201.76 Reweighing.

Stockyard owners, market agencies, dealers, packers and live poultry dealers or handlers shall reweigh livestock, livestock carcasses or live poultry on request of any authorized representative of the Secretary.

§§ 201.77, 201.78, 201.79, and 201.80 [Removed]

7. In Part 201, §§ 201.77, 201.78, 201.79, and 201.80 are removed.

8. Section 201.81 is revised to read as follows:

§ 201.81 Suspended registrants.

No stockyard owner, packer, market agency, or dealer shall employ any person who has been suspended as a registrant to perform activities in connection with livestock transactions subject to the jurisdiction of the Secretary under the Act during the period of such suspension: *Provided,* That the provisions of this section shall not be construed to prohibit the employment of any person who has been suspended as a registrant until such time as the person demonstrates solvency or obtains the bond required under the Act and regulations. No such person shall be employed, however, until after the expiration of any specified period of suspension contained in the order of suspension.

9. Section 201.82 is revised to read as follows:

§ 201.82 Care and promptness in weighing and handling livestock and live poultry.

(a) Each stockyard owner, market agency, dealer, packer and live poultry dealer or handler shall exercise reasonable care and promptness with respect to loading, transporting, holding, yarding, feeding, watering, weighing or otherwise handling livestock or live poultry to prevent waste of feed, shrinkage, injury, death or other avoidable loss.

(b) Whenever live poultry is weighed on a vehicle by a packer or live poultry dealer or handler, the gross weight shall be determined on the scale normally used for such purpose as promptly as possible after the poultry is loaded on the vehicle.

§ 201.84 [Removed]

10. In Part 201, § 201.84 is removed.

11. Section 201.94 is revised to read as follows:

§ 201.94 Information as to business; furnishing of by packers, stockyard owners, market agencies, and dealers.

Each packer, stockyard owner, market agency, and dealer, upon proper request, shall give to the Secretary or his duly authorized representatives in writing or otherwise, and under oath or affirmation if requested by such representatives, any information concerning the business of the packer, stockyard owner, market agency, or dealer which may be required in order to carry out the provisions of the act and regulations in this part within such reasonable time as may be specified in the request for such information.

12. Section 201.95 is revised to read as follows:

§ 201.95 Inspection of business records and facilities.

Each stockyard owner, market agency, dealer, packer and live poultry dealer or handler, upon proper request, shall permit authorized representatives of the Secretary to enter its place of business during normal business hours and to examine records pertaining to its business subject to the Act, to make copies thereof and to inspect the facilities of such persons subject to the Act. Reasonable accommodations shall be made available to authorized representatives of the Secretary by the stockyard owner, market agency, dealers, packer or live poultry dealer or handler for such examination of records and inspection of facilities.

13. Section 201.96 is revised to read as follows:

§ 201.96 Unauthorized disclosure of business information prohibited.

No agent or employee of the United States shall, without the consent of the stockyard owner, market agency, dealer, packer or live poultry dealer or handler concerned, divulge or make known in any manner, any facts or information regarding the business of such person acquired through any examination or inspection of the business or records of the stockyard owner, market agency, dealer, packer or live poultry dealer or handler, or through any information given by the stockyard owner, market agency, dealers, packer or live poultry dealer or handler pursuant to the Act and regulations, except to such other agents or employees of the United States as may be required to have such knowledge in the regular course of their official duties, or except insofar as they may be directed by the Administrator or by a court of competent jurisdiction, or except as they may be otherwise required by law.

14. In § 201.99, paragraph (d) is revised to read as follows:

§ 201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or carcass grade and weight basis.

* * * * *

(d) Settlement and final payment for livestock purchased by a packer on a carcass weight or carcass grade and weight basis shall be on actual hot weights. The hooks, rollers, gambrels or other similar equipment used at a packing establishment in connection with the weighing of carcasses of the same species of livestock shall be uniform in weight. The tare shall include only the weight of such equipment.

(Approved by the Office of Management and Budget under control number 0590-0003)

§§ 201.103, 201.104, 201.105, 201.106, 201.108, 201.109, and 201.110 [Removed]

15. In Part 201, §§ 201.103, 201.104, 201.105, 201.106, 201.108, 201.109, and 201.110 are removed.

(7 U.S.C. 222 and 228 and 15 U.S.C. 46)

Done at Washington, D.C. this 12th day of September 1984.

B.H. (Bill) Jones, *Administrator.*
Packers and Stockyards Administration.

[FR Doc. 84-25317 Filed 9-21-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-19]

Changes to Controlled Airspace, Hawaii

Correction

In FR Doc. 84-23138 beginning on page 34442 in the issue of Friday, August 31, 1984, make the following corrections.

On page 34443, § 71.401 is corrected as follows:

1. In the second column, under the heading **Honolulu, HI [Revised],** *Primary Airport,* in the second line, "21°29′20″ N." should have read "21°19′20″ N.".

2. In the third column:

a. In the fourth line of *Area H,* "158°01′57″ W." should have read "158°03′00″ W."; and in the fifth and sixth lines, "158°03′00″ W." should have read "158°03′55″ W.".

b. In the second line of *Area I,* "1,000" should have read "2,200".

c. In the second line of *Area J,* "1,600" should have read " "1,000"; in the seventh line, "H-5Freeway" should have read "H-1 Freeway"; and in the eighth line, "157°1′15″ W." should have read "157°51′15″ W".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-204 (New Mexico—25); Order No. 397]

High-Cost Gas Produced From Tight Formations; New Mexico

Issued: September 21, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the

Commission adopts the recommendation by the New Mexico Energy and Minerals Department, and the U.S. Bureau of Land Management that a portion of the Pictured Cliffs Formation located in Rio Arriba and Sandoval Counties, New Mexico, be designated as a tight formation.

EFFECTIVE DATE: This rule is effective October 22, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees, (202) 357–5420 or Walter Lawson, (202) 357–8556.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Background

Based on a recommendation made by the new Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico), the Commission amends its regulations [1] to designate a portion of the Pictured Cliffs Formation located in Rio Arriba and Sandoval Counties, New Mexico, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation (Director) issued a Notice of Proposed Rulemaking proposing the designation on June 15, 1984.[2]

The U.S. Department of Interior, Bureau of Land Management (BLM),[3] supports the New Mexico recommendation in part, but argues that certain other areas should be included in the recommendation and that others be deleted. BLM recommends that the part of the Pictured Cliffs Formation underlying Township 24 North, Range 3 West, Sections 26 through 35 and South ½ of Section 36, be included in the tight formation designation (Sections 29 through 32 and the West ½ of Section 33 were included in the New Mexico recommendation).

However, BLM also recommends that the portion of the Pictured Cliffs Formation underlying Township 22 North, Range 3, West, Sections 19 through 36; Township 22 North, Range 4 West, Sections 13 through 36; and Township 22 North, Range 5 West, all sections, be deleted from the tight formation designation. BLM asserts that this portion, located in the southwest corner of New Mexico's proposed area, is not part of the same trend found in the Ballard Pictured Cliffs field and has not been adequately tested, described or characterized by the data contained in the application.

BLM describes the portion of the Pictured Cliffs Formation it supports as being nearshore bars aligned northwest to southeast, whereas the area it opposes is described as nearshore bars which are extremely lenticular, ribbon-like deposits with a very limited southwest-northeast areal extent. BLM asserts that because of the limited areal extent of the deposits, it is unreasonable to include the untested acreage found several miles southwest from the edge of the main trend.

II. Summary of Comments

Several comments were received in response to the Notice of Proposed Rulemaking. Southern California Gas Supply Company (SoCal) and the Pacific Lighting and Gas Supply Company (PLGS) filed joint comments opposing the New Mexico recommendation. The Northwest Pipeline Corporation (Northwest) also filed comments opposing New Mexico's recommendation.

SoCal and PLGS objected to the recommendation by New Mexico on the grounds that there was insufficient well test data and an inadequate analysis to support its assertion that the recommended area qualified as a tight formation. SoCal and PLGS assert that the applicant before New Mexico attempted to arrive at the expected *in situ* permeability based on core analyses from only four wells. SoCal and PLGS argue further that while this applicant chose to rely more on an analysis using Darcy's equation to estimate the recommended area's permeability rather than the core method, flow rata data from only six wells were available for the analysis. SoCal and PLGS feel this does not constitute sufficient and adequate reservoir data to properly evaluate an area of nearly 370 square miles.

SoCal and PLGS also argue that the applicant excluded certain unfavorable data from its calculations, resulting in an erroneously low expected average *in situ* permeability. SoCal and PLGS state that the analytical approach for determining the average *in situ* permeability under the regulations is to calculate the arithmetic average of the permeabilities of all productive wells in the recommended area. SoCal and PLGS assert that the applicant excluded the unstimulated flow rate from one of the seven wells because the applicant believed that the particular well had penetrated a highly productive sweet spot uncharacteristic of the recommended formation, yet included rates from two wells whose production rate was too small to measure. SoCal and PLGS assert that the applicant did not submit enough supporting data to justify the exclusion.

SoCal and PLGS assert that the applicant's use of an average net pay thickness of 41 feet is inappropriate for such a non-homogeneous formation such as the Pictured Cliffs formation, because it does not reflect localized differences in net pay thickness, static and flowing bottom hole pressures, wellbore radius and near wellbore damage of individual wells. SoCal and PLGS state that they have summarized the core data and have arrived at an average pay thickness of 23 feet. SoCal and PLGS assert that when this figure is used, along with the arithmetic average of the unstimulated flow rate for all productive wells of 51.2 Mcf per day, it arrives at an estimated *in situ* permeability of 0.24 millidarcy, exceeding the 0.1 millidarcy guideline found in § 271.703(c)(2)(i)(A).

On August 1, 1983, the Commission also received comments from Northwest Pipeline Corporation (Northwest) in which Northwest expressed concern about the development and permeability levels of the acreage found in the South Blanco Pictured Cliffs and Ballard Pictured Cliffs Pools as established by New Mexico Order Nos. 156 and 577 respectively.[4] On August 31, 1983, the Commission requested any additional data Northwest had concerning these areas and any permeability data Northwest felt was pertinent. On October 12, 1983, the Commission received the additional data from Northwest.

Northwest submits that New Mexico Spacing Order No. R–1670, issued May 23, 1960, allows the drilling of four wells per section in these pools. Northwest submits of the 65 sections contained in the Blanco Pictured Cliffs Pool, 29% are 100% developed, 15% are 75% developed and 37% are partially developed. In the Ballard Pictured Cliffs Pool, containing 103 sections, there is 100% development on 46% of the sections, 9% of the remaining sections are 75% developed, 4% of these sections are 66% developed, and 22% of the sections are 50% developed. Altogether, Northwest submits 81% of the sections in the two pools are at least 50% developed. Northwest therefore concludes that incentive prices for tight formation gas has not been needed for the development of these two areas and that it is not necessary for the future development of the area as well.

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[1] 18 CFR 271.703(d) (1983).

[2] 48 FR 28,113 (June 20, 1983).

[3] Portions of the land involved herein are Federal lands and therefore the BLM was involved in the proceeding.

[4] New Mexico Order Nos. 156 and 577 were issued on May 20, 1952, and on February 9, 1965 respectively.

Northwest also submits that it has reviewed production history from 19 wells in the South Blanco Pictured Cliffs Pool and of 6 wells in the Ballard Pictured Cliffs Pool. Northwest calculates the permeability of the recommended formation, based on its review, to be an average of 0.113 millidarcy.

III. Discussion

A. BLM's Recommendation

The Commission has reviewed BLM's comments and finds that the additional area that BLM proposes to include in the recommended area is supported by the evidence submitted. The Commission therefore includes this area in the area designated as a tight formation.

The Commission, however, disagrees with BLM's assertions that certain areas recommended by New Mexico should be deleted. Review of the data shows the Pictured Cliffs Formation in the proposed area to be a continuous lithologic unit of interfingered sand lenses recognizable on electric logs of wells throughout the recommended area. The subject formation, a silty sandstone with clay filled pore spaces, was deposited in a regressive marine environment by the Late Cretaceous sea. The same physical forces responsible for depositing the nearshore bars found near the northeast boundary were operating during the deposition of the nearshore bars in the southwest portion of the proposed area. Consequently, we believe that formation characteristics in the developed nearshore bar trend in the northeastern portion, from which most of the raw data originates, can reasonably be used to approximate the characteristics in the adjacent nearshore bar system believed to underlie the sparsely drilled southwestern portion.

The Commission's guidelines require that a recommended area exhibit or be expected to exhibit tight formation characteristics. They do not go so far as to require that data exist in the same degree in all parts of the formation as in the northeast portion of the recommended area. If this were so, then undeveloped areas, for which the incentive price is most needed, could never be designated as tight formations. The Commission believes that the southwestern portion should not be deleted from the tight formation designation, since enough evidence exists to lead to a finding that this area is expected to exhibit tight formation characteristics.

B. SoCal and PLGC's Comments

The Commission also finds SoCal and PLGS's comments unpersuasive. Commission review of the data submitted indicates that the flow rates from the "sweet spot" were anomolous to the rest of the recommended area and finds that exclusion of the flow rate from the "sweet spot" is justified in this particular case. Furthermore, the Commission believes that the applicant's approximation of 41 feet for the net pay thickness of the pay section is supported by the evidence available. Based on data from nine wells producing in the subject cross section, excluding the flow rate from the sweet spot area, the Commission arrived at an arithmetic average for the unstimulated stabilized flow rate of 16.5 Mcf. The Commission finds that SoCal and PLGS' assertion that the unstimulated flow rate was 51.2 Mcf was actually an unstabilized rate of flow and not in accordance with the guidelines in § 271.703(c)(2)(i)(B). Furthermore, that section of the Commission's regulations requires the applicant to show a stabilized prestimulated flow rate of 79.5 Mcf for the subject formation, a figure above SoCal and PLGS' estimated rate of flow. Additionally, the Commission used its estimate of the unstimulated flow rate and the applicant's estimation of a net pay section of 41 feet in Darcy's equation and arrived at an expected average *in situ* permeability of .018 millidarcy, which is well below the 0.1 millidarcy requirement found in § 271.703(c)(2)(i)(A).

C. Northwest's Comments

We now turn to Northwest's comments that certain areas have been substantially developed and should be deleted from this designation. Section 271.703(c)(2)(i)(D) provides that no area should be included in a recommendation if that area was authorized to be developed by infill drilling prior to the date of the recommendation, and information exists to indicate that the area can be developed absent the incentive price. We have found this "information" to exist in cases where the area was substantially developed at the time an infill drilling order was issued.[8] In this case, there has been no infill drilling order and so there is no basis to exclude any areas under § 271.703(c)(2)(i)(D). Additionally, our review shows that 88 percent of the existing wells in the Ballard Pictured Cliffs and South Blanco Pictured Cliffs Pools were drilled and completed in the tight formation prior to July 16, 1979, the date at which the incentive price was established. Accordingly, production from these wells in the tight formation will probably not qualify for the NGPA section 107 incentive price. *See* § 271.703(b) (2) and (3). Furthermore, as stated above, the Commission estimates the expected *in situ* permeability to be .018 millidarcy for the designated area.

IV. Conclusion

Based on the above, the Commission finds that the evidence submitted by New Mexico supports the assertion that the Pictured Cliffs formation meets the guidelines contained in § 271.703(c)(2). Thus, the Commission adopts the New Mexico recommendation, with the additional area recommended by BLM.

This amendment shall become effective October 22, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(179) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(179) *Pictured Cliffs Formation in New Mexico.* RM79–76–204 (New Mexico—25).

(i) *Delineation of formation.* The Pictured Cliffs Formation is located in Rio Arriba and Sandoval Counties, New Mexico, in Township 22 North, Range 2, 3, 4 and 5 West, Sections 5 through 9, 16 through 21, and 25 through 36; Township 23 North, Ranges 3, 4 and 5 West, All Sections; Township 24 North, Range 3 West, Sections 19, 20, 26 through 35, and S/2 of 36; Township 24 North, Range 4 West, Sections 3 through 10 and 13 through 36; Township 24 North, Range 5 West, All Sections; Township 25 North, Range 4 West, Sections S/2 of 30, 31 and 32; Township 25 North, Range 5 West, Sections 15 through 23 S/2 of 24, and 25 through 30, NMPM.

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[8] *See* Docket No. RM79–76, (Colorado-1) FERC Stats. & Regs. [Reg. Preambles 1977–1981] ¶ 30.229 (1981), Order 124; Docket No. RM79–76, (Colorado-3) FERC Stats. & Regs. [Reg. Preambles 1977–1981] ¶ 30.244 (1981), Order 137; Commission Order Denying Rehearing, Order 137–A 15 FERC ¶ 61,277 (1981).

(ii) *Depth.* The Picture Cliffs Formation is defined as that interval at a depth of approximately 3,046 feet to 3,141 feet on the Induction Electric Log from the John E. Schalk, Cinco Diablos Well No. 6. The average depth to the top of the Pictured Cliffs Formation is 2,685 feet.

[FR Doc. 84-25191 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-218 (New Mexico—26); Order No. 398]

High-Cost Gas Produced From Tight Formations; New Mexico

Issued: September 21, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Commission adopts in part the recommendation of the State of New Mexico Energy and Minerals Department Oil Conservation Division (New Mexico) than an additional area of the Dakota formation, located in San Juan Basin in San Juan County, New Mexico, exclusive of certain areas where development has been substantial be designated as a tight formation.

EFFECTIVE DATE: This rule is effective October 22, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin R. Rees, (202) 357-5420 or Walter Lawson, (202) 357-8556.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

I. Background

On October 24, 1984, the State of New Mexico, Energy and Minerals Department, Oil Conservation Division (New Mexico) submitted a recommendation to the Commission that the Dakota Formation located in San Juan County, New Mexico, be designated as a tight formation. A Notice of Proposed Rulemaking was issued by the Director of the Office of Pipeline and Producer Regulation (Director) on November 14, 1983.[1]

The area recommended by New Mexico was proposed to it by M.J. Brannon (Brannon), who refers to the area as the Huerfano Mountain Tight Gas Area. The area consists of the Dakota Formation underlying Sections 20 East ½, 21, and 28 through 30 of Township 25 North, Range 9 West, and Section 25 of Township 25 North, Range 10 West, in San Juan County, New Mexico. The average depth to the top of the Dakota Formation is 6400 feet. The average gross thickness of the Dakota Formation is 275 feet. The recommended area is also subject to New Mexico Order No. R-1670-V, issued May 22, 1979, which authorizes the recommended formation for infill drilling.

The Bureau of Land Management (BLM)[2] has concurred with the New Mexico recommendation and also recommends the Dakota Formation underlying Sections 16, 17 and 18 of Township 25 North, Range 9 West and Sections 13 and 24 of Township 25 North, Range 10 West be included in the recommended area.

The Notice Of Proposed Rulemaking was issued pursuant to § 271.703 of the Commission's regulations to determine whether the Commission should adopt New Mexico's recommendation. The Notice provided that any requests for a public hearing were to be filed on or before November 29, 1983, and written comments were to be filed on or before December 29, 1983.

On November 29, 1983, the Gas Company of New Mexico (GCNM) and the Southern Union Gathering Company (Southern Union)[3] filed a joint request for a public hearing on the recommendation. On December 29, 1983, GCNM filed written comments in opposition to the proposed designation and Brannon filed comments in favor of the proposed designation. Brannon filed additional comments on January 20, 1984. A hearing was held on May 4, 1984, and was attended by Brannon, GCNM and Southern Union.

II. Summary of Comments

A. Permeability Requirement

Both in its comments and at the May 4, 1984 hearing, GCNM asserted that the estimated *in situ* gas permeability of the recommended area was developed erroneously. To qualify for a tight formation designation under § 271.703(c)(2)(i)(A), the estimated *in situ* permeability of the pay section of the formation must not be expected to exceed 0.1 millidarcy. GCNM challenges the method by which Brannon arrived at the expected *in situ* permeability, which New Mexico later used. More particularly, GCNM challenges the use of the core analyses from the Alex N. Campbell-M.B. Rudman #1 well (Rudman #1 well). The Rudman #1 Well is located 760 feet east of the proposed designated tight formation and is within the boundaries of the tight formation designated in Docket No. RM79-76 (New Mexico-6).[4] GCNM argues that § 271.703(c)(2)(i)(A) requires that the core analyses performed must be from wells in the actual recommended formation in order to evaluate the permeability of the recommended formation.

In determining the permeability to air for the recommeded formation, GCNM also argues that Brannon used core intervals which were arguably outside of the pay section of the formation. According to GCNM, use of these non-pay section intervals directly contradicts the language of § 271.703(c)(2)(i)(A), requiring an average *in situ* permeability throughout the *pay section* of less than 0.1 millidarcy.

Brannon responds to GCNM's arguments stating that data from the Rudman #1 well, located 760 feet east from the boundary of the recommended formation, was used for a very limited purpose. Brannon states that the core intervals were used in conjunction with the tested flow rate from the Brannon Federal 28 #2 well, which is located 5000 feet to the west of the Rudman #1 well and within the boundaries of the recommended tight formation, to determine the *in situ* permeability of the recommended formation. Brannon also argues that the pay intervals it used were selected according to standard engineering procedures.

GCNM argues that Brannon failed to perform a valid pressure build-up analysis or to calculate the *in situ* permeability from actual, observed, pre-stimulation production rates of wells operating in the formation. GCNM stated that Brannon's use of a reduction factor of 85% in calculating the *in situ* permeability was too high, causing an unrealistically low average *in situ* permeability. GCNM argued that a lower reduction factor should have been used.[5] GCNM argued further that in order to correctly calculate the *in situ* permeability, a valid pressure build-up analysis of the recommended formation must be performed and then the laboratory permeability must be corrected to the *in situ* permeability of the reservoir based upon this valid pressure build-up analysis. Additionally, GCNM argues Brannon could have also taken the actual, per-stimulation, stabilized production rates from wells currently operating in the recommended formation to calculate the *in situ* permeability using Darcy's Equation.

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[1] 48 FR 52593, November 21, 1983.

[2] Certain of the lands involved are Federal or Indian lands and under the jurisdiction of the Department of Interior, Bureau of Land Management.

[3] Gas Company of New Mexico is a distribution division of the Southern Union Company and an affiliate fo the Southern Union Gathering Company.

[4] See FERC Stats. & Regs. [Reg. Preambles 1977-1981] ¶ 30,319 (1981), Order No. 195.

Brannon states that it selected the reduction factors described in Rex O. Thomas and Don C. Ward's paper entitled "Effect of Overburden Pressure and Water Saturation on Gas Permeability of Tight Sandstone Cores" in calculating the permeability of the recommended formation, because the Thomas and Ward procedure was developed from core samples taken in Rio Arriba County, New Mexico, an area adjacent to the recommended tight formation. Brannon argues that the Donald Katz procedure supported by GCNM was developed on the basis of core samples taken from sandstones in California. Brannon believes that the reduction procedure developed in the San Juan Basin, Rio Arriba and San Juan Counties, New Mexico has greater validity for the recommended tight formation that a procedure developed for California sandstones. Brannon further asserts that since the Thomas and Ward procedure was used to analyze the formation approved in Docket No. RM79-76 (New Mexico—6), it should be allowed in this case as well.

Brannon argued that it selected the 85% reduction factor because of its greater accuracy. The overburden pressure of 4320 psi was obtained by using 90% of the pressure derived from a frac gradient of .75 psi per foot. The permeability reduction factor from air permeability to *in situ* permeability of 4300 psi overburden[6] for the San Juan Basin (Gasbuggy) area in New Mexico indicates a reduction factor using the mid-range of the plotted data to be 85% permeability to air. The actual reduction factor needed to reach 0.1 millidarcy or less is substantially less than the 85% figure of the Thomas and Ward study. Furthermore, Brannon asserted that these permeability reduction factors are used to account only for overburden pressure and that actual permeability reduction would be greater due to the influence of water saturation in the formation.

B. Stabilized Flow Rate Requirement

GCMN argued further that the production rate data that Brannon submitted fails to meet the requirements of § 271.703(c)(2)(i)(B) for several reasons: (1) Because an unstabilized prouction rate was presented for the Federal 28 #2 well and (2) the use of the erroneously developed *in situ* permeability data in Darcy's Equation produced equally erroneous production rate data. Section 271.703(c)(2)(i)(B) of the Commission's regulations requires that the stabilized production rate, without stimulation, of wells completed for production in the subject formation, is expected to be less than 217 Mcf per day. GCNM alleged that this requirement was not met because the production rate was constantly increasing and never stabilized.

According to GCNM, the use of the *in situ* permeability data adjusted by the reduction factors presented by Katz, *et al.*, in Darcy's Equation yields pre-stimulation production rates in excess of the requisite 217 Mcf per day for the four of wells which Brannon presented.

Brannon states that the unstimulated, stabilized flow rate for the Brannon Federal 28 #2 well during a 48-hour test period was zero. The stabilized flow rate after acid stimulation of the Brannon Federal 28 #2 was less than 20 Mcf per day. Both the unstimulated flow test of zero Mcf per day and the acid stimulated flow test of 19.78 Mcf per day were witnessed and approved by New Mexico.[7] The *in situ* permeability was then calculated, using the stimulated 20 Mcf per day flow rate of the Brannon Federal 28 #2 and Darcy's equation, at .012 millidarcies. In its presentation to New Mexico, Brannon then compared the flow rate of the Brannon Federal 28-#2 to that of the Rudman #1 Well. Using the .002 millidarcy calcuated from the analyses of the Rudman #1 well core in Darcy's equation, Brannon calculated an unstimulated flow rate of 3.1 Mcf per day. Brannon states that the calculated rate comparison accurately reflects the unstimulated flow rate witnessed by New Mexico and was conducted to show the extremely low permeability evidenced by low flow rates, not to show or imply that the Brannon Federal 28 #2 had the same permeability as the Rudman #1. Both wells exhibit a permeability factor well below the .1 millidarcy required by § 271.703(c)(2)(i)(A).

C. Economic Necessity

Finally, GCNM submits that due to changed economic circumstances since the issuance of Order No. 99,[8] incentive pricing for gas produced from tight formations is no longer in the public interest. GCNM alleges that the Commission must require proof of the necessity for incentive pricing for tight formations in this proceeding, or be guilty of an arbitrary and capricious decision and an abuse of discretion in direct contradiction of the public interest. GCNM requested that the Commission deny Brannon's application for its failure to meet the requirements of both § 271.703(c)(2)(i)(A) and of the regulations and order that the need for incentive pricing for tight formation gas will be considered on a case-by-case basis. GCNM requested that in the alternative, the Commission remand the application to New Mexico for further analysis of the permeability and production rate characteristics of the recommended formation and analysis of the necessity for incentive pricing for gas produced from the recommended formation.

Brannon responded to GCNM's argument by stating that the question of whether the incentive price for tight formations is necessary to provide reasonable incentives for particular gas supplies is beyond the scope of tight formation rulemaking proceedings. Brannnon requested GCNM's argument be denied.

III. Discussion

A. GCNM's Comments

The Commission has reviewed all the evidence and comments presented in this docket and finds that the recommendation submitted by New Mexico, with the additional acreage recommended by BLM, meets the guidelines in § 271.703(c)(2), except as discussed below.

The Commission finds that the evidence presented in this proceeding demonstrates that the estimated *in situ* permeability of the pay section of the subject formation is not expected to exceed 0.1 millidarcy. We reject

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[5] GCNM relied on D. Katz et al., Handbook of Natural Gas Engineering.

[6] This figure is based on Figure 1 of Exhibit 8 in the Thomas and Ward paper.

[7] Brannon Exhibits 10 and 11.

[8] 12 FERC ¶ 61,165 (1980).

GCNM's argument that we cannot consider core analyses taken from wells outside the recommended formation to determine the *in situ* permeability. The core analysis used was taken from the Rudman #1 well, located a mere 790 feet east of the recommended area. The well is located in the tight formation area designated in Docket No. RM79-76 (New Mexico—6) which surrounds the recommended area on three sides. The cross referencing of well cores to determine the geology between such wells is a common industry practice. Furthermore, core samples were never taken from wells in the recommended area. We believe we can consider the best evidence available to determine compliance with the guidelines. The Commission also rejects GCNM's allegation that a pressure build-up analysis should have been performed. There is no such requirement in the Commission's regulations. In light of the location of the well from which the core sample was taken in relation to the location of the recommended area, and its use in conjunction with data from the Brannon Federal 28 #2 well, the Commission finds that the evidence in this particular case is sufficient to meet the requirements of § 271.703(c)(1)(i)(A).

The Commission also finds that Brannon has met the requirement of § 271.703(c)(2)(i)(B) that the stabilized production rate for wells completed in the subject formation, against atmospheric pressure, without stimulation, is not expected to exceed a production rate of 217 Mcf per day. GCNM asserts that the production rate never stabilized. In fact, the prestimulated production rate was zero. Even after acid stimulation was performed, the production rate was substantially below 217 Mcf per day. Production rates are initially above what the stabilized rate would be, so there is no basis to assume that the stabilized rate would exceed the guideline. Accordingly, the Commission rejects GCNM's arguments that the recommended area fails to meet the requirements of § 271.703(c)(2)(i) (A) and (B).

The Commission also rejects GCNM's assertion that incentive pricing for gas produced from tight formations is no longer in the public interest and that the Commission must require proof of necessity for incentive pricing. The Commission has stated before that it will not use the tight formation recommendation proceeding as a vehicle to reopen Order 99.[9] If GCNM seeks Commission review of Order 99, it should request the Commission to institute a rulemaking pursuant to § 385.207 of the Commission's rules of Practice and Procedure.

B. Exclusion of Areas Substantially Developed

New Mexico authorized infill drilling in the recommended area prior to its recommendation.[10] New Mexico's order authorizing infill drilling for the subject area retained the original 320 acre drilling units but allowed the drilling of an additional well on each unit. At present there are 21 drilling units contained in the proposed area. Prior to the issuance of the New Mexico infill order, wells had been completed on 14 of these units representing 66% of the available drilling sites. The Commission finds that this constitutes substantial development of the proposed area at the time the infill order was issued. Because the Commission believes this fact indicates that these portions of the formation could have been, and indeed were developed absent the NGPA section 107 incentive price, the Commission will exclude the 14 drilling units developed prior to July 1, 1979, from the tight formation designation.[11] The Commission otherwise adopts the New Mexico recommendation.[12]

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

2. Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(180) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(180) *Dakota Formation in New Mexico.* RM79-76-218 (New Mexico—26).

(i) *Delineation of formation.* The Dakota Formation is located in San Juan County, New Mexico, in Township 25 North, Range 9 West, Sections 16, 17 E/2, 19, 20 W/2, 28 W/2, 29 E/2, and 30 W/2 NMPM; Township 25 North, Range 10 West, Section 25 W/2, NMPM.

(ii) *Depth.* The Dakota formation is defined as that interval at a depth of approximately 6,234 feet to 6,599 feet on the Induction Spherically Focused Log from the M.J. Brannon 28 No. 2 well. The average depth to the top of the Dakota formation is 6,400 feet.

[FR Doc. 84-25192 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

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[9] See Final Rule, Order No. 226, Docket No. RM79-76 48 FR 20573, May 13, 1982.

[10] New Mexico Order No. R-1670-V, issued May 22, 1979.

[11] The areas developed prior to the issuance of New Mexico Order No. R-1670-V and excluded from this order are found in Township 25 North, Range 9 West, NMPM, Section 17 West ½, Section 18 East all, Section 20 East ½, Section 21 all, Section 28 East ½, Section 29 West ½, and Section 30 East ½; and Township 25 North, Range 10 West, NMPM, Section 13 all, Section 24 all, and Section 25 East ½.

[12] *See* Docket No. RM79-76, (Colorado-1) FERC Stats. & Regs. [Reg. Preambles 1977-1981] ¶30,228 (1981), Order 124; Docket No. RM79-76, (Colorado-3) FERC Stats. & Regs. [Reg. Preambles 1977-1981] ¶30,224 (1981), Order 137; Commission Order Denying Rehearing, Order 137-A, 15 FERC ¶61,277 (1981).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 76N-0308]

Diagnostic X Ray Systems and Their Major Components; Amendments to Performance Standard; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that amended the performance standard for diagnostic x-ray systems and their major components by revising and adding requirements concerning computed tomography x-ray (CT) systems. In that document, a formula was inadvertently omitted in the codified material. This document corrects that error.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-23154 appearing on page 34698 in the issue of Friday, August 31, 1984, the following correction is made on page 34712: In the second column under § 1020.33 *Computed tomography (CT) equipment* in paragraph (b)(1), the following formula is inserted after "that is:"

$$\mathrm{CTDI} = \frac{1}{nT}\int_{-7T}^{+7T} D(z)\,dz$$

Dated: September 18, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25202 Filed 9-21-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 82-025]

Drawbridge Requirements; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on drawbridge requirements that appeared at page 17450 in the **Federal Register** of Tuesday, April 24, 1984 (49 FR 17450). The action is necessary to correct typographical errors and omissions and to conform place names to the usage of the Board of Geographic Names.

FOR FURTHER INFORMATION CONTACT: Mr. A.T. Meschter, (202) 426-1380.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

Accordingly, the Coast Guard is correcting FR Doc. 84-10537 appearing on page 17450 in the **Federal Register** issue of April 24, 1984, to read as follows:

§ 117.123 [Amended]

1. On page 17457, column three, the section heading "§ 117.12" is corrected to read "§ 117.123."

§ 117.141 [Amended]

2. On page 17458, column three, the section heading "§ 117.14" is corrected to read "§ 117.141."

3. On page 17459:

§ 117.147 [Amended]

In § 117.147(b), "railroad and highway bridge" is corrected to read "railroad bridge."

§ 117.171 [Amended]

In § 117.171(a), "Department Public Works" is corrected to read "Department of Public Works."

In § 117.171(b), "Yardmaster" is corrected to read "yardmaster."

§ 117.193 [Amended]

4. On page 17460, § 117.193 is corrected by changing "Bayfarm Island" in the second sentence to read "Bay Farm Island."

§ 117.215 [Amended]

5. On page 17461, § 117.215(a) is corrected by changing "from 6 p.m., the draw shall open" in the first sentence to read "from 6 p.m. to 6 a.m., the draw shall open."

6. On page 17463:

§ 117.253 [Amended]

In § 117.253(b)(4), column one, "safely" is corrected to read "safety."

§ 117.261 [Amended]

In § 117.261(a), "brige" is corrected to read "bridge."

In § 117.261(b), "small craft expected" in the fourth sentence is corrected to read "small craft are expected."

In § 117.261(g), "passage vessels" is corrected to read "passage of vessels."

7. On page 17464:

In § 117.261(k), "November 1, to May 31" is corrected to read "November 1 to May 31."

In § 117.261(u), "tug" in the third sentence is corrected to read "tugs."

8. On page 17465:

§ 117.273 [Amended]

In § 117.273, the section heading is corrected by changing "Canaveral Harbor Barge Canal" to read "Canaveral Barge Canal."

§ 117.287 [Amended]

In § 117.287(d), "Cortex" is corrected to read "Cortez."

9. On page 17466:

§ 117.291 [Amended]

In § 117.291(a), "from 8 a.m. 6 to p.m." is corrected to read "from 8 a.m. to 6 p.m."

In § 117.291(c), "West Hillsorough" is corrected to read "West Hillsborough."

§ 117.300 [Amended]

In § 117.300, "Laxahatchee" in the first sentence is corrected to read "Loxahatchee."

§ 117.335 [Amended]

10. On page 17467, § 117.335 is corrected by changing "two hours is given" to read "two hours notice is given."

11. On page 17468:

§ 117.355 [Amended]

In § 117.355, third line, "St. Simon's" is corrected to read "St. Simons."

§ 117.367 [Amended]

In § 117.367(b), "opended" is corrected to read "opened."

12. On page 17469:

§ 117.391 [Amended]

In § 117.391(b), column one, "Northwest Expressway Feeder" is corrected to read "Ohio Street."

§ 117.403 [Amended]

In § 117.403, the section heading is corrected by changing "Wasbash River" to read "Wabash River."

13. On page 17470:

§ 117.415 [Amended]

In § 117.415(a), "System Railroad bridge" is corrected to read "System railroad bridge."

In § 117.415(c)(2), "maintained in the position" is corrected to read "maintained in the open position."

§ 117.417 [Amended]

In § 117.417, "vessles" is corrected to read "vessels."

14. On page 17471:

§ 117.451 [Amended]

In § 117.451(c), "East Part Avenue" is corrected to read "East Park Avenue."

§ 117.453 [Amended]

In § 117.453, "S3197" is corrected to read "US90" and "from 9 p.m., to 5 a.m." is corrected to read "from 9 p.m. to 5 a.m."

§ 117.461 [Amended]

In § 117.461, "draws of S14 bridge" is corrected to read "draws of the S14 bridge."

§ 117.477 [Amended]

In § 117.477, "Archafalaya" in the section heading is corrected to read "Atchafalaya."

§ 117.491 [Amended]

In § 117.491(b), "open" is corrected to read "opened."

§ 117.509 [Amended]

15. On page 17472, § 117.509(a)(4) is corrected by changing "Vermillion" to read "Vermilion."

16. On page 17473:

§ 117.527 [Amended]

In § 117.527, in the first and second sentences, "Main" is corrected to read "Maine."

§ 117.529 [Amended]

In § 117.529, "Main" is corrected to read "Maine."

17. On page 17474:

§ 117.559 [Amended]

In § 117.559, "Wright" in the section heading is corrected to read "Wight."

§ 117.567 [Amended]

In § 117.567, "mile 24.4" is corrected to read "mile 18.5."

§ 117.585 [Amended]

In § 117.585, "Achushnet" in the section heading is corrected to read "Acushnet."

§ 117.587 [Amended]

In § 117.587, "from sunrise to 7:30 a.m., 9:30 a.m., 11:30 a.m., 1 p.m., 4:30 p.m., 6:30 p.m., and one hour after sunset" is corrected to read "from sunrise to 7:30 a.m., 9:30 a.m. to 11:30 a.m. 1 p.m., to 4:30 p.m., and 6:30 p.m. to one hour after sunset."

18. On page 17475:

§ 117.599 [Amended]

In § 117.599(a), "draws of the Northern" is corrected to read "draw of the Northern."

In § 117.599(b), "the drawn shall" is corrected to read "the draws shall" and "with six months" is corrected to read "within six months."

§ 117.601 [Amended]

In § 117.601, "USI" is corrected to read "S16."

§ 117.645 [Amended]

19. On page 17477, the section heading of § 117.645 is corrected by changing "Rouge River" to read "River Rouge."

20. On page 17478:

§ 117.655 [Amended]

In § 117.655, "US23" is corrected to read "Second Avenue."

§ 117.681 [Amended]

In § 117.681, "US90" is removed.

§ 117.705 [Amended]

21. On page 17479, § 117.705 is corrected by changing "shall be open" in the second sentence to read "shall open."

22. On page 17480:

§ 117.713 [Amended]

In § 117.713(b), "District Commander to so" is corrected to read "District Commander to do so."

§ 117.723 [Amended]

In § 117.723, "and Overpeck Creek" in the section heading is removed.

In § 117.723(a)(1), "Snake Hill" is corrected to read "Little Snake Hill."

In § 117.723(a)(3), "must shall open or signal" is corrected to read "shall open on signal."

§ 117.727 [Amended]

In § 117.727, "Brielle Township" is corrected to "Riviera Beach."

§ 117.815 [Amended]

23. On page 17484, § 117.815 is corrected by changing "mile 1.3" to read "mile 1.7."

24. On page 17485:

§ 117.821 [Amended]

In § 117.821(b), "Wrightsville Beach" is corrected to read "Wrightsville."

§ 117.835 [Amended]

In § 117.835, "Herford" is corrected to read "Hertford."

§ 117.841 [Amended]

In § 117.841, "Smiths" in the section heading is corrected to read "Smith" and "US117–S133" is corrected to read "S117–S133."

25. On page 17486:

§ 117.863 [Amended]

In § 117.863, "notice given" is corrected to read "notice is given."

§ 117.871 [Amended]

In § 117.871, second sentence, "ever 10 seconds" is corrected to read "every 10 seconds."

In § 117.889, "Siuslaw" is corrected to read "Suislaw."

§ 117.895 [Amended]

26. On page 17487, the section heading for § 117.895 is corrected by changing "Walluski" to read "Wallooskee."

§ 117.937 [Amended]

27. On page 17488, § 117.937 is corrected by changing "bridge tender's" in the last sentence to read "drawtender's."

28. On page 17490:

§ 117.991 [Amended]

In § 117.991(c), "on quarter mile" is corrected to read "one quarter mile."

In § 117.991(d), "detector bream" is corrected to read "detector beam."

§ 117.1003 [Amended]

In § 117.1003, "if a least 12 hours" is corrected to read "if at least 12 hours."

Dated: September 17, 1984.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84–25311 Filed 9–21–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Wilmington, NC Reg. 84–01]

Safety Zone Regulations: Upper Cape Fear River, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Old Wilmington Riverfront, Inc., the Coast Guard will close the Cape Fear River to all traffic from the Hilton Bascule Bridge down river to Cape Fear Towing during the period of the annual Riverfest raft race on Sunday, 7 October 1984. The regulations are intended to reduce river congestion and ensure the safety of the participants in the Riverfest raft race.

DATES: This rule becomes effective at 1200, on Sunday, 7 October 1984, and will remain in effect until 1600, on Sunday, 7 October 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kevin C. Olds, Chief, Operations Department, Coast Guard Marine Safety Office, Wilmington, North Carolina, Phone: (919) 343–4892.

SUPPLEMENTARY INFORMATION: On May 4, 1984, the Coast Guard published a proposed rule, COTP Reg. 84–01, concerning this amendment. In this notice interested persons were given until June 18, 1984, to submit comments. No comments were received. This is an annual event and no adverse comments were anticipated.

Drafting Information

The drafter of this notice is Lieutenant Kevin C. Olds, project officer for the Captain of the Port.

Economic Assessment and Certification

This proposed regulation is considered to be non-significant in accordance with DOT Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the period of closure to river traffic will only be four hours. Vessel movement records indicate that commercial river traffic in this area of the Cape Fear River would be minimal during the period of closure and scheduling of commercial vessel movements can be adjusted if necessary to avoid the area during the closure times. The most impact, though non-economic, will be to the pleasure boat operators who have in past years lined the riverbanks during past raft races. They have in the past created safety hazards and much congestion in this area of the river during the raft race. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding a new § 165.T501 to read as follows:

§ 165.T501 Safety Zone.

(a) *Location:* The following area is a safety zone: The Northeast Cape Fear River from the Hilton Bascule Bridge down river to Point Peter and the Cape Fear River from Point Peter down river to Cape Fear Towing.

(b) *Regulations:* (1) In accordance with General Regulation in § 165.20 of this part, entry into or remaining in this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 33 CFR 160.5. 49 CFR 1.46)

Dated: September 5, 1984.

D.L. McCord,

Acting CDR, U.S. Coast Guard.

[FR Doc. 84–25313 Filed 9–21–84; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Post-Vietnam Era Veterans Educational Assistance Program; Change of Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulation.

SUMMARY: This regulation, issued jointly by the VA (Veterans Administration) and the Department of Defense, states that all of the provisions of 38 CFR 21.4234 apply to veterans who are receiving educational assistance under VEAP (the Post-Vietnam Era Veterans' Educational Assistance Program) and who wish to change their program of education. This should eliminate confusion which has arisen in this area.

EFFECTIVE DATE: August 27, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave, NW., Washington, DC 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: On pages 13892 and 13893 of the **Federal Register** of April 9, 1984 there was published a notice of intent to amend part 21 to clarify the regulation governing changes of program for VEAP recipients.

Interested people were given 30 days to submit comments, suggestions or objections. The VA received no comments, suggestions or objections. Accordingly, the agency is making the proposal final without change.

The VA and the Department of Defense have determined that this regulation is not a major rule as that term is defined by Executive Order 12291, entitled "Federal Regulation". The annual effect on the economy will be less that $100 million. The regulation will not result in any major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs and the Secretary of Defense hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation, therefore, is exempt from the initial and final analyses requirements of sections 603 and 604.

This certification can be made because this regulation contains a technical change which does not affect basic VA policy. It will have no significant economic impact on small entitites, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 6, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Approved: August 27, 1984.

Edgar A. Chavarria,

Deputy Assistant Secretary of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is amending 38 CFR Part 21 as set forth below:

Section 21.5232 is revised as follows:

§ 21.5232 Change of program.

In the administration of benefits payable under Chapter 32, title 38, United States Code, the Veterans Administration will apply § 21.4234 in the same manner as it is applied in the administration of Chapters 34 and 36.

(38 U.S.C. 1641)

[FR Doc. 84–25237 Filed 9–21–84; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to Norway

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Norway.

SUMMARY: Pursuant to an agreement with the postal administration of Norway, the Postal Service intends to begin Express Mail International Service with Norway at postage rates indicated in the tables below. Service is scheduled to begin on October 23, 1984.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn (202) 245–4414.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on August 20, 1984 (49 FR 33025), the Postal Service announced that it was proposing to begin Express Mail International Service to Norway. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received.

Accordingly, the Postal Service states that it intends to begin Express Mail International Service with Norway on October 23, 1984 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Postal service, Foreign relations.

NORWAY.—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1] [2]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$28.00	1	$20.00
2	31.70	2	23.70
3	35.40	3	27.40
4	39.10	4	31.10
5	42.80	5	34.80
6	46.50	6	38.50
7	50.20	7	42.20
8	53.90	8	45.90
9	57.60	9	49.60
10	61.30	10	53.30
11	65.00	11	57.00
12	68.70	12	60.70
13	72.40	13	64.40
14	76.10	14	68.10
15	79.80	15	71.80
16	83.50	16	75.50
17	87.20	17	79.20
18	90.90	18	82.90
19	94.60	19	86.60
20	98.30	20	90.30
21	102.00	21	94.00
22	105.70	22	97.70
23	109.40	23	101.40
24	113.10	24	105.10
25	116.80	25	108.80
26	120.50	26	112.50
27	124.20	27	116.20
28	127.90	28	119.90
29	131.60	29	123.60
30	135.30	30	127.30
31	139.00	31	131.00
32	142.70	32	134.70
33	146.40	33	138.40
34	150.10	34	142.10
35	153.80	35	145.80
36	157.50	36	149.50
37	161.20	37	153.20
38	164.90	38	156.90
39	168.60	39	160.60
40	172.30	40	164.30
41	176.00	41	168.00
42	179.70	42	171.70
43	183.40	43	175.40
44	187.10	44	179.10

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.00 for each pickup stop, regardless of the number of pieces picked up. Domestic and international Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the Federal Register as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-25247 Filed 9-21-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2620-3]

Standards of Performance for New Stationary Sources; Reference Methods; Revision To Method 12 for Inorganic Lead To Add a Method of Additions Procedure

Correction

In FR Doc. 84-21131 beginning on page 33842 in the issue of Friday, August 24, 1984, make the following correction: In column three, the equation at the bottom of the page should read:

$$C_s = C_a \frac{A_s}{A_t - A_s}$$

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 170

[CGD 79-023]

Subdivision and Stability Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects three incorrect definitions in the final rule issued November 4, 1983.

FOR FURTHER INFORMATION CONTACT: Lt. Albert W. Horsmon Jr., Commandant (G-MTH-5/13), Room 1308, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202) 426-2187.

Discussion of Correction

§ 170.170 [Amended]

In the Federal Register of November 4, 1983, page 51014, some definitions for the coefficient P in the inequality defining GM in § 170.170(a) are incorrect due to typographical errors. The second, third, and fourth definitions for P are corrected to read:

$P = .055 + (L/1309)^2$ metric tons/m² . . . for ocean service, Great Lakes winter service, or service on exposed waters.

$P = .0033 + (L/14{,}200)^2$ tons/ft² . . . for Great Lakes summer service or service on partially protected waters.

$P = .036 + (L/1309)^2$ metric tons/m² . . . for Great lakes summer service or service on partially protected waters.

Dated: September 18, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84-25312 Filed 9-21-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

Amendment of Part 1 of the Rules Concerning Practice and Procedure in the Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the Appendix to an amendment of the rules of practice and procedure in the Private Radio Services.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private Radio Bureau, (202) 632-7175

Mary Beth Hess, Private Radio Bureau, (202) 634-2443

SUPPLEMENTARY INFORMATION:

Erratum

Released: September 17, 1984.

In the matter of amendment of Part 1 of the Rules concerning Practice and Procedure in the Private Radio Services.

On July 24, 1984, the Commission released an Order (FCC 84-323) (August 2, 1984, 49 FR 30943) in the above-captioned proceeding. Section 1.925(f), (g) and (h) were printed incorrectly in the Appendix. Those paragraphs should read:

§ 1.925 Application for special temporary authorization, temporary permit or temporary operating authority.

* * * * *

(f) An applicant for a Ship Radio station license may operate the radio station pending issuance of the ship station authorization by the Commission for a period of 90 days, under a temporary operating authority, evidenced by a properly executed certification made on FCC Form 506-A.

(g) An applicant for a Business Radio station license utilizing an already authorized facility may operate the radio station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 572, after the mailing of a formal application for station license together with evidence of frequency coordination, if required, to the Commission. The temporary operation of stations, other than mobile stations, within the Canadian coordination zone will be limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 20 feet (6.1 meters) above average terrain.

(h) An applicant for a radio station license under Part 90, Subpart M, of this chapter to utilize an already existing Specialized Mobile Radio System (SMRS) facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit evidenced by a properly executed certification of FCC Form 572 after the mailing of a formal application for station license, provided that the antenna employed by the control station is a maximum of 20 feet (6.1 meters) above a man-made structure (other than an antenna tower) to which it is affixed.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-25264 Filed 9-21-84; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1140

[Ex Parte No. 402]

Reasonably Expected Costs

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In response to petitions we are modifying the regulations, published at 47 FR 83703, August 4, 1982, governing the computation of "reasonably expected costs" in connection with railroad surcharges on traffic that originates or terminates on light density lines. The modifications: (1) Explicitly provide that reasonably expected costs may be assigned to single-line traffic originating or terminating on the surcharged line and that surcharges may be applied to single-line as well as joint-line traffic; (2) clarify the intent of the existing regulations that the costs and revenues of overhead traffic be excluded from the computation of reasonably expected costs and provide a better method for excluding such costs; and (3) in connection with computation of the return on investment component of reasonably expected costs, (a) provide for the inclusion in the investment base of a working capital allowance and tax benefits, and (b) specify the use of the real (inflation adjusted) cost of capital and the average value of the investment base during the surcharge period.

EFFECTIVE DATE: These modifications are effective on October 23, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245
Wayne A. Michel, (202) 275-7657, or
Tom Shick, (202) 275-7972

SUPPLEMENTARY INFORMATION: On August 4, 1982, final rules were issued for calculating the "reasonably expected costs" of operating a line for purposes of light-density line surcharges in accordance with section 217 of the Staggers Rail Act of 1980, 49 U.S.C. 10705a(b). In response to petitions we are reopening the proceeding and modifying the rules (1) to provide explicitly that the surcharge is applicable to, and reasonably expected costs may be assigned to, single-line as well as joint-line traffic originating or terminating on the surcharged line; (2) to clarify the rules to exclude the costs as well as revenues of overhead traffic in the computation of overhead costs, and to provide a better method for excluding such costs; and (3) to compute return on investment by applying the "real" (inflation adjusted) cost of capital to the average value of the investment base during the surcharge period, and to include working capital and tax benefits in the investment base.

A detailed discussion of these and other issues raised by the parties is available in the full decision. To purchase a copy of the full decision contact T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

The changes to these rules will not have a significant economic impact on a substantial number of small entities. The general purpose of the changes is to provide greater accuracy in determining reasonably expected costs.

This action will not significantly affect either the quality of the human environment or energy conservation.

This notice of modification to the Final Rules is issued under 49 U.S.C. 10321, 10362, and 10705a and 5 U.S.C. 553.

Chapter X of Title 49 of the Code of Federal Regulations is amended as detailed in the appendix.

List of Subjects in 49 CFR Part 1140

Railroads, Uniform systems of accounts.

Decided: August 30, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Vice Chairman Andre concurred with a separate expression. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

Vice Chairman Andre, Concurring:

In the computation of rate of return on investment, I would continue to use the nominal cost of capital rather than the methodology proposed by the majority. See my statement in Ex Parte No. 274 (Sub-No. 5), *Revision of Abandonment Regulations*, 367 I.C.C. 831, 845 (1983).

Appendix

PART 1140—[AMENDED]

49 CFR Part 1140 amended as follows:

1. Section 1140.2 is amended by adding text to follow the existing text in the introductory text of paragraph (b) and to paragraph (b)(7)(i); by revising the introductory text and paragraphs (B) through (E) in paragraph (b)(7)(ii); by revising paragraphs (b)(7)(iii) and (b)(8); by adding text to follow the existing text in paragraph (b)(12)(i); by revising the introductory text and paragraphs (B) through (E) of paragraph (b)(12)(ii); and by revising paragraph (b)(12)(iii) to read as follows:

§ 1140.2 Reasonably expected costs.

* * * * *

(b) * * *

The costs associated with overhead traffic are not considered to be reasonably expected costs of operating the line, and shall not be included in the total cost calculated under § 1140.2 of these regulations. However, in view of the difficulty of identifying and excluding from the operating expense accounts prescribed in § 1140.2 the costs of overhead traffic moving in mixed trains comprised of cars of both overhead traffic and traffic originating and/or terminating on the line, all costs associated with such mixed trains shall be included in such expense accounts and the *pro rata* share of the total costs (other than normalized maintenance) shall be assigned to shipments originating or terminating on the surcharged line through the proration procedures established in § 1140.3. Overhead traffic shall include all shipments that are not originated, terminated, or handled in interchange with another carrier at any point on the surcharged line segment.

(7) * * *

(i) * * *

An average current replacement cost for the period of the surcharge shall be determined by the surcharging carrier by the method of its choice, so long as the method employed is reasonable, rational and fully explained.

(ii) The current cost of capital used in the calculation of return on investment for locomotives shall be the current before-tax cost of capital, adjusted for inflation, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and State income tax rates. The current cost of capital, expressed as a percent, shall be calculated as follows:

* * * * *

(B) The current cost of debt shall be the current rate quoted to the railroad for debt instruments normally used by the railroad in financing new equipment purchases, such as bonds, equipment trust certificates, *et cetera*. The current real cost of debt shall be determined in accordance with the following formula:

$r_d = [(1+n)/(1+i)] - 1$

where r_d = current real cost of debt, n = the current nominal cost of debt, and i = annual rate of inflation. The annual rate of inflation, as projected by the most recent Gross National Product price deflator published by the Department of Commerce Bureau of Labor Statistics or any other reasonable index of inflation, may be used. Because this is a before-tax rate there is no adjustment for income taxes.

(C) The current nominal after-tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investments in the financial marketplace. The current real after-tax cost of equity shall be determined in accordance with the following formula:

$r_e = [(1+n)/(1+i)] - 1$

where r_e = current real after-tax cost of equity, and i = the annual rate of inflation. The annual rate of inflation, as projected by the most recent Gross National Product price deflator published by the Department of Commerce Bureau of Labor Statistics or any other reasonable index of inflation, may be used. This current real cost of equity shall be divided by 1 minus the combined statutory Federal and State income tax rates. This will yield the before-tax current real cost of equity capital.

(D) The current before-tax real cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted real before-tax cost of current debt.

(E) The current before-tax cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted real before-tax cost of current equity.

* * * * *

(iii) The annual return on investment for each category or type of locomotive shall be calculated by multiplying the average replacement cost developed in paragraph (b)(7)(i) of this section by the current real cost of capital determined in paragraph (b)(7)(ii) of this section.

(8) *Normalized maintenance.* The maintenance-of-way and structure that is assignable to the line shall be the normalized maintenance that is necessary to permit the continuation of the right-of-way and structures in their present condition. Amounts included under this subsection shall only consider the traffic that originates and/or terminates on the surcharged line. In addition to the track and right-of-way this amount shall also include, but not be limited to, the maintenance of highway grade crossings, signal systems, communication systems, tunnels, bridges, culverts, electric power systems, station structures and other facilities that are located on the line. The surcharging railroad must certify at the time it files the surcharges that all amounts that are included for normalized maintenance in the calculation of the surcharge shall be expended within twelve (12) months of the effective date of the surcharge.

* * * * *

(12) * * *

(i) * * *

The investment base shall also include (C) the allowable working capital computed at 15 days cash costs (on-branch costs less depreciation); and (D) the amount of current income tax benefits the carrier could realize were it to abandon the line which would have been applicable to the period of the surcharge. An average investment base value for the period of the surcharge shall be computed by the carrier by the method of its choice, provided that the method employed is reasonable and rational.

(ii) *Rate of Return.* The railroad's cost of capital shall be the current before-tax cost of capital, adjusted for inflation, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and State income tax rates. This rate of return, expressed as a percent, shall be calculated as follows:

* * * * *

(B) The current nominal cost of debt shall be determined by taking the average of all debt instruments (including bonds, equipment trust certificates, financial lease arrangements, *et cetera*) issued by the carrier in the most recent 12-month period. The current real cost of debt shall be determined in accordance with the following formula:

$r_d = [(1+n)/(1+i)] - 1$

where r_d"current real cost of debt, n = the current nominal cost of debt, and i = annual rate of inflation. The annual rate of inflation, as projected by the most recent Gross National Product price deflator published by the Department of Commerce Bureau of Labor Statistics or any other reasonable index of inflation, may be used. The debt cost calculated by this procedure is a before-tax rate and is not adjusted for income taxes.

(C) The current nominal after-tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investments in the financial market place. The current real after-tax cost of equity shall be determined in accordance with the following formula:

$r_e = [(1+n)/(1+i)] - 1$

where r_e = current real after-tax cost of equity, and i = the annual rate of inflation. The annual rate of inflation, as projected by the most recent Gross National Product Price deflator published by the Department of Commerce Bureau of Labor Statistics, or any other reasonable index of inflation, may be used. The current after-tax real cost of equity is divided by 1 minus the combined statutory Federal and State income tax rates. This will develop the real cost of equity on a before-tax basis.

(D) This current real before-tax cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted before-tax real cost of current debt.

(E) The current before-tax cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted real before-tax cost of current equity.

* * * * *

(iii) *Return on Value:* The return on value that shall be included in the cost of sustaining service is calculated by multiplying the average value of the properties during the surcharge period as determined in paragraph (b)(12)(i) of this section by the rate of return calculated in paragraph (b)(12)(ii)(F) of this section.

* * * * *

2. Section 1140.3 is revised to read as follows:

§ 1140.3 Assignment of reasonably expected costs.

Reasonably expected costs as determined in section 1140.2 of these regulations shall be assigned to each shipment that originates or terminates on the surcharged line on any basis that is equitable and does not result in any shipper bearing a disproportionate share of the reasonably expected costs. However, the railroad shall not apportion the reasonably expected costs on the basis of the Commission's Rail Form A cost procedure or its successor. In the case where the total reasonably expected costs calculated under § 1140.2 include costs associated with the transportation of overhead traffic contained in mixed trains as defined in § 1140.2, the following procedure shall be employed to assign reasonably expected costs to shipments originating and/or terminating on the line:

(a) The total revenue ton-miles for all traffic (originated and terminated plus overhead traffic in mixed trains) is divided into the revenue ton-miles of shipments that originate and/or terminate on the line to derive the O&T assignment factor.

(b) The adjusted reasonably expected costs shall be determined by subtracting the Normalized Maintenance determined in § 1140.2(b)(8) from the total costs determined under § 1140.2(b).

(c) The reasonably expected costs of O&T traffic shall be determined by multiplying the adjusted reasonably expected costs from paragraph (b) above by the O&T assignment factor from paragraph (a) above and adding to this amount the normalized maintenance from § 1140.2(b)(8).

[FR Doc. 84-25209 Filed 9-21-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Wildlife and Fisheries; Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants; Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule and correction.

SUMMARY: This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons; special restrictions to reduce the black duck harvest; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; experimental canvasback seasons; additional sandhill crane seasons in the Central Flyway and in Arizona; coots, gallinules, and snipe in the Pacific Flyway; and additional falconry seasons. Taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The rules will permit taking of the designated species during the 1984–85 season within specified periods of time beginning as early as September 29 and benefit the public by opening the seasons which are presently closed.

On September 14, 1984, (49 FR 36272), the Service published in the **Federal Register** Final Frameworks for Late Season Migratory Bird Hunting Regulations. The Service corrects its response to public comments on the National Wildlife Federation petition on lead shot. The following corrections are made in 49 FR 36272 issued on September 14, 1984:

1. On page 36275 in the middle of column two, "* * * the Service has had a rider attached to its appropriation bill which * * *" is corrected to read "* * * the Department of the Interior's Appropriation Act language * * *"

2. On page 36275 near the bottom of column three, "Because the resources available for the endangered species recovery program are not inexhaustible, the Service felt it was justified in * * *" is corrected to read "The Service has been * * *"

EFFECTIVE DATE: September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C., telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

On March 23, 1984, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (49 FR 11120) a proposal to amend 50 CFR Part 20, with comment periods ending June 21, July 16 (later extended to July 18) and August 17 (later extended to August 29), 1984, respectively, for the 1984–85 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; other early seasons; and the late hunting season frameworks. That document dealt with the establishment of hunting seasons, hours, areas, and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 13, 1984, the Service published in the **Federal Register** (49 FR 24417) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late season frameworks. On July 9, 1984, the Service published for public comment in the **Federal Register** (49 FR 28026) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early season migratory bird hunting regulations. On July 19, 1984, the Service published in the **Federal Register** (49 FR 29238) a fourth document containing final frameworks for Alaska, Puerto Rico, and the Virgin Islands. On August 7, 1984, the Service published a fifth document (49 FR 31421) containing final frameworks for the early season migratory bird hunting regulations from which State wildlife conservation agency officials selected early season hunting dates, hours, areas, and limits for the 1984–85 season. On August 20, 1984, the Service published for public comment in the **Federal Register** (49 FR 33090) a sixth document consisting of a proposed rulemaking dealing specifically with frameworks for late season migratory bird hunting regulations. On August 31, 1984, the Service published in the **Federal Register** (49 FR 34648) a seventh document consisting of a final rule amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas, and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, and gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and special falconry seasons. On September 14, 1984, the Service published in the **Federal Register** an eighth document (49 FR 36272) consisting of a final rulemaking for the late season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected late season hunting dates, hours, areas, and limits for the 1984–85 season.

The final rule described here is the ninth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for species subject to late hunting regulations.

These regulations will take effect immediately upon publication.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Nontoxic Shot Regulations

On August 13, 1981, the Service published in the **Federal Register** (46 FR 40879) final rules describing nontoxic shot zones for waterfowl hunting. When eaten by waterfowl, spent lead pellets can have a toxic effect. Nontoxic shot zones reduce availability of lead pellets in selected waterfowl feeding areas.

Amendments to these regulations were published in the **Federal Register** (47 FR 32546; July 28, 1982 and 48 FR 26457; June 8, 1983). These amendments relate to changes in Indiana, Maine, Massachusetts, Nebraska, Michigan, Illinois, Florida, and Texas.

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments, including a recent one concerning eastern population whistling swans, have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement.

Copies of assessments are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] "* * * by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species * * * which is determined to be critical." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 5, 1984, the Chief, Office of Endangered Species (OES), concluded that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. As noted in the August 20, 1984, **Federal Register** (at 49 FR 33097) the Service reinitiated section 7 consultation on the proposed 1984–85 migratory game bird regulations in response to information submitted by the National Wildlife Federation regarding secondary lead poisoning of bald eagles. The reinitiated consultation was completed on August 27, 1984, and found that the proposed migratory bird regulations were not likely to jeopardize the continued existence of the listed bald eagle. In a supplemental biological opinion dated September 6, 1984, the OES considered actions proposed to be taken by the Service in regard to its authorities for the conservation of listed species under section 7(a)(1) of the Endangered Species Act. The OES believed the measures proposed were timely and appropriate. A second revised supplemental opinion was issued by OES on September 10, 1984, which concluded that the proposed migratory bird regulations were not likely to jeopardize, even on a regional basis, the continued existence of the listed bald eagle.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, D.C.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 23, 1984 (at 49 FR 11120), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated July 19, 1984 (at 49 FR 29238).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

After analysis of the migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the late season proposals (49 FR 11120, March 23, 1984; 49 FR 24417, June 13, 1984; and 49 FR 33090, August 20, 1984), the Service published in the **Federal Register** on September 14, 1984 (49 FR 36272) final late season frameworks. Copies of the final frameworks were sent to the officials of the State conservation agencies who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas, and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 29 and benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting, must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 23, June 13, and August 20, 1984, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas, and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. (d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: September 20, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

PART 20—MIGRATORY BIRD HUNTING

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are hereby corrected and amended.

The hunting season regulations will not be included in the annual codification of Title 50 CFR, Wildlife and Fisheries, inasmuch as most seasons will have terminated by the time that the annual codification is issued.

Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2).	5	8
Possession limit	25 (1)	See footnote (2).	10	16

Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Seasons in the Atlantic Flyway:				
Connecticut	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 20-Dec. 1.	Oct. 20-Dec. 1.
Delaware	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 15-Oct. 27 & Nov. 19-Jan. 9.	Oct. 15-Oct. 27 & Nov. 19-Jan. 31.
Florida	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Dec. 1-Feb. 3.	Nov. 3-Feb. 17.
Georgia	Sept. 12-Nov. 20.	Sept. 12-Nov. 20.	Nov. 20-Jan. 23	Nov. 20-Feb. 28.
Maine	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 30	Sept. 1-Dec. 16.
Maryland	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 15-Nov. 23 & Dec. 7-Dec. 31.	Oct. 1-Jan. 15.
Massachusetts	Sept. 1-Nov. 9.	Closed.	Oct. 10-Nov. 24(4)	Sept. 1-Dec. 15.
New Hampshire	Closed.	Closed.	Oct. 1-Dec. 4.	Oct. 1-Dec. 4.
New Jersey:				
North Zone (5)	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 6-Nov. 29.	Oct. 6-Jan. 19.
South Zone (5)	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Oct. 27-Dec. 1 & Dec. 15-Jan. 2.	Oct. 6-Jan. 19.
New York (5):				
Long Island	Closed.	Closed.	Oct. 1-Nov. 23.	Closed.
Remainder of State	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 23.	Sept. 1-Nov. 23.
North Carolina	Sept. 6-Nov. 14.	Sept. 6-Nov. 14.	Nov. 12-Jan. 15.	Nov. 12- Feb. 26.
Pennsylvania	Sept. 1-Nov. 9.	Closed.	Oct. 20-Nov. 10(3)	Oct. 20-Dec. 15.
Rhode Island	Sept. 15-Nov. 23.	Sept. 15-Nov. 23.	Oct. 20-Dec. 7 & Dec. 17-Jan. 1.(3)	Sept. 15-Dec. 7 & Dec. 17-Jan. 8.
South Carolina	Sept. 21-Oct.27 & Nov. 20-Dec. 22.	Sept. 21-Oct.27 & Nov. 20-Dec. 22.	Nov. 22-Jan. 25.	Nov. 14-Feb. 28.
Vermont	Sept. 29-Dec. 7.	Closed.	Oct. 1-Dec. 4.	Sept. 29-Dec. 7.
Virginia	Sept. 8-Nov. 16.	Sept. 8-Nov. 16.	Oct. 29-Jan. 1.	Oct. 17-Jan. 31.
West Virginia	Sept. 3-Nov. 11.	Closed.	Oct. 13-Dec. 16.	Sept. 3-Dec. 18.
Seasons in the Mississippi Flyway:				
Alabama (6)	Nov. 12-Jan. 20.	Nov. 12-Jan. 20.	Nov. 28-Jan. 31.	Nov. 14-Feb. 28.
Arkansas	Sept. 1-Nov. 9.	Closed.	Nov. 3-Jan. 6.	Nov. 17-Feb. 28.
Illinois	Sept. 1-Nov. 9.	Closed.	Oct. 1-Dec. 4.	Sept. 8-Dec. 23.
Indiana	Sept. 1-Nov. 9.	Closed.	Sept. 22-Nov. 25.	Sept. 1-Dec. 16.
Iowa (7)	Sept. 1-Nov. 9.	Closed.	Sept. 15-Nov. 18.	Sept. 1-Dec. 16.
Kentucky	Nov. 20-Jan. 20.	Closed.	Oct. 1-Dec. 4.	Oct. 1-Dec. 4.
Louisiana	Sept.22-Sept.30 & Nov. 3-Jan. 2.	Sept.22-Sept.30 & Nov. 3-Jan. 2.	Dec. 8-Feb. 10.	Nov. 3-Feb. 17.
Michigan (8)	Sept. 15-Nov. 14.	Closed.	Sept. 15-Nov. 14.	Sept. 15-Nov. 14.
Minnesota	Sept. 1-Nov. 4.	Closed.	Sept. 1-Nov. 4.	Sept. 1-Nov. 4.
Mississippi	Oct. 20-Dec. 28.	Oct. 20-Dec. 28.	Dec. 22-Feb. 24.	Nov. 10-Feb. 24.
Missouri	Sept. 1-Nov. 9.	Closed.	Oct. 1-Dec. 4.	Oct.1-Dec. 4.
Ohio	Sept. 1-Nov. 9.	Closed.	Sept. 21-Nov. 24.	Sept. 1-Nov. 24 &

				Dec. 7-Dec. 28.
Tennessee	Dec. 2-Jan. 20.	Closed.	Oct. 13-Nov. 18 & Feb. 1-Feb. 28.	Nov. 19-Feb. 28.
Wisconsin:				
North Duck Zone (5)	Oct. 1 (noon)-Nov. 19.	Closed.	Sept. 15-Nov. 18.	Oct. 1 (noon)-Nov. 19.
South Duck Zone (5)	Oct. 1 (noon)-7 & Oct. 13-Nov. 24.	Closed.	Sept. 15-Nov. 18.	Oct. 1 (noon)-7 & Oct. 13-Nov. 24.
Seasons in the Central Flyway:				
Colorado (9)	Sept. 1-Nov. 9	Closed.	Closed.	Sept. 1-Nov. 9 & Dec. 8-Dec. 30.
Kansas	Sept. 15-Nov. 23.	Closed.	Oct. 1-Dec. 4.	Sept. 15-Dec. 30.
Montana (9)	Closed.	Closed.	Closed.	Sept. 29-Nov. 27.
Nebraska (10)	Sept. 1-Nov. 9.	Closed.	Sept. 15-Nov. 18.	Sept. 1-Dec. 15.
New Mexico (9)	Sept. 8-Nov. 16.	Closed.	Closed.	Sept. 8-Dec. 9.
North Dakota	Closed.	Closed.	Closed.	Sept. 29-Nov. 27.
Oklahoma	Sept. 1-Nov. 9.	Closed.	Nov. 20-Jan. 23.	Oct. 20-Feb. 3.
South Dakota (11)	Closed.	Closed.	Closed.	Sept. 1-Oct. 31.
Texas	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 24-Jan. 27.	Nov. 1-Feb. 12.
Wyoming (9)	Sept. 22-Nov. 30.	Closed.	Closed.	Sept. 22-Jan. 6.
Seasons in the Pacific Flyway:				
Arizona	Closed.	Closed.	Closed.	Oct. 17-Jan. 17.
California:				
Northeastern Zone (5)	Closed.	Closed.	Closed.	Oct. 13-Jan. 6.
Colorado River Zone (5)	Closed.	Closed.	Closed.	Oct. 17-Jan. 17
Remainder of State	Closed.	Closed.	Closed.	Oct. 20-Jan. 13.
Colorado (9)	Sept. 1-Nov. 9	Closed.	Closed.	Sept. 1-Nov. 9 & Dec. 8-Dec. 30.
Idaho:				
Columbia Basin (5)	Closed.	Closed.	Closed.	Oct. 6-Jan. 13.
Remainder of State	Closed.	Closed.	Closed.	Oct. 6-Jan. 6.
Montana (9)	Closed.	Closed.	Closed.	Sept. 29-Dec. 30.
Nevada:				
Clark County	Closed.	Closed.	Closed.	Oct. 20-Jan. 20.
Remainder of State	Closed.	Closed.	Closed.	Oct. 6-Jan. 6.
New Mexico (9)	Sept. 8-Nov. 16.	Closed.	Closed.	Sept. 8-Dec. 9.
Oregon	Closed.	Closed.	Closed.	Oct. 13-Jan. 13.
Utah (12)	Closed.	Closed.	Closed.	Oct. 13-Jan. 6.
Washington:				
Eastern Washington (5), (12)	Closed	Closed.	Closed.	Oct. 13-Jan. 20.
Western Washington (5), (12)	Closed.	Closed.	Closed.	Oct. 13-Jan. 13.
Wyoming (9)	Sept. 22-Nov. 30.	Closed.	Closed.	Sept. 22-Dec. 23.

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(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) Limits are 3 daily and 6 in possession.

(4) Limits are 2 daily and 4 in possession.

(5) For description of zones or management units within a State, see State regulations.

(6) In Alabama, the rail limits are 15 daily and 15 in possession.

(7) In Iowa, shooting hours are sunrise to sunset. Rail limits are 15 daily and 25 in possession.

(8) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(9) The Central Flyway portion consists of: Colorado and Wyoming — the area lying east of the Continental Divide; Montana — the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; New Mexico — the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

(10) In Nebraska the rail limits are 10 daily and 20 in possession.

(11) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(12) In Utah and Eastern Washington, on the first day, the season opens at 12 noon; and in Western Washington, on the first day, the season opens at 8 a.m.

Section 20.105 is amended to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) Waterfowl, coots and gallinules in Atlantic, Mississippi, Central, and Pacific Flyways.

ATLANTIC FLYWAY

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Flywaywide Restrictions.

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

Black ducks — bag limits and seasons shown separately, but when the black duck is permitted in the daily bag, it is part of the daily and possession limits for ducks.

Wood ducks — No more than 2 wood ducks may be taken daily nor more than 4 wood ducks may be possessed. Exceptions: during duck seasons prior to October 16, in Georgia, North Carolina, South Carolina, and Virginia. See State footnotes.

Hooded mergansers — In States selecting conventional regulations, no more than 1 hooded merganser may be taken daily nor more than 2 hooded mergansers may be possessed.

Canvasbacks and redheads — Except in closed areas, the limit on canvasbacks is 1 daily and 1 in possession. The limit on redheads throughout the flyway is 2 daily, except that in areas open to canvasback harvest the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback. The canvasback possession limit is equal to the daily bag limit. The possession limit on redheads is twice the daily bag limit under conventional regulations. Under the point system, canvasbacks (except in closed areas) count 100 points each and redheads flywaywide count 70 points each. Areas closed to canvasback hunting are:

New York — Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

New Jersey — Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

Maryland, Virginia and North Carolina — Those portions of the State lying east of U.S. Highway 1.

Portions of these areas otherwise closed to taking of canvasback, are open to hunting of canvasback at the end of the regular season State permits required in Maryland, New Jersey, New York and North Carolina. See sections below for these States for seasons and bag limits.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS.

The season dates for mergansers and coots are the same as those for ducks in the following tables:

	Season Dates	Limits	
		Bag	Possession
Connecticut			
Ducks:			
North Zone (1)			
Black Ducks	Nov. 21-Dec. 25	1	2
Ducks	Oct. 20-Nov. 3 & Nov. 21-Dec. 25.	5	10
Extra teal during regular season	Oct. 1-Oct. 6.	2(2)	4(2)

South Zone (1)			
Black Ducks	Nov. 30-Jan. 12.	1	2
Ducks	Oct. 1-Oct. 6 & Nov. 30-Jan. 12.	5	10
Scaup-only season (3)	Jan. 16-Jan. 31.	5	10
Extra teal during regular season	Oct. 1-Oct. 6.	2(2)	4(2)
Sea ducks (4)(5)(6)	Sept. 21-Jan. 5.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:			
North Zone	Oct. 20-Jan. 17.		
South Zone	Nov. 3-Jan. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant:		4	8
North Zone	Oct. 20-Nov. 3 & Nov. 21-Dec. 25.		
South Zone	Nov. 30-Jan. 18.		
Delaware:			
Ducks:			
Black Ducks	Nov. 22-Jan. 1.	1	2
Ducks	Oct. 1-Oct. 3 & Oct. 29-Nov. 3 & Nov. 22-Jan. 1.	5	10
Extra teal during regular season	Oct. 1-Oct. 3. Oct. 29-Nov. 3.	2(2)	4(2)
Extra scaup during regular season	Oct. 1-Oct. 3 & Oct. 29-Nov. 3 & Nov. 22-Jan. 1.	2(2)	4(2)
Sea ducks(4)(5)(6)	Sept. 22-Jan. 5.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:			
Canada	Oct. 29-Nov. 17 & Nov. 22-Jan. 30.	4	8
Snow (including blue)	Oct. 29-Nov. 17 & Nov. 22-Jan. 30.	4	8
Brant	Dec. 1-Jan. 19.	4	8
Florida			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit	Sept. 22-Sept. 26	4	8
Ducks:	Nov. 21-Dec. 2 & Dec. 14-Jan. 20.	Point system.	
Scaup-only season(3)	Jan. 21-Jan. 31	5	10
Coots		15	30
Gallinules (7)	Sept. 1-Nov. 9.	15	30
Geese	Closed.	-	-
Georgia			
Black Ducks	Oct. 12-Oct. 14 & Nov. 22-Nov. 25 & Dec. 8-Jan. 19.	1	2
Ducks	Oct. 12-Oct. 14 & Nov. 22-Nov. 25 & Dec. 8-Jan. 19.	5	10(8)
Extra teal during regular season	Oct. 12-Oct. 14.	2(2)	4(2)
Extra scaup during regular season (27)	Oct. 12-Oct. 14 & Nov. 22-Nov. 25 & Dec. 8-Jan. 19.	2(2)	4(2)
Sea ducks(4)(5)(6)	Nov. 22-Jan. 19.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Oct. 12-Oct. 14 & Nov. 22-Nov. 25 & Dec. 8-Jan. 19.	15	30

Geese	Closed.	-	-
Brant	Closed.	-	-
Maine			
North Zone (Wildlife Management Units 1-5)			
Black Ducks	Oct. 15-Nov. 19.	1	2
Ducks	Oct. 1-Nov. 19	5	10
Extra teal during regular season	Oct. 1-Oct. 9.	2(2)	4(2)
South Zone (Wildlife Management Units 6-8)			
Black Ducks	Nov. 14-Dec. 17	1	2
Ducks	Oct. 1-Oct. 15 & Nov. 14-Dec. 17.	5	10
Extra teal during regular season	Oct. 1-Oct. 9.	2(2)	4(2)
Extra scaup during regular season (9)	Oct. 28-Nov. 12.	2(2)	4(2)
Sea ducks(4)(5)(6)	Oct. 1-Jan. 15.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese: including no more than:			
Canada	Oct. 1-Dec. 9	3	6
Snow (including blue)	Oct. 1-Dec. 29.	4	8
Brant	Oct. 1-Nov. 19.	4	8
Maryland			
Ducks		Point system	
Inland Zone (1)			
Black Ducks	Dec. 17-Jan. 10.		
Ducks	Oct. 19-Nov. 3 & Dec. 17-Jan. 19.		
Coastal Zone (1)			
Black Ducks	Nov. 13-Nov. 23 & Dec. 10-Jan. 10.		
Ducks	Nov. 6-Nov. 23 & Dec. 10-Jan. 10.		
Canvasback Ducks	Jan. 5-Jan. 10.	Point system (10)	
Scaup only season (in sea duck zone)(3)	Nov. 26-Dec. 8.	5	10
Sea ducks(4)(5)(6)	Oct. 5-Jan. 19.	7	14
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:			
Canada:			
Delmarva Peninsula (11)	Oct. 19-Nov. 23 & Dec. 10-Jan. 31.	3	6
Remainder of State	Nov. 2-Nov. 23 & Dec. 3-Jan. 19.	3	6
Snow (including blue)	Oct. 19-Nov. 23 & Dec. 10-Jan. 31.	4	8
Brant	Nov. 6-Nov. 23 & Dec. 10-Jan. 10.	4	8
Massachusetts			
Ducks:			
Western Zone (1)			
Black Ducks	Oct. 15-Dec. 3.	1	2
Ducks	Oct. 15-Dec. 3.	5	10
Extra teal during regular season	Oct. 15-Oct. 23.	2(2)	4(2)
Coastal Zone (1)			
Black Ducks	Oct. 22-Oct. 27 & Nov. 19-Dec. 5 & Dec. 16-Jan. 1.	2	4
Ducks	Oct. 22-Oct. 27 & Nov. 19-Jan. 1.	4	8
Extra teal during regular season	Oct. 22-Oct. 27.	2(2)	4(2)
Central Zone (1)			
Black Ducks	Oct. 22-Nov. 10 & Nov. 22-Dec. 21.	1	2
Ducks	Oct. 22-Nov. 10 & Nov. 22-Dec. 21.	5	10

Extra teal during regular season	Oct. 22-Oct. 30.	2(2)	4(2)
Scaup-only season(3)	Jan. 4-Jan. 19.	5	10
Sea ducks(4)(5)(6)	Oct. 1-Jan. 15.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:			
Western Zone (1)	Oct. 15-Dec. 22.		
Coastal Zone (1)	Oct. 22-Oct. 27 & Nov. 19-Jan. 19.		
Central Zone (1)	Oct. 22-Nov. 10 & Nov. 22-Jan. 10.		
Canada		3	6
Snow (including blue)		4	8
Brant:			
Inland & Central Zone	Closed		
Coastal Zone	Nov. 19-Jan. 7.	4	8
New Hampshire			
Ducks:			
Inland Zone (1)			
Black Ducks	Oct. 1-Nov. 4 & Nov. 17-Dec. 1.	1	2
Ducks	Oct. 1-Nov. 4 & Nov. 17-Dec. 1.	5	10
Extra teal during regular season	Oct. 1-Oct. 9.	2(2)	4(2)
Extra scaup during regular season	Oct. 6-Oct. 14 & Nov. 16-Dec. 26.	2(2)	4(2)
Coastal Zone (1)			
Black Ducks	Nov. 16-Dec. 26.	2	4
Ducks	Oct. 6-Oct. 14 & Nov. 16-Dec. 26.	4	8
Extra teal during regular season	Oct. 6-Oct. 14.	2(2)	4(2)
Extra scaup during regular season	Oct. 6-Oct. 14 & Nov. 16-Dec. 26.	2(2)	4(2)
Sea ducks(4)(5)(6)	Sept. 15-Dec. 30.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Closed.		
Geese:			
Canada		3	6
Inland Zone	Oct. 1-Dec. 9.		
Coastal Zone	Oct. 6-Oct. 14 & Nov. 1-Dec. 31.		
Snow (including blue)		4	8
Inland Zone	Oct. 1-Dec. 29.		
Coastal Zone	Oct. 6-Jan. 3.		
Brant:		4	8
Inland Zone	Oct. 1-Nov. 19.		
Coastal Zone	Oct. 6-Oct. 14 & Nov. 1-Dec. 11.		
New Jersey			
Ducks:		Point system	
North Zone (1)			
Black Ducks	Oct. 6-Oct. 20 & Nov. 22-Dec. 26.		
Ducks	Oct. 6-Oct. 20 & Nov. 22-Dec. 26.		
South Zone (1)			
Black Ducks	Oct. 13-Oct. 20 & Nov. 22-Jan. 2.		
Ducks	Oct. 13-Oct. 20 & Nov. 22-Jan. 2.		
Coastal Zone (1)			
Black Ducks	Oct. 27-Nov. 3 & Nov. 21-Jan. 1.		
Ducks	Oct. 27-Nov. 3 & Nov. 21-Jan. 1.		
Canvasback Ducks	Dec. 22-Jan. 1.	Point system (10)	
Scaup only season (3)	Jan. 4-Jan. 19.	5	10

Sea ducks(4)(5)(6)	Oct. 6-Jan. 19.	7	14
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:			
Canada			
North Zone (1)	Oct. 6-Oct. 29 & Nov. 22-Jan. 26.	4	8
South Zone (1)	Oct. 13-Oct. 31 & Nov. 22-Jan. 31.		
Coastal Zone (1)	Oct. 6-Nov. 3 & Nov. 21-Jan. 19.		
Snow (including blue)	Oct. 13-Jan. 10.	4	8
Brant	Oct. 27-Nov. 3 & Nov. 21-Jan. 1.	4	8
New York			
Long Island Zone:			
Ducks:			
Black ducks	Nov. 14-Jan. 2.	1	2
Ducks	Nov. 14-Jan. 2.	5	10
Scaup only season(3)	Jan. 12-Jan. 27.	5	10
Extra teal during regular season	Nov. 14-Nov. 22.	2(2)	4(2)
Sea ducks (4)(5)(6)	Sept. 23-Jan. 7.	7	14
Mergansers		5	10
Coots		15	30
Geese:	Nov. 14-Jan. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Nov. 14-Jan. 2.	4	8
Lake Champlain Area: (12)			
Ducks:			
Black Ducks	Oct. 15-Nov. 28.	1	2
Ducks	Oct. 10-Nov. 28.	5	10
Wood duck	Oct. 10-Nov. 28.	2	4
Special scaup and goldeneye season (13)	Dec. 1-Dec. 16.	3	6
Extra teal during regular season	Oct. 10-Oct. 18.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese	Oct. 10-Dec. 18.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 10-Nov. 28.	4	8
Northeastern Zone (1):			
Ducks:			
Black Ducks	Oct. 3-Oct. 28.	1	2
Ducks	Oct. 3-Oct. 28 & Nov. 9-Dec. 2.	5	10
Extra teal during regular season	Oct. 3-Oct. 11.	2(2)	4(2)
Extra scaup during regular season	Oct. 3-Oct. 28 & Nov. 9-Dec. 2.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:	Oct. 3-Dec. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 3-Nov. 21.	4	8
Southeastern Zone (1):			
Ducks:			
Black Ducks	Oct. 10-Oct. 21 & Nov. 9-Nov. 21.	1	2
Ducks	Oct. 10-Oct. 21 & Nov. 9-Dec. 16.	5	10
Extra teal during regular season	Oct. 10-Oct. 18.	2(2)	4(2)
Extra scaup during regular season	Oct. 10-Oct. 21 & Nov. 9-Dec. 16.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30

Geese:	Oct. 3-Dec. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 3-Nov. 21	4	8
Western Zone (1):			
Ducks:			
Black Ducks	Oct. 10-Nov. 15	1	2
Ducks	Oct. 10-Nov. 15 & Dec. 21-Jan. 2	5	10
Extra teal during regular season	Oct. 10-Oct. 18.	2(2)	4(2)
Extra scaup during regular season	Oct. 10-Nov. 15 & Dec. 21-Jan. 2.	2(2)	4(2)
Canvasback ducks	Dec. 23-Jan. 2.	4	8(14)
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:	Oct. 3-Dec. 31.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 3-Nov. 21.	4	8
North Carolina			
Ducks:			
Black Ducks	Dec. 27-Jan 19.	1	2
Ducks	Oct. 4-Oct. 6 & Nov. 22-Nov. 24 & Dec. 7-Jan. 19.	5	10(8)
Canvasback ducks	Jan. 9-Jan. 19.	4	8(14)
Extra scaup during regular season (15)	Oct. 4-Oct. 6 & Nov. 22-Nov. 24 & Dec. 7-Jan. 19.	2(2)	4(2)
Extra teal during regular season	Oct. 4-Oct. 6 & Nov. 22-Nov. 24 & Dec. 7-Dec. 8.	2(2)	4(2)
Sea ducks(4)(5)(6)	Oct. 5-Jan. 19.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 6-Nov. 14.	15	30
Geese:			
Canada	Dec. 20-Jan. 31.	1	2
Snow (including blue)	Nov. 3-Jan. 31.	4	8
Brant	Oct. 4-Oct. 6 & Nov. 22-Nov. 24 & Dec. 7-Jan. 19.	4	8
Pennsylvania			
Ducks:			
North Zone (1)			
Black Ducks	Oct. 29-Nov. 17.	1	2
Ducks	Oct. 6-Nov. 24.	5	10
Extra teal during regular season	Oct. 6-Oct. 13.	2(2)	4(2)
South Zone (1)			
Black Ducks	Nov. 12-Dec. 3.	1	2
Ducks	Oct. 22-Oct. 31 & Nov. 12-Dec. 21.	5	10
Extra teal during regular season	Oct. 22-Oct. 29.	2(2)	4(2)
Northwest Zone (1)			
Black Ducks	Oct. 29-Dec. 1.	1	2
Ducks	Oct. 13-Oct. 20 & Oct. 29-Dec. 8.	5	10
Extra teal during regular season	Oct. 13-Oct. 20.	2(2)	4(2)
Lake Erie Zone (1)			
Black Ducks	Oct. 27-Dec. 1.	1	2
Ducks	Oct. 27-Dec. 15.	5	10
Extra teal during regular season	Oct. 27-Nov. 3.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30

Geese:			
Canada and		3	6
Snow (including blue)		3	6
North Zone (1)	Oct. 6-Dec.14.		
South Zone (1)	Oct. 13-Dec. 21.		
Northwest Zone (1)	Oct. 13-Dec. 21.		
Lake Erie Zone (1)	Oct. 13-Dec. 21.		
Southeastern Zone (1)	Oct. 13-Jan. 10.		
Brant	Oct. 20-Nov. 17.	2	4
Rhode Island			
Ducks:			
Black Ducks	Oct. 11-Oct. 14 & Nov. 21-Jan. 5.	1	2
Ducks	Oct. 11-Oct. 14 & Nov. 21-Jan. 5.	5	10
Extra teal during regular season	Oct. 11-Oct. 14 & Nov. 21-Nov. 25.	2(2)	4(2)
Scaup-only season (3)	Jan. 12-Jan. 27.	5	10
Sea ducks(4)(5)(6)	Oct. 1-Jan. 15.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 15-Nov. 23.	15	30
Geese:			
Canada and	Oct. 11-Oct. 14 & Nov. 7-Jan. 31.	3	6
Snow (including blue)		4	8
Brant	Dec. 1-Jan. 19.	4	8
South Carolina(16)(17)			
Ducks:			
Black Ducks (18)	Oct. 4-Oct. 6 & Dec. 8-Jan. 19.	1	2
Ducks	Oct. 4-Oct. 6 & Nov. 21-Nov. 24 & Dec. 8-Jan. 19.	5	10(8)
Extra teal during regular season	Jan. 11-Jan. 19.	2(2)	4(2)
Extra scaup during regular season (19)	Oct. 4-Oct. 6 & Nov. 21-Nov. 24 & Dec. 8-Jan. 19.	2(2)	4(2)
Mottled duck	Closed.	-	-
Sea ducks(4)(5)(6)	Oct. 5-Jan. 19.	7	14
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 21-Oct. 27 & Nov. 20-Dec. 22.	15	30
Geese:			
Canada (20)	Dec. 20-Jan. 19.	1	2
Snow (including blue)	Oct. 4-Oct. 6 & Nov. 21-Nov. 24 & Dec. 8-Jan. 19.	4	8
Brant	Oct. 4-Oct. 6 & Nov. 21-Nov. 24 & Dec. 8-Jan. 19.	4	8
Vermont (12)			
Ducks:			
Black Ducks	Oct. 15-Nov. 28.	1	2
Ducks	Oct. 10-Nov. 28.	5	10
Extra teal during regular season	Oct. 10-Oct. 18.	2(2)	4(2)
Wood ducks	Oct. 10-Nov. 28.	2	4
Special scaup and goldeneye season (13)	Dec. 1-Dec. 16.	3	6
Mergansers		5	10
Coots		15	30
Gallinules	Sept. 29-Dec. 7.	15	30
Geese (21):	Oct. 10-Dec. 18.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 10-Nov. 28.	4	8

Virginia			
Ducks:		Point system (8)	
Black Ducks	Oct. 3-Oct. 6 & Dec. 10-Jan. 12.		
Ducks	Oct. 3-Oct. 6 & Nov. 20-Dec. 1 & Dec. 10-Jan. 12.		
Canvasback ducks	Jan. 7-Jan. 12.	Point system (10)	
Scaup only season(3)	Jan. 14-Jan. 29.	5	10
Sea ducks(4)(5)(6)	Oct. 5-Jan. 19.	7	14
Coots		15	30
Gallinules	Oct. 3-Oct. 6 & Nov. 20-Dec. 1& Dec. 10-Jan. 12.	15	30
Geese:			
Canada:			
Back Bay Area (22)	Oct. 3-Oct. 6 & Nov. 20-Dec. 1 & Dec. 10-Jan. 12.	2	4
Delmarva Peninsula Area	Nov. 3-Jan. 31.	4	8
Remainder of State	Nov. 10. & Nov. 12-Jan. 19.	3	6
Snow (including blue):			
Back Bay Area (23)	Nov. 20-Dec. 1 & Dec. 10-Jan. 12.	4	8
Remainder of State	Nov. 3-Jan. 31.	4	8
Brant	Oct-3-Oct. 6 & Nov. 20-Dec. 1 & Dec. 10-Jan. 12.	4	8
West Virginia			
Ducks:			
Allegheny Mountain Upland Zone (Zone 2) (1)			
Black Ducks	Oct. 1-Oct. 16 & Nov. 1-Dec. 4.	1	2
Ducks	Oct. 1-Oct. 16 & Nov. 1-Dec. 4.	5	10
Extra teal during regular season	Oct. 1-Oct. 8.	2(2)	4(2)
Extra scaup during regular season	Oct. 1-Oct. 16 & Nov. 1-Dec. 4.	2(2)	4(2)
Gallinules	Oct. 1-Oct. 16 & Nov. 1-Dec. 4.	15	30
Remainder of State (Zone 1)(1)			
Black Ducks	Oct. 1-Oct. 16 & Dec. 17-Jan. 19.	1	2
Ducks	Oct. 1-Oct. 16 & Dec. 17-Jan. 19.	5	10
Extra teal during regular season	Oct. 1-Oct. 8.	2(2)	4(2)
Extra scaup during regular season	Oct. 1-Oct. 16 & Dec. 17-Jan. 19.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules	Oct. 1-Oct. 16 & Dec. 17-Jan. 19.	15	30
Geese:			
Allegheny Mountain Upland Zone (1)	Oct. 1-Oct. 16 & Nov. 1-Dec. 4.		
Remainder of State	Oct. 1-Oct. 16 & Dec. 17-Jan. 19.		
Canada		1(24)	2(24)
Snow (including blue)		4	8
Brant		4	8
Allegheny Mountain Upland Zone	Oct. 1-Oct. 16 & Nov. 1-Dec. 4.		
Remainder of State	Oct. 1-Oct. 16 & Dec. 17-Jan. 19.		

Point system — Ducks, mergansers and coots. The Atlantic Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days. The shooting (including hawking) hours are one-half hour before sunrise until sunset daily unless otherwise indicated.

The point values assigned to the species and sexes are as follows:

Atlantic Flyway

100 points	70 points	10 points	25 points
Canvasback (except where closed)	Female mallard Mottled duck Wood duck (25) Redhead	Pintail Blue-winged teal Green-winged teal Shoveler	Male mallard and all other species of ducks.
Fulvous tree duck and Mottled ducks (only in Florida)	Hooded merganser	Gadwall Wigeon Scaup Sea ducks (26)	
Black duck (Maryland, Florida & the Coastal & South Zones in New Jersey)	Black duck (Virginia, and the North Zone in New Jersey)	Mergansers (except hooded)	

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(1) Described in the September 14,1984, Federal Register (49 FR 36272). See State Regulations for zone/area boundaries.

(2) The daily bag and possession limits specified here are in addition to any other bag and possession limits specified elsewhere.

(3) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(4) An open season for taking scoter, eider, and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1984, and January 20, 1985, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the Town of Riverhead to Red Cedar Point in the Town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

(5) The daily bag limit is 7 and possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

(6) Notwithstanding the provisions of this Part 20 the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

(7) In Florida, the gallinule season applies to the common gallinule only. There is no open season on the purple gallinule in Florida.

(8) No special daily bag and possession limit restrictions apply to wood ducks in Georgia during October 12-October 14, in North Carolina and South Carolina during October 4-October 6 and in Virginia during October 3-October 6 the wood duck is 25 points.

(9) Only in coastal waters and the waters of the rivers and streams seaward from the first upstream bridge and includes all tidal waters bounded by ME 182 and 200 north of U.S. 1 in Hancock County.

(10) In Maryland, New Jersey, and Virginia male canvasbacks are 25 points and female canvasbacks are 100 points. The possession limit is twice the daily bag limit. Areas open to canvasback hunting during the special season are:

New Jersey- East of the Garden State Parkway from Route 440, south to Route 36 (Raritan and Sandy Hook Bays, Navesink, and Shrewsbury Rivers); east of the Garden State Parkway from Route 88 south to Route 72 (Barnegat, Silver and Manahawkin Bays, Metedeconk and Toms Rivers).

Maryland - The waters of Cheasapeake Bay and its tributaries to the first upstream bridge, except on the Patuxent River the boundary is the second upstream bridge (Maryland Route 231 bridge near Benedict, MD); including Potomac River and its tributaries upstream to U.S. Route 301 bridge.

Virginia - Starting at the Virginia-Maryland line (301 bridge) those lands and waters enclosed in the area bounded by: U.S. Highway 301 south to Route 207 and continuing to the junction of U.S. Route 1, south on Route 1 to Route 460, then southeast on 460 to Route 13, then east and north on Route 13 to the Maryland line, then westward on the Maryland-Virginia line to Route 301. The remaining portions of New Jersey, Maryland and Virginia presently closed to the taking of canvasbacks will remain closed.

(11) In Maryland, the Delmarva Peninsula includes the counties of Caroline, Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico and Worcester.

(12) In Vermont and in the Lake Champlain Zone of New York, on opening day, October 10, shooting hours are from 7 a.m. to sunset. During October 11-December 18 shooting hours are one-half hour before local sunrise to local sunset.

(13) In the Lake Champlain areas of New York and Vermont (described and delineated in the hunting regulations of the respective States) a special hunting season for scaup and goldeneye is prescribed with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate and 6 scaup or 6 goldeneyes or 6 in the aggregate in possession.

(14) In New York and North Carolina the daily bag may include no more than 4 canvasback, not more than one of which may be a female. Areas open to canvasback hunting during the special season are:

New York - Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls, and all waters of Lake Cayuga.

North Carolina - That portion of Pamlico Sound and its tributaries designated as coastal fishing waters within two miles of the mainland, extending from Long Shoal Point on north side of Long Shoal River to that point of land near Whortonville on the north side of Broad Creek known as Piney Point and upstream in the Pamlico River to the Auroa-Bellhaven Ferry crossing.

The remaining portions of New York and North Carolina presently closed to the taking of canvasback will remain closed.

(15) Only in waters east of U.S. Highway 17, except Currituck Sound north of U.S. Highway 158.

(16) There will be no Sunday hunting in Georgetown County or Charleston County from the Georgetown County line (South Santee River) to the Wando River, east of Highway U.S. 17. The shooting hours in this area will be 1/2 hour before sunrise to 12:00 noon daily, except on October 6, Nov. 24 and Jan. 19, when shooting hours will be 1/2 hour before sunrise to sunset.

(17) During the period Dec. 8-Jan. 18, the shooting hours are 1/2 hour before sunrise to 1:00 p.m. daily on all lands and waters of: that portion of Lake Marion and Santee Swamp west of Interstate 95 bridge upstream to the confluence of the Wateree and Congaree Rivers. The affected area being further described as all land west of I-95 within or adjacent to Lake Marion which is owned by Santee Cooper or the State of South Carolina in the Counties of Clarendon, Sumter, Orangeburg and Calhoun. This regulation shall apply to all land in the area described above, whether such land shall be exposed or inundated.

NOTE: These regulations shall apply to land owned by Santee-Cooper or the State of South Carolina ONLY.

(18) In South Carolina, the season is closed on black ducks in Georgetown, Charleston, Colleton, and Beaufort Counties.

(19) Only in waters east of U.S. Highway 17, north of Charleston, and east of the Seaboard Railroad bed south of Charleston.

(20) In South Carolina the season on Canada geese is closed in the counties of Abbeville, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Cherokee, Chester, Colleton, Edgefield, Fairfield, Greenwood, Hampton, Kershaw, Lancaster, Laurens, Lee, McCormick, Newberry, Oconee, Pickens, Richland, Saluda, Spartanburg, Sumter, Union and York.

(21) See State regulations for further limit restrictions for Dead Creek Area, Addison County, Vermont.

(22) In Virginia, the Back Bay Area is defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake lying east of U.S. Highway 17 and Interstate 64.

(23) In Virginia, the Back Bay Area is defined for snow (including blue) geese as the waters of Back Bay and its tributaries and the marshes adjacent

thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Lake Tecumseh and Red Wing Lake and the marshes adajacent thereto.

(24) In West Virginia, the daily bag and possession limits on Canada geese is 1 and 2, respectively, in both zones during the first half of the split season. During the second half of the split season in both zones, the daily bag and possession limit on Canada geese is 2 and 4, respectively.

(25) In Virginia, during October 3- October 6, the wood duck counts 25 points.

(26) Sea ducks count 10 points each during the point-system season, but during any part of the regular sea duck season falling outside the point-system season, sea duck daily bag and possession limits of 7 and 14, respectively, apply.

(27) East of Intercoastal Waterway in Chatham, Bryan, Liberty, McIntosh, Glynn and Camden Counties.

MISSISSIPPI FLYWAY

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS.

The season dates for mergansers and coots are the same as those for ducks in the following tables.

	Season Dates	Limits	
		Bag	Possession
Alabama			
Ducks:		Point system.	
North Zone (1)	Dec. 1-Jan. 19.		
South Zone (1)	Nov. 15-Nov. 25 & Dec. 13-Jan. 20.		
Coots		15	30
Gallinules	Nov. 12-Jan. 20.	15	15
Geese:		5	10
Barbour, Henry, and Russell Counties	Closed.	-	-
Remainder of State	Nov. 12-Jan. 20.		
Limits include no more than:			
Canada		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Arkansas			
Ducks	Nov. 17-Dec. 9 & Dec. 15-Jan. 10.	Point system.	
Coots		15	30
Gallinules	Nov. 10-Jan. 18.	15	30
Geese:		5	10
Canada	Closed.	-	-
Other geese	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Illinois			
Ducks (2):		Point system.	
North Zone (3)	Oct. 10-Nov. 28.		
Central Zone (3)	Oct. 24-Dec. 12.		
South Zone (3)	Nov. 1-Dec. 20.		
Coots		15	30
Gallinules	Closed.		

Geese (4):		5	10
Canada			
North Zone (3)			
Tri-County Zone (3)	Nov. 1-Nov. 20.	1	4
Remainder of North Zone	Oct. 10-Oct. 29.	1	4
Central Zone (3)			
Tri-County Zone (3)	Nov. 1-Nov. 20.	1	4
Remainder of Central Zone	Oct. 24-Nov. 12.	1	4
South Zone (3)			
Southern Illinois Quota Zone (Alexander, Jackson, Union, and Williamson Counties)(5)(6)	Nov. 12-Dec. 6.	2	4
Remainder of South Zone	Nov. 26-Dec. 15.	1	4
Other Geese			
North Zone (3)	Oct. 10-Nov. 28.		
Central Zone (3)	Oct. 24-Dec. 12.		
South Zone (3)	Nov. 1-Dec. 20.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10
Indiana			
Ducks:		Point system.	
North Zone (7)	Oct. 13-Oct. 17 & Oct. 27-Dec. 10.		
South Zone (7)	Oct. 20-Oct. 27 & Nov. 21-Jan. 1.		
Ohio River Zone (7)	Oct. 27-Nov. 3 & Dec. 3-Jan. 13.		
Scaup-only season (Lake Michigan only) (8)	Dec. 11-Dec. 26.	5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:		5	10
Canada:			
North Zone	Oct. 13-Dec. 21.	2	4
South Zone:			
Posey County	Dec. 26-Jan. 14.	1	2
Remainder of South Zone	Nov. 12-Jan. 20.	2	4
Ohio River Zone			
Posey County	Dec. 26-Jan. 14.	1	2
Remainder of Ohio River Zone	Nov. 12-Jan. 20.	2	4
Other Geese:			
North Zone	Oct. 13-Dec. 21.		
South Zone	Nov. 12-Jan. 20.		
Ohio River Zone	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10
Iowa			
Ducks (2)		Point system.	
North Zone	Oct. 20-Dec. 3.		
South Zone	Oct. 27-Dec. 10.		
Coots		15	30
Gallinules	Closed.		
Geese:		5	10
Southwest Zone (15)	Oct. 13-Dec. 21.		
Remainder of State	Sept. 29-Dec. 7.		
Limits include no more than:			
Canada		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Kentucky			
Ducks	Nov. 20-Nov. 25 & Dec. 8-Jan. 20.	Point system.	
Coots		15	30
Gallinules	Nov. 20-Jan. 20.	15	30

Geese:		5	10
Western Zone (1)(4)(5)	Jan. 7–Jan. 31.		
Remainder of State	Nov. 20–Jan. 20.		
Limits include no more than:			
Canada		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Louisiana			
Ducks:		Point system.	
East Zone (1)	Nov. 17–Dec. 2 & Dec. 18–Jan. 20.		
West Zone (1)	Nov. 3–Dec. 2 & Dec. 15–Jan. 8.		
Scaup only season (8)	Jan. 21–Jan. 31.	5	10
Coots		15	30
Gallinules	Sept. 22–Sept. 30 & Nov. 3–Jan. 2.	15	30
Geese:			
Canada	Closed.	–	–
Other Geese:		5	10
East Zone(1)	Nov. 17–Dec. 2 & Dec. 18–Feb. 9.		
West Zone (1)	Nov. 3–Dec. 2 & Dec. 15–Jan. 23.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Michigan			
Ducks (2):		Point system.	
North Zone (9)	Sept. 29–Nov. 17.		
Middle Zone (9)	Sept. 29–Oct. 4 & Oct. 13–Nov. 25.		
Southeast Zone (9)	Oct. 6–Nov. 24.		
Coots		15	30
Gallinules:		15	30
North Zone	Sept. 29–Nov. 17		
Middle Zone	Sept. 29–Oct. 4 & Oct. 13–Nov. 25.		
Southeast Zone	Oct. 6–Nov. 24.		
Geese:			
Canada			
North Zone (9):			
Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon Counties	Sept 26–Oct. 15.	1	2
Remainder of North Zone	Sept. 29–Oct. 18.	1	2
Middle Zone (1):			
Allegan County Goose Management Area	Oct. 13–Nov. 1.	1	2
Remainder of Zone:			
West of U.S. Highways 131 and 31 and Interstate Highway 75	Sept. 29–Oct. 4 & Oct. 13–Oct. 26.	1	2
East of U.S. Highways 131 and 31 and Interstate Highway 75	Sept. 29–Oct. 4 & Oct. 13–Nov. 10.	1	2
Southeast Zone (9)			
Southern Michigan Goose Management Area (1)	Oct. 6–Nov. 9.	1	2
	Dec. 22–Feb. 16.	3	6
Saginaw County Goose Management Area (1)	Sept. 29–Nov. 2.	1	2
Remainder of Southeast Zone	Oct. 6–Nov. 9.	1	2

Other geese:			
North Zone (9):			
Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon Counties	Sept. 26-Nov. 17.		
Remainder of North Zone	Sept. 29-Nov. 17.		
Middle Zone (9)	Sept. 29-Oct. 4 & Oct. 13-Nov. 25.		
Southeast Zone (9)	Oct. 6-Nov. 24.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Minnesota (10)			
Ducks:	Sept. 29-Nov. 17.	5	10
Limits include no more than:			
Mallards (no more than 2 female mallards daily or 4 in possession)		3	6
Black ducks		1	2
Wood ducks		2	4
Canvasbacks (except in closed areas)		1	2
Redheads		1	2
Mergansers (no more than 1 hooded merganser daily or 2 in possession)		5	10
Coots		15	30
Gallinules	Sept. 29-Nov. 17.	15	30
Geese:			
Canada:			
Lac Qui Parle Quota Zone (1) (5)	Sept. 29-Nov. 17	1	2
Southeastern Zone (1)	Sept. 29-Dec. 7.	2	4
Remainder of State	Sept. 29-Nov. 17.	1	2
Other geese:			
Southeastern Zone	Sept. 29-Dec. 7		
Remainder of State	Sept. 29-Nov. 17.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Mississippi			
Ducks	Dec. 8-Dec. 9 & Dec. 15-Jan. 31.	Point system.	
Coots		15	30
Gallinules	Oct. 20-Dec. 28.	15	30
Geese:		5	10
Canada:			
Sardis Reservoir Area (1)	Dec. 5-Dec. 14 & Jan. 12-Jan. 31.	1	2
Remainder of State	Jan. 17-Jan. 31.	1	2
Other geese	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Missouri			
Ducks:		Point system.	
North Zone (1)	Oct. 20-Oct. 24 & Nov. 1-Dec. 15.		
South Zone (1)	Nov. 1-Dec 2 & Dec. 15-Jan. 1.		
Coots		15	30
Gallinules	Closed.		
Geese:		5	10
Canada			
North Zone (1)			
Swan Lake Zone (1) (5)	Nov. 1-Dec. 20.	2	4
Southeastern Area (east of U.S. Highway 67 and south of Crystal City)	Dec. 2-Jan. 20.	1	2
Remainder of North Zone	Nov. 1-Dec. 15.	1	2

South Zone (1)			
Southeastern Zone (1)	Dec. 2-Jan. 20.	1	2
Remainder of South Zone	Nov. 1-Dec. 2 & Dec. 15-Jan. 1.	1	2
White-fronted	Nov. 1-Jan. 9.	2	4
Snow (including blue) and brant	Nov. 1-Jan. 9.	5	10
Ohio			
Pymatuning Area (1):			
Ducks:		5	10
Black Ducks	Oct. 29-Dec. 1.	1	2
Other Ducks	Oct. 13-Oct. 20 & Oct. 29-Dec. 8.		
Limits include no more than:			
Black Ducks		1	2
Wood Ducks		2	4
Canvasbacks		1	1
Redheads		2	4
Canvasbacks and Redheads combined		2	4
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Mergansers (except hooded)		5	10
Hooded mergansers		1	2
Geese:			
Brant	Oct. 20-Nov. 17.		
Other Geese	Oct. 13-Dec. 21.		
Limts include no more than:			
Canada		3	6
Snow (including blue)		4	8
Brant		4	8
Remainder of State:			
Ducks:		5	10
North Zone (11)	Oct. 19-Nov. 24 & Dec. 3-Dec. 15.		
South Zone (11)	Oct. 19-Nov. 3 & Dec. 3-Jan. 5.		
Ohio River Zone (11)	Oct. 19-Nov. 3 & Dec. 17-Jan. 19.		
Limits include no more than:			
Mallards (no more than 2 female mallards daily or 4 in possession		3	6
Black ducks		1	2
Wood ducks		2	4
Canvasbacks		1	2
Redheads		1	2
Scaup-only (North Zone only)	Dec. 17-Jan. 1.	5	10
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese	Oct. 19-Dec. 15 & Dec. 18-Dec. 29.	5	10
Limits include no more than:			
Canada:			
Ashtabula, Auglaize, Erie, Lucas, Marion, Mercer, Ottawa, Sandusky, Trumbull, and Wyandot Counties		1	2
Remainder of State		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Tennessee			
Ducks:		Point system	
Reelfoot Zone (1)	Nov. 3-Nov. 7 & Dec. 7-Jan. 20.		
State Zone (1)	Dec. 2-Jan. 20.		
Coots		15	30
Gallinules	Dec. 2-Jan. 20.	15	30
Geese (1):		5	10
Canada(12)			
Northwest Zone (5)	Jan. 7-Jan. 31.	1	2
Southwest Zone	Jan. 6-Jan. 20.	1	2

Remainder of State			
West of State Highway 13	Nov. 12-Jan. 20.	2	4
East of State Highway 13	Nov. 12-Jan. 20.	1	2
Other geese	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Wisconsin			
Ducks (2):		Point system (14)	
North Duck Zone (1)	Oct. 1 (13)-Nov. 19.		
South Duck Zone (1)	Oct. 1 (13)-Oct. 7 & Oct. 13-Nov. 24.		
Coots		15	30
Scaup-only season (8)			
North Duck Zone	Nov. 20-Dec. 5.	5	10
South Duck Zone	Nov. 25-Dec. 10.	5	10
Gallinules			
North Duck Zone (1)	Oct. 1(13)-Nov. 19.	15	30
South Duck Zone (1)	Oct. 1(13)-Oct. 7 & Oct. 13-Nov. 24.	15	30
Geese:		5	10
Canada:			
North Duck Zone (1)			
Brown County	Oct. 1 (13)-Oct. 20.	1	2
	Dec. 1-Dec. 31.	2	4
Mississippi River Zone	Oct. 1 (13)-Oct. 20.	1	2
	Nov. 25-Dec. 9.	2	4
Remainder of North Zone	Oct. 1 (13)-Oct. 20.	1	2
South Duck Zone (1)			
Horicon and Central Zones (1)	Oct. 13-Nov. 6.	Tag system - see State regulations.	
Rock Prairie Zone (1)	Oct. 13-Nov. 1	1	2
	Nov. 25-Dec. 9.	2	4
Mississippi River Zone	Oct. 13-Nov. 1	1	2
	Nov. 25-Dec. 9.	2	4
Remainder of South Zone	Oct. 13-Nov. 1.	1	2
Other geese			
North Duck Zone (1)	Oct.1(13)-Nov. 19.		
South Duck Zone (1)	Oct. 1 (13)-Oct. 7 & Oct. 13-Nov. 24.		
Limits include no more than:			
White-fronted		2	4
snow (including blue) and brant		5	10

The point values assigned to the species and sexes are as follows:
Mississippi Flyway (14)

100 points	70 points	10 points	25 points
Canvasback (except where closed) Black duck	Female mallard Wood duck Redhead Hooded merganser	Pintail Blue-winged teal Green-winged teal Cinnamon teal Wigeon Shoveler Gadwall Scaup Mergansers (except hooded).	Male mallard and all other species of ducks.

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(1) Described in the September 14, 1984, Federal Register (49 FR 36272). See State regulations for zone/area boundaries.

(2) The areas closed to canvasback hunting are:

Mississippi River - (1) Entire river, both sides, from Lock and Dam 9 upstream to the confluence of the Chippewa River. (2) Pool 19 bordering Iowa and Illinois.

Michigan - Macomb and St. Clair Counties, including the adjacent Great Lakes waters and interconnecting waterways under the jurisdiction of the State of Michigan.

Wisconsin - In the Mississippi River Zone, all that part of Wisconsin west of the Burlington-Northern Railroad from Lock and Dam 9 north to the centerline of the Chippewa River.

(3) In Illinois, the North Zone is that portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I-280, east along I-280 to I-80, then east along I-80 to the Indiana border. The Central Zone is that portion of the State between the North and South Zone boundaries. The South Zone is that portion of the State south of a line running east from the Missouri border on the Mississippi River along the Monroe-Randolph County line to County Highway 856, south along County Highway 856 to Illinois Highway 155, east along Illinois Highway 155 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 159, north along Illinois Highway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I-70, then east along I-70 to the Indiana border. The Tri-County Zone is that part of Illinois including all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County.

(4) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation for shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(5) Harvests of Canada geese will be limited as follows:

Illinois: Southern Illinois Quota Zone—17,500.
Kentucky: West Kentucky Zone—7,000.
Wisconsin: Horicon and Central Zones combined—15,000.
Missouri: Swan Lake Zone—16,000.
Minnesota: Lac qui Parle Zone—4,500.
Tennessee: Northwest Zone—1500.

Missouri, Illinois, Minnesota, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Swan Lake Zone in Missouri, the Lac qui Parle Zone in Minnesota, the West Kentucky Zone and the Northwest Zone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

(6) Shooting hours for geese are sunrise until 3 p.m.

(7) In Indiana, the North Zone is that portion of the State north of State Highway 18. The Ohio River Zone is that portion of the State south of Interstate Highway 64. The South Zone is that portion of the State between the North and Ohio River Zone boundaries.

(8) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(9) In Michigan, the North Zone is the Upper Peninsula portion of the State. The Southeast Zone is that portion of the Lower Peninsula south and east of a line running north from the Michigan-Ohio border along U.S. Highway 127 to US-27, north along US-27 to South County Line Road in Gratiot County, east along South County Line Road to McClelland Road, north along McClelland Road to M-57, west along M-57 to US-27, north along US-27 to M-20, east along M-20 to US-10, east along US-10 to M-13, north along M-13 to US-23, north and east along US-23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then due east ten miles into Saginaw Bay, and from that point along a northeast line to the Ontario border. The Middle Zone is the remainder of the State.

(10) In Minnesota, the shooting hours for waterfowl vary as follows: September 29 - 12 noon to 4 p.m.; September 30 through October 19 - 1/2 hour before sunrise to 4 p.m.; and October 20 through November 17 - 1/2 hour before sunrise to sunset.

(11) In Ohio, the North Zone is that portion of the State consisting of the counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. The Ohio River Zone includes the counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. The South Zone includes that portion of Ohio between the North and Ohio River Zone boundaries.

(12) Local restrictions, including closures, apply in specified areas. Consult State regulations. Tagging of Canada geese is required in designated zones.

(13) On the first day the season opens at 12 noon.

(14) In Wisconsin, point values for some species change during the season. See State Regulations. Also, some species listed in the 10-point category in the Mississippi Flyway point-system table are assigned 25 points in Wisconsin.

(15) In Iowa, the Southwest Goose Zone is that portion of the State bounded by U.S. Highway 92 and 71.

CENTRAL FLYWAY

The Central Flyway consists of Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese include all species of geese and brant.

Dark Geese include Canada geese, white-fronted geese, and "black" brant.

Light Geese include all other species.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise noted.

Mergansers — All mergansers are to be included within the daily bag and possession limits under conventional and point system regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS.

	Season Dates	Limits	
		Bag	Possession
Colorado			
Ducks	Sept. 29-Oct. 14 & Oct. 27-Dec. 2 & Dec. 15-Jan. 13.	Point system.	
Coots	Same as for ducks.	15	30
Gallinules	Closed.		
Geese (1):		2	4
North-Central Unit	Oct. 27-Jan. 13.		
South Park Unit	Sept. 29-Oct. 12 & Oct. 27-Dec. 31.		
San Luis Valley Unit	Nov. 3-Dec. 31.		
Remainder of State in Central Flyway	Nov. 3-Jan. 13.		
Kansas			
Ducks(2):		Point system.	
High Plains Area	Oct. 6-Nov. 9 & Nov. 17-Dec. 2 & Dec. 8-Jan. 8.		
Low Plains Area	Oct. 20-Nov. 9 & Nov. 17-Dec. 9 & Dec. 22-Jan. 6.		
Coots	Same as for ducks.	15	30
Gallinules	Closed.		
Dark geese (2)	Oct. 27-Jan. 6.	2	4
including no more than:			
White-fronted	Oct. 27-Jan. 6.	1	2
Canada	Nov. 26-Jan. 6.	1	2
Light geese	Nov. 3-Nov. 30 & Dec. 15-Feb. 10.	5	10
Montana			
Ducks			
Zone 1 (3)	Sept. 29-Nov. 27 & Dec. 9-Dec. 30.	Point system (12)	
Zone 2 (3)	Sept. 29-Oct. 21 & Nov. 2-Dec. 30.		
Coots	Same as for ducks.	15	30
Gallinules	Closed.		
Geese:	Sept. 29-Dec. 30.		
Sheridan County		2	4
Remainder of State in			

Central Flyway		3	6
Whistling (Tundra) swans	Sept. 29-Dec. 30.	Only by permit; 1 swan per season	
Nebraska			
Ducks		Point system.	
High Plains Area (4)	Oct. 13-Dec. 2 & Dec. 7-Jan. 7.		
Low Plains Area (4)			
Zones 1 and 2 (4)	Oct. 20-Dec. 18.		
Zones 3 and 4 (4)	Oct. 6-Dec. 4.		
Coots	Same as for ducks.	15	30
Gallinules	Closed.		
Dark geese			
North Unit (5)	Oct. 6-Dec. 23.	2	4
including no more than:			
White-fronted	Oct. 6-Dec. 23.	1	2
Canada	Oct. 6-Nov. 9.	1	2
East Unit (5)	Sept. 29-Dec. 9.	2	4
including no more than:			
White-fronted	Sept. 29-Dec. 9.	1	2
Canada	Nov. 21-Dec. 9.	1	2
Central Unit (5)	Oct. 21-Dec. 31.	2	4
including no more than:			
White-fronted	Oct. 21-Dec. 31.	1	2
Canada	Nov. 21-Dec. 31.	1	2
Panhandle Unit (5)	Nov. 10-Dec. 31.	2	4
including no more than:			
White-fronted	Nov. 10-Dec. 31.	1	2
Canada	Nov. 21-Dec. 31.	1	2
Sandhills Unit(5)	Nov. 3-Dec. 31.	Only by permit - 1 Canada goose per season.	
Light Geese	Sept. 29-Dec. 23.	5	10
New Mexico			
Ducks :		Point system.	
Zone 1 (3)	Oct. 16-Jan. 6.		
Zone 2 (3)	Oct. 30-Jan. 20.		
Coots	Same as for ducks.	15	30
Gallinules	Oct. 16-Dec. 24.	15	30
Geese:			
Dark geese	Oct. 20-Jan. 20.	2	4
Light geese:			
	Nov. 28-Feb. 28(6)	5	10
	Nov.28-Feb. 12.(6)	5	10
North Dakota (7)			
Ducks:	Sept. 29-Nov. 25 & Dec. 1-Dec. 2.	5	10
including no more than:			
Female mallards		1	2
Canvasbacks		1	1
Redheads		1	2
Wood ducks		2	4
Hooded mergansers		1	2
Additional blue-winged teal	Sept. 29-Oct. 7.	2(8)	4(8)
Coots	Same as for ducks.	15	30
Gallinules	Closed.		
Dark geese	Sept. 29-Nov. 11.	2	4
including no more than:			
Canada	Sept. 29-Oct. 28.	1	2
Light geese	Sept. 29-Dec. 2.	5	10
Oklahoma			
Ducks:		Point system.	
High Plains Area (3)	Oct. 13-Jan. 3.		
Low Plains			
Zone 1 (3)	Oct. 13-Nov. 25 & Dec. 15-Dec. 30.		
Zone 2 (3)	Oct. 27-Nov. 25 & Dec. 22-Jan. 20.		
Coots	Same as for ducks.	15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Dark geese (3)		2	4
including no more than:			
White-fronted		1	2

Unit 1	Nov. 10-Jan. 20.		
Unit 2	Oct. 15-Nov. 25 & Dec. 22-Jan. 20.		
Light geese	Oct. 15-Nov. 25 & Dec. 22-Feb. 3.	5	10
South Dakota			
Ducks:		Point system (12)	
High Plains Area (9)	Sept. 29-Nov. 27 & Dec. 15-Jan. 6.		
Low Plains Area			
North Zone (9)	Sept. 29-Nov. 27.		
South Zone (9)	Oct. 20-Dec. 18.		
Coots	Same as for ducks.	15	30
Gallinules	Closed.		
Dark geese			
Missouri River Unit	Sept. 29-Dec. 16.	2	4
including no more than:			
Canada	Sept. 29-Nov. 9.	1	2
White-fronted	Sept.29-Dec. 16.	1	2
Remainder of State	Sept. 29-Dec. 9.	2	4
including no more than:			
Canada		1	2
White-fronted		1	2
Light geese	Sept. 29-Dec. 23.	5	10
Texas			
Ducks (except masked duck):		Point system.	
High Plains Area	Oct. 30-Jan. 20.		
Remainder of State	Nov. 3-Nov. 11 & Nov. 19-Nov. 25 & Dec. 8-Jan. 20.		
Masked duck	Closed season.	-	-
Coots	Same as for ducks.	15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:			
East of U.S. Highway 81:			
Dark geese	Nov. 3-Nov. 11 & Nov. 19-Jan. 20.	2	4
including no more than:			
Canada		1	2
White-fronted		1	2
Light geese	Nov. 3-Jan. 27.	5	10
West of U.S. Highway 81:			
Geese:	Oct. 30-Jan. 20.	5	10
including no more than:			
Dark geese		2	4
Wyoming			
Ducks and coots		Point system (9).	
Zone 1 (3)	Sept. 29-Nov. 25 & Dec. 13-Jan. 6.		
Zone 2 (3)	Sept. 29-Oct. 21 & Nov. 3-Jan. 1.		
Zone 3 (3)	Sept. 29-Nov. 27 & Dec. 8-Dec. 30.		
Zone 4 (3)	Sept. 29-Oct. 21 & Nov. 3-Jan. 1.		
Gallinules	Closed.		
Geese:		2	4
Zone 1 (3)	Oct. 20-Jan. 6.		
Zone 2 (3)	Nov. 17-Jan. 13.		
Zone 3 (3)	Sept. 29-Dec. 30.		
Zone 4 (3)	Sept. 29-Dec. 30.		

Point system - Ducks, mergansers and coots. The Central Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limist is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days. The shooting (including hawking) hours are one-half hour before sunrise until sunset daily unless otherwise indicated.

The point values assigned to the species and sexes are as follows:

Central Flyway (11)

100 points	70 points	10 points	20 points
Canvasback Montana and South Dakota only: Female mallard (12)	Female mallard(12) Mexican-like duck Wood duck Redhead Hooded merganser Texas only: Mottled duck Black duck Black bellied and fulvous whistling (tree) ducks.	Pintail* (12) Blue-winged teal Green-winged teal Cinnamon teal Shoveler Gadwall Wigeon Scaup Merganser (except hooded).	Male mallard* (12) and all other species of ducks. South Dakota only: Pintail (12)

* In Montana only, the male mallard is assigned 35 points and the pintail is assigned 25 points. (12)

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(1) Colorado Goose Hunting Units: North-Central Unit: That portion of Colorado bounded on the north by the State line; on the east by U.S. Highway 85 to Interstate 76, Interstate 76 to Interstate 25, and Interstate 25 to Interstate 70; on the south by Interstate 70; and on the west by the Continental Divide. South Park Unit: Chaffee, Fremont, Lake, Park, and Teller Counties. Hunting by permit only; limits, 2 geese daily, 2 per season, geese must be tagged. San Luis Valley Unit: Alamosa, Conejos, Costilla, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Sanguache Counties east of the Continental Divide. Hunting by permit only; limits, 1 goose daily, 1 per season, goose must be tagged. See State regulations. Numerous local closures.

(2) In Kansas, the High Plains Area and the Low Plains Area are those portions of the State lying to the west and east, respectively, of U.S. 283. The following two areas are closed to the taking of dark geese (Canada and white-fronted geese) during the regular dark goose season: (a) That part of Kansas bounded by a line from the Missouri-Kansas boundary west on K-68 to its junction with US-169, then southwest on US-169 to the junction of K-7, then southeast on K-7 to the junction of K-31, then east on K-31 to the junction of US-69, then north on US-69 to the junction of K-239, then east on K-239 to the Missouri-Kansas boundary, then north on the Missouri-Kansas boundary to its junction with K-68; and (b) that part of Kansas bounded by a line from the junction of K-96 and US-77-54, then north on US-77-54 to the split of US-77-54, then north on US-77 to the junction of US-50, then east-northeast on US-50 to the junction of K-99-57, then south on K-99-57 to the split of K-99 and K-57, then east on K-57 to the junction of US-75, then sourth on US-75 to the junction of K-39, then southwest on K-39 to the junction of K-96, then west on K-96 to the junction of US-77-54.

(3) Described in the September 14, 1984, Federal Register (49 FR 36272). See State regulations for zone/area boundaries.

(4) Nebraska:

High Plains. As described in State regulations.

Zone 1: Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2: The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N-67; north through Nemaha to U.S.73-75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N-63; north and west to U.S. 77; north to N-92; west to U.S. 81; south to N-66; west to N-14; south to I-80; west to U.S. 34; west to N-10; south to the State Line; west to U.S. 283; north to N-23; west to N-47; north to U.S. 30; east to N-14; north to N-52; northwesterly to N-91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N-70 from Wheeler County to N-14; south to N-39; southeast to N-22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N-51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

(5) In Nebraska, the North Unit is comprised of Boyd, Cedar (west of U.S. 81), Keya Paha (east of U.S. 183), and Knox Counties; The East Unit is the remainder of the State east of the following highways starting at the boundary with South Dakota: U.S. 183 to U.S. 20, U.S. 20 to NE 11, NE 11 to NE 91, NE 91 to US. 183, U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to the Kansas line; the Panhandle Unit is that portion of the State bounded by the North boundaries of Garden, Morrill and Scotts Bluff Counties and NE 2 to NE 61, NE 61 to NE 23, and NE 23 to the Colorado line; the Sandhills Unit is that portion of the State bounded on the north by the State line and highways U.S. 83 and U.S. 20, on the east by NE 11, on the south by NE 91 and NE 2, and on the west by NE 27; the Central Unit is the remainder of the State.

(6) In New Mexico, the dark goose season is closed in Sandoval, Sierra, Valencia, Socorro and Bernalillo Counties. In the Central Flyway counties of Sandoval, Santa Fe, Bernalillo, Valencia and that portion of Socorro County lying north of U.S. 60 and east of Interstate 25 the light goose season shall be November 28, 1984, through February 12, 1985. In the remainder of the State in the Central Flyway the light goose season shall be November 28, 1984 through February 28, 1985.

(7) In North Dakota, goose hunting shall be from one-half hour before sunrise to 1:00 p.m. each day from the opening day through October 27 and from one-half hour before sunrise to 2:00 p.m. from October 28 through to the end of the season. The Dark Goose season is delayed until October 1 in the area west and south of the following: Starting at South Dakota border where U.S. 281 enters North Dakota, north and west on U.S. 281 to Carrington, then west and north on ND 200 to the Montana border. Numerous areas are closed to the hunting of Canada geese. Nonresident waterfowl hunters are restricted to hunting in eight specified zones and limited to 20 ducks and 12 geese per season. See State regulations for descriptions of areas, zones, and nature of special restrictions.

(8) The daily bag and possession limits specified here are in addition to any other bag and possession limits specified elsewhere.

(9) South Dakota - High Plains - as described in State regulations. South Zone: Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3207 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81. North Zone: The remainder of the Low Plains portion.

(10) In Wyoming, coots are assigned 10 points.

(11) Coots have no point value (except in Wyoming) but conventional bag limits of 15 daily and 30 in possession apply. In Wyoming the coot is assigned 10 points.

(12) In South Dakota, the female mallard is assigned 100 points and the pintail is assigned 20 points; and in Montana, the female mallard is assigned 100 points; the male mallard is assigned 35 points; and the pintail is assigned 25 points.

PACIFIC FLYWAY

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily, except as noted.

Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.

White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are for snow, including blue, and Ross' geese, either singly or in the aggregate; and seasons and limits for dark geese are for Canada and white-fronted geese, brant, and all other species of geese, either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS.

	Season Dates	Limits	
		Bag	Possession
Arizona (2)			
Ducks	Oct. 17-Jan. 17.	See footnote (1).	
Geese:	Oct. 27-Jan. 20.	6	6
Including no more than:			
Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and gallinules (singly or in the aggregate)	Same as for ducks.	25	25
Common Snipe	Same as for ducks.	8	16

Sandhill cranes (only in Game Management Units 30A, 30B, 31, and 32)	Nov. 10, 11, 15 and 16.	Only by permit; 2 cranes per season.	
California			
Ducks:			
Northeastern Zone	Oct. 13–Jan. 6.	See footnote (1)	
Colorado River Zone	Oct. 17–Jan. 17.	See footnote (1)	
Remainder of State	Oct. 20–Jan. 13.	See footnote (1)	
Geese (except cackling Canada, Aleutian Canada and brant):			
Northeastern Zone	Oct. 13–Jan. 13.	3	3
Including no more than:			
Dark (3)(4), except that the season on white-fronted geese shall be from Oct. 13–Nov. 4.		1	2
White		3	3
Colorado River Zone:	Oct. 27–Jan. 20.	6	6
Including no more than:			
Dark (but no more than 2 Canada geese)(3)		3	3
White		3	3
Southern Zone:	Oct. 20–Jan. 20.	6	6
Including no more than:			
Dark (except the open season on Canada geese shall be from Oct. 27 through Jan. 20, and Canada geese not exceed 2 in the daily bag and possession limits; but in that portion of District 22 within the Southern Zone, Canada geese may not exceed 1 in daily bag and 2 in possession)(3)		3	3
White		3	3
Balance-of-the-State Zone:	Nov. 3–Jan. 20.	3	3
Including no more than:			
Dark (3)(4):		1	1
Except that the season on Canada geese (3)(4) shall be:			
Counties of Del Norte and Humboldt	Closed.	-	-
Sacramento Valley Area (5)	Dec. 15–Jan. 20.		
San Joaquin Valley Area (6)	Nov. 3–Nov. 22.		
Except that the season on white-fronted geese shall be:	Nov. 3–Jan. 6.		
White		3	3
Cackling Canada geese and Aleutian Canada geese:	Closed.	-	-
Brant	Oct. 20–Nov. 30.	2	4
Coots and gallinules, singly or in the aggregate.	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Colorado			
Ducks (7)	Sept. 29–Oct. 19 & Nov. 10–Jan. 20.	See footnote (1)	
Geese (7):			
Brown's Park, Moffat County	Oct. 27–Dec. 9.	1	2
Delta and Montrose Counties	Nov. 17–Jan. 6.	Only by permit; 2 geese per season.	
Mesa County	Nov. 17–Jan. 6.	Only by permit; 2	4
		6 geese per season.	
Garfield County	Nov. 17–Jan. 6.	Only by permit; 2	4

Dolores, Gunnison, and Montezuma Counties	Closed.	-	-
Remainder of State in Pacific Flyway	Oct. 13-Jan. 6.	2	4
Coots (7)	Same as for ducks.	25	25
Common snipe(7)	Sept. 1-Nov. 9 & Dec. 8-Dec. 30.	8	16
Sora and Virginia rails(7)	Sept. 1-Nov. 9.	25	25
Idaho (8)			
Ducks:			
Columbia Basin counties (9)	Oct. 6-Jan. 13.	See footnote (1)	
Remainder of State	Oct. 6-Jan. 6.	See footnote (1)	
Geese:			
Goose Area 1 (10)	Oct. 6-Jan. 6.	3	6
Goose Area 2 (10)(11)	Oct. 13-Jan. 6	2	2
Goose Area 3 (10)	Oct. 27-Jan. 6.	2	2
Goose Area 4 (10)(11)	Oct. 13-Dec. 9	2	2
Goose Area 5 (10)	Oct. 13-Dec. 23.	2	2
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Montana			
Ducks(12)	Sept. 29-Dec. 30.	See footnote (1)	
Geese (12):			
East of the Continental Divide (10)	Sept. 29-Dec. 30.	6	6
Including no more than:			
Dark		3	6
White		3	6
West of the Continental Divide (12)	Sept. 29-Dec. 30.	5	6
Including no more than:			
Dark		2	2
White		3	6
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Teton and Cascade Counties	Sept. 29-Dec. 30.	Only by permit; 1 swan per season.	
Nevada			
Ducks:			
Clark County	Oct. 20-Jan. 20.	See footnote (1)	
Remainder of State	Oct. 6-Jan. 6.	See footnote (1)	
Dark geese:			
Clark County	Oct. 20-Jan. 20.	2	2
Elko County and Ruby Lake National Wildlife Refuge in White Pine County	Oct. 6-Jan. 6.	2	2
White River Valley in Nye County and Pahranagat Valley in Lincoln County	Dec. 22-Jan. 13.	1	1
Remainder of State	Oct. 20-Jan. 20.	2	2
White geese:			
Clark County	Nov. 24-Jan. 20.	3	3
Elko County, except Ruby Valley	Oct. 6-Jan. 6.	3	3
Ruby Valley in Elko and White Pine Counties, White River Valley in Nye County, and Pahranagat Valley in Lincoln County	Closed.	-	-
Remainder of State	Oct. 20-Jan. 20.	3	3
Coots and gallinules, singly or in the aggregate	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Churchill, Lyon, and Pershing Counties	Oct. 20-Jan. 6.	Only by permit; 1 swan per season.	
New Mexico			
Ducks	Oct. 6-Oct. 21 & Nov. 5-Jan. 20.	See footnote (1)	

Geese:			
North of Interstate 40	Jan. 12-Jan. 20.	2 geese per season.	
South of Interstate 40	Oct. 27-Jan. 20.	6	6
Including no more than:			
Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and gallinules (singly or in the aggregate)	Same as for ducks.	25	25
Common snipe	Sept. 8-Dec. 9.	8	16
Virginia and sora rails (singly or in the aggregate)	Sept. 8-Nov. 16.	25	25
Oregon			
Ducks:			
Entire State, except Columbia Basin counties (13)	Oct. 13-Jan. 13.	See footnote (1)	
Columbia Basin counties (13)	Oct. 13-Jan. 20.	See footnote (1)	
Geese (except cackling Canada, Aleutian Canada and brant):			
Western Oregon (3)(14)(13)	Nov. 17-Dec. 16.	1	1
Eastern Oregon, except the Columbia Basin counties and Baker, Malheur, Klamath, and Lake Counties	Oct. 13-Jan. 13.	6	6
Including no more than:			
Dark(3)		3	6
White		3	6
Columbia Basin counties (13)	Oct. 13-Jan. 20.	6	6
Including no more than:			
Dark(3)		3	6
White		3	6
Baker and Malheur Counties(3)	Oct. 13-Jan. 6.	2	2
Klamath and Lake Counties		6	6
Including no more than:			
Dark (3)	Nov. 1- Jan. 13.	3	6
White	Oct. 13-Jan. 13.	3	6
Cackling Canada geese, Aleutian Canada geese and Brant	Closed.	-	-
Coots	Same as for ducks	25	25
Common snipe	Same as for ducks	8	16
Utah			
Ducks (15)	Oct. 13-Jan. 6.	See footnote (1)	
Geese (15)(16):			
General Season:	Oct. 13-Jan. 6.	5	6
Including no more than:			
Canada geese		2	4
White geese		3	6
Special Seasons:			
Daggett County east of State Highway 44 and 260	Oct. 27-Dec. 9.		
Including no more than:			
Canada geese		1	2
Washington County	Oct. 20-Jan. 13.		
Including no more than:			
Canada geese		2	2
Coots (15)	Same as for ducks.	25	25
Common snipe (15)	Same as for ducks.	8	16
Whistling swans (15)	Oct. 13-Jan. 6.	Only by permit; 1 swan per season.	
Washington			
Ducks (17):			
Eastern Washington (18)	Oct. 13-Jan. 20.	See footnote (1)	
Western Washington (18)	Oct. 13-Jan. 13.	See footnote (1)	
Geese (except cackling Canada Aleutian Canada, and brant) (17):			
Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties (19)	Oct. 13-Jan. 20.	3	6

Island, Skagit, and Snohomish Counties	Oct. 13-Dec. 30.	3	6
Whatcom County	Nov. 3-Dec. 30.	1	2
Clark and Cowlitz Counties (3)(20)	Nov. 17-Dec. 16.	1	1
Remainder of State (3)(19)	Oct. 13-Jan. 13.	3	6
Cackling Canada geese, Aleutian Canada geese and Brant:	Closed.	-	-
Coots (17)	Same as for ducks.	25	25
Common snipe (17)	Same as for ducks.	8	16
Wyoming			
Ducks and coots, singly or in the aggregate	Sept. 29-Dec. 30.	See footnote (1)	
Canada Geese	Sept. 29-Dec. 16.	3	3
Common snipe	Sept. 22-Dec. 23.	8	16
Sora and Virginia rails, singly or in the aggregate	Sept. 22-Nov. 30.	25	25

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(1) Duck Limits. Basic daily bag and possession limits on ducks (including mergansers) in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming are 7 and 14, respectively, and in California and Utah, 5 and 10, respectively, Throughout the Pacific Flyway, except for Colorado, no more than two canvasbacks or two redheads or one of each may be taken daily nor more than four singly or in the aggregate, may be in possession. In Colorado, no more than two of any one, or two in the aggregate may be canvasback, redhead, or female mallard in the daily bag limit nor more than four of any one, or four in the aggregate, may be canvasback, redhead, or female mallard in possession. In Arizona, Montana, Nevada, Oregon, and Washington, no more than four pintails may be taken daily nor more than eight may be possessed. In Montana, no more than four mallards, only one of which may be female, may be taken daily, nor more than eight mallards, only two of which may be female, may be in possession. In Idaho, in the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone, the daily bag and possession limits, each, may not include more than two wood ducks.

(2) The Imperial, Cibola, and Havasu National Wildlife Refuges, Arizona, are open to waterfowl hunting except for posted portions. Ashurst Lake in Game Management Unit 5B is closed to all waterfowl and snipe hunting. Unit 1, Unit 27, that portion of Unit 25B lying east of Highway 273 and all of Units 3A and 3B lying east of Highways 77 and 260 are closed to the taking of Canada geese and its subspecies.

(3) The season on both cackling Canada geese and Aleutian Canada geese is closed.

(4) The dark goose limits may be expanded to 2 provided they are Canada geese, except for cackling Canada and Aleutian Canada geese for which the season is closed.

(5) The Sacramento Valley Area is bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River, then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows.

(6) The San Joaquin Valley Area is bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate 5; then southerly on Interstate 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning in Modesto.

(7) Special closures and restrictions apply to hunting ducks, coots, rails, snipe, and geese in the following areas: the Colorado River, Highline State Recreation Area, Mack Mesa Reservoir, all in Mesa County; Rifle Gap-Falls State Recreation Area, Garfield County; Steamboat Lake State Recreation Area, Routt County; Sweitzer Lake, Delta County; and Yampa River, Moffat County. Special closures and restrictions also apply to goose hunting on the Colorado River in Eagle and Grand Counties, on the Eagle River in Eagle County, on Granby Reservoir, Grand Lake, and Shadow Mountain Reservoir in

Grand County, and on the Yampa River, Routt County. Consult State regulations for description of areas and nature of closure.

(8) Waterfowl may not be taken in the Pend Oreille Waterfowl Closure, Kootenai County Waterfowl Closure-Thompson Lake, Hells Canyon Waterfowl Closure, Mormon Reservoir Waterfowl Closure, Black Canyon Reservoir-Payette River Waterfowl Closure, Ada County Waterfowl Closure, Fort Hall Indian Reservation Closure, and Hagerman Wildlife Management Area. Geese may not be hunted in the Canyon County Goose Closure, Minidoka-Cassia Goose Closure, or Hagerman Valley Goose Closure. See State regulations for descriptions of these areas.

(9) Columbia Basin counties are Adams, Bear Lake, Boise, Bonneville, Butte, Caribou, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Lemhi, Madison, Oneida, Teton, Valley, and that portion of Blackfoot Reservoir drainage lying within Bingham County.

(10) Goose Area 1 is Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties. Goose Area 3 is Blaine County lying south and east of U.S. Highway 93, and the Counties of Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls. Goose Area 4 is that portion of Fremont County within the North Fork of the Snake River drainage above the new Wendell Bridge near Ashton. Goose Area 5 is the counties of Ada, Adam, Canyon, Gem, Payette and Washington; that portion of Elmore County west of C.P. Strike Dam Road and Simco Road and west of Highway 67, between said roads; and that portion of Owhyee County West of State Highway 51 and C. J. Strke Dam Road and southwest of State Highway 78, between said roads, and State Highway 51. Goose Area 2 is the remainder of the State.

(11) The season on white geese is closed in that portion of Jefferson County lying north of State Highway 33 and east of Interstate Highway 15, and in all of Clark, Fremont, Madison, and Teton Counties.

(12) Exceptions to the general season in the following management areas (see State regulations for descriptions of areas): Shooting hours for hunting ducks and geese in the Canyon Ferry Goose Zone are from one-half hour before sunrise to 12 noon daily during Sept. 29-Nov. 11 and from one-half hour before sunrise to sunset during the remainder of the season; the goose season in the Flathead Goose Zone is Sept. 29-Nov. 25; the goose season in the Deer Lodge Goose Zone is Oct. 15-Dec. 30; the season on dark geese in the Benton Lake Goose Zone is Oct. 31-Dec. 30; the goose season is closed in the Missoula County Goose Zone; and the Canada goose season is closed in the Kleinschmidt Lake Goose Zone.

(13) Columbia Basin counties are Wasco, Sherman, Gilliam, Morrow, and Umatilla Counties. Western Oregon consists of all counties west of the summit of the Cascades excluding Klamath and Hood River Counties. Those portions of Coos and Curry Counties lying west of U.S. Highway 101, that portion of Tillamook County lying south of an east-west line passing through the most westerly point of Cape Lookout, and those portions of Douglas and Lane Counties lying west of the summit of the Coast Range are closed to all goose hunting.

(14) In Oregon, on the Sauvie Island Wildlife Management Area and on the William L. Finley, Baskett Slough, and Ankeny National Wildlife Refuges the bag and possession limits may be increased to 2 geese, only 1 of which shall be a dusky Canada goose, provided all conditions of these controlled hunts are met.

(15) Shooting hours are from 12 noon through sunset on October 13, from 8 a.m. through sunset on November 5, and from one-half hour before sunrise through senset on all other days of the seasons.

(16) Goose hunting is prohibited within the boundaries of the Desert Lake Waterfowl Management Area in Emery County, Fish Springs National Wildlife Refuge in Juab County, and Ouray National Wildlife Refuge in Uintah County.

(17) In Western Washington the shooting hours are from 8 a.m. through sunset on the opening day, and in Eastern Washington the shooting hours are from 12 noon through sunset the opening day.

(18) Eastern Washington includes all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County. Western Washington includes all areas lying to the west of Eastern Washington.

(19) Geese may be hunted only on Saturdays, Sundays, and Wednesdays, and on November 12, 22, and 23 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanagan, Spokane, and Walla Walla Counties and east of Satus Pass (U.S. Highway 97) in Klickitat County. Geese may be hunted every day during January 14-20 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties.

(20) On the Ridgefield National Wildlife Refuge, the daily bag and possession limits may be increased to 3 geese, only one of which shall be a dusky Canada goose, provided all conditions of this controlled hunt are met.

Section 20.106 is amended to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 (3 in New Mexico experimental season area) cranes, and with shooting (including hawking) hours from one-half hour before sunrise until sunset, in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive season dates are September 29 through November 25, 1984.

(b) In the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt the inclusive dates are October 27, 1984, through January 27, 1985. In the New Mexico experimental sandhill crane season hunt areas, the bag and possession limits may not exceed 3 cranes, each of which must be tagged upon taking. In Area 1 (those portions of Dona Ana, Luna, and Sierra Counties west of Interstate Highway 25, north of Interstate Highway 10, east of New Mexico Highways 26 and 27 between Deming and Hillsboro, and south of New Mexico Highway 90), and Area 2 (that portion of Luna County south of Interstate Highway 10), the inclusive season dates are October 27 through October 29, 1984; December 15 through December 17, 1984; and January 12 through January 14, 1985. Each person participating in the experimental season must obtain and have in his possession while hunting, a valid special permit issued by New Mexico.

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 13, 1984, through January 13, 1985.

(d) In Texas, in Zone A the inclusive dates are November 10, 1984, through February 10, 1985. In Zone B the inclusive dates are December 1, 1984, through February 10, 1985. In Zone C the inclusive dates are January 12, 1985, through February 10, 1985. In the remainder of the State, the season is closed. See State regulations for description of zones.

(e) In North Dakota, sandhill crane hunting shall be from one-half hour before sunrise to 1:00 p.m. each day from the opening day through October 27 and from one-half hour before sunrise to 2:00 p.m. from October 28 through the remainder of the season. In Zone 1, the inclusive season dates are September 8 through November 4, 1984. In Zone 2, the inclusive season dates are September 8 through September 28, 1984. In the remainder of the State, the season is closed. See State regulations for description of zones and prohibited means of hunting sandhill cranes.

(f) In South Dakota, the inclusive dates are September 29 through November 4, 1984.

(g) In Montana (the Central Flyway), the inclusive season dates are September 29 through November 25, 1984; except in that area south and west of I-90 and the Bighorn River, the season is closed and in Sheridan County the inclusive season dates are November 1 through November 25, 1984.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 22 through November 18, 1984.

(i) Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to an authorized law enforcement official upon request.

Pacific Flyway: In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season dates are November 10, November 11, November 15 and November 16, 1984. Hunting will be by special permit to be issued by the State. Each permittee may take 2 sandhill cranes per season.

Section 20.107 is revised as follows.

§20.107 Seasons, limits, and shooting hours for whistling swans.

Whistling swans may be taken only by State-issued permit. Permittees may take only one whistling swan per season. Successful permittees must immediately validate their harvest by that method required in State regulations. Shooting hours are from one-half hour before sunrise to sunset daily except as noted below. Seasons are:

Central Flyway: (a) In Montana, whistling swans may be hunted from September 29, 1984, through December 30, 1984.

Pacific Flyway: (a) In Montana, whistling swans may be hunted only in Teton and Cascade Counties and from September 29, 1984 through December 30, 1984;

(b) In Nevada, whistling swans may be hunted only in Churchill, Lyon and Pershing Counties and from October 20, 1984, through January 6, 1985; and

(c) In Utah, whistling swans may be hunted from October 13, 1984, through January 6, 1985. Shooting hours on the first day of the season are from noon to sunset.

Atlantic Flyway: (a) In North Carolina, whistling swans may be hunted from November 3, 1984 through January 31, 1985.

Section 20.108 Non-toxic shot zones.

* * * * *

Section 20.109 is revised as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate(1).
Possession limit	6 singly or in the aggregate(1).

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS.

Atlantic Flyway

Florida:	
Mourning and white-winged doves	Sept. 29-Jan. 13.
Woodcock	Oct.27-Feb. 10.
Snipe	Nov. 3-Feb. 17.
Rails and gallinules	Sept.1-Dec. 13.
Ducks, merganser, and coots	Oct.13-Dec. 2 & Dec. 8-Jan. 13
Maryland:	
Mourning doves	Sept.1-Oct. 20 & Nov. 15-Jan. 10.
Rails and gallinules	Sept. 1-Dec. 16.
Woodcock	Oct. 15-Dec. 2 & Dec. 5-Jan. 31.
Snipe	Oct. 1-Jan. 15.
Ducks, coots, and mergansers	Oct. 5-Jan. 19.
Canada geese	
Eastern Shore	Oct.17-Jan. 31.
Remainder of State	Oct. 6-Jan. 19.
Snow geese	Oct. 17-Jan. 31.
Brant	Oct. 5-Jan. 19.
Massachusetts:	
All permitted ducks, geese, and coots	Oct. 12-Jan. 15.
Pennsylvania:	
Mourning doves	Sept. 1-Dec. 15.
Ducks, mergansers, and coots	Oct. 1-Jan. 7.
Virginia:	
Mourning doves	Sept. 24-Dec. 3 & Dec. 20-Jan. 4.
Rails	Sept. 24-Dec. 3 & Dec. 20-Jan. 4.
Woodcock	Oct. 17-Jan. 31.
Snipe	Oct. 17-Jan. 31.
Ducks (except scaup and sea ducks) and brant	Oct. 4-Nov. 10 & Nov. 12-Jan. 18.
All geese, scaup and sea ducks	Nov. 3-Jan. 31.

Mississippi Flyway

Illinois:	
Mourning doves, rails, and woodcock	Sept. 1-Dec. 16.
Snipe	Sept. 10-Dec. 25.
Teal	Sept. 8-Sept. 16.
Ducks, mergansers, and coots	Oct. 1-Jan. 6.
Indiana:	
Ducks, mergansers, and coots	Oct. 1-Oct. 7.

Iowa:	
Ducks, coots, rails, snipe, woodcock and mergansers	Sept. 22-Jan. 6.
Geese	Sept. 29-Jan. 6.
Kentucky:	
Ducks, mergansers, geese, coots, rails and gallinules	Nov. 1-Jan. 20.
Michigan:	
Woodcock, rails, and snipe	Sept. 1-Dec. 16.
Ducks, mergansers, geese, gallinules and coots	Sept. 29-Jan. 13.
Minnesota:	
Woodcock, rails, and snipe	Sept.1-Dec. 16.
Ducks, mergansers, geese, coots and gallinules	Sept. 29-Jan. 13.
Mississippi:	
Mourning doves	Sept. 29-Oct. 14 & Nov. 26-Dec. 16.
Ducks, mergansers, and coots	Nov. 3-Dec. 14.
Missouri:	
Mourning doves	Sept.1-Dec. 16.
Ducks, mergansers, coots, and geese	Oct. 20-Oct. 24 & Nov. 1-Jan. 20.
Wisconsin:	
Rails, woodcock, snipe, and gallinules	Sept. 1-Dec. 16.
Ducks, mergansers, and coots	Oct. 1-Jan. 15.
Central Flyway	
Colorado:	
Ducks, mergansers, coots, and geese	Oct. 15-Oct. 26.
Montana (1):	
All permitted migratory birds	Sept. 29-Jan. 13.
New Mexico (2):	
Mourning doves, white-winged doves, and band-tailed pigeons	Sept. 1-Nov. 6 & Nov. 17-Dec. 26.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties	Oct. 13-Jan. 27.
Ducks, mergansers, coots, and gallinules	Oct. 15-Jan. 20.
Canada and white-fronted geese	Oct. 15-Jan. 20.
Snow, blue, and Ross' geese	Nov. 14-Feb. 28.
Oklahoma:	
Ducks, mergansers, and coots	Oct. 15-Jan. 18.
Texas:	
Mourning doves	Sept. 1-Nov. 30 & Jan. 5-Jan. 20.
Rails and gallinules	Sept. 1-Dec. 16.
White-winged doves	Sept. 1-Nov. 30 & Jan. 5.-Jan. 20.
Ducks, geese, and coots	Oct. 20-Jan. 20.
Sandhill cranes (Zones A, B, and C)	Nov. 1-Feb. 12.
Woodcock	Nov. 1-Feb. 15.
Snipe	Nov. 1-Feb. 15.
Wyoming (1):	
Ducks, merganser, geese, and coots	Sept. 29-Dec. 30.
Pacific Flyway	
Colorado:	
Ducks, mergansers, coots, and geese	Oct. 20-Nov. 2.
Idaho:	
Mourning doves only	Sept. 1.-Oct. 30.
Ducks, merganser, coots, and snipe	Oct. 1.-Jan. 15.
Geese (1)	Concurrent with firearm seasons.
Montana (1):	
All permited migratory birds	Sept. 29-Jan. 13.
New Mexico (2):	
Mourning doves, white-winged doves, and band-tailed pigeons	Sept. 1-Nov. 6 & Nov. 17-Dec. 26.
Ducks, coots, and gallinules	Oct. 15-Jan. 20.
Geese	Oct. 6-Jan. 20.

Oregon:	
Mourning doves	Sept. 1-Dec. 16.
Snipe	Oct. 1-Jan. 15.
Ducks, geese, and coots	Oct. 1-Jan. 15.
Utah:	
Mourning doves	Sept. 1-Sept. 30.
Ducks, coots, mergansers and snipe	Sept. 29-Jan. 13.
Washington:	
Ducks, geese, and coots:	
Western Zone	Oct. 6-Oct. 12 & Jan. 14-Jan. 20.
Eastern Zone	Oct. 6-Oct. 12.
Wyoming (1):	
Mourning doves	Sept. 1-Oct. 15.
Rails and snipe	Sept. 22-Nov. 30.
Ducks, coots and geese	Sept. 29-Dec. 30.

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(1) In Idaho, the aggregate daily bag and possession limits may not include more than 1 and 2 geese, respectively. In Montana, the aggregate daily bag and possession limits of all species are 2 and 6, respectively. In Wyoming, the aggregate daily bag and possession limtis of all species are 2.

(2) Daily bag and possession limits are for permitted species of migratory birds and resident game, either singly or in the aggregate.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

[FR Doc. 84-25340 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 267

[Docket No. 40556-4056]

United States Standards for Grades of North American Freshwater Catfish and Products Made Therefrom; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule with request for comments; correction.

SUMMARY: This document corrects Latin terminology and an entry in Table 1 that appeared in an interim rule establishing grade standards for North American catfish and products made therefrom that was published on July 5, 1984, 49 FR 27514.

FOR FURTHER INFORMATION CONTACT: Rita A. Creitz (Office of Utilization Research), 202-634-7458.

Dated: September 19, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

The following corrections are made in FR Doc. 84-17748 appearing on 27514 in the issue of July 5, 1984:

1. On page 27515, § 267.101(a)(3) is corrected to read:

§ 267.101 Description of the product.

(a) * * *

(3) Blue catfish (*Ictalurus furcatus*)

* * * * *

§ 267.107 [Amended]

2. On page 27517, appearing at the end of Sec. 267.107, Table 1, entry 3 is corrected to read as follows:

TABLE 1.—SCHEDULE OF POINT DEDUCTIONS OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

[Per sample unit unless otherwise indicated]

Scored factors	Degree of quality variation	Deduct
* * *	* *	
3 Uniformity: Deviation above or below declared weight of portion:		
Weight of portion:	Moderate:	
0.75 to 4.14 oz	over ⅛ but not over ¼ oz.	
4.17 to 11.20 oz	over ¼ but not over ½ oz.	5
11.21 to 17.30 oz	over ½ but not over ¾ oz.	
	Excessive:	
0.75 to 4.16 oz	over ¼ oz.	
4.17 to 11.20 oz	over ½ oz.	10
11.21 to 17.30 oz	over ¾ oz.	

* * * * *

(16 U.S.C. 742e; 7 U.S.C. 1622, 1624)

[FR Doc. 84-25239 Filed 9-21-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 186
Monday, September 24, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 989

[Docket No. F&V AO-198 A-12]

Raisins Produced From Grapes Grown in California; Hearing on Proposed Amendment of the Marketing Agreement and Order, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed amendment amd text of proposal.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed amendment of the marketing agreement and Order No. 989 (7 CFR Part 989) covering raisins produced from grapes grown in California. The principle issues to be considered would (1) add authority for a raisin diversion program; and (2) increase the desirable carryout for Natural (sun-dried) Seedless raisins. The diversion program would give the industry a means of bringing supplies more closely in line with demand. The increase in the desirable carryout would make more natural seedless raisins from the prior year's production available for early season shipment until new crop raisins are ready for processing and shipment. The increased desirable carryout is intended to assist the industry increase raisin shipments.

DATE: The hearing will begin at 9:00 a.m., Tuesday, October 2, 1984.

ADDRESS: The hearing will be held in Assembly Room No. 1036, State of California Building, 2550 Mariposa Street, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Divisions, AMS, USDA, Washington, D.C. 20250. Telephone: (202) 447-5053.

SUPPLEMENTARY INFORMATION: This amendment was proposed by the Raisin Adminstrative Committee established under the marketing agreement and order program which covers raisins produced from grapes grown in California. The Department of Agriculture proposes that it be authorized to make any necessary conforming changes which may result from the proceeding.

A pre-notice press release was issued September 6, 1984, inviting comments on the Committee's proposal until September 14. One comment was received from the Committee requesting a change in the definition of the term "producer" in § 989.11. That proposed change has been included in the Committee's proposal.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the appliable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendment of the marketing agreement and order; (2) determining whether there is a need for amendent to the marketing agreement and order; and (3) determining whether the proposed amendment or an appropriate modification of it will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Marketing agreement and order, Grapes, Raisins, and California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Proposed by the Raisin Administrative Committee

Proposal No. 1

1. Section 989.11 is revised to read as follows:

§ 989.11 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artifical means until they become raisins: *Provided*, That a "producer" shall include any person whose production unit has qualified for diversion under a diversion program announced by by Committee.

Proposal No. 2

2. Section 989.54(a) is amended by reusing the fifth sentence to read as follows:

§ 989.54 Marketing policy.

(a) *Trade demand.* * * * The desirable carryout shall be increased from 45,000 to 60,000 tons for National (sun-dried) Seedless raisins at a rate of 5,000 tons per year for three crop years following the effective date of this amended subpart. * * *

Proposal No. 3

3. Section 989.54(b) is amended by adding a proviso at the end of the first sentence to read as follows:

§ 989.54 Marketing policy

* * * * *

(b) * * *: *Provided*, That such production estimate shall include by varietal type the total tonnage of raisins handlers are expected to acquire from producers and the total tonnage of raisins diverted under a raisin diversion program.

Proposal No. 4

4. A new § 989.56 is added to the order to read as follows:

§ 989.56 Raisin diversion program.

(a) *Announcement of program.* On or before November 30 of each crop year, the Committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable inventory and other matters relating to the quantity of raisins of all varietal types. When the Committee determines that raisins exist in the reserve pool in excess of projected market demand for any varietal type for which an excess tonage is computed, the Committee may determine and announce the amount of such tonnage eligible for diversion during the subsequent crop year. At the same time, the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage.

(b) *Voluntary diversion.* No producer shall be required to participate in any raisin diversion program.

(c) *Issuance of diversion certificates.* After the Committee announces a raisin diversion program, producers may divert grapes of their own production and receive from the Committee diversion certificates in accordance with applicable rules and regulations. Diversion certificates may not be transferred or sold except in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion.

(d) *Redemption of diversion certificates.* Only handlers may redeem diversion certificates for reserve pool raisins. To redeem a certificate a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the harvest cost it has established. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is canceled.

(e) *Implementation diversion program.* The Committee shall establish, with the approval of the Secretary, such rules and regulations as may be necessary for the implementation and operation of a raisin diversion program.

Proposed by the Department of Agriculture

Proposal No. 5

5. The Secretary of Agriculture shall be authorized to make such changes as may be necessary to make the entire marketing agreement and order conform with any amendment thereto that may result from this hearing.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: September 20, 1984.

William T. Manley,

Acting Administrator.

[FR Doc. 84–25356 Filed 9–20–84 2:14 pm]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 40802–4102]

Foreign Trade Statistics; Amendments to the Foreign Trade Statistics Regulations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend the Foreign Trade Statistics Regulations to eliminate the requirement for filing Shipper's Export Declarations (SEDs) for shipments from the United States and Puerto Rico to the Northern Mariana Islands and to reflect the transfer of the Panama Canal to the Republic of Panama.

DATE: Comments should be submitted on or before November 23, 1984.

ADDRESS: Send comments to the Director, Bureau of the Census, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: Barry Cohen, Chief, Foreign Trade Division, Bureau of the Census, (301) 763–5342.

SUPPLEMENTARY INFORMATION: On January 9, 1978 the Northern Mariana Islands entered into a political union with the United States, *The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America;*

Public Law 94–241, 48 U.S.C. 1681 (hereinafter referred to as the "Covenant"). Section 502(a) of the Covenant states that Federal laws and regulations applicable to Guam and the several states should apply to the Northern Mariana Islands.

On June 1, 1968 the Government of Guam began collecting statistical documentation on merchandise imported into Guam in preparation for implementing its program for compiling Guam's trade statistics. Therefore, effective March 21, 1970, it was decided to eliminate the requirement for filing SEDs for shipments to Guam. At the same time SED filing requirements for shipments to certain "United States Possessions" (except for shipments to American Samoa and the Virgin Islands of the United States) were eliminated. On September 28, 1976 SED filing requirements for shipments to American Samoa also were eliminated.

Section 370.4 of the Export Administration Regulations was amended in October 1979 exempting shipments to the Trust Territory of the Pacific Islands (that is, the Caroline, Marshall, and Northern Mariana Islands) from licensing requirements.

Section 603(c) of the Covenant provides that imports from the Northern Mariana Islands shall be subject to the same treatment as imports from Guam; therefore, Customs Service Decision 83–51 of February 22, 1983, accords to imports into the United States from the Northern Mariana Islands duty-free treatment for certain merchandise as set forth in the General Headnotes and Rules for Interpretation of the Tariff Schedules of the United States.

Accordingly, this proposed amendment would not be at variance with the Covenant or procedures of other agencies, but provides for consistency in the reporting of both import and export trade data of the Northern Mariana Islands.

On October 1, 1979 the United States transferred jurisdiction over the Panama Canal Zone to the Republic of Panama. To reflect this transfer, which incorporates the Canal Zone with the Republic of Panama, the Foreign Trade Statistics Regulations (FTSR) are amended so that all requirements for SEDs to foreign countries apply, without specifying, to the Republic of Panama. Previously, shipments from the United States to the Panama Canal Zone Government and Panama Canal Company for their exclusive use were exempt from SED filing requirements because the Canal Zone was under the sole jurisdiction of the United States Government.

These proposed amendments do not constitute a major role as defined in Executive Order 12291. Pursuant to the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce certified to the Small Business Administration that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. These proposed amendments to the FTSR impose no additional reporting burden on the public because SEDs have always been required for shipments to the Republic of Panama, therefore the transfer of the Canal Zone to the Republic of Panama does not increase the reporting burden. In addition, the elimination of SEDs for shipments to the

Northern Marina Islands reduces the reporting burden. The collection of this information has been approved by the Office of Management and Budget under Control numbers 0607–0001, 0607–0018, 0607–0150, and 0607–0152.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

PART 30—[AMENDED]

To effect these changes, it is proposed to amend the Foreign Trade Statistics Regulations (15 CFR Part 30) as set forth below:

Section 30.1 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

(a) * * *

(1) To foreign countries or areas including Trust Territories under U.S. administration, with the exception of the Northern Mariana Islands, and to Foreign Trade Zones located in foreign countries or areas from any of the following: * * *

* * * * *

(Title 13, United States Code, sec. 301–307; and Title 5, United States Code, sec. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765)

Dated: May 8, 1984.

John G. Keane,

Director, Bureau of the Census.

Dated: July 2, 1984.

I Concur.

Edward T. Stevenson,

Acting Assistant Secretary, Department of the Treasury.

[FR Doc. 84–25073 Filed 9–21–84; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Permanent State Regulatory Program of Colorado

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Colorado (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On August 10, 1984, the State of Colorado Department of Natural Resources, Mined Land Reclamation Division, requested that the time allotted for the development and implementation of a blaster certification program be extended for an additional six months. The current deadline is September 4, 1984. On February 6, 1984, Colorado had requested a six-month extension of time for the development of a blaster certification program. That extention of time has not been adequate for the State to develop and adopt a blaster certification program.

DATE: Comments must be received by October 24, 1984 at the address below, no later than 5:00 p.m.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Bob Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Colorado's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On February 6, 1984, Colorado advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an additonal six months to develop and adopt a blaster certification program. On April 30, 1984, the Director granted the State's request and the deadline was set for September 4, 1984 (49 FR 18296).

The Director of the Colorado Department of Natural Resources, Mined Land Reclamation Divison, the regulatory authority for Colorado's program, advised OSM that the State would require the additional time in order to work out an agreement with another State agency that would handle the blaster certification program. He also stated the Colorado would like to promulgate requlations governing a blaster training program concurrently with the promulgation of other modifications to the program which the State intends to make as a result of modifications in the Federal regulations under SMCRA. On August 10, 1984, the State requested another extension for an additional six months. The State believes that an additional six months will be necessary to allow them to develop an adequate program.

OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 or Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory reviewed by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: September 18, 1984.

William B. Schmidt,

Acting Director, Office of Surface Mining.

[FR Doc. 84–25279 Filed 9–21–84; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CDG11–84–05]

Special Anchorage Areas; Dangling Rope Canyon and Hite in Lake Powell, UT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to change the special anchorage area in Forbidding Canyon, Utah, to Dangling Rope Canyon, Utah, and establish a new special anchorage area in Hite, Utah. These actions are being taken to conform the anchorages to existing marinas and protect the safety of persons and property involved.

DATES: Comments must be received on or before November 8, 1984.

ADDRESSES: Comments should be mailed to Commander(mps), Eleventh Coast Guard District, Union Bank Building, Long Beach, CA 90822. The comments will be available for inspection and copying at Marine Safety Division, Commander Eleventh Coast Guard District, Room 709, 400 Oceangate, Long Beach, EC 90822. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Louis S. Stanton, Marine Safety Division, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone Number: (213) 590–2301.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CDG11–84–05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiraton of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant L. S. Stanton, project officer, and Lieutenant C. M. McNally, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The proposed anchorage regulations are submitted at the request of the National Park Service, Glen Canyon National Recreation Area, Page, Arizona due to the relocation of the marina from Forbidding Canyon to Dangling Rope Canyon at Lake Powell. The Hite anchorage regulations are submitted to increase safety at the previously established Hite Marina.

Economic Assessment and Certification

This proposed regulation is considered to be non-major uder Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minmal that a full regulatory evaluation is unnecessary. Neither the relocating of the Forbidding Canyon anchorage to Dangling Rope Canyon nor establishing an anchorage at Hite will adversely affect any known commercial enterprise. Each measure is designed to make the location of the anchorage in question conform to the actual location of an existing marina.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend § 110.127a of Title 33, Code of Federal Regulations as follows:

§ 110.127a [Amended]

1. By revising paragraph (d) to read as follows:

(d) *Dangling Rope Canyon, Utah.* That portion of Dangling Rope Canyon, Lake Powell, enclosed by the shoreline and a line connecting the following points, excluding a 200-foot-wide fairway, extending southerly from the marina, as established by the Superintendent, Glen Canyon National Recreation Area:

Latitude	Longitude
"a" 37 °06′48″ N	111 °06′00″ W.
"b" 37 °07′15″ N	111 °05′03″ W.
"c" 37 °07′10″ N	111 °04′49″ W.
"d" 37 °06′06″ N	111 °04′00″ W.
"e" 37 °07′30″ N	111 °04′30″ W.
"f" 37 °07′20″ N	111 °04′15″ W.

2. By adding paragraph (f) to read as follows:

§ 110.127a [Amended]

(f) Hite, Utah. That portion of Lake Powell enclosed by the shore and by lines connecting the following two sets of points, excluding a 200-foot-wide fairway extending westerly from the launching ramp on the far shore, as established by the Superintendent, Glen Canyon National Recreation area:

Latitude	Longitude
East Shore	
"a" 37 °51′40″ N	110 °23′45″ W.
"b" 37 °51′40″ N	110 °24′05″ W.
"c" 37 °52′30″ N	110 °24′00″ W.
"d" 37 °52′30″ N	110 °23′35″ W.
North Wash	
"a" 37 °52′00″ N	110 °24′45″ W.
"b" 37 °52′40″ N	110 °24′45″ W.

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g))

Dated: September 19, 1984.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast District.

[FR Doc. 84–25310 Filed 9–21–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action NE 1410; A–7–FRL 2677–5]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On October 6, 1983, the State of Nebraska submitted a State Implementation Plan (SIP) revision comprised of amendments to various Nebraska Air Pollution Control Rules and Regulations. Supplementary information was received from the State on March 5 and March 29, 1984. The purpose of today's notice is to discuss the amendments and invite public comments on EPA's proposed action.

DATES: Comments must be received on or before October 24, 1984.

ADDRESSES: Comments should be addressed to Mary C. Carter, Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the State submission are available for inspection during normal business hours at the above address and at the following location: Nebraska Department of Environmental Control, Air Pollution Control Division, Box 94877, Statehouse Station, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (816) 374-3791, FTS 758-3791.

SUPPLEMENTARY INFORMATION: On May 17, 1983, the Nebraska Department of Environmental Control Submitted draft amendments to the Nebraska Air Pollution Control Rules and Regulations for review. EPA responded with comments on the proposed amendments on June 10, 1983. Some changes to the amendments resulted from EPA's comments, although all of EPA's comments were not addressed by the State. On June 17, 1983, the Nebraska Environmental Control Council conducted a public hearing and subsequently adopted the amendments to the regulations. These amendments were submitted to EPA as a SIP revision on October 6, 1983. Supplementary information was received from the State on March 5 and March 29, 1984.

The affected Chapters of the Nebraska Air Pollution Control Rules and Regulations are as follows:

Chapter 1—Definitions
Chapter 4—Reporting and Operating Permits for Existing Sources; When Required
Chapter 5—New, Modified, and Reconstructed Sources; Standards of Performance, Application for Permit, When Required
Chapter 10—Incinerators; Emission Standards
Chapter 12—Sulfur Compound Emissions; Emission Standards
Chapter 14—Open Fires, Prohibited; Exceptions
Chapter 20—Emission Sources; Testing; Monitoring

Revisions to Chapters 1, 4, 5 and 20 delete the definitions and review requirements for complex sources of air pollution. The state reports that the review requirements are ineffective and unnecessary in that only two applications have been reviewed since 1974, both of which were for new highway construction.

A complex or indirect source is a facility which attracts or may attract mobile sources of pollution. Section 110(a)(5)(A) of the Clean Air Act provides that a state may include an indirect source review program in its SIP, but that the Administrator may not require such program as a condition of approval of the SIP. Section 110(a)(5)(A)(iii) provides that a state may revise its approved SIP to suspend or revoke an indirect source review program included in it, provided that the SIP meets all the substantive and procedural requirements of section 110, including the requirement that the plan demonstrate attainment and maintenance of the primary National Ambient Air Quality Standards (NAAQS). The submission from Nebraska does not include such a demonstration. Additionally, EPA has determined that the state must prepare and submit plan revisions for attainment and maintenance of the carbon monoxide (CO) standard in Lincoln and Omaha, which are currently designated as nonattainment for that pollutant. Until the state determines the control measures that will be necessary to attain and maintain the CO standard in these two areas and until the state demonstrates that the indirect source review program is not a necessary element of the control strategy to attain the standards in these two areas and to maintain the standards statewide, EPA cannot approve the revocation of the state's indirect source review program.

Proposed action: EPA proposes to retain the state's complex or indirect source review program as part of the approved SIP.

The revision to Chapter 14 allows the Nebraska Game Commission, the United States Forest Service, and the University of Nebraska to conduct open burning for the purposes of plant, wildlife, and parks management without permit. The local control agencies of Lincoln/Lancaster County and the City of Omaha will still require permits for burning on park or University property within their jurisdiction. Open burning by these three agencies does not take place in particulate nonattainment areas. Prescribed burning is conducted on state and federally owned park land which is usually remote from population centers. There were twenty applications for burning in wildlife and park areas in 1983. Permits were issued in each case. The state has reported that the elimination of the permit requirement for open burning by these agencies will not have an impact on maintenance of air quality. Based on the information provided by the state, EPA agrees with the state's conclusion.

The remainder of the revisions included in the submission are of a clerical nature or delete obsolete provisions. The revision to Chapter 10 deletes the requirement that incinerator emission compliance test results be reported on forms (now obsolete) that were, in the past, provided by the state agency. The state reports that the standard test report format adequately provides the information required.

The revision to Chapter 12 deletes the standard and test method for hydrogen sulfide (H_2S). No national ambient air quality standards have been issued for H_2S.

The other revision to Chapter 20 is non-regulatory in that it changes a reference from the **Federal Register** to the Code of Federal Regulations.

Proposed action: EPA proposes to accept the revisions to Chapter 10, 12, and 14 and the non-regulatory revision to Chapter 20, as revisions to the approved SIP.

EPA is soliciting comments on the state's submission, and on the actions proposed in this documemt. The Administrator will consider comments received from the public in deciding to approve or disapprove this submission.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106.

Pursuant to the provisions of 5 U.S.C. 605(b), the Regional Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities because it does not create any new requirements which are not currently part of the state regulations or the approved SIP. (See 46 FR 8709.)

This action is issued under the authority of Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: June 28, 1984.

Morris Kay,

Regional Administrator.

[FR Doc. 84-25222 Filed 9-21-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-9-FRL-2677-4]

San Diego Air Quality Air Pollution Control District; Air Pollution Control Regulations, State of California

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The San Diego County Air Pollution Control District (SDAPCD) adopted revisions to its permitting regulations on November 25, 1981, and January 19, 1983. Those amended regulations constitute Regulation II, Rules 20.1, 20.2, 20.3, 20.4, and 20.6, which contain provisions comparable to EPA's requirements for New Source Review (NSR) and regulate the construction and operation of new and modified major sources of nonattainment pollutants.

The SDAPCD adopted these revisions to satisfy conditions on the approval of a previous version of Regulation II. The regulations were submitted to EPA as revisions to the State Implementation Plan on March 1, 1982, August 6, 1982, and March 11, 1983. In this notice EPA is proposing to approve the regulations, as well as a San Diego APCD Board Resolution adopted on January 10, 1984, and submitted as a SIP revision on February 27, 1984.

DATES: Comments may be submitted up to October 24, 1984.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, Air Operations Branch, New Source Section, Environmental Protection Agency Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the revisions and EPA's Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address and at the following locations:

California State Air Resources Board, 1102 "Q" Street Sacramento, CA 95812

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123

FOR FURTHER INFORMATION CONTACT: Richard Grow, New Source Section, Air Operations Branch, Air Management Division, EPA, Region 9, (415) 974-8223, (FTS) 454-8223.

SUPPLEMENTARY INFORMATION:

Background

Part D of the Clean Air Act (Sections 172 and 173) requires that States incorporate in their State Implementation Plans (SIPs) an acceptable permitting program for the pre-construction review of new or modified major stationary sources in nonattainment areas. EPA's requirements are contained at 40 CFR 51.18, as amended on May 13, 1980, August 7, 1980, and June 25, 1982.

On April 14, 1981 (46 FR 21749) EPA conditionally approved Regulation II, Rules 20.1-20.6. The approval was made contingent on revision of the NSR rules to conform to EPA's regulations as amended on August 7, 1980 (40 CFR 51.18).

Rules 20.1, 20.2, 20.3, 20.4, and 20.6, as revised, are intended to satisfy the condition. These revisions to Regulation II substantially alter the implementation of new source review in the San Diego County Air Pollution Control District.

The San Diego Air basin is designated nonattainment by the EPA for ozone, carbon monoxide (CO) and total suspended particulates (TSP). It is designated attainment for sulfur dioxide (SO_2) and nitrogen dioxide (NO_2).

NSR—Part D of the Clean Air Act (Sections 171 to 173) and 40 CFR 51.18 define the requirements for NSR programs, which apply to nonattainment pollutants. The SDAPCD currently administers the NSR programs under its Regulation II. The most important requirements are that local NSR rules and programs require that applicants for major new or modified sources:

(a) Meet the Lowest Achievable Emission Rate (LAER),

(b) Provide reductions in emissions at least equal to the increased emissions, sufficient to provide for reasonable further progress (RFP), and

(c) Certify that all major source they own in the same state comply with all applicable emission limitations and standards.

Description of Regulations

Regulation II of the San Diego County Air Pollution Control District's Rules and Regulations includes Rules 10-25, and governs the issuance of permits for construction and operation of air pollution sources. Rules 20.1-20.6 regulate new sources review.

In response to the EPA's requirements, the District adopted revisions to Regulation II, Rules 20.1, 20.2, 20.3, 20.4 and 20.6 on November 25, 1981 and January 19, 1983. These revisions were submitted to the EPA on March 1 and August 6, 1982, and March 11, 1983. The changes adopted on those dates substantially revise the previously adopted version of Regulation II. Finally, on January 10, 1984, the SDAPCD adopted a resolution which was submitted to the EPA as a SIP revision on February 27, 1984. The Resolution further addresses EPA's NSR requirements as discussed below.

In an attempt to incorporate emission banking into its permitting activities, the District on February 16, 1983 adopted further revisions to Rule 18 (Applications), 20.1 (Definitions, Offsets), and added new Rules 20.8 (Special Offset Requirements), 26.0-26.10 (Banking), and Rule 27 (EPA Review) to its local regulations. However, in response to EPA's position that implementation of the banking rules would be seen as substantively inconsistent with EPA's regulations pertaining to both banking and new source review, the District Air Pollution Control Officer committed to the EPA, in a letter dated July 22, 1983, to conform his permitting activities to avoid this serious deficiency until the problem can be resolved. These rules have not been submitted to EPA. On January 10, 1984, the San Diego Air Pollution Control Board adopted a resolution committing the District to refrain from implementing the banking rules inconsistent with EPA's regulations, specifically with regard to emissions reduction credits for shutdowns.

EPA's evaluation of the regulations considers the acceptability of the District's NSR rules and the resolution described above, and including other rules reference within the regulations.

Evaluation

EPA has evaluated the NSR rules listed above (Rules 20.1, 20.2, 20.3, 20.4 and 20.6, adopted on November 25, 1981 and January 19, 1983) to determine whether they satisfy all the criteria for an NSR permitting program. EPA believes that, with the exception of the items described below, the SDAPCD's Rules satisfy EPA's requirements, and significantly strengthen the existing NSR regulations. The SDAPCD rules will: (1) Require pre-construction review of the sources which would be subject under the federal guidelines, and (2) require application of LAER and offsets in a manner consistent with EPA's NSR requirements (40 CFR 51.18). The SDAPCD regulations also contain adequate guidelines and procedures for the administration and enforcement of the NSR program.

EPA review of the rules did reveal one significant potential problem and several minor deviations from EPA requirements. In most instances the District has indicated its intent to implement its rules consitent with EPA requirements. A full discussion of the minor deviations is included in the Technical Support Document (TSD) for this proposal.

The most serious problem is the potential requirement, under State law but not under the District rule, that the District issue New Source Review permits for cogeneration or resource recovery sources, regardless of whether they have met the offset requirement. The District rule proposed for inclusion in the SIP today requires that the District deny the application for such a permit, and thus there is a potential conflict between the state and federal requirements but not between federal and local regulations. This Notice proposes approval of the District provisions since they impose the federal requirement for denial of such permits. However, if the District felt obligated, under State law, to issue a local NSR permit to a cogeneration or resource recovery project such issuance would be inconsistent with federal requirements, would be seen as failure to implement the applicable SIP, and might also result in issuance of EPA orders prohibiting construction of these sources unless a sufficient growth allowance existed in the approved SIP. Similarly, any banked credits under Rule 20.1(c)(7) could not be used in place of full offsets unless the credits were included in an approved growth allowance.

The District's submitted definition of source, Rule 20.1(a)(8) and, of LAER Rule 20.1(a)(3), are not different from the presently conditionally approved definitions in the SIP, and correspond to EPA's plantwide definition, as required under EPA's source definition promulgation of October 14, 1981, and to EPA's LAER requirement. EPA will take no action on the source and LAER definitions and will retain existing provisions in the SIP and extend the condition of the previous conditional approval regarding source definition pending the outcome of continuing court proceedings (*NRDC* v. *EPA)* on source definition.

Several of the relatively minor issues of NSR implementation are resolved by a letter from the Air Pollution Control Officer dated February 6, 1984, which confirms District practices. The Technical Support Document also discusses a minor deficiency with regard to offsets for nonreactive organic gases.

Another serious deficiency in the proposed rules which might result in a disapproval is in the area of exemptions. Any of the exemptions which are not remedied by final rulemaking should be disapproved, including those exemptions currently included in the applicable SIP which were conditionally approved in 1981.

EPA has also reviewed the banking rules adopted by the District on February 16, 1983. These revisions, while not yet formally submitted to the EPA as a SIP revision, reflect a serious effort at development of a sound emissions banking system. The rules, however, include deficiencies which are substantial, and could undermine the entire banking program and basic new source review program, as well as casting some cloud over the integrity of the nonattainment area plan (NAP) attainment strategy. The most serious deficiency is the failure of the rules to restrict the crediting and use of emissions reductions from source shutdowns and curtailments as required under 40 CFR 51.18(j)(3)(ii)(c). Another serious problem with the District's management of shutdowns is the provision (at Rules 20.8 and 26.8) which allows re-starting of sources whose termination of operation has been presumed, as an offset credit, for the permitting of a new or modified source. EPA's regulations require that such offsets be permanent, and further that such re-starting of a source be treated as new construction and subject to all NSR requirements.

San Diego's previously approved NSR rules (46 FR 21749, April 14, 1981) also included brief banking provisions, which were approved on the condition that they be brought into accordance with EPA's Interpretative Ruling. The District's November 25, 1981, rule revisions did modify Rules 20.1(c) (2) and (6) to address EPA's requirements. However, EPA subsequently published its proposed Emissions Trading Policy Statement (ETPS) on April 7, 1982 (47 FR 15076) which further developed the banking requirements. In the near future EPA expects to publish the final ETPS, and also anticipates that the District will be submitting more comprehensive banking rules for inclusion in the SIP. For all of these reasons, EPA is taking no action on revised rules (20.1(c) (2) and (6)), as submitted on March 1 and August 6, 1982. These rules would have superceded similar rules in the currently approved SIP, which will be retained. EPA's condition that the banking rules be brought into accordance with federal requirements will be extended, and any use of banked credits of nonattainment pollutants prior to final approval of the banking provisions for inclusion in the SIP will be seen as inconsistent with the Clean Air Act.

District rules lack health and welfare equivalence provisions for emission reduction credits and do not assure federal enforceability of netting credits. The federal requirement was the subject of an EPA proposal on August 25, 1983 (48 FR 38792). Upon final rulemaking on the August 25 proposal, District rules must be brought into conformity with health and welfare and federal enforceability requirements within one year. The District must commit to implementing these provisions in the interim.

Finally, since the District's February, 1983 adoption of banking rules has already resulted in the deletion from local regulations of Rules 20.1 (c) (2) and (6), and since it was these sections of the rules which had previously constrained the crediting and use of shutdowns and curtailments, the District resolution of January 10, 1984, which prohibits any shutdown credits inconsistent with the requirements of 40 CFR 51.18(j), must also be included in the SIP.

The SDAPCD regulations described above are discussed in detail in EPA's Technical Support Document, which provides the basis for today's proposal (available at the locations listed in the **ADDRESSES** section of this notice).

EPA intends to consider the San Diego NSR rule, as it was amended on January 19, 1983, to be the same rule as the rule further amended on February 16, 1983, except for the February addition of the bank and the removal of the prior shutdown restriction. Therefore, EPA intends to consider federally enforceable any valid permit issued by San Diego under the February NSR rule which does not use banked or prior shutdown emission reduction credits. A valid permit is any permit correctly issued in accordance with the San Diego regulations. As discussed above, the District Board committed on January 10, 1984 not to use those portions of the February amendments which allow "emission reductions resulting from equipment shutdowns to be used as emission offsets to satisfy NSR rule requirements unless such use is consistent with the federal regulations regarding emission reduction credits and emission offset eligibility specified in 40 CFR 51.18(j) as it exists on January 10, 1984." EPA intends to approve this resolution as a federally enforceable part of the State Implementation Plan for San Diego. EPA invites public comment on this approach.

Proposed Action

EPA proposes to approve, under sections 110 and Part D of the Clean Air Act, SDAPCD Rules 20.1, 20.2, 20.3, 20.4 and 20.6 as submitted on March 1, 1982, August 6, 1982 and March 11, 1983, except for Rules 20.1(c) (2) and (6). EPA also proposes to approve the January 10, 1984 Board Resolution submitted on February 27, 1984, for inclusion in the SIP.

EPA also proposes to rescind 40 CFR 52.232(a)(4)(i)(A), assuming all of the minor issues discussed in the TSD are resolved, thereby eliminating the NSR conditions promulgated in EPA's previous rulemaking of April 14, 1981 (see "Background", above). Finally, EPA is proposing to disapprove exemptions, cited in this Notice and in the Technical Support Document, which are not brought into conformity with federal requirements.

No action is being proposed on the source definition (Rule 20.1(a)(8)), on the LAER definition (Rule 20.1(a)(3)), or on offset regulations at Rules 20.1(c) (2) and (6), as discussed above under evaluation. EPA proposes to extend and recodify that portion of the previous condition on approval of the NSR rule regarding source definition pending the outcome of court litigation on the issue. EPA also proposes to extend and recodify that portion of the NSR condition regarding banking until the District submits and EPA approves comprehensive banking rules meeting federal requirements.

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review. I certify that this action will not have a significant effect on a substantial number of small entities.

Authority: Secs. 110, 129, 171 to 173, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7503, and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: April 17, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 84–25223 Filed 9–21–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-2677-3]

Designation of Areas for Air Quality Planning Purposes Attainment Status Designations; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to approve the State of Indiana's request to change the Total Suspended Particulates (TSP) designation for a portion of Clark County (Jeffersonville Township) from primary nonattainment to secondary nonattainment. The rest of the county will remain attainment. Additionally, it proposes to disapprove the State's request to change the TSP designation for a portion of Dubois County (Bainbridge Township) from primary nonattainment to attainment.

Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such a change. Indiana provided sufficient data in the case of Clark County to justify the redesignation, but the data for Dubois County show the secondary TSP standard has not been attained. The notice proposes to change the designation of Bainbridge Township to secondary nonattainment, if the State makes such a request during the public comment period.

DATE: Comments are due by November 23, 1984.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

Comments on this proposed rule should be addressed to: (Please submit an original and five copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of Indiana. See 40 CFR 81.315. These area designations may be revised whenever the data warrants.

The primary TSP NAAQS is violated when, in a year, either: (1) The geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary TSP is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

The current designations for TSP in Clark and Dubois Counties, in Indiana, as codified in 40 CFR Part 81.315 (1983):

Clark—Primary Nonattainment:
  Jeffersonville Township
Attainment: Remainder of the County
Dubois—Primary Nonattainment:
  Bainbridge Township
Attainment: Remainder of the County

On April 14, 1983, the State of Indiana requested USEPA to revise the TSP designations of Clark and Dubois Counties. Additional technical information was submitted on July 27, 1983. On September 2, 1983, USEPA notified the State of Indiana that their redesignation request was not approvable due to a lack of technical support. On September 23, 1983, the State acknowledged USEPA's deficiency letter and stated a more detailed response would be forthcoming. On February 16, 1984, the State submitted a revised redesignation request and additional technical support to revise the TSP designation of Clark and Dubois Counties, Indiana to:

Clark—Secondary Nonattainment:
  Jeffersonville Township
Attainment: Remainder of the County
Dubois—Attainment: Entire County

Additional technical support was submitted to USEPA on April 13, 1984, and May 16, 1984. Further discussion of each county is described below:

Clark County (Jeffersonville Township)

To support the redesignation request, the State submitted ambient air quality data collected at three monitors in Clark County, Indiana during the period 1982–1983 and a dispersion modeling analysis. No violation of the primary TSP NAAQS were measured during this period. One site, however, recorded violations of the secondary 24-hour TSP NAAQS in 1983. These consisted of four exceedances of the standard. Therefore, the monitored data indicate nonattainment of the secondary TSP NAAQS. The dispersion modeling submitted by the State also indicates secondary nonattainment in the Township. The technical data are discussed in more detail in the technical support document which is available at USEPA's Region V office.

In a letter to USEPA dated January 13, 1984, the State cited several reasons for the improvement in the TSP concentrations in Jeffersonville Township; including source shutdowns and the paving of gravel parking lots near the problem monitor, improvements in the City of Jeffersonville's street cleaning program, and significant emission reductions in various area source categories (e.g., discontinuation of driftwood burning and conservation tilling practices in Clark County). Dispersion modeling and filter analysis submitted by the State verify the effectiveness of these emission reductions in improving ambient TSP concentrations. [Note, the most recently approved stationary source SIP (July 16, 1982, 47 FR 30972) for Clark County was based on status quo emissions. USEPA data show all stationary sources in compliance with the Federally approved SIP, except for Occidental Chemical Corporation, where the State has requested a site-specific SIP revision. See 49 FR 20518, May 15, 1984.]

USEPA has determined that the State's explanation for improvement in TSP concentrations in Jeffersonville Township is acceptable. Therefore, based on the available technical support from the State, USEPA proposes to approve the redesignation of Jeffersonville Township in Clark County to secondary nonattainment for TSP. The remainder of the County will remain designated attainment.

Dubois County (Bainbridge Township)

To support the redesignation request, the State submitted ambient air quality data collected at one monitor in Dubois County and a disperson modeling analysis. During the period 1982–1983, there were no violations of the primary TSP NAAQS. In 1983, however, there was one violation (two exceedances) of the secondary 24-hour NAAQS recorded at the one monitor.

The State requested USEPA to discount the secondary exceedance which occurred on March 1, 1983, and, thereby, remove the violation. USEPA reviewed the State's request and determined that there was no basis for ignoring this datum for redesignation purposes. As a result, USEPA considers both of the 1983 exceedances to be valid, and the secondary 24-hour TSP NAAQS has not been met in Bainbridge Township. Additional technical data are discussed in the technical support document which is available at USEPA's Region V office.

As a result of this recent monitored violation, USEPA cannot approve the State's request to redesignate Bainbridge Township to full attainment for TSP. Therefore, USEPA proposes disapproval of the redesignation of Bainbridge Township in Dubois County to full attainment for TSP. However, the modeling and monitoring data in the State's submittal do demonstrate attainment of the primary, although not the secondary, standards in Dubois County. If the State so requests, during the public comment period, then USEPA is proposing to approve redesignating Bainbridge Township to secondary nonattainment, if during the public comment period the State so requests. If the State does not request redesignation to secondary nonattainment, then USEPA is proposing that the Bainbridge Township designation will remain nonattainment.

USEPA is providing a 60 day public comment period on this notice of proposed rulemaking. Public comments received on or before November 23, 1984, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Section 107(d) and 301 of the Act, as amended)

Dated: August 20, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-25224 Filed 9-21-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-6-FRL-2678-8]

Oklahoma; Final Authorization of State Hazardous Waste Management Program; Tentative Determination on Application of State of Oklahoma for Final Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public hearing and public comment period.

SUMMARY: The State of Oklahoma has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the State's application and has made the tentative determination that, with one exception noted below, the State of Oklahoma's hazardous waste program satisfies all of the requirements necessary to qualify for Final Authorization. Thus, EPA intends to grant Final Authorization to the State to operate its program in lieu of the federal program in the State. The State of Oklahoma's application for Final Authorization is available for public review and comment and a public hearing will be held to solicit comments on the State's program submittal and EPA's tentative decision.

DATES: A public hearing is scheduled for October 24, 1984 at 7:00 p.m. The State of Oklahoma will participate in the public hearing held by EPA on this subject. All comments on the State's application and EPA's tentative determination must be received by the close of the public hearing on October 24, 1984.

ADDRESSES: Copies of Oklahoma's final authorization application are available during business hours at the following addresses for inspection and copying: Oklahoma State Department of Health, 1000 NE. 10th Street, Oklahoma City, Oklahoma 73152; U.S. EPA Headquarters Library, PM 211A, 401 M Street, S.W., Washington, D.C. 20460, Phone: (202) 832–5926; U.S. EPA Region VI Library, 1201 Elm St, Dallas, Texas 75270, Phone: (214) 767–7341. Written comments should be sent to H.J. Parr, Hazardous Materials Branch, Environmental Protection Agency, 1201 Elm St, Dallas, Texas 75270, Phone: (214) 767–2645. EPA will hold the public hearing on October 24, 1984 in the Sequoyah Auditorium, Sequoyah Building, 2400 North Lincoln Blvd., Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, Hazardous Materials Branch, U.S. EPA, 1201 Elm St, Dallas Texas 75270, Phone: (214) 767–2645.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "Interim Authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to Interim Authorization: Phase I, covering the EPA regulations in 40 CFR Part 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities)

Phase II, in turn, has three components. Phase II, Component A, covers general permitting procedures and technical standards for storage of hazardous waste in containers and tanks. Phase II, Component B, covers incenerator facilities, and Phase II, Component C, addresses facilities that dispose of hazardous waste in landfills, land treatment facilities, surface impoundments and waste piles. By statutes, all interim authorizations expire on January 26, 1985. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and programs in other States, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for Final Authorization. EPA regulations for Final Authorization appear at 40 CFR 271.1–271.23.

B. State of Oklahoma

Oklahoma received Phase I Interim Authorization on January 14, 1981, Phase II, Components A and B Interim Authorization on December 13, 1982, and Phase II, Component C, Interim Authorization on June 23, 1983. On June 22, 1984, Oklahoma submitted a complete application for Final Authorization. Prior to its submission, Oklahoma solicited public comment and held a public hearing on its draft application.

During the review of the State's program, EPA noted that Oklahoma's Controlled Industrial Waste Disposal Act (CIWDA) section 1–2009 provides "after a controlled industrial waste facility has been closed, its owner or operator shall properly maintain and monitor the controlled industrial waste facility for a period of *not more than thirty (30) years* as determined by the Department at the time of issuance of the permit and shall make such repairs or improvements as deemed necessary by the Department to ensure that no migration of controlled industrial waste material will occur from the controlled industrial waste facility." (Emphasis added).

EPA has found this provision of the State's statute conflicts with 40 CFR 264.117(a)(2)(ii) of the federal regulations which states: "Prior to the time that the post-closure care period is due to expire, the Regional Administrator may extend the post-closure care period is due to expire, the Regional Administrator may extend the post-closure care period if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater nomitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment)."

Ordinarily such a gap would preclude the authorization of the State. Oklahoma, however, has made the argument, and EPA agrees, that the State's program is equivalent to EPA's with the exception of extending the 30 year post-closure care period and that the authority to require the extension of a post-closure care period would not be needed until the last few years of the 30 year period.

The State of Oklahoma has agreed in the Memorandum of Agreement to seek a change in section 1–2009 of CIWDA which would authorize regulations by which the State could require extension of the post-closure care period beyond the 30 years.

EPA agrees to this approach for two reasons:

(1) There will be a significant amount of time before the State would be required to exercise the authority to extend a post-closure care period; and

(2) The State has agreed to seek this authority from the Oklahoma Legislature within a reasonable amount of time.

EPA is concerned that this authority be available to the State at the earliest possible time. Therefore, if the State has not obtained the authority to extend the post-closure care period beyond 30 years for cause and implemented this authority through appropriate regulations within two (2) years of the effective date of the State's Final Authorization, EPA will commence proceedings under 40 CFR 271.23(b) to withdraw approval of the State's program. Criteria for withdrawing approval of State programs is found in 40 CFR 271.22

EPA has reviewed Oklahoma's application and has tentatively determined that, with the above mentioned exception, the State's program meets all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization to Oklahoma. In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on the tentative decision on October 24, 1984, at 7:00 in the Sequoyah Auditorium, Sequoyah Building, 2400 North Lincoln Blvd., Oklahoma City, Oklahoma 73152. The public may also submit written comments on EPA's tentative determination and the State's submittal up until the close of the public hearing on October 24, 1984. Copies of Oklahoma's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authoriztion to Oklahoma. EPA expects to make a final decision on whether or not to approve Oklahoma's program by December 24, 1984, and will give notice of it in the **Federal Register.** The Notice will include a summary of the reasons for the final determination and a response to all major comments.

The State does not seek authorization to administer the Oklahoma Hazardous Waste Management program in lieu of the federal program over Indian Lands in Oklahoma. Thus EPA will implement the federal program on Indian Lands after Final Authorization.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business informaton.

Dated: August 31, 1984.

Dick Whittington, P.E.,

Regional Administrator.

[FR Doc. 84–25354 Filed 9–21–84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-634]

Changes in the Corporate Structure and Operations of the Communications Satellite Corporation; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This erratum corrects paragraphs 11, 17, 19, and 20 of the Second Notice of Proposed Rulemaking, in this Proceeding concerning the Communications Satellite Corp. released August 14, 1984. The purpose of these amendments is to clarify certain proposals concerning filing requirements for Comsat and its affiliates and to expand upon certain procedural matters. The proposed rule was published in the **Federal Register** on August 28, 1984 (49 FR 34041).

FOR FURTHER INFORMATION CONTACT: Joel Pearlman, International Conference Staff, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of changes in the corporate structure and operations of the Communications Satellite Corporation; CC Docket No. 80-634.

Released: August 20, 1984.

Paragraphs 11 and 20 of the Commission's Second Notice of Proposed Rulemaking, adopted August 8, 1984, released August 14, 1984, should read as follows:

11. COMSAT General's Forms M and 901 are filed in a format similar to Comsat's other filings. We question whether this level of reporting is necessary for regulatory purposes. Comsat's leases of COMSTAR and MARISAT capacity are diminishing as these satellites reach the end of their useful lives and are not being replaced. In addition, we have streamlined the regulatory requirements for non-dominant domestic common carriers generally.[1] Most important, these COMSAT General reports are not useful in regulating jurisdictional activities. Instead of these reports, additional information from COMSAT on details of its intracorporate transactions with subsidiaries and other affiliates would better enable us to meet our regulatory responsibilities. We tentatively conclude that COMSAT General need not be required to file Form M and Form 901 reports on its domestic common carrier operations. Comsat would file data on its transactions with COMSAT General and COMSAT General would file only those reports required of similarly situated domestic carriers. To the extent that COMSAT General or other Comsat subsidiaries or partnerships offer regulated services other than domestic common carrier operations, such entities would remain subject to the reporting requirements set forth in Part 43 of the Commission's Rules and Regulations and other applicable Commission decisions.

20. It is further ordered that the Secretary shall cause a copy of this order to be published in the **Federal Register**. Because this proceeding will not result in the solicitation of information from ten or more entities, this NPRM is exempted from the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 35

The following should be inserted between the second and third sentences of Paragraph 17:

In reaching its decision on this matter the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

The following should be inserted following the last sentence of Paragraph 19:

In addition, the Act excludes from the application of the statute proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances". 5 U.S.C. 601(2).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-25262 Filed 9-21-84; 8:45 am]

BILLING CODE 6712-07-M

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[1] *See* Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefore (Fourth Report and Order), FCC 83-181 (released November 2, 1983).

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47 CFR Part 67

National Association of Regulatory Utility Commissioners (NARUC) Response to Common Carrier Bureau Questions on the St. Louis Resolution; Request for Comments

AGENCY: Federal Communications Commission.

ACTION: Notice requesting comments.

SUMMARY: The Commission seeks comments on a letter from the National Association of Regulatory Utility Commissioners (NARUC) concerning a resolution adopted by NARUC, which included a proposal for a single set of access tariffs established and administered by the state commissions subject to federal guidelines. Comments are being requested concerning this proposal in order to supplement the existing record. Additional comments will facilitate the Commission's decision-making processes.

DATE: Comments are to be filed with the Secretary, by October 3, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or William Kirsch of the Common Carrier Bureau at (292) 632–6363.

SUPPLEMENTARY INFORMATION:

September 19, 1984.

Commission Seeks Comments on National Association of Regulatory Utility Commissioners (NARUC) Response to Common Carrier Bureau Questions on the St. Louis Resolution

(*MTS and WATS Market Structure Inquiry*, CC Docket No. 78-72; *Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286)

In its *Order on Further Reconsideration* in the *MTS and WATS Market Structure Inquiry*, CC Docket No. 78-72, Phase I, FCC 84-36 (released February 15, 1984) the Commission deferred subscriber line charges for residential and single-line business subscribers until June 1985. At that time the Commission stated that it would complete a number of additional proceedings before it allowed subscriber line charges for these subscribers to become effective. The Commission began further proceedings on subscriber line charge exemptions or targeted assistance for needy subscribers, more effective mechanisms to meet the needs of small telephone companies, and how best to implement subscriber line charges for residential and single-line business customers by seeking comments in its *Further Notice of Proposed Rulemaking*, CC Docket Nos. 78–72 and 80–286, FCC 84–133 (released April 11, 1984). The Commission also concluded that preparation of a recommended decision by the existing Joint Board in CC Docket No. 80–286, *Amendment of Part 67*, concerning these issues would facilitate its decision-making processes.

In the *Further Notice of Proposed Rulemaking* the Commission stated that, based on the substantial record in this proceeding, it is convinced that a significant reduction in the level of toll loading is necessary to ensure the long term viability of the telephone network and best serve the four basic goals which it had established in this proceeding, namely: (1) The continued assurance of universal service; (2) the elimination of unjust discrimination or unlawful preferential rates; (3) the encouragement of network efficiency; and (4) the prevention of uneconomic bypass. The Commission also stated that it had reached a number of basic conclusions. First, bypass and the economic inefficiency inherent in the present system of toll rates represent a serious long term threat to universal service. Second, the emergency of competition in the telecommunications industry requires that charges more fully reflect the cost of service. Third, a nationwide solution to these problems is necessary in the near future to provide the industry with certainty. Fourth, flat fee subscriber line charges are an equitable and economically sound method for recovering a portion of non-traffic sensitive costs, although assistance is needed for low income subscribers and those in high cost areas. Fifth, an appropriate transition to the new environment is needed. The Commission sought comments on the residential and single line business subscriber line charges as a means toward these ends. In addition, the Commission made provisions for the Joint Board to consider possible variants which will significantly decrease toll loading and achieve the four basic goals listed above.

An alternative approach discussed in the comments by several state commissions included a proposal for a single set of access tariffs established and administered by the state commissions in compliance with federal guidelines recommended by the Joint Board and approved by the Commission. At a meeting in St. Louis on May 6, 1984, the Communications Committee of the National Association of Regulatory Utility Commissioners (NARUC) adopted this proposal, entitled "the St. Louis Resolution". The Executive Committee of NARUC subsequently approved the resolution at a meeting in San Diego in July.

The Common Carrier Bureau's analysis of the general outlines of the St. Louis plan raised a number of questions concerning its meaning. On August 24, 1984, the Chief, Common Carrier Bureau, in a letter to Junie L. Bradshaw, President of NARUC, asked the Communications Committee for clarification on a number of points. The Bureau's letter also stated that interested parties would be given an opportunity to comment on the NARUC filing. NARUC filed its response with the Commission on September 17, 1984.

The Commission hereby requests comments on the NARUC filing concerning the St. Louis Resolution, a copy of which is attached. Comments are to be filed with the Secretary, Federal Communications Commission by October 3, 1984. Each filing is to contain two originals, two duplicates and six copies for the federal staff. Copies are to be mailed to the Joint Board members and staff shown on the attached service list.

For further information, contact Claudia Pabo or Bill Kirsch at (202) 632-6363.

William J. Tricarico,

Secretary, Federal Communications Commission.

National Association of Regulatory Utility Commissioners

September 14, 1984.

Jack D. Smith,
Chief, Common Carrier Bureau, Federal Communication Commission, 1919 M Street, NW., Washington, D.C. 20554

RE: Clarification of NARUC St. Louis Resolution

Dear Mr. Smith: On August 29, 1984 the NARUC received a copy of a letter you sent to Junie L. Bradshaw, President of the NARUC. The letter asked the NARUC Communications Committee for clarification on a number of questions the FCC had concerning the resolution adopted by the Committee in St. Louis, Missouri on May 6, 1984. It requested that the NARUC provide answers to these questions by September 14, 1984 and proposed that interested parties would then be allowed two weeks in which to comment on these answers.

The following are the Communications Committee's answers to the questions you have posed.

1. Is the St. Louis plan meant to apply to both NTS and traffic sensitive (TS) costs? (Although the text of the resolution does not contain language specifically addressing this point, the reference to "a single set of access changes tariffs * * * for all interexchange use of local plant * * *" suggests that the St. Louis resolution contemplates state access charge tariffs for both NTS and TS costs).

Yes, the St. Louis Resolution is intended to apply to both NTS and TS costs. The Resolution in paragraph number 1 provides "state commissions shall recover under a single set of access tariffs, interstate costs allocated by the Joint Board for all interexchange use of local plant within each state." The words "interstate costs" and "all" in this paragraph are intended to encompass both traffic sensitive and non-traffic sensitive costs along with directly assigned costs.

Under the current federal plan, most local operating companies are required to file both a State and a separate federal access charge tariff. The St. Louis Plan could reduce this quantity of tariffs by 50% if all States participate in the plan. A reduction of 50% in the number of tariffs required would result in a substantial reduction in administrative burden and expense. Additionally, State participation in the Plan would result in a substantial improvement in customer understanding since, within a given participating State, there would be a single set of unified tariffs.

2. Would the federal guidelines effectively govern the structure and cost recovery levels for the intrastate allocation of local exchange costs? (The provision in the St. Louis resolution for a single set of access tariffs for all interexchange use of the local plant subject of federal guidelines as well as the prohibition on charges which discriminate against interstate services suggest that intrastate access cost would be recovered in conformity with the federal guidelines. The bureau is not certain, however, that this is an accurate construction of the St. Louis proposal, since recovering the intrastate allocation of local exhange costs pursuant to a single set of access charge tariffs governed by FCC guidelines could be reviewed as an incursion on traditional state ratemaking authority).

Indirectly, the federal guidelines may influence the interplay between local exchange and intrastate toll rates because intrastate access charge levels will be dependent upon interstate rates. This is true today for those State which have adopted the interstate toll rate structure for intrastate toll rates.

However, the federal guidelines will apply exclusively to interstate services and costs. They will not preempt in any way State authority over intrastate services.

3. At what level should the cap on NTS costs to be recovered through interstate interexchange services be set? (The guidelines set out in the St. Louis resolution do not discuss the level of the cap.)

The cap on NTS costs relates to the maximum portion of NTS costs that can be recovered through interstate carrier common line charges. The St Louis Plan comtemplates a recommendation by the current 410(c) Joint Board to the FCC on the level at which NTS costs should be capped.

However, a participating State should have the flexibility to recover a lesser amount of NTS costs from access charges assessed on interstate interexchange carriers to combat bypass. The cap on interstate interexchange carriers could be in the form of a percentage of the exchange carrier's NTS revenue requirement.

4. Would State access charge plans or tariffs be reviewed by the FCC for compliance with the federal guidelines prior to implementation? (The text of the resolution states that the State plans for interstate access charges and the implementing tariffs are to comply with the federal guidelines, but it does not state whether the FCC would review the State plans or the resulting tariffs prior or subsequent to implementation. If prior or subsequent FCC review is comtemplated by the ST. Louis proposal, what would be the mechanism for review? Would actual tariffs be submitted to the FCC, or would State plans be submitted in lieu of tariffs? What would be the effect of FCC rejection of a proposed tariff plan?)

Pre-implementation review by the federal reviewing body may be acceptable. However, the process for determining whether a State's tariffs should be approved would be limited to a determination of whether the tariffs conformed with the established federal guidelines.

The actual tariffs, along with an explanation of their compliance with federal guidelines, would be submitted for review. A rejection of the tariffs for noncompliance should result in the State being afforded an opportunity to address the reasons for rejection as well as an opportunity to resubmit restructured tariffs.

The FCC should allow as many States as possible the opportunity to administer unified access tariffs that mirror federally recommended tariffs. If the FCC finds it inadvisable to endorse the St. Louis Plan for all States at the present time, a limited number of States could, however, be authorized to provide for tariffs on an experimental basis which comply with the federal guidelines but differ in structure.

5. How would the system of review by the Joint Board and the FCC mesh with possible court review of State commission actions? (The St. Louis Plan provides for Joint Board (and presumably FCC) review of the unified access charge tariffs for compliance with the federal guidelines. However, State commission actions are normally subject to State court review.) What would happen if a question was appealed in State court at the same time that it was raised in a petition before the Joint Board?

It is possible that both federal and State bodies would review a participating State's plan concurrently. This would not, however, raise any jurisdictional problems or administrative burdens. The jurisdiction of the federal body would extend only to a review of the interstate aspects of the Plan and the compliance of the Plan with federal guidelines while the jurisdiction of the State body would extend to the intrastate aspects of the plan and the compliance of the plan with State statutes and regulations.

The federal reviewing body could consist of a Joint Board specially convened under sections 410(a) or 410(c) of the Communications Act, 47 U.S.C., 410(a), 410(c). Naturally, any final order of an administratively-final Joint Board or the FCC would be subject to federal court jurisdiction.

6. How detailed should the federal guidelines be? (The guidelines set out in the text of the St. Louis resolution are stated in extremely general terms. However, this would require that each State develop its own set of access charge terms and conditions. This could be extremely time consuming for the States and confusing for the interchange carriers with different tariff provisions applying in different States).

The federal guidelines should be specific enough to ensure consistency with the objectives of the Communications Act of 1934 yet general enough to allow geographic flexibility and the creativity to develop better ways of dealing with the problems facing regulators today. The following is a suggested list of specific guidelines:

Specific Guidelines for Unified Plans Implementing the St. Louis Resolution

1. A cap on the total NTS costs which may be recovered from interstate interexchange carriers for their access to the local exchange.

—Interstate access charges must be limited to recovering the interstate jurisdictional revenue allocated by the separations process.

—Jurisdictional separations procedures would continue to be determined by the Federal/State Joint Board.

2. Charges shall not discriminate against interstate interexchange service.

—See Response #9 below. This does not mean that access charges per minute of use or flat rate charges must be the same for both interstate and intrastate access.

3. Charges shall not discriminate between different interexchange carriers utilizing the same services or facilities.

4. Charges shall not encourage uneconomic bypass.

—Access charges may be set to recover less than the amount allocated to the interstate jurisdiction to reduce the average cost of toll services.

—Bulk discounts, tapers and other discounts may be offered to large volume end users as competitive necessity requires.

5. Charges shall promote universal service.

6. A State may adopt a unified plan developed by another State, develop its own plan meeting these specific guidelines or adopt a federal "fall back" plan.

7. The existing NECA tariff shall be the basis for the terms and conditions of access provision. Any deviation from those terms and conditions shall be noted and justified.

7. Would the St. Louis Plan allow for a national Universal Service Fund such as that adopted by the FCC earlier in CC Docket No. 80–286? (The text of the resolution refers to tariffs for the recovery of "interstate costs * * * for all interexchange use of local plant within each State * * *" This suggests that each State would recover its own NTS costs, supporting high cost areas with assistance generated in lower cost areas within the State. This approach could adversely affect telephone subscribers in States with high NTS local exchange costs in light of the larger variation in the statewide average anticipated NTS local exchange cost per loop).

The St. Louis Plan would easily accommodate a national Universal Service Fund (USF) such as the one adopted by the FCC in Docket No. 80–826 or the one proposed by the Joint Board in the same docket. Under the St. Louis Plan, as with the current federal access charge plan, a number of different interstate High Cost Factor schemes could be implemented.

Clearly, however, the need for interstate USF assistance would be reduced because States would, in most cases, have the flexibility to handle such problems either through pricing strategies or interstate intercompany subsidiaries without federal assistance.

Any USF would have to be federally administered where interregional transfers were involved.

8. Would the St. Louis approach be consistent with maintenance of nationwide average toll rates? If not, could the St. Louis proposal be modified so as to create less pressure for de-averaging? (The St. Louis plan appears to contemplate different levels of NTS cost recovery through the interstate access charges in different areas. This would substantially increase the pressure for toll rate de-averaging and conflict with the historic practice of nationwide averaging and with recent FCC efforts to continue toll rate averaging by mandating national averaging of the carrier common line element which covers most of the NTS costs to be recovered from the interchange carriers.) Does NARUC support extensive toll rate de-averaging if the St. Louis Plan were adopted?

Pressure for nationwide de-averaging of toll rates has already been created by the FCC's position regarding interstate competition and the serious consideration it has given to proposals to deregulate AT&T's basic interstate services in the near future. Implementation of the St. Louis Plan would not exacerbate this pressure.

Indeed, under the St. Louis Plan participating States utilizing properly structured federal guidelines will minimize pressure or de-averaging. The cap and guidelines will help to average access charges nationwide.

It is geographic and route-specific de-averaging and not the bulk discounts, tapers and other discounts contemplated by the St. Louis Plan, which present the greatest potential negative impact on universal service.

9. What would constitute discrimination against interstate services? Would anti-discrimination provision prohibit any differences in access charge rates or tariff terms and conditions for intrastate and interstate services? (The terms of the resolution propose a prohibition on such discrimination as one of the guidelines but do not elaborate on the meaning of this provision).

The suggested guideline in the St. Louis Resolution which states that "charges shall not discriminate against interstate, interexchange service" does not prohibit differences in rates or other terms and conditions between intrastate and interstate services. Discrimination would occur if a State set interstate access charges so as to place an unjustified burden on interstate communications. For instance, if a State set interstate access charges higher than it set intrastate access charges, it would have to have a strong justification for so doing. Higher interstate costs would be an example of such a justification.

In at least most States, costs differ between interstate and intrastate access services. Although States can set intrastate access charges on any reasonable basis, a reasonable relationship between costs and charges should be maintained. Therefore, although parity between intrastate and interstate access charges may often be desirable, parity would be improper in situations where it results in charges which are too far out of line with costs. States must continue to make these determinations and should not be foreclosed from setting intrastate access charges higher or lower than interstate access charges it costs of other factors justify doing so.

We hope the above-specified responses aid the Commission and interested members of the public in evaluating the NARUC's St. Louis Plan.

Sincerely,

Edward B. Hipp,

Chairman, NARUC Communications Committee.

EBH:jrf

cc: Mark Fowler, Chairman
Henry Rivera, Commissioner
James Quello, Commissioner
Dennis Patrick, Commissioner
Mimi Dawson, Commissioner
Parties of Record—CC Docket No. 78-72
Parties of Record—CC Docket No. 80-286

Attachment

Joint Board Members

Chairman Mark S. Fowler, Federal Communications Commission, Room 814, 1919 M Street, NW., Washington, D.C. 20554

Commissioner Henry M. Rivera, Federal Communications Commission, Room 822, 1919 M Street, NW., Washington, D.C. 20554

Commissioner Mimi Weyforth Dawson, Federal Communications Commission, Room 826, 1919 M Street, NW., Washington, D.C. 20554

Commissioner Marvin R. Weatherly, Alaska Public Utilities Commission, Suite 100 420 L Street, Anchorage, Alaska 99501, (Express Mail or Courier Service)

Chairman Edward F. Burke, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903,

Commissioner Edward P. Larkin, New York Public Service Commission, 400 Broome Street, New York, New York 10013

Commissioner Edward B. Hipp, North Carolina Utilities Commission, Box 991, Raleigh, North Carolina 27602

Federal State Joint Board Staff

Kathleen Whiteaker, Chairman, Federal State Joint Board Staff, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501, (Express Mail or Courier Service)

Paul Popenoe, Jr., California Public Utilities Commission, 350 McAllister Street, San Francisco, California 94102

Timothy J. Devlin, Deputy Director, Auditing and Financial Analysis Dept., Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32301

Elton Calder, Georgia Public Service Commission, 244 Washington Street, SW., Atlanta, Georgia 30334

Robert E. Osborn, Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50319

Guy E. Twombly, Maine Public Utilities Commission, State House, Station 18, Augusta, Maine

Ronald Choura, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909

Allan Bausback, New York Public Service Commission, Empire State Plaza, Albany, New York 12223

Hugh L. Gerringer, Public Staff—NCUC, Communications Division, Box 991, Raleigh, North Carolina 27602

Jim Lanni, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Gary A. Evenson, Director, Communications Bureau, Utility Rates Division, Public Service Commission, P.O. Box 7854, Madison, Wisconsin 53707

Claudia R. Pabo (4 copies), Room 544, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554

[FR Doc. 84-25276 Filed 9-21-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-718; RM-4622]

FM Broadcast Stations in Rutland, VT and Plattsburgh, NY; Order Extending Time for Filing Comments and Reply Comment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: Action taken herein, at the request of Plattsburgh Broadcasting Corporation, extends the comment and reply comment period to respond to a proposal to assign FM Channel 261A to Rutland, Vermont.

DATES: Comments are due on or before September 27, 1984, and reply comments are due on or before October 12, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments and Reply Comments

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Rutland, Vermont, and Plattsburgh, New York); MM Docket No. 84-718, RM-4622.

Adopted: September 12, 1984.
Released: September 14, 1984.
By the Chief, Policy and Rules Division.

1. On July 11, 1984, the Commission adopted the *Notice of Proposed Rule Making and Order to Show Cause*, 49 FR 31305, published August 6, 1984, proposing the assignment of FM Channel 261A to Rutland, Vermont, in response to a petition filed by Howard M. Ginsberg and John O. Kimel. The date for filing comments is September 13, 1984, and for reply comments is September 28, 1984.

2. On August 30, 1984, Plattsburgh Broadcasting Corporation ("WGFB"), licensee of Station WGFB-FM, Plattsburgh, New York, requested an extension of time to respond to the *Notice*. Station WGFB was ordered to show cause why its license should not be modified. WGFB states additional time is needed in order to respond since it is now reviewing options for improving its facilities by the March 1, 1987, cut-off date so as to avoid reclassification.

3. Generally, it has been the Commission's policy that extensions of time are not routinely granted. See § 1.46(a) of the Commission's Rules. However, here we believe that WGFB has shown sufficient cause to grant a two-week extension to September 27, 1984. All Class C stations have been given three years in which to make plans to comply with the Commission's decision in Docket 80-90 (49 FR 10260, published March 20, 1984) to meet minimum standards for Class C facilities. However, as a result of the Rutland proposal, Station WGFB is forced to evaluate its future plans immediately to determine whether the proposed modification of its license will permit a future increase in facilities. Under the circumstances, we believe an extension of time is warranted.

4. Accordingly, it is ordered, That the request of Plattsburgh Broadcasting Corporation is granted.

5. The date for filing comments is extended to and including September 27, 1984. The reply comments date is extended to and including October 12, 1984.

6. This action is taken pursuant to sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-25283 Filed 9-21-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 175

[Docket No. HM-166-S, Notice No. 84-10]

Magnetized Material

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The MTB proposes to amend the regulations governing the transportation of magnetized material aboard aircraft. These proposals are in response to a petition for rulemaking which was filed with the MTB. The changes are necessary to remove from regulation those materials which have magnetic properties, but present no significant risk to the safe operation of aircraft, and to maintain transportation safety by continuing to forbid those magnetized materials which present a hazard due to their potential effect on aircraft instruments used for navigation.

DATE: Comments must be received on or before November 7, 1984.

ADDRESS: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Irving R. Abis, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, 400 7th Street, SW., Washington, D.C. 20590 (202) 426-2075.

SUPPLEMENTARY INFORMATION: Under the provisions of 49 CFR 173.1020, a material is considered to be "magnetized" and subject to the requirements of the Hazardous Materials Regulations (when transported by aircraft) when it has a magnetic field strength of 0.002 gauss or greater at a distance of 7 feet from any point on the surface of the package, or which is of such mass that is could affect aircraft instrumentation, particularly magnetic compasses. Furthermore, a material with a measurable magnetic field greater than 0.00525 gauss, when measured from any package surface at a distance of 15 feet, must be shielded to reduce the reading to a level that is no greater than 0.00525 gauss before being offered for transporation by aircraft.

This notice is in response to a petition for rulemaking filed with the MTB by the Motor Vehicle Manufacturers Association (MVMA), under the provisions of 49 CFR 106.31. The MVMA petitioned the MTB to deregulate certain materials, such as auto fenders and other automobile parts, which may meet the lower criteria in § 173.1020 for magnetized material, but pose little or no transportation hazard because they do not affect aircraft instrumentation.

The MTB believes that the current rules on magnetic materials are obsolete due to improvements in the technology of aircraft instrumentation over the past 30 years. Modern aircraft use electronic compasses with magnetic compasses as backups. The sensors for the magnetic backup compasses of modern aircraft are located sufficiently far away from cargo bays so that the possible marginal magnetic properties of metal objects such as automobile parts will not cause a measurable deflection effect on the compass. It is normal procedure for pilots to check the aircraft's magnetic compass and electronic compass against the runway heading before takeoff.

In order to perform an accurate test for magnetism at the lower gauss limit currently specified in § 173.1020 (0.002 gauss), a test would have to be conducted away from any possible magnetic sources, using a gauss meter which costs about $1,500.00. To conduct this test, large metal objects which are to be offered for transportation, and which are not intentionally magnetic, but have acquired magnetic properties during their manufacture or because of their orientation, would have to be tested in a controlled environment. If the test shows that the metal objects are above the 0.002 gauss level at a distance of 7 feet, under current rules they must be labeled with the MAGNETIZED MATERIAL label, marked "ORM-C", and shipped as a hazardous material. The metal objects must be reloaded and brought to the airport for transportation by aircraft. When the metal objects are moved, the magnetic field created by the mass of those objects may change due to the new placement of the objects. When they are loaded aboard the aircraft, the magnetic field may again change, due to placement of the object aboard an aircraft. Consequently these tests at low gauss levels are not repeatable and the necessity for and benefit of regulating metallic ladings at low levels at low levels of magnetism is questionable.

The MTB believes that testing metal objects for magnetism is not necessary, other than those deliberately fabricated with magnetic properties. Marginal magnetic properties of other ladings are of such low levels that the probability of deflecting aircraft instruments is negligible. This notice proposes to eliminate the 0.002 gauss threshold and to continue to forbid the transportation of magnetized material over the 0.00525 gauss level at a distance of 15 feet from the package surface for carriage aboard aircraft. The MTB believes that the rules proposed in this notice, if adoped, would not reduce the level of air safety and would relieve shippers and carriers of burdens imposed by undue regulation.

The MTB will propose that the standards for magnetized material in the International Civil Aviation Organization (ICAO) Technical Instructions be changed to reflect these proposed amendments if a final rule is issued as proposed. Should these amendments be adopted as a final rule, the Federal Aviation Administration (FAA) is considering the publication of an Advisory Circular for aircraft built before 1955 to assure that the proper procedure for stowage of magnetized material is followed to avoid affecting instruments on aircraft which might not have compasses with remote sensors.

The MTB certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Also, in view of the type of changes being proposed, the MTB has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National

Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is considered unnecessary because the anticipated impact would be minimal.

List of Subject

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, it is proposed to amend the Hazardous Matrials Regulations as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.8, the entry for "Magnetic material" would be revised as follows:

* * *

"Magnetic materials" See § 173.21(f).

* * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

2. In § 172.101, the Hazardous Materials Table would be amended by removing the entry for magnetized materials and adding a new entry as follows:

§ 172.101 Hazardous Materials Table.

EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo aircraft only	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
(1)	(2)	(3)	3(a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	* * *										
	(Remove)										
	* * *										
	Magnetized material	ORM-C	UN2807	Magnetized material	None	173.1020	No limit	No limit			
	* * *										
	(ADD)										
	* * *										
	Magnetized material. See 173.21(f).										

§ 172.402 [Amended]

3. In § 172.402, paragraph (d) would be removed and reserved.

§ 172.446 [Removed]

4. Section 172.446 would be removed and reserved.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. In § 173.21, a new paragraph (f) would be added to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) For carriage by aircraft, any material which when packaged has a measurable magnetic field of more than 0.00525 gauss when measured from any surface of the package at a distance of 15 feet.

§ 173.1020 [Removed]

6. Section 173.1020 would be removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

§ 175.30 [Amended]

7. In § 175.30, paragraph (d)(3) would be removed and reserved.

§ 175.85 [Amended]

8. In § 175.85, paragraph (g) would be amended by removing the last sentence.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(3) of Appendix A to Part 106.)

Issued in Washington, D.C., September 19, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84–252[illegible] Filed 9–21–84; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 49, No. 186
Monday, September 24, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board

Date: October 18-19, 1984

Time: 8:30 a.m.-4:30 p.m., Oct. 18; 8:30 a.m.-4:30 p.m., Oct. 19.

Place: Rm. 3109, South Building, Department of Agriculture, Washington, D.C.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that petition to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, Room 239, Building 005, BARC-West, Beltsville, Maryland 20705. Telephone: (301) 344-1560.

Done at Beltsville, Maryland, this 10th day of September 1984.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 84-25273 Filed 9-21-84; 8:45 am]

BILLING CODE 3410-03-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Interagency Agreement Between the Bureau of Land Management and the Forest Service for Mineral Leasing

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of Interagency Agreement.

SUMMARY: The Bureau of Land Management and the Forest Service signed an interagency agreement for mineral leasing on June 19, 1984. This interagency agreement establishes the policy and procedures by which mineral use authorizations which grant rights to federally owned leasable minerals in the National Forest System and in adjoining private lands with Federal minerals are to be processed by the Bureau of Land Management and the Forest Service. The text of the signed agreement is set forth at the end of this notice.

EFFECTIVE DATE: June 19, 1984.

ADDRESS: R. Max Peterson, Chief, Forest Service, USDA, 12th and Independence Ave., SW., Washington, D.C. 20013 and Robert F. Burford, Director, Bureau of Land Management, USDI, 18th and C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Craig K. Losche, Forest Service, USDA, Minerals and Geology Management Staff, P.O. Box 2417, Rm 606 RP-E, Washington, D.C 20013, (703) 235-9873 and Greg Shoop, Bureau of Land Management, USDI, Division of Fluid Mineral Leasing, 18th and C Street, NW., Washington, D.C. 20240, (202) 653-2187.

Dated: August 23, 1984.

James M. Parker,

Acting Director, Bureau of Land Management.

Dated: September 14, 1984.

John H. Ohman,

Acting Chief, Forest Service.

Interagency Agreement Between the Bureau of Land Management and the Forest Service for Mineral Leasing

The Bureau of Land Management (BLM), Department of the Interior, and the Forest Service (FS), Department of Agriculture, hereby agree that the policy and procedures set forth in this Interagency Agreement (IA) shall be followed with respect to the processing of authorizations, such as licenses, permits, and leases, that grant rights to federally owned minerals in the National Forest System (NFS) and in adjoining lands with Federal minerals (split estate lands). Such authorizations are collectively referred to in this IA as leases. This agreement does not include permits issued by the FS to do preliminary mineral-related investigations or surveys.

I. Authorities

The BLM manages the Federal leasable mineral estate under authority of the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), Section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix), the Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1083), and other Acts.

The FS manages the NFS for multiple use and sustained yield of products and services and is authorized to make rules and regulations to govern surface use and occupancy under the authority of the Organic Administration Act of 1897 (16 U.S.C. 473-475, 477-482, 551), the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C 528 (note), 528-531), and the National Forest Management Act of 1976 (90 Stat. 2949). Under certain statutes the FS has consent authority for leasing of the NFS. Also, in accordance with 43 CFR 3101.7 and through long standing agreement between the Departments, the FS provides recommendations where consent authority does not exist.

II. Purpose

This IA establishes the policy and procedures by which leasing proposals which involve the NFS and adjoining private lands with Federal minerals are to be processed by the BLM and the FS. This policy and these procedures are adopted to ensure cooperative, timely, and efficient action by the BLM and the FS with respect to such leasing, consistent with the statutory and regulatory responsibilities of each agency.

III. Responsibilities

A. NEPA Compliance and Coordination

Issuance of leases by the BLM is a Federal action which requires an environmental analysis to be made in conformance with the National Environmental Policy Act of 1969 (NEPA), its implementing regulations (40 CFR Parts 1500–1508), and agency direction. In order to comply with these requirements in an efficient and effective manner, both agencies will participate jointly in scoping each proposed action. A single environmental analysis and, if appropriate, a single document is to be completed such that it will be an adequate environmental basis for all recommendations and/or decisions to be made by either the FS or the BLM.

For leasing proposals which primarily involve the NFS or adjoining private lands with Federal minerals and which primarily involve NFS issues, the FS will have the lead for environmental analysis and, when necessary, documentation in an environmental assessment or environmental impact statement. For leasing proposals which involve primarily non-NFS lands or issues, the participation of each agency in environmental analysis and documentation will be determined during scoping. In all cases, FS expertise will be recognized for that portion of any analysis or document concerning protection and utilization of the NFS.

B. Stipulation Development and Use

The BLM and the FS will coordinate the development of stipulations in conjunction with NEPA compliance at the local level to ensure appropriate wording and to ensure that adequate justification for their use exists in the record. The BLM and the FS will coordinate agency-wide stipulation use policy at the Washington level.

C. Agency Decisions

Leasing decisions are to be coordinated by the BLM and the FS so that requirements identified through the environmental analysis and, if appropriate, the environmental documents are considered in FS recommendations (including those pertaining to adjoining private lands with Federal minerals) and/or consent decisions and in subsequent BLM leasing decisions. Coordination with respect to FS recommendations and/or decisions is to be such that FS is aware of final action to be taken by BLM.

1. *Recommendation.* When the FS role in the leasing decision is limited to providing the BLM with advisory, nonbinding recommendations, the FS will forward its recommendations to BLM as to the leasing of the NFS and adjoining private lands with Federal minerals.

2. *Consent.* When the decision requires consent of the FS for the leasing of the NFS, the FS shall notify affected parties of its decision. After expiration of the FS appeal period, the FS shall forward its decision to BLM. When the FS provides recommendations for adjoining private lands with Federal minerals or recommendations involving non-NFS lands or authorities within its decision, they are to be so identified.

D. Appeal Coordination

To the extent that potential leasing of the NFS and of adjoining private lands with Federal minerals involves only FS recommendations, FS actions are not subject to appeal to the FS. However, to the extent that such leasing of the NFS requires FS consent, FS decisions are subject to appeal to the FS under CFR 211.18. If a decision is appealed, the FS will promptly notify the BLM.

All BLM decisions, subsequent to either FS recommendations or consent decisions, are then subject to protest to BLM and/or appeal under 43 CFR Part 4. The BLM will promptly notify the FS if a BLM decision affecting a lease proposal of the NFS is protested or appealed.

E. General Program Coordination

1. The BLM will review proposals for leases prior to forwarding them to the FS to ensure compliance with applicable regulations. The BLM will forward acceptable proposals to the FS within 15 days of receipt with a request for a FS recommendation and/or consent decision and, if acquired minerals are proposed for leasing, a request for a title report.

2. Within 30 days of FS receipt of a leasing proposal, the BLM and the FS will, if necessary, scope the proposal.

3. The FS will forward its recommendation and/or consent decision within 60 days of the initial receipt by the FS of the leasing proposal, or will provide the BLM with a date to expect a response giving the reason for such delay.

4. The BLM State Director and the FS Regional Forester will attempt to resolve differences concerning FS leasing recommendations or differences involving specific leasing procedures. Differences which cannot be resolved will be forwarded promptly to the BLM Director and the FS Chief for resolution.

5. The BLM will close a case by either issuing a lease or rejecting an offer within 60 days of receipt of FS recommendations or consent decisions.

6. The BLM will provide the FS information relative to changes in the status of offers, licenses, permits, and leases within 10 days of the change.

7. The BLM and the FS will incorporate the policies and procedures set forth in this agreement into their respective manual systems. The BLM and the FS will coordinate and share at the local and national level manual releases, policy memoranda, and directives affecting the respective leasable mineral programs.

8. The BLM and the FS will coordinate the preparation of budget proposals for leasable minerals at the national level to ensure that data and information are consistent and that major projects, such as coal leasing plans, are appropriately considered in the budgets of both agencies. The BLM and the FS will coordinate work plans at the State Director/Regional Forester level and, with respect to NEPA compliance for leasing of split estate lands, will notify respective Washington Offices when substantial costs will be incurred.

IV. Supplemental Agreements

The BLM State Directors and the FS Regional Foresters are encouraged to enter into supplemental agreements consistent with this IA in order to implement local procedures which will contribute to the cooperative, timely, and orderly processing of mineral leasing proposals. A copy of supplemental agreements will be forwarded to the BLM Director and the FS Chief for information.

V. Effect on Prior Agreements

This IA supersedes the following interagency agreements, in whole or in part as indicated, as they relate to the processing of mineral leasing proposals and, to the extent inconsistent, any other agreements between the BLM and the FS.

1. Section III, IV, and V of the Cooperative Agreement Between Forest Service (USDA) and the Geological Survey (USDI) for Operations Within Solid Mineral Permits and Leases on National Forest System Lands, dated November 1980, are superseded.

2. The Interim Memorandum of Understanding between the Bureau of Land Management and the Forest Service, dated December 1980, is superseded in its entirety.

3. Sections I.A., I.B., III.A., and III.B., of the Memorandum of Understanding for the Geothermal Program between the U.S. Geological Survey—Bureau of Land Management—USDA, Forest Service, dated December 1981, are superseded.

VI. Agreement Review

Within 1 month prior to the anniversary date of this IA, the FS Regional foresters and the BLM State

Directors shall apprise their respective Washington Offices of suggested modifications, if any, to this agreement which would contribute to the cooperatively, timely, and orderly processing of mineral leasing proposals. These suggestions will be reviewed by the BLM Director and the FS Chief to determine if the IA should be amended.

Dated: June 19, 1984.

F. Dale Robertson,

For Chief, Forest Service.

Dated: June 19, 1984.

James M. Parker,

For Director, Bureau of Land Management.

[FR Doc. 84-25177 Filed 9-21-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Sea Grant Review Panel; Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The purpose of the meeting is to discuss the program's current posture and the development of national research priorities.

The meeting will be open to the public. The announced meeting is scheduled for one day, November 14, 1984, 1:30–5:30 p.m.

ADDRESS: The meeting will be held at: Georgetown Silver Plume Room, Brown Palace Hotel, 321 17 Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur G. Alexiou, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 6010 Executive Boulevard, Rockville, Maryland 20852, (301) 443-8894.

Dated: September 18, 1984.

Alan R. Thomas,

Acting Assistant Administrator for Oceanic and Atmospheric Research.

Sea Grant Review Panel Meeting

November 14, 1984.

Brown Palace Hotel, Denver, Colorado

Tentative Agenda

November 14

1:30 p.m.–2:00 p.m.

A. Discussions with National Sea Grant College Program (NSGCP) Office Staff on current posture and nature of problems facing the program.

2:00 p.m.–4:00 p.m.

B. Discussions and critique of current NOAA listing of national needs with respect to ocean and coastal resources.

4:00 p.m.–5:30 p.m.

C. Discussions concerning priority statements on research of national interest developed by Sea Grant Directors.

[FR Doc. 84-25193 Filed 9-21-84; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Discretionary Grant Programs Under the Indian Education Act of 1972, as Amended; Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1985 Applications

AGENCY: Department of Education.

ACTION: Application notice establishing closing dates for transmittal of certain Fiscal Year 1985 applications for new awards.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for new projects under certain programs administered by the Department of Education under the Indian Education Act, Title IV of Pub. L. 92-318, as amended.

Organization of Notice: This notice contains two parts. Part I includes the list of all application closing dates for new awards covered by this notice. Part II consists of individual application announcements for each program.

Instructions for Transmittal of Applications: Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of Applications: Applications for new projects must be mailed or hand delivered on or before the closing date given in the individual application announcements included in this document.

Applications Delivered by Mail. An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (insert appropriate CFDA number), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Street SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Part I—Programs

CFDA No.	Program	Closing date
84.062A	Educational services for Indian adults.	Dec. 3, 1984.
84.062C	Planning projects for Indian adults.	Do.
84.062D	Pilot projects for Indian adults.	Do.
84.062E	Demonstration projects for Indian adults.	Do.

Part II—Individual Announcements for Programs Listed in Part I

84.062A–Indian Education Act—Part C—Educational Services for Indian Adults

Closing Date: December 3, 1984.

Applications are invited for new projects under the Educational Services for Indian Adults program.

Authority for this program is contained in Section 316(b) of Part C of the Act, as amended.

(20 U.S.C. 1211a(b))

This program issues awards to Indian tribes, Indian organizations, and Indian institutions for educational service projects.

The purpose of the these projects is to improve educational opportunities for Indian adults.

Program Information: In Fiscal Year (FY) 1984, approximately 32 projects were awarded grants under this program totaling $3,136,000. The average grant amount was $98,063. Included in this total was an FY 1983 supplemental appropriation of $1,938,000 obligated in FY 1984 to an additional 23 projects.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review.

State

Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, Guam, Virgin Islands

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by February 4, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.062A, 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant must submit its completed application. *Do not send applications to the above address.*

Available Funds: The President's budget request for Fiscal Year (FY) 1985 was for $1,200,000 for this program. The Congress has not passed the FY 1985 appropriation act covering this program. The FY 1985 budget request estimated that approximately 9 projects would be supported and the average grant would be $133,333.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Projects supported under this program will be for a period of one year.

Application Forms: Application packages are expected to be ready for mailing on October 19, 1984. A copy of the application package may be obtained by writing to Indian Education Programs, U.S. Department of Education (Room 2177, FOB 6), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the office of Management and Budget under control number 1810-0021.)

Applicable Regulations: The regulations that apply to this program include the following:

(a) Regulations governing Indian Education Programs (34 CFR Parts 250 and 257, published in the **Federal Register** on June 7, 1984 at 49 FR 23761.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further Information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education (Room 2177, FOB-6), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732-1918.

(20 U.S.C. 1211a(b))

84.062C—Indian Education Act—Part C—Planning Projects for Indian Adults

Closing Date: December 3, 1984.

Applications are invited for new planning projects under the Indian Adults program.

Authority for this program is contained in section 316(a)(1), (2) of Part C of the Act, as amended.

(20 U.S.C. 1211a(a)(1), (2))

This program provides financial assistance for projects designed to plan effective programs for improving employment and educational opportunities for Indian adults.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, and Indian institutions.

Program Information: In Fiscal Year 1984, approximately 4 Planning projects were awarded grants totalling $595,897. The average grant amount was $148,974.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local Officals by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review.

State

Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Indiana, Kansas, Louisiana, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, Guam.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by February 4, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.062C, 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant must submit its completed application. *Do not send applications to the above address.*

Available funds: The President's budget request for Fiscal Year (FY) 1985 was for $600,000 for this program. The Congress has not passed the FY 1985 appropriation act covering this program. The FY 1985 budget request estimated that approximately 4 projects would be supported and the average grant would be $150,000.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Projects supported under this program will be for a period of one year.

Application Forms: Application packages are expected to be ready for mailing on October 19, 1984. A copy of the application package may be obtained by writing to Indian Education Programs, U.S. Department of Education (Room 2177, FOB 6), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or guarantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1810–0021).

Applicable Regulations: The regulations that apply to this program include the following:

(a) Regulations governing Indian Education Programs (34 CFR Parts 250 and 258), published in the **Federal Register** on June 7, 1984 at 49 FR 23761.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further Information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education (Room 2177, FOB-6), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 1211a(1), (2)

84.062D—Indian Education Act—Part D—Pilot Projects for Indian Adults

Closing Date: December 3, 1984.

Applications are invited for new pilot projects under the Indian Adults program.

Authority for this program is contained in Section 316(a)(1), (2) of Part C of the Act, as amended.

(20 U.S.C. 1211a(a)(1), (2))

This program provides financial assistance for projects designed to test the effectiveness of programs for improving employment and educational opportunities for Indian adults.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, and Indian institutions.

Program Information: In Fiscal Year 1984, approximately 2 Pilot projects were awarded grants totalling $231,441. The average grant amount was $115,720.

Intergovernmental Review: On June 24, 1983, the Secretary published in the

Federal Register final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review.

Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Indiana, Kansas, Louisiana, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, Guam.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by February 4, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.062D, 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant must submit its completed application. *Do not send applications to the above address.*

Available Funds: The President's budget request for Fiscal Year (FY) 1985 was for $350,000 for this program. The Congress has not passed the FY 1985 appropriation act covering this program. The FY 1985 budget request estimated that approximately 3 projects would be supported and the average grant would be $116,667.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Projects supported under this program will be for a period of one year.

Application Forms: Application packages are expected to be ready for mailing on October 19, 1984. A copy of the application package may be obtained by writing to Indian Education Programs, U.S. Department of Education, (Room 2177, FOB 6), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exeed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1810–0021).

Applicable Regulations: The regulations that apply to this program include the following:

(a) Regulations governing Indian Education Programs (34 CFR Parts 250 and 258), published in the **Federal Register** on June 7, 1984 at 49 FR 23761.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further Information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education (Room 2177, FOB–6), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 1211a (1), (2))

84.062E—Indian Education Act—Part C—Demonstration Projects for Indian Adults

Closing Date: December 3, 1984.

Applications are invited for new Demonstration projects under the Indian Adults program.

Authority for this program is contained in section 316(a) (1), (2) of Part C of the Act, as amended.

(20 U.S.C. 1211a(a) (1), (2))

This program provides financial assistance for projects designed to demonstrate the effectiveness of programs for improving employment and educational opportunities for Indian adults.

Grants may be made to State educational agencies, local educational agencies, Indian tribes, Indian organizations, and Indian institutions.

Program Information: In Fiscal Year 1984, approximately 6 Demonstration projects were awarded grants totalling $857,214. The average grant amount was $142,869.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review.

State

Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Indiana, Kansas, Louisiana, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, South Dakota, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, Guam.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by February 4, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.062E, 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant must submit its completed application. *Do not send applications to the above address.*

Available Funds: The President's budget request for Fiscal Year (FY) 1985 was for $850,000 for this program. The Congress has not passed the FY 1985 appropriation act covering this program. The FY 1985 budget request estimated that approximately 5 projects would be supported and the average grant would be $170,000.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Projects supported under this program will be for a period of one year.

Application Forms: Application packages are expected to be ready for mailing on October 19, 1984. A copy of the application package may be obtained by writing to Indian Education Programs, U.S. Department of Education (Room 2177, FOB 6), 400 Maryland Avenue, SW, Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1810–0021).

Applicable Regulations: The regulations that apply to this program include the following:

(a) Regulations governing Indian Education Programs (34 CFR Parts 250 and 258), published in the **Federal Register** on June 7, 1984 at 49 FR 23761.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further Information: For further information contact Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education (Room 2177, FOB–6), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732–1918.

(20 U.S.C. 1211a(1), (2))

(Catalog of Federal Domestic Assistance No. 84.062; Indian Education—Adult Indian Education (Indian Education—Part C))

Dated: September 19, 1984.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 84–25272 Filed 9–21–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER84–663–000]

Carolina Cogeneration Company, Inc.; Filing

September 20, 1984.

The filing company submits the filing:

Take notice that on September 5, 1984, Carolina Cogeneration Company, Inc. (CCC) tendered for filing a long term rate schedule applicable to sales of electric energy and capacity by CCC to Carolina Power & Light Company (CP&L). CCC states that the energy and capacity are to be provided by a qualifying small power production facility to be built by CCC in Craven County, North Carolina near the city of New Bern.

The proposed rate schedule, CSP–6C, is set forth in the Electric Power Purchase Contract, dated December 21, 1983 between CP&L and CCC. The above mentioned contract and rate schedule arrangement are "standard offers" developed by CP&L and accepted by the North Carolina Utilities Commisison to satisfy their requirements under PURPA. Schedule CSP–6C sets both variable and long term rates for energy, and variable and long term rates for capacity. The Electric Power Purchase Contract on file with the Commission has been specificaly examined and accepted by the North Carolina Utilities Commission in Docket No. SP–11 "Order Approving Contract".

CCC requests waiver of the Commission's notice requirements, and the Commission's regulations regarding cost-of-service documentation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25280 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-660-000]

Centel Corp.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 4, 1984, Centel Corporation, Southern Colorado Power Division, tendered for filing Electric Rate Adjustment No. 3 applicable to sales of power and energy to the City of Las Animas. Adjustment No. 3 reflects increased rates charged by Southern Colorado Power's supplier and results in an increase in revenues from sales to Las Animas of $57,698.32.

Centel requests an effective date of August 25, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the City of Las Animas and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25281 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-667-000]

Central Hudson Gas & Electric Corp.; Cancellation

September 20, 1984.

The filing Company submits the following:

Take notice that on September 7, 1984, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing Notice of Cancellation of Central Hudson's Rate Schedule FERC No. 38 which was filed with the Commission on September 6, 1984. Central Hudson states that the Contract was cancelled on October 25, 1970 in accordance with its terms.

According to Central Hudson a copy of this filing has been sent to Long Island Lighting Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25283 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-666-000]

Central Illinois Public Service Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 7, 1984, Central Illinois Public Service Company (CIPS) tendered for filing a revised Appendix B to the service agreement between CIPS and Mt. Carmel Public Utility Company (Mt. Carmel). Pursuant to the service agreement, the revised Appendix B lists actual costs and a revised monthly charge for newly installed metering facilities, which revision lowers the monthly metering charge.

CIPS requests an effective date as of March 1, 1984, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing has been sent to Mt. Carmel.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25282 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-662-000]

Central Louisiana Electric Co., Inc.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 5, 1984, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing a copy of an executed letter agreement and a copy of an executed Appendix B that amends the existing interconnection agreement between CLECO and Cajun Electric Power Cooperative, Inc. (CEPCO) CLECO states that the filing will permit the continuation of service in accordance with the desire of the parties, and will provide a basis for billing for the 1984 calendar year.

CLECO requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 84-25284 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7361-002]

Charles W. Cole, Jr.; Surrender of Preliminary Permit

September 20, 1984.

Take notice that Charles W. Cole, Jr., Permittee for the proposed Cagle Mill Hydro Project No. 7361, has requested that its preliminary permit be terminated. The permit was issued on June 26, 1984, and would have expired on November 30, 1985. The project would have been located on Mill Creek near Poland, Putnam County, Indiana.

The Permittee cites that the proposed project is not economically feasible as the reason for its surrender request.

The Permittee filed its request on August 24, 1984, and the surrender of the preliminary permit for Project No. 7361 is deemed accepted 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25285 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-461-005]

Columbia Gas Transmission Corp.; Compliance Tariff Filing

September 18, 1984.

Notice is hereby given that on September 5, 1984, Columbia Gas Transmission Corporation filed the following tariff sheets to be included in its FERC Gas Tariff, Original Volume No. 1:

Eleventh Revised Sheet No. 1
First Revised Sheet No. 21A
First Revised Sheet No. 21D
First Revised Sheet No. 21E
First Revised Sheet No. 21F

The subject tariff sheets bear an issue date of September 5, 1984, and proposed effective date of July 27, 1984.

Columbia states that the proposed tariff sheets are being filed in compliance with Ordering Paragraph C of the Commission's August 20, 1984 Order on Requests for Clarification and Rehearing in the captioned proceeding relating to the rates to be charged for the Incentive Sales (IS) service which was approved by the Commission's order of July 23, 1984 in this proceeding.

Columbia also submitted revised tariff sheets reflecting pro-rated base quantities applicable to those customers whose November 1984 billing month commences on October 20, or 25, 1984.

Columbia states that the instant tariff filing is being served upon all parties to Docket No. CP84-461-000, as well as upon interested state Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25302 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-655-000]

Connecticut Light and Power Co.; Filing

September 19, 1984.

The filing Company submits the following:

Take notice that on August 31, 1984, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between the Hartford Electric Light Company (HELCO), CL&P, Western Massachusetts Electric Company (WMECO), and Bangor Hydro-Electric Company (Bangor) dated as of December 15, 1977.

CL&P states that the Purchase Agreement provides for a sale to Bangor of a specified percentage of capacity and energy from various CL&P and WMECO gas turbine units (the Units) during the period November 1, 1984 through October 31, 1987.

CL&P states that the capacity charge rate for the proposed service is a rate determined on a cost-of-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/KW-month) and (ii) the number of kilowatts of winter capability which Bangor is entitled to receive during such month. The Energy Charge, Variable, and Additional Maintenance Charges are based on Bangor's portion of the applicable fuel expenses and hours of operation related to the Units. No special cost-of-service studies were made to derive at these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same as service provided by CL&P, WMECO, and HELCO relating to agreements between CL&P, WMECO, HELCO, and Newport Electric Corporation (FERC Rate Schedule Nos.: CL&P 220, WMECO 181, HELCO 231), and Lyndonville Electric Department (FERC Rate Schedule Nos.: CL&P 172, WMECO 145, HELCO 169).

CL&P requests an effective date of November 1, 1984.

Copies of this filing were served upon WMECO and Bangor.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25301 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST81-61-002, et al.]

Cranberry Pipeline Corp., et al.; Extension Reports

September 18, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before October 15, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-61-002	Cranberry Pipeline Corp., 1400 Charleston National Plaza, Charleston, WV 25337	Hope Natural Gas Corp	8-23-84	C	11-24-84
ST81-74-002	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	Mississippi River Transmission Corp	8-17-84	G	11-15-84
ST81-115-002	do	Northern Natural Gas Co	8-17-84	G	11-16-84
ST81-304-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	United Gas Pipe Line Co	8-30-84	G	12-01-84
ST81-412-002 [1]	Fantera Energy Corp., 1616 Glenarm St., Suite 1830, Denver, CO 80202	Colorado Interstate Gas Co	8-21-84	D	8-15-84
ST83-92-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Texas Eastern Transmission Corp	8-16-84	G	11-16-84
ST83-94-001	PGC Pipeline, 950 One Energy Square, Dallas, TX 75206	do	8-27-84	C	12-03-84
ST83-105-001	Delta Natural Gas Co., Inc., Route 1, Box 30-A, Winchester, KY 40391	Columbia Gas Transmission Corp	8-21-84	G(HT)	11-23-84
ST83-111-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Texas Eastern Transmission Corp	8-24-84	G	11-24-84
ST83-121-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Transcontinental Gas Pipe Line Corp	8-22-84	G	11-22-84
ST83-134-001	Liberty Natural Gas Co., 5307 E. Mockingbird Lane, Dallas, TX 75206	Transwestern Pipeline Co	8-27-84	C	12-01-84
ST83-135-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Tennessee Gas Pipeline Co	8-24-84	G	11-24-84
ST83-137-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Texas Eastern Transmission Corp	8-21-84	G	11-19-84
ST83-153-001	Oasis Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	Transwestern Pipeline Co	8-24-84	C	12-01-84
ST83-179-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Tenngasco Gas Gathering Co	8-27-84	B	12-10-84
ST83-206-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Dow Intrastate Gas Co	8-31-84	B	12-01-84
ST83-233-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Intratex Gas Co	8-27-84	B	1-14-84
ST83-255-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Louisiana Intrastate Gas Corp	8-16-84	B	1-06-84
ST83-317-001	Acadian Gas Pipeline System, 1200 Milam, Suite 2700, Houston, TX 77002.	Texas Eastern Transmission Corp	8-30-84	C	4-05-84

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 84-25303 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-661-000]

Florida Power & Light Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 4, 1984, Florida Power & Light Company (FP&L) tendered for filing a document entitled "Amendment Number Two to Contract for Interchange Service Between FP&L and Utilities Commission of the City of New Smyrna Beach, Florida (New Smyrna)."

FP&L states that under the Amendment FP&L and New Smyrna utilize the provisions of the existing Contract for Interchange Service between FP&L and New Smyrna for the parties to establish additional service schedules. FP&L states that Service Schedule X provides the parties with the necessary vehicle to better maximize the overall economy of power production in the State of Florida.

FP&L respectfully requests that the proposed Amendment be made effective no later than 60 days from the date of filing.

According to FP&L, a copy of this filing was served upon New Smyrna.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion of intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-25286 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6399-002]

Green Mountain Power Corp.; Surrender of Preliminary Permit

September 20, 1984.

Take notice that Green Mountain Power Corporation, Permittee for the Montpelier No. 5 Project No. 6399, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 6399 was issued on August 29, 1983, and would have expired on February 28, 1985. The project would have been located on Winooski River in Washington County, Vermont.

Green Mountain Power Corporation filed the request on September 6, 1984, and the surrender of the preliminary permit for Project No. 6399 is deemed accepted as of the filing date and effective as of 30 days after the issuance date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-25268 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-554-000]

Holyoke Water Power Co. and Holyoke Power & Electric Co.; Revised Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Waivers, Denying in Part Requests for Summary Disposition, and Establishing Hearing Procedures; Electric Rates

Issued September 20, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On July 23, 1984, Holyoke Water Power Company (HWP) tendered for filing an amendment to its Resale Service Rate CD-1 for partial requirements service to the City of Chicopee, Massachusetts Municipal Lighting Plant (Chicopee).[1] HWP requests a September 22, 1984 effective date. The revision would increase revenues by about $1.4 million (12.74%).

Holyoke Power & Electric Company (HP&E)[2] jointly tendered for filing a full requirements Rate F-1 to supersede the Electric Service Agreement under which it provides firm wholesale electric service to the Town of South Hadley, Massachusetts (South Hadley). These rate changes would increase revenues by approximately $1.1 million (21.26%). HP&E has requested a January 20, 1985 effective date for its rate schedule change, to coincide with the date on which the existing service agreement terminates. HP&E has requested waivers of several filing requirements to permit that effective date.[3] HWP and HP&E (the companies) submitted their filings based on a consolidated cost of service study.[4]

HWP's proposed amendments to its partial requirements rate schedule with Chicopee include alternative stratified rate designs (CD-1 and Rider B). According to HWP, both rate designs are calculated to produce an identical return on fixed costs. Rate CD-1 is based on the rate design accepted by the Commission in the settlement of Docket No. E-8843. The settlement rate schedule provides that for the purpose of developing energy and demand costs, the pumped storage hydro and fossil steam units with full load efficiency of 12,000 Btu/Kwh or more will be considered peaking units. Under this test, HWP's Mount Tom and Northfield Mountain generating units are considered peaking units for rate purposes. The alternative rate design—Rider B—recognizes the conversion of the Mount Tom generating units from oil to coal-fired steam and the actual conjunctive operation of the Northfield Mountain pumped storage units and Millstone Nuclear Unit No. 2 as the base/intermediate generating system.

According to the companies, Rider B is a better economic representation of HWP's actual operations with Mount Tom and Northfield Mountain costs included in the base/intermediate rate costing structure. However, HWP has proposed the CD-1 design because it must do so under the terms of its settlement agreement. HWP has offered the alternative Rider B design as an option to Chicopee, if it so chooses, with the stipulation that once this option is exercised, Chicopee must remain on Rider B rates until a further amendment to Rider B becomes effective. The filing provided that Chicopee must exercise the option to switch to the Rider B rate within 30 days of the proposed effective date.

HP&E proposes to supersede its present rate schedule for South Hadley with an unexecuted service agreement under a full requirements tariff. In addition, to increased unit charges, the revised tariff introduces a 100% demand ratchet, an automatic tax adjustment clause,[5] and a revised fuel adjustment clause.

Notice of the companies' submittal was published in the **Federal Register** with comments due on or before August 16, 1984. Chicopee and South Hadley jointly filed a timely protest, motion to intervene, and motion for five month suspension and for summary judgment.[6] The customers question, among other things, the authority of the companies to unilaterally change the conditions of a previous settlement agreement; the amount of fuel inventory allowable; the amount of cash working capital allowable in rate base; the use of 100% ratchet together with a 12-CP demand allocation method; the trigger date for customer selection of contract demand; the inclusion of unappropriated undistributed subsidiary earnings in the common equity portion of HWP's capital structure; and the proposed rate of return on equity. The customers also request summary disposition with respect to several matters which are discussed below. With respect to the limitation on Chicopee's right to elect rate design Rider B, the customer asks that HWP be ordered to allow Chicopee until the later of November 1, or the effective date of its rate change, to make the choice.[7]

On August 24, 1984, the companies' responded to the customers' pleading. While not opposing the requests to intevene, the companies challenge the request for summary action and a maximum suspension.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make Chicopee and South Hadley parties to this proceeding.

The customers have requested summary dispositons with respect to three issues. According to Chicopee and South Hadley, the Commission should summarily reject HWP's proposed 100% ratchet; order the companies to eliminate the proposed 45 days of cash working capital from rate base; and summarily exclude Unappropriated Undistributed Subsidiary Earnings (Account 216.1) from HWP's common equity component.

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[1] *See* Attachment for rate schedule designations.

[2] HP&E is a wholly owned subsidiary of HWP, which in turn is a wholly-owned subsidiary of Northeast Utilities (NU).

[3] Specifically, HP&E requests waiver of the 120-day advance filing limitation in § 35.3(a) of the Commission's regulations and waiver of the requirement of § 35.13(d)(2) and (3)(ii)(A) to permit its Period II study to begin earlier than nine months prior to the proposed effective date.

[4] HWP and HP&E state that they are totally integrated entities.

[5] We note that any adjustments in the rate pursuant to the automatic tax adjustment clause contained in section 4(c) of the tariff will represent a change in rate requiring a timely filing under Part 35 of the Commission's regulations.

[6] On August 17, 1984, South Hadley submitted supplemental comments indicating that if does not oppose HPE's request for waivers, but requesting that the Commission not allow the rates to take effect before the January 25, 1985 proposed effect date.

[7] In its answer to the customers' intervention, HWP has agreed to this request. Thus, we need not address it. However, HWP shall advise the Commission if and when Chicopee exercises the option to be served under the Rider B rates.

According to the customers, "(u)nder Commission precedent, a company using a 12 month coincident peak allocation method cannot employ a ratchet in its rate design...." In *Central Illinois Light Company,* Opinion No. 81, 10 FERC ¶ 61,248 at 61,474–5 (1980), we made it clear that any utility proposing the imposition of a ratchet on a full requirements customer where the utility also uses a 12-CP demand allocation method has a heavy burden to meet, but it will be given a change to do so. The customers have not shown that HWP as a matter of law cannot make such a showing. Consequently, summary judgment on this issue is not appropriate at this time.

Similarly, with respect to the cash working capital allowance, questions of fact remain to be resolved at a hearing. According to the customers, the presumption against rate base inclusion of any working cash, which is being considered by this Commission in Rulemaking Docket No. RM84–9–000, should be applied in this case. That rule, however, is merely in the proposal stage and until it is finalized we will follow existing precedent.

The customers also request that we order deletion of Account 216.1 balances from HWP's capital structure. In this instance, we agree with the customers that it is not appropriate to include the unappropriated undistributed earnings of HP&E in HWP's capital structure. *See Minnesota Power and Light Company,* Opinion No. 155, 21 FERC 1451, 233 (1983); *United Gas Pipe Line Company* Opinion No. 99, 13 FERC ¶ 61,044 (1980). Amounts recorded in Account 216.1 are not included in the captial structure for ratemaking purposes because they do not represent available cash proceeds. The capital structure should represent the sources of funds used to finance rate base. Since Account 216.1 does not represent cash received or generated by the company, it cannot be a source of financing for the rate base. While we shall grant summary disposition with respect to this issue, we shall not require immediate refiling of the proposed rates, given the relatively small revenue effect of this decision.

In addition to summary judgment, the customers have requested that we afford affirmative relief in two other respects. First, they ask that we strike sections 5 and 6 of HPE's proposed service agreement contending that such sections provide for supersession of all previous contracts for the purchase of wholesale power between South Hadley and HPE and, therefore, eliminate prior settlement provisions affording the right to request services under a contract demand (CD) rate. In repsonse to this concern, the companies expressly state that sections 5 and 6 do not supersede any existing settlement terms and have no effect on South Hadley's ability to request CD service. Given this representation, we find no reason to strike the provisions at issue.

The customers have also requested that we order the companies to refile their rate increases with a "more typical capital rate structure." The appropriate capital structure is clearly a matter for examination at hearing. We therefore decline to order such a revision at this time.

Our preliminary review of the companies' joint filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co.,* 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for five months where preliminary review indicates that the proposed rates may be unjust and unreasonable and may generate substantially excessive revenues, as defined in *West Texas.* Our preliminary review of the current filing suggests that HP&E's and HWP's rates may result in substantially excessive revenues.

As noted, HP&E has requested waiver of the 120-day advance notice limitation and the requirement that Period II begin no earlier than nine months before the date on which the rate schedule change is proposed to become effective. HWP and HP&E also request waiver of the Commission's filing requirements so that they may file their cost of service study on a consolidated basis. The basis for these requests is the avoidance of duplicative and expensive work. Given the lack of opposition to these requests and the apparent economies of the approach taken by the companies, we conclude that good cause exists to waive these notice and filing requirements. Accordingly, HP&E's proposed rates will be accepted for filing and suspended for five months from its proposed effective date, to become effective, subject to refund, on June 20, 1985, and HWP's rates will be suspended for five months from that proposed effective date, to become effective, subject to refund, on February 22, 1985.

The Commission Orders

(A) The motion for summary disposition regarding the elimination of Account 216.1 balances from HWP's capital structure is granted; the other motions for summary judgment and for rejection of certain portions of the filings are hereby denied. The elimination of Account 216.1 balances shall be reflected in any compliance cost of service and rates at the conclusion of this proceeding.

(B) The request for waiver of notice and other filing requirements, as discussed above, is hereby granted.

(C) HWP's and HP&E's proposed rates are hereby accepted for filing and are suspended for five months from the proposed effective dates, to become effective, subject to refund on February 22, 1985, and June 20, 1985, respectively.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of HWP's and HP&E's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT.—RATE SCHEDULE DESIGNATIONS

[Docket No ER84-554-000]

Designations	Description
Holyoke Water Power Company	
(1) Supplement No. 2 to Supplement No. 2 to Rate Schedule FPC No. 30 (Supersedes Supplement No. 1 to Supplement No. 2 and Exhibit A to Supplement No. 1 to Supplement No. 2).	Service Schedule CD-1.
(2) Supplement No. 3 to Supplement No. 2 to Rate Schedule FPC No. 30.	Rider B.
Holyoke Power and Electric Company	
(3) FERC Electric Tariff, Original Volume No. 1 (Original Sheet Nos. 1 through 19).	Full Requirements Service Tariff.
(4) Service Agreement No. 1 under FERC Electric Tariff, Original volume No. 1 (Supersedes Rate Schedule FERC No. 4).	Unexecuted Service Agreement with South Hadley.
(5) Supplement No. 1 to Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1.	Delivery Points—South Hadley.

[FR Doc. 84-25280 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-659-000]

Kentucky Utilities Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 4, 1984, Kentucky Utilities Company (KU) tendered for filing three agreements between KU and East Kentucky Power Cooperative (East Ky.), each of which provided for an interconnection point between the two parties systems. An agreement between the parties dated January 13, 1970, which is on file with this Commission (Company Rate Schedule F.P.C. No. 96), provides for additional delivery points to be established as needs arise.

KU requests waiver of prior notice requirements and requests the following effective dates: (1) Letter agreement dated February 16, 1984, connection to Leeco Substation—September 30, 1984; (2) letter agreement dated March 23, 1984, connection to Revelo Substation—October 31, 1984; and (3) letter agreement dated July 13, 1984, connection to Hopewell tap—September 30, 1984.

Copies of this filing have been served upon East Ky. and the Public Service Commission of Kentucky.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion of intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25290 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket NO. GP84-50-000]

Mobil Oil Corp., et al.;[1] "Complaint Against Purchasers' Noncompliance with Commission's Section 110 Regulations"

In the matter of ANR Pipeline Co., Arkansas Louisiana Gas Co., Columbia Gas Transmission Corp., El Paso Natural Gas Co., Florida Gas Transmission Corp., Lone Star Gas Co., Montana Dakota Utilities Co., Natural Gas Pipeline Co. of America, Northern Illinois Gas Supply Inc., Northern Natural Gas Co.; Northwest Central Pipeline Corp., Northwest Pipeline Corp., Panhandle Eastern Pipe Line Co., Sea Robin Pipeline Co., Southern Natural Gas Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp., Texas Gas Transmission Corp., Transcontinental Gas Pipeline Co., Transwestern Pipeline Co., Trunkline Gas Co., United Gas Pipe Line Co.

Issued September 18, 1984.

On August 28, 1984, Mobil Oil Corporation, *et al.* (Mobil), Nine Greenway Plaza, Suite 2700, Houston, Texas 77045, filed a complaint with the Federal Energy Regulatory Commission (Commission) against ANR Pipeline Company, *et al.* (Respondents), pursuant to Rule 206(a) of the Commission's Rules of Practice and Procedure [2] and § 271.1105 of the Commission's regulations.[3] Mobil has complained that Respondents are not complying with the Commission's regulations under section 110 of the Natural Gas Policy Act of 1978.[4]

Specifically, Mobil asserts that the Respondents are not paying the billed production-related costs pursuant to the requirements of the Commission's rules. Mobil believes that each of the listed Respondents, respectively, is in violation of § 271.1104, *et seq.* in not timely paying its properly noticed and billed production-related costs. Mobil requests that the Commission (a) order the Respondents to immediately commence payment of properly billed production-related costs attributable to deliveries made prior to March 7, 1983, in accordance with § 271.1104(e)(3) of the Commission's regulations [5] and (b) order that properly billed production-related costs attributable to deliveries made on or after March 7, 1983, be paid by the Respondents within thirty (30) days of the receipt of the seller's invoice.

Any person desiring to be heard or to protest this complaint should file within 15 days after Notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceedings. Copies of the complaint have been served by the Complainant on all Respondents. Answers to the Complaint shall be due on or before October 9, 1984, under Rules 206 and 213.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25304 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

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[1] Mobil Oil Corporation filed this Complaint on behalf of itself and its wholly-owned affiliates, Mobil Producing Texas & New Mexico Inc. and Mobil Oil Exploration & Producing Southeast Inc.

[2] 18 CFR 385.206(a) (1983).

[3] 18 CFR 271.1105 (1983).

[4] 15 U.S.C. 3301-3432) (1982).

[5] 18 CFR 271.1104(e)(3) (1983).

[Docket No. RP82-14-006]

Mountain Fuel Resources, Inc.; Tariff Filing

September 18, 1984.

Take notice that on September 10, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Fifth Revised Sheet No. 4;
Third Substitute Sixteenth Revised Sheet No. 7;
Second Substitute Seventeenth Revised Sheet No. 7;
Second Substitute Eighteenth Revised Sheet No. 7;
Substitute Nineteenth Revised Sheet No. 7;
Substitute Twentieth Revised Sheet No. 7;
Substitute Twenty-First Revised Sheet No. 7.

Resources states that the foregoing tariff sheets were submitted to the Federal Energy Regulatory Commission (Commission) in accordance with ordering paragraph B of Opinion No. 214, issued on May 2, 1984.

Resources states that it submitted a refund report to the Commission on March 14, 1983, pursuant to Article VII of a Stipulation and Agreement in Docket Nos. RP82-14-000, RP82-14-001, and RP82-47-000, which resolved all issued in the related proceedings other than the appropriate capital structure and rate of return on common equity. Resources states that on April 13, 1983, it refunded $1,681,116.02 (principal and interest) to its jurisdictional sale-for-resale and transportation customers.

Resources further states that its final refund report to the Commission, which was prepared as prescribed by § 154.67 of the Commission's regulations, indicates an additional $1,800,033.74 refunded to its jurisdictional customers.

Resources requests that the Commission waive any of its rules or regulations as may be necessary in order to allow the filed tariff sheets to be accepted as proposed.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion of intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25305 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6195-001]

North Carolina Electric Membership Corp.; Surrender of Preliminary Permit

September 20, 1984.

Take notice that North Carolina Electric Membership Corporation, Permittee for the proposed Cape Fear Lock and Dam No. 1 Project No. 6195, has requested that its preliminary permit be terminated. The permit was issued on July 22, 1983, and would have expired December 31, 1984. The project would have been located on the Cape Fear River near Kelly, Bladen County, North Carolina.

The Permittee cites that the proposed project is not economically feasible as the reason for the surrender request.

The Permittee filed its request on August 31, 1984, and the surrender of the preliminary permit for Project No. 6195 is deemed accepted 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25291 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-73-001]

Northern Natural Gas Co., Division of InterNorth, Inc.; Tariff Filing

September 18, 1984.

Take notice that on September 12, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), tendered for filing to become part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1:

Fifteenth Revised Sheet No. 1
Fourth Revised Sheet No. 1a
Sixth Revised Sheet No. 2a
Thirty-Fourth Revised Sheet No. 4a
Twenty-Fifth Revised Sheet No. 4b
Original Sheet No. 24
Original Sheet No. 24a
Original Sheet No. 24b
Third Revised Sheet No. 27e
Seventh Revised Sheet No. 27f
First Revised Sheet No. 29a
Original Sheet No. 78a
Original Sheet No. 78b
Original Sheet No. 78c
Original Sheet No. 78d
Third Revised Sheet No. 85d
Twenty-Second Revised Sheet No. 87
Twenty-Second Revised Sheet No. 88
Eighteenth Revised Sheet No. 90
Eleventh Revised Sheet No. 103
Twelfth Revised Sheet No. 104
Ninth Revised Sheet No. 110
Eighth Revised Sheet No. 111
Eighth Revised Sheet No. 112
Second Revised Sheet No. 124

These sheets consist of Northern's new CDO-1 Rate Schedule, revised SS-1 and AOS-1 Rate Schedules, Demand and Commodity Rate Schedules, Tables of Contents, Index of Purchasers, Directory of Communities Served and cancellation of a PL-1 Service Agreement. These pages also reflect the new and revised Service Agreements also filed by Northern on this date.

Also tendered for filing to become a part of Northern's F.E.R.C. Gas Tariff, Original Volume No. 2 is:

Twenty-First Revised Sheet No. 1a,
First Revised Sheet No. 1529.

Twenty-First Revised Sheet No. 1a reflects the deletion of the X-88 Agreement from the Table of Contents. First Revised Sheet No. 1529 consists of a Notice of Cancellation for Rate Schedule X-88, a Gas Exchange Agreement between Northern Natural Gas Company and Tennessee Gas Pipeline Company dated December 3, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25306 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-665-000]

Pacific Gas and Electric Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 7, 1984, Pacific Gas and Electric Company (PGandE) tendered for filing as an initial rate schedule the Power Sale Agreement between PGandE and the Resort Improvement District No. 1 (District) dated August 31, 1984.

PGandE states that the Agreement provides for full requirements resale service by PGandE to the District. PGandE will charge system average rates for service at primary distribution. The rates will consist of a $250/month customer charge, a demand charge of $7.801/kW-month, and an energy charge of $.00756/kWh. A fuel cost adjustment charge will be added to the energy charge. The Agreement provides for rate adjustments to account for adjustments to PGandE's retail base revenue amounts authorized by the California Public Utilities Commission.

PGandE requests an effective date of November 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the District and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25292 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-697-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

September 18, 1984.

Take notice that on September 7, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-697-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Owens-Corning Fiberglas Corporation (Owens-Corning) through June 30, 1985, under the certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is indicated that pursuant to a limited release and gas sales and purchase agreement among Transco, Owens-Corning and McCormick 1978 Oil and Gas Program (McCormick), the seller of the gas, Owens-Corning has contracted to purchase natural gas which is gas released by Transco. Owens-Corning would use the gas at its Barrington and Berlin, New Jersey, plants for boiler fuel and process purposes. In order for Owens-Corning to receive its gas, it has entered into a gas transportation agreement with Transco dated July 1, 1984, it is indicated. Transco proposes to receive 2,000 dt equivalent of gas on an average day, up to 4,300 dt equivalent of gas on a peak day and 730,000 dt equivalent of gas on an annual basis at existing points of interconnection with McCormick in the North Rucias Field, Brooks County, Texas, and to redeliver equivalent quantities (less quantities retained for compressor fuel and line loss make-up) at existing points of delivery between Transco and South Jersey Gas Company (South Jersey) for subsequent transportation to Owens-Corning's plants. The volume of gas to be transported to the Barrington plant would be 2,783 dt equivalent on a peak day, 1,000 dt equivalent on an average day, and 365,000 dt equivalent annually and that the volume of gas to be transported to the Berlin plant would be 1,500 dt equivalent on a peak day, 1,000 dt equivalent on an average day, and 365,000 dt equivalent annually. Transco's proposed transportation, including the rates which Owens-Corning would be charged, would be pursuant to Transco's Rate Schedule T-II, it is stated. Transco further states that no new facilities would be constructed by Transco in order to provide its part of the transportation service.

Transco also requests "flexible authority" whereby Transco would undertake certain filings to advise the Commission in the event Owens-Corning obtains different sources of supply or if additions or deletions of receipt and/or delivery points are required in the furtherance of the end-user transportation authority. Transco states that it would, within 30 days of the addition or deletion of any gas sources and/or receipt/delivery points, file a report with the Commission which would include:

(i) A copy of the gas purchase contract between Owens-Corning and the seller and a copy of any resulting modifications in the transportation agreement between Transco and Owens-Corning;

(ii) A statement as to whether the supply is attributable to gas under contract to, and released by, a pipeline or distributor and, if so, identification of the parties and specification of the current contract price;

(iii) A statement of the Natural Gas Policy Act of 1978 pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(iv) If the supplier is a "producer or other seller in a first sale", a statement that the gas was not "committed or dedicated to interstate commerce on November 8, 1978" as such terms are used in § 157.209(e)(1)(i)(A) of the Regulations;

(v) Location of the receipt/delivery points being added or deleted and the transportation rate changes, if any, resulting from the addition or deletion of receipt/delivery points (for deletions the name of the producer/supplier being deleted will be provided);

(vi) Where an intermediary participates in the transaction between Owens-Corning and the seller, the information required by § 157.209(c)(1)(ix) of the Regulations;

(vii) Identity of any other pipeline involved in the transportation; and

(viii) A statement by South Jersey that it is willing to provide its part of the transportation service for an added source of supply.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25307 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-706-000]

Washington Gas Light Co.; Petition for Declaratory Order

September 18, 1984.

Take notice that on September 11, 1984, Washington Gas Light Company (WGL), 1100 H Street, NW., Washington, D.C. 20080, filed in Docket No. CP84-706-000 a petition pursuant to section 7(c)(1)(B) of the Natural Gas Act for a declaratory order exempting from the certificate requirements of section 7(c) a proposed sale of compressed natural gas (CNG), on a short-term, experimental basis to Accokeek Marine Company (Accokeek) for resale, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

WGL desires to sell CNG to Accokeek on an experimental basis to determine if a market exists for the use of CNG by pleasure boats. The CNG would be provided to Accokeek at WGL's

Forestville, Maryland, substation. The CNG would be placed in cylinders that hold either 84 or 114 cubic feet of natural gas at 2,400 psig. It is asserted that the cylinders would be owned, maintained and transported by Accokeek in compliance with all applicable regulations. WGL would not be involved in the promotion, sale or distribution of the gas to boat owners. It is stated that the volume of gas to be sold in this experimental program is *de minimis*, as Accokeek's current cylinder capacity is only approximately 5 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 4, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25306 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-664-000]

Washington Water Power Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 6, 1984, Washington Water Power Company (Washington) tendered for filing materials regarding the average system cost (ASC) for Washington and Idaho jurisdictions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25293 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5248-999, et al.]

West Slope Power Co., et al.; Extension of Time

September 18, 1984.

On September 12, 1984 and September 14, 1984, the State of California's Office of Planning and Research and the United States Department of the Interior's Bureau of Reclamation filed respective motions for an extension of time to file comments on a Draft Environmental Impact Analysis Report, as provided for in the Commission's Request for Comments and Notice of Availability issued August 10, 1984, in the above-docketed proceeding. The State of California's motion states that interested State agencies have experienced a delay in their receipt of a copy of the draft report and therefore require additional time to review the document and coordinate the preparation of their comments.

Upon consideration, notice is hereby given that the State of California and the U.S. Department of Interior are granted an extension of time for the filing of comments to and including October 1, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25309 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-455-000]

General Electric Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 20, 1984.

On August 20, 1984, General Electric Company (Applicant), Transportation Systems Business Operations, 2901 East Lake Road, Erie, Pennsylvania 16531, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Building 4E at 2901 East Lake Road, Erie, Pennsylvania 16531. The facility will consist of three No. 2 fuel oil fired diesel engine generator sets and a waste heat recovery boiler (WHRB). High pressure steam from the WHRB will be used for supply to process steam loads on the site through the district heating system and also to heat raw city water for use in the lime softening system. The net electric power production capacity of the facility will be 7.95 MW. The primary enery source will be No. 2 diesel fuel oil. No electric utility or electric utility holding company has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25287 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued August 31, 1984.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On August 10, 1984, the Commission received notice from MMS, Pacific OCS Region, that on May 20, 1984, MMS issued five leases from OCS Sale No. 53. The new leases were the subject of litigation since the sale date of May 28, 1981. These leases have been determined to qualify under NGPA section 102(c)(1)(A) as new OCS leases granted on or after April 20, 1977, pursuant to Order No. 336, and are identified as follows:

Lease No. OCS-P	Legal description, oil and gas sale No 53 of May 28, 1981	Effective date
0373	NI 10-3; Block 590	June 1, 1984.
0374	NI 10-3; Block 591	Do.
0375	NI 10-3, Block 634	Do
0376	NI 10-3; Block 635	Do.
0377	NI 10-3, Block 678	Do.

The notice of determination for these leases is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25299 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5236-005, et al.]

Cabot Corp. (Formerly Godfrey I. Cabot, Inc.), et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

September 18, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 26, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No and date filed	Applicant	Purchaser and location	Price per 1,000 ft^3	Pressure base
G-5236-005, D, Sept. 6, 1984	Cabot Corporation (formerly Godfrey I. Cabot, Inc.), P.O. Box 1473, Charleston, West Virginia 25325.	Consolidated Gas Supply Corp., McDowell, Wyoming & Fayette Counties, West Virginia.	(1)	
G-11957-000 D, Sept. 10, 1984	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	El Paso Natural Gas Company, Spraberry Trend Area and Benedum Fields, Glasscock, Midland, Reagan & Upton Counties, Texas.	(2)	
G-15221-000, D, Sept. 6, 1984	Cabot Corporation (Succ. to Cabot Carbon Co.), P.O Box 1473, Charleston, West Virginia 25325.	Consolidated Gas Supply Corp. (Formerly New York State Natural Gas Corp.), Clearfield Field, Clearfield County, Pennsylvania.	(3)	
G-17012-000, D, Sept. 10, 1984	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	El Paso Natural Gas Company, Spraberry Field, Upton County, Texas.	(4)	
G-17337-002, Sept. 12, 1984	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Texas Gas Transmission Corporation, West Cameron Block 33, Offshore, Louisiana.	(5)	
G-17012-000, D, Sept. 10, 1984	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	El Paso Natural Gas Company, Spraberry Field, Upton County, Texas.	(6)	
CI62-1523-001, D, Sept. 10, 1984	do	El Paso Natural Gas Company, Spraberry Field, Upton County, Texas.	(7)	
CI68-492-000, D, Sept. 6, 1984	Cabot Corporation, P.O. Box 1473, Charleston, West Virginia 25325.	Consolidated Gas Supply Corp., Cabot Station, Calhoun County, West Virginia (Consolidated) Pleasant County, West Virginia.	(8)	
CI79-247-001, Aug. 27, 1984	Warren Petroleum Company, A Division of Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77252.	El Paso Natural Gas Company, Levelland Gas Processing Plant, Hockley County, Texas.	(9)	
CI79-438-001, E, Sept. 7, 1984	Phillips Petroleum Company (Successor In Interest To Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Sea Robin Pipeline Company, South Marsh Island, Blocks 234 & 235, Offshore, Louisiana.	(10)	14 73
CI80-174-001, E, Sept. 5, 19P4	do	Sea Robin Pipeline Company, South Marsh Island, Blocks 234 & 235, Offshore, Louisiana.	(11)	14 73
CI84-573-000, A, Aug. 31, 1984	TBP Offshore Company, P.O. Box 2009, Amarillo, Texas 79189.	United Gas Pipe Line Company, Block A-351, High Island Area, East Addition, South Extension, Offshore, Texas.	(12)	14.73
CI84-574-000 (G-9483), B, Sept. 4, 1984.	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221-2880.	Tennessee Gas Pipeline Company, Nelsonville Field, Austin County, Texas.	(13)	
CI84-575-000 (CI73-47), B, Aug. 31, 1984.	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77251.	Transcontinental Gas Pipe Line Corporation, Brazos Block A-1, Offshore, Texas.	(14)	
CI84-576-000, B, Aug. 31, 1984	Murvin Oil Corporation	Consolidated Gas Transmission Corporation, Murphy District, Ritchie County, West Virginia Allen No. 2.	(15)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ^{3}	Pressure base
CI84-577-000 (CI73-97), B, Aug. 31, 1984.	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77251.	Transcontinental Gas Pipe Line Corporation, Brazos Block A-1, Offshore, Texas.	(14)	
CI84-578-000 (CI66-443-000), B, Aug. 27, 1984.	Shell Oil Company, P.O. Box 2463, Houston, Texas 77001.	ANR Pipeline Company, Buck Point Field, Vermilion Parish, Louisiana.	(16)	
CI84-579-000 (CI66-439-000), B, Sept. 4, 1984.	do	ANR Pipeline Company, East Buck Point Field, Vermilion Parish, Louisiana.	(16)	
CI84-580-000 (CI73-471), B, Sept. 4, 1984.	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046	El Paso Natural Gas Company, Morrison (3600' Wolfcamp) (Ellenburger) Field, Crockett and Val Verde Counties, Texas.	(17)	
CI84-581-000, B, Sept. 7, 1984	Warren Drilling Company, Inc., P.O. Box 1218, Owensboro, Kentucky 42302.	Texas Gas Transmission Corporation, Elk Creek Gas Field, Hopkins County, Kentucky.	(18)	
CI84-582-000, B, Sept. 7, 1984	Commonwealth Exploration, Inc., P.O. Box 1604, Owensboro, Kentucky 42302	Texas Gas Transmission Corporation, Slaughters South Gas Area, Hopkins County, Kentucky.	(15)	
CI84-583-000, B, Sept. 7, 1984	Charlotte A. Sutliff, P.O. Box 368, Princeton, Indiana	Texas Gas Transmission Corporation, Fransisco Field, Gibson County, Indiana.	(18)	
CI84-584-000, B, Sept. 6, 1984	Cabot Corporation (Formerly Godfrey L. Cabot, Inc.), P.O. Box 1473, Charleston, West Virginia 25325.	Sylvania Corporation, Town of Benezette, County of Elk, Pennsylvania.	(19)	
CI84-590-000, B, Sept. 7, 1984	Texas Crude Oil Company, 2100 Texas Crude Building, 801 Travis, Houston, Texas 77002.	Southern Natural Gas Company, Bully Camp Field, La Fourche Parish, Louisiana.	(20)	
CI84-585-000 (CI80-145), B, Sept. 10, 1984.	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125	Northern Natural Gas Company, Galveston Block A-157, Offshore, Texas.	(21)	
CI84-586-000, B, Sept. 10, 1984	Adeline Janette Fleischaker, Revocable Trust, *et al.*, c/o Mr. David S. Fleischaker, Jolen Operating Company, P.O. Box 1178, Oklahoma City, Oklahoma.	ANR Pipeline Company, Barby No. 1-12 Well, Laverne Field, Section 12-4N-26ECM, Beaver County, Oklahoma, 73101.	(22)	
CI84-587-000 (CI79-572), B, Sept. 12, 1984.	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125	Southern Natural Gas Company and United Gas Pipe Line Company, Platform A in Block 330, West Cameron Area, Offshore Louisiana	(23)	
CI84-588-000, B, Sept. 12, 1984	Walter W. Krug d/b/a. Wallen Production Co., P.O. Box 1960, Midland, Texas 79702	Northern Natural Gas Company, Section 40, North of Block O, A.B. Dyer, Sur. Part of Section 38, Block KL, F.M. Holmsbey, Sur. Ozone (Canyon) Field, Crockett County, Texas.	(24)	
CI84-589-000, B, Sept. 12, 1984	Kaiser Energy, Inc., P.O Box 8, Ravenswood, West Virginia 26164.	Columbia Gas Transmission Corporation, Kenna Quad, Ripley District, Jackson County, West Virginia.	(25)	
G-3315-001, D, Sept. 13, 1984	Diamond Shamrock Exploration Company, P.O Box 631, Amarillo, Texas 79173.	Northern Natural Gas Company, McKee Plants, Moore County, Texas.	(26)	

[1] Corporate Reorganization. Exchange to continue between Cranberry Pipeline Corporation and Consolidated Gas Supply Corp.

[2] By Assignment of Operating Rights effective 11-5-83 MPTM assigned to John L. Co small producer, all of its operating rights in that certain producing acreage.

[3] Pressure decreased to point where gas from well could not enter purchaser's pipelines. Well is plugged and the underlying leases expired.

[4] Sohio Petroleum Company assigned their interest in S/2 and NW/4 of Section 14, Block N, H. E. & W. T. RR Co. Survey Upton County, Texas to USENCO Incorporated.

[5] Applicant is filing to change delivery point.

[6] Not used

[7] Sohio Petroleum Company assigned their interest in N/2 of Section 1, Block N, H. E. & W. T. RR Co. Survey, Sprayberry Field, Upton County, Texas

[8] Corporation Reorganization Transportation to continue by Cranberry Pipeline Corporation.

[9] Applicant is filing for permission to abandon the existing delivery point and substitute another existing delivery point

[10] Effective December 1, 1983, Phillips Oil Company assigned to Applicant, its working interest in OCS-G-2300 South Marsh Island, Blocks 234 and 235, Offshore, Louisiana.

[11] Effective December 1, 1983, Phillips Oil Company assigned to Applicant, its working interest in the East Cameron Block 38 Field, Offshore Louisiana.

[12] Applicant is filing under Gas Purchase Contract dated May 16, 1984.

[13] The remaining leases and acreage committed have either expired or have been assigned

[14] The reserves have depleted and the lease has been released

[15] Decline in production, uneconomical to continue operations

[16] Shell no longer owns any leases subject to this rate schedule.

[17] The gas delivered under the contract contains hydrogen sulphide in excess of the specifications provided in the contract and in excess of the amounts buyer can accept in its pipeline facilities.

[18] Field depleted.

[19] Wells are inactive, gas supply is depleted.

[20] The Louis Adams Wells No. 1 & 1-D were P&A on 7/9/73. Additionally, Purchaser has requested Seller to seek abandonment in order that Purchaser may abandon pipeline & measuring facilities installed for receipt of production.

[21] Ceased production due to depletion

[22] Well level declined to a non-commercial level.

[23] All wells have watered out and lease has no future production potential. All have been plugged and abandoned.

[24] The Miller No. 5 gas well is in final depletion stage with total production in June 1984 being 354 MCF or 12 MCF/day, therefore uneconomical to operate well

[25] Purchaser determined to release the production and acreage associated with the high cost gas produced from the Melvin Casto well (KEM No. 165)

[26] These leases have expired or terminated by their own terms.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession

[FR Doc. 84-25300 Filed 9-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-51-000, et al.]

Motion of Indicated Producers To Require Pipeline Purchasers To Pay Gathering and Compression Allowances; Shell Oil Co. et al.

September 18, 1984.

In the matter of motion of Indicated Producers respecting: Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 And Establishing Policy Under the Natural Gas Act (Docket No. RM80-47-002); Delivery Allowances under Section 110 of the Natural Gas Policy Act of 1978 (Docket No. RM80-73-000; Compression Allowances under Section 110 of the Natural Gas Policy Act of 1978 (Docket No. RM80-74-000)

On september 7, 1984, Indicated Producers[1] requested, pursuant to 18 CFR 385.212 (1983), that the Federal Energy Regulatory Commission (Commission) issue an Order requiring interstate pipeline purchasers to make payments of the generic gathering and compression allowances established by Order No. 94-A[2] and Order No. 94-C[3] in Docket No. RM80-47-002, in the amounts set out in the Interim Rule[4] and Final Rule[5] in Docket Nos. RM80-73-000 and RM80-74-000. The Interim Rule provided that collection of these allowances could begin, effective thrity

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[1] Shell Oil Company, Shell Offshore Inc., Shell Western E&P Inc., Aminoil Inc., Cities service Oil and Gas Corporation, Gulf Oil Corporation, Mitchell Energy Corporation, Mobil Oil Corporation, Mobil Producing Texas & New Mexico Inc., Mobil Oil Exploration & Producing Southeast Inc., Sun Exploration and Production Company, Texaco Inc., and Union Oil Company of California are the Indicated Producers herein. Although styled as a "motion," Indicated Producers' request is generally in the nature of a Complaint, and has been docketed at No. GP 84-51-000. It is akin to a complaint filed by Mobil Oil Corporation, *et al*: on Aug. 28, 1984, at Docket No. GP84-50-000, respecting the section 110 regulations under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982).

[2] 22 FERC ¶ 61.055 (1983).

[3] 23 FERC ¶ 61.280 (1983).

[4] 22 FERC ¶ 61.054 (1983).

[5] 24 FERC ¶ 61.356 (1983).

(30) days from the date of publication of that Order in the **Federal Register** (*mimeo* at 47) or March 7, 1983. These allowances are self-implementing, and require that the seller have contractual authority therefor, and that the seller submit to the purchaser a written description of the basis for the charges,[6] and file a blanket affidavit with the Commission under § 154.94(k) of the Commission's regulations.

Indicated Producers assert that despite the fact that Producers have fully complied with the Commission's Orders, most interstate pipeline purchasers are, arbitrarily and without legal justification, refusing to pay the generic delivery and compression allowances. Indicated Producers note further that the Commission has pending before it another proceeding, entitled "Refunds Resulting From Btu Measurement Adjustments, Docket Nos. RM84-6-000, *et al.*"

Indicated Producers specifically request that the Commission should either:

1. Direct the interstate pipelines to offset the production-related cost allowances under section 110 of the Natural Gas Policy Act of 1978 against the Btu refund payments of Docket No. RM80-6-000, *et al.*, or

2. Direct the interstate pipelines to begin making payments for production-related cost allowances for which they have received billings on a current basis each month, and to make retroactive payments for which they have received billings within 30 days after the Commisison's Order, or receipt of the billing statement, whichever occurs last.

Any person desiring to be heard or to protest Indicated Producers' filing should file within 15 days after notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-25298 Filed 9-21-84; 8:45 am]

BILLING CODE 6717-01-M

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[6] 18 CFR 271.1104(e) (1983); Order No. 94-A, Appendix at 10-12.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51537; TSH-FRL-2676-7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-six PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-1149, 84-1150, 84-1151, 84-1152, 84-1153, 84-1154, 84-1155, 84-1156, 84-1157, 84-1158, 84-1159, 84-1160 and 84-1161—December 8, 1984.
PMN 84-1162, 84-1163, 84-1164, 84-1165, 84-1166, 84-1167, 84-1168, 84-1169, 84-1170 and 84-1171—December 9, 1984.
PMN 84-1172, 84-1173 and 84-1174—December 10, 1984.

Written comments by:

PMN 84-1149, 84-1150, 84-1151, 84-1152, 84-1153, 84-1154, 84-1155, 84-1156, 84-1157, 84-1158 84-1159, 84-1160 and 84-1161—November 8, 1984.
PMN 84-1162, 84-1163, 84-1164, 84-1165, 84-1166, 84-1167, 84-1168, 84-1169, 84-1170 and 84-1171—November 9, 1984.
PMN 84-1172, 84-1173 and 84-1174—November 10, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51537]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENT INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-1149

Manufacturer. Confidential.

Chemical. (G) Disubstituted carbopolycycle, salt.

Use/Production. (S) Site-limited isolated intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84-1150

Manufacturer. Confidential.

Chemical. (S) 2,2'-Methylene-bis-[4,6-bis(1,1-dimethylethyl)]-1,3-benzenediol.

Use/Production. (G) Additive for plastics, rubber or lubricants, Prod. range: Confidential.

Toxicity Data. Ames Test: Non-mutagenic.

Exposure. Manufacture: dermal, a total of 17 workers, up to 4 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. 10 to 300 kg/batch released to land. Disposal by publicly owned treatment works (POTW).

PMN 84-1151

Manufacturer. Confidential.

Chemical. (S) 2,2'-Methylene-bis-[4,6-bis(1,1-dimethylethyl)]-1,3-benzenediol.

Use/Production. (G) Additive for plastics, rubber or lubricants. Prod. range: Confidential.

Toxicity Data. Ames Test. Non-mutagenic.

Exposure. Maufacture: dermal, a total of 23 workers, up to 4 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. 10 to 300 kg/batch released to land. Disposal by POTW.

PMN 84-1152

Importer. Confidential.

Chemical. (G) Copper complex of a substituted phenyl azo.

Use/Import. (S) Direct dye for paper. Import range: Confidential.

Toxicity Data. Acute oral: 720 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 1 person/shift, 1/4 hr/da.

Environmental Release/Disposal. Disposal by on-site biological waste treatment plants.

PMN 84–1153

Manufacturer. Confidential.

Chemical. (G) Aromatic substituted urea.

Use/Production. (G) Curing agent for thermoset resins. Prod. range: Confidential.

Toxicity Data. Acute oral: 3,636 mg/kg; Acute dermal: >2 gm/kg; Irritation: Eye—Severe; Ames Test: Not mutagenic; Delayed contact hypersensitivity: No sensitization.

Exposure. Manufacture: a total of 18 workers, up to 8 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 0.1 kg/batch released with none to water. Disposal by POTW.

PMN 84–1154

Manufacturer. Confidential.

Chemical. (G) Aromatic substituted urea.

Use/Production. (G) Curing agent for thermoset resins. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 18 workers, up to 8 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 0.1 kg/batch released with none to water. Disposal by POTW.

PMN 84–1155

Manufacturer. Confidential.

Chemical. (G) Quaternary polyamine.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. 25 kg/batch released.

PMN 84–1156

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium chloride of oxyalkylated polyamine.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. 25 kg/batch released.

PMN 84–1157

Manufacturer. Confidential.

Chemical. (G) Oxyalkylated phenolic ester.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. 25 kg/batch released.

PMN 84–1158

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium chloride of an oxyalkylated polyamide.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. 25 kg/batch released.

PMN 84–1159

Manufacturer. Confidential.

Chemical. (G) Oxyalkylated tetrol 2-butenedioic acid ester.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. 25 kg/batch released.

PMN 84–1160

Manufacturer. Confidential.

Chemical. (G) Propoxylated imidazoline.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. 25 kg/batch released.

PMN 84–1161

Manufacturer. Confidential.

Chemical. (G) 4-Substituted benzoic acid.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 9 workers, up to 24 hrs/da, up to 4.5 da/yr.

Environmental Release/Disposal. 0.2 to 9.6 kg/batch released. Disposal by incineration.

PMN 84–1162

Manufacturer. Confidential.

Chemical. (G) Fatty acids, ester with polyols.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water. Disposal by sanitary landfill and state approved water treatment system.

PMN 84–1163

Manufacturer. The Minnesota Mining and Manufacturing Company.

Chemical. (G) Perfluoroalkyl substituted polyurethane.

Use/Production. (S) Industrial fiber treatment. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Minimal, Eye—Non-irritant; Ames Test: Non-mutagenic; Yeast assay: Non-recombinogenic; C–BOD5: Nil; C–BOD_{10}: Nil; C–BOD20 ≤ 51 mg/1; LC50 96 hr (Fathead minnow): 1,000 mg/l.

Exposure. Manufacture and processing: dermal, a total of 20 workers.

Environmental Release/Disposal. Less than 2 to less than 10 lbs. released to water and less than 2 lbs. to land. Disposal by biological wastewater treatment, navigable waterway and sanitary landfill.

PMN 84–1164

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzoic acid ester.

Use/Production. (G) Chemical intermediate. Prod. range: 3,000–6,000 kg/yr.

Toxicity Data. Acute oral: Males and females >3,200 mg/kg; Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Normal to moderate.

Exposure. Manufacture and use: dermal and inhalation, a total of 14 workers, up to 0.8 hr/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 15 to 30 kg/batch incinerated.

PMN 84–1165

Manufacturer. Confidential.

Chemical. (G) Substituteded benzotriazole.

Use/Production. (G) Chemical intermediate. Prod. range: 650–1,300 kg/yr.

Toxicity Data. Acute oral: Males and females >3,200 mg/kg; Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Normal.

Exposure. Manufacture and use: dermal and inhalation, a total of 9 workers, up to 0.5 hr/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 0.1 to 9 kg/batch incinerated.

PMN 84–1166

Manufacturer. Confidential.

Chemical. (G) Functionally modified polyurethane.

Use/Production. (G) Industrial coating. Prod. range: 50,000–122,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 26 workers, up to 5 hrs/da, up to 49 da/yr.

Environmental Release/Disposal. 5 to 25 kg/batch released to land. Disposal by incineration and landfill.

PMN 84–1167

Manufacturer. Confidential.

Chemical. (G) Epoxy ester.

Use/Production. (G) UV-curable resin for clear finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers.

Environmental Release/Disposal. Confidential.

PMN 84–1168

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Polysubstituted urethane.

Use/Production. (G) Synthetic fiber finish, non-dispersive use. Prod. range: 800–100,000 kg/yr.

Toxicity Data. Acute oral: >25,000 mg/kkg; Irritation: Skin—Slight, Eye—Mild to moderate; Inhalation: 290 mg/m^3.

Exposure. Manufacture and use: dermal, a total of 20 workers, up to 7 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. 0.4 to 40 kg/batch contained for disposal. Disposal by on-site chemical/biological waste treatment facility.

PMN 84–1169

Importer. Confidential.

Chemical. (G) Phenol, benzylic ether.

Use/Import. (G) Highly dispersive use. Import range: Confidential.

Toxicity Data. Irritation: Eye—Non-irritant to mild; Ames Test: Not mutagenic; Skin sensitization: No sensitizing potentiality; Photallergenicity: No photoallergenic properties; Phototoxicity: no phototoxic potential.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84–1170

Manufacturer. Confidential.

Chemical. (G) Rhodium carboxylate.

Use/Production. (G) Homogeneous chemical catalyst. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by recycle and recovery.

PMN 84–1171

Manufacturer. The Minnesota Mining and Manufacturing Company.

Chemical. (G) Perfluoroalkyl substituted polyurethane.

Use/Production. (S) Industrial fiber treatment. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Minimal, Eye—Non-irritant; Ames Test: Non-mutagenic; Yeast assay: Non-recombinogenic; C–BOD_5: Nil; C–BOD_{10}: Nil; C–BOD_{20}: Nil; COD: 0.60 g/g; LC_{50} 96 hr (Fathead minnows): 1,000 mg/l.

Exposure. Confidential.

Environmental Release/Disposal. 2 to less than 10 lbs released to water with 2 lbs to land. Disposal by incineration, sanitary landfill, navigable waterway and reclamation or recycle.

PMN 84–1172

Manufacturer. Confidential.

Chemical. (S) 1-Dodecanamine sulfate, mixture of mono- and di- amine salts.

Use/Production. (G) Catalyst promoter for contained use in crude oil refineries. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. 0.002 kg/batch released to land. Disposal by approved and licensed deep well.

PMN 84–1173

Manufacturer. Confidential.

Chemical. (S) 1-Octanamine hydrogen sulfate, mixture of mono- and di- amine salts.

Use/Production. (G) Catalyst promoter for contained use in crude oil refineries. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. 0.03 kg/batch released to land. Disposal by approved and licensed deep well.

PMN 84–1174

Manufacturer. Confidential.

Chemical. (S) Tricyclo $[3.3.1.1^{3,7}]$ decan-1-amine sulfate, mixture of mono- and di- amine salts.

Use/Production. (G) Catalyst promoter for contained use in crude oil refineries. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. 0.05 kg/batch released to land. Disposal by approved and licensed deep well.

Dated: September 14, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–25220 Filed 9–21–84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-50526; TSH-FRL-2677-1]

Significant New Use Notification; Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a significant new use notice from a company that intends to begin manufacturing the chemical substance 4,4′-methylenebis(2-chlorobenzenamine) (MBOCA) in the United States. The company has submitted the significant new use notice voluntarily in anticipation of a possible EPA proposal to designate the manufacture of MBOCA in the United States as a significant new use of that substance.

FOR FURTHER INFORMATION CONTACT: Jeanette Wiltse, Chief, Risk Management Branch, Existing Chemical Assessment Division (TS–778), Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, D.C. 20460, (202–382–3832).

SUPPLEMENTARY INFORMATION: Sections 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a significant new use; the regulatory mechanism for doing so is a significant new use rule (SNUR). TSCA section 5(a)(1)(B) requires persons intending to engage in a significant new use, as designated by EPA, to submit a significant new use notice to the Agency at least 90 days before they commence that use. EPA has codified the notice requirements and other general SNUR provisions at 40 CFR Part 721, Subpart A.

At present, there is no SNUR proposed or in effect for the chemical substance MBOCA. However, the EPA Office of Pesticides and Toxic Substances (OPTS) is developing a proposed SNUR that would designate the manufacture of MBOCA in the United States as a significant new use of that substance. OPTS currently intends to include a provision in the proposed SNUR exempting persons who, prior to the effective date of the final SNUR, meet certain conditions of voluntary compliance.

Although EPA has not yet proposed a SNUR for MBOCA, the Agency has received a significant new use notice from a company that currently intends to manufacture MBOCA in the United States. The company submitted the notice voluntarily, with the knowledge that OPTS is developing the proposed SNUR described above. The company submitted the notice because it is seeking to comply with the SNUR before the rule is promulgated, and thus possibly qualify for an exemption from the final rule.

If OPTS does promulgate a SNUR for the manufacture of MBOCA in the United States, and the rule contains a voluntary compliance exemption, then the Agency would determine whether the company has met all of the conditions for the exemption as specified in the final SNUR. If such an exemption were granted, EPA would not require the company to cease production and submit a new SNUR notice on the effective date of the final rule.

Interested persons will have an opportunity to comment on the voluntary compliance exemption when the SNUR is proposed. The completed non-confidential document is available in the Public Reading Room E-107 at the above address.

The following is a list of data extracted from the nonconfidential version of the company's significant new use notice.

SNUR 84-1

Chemical. 4,4-methylenebis(2-chlorobenzenamine), also identified as 4,4′-methylenebis(2-chloroaniline) and MBOCA (CAS No. 101-14-4).

Manufacturer. Confidential.

Significant new use. Manufacture in the United States.

Use(s) of chemical substance. Industrial and commercial crosslinking agent for polyurethane products.

Production range. Confidential.

Toxicity data. No data submitted.

Exposure. Confidential.

Environmental release. Confidential.

Disposal. Confidential.

(Sec. 5, Pub. L. 94-469, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 1[illegible] 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-25218, Filed 9-21-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59168A; OTS-FRL 2678-1]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-77. The test marketing conditions are described below.

EFFECTIVE DATE: September 12, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M Street SW., Washington, DC 20460, (202-382-3480).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-77. EPA has detemined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the level and duration of exposure must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met. The following additional restrictions apply. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substances produced and must make these records available to EPA upon request.
2. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME-84-77.

Date of Receipt: August 13, 1984.

Notice of Receipt: August 24, 1984 (49 FR 33720).

Applicant: Confidential.

Chemical: (G) Aliphatic amine adducted with epoxy resin.

Use: (G) Potting and casting applications.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: One year.

Commencing on: September 12, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 12, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc 84-25216 Filed 9-21-84; 8:45 am]

BILLING CODE 6560-50-M

[A-7-FRL]

Region VII; Actions Taken Under the PSD and NSPS Regulations (Iowa/Kansas/Missouri/Nebraska)

Notice is hereby given that the Environmental Protection Agency (EPA), Region VII, has taken the following actions under either the federal prevention of significant deterioration of air quality (PSD) regulation, 40 CFR 52.21 (as amended on August 7, 1980), or the federal Standards of Performance for New Stationary Sources (NSPS) regulation, 40 CFR Part 60:

(A) The following PSD permit was revised:

NATIONAL COOPERATIVE REFINERY ASSOCIATION, McPherson, Kansas: Various revisions were made to the permit that was issued by the regional office on July 17, 1981. In general, the revisions revised the sequence of bringing the various units of the proposed project on line—the emission limits of the permit were not affected. *Issued:* May 17, 1984.

(B) The "commencement of construction" deadline for the following PSD project was extended by 18 months:

IOWA ELECTRIC LIGHT AND POWER COMPANY, Guthrie County Generating Station, Guthrie County, Iowa: Proposal to construct a new 650-megawatt coal-fired steam electric generating plant, approved by the regional office on October 29, 1982. Original Deadline: April 29, 1984. Revised Deadline: October 29, 1985. *Issued:* August 6, 1984.

(C) The following NSPS applicability and non-applicability determinations were issued by the regional office:

INTERTHERN, INC., St. Louis, Missouri: The regional office concluded that the company's proposed new furnace coating operation will not be subject to the requirements of 40 CFR Part 60, Subpart SS—Standards of Performance for Industrial Surface Coating: Large Applicances (47 FR 47778).

Issued: July 5, 1984.

NASHUA CORP., Omaha, Nebraska: Since the company's modification of an existing paper coating line resulted in a net emissions increase of volatile organic compounds, the regional office concluded that the modified facility became an affected facility, subject to the requirements of 40 CFR Part 60, Subpart RR—Standard of Performance for Pressure Sensitive Tape and Label Surface Coating Operations. *Issued:* May 29, 1984.

Under § 307(b)(1) of the Clean Air Act, judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within sixty (60) days of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements.

In the above cases, the appropriate courts are the Eighth U.S. Circuit Court of Appeals (St. Louis, Missouri) for sources in Iowa, Nebraska and Missouri, and the Tenth U.S. Circuit Court of Appeals (Denver, Colorado) for sources in Kansas. A petition for review must be filed with the appropriate court on or before November 23, 1984.

Copies of the above actions and related information are available for public inspection at the following location: U.S. Environmental Protection Agency, Region VII, Air and Waste Management Division, Air Branch (Room 1414), 324 East 11th Street, Kansas City, Missouri 64106.

Interested individuals may also contact Mr. Charles W. Whitmore at 816/374–6525 (FTS: 758–6525).

Dated: August 30, 1984.

William Rice,

Acting Regional Administrator.

[FR Doc 84-25221 Filed 9-21-84; 8:45 am]

BILLING CODE 6560-50-M

[ORD-FRL-2689-6]

Finding of No Significant Impact (FNSI) for Demonstration of the USEPA Mobile Incineration System

AGENCY: Environmental Protection Agency.

ACTION: Announcement of FNSI for USEPA Mobile Incineration System.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) for the preparation of environmental impact statements, the proposed USEPA action described below has been reviewed.

Project Name: Field demonstration of a mobile system for the detoxification/incineration of hazardous and toxic substances from clean-up operations at uncontrolled hazardous waste sites.

Project Number: USEPA Decision Unit Number: Y-105; Task Number: YEH-004; EPA Contract Number: 68-03-3069.

Project Originator: U.S. Environmental Protection Agency, Office of Research and Development, Municipal Environmental Research Laboratory—Ci Oil and Hazardous Materials Spills Branch Edison, New Jersey 08837.

Project Location: The system will be operated temporarily as a demonstration at hazardous waste sites throughout the country under the direction of the Project Originator.

Project Objective: The objective of the project is to demonstrate and evaluate the USEPA Mobile Incineration System at uncontrolled hazardous waste sites throughout the United States. The system was specifically made mobile to facilitate nationwide use. The USEPA Mobile Incineration System will complement other mobile treatment systems that have been developed and field demonstrated by the Project Originator at numerous hazardous and toxic waste sites throughout the country.

During emergency remedial situations, the system will be temporarily set up at a hazardous waste site for the on-site thermal destruction or detoxification of liquids and solids contaminated hazardous and toxic organic substances. System operating conditions will be monitored in accordance with the specific requirements of the individual Federal, State, and Municipal permits that will govern the operation of the system at the hazardous waste site. In general, these requirements will include: The analysis of the contaminated materials that are to be incinerated; the continuous monitoring of the system's operation, the combustion process, and the stack gas; and prior to discharge, the temporary storage and subsequent analysis of kiln ash and process water to ensure regulatory compliance. At the conclusion of a cleanup operation, the system will be decontaminated and removed from the site.

Project Background: The continuing discoveries of abandoned hazardous waste sites have increased the resolve of the USEPA to find permanent solutions to the problems of treating and disposing to toxic and hazardous wastes.

Most treatment and disposal methods do not provide the environmental safeguards required by today's regulations. This is especially true for toxic substances containing more than 500 ppm polychlorinated biphenyls (PCBs). The USEPA, through the regulations issued pursuant to the Toxic Substances Control Act (TSCA, 15 U.S.C. 2601 et seq.), specifies high temperature incineration for disposal of PCBs at concentrations in excess of 500 ppm. At present, only five facilities in the United States have USEPA TSCA permits for the commercial incineration of PCB-contaminated (more than 500 ppm) wastes.

High temperature incineration is also an acceptable method for the destruction or detoxification of hazardous substances cited under the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. 6905, 6912(a), and 6924). Incinerators must meet the requirements of the RCRA regulations (40 CFR Part 264, Subpart O) for the disposal of any hazardous substance listed in the regulations. Because of the limited number of USEPA-approved treatment and disposal facilities, highly toxic incinerable wastes from many areas of the United States are transported great distances to these facilities.

High-temperature incineration and air pollution control technology currently exist and can be applied to destroy many types of toxic and hazardous substances, but the problems associated with the siting of a fixed regional incineration facility and the public apprehension about incineration have limited the use of the technology in the United States.

A promising publicly-acceptable approach for using incineration technology is to provide mobile or transportable incineration systems. These systems can be: brought to uncontrolled hazardous waste sites, used to destroy the toxic and hazardous organic substances that are at the site, and then removed from the site. Thus, public objections are reduced since there is neither: (1) The creation of a permanent waste disposal site to which other wastes could be brought, nor (2) the transport of wastes through a community, both of which are concerns of the local citizenry.

The USEPA, through a seven year program, has developed and tested a mobile incineration system to minimize the handling and transporting of hazardous and toxic organic substances and to maximize their safe treatment through on-site thermal destruction. Since the TSCA and RCRA regulations mandate that trial burn tests be conducted in order to demonstrate the performance of incinerators equipped with air pollution control equipment, a series of TSCA/RCRA Trial Burn tests with liquids were performed.

The performance of the USEPA Mobile Incineration System exceeded all requirements under RCRA and TSCA for the destruction of liquid hazardous and toxic substances, including: Combustion, Principal Organic Hazardous Constituents (POHCs) destruction and removal, HCI removal, and particulate removal efficiencies, in a safe manner without negatively impacting the environment or compromising public health and safety. Among the substances successfully incinerated were PCBs and tetrachloromethane, two of the most difficult toxic substances to destroy.

Now that the Trial Burn tests with liquids have been successfully completed, the incinerator will be made available on a nationwide basis to assist Federal and State personnel during remedial environmental responses.

Project Description: The USEPA Mobile Incineration System is designed to detoxify a wide variety of hazardous and toxic organic contaminants in soil, water, or debris. In order to meet the maximum allowable size and weight restrictions that govern the permit-free interstate transportation of semi-trailers, it was necessary to limit the design capacity of the system for processing solids, liquids, and sludges. The design processing rates, with 20% excess air, are:

Contaminated dry sand: up to 4,100 kg/hr, (9,000 lb/hr); or Contaminated water: up to 680 L/hr, (180 gal/hr); or Contaminated fuel oils: up to 380 L/hr, (100 gal/hr).

The major components of the system are mounted on three heavy duty semi-trailers and one smaller trailer. The trailers are capable of operating at remote locations and are equipped as follows:

Trailer No. 1 is equipped with a control console, solids feeder, liquid and sludge feed ports, and a refractory-lined rotary kiln. The kiln operates with excess air at temperatures up to 1000°C (1800°F) and provides sufficient retention time to detoxify non-incinerable solid materials, which are subsequently collected as inert ash. After being shredded, solid materials are ram fed into the kiln; sludges and viscous fluids are pumped into the kiln; and liquids are atomized using air or steam. During the processing of sludges and solids, residual ash and inert solids are removed continuously from the discharge end of the kiln. Vaporized and partially destroyed toxic components are carried by the exhaust gases through a self-aligning duct into the secondary combustion chamber on Trailer No. 2.

Trailer No. 2 is equipped with a refractory-lined secondary combustion chamber (SCC) designed to operate at 1200°C (2200°F) and to maintain a minimum 2-second gas-stream dwell time with more than 3% excess oxygen. These operating conditions are stipulated under TSCA, which regulates the incineration of PCBs. These conditions are also sufficient to destroy other highly toxic, stable organic substances, including pesticides. The flue gas flows through a venturi nozzle which is used to monitor gas residence time. The SCC gas stream is continuously sampled immediately prior to its passage from the SCC into the system's air pollution control equipment.

Trailer No. 3 consists of air pollution and ancillary equipment which are designed to cool the flue gas and to remove particulate matter and acid gases from the gas stream. The hot flue gas is cooled in a wetted-throat quench elbow, with the excess water being separated in a ground level pump. Fly ash and submicron-size particulate matter, such as phosphorus pentoxide, are removed by a Cleanable High-Efficiency Air Filter (CHEAF). The gases then pass through a mass-transfer (packed-bed) scrubber where acid gases (HCl, SO_2) are removed. To prevent the leakage of any gaseous or vapor emissions, the entire incineration system is maintained under negative pressure by a diesel-driven induced-draft fan. The cleaned flue gas is released to the atmosphere through a 40-foot high stack.

Trailer No. 4 provides a fully automated gas-sampling and dual analysis system, which incorporates gas-sampling pumps, gas analyzers, calibration gases, automated valves, and microprocessor controllers. The monitoring system continuously draws gas samples from two locations (the SCC exit prior to quenching and the stack); analyzes for O_2, CO_2, CO, SO_2, NO_x, and total hydrocarbons (THC); and prints the results at a computer terminal. The microprocessor controller is connected to the incinerator safety-interlock system and automatically and immediately stops the feeding of hazardous material if the concentration of the monitored components in the flue gas and stack emissions exceed acceptable levels.

An environmental review of the project indicates that the system will have no adverse environmental impacts. Because of the mobile nature of the incineration system, and its temporary installation and brief operation at sites where emergency hazardous conditions already exist, the system will have minimal negative impact at any hazardous waste site in the nation. Consequently, a preliminary decision has been made that an Environmental Impact Statement (EIS) is not necessary for the USEPA Mobile Incineration System. This decision is based on a review of the project plan, supporting documents, and the demonstrated satisfactory performance of the system, which is substantiated by the results of the TSCA/RCRA Trial Burn tests that have already been conducted.

All of the above-mentioned documents, along with an Environmental Assessment, are on file at the USEPA Region II office in New York City and at the USEPA Oil and Hazardous Materials Spills Branch in Edison, New Jersey, where they are available for public review upon request. These documents will also be on file at each USEPA Regional office in the Region where operation of the incinerator is proposed or underway

DATES: Comments may be submitted to the USEPA. All comments must be received within thirty (30) calendar days of the publication date of this Finding of No Significant Impact (FNSI). Please address your comments to the Chief, Oil and Hazardous Materials Spills Branch, Office of Research and Development, U.S. Environmental Protection Agency, Edison, NJ 08837. After evaluating any comments received, the USEPA will make a final decision. However, no decision will be made until at least thirty (30) calendar days after the publication date of this FNSI.

FOR FURTHER INFORMATION CONTACT: Mr. James Yezzi, Jr. of the Oil and Hazardous Materials Spills Branch at 201–321–6703.

Dated: August 28, 1984.

Donald J. Ehreth,

Acting Assistant Administrator for Research and Development.

[FR Doc. 84–24191 Filed 9–21–84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 84–841 and 84–842; File Nos. BPCT–830818KG and BPCT–831018KG]

Retherford Publications, Inc. et al.; Memorandum Opinion and Order; Erratum

In the matter of applications of Retherford Publications, Inc. (MM Docket No. 84–841, File No. BPCT–830818KG); Craig Fox, George and Russell Kimble, a partnership d/b/a Jamestown TV Associates (MM Docket No. 84–842, File No. BPCT–831018KG); for construction permit for New TV station, Channel 26, Jamestown, New York.

Released September 13, 1984.

The Memorandum, Opinion and Order in the above entitled proceeding released September 6, 1984, (49 FR 35686, September 11, 1984), is corrected to change the Docket No. for Craig Fox, George and Russell Kimble, a partnership d/b/a Jamestown TV Associates from MM 94–842 to MM 84–842.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–25285 Filed 9–21–84; 8:45 am]

BILLING CODE 6712-01-M

[FCC Nos. 84–422, 84–435, 84–436]

Specialized Mobile Radio Systems Applications in the Chicago, Dallas, and Houston Areas

AGENCY: Federal Communications Commission.

ACTION: Order establishing random selection lottery procedures.

SUMMARY: The Commission has adopted three Memorandum Opinion and Orders establishing random selection lottery procedures to select from among competing applications for 800 MHz Specialized Mobile Radio Systems in the Chicago, Dallas, and Houston areas. This action was taken to expedite the applications process because there are no substantial, material differences among the competing applications.

FOR FURTHER INFORMATION CONTACT: Jerold Feldman, Private Radio Bureau, (202) 632–7125.

Federal Communications Commission.

William J. Tricarico,

Secretary.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the matter of SMRS application in the Chicago, Illinois Area, FCC 84–435.

Adopted: September 12, 1984.

Released: September 18, 1984.

By the Commission Commissioner Quello concurring in the result.

1. On April 16, 1984, the Commission, in accordance with procedures set forth in the Second Report and Order in General Docket No. 81–768, 48 FR 27182 (June 13, 1983), initiated by Public Notice (No. 3504) an expedited paper hearing proceeding to select licensees from among competing applicants for Specialized Mobile Radio (SMR) 800 MHz channels in the Chicago, Illinois area. Only those applications which met the filing requirements as set forth in our *Second Report and Order* in PR Docket No. 79–191, *et al.*, 90 FCC 2d 1281 (1982), are being considered.

2. The Public Notice citing the comparative criteria established in our *Memorandum Opinion and Order* terminating PR Docket No. 79–191, *et al.*, 48 FR 51917 (November 15, 1983), noted that applicants will be awarded comparative points based upon the following:

(1) Applications proposing to expand an existing loaded trunked system will be awarded two comparative points.

(2) Applications proposing to operate a new trunked system will be awarded one comparative point.

(3) Applications proposing to operate a conventional system will be awarded no comparative points.

3. In accordance with Rule 1.221, applicants were required to file a Notice of Appearance and Statement and serve copies on all other applicants within 30 days. The purpose of the information furnished in the statement was to determine each applicant's comparative points. The Public Notice, sent to each applicant by certified mail, stated that an untimely filing of appearance or failure to respond could result in dismissal for failure to prosecute pursuant to Rules 1.221(c) and 1.961(b). Applicants were given 20 days to submit rebuttals or informal complaints the qualifications or statements of competing applicants.

4. The Public Notice indicated that we would review the information submitted and make a final decision concerning the proper comparative points for each applicant. After the paper proceedings, those applications with the highest number of comparative points would be granted. If sufficient channels were not available to grant all applications with the same number of comparative points, grants in that group would be made in accordance with the Commission's lottery procedures.

5. The Public Notice initiating this proceeding listed 43 applications for SMR stations in the Chicago, Illinois area.[1] Of these applications the following were dismissed for the reasons shown:

Applicant	File No.	Dismissed	Reason for dismissal
J.B. Communications, Inc.	508040	6–19–84	Application for systems within 40 miles of existing station in Chicago, Illinois prohibited by Rule 90.627(b).
Texas Mobile Communications, Inc.	508070	8–27–84	Failure to provide requested qualifying information.

6. The following applications are also dismissed by this order, for the reasons shown:

Applicant	File No.	Reason for dismissal
American Radio Communications, Inc.	508051	Correspondence returned.
Marcel Boulais, d.b.a. Confidential Communications Co.	508022	Failure to respond.
Wayne E. Healy	508887	Do.
Kokusai Electric Co. of America.	509561	Do.
NUR Corporation	509059	Do.
Repeater Rentals	509212	Do.
Scorpion Systems, Inc.	509067	Do.
Sound-Tronics, Inc.	508347	Do.
Upcon, Inc.	509044	Do.

7. Based on the Notices of Appearance and Statements and clarifying information furnished by several applicants pursuant to our request we have determined that, of the remaining applications, one application is assigned two comparative points for proposing to expand an existing loaded trunked system and 31 applications are each assigned one comparative point for

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[1] The April 16 Public Notice listed 42 applications. On April 30, 1984, the Commission released a Public Notice (No. 3914) adding an applicant who was omitted from the initial list of participants.

proposing to operate a new trunked system.

8. Consistent with the April 16 Public Notice and the policies and procedures in our *Second Report and Orders* in General Docket No. 81-768,, *Supra*, and PR Docket No. 79-191, *et al., supra*, applications assigned the highest number of comparative points will be granted without a lottery if there are sufficient channels available to accommodate such applicants. Therefore, the application of Omni Comm (File no. 506640), to add 5 channels to its existing loaded 10 channel SMR system WZH-901 located in Chicago, Illinois will be granted.

9. When spectrum remains available but is insufficient to grant applications which are without substantial, material difference [2] and which are assigned one comparative point, those applications will be designated for random selection. Since sufficient channels are not available to grant all 31 applications proposing to operate a new trunked system, grants of those applications, which are listed in the attachment, will be made in accordance with the Commission's lottery procedures.[3]

10. Accordingly, it is ordered, pursuant to section 309(i) of the Communications Act of 1934, as amended, (47 U.S.C. 309(i)) and § 1.972 of the Commission's Rules (47 CFR 972), that a lottery will be conducted to select from among the 31 competing applications for new trunked SMR systems in the Chicago, Illinois area. A Lottery Notice will be issued shortly providing the date and procedures for this random selection process.

William J. Tricarico
Secretary

Applications in the Chicago, Illinois Area

1. ACI Communications, P.O. Box 6154 Merrillville, IN 46410, Chicago, IL, 506636
2. Advanced Communications Systems, 319 Wilson St., W. Chicago, IL 60185, Chicago, IL, 507722
3. Adv. Radio Comm. Services of Florida, Inc., P.O. Box 10, 1700 South Dixie Highway, Boca Raton, FL 33432-0019, Chicago, IL 509230
4. R.W. Brown Electronics Inc., 1280 E. State Street, P.O. Box 334, Sycamore, IL 60178, Plato Center, IL, 507727
5. Capital B Corporation, 303 E. Wacker Drive, Suite 940, Chicago, IL 60601, Chicago, IL, 509224
6. Com/Rad Inc., 1761 Oakton Blvd., Des Plaines, IL 60016, Chicago, IL, 507729
7. Comven, Inc., 2629 N. Scottsdale Rd., Scottsdale, AZ 85257, Batavia, IL, 508142
8. Comven, Inc., 2629 N. Scottsdale Rd., Scottsdale, AZ 85257, Gary, IN, 508143
9. Crescent Cardboard Co., c/o Crescent Communications, 112 East 100 North, Logan, UT 84321, Chicago, IL, 508832
10. John Dittrich, 3624 Emerson Street, Franklin Park, IL 60131, Chicago, IL, 508019
11. Epic Systems, Inc., 1126 Bellwood Ave., Bellwood, IL 60104, Chicago, IL, 509158
12. John J. Gottsman, d/b as, G & S Enterprises, 1021 Stone Canyon Road, Los Angeles, CA 90024, Chicago, IL, 509066
13. Leader Communications, Inc., 3003 W. Madison, Bellwood, IL 60104, Milwaukee, WI, 509116
14. Roy Marsh, Jr., d/b as, Roy Marsh Enterprises, 104 Butlers Court, Conroe, TX 77302, Chicago, IL, 508138
15. Microwave Carphones, Inc., P.O. Box 430016, Houston, TX 77243, Chicago, IL, 508222
16. Jack Miner, P.O. Box 3268, Munster, IN 46321, Chicago, IL, 508742
17. Motorla, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, Chicago, IL, 507479
18. Motorola, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, Kenosha, WI, 507508
19. Motorola, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, Valparaiso, IN, 507512
20. Motorla, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, Plato Center, IL, 508119
21. Guy P. McSweeney, 3340 Peachtree Rd., NE, Suite 1690, Atlanta, GA 30326, Chicago, IL, 509241
22. Peak Electronics, Inc., 5707 W. Howard St., Niles, IL 60648, Chicago, IL, 507744
23. Richard A. Boulais, d/b as, Private-Line Communications Co., 4833 W. Country Gables, Glendale, AZ 85306, Chicago, IL, 507750
24. R.W.O. Communications, 715 North Elmwood Drive, Aurora, IL 60506, Aurora, IL, 507519
25. Tactel Systems, Inc., 8325 Old Marlboro Pike, Unit A-13, Upper Marloboro, MD 20772, Chicago, IL, 508188
26. Tele-Communications Radio, Inc., 960 Rand Avenue, Des Plaines, IL 60016, Chicago, IL, 509214
27. Thompson Sales & Service, 2400 West Ridge Road, Gary, IN 46406, Chicago, IL, 507755
28. United States Sugar Corp., Post Office Drawer 1207, Clewiston, FL 33440, Chicago, IL, 509165

Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458, Milwaukee, WI, 508365

30. Weston Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458, Chicago, IL, 508775
31. Xentel Corporation, P.O. Box 2066, Burbank, CA 91507, Chicago IL, 507531

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[2] 48 F.R. 27182, 27195 (June 13, 1983).

[3] There are no substantial, material differences among these applicants since they all propose to operate a new 5 channel trunked SMR system and there are no financial qualifications required for applying for an SMR license. We deem there to be no substantial, material differences among applications which are assigned the same number of comparative points. See *Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945, 960 (1975).

Memorandum Opinion and Order

In the Matter of SMRS Applications in the Dallas, Texas Area, FCC 84-422.

Adopted: September 12, 1984.
Released: September 18, 1984.

By the Commission: Commissioner Quello concurring in the result.

1. On April 16, 1984, the Commission, in accordance with procedures set forth in the *Second Report and Order* in General Docket No. 81-768, 48 FR 27182 (June 13, 1983), initiated by Public Notice (No. 3504) an expedited paper hearing proceeding to select licensees from among competing applicants for Specialized Mobile Radio (SMR) 800 MHz channels in the Dallas, Texas area. Only those applications which met the filing requirements as set forth in our *Second Report and Order* in PR Docket No. 79-191, *et al.*, 90 FCC 2d 1281 (1982), are being considered.

2. The Public Notice, citing the comparative criteria established in our *Memorandum Opinion and Order* terminating PR Docket No. 798-191, *et al.*, 48 FR 51917 (November 15, 1983), noted that applicants will be awarded comparative points based upon the following:

(1) Applications proposing to expand an existing loaded trunked system will be awarded two comparative points.

(2) Applications proposing to operate a new trunked system will be awarded two comparative point.

(3) Applications proposing to operate a conventional system will be awarded no comparative points.

3. In accordance with Rule 1.221, applicants were required to file a Notice of Appearance and Statement and serve copies on all other applicants within 30 days. The purpose of the information furnished in the statement was to determine each applicant's comparative points. The Public Notice, sent to each applicant by certified mail, stated that an untimely filing of appearance or failure to respond could result in dismissal for failure to prosecute pursuant to Rules 1.221(c) and 1.961(b). Applicants were given 20 days to submit rebuttals or informal complaints concerning the qualifications or statements of competing applicants.

4. The Public Notice indicated that we would review the information submitted and make a final decision concerning the proper comparative points for each applicant. After the paper proceedings, those applications with the highest number of comparative points would be granted. If sufficient channels were not available to grant all applications with the same number of comparative points, grants in that group would be made in accordance with the Commission's lottery procedures.

5. The Public Notice initiating this proceeding listed 38 applications for

SMR stations in the Dallas, Texas area.[1] Of these applications the following were dismissed for the reasons shown:

Applicant	File No.	Dismissed	Reason for dismissal [2]
Alliance Fabrication, Inc.	507777	8-22-84	Failure to pursue application.
Patricia Briggs Irby.	507778	8-22-84	Do.
Fred R. Hickman	507783	8-22-84	Do.
John W. Hughes	508756	8-22-84	Do.
E.E. Kasper	507785	8-22-84	Do.
H.J. McGinnis	507787	8-22-84	Do.
David D. Peters	507788	8-22-84	Do.
Fred A. Taylor	508080	8-22-84	Do.

[2] These eight applications were dismissed when the applicants informed the Commission that they did not wish their applications designated for hearing. (See footnote 3).

6. The following applications are also dismissed by this order, for the reasons shown:

Applicant	File No.	Reason for dismissal
T.L.C., Inc.	507939	Correspondence returned.
Greg S. Cunningham, d.b.a. Telecommunications Leasing Co	507753	Do.
NUR Corporation	506666	Failure to respond.
Scorpion Systems, Inc.	509068	Do.
Texas Mobile Communications.	508075	Do.

7. Based on the Notices of Appearance and Statements and clarifying information furnished by several applicants pursuant to our request we have determined that the remaining 23 applications are each assigned one comparative point for proposing to operate a new trunked system.[3]

8. When spectrum remains available but is insufficient to grant applications which are without substantial, material differences[4] and which are assigned one comparative point, those applications will be designated for random selection. Since sufficient channels are not available to grant all 23 applications proposing to operate a new trunked system, grants of these applications, which are listed in the attachment, will be made in accordance with the Commission's lottery procedures.[5]

9. According, it is ordered, pursuant to section 309(i) of the Communications Act of 1934, as amended (47 U.S.C. 309(i)) and § 1.972 of the Commission's Rules (47 CFR 1.972), that a lottery will be conducted to select from among the 23 competing applications for new trunked SMR systems in the Dallas, Texas area. A Lottery Notice will be issued shortly providing the date and procedures for this random selection process.

Applications in the Dallas, Texas Area

1. Leroy H. Bronson, Suite 440, 6500 Greenville, Dallas, TX 75206, Dallas, TX, 507726
2. Central Communications & Electronics, Inc., 103 East Pioneer Drive, Irving, TX 75061, Cedar Hill, TX, 509210
3. Circle Communications, 2740 So. Freeway, Fort Worth, TX 76104, Fort Worth, TX, 507781
4. Creative Mobile Communications, P.O. Box 366, Spring, TX 77373, Irving, TX, 509209
5. Decom Systems, Inc., 340 Rancheros Drive, San Marcos, CA 92069, Cedar Hill, TX, 507345
6. Glenn Olsen, d.b.a. Elecom Communications, 4821 N. Hydraulic, Wichita, KS 67219, Fort Worth, TX, 507495
7. John J. Gottsman, d.b.a. G & S Enterprises, 1021 Stone Cayon Road, Los Angeles, CA 90024, Cedar Hill, TX 509067
8. Weldon A. Irby, 1112 Forest Oaks Lane, Hurst, TX 76053 Fort Worth, TX, 507784
9. Jecca Towers, Inc., P.O. Box 1779, Kilgore, TX 75662, Denton, TX, 507499
10. Leader Communications, 3003 W. Madison, Bellwood, IL 60104, Fort Worth, TX, 508779
11. Metro Mobile Communications, Inc., 555 Madison Avenue, New York, NY 10022, Celina, TX, 506591
12. Microwave Carphones, Inc., P.O. Box 430016, Houston, TX 77243, Dallas, TX, 508043
13. Mobil/Comm of Texas, Inc., P.O. Drawer 2367, Jackson, MS 39205 Dallas, TX, 507516
14. Mobile Telephone of America, Inc., 14 S. 41st Place, Phoenix, AZ 85034, Fort Worth, TX, 508289
15. Motorola, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, White Settlement, TX, 508120
16. Motorola, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, Dallas, TX, 508127
17. Guy P. McSweeney, 3340 Peachtree Rd., NE, Suite 1690, Atlanta, GA 30326, Dallas, TX, 509219
18. William R. Miller, d.b.a. Russ Miller Communications, 3620 Byers Avenue, Ft. Worth, TX 76107, Arlington, TX, 506699
19. Ralph C. Parker, P.O. Box 2247, Wichita Falls, TX 76307, White Settlement, TX, 507768
20. Ralph C. Parker, Box 2247, Wichita Falls, TX 76307, Attn: Ralph C. Parker, Dallas, TX, 507743
21. Texas Instruments Inc., P.O. Box 225214 M/S 396, Dallas, TX 75265, Dallas, TX, 507754
22. Texas Tower Leasing, Inc., 1801 River Oaks Road, Abilene, TX 79605, Dallas, TX. 508760
23. Western Union Telegraph Co., 1 Lake Street, Upper Saddle River, NJ 07458, Dallas, TX, 508871

Memorandum Opinion and Order

In the matter of SMRS Applications in the Houston, Texas Area, FCC 84-436.

Adopted: September 12, 1984.

Released: September 18, 1984.

By the Commission: Commissioner Quello concurring in the result.

1. On April 16, 1984, the Commission, in accordance with procedures set forth in the *Second Report and Order* in General Docket No. 81-768, 48 FR 27182 (June 13, 1983), initiated by Public Notice (No. 3504) an expedited paper hearing proceeding to select licensees from among competing applicants for Specialized Mobile Radio (SMR) 800 MHz channels in the Houston, Texas area. Only those applications which met the filing requirements as set forth in our *Second Report and Order* in PR Docket No. 79-191, *et al.*, 90 FCC 2d 1281 (1982), are being considered.

2. The Public Notice, citing the comparative criteria established in our *Memorandum Opinion and Order* terminating PR Docket No. 79-191, *et al.*, 48 FR 51917 (Number 15, 1983), noted that applicants will be awarded comparative points based upon the following:

(1) Applications proposing to expand an existing loaded trunked system will be awarded two comparative points.

(2) Applications proposing to operate a new trunked system will be awarded one comparative point.

(3) Applications proposing to operate a conventional system will be awarded no comparative points.

3. In accordance with Rule 1.221, applicants were required to file a Notice of Appearance and Statement and serve copies on all other applicants within 30 days. The purpose of the information furnished in the statement was to determine each applicant's comparative points. The Public Notice, sent to each applicant by certified mail, stated that an untimely filing of appearance or failure to respond could result in dismissal for failure to prosecute

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[1] The April 16 Public Notice listed 34 applications. On April 30, 1984, the Commission released a Public Notice (No. 3914) adding two applicants who were omitted from the initial list of participants.

[3] The application of Weldon A. Irby (File No. 507784) is included in this group. However, Irby's application will be designated for hearing if its ranking in the lottery will permit a grant of the application. Irby's application for a new trunked SMR system in Fort Worth, Texas was filed with similar applications for systems at the same transmitter location by Irby's wife, his wife's brother H. J. McGinnis, three corporations of which McGinnis is a principal, four employees of McGinnis, McGinnis' attorney and McGinnis' accountant, in an apparent abuse of the Commission's applications process. Irby was also an employee of McGinnis. All applications have been dismissed prior to or during this proceeding with the exception of Irby's application. Irby has requested a hearing. (See Para. 5).

[4] 48 FR 27182, 27198 (June 13, 1983).

[5] There are no substantial, material differences among these applicants since they all propose to operate a new 5 channel trunked SMR system and there are no financial qualifications required for applying for an SMR license. We deem there to be no substantial, material differences among applications which are assigned the same number of comparative points. See *Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945, 960 (1975).

pursuant to Rules 1.221(c) and 1.961(b). Applicants were given 20 days to submit rebuttals or informal complaints concerning the qualifications or statements of competing applicants.

4. The Public Notice indicated that we would review the information submitted and make a final decision concerning the proper comparative points for each applicant. After the paper proceedings, those applications with the highest number of comparative points would be granted. If sufficient channels were not available to grant all applications with the same number of comparative points, grants in that group would be made in accoradance with the Commission's lottery procedures.

5. The Public Notice initiating this proceeding listed 55 applications for SMR stations in the Houston, Texas area.[1] Of these applications the following were dismissed for the reasons shown:

Applicant	File No.	Dismissed	Reason for dismissal
AMPS Mobile Radio, Inc. (formerly Communicators Unlimited).	506330	7-25-84	At its request.
Communication Service Center.	506692	6-1-84	Do.
Roy A. Marsh, III, d.b.a. Roy A. Marsh, III, CPA.	508044	5-7-84	Do.
Heritage Republic Corporation.	508037	8-27-84	Failure to provide requested qualifying information.
J. Patrick Kelley, d.b.a. J. Patrick Kelley & Associates.	508042	8-27-84	Do.

6. The following applications are also dismissed by this order, for the reasons shown:

Applicant	File No.	Reason for dismissal
Fred A. Kapp	508041	Correspondence returned.
Gasco Communications	507462	Failure to respond.
Do	508035	Do.
Industrial Telecommunications Specialists, Inc.	508039	Do.
NUR Corporation	508658	Do.
NUR Corporation	509149	Do.
Scorpion Systems, Inc.	509086	Do.
Tech-Com, Inc	506158	Do.
Texas Building and Investment Co.	508078	Do.
Texas Mobile Communications.	508071	Do.

7. Based on the Notices of Appearance and Statements and clarifying information furnished by several applicants pursuant to our request we have determined that, of the remaining applications, 36 applications are each assigned one comparative point for proposing to operate a new trunked system and 4 applications are assigned no comparative points for proposing to operate a conventional system.

8. When spectrum remains available but is insuffficent to grant applications which are without substantial, material differences [2] and which are assigned one comparative point, those applications will be designated for random selection. Since sufficient channels are not available to grant all 36 applications proposing to operate a new trunked system, grants of these applications, which are listed in the attachment, will be made in accordance with the Commission's lottery procedures.[3]

9. Since there are insufficient channels to grant to all applications for new trunked systems, the remaining applications for a conventional system are dismissed by this order.

Applicant	File No.
Susan Dillion, d.b.a. Dillion Two Way Service	508103
Joel E. Klein, d.b.a. Kleinco Communications	508097
SWS Communications	508150
Gregory J. Colson, d.b.a. Texas Industrial Communications	508104

10. Accordingly, it is ordered, pursuant to section 309(i) of the Communications Act of 1934, as amended, (47 U.S.C. 309(i)) and § 1.972 of the Commission's Rules (47 CFR 1.972), that a lottery will be conducted to select from among the 36 competing applications for new trunked SMR systems in the Houston, Texas area. A Lottery Notice will be issued shortly providing the date and procedures for this random selection process.

Applications in the Houston, Texas Area

1. Air Freight Services, Inc., 3082 McKaughan Road, Houston, TX 77205, Houston TX, 508748
2. American "3001" Mobil Telephones, Inc., 13550 Floyd Circle, Dallas, TX 75243, Houston TX, 508016
3. Astro Mobile, Inc., P.O. Box 1207, Natchitoches, LA 71457, Houston TX, 508863
4. Calculator Service Center, Inc., 3506 Chimney Rock, Houston, TX 77027, Houston TX, 506700
5. Damon R. Capps, 3724 FM 1960 West, Ste. 206, Houston, TX 77068, Houston TX, 508747
6. Comven, Inc., 2829 N. Scottsdale Rd., Scottsdale, AZ 85257, Galveston, TX, 508144
7. Marcel Boulais, d.b.a. Confidental Communications Co., 5346 N. 91st Avenue, Tolleson, AZ 85353, Houston TX, 507688
8. Creative Mobile Communications, P.O. Box 366, Spring, TX 77373, Houston TX, 508235
9. Decom Systems, Inc., 340 Rancheros Drive, San Marcos, CA 92069, Houston TX, 507347
10. Dorsett Radio Service, Inc., Route 6, Box 884, Alvin, TX 77511, Alvin, TX, 508024
11. Jack Evans, d.b.a. Jack Evans Attorney At Law, 3100 Eastside, Suite 210, Houston, TX 77098, Dickenson, TX, 507773
12. Front Range Mobile Communications, Inc., P.O. Box 171024, Arlington, TX 76003, Houston TX, 506695
13. John J. Gottsman, d.b.a. G & S Enterprises, 1021 Stone Canyon Road, Los Angeles, CA 90024, Houston TX, 509064
14. General Electric Radio Services Corp., Mobile Radio Dept., 6501 Loisdale Ct., Ste. 1100, Springfield, VA 22150, Houston TX, 508855
15. H & J Electric Company, P.O. Box 18137, Houston, TX 77023, Houston TX, 506960
16. Houston Galveston Communications, Inc., c/o Rusk Corporation, 511 Lovett Boulevard, Houston, TX 77006, Houston TX, 506714
17. Kenneth E. Klaus, d.b.a. Kenneth E. Klaus Enterprises, 316 Schilling, Baytown, TX 77520, Houston TX, 508805
18. Leader Communications, Inc., 3003 W. Madison, Bellwood, IL 60104, Houston TX, 506763
19. Loomis Radio Communications, Inc., P.O. Box 2383, Houston, TX 77001, Hitchcock, TX, 506757
20. Louisiana Coastal Communications, 120 St. Margarite Street, Lafayette, LA 70501, Rurel, TX, 506947
21. Lucas Communications, Inc., 4141-B Directors Row, Houston, TX 77092, Houston TX, 506701
22. Roy A. Marsh, Jr., d.b.a. Roy A. Marsh Enterprises, 104 Butlers Court, Conroe, TX 77302, Houston TX, 508045
23. Metro Mobile Communications, Inc., 555 Madison Avenue, New York, NY 10022, Sealy, TX, 508588
24. Mobile/Comm of Texas, Inc., P.O. Box Drawer 2367, Jackson, MS 39205, Stafford, TX, 507514
25. Mobile Telephone of America, Inc., 14 S. 41st Place, Phoenix, AZ 85034, Houston TX, 508286
26. Mobile Telephone Reps, Inc., P.O. Box 721613, Houston, TX 77272, Houston TX, 509190
27. Motorola, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, Dayton, TX, 508117
28. Motorola, Inc., 1270 Fairfield Rd., Gettysburg, PA 17325, Houston TX, 508121
29. Guy P. McSweeney, 3340 Peachtree Road, Suite 1690, Atlanta, GA 30326, Houston TX, 509242
30. National Tower Trunking Systems, Inc., 800 Kenrick, Suite D-6, Houston, TX 77060, Pelican Island, TX, 508059

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[1] The April 16 Public Notice listed 54 applications. On April 30, 1984, the Commission released a Public Notice (No. 3914) adding one applicant who was omitted from the original list of participants.

[2] 48 FR 27182, 27196 (June 13, 1983).

[3] There are no substantial, material differences among these applicants since they all propose to operate a new 5 channel trunked SMR system and there are no financial qualifications required for applying for an SMR license. We deem there to be no substantial, material differences among applications which are assigned the same number of comparative points. See *Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945, 960 (1975).

31. National Tower Trunking Systems, Inc., 600 Kenrick, Suite D-6, Houston, TX 77060, Conroe, TX, 508081
32. Percco, Inc., 1511 Imperial Crown, Houston, TX 77043, Houston TX, 506155
33. Southwest Medicphone, Inc., c/o Michael B. Bell & Co., 750 Bering Drive, Suite 101, Houston, TX 77057, Houston TX, 508340
34. Tactel System, Inc., 8325 Old Marlboro Pike, Unit A-13, Upper Marlboro, MD 20772, Houston TX, 506209
35. Truman West, 2147 F. M 1960 E, Houston, TX 77073, Houston TX, 506345
36. Woodard Communications Corp., P.O. Drawer 7268, Opelousas, LA 70570, Houston TX, 507797

[FR Doc. 84-25286 Filed 9-21-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Requests for Relief from Reimbursement Under the Truth in Lending Act (OMB No. 3064-0065).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: The FDIC is requesting an extension of the expiration date to October 1987 of the collection of information from insured state nonmember banks who submit requests for relief from reimbursement to the accounts of customers for violations of the Truth In Lending Act. The current OMB control number, 3064-00065, expires on November 30, 1984.

Dated: September 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson.

Executive Secretary.

[FR Doc. 84-25214 Filed 9-21-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Rescinding Portwide Exemptions Granted to the Ports of Searsport, ME; Morehead City, and Wilmington, NC, Pursuant to § 510.33(e) of General Order 4

On August 15, 1984, the Commission adopted Final Rules in Docket No. 84-19, *Licensing of Ocean Freight Forwarders*, revising 46 CFR 510 to implement the Shipping Act of 1984 (46 U.S.C. app. 1701-1720). One of the revisions adopted modified 46 CFR 510.33(e), redesignated as 46 CFR 510.23(e) in the Final Rules, to allow compensation to be paid to a forwarder who requests a carrier or its agent to perform forwarding functions if such carrier or agent is a licensed ocean freight forwarder. With this allowance, the portwide exemption provisions contained in the rules became unnecessary and it was deleted in the Final Rules.

With the deletion of the exemption provision from the rules, the exemptions granted to the ports of Searsport, Maine; Morehead City, North Carolina; and Wilmington, North Carolina have no force and effect. Accordingly, these exemptions are being rescinded.

By a separate notice in connection with Docket No. 82-22, *Notice of Intent to Review Certain Portwide Exemptions Granted Pursuant to § 510.33(e) of General Order 4*, the Commission rescinded all other outstanding exemptions granted.

Therefore, it is ordered, that the portwide exemptions granted to the ports of Searsport, Maine; Morehead City, North Carolina; and Wilmington, North Carolina are hereby rescinded;

It is further ordered, that a notice of this action be published in the **Federal Register.**

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25252 Filed 9-21-84; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 82-22]

Rescinding Portwide Exemptions Granted to the Ports of Pensacola, Port Everglades and Tampa, FL Pursuant to § 510.33(e) of General Order 4 and Discontinuance of Proceeding

By notice dated April 14, 1982, the Commission instituted Docket No. 82-22, *Notice of Intent to Review Certain Portwide Exemptions Granted Pursuant to 510.33(e) of General Order 4*, for the purpose of determining whether portwide exemptions granted by the Commission some seventeen years ago to the ports of Pensacola, Port Everglades and Tampa, Florida were still justified.

The proceeding in Docket No. 82-22 has been held in abeyance pending final action by the Commission on proposed revisions to 46 CFR Part 510 in Docket No. 83-35, *Licensing of Independent Ocean Freight Forwarders*. The proposed revisions under review in Docket No. 83-35 subsequently were incorporated into an interim rule proceeding, Docket No. 84-19, *Licensing of Ocean Freight Frowarders*, which proposed rules to implement the Shipping Act of 1984 (46 U.S.C. app. 1701-1720). The proceeding in Docket No. 83-35 was discontinued by notice served April 24, 1984.

On August 15, 1984, the Commission Adopted Final Rules in Docket No. 84-19. One of the revisions adopted modified 46 CFR 510.3(e), redesignated as 46 CFR 510.23(e) in the Final Rules, to allow compensation to be paid to a forwarder who requests a carrier or its agent to perform forwarding functions if such carrier or agent is a licensed ocean freight forwarder. With this allowance, the portwide exemption provision contained in the rules became unnecessary and it was deleted in the Final Rules.

The issue of whether to continue the portwide exemptions in three Florida ports which is the subject of Docket No. 82-22 has thus become moot. Moreover, with the deletion of the exemption provision from the rules, the exemptions granted to the three Florida ports, identified above, have no force and effect. Accordingly, these exemptions will be rescinded.

By a separate notice, all other outstanding exemptions granted by the Commission will be rescinded also.

Therefore, it is ordered, that the portwide exemptions granted to the ports of Pensacola, Port Everglades and Tampa, Florida are hereby rescinded;

It is further ordered, that Docket No. 82–22 is hereby discontinued;

It is further ordered, that a notice of these actions be published in the **Federal Register.**

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–25246 Filed 9–21–84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank of Delaware Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the board of Governors. Interested persons may express their views in writing on the question whether consumption of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in effeciency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1984.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Bank of Delaware Corporation,* Wilmington, Delaware; to engage *de novo* through its subsidiary, Christina Life Insurance Company, Phoenix, Arizona, in the activity of underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit by the credit extending affiliates of Bank of Delaware Corporation. These activities would be conducted in the state of Delaware.

Board of Governors of the Federal Reserve System, September 18, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–25196 Filed 9–21–84; 8:45 am]

BILLING CODE 6210-01-M

Barclays Bank PLC and Barclays Bank International Limited; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 11, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and *Barclays Bank International Limited,* both of London, England; to acquire Firstmark Corporation, Buffalo, New York, thereby engaging in the operation of a general consumer finance business, including direct installment loans to individuals and the purchase of retail installment notes (sales finance), such as loans made to individuals for personal, family or household purposes, including loans secured by real estate; second mortgage lending; the purchase on a discounted basis of contracts and related security agreements arising principally from the sale by dealers of titled goods (including automobiles and mobile homes) and non-titled goods (including furniture, television sets and appliances, travel trailers and campers, and boat and marine equipment); servicing loans and other extensions of credit for its own account or for the account of others; and related wholesale financing consisting of financing dealers' inventories of automobiles, mobile homes and other chattels. In addition, the activities of the offices will be expanded to include the sale of money orders with a face value not exceeding $1,000 and travelers checks. This application relates only to certain offices in Indiana (5), Kentucky (2), Ohio (6) and Pennsylvania (4).

Board of Governors of the Federal Reserve System, September 18, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–25197 Filed 9–21–84; 8:45 am]

BILLING CODE 6210-01-M

Pikeville National Corp., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the Offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 12, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pikeville National Coporation*, Pikeville, Kentucky; to acquire 100 percent of the voting shares of First Guaranty Bank of Martin, Martin, Kentucky.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Liberty Financial Services, Inc.*, New Orleans, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Liberty Bank & Trust Company, New Orleans, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F. and M. Bancorp of Tomah, Inc.*, Tomah, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers & Merchants Bank, Tomah, Wisconsin.

2. *Hartwick Bancshares, Inc.*, Hartwick, Iowa; to become a bank holding company by acquiring 70.6 percent of the voting shares of Hartwick State Bank, Hartwick, Iowa.

3. *Whittemore Bancshares, Inc.*, Whittemore, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers State Bank, Whittemore, Iowa.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Jack's Fork Bancorporation, Inc.*, Columbia, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Mountain View, Mountain View, Missouri, and by acquiring Summerville Bancshares, Inc., Summerville, Missouri, and indirectly acquiring Summerville State Bank, Summerville, Missouri.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Union Bancorp.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Union National Bank of Colorado, Denver, Colorado.

Board of Governors of the Federal Reserve System, September 18, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25195 Filed 9-21-84; 8:45 am]

BILLING CODE 6210-01-M

Woodstock Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice president) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Woodstock Holding Company, Inc.*, Woodstock, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of The Woodstock National Bank, Woodstock, Vermont.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Garden State Bancshares, Inc.*, Jackson, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Garden State Bank, Jackson, New Jersey.

C. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Kentucky Bancorporation, Inc.*, Covington, Kentucky; to merge with Northern Kentucky Bancshares, Inc., Covington, Kentucky, thereby indirectly acquiring Falmouth Deposit Bank, Falmouth, Kentucky; and to merge with Kentucky National Corporation, Covington, Kentucky, thereby indirectly acquiring Kentucky National Bank, Walton, Kentucky.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First State Corporation*, Albany, Georgia; to acquire 100 percent of the voting shares of First State Bank in Cordele, Cordele, Georgia.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Brazos Valley Bancshares, Inc.*, Bryan, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Western National Bank, Bryan, Texas.

2. *Huntington Bancshares, Inc.*, Huntington, Texas; to acquire 72 percent of the voting shares of Eastex Bancshares, Inc., Lufkin, Texas, thereby indirectly acquiring Angelina National Bank, Lufkin, Texas.

Board of Governors of the Federal Reserve System, September 18, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-25196 Filed 9-21-84; 8:45 am]

BILLING CODE 6210-01-M

THE COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, October 16, 1984 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566-1066.

Dated in Washington, D.C. September 17, 1984.

Charles H. Atherton,

Secretary.

[FR Doc. 84-25238 Filed 9-21-84; 8:45 am]

BILLING CODE 6330-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator

Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Board's subcommittee on Organization and General Management will meet on October 3, 1984 from 9:00 a.m to 3:30 p.m. in Room 6120, 18th and F Streets, NW, Washington, D.C. This meeting shall be open to the public.

The meeting will be devoted to a review of GSA's plan to address the telecommunications requirements of Federal agencies.

Questions regarding this notice may be directed to Mr. James Dean on (202) 566-0382.

Dated: September 18, 1984.

Thomas J. Simon,

Director of Program Initiatives.

[FR Doc. 84-25206 Filed 9-21-84; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Child Support Enforcement Research and Demonstration Interstate Grants Availability of Fiscal Year 1985 Funds

The Acting Director of the Office of Child Support Enforcement (OCSE) gives notice of the availability of Fiscal Year 1985 funds for projects in the area of interstate child support processes. Funding for grants is authorized under section 8 of Pub. L. 98-378. In accordance with section 45(e)(4) of the Social Security Act (the Act) as amended by section 8 of Pub. L. 98-378, amounts expended by a State in carrying out a project funded under this grant program will be considered as part of the grantee State's administrative expenditures of purposes of calculating incentive payments under this section.

There will be three funding cycles for FY 85. The closing date of grant applications for the first cycle will be November 30, 1984; the second closing date is March 29, 1985; and the third closing date is July 31, 1985. Approved projects received during any one cycle may be held for funding during the next review cycle or until the next fiscal year. It is anticipated that grant awards will be issued within 90 days of the closing date for grant applications.

Program Purpose

Grants funded by OCSE under the Interstate Program are for research and demonstration projects which will add to existing knowledge and promote improvements or new methods and techniques in the area of interstate child support operations.

Program Goals

In general, OCSE intends to support the following types of projects through the Interstate grants program:

(1) Those which encourage States to develop efficient and effective ways of handling interstate cases;

(2) Those which augment and improve existing State efforts to pursue and respond to interstate efforts. Funds from this program are not available to supplant current State and local funding efforts;

(3) Those which develop, test, implement, and demonstrate new or innovative methods of interstate case processing;

(4) Those which show a high promise of ready transferability to other States and of producing verifiable knowledge of demonstration results through definitive evaluation.

Program Priorities for Research and Demonstration Funding

Research and demonstration projects will be directed toward broadly stated priorities derived from the administration of interstate child support processes. OCSE has identified priorities which reflect the major aims of the program's interstate processes.

Applicants may also submit proposals for projects not specifically identified in this announcement but which are relevant to OCSE interstate goals. Such proposals will compete for funding with those submitted for the priority areas listed below.

Program Priorities for Interstate Grants

Interstate grant applications should emphasize the development of innovative techniques that can eventually be generalized to the entire caseload. As a matter of general policy, OCSE intends to encourage experimentation and demonstration of ways of handling interstate cases in such a manner that they are integrated into the normal handling of a State's IV-D caseload. Examples of interstate program priorities are the following:

I. Development of innovative techniques in processing interstate cases such as:

A. Innovative communication techniques to include teleconferencing, electronic mail and other electronic means of moving informations from one jurisdiction to another;

B. Interstate tracking and monitoring systems;

C. Staffing patterns for interstate case processing: Experimentation with combinations of specialization vs. generalization of the interstate function.

II. Development of innovative techniques for child support collections in interstate cases, especially in the area of application of mandatory procedures such as wage withholding. Also of interest are:

A. Use of credit reporting Agencies;

B. Use of property liens;

C. User fees;

D. Tax refund offset.

III. Development of ADP and interstate systems components such as:

A. Clearing houses for the centralization of multi-state data bases;

B. New data bases for interstate use.

Note:—OCSE does not contemplate funding for the purchase of ordinary computer hardware which would be authorized under the 90-10 program.

IV. Development of innovative paternity establishment techniques in interstate cases such as methods for lowering the cost or increasing the use of parentage testing laboratories on a regional basis.

V. Other program ideas with an explicity interstate focus will be entertained for funding.

Applications should contain plans for comprehensive evaluation of the results of the demonstration. OCSE will also entertain plans for dissemination of results of the evaluation and lessons learned from the demonstration, as well for an initial planning and research module, as long as these lead logically to demonstrations. These efforts can be planned as multi-year projects.

Eligible Applicants

Grants are to be awarded to the State agency responsible for administering the IV-D program. The IV-D agency can enter into cooperative arrangements with other State agencies within the State (e.g., Attorney General, State court system, etc.) but the grant recipient will remain responsible for financial and program management of the grant, reports, auditing, and other normal grant functions. Applicants can also subcontract with private contractors for performance of work proposed in the grant application, in accordance with DHHS Regulation 45 CFR, Part 74.

In addition to applications made by individual State agencies proposing to experiment with their own internal procedures for processing interstate cases, proposals may include demonstrations which involve one or several other State IV-D agencies. These proposals will require that the applicant State IV-D agency retain responsibility for the proper administration of the grant. Such applications must come from a single lead Sate that will assume the responsibilities of the grantee for tracking, monitoring, auditing, reporting and other grant administrative functions. These applications should contain explicit information on the activities and responsibilities of each of the participating States and a detailed budget for each State. The application should show evidence of agreement of each of the participating State in the grant activity.

Availability of Funds

It is anticipated that up to $7 million will be available for funding interstate grants in FY 1985. For planning purposes, OCSE anticipates awarding 15-20 grants ranging from $350,000 to $465,000 each. The amounts of the grants may vary according to the scope and merit of the individual application and are quoted as projected averages for the first year of the program.

Waivers

Waivers of certain provisions of Title IV-D of the Social Security Act may be granted for the conduct of these demonstrations. The requests for such waivers must be included in the grant proposal.

The Application Process

1. *Availability of application forms.* Application kits containing the prescribed application forms and related documents are available from: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, 1-C-1 Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207. Telephone: (301) 594-0284, Lawrence H. Pullen, Chief, Grants Management Branch.

2. *Application submission.* To be considered for a grant award, all applications must be submitted on standard forms provided by the Division of Contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant.

3. *Application consideration.* Applications are initially screened for relevance to interstate child support concerns. Irrelevant applications are returned to the applicant. Relevant applications are reviewed and evaluated by a review panel of not less than three persons.

4. *Application approval.* Following approval of the applications selected for funding, financial assistance awards will be issued within limits of Federal funds available. The official grant document is the Notice of Grant Award. It provides the amount of funds awarded, the purpose of the award, the budget period for which support is given, the terms and conditions of the award, the total project period for which support is contemplated, and the total grantee financial participation.

5. *Additional information.* For questions concerning project development please contact John K. Maniha, Office of Child Support Enforcement, Room 931A, 6110 Executive Boulevard, Rockville, MD 20852, (301) 443-2980.

Criteria for Review and Evaluation of Applications

Applications will be reviewed and evaluated by a review panel against the following criteria:

1. *Project Design and Evaluation Methodology.* Feasibility and coherence of the project design and the quality of its evaluation component. (30 points);

2. *Knowledge.* Knowledge about possible alternative solutions to interstate problems, background presentation material, statement of the problem, and general grasp of the proposed solution. (10 points);

3. *Innovation.* Degree to which the application shows evidence of breaking new ground or presenting new solutions to interstate case problems. (25 points);

4. *Relevance and Applicability.* Relevance of proposal to OCSE's interstate priorities and goals, the degree to which the proposed solution could be transferred to other States. Does the application make sense and can it be done? (20 points);

5. *Personnel, Budget, and Facilities.* Availability and competence of specific kinds and numbers of experienced personnel. Is the project cost effective? Are the costs reasonable and adequately described considering the anticipated results? Are the applicant's facilities and resources adequate? (15 points).

Closing Dates and Times

For Fiscal Year 1985 projects the closing dates are November 30, 1984; March 29, 1985; and July 31, 1985. Any application not received by the closing date for a specific funding cycle will be held over to the next funding cycle.

Applications may be mailed or hand delivered to: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, 1-C-1 Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, MD 21207.

Hand delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing dates.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date. Applications not received by the deadline date of one cycle of funding will be held for review during the next cycle.

Executive Order 12372—Intergovernmental Review of Federal Programs

These grant activities are not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials in proposed Federal financial assistance.

Dated: September 13, 1984.

Martha A. McSteen,

Acting Director, Office of Child Support Enforcement.

[FR Doc. 84-25347 Filed 9-21-84; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Arthritis Advisory Committee

Date, time, and place. October 25 and 26, 9 a.m., Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 25, 9:15 a.m. to 10:15 a.m.; open committee discussion, October 25, 10:15 a.m. to 5 p.m.; October 26, 9 a.m. to 3 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of arthritis.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. On October 25, the committee will discuss consideration of revised labeling for phenylbutazone and oxyphenbutazone; and consideration of other drugs for "not for initial use labeling." On October 26, the committee will discuss consideration of approvability of auranofin.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 18, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25306 Filed 9-21-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0299]

Availability of Final Report to the Commissioner From the Agency Steering Committee on Animal Welfare Issues

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final report to the Commissioner of Food and Drugs from the Agency Steering Committee on Animal Welfare Issues. The report presents findings and makes recommendations on agency animal welfare issues.

ADDRESS: Single copies of the report are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Allen H. Heim, Office of Science Coordination (HF-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1587.

SUPPLEMENTARY INFORMATION: To clarify requirements for acute toxicity testing, FDA held a public workshop on November 9, 1983, to review and discuss the toxicology and scientific basis for acute studies (48 FR 46855; October 14, 1983). At this workshop, FDA announced the formation of the Agency Steering Committee on Animal Welfare Issues (the Committee). The Committee was charged with addressing the following five issues:

(1) Are FDA procedures so ordered as to obtain the maximum amount of useful scientific information while utilizing the fewest number of animals?

(2) Do FDA procedures in any way indirectly stimulate the perpetuation of the LD$_{50}$ test even though the agency no longer directly requires the use of this test?

(3) Is FDA making the maximum use of and encouraging the continued development of reliable in vitro alternatives to in vivo methodologies?

(4) Are mechanisms in place to ensure continuing compliance with the Animal Welfare Act and with the highest standards of animal care?

(5) Is the historical usefulness of animal testing in human health

protection, the primary mission of FDA, properly appreciated by our constituents?

The report contains the findings and recommendations of the Committee and is available to the public on request. The Commissioner agrees with the findings and recommendations.

Copies of the final report of the Agency Steering Committee on Animal Welfare Issues may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for copies may be sent to the Dockets Management Branch and should be identified with the docket number found in brackets in the heading of this document.

Dated: September 18, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25204 Filed 9-21-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Plan for the Review of Qualification Standards for Indians in the Excepted Service in the Indian Health Service.

Notice is hereby given that the Department has established a Steering Committee to review the qualification standards for all positions in the Indian Health Service (IHS) and to recommend qualification standards for Indians who apply for jobs in the Excepted Service in IHS. This review is required as a result of the decision by the United States Court of Appeals for the Ninth Circuit in *Preston* v. *Heckler,* 734 F.2d 1359 (9th Cir. 1984). The Steering Committee has developed a plan to implement the Court's decision. The plan includes the identification of a limited number of occupations which will be evaluated as part of a pilot study. The results of the study will be used to determine the process and the schedule that will be followed for the evaluation of the qualification standards for the remaining positions in IHS. The occupations selected for the pilot study are: GS-610, Community Health Nursing; GS-185, Social worker; and GS-681, Dental Assistant.

A full copy of the plan is attached.

Dated: September 17, 1984.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

Plan for the Review of Qualification Standards for Indians in the Excepted Service

Background

On June 7, 1984, the United States Court of Appeals for the Ninth Circuit issued a decision on the appeal regarding the *Preston* Case from the United States District Court for the District of Alaska in favor of the plaintiff. The Court of Appeals agreed with the District Court that the Indian Preference Act "requires the Secretary to adopt standards for evaluating the qualifications of Indians[1] for employment in the Indian Health Service that are separate and independent from the generally applicable civil service standards," and "give sufficient weight to the unique experience and background of Indians, including their superior knowledge of Indian needs and problems."

The decision requires the Department to establish qualification standards for Indians who apply for jobs in the Excepted Service in the Indian Health Service (IHS). Positions in the IHS are considered Excepted Service when they are filled under 5 CFR 213.3116(b)(8) by Indians entitled to Indian preference. Excepted appointments are not subject to the Competitive Service appointment requirements established by the U.S. Office of Personnel Management.

On July 9, 1984, the Assistant Secretary for Personnel Administration (ASPER) issued a memorandum establishing a Steering Committee under Public Health Service (PHS) leadership to develop, implement and oversee the review of qualifications standards for occupations in IHS. The Bureau of Indian Affairs (BIA) has agreed to participate in the development of qualification standards for series common to both organizations.

Purpose

To set forth a procedure to review qualification standards for occupations in the IHS and to develop qualification standards as appropriate. The qualification standards will apply to Indians appointed to positions under 5 CFR 213.3116(b)(8).

Objectives

The Court, in the *Preston* Case Decision, provides the following objectives:

"* * * ensuring that health services provided to Indians are of the highest quality."

"* * * To adopt standards for evaluating the qualifications of Indians for employment in the Indian Health Service that are separate and independent from the generally applicable civil service standards."

"* * * [To ensure that qualifications standards used in evaluating Indians for employment under cited authority]" give sufficient weight to the unique experience and background of Indians, including their superior knowledge of Indian needs and problems."

"* * * [To determine occupations in which it is appropriate to require experience which is] practical rather than academic * * * [inasmuch as] it is the practical aspects that the statute addresses when it requires separate qualifications for Indians.

Method

Occupational series currently existing in IHS will be reviewed by work groups through the process established by the Steering Committee in this document. Series in which there are presently ten or more incumbents will be reviewed first.

A. Steering Committee will:

1. Provide leadership to develop, impement, and oversee the review of qualification standards for occupations in IHS.

2. Consist of Federal employees appointed by ASPER. The Steering Committee will invite representatives of Indian organizations or others to attend its meetings.

3. Develop criteria, guidelines, and methodology to apply to each standard during the review process including:

a. Material to be reviewed.

b. Instructions/training/orientation of work groups (options and limitations).

c. Documentation and report requirements.

d. Schedule of activities.

e. Coordination of publication of **Federal Register** notice.

4. Identify priorities for review of qualification standards.

5. Establish work groups and assign to them responsibility for one or more series. There will be only one work group for each series.

6. Determine function and composition of work groups, ensuring the greatest possible Indian membership.

7. Provide continuing guidance to the work groups on assigned tasks.

8. Establish and monitor the review and comment process, assuring involvement of tribes, Indian organizations, professional groups,

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[1] Includes Indians and Alaska Natives eligible for Indian preference.

unions, IHS management, Regional and IHS Area personnel staffs, etc.

9. Review findings of the work groups using appropriate resources and accept, reject or modify work group findings.

10. Make recommendations for each occupation reviewed.

11. Provide progress reports as necessary.

B. Work Groups will:

1. Under the overall direction of the Steering Committee, review current qualification standards for the job series assigned to them and submit to the Steering Committee written recommendations on what, if any, changes should be made to the standards which will help assure that the Department can continue its efforts to provide quality health service to the Indian people while meeting all the requirements of the Indian Preference Act.

2. Consist of at least three members, but no more than five. Membership must include at least one subject matter expert with a working knowledge of the occupation and one personnalist knowledgeable about the knowledges, skills, and abilities (KSA) job analysis methodology. To the extent possible, work groups will include Indian employees.

3. Be established by occupational category (e.g., 100, 200, 300, 400, etc.) or individual series, where appropriate.

4. Ensure adequate involvement of tribes, Indian organizations, professional groups, unions, IHS management, Regional and IHS Area personnel staffs, etc.

5. Perform job analysis for assigned series.

6. Solicit and analyze written comments from appropriate sources.

a. Prepare a listing of sources contacted.

b. Prepare a summary of comments received.

c. Submit copies of the written request for comments and *all* comments received in response to that request.

7. Complete Criteria for Review of Qualification Standards (Attachment 1) for assigned series and report findings for each series to the Steering Committee.

8. Prepare a report of findings and a recommendation to accpet or modify existing qualification standards. Report must include a *completed* copy of the Criteria for the Review of Qualification Standards (Attachment 1) and a Certification by Members of Work Group (Attachment 2) showing concurrence or non-concurrence of each member in the final report. Non-concurrences should be accompanied by an explanation.

9. Provide additional information to Steering Committee as necessary.

C. Schedule.

	Target date	Completion date
1. Assistant Secretary for Personnel Administration establish Steering Committee and appoint Chairperson.	July 9, 1984	July 9, 1984.
2. Director, IHS notify IHS management officials of the Department's plans for implementation of the Preston Case Decision.	July 20, 1984	July 13, 1984.
3. Chairman, Steering Committee convene Steering Committee meeting to develop process and criteria for review of qualification standards.	July 11 to 13, 1984	July 13, 1984.
4. Steering Committee develop draft planning document for the review of qualification standards.	July 11 to 13, 1984	July 13, 1984.
5. Chairman, Steering Committee distribute draft Planning Document and Criteria for Review of Qualification Standards for review and comment including to National Indian Organizations.	July 20, 1984	July 16, 1984.
6. Comments due to Steering Committee.	Aug. 10, 1984	Aug. 10, 1984.
7. Steering Committee review and consider comments and finalize Planning Document and Criteria for Review of Qualification Standards.	Aug. 20 to 21, 1984	Aug. 21, 1984.
8. Steering Committee prepare draft of general notice for publication in FEDERAL REGISTER.	Aug. 31, 1984	Aug. 28, 1984.
9. Steering Committee identify occupational groups for pilot study.	Sept. 4, 1984	Aug. 21, 1984.
10. Director, IHS request assistance from IHS management in identifying work group members for pilot.	Sept. 4, 1984	Sept. 6, 1984.
11. Publish notice in FEDERAL REGISTER..	Oct. 1, 1984	
12. Steering Committee establish pilot work groups, designate Chairperson, and make series assignments for each work group.	Oct. 1, 1984	
13. Steering Committee train, orient, and provide guidance to pilot work groups and discuss process for reviewing qualification standards.	Oct. 19, 1984	
14. Chairmen, pilot work group convene pilot work groups for review of qualification standards.	Oct. 25, 1984	
15. Chairmen, pilot work groups report findings and recommendations to Steering Committee.	Feb. 15, 1985	
16. Steering Committee review findings of pilot work groups.	Mar. 15, 1985	
17. Steering Committee recommend appropriate action for each series reviewed by pilot work groups and appropriate implementation of the decision.	Mar. 29, 1985	
18. Steering Committee prepare as necessary, modified standards for pilot occupations and submit to Director, IHS for approval.	Apr. 30, 1985	
19. Director, IHS approve standards and submit to ASPER for concurrence.	May 17, 1985	
20. ASPER concur on standards.	May 31, 1985	

	Target date	Completion date
21. Steering Committee evaluate and modify process for review of qualification standards as necessary.	(1)	(1).
22. Steering Committee establish schedule for review of remaining occupational groups and series.	(1).	(1).
23. Carry out steps 12 through 17 for remaining occupational groups and series.	(1)	(1).
24. Steering Committee prepare, as necessary, modified standards for other series and submit to Director, IHS for approval.	(1)	(1).
25. Director, IHS approve standards and submit to ASPER for concurrence.	(1)	(1).
26. ASPER concur on standards.	(1)	(1).

[1] Dates to be established on basis of experience with pilot study.

D. Resources.

1. Human Resources include:

a. Representatives of Indian Tribes and Indian organizations.

b. United States Office of Personnel Management Native American Assistance Program.

c. Headquarters, Regional and Area Personnel Office Staffs.

d. IHS Professional Coordinators (Headquarters).

e. Area Program Consultants.

f. IHS Managers and Specialists.

g. Professional Organizations.

h. Anthropologists and/or other scholars versed in Indian culture, background, experience, and unique characteristics.

2. Reference Materials include:

a. Requirements of accreditation/licensure/registration/certification organizations.

b. Classification Standards.

c. Qualification Standards.

d. Position Descriptions.

e. Literature concerning occupations.

f. Performance Rating Plans.

g. Training materials, if available.

h. Anthropological and other studies on Indian culture, background, experience, and unique characteristics.

i. Federal Personnel Manual Supplement 335-1.

Attachment 1

Criteria for Review of Qualification Standards

Title of Occupation: ________________

Series: ________________________

A. Using Classification Standards, Position Descriptions, and Performance Plans as a Basis

1. Determine and list the major tasks for each occupation.

2. Determine and list the knowledge, skills, and abilities (KSAs) needed to perform each of the major tasks.

3. Determine and list for each KSA, on a preliminary basis, how it can be acquired (e.g., formal education or training, job related experience, other kinds of practical experience, unique Indian experience and background, etc.).

B. Using U.S. Office of Personnel Management (USOPM) Qualification Standards for Positions Under General Schedule, X-118 (or USOPM Job Qualification System for Trades and Labor Occupations, X-118C) and the results of A. Above as a Basis

Are the *lengths* of experience in this qualification standard reasonable, i.e., would less experience be acceptable at any of the grade levels, or is more experience necessary at any grade level?[1]

If more or less experience is necessary at any grade level, specify affected grade levels and amount of experience that should be required and state why, in relation to actual job performance.

Should some kinds of experience, especially that unique to Indian people, be given more credit in evaluating length of experience?

2. In addition to the *kinds* of experience currently shown in the standards, are there other kinds of practical experience, including that unique to Indian people, which would enable an individual to satisfactorily perform in this occupation in the IHS?

If so, provide examples of experience which you consider qualifying and state why.

3. Are there any *kinds* of experience currently in the standard that should be deleted (i.e., they are not necessary for satisfactory performance in this occupation in the IHS)?

If yes, specify what could be deleted and why.

4. Does the standard specify required *levels* of experience (e.g., experience at a certain grade level)?

If so, should these be modified or deleted?

Why or why not?

If there are no levels currently in the standards, should they be required?

If yes, specify what should be required and why.

5. Are there any *recency* of experience requirements in this standard?

If so, are they appropriate for application to Indian candidates in the IHS?

Why or why not?

If there are not currently any recency of experience requirements in this standard, are there any appropriate for application to Indian candidates in the IHS that should be added to the standard? If so, explain why.

6. Are there positive *education* requirements in this qualification standard?[1]

If so, can practical experience, including that unique to Indian people, be substituted for all or some of the academic requirements?

If yes, what kinds of practical experience, not presently included, could be substituted in filling jobs in IHS, and in what amounts for what grade levels?

7. Are there other kinds of education or training, including that unique to Indian people, which would enable an individual to satisfactorily perform in this occupation in IHS?

If yes, what are they?

8. Is the amount of education which may be substituted for experience reasonable, i.e., would less education be acceptable at any of the grade levels, or is more education necessary at any grade level?[1]

If more or less education is necessary at any grade level, specify affected grade levels and amount of education that should be required and state why, in relation to actual job performance.

Should some kinds of education, especially that unique to Indian people, be given more credit in the substitution for experience?

9. Is there any kind of education requirement or substitution of education for experience provision currently in the standard that should be deleted for jobs in IHS?[1]

If so, specify what should be deleted and why.

10. Are there licensure/certification/registration/apprenticeship requirements in this standard?

If so, are these requirements appropriate for application to Indian candidates in the IHS?

Why or why not?

If there are not currently any such requirements in this standard, are there any appropriate to IHS that should be added to the standard?

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[1] Does not apply to wage grade occupations covered by X-118C, inasmuch as the X-118C is based on a job element rating process.

If so, explain why.

11. Does the standard currently require a written test?

If so, should the requirement be deleted?

Why or why not?

If there is no written test currently in the standard, should one be required?

If yes, explain what kind of written test should be required and why.

12. Does the standard currently require a practical examination?

If so, should the requirement be deleted?

Why or why not?

If there is no practical test currently in the standard, should one be required?

If yes, specify what type of skills or knowledges should be tested, and how they should be tested.

13. Could a practical examination be substituted for other requirements (e.g., experience, education, etc.)?

If so, give examples and explain why.

14. Are the physical requirements in the standard appropriate for the occupation?

If so, give examples and explain why.

14. Are the physical requirements in the standard appropriate for the occupation?

If not, explain.

C. Other Considerations

1. Are there accrediting body standards or requirements for the IHS facilities (e.g., professional, hospital) which should be considered in establishing qualification requirements for this occupation?

If yes, what are they?

If yes, are they appropirate for application to Indian candidates in the IHS?

Why or why not?

2. If the work group is recommending any changes in the qualification standard that would credit additional experience, training or education for Indians, what methods are most appropriate for obtaining and evaluating evidence that an Indian applicant possesses these new factors?

3. If different knowledge requirements are established for this occupation, will that affect classification (i.e., will it affect the grade level of duties that incumbents are able to perform)?

If yes, explain.

4. Are there Indian cultural characteristics, not previously covered, which need to be considered in determining if an individual qualifies to perform successfully in this occupation?

If so, give examples and explain why.

D. Draft Qualification Standard

If the work group has identified any changes that are needed in the standard, please attach a draft of the modified standard. (To the extent possible, use the same format as the X-118 or X-118C.)

Attachment 2

Certification by Member of Work Group

Final Report On:

Title of Occupation: ____________

Series: ____________

Chairperson:

____

[Name and Title (Typed or printed)

Concur

(Check One)

Chairperson:

____

Signature and Date Yes No

Other members:

____

Name and Title (Typed or printed)

____

Signature and Date Yes No

____

Name and Title (Typed or printed)

____

Signature and Date Yes No

____

Name and Title (Typed or printed)

____

Signature and Date Yes No

____

Name and Title (Typed or printed)

____

Signature and Date Yes No

Note.—If there are non-concurrences, provide the reasons in writing and attach a copy to this form.

[FR Doc. 84-25201 Filed 9-21-84; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[INT DEIS 84-52]

Availability of the Draft Wilderness Environmental Impact Statement for Southern Lincoln and Northeastern Clark Counties, NV

AGENCY: Bureau of Land Management (BLM), U.S. Department of the Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for Wilderness Study Areas: Southern Lincoln and northeastern Clark Counties, Nevada.

SUMMARY: Pursuant to Section 603 of the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM Las Vegas District has prepared a Draft Environmental Impact Statement (DEIS) on proposed wilderness suitability recommendations for Wilderness Study Areas (WSAs) in southern Lincoln and northeastern Clark Counties, Nevada.

SUPPLEMENTARY INFORMATION: The Caliente Wilderness DEIS analyses the potential effects of designating or not designating all or portions of five Wilderness Study Areas, totaling 588,423 acres, as wilderness. The goal of this analysis is to recommend for wilderness designation those areas where wilderness is determined to be the most appropriate use of the land and its resources. This analysis involved evaluation of the potential manageability of wilderness, accessibility of identified mineral values for exploration and development, and the enhancement and development of such resource values and uses as wildlife habitat, recreation, livestock grazing, cultural resources, utility corridors, and others.

The recommendations made in the Draft EIS are not final decisions. Following the public comments on the DEIS, a final EIS and recommendations will be prepared for the signature of the Secretary of the Interior, and submitted through the President to Congress for final decision on which areas will be designated into the National Wilderness Preservation System.

Prior to final recommendation by the BLM, a mineral survey will be conducted by the U.S. Geological Survey and U.S. Bureau of Mines on those lands preliminarily recommended suitable for wilderness designation.

The following Wilderness Study Areas are evaluated in the Caliente Wilderness DIES:

	Acres
Clover Mountains (Grapevine Spring), NV-050-0139	84,935
Delamar Mountains, NV-050-0177	126,257
Meadow Valley Range, NV-050-0156	185,744
Mormon Mountains, NV-050-0161	162,887
South Pahroc Range, NV-050-0132	28,600

Four alternatives were considered in addition to the Preferred Alternative. They are All Wilderness, Wilderness Accent, Resource Development and No Wilderness (No Action). A discussion of the affected environment is briefly summarized and the environmental consequences anticipated from each of the five alternatives are documented in the DEIS.

The BLM's Preferred Alternative for each of the WSAs is as follows:

Clover Mountains (NV-050-0139)—A total of 84,165 acres is recommended suitable for wilderness designations. A total of 770 acres adjacent to the Pennsylvania Mining District is recommended nonsuitable.

Delamar Mountain (NV-050-0177)—The entire WSA, totaling 126,257 acres, is recommended nonsuitable for wilderness designation.

Meadow Valley Range (NV-050-0156)—A total of 97,180 acres, including the Meadow Valley Mountains and most of Hackberry Canyon are recommended suitable for wilderness designation. Recommended as nonsuitable are 88,564 acres in the Bunker Hills, central bajada and Vigo Canyon portion of the WSA.

Morman Mountains WSA (NV-050-0161)—A total of 23,690 acres in the central portions of the rugged core, including Mormon Peak is recommended suitable for designation as wilderness. Recommended as nonsuitable are 139,197 acres of highlands, bajadas and Moapa Peak surrounding the core.

South Pahroc Range (NV-050-0132)—A total of 28,395 acres is recommended as suitable for wilderness designation. A total of 205 acres on the northeast is recommended nonsuitable.

FOR FURTHER INFORMATION CONTACT: Kemp Conn, District Manager, or Frank Maxwell, EIS Team Leader, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126, (702) 388-6403 or FTS 598-6403.

Copies of the DEIS are availale for review at the following BLM offices:

Office of Public Affairs, 18th and C Streets, NW., Washington, D.C. 20240
Nevada State Office, 300 Booth Street, Reno, NV 89520
Battle Mountain District Office, North 2nd and Scott Streets, Battle Mountain, NV 89820
Carson City District Office, 1050 E. William Street, Carson City, NV 89701
Elko District Office, 2002 Idaho Street, Elko, NV 89801
Ely District Office, Star Route 5, Box 1, Ely, NV 89301
Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89126
Arizona Strip District Office, 8916 East Tabernacle, St. George, UT 84770
Winnemucca District Office, 705 E. 4th Street, Winnemucca, NV 89445
Cedar City District Office, 1579 North Main, Cedar City, UT 84720
Riverside District Office, 1695 Spruce Street, Riverside, CA 92507

Also, copies are available for review at the following public libraries:

Boulder City Library, 539 California Ave., Boulder City, NV 80005
Cedar City Public Library, 136 W. Center, Cedar City, UT 84720
Charleston Heights Library, 800 Brush Street, Las Vegas, NV 89107
Clark County Community College, Learning Resource Center, 3200 E. Cheyenne Avenue, North Las Vegas, NV 89030
Clark County Library, 1401 E. Flamingo Rd., Las Vegas, NV 89109
Henderson Library, Henderson, NV 89015
Las Vegas Public Library, 1762 E. Charleston Blvd., Las Vegas, NV 89104
Lincoln County Library, Caliente Branch, P.O. Box 306, Caliente, NV 89008
North Las Vegas Library, 2300 Civic Center Drive, North Las Vegas, NV 89030
St. George Public Library, 55 W. Tabernacle, St. George, UT 84770
James Dickinson Library, Documents Division, University of Nevada, 4505 Maryland Parkway, Las Vegas, NV 89154
Getchell Library, Government Publications Department, University of Nevada, Reno, NV 89507
Virgin Valley Library, Mesquite, NV 89024
Nevada State Library, Library Building, Carson City, NV 89710
Washoe County Library, 301 S. Center Street, Reno, NV 89505
White Pine County Library, Courthouse Plaza, Ely, NV 89301

A copy of the Draft EIS will be sent to all individuals, agencies, and groups who have expressed an interest in the Caliente Wilderness Planning process, and a limited number of copies are available upon request to the District Manager. A Wilderness Technical Report has also been prepared, providing supplementary information to the DEIS, and is also available upon request to the above address.

DATES: Written comments concerning issues pertinent to the Caliente Wilderness EIS will be accepted until January 2, 1985. Public hearings on the DEIS have been scheduled for Wednesday November 14, 1984 at 7:00 p.m. at the second floor banquet room of the Showboat Hotel, 2800 E. Fremont, Las Vegas, Nevada and the Thursday November 15, 1984 at 7:00 p.m. at the Caliente City Hall Council Room, Caliente, Nevada. Interested individuals, representatives of organizations and public officials wishing to testify are requested to contact the District Manager for advance registration, at the above address or phone number, by 4:15 p.m., November 14, 1984 for the Las Vegas hearing and by 4:15 p.m. November 15, 1984 at (702) 726-3141 for the Caliente hearing. Oral testimony will be limited to ten minutes.

Dated: September 18, 1984.

Roger J. McCormack,

Associate State Director.

[FR Doc. 84-25267 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Interagency Project Review Team for EIS On Proposal To Translocate Southern Sea Otters; Meeting.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As stated previously in the **Federal Register** June 27, 1984 (49 FR 26313-26315), the U.S. Fish and Wildlife Service (Service) is in the process of preparing an Environmental Impact Statement (EIS) on a proposal to translocate a number of southern sea otters from their present range to a site within the historic range of the species off the Pacific coast of the United States. To assist in the scoping process and to provide consultation during initial drafting of the EIS concerning the proposed translocation, the Service has established an interagency project review team (IPRT) as suggested by the Council on Environmental Quality (see 48 FR 34263-34264, July 28, 1983). Dates for the initial meetings of the IPRT were published in 49 FR 26313-26315 (June 27, 1984).

Dates indicated that notice were August 6-7 and August 23-24, 1984. The August 23-24 meeting was subsequently cancelled. Notice is hereby given of the next meeting of the IPRT. The agenda for the meeting will include presentations on methodologies for addressing risks of oil spills in the EIS on proposed southern sea otter translocation. Since oil spill risks are an important factor in determining whether or not the translocation should be undertaken and, if so, where the translocation site should be, the methodology used in the EIS for addressing oil spill risks will also be important. A second item to be discussed will be names of nominees to a peer review group to review and objectively comment on various sections of the draft and final EIS on the proposed translocation.

DATE: The IPRT meeting will be held October 4, 1984, beginning at 9:00 a.m. and ending on or before 5:00 p.m. the same day. It will be held in the Federal Building, Conference Room 14217, 450 Golden Gate Avenue, San Francisco, California.

ADDRESSES: Questions should be addressed to Skip Ladd, U.S. Fish and Wildlife Service, Sea Otter Recovery Project, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (telephone 916/484-4935; FTS 468-4935).

FOR FURTHER INFORMATION CONTACT: Skip Ladd at the address and telephone number stated above. Attendance is open to the interested public to observe and participate as desired in the discussions. Those who can provide specific information on the agenda topics are especially encouraged to attend and provide such information. Seating space is very limited. Those members of the general public who plan to attend are encouraged to notify Mr. Ladd so that the number of attendees can be predetermined and seating arrangements made.

Dated: September 18, 1984.

Richard J. Myshak,

Regional Director.

[FR Doc. 84-25253 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Arco Oil and Gas Co; Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4758, Block 212, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on September 17, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 17, 1984.

John L. Rankin,

Regional Manager.

[FR Doc. 84-25235 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-MR-M

Samedan Oil Corp.; Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3297, Block 215, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 14, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Mangement Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: September 14, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-25236 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. App. 1 and the Office of Management and Budget's Circular No. A-63, Revised.

The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet from 8:00 a.m. to 5:00 p.m., October 24 and 25, 1984, at the Meridien Hotel New Orleans, New Orleans, Louisiana (504/525-6500).

The meeting will cover the following principle subjects:

October 24

- Results of frontier region exploration since 1973 and implications for future OCS exploration
- Areas of oil and gas industry interest—Summary of the Minerals Management Service and industry information prepared for 5-Year Program
- Means of identifying oil and gas potential in leasing decisions

October 25

- Criteria for determining the environmental sensitivity of marine areas
- Criteria for balancing energy and environmental concerns in the 5-Year Program
- Means of integrating the 5-Year Program and Environmental Studies Program
- Innovative Approaches for 5-Year Program Planning

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the committee. Such requests should be made no later than October 3, 1984, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th & C Streets, NW., Washington, D.C. 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information contact the Executive Secretary, Michele Tetley at (202/343-9314).

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Minerals Management Service, Department of the Interior, 18th & C Streets, NW., Washington, D.C. 20240.

Dated: September 21, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-25300 Filed 9-21-84; 10:33 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of Plan of Operations and Environmental Analysis for the Purpose of Drilling Exploratory Oil/Natural Gas Well No. 1; American Petrofina Co. of Texas, Laguna Madre Area, State Tract 181, Padre Island National Seashore, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the code of Federal Regulations that the National Park Service has received from American Petrofina Company of Texas a Plan of Operations for the purpose of drilling the Exploratory Oil/Natural Gas Well No. 1 within the Laguna Madre Area, State Tract 181, Padre Island National Seashore, Kleberg County, Texas.

The Plan of Operations and Environmental Analysis are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418. Copies of the document are available from Padre Island National Seashore and will be sent, upon request, to individuals or groups at a charge of $7.60 per copy, pursuant to the Freedom of Information Act. The document is 76 pages in length.

Dated: September 17, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-25261 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-70-M

Intention To Extend Concession Contract; Amfac Hotels and Resorts, Inc. dba Fred Harvey

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with Amfac Hotels and Resorts, Inc. dba Fred Harvey authorizing it to continue to provide lodging, food and beverage, merchandise, automobile service station and souvenir facilities and services for the public at Stovepipe Wells within Death Valley National Monument for a period of two (2) years from January 1, 1986, through December 31, 1987.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Fred Harvey, the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Fred Harvey. If Fred Harvey amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Fred Harvey.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Region, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: August 28, 1984.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 84-25259 Filed 9-21-84; 8:45am]

BILLING CODE 4310-70-M

National Capital Region, Public Affairs; Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1984 Christmas Pageant of Peace, which opens December 3 on the Ellipse, south of the White House.

A public meeting will be held at the National Capital Region Building, 1100 Ohio Drive, SW., 2nd floor, on November 1, at 10 a.m.

Interested persons who would like to comment at the meeting should notify the National Park Service by October 24, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at 426-6700. Persons who cannot attend the meeting can send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, D.C. 20242. Comments will be accepted until October 17, 1984.

Dated: September 14, 1984.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 84-25260 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 10706(a)(5)(A) Application No. 10]

U.S. Clay Producers Traffic Association, Inc.; Agreement Filed and Request for Comment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing agreeement and request for comments.

SUMMARY: An application for approval of an agreement under 49 U.S.C. 10706(a)(5)(A) has been filed by U.S. Clay Producers Traffic Association, Inc. (USCP), on behalf of its interested members who own or lease rail tank cars. The agreement establishes an association called the Tank Car Allowance Committee (TCAC) consisting of USCP members. TCAC will provide a forum for joint consideration and discussion of rail tank car allowances. The Commission seeks public comment prior to acting on the application.

DATES: An original and 10 copies of comments from interested parties should be filed by October 24, 1984.

ADDRESSES: The application may be inspected at the Office of the Secretary, Interstate Commerce Commission, in Washington, D.C.

Comments referring to section 10706(a)(5)(A) Application No. 10 should be addressed to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Applicant's representative: Henry M. Wick, Jr., 1610 Two Chatham Center, Pittsburgh, PA 15219.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: An application was filed June 29, 1984, by USCP seeking Commission approval of an agreement that would permit USCP memers to discuss among themselves and engage in negotiations with various railroad interests matters relating to the allowances to be paid by rail carriers for the use of privately owned or leased rail tank cars.

Shippers entering into such agreements and seeking antitrust immunity must apply to the Commission for approval of their agreement under 49 U.S.C. 10706(a)(5)(A). The Commission will approve an agreement only upon a finding that it furthers the rail transportation policy set forth in 49 U.S.C. 10101a. The Commission can, if necessary, impose conditions to further that policy. If the agreement is approved, the antitrust laws do not apply to parties and other persons with respect to making and carrying out the agreement.

Comments are invited on the proposed agreement, with special attention to the following subjects:

(1) How will this agreement further the transportation policy set forth in 49 U.S.C. 10101a? (Is the requested antitrust immunity necessary?)

(2) Are there any anti-competitive effects that may result because of the agreement?

(3) What, if any, additional safeguards are necessary to ensure that the proposed agreement will not have an undesirable anti-competitive effect or suppress competition among members of the association.

(4) What other matters should the Commission consider in determining whether the agreement should be approved? I11While it does not appear that this action will have a significant effect on the quality of the human environment or conservation of energy resources, comments on these issues are also invited.

Authority: 49 U.S.C. 10706(a)(5).

Dated: September 13, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-25208 Filed 9-21-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket Nos. 30544 and 30546]

Cedar Valley Railroad Co.; Exemption; 49 U.S.C. 10901 and 11301

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of: (1) 49 U.S.C. 10901 the (a) acquisition and operation by Cedar Valley Railroad Company (CVRC) of Illinois Central Gulf Railroad Company's (ICG) 102-mile line of track between Mona Junction, IA, and Lane, MN, including a branch between Stacyville Junction and Stacyville, IA; (b) acquisition by CVRC from ICG of trackage rights between Mona Junction and Waterloo, IA; and (c) acquisition by CVRC from Chicago and North Western Transportation Company of trackage rights between Lane and Albert Lea, MN; and (2) 49 U.S.C. 11301 for CVRC to issue debt and equity securities for line acquisition and other corporate purposes.

DATES: This exemption will be effective on September 20, 1984. Petitions to reopen must be filed by October 15, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30544 and 30546 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter A. Gilbertson, Witkowski, Weiner, McCaffrey and Brodsky, Suite 350, 1575 Eye Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 18, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Gradison concurred. She would grant an exemption from the requirements of Section 11343, rather than Section 10901, for the proposed acquisition of trackage rights in Finance Docket No. 30546. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-25217 Filed 9-21-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Approval of Rail Cost Adjustment Factor.

SUMMARY: The Commission has decided to approve the cost index filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. The application of the index provides for a fourth quarter 1984 Rail Cost Adjustment Factor (RCAF) of 1.053. Since the fourth quarter 1984 RCAF (1.053) shows a decrease of .005 from the third quarter 1984 RCAF (1.058), there is no authority for the one-tenth of one percent increase currently scheduled to become effective on October 1, 1984 in RCCR Tariff X-084-A. Consequently, railroads must amend the tariff immediately to cancel the provisions in Item 30 (and any other items in the tariff) which direct addition of the further 0.1 percent. No other rate actions are ordered.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 275-0938; Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: By decision served April 17, 1981 (46 FR 22594, April 20, 1981), we outlined the procedures for the calculation of the interim mid-quarter index of railroad costs and the methodology for the computation of the RCAF. AAR was required to calculate and submit the mid-quarter index to the Commission no later than 20 days before the end of each quarter.

The index weights have been updated to 1983 levels using data from the R-1 Annual Reports of Class I Railroads. These weights replace 1982 weights which have been used since the fourth quarter of 1983. The shift in weights between the "materials and supplies" component and the "other" component was caused, in part, by a change from betterment accounting to depreciation accounting for track structures. The fourth quarter index also uses, for the first time, a revised thirty-eight item market basket for the measurement of the materials and supplies component.

We have reviewed the reweighting and the subsequent linking of the old and new index weights and conclude that acceptable procedures have been used.

We have reviewed AAR's calculations of the mid-quarter index for the fourth quarter of 1984 and find that these calculations comply with the guidelines contained in our decision served April 17, 1981.

Our decision served June 20, 1984 provided for a reduction of .1 percent in the maximum rate increase allowed for the third quarter of 1984, the reduction to be effective for one quarter only. We also stated, "Rate increases taken under these provisions for the fourth quarter 1984 or thereafter may include the .1 percent *to the extent that the RCAF remains at or exceeds 1.058.*" (Emphasis supplied). We note that, in anticipation that the RCAF would equal or exceed 1.058, RCCR Tariff X–084–A provided for the (withheld) .1 percent to be effective October 1, 1984. Since the RCAF did not remain at 1.058, provision for the .1 percent increase must be canceled.

EX PARTE NO. 290 (SUB-NO. 2)
INTERIM MID-QUARTER INDEX

Line No.	Category	1982 Weights	1983 Weights	Second Quarter 1984 Actual	Third Quarter 1984 Forecast	Fourth Quarter 1984 Forecast
1	Salaries, wages and supplements	48.3%	48.5%	147.3	147.3	146.6
2	Fuel	11.3%	10.3%	98.0	99.4	97.3
3	Materials and supplies	10.4%	7.2%	102.8	104.2	106.0
4	Other expense	30.0%	34.0%	115.9	117.6	117.2
5	Weighted average a. 1980 = 100			xxx	128.5	128.6
	b. Linked index			127.1	127.9	127.3 1/
6	Rail Cost Adjustment Factor 2/ (10/1/82 = 100) 120.9 = 100			1.051 3/	1.058	1.053

1/ Linking is necessitated by a change of weights from 1980 to 1983. The following formula was used:

$$\frac{\text{4th Quarter 1984 Index (1983 Weights)}}{\text{3rd Quarter 1984 Index (1983 Weights)}} \times \text{3rd Quarter 1984 Index (Linked Index)} = \text{Linked Index (1980 Weights to 1983 Weights)}$$

or

$$\frac{128.6}{129.2^{a/}} \times 127.9 = 127.3$$

a/ Third quarter 1984 Index (128.5) recalculated using 1983 weights.

2/ The denominator was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980.

3/ For comparative purposes an RCAF for the second quarter 1984 is shown using actual data. The published RCAF is computed using forecasted data.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: September 17, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–25210 Filed 9–21–84; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Metabolic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date and Time: October 10, 11, 12, 1984 9:00—5:00 p.m.

Place: National Science Foundation, Room 338, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. William van B. Robertson, Program Director, Metabolic Biology Program, Room 325, National Science Foundation, Wash., DC 20550 Telephone (202) 357–7987.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in metabolic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: September 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–25271 Filed 9–21–84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and Time: October 11 & 12, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Louis F. Pitelka, Program Director, Population Biology and Physiological Ecology (202) 357–9728, Room

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1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-25280 Filed 9-21-84; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.

Date and Time: October 10, 11, 12, and 13, 1984; 8:30 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 602, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550 Telephone: (202) 357-7958.

Purpose of Committee: To provide advice and recommendations concerning support for research in Earch Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-25270 Filed 9-21-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-312]

Sacramento Municipal Utility District; Environmental Assessment and Final Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of relief from certain Inservice Testing requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Component", to the Sacramento Municipal Utility District, the licensee for the Rancho Seco Nuclear Generating Station, located in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action

The relief permits the licensee to test certain designated pumps and valves in a manner and on a schedule different from that prescribed in Section XI of the ASME Boiler and Pressure Vessel Code. The proposed relief is in accordance with the licensee's requests for relief dated July 18, December 10 and 24, 1979, April 17 and May 30, 1980, March 3 and October 6, 1983, and January 25, 1984.

The Need for Proposed Action

10 CFR 50.55a(g) requires that ASME Code Class 1, 2 and 3 pumps and valves be inservice tested in accordance with the applicable editions of the ASME Code except where, pursuant to 10 CFR 50.55a(g)(6)(i), specific relief is granted by the Commission. The licensee requested relief from certain inservice testing requirements of the Code for specific pumps and valves for which it has concluded that the requirements were impractical for the following reasons:

1. Exercising of specific valves every three months because (a) testing of the valves during power operation could cause equipment failures or operating transients; (b) design flow cannot be developed during power operation; (c) the valves are required to be closed during power operation to isolate high pressure systems from lower pressure systems; or (d) the valves are locked closed and are not required to move to perform their safety function.

2. Measuring lubricant temperature for specific centrifugal pumps to establish bearing temperatures cannot be done because no installed instrumentation exists for the measurement of the lubricant's temperatures.

3. Inservice testing each Code pump every month and measuring the pump flow rate during each inservice test because (a) quarterly inservice tests are adequate to evaluate any degradation that may occur and (b) no flow rate measurement instruments are provided for these specific pumps.

The licensee has proposed alternate methods for inservice testing of these specific valves and pumps.

Environmental Impact of the Proposed Action

The inservice inspection program as specified by the applicable editions Section XI of the ASME is established to verify operational readiness of pumps and valves whose function is required for safety. The proposed relief involves only the relief from some of the requirements of the code for specified valves and pumps because, for the reasons outlined above, the licensee has found these requirements were impractical. For each relief the licensee has proposed an alternative inservice test which the staff has reviewed and found acceptable for verifying the operational readiness of the specific valves and pumps. Therefore, the relief will not change the likelihood of primary system failures between inspections. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed relief does not otherwise affect facility radiological effluents, or any significant occupational exposures. Likewise, the relief does not affect facility nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed relief.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed relief, any alternatives either will have no environmental impact or will have no greater environmental impact. The principal alternative to the relief would be to require literal compliance with 10 CFR 50.55a(g). Such an action would not enhance the protection of the environment and could result in unnecessary shutdown of the facility, failure to equipment, and/or operating transients.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in connection with the Final Environmental

Statement relating to this facility, dated March 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for relief dated July 18, December 10 and 24, 1979, April 17 and May 30, 1980, March 3 and October 6, 1983, and January 25, 1984 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Sacramento City-County Library, 828 I Street, Sacramento, California.

Dated at Bethesda, Maryland, this 27th day of August 1984.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-25275 Filed 9-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (The Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24 to the Southern California Edison Company, San Diego Gas & Electric Company, the City of Anaheim, California, and the City of Riverside, California (the licensees). The licensees hold Facility Operating License Nos. NPF-10 and NPF-15, which authorize operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 (the facilities). These facilities are pressurized water reactors located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The exemption from 10 CFR 70.24 would allow irradiated or unirradiated fuel assemblies to be handled and stored in the San Onofre 2 and 3 fuel handling building without having two criticality monitoring systems operable, provided that no more than one fuel assembly is outside an approved shipping container, storage rack, or fuel transfer tube at any time.

The Need for the Proposed Action

The proposed exemption is needed to permit refueling operations at San Onofre 2 and 3 to be conducted without installing the criticality detection systems specified by 10 CFR 70.24.

Environmental Impacts of the Proposed Action

There are no environmental impacts of the proposed action. Criticality will be precluded by the use of geometric spacing in storing new and spent fuel storage racks and the restriction that no more than one fuel assembly shall be authorized to be outside an approved shipping container, storage rack or the fuel transfer tube at any one time. This is an acceptable alternative to redundant criticality detection systems. Since the proposed change does not otherwise affect radiological plant effluents nor cause any significant occupational exposures, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

We have concluded that there is no measurable environmental impact associated with the proposed exemption. The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Proposed San Onofre Nuclear Generating Station Units 2 and 3" dated March 1973, the "Final Environmental Statement Related to the Operation of San Onofre Nuclear Generating Station Units 2 and 3", dated April 1981, and the Errata to the Final Environmental Statement dated June 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated March 27, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Dated at Bethesda, Maryland, this 17th day of September, 1984.

For the Nuclear Regulator Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-25276 Filed 9-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142]

University of California, Los Angeles; Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts of Terminating Facility License

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of Orders authorizing the University of California, Los Angeles (licensee), to dispose of the component parts of the research reactor in their possession, and terminating Facility Operating Licensing No. R-71 in accordance with the licensee's application dated July 26, 1984.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for disposal of the radioactive components of the reactor and decontamination of the facility or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By October 24, 1984, the licensee may file a request for a hearing with respect to issuance of either or both of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding may file a petition for leave top intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the actions under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW Washington, D.C. by the above date. When petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); (University of California, Los Angeles) and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to William H. Cormier, Esq., Office of Administrative Vice Chancellor, University of California, 405 Hilgard Avenue, Los Angeles, California 90024.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated July 26, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C.

Dated at Bethesda, Maryland, this 14 day of September 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 84-25274 Filed 9-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-02939; License No. 37-00118-07; EA 84-50]

The University of Pennsylvania, Philadelphia, Pennsylvania; Order Imposing Civil Monetary Penalties

I

The University of Pennsylvania, Philadelphia, Pennsylvania 19104 (the "licensee") is the holder of License No. 37-00118-07 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to possess and use radioactive materials for medical research, diagnosis, therapy, and teaching and training in accordance with conditions specified therein. License No. 37-00118-07 was issued on August 19, 1983.

II

An NRC safety inspection of the licensee's activities under the license was conducted on January 13 and 16, 1984 and March 21-22, 1984 to review the circumstances associated with a violation involving an exposure of a licensee employee to iodine-125 in excess of the regulatory limit. As a result of the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated June 20, 1984. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of civil penalty for each violation. A response dated July 13, 1984 to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

Upon consideration of the answers received, the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, and as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Four Thousand Dollars ($4,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 17th day of September 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

Although the licensee admits the violations, the licensee's July 13, 1984 response to the Notice of Violation and Proposed Imposition of Civil Penalties dated June 20, 1984, requests that the severity level for the violations described in Section II of the Notice be reduced, and that all of the proposed penalties for the violations described in both Sections I and II of the Notice be mitigated. Provided below are (1) restatement of each violation, (2) a summary of the licensee's response in support of their request, and (3) the NRC staff evaluation and conclusion regarding the licensee's response.

Section I—Violation Related to exposure in Excess of Regulatory Limit

Statement of Violation

10 CFR 20.103(a)(1) states that no licensee shall possess, use, or transfer licensed material in such a manner as to permit an individual in a restricted area to be exposed to radioactive material such that the uptake by any organ from either inhalation or absorption or both routes of intake in any calendar quarter exceeds that which would result from inhaling such radioactive material for 40 hours per week for 13 weeks, that is, 520 hours, at the maximum permissible concentrations (MPC) specified in 10 CFR Part 20, Appendix B, Table I, Column 1.

Contrary to the above, on or before January 13, 1984, one individual was exposed to the equivalent of 2,548 MPC hours of airborne iodine-125 during the first calendar quarter of 1984, an amount 4.9 times the limit specified in 10 CFR Part 20, Appendix B, Table I, Column 1.

This is a Severity Level III violation (Supplement IV). Civil Penalty—$2,000

Licensee Response

The licensee contends that there is no evidence that the employee received the exposure over a thirteen week period ending on January 13, 1984, and that the possibility the exposure occurred outside the activities conducted under the University's license has not been ruled out. The licensee, however, admits the violation, stating that it is probable that the employee received the exposure while working at the University. Nonetheless, the licensee requests that the penalty be mitigated because the exposure was promptly investigated and reported to the NRC.

NRC Evaluation

The NRC is not stating that the exposures occurred over a thirteen week period ending January 13, 1984. Rather, the maximum permissible concentration (MPC) hour method is used to express the equivalent inhalation exposure necessary to give the thyroid uptake that was obeserved in the individual. While the NRC staff agrees that the exposure was promptly investigated and reported to the NRC, the violation was not promptly identified by the licensee, but rather was identified when the individual requested that a thyroid bioassay be performed so that he could begin performing iodinations again. Further, although the violation was promptly investigated, the investigation did not identify as a program weakness the Radiation Safety Office's inability to identify all investigators who failed to have thyroid bioassays performed when required. This demonstrates a lack of aggressive oversight by the Radiation Safety Office and a failure of the licensee to have a management control system to assure that program requirements are followed. Accordingly, the NRC staff concludes that sufficient basis was not provided for mitigating the proposed civil penalty.

Section II—Violations Related to Programmatic Deficiencies

Statement of Violations

A. 10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that materials in an unrestricted area and not in storage be under constant surveillance and immediate control of the licensee. 10 CFR 20.3(a)(17) defines an unrestricted area as any area to which access is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above,

1. On March 21, 1984, the Radiopharmacy, an unrestricted area used for storage, contained millicurie quantities of licensed material which were not secured in that the Radiopharmacy was unlocked and was not under constant surveillance and immediate control. During these periods, the Radiopharmacy was accessible to visitors and employees who were not trained in accordance with 10 CFR 19.12.

2. On March 21, 1984, the stairwell behind the Nuclear Medicine Laboratory, an unrestricted area, was used to store licensed material as waste in open cans and containers, but was not under constant surveillance and immediate control. During these periods, the stairwell was accessible to visitors and employees who were not trained in accordance with 10 CFR 19.12.

B. Condition 27 of License No. 37–00118–07 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated February 25, 1980 and a letter dated March 18, 1983.

Contrary to the above, licensed material was not possessed and used in accordance with statements, representations, and procedures contained in the application dated February 25, 1980 and the letter dated

March 18, 1983, as evidenced by the following examples.

1. Item 12 of the application requires that persons regularly performing iodinations have thyroid bioassays at intervals of from one to three months.

However, as of March 22, 1984, some individuals regularly performing iodinations did not have thyroid bioassays at intervals of from one to three months. For example, an individual who performed iodinations during 1983 and 1984 only received thyroid bioassays in January and August 1983 and an individual who performed iodinations in January, February and March 1984 had not been given a thyroid bioassay since October 1983.

2. Item 13 of the March 18th letter requires that syringe shields be routinely used in the preparation of radiopharmaceuticals.

However, as of March 22, 1984, syringe shields were not routinely used in the preparation of radiopharmaceuticals in the Nuclear Medicine Department.

C. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with all sections of Part 20. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, as of March 22, 1984, surveys made to assure compliance with 10 CFR 20.106 were not adequate. Specifically, surveys or evaluations made of the concentrations of radioactive materials in the effluent air discharged from hoods, where millicurie quantities of iodine-125 were processed at various intervals, were not adequate in that actual measurements of airborne concentrations were not made frequently enough during actual processing of iodine-125, and the measurements made and other information collected were not evaluated in terms of annual releases.

D. 10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who is continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on June 14, 1983, radiation levels of 10 millirems per hour existed for at least eight hours in an unrestricted area, namely, a room adjacent to Room 421 in the Maloney Building.

Licensee Response

The licensee admits the violations occurred, but states that there was no threat to health and safety and denies that the violations collectively represent a breakdown in the management control and oversight of the radiation safety program. The licensee maintains that they have been extremely effective in assuring licensed activities are properly conducted, as evidenced by a virtually unblemished safety record.

The licensee contends that there is no basis in the regulations for aggregating a number of separate violations, none of which are Severity Level III, into one Severity Level III problem. Therefore, the licensee requests that the Severity Levels of the violations be reduced and all of the penalties mitigated.

NRC Evaluation

The NRC staff maintains that the violations collectively represent a breakdown in the management control and oversight of the radiation safety program because they indicate that adequate supervision of the program was not exercised by the Radiation Safety Officer or the Radiation Safety Committee to insure proper implementation of all program requirements, or to promptly identify and correct existing deficiencies in the program. The identification of these violations by the NRC, as well as the identification of four violations by the NRC during an inspection in 1981, demonstrates that the licensee has not been effective in assuring that licensed activities are properly conducted, contrary to the licensee's assertions.

Aggregation of these violations into a collective Severity III problem is appropriate and in accordance with both Section IV.B of the Enforcement Policy published in the **Federal Register** (47 FR 9987) on March 9, 1982, and Section V.B of the revised Enforcement Policy published in the **Federal Register** (49 FR 8583) on March 8, 1984, to focus on the underlying causes of the violations, namely inadequate management and supervision. Violation II.A, involving failure to properly secure licensed material, could itself be classified at Severity Level III in accordance with Section C.1 of Supplement VI of the revised policy. However, the NRC staff concluded that all of the violations should be categorized in the aggregate so that emphasis of the civil penalty is placed on the underlying cause of the violations.

Conclusion

The NRC staff's evaluation of the licensee's response indicates that an adequate basis was not provided for reduction of the severity level of the violations, or for mitigation of the civil penalties. Accordingly, civil penalties in the amount of Four Thousand Dollars are imposed.

[FR Doc. 84-25277 Filed 9-21-84; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final notice of Computer Matching Program: U.S. Postal Service/Requesting State Agencies, and final notice of a modification to an existing system of records.

SUMMARY: The purpose of this document is to publish final notice of a computer matching program and a records system change to Postal Service system USPS 050.020, Finance Records—Payroll System.

EFFECTIVE DATE: September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service hereby publishes final notice of a computer matching program and a new routine use No. 26 for system USPS 050.020, in connection with its plans to assist the Department of Labor in its efforts to enhance the integrity of its unemployment insurance program by providing to states, upon request, certain postal employee information required in connection with their efforts to prevent illegal payments of unemployment compensation benefits. This routine use will permit the discretionary disclosure of data from the Postal Service's Payroll System files to state agencies that provide unemployment compensation benefits to individuals where disclosed is necessary for the appropriate state component to take legal, administrative or corrective action to improve program integrity. The disclosed information will be used in a state's attempt to eliminate waste, fraud, and abuse in its unemployment insurance program. Advance notice of the proposed computer match and adoption of the routine use was published on August 10, 1984, at 49 FR 32138, where additional details of the proposal, as required by OMB's matching guidelines (47 FR 21656), were described. No comments were received in response to the advance notice.

Accordingly, system USPS 050.020, Finance Records—Payroll System, is modified to add a new routine use No. 26, as follows:

USSP 050.020

SYSTEM NAME:

Finance Records—Payroll System.

* * * * *

26. Disclosure of information about particular postal employees may be made to requesting states in connection with approved computer matching programs, limited to only those data elements considered relevant to making a determination of eligibility under unemployment insurance programs administered by the state (and by those states to local governments); to improve integrity; and to collect debts and overpayments owed to those governments and their components.

* * * * *

A complete statement of system USPS 050.020, as modified by this notice, appears following the next two Postal Service notices which also modify the Routine Use Section of system USPS 050.020.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-25249 Filed 9-21-84; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program: U.S. Postal Service/Government of the District of Columbia, Department of Human Services (DC-DHS), and final notice of modification to an existing system of records.

SUMMARY: The purpose of this document is to publish final notice of a computer matching program and a records system change to Postal Service system USPS 050.020, Finance Records—Payroll System.

EFFECTIVE DATE: September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service hereby publishes final notice of a computer matching program and a new temporary routine use for system "USPS 050.020, Finance Records—Payroll System in connection with its plan to assist the DC Department of Human Services (DC-DHS) in identifying welfare recipients who are employed by the Postal Service in the District of Columbia, and in the States of Maryland and Virginia and who have not reported their earnings from postal employment to the DC-DHS. The routine use will be in effect for a period of one year from its effective date. The purpose of this action is to determine whether suspected violations of Federal, State or District of Columbia's laws or Postal Service regulations have occurred in connection with the receipt by such employees of welfare benefits under the Aid to Families with Dependent Children (AFDC), General Public Assistance (GPA), Food Stamps, and Medicaid programs, and the nonreporting of earnings from Postal Service employment to the DC-DHS. Advance notice of the proposed computer match and adoption of the temporary routine use was published on August 10, 1984, at 49 FR 32139, where additional details of the proposal, as required by OMB's matching guidelines (47 FR 21656), were described. No comments were received in response to the advance notice.

Accordingly, system USPS 050.020, Finance Records—Payroll System is modified to add a new temporary routine use as follows:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

* * * * *

30. (Temp.) Disclosure of information about particular postal employees who work in the District of Columbia and in the States of Maryland and Virginia may be made to the Government of the District of Columbia, Department of Human Services (DC-DHS) for comparison with the DC-DHS welfare program files.

* * * * *

Note—The routine use will be in effect for a period of one year ending *September 24, 1985.*

A complete statement of system USPS 050.020, as modified by this notice, appears following the next Postal Service notice which also modifies the Routine Use Section of system USPS 050.20.

W. Allen Sanders,

Associate General Counsel, Office of General, Law and Administration.

[FR Doc. 84-25250 Filed 9-21-84; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final notice of modification to an existing system of records.

SUMMARY: The purpose of this document is to publish final notice of a records system change to Postal Service system USPS 050.020, Finance Records—Payroll System.

EFFECTIVE DATE: September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service hereby publishes final notice of a new temporary routine use for Privacy Act System of Records USPS 050.020, Finance Records—Payroll System in connection with its plan to assist the U.S. Department of Housing and Urban Development in its efforts to collect overdue debts from current postal employees. These debts are based upon Title I home improvement or manufactured home loans administered by the Secretary of Housing and Urban Development (HUD). Under the arrangements established by the two agencies, the Postal Service will provide to HUD a computer tape containing USPS employees' names and social security account numbers. HUD will match that tape against its file of Title I defaulted debtors and will return the uncopied computer tape to the USPS immediately after the match has been run. Upon written request, for verification purposes, the USPS will provide to HUD the home addresses of those matched individuals, as specifically identified (by name and social security account number) in the request. Advance notice of the proposed adoption of the temporary routine use was published on August 9, 1984, at 49 FR 31967, where additional details of the proposal, as required by OMB's matching guidelines (47 FR 21656), were described. No comments were received in response to the advance notice.

Accordingly, system USPS 050.020, Finance Records—Payroll System, is modified as follows:

USPS 050.020

System Name: Finance Records—Payroll System.

* * * * *

31. (Temp.) To provide to the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Development and for taking subsequent action to collect those debts.

* * * * *

Note.—This routine use will be in effect for a period of five years ending September 25, 1989.

A complete statement of system USPS 050.020, as modified, appears below.

W. Allen Sanders,

Associate General Counsel, Office of General Law & Administration.

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

SYSTEM LOCATION:

Payroll system records are loacted and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal data centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees and postmaster relief/replacement employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain general payroll information including retirement deduction, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding, allowances, FICA taxes, salary, name, social security number, payments to financial organizations, dates of appointment or status changes, designation codes, position titles, occupation codes, position titles, occupation code, addresses records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003.5 U.S.C. 8339.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

1. Infromation within the system is for handing all necessary payroll functions and for use by employee supervisors for the performance of their managerial duties.

2. To provide information to USPS Management and executive personnel for use in section decisions and evaluation of training effectiveness. These records are examined by the Selection committee and Regional Postmasters General.

3. To compile vairous lists and mailing list, i.e., Postal Leader, Women's lists, i.e., Postal Leader, Women's Programs. Newsletter, etc.

4. To support USPS Personnel Programs such as Executive Leadership, Non-Bargaining Positions Evaluations of Probationary Employees, Merit Evaluation, Membership and Identification Listings, Emergency Locator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various salary ranges.

Use—

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 U.S.C. 8334, along with a check.

2. Tax Information—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including name, home address, social security number, wages and taxes withheld for other jurisdiction.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W-2 tax mailings and Postal mailing such as Postal Life, Postal Leaders, etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FI (SS Tax) Deduction—To SS Administration as record of earnings under the SS act for all casual employees not under retirement.

7. Determine eligibility for coverage and payments of benefits under the Civil Service Retirement System, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program and transfer related records as appropriate.

8. Determine the amount of benefit due under the Civil Service Retirement System, the Federal Employees, Group Life Insurance Program and the Federal Employees Health Benefits program and authorizing payment of that amount and transfer related records as appropriate.

9. Transfer to Office of Workers Compensation Program, Veterans Administration Pension Benefits Program, Social Security Old Ages, Survivor and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilian employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system of records, for use in determining an individual's claim for benefits under such system.

10. Transfer earnings information under the Civil Service Retirement System to the Internal Revenue Service as requested by the Internal Revenue Code of 1954, as amended.

11. Transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.

12. Transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health benefits Program to a health insurance carrier or plan participating in the program.

13. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

14. To request or provide information from or to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefits.

15. As a data source for management information of production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

16. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

17. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

18. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

19. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

20. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

21. Inactive records may be transferred to a GSA Federal Records Center prior to destruction.

22. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service competition date, retirement system, and FEGLI status) for use by OPM's Compensation Group collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

23. Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission, upon his request, when that investigator is properly engaged in the investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint.

24. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

25. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93–647.

26. Disclosure of information about particular postal employees may be made to requesting states in connection with approved computer matching programs, limited to only those data elements considered relevant to making a determination of eligibility under unemployment insurance programs administered by the states (and by those states to local governments); to improve program integrity; and to collect debts and overpayments owed to those governments and their components.

27. To union-sponsored insurance carriers for the purposes of determining eligibility for coverage and payments of benefits under union-sponsored, non-Federal insurance plans and transferring related records as appropriate.

28. (Temp.) To provide the Department of Education home address information on former postal employees for the purposes of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Education and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of one year ending February 3, 1985.

29. (Temp.) Disclosure of information about particular postal employees on the employment rolls of the City of New Orleans, Louisiana, may be made to the New Orleans' Department of City Civil Service (NOCCS) for comparison with the NOCCS time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year ending June 15, 1985.

30. (Temp.) Disclosure of information about particular postal employees who work in the District of Columbia and in the States of Maryland and Virginia may be made to the Government of the District of Columbia, Department of Human Service (DC–DHS) for comparison with the DC–DHS welfare program files.

Note.—This routine use will be in effect for a period of one year ending September 24, 1985.

31. (Temp.) To provide the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Development and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of one year ending September 24, 1989.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer reports and card forms.

RETRIEVABILITY:

These records are organized by location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also projected by computer passwords and tape library physical security.

RETENTION AND DISPOSAL:

Records are retained and updated throughout employment with the Postal Service. Upon separation records become historical data, this data is retained at the local site for two years then forwarded to the Federal Records Center nearest the pay location.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Finance Department and APMG, Employee Relations Department at Headquarters.

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed, giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURES:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

[FR Doc. 84–25251 Filed 9–21–84; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 21331; SR–MSRB–84–12]

Municipal Securities Rulemaking Board; Filing and Order Granting Accelerated Approval of Proposed Rule Change

September 19, 1984.

The Municipal Securities Rulemaking Board ("MSRB") 1150 Connecticut Avenue, NW., Suite 507, Washington, D.C. 20036, on June 12, 1984, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Seacurities Exchange Act of 1934 ("Act") and rule 19b–4 thereunder to amend rule G–5 of the rules of the MSRB to subject municipal securities brokers and dealers that are National

Association of Securities Dealers, Inc. ("NASD") members to section 38 of Article III of the NASD's Rules of Fair Practice as in effect on April 3, 1984. Section 38 permits the NASD to prescribe certain remedial measures for NASD members subject to the rule that experience financial or operational difficulties. The amendment to rule G–5 authorizes the NASD to limit the business or take other remedial acations against municipal securities brokers and dealers.

Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. SR–MSRB–84–12.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the MSRB.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and in particular, the requirements of section 15B of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that prompt action will further the protection of investors and be in the public interest, and notice of the proposal was already given in the *SEC Docket, (31 SEC Docket 98, August 21, 1984).*

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above, be and hereby is, approved.

For the Commission, by the division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25228 Filed 9–21–84; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 14162; 812–5823]

Notice of American Balanced Fund, Inc., et al.; Filing of Application for an Order Pursuant to Section 6(c) of the Act Granting Exemption From the Provisions of Section 22(d) of the Act and Rule 22d–1 Thereunder and Pursuant to Section 11(a) of the Act Approving the Terms of Offers of Exchange

September 17, 1984.

Notice is hereby given that American Balanced Fund, Inc., AMCAP Fund, Inc., American Mutual Fund, Inc., The Bond Fund of America, Inc., EuroPacific Growth Fund, Fundamental Investors, Inc., The Growth Fund of America, Inc., The Income Fund of America, Inc., The Investment Company of America, The New Economy Fund, New Perspective Fund, Inc., The Tax-Exempt Bond Fund of America, Inc., Washington Mutual Investors Fund Inc. and any other member fund to be formed in the American Funds Group of Funds (collectively, "Funds") along with American Funds Distributors, Inc. ("Distributor"), 333 South Hope Street, Los Angeles, CA 90071, the principal underwriter of the Funds (collectively with the Funds, "Applicants"), filed an application on April 13, 1984, and an amendment thereto on September 5, 1984, for an order of the Commission, pursuant to Section 11(a) of the Investment Company Act of 1940 ("Act") approving the terms of certain exchanges, and, pursuant to section 6(c) of the Act, exempting Applicants from the provisions of section 22(d) of the Act and Rule 22d–1 thereunder in connection with those exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable sections and rules.

The application indicates that each Fund is registered under the Act as an open-end, diversified, management investment company. Applicants state that a prior Commission order, Investment Company Act Release No. 10939 (November 16, 1979) already approves the terms of exchanges similar to those described herein.

According to the application, the Funds are currently engaged in a continuous public offering of their shares through distributor at a public offering price equal to the net asset value plus a sales charge which varies with the size of purchase; however, EuroPacific Growth Fund ("EUPAC") and the Tax-Exempt Bond Fund of America ("TEBF") have sales charges which differ from those of the other Funds. Applicants state that the maximum sales charge for each of the Funds, with the exception of TEBF, is 8.5% of the offering price per share on purchases of less than $15,000; the sales charge is reduced on larger purchases. Applicants further state that the maximum sales charge for shares of TEBF is 4.75% of the offering price per share, reduced on sales in excess of $25,000. The application indicates that while the sales charge for each of the Funds except EUPAC is the same for purchases of shares amounting to $1,000,000 or more, EUPAC applies no sales charge to share purchases of $1,000,000 or more ("No-Load shares") and purchases of EUPAC for less than $1,000,000 have a sales charge identical to all Funds except TEBF. All Funds provide that shares may be acquired through reinvestment of dividends and distributions at net asset value.

Applicants propose the following: (1) Shares of Funds except (i) No-Load shares of EUPAC; (ii) No-Load shares of any other Fund which may in the future have the same sales structure as EUPAC (collectively with EUPAC, "Large-Purchase No-Load Funds") and (iii) shares of TEBF, will be exchanged for shares of the Funds on the basis of their net asset value per share at the time of the exchange. (2) No-Load shares of the Large-Purchase No-Load Funds which were acquired through a share exchange from one of the Funds other than through a share exchange of No-Load shares from a Large-Purchase No-Load Fund or which were acquired as a result of the reinvestment of dividends or distributions ("Reinvested Shares") will be exchanged for shares of any of the Funds on the basis of their net asset value per share at the time of the exchange. (3) Shares of the Large-Purchase No-Load Funds and TEBF, other than Reinvested Shares, will be exchanged for shares of the Funds upon payment of the sales charge described in the prospectus of the Fund whose shares will be acquired, less any previously paid sales charge.

Applicants represent that holders of No-Load shares of a Large-Purchase No-Load Fund, exchanging shares for those of the other Funds, would pay the same overall sales charge that they would have paid had they directly purchased the same number of shares of the other Fund. Applicants further represent that a shareholder who acquired shares of the Large-Purchase No-Load Funds by way of an exchange of shares of one of the Funds which would otherwise have been No-Load shares had the shares been purchased from a Large-Purchase No-Load Fund, would be able to re-exchange the shares of the Large-Purchase No-Load Funds for shares of any of the Funds on the basis of their relative net asset value per share at the time of the exchange since the shareholder would have paid a normal sales charge on the shares of the exchanged Fund. Applicants represent that no further sales charge would be assessed on any future exchange of the shares so acquired, and no refund of sales charges will be made on any of the exchanges permitted hereunder.

The application indicates that, in the event shareholders desire to exchange only a portion of their No-Load shares of the Large-Purchase No-Load Funds for one of the Funds, those shares which may be exchanged at relative net asset value without sales charge will be exchange first; the remaining shares to be exchanged will be selected from those shares which are entitled to be exchanged upon payment of the lowest additional sales charge. Applicants represent that, if because of rights of accumulation at the time of the exchange, the shareholder would be entitled to make a direct purchase of shares of the Fund to be acquired at a lower sales charge, the lower sales charge less the sales charge previously paid would be assessed.

Applicants submit that without Commission approval certain of the proposed exchanges would violate section 11(a) of the Act since they would be completed on a basis other than relative net asset value. Applicants further submit that some of the exchanges may not be deemed in compliance with section 22(D) of the Act and the rules thereunder, absent an exemptive order under section 6(c) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 12, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25230 Filed 9-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 14161; 812-5824]

EuroPacific Growth Fund; Application for Order Pursuant to Section 6(c) of the Act Exempting Applicant From Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 Thereunder

September 17, 1984.

Notice is hereby given that EuroPacific Growth Fund ("Applicant"), 333 South Hope Street, Los Angeles, California 90071, an open-end, diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on April 13, 1984, and an amendment thereto on August 30, 1984, for a Commission order, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22-1 thereunder to the extent necessary to permit Applicant and any other fund in the American Funds Group of Funds with substantially the same sales structure to assess (and waive in certain cases) a contingent deferred sales charge on redemptions of its shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

Applicant proposes to offer its shares for sale at net asset value plus a front-end sales charge where the initial purchase price is less than $1,000,000. Applicant intends to impose a contingent deferred sales charge on certain redemptions of shares with an initial purchase price of $1,000,000 or more. Applicant believes that not imposing a sales charge for purchases of $1,000,000 or more is permitted by Rule 22d-1(a) which allows a scale of reducing sales load varying with the quantity of securities purchased by any person. Applicant states that the contingent deferred sales charge would only be imposed on redemptions occurring within twelve months of a purchase and would equal 1% of the lesser of (1) the net asset value of the shares redeemed, or (2) the total cost of the shares. No contingent deferred sales load will be imposed when the investor redeems: (1) Amounts derived from increases in the value of his account above the total cost of shares redeemed due to increases in Applicant's net asset value per share; (2) shares acquired through reinvestment of dividend income and capital gains distributions; (3) shares held for more than twelve months; or (4) on exchange of Applicant's shares for shares offered by (a) Applicant's principal underwriter, American Funds Distributor Inc. (the "Distributor"), or (b) The Cash Management Trust of America, a money-market fund in the American Funds Group which is not distributed by the Distributor. Applicant states that, in determining whether a contingent deferred sales charge is payable, shares held the longest will be redeemed first.

Applicant intends to waive the contingent deferred sales charge on redemptions in connection with distributions from retirement plans qualified under the Internal Revenue Code (the "Code"), section 401(a), when such redemptions are necessary to make distributions to plan participants. Applicant states that it will assist in financing the distribution of its shares pursuant to a plan adopted under Rule 12b-1 under the Act (the "Plan"). The Plan provides that Applicant will pay the distributor monthly at an annual rate not to exceed .25% of Applicant's average net assets to finance activity that is primarily intended to result in the sale of Applicant's shares. Applicant believes that imposition of the proposed contingent deferred sales charge is fair and is in the best interests of Applicant's shareholders. Applicant asserts that the proposed charge would allow shareholders to have greater investment dollars working at the time of purchase.

Applicant asserts that imposition of the contingent deferred sales charge would not cause Applicant's shares to fall outside the Act's definition of "redeemable securities". Applicant states that the contingent deferred sales charge will in no way restrict a shareholder from receiving a proportionate share of the current net assets of Applicant, but will merely defer deduction of a sales charge and make it contingent on an event that may never occur. Accordingly, Applicant requests an exemption from the provisions of section 2(a)(32) of the Act to permit imposition of a contingent deferred sales charge.

Applicant asserts that there is no reason to prohibit imposition of a sales charge at a time other than the time of purchase. Applicant further asserts that the contingent nature of the charge puts the purchaser in a better position than if a sales load were imposed at the time of sale. Applicant submits that, because the charge is imposed only on amounts representing purchase payments (and not on increases in value of the shares or on shares purchased through reinvestment), the purchaser is better off with a contingent deferred sales charge. Accordingly, Applicant requests an exemption from the provisions of section 2(a)(35) of the Act to permit imposition of a contingent deferred sales charge.

Applicant asserts that the proposed contingent deferred sales charge is consistent with the intent of the definition of "sales load" contained in the Act. Applicant states that the contingent deferred sales charge is paid to the Distributor to reimburse it solely for expenses related to the sale of shares. It is submitted that the deferral of the sales charge, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of the charge, which is in every other respect a sales charge. Accordingly, Applicant requests an exemption from the provisions of section 2(a)(35) of the Act to the extent necessary to implement the proposed contingent deferred sales charge.

Applicant states that when a redemption of Applicant's shares occurs, the price of the shares redeemed will be based on current net asset value. The contingent deferred sales charge will merely be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds.

Accordingly, Applicant requests an exemption from the provisions of section 22(c) of the Act and Rule 22c–1 thereunder to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant requests an exemption from the provisions of section 22(d) of the Act and Rule 22d–1 thereunder to permit waiver of the contingent deferred sales charge on redemptions in connection with distributions from retirement plans qualified under Code section 401(a). It is asserted that waiver of the contingent deferred sales charge for distributions from a qualified retirement plan is justified on basic considerations of fairness. It is further asserted that waiving the charge on certain distributions from a qualified retirement plan is fully consistent with the policies reflected in Rules 22d–1(a)(3) and 22d–1(b)(3) under the Act, which permit quantity discounts to plans qualified under Code section 401, and Rule 22d–1(f) under the Act, which permits variation in sales load for qualified employee benefit plans (which need not be based on realization of economies of scale where the plans are qualified under section 401 of the Code).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 12, 1984, at 5:30 p.m., to do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25232 Filed 9–21–84; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 14163; 812–5862]

Guild Finance Corp.; Filing of Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From all Provisions of the Act

September 17, 1984.

Notice is hereby given that Guild Finance Corporation ("Applicant"), 9160 Gramercy Drive, San Diego, California 92123, incorporated under the laws of the State of California, filed an application on May 30, 1984, and an amendment thereto on August 24, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the test of the applicable statutory provisions.

The application states that Applicant is a limited purpose financing corporation organized by Guild Mortgage Company, a California corporation engaged in the business of mortgage banking ("Guild Mortgage"), to facilitate the financing of long-term residential mortgages on single-family residences and will not engage in any other unrelated business or investment activities. Applicant states that it intends to issue securities ("Bonds") and enter into funding agreements as described below with certain limited purpose finance companies (the "Finance Companies" or, individually, a "Finance Company") with respect to the Bonds. Applicant states that each Finance Company will use the proceeds from the Bonds to acquire eligible mortgage related collateral from one or more affiliated companies involved in the homebuilding business, who, in turn, will use those funds primarily to repay indebtedness to lenders or others incurred in connection with the construction of the single family residences securing the mortgage loans underlying the eligible mortgage related collateral. According to the application, in general, each Finance Company participating in a series of Bonds issued by Applicant is or will be organized and principally owned or otherwise controlled by a separate concern involved in the home building or mortgage finance business. Applicant represents it will have no significant assets other than the Mortgage-Backed Funding Obligations (as defined below) which back and secure the Bonds.

According to the application, each series of Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee ("Trustee"). Applicant represents any issue of Bonds will be rated in the highest bond rating category available by at least one nationally recognized rating agency. Applicant and each Finance Company participating in the Bonds will enter into a funding agreement with respect to the Bonds pursuant to which (i) Applicant will issue Bonds; (ii) Applicant will lend the proceeds of the sale of the Bonds to such Finance Company; (iii) each such Finance Company will be obligated to repay the loan made to it by the Applicant by causing payments to be made directly to the Trustee on behalf of Applicant in such amounts as are necessary to pay proportionate share of the principal of and interest on the Bonds as the same become due; (iv) each such Finance Company will execute a note evidencing its obligation to repay the loan pursuant to the terms of the related funding agreement; and (v) each such Finance Company will pledge to Applicant eligible mortgage-related collateral as security for its loans. The application states that the eligible collateral consists of fully-modified pass-through mortgage-backed certificates, fully guaranteed as to principal and interest by the Government National Mortgage Association, mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation, guaranteed mortgage pass-through certificates issued by the Federal National Mortgage Association, and will also include certain reserve funds. Applicant will assign to the Trustee its right, title and interest in the funding agreements, the notes and the mortgage-related collateral pledged thereunder as security for the Bonds. According to the application, payments on the mortgage-related collateral will be the primary source of funds for payments of principal and interest due on the Bonds. The collateralized funding arrangements backing and securing the Bonds are referred to herein as the "Morgage-Backed Funding Obligations".

Applicant submits that it is not the type of entity which was intended to be regulated under the Act and that since it is being formed for the limited purpose of issuing low risk, highly rated bonds backed and secured by Mortgage-Related Funding Obligations, its activities do not require the protection of the Act. Furthermore, Applicant submits that there are strong policy reasons for granting the exemptive relief in that its activities supply capital to the real estate and mortgage markets and thereby facilitate the financing of housing, a critical national need. Applicant submits that there is no public policy reason to require Applicant to register under the Act merely because it is facilitating the financing efforts of a number of small builders.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 11, 1984, at 5:30 p.m. do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25231 Filed 9-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21330; SR-NASD-84-22]

Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1984, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend a stated policy ("Policy") [1] with respect to the enforcement of NASD By-Laws Article IV, Section 2, Schedule E.[2] The Policy provides a temporary exemption from Schedule E for certain "special purpose broker-dealers," *i.e.*, broker-dealers that: (i) Sell public offerings of securities issued by an affiliate; (ii) formerly were registered with the Commission as SECO broker-dealers and were not NASD members; (iii) qualified for, and relied on, paragraph (c)(3) of former Rule 15b10-9 under the Act for an exemption from certain other SECO rules, immediately prior to becoming NASD members. The NASD is amending the Policy to extend this temporary exemption from June 6, 1984, to September 28, 1984. The NASD believes that this grace period will facilitate the integration of certain SECO firms into the NASD and is necessary as part of the conversion process. In addition, the NASD states that the temporary exemption will provide the NASD and the Commission staff the opportunity to consult with each other regarding the progress of NASD review of Schedule E compliance of those firms which were permitted to use the temporary exemption.

The NASD believes the proposed rule change is consistent with section 15A(b)(2) of the Act as amended because the proposed rule exchange is intended to provide new members of the NASD who formerly were not subject to the Commission's self-underwriting rule sufficient time to develop procedures for compliance with Schedule E. The NASD believes that the proposed rule change is consistent with section 15A(b)(6) because the temporary exemption does not unfairly discriminate between NASD member firms because it facilitates the conversion of former SECO firms to NASD membership.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-84-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25229 Filed 9-21-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] The Commission approved the Policy, which the NASD submitted as a proposed rule change, SR-NASD-83-25, in Securities Exchange Act Release No. 20447 (December 6, 1983), 48 FR 55374 (December 12, 1983). The NASD adopted the Policy as part of its effort to accept former SECO broker-dealers as NASD members. Congress abolished the SECO program, effective December 6, 1983. Pub. L. 98-38, 97 Stat. 205.

[2] NASD Manual (CCH), ¶ 1402 (hereinafter referred to as "Schedule E").

[Release No. 14167 (812-5845)]

CIGNA Annuity Fund, Inc., et al., CIGA Corp.; Application for Order Exempting Applicant and Permitting Certain Affiliated Transactions

September 19, 1984.

Notice is hereby given that CIGNA Annuity Fund, Inc. ("Applicant"), Hartford, Connecticut 06152, an open-end, diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on May 11, 1984, and an amendment thereto on August 9, 1984, requesting a Commission order: (1) Pursuant to section 6(c) of the Act, exempting Applicant and all subsequent funds and similar series of funds organized and sponsored by CIGNA Corporation or its affiliates (the "CIGNA Funds") from the provisions of sections 13(a)(2), 18(f)(1) and 22 (f) and (g) of the Act to the extent necessary to permit Applicant and subsequent and similar series of the CIGNA Funds to enter into a deferred fee arrangment with their directors and, (2) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting Applicant and subsequent and similar series of the CIGNA Funds to effect transactions incident to the deferred fee arrangement. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the provisions cited in the application.

Applicant states that it offers four classes of common stock representing interests in four portfolios: (1) The Money Market Portfolio, (2) The Short-Term Government Portfolio, (3) The Equity Portfolio, and (4) The Income Portfolio. Each of Applicant's portfolios has a different investment objective and is designed to fund variable annuity contracts issued by Investors Life Insurance Company of North America ("Investors Life"). CIGNA Investment Management Company ("CIGNA Management"), an indirect subsidiary of the CIGNA Corporation ("CIGNA"), is Applicant's investment manager and serves as investment manager or adviser for the CIGNA Funds.

Applicant states that its Board of Directors will consist of twelve persons, a majority of whom are not, within the meaning of section 2(a)(19) of the Act, "interested persons" of Applicant. It is stated that each of the directors who is not an interested person of CIGNA, Investors Life or CIGNA Management receives a retainer of $8,400 for serving as a director of all the CIGNA Funds plus a meeting fee of $550 for each Board or Committee meeting attended. Applicant states further that directors acting as Chairmen of Committees (Applicant will have Audit, Nominating and Contracts Committees) receive an additional retainer of $1,500 per year. With two exceptions (Mr. James H. Torrey and Mr. Harold H. Bigler), no director of Applicant who is an interested person of CIGNA, Investors Life, or CIGNA management receives any remuneration from Applicant. According to the application, the total remuneration payable to the directors is allocated among all the CIGNA Funds based on their relative net assets. Applicant states that the CIGNA Funds pay no other remuneration to their directors and that the amounts paid to the directors are, and are expected to continue to be, insignificant in comparison to Applicant's total net assets.

The requested order would permit Applicant to negotiate an agreement deferring payment of directors' fees otherwise currently payable by Applicant. A director may elect to defer receipt of his director's fees to avoid loss or diminution of social security benefits, to enable the director to defer payment of income taxes on such fees, or for other reasons. Applicant believes that the availability of a deferred fee arrangement will enhance its ability to attract and retain directors of the same high caliber as those who presently serve on its Board. Applicant states that the deferred directors' fees will be credited to a book reserve account (the "Deferred Fee Account") as of the date such fees would have been paid. Directors' fees that become payable for attending Board or Committee meetings will be credited to the Deferred Fee Account on the following business day.

According to Applicant, deferred fees will accrue interest daily from the date directors' fees are credited to the Deferred Fee Account. The rate of return on amounts (including accrued interest) in the Deferred Fee Account will equal the rate payable on shares of CIGNA Cash Fund, Inc. ("CIGNA Cash"). Applicant may purchase shares of CIGNA Cash to fund interest payments on amounts in the Deferred Fee Account. However, payment of deferred fees and accrued interest will be a general obligation of Applicant and such payment will be made from Applicant's general assets and property. A director entitled to payment of deferred fees will be a general unsecured creditor of Applicant. The deferred director's fees (including interest accrued thereon) will become payable in cash upon termination of the director's services in such capacity, in a lump sum or in such number of annual installments as shall be determined by Applicant in its sole discretion. In the event of the director's death, amounts payable to him under the agreement will be payable to his designated beneficiary; in all other events, the director's right to receive payments will be nontransferable. Applicant states that the deferred fee agreement will not obligate Applicant to retain a director in such capacity, nor will it obligate Applicant to pay any (or any particular level of) directors' fees to any director.

Applicant asserts that the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that its participation in the deferred fee agreement is not on a basis different from or less advantageous than that of any affiliated person of Applicant.

Applicant asserts that it should be exempted from the provisions of sections 18(f)(1) and 13(a)(2) of the Act because the deferred fee agreement is not a senior security within the meaning of the Act. Applicant submits that it would not "borrow" from its directors and that all liabilities created by credits to the Deferred Fee Account would be offset by equal amounts of assets that would not exist if directors' fees were currently paid. Applicant asserts that the deferred fee agreement would not: (1) Induce speculative investments by Applicant or provide an opportunity for manipulative allocation of Applicant's expenses and profits, (2) effect control of Applicant, or (3) confuse Applicant's investors, make it difficult for them to value Applicant's shares or convey a false impression of safety.

Applicant asserts that it should be exempted from the provisions of section 22(f) of the Act because that section was designed only to bar those restrictions on transferability or negotiability either not disclosed to the holder of the subject security or expressly prohibited by Commission rule or regulation. Applicant states that the restriction on transferability of directors' benefits would be clearly set forth in the deferred fee agreement, would primarily benefit the directors and would not adversely affect the interests of the directors or shareholders of Applicant or the CIGNA Funds.

Applicant asserts that it should be exempted from the provisions of section 22(g) of the Act because the legislative history of the Act indicates that

Congress was primarily concerned with the dilutive effect on the equity and voting power of the securities of an open-end company if such securities were issued for consideration not readily valued. Applicant submits that the deferred fee agreement would not have a dilutive effect. Applicant states that its obligations to make payments under the deferred fee agreement would not be "issued" for services. Although a director's fees that might become payable to a director would clearly be for services, any such fees would become payable independent of the agreement. Applicant states that the deferred fee agreement would merely provide for deferral of payment of such fees and thus should be viewed as being "issued" not in return for services but in return for Applicant's not being required to pay such fees on a current basis.

Applicant asserts that the agreement is not a joint transaction, within the meaning of section 17(d) of the Act and Rule 17d–1 thereunder. If the agreement is to be considered a joint transaction, Applicant states in support of its request for approval, that the interest to be accrued on amounts in the Deferred Fee Account is to be based on the yield of CIGNA Cash, not that of Applicant. Applicant asserts that use of CIGNA Cash's yield to determine interest on amounts in the Deferred Fee Account does not inherently differ from (but might be fairer than) the use of the prime rate or another assumed rate of interest. Applicant maintains that deferral of a director's fees in accordance with the deferred fee agreement would maintain the parties to the agreement in the same position as if the fees were paid on a current basis.

To comply with section 12(d)(1) of the Act, Applicant represents that its total ownership of CIGNA Cash shares will at all times: (1) Represent less than three percent of the total outstanding voting securities of CIGNA Cash; (2) have an aggregate value of less than five percent of Applicant's total assets; and (3) will constitute, in the aggregate with the other CIGNA Funds, less than ten percent of the total outstanding voting stock of CIGNA Cash.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25294 Filed 9–21–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14164; (813–60)]

Hutton Investment Partnership I; Application for an Order Amending Prior Order

September 19, 1984.

Notice is hereby given that Hutton Investment Partnership I ("Applicant"), One Battery Park Plaza, New York, New York 10004, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management company, filed an application on July 6, 1984, requesting an order of the Commission pursuant to section 6(b) of the Act, amending in the manner described below an earlier order issued July 29, 1981 (Investment Company Act Release No. 11877), and amended on April 8, 1982 (Investment Company Act Release No. 12362) (the "Order"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant is a limited partnership organized under the Uniform Limited Partnership Act of the State of New York. Its organization was conceived by employees of the E.F. Hutton Group Inc. ("Hutton"), a Delaware corporation, to function as an investment vehicle for certain employees of Hutton and its subsidiaries.

Applicant states that, as originally issued on July 29, 1981, the Order exempted Applicant from sections 10 (a), (b) and (f), 14(a), 15(a), 16(a), 17(a), (d), (f) and (g), 18(i), 23(c), 30 (a), (b) and (d) and 32(a) of the Act, and granted confidential treatment pursuant to Section 45(a) of the Act to the extent that filings might be made by Applicant with the Commission pursuant to section 30 of the Act. By amendment dated April 8, 1982, the Order relieved Applicant of certain undertakings given in its original application, and specifically exempted certain of its additional activities from the provisions of sections 17 (a)(2) and (d) of the Act, and exempted Applicant from certain requirements of section 18(a)(1) of the Act.

Applicant believes that still further revision of the Order is appropriate to make it coterminous with the Commission order (Investment Company Act Release No. 13246) granted on May 17, 1983, to Hutton Investment Partnership II ("Partnership II"), the second partnership in the series of employees' securities companies of which Applicant was the initial entity. The latter order provided for exemptive relief substantially identical to that provided for by the Order except that Partnership II (and subsequent similar partnerships) were granted additional relief in the form of exemptions from sections 8(b), 19(b) and 20(a) of the Act, and were exempted from section 17(d) and Rule 17d–1 thereunder to permit them to enter into concurrent investments with affiliates to an extent greater than that permitted by the Order. For the reasons set forth hereinafter, Applicant requests that said additional exemptive relief be extended to it, as well.

Applicant states that although Partnership II, and subsequent such entities of the same series ("Subsequent Partnerships") (Partnership II and Subsequent Partnerships collectively, "Partnerships") may differ from Applicant, or from each other, in terms of their respective investment objectives, structurally and operationally speaking, they are (or will be) similar. Neither Applicant nor the Partnerships are or will be controlled by Hutton, but rather will be controlled by officers and employees of Hutton. The limited partners of Applicant and of the Partnerships are or will be officers, directors, or other employees of Hutton or its subsidiaries. Management of Applicant and that of the Partnerships are or will be vested exclusively in the general partner of these entities, i.e., Hutton Venture Investment Partners, Inc. (formerly named "Hipco, Inc.") ("General Partner"). Both Applicant and the Partnerships have or will have minimum income requirements for participants, minimum and maximum capital contributions, and similar restrictions and allowances with respect to such characteristics as transferability. Consequently, Applicant concludes, abundant indicia exist of a community of interest between Applicant and the Partnerships.

Applicant contends that such community of interest notwithstanding, inconsistencies exist between the Order and the exemptive order issued to the Partnerships, and that such inconsistencies compel the General Partner to establish and maintain separate procedures for the operations of Applicant vis-a-vis those of the Partnerships. It is noted, for example, that the exemption from section 17(d), and Rule 17d-1 thereunder, accorded the Partnerships permits each such company to make concurrent investments with each other, or with Applicant, provided that the basis of participation is the same for each employees' securities company. Therefore, Applicant requests that it likewise be exempted from section 17(d) of the Act, and Rule 17d-1 thereunder, to the extent necessary to permit (i) investments by Applicant in any other partnership or other investment vehicle that is sponsored or managed by Hutton or its affiliates, or (ii) investments by Applicant in which a partnership or other investment vehicle described in clause (i) is a participant or plans to become a participant and which would not be prohibited investments for Applicant except that Hutton or any of its subsidiaries, or one or more officers, directors, or employees of the General Partner, have a partnership interest in, or compensation arrangement with, such entity as is described in clause (i).

A further example which Applicant cites of the inconsistency between the terms of the Order and the exemptive treatment given the Partnerships is to be found the exemption of the Partnerships from the provisions of section 19(b) of the Act, and Rule 19b-1 thereunder. This relief permits the Partnerships to make distributions of capital gains more frequently than once every twelve months. The Order, on the other hand, does not afford Applicant this relief.

It is noted that the exemption of the Partnerships from section 19(b), and Rule 19b-1, was requested for the specific purpose of enabling the Partnerships to distribute portfolio securities, or the proceeds of a liquidation thereof, to limited partners more frequently than once each year; it was stated that the Partnerhips might hold portfolio investments until they become liquid, and thereupon distribute either the investments or proceeds of sale to limited partners. In view of this policy, it was believed that compliance with Section 19(b), and Rule 19b-1, could seriously impede the proposed operations of the Partnerships. Applicant apparently wishes to attain the same flexibility in this regard as presently enjoyed by the Partnerships.

Additionally, the Partnerships are exempted from section 8(b) of the Act to the extent necessary to relieve them of the requirement of filing annual amendments to their registration statements in accordance with Rule 8b-16 under the Act, while Applicant remains subject to section 8(b) in its entirety, and, in accordance with the terms of the Order, is subject to certain information reporting obligations. The exemption from Rule 8b-16 was granted in the case of the Partnerhips on the theory that, as closed-end companies, each of the Partnerships would be limited to a single offering of limited partnership interests, which would not be the subject of any secondary market trading. Moreover, it was noted that limited partners of the Partnerhips receive annual reports regarding the operations and assets of these companies, and such reports must include audited financial statements for each entity provided by Hutton and prepared or reviewed by an independent public accountant selected by the General Partner. These reports must disclose, together with other information, the outstanding borrowings of the Partnerhip during the applicable reporting period. In addition to the foregoing, limited partners of the Partnerhips are to receive, within 60 days after the end of the tax fiscal year of each of the Partnerhips, a recent setting forth information with respect to the income, gains and losses, for federal income tax purposes, of each limited partner resulting from the operation of the Partnerhips during such tax year. These practices will be followed in like manner by Applicant, and, accordingly it is inferred that Applicant should similarly be exempted from section 8(b) of the Act insofar as such section would require it to file an updating amendment to its registration statement each year. Applicant also requests that its obligation under the Order to file with the Commission the information called for by sections 30 (a) and (b) of the Act (having it remain confidential), be deleted from the Order, thereby eliminating all periodic reporting requirements to which Applicant would otherwise be subject under the Act.

Finally, it is stated that the Partnerhips were exempted from section 20(a) of the Act, and the rules thereunder, in soliciting proxies from limited partners, upon the condition that any such solicitations would, nonetheless, be conducted in compliance with the provisions of section 14(a) of the Securities Exchange Act of 1934 ("1934 Act"), and the rules and regulations under the 1934 Act. The Partnerhips were accorded this relief insofar as the provisions of section 20(a) would apply to the exercise of limited partners' rights to remove the General Partner, to approve significant amendments to partnership agreements, and to grant the General Partner powers of attorney to execute and file certain documents on behalf of the Partnerhips, or execute certain amendments to the partnership agreements. As a basis for this relief, it was asserted that adherence to the requirements of section 20(a) of the Act could necessitate analysis of difficult questions of interpretation likely to render the process of preparing and filing proxy statements unusually costly and time-consuming. Applicant believes that these difficulties are applicable in equal measure to it, and therefore, that it also should be exempted from the proxy solicitation requirements of section 20(a) of the Act, subject, however, to the condition that it comply with the 1934 Act provisions governing the proxy solicitation process.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25298 Filed 9-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14168; (812-5885)]

Massachusetts Fund, et al.; Application for Order Granting Exemptions Permitting Certain Affiliated Transactions

September 19, 1984.

Notice is hereby given that Keystone Custodian Funds, Inc. ("Keystone"), the corporate trustee of Keystone Custodian Fund, Series K-1 ("Series K-1"), Series

K-1 and Massachusetts Fund ("Mass Fund") ("Applicants"), 99 High Street, Boston, Massachusetts 02110, both open-end, diversified management investment companies registered under the Investment Company Act of 1940 (the "Act"), filed an application on June 28, 1984, and an amendment thereto on August 21, 1984, for a Commission order (1) pursuant to sections 6(c) and 17(b) of the Act, exempting certain transactions incident to the reorganization of Mass Fund and Series K-1 from the provisions of sections 17(a) and 19(b) of the Act and Rule 19b-1 thereunder, and (2) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting the proposed reorganization. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

According to the application, Mass Fund is the successor to a load mutual fund of the same name (the "Predecessor") whose assets it acquired in a tax-free reorganization on December 30, 1983. Mass Fund's investment objectives are protection of principal and, secondarily, income and future growth of capital. Applicants state that, as of June 30, 1984, Mass Fund had net assets of approximately $185,829,000 and approximately 6,185 shareholders. Applicants state further that the ivnestment objectives of Series K-1 are current income and, secondarily, future growth of both capital and income. It is stated that, as of June 30, 1984, Series K-1 had net assets of approximately $63,487,000 and approximately 11,605 shareholders.

Applicants propose that Series K-1 acquire all of the assets of Mass Fund in the manner set forth in an Agreement and Plan of Reorganization (the "Agreement") between Keystone on behalf of Series K-1 and Mass Fund. Applicants state that, under the terms of the Agreement, on a closing date (the "Closing Date"), Series K-1 will acquire all of the assets of Mass Fund in exchange for shares of Series K-1 and the assumption of all of the liabilities of Mass Fund by Series K-1. Applicants state that following the acquisition of the assets of Mass Fund, Mass Fund will dissolve and terminate. Applicants state that each Mass Fund shareholder will be entitled to receive that proportion of the Series K-1 shares to be received by Mass Fund that the number of Mass Fund shares owned by such shareholders bears to the number of Mass Fund shares outstanding on the date of exchange. Applicants state further that full shares and, to the extent necessary, a fractional share of Series K-1 equal in aggregate net asset value to the aggregate net asset value of Mass Fund are to be issued by Series K-1 in exchange for the assets of Mass Fund. The value of the exchanged Series K-1 shares and Mass Fund's assets acquired by Series K-1 will be determined using the valuation procedures applied to the assets of Series K-1, as set forth in its trust agreement and current prospectus.

Applicants state that Keystone has agreed to provide, at no cost to the shareholders of Mass Fund, account insurance to all individual shareholders of Mass Fund on the Closing Date who continue to maintain their investments and reinvest all dividends and capital gains distributions on those Series K-1 shares that they receive in connection with the reorganization. The insurance is intended to guarantee that the value of a former Mass Fund shareholder's Series K-1 account on the date of such shareholder's death will be no less than the value of his Mass Fund account on the Closing Date, reduced by the proportionate amounts of any redemptions in his Series K-1 account. Applicants deem this insurance arrangement not to require exemptive relief under section 17(d) of the Act and seek no such relief in the application.

Applicants state that Mass Fund and Series K-1 each have agreed to declare and pay a dividend to their respective shareholders prior to completion of the reorganization of all of their respective undistributed investment company taxable income and any net realized capital gain (to the extent not offset by a capital loss carryover) through the Closing Date. Applicants state that if not making such a distribution by Series K-1 would not materially adversely affect shareholders of Mass Fund in the reorganization, then any such net realized capital gain will not be distributed by Series K-1. Applicants further state that as of June 30, 1984, 0.75 percent of Mass Fund's net asset value represented net unrealized appreciation and the Series K-1 Fund had unrealized depreciation equal to 2.9 percent of its net asset value.

Applicants state that Series K-1 and Mass Fund will each bear the fees and expenses incurred by it in connection with the reorganization, except that under its investment advisory agreement with Mass Fund, Keystone will reimburse Mass Fund for the fees and expenses incurred for its proxy solicitation and for its meeting of shareholders. Series K-1 imposes a contingent deferred sales charge on certain redemptions of its shares but such charge will not be imposed on the redemption of any Series K-1 shares issued in the reorganization.

Applicants state that Keystone, a wholly-owned subsidiary of The Travelers Corporation ("Travelers"), is Mass Fund's investment adviser and Series K-1's corporate trustee. In addition, the Massachusetts Company, Inc. ("MassCo."), also a wholly-owned subsidiary of Travelers, as trustee of approximately 5,972 trusts owns approximately 96.6 percent of the outstanding shares of Mass Fund and as trustee of approximately 237 trusts owns 2 percent of the outstanding shares of Series K-1. Applicants submit that they may be deemed affiliated persons of each other for purposes of the prohibitions of sections 17(a) (1) and (2) of the Act. The proposed reorganization may also be deemed to involve a joint enterprise or other joint arrangement for purposes of section 17(d) of the Act and Rule 17d-1 thereunder.

Applicants assert that the terms of the proposed reorganization are consistent with the standards of sections 6(c) and 17(b) of the Act and Rule 17d-1 under the Act. The Board of Trustees of Mass Fund, including a majority of the Trustees who are not interested persons of Mass Fund or Series K-1, has approved the proposed reorganization and recommended that it be submitted to the shareholders of Mass Fund for their approval. Applicants further assert that the Board of Directors of Keystone, including those Directors of Keystone, who have in various other contexts performed the functions of independent Directors of Series K-1, has approved the proposed reorganization.

Applicants assert that, in connection with its approval of the proposed reorganization and its decision to recommend the transaction to shareholders for their approval, the Board of Trustees of Mass Fund were concerned with: (1) The pattern of net redemptions experienced by Mass Fund, (2) the possible effect of adopting the sales load structure of the Predecessor, and (3) Mass Fund's continued ability to obtain high-quality management services without increases in marginal costs (although the proposed reorganization is expected to result in increased aggregate costs to Mass Fund shareholders). However, the combined fund will pay management fees at an incremental rate lower than either would pay on a stand-alone basis. Furthermore, after the proposed reorganization, Mass Fund shareholders will become shareholders of a fund with the same investment manager, an improved investment performance and an active, viable distribution program. Applicants further submit that Mass Fund shareholders are expected to benefit from the greater diversification of security holdings possible in a combined Mass Fund-Series K–1 portfolio.

Applicants assert that the advantages of the proposed reorganization to Mass Fund shareholders outweigh any disadvantages represented by the structural differences between Mass Fund and Series K–1. Applicants state that Mass Fund shareholders have one vote per share on the initial election of a Board of Trustees and in certain elections of their replacements. Shareholder approval is also required for amendment of the Declaration of Trust, for retention of any investment adviser or manager, and for filing or maintaining a court action, proceeding or claim on behalf of Mass Fund or its shareholders. Applicants state further that Series K–1 shareholders have one vote per share only on certain matters. Applicants state that, although Series K–1 shareholders are not called upon to approve the continuance of Keystone as corporate trustee, Series K–1 shareholders have the voting rights provided by sections 13(b), 16(c) and 32(a) of the Act.

Applicants assert that the proposed reorganization is in the interest of Series K–1 shareholders because the incremental rate of management fees applied to the combined funds will be lower than Series K–1 would separately pay.

Applicants further assert that the proposed reorganization will benefit the shareholders of Series K–1 because the increase in net assets may allow greater diversification of investment. Applicants state that the increase in diversification will be achieved without the transaction costs Series K–1 would incur were it to invest a similar amount of cash.

Applicants assert that the proposed reorganization is consistent with the policies of Series K–1 and Mass Fund. Applicants assert that the investment policies and restrictions of Series K–1 and Mass Fund are similar. Applicants state that Mass Fund's portfolio securities are suitable investments for Series K–1 and no realignment of Mass Fund's portfolio is expected solely as a result of the proposed reorganization. Applicants assert that, although Series K–1's objectives are more focused on income, Mass Fund's Board of Trustees believes that Series K–1 is a suitable investment for Mass Fund shareholders.

Applicants submit that Rule 17a–8 under the Act would exempt them from the prohibitions of section 17(a) of the Act but for MassCo's ownership of Mass Fund (and possibly Series K–1) shares as trustee. Applicants submit that the Board of Trustees of Mass Fund and the Board of Directors of Keystone, on behalf of Series K–1, have made the determinations required by Rule 17a–8 under the Act. Applicants further submit that MassCo has agreed to vote Mass Fund shares held in trust according to the instructions of the beneficiary or the settlor of the trust and not to vote those shares that are not subject to instructions.

Applicants assert that granting the requested exemption from the provisions of section 19(b) of the Act and Rule 19b–1 thereunder is appropriate under the exemptive standards of section 6(c) of the Act. Applicants state that section 19(b) of the Act is designed to prevent realized capital gains from being distributed to shareholders in a manner indicating such distributions to be part of regular dividends from investment income. Applicants propose to distribute any investment company taxable income and realized capital gain prior to the Closing Date. Applicants represent that the distributions would be made in connection with the reorganization for tax and accounting purposes. Accordingly, Applicants submit that the distribution of any net realized capital gains to Mass Fund and Series K–1 shareholdera prior to the reorganization will not result in any of the abuses addressed by section 19(b) of the Act and Rule 19b–1 thereunder.

Applicants assert that the terms of the proposed reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned and that the proposed reorganization is consistent with the policies of Applicants recited in their respective registration statements and reports filed under the Act and with the general purposes of the Act. Applicants further assert that the participation of Mass Fund and Series K–1 in the proposed reorganization is consistent with the provisions, policies and purposes of the Act and is not on a basis different from or less advantageous than that of the other participants.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or my mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25296 Filed 9-21-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14165; (812-5884)]

Safeco Tax-Free Money Market Fund, Inc.; Filing of Application for Exemption

September 19, 1984.

Notice is hereby given that Safeco Tax-Free Money Market Fund, Inc. ("Applicant"), Safeco Plaza, Seattle, WA 98185, an open-end, diversified, management investment company registered under the Investment Company Act 1940 (the "Act"), filed an application on June 28, 1984, and an amendment thereto on September 7, 1984, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of sections 2(a)(41) and 12(d)(3) of the Act to the extent necessary to permit Applicant to acquire rights to sell its portfolio securities to broker-dealers and to determine such rights have a fair value of zero. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

Applicant states that it will invest in a diversified portfolio of municipal obligations which have a stated maturity of not more than one year from the date of settlement. Applicant further states that it intends to invest as fully as possible in tax-exempt securities; however, Applicant reserves the right to invest, under normal conditions, up to 20% of its assets in taxable securities.

The application states that a stand-by commitment (commonly referred to as a "put") is the right of a purchaser of municipal obilgations to sell the same principal amount of such securities back to the seller at purchaser's option at a specified price. It further states that Applicant's investment policies permit the acquisition of stand-by commitments from banks and broker-dealers solely to facilitate portfolio liquidity. According to the application, the acquisition or exercise of a stand-by commitment will not effect the valuation or maturity of Applicant's underlying portfolio which will be valued in accordance with Rule 2a–7 under the Act.

Applicant contends that it must be able to enter into stand-by commitments in order to achieve a reasonable level of liquidity to permit it to honor redemption orders received from shareholders. According to Applicant, because maturity dates of the municipal obligations Applicant expects to hold in its portfolio will be relatively infrequent and non-negotiable, Applicant will be unable to rely on scheduled maturities to meet net redemptions. In addition, Applicant expects the regular settlement on sales of its portfolio securities to take at least five business days. Applicant represents that, unless other arrangements assuring immediate liquidity have been made, the negotiation of same-day settlements on sales of municipal obligations may be impossible to achieve or may require Applicant to receive a less favorable execution price on the sale even though the securities sold have a short remaining maturity. Applicant further represents that investment techniques used by taxable money market funds in order to assure liquidity are not viable options because they are expensive and would produce taxable income.

Applicant represents that each stand-by commitment it acquires from brokers or dealers: (1) Will be in writing and physically held by Applicant's custodian; (2) will be exercisable by Applicant at any time prior to the underlying securities' maturity; (3) will provide Applicant with an unconditional and unqualified right to exercise it; (4) will be entered into only with brokers or dealers who in the investment adviser's opinion present a minimal risk of default; (5) will not be transferable, although the municipal obligations purchased subject to such commitments may be sold to a third party at any time, even though the stand-by commitment remains outstanding; and (6) will have an exercise price equal to (a) Applicant's acquisition cost of the municipal obligations which are subject to the commitment (excluding any accrued interest which Applicant paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period Applicant owned the securities, plus (b) all interest accrued on the securities since the last interest payment date during the period Applicant owned the securities. Applicant expects that stand-by commitments generally will be available without the payment of any direct or indirect consideration. Applicant may, however, if necessary or advisable, pay for a stand-by commitment, either in cash or by paying a higher price for portfolio securities which are acquired subject to such a commitment. Applicant also represents that the total amount "paid" in either manner for outstanding stand-by commitments held in its portfolio will not exceed one-half of 1% of the value of Applicant's total assets calculated immediately after any stand-by commitment is acquired.

Applicant asserts that it is difficult to evaluate the extent to which Applicant may use or the potential benefit to Applicant of a stand-by commitment. Applicant states, if this order is granted, its board of directors will determine that stand-by commitments have a "fair value" of zero, regardless of whether any direct or indirect consideration is paid. Applicant further states that where it has paid for a stand-by commitment, its cost will be reflected as unrealized depreciation for the period during which the commitment is held. Applicant expects to refrain from exercising the stand-by commitments in such a situation where exercising would impose a loss on the broker or dealer and jeopardize Applicant's business relationship with that broker or dealer.

Applicant believes that the relief is appropriate, in the public interest and consistent with the protection of investors. Applicant submits that the proposed acquisition of stand-by commitments will not affect its net asset value per share for the purposes of sales and redemptions and will not pose new investment risks, but rather will improve its liquidity and ability to pay redemption proceeds. Applicant further submits that its investment adviser will periodically evaluate the credit of brokers and dealers who issue stand-by commitments to Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25297 Filed 9–21–84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP84–15; Notice 1]

U-Haul International; Petition for Determination of Inconsequential Noncompliance

U-Haul International of Phoenix, Arizona, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 13 *et seq.*) for a noncompliance with 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

U-Haul International is the importer of certain utility trailer kits manufactured by Ever Young Industries Co. Limited of Taiwan. As an importer for resale, U-Haul International is a "manufacturer" as defined by 15 U.S.C. 1391(5), and accordingly, responsible for notification and remedy of noncompliances with the Federal motor vehicle safety standards in the products that it imports. U-Haul International has discovered noncompliances with Motor Vehicle Safety Standard No. 120 in approximately 920 kits which have been distributed to its affiliates for sale to the general public.

Specifically, the rims are not marked with any of the five items of information required by paragraph S5.2. These are a designation which indicates the source of the rim's published nominal dimensions, the rim size designation, the symbol DOT constituting a certification of compliance, a designation that identifies the manufacturer of the rim by name, trademark, or symbol, and the date of manufacture.

Petitioner argued that the noncompliance is inconsequential as it relates to motor vehicle safety because the wheel rims otherwise comply with Federal requirements, and the absence of markings, in its opinion, does not pose a threat of personal injury to the user. If the petition is not granted, U-Haul International proposes to remedy the noncompliance by sending decals to purchasers of the kits, and by replacing nonconforming rims in unsold kits with conforming ones.

Interested persons are invited to submit written data, views and arguments on the petition of U-Haul International described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are A.Y. Casanova and Taylor Vinson, respectively.

Comment closing date: October 24, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 18, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-25212 Filed 9-21-84; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in August 1984. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
970-X	DOT-E 970	Callery Chemical Co., Callery, PA	49 CFR 173.21(b), 173.300, 173.302(g)	To authorize use of DOT Specification 3AA2015 or 3AA2400 cylinders, for transportation of a flammable poisonous gas. (Modes 1, 2.)
970-X	DOT-E 970	U.S. Department of Defense Washington, DC.	49 CFR 173.21(b), 173.300, 173.302(g)	To authorize use of DOT Specification 3AA2015 or 3AA2400 cylinders, for transportation of a flammable poisonous gas. (Modes 1, 2.)
1479-X	DOT-E 1479	Jet Propulsion Laboratory Pasadena, CA	49 CFR 173.315(a)(1)	To authorize use of non-DOT specification cargo tanks, for transportation of liquefied fluorine and mixture of liquefied fluorine and liquefied oxygen. (Mode 1.)
2462-X	DOT-E 2462	E.I. du Pont de Nemours, & Company, Inc., Wilmington, DE.	49 CFR 173.73(b)	To authorize shipment of certain lead azide in glass bottles overpacked in non-DOT specification wooden boxes. (Mode 1.)
2587-X	DOT-E 2587	Liquid Air Corporation, San Francisco, CA	49 CFR 173.315(a)(1)	To authorize shipment of liquid oxygen in non-DOT specification cargo tanks. (Mode 1.)
2587-P	DOT-E 2587	Albany-Edison Oxygen Company, Albany, NY.	49 CFR 173.315(a)(1)	To become a party to Exemption 2587. (Mode 1.)
2709-P	DOT-E 2709	Atlantic Research Corporation, Camden, AR.	49 CFR 173.52, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To become a party to Exemption 2709. (Mode 1.)
2787-X	DOT-E 2787	Raytheon Company, Andover, MA	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable compressed gas, in non-DOT specification pressure vessels equipped with a regulating valve, a pressure relief valve, and a squibb actuated valve. (Modes 1, 2, 3, 4.)
3121-X	DOT-E 3121	U.S. Department of Defense Washington, DC.	49 CFR 173.336(a), 177.841(b)	To authorize an additional cargo tank for shipment of liquid nitrogen tetroxide. (Mode 1.)
3126-X	DOT-E 3126	Hercules, Incorporated, Wilmington, DE	49 CFR 173.62, 177.821, 177.822(b), 177.835(k).	To authorize transport of Class A explosives in DOT Specification 5 metal drums, or in DOT Specification 42B aluminum drums. (Mode 1.)
3216-X	DOT-E 3216	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314(c)	To authorize use of a proposed DOT Specification 110A3000W tank car tank, for transportation of certain flammable compressed gases. (Modes 1, 3.)
3216-X	DOT-E 3216	Pennwalt Corporation, Philadelphia, PA	49 CFR 173.314(c)	To authorize use of a proposed DOT Specification 110A3000W tank car tank, for transportation of certain flammable compressed gases. (Modes 1, 3.)
3941-X	DOT-E 3941	Aerojet Strategic Propulsion Company, Sacramento, CA.	49 CFR 173.239a(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification aluminum portable tanks. (Modes 1, 2.)
3941-X	DOT-E 3941	Aerojet Tactical Systems Company, Sacramento, CA.	49 CFR 173.239(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification aluminum portable tanks. (Modes 1, 2.)
3941-X	DOT-E 3941	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	49 CFR 173.239a(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification aluminum portable tanks. (Modes 1, 2.)
4039-X	DOT-E 4039	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.316(a)	To authorize shipment of liquefied hydrogen in a non-DOT Specification vacuum insulated portable tank. (Mode 1.)
4106-X	DOT-E 4106	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.315(a)	To authorize shipment of liquefied argon, nitrogen and oxygen in a non-DOT Specification insulated portable tank. (Mode 1.)
4106-P	DOT-E 4106	Liquid Air Corporation, San Francisco, CA	49 CFR 173.315(a)	To become a party to Exemption 4106. (Mode 1.)
4106-X	DOT-E 4106	Purity Cylinder Gases, Inc., Grand Rapids, MI.	49 CFR 173.315(a)	To authorize shipment of liquefied argon, nitrogen and oxygen in non-DOT specification insulated cargo tanks. (Mode 1.)
4607-X	DOT-E 4607	Armstrong Laboratories, Inc., West Roxbury, MA.	49 CFR 173.306(a)(3)	To authorize transport of nonflammable, nonpoisonous compressed gas, in an inside plastic coated glass bottle. (Modes 1, 2, 3, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4734-X	DOT-E 4734	General Electric Co., Waterford, NY	49 CFR 173.135(a)(9), 173.136(a)(8), 173.2[illegible](a)(8).	To authorize use of modified DOT Specification MC-331 cargo tanks, for transportation of certain flammable liquids and corrosive materials. (Mode 1.)
5206-P	DOT-E 5206	Kesco, Incorporated, Kittanning, PA	49 CFR 173.114a	To become a party to Exemption 5206. (Mode 1.)
5243-P	DOT-E 5243	Appalachian Explosives, Inc., Romney, WV.	49 CFR 173.103(a), 173.66(g)(1), 177.835(g).	To become a party to Exemption 5243. (Modes 1, 2, 3.)
5792-X	DOT-E 5792	Northern Petrochemical Company, Morris, IL.	49 CFR 172.101, 173.314(c)	To authorize shipment of liquefied flammable gases in non-DOT specification vacuum insulated tank car tanks. (Mode 2.)
5987-X	DOT-E 5987	Rocket Research Corp., Redmond, WA	49 CFR 173.304(a)(2), 175.3, 178.44	Request to extend the service life restriction on pressure vessels covered by exemption. (Modes 1, 2, 4, 5.)
6121-X	DOT-E 6121	E.I. du Pont de Nemours & Company, Inc., Wilmington DE.	49 CFR 179.220-19(c)	To authorize use of DOT Specification 115A60W1 and 115A60W6 tank car tanks, for transportation of a certain flammable liquid. (Mode 2.)
6126-P	DOT-E 6126	Laporte (United States) Inc., Saddle Brook, NJ.	49 CFR 173.253(c)	To become a party to Exemption 6162. (Modes 1, 3.)
6154-X	DOT-E 6154	Uniroyal Chemical, Naugatuck, CT	49 CFR 173.154(a)(12), 178.205-16	To authorize transport of certain flammable solids in a modified DOT Specification 12B fiberboard box. (Modes 1, 2, 3.)
6263-X	DOT-E 6263	Amtrol, Incorporated, West Warwick, RI	49 CFR 173.302(a)(1)	To authorize transport of certain nonflammable compressed gases, in non-DOT specification welded, cylindrical or spherical, steel tanks. (Modes 1, 2.)
6305-P	DOT-E 6305	Appalachian Explosives, Inc., Romney, WV.	49 CFR 173.113(a)(1)	To become a party to Exemption 6305. (Modes 1, 2.)
6392-X	DOT-E 6392	Northern Petrochemical Company, Morris, IL.	49 CFR 172.101, 173.314(c)	To authorize use of non-DOT specification vacuum insulated tank car tanks, for transportation of a liquified flammable compressed gas. (Mode 2.)
6442-X	DOT-E 6442	U.S. Department of Defense, Washington, DC.	49 CFR 173.53(k), 173.87	To authorize transport of a 155mm high explosive projectile containing either a corrosive or flammable liquid in metal cannister with an inner polyethylene container. (Modes 1, 2.)
6530-P	DOT-E 6530	The Great Plains Welding Supply Company, Cheynne, WY.	49 CFR 173.302(c)	To become a party to Exemption 6530. (Modes 1, 2.)
6530-P	DOT-E 6530	Brown Welding Supply, Inc., Salina, KS	49 CFR 173.302(c)	To become a party to Exemption 6530.(Modes 1, 2.)
6538-X	DOT-E 6538	Pan Products Inc., Macedonia, OH	49 CFR 173.304(d)(3)(ii), 178.33	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3.)
6538-X	DOT-E 6538	Beltronic Marking Inc., Dorval, Que., Canada, NY.	49 CFR 173.304(d)(3)(ii), 178.33	To authorize use of a non-DOT specification inside nonrefillabel metal container, for transportation of a certain flammable gas. (Modes 1, 3.)
6538-X	DOT-E 6538	Optimus, Incorporated, Bridgeport, CT	49 CFR 173.304(d)(3)(ii), 178.33	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3.)
6538-X	DOT-E 6538	Hanco International, Inc., North Miami Beach, FL.	49 CFR 173.304(d)(3)(ii), 178.33	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3.)
6543-X	DOT-E 6543	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6611-X	DOT-E 6611	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.318(a)	To authorize use of a non-DOT specification vacuum insulated portable tank, for transportation of a nonflammable gas. (Modes 1, 3.)
6611-P	DOT-E 6611	Teisan K.K., Tokyo, Japan	49 CFR 173.318(a)	To become a party to Exemption 6611. (Modes 1, 3.)
6651-X	DOT-E 6651	Park Chemical Company, Detroit, MI	49 CFR 173.28(h), 173.28(m)	To authorize one time reuse of single-trip containers, for transportation of certain Class B poisonous solids. (Mode1.)
6651-X	DOT-E 6651	Mitchell-Bradford Chemical Co., INC., Milford, CT.	49 CFR 173.28(h), 173.28(m)	To authorize one time reuse of single-trip containers, for transportation of certain Class B poisonous solids. (Mode 1,)
6651-X	DOT-E 6651	Enthone, Incorporated, New Haven, CT	49 CFR 173.28(h), 173.28(m)	To authorize one time reuse of single-trip containers, for transportation of certain Class B poisonous solids, (Mode 1.)
6724-X	DOT-E 6724	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, 173.89, 175.3	To authorize transport of caseless ammunition in an inside fiberboard box with egg crate separations and overpacked in a non-DOT specification strong wooden box. (Modes 1, 4.)
6765-X	DOT-E 6765	L'Air Liquid Corp., Paris, France	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6806-X	DOT-E 6806	Transfresh Corporation, Salinas, CA	49 CFR 173.302(a), 175.3	To authorize transport of a flammable gas in a DOT Specification 3E1800 cylinder by passenger carrying aircraft. (Mode 5.)
6890-X	DOT-E 6890	U.S. Department of Defense, Washington, DC.	49 CFR 173.100(cc), 175.3	To authorize transport of an explosive severance system consisting of linear segments which may contain up to 79 grams of hexanitrostilbene. (Modes 1, 2, 3, 4.)
6890-X	DOT-E 6890	Explosive Technology, Inc., Fairfield, CA	49 CFR 173.100(cc), 175.3	To authorize transport of an explosive severance system consisting of linear segments which may contain up to 79 grams of hexanitrostilbene. (Modes 1, 2, 3, 4.)
6944-X	DOT-E 6944	U.S. Department of Defense, Washington, DC.	49 CFR 173.62(a), 177.834(L)(1)	To authorize transport of a liquid high explosive in a specially designed stainless steel desiccator. (Mode 1.)
6960-X	DOT-E 6960	Pepsi-Cola Company, Purchase, NY	49 CFR Parts 100-199	To authorize use of DOT Specification and non-DOT specification stainless steel drums not presently authorized in the Hazardous Materials Regulations, for shipment of certain corrosive liquids. (Modes 1, 2, 3.)
6984-P	DOT-E 6984	Appalachian Explosives, Inc., Romney, WV.	49 CFR 173.103(a), 173.66(g), 177.835(g)(2)(i).	To become a party to Exemption 6984. (Model 1.)
6984-X	DOT-E 6984	Mesabi Powder Company, Hibbing, MN	49 CFR 173.103(a), 173.66(g), 177.8435(g)(2)(i).	To authorize packaging of 1000 or less electric blasting caps in inside pasteboard cartons or tubes, overpacked in an IME Standard 22 container. (Mode 1.)
6984-X	DOT-E 6984	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.103(a), 173.66(g), 177.835(g)(2)(i).	To authorize packaging of 1000 or less electric blasting caps in inside pasteboard cartons or tubes, overpacked in an IME Standard 22 container. (Mode 1.)
6984-X	DOT-E 6984	Hercules, Incorporated, Wilmington, DE	49 CFR 173.103(a), 173.66(g), 177.835(g)(2)(i).	To authorize packaging of 1000 or less electric blasting caps in inside pasteboard cartons or tubes, overpacked in an IME Standard 22 container. (Mode 1.)
6984-P	DOT-E 6984	Controlled Blasting, Inc., Zelienople, PA	49 CFR 173.103(a), 173.66(g), 177.835(g)(2)(i).	To become a party to Exemption 6984. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6984-P	DOT-E 6984	Kasco, Inc., Kittanning, PA	49 CFR 173.103(a), 173.86(g), 173.835(g)(2)(i).	To become a party to Exemption 6984. (Mode 1.)
7052-P	DOT-E 7052	Eastman Kodak Company, Rochester, NY.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Tracor Applied Sciences, Inc., Rockville, MD.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Martin Marietta Corporation, Denver, CO	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7076-X	DOT-E 7076	LaMotte Chemical Products Company, Chestertown, MD.	49 CFR 173.266(b)	To authorize packaging not prescribed in the Hazardous Materials Regulations, for transportation of a certain corrosive liquid and flammable liquid. (Modes 1, 2, 3.)
7085-X	DOT-E 7085	California Seal Control Corporation, San Pedro, CA.	49 CFR 172.101, 173.100, 173.51(a)(7), 173.86.	To authorize packaging not presently authorized by the Hazardous Materials Regulations, for shipment of class C explosives. (Modes 1, 2, 3.)
7097-X	DOT-E 7097	Plant Products Corporation, Vero Beach, FL.	49 CFR 173.377(f)	To authorize shipment of dry mixtures of parathion and tetraethyl dithio pyrophosphate from specification packaging requirements. (Mode 1.)
7494-X	DOT-E 7494	Airco Industrial Gases, Murray Hill, NJ	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain nonflammable gases. (Modes 1, 3.)
7498-X	DOT-E 7498	Allied Chemical, Morristown, NJ	49 CFR 173.263(a)(15), 178.210	To authorize shipment of a corrosive liquid in a non-DOT specification corrugated polypropylene box. (Modes 1, 2, 3, 4.)
7544-X	DOT-E 7544	Eastman Kodak Company, Rochester, NY.	49 CFR 173.245, 173.249, 173.272	To authorize transport of solutions of sodium hydroxide and certain other liquid corrosives, or other liquid corrosive materials in a DOT Specification 2U polyethylene inside container, overpacked in a non-DOT specification fiberboard box. (Modes 1, 2, 3.)
7546-X	DOT-E 7546	Grumman Aerospace Corporation, Bethpage, NY.	49 CFR 173.119, 173.302(a)(1), 173.304(a), 173.306(a), 173.34(d), 175.3.	To authorize use of a heat pipe radiator assembly for shipment of certain flammable liquids and nonflammable and flammable compressed gases. (Modes 1, 3, 4.)
7558-X	DOT-E 7558	Union Carbide Corporation, Danbury, CT	49 CFR 173.318(a)(1)	To renew, to make certain proper shipping name, retest and travel time changes in consonance with Docket HM-115 rulemaking. (Modes 1, 3.)
7654-X	DOT-E 7654	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. Modes 1, 2.)
7767-X	DOT-E 7767	Walter Kidde; Wilson, NC	49 CFR 173.304(a)(1), 175.3, 178.47	To authorize manufacture, marking and sale of non-DOT specification welded steel cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
7827-X	DOT-E 7827	KemaNord A.B., Stockholm, Sweden	49 CFR 173.163	To authorize transport of a certain oxidizing material in a freight container. (Modes 1, 2, 3.)
7835-P	DOT-E 7835	Landeen Welding Supplies, Inc., Oregon City, OR.	49 CFR 177.848, Part 107 Appen. B(1)	To become a party to Exemption 7835. (Mode 1.)
7876-X	DOT-E 7876	Allied Corporation, Morristown, NJ	49 CFR 173.290(a), 175.3	To authorize shipping description etching acid, liquid, n.o.s. to be used for products which do not comply with the definition in 49 CFR 173.229(a). (Modes 1, 2, 3, 4.)
7885-X	DOT-E 7885	The Mercoid Corporation, Chicago, IL	49 CFR 173.1200, 173.123, 173.347, 175.3.	To authorize use of non-DOT specification non-refillable metallic inside containers, for shipment of certain hazardous materials. (Modes 1, 2, 3, 4, 5.)
7959-X	DOT-E 7959	Woods Hole, Marthas Vineyard & Nantucket Steamship, Woods Hole, MA.	49 CFR 172.101, 176.78(k)	To authorize stowage of recreational vehicles carrying liquefied petroleum gas for heating and cooking on the vehicle deck of passenger-carrying ferries and other passenger-carrying vessels. (Mode 3.)
7991-X	DOT-E 7991	Union Pacific Railroad Company, Omaha, NE.	49 CFR Parts 100–177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.)
8006-P	DOT-E 8006	Strombecker Corporation, Chicago, IL	49 CFR 172.400(a), 172.504 Table 2	To become a party to Exemption 8006. Mode 1.)
8006-P	DOT-E 8006	Esquire Novelty Corp., Amsterdam, NY	49 CFR 172.400(a), 172.504 Table 2	To become a party to Exemption 8006. (Mode 1.)
8017-X	DOT-E 8017	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d)(2), 173.302(a)(3)	To authorize use of DOT Specification 3AX, 3AAX, or 3T cylinders, for transportation of a flammable gas. (Mode 1.)
8080-X	DOT-E 8080	Allied Chemical, Morristown, NJ	49 CFR 173.164	To authorize DOT Specification 111A100W2 tank car tanks which have been converted to DOT Specification 111A100W1 with a sparger system as additional containers. (Mode 2.)
8156-X	DOT-E 8156	Air Products and Chemicals, Inc., Allentown, PA,	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8156-X	DOT-E 8156	Cryogenic Rare Gas Labs., Inc., Metuchen, NJ.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8236-X	DOT-E 8236	Talley Industries of Arizona, Inc., Mesa, AZ.	49 CFR 173.153, 173.154, 175.3	To renew and to authorize a new electric squib design. (Modes 1, 2, 3, 4.)
8236-X	DOT-E 8236	Ford Motor Company, Dearborn, MI	49 CFR 173.153, 173.174, 175.3	To authorize the shipment of a passive restraint system, and the inflator therefore, containing a class B explosive as a flammable solid. (Modes 1, 2, 3, 4.)
8367-X	DOT-E 8367	FMC Corporation, Philadelphia, PA	49 CFR 173.266(a)	To authorize transport of hydrogen peroxide in DOT Specification MC-312 cargo tank aboard cargo vessel. (Mode 3.)
8390-X	DOT-E 8390	Allied Corporation, Morristown, NJ	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8390-X	DOT-E 8390	Ashland Oil, Inc., Columbus, OH	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8390-X	DOT-E 8390	Mallinckrodt, Inc., Paris, KY	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8390-X	DOT-E 8390	J.T. Baker Chemical Co, Phillipsburg, NJ	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%–98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8409-X	DOT-E 8409	EM Science, A Division of EM Industries, Inc., Cincinnati, OH,	49 CFR 173.264(a)(4), 178.210	To authorize shipment of hydrofluoric acid solution no greater than 70% strength, in non-DOT Specification polyethylene bottles, not exceeding a capacity of 6 liters, packed in DOT specification 12A fiberboard boxes. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8410-X	DOT-E 8410	EM Science, A Division of EM Industries, Inc., Cincinnati, OH.	49 CFR 173.269(a)(1)	To authorize shipment of perchloric acid no greater than 72% strength in glass bottles, not exceeding a capacity of 2.5 liters, packed in non-DOT specification IMCO 4C2 wooden boxes. (Modes 1, 3.)
8437-X	DOT-E 8437	Park Chemical Company, Detroit, MI	49 CFR 173.154, 178.241-4	To authorize shipment of a sodium nitrate mixture in non-DOT specification, nine mil plastic bags of 50 pounds net weight and which are stretch-wrapped 40 bags to a pallet. (Mode 1.)
8450-X	DOT-E 8450	Vought Corporation, Dallas, TX	49 CFR 173.92	To authorize transport of rocket motors without igniters, in non-DOT Specification polyethylene containers. (Mode 1.)
8457-X	DOT-E 8457	Duracell U.S.A., Tarrytown, NY	49 CFR Parts 100-177	To authorize transport of an electronic device containing one lithium cell which meets certain prescribed requirements. (Modes 1, 2, 3, 4, 5.)
8488-X	DOT-E 8488	Degussa Corporation, Teterboro, NJ	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 2, 3.)
8489-X	DOT-E 8489	FMC Corporation, Philadelphia, PA	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 2, 3.)
8490-X	DOT-E 8490	Houghton Chemical Corporation, Allston, MA.	49 CFR 173.245(a)(31)	To authorize use of a fiberglass insulated DOT Specification MC-306 cargo tank, for shipment of certain corrosive materials. (Mode 1.)
8509-P	DOT-E 8509	American Hoechst Corporation, Somerville, NJ.	49 CFR 173.263(a)(9), 179.201-1	To become a party to Exemption 8509. (Mode 2.)
8690-X	DOT-E 8690	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(d)(5)	To authorize shipment of nitrosyl chloride in DOT Specification 3BN400 cylinders without safety relief devices. (Mode 1.)
8693-P	DOT-E 8693	CAN-TRO Chemical and Oil Co., Inc. Kansas City, MO.	49 CFR 173.290	To become a party to Exemption 8693. (Modes 1, 3.)
8732-X	DOT-E 8732	Ashland Services Company, Columbus, OH.	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8733-X	DOT-E 8733	ICI Americas, Incorporated, Wilmington, DE.	49 CFR 173.315	To authorize shipment of various refrigerant gases, classed as nonflammable gases in non-DOT specification portable tanks constructed in accordance with ASME Section VIII and DOT Specification 51, but not certified. (Modes 1, 2, 3.)
8739-X	DOT-E 8739	Kerr Steamship Company, Inc., Seattle, WA.	49 CFR 173.1075, 176.30	To authorize carriage of hand wrapped newspaper bundles of paper scraps in a freight container with the total weight of the container listed on the dangerous cargo manifest. (Mode 3.)
8747-X	DOT-E 8747	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined 28/26 gauge DOT Specification 37C80 steel drum of five gallon capacity. (Modes 1, 2, 3, 4.)
8758-X	DOT-E 8758	Union Carbide Corporation, Danbury, CT	49 CFR 173.318(a)	To renew, to increase the water capacity of the LTM-1600 tank from 1550 to 1670 and the LTM-2000 tank from 1950 to 2100 gallons, and to increase the 2 year retest period to 5 years. (Mode 1.)
8781-X	DOT-E 8781	Mauser-Werke, GmbH (Mauser Packaging Ltd.), New York, NY.	49 CFR 171.12(c), 178.115-6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 gauge, 55-gallon capacity DOT Specification 17E drums, for transportation of various hazardous materials. (Modes 1, 2, 3.)
8792-X	DOT-E 8792	Digital Equipment Corporation, Northborough, MA.	49 CFR Parts 100-199	To authorize small quantities of isopropyl alcohol in a saturated pad, sealed in a plastic coated foil pack, overpacked not to exceed 250 packs per strong outside box, as essentially non-regulated. (Modes 1, 2, 3.)
8809-X	DOT-E 8809	Continental Group, Inc., Lombard, IL	49 CFR 178.225, Part 173	To authorize manufacture, marking and sale non-DOT specification fibre drum overpacks for 15-gal capacity inner polyethylene container, similar to DOT-21P/2U except top head is molded polyolefin polymer secured to drum by wire stitches for shipment of commodities authorized in DOT-21P/2U composite. (Modes 1, 2, 3.)
8812-X	DOT-E 8812	The Protectoseal Co., Bensenville, IL	49 CFR 173.119, 178.80	To authorize manufacture, marking and sale non-DOT specification metal drums of 5-gallon capacity and comparable to DOT Specification 5L, for shipment of gasoline and gasohol, classed as flammable liquids. (Modes 1.)
8816-X	DOT-E 8816	Hunt-Wesson Foods, Inc., Fullerton, CA	49 CFR 172.504(a)	To authorize rail boxcar shipment of matches, strike anywhere, packed in compliance with 49 CFR 173.176 and in a quantity not to exceed 2,000 pounds without placarding the rail boxcar. (Mode 2.)
8817-X	DOT-E 8817	Allied Corporation, Morristown, NJ	49 CFR 173.274(a) ((1), Note 1	To authorize shipment of fluosulfonic acid in non-DOT specification acid-resistant screw cap glass bottles, overpacked in metal cans, packed in a DOT Specification 15A, 15B, 15C, 16A, or 19A wooden box. (Modes 1, 2, 3.)
8826-X	DOT-E 8826	Phoenix Air, Marietta, GA	49 CFR 172.101, 172.204(c) (3), 173.27, 175.30(a) (1), 175.320(b), Part 107 Appendix B.	To authorize carriage of certain Class A, B and C explosives that are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8852-X	DOT-E 8852	Procter & Gamble Company, Cincinnati, OH.	49 CFR 173.119(b) (4), 178.210	To authorize shipment of a certain flammable liquid, n.o.s., in polyethylene terephthalate bottles of two-liter capacity, packed no more than four to a DOT Specification 12B-30 corrugated fiberboard box. (Modes 1, 2.)
8860-X	DOT-E 8860	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.31(c), Retest Table 1	To authorize use of DOT Specification 103CW and 103EW tank cars with extended retest periods, for transportation of certain corrosive materials and oxidizers. (Mode 2.)
8862-X	DOT-E 8862	Union Carbide Corporation, Danbury, CT	49 CFR 173.119, 173.305	To authorize shipment of propylene oxide, classed as a flammable liquid, in DOT Specification 5P lagged steel drums. (Mode 1.)
8865-X	DOT-E 8865	Moog Inc., East Aurora, NY	49 CFR 173.302(a), 175.3	To authorize use of nonrefillable, non-DOT specification cylinders, for transportation of a nonflammable gas. (Modes 1, 2, 4.)
8870-X	DOT-E 8870	Everpure, Inc., Westmont, IL	49 CFR 172.101, 173.286, 175.3	To comingle compatible hazardous materials of various classifications packed in separate inside receptacles not exceeding 8 fluid ounces or ½ lb. packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8870-X	DOT-E 8870	Hach Company, Ames, IA	49 CFR 172.101, 173.266, 175.3	To comingle compatible hazardous materials of various classifications packed in seperate inside receptacles not exceeding 8 fluid ounces or ½ lb. packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit. (Modes 1, 2, 3, 4, 5.)
8874-X	DOT-E 8874	Justus Enterprises of Kansas, Inc., Chenute, KS.	49 CFR 173.302, 175.3 178.46	To authorize manufacture, marking and sale of non-DOT specification aluminum cylinders made in compliance with DOT Specification 3AL with certain exception, for transportation of nonflammable gases. (Modes 1, 2, 3, 4, 5.)
8885-X	DOT-E 8885	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a nonhazardous resin mix. (Modes 1, 2, 3, 4.)
8893-X	DOT-E 8893	Trojan Corporation, Salt lake City, UT	49 CFR 172.101	To authorize transport of a mixture containing, by weight, 10% trimethylolethane trinitrate and 90% methanol, in non-DOT specification drums. (Mode 1.)
8903-X	DOT-E 8903	Teledyne McCormick Selph, Hollister, CA	49 CFR 172.101	To authorize transport of an initiating explosive, in plastic bottles, overpacked in DOT Specification 5, 5B, or 17H steel drums. (Mode 1.)
8919-X	DOT-E 8919	The Upjohn Company, Kalamazoo, MI	49 CFR Parts 100-199	To authorize transport of small quantities of a medical products containing ethyl alcohol in heat sealed glass ampules, packed in a corrugated outside fiberboard box. (Modes 1, 4, 5.)
8932-X	DOT-E 8932	Catalyst Resources, Inc., Elyria, OH	49 CFR 173.119(m)	To authorize shipment of a flammable liquid which is also organic peroxide, in tank motor vehicles complying with DOT Specifications MC-307 and MC-312 cargo tanks. (Mode 1.)
8963-X	DOT-E 8963	Atlantic Research Corporation, Gainesville, VA.	49 CFR 173.88(e)(2)(ii)	To authorize transport of a rocket motor in a propulsive state, in a DOT Specification 15A wooden box. (Mode 1.)
9002-X	DOT-E 9002	PepsiCo, Inc., Purchase, NY	49 CFR 178.210-10(a)(2)	To authorize shipment of flavoring components in non-DOT specification fiberboard boxes with inside polyethylene bottles. (Modes 1, 2, 3.)
9050-X	DOT-E 9050	United Executive Jet, Inc., Chesterfield, MO.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize additional Class A explosives and to include various Class B and C explosives for carriage by air. (Mode 4.)
9056-X	DOT-E 9056	Hodgdon Powder Co., Inc., Shawnee Mission, KS.	49 CFR 173.93(a)	To authorize shipment of certain identified solid propellant explosives, in polyethylene bottles packed in DOT Specification 12B boxes. (Mode 1.)
9144-X	DOT-E 9144	Cajun Bag & Supply Company, Crowley, LA.	49 CFR 173.154, 173.182, 173.234, 173.245b.	To authorize sodium nitrite, classed as an oxidizer, as an additional commodity (Modes 1, 2.)
9170-P	DOT-E 9170	Transport Company, Inc., El Dorado, AR	49 CFR 173.245, 178.340-10, 178.340-8, 178.341-3, 178.341-4, 178.341-5, 178.341-7.	To become a party to Exemption 9170. (Mode 1.)
9221-P	DOT-E 9211	Maersk Line, Limited, New York, NY	49 CFR 146.29-35(f)	To become a party to Exemption 9211. (Mode 3.)
9211-P	DOT-E 9211	Watermen Steamship Corporation, New Orleans, LA.	49 CFR 146.29-35(f)	To become a party to Exemption 9211. (Mode 3.)
9222-X	DOT-E 9222	Willms Trucking Company, Inc., Charleston Heights, SC.	49 CFR 173.119(b), 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable liquid or flammable solid. (Mode 1.)

New Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9238-N	DOT-E 9239	Kane Closures Inc., Westfield, NJ	49 CFR 173.119, 173.128, 178.118-6	To authorize manufacture, marking and sale of non-DOT Specification steel drum of 30-gallon capacity complying with DOT Specification 17H, except for 178.118-6, for shipment of traffic paint classed as flammable liquid. (Mode 1.)
9243-N	DOT-E 9243	Abatar, Inc., Winter Park, FL	49 CFR 173.111(a)(3), 175.30, Part 172, Subpart D, E.	To authorize shipment of a trick noise maker in outside packagings which are not required to be marked or labeled. (Modes 1, 2, 3, 4, 5.)
9265-N	DOT-E 9265	Guinn Flying Service, Houston, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air. (Mode 4.)
9270-N	DOT-E 9270	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.264(b)(2), 179.101-1(a)	To authorize shipment of hydrogen fluoride, in DOT Specification 112A400W tank cars stenciled DOT Specification 112A200W. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8009-P	DOT-E 8009	Oklahoma Gas Transport, Inc., Oklahoma City, OK.	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To become a party to Exemption 8009. (Mode 1.)
EE 8009-X	DOT-E 8009	Pressure Transport, Inc., Austin, TX	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AAX cylinders made of 4130X steel, for transportation of a compressed natural gas. (Mode 1.)
EE 9299-N	DOT-E 9299	United States Coast Guard, Washington, DC.	49 CFR Part 107, Appendix B, Parts 172 and 173.	To authorize transport of pellets containing aluminum phosphide in non-DOT specification metal drums. (Mode 3.)
EE 9300-N	DOT-E 9300	Air North, Fairbanks, AK	49 CFR 172.101(6)(b), 175.30	To authorize shipment of hydrochloric acid solution in DOT Specification 34 containers. (Mode 4.)
EE 9301-N	DOT-E 9301	Schlumberger Well Services, Rosharon, TX.	49 CFR 172.101, Column 6(b), 175.30, 175.320(a).	To authorize transport of shaped charges, commercial Class A explosives. (Mode 4.)
EE 9303-N	DOT-E 9303	Fastline Shipping Corporation, Miami, FL	49 CFR 171.12, 173.86, 176.11	To authorize a foreign-flag vessel (M/V PATRICK) to transport packages of explosives which are described, classed, packaged, marked and labeled in accordance with the International Maritime Dangerous Goods Code through United States waters and to unload and load such packages of explosives. (Mode. 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9310-N	DOT-E 9310	Dresser Atlas, Houston, TX	49 CFR 172.101 column 6(b), 175.30, 175.320(a).	To authorize transportation of Class A and C explosives on cargo aircraft only. (Mode 4.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of Exemption Thereof
7543-X	Monsanto Company, Saint Louis, MO	49 CFR 173.154	To authorize shipment of a flammable solid in a DOT Specification 56 portable tank. (Modes 1, 4.)
9185-P	Hercules, Incorporated, Wilmington, DE	49 CFR 176.410(d)	To become a party to Exemption 9185. (Mode 3.)
9186-N	Atlas Powder International Ltd., Miami, FL	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in either multiwall paper or plastic bags utilizing stevedoring slings and stretch wrapping, loaded aboard cargo vessels exempt from spacing criteria and location. (Mode 3.)

Denials

9165-N Request by Union Carbide Corporation, Danbury, CT; Taylor-Wharton, Division of Harsco Corporation, Easton, PA to authorize a new designed highly stressed, seamless steel cylinder, for use in transportation of compressed gasses denied August 3, 1984.

9169-X Request by Pacific Smelting Company, Torrance, CA to authorize shipment of zinc die cast skimming and certain other zinc residues in bulk in open top or partially covered rail cars or hopper trucks; or in uncovered drums loaded on motor vehicles denied August 30, 1984.

9177-N Request by Process Engineering Inc., Plaistow, NH to manufacture, mark and sell non-DOT specification 304 stainless steel portable tanks of 7300 gallon capacity for shipment of liquefield nitrogen, oxygen and argon, classed as nonflammable gas, not to exceed 40 psig denied August 14, 1984.

9257-N Request by Minnesota Valley Engineering, Inc., New Prague, MN to manufacture, mark and sell non-DOT specification cargo tanks for shipment of liquid nitrogen, oxygen or argon, classified as nonflammable gases denied August 15, 1984.

9264-N Request by Genus, San Marcos, CA to authorize shipment of tungsten hexafluoride classified as corrosive meterial in DOT Specification 3AL aluminum cylinders denied August 15, 1984.

Issued in Washington, DC, on September 13, 1984.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation, Bureau.

[FR Doc. 84-25119 Filed 9-21-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of a Vehicle Known as a "Unimog"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party requesting the reclassification of a vehicle known as a "Unimog". The petitioner contends the current tariff classification by Customs of the vehicle as a "tractor suitable for agricultural use" is incorrect and that it should be classified as an "automobile truck valued at $1,000 or more for the transport of persons or articles". This document invites comments with regard to the correctness of the current classification.

DATE: Comments must be received on or before November 23, 1984.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John Valentine, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, 202-566-8181.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of an American manufacturer of rotary snow blowers and snow removal equipment. The petitioner contends that an imported vehicle known as a "Unimog", currently classified by Customs as a "tractor suitable for agricultural use" under item 692.34, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), is more accurately classifiable as an "automobile truck valued at $1,000 or more for the transport of persons or articles" and thus should be classified for Customs purposes under item 692.02, TSUS. The tractor classification results in the importation of "Unimogs" free of duty, whereas the automobile truck classification would carry a 25 percent ad valorem rate of duty under item 945.69, TSUS, because articles classified under item 692.02, TSUS, are subject to a temporary tariff modification pursuant to section 252 of the Trade Expansion Act of 1962 (Pub. L. 87-794).

The "Unimog" is a six cylinder, diesel engine, 4-wheel drive vehicle capable of many uses through the addition of attachments for tasks such as snow removal, grass mowing and street sweeping. The petitioner's argument for reclassification is based primarily on a comparison of the "Unimog" with an agricultural tractor. Petitioner's contentions are that "Unimogs" are not used for agricultural purposes in any significant numbers, need licenses for highway use in California whereas agricultural tractors do not, can attain much higher speeds than agricultural tractors and are capable of many sophisticated uses compared to the "simple push-pull" functions of an agricultural tractor.

Petitioner also argues that "Unimogs" should be classified like other 4-wheel drive trucks and believes the current classification is failing to provide the protection to domestic manufacturers usually provided by tariff laws.

As alternatives to classification under item 692.02, TSUS, "automobile truck valued at $1,000 or more for the transport of persons or articles", petitioner also believes the "Unimog" could properly be reclassified under item 692.35, TSUS, as "other tractor", or item 678.50, TSUS, "a machine not specifically provided for". Either alternative, in petitioner's opinion, would more accurately reflect the "Unimog's" sophistication and infrequent use for agricultural purposes, characteristics not taken into account in the current classification.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before maki[illegible]ermination on the matter, Customs invites written comments on the petition from interested parties.

The domestic interested party petition, as well as all comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. or regular business days, at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority: This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: September 12, 1984.

William von Raab,

Commissioner of Customs.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-25113 Filed 9-21-84; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name; Acme Premium Supply Corp.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C 1124), of the trade name "ACME PREMIUM SUPPLY CORP." used by Acme Premium Supply Corp., a corporation organized under the laws of the State of Missouri, located at 4100 Forest Part Boulevard, St. Louis, Missouri 6308.

The application states that the trade name is used in connection with the following merchandise manufactured in China, Taiwan, Korea and Hong Kong: stuffed toys, inflatable toys, plastic toys, novelty items, hats, caps and figurines.

Before final action is taken on the application, consideration will be given to any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before November 23, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202) 566-5765).

Dated: September 18, 1984.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 84-25340 Filed 9-21-84; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the gold objects to be included in the exhibit, "Asante: Kingdom of Gold" (included in the list[1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between The American Museum of Natural History, New York, N.Y., and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the American Museum of Natural History, New York, N.Y., beginning on or about October 19, 1984, to on or about March 17, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 21, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison

[FR Doc. 84-25447 Filed 9-21-84; 11:22 am]

BILLING CODE 8230-01-M

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[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 49, No. 186
Monday, September 24, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-411 Amdt. 1]

September 18, 1984.

Notice of Deletion of item and addition of item at the September 18, 1984 Meeting

TIME AND DATE: 10:00 a.m., September 18, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

Commuter carrier fitness determination of Air Caribe International, Inc.; Docket 42394, Emergency Exemption of Air Caribe to operate as a commuter pending completion of its fitness review and Docket 42401, Application for fitness review. (BDA)

25. Discussion of Greek Negotiations. (BIA)

STATUS: 13 Open, 25 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: .

Phyllis T. Kaylor,
Secretary.

[FR Doc. 25368- Filed 9-20-84; 3:23 am]

BILLING CODE 6320-01-M

2

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m. Friday, September 28, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Secure voice communications program for the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.
4. Federal Reserve Bank and Branch director appointments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 20, 1984.

William W. Wiles,
Secretary of the Board.

[FR Doc. 84-25386 Filed 9-20-84; 3:45 pm]

BILLING CODE 6210-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 19, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, September 26, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Gary Goff v. Youghiogheny and Ohio Coal Company, Docket No. LAKE 84-86-D. (Issues include whether the administrative law judge erred in dismissing the miner's discrimination complaint on the ground that the complaint should have been filed pursuant to section 428 of the Black Lung Benefits Act, 30 U.S.C. 938(1982)).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 84-25329 Filed 9-20-84; 11:44 am]

BILLING CODE 6735-01-M

4

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: It will commence at 9:30 a.m. and continue until all official business is completed; Monday, October 1, 1984.

PLACE: General Services Administration, Auditorium, 18th and F Streets, NW., Washington, D.C. 20405.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, criminal, litigation, and investigatory matters under 45 CFR 1622.5 (a), (d), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —September 14, 1984
3. Report from the President
4. Report from the Office of Government Relations
5. Report from the Office of Field Services
6. Report from the Operations and Regulations Committee
7. Report from the Office of General Counsel
   —Regulation Part 1630

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Opsut, Executive Office, (202) 272-4040.

DATE ISSUED: September 20, 1984.

Michele L. Surface,
Assistant Secretary to the Corporation.

[FR Doc. 84-25411 Filed 9-20-84; 4:35 pm]

BILLING CODE 6820-35-M

federal register

Monday
September 24, 1984

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

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27 CFR Parts 4 and 240

Materials and Processes Authorized for the Production of Standard Wine and for the Treatment of Juice, Standard Wine and Distilling Material; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 240

[T.D. ATF-182; Ref. Notice Nos. 413, 414, and 426]

Materials and Processes Authorized for the Production of Standard Wine and for the Treatment of Juice, Standard Wine and Distilling Material

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This document implements regulations which: update the materials and processes authorized for use in the production and treatment of standard wine, juice, and distilling material; establish a procedure to provide agency sanction of experimentation with new materials and processes; and, revise the procedure for adding or deleting materials and processes and for changing usage levels of materials and processes employed in the treatment of wine. In addition, the Bureau has determined that the practice of reconstituting standard wine subjected to processing by thin-film evaporation under reduced pressure is not acceptable in good commercial practice and, therefore, prohibits this practice in the treatment of standard wine.

A notice of proposed rulemaking in which ATF solicits additional comment regarding the acceptability in "good commercial practice" of certain materials and processes in the treatment of wine appears elsewhere in this issue of the Federal Register.

This final rule is one of several which are to be issued by the Bureau in the revision of the Federal regulations pertaining to the production of wine. When ATF has completed the revision of these regulations, a final rule will be issued to recodify the wine regulations into a new Part 24.

EFFECTIVE DATE: The procedural regulations prescribed in 27 CFR 240.1052 and 240.1053, the rulemaking in 27 CFR 240.1051b which prohibits the reconstitution of wine and those rulemakings which authorize the use of new treatments become effective October 24, 1984; all other amendments which include rulemakings that delist, restrict or proscribe previously listed treatments become effective March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

Notice No. 413, published in the **Federal Register** of June 16, 1982 (47 FR 26399), proposed the addition or deletion of, and in some instances, revised usage levels for, materials and processes intended for use in the production and treatment of standard wine. Publication of the notice of proposed rulemaking resulted from ATF's recognition of the need to update the list of wine treating materials and processes and the need for a more formal public procedure for approving or disapproving applications for wine treating materials and processes. The original 60-day comment period was reopened for an additional 90 days by publication of Notice No. 426 in the **Federal Register** of September 20, 1982 (47 FR 41402).

Notice No. 414, published in the **Federal Register** of July 27, 1982 (47 FR 32447), invited public comment regarding reconstitution, a relatively new practice of adding water to low alcohol wine in order to restore the volume of water lost through azeotropic action during the processing of standard wine by thin-film evaporation under reduced pressure. This notice also requested comment as to whether the practice, if it were to be approved, should be disclosed on beverage wine labels.

Since each of the three notices of proposed rulemaking pertained to materials or processes employed in the production and treatment of wine, the Bureau is publishing a single Treasury decision implementing the changes resulting from a review of all comments received. Concurrent with the publication of this Treasury decision, ATF is publishing a notice of proposed rulemaking, Notice No. 543, in order to obtain additional comment on the acceptability in "good commercial practice" of certain materials and processes in the treatment of wine in accordance with the provisions of Section 5382 of the Internal Revenue Code of 1954, as amended.

The following are summaries of the comments received in response to the two notices pertaining to wine treating materials and processes and the notice pertaining to reconstitution:

Summary of Comments to Notice Nos. 413 and 426 (Wine Treating Materials and Processes)

ATF received 40 comments in response to the two notices of proposed rulemaking pertaining to wine treating materials and processes. Applications received during the comment periods are considered as comments. A list of the names of the commenters follows:

List of Commenters

1. John H. Dawson, Consumer Safety Officer, U.S. Food and Drug Administration (FDA) GRAS Review Branch
2. Susan Thompson, Ph. D., FDA GRAS Review Branch
3. Robert Beelman, Ph. D., The Pennsylvania State University
4. John C. Savage, Sebastiani Vineyards, BW-CA-876
5. Paul F. Thomas, III, Paul Thomas Wines, BW-WA-70
6. Alex P. Mathers, Ph. D., Almarla Vineyards, BW-MS-4
7. R.S. Scott, Ph. D., Scott Laboratories, Inc.
8. Richard T. Keller, Paul Masson Vineyards, BW-CA-4682
9. Meyer H. Robinson, Monarch Wine Co., Inc., BW-NY-21
10. M.J. Kramer, United Vintners, Inc., BW-CA-22
11. R.D. Middlekauff, Ad Hoc Enzyme Technical Committee
12. Edward G. Merritt, Pfizer, Inc.
13. William A. Spradlin, Virginia Chemicals, Inc.
14. Paul C. Thorpe, E. & J. Gallo Winery, BW-CA-4213
15. George W. Naumburg, Jr., M.D., North Salem Vineyards, BW-NY-660
16. Michael R. Barton, Chalet Debonne Vineyards, BW-OH-274
17. James Trezise, New York State Wine Grape Growers, Inc.
18. Jim Carter, Sebastiani Vineyards, BW-CA-876
19. Emil P. Tedeschi, Tedeschi Vineyard, BW-HI-5
20. Mary C. Custer, Ph. D., FDA GRAS Review Branch
21. Richard J. Alessi, Mogen David Wine Corp., BW-NY-626
22. Paul W. Flowers, Franzia Brothers Winery, BW-CA-3654
23. Kirby Anderson, San Benito Vineyards, BW-CA-4633
24. R. Martin Keen, Conestoga Vineyards, BW-PA-112
25. John F. Wilk
26. James Trezise, New York State Wine Grape Growers, Inc.
27. Robert E. Callan, Canada Dry/Graf's, BW-WI-35
28. Anthony A. Bell, Beaulieu Vineyards, BW-CA-71
29. John A. De Luca, President, Wine Institute
30. Olsson & Frank, P.C., for Villa Bianchi Winery, BW-CA-4662
31. John F. Wilk
32. Michael F. Jacobson, Ph. D., Center for Science in the Public Interest
33. Taylor Quinn, Associate Director, Office of Regulatory Compliance (FDA)
34. Wine Institute Technical Committee
35. William F. Randolph, Deputy Associate Commissioner for Regulatory Affairs (FDA)
36. Abraham M. Buchman, American Wine Association
37. Olsson & Frank, P.C. for Villa Bianchi Winery, BW-CA-4664

38. R.B. Boulton, Ph. D., Univ. of California (Davis)
39. D.A. Heatherbell, Ph. D., Oregon State Univ.
40. R.S. Scott, Ph. D., Scott Laboratories, Inc.

The following paragraphs provide a summary of the comments received with a parenthetical reference to the specific commenter:

Sequestered Ferrocyanide Complexes

In an advisory letter (#1) dated June 22, 1982, the GRAS Review Branch of the U.S. Food and Drug Administration indicated that although sequestered ferrocyanide complexes are not currently listed in Title 21, Code of Federal Regulations, Part 182, the Food and Drug Administration (FDA) considers these materials to be generally recognized as safe (GRAS) for use as fining agents in the treatment of wine provided the residual ferrocyanide concentration in the finished wine does not exceed one part per million. In view of this comment, ATF is retaining as authorized treatments the sequestered ferrocyanide complexes originally approved and listed under the brand names "Cufex," "Sulfex," and "Metafine".

Malo-lactic Bacteria

By letter (#2) dated June 9, 1982, the GRAS Review Branch addressed the use in wine production of *Leuconostoc oenos*, a type of malo-lactic bacteria. A search by the GRAS Review Branch of its files shows no information regarding this type of malo-lactic bacteria. FDA states that in order to obtain FDA GRAS approval for its use, a petition for GRAS status would have to be submitted. ATF concludes that since this is a type of malo-lactic bacteria which is naturally present during fermentation and has gained widespread acceptance among domestic winemakers, *Leuconostoc oenos* is deemed to be acceptable in good commercial practice for the intended use in standard wine.

By letter (#3) dated July 19, 1982, the Food Science Department of the Pennsylvania State University offered comment on malo-lactic bacteria. The commenter suggests that the reference to "patented" strains of malo-lactic bacteria be deleted and that the more general term "malo-lactic bacterial cultures" be listed in order that unpatented as well as patented strains be allowed to be used since all strains are natural. ATF concurs with this comment and, threfore, has amended the regulations in 27 CFR 240.361 and 240.365 to read "malo-lactic bacteria listed in Subpart ZZ" of Part 240. The reference to "malo-lactic bacteria" in 27 CFR 240.1051 specifies the "*Leuconostoc oenos*".

Potassium Bicarbonate

The Food Science Department of Pennsylvania State University (#3) as well as North Salem Vineyard (#15) and Chalet Debonne Vineyards (#16) requested that potassium bicarbonate be added to the list of approved wine treating materials. Potassium carbonate is presently authorized for the treatment of wine. ATF has found that potassium bicarbonate is more effective than potassium carbonate in some instances in reducing excess natural acidity in wine. ATF finds that winemakers should have the option of using either to treat wine since both constitute good commerical practice. Accordingly, ATF concurs with the commenters and has amended the reference to potassium carbonate to include the bicarbonate with the same conditions that the natural or fixed acids not be reduced below 5 parts per thousand (5 grams per liter).

Thiamine (Vitamin B–1)

Sebastiani Vineyards in a July 22, 1982, letter (#4) requested that thiamine (vitamine B–1) be listed specifically as an approved material for use in the treatment of wine. Thiamine is naturally present in grape juice and is a necessary nutrient for the growth of yeast during the fermentation of juice into wine. ATF concurs with the comment, and, accordingly, has made a specific reference to thiamine in 27 CFR 240.1051.

Calcium Sulfate

Paul Thomas Wines (#5) requested approval to use calcium sulfate in the production of rhubarb wine in order to remove oxalic acid which occurs naturally in rhubarb. If not removed from the juice or wine, oxalic acid reacts with calcium in the human body to form calcium oxalate. Since rhubarb wine is an agricultural wine and regulations in 27 CFR 240.465 require the submission of a formula to cover the production of agricultural wine, materials intended for use in the treatment of such wine would be listed on the ATF Form 698 Supplemental (5120.29) covering the production of the wine. The submission and subsequent approval by ATF of a formula listing the use of oxalic acid to treat rhubarb juice would obviate the necessity of listing this specific use in 27 CFR 240.1051.

Paul Masson Vineyards (#6) filed a letter request to use calcium sulfate on a continuing basis to treat all standard wine at a use level not to exceed the prescribed 2 grams per liter of wine. Following the submission of the request, however, the commenter informed the review panel that the request was being withdrawn. Accordingly, the original limitation restricting the use of calcium sulfate only for lowering the pH of sherry wine is retained without change.

Silica Gel

Scott Laboratories, Inc., and E. & J. Gallo, in separate comments (#7,#14), requested that silica gel (colloidal silicon dioxide) not be limited to the 30 percent concentration level proposed in the notice since silicia gel is available in concentrations other than 30 percent. Silica gel has a history of use in good commerical practice and has been approved at increasingly greater use levels to the present level of 20 pounds per 1,000 gallons of wine. ATF maintains that the percentage limiting the concentration level to 30 percent imposes an unnecessary regulatory burden on manufactuers and winemakers who use silica gel in the treatment of wine. The limit of 20 pounds per 1,000 gallons is representative of the use level requested by the wine industry and constitutes good commerical practice among U.S. winemakers. In recognition of the history of increases of the usage level of the 30 percent concentration from 0.5 pounds, to 1.6 pounds, 5 pounds, 10 pounds, and ultimately to 20 pounds per 1,000 gallons of wine, the limitation on use is stated in this final rule as the equivalent of 20 pounds of silica gel at a 30 percent concentration per 1,000 gallons of wine.

Enzymatic Activity

Scott Laboratories, Inc., (#7) also advocated the listing of protease, a proteolytic enzyme, to control foaming during the fermentation of wine and for protein (heat) stability. In February 1983, the review panel contacted Scott Laboratories regarding the results of studies conducted in 1982 by various wineries in collaboration with Scott Laboratories. ATF received comments (#38, #39, #40) from Roger B. Boulton of the University of California (Davis), D.A. Heatherbell of Oregon State University, as well as from Robert S. Scott of Scott Laboratories, Inc. These commenters favored inclusion of protease in the list of authorized treating materials to control foaming of bulk wine during fermentation and to stabilize standard wine. Based on the review of these comments and in recognition of the preference among winemakers to employ an enzyme over other types of cellar treatment for heat stability, ATF concludes that the use of this material constitutes good commercial practice and, therefore, merits the inclusion of protease in the list of authorized wine treating materials.

The Ad Hoc Enzyme Technical Committee and the Technical Committee of the California Wine Institute, in separate comments (#11, #29), each recommended the listing of enzymes as treating materials but proposed very general terms. However, the GRAS Review Branch of the U.S. Food and Drug Administration, in an advisory opinion dated August 18, 1983, informed ATF that an enzyme used in the processing of foods and beverages must be specifically identified as to source. Therefore, ATF has amended the list of treating materials to include specific listings of the enzymes which are approved for use in the treatment of wine. Basically, these enzymes identified by their trivial of functional names are: amylase, catalase, cellulase, glucose oxidase, pectinase, and protease.

The Ad Hoc Enzyme Technical Committee also requested that the authorization to use amylase enzyme be extended from use solely in distilling material to use as a treating material for standard wine and juice to convert starches to fermentable sugars and to clarify juice and wine. The Bureau had proposed in Notice No. 413 that amylase enzyme be retained for use in the treatment of distilling material as prescribed in 27 CFR 240.1051a. Following the close of the comment period, ATF received an application from a winemaker to use an amylase preparation to clarify standard wine. Based on a review of the data and samples submitted with the application, ATF concludes that such use is acceptable in good commercial practice. By an application dated October 31, 1983, Sokol Blosser Winery, BW-OR-66, requested authorization to use an "anthocyanase" enzyme preparation to reduce color in the juice of red and black grapes prior to fermentation of the juice into white wine. ATF requests comment about its effectiveness and whether its use would be considered acceptable in good commercial practice among winemakers.

Sodium Treating Materials

In Notice No. 413, the Bureau proposed to delist all sodium treating materials.

Virginia Chemicals (#13) commented that no technical data can be found which indicates that the use of either *sodium metabisulfite* or *sodium bisulfite* represents any hazard that would warrant discontinuance of use of either in the treatment of wine, juice, and distilling material. Villa Bianchi Winery in its several comments (#30, #37), United Vintners (#10), and Canada Dry/Graf's (#27), also objected to the delisting of the sodium preservative agents.

Olsson and Frank, P.C., on behalf of Villa Bianchi Winery (#30), expressed concern that the deletion of sodium compounds may create a safety problem as well as be contrary to sound public policy. The commenter cited the coincidence that the notice of proposed rulemaking published by ATF in the **Federal Register** appeared in the same issue as FDA's voluntary sodium labeling proposal and questioned whether this is part of a governmental movement to reduce sodium consumption. The commenter also asked that ATF postpone any action to delete the use of sodium compounds until some reasonable alternative exists and cited the Mobay Chemical Corporation's filing of a food additive petition for approval of dimethyldicarbonate (DMDC) by the Food and Drug Administration. In a second comment (#37), Olsson and Frank, P.C., requested the continued use of *sodium citrate* as a treating material for wine and expressed concern that the elimination of sodium in the treatment of wine could pose a potential health risk.

By letter (#27) dated Decembr 15, 1982, Canada Dry/Graf's, advocated the retention of *sodium benzoate*, sodium citrate, and sodium metabisulfite as preservative agents in the treatment of wine.

In a letter (#28) dated Decembr 15, 1982, Beaulieu Vineyards, expressed opposition to the deletion of *sodium chloride* (brime) solutions in the preparation of albumen.

It is ATF's understanding that winemakers have had concern for many years about sodium levels and that over the past 20 years individual winemakers have substituted other materials and processes as alternatives to sodium treating materials in order to reduce the amount of sodium present in wine offered for sale to consumers. Citric acid or potassium citrate may be substituted to achieve the effect intended by the use of sodium citrate. Potassium metabisulfite may be used in place of sodium metabisulfite. With regard to the use of sodium benzoate, ATF maintains that there are authorized treatments which can be substituted to obtain the same effect. ATF is also listing potassium benzoate in this final rule but is soliciting comment in Notice No. 543 regarding the effectiveness of potassium benzoate as a substitute for sodium benzoate in the treatment of standard wine.

The Wine Institute (#30), representing 455 winemakers, commented that the use of sodium treating materials is no longer considered to be acceptable as "good commercial practice" by its Technical Committee and, accordingly, supports the ATF proposal.

In the **Federal Register** of June 18, 1982 (47 FR 26580), FDA published a proposal to amend the food labeling regulations to provide for the labeling of sodium. In the same issue of the **Federal Register** (47 FR 26590), FDA published the Notice of GRAS Safety Review of Sodium Chloride. In the **Federal Register** of April 18, 1984 (49 FR 15510), FDA published a final rule pertaining to sodium labeling. In addressing the comments which were received in response to the proposal, FDA cites in the preamble of the final rule reference to the scientific data linking sodium consumption and hypertension. The preamble of the final rule states, in part, that—

> * * * FDA has reviewed the available data on the health implications of excessive sodium consumption, and has concluded that, "[although scientists disagree about the role of [sodium] intake as a basic causative factor in essential hypertension, there is a broad consensus in the scientific community that [sodium] is one of the factors in the development of hypertension in susceptible individuals, and that excess sodium consumption aggravates hypertension"] (47 FR 26592). The agency reiterates this position. * * * FDA continues to believe that the agency should focus its regulatory efforts on providing information to consumers so that they can structure their diets to meet individual health needs, and on working with manufacturers to reduce the amount of sodium in processed foods. The food processing industry is in the best position to reduce the amount of sodium in processed foods. * * * (49 FR 15511)

FDA stated further that over 80 percent of the approximately 2,700 comments received in response to the sodium labeling proposal were from individual consumers and that these comments were almost unanimous in either supporting the agency's sodium initiatives or in calling upon FDA to do more in bringing about increased sodium labeling and a reduction of sodium in processed foods (49 FR 15511). FDA also stated that its 1978 survey of consumers revealed that salt was second only to sugar as a food ingredient consumers sought to avoid (49 FR 15511). Data from a 1982 survey funded by FDA and conducted by the National Heart, Lung, and Blood Institute, revealed that nearly two-thirds of consumers have some degree of concern about their sodium consumption and almost half are tryinig to reduce it (49 FR 15511). FDA stated its belief that the great weight of the evidence strongly supports the prevailing consensus among scientists that it would be prudent for the general population to reduce sodium consumption whenever possible (49 FR 15511). FDA expressed the position that significant benefits are likely to be derived by the general population by moderating sodium intakes, and no convincing evidence has been presented to demonstrate that a moderate but significant reduction of sodium intake would have any adverse health effects (49 FR 15513). "If incidence rates remain at current levels, about 65 percent of all U.S. citizens will have developed definite or borderline high blood pressure by the time they are 65 to 74 years of age. Therefore, [FDA] remains convinced that the public in general will benefit from a reduction in sodium intake even though some persons do not presently require it" (49 FR 15513).

Under the topic of "Health Issues" in the preamble of the FDA's document, the agency addressed the concerns expressed by a few commenters that FDA's "efforts to encourage the general population to moderate their intake of sodium would lead to medical problems for certain segments of the population." These commenters had "urged that FDA make it clear that pregnant women and persons living in tropical or subtropical environments or persons engaged in physically strenuous occupations need not necessarily moderate their intake of sodium, because such groups have an increased need for sodium in the diet" (49 FR 15514). FDA responded that:

> The agency does not consider the increased requirement for sodium during pregnancy to be a problem even for women who seek to moderate their daily intake of sodium. However, the general advisory to moderate sodium intake would not be applicable for pregnant women on extremely restricted diets. These cases are rare and such women should be under a physician's care for the problems necessitating the restricted diet. The agency acknowledges that there also is a concern for unacclimatized individuals performing heavy work in hot environments. However, these individuals constitute only a small segment of the population in hot environments and the need for increased levels of sodium is transient and usually disappears in 1 to 2 weeks as a result of the physiological adjustment to the new environment.

In light of the Wine Institute's comment, the availability of potassium treating materials to serve as substitutes for sodium treating materials, the practice among winemakers to eliminate the use of sodium in the treatment of wine and the recently published position of the U.S. Food and Drug Administration, ATF is delisting the sodium treating materials. Use of these materials is no longer deemed to be acceptable in good commercial practice among winemakers. Proprietors have the option of using citric acid or potassium citrate in place of sodium citrate. With regard to sodium metabisulfite, proprietors have the option of using potassium metabisulfite.

Nitrogen

Canada Dry/Graf's (#27) advocated retention of the proposed limitations on the use of nitrogen, an inert gas used to fill headspace in wine containers. Nitrogen provides structural support to the thin walls of aluminum cans. In light of the fact that nitrogen is an inert gas, i.e., it does not react with wine filled into a bottle, can or other type of container, and rapidly dissipates upon the breaking of the seal closing the container, ATF is striking the maximum usage level for nitrogen and the reference limiting its use to sparkling wine. This will permit use of nitrogen in the bottling and canning of still wines as well as sparkling wine.

Casein

By letter (#19) dated November 23, 1982, Tedeschi Vineyard and Winery requested that the limitation of 3.6 grams per liter for the use of casein (potassium caseinate) be increased to a higher level. The commenter apparently had misread the limitation imposed on the use of *milk powder* in the referenece section of the list of treating materials. Milk powder, a synonym for casein, is a term which is no longer widely used. In consideration of the confusion created by the listing of a limitation for milk powder and the obsolescence of the term "milk powder," ATF is deleting the reference to milk powder and the limitation on the use of milk powder. ATF has placed no limitation on the use of casein.

Antimicrobial Agents

The GRAS Review Branch (FDA) forwarded a transmittal letter (#20) with copies of the documents which the Center for Science in the Public Interest (CSPI) filed with the Food and Drug Administration on October 28, 1982, regarding the use of *sulfiting agents* in foods and beverages. Also included in the materials which accompanied the FDA's letter was the FDA's July 9, 1982, notice of proposed rulemaking to affirm the GRAS status of *potassium metabisulfite* at 21 CFR 184.3637, *sodium bisulfite* at 21 CFR 184.3739, and *sodium metabisulfite* at 21 CFR 184.3766. These three sections of the Federal food and drug regulations have specific references to the use of these materials as antimicrobial agents in the treatment of alcoholic beverages.

Since ATF is removing the sodium compounds from the list of authorized treating materials for wine, the FDA references in §§ 184.3739 and 184.3766 to the use of sodium bisulfite and sodium metabisulfite in the treatment of "beverages, alcoholic" will require conforming changes. ATF has advised FDA of the prohibition of sodium bisulfite and sodium metabisulfite in the treatment of wine.

By letter (#32) dated December 20, 1982, the Center for Science in the Public Interest applauded ATF's decision to remove sulfiting agents containing sodium from the list of materials considered acceptable in "good commercial practice" but simultaneously criticized ATF's proposal to retain potassium metabisulfite and sulfur dioxide as antimicrobial agents in treatment of wine.

In a December 15, 1982, comment, John F. Wilk (#25) requested that ATF evaluate the use of all chemical agents, specifically sulfiting agents, in grape juice and wine, substitute a process known as "the Walthari Process" for treatments with sulfur and other preservative chemicals, and require disclosure in labeling of the addition of preservative agents to wine. In a second comment (#31), Mr. Wilk requested a public hearing in which he wished to take the opportunity to explain the Walthari Process.

The use of sulfur dioxide is necessary, common to, and historically documented in winemaking. At the present time, there is insufficient scientific data to justify ATF's delisting of the use of sulfiting agents in the treatment of wine. Accordingly, ATF is retaining sulfur dioxide as an authorized preservative agent in the treatment of wine. However, if at some future date the U.S. Food and Drug Administration were to determine that the sulfiting of foods and beverages presents a risk to the public health and requires labeling disclosure, ATF would promptly propose the disclosure in labeling of sulfur dioxide and sulfiting agents.

In recognition of the health concerns over the use of sulfiting agents in foods and beverages including wines, ATF is issuing a notice of proposed rulemaking, Notice No. 543, proposing reduced usage levels of not more than 125 parts per million total sulfur dioxide for low sugar red and rose wines and 175 parts per million total sulfur dioxide for low sugar white wine. The 350 parts per million limitation would be reduced to 275 parts per million for high sugar wines, i.e., wines having a sugar content of 5 or more grams per 100 milliliters. ATF welcomes additional comments from all interested parties as to what maximum residual levels of sulfur dioxide would be acceptable in a final rule and whether 5 grams per 100 milliliters is the level at which to distinguish between high sugar and low sugar wines. Commenters should refer to Notice No. 543 for the specifics of the ATF proposal.

The Wine Institute Technical Committee (#29) took exception to the proposed inclusion of *potassium benzoate* and *the parabens, i.e., the n-alkyl esters of p-hydroxy-benzoic acid (methyl-, propyl-, and heptyl-)* as antimicrobial agents for use in the treatment of wine and the use of *propylene glycol* as a solvent for the parabens. The commenter opposed the inclusion of these materials in the list of authorized treating materials on the basis that such use is not acceptable in good commercial practice. Based on the review of comments received in response to Notice Nos. 413/426, ATF is proposing in Notice No. 543 to delete the parabens and propylene glycol, a solvent used in the preparation of the parabens, from the list of authorized treating materials and is requesting the submission of comments as to whether potassium benzoate should remain on the list of authorized treating materials. In the interim period during which comments will be reviewed, ATF is continuing the listing of the parabens, propylene glycol and potassium benzoate.

Maltol and Ethyl Maltol

Seven commenters (#9, #10, #12, #21, #22, #29, and #36) addressed the ATF proposal to remove maltol and ethyl maltol from the list of authorized wine treating materials. Both of these materials had originally been approved "to smooth wine;" however, both are listed in FDA regulations as flavoring adjuvants (enhancers). Ethyl maltol does not occur naturally whereas maltol does occur naturally in several plants but is not a natural constituent of grapes. ATF is requesting additional comments on the continued use of these materials through the issuance of Notice No. 543. In the interim period during which comments will be reviewed, ATF will allow the continued use of maltol at a maximum level of 250 milligrams per liter and ethyl maltol at a maximum level of 100 milligrams per liter. These are the limitations which historically have been used by winemakers in good commercial practice in treating certain types of wines.

Use of Water to Prepare Slurries of Wine Treating Materials

Almarla Vineyards (#6), the Wine Institute (#29, #34), and Sebastiani Vineyards (#18), addressed comments to the use of water to prepare slurries of wine treating materials. ATF, in Notice No. 413, differentiated between the use of water to rehydrate yeast and the use of water to prepare treating materials. The Bureau proposed to limit the addition of water in yeast rehydration to not more than a 0.26 percent increase in volume and to limit the use of treating material slurries to not more than a 1.0 percent increase in volume (separate from the limitation on yeast rehydration).

Sebastiani Vineyards commented in favor of the ATF proposals. The Wine Institute and Almarla Vineyards requested that the use of water for whatever purpose total not more than 3 percent by volume.

With regard to yeast rehydration, ATF maintains the position that the use of yeast, a basic component of the fermentation process, does not constitute a cellar treatment. The 0.26 percent limitation proposed in Notice No. 413 was obtained by contacting yeast suppliers in order to determine the amount of water actually needed to rehydrate yeast. Based on updated information obtained from these same suppliers, ATF is increasing the limit to 0.5 percent which ATF maintains is representative of good commercial practice among yeast suppliers.

With regard to water slurries, however, the Bureau is still not convinced that water additions exceeding 1.0 percent by volume are necessary. The 1.0 percent limitation is based on historical use and represents good commercial practice among winemakers to date. Accordingly, ATF is maintaining the 1.0 percent by volume limitation but requests additional comment from all interested parties about increasing the 1.0 percent limitation to as much as 3.0 percent by volume as proposed by these commenters. Persons interested in this issue should forward comments to Notice No. 543.

Potassium Bitartrate

Conestoga Vineyards, in a letter (#24) dated December 8, 1982, requested that the usage level of potassium bitartrate be increased from 4 pounds per 1,000 gallons to 35 pounds per 1,000 gallons for use in the cold stabilization of wine by means of the "seeding" process. Examination of the scientific data pertaining to the "seeding" process shows that this process is an effective method of stabilizing tartrates in wine. The process has gained increasing acceptance among winemakers in the United States. During the past year, ATF authorized experimentation at the increased usage level.

The Wine Institute (#29) requested that there be no limit placed on the amount of potassium bitartrate used in the treatment of wine. ATF does not concur with the Wine Institute comment. The most current scientific literature references the use of potassium bitartrate at a maximum level of 35 pounds per 1,000 gallons as the optimum level of use for the intended effect. Accordingly, the use of potassium bitartrate will be limited to 35 pounds per 1,000 gallons of wine.

Activated Carbon

San Benito Vineyards, in its comment (#23) dated December 8, 1982, addressed the uses of activated carbon and hydrogen peroxide. The commenter asked that the reference to activated carbon be broadened to cover specifically its *use as a deodorizer.* ATF maintains that the stated use of activated carbon "to clarify and to purify wine" encompasses its use as a deodorizer in wine.

The Wine Institute (#29) proposed adding specific mention in 27 CFR 240.361, 240.365, 240.401, and 240.405 of the use of activated carbon *as a fermentation aid* to assist precipitation and dropping specific mention of this use in 27 CFR 240.1051. ATF has made a general reference to the use of precipitating agents in each of the four production sections but has inserted in each section a specific reference to Subpart ZZ.

Color Reduction

In light of the consumer demand for white wines and the glut of red and black grapes, there is genuine interest among winemakers for materials and processes to reduce color in the juice from red and black grapes so that the juice may subsequently be fermented into white wine.

Prior to the issuance of Notice No. 413, ATF has received separate applications from winemakers to use *activated carbon* and *hydrogen peroxide* in the treatment of the juice pressed from red and black grapes. In Notice No. 413, ATF requested comments regarding the acceptability of the continued use of these treatments to reduce color in the juice of red and black grapes. The Wine Institute (#29) advocated the delisting of the use of activated carbon and hydrogen peroxide to decolorize juice from red and black grapes. United

Vintners, Inc. (#10) favored retention of the use of activated carbon to reduce color in juice and wine. The New York State Wine Grape Growers, Inc. (#28) favored retention of the use of hydrogen peroxide to remove color from the juice of red and black grapes.

San Benito Vineyards (#23) inquired why a batch of wine produced from juice treated with hydrogen peroxide may only be blended with other standard wine rather than be bottled without prior blending. In light of the fact that the imposition of this limitation resulted from the original application filed to use hydrogen paroxide for this purpose and not from any problem with its use in good commercial practice, ATF has no objection to dropping this restriction. Accordingly the "reference" column has been so amended.

By letter dated October 31, 1983, Sokol Blosser Winery, BW–OR–66, applied for authorized to employ an *"anthocyanase" enzyme preparation* as a cellar treatment to reduce color in the juice of red and black grapes prior to fermentation of such juice into wine.

In Notice No. 543 which is being published concurrently with this Treasury decision, ATF solicits comment from winemakers and other interested parties regarding the acceptability of the use of activated carbon or hydrogen peroxide or the enzyme preparation to reduce color in the juice of red and black grapes prior to fermentation of such juice into wine. In the interim period until the rulemaking process is completed, the continued use of either activated carbon or hydrogen peroxide to remove color from the juice of red and black grapes will be permitted. However, ATF action regarding the use of an anthocyanase enzyme to decolorize juice is dependent upon the outcome of the rulemaking process. For information concerning this enzyme preparation, winemakers and other interested parties may contact the ATF Reading Room. The winemaker's application in a part of the comment file for Notice No. 543.

Ultrafiltration

In February 1984, ATF received an application from Papagni Vineyards, BW–CA–4630, for authorizations to employ an "ultrafiltration" process using membrances of various molecular sizes to: (1) Remove proteinaceous material from wine, (2) remove the pink color from blanc de noir wines, (3) reduce harsh tannic material from white wine produced from white skinned grapes, and (4) separate red wine into low color and high color wine fractions for blending purposes. This application was received after the close of the comment period for Notice Nos. 413/428. However, in light of the interest in and controversy over the use of activated carbon, hydrogen peroxide and enzymatic activity to decolorize the juice of red grapes, ATF is airing this application in Notice No. 543 in order to obtain public comment prior to making a decision as to whether such a process may be applied, in whole or in part, in the celler treatment of wine. For information regarding the application to use "ultrafiltration" in the treatment of wine, winemakers and other interested parties may contact the ATF Reading Room. The winemaker's application is a part of the comment file for Notice No. 543.

General Comment

The New York State Wine Grape Growers, Inc., in a November 19, 1982, letter (#17), advocated maximum flexibility in materials and processes for wine production and stated its general support for ATF's proposals pertaining to both deletions and accepted practices.

Editing Changes

Mr. William F. Randolph, Deputy Associate Commissioner for Regulatory Affairs, U.S. Food and Drug Administration, in a telephone call (#35) on October 14, 1982, recommended editing changes pertaining to the citation of metric measure and chemical nomenclature. These changes have been adopted. In a letter dated December 28, 1982, Mr. Taylor Quinn, Associate Director for Compliance, Buerau of Foods (FDA), submitted editing corrections (#33) to ATF's citations of Parts 172, 182, and 184, of Title 21, Code of Federal Regulations.

Multiple Comments

The following summaries highlight the many issues addressed in the multiple-comment letters forwarded by Almarla Vineyards (#6), United Vintners, Inc. (#10), and the Wine Institute (#29). For a detailed reading of these comments, the reader may contact the Bureau's Disclosure Office for copies of the comments.

Comment of Almarla Vineyards

By letter dated August 3, 1982, Dr. Alex P. Mathers of Almarla Vineyards, commented that where references to certain treating materials are made in other parts of regulations in Title 27, Code of Federal Regulations, Part 240, there is no need to make further reference to these same materials in Subpart ZZ. ATF considered the comment and concluded that in the interest of providing both consumers and winemakers with a comprehensive list of materials that may be used in the treatment of wine and to lessen the amount of confusion about which materials may or may not be used in such treatment, ATF will continue to list all bona fide treating materials in as many places in regulations as the Bureau deems to be necessary.

With regard to the commenter's proposal that advisory memoranda from the Department of the Treasury or from an industry group be used in place of a detailed list of treating materials in 27 CFR 240.1051 *et al.*, ATF has found through experience that the issuance of advisory memoranda and industry circulars is an ineffective means of transmitting information to winemakers since the information conveyed has often been misplaced or misconstrued in transmission. ATF finds that it is far more effective to place all the materials in lists in the same regulatory subpart and to update the lists periodically so that both consumers and regulated industry members will have access to the list and know where the information is to be found.

ATF is revising the wording of the regulations to provide specifically for the publication of a notice in the ATF Quarterly Bulletin to advise winemakers of the approval of a material or process and to provide specific regulatory language citing the discretionary authority of the Director to issue a notice of proposed rulemaking when it is determined that public comment is needed to facilitate the Bureau's decision making. Periodically, the Bureau will be issuing a notice of proposed rulemaking in which comments will be solicited as to whether the materials, usage levels, and processes approved and noticed in the ATF Quarterly Bulletin as well as the materials, usage levels, and processes listed in Subpart ZZ, are considered to be acceptable in "good commercial practice" in accordance with the provisions of section 5382(c) of the Internal Revenue Code of 1954, as amended.

The commenter has expressed opposition to the "across-the-board" deletion of the *sodium treating materials*. In addition, the commenter has proposed that a blanket authorization of not more than 3 percent water by volume be given for the *rehydration of yeast* and the preparation of *water based slurries* of treating materials. ATF has responded to the commenter in an earlier part of this preamble.

Comment of the Wine Institute

The December 16, 1982, letter from the Wine Institute (#29) contains many comments on the proposed regulations for wine treating materials. Earlier in this preamble, ATF responded to specific treatments on which the Wine Institute has commented. The commenter points out that some materials are no longer in use in the treatment of wine but remain in the Bureau's proposed list of materials to be retained (ATF concurs and has made the necessary corrections); that the Wine Institute proposes a functional grouping of treating materials by class of material where appropriate (ATF considered this proposal but concluded that an alphabetical listing by generic name would be more informative and easier to follow).

The Wine Institute favored maximum simplification and consolidation of regulations pertaining to wine treatments. The commenter proposed that where materials are listed in other sections of Part 240 no purpose is served by the duplication of citing the same materials in Subpart ZZ. Examples of materials cited by the Wine Institute were sulfur dioxide at CFR 240.523, carbon dioxide at §§ 240.510 and 240.531–240.535, and fruit acids in 27 CFR 240.364, 240.404 and 240.526. Although Notice No. 413 proposed revisions to the list of treatments prescribed in Subpart ZZ of Part 240, ATF has found that revisions in Subpart ZZ required revisions in other subparts in Part 240 as well as the drafting of a proposal for amendatory language in Part 4.

The commenter also takes exception to the Bureau's proposal to limit the *rehydration of yeast* to not more than 0.26 percent by volume of wine. The commenter states that *water used to prepare treating materials* is not a means of diluting wine.

The Wine Institute proposed the delisting of ammonium hydroxide from the list of materials authorized for use in the treatment of wine. Since *ammonium hydroxide* is a water treating material used solely to adjust the pH of water to facilitate the dissolution of casein prior to the addition of the casein to wine, ammonium hydroxide is not subject to regulation by ATF and, accordingly, is being delisted.

The Wine Institute proposes that cellulose be removed from the list since it is an inert filtering aid which is presently covered by general reference in 27 CFR 240.528. ATF has decided to delete the references in 27 CFR 240.1051 to the four filtering and clarifying aids, *agar-agar, carrageenan, cellulose, and diatomaceous earth,* and to make specific references to these materials in 27 CFR 240.528. The use of these materials is deemed to be acceptable in good commercial practice because they act only as filtering and clarifying agents to aid in the removal of filterable material. Limitations are not necessary since these materials do not dissolve or react with wine and juice.

With regard to the Wine Institute proposal to delete the use of *activated carbon* and *hydrogen peroxide to remove color from juice from red and black grapes* on the basis that this is not acceptable in good commercial practice, ATF maintains that this issue requires additional comments prior to the drafting and publication of a final rule. Accordingly, the use of activated carbon and hydrogen peroxide for this purpose has been retained in the interim until comments have been received and reviewed from a notice of proposed rulemaking which is being issued concurrently with the publication of this Treasury decision.

The Wine Institute proposed the deletion of *mineral oil, charred oak chips, the parabens, potassium citrate, and propylene glycol.* With the exception of potassium citrate which may be used to treat citrus wines, the Bureau concurs with these proposals. In the past, winemakers would suspend a thin film of mineral oil over the surface area of bulk wine to prevent oxidation of the wine. In place of mineral oil, winemakers are using nitrogen, an inert gas. Charred oak chips are being delisted since their use is for flavoring formula wines and not for use in the production and treatment of standard wine, juice, and distilling material. The parabens and propylene glycol are being retained at present. However, in light of the Wine Institute's comment and the relatively recent listing of the parabens for use in the cellar treatment of low alcohol wines by a single winemaker, ATF is proposing their deletion from the list of authorized wine treating materials and is requesting comment from winemakers and other interested parties as to whether the use of the parabens is acceptable in good commercial practice among winemakers.

The Bureau is retaining potassium citrate since the deletion of sodium citrate may require substitutions with citric acid and potassium citrate in the treatment of citrus wines.

With regard to the wording of proposed § 240.1052, the Wine Institute recommended changes in the procedure to be followed and the timetable for the approval of materials intended for use in the treatment of wine on a commercial scale. ATF has evaluated this comment and concurs. Consequently, specific provision has been made in the regulations to allow for the use of a material on an experimental basis so that the winemaker can obtain sufficient data to justify the filing of an application for use of the treating material on a commercial scale. ATF is providing for an experimental authorization in a new § 240.1052 and redesignating § 240.1052 as § 240.1053. The text of § 240.1052 will be entitled "Experimentation with new treating material or process." The wording of this section paraphrases that of § 240.134.

Section 240.1053 will be entitled "Application for use of new treating material or process" and the text will read basically the same as that which was orginally proposed for § 240.1052. ATF has made some modifications in the wording of this text to meet the Wine Institute's concerns about the lengthy, cumbersome, and expensive aspects of the rulemaking process. ATF has also incorporated the requirements of ATF Procedure 77–1 as it pertains to the filing of specific data to perfect the filing of an application to use a material or process in the treatment of wine.

Comment of United Vintners, Inc.

By letter dated August 12, 1982, United Vintners, Inc. requested that the words "or elsewhere in this part" be stricken from the wording of proposed § 240.1052 on the basis that all materials and processes should be listed together only in § 240.1051 in order to aviod confusion and to reduce the time spent searching for needed information. ATF has decided to keep the phrase "or elsewhere in this part" in light of the fact that although the treating materials will be specifically listed in § 240.1051, there will continue to be a need for references in the regulations in Part 240 to the use of treating materials, e.g. acids and activated carbon. In order to avoid confusion, ATF has made cross references in the third column, i.e., the reference column in 27 CFR 240.1051, to the various sections in Part 240 that have a bearing on specific treating materials.

The commenter takes exception to the requirements of the proposed § 240.1052 citing the lengthy and time consuming aspect of the rulemaking process, the possibility of divulging trade secrets, and the cost of going through the rulemaking process on a frequent basis. (The Wine Institute in its comment expressed the same concerns.) ATF believes that the commenter has valid points. The rulemaking process, by its very nature, is lengthy, time consuming, and costly both to the wine industry and to the Government. Accordingly, ATF has revised the wording of the regulations to facilitate the approval of treating materials and processes which the Director determines are not controversial. This procedure should reduce the number of notices of proposed rulemaking being published and be less costly to the Bureau and less time consuming to all parties than the rulemaking process.

Use of Acids in Treatment of Wine

Included in ATF's original proposal in Notice No. 413 was the revision of the provisions of Subpart ZZ pertaining to the use of acids in the cellar treatment of wine. The review of comments received in response to that proposal, coupled with the ongoing review of Part 240 and the recodification of Part 240 into new Part 24, has required conforming changes in 27 CFR 240.364, 240.404, 240.512, 240.526, and 240.539 pertaining to the use of organic acids.

Following the review of the comments pertaining to sorbic acid, the Bureau conducted a survey of winemakers to determine a level of use acceptable in good commercial practice. Based on the results of this survey as well as the comments received in response to Notice No. 413, the Bureau is lowering the residual level of sorbic acid from 1000 parts per million to 300 milligrams per liter (300 parts per million). In Notice No. 543, ATF proposes to lower the residual level of sorbic acid to 200 milligrams per liter.

Hydrated Aluminosilicates

ATF had proposed to retain Bentonite (Wyoming clay) as the only hydrated aluminosilicate authorized for use in the treatment of standard wine. Bentonite has a molar ratio of one part aluminum to four parts silicon dioxide. Well after the close of the comment period, ATF received two inquiries regarding the use of other hydrated aluminosilicates to clarify standard wine: A 1:2 aluminum to silicon dioxide compound known by the name "Kaolin" which is commonly used in Western Europe and a 1.5:1 compound which is not as well known as Bentonite and Kaolin but which produces the same intended effect. In light of these inquiries, the list of authorized treating materials is amended to read "Hydrated aluminosilicates" with parenthetical references to Bentonite and Kaolin as examples of hydrated aluminosilicates.

Volatile Acidity

After the close of the comment period, ATF received several requests from producers of "late harvest" style wines for exceptions to the volatile acidity limitations prescribed in 27 CFR 4.21. In light of the interest, ATF is requesting comments to proposed higher levels of volatile acidity in wines produced in the "late harvest" style.

Conclusion

Based on the review of the 40 comments received in response to Notice Nos. 413 and 426, ATF is implementing regulations which generally will: (1) Delete materials which are no longer in use in the production and cellar treatment of standard wine, (2) delete materials which are used solely in wines produced pursuant to formulas filed with the Bureau, (3) add new materials and processes to the lists of authorized treatments, (4) delete the sodium treating materials, (5) delete all references to brand names, (6) list the treating materials by component ingredients under generic designations, (7) prescribe usage levels in both American and metric units of measure, (8) prescribe revised limitations on use and updated regulatory references, (9) establish a procedure for experimentation with new treatments, and (10) revise the procedure for obtaining authorization to use new treatments on a commercial scale.

The following is a summary of the materials which are being deleted with a brief explanation of the justification for this action:

Material	Use	Reason(s) for final action
Acetic acid	To correct natural deficiencies in grape wine	Used in flavored wine; use authorized by submission and approval of a formula.
Acidex	To reduce excess natural acidity in wine	Brand name—now listed under component ingredients by generic designations.
Actiferm (Roviferm)	Fermentation adjunct	Brand name—no longer manufactured.
Aferrin	To reduce trace metals in wine	Do.
Agar-agar	To filter and to clarify juice and wine	Use of inert filtering and clarifying aids covered in 27 CFR 240.526.
AMA special gelatine solution	To clarify wine	Brand name—now listed under component ingredients by generic designations.
Amber ByF and/or Amberex 1003	Yeast nutrient in fermentation of grape and fruit wine	Do.
Ammonium hydroxide	To adjust pH of water to dissolve casin for use in treatment of wine.	Not a wine treating material.
Antifoam "A"; Antifoam AF emulsion; Antifoam C.	Defoaming agent in production of wine	Brand name—now listed under component ingredients by generic designations.
Atmos 300	Antifoaming agent	Do.
Bentonite compound (Bentonite, activated carbon, and copper sulfate).	To clarify and to stabilize wine	Component ingredients listed separately in 27 CFR 240.1051.
Benzoic acid	To preserve wine	Ineffective treating material for intended use; not acceptable in good commercial practice.
Bone charcoal	To clarify wine	Obsolete term—see "activated carbon."
Carbon	To clarify and to purify wine	Do.
Carrageenan	To filter and to clarify juice and wine	Use of inert filtering and clarifying aids covered in 27 CFR 240.526.
Cellulose (food-grade)	do	Do.
Clan/Preme	To clarify and to stabilize wine	Brand name—no longer manufactured.
Cold Mix Sparkolloid	To clarify unfermented juice and/or wine	Brand name—now listed under component ingredients by generic designations.
Combustion product gas	To maintain pressure during filtering and bottling of sparkling wines.	Obsolete term for carbon dioxide; method to produce carbon dioxide no longer used.
Compressed air	Aeration of sherry wine	Listed in 27 CFR 240 1051 under "Oxygen."
Cufex	To remove trace metal from wine	Brand name—now listed under component ingredients by generic designations.
Diammonium monohydrogen phosphate.	In honey wine production, the amount used shall not exceed 1.5 g/L of wine.	Use in honey wine, i.e., agricultural wine, covered by formula approval. Use in other wines covered by general reference to "ammonium phosphate (mono- and dibasic)" in 27 CFR 240 1051.
Diatomaceous earth	To filter and to clarify juice and wine	Use of inert filtering and clarifying aids covered in 27 CFR 240.526.
Egg yolk	To clarify wine	Used in flavored wine; use authorized by submission of a formula.
Fermcozyme Vin	To clarify and to stabilize wine	Brand name—now listed under component ingredients by generic designations.
Fermcozyme Vin XX	do	Do.
Ferrix	To remove trace metal from wine	Brand name—no longer manufactured.
Freon (C-318 (octafluorocyclobutane)	Propellant in aerosol containers of vermouth	Not in use in winemaking.
Fulgur (hydrated aluminosilicate and albumen).	To clarify wine	Brand name—no longer in use in winemaking.
Klerzyme H. T.	To clarify and to stabilize wine and to facilitate seperation of fruit from juice.	Brand name—now listed under component ingredients by generic designations.
Koldone	A fining agent for cold stabilization and/or acid reduction	Do.
Metafine	To remove trace metal from wine	Do.
Milk powder	To clarify wine	Obsolete term. See "casein."

Material	Use	Reason(s) for final action
Mineral oil (white)	On surface of wine in storage tanks to prevent the access of air to the wine.	No longer used. Replaced by using nitrogen in the headspace of storage tank.
Oak chips charred	To treat Spanish type blending sherry	Use authorized by submission and approval of a formula. 21 CFR 172.510.
Promine-D	To clarify and to stabilize wine	Brand name—no longer manufactured.
Protovac PV-7916	To clarify wine	Do.
Ridex-High	To stabilize wine	Do.
Sodium benzoate	do	Sodium compound—no longer acceptable in good commercial practice.
Sodium bisulfite	To sterilize and to preserve wine	Do.
Sodium carbonate	To reduce excess natural acidity in wine	Do.
Sodium caseinate	To clarify wine	Do.
Sodium citrate	pH control agent and sequestrant in treatment in citrus wines; pH control and smoothing agent in grape wines.	Do.
Sodium iso-ascorbate (sodium erythorbate).	Antioxidant	Do.
Sodium metabisulfite	To sterilize and to preserve wine	Do.
Sodium sorbate	To sterilize and to preserve wine and to inhibit mold growth and secondary fermentation.	Do.
Sparkolloid No. 1	To clarify wine	Brand name—now listed under component ingredients by generic designations. 27 CFR 240.528.
Sparkolloid No. 2	To clarify wine	Do.
Sulfex	To remove objectionable levels of sulfide and mercaptans from wine.	Brand name—now listed under component ingredients by generic designations.
Takamine cellulase 4,000	To clarify wine	Do.
Tansul clays Nos. 7, 710, and 711	do	Obsolete term.
Uni-Loid Type 43 B (pure U.S.P. agar-agar and standard supercel).	To clarify and to stabilize wine	Brand name—now listed under component ingredients by generic designations. 27 CFR 240.528.
Veltol	To smooth wine	Brand name—now listed by generic name, "maltol".
Veltol Plus	do	Brand name—now listed by generic name "ethyl maltol".
Wine clarifier (containing agar-agar and standard supercel).	To clarify wine	Brand name—no longer manufactured
Wine clarifier (Clari-Vine B) (containing locustbean gum, carrageenan, alginate, bentonite, agar-agar and diatomaceous earth).	do	Do.
Yeastex	To facilitate fermentation	Do.
Yeastex 61	do	Brand name—now listed under component ingredients by generic designations.

In light of the comments received and the suggested revisions to the listings of wine treating materials and processes, AFT is making specific conforming changes in the following regulatory sections in Part 240: (1) Amendment of 27 CFR 240.361, 240.365, 240.401, and 240.405 to provide for the addition of water in the rehydration of dry activated yeast and the use of precipitating agents and inert pressing aids, e.g., rice hulls, in the production of wine, (2) revision of 27 CFR 240.361 and 240.365 to recognize the use of malo-lactic bacteria in the production of wine, (3) revision of 27 CFR 240.364, 240.404, 240.512, 240.526, and 240.539 pertaining to the use of acids in the production, amelioration, and treatment of wine, and (4) repeal of 27 CFR 240.523 and 240.525 pertaining to limitations on the use of antimicrobial agents and tannin, respectively.

Where appropriate, the third column entitled "Reference or Limitation" in the lists prescribed in 27 CFR 240.1051 and 240.1051a is revised to show levels of use in American units of measure with parenthetical metric equivalents since domestic winemakers work in American units rather than in metric units. The originally proposed metric measure is retained as an aid in scientific reference and to facilitate an international understanding of U.S. requirements.

Summary of Comments to Notice No. 414 (Reconstitution of Processed Wine)

The Bureau received 13 comments in response to the notice of proposed rulemaking, Notice No. 414, pertaining to the reconstitution of wines processed by thin-film evaporation under reduced pressure. Villa Bianchi Winery, the original petitioner, was one of eight wineries from which comments were received. The remaining five comments were from the Wine Institute, the German Embassy, Coudert Brothers on behalf of the Federal Republic of Germany, SWK Machines, Inc., a supplier of materials and machinery to the beverage and food industries, and Grenco Special Applications B.V., a West European company which supplies freeze concentration equipment to the food and beverage industries.

All but one of the commenters addressing the issues raised in the notice opposed the practice of reconstitution. Although the use of thin-film evaporation technology in commercial winemaking in the United States is a relatively new practice as opposed to the more traditionally-accepted winemaking practices, the majority of the commenters favored the application of this type of technology to domestic winemaking but were opposed to the practice of reconstituting the processed wine. Several commenters did express support for the refluxing of water lost through azeotropic action and the return of this "old" water in a closed continuous system.

The original petitioner, Villa Bianchi Winery, regarded reconstitution as being acceptable in good commercial practice. All other commenters who addressed the issues raised in the notice indicated strong opposition to reconstitution. Similarly, only one commenter, again Villa Bianchi Winery, among the seven who addressed the label disclosure issue, felt that reconstitution, if permitted, should not require disclosure on beverage wine labels.

Refluxing

When Notice No. 414 was published, ATF had contemplated only the practice of restoring the volume of water lost with "new" water, i.e., distilled water or deionized water added in an open system. Two commenters, the Wine Institute and Paul Masson Vineyards, raised the issue of extending this question to include the refluxing of water and the return of this water to the wine from which it was originally extracted. These commenters expressed the opinion that this type of processing is acceptable in good commercial practice and should not be prohibited.

Refluxing involves adding back in a closed continuous system nearly all of the water and volatile materials which were in the wine prior to processing the wine by means of thin-film evaporation under reduced pressure. The only original component of the wine which is removed to any significant degree is the ethyl alcohol. The system involves a series of evaporation stages wherein (1) alcohol, water, and volatile materials are extracted from standard wine and (2) the mixture of alcohol, water, and volatile materials is subsequently subjected to evaporation in order to fractionate the ethyl alcohol. The water and volatile material fraction returns in a closed continuous system to the same wine from which it was originally removed. Since the solution returned to the wine contains the water and many of the volatile materials extracted in the first stage, the wine resulting from such processing has, with the exception of its lower alcohol content, characteristics which are nearly identical to the characteristics of standard wine prior to being subjected to such processing.

Thermal Gradient Processing

Grenco Special Applications B.V. raised the question of whether a freeze concentration technique which separates wine thermally into gradients or layers would be acceptable under the provisions of section 5382(c) of the Internal Revenue Code of 1954, as amended, as good commercial practice in winemaking in the United States. The commenter proposed the use of the thermal gradient process to concentrate wine by removing the volume of water present in the wine. The commenter proposed to employ this process as a cost efficient method of transporting bulk wine which subsequently either could be blended in its concentrated form with standard wine or reconstituted by the addition of water. ATF has received applications from two winemakers to use thermal gradient processing to separate standard wine into low alcohol and high alcohol wine fractions both having alcohol contents of less than 24 percent by volume. Analyses of samples representative of these fractions confirm that both the high alcohol and low alcohol fractions obtained from thermal gradient processing retain vinous character.

Conclusion

On the basis of the review of the comments received, ATF finds that reconstitution, i.e., the addition of water to wine in order to restore the volume of water lost through thin-film evaporation, is not acceptable in "good commercial practice" and, accordingly, under the authority provided in 26 U.S.C. 5382(c), prohibits this practice in the cellar treatment of wine. Further, having evaluated the comments addressing the issue of refluxing, i.e., the separation of water from the mixture of alcohol and water obtained as a byproduct from thin-film evaporation and the return of this water in a closed continuous system to the low alcohol wine fraction, ATF finds that the refluxing operation is acceptable in good commercial practice and need not be disclosed in labeling. Application of thermal gradient processing, i.e., the use of cold to fractionate standard wine into low alcohol and high alcohol wine fractions, is deemed to be acceptable in good commercial practice provided no water is added to either fraction. Standard wine subjected to such processing and subsequently reconstituted in the United States would no longer be classed as standard wine and would become "other than standard" for designation and labeling purposes.

Public Participation

Concurrent with the publication of this final rule, the Bureau is issuing a notice of proposed rulemaking, Notice No. 543, in which the Bureau requests comments pertaining to certain materials which the Bureau deems to merit additional data prior to final rulemaking. Commenters are encouraged to read the preceding paragraphs in which the agency has addressed the comments received in response to Notice Nos. 413 and 426. Specific comments are being solicited via the notice of proposed rulemaking regarding (1) proposed maximum residual sulfur dioxide levels for red and rose wines, white wines, and wine produced from juice having high solids content, (2) the acceptability in "good commercial practice" of using either activated carbon or hydrogen peroxide or an "anthocyanase" enzyme preparation to decolorize the juice obtained from crushing red and black grapes, (3) the acceptability of the continued use of maltol or ethyl maltol in the treatment of wine, (4) the proposed 3-fold increase in the presently imposed one percent by volume limitation on the addition of water to wine via water slurries used in the preparation of treating materials, (5) proposed maximum levels for ethyl acetate and hydrogen sulfide in standard wine, (6) proposed volatile acidity levels of 0.15 gram per 100 milliliters for white wine produced from unameliorated juice having a minimum solids content of 28° Brix and of 0.17 gram per 100 milliliters for red wine produced from unameliorated juice having a minimum solids content of 28° Brix, (7) ATF's proposal, based on the review of comments received in response to Notice Nos. 413 and 426, to delete the parabens and propylene glycol, a solvent used in the preparation of the parabens, from the list of authorized treating materials, (8) the continued use of potassium benzoate to preserve wine, (9) ATF's proposal to permit the addition of acid to 9 parts per thousand in white wines containing 5 or more grams of sugar per liter, and, (10) ATF's proposal that the authorized level of sorbic acid in finished wine be further reduced from 300 to 200 milligrams per liter.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable because this final rule will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3507, and its implementing regulations, 5 CFR Part 1320, ATF requested approval by the Office of Management and Budget (OMB) of the recordkeeping requirements prescribed in §§ 240.1052 and 240.1053. These requirements have been approved by OMB Control No. 1512–0292. The records required in these sections are not newly required; however, these regulations are more specific as to the types of information which must be made a part of an application to employ a material or process in the cellar treatment of standard wine. Public comments relating to paperwork burdens are discussed earlier in this preamble.

Drafting Information

The principal author of this document is Coordinator Michael J. Breen of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. ATF Chemist Randolph H. Dyer, ATF Wine Technical Advisor Richard M. Gahagan, and ATF International Liaison Officer Gale Guinand have assisted in the preparation of this document.

List of Subjects in 27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouse, Wine and vinegar.

Authority: These regulations are issued under the authority contained in 26 U.S.C. 5382 (72 Stat. 1383, as amended) and 26 U.S.C. 7805 (68A Stat. 917, as amended).

Accordingly, Title 27, Code of Federal Regulations, Part 240 is amended as follows:

PART 240—WINE

Subpart P—Production and Treatment of Natural Grape Wine

Par. 1. Section 240.361 is amended to provide for the addition of water to rehydrate dry activated yeast and for the use of malo-lactic bacteria, precipitating agents, and inert pressing aids. Section 240.361 is amended by revising paragraphs (b)–(d) to read as follows:

§ 240.361 Materials.

* * * * *

(b) Yeast or yeast cultures grown in grape juice, to any extent desired, provided that where dry activated yeast has been rehydrated by the addition of water, the volume of water used to rehydrate the yeast shall not exceed 15 liters of water for each kilogram of yeast, and the increase in volume of the juice shall not exceed 0.5 percent by volume;

(c) Malo-lactic bacteria listed in Subpart ZZ of this part; and,

(d) Yeast nutrients, sterilizing and precipitating agents, inert pressing aids, or fermentation adjuncts listed in Subpart ZZ of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended, 1384, as amended (26 U.S.C. 5381, 5382, 5383))

Par. 2. Section 240.364 is amended to conform with § 240.1051 in respect to the use of fumaric acid and lactic acid to correct natural acid deficiencies in grape wine. Section 240.364 is revised to read as follows:

§ 240.364 Addition of acid to correct natural deficiencies in grape wine.

(a) *General.* Prior to and/or during fermentation, tartaric acid or malic acid, or a combination of both tartaric acid and malic acid, may be added to correct natural deficiencies in the fruit or juice, and after fermentation is completed, citric, fumaric, lactic, malic, or tartaric acid, or a combination of two or more of these acids, may be added to wine to correct natural deficiencies within the limitations prescribed in § 240.1051 and to the extent that the finished wine does not contain more than 8 grams per liter of fixed acid (calculated as tartaric acid). Where ameliorating material, as authorized in § 240.366, is used in the production of grape wine, no acid may be used to correct deficiencies.

(b) *Record.* A record of the quantity of acid used under the provisions of this section shall be kept in accordance with the provisions of § 240.917.

(c) *Other acids.* If the winemaker desires to use other organic acids, the requirements of § 240.1053 shall be followed. If the winemaker desires to use acid to stabilize wine, the requirements of § 240.526 shall be followed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Par. 3. Section 240.365 is amended to provide for the addition of water to dry activated yeast and for the use of malo-lactic bacteria, precipitating agents, and inert pressing aids. Section 240.365 is amended by revising paragraphs (a)–(c) to read as follows:

§ 240.365 Materials.

* * * * *

(a) Yeast or yeast cultures grown in grape juice, to any extent desired, provided that where dry activated yeast has been rehydrated by the addition of water, the maximum volume of water used to rehydrate the yeast shall not exceed 15 liters for each kilogram of yeast, and the maximum increase in volume of the juice is 0.5 percent by volume;

(b) Malo-lactic bacteria listed in Subpart ZZ of this part; and,

(c) Yeast nutrients, sterilizing and precipitating agents, inert pressing aids, or fermentation adjuncts listed in Subpart ZZ of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1384, as amended (26 U.S.C. 5383))

Subpart Q—Production and Treatment of Natural Fruit Wine

Par. 4. Section 240.401 is amended to provide for the addition of water to dry activated yeast and for the use of precipitating agents. Section 240.401 is amended by revising paragraphs (a) and (b) to read as follows:

§ 240.401 Materials.

* * * * *

(a) Yeast or yeast cultures grown in juice of the same kind of fruit, to any extent desired, provided that where dry activated yeast has been rehydrated by the addition of water, the maximum volume of water used to rehydrate the yeast is 15 liters for each kilogram of yeast, and the maximum increase in volume of the juice shall not exceed 0.5 percent by volume; and,

(b) Yeast nutrients, sterilizing and precipitating agents, inert pressing aids, or fermentation adjuncts listed in Subpart ZZ of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381))

Par. 5. Section 240.404 is amended to include a reference to § 240.526 providing for the addition of fumaric acid to stabilize wine. Section 240.404 is revised to read as follows:

§ 240.404 Addition of acid to correct natural deficiencies in fruit wine.

(a) *General.* Acid of the kinds occurring in a fruit may be added to correct natural deficiencies in the fruit, or juice, or wine made therefrom, within the limitations prescribed in § 240.1051 and to the extent that the finished wine does not contain more than 7 grams of fixed acid per liter of wine (calculated as malic acid for apples and citric acid for other fruits or berries). Only malic acid may be added to apple wine and only citric acid may be added to citrus fruit wine. Citric acid or malic acid, or a combination of citric acid and malic acid, may be added to other fruit wines to correct natural acid deficiencies. Where ameliorating material, as authorized in § 240.407, is used in the production of fruit wine, no acid may be used to correct natural acid deficiencies.

(b) *Record of use.* A record of the use of acid under the provisions of this section shall be kept in accordance with the provisions of § 240.917.

(c) *Other acids.* If the winemaker desires to use other organic acids, the requirements of § 240.1053 shall be followed. If the winemaker desires to add acid to stabilize wine, the requirements of § 240.526 shall be followed.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Par. 6. Section 240.405 is amended to provide for the addition of water to dry activated yeast and for the use of precipitating agents and inert pressing aids. Section 240.405 is amended by revising paragraphs (a)-(b) to read as follows:

§ 204.405 Materials.

* * * * *

(a) Yeast or yeast cultures grown in juice of the same kind of fruit, to any extent desired, provided that where dry activated yeast has been rehydrated by the addition of water, the maximum volume of water used to rehydrate the yeast is 15 liters for each kilogram of yeast, and the maximum increase in volume of the juice shall not exceed 0.5 percent by volume; and,

(b) Yeast nutrients, sterilizing and precipitating agents, inert pressing aids, or fermentation adjuncts listed in Subpart ZZ of this part.

(Sec. 201 Pub. L. 85-859, 72 Stat. 1385, as amended (26 U.S.C. 5384))

Par. 7. Section 240.512 is amended to include by reference to 27 CFR 240.1051 various acids which may be employed in preparing still wine for the production of effervescent wine and in the refermentation and finishing of effervescent wine. Section 240.512 is revised to read as follows:

§ 240.512 Process and materials.

In preparing still wine for the production of effervescent wine, pure sugar or a solution of pure sugar and water of not less than 60° Brix, and acid of the kinds and within the limitations prescribed in 27 CFR 240.364 may be added with yeast or yeast culture to facilitate the process of secondary fermentation or to correct the acidity of the wine. Fruit syrup, pure sugar, a solution of pure sugar and water of not less than 60° Brix, wine, wine spirits, and acid may be used in preparing a finishing dosage for sparkling wine or carbonated wine. The fruit syrup, wine spirits and wine so used shall come from the same kind of fruit as the wine from which the sparkling wine or carbonated wine is made. In the production of effervescent natural wine, taxpaid wine spirits or wine spirits withdrawn tax-free under the provisions of Subpart PP of this part may be used. Tax-free wine spirits may not be used in the production of effervescent wine which is not natural wine. In the refermentation and finishing of the effervescent wine, the acids and materials specifically authorized in § 240.1051 for correction of acid deficiencies or for stabilization may be used.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

§ 240.523 [Reserved]

Par. 8. Section 240.523 is repealed since the limitations on the use of sulfiting agents are prescribed in §§ 240.1051 and 4.22. Section 240.523 is removed and reserved.

§ 240.525 [Reserved]

Par. 9. Section 240.525 pertaining to the addition of tannin to wine in order to facilitate the precipitation of fining agents is repealed since the various uses of tannin as a treating material in wine are prescribed in 27 CFR § 240.1051. Section 240.525 is removed and reserved:

Par. 10. Section 240.526 is amended to provide for the use of citric acid to stabilize standard wine other than citrus wine and to provide for the use of fumaric acid to stabilize standard wine. Section 240.526 is revised to read as follows:

§ 240.526 Addition of acid to stabilize standard wine.

Standard wine other than citrus wine may be stabilized by the addition of not more than 5.8 pounds of citric acid per 1,000 gallons of wine within the limitations of § 240.1051. Standard wine including citrus wine may be stabilized by the addition of not more than 25 pounds of fumaric acid per 1,000 gallons of wine within the limitations of § 240.1051. The record required by § 240.917 must be maintained to document the quantity of each acid used to stabilize standard wine.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Par. 11. Section 240.528 is amended to include specific references to agar-agar, carrageenan, cellulose, and diatomaceous earth as inert filtering and clarifying aids and to specify that a record of use must be maintained if these materials are dissolved in water slurries. Section 240.528 is revised to read as follows:

§ 240.528 Filtering and clarifying aids.

Inert fibers, pulps, earths, or similar materials, may be used as filtering or clarifying aids in the cellar treatment and finishing of wine. Agar-agar, carrageenan, cellulose, and diatomaceous earth are commonly employed inert filtering and clarifying aids. There is no limitation on the use of such inert materials as filtering or clarifying aids; however, where such materials are dissolved in water prior to addition to wine, the record required in § 240.908 shall be maintained. Filtering and clarifying aids which contain active chemical ingredients or which have been so treated that their use alters the character of wine may be used only in accordance with the provisions of Subpart ZZ of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Par. 12. Section 240.539 is amended to provide for the addition of citric and fumaric acids to stabilize standard wine other than citrus wine. Section 240.539 is revised to read as follows:

§ 240.539 Addition of acid.

Citric acid, fumaric acid, or a combination of citric acid and fumaric acid, may be added to wine treated in accordance with the provisions of §§ 240.536-240.538, only for stabilization, within the limitations provided in § 240.526.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Par. 13. Section 240.908 is amended to require a record of the volume of water based treating material(s) added to bulk wine. Section 240.908 is amended by revising the introductory text of the section and paragraph (d) to read as follows:

§ 240.908 Record of bulk still wine.

Each proprietor of a bonded wine cellar who produces or receives still wine, other than distilling material or vinegar stock made with excess water, shall maintain a daily record of transactions for bulk still wine. A separate record (verifiable by source records) shall be maintained for each tax class of still wine. The record shall contain the following:

* * * * *

(d) The quantity used and produced by sweetening, amelioration, or addition of wine spirits established by measurements taken before and after production. In addition, the record shall contain the kind and quantity of any material added to the wine and where a treating material is dissolved or dispersed in water in accordance with the provisions of Subpart ZZ of this part, the volume(s) of water based treating material(s) added to the bulk wine;

* * * * *

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

Par. 14. The title of Subpart ZZ is revised to read as follows:

Subpart ZZ—Materials and Processes Authorized for Treatment of Wine Juice and Distilling Material

Par. 15. The title and text of § 240.1051 are revised to read as follows:

§ 240.1051 Materials authorized for treatment of wine and juice.

The materials listed in this section are approved, as being consistent with good commercial practice, for use by proprietors of bonded wine cellars in the production, cellar treatment, or finishing of wine, and where applicable in the treatment of juice, within the general limitations of § 240.524 or the limitations specified in this section: *Provided:* (a) That when the specified use or limitation of any material on this list is determined to be unacceptable by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the material in the production, cellar treatment, or finishing of wine; and (b) That where water is added to facilitate the solution or dispersal of a material, the volume of water added, whether the material is used singly or in combination with other water based treating materials, must not total more than *1 percent* of the volume of treated wine and/or the juice from which such wine is produced.

Materials	Use	Reference or limitation
Acacia (gum arabic)	To clarify and to stabilize wine	The amount used shall not exceed 2 lbs/1,000 gals. (0.24 g/L) of wine. 21 CFR 184.1330 (GRAS).[1]
Activated carbon	To assist precipitation during fermentation	27 CFR 240.361, 240.365, 240.401 and 240.405. GRAS per FDA advisory opinion dated 1/26/79.
	To clarify and to purify wine	The amount used to clarify and to purify wine shall be included in the total amount of activated carbon used to remove excessive color in wine. 27 CFR 240.524, 240.527 and 240.527a (GRAS).
	To remove excessive color in white wine	The amount used shall not exceed 9 lbs/1,000 gals. (1.08 g/L) of wine. If the amount used exceeds this limit, a notice is required pursuant to 27 CFR 240.527a (GRAS).
	To remove excessive color in pale dry sherry or cocktail sherry	The amount used shall not exceed 25 lbs/1,000 gals. (3.0 g/L) of wine. 27 CFR 240.527 (GRAS).
	To reduce color in the juice from red and black grapes	The amount used to reduce color must not exceed 4 lbs/1,000 gals. (0.48 g/L) of juice. Wine made from juice so treated shall have a color of not more than 95 percent transmittance per [2] AOAC Method 11.003–11.004 (13th Ed.) or equivalent.
Albumen (egg white)	Fining agent for wine	May be prepared in a light brine: 1 oz. (28.35 grams) potassium chloride, 2 lbs (907.2 grams) egg white, 1 gal. (3.785 L) of water. Usage not to exceed 1.5 gals. of solution per 1,000 gals. of wine. (GRAS).
Alumino-silicates (hydrated) e.g., Bentonite (Wyoming clay) and Kaolin.	To clarify wine	21 CFR 182.2727, 182.2729, 184.1155 (GRAS) and 186.1256. The sodium content of the wine shall not be increased by such treatment. Request for (GRAS) advisory opinion pending.
Ammonium carbonate	Yeast nutrient to facilitate fermentation in wine	The natural fixed acids shall not be reduced below 5 g/L. The amount used shall not exceed 2 lbs/1,000 gals. (0.24 g/L). 21 CFR 184.1137 (GRAS).
Ammonium phosphate (mono- and dibasic).	Yeast nutrient in wine production and to start secondary fermentation in the production of sparkling wines.	As a yeast nutrient in wine production, the amount shall not exceed 1.7 lbs/1,000 gals. (0.20 g/L). In the production of sparkling wines, the amount used shall not exceed 8 lbs/1,000 gals. (1.00 g/L) of wine. 21 CFR 184.1141 (GRAS).
Ascorbic acid, iso-ascorbic acid (erythorbic acid).	To prevent oxidation of color and flavor components of juice and wine.	May be added to fruit, grapes, berries, and other materials used in wine production, to the juice of such materials, or to the wine, within limitations which do not alter the class or type of the wine. 21 CFR 182.3013 and 182.3041 (GRAS).
Autolyzed yeast	Yeast nutrient to facilitate fermentation in the production of grape or fruit wine.	21 CFR 172.896, 184.1983. GRAS per FDA advisory opinion of 10/06/59.
Calcium carbonate (with or without calcium salts of tartaric and malic acids).	To reduce the excess natural acid in high acid wine	The natural or fixed acids shall not be reduced below 5 g/L. 21 CFR 184.1069, 184.1099, and 184.1191. (GRAS).
	A fining agent for cold stabilization	The amount used shall not exceed 30 lbs/1,000 gals. (3.59 g/L) of wine.
Calcium sulfate (gypsum)	To lower pH in sherry wine	The calcium sulfate content of the finished wine shall not exceed 16.69 lbs/1,000 gals. (2.0 g/L). 27 CFR 240.365; 21 CFR 184.1230 (GRAS).
Carbon dioxide	To stabilize [3] and to preserve wine	27 CFR 240.531 through 240.535; 21 CFR 184.1240 (GRAS).
	To maintain counterpressure during the transfer of sparkling wines.	The carbon dioxide content of the finished wine shall not be increased during the transfer operation. 27 CFR 240.510.
Casein, potassium salt of casein	To clarify wine	GRAS per FDA opinions of 2/23/60 and 8/25/61. 27 CFR 240.528.
Citric acid	To correct natural acid deficiencies in wine	27 CFR 240.364, 240.404, and 240.512; 21 CFR 182.1033 (GRAS).
	To stabilize wine other than citrus wine	The amount of citric acid shall not exceed 5.8 lbs/1,000 gals. (0.7 g/L). 27 CFR 240.526, 240.539; 21 CFR 182.1033 (GRAS).
Copper sulfate	To remove hydrogen sulfide and/or mercaptans from wine	The quantity of copper sulfate added (calculated as copper) shall not exceed 0.5 part copper per million parts of wine with the residual level of copper not to be in excess of 0.2 part per million. GRAS per FDA advisory opinion of 7/23/69.
Defoaming agents: (polyoxyethylene 40 monostearate, silicon dioxide, dimethylpoly-siloxane, and sorbitan monostearate).	To control foaming	Defoaming agents which are 100% active may be used in amounts not exceeding 0.15 lbs/1,000 gals. (0.018 g/L) of wine. Defoaming agents which are 30% active may be used in amounts not exceeding 0.5 lbs/1,000 gals. (0.06 g/L) of wine. Silicon dioxide shall be completely removed by filtration. The amount of silicon remaining in the wine shall not exceed 10 parts per million and no soluble residue in excess of 25 parts per million shall remain in the wine. 21 CFR 173.340.
Enzymatic activity:		The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (alpha-Amylase)	To convert starches to fermentable carbohydrates	The amylase enzyme activity shall be derived from Aspergillus niger, Aspergillus oryzae, Bacillus subtilis, or barley malt per FDA advisory opinion of 8/18/83 or from Rhizopus oryzae per 21 CFR 173.130 or from Bacillus licheniformis per 21 CFR 184.1027.
Carbohydrase (beta-Amylase)	To convert starches to fermentable carbohydrates	The amylase enzyme activity shall be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucoamylase, Amyloglucosidase).	To convert starches to fermentable carbohydrates	The amylase enzyme activity shall be derived from Aspergillus niger or Aspergillus oryzae per FDA advisory opinion dated 8/18/83 or from Rhizopus oryzae per 21 CFR 173.130 or from Rhizopus niveus per 21 CFR 173.110.
Catalase	To clarify and to stabilize wine	The enzyme activity used shall be derived from Aspergillus niger or bovine liver per FDA advisory opinion dated 8/18/83 (GRAS).
Cellulase	To clarify and to stabilize wine and to facilitate separation of the juice from the fruit.	The enzyme activity used shall be derived from Aspergillus niger per FDA advisory opinion dated 8/18/83 (GRAS).
Glucose oxidase	To clarify and to stabilize wine	The enzyme activity used shall be derived from Aspergillus niger per FDA advisory opinion of 8/18/83 (GRAS).
Pectinase	To clarify and to stabilize wine and to facilitate separation of juice from the fruit.	The enzyme activity used shall be derived from Aspergillus niger per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (general)	To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from Aspergillus niger or Bacillus subtilis per FDA advisory opinion dated 8/18/83 or from Bacillus licheniformis per 21 CFR 184.1027 (GRAS).

Materials	Use	Reference or limitation
Protease (Bromelin)	To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from Ananus comosus or Ananus bracteatus (L) per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (Ficin)	To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from Ficus spp. per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (Papain)	To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from Carica papaya (L) per 21 CFR 184.1585 (GRAS).
Protease (Pepsin)	To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from porcine or bovine stomachs per FDA advisory opinion dated 8/18/83 (GRAS).
Protease (Trypsin)	To reduce or to remove heat labile proteins	The enzyme activity used shall be derived from porcine or bovine pancreas per FDA advisory opinion dated 8/18/83 (GRAS).
Ethyl maltol	To smooth wine	Use limited to not more than 100 mg/L. 21 CFR 172.515.
Ferrocyanide compounds (sequestered complexes).	To remove trace metal from wine and to remove objectionable levels of sulfide and mercaptans from wine.	No insoluble or soluble residue in excess of 1 part per million shall remain in the finished wine and the basic character of the wine shall not be changed by such treatment. GRAS per FDA advisory opinion of 6/22/82.
Ferrous sulfate	To clarify and to stabilize wine	The amount used shall not exceed 3 ozs./1,000 gals. (0.022 g/L) of wine. 21 CFR 182.8315 (GRAS).
Fumaric acid	To correct natural acid deficiencies in grape wine	Use must not exceed 25 lbs/1,000 gals. (3.0 g/L). 27 CFR 240.364, 240.404, and 240.512. 21 CFR 172.350. The fumaric acid content of the finished wine shall not exceed 3.0 g/L.
	To stabilize wine	Use must not exceed 25 lbs/1,000 gals. (3.0 g/L). 27 CFR 240.526, 240.539. 21 CFR 172.350. The fumaric acid content of the finished wine shall not exceed 3.0 g/L.
Gelatin (food grade)	To clarify juice or wine	(GRAS).
Granular cork	To treat wine	The amount used shall not exceed 10 lbs/1,000 gals. of wine (1.2 g/L). Request for GRAS advisory opinion pending.
Hydrogen peroxide	To facilitate secondary fermentation in the production of sparkling wine.	Amount used shall not exceed 3 parts per million. The finished wine shall contain no residual hydrogen peroxide. (GRAS).
	To remove color from the juice of red and black grapes	The amount used shall not exceed 500 parts per million. The use of hydrogen peroxide is limited to oxidizing color pigment in the juice of red and black grapes. 21 CFR 182 1366 (GRAS).
Isinglass	To clarify wine	Request for GRAS advisory opinion pending.
Lactic acid	To correct natural acid deficiencies in grape wine	27 CFR 240.364 and 240.512; 21 CFR 182.1061 (GRAS).
Malic acid	To correct natural acid deficiencies in juice or wine	27 CFR § 240.364, 240.404, and 240.512. 21 CFR 184.1069 (GRAS).
Malo-lactic bacteria	To stabilize grape wine	Malo-lactic bacteria of the type Leuconostoc oenos may be used in treating wine. Request for GRAS advisory opinion pending.
Maltol	To smooth wine	Use limited to not more than 250 mg/L. 21 CFR 172.515.
Nitrogen gas	To maintain pressure during filtering and bottling or canning of wine and to prevent oxidation of wine.	21 CFR 184.1540 (GRAS).
Oak chips or particles, uncharred and untreated.	To smooth wine	21 CFR 172.510.
Oxygen and compressed air	In baking or maturing wine and aeration of sherry	May be used provided it does not cause changes in the wine other than those occurring during the usual storage in wooden cooperage over a period of time.
Parabens (n-alkyl esters of p-hydroxybenzoic acid: heptyl-, Propyl-, and methyl-.	To preserve wine	Use separately or in combination must not exceed 0.1 percent by weight (w/w). Use of n-heptyl-paraben must not exceed 12 parts per million. 21 CFR 172.145, 184.1490, 184.1670 (GRAS).
Polyvinyl-polypyr-rolidone (PVPP)	To clarify and to stabilize wine	The amount used shall not exceed 6 lbs/1,000 gals. (0.72 g/L) of wine. Material shall be removed during filtration. 21 CFR 173.50.
Polyvinyl-pyrrolidone (PVP)	To clarify wine	The residual level of PVP in the finished wine shall not exceed 60 parts per million. 21 CFR 173.55.
Potassium benzoate	To preserve wine	Use separately or in combination with other approved antimicrobial agents must not exceed 0.1 percent of the volume of juice and/or wine so treated. GRAS advisory opinion pending.
Potassium bitartrate	To stabilize grape wine	The amount used shall not exceed 35 lbs/1,000 gals. (4.19 g/L) of grape wine. 21 CFR 184.1077 (GRAS).
Potassium carbonate and/or potassium bicarbonate.	To reduce excess natural acidity in wine	The natural or fixed acids shall not be reduced below 5 parts per thousand (5 g/L). 21 CFR 184.1613 and 184.1619 (GRAS).
Potassium citrate	pH control agent and sequestrant in treatment of citrus wines	The amount of potassium citrate shall not exceed 25 lbs/1,000 gals. (3.0 g/L) of finished wine. 27 CFR 240.404; 21 CFR 182.1625 and 182.6625 (GRAS).
Potassium metabisulfite	To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22. 21 CFR 182.3637 (GRAS).
Propylene glycol	Solvent for parabens	The amount used shall not exceed 40 parts per million in wine. 21 CFR 184.1666 (GRAS).
Silica gel (colloidal silicon dioxide)	To clarify wine	Use shall not exceed the equivalent of 20 lbs. colloidal silicon dioxide at a 30% concentration per 1,000 gals. of wine. (2.4 g/L). Silicon dioxide shall be completely removed by filtration (GRAS).
Sorbic acid and potassium salt of sorbic acid.	To sterilize and to preserve wine; to inhibit mold growth and secondary fermentation.	The finished wine shall contain not more than 300 milligrams of sorbic acid per liter of wine. 21 CFR 183.3089 and 182.3640 (GRAS).
Soy flour (defatted)	Yeast nutrient to facilitate fermentation of wine	The amount used shall not exceed 2 lbs/1,000 gals. (0.24 g/L) of wine (GRAS).
Sulfur dioxide	To sterilize and to preserve wine	The sulfur dioxide content of the finished wine shall not exceed the limitations prescribed in 27 CFR 4.22(b)(1). 21 CFR 182.3862 (GRAS).
Tannin	To adjust tannin content in apple juice or wine	The residual amount of tannin shall not exceed 3.0 g/L, calculated as gallic acid equivalents (GAE). GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60.
	To clarify or to correct tannin deficiencies in grape juice or wine.	The residual amount of tannin, calculated in gallic acid equivalents, shall not exceed 0.8 g/L in white wine and 3.0 g/L in red and rose wines. Only tannin which does not impart color may be used in the cellar treatment of juice or wine. GRAS per FDA advisory opinions dated 4/6/59 and 3/29/60.
Tartaric acid	To correct natural acid deficiencies in grape juice or grape wine.	Use as prescribed in 27 CFR 240.364 and 240.512; 21 CFR 184.1099 (GRAS).
Thiamine hydrochloride	Yeast nutrient to facilitate fermentation of wine	The amount used shall not exceed 0.005 lb/1,000 gals. (0.6 mg/L) of wine or juice. 21 CFR 184.1875 (GRAS).
Urea	Yeast nutrient to facilitate fermentation of wine	The amount used shall not exceed 2 lbs/1,000 gals. (0.24 g/L) of wine. 21 CFR 184.1923 (GRAS).

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[1] GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in Title 21, Code of Federal Regulations, Part 182 or Part 184, or is considered to be generally recognized as safe by the U.S. Food and Drug Administration.

[2] AOAC—Association of Official Analytical Chemists.

[3] To stabilize—To prevent or to retard unwanted alteration of chemical and/or physical properties.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

Par. 16. A new § 240.1051a is added and reads as follows:

§ 240.1051a Materials authorized for treatment of distilling material.

The materials listed in this section as well as the materials listed in § 240.1051 are approved as being consistent with good commercial practice for use by proprietors of bonded wine cellars in the treatment of distilling material within the limitations specified in this section: *Provided*, That when the specified use or limitation of any material on this list is determined to be unacceptable by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the material in the treatment of distilling material.

Materials	Use	Reference or limitation
Ammonium phosphate (mono- and dibasic).	Yeast nutrient in distilling material	The amount used shall not exceed 10 lbs/1,000 gals. (1.2 g/L). 21 CFR 184.1141 (GRAS).[1]
Amylase enzyme activity		The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
Carbohydrase (alpha-Amylase)	To convert starches to fermentable carbohydrates	The amylase enzyme activity shall be derived from Aspergillus niger, Aspergillus oryzae, Bacillus subtilis, or barley malt per FDA advisory opinion of 8/18/83 or from Rhizopus oryzae per 21 CFR 173.130 or from Bacillus licheniformis per 21 CFR 184.1027.
Carbohydrase (beta-Amylase)	To convert starches to fermentable carbohydrates	The amylase enzyme activity shall be derived from barley malt per FDA advisory opinion dated 8/18/83.
Carbohydrase (Glucomylase, Amyloglucosidase).	To convert starches to fermentable carboyhdrates	The amylase enzyme activity shall be derived from Aspergillus niger or Aspergillus oryzae per FDA advisory opinion dated 8/18/83 or from Rhizopus oryzae per 21 CFR 173.130 or from Rhizopus niveus per 21 CFR 173.110.
Copper sulfate	To eliminate hydrogen sulfide and mercaptans	The finished brandy or wine spirits produced from distilling material to which copper sulfate has been added shall not contain more than 2 parts per million (2 mg/L) residual copper. GRAS per FDA advisory opinion of 7/23/69.
Hydrogen peroxide	To reduce the bisulfite aldehyde complex in distilling material	The amount used shall not exceed 200 parts per million. 21 CFR 182.1366 (GRAS).
Potassium permanganate	Oxidizing agent	The finished brandy or wine spirits produced from distilling material to which potassium permanganate has been added must be free of chemical residue resulting from such treatment (GRAS).
Sodium benzoate	To prevent fermentation of the sugar in special natural wine being accumulated as distilling material.	The amount used shall not exceed 0.1% (w/w). 21 CFR 184.1733 (GRAS).
Sodium hydroxide	Acid neutralizing agent	The finished brandy or wine spirits produced from distilling material to which sodium hydroxide has been added must be free of chemical residue resulting from such treatment. 21 CFR 184.1763 (GRAS).
Sulfuric acid	To effect favorable yeast development in distilling material; to prevent fermentation of the sugar in special natural wine being accumulated as distilling material; to lower pH to 2.5 to prevent putrefaction and/or ethyl acetate development.	27 CFR 240.486; 21 CFR 184.1095 (GRAS).

[1] GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in Title 21, Code of Federal Regulations, Part 182 or Part 184, or is considered to be generally recognized as safe by the U.S. Food and Drug Administration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

Par. 17. A new § 240.1051b is added and reads as follows:

§ 240.1051b Processes authorized for the treatment of wine, juice, and distilling material.

The processes listed in this section are approved, as being consistent with good commercial practice, for use by proprietors of bonded wine cellars in the production, cellar treatment, or finishing of standard wine, juice, and distilling material, within the general limitations of § 240.524 or the limitations specified in this section: *Provided*, That when the specified use or limitation of any process on this list is determined to be unacceptable for use in foods and beverages by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the process in the production, cellar treatment, or finishing of standard wine, juice, and distilling material.

Processes	Use	Reference or limitation
Ion exchange	Various applications in the treatment of wine	Anion, cation, and non-ionic resins, except those anionic resins in the mineral acid state, may be used in batch or continuous column processes as total or partial treatment of wine, provided that with regard to the finished wine: 1. Such treatment does not alter the vinous character of the wine. 2. The treatment does not reduce the color of the wine to less than that normally contained in such wine. 3. The treatment does not increase inorganic anions in the wine by more than 10 mg/L. 4. The treatment does not reduce the metallic cation concentration in the wine to less than 300 mg/L. 5. The treatment does not reduce natural or fixed acid in grape wine below 4 g/L for red table wines, 3 g/L for white table wines, 2.5 g/L for all other grape wines, 4 g/L for wine other than grape wine. 6. Treatment does not reduce the pH of the wine to less than pH 3 nor increase the pH to more than pH 4.5. 7. The resins used have not imparted to the wine any material or characteristic (incidental to the resin treatment) which may be prohibited under any other section of the regulations in this part. The winemaker may employ conditioning and/or regenerating agents consisting of water, fruit acids common to the wine being treated, and inorganic acids, salts and/or bases provided the conditioned or regenerated resin is rinsed with water until the resin and container are essentially free from unreacted (excess) conditioning or regenerating agents prior to the introduction of the wine. 21 CFR 173.25.

Processes	Use	Reference or limitation
Thermal gradient processing	To separate standard wine into low alcohol and high alcohol wine fractions.	The fractions derived from such processing must retain the color, taste, and other vinous characteristics of the wine prior to treatment. Such treatment must not reduce the ethyl alcohol content of the low alcohol fraction to less than 3 percent by volume nor increase the alcohol content of the high alcohol fraction to more than 24 percent by volume. Blending is restricted to wine of the proprietor's own production. Reconstitution, i.e., the addition of water other than that originally present in the wine prior to processing, is prohibited.
Thin-film evaporation under reduced pressure.	To separate standard wine into a low alcohol wine fraction and into a higher alcohol distillate.	Wine so treated must retain the color, flavor and other vinous characteristics of the wine prior to treatment. Such treatment must not reduce the ethyl alcohol content of the low alcohol fraction to less than 3 percent by volume. Blending is restricted to wine of the proprietor's own production. Reconstitution, i.e., the addition of water other than that originally present in the wine prior to processing, is prohibited. Water lost in processing may be recovered by refluxing in a closed continuous system and returned to the wine from which it was extracted.
Elimination of sulfur dioxide by physical process.	To reduce the sulfur dioxide content of juice	Use of a physical process to remove sulfur dioxide from juice must not alter the basic character of the juice so treated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

Par. 18. The original title and text of § 240.1052 are repealed. Section 240.1052 is revised to read as follows:

§ 240.1052 Experimentation with new treating material or process.

(a) *General.* The proprietor of a bonded wine cellar may, under the provisions of this section, conduct on bonded wine cellar premises experimentation with a treating material or process as the Director finds may be conducted in a manner that will not jeopardize the revenue, conflict with wine operations, or be contrary to law.

(b) *Application.* A proprietor desiring to conduct experimentation shall file an application with the Regional Director (Compliance) setting forth in detail the experimentation to be conducted and the facilities and equipment to be used. The proposed experimentation shall not be conducted until (1) the Director has determined that the conduct of such experimentation will not jeopardize the revenue, conflict with wine operations, or be contrary to law; and (2) the Regional Director (Compliance) has approved the application. Where the Director has determined previously that such an experiment may be conducted on bonded wine cellar premises, the Regional Director (Compliance) may approve applications to conduct a similar type of experiment, unless the Regional Director (Compliance) finds that there are particular conditions in respect of the applicant's premises or operations that would cause the conduct of such experiment to be a jeopardy to the revenue or to conflict with wine operations.

(c) *Segregation of operations.* Experimentation authorized under this section shall be conducted with such degree of segregation from wine operations as may be required by the Regional Director (Compliance) under the provisions of § 240.131.

(d) *Records.* The proprietor shall, with respect to each experiment authorized under this section, keep records of the kind and quantity of materials received and used and the volume of wine treated. The disposition of such wine shall be done in accordance with the provisions of 27 CFR 240.740.

(Approved by the Office of Management and Budget under control number 1512–0292)

(Sec. 201, Pub. L. 85–859 (72 Stat. 1383, as amended (26 U.S.C. 5361))

Par. 19. A new section 240.1053 is added to read as follows:

§ 240.1053 Application for use of new treating material or process.

(a) *General.* If the proprietor desires to use a material or process which is not specifically authorized in §§ 240.1051, 240.1051a, 240.1051b, or elsewhere in this part the proprietor shall file an application with the Regional Director (Compliance) of the region in which the bonded wine cellar is located to show that the proposed material or process is a cellar treatment consistent with good commercial practice.

(b) *Data required.* The application shall include the following: (1) The name and description of the material or process; (2) the purpose, the manner, and the extent to which the material or process is to be used together with any technical bulletin or other pertinent information relative to the material or process; (3) a sample, if a proposed material; (4) documentary evidence of the U.S. Food and Drug Administration's approval of the material for its intended purpose in the amounts proposed for the particular treatment contemplated; (5) the test results of any laboratory-scale pilot study conducted by the winemaker in testing the material and an evaluation of the product and of the treatment including the results of tests of the shelf life of the treated wine; (6) a tabulation of pertinent information derived from the testing program conducted by the chemical manufacturer demonstrating the function of the material or process; (7) a list of all chemicals used in compounding the treating material and the quantity of each component; (8) the recommended maximum and minimum amounts, if any, of the material proposed to be used in the treatment and a statement as to the volume of water required, if any, to facilitate the addition of the material or operation of the process; and (9) two 750-milliliter samples representative of the wine before and after treatment. Information of a confidential or proprietary nature to the manufacturer or supplier of the treating material or process may be forwarded by the manufacturer or supplier to the Director with a reference to the application filed by the winemaker.

(c) *Use of cellar treatment.* The proprietor shall not use the proposed treating material or process until a determination has been made by the Director that the intended use of the material or process is acceptable in good commercial practice. If the Regional Director (Compliance) has been advised by the Director that the use of the material or process has been previously approved, he will so inform the proprietor and state limitations, if any, which must be observed. However, if the Regional Director (Compliance) has not been so advised, the application shall be forwarded to the Director for a decision regarding the use of the material or process.

(d) *Processing of application.* After evaluation of the data submitted with the application, the Director shall make a decision regarding the acceptability of the proposed treatment in good commercial practice. The Director shall notify the Regional Director (Compliance) of the approval or disapproval of the application. The Regional Director (Compliance) shall then inform the proprietor of the Director's decision.

(Approved by the Office of Management and Budget under control number 1512–0292)

(Sec. 201, Pub. L. 85-859, (72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

Signed: July 9, 1984.

Stephen E. Higgins,
Director.

Approved: September 7, 1984.

John M. Walker, Jr.,
Assistant Secretary, Enforcement and Operations.

[FR Doc. 84-[illegible] Filed 9-21-84; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 240

[Notice No. 543; Ref: Notice Nos. 413 and 426]

Materials and Processes Authorized for the Production of Standard Wine and for the Treatment of Juice, Standard Wine and Distilling Material

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits additional comments from winemakers and other interested parties as to whether pursuant to the provisions of section 5382 of the Internal Revenue Code of 1954, the use of certain materials and processes is acceptable in "good commercial practice" in the production, cellar treatment, and finishing of standard wine and in the preparation of juice prior to fermentation.

In the RULES AND REGULATIONS portion of this issue of the **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms has issued a Treasury decision (final rule) implementing revised regulations for those treating materials which are deemed to be noncontroversial and not requiring further comment.

This notice is one of several to be issued by the Bureau in the revision of the regulations presently prescribed in Title 27, Code of Federal Regulations, Part 240 for the production of wine. When the Bureau has completed the revision of these regulations, a final rule will be issued to recodify the wine regulations into a new Part 24.

DATE: Written comments to this notice must be received by January 23, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, Reference: Notice No. 543.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

Notice No. 413, published in the **Federal Register** of June 18, 1982 (47 FR 26399), proposed the addition or deletion of, and, in some instances, revised usage levels for, materials intended for use in the production and treatment of standard wine. Publication of the notice of proposed rulemaking resulted from ATF's recognition of the need to update the list of wine treating materials and processes and the need for a more formal public procedure for approving or disapproving applications for wine treating materials and processes. The original 60-day comment period was reopened for an additional 90 days by publication of Notice No. 426 in the **Federal Register** of September 20, 1982 (47 FR 41402).

After completion of a lengthy review of the comments received during the two comment periods, the Bureau has drafted this notice in which additional comments are requested for specific treatments. A summary of the comments received in response to Notice Nos. 413 and 426 pertaining to wine treating materials and processes may be found in the preamble to the Treasury decision. ATF encourages all potential commenters to this notice to read the preamble of the Treasury decision for a detailed explanation of the Bureau's concerns about the treatments which are being addressed in the following paragraph.

ATF solicits specific comment regarding possible revisions of the regulations in Parts 4 and 240 pertaining to: (1) The use of activated carbon or hydrogen peroxide or an "anthocyanase" enzyme preparation to reduce color in the juice of red and black grapes; (2) the acceptability in good commercial practice of employing an ultrafiltration process utilizing membranes of various molecular sizes to filter proteinaceous material and color pigments from juice and wine including red wine, (3) the use of maltol or ethyl maltol to treat standard wine; (4) ATF's proposal, based on the review of comments received in response to Notice Nos. 413 and 426, to delete the parabens and propylene glycol from the list of authorized treating materials; (5) the continued use of potassium benzoate to preserve wine; (6) ATF's proposal to decrease the maximum residual levels of sulfur dioxide in wine; (7) a proposed 3-fold increase in the volume of water used in the preparation of treating material slurries; (8) the establishment in the standards of identity for wine of maximum levels for ethyl acetate and hydrogen sulfide and a higher volatile acidity level of 0.15 gram per 100 milliliters for white wine and 0.17 gram per 100 milliliters for red wine produced from unameliorated juice having a minimum solids content of 28° Brix; (9) ATF's proposal that the authorized level of sorbic acid in finished wine be further reduced from 300 to 200 milligrams per liter; and, (10) a proposal to permit the addition of acid to a level of 9 grams per liter in white wine containing 5 or more grams of sugar per liter.

During the comment period, members of the wine industry and other interested parties will have the opportunity to provide additional comments regarding these specific treatments. The review of the comments received in response to this notice will be a factor in ATF's decision whether or not to hold public hearings.

Public Participation

Comments to this notice may address any one or all of the proposals. Comments received on or before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future agency action.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable because this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities or to impose, or otherwise cause, a significant increase in the reporting, record-keeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this notice of proposed rulemaking, if published as a final rule, is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Coordinator Michael J. Breen of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine and vinegar.

Authority

Accordingly, under the authority contained in 26 U.S.C. 5382 (72 Stat. 1383, as amended), 26 U.S.C. 7805 (68A Stat. 917, as amended), and 27 U.S.C. 205 (49 Stat. 981, as amended), the Director proposes the following revisions to Title 27, Code of Federal Regulations, Parts 4 and 240:

PART 4—LABELING AND ADVERTISING OF WINE

Subpart C—Standards of Identity for Wine

Paragraph 1. Section 4.21 would be amended to provide for maximum ethyl acetate and hydrogen sulfide levels for wine, to provide for a higher volatile acidity level for grape wine produced from juice having high total solids as follows: The last paragraph at the end of paragraph (a)(1) would be designated as paragraph (a)(1)(iv) and revised to read as set forth below and paragraphs (d)(1)(ii), (e)(1)(ii), (f)(1)(ii) and (h)(2)(ii) of § 4.21 would be revised to read as follows:

§ 4.21 The standards of identity.

* * * * *

(a) *Class 1; grape wine.* (1) * * *

(iv) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20 °C) for natural red and rose wines and 0.12 gram per 100 mL (20 °C) for other grape wine: *Provided,* That white wine produced from unameliorated juice having total solids of 28 or more degrees Brix may have a maximum volatile acidity of 0.15 gram per 100 milliliters and red wine produced from unameliorated juice having total solids of 28 or more degrees Brix may have a maximum volatile acidity of 0.17 gram per 100 milliliters. The maximum ethyl acetate level is 200 milligrams per liter. The maximum sulfide level, calculated as hydrogen sulfide, is 1 milligram per liter.

* * * * *

(d) *Class 4; citrus wine.* (1) * * *

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20 °C) for natural citrus wine and 0.12 gram per 100 mL (20 °C) for other citrus wine. The maximum ethyl acetate level is 200 milligrams per liter. The maximum sulfide level, calculated as hydrogen sulfide, is 1 milligram per liter.

* * * * *

(e) *Class 5; fruit wine.* (1) * * *

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, is 0.14 gram per 100 mL (20 °C) for natural fruit wine and 0.12 gram per 100 mL (20 °C) for other fruit wine. The maximum ethyl acetate level is 200 milligrams per liter. The maximum sulfide level, calculated as hydrogen sulfide, is 1 milligram per liter.

* * * * *

(f) *Class 6; wine from other agricultural products.* (1) * * *

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20 °C) for natural wine of this class and 0.12 gram per 100 mL (20 °C) for other wine of this class. The maximum ethyl acetate level is 200 milligrams per liter. The maximum sulfide level, calculated as hydrogen sulfide, is 1 milligram per liter.

* * * * *

(h) *Class 8; imitation and substandard wine.*

* * * * *

(2) "Substandard wine" shall have as a part of its designation the word "substandard," and includes:

(i) * * *

(ii) Any wine for which no maximum volatile acidity is prescribed in §§ 4.20 to 4.25, inclusive, having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.14 gram per 100 mL (20 °C); or any wine for which the maximum ethyl acetate level exceeds 200 milligrams per liter; or, any wine for which the maximum sulfide level, calculated as hydrogen sulfide, exceeds 1 milligram per liter.

* * * * *

Par. 2. Section 4.22 would be amended to provide in paragraph (b)(1) for lower residual sulfur dioxide levels for red wine (including rose wine), white wine, and wine having high residual sugar. Section 4.22(b)(1) would be revised to read as set forth below. For the information of the reader the introductory text of paragraph (b)(1) is set forth without charge:

§ 4.22 Blends, cellar treatment, alteration of class and type.

* * * * *

(b) Alteration of class or type shall be deemed to result from any of the following occurring before, during or after production.

(1) Treatment of any class or type of wine with substances foreign to such wine which remain therein: *Provided,* That wine having a total sugar content of less than 5 grams per 100 milliliters may contain: For red and rose wine, not more than 125 parts per million total sulfur dioxide, or sulfites expressed as sulfur dioxide, and for white wine, not more than 175 parts per million total sulfur dioxide or sulfites expressed as sulfur dioxide; and *Provided,* That all wines having a total sugar content of 5 or more grams per 100 milliliters may contain up to 275 parts per million total sulfur dioxide or sulfites expressed as sulfur dioxide, and *Provided further,* That all wines, regardless of sugar content, produced prior to March 25, 1985, may contain up to 350 parts per million total sulfur dioxide or sulfites expressed as sulfur dioxide.

* * * * *

PART 240—WINE

Subpart N—Natural Wine

Par. 3. Section 240.364 would be amended to permit the addition of acid to a maximum level of 9 grams per liter to correct natural acid deficiencies in white wine having a solids content of 5 or more grams per liter. Section 240.364 would be revised to read as follows:

§ 240.364 Addition of acid to correct natural deficiencies in grape wine.

(a) *General.* Prior to and/or during fermentation, tartaric acid or malic acid, or a combination of both tartaric acid and malic acid, may be added to correct natural deficiencies in the fruit or juice, and after fermentation is completed, citric, fumaric, lactic, malic, or tartaric acid, or a combination of two or more of these acids, may be added to wine to correct natural deficiencies within the limitations prescribed in § 240.1051 and to the extent that the finished wine does not contain more than 8 grams per liter of fixed acid (calculated as tartaric acid); except that in the case of white wine containing 5 or more grams sugar per liter of wine, acids may be added to correct natural acid deficiencies to the extent that the finished wine does not contain more than 9 grams per liter of fixed acid (calculated as tartaric acid). Where ameliorating material, as authorized in § 240.366, is use in the production of grape wine, no acid may be used to correct deficiencies.

(b) *Record of use.* A record of the quantity of acid used under the provisions of this section shall be kept in accordance with the provisions of § 240.917.

(c) *Other acids.* If the winemaker desires to use other organic acids, the requirements of § 240.1053 shall be followed. If the winemaker desires to use acid to stabilize wine, the requirements of § 240.526 shall be followed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5382))

Subpart U—Wine Other Than Standard Wine

Par. 4. Section 240.489 would be revised to provide a specific reference to the limitations prescribed in Part 4 for maximum levels of ethyl acetate and hydrogen sulfide in standard wine. As revised, § 240.489 would read as follows:

§ 240.489 Spoiled wine.

Whenever a standard wine becomes spoiled by reason of its condition, the spoiled wine shall be immediately removed from the bonded wine cellar unless the condition is corrected. Where the condition is not corrected, the wine must be removed either as distilling material under the provisions of Subpart CC of this part or, where applicable, for use in the manufacture of vinegar under the provisions of Subpart DD, or destroyed under Government supervision under the provisions of Subpart KK of this part. Among conditions requiring correction or removal are the development of volatile acidity, ethyl acetate, or hydrogen sulfide in excess of the maximum levels prescribed in Part 4 issued under the Federal Alcohol Administration Act (49 Stat. 977; 27 U.S.C. 201) or disease or decomposition which causes the wine to lack the composition, color and other characteristics of standard wine of the same type.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381))

Subpart ZZ—Materials and Processes Authorized for Treatment of Wine, Juice and Distilling Material

Par. 5. The text preceding the table in § 240.1051 would be revised to provide a 3-fold increase in the amount of water which may be added to wine via the use of treating materials prepared in water slurries and would read as follows:

§ 240.1051 Materials authorized for treatment of wine and juice.

The materials listed in this section are approved, as being consistent with good commercial practice, for use by proprietors of bonded wine cellars in the production, cellar treatment, or finishing of wine, and where applicable in the treatment of juice, within the general limitations of § 240.524 or the limitations specified in this section: *Provided,* (a) That when the specified use or limitation of any material on this list is determined to be unacceptable by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the material in the production, cellar treatment, or finishing of wine; and (b) That where water is added to facilitate the solution or dispersal of a material, the volume of water added, whether the material is used singly or in combination with other water based treating materials, must not total more than 3 percent of the volume of treated wine and/or the juice from which such wine is produced.

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Par. 6. Following a review of all comments received in response to this notice, the Bureau may amend the list of authorized treating materials in § 240.1051 with respect to the use of the following materials: Activated carbon to decolorize the juice of red and black grapes; hydrogen peroxide to decolorize the juice of red and black grapes; and "anthocyanase" enzyme preparation to decolorize the juice of red and black grapes; ethyl maltol or maltol to smooth wine; the parabens (prepared in a propylene glycol solution) to preserve wine; potassium benzoate to preserve wine; and, the level of use of sorbic acid in the treatment of wine. The following is a list of the treating materials and usage levels for which comments are solicited:

Materials	Use	Reference or Limitation
Activated carbon:		
* * *	* * *	* * *
	To reduce color in the juice from red and black grapes	The amount used to reduce color must not exceed 4 lbs/1,000 gals. (0.48 g/L) of juice. Wine made from juice so treated shall have a color of not more than 95 percent transmittance per [1] AOAC Method 11.003–11.004 (13th Ed.) or equivalent.
* * *	* * *	* * *
Enzymatic activity:		
* * *	* * *	* * *
"Anthocyanase" enzyme preparation	To reduce anthocyanins, that is, color pigments, in the juice pressed from red and black grapes.	(Subject to comment.).
* * *	* * *	* * *
Ethyl maltol	To smooth wine	Use limited to not more than 100 mg/L. 21 CFR 172.515.
* * *	* * *	* * *
Hydrogen peroxide	To remove color from the juice of red and black grapes	The amount used shall not exceed 500 parts per million. The use of hydrogen peroxide is limited to oxidizing color pigment in the juice of red and black grapes. 21 CFR 182.1366 [1] (GRAS).
* * *	* * *	* * *
Maltol	To smooth wine	Use limited to not more than 250 mg/L. 21 CFR 172.515.
* * *	* * *	* * *
Parabens (*n*-alkyl esters of *p*-hydroxybenzoic acid: heptyl-, propyl-, and methyl-	To preserve wine	Use, separately or in combination must not exceed 0.1 percent by weight (w/w). Use of *n*-heptyl-paraben must not exceed 12 parts per million. 21 CFR 172.145, 184.1490, 184.1670 (GRAS).

Materials	Use	Reference or Limitation
* * * * * * *		
Potassium benzoate	To preserve wine	Use separately or in combination with other approved antimicrobial agents must not exceed 0.1 percent of the volume of juice and/or wine so treated. GRAS advisory opinion pending.
* * * * * * *		
Propylene glycol	Solvent for parabens	The amount used shall not exceed 40 parts per million in wine. 21 CFR 184.1666 (GRAS).
* * * * * * *		
Sorbic acid and potassium salt of sorbic acid.	To sterilize and to preserve wine; to inhibit mold growth and secondary fermetation.	The finished wine shall contain not more than 200 milligrams of sorbic acid per liter of wine. 21 CFR 183.3089 and 182.3640 (GRAS).
* * * * * * *		

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[1] GRAS—An acronym for "generally recognized as safe." The term means that the treating material has an FDA listing in Title 21, Code of Federal Regulations, Parts 182 or Part 184, or is considered to be generally recognized as safe by the U.S. Food and Drug Administration.

[2] AOAC—Association of Official Analytical Chemists.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

* * * * *

Par. 7. Following a review of all comments received in response to this notice, the Bureau may amend the list of authorized processes in § 240.1051b with respect to the use of an ultrafiltration process utilizing membranes of various molecular sizes to filter proteinaceous material from any wine; to remove harsh tannic material from white wine produced from the juice of white skinned grapes; to remove the pink color from blanc de noir wine; and, to separate red wine into low color and high color wine fractions for use in blending. The Bureau requests comments regarding the specific applications of such a process in the treatment of wine and any limitation which the commenter believes should be imposed on such uses. As proposed, § 240.1051b may be amended, in part by revising the introductory text and the entry in the table for the ultrafiltration process to read as follows:

§ 240.1051b Processes authorized for the treatment of wine, juice, and distilling material.

The processes listed in this section are approved, as being consistent with good commercial practice, for use by proprietors of bonded wine cellars in the production, cellar treatment, or finishing of standard wine, juice, and distilling material, within the general limitations of § 240.524 or the limitations specified in this section or given in the sections referred to: *Provided,* That when the specified use or limitation of any process on this list is determined to be unacceptable for use in foods and beverages by the U.S. Food and Drug Administration, the Director may cancel or amend the approval for use of the process in the production, cellar treatment, or finishing of standard wine, juice, and distilling material.

Processes	Use	Reference or Limitation
* * * * * * *		
Ultrafiltration	To remove proteinaceous material from wine	10,000 nominal molecular weight limitation (NMWL). 21 CFR 175.300, 177.1520, 177.2440, 177.2500, and 177.2600.
	To reduce harsh tannic material from white wine produced from white skinned grapes.	10,000 nominal molecular weight limitation (NMWL). 21 CFR 175.300, 177.1520, 177.2440, 177.2500, and 177.2600.
	To remove the pink color from blanc de noir wine	1,000 nominal molecular weight limitation (NMWL). 21 CFR 175.300, 177.105, 177.1520, 177.1550, 177.1630, and 177.2500.
	To separate red wine into low color and high color wine fractions for blending purposes.	1,000 nominal molecular weight limitation (NMWL). 21 CFR 175.300, 177.105, 177.1520, 177.1550, 177.1630, and 177.2500.
* * * * * * *		

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387))

Signed: July 9, 1984.

Stephen E. Higgins,
Director.

Approved: September 7, 1984.

John M. Walker, Jr.,
Assistant Secretary (Enforcement and Operations).

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Monday
September 24, 1984

Part III

Department of the Interior

Minerals Management Service

Diapir Field, Lease Sale 97; Call for Information and Notice of Intent to Prepare an Environmental Impact Statement

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Diapir Field
Lease Sale 97
Call for Information
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION

Purpose of Call for Information

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23, with regard to proposed OCS Lease Sale 97 in the Diapir Field area tentatively scheduled for December 1986.

This initial information gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. It should be recognized that this Notice does not indicate a preliminary decision to lease in the area described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process--Area Identification--to resolve conflicts by deleting areas where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for January 1985.

A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS, which will include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent is located later in this document. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Alaska Coastal Management Program (ACMP).

Description of Area

The Diapir Field Call area is generally located offshore the State of Alaska in the Beaufort Sea and the Arctic Ocean. Beginning at the Federal/State 3-geographical-mile line, which represents the southern boundary, the area extends about 220 miles north up to 73° N. latitude. It is bounded on the west by 162° W. longitude and extends eastward to the limit of the U.S. jurisdiction.

The Call area includes approximately 1,700 blocks which were deferred from offering for lease at Sale 87 held on August 22, 1984. The deferred area was comprised, in part, of blocks west of Point Barrow which were removed to reduce the potential for conflict with subsistence resources. Blocks within a 20-mile radius of Point Barrow were deferred to further reduce the potential for conflict with subsistence activities and resources. Commenters are asked to reexamine the areas deferred at Sale 87 and to provide their views as to whether these areas should be given further consideration or should be deleted from Sale 97 at the Area Identification stage. Any new information as to resource potential, technology, subsistence use and resources, ice, etc., relevant to the area deferred at Sale 87 would be most useful.

The DOI has held three Federal offshore oil and gas lease sales in the Beaufort Sea/Diapir Field area. The first Federal offshore sale in the Beaufort Sea was conducted jointly with the State of Alaska. This sale, the Joint Federal/State Beaufort Sea Oil and Gas Lease Sale (BF), was held December 11, 1979, and offered a combined total of approximately 514,202 acres of State and Federal offshore lands. Of the 46 federally managed tracts offered, 25 received bids. One high bid was rejected for insufficiency, and 24 leases were issued on 4 Federal tracts and 20 federally managed disputed tracts. Of the 71 State managed tracts offered, 67 were State tracts and 4 were State managed disputed tracts, of which 62 received bids. The State issued leases for all 62 tracts including the 4 State managed disputed tracts. The second Federal offshore sale in the Diapir Field, Sale 71, was held on October 13, 1982. The Sale 71 area was comprised of approximately 1.8 million acres and included blocks previously offered in Sale BF. Of the 338 tracts offered, 125 received bids. A total of 121 tracts containing approximately 662,860 acres were leased. The most recent sale in the Diapir Field was Sale 87, held on August 22, 1984. The Sale 87 area included 1,474 blocks covering about 7.8 million acres. High bids were received on 232 blocks totalling $877 million. All leases resulting from these sales provide for a 10-year primary lease term.

To date four exploratory wells have been drilled on federally managed leases from Sale BF in the Beaufort Sea. Two of these wells have been permanently abandoned and two wells have been temporarily abandoned. In addition, Shell Western E & P Inc. has announced a discovery with a directionally drilled well into a federally managed lease from a gravel island on a State lease. The well, which has been temporarily abandoned, is reported to have tested up to 5,000 barrels of oil per day. One well has been drilled on a lease issued in Sale 71.

The following list identifies the Official Protraction Diagrams which comprise the Call area. The diagrams may be purchased for $2.00 each from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Instructions on Call," below.

NS 4-7	--	(Approved April 25, 1978), all Federal blocks
NS 4-8	--	(Approved January 21, 1981), all Federal blocks
NS 5-7	--	(Approved April 25, 1978), all Federal blocks
NS 5-8	--	(Approved January 21, 1981), all Federal blocks
NS 6-7	Laurentian Basin	(Approved April 25, 1978), all Federal blocks
NS 6-8	Beaufort Basin	(Approved January 21, 1981), all Federal blocks
NS 7-7	Beaufort Terrace	(Approved March 17, 1982), all Federal blocks
NR 4-1	--	(Approved October 12, 1977), all Federal blocks
NR 4-2	Barrow	(Approved February 16, 1984), all Federal blocks
NR 5-1	Dease Inlet	(Approved June 3, 1976), all Federal blocks
NR 5-2	--	(Approved May 5, 1976), all Federal blocks
NR 5-3	Teshekpuk	(Approved June 3, 1976), all Federal blocks
NR 5-4	Harrison Bay	(Approved May 13, 1982), all Federal blocks
NR 6-1	--	(Approved June 3, 1976), all Federal blocks
NR 6-2	--	(Approved May 5, 1976), all Federal blocks
NR 6-3	Beechey Point	(Approved April 23, 1984), all Federal blocks
NR 6-4	Flaxman Island	(Approved November 10, 1983), all Federal blocks
NR 7-1	--	(Approved October 26, 1979), all Federal blocks
NR 7-2	--	(Approved January 22, 1984), all Federal blocks
NR 7-3	Barter Island	(Approved October 26, 1979), all Federal blocks
NR 7-4	--	(Approved January 22, 1984), all Federal blocks
NR 7-5	Demarcation Point	(Approved November 10, 1983), all Federal blocks
NR 7-6	--	(Approved January 22, 1984), all Federal blocks

Instructions on Call

The standard Call map delineates the Call area and shows the area as identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in the Diapir Field Lease Sale 97. Boundaries of the Call area are shown, in general, on the map at the end of this Call and are shown in detail on the standard Call for Information Map available free from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, MMS, P.O. Box 101159, 620 East 10th Avenue, Anchorage, Alaska 99510, telephone (907) 261-2452 or 261-2414. Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map. Interest should be shown by outlining the area(s) of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area for which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Information concerning both location and priority of interest submitted by individual companies will be held proprietary and will be used as a criterion in determining the area to be analyzed in the EIS. In addition to indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential, and environmental, economic, and multiple use considerations.

Comments are also sought from all interested parties about particular geological, environmental, biological, archeological, or socioeconomic conditions or conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sale and the ACMP. If possible, these comments should identify specific ACMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Indications of Interest for Leasing for the Call for Information for Diapir Field Lease Sale 97" or "Comments on the Call for Information for the Diapir Field Lease Sale 97," as appropriate. The original standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated above under "Instructions on Call." Two copies of the standard Call map showing interest and any comments should also be sent to the Chief, Offshore Leasing Management Division, MMS, Mail Stop 645, 12203 Sunrise Valley Drive, Reston, Virginia 22091. Hand deliveries in the Washington, D.C., area may be made to the Chief, Offshore Leasing Management Division, Room 2523, Department of the Interior, 18th and C Sts., N.W., Washington, D.C. 20240.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (40 CFR 1501.7), and the OCSLA, as amended. A final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede this sale, proposed for 1986.

Comments due on the Call:	November 1984
Area Identification:	January 1985
Scoping comments due:	February 1985

Draft EIS published:	November 1985
Hearings on draft EIS held:	December 1985
Final EIS published:	May 1986
Proposed Notice of Sale published:	July 1986
Governor's comments due on proposed Notice:	September 1986
Final Notice of Sale published:	November 1986
Sale:	December 1986

Existing Information

Much information has already been collected and analyzed during consideration of past OCS activity in the same area. This information will be integrated with new information supplied during this process. Information already available includes four EIS's covering all or part of this area for the joint Federal/State Sale BF, Sale 71, the 5-Year oil and gas leasing program, and Sale 87.

In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be available for use.

The following is a list of other information available in the DOI which will be available for consideration regarding OCS Lease Sale 97.

Diapir Field Summary Reports and Index

1. Alaska Index, December 1981 through April 1983, prepared by MMS.
2. Arctic Summary Report, January 1983, prepared by MMS.
3. Arctic Summary Report Update, September 1983, prepared by MMS.

Diapir Field Planning Area-Completed Environmental Studies

1. Identification, Documentation, and Delineation of Coastal Migratory Bird Habitats in Alaska, Alaska Department of Fish and Game, NOAA/OCSEAP Research Unit No. 3/4, September 1980.
2. Distribution, Abundance, Community Structure, and Trophic Relationships of the Nearshore Benthos, University of Alaska, NOAA/OCSEAP Research Unit No. 5, December 1981.
3. Distribution, Composition, and Variability of Western Beaufort and Northern Chukchi Sea Benthos, Oregon State University, NOAA/OCSEAP Research Unit No. 6, January 1982.

4. Summarization of Existing Literature and Unpublished Data on Distribution, Abundance, and Life Histories of Benthic Organisms of the Beaufort Sea, Oregon State University, NOAA/OCSEAP Research Unit No. 7, January 1977.
5. Assessment of Potential Interactions of Micro-organisms and Pollutants Resulting from Petroleum Development on the OCS in the Beaufort Sea, University of Louisville, NOAA/OCSEAP Research Unit No. 29, December 1982.
6. Analysis of Marine Mammal Remote Sensing Data, Johns Hopkins University, NOAA/OCSEAP Research Unit No. 34, April 1977.
7. Trace Hydrocarbon Analysis in Previously Studied Matrices and Methods Development for a) Trace HC Analysis in Sea Ice and at the Sea Ice-Water Interface and b) Analysis of Individual High Molecular Weight Aromatic HC, National Bureau of Standards, NOAA/OCSEAP Research Unit No. 43, January 1980.
8. Environmental Assessment of Alaskan Waters - Trace Element Methodology - Inorganic Elements, National Bureau of Standards, NOAA/OCSEAP Research Unit No. 47, May 1977.
9. Coastal Morphology, Sedimentation, and Oilspill Vulnerability, RPI, Inc., NOAA/OCSEAP Research Unit No. 59, April 1980.
10. Migration, Distribution, and Abundance of Bowhead and Beluga Whales in the Arctic Oceans, National Marine Fisheries Service, NOAA/OCSEAP Research Unit No. 69/70, October 1981.
11. Lethal and Sublethal Effects On Selected Alaskan Marine Species After Acute and Long-Term Exposure to Oil, National Marine Fisheries Service, NOAA/OCSEAP Research Unit No. 72, April 1983.
12. Sublethal Effects of Petroleum as Reflected By Morphological, Chemical, Physiological, Pathological and Behavioral Indices, National Marine Fisheries Service, NOAA/OCSEAP Research Unit No. 73, June 1982.
13. Identification of Major Processes in Biotransformations of Petroleum HC and Trace Metals, National Marine Fisheries Service, NOAA/OCSEAP Research Unit No. 74, June 1982.
14. Assessment of Available Literature: Oil Pollution Effects on Biota in Arctic and Subarctic Waters, National Marine Fisheries Service, NOAA/OCSEAP Research Unit No. 75, November 1976.
15. Beaufort Shelf Surface Currents, United States Coast Guard, NOAA/OCSEAP Research Unit No. 81, April 1977.
16. Interaction of Oil With Sea Ice in the Beaufort Sea, University of Washington, NOAA/OCSEAP Research Unit No. 87, May 1982.

17. Current Measurements in Possible Dispersal Regions of the Beaufort Sea, University of Washington, NOAA/OCSEAP Research Unit No. 91/151, January 1981.

18. Dynamics of Nearshore Ice, Flow Research Co., NOAA/OCSEAP Research Unit No. 98, March 1979.

19. Delineation and Engineering Characteristics of Permafrost Beneath the Arctic Seas, U.S. Army-CRREL, NOAA/OCSEAP Research Unit No. 105, May 1982.

20. Seasonality and Variability of Streamflow Important to Alaskan Nearshore Coastal Areas, University of Alaska, NOAA/OCSEAP Research Unit No. 111, March 1977.

21. Natural Distribution of Trace Heavy Metals and Environmental Background in Three Alaskan Shelf Areas, University of Alaska, NOAA/OCSEAP Research Unit No. 162, May 1979.

22. Shorebird Dependence on Arctic Littoral Habitats, University of California, NOAA/OCSEAP Research Unit No. 172, September 1982.

23. Study of Microbial Activity and Crude Oil-Microbial Interactions in the Waters and Sediments of Cook Inlet and the Beaufort Sea, Oregon State University, NOAA/OCSEAP Research Unit No. 190, December 1980.

24. Morbidity and Mortality of Marine Mammals, University of Alaska, NOAA/OCSEAP Research Unit No. 194, December 1980.

25. Distribution, Abundance, and Feeding Ecology of Birds Associated with Sea Ice, College of the Atlantic, NOAA/OCSEAP Research Unit No. 196, January 1983.

26. Avifaunal Utilization of the Offshore Islands Near Prudhoe Bay Alaska, University of Alaska, NOAA/OCSEAP Research Unit No. 215, March 1977.

27. The Natural History and Ecology of the Bearded Seal and the Ringed Seal, Alaska Department of Fish and Game, NOAA/OCSEAP Research Unit No. 230, May 1979.

28. Trophic Relationships Among Ice Inhabiting Phocid Seals and Functionally Related Marine Mammals in the Arctic, Alaska Department of Fish and Game, NOAA/OCSEAP Research Unit No. 232, February 1982.

29. Beaufort Sea Estuarine Fishery Study, Alaska Department of Fish and Game, NOAA/OCSEAP Research Unit No. 233, October 1977.

30. Study of Climatic Effects on Fast Ice Extent and its Seasonal Decay Along the Beaufort Sea/Chukchi Sea Coasts, University of Colorado, NOAA/OCSEAP Research Unit No. 244, March 1979.

31. Relationships of Marine Mammal Distributions, Densities, and Activities to Sea Ice Conditions, Alaska Department of Fish and Game/University of Alaska, NOAA/OCSEAP Research Unit No. 248/249, June 1980.

32. Morphology of Beaufort, Chukchi, and Bering Seas Nearshore Ice Conditions By Means of Satellite and Aerial Remote Sensing, University of Alaska, NOAA/OCSEAP Research Unit No. 257/258, September 1978.

33. Experimental Measurements of Sea Ice Failure Stresses Near Grounded Structures, University of Alaska, NOAA/OCSEAP Research Unit No. 259, June 1978.

34. Baseline Study of Historic Ice Conditions in Bering Strait, Chukchi Sea, and Beaufort Sea, University of Alaska, NOAA/OCSEAP Research Unit No. 261, September 1977.

35. Arctic Offshore Permafrost Studies, Michigan Technical University/University of Alaska, NOAA/OCSEAP Research Unit No. 271/610, September 1982.

36. Hydrocarbons: Natural Distribution and Dynamics on the Alaskan OCS, University of Alaska, NOAA/OCSEAP Research Unit No. 275, February 1981.

37. Preparation of Illustrated Keys to Skeletal Remains and Otoliths of Forage Fishes in the Beaufort Sea, University of Alaska, NOAA/OCSEAP Research Unit No. 318, March 1977.

38. Determine the Frequency and Pathology of Marine Fish Diseases in the Gulf of Alaska, Bering, and Beaufort Seas, National Marine Fisheries Service, NOAA/OCSEAP Research Unit No. 332, January 1980.

39. Transport of Pollutants in the Vicinity of Prudhoe Bay, Environmental Protection Agency, NOAA/OCSEAP Research Unit No. 335, March 1976.

40. Seasonal Distribution and Abundance of Marine Birds, U.S. Fish and Wildlife Service, NOAA/OCSEAP Research Unit No. 337, October 1978.

41. Review and Analysis of Literature and Unpublished Data on Marine Birds, U.S. Fish and Wildlife Service, NOAA/OCSEAP Research Unit No. 339, December 1980.

42. Migration of Birds in Alaskan Marine Waters Subject to Influence by OCS Development, U.S. Fish and Wildlife Service, NOAA/OCSEAP Research Unit No. 340, May 1978.

43. Feeding Ecology and Trophic Relationships of Alaska Marine Birds Population Dynamics of Marine Birds, and Catalog of Seabird Colonies, U.S. Fish and Wildlife Service, NOAA/OCSEAP Research Unit No. 341/342/343, October 1978.

44. Marine Climatology of the Gulf of Alaska, Bering and Beaufort Seas, Arctic Environmental Information and Data Center/National Climatic Center, NOAA/OCSEAP Research Unit No. 347/496, December 1977.

45. Literature Search and Data Conversion on Density Distribution of Fishes of the Beaufort Sea, University of Alaska, NOAA/OCSEAP Research Unit No. 348, March 1977.

46. Beaufort Sea Plankton Studies, University of Washington, NOAA/OCSEAP Research Unit No. 359, February 1981.

47. A Study of Beaufort Sea Coastal Erosion, Arctic Research, NOAA/OCSEAP Research Unit No. 407, September 1976.

48. Ice Edge Ecosystem Study: Primary Productivity, Nutrient Cycling and Organic Matter Transfer, University of Alaska, NOAA/OCSEAP Research Unit No. 427, March 1979.

49. Beaufort Sea Barrier Island-Lagoon Ecological Process Studies, LGL Ecological Research Associates, NOAA/OCSEAP Research Unit No. 467, March 1980.

50. Characterization of Organic Matter In Sediments from the Gulf of Alaska, Bering and Beaufort Seas, University of California, NOAA/OCSEAP Research Unit No. 480, June 1981.

51. Evaluation of Earthquake Activity and Seismotechnic Studies of Northern and Western Alaska, University of Alaska, NOAA/OCSEAP Research Unit No. 483, March 1980.

52. Characterization of the Nearshore Hydrodynamics of Arctic Barrier Island-Lagoon System, University of Alaska, NOAA/OCSEAP Research Unit No. 526, March 1981.

53. Sediment Characterization, Stability, and Origin of Barrier Island-Lagoon Complex, North Arctic, Alaska, University of Alaska, NOAA/OCSEAP Research Unit No. 529, August 1982.

54. Geology and Geomorphology of the Barrier Island-Lagoon System Along the Beaufort Sea Coastal Plain, University of Alaska, NOAA/OCSEAP Research Unit No. 530, July 1981.

55. Oceanographic Processes in a Beaufort Sea Barrier Island-Lagoon System and its Surroundings; Numerical Modelling and Current Measurements, Kinnetic Laboratories, Inc., NOAA/OCSEAP Research Unit No. 531, June 1982.

56. Oil Pooling Under Sea Ice, U.S. Army-CRREL, NOAA/OCSEAP Research Unit No. 562, March 1980.

57. Transport and Behavior of Oil Spilled In and Under Sea Ice (Task I), Flow Research Co., NOAA/OCSEAP Research Unit No. 567, January 1983.

58. Transport and Behavior of Oil Spilled In and Under Sea Ice (Task II and III), ARCTEC Incorporated, NOAA/OCSEAP Research Unit No. 568, September 1980.

59. Baffin Island Oil Spill Project, Environmental Protection Service (Canada), NOAA/OCSEAP Research Unit No. 606, February 1984.

60. Biological Investigation of Beluga Whales in the Coastal Waters of Alaska, Alaska Department of Fish and Game, NOAA/OCSEAP Research Unit No. 612, December 1983.

61. Investigations of Marine Mammals in the Coastal Zone During Summer and Autumn, Alaska Department of Fish and Game, NOAA/OCSEAP Research Unit No. 613, September 1982.

62. Geophysical and Biological Reconnaissance of Rock Habitats in Eastern Camden Bay, University of Alaska, NOAA/OCSEAP Research Unit No. 630, July 1983.

63. Ecosystem Characterization: Eastern Beaufort Sea, LGL Ecological Research Associates, NOAA/OCSEAP Research Unit No. 632, September 1983.

64. Technical and Scientific Support for Preparation of Workshop Documentation (Monitoring of the Beaufort Sea), Dames and Moore, NOAA/OCSEAP Research Unit No. 652, 1984.

65. Development of Large Cetacean Tagging and Tracking Capabilities in OCS Lease Areas - I, Oregon State University, MMS Contract, May 1981.

66. Tissue Structure Studies and Other Investigations on the Biology of Endangered Whales in the Beaufort Sea, University of Maryland, MMS Contract, June 1981.

67. Development of Large Cetacean Tagging and Tracking Capabilities in OCS Lease Areas - II, National Marine Mammal Laboratory, MMS Contract, March 1981.

68. Effects of Oil on the Feeding Mechanism of the Bowhead Whale - Baleen Fouling, Brigham Young University, MMS Contract, June 1983.

Diapir Field Planning Area-Completed Socioeconomic Studies

1. Beaufort Sea Basin Petroleum Development Scenarios for the Federal Outer Continental Shelf, Interim Report, Dames & Moore; USRA; CCC/HOK, MMS Technical Report No. 3, December 1977 (out of print).

2. Prudhoe Bay Case Study, CCC/HOK, MMS Technical Report No. 4, February 1978.

3. Beaufort Sea Baseline Studies: Interim Report, CCC/HOK, MMS Technical Report No. 5, December 1977 (out of print).

4. Beaufort Sea Petroleum Development Scenarios, Dames & Moore, MMS Technical Report No. 6, April 1978.

5. Beaufort Sea Region - Man Made Environment, Alaska Consultants, Inc., MMS Technical Report No. 8, April 1978.

6. Beaufort Sea Region Sociocultural Systems, Worl Associates, MMS Technical Report No. 9, June 1978.

7. Beaufort Sea Region Natural Physical Environment, Dames & Moore, MMS Technical Report No. 10, May 1978.

8. Beaufort Sea Region Socioeconomic Baseline, Peat, Marwick, Mitchell & Co., MMS Technical Report No. 11, July 1978.

9. Anchorage Socioeconomic and Physical Baseline, Policy Analysts Ltd., MMS Technical Report No. 12, June 1978.

10. Anchorage Impacts of the Beaufort Sea, Petroleum Development Scenario, Policy Analysts Ltd., MMS Technical Report No. 13, August 1978 (out of print).

11. Governance in the Beaufort Sea Petroleum Development Region, Institute of Social and Economic Research, University of Alaska, MMS Technical Report No. 16, July 1978.

12. Economic and Demographic Impacts of the Beaufort Sea Petroleum Development Scenarios, Institute of Social and Economic Research, University of Alaska, MMS Technical Report No. 18, June 1978.

13. Man Made Environmental Impacts of the Beaufort Sea Petroleum Development Scenarios, Alaska Consultants, Inc., MMS Technical Report No. 19, August 1978.

14. Transportation Impacts of the Beaufort Sea Petroleum Development Scenarios, Dennis Dooley & Assocs., MMS Technical Report No. 20, August 1978.

15. Natural Physical Environment Impact of the Beaufort Sea Petroleum Development Scenarios, Dames and Moore, MMS Technical Report No. 21, June 1978.

16. Sociocultural Impacts of the Beaufort Sea Petroleum Development Scenarios, Worl Associates, MMS Technical Report No. 22, April 1978.

17. Socioeconomic Systems Impacts of the Beaufort Sea Petroleum Development Scenarios, Peat, Marwick, Mitchell & Co., MMS Technical Report No. 23, December 1978.

18. Socioeconomic Impacts of Selected Foreign OCS Developments, Habitat North, Inc., MMS Technical Report No. 28, April 1979.

19. Beaufort Sea Statewide & Regional Demographic & Economic Systems, Institute of Social and Economic Research, University of Alaska, MMS Technical Report No. 62, August 1981.

20. Beaufort Sea Sociocultural Systems Update Analysis, Worl Associates, MMS Technical Report No. 64, November 1981.

21. A Description of the Socioeconomics of the North Slope Borough, Institute of Social and Economic Research, University of Alaska, MMS Technical Report No. 85, September 1983.

22. Diapir Field Statewide and Regional Economic and Demographic Systems Impacts Analysis, Institute of Social and Economic Research, University of Alaska, MMS Technical Report No. 88, November 1983.

These study reports can be viewed at the Alaska OCS Regional Office and most public libraries in Alaska. The socioeconomic studies may be ordered directly from the U.S. Department of Commerce, National Technical Information Service by calling FTS 737-4650 or Commercial (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Diapir Field Planning Area-Active and Planned Studies

The studies listed below are presently being conducted by MMS or are planned to be conducted on a schedule which will provide information for the EIS and/or subsequent decision documents related to OCS Lease Sale 97. Information on the status of these studies and the information they have produced may be obtained from the Alaska OCS Region, MMS, at the address listed under "Instructions on Call" above.

Environmental Studies

1. Dynamics of Nearshore Ice, U.S. Army-CRREL, NOAA/OCSEAP Research Unit No. 88.

2. Offshore Permafrost Studies, U.S. Geological Survey, NOAA/OCSEAP Research Unit No. 204, 473.

3. Geologic Environment of the Chukchi and Beaufort Sea Shelf and Coastal Regions, U.S. Geological Survey, NOAA/OCSEAP Research Unit No. 205.

4. Mechanics of Origin of Pressure, Shear Ridges, and Hummock Fields in landfast Ice, University of Alaska, NOAA/OCSEAP Research Unit No. 250.

5. Subsea Permafrost, Probing, Thermal Regime and Data Analysis, University of Alaska, NOAA/OCSEAP Research Unit No. 253.

6. In Situ Measurements of the Mechanical Properties of Sea Ice, University of Alaska, NOAA/OCSEAP Research Unit No. 265.

7. Operation of an Alaskan Facility for Application of Remote Sensing Data to OCS Studies, University of Alaska, NOAA/OCSEAP Research Unit No. 267.

8. Environmental Assessment of Selected Habitats in Arctic Littoral Systems, Western Washington State University, NOAA/OCSEAP Research Unit No. 356.

9. Modeling of Tides and Circulations, Rand Corporation, NOAA/OCSEAP Research Unit No. 435.

10. Nearshore Meteorologic Regimes in the Arctic, Occidental College, NOAA/OCSEAP Research Unit No. 519.

11. Nutrient Dynamics and Trophic System Energetics in Nearshore Beaufort Sea Waters, University of Alaska, NOAA/OCSEAP Research Unit No. 537.

12. Baffin Island Oil Spill Project. Hydrocarbon Bioaccumulation and Histopathological and Biochemical Responses of Molluscs, Battelle Northwest Laboratories, NOAA/OCSEAP Research Unit No. 615.

13. Sublethal Effects of Petroleum Hydrocarbons, National Marine Fisheries Service, NOAA/OCSEAP Research Unit No. 619.

14. Storm Surge Modeling, University of Alaska, NOAA/OCSEAP Research Unit No. 627.

15. Beluga Whale Disturbance Study, Hubbs Sea World, NOAA/OCSEAP Research Unit No. 629.

16. Fish Survey: Shoreline From Harrison Bay to Point Barrow, LGL Ecological Research Associates, NOAA/OCSEAP Research Unit No. 631.

17. Direct Effects of Acoustic Disturbance Sources on Ringed Seal Reproductive Behavior, Vocalization, and Communication, Alaska Department of Fish and Game, NOAA/OCSEAP Research Unit No. 636.

18. Oil Weathering In Sea Ice, Science Applications, Incorporated, NOAA/OCSEAP Research Unit No. 640.

19. Oceanographic Data, Brown and Caldwell, NOAA/OCSEAP Research Unit No. 642.

20. Biological Reconnaissance of Boulder Island Shoal in Western Camden Bay, LGL Inc., NOAA/OCSEAP Research Unit No. 651.

21. Publication Support "Alaska Beaufort Sea Ecosystems and Environment", University of Alaska, NOAA/OCSEAP Research Unit No. 653.

22. Investigation of the Occurrence and Behavior Pattern of Whales in the Vicinity of the Beaufort Sea Lease Area, Naval Arctic Research Laboratory, MMS Contract.

23. Aerial Survey of Endangered Whales in the Beaufort, Chukchi, and Northern Bering Seas, Naval Ocean Service Center, MMS Contract.

24. Computer Simulation of the Probability of Endangered Whale Interaction with Oil Spills, Applied Science Associates, MMS Contract.

25. Effects of Whale Monitoring System Attachment Device in Whale Tissue, Woods Hole Oceanographic Institution, MMS Contract.

26. Development of Satellite-Linked Methods of Large Cetacean Tagging and Tracking Capabilities in OCS Lease Areas, Oregon State University, MMS Contract.

27. Investigations of the Potential Effects of Acoustic Stimuli Associated With Oil and Gas Exploration/Development on the Behavior of Migratory Gray Whales, Bolt Beranek and Newman, Inc., MMS Contract.

28. Possible Effects of Acoustic and Other Stimuli Associated With Oil and Gas Exploration/Development on the Behavior of the Bowhead Whale, LGL Ecological Research Associates, MMS Contract.

29. Surf Zone Smear Model, MMS Contract.

30. Integration of Suspended Particulate Matter and Transport Studies, MMS Contract.

31. Beaufort Sea Monitoring Program, MMS Contract.

32. Food Organisms of Bowhead Whales. Importance of the Eastern Beaufort to Feeding Bowhead Whales. MMS Contract.

33. Diapir Field - Prediction of Site Specific Interaction Between Acoustic Stimuli and Endangered Whales. MMS Contract.

Socioeconomic Studies

1. Diapir Field Anchorage Impacts, Kevin Waring Associates, MMS Technical Report No. 94.

2. Nuiqsut Case Study, Research Foundation, SUNY Binghamton, MMS Technical Report No. 96.

3. Diapir Field Transportation Systems Impacts Analysis, Louis Berger & Assocs., MMS Technical Report No. 105.

4. Beaufort Sea Area Monitoring Study, Kevin Waring Associates, MMS Technical Report No. 107.

5. Assessment of Cumulative Impacts Assessment Methods for Petroleum Development in the Alaskan Arctic, Maynard & Partch, MMS Technical Report No. unassigned.

6. Beaufort/Chukchi-wide Subsistence Study, MMS Contract.

Inquiries about the status and availability of information about reports and studies should reference the research unit number or the technical report number, not the sequential number assigned in these lists.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulation implementing the procedural provision of the National Environmental Policy Act of 1969 (40 CFR 1501.7), the MMS is announcing its intent to prepare an EIS regarding the proposed oil and gas leasing proposal known as Sale 97 in the Diapir Field region of Alaska. The Notice of Intent also serves to announce the scoping process which will be followed for this EIS. The scoping process is intended to involve Federal, State, and local governments and other interested parties in aiding the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Instructions on Call" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Diapir Field Lease Sale 97." Comments are due no later than February 1985. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Wm D. Bettenberg
Director, Minerals Management Service
William D. Bettenberg

Approved:

Garrey E. Carruthers
Assistant Secretary - Land and Minerals Management

9/13/84
Date

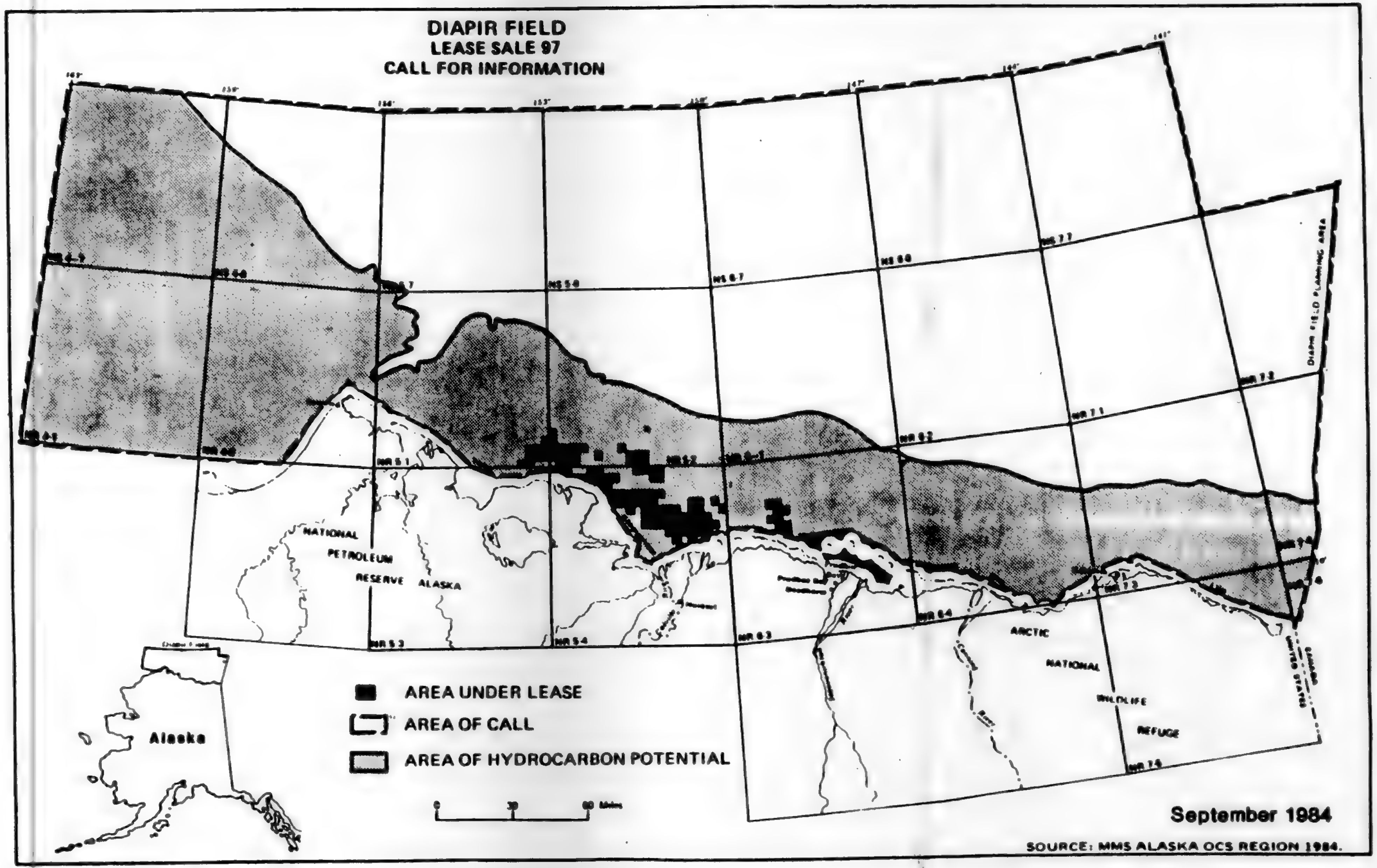

DIAPIR FIELD
LEASE SALE 97
CALL FOR INFORMATION

NATIONAL PETROLEUM RESERVE ALASKA
ARCTIC NATIONAL WILDLIFE REFUGE
Alaska
DIAPIR FIELD PLANNING AREA
CANADA
UNITED STATES
■ AREA UNDER LEASE
AREA OF CALL
AREA OF HYDROCARBON POTENTIAL
0 30 60 Miles

September 1984

SOURCE: MMS ALASKA OCS REGION 1984.

[FR Doc. 84-25200 Filed 9-21-84; 8:45 am]

BILLING CODE 4310-MR-C

federal register

Monday
September 24, 1984

Part IV

Environmental Protection Agency

40 CFR Part 51

Dispersion Techniques Implemented Before Enactment of the Clean Air Act Amendments of 1970; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-2537-8]

Dispersion Techniques Implemented Before Enactment of the Clean Air Act Amendments of 1970

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 123 of the Clean Air Act as amended in 1977, 42 U.S.C. 7423, states that the degree of emission limitation required for control of any pollutant under an applicable State implementation plan (SIP) shall not be affected by a stack height which exceeds good engineering practice or any other dispersion technique. Section 123 goes on to say, however, that this prohibition shall not apply to dispersion techniques implemented before enactment of the Clean Air Amendments of 1970 (December 31, 1970). Dispersion techniques include intermittent control systems (ICS).

Today's proposed rule sets forth the criteria for determining whether an ICS was implemented before December 31, 1970.

DATES: Comments must be received by the Central Docket Section no later than December 24, 1984.

ADDRESSES: All comments must be submitted (in duplicate if possible) to: Central Docket Section (LE-131), EPA, Attn: Docket No. A-79-12, 401 M Street, SW., Washington, D.C. 20460. Docket No. A-79-12, containing material relevant to this rulemaking, is located in the EPA's Central Docket Section, Gallery One, West Tower, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Polkowsky, EPA, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711, telephone: (919) 541-5540.

SUPPLEMENTARY INFORMATION:

Background

EPA has established national ambient air quality standards (NAAQS) for air pollutants which protect the public health and welfare. Under the Clean Air Act, States are required to develop state implementation plans (SIP's) to attain and maintain the NAAQS.

Two general methods for preventing violations of the NAAQS are emission limitations and dispersion techniques. Emission limitations limit the quantity, rate, or concentration of pollutants released into the atmosphere from the source on a continuous basis. In contrast, dispersion techniques rely on atmospheric conditions to enhance dispersion of emitted pollutants so that ground-level concentrations of a pollutant near a source do not violate the NAAQS. Dispersion techniques do not limit emissions on a continuous basis.

Two main types of dispersion techniques are tall stacks and intermittent control systems (ICS). Tall stacks release pollutants into the air at elevations far above the ground. These emissions disperse over a wide area. Intermittent control systems vary a source's rate of emissions in accordance with varying meteorological conditions. When conditions do not favor dispersion and a NAAQS may be violated, the source temporarily restricts operations, shuts down, or burns cleaner fuels to reduce the amount of pollutants emitted. When conditions favor rapid dispersion, the source emits pollutants at higher rates. Some sources with some constant emission control systems use ICS to supplement their constant control systems. When a dispersion technique such as an ICS is used in conjunction with a continuous control system, the dispersion technique is called a supplemental control system. Dispersion technique have been linked with a variety of undesirable environmental and economic effects. These effects are described in the legislative history of the Clean Air Act amendments.[1]

In section 123 of the Clean Air Act, Congress prohibited the use of any dispersion technique in determining a source's emission limitation. The only general exception to this prohibition is for stack heights in existence and dispersion technique implemented before December 31, 1970. Specifically, section 123 states that:

> The [bar against credit for stack heights above good engineering practice and for dispersion technique] shall not apply with respect to stack heights in existence before the date of enactment of the Clean Air Amendments of 1970 or dispersion technique implemented before such date.

Today's proposal interprets the term "implemented" for intermittent control systems. Neither the statute nor the legislative history contains any explicit guidance on the meaning of the term "implemented." The dictionary definition of "implement" is "to carry into effect, fulfill, accomplish."[2] The proposed regulations reflect this "common use meaning"[3] of the word. Accordingly, only those systems designed with a specific air quality objective and operated, equipped, and maintained in a way suited to achieving that objective, are considered implemented. The extent to which an ICS may be taken in to account in establishing emission limits must reflect the ability and efficiency of the ICS as of December 30, 1970. The incidental control of a pollutant which is not the target of the specific air quality objective cannot be considered part of the ICS.

EPA believes the proposed criteria for determining whether ICS were implemented before December 31, 1970, is consistent with the underlying purpose of section 123. The House Committee which originated section 123 was highly critical of intermittent control systems, emphasizing their lack of reliability and enforceability, their adverse environmental impacts, and the heavy resource burden that these techniques place on State and local agencies.[4] At the same time, Congress intended to protect significant commitments or resources made by sources in good faith in order to attain air quality objectives prior to the passage of the Clean Air Act in 1970.[5] Consistent with these concerns, EPA believes that the proposed criteria will result in the exemption of only intermittent control systems to which sources had made a practical, realistic, and significant commitment of resources before December 31, 1970.

EPA earlier defined "in existence" in section 123 to exempt all stacks for which an owner or operatior had entered into binding commitments for construction prior to December 31, 1970. The definition EPA is proposing today for ICS will exempt only those systems actually in operation on that date. EPA believes that the distinction between the criteria for ICS and tall stacks is sound for policy reasons and is consistent with Congressional intent. The preoperational outlay of resources required to set up an ICS is tied mainly to air pollution monitoring equipment. Those costs are not significant and can be partly recovered by resale of the equipment if the system is abandoned. It is only when an ICS is actually put into operation, i.e., when the personnel to run the system are under employment or contract, that the system costs become significant. Therefore, the Agency believes that Congress intended to exempt ICS under section 123 only if those systems were operating before December 31, 1970.

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[1] House Report No. 95-294, 1st Sess. 91 (1977).

[2] Webster's New World Dictionary, College Edition, 730 (1966).

[3] *See Lubvizol* v. *EPA* 562, F. 2d 807, 816 (D.C. Cir 1977).

[4] House Rep. No. 95-294, 1st Sess. 82-87 (1977).

[5] *Id* at 93.

In contrast, a source makes a significant financial commitment to a stack at the time it enters into a binding construction contract. The cost of building a stack is considerably greater than the cost of purchasing monitoring equipment. Moreover, the design of a stack is an integral part of the design of the entire facility. A source could not alter a stack without redesigning or reconstructing many other parts of the facility. Because of these substantial costs, the costs of terminating a contract for the construction of a stack may also be substantial. Thus, it is reasonable to define "implemented" with respect to ICS differently from "in existence" with respect to stack heights. The Agency solicits comments on its definitions of "implemented." The Agency may consider its current position if recompelling reasons are provided in comments as to why "implemented" should be defined more broadly.

The Eligibility Criteria

This proposed rule governing eligibility consists of two definitions and general conditions on the use of an ICS. The rule defines what an ICS is and defines the term "implemented" when applying it to an ICS. The proposed rule will be incorporated into Title 40, Code of Federal Regulations (CFR), §§ 51.1 and 51.12.

The proposal defines ICS as a dispersion technique limiting the emission of pollutants when meteorological conditions cause or are expected to cause ground-level concentrations in excess of applicable ambient air quality standards. This definition also includes an ICS when it is used as a supplemental control system (SCS). An ICS must meet the criteria set forth here in order to be part of a SIP emission limitation.

Under the proposal, an ICS will be considered implemented if the system: (1) Was established and operational before December 31, 1970; (2) was designed and operated to reduce emissions when necessary to meet a stated air quality objective, such as an air quality standard, (3) included, as a minimum, air quality monitors, meteorological instrumentation or appropriate access to meteorological data, and the services of a meteorologist; and (4) is adequately documented to meet these criteria. The air quality data used in operating the ICS must have been obtained from monitors that provided data consistent with the air quality objective and operation of the system. The meteorological information could come from a nearby weather station if appropriate. Documentation of procedures used in operating the ICS and other material supporting the claim of eligibility are required. The documentation should support the use of an ICS as a bona fide attempt to meet an air quality objective, while the documentation need not necessarily demonstrate that the air quality objective was always attained, it should show that emissions were in fact curtailed whenever warranted by meteorological conditions.

Protection of air quality would be minimal or nonexistent if there were no air quality goal or if a dispersion technique were unreliable in attaining a stated goal. Therefore, EPA does not believe that Congress intended that a pre-1971 dispersion technique be considered implemented and thus taken into accouint in setting emission limitations in a SIP, unless such a technique provided a reasonable degree of protection of ambient air quality goals or standards. EPA has determined that the ICS components described above are the minimum necessary to provide an acceptable degree of protection of ambient air quality. An ICS that lacks these components would not reliably maintain the desired levels of pollution control. Without collection of meteorological data and the avaliability of a qualified expert to interpret such data, trends in atmospheric conditions resulting in increasing pollutant concentrations could not be detected quickly enough to activate source cutbacks to protect air quality goals. In addition, without monitors which accurately track pollutant levels, the determination that the source cutbacks were effective in reducing ambient pollutant levels could not be made.

The Agency expects any State which allows for the use of an ICS in setting emission limitations to define the emission limitations affected by the ICS and the manner in which the ICS is taken into account in establishing those limits. The Agency intends that the extent to which an ICS may be taken into account in establishing emission standards be limited to reflect the efficiency of the ICS, as it was implemented before December 31, 1970, in attaining the current NAAQS (i.e., the standards in effect at the time the SIP revisions are being made or the pre-1971 goal or standard, whichever standard or goal is greater). The Agency believes that section 123 was not intended to permit improvements in an ICS made on or after December 31, 1970, to be taken into account in setting emission limits. One example of how this requirement may be implemented is as follows. To ascertain the efficiency of an ICS in meeting a current ambient air quality standard, the first step would be to model the source while setting the receptor sites of the model to be the same as the monitoring sites of the ICS as they existed before December 30, 1970. The source should be modeled at maximum capacity as of December 30, 1970. Using concentrations predicted for the pre-December 31, 1970, ICS monitoring sites and using the pre-December 31, 1970, operations manual for the ICS, the amount of source shutdown required to meet the current standard at those sites could be ascertained. If the air quality design goal of the ICS in 1970 was less stringent than the current standard, only the amount or reduction to meet the design goal should be ascertained. Another model using the source's current emission capacity and a full range of receptor sites should then be applied. This model would take into account the reduction in emissions calculated from the first model. If more control than just the curtailment accomplished by the ICS under the first model is necessary for meeting the standard at all receptor locations, such additional control would have to be accomplished by constant emission reduction. An equivalent method of taking pre-1971 efficiency of the ICS into account may be used by the State.

It should be noted that the method described above is intended only to be a method for determining a source's emission limitations. Once the emission limitations are established by the method described, the source may use its ICS to the extent necessary to meet current standards.

The proposed regulations also provide that in setting the emission limits a State Plan may allow an ICS to compensate only for emissions from a source to which the ICS was implemented before December 31, 1970, and, in the event the source has been modified, only to the extent the emissions correspond to the maximum capacity of a source as of December 31, 1970. For purposes of this requirement, a source to which the ICS was implemented is any particular structure or equipment whose emissions were subject to the ICS procedures before December 31, 1970. Thus, an ICS cannot compensate for all emissions at a particular plant site unless the ICS was implemented with respect to maximum capacity emissions at that plant site before December 31, 1970. The Agency believes that this restriction on how the ICS may be credited is consistent with the letter and purpose of section 123. Since the essence of operating an ICS is the curtailment of emissions whenever warranted by meteorological conditions, an ICS cannot be considered implemented before December 31, 1970, with respect to emissions which did not then potentially exist or with respect to existing emission capacity which was not subject to ICS procedures before December 31, 1970. As an example, one may assume that on December 31, 1970 a source had 5 boilers in operation, each with a capacity to emit 200 tons per year of sulfur dioxide and that only 3 were subject to curtailment under an ICS. In establishing how the ICS would meet a NAAQS for sulfur dioxide, the ICS could be taken into account in establishing an emission limit only with respect to the 600 tons per year of potential sulfur dioxide emissions from the 3 boilers, and only to the extent consistent with the ICS operating procedures. If 1 of the 3 affected boilers is modified to double its emissions, the ICS can still only compensate for 600 tons per year of sulfur dioxide. If one of the affected boilers is put out of service, then the ICS is limited to 400 tons per year of maximum compensation. If both of these events, the modification and the retirement, occur, then the source can still use the ICS to compensate for the combined total of 400 tons per year from the 2 boilers, subject to any additional control requirements resulting from the modification. The proposed regulations are not intended in any way to affect any new source performance standards or new source review requirements which might apply to modified sources.

The proposed regulations permit a plan to credit ICS in setting emission limits on the condition that the plan requires the continued operation of any constant pollution control system which was in use before December 31, 1970, or the equivalent system. This provision is proposed because the Agency does not believe that an ICS should be considered implemented with respect to emissions subject to constant controls before December 31, 1970.

The proposed regulations requires that any State plan which takes an ICS into account in establishing emission limitations must require that the source owner continuously operate and maintain an ICS which satisfies the performance specifications contained in 40 CFR Part 53 and which is otherwise at least as effective as it was before December 31, 1970. Moerover, the regulations provide that any such State plan must contain requirements which specify the procedures for operation of the ICS as well as recordkeeping and reporting requirements. In addition, the State plan must contain any other requirements which, together with the emission limitations, will assure that the NAAQS will be reliably attained and maintained. Although not necessarily required to do so, a State may establish, as part of its SIP, provisions which would allow the State under appropriate circumstances to take direct enforcement action against an ICS-credited source for NAAQS violations. For example, a State might establish provisions similar to those contained in the nonferrous smelter regulations (at 40 CFR 57.401) which provide for presumptive liability for violations of the appropriate NAAQS in a "designated liability area" surrounding and ICS-credited source.

As noted above, among the primary reasons Congress limited the extent to which ICS could be used in establishing emission limitations were problems concerning the reliability and enforceability of such systems.[6] Therefore, the Agency will carefully evaluate whether State plans which take ICS into account contain provisions which in fact will assure that the ICS will be continuously operated or maintained in a reliable manner, and that the NAAQS will be maintained.

The proposed regulations are not in any way intended to limit any State's authority to delegate to local agencies responsibility for developing emission limitations.

Assistance to States

After promulgation of these rules, EPA will provide assistance to any State which adopts this rule and wishes to incorporate an ICS for a specific source into its SIP. This assistance could include information on calculating constant emission control equivalents for that ICS, as well as techniques for ensuring that the operation of the ICS will protect the NAAQS. Since this type of assistance needs to be source specific and will only be developed for a limited number of surces, EPA does not feel that any general guidance document can be prepared as part of this rulemaking. It should be noted, however, that any such assistance will be subject to full public review as required by any SIP action.

Attainment/Nonattainment Designations

The Agency, in accordance with Section 107 of the Clean Air Act, has made designations of attainment/nonattainment for various areas (43 FR 40412, 43 FR 40502, 43 FR 45993). Some areas were designated non-attainment or unclassifiable because reductions in ambient pollutant levels achieved by ICS could not be incorporated into the designation process. If today's proposal becomes final, States may request reclassification to attainment of the affected area based upon reductions in ambient pollutant levels achieved by the eligible ICS. States reclassifying an area to attainment based on an eligible ICS will be required to demonstrate that the appropriate NAAQS will not be violated with continued use of ICS.

Classification

Under Executive Order 12291, EPA is required to judge whether a rule is "major" and therefore subject to procedural review requirements. The Administrator finds this proposal to be a "nonmajor" action not subject to the procedural requirements of Executive Order 12291.

This determination of "nonmajor" is based upon an analysis of the criteria specified in Executive Order 12291. An action is deemed major if the action will: (1) Have an annual effect on the economy of $100 millon or more; (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Should this rule become final, it could result in a decrease in expenditures for required pollution control equipment at the affected sources because the amount of expenditures necessary to comply with applicable air pollutant emission limitations by qualifying sources would generally be less than what would otherwise be required under emission limitations, which are based entirely on the use of constant controls. Sources not qualifying are currently subject to requirements to reduce air pollutant emissions and would not be subject to additional requirements as a result of this rule. Therefore, this proposed rule meets none of the criteria for designation as a "major rule" under the context of Executive Order 12291. EPA has submitted this regulation to the Office of Management and Budget (OMB) for their review in accordance with 12291. Any comments received from OMB on this regulation have been included in the public docket.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule would, if promulgated, make available to a few sources the opportunity to request modification of emission limitations based upon use of ICS prior to December 31, 1970. The recordkeeping requirements in this regulation do not come under the Paperwork Reduction Act (44 U.S.C. 3051, et seq.) because they should impact fewer than 10 facilities.

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[6] House Report, No. 95–294, 1st Sess. 82–87 (1977)

Solicitation of Comments

The Agency actively solicits comments on the proposed rule, and particularly the appropriateness of the procedures for determining the eligibility of ICS in operation before December 31, 1970.

Authority: Sec. 110, 301(a), and 123 of the Clean Air Act as amended, 42 U.S.C. 7410, 7601(a), and 7423.

List of Subjects on 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, and Carbon monoxide.

Dated: September 7,1984.

William D. Ruckelshaus,

Administrator.

PART 51—[AMENDED]

It is proposed to amend Part 51, Chapter I, of Title 40, Code of Federal Regulations to read as follows:

1. A new paragraph (nn) is added to § 51.1 to read as follows:

§ 51.1 Definitions.

* * * * *

(nn) Intermittent control system (ICS) means a dispersion technique which limits the rate at which pollutants are emitted to the atmosphere during periods when meteorological conditions cause or are expected to cause ground-level concentrations in excess of applicable ambient air quality standards. Such a dispersion technique is an ICS whether used alone, used with other dispersion techniques, or used as a supplement to continuous emission controls (i.e., used as a supplemental control system).

2. New paragraphs (m) and (n) are added to § 51.12 to read as follows:

§ 51.12 Control strategy: General.

* * * * *

(m) The use of an intermittent control system (ICS) may be taken into account in establishing an emission limitation for a pollutant under a State plan, provided:

(1) The ICS was implemented before December 31, 1970, according to the criteria specified in § 51.12(n).

(2) The extent to which the ICS is taken into account is limited to reflect the efficiency of the ICS, as it was implemented before December 31, 1970, in attaining current national ambient air quality standards (NAAQS) or, the standard or concentration that the ICS was designed to achieve as of December 31, 1970, whichever concentration or standard is greater.

(3) The plan allows the ICS to compensate only for emissions from a source for which the ICS was implemented before December 31, 1970, and, in the event the source has been modified, only to the extent the emissions correspond to the maximum capacity of the source as of December 30, 1970. For purposes of this subparagraph, a source for which the ICS was implemented is any particular structure or equipment the emissions from which were subject to the ICS operating procedures.

(4) The plan requires the continued operation of any constant pollution control system which was in use before December 31, 1970, or the equivalent of that system.

(5) The plan clearly defines the emission limits affected by the ICS and the manner in which the ICS is taken into account in establishing those limits.

(6) The State plan contains requirements for the operation and maintenance of the qualifying ICS which, together with the emission limitations and any other necessary requirements, will assure that the national ambient air quality standards will be attained and maintained. These requirements shall include, but not necessarily be limited to, the following:

(i) Requirements that as source owner or operator continuously operate and maintain an ambient air monitoring network which statisfies the performance specifications contained in 40 CFR Part 53 and which is otherwise at least as effective as the monitoring network implemented before December 31, 1970.

(ii) Requirements that a source owner or operator continuously operate and maintain the components of the ICS specified at § 51.12(n)(3) (ii)–(iv) in a manner which assures that the ICS is at least as effective as it was before December 31, 1970.

(iii) Requirements which specify the circumstances under which, the extent to which, and the procedures through which emissions shall be curtailed through the activation of ICS;

(iv) Requirements for recordkeeping which require the owner or operator of the source to keep for a period of at least 3 years, records of measured ambient air quality data, meteorological information acquired, and production data relating to those processes affected by the ICS.

(v) Requirements for reporting which require the owner or operator of the source to notify the State and EPA within 30 days of a NAAQS violation pertaining to the pollutant affected by the ICS.

(7) Nothing in this paragraph affects the applicability of any new source review requirements or new source performance standards contained in the Clean Air Act or 40 CFR Subchapter C.

(8) Nothing in this paragraph precludes a State from taking an ICS into account in establishing emission limitations to any extent less than permitted by this paragraph.

(n) An intermittent control system (ICS) may be considered implemented for a pollutant before December 31, 1970, if the following criteria are met:

(1) The ICS must have been established and operational with respect to that pollutant prior to December 31, 1970, and reductions in emissions of that pollutant must have occurred when warranted by meteorological and ambient monitoring data.

(2) The ICS must have been designed and operated to meet an air quality objective for that pollutant, such as an air quality level or standard.

(3) The ICS must, at a minimum, have included the following components prior to December 31, 1970:

(i) Air quality monitors—an array of sampling stations whose location and type were consistent with the air quality objective and operation of the system.

(ii) Meteorological instrumentation—a meteorological data acquisition network (may be limited to a single station) which provided meteorological prediction capabilities sufficient to determine the need for and degree of emission curtailments necessary to achieve the air quality design objective.

(iii) Operating system—a system of established procedures for determining the need for curtailments and for accomplishing such curtailments. Documentation of this system, as required by paragraph (4) of this section, may consist of a compendium of memoranda or comparable material which define the criteria and procedures for curtailments and which identify the type and number of personnel authorized to initiate curtailments.

(iv) Meteorologist—a person, schooled in meteorology, capable of interpreting

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data obtained from the meteorological network and qualified to forecast meteorological incidents and their effect on ambient air quality. Sources may have obtained meteorological services through a consultant.

(4) Documentation sufficient to support the claim that the ICS met the criteria listed in this paragraph must be provided. Such documentation may include affidavits or testimony.

[FR Doc. 84-25165 Filed 9-21-84; 8:45 am]

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federal register

Monday
September 24, 1984

Part V

Environmental Protection Agency

40 CFR Part 60

Proposed Waivers From New Source Performance Standards; Innovative Technology Waivers for Four Automobile and Light-Duty Truck Surface Coating Operations; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2634-2]

Proposed Waivers From New Source Performance Standards; Innovative Technology Waivers for Four Automobile and Light-Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant, subject to the concurrence by the Governors of the States of Georgia, Michigan, Minnesota, and Missouri, innovative technology waivers, pursuant to section 111(j) of the Clean Air Act, as amended (the Act), 42 U.S.C. 7411(j), for topcoat operations at the following automobile and light-duty truck assembly plants:

(1) Chrysler Corporation's Sterling Heights, Michigan, plant;
(2) Ford Motor Company's (Ford) Hapeville, Georgia, plant;
(3) Ford's St. Paul, Minnesota, plant; and
(4) Ford's Hazelwood, Missouri, plant.

These waivers provide an opportunity to demonstrate the capability of basecoat/clearcoat (BC/CC) topcoat systems to achieve equivalent or greater emission reductions than required by the existing standard of performance for topcoat operations at automobile and light-duty truck assembly plants at lower costs.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the proposed innovative technology waivers.

DATES: Comments. Comments must be received on or before November 8, 1984.

Public Hearing. A public hearing (or hearings) will be held if requested. Persons wishing to request a public hearing must contact EPA by October 9, 1984. If hearings are requested, announcements of the dates and places will appear in separate **Federal Register** notices.

ADDRESSES: Comments. Under section 307(d)(2) of the Clean Air Act, 42 U.S.C. 7607(d)(2), the Administrator is required to establish two identical rulemaking dockets for each rule that would apply only within the boundaries of one State. One copy of the docket is located in Washington, D.C., and a second copy is located at the EPA Regional Office for the affected State. Therefore, copies of all comments on a particular waiver action should be submitted to the Washington, D.C. docket *and* to the respective Regional Office docket.

One copy of each comment should be sent to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. (Use appropriate docket number for plant waiver—see Table 1.)

A second copy of each comment should be sent to:

For: Chrysler's Sterling Heights, Michigan, plant and/or Ford's St. Paul, Minnesota, plant: Environmental Protection Agency, Region V, Attention: Mr. Gary Gulezian, Docket Number (see Table 1), 230 South Dearborn Street, Chicago, Illinois 60604.

For: Ford's Hapeville, Georgia, plant: Environmental Protection Agency, Region IV, Attention: Mr. Brian Beals, Docket Number (see Table 1), 345 Courtland Street, NE., Atlanta, Georgia 30365.

For: Ford's Hazelwood, Missouri, plant: Environmental Protection Agency, Region VII, Attention: Mr. Charles Whitmore, Docket Number (see Table 1), 324 East 11th Street, Kansas City, Missouri 64106.

The dockets may be inspected at the listed addresses between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged for copying.

TABLE 1.—DOCKET NUMBERS

Plant	Docket No.
1. Chrysler—Sterling Heights, MI	A-84-09
2. Ford—St. Paul, MN	A-84-10
3. Ford—Hapeville, GA	A-84-11
4. Ford—Hazelwood, MO	A-84-12

Public Hearing. Persons wishing to request a public hearing should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy or Mr. Gilbert Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Background

Current Regulations

On October 5, 1979, pursuant to section 111 of the Clean Air Act, standards of performance were proposed to limit emissions of volatile organic compounds (VOC) from new, modified and reconstructed automobile and light-duty truck surface coating operations (44 FR 57792). Final standards were published in the **Federal Register** on December 24, 1980 (45 FR 85410).

Standards of performance under section 111 are established at levels that reflect best demonstrated technology (BDT). For automobile and light-duty truck topcoat operations, BDT was determined to be the use of low VOC content waterborne coatings applied with the best demonstrated air atomized spray techniques. The standard of 1.47 kilogram VOC per liter (kg/l) of applied coating solids for topcoat operations was based on the use of this coating system. The standard does not, however, require use of waterborne coatings. Any coating system capable of reducing VOC emissions to 1.47 kg/l of applied coating solids may be used. Other methods which could be used independently or in various combinations to achieve the topcoat standard are low VOC content solvent-borne coatings, add-on control devices (e.g., incinerators and carbon adsorbers), and high efficiency coating application techniques.

Trends in Automobile Topcoats

Since the standard was proposed in 1979, the trend in the domestic automobile industry has been to develop and use low VOC content solvent-borne topcoats with improved transfer efficiency, rather than waterborne coatings, to reduce VOC emissions and improve finish quality. Low VOC content topcoats are available for production line use. These coatings have been demonstrated to be of acceptable quality and appearance and, when used in combination with better transfer efficiency and/or bake oven emission control systems (i.e., energy efficient incinerators), will meet the standard.

Since 1979, however, there has been an increase in the effort by the automobile manufacturers to develop basecoat/clearcoat (BC/CC) topcoats for automobiles and light-duty trucks. The BC/CC topcoats consist of a relatively thin layer of highly pigmented basecoat followed by a thicker layer of clearcoat. The BC/CC coatings have a more appealing appearance than non-BC/CC topcoat systems and also offer improved chemical resistance and gloss retention. Vehicles coated with BC/CC topcoats are now being imported to the United States (U.S.) in significant quantities by both European and Japanese manufacturers. Because of the general appeal and acceptance by U.S. consumers of vehicles coated with the BC/CC topcoats, U.S. automobile and light-duty truck manufacturers claim they must duplicate the performance of this type of topcoat to be competitive.

The BC/CC coatings that are being used in foreign plants contain relatively large quantities of VOC. If U.S. manufacturers used similar coatings, the only possible method of meeting the existing standard of performance for automobile and light-duty truck topcoat operations would be to use expensive add-on controls. Although U.S. automobile manufacturers and coating suppliers have made progress in developing lower VOC content BC/CC systems, BC/CC systems with VOC content low enough to comply without such add-on control are not yet commercially available. The automobile manufacturers and equipment vendors are also developing more efficient application methods for these coatings. Ultimately, this intensive industry development program will permit the automobile companies to meet the topcoat standard and still apply BC/CC coatings to automobiles in sufficient number to meet market demand without having to use expensive add-on controls.

Requirements of Section 111(j)

Section 111(j) of the Clear Air Act sets forth provisions for the issuance of waivers for the development of innovative technology. In the 1977 Amendments to the Clean Air Act, Congress added this provision to encourage the use of innovative "technological systems of continuous emission reduction" for the control of air pollutants. Their intent in doing so was to provide a statutory incentive for the improvement of emission control technology and for reducing costs, environmental impacts, and energy usage of such technology.

Under section 111(j) of the Act, upon request by the owner or operator of a new source and with the consent of the Governor of the State in which the source in located, the Administrator is authorized to grant a waiver from the requirements of Section 111 for a limited time period provided certain statutory prerequisites are satisfied. The Administrator must determine that:

a. The proposed innovative system has not been adequately demonstrated;

b. The proposed innovative system will operate effectively and there is substantial likelihood that the system will achieve greater continuous emission reduction than otherwise required or achieve an equivalent emission reduction at lower cost in terms of energy, economic, or nonair quality environmental impact;

c. The owner or operator of the proposed system has demonstrated to the Administrator's satisfaction that the system will not cause or contribute an unreasonable risk to public health, welfare, or safety; and

d. The proposed waiver for the specific innovative technological system is not in excess of the number of waivers necessary to ascertain whether or not such system will achieve the conditions set forth in "b" and "c" immediately above.

Additionally, section 111(j)(1)(B) of the Act requires an innovative technology waiver to be granted on such terms and conditions during the waiver period as the Administrator determines necessary:

a. To ensure emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

b. To ensure proper functioning of the innovative technological system.

Current Waivers

On February 4, 1983, EPA granted innovative technology waivers under section 111(j) of the Clean Air Act to three General Motors Corporation (GM) plants, one Honda of America Manufacturing, Inc. (Honda) plant, and one Nissan Motor Manufacturing Corporation U.S.A. (Nissan) plant. (See **Federal Register**, Vol. 48, No. 5, Friday, February 4, 1983, pp. 5452 through 5456.) Three identical waivers were granted for the GM plants. The waivers allow VOC emissions of 1.9 kg/l of applied coating solids from the portion of the topcoat operations that use BC/CC coatings. The waivers for the Honda plant and the Nissan plant allow VOC emissions of 3.1 and 2.3 kg/l of applied coating solids, respectively, from the portion of the topcoat operations that use BC/CC coatings. Non/BC/CC topcoats, under these waivers, are still required to meet the standard at all times.

Waiver Requests

Chrysler

On February 9, 1984, Chrysler submitted a request for an innovative technology waiver under section 111(j) of the Clean Air Act for the topcoat operation at an automobile plant under construction in Sterling Heights, Michigan, until August 31, 1987. The plant is scheduled to begin production by mid-1984. Chrysler claims they need to use BC/CC topcoats on most, if not all, of the cars produced at this plant so that they can compete with both domestic and foreign car manufacturers who are increasingly relying on BC/CC topcoats.

Chrysler indicated that the lowest VOC content BC/CC coating that would be demonstrated and available for production line use at plant startup is a topcoat system that is composed of a 40 volume percent solids basecoat and a 46 volume percent solids clearcoat (i.e., a 40/46 BC/CC coating). Two other BC/CC coatings that Chrysler indicated would be available at plant startup are a 34/53 BC/CC coating and a 30/39 BC/CC coating. Regardless of which paint is used, the BC will be applied with manual and automatic air atomized spray. The CC will be applied with a combination of electrostatic bells and manual electrostatic sprays. The average transfer efficiency will be 45 percent for the BC and 76.4 percent for the CC. The exhaust gas streams from all the topcoat ovens will be incinerated. The oven incinerators would reduce overall topcoat VOC emissions by about 18 percent. Under these conditions, BC/CC topcoat emissions for the 40/46, 34/53, and 30/39 BC/CC coatings would be 1.68, 2.16 and 2.65 kg/l of applied coating solids, respectively.

Currently, Chrysler has two BC/CC coatings under evaluation (a 48/54 BC/CC coating and a 38/54 BC/CC coating). The 48/54 BC/CC coating could meet the topcoat standard of performance with oven incineration and an average coating transfer efficiency of 45 percent for BC and 76.4 percent for CC. Chrysler expects this coating to be ready for production application prior to the 1988 car model year.

Ford

On February 10, 1984, Ford submitted a request for an innovative technology waiver under section 111(j) of the Clean Air Act for each new topcoat operation at three of its existing assembly plants until December 31, 1986. The Hapeville, Georgia, plant and the St. Paul, Minnesota, plant are scheduled to start their new topcoat operations at the beginning of 1985; the Hazelwood, Missouri, plant is scheduled to start its new topcoat operation in August 1984. Ford claims they need to use BC/CC topcoats at these plants so they can be competitive with vehicles produced by other domestic and foreign manufacturers.

Ford indicated that the lowest VOC content BC/CC coating that would be demonstrated and available for production line use by the third quarter of 1984 is a 22/48 BC/CC coating. Ford plans to use this coating on a portion of the vehicles produced at all three plants. (The remaining vehicles will be painted with non-BC/CC higher solids enamels that will comply with the NSPS for automobile and light-duty truck topcoats.) The BC will be applied using a combination of manual and automatic nonelectrostatic applicators and high voltage automatic electrostatic applicators. The CC will be applied with a combination of manual and automatic electrostatic applicators. Due to the different vehicle configurations and planned production rates at each plant, different combinations of application equipment were selected for each plant. The different combinations of application equipment result in different average overall topcoat transfer efficiencies at each plant. The average overall basecoat transfer efficiency will be 49 percent at the St. Paul plant, 52 percent at the Hapeville plant, and 59 percent at the Hazelwood plant; the average overall clearcoat transfer efficiency will be 70 percent at the Hazelwood and St. Paul plants and 72 percent at the Hapeville plant. The oven exhaust gas stream from the St. Paul, Minnesota, plant will be incinerated; however, Ford noted that the incineration is provided for odor control and not VOC control. Oven exhaust gas streams from the other two plants will not be incinerated. Incinerators at the St. Paul, Minnesota, plant would reduce overall topcoat VOC emissions by about 27 percent. Under these conditions, BC/CC topcoat emissions would be 2.45 kg/l of applied coating solids at the Hazelwood plant; 2.61 kg/l of applied coating solids at the Hapeville plant; and 2.00 kg/l of applied coating solids (taking into account the incineration) at the St. Paul plant.

Ford is currently studying two higher solids BC/CC materials. One is a 32/46 BC/CC coating and the other is a 38/54 BC/CC coating. Of these, only the 38/54 BC/CC coating would comply with the topcoat standard of performance using the application equipment noted above and their respective BC and CC transfer efficiencies at each of the three plants and using incinerators at the St. Paul plant. The 38/54 BC/CC coating is expected to be in use by December 31, 1986.

The Chrysler and Ford waiver requests each depend upon the development of lower VOC content BC/CC topcoats than are currently demonstrated. Therefore, reviews of these requests are presented under the same headings below.

Technology Not Demonstrated

Chrysler plans to use BC/CC coatings on most, if not all, of the automobiles produced at the plant for which they have requested a waiver. Ford plans to use BC/CC coatings on about 60 percent of the automobiles produced at the Hapeville, Georgia, plant; about 50 percent of the vans produced at the Hazelwood, Missouri, plant; and about 35 percent of the pickup trucks at the St. Paul, Minnesota, plant. The lowest VOC content BC/CC coating expected to be available and demonstrated for the Chrysler plant at startup will average 40 volume percent solids for the basecoat and 46 volume percent solids for the clearcoat (i.e., 40/46 BC/CC coating). The lowest VOC content BC/CC coating expected to be available and demonstrated for the Ford plants at startup will average 22 volume percent solids for the basecoat and 46 volume percent solids for the clearcoat (i.e., 22/46 BC/CC coating).

When these BC/CC coating systems are applied with the best available coating application equipment demonstrated by each company, emissions of 1.68 (Chrysler), 2.45 (Ford-Hazelwood, Missouri), 2.61 (Ford-Hapeville, Georgia), and 2.00 (Ford-St. Paul, Minnesota) kg/l of applied coating solids would result (based on 100 percent use of BC/CC coatings at each plant and on the use of incinerators at Chrysler's plant and at Ford's St. Paul plant). These emission levels are higher than the 1.47 kg/l of applied coating solids allowed by the standard of performance for topcoat operations. To the extent Ford uses both BC/CC and non-BC/CC coatings at their three plants, overall average topcoat emissions at startup will be lower.

Higher solids BC/CC coatings, which are in various stages of development and testing, include a 38/54 BC/CC coating and a 48/54 BC/CC coating (by Chrysler) and a 32/46 BC/CC coating and a 38/54 BC/CC coating (by Ford). Chrysler could meet the topcoat standard of performance with the 48/54 BC/CC coating using the paint application equipment and bake oven exhaust incinerators they plan to install at startup at their plant. Ford could meet the topcoat standard of performance with the 38/54 BC/CC coating using the paint application equipment they plan to use at startup in their plants and incinerators at the St. Paul plant.

Development of these BC/CC coatings to the point where they are compatible with high transfer efficiency coating equipment and ready for use on assembly lines is a time-consuming process. Achievement of the emission rates necessary to comply with the topcoat standard of performance is dependent not only upon continued development of these coatings, but also upon the continued development and use of coating application techniques which result in high transfer efficiency of the sprayed solids to the automobile. Development and demonstration of these techniques are an integral part of the coatings development program for each automobile manufacturer. Differences in the overall coatings and application program among manufacturers may enable one manufacturer to meet the standard with a coating that has a particular percent volume solids, whereas another manufacturer cannot meet the standard with the same coating. The determination of whether a particular BC/CC coating will meet the standard, therefore, must take into account a number of variables in addition to the percent volume solids.

In addition to the need to assure that the coatings can be applied under assembly-line conditions while achieving acceptable appearance and quality, there is also the need to assure durability of the coating. This requires long-term exposure testing.

Until the 38/54 or 48/54 BC/CC coating is fully developed, compliance with the topcoat standard of performance using BC/CC coatings can only be achieved by limiting production of vehicles with BC/CC coatings or by using add-on controls. Limiting production of vehicles with BC/CC coatings to achieve compliance with the topcoat standard of performance is unreasonable due to the economic penalty this could impose of domestic automobile manufacturers as a result of their inability to manufacture a sufficient number of vehicles with BC/CC coatings. Similarly, as explained below, the use of add-on controls is also unreasonable.

Up to 80 percent of all VOC emitted from a topcoat operation are emitted from the spray booth area. This high volume emission stream is characterized by low VOC concentration. This is due to the ventilation requirements for workers in the spray booth and process considerations to prevent overspray from drifting from one vehicle to the next. There are two add-on control technologies that could be applied to this stream to reduce VOC emissions: carbon adsorption and incineration. Both effectively remove or destroy VOC from the exhaust streams before release to the atmosphere.

Carbon adsorption units have been used in experimental studies on low VOC concentration spray booth exhaust streams and have been technically demonstrated. Although these systems have not been used in full-scale production, there is sufficient evidence to show that they would also work in such applications. Ford estimates that the capital costs for this control alternative would be between $15 and $20 million per plant using the 22/46 BC/CC coating.

Incineration of the spray booth exhaust streams requires a large amount of supplemental fuel because the low VOC concentration cannot support combustion by itself. Chrysler estimates that the capital costs for thermal incineration equipment necessary to achieve compliance with the topcoat standard of performance for available topcoat materials would be between $7 and $10 million using the 30/39 BC/CC coating. The annual operating cost the Chrysler's system was estimated to be approximately $7 million. The thermal incineration would reduce VOC emissions by approximately 375 tons per year, resulting in a cost effectiveness of over $18,000 per ton of VOC removed.

In summary, BC/CC topcoat systems that will meet the topcoat standard of performance and allow production of BC/CC coated vehicles at the levels required to permit domestic automobile manufacturers to compete with foreign automobile manufacturers are not adequately demonstrated. Add-on control system that would reduce VOC emissions to levels required to comply with the topcoat standard of performance are demonstrated technically, but the economic and energy impacts associated with these control systems are considered unreasonable, and the systems are, therefore, not adequately demonstrated within the meaning of section 111(a)(1).

BC/CC Systems Will Operate Effectively and Achieve the Standard at Lower Costs

There is sufficient evidence to indicate that the companies that develop and market automobile coatings and coatings application equipment will develop BC/CC coating systems that will meet both the topcoat standard of performance and the automobile manufacturers production and coating quality requirements within the time frame provided in the waivers. This conclusion is based on the fact that a number of BC/CC coatings, which have lower VOC contents that currently demonstrated BC/CC coatings, are already in various stages of testing and that the companies that develop and market automobile coatings have a history of succeeding within their projected time frames for developing low VOC content coatings.

When developed, the 38/54 or 48/54 BC/CC coatings will meet the topcoat standard of performance. These low VOC content BC/CC coatings will be able to achieve the topcoat standard without spray booth controls; therefore, the energy and economic impacts would be much less than for the use of a 30/39, 34/53, 40/46, or 22/46 BC/CC coating and spray booth controls.

Number of Waivers Needed To Demonstrate Technology

Based on a review of the technical factors involved in demonstrating that lower solvent BC/CC systems are an adequately demonstrated technology, the Agency concludes that the number of waivers which have been requested are necessary and appropriate. Generally, much of the BC/CC technology is transferable among automobile manufacturing companies, since coating manufacturers do not limit their sales to only one firm or plant. However, individual automobile manufacturing companies have historically relied on their own testing procedures and acceptance criteria for establishing a coating durability and quality. Such independent testing is an inherent part of the structure of the automobile industry and plays an important role in advancing the quality of automobile coatings.

Moreover, the demonstration of BC/CC technology involves advancement in application equipment, as well as the coatings, and the two must be compatible. The advancement and demonstration of this technology must take into account a number of variables including different plant designs and approaches to paint processing; variability among coating supplied by several suppliers; plant-to-plant differences in the operation of paint line equipment (e.g. oven temperature, spray booth flow rate, and humidity control systems); the use of robot systems; and high voltage electrostatic equipment supplied by several vendors. In effect, these variables present a matrix of conbinations which must be evaluated before the lower solvent BC/CC systems are fully demonstrated. Considering the complexity and technical challenge which this presents, the Agency concludes that each waiver is warranted.

BC/CC Will Not Cause or Contribute to Unreasonable Risk to Public Health, Welfare, or Safety

The ambient air quality impacts of allowing additional VOC emissions during the waiver period would not contribute to an unreasonable risk to public health, welfare, or safety. The waivers would allow between 100 and 400 additional tons of VOC per plant per year to be emitted from topcoat operations while they are in effect based on their projected split of non-BC/CC and BC/CC coatings at their plants. If the manufacturers were to use BC/CC coatings 100 percent of the time, the waivers would allow between 300 and 700 additional tons of VOC per plant to be emitted from topcoat operations while in effect.

The proposed waivers contain a general provision to clarify that the granting of these waivers does not exempt the automobile manufacturers form any requirements that the State may impose in order to maintain reasonable further progress, to achieve an approved demonstration of attainment, or to attain and maintain the national ambient air quality standard for ozone. The proposed waivers would not affect the attachment date for the national ambient air quality standard for ozone because they would expire on December 31, 1986.

Three of the four plants are in nonattainment areas for ozone; two of these three plants (Hazelwood, Missouri, and Hapeville, Georgia) are in nonattainment areas that lack approved demonstrations of attainment for ozone. All four plants, however, must have construction and operating permits. These permits will have to be revised as discussed in the following paragraphs.

The permits for the three plants in nonattainment areas must ensure that reasonable further progress (RFP) toward attainment will be maintained. The statewide compliance requirements of section 173 of the Clean Air Act also must be met. For the two plants in nonattainment areas without approved demonstrations of attainment, the States must require sufficient offsetting emission reductions so that RFP is maintained. Each of these three plants must also meet the lowest achievable emission rate requirement of section 173 of the Act. The proposed development of BC/CC coatings appears to meet the intent of the LAER requirement since it offers the potential of providing greater emission reductions at lower costs than existing LAER technology. EPA, thus, encourages any State LAER decision to allow for the development of BC/CC coatings at these plants that is consistent with the conditions of the 111(j) waivers.

For the plant in an attainment area for ozone, the permit must ensure the maintenance of the national ambient air quality standard for ozone as provided for by Part C of the Act. The proposed waiver for this plant would not adversely affect the maintenance of the national ambient air quality standard for ozone.

Use of the VOC content BC/CC coating systems will not result in an increase in water or solid waste pollution compared to the current coating systems now in use at existing plants, nor will new pollutants be released to the environment.

Conclusion

Based on the above considerations, the Administrator proposes to grant, subject to the concurrence of the Governors of Georgia, Michigan, Minnesota, and Missouri, innovative technology waivers as specified in this proposal to: (1) Chrysler for their Sterling Heights, Michigan, automobile assembly plant; (2) Ford for their Hapeville, Georgia, automobile assembly plant; (3) Ford for their Hazelwood, Missouri, passenger van assembly plant; and (4) Ford for their St. Paul, Minnesota, light-duty truck assembly plant based upon findings that such waivers comply with the provisions of section 111(j) of the Act.

Proposed Waivers

The four waivers are proposed to be granted under the following general conditions. The starting BC/CC system would be the lowest emitting BC/CC system adequately demonstrated for each plant. The plants must use coating applications systems with the highest transfer efficiencies that are currently available and practical at the respective plant.

The waivers would cover only the BC/CC topcoat portion of the topcoat operations. If non-BC/CC solid color or metallic topcoats are used, that portion of the topcoats operation must meet the topcoat standard of performance at all times. Reports of progress on the development of the BC/CC systems must be made to EPA within 60 days of issuance of the waiver and at least each 12-month period. The topcoat standard of performance must be achieved as soon as possible.

As noted earlier, Chrysler requested that their waiver be granted until August 31, 1987, and Ford requested that their waivers be granted until December 31, 1986. Chrysler's requested date is based upon introducing a compliance BC/CC at the start of the 1988 model year rather than introducing a compliance BC/CC in the middle of the 1987 model year. The other automobile manufacturers for whom waivers have already been issued indicated that they can implement a compliance BC/CC system by December 31, 1986, even though the changeover might occur in the middle of the 1987 model year. These previously issued waivers expire on December 31, 1986. There is no apparent technological reason as to why all waivers, including those that would be granted to Chrysler, should not expire on the same date. Therefore, the proposed waivers for Chrysler and Ford would expire on December 31, 1986.

The companies are required, consistent with Parts C and D of the Clean Air Act, to obtain permits to operate from the State. These permits would ensure that each waiver will not prevent attainment and maintenance of any national ambient air quality standard. The conditions of the proposed waivers would also require proper operation of the BC/CC systems.

By virtue of section 111(j)(1)(B) of the Clean Air Act, 42 U.S.C. 7411 (j)(1)(B), the terms and conditions of the section 111(j) waivers would be federally promulgated standards of performance legally applicable during the waiver periods. Violations of the terms and conditions of the section 111(j) waivers would subject the owners and operators of the plants granted waivers to Federal enforcement under section 113 (b) and (c) of the Act, 42 U.S.C. 7413 (b) and (c), and under section 120 of the Act, 42 U.S.C. 7420, as well as possible citizen enforcement under section 304 of the Act, 42 U.S.C. 7604.

State Concurrence

Pursuant to section 111(j)(1)(A) of the Act, 42 U.S.C. 4711(j)(1)(A), if after review and consideration of comments submitted in response to this rulemaking, the Administrator decides to issue a waiver of the Federal New Source Performance Standard to Chrysler's Sterling Heights, Michigan, plant; Ford's Hapeville, Georgia, plant; Ford's Hazelwood, Missouri, plant; and Ford's St. Paul, Minnesota, plant; the Administrator shall request the concurrence of the Governors of the States of Georgia, Michigan, Minnesota, and Missouri. Receipt of such concurrences is a prerequisite for a waiver under section 111(j) of the Act.

Docket

The docket for each proposed waiver is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated waivers and EPA's responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review materials [section 307(d)(7)(A)].

Miscellaneous

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information" as defined in the Paperwork Reduction Act. Therefore, the provisions of the Paperwork Reduction Act applicable to collection of information do not apply to this rulemaking.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements; and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291. This rulemaking was submitted to OMB for review as required by Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergrovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: September 14, 1984.

William D. Ruckelshaus,
Administrator.

PART 60—[AMENDED]

Title 40 Part 60, Subpart MM of the Code of Federal Regulations is proposed to be amended by adding the following new paragraphs to § 60.398 as set forth below:

§ 60.398 Innovative technology waivers.

* * * * *

(f) Chrysler Corporation, Sterling Heights, Michigan automobile assemby plant.

(1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Chrysler Corporation's automobile assembly

plant located in Sterling Heights Michigan, shall comply with the following conditions:

(i) The Chrysler Corporation shall obtain the necessary permits as required by Parts C and D of the Clean Air Act, as amended August 1977, to operate the Sterling Heights assembly plant.

(ii) Commencing on [date of promulgation in the **Federal Register**], and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified in 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Chrysler Corporation shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Sterling Heights, Michigan, assembly plant, to either:

(A) 1.7 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (f)(1)(ii) of this section and continuing thereafter, emissions of VOC from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified in 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits in § 60.398(f)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulagtion of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards, and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Chrysler Corporation to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Chrysler Corporation to enforcement under section 113 (b) and (c) of the Act (42 U.S.C. 7412 (b) and (c)) and under section 120 of the Act (42 U.S.C. 7420) as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Michigan from imposing upon the Chrysler Corporation any emission reduction requirement at Chrysler's Sterling Heights automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone.

(g) Ford Motor Company, Hapeville, Georgia, automotive assembly plant.

(1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in Hapeville, Georgia, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required by Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hapeville assembly plant.

(ii) Commencing on [date of promulgation in the **Federal Register**], and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified in 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hapeville, Georgia, assembly plant, to either:

(A) 2.6 kilograms of VOC per liter of applied coating solids from BC/CC topcoat, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (g)(1)(ii), of this section and continuing thereafter, emissions of VOC from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified in 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coating when necessary to demonstrate compliance with the emission limits in § 60.398(g)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina, 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) of the Act (42 U.S.C 7412 (b) and (c)) and under section 120 of the Act (42 U.S.C. 7420) as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Georgia from imposing upon the Ford Motor Corporation any emission reduction requirement at Ford's Hapeville automobile assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone.

(h) Ford Motor Company, St. Paul, Minnesota, light-duty truck assembly plant.

(1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in St. Paul, Minnesota, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required by Parts C and D of the Clean Air Act, as amended August 1977, to operate the St. Paul assembly plant.

(ii) Commencing on [date of promulgaton in the **Federal Register**], and continuing to December 31, 1986, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified in 40 CFR 60.392(c), is demonstrated to the Administrator's statisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the St. Paul, Minnesota, assembly plant, to either:

(A) 2.0 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (h)(1)(ii) of this section, and continuing thereafter, emissions of VOC from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified in 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits in § 60.398(h)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina, 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113 (b) and (c) of the Act (42 U.S.C. 7412 (b) and (c)) and under section 120 of the Act (42 U.S.C. 7420) as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Minnesota from imposing upon the Ford Motor Corporation any emission reduction requirement at Ford's St. Paul light-duty truck assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standard for ozone or the maintenance of the national ambient air quality standard for ozone.

(i) Ford Motor Company, Hazelwood, Missouri, passenger van assembly plant.

(1) Pursuant to section 111(j) of the Clean Air Act, 42 U.S.C. 7411(j), each topcoat operation at Ford Motor Company's automobile assembly plant located in Hazelwood, Missouri, shall comply with the following conditions:

(i) The Ford Motor Company shall obtain the necessary permits as required by Parts C and D of the Clean Air Act, as amended August 1977, to operate the Hazelwood assembly plant.

(ii) Commencing of [date of promulgation in the **Federal Register**] and continuing to December 31, 1986, whichever comes first, or until the basecoat/clearcoat (BC/CC) topcoat system that can achieve the standard specified in 40 CFR 60.392(c) is demonstrated to the Administrator's satisfaction, whichever is sooner, the Ford Motor Company shall limit the discharge of VOC emissions to the atmosphere from each topcoat operation at the Hazelwood, Missouri, assembly plant, to either:

(A) 2.5 kilograms of VOC per liter of applied coating solids from BC/CC topcoats, and 1.47 kilograms of VOC per liter of applied coating solids from all other topcoat coatings; or

(B) 1.47 kilograms of VOC per liter of applied coating solids from all topcoat coatings.

(iii) Commencing on the day after the expiration of the period described in paragraph (i)(1)(ii) of this section, and continuing thereafter, emissions of VOC from each topcoat operation shall not exceed 1.47 kilograms of VOC per liter of applied coating solids as specified in 40 CFR 60.392(c).

(iv) Each topcoat operation shall comply with the provisions of §§ 60.393, 60.394, 60.395, 60.396, and 60.397. Separate calculations shall be made for BC/CC coatings and all other topcoat coatings when necessary to demonstrate compliance with the emission limits in § 60.398(i)(1)(ii)(A).

(v) A technology development report shall be sent to EPA Region VII, 324 East 11th Street, Kansas City, Missouri 64106, postmarked before 60 days after the promulgation of this waiver and annually thereafter while this waiver is in effect. A copy of this report shall be sent to Director, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711. The technology development report shall summarize the BC/CC development work including the results of exposure and endurance tests of the various coatings being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.392(c), based on the most current information.

(2) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for the Ford Motor Company to operate a topcoat operation in violation of the requirements established in this waiver. Violation of the terms and conditions of this waiver shall subject the Ford Motor Company to enforcement under section 113(b) and (c) of the Act (42 U.S.C. 7412(b) and (c)) and under section 120 of the Act (42 U.S.C. 7420) as well as possible citizen enforcement under section 304 of the Act (42 U.S.C. 7604).

(3) This waiver shall not be construed to constrain the State of Missouri from imposing upon the Ford Motor Corporation any emission reduction at Ford's Hazelwood passenger van assembly plant necessary for the maintenance of reasonable further progress or the attainment of the national ambient air quality standards for ozone or the maintenance of the national ambient air quality standard for ozone.

(42 U.S.C. 7411 and sec. 111(j) of the Clean Air Act)

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3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
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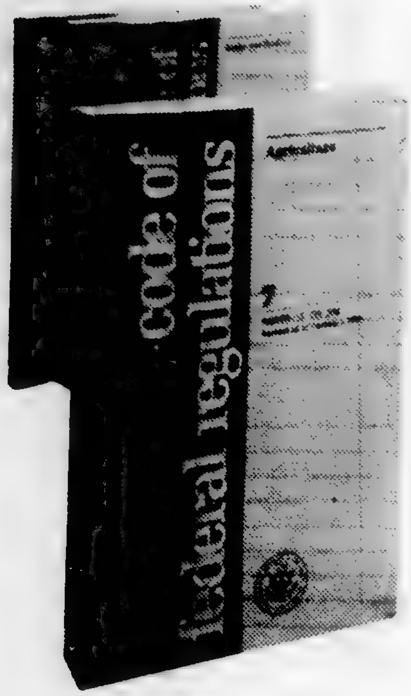

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Federal Register
Vol. 49, No. 187
Tuesday, September 25, 1984

Presidential Documents

Title 3—

The President

Proclamation 5233 of September 21, 1984

National Sewing Month, 1984

By the President of the United States of America

A Proclamation

The home sewing industry is important to our Nation's economy and is an activity shared by many Americans. Approximately fifty million Americans sew at home, and nearly forty million sew at least part of their wardrobe. Their initiative, creativity and self-reliance are characteristic of the people of our Nation.

Sewing at home helps keep down the cost of clothing, and the sewing industry generates over $3,500,000,000 annually for the economy of the United States. Home sewing also enhances the career opportunities of many Americans in fields such as fashion, interior design, patternmaking, retail merchandising and textile design.

In recognition of the importance of home sewing to our Nation, the Congress, by Senate Joint Resolution 302, has designated the month of September 1984 as "National Sewing Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 1984 as National Sewing Month, and I call upon the people of the United States to observe September with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25538
Filed 9-21-84; 4:15 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5234 of September 21, 1984

Youth of America Week, 1984

By the President of the United States of America

A Proclamation

More than fifty million young Americans contribute to the vitality of our Nation. In their values, aspirations and accomplishments we see reflected not only a rich heritage but a vision of America in the future. It will be a society generous in spirit, strong in character and sincere in purpose—one in which freedom and opportunity give rise to responsibility and excellence.

Just as young Americans can be proud of their contribution to our Nation, they also share a vital part of the life of the smaller community of the family. In this first school where the values of self-reliance, compassion and initiative are taught, the younger members make special contributions to foster the unique identity and sharing of each family. And they prepare for the time when they too will pass on to a new generation the values of our heritage.

For those young Americans in special need we continue to offer support in a variety of activities within the public and private sectors. These support programs are an investment in our national future, and many of the best of them rely not on large sums of money but on the unpaid service of volunteers who contribute their time and experience to the task of forming the next generation. Just as importantly, young people themselves are one of our best sources of volunteers because their energy and idealism give them a natural motivation to devote themselves to helping others.

To assure the Nation's youth of our commitment to share our knowledge, experience and wisdom as they mature towards a full appreciation of democratic principles, the Congress of the United States, by Senate Joint Resolution 597, has designated the week of September 2 through September 8, 1984, as "Youth of America Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 2 through 8, 1984, as Youth of America Week.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25539
Filed 9-21-84; 4:16 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5235 of September 21, 1984

National School-Age Child Care Awareness Week, 1984

By the President of the United States of America

A Proclamation

The care and education of children has always been society's most important task, since a nation's children are its future. The love and instruction young people receive during their formative years help to set their characters for the rest of their lives and so determine the kind of society we all live in.

Patterns of child care are changing rapidly as a majority of women spend part or all of their adult lives as members of the labor force. Yet the need of young people for love and guidance remains as important as ever, and we all have a responsibility to make sure that they continue to receive it.

The Federal government has been actively involved in working with State and local governments, voluntary and nonprofit agencies, and businesses to encourage the creation of appropriate programs for school-age children. The White House Office of Private Sector Initiatives has launched a series of forums for chief executive officers of major corporations to promote increased private sector involvement in child care. The Department of Health and Human Services is also sponsoring a number of initiatives to help American families meet their child care needs. These projects are increasing knowledge through research, demonstrating new program models, making valuable information available to parents and providers, and helping to develop local child care systems.

But today, as in the past, the most important environment forming the characters of our young people is the family. Families face new challenges, but the American family has proved to be a most resilient institution. It remains the primary vehicle by which parents seek to develop their children into healthy and confident adults. The task before us is to strengthen the family and help it when necessary so that it will continue to perform its unique civilizing function.

The Congress of the United States, by House Joint Resolution 544, has designated the week of September 2 through 8, 1984, as "National School-Age Child Care Awareness Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 2 through 8, 1984, as National School-Age Child Care Awareness Week.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25540
Filed 9-21-84; 4:17 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5236 of September 21, 1984

National Drug Abuse Education and Prevention Week, 1984

By the President of the United States of America

A Proclamation

During the past two decades, the use of illegal drugs in the United States spread at an unprecedented rate and reached into every segment of our society. The youth-oriented drug culture was foreign to most of our adult population. We lacked accurate information about the hazards of some of the most widely used drugs, and our efforts to combat the lies, misconceptions, and moral confusion surrounding drug abuse lacked credibility. There was a feeling of inevitability regarding widespread drug use and uncertainty over what was the right thing to do.

The early 1980s have brought a dramatic change. People no longer believe that drug abuse is inevitable. There is growing recognition that by working together to eliminate the abuse of drugs, we can make a real difference in the lives of our children and a better future for America.

One of the most effective weapons we have against drug abuse is our ability to communicate the truth about drugs to the user and the potential user. Research and the personal experience of families across the Nation are expanding our knowledge of drug abuse and how to stop it. This new knowledge is being used by parents, community volunteers, local officials, teachers, health care professionals, and young people themselves. These are the individuals who are closest to current potential drug users, and they can have the greatest influence in preventing the abuse of drugs.

Across America, all levels of government, businesses, educational institutions, civic groups, and individual citizens are organizing activities which will help persons of all ages to say "no" to drug abuse. These Americans are committed to raising the awareness of the dangers of drug abuse and creating a positive environment in which drug abuse is unacceptable behavior.

To call attention to these important efforts, the Congress, by House Joint Resolution 529, has designated the week beginning September 23, 1984, as "National Drug Abuse Education and Prevention Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 23, 1984, as National Drug Abuse Education and Prevention Week, and I call upon all Americans to observe this week with appropriate ceremonies and activities. Let all of us seek every opportunity to learn the truth about drug abuse and join in the national fight to create a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25541
Filed 9-21-84; 4:18 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Sept. 21, 1984, on signing Proclamation 5236, see the *Weekly Compilation of Presidential Documents* (vol. 20, no. 38).

Presidential Documents

Proclamation 5237 of September 21, 1984

Columbus Day, 1984

By the President of the United States of America

A Proclamation

In October of each year, we are privileged to honor Christopher Columbus, the Italian explorer whose epic voyages to the New World still excite the imagination.

Columbus challenged the unknown when he sailed westward in 1492 with his tiny fleet of ships. Others had preceded him; some indeed may have visited the Western Hemisphere. Yet his discovery of the New World stands as a unique and momentous achievement. His voyages ushered in a new phase in history and enriched mankind with new opportunities. They revolutionized the way man thought of himself and his world. This New World that Columbus revealed to Europe soon came to symbolize hope, freedom, and opportunity for all. A stream of settlers arrived to build a new society out of their dreams of liberty, justice, and economic opportunity.

We Americans will always feel that we stand at the frontier. Today our voyage of discovery continues—to the vastness of outer space, to the depths of the sea, to the mysteries of life itself. The willingness to strike out in new directions and to take risks is still at work. This spirit has enriched our lives and expanded our horizons. Thus, it is appropriate that we, both as Americans and as Columbus' spiritual heirs, should take inspiration from his blend of daring, skill, enterprise, and imagination.

All Americans share in admiring Columbus' achievement. But those of Italian descent can take particular pride in honoring this bold son of Genoa who set forth in the service of Spain in search of the unknown. A host of other Italians have followed Columbus to this land, lending their talents and helping to create an unparalleled society of freedom and opportunity. This day is one of justifiable pride for Italy and Italians everywhere, and it symbolizes the respect we Americans have for our rich inheritance from the Old World.

In tribute to Columbus' achievement, the Congress of the United States, by joint resolution approved April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as Columbus Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Monday, October 8, 1984, as Columbus Day. I invite the people of this Nation to observe that day in schools, churches, and other suitable places with appropriate ceremonies in honor of this great explorer. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in memory of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25542
Filed 9-21-84; 4:19 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5238 of September 21, 1984

Leif Erikson Day, 1984

By the President of the United States of America

A Proclamation

In the year 1000, Leif Erikson, charged by King Olav to convert the Nordic settlers in Greenland, set sail to the west. A terrible storm forced his vessel off course, and he came upon lands of which there was no previous knowledge. He found "fields of self-sown wheat" and a country rich with grapes and timber. His early explorations are a tribute to the indomitable and inquisitive spirit so characteristic of the Nordic peoples.

Leif Erikson could not have known at the time of his voyage how intermingled the fate and fortune of the Nordic peoples and the new land would become. During the nineteenth century and early part of the twentieth, millions of Erikson's descendants would join the great current of European migration to the United States. Brave pioneers from Norway, Sweden, Denmark, Finland and Iceland helped push the American frontier to the west, building communities and farms and enriching American life and culture. Others worked long and hard contributing to the great industries of the Northeast. Their accomplishments constitute a proud monument to the Nordic-American heritage and to the development of our country. Democratic ideals, an abiding faith in the value of ingenuity and hard work, and a deep belief in the sanctity of the individual are among the many values and principles we share. Because of the extensive commerce and exchange of ideas and people between the United States and the Nordic region, we have enjoyed friendship, understanding, and appreciation for each other.

To commemorate the courage of Leif Erikson and in recognition of our long and fruitful relationship with the Nordic peoples, the Congress of the United States, by joint resolution approved September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), authorized the President to proclaim October 9 in each year as Leif Erikson Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate October 9, 1984, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings that day. I also invite the people of the United States to honor Leif Erikson by holding appropriate exercises and ceremonies in suitable places throughout the land.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25543
Filed 9-21-84; 4:20 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1006 and 1012

[Docket Nos. AO-356-A20 and AO-347-A23]

Milk in the Upper Florida and Tampa Bay Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Upper Florida and Tampa Bay milk orders. As amended, the plant location adjustment provisions will insure that the Class I milk price for fluid milk products transferred from a pool plant under the Upper Florida or Tampa Bay orders that is located outside Florida, to a pool plant regulated by another Federal milk order, shall be not less than the Class I price under such other Federal milk order applicable at the location of the transferor plant. The action is based on industry proposals considered at a public hearing held December 6, 1983. The changes are necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Upper Florida, Tampa Bay and other marketing areas.

EFFECTIVE DATE: November 1, 1984.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued November 10, 1983; published November 17, 1983 (48 FR 52318).

Extension of Time for Filing Briefs: Issued February 21, 1984; published February 27, 1984 (49 FR 7133).

Recommended Decision: Issued May 17, 1984; published May 22, 1984 (49 FR 21537).

Final Decision: Issued July 26, 1984; published August 1, 1984 (49 FR 30720).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Florida and Tampa Bay orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Upper Florida and Tampa Bay marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of the order amending each of the specified orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1006 and 1012

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Florida and Tampa Bay marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the aforesaid orders, as amended, and as hereby further amended, as follows:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

In § 1006.52(a), the introductory text preceding the table is revised to read as follows:

§ 1006.52 Plant location adjustment for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida and more than 70 miles from the nearer of the City Halls of Jacksonville or Tallahassee, Florida, or within the State of Florida shall be adjusted at the rates set forth in the following schedule: *Provided,* That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant:

* * * * *

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

In § 1012.52(a), the introductory text preceding the table is revised to read as follows:

§ 1012.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida or within the State of Florida but outside the defined marketing area shall be adjusted at the rates set forth in the following schedule: *Provided,* That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location at the transferor plant:

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Effective date: November 1, 1984.

Signed at Washington, D.C. on September 19, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–25367 Filed 9–24–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ANE–4; Amdt. 39–4897]

Airworthiness Directives; Pratt & Whitney Aircraft Model JT8D–15, –17, and –17R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires tightening of the diametral fit between the second stage turbine disk snap diameter and third stage turbine rotor airseal to prevent relative motion between these parts on Pratt & Whitney Aircraft model JT8D–15, –17, and –17R turbofan engines. The AD is needed to prevent excessive movement between disk/airseal surfaces which could result in high amplitude stresses in the operating range and ultimately, failure of the second stage turbine disk.

DATE: Effective—October 25, 1984.

Compliance schedule—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on October 25, 1984.

ADDRESSES: The applicable service bulletins may be obtained from: Pratt & Whitney Aircraft, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108.

A copy of each of the service bulletins is contained in the Rules Docket, in the Office of the Regional Counsel, Federal Aviation Administration (FAA), 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: W. Locke Easton, Transport Engine Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7088.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring tightening of the diametral fit between the second stage turbine disk snap diameter and third stage turbine rotor airseal to prevent relative motion between these parts on certain Pratt & Whitney model JT8D–15, –17, and –17R turbofan engines was published in the **Federal Register** on May 18, 1984 (49 FR 21071).

The FAA has determined that second stage turbine disks and third stage turbine inner airseals that are assembled with a diametral fit at the low end of the tolerance band can become loose during certain engine operating conditions, resulting in relative motion between the disk and airseal. This movement can cause the mating surfaces to wear after extended operation. Wear at the bottom of the disk airseal groove can reduce fatigue strength, and relative motion between the disk and the airseal can allow a high amplitude disk stress to occur within the engine operating range. The combination of reduced disk strength and increased vibratory stress can result in disk cracking and eventual failure. Since this condition is likely to exist or develop on other engines of the same type design, this AD requires inspection of the second stage turbine disk assemblies which will detect wear of the snap diameter and the bottom of the disk airseal groove. The AD also provides repair instructions for the disk and modification instructions for the mating third stage airseal which will increase the disk to airseal diametrical fit and will prevent future wear, in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision 1, dated May 4, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two commenters requested that it be made clear that the repair of the disk and modification of the mating third stage airseal in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision 1, be required only one time and not at each shop visit. The FAA has determined that the phrase "Compliance is required as indicated unless already accomplished" precludes the need for repetitive compliance.

One commenter took exception to the time(s) since last inspection and time(s) since new being effective as of April 30, 1984. Selecting April 30, 1984, resulted in a significant impact to this user in terms of engine compliance and resulting out of service aircraft. The FAA has determined that extension of the April 30, 1984, date to June 30, 1984, as the date from which time(s) since last inspection and time(s) since new are effective, is acceptable. The AD will reflect the June 30, 1984, date.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft model JT8D–15, –17, and –17R turbofan engines.

Compliance is required as indicated unless already accomplished, in accordance with Pratt & Whitney Aircraft Service Bulletin No. 5510, Revision 1, dated February 13, 1984, or Pratt & Whitney Aircraft Alert Service Bulletin No. 5541, Revision 1, dated May 4, 1984, or equivalent means approved by the Manager, Engine Certification Office, New England Region.

To prevent possible failure of the second stage turbine disk, inspect second stage turbine disk, Part Numbers 676802, 770602, 780502, 786802, and 787302 details, and Part Numbers 676822, 769722, 769832, 86822, and 787232 assemblies for wear of the snap diameter and at the bottom of the disk airseal groove, repair the disk, and modify the mating third stage turbine inner airseal in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision

1, dated May 4, 1984, per the following schedule:

1. (a) For disks not previously inspected:

(1) With over 17,000 hours time since new—inspect within 1,000 hours.

(2) With 17,000 hours or less time since new—inspect at next shop visit over 5,000 hours time since new or prior to reaching 18,000 hours, whichever occurs first.

(b) For disks previously inspected in accordance with JT8D engine manual, P/N 481672:

(1) With over 17,000 hours time since last inspection—inspect within 1,000 hours.

(2) With 17,000 hours or less time since last inspection—inspect at next shop visit over 5,000 hours time since last inspection, or prior to reaching 18,000 hours time since last inspection, whichever occurs first.

Note.—Time(s) since last inspection and time(s) since new are effective as of June 30, 1984.

Note.—Shop Visit (as defined in the World Airlines Technical Operations Glossary) is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails:

2. (a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Note: Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "Shop Visit".

(b) Removal of a disk or hub or spool.

(c) Removal of the main or angle gearbox.

(d) Removal of the fuel nozzles.

For purpose of this AD the term "repair shop" refers to a maintenance station where low pressure turbine overhaul facilities exist.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, Burlington, Massachusetts 01803.

The manufacturer's service bulletins and engine manual identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a) (1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney Aircraft Group, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. These documents also may be examined at the Office of the Regional Counsel, Room No. 311, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday except Federal holidays.

This amendment becomes effective October 25, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act or 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.)

Note.—The FAA has determined that this regulation involves 2,000 engines and will require 99 revenue plane days lost and 293,000 manhours. At $20,000/revenue plane day and at $40/manhour labor the total cost of the program would be approximately $14,000,000. Less than 11 small entities will be affected by this AD. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this document is contained in the regulatory docket.

A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

Issued in Burlington, Massachusetts, on August 7, 1984.

Robert E. Whittington,

Director, New England Region.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 241

[Release Nos. 33-6550; 34-21332; File No. S7-996]

Research Reports

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of amendments to Rule 139, which provides a safe harbor under Section 5 of the Securities Act for the publication of broker-dealer research reports that contain information, opinions or recommendations concerning registrants that are in the process of registering securities for public sale. The amended Rule furthers the integrated disclosure system by expanding the class of publications that come within the protection of the Rule, thereby broadening the flow of corporate information into the marketplace. The release also announces related amendments to two companion Securities Act rules concerning research reports and provides interpretive guidance under an antimanipulation Exchange Act rule, Rule 10b-6.

EFFECTIVE DATE: October 25, 1984. The rule amendments and interpretive position may be relied upon voluntarily prior to their effectiveness.

FOR FURTHER INFORMATION CONTACT: With regard to Rules 137, 138 and 139, prior to the effective date, contact Patricia B. Magee (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549; after the effective date, contact Anne M. Krauskopf (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. With regard to Rule 10b-6, contact M. Blair Corkran, Jr. (202) 272-2853, or Stuart D. Fishman (202) 272-2828, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 139, as adopted, expands the research information reaching the marketplace in a two-tiered manner. The Rule extends the safe harbor under Section 5 with respect to broker or dealer research reports that include information, opinions or recommendations concerning registrants that are eligible to use short form registration Form S-3[1] or Form F-3[2] or such registrants' securities, so long as the reports are distributed with reasonable regularity in the normal course of business. The Rule's safe harbor for research reports concerning other registrants, or their securities, is more restrictive than that for S-3 and F-3 registrants. The Rule contains limitations regarding the distribution of the reports, as well as the type, manner and tone of the information. The two principal respects in which the Rule's safe harbor has been broadened are: first, deletion of the two-year prior publication requirement; and second, modification of the comprehensive list requirement.

I. Background

Section 5 of the Securities Act of 1933 (the "Securities Act")[3] governs the type and manner of disclosure regarding securities in registration.[4] Where no exemption from registration is available, Section 5 requires that any offers to sell securities in registration be made only under certain conditions,[5] in order to

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[1] 17 CFR 239.13.

[2] 17 CFR 239.33.

[3] 15 U.S.C. *77a et seq.* (1982).

[4] Unless otherwise specified, the term "in registration" refers to the entire registration process from the pre-filing period until the prospectus delivery requirements [17 CFR 230.174] have been satisfied.

[5] In the pre-filing period, section 5(c) prohibits offers to sell securities by means of a propectus or otherwise. During the period after the registration statement has been filed, but prior to effectiveness, section 5(b)(1) provides that written offers may be

Continued

lessen the opportunity to condition the market for the security in registration.[6] In this context, questions arise concerning the status of broker or dealer research reports under Section 5.

Historically, the concerns with respect to research reports containing information, opinions or recommendations regarding a company in registration included: (1) Whether the report would be considered an offer to sell under Section 5(c), particularly when the broker or dealer publishing the report also is a participant in the distribution of the subject security; and (2) whether research reports disseminated by participating brokers or dealers in the waiting or post-effective periods that do not meet Section 10 prospectus requirements, or are not accompanied by a Section 10 prospectus, may violate Section 5(b) (1) or (2). Rule 139 originally was adopted to provide specific guidance as to permissible broker or dealer activities under Section 5 during the registration process.[7]

In October 1983, the Commission published for comment proposed amendments to Rule 139 designed to update the Rule's requirments in keeping with regulatory and market developments that had occurred since its original adoption in 1970.[8] First, the integrated disclosure system was implemented, combining the registration system under the Securities Act and the continuous reporting system under the Securities Exchange Act of 1934 (the "Exchange Act")[9] into a single, streamlined disclosure system. Second, the securities markets and the activities of their participants have evolved, including the research publication practices of brokerage firms.

Among the participants whose publication practices have evolved are: (1) Financial analysts, who constantly digest and synthesize information and act as essential conduits in the continuous flow of information to investors; and (2) the financial press, which facilitates the broad dissemination of timely and material corporate information. This flow of information is an integral part of the integrated disclosure system because the existence of timely and complete corporate information in the marketplace allowed the Commission to streamline the Securities Act registration process.

Amending Rule 139 will enhance the efficiency of the markets by allowing a greater number of research reports to provide a continuous flow of essential corporate information into the marketplace.[10] The amended Rule is structured to differentiate between companies eligible to use Form S–3 (and Form F–3) and other registrants. This structure facilitates the functioning of the integrated disclosure system by increasing the flow of information most broadly as to S–3/F–3 companies, those companies whose marketplace following is relied upon to replace reiteration of all company-oriented information in the prospectus. Moreover, the marketplace following provides the basis for allowing more research as to S–3/F–3 companies to come within a Section 5 safe harbor because it lessens the opportunity to condition the market for such companies' securities.

Commentator response to the proposed amendments to Rule 139 was overwhelmingly favorable,[11] and the Commission is adopting the Rule substantially as proposed. Certain modifications from the proposed Rule have been made in response to commentator suggestions.

II. Rule 139

The introductory paragraph of Rule 139 is adopted as proposed, with four clarifying and simplifying changes.[12] In addition, the words "broker or" have been added wherever the word "dealer" appears, to clarify the application of the Rule.[13]

A. Registrants Eligible To Use Form S–3 or F–3

Commentators expressed unqualified support for the approach reflected in paragraph (a) of proposed Rule 139. The Commission has adopted paragraph (a) as proposed. That paragraph applies to reports concerning companies which meet the registrant requirements for Form S–3 or F–3, and the minimum float test, or investment grade securities provisions of the respective Forms.[14] The requirements of former Rule 139 applied one standard to all research reports concerning companies in registration. The amendments to Rule 139 provided a simpler standard for research reports concerning S–3 or F–3 companies. Amend paragraph (a) of the Rule, in addition to removing the two-year distribution and comprehensive list requirements, also removes several of the requirements that continue to be imposed upon research reports concerning other registrants. In order to come within the protection of revised

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made only by means of a prospectus meeting the requirements of section 10 of the Securities Act. This would include a preliminary or "red herring" prospectus complying with Section 10(b) and Rule 430 [17 CFR 230.430] thereunder, a "tombstone ad" complying with Section 2(10) and Rule 134 [17 CFR 230.134] thereunder, or a summary prospectus prepared by an independent organization complying with section 10(b) and Rule 431 [17 CFR 230.431] thereunder. In the post-effective period, section 5(b)(2) provides that, unless an exemption from the prospectus delivery requirements is available, all sales or confirmations of sales must be accompanied or preceded by a Section 10 prospectus.

[6] The terms "offer to sell" and "prospectus" are defined broadly in Sections 2(3) and 2(10), and have been interpreted to encompass pre-filing publicity efforts by participants in an offering which, although not couched in terms of an express offer, may condition the market and stimulate interest in a proposed offering. *See e.g., In the Matter of Loeb Rhodes & Co.,* 38 SEC 843 (1959); *In the Matter of First Maine Corporation,* 38 SEC 882 (1959).

[7] Release No. 33–5101 (November 19, 1970) [35 FR 18457].

[8] Release No. 33–6492 (October 5, 1983) [48 FR 46801].

[9] 15 U.S.C. 78a *et seq.* (1982).

[10] For example, registrants that are eligible to use Forms S–3 and F–3 may be involved in a distribution of their various securities for extended periods of time by using shelf registration under Rule 415 of the Securities Act [17 CFR 230.415]. The Commission believes that former Rule 139 would restrict unduly the dissemination of research reports with respect to these registrants, thereby impeding the flow of information concerning them into the marketplace. Thus, amended Rule 139 permits dissemination of research reports with respect to these registrants so long as the reports meet the requirements of paragraph (a) of the amended Rule.

[11] The Commission received twelve comment letters in response to the proposed amendments to the Rule. The comment letters and a summary of the comments prepared by the staff are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549 (see File No. S7–996).

[12] The changes adopted are: (1) the word "registrant" replaces the word "issuer"; (2) the words "or has an effective" have been added; (3) the words "participant in a distribution" replace the words "member of the underwriting syndidate or dealer group"; (4) the words "in the regular course of business" have been deleted.

[13] The staff recognizes that in addition to research reports concerning companies in registration that are published by dealers participating in firm commitment underwritings there are also research reports published by brokers participating in best efforts underwritings. Thus, the addition of the words "broker or" wherever "dealer" appears is necessary to extend the Rule's safe harbor protection to both broker and dealer research reports that meet the Rule's requirements. Corresponding changes also were made to Rules 137 and 138.

[14] General Instruction I.A. of Form S–3 contains the registrant requirements for use of the Form. General Instruction I.B.(1) of Form S–3 requires that the aggregate market value of stock held by non-affiliates must be either (1) 150 million dollars or more or (2) 100 million dollars or more and the registrant must have had an annual trading volume of such stock of 3 million shares or more. The registrant requirements of General Instruction I.A. (4) of Form F–3 requires that the aggregate market value worldwide of voting stock held by non-affiliates is the equivalent of 300 million dollars or more.

paragraph (a) of the Rule, research reports containing information, opinions or recommendations with respect to such companies must be distributed "with reasonable regularity in the normal course of business."

In their strong support of amended paragraph (a), some commentators also suggested extending the proposed safe harbor protection in the paragraph to reporting registrants that are eligible to use Form S-2 [15] or Form F-2 [16] for registration of securities under the Securities Act. The Commission has determined not to make this change because the marketplace following of registrants using Forms S-2 and F-2 is not sufficiently wide to insure adequate dissemination of information with respect to such registrants.

Several commentators suggested that the proposed requirement in paragraph (a) that applications discussing registrants eligible to use Form S-3 or F-3 be distributed "with reasonable regularity" should be deleted. The Commission believes that the "reasonable regularity" standard is necessary to insure that the purposes of Section 5 are met and that it also gives the Rule adequate flexibility to accommodate changes in research practices.[17] Moreover, the Commission has added an Instruction to make clear that the Rule's protection would not cover research concerning a company with respect to which broker or dealer currently is not publishing research because such research would not have been distributed with reasonable regularity by the broker or dealer participant.[18]

Paragraph (a) of Rule 139, as adopted, reflects a change from the proposal clarifying the reference to S-3 or F-3 companies. This provision is intended to limit the application of paragraph (a) to companies which could qualify to use these Forms for the registration of primary offerings. In view of a commentator question as to whether paragraph (a) was intended to be limited to reports where the particular offering in registration is of securities for cash, the Rule, as adopted, reflects a change to make clear that paragraph (a) provides safe harbor protection for research reports concerning companies which are qualified to use short form registration for their securities regardless of whether the transaction involves cash or securities. Thus, the references to the Forms' "transaction requirements" has been replaced by a reference to the "minimum float" or "investment grade securities" provisions.

B. Other Registrants

Research reports with respect to registrants which are not eligible to use Form S-3 or F-3 must meet the requirements of paragraph (b) of Rule 139 in order to come within the Rule's safe harbor protection. Paragraph (b) of the Rule is adopted substantially as proposed with modifications to paragraphs (b)(1)(ii) and (b)(3).

Paragraph (b)(1)(i) requires that information, opinions or recommendations as to registrants which are not eligible to use Form S-3 or F-3 must be contained in a publication that is distributed with reasonable regularity in the normal course of business. This paragraph is adopted as proposed for the reasons discussed in A. above.

Paragraph (b)(1)(ii) of the Rule, as proposed, requires research reports concerning companies not eligible to use Form S-3 or F-3 to include similar information with respect to a substantial number of companies in the registrant's industry. This provision received commentary in response to which several modifications have been made.

Commentators generally perceived the "substantial number of companies in the registrant's industry" requirement to be more restrictive than necessary to effectuate the Rule's purposes. While the Commission does not agree that the Rule should be less restrictive, it does believe that greater clarity and flexibility may be provided by adding the words "or sub-industry" to paragraph (b)(1)(ii). This change avoids the necessity to define the term "industry" and addresses the needs of regional firms whose research reports may cover a smaller number of companies in a particular industry.

Paragraph (b)(1)(ii) of the Rule, as adopted, also provides a comprehensive list alternative to the "information with respect to a substantial number of companies" requirement. Thus, a research report containing a comprehensive list of securities currently recommended by a broker or dealer will come within the Rule's safe harbor even though no particular industry or sub-industry is represented by a substantial number of companies in the report.

Paragraph (b)(2)(i) of the Rule is adopted as proposed, but redesignated subparagraph (b)(2). This provision requires that the information, opinions or recommendations contained in the report may not be given materially greater space or prominence in the publication than that given to other securities or registrants.

Existing Rule 139 [19] provides that a research report may not include projections of sales or earnings beyond the registrant's current fiscal year or following fiscal year if within the last six months of the current fiscal year. While it did not propose changes to the Rule 139 projections provision, the Commission recognized that registrant projections are allowed and sought specific comment as to what treatment should be accorded projections made by brokers or dealers in research reports. Commentators generally believed that amended Rule 139 should provide a safe harbor for research reports that include projections beyond those now within the Rule. The Commission has determined to allow projections for longer periods and, accordingly, has deleted proposed paragraph (b)(2)(ii). At the same time, the Commission has included an Instruction to paragraph (b) to clarify the application of the conditions of paragraph (b) to publications including projections of a registrant's sales or earnings. The instruction provides that: (1) the projections must have been published previously on a regular basis in order for the publication to come within paragraph (b)(1)(i); (2) there must be projections included, and included for the same periods, with respect to all the companies covered in the publication in order for it to meet paragraph (b)(2)(ii); and (3) because projections constitute opinions within the meaning of the Rule, they must meet the "no upgrade" requirements of paragraph (b)(3).

Paragraph (b)(3) of the Rule, as proposed, requires a research report to contain an opinion or recommendation "at least as favorable as to the registrant or any class of its securities" to have been published by the broker or dealer in the publication of such broker of dealer addressing the registrant or its securities prior to the broker's or dealer's commencement of participation in a distribution of such registrant's securities. One commentator suggested that paragraph (b)(3) be modified to clarify that research reports which contain opinions or recommendations that are the same as, or less favorable than those previously published come within the Rule's safe harbor protection. The Commission has determined to clarify paragraph (b)(3) by revising the "at least as favorable" language in the proposal to read: "An opinion or recommendation as favorable or more favorable as to the registrant or any class of its securities was published by the broker or dealer in the last publication of such broker or dealer addressing the registrant or its securities prior to the commencement of participation in the distribution." Of course, research reports which contain opinions or recommendations that are more favorable than those previously published would not come within the Rule's safe harbor because such reports might condition the market with respect to the securities of a registrant not well followed in the marketplace, and thus not eligible to use short form registration.

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[15] 17 CFR 239.12.

[16] 17 CFR 230.32

[17] For example, variations in the scope and format of research reports occasioned by industry personnel turnover would come under the Rule's safe harbor so long as the reports are distributed with reasonable regularity in the normal course of business.

[18] Initial company reports would not have been published or distributed with reasonable regularity by the broker or dealer participant. Therefore, not including such reports within the safe harbor of Rule 139 does not interrupt the flow of information concerning the company in registration into the marketplace. The instruction clarifies that a broker or dealer participant in the distribution must have been publishing research concerning the company in registration prior to the distribution.

[19] Paragraph (b) of existing Rule 139; paragraph (b)(2)(ii) of the proposed amendments.

III. Rule 10b–6 Considerations

Historically, the staff of the Division of Market Regulation has taken the position that research reports complying with the provisions of Rule 139 do not constitute prohibited inducements to purchase under Rule 10b–6 under the Exchange Act.[20] More recently, in the 1983 release adopting amendments to Rule 10b–6, the staff took an interim no-action position with respect to certain research reports which exceed the limitations then found in Rule 139.[21] In proposing amendments to Rule 139, the Commission solicited comment on whether the interpretation under Rule 10b–6 should be modified to be consistent with the proposed amendments to Rule 139.[22]

Rule 139 and Rule 10b–6 are designed to serve different purposes. Rule 139 provides a safe harbor from the strict liability provisions of the Securities Act, which assure that investors receive prospectus disclosure. In contrast, Rule 10b–6 is intended to assure that distributions of securities are free of the market effects of bids, purchase, or inducements to purchase by those who have an interest in the success of a distribution. The prohibition on inducements to purchase is an essential element of Rule 10b–6. Because inducements to purchase, such as improved recommendations, can be an effective and inexpensive method of facilitating the distribution of securities, the staff is taking a no-action position that substantially broadens the type of research that can be disseminated during a distribution but is narrower than the safe harbor provided by Rule 139.[23]

Accordingly, the staff announces that it will not recommend that the Commission take enforcement action under Rule 10b–6 with respect to a research report that is: (1) Within Rules 137, 138 or paragraph (b) of Rule 139; or (2) within paragraph (a) of Rule 139 [24] and does not contain a recommendation or earnings forecast more favorable than that previously disseminated by the firm.[25]

IV. Rules 137 and 138

In connection with the proposed amendments to Rule 139, the Commission also solicited comment on the need for changes to Rules 137 and 138. Several commentators suggested that changes be made in those Rules to conform the language in Rules 137 and 138 to that in proposed Rule 139. Therefore the following changes have been made in Rules 137 and 138: (1) The words "members of the underwriting syndicate or dealer group" have been changed to "participant in the distribution"; (2) the words "or an effective" have been added to the introductory paragraphs; (3) the word "issuer" has been replaced by the word "registrant"; and (4) the words "broker or" have been added wherever the word "dealer" appears. The Commission has determined that no further changes to Rules 137 and 138 are necessary.[26]

V. Lists of Subjects in 17 CFR Parts 230 and 241

Reporting and recordkeeping requirements; Interpretive releases, Securities.

VI. Statutory Authority

The Commission hereby authorizes adoption of the amendments to Rules 137, 138 and 139 pursuant to its statutory authority under Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933.

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[20] Securities Act Release No. 6383 (March 3, 1982) [47 FR 11380, 11398 n. 94]. This was reiterated as the staff's position in Securities Exchange Act Release No. 19565 (March 4, 1983) [48 FR 10628] (the "1983 Rule 10b–6 Release").

[21] 1983 Rule 10b–6 Release, 48 FR at 1038. The Release noted that research reports that do not comply with the requirements of Rule 139 may not, in some instances, constitute either inducements to purchase for purposes of Rule 10b–6 under the Exchange Act or offers to sell securities for purposes of Section 2(10) or 5(c) of the Securities Act. Cited as examples were: (1) industry or sub-industry reports disseminated as part of a firm's continuing research program that are similar in tone and appearance and are distributed with reasonable regularity in the normal course of business and discuss registrants without giving special treatment to the security to be distributed; and (2) reports that constitute a factual or statistical update on a registrant in an industry or sub-industry regularly covered by the firm.

[22] Five of the twelve commentators that responded to the proposing release commented on the advisability of reconciling Rules 139 and 10b–6. All five agreed that Rule 10b–6 should be modified to provide that research reports that comply with Rule 139 would not be considered inducements to purchase under Rule 10b–6.

[23] In light of the revisions made to Rule 139, the interim no-action position under Rule 10b–6 is withdrawn.

[24] See Instruction 1. to Rule 139, which also is applicable to this interpretation.

[25] The staff believes that more favorable recommendations or earnings forecasts may constitute impermissible inducements to purchase securities under Rule 10b–6 and thus should remain subject to that Rule. The staff recognizes that on infrequent occasions new information may be released regarding a company after the commencement of a distribution in that company's securities that significantly affects outstanding earnings estimates. Whether a favorable revision of an earnings forecast based on such new information would serve as an inappropriate inducement to purchase requires an analysis of all of the facts and circumstances surrounding the distribution. Where appropriate the staff will respond to requests for interpretive advice in those situations.

Broker-dealers also must determine whether research provided by account executives and other sales personnel renders a transaction "solicited" and thus outside the scope of permissible transactions under exception (v) of Rule 10b–6. Generally, research transmitted continuously through the use of routine distribution systems such as mailing lists does not constitute a solicitation to purchase, while research directed to particular customers by sales personnel constitutes a solicitation to purchase. Research transmitted orally must be evaluated in the context of the entire oral presentation, *e.g.*, whether the broker-dealer or the customer initiated the contact, the sophistication of the customer, and the normal course of dealings with the customer. In most cases, oral transmission of positive research by sales personnel on their own initiative would constitute both a solicitation and an inducement to purchase.

[26] Rule 137 confirms the publication of research reports concerning companies in registration by brokers or dealers that are not participants in the distribution of the companies' securities do not raise concerns under Section 5, and thus do not require limitations as to their content and manner of distribution.

Rule 138 permits publication of research reports concerning S–2/F–2 registrants by brokers or dealers that are participants in a distribution, so long as the reports are published in the regular course of business and contain information, opinions or recommendations regarding: (1) nonconvertible senior securities where the security in registration is common stock; or (2) common stock where the security in registration is a nonconvertible senior security. While paragraph (b) of Rule 139 imposes greater limitations upon research reports concerning an S–1 or S–2 company in registration where reports discuss the company or any class of its securities, the less restrictive limitations of Rule 138 apply only where the report concerns a class of the company's securities which is not the subject of the offering in which the broker or dealer is a participant. Because the markets for nonconvertible senior securities and common stock differ, Rule 138 provides a somewhat broader safe harbor in circumstances where the opportunity to condition the market is lessened.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising § 230.137 to read as follows:

§ 230.137 Definition of "offers", "participates", or "participation" in section 2(11) in relating to certain publications by persons independent of participants in a distribution.

The terms "offers", "participates", or "participation" in section 2(11) of the Act shall not be deemed to apply to the publication or distribution of information, opinions or recommendatio is with respect to the securities of a registrant which is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and proposes to file, has filed or has an effective registration statement under the Securities Act of 1933 if—

(a) Such information, opinions, and recommendations are published and distributed in the regular course of its business by a broker or dealer which is not and does not propose to be a participant in the distribution of the security to which the registration statement relates; and

(b) Such broker or dealer receives no consideration, directly or indirectly, in connection with the publication and distribution of such information, opinions or recommendations from the registrant, a selling security holder or any participant in the distribution or any other person interested in the securities to which the registration statement relates, and such information, opinions or recommendations are not published or distributed pursuant to any arrangement or understanding, direct or indirect, with such registrant, underwriter, dealer, or selling security holder; *Provided, however,* That nothing herein shall forbid payment of the regular subscription or purchase price of the document or other written communication in which such information, opinions or recommendations appear.

2. By revising § 230.138 to read as follows:

§ 230.138 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

(a) Where a registrant which meets all of the conditions for the use of Form S-2 [§ 239.12 of this chapter] or Form F-2 [§ 239.32 of this chapter] proposes to file, has filed or has an effective registration statement under the Act relating solely to a nonconvertible debt security or to a nonconvertible, nonparticipating preferred stock, publication or distribution in the regular course of its business by a broker or dealer of information, opinions or recommendations relating solely to common stock or to debt or preferred stock convertible into common stock of such registrant shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act even though such broker or dealer is or will be a participant in the distribution of the security to which such registration statement relates.

(b) Where a registrant which meets all of the conditions for the use of Form S-2 [§ 239.12 of this chapter] or Form F-2 [§ 239.32 of this chapter] proposes to file, has filed or has an effective registration statement under the Act relating solely to common stock or to debt or preferred stock convertible into common stock, the publication or distribution in the regular course of its business by a broker or dealer of information, opinions or recommendations relating solely to a nonconvertible debt security, or to a nonconvertible nonparticipating preferred stock shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act, even though such broker or dealer is or will be a participant in the distribution of the security to which such registration statement relates.

3. By revising § 230.139 to read as follows:

§ 230.139 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

Where a registrant which is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 proposes to file, has filed or has an effective registration statement under the Securities Act of 1933 relating to its securities, the publication or distribution by a broker or dealer of information, an opinion or a recommendation with respect to the registrant or any class of its securities shall not be deemed to constitute an offer for sale or offer to sell the securities registered or proposed to be registered for purposes of sections 2(10) and 5(c) of the Act, even though such broker or dealer is or will be a participant in the distribution of such securities, if the conditions of paragraph (a) or (b) have been met:

(a) The registrant meets the registrant requirements of Form S-3 (§ 239.13 of this chapter) or Form F-3 (§ 239.33 of this chapter) and the minimum float or investment grade securities provisions of either paragraph (B) (1) or (2) of General Instruction I of the respective form and such information, opinion or recommendation is contained in a publication which is distributed with reasonable regularity in the normal course of business; or

(b)(1) Such information, opinion or recommendation is contained in a publication which:

(i) Is distributed with reasonable regularity in the normal course of business and

(ii) Includes similar information, opinions or recommendations with respect to a substantial number of companies in the registrant's industry, or sub-industry, or contains a comprehensive list of securities currently recommend by such broker or dealer.

(2) Such information, opinion or recommendation is given no materially greater space or prominence in such publication than that given to other securities or registrants; and

(3) An opinion or recommendation as favorable or more favorable as to the registrant or any class of its securities was published by the broker or dealer in the last publication of such broker or dealer addressing the registrant or its securities prior to the commencement of participation in the distribution.

Instructions to Rule 139. 1. For purposes of paragraph (a), a research report has not been distributed with "reasonable regularity" if it contains information, an opinion, or a recommendation concerning a company with respect to which a broker or dealer currently is not publishing research.

2. Where projections of a registrant's sales or earnings are included, the publication must comply with the following in order to meet paragraphs (b)(1) and (b)(3).

A. The projections must have been published previously on a regular basis in order for the publication to meet paragraph (b)(1)(i);

B. The projections must be included with respect to either a substantial number of companies in the registrant's industry or sub-industry or all companies in a comprehensive list which is contained in the publication, and must cover the same periods with respect to such companies as with respect to the registrant, in order to meet the requirements of paragraph (b)(1)(ii); and

C. Because projections constitute opinions within the meaning of the Rule, they must come within paragraph (b)(3).

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; Secs. 205, 209, 48 Stat. 906, 908; Sec. 8, 68 Stat. 685;

Sec. 306(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77s(a))

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. By amending Part 241 by adding this release, Release No. 34–21332 (September 19, 1984) to the list of interpretive releases set forth thereunder.

By the Commission.

Dated: September 19, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25409 Filed 9–24–84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 299

[Docket No. 81N–0263]

Designated Names; Revocation of List of Official Names of Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the existing list of official names of drugs designated by the agency. Nonproprietary drug names listed in *USAN and the USP Dictionary of Drug Names* will serve as "established names" under section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) unless FDA designates an official name for a drug because it finds the name listed in that volume to be unduly complex or not useful. This action will make it unnecessary for FDA to publish routinely as official names those names of drugs listed in *USAN and the USP Dictionary of Drug Names*. This action will not affect the availability to the public of current information on acceptable "established names" of drugs.

DATES: Effective on November 26, 1984. The Director of the Federal Register approves the incorporation by reference of the publication in § 299.4 effective September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1982 (47 FR 31008), FDA proposed to revoke the existing list of official names of drugs designated by the agency. Under the proposal, nonproprietary drug names adopted by the U.S. Adopted Name Council (for which names the abbreviation USAN is generally used), and other official or common or usual names listed in *USAN and the USP Dictionary of Drug Names* would serve as "established names" under section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) unless FDA designates an official name for a drug because it finds the USAN or other official or common or usual name to be unduly complex or not useful. This action was taken because FDA's routine publication of official names of drugs was considered duplicative and unnecessary in light of the skill and expertise the USAN Council has shown in deriving useful nonproprietary names for drugs, because of the wide publicity each USAN quickly receives, and because the drug names which FDA has designated in the past as official names have been almost identical to those adopted by the USAN Council.

Interested persons were given 60 days to submit written comments on the proposed rule. The agency received three comments, two of which indicated support for the proposed rule. A summary of the third comment and the agency's response to it follows:

1. The comment stated that the proposed rule as written is confusing in regard to the hierarchical selection of "established names" of drugs. The comment stated that some entities have compendial names that are not USAN adopted names, and some entities have USAN adopted names that are not listed in the compendia. Therefore, the comment recommended that a clearer alternative to the selection of an "established name" would be (1) the compendial name, or (2) the USAN adopted name in the absence of a compendial name, or (3) the common or usual name in the absence of compendial or USAN adopted name.

The purpose of the proposal was not to substitute the use of compendial names for official names but, rather, to use those nonproprietary names listed in the volume *USAN and the USP Dictionary of Drug Names* as established names of drugs. In the agency's view, the *USAN and the USP Dictionary of Drug Names* is preferable to the compendia as a source of established names of drugs for several reasons. First, the volume is more comprehensive than the compendia in that it includes USAN adopted names and compendial names as well as common or usual names. Further, it is published yearly as opposed to every 5 years as is the compendia and, therefore, can provide a more up-to-date source of drug names which is its primary purpose. Moreover, because a liaison representative of FDA sits on the USAN Council, the agency plays a more prominent role in the establishment of names listed in the volume than it does in listing products in the compendia.

Another reason is that a drug name adopted by the USAN Council usually is established by the time the relevant new drug application is filed with FDA and well before the drug would be considered for recognition in the compendia. When choosing an adopted name, the USAN Council does so with the expectation that the name will be suitable for subsequent designation as the title of the monograph should the drug be recognized in the compendia. To assure such acceptability, the U.S. Pharmacopeial Convention, one of the three organizations that sponsor the USAN program, is represented on the USAN Council. Because names of drug substances that appear in both *USAN and the USP Dictionary of Drug Names* and the compendia are the same, the net result suggested by the comment will still be realized.

The agency recognizes that there are some drugs that have a compendial name, but do not have a USAN. Drugs that fall into this class, such as digitalis, digitoxin, and phenobarbital, were included in a compendia before the USAN Council started designating names. These drugs, however, are still included in *USAN and the USP Dictionary of Drug Names*. Therefore, the reference in the regulation to the name in *USAN and the USP Dictionary of Drug Names* covers both compendial names and USAN's.

2. The comment also stated that the language in proposed §299.4(e) should be changed to make clear that the drug names listed in *USAN and the USP Dictionary of Drug Names*, which persons can rely on as the "established names," are only those names listed in the publication which are designated as USAN's. The comment pointed out that *USAN and the USP Dictionary of Drug Names* contains numerous names of drugs that are listed for historical purposes only which are not USAN's.

The agency does not agree with the comment. The drug names listed in *USAN and the USP Dictionary of Drug Names* include compendial names and USAN's as well as other unofficial names of drugs. Therefore, the names listed in *USAN and the USP Dictionary* *of Drug Names*, which persons can rely on as "established names," are not limited to those names officially designated as USAN's in the publication but, rather, all names listed in that publication.

In a notice appearing elsewhere in this issue of the **Federal Register**, FDA is withdrawing a proposal which was published in the **Federal Register** of September 13, 1977 (42 FR 45936) to update the list of official names of drugs. The official names proposed in the September 13, 1977 document have since been adopted by the USAN Council. Accordingly, because this final rule revokes the existing list of official names of drugs (21 CFR 299.20) and accepts drug names adopted by the USAN Council as the "established names" of drugs, FDA believes that is not necessary to issue a final rule based on the September 13, 1977 proposal.

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this final rule is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), FDA has analyzed the economic impact of this rule. The agency has determined that the rule would not affect the availability to the public of current information on acceptable established names of drugs. Further, it would not result in any significant increase in cost for obtaining this information. Information concerning established names of drugs would be available in *USAN and the USP Dictionary of Drug Names* instead of the Code of Federal Regulations. *USAN and the USP Dictionary of Drug Names* is republished annually, and it can be found in most medical libraries. Most interested persons needing this information, moreover, probably already possess a current copy of this volume, because it has been widely used in the past as a reliable and up-to-date source for nonproprietary names of drugs. Drug manufacturers, which normally are the persons that request the USAN Council to designate a drug name, are especially likely to possess this volume. For these reasons, therefore, the agency has determined that the final rule is not a "major rule" as defined in Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 299

Drugs, official names, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 501, 502, 505, 508, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055, 76 Stat. 789–790 as amended (21 U.S.C. 331, 351, 352, 355, 358, 371(a))) and under 21 CFR 5.11, Part 299 is amended as follows:

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

1. In § 299.4 by revising the second sentence of paragraph (d) and by adding new paragraphs (e) and (f), to read as follows:

§ 299.4 Established names of drugs.

* * * * *

(d) * * * In addition, the Food and Drug Administration agrees with "Guiding Principles for Coining U.S. Adopted Names for Drugs," published in *USAN and the USP Dictionary of Drug Names* (USAN 1985 ed., 1961–1984 cumulative list), which is incorporated by reference. Copies are available from: U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852, or are available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

(e) The Food and Drug Administration will not routinely designate official names under section 508 of the act. As a result, the established name under section 502(e) of the act will ordinarily be either the compendial name of the drug or, if there is no compendial name, the common and usual name of the drug. Interested persons, in the absence of the designation of an official name, may rely on as the established name for any drug the nonproprietary name listed in *USAN and the USP Dictionary of Drug Names*. The Food and Drug Administration, however, will continue to publish official names under the provisions of section 508 of the act when the agency determines that: (1) The USAN of other official or common or usual name is unduly complex or is not useful for any other reason; (2) two or more official names have been applied to a single drug, or to two or more drugs that are identical in chemical structure and pharmacological action and that are substantially identical in strength, quality, and purity; or (3) no USAN or other official or common or usual name has been applied to a medically useful drug. Any official name published under section 508 of the act will be the established name of the drug.

(f) A cumulative list of U.S. adopted names selected and released since June 15, 1961, is published yearly by the U.S. Pharmacopeial Convention, Inc., in *USAN and the USP Dictionary of Drug Names*. Copies may be purchased from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

§ 299.20 [Removed]

2. By removing Subpart B—Designated Names, consisting of § 299.20 *Drugs; official names*, and marking it "[Reserved]."

Effective date. This regulation is effective November 26, 1984.

(Secs. 301, 501, 502, 505, 508, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055, 76 Stat. 789–790 as amended (21 U.S.C. 331, 351, 352, 355, 358, 371(a)))

Dated: August 27, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84–24526 Filed 9–24–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960, and 965

[Docket No. R–84–1144; FR–1882]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on Monday, May 21, 1984 (49 FR 21475), which implemented a definition of income, established income limits for admission, set rental payment levels, and provided for reexamination of income for certain housing assistance programs. Previous correction documents were published in the **Federal Register** on June 29, 1984 and July 16, 1984. This action is necessary to correct a discrepancy between the preamble and the rule concerning the applicability of the ten percent annual cap on rent increases to the Mutual Help

Homeownership Program and to insert omitted language and punctuation.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Office of Indian Housing, Department of Housing and Urban Development, Room 6230, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6522. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On page 21484, first column, line 12 of the **Federal Register** published on May 21, 1984, the preamble of the rule indicated that § 913.107(d) applied the ten percent cap to the Mutual Help Program. However, on page 21488, third column of that same issue, the text of § 913.107(d) did not apply the cap to that program. By omitting reference to the applicability of paragraph (c)(2), this correction changes the rule text to conform to the preamble and to the Department's original intent. This correction also inserts a missing word and parenthesis in § 913.109, published on page 21488, third column, and a missing comma in the heading of Part 960, which appeared on page 21491, third column.

PART 913—[AMENDED]

Accordingly, the Department is correcting 24 CFR Part 913, published on May 21, 1984, as follows:

1. Section 913.107(d) is corrected to read as follows:

§ 913.107 Total tenant payment.

* * * * *

(d) *Mutual help homeownership projects.* Paragraphs (a) and (b) of this section shall not apply to Mutual Help Homeownership projects (see § 905.416 of this chapter).

* * * * *

§ 913.109 [Amended]

2. Section 913.109(a) is corrected by changing the words in the first sentence following the word "pertinent" to the following: "regulations (Part 960, Subpart B)."

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

3. The heading of Part 960 is corrected to read as set forth above.

Dated: September 19, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-25420 Filed 9-24-84; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 240, 245, 250, 251, 270, 275, and 285

[T.D. ATF–185]

Electronic Fund Transfer for Alcohol and Tobacco Taxpayments

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF) Treasury.

ACTION: Final rule.Treasury decision.

SUMMARY: This final rule implements section 27(c) of The Deficit Reduction Act of 1984, Pub. L. 98–369. Section 27(c) of Pub. L. 98–369 amends 26 U.S.C. 5061, relating to the method of payment of tax on distilled spirits, wine and beer, and amends 26 U.S.C. 5703(b), relating to the method of payment of tax on tobacco products and cigarette papers and tubes.

EFFECTIVE DATE: This final rule is effective for tax remittances required to be paid on and after September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen, (202) 566–7531, or John A. Linthicum, (202) 566–7626.

SUPPLEMENTARY INFORMATION: Section 27(c) of Pub. L. 98–369 requires tax remittances to be made using electronic fund transfer (EFT) for any person who in any 12 month period ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in excise taxes on alcohol products, or tobacco products, and cigarette papers and tubes.

Regulations promulgated by the Treasury Department in January 1981 would have required payment of alcohol and tobacco taxes by electronic transfer in the case of taxpayers who paid $5 million or more in those taxes in the previous fiscal year. These regulations have never become effective because of restrictions included in the continuing appropriations Acts for the Treasury Department.

The Deficit Reduction Act of 1984 recognizes electronic fund transfer as an established, accurate and more effective method of transferring large sums of money than the present system where taxpayers attach a check to a return which is then mailed to the Treasury Department. Accordingly, the Act requires the electronic transfer of excise tax payments for alcohol and tobacco products. However, to prevent any undue burden on taxpayers liable for small amounts of tax, Congress decided to require payment by electronic fund transfer only by taxpayers who were liable for $5 million or more in the applicable tax during the preceeding calendar year.

The requirement of payment by electronic fund transfer applies to domestic producers and manufacturers (including Puerto Rican producers and manufacturers), to importers of taxable alcohol and tobacco products, cigarette papers and tubes, and to persons bringing such commodities into the United States from the Virgin Islands.

The determination of whether a person was liable for $5 million or more in alcohol or tobacco tax in any calendar year is to be made by reference to the person's gross tax liability, without regard to any drawbacks, credits, or refunds. However, erroneous overpayments are not taken into account in summarizing the gross tax liability. The term "person" includes all members of a controlled group of corporations as defined in 26 U.S.C. 1563. Likewise, all plants at which a person carries on business are to be aggregated. Additionally, this determination is to be made treating all types of distilled spirits as one product. Likewise, all types of beer will be treated as one product, and all types of wines will be treated as one product. In the case of tobacco, the determination is to be made by reference to all types of taxable tobacco products, e.g. a person liable for tax with respect to cigars, cigarettes, cigarette papers, and cigarette tubes, would be treated as liable for tax with respect to one product.

Regulatory Flexibility Act

The provisions of the regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

This final rule is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) because the rule will not have an annual effect on the economy of $100 million or more (although the underlying statute which is being implemented will have a net effect of increased revenues in fiscal year 1985); it will not result in a major increase in cost or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information contained in this final rule have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35 (Control Number 1512-0457). Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

Notice and Public Procedure

This final rule is promulgated without notice and public procedure, as required by 5 U.S.C. 553(b), because it is a rule of procedure. Moreover, notice and public procedure are unnecessary and impracticable in this case because immediate guidance is necessary to implement the use of EFT for tax remittances on and after September 30, 1984, the effective date of section 27(c) of The Deficit Reduction Act of 1984.

Effective Date

Because this final rule implements section 27(c) of Pub. L. 98-369, which was enacted on July 17, 1984 with an effective date of September 30, 1984, it is impracticable to publish this final rule thirty days before its effective date under 5 U.S.C. 553(d).

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfer, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 245

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfer, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfer, Excise taxes, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfer, Excise taxes, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

Drafting Information

The principal authors of this document are Clifford A. Mullen and John A. Linthicum of the Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

These regulations are issued under the authority contained in 26 U.S.C. 6302(c) and 7805. Accordingly, Title 27 CFR is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

1. Section 19.523a is revised to implement the use of EFT for payment of taxes. As revised, § 19.523a reads as follows:

§ 19.523a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of distilled spirits taxes during the succeeding calendar year. Payment of distilled spirits taxes by cash, check, or money order, as described in § 19.524, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including distilled spirits products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4. These criteria are not the same criteria applied to a controlled group of corporations under Subpart H of this part, for the puposes of filing bonds covering more than one distilled spirits plant.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, ATF F 5110.32 or ATF F 5110.35, for each distilled

spirits plant from which spirits are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes during the previous calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 19.523. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in distilled spirits taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 19.524. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to ATF F 5110.32 or ATF F 5110.35, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, ATF F 5110.32 or ATF F 5110.35, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on ATF F 5110.32 or ATF F 5110.35.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes during calendar year 1983, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512–0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

2. Paragraph (a) of § 19.524 is revised to conform to the above revision. As revised, paragraph (a) of § 19.524 reads as follows:

§ 19.524 Manner of filing returns.

(a) Each return on ATF F 5110.32 or 5110.35 shall be filed with the district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form. If the return and remittance are to be filed with a designated ATF Officer, the proprietor shall file the return and remittance no later than 2:00 p.m. on the date the return is required to be filed.

* * * * *

PART 240—WINE

3. Section 240.591a is revised to implement the use of EFT for payment of taxes. As revised, § 240.591a reads as follows:

§ 240.591a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of wine taxes during the succeeding calendar year. Payment of wine taxes by cash, check, or money order, as described in § 240.591, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount to tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including wines brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1—1.1563–4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 2050 or Form 2052, for each bonded wine cellar or bonded winery from which wine is withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this

section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 240.591 or § 240.594. The request shall take into account any time limit established by the bank.

(3) If a Taxpayer was liable for less than five million dollars in wine taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 240.591. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 2050 or Form 2052, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 2050 or Form 2052, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 2050 or Form 2052.

(2) Remittance shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in wine taxes during calendar year 1983, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512–0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 240.594 [Amended]

4. Paragraph (b)(1) of § 240.594 is amended by replacing "director of the service center and to the regional director (compliance)" with "district director, director of the service center, or regional director (compliance)".

§ 240.901 [Amended]

4a. Section 240.901 is amended by replacing "Internal Revenue Service" with "district director, director of the service center, or regional director (compliance)".

§ 240.902 [Amended]

5. Paragraph (b)(2) of § 240.902 is amended by replacing "director of the service center;" with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form;".

PART 245—BEER

6. The table of sections in Part 245 is amended to reflect the removal of § 245.117b, to read as follows:

* * * * *

§ 245.117b [Removed and Reserved]

* * * * *

§ 245.117 [Amended]

7. Paragraph (f)(1) of § 245.117 is amended by replacing "director of the service center," with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form,".

8. Section 245.117a is revised to implement the use of EFT for payment of taxes. As revised, § 245.117a reads as follows:

§ 245.117a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 245.112, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 245.116, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1—1.1563–4. These criteria are not the same criteria applied to a controlled group of brewers under § 245.110a, for the purposes of determining eligibility for a reduced rate of tax.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 2034, for each brewery from which beer is removed upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of

the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 245.117 or § 245.117d. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in beer taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 245.112. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 2034, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 2034, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 2034.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the tax payment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a tax payment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who paid a gross amount equal to or exceeding five million dollars in beer taxes during calendar year 1983, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512–0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 245.117b [Removed]

9. Section 245.117b is removed because it is incorporated in the above revision of § 245.117a.

§ 245.117d [Amended]

9a. Paragraph (b)(2) of § 245.117d is amended by replacing "director of the service center" with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form".

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

10. Section 250.112a is revised to implement the use of EFT for payment of taxes. As revised, § 250.112a reads as follows:

§ 250.112a Payment of tax by electronic fund transfer.

(a) *General.* Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirts taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment by cash, check, or money order, of distilled spirits taxes, wine taxes, or beer taxes, as described in § 250.112, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on each type of product for which taxes are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importation during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises at which tax liabilities are incurred by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1—1.1563–4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate semimonthly return form or prepayment return form, for each premises from which distilled spirits, wine, or beer is withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 250.112 or § 250.113. The request

shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, less than five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or less than five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 250.112. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to the tax return, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the semimonthly return form or prepayment return form, information about remitting the tax for that return by EFT and shall file the return with the Officer-in-Charge.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the tax payment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512–0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

11. The table of sections in Part 251 is amended to reflect the addition of § 251.48a, to read as follows:

Sec.

* * * * *

251.48a Payment of tax by electronic fund transfer.

* * * * *

12. Immediately after § 251.48, the following new § 251.48a is added to implement the use of EFT for payment of taxes. As added, § 251.48a reads as follows:

§ 251.48a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part, five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 250 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 250 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (a)(3) of this section, of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on all taxable withdrawals and importations (including products of the same tax class brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, an importer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1—1.1563–4.

(3) Electronic fund transfer or EFT means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer of magnetic tape, so as to order, instruct, or authorize a financial institution to either debit or credit an account, in accordance with procedures established by the U.S. Customs Service.

(4) An importer who is required by this section to make remittances by EFT, shall make the EFT remittance in accordance with the requirements of the U.S. Customs Service.

(b) *Effective date.* Any importer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 250 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 250 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 250 of this chapter, during calendar year 1983, shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

§ 270.165 [Amended]

13. Paragraph (d) of § 270.165 is amended by replacing "district director or director of the service center" with "district director, director of the service center, or regional director (compliance)".

14. Section 270.165a is revised to implement the use of EFT for payment of taxes. As revised, § 270.165a reads as follows:

§ 270.165a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on cigars and cigarettes by cask, check, or money order, as described in § 270.168, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including cigars, cigarettes, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 3071 or Form 2617, for each factory from which cigars or cigarettes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter, during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 270.165 or § 270.167. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return on as prescribed by § 270.168. Upon filing the first return which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 3071 or Form 2617, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 3071 or Form 2617, information about remitting the tax for that return period by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 3071 or Form 2617.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the tax payment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a tax payment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512–0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85–859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

§ 270.167 [Amended]

15. Paragraph (b) of § 270.167 is amended by replacing "director of the service center and by forwarding a copy to the regional director (compliance)" with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form".

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

16. The table of sections in Part 275 is amended to reflect the addition of § 275.63, to read as follows:

Sec.

* * * * *

275.63 Payment of tax by electronic fund transfer.

* * * * *

17. Immediately after § 275.62, the following new § 275.63 is added to implement the use of EFT for payment of

taxes. As added, § 275.63 reads as follows:

§ 275.63 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars, in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including cigars, cigarettes, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, an importer includes a controlled group of corporations, as defined in 26 U.S.C 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4.

(3) For the purposes of this section, (i) electronic fund transfer or EFT means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer of magnetic tapes, so as to order, instruct, or authorize a financial institution to either debit or credit an account, in accordance with procedures established by the U.S. Customs Service, and (ii) electronic fund transfer or EFT does not have the meaning defined in § 275.11 for use elsewhere in this part.

(4) An importer who is required by this section to make remittances by EFT, shall make the EFT remittance in accordance with the requirements of the U.S. Customs Service.

(b) *Effective date.* Any importer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter during calendar year 1983, shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

18. Section 275.115a is revised to implement the use of EFT for payment of taxes. As revised, § 275.115a reads as follows:

§ 275.115a Payment of tax by electronic fund tranfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes by cash, check, or money order, as described in § 275.115, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability of all taxes which are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importations during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-7—1.1563-4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate semimonthly return form or prepayment return form, for each factory which cigars, or cigarettes, or cigarette papers, or cigarette tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter during the previous calender year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 275.105 or § 275.114. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 275.115. On the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to the semimonthly return form or prepayment return form, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the semimonthly return form or prepayment return form, information about remitting the tax for that return by EFT and shall file the return with the Officer-in-Charge.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

19. The table of sections in Part 285 is amended to reflect the addition of § 285.27, to read as follows:

Sec.

* * * * *

285.27 Payment of tax by electronic fund transfer.

* * * * *

20. Immediately after § 285.26, the following new § 285.27 is added to implement the use of EFT for payment of taxes. As added, § 285.27 reads as follows:

§ 285.27 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (a)(3) of this section, of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes in any other form of remittance, as authorized in § 285.25, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including cigars, cigarettes, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4.

(3) Electronic fund transfer or EFT means any transfer of funds effected by the taxpayer's bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Department of the Treasury's General Account at the Federal Reserve Bank of New York.

(4) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 2137, for each factory from which cigarettes papers or cigarettes tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank, any bank which has access to the Federal Reserve Communications System (FRCS) or Fedwire, to make an electronic fund transfer in the amount of the taxpayment to the Department of the Treasury's General Account at the Federal Reserve Bank of New York, as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 285.25. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 285.25. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 2137, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 2137, information about remitting the tax for that return period by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 2137.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

Signed: August 20, 1984.

Stephen E. Higgins,

Director.

Approved: September 11, 1984.

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-25342 Filed 9-24-84; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Modifications of the Kentucky Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 917 by announcing the approval of certain amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted by Kentucky are intended (1) to satisfy certain conditions imposed by the Secretary of the Interior on the approval of the Kentucky program, and (2) as further modifications to the Kentucky program. The amendments pertain to sediment pond design, permitting, groundwater, award of costs and expenses and administrative rules of procedure.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Secretary has determined that the modifications to the Kentucky program meet the requirements of SMCRA and the Federal permanent program regulations and the conditions are being removed. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement these actions.

EFFECTIVE DATE: The approval of the program amendment is effective September 25, 1984.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982 (47 FR 21404-21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

II. Submission of Program Amendment and Proposed Findings

By a letter dated October 31, 1983, Kentucky submitted to OSM pursuant to 30 CFR 732.17, certain revisions to the regulations previously approved by the Secretary and new regulations to modify its program. These modifications are intended to satisfy certain conditions placed on the Secretary's approval of the Kentucky program. The conditions addressed in the amendment are (d), (i), (j), (k), (o), and (p).

OSM announced receipt of the amendment and solicited public comment in the **Federal Register** dated November 17, 1983 (48 FR 52333). The public hearing scheduled for December 13, 1983, was not held because no requests for such a hearing were received. The public comment period closed December 19, 1983.

OSM reviewed the proposed modifications and asked Kentucky to clarify certain issues. On May 14, 1984, OSM received additional material from Kentucky pertaining to its civil penalty program and hearings provisions and its administrative rules of procedure relating to service, discovery and burdens of proof. OSM announced the receipt of this material and solicited public comment in the **Federal Register** dated June 28, 1984 (49 FR 26605).

III. Secretary's Findings

Finding 1, Condition (d)

Condition (d) requires Kentucky to amend its program to provide for civil procedures which are no less effective than those at 43 CFR Part 4. In the October 31, 1983 material, Kentucky submitted new regulations (405 KAR 1:0305, 1:040, and 1:050E) pertaining to administrative rules of procedure.

In response to concerns expressed by OSM, Kentucky revised its 405 KAR 1:040 provisions and submitted this material to OSM on May 14, 1984.

The submission as amended on May 14, 1984, contains provisions for (1) service of process, (2) discovery and (3) burden of proof. The Secretary's finding number 27.4, published in the **Federal Register** dated May 18, 1982, explained that Kentucky's program did not demonstrate which rules are pertinent for the above procedures. The Secretary finds that Kentucky's amendment satisfies the condition by providing specific procedures and rules for service of process, discovery and burden of proof that are no less effective than those established in 43 CFR Part 4.

Finding 2, Condition (i)

Condition (i) requires Kentucky to amend its program to provide standards acceptable to the Secretary for the design of sedimentation ponds without an emergency spillway. Kentucky submitted revised regulations (405 KAR 16:090E and 18:090E) that are intended to satisfy condition (i) of the Secretary's approval.

The Secretary imposed condition (i) because the Kentucky program allowed the approval of sedimentation ponds designed without an emergency spillway and did not provide any standards to be used in approving such ponds (Finding 13.27, 47 FR 21413). The Secretary finds that the revised regulations contain standards of approval for single spillway ponds at 405 KAR 16:090, section 5 paragraph 3 and 18:090, section 5 paragraph 5 which are no less effective than 30 CFR 816.46 and 817.46.

Finding 3, Condition (j)

Condition (j) requires the State to amend its program to limit the authority of the Kentucky Natural Resources and

Environmental Protection Cabinet (Cabinet) in deleting water quality parameters from the permit information to those instances approved by OSM. In conditioning the program, the Secretary basically agreed with the State flexibility justification submitted by Kentucky (KY-438), but did not believe that Congress intended the State to have unlimited flexibility to delete all parameters on a case-by-case basis. Therefore, the Secretary directed Kentucky to submit either a regulatory change or a clear policy statement indicating that the deletions allowed in the regulations would only be exercised for dissolved manganese, dissolved iron and sulfate for existing operations not expected to create significant new surface disturbance (47 FR 21416-21417).

Since the time of the Secretary's approval, OSM has revised its rules. The Federal standards that address the requirements to be satisfied are 30 CFR 780.21 and 784.14 as revised on September 26, 1983 (48 FR 43956).

Kentucky revised 405 KAR 8:030, section 15(2)(b) and 8:040, section 15(2)(b) to reflect clearly that deletions of required parameters on a case-by-case basis is not authorized by Kentucky regulation. The Secretary finds that these revised regulations provide standards no less effective than 30 CFR 780.21 and 784.14 and, therefore, Kentucky has satisfied condition (j).

Finding 4, Condition (k)

Condition (k) requires Kentucky to amend its program to establish standards of costs and expenses no less effective than those provided in 43 CFR 4.1294.

The Secretary found Kentucky's phrase "as the Secretary deems proper" to be less effective than the Federal standard that specifies explicitly who is required to pay the costs, and what showing is necessary to receive an award.

Kentucky's amended rule at 405 KAR 7:090, section 12, paragraph 5(a)-(e) specifies who may be awarded costs and expenses and what showing is necessary to receive such an award. The Secretary finds that Kentucky's revised regulations provide a standard for the award of costs and expenses which is no less effective than the Federal standard in 43 CFR 4.1294. The Secretary also finds that Kentucky's proposal provides the same or similar procedures as is found in the Federal regulations for the award of costs and expense. Therefore, the Secretary finds that the State has satisfied condition (k).

Finding 5, Condition (o)

Condition (o) requires Kentucky to amend its program to provide for recharge capacity to groundwater consistent with section 515(b)(10)(D) of SMCRA. To satisfy condition (o), Kentucky revised its regulations at 405 KAR 16:060. In this regulation, Kentucky provides that "Groundwater quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal processing waste and underground development waste disposal areas and fills, so as to allow the movement of water to the groundwater system." The Secretary finds Kentucky's revised regulation to be no less effective than 30 CFR 816.41 and 817.41 and is consistent with section 515(b)(10)(D) of SMCRA. Therefore, Kentucky has satisfied condition (o).

Finding 6, Condition (p)

Condition (p) requires the State to amend its program to provide standards for water diversions for coal waste banks which are no less effective than 30 CFR 816.83(b) and 17.83(b). The Federal standard for water diversions for coal waste banks has been revised since the condition was imposed. OSM published its revision in the **Federal Register** dated September 26, 1983 (48 FR 44006) and therefore the Federal standard is now 30 CFR 816.83 and 817.83.

Kentucky's revised regulations at 405 KAR 16:140E and 18:140E accompanied by previously approved 405 KAR 16:130 provides a standard for water diversions for coal waste banks both during and after construction that is no less effective than 30 CFR 816.83 and 817.83. Kentucky, therefore, has satisfied condition (p).

IV. Public Comment

1. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(a)(10)(i), comments were solicited from various Federal agencies on the proposed State permanent program amendments. Of those agencies invited to comment, comments were received from the following agencies: The United States Environmental Protection Agency (EPA) and the Fish and Wildlife Service (FWS).

The EPA, by its letter dated January 26, 1984, concurred with the Kentucky modifications pursuant to the requirements of SMCRA.

The FWS recommended that Kentucky revise further several sections contained in 405 KAR 8:030. OSM appreciates the commenter's concern pertaining to requiring adequate permit information relating to the protection and consideration of fish and wildlife resources. However, Kentucky revised section 2 of 405 KAR 8:030 to address specifically a condition of approval pertaining to water quality parameters. The recommendations made by the FWS pertain to other areas within the regulation and are not a subject of this rulemaking. Therefore, OSM cannot require that Kentucky make these suggested changes.

2. The Applachian Research and Defense Fund of Kentucky, Inc. (ARDFK) commented on the initial submission and the subsequent revisions.

ARDFK indicates the revision to 405 KAR 1:030, 1:040 and 1:050 substantially satisfy condition (d) pertaining to Kentucky's rule for civil procedure. However, ARDFK registered several concerns with Kentucky's amendment. The first area of concern pertains to personal service versus service by certified mail of administrative summons documents. ARDFK believes that Kentucky's provision could be read to allow only for personal service which would severely strain agency resources and slow the administrative process. When ARDFK commented in response to the May 14, 1984 resubmission, it indicated that the revised material addressed ARDFK's concern and the comment was withdrawn. OSM agrees that the revision submitted by Kentucky adequately provides for personal service and service by certified mail.

ARDFK also commented initially on Kentucky's revision to 405 KAR 1:040 pertaining to free access to expert witnesses and trial preparation materials. In the revised amendment material submitted on May 14, 1984, the State clarified its provisions pertaining to "discovery". When ARDFK commented, on the resubmission, it indicated that the May 14, 1984 material addressed its concern and the comment was withdrawn. OSM agrees that Kentucky's revised regulation provides the same or similar procedures for "discovery" as the Federal rule in 43 CFR Part 4.

Additionally, ARDFK is concerned that where the permittee seeks to set aside an enforcement action taken by the Cabinet that the burden of proof rests with the Cabinet. The commenter believes that the Cabinet's action should be presumed valid and that the party seeking to upset a determination should bear the burden of proving the impropriety of such agency action.

OSM agrees with the commenter insofar as 43 CFR 4.1171 provides that the burden of going forward rests with the agency in establishing a *prima facie* case as to the validity of such an agency determination. The Federal standard indicates that the ultimate burden of persuasion rests with the applicant to establish the grounds for the requested relief from the enforcement action. However, OSM believes that Kentucky's provisions provide for a similar standard on burden of proof and Kentucky affirmatively stated in the May 14, 1984 resubmission that the ultimate burden of proof rests with the applicant. Therefore, OSM finds that Kentucky's revised regulation (405 KAR 1:040) submitted on October 31, 1983, and the material submitted on May 14, 1984, provides the same or similar procedures as sections 521, 525 and 526 of SMCRA, and is no less effective than 43 CFR part 4.

3. The Tennessee Valley Authority (TVA) comments that it strongly supports Kentucky's efforts toward correcting program conditions.

V. Approval of Amendment

Accordingly, the amendments submitted by Kentucky on October 31, 1983, and May 14, 1984, to satisfy conditions (d), (i), (j), (k), (o) and (p) on the Secretary's approval of the Kentucky program are approved pursuant to 30 CFR 732.17.

VI. Additional Findings

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 19, 1984.

Leona A. Power,

Acting Assistant Secretary, Land and Minerals Management.

PART 917—KENTUCKY

§ 917.11 [Amended]

1. 30 CFR 917.11 is amended by removing and reserving paragraphs (d), (i), (j), (k), (o) and (p).

2. 30 CFR 917.15 is amended by adding paragraph (i).

§ 917.15 Approval of Amendments to State Regulatory Program.

* * * * *

(i) The following amendments are approved effective on September 25, 1984: Revisions submitted on October 31, 1983, to 405 KAR 7:020 and 7:030; 1:030, 1:040 and 1:050; 16:090 and 18:090; 8:030 and 8:040; 7:090; 16:060; and 16:140 and 18:140 accompanied by material submitted by Kentucky on May 14, 1984, pertaining to 405 KAR 1:030, 1:040, 1:050, and 7:090.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 84–25341 Filed 9–24–84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Approval of Amendments and Removal of a Condition on the Approval of the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments and the removal of a condition of the Secretary of the Interior's approval of the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By letter dated June 15, 1984, the Ohio Division of Reclamation (the Division) submitted to OSM a set of proposed regulations intended to satisfy condition (c) of the Secretary's approval of the Ohio program concerning the preparation of maps and plans and the design and certification of structures by qualified registered professional engineers or registered surveyors.

After providing opportunity for public review and comment and conducting a thorough review of the program amendments, the Secretary has determined that the modifications to the Ohio program satisfy the condition of approval and meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary is removing the condition and approving the regulatory amendments. The Federal rules at 30 CFR Part 935 which codify decisions concerning the Ohio program are being amended to implement these actions.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)–(f)(10)), (g), (h)(1)–(h)(3), (i)(1)–(i)(3), (j) and (k)(1)–(k)(5). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.** In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983; deficiency (e) by September 16, 1982; and the remaining deficiencies by February 8, 1983.

On January 6, 1983, Ohio submitted materials to OSM intended to, among other things, satisfy conditions (a), (b), (c), (d), (f), (g), (h), (i), (j), (k)(1) and (k)(2). On May 24, 1983, the Secretary approved certain of the amendments and removed conditions (b), (d), (f)(1) through (f)(6), (f)(8) through (f)(10), (g), (h)(2), (h)(3), (i), (j), (k)(1) and (k)(2). The Secretary established a deadline of August 8, 1983, for the State to meet conditions (a), (c)(and (h)(1), and extended to that same date, the deadline for the State to meet conditions (f)(7), (k)(3), (k)(4), and (k)(5). Additionally, the

Secretary imposed two new conditions (l) and (m) which also carried a deadline of August 8, 1983.

On July 26, 1983, the Chief of the Ohio Division of Reclamation wrote to OSM requesting that Ohio be granted an extension of time to meet conditions (c), (f)(7), (h)(1), (k)(3), (k)(4), (k)(5) and (m).

On October 11, 1983, after providing public notice and an opportunity to comment, OSM announced the Secretary's decision to extend the deadline for Ohio to satisfy these conditions. The Secretary extended the deadline for conditions (f)(7), (h)(1), (k)(3), (k)(4) and (k)(5) until February 8, 1984, and the deadline for conditions (c) and (m) until August 8, 1984. Conditions (f)(7), (k)(3), (k)(4) and (k)(5) were removed on May 1, 1984, and on July 5, 1984, the deadline for satisfying condition (h)(1) was extended to April 30, 1985. Condition (m) is the subject of a separate rulemaking notice (49 FR 32403, August 14, 1984).

Condition (c) stipulates that Ohio must amend its program to require that work be performed by qualified registered professional engineers in instances required by SMCRA and the Federal regulations. Ohio submitted an amendment to satisfy this condition on January 6, 1983. On May 24, 1983, the Secretary determined that the condition had not been satisfied because Ohio Revised Code (ORC) section 1513.07(B)(2)(n)(i) provided that registered surveyors would be allowed to perform all plans, maps, and certifications as they are authorized under ORC Chapter 4733. ORC Chapter 4733 provides for the registration of professional engineers and surveyors in Ohio. The Secretary found that this provision would allow surveyors to perform certain duties which SMCRA requires be done by engineers or geologists. The Secretary also found that the Ohio Administrative Code (OAC) had not been amended as required by condition (c).

Since that time, SMCRA has been amended to provide that, notwithstanding section 507(b)(14), cross-section maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans.

II. Submission of Revisions

By letter dated June 15, 1984, Ohio submitted proposed program amendments consisting of revised regulations and a Division Advisory Memorandum intended to satisfy condition (c) due August 8, 1984.

Specifically Ohio has:

(1) Proposed changes to paragraph (I) of rule 1501:13-4-04 concerning map preparation to remove the word "professional" from the phrase "registered professional surveyor";

(2) Proposed changes to paragraph (L) of rule 1501:13-4-04 concerning design maps and plans for ponds and other structures to remove the authority for registered surveyors to prepare and certify such maps and plans;

(3) Proposed changes to paragraphs (I) and (J) of rule 1501:13-4-13 concerning map preparation and certification to allow registered surveyors to prepare and certify such maps and to remove the dual certification requirements that both an engineer and a surveyor must certify such maps;

(4) Proposed changes to paragraph (L) of rule 1501:13-4-13 concerning design maps and plans for ponds and other structures to remove the authority for a professional geologist to prepare and certify such maps and plans;

(5) Proposed changes to paragraphs (B)(5) and (G)(15) of rule 1501:13-9-04 concerning drainage control systems to provide that structures shall be certified upon completion of construction either by a qualified registered professional engineer and a qualified registered surveyor, to the extent such joint certification is required or permitted by the chief, as meeting the dimensions and design criteria set forth in the engineering plans, drawings, and design details submitted as part of the permit application; and

(6) Submitted to OSM a copy of Division Advisory Memo No. 31 dated May 22, 1984, and addressed to all Ohio coal mine operators and consultants regarding certification of sediment ponds. The memo explains the Division's certification requirements and the authority of engineers and surveyors to perform various roles according to State and Federal law.

On July 24, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendments and requesting public comment on whether the proposed amendments are no less effective than the Secretary's regulations and whether the amendments satisfy the condition of approval. (49 FR 29804) The public comment period ended August 23, 1984. A public hearing scheduled for August 14, 1984, was changed to a public meeting because only one person expressed a desire to present testimony. On July 24, 1984, the Director, pursuant to section 503(b)(1) of SMCRA, requested the concurrence of the Environmental Protection Agency (EPA) on the proposed modifications to the Ohio program. The EPA provided its concurrence on September 10, 1984.

III. Secretary's Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on June 15, 1984, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

The Secretary found that the Ohio program conditionally approved on August 16, 1982, allowed registered land surveyors to perform certain duties which SMCRA requires be done by qualified registered professional engineers or registered geologists. On May 24, 1983, the Secretary found that a January 6, 1963 Ohio amendment did not fully satisfy condition (c) because the Ohio Administrative Code (OAC) had not been amended as required. Since that time, SMCRA has been amended to provide that, notwithstanding section 507(b)(14), cross-section maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans. To implement the amendment to SMCRA, OSM has drafted proposed rules which will be published for comment in the Federal Register in the near future. The proposed rules will clarify what portions of the permit application may be prepared by land surveyors. Should the amendments to the Federal rules necessitate any further changes in the Ohio program, the Director of OSM will notify the State of any required program amendments.

The June 15, 1984 proposed program amendment included a copy of Division Advisory Memo No. 31 to all coal operators regarding the role of surveyors in the permit application process. The Memo states that:

1. Detailed design plans for sediment ponds required by OAC 1501:13-4-04(L) cannot be prepared and certified by surveyors, but must be prepared and certified by a professional engineer;

2. Registered surveyors may prepare the supplemental cross-sections, maps and plans for sediment ponds required by section 1513.07(B)(2)(n)(i) of the Ohio Revised Code and OAC 1501:13-4-04(J), and may prepare the application map required by OAC 1501:13-4-04(I); and

3. Certification that a pond is built according to design may be submitted

with an engineer's certification only, except that a surveyor may partially certify pond construction only to the extent that he is certifying that the measurements of the pond structure conform to the measurements contained in the detailed design plan submitted with the application and prepared by the engineer.

In Ohio, unlike some other States, State law does not permit surveyors to perform design functions. Therefore, even though SMCRA has been amended, surveyors in Ohio may not prepare detailed design plans, but may prepare general plans, maps and cross-sections which constitute measurement, rather than design functions.

The Secretary finds that the responsibilities set forth in the Memo are consistent with SMCRA, as amended, and the Federal regulations.

Ohio has amended paragraph (I) of OAC 1501:13–4–04, concerning preparation of a surface mining permit application map, to remove the word "professional" from the phrase "registered professional surveyor". In Ohio, a registered surveyor is a professional surveyor by definition. The inclusion of the word "professional" would be redundant. Therefore, the Secretary finds the amendment is consistent with SMCRA as amended.

Ohio has amended paragraph (L) of OAC 1501:13–4–04, concerning preparation and certification of detailed design plans and maps for surface mining ponds and impoundments, to remove the authority for a registered surveyor to prepare and certify such maps and plans. The Secretary finds that the amendment is no less effective than 30 CFR 780.25.

Ohio has amended paragraph (I) of OAC 1501:13–4–13, concerning preparation of an underground mining application map, to remove the requirement for dual certification by both an engineer and a surveyor and instead allow either an engineer or a surveyor to prepare and certify the map. The Secretary finds the amendment to be consistent with SMCRA as amended.

Ohio has amended paragraph (J) of OAC 1501:13–4–13 concerning preparation of supplementary maps, cross-sections and plans for underground mining applications, to allow either a qualified registered professional engineer or a registered surveyor to prepare and certify such maps, cross-sections and plans. The Secretary finds the amendment to be consistent with SMCRA, as amended.

Ohio has amended paragraph (L) of OAC 1501:13–4–13, concerning detailed design plans and maps for underground mining ponds, impoundments and coal waste structures, to remove the authority for professional geologists to prepare and certify such plans and maps. The Secretary finds the amendment to be no less effective than 30 CFR 784.16.

Ohio has amended paragraph (B)(5) of OAC 1501:13–9–04, concerning construction of drainage control systems, to provide that such structures shall be certified upon completion of construction either by an engineer or jointly by an engineer and a surveyor to the extent such joint certification is required or permitted by the Chief of the Division as meeting the dimensions and design criteria set forth in the design plan submitted as part of the permit application. The Secretary finds the amendment makes the Ohio rule no less effective than 30 CFR 816.49 and 817.49.

Ohio has amended paragraph (G)(15) of OAC 1501:13–9–04, concerning pond design and construction, to provide that ponds shall be inspected during construction and certified after construction by an engineer or jointly by an engineer and surveyor to the extent such joint certification is required or permitted by the Chief of the Division. The Secretary finds the amendment makes the Ohio rule no less effective than 30 CFR 816.49 and 817.49.

The Secretary finds, based on the Division Advisory Memo and the changes to the Ohio rules discussed above, that Ohio has satisified condition (c) regarding duties to be performed by engineers and surveyors in the Ohio program.

IV. Public Comments

At the public meeting held on August 14, 1984, several commenters objected to the proposed changes to OAC 1501:13–9–04(B)(5) requiring joint certification by engineers and surveyors of "as built" structures, stating that surveyors should be allowed to certify "as built" structures independently because such work is "measurement" work which surveyors are authorized and required to perform under Ohio law. One commenter also stated that construction certification requirements for small ponds (those not meeting the size or other criteria of 30 CFR 77.216(a)) are excessive and that in any event such certifications ought to be performed by surveyors.

The Division Advisory Memo makes clear that a surveyor may partially certify "as built" construction to the extent that he is certifying that the measurements of the structure conform to the measurements contained in the detailed design plan. Certification of stability, compaction, and detention time must be submitted by an engineer. This direction is consistent with the Ohio statute and with section 515(b)(10) of SMCRA and 30 CFR 816.46 and 817.46.

Two commenters stated that removal of the word "professional" from OAC 1501:13–9–04(I) was unnecessary. The Secretary has determined that the word "professional" is implicit in the phrase "registered surveyor" and its deletion does not change the meaning of the phrase.

Acknowledgements were received from the following Federal agencies:

Department of Labor—Mine Safety and Health Administration
Department of the Army—Office of the Chief of Engineers
Department of Agriculture—Farmers Home Administration

The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Secretary's Decision

The Secretary, based on the above findings, is approving the June 15, 1984 amendments to the Ohio program, and is removing condition (c). Part 935 of 30 CFR Chapter VII is being amended to reflect the above actions.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 935 is amended as set forth herein.

Dated: September 19, 1984.

Leona A Power,

Acting Assistant Secretary for Land and Minerals Management.

PART 935—OHIO

§ 935.11 [Amended]

1. 30 CFR 935.11 is amended by removing and reserving paragraph (c).

2. 30 CFR 935.15 is amended by adding a new paragraph (k) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendments submitted to OSM on June 15, 1984, are approved effective upon promulgation of the rules by the State, provided the rules adopted are identical to the rules submitted to and reviewed by OSM: Ohio Administrative Code sections 1501:13–4–04 (I) and (L); 1501:13–4–13 (I), (J), and (L); 1501:13–9–04 (B)(5) and (G) (15); and Division Advisory Memo No. 31.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 84–25339 Filed 9–24–84; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2679-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Enviromental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is revising the Federal Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the B.F Goodrich plant and the Ohio Edison Company's Beech Street power station in Summit County, Ohio. This revision is based on an urban modeling analysis submitted by the State of Ohio. The analysis demonstrates that this revision will not interfere with the attainment and maintenance of the SO_2 National Ambient Air Quality Standards. This action revises the B.F Goodrich SO_2 emission limits from 5.54 lbs SO_2/MMBTU to 7.0 lbs SO_2/MMBTU. In addition USEPA is revising the Ohio Edison Beech Street Plant emission limit from 2.79 to 0.0 because the plant is permanently shut down.

EFFECTIVE DATE: This final rulemaking becomes effective on October 25, 1984.

ADDRESSES: Copies of the Docket #5A–83–3 are on file at the following addresses for review. (It is recommended you telephone the contact person below before visiting the Region V office.)

U.S. Enviromental Protection Agency, Region V, Air and Radiation Branch 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Enviromental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Copies of the SIP revision request is also available for inspection at: Ohio Enviromental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation branch (5AR-26), Enviromental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the Ohio Enviromental Protection Agency (Ohio USEPA) submitted a request for a revision to the SO_2 emission limitation for the B.F Goodrich South Main Street Plant in Summit County, Ohio. The submittal was intended as a request for a revision to the current Federal SIP, which was promulgated by USEPA on December 5, 1979 (44 FR 69928). Additional technical support was submitted to USEPA on April 15, 1983.

Ohio EPA requested that USEPA revise the emission limit for coal-fired Boilers No. 27 and 32 at the B.F Goodrich facility from 5.54 lbs SO_2/MMBTU to 7.0 lbs SO_2/MMBTU. The current Federal limit of 0.51 lbs SO_2/MMBTU for Boiler Number 31 and the nonsimultaneous operating restriction for Boilers Nos. 27 and 32 currently in the SIP are not being revised.

To determine if the 7.0 lbs SO_2/MMBTU limit will provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), B.F Goodrich performed a RAM urban modeling analysis. The results of the analysis demonstrate that the revision will not interfere with the attainment and maintenance of the SO_2 NAAQS. Therefore, USEPA is promulgating this revision to the Ohio SO_2 SIP. Fuirther discussion of the modeling analysis is contained in the technical support document for this revision, which is available for review at the Region V office.

The emission inventory prepared by the State and used in the modeling attainment demonstration did not include the Ohio Edison Beech Street Plant because it is permanently shut down. Therefore, as part of this rulemaking, USEPA is also revising the limit for the Ohio Edison Beech Street Plant from 2.79 lbs SO_2/MMBTU to 0.00 lbs SO_2/MMBTU.

Impact on Attainment and Prevention of Significant Deterioration (PSD) in Other States

USEPA also reviewed the proposed B.F Goodrich revision for consistency with section 110(a)(2)(E) of the Clean Air Act. Due to present limitations on modeling, the modeling for the revision was limited to a 50 km radius around the B.F Goodrich plant. There is no other State within 50 km of the plant. Furthermore, although the revision would increase allowable emissions from the B.F Goodrich plant by approximately 1,200 tons per year, the revision for both B.F Goodrich and Beech Street taken together represent a net decrease in allowable emissions of about 5,200 tons per year and is not expected to result in an increase in actual emissions from historical levels. Therefore, the revision will not affect PSD increment consumption.

The modeling for this revision demonstrated that 3-hour and 24-hour ambient SO_2 concentrations resulting from B.F Goodrich's emissions decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in USEPA's judgment, the revision would not contribute significantly to SO_2 nonattainment in any other State.

Public Comment

On March 23, 1984 (49 FR 11103), USEPA proposed to revise the Federal Ohio SIP as noted above. No public comments were submitted to USEPA during the 30-day public comment period.

Final Action

USEPA is revising the B.F. Goodrich SO_2 emission limit from 5.54 lbs. SO_2/MMBTU to 7.0 lbs. SO_2/MMBTU and the Ohio Edison Beech Street Plant SO_2 emission limit from 2.79 to 0.0.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority of section 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: September 14, 1984.

William D. Ruckelshaus,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

Subpart KK—Ohio

Section 52.1881(b) is amended by revising paragraphs (59)(viii)(B) and (59)(xi) as follows:

§ 52.1881 Control Strategy: Sulfur Oxides (sulfur dioxide).

* * * * *

(b) * * *

(59) * * *

(viii) * * *

(B) 7.0 pounds of sulfur dioxide per million BTU actual heat input for coalfired Boilers #27 and #32.

* * * * *

(xi) The Ohio Edison or any subsequent owner or operator of the Ohio Edison Company's Beech Street power station in Summit County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack at the Beech Street plant in excess of 0.00 pounds of sulfur dioxide per million BTU actual heat input.

* * * * *

[FR Doc. 84-25301 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-2679-7]

Approval and Promulgation of Implementation Plans; Massachusetts; Temporary Sulfur-in-Fuel Revision for James River Corporation, Hyde Park Mill in Boston

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Massachusetts State Implementation Plan (SIP) which will allow James River Corporation, Hyde Park Mill in Boston, Massachusetts to increase the sulfur content of its residual fuel oil for up to 30 months. The burning of less expensive, higher sulfur content fuel oil will provide this source with some of the capital needed to implement permanent energy conservation measures.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 223-5133.

ADDRESSES: Copies of the Massachusetts submittal, which is incorporated by reference, are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 2313, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; Office of the Federal Register, 110 L Street, NW., Room 8401, Washington, D.C. 20460 and the Department of Environmental Quality Engineering, 8th Floor, One Winter Street, Boston, Massachusetts 02108.

SUPPLEMENTARY INFORMATION: On July 11, 1984, the Massachusetts DEQE submitted a SIP revision for James River Corporation, in Hyde Park Mill, Boston, Massachusetts. The revision allows the burning of 2.2% sulfur fuel in their boilers for 30 months or less. During this time period, James River Corporation has committed to implementing permanent energy conservation measures. The facility will use the savings realized during the temporary (30 months or less) utilization of less expensive 2.2% sulfur fuel oil to defray the costs of implementing the permanent energy conservation measures. The facility will return to burning 0.5% sulfur fuel oil by 30 months from the effective date of this Register.

Background

This temporary sulfur-in-fuel revision is being approved pursuant to the provisions of Regulation 310 CMR 7.19, "Interim Sulfur-in-Fuel Limitation for Fossil Fuel Utilization Facilities Pending Energy Conservation Measures." EPA approved the addition of this regulation to the Massachusetts SIP on March 19, 1981, (46 FR 82677). It specifies the requirements and conditions which sources must meet in order to qualify for temporary sulfur-in-fuel relaxations and the procedures which the Massachusetts Department of Environmental Quality Engineering (DEQE) must use to determine that the emissions will not violate any National Ambient Air Quality Standards (NAAQS). Only sources rated at less than 250 million Btu per hour heat input, which are currently burning residual fuel oil, and have made a commitment to either (a) convert to an alternate fuel; or (b) implement energy conservation measures, are eligible for a temporary sulfur-in-fuel revision not to exceed 30 months. Further details on the requirements of Regulation 310 CFR 7.19 and EPA's reasons for approving it were discussed in a Notice of Proposed Rulemaking (NPR) published on December 16, 1980 (45 FR 82675). In the NPR, EPA also proposed approval of all individual sources that meet the eligibility requirements of this regulation.

EPA Evaluation

EPA has determined that the DEQE has approved James River Corporation's request to burn higher sulfur fuel oil in accordance with the provisions of Regulation 310 CMR 7.19, and agrees that no air quality standards will be violated by the temporary burning of 2.2% sulfur fuel oil at this facility.

EPA received no comments on its December 16, 1980 (45 FR 82675) proposal to approve individual sources of sulfur-in-fuel relaxations, and DEQE received no comments on its proposed approval of the temporary sulfur-in-fuel relaxation at the James River Corporation, Hyde Park Mill facility in Boston. Since the public has had these other opportunities to comment, and since EPA published a generic NPR for all such sulfur relaxations, EPA believes that publishing a new NPR is unnecessary. Therefore, EPA is taking final action today to approve this SIP revision without first publishing a new proposed rulemaking. EPA finds good cause for making this action effective immediately because the implementation plan is already in effect under State law and imposes no additional regulatory burden.

Final Action

EPA is approving the proposed temporary sulfur-in-fuel relaxation revision for James River Corporation.

Under U.S.C. section 605(b), the Administrator has certified that this action will not have significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by Reference for the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 14, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52, Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

Section 52.1120, is amended by adding paragraph (c)(67) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(67) A revision submitted on July 11, 1984 allowing the burning of 2.2% sulfur content fuel oil at the James River Corporation Hyde Park Mill facility in Boston, Massachusetts for a period of up to 30 months, commencing on September 25, 1984.

[FR Doc. 84-25382 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Docket No. MA 1462; A-1-FRL-2679-8]

Approval and Promulgation of Implementation Plans; Massachusetts; Sulfur Dioxide Revision for Boston Edison Co.; Mystic Station Unit 7

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions renew a temporary, 30-month variance to 310 CMR 7.05(1)(d)2 to allow for the burning of 2.2% sulfur content fuel oil in boiler unit 7 (Unit 7) of the Boston Edison Company (BECo) Mystic Station facility (Mystic) in Everett, Massachusetts. The intended effect of this action is to allow for the continued use of higher sulfur content fuel oil at Mystic Unit 7. This action is taken pursuant to sections 110 and 301 of the Clean Air Act.

EFFECTIVE DATE: September 25, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2312, JFK Federal Building, Boston, Mass. 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408 and at the Division of Air Quality Control of the Massachusetts Department of Environmental Quality Engineering, 1 Winter Street, 8th Floor, Boston, Mass. 02108.

FOR FURTHER INFORMATION CONTACT: Jon Pollack, (617) 223-4867.

SUPPLEMENTARY INFORMATION: On April 25, 1984 (49 FR 17773), EPA published a Notice of Proposed Rulemaking (NPR) proposing to approve revisions to the Massachusetts SIP. These revisions would approve a variance to 310 CMR 7.05(1)(d)2 to allow for the continued use of 2.2% sulfur (S) content fuel oil at Mystic Unit 7 for a period of thirty months. A more complete discussion of the revisions and the rationale for EPA's proposed action is contained in the NPR. In addition, the NPR discusses a number of conditions that the Massachusetts Department of Environmental Quality Engineering has attached to the variance.

Two public comments supporting the proposed action were received in response to the NPR.

Final Action

EPA is approving revisions to the Massachusetts SIP that allow for the continued use of 2.2% S fuel oil at BECo's Mystic Station Unit 7 for a period of thirty months.

As noted in the NPR, the modeling demonstration supporting this action is based on full stack height credit (500 feet) for the stack serving Unit 7. This height is consistent with "good engineering practice" as the term is defined by the formula in EPA's existing stack height regulations, 40 CFR 51.1.

Portions of the stack height regulations promulgated on February 8, 1982 (47 FR 5864), have been overturned by a panel of the U.S. Court of Appeals for the D.C. Circuit. *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir., 1983). While EPA believes the actions taken today to be consistent with the court decision, these actions may be subject to modification when revised regulations are promulgated in response to the decision. This may result in revised emission limitations or may affect other actions taken by States and source owners or operators.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations and Incorporation by reference.

Authority: Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 14, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

Section 52.1120, is amended by adding subparagraph (c)(65) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(65) A temporary variance to 310 CMR 7.05(1)(d)2 of "Sulfur Content of Fuels and Control Thereof for Metropolitan Boston Air Pollution Control District" submitted on January 6, 1984 to allow for the use of 2.2% sulfur content fuel oil in boiler unit 7 of the Boston Edison Company Mystic Station facility in Everett for thirty months commencing on September 25, 1984.

[FR Doc. 84-25363 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 147

[OW-10-FRL-2664-7]

Oregon Department of Environmental Quality; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Oregon has submitted an application under sections 1422 and 1425 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for Classes I, III, IV, and V injection wells meets the requirements of Section 1422 of the Act and, that the State's injection well program for Class II oil and natural gas related wells meets the requirements of section 1425 of the Act. Therefore, this application covering Classes I–V injections is approved.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on October 9, 1984. This approval shall become effective on October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald Opatz, Mail Stop 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. PH: (206) 442-1225, FTS 399-1225.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The SDWA was amended on December 5, 1980, to include section 1425, which establishes an alternative method by which a State may obtain primary enforcement responsibility for those portions of its UIC program related to the recovery and production of oil and natural gas (Class II wells). Specifically, instead of meeting Federal Regulations (40 CFR Parts 124, 144, and 147) and related Technical Criteria and Standards (40 CFR Part 146), a State may demonstrate that its program meets the more general statutory requirements of section 1421 (b)(1) (A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water.

The State of Oregon was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under sections 1422 and 1425 on November 14, 1983, for a UIC program to be administered by the Oregon Department of Environmental Quality (ODEQ). On February 3, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the ODEQ (49 FR 4216). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest.

After careful review of the application, I have determined that the Oregon UIC program submitted by the ODEQ to regulate Classes, I, II, III, IV, and V injection wells meets the requirements established by the Federal regulations pursuant to sections 1422 and 1425 of the SDWA and, hereby approve it. However, since there are no, Class I, III, and IV wells and the State has elected to prohibit such injection, Class I, III, and IV injection will be banned. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Oregon.

This approval does not, however, apply to that portion of the Memorandum of Agreement (MOA) between the USEPA and the ODEQ which deals with the State's National Pollutant Discharge Elimination System (NPDES) program. The existing NPDES MOA between the USEPA and the ODEQ remains in force and is neither superseded or modified by approval of the UIC program.

This approval will be codified in 40 CFR 147.1900. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

In this application, Oregon chooses not to assert jurisdiction over Indian lands or reservations for purposes of its UIC program. Therefore, the EPA will, at a future date, prescribe a UIC program governing injection wells on any Indian lands or reservations.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Oregon Department of Environmental Quality will not have a significant economic impact on a substantial number of small entities, since this rule

only approves State actions. It imposes no new requirements on small entities.

(42 U.S.C. 300 SDWA 1425 and 1422)

Dated: September 7, 1984.

William D. Ruckelshaus,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart MM—Oregon

Amend 40 CFR Part 147 by revising § 147.1900 as follows:

§ 147.1900 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Oregon is the program administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on September 25, 1984; the effective date of this program is October 9, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Oregon. This incorporation by reference was approved by the Director of the **Federal Register** effective October 9, 1984.

(1) Oregon Revised Statutes, Title 16, Ch. 164, section 164.785; Title 36, Ch. 468, sections 468.005, 468.065 to 468.070, 468.700 to 468.815; Title 43, Ch. 520 sections 520.005, 520.095, 520.155—520.330 (1983);

(2) Oregon Administrative Rules, 340 Division 44 sections 340–44–005 to 340–44–055 October 1983, 340–45–005 to 340–45–070 (June 1980); Ch. 632 sections 632–10–002 to 632–10–235 (Dated October 1982); 632–20–005 to 632–20–159; 632–20–170 to 632–20–180 (January 1981).

(b) *Other Laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) Oregon Revised Statutes, Chapter 183; 192.420, 192.500, 459.460(3), 468.005–468.605, 468.780–468.997; Chapters 516, 522 (1983);

(2) Oregon Administrative Rules, Ch. 137, Div. 3 (July 1982); Ch. 340, Div. 11 (November, 1983); Ch. 340, Div. 14 (November, 1983); Ch. 340, Div. 52 (November 1983); Ch. 632, Div. 1 (June 1980); Ch. 632, Div. 20 (January 1981);

(c)(1) The Memorandum of Agreement between EPA Region X and the Oregon Department of Environmental Quality, signed by the EPA Regional Administrator on May 3, 1984.

(d) *Statement of Legal Authority.*

(1) "Underground Injection Control Program Legal Counsel's Statement," October 1983, signed by the Assistant Attorney General, Oregon;

(2) Opinion of the Attorney General, Oregon, 35 Op. Attorney General 1042 (1972).

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[FR Doc. 84–24371 Filed 9–24–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 415

[WH-FRL-2678-4]

Inorganic Chemicals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This notice corrects typographical errors that appeared in the August 22, 1984 publication (49 FR 33402) of the Environmental Protection Agency's regulations on Inorganic Chemicals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards. These regulations were promulgated under the Clean Water Act to limit the discharge of effluents to waters of the United States and the introduction of pollutants into publicly owned treatment works from inorganic chemical manufacturing facilities.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding, (202) 382-7156.

SUPPLEMENTARY INFORMATION: We are amending 40 CFR Part 415, Inorganic Chemicals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards to correct typographical errors in the promulgated regulation.

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567 Pub. L. 95–217.

List of Subjects in 40 CFR Part 415

Inorganic chemicals, Water pollution control, Waste treatment and disposal.

PART 415—[CORRECTED]

The following corrections are made to 40 CFR Part 415 appearing in the August 22, 1984 issue on page 33402:

1. Page 33420, column 3, § 415.01(b), in the list of subparts, change "M" to "BM."
2. Page 33428, column 2, § 415.662, in the table, change "NSPS Effluent Limitations" to "BPT Effluent Limitations."
3. Page 33428, column 2, § 415.663, in the table, change "BPT Effluent Limitations" to "BAT Effluent Limitations."
4. Page 33428, column 3, § 415.666, in the table, change "BAT Effluent Limitations" to "PSNS Effluent Limitations."
5. Page 33429, column 1, § 415.672, in the table, change "BAT Effluent Limitations" to "BPT Effluent Limitations."
6. Page 33429, column 2, § 415.673 and § 415.674, and column 3, § 415.675, in all three tables change the effluent limitations for lead for the maximum for any one day from 0.6 milligrams per liter (mg/l) to 0.18 mg/l; and, in all three tables, change the effluent limitations for lead for the average of daily values for 30 consecutive days from 0.2 mg/l to 0.048 mg/l.
7. Page 33429, column 3, § 415.675, in the table, change "BPT Effluent Limitations" to "NSPS Effluent Limitations."

Dated: September 18, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84–25350 Filed 9–24–84; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 610, 611, 612, 613, 640, 650, and 670

Nomenclature Changes

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This action makes technical corrections and conforming amendments to NSF regulations on procedures and criteria for resolving questions involving moral character or loyalty of applicants for and holders of NSF fellowships; effectuation of Title VI of the Civil

Rights Act of 1984, availability of information and records, implementation of the Privacy Act, compliance with the National Environmental Policy Act, Patents, and conservation of Antarctic animals and plants.

EFFECTIVE DATE: September 25, 1984.

ADDRESS: Any comments should be addressed to: Paralegal, office of the General Counsel, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Sukari S. Smith, Paralegal, Office of the General Counsel, National Science Foundation, Washington, DC 20550, 202-357-9580 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These changes are being made at this time so they can be incorporated into the next edition of Title 45 of the Code of Federal Regulations.

Explanation of changes

The changes made to Parts 610, 611, 612, 613, and 640 of Title 45 of the Code of Federal Regulations merely correct the titles of officals and organizational elements to conform to present NSF nomenclature.

The "Scope of Part" section of the NSF Patents regulation (Section 650.1 of Title 45 of the Code of Federal Regulations) is reworded to reflect the issuance of the Federal Acquisition Regulations.

In accordance with Transmittal Memorandum No. 1 to Office of Management and Budget Circular A-124 (published at 49 FR 10393), the standard patent rights clause contained in § 650.4(a) of Title 45 of the Code of Federal Regulations is amended as follows:

(a) "(April 1983)" in the title is changed to "(September 1984)".

(b) In subparagraph a(5), the words "means a small business concern" are replaced by "means a domestic small business concern".

(c) In subparagraph a(6), the words "means a university or other" are replaced by "means a domestic university or other" and the words "any nonprofit scientific" are replaced by "any domestic nonprofit scientific".

(d) In subparagraph c(2), the words "months of disclosure to the grantee" are replaced by the words "months of disclosure to grantee personnel responsible for patent matters".

(e) In paragraph d, "(1)" is deleted, "(i)" is changed to "(1)", "(ii)" is changed to "(2)", and "(iii)" is changed to "(3)".

(f) The following sentence is added to the end of subparagraph d(1), as redesignated: "NSF may only request title within sixty days after learning of the grantee's failure to disclose or elect within the specified times."

(g) In the last sentence of paragraph h, "35 U.S.C. 202(c)(5)" is replaced by "law".

In addition, in the first sentence of the last paragraph of the standard Patent Rights clause in § 650.4(a) of the Code of Federal Regulations, the words "Foundation, 20550" are replaced by the words "Foundation, Washington, DC 20550" to correct a clerical error.

The entire section containing the Foundation's standard Patent Rights clause is being republished to allow these changes to be seen in context and to give interested parties a complete, up-to-date copy of that clause.

To bring the Foundation's procedure for waiver of rights to inventions into compliance with the Federal Acquisition Regulations, 48 CFR 27.304-1(f)(2), § 650.13(e) of Title 45 of the Code of Federal Regulations has been amended to require preparation of a written statement for waivers of rights to inventions made under contracts subject to the FAR.

To comply with an Office of Management and Budget requirement (5 CFR 1320.4(a)), information collection control numbers are added at the end of those sections in Chapter VI of Title 45 of the Code of Federal Regulations requiring Civil Rights Act compliance information (§ 611.6), containing the standard Patent Rights clause (§ 650.4), and dealing with application for permits to take plants or wildlife to or from Antarctica (§ 670.9).

Executive Order 12291

The Foundation has determined that this action is not a major rule as defined in Executive Order 12291 of February 17, 1983 (3 CFR 1981 Comp., p. 127).

These changes are mostly technical corrections and additions to existing regulations. The only substantive amendments are those made to conform the NSF Patents Rights clause to that contained in OMB Circular A-124, as amended by Transmittal Memorandum No. 1, and the public had an opportunity to comment on those changes when they were promulgated by OMB. Therefore, the Foundation found that obtaining public comment on this action before making it final was unnecessary.

List of Subjects

45 CFR Part 610:

Scholarships and fellowships, Students.

45 CFR Part 611:

Civil rights, Government procurement, Grant programs—science and technology, Nondiscrimination.

45 CFR Part 612:

Freedom of information.

45 CFR Part 613:

Privacy.

45 CFR Part 640:

Environmental protection.

45 CFR Part 650:

Government procurement, Grant programs—science and technology, Inventions and patents, Nonprofit organizations, Small businesses.

45 CFR Part 670:

Endangered and threatened wildlife, Natural resources, Research.

Arthur J. Kusinski,

Acting General Counsel.

September 20, 1984.

Accordingly, Title 45 of the Code of Federal Regulations is amended as provided below:

PART 610—[AMENDED]

§ 610.2 [Amended]

1. Section 610.2(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "the Associate Director (Scientific Personnel and Education)" with "the Assistant Director for Science and Engineering Education".

PART 611—[AMENDED]

§ 611.6 [Amended]

2. Section § 611.6 of Title 45 of the Code of Federal Regulations is amended by adding the OMB control number to read as follows:

(Approved by the Office of Management and Budget under control number 3145-0087)

PART 612—[AMENDED]

§ 612.2 [Amended]

3. Section 612.2(c) of Title 45 of the Code of Federal Regulations is amended by replacing "ADAO" with "AD/A" in the second sentence.

PART 613—[AMENDED]

§ 613.2 [Amended]

4. Section 613.2(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "Management Analysis Office" with "Division of Administrative Services".

§ 613.3 [Amended]

5. Section 613.3(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "Management Analysis Office" with "Division of Administrative Services".

PART 640—[AMENDED]

§ 640.2 [Amended]

6. Section 640.2(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "the Office of Government and Public Programs, and the Office of Planning and Resources Management" with "the Office of Legislative and Public Affairs, and the Office of the Comptroller".

PART 650—[AMENDED]

7. Section 650.1 of Title 45 of the Code of Federal Regulations is revised to read as follows:

§ 650.1 Scope of part.

This part contains the policies, procedures, and clauses that govern allocation of rights to inventions made in performance of NSF-assisted research. It applies to all funding agreements entered into by the Foundation after September 30, 1984, that relate to performance of scientific or engineering research. As stated in the NSF Acquisition Regulation (Chapter 25 of Title 48 of the Code of Federal Regulations), the provisions of this part apply to contracts as well as to grants and cooperative agreements.

8. Section 650.4 of Title 45 of the Code of Federal Regulations is revised to read as follows:

§ 650.4 Standard patent rights clause.

(a) The following Patent Rights clause will be used in every funding agreement awarded by the Foundation that relates to scientific or engineering research unless a special patent clause has been negotiated (see § 650.5).

Patent Rights (September 1984)

a. Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(2) "Subject invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant.

(3) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small business firm" means a domestic small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) "Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

b. Allocation of Principal Rights

The grantee may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. If the award indicates it is subject to an identified international agreement or treaty, the Foundation also has the right to direct the grantee to convey to any foreign participant such patent rights to subject inventions as are required to comply with that agreement or treaty.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Grantee

(1) The grantee will disclose each subject invention to the National Science Foundation (NSF) within two months after the inventor discloses it in writing to grantee personnel responsible for the administration of patent matters. The disclosure to NSF shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NSF, the grantee will promptly notify NSF of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any such invention by notifying NSF within twelve months of disclosure to grantee personnel responsible for patent matters; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by NSF to a date that is no more than 60 days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale or public use. The grantee will file patent applications in additional countries within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to NSF, election, and filing may, at the discretion of NSF, be granted.

d. Conditions When the Government May Obtain Title

The grantee will convey to NSF, upon written request, title to any subject invention:

(1) If the grantee fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. NSF may only request title within sixty days after learning of the grantee's failure to disclose elect within the specified times.

(2) In those countries in which the grantee fails to file patent applications within the times specified in c. above; provided, however, that if the grantee has filed a patent application in a country after the times specified in c. above but prior to its receipt of the written request of NSF the grantee shall continue to retain title in that country.

(3) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Grantee

(1) The grantee will retain a nonexclusive, royalty-free, license throughout the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in c. above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a party and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of NSF except when transferred to the successor of that part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by NSF to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable

provisions in the Federal Property Management Regulations. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NSF to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NSF will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by NSF for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with applicable regulations in the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Grantee Action to Protect Government's Interest

(1) The grantee agrees to execute or to have executed and promptly deliver to NSF all instruments necessary to: (i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the grantee retains title, and (ii) convey title to NSF when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly lin writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by c. (1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The grantee will notify NSF of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the grant) awarded by the National Science Foundation. The Government has certain rights in this invention."

(5) The grantee or its representative will complete, execute, and forward to NSF a confirmation of a License to the United States Government within two months of filing any domestic or foreign patent application.

(6) The grantee or its representative will forward to NSF a copy of any United States patent covering a subject invention within two months after it is issued.

g. Subcontracts

(1) The grantee will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor will retain all rights provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the case of subcontracts, at any tier, when the prime award by the Foundation was a contract (but not a grant or cooperative agreement), NSF, subcontractor, and contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Foundation with respect to those matters covered by this clause.

h. Reporting on Utilization of Subject Inventions

The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as NSF may reasonably require. The grantee also agrees to provide additional reports in connection with any march-in proceedings undertaken by NSF in accordance with paragraph j. of this clause. To the extent data or information supplied under this section is considered by the grantee, its licensee or assignee to be privileged and confidential and is so marked, NSF agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

i. Preference for United States Industry

Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NSF upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantilly in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights

The grantee agrees that with respect to any subject invention in which it has acquired title, NSF has the right in accordance with procedures in OMB Circular A-124 and NSF regulations at 45 CFR 650.13 to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, NSF has the right to grant such a license itself if NSF determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph i. of this clause has not obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Grants With Nonprofit Organizations

If the grantee is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of NSF, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the grantee);

(2) The grantee may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) five years from first commercial sale or use of the invention, or

(ii) eight years from the date of the exclusive license excepting the time before regulatory agencies necessary to obtain premarket clearance,

unless on a case-by-case basis NSF approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The grantee will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

l. Communications

All disclosures, elections, confirmations of the Government license, copies of patents, and other routine communications should be sent to the NSF Patent Paralegal, Office of the General Cousel, National Science Foundation, Washington, DC, 20550. Requests for waivers and other exceptional communications with the Foundation regarding this clause should be addressed to the NSF Intellectual Property Attorney, Office of the General Counsel, National Science Foundation, Washington, DC, 20550.

(b) When the above clause is used in a funding agreement other than a grant, "grant" and "grantee" may be replaced by "contract" and "contractor" or other appropriate terms.

(Approved by the Office of Management and Budget under control number 3145-0084)

§ 650.13 [Amended]

9. Section 650.13(d) of Title 45 of the Code of Federal Regulations is revised to read as follows:

* * * * *

(d) The NSF Intellectual Property Attorney may waive on behalf of the Foundation and the Government some or all of the rights normally reserved in a subject invention if the award under which the invention was made was not controlled by the Bayh-Dole Act and the inventing organization demonstrates that the NSF made a very limited contribution to the discovery or that the interests of the United States and the general public will be served thereby. If the award under which the invention was made was subject to the Federal Acquisition Regulations, the Intellectual Property Attorney will prepare an accompanying written statement, as required by 48 CFR 27.304-1(f)(2).

PART 670—[AMENDED]

§ 670.9 [Amended]

10. Section 670.9 of Title 45 of the Code of Federal Regulations is amended by adding the OMB control number to read as follows:

(Approved by the Office of Management and Budget under control number 3145-0034).

Authority: Sec. 11(a) of the National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a).

[FR Doc. 84-25343 Filed 9-24-84; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 40675-4075]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule, extension of effective date.

SUMMARY: Emergency regulations amending the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) are in effect through September 28, 1984. The Secretary of Commerce (Secretary) extends those regulations for an additional 90 days, through December 27, 1984, because the conditions within the fishery necessitating the original emergency rule are still prevalent. The intent of this extension is to continue management measures to prevent the fishery from exceeding its annual quota.

EFFECTIVE DATE: September 29, 1984, through December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 (ext. 273).

SUPPLEMENTARY INFORMATION: Under section 305(e)(2) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) the Secretary issued emergency regulations amending the FMP on July 1, 1984 (49 FR 27156, July 2, 1984). The rule revised the New England Area surf clam management program to reflect the increased knowledge of the status of the resource by increasing the upper bound of the optimum yield (OY) range to 200,000 bushels, from which the annual quota is selected. It also: (1) Increased the 1984 annual quota to 200,000 bushels, the maximum amount within the OY range; (2) imposed a minimum size limit of 5½ inches for surf clams in the New England Area consistent with the size limit in the Mid-Atlantic Area; and (3) revised the effort control program to reflect better the particular regional characteristic of the New England Area fishery.

Emergency interim regulations implementing the above rule requested comments. No comments were received. A detailed discussion of the background, issues and regulations, and the classification of the rulemaking, is set forth in the preamble to the original emergency rule.

This action extends the emergency regulations for an additional 90 days by agreement of the Secretary, and the New England and Mid-Atlantic Fishery Management Councils, as provided by section 305(e)(3)(b) of the Magnuson Act, because the conditions within the fishery requiring the original emergency rule are still prevalent.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in Section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: September 20, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84-25389 Filed 9-20-84; 4:23 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. IX

[Docket No. AO-84-1]

Sweet Peppers Grown in Florida; Notice of Recommended Decision To Terminate Proceedings on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends terminating proceedings without prejudice on a proposed marketing agreement and order for sweet peppers grown in Florida. The proposal would have provided authority for the establishment of grade, size, quality and container standards, and also for production and marketing research. Because of apparent insufficient support among a number of growers, further development of the program is proposed to be terminated at this time.

DATE: Comments due October 25, 1984.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–5764.

SUPPLEMENTARY INFORMATION: Prior document in these proceedings: Notice of Hearing—Issued June 1, 1984, and published June 5, 1984 (49 FR 23186).

Preliminary statement. A public hearing was held in Belle Glade, Florida, on June 20, 1984, on a proposed marketing agreement and order for sweet peppers grown in Florida. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice (7 CFR Part 900).

Rulings on briefs. Briefs were submitted by Valjean Haley, John I. Whitworth, E. Wayne Dubois and Theodore W. Winsberg, Chairman, Sweet Pepper Steering Committee, regarding the proposal. The briefs indicate that the sweet pepper industry currently lacks a unified base to support efforts to develop and administer a marketing order program. They recommended that in view of this, these proceedings should be indefinitely suspended. However, the rules of practice do not provide for long suspensions of rulemaking proceedings. Further, because the hearing record will become stale with the passage of time, a new or reopened hearing record will become stale with the passage of time, a new or reopened hearing would be necessary even if the proceedings were "suspended" as opposed to "terminated". Also, the Department representatives are prohibited from making off the record, or ex parte, contact with interested persons during the pendency of a rulemaking proceeding and would continue to be so prohibited during a period of suspension, if these proceedings were to be suspended. This is not a desirable situation under the current circumstances in the sweet pepper industry. For the foregoing reasons, and in view of the hearing evidence and positions expressed in briefs filed by interested parties, these proceedings are proposed to be terminated without prejudice.

Findings and conclusions. It is concluded, therefore, that further promulgation of this proposed marketing agreement and order should not be undertaken at this time. Hence, since proceedings would be terminated without prejudice, there is no need for findings or conclusions on issues which relate to particular terms or provisions of the proposed program. It is understood, however, that if the industry later develops a greater degree of support for a proposed marketing order, new proceedings should be instituted without prejudice.

Signed at Washington, D.C., on September 20, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

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7 CFR Part 1139

[Docket No. AO-374-A8]

Milk in the Lake Mead Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision provides as additional option for computing the pool obligation of a partially regulated distributing plant that is also regulated under a State order that provides for marketwide pooling of dairy farmer returns. Under the option, a plant operator may elect to pay the amount that the Class I price under the Lake Mead order exceeds the price under the State order on fluid milk sales that such plant makes in the Lake Mead marketing area. In other changes, milk produced on farms in Clark County, Nevada, and Mohave County, Arizona, that is diverted to a nonpool plant will be priced at the location of the pool plant from which diverted, and a maximum location adjustment of minus 35 cents per hundredweight will apply to milk from farms in Utah that is diverted to nonpool plants. Another change increases the amount of milk not needed for fluid (bottling) use which may be moved from producers' farms directly to nonpool plants for manufacturing use. Also, milk diverted by anyone other than the plant operator will not be included as a receipt in determining the pool qualification of distributing and supply plants.

The decision also adopts in the Lake Mead order the uniform classification provisions that have been incorporated in most other Federal milk orders. The order amendments, which are based on industry proposals considered at a public hearing in August 1983, are necessary to reflect current marketing conditions and to assure orderly

marketing in the Lake Mead marketing area.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administration action is governed by the provisions of Section 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding.

Notice of Hearing: Issued August 1, 1983; published August 5, 1983 (48 FR 35652).

Recommended Decision: Issued June 12, 1984; published June 15, 1984 (FR 49 24736).

Extension of Time for Filing Exceptions: Issued July 11, 1984; published July 17, 1984 (49 FR 28855).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and order regulating the handling of milk in the Lake Mead marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Las Vegas, Nevada, on August 16–17, 1983. Notice of the hearing was issued on August 1, 1983 and published on August 5, 1983 (48 FR 35652).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on June 12, 1984, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity of file written exception to it.

Further, William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that the amendments adopted herein, which are based on the hearing record, would not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "3. *Pricing of diverted milk.*", seven new paragraphs are added after paragraph 13.

2. Under the heading "4. *Diversion limits.*", the first paragraph is revised and two new paragraphs are added following such paragraph.

3. Under the heading "6. *Pool obligation of a partially regulated distributing plant.*", the last paragraph is revised and nine new paragraphs are added at the end of the discussion.

The material issues on the record of the hearing relate to:

1. The definition of route disposition.
2. Milk to be include as "receipts" in the determination of pool plant qualification.
3. Pricing of diverted milk.
4. Diversion limits.
5. Classification of milk.
6. Pool obligation of a partially regulated distributing plant that is also regulated under a State order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *The definition of route disposition.* The definition of "route disposition" should be changed to include deliveries to other plants, except pool distributing plants. Currently, the definition of "route disposition" includes Class I fluid milk products delivered from a plant to a retail or wholesale outlet, except deliveries to other plants.

The Lake Mead Cooperative Association (LMCA) proposed that the route disposition definition be modified to include any transfers of Class I fluid milk products to a nonpool plant. Such change would allow a pool plant operator to include as route disposition any fluid milk products delivered to a nonpool plant that acts as a distributor for the pool handler's products. According to the witness, exclusion of such dispositions from a handler's route disposition could result in the handler's failure to meet the percentage of receipts required to qualify for pool plant status. To safeguard against the possibility that the same Class I milk might be credited as route disposition to more than one plant for qualification purposes, proponent witness suggested that Class I fluid milk products moved between pool plants should not be included as route disposition of the transferor plant. The witness testified that adoption of the proposed amendments to the "route disposition" definition would not affect the status of any pool plants or nonpool plants operating in the Lake Mead market at the present time.

The proposal to include deliveries of fluid milk products to nonpool plants in the "route disposition" definition should be adopted. In addition, deliveries of fluid milk products from a pool distributing plant to a pool supply plant should be included as "route disposition" from the distributing plant. Such modification of the cooperative's proposal is necessary to assure that milk which moves from a pool distributing plant to a pool supply plant which serves as a distribution point is included in determining the pool qualification of the distributing plant.

It is not necessary, as suggested by the cooperative, that fluid milk products that are moved from a pool distributing plant to a pool supply plant be excluded from the route disposition definition. The cooperative's concern that the same milk might be counted as route disposition of more than one plant is not warranted with respect to deliveries to a pool supply plant. A supply plant's qualification as a pool plant is unrelated to the amount of route disposition by the plant and is dependent solely upon its milk shipments to pool distributing plants.

2. *Milk to be included as "receipts" in the determination of pool plant qualification.* Milk that is diverted by a cooperative association from a pool plant to a nonpool plant should not be included as a receipt at the pool plant for purposes of pool qualification. Milk that is diverted to a nonpool plant by the operator of a pool plant for his own account should continue to be a receipt at the pool plant for the purpose of determining the plant's pool qualification.

The order presently provides that a pool distributing plant must have route disposition representing not less than 50 percent of its total receipts of Grade A fluid milk products. A pool supply plant is required to transfer 50 percent of its Grade A milk receipts from dairy farmers to pool distributing plants. The total receipts used in determining the pool qualification of both distributing and supply plants include all milk diverted from the pool plant to nonpool plants, as well as milk physically received at the pool plant.

The witness for LMCA proposed that milk diverted to a nonpool plant by a cooperative association not be included as a receipt at the pool plant from which it is diverted. He pointed out that under the current provisions of the order milk diverted from a pool plant by a handler other than the plant operator, which would cause the plant to become a nonpool plant, is not considered producer milk. While the intent of the provisions is to assure pool status for the plant, the provisions could result in the loss of producer milk status for some of the milk diverted by the cooperative from the pool plant. To safeguard against that possibility, the cooperative proposed that the total receipts used in determining pool plant qualification be limited to milk physically received at the plant and milk caused to be diverted from the plant by the plant operator.

The principal reason for including all diversions from a pool plant in the plant's receipts for purposes of determining pool qualification is to assure that the quantities of milk that are pooled on the market by diversion bear some relationship to the fluid milk requirements of the individual plants. However, as pointed out by proponent cooperative, one of the problems with such an approach is that a plant operator has no control over whether or not milk in excess of the pooling requirements is diverted to nonpool plants. Furthermore a cooperative association diverting milk to nonpool plants on the basis of its deliveries to a pool plant may find that some of its member milk is ineligible for pooling if the plant operator or another cooperative has already met the limit of diversions as determined by the plant's route dispositions and actual physical receipts for that month.

As discussed in a later section dealing with diversion limits, the volume of milk that a cooperative association may pool on the Lake Mead market is limited by the quantity of milk that the cooperative delivers to pool plants. Thus, it is not necessary that a cooperative be limited in the percentage of milk that it may divert from each pool plant in order to assure that undue quantities of milk are not associated with market. Accordingly, the pool plant qualification standards should be changed to include only milk diverted by the operator of the plant.

3. *Pricing of diverted milk.* Producer milk delivered directly from the farms of producers located in Clark County, Nevada, and Mohave County, Arizona, to nonpool plants should be priced at the location of the pool plant from which diverted rather than at the location of the nonpool plant to which diverted. The diverted milk of all producers whose farms are located in Utah and whose milk is pooled under the Lake Mead order should be priced at the location of the nonpool plant to which diverted, subject to a minus location adjustment of not more than 35 cents per hundredweight regardless of where it is delivered. The diverted milk of all other producers should continue to be priced at the location of the nonpool plant receiving such milk

LMCA proposed that milk which is diverted to a nonpool plant for manufacturing uses be priced at the location of the plant from which diverted. The spokesman for the cooperative association maintained that location adjustments on diverted milk are an unwarranted financial burden on the individual producer members. The witness explained that individual producers incur substantial expenses in connection with the maintenance of a reserve supply of producer milk that is needed to assure consumers in the marketing area of an adequate and dependable supply of high-quality milk. Because there are no manufacturing facilities in or near the Lake Mead market, any milk surplus to the fluid needs of the market must be hauled to distant plants. The manufacturing outlet most commonly receiving Lake Mead surplus milk is located at Beaver, Utah, 221 miles from Las Vegas, with a location adjustment of minus 34.5 cents per hundredweight. For the period April 1982 through March 1983, over two-thirds of the milk of producer members of the Lake Mead Cooperative diverted to nonpool plants was moved to the Cache Valley plant at Beaver. Ogden, Utah, 447 miles, and Richmond, Utah, 509 miles from Las Vegas, are the locations of two other nonpool plants which frequently receive milk diverted from the farms of members of the Lake Mead Cooperative. The location adjustment on producer milk diverted to Ogden is minus 67.5 cents per hundredweight, and minus 76.5 cents per hundredweight on milk received at Richmond.

In addition to the negative effect of location adjustments on prices received for milk diverted to distant manufacturing outlets, the producer whose milk is diverted also incurs considerable costs in hauling the milk over the long distances involved. The witness observed that underlying the principle of pricing milk at the plant to which diverted is the assumption that the cost of hauling milk from the farm to a nonpool plant is less than if the milk is delivered to a pool plant. In the Las Vegas market, he asserted, that assumption clearly is not valid with but one exception. Except when the milk of producers located in Beaver County, Utah is diverted to the nearby Cache Valley Cheese plant, the witness testified that the cost of hauling producer milk to manufacturing outlets is substantially higher than the cost of delivering it to Las Vegas.

The cooperative's representative stated that the milk of producers whose farms are located in close proximity to a pool plant must be diverted on many occasions to nonpool plants. This is so particularly during the months of heavier production when there are considerable excess supplies. Also, it was indicated, the bottling schedules of the pool plants do not always accommodate the receipt of the nearby milk supplies. In addition, it was pointed out, close-in production often is displaced by the milk of more distant producers because the order requires that 20 percent of each producer's milk must be delivered to pool plants each month as a condition for diverting any of such producer's milk.

The witness noted that when the Las Vegas-area producers' milk is diverted, the individual producer must incur the cost of transporting the milk at least to Beaver. In other cases, the milk must be hauled beyond Beaver to Ogden or Richmond. For such milk, the producer receives the uniform price at Las Vegas less the applicable location adjustment. In addition, the member producers of the Lake Mead Cooperative incur a further loss on milk diverted to the Beaver plant. On such milk movements, the cooperative must account to the pool at the Class III price while it receives from the Beaver plant approximately one dollar less than the Class III price for such milk.

Proponent witness testified that the Cache Valley Cheese plant at Beaver is owned by his and operated for the benefit of its producers, who are members of a cooperative association of manufacturing grade producers. When the plant is able to accommodate milk in excess of the production of its own members, it receives limited quantities from members of the Lake Mead Cooperative Association. According to proponent witness, however, the cheese plant often is full, and the reserves for the Lake Mead market must be hauled to Ogden or Richmond. In such instances, the producer whose milk is diverted incurs increased hauling costs and at the same time receives a progressively lower pay price as the distance from Las Vegas increases. In this regard, the witness pointed out that the June 1983 Lake Mead uniform price, adjusted for location, was $13.375 at Beaver, $13.045 at Ogden, and $12.955 at Richmond.

The cooperative association spokesman pointed out that as a result of pricing milk at the location to which diverted, the burden of handling the market's reserve milk supply is borne exclusively by the cooperative's member producers, while the benefits of the Lake Mead Class I price, the marketwide pool, and a reserve milk supply managed by the cooperative accrue to all of the market's producers. In contrast, he noted, the milk production of the only nonmember producer on the market is subject to minimal hauling costs and to no location adjustment. Proponent indicated that this producer's milk production, which represents nearly one-third of the total producer milk supply for the entire market, is received 7 days each week at a Las Vegas pool plant. Thus, the producer, unlike the cooperative association, does not need to maintain standby facilities to handle milk that is not needed locally or to haul any of his production to distant nonpool plants.

The present plant location adjustment structure of the Lake Mead order provides that the Class I and producer blend prices be reduced at the rate of 1.5 cents for each 10 miles that the plant is located from the county courthouse in Las Vegas, Nevada. According to this provision, milk received at plants located within 40 miles of Las Vegas is subject to no location adjustment. Class I and producer prices for milk received at the pool plants located in Logandale, Nevada, and Cedar City, Utah, however, are reduced by 9 cents and 27 cents per hundredweight, respectively. Logandale is 58 miles, and Cedar City is 171 miles, from Las Vegas. The nonpool plants to which Lake Mead pool milk is customarily diverted are located from 221 to 509 miles from Las Vegas. The location adjustments applicable to milk received at these manufacturing plants range from $.345 to $.765 per hundredweight.

As noted by proponent and reflected in the present location adjustment provisions of the Lake Mead order, an underlying assumption of location pricing policy is that milk received at a distributing plant in the market's population center should be priced at a higher level than milk delivered to a manufacturing facility at "county" location. Such differential pricing on the basis of location is necessary to provide an incentive for producers whose farms are located at a "country" location to incur the higher hauling costs necessary to move their milk to "city" locations.

In the Lake Mead market, however, the traditional location of farms with respect to the "country" and "city" locations is reversed with respect to producers supplying pool plants at Las Vegas and Logandale, Nevada. Producers located in the vicinity of Las Vegas and Logandale have a strong financial incentive to see that their milk is delivered to pool plants at those locations whenever it can be used there. Not only do they receive a higher price for milk delivered to Las Vegas and Logandale than for milk delivered to manufacturing outlets, but the proximity of the pool plant locations makes the cost of hauling milk to such plants much lower than the cost of delivering it to Beaver, Ogden or Richmond. Producers located in Clark County, Nevada and Mohave County, Arizona, fit in that category. Their farms are located closer to a city plant than a country plant. When the milk of such producers cannot be used at nearby distributing plants, but instead must be hauled to distant manufacturing outlets at the expense of the producers, they should not be penalized further by receiving a lower price for their milk. They should have their milk priced at the pool plant from which it is diverted. If such a producer's milk is received at more than one pool plant during the month, the quantity of milk deemed to have been diverted to nonpool plants from each pool plant shoud be determined on the basis of a pro rata assignment to the quantity of milk physically received at each pool plant.

Lake Mead producers whose farms are located in Utah should continue to have their milk priced at the location of the plant to which diverted. The cooperative's proposal to price the milk of all producers at the location of the pool plant from which diverted would provide a disincentive to move milk from the farms of producers in Utah to pool distributing plants when needed. Under the cooperative's proposal, a Utah producer whose milk is diverted to a nonpool plant would receive the uniform price at the location of the pool plant from which the milk is diverted. As a consequence, a Utah producer whose milk is diverted from the Las Vegas pool plant to the nonpool plant at Beaver would receive the uniform price applicable at Las Vegas. However, his hauling cost to the Beaver plant would be less than his hauling cost to the Las Vegas plant because of the shorter haul involved. In this regard, it is noted that Interstate Highway 15, the principal route between Las Vegas and Beaver, Utah, enters Utah at a point approximately 110 miles from Las Vegas, or almost exactly halfway between Las Vegas and Beaver. Thus, any producer whose farm is in Utah would be located closer to Beaver than to Las Vegas.

A further complication of pricing milk of Utah producers at the plant from which diverted could occur in that neighboring farmers delivering milk to the same nonpool plant would be paid different prices, depending on the locations of the pool plants from which their milk is diverted. From the record evidence, it is apparent that many of the Utah producers are located in close proximity to each other in the vicinity of Beaver and Cedar City, Utah. Other evidence in the hearing record indicates that the Utah producers represent approximately two-thirds of Lake Mead Cooperative Association's members and one-half of the association's milk supply. The remaining Utah producers on the Lake Mead market are member producers of Western General Dairies. Thus, if proponent's proposal were adopted, Western General producers whose milk is associated with the Cedar City plant, which has a minus 27-cent location adjustment, would receive the Cedar City price for their milk when it is diverted to Beaver, Ogden, or Richmond. However, the Lake Mead Cooperative's members who are also located in Utah would receive 18 to 27 cents more for their milk, depending on whether their milk was diverted from Las Vegas or Logandale, for milk delivered to any of the 3 nonpool plants in Utah. Such a situation certainly would not result in orderly marketing within the marketing area.

A further problem with pricing diverted milk of Utah producers at the plant from which diverted is that it may provide an incentive for Great Basin producers to estabish an association with the Lake Mead market. As noted by proponent, the blend price under the Great Basin order at Ogden and Richmond in June 1983 was $13.43, or 29 cents lower than the Lake Mead blend price at Las Vegas. Thus, adoption of the cooperative's proposal would give Great Basin producers whose milk is regularly delivered to Ogden and Richmond an incentive to associate their milk with the Lake Mead pool on the basis of one delivery a month to Las Vegas in order to obtain the higher price.

LMCA excepted to the findings and conclusions in the immediately preceding three paragraphs as unsupported by the record evidence. It was the cooperative's position that:

> There is no basis in the record for concern that pricing milk at the plant from which diverted would provide a disincentive to move milk from the farms of producers in Utah to pool distributing plants when needed. There is only one non-member producer on the order. That producer's entire production is received by Anderson Dairy and is never diverted. The remaining producers on the market, other than proponent Lake Mead Cooperative's (LMCA) members, are members of Western General Dairies which operates a bottling plant at Cedar City, Utah. All of Western General's Order 139 producers are pooled at the Cedar City, Utah plant. When that milk is not needed at the bottling plant, Western General moves the milk as producer milk to the Great Basin order.

All of the remaining Order 139 producers are members of proponent LMCA which has total control over the movement of its member milk. The sole purpose for which the cooperative exists is to supply its handler customers with their fluid milk requirements. There are not producers associated with the market who have either the power or opportunity to decide that they will deliver milk one day a month to a Las Vegas handler and divert their milk the remaining days of the month to a nonpool plant.

The Department's decision to adopt to a limited extent the pricing of milk that is diverted to a nonpool plant at the location of the pool plant from which diverted recognizes that LMCA does bear substantial hauling costs in balancing milk supplies for handlers in the Lake Mead market. However, the Department also concluded that there were other over-riding considerations why it would not be appropriate to price all diverted milk in such manner. As was pointed out in the recommended decision, it is necessary that producers be provided an incentive to move milk to pool distributing plants when such milk is needed by the plant operators. For this reason, it was concluded that it would not be appropriate to price milk that is diverted to nonpool plants from farms in Utah at the location of the plant from which diverted. One of the reasons why such pricing would not be practical is readily evident from comparing the blend price that would apply for milk received at the nonpool plant at Beaver, Utah, with the price for milk received at the pool distributing plant in Cedar City. Under the cooperative's proposal, producer milk received at the Beaver plant as a diversion from the Las Vegas pool plant would be priced at the Las Vegas location while milk from farms in the same general location that is delivered to the Cedar City plant, a pool distributing plant which utilizes milk in fluid uses, would be priced 27 cents lower. It is obvious that such pricing, which would result in a dairy farmer receiving more for his milk if it were delivered to a nonpool plant for manufacturing use than if it were delivered to a pool plant for fluid uses, would not foster orderly marketing conditions.

Exceptor's further argument that no producer is currently in a position to come on the market and take advantage of the fact that milk diverted to a nonpool plant is priced at the pool plant from which diverted is not persuasive. There is no reason to presume that marketing conditions would remain static in this regard if the pricing changes that the cooperative proposed were adopted.

In response to the Department's conclusion that the pricing of diverted milk at the plant from which diverted could result in neighboring farmers being paid different prices depending upon the location of the pool plant from which their milk is diverted, LMCA contended "there is nothing unfair or inequitable in providing LMCA with a higher price on all of its diverted milk than the price applicable to the Western General Cedar City pooled milk. There is nothing in the record to show that the Cedar City producers or their cooperative bear any of the costs of balancing the market that LMCA bears."

With regard to LMCA's comments that neither the nonmember producer nor Western General's member producers are bearing any of the balancing costs, this is correct only in the case of the nonmember. It appears, however, that Western General member producers whose milk is received during part of the month at the Cedar City plant do bear some of the costs of balancing the market supplies for handlers in the Lake Mead market. In support of that position, it is noted that when the milk of these producers is not needed at the Cedar City plant, their milk is shipped from the farm to manufacturing plants at Ogden and Richmond, Utah. Thus, these dairy farmers or their cooperative bear the cost of delivering such milk to those manufacturing plants when their milk is received at the plants as producer milk under the Great Basin order. Likewise, these producers or their cooperative would incur the cost of such milk movements if their milk was reported as diversions from the Cedar City to the plants at Ogden or Richmond, Utah.

Although the proposal to price diverted milk at the location of the plant from which diverted should not be adopted for the milk of Lake Mead producers located in Utah, the amount of minus location adjustment applicable to the diverted milk of those producers should be limited to 35 cents. Such amount approximates the locations adjustment that applies at the location of the nonpool plant in Utah located nearest to the pool plants regulated under the order.

A limit of minus 35 cents to location adjustment provisions should be applied to the milk received from a Utah producer that is diverted to a nonpool plant. In the absence of this limit, the producer whose milk is diverted to one of the more distant nonpool plants would receive a blend price that would be reduced by the amount of the location adjustment at the Ogden plant ($.675) or Richmond plant ($.765) as well as incur the cost of transporting the milk from his farm to the nonpool plant.

Under usual circumstances, when a producer's milk cannot be utilized at a pool plant and is diverted to a nonpool plant, the producer receives a blend price that is reduced by the amount of the location adjustment but he also incurs a corresponding lower cost in delivering his milk to the market. The reason for the lower hauling cost is that the nonpool plant is located nearer to the producer's farm than the pool plant. This is not the case, however, in the Lake Mead market. In the Lake Mead production area, the only nonpool plant located close to producers' farms is the Cache Valley Cheese plant at Beaver, Utah. However, this nearby manufacturing outlet cannot handle all of the market's reserve milk supplies. During the spring and summer months when milk supplies are at their peak, the Beaver plant tends to be able to handle even less of the Lake Mead market's reserve, since their own producers' production is also at its highest level during such months.

The nonpool plant located at Ogden, Utah is the next closest outlet to Las Vegas for surplus milk on the Lake Mead market. The Ogden plant is more than twice as far from Las Vegas as the Beaver plant. Another nonpool plant is located at Richmond, Utah but such plant is more distant from Las Vegas than the Ogden plant. Because of the greater distances involved and the ensuing greater transportation costs, the nonpool plants at Ogden and Richmond are not outlets to which producers would choose to deliver their milk that is surplus to the fluid needs of the Lake Mead market. However, in those instances when the Beaver plant is unable to handle additional milk, it will be necessary for producers to deliver their milk to the more distant milk plants and incur the increased costs of hauling such milk to these locations. When milk must be delivered to the more distant locations, a minus 35-cent location adjustment, approximating the Lake Mead price at Beaver, is an appropriate maximum in the downward adjustment of prices received by Utah producers for milk diverted to Utah nonpool plants.

As previously noted, the Cache Valley Cheese plant at Beaver is the usual and customary outlet for Lake Mead reserve milk and is located in the vicinity of the Lake Mead producers most distant from the market. Thus, under the pricing structure provided herein, Beaver-area producers would continue to have an incentive to deliver their milk to the Lake Mead pool distributing plants at prices higher than those obtainable at the northern Utah manufacturing plants.

In addition, the cost to producers of hauling their milk to the pool plants would be no greater than the cost of delivering the milk to Ogden or Richmond. Furthermore, the 35-cent limit on the downward adjustment of location differentials would not provide an incentive for dairy farmers in northern Utah to associate unneeded milk supplies with the Lake Mead market. In that regard, it is noted that the uniform price at Las Vegas minus 35 cents was lower than the uniform price under the Great Basin order at Ogden and Richmond for all but 5 of the 18 months from January 1982 to June 1983.

According to proponent witness, there is no need to consider special pricing provisions for the diverted milk of producers located in nearby areas outside of Clark County, Nevada; Mohave County, Arizona; and the State of Utah who might become associated with the Lake Mead pool. The witness stated that producers located in California, or in the Great Basin or Central Arizona marketing areas, would have little or no incentive to associate their milk with the Lake Mead pool in view of the higher prices effective in those areas. Furthermore, the production of the Nevada and Arizona producers currently pooled in Lake Mead in conjunction with reserve supplies from the producers located in southwestern Utah represents an adequate supply for the present needs of the fluid market. Under the circumstances, it is concluded that milk diverted to nonpool plants from farms located outside of Clark County, Nevada and Mohave County, Arizona should continue to be priced at the location of the nonpool plant at which the milk is received except, as previously noted, that in the States of Utah the amount of the minus location adjustment shall not exceed 35 cents.

4. *Diversion limits.* The limitations on diversions of producer milk to nonpool plants should be relaxed to provide that one day's milk production of each producer be received at a pool plant each month. Also, a handler's diversions of producer milk to nonpool plants should not exceed 50 percent in the months of March through July, and 40 percent in other months, of the producer milk handled by the cooperative or plant operator. The provision which provides that at the request of cooperative associations the receipts and diversions of two or more cooperative associations may be combined for purposes of calculating allowable diversions should be retained, as well as the provision specifying that milk diverted in excess of the diversion limits shall not be producer milk.

The provision of the current order which provides that a pool plant shall not be depooled as a result of overdiversions by a cooperative that is also diverting milk from such plant should be deleted. In the recommended decision, it was stated initially that such provision should be retained. Then, in the concluding paragraph of such discussion it was stated that the provision should be deleted. Also, the amendatory language in the recommended decision did not provide for the retention of such provision.

Further review of the matter indicates that the retention of such provision would serve no useful purpose. In this regard, it is noted that changes in the pool plant provisions adopted herein, as discussed in detail in another section of this decision, delete the requirement that diversions from a pool plant by a cooperative association be included as receipts of the pool plant in determining whether such plant has pool status. Under such circumstances, the current provision of the order specifying that a pool plant shall not be depooled as a result of overdiversions by a cooperative has no valid application and should not be retained under the amended order adopted herein.

Under the present diversion limits, at least 20 percent of a producer's milk production must be received at a pool plant every month for any of the producer's milk to be eligible for diversion to nonpool plants as producer milk. In addition, the total quantity of milk moved directly from producer's farms to nonpool plants cannot exceed 30 percent in the months of March through July, and 20 percent in other months, of the milk caused to be delivered to pool plants during the month by the handler of the milk.

The proponent cooperative association proposed that the milk of each producer be received at a pool plant a minimum of one day each month, and that the percentage limits on the quantity of milk that may be diverted to nonpool plants by a cooperative association be eliminated. Because the cooperative's proposal included no limit on the quantity of milk that a cooperative may divert to nonpool plants, the cooperative requested that the current order provision that allows cooperatives to combine their receipts and diversions to meet the diversion limits be deleted. As an additional conforming change, the proponent's witness suggested that two provisions of the order relating to the status of overdiverted milk be deleted.

The witness for the proponent cooperative testified that the order's present diversion limits are too restrictive in view of the available milk supply, arrangements between producers and pool plants, and the location of producers' farms relative to the locations of pool plants. The witness explained that while the entire Lake Mead milk supply is not ordinarily needed at pool plants, the amount of milk in excess of pool plant needs is a necessary reserve for the market. He noted too that the supply of producer milk has not kept pace with fluid milk consumption in the Lake Mead market. In this regard, he pointed out that milk production had increased only 15 percent since 1974 compared to a 50 percent increase in packaged fluid milk product disposition. The witness noted too that the large share of the market's Class I milk dispositions supplied by California handlers is vulnerable to interruptions such as a May 1983 labor strike, which resulted in a 26-percent reduction from the previous month in the daily fluid milk product disposition in the Lake Mead market by California handlers.

Aside from a potential failure of California handlers, most of whom distribute milk only to their own stores, to supplement the fluid milk needs of the Lake Mead market, the witness stated that a large reserve milk supply is necessary because of seasonal variations and extreme day-to-day and week-to-week variations of demand peculiar to the market. The witness characterized the Las Vegas area as experiencing large increases of population over weekends and during conventions due to its nature as a resort community.

In addition to major variations in supply from out-of-area sources and in demand due to population fluctuations, the witness testified that the procurement arrangements of a large Las Vegas distributing plant require that a substantial reserve milk supply be available for the Lake Mead market. According to proponent, Anderson Dairy receives all of the production of a large nonmember producer representing 30 percent of the market's total milk production. This producer is assured of an outlet for all of his production every day of the week. At the same time, the witness stated, Anderson Dairy relies on proponent cooperative to balance the supply necessary to fill its 4- to 5-day per week bottling schedule. The cooperative also supplies milk to Knudsen Dairy at Logandale, Nevada, which has a similar bottling and processing schedule. Any milk produced by cooperative members which is not needed by these two pool plants must be diverted for manufacturing use to a nonpool cheese plant at Beaver, Utah, 221 miles northeast of Las Vegas, or to surplus outlets located more than 400 miles from Las Vegas.

At times, the witness stated, the milk that is delivered from the farms of Utah producers to Logandale or to Las Vegas because of the order's pooling requirements that 20 percent of the milk of producers be delivered to Lake Mead pool plants each month displaces the milk of cooperative producers located closer to the pool plants. Consequently, closer-in milk must be hauled to one of the distant surplus outlets. According to the witness, producer milk must be moved to pool plants to fulfill the order's delivery requirements even when the milk is not needed at the pool plant. In those instances, milk is delivered to Las Vegas or Logandale and pumped into the plant, only to be pumped back onto the truck and hauled to Beaver, Ogden, or Richmond, Utah. The witness also stated that the percentage limits on the quantity of milk that may be diverted by a handler have caused the cooperative to undertake uneconomic hauling arrangements solely for the purpose of qualifying producer milk for pooling. The witness pointed out that the diversion limitation percentages of the order, with respect to individual producers and to the total milk supply of a cooperative or handler have been suspended many times in the past and are currently suspended pending the outcome of this proceeding.

With the elimination of percentage diversion limits, the cooperative spokesman claimed, the cooperative would be able to minimize the transportation of producer milk and thereby reduce hauling costs. With regard to the cooperative's proposal that milk from each producer must be received at a pool plant at least once each month, the spokesman believed that such requirement was sufficient to assure that producers continue to comply with the sanitary standards required for the production of Grade A milk. The witness remarked too that the adoption of the cooperative's proposals to delete the order's percentage diversion limits would minimize the costs incurred in qualifying the market's reserve supply for pooling. Currently, such costs are borne solely by the cooperative and its members.

The order should be amended to provide that milk of a producer must be received at least one day each month in order for any remaining milk of such producer that is moved directly from the farm to nonpool plants for manufacturing uses to be priced and pooled under the order. Under the current provisions which require that 20 percent of the milk of each producer must be delivered to pool plants, the milk of producers whose farms are favorably located with respect to pool distributing plants must be moved to distant surplus outlets. This action is necessary to allow the more distant producers an opportunity to associate their milk with a pool plant. Thus, the current diversion limits create a situation in which a handler must engage in uneconomic movements of milk in order to maintain the pool status of all his producers. In this regard, it is noted that one-third of the proponent cooperative's member producers are located in Nevada. However, two-thirds of its producers are located in Utah and the farms of such producers are located closer to the Beaver cheese plant than to the pool plants in Logandale and Las Vegas, Nevada. Also, the Nevada producers of the cooperative generally produce twice as much milk as those members more distant from the market. Thus, approximately one-half the cooperative's milk is supplied by producers for whom Beaver, Utah, is a nearby outlet for their milk while the cooperative's remaining milk supply is located nearby Logandale and Las Vegas. It is apparent, therefore, that a large part of the milk needed for Class I use at pool plants can be obtained from the farms of the producers near Las Vegas. Under these circumstances there is no reason to require that the milk of the more distant producers be delivered to pool plants more than once per month.

Allowable diversions to nonpool plants by a cooperative association or a proprietary handler should be changed to limit to 50 percent in the months of March through July and 40 percent in other months of the producer milk caused by the handler to be delivered to or diverted from pool plants during the month. It is apparent that the present diversion limits on the quantity of milk that handlers may divert to nonpool plants as producer milk are much too restrictive. The current limit on diversions to nonpool plants of 20 percent or less of the producer milk delivered to pool plants during August through February and 30 percent for the months of March through July are significantly less than the percentages of milk that handlers have been required to divert to nonpool plants during those months. For the period of April 1982 through March 1983, the proportion of the cooperative's milk that was diverted directly from producers' farms to nonpool plants ranged from 20.5 percent in August 1982 to 40.7 percent in May 1982, with an average for the 12-month period of 29.5 percent. When the cooperative's actual diversions for April 1982 through March 1983 are compared to the diversion limits, there is not a single month during that period in which the cooperative operated within the diversion limits of the order.

While the diversion limits currently contained in the order do not allow for the pooling of some producer milk which historically has been associated with the market, this does not necessarily mean that there should be no diversion limits at all. It is apparent that the proponent cooperative would be able to pool the milk supply of its member producers if the diversion limits were relaxed somewhat. Furthermore, unless some limits are retained, distant producers could attain pool status and dilute the marketwide pool by delivering only one day's milk production per month and diverting the rest of their milk to nonpool plants nearer their farms. A further reason why it is necessary to retain minimum performance standards for producers in the Lake Mead market is that the blend price in that market is high relative to surrounding markets and thus the relatively high blend price could attract additional milk supplies. In this regard, it is noted that the percentage of producer milk used in Class I seldom falls below 65 percent, and ranges as high as 85 percent.

The diversion limits adopted herein should be established somewhat higher than the level of diversions to nonpool plants by the proponent cooperative during the April 1982 through March 1983 period. During that period, proponent cooperative delivered from 58 percent to 79 percent of its total milk supply to pool plants. The average percentage of producer milk diverted to nonpool plants during March through July of that period was 34.8 percent. During the months of August 1982 through February 1983, the average percentage of the cooperative's producer milk diverted to nonpool plants was 25.3 percent. Furthermore, the deliveries and diversions that took place during these months, a period in which the percentage diversion limits of the order were suspended, should be representative of the level of performance within which the proponent cooperative can operate without having to engage in unnecessary and uneconomic movements of milk solely for qualifying the milk of its member producers for pooling. However, the diversion limits that are established should take into account that variations may occur in producer delivery patterns, plant bottling schedules, production levels of the producers involved, and consumer demand for fluid milk. In recognition of these possible variations, the allowable diversion limits should be established about 15 percentage points greater than the average level of diversions that the proponent cooperative found necessary to make during the April 1982 through March 1983 period. On this basis, allowable diversions to nonpool plants by a cooperative or proprietary handler should be limited to 50 percent in the months of March through July and 40 percent in other months of the producer milk caused by a handler to be delivered to or diverted from pool plants during the month.

The provision which provides that milk diverted in excess of the diversion limits shall be other than producer milk should not be deleted as recommended by proponent. The deletion of the provision was predicated upon the removal of diversion limits from the order. Since those limits are not removed, but merely relaxed, the provision dealing with the status of milk diverted in excess of the percentage limits should be retained.

The provision which specifies that milk diverted for the account of a cooperative association should not be producer milk if diverted from the pool plant of another handler in amounts that would cause the pool plant to become a nonpool plant should be deleted, as suggested by proponent. The marketwide limit on the proportion of a cooperative's milk supply that may be diverted makes the retention of such provision unnecessary.

5. *Classification of milk.* The Lake Mead milk order should provide for the same uniform classification of skim milk and butterfat that is commonly provided in many other Federal milk orders. The changes adopted herein would reclassify from Class III to Class II skim milk and butterfat used in plastic cream, frozen cream, and anhydrous milk fat; in the production of custard, pudding, and pancake mixes; and in formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers. Also reclassified from Class III to Class II would be skim milk and butterfat disposed of to commercial food processing establishments.

The proposal to adopt the uniform classification provisions was made by LMCA, which supplies much of the milk used in the Lake Mead marketing area. The classification plan proposed was the same as that adopted in 39 Federal milk orders in 1974 following extensive hearings in 1971 on the issue of uniform classification and pricing provisions. The plan was modified slightly in 1975. In 1982 the same classification provisions were adopted in the Eastern Colorado, Western Colorado and Great Basin milk marketing orders.

The spokesman for the cooperative association testified that adoption of uniform classification provisions would facilitate accounting and reporting procedures in the market, especially those related to inter-market movements of milk and dairy products. According to the witness, the changes would not at this time affect any handler fully regulated by the order. He stated that the reasons for reclassifying from Class III to Class II skim milk and butterfat in the uses specified in their proposal are basically the same as the reasons for classifying as Class II milk used in cottage cheese, ice cream and other soft and semi-soft products. In his opinion, the products in question should not be Class I because they are not intended for fluid uses and need not be made from Grade A milk. The witness explained that the proposed additional Class II products are not as bulky or perishable as fluid milk products, and that the products compete for a market over a wide geographic area. In addition, the spokesman stated, the products proposed to be changed from Class III to Class II are not made for the purpose of providing a market outlet, in storeable form, for reserve milk supplies as are such products as butter, cheese, and dried milk. In addition, the witness testified, some of the products in question are used ultimately in the production of other Class II products. If for some reason a Class II product is reprocessed and used in a Class III product, the skim milk and butterfat would be reclassified as a Class III use.

The witness testified that at the time of promulgation hearing for the Lake Mead order, the proposed classification of skim milk and butterfat used in dairy products in the Lake Mead market was designed to correspond with the 39-market uniform classification recommended decision, which at that time had only recently been issued. The classification provisions adopted in Lake Mead were the same as those proposed, but the final decision on the uniform classification proceeding for the 39 markets changed the classification of some milk products from what was included in the recommended decision. The classification provisions of the Lake Mead order differ from those contained in most other Federal milk orders. The witness stated that such differences were unintentional, as the cooperative intended at the promulgation hearing that the Lake Mead order would incorporate the uniform classification provisions. For that reason, the witness stated, the Lake Mead classification provisions should be modified to be uniform with the other orders.

No testimony was received with regard to the extent or existence of inter-order movements of the products proposed to be reclassified. However, marketing conditions are much less local in nature now than at the time the order was promulgated, and differences in product classification between markets and corresponding differences in prices of milk used to produce the same products may be expected to cause marketing disorders when those products are moved between marketing areas.

Skim milk and butterfat contained in plastic cream, frozen cream and anhydrous milk fat; used to produce custard, pudding, and pancake mixes; used in formulas expecially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers; and disposed of in bulk to commercial food precessors to be used in the production of. manufactured food products should be reclassified from Class III to Class II. These are products which can command a higher value than Class III products, but must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured daily products that can be used in making Class II products. The changes in classification adopted in this decision are those proposed by proponents and are identical to the uniform classification plan contained in most other Federal orders. That plan was based on exhaustive hearings held on the classification issue in 1971 for 39 markets. The final decision on the uniforms classification plan, cited in this proceeding, was issued February 19, 1974 (39 FR 8202, 8452, 8712, 9012). It contains a detailed discussion of the classification issue. A decision of the Assistant Secretary issued July 17, 1975 (40 FR 30119) modified certain provisions originally adopted in the 39-market decision. A further hearing was held on the classification issues for three western milk orders in February 1982, and the final decision for that proceeding was issued August 17, 1982 (47 FR 37178 and 37203), adopting the uniform classification provisions for those orders.

One of the participants at the hearing pointed out that the current order provides that if a handler adds nonfat milk solids to a Class II product, the modified Class II product shall be classified as Class II only to the extent of the volume of the unmodified product that the added milk solids replaces. The participant questioned whether this procedure, which is the same as the procedure used in classifying fluid milk products that have been modified by the addition of nonfat milk solids, would be changed by the adoption of the uniform classification provisions.

Proponent cooperative's proposal that the entire weight of the skim milk equivalent of the solids added in modifying a Class II product be classified in Class II should be adopted. Such classification procedure comports with the uniform classification provisions resulting from the 39-market hearing on the reclassification issue. The decision on the reclassification issue points out that nonfat dry milk or condensed milk that is added to a Class II product is assigned directly to the handler's Class II use in the allocation provisions of the order. For this reason, the decision notes that classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation.

The uniform classification plan should be adopted in the Lake Mead milk order to coordinate the classification provisions of this order with the same provisions under most other orders. The classification changes adopted herein will have no effect on the operation of pool plants regulated by the Lake Mead order because the plants are not processing any of the products affected by the proposed reclassification changes. In addition, there was no opposition expressed to the adoption of the uniform classification provisions.

6. *Pool obligation of a partially regulated distributing plant.* The operator of a partially regulated distributing plant that is also regulated under a State order that provides for marketwide pooling of producer returns should be afforded an additional option in settlement of the plant's obligation to the producer-settlement fund. Under the added option adopted herein, a plant operator could settle his plant's obligation by paying the amount that the Class I price under the Federal orders exceeds the applicable State order prices on fluid milk sales that such plant makes in the Lake Mead marketing area.

Under the present provisions of the Lake Mead order, a partially regulated distributing plant operator has three options that he may use in settlement of his pool obligations:

(a) The plant operator incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another Federal order.

(b) The plant operator incurs no obligation under the order, except for an administrative assessment charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any Federal order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. Under this option, which is commonly referred to as the "Wichita" option, a plant operator whose payments for milk are less than the order's obligations may pay the difference either to his own dairy farmers or to the producer-settlement fund.

(c) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price and the producer blend price of the order (both prices adjusted for the location of the plant) on all fluid milk products distributed in the marketing area (less any purchases of milk classified and priced as Class I milk under under any Federal order).

Lake Mead Cooperative Association proposed initially that California handlers distributing milk in the Lake Mead marketing area be provided an additional option for computing their obligations to the Lake Mead producer-settlement fund. Under such option, their obligations would be computed on the basis of the difference between the California State price and Lake Mead Federal order Class I price on Fluid milk products that the California plants distribute in the Lake Mead marketing area. At the hearing the cooperative modified its initial proposal. Under its revised proposal, California-regulated handlers would be required to use the option proposed by the cooperative in accounting to the marketwide pool for milk distributed within the marketing area. However, handlers unregulated under any State or Federal order who distribute fluid milk within the Lake Mead marketing area would continue to be subject to the payment options presently in effect.

Proponent cooperative testified that more than one-quarter of the Class I route sales within the Lake Mead marketing area are by handlers located in California. Proponent noted that, although the total volume or milk involved represents a significant segment of the Lake Mead market, it does not represent a large enough precentage of each California handler's total route disposition to result in their being pooled under the Lake Mead order.

Witnesses testified that the California handlers are regulated under the California State Pooling Plan. They are required to pay for the milk they use, according to the class in which it is used, primarily on the basis of the butterfat and solids-not-fat contained in the milk. The value of all the milk received by each California handler is pooled on a marketwide basis and then redistributed to producers on the basis of the individual producer's production quota and base. Two witnesses made the point that, as a consequence, the payments received by dairy farmers supplying the individual plant have no direct relationship to the uses made of their milk by the handler receiving it, or to the amount paid into the pool by the receiving handler.

Proponents indicated that their primary interest in modifying the payment provisions for partially regulated distributing plants is to assure that the California handlers, who supply a substantial portion of the Lake Mead market, make payment for the milk they use at a rate equivalent to that paid by handlers fully regulated under the Lake Mead Federal milk order. In this regard, a witness for proponent cooperative testified that regulated handlers under a Federal order pay a price for milk used in fluid milk products that includes a Class I differential. He explained that the price differential for Class I use is a necessary incentive for dairy farmers to make available to the fluid market an adequate supply of high-quality milk. The witness stated that if the higher price paid for milk used in Class I is to serve its function of providing the additional income needed to induce an adequate milk supply, it must be insulated effectively from unfair competition. According to the witness, such insulation can be provided only by establishing compensatory payment provisions for the use of alternative lower-cost milk supplies in fluid milk products distributed in the marketing area. Such provisions, he testified, should require any fluid milk products distributed in the market by partially regulated distributing plants to meet the full price or cost requirements established under the order for milk used in fluid products by fully regulated plants.

In the case of fully regulated plants, the witness stated, the requirement that handlers operating such plants account fully for all milk and dairy products received serves to protect the fluid market from receipts of surplus milk for fluid use priced below the order's Class

I price. However, he testified, fully regulation of all handlers distributing fluid milk in the marketing area would not be a practicable solution to the problem of milk distributed in the marketing area that is priced below the level established by the order. In his opinion, subjecting plants that have only a minimal association with the market to full regulation may be unfair to those plants in meeting competition within their primary markets. In addition, full regulation of the plant would have the effect of diluting the blend price under the order if the plant has minimal Class I utilization.

Another approach discussed by the witness for dealing with the Class I sales in Federal order marketing areas of handlers not fully regulated is to treat such sales as surplus to the market from which they originate. Under this concept, the handler would be responsible to the pool for a payment on milk distributed within the marketing area at a rate determined by the difference between the Class I and Class III prices of the Federal order regulating such marketing area. The Class I-Class III price difference would eliminate the advantage gained by an unregulated plant disposing of its surplus milk in a regulated market. The witness rejected the use of this pricing concept for milk distributed in Lake Mead by California handlers since such milk is classified as a fluid milk use by the State of California and thus is subject to a higher price than the Lake Mead Class III price.

An alternative method of equalizing the cost of milk between regulated and unregulated handlers is to charge unregulated handlers the difference between the Class I price and the uniform price to producers. This alternative is already included in the Lake Mead order as an option that nonpool handlers distributing Class I milk I in the marketing area may elect in computing their obligation to the pool. The rationale for this option is that milk obtained by an unregulated handler in the vicinity of the marketing area would be available for purchase at a price approximating prices paid to producers whose milk is part of the pool. The witness pointed out that while this approach seems appealing on the basis of fairness, it lacks any real applicability to the nonpool plants currently distributing milk in the Lake Mead marketing area. For one thing, he stated, an assumption underlying the Class I-blend price difference charge to nonpool handlers is that such handlers carry their own surplus supplies. The witness testified that none of the California handlers distributing milk in the Lake Mead order carry their own reserve supplies. Furthermore, because of the California State milk pricing provisions, milk is not available to California handlers at a price approximating prices paid to producers whose milk is part of the pool.

Proponent witness detailed the origins and purpose of the "Wichita" option for determining the pool obligation of a partially regulated distributing plant. Under this option, the amounts paid to producers for milk received by a nonpool distributing plant are compared to the amount which would be due the marketwide pool for such milk if the plant were a pool plant. Any amount by which the pool value exceeds the value paid to producers is due the marketwide pool to equalize the competitive positions of pool and nonpool distributing plants. According to the witness, the "Wichita"-type option contained in the Lake Mead order is not a satisfactory method of dealing with milk sold in the Lake Mead marketing area by handlers regulated under the California order. He stated that dissimilarities in the pricing and classification rules and producer payment provisions between the Federal and State orders make it impossible for the market administrator to determine precisely the amounts paid to dairy farmers who supply the raw milk for processing by California handlers distributing milk in the Lake Mead area.

The witness expressed the opinion that equity between California handlers and Lake Mead handlers would be assured if the California handlers distributing fluid milk in the Lake Mead marketing area are required to pay to the Lake Mead pool for such sales at a rate equal to the amount by which the Lake Mead Class I price, adjusted for location of the California plant, exceeds the prices effective for such products under the California order. According to the witness, the options under which California handlers currently may choose to have their obligations to the Lake Mead pool calculated would not be needed for California plants if the proposed compensatory payment method were adopted. He indicated, however, that such other options should be retained in the order in case they are needed at some future time to deal with an unregulated plant other than a California plant that might begin to distribute milk in the Lake Mead market.

A brief was filed on behalf of 3 California plants, Knudsen Corporation, Safeway Stores and Lucky Stores, in opposition to the proposal by LMCA to require California plants to pay the difference between the California price and Lake Mead Class I price on route disposition within the Lake Mead marketing area in lieu of the current payment options provided under the order. The California plant operators stated that they were not given notice prior to the hearing that the cooperative intended to propose that the order be amended to deny California plants the use of the Wichita option and require that such plants must pay to the producer-settlement fund the difference between the California class prices and the Lake Mead Class I price, adjusted for the location of the California plant, on route disposition in the Lake Mead marketing area.

In their brief, the 3 California plant operators indicated they did not prepare testimony for presentation at the hearing and did not retain any experts to examine any of proponent's witnesses since: "(1) the Wichita plan was expressly preserved in the Cooperative's proposal, as set forth in the hearing notice, (2) the Department had advised the plant operators that the hearing would proceed on the basis of proposal's preserving the Wichita option and (3) no proposal was noticed for hearing such as that advanced at the hearing."

Opponents objected primarily to the modified proposal on the basis that affected persons were unaware of the scope of the hearing by virtue of the notice that was issued. Furthermore, they contended that any proponent of a proposal that is modified while the hearing is underway has an advantage over an opponent. They noted that a proponent can prepare testimony and exhibits in support of the modified proposal while opponent will be unprepared to respond and perhaps even be absent when proposals affecting their interests are considered.

On the surface, it appears that the Department and opponents of the payment plan may have been misled regarding changes that the cooperative intended to make in the payment plan for partially regulated distributing plants. Initially, the cooperative asked the Department to call a hearing on a proposal that would require a California partially regulated distributing plant to pay to the producer-settlement fund for each hundredweight of Class I sales in the Lake Mead marketing area a payment equal to the amount by which the Lake Mead Class I price exceeds the Class I price established by the California Bureau of Milk Stabilization. A second proposal that would have also affected the payment obligations of partially regulated distributing plants would have eliminated location adjustments at plants located more than 200 miles from Las Vegas. Both proposals were withdrawn by the cooperative before a hearing notice was issued and amended proposals were submitted in their place. After the Department received the revised proposals and published them in a hearing notice, it wrote to the counsel for the three California plants in response to an inquiry and indicated * * *

"The proposals noticed for hearing would retain the so-called 'Wichita' option for partially regulated distributing plants that provide the market administrator with information sufficient to compute and verify the plant's classified use value of milk at the Lake Mead order prices and its payment to producers. Plants subject to state regulation that do not elect the 'Wichita' option would be required to make a compensatory payment equal to the amount that the Lake Mead Class I price exceeds the appropriate class price under such state's regulation."

The Department agrees with the contention of the opponents that the payment arrangement for California partially regulated distributing plants that was proposed by the cooperative at the hearing is a substantial modification of the proposal initially noticed for hearing. However, in view of the conclusions reached herein relative to how the order should be changed, the alleged inadequacy of the hearing notice becomes a moot issue.

The cooperative's contention that the Wichita option should not be available to California plants due to shortcomings of this payment arrangement is not a valid reason for deleting the option. The shortcomings of the Wichita option with respect to California plants can be overcome by modifying this option rather than deleting it. Accordingly, the payment options presently provided in the order for partially regulated distributing plants should be retained.

It is appropriate, however, to modify the Wichita option to overcome the shortcomings of that option pointed out by proponent cooperative. As previously noted, the Wichita option provides that a plant operator incurs no obligation, except for an administrative assessment charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any Federal order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. The shortcoming of the Wichita option, as noted by proponent cooperative, with respect to California plants is that the payments received by dairy farmers are not directly related to the payments made by the plant operator. The reason for this is due to California regulations which provide for the marketwide pooling of producer returns and the use of base milk and quota milk plans. As a consequence, the returns received by dairy farmers shipping to a given plant bear no direct relationship to the plant's obligation on milk received from such producers.

The shortcomings can be overcome by providing that a California partially regulated distributing plant (or any plant regulated under a State order that provides for marketwide pooling of producer returns) shall incur no obligations, except for an administrative charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payment to the State for subsequent distribution to dairy farmers and the operator's payment to the producer settlement fund of any order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. In the absence of marketwide pooling and the allocation of returns to producers on the basis of quota milk and base milk, the payment that the California plant would have made to the State Milk Stabilization Board would have been received by the dairy farmers supplying the plant. Thus, the plant's payments to the State Milk Stabililzation Board can be used in lieu of the payments received by the dairy farmers supplying the plant. Under such circumstances, this arrangement, which in essence is a modification of the Wichita option, represents a reasonable alternative method for computing a partially regulated distributing plant's obligation to the pool.

As an alternative to the current payment options available to a partially regulated distributing plant, California plants should be given the further option of paying the amount that the Lake Mead Class I price exceeds the California class prices, all adjusted for the location of the California plant, on route disposition within the marketing area plus an administrative assessment on such sales. Such payment rate should result in equivalent Class I costs between California distributing plants and handlers fully regulated under the Lake Mead order on Class I sales in the Lake Mead marketing area. Currently, such rate represents a less costly alternative than the option of paying to the producer-settlement fund the difference between the Class I and uniform prices under the Lake Mead order on route disposition in the Lake Mead marketing area. Furthermore, adoption of the additional payment option will not have an adverse impact upon California plants because such payment method would be utilized only if such payment plan represents the least costly alternative.

LMCA submitted vigorous exceptions to the Department's conclusion that the payment arangements for California partially regulated distributing plants that were proposed by LMCA at the hearing represented a substantial modification of the proposal noticed for hearing. The argument raised by exceptor that such changes represented appropriate modifications of the proposal were considered in arriving at the initial conclusion. Accordingly, no basis exists for modifying the Department's conclusion in that regard.

LMCA excepted principally to the Department's conclusion that the Wichita option should be retained in the order for use by California partially regulated distributing plants. The cooperative's objection to the continued use of the option dealt in large part with the administrative feasibility of the option. In further support of its contention that the Wichita option should not be available to partially regulated distributing plants in California, LMCA argued that "the assessment rate applicable to the California partially regulated handler pursuant to § 1139.85 simply precludes the Market Administrator from computing, auditing and verifying the monthly pool obligation that the California partially regulated plant would have incurred if such plant had been fully regulated under the Lake Mead order."

The Department recognized in the recommended decision that there are administrative problems in applying the Wichita option to California plants. For this reason, the Wichita option was modified to alleviate the principal administrative problems encountered in the determination of the credit to be accorded a California plant in payment of its obligation for milk received from dairy farmers.

LMCA's argument that California plants should not be able to elect the Wichita option because of the cost of conducting audits of their full operations is not persuasive in view of their contention that the Wichita option should be available to partially regulated distributing plants that are not under State regualtions. Presumably, the non-California plants that elected to use the Wichita option would have to be audited to the same extent as the

California plant operators who elected the Wichita option.

It is the Department's position that the Wichita option should be uniformly available to any partially regulated distributing plant. Under such option, a partially regulated distributing plant's obligation for its milk supply is computed as though it were a fully regulated handler. As a consequence of such pricing, the partially regulated distributing plant's cost for fluid milk sold in a Federally regulated marketing area is equivalent to the costs incurred by a fully regulated handler on a similar volume of sales in such marketing area. Thus, it is not apparent from this record that a California partially regulated distributing plant that elects to use the Wichita option would have a competitive advantage over a fully regulated plant under the Lake Mead order. Under these circumstances, it is concluded that the Wichita option should be available for California handlers who elect such option as well as other handlers who elect to use such payment plan.

In retrospect, there appears to be little reason for a California partially regulated distributing plant to elect the option of having its payment obligation computed as though the plant were a fully regulated plant under the Lake Mead order. In support of that position it is noted that if the California plant is entirely a Class I operation and the California Class I price is at such a level that the plant is required under the Wichita option to make a compensatory payment to the producer-settlement fund of the Lake Mead order or to its dairy farmers at the difference between the Lake Mead Class I price adjusted for the California plant's location and the California class prices, the operator that elected the Wichita option would have to make such payment on 100 percent of his fluid milk products. In contrast, if the plant operator elected the payment proposed by exceptor, the operator could elect to make the payment rate previously detailed on only his fluid milk sales in the Lake Mead marketing area. In view of the pooling requirements under the order, such fluid milk sales would represent less than 10 percent of the plant's total fluid milk sales. In addition, the California plant that elects not to use the Wichita option would be spared the expense involved in submitting a full report of its receipts and utilization.

LMCA excepted to the Department's conclusion that California plants should not be denied the use of the option in § 1139.76(a) which permits a partially regulated distributing plant to pay to the producer-settlement fund of the Lake Mead order the difference between the Lake Mead Class I price and the blend price (both prices adjusted for the location of the plant) on fluid milk products distributed in the Lake Mead marketing area. While the cooperative contended that the use of such provision was appropriate for a plant that was not subject to State regulation, the cooperative claimed that the provision was not appropriate for California plants because they do not carry their own reserve supplies. Instead, the cooperative pointed out that such plants pay for milk on the basis of the individual plant's utilization while reserve supplies for such plants are borne by producers throughout California as the result of California's marketwide pooling of producer returns.

The Department concedes that such option should be available for use by California handlers in very limited circumstances. Such option should be available for use by California handlers only if such payment obligation results in a lesser payment obligation than the plant would incur under exceptor's proposal, i.e., the Lake Mead Class I price adjusted for the location of the plant minus the California class prices on fluid milk products distributed in the Lake Mead marketing area. Such limitation on the use of the option will meet one of the objections raised by the cooperative at the hearing to the use of such option by California handlers. In that regard, the cooperative pointed out that a compensatory payment by a California handler at the difference between the Lake Mead Class I price and the blend price in addition to the Class I price assessed under the California regulations could result in the California handler paying a higher price for milk sold in the Lake Mead marketing area than the cost for Class I milk sold in such marketing area by a fully regulated handler under the Lake Mead order. In further support of its position, the cooperative noted that a compensatory payment rate that results in a higher cost for raw fluid milk than the costs incurred by a fully regulated handler was declared invalid by the Supreme Court in its decision in the Lehigh Valley case.

The point raised by exceptor is valid and should have been discussed in detail in the Department's findings and conclusions set forth in the recommended decision. California handlers should not be assessed a higher cost than fully regulated handlers under the Lake Mead order on fluid milk distributed in the Lake Mead marketing area. Accordingly, the order should provide that the only time such option (Lake Mead Class I price less the blend price, both adjusted for plant location) should apply is when such payment rate results in a lesser payment than the difference between the Lake Mead Class I price adjusted for the plant's location minus the California Class I price on fluid milk products distributed in the Lake Mead marketing area.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusion are denied for the reason previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Lake Mead order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity sepecified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Amended hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Lake Mead marketing area which have been decided upon as the detailed and appropriate means of the effectuating of the foregoing conclusions.

It is hereby ordered, that this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

June 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Lake Mead marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

Order [1] Amending the Order, Regulating the Handling of Milk in the Lake Mead Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Lake Mead marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900). Upon the basis of the evidence introduced at such hearing and the record thereof, it is followed that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to person in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Lake Mead marketing area shall be in comformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on June 12, 1984, and published in the **Federal Register** on June 15, 1984 (49 FR 24736) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to a modification in § 1139.76 of the introductory text in paragraph (a) that precedes subparagraph (1).

PART 1139—MILK IN THE LAKE MEAD MARKETING AREA

1. Section 1139.3 is revised to read as follows:

§ 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point, by a vendor, from a plant store or through a vending machine) except a delivery to a plant described in § 1139.7(a).

2. In § 1139.7, paragraphs (a) and (b) are revised to read as follows:

§ 1139.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that during the month has:

(1) Route disposition, except filled milk, representing not less than 50 percent of its total receipts of Grade A fluid milk products (including milk diverted by the operator of such plant to a nonpool plant pursuant to § 1139.13); and

(2) Route disposition, except filled milk, in the marketing area representing not less than 10 percent of such receipts.

(b) A supply plant from which during the month not less than 50 percent of its Grade A milk receipts from dairy farmers (including milk diverted by the operator of such plant to a nonpool plant pursuant to § 1139.13) is transferred to a pool distributing plant pursuant to paragraph (a) of this section as fluid milk products, except filled milk. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any such month is filed by the plant operator with the market administrator prior to the first day of any such month. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of the March-through-July period unless it fulfills the transferring requirement of this paragraph for such month.

* * * * *

3. In § 1139.13, paragraph (d) is revised to read as follows:

§ 1139.13 Producer milk.

* * * * *

(d) The following conditions shall apply to milk of a producer diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met. The marketing agreement is filed as a part of the original document and is therefore not published in the Federal Register.

(1) Such milk shall be priced:

(i) At the location of the pool plant from which the milk is diverted (or on a prorata basis if the producer's milk is received during the month at pool plants having different location adjustments) if the dairy farm from which milk is diverted is located in Clark County, Nevada, or Mohave County, Arizona; and

(ii) Except as provided in paragraph (d)(1)(i) of this section, at the location of the nonpool plant to which the milk is diverted. However, the amount of price adjustment on milk originating from Utah farms that is diverted from a pool plant to a nonpool plant shall not exceed 35 cents per hundredweight.

(2) A cooperative association may divert for its account the milk of any producer (other than producer milk diverted pursuant to paragraph (d)(3) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 50 percent in the months of March through July and 40 percent in other months of the producer milk which the association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to or diverted from pool plants if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator.

(3) The operator of a pool plant (other than a cooperative association) may divert for his account the milk of any producer (other than producer milk diverted pursuant to (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantiy of milk so diverted may not exceed 50 percent in the months of March through July and 40 percent in other months of the milk received at or diverted from such pool plant from producers for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler during the month shall not duplicate milk diverted pursuant to paragraph (d)(2) of this section.

(4) Diversions in excess of such percentages shall not be producer milk, and the diverting handler shall designate the dairy farmers whose milk is not producer milk. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

4. In § 1139.31 paragraph (c) is revised to read as follows:

§ 1139.31 Payroll reports.

* * * * *

(c) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76(a)(2) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

5. Section 1139.40 is revised to read as follows:

§ 1139.40 Classes of utilization.

Except as provided in § 1139.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1139.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section:

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen desserts mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formula especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products any products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15; and

(6) In shrinkage assigned pursuant to § 1139.41(a) to the receipts specified in § 1139.41(a)(2) and in shrinkage specified in § 1139.41 (b) and (c).

6. In § 1139.50, the introductory text preceding paragraph (a) is revised to read as follows:

§ 1139.50 Class prices.

Subject to the provisions of § 1139.52, the class prices for the month per hundredweight of milk shall be as follows:

* * * * *

7. Section 1139.76 is revised to read as follows:

§ 1139.76 Payments by handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant that is not subject to a milk classification and pricing program which provides for marketwide pooling of producer returns and is enforced under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the lesser of the amounts computed pursuant to paragraphs (a)(1) or (b)(1) of this section. If the handler submits pursuant to §§ 1139.30(b) and 1139.31(c) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than Class III price); and

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(1)(iii) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been pool plant, subject to the following modifications:

(*a*) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(*b*) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other plants that are classified in the corresponding class pursuant to paragraph (a)(2)(i)(*a*) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(*c*) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant § 1139.60 for such handler shall include, in lieu of the value of other source milk specified in § 1139.60(f) less the value of such other source milk specified in § 1139.71(b)(2), a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not another order plant which serves as supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(b), subject to the following conditions:

(*i*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1139.30(b) and 1139.31(c) similar reports for each such nonpool supply plant;

(*ii*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*iii*) The value of milk determined pursuant to § 1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (a)(2)(i) of this section, subtract:

(*a*) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated. If such plant is regulated under a State program which provides for marketwide pooling of producer returns, the amount to be subtracted in lieu of gross payments to dairy farmers shall be the gross payment obligation of the plant operator under such State's regulatory program for milk received from dairy farmers;

(*b*) If paragraph (a)(2)(i)(*c*) of this section applies, the gross payments by the operator of such nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(*c*) The payment by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (a)(2)(i)(*c*) of this section applies.

(b) Each handler who operates a partially regulated distributing plant that is subject to a milk classification and pricing program which provides for marketwide pooling of producer returns and is enforced under the authority of a State government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the lesser of the amounts computed pursuant to paragraphs (a)(1) or (b)(1) of this section. If the handler submits pursuant to §§ 1139.30(b) and 1139.31(c) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not an other plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any

Federal milk order is classified and priced as Class I milk and is used as an offset for any other payment obligation under any order;

(iii) Multiply the remaining pounds by the amount that the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) exceeds the applicable prices for such products as determined under the State program.

8. In § 1139.85, paragraph (c) is revised to read as follows:

§ 1139.85 Assessment for order administration.

* * * * *

(c) Route disposition in the marketing area from partially regulated distribution plant that exceeds the skim milk and butterfat subtracted pursuant to § 1139.76 (a)(1)(ii), or (b)(1)(ii), as the case may be.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674))

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

September 19, 1984.

[FR Doc. 84-25388 Filed 9-24-84; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 118, 119, 120, 122, and 130

Business and Special Purpose Loans; Notice of Proposed Rulemaking

AGENCY: Small Business Administration.

ACTION: Proposed rulemaking.

SUMMARY: At present, SBA's regulations governing its financial assistance program appears in various parts of 13 CFR Chapter I. Therefore, it is often difficult to isolate the policies that apply to all loan programs from the policies that have limited application. The proposal is necessary to accomplish several purposes: (1) Codify policies of the Small Business Administration, (2) reflect amendments made to the Small Business Act by Pub. L. 97-35 (95 Stat 357), (3) remove duplications in the regulations, and (4) to clarify rules and procedures. The effect of this proposed rulemaking action would be to incorporate all basic loan policies, including borrower eligibility, and participant eligibility into Part 120 and specific loan programs into Part 122.

DATE: Comments must be received or postmarked on or before November 26, 1984.

ADDRESSES: Written comments, in duplicate, are to be addressed to the Director, Office of Business Loans, 1441 L Street, NW., Washington, D.C 20416.

FOR FURTHER INFORMATION CONTACT: Questions about this proposed rule may be directed to:

Part 120—Subpart B

Timothy O'Leary, Deputy Director, Office of Portfolio Management, (202) 653-6429

Part 120—Subpart C

Danny J. Gibb, Chief, Financial Institutions Branch, (202) 653-6076

Balance of Part 120 and All of Part 122

Everett E. Shell, Chief, Loan Processing Branch, (202) 653-6470

SUPPLEMENTARY INFORMATION: At present, SBA's regulations governing its financial assistance program appear in various Parts of 13 CFR Chapter I. Part 118 deals with Handicapped Assistance Loans, Part 119 with Economic Opportunity Loans, Part 120 with Loan Policy, Part 122 with Business Loans and Part 130 with Small Business Energy Loans. As presently published, basic loan policy appears in both Parts 120 and 122. This policy is presently incorporated into the other Parts either by reference or by duplication. Therefore, it is often difficult to isolate the policies that apply to all loan programs from the policies that have limited application.

When the President signed the Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981 (Pub. L. 97-35), SBA's statutory authority for extending financial assistance was extensively revised. Section 7(e), 7(h), 7(i) and 7(l) of the Small Business Act (15 U.S.C. 631 et seq.) (Act) were all effectively repealed and section 7(a) was amended to incorporate the special purpose loan programs that are to be continued. The Trade Adjustment Loan Program [section 7(e)] and the Pool Loan (Group Corporation) Program [section 7(a)(5)] were discontinued. These proposed regulations represent an effort to reorganize the various parts of existent regulations referred to above into two more cohesive Parts (120 and 122), and to accommodate the changes in the Small Business Act which occurred as a result of Pub. L. 97-35.

The following table provides a cross reference to specific regulations as they appear in both the existing regulations and this proposal. Because of repetition in the existing regulations and because the proposed regulations represent a rearrangement of some sections, several existing citations may have the same proposed citation as a reference or may have more than one citation in the proposed regulations as a reference. Those instances in which Pub. L. 97-35 appears as a reference indicates our authority was modified by the new law. Use of the word "out" appears as the indication that the existing regulation was dropped in this proposal. Discussion of these changes follows the table.

118.1(a)	122.51-2(e)—122.51-6.
118.1(b)	122.51.
118.2(a) and (b)	Out.
118.2(c)	120.101-1.
118.2(d)	120.2-1.
118.2(e)	122.51-2(c)—PL 97-35.
118.2(f)	122.51-2(d)—PL 97-35.
118.2(g)	122.51-2(a).
118.2(h)	122.51-2(b).
118.11(a) and (a)(1)	122.51-2(c)—122.51-5.
118.11(a)(2) and (2)(i) and (ii)	120.103-2.
118.11(a)(2)(iii) and (iv)	122.51-5.
118.11(b)	122.51-2(d)—122.4
118.11(b)(1)	120.103-1.
118.11(c)	122.51-6.
118.11(d)	122.51-5(b).
118.21(a)	122.51-6.
118.21(b)	Out.
118.31(a) and (a)(1)	Pub. L. 97-35—122.7.
118.31(b)	122.51-3.
118.31(c)	Pub. L. 97-35—122.8.
118.31(d)	120.202-3.
118.31(e)	122.6-1—122.6-2.
118.41(a) and (a)(1)	120.3-4.
118.41(a)(2)	122.7-2—122.7-3.
118.41(a)(3)	120.104.
118.41(a)(4)	120.301-1.
118.51(a) and (a)(1)-(3)	120.103-2.
118.51(a)(4)	120.103-2.
118.51(a)(4)(i)	122.51-4(a).
118.51(a)(5)	120.103-2(c).
118.51(a)(5)(i)	122.51-4(c).
118.51(a)(5)(ii)	122.51-4(c).
118.51(a)(6)	120.103-2.
118.51(a)(6)(i)	122.51-4(b).
118.61	122.5—120.103-3.
118.71(a)	122.4.
118.71(b)	122.51-5(a).
119.1	Pub. L. 97-35—122.52.
119.2(a) and (b)	122.52.
119.2(c)	Out—Pub. L. 97-35.
119.11	120.2.
119.21(a)(b) and (b)(1)	122.52.
119.21(b)(2)	Out.
119.21(c) and (d)	122.52—120.101-2(a).
119.21(e)	122.52.
119.21(f)	120.103-1.
119.31(a)	122.7.
119.31(b)	122.5-122.6 Pub. L. 97-35.
119.31(c)(1)	122.8-1.
119.31(c)(2)	122.8-2.
119.31(c)(3)	120.202-3.
119.31(d)	120.103-2(c).
119.41(a)	122.7-3—Pub. L. 97-35.
119.41(b)	122.7-2—Pub. L. 97-35.
119.51(a) and (b)	120.103-2—122.52.
119.51(c)	120.103-2.
119.51(d)	120.103-2(b).
119.51(e)	Out—Pub. L. 97-35.
119.61	122.5-3.
119.71	122.4.
119.81	122.52.
119.91	Out—Pub. L. 97-35.
120.1(a)	120.1.
120.1(b)	120.2-5.
120.1(c)	120.2-6.
120.1(d)	120.2-2.
120.2(a)	120.103-1.
120.2(b) and (b)(1)	120.3-4.
120.2(b)(2)	122.7-2 and 3.
120.2(b)(3)	120.301-1
120.2(c)(1)	120.103-2.
120.2(c)(2) and (3)	120.102-6 and 7.
120.2(c)(4)	120.101-1(b).
120.2(c)(5)	120.101-(c).
120.2(d)(1)(i)	120.102-1.
120.2(d)(1)(ii)	120.102-3.
120.2(d)(1)(iii)	120.102-4.
120.2(d)(1)(iv)	120.102-11

120.2(d)(2)	120.102-5.
120.2(d)(3)	120.101-2(a).
120.2(d)(4)	120.101-2(b).
120.2(d)(4)(i)	120.101-2(b).
120.2(d)(4)(ii)	120.101-2(b).
120.2(d)(4)(iii)	120.101-2(b).
120.2(d)(4)(iv)	120.101-2(b).
120.2(d)(4)(v)	120.101-2(b).
120.2(d)(4)(vi)	120.101-2(b).
120.2(d)(4)(vii)	120.101-2(b).
120.2(d)(5)	120.101-2(c).
120.2(d)(6)	120.102-8.
120.2(d)(7)	120.102-8—122.50.
120.2(d)(8)	120.102-9.
120.2(d)(9)	120.101-2(d).
120.2(d)(10)	120.101-2(e).
120.2(d)(11)	120.101-2(f).
120.2(d)(12)	120.101-2(g).
120.3(a)	122.6—122.6-1.
120.3(b)(1)	120.104.
120.3(b)(1)(i)	Out.
120.3(b)(1)(ii)	1Out.
120.3(b)(1)(iii)–(iv)	120.104.
120.3(b)(2)(i) and (ii)	122.8—Pub. L. 97-35.
120.3(b)(iii)(A)	Out.
120.3(b)(2)(iii)(B)	122.8-4.
120.3(b)(2)(iv)	122.8-3
120.3(b)(2)(v)	120.202-3.
120.3(b)(2)(vi)	120.202-4.
120.3(b)(3)	120.104-2(a) and (b).
120.3(b)(5) and (5)(i)	120.104-2(d) and (e).
120.3(b)(5)(ii)	120.104-2(d) and (f).
120.3(b)(6)	120.103-2(e).
120.4(a)	120.300.
120.4(a)(1)	120.301-5(a).
120.4(a)(2)	120.301-5(b).
120.4(a)(3)	120.301-5(c).
120.4(a)(4)	120.301-5(d).
120.4(b)	120.302.
120.4(b)(1)	120.302-1(a).
120.4(b)(2)	120.302-1.
120.4(c)(1)	120.300.
120.4(d)	120.305.
120.4(d)(1)	120.305-1.
120.4(d)(2)	120.305-2.
120.4(d)(3)	120.305-3.
120.4(d)(4)	120.305-4.
120.4(d)(5)	120.305-5.
120.4(d)(6)	120.305-6.
120.4(d)(7)	120.305-7.
120.4(d)(8)	120.305-8.
120.5(a)(1)	120.102-10.
120.5(a)(2)	120.301-3.
120.5(a)(2)(i)	120.103-2(d) and (e).
120.5(a)(2)(ii)	Out.
120.5(a)(3)	120.301-2.
120.5(a)(4)	120.301-4.
120.5(b)	120.302.
120.5(b)(1)	120.302-2(d).
120.5(b)(2)	120.302-1(c).
120.5(b)(3)	120.302-1(e).
120.5(b)(4)	120.302-1(f).
120.5(b)(5)	120.302-1(g).
120.5(b)(6)	120.302-1(h).
120.5(b)(7)	120.302-1(i).
120.5(b)(8)	120.302-1(j) and (k) and (l).
120.5(b)(9)	120.302-1(m).
120.5(b)(10)	Out.
120.5(b)(11)	120.302-1(n).
120.5(b)(12)	120.302-1(o).
120.5(b)(13)	120.302-1(p)
120.5(b)(14)	120.302-1(q).
120.6(a)	120.303-1.
102.6(b)	120.303-2.
102.6(c)	120.303-3.
120.6(d)(1)	120.303-4.
120.6(d)(2)	120.303-5.
120.6(d)(3)	120.303-6.
120.7	120.304.
122.1	122.1.
122.2(a)	120.1—120.103-1.
122.2(b)	120.103-1.
122.2(c)	120.103-2.
122.2(d)	120.103
122.2(d)(1)	Out.
122.2(d)(2)	Out.
122.2(d)(3)	Out.
122.2(e)	122.4.
122.2(f)	120.2-3—120.2-6
122.3	122.4.
122.4	Out.
122.5(a) and (b)	122.7—Pub. L. 97-35.
122.6	Out.
122.7	120.3-2—122.7-2.
122.8	120.3-1.
122.9	Out Pub. L. 97-35
122.10(a)(1)–(4)	Out.
122.10(a)(5)	120.202-1
122.10(a)(6)	120.202-2—120.202-5.
122.10(b)(1)(i)–(iii)	Out
122.10(b)(1)(iv)	120.202-5(e).
122.10(b)(2) and (3)	Out.
122.11	Out.
122.12	Out.
122.13	120.102.
122.14	122.6-1.
122.15	122.5.
122.15-1-3	120.103-3.
122.16(a)-(d)	120.103-2.
122.16(d)(1)(e) and (f) and (g).	120.103-2.
122.17	122.6-1.
122.18	120.104-2(e).
122.19	122.5-5.
122.20(a)	120.200-1.
122.20(b)	120.200-2.
122.20(c)(1)	Out.
122.20(c)(2)	120.201.
122.20(d)	Out.
122.21	120.203.
122.22(a)–(d)	120.204.
122.23(a)	120.204-1.
122.23(b)(1)–(7)	120.204-2.
122.24(a)–(d)	122.204-2
122.25(a)–(c)	120.204-2.
122.302	122.55-2.
122.303	122.55-1.
122.304	122.66-1-122.55-3.
122.305(a)	122.55-5.
122.305(b)	122.55-4(a).
122.305(c)	122.55-4(b).
122.305(d)	122.55-4(c).
122.305(e)	122.55-4(c).
122.305(f)	122.55-5.
122.306(a)	122.55-5(a).
122.306(b)	122.55-5(b).
122.307	122.55-1(b).
122.308(a)	122.55-4(c).
122.308(b)	122.55-4(b).
122.308(c)	122.55-4(b).
122.308(d)	122.55-4(b).
122.309	122.103-1.
122.400	122.54-1—122.54-3.
122.401	122.54-2.
122.403	122.54-4.
122.404	122.54-1.
122.405	122.54-5.
122.406	122.54-6.
122.501	122.56-1.
122.502	122.56-2.
122.503	122.56-3.
122.504	122.56-4.
130.1	122.53-1.
130.2	122.53-1.
130.3	122.53-2.
130.4	120.101.
130.5	120.301-5.
130.6	122.53-3.
130.7	122.53-4.
130.8	122.5-1.
130.9	122.7.
130.10	122.8.
130.11.	122.6.
130.12	122.4.
130.13-15	Out Pub. L. 97-35.
Table 1	Table 1, Pt. 122.

Part 120 of these proposed regulations sets forth the broad policies and principles SBA employs in deciding whether to grant or deny financial assistance to small businesses pursuant to section 7(a) of the Small Business Act. It also describes the steps SBA employs to administer such assistance once it has been made available to a small business, both with respect to the recipient and any lending institution with which SBA may participate in making the assistance, and the procedures which such a lending institution must follow in order to properly participate in the making of such assistance available.

Subpart A of proposed Part 120 is intended to set forth the policies that SBA follows in deciding to grant or deny financial assistance. Most of the proposed regulations contained in this Subpart are presently contained in Part 120 of 13 CFR. However, several of the sections in this Subpart reflect preexistent policies of the Agency which have not previously been stated in regulation form, and several others are a direct result of statutory change.

Section 120.1 sets forth several general provisions of a procedural nature which explain how SBA will interpret these regulations. Of particular note is § 120.1-3 which provides that financial assistance granted before the effective date of these regulations will be governed by the regulations and contractual provisions then in effect. In addition, § 120.1-2 allows the Administrator of SBA to suspend or modify SBA rules, for a limited period of time in a specified area, so long as the reasons for such suspension or modification are clearly explained by a notice in the **Federal Register.**

Section 120.2 sets forth a number of definitions commonly used in these regulations most of which are self-explanatory. Section 120.3 describes the various forms of SBA financial assistance available to businesses under these regulations. These are statutorily prescribed forms of assistance and the same, or very similar regulations, have been in effect since the Agency's inception.

Section 120.101 specifies the criteria of eligibility for an applicant for SBA business financial assistance. In this regard, this section specifies that an applicant must be a small business as defined by SBA in its size regulations (13 CFR Part 121) and may be an agricultural enterprise. In addition, this section provides that provision of loans to small businesses owned or controlled by Indian Tribes (as defined in § 120.2-7 of this proposal) is permissible. This provision is in the present regulations.

Subsection 120.101-2 of these proposed regulations establishes the general principle that SBA will make financial assistance available to most types of small businesses. It also sets forth in paragraphs (a)-(h) exceptions to this general rule and descriptions of the reasons for the exceptions and the circumstances under which they will be applied. In this regard, the only exception to the general rule which is different from those presently found in SBA's regulations involves loan packagers (§ 120.101-2(h)). This provision indicates that any small concern, 30 percent of the business of which is the preparation of applications for assistance from SBA, is ineligible for SBA business financial assistance. In addition, the following small business concerns are currently, and will continue to be, excluded from financial assistance under the circumstances specified in these regulations: (a) Charitable, religious or other nonprofit institutions; (b) concerns engaged in the creation, organization, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content; (c) most concerns that derive any part of their annual gross receipts or whose principal owner(s) derive any part of their annual income from gambling activities; (d) concerns engaged in illegal activities; (e) concerns primarily engaged in the business of lending or investing or any otherwise eligible applicant where the purpose of the financial assistance is to finance investments that are neither related nor essential to the enterprise; (f) any concern where the proprietor, a holder of at least 20 percent of the stock, or a partner, officer or director is currently on parole or probation following conviction of a serious crime; and (g) any concern engaged in multilevel sales distribution plans of the "pyramid" type.

Section 120.102 of these proposed rules sets forth the general statutorily mandated principle that eligible recipients of SBA business financial assistance may utilize the assistance to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; for working capital; or at the discretion of SBA, to refinance outstanding debt. The section then specifies several uses of SBA assistance which are impermissible. For the most part, these impermissible uses are stated in SBA's present regulations. However, § 120.102-2, which prohibits the use of assistance for revolving lines of credit other than those specifically permissible under the Small Business Act, is a new regulatory provision. In addition, the provisions of the proposal regarding conflicts of interest (§ 120.102-10(a)-(f)) reflect an attempt to clarify the general proscription against creation of a conflict of interest or appearance of such a conflict between SBA and an applicant or a participating lender, by setting forth examples of such prohibited conduct which have arisen in the course of program administration.

Section 120.103 of the proposed regulations prescribes additional criteria which SBA employs in determining the eligibility of applicants for business assistance. In general, under these regulations, an applicant must demonstrate need for the assistance which cannot be satisfied by private sources. This is a statutory requirement which has been previously expressed in SBA's regulations. In addition, the proposal provides that SBA must in each case determine and take such steps as are needed to assure that the applicant's credit is such that there is reasonable assurance of repayment of the assistance. Section 120.103-2(a)-(h) of the proposal sets forth the means by which this assurance will be attained. These means are presently contained in SBA regulations. Finally, § 120.103 also contains the administrative provisions under which reconsideration of declined applications will be made. These provisions are also contained in SBA's present regulations.

Section 120.104 of the proposed regulations describes the types and amounts of fees which may be paid attendant to SBA business financial assistance, and circumstances under which they may be paid. In circumstances in which business financial assistance is made available by SBA in conjunction with a participating lender, the lender may be required to pay SBA a guaranty fee (§ 120.104-1). The regulations describe the amount, the terms of payment and the effect of payment of such fee. Such lenders are also permitted to charge SBA a servicing fee under certain circumstances (§ 120.104-2(a)) and the proposed regulations set forth those circumstances and the permissible amount of such fees. The proposed regulations further specify that no late payment or prepayment fees may be charged in connection with SBA assistance (§ 120.104-2(b)), and that enumerated commitment fees may be charged by participating lenders in connection with SBA's export line of credit program (§ 120.104-2(c)). Finally, the proposed regulations provide the terms and conditions under which fees may be paid by applicants for assistance to third parties who represent or otherwise provide services to them in connection with their attempts to obtain SBA assistance (§ 120.104-2(d)-(f)). All of these provisions are presently contained in SBA's regulations.

Subpart B of Part 120 of the proposed regulations contains the policies applicable to the administration of SBA business financial assistance. In most instances of financial assistance, other than loans made directly by SBA, the responsibilities for administration of the assistance lies with the lender. Pursuant to § 120.200-1, immediate participation loans which are closed by the lender will generally be serviced by the lender; immediate participation loans or direct loans closed by SBA will generally be administered by SBA. In addition, guaranteed loans will be serviced by the lender pursuant to § 120.200-2. The lender will receive all payments of principal and interest on the loan until SBA completes the purchase of its guaranteed share of the loan. The lender may, however, continue to service the loan after such purchase provided SBA gives written consent. Therefore, the major portion of this Subpart outlines the responsibilities of the lender to SBA and the borrower in the assistance and administration process. For example, § 120.201-1 specifies the instances in which SBA's prior consent is required to permit the lender to take a servicing action, and §§ 120.202-1 and 120.202-2 prescribe the circumstances under which SBA will purchase the guaranteed portion of a loan made by a participating lender. These provisions, for the most part, are reflections of SBA policy which have not previously appeared in regulations governing the program but rather have evolved as a matter of practice and administrative interpretation of relevant program documents.

Section 120.204 of the proposed regulations describes the practices and procedures SBA will employ to either sell or convert an evidence of indebtedness or liquidate collateral for business assistance when either step is necessary to collect an indebtedness. In general, SBA favors a policy of avoiding such steps in favor of pursuing any reasonable prospect of repayment. Paragraph 120.204-1(a) provides that liquidating the property securing a loan will not be resorted to if there is any reasonable prospect that the loan may be repaid within a reasonable time. Section 120.204-2 prescribe steps which may be taken when SBA determines repayment is not realistic. These steps are presently prescribed in SBA's regulations, and they are the normal practices any commercial lender would follow in realizing recovery on an indebtedness. Section 120.204-1(b)(1) authorizes SBA to sell any direct loan without the consent of the borrower. Direct loans may also be converted to guaranteed loans or to immediate participation loans (§ 120.204-1(b)(2)). Subparagraph 120.204-1(b)(3) authorizes the conversion of immediate participation loans to guaranteed loans or loans wholly owned by the participating financial institution without the borrower's consent. Section § 120.204–2 prescribes provisions for the foreclosure of collateral. Paragraph 120.204–2(a) provides for the liquidation of the security when any one of seven specified conditions exists. Real and personal property, pledged as security for a loan which is in default, may also be sold in accordance with the provisions of the related security agreement (§ 120.204–2(b)).

Subpart C of Part 120 prescribes the regulations governing the functions of banks and other lending institutions which participate with SBA in making, servicing and collecting business financial assistance. In this regard, SBA is authorized by statute to participate with banks and other lending institutions on an immediate or guaranteed basis in making such assistance (see § 120.300). A major portion of Subpart C describes the conditions under which a lender may: (1) Participate with SBA (§ 120.301–1 proscribes lender preferences), (2) sell or transfer the guaranteed portion of a loan (§ 120.302–2), (3) provides services to a borrower (§ 120.301–3), and (4) otherwise hold itself out as a participant to the public (§ 120.301–4). The remainder of the Subpart describes the qualifications an otherwise regulated lender must possess in order to be allowed to participate in the business financial assistance program with SBA (see § 120.301–5), and the terms on which Small Business Lending Companies (SBLC's), which are regulated only by SBA, may so participate. These qualifications and terms are presently stated in SBA's regulations and are restated without significant change in the proposal. A proposed amendment of § 120.5(b)(2) of the existing regulation has been published which would increase the capitalization requirements for all small business lending companies to $1,000,000 from the present $500,000. Such increase would take effect one year after the amendment is published in final form in the **Federal Register**. Accordingly, section 120.302–1(c) herein proposed would reflect such amendment when promulgated as a final rule.

Part 122 of these proposed regulations sets forth the rules governing the making of financial assistance available to small businesses pursuant to section 7(a) of the Small Business Act, 15 U.S.C. 636(a), *et seq.* Subpart A of this Part sets forth the general rules governing the terms and conditions upon which such assistance is made available, including such features as the maturities, amounts available, percentages of loan amounts SBA will guaranty, interest rates and collection policies relative to such assistance. Subpart B of this Part describes the special features of certain loan programs which are provided for by statute such as financing residential or commercial construction or rehabilitation (Small Business Act sec. 7(a)(9)), subsidized loans to handicapped small business persons (sec. 7(a)(10)), loans to businesses located in areas of high unemployment or high proportions of low income individuals (sec. 7(a)(11)), loans to assist small businesses involved in energy related measures (sec. 7(a)(12)), loans for exporters (sec. 7(a)(14)), and loans to qualified employee trusts (sec. 7(a)(15)).

Sections 122.1–122.4 of the proposed regulations set forth general procedural rules of applicability governing this Part. Section 122.5 describes the requirements of the SBA loan application for the various types of assistance indicated above. In general, SBA will require satisfactory evidence that lending institutions have refused to either make or participate in the making of a loan to a given small business before it will either participate with a lending institution or make the loan directly to a small business (see §§ 122.5 and 120.103). If a lending institution will make assistance available in participation with SBA, it will prepare and submit the application to SBA. For assistance made directly by SBA, the application is made by the small business (§ 122.5–3).

Section 122.6 describes the terms under which SBA assistance may be made available. Most of these requirements are provided for within the provisions of section 7(a) of the Small Business Act. In general, loans have 25 year maturities, with additional periods as may be required for that portion of a loan made for acquiring real property or constructing, converting or expanding business facilities (see § 122.6–1). SBA may also extend or renew a loan maturity up to ten years in order to aid in the orderly liquidation of the loan, or refinance a loan under prescribed conditions (see § 122.6–1). In addition, the regulations provide for the granting of grace periods and moratoria on payments under certain prescribed conditions (see §§ 122.6–2 and 3 and Part 131 of this Chapter).

As the regulations in § 122.7 indicate, SBA is statutorily permitted to make a direct loan in the amount of $350,000, but has administratively limited the available amount of a direct loan to $150,000 per borrower. In immediate participation loans, SBA is authorized a participation of 90 percent of the loan or $350,000, whichever is less. However, again by regulation SBA has limited its participation to 75 percent of the loan or $150,000, whichever is less. With respect to guaranteed loans, SBA's exposure cannot exceed $500,000 in any circumstance. The proposed regulations also set forth statutorily prescribed percentages of SBA guaranty for certain sized loans (see § 122.7–3(a)–(c)).

Section 122.8 prescribes the interest rates which may be charged with respect to the various types of SBA loans. These, too, are statutorily prescribed (see sec. 7(a)(4) of the Small Business Act). Of note is § 122.8–4 of the proposed regulations which proposes a variation of SBA policy with respect to fluctuation of interest rates. Section 120.3(b)(2) of the present regulations, 13 CFR § 120.3(b)(2), authorizes a participating lender to charge a fluctuating interest rate which can be changed no more frequently than quarterly after an initial rate period of at least one full quarter. Section 122.8–4, as proposed herein, would permit the fluctuation to commence on the first business day of the month following full disbursement with subsequent fluctuations no more frequently than monthly. The proposed regulation provides that the base rate would be the low New York prime rate as printed in a national daily financial newspaper. This provision would clarify the uncertainty inherent in the present regulation which refers only to the prime rate as published in the media. In addition, the proposed regulation clarifies the amortization of the loan by allowing an interest spread of up to three percentage points. The present regulation makes no reference to such spread. The proposed regulation allows SBA to authorize unequal payments in order to amortize the loan. This is not in the present regulation but does reflect present policy and good lending practice.

Subpart B of proposed Part 122 sets forth provisions for special purpose loans. These regulations contain provisions concerning small general contractors, organizations for the handicapped, low-income areas, energy conservation, exporters, qualified employee trusts, and loans to veterans.

Section 122.50 describes the policy and the availability of loans to small general contractors to finance residential or commercial construction. Such loan funds cannot be used primarily for the acquisition of land (i.e., not more than 20 percent of the loan proceeds can be used for the acquisition of land). This section specifies eight conditions which must be met in order for these loans to be available (§ 122.50–2 to § 122.50–9). These conditions are: (1)

The applicant must be a construction contractor with a demonstrated ability in profitable construction or rehabilitation projects of a comparable type and size; (2) the maturity of the loan cannot exceed 36 months beyond the estimated time to complete the construction or rehabilitation; (3) loan proceeds may only be used for construction or significant rehabilitation of structures for sale; (4) loan funds cannot be used to purchase vacant land or to operate or hold rental property for investment purposes; (5) the constructed or rehabilitated structure cannot be rented, pending sale, without SBA's written approval; (6) the sale of the property must be both a beneficial and a legal change of ownership in the title to the property; (7) SBA must have at least a second lien on the property as collateral; and (8) the application must include three additional letters (as described in § 122.50–9).

Section 122.51 details the authorized loans to assist organizations for the handicapped or to assist handicapped individuals in establishing, acquiring or operating a small business concern. Subsection 122.51–2 contains definitions of various terms used in this section. It defines the terms "HAL–1," "HAL–2," "organization for the handicapped," "handicapped individual," and "supportive services." HAL–1 applicants must submit evidence that the organization has the capability and experience to successfully perform the HAL–1 requirements (§ 122.51–4(b)). In addition, pursuant to § 122.51–5(a), these applicants must submit copies of bylaws, incorporation papers, or other evidence that they meet the definition of HAL–1 organizations. This application must also show that private credit is not available and that funds from other government programs are not being duplicated by SBA. An applicant for an HAL–2 type loan must submit written information from a physician, psychiatrist or other qualified professional as to the permanent nature of the handicap and the limitations it places on the applicant (§ 122.51–5(b)). Section 122.51–6 describes the uses to which the proceeds of both HAL–1 and HL–2 loans may be put.

Section 122.52 authorizes loans to establish, preserve or strengthen small business concerns: (1) Located in areas with high proportions of unemployed or low-income individuals, or (2) owned by low-income individuals.

Section 122.53 describes the authorized loans to assist small business concerns to utilize energy measures designed to conserve the Nation's energy resources. Subsection 122.53–2 defines what the term "energy measures" encompasses, including: solar thermal energy equipment; photovoltaic cells; hydroelectric power equipment; and wind energy conversion equipment. Loan proceeds may be used to acquire vacant land necessary for the construction of a plant and any other equipment or materials which are required to effectively employ eligible energy measures (§ 122.53–3). Subsection 122.53–4 recognize that because greater risk may be associated with these energy measures, the status of these loans need not be as sound as for other loans authorized under Subpart B.

Section 122.54 sets forth the provisions governing an authorized revolving line of credit for pre-export financing and for export purposes to enable small concerns to develop foreign markets. An applicant for an Export Revolving Line of Credit must have been in operation for 12 full months before filing an application in order to be eligible (§ 122.54–2). The proceeds of such a loan may only be used to penetrate or develop a foreign market and to finance labor and materials for pre-export production (§ 122.54–3). This subsection then gives a few examples of what would constitute both eligible and ineligible uses of proceeds. These stated examples are by no means intended to be exclusive. Subsection 122.54–5 requires that only collateral that is located in the United States, its territories and possessions will be acceptable security for these loans. In addition, applications for these loans must contain a projected cash flow chart for the term of the loan and monthly progress reports (§ 122.54–6).

Section 122.55 describes the specifications for authorized guaranteed loans to qualified employee trusts. Such guaranteed loans are authorized to finance growth and to effect a change of ownership in business concerns that are small or that would be small after the purchase is accomplished (§ 122.55–1). Subsection 122.55–2 contains definitions of various terms used in this section. It defines the terms "employee," "employee organization," "employee trust," "employer concern," "ESOP," "qualified employee trust," and "qualifying employer securities." These definitions do not amend or modify the definitions in the Internal Revenue Code, and the regulations thereunder, or The Labor Department definitions. Subsection 122.55–3 clarifies the fact that the $500,000 statutory limit which SBA may guarantee applies to the *combined total* of all obligations of the qualified employee trust, the employer concern and all its other affiliates in the agregate. The individual personal assets of the employee-owners cannot be considered in determining whether to guarantee a loan. However, SBA may consider business experience where certain employee-owners assume managerial responsibilities (§ 122.55–4(c)). Paragraph 122.55–5(a) specifies eight requirements which must be met in order for a qualified employee trust to be eligible for an SBA loan guarantee, including the provision that the SBA guaranteed loan can only be used for the purchase of qualifying employer securities. Pursuant to § 122.55–5(b), in order for a trust to be treated as a qualified employee trust for the purposes of an SBA loan guaranty, such trust must: (1) Be maintained by an employee organization which represents at least 51 percent of the employees of such concern; (2) be part of a plan which constitutes an employee benefit plan under the Labor Department regulations implementing ERISA, provided the plan contains certain specified requisites; and (3) enter into an agreement with SBA setting forth the eight requirements cited in paragraph (a) of § 122.55–5.

The veterans loan program discussed in §§ 122.56—122.56–4 reflects the regulations promulgated in §§ 122.501—122.504. The specific statutory authority, as stated in § 122.56–1 may be found in the Veterans Small Business Loan Act of 1981 (Pub. L. 97–35) and the Second Continuing Resolution of 1983 (Pub. L. 97–377). Section 122.56–2 states that it is a direct loan program. Section 122.56–3 sets forth the eligibility rules. Section 122.56–4 prescribes that the veteran loan status may be used only once.

Compliance With Executive Order 12291 and Regulatory Flexibility Act

As indicated above, this proposed rule constitutes primarily a reorganization of existent regulations and a revision of certain of the provisions to account for statutorily mandated changes in the operation of SBA's business financial assistance program. For purposes of this analysis, SBA has chosen to look upon the proposal, therefore, as one rule rather than to consider individual sections of it separately. It is anticipated that over the course of 1984, after this proposal becomes final, there will be multiple efforts to revise individual sections of Parts 120 and 122 by the rulemaking process which will afford the public an opportunity to participate.

Taken as a whole, these proposed rules do constitute major rules for the purpose of E.O. 12291 and will have a significant economic impact on a substantial number of small businesses. In this regard, the rules provide the general framework by which an annual program of approximately $2¼ billion is administered. Under this program, SBA annually approves approximately 30,000 applications for assistance from small businesses.

1. Description of Potential Benefits

The benefits to be derived from this rulemaking are non-financial in nature. This rulemaking constitutes a procedural simplification of our present regulations which should assist all applicants for assistance to more easily understand the program. It eliminates repetitious regulations, more clearly codifies existent policies, and updates the regulatory format governing the program to reflect statutory changes.

2. Potential Costs

These proposed regulations impose no costs in and of themselves, with one exception: examination fees for existent non-bank lenders only, of which there are 16, would be increased. There are no new application or recordkeeping requirements imposed.

3. Net benefits

See paragraph 1 above.

4. Alternative Approaches

These proposed rules, as indicated above, constitute a necessary general reorganization (see paragraph 1 above). It is anticipated that individual revisions of certain sections will be proposed in the future, subsequent to publication of this revision.

These proposed regulations do not duplicate or overlap any existent regulations. They impose no new application or recordkeeping requirements, but inherent in them as the requirements that applicants provide information and records to SBA to enable determination of eligibility and creditworthiness. Professional assistance in preparing such material may be required, i.e., accounting or bookkeeping assistance. Normally, however, applicants are capable of preparing the applications themselves. The statutory basis for these proposed rules is section 5(b)(7), (15 U.S.C. 634(b)(7)) and section 7(a), (15 U.S.C. 636(a)) of the Small Business Act.

Compliance With Paperwork Reduction Act

The approved information collection requirements in this part have been identified by Office of Management (OMB) approval number. The remaining information collections have been or will be submitted to OMB as required by 44 U.S.C. 3501, et. seq. Information collections affecting nine or less entities that are not subject to the Paperwork Reduction Act are also identified.

List of Subjects

13 CFR Part 118

Loan programs—business, Small businesses.

13 CFR Part 119

Loan programs, Small businesses.

13 CFR Part 130

Energy, Grant programs—energy, Loan programs—energy, Small businesses, Solar energy.

13 CFR Part 120

Loan programs—business, Small businesses.

13 CFR Part 122

Handicapped, Employee benefit plans, Loan programs—business, Small business, Trusts and trustees, Energy, grant programs—energy, Loan programs—energy, Solar energy.

PARTS 118, 119, AND 130—[REMOVED]

Accordingly, pursuant to the authority in section 5(b)(6) of the Small Business Act (15 U.S.C. 631 et seq.), Parts 118, 119, and 130, Chapter I, Title 13 of the Code of Federal Regulations would be removed and Parts 120 and 122 would be revised to read as follows:

PART 120—BUSINESS LOAN POLICY

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120.1–2 Pilot programs.
120.1–3 Savings clause.
120.2 Definitions.
120.1 Act.
120.2–2 Associate.
120.2–3 Financial assistance.
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120.302 Loan participants regulated by SBA.
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120.303–1 General.
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120.303–6 Miscellaneous reports.
120.304 Examination of Small Business Lending Companies.
120.305 Suspension and revocation of eligibility to participate.
120.305–1 Service of notice.
120.305–2 Service of papers other than notice.
120.305–3 Service of papers upon SBA.
120.305–4 Effect of failure to respond.
120.305–5 Answer.
120.305–6 Initial decision.
120.305–7 Final decision.
120.305–8 Effect of decision.
Appendix A—Memorandum of understanding between the Small Business Administration and the Department of Agriculture, Farmers Home Administration.

§ 120.1 General.

§ 120.1-1 Scope.

This Part sets forth the broad policies and principles that the Small Business Administration (SBA) follows in deciding to grant or deny Financial Assistance under the authority of section 7(a) of the Small Business Act, 15 U.S.C. 636(a), administering and servicing loans, and overseeing the operations of all loan participants. Frequently firms seeking a loan do not need financial assistance but are in need of management or financial counseling. SBA will, in these cases, provide such assistance through its various counseling programs.

§ 120.1-2 Pilot programs.

(a) In order to explore new directions or improved delivery of SBA services to small concerns, the Administrator of SBA may from time to time publish a notice in the **Federal Register** that certain rules will be suspended or modified for a limited period of time in a specified area.

(b) Such notice in the **Federal Register** shall clearly explain the reasons or grounds for the suspension or modification of SBA rules and comply with all applicable statutes and regulations.

§ 120.1-3 Savings clause.

Financial Assistance granted before (the effective date of this revision) shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such Financial Assistance granted pursuant to contractual terms no longer in use and prior regulations no longer in effect. If any section or part of a section of these regulations should be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

§ 120.2 Definitions.

The following terms have the same meaning wherever they are used in this Part dealing with loan programs or financial assistance.

§ 120.2-1 Act.

Act means the Small Business Act, as amended, 15 U.S.C. 631 *et seq.*

§ 120.2-2 Associate.

Associate means an associate of the Lender. This includes any of the following persons who have, or had, an interest in the applicant during the period six months before the date of the application or at any time thereafter while the loan is outstanding:

(a) An officer or director of the Lender; an employee authorized to approve loans on the Lender's behalf; a holder directly or indirectly of 10 percent or more of the value of the Lender's stock, debt instruments and other securities; or a close relative or partner of any such person.

(b) Any person, business or other entity that, directly or indirectly, controls, is controlled by or is under common control with the Lender, or a close relative or partner of such person.

(c) Any enterprise in which 10 percent or more of the value of the stock or ownership interest, debt instruments and other securities are owned or controlled by one or more persons or entities acting in concert and named in paragraphs (a) and (b) of this definition (except a Small Business Investment Company licensed by SBA), or where any such person or entity is an officer, director or partner.

(d) A "close relative" as used in paragraphs (a) and (b) of this definition only, means ancestor, lineal descendant, brother or sister or the lineal descendant of either, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law that is a member of the person's household.

§ 120.2-3 Financial assistance.

Financial assistance means any SBA loan, whether made directly by SBA or as an immediate participation or guarantee loan made in cooperation with a financial institution.

§ 120.2-4 Financial institution.

Financial institution means banks, or other concerns whose regular course of business entails the making of commercial and industrial loans. The terms participating lender, participant, non-bank lender, small business lending company, bank or lender refer to financial institutions that are eligible to participate with SBA and have executed participation agreements.

§ 120.2-5 Lending institution or lender.

(See definition for Financial Institution, 120.2-4.)

§ 120.2-6 Participant and participating lender.

(See definition for Financial Institution, 120.2-4.)

§ 120.2-7 Qualified Indian Tribe.

Qualified Indian tribe means an Indian tribe, as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4506), which owns and controls 100 percent of a small business concern.

§ 120.2-8 Small business lending company (SBLC).

(See definition for Financial Institution, 120.2-4.)

§ 120.3 Types of loans.

§ 120.3-1 Direct loans.

These loans are made by SBA without a Financial Institution's participation.

§ 120.3-2 Immediate participation (IP) loans.

These are loans where either SBA or a Financial Institution agree to purchase from the other, immediately upon disbursement, an agreed percentage of each disbursement.

§ 120.3-3 Guaranty (GP) loans.

These loans, which are referred to as "deferred participations" in the Act, are loans made by a Lender to a small business under a guaranty agreement between the Lender and SBA. The agreement may be an individual agreement that pertains to one specific loan only or a blanket agreement that pertains to all such loans submitted by the Lender and agreed to by SBA. The Lender advances the total funds for the loan and SBA agrees to purchase, upon demand by the Lender and subject to specific conditions, an agreed portion of the outstanding balance.

§ 120.3-4 Priority of loan type.

Every applicant for a direct loan, immediate participation or guaranty loan must show that the loan is not available without SBA assistance. In addition, an applicant for a direct loan must show that neither an immediate participation nor a guaranty loan is available; an applicant for an immediate participation must show that a guaranty loan is not available.[1]

Subpart A—Loan Making Policy

§ 120.100 General.

This subpart outlines the general loan policies covering eligibility, basic loan principles, interest rates, fees and other matters that apply to all SBA Financial Assistance.

§ 120.101 Eligibility of applicant.

§ 120.101-1 Applicant business concern.

(a) *Size.* To receive Financial Assistance from SBA the business applicant must qualify as a small business as defined in Part 121 (Size Standards) of this Chapter.

(b) *Loans to agricultural enterprises.* Small concerns engaged in farming and related businesses will be assisted by

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[1] OMB No. 3245-0016.

SBA in accordance with the Memorandum of Understanding signed by the SBA and the United States Department of Agriculture, Farmers Home Administration (FmHA), which appears as Appendix A to this Part.

(c) *Loans to Indian tribes.* Eligibility of small business concerns under section 7(a) of the Act shall not be adversely affected because any such concern is owned or controlled by an Indian Tribe as defined herein (see 120.2–7).

§ 120.101–2 Type of business.

Most small concerns are eligible for financial assistance. the following types of businesses are, however, not eligible for SBA assistance except where otherwise stated in this Section (120.101–2).

(a) *Charitable, religious or other non-profit institution.* Eleemosynary (charitable) institutions, other non-profit enterprises, government-owned corporations, consumer and marketing cooperatives, churches and organizations promoting religious objectives. An otherwise eligible small concern owned in whole or in part by a private non-profit organization is eligible, as is such concern when owned and controlled by a qualified Indian Tribe. Sheltered workshops for the handicapped are eligible under a special program, see Section 122.51. Producer cooperatives, including farm cooperatives, are eligible if "small" under Part 121 of this Chapter, and if they are totally owned by otherwise eligible small concerns that share a common need, the cooperative is for the exclusive use of the members and the cooperative provides raw materials, equipment, inventories, supplies or the benefits of research and development or the facilities for such purposes. For qualified employee trusts, see Section 122.56.

(b) *Media and similar concerns.* Concerns engaged in the creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content. Financial Assistance to such applicants is barred in order to avoid Government interference, or the appearance of such interference, with the constitutionally protected freedoms of speech and press.

(1) Such concerns include:

(i) *Publishing.* Concerns that are publishers, including so-called "vanity" publishers, and producers, importers, exporters or distributors of communications, including newspapers, magazines, books, greeting cards, sheet music, pictures, posters, film, tape, live broadcasts, recordings or reproductions of sight, sound or musical programs or products, motion picture theaters or theatrical productions, and transportation concerns limited to the distribution or delivery of such products.

(ii) *Book distributors.* Concerns that are book distributors, that specialize in selling products (books, newspapers, etc.) that promote or advocate ideas, including ideological, political, artistic or philosophical viewpoints. This does not prohibit assistance for a general merchandise store that is also selling books, newspapers, magazines, records, etc. or a general (as distinguished from a specialized) book, music, record, or videotape store.

(iii) *Schools.* Concerns operating schools that teach academic subjects. Nursery and pregrade schools if they are not primarily (50% or more of the time) engaged in teaching academic subjects, and vocational, technical or other non-academic schools that do not also teach academic subjects are eligible. English taught in a vocational school may be considered a nonacademic subject if the instruction focuses on grammar, spelling, vocabulary, syntax or communications.

(2) Financial Assistance may, however, be extended to:

(i) *Printing.* A concern solely engaged in commercial or job printing, if there is no common ownership or other affiliation with another concern that is ineligible under this Section 120.101–2(b), and the printer has no direct financial interest in the commercial success of the material produced.

(ii) *Advertisements and technical material.* A concern that produces advertisements and promotional material for a client's goods and services or technical or instructional material relating to a client's goods and services.

(iii) *Shoppers' newspapers.* A concern that publishes shoppers' newspapers or circulars consisting of advertising material only, without editorial, narrative or filler material.

(iv) *Reproduction of material.* A concern that provides motion picture, videotape, sound recording or theatrical technical production facilities, or the technical reproduction of motion picture, videotape or sound recordings without editorial or artistic participation, provided that the applicant concern has no direct interest in the commercial success of the material produced and that there is no common ownership or other affiliation between the applicant and the concern interested in the success of the material being produced.

(v) *Broadcasting and cable TV.* A concern operating a commercial broadcasting (radio or television) station or a cable TV system under the regulatory jurisdiction of the Federal Communications Commission (FCC) or a cable TV franchise granted in conformity with FCC standards. Concerns engaging in predominantly religious or political programming are not eligible.

(c) *Gambling.* Concerns that derive any part of their annual gross receipts, including rental income, or whose principal owner(s) derive any part of their annual income from gambling activities: *Provided, however,* That an otherwise eligible concern shall not become ineligible if it obtains less than one-third of its annual gross income (either before the loan application or during the life of the loan) from (1) commissions from the sale of official State lottery tickets under a State license or (2) from gambling activities in those States where such activities are legal and supervised by the State.

(d) *Illegal activities.* Concerns that are engaged in an illegal activity or are engaged in the production, servicing, or distribution by sale or otherwise of products or services used in connection with an illegal activity. This includes, but is not limited to, the production, servicing, distribution of paraphernalia, products or services that are used or intended to be used primarily or exclusively in connection with the unlawful use of drugs or controlled substances.

(e) *Lending or investment, "alter ego".* Concerns primarily engaged in the business of lending or investing or any otherwise eligible applicant where the purpose of the financial assistance is to finance investments that are neither related nor essential to the enterprise: *Provided, however,* That a small concern (alter ego) owning and leasing or proposing to own and lease real or personal property to an otherwise eligible small concern (operating company) shall be eligible if all the following conditions are met:

(1) The alter ego must be a business organized and operated for profit as an individual proprietorship, partnership or corporation.

(2) It must be in the business of owning and leasing real or personal property to the operating company.

(3) It must propose to use loan proceeds for purposes that would be eligible uses for the operating company.

(4) It must use the loan proceeds solely to acquire or improve real or personal property (including eligible refinancing) for the exclusive use of such operating company.

(5) It must have ownership interest(s) completely identical with and in the

same proportion as the ownership interest(s) in the operating company and agree in writing that such identity of ownership shall remain unchanged until the loan is paid in full or unless SBA gives written approval for an earlier change.

(6) It must pledge the lease between it and the operating company having a remaining term at least equal to the term of the loan and a lien on the property itself as collateral for the loan.

(7) The operating company must be either a guarantor or coborrower on the loan and the owner(s) of the operating company must guarantee the loan.

(f) *Parole or probation.* Any concern if the proprietor, a holder of 20 or more percent of the stock, or a partner, officer or director is currently incarcerated, on parole or on probation following conviction of a serious crime. The concern remains ineligible if the probation or parole is lifted solely because it is an impediment to obtaining a loan.

(g) *Multilevel sales distribution plan.* Generally, any concern engaged in multilevel sales distribution plans of the "pyramid" type.

(h) *Loan packager.* Any small concern, where a substantial part (30% or more of its annual business volume) is the preparation of applications seeking Financial Assistance from the SBA. This is not intended to preclude Financial Assistance to an otherwise eligible small concern that regularly provides accounting or legal services to the public.

§ 120.102 Limitations on loan purposes.

Small manufacturers, wholesalers, retailers, service concerns and other firms may borrow to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; to obtain working capital; or, at the discretion of SBA, to refinance outstanding notes payable. For additional special rules applicable to refinancing loans, see § 122.7-3(c). Financial Assistance shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

§ 120.102-1 Refinance unsecured loans.

Pay off inadequately secured creditor(s) who could suffer a loss if debt is not refinanced, and SBA would probably sustain all or part of the same loss, or if SBA determines that the loan will not benefit the small concern: *Provided, however,* That (subject to intervening adverse change) SBA may reimburse a lender's interim advance from loan proceeds if made in compliance with a loan authorization previously issued by SBA. SBA shall not decline to gurarantee a loan solely because such loan will refinance existing indebtedness of a small concern.

§ 120.102-2 Revolving credit.

Except as permitted under § 122.54, create a revolving line of credit, such as "floor plan" financing.

§ 120.102-3 Pay obligation to owners.

Provide funds for payments, distributions or loans to owners, partners or shareholders of the applicant, exclusive of ordinary compensation for services rendered, and excluding the proceeds of loans to change ownership of the business as described in Section 120.102-6 below.

§ 120.102-4 Refund debt to SBIC.

Refund a debt owed to a Small Business Investment Company (SBIC) (see part 107 of this Chapter). However, applications may be accepted from business applicants financed by an SBIC if SBA's collateral position will be superior to that of the SBIC.

(a) *Participation with an SBIC.* SBA shall not participate on either an immediate or guaranty basis with an SBIC (Section 120-2 and 3). However, this does not limit the granting of a loan to an applicant which has or will have a loan or equity capital from an SBIC if SBA's collateral position is superior to that of the SBIC.

(b) *Loans to firms owned or controlled by SBIC.* A loan may be made to a firm which is otherwise eligible but temporarily owned or controlled by an SBIC in compliance with the regulations in Part 107 of this Chapter.

§ 120.102-5 Speculation.

Provide or free funds for speculation in any kind of real or personal property, whether tangible or intangible. Examples of speculation include "wildcatting" in oil and dealing in commodity futures.

§ 120.102-6 Change in ownership.

To effect a change in the ownership of the applicant unless the change (a) will promote the sound development or preserve the existence of a small concern or (b) will contribute to a well-balanced national economy by facilitating ownership of a small concern by person(s) whose participation in the free enterprise system has been prevented or hampered because of economic, physical or social disadvantages or because of disadvantages in residential or business location.

Note.—It is not intended that the Agency permit an individual(s) to borrow funds to purchase an interest in a business (except under a qualified ESOP).

§ 120.102-7 Recreational or amusement enterprises.

Finance the construction, acquisition, conversion or operation of recreational or amusement enterprises unless (a) they are open to the general public and (b) they are properly licensed by the appropriate State or local authority.

§ 120.102-8 Investment in property.

Finance the acquisition, construction, improvement or operation of personal or real property that is, or is to be, held for sale or investment (rental income) or is not to be used in connection with the applicant's otherwise eligible small business. (But see section 122.50 of this Chapter.)

§ 120.102-9 Monopoly.

Have the effect of encouraging a monopoly or be inconsistent with the accepted standards of the American system of free enterprise.

§ 120.102-10 Conflict of interest.

Create, or appear to create, a conflict of interest. Without the prior written approval of the responsible district office, SBA shall not participate in or guarantee a loan to a business where the lender or an Associate has, or acquires while the loan is outstanding, an interest in any form which constitutes a conflict of interest, or the appearance thereof, with respect to the loan or the small concern. A field office reviewing a request for approval must determine whether a conflict of interest exists or appears to exist because of preferential treatment or the loss of independent, impartial and objective judgment. It must determine what corrective action, if any, will eliminate the actual or apparent conflict of interest and allow immediate processing of the loan application. The field office determination shall be based on such factors as the nature of the relationship between the Lender and its Associate, the significance of an Associate's influence on the actions or decisions of the Lender the nature of the relationship with a close relative (e.g. would it tend to prejudice an objective decision) and such other factor(s) as may, directly or indirectly, contribute to or negate a conflict of interest. The following are examples (not an all inclusive listing) of where SBA shall not participate in or guarantee a loan:

(a) *Non-disclosure.* When the Lender's application to SBA does not contain a full disclosure, including negative statements to the best of its knowledge, from the Lender and from the small concern, relative to all relationships discussed in section 120.2–2 and an undertaking that no such relationship shall knowingly be created as long as the loan is outstanding. For an exception relating to the handicapped see section 122.51–5(a).

(b) *Purchase from lender.* When the proceeds will directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Lender, its Associate, or the designee of either. SBA may permit such on a case by case basis by making a written determination that the purchase is in the best interest of the applicant and will not impair the lender's objective judgment in any decisions with respect to the making, servicing or liquidation of the loans. The applicant shall not contract with the lender or an associate for goods or services without written approval by SBA.

(c) *Reduce exposure.* When the proceeds will reduce the exposure of the Participant unless SBA makes a written determination that it is in the best interest of the applicant and meets the requirements of subsection 122.7–3(c) of this chapter.

(d) *Repay associate.* To repay or refinance a debt due an Associate unless SBA makes a written determination that the documentation in the file supports the repayment or refinancing. The evidence shall show that the terms of the existing debt are causing the applicant undue hardship, that refinancing the debt will relieve the hardship and that relief from the hardship is not available through extension or modification of the original debt or through refinancing with private lending sources.

(e) *Forward commitment.* Where the Lender has issued a real estate forward commitment to a builder/developer with respect to a project of such builder/developer and the applicant for Financial Assistance proposes to use the proceeds to acquire space in such project.

(f) *Reinvestment in lender.* When the applicant or its principals invest funds in the Participant Lender: *Provided, however,* That if the enabling authority of a Participant (such as a Production Credit Association) requires such investment, Participant may make a "side loan" not guaranteed by SBA and subordinated to SBA's Financial Assistance except that Lender may hold a first lien on the securities representing such investment, and *Provided, further,* That the interest rate applicable to such side loan does not exceed SBA's maximum for guaranteed loans and the maturity is no shorter than that of SBA's Financial Assistance.

§ 120.102–11 Replacement of funds.

Replace funds already used for the purposes described in § 120.102.

§ 120.103 Lending criteria.

§ 120.103–1 Evidence of needs.

Applications for financial assistance shall be considered only when the desired credit is not otherwise available on reasonable terms from non-federal sources. To establish that the credit is not otherwise available, SBA shall [1]

(a) *Proof of refusal.* (1) Direct or immediate participation loans: Require written proof of refusal [1] from (i) the applicant's bank of account or, if the amount of the loan exceeds that bank's legal or normal lending limit, from a correspondent bank with a legal or normal lending limit that is adequate to cover the loan, and (ii) from a second Financial Institution in cities with a population exceeding 200,000 the proof of refusal must be dated and signed and include the amount and terms requested and the reason for denial:

(2) Guaranty loans: The certification a lender makes in its application [1] for a guaranty by SBA will generally be accepted as sufficient documentation in lieu of a letter(s) of decline.

(b) *Funds otherwise available.* Determine from financial statements or other financial information provided whether it appears that the funds are available (1) from a private of public sale of securities issued by the applicant, (2) by disposal at a fair price of assets not necessary to the applicant's operation or growth, (3) through utilization, without undue hardship, of the owners, partners, management or principal shareholders.

§ 120.103–2 Credit evaluation.

In evaluating a loan application,[1] SBA attaches importance to many factors including the character and reputation of the applicant and its principals, experience and depth of management, in inherent soundness of the business enterprise, the past earnings record and future prospects, the long-range possibilities of successful operation, and whether the granting of financial assistance has a sound business purpose.

(a) *Repayment.* The Act specifies that "* * * all loans shall be of such sound value or so secured as to reasonably assure repayment * * *" Therefore no financial assistance shall be extended unless there is reasonable assurance that the loan can be paid from the earnings of the business.

(b) *Sound finances.* The applicant must have enough equity invested or to invest so that, if SBA financial assistance is approved, it can operate on a sound financial basis.

(c) *Collateral.* Adequate collateral is required to reasonably protect the interest of the Government. The amount of collateral needed considered along with other credit factors, is determined on a case-by-case basis. Proprietors, partners, officers, directors and owners of 20 percent or more of the business shall generally be required to guarantee repayment of the loan and, in some instances, to pledge personal assets to secure the guarantee. Inadequate collateral will not mormally be used as the sole reason for decline unless the applicant refuses to pledge whatever worthwhile collateral is available.

(d) *Special reports.* SBA may require professional appraisals of the applicant's assets, an engineering survey, a feasibility study of the applicant's operation, earnings, management, competitive position or other such factors. The need will be determined by a review of the application and, when needed, the applicant is generally required to purchase the service and submit the report [1] to SBA.

(e) *Insurance coverage.* A small business is generally required to purchase and maintain hazard insurance and Federal Flood Insurance (see Part 116 of this Chapter). In some instances life insurance on the principal(s) may also be required. The borrower may select the agent and carrier from whom the insurance is purchased and any new or additional insurance required should be reducing term insurance with an original face amount no greater than the amount of the loan. Any variation in the type of life insurance shall be authorized by SBA in writing. Any fee or commission for insurance purchased from the Lender or an Associate must be reported as a fee paid to the Lender. The purchase of insurance from the Lender or an Associate shall not be required as a condition to accepting processing, or approving a loan.

(f) *Compliance with other parts.* All financial assistance under this part shall require compliance with parts 112, 113, 116 and 117 (when promulgated) of this Chapter. With respect to any financial assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin. Part 113 prohibits discrimination based on race, color, religion, sex, marital status, handicap or national origin with respect to all recipients of SBA financial assistance. Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA financial assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA financial assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. When promulgated, Part 117 will cover the prohibition of discrimination based on age.

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[1] Subject to OMB approval.

(g) *Tax requirements.* If any portion of the loan proceeds will be used for paying wages of additional employees, the applicant shall be current on all payroll taxes, both Federal and State. It shall have a depository plan in operation for payment of future employee withholding taxes.

(h) *Bonding requirements.* On all construction loans, a 100 percent payment and performance bond and builders risks/workman's compensation insurance must be supplied unless waived by SBA.

§ 120.103-3 Reconsideration of decline.

Any applicant that is declined for size may appeal the decision only in accordance with Part 121 of this Chapter. Any applicant whose request (including request for a modification of an existing loan condition) has been declined shall have the right to present new or additional information[2] to overcome the reason(s) for decline and request a reconsideration.

(a) *File within 6 months.* Applicant shall submit a written request for reconsideration to the office that processed and declined the application, within six months of the date of the initial decline. After six months a new application is required. A request for reconsideration of a guaranty loan application must be submitted by the Lender.

(b) *Additional information.* The written request for reconsideration must contain significant new or additional information which is expected to overcome the reason(s) for decline. Reconsideration requests without such information shall not be accepted.

(c) *Reasons for decline.* Decline of an application for one reason(s) does not waive the Agency's right to decline a request for reconsideration for another reason(s).

(d) *Appeal of declined reconsiderations.* An applicant whose request was declined on reconsideration shall have the right to request reconsideration at the next higher office. Such written requests for further reconsideration must be submitted to the office that processed the loan within 30 days of the last decline action, shall specifically request reconsideration at the next higher office, and shall contain the written justification for requesting a reversal of the decline action.

(e) *Finality of review:* The decision of the regional office is final. *Provided, however,* That the Regional Administrator may refer a case to the Associate Administrator for Finance and Investment (AA/F&I), or the AA/F&I may request that a file be forwarded to the Central Office because of special circumstances. The term "special circumstances" refers to a policy reconsideration, or reevaluation of an existing policy by the Agency, conflicting policy interpretations between two regional offices, alleged improper acts by SBA personnel, or other such considerations.

§ 120.104 Fees.

§ 120.104-1 Guaranty fees.

The Financial Institution shall pay a guaranty fee to SBA for each loan. Acceptance of the guaranty fee by SBA shall not waive any right of SBA arising from the Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement or the loan authorization.

(a) *Amount.* SBA shall charge a guaranty fee on loans with maturities in excess of twelve months, equal to one percent (1%) of the guaranteed portion of the loan. For loans with a maturity of twelve (12) months or less, the guaranty fee shall be one-quarter (¼) of one percent of the guaranteed portion of the loan. (See sections 122.6 of this Chapter with respect to loan maturities.)

(b) *When payable.* The Lender shall pay the guaranty fee on a loan with a maturity of 12 months or less at the time the Lender submits the application for guaranty.[1] The Lender shall pay the guarantee fee on a loan with a maturity in excess of 12 months within 90 calendar days of the date of SBA's approval as stated in the loan authorization. Like fees shall be paid for increases in the loan amount. If the guaranty fee is not paid by the Lender within this time period, SBA shall send the Lender a written notice (bill) requesting payments. The guaranty will be subject to termination if SBA does not receive the fee within the time period stated in the notice.

(c) *Who pays.* The Participating Lender is responsible for paying the guarantee fee to SBA. For guaranty loans having a maturity of 12 months or less, the Lender (having paid the fee to SBA) may charge the borrower for the guaranty fee upon approval of the loan by SBA. For guaranty loans with maturities exceeding 12 months, a lender (having paid the guaranty fee to SBA and made the first disbursement on the loan) may charge the borrower for the guaranty fee. The borrower may use loan proceeds to pay the fee.

(d) *Reinstatement of guaranty.* SBA may, at its sole discretion, reinstate a guaranty that was cancelled for failure to pay the guaranty fee, where SBA determines that such Lender's failure was not intentional and not part of a recurring pattern. SBA shall not reinstate a guaranty if the fee is unpaid at the time the borrower defaults and if such default continues uncured for sixty days or if SBA determines that there has been a substantial adverse change in the borrower's condition.

(e) *Refunds.* (1) SBA shall refund the guaranty fee submitted with the application for loans with a maturity of 12 months or less, when an application is withdrawn prior to approval by SBA, or declined by SBA. When SBA substantially changes the Lender's loan terms and then approves the loan, the Lender must request a refund in writing[2] within thirty calendar days of such approval, if the changed terms are not accepted. (2) SBA shall refund the guarantee fee for a loan with a maturity exceeding 12 months only when the Lender has not made any disbursement on the guaranteed loan and requests the refund and cancellation of the guaranty in writing.

§ 120.104-2 Service and commitment fees.

(a) *Service fees.*—(1) *Regular service.* The Lender may charge SBA a service fee for servicing immediate participation loans or guaranty loans where SBA has purchased its guaranty portion but has not assumed responsiblity for servicing the loan. The Lender may also charge a service fee where the guaranty portion has been transferred with SBA's consent by the Lender to a third party. The Lender shall deduct such fee only from interest collected for the account of SBA or a third party and only so long as the Lender is servicing the loan. The fee shall not be added to any amount the borrower is obligated to pay under the loan. Fees on guaranty loans after SBA purchase are determined by the initial percent of SBA guarantee. Where SBA's share of an immediate participation or guananteed loan is seventy-five (75) percent or less, the service fee shall be three-eighths (⅜) of one (1) percent per annum on the unpaid principal balance of SBA's share of the loan. Where SBA's share of any immediate participation or guaranteed loan is in excess of seventy-five (75) percent, the service fee shall be one-fourth (¼) of one (1) percent per annum of the unpaid principal balance of SBA's share of the loan. The fee a Lender receives for servicing a loan for the benefit of a third party is negotiated between the two parties and is not subject to the limitations set forth above.

(2) *Loan extension.* An additional service fee not exceeding one (1) percent of the outstanding amount of the principal may be paid by the borrower to the Lender in consideration for extending the term or refinancing the indebtedness where the extension results in a term that exceeds ten years.

(3) *Extraordinary service.* Subject to prior written SBA approval, if a loan will have extraordinary servicing needs, a Lender may charge the applicant a service fee not to exceed 2 percent per annum on the outstanding balance of such loan (2 percent of the amount approved, in the case of construction loans). If the extraordinary services are required only for part of the loan, or for part of the collateral for a loan, such service fee shall be applied only to that part of the loan, or for the part secured by such collateral. In no event may such service fee represent additional interest or profit on the loan. The fee charged shall be commensurate with the extra service provided and shall be requested by the Lender and justified in writing prior to approval of the loan.[2]

(b) *No late payment or prepayment fees.* Fees for handling late payments and fees or penalties for partial or full prepayment of the loan shall not be charged in connection with any SBA loans.

(c) *Commitment fee for Export Revolving Line of Credit (ERLC) loans.* After SBA approves a loan under the ERLC program, a Lender may charge the borrower a commitment fee of one-quarter (¼) of one (1) percent (or $200 minimum) of the loan. (See § 122.54–4 of this Chapter relating to Export Revolving Lines of Credit.)

(d) *Fees for representatives.* Except as herein provided, no applicant for SBA Financial Assistance shall be required to pay the Lender, an Associate of the Lender or any party designated by either, any fees or charges, for any goods or services, including insurance, as a condition of the Lender's participation in an SBA loan. See also Parts 103 and 104 of this Chapter, expecially section 103.13–5.

(e) *Fees for other services.* Payment of bonus, or brokerage fees or commissions for the purpose of, or in connection with, obtaining financial assistance through SBA is prohibited. A Lender or Associate may charge an applicant reasonable fees on an hourly basis for necessary services actually performed at the request and for the primary benefit of the applicant. Nothing contained herein shall be deemed to authorize any Lender to impose upon an applicant fees or charges (including origination or packaging fees), any part of which defrays the Lender's overhead cost; for example, payments for services of counsel, accountants, financial analysts, etc., who are salaried employees of the Lender or its Associate. An opinion on the validity of the loan or its compliance with SBA requirements serves the interest of the Lender and is part of its overhead cost. If the Lender needs additional appraisals, abstracts of title or other record searches for the processing or as a condition of the disbursement of a loan, the Lender or an Associate (with the consent of the applicant in either case) may prepare such documentation for a reasonable fee. Legible copies of any such documents shall be made available to the applicant, together with any supporting workpapers that the applicant may request. If the same law firm represents both Lender and applicant, with the applicant's consent and pursuant to applicable bar and court rules, such law firm may charge applicant reasonable fees for the services rendered to and for the benefit of the applicant. SBA has no national standard as to what is reasonable. The SBA district offices determine what fee is reasonable on a case by case basis. A Lender may be reimbursed by the borrower for any reasonable out-of-pocket expenses incurred for filing or recordation necessary to perfect a security interest in the assets of the borrower, including title insurance. A Lender shall not require that borrower pay points, and add-on interest may not be used. A Lender may receive the fees authorized under this paragraph, and no others, whether or not the requested loan is made. See also §§ 120.104–2(a) and 120.301–3 of this chapter.

(f) *Report on fees.* The applicant shall certify the names of all attorneys, accountants or other representatives, including the Participating Lender or its Associate, engaged by the applicant for a fee in connection with the Financial Assistance being requested, as well as the amounts paid. SBA Form 159 (Compensation Agreement) shall be used therefor.[2]

§ 120.105 Other legal requirements.

SBA loans are also subject to the provisions and requirements of other legislation such as the Freedom of Information, Privacy, Right to Financial Privacy, Paperwork Reduction, Flood Disaster Protection, Lead-Based Paint Poisoning Prevention, Equal Credit Opportunity, Occupational Safety and Health, Consumer Credit Protection Acts, Civil Rights Legislation and various Executive Orders. Therefore, SBA may [2] request data, agreements, or acknowledgements to support or document compliance with, and respond to reporting requirements of, these statutes in addition to the data required to make an informed credit decision. (See Parts 112, 113, 116 and 117 (when issued) of this chapter.)

Subpart B—Loan Administration

§ 120.200 General.

This subpart outlines the general loan administration policies applicable to SBA Financial Assistance.

§ 120.200–1 Servicing direct or immediate participaton loans.

Immediate participation loans which are closed by the Lender shall be serviced by the Lender, and immediate participation loans or direct loans closed by SBA shall be administered by SBA. However, SBA reserves the right to transfer the servicing of an immediate participation loan from the Lender to SBA and, with mutual agreement, from SBA to the Lender.

§ 120.200–2 Servicing guaranteed loans.

Guaranteed loans shall be serviced by the Lender. The Lender shall hold the note, instruments of hypothecation, and all other agreements, documents, and instruments required in connection with such loans. The Lender shall receive all payments of principal and interest on the loan until such time as SBA may complete the purchase of its guaranteed share of the loan, i.e., when SBA perfects the paperwork necessary to process disbursement and SBA's purchase of its share of a guaranteed loan is complete. The Lender shall thereupon assign the note and the other loan instruments to SBA and loan servicing shall become the responsibility of SBA. With SBA's written consent the lender may continue to service the loan after purchase. In such case, the Lender shall execute a certificate of interest evidencing SBA's percentage of the loan and shall continue to service the loan and be the holder of the note and the other instruments, until SBA makes a written request for the transfer of loan servicing the SBA; the Lender shall thereupon assign and deliver to SBA all loan instruments immediately after the receipt of such a transfer request from SBA[2].

§ 120.201 Servicing requirements.

§ 120.201-1 Prior consent required.

The holder of the note shall not, without the prior written consent of the other participant:

(a) *Alteration.* Make or consent to any substantial alteration in the terms or conditions of any loan instrument. For the purpose of this paragraph, "substantial" includes, but is not limited to, increases in principal amount or interest rate or any action that benefits or confers a preference on the holder;

(b) *Release of collateral.* Make or consent to release of collateral having a cumulative value as reasonably determined by the holder of the note, which is more than 20 percent of the original loan amount;

(c) *Accelerate maturity.* Accelerate the maturity of any note;

(d) *Sue.* Sue upon any loan instrument;

(e) *Waive claim.* Waive any claim against any borrower, guarantor, obligor, or standby creditor arising out of any loan instrument;

(f) *Increase amount of prior lien.* Increase the amount of any prior lien held by the Lender on property securing an SBA-guaranteed loan.

§ 120.202 SBA purchase of guaranteed loans.

§ 120.202-1 SBA purchase determination.

SBA shall have the right at any time to purchase its guaranteed percentage of the loan if SBA shall determine that such purchase is in the best interest of the Government.

§ 120.202-2 No waiver.

Purchase by SBA of its guaranteed share shall not waive any right of SBA arising from Lender's negligence, misconduct or violation of these regulations, the guaranty agreement or the loan instruments.

§ 120.202-3 Rate of interest to borrower.

When SBA purchases its share of a loan, the rate of interest payable by the borrower on SBA's share shall be the same as the rate of interest provided in the note. On those loans with a fluctuating interest rate, the interest paid to SBA shall be the rate in effect at the time of default where a default has occurred, or at that rate in effect at the time of purchase where no default has occurred.

§ 120.202-4 Accrued interest to holder.

When SBA purchases its guaranteed share, its payment to the holder of accrued interest to the date of purchase shall be at the rate of interest provided in the note. On those loans with a fluctuating interest rate, the SBA's payment of accrued interest shall be at that rate in effect at the time of default where a default has occurred, or at that rate in effect at the time of purchase where no default has occurred.

§ 120.202-5 When SBA does not purchase.

SBA shall be released from obligation to purchase its share of the guaranteed loan unless the Lender has substantially complied with all of the provisions of these regulations, the Guaranty Agreement and the loan authorization, or upon the happening of any one or more of the following events:

(a) *Defective closing.* Failure of the Lender to close and disburse the loan substantially in accord with the terms and requirements of the loan instruments, or to service the loan in a prudent manner, either of which may result in a substantial loss on the loan;

(b) *Full payment.* Payment in full of the amount due on the note;

(c) *Request to terminate.* Receipt by SBA of written request from the Lender to terminate the guarantee; or

(d) *Non-payment of guaranty fee.* Failure of the Lender to pay the guaranty fee as required by Section 120.104-1 (c) and (d);

(e) *Late demand.* Failure of the Lender to demand purchase of an unpaid guaranteed portion or to request an extension of maturity within one year after the maturity of the note: *Provided, however,* That if SBA denies the request to extend the loan, the Lender shall have 6 months from the date of such denial to demand that SBA purchase the guaranteed portion of the loan.

§ 120.203 Collection policy.

It is the policy of SBA to insist upon prompt payments, and upon compliance with all conditions of the note, mortgage and loan agreement. Any request for relief should be directed to the Participating Lender or the SBA field office, whichever is servicing the loan. In order to aid and assist borrowers in the discharge of their financial obligations, it is the policy of SBA to advise and counsel with borrowers in all aspects of their business, with a view to the development of a healthy, growing concern [2].

§ 120.204 Liquidation of loans and security.

§ 120.204-1 Liquidation policy.

(a) *Assist and protect business.* It is the policy of SBA to aid, counsel, assist and protect small concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not be resorted to if there appears to be any reasonable prospect that the loan may be repaid by the borrower or a guarantor (other than SBA) within a reasonable period.

(b) *Sale and conversion of loans.*—(1) *Sale of direct loan.* SBA is authorized to effect the sale of any direct loan upon payment of the full amount of the borrower's obligation. The consent of the borrower is not required.

(2) *Conversion of direct loans.*

Direct loans may be converted to guaranteed loans or to immediate participation loans.

(3) *Conversion of immediate participation loan.*

An immediate participation loan may be converted to a guaranteed loan or a loan wholly owned by the participating institution without the borrower's approval upon payment of the unpaid amount of SBA's participation in such loan, together with accrued interest due thereon and any advances that may have been made by SBA.

§ 120.204-2 Foreclosure of collateral.

(a) *Liquidation of collateral.* Liquidation of the security may be approved when any one of the following conditions exists:

(1) A borrower is in default in the payment of one or more installments due under a note or has defaulted in the performance of conditions contained in the note, loan agreement, other instrument, or a security instrument, and the failure to cure, or to attempt to cure, such defaults is due to (i) lack of diligence; (ii) lack of managerial ability which the borrower has failed to correct; (iii) other circumstances within the borrower's control; or (iv) the inability of the borrower to remedy the default;

(2) Foreclosure or other creditor's rights proceedings have been instituted which may jeopardize the interests of the Government;

(3) A borrower has filed a voluntary petition or an involuntary petition has been filed against the borrower pursuant to any of the provisions of the Bankruptcy Code, as amended;

(4) A receiver has been appointed or other judicial action taken for the purpose of liquidating the borrower's assets;

(5) The borrower has made an assignment for the benefit of creditors;

(6) The borrower is in default and has discontinued or abandoned the business or has not submitted an acceptable plan of payment;

(7) The borrower has failed to disclose in the loan application any fact deemed by SBA to be material or any false statement or material misrepresentation by, on behalf of, or for the benefit of the borrower has been made in any document submitted in connection with a loan application.

(b) *Disposal of collateral.* Real and personal property, including contracts and claims, pledged as security for a loan which is in default may be sold in accordance with the provisions of the related security instrument.

(1) *Competitive bids or negotiated sale.* SBA or the participating lender generally shall offer acquired or collateral properties for public sale. Such sales, unless otherwise authorized, will be ordinarily effected through competitive bids at an auction sale or a sealed bid sale. Where property cannot be sold advantageously at auction or sealed bid sale, a negotiated sale of the property may be authorized. The right, title and interest of SBA in property sold will, unless otherwise authorized, be conveyed by an appropriate bill of sale or deed, without representation or warranty.

(2) *Lease of acquired property.* SBA does not favor renting or leasing acquired property or the granting of options to purchase. In those instances where the property cannot be sold advantageously and it appears to be in the interests of the Government to lease the property, proposals for a lease will be considered. Any such proposals shall provide for termination by SBA upon the giving of reasonable notice when a favorable offer to purchase is received.

(c) *Recoveries and security interests shared.* All payments or recoveries on a loan as well as all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan) incurred by SBA or the Participating Lender, and any security interest or guaranty (excluding SBA's guaranty) which the Participating Lender or SBA may hold or receive in connection with a loan shall be shared ratably by SBA and such Lender in accordance with their respective interests in the loan.

(d) *Guarantors.* Guarantors of financial assistance, other than SBA, shall have no rights of contribution against SBA on a guaranteed loan. SBA shall not be deemed to be a coguarantor with any other guarantors.

Subpart C—Loan Participants

§ 120.300 Policy

SBA is authorized to make in its discretion participation loans in cooperation with banks and other Lending Institutions, excluding small business investment companies licensed by SBA, through agreements to participate on an immediate or deferred (guaranty) basis. Such agreements do not obligate SBA to participate in any particular loan or loans that a lender may submit. The existence of a participation agreement does not limit SBA's right to determine from time to time, as a matter of general policy or with respect to particular loans, the ratio between its share of a loan and the Lender's share, or SBA's right to withhold, at its sole discretion, approval of a proposed transfer of the guaranteed portion of any loan.

§ 120.301 Operation of all loan participants.

§ 120.301-1 Preferences.

No agreement to participate under the Small Business Act shall establish any preferences in favor of the Participant. "Preferences" as used in this regulation include, but are not limited to, (a) any arrangement giving a Participating Lender a preferred position over the SBA position as regards repayment, collateral or guarantees in connection with the loan, (b) any requirement that the borrower accept a separate or companion loan which results in a preferred position for the Participant or (c) any requirement that a borrower purchase a certificate of deposit or maintain a compensating balance which is not under the unrestricted control of the borrower. For loans made in participation with offices of the Farm Credit Administration see Section 120.102-10(f).

§ 120.301-2 Sale or transfer of guaranteed portion.

As provided in SBA Form 750 and 750B (Loan Guaranty Agreements) a Lender may transfer the entire guaranteed portion pursuant to a transfer instrument (hereinafter referred to as a secondary participation agreement): *Provided,* That prior to the execution thereof:

(a) *Documents.* The duly executed note and settlement sheet(s) underlying the transaction, and such other documents as SBA may expressly require have been submitted by the Lender to SBA [2];

(b) *Fees approved.* All fees, including fees to agents (as defined in Section 103.13-2 of this Chapter) paid or to be paid by the borrower in connection with the loan have been approved by SBA;

(c) *Full disbursement.* The full amount of the loan, as authorized, has been disbursed by the Lender to the borrower;

(d) *Guaranty fees paid.* All guaranty fees, including fees otherwise payable in installments, have been paid in full; and

(e) *Terms.* The terms of sale do not obligate the Lender or SBA to repurchase under any circumstances other than those provided for in the said secondary participation agreement. Execution of the said secondary participation agreement by SBA shall not relieve any Lender of the obligation of compliance with all legal requirements relating to the sale or other transfer of securities, including (but not limited to) "Blue Sky" laws, and the statutes administered by the Securities and Exchange Commission.

§ 120.301-3 Service to borrowers.

Subject to Section 120.102-10, Lenders, their Associates or the designee of either may provide services to and contract for goods with any small concern only after full disbursement of the loan to the small concern or to an account not controlled by the Lender, Associate or designee of either. Where Lender or any Associate or the designee of either provides services permitted under Subpart A of this Part, such services shall be furnished on a time basis pursuant to a written contract approved by the board of directors, partners, or proprietor of the small concern. Records of time spent and charges made for such services shall be maintained for examination[3] by SBA. Charges made shall not exceed those charged by established professional consultants providing similar services.

§ 120.301-4 Advertisement of relationship with SBA.

A Lender may make reference in its advertising to its participation with SBA by the use of phrases such as "a participation with SBA in loans to small business" or "solely engaged in participant with SBA in loans to small business": *Provided, however,* That no such advertising shall state or imply that such Lender, or any of its borrowers, will enjoy preferential treatment from SBA; or be false or misleading in any other respect; and *Provided, further,* That such advertising shall not make use of SBA's seal or any facsimile thereof.

§ 120.301-5 Requirement for all participants.

A participating Financial Institution must meet all of the following requirements:

(a) *Capability.* Have a continuing capability to evaluate, process, close, disburse, and service loans authorized to be made by SBA to small business concerns. Such capability will be deemed to exist when the Financial Institution's operations are at all times conducted by persons possessing the above listed capability. The Financial Institution shall hold itself out to the public as engaged in the making of such loans, and shall maintain a reasonably accessible office in its own name, have a listed telephone number, and be open to the public during regular business hours.

(b) *Good character and reputation.* Have continuing good character and reputation. A lending institution will be deemed to possess good character and reputation if each holder, direct or indirect, of ten (10) percent or more of its voting power, and all members of its management (including managers and other key employees, officers and directors) possess good character and reputation. Good character and reputation shall be deemed absent if any of the above mentioned is or are currently incarcerated, on parole or probation, or has or have been indicted for, formally charged with or convicted of a felony, or suffered an adverse final judgment in any case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions.

(c) *Financing subsidiaries.* Not be engaged (or planning to engage) primarily in financing the operations of an affiliate as defined in Part 121 of this Chapter.

(d) *Supervision and examination.* Be a financial institution subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority as SBA may deem satisfactory, such as a State or National bank, or a State or Federal savings and loan association.

§ 120.302 Loan participants regulated by SBA.

§ 120.302-1 Small Business Lending Companies.

Prior to January 4, 1982, SBA Regulations provided that any lending institution which was not subject to continuing supervision and examination by a State or Federal regulatory authority, could be approved as a Participating Lender subject to certain conditions. Such a Lender was referred to as a "Subsection (b) Lender" and is presently known as a "Small Business Lending Company" or "SBLC". Effective January 4, 1982, SBA does not accept aplications for SBLC status but existing SBLC's continue to participate with SBA and be subject to supervision and examination by SBA.[3] In addition to the requirements set forth in Section 120.301-5(a) through (c), an SBLC shall:

(a) *Business purpose.* Be a corporation (profit or non-profit) engaged solely in the making of loans under Section 7(a) (except Section 7(a)(13)) of the Act in participation with SBA.

(b) *Subject to SBA supervision.* Maintain a written agreement with SBA whereby it will be subject to supervision and examination by SBA and to conduct its business operations in accordance with all applicable SBA regulations.

(c) *Capital structure.* Have unencumbered paid-in capital and paid-in surplus of at least $500,000 or ten percent of the aggregate of its share of all outstanding loans, whichever shall be more.

(d) *Capital impairment.* Maintain at all times an unimpaired capital. Impairment shall be deemed to exist when the retained earnings deficit exceeds fifty percent of the combined paid-in capital and paid-in-surplus, excluding treasury stock. SBA shall be given prompt written notice of any capital impairment. Until the said impairment is cured, a Lender shall not present any loans to SBA for guaranty.

(e) *Issuance of securities.* Without prior written SBA approval, it shall not issue any securities including stock options and debt securities except stock dividends and common stock issued for cash or direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States.

(f) *Voluntary capital reduction.* Without prior written SBA approval, it shall not voluntarily reduce its capital, or purchases and hold more than two (2) percent of any class or combination of classes of its stock.

(g) *Reserves for losses.* Maintain a reserve in the amount of anticipated losses on loans and receivables.

(h) *Maintenance of records.* Maintain accurate and current financial records, including books of account.[4] All financial records, minutes of meetings of stockholders, directors, executive committees, or other officials, and all documents and supporting materials relating to its transactions shall be maintained at its principal business office. *Provide, however,* That securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(i) *Preservation of records.* Preserve, for the periods hereinafter specified and in a manner that permits the immediate location thereof, such documents which are the basis for financial statements required by Section 120.303-2 (and of the accompanying independent public accountant's opinion),[4] and shall:

(1) Preserve permanently—

(i) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(2) Perserve for all least six years following final disposition of the related loan—

(i) All applications for financing

(ii) Lending, participation, and escrow agreements;

(iii) Financing instruments;

(iv) All other documents and supporting material relating to such loan, including correspondence.

Records and other documents referred to in this paragraph (i) may be preserved by reproduction: *Provided, however,* That said Lender shall cause a duplicate to be made on a current basis and stored separately from the original for the time required, and shall maintain at all times facilities for the projection and reproduction of the records.

(j) *Internal control.* Adopt a plan designed to safeguard its funds and other assets, to assure the reliability of its personnel, and the accuracy of its financial data.

(k) *Dual control.* Maintain dual control over disbursement of funds and withdrawal of securities. Disbursements shall be made only by means of checks or wire transfers authorized by the signatures of two or more officers covered by the said Lender's fidelity bond, except that checks in amount of $1,000 or less may be signed by one bonded officer. Two or more bonded officers, or one bonded officer and a bonded employee, shall be required to open safe deposit boxes or withdraw securities from safekeeping. The SBLC shall furnish to each depository bank, custodian, or entity providing safe deposit boxes, a certified copy of the resolution implementing the foregoing control procedures.

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[3] OMB approval No. 3245 0077 will be amended to include all unapproved SBLC reporting and recordkeeping requirements.

[4] OMB approval No. 3245-0077.

(l) *Fidelity insurance.* Maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. Section 6–13.

(m) *Change of ownership or control.* Report any proposed change of ownership or control to SBA. Any change of ownership or control is prohibited without prior written approval of SBA. Lender shall file request for approval of any such change with the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416. Pending such approval, Lender shall neither register the proposed new owners on its transfer books, nor permit them to participate in any manner in the conduct of its affairs. Change of ownership or control shall include:

(1) Any transfer of ten percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of ten (10) percent or more of any class of its stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that in fact transfers control (as defined in Section 121.3–2(a) of this chapter). If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or similar regulatory authority, copies of any document filed with such authority shall, at the same time, be transmitted to the SBA District Office serving the area in which the Lender's principal office is located.

(n) *Common control.* Not control, be controlled by or under common control with, another SBLC. Without prior written SBA approval, Lender shall not have any officer, director, or holder of ten (10) percent or more of its voting securities who is an officer, director or holder of ten percent or more of the voting securities either of another SBLC or of any entity which directly or indirectly controls or is under common control with another SBLC.

(o) *Management services.* Employ a manager only with SBA approval. An SBLC may employ a manager or advisor or may contract for managerial or advisory services, subject to prior written approval of SBA and subject to the supervision of its board of directors. The contract shall specify the services to be rendered to the SBLC and to its applicants and borrowers.

(p) *Prohibited financing.* Not make a loan to a small business concern which has received financing (or commitment therefore) from a small business investment company licensed by SBA which is its "Associate", as defined by section 120–2.

(q) *Borrowed Funds.* Without SBA prior written approval be capitalized with borrowed funds. Shareholders owning ten (10) percent or more of any class of its stock shall not use borrowed funds in purchasing such stock unless the net worth of such shareholders is at least twice the amount borrowed or unless such shareholders receive SBA's prior written approval of a lesser ratio.

§ 120.303 Reports to SBA by Small Business Lending Companies.

§ 120.303–1 General.

All reports required to be filed hereunder [2] shall be transmitted to the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416.

§ 120.303–2 Financial reports to SBA.

Within three months after the close of each fiscal year, every Small Business Lending Company shall submit a financial report prepared by an independent public accountant approved by SBA. When requested by SBA, interim financial reports shall also be submitted.

§ 120.303–3 Litigation reports.

When a Small Business Lending Company becomes a party to litigation or other legal or administrative proceedings, including any action commenced by it, or by a security holder thereof in a personal or derivative capacity, against an officer, director, or employee of the SBLC for alleged breach of official duty, it shall within ten (10) days thereof file a report with SBA describing the proceedings, identity of and the SBLC's relationship to other parties involved and, upon request, submit copies of the pleadings and other documents specified by SBA. Where such proceedings have been terminated by settlement or final judgment, the company shall within ten (10) days advise SBA of the terms thereof. The requirements of this paragraph are in addition to the requirements of SBA's Form 750 and 750B (Loan Guaranty Agreement).

§ 120.303–4 Reports to stockholders.

At the time any report is furnished to its stockholders (including any prospectus, letter, or other publication concerning the financial operations of said Lender or any of its borrowers) it shall file three copies of such report with SBA.

§ 120.303–5 Reports of changes.

A Small Business Lending Company shall, within thirty (30) calender days of the event in question, notify SBA in writing (using an SBA Form, where appropriate) of:

(a) *Name or address.* Any change in its name, address or telephone number;

(b) *Charter or bylaws.* Any change in its charter or bylaws, or of its officers or directors (to be accompanied by a statement of personal history);

(c) *Capitalization.* Any change in capitalization not otherwise required by Section 120.302–l(f) to be reported to SBA; or

(d) *Continued eligibility.* Any change in the circumstances affecting the validity of representations on the basis of which SBA determined that the Lender was an eligible participant.

(e) *Pledge of stock.* Whenever ten (10) percent or more of its stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve any transfer for which prior written approval of SBA is required under section 120.302–1(m), written notice of the terms of such transaction shall be furnished to SBA by the pledgor within thirty (30) calendar days following the date of the transaction.

§ 120.303–6 Miscellaneous reports.

Each Small Business Lending Company shall file with SBA such other reports as SBA may require from time to time by written directive.

§ 120.304 Examination of Small Business Lending Companies.

Each Small Business Lending Company is subject to periodic examinations by the Inspector General of SBA,[3] and the cost of such examination shall be assessed against it, except for the first examination. SBA may waive examination in the case of a company whose operations have been suspended, or which is in receivership. As a general rule, SBA will not assess examination fees for special examinations to obtain specific information. The fee structure for examinations is based on the company's assets as of the date of the latest audited financial statement submitted to

SBA before the examination. The rate table is as follows:

Total assets	Total fee	
	Base fee	Additional fee
$500,000 or less	$800	None.
$500,001 to $1,000,000	800	0.12 percent over $500,000.
$1,000,001 to $3,000,000	1,400	0.030 percent over $1,000,000.
$3,000,001 to $5,000,000	2,000	0.016 percent over $3,000,000
Over $5,000,001	2,320	0.006 percent over $5,000,000.

For example, an SBLC with total assets of $2,000,000 would pay an examination fee of $1700 ($1400+0.030 percent of $1,000,000). SBA may assess an additional fee of $250 per day required to complete an examination that is delayed or prolonged beyond twenty days if, in the judgment of SBA, such delay or prolongation is caused by the SBLC's failure to keep or maintain its books or records in the manner prescribed herein or by failure to cooperate in such examination.

§ 120.305 Suspension and revocation of eligibility to participate.

SBA reserves the right to revoke the eligibility of any Lender to participate with SBA or to suspend temporarily the eligibility of any Lender to participate with SBA, as a result of any violation of SBA regulations, any breach of any agreement with SBA, or any change of circumstances resulting in the Lender's inability to meet the operational requirements set forth herein; *Provided, however,* That such suspension or revocation shall not invalidate any guaranty previously entered into by SBA. Suspension or revocation shall be accomplished in the manner set forth below.

§ 120.305-1 Service of notice.

SBA shall serve upon a Lender notice of its intention to suspend or revoke its eligibility (Notice), which Notice shall set forth in detail the basis of SBA's intention to suspend or revoke the Lender's eligibility. The Notice shall be served upon the Lender by registered or certified mail, return receipt requested, addressed to the Lender's principal business office.

§ 120.305-2 Service of papers other than notice.

Papers other than Notice may be served upon a Lender as provided in § 120.305-1, or by service in the manner provided therein upon an attorney at law or other agent designated by the Lender.

§ 120.305-3 Service of papers upon SBA.

Papers in connection with the suspension or revocation [2] of a Lender's eligibility shall be served upon SBA by:

(a) Delivery to the Associate Administrator for Finance and Investment, SBA, 1441 L Street, NW., Washington, D.C. 20416; or

(b) Registered or certified mail, return receipt requested, addressed to the Associate Administrator for Finance and Investment at the above listed address.

§ 120.305-4 Effect of failure to respond.

The revocation or temporary suspension of a Lender's eligibility to participate shall become effective as of the close of business on the tenth calender day following the Lender's receipt of the Notice unless, prior to the expiration of the aforementioned time period, SBA shall receive notice of the Lender's intention to submit an answer.

§ 120.305-5 Answer.

A Lender that has notified SBA of its intention to file an answer shall be given twenty (20) additional days to submit to SBA such answer, including briefs and affidavits, showing why its eligibility should not be suspended or revoked. SBA may, in its sole discretion, extend the period permitted hereunder for the filing of an answer. Suspension or revocation of the eligibility of any Lender that has filed an answer shall not become effective pending final determination by SBA.[5]

§ 120.305-6 Initial decision.

SBA's Notice, together with the Lender's answer thereto, including briefs and affidavits, shall be referred by the Associate Administrator for Finance and Investment to an SBA employee designated by him or her (designee) for initial determination of any material issues of fact or of law. No person who has participated in the preparation or approval of the Notice to the Lender, or in any investigation or other fact-finding procedure in connection therewith shall participate in the preparation of the initial determination; and no person who has participated in the Lender's case, as aforesaid, shall communicate with, or otherwise attempt to influence the initial decision of the designee, who shall as soon as possible prepare proposed findings and conclusions and present them to the Associate Administrator for Finance and Investment.

§ 120.305-7 Final decision.

The decision of the Associate Administrator for Finance and Investment shall give appropriate weight to the recommended findings and conclusions of the designee and shall, without further proceedings, be the decision of SBA, subject to the Lender's right to appeal such decision to the Office of Hearings and Appeals, Section 101.2-2 of this Chapter.

§ 120.305-8 Effect of decision.

Suspension or revocation of a Lender's eligibility to participate with SBA shall become effective upon the Lender's receipt of notification of SBA's decision, but shall not relieve that Lender from its obligation to service any loan made in participation with SBA, nor any other obligation arising out of, or out the breach of, any agreement with SBA, or any regulation promulgated by SBA.

Appendix A—Memorandum of Understanding Between the Small Business Administration and the United States Department of Agriculture, Farmers Home Administration

Preamble

Pub. L. 94-305, which amended the Small Business Act, authorized the Small Business Administration (SBA) to assist small businesses engaged in farming and related activities under its existing programs. The legislation did not create any new SBA loan programs but merely included the agricultural industries among the industries eligible for SBA assistance. Neither did the legislation diminish, in any way, the responsibility of the Farmers Home Administration (FmHA) to meet the financial and other needs of farmers.

The joint memorandum reaffirms the mutual desire of SBA and FmHA to cooperate in the use of their respective loan making authorities to complement the activities of each other and, to the extent possible, to improve and expand the delivery of financial assistance to the agricultural production segment of the country; all with the least possible degree of overlapping, confusing or duplicating activities.

1. The FmHA administers its financial assistance programs through its State, District and County offices.

The SBA administers its financial assistance programs through its Regional, District and Branch offices.

FmHA State Directors and SBA District Directors will exchange addresses of their offices and identify the geographical areas served by each. This information will be available in all field offices of both agencies so applicants can be referred to the appropriate offices. These same oficials will make arrangents to inform the personnel within their jurisdictions of the other agency's current loan making and servicing policy so the referral advice given to potential applicants will be as accurate as possible.

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[5] Because this request involves nine or less respondents, it is not subject to OMB Review under this Act.

2. FmHA and SBA will establish a liaison at both the State Director/District Director level and the National level and periodically coordinate their activities to: (a) Exchange detailed information concerning loan programs, (b) define areas of cooperation between the two agencies, (c) assure that their programs are servicing the intended recipients, (d) establish new methods to serve the public more expeditiously, and (e) achieve maximum utilization of their respective resources.

The SBA and the FmHA agree that the interests of agricultural industries will be best served and that each agency will achieve better utilization of available resources through the following operating guidelines:

3. Potential *applicants* may contact either agency for an interview but may file an application with only one agency at a time. However, SBA will encourage those potential applicants that have been or are borrowing through the FmHA to continue their relationship with that agency.

4. Potential applicants meeting FmHA eligibility requirements will, at the time of initial interview, be advised by SBA to contact the appropriate FmHA County Office for assistance.

FmHA personnel will, at the time of initial interview, refer potential applicants who are not eligible for FmHA assistance, (such as corporations, partnerships or aliens, applying for certain loans) to SBA if they appear to be eligible for SBA assistance.

5. Potential applicants are not to be referred back and forth between FmHA and SBA. Representatives of each agency must be reasonably certain that the applicant and proposed use of proceeds may be eligible for assistance from the other agency before a referral is made.

6. Neither agency will refuse a loan request from an applicant who prefers to file with that agency.

7. Agricultural applicants filing for financial assistance from either agency will give written permission for FmHA and SBA to exchange whatever prior or current loan application and loan experience information, including appraisals, either may have in its files.

8. Applicants who are denied FmHA assistance for any reason, including lack of FmHA funding, may contact SBA for assistance.

9. Applicants filing for financial assistance from either agency must use the forms and procedures of the agency being requested to provide the assistance. An applicant who is denied assistance by either agency must use a new application to file with the other in accordance with that agency's forms and procedures.

10. Applicants should not have to apply to two Federal agencies to borrow funds for a single purpose. Therefore, if either FmHA or SBA can make the entire loan, the applicant should not be referred to the other agency for part of the funds needed. If either FmHA or SBA cannot make the entire loan, the applicant should be referred to the other agency. Joint funding with shared collateral between the agencies is not encouraged and should be used only as a last resort.

Description of Lending Policies

11. The FmHA makes guaranteed loans and insured loans. Guaranteed loans are loans where the lending institution advances the entire funds from its account and the FmHA guarantees repayment of a certain percentage of principal and interest. Insured loans are those made from one of FmHA's insurance funds.

The SBA makes guaranteed, immediate participation and direct loans. The Guaranteed loans are those where the lending institution advances the entire loan and the SBA agrees to purchase a percentage of the outstanding balance at time of default. Immediate participation loans are those where SBA disburses a percentage of the loan and the lender disburses the remainder from its account. Direct loans are made with SBA funds alone.

FmHA Loan Programs for Farmers

12. Operating Loans.

a. Eligibility. Be a citizen of the United States.

Be unable to obtain credit elsewhere (exclusive of SBA.)

Be the operator of a family farm.

Note.—A "family farm" is defined as "one that will produce agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence; one that will provide substantial income by itself and which together with any other dependable income will enable the family to pay necessary family and other operating expenses, including maintenance of essential chattel and real property and pay debts; and one for which the operator and his immediate family provide the management and are actively engaged in the operation by providing a major amount of the farm and any non-farm enterprise labor. A reasonable amount of hired labor may be used during seasonal peakload periods."

b. Loan purposes. Finance livestock, machinery and operating expenses.

Refinance debts.

Finance non-farm enterprises.

c. Terms. Up to seven years with five-year renewal.

Interest rate based on the cost of Treasury borrowings.

d. Loan limit—$50,000.

13. Farm Ownership Loans.

a. Eligibility. Be a citizen of the United States.

Be unable to obtain the credit from other sources (exclusive of SBA).

Be the owner-operator of a family farm after loan is closed.

b. Loan purpose. Buy land.

Construct and repair farm buildings.

Develop land and pollution control measures.

Develop farm irrigation facilities and domestic water supply.

Refinance debt.

Finance non-farm enterprise.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. $100,000.

Maximum debt on security with other credit is $225,000.

14. Soil and Water Loans.

a. Eligibility. Be unable to obtain the credit elsewhere (exclusive of SBA).

Be a farm tenant, owner, partnership or corporation engaged in farming.

b. Loan purposes. Develop land and pollution control practices.

Water development.

Purposes related to soil and water conservation.

c. Terms. Up to 40 years.

Five (5) percent interest.

d. Loan limits. $100,000.

Maximum debt on security with other credit is $225,000.

15. Recreation Loans.

a. Eligibility. Be a citizen of the United States.

Be unable to obtain the credit elsewhere (exclusive of SBA).

Be an individual engaged in farming when the loan is applied for.

b. Loan purposes. Convert all or part of the farm to outdoor recreation enterprises.

Acquire land and easements for recreational uses.

Refinance debts.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. $100,000.

Maximum debt on security with other credit is $225,000.

16. Rural Housing.

a. Eligible. Be a U.S. citizen or permanent resident.

Be unable to obtain credit elsewhere (exclusive of SBA).

Be a farmowner without decent, safe and sanitary housing for his own use or the use of tenants, sharecroppers, farm laborers or farm manager.

b. Loan purpose. Buy, build or repair dwellings of modest size, design and cost.

c. Terms, up to 33 years.

Interest rate established periodically based on housing money market rate.

d. Loan limit. The cost of providing modest, decent, safe and sanitary housing.

17. Business and Industry Loans.

a. Eligibility. If an individual, a U.S. Citizen.

A cooperative, corporation, partnership, trust, Indian tribe, or other legal entity.

b. Loan purposes. Pollution control measures.

c. Terms. Up to 30 years.

Interest rate is negotiated between lender and applicant.

d. Loan limits. No statutory dollar limit; determined by cost of project and credit factors.

18. Grazing Association Loans.

a. Eligibility. Be a nonprofit association.

Be unable to obtain credit elsewhere (exclusive of SBA).

Provide seasonal grazing for association members.

b. Loan purposes. Acquire land for grazing.

Develop land for grazing.

Pollution control measures incidental to other authorized purposes.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. No statutory or regulatory dollar limit—determined by value of security.

19. Irrigation, drainage and soil and water association loans.

a. Eligibility. Be an association composed primarily of farmers and other rural residents.

Be unable to obtain credit elsewhere (exclusive of SBA).

Provide a facility to serve farmers and other rural residents within the service area.

b. Loan purpose. Install or improve drainage facilities.

Install, repair or enlarge irrigation facilities.

Install or improve soil conservation and water control facilities including pollution abatement.

Special-purpose machinery and equipment.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. No statutory or regulatory dollar limit-determined by value of security.

Note.—In addition to the eligibility requirements for specific programs listed above, the following eligibility requirements must be met by all FmHA borrowers:

Have the experience to carry out the proposed operation to be financed.

Have the ambition to carry out the proposed operations.

Have the management ability to carry out the obligations required in connection with the loan.

SBA Loan Programs for Agricultural Enterprises

In addition to the specific eligibility factors listed under the following SBA programs, a borrower must be of good character, be an eligible small business under SBA rules and regulations (13 CFR Parts 121 and 122), be organized for profit, and be able to evidence reasonable assurance of ability to repay the loan from the profits of the business. Can be proprietorship, partnership or corporate business organization, and need not be a citizen of the U.S.A.

20. Regular Business Loans—7(a).

a. Eligibility. Be eligible under SBA rules and regulations (13 CFR Part 120).

Be unable to obtain the credit from non-Federal sources thrbugh utilization of personal resources or otherwise.

b. Loan purpose. Purchase of land and buildings and land improvements (fencing, irrigation systems, etc.) including pollution control facilities essential to the small business.

Construction, renovation or improvement (including water systems of (i) farm building other than residential buildings or (ii) residential buildings essential to the business if not available from other Federal sources.

Purchase of farm machinery and equipment (appliances and other household contents used for residential purposes are not eligible).

Operating expenses directly related to the farming operation excluding personal or family living expenses.

Refinancing of debt directly related to the farming operation, but excluding personal or family debt.

c. Terms. The interest rate on direct and SBA share of immediate participation loans is based on a legislative formula.

The lender's interest rate on immediate participation and guaranty participation loans is established by the lending institution, within SBA policy, but cannot exceed SBA's maximum which is periodically published in the **Federal Register**.

Maturity of the loans will generally not exceed one year for annual seed, feed, fertilizer and other annual needs, 7 years for that portion of the loan used for working capital 10 years for that portion of the loan used for livestock and/or farm machinery and equipment, and 20 years for that portion of the loan used for acquisition or construction of real estate. However, all borrowers are expected to repay the loan as soon as possible and these maximum maturities are not automatically available in every case.

SBA loans are generally repaid in even monthly payments of principal and interest. However, quarterly, semiannual, annual or seasonal payments can be arranged when necessary.

d. Loan limits. Direct loans have an administrative limit of $150,000.

Immediate participation loans have an administrative limit of $150,000, SBA share. (Both the direct and immediate participation administrative limits can be waived in exceptional situations by SBA's Regional Directors.)

Guaranty participation loans have a limit of $350,000, SBA share, except that in exceptional situations the SBA share can be increased to $500,000.

The limits on a borrower's total indebtedness to SBA on all outstanding loans is (i) the aggregate of direct and the SBA share of immediate participation loans cannot exceed $350,000 and (ii) the aggregate of direct and the SBA share of immediate participation and guaranty participation loans cannot exceed $500,000 at any one time.

21. Economic Opportunity Loans.

a. Eligibility. Must be economically or socially disadvantaged.

Meet the eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 119 and 120).

b. Loan purposes. Can be used for the same purposes as Regular Business Loans.

c. Terms. Interest on direct and SBA share of immediate participation loans is subject to a legislative formula, and is subject to change quarterly.

The lender's interest on immediate and guaranty participation is the same as for regular business loans.

Maturities of these loans are generally restricted to 10 years for working capital other than annual operating expenses and farm machinery and equipment and to the legislative limit of 15 years for real estate purposes. However, no borrower will receive a longer maturity than is necessary for the loan to be repaid from the business income.

d. Loan limits. These loans cannot exceed $100,000 SBA share, whether direct, immediate participation or guaranty.

22. Water Pollution Control Loans.

a. Eligibility. Meet eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 120 and 123).

Must have a statement from EPA of the necessity and adequacy.

Must show evidence of substantial economic injury.

b. Loan proposes. Only to make modifications and changes necessary to meet the Federal standards established under the Federal Water Pollution Control Act or State standards established in compliance with the Federal Water Pollution Control Act.

c. Terms. Interest rate same as for Regular Business Loans.

Maturity not to exceed 30 years.

d. Loan Limits. No dollar limit.

23. Other substantial Economic Injury Programs.

The SBA has loan authority to aid small businesses that suffer substantial economic injury as a result of a Federal action or Federally directed action, such as Occupational Health and Safety regulations, Air Pollution Control regulations or being displaced by a Federally financed construction project. These progams are more completely discribed in 13 CFR Part 123.

Administrative Guidelines

24. The services of FmHA and SBA to lenders and applicants are, by mutual agreement, those that each agency would provide any eligible applicant in the normal course of business and there will be no reimbursement by either agency to the other for such services.

25. The National Office of FmHA and the Central Office of SBA will cooperate with each other in counseling their field offices and in resolving problems in specific cases.

26. This Memorandum of Understanding in no way alters or supersedes the existing Memorandums between the two agencies covering their disaster (emergency) loan authority and FmHA's Business and Industrial Loan Program.

27. This Agreement may be amended at any time by written agreement of both parties.

28. This agreement shall take effect upon the date of execution thereof.

Dated: September 2, 1976.

Mitchell P. Kobelinski.

Administrator, SBA.

Dated: September 20, 1976.

Frank B. Elliott.

Administrator, FmHA.

PART 122—BUSINESS LOANS

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Subpart A—General Provisions

§ 122.1 Statutory provisions.

The authority for these loans is contained in Section 7(a) of the Small Business Act, as amended (15 U.S.C. 636(a)). See also 15 U.S.C. 636 (Note).

§ 122.3 Savings clause.

§ 122.3–1 Prior rules.

Financial assistance granted before (the effective date of this revision) shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such financial assistance granted pursuant to contractual terms no longer in use and prior regulations no longer in effect.

§ 122.3–2 Effect of invalidity.

If any section or part of a section of these regulations should be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

§ 122.4 Applicability of other parts.

The Loan Policy and definitions of Part 120 of this Chapter apply to the loans authorized in this Part. Also applicable are Parts 112, 113, 116 and 117 when adopted). With respect to any financial assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin. Part 113 prohibits discrimination based on race, color, religion, sex, marital status, handicap or national origin with respect to all recipients of SBA financial assistance. Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA financial assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA financial assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. When promulgated, Part 117 will cover the prohibition of discrimination based on age.

§ 122.5 Application.

§ 122.5–1 Other financing.

Except as otherwise specified, before applying for SBA financial assistance, an applicant shall endeavor to obtain financing from other non-Federal sources, including (but not limited to) other resources of its owners, and private lending sources. If an institution is unable or unwilling to make the loan, the applicant must then determine if the Lender would make the loan in participation with SBA as a guaranty or an immediate participation loan. (If a Lending Institution will make a loan in participation with SBA, the Lender, not the applicant, shall contact SBA.) SBA shall require [1] satisfactory evidence concerning the Lending Institution(s) refusing to make, or to participate in, the loan. See §§ 120.3–4 and 120.103–1 of this Chapter.

§ 122.5–2 Content of application.

An applicant for SBA financial assistance in any form shall furnish [1] a history of the business, the nature of the business, the amount and purpose(s) of the loan, the collateral offered for the loan, and current financial statements, together with financial statements (or tax returns if appropriate) for the past three years. Annual financial statements shall be required from borrower thereafter [1], but SBA may also require more frequent reports [1]. In addition, personal financial statements may be required, as applicable, from a proprietor, general partners, officers, directors, guarantors and holders of twenty percent or more of the equity of the applicant. Financial statements from non-stockholder directors or officers may be waived by SBA.

§ 122.5–3 Direct assistance.

Subject to availability of funds, an applicant unable to obtain a loan or loan participation from a private lender (See § 120.3 of this Chapter) may apply to SBA for a direct loan on a form provided by SBA [1]. Such application shall be made to the SBA office serving the location of the proposed or existing business, but counseling may be obtained from any SBA office. (See § 101.3–1 of this Chapter for the addresses of all SBA offices.)

§ 122.5–4 Approval or decline.

Applicants will be given notice of approval or decline by either the Lender (for a participation/guaranty loan) or by SBA (for a direct loan). The decline notification will include the reason(s) for the decline.

§ 122.5–5 Loan authorization.

If SBA approves a loan request, a loan authorization is issued. The authorization states the terms and conditions [1] on which SBA is willing to make, participate in or guarantee a loan but it is not a contract to loan money.

§ 122.6 Loan terms.

§ 122.6–1 Maturities.

(a) Except as otherwise specified, a loan, including extensions and renewals, may be made for a period not to exceed twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting or expanding facilities may have a maturity of twenty-five years plus such additional period as may be required to complete such construction, conversion or expansion.

(b) The maximum maturity shall not be available for every loan. The maturity of each loan will be the shortest feasible term commensurate with the repayment ability of the borrower and shall not exceed ten years, except when the loan finances real estate or the construction or the acquisition of equipment with a useful life exceeding ten years. Amortization will generally require equal monthly payments of principal and interest but may be adjusted to accommodate the cash flow of the borrower. In addition, SBA may extend the maturity of a loan before October 1, 1985 pursuant to Section 1902 of Pub. L. 97–35, approved August 13, 1981, conditioned in the case of a participation upon the concurrence of the participant, the holder in due course (if any) and the borrower, or refinance such loan with an extension of its term. The aggregate term of such extended or refinance loan shall not exceed the maximum maturity permitted by this paragraph and shall be repaid in equal installments of principal and interest. SBA may also extend the maturity of or renew a loan pursuant to Section 7(c)(1) of the Act (including any loan transferred to SBA pursuant to Reorganization Plans No. 2 of 1954 and No. 1 of 1957) for additional periods not to exceed ten years beyond their original maturity, limited to such periods of time as appear necessary to avoid forced liquidation of loans. Extensions are granted under the preceding sentence only when it appears that no other course will result in a greater or earlier recovery of the indebtedness.

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[1] The reporting and recording requirements of which are subject to OMB approval)

§ 122.6–2 Grace periods.

SBA may defer initial payments for a grace period, and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of the borrower.

§ 122.6–3 Moratorium.

SBA may suspend or undertake borrower's obligations to pay principal and interest in certain circumstances and on certain conditions. See Part 131 of this Chapter.

§ 122.7 Loan amounts.

Limits on loan amounts applying to the combined aggregate amount of all loans to a given borrower under this Part, including such borrower's affiliates, as defined in § 121.3–2(a) of this Chapter.

§ 122.7–1 Direct loans.

The statutory limit for direct loans is $350,000. SBA has established an administrative limit of $150,000. Regional Administrators may authorize, in writing, the acceptance of an application that exceeds the administrative but not the statutory limit.

§ 122.7–2 Immediate participation.

The statutory limit on SBA's portion of an immediate participation loan is the lesser of 90 percent of the loan, or $350,000. The administrative limit, however, is the lesser of 75% of the loan, or $150,000. Regional Administrators may allow exceptions to the administrative dollar limit, up to $350,000. District directors may make exceptions to the percentage limit if the participant's legal lending limit precludes a 25 percent exposure. In such cases the Lender will be required to participate up to its legal lending limit, but in no event less than 10 percent.

§ 122.7–3 Guaranty loans.

SBA's exposure on guaranty loans shall not exceed $500,000 in any circumstance. The percentage of the SBA guaranty shall not exceed the following:

(a) *Guaranty of loans not to exceed $100,000.* SBA shall guarantee at least 90 percent of a loan so long as the total amount outstanding (including the loan under consideration) does not exceed $100,000, except as permitted under paragraph (c) below.

(b) *Guaranty of loans in excess of $100,000.* SBA shall guarantee no more than 90 percent and no less than 70 percent of loans in excess of $100,000 so long as the total amount approved and outstanding does not increase SBA's exposure beyond $500,000, subject to paragraph (c) below. Decisions to guarantee such loans in amounts between 70 percent and 90 percent shall be made on a case-by-case basis. The percentage guaranteed shall not influence loan approvals. A Lender's request for less than a 70 percent participation by SBA shall not be approved unless a lesser percentage is necessary due to the statutory $500,000 ceiling on SBA exposure.

(c) *Refinancing.* SBA shall guarantee no more than 80 percent of that portion of a loan used to refinance a debt owed to a bank or other lending institution. Therefore the blended guaranty percentage of the total loan will reflect the respective percentages of guaranty for the refinancing and the remaining portion of the loan. Until October 1, 1985, SBA shall not refuse to guarantee a loan solely because such loan will be used to refinance all or any part of the outstanding indebtedness of a small concern unless:

(1) The creditor is likely to suffer a loss if the loan is not refinanced and SBA is likely to sustain part or all of any loss which would have otherwise been sustained by the creditor, or

(2) SBA determines that refinancing the debt will not benefit the small concern.

§ 122.8 Interest rate.

§ 122.8–1 Direct loans.

The rate of interest on direct loans and SBA's share of immediate participation loans is determined by a statutory formula based on the cost of money to the Federal government. No later than the 10th day of each calendar quarter (Jan. 10, April 10, July 10, and Oct. 10) SBA shall publish such rate in the **Federal Register** for such quarter. (The rate in effect at any time is available from the local SBA offices.)

§ 122.8–2 Immediate participation.

The maximum rate a Participating Lender shall charge on its share of an immediate participation loan shall be the lesser of: (a) The rate permitted under the applicable usury statute, or (b) one percent less than the maximum rate permitted by SBA policy for a guaranteed loan of the same maturity, published from time to time in the **Federal Register** and available from local SBA offices.

§ 122.8–3 Guaranty loans.

A Participating Lender may establish an interest rate that is legal and reasonable. SBA publishes from time to time in the **Federal Register** the maximum rate permitted. Such rate information is available from local SBA offices.

§ 122.8–4 Variable (fluctuating) rate.

Subject to the approval of SBA, a Participating Lender may utilize a fluctuating rate of interest. SBA's maximum allowable rates apply only to the initial rate. SBA's approval of the use of a variable interest rate shall be subject to the following conditions:

(a) *Frequency.* The fluctuation may occur no more frequently than monthly.

(b) *Commencement of fluctuation.* Fluctuation periods may commence on the first business day of the month following full disbursement.

(c) *Basis for fluctuation.* The note rate must rise and fall on the same basis. Where a participant establishes a floor and ceiling for the fluctuating rate, the difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.

(d) *Base rate.* The base rate shall be the low New York prime rate in effect on the first business day of the month, as printed in a national financial newspaper published each business day.

(e) *Maturities under 7 years.* For loans with maturities under seven years, the maximum interest rate shall not exceed two and one-quarter (2¼) percentage points over the base rate.

(f) *Maturities of 7 years or more.* For loans with maturities of seven or more years, the maximum interest rate shall not exceed two and three-quarters (2¾) percentage points over the base rate.

(g) *Amortization.* Amortization shall require equal monthly payments combining principal and interest, and may be computed on the basis of an interest rate up to three percentage points above the interest rate prevailing at the date of the note to insure that future payments will be sufficient in the event of a rise in the base rate. With SBA prior approval, unequal payments of fixed payments of principal plus interest may be agreed upon on a case-by-case basis.

Subpart B—Special Purpose Loans

§ 122.50 Small general contractors.

§ 122.50-1 Policy.

The Act authorizes loans to contractors to finance residential or commercial construction or rehabilitation provided that loan funds are not used primarily for the acquisition of land. The terms "construction" and "rehabilitation" as used in this section apply only to work done on-site, construction and rehabilitation of the structure, above or underground utility connections and landscaping. Not more than five (5) percent of the loan proceeds can be used for community improvements that benefit more than the structure financed with the SBA loan. Examples include streets, curbs, open spaces and similar improvements. These loans can be used for individual structures only: *Provided, however,* That an SBA loan may be for more than one individual structure if each structure is separately identified, the loan proceeds for each structure are identified separately, and the amount that must be paid on the loan to effect transfer of clear title on each structure as sold is shown. Such loans are not prohibited by § 120.102-8 of this Chapter. These loans may be available under the following conditions:

§ 122.50-2 Demonstrated ability.

The applicant shall be a construction contractor or homebuilder with a demonstrated [7] managerial and technical ability in profitable construction or rehabilitation projects of a comparable type and size. Joint ventures or other organizations that have no history or are organized only for a specified project are not eligible. A portion of the work may be subcontracted, but on subcontracts in excess of $25,000 a one-hundred percent payment and performance bond may be required.

§ 122.50-3 Maturity.

The maturity of the loan shall not exceed thirty-six months plus the estimated time to complete the construction or rehabilitation.

§ 122.50-4 Purpose of loan.

Loan proceeds shall be used solely for the direct expense of acquisition, immediate construction and/or prompt significant rehabilitation of residential or commercial structures for sale. For this purpose "significant" rehabilitation means rehabilitation costing more than one-third (⅓) of the purchase price or fair market value at time of loan application. Not more than twenty (20) percent of the loan proceeds shall be used for the acquisition of land.[7]

§ 122.50-5 Investment property prohibited.

Loan funds shall not be used to purchase vacant land for possible future construction or to operate or hold rental property pending future rehabilitation. Loan funds shall not replace or free applicant's funds for these purposes.

§ 122.50-6 Rental.

The constructed or rehabilitated structures shall not be rented, in whole or in part, pending sale, without SBA's prior written approval.

§ 122.50-7 Sale of entire property.

Loan proceeds shall not be used as a construction loan to be repaid with permanent financing if the applicant or its affiliate retain title. The sale of the property must be both a beneficial and a legal change of ownership in the title to the property.

§ 122.50-8 SBA's lien.

SBA shall have not less than a second lien on the property as collateral. All prior liens shall permit the release of individual parcels upon payment of a predetermined amount (so the buyer of each parcel can get a clear title) and the sum of all liens, including SBA's, shall not exceed eighty (80) percent of the fair market value of the completed structure.

§ 122.50-9 Application.

The application shall include three letters in addition to the regular requirements of § 122.005-2. (A Participating Lender may provide the necessary written assurance instead of three such separate letters).[7] The three letters are: (a) From a mortgage lender doing business in the project area advising whether permanent mortgage money is normally available to qualified purchasers of comparable real estate at the project location; (b) from an independent, licensed real estate broker with at least three years experience in the project area advising whether a market exists for the proposed structure and whether the property's monetary and architectural values are compatible with other structures in the neighborhood; (c) from an independent licensed architect, appraiser or engineer who shall agree to make all construction inspections and certifications needed to support interim disbursements. (Insepction fees may be paid from loan proceeds.)

§ 122.51 Handicapped.

§ 122.51-1 Policy.

The Act authorizes loans to assist a public or private organization for the handicapped or to assist a handicapped individual in establishing, acquiring or operating a small concern.

§ 122.51-2 Definitions.

(a) *HAL-1* is the designation of a loan to a nonprofit public or private organization for the employment of the handicapped.

(b) *HAL-2* is the designation of a loan to a handicapped individual or a small business which is wholly owned by a handicapped individual(s). Such loans shall comply with the requirements of Parts 120 and 121 of this Chapter, and direct loans are subject to the availability of funds.

(c) *Organization for the Handicapped* means one which:

(1) Is organized under the laws of the United States or any State, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and which is operated in the interest of handicapped individuals;

(2) Complies with all occupational health and safety standards prescribed by the Secretary of Labor; and,

(3) Employs in the production of commodities and the provision of services during any fiscal year in which it received financial assistance under this subsection, handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(d) *Handicapped individual* means a person who has a physical, mental or emotional impairment, defect, ailment, disease or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable. For HAL-2 purposes a partnership or corporation must be 100 percent owned by handicapped individuals.

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[7] Possible documentation requirement subject to OMB approval.

(e) *Supportive services* refers to expenses incurred by HAL–1 organizations to subsidize wages of low producers, health and rehabilitation services, management, training, education and housing of handicapped workers and other such uses.

§ 122.51–3 Interest rate.

Direct loans and SBA's share of immediate participation loans are subject to an administrative limit of $150,000 and shall bear interest at a rate of three (3) percent. See subsection 122.008–3 for the interest rate on guaranty loans.

§ 122.51–4 Repayment ability.

(a) *Reasonable doubt.* In the application of section 120.103–3 of this Chapter to loans under this section 122.51, reasonable doubt shall be resolved in favor of the applicant.

(b) *Capability and experience.* HAL–1 applicants must submit evidence[1] that the organization has the capability and experience to perform successfully but evidence of repayment ability from the earnings of the organization is not necessary provided other sources of repayment are reasonably established.

(c) *Collateral.*—(1) *Assignment of proceeds.* Loans to finance Federal Government contracts may require an assignment of the proceeds of the contracts.

(2) *Personal guarantees.* Personal guarantees of the officers and directors of a HAL–1 organization shall not be required but may be accepted if offered.

§ 122.51–5 Application.

(a) *Contents of HAL–1 application.* A HAL–1 applicant shall submit [2] copies of by-laws, incorporation papers, Internal Revenue Service certification of tax-exempt status, recognition/approval by a State Vocational Rehabilitation Agency or other evidence that it meets the definition of a HAL–1 organization, including the percentage of man-hours performed by handicapped persons. The applicant shall also show that private credit is not available and that funds from other Government programs are not being duplicated by SBA and that contributions from foundations, State fund raising activities (including tax assessments) and other traditional funding will not be diminished as a result of an SBA loan. Notwithstanding § 120.102–10 of this Chapter, a HAL–1 organization shall not be considered to be an associate of the lender solely because one or more of the organization's officers or directors are also officers, directors or holders of 10 or more percent of the stock of the lender: *Provided, however,* That such person shall have no part in the lender's decision to participate in the loan.

(b) *Contents of HAL–2 application.* A HAL–2 applicant shall submit [2] written information from a physician, psychiatrist or other qualified professional as to the permanent nature of the handicap and the limitations it places on the applicant.

§ 122.51–6 Use of proceeds.

(a) *HAL–1.* HAL–1 loan proceeds are to be used, primarily, for direct labor and materials expenses. Loan funds cannot be used for supportive services. Further, the use of SBA funds to purchase or construct facilities is prohibited when construction grants and mortgage assistance are available from another Federal source.

(b) *HAL–2.* HAL–2 funds may be used to effect a change of ownership without regard to § 120.102–6 of this Chapter.

§ 122.52 Low-income areas.

The Act authorizes loans to small concerns with particular emphasis on the establishment, preservation and strengthening of small concerns (a) located in urban and rural areas with high proportions of unemployed (as designated by the Department of Labor) or low-income individuals or (b) owned by low-income individuals (income is not adequate to satisfy basic family needs). Partnerships and corporations must be over 50 percent owned by low-income individuals to qualify under the low-income criteria. Program requirements and credit standards outlined in other sections of this regulation will not be relaxed to accommodate loan applicants qualifying under this subpart.

§ 122.53 Energy conservation.

§ 122.53–1 Policy.

The Act authorizes loans to assist a small concern to design architecturally or to engineer, manufacture, distribute, market, install or service energy measures designed to conserve the Nation's energy resources. See Table 1 for eligible energy measures.

§ 122.53–2 Energy measures defined.

Energy measures include:

(a) Solar thermal energy equipment which is either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive or radiant energy transfer or some combination of these types;

(b) Photovoltaic cells and related equipment;

(c) A product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy (see Table 1) or which the Administrator determines to be consistent with the intent of this subsection;

(d) Equipment the primary purpose of which is the production of energy from wood, biological waste, grain or other biomass source of energy;

(e) Equipment the primary purpose of which is industrial cogeneration of energy, district heating or production of energy from industrial waste;

(f) Hydroelectric power equipment;

(g) Wind energy conversion equipment; and

(h) Engineering, architectual, consulting or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraphs (a) through (g).

§ 122.53–3 Use of proceeds.

Loan proceeds may be used to acquire vacant land immediately necessary for the construction of a plant and for buildings, machinery, equipment, furniture, fixtures, facilities, supplies or materials for eligible energy measures. Working capital loans shall be made only to the extent it is demonstrated to SBA's satisfaction that the proceeds will be used for entry into or expansion in the area defined above as energy measures. The applicant may be a new business or an existing business that is expanding. Loan funds shall not be used primarily for research and development: *Provided, however,* That up to 30 percent of the loan proceeds may be used for further development of a product or service already on the market or where the remaining development of a product or service may be completed under a business plan that provides reasonable assurance of repayment.

§ 122.53–4 Repayment ability.

Recognizing that greater risk may be associated with these energy measures, the status of these loans need not be as sound as for other loans authorized under this Part. In order to determine "sound value", SBA will consider such factors as quality of the product or service, technical qualifications of the applicant's management and employees, sales projections and the applicant's financial status.

§ 122.54 Loans for exporters.

§ 122.54-1 Policy.

The Act authorizes a revolving line of credit for export purposes to enable small concerns to develop foreign markets and for pre-export financing. No such credit shall be extended for a period or periods exceeding eighteen months.

§ 122.54-2 Applicant eligibility.

Applicants for an Export Revolving Line of Credit (ERLC), in addition to meeting other eligibility criteria (see §§ 120.101 and 120.103-2(g) of this Chapter), shall have been in operation for twelve (12) full months before filing an application.

§ 122.54-3 Use of proceeds.

Proceeds of an ERLC loan can be used only to penetrate or develop a foreign market and to finance labor and materials for pre-export production. Professional export marketing advice or services, foreign business travel or participation in trade shows are examples of eligible expenses to develop or penetrate a foreign market. The cost of acquiring or renting office or commercial space in a foreign country, equipping such an office, or wages for a staff in such an office are examples of ineligible uses of proceeds.

§ 122.54-4 Fees.

In addition to other allowable fees (see § 120.104-2(a)(3)), the participant in an ERLC loan may charge the borrower a commitment fee equal to one-fourth (¼) of one (1) percent of the loan or $200, whichever is greater. This fee shall not be charged until the SBA has approved the lender's request for guaranty.

§ 122.54-5 Collateral.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for these loans.

§ 122.54-6 Additional loan conditions.

(a) *Cash flow projection.* All ERLC loan applications shall include a projected cash flow chart for the term of the loan that supports the need for the funds and that evidences repayment ability. The projection must cover the applicant's total operation and clearly identify the use(s) of the loan proceeds and source(s) of repayment.

(b) *Monthly progress reports.*[3] The ERLC borrowers must submit monthly progress reports to the Lender and explain discrepancies between the projected cash flow and the progress report.

§ 122.55 Qualified employee trust.

§ 122.55-1 Policy.

The Act authorizes guaranty loans to:

(a) *Finance growth.* A qualified or other employee trust which may be treated as a qualified employee trust (see § 122.55-5 below), that represents at least 51 percent of the employees and that is maintained by a continuing small concern which is seeking to finance its corporate growth through the use of a loan from the trust; or

(b) *Change of ownership.* A qualified or other employee trust representing at least 51 percent of the employees, to purchase at least 51 percent of the voting control of a business operated for profit which is (1) a small concern or (2) a business which is other than small and controlled by another person or entity if, after the purchase is accomplished, such business would be a small concern. Such purchase shall be deemed completed when at least 51 percent of the total voting stock of the employer concern is registered in the name of the qualifying employee trust. In these cases the trustee must agree, without limitation, that

(i) Subsequent to such purchase, the small business will be a corporation which

(A) Is a small concern pursuant to Part 121 of this Chapter, and

(B) Is not under the effective control (as defined in Part 121 of this Chapter), directly or indirectly, of the seller(s), and

(ii) Not later than the date the guaranteed loan is repaid (or as soon thereafter as is consistent with the requirements of the Internal Revenue Code) at least 51 percent of the total voting stock of the small concern shall be allocated to the accounts of at least 51 percent of the employees,

(iii) There will be annual reviews by the plan participants or by the trustee of the role of the employees in the management of such concern,

(iv) There will be adequate management to assure management expertise and continuity, and

(v) The trustee shall report annually to the lender with respect to the requirements of this section.

§ 122.55-2 Definitions.

The following definitions do not amend or modify the definitions of the Internal Revenue Code, or the Treasury or Labor Department definitions in their respective regulations. As used in this Subpart:

Employee means, in the case of a loan not involving a change of majority ownership of the employer concern's voting stock, every person who has been on the payroll of the employer concern as a permanent, full-time employee in any capacity for at least 30 days prior to the date SBA receives the application for a loan guarantee. In case of a loan guarantee to an employee trust to effect a change of the majority ownership (at least 51 percent) of the employer concern, employee means every person on the payroll of such concern as a permanent, full-time employee in any capacity at the time such majority ownership is acquired. (Any person who is employed for 1,000 or more hours over 12 consecutive months is considered a full-time, permanent employee.)

Employee organization means an entity representing at least 51 percent of the employees of the employer concern and which maintains a trust treated as an employee trust.

Employee trust means a qualified employee trust or a trust (described in Section 122.55-5(b)) maintained by an employee organization.

Employer concern means the present, or prospective, corporate business concern with respect to which an employee trust is receiving an SBA loan guarantee and which qualifies (or will qualify) as small under Part 121 of this Chapter.

ESOP means an employee stock ownership plan as defined in the Internal Revenue Code.

Qualified employee trust means, with respect to a small business concern, a trust which forms a part of an ESOP (or a part of an employee benefit plan that is treated as an ESOP for SBA loan guarantee purposes):

(a) Which is maintained by such concern,

(b) Which represents at least 51 percent of the employees;

(c) Which provides that each plan participant is entitled to direct the plan how to vote the qualifying employer securities which are or will be (as the SBA guarantee loan is repaid and encumbrances are removed) allocated to the account of such participant with respect to corporate matters which by law, charter or by-laws must be decided by a majority vote of outstanding qualifying employer securities voted; and

(d) Which the Internal Revenue Service has qualified in writing or which has been exempted in writing from appropriate Labor Department regulations governing Employee Benefit Plans under ERISA.

Qualifying employer securities means, for SBA purposes, an employer security which is (a) stock or otherwise an equity security or (b) a bond, debenture, note, certificate or other evidence of indebtedness which is described in the ESOP provisions of the Internal Revenue Code. Warrants and options are excluded.

§ 122.55–3 Amount of loan.

The $500,000 statutory limit which SBA may guarantee applies to the combined total of all obligations of the qualified employee trust, the employer concern and all its other affiliates in the aggregate.

§ 122.55–4 Exceptions to other SBA regulations.

(a) *Guaranty loan only.* SBA's assistance is available only as a loan guaranty.

(b) *Repayment ability.* In determining whether a reasonable assurance of repayment exists,

(1) SBA shall consider the earnings history and projected future earnings of the employer concern together with its ability to make the necessary payments to the trust. The trustee must document in the application that funds generated from the employee trust will enable the small business concern to overcome present competitive difficulties, if any, which may have an adverse impact on the small concern's prospects of success, including (without limitation) plant obsolescence or the need for regulatory compliance.

(2) SBA shall not consider the personal assets of the employee-owners who are members of the employee organization. However, SBA must have evidence that financial assistance is not otherwise available by utilizing the personal resources and credit of the principals of the employer concern who are not participating in the employee organization, the resources and credit of the employer concern or the sale of those employer assets that are not essential to the operation of the business or its healthy growth.

(c) *Experience or assets of employees.* The individual personal assets of the employee-owners shall not be used as criteria in determining whether to guarantee a loan: *Provided, however,* That SBA may consider business experience, where certain employee-owners assume managerial responsibilities. The small concern must maintain an adequate managerial capacity which may be derived from contracts with employee-owners, or with others. An employee trust relying on the expertise of other than employee-owners shall endeavor to train employee-owners for managerial responsibilities in order to accelerate the assumption of such responsibilities by employee-owners no later than the date the guaranteed loan is repaid.

§ 122.55–5 Eligibility.

(a) *Qualified employee trust.* A qualified employee trust shall be eligible for an SBA loan guarantee to assist an employer concern if the trustee of the trust enters into an agreement with SBA which is binding on both the trust and the small concern and which provides that:

(1) The SBA guaranteed loan shall be used solely for the purchase of qualifying employer securities;

(2) The employer concern agrees to use funds received from the employee trust solely for the business purposes for which the loan was guaranteed;

(3) The employer concern agrees to provide the funds necessary for the trust to repay the loan principal plus interest;

(4) The property of the employer concern shall be available as security for repayment of the loan;

(5) All unencumbered qualifying employer securities acquired by the trust using SBA guarantee loan funds shall be allocated to the accounts of the plan participants who are entitled to share in the allocation;

(6) Each plan participant has a nonforfeitable (vested) right, not later than the date such loan is repaid, to all such allocated qualifying employer securities which are acquired with SBA guaranty loan funds;

(7) The employer concern agrees that an employee organization owning less than 51 percent of the voting control will have a 90 day "right of first refusal" to acquire the business before the business is relocated, sold, liquidated or loses its identity as an independently owned and operated small concern by any means other than court action; and

(8) The employer concern has placed no maximum or minimum limits on the percentage of voting stock that the employee organization is allowed to purchase and control.

(b) *Trust equivalent to a qualified employee trust.* A trust may be treated as a qualified employee trust for the purposes of an SBA loan guaranty if:

(1) Such trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern;

(2) The trust is part of a plan which constitutes an employee benefit plan under the Labor Department regulations implementing ERISA and has a written Labor Department exemption from certain prohibited loan transactions. The plan must provide for the following;

(i) Be designed to invest primarily in qualifying employer securities;

(ii) Stipulate that each plan participant is entitled to direct the trustee in the manner of voting all qualifying employer securities acquired with SBA loan guarantee funds that have been allocated or, as the SBA loan is repaid, will be allocated to the participants' accounts, on all corporate matters which, by law, charter or by-laws, must be decided by a majority vote of the qualifying employer securities voted;

(iii) Provides that each participant who is entitled to distribution from the plan has a right, with respect to qualifying employer securities not readily tradable on an established market, to require that the employer concern repurchase such securities under either a fair valuation formula, appraisal requirement or other method, any of which the Internal Revenue Service or the Labor Department have accepted in writing;

(iv) Provides procedures for including future employees in the plan; and

(3) The trust, with respect to an SBA loan guaranty, enters into an agreement with SBA setting forth the provisions outlined in paragraph (a) of this § 12.55–5.

§ 122.56 Veterans Loan Program.

§ 122.56–1 Policy.

The statutory authorities for these loans appear in Pub. L. 97–377 (95 Stat. 1055), Pub. L. 97–72 (96 Stat. 1871), and Sec. 7(a) of the Act.

§ 122.56–2 Direct loans.

Only SBA direct financial assistance is available to eligible veterans under this program. Private sector financing and SBA guaranteed loans must be unavailable before a direct loan can be considered.

§ 122.56–3 Eligibility.

(a) *Eligible veterans.* Veterans eligible for this program include the following:

(1) Vietnam-era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

(2) Disabled veterans of any era with a minimum compensable disability of 30%, or a veteran of any era who was discharged for disability.

(b) *Ownership percentage.* The small business concern must be owned (a minimum of 51%) by one or more eligible veterans.

(c) *Management requirements.* Management and daily operation of the business must be directed by one or more of the veteran owners of the applicant whose veteran status was used to qualify for the loan.

§ 122.56–4 Single loan benefit.

The veteran status of an individual may only be used once to qualify for an SBA loan. After having received an SBA loan with eligibility based on veteran status, second or refunding loans can be considered only under the regular business loan program or based on the ownership by other eligible veterans (51% minimum ownership by persons of unused eligibility). Individuals who formerly received SBA loans with eligibility based on veteran status have used their loan benefit and may not be considered for the veterans loan program.

Table 1—Eligible Energy Measures

Subject to the requirements and limitations set forth in Title 10, Code of Federal Regulations, Chapter II, § 450.32 (1982), an energy conservation measure shall be—

(a) Ceiling insulation in a residential or commercial building which is a material which is installed on the surface of the ceiling facing the building interior or between the heated top level living area and the unheated attic space and which resists heat flow through the ceiling;

(b) Wall insulation in a residential or commercial building or industrial plant, which is a material which is installed on the surface facing the building interior or in the cavity of an exterior wall and which functions to resist heat flow through the wall;

(c) Floor insulation in a residential or commercial building, which is a material which resists heat flow through the floor between the first level heated space and the unheated space beneath it, including a basement or crawl space;

(d) Insulation for hot bare pipes in a residential or commercial building or industrial plant, which is a material which resists heat flow from the pipes to the surrounding space;

(e)(1) Caulks and sealants in a residential or commercial building or industrial plant, which are nonrigid materials placed in joints of buildings to prevent the passage of heat, air and moisture;

(2) Weatherstripping in a residential or commercial building or industrial plant, which consists of narrow strips of flexible material placed over or in movable joints of windows and doors to reduce the passage of air and moisture;

(f) Roof insulation in a commercial building or industrial plant which is insulation placed on the surface of the roof facing the building interior or between a roof deck and its water repellent roof surface;

(g) Clock thermostat in a residential building, which is a temperature control device for interior spaces incorporating more than one temperature control point and a clock for switching from one control point to another;

(h) Exterior insulation for a hot water heater in a residential or commercial building or industrial plant, which is a material placed around the tank which resists the heat flow from the hot water heater to its surrounding space;

(i) Insulation for forced air ducts in a residential or commercial building or industrial plant, which is a material which resists heat flow from the duct to its surrounding space;

(j) Storm window in a residential or commercial building which is an extra window, normally installed to the exterior, but which may be installed to the interior, of the primary or ordinary window, to increase resistance to heat flow and to decrease air infiltration;

(k) Efficient lighting fixture or lamp in a residential or commercial building or industrial plant, which is one which—

(1) Replaces an incandescent fixture or lamp with a type of lighting system including fluorescent, mercury vapor, metal halide, and high pressure sodium or ellipsoidal reflector lamps; or

(2) Replaces a mercury vapor fixture or lamp with a high pressure sodium lighting system.

(l) Mixing valve for a hot water supply line in a residential or commercial building or industrial plant, which is a type of valve mounted in the hot water supply line, close to the water which mixes cold water with hot, reducing the temperature of the water in the hot water distribution system;

(m) Flow restrictor for hot water lines in a residential or commercial building or industrial plant, which is a device that limits the rate of flow of hot water from shower heads and faucets;

(n) Burner for oil fired heating equipment in a residential building, which is a device which atomizes the fuel oil, mixes it with air and ignites the fuel-air mixture, and is an integral part of an oil fired furnace or boiler, including the combustion chamber;

(o) Individual meters to replace a master meter for gas, electricity and hot water in a commercial building, which are meters that measure the consumption of gas, electricity or centrally distributed hot water for individual users, instead of the total consumption which is measured by a master meter;

(p)(1) New oil burner in a commercial building or industrial plant, which is a device that meters, atomizes, ignites and mixes the oil with air for the combustion process of boiler; or

(2) New boiler controls in a commercial building or industrial plant, which are devices that sense the need for reducing or increasing the firing rate and change the combustion air and oil flow rate accordingly;

(q) Controls for lighting in a residential or commercial building or industrial plant which are manual or automatic cut off switches for lighting systems that allow cut off of all lighting or a portion of the lighting systems when lighting is not required;

(r) Automatic HVAC control system in a commercial building or industrial plant, which is a device which adjusts the supply of heating or cooling to meet space conditioning requirements;

(s) High efficiency electric motor or motor controls in a commercial building or industrial plant, which replace an existing motor or motor controls, resulting in not less than a specified increase in efficiency at a specified level of use, as determined by DOE; and

(t) Whole house ventilation fan in a residential building, which is a fan which removes air from the inside of a residential building to the outside.

(u) Air source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of air and transferring this heat to a body of liquid or to another body of air for space conditioning purpose;

(v) Water source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of water and transferring this heat to another body of liquid or to a body of air for space conditioning purposes.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: April 24, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–26079 Filed 9–24–84; 8:45 am]

BILLING CODE 8025-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[Policy Statement Docket No. 39635]

Statements of General Policy

Dated: September 18, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Termination of Rulemaking.

SUMMARY: The CAB is terminating its rulemaking that sought to refine its Standard Foreign Fare Level (SFFL) methodology. The SFFL provides a cost pass-through mechanism that keeps Board fare policy in line with current

cost trends. The Board has found that its current methodology is adequate and workable and effectively realizes its intended purpose.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Regulatory Analysis Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C.; (202) 673-5298.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1981, the Board issued an advance notice of proposed rulemaking, PSDR-72 (46 FR 29285, June 1, 1981) seeking comments on its Standard Foreign Fare Level (SFFL) methodology. The SFFL provides a cost pass-through mechanism that keeps Board fare policy in line with current cost trends. Although the Board believed its methodology to be reasonable at that time, it sought to refine it where possible and ensure that it stood on sound economic footing. It questioned whether greater accuracy could be reached if more refined cost factors were included. The Board expected carriers to comment upon the entire SFFL methodology and to offer concrete and practical suggestions, but specifically identified a number a areas where comments were requested. These special target areas included: (1) Method of fuel cost projection; (2) nonfuel costs; (3) capital costs; (4) property and mail offset; (5) transborder operation; and (6) foreign air carriers (the Board was open to a demonstration that foreign flag costs could be reflected within the SFFL system).

The Board received comments from Delta, Eastern, Pan American, TWA, United, American, and the Air Transport Association of America on behalf of Continental, Flying Tiger, Northwest, Texas International, USAir, and Western. A reply comment was received from TWA. The comments unanimously favored largely retaining the present procedures in arriving at the Standard Foreign Fare Level. Although changes were suggested on one or two elements listed in the advance notice of proposed rulemaking, these changes were minor and would probably not significantly change the outcome of the Board's SFFL methodology. Because of the general support for the current methodology, the Board has decided to keep the present procedures for adjusting the SFFL.

The main modifications, suggested were including interest expense and more rapid depreciation in operating expenses, basing escalation on year-over-year comparisons, changing the flexibility zones to reflect different markets, building in an upward flexibility of over 5% and creating a new ratemaking entity for transborder operations.

However, improvement in productivity, unit costs, and operating results have relieved the pressure for upward SFFL index adjustments. A review of the history of the SFFL index as related to actual experience shows that the SFFL methodology has consistently been close in predicing actual costs. In short, the Board's SFFL methodology has been doing what the Board intended it to do, and it no longer feels that the changes suggested in PSDR-72 are necessary. For transborder operations, the Board will continue to use the current methodology that has been applicable to those areas.

Accordingly, the Board terminates the rulemaking instituted by PSDR-72 and closes Docket 39635.

(Sec. 101, 102, 105, 204, 401, 402, 403, 404, 405, 407, 408, 409, 411, 412, 414, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85-725, as amended, 72 Stat. 737, 740, 743, 754, 757, 758, 760, 766, 767, 768, 769, 770, 771, 782, 788, 797, 92 Stat. 1708; 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1372, 1374, 1375, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502, 1504)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25389 Filed 9-24-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 299

[Docket No. 77N-0115]

Drugs; Offical Names; Withdrawal of Proposal

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a proposal to update the list of official names of drugs. This action is being taken because FDA is revoking the existing list of official names of drugs in a final rule appearing elsewhere in this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857. 301-443-6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 13, 1977 (42 FR 45938), FDA published a notice of proposed rulemaking to update the list of official names of drugs to reflect changes in chemical structure and the addition of new official names of drugs. The agency received three comments in response to the proposed rulemaking. Two of the comments recommended additions to the list of official names of drugs, and one comment requested clarification of a particular drug name. Shortly after the proposal was published, the agency began initial deliberations on a plan which would eliminate its routine publication of official names of drugs without affecting the availability to the public of current information on acceptable "established names" of drugs. As a result of these deliberations, the agency published in the **Federal Register** of July 16, 1982 (47 FR 31008) a proposed rule to revoke the existing list of official names of drugs in § 299.20. Further action on the September 13, 1977 proposal, therefore, was deferred pending final determination of the later rulemaking action. Because FDA is now revoking the list of official names of drugs in a final rule published elsewhere in this issue of the **Federal Register,** finalization of the September 13, 1977 proposal is not necessary.

Therefore, the proposal published in the **Federal Register** of September 13, 1977 (42 FR 45938) is hereby withdrawn.

This withdrawal is issued under authority of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 701(a), 52 Stat. 1050-1053 as amended, 1055-1056 as amended (21 U.S.C. 352, 355, 371(a))) and under 21 CFR 5.11.

Dated: August 27, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-24525 Filed 9-24-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Safety Standards for Explosives; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's preproposal draft standards

for explosives for metal and nonmetal mines in 30 CFR Parts 55, 56, and 57.

DATE: Written comments on the explosive standards must be received on or before November 16, 1984.

ADDRESS: All comments should be sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION: On August 20, 1984, MSHA published a notice (49 FR 33087) announcing the availability of a preproposal draft of revisions to current explosives standards for the metal and nonmetal mining industry. The comment period was scheduled to end on October 19, 1984.

Due to requests from the public, MSHA is extending the time for commenting on this preproposal draft. The comment period is extended to November 16, 1984. All interested members of the mining community are encouraged to submit comments prior to that date.

Dated: September 18, 1984.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 84–25376 Filed 9–24–84; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817, and 855

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects errors in the public hearing and public comment period dates in a proposed rule on blaster certification in the **Federal Register** of Tuesday, September 11, 1984 (49 FR 35714)

DATES: Comments on the proposed rule must be submitted on or before November 19, 1984.

ADDRESSES: Written Comments: Hand deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1000 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Ave., NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James Kress, Telephone: (202) 343–5866.

The following corrections are made in FR Doc. 84–23913 appearing on 35714 in the issue of September 11, 1984.

1. The close of the comment period, shown on page 35714 at the bottom of column one as "October 11, 1984," is corrected to read "November 19, 1984."

2. The date and time of the public hearings, shown on page 35714 at the bottom of column one as "9:30 a.m. eastern standard time on October 9, 1984," is corrected to read "9:30 a.m. local time on November 13, 1984."

3. The deadline for requesting a public hearing, shown on page 35714 at the top of column two, "October 23, 1984," is corrected to read "November 6, 1984."

William B. Schmidt,

Assistant Director, Program and Inspection.

[FR Doc. 84–25378 Filed 9–24–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Texas to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of proposed revisions to the Texas regulatory program concerning effluent limitations and prime farmland.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Comments not received on or before 4:00 p.m. October 25, 1984, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on October 24, 1984 beginning at 10:00 a.m. at the location shown below under **ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103.

If a public hearing is held, its location will be at: The Federal Building, Room 577, 300 East 8th Street, Austin, Texas 78746.

See **SUPPLEMENTARY INFORMATION:** For addresses where copies of the Texas program amendment and administrative record on the Texas program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Texas program amendment, the Texas program and the administrative record on the Texas program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

Office of Surface Mining, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–7896.

Surface Mining Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, Telephone: (512) 475–8715.

Written Comments.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Tulsa, Oklahoma, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business October 19, 1984. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On July 20, 1979, the Secretary of the Interior received a proposed regulatory program from the State of Texas. On February 16, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Texas program (45 FR 12998, February 27, 1980).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Texas program, can be found in the February 27, 1980 **Federal Register**.

Proposed Amendment

On August 31, 1984, the State of Texas submitted to OSM an amendment to its approved permanent regulatory program. The amendment consists of proposed modifications to Texas regulations concerning effluent limitations and prime farmland.

The proposed amendment would modify requirements for effluent limitations for discharges from areas disturbed by surface mining and underground mining activities, and would modify requirements for prime farmland concerning: Definitions; pre-application investigation; application contents; applicability and special requirements; soil removal, stockpiling and replacement; and revegetation and restoration of soil productivity.

The full text of the program modification submitted by Texas for OSM's consideration is available for public review at the addresses listed under "**ADDRESSES.**"

Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: 30 U.S.C. 1253.

Dated: September 20, 1984.

William B. Schmidt,

Acting Director, Office of Surface Mining.

[FR Doc. 84-25379 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2679-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking and response to petitions for reconsideration.

SUMMARY: EPA is proposing to approve a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the PPG Barberton plant in Summit County, Ohio. EPA's proposed approval is based on an urban/rural land use analysis, ambient SO_2 monitoring data, and rural modeling analyses performed by EPA and PPG. Final action on this proposal will constitute the Agency's response to petitions for reconsideration filed by PPG and the State of Ohio.

DATE: Comments on this revision and on the proposed EPA action must be received by October 25, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review (It is recommended that you telephone the contact person given below before visiting the Region V office.):

Environmental Protection Agency, Region V, Air and Radiation Branch (AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to (please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On August 27, 1976, EPA promulgated regulations establishing a State Implementation Plan (SIP) for the control of SO_2 in the State of Ohio (42 FR 36342). Enforcement of the regulations for Summit County, Ohio was stayed pending data corrections in EPA's modeling. Revisions to the Summit County regulations for most sources, but not PPG's Barberton, Ohio plant, were published December 5, 1979 (44 FR 69928). EPA promulgated new regulations for the PPG facility on July 25, 1980 (45 FR 49550). On January 27, 1981, EPA disapproved proposed SIP limitations Ohio had submitted for, among other sources, the PPG facility (46 FR 8481).

The State of Ohio submitted a petition for reconsideration of EPA's disapproval as it applied to, among other sources, the PPG plant. Also, PPG submitted a petition for reconsideration of the federally promulgated Ohio SIP limit for its Barberton plant.

On April 13, 1982, EPA announced that it was granting Ohio's petition for reconsideration (47 FR 15814). The Agency stated that it would respond to the State's petition by taking action on the revised Summit County SIP that Ohio intended to submit for EPA review. Also, on July 7, 1982, EPA announced that it was granting PPG's petition for reconsideration (47 FR 29573). The Agency stated in that notice that it would respond to PPG's petition in the same way—by taking action on the State's revised Summit County submittal.

On August 27, 1982 and November 17, 1982, Ohio submitted a request to revise the SO_2 SIP for the PPG Barberton Plant in Summit County. The State requested EPA to revise the federally promulgated emission limit of 3.8 pounds of SO_2 per million British Thermal Units (lbs/MMBTU) and approve a limit of 7.8 lbs/MMBTU for Boilers 3 and 6 through 10 (the stokers), 11 and 12 at the PPG Plant, with operation of the boilers permitted in only one of the following four configurations at any one given time:

(a) Boiler numbers 11, 12; and six stokers off;

(b) Boiler number 12 and not more than two stokers on; Boiler number 11 and the remaining four stokers off;

(c) Boiler number 11 and not more than three stokers on, with said three stokers being limited to not more than a combined total heat input of 725 x 10^6 Btu/hr.; Boiler number 12 and the remaining three stokers off; or

(d) Not more than three stokers on; Boiler number 11 and 12 off.

Additionally, the State requested a compliance date of April 30, 1983 for the revised emission limit.

EPA developed the federally promulgated emission limits for PPG using the RAM urban modeling analysis. Since that time, however, PPG performed an analysis of land use types within 3 km of the Barberton Plant to assess the correct urban/rural classification of the area. This analysis is consistent with EPA modeling guidelines (See Regional Workshops on Air Quality Modeling: "A Summary Report," April 1981). The analysis demonstrates that the area around PPG is rural and, thus, any modeling of the plant should use a reference rural model (e.g. CRSTER or MPTER).

As a result of this finding, EPA reanalyzed PPG's emission limitation using the CRSTER model. Additionally, PPG reanalyzed the limits using the MPTER mode. Both analyses are discussed below.

EPA performed a modeling analysis using CRSTER (which is equivalent to MPTER except that it includes the assumption of co-located stacks). Five years of the most recent available Akron/Pittsburgh National Weather Service (NWS) meteorological data were utilized. This analysis included a background of 20 $\mu g/mg^3$ for the 24-hour standard and 65 $\mu g/m^3$ for the 3-hour standard. The modeling predicts that an emission limit of 7.8 along with the revised operating conditions are adequate to protect the National Ambient Air Quality Standards (NAAQS).

PPG performed a modeling analysis using MPTER. One year of (1981) on-site/NWS meteorological data were utilized. The background data were derived from concurrent 1981 hourly monitoring data. The modeling conducted by PPG also predicts that an emission limit of 7.8 along with the revised operating conditions are adequate to protect the NAAQS.

Although there are three fundamental differences between the EPA and PPG modeling analysis (model, background, and meteorological data base) both analysis collectively demonstrate that the revised regulation will protect the NAAQS. Further discussion of these analyses is contained in the technical support document for this revision.

Additionally, the State of Ohio submitted ambient SO_2 monitoring data collected during 1981 at eight monitoring sites near the PPG Barberton Plant. Two of these monitors have been in operation since October 1978 and a third since 1973. EPA has also reviewed this data. Based on midnight-to-midnight block averages, no violations of the ambient standards have ever been measured at any of these eight monitors. Based on these monitoring data, the above noted modeling analyses, and emissions data, EPA proposed to redesignate the area surrounding the PPG Plant in the **Federal Register** on November 23, 1982 (47 FR 52733). Therefore, the monitoring data indicate that the proposed regulations are adequate to attain and maintain the NAAQS. The monitoring data has been included in the docket as additional technical support for this revision. Any additional information regarding the attainment status of this area will be considered in final rulemaking action of this SIP revision.

It should be noted that the majority of the operations at the PPG Barberton plant have been shut down within the last 12 months. This shutdown has resulted in further reductions in emissions in the Barberton area. Despite this shutdown, PPG has chosen to retain its operating permit for the plant.

The SIP revision request also contained a compliance date for PPG of April 30, 1983. The Federally approved compliance date for PPG is December 27, 1982. If EPA approves this revision, as it is proposing to do today, the revised limit will be deemed to have been federally enforceable beginning April 30, 1983. Since this revision request did not contain an attainment date specific to the area around the PPG facility, the Federally promulgated attainment date of August 25, 1983 contained in 40 CFR 52.1875 footnote f remains in effect.

Impact on Attainment and Prevention of Significant Deterioration (PSD) in Other States

EPA also reviewed the proposed revision for consistency with section 110(a)(2)(E) of the Clean Air Act. Due to present limitations on modeling, the modeling was limited to a 50 km radius around the PPG plant.

As explained more thoroughly in the technical support document, the applicable EPA reference models demonstrated that 3-hour and 24-hour ambient SO_2 concentrations would decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in EPA's judgment, the revision would not contribute significantly to SO_2 nonattainment in other States.

According to emissions data supplied by Ohio EPA, the revision will not result in an increase in actual emissions above the actual emissions levels of the last several years. Consequently, the revision will not consume PSD increment in any areas in which the PSD baseline has already been triggered. In areas in which the PSD baseline has not yet been triggered, emissions under this revision will be reflected in the baseline concentrations established in the future. Under Part C of the Act, emissions from the PPG plant under this revision would not consume PSD increment above those eventual baselines. For these reasons, EPA has concluded that this revision will not interfere with PSD measures in other States.

Conclusion

Based on an urban/rural land use analysis, ambient SO_2 monitoring data, and rural modeling analyses performed by EPA and PPG, EPA proposes to approve the emission limitation of 7.8 lbs/MMBTU along with the operating conditions contained in the Ohio Revised Code (ORC) Rule 3745–18–83(S). Additionally, EPA proposes to approve the compliance date of April 30, 1983 contained in ORC 3745–18–83(c)(4). These actions constitute the Agency's response to PPG's petition for reconsideration and Ohio's petition for reconsideration (as it applies to the PPG facility).

If EPA ultimately approves this revision as it is proposing to do today, the existing Federally approved SIP regulation for this source will apply, and will be fully enforceable if there is any delay or lapse in the applicability of the new regulation.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

Dated: July 30, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–25358 Filed 9–24–84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2679-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing action on a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Ohio Power Muskingum River Power Plant located in Morgan and Washington Counties. EPA's action is based on the Agency's modeling analysis and monitoring data submitted by the State of Ohio.

DATE: Comments on this revision and on the proposed EPA action must be received by October 25, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088 before visiting the Region V office.):

Environmental Protection Agency,
Region V, Air and Radiation Branch
5AR–26, 230 South Dearborn Street,
Chicago, Illinois 60604.

Ohio Environmental Protection Agency,
Office of Air Pollution Control, 361
East Broad Street, Columbus, Ohio
43216.

Comments on this proposed rule should be addressed to (please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch 5AR–26, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On April 8, 1982 and November 8, 1982, Ohio EPA requested revisions to the SO_2 SIP for the Ohio Power Muskingum River plant. The State requested that EPA revise the federally promulgated emission limitation of 6.48 pounds of SO_2 per million British Thermal Units (MMBTU) and approve two separate emission limitations for the plant.

The State requested an emission limit of 8.6 lbs/MMBTU to protect the primary National Ambient Air Quality Standards (NAAQS), with a compliance date of June 17, 1980. The compliance date for the federal emission limitation was Octrober 14, 1982. Since the State's compliance date for the revised primary limit is earlier than the date EPA has already established as consistent with the minimum requirements of Section 110(a)(2), the Agency is proposing to approve the State's date.

In addition, the State requested an emission limitation of 7.6 lbs/MMBTU to protect the secondary NAAQS, with a compliance date of July 1, 1989. Section 110(a)(2)(A) of the Clean Air Act requires attainment of a secondary NAAQS within a reasonable period of time. A "reasonable time" for secondary NAAQS attainment is defined in 40 CFR 51.13(b)(1) as generally three years from SIP approval unless the State shows good cause for providing a longer period. Section 51.13(b)(2) specifies that in such a case "reasonable time" depends on a number of factors. The State's submittal shows, based on specific environmental and economic justification, that good cause exists for postponing compliance beyond three years from the date EPA approves this SIP revision. EPA has reviewed this justification and finds that it provides consideration of the factors listed in § 51.13(b)(2) adequate to justify selecting the July 1, 1989 attainment date as constituting a "reasonable time". Further discussion of the State's justification is contained in the docket. (The federally established attainment date contained in 40 CFR 52.1875 remains in effect as to the primary NAAQS.)

Ohio also submitted a compliance schedule for the secondary emission limit as required by Title 40 Part 51 of the Code of Federal Regulations. Parts 51.13 and 51.15 require that attainment plans contain compliance schedules which provide for legally enforceable increments of progress toward compliance. EPA has reviewed this schedule and feels it contains appropriate increments of progress leading to attainment of the secondary SO_2 NAAQS within a reasonable period of time.

As a result of approving these two separate emission limitations and compliance dates, the primary limit of 8.6 lbs/MMBTU will be in effect from the date of EPA's final rulemaking until July 1, 1989 when the secondary limit of 7.6 lbs/MMBTU becomes effective.

The modeling analysis which supports this revision was conducted by EPA using the MPTER (the reference multiple source, rural model for rolling terrain). Five years of the most recent available meteorological data from Huntington, West Virginia, were utilized. This analysis included 540 receptors and a background of 28 $\mu g/m^3$ for both 3-hour and 24-hour NAAQS. (The background value is discussed further in the "Technical Support Document; Sulfur Dioxide Control for the State of Ohio, Vol I" (EPA-905/2-76-002, August 1976)). The highest concentrations were predicted to occur under 100% load conditions.

Since the 24-hour primary standard (365 $\mu g/m^3$) and the 3-hour secondary standard (1300 $\mu g/m^3$) may not be exceeded more than once a year, emission limitations established by modeling are based on the highest second high value. Based on an emissions level of 9.23 lbs/MMBTU, the modeling predicts that the highest second high 24-hour concentration would be 235 $\mu g/m^3$ at 1.4 km from the plant. Therefore, an emission limit of 8.6 lbs/MMBTU will protect the 24-hour primary standard. Additionally, the modeling (at 9.23 lbs/MMBTU) predicts the highest second high 3-hour concentration would be 1549 $\mu g/m^3$ at the same receptor. Therefore, based on a rollback modeling calculation an emission limit of 7.6 lbs/MMBTU will protect the 3-hour secondary standard. Further discussion of this analysis is contained in the technical support document for this revision.

Additionally, Ohio EPA submitted as part of their SIP revision request, an analysis of the ambient SO_2 data collected at six continuous monitors in the vicinity of the Muskingum River plant during 1975-80. The State analyzed these data and concluded that the data support the proposed emission limitations. This analysis is discussed in the State's report entitled "Muskingum River Plant Supplementary Technical Support Document."

Impact on Attainment and Prevention of Significant Deterioration (PSD) in Other States

EPA also reviewed the proposed revision for consistency with section 110(a)(2)(E) of the Clean Air Act. Due to present limitations on modeling, the modeling was limited to a 50 km radius around the Muskingum River plant.

As explained more thoroughly in the technical support document, the applicable EPA reference models demonstrated that 3-hour and 24-hour ambient SO_2 concentrations would decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in EPA's judgment, the revision would not contribute substantially to SO_2 nonattainment in either nearby West Virginia or more distant States.

According to emissions data supplied by Ohio EPA, the revision will not result in an increase in actual emissions above the actual emissions levels of the last several years. Consequently, the revision will not consume PSD increment in any areas—either in the counties in West Virginia within 50 km of Muskingum River, which are currently designated attainment for SO_2 or in more distant States—in which the PSD baseline has already been triggered. In areas in which the PSD baseline has not yet been triggered, emissions under this revision will be reflected in the baseline concentrations established in the future. Under Part C of the Act, emissions from the Muskingum River plant under this revision would not consume PSD increment above those eventual baselines. For these reasons, EPA has concluded that this revision will not interfere with PSD measures in other States.

Conclusion

Based on EPA's new reference modeling analysis and Ohio EPA's review of ambient monitored data, EPA proposes to approve the 8.6 lbs./MMBTU SO_2 emission limit to protect the primary NAAQS and the compliance date of June 17, 1980.

EPA also proposes to approve the 7.6 lbs/MMBTU SO_2 emission limit to protect the secondary NAAQS, along with the compliance schedule and July 1, 1989 compliance and attainment date. EPA has determined that these limits will provide for the attainment and maintenance of the SO_2 NAAQS.

If EPA ultimately approves this revision as it is proposing to do today, the existing federally-approved SIP regulations for this source will apply, and be fully enforceable, if there is any delay or lapse in the applicability of the new regulations.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

Dated: July 30, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-25359 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-10-FRL-2678-3]

Approval and Promulgation of State Implementation Plans; Idaho; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment deadline.

SUMMARY: By this notice, EPA is extending from September 7, 1984 to October 1, 1984 the deadline for receiving written comments on the Agency's proposed promulgation of a Federal Implementation Plan for attainment of National Ambient Air Quality Standards for lead for the portion of Shoshone County surrounding and including the Bunker Limited Partnership primary lead smelter.

DATE: Comments must be received or postmarked on or before October 1, 1984.

ADDRESS: Comments should be addressed to: Laurie M. Kral, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4016, FTS: 399-4016.

SUPPLEMENTARY INFORMATION: On July 6, 1984 (49 FR 27787) EPA proposed to promulgate a Federal Implementation Plan to provide for reduction of lead from the Bunker Limited lead smelter near Kellogg, Idaho. Comments on the proposal from all interested parties were due on or before September 7, 1984.

As a result technical clarifications requested by Bunker Limited, EPA developed additional explanatory material, which was sent to the Company and added to the official docket files on September 7, 1984. In order to respond to the new information, Bunker Limited requested the comment period be extended. Therefore, EPA is extending the official comment period from September 7 to October 1, 1984 so that the Company, and all other parties interested in this action, may review and comment on the new material.

EPA is seeking comment on all aspects of its proposal. Copies of the proposal and supporting documents are available to anyone who wants to become familiar with them. They may be inspected at the following locations:

Kellogg Library, 16 West Market Avenue, Kellogg, Idaho.
EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho.

The official rulemaking dockets are available at:

EPA Region 10, Air Programs Branch, 1200 Sixth Avenue, Seattle, Washington.
EPA Headquarters—Public Information Reference Unit, 401 M Street, SW., Washington, D.C.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: September 14, 1984.

Randall F. Smith,

Acting Regional Administrator.

[FR Doc. 84-25349 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-5-FRL-2679-1]

Delayed Compliance Orders; Proposed Approval of a Delayed Compliance Order Issued by the Michigan Department of Natural Resources to Baker and Sons Finishing Co., Inc.

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: The USEPA proposes to approve a Delayed Compliance Order (DCO) issued by the Michigan Department of Natural Resources to Baker and Sons Finishing Company, Inc., in Otsego, Michigan. The Order requires the company to bring volatile organic compound (VOC) emissions from its paint spraying operations into final compliance with the limits established by Michigan Administrative Code 1980 AACS, R336.1621, part of the Federally approved Michigan State Implementation Plan (SIP).

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Copies of the State order, supporting material, and public comments received in response to this rulemaking are available for inspection at the following address: U.S. Environmental Protection Agency, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

SUPPLEMENTARY INFORMATION: On June 25, 1984, the Michigan Department of Natural Resourcs submitted a DCO for Baker and Sons Finishing Company, Inc., in Otsego, Michigan. The Order requires the company to bring VOC emissions from its spray painting operations into final compliance with Michigan Administrative Code 1980 AACS, R336.1621, part of the Federally approved SIP, by June 30, 1985. R336.1621 requires final compliance with emission limits of 3.5 pounds of VOC per gallon of coating, as applied, for air-dried coatings, and 3.0 pounds of VOC per gallon of coating, as applied, for any coatings for which a more stringent limit is not specified.

USEPA's criteria of approval of DCO's are set forth in section 113(d) of the Clean Air Act (the Act), as amended August 1977, and in an April 26, 1983, memorandum from Kathleen M. Bennett, who at the time, was the Assistant Administrator for Air, Noise and Radiation. USEPA evaluated the Order using these criteria and determined that its meets all the criteria as set forth below.

1. The Order must require final compliance as expeditiously as practical but no later than July 1, 1979, or 3 years after the date for final compliance specified in the SIP, whichever is later. The DCO requires compliance by June 30, 1985. This is within 3 years of the final compliance date of December 31, 1983, specified in the Michigan SIP.

2. The Order must include reasonable requirements for monitoring and reporting. The DCO requires monthly reports documenting the quantity and VOC content of coatings used at the facility.

3. The Order must include reasonable and practicable interim controls. The DCO stipulates that after the effective date of the order and until June 30, 1985, the VOC emissions from the spray painting operations shall not exceed 5.8 pounds of VOC per gallon of coating, minus water as applied for extreme performance and air-dried coatings, and 5.2 pounds of VOC per gallon of coating, minus water, as applied for all other coatings.

4. The Order must include a finding that the source is currently unable to comply with the SIP requirements. The DCO contains such a finding.

5. Notice and opportunity for a public hearing must be provided. A public hearing was held on March 20, 1984.

6. The Order must include a schedule for compliance. The DCO includes a schedule which contains increments of progress as specified in 40 CFR 51.1(q).

7. If the Order is for a major source, it must notify the source of its possible liability for noncompliance penalties under Section 120 of the Act. This is provided for in the DCO.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with provisions of the SIP, it must be approved by USEPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Act. If approved by USEPA, source compliance with its terms would preclude Federal enforcement action under section 113(b) of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Michigan SIP. However, source compliance with the Order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under the Section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether USEPA may approve the Order. After the Public comment period, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601

Dated: September 14, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-25355 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2678-6]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order issued by the Pennsylvania Department of Environmental Resource to Anchor Hocking Corporation. The Order requires the company to bring air emissions from its glass container closure manufacturing facility in Connellsville, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) by either April 21, 1986 or April 21, 1987. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be appoved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joseph S. Arena, Environmental Scientist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-6553.

SUPPLEMENTARY INFORMATION: Anchor Hocking Corporation operates a glass container closure manufacturing facility at Connellsville, Pennsylvania. The Order under consideration addresses emissions from various surface coating processes, which are subject to section 129.52 of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and is part of the federally approved Pennsylvania State Implementation Plan. The Order requires final compliance with the regulation by April 21, 1986 through the use of low solvent coatings, or by April 21, 1987 through the use of control equipment.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection.

EPA's review indicates that the Anchor Hocking facility is a major source of VOC emissions. The facility is unable to comply with regulations limiting emissions of VOCs codified at Section 129.52 the Title 25 of the Pennsylvania Code, part of the federally approved State Implementation Plan, because low solvent coatings are still being developed. The Order requires compliance with the regulation no later than April 21, 1987 three years after April 21, 1984, the date by which compliance is otherwise required. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. The Order contains expeditious increments of progress towards compliance and emission monitoring and reporting requirements, and provides for interim emission reduction requirements to aviod an imminent and substantial endangerment to health. Pennsylvania has determined that the Order requires the facility to comply with the State Implementation Plan whenever it is tempoarily able to do so. The Order notifies Anchor Hocking of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420.

If the Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment to any noncompliance penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) of (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601.

Dated: September 10, 1984.

Thomas P. Eichler,

Regional Administrator, Region III.

[FR Doc. 84-25352 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-3-FRL-2678-5]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Amended Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Philadelphia Textile Finishers, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an amended Administrative Order issued by the Pennsylvania Department of Environmental Resources to Philadelphia Textile Finishers, Inc. The amended Order requires the company to bring air emissions from its fabric coating facility in Norristown, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because the amended Order has been issued to a major source and permits a delay in compliance with

provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the amended Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the amended Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate changes) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joseph S. Arena, Environmental Scientist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-6553.

SUPPLEMENTARY INFORMATION: Philadelphia Textile Finishers, Inc., operates a fabric coating facility at Norristown, Pennsylvania. The amended Order under consideration addresses emissions from the surface coating processes, which are subject to § 129.52 of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and is part of the federally approved Pennsylvania State Implementation Plan. The original Order, which was proposed in the March 16, 1983, **Federal Register**, required final compliance with the regulation by October 31, 1983, through the use of low solvent coatings. The amended Order requires final compliance with the regulation by April 9, 1985 through the use of low solvent coatings.

Because this amended Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the amended Order and has found that the amended Order does satisfy the requirements of this subsection.

EPA's review indicates that the Philadelphia Textile facility is a major source of VOC emissions. The facility is unable to comply with regulations limiting emissions of VOCs codified at Section 129.52 of Title 25 of the Pennsylvania Code, part of the federally approved State Implementation Plan, because low solvent coatings are still being developed. The amended Order requires compliance with the regulation by April 9, 1985, three years after April 9, 1982, the date by which compliance is otherwise required. Prior to issuance of the amended Order, Pennsylvania provided an opportunity for public comment and hearing on the amended Order. The amended order contains expeditious increments of progress towards compliance and emission monitoring and reporting requirements, and provides for interim emission reduction requirements to avoid an imminent and substantial endangerment to health. Pennsylvania has determined that the amended Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so. The amended Order notifies Philadelphia Textile of its liability for noncompliance penalties under Section 120 of the Clean Air Act, 42 U.S.C. 7420.

If the amended Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the amended Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the amended Order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed amended Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the amended Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the amended Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7313, 7601.

Dated: September 4, 1984.

Thomas P. Eichler,

Regional Administrator, Region III.

[FR Doc. 84-25351 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-5-FRL-2678-7]

Delayed Compliance Orders; Proposed Approval of a Delayed Compliance Order Issued by the Michigan Department of Natural Resources to Chrysler Corp., Warren Truck Plant

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: The USEPA proposes to approve a Delayed Consent Order (DCO) issued by the Michigan Department of Natural Resources to Chrysler Corporation in Warren, Michigan. The Order requires the company to bring particulate matter emissions from Boilers, 1, 2, 3, 4, and 5 into final compliance with the limits established by Michigan Administrative Code 1980 AACS, R336.1331, part of the Federally approved Michigan State Implementation Plan (SIP).

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Copies of the State order, supporting material, and public comments received in response to this rulemaking are available for inspection at the following address: U.S. Environmental Protection Agency, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed action should be addressed to: Gary Gulezian, Chief, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

SUPPLEMENTARY INFORMATION: On July 6, 1984, the Michigan Department of Natural Resources submitted to USEPA for review and approval a Delayed Compliance Order (DCO) which it had issued to Chrysler Corporation, in Warren, Michigan. The Order under consideration addresses particulate matter emissions from Boilers 1, 2, 3, 4, and 5 at the company's Warren Truck Plant, which are subject to Michigan Administrative Code 1980 ASCS, R336.1331. This regulation is part of the Federally approved Michigan SIP. The Order requires the shutdown of Boilers 1 and 2 on July 6, 1984; and final compliance with emission limits of 0.30 pounds per 1,000 pounds of exhaust gases by September 1, 1984, January 31, 1985, and November 30, 1984, for Boilers 3, 4, and 5, respectively. USEPA evaluated the Order using criteria set forth in section 113(d) of the Clean Air Act (the Act), as amended August 1977, and determined that it meets all the requirements as shown below:

1. The Order must include a finding that the source is currently unable to comply with the SIP requirements. The DCO contains such a finding.

2. Notice and opportunity for a public hearing must be provided. A public hearing was held on April 5, 1984.

3. The Order must include a schedule for compliance. The DCO contains a schedule of milestones for compliance for all five boilers. The schedules included plan submittal, contract initiation, start of construction, completion of construction, and final testing.

4. The Order must include reasonable and practicable interim controls. Interim emission reduction measures are included in the order, consisting of the requirement that only the best controlled boiler be used until compliance is demonstrated for all boilers. The schedule is such that summer steam demand levels will be low until after installation of the collector is complete for Boiler 3.

5. The Order must include reasonable requirements for monitoring and reporting. The DCO requires continuous opacity monitoring equipment on Boilers 3, 4, and 5. Monitoring data are to be maintained for 2 years. Each year, Method 5, stack testing is to be performed on each boiler and submitted to the MDNR. The company has already installed equipment to monitor opacity in the stacks.

6. The DCO must require final compliance as expeditiously as practicable but no later than July 1, 1979, or 3 years after the date for final compliance specified in the SIP, whichever is later. The compliance dates are less than three years after the original compliance date of December 31, 1982.

7. If the Order is to a major source, it must notify the source of its possible liability for noncompliance penalties under section 120 of the Act. The company was notified and acknowledged in the order their exposure to penalties under section 120 of the Clean Air Act.

Because this Order has been issued to a major source of particulate matter emissions and permits a delay in compliance with provisions of the SIP, it must be approved by USEPA before it become effective as a Delayed Compliance Order under section 113(d) of the Act. If approved by USEPA, source compliance with its terms would preclude Federal enforcement action under section 113(b) of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Michigan SIP. However, source compliance with the Order will not preclude assessment of any noncompliance penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether USEPA may approve the Order. After the public comment period, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601.

Dated: September 14, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–25353 Filed 9–24–84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of the Comment Period on Proposed Endangered With Critical Habitat Status for the June Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of public hearing, and reopening of the comment period.

SUMMARY: The Service gives notice that a public hearing will be held on the proposed determination of endangered with critical habitat status for the June sucker, and that the comment period on the proposal will be reopened.

DATES: The public hearing will be held on October 11, 1984, from 6 p.m. to 9 p.m. Comments on the proposal must be received by October 21, 1984.

ADDRESS: The public hearing will be held at the Provo City Building in the City Council Chambers, 359 W. Center Street, Provo, Utah. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours, by appointment at the Regional Endangered Species Division, 134 Union Boulevard, fourth floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Staff Biologist, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, (303/234–2496).

SUPPLEMENTARY INFORMATION:

Background

The June sucker (*Chasmistes liorus*) is a fish found only in Utah Lake, Utah County, Utah. It uses the lower portions of the Provo and Spanish Fork Rivers, the two largest tributaries of Utah Lake, for spawning and larval rearing. The species is jeopardized by alteration of habitat due to water impoundments and irrigation, illegal killing of spawning adults, predation and competition from exotic fish, and water pollution. In the **Federal Register** of July 2, 1984 (49 FR 27183–27188), the Service proposed determination of endangered with critical habitat status for the June sucker. The period for submission of public comments on the proposal was originally scheduled to last until August 31, 1984.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On August 14, 1984, the Service received requests for a hearing on the June sucker from Attorney Dave McMullin, Payson, Utah, on behalf of the East Bench, Lake Shore, Lake Side, Salem, South Field, and West Field Irrigation Companies. Additional requests for a hearing were received from Mayor James E. Ferguson, Provo, Utah; and the Central Utah Water Conservancy District, Orem, Utah. The Service has scheduled this hearing for October 11, 1984, from 6 p.m. to 9 p.m., at the Provo City Building, in the City Council Chambers, 359 W. Center Street, Provo, Utah. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing.

In order to accommodate the hearing, the Service also reopens the public comments period on the proposal. Written comments may now be submitted until October 21, 1984, to the Service's Office in the **ADDRESS** section.

Author

The primary author of this notice is Julie Bridenbaugh, U.S. Fish and Wildlife Service, P.O. Box 35486, Denver, Colorado 80225.

Authority: The authority for this action is Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 19, 1984.

Robert H. Shields,

Acting Regional Director.

[FR Doc. 84–25320 Filed 9–24–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1984 Crop Soybean Final Loan and Purchase Rate

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1984 Crop Soybean Final Level of Price Support.

SUMMARY: The purpose of this notice is to announce that the final level of price support for the 1984 soybean crop is $5.02 per bushel. This determination is required to be made by section 201(g)(1) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447–4417. Since this determination is calculated in accordance with the statutory formula, the requirement of an Impact Analysis has been waived.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies to are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 201(g)(1) of the Agricultural Act of 1949, as amended, provides that the price of soybeans for each of the 1982 through 1985 marketing years shall be supported through loans and purchases at a level equal to 75 percent of the simple average price received by farmers for soybeans for each of the preceding five marketing years, excluding the high and low valued years, except that the support price may not be less than $5.02 per bushel. However, if the Secretary of Agriculture determines that the average price received by producers for soybeans in any marketing year is not more than 105 percent of the level of loans and purchases for such marketing year, the support level may be reduced for the next marketing year by the amount which is determined to be necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 10 percent in any year nor below $4.50 per bushel.

Section 201(g)(1) also provides that the Secretary must make a preliminary announcement of the level of price support not earlier than 30 days prior to September 1, the beginning of the marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available on prices for the five years preceding the beginning of the marketing year for which the level of support is determined. The final level of price support must be announced no later than October 1 of the marketing year to which the announcement applies. The final level of support cannot be less than that of the preliminary announcement.

A preliminary level of price support of $5.02 per bushel for the 1984 crop of soybeans was determined and announced on August 2, 1984 (49 FR 31121). As set forth below, it has been determined that the final level of price support for the 1984 crop of soybeans is $5.02 per bushel.

Determination

The simple average price received by farmers for soybeans for each of the preceding five years, excluding the high and low valued years, is $6.61 per bushel. This determination is based on the following data:

(1)

	Prices[1] (dollars per bushel)
1979	$6.29
1980	7.50
1981	6.05
1982	5.83
1983 (projected)	7.80

[1] Simple-average soybean prices.

(2) Average of the five years, excluding the low valued year (1982) and the high valued year (1983): ($6.29+$7.50+$6.05)/3=$6.61 per bushel.

(3) The final price support level calculation is $6.61 × .75=$4.96. The calculated final price support level of $4.96 per bushel is less than the statutory minimum level of $5.02 per bushel. The projected average price of soybeans received by producers douring the marketing year 1983 ($7.80) exceeded 105 percent of the 1983 price support level for soybeans ($5.02 × 1.05=$5.27). There is, therefore, no basis for reducing the final price support level for soybeans below the statutory minimum level of $5.02 per bushel. Accordingly, the final 1984-crop soybean price support level is $5.02 per bushel.

(Sec. 201(g)(1) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(g)(1))

Signed at Washington, D.C., on September 14, 1984.

John R. Block,

Secretary.

[FR Doc. 84-25316 Filed 9-24-84; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Upper Chester River Watershed, Maryland and Delaware; Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent To Prepare a Supplemental Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a supplemental envionmental impact statement is being prepared for the Upper Chester River Watershed, Kent and Queen Anne's Counties, Maryland and Kent and New Castle Counties, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301-344-4180.

SUPPLEMENTARY INFORMATION: The existing environmental impact statement was completed July, 1982. Considerable controversy and additional information indicates that the project may cause significant local impacts on the environment. As a result of these impacts, Mr. Gerald R. Calhoun State Conservationist, has determined that the preparation and review of a supplemental environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention, and drainage. Alternatives considered during planning include no action, land use changes, land treatment, channel work, and various systems of dams.

A draft supplemental environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at 8:00 p.m., Wednesday, November 7, 1984, at the Fire Hall in Hartly, Delaware to determine the scope of the evaluation of the proposed action.

Further information on the proposed action, or the scoping meeting may be obtained from Mr. Gerald R. Calhoun, State Conservationist, at the above address or telephone (301) 344-4180.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable.)

Dated: September 19, 1984.

Gerald R. Calhoun,

State Conservationist.

[FR Doc. 84-25381 Filed 9-24-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Premiere Airlines, Inc., Continuing Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter will commence on October 18, 1984, at 10:00 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington D.C., September 19, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84-25367 Filed 9-24-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness; Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meeting.

SUMMARY: This notice announces the forthcoming meeting of the Cochairmen of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and place: October 11, 1984 from 8:30 a.m.–1:00 a.m. at the Capital Hilton, California Room, 16th and K Street, NW, Washington, DC 20036. This cochairmen meeting is being held to discuss the final report of the Commission.

Public participation: The meeting will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone 202-395-4527.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84-25326 Filed 9-24-84; 8:45 am]

BILLING CODE 3510-18-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

September 18, 1984.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-429, 913 (4,464,862) Chemical Applicator

SN 6-573,748 Method and Apparatus for Transporting Implements

SN 6-625,272 Hide Transfer Apparatus and Method

Department of Health and Human Services

SN 6-329,870 (4,465,769) Non-Transformed Thymidine Kinaseless Cell Line And Its Use For Testing Tumorigenic Potential of Genes

SN 6-585,111 Synthesis of Platinum (IV) Antineoplastic Agent

SN 6-601,314 Carbamates of Colchicine and Thiocolchicine Suitable for Treatment of Gout and Murine Malignancies

SN 6-604,136 Substituted N-Methyl Derivatives of Mitindomide

SN 6-607,160 Therapy for Retinoid Pathogenesis

SN 6-618,949 Rapid Visualization System for Gel Electrophoresis

SN 6-619,325 Method and Device for Quantitative Endpoint Determination in Microfluorophotometry

Department of the Air Force

SN 6-370,234 Range-Only Multistatic Radar System

SN 6-601,515 Retro Directive Radar Target Simulator Beacon Apparatus and Method

SN 6-603,528 Portable, Sequential Air Sampler

SN 6-610,142 Atmospheric Contrast Transmittance Monitor

SN 6-614,190 X33 Cut Quartz For Temperature Compensated Saw Devices

SN 6-615,506 Harness Formation End-Effector with Interchangeable Tool Capability

SN 6-615,612 Optical Flip-Flop System

SN 6-617,666 Multilayer Ceramic Capacitor

Department of the Army

SN 6-628,091 Optical Fiber Splice Sled

SN 6-628,553 Precision Cutting of Millimeter Wave Ferrite Materials

[FR Doc. 84-25382 Filed 9-24-84; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 9:30 a.m. until 5:00 p.m. on October 24, 1984, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Finances of the Trademark Operation
(2) Trademark Automation Developments
(3) Activities of the Trademark Examining Operation
(4) Trademark Trial and Appeal Board Operations
(5) Customer Services

and any other Patent and Trademark Office activities, including legislation and international conventions, affecting trademarks.

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Ellen J. Seeherman, Office of the Assistant Commissioner for Trademarks, Room CP3-11C17, Patent and Trademark Office, Washington, D.C. 20231. Telephone: 703-557-7464.

Dated: September 18, 1984.

Approved:

Gerald J. Mossinghoff,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 84-25322 Filed 9-24-84; 8:45 am]

BILLING CODE 3510-16

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 83-1]

1982 Cable Royalty Distribution Determination

AGENCY: Copyright Royalty Tribunal (Tribunal) announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of royalty fees paid by cable systems for secondary transmissions during 1982.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, (202) 653 5175.

SUPPLEMENTARY INFORMATION:

Introduction

17 U.S.C 111(d)(5)(B) requires the Tribunal after the first day of August to determine whether a controversy exists concerning the distribution of cable royalty fees deposited by cable systems with the Copyright Office. Upon determination that a controversy exists, 17 U.S.C. 804(d) requires the Chairman of the Tribunal to publish in the **Federal Register** a notice announcing the commencement of distribution proceedings.

In a notice published in the **Federal Register** of August 8, 1983 (48 FR 35989), the Tribunal directed that claimants to royalty fees paid by cable operators for secondary transmissions during 1982 submit not later than September 20, 1983 any comments concerning whether a controversy exists concerning the distribution of the 1982 royalty fees.

The Tribunal on October 12, 1983 published in the **Federal Register** (48 FR 46412) its determination that a controversy did exist concerning the distribution of cable royalty fees for the period January 1 through December 31, 1982.

Background and Chronology

On May 6, 1983, the Motion Picture Association of America, the Joint Sports Claimants, the Public Broadcasting Service, the Music Claimants and National Public Radio (the "Settling Parties") filed with the Tribunal an agreement in which they agreed to seek in the 1982 distribution proceeding a single aggregate award which would be divided among them "in the proportions determined by their individual Phase I awards in the 1979 and 1980 distribution proceedings (with the proviso that NPR's share shall not be reduced below 0.25 percent of the total funds)." Subsequently the National Association of Broadcasters and the Canadian Claimants agreed to resolve the Phase I proceeding on the basis of the Tribunal's 1979 and 1980 awards. These agreements contemplated that any award to the Devotional Claimants in this proceeding should be accomplished by a pro rata reduction of the shares of other parties.

As in prior distribution cases, the Tribunal conducted the proceeding in two phases. In Phase I the Tribunal receives evidence concerning the awards to general categories of claimants, while in Phase II it receives evidence concerning disputes within categories. The Tribunal held evidentiary hearings on Phase I and Phase II issues, including rebuttal cases, on July 17, 18, 24, 25, 26 and August 2, 3, 6, 7.

The Tribunal directed parties to submit proposed findings of fact and conclusions of law on August 22, 1984. Reply findings were received on August 31, 1984.

The Tribunal incorporated the Phase I and Phase II records of the 1978, 1979, 1980, and 1981 cable distribution proceedings into the record of the 1982 proceeding.

On September 6, 1984, the Tribunal granted the motion of the Turner Broadcasting System, Inc. to intervene in the Phase II proceeding.

Phase I

Structure of Phase I Cases

We begin with the argument advanced by the Devotional Claimants [1] that the record of the 1982 proceeding "is devoid of any evidence upon which to base an award to any claimant group other than PBS and the Devotional Claimants." The Devotional Claimants assert that other parties "have only put in rebuttal and surrebuttal evidence against the Devotional Claimants." Devotional Claimants conclude therefore that no award can legally be made to these parties.

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[1] Devotional Claimant's Proposed Findings of Fact and Conclusions of Law, pp 37-39

We find no merit in the argument of the Devotional Claimants, which in our view reflects a myopic view of the matters to be determined by the Tribunal in this Phase I proceeding. All Phase I parties, other than Devotional, in a series of voluntary agreements determined the Phase I awards. Since these argeements did not include the Devotional Claimants, the only controversy to be determined by the Tribunal was what award, if any, to make to the Devotional Claimants.

We also reject the argument that the 1982 Phase I record provides no basis for an award to most other categories of claimants. The Tribunal incorporated into the 1982 record 20,194 transcript pages of prior distribution proceedings. Devotional Claimants made no showing that the collective situation of the other Phase I parties changes in 1982.

"Special Factors" and "Fundamental Distinction"

In our 1979 determination [2] the Tribunal gave weight to certain "special factors" deemed relevant to the devotional claims, namely the purchase of broadcast time by devotionals and perceived benefits to such claimants from cable retransmission. We viewed these factors as establishing a "fundamental distinction" of the devotional claims from other claims. In reviewing our 1979 determination, the Court of Appeals for the District of Columbia Circuit wrote: "We begin by reiterating that there is nothing necessarily irrational about the Tribunal's 'fundamental distinction'." [3] In our 1979 and 1980 remand determinations [4] we gave less weight to these "special factors," in part because of the state of the record. We indicated that in subsequent proceedings we expected the parties to develop a fuller record on these matters. This would then permit the Tribunal to discuss these matters in greater detail than was previously possible because of the record and the time restraints of 17 U.S.C. 804(e).

Other than for the evidence and testimony of PBS presented for the purpose of seeking to rebut Devotional Claimants' argument that they were comparable claimants, we find a failure of the Settling Parties and NAB to make any showing that would be useful to the Tribunal on the "special factors" issues, which we had designated for particular review in this proceeding.

The Settling Parties argue in their reply findings [5] that the "record as a whole demonstrates that devotional programming does not satisfy the Tribunal's distribution criteria." This is the issue for the Tribunal to resolve. The Settling Parties provide assertions, but have not supplied supporting evidence. We have given in this determination no weight to the "special factors," and we reject the conclusion of the Settling Parties that they have established that the devotional claimants do not qualify for an award under the Tribunal's distribution criteria.

Evidentiary Record

The Tribunal in the 1978 cable royalty distribution proceeding adopted the criteria to be applied in that and subsequent cable royalty distribution proceedings. The criteria, an analysis of the criteria, and the relative weight accorded each factor are set forth in the 1978 distribution opinion.[6] We have applied the distribution criteria to the record evidence in this proceeding, including the incorporated records of previous proceedings. In practice we have found that our distribution allocations are rooted in a search for the marketplace value of the transmitted programs, and the benefit of particular types of distant signal programming to cable operators.

We wish to emphasize that we are deciding the 1982 case on the basis of the total record in this proceeding, and that we do not propose to review here conclusions reached in other proceedings on the basis of the evidentiary record before us in those proceedings. We also affirm that cumulative experience based on cumulative evidence cannot be excluded from the decision process.[7]

With reference to the new evidence of the 1982 record, we believe that the Devotional Claimants have made an effort to respond to our findings of deficiencies in their previous presentations. We have been particularly troubled in prior proceedings by their showings as to the marketplace value of their programs, and the benefit of their programs to cable operators.

In deciding to make a larger award to the devotional claimants than previously, we have given weight to the Devotional Claimants Exhibit 3, a survey of the attitudes of cable system managers toward programming. The Tribunal reads this survey as supporting a finding of some cable operator interest in devotional programming. While finding the survey helpful to our determination, we also acknowledge the assertions of the Settling Parties that there are deficiencies in this survey.[8] These limitations, such as the size and timing of the survey, precludes the Tribunal from utilizing the survey, even with other evidence, to produce the award requested by the Devotional Claimants.

Devotional Claimants have introduced the report entitled, "Religion and Television," a Research Report by the Annenberg School of Communications of the University of Pennsylvania and the Gallup Organization. While the report contains much interesting data, we have found it to have only limited relevance to our task in this proceeding. It is not related to the retransmission of distant signals, which while not destroying all relevance, requires the Tribunal to make adjustments to glean what is of value to our determination. We read this report as establishing that there is a core constituency for religious programming, but that such programming has little appeal beyond the core constituency. As with other reports and surveys presented over the years to the Tribunal, it in no way by itself provides support for any particular level of award to the devotional claimants.

We have also considered the Cable Television Viewer Survey (Devotional Claimants Exhibit 2) which indicates that obtaining access to devotional programming is a factor in the determination of some people to subscribe to cable television.

The Settling Parties have sought to rebut the Devotional Claimants case by presenting the A. C. Nielsen Company's Report on Syndicated Programs (ROSP) data on local market viewing of selected Devotional Claimants' programming, which shows low ratings for this programming and the 1982 Special Nielsen Study which relates to the time and viewing of programs as distant signals in cable households. But, again, we must balance these data with our conclusions in earlier proceedings, as to the measure of value to cable operators of viewing figures.

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[2] 47 FR 9896–97.

[3] The Christian Broadcasting Network, Inc. v The Copyright Royalty Tribunal, 720 F. 2d 1295–1309 (1983).

[4] 47 FR 9879–9900 and 48 Fr 9552–9570.

[5] Setting Parties' Reply Findings of Fact and Conclusions of Law p. 13.

[6] 45 FR 63035–37

[7] See also 49 FR 20049, in which we stated with regard to our 1979 determination that it was reasonable to alter awards "given a greater refinement in our ability to assess a claimant's overall case and weight even unchanged evidence more accurately."

[8] Settling Parties Proposed Findings of Fact and Conclusions of Law, pp 20–21.

Other Distribution Criteria

We again found in this proceeding that the "harm" test is of limited utility in allocating royalty fees among categories of claimants.[9]

We affirm our previous conclusions that the total number of hours of categories of programming on distant signals provides limited guidance to a reasonable allocation of cable royalties.

The "new" 1982 evidence did not require analysis under the quality criterion.

Public Broadcasting Factor

The Public Broadcasting Service and Devotional Claimants in their proposed findings have discussed a number of issues relating to the status and relationship of these two categories of claimants. Our determination in this proceeding has not required us to make findings on all the issues presented. We adhere to our view that the situation of the public broadcasting claimants, and the devotional claimants is not similar, and that these differences support a substantially larger award to the public broadcasting claimants. When a cable operator determines to import a distant public broadcasting signal all the programs on that signal are public television programs. We find in these programs a diversity of content, and appeal to a broad range of the public, that we have not been able to discover on the basis of the evidence before us in the programs of the devotional claimants. We continue to believe that public television programs occupy a unique position in the cable television marketplace by presenting diverse programming that is not available on commercial signals.

Phase I Allocations

On the basis of the above, and the entire incorporated record, we make an award of 1% to the Devotional Claimants. Subject to the disposition of the Devotional Claimants, all other Phase I parties have resolved by voluntary agreements that the Phase I awards to claimants shall be in the percentages determined by the Tribunal in the 1979 and 1980 cable royalty proceedings. It was also provided that any award by the Tribunal to the Devotional Claimants in this proceeding should be accomplished by a pro rata reduction of the shares of other parties. The Settling Parties further agreed that the share of National Public Radio should not be reduced below 0.25 percent of the total funds. The Tribunal finds that the exclusion of National Public Radio from the pro rata reduction is reasonable.

It is therefore ordered the Devotional Claimants be awarded 1%, and that, other than for the National Public Radio, the 1979 and 1980 awards to other phase I parties be reduced on a pro rata basis to provide for the award to the Devotional Claimants. It is further ordered that in accordance with the voluntary agreement of the Settling Parties a single aggregate award be made to them to be divided among them "in the proportions determined by their individual Phase I awards in the 1979 and 1980 distribution proceedings." It is further ordered that the 1982 cable royalties be distributed in accordance with the above.

Phase II

The only claimant categories requiring Phase II proceedings are Program Syndicators, and Sports.

Program Syndicators—Multimedia Claim

The only Program Syndicator evidentiary hearing resulted from the failure to reach a voluntary agreement as to the claim of Multimedia Entertainment, Inc. (Multimedia).

Our review of the record as it relates to 1982 permits only one conclusion—a significant reduction is required from the level of our previous awards to Multimedia. We address first the argument of Multimedia that because of the Tribunal's disposition of the Multimedia claim in some previous proceedings, the Tribunal should refrain from making the downward adjustment which to us is otherwise compelled by the 1982 record. The record establishes that the Tribunal was divided on whether an upward adjustment was required in the 1980 proceeding by the addition of Show Biz programs to the Multimedia claim and the significant growth in the carriage of WGN-TV, particularly in relation to the award standard applied by the Tribunal to the record evidence of parties in that proceeding. Whatever validity there may have been to Multimedia's arguments to the Tribunal, if Multimedia was aggrieved by the Tribunal's determination, the Copyright Act provides a remedy for such grievances. We reject any contention that we should refrain from a downward adjustment of the 1982 Multimedia award because of our prior determinations.

We find that the removal of the "Donahue" program from WGN significantly reduces the value of the Multimedia claim, and that this loss is not offset by the evidence as to other 1982 programs in the Multimedia claim.

According to MPAA Exhibit 3, "Donahue" achieved only 4.3 million household viewing hours in 1982 versus 10.6 million in 1981. The substantially reduced availability decreases its marketplace value and benefit to cable operators. Our conclusion is fortified by reviewing earlier proceedings in which Multimedia stressed the distant carriage of the live Donahue show in WGN, and the particular value and appeal of the live show.

At best, we find that shifts in other programs in the Multimedia claim does not offset the "loss" to the claim resulting from the change in the "Donahue" carriage. Country music specials have increased in numbers, but such specials had reduced ratings in 1982 compared to 1981. Fewer programs were syndicated in 1982 and several programs, such as "Tony Brown's Journal, were dropped from syndication. The amount of programming fell by 10%.

We reaffirm our earlier findings as to the special appeal and marketplace value of programs in the Multimedia claim. This evidence continues to support an award in accordance with our distribution criteria.

Challenge to MPAA Claim

Multimedia has conducted a reviw of the copyright status of certain older movies broadcast in 1982 over WTBS. It is stated that "Copyright Office research determined that several of the movies shown on WTBS do not have valid copyright registrations." [10] Multimedia further argues that "no royalties should be awarded MPAA for any program whose copyright authenticity is not firmly established. It is argued that because of the importance of WTBS signal carriage, it cannot be argued that the impact is de minimus. We do not agree. The Tribunal will consider and reflect in our awards significant copyright matters. But we do not intend to burden claimants with a totally unnecessary exercise in paper collection because there may be some public domain films included in the Nielsen Study. We find the Multimedia argument utterly lacking in merit.

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[9] See 47 FR 9892.

[10] Multimedia on September 7, 1984 filed a motion to Strike certain data in the Program Suppliers' Reply Findings, namely a letter of December 27, 1983 from Turner Broadcasting Inc., and certain viewing data respecting public domain movies. It is argued that these matters are "evidence outside the record." Program Suppliers on September 14, 1984 filed an Opposition to Motion to Strike. The motion is granted.

Multimedia also argues that MPAA has failed to provide a list of the programs accounting for one-third of the viewing hours in the Nielsen Study, and therefore "one-third of MPAA's share must be withheld." No serious argument has been made as to why this information is essential to our determination in this proceeding. We find no merit in this argument.

MPAA Case

The primary basis for the MPAA and Associated Program Suppliers Phase II claim was the 1982 Neilsen Study. As in past Phase II proceedings, the Tribunal has accorded substantial weight to these viewing data, but has not utilized the study as the sole basis for our allocations.

Syndicator Award

On the basis of the above, 1% of the Program Syndicators share is awarded to Multimedia. In accordance with voluntary agreements, 0.8 is awarded to the National Association of Broadcasters, and 0.7 is awarded to the Spanish International Network. 97.5 of the Program Syndicators share is awarded to the MPAA and Associated Program Syndicators.

Sports—Spanish International Network (SIN) Claim

This case marks the first Phase II proceeding in the Sports category. SIN is seeking a portion of the sports award based on its distribution of the 1982 World Cup—an international competition among professional soccer teams that occurs once every four years.

Jurisdictional Questions

1. The Joint Sport Claimants (JSC) argue that SIN must be denied a share of the sports royalties "because SIN did not assert a Phase II claim for royalties and the JSC Phase I award is only for their own programming." In an order of July 23, 1984 the Tribunal denied the JSC motion to dismiss SIN's sports claim.

The SIN claim for 1982 cable royalties, in responding to the Tribunal's requirement that claimants identify the nature of the works for which compensation is requested, stated: "Television programs in the Spanish language which it licenses for transmission on television stations in the U.S."

We are unable to accept the argument that a Tribunal Phase I award for sports covers only the programs of the JSC. This view is not in accordance with the Tribunal's treatment of Phase I categories as applying to generic categories of programs. The Tribunal in certain prior proceedings has given considerable attention to the competing claims of two categories of claimants to sports royalties. Nothing in our previous pronouncements on the allocation of sports royalties provides support for the arguments now advanced by JSC.

2. We also are unable to accept any argument that the voluntary Phase II agreement reached between SIN and other claimants to the royalties awarded under the Program Syndicator category bars SIN's claim to a share of the sports royalties, or provides compensation under the statutory compulsory licensing scheme for their sports programming in the 1982 proceeding. We again decline to intrude into any aspect of voluntary agreements.

3. SIN has argued that the JSC claimants have overstated the amount of their compensable programming by over 40 percent because they have "improperly" included in their claim Atlanta Braves baseball games broadcast by WTBS. On the basis of a decision by the United States District Court for the Southern District of New York in *ABC Sports, Inc. et al.* v. *Atlanta National League Baseball Club* SIN argues that the WTBS signal is not an over-the-air broadcast signal under Section 111 of the Copyright Act, that the Copyright Act did not intend for the compulsory license scheme to compensate copyright owners who had authorized distant signal carriage, that distant signal carriage of the Braves' games would not be an infringement of either the Braves or WTBS's copyright, and that the WTBS signal is not a distant signal subject to compulsory license.[11]

We need not in this proceeding address any of these issues presented by SIN. It is sufficient to state that, even under the flexible procedures of the Tribunal, it is not appropriate to litigate such matters before the Tribunal at the time chosen by SIN, particularly when the record is bare of any testimony that would illuminate the issues.

Evidentiary Record

We have had the opportunity in previous proceedings to consider the benefit of SIN's programming in general to cable operators. In our 1979 determination we concluded that "SIN's Spanish language programming is of particular marketplace value and benefit to cable operators in attracting Spanish-speaking subscribers."[12] But the only issue in this proceeding is the distant signal value and benefit of the World Cup.

From the record of this proceeding we are satisfied that the 1982 World Cup was an important event in sports, that it was popular with a limited audience and that the distant signal carriage of that event had some marketplace value. However, SIN acknowledged that only a relatively small incremental percentage of the Hispanic population would be reached by distant signal carriage.[13] Furthermore, as a distant signal the World Cup telecasts reached less than 4 percent of the cable industry.[14]

In our Phase I allocations we have attached particular importance to the benefit to cable operators of distant signal sporting events. But we are unable in this record to conclude that SIN's World Cup telecasts conferred any meaningful benefit on cable systems. Although SIN made the telecasts available free of charge only 12 cable systems not otherwise carrying the programming accepted SIN's offer.

Joint Sports Claimants sought to rebut evidence introduced by SIN that carriage of the World Cup benefited cable operators with a survey of cable operators who carried the telecasts. We agree with SIN that the methodology of the survey was flawed, by failing to compare the value of distant signal carriage of World Cup as compared to the value of distant signal carriage of the events of Joint Sports. But, other evidence in the total record establishes the benefit of JSC programming.

SIN sought in several ways to establish the marketplace value of the World Cup. It compared what SIN paid for rights to the World Cup with the price paid for the rights to broadcast Major League Baseball events. We agree with JSC that this analysis, even if factually accurate, is largely irrelevant as it does not relate to the value of the telecasts on a distant signal basis.

SIN has also proposed as a measure of the relative marketplace value of the World Cup a formula comparing the total number of subscriber events attributable to World Cup to the total number of subscriber events attributable to Joint Sports. Subscriber events are defined as the number of cable subscribers on distant signal cable systems times the number of relevant sports events carried by those systems.

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[11] SIN Proposed Findings of Fact and Conclusions of Law, pp 37–49.

[12] 47 FR 9896 and 48 FR 9569.

[13] Tr. 421.

[14] Joint Sports Claimants Exhibit 5A; Tr. 1184–87.

It will come as no surprise to diligent readers of our opinions that the Tribunal has not found SIN's subscriber events formula to be a useful tool in the allocation of cable royalties. In addition to our often stated reservations about the utility of formulas, we are unable to see any relationship between the formula proposed and our distribution criteria, and past determinations.

Both SIN and JSC correctly note that the Tribunal has used viewing data as a "starting point" from which the distribution criteria are applied. By any measure, SIN's World Cup telecasts generated, on a distant signal basis, only an infinitesimal share of viewing.[15] We find in this record no basis for any significant adjustment from the viewing figure base.

We have already stated that we have not found the harm test to be of much utility in the division of cable royalties. Our record concerning SIN's business judgment to offer the World Cup as a "present" to the cable industry further dilutes the value of the harm criteria, and provides no support for an allocation of royalties to SIN.

On the basis of the above, we award 0.02 of the Sports share to SIN, and the balance of Sports share to JSC. This award as it relates to viewing is consistent with the viewing/award ratio reflected in our previous awards to SIN, and in the 1982 Phase II program syndicator voluntary agreement.[16]

Commissioner Hall did not participate in this determination.

Thomas C. Brennan,

Chairman.

September 20, 1984.

[FR Doc. 84-23907 Filed 9-24-84; 8:45 am]

BILLING CODE 1410-11-M

COUNCIL ON ENVIRONMENTAL QUALITY

Presidential Parkway, Atlanta, Georgia

AGENCY: Council on Environmental Quality/Executive Office of the President.

ACTION: Information only, findings of the Council on Environmental Quality regarding national importance of proposed Presidential Parkway, Atlanta, Georgia.

SUMMARY: The Council on Environmental Quality's (CEQ) regulations for the implementation of the National Environmental Policy Act (NEPA) includes procedures for referring to CEQ federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects. (40 CFR Part 1504). In determining what environmental objections to the matter are appropriate to refer to CEQ, an agency is instructed to consider possible violation of national environmental standards or policies, severity, geographical scope, duration, importance as precedents, and availability of environmentally preferable alternatives. (40 CFR 1504.2).

On June 25, 1984, CEQ received a referral from the Advisory Council on Historic Preservation (ACHP) regarding the proposed Presidential Parkway, Atlanta, Georgia. The Federal Highway Administration (FHWA), U.S. Department of Transportation, is the lead federal agency for the project. The FHWA has the role of approving or disapproving the State of Georgia's application for federal aid under the Federal-aid urban system (Title 23, U.S.C.). The FHWA responded to the referral on July 18, 1984.

One of the options under the CEQ referral regulations is for CEQ to "determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process." (40 CFR 1504.3(f)(4)). At a public meeting held on July 17, 1984, the CEQ decided to address the issue of national importance in relation to this referral. In a **Federal Register** notice published July 24, 1984, CEQ asked for written comments from the public on this issue. (49 FR 29812). The comment period closed on August 24, 1984. The CEQ further determined that it would be appropriate for any interested parties in either the private or public sector to meet individually with CEQ Council Members to discuss the proposed project, and that CEQ Council Members would make independent visits to the site of the proposed Presidential Parkway.

By unanimous vote, CEQ has determined that the issue is not one of national importance. Thus, CEQ's involvement in the referral process is concluded, and the Advisory Council on Historic Preservation and the Federal Highway Administration are requested to resume their normal decision process.

DATE: September 20, 1984.

SUPPLEMENTARY INFORMATION: There follows the written statements of the Chairman and Members of the Council upon their determinations regarding this issue. Note that Chairman A. Alan Hill and Member William Mills have issued a combined statement; Member Jacqueline Schafer has issued an individual statement.

A. Alan Hill,

Chairman.

Chairman A. Alan Hill and Dr. Willam Mills

Our determination that the Presidential Parkway referral does not raise an issue of national importance is based upon our visits to the site of the proposed project and the surrounding area, the written comments received regarding national importance, and our meetings and conversations with members of the public and private sector on this point.

We are mindful of the high degree of controversy which the proposed project has engendered and the desires of many individuals to see CEQ complete the referral process in this instance. Nevertheless, we have reached our determination based upon our understanding of the purpose of the national importance criteria and its application to this case. The purpose of the national importance provision in the NEPA regulations reflects CEQ's concern, that, ". . . The referral process be limited to truly important matters—matters of national importance—that might properly engage the attention of the President's Executive Office or even the President. We did not believe that the fact that an environmental impact statement had been prepared made a project or policy one of national importance. Nor would the fact of an interagency controversy, standing alone, make something of national importance. Our goal was to focus attention on a very small but very important subset of controversial federal proposals. We were trying to ensure that the process would not be open to all controversial proposals for which environmental impact statements had been prepared, because we did not want to burden ourselves, our colleagues in the EOP, or the President with proposals that were not of national importance."[1] The CEQ was also concerned about keeping the number of referrals at a manageable size, in light of its small staff.

We recognize that the referral raises concerns which are cognizable under NEPA, notably, the preservation of historic resources. However, we do not believe that the context and intensity of these issues rise to the level of "national importance." We do not believe that the referral raises new, precedent-making issues which are reasonably likely to affect national policies in the environmental arena. Nor do we find the level and intensity of controversy attendant to this proposed project to be so unique in the realm of public works projects that it warrants our review under the national importance provision.

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[15] Joint Sports Proposed Findings of Fact and Conclusions of Law, pp 17 and 18.

[16] JSC Reply Findings, p 17, footnote 15.

[1] Letter from Gus Speth, former Council Member and former Chairman of CEQ to the Honorable A. Alan Hill, August 17, 1984. Mr. Speth also stated that he was *not* addressing the issue of national importance in regard to the Presidential Parkway as he did not know enough about the details of the issues raised by the ACHP to assess them adequately.

We acknowledge the presence of historic sites in the area surrounding the route of the proposed Presidential Parkway, particularly the Olmsted parks. We regret the slight taking of the parkland which would occur should the Parkway be constructed, but we do not feel that this loss is one which is of national importance. Further, we do not perceive any nationally important adverse environmental impacts which would be likely to occur as a result of the Presidential Parkway's construction.

In arriving at these conclusions, we wish to strongly emphasize that our judgment is based solely upon the proposal as presented to us by the Georgia Department of Transportation and the Federal Highway Administration in regard to the proposed route of the Parkway. We realize that many people in Atlanta and surrounding communities feel strongly that the proposed 2.4 mile Presidential parkway is merely a "first step" to the completion of a road along the route of the proposed Stone Mountain Tollway, which was the subject of much controversy at an earlier time. We understand the deep and sincere fears regarding this prospect, and we wish to make it clear that we strongly maintain CEQ's position against the segmentation of highway proposals for the purpose of avoiding full compliance with NEPA. Our decision regarding national importance rests, in part, upon the proponents' representations that such segmentation will not occur. While we view the current impact on the Olmsted Parks as minor, we believe that any further Parkway development would have a serious impact and should be opposed.

A. Alan Hill.

William L. Mills.

Additional Views of Jacqueline E. Schafer, Member, CEQ

I have voted to determine that the issue of the impact of the Presidential Parkway in Atlanta is not one of national importance.

The referral from the Advisory Council on Historic Preservation places before us the opportunity to assess the merits of a project that has been thoroughly reviewed by other responsible and competent agencies at the local, state and federal level. The opportunity arises as a result of an interagency disagreement at the federal level concerning the acceptability of the anticipated environmental impacts of the instant project. We have been presented with a serious case that demands a serious approach to its consideration. CEQ's approach to this referral relies on an informed determination as to the "national importance" of the proposed "major federal action", the funding of a 2.4 mile arterial parkway on the Federal-aid Urban System. With so few precedents under the referral regulations of the National Environmental Policy Act to guide us, the Council elected to take comment on the question of "national importance". In the course of receiving these comments and of inspecting the site we were presented with considerable factual information concerning the merits and impacts of the project itself.

Clearly the Presidential Parkway poses an issue of enormous local importance: the appropriate use of undeveloped urban land will determine the character of the community. The project will have significant and complex impacts, both beneficial and adverse, on the affected neighborhoods. That the community is divided on this issue is most recently illustrated by the 7–7 vote taken on September 17 by the Atlanta City Council.

While this division may invite or tempt us to "weigh in" on one side or the other of a whole host of issues, the Council should confine its review to the national importance of the impact of the Presidential Parkway on the historic properties that lies at the heart of the referral from the Advisory Council on Historic Preservation. That a historic district is included in the National Register of Historic Places does not necessarily elevate *any* impact on such district to the status of national importance under the NEPA referral process. In my view, a design can be altered in its details, including changes in its use, yet retain fundamental integrity. Information presented to the Council persuades me that the design and operational aspects of the Presidential Parkway represent a significant attempt to preserve the integrity of the original design while adapting it to later needs. Its execution cannot be construed as the "loss of this national resource" that would constitute an impact of national importance. I cannot determine that *any* alteration of the original landscapes must necessarily be of national importance, nor can I determine that the preservation of the Olmsted legacy requires that no changes in the design or use may be tolerated. The legislative history of a bill to "identify, commemorate and preserve the legacy of historic landscapes of Frederick Law Olmsted" acknowledges the possibility and legitimacy of changing uses:

> It is my understanding that this legislation would not establish a priority for rigid adherence to original designs which would fail to take into account valid and important changing uses in the uses of the landscapes. (Congressional Record—House, August 6, 1984, page H 8456).

Jacqueline Schafer.

[FR Doc. 84–25490 Filed 9–24–84; 8:45 am]

BILLING CODE 3125–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Data Network; Meeting

September 20, 1984.

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on the Defense Data Network will meet in closed session on October 12, 1984 in the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review progress in implementing the Defense Data Network Program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 12, 1984.

Patricia H. Means,

OSD Federal Register Liaison, Office of Department of Defense.

[FR Doc. 84–25390 Filed 9–24–84; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP84-128-000]

Alabama-Tennessee Natural Gas Co.; Compliance Filing

September 20, 1984.

Take notice that on September 13, 1984, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing Forty-Fifth Revised Sheet No. 3-A to its FPC Gas Tariff, Third Revised Volume No. 1. Alabama-Tennessee's filing is made in compliance with Order No. 380, issued in Docket No. RM83-71-000 on May 25, 1984, and 18 CFR 154.111. Section 154.111 (a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers.

Alabama-Tennessee requests an effective date of September 14, 1984.

Alabama-Tennessee states that it have mailed copies of its filing to the persons named on the service list.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25391 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-658-000]

Arizona Public Service Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 4, 1984, Arizona Public Service Company (APS) tendered for filing five Notices of Cancellation for its Rate Schedule Nos. 10, 19, 24, 71, 72, between APS and the Colorado River Indian Irrigation Project (CRIIP), Rate Schedule No. 10; the Arizona Power Authority (APA), Rate Schedule No. 19; the Western Area Power Administration (WAPA), Rate Schedule No. 24; and the Salt River Project Agricultural Improvement and Power District (SRP), Rate Schedule Nos. 71 and 72.

APS is cancelling Rate Schedule Nos. 10 and 24 pursuant to stipulated termination dates.

APS is cancelling Rate Schedule No. 19, pursuant to its terms under Article 1, which stipulated a termination date simultaneous with Rate Schedule No. 18, which has already been cancelled.

Rate Schedule Nos. 71 and 72 are terminated simultaneously pursuant to terms under Rate Schedule No. 72, which stipulated a termination date on the in-use date of the Coronado-Silver King 500 kV line which was July 1, 1979.

APS further informs FERC that its Rate Schedule No. 95, Certificate of Concurrence to the "Inland Power Pool Agreement" filed by Public Service Company of Colorado (PSCC) has been superseded by Rate Schedule No. 104, Certificate of Concurrence to the "Revised Inland Power Pool Agreement", also filed by PSCC.

Copies of this filing were served upon the APA, CRIIP, SRP, WAPA, and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25392 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-227-001]

Columbia Gas Transmission Corp.; Amendment To Request Under Blanket Authorization

September 21, 1984.

Take notice that on September 10, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-227-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Virginia Linen Services, Inc. (Virginia Linen), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposed to continue transporting for Virginia Linen up to 140 MMBtu equivalent of natural gas for use in Virginia Linen's Petersburg, Virginia, plant through June 30, 1985, instead of the November 29, 1984, termination date authorized in Docket No. CP84-227-000 under the prior notice procedure by notice issued February 10, 1984. It is stated that in all other respects the transportation would remain the same as authorized in Docket No. CP84-227-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intevene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest in filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25393 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-127-000]

Commercial Pipeline Co., Inc.; Filing

September 20, 1984.

Take notice that on September 13, 1984, Commercial Pipeline Co., Inc. ("Commercial") tendered its 45th Revised Sheet No. 3A, superseding 44th Revised Sheet No. 3A. This filing is made in compliance with Order No. 380, issued in Docket No. RM83-71-000 on May 25, 1984, and 18 CFR 154.111(a)(3), which require that revised pipeline rate schedules and tariffs be filed to separately state purchased gas costs. An effective date of August 15, 1984, for Commercial's filing is provided.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rule of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25394 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-135-000]

Consolidated Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on September 14, 1984, filed Substitute Original Sheet No. 31 and First Revised sheet No. 31 to its FERC Gas Tariff, Original Volume No. 1. The revised tariff sheets are for effectiveness on June 25, 1984, and September 1, 1984, respectively. Both tariff sheets simply renumber tariff sheets previously filed by Consolidated under the tariff designations of its Corporate predecessor in interest, Consolidated Gas Supply Corporation.[1]

The First Revised Sheet is filed in compliance with Ordering Paragraph (F) of the Commission's August 31, 1984, suspension order in Docket Nos. TA84-2-22-002 and TA84-2-22-003. It replaces Forty-First Revised Sheet No. 16 to the Third Revised Volume No. 1 of Consolidated Gas Supply Corporation's tariff which was filed August 1, 1984, for effectiveness on September 1, 1984 as Consolidated's semi-annual PGA. Additionally, the First Revised Sheet, in compliance with the minimum bill rule in Docket No. RM83-71, separates gas and non-gas costs in the commodity components of Consolidated's rates.

The Substitute Original Sheet simply redesignates and is identical to Fortieth Revised Sheet No. 16 of Third Revised Volume No. 1 of Consolidated Gas Supply Corporation's tariff which was accepted for filing by letter order dated June 29, 1984 in Docket No. TA84-2-22-001 (PGA84-4). Consolidated asks that this Substitute Original sheet be made effective as of June 25, 1984, the same date that the entire Original Volume No. 1 was accepted for filing by letter order dated July 27, 1984, in Docket No. CP80-346-003.

Consolidated requests a waiver of any of the Commission's Rules and Regulations as are necessary to permit the revised tariff sheets to become effective as proposed.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25395 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-469-000]

Conway Oil Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 21, 1984.

On August 28, 1984, Conway Oil Company, 6226 Dominion Road, Santa Marie, California, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Santa Maria, California. The facility will use a reciprocating natural gas burning engine to generate 125 kW of electricity. Heat from the jacket water and the exhaust will be recovered in a closed loop water circulation system to heat oil from 100 degrees to 180 degrees prior to its shipment. Currently the natural gas intended for use as fuel for the proposed cogeneration facility is being burned in a conventional heater to heat the water circulation loop to provide the heat load.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25396 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-134-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on September 14, 1984, tendered for filing Fourteenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective July 31, 1984.

Fourteenth Revised Sheet No. 4 is filed in compliance with Commission's Order No. 380, issued on May 25, 1984, requiring natural gas pipelines to identify separately gas purchased costs included in their commodity rates.

Great Lakes states it is making this filing under protest due to the reasons stated by Great Lakes in its previous submissions made in Docket No. RM83-71, *et al*, as well as in its Petition for Review filed with the U.S. Court of

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[1] The corporate reorganization of Consolidated Gas Supply Corporation was approved by the Commission in December of 1983 at 25 FERC Paragraph 61,397 (1983). Consolidated thereafter adopted the tariff of its corporate predecessor until a replacement tariff was prepared and filed on June 25, 1984. The replacement tariff was accepted for filing effective June 25, 1984 by letter order issued July 27, 1984, in Docket No. CP80-346-003.

Appeals for the District of Columbia (No. 84-1360).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25397 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-482-000]

Ice Haus I; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 20, 1984.

On September 4, 1984, Ice Haus I (Applicant), a California general partnership, Box 474, Newport Beach, California 93662, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be using natural gas as its primary energy source. Exhaust heat from a combustion turbine-generator unit will supply a waste heat boiler. The generated steam will supply an extraction turbine-generator unit. The electric power production capacity will be 27,704 kilowatts. The extracted steam will be used by an industrial process in absorption refrigeration equipment providing refrigeration at the host ice manufacturing plant. The facility will be located at 17011 S. Central Avenue, Carson, California 90746, and is expected to begin operation the summer of 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25398 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-125-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Compliance Filing

September 20, 1984.

Taken notice that on September 11, 1984, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City Minnesota) tendered for filing Third Substitute Twentieth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1. Inter-City Minnesota states that this filing is made in compliance with Order No. 380, issued in Docket No. RM83-71-000 on May 25, 1984, and 18 CFR 154.111. Section 154.111(a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers.

Inter-City Minnesota states that the filing shows that it is already in conformity with § 154.111.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25399 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-133-000]

Louisiana-Nevada Transit Co.; Compliance Filing

September 20, 1984.

Take notice that on September 14, 1984, Louisiana-Nevada Transit Company (Louisiana-Nevada) tendered for filing Fifth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. Louisiana-Nevada's filing is made in compliance with Order No. 380, issued in Docket No. RM83-71-000 on May 25, 1984, and 18 CFR 154.111. Section 154.111(a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers. Louisiana-Nevada states that its Rate Schedules G-1 and X-2 have been revised accordingly.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission end are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25400 Filed 9-24-84, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-131-000]

MIGC, Inc.; Compliance Filing

September 20, 1984.

Take notice that on September 13, 1984, MIGC, Inc. (MIGC) tendered for filing Thirtieth Revised Sheet No. 32 to its FERC Gas Tariff, Original Volume No. 1. MIGC states that this filing is made in compliance with Order No. 380, issued in Docket No. RM83-71-000 on May 25, 1984, and 18 CFR 154.111. Section 154.111(a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers.

MIGC requests an effective date of September 14, 1984.

MIGC asserts that this tariff filing should not be construed as indicating that MIGC has waived any rights to pursue its opposition to Section 154.111 at the Commission and in the Courts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25401 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-657-000]

PacifiCorp, Doing Business As Pacific Power & Light Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 4, 1984 PacifiCorp doing business as Pacific Power & Light Company (Pacific) tendered for filing an Agreement in accordance with FERC Electric Tariff, Original Volume No. 3.

Pacific states that the Agreement provides for the sale of nonfirm power and energy in accordance with Service Schedule PPL-3 of the Tariff.

Pacific requests an effective date of August 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25402 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-43-000]

Public Service Company of New Mexico; Petition for a Declaratory Order Disclaiming Jurisdiction or, in the Alternative, Request for Authorization Under Section 203 of the Federal Power Act

September 20, 1984.

Take notice that on August 31, 1984, Public Service Company of New Mexico ("PNM"), filed an application seeking an order determining that no approval is necessary and dismissing for lack of jurisdiction under section 203 of the Federal Power Act, or, in the alternative, for approval pursuant to that section authorizing PNM's acquisition of certain of the interstate natural gas pipeline and related facilities of Western Gas Interstate Company ("WGI") located in New Mexico.

PNM requests a declaratory order that its acquisition of certain interstate natural gas pipeline facilities currently owned by WGI which are subject to the Commission's jurisdiction does not require section 203 approval. The proposed acquisition of facilities and operations arises out of settlement of a pending protracted antitrust proceeding. Under the terms of the settlement, the parties agreed that Southern Union Company ("Southern Union") shall sell to PNM certain of its properties and assets relating to the distribution, gathering, transmission and storage of natural gas in New Mexico. This includes tangible properties, plant and equipment of WGI, a wholly-owned subsidiary of Southern Union.

PNM proposes to acquire certain of WGI's natural gas transmission facilities located in New Mexico and to perform the identical transmission and sales services performed by WGI through such facilities. The acquired facilities consist of WGI's Antelope Ridge facilities which were authorized by the Commission to be constructed and operated pursuant to a certificate, as amended, issued on November 3, 1978, and December 10, 1979. WGI now provides interstate transmission and sales service through the Antelope Ridge facilities for Gas Company of New Mexico under its Rate Schedule GR to its FERC Gas Tariff. The facilities will be operated in the same manner as set forth in the original certificates and will perform the identical transportation and sales services perform by WGI by means of such facilities.

Upon the consummation of the antitrust settlement agreement, WGI's Antelope Ridge facilities shall be acquired and operated by a wholly-owned subsidiary of Sunbelt Mining Company, Inc. Sunbelt Mining Company, Inc. is a wholly-owned subsidiary of PNM. As an alternative to its petition for a declaratory order disclaiming jurisdiction, PNM seeks approval for the acquisition pursuant to section 203 of the Federal Power Act and the regulations thereunder.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of 18 CFR. All such petitions or protests should be filed on or before October 11, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25403 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-479-000]

SAI Geothermal, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 20, 1984.

On August 31, 1984, SAI Geothermal, Inc. (Applicant) of 3030 Patrick Henry Drive, Santa Clara, California 95054-1814, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The primary energy source for the facility will be geothermal steam with a power production capacity of 12,500 kilowatts. The facility will be located in Sonoma County, California, and wholly owned by the Applicant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy

Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25404 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-129-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 13, 1984 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheet:

Revised Substitute Seventieth Revised Sheet No. 14

This tariff sheet is being filed pursuant to Commission Order No. 380 issued May 25, 1984 which added Section 154.111 to the Commission's Rules and Regulations requiring that existing tariff sheets state purchased gas costs in the commodity rate separately from other charges. The attached tariff sheets so reflects the purchased gas cost rate separately for those rate schedules containing commodity minimum bill provisions.

The proposed effective date of the above tariff sheet in September 13, 1984.

In This connection, Texas Eastern has petitioned the United States Court of Appeals for the District of Columbia Circuit for review of Order Nos. 380 and 380-A. This filing is without prejudice to Texas Eastern's position on appeal and rights to further appeal and without prejudice to its rights in the event the court grants a stay.

In its Order No. 380 issued May 25, 1984, the Commission waived the Part 381 filing fees for tariff filings made by pipeline companies under Section 154.111 of its Regulations. Accordingly, Texas Eastern is not transmitting a filing fee herewith.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Texas Eastern respectfully requests that the Commission grant a waiver of the notice requirements as provided in Section 154.51 of the Regulations in order that the enclosed tariff sheets be made effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25405 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-130-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Transwestern Pipeline Company (Transwestern) on September 13, 1984 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

Revised Substitute Twenty-fifth Revised Sheet No. 5

Revised Substitute Twenty-fourth Revised Sheet No. 6.

These tariff sheets are being filed pursuant to Commission Order No. 380 issued May 25, 1984 which added Section 154.111 to the Commission's Rules and Regulations requiring that existing tariff sheets state purchased gas costs in the commodity rate separately from other charges. The attached tariff sheets so reflect the purchased gas cost rate separately for those rate schedules containing commodity minimum bill provisions.

The proposed effective date of the above tariff sheets in September 13, 1984.

In this connection, Transwestern has petitioned the United States Court of Appeals for the District of Columbia Circuit for review of Order Nos. 380 and 380-A. This filing is without prejudice to Transwestern's position on appeal and rights to further appeal and without prejudice to its rights in the event the court grants a stay.

In its Order No. 380 issued May 25, 1984, the Commission waived the Part 381 filing fees for tariff filings made by pipeline companies under Section 154.111 of its Regulations. Accordingly, Transwestern is not transmitting a filing fee herewith.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state Commissions.

Transwestern respectfully requests that the Commission grant a waiver of the notice requirements as provided in Section 154.51 of the Regulations in order that the enclosed tariff sheets be made effective as proposed.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25407 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In FR Doc. 84-24698 appearing on page 36567 in the issue of Tuesday, September 18, 1984, make the following correction in the last column: The "Agreement No." in the tenth line should be corrected to read "224-010642."

BILLING CODE 1905-01-M

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the

Shipping Act, 1916 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Jong Pyo Kim dba Sam Young Express Co., 13017 Artesia Blvd., Suite No. 104, Cerritos, CA 90701

Yowell Transportation Services, Inc., 7805 Ellis Road, Melbourne, FL 32901; Officers: Neil T. Yowell, Jr., Chairman, Carol Yowell, Secretary/Treasurer, Neil T. Yowell, III, President, Victor L. Yowell

Bernard J. McHale dba Bernard J. McHale Company, 2401 Lourance Blvd., Greensboro, NC 27407

By the Federal Maritime Commission.

Dated: September 20, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25337 Filed 9-24-84; 8:45 am]

BILLING CODE 6730-01-M

Pacific Westbound Conference et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000057-138.

Title: Pacific Westbound Conference (PWC).

Parties:

American President Lines, Ltd.
A.P. Moller-Maersk Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Sea-Land Service, Inc.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The parties having notified the Commission of their determination to dissolve the PWC effective October 31, 1984, the Commission hereby gives notice of its intent to terminate its prior approval of Agreement No. 202-000057, such termination to be effective October 31, 1984. The parties have requested a shortened review period.

Agreement No.: 202-008493-013.

Title: Trans-Pacific American Flag Berth Operators.

Parties:

American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would expand the geographic scope of the agreement to include all U.S. Coasts, Hawaii and Alaska and intermodal transportation in the United States and the Far East. It would also establish procedures with respect to independent action, neutral body self-policing, consultation and shipper's requests and complaints. Additionally, it would eliminate current transshipment provisions, make various non-substantive changes to reflect provisions of the Shipping Act of 1984 and would restate the agreement.

Agreement No.: 224-010607-001.

Title: Anacortes Terminal Agreement.

Parties:

Port of Anacortes
Bellingham Stevedoring Company

Synopsis: The amendment conforms the basic agreement with the Shipping Act of 1984 by removing the word "approval" from paragraph 3, titled "Term", and substituting therefor the word "review".

Agreement No.: 217-010643.

Title: Farrell Lines—SITRAM Space Charter Agreement.

Parties:

Farrell Lines Incorporated (Farrell)
Societe Ivoirienne de Transport Maritime (SITRAM)

Synopsis: Establishes a space charter agreement in the trade between the Ivory Coast and North America whereby Farrell agrees to provide space aboard its vessels to SITRAM on a space available basis. The agreement succeeds Agreement No. 10412 which expired on September 16, 1984. The parties have requested a shortened review period.

Agreement No.: 224-010644.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (City)
Indies Terminal Company (ITC)

Synopsis: Agreement No. 224-010644 provides that the City will grant to ITC preferential use of a container terminal at Berths 216-225 at the Port of Los Angeles, including 90 acres of backland area. The term of the agreement is for five years. Compensation will be based upon tariff charges with a minimum guarantee and revenue sharing for increased volume of cargo. ITC will pay the City for crane charges.

Agreement No.: 224-010645.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (City)
Korea Shipping Corporation (KSC)

Synopsis: Agreement No. 224-010645 provides for the granting by the City to KSC the preferential use of Berths 87-89 and a secondary assignment to Berth 90, including 25 acres of backland area at the Port of Los Angeles. The term of the agreement is for five years. Compensation is based upon tariff charges with a minimum annual guarantee and revenue sharing for increased volume of cargo. The agreement obligates the City to make certain improvements and modifications to the premises.

By Order of the Federal Maritime Commission

Dated: September 20, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25336 Filed 9-24-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central of Kansas, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central of Kansas, Inc.*, Junction City, Kansas, to acquire Central Computer Services, Inc., Junction City, Kansas, thereby furnishing for itself, its subsidiaries, and others, data processing and transmission services, facilities, data bases, and access to such services, facilities, or data bases, only of a financial, economic, or banking nature. These activities would be conducted in Junction City, Kansas, and surrounding market area.

Board of Governors of the Federal Reserve System, September 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25323 Filed 9-24-84; 8:45 am]

BILLING CODE 6210-01-M

GHW Associates, el al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.4 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 16, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *GHW Associates*, Hackensack, New Jersey; to become a bank holding company by acquiring 51 percent of the voting shares of First County Bank of New Jersey, North Brunswick, New Jersey.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Wesbanco, Inc.*, Wheeling, West Virginia; to acquire 100 percent of the voting shares of First-Tyler Bank & Trust Co., Sisterville, West Virginia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *BW Bancshares, Inc.*, Warrensburg, Illinois; to become a bank holding company by acquiring 81 percent of the voting shares of Community Bank of Warrensburg, Warrensburg, Illinois.

2. *Wapello Bankshares, Inc.*, Wapello, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Wapello, Wapello, Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grant Avenue, Kansas City, Missouri 64198:

1. *Landmark Bancshares, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 80 percent or more of the voting shares of Landmark National Bank, Denver, Colorado.

2. *Minnequa Bancorp, Inc.*, Pueblo, Colorado; to become a bank holding company by acquiring 80 percent or more of the voting shares of Minnequa Bank of Colorado, Pueblo, Colorado.

3. *Rogers County Bank Holding Company*, Claremore, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Rogers County Bank, Claremore, Oklahoma.

Board of Governors of the Federal Reserve System, September 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25324 Filed 9-24-84; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; *Barclays Bank PLC* and *Barclays Bank*

International Limited, both of London, England; *Chemical New York Corporation*, New York, New York; *National Westminster Bank PLC*, London, England and *Natwest Holdings, Inc.*, New York, New York; *Northeast Bancorp, Inc.*, New Haven, Connecticut; *The Bank of New York Company, Inc.*, New York, New York; *The HongKong and Shanghai Banking Corporation*, Hong Kong, B.C.C.; *Kellett N.V.*, *Curacao, Netherlands Antilles; HSBC Holdings B.V.*, Amsterdam, The Netherlands; and *Marine Midland Banks, Inc.*, Buffalo, New York; to engage *de novo* through their subsidiary, The New York Switch Corporation, in data processing activities.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tri-State Bankshares, Inc.*, Trenton, Georgia; to engage *de novo* directly in insurance activities in Trenton, Georgia, a town with a population not exceeding 5,000.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manufacturers National Corporation*, Detroit, Michigan; to expand *de novo*, the activities of its wholly-owned subsidiary, Manucor Leasing, Inc., Detroit, Michigan, and to engage in the activities of leasing of personal property. The geographic scope will include the entire United States.

D. **Federal Reserve Bank of Kansas** City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Missouri Bancshares, Inc.*, Kansas City, Missouri; to engage *de novo*, directly in making, acquiring or servicing of loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others.

Board of Governors of the Federal Reserve System, September 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25325 Filed 9-24-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of October 1984.

Biological/Neurosciences Subcommittee of the Mental Health Research Education Review Committee
October 4; 8:00 a.m.
Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814
Open—October 4; 8:00–9:00 a.m.
Closed—Otherwise
Contact: Betty Russell, Room 9-109, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 8:00–9:00 a.m., October 4, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
October 11–12; 9:00 a.m.
Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814
Open—October 11; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Pamela J. Mitchell, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 11, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Aging Subcommittee of the Life Course and Prevention Research Review Committee
October 12–13; 9:00 a.m.
Sheridan Room, Georgetown Hotel, 2121 P Street, NW., Washington, D.C. 20037
Open—October 12; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Victoria Souder, Room 9C02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4728.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 12, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Epidemiology and Prevention Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee
October 15–17; 8:30 a.m.
Council Room, Sheraton Inn Washington Northwest, 8727 Colesville Road, Silver Spring, Maryland 20910
Open—October 15; 8:30–10:00 a.m.
Closed—Otherwise
Contact: Ron Gold, Executive Secretary, DAPA, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–10:00 a.m., October 15, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Psychosocial Research Review Committee
October 17–19; 9:00 a.m.
Quality Inn—Embassy Suites, 2000 N Street NW., Washington, D.C. 20036
Open—October 17; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Laura Weinstein, Ph.D., Executive Secretary, Alcohol Psychosocial Research Review Committee, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–9:30 a.m., October 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychological Sciences Subcommittee of the Mental Health Research Education Review Committee
October 18–19; 1:00 p.m.
Gramercy Inn, North Scott Suite, 1616 Rhode Island Avenue, NW., Washington, D.C. 20036
Open—October 18; 1:00–2:00 p.m.
Closed—Otherwise
Contact: Sandra Buckhalter, Room 9–109, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 1:00–2:00 p.m., October 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
October 18–19; 9:00 a.m.
The Shoreham Hotel, Calvert Street and Connecticut Avenue, NW., Washington, D.C. 20008
Open—October 18; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Maureen Eister, Room 9C14, Parklawn Building, 5600 Fishers Lane Rockville, Maryland 20857, (301) 443–4868.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (Appendix I).

Board of Scientific Counselors, NIMH
October 18–20; 9:00 a.m.
October 18 and 20—National Insititutes of Health, Building 36, Conference Room 1B–07, 9000 Rockville Pike, Bethesda, Maryland 20205
October 19—St. Elizabeths Hospital, The William A. White Building, Room 146, Washington, D.C. 20032
Open—October 18; 9:00–9:15 a.m.
Closed—Otherwise
Contact: Dr. Frederick K. Goodwin, National Institutes of Health, Building 10, Room 4N–224, Bethesda, Maryland 20205, (301) 496–3501.

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: On October 18, the Board will meet in Building 36, Conference Room 1B–07, Bethesda, Maryland, for approximately 15 minutes for a report by the Director of Intramural Research, NIMH, on recent administrative developments. The remainder of the sessions will be devoted to a review of the intramural research projects from the Neuropsychiatry Branch, and the evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental health Administration, pursuant to the provisions of section 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee
October 18–20; 9:00 a.m.
Wellington Hotel, 2505 Wisconsin Avenue, NW., Washington, D.C. 20007
Open—October 18; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Christine Peers, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1177.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to the mental health of the child and family and prevention, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Applied Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee
October 19; 9:00 a.m.
Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, D.C. 20007
Open—October 19; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Emilie Embrey, Room 9–109, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee
October 23–25; 9:00 a.m.
Halpine Conference Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852
Open—October 23; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Heinz Sorer, Ph.D., Extramural Policy and Project Review Branch, NIDA, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Clinical and Behavioral Research Review Committee
October 23–25; 9:00 a.m.
Twinbrook Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852
Open—October 23; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Daniel L. Mintz, Executive Secretary, DACB, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee
October 23–25; 9:00 a.m.
Rockville Conference Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852
Open—October 23; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Khursheed Asghar, Ph.D., Extramural Policy and Project Review Branch, NIDA, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee
October 24–26; 9:00 a.m.
Gramercy Hotel, 1616 Rhode Island Avenue, NW., Washington, D.C. 20036
Open—October 24; 9:00–11:00 a.m.
Closed—Otherwise
Contact: Harvey P. Stein, Ph.D., Executive Secretary, Alcohol Biomedical Research Review Committee, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–11:00 a.m., October 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applicatioins for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee
October 24–26; 9:00 a.m.
Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, D.C. 20008
Open—October 24; 9:00–10:00 a.m.

Closed—Otherwise
Contact: Irma Fisher, Room 9C24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I):

Research Scientist Development Review Committee
October 24–26; 10:00 p.m.
Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, D.C. 20008
Open—October 25; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Diána Souder, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., October 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Mental Health Behavioral Sciences Research Review Committee
October 25–27; 9:00 a.m.
The Wellington Hotel, 2505 Wisconsin Avenue, NW., Washington, D.C. 20007
Open—October 25; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Naomi Lichtenberg, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health of support or research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(C)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Basic Psychopharmacology Research Subcommittee of the Neurosciences Research Review Committee
October 25–27; 9:00 a.m.
Silver Spring Holiday Inn, 8770 Georgia Avenue, Silver Spring, Maryland 20901
Open—October 25; 9:00–10:00 a.m.
Closed–Otherwise
Contact: Marilyn Anderson, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20657, (301) 443–39444.

Purpose: The Committee is charged with the initial review of applications for assistance form the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with the recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 25, the meeting will be open for discussion of administrative announcements program developmens. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Epidemiologic and Services Research Review Committee
October 29–31; 9:00 a.m.
Sheraton Washington Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008
Open—October 29; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Gloria Yockelson, Room 9C16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance form the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 29, the meeting will be open for discussion of administrative announcements and program developments. Otherwise the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Criminal and Violent Behavior Research Review Committee
October 31–November 2; 9:00 a.m.
Quality Inn Downtown, 1315 16th Street, NW., Washington, D.C. 20036
Open–October 31; 9:00–10:30 a.m.
Closed—Otherwise
Contact: Jean Bryne, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4968.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:30 a.m., October 31, the meeting will be open for discussion of administrative announcements and program developments. Otherwise the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

This **Federal Register** notice is late because it was difficult to coordinate members' schedules.

Dated: September 19, 1984.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84–25377 Filed 9–24–84; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 81N–0314]

Reexamination of the GRAS Status of Sulfiting Agents; Delay in Availability of Tentative Report and Opportunity for Public Comments

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the tentative report of the ad hoc Review Panel on the Reexamination of the GRAS Status of Sulfiting Agents (the ad hoc Review Panel) will be publicly available a few weeks later than was previously announced. The ad hoc Review Panel was formed by the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office. FDA and FASEB are inviting oral and written comments on the tentative report.

DATES: The tentative report will be publicly available on October 15, 1984, rather than September 21, 1984, as was previously announced. An open meeting of the ad hoc Review Panel is tentatively scheduled for Thursday, November 29, 1984, 9 a.m., at a location in Bethesda, MD, that will be identified in the tentative report and announced in the future **Federal Register** notice. Requests to make oral presentations at the open meeting must be made in writing, be postmarked before November 23, 1984, and be received by November 26, 1984. Written comments on the tentative report must be postmarked before November 23, 1984, and be received by November 29, 1984.

ADDRESSES: Written requests for signle copies of the tentative report should be submitted to Sue Ann Anderson, Life Sciences Research Office, FASEB, 9650 Rockville Pike, Bethesda, MD 20814. Copies of the tentative report will also be on display at the Life Sciences Research Office and the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Written requests to make oral presentations at the open meeting should be sent to Sue Ann Anderson, Life Sciences Research Office, FASEB, and to the Dockets Management Branch (addresses above).

Written comments on the tentative report should be sent to Sue Ann Anderson, Life Sciences Research Office, FASEB, and to the Dockets Management Branch (addresses above).

FOR FURTHER INFORMATION CONTACT: Sue Ann Anderson, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 1984 (49 FR 27994), FDA announced that FASEB had formed the ad hoc Review Panel to reexamine all relevant scientific data that bear on the human effects of sulfiting agents. FDA is announcing that the tentative report of the ad hoc Review Panel will be available on October 15, 1984, rather than September 21, 1984, as announced in the **Federal Register** of August 17, 1984 (49 FR 32908). The availability of the report has been delayed because the ad hoc Review Panel has not been able to locate, assemble, analyze, and interpret the information and data it needs in accordance with the planned schedule.

In its tentative report, the ad hoc Review Panel will consider the levels of exposure to sulfiting agents and the health effects of the use of these ingredients in deciding whether those uses are generally recognized as safe (GRAS).

The sulfiting agents (also known as sulfites) include potassium metabisulfite, sodium bisulfite, sodium metabisulfite, potassium bisulfite, sodium sulfite, and sulfur doixide.

In 1976, the Select Committee on GRAS Substances (the Select Committee), which was formed by FASEB, evaluated the GRAS status of the sulfiting agents in a report (PB–265 508), which is available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. Based in part on that report, in 1982 FDA proposed to affirm that the use of sulfiting agents in food is GRAS (47 FR 29956; July 9, 1982). However, a larger quantity of additional data and information on new and wider uses for sulfiting agents in foods and reports of health effects possibly associated with the consumption of sulfiting agents have become available since the Select Committee completed its review. In its tentative report, the ad hoc Review Panel will consider the recent scientific publications and the new information that were submitted to FDA in response to its proposal on the GRAS status of the use of sulfiting agents.

Public comment on the tentative report is invited at an open meeting of the ad hoc Review Panel tentatively scheduled for November 29, 1984, 9 a.m., at a location in Bethesda, MD, that will be identified in the tentative report and announced in a future **Federal Register** notice. Interested persons are invited to provide data and information on uses of sulfiting agents, exposures to these substances, and health effects of sulfiting agents as well as to give their views on the safety of the use of these substances at this meeting. Written requests to make oral presentations at the open meeting should be sent to the addressess above and must be postmarked before November 23, 1984, and received by November 26, 1984. In addition, interested persons may submit written comments on the tentative report. These comments should also be sent to the addressess above and must be postmarked before November 23, 1984.

Dated: September 20, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25431 Filed 9-21-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcements for Grants for Establishment of Departments of Family Medicine

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1985 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of Section 780 of the Public Health Service Act.

Section 780 authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under Section 786(a), Title VII, of the Public Health Service Act.

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy.

To receive support, programs must meet the requirements of final regulations published in the **Federal Register** on May 4, 1983 (48 FR 20214).

Application materials are being made available without final action on the Fiscal Year 1985 budget and the enactment of health professions renewal legislation. Therefore, financial adjustments and programmatic changes may be necessary at a later date. Should such changes be necessary, all applicants will be notified.

A funding preference was announced in the **Federal Register** May 30, 1984 (49 FR 22540) for Fiscal Year 1984 awards only, therefore, it is not being used in Fiscal Year 1985.

The application deadline date is November 15, 1984. Applications shall be considered as meeting the deadline if they are either (1) *received* on or before the deadline date or (2) *postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D32), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Division of Medicine, Multidisciplinary Resources Development Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-25 Rockville, Maryland 20857, Telephone: (301) 443-3614.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 19, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84-25365 Filed 9-24-84; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-84-774; FRL-2023]

Delegation of Authority To Apply Administrative Actions To Lenders Participating in the Title I (National Housing Act) Program.

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: The Secretary of Housing and Urban Development (HUD) is delegating to the Mortgagee Review Board the authority to apply administrative actions to Title I (Property Improvements and Manufactured Home Programs) lenders. The administrative actions that may be applied and the grounds for applying those actions are enumerated and codified at 24 CFR 202.6, effective September 10, 1984. In applying administrative actions to Title I lenders, the Mortgagee Review Board will be governed by its internal procedures codified at 24 CFR Part 25.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip L. Schulman, Office of General Counsel, Room 10270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Telephone: (202) 755-5557 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Following notice and public comments, on June 19, 1984, HUD published a final rule in the **Federal Register** (49 FR 24989) setting forth the requirements for Title I lender approval, including provisions for the termination of the Contract of Insurance and for the taking of administrative actions. The final rule, which is codified at 24 CFR Part 202, is effective on September 10, 1984. Under a previous delegation of authority published in the **Federal Register** on July 14, 1982, (47 FR 30653), the Deputy Assistant Secretary for Single Family Housing (formerly the Deputy Assistant Secretary for Single Family Housing and Mortgagee activities) was delegated the authority to approve or withdraw or suspend the approval of Title I lenders. The delegation dated July 14, 1982, will remain in effect to the extent that the Deputy Assistant Secretary for Single Family Housing will continue to have the authority to approve Title I lenders and to issue or cancel contracts of insurance. In so doing, the Deputy Assistant Secretary will be governed by the provisions of 24 CFR Part 202. However, since withdrawal or suspension of a Title I lender's approval constitutes an administrative action, provided for at 24 CFR § 202.6, the authority to impose such an action will be vested in the Mortgagee Review Board pursuant to the terms of this delegation of authority.

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Mortgagee Review Board the authority to apply administrative actions to Title I (Property Improvement and Manufactured Home Programs) lenders, pursuant to 24 CFR 202.6 (49 FR 24989), effective September 10, 1984. In applying administrative actions to Title I lenders, the Mortgagee Review Board shall be governed by the regulations codified at 24 CFR 202.6, and by its own internal procedures codified at 24 CFR Part 25.

Section B. Authority to Redelegate

The authority of the Mortgagee Review Board to redelegate to the employees of the Department any of the power and authority delegated under

Section A shall be governed by 24 CFR § 25.2.

Section C. Effect Upon Previous Delegations

The delegation of authority, published in the Federal Register on July 14, 1982 (47 FR 30653), granting the Deputy Assistant Secretary for Single Family Housing and Mortgagee Activities the authority to approve and withdraw or suspend the approval of Title I lenders and to issue or cancel contracts of insurance with Title I lenders shall remain in effect, except that the authority to withdrawn or suspend the approval of a Title I lender shall no longer be vested in the Deputy Assistant Secretary, but rather in the Mortgagee Review Board in accordance with Section A.

This delegation supersedes and revokes all other preceding delegations that are inconsistent with it.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: September 18, 1984.

Samuel R. Pierce, Jr.,

Secretary, Department Housing and Urban Development.

[FR Doc. 84-25418 Filed 9-24-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Land Resource Management; Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Plats of survey of the lands described below accepted July 30, 1984, will be officially filed in the Montana State Office effective 8 a.m. on November 14, 1984.

Principal Meridian, Montana

T. 15 N., R. 18 W.

T. 15 No., R. 17 W.

The plat represents the dependent resurvey of a portion of the Flathead Indian Reservation boundary in Township 15 North, Range 18 West, Principal Meridian, Montana. The area described is in Missoula County.

Principal Meridian, Montana

The Plat represents the survey of a portion of the Flathead Indian Reservation bondary in Township 15 North, Range 17 West, Principal Meridian, Montana. The area described is in Missoula County.

Principal Meridian, Montana

T. 16 N., R. 17 W.

The plat, in two sheets, represents the survey of a portion of the Flathead Indian Reservation boundary in Township 16 North, Range 17 West, Principal Meridian, Montana. The area described is in Missoula County.

Principal Meridian, Montana

T. 16 N., R. 18 W.

The plat represents the survey of a portion of the Flathead Indian Reservation boundary in Township 16 North, Range 18 West, Principal Meridian, Montana. The area described is in Missoula County.

These surveys were requested by the Bureau of Indian Affairs.

Principal Meridian, Montana

T. 2 S., R. 9 W.

The plat represents the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and certain boundaries of mineral surveys; and the survey of the subdivision of sections 4 and 5, Township 2 South, Range 9 West, Principal Meridian, Montana. The area described is in Silver Bow County.

This survey was requested by the Butte District Office to facilitate their administrative needs.

EFFECTIVE DATE: November 14, 1984.

FOR FURTHER INFORMATON CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: September 12, 1984.

Linda M. Wagner,

Chief, Branch of Records.

[FR Doc. 84-25328 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-DN-M

Land Resource Management; Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Plats of survey of the lands described below accepted August 23, 1984, will be officially filed in the Montana State Office effective 8 a.m. on November 16, 1984.

Principal Meridian, Montana

T. 11 N., R. 12 W.

The plat represents the dependent resurvey of a portion of the south boundary of Township 12 North, Range 12 West, a portion of the west boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 5, 6, 7, and 22, Township 11 North, Range 12 West, Principal Meridian, Montana. The area described is in Powell County.

Principal Meridian, Montana

T. 13 N., R. 12 W.

The plat represents the dependent resurvey of a portion of the Third Standard Parallel North, and a portion of the subdivisional lines; and the survey of the subdivision of sections 22, 23, 26, 28, 32, and 33, Township 13 North, Range 12 West, Principal Meridian, Montana. The area described is in Powell County.

These surveys were requested by the Butte District Office to facilitate their administrative needs.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated September 11, 1984.

Linda M. Wagner,

Chief, Branch of Records.

[FR Doc. 84-25327 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Establishment of Criteria for Identification of Non-Toxic Shot Zones for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This Notice is to solicit comments and recommendations from interested parties as to the specific criteria that should be proposed for the identification and establishment of non-toxic shot zones for waterfowl hunting.

DATE: Comments must be submitted by October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Telephone 202-254-3207.

SUPPLEMENTARY INFORMATION: When eaten by waterfowl, spent lead pellets may have a toxic effect. The only non-toxic shot available at this time is steel shot. As indicated in 50 CFR 20.21(j), non-toxic shot is required for watefowl hunting in certain designated zones. These zones have been identified in a variety of ways since 1976; however, since 1978 no non-toxic shot zone can be implemented or enforced by the Fish and Wildlife Service (FWS) in a State without approval of the appropriate State authorities. This restriction on use of funds by FWS has been contained in the Interior Department Appropriations Bill each year. As a consequences of this restiction, FWS has proposed additions and deletions to the designated non-toxic zones for waterfowl hunting only with the approval of State authorities. The manner in which non-toxic shot zones are selected has varied by region and State and the subject has been controversial.

Officials of the Department of the Interior have held discussions with interested organizations, States, and individuals concerning the nature, extent, and significance of lead poisoning in waterfowl and other wildlife. Through these discussions it has become clear that States, Flyway Councils, private organizations, and individuals are seeking greater participation from the FWS in addressing this subject. In response to this expressed need, FWS has developed a plan for moving toward resolution of the issue. The FWS plan includes:

- Monitoring selected locations throughout the United States for the occurrence of lead poisoning in migratory birds,
- Cooperating with States, Flyway Councils, other interested organizations and individuals, formulating more specific criteria for defining lead poisoning areas.
- Identifying needed research on lead poisoning, crippling loss, and similar topics of concern.
- Analyzing and summarizing current information on lead poisoning among bald eagles and developing management recommendations.
- Development of an information program in cooperation with States, Flyway Councils, private organizations and individuals.
- Increased efforts to monitor levels of lead in waterfowl in areas identified by the States and FWS.

In 1976, a Final Environmental Statement (FES) on the *Proposed Use of Steel Shot for Waterfowl Hunting* was published by the Interior Department. Page 264 of that document contained a discussion of how non-toxic shot zones would be selected. That discussion contains the following statement: The determination of areas where the use of steel shot will be required for waterfowl hunting will be based on evidence from all sources and will include consideration of magnitude of harvest, density of deposited shot, incidence of shot in gizzards, measurements of lead levels in wing bones, visible evidence of mortality, and enforcement considerations in establishing easily identifiable and meaningful boundaries, and such other factors as may be appropriate.

Since publication of the FES–1976, the occurrence of lead in the soft tissues of waterfowl, such as liver and kidney, and measurements relating to lead in blood and levels of certain enzymes that serve as indicators of lead ingestion have been used in defining problem areas. The original techniques, plus these newer procedures, have been used individually or in combination within States, FWS Regions, and among the four administrative units know as waterfowl flyways. However, no single technique or combination of techniques has had general acceptance among these administrative units. The failure to achieve uniformity in the zone selection process has resulted in what appears to be inequities in the application of non-toxic shot requirements for waterfowl hunting.

It our intent to propose in December 1984, criteria that will be more specific than those proposed in FES–1976 and serve as a guideline in the establishment of non-toxic shot zones for waterfowl hunting. Prior to the development of such a proposal, FWS welcomes the recommendations and comments of interested organizations and individuals.

Please address your comments to Director, Fish and Wildlife Service (MBMO), Department of the Interior, Washington, D.C. 20240.

Dated: September 20, 1984.

Robert A. Jantzen,

[FR Doc. 84–25346 Filed 9–24–84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463. A meeting of the Outer Continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group will be held on November 27–29, 1984, in New Orleans, Louisiana. The agenda of the meeting is as follows:

November 27
9:00 a.m.–5:00 p.m.: Gulf of Mexico Information Transfer Meeting
November 28
8:30 a.m.–5:00 p.m.: Continuation of the Information Transfer Meeting
November 29
9:00 a.m.–12:00 noon: Closing Plenary Session of the Information Transfer Meeting
1:00 p.m.–5:00 p.m.: Regional Technical Working Group Business Meeting

A. Sale Results: Western Gulf of Mexico No. 84.

B. Status of Proposed 1985 Lease Sales Nos. 94/98/102.

C. Scoping Briefing: 1986 Proposed Lease Sales Nos. 104/105.

D. New 5-Year OCS Oil and Gas Leasing Program.

E. Briefing on the Environmental Studies Program.

F. Regional Activities Update.

The meeting will be held in the International Hotel, 300 Canal Street, New Orleans, Louisiana. All sessions are open to the public, and interested persons may make oral or written presentations at the Business Meeting upon request. Such requests should be made not later than November 21, 1984, to Mr. Sydney H. Verinder, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Boulevard, P.R. Box 7944, Metairie, Louisiana 70010, ot telephone (504) 838–0627.

A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Manager at the above address not later than 60 days after the meeting.

Dated: September 17, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 84–25380 Filed 9–24–84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 3145 and 1196, Blocks 60 and 61, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 17, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region, Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 17, 1984.

John L. Rankin,
Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-25384 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 14 1984. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 10, 1984.

Carol D. Shull,
Chief of Registration, National Register.

ARKANSAS

Garland County

Hot Springs, *Hot Springs Central Avenue Historic District*, Central Ave., from Prospect to Park Sts.

Pulaski County

Little Rock, *Farrell House (Thompson, Charles L., Design Collection TR)*, 2109 Louisiana

COLORADO

Fremont County

Cannon City, *Robinson Mansion*, 12 Riverside Dr.

La Plata County

Durango, *East Third Avenue Historic Residential District (The Boulevard)*, E. 3rd. Ave. between 5th, and 15th Sts.

Pueblo County

Pueblo, *White, Asbury, House*, 417 W. 11th St.

INDIANA

Fountain County

Covington, *Sewell, William C. B., House*, 602 E. Washington St.

KENTUCKY

Jefferson County

Louisville, *German Bank Building*, 150 S. 5th St.

LOUISIANA

Caddo Parish

Shreveport, *St. Paul's Bottoms*, Roughly bounded by Western and Pierre Aves., Alston, Christian, Oakland, and Snow Sts.

MAINE

Penobscot County

Bradley vicinity, *Collins Bridge Site (Maine Archaeological Survey Site 74.16)*, ME 178

MARYLAND

Anne Arundel County

Annapolis, *Fort Nonsense*, Millersville vicinity, *Bunker Hill*, MD 178 and Millersville Rd.

Howard County

Elkridge, *Lawn, The*, 5388 Old Lawyers Hill Rd.

MASSACHUSETTS

Middlesex County

Newton, *Weeks Junior High School*, 7 Hereward Rd.

MISSOURI

Jackson County

Kansas City, *Peppard, Joseph Grear, House*, 1704 Jefferson St.

NEVADA

Washoe County

Reno, *Francovich House*, 557 Washington St.
Reno, *Pincolini Hotel*, 214 Lake St.

White Pine County

Ely, *Nevada Northern Railroad Rolling Stock*, Northern Nevada Railroad Yards

NEW JERSEY

Hudson County

Jersey City, *Van Vorst Park Historic District (Boundary Increase)*, Roughly bounded by Railroad Ave., Henderson, Bright, Varick and Monmouth Sts.

NORTH CAROLINA

Burke County

Morgantown, *Gaston Chapel*, 100 Bouchelle St.
Morgantown, *Mountain View*, 604 W. Union St.
Salem vicinity, *Gilboa Methodist Church*, U.S. 64

Cherokee County

Bell View vicinity, *Cobb, John Franklin, House*, U.S. 19-129

Dare County

Kitty Hawk, *Kitty Hawk Life-Saving Station*, U.S. 158

Durham County

Durham, *Erwin Cotton Mills Company Mill No. 1 Headquarters Building*, W. Main and 9th Sts.

Pitt County

Greenville, *U.S. Post Office*, 215 S. Evans St.

Rockingham County

Eden vicinity, *Lower Sauratown Plantation*

OKLAHOMA

Muskogee County

Fort Gibson, *Administration Building (Post Hospital) (Fort Gibson Post-Civil War Military Buildings TR)*, 803 Garrison Ave.
Fort Gibson, *Blacksmith Shop (Fort Gibson Post-Civil War Military Buildings TR)*, 905 Garrison Ave.

Fort Gibson, *Commandant's Quarters (Fort Gibson Post-Civil War Military Buildings TR)*, 905 Coppinger Ave.

Fort Gibson, *Officer's Quarters (Fort Gibson Post-Civil War Military Buildings TR)*, 907 Coppinger Ave.

Fort Gibson, *Post Adjutant's Office (Fort Gibson Post-Civil War Military Buildings TR)*, 905 Garrison Ave.

TEXAS

Eastland County

Cisco, *Cisco Historic District*, Roughly bounded by Conrad Hilton Ave., W. 3rd St., Ave. K, W. 8th and 9th Sts.

UTAH

Beaver County

Black Rock Station Petroglyph Sites (42 MD 43, 47, 485, 593, and an isolated boulder) (Great Basin Style Rock Art TR)

Mud Spring (Great Basin Style Rock Art TR)

Ryan Ranch (42 BE 616) (Great Basin Style Rock Art TR)

Box Elder County

Brigham City, *Brigham City Carnegie Library (Carnegie Library TR)*, 26 E. Forest St.

Garland, *Garland Carnegie Library (Carnegie Library TR)*, 86 W. Factory St.

Cache County

Richmond, *Richmond Carnegie Library (Carnegie Library TR)*, 6 W. Main St.

Garfield County

Panguitch, *Panguitch Carnegie Library (Carnegie Library TR)*, 75 E. Center St.

Millard County

Cottonwood Wash (42 MD 183) (Great Basin Style Rock Art TR)

Deseret (42 MD 55) (Great Basin Style Rock Art TR)

Mountain Home Wash (Great Basin Style Rock Art TR)

Site 42 MD 284 (Great Basin Style Rock Art TR)

Sanpete County

Ephraim, *Ephraim Carnegie Library (Carnegie Library TR)*, 30 Main St.

Manti, *Manti Carnegie Library (Carnegie Library TR)*, 12 Main St.

Mount Pleasant, *Mount Pleasant Carnegie Library (Carnegie Library TR)*, 24 Main St.

Sevier County

Glenwood (42 Sv 1877) (Great Basin Style Rock Art TR)

Richfield, *Richfield Carnegie Library (Carnegie Library TR)*, 83 E. Center St.

Summit County

Hoytsville vicinity, *Birch, Annie, House (Scandinavian-American Pair-Houses TR)*, Off IR 80

Tooele County

Tooele, *Tooele Carnegie Library (Carnegie Library TR)*, 47 E. Vine St.

Utah County

Pleasant Grove, *Johnson, Peter Axel, House (Scandinavian-American Pair-Houses TR)*, 1075 N. 100 East

[FR Doc. 84-25348 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30545]

Peoria and Pekin Union Railway Company; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10901 the lease and operation by Peoria and Pekin Union Railway Company of railroad track in Peoria County, IL. No employee protective conditions are imposed.

DATE: This exemption is effective on September 24, 1984. Petitions for reconsideration must be filed by October 15, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. No. 30545 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Anne D. Smith, White & Case, 1747 Pennsylvania Avenue, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call toll free (800) 424-5403, or 289-4357 (DC Metropolitan area).

Decided: September 18, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-25321 Filed 9-24-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARMENT OF JUSTICE

Information Collection(s) Under Review

September 21, 1984.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312.

- **Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection**

(1) Larry E. Miesse, 202/633-4312

(2) Immigration and Naturalization Service, Department of Justice

(3) APPLICATION TO FILE PETITION FOR NATURALIZATION

(4) N-400

(5) On occasion

(6) Individuals or households. Data required to establish petitoners eligibility for naturalization and to enable designated officers of the Immigration and Naturalization

Service to make appropriate recommendations to the naturalization court.
(7) 331,000 respondents
(8) 61,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veder—395–4814

(1) Larry E. Miesse, 202/633 –4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION TO FILE PETITION ON BEHALF OF CHILD
(4) N–402
(5) On occasion
(6) Individuals or households. Filed by a U.S. citizen to petition for naturalization on behalf of a natural or adopted alien child. Used by the INS to determine eligibility and make appropriate recommendations to the naturalization court.
(7) 15,000 respondents
(8) 7,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4314

- **New Collection**

(1) Larry E. Miesse, 202/633–4312
(2) Drug Enforcement Administration, Department of Justice
(3) DANGEROUS DRUG "STREET" STUDIES IN EIGHT U.S. CITIES
(4) None
(5) Annually
(6) Individuals or households. This information will be used in formulating the Federal Strategy for Drug Abuse and Prevention Control. Data to be collected from random participants in drug treatment programs.
(7) 480 respondents
(8) 240 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder-395–4814

Larry E. Miesse,

Agency Clearance Officer Department of Justice.

[FR Doc. 84–25336 Filed 9–24–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–15, 140]

Negative Determination Regarding Application for Reconstruction; Alten Foundry and Machine Works, Inc., Lancaster, OH

By an application dated August 4, 1984 the International Moulders and Allied Workers Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at the Alten Foundry and Machine Works, Inc., Lancaster, Ohio. The determination was published in the **Federal Register** on July 17, 1984 (49 FR 28938).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The foundry which produced the iron castings and the machine shop which produced the pumping units and reducers closed in mid-1983.

The Department's denial was predicated on investigation findings that did not satisfy the "contributed importantly" test in Section 222 of the Group Eligibility Requirements of the Trade Act of 1974. This test is generally confirmed through a survey of company customers.

The union claims that the Department's survey of Alten's customers was inadequate.

Findings in the investigative case file do not support the union's claim. The results of the Department's survey of Alten's customers accounted for the major share of Alten's 1982 and the first half of 1983 sales. None of the respondents imported iron castings in 1982 or in the first half of 1983. Pumping units and reducers accounted for a small percent of 1982 sales. All pumping units were sold to an exclusive distributor who did not import pumping units. All reducers were exported. Under the Trade Act, the loss of export sales would not provide a basis for certification.

U.S. imports of iron castings decreased absolutely in 1982 compared to 1981 and in the first nine months of 1983 compared to the same period in 1982. The ratio of imports to domestic production of iron castings has been less than three percent during the last five years.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 11th day of September 1984.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 84–25412 Filed 9–24–84; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–15,182]

Negative Determination Regarding Application for Reconsideration; Goodyear Tire and Rubber Co., Jackson, MI

By an application dated August 21, 1984, the United Rubber Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at the Jackson, Michigan plant of the Goodyear Tire and Rubber Company. The determination was published in the **Federal Register** on July 29, 1984 (49 FR 29880).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered: or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that the "contributed importantly" test of Trade Act of 1974 was not met.

The union claims in its application for reconsideration that the Department's decision is based largely on Goodyear's corporate performance rather than on the performance at the Jackson plant. The union also claims that U.S. aggregate imports of truck tires increased in 1983 compared to 1982; that bias and radial truck tires are like and directly competitive; and that a survey of Goodyear's customers should have been conducted by the Department.

There is no dispute with the facts that imports of truck tires increased and that sales and production and employment at the Jackson plant declined. The issue is whether increased imports contributed importantly to those declines.

The facts developed in the investigation reveal that an explosion at the Jackson plant caused the company to shift permanently radial tire producion to other domestic plants.

The Jackson plant was a high cost facility compared to other domestic Goodyear facilities and consequently bias ply production was gradually transferred to other domestic plants as well. During the period these transfers were taking place, overall company sales and domestic production of tires were increasing while company imports were decreasing. Obviously company customers were buying more domestically produced tires from the company than imports relative to prior years. Under these circumstances a customer survey would not yield information that imports were substituting for domestic production even if customers were also increasing imports from other sources because the company's domestic production and sales increased over the relevant period.

Increasing imports in the aggregate also would not be an important factor in the declines in sales or production and in employment at the Jackson plant because it is clear that other domestic company production substituted for the Jackson's plant output.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 12th day of September 1984.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 84-25413 Filed 9-24-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Republic Steel Corp. et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 10, 1984-September 14, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15, 323; Republic Steel Corp., (LTV Steel Co.), Drainage Products Div-Fairhope Plant, Canton, OH

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-15, 351; Caterpillar Tractor Co., Milwaukee, WI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15, 346; Consolidation Coal Co., Turkey Gap Mine, Dott, WV

Aggregate U.S. imports of metallurgical coal are negligible.

TA-W-15, 253; Brown Shoe Co., Ironton, MO

Separations from the subject firm resulted from a transfer of production to other domestic facilities.

Affirmative Determinations

TA-W-15, 241; Brown Shoe Co., Pittsfield, IL

A certification was issued covering all workers separated on or after April 9, 1983 and before July 15, 1984.

TA-W-15, 250; JMS Fashions, Patchogue, NY

A certification was issued covering all workers separated on or after March 1, 1983 and before January 1, 1984.

TA-W-15, 308; Modern Juniors, North Bergen, NJ

A certification was issued covering all workers separated on or after April 6, 1983 and before July 1, 1984.

TA-W-15, 304; Calhoun Manufacturing Co., Division Modern Juniors, Saint Matthews, SC

A certification was issued covering all workers separated on or after April 13, 1983 and before July 1, 1984.

TA-W-15, 340; Ronson Metals Corp., Newark, NJ

A certification was issued covering all workers engaged in the production of mischmetal separated on or after May 16, 1983.

I hereby certify that the aforementioned determinations were issued during the period September 10, 1984-September 14, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 18, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-25415 Filed 9-24-84; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Certification of Interest Relief: Certification of States Qualifying for Partial Relief of Interest Due on Advances Under Title XII of the Social Security Act; Colorado et al.

Title XII of the Social Security act provides for several forms of deferral of interest and a discounted rate of interest payable by States on advances received by them from the Federal unemployment account in the Unemployment Trust Fund if the States meet criteria set forth in the statue. The certification to the Secretary of the Treasury of specified State that meet the respective criteria with respect to interest due prior to October 1, 1984, is published below.

Dated: September 18, 1984.

Patrick J. O'Keefe

Deputy Assistant Secretary of Labor.

September 12, 1984.

Hon. Donald T. Regan,
Secretary of the Treasury Washington, DC 20220.

Dear Secretary Regan: The Department of Labor has reviewed States' applications for relief from interest payments which are due prior to October 1, 1984. The interest relief options available to States are:

(1) High Unemployment Deferral: Section 1202(b)(2)(C) of the Social Security Act (SSA) allows a State to defer 75 percent of interest otherwise due if the rate of insured unemployment under the State law for the period consisting of the first six months of the preceding calendar year equaled or exceeded 7.5 percent. The State must pay 75 percent of interest otherwise due in three annual installments of at least 25 percent beginning with the year after the year in which it was due. The interest deferred does no accrue interest.

(2) Legislative-Action Deferral: Section 1202(b)(8) of the SSA allows a State to defer 80 percent of interest otherwise due if the State has taken no action since October 1, 1982, to reduce the State's tax effort or

unemployment fund solvency and has taken action after March 31, 1982, which increases revenues to the State's unemployment fund and decreases benefits by at least 25 percent in the calendar year for which the first deferral is requested; deferrals for the second and third years immediately following the year in which the first year change is effective are available if the State produces a solvency effort of at lease 35 and 50 percent, respectively. The State must pay 80 percent of interest otherwise due in four annual installments of at least 20 percent beginning with the year after the year in which it was due. Interest does not accrue or deferred interest. Once a legislative-action deferral is approved, a State must continue to maintain its solvency effort. Failure to do so will result in the State being required to make immediate payment of all deferred interest. This type of deferral remains available for 1984 and 1985 payments only.

(3) Average Tax Rate Deferral: Section 1202(b)(8) of the SSA azllows a State to defer 80 percent of interest otherwise due if the State has taken no action since October 1, 1982, to reduce the State's tax effort or unemployment fund solvency and for taxable year 1982, total State unemployment compensation revenues to the unemployment fund equaled at least two percent of total wages paid by employers covered under the State unemployment compensation law. The State must pay 80 percent of interest otherwise due in four annual installments of at least 20 percent beginning with the year after the year in which it was due. Interest does not accrue on deferred interest. This type of deferral remains available for 1984 and 1985 payments only.

(4) High Unemployment Delay of Payment Due: Section 1202(b)(9) of the SSA allows a State to delay up to nine months the payment of interest due September 30 of any calendar year after 1982 during which the average total unemployment rate (TUR) in the State was 13.5 percent or higher for the most recent 12-month period for which data are available. The State must meet the 13.5 percent TUR requirement each succeeding year in order to delay payments nine months in such succeeding years.

(5) Discounted Interest Rate: Section 1202(b)(8)(D) of the SSA allows a State to receive a discounted interest rate that would be one percentage point below the interest rate that would otherwise apply. The discounted rate for interest due prior to October 1, 1984, would be 9.00 percent for interest accrued October through December 1983 and 8.78 percent for interest accrued January through September 1984. This discounted interest rate is available to a State which has taken no action since October 1, 1982, to reduce the State's tax effort of unemployment fund solvency and has taken action since March 31, 1982, which produces a solvency effort of at least 50, 80, and 90 percent rather than 25, 35, and 50 percent, respectively, as specified under the legislative-action deferral. A discounted interest rate remains available for 1984 and 1985 payments only.

I hereby certify that the States shown on the accompanying table meet all the criteria specified by law to qualify for the interest relief shown.

Sincerely,

Robert A Schaerfl,

Acting Director, Unemployment Insurance Service.

State	Interest relief
Colorado	Legislative-Action Deferral (25%).
District of Columbia.	Legislative-Action Deferral (35%) Discounted Rate (80%).
Illinois	Legislative-Action Deferral (35%).
Kentucky	Do.
Michigan	Legislative-Action Deferral (35%) Discounted Rate (80).
Ohio	Legislative-Action Deferral (35%).
Pennsylvania	Do.
West Virgina	Average Tax Rate Deferral High Unemployment Delay.
Wisconsin	Legislative-Action Deferral (35%) Discounted Rate (80%).

[FR Doc. 84-25441 Filed 9-25-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-73]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission. The NASA Supplement to the Federal Acquisition Regulation has been previously cleared by OMB (2700-0043), subject to submission of clearance requests for specific reporting and recordkeeping requirements.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letter, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by October 5, 1984. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: NASA FAR Supplement, Part 18-27, Patents, Data and Copyrights

Type of Request: Existing regulation (no change proposed)

Frequency of Reports: Annually and other

Type of Respondent: Small and Large Businesses, State and Local Governments and Non-Profit Institutions

Annual Responses: 2,280

Annual Burden: 27,360 hours.

Annual-Need/Users: Records and reports regarding patents and data are required to comply with statutes and the OMB and NASA implementing regulations.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84-25314 Filed 9-24-84; 8:45 am]

BILLING CODE 7510-01-M

[Notice 84-75]

Intent To Grant an Exclusive Patent License; HealthMate, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to HealthMate, Inc., of Northbrook, Illinois, an exclusive, royalty-bearing, revocable license to practice the inventions as described in U.S. Patent No. 4,345,153 for a "Low Intensity X-Ray and Gamma-Ray Spectrometer," which issued on November 15, 1983, and U.S. Patent Application No. 459,842 for a "Three Dimensional and Tomographic Imaging Device for X-Ray and Gamma-Ray Spectrometer," which was filed on January 21, 1983. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives

written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by November 26, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: September 18, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–25316, Filed 9–24–84; 8:45 am]

BILLING CODE 7510-01-M

[Notice 84-74]

Intent To Grant an Exclusive Patent License; John J. McMullen Associates, Inc.

AGENCY: Nation Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to John J. McMullen Associates, Inc., of Pascagoula, Mississippi, an exclusive, field of use, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,415,450 for a "Method for Treating Wastewater Using Microorganisms and Vascular Aquatic Plants," which issued on November 15, 1983, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by November 26, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: September 18, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–25315 Filed 9–24–84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

President's Committee on the Arts and Humanities; Meeting

Thursday, October 18, 1984 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting VII. This meeting has been scheduled in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

The agenda will include briefings by the Chairmen of the National Endowment for the Humanities and the National Endowment for the Arts on the highlights of their activities; Library/Radio Initiative; Great Performances; Press Conferences; Tax; Philadelphia Alliance for Teaching Humanities in the Schools; Los Angeles Coporate Arts Projects; The Corporation as a Catalyst, presentation by Rawleigh Warner, Jr., Chairman of the Board and CEO, The Mobil Corporation; and Motivational Study on Individual Giving, presentation by William Dietel, President, Rockefeller Brothers Fund.

This meeting is expected to adjourn before lunch. Please call the President's Committee (202) 682–5409 or (212) 883–6764 if you wish to attend.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–25330 Filed 9–24–84; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Humanities

Humanities Panel Meetings

Correction

The NFAH document published in the Sunshine Act Meetings section on page 36190 in the issue of Friday, September 14, 1984, should have appeared in the regular Notices section of the issue.

In addition, the **Federal Register** document number appearing at the end of the document should have read "FR Doc. 84–24486".

BILLING CODE 1505-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.

Date and time: Wednesday and Thursday, October 10 and 11, 1984 from 9:00 am to 5:00 pm.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact person: Dr. DeLill Nasser, Program Director, Eucaryotic Genetic, Room 329G Telephone: 202/357–0112.

Purpose of adivsory panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–25345 Filed 9–24–84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Genetics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.

Date and time: Thursday and Friday, October 11 and 12, 1984 from 9:00 am to 5:00 pm.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Philip Harriman, Program Director, Procaryotic Genetic, Room 329; Telephone: 202/357-9687.

Purpose of subpanel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-25344 Filed 9-24-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Radiological Effects; Revised Agenda

The agenda for the ACRS Subcommittee on Reactor Radiological Effects scheduled for *Thursday, September 27 and Friday, September 28, 1984*, Room 1046, 1717 H Street, NW, Washington, DC has been revised as follows: Delete from the Friday, September 28, 1984, agenda that portion of the entry which reads, "and (2) DOE on their systematic approach regarding reactor safety and radiation protection research."

All other items regarding this meeting remain the same as published on Wednesday, September 12, 1984 (49 FR 35880).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 20, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-25371 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on October 11-13, 1984, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on August 21, 1984.

The agenda for the subject meeting will be as follows:

Thursday, October 11, 1984

8:30 A.M.-8:45 A.M.: ACRS Chairman's Report (Open)—The ACRS Chairman will report briefly on matters of current interest.

8:45 A.M.-10:45 A.M.: Evaluation of Nuclear Power Plant Incidents/Accidents (Open)—The Committee members will discuss proposed ACRS comments and recommendations regarding the need for an independent board to investigate and evaluate accidents and incidents which occur in nuclear facilities.

10:45 A.M.-12:00 Noon: Selection of Unresolved Safety Issues (Open)—The members of the Committee will hear reports from cognizant ACRS subcommittee chairmen and will discuss proposed ACRS comments regarding the NRC Staff review and categorization of high priority unresolved generic issues. Members of the NRC Staff will participate as appropriate.

1:00 P.M.-2:00 P.M.: Experience Levels for Reactor Operators (Open)—The members will discuss experience requirements for nuclear power plant operating personnel.

2:00 P.M.-3:30 P.M.: Meeting with NRC Commissioners (Open)—The members of the Committee will meet with the NRC Commissioners to discuss ACRS comments and recommendations regarding the need for an independent board to investigate and evaluate incidents and accidents that occur in nuclear facilities.

3:30 P.M.-5:15 P.M.: ACRS Subcommittee Activities (Open/Closed)—The members will hear and discuss the reports of cognizant ACRS Subcommittee chairmen regarding current subcommittee activities including resolution of USI A-45, Shutdown Decay Heat Removal Requirements, and BWR pipe cracking.

Portions of this session will be closed to discuss information provided in confidence by foreign sources.

5:15 P.M.-6:00 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS Subcommittee activities and items proposed for consideration by the full Committee.

Friday, October 12, 1984

8:30 A.M.-9:30 A.M.: NRR Activities (Open)—The members will hear a report regarding NRR activities from the Director, NRR.

9:30 A.M.-12:00 Noon: Pressurized Thermal Shock (Open)—The members will hear and discuss the report of its subcommittee and reports from representatives of the NRC Staff regarding the results of safety research applicable to this matter and a proposed NRC rule regarding pressurized thermal shock of reactor pressure vessels.

Portions of this session will be closed to discuss Proprietary Information applicable to the matter being discussed.

1:00 P.M.-3:30 P.M.: Backfitting of Nuclear Facilities (Open)—The members will hear and discuss the reports of its subcommittee and representatives of the NRC Staff regarding proposed NRC requirements regarding the management of backfitting requirements for nuclear power plants. Representatives of the nuclear industry will participate as appropriate.

3:30 P.M.-4:30 P.M.: Reactor Operating Experience (Open)—The members will hear and discuss reports from representatives of the NRC Staff regarding recent operating events and incidents at nuclear power plants.

4:30 P.M.-6:00 P.M.: ACRS Subcommittee Activities (Closed)—The members will hear and discuss the report of its Subcommittee on Maintenance Practices and Procedures regarding maintenance policies and practices in Japanese nuclear power plants. The members will also discuss proposed activities of its Subcommittee on Regulatory Policies and Practices.

This portion of the meeting will be closed to discuss information provided in confidence by a foreign source.

Saturday, October 13, 1984

8:30 A.M.-12:00 Noon: ACRS Reports (Open/Closed)—The members will discuss proposed ACRS comments and recommendations to the NRC regarding topics considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed and information provided in confidence by foreign sources.

1:00 P.M.–2:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the reports of its subcommittees regarding current activities including performance of fire protection systems in nuclear power plants, PRA for the Limerick Nuclear Station, quality assurance during design and construction of nuclear facilities, and residual contamination limits at decommissioned nuclear facilities.

2:30 P.M.–3:30 P.M.: ACRS Reports (Open/Closed)—The members will complete discussion of proposed ACRS comments and recommendations regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed and information provided in confidence by a foreign source.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)) and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: September 19, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-25370 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Unit 2; Notice of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the schedular requirements of 10 CFR 50.49 to Carolina Power & Light Company (the licensee) for the Brunswick Steam Electric Plant, Unit 2, located at the licensee's site near Southport, North Carolina.

Environmental Assessment

Identification of Proposed Action

The extension would extend the deadline for final environmental qualification of electrical equipment within the scope of the rule from the end of the 1984 refueling outage to November 30, 1985. The proposed extension is in accordance with the licensee's request for extension dated April 25, 1984, as supplemented July 6 and August 30, 1984. In the April 25, July 6 and August 30, 1984 submittals the licensee requested an extension of the deadline until November 30, 1985 for certain items of equipment. Unit 2 is currently scheduled for a special shutdown on or before November 30, 1985 for the purpose of completing the required modifications and thereby meeting the requirements of 10 CFR 50.49(g).

The Need for the Proposed Action

10 CFR 50.49(g) requires a licensee to complete final environmental qualification of electrical equipment within the scope of the rule by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. The refueling outage which began in March 1984 is the second refueling outage at the Brunswick Steam Electric Plant, Unit 2 since March 31, 1982. Therefore, the regulation would require completion of final qualification at the Brunswick Steam Electric Plant, Unit 2 before startup from this refueling outage.

The April 25, July 6 and August 30, 1984 letters explain the process by which Carolina Power & Light Company intends to achieve final qualification of any equipment for which final qualification has not been achieved at the end of the refueling outage. Carolina Power & Light Company concluded that this process including additional analysis and testing, equipment procurement and installation, cannot be completed before the end of the outage. This process was reviewed and approved by the NRC staff.

Environmental Impacts of the Proposed Action.

The purpose of the final environmental qualification of electrical equipment required by 10 CFR 50.49 is to ensure that electrical equipment which is needed to achieve safe shutdown or mitigate a reactor accident is capable of performing properly under the environmental conditions which might ensue (for example, high temperature and pressure) during such an accident. The environmental impact of delaying final qualification is the slightly increased risk of radiological releases during the next twelve months of power operation which would be associated with a reactor accident if the equipment failed due to the accident environment.

To ensure that this risk is minimized, the licensee has provided justifications for continued operation for equipment for which final qualification will not be completed by the end of the outage. These justifications are based on the acceptance criteria for such justifications provided in 10 CFR 50.49. These justifications provided reasonable assurance that an accident would be properly mitigated even though the final qualification of the equipment is not complete. Therefore, this incremental risk is quite low and the releases if they did occur would be bounded by releases which have been previously determined as possible consequences for other accidents at the Brunswick Steam Electric Plant, Unit 2. Therefore, the Commission concludes that there are not significant radiological environmental impacts associated with this proposed extension.

The proposed extension involves only systems located entirely within the restricted area as defined in 10 CFR Part 20. Also, the proposed extension does not affect non-radiological plant effluents or other non-radiological environmental impacts. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed extension.

The principal alternative to the proposed action would be to deny the extension and not allow reactor startup until final qualification was complete. Such an action would negate the insignificant incremental risk described above. However, such an action would result in the loss of approximately twelve full power months of generated electricity, a large adverse impact.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (Operating License) for the Brunswick Steam Electric Plant, Units 1 and 2).

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for extension dated April 25, 1984, and supplements dated July 6 and August 30, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Southport—Brunswick County Library, 108 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 18th day of September, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-25375 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendments To Facilities Operating Licenses and Final Determination of No Significant Hazard Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 109 to Facility Operating License Nos. DPR-31, and Amendment No. 103 to Facility Operating License No. DPR-41 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of the Turkey Point Plant Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance and shall be implemented within 60 days of issuance.

These amendments revise Section 5.2 of the Technical Specifications to delete the present enrichment restriction of 3.5 weight per cent. The fuel storage specifications, Section 5.4, are revised to allow storage of fuel with increased enrichment in the existing new fuel storage racks, spent fuel storage racks and add an additional K_{eff} (neutron multiplication factor) requirement for the existing new fuel storage racks under conditions of low density (optimum moderation). The increase for the existing new fuel storage racks is 57.7 grams (4.5 weight per cent) of U-235 and 52.4 grams (4.1 weight per cent) of the existing spent fuel storage racks. A K_{eff} of 0.98 for optimum moderation conditions is included for the existing new fuel storage racks in addition to the existing K_{eff} of 0.95 for fully flooded with unborated water.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** (49 FR 25360) on June 20, 1984. A request for a hearing was filed on July 12, 1984, by the Center for Nuclear Responsibility, Inc. and Ms. Joette Lorion.

Under its regulations, the Commission may issue and make an amendment immediately effective, nonwithstanding the pendency before it of a request for a hearing from any persons, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that these amendments involve no significant hazards consideration.

The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, these amendments have been issued and made immediately effective and any hearing will be held after issuance.

These amendments involve changes in the installation or use of facility components located within the restricted area as defined in 10 CFR Part 20. The staff has determined that the amendments involve no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has made a final no significant hazards consideration finding with respect to these amendments. Accordingly, these amendments meet the eligibility criteria for categorical exclusion set forth in CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of these amendments.

For further details with respect to the action see (1) the application for amendments dated April 4, 1984, as supplemented on May 25, 1984 and June 15, 1984, (2) Amendment Nos. 109 and 103 to Facility Operating License No. DPR-31 and DP-41 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this September 5, 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 84-25373 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50–498 OL, STN 50–499 OL; ASLBP No. 79–421–07 OL]

Houston Lighting and Power Co., et al. (South Texas Project Units 1 and 2); Change of Location of Prehearing Conference

September 19, 1984.

The location of the October 15–16, 1984 prehearing conference, as announced in our Order dated September 7, 1984 (49 FR 36037, September 13, 1984), has been changed from Forum Room No. 5 to Forum Rooms 1–2, Astro Village Hotel, 2350 South Loop W (I–610 at Kirby), Houston, Texas.

Dated at Bethesda, Maryland, September 20, 1984.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 84–25374 Filed 9–24–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344–OLA; ASLBP No. 84–498–05 LA]

Portland General Electric Co., et al., Trojan Nuclear Plant; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Portland General Electric Co., et al.* (Trojan Nuclear Plant), Docket No. 50–344–OLA, is hereby reconstituted by appointing Administrative Judge Helen F. Hoyt in place of Administrative Judge Ivan W. Smith, who, because of a schedule conflict, is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Helen F. Hoyt, Chairman, Dr. Peter A. Morris; and Dr. Oscar H. Paris.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR §2.701 (1980). The address of the new Board member is: Helen F. Hoyt, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 19th day of September, 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 84–25372 Filed 9–24–84; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Procurement Reforms and General Policies Governing the Federal Procurement Process; Public Meeting and Request for Public Comment

AGENCY: Office of Federal Procurement Policy; Office of Management and Budget.

ACTION: Solicitation of views.

SUMMARY: In developing the "Proposal for a Uniform Federal Procurement System" the Office of Federal Procurement Policy recognized the desirability of greater private sector involvement in the policy development process. As one means of fostering greater public participation, OFPP holds an annual public hearing to elicit comments from interested parties with respect to existing policies, new policies or other procurement problems.

Date, Time and Location of Meeting

The meeting will be held on Friday, November 30, 1984, in Room 2010 of the New Executive Office Building, 726 Jackson Place, N.W., Washington, DC. The meeting will begin at 9:30 a.m.

Clearance to attend meeting: Because the security system requires advance identification of visitors, please call Brenda Harper or Margaret Davis, 202–395–6803 by noon on November 29, 1984 to advise of your attendance.

Current background: There have been several innovations in the Federal procurement process within this past year. The Federal Acquisition Regulation (FAR) was implemented in April, establishing a single simplified regulatory base for contracting throughout the Federal Government. The statutory basis for Federal Government contracting is still split between the Federal Property and Administrative Services Act, the Armed Services Procurement Act, and a multitude of less comprehensive procurement legislation so that, to some extent, different rules still do apply among Federal agencies. Nonetheless, a single primary regulation and a unified regulatory system should ease the administrative burden on those doing business with the Government as well as on Government contracting personnel.

The Executive agencies have continued to implement Executive Order 12352, "Federal Procurement Reforms." Implementation guidance was developed and furnished to the agencies by several interagency task groups under the Executive Committee on Federal Procurement Reforms. The Executive Committee is comprised of the eight largest procuring agencies plus the Office of Personnel Management and the Small Business Administration. Two significant packages sent to the Heads of Executive Agencies and Establishments this year were: (1) Guidance for Developing Criteria to Evaluate/Certify Procurement Systems and to Enhance Competition, and (2) Guidelines for the Simplification of Small Purchases. These publications can be obtained through the OFPP Point of Contact listed below.

GOVERNMENT PRESENTATION: Attendees will be briefed on several current areas of interest. These include an update on the Study of Alternatives in the Procurement of Professional Services which OFPP was directed to do by Pub. L. 98–369. A public meeting was held on September 13 to solicit comments on this subject. A notice of the meeting, including background information on the study, was published in the Federal Register on August 29, 1984. Copies of the OFPP study plan can be obtained from OFPP at the address given below. Possible revisions to OMB Circulars A–76 and A–109 will also be briefing topics

Public Presentation of Views at Meeting

Oral Presentations

You may make an oral presentation on your own behalf or as a representative of any entity or any interested group, whether public or private. If you wish to provide oral testimony, you should notify Ms. Marianne Healy by November 26 by calling 202–395–6803 or writing to the address below. Oral presentations will be limited to 10 miniutes. A written summary of the presentation should be provided to OFPP on the day of the meeting.

Written Presentations

Written testimony may be submitted until November 29 to the Office of Federal Procurement Policy at the address below.

FOR FURTHER INFORMATION CONTACT: Ms. Marianne Healy, Office of Management and Budget, New Executive Office Building, Room 9025, 726 Jackson Place, NW, Washington, DC 20503—(202) 395–6803.

Dated: September 20, 1984.

Donald E. Sowle,

Administrator.

[FR Doc. 84–25[illegible] Filed 9–24–84; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on August 28, 1984 (49 FR 34114). Individual authorities established or revoked under Schedules A, B, or C between August 1, 1984 and August 31, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, of each year.

Schedule A

The following exception is established:

Department of the Army

Associate Director of Admissions for Plans and Programs, U.S. Military Academy, West Point, New York. Effective August 24, 1984.

Schedule B

No exceptions were established or revoked in Schedule B during the month of August.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs. Effective August 1, 1984.

One Director of Congressional and Public Affairs, Federal Crop Insurance Corporation. Effective August 1, 1984.

One Confidential Assistant to the General Counsel, Office of the General Counsel. Effective August 1, 1984.

One Midwest Area Director to the Deputy Administrator for State and County Operations. Effective August 2, 1984.

One Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective August 15, 1984.

One Confidential Assistant to the Manager, Federal Corp Insurance Corporation. Effective August 31, 1984.

Department of Commerce

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs. Effective August 10, 1984.

One Confidential Assistant to the Special Assistant to the Deputy Secretary. Effective August 10, 1984.

One Special Assistant to the Director of Public Affairs. Effective August 16, 1984.

One Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration. Effective August 16, 1984.

One Congressional Liaison Specialist to the Under Secretary for Economic Affairs. Effective August 30, 1984

One Special Assistant to the Assistant Secretary for Telecommunications and Information. Effective August 30, 1984.

One Confidential Assistant to the General Counsel. Effective August 30, 1984.

Department of Defense

One Private Secretary to the Director of Net Assessment, Office of the Under Secretary of Defense (Policy). Effective August 13, 1984.

One Joint Chiefs of Staff Representative to the Conference on Disarmament in Europe. Effective August 15, 1984.

One Private Secretary to the Assistant Secretary of Defense (Comptroller). Effective August 15, 1984.

One Private Secretary to the Senior Judge, U.S. Court of Military Appeals. Effective August 16, 1984.

One Special Assistant to the Deputy Assistant Secretary of Defense (Readiness and Training). Effective August 20, 1984.

Department of Education

One Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance, Office of Postsecondary Education. Effective August 1, 1984.

One Special Assistant to the Director of Intergovernmental Affairs, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 16, 1984.

Department of Energy

One Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission. Effective August 30, 1984.

Department of Health and Human Services

One Confidential Assistant to the Director of Community Services. Effective August 3, 1984.

One Confidential Secretary to the Assistant Secretary for Legislation. Effective August 23, 1984.

One Assistant to the Secretary (Special Programs). Effective August 27, 1984.

Department of Housing and Urban Development

One Special Assistant to the Secretary. Effective August 1, 1984.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective August 2, 1984.

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective August 7, 1984.

One Confidential Assistant to the Assistant Secretary for Public Affairs. Effective August 7, 1984.

One Senior Legislation Specialist to the Deputy Assistant Secretary for Legislation. Effective August 7, 1984.

One Associate Deputy Assistant Secretary for Policy Development and Research. Effective August 8, 1984.

One Executive Assistant to the Deputy Assistant Secretary for Legislation, Office of the Assistant Secretary for Legislation and Congressional Relations. Effective August 15, 1984.

One Senior Legislation Specialist to the Deputy Assistant Secretary for Legislation, Office of the Assistant Secretary for Legislation and Congressional Relations. Effective August 15, 1984.

One Staff Assistant to the Under Secretary. Effective August 16, 1984.

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective August 30, 1984.

Department of the Interior

One Special Assistant to the Assistant to the Secretary and Director of Congressional and Legislative Affairs. Effective August 1, 1984.

One Special Assistant to the Secretary. Effective August 1, 1984.

One Supervisory Public Affairs Specialist to the Director, Bureau of Land and Management. Effective August 15, 1984.

One Special Assistant to the Deputy Director, National Park Service. Effective August 16, 1984.

Department of Justice

One Secretary (Stenography) to the Deputy Attorney General. Effective August 3, 1984.

One Attorney-Advisor (General) to the Assistant Attorney General, Land and Natural Resources Division. Effective August 3, 1984.

One Attorney-Advisor to the Assistant Attorney General, Civil Rights Division. Effective August 6, 1984.

One Special Assistant to the Assistant Attorney General, Civil Division. Effective August 15, 1984.

One Associate Director of Public Affairs, Offices, Boards, and Divisions. Effective August 16, 1984.

One Staff Assistant to the Assistant Attorney General, Civil Rights Division. Effective August 17, 1984.

One Confidential Assistant and Private Secretary to the Assistant Attorney General, Land and Natural Resources Division. Effective August 22, 1984.

Department of Labor

One Special Assistant to the Secretary. Effective August 10, 1984.

One Executive Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective August 27, 1984.

One Special Assistant to the Secretary. Effective August 27, 1984.

One Special Assistant to the Deputy Under Secretary for International Affairs. Effective August 30, 1984.

Department of the Navy

One Special Assistant to the Deputy Under Secretary of the Navy (Policy). Effective August 30, 1984.

Department of State

One Secretary (Stenography) to the Director, Bureau of Politico-Military Affairs. Effective August 15, 1984.

One Secretary (Stenography) to the Assistant Secretary for the Bureau of Inter-American Affairs. Effective August 16, 1984.

One Staff Assistant to the Assistant Secretary for the Bureau of International Organization Affairs. Effective August 26, 1984.

One Secretary (Stenography) to the Assistant Secretary for the Bureau of East Asian and Pacific Affairs. Effective August 29, 1984.

One Special Assistant to the Assistant Secretary for the Bureau of Near Eastern and South Asian Affairs. Effective August 30, 1984.

One Staff Assistant to the Under Secretary for Management. Effective August 30, 1984.

One Staff Assistant to the Under Secretary for Management. Effective August 30, 1984.

Department of Transportation

One Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety administration. Effective August 1, 1984.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective August 3, 1984.

One Special Assistant to the Director of Public Affairs, Urban Mass Transportation Administration. Effective August 17, 1984.

Department of the Treasury

One Special Assistant to the Assistant Secretary for Policy, Planning, and Communications. Effective August 15, 1984.

One Public Affairs Specialist to the Assistant Secretary for Policy, Planning, and Communications. Effective August 16, 1984.

One Staff Assistant to the Assistant Secretary for Administration. Effective August 30, 1984.

Action

One Special Assistant to the Executive Officer. Effective August 7, 1984.

Agency for International development

One Deputy Assistant to the Administrator for Public Affairs. Effective August 20, 1984.

One Associate Director for Legislative Affairs. Effective August 20, 1984.

One Special Assistant to the Assistant Administrator, Bureau for Africa. Effective August 20, 1984.

One Special Assistant to the Assistant to the Admninistrator for External Affairs. Effective August 20, 1984.

One Special Assistant to the Assistant to the Administrator for External Affairs. Effective August 20, 1984.

One Deputy Director, Women in Development. Effective August 27, 1984.

Commodity Futures Trading Commission

One Special Assistant to a Commissioner. Effective August 2, 1984.

Consumer Product Safety Commission

One Staff Assistant to the Chairman. Effective August 13, 1984.

One Congressional Relations Specialist to the Director, Office of Congressional Relations. Effective August 13, 1984.

Environmental Protection Agency

One Program Advisor to the Assistant Administrator for Water. Effective August 1, 1984.

One Special Assistant to the Regional administrator in Philadelphia, Pennsylvania. Effective August 7, 1984.

One Confidential Assistant to the Executive assistant to the Administrator. Effective August 18, 1984.

Executive Office of the President

One Special Assistant to the Executive Assistant to the United States Trade Representative. Effective August 8, 1984.

Federal Trade Commission

One Staff Assistant to the Chairman. Effective August 2, 1984.

General Services Administration

One Confidential Assistant to the Assistant Administrator for Federal Supply and Services. Effective August 3, 1984.

International Trade Commission

One Confidential Assistant to a Commissioner. Effective August 3, 1984.

National Endowment for the Humanities

One Public Affairs Officer to the Assistant Chairman. Effective August 15, 1984.

Securities and Exchange Commission

One Secretary (Stenography) to the Director, Division of Enforcement. Effective August 3, 1984.

U.S. Information Agency

One Staff Assistant to the Director. Effective August 15, 1984.

Dated: September 13, 1984.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-25215 Filed 9-24-84; 8:45 am]

BILLING CODE 6325-01-M

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

Correction

In FR Doc. 84-24725, appearing on page 36718 in the issue of Wednesday, September 19, 1984, make the following correction:

In the first column, the date of the meeting of the Federal Prevailing Rate Advisory Committee reading "Thursday, October 15, 1984" should have read "Thursday, October 25, 1984".

BILLING CODE 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

Approval of Certain Plan Amendments Requiring PBGC Approval Under ERISA Section 4220

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of class approval.

SUMMARY: This notice advises the public of the Pension Benefit Guaranty Corporation's granting of approval to four classes of plan amendments requiring the PBGC's approval under section 4220 of the Employee Retirement Income Security Act of 1974, as amended. Under section 4220, certain plan amendments adopted after September 25, 1983, may not be put into effect without the PBGC's approval. The PBGC may disapprove an amendment only if it finds that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. The PBGC has determined that these four plan amendments would not in any plan create an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. Therefore, the effect of this notice is to grant class approval for these amendments, so that plans may adopt them without filing individual requests for approval.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860. [This is not a toll-free number]

SUPPLEMENTARY INFORMATION: Section 4220(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act, (the "Act"), provides that certain multiemployer plan amendments adopted after September 25, 1983, may be put into effect only with the approval of the Pension Benefit Guaranty Corporation or if the PBGC fails to disapprove the amendment within 90 days after receipt of notice of the amendment. Under section 4220(c), the PBGC may disapprove an amendment only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. The PBGC's approval under section 4220 is required for all plan amendments authorized by sections 4201–4219 (other than an amendment permitted by section 4211(c)(5), dealing with the adoption of alternatives to the statutory methods for allocation of a plan's unfunded vested benefits).

The PBGC has determined that four plan amendments authorized by sections 4201–4219, and therefore covered by section 4220, would not in any case have the effect of creating an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. Consequently, the PBGC is granting approval for these four classes of amendments.

The plan amendments receiving this approval are those authorized by sections 4203(c)(4) (permitting plans that primarily cover employees in the entertainment industry to limit the applicability of the special withdrawal liability rule), 4205(c)(1) (allowing a retain food industry plan to be amended to substitute "35 percent" for "70 percent" in the partial withdrawal liability rule of section 4205(b)(1)(A)), 4210(b)(2) (allowing a plan, other than one primarily covering employees in the building and construction industry, to adopt the six-year "free look" rule), and 4211(c)(1) (permitting certain plans to adopt one of the three statutory alternatives for determining the unfunded vested benefits allocable to a withdrawing employer).

In a notice published in the **Federal Register** on May 2, 1983 (48 FR 19806), the PBGC advised the public that it was considering granting approvals for plan amendments authorized by section 4203(c)(4) and section 4205(c)(1) of the Act. The PBGC noted that an amendment under section 4203(c)(4) broadens the events giving rise to withdrawal liability by making the general withdrawal liability rules applicable to a group or class of employers that otherwise would be subject to the special, more limited withdrawal rules applicable to entertainment plans. The PBGC also observed that an amendment authorized by section 4205(c)(1) gives a retain food plan at least as much, and usually greater, protection against declines in covered work as that provided by the statutory rule requiring a 70 percent decline in contributions as a condition for the imposition of partial withdrawal liability.

For these reasons, the PBGC has concluded that an amendment under either section 4203(c)(4) or 4205(c)(1) would not in any case create an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. Therefore, a plan sponsor need not submit amendments authorized by these sections to the PBGC for approval.

The third amendment approved under this notice is one authorized by section 4210(b)(2). This so-called "free look" rule provides that a plan, other than one primarily covering employees in the building and construction industry, may be amended to provide that an employer that withdraws in a complete or partial withdrawal is not liable to the plan if the employer:

(i) Was first obligated to contribute to the plan after September 26, 1980;

(ii) Was obligated to contribute to the plan for no more than the lesser of six consecutive plan years preceding the date of withdrawal or the number of years required for vesting under the plan;

(iii) Contributed less than 2 percent of all employer contributions for each plan year in which it was required to contribute; and

(iv) Never previously used this section to avoid withdrawal liability to the plan.

In addition, this "free look" rule applies only if:

(i) The plan is amended to provide for its application;

(ii) The plan provides that benefits of participants accrued as a result of service with an employer before the employer was required to contribute to the plan may not be payable if the employer ceases contributions to the plan; and

(iii) The ratio of plan assets to benefit payments during the plan year preceding the first plan year for which the employer was required to make plan contributions was at least 8 to 1.

These standards ensure that adoption of the provision will not create an unreasonable risk. Plans can permit a "free look" only to small, short-term contributors—those contributing less than 2 percent of total plan contributions for less than 7 years—and the ratio of plan assets to benefit payments for the plan year preceding the first plan year for which the employer was required to contribute must be at least 8 to 1. Further, if the ratio of plan assets to benefit payments falls below 8 to 1, a "free look" amendment cannot be applied to any new employer. These statutory requirements make it unnecessary to consider whether, in a particular case, an amendment authorized by section 4210(b)(2) will pose an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. The PBGC therefore grants approval to all such amendments.

Finally, approval is extended to certain amendments authorized by section 4211(c)(1). With the exception of a plan described in section 404(c) of the Internal Revenue Code, an employer's share of unfunded vested benefits is determined by the presumptive method of section 4211(b) unless the plan is amended pursuant to section 4211(c)(1). Section 4211(c)(1) permits a plan, other than one primarily covering employees in the building and construction industry, to adopt by amendment one of the three allocation methods described in sections 4211(c)(2) (the modified presumptive method), 4211(c)(3) (the rolling-5 method), and 4211(c)(4) (the direct attribution method).

The four statutory methods result in the same overall degree of allocation of a plan's unfunded vested benefits, notwithstanding the fact that different amounts may be allocated to individual employers under each method. Adoption of any of the three alternative methods could create a risk of loss only if the effect of changing methods were to shift liabilities to employers who were unable to pay the increase in withdrawal liability. However, because each method apportions liability based on the withdrawing employer's participation in the plan, measured either by that employer's contributions relative to the total contributions to the plan or by the unfunded vested benefits directly earned by employees of that employer, there is no reason to believe that changes in the allocation method shift liabilities in any substantial or systematic way toward weaker employers. Moreover, assessing this potential risk would require detailed inquiries into the financial situations of various employers, which would place a heavy burden on plan sponsors, employers, and the PBGC. Such a burden cannot be justified in light of the minimal possibility that an increased risk might be determined to exist. Therefore, the PBGC grants approval to all plan amendments that simply adopt one of the three allocation methods described in sections 4211(c)(2), 4211(c)(3), and 4211(c)(4).

This notice covers all plan amendments specified above, regardless of proposed effective date. It also extends to subsequent repeals of these amendments. However, this notice does not apply to any amendment that limits or otherwise modifies the statutorily prescribed amendments. Finally, the PBGC emphasizes that this approval relates only to the issue of risk under section 4220; it shall have no effect in determining whether a particular plan amendment was adopted in accordance with applicable statutory and plan provisions.

Issued at Washington, D.C. on this 19th day of September 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-25417 Filed 9-24-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23425; (70-7021)]

Middle South Energy, Inc.; Proposal To Issue and Sell First Mortgage Bonds; Exception From Competitive Bidding

September 20, 1984.

Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, a wholly owned subsidiary of Middle South Energy, Inc. ("MSU"), a registered holding company, has proposed a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

MSE proposes to issue and sell First Mortgage Bonds ("Bonds") in one or more series through October 31, 1985, by means of an underwritten offering or offerings through an investment banker, in an aggregate principal amount not to exceed $400 million. The Bonds will be issued and sold under one or more supplemental indentures to MSE's existing Mortgage and Deed of Trust, as supplemented, and will have such other terms and conditions as shall be approved by this Commission. MSE proposes to apply the net proceeds from the issuance and sale of the Bonds to finance MSE's 90% interest in the Grand Gulf I Nuclear Station ("Grand Gulf I"). This will include the repayment of then outstanding short-term borrowings and/or to the repayment of borrowings then outstanding under its Second Amended and Restated Bank Loan Agreement, dated June 15, 1981 ("Domestic Bank Loan Agreement"). Borrowings under the Domestic Bank Loan Agreement are expected to total approximately $1.711 billion by the end of 1984. As of August 15, 1984, MSE had $1.698 billion of short-term debt outstanding under the Domestic Bank Loan Agreement. By the first quarter of 1985, when Grand Gulf I is expected to be placed into commercial operation, MSE will have expended $3.065 billion (excluding nuclear fuel) for its interest in Grand Gulf I.

The capital structure of MSE as of May 31, 1984 indicates:

	Per books percent	Pro forma percent
First Mortgage Bonds	11.3	19.7
Other Long-Term Debt	53.3	41.4
Common Equity	35.4	38.9
Total Capitalization	100.0	100.0

As additional security for its Bond obligations, MSE may be required to assign, for the benefit of the Bond holders, its rights under the Availability Agreement, dated June 21, 1974, as amended, pursuant to the terms of an Eleventh Assignment of Availability Agreement, Consent and Agreement. In addition, MSE may be required to assign its rights under the Capital Funds Agreement, dated as of June 21, 1974, pursuant to the terms of an Eleventh Supplementary Capital Funds Agreement and Assignment.

MSE requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the proposed issuance and sale of Bonds to underwriters for sale to the public. MSE states that the exception is justified because the company lacks an earnings or operating history due to the fact that its only project, the Grand Gulf Station, has not been placed in commercial operation, and for other reasons stated in its proposal. MSE proposes, and is hereby authorized, forthwith, to select one or more investment banking firms which will act (or form a group of firms to act) as underwriters for the offering, and to negotiate the price and other terms on which the shares to be sold in that offering will be issued to such underwriters for public sale.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 15, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact and/or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25410 Filed 9-24-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Mitsubishi MU-2 Airplanes; Availability of Special Certification Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Documentation.

SUMMARY: The Director of the FAA, Central Region, has conducted a review of the issues involved in the Mitsubishi MU-2 Special Ceritification Review. He has also reviewed and discussed with his staff a document entitled "Mitsubishi MU-2 Special Certification Review, Final Report". Based on this review, the Director approves issuance of the Mitsubishi MU-2 Special Certification Review. A copy of this document is on file in the FAA Rules Docket and is available for examination and copying at the Rules Docket, and also may be obtained from the Office of the Regional Counsel, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 7, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-25427 Filed 9-24-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 27-84]

Treasury Notes of September 13, 1984; Series Y-1986

September 20, 1984.

The Secretary announced on September 19, 1984, that the interest rate on the notes designated Series Y-1986, described in Department Circular—Public Debt Series—No. 27-84 dated September 13, 1984, will be 11⅞ percent. Interest on the notes will be payable at the rate of 11⅞ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-25366 Filed 9-24-84; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name: "L.A. GEAR CALIFORNIA, INC."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "L.A. GEAR CALIFORNIA, INC." used by L.A. Gear California, Inc., a corporation organized under the laws of the State of California, located at 122 West 25th Street, Los Angeles, California 90007. The application states that the trade name is used in connection with the following merchandise manufactured in Hong Kong, Taiwan, Korea, Brazil and the United States: men's, women's and children's sportswear (specifically shirts, skirts, shorts, pants, dresses, jackets and jumpsuits); footwear, fashion accessories (specifically hosiery, leather and nylon handbags, and carrying bags).

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before November 26, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: September 19, 1984.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 84-25384 Filed 9-24-84; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:30 p.m. on Wednesday, September 19, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation with respect to an administrative enforcement action against an administrative enforcement action against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

At that same meeting, the Board of Directors also: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Verdigre and Trust Company, Verdigre, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska, on Wednesday, September 19, 1984; (2) accepted the bid for the transaction submitted by The National Bank of Neligh, Neligh, Nebraska; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Mr. H. Hoe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 20, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25486 Filed 9-21-84; 11:33 am]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 12:00 noon, Monday, October 1, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 28, 1984.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25532 Filed 9-21-84; 8:45 am]

BILLING CODE 6210-01-M

3

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Tuesday, October 2, 1984, in Cleveland, Ohio, and at 8:00 a.m. on Wednesday, October 3, in Room 52 A/B of the Cleveland Post Office, 2400 Orange Avenue, Cleveland, Ohio. As indicated in the following paragraph, the October 2 meeting is closed to public observation. The October 3 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

At its meeting on September 10, 1984, and by telephone vote on September 20-21, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for October 2. (See 49 FR 36596, September 18, 1984.) The agenda items of the meeting to be closed concern: (1) discussion of personnel matters; (2) strategic planning in connection with continued collective bargaining negotiations involving the Postal Service and four labor organizations representing certain postal employees; and (3) consideration of the Postal Rate Commission's September 7, 1984, Opinion and Recommended Decision in Docket No. R84-1.

Agenda

Tuesday Session, October 2 (Closed)

1. Discussion of Personnel Matters.
2. Strategic Planning—Collective Bargaining.
3. Consideration of Postal Rate Commission recommended decision in the omnibus rate case, Docket No. R84-1.

Wednesday Session, October 3 (Open)

1. Minutes of the Previous Meeting, September 10-11, 1984.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)

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3. Officer Compensation. (The Board will consider approval of a recommendation by the Postmaster General regarding adjustment in officer compensation.)

4. Review of Capital Investment Program. (Annually the Board considers approval of Postal Service capital investment plans, in accordance with section 3.4(f) of the Bylaws. Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will present the Postal Service's capital investment program.)

5. Report of Regional Postmaster General. (Mr. Carlin, Regional Postmaster General, Central Region, will report on postal operations in the Central Region.)

6. Capital Investments:

a. Red Bank, NJ General Mail Facility;

b. Potomac, MD Management Academy—additional improvements.

7. Determination of sites for Board of Governors' meetings in 1985.

8. Consideration of Tentative Agenda for the November 13–14, 1984, meeting in Pittsburgh, PA.

David F. Harris,

Secretary.

[FR Doc. 84-25512 Filed 9-21-84; 3:37 am]

BILLING CODE 7710-12-M

4

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting.

By telephone vote on September 20–21, 1984, the Board voted to add discussion of personnel matters to the agenda for the closed meeting on Tuesday, October 2, 1984, in Cleveland, Ohio.

The Board determined that pursuant to section 552b(c)(6) of title 5, United States Code, and section 7.3(f) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b) because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest did not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 32, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion this portion of the meeting to be closed may properly be closed to public observation pursuant to section 552b(c)(6) of title 5, United States Code, and section 7.3(f) of title 32, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84-25511 Filed 9-21-84; 3:37 pm]

BILLING CODE 7710-12-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published)

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, September 12, 1984.

CHANGE IN THE MEETING: Deletion.

A closed meeting scheduled for Tuesday, September 18, 1984, at 2:30 p.m. to discuss the following matter has been cancelled.

Institution of administrative proceeding of an enforcement nature.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272–2179.

Shirley E. Hollis,

Acting Secretary.

September 20, 1984.

[FR Doc. 84-25453 Filed 9-21-84; 11:42 am]

BILLING CODE 8010 01—M

6

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1338)

TIME AND DATE: 10:15 a.m. (EDT), Thursday, September 27, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda Items

Approval of minutes of meeting held on September 12, 1984.

Discussion Item

1. Update on Implementing TVA's Prime Farmland Policy.

Action Items

C—Power Items

C1. Renewal power contract with Athens, Alabama.

C2. Cooperative agreement with the Kentucky Energy Cabinet for the Atmospheric Fluidized Bed Combustion Demonstration Plant Project.

D—Personnel Items

D1. Renewal of consulting contract with Robert B. Jansen, Mead, Washington, for consultation on the design and construction of major hydro projects, requested by the Division of Engineering Design.

D2. Recommendations on rates of pay and certain monetary fringe benefits for salary policy employees in represented positions resulting from the thirty-third (1984) annual salary negotiations; and recommendations concerning management schedules and certain other employees.

E—Real Property Transactions

E1. Abandonment of certain easements rights affecting approximately 0.04 acre of Boone Reservoir land in Washington County, Tennessee—Tract No. BR-135F.

F—Unclassified

F1. [1] Supplement to Agreement No. TV-60244A with the Office of Surface Mining (OSM), U.S. Department of the Interior providing for aerial photographic and related activities to be performed by TVA.

F2. Contract No. TV-65124A between TVA and Northeast Mississippi Junior College providing for the establishment of a high technology computer training center.

F3. Contract No. TV-65082A between TVA and Appalachian Regional Commission providing for the establishment of a demonstration regional training facility at Walker College in northwest Alabama.

F4. Contract No. TV-65131A between TVA and Walker College providing for cooperation in a demonstration model regional training facility at the college in northwest Alabama.

F5. Supplement to Contract No. TV-50963A between TVA and Tennessee Valley Center for Minority Economic Development, Inc., to implement a program plan for economic development for socially and economically disadvantaged persons in the seven-State TVA region.

F6. Payments to State and counties in lieu of taxes for fiscal year ending September 30, 1984, as provided under Section 13 of the TVA Act, as amended.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 20, 1984.

W.F. Willis,

General Manager.

[FR Doc. 84-25510 Filed 9-21-84; 3:13 pm]

BILLING CODE 8120-01-M

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[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Tuesday
September 25, 1984

Part II

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Alcohol, Drug Abuse, and Mental Health Administration; National Institutes of Health; Centers for Disease Control; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Office of the Assistant Secretary for Health (OASH).

ACTION: OASH is publishing this document to meet the requirements of Pub. L. 97–375, the Congressional Reports Elimination Act. This statute amends the Privacy Act (5 U.S.C. 552a, section 3(e)(4)) to limit republication to revised system notices only.

SUMMARY: This preamble summarizes significant changes to systems of individually indentifiable records which have occurred since the 1983 annual publication. Four of these revised systems are published in their entirety below and are complete as of the date of signature. None of the modifications being made meet the Office of Management and Budget criteria either for a new or altered system report, or for an advance period of public comment.

OASH has added one new system of records to its inventory since the 1983 annual publication; and one system was also subsequently republished to add a routine use. No systems were deleted.

OASH is republishing the table of contents to the inventory of all of its current systems of records. The citation of the most recent publication of each system is provided following the system's title; an asterisk indicates that the system notice so designated has been modified and is being republished below.

SUPPLEMENTARY INFORMATION:

A. General Information

1. The routine uses set forth in each notice describe permissible disclosures outside the Department of records in that system, which may be made without the consent of individuals who are the subjects of those records. Additional disclosures without consent of subject individuals are permitted by the Privacy Act itself in Section 3(b), as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use (as described in the routine use section of each specific system notice);

"(4) To the Bureau of the Census for purposes of planning or carryng out a census or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has value;

"(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))."

2. OASH has carefully reviewed each of its system notices again this year with a view toward enhancing clarity and specificity as well as to incorporate normal updating changes. However, we are only republishing those system notices where the changes affect the public's need-to-know (See B.1. immediately below). All other changes, such as a change in organizational designation to reflect a reorganization, are being made to the database (inventory) only.

B. Specific Information

1. This year, PHS has made a special effort to review the "Safeguards" section of all Privacy Act system notices to ensure that the published description both fully and accurately reflects the manner in which both manual and computerized records in each system are protected. As a result, the "Safeguards" section of all notices of OASH systems of records has been reformatted to delineate clearly who the authorized users are and what physical and procedural safeguards are being used to protect the records.

We are publishing the following four systems of records below, because the changes made in the "Safeguards" section affect the public's need-to-know due to the nature of the records in these systems:

09–37–0010, "Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population, HHS/OASH/NCHS."
09–37–0011, "Health Manpower Inventories and Surveys, HHS/OASH/NCHS."
09–37–0012, "Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occurring in the United States During Each Year, HHS/OASH/NCHS."
09–37–0013, "Health Resources Utilization Statistics, HHS/OASH/NCHS."

The Commissioned Personnel Operations Division (CPOD) published in the **Federal Register,** Vol. 48, No. 219, pp. 51744–51757, a comprehensive restructuring of all CPOD system notices, which included complete and accurate safeguards.

In all other OASH systems of records, the changes to the "Safeguards" section have been incorporated into the database.

2. OASH published one new system of records during the year: 09–37–0016, "Users of Health Statistics, HHS/OASH/NCHS," **Federal Register,** Vol. 49, No. 105, p. 22540.

3. Also during the year, OASH added a new routine use and the Special Disclosure Statement permitting disclosures to Consumer Reporting Agencies (see A.1.12. above) to system of records: 09–37–0015, "National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR". This addition was published in the **Federal Register,** Vol. 49, No. 124, p. 25151.

Readers who notice any inadvertent errors or omissions in OASH system notices are invited to bring them to my attention at the following address:

Department of Health and Human Services, Public Health Service, Office of the Assistant Secretary for Health, Office of Management, 5600 Fishers Lane, Room 17-25, Rockville, Maryland 20857.

Dated: September 11, 1984.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Inventory of Privacy Act Systems of Records

Table of Contents

09-37-0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM, publ. **Federal Register**, Vol. 48, No. 230, p. 53793

09-37-0002 PHS Commissioned Officer Personnel Data System, HHS/OASH/OM, publ. **Federal Register**, Vol. 48, No. 219, p. 51748

09-37-0003 PHS Commissioned Corps Medical Records, HHS/OASH/OM, publ. **Federal Register**, Vol. 48, No. 219, p. 51751

09-37-0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM, publ. **Federal Register**, Vol. 46, No. 219, p. 51752

09-37-0006 PHS Commissioned Corps Grievance, Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files, HHS/OASH/OM, publ. **Federal Register**, Vol. 48, No. 219, p. 51755

09-37-0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM, publ. **Federal Register**, Vol. 48, No. 219, p. 51756

09-37-0009 Applicants for National Center for Health Statistics Technical Assistance, HHS/OASH/NCHS, publ. **Federal Register**, Vol. 49, No. 230, p. 53794

*09-37-0010 Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population, HHS/OASH/NCHS

*09-37-0011 Health Manpower Inventories and Surveys, HHS/OASH/NCHS

*09-37-0012 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occurring in the United States during Each Year, HHS/OASH/NCHS

*09-37-0013 Health Resources Utilization Statistics, HHS/OASH/NCHS

09-37-0014 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/OASH/NCHS, publ. **Federal Register**, Vol. 47, No. 109, p. 45690

09-37-0015 National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR, publ. **Federal Register**, Vol. 49, No. 124, p. 26151

09-37-0016 Users of Health Statistics, HHS/OASH/NCHS, publ. **Federal Register**, Vol. 49, No. 105, p. 22540

*Indicates that the system notice is being republished below.

09-37-0010

SYSTEM NAME:

Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population. HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2-19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409; and at selected contractor location. A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and members of households selected by probability sampling techniques to be representative of the civilian population of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on: (1) The incidence of illness and accidental injuries, prevalence of diseases and impairments, the extent of disability, the utilization and cost of health care services, and other health characteristics of individuals obtained in household interviews and from their named health care providers and insurers; or (2) the nutritional status, prevalence levels of specially defined chronic diseases, growth and development patterns and distributions of various health related measurements and related data obtained in a survey involving health examinations, tests, and other measurement procedures; or (3) marital and child bearing history and intended future births, the use of prenatal care, and the family planning practices of individual women obtained by interview. Demographic and socioeconomic characteristics such as age, marital status, education, occupation, and family income are also obtained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(b) (42 U.S.C. 242k).

PURPOSE(S):

The data are used for statistical purposes only. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis, and interpretation, to meet the legislative mandates of 42 U.S.C. 242k, i.e., to determine levels of illness and disability and their effects on the population, the use of health care facilities, trends in family formation and dissolution, and the like.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data are disseminated for purposes of statistical research and analysis outside DHHS in forms which do not permit the identification of individuals, such as publications of statistical tables, specially requested tabulations and public use computer tapes. These are communicated to interested persons outside DHHS, such as members of Congress and their staffs, other executive branch agencies, universities, States, cities, private foundations, etc. The findings are used by demographers, sociologist, health statisticians, epidemiologists, other scholars and concerned citizens, to evaluate health matters, make determinations on needs for legislation, appropriations, new service programs, and the like.

The Department occasionally contracts with a private firm for the purpose of collecting analyzing, aggregating, or otherwise refining records in this system. Relevant records are disclosed to such a contractor. The contractor is required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tapes.

RETRIEVABILITY:

A serial number tied to the selection process of successively smaller geographic areas is assigned to each record on magnetic tape. This serial number is cross-indexed to the original, individually identifiable record.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. (The automated portions of the records

do not contain individually identifiable data. Because they are not subject to the Privacy Act, descriptions of the computer safeguards used are not included in this notice.) Access to the buildings in which the manual records are stored is controlled by special entry divices and 24-hour security guards.

3. Procedural Safeguards: All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions.

Contractors who maintain records in the system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45-13; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

Original survey records are reviewed for accuracy, edited, and data (without personal identifiers such as name or Social Security Number) are transferred to magnetic tape. The original records are retained in office files of NCHS until the process of conversion to magnetic tape and verification of information is completed. This process is completed within approximately nine months. The original records are then sent to the Federal Records Center where they are stored for 5 years for interview survey records and 10 years for examination records. Microfilm copies of examination records are retained at the Federal Records Center for 40 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2-19, 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager.

RECORD ACCESS PROCEDURES:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management, Public Health Service. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Respondents included in the survey samples.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in subsections 552a(c)(3), (d) (1) through (4), and (e)(4) (G) and (H) in accordance with the provisions of subsection 552a(k)(4) of the Privacy Act of 1974. The reason this system has been exempted is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the **Federal Register**, October 8, 1975, page 47413.

09-37-0011

SYSTEM NAME:

Health Manpower Inventories and Surveys. HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2-19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782; and at selected contractor locations. A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals trained in specific health occupations, such as dentists, nurses, pharmacists, optometrists, dental hygienists, and other providers of health care services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on educational attainment, place of education, activity status, place and setting of employment or practice, place of residence, date of birth, sex, and marital status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(b) (42 U.S.C. 242k).

PURPOSE(S):

The data are used for statistical purposes only. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis, and interpretation to meet legislative mandates of the Public Health Service Act, Section 306 (42 U.S.C. 242k), such as an annual report on health resources, including a description and analysis of the statistics included under Section 306(b)(1)(G). In addition, probability samples of individuals are selected by NCHS for statistical research purposes. Tables, magnetic tapes, and statistical samples of individuals are provided for statistical purposes only to the Bureau of Health Professions, Health Resources and Services Administration, for its use in determining health manpower scarcity areas, for loan forgiveness, and developing and evaluating educational and training programs for health manpower.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data are made available to Health Systems Agencies and the State Agency designated under the Public Health Service Act (42 U.S.C. 300 l and m) for statistical purposes only for developing and evaluating health plans.

The data are also disseminated for the purpose of statistical research and analysis outside DHHS in forms which do not permit the identification of individuals, such as publication of statistical tables, specially requested tables, and public use magnetic tapes. These are communicated to interested persons outside DHHS, such as Members of Congress, other executive branch agencies, professional associations, universities, State, cities, private foundations, etc. The statistical summaries are used by health manpower researchers, legislators statisticians and concerned citizens to evaluate the Nation's health manpower resources, make determinations on needs for legislation, new health manpower training programs, and the like.

The Department occasionally contracts with a private firm for the purpose of collecting, analyzing, aggregating or otherwise refining records in the system. Relevant records are disclosed to such a contractor. The contractor is required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tape.

RETRIEVABILITY:

Name and address, date of the inventory or survey, and other identifiers permit the retrieval of a computer record of the individual's information contained on magnetic tape. Original records of information are reviewed by the contractor and/or National Center for Health Statistics (NCHS) staff for accuracy and edited, and data with personal identifier (such as name and address) are transferred to magnetic tape. The records are then matched by personal identifiers to produce an unduplicated file of individuals in a health occupation.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. The automated records and the computer equipment are in secured areas with fire extinguishers and sprinkler system. Access to the buildings in which the manual and the automated records are stored is controlled by special entry devices and 24-hour security guards.

3. Procedural Safeguards: All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions. Data stored in computers are accessed through the use of passwords/keywords known only to the principal investigators and authorized personnel. These passwords/keywords are changed frequently.

Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards of Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

The original records are retained in the offices of national professional associations and/or State boards of licensure, or the NCHS data processing facility until the process of conversion to magnetic tape and verification of information is completed and a subsequent inventory or survey is initiated. For these reasons the records may be retained for a period of up to five years before disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management, Public Health Service. An individual may also request an accounting of disclosure of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Health practitioners, state licensing agencies, or professional associations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in subsections 552a(c)(3), (d)(1) through (4), and (e)(4)(G) and (H) in accordance with the provisions of subsection 552a(k)(4) of the Privacy Act of 1974. The reasons that the system has been exempted is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the **Federal Register**, October 8, 1975, page 47413.

09–37–0012

SYSTEM NAME:

Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occuring in the United States during Each year. HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782;

Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are born and their parents; individuals who die; individuals who are married or divorced; and parents experiencing fetal deaths.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include microfilm images of State records or machine-readable data prepared by the State from records collected under the laws of each State for births, deaths fetal deaths, marriages and divorces. The records contain the demographic characteristics of individuals associated with each event. In addition, the birth records include information on the characteristics of each live birth, the health status of the infant, and socioeconomic characteristics of the parents. The death records contain medical information relating to cause of death and to socioeconomic characteristics of the deceased; the fetal death record contains medical information relating to cause of death and socioeconomic characteristics of the parents. Marriages and divorces include demographic and socioeconomic characteristics of both parties to the event and legal information regarding the event.

Periodically the National Center for Health Statistics (NCHS) conducts followback surveys, collecting information on random samples of births and deaths through mail questonnaires. The content of questionnaires for the followback surveys varies. Past surveys have collected information on such topics as hospital utilization in the last year of life, smoking habits of the deceased, health status of infants, and pregnancy and employment histories of mothers.

Lists of names and other identifying information in the system are provided to NCHS by individuals and organizations who for health research purposes seek to have them matched against files of decedents in order to identify State death records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(h) (42 U.S.C. 242k.)

PURPOSE(S):

The data are used for statistical purposes only. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis, and interpretation, to meet the legislative mandates of 42 U.S.C 242k, i.e., to determine the extent and nature of illness and disability of the population of the U.S., including life expectancy and levels of infant and maternal mortality, environmental and other health hazards, trends in family formation, growth, and dissolution, and other related matters. The followback surveys are designed primarily to expand the scope of data that NCHS can collect from the national registration system, to make the registration system more responsive to changing needs for data, and to evaluate the quality of data collected on the birth and death records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The processed data are disseminated for public use in forms that do not permit identification of individuals, such as published statistical tables, special unpublished tabulations, and public use computer tapes, which carry no individual identifiers. They are used by members of Congress and their staffs, other executive branch agencies, state and city governments, public and private research institutions, life insurance companies, faculty and students of universities, physicians, workers in health information, newspaper reporters and feature writers, etc. The findings are used to make determinations on needs for legislation, appropriations, and programs in the health field; to pinpoint health problems, measure progress of national health programs, and make population estimates; for epidemiological studies, marketing research, sociological studies, and studies of the family; and for other research directed at understanding our society.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tapes.

RETRIEVABILITY:

Some States submit microfilm copies of certificates of birth, death, fetal death, marriage, and divorce, and statistics are extracted from them. These microfilms contain individual identifiers; they are the only individually identified records in the system. Other States submit vital statistics data on magnetic tape, showing only a State file number for each case but no personal identifiers

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. (The automated portions of the records do not contain individually identifiable data. Because they are not subject to the Privacy Act, descriptions of the computer safeguards used are not included in this notice.) Access to the buildings in which the manual records are stored is controlled by special entry devices and 24-hour security guards.

3. Procedural Safeguards: All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions.

Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safequards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

The microfilm copies of the individually identifiable records are retained in office files of NCHS until the process of conversion to magnetic tape and verification of information is completed. The death records are sent to the Federal Records Center ten years after tabulation for deaths occurring during the three year period surrounding census years and one year after tabulation for other years. They are held until disposed of, 15 years after tabulation for deaths of the censal years, and five years after tabulation for other years. Records of births, fetal deaths, marriages, and divorces are disposed of two years after tabulation. The questionnaires for the followback surveys are destroyed after conversion to magnetic tape, tabulation, and analyses have been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19
3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management, Public Health Service. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Vital statistics records are obtained from State vital statistics offices, or, in rare instances, from other State or county repositories of marriage or divorce data. Information in followback surveys in obtained from hospitals, physicians, or relatives of the infants or the deceased.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in subsections 552a(c)(3), (d)(1) through (4), and (e)(4)(G) and (H), in accordance with the provision of subsection 552a(k)(4) of the Privacy Act of 1974. The reason that the system has been exempted is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the **Federal Register**, October 8, 1975, page 47413.

09-37-0013

SYSTEM NAME:

Health Resources Utilization Statistics, HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2-19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782; Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409; and at selected contractor locations. A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of medical care included in statistical surveys and reports of the National Center for Health Statistics (NCHS), including but not limited to: (1) Staff and residents of nursing homes selected by random sampling techniques to be representative of nursing homes in the U.S. (2) physicians providing medical care and patients visiting such physicians; (3) patient medical records from selected short-stay hospitals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on: (1) The utilization of long-term care and nursing home care through data on clients and residents (demographic and social characteristics, health status and charges paid for care) and the facility (general characteristics certification, services offered and expense); (2) the demographic characteristics, medical and other problems of persons visiting physicians, and the physicians' diagnoses, treatment, and disposition decisions made during such visits as obtained from physicians during randomly assigned one-week survey periods; (3) the demographic characteristics administrative information (admission and discharge dates, discharge status, and medical record number), and medical information (diagnoses and surgical procedures) abstracted from the face sheet of short-stay hospital medical records; (4) records of family planning medical services provided by the clinics participating in a nationwide sample survey reporting system, the demographic and socioeconomic characteristics, including education and welfare status, of the recipients of these services, and the extent to which these services (excluding physicians' offices) are funded by Federal grants.

In many cases, these records do not contain individual identifiers when they come under control of the National Center for Health Statistics; they carry only sequence numbers, which only the originating agency would be able to translate into a personal identifier—and even then, not in all cases. Names of residents and staff of nursing homes and patients of physicians are listed on separated forms for sampling purposes only and are not included in the final statistical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(b) (42 U.S.C. 242k).

PURPOSE(S)

The data are used for statistical purposes only, as specified by statute, Section 308(d) of 42 U.S.C. 242m. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis and interpretation to meet the legislative mandates of 42 U.S.C. 242k, i.e., collection of statistics on the utilization of health services, including the utilization of: (1) Long-term care services and nursing home facilities to determine levels of illness and disability, effects on the serviced population, and the costs of care; (2) ambulatory health services by specialties and types of practice of the health professionals providing such services; (3) short-stay hospitals to determine characteristics of patients, length of stay, diagnosis and surgical operations, and utilization patterns of care in hospitals of different size and ownership; (4) family planning facilities to provide statistics on the size of and services dispensed by these facilities, the numbers and characteristics of family planning patients, the overall proportion of the "target population" which is being reached by family planning programs on a national scale, and the like. The family planning data are distributed to the Deputy Assistant Secretary for Population Affairs, DHHS, and the Bureau of Community Health Services in the Health Resources and Services Administration for the purpose of executing national family planning programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data are disseminated in forms which do not permit the identification of individuals, such as publications of statistical tables, special requested tabulations, and public use computer tapes. These are communicated to interested persons outside DHHS, such as members of Congress and their staffs, other executive branch agencies, universities and medical schools, state and local health planning agencies, private foundations, etc. The findings are used by demographers, sociologists, health statisticians, epidemiologists, medical educators, health planners, other scholars, and concerned citizens, to evaluate health matters, make determinations on needs for legislation, appropriations, new service programs, and the like.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tapes.

RETRIEVABILITY:

Data are retrieved by individual identifier only in the editing stage of data processing and only for the purpose of correcting errors in the recording of information. Original survey records are reviewed for accuracy and edited, then data (without personal identifiers such as name or Social Security Number) are transferred to magnetic tape.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. (The automated portions of the records do not contain individually identifiable data. Because they are not subject to the Privacy Act, descriptions of the computer safeguards used are not included in this notice.) Access to the buildings in which the manual records are stored is controlled by special entry devices and 24-hour security guards.

3. Procedural safeguards: All employees of NCHS and contractor personnel with access of NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions.

Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

The original records are retained in office files of NCHS or NCHS contractors for two years. The procedure for family planning records differs in that the original documents are retained in office files for only two months. In all instances, the original records are then sent to the Federal Records Center where they are stored for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management, Public Health Service. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Hospitals, physicians, clinics, nursing homes, and other providers of health care.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in Subsections 552(a)(3), (d)(1) through (4), and (e)(4)(G) and (H), in accordance with provisions of Subsections 552a (k)(4) of the Privacy Act of 1974. The reason for this exemption is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the **Federal Register**, September 11, 1978, page 40229.

[FR Doc. 25245 Filed 9–24–84; 8:45 am]

BILLING CODE 4160–17–M

Alcohol, Drug Abuse, and Mental Health Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

ACTION: ADAMHA is publishing this document to meet the requirements of Section 3(e)(4) of the Privacy Act (5 U.S.C. 552a), as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97–375), providing for annual publication of the existence and character of revised systems of records which are subject to the Act.

SUMMARY: The preamble summarizes significant changes to systems of individually identifiable records which have occurred since the due date for submissions to the 1982 annual republication (August 13, 1982).

SUPPLEMENTARY INFORMATION: ADAMHA has reviewed all of its systems of records and has made minor editorial changes to many systems. However, ADAMHA is only republishing those systems which have changes affecting the public's right and need to know in compliance with the Congressional Reports Elimination Act of 1982.

1. Changes

Changes appearing in this year's publication include, but are not necessarily limited to, the following:

a. Inclusion of the notification procedures for accessing children's records in system notice 09–30–0005, "Saint Elizabeths Hospital Research Subjects Data Record, HHS/ADAMHA/NIMH," and a change in the title of the System Manager.

b. In system notice 09–30–0008, "Saint Elizabeths Hospital Social Services Record System, HHS/ADAMHA/NIMH," revision of routine use number 6 to clarify the purpose for contracting with private firm and deletion of a obsolete routine use to disclose a record otherwise exempt from mandatory disclosure where the appropriate official of the Department determines it is in the public interest to do so.

c. Revision of routine use number 3 in system notice 09–30–0028, "Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes, HHS/ADAMHA/NIMH," to specify who is considered "authorized parties, who have legitimate interest in the patient," as previously published.

d. Clarification of the Safeguards by reformatting the language; the Notification Procedures and Record Access Procedures by adding additional language; and of the authority through an editorial change.

2. New Systems Not in 1983 Publication

09–30–0046, "Survey of Alcohol Use Among Youth and Young Adults, HHS/ADAMHA/NIAAA," published February 17, 1984, **Federal Register** (FR), Vol. 49, No. 34, pp. 6180–6182.

3. System Notices Deleted

No system notices have been deleted. ADAMHA is only republishing those systems of records that have been changed. Each system, with the exception of two systems which have not been changed since the 1982 annual publication and one system in which a major alteration was made just prior to the 1982 annual publication, was last published in the **Federal Register**, November 29, 1983, Vol. 48, No. 230, pp. 53795–53833. The two systems which had no changes since the 1982 publication were last published in the **Federal Register**, October 13, 1982, Vol. 47, No. 198, pp. 45427–45468. These systems are system 09–30–0026, "Saint Elizabeths Hospital Research Project Records, HHS/ADAMHA/NIMH," and system 09–30–0035, "Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH." The system which underwent a major alteration just prior to the 1983 annual publication is system 09–30–0041, "Subject Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA," published in the **Federal Register**, June 9, 1983, Vol. 48, No. 112, pp. 26672–26674.

4. Readers who notice any errors or omissions in ADAMHA system notices are invited to bring them to my attention at the following address: Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857.

Dated: August 28, 1984.

Joseph R. Leone,

Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.

5. Table of Contents

The following is a list of system notices which ADAMHA currently maintains.

09–30–0002 Statistical Research Data on Adolescent Runaways in Prince Georges County, MD., 1962–65, HHS/ADAMHA/NIMH
09–30–0003 Medical Records Files of Patients Seen in Therapy Programs of the Mental Health Study Center, HHS/ADAMHA/NIMH
09–30–0004 Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness, HHS/ADAMHA/NIMH
*09–30–0005 Saint Elizabeths Hospital Research Subjects Data Records, HHS/ADAMHA/NIMH
09–30–0006 Saint Elizabeths Hospital Medical Support Programs File System, HHS/ADAMHA/NIMH
09–30–0007 Saint Elizabeth Hospital Clinical Support Services Record System, HHS/ADAMHA/NIMH
*09–30–0008 Saint Elizabeths Hospital Social Services Record System, HHS/ADAMHA/NIMH
09–30–0009 Saint Elizabeths Hospital Multidisciplinary Raw Data Consultation Files HHS/ADAMHA/NIMH
09–30–0010 Saint Elizabeths Hospital Juvenile Education Monitoring System, HHS/ADAMHA/NIMH
09–30–0011 Saint Elizabeths Hospital Emergency Psychiatric Service Non-Admission File System, HHS/ADAMHA/NIMH
09–30–0012 Saint Elizabeths Hospital Pre-Service Education Records, HHS/ADAMHA/NIMH
09–30–0013 Saint Elizabeths Hospital Training Videotape Records, HHS/ADAMHA/NIMH
09–30–0014 Saint Elizabeths Hospital Financial System, HHS/ADAMHA/NIMH
09–30–0015 Saint Elizabeths Hospital General Security System, HHS/ADAMHA/NIMH
09–30–0016 Saint Elizabeths Hospital Patients' Personal Property Record System, HHS/ADAMHA/NIMH
09–30–0017 Saint Elizabeths Hospital Legal Office Record System, HHS/ADAMHA/NIMH
09–30–0018 Saint Elizabeths Hospital Area D Community Mental Health Center Citizens Advisory Group Records, HHS/ADAMHA/NIMH
09–30–0019 Saint Elizabeths Hospital Court-Ordered Forensic Investigatory Materials File, HHS/ADAMHA/NIMH
09–30–0020 Administrative Records on Civilly Committed Drug Abusers under the Narcotic Addict Rehabilitation Act, HHS/ADAMHA/NIDA
09–30–0021 Patient Medical Records on PHS Beneficaries 1935–1974 and Civilly Committed Narcotic Addicts 1967–1978 Treated at the PHS Hospitals, Fort Worth, Texas and Lexington, Kentucky, HHS/ADAMHA/NIDA
09–30–0022 National Institute on Drug Abuse Addiction Research Center Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA
09–30–0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA
09–30–0024 Saint Elizabeths Hospital General Administrative Record System HHS/ADAMHA/NIMH
09–30–0026 Saint Elizabeths Hospital Research Project Records, HHS/ADAMHA/NIMH
09–30–0027 Grants: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowships, Clinical Training, Community Services, Cooperative Agreements, HHS/ADAMHA/OA
*09–30–0028 Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes, HHS/ADAMHA/NIMH
09–30–0029 Records of Guest Workers, HHS/ADAMHA/OA
09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA
09–30–0031 Saint Elizabeths Hospital Management Information Reporting System, HHS/ADAMHA/NIMH
09–30–0033 Correspondence Files, HHS/ADAMHA/OA
09–30–0035 Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH
09–30–0036 Mental Health Epidemiologic and Biometric Research Data, HHS/ADAMHA/NIMH
09–30–0037 Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIMH
09–30–0038 Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA
09–30–0039 Drug Abuse Treatment Outcome Prospective Study (TOPS), HHS/ADAMHA/NIDA
09–30–0041 Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA
09–30–0043 Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/ADAMHA/NIDA
09–30–0046 Survey of Alcohol Use Among Youth and Young Adults, HHS/ADAMHA/NIAAA

09-30-0005

SYSTEM NAME:

Saint Elizabeths Hospital Research Subjects Data Record. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Saint Elizabeths Hospital
Washington, D.C. 20032 AND
Washington National Records Center
4205 Suitland Road
Washington, D.C., 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons participating in approved research studies at Saint Elizabeths Hospital in the following categories: (1) Inpatients, outpatients, and relations of patients; (2) hospital staff including stipended trainees; and (3) non-hospital related subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record categories include: data from interviews, medical and non-medical test and laboratory data, self-report information, informant observation data, and data from previous records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301 (42 U.S.C. 241).

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*These systems of records have been changed during this year's review and are being republished below.

PURPOSE(S):

Purposes include: data analysis; case study illustration; hypothesis generating study; subject reimbursement; diagnosing and treating mental disorders, and improving diagnostic and treatment methods; generating new knowledge about the nature and causes of mental and emotional illneses, and about rehabilitating the mentally ill; generating new knowledge about human behavior; program evaluation and assessment; and historical research.

1. Records are routinely disclosed to qualified physicians for the purpose of obtaining medical background data.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individuals).

4. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to -- (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except -- (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

STORAGE:

Written documents and photographs are in file folders and filing cabinets; audio and video tape reels are in storage cabinets.

RETRIEVABILITY:

System is filed by name, code, and/or hospital case number of subject, dates when research was conducted, research program area, and primary investigator.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access to research files is limited to authorized researchers and medical staff.

2. Physical Safeguards: File folders are kept in locked storage cabinets. Fire and life safety codes are strictly enforced. Offices are locked when not in use. Offices are monitored by security guards at night and on weekends.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel. An employee picture I.D. program is in effect. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the Federal Records Disposal Schedule.

Director, Overholsen Division of Training
Saint Elizabeths Hospital
Washington, D.C. 20032

NOTIFICATION PROCEDURE:

To determine if a record exists, contact

Privacy Act Coordinator
Office of the Director, Overholsen Division of Training
Saint Elizabeths Hospital
Washington, D.C. 20032

Provide a notarized signature if request is by mail, or suitable identification if request is made in person.

All of the following data must be provided when requesting notification:

(a) Full name, date and place of birth;

(b) Inclusive dates of participation in the research study;

(c) Type of research study;

(d) Location of the unit where research was conducted;

(e) Name of primary investigator;

(f) The status of the requester with respect to the hospital, e.g., in-patient, out-patient, former patient, staff or trainee, or non-hospital related subject;

(g) If possible, in the case of patients, the hospital number. A parent or guardian who requests notification of or access to a child's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child as well as proof of his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from research subjects, observers, previous records, and test results.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0008

SYSTEM NAME:

Saint Elizabeths Hospital Social Services Record System. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A widely decentralized system at Saint Elizabeths Hospital (SEH). Individual records are kept in the offices of social workers responsible for patients on the rolls of the various Hospital Divisions. Social workers' offices are located in each inpatient and outpatient division or clinic at Saint Elizabeths Hospital, Washington, D.C. 20032. Records of individuals in transition programs may be located at contractor sites. For a current listing of contractor sites, contact the System Manager. Inactive records are stored at Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All past and present patients on the rolls of Saint Elizabeths Hospital; home sponsors; caretakers; owners and operators of facilities providing services to patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files on inpatients and outpatients containing demographic data; social workers' contact with families and the community including social, marital and family status, job status; identifying information containing name, address, telephone numbers, social security numbers, Medicaid numbers, date of birth, legal status, financial information, hospital number, Veterans Administration numbers, Health Insurance numbers, Civil Service Numbers, family composition; statement on background, names of relatives, conservators with addresses and telephone numbers; correspondence sent other agencies; information regarding psychiatric and medical condition; social histories; progress notes (carbon copies of notes may be placed in ward chart) hand written progress notes not in chart, return to hospital notes, interval histories, placement and planning notes; information regarding psychiatric and medical condition, financial resources, treatment plans, correspondence to relatives, friends, other agencies, etc. Telephone interviews or conversations, incident reports and copies of reportable occurrences, group therapies and individual therapies by social workers, daycare status and group activities, religious histories; intra-agency evaluative and assessment data and reports received from other sources, outside agencies that provide supportive services; essential information regarding services sought or received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

24 U.S.C. 161, et seq.; Hospitalization of the Mentally Ill Act, 21 DC Code 562.

PURPOSE(S):

Information is used:

1. In planning to assess the patient's overall ability to be placed and to adjust or function in the type of environment to which he or she has been referred.
2. For accountability to other hospital personnel and reference for recording or sharing information with staff and other necessary persons upon request.
3. To share information with team, reference for casework services and reference for completing forms.
4. To monitor patient's progress and periodically assess placement situations in outplacement facilities. To monitor outplacement facilities outside the hospital and assist in placement of patients by providing accurate, up-to-date information regarding available facilities; and to determine the status of compliance of a facility with certain standards through appropriate licensing agencies. To familiarize staff with outplacement facilities. To assess outplacement operators, administrators or owners ability to provide the level of care needed by individual patients. To share patient's background and appropriate information with outplacement owners, operators and sponsors.
5. To expedite family involvement in planning patient care and to expedite mobilization of community resources on behalf of the patient.
6. As a resource in diagnosis, treatment, planning prognosis goals and communication with other disciplines.
7. As resource material gathered by the social workers used to prepare narrative summaries for the patient's medical records.
8. To keep informed about social services provided patients; patient problem areas in the unit for purpose of evaluating services provided and need for action, and for reporting to the Clinical Directors or person in charge of service.
9. As resource material for diagnostic planning and implementation of treatment plan and documentation of services offered.
10. For reference in order to complete summaries for medical records; to have readily available pertinent information with which to respond to personal and telephone contacts; to provide needed information to hospital staff, officials of other agencies reponsible for the provision of adjunct services.
11. To provide inservice training for continued professional development.
12. To provide Hospital staff and patients with essential information for selecting appropriate living arrangements for patients in the community.
13. To provide information to placement workers from other community service organizations in order to facilitate patient placements and to develop necessary community support services.
14. To serve as a uniform system for location of staff, indication of qualifications and areas of responsibility, in order to assist in provision of resources (financial and other) to patients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is routinely disclosed to the following sources for the purposes of obtaining financial assistance for patients, locating community recreation resources, providing job placement and training for patients, securing alternative placements in other institutions, providing education, securing living and care arrangements and aiding in followup care, and providing required reports to court, state government or Federal government agencies:

a. Foster home sponsors, caretakers, owners and operators of facilities providing services to patients
b. Agencies of the District of Columbia Government
c. The Superior Court for the District of Columbia
d. The United States District Court for the District of Columbia
e. The Veteran's Administration
f. The Office of Personnel Management
g. Anchor Mental Health Association

h. State Departments of Social Services throughout the United States;

2. Information disclosed routinely to persons, who are not employees of SEH, on a need to know basis, who have a responsibility for the care and treatment of patients of SEH.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., Department of Justice), State or local (e.g., State and local licensing boards) charged with the responsiblity of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. A record from this system of records may be disclosed as a 'routine use' to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

6. The Department contemplates that it will contract with a private firm for the purpose of providing supportive services to patients. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

7. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to – (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except – (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosures may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

9. Disclosures may be made in the course of employee discipline or competence determination proceedings to parties involved in the proceedings such as police, attorneys, and Office of Personnel Management employees.

10. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

11. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards, file folders, logs, notebooks, Rolodex, and Kardex.

RETRIEVABILITY:

By patient's name and staff's name.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access is restricted to authorized social workers and support staff.

2. Physical Safeguards: File folders are kept in locked desks or file cabinets in social workers' offices. Offices are locked when not occupied. Fire and life safety codes are strictly enforced.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act. An employee picture I.D. program is in effect. Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the project officer and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer, contract officer and staff of the SEH Outplacement Office oversee compliance with these requirements.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 in the General Administration Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the ADAMHA Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Social Services
A Building, Room 221 Saint Elizabeths Hospital
Washington, D.C. 20032

NOTIFICATION PROCEDURE:

Active or discharged patients in this system of records may learn if a record exists upon written request, with notarized signature if request is made by mail, or with suitable identification if request is made in person, directed to:
Privacy Act Coordinator
Office of the Director of Social Services
A Building, Room 221
Saint Elizabeths Hospital
Washington, D.C. 20032

All of the following information must be provided when requesting notification:
(a) Full name;
(b) The approximate dates of contact with the hospital;
(c) The nature of the material desired;
(d) Hospital number, if possible.

A parent or guardian who requests notification of a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record content being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Past and present patients of Saint Elizabeths Hospital, home sponsors, caretakers, owners, and operators of facilities providing services to Saint Elizabeths patients, other employees of Saint Elizabeths Hospital, employees of various agencies of the District of Columbia and the United States.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0028

SYSTEM NAME:

Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This is a widely decentralized system of records. Inactive patient records are located in the basement of the Dix Building. Active patient records are located in the division where the patient is residing, including possibly contractor locations. A current listing of contractor sites is available from the System Manager. Saint Elizabeths Hospital clinical divisions are listed below under System Manager. Inactive records may also be stored at the Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All past and present patients of Saint Elizabeths Hospital.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient and outpatient psychiatric medical/clinical records. The medical/clinical record contains identifying data (name, date and place of birth, age, sex, race, marital status, legal category, social security number, leave and residential status, admission and discharge dates, identification of relatives and hospital identification number) and medical/clinical information (physician's admission note, results of physical examinations, descriptions of patient's present and past physical and mental health, diagnosis, prognosis, consultant's opinions, social history, treatment plan, results of diagnostic tests and procedures, notes of patient's response to treatment, progress notes, nurses' notes, incident reports, and reports or notes of others who contributed to a patient's treatment and/or social work efforts, and correspondence with Saint Elizabeths Hospital concerning such a patient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

24 U.S.C. 161, et seq.; Hospitalization of the Mentally Ill Act, 21 DC Code 562.

PURPOSE(S):

1. To document a patient's illness, chief complaint, history, physical examination, diagnostic test and procedure reports, to plan treatment whether as an inpatient or an outpatient.
2. To promote continuity of care for followup of treatment; for reference upon future treatment and care.
3. To provide a basis for reports mandatory under Federal and local laws.
4. In some instances, to provide a basis for action in the course of employee discipline or competence determination proceedings.
5. To transact hospital business in filing insurance claims, verification of patient's competency, disability, or retirement benefits, verification of leave status and residence.
6. To serve as a basis for hospital administrative planning and evaluation of its programs.
7. To serve as impersonal documents for the hospital staff continuing education and studies.
8. To be used by hospital staff for assessment of the quality of treatment, for medical audit and utilization review.
9. To be used for the legal defense of the hospital and its staff in cases where a claim is based on patient's mental or physical conditions and arising from the patient's treatment at Saint Elizabeths Hospital.
10. To be used for statistical reports, monthly analysis of clinical division services, monthly, quarterly, annual reports.
11. To serve as a basis for reports to accrediting agencies, Joint Commission on Accreditation of Hospitals, American Hospital Association, American Psychiatric Association, Medicare Licensure, etc.
12. To prepare indexes based on medical/clinical records that are routinely used for: (a) speedy identification and location of specific patients; (b) monitoring the completeness of patient records, particularly records of patients discharged or deceased; (c) monitoring the changing status of patients in terms of either transfers within the hospital or outside the hospital; (d) easy identification of basic demographic data used for statistical and/or research purposes; and, (e) quick review of current treatment regimen in some cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To facilitate treatment of patient when admitted to other facilities; to send records to new physician.

2. To personnel who are not employees of the hospital for accreditation or licensure of the hospital.

3. Of reports to a referring source such as a physician or a court; and to authorized organizations and state and local agencies (which may include contractors) that may provide services to patients, such as the Interstate Services Section of the District of Columbia government.

4. To Assistant United States Attorneys, Assistant Corporation Counsel, defense attorneys, and the Mental Health Commission, who request a patient's medical records in cases where a physician-patient privilege is waived by statute, in order that information necessary to perform statutory governmental functions in civil commitment, adult criminal, and juvenile proceedings, will be available to the parties and the fact-finders.

5. In the case of a patient who lacks the capacity to give informed consent to the release of his or her medical records, and who has no legal guardian to act on his or her behalf, disclosure may be made to appropriate individuals or organizations so that such individuals or organizations may provide a benefit or service to the patient, such as (but not limited to) welfare benefits or occupational services.

6. For a research purpose, when the department: (a) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to – (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature or retaining such information, and (3) make no further use or disclosure of the record except – (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. To organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review, including Professional Standards Review Organizations.

8. Disclosures may be made in the course of employee discipline or competence determination proceedings to parties involved in the proceedings such as police, attorneys, and Office of Personnel Management Employees.

9. To a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

10. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

1. Active Patients - File folders with general medical record and correspondence file are kept in metal file cabinets. Index cards, monitoring cards, kardex and addressograph plates are kept in their appropriate containers.
2. Inactive Patients (Discharged and Deceased Patients) - Clinical and correspondence records are filed in separate coded folders with unit numbering system. Patients index - 3x5 card file of all patients hospitalized or treated at SEH in a Kardveyer; Diagnostic Indexes - a 5x7 separate index card file stored in a Visu-Triver.

RETRIEVABILITY:

Data are retrieved by patient's name and hospital number.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access is limited to authorized hospital personnel.

2. Physical Safeguards: Active records are filed in locked nursing stations on patient wards. Doors lock automatically when closed. Discharged patient records are maintained in locked offices in the Medical Records Branch. Fire and life safety codes are strictly enforced.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel. An employee picture I.D. program is in effect. Access to records is limited to staff trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records will be retired to a Federal Records Center five years after date of discharge.

SYSTEM MANAGER(S) AND ADDRESS:

I. For Records of Inactive Patients:

Superintendent
Room 105, Administration Building
Saint Elizabeths Hospital
Washington, D.C. 20032

II. For Records of Active Patients:

Director
Area D Community Mental Health Center
Dix Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Division of Child and Adolescent Services
Dix Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Noyes Division
Noyes 7, Saint Elizabeths Hospital

Washington, D.C. 20032

Director
Forensic Division
John Howard Pavilion, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Godding Division
Godding 6, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Marr Division
Nichols Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Mental Health Program for the Deaf
L Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Medicine Branch
W. W. Eldridge Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
O'Malley Division
Q Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Richardson Division
P Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Clinical Director
William A. White Division
William A. White Building
Saint Elizabeths Hospital
Washington, D.C. 20032

NOTIFICATION PROCEDURE:

A patient or former patient may learn if a record exists upon written request, with notarized signature if request is made by mail, or with suitable proof of identity if request is made in person, directed to, as appropriate:

Active Patients:
Privacy Act Coordinator
Office of the Director (Division where person receives treatment; see list under 'System Manager')
Saint Elizabeths Hospital
Washington, D.C. 20032

Inactive Patients:
Privacy Act Coordinator
Office of Medical Records Branch
A Building
Saint Elizabeths Hospital
Washington, D.C. 20032

All of the following information must be provided when requesting notification: (a) full name; (b) for discharged patients, approximate dates enrollment at Saint Elizabeths Hospital; (c) if possible, the patient's hospital number; (d) the nature of the material desired. A parent or guardian who requests notification of a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Medical records are a compilation of sociological, medical, clinical and historical data of a patient. They are a complete report of an illness resulting from an accumulation of a large amount of information about a patient. The information recorded was given by the patient, his/her relatives, or other third persons interested in the patient, from existing records used as reference, from clinical tests (different departments such as lab, X-ray, EEG, etc.), physicians, psychiatrists, nurses, social workers, other therapists who entered their observations and assessments by means of progress notes, reports, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-25242 Filed 9-24-84; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service; National Institutes of Health.

ACTION: Privacy Act: Annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) is publishing this document to establish changes to notices of systems of records which have been revised following a comprehensive review of all systems of records maintained by NIH. None of these changes requires a report of altered system to be sent to the Congress and the Office of Management and Budget. The notices republished below are complete and accurate as of August 31, 1984.

Furthermore, we are summarizing the addition of one new system which was published and deletion of two systems which have been terminated since the 1983 publication. We are also publishing a complete list of all systems of records which NIH currently maintains.

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of all systems of records which NIH maintains:

A. *Revised System Notice.* We have revised system notices republished below as follows:

(1) A routine use was inadvertently omitted in past **Federal Register** publications in system of records 09-25-0001, "Clinical Research: Patient Records, HHS/NIH/NHLBI." This routine use allows disclosure to Congress in response to a request on behalf of the subject individual.

(2) Under the "Purpose" section of system of records 09-25-0033, "International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC," the purpose has been narrowed in scope. Program review and evaluation have been deleted from the purposes of the system.

(3) System 09-25-0075, "Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD," has been updated to reflect a change in the system location and system manager address.

(4) In each of the following systems of records, the "Safeguards" section has been updated to provide a clearer description of safeguards implemented.

09-25-0033, "International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC."
09-25-0054, "Administration: Property Accounting, HHS/NIH/ORS."
09-25-0078, "Administration: Consultant File, HHS/NIH/NHLBI."
09-25-0105, "Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and

Relatives of Inpatients, HHS/NIH/OD."

09-25-0128, "Clinical Research: Neural Prosthesis & Biomedical Engineering Studies, HHS/NIH/NINCDS."

09-25-0135, "Grants: PROPHET System Applicants Research Prospectuses, HHS/NIH/DRR."

(5) In the Table of Contents which appeared in the last annual publication, system of records 09-25-0067, "Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI," was inadvertently omitted.

(6) Editorial changes have been made to several system notices to make them clearer and more accurate.

B. *New Systems of Records.* The following new system of records did not appear in the 1983 annual publication:

09-25-0154, "Biomedical Research: Records of Subjects in Cancer Studies of the Division Resource, Centers and Community Activities, HHS/NIH/NCI," published in the **Federal Register**, Novemer 23, 1983, Vol. 48, No. 227, pp. 52981.

C. *Deleted Systems of Records.* The following systems of records which appeared in the 1982 annual publication are now being deleted:

(1) 09-25-0051, "Grants: NIH Fellowship Payroll, HHS/NIH/DFM," published in the **Federal Register**, October 13, 1982, pp. 45804. This system of records is being deleted as the records in this system are covered by a departmentwide umbrella system of records, 09-90-0024, "Accounting Records of Payments to and Collections from Individuals from Operating Division Agency and Regional Financial Management and Disbursing Offices, HHS/OS/ASMB."

(2) 09-25-0068, "Clinical Research: National Cancer Institute/American Cancer Society National Breast Cancer Screening of Antihypertensives, HHS/NIH/NCI," published in the **Federal Register**, October 13, 1982, pp. 45810. This system of records has been terminated and the records have been destroyed.

D. Section 3(b) of Privacy Act permits the following types of disclosures for which no routine use is required, in addition to those made at the request of the subject individual.

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) required under section 552 of this title;

"(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) pursuant to the order of a court of competent jurisdiction; or

"(12) to a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S..C 3711(f))."

We are only republishing those system notices which have been changed, and all system notices other than the new one cited, including those now being deleted, were last published in the **Federal Register**, Vol. 47, No. 198, pp. 45773–45858, October 13, 1982, and selectively updated in Vol. 48, No. 230, pp. 53833–53852, November 29, 1983.

Dated: September 14, 1983.

James B. Wyngaarden,

Director.

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*09-25-0001 Clinical Research: Patient Records, HHS/NIH/NHLBI.

09-25-0002 Clinical Research: Patient Phonocardiogram Records, HHS/NIH/NHLBI.

09-25-0003 Administration: Authorized Radionuclide Users File, HHS/NIH/ORS.

09-25-0004 Administration: Registry of Individuals Exposed to Chemical Carcinogens, HHS/NIH/ORS.

09-25-0005 Administration: Library Circulation and User I.D. File, HHS/NIH/OD.

09-25-0007 Administration: NIH Safety Shoes and Safety Glasses Issuance Program, HHS/NIH/ORS.

09-25-0008 Administration: Radiation Workers Monitoring, HHS/NIH/ORS.

09-25-0009 Clinical Research: Radiotherapy Patient File, HHS/NIH/ORS.

09-25-0010 Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

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09-25-0012 Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

09-25-0013 Clinical Research: Preadmission Medical Records, HHS/NIH/CC.

09-25-0014 Clinical Research: Student Records, HHS/NIH/CC.

09-25-0015 Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINCDS.

09-25-0016 Clinical Research: Collaborative Perinatal Project HHS/NIH/NINCDS.

09-25-0019 Clinical Research: Genetic Counseling, HHS/NIH/NINCDS.

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09-25-0026 Clinical Research: Nervous System Studies, HHS/NIH/NINCDS.

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09-25-0031 Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINCDS.

*09-25-0033 International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

09-25-0034 International Activities: Scholars Program, HHS/NIH/FIC.

09-25-0035 International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC.

09-25-0036 Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG.

09-25-0037 Clinical Research: Gerontology Research Center Longitudinal Aging Study, HHS/NIH/NIA.

09-25-0038 Clinical Research: Patient Data, HHS/NIH/NIADDK.

09-25-0039 Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIADDK.

09-25-0040 Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIADDK.

09-25-0041 Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIADDK.

09-25-0042 Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

09-25-0044 Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR.

09-25-0046 Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

09-25-0048 Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID.

09-25-0049 Clinical Research: Atlanta Federal Prison Malaria Research Projects, HHS/NIH/NIAID.

09-25-0053 Clinical Research: Vision Studies, HHS/NIH/NEI.

*09-25-0054 Administration: Property Accounting, HHS/NIH/ORS.

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09-25-0060 Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

09-25-0064 Clinical Research: Japanese Hawaiian Cancer Studies, HHS/NIH/NCI.

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09-25-0069 NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.

09-25-0074 Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI.

*09-25-0075 Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD.

09-25-0077 Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.

*09-25-0078 Administration: Consultant File, HHS/NIH/NHLBI.

09-25-0087 Administration: Employees and Consultants, HHS/NIH/NIAID.

09-25-0088 Clinical Research: Researchers Using H-2 Soluble Antigen and H-2 Antiserum, HHS/NIH/NIAID.

09-25-0089 Clinical Research: HLA Antiserum and Tray Users, HHS/NIH/NIAID.

09-25-0091 Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI.

09-25-0093 Administration: Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI.

09-25-0096 Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialist, HHS/NIH/NCI.

09-25-0099 Clinical Research: Patient Medical Records, HHS/NIH/CC.

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09-25-0102 Administration: Grants Associates Program Working Files, HHS/NIH/DRG.

*09-25-0105 Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/OD.

09-25-0106 Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD.

09-25-0108 Personnel: Guest Workers/Visiting Fellows/Student Scientists/Scientists Emeriti, HHS/NIH/DPM.

09-25-0112 Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD.

09-25-0115 Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

09-25-0117 International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID.

09-25-0118 Contracts: Professional Services Contractors, HHS/NIH/NCI.

09-25-0121 International Activities: Senior International Fellowships Program, HHS/NIH/FIC.

09-25-0124 Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.

09-25-0126 Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI.

*09-25-0128 Clinical Research: Neural Prosthesis & Biomedical Engineering Studies, HHS/NIH/NINCDS.

09-25-0129 Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NINCDS.

09-25-0130 Clinical Research Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI.

09-25-0131 Clinical Research: Clinical Epidemiologic Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI.

09-25-0133 Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIADDK.

09-25-0134 Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.

09-25-0135 Grants: PROPHET System Applicant Research Prospectuses, HHS/NIH/DRR.

09-25-0138 Biomedical Research: Studies of Possible Influence on Cognitive and Emotional Development of Children, HHS/NIH/NICHD.

09-25-0140 International Activities: Scientific Visitors at the National Institutes of Health, HHS/NIH/FIC.

09-25-0141 Patient and Donor Records in the Blood Component Support Program for the Division of Cancer Treatment, HHS/NIH/NCI.

09-25-0142 Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA.

09-25-0143 Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

09-25-0147 Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Heart, Lung, and Blood Institute, HHS/NIH/NHLBI.

09-25-0148 Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological and Communicative Disorders and Stroke, HHS/NIH/NINCDS.

09-25-0149 Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of General Medical Sciences, HHS/NIH/NIGMS.

09-25-0150 Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.

09-25-0151 Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD.

09-25-0152 Biomedical Research: Records of Subject in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR.

09-25-0153 Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.

09-25-0154 Biomedical Research: Records of Subjects in Cancer Studies of the Division Resources, Centers and Community Activities, HHS/NIH/NCI.

*Systems which have been changed and are being republished.

09-25-0001

SYSTEM NAME:

Clinical Research: Patient Records, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Heart, Lung, and Blood Institute (NHLBI) under study at the National Institutes of Health (NIH).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, diagnostic studies, laboratory data, treatment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation," "National Heart, Lung, and Blood Institute," and "Research and Training in Diseases of the Heart, Blood Vessels, Lung, and Blood and in the Management of Blood Resources," of the Public Health Service Act (42 U.S.C 241, 287, 287a).

PURPOSE:

1. For use by physicians in evaluation and treatment of patients under study at NIH.

2. To furnish patient data to patients, their families, and with patients' consent, to their private physicians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

Certain infectious diseases may be reported to state government as required by law.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card index, laboratory books, computer memory.

RETRIEVABILITY:

Indexed by name or patient number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to authorized physicians and their assistants.

Physical Safeguards: Records are kept in secure locked metal or wood file cabinets and, in some instances, in locked offices.

Procedural Safeguards: Access to files is strictly controlled by files staff. Access to computerized records is controlled by keyword codes available only to authorized users.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Intramural Research, NHLBI, Building 10, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Privacy Act Coordinator, NHLBI, Building 31, Room 5A29, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Referring physicians, hospitals and medical centers, patients and families, results of procedures and tests of NIH patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0033

SYSTEM NAME:

International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 38A, Room 615, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens qualified in health-related sciences submitting applications through the National Institutes of Health for fellowships for study abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

"International Cooperation" of the Public Health Service Act (42 U.S.C. 242*l*).

PURPOSE OF THE SYSTEM:

To assist U.S. citizens in obtaining fellowships from foreign organizations, Fogarty International Center (FIC) program staff collects applications and submits them to the Division of Research Grants for technical review. Afterwards, the applications are sent to the awarding organization in the foreign country. These foreign countries make the selection for award.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

After review by the operating agency review panel the applications and all supporting documents are forwarded to the foreign organizations or agencies making awards.

In addition, such application may be made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and, in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and fellowship number.

SAFEGUARDS:

Authorized users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

Physical Safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Years at NIH: 1. Number of years held at Federal Records Center before disposal: 5.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, International Research Awards Branch, FIC, Building 38A, Room 615, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants and persons supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0054

SYSTEM NAME:

Administration: Property Accounting, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 13, Room 2W35, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NIH Computer Center, Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Building 31, Room B1C06, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Office of Facilities Engineering, MD 102–01, NIEHS, P.O. Box 12233, Research Triangle Park, N.C. 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Institutes of Health who are issued tools or card keys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5901; 5 U.S.C. 7903; 40 U.S.C. 318a; 42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

Used for tool and card keys issuance and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charges with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to those officials whose duties require use of the information. Other one-time and special access is granted on a need-to-know basis and release is specifically authorized by the system manager or other authorized personnel.

Physical Safeguards: Records are kept in officially designated office locations which are locked when unattended by office personnel.

Procedural Safeguards: Access to files is strictly controlled by office personnel. Access to computerized records is controlled by keyword codes available only to authorized users.

These safeguards are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP System Manaual.

RETENTION AND DISPOSAL:

Records are kept until two years after an item is released by an individual.

SYSTEM MANAGER(S) AND ADDRESS:

For tools: Administrative Officer, DES, Building 13, Room 2W35, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

For card keys: Security Specialist, DAS, Building 31, Room B1C06, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Chief, Office of Facilities Engineering, MD 102-01, HIEHS, P.O. Box 12233, Research Triangle Park, N.C. 27709.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identify by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0075

SYSTEM NAME:

Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 31, Room 4B09, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons submitting research proposals to the National Institutes of Health involving risks to subjects or matters pertaining to the protection of the rights and welfare of human research subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research protocol, identification of Principal Investigator, institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation" of the Public Health Service Act (42 U.S.C. 241a).

PURPOSE:

Monitoring of research proposals that may involve undue risks to subjects or ethical considerations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on card file.

RETRIEVABILITY:

Records are retrieved by name of Principal Investigator.

SAFEGUARDS:

Authorized Users: Members of the professional staff of the Office for Protection from Research Risks (OPRR) may use information from the file in connection with follow-up procedures of research proposals identified as involving potential risk to the protection of the rights and welfare of human research subjects.

Physical Safeguards: Records are maintained in offices which are monitored during business hours and are locked during off-duty hours.

Procedural Safeguards: Requests for information from the file are made to the Compliance Coordinator who supervises and is responsible for the file. These safeguards are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45-13.

RETENTION AND DISPOSAL:

Records are kept for 6 years after the end of a research project or 6 years after final action in any case involving litigation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, OPRR, Building 31, Room 4B09, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Proposals submitted by individuals, but identified by employees or consultants of HHS as possibly involving undue hazards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0078

SYSTEM NAME:

Administration: Consultant File, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

List of consultants available for use in evaluation of National Heart, Lung, and Blood Institute special grants and contracts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, résumés, lists of publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation" and "Establishment of Institutes" of the Public Health Service Act (42 U.S.C. 241, 287).

PURPOSE:

1. To identify and select experts and consultants for program reviews and evaluations.
2. For use in evaluation of NHLBI special grants and contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc and file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to authorized technical review staff and their assistants.

Physical Safeguards: Records are kept in locked file cabinets and, in some instances, in locked offices.

Procedural Safeguards: Access to files is strictly controlled by files staff. Access to computerized records is controlled by keyword codes available only to authorized users.

These safeguards are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are kept until the individual is no longer available for consultation.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Analyst, Division of Extramural Affairs, NHLBI, Westwood Building, Room 5A-15, 5333 Westbard Avenue, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Privacy Act Coordinator, NHLBI, Building 31, Room 5A29, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0105

SYSTEM NAME:

Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Buildings 10 and 13, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Federal Building, 7550 Wisconsin Avenue, Bethesda, MD 20205.

Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20205.

Rocky Mountain Laboratory, Hamilton, Montana 59840.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, fellows, visiting scientists, relatives of inpatients, visitors, contractors working on site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901.

PURPOSE:

1. For medical treatment;
2. Upon researcher request with individual's written permission, release of record for research purposes to medical personnel;
3. Upon request by HHS personnel offices for determination of fitness for duty, and for disability retirement and other separation actions;
4. For monitoring personnel to assure that safety standards are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to Federal, State and local government agencies for adjudication of benefits under workman's compensation, and for disability retirement and other separation actions.

To district office of OPEC, Department of Labor with copies to the U.S. Office of Personnel Management for processing of disability retirement and other separation actions.

Upon non-HHS agency request, for examination to determine fitness for duty with copies to requesting agency and to the U.S. Office of Personnel Management.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized users: Access is limited to authorized personnel (system manager and staff; Occupational Medicine Service staff; and personnel and administrative officers with need for information for fitness for duty, disability, and other similar determinations).

Physical safeguards: Files are maintained in locked cabinets.

Procedural safeguards: Access to files is strictly controlled by authorized staff.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and suplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Records are retained indefinitely as required by Federal Property Management Regulations Bulletin B–112.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Safety, Building 31, Room B2B47, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Administrative Officer, Rocky Mountain Laboratory, Hamilton, Montana 59840.

NOTIFICATION PROCEDURE:

Contact System Manager at appropriate treatment location listed above, to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Records contain data resulting from clinical and preventive services provided at treatment location, and data received from individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

Clinical Research: Neural Prosthesis & Biomedical Engineering Studies, HHS/NIH/NINCDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Building, Room 120, 7550 Wisconsin Ave., Bethesda, MD 20205, and (1) at hospitals and medical centers under contract; and (2) Federal Records Centers. Write to the system manager at the address below for the address of any Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and normal volunteers, males and females, participating in clinical studies to determine the feasibility of neural prostheses, and in clinical studies related to the development of instrumentation for diagnosis and treatment of neurological and sensory disorders conducted under contract for the National Institute of Neurological and Communicative Disorders and Stroke (NINCDS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical research data as related to studies which seek to determine the feasibility of neural prostheses and to develop instrumentation for diagnosis and treatment of neurological and sensory disorders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Establishment of Institutes" and "Functions" of the Public Health Service Act (42 U.S.C. 289a, 289c).

PURPOSE OF THE SYSTEM:

1. Clinical research on the development of neural prosthesis (artificial devices) to enhance function of individuals with various disorders of the central nervous system.

2. Research on the development of new instruments to improve diagnosis and treatment of disorders of the nervous system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

Authorized Users: Employees who maintain records in this system are instructed to grant access only to HHS scientists or their authorized collaborators.

Physical Safeguards: Records are kept in locked cabinets during non-working hours in a location which is also locked during non-working hours.

Procedural Safeguards: Persons having access to this system are trained in Privacy Act requirements. Location is attended at all times during working hours.

Contractors, grantees and collaborators who maintain records in this system are authorized to make no further disclosure of the records except as authorized by the system manager.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Fundamental Neurosciences Program, NINCDS, Federal Building, Room 120, 7550 Wisconsin Ave, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Write to: Head, Administrative Management Section, NINCDS, Building 31, Room 8A47, 9000 Rockville Pike, Bethesda, MD 20205, and ask if a file with your name exists in the Neural Prosthesis or Biomedical Engineering Studies.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Patients, patients' families, hospital records and clinical investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0135

SYSTEM NAME:

Grants: PROPHET System Applicants Research Prospectuses, HHS/NIH/DRP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Bldg. 31, Rm. 6A06, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for access to the facilities and services of the PROPHET System, a unique national computer resource for the study of chemical/biological interrelationships.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Descriptions of the research objectives of the applicant individuals or groups and their plans for use of the PROPHET system in support of their research; (b) biographical sketches of all key individual associated with the prospectuses; (c) evaluation documents; (d) related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation" of the Public Health Service Act (42 U.S.C. 241a).

PURPOSE:

The system is used exclusively in support of the Chemical/Biological Information-Handling (CBIH) program management—i.e., technical merit review of prospectuses, allocation of PROHPET services, analysis and evaluation of ongoing activities, and program planning.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made of assignments of research investigators and project monitors to specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange, Inc.

Disclosure may be made to the cognizant audit agency for auditing.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

To a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

To the grantee institution in connection with performance or administration under the terms and conditions of the award.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

System is indexed by name of principal individual associated with the prospectus and by program identification number.

SAFEGUARDS:

Authorized Users: Access is limited to System Manager and his/her staff, and authorized Committee members.

Physical Safeguards: Records are maintained in rooms which are locked when unattended.

Procedural Safeguards: Only authorized users are permitted access. Access is controlled by System Manager or responsible staff.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Number of years held at NIH: 2. Disposal methods include burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Program Director, Chemical/Biological Information-Handling Program, Division of Research Resources, Bldg. 31, Rm. 6A–04, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the Program Director, Chemical/Biological Information-Handling Program at address listed above and ask if a file exists with your name in the PROPHET System Research Prospectuses.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

The information is provided by the individuals themselves and by NIH consultants who assess the scientific and technical merit of the prospectuses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-25246 Filed 9-24-84; 8:45 am]

BILLING CODE 4140-01-M

Centers for Disease Control

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, Centers for Disease Control, HHS.

ACTION: Privacy Act: Annual republication of notices of systems of records.

SUMMARY: The Centers for Disease Control (CDC) is publishing this document to meet the requirements of section 3(e)(4) of the Privacy Act (5 U.S.C. 552a), as amended by the Congressional Reports Elimination Act of 1982, to republish the notices of systems of records which have been revised. .

This publication provides a table of contents which contains the numerical designations and titles of all systems of records maintained by CDC and its organizational components, including the National Institute for Occupational Safety and Health (NIOSH). In addition, the notices of systems of records which have been revised following a comprehensive review are indicated by an asterisk in the Table of Contents and are published below in their entirety. CDC's system notices were last published in the **Federal Register** Vol. 48, No. 230, pp. 53852-53882, November 29, 1983. One additional new system of records 09-20-0162, "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies", HHS/CDC/CEH, has been published in the **Federal Register**, Vol. 49, No. [illegible]27, pp. 26815-26818, June 29, 1984.

Three of CDC's previously published forty-four notices have been modified to clarify the descriptions and to ensure that they are complete, accurate, and timely. None of these changes requires a report of altered system to be sent to the Congress and the Office of Management and Budget. The notices are complete and accurate as of August 15, 1984.

SUPPLEMENTARY INFORMATION: The notices being republished include several changes which have been made since the 1983 annual publication, as summarized here:

A. Revision of Safeguards: The "Safeguards" category of all notices has been revised to comply with the new format requirements and to more clearly reflect the specific safeguards used for each system.

B. Clarification of System Manager: The "System Manager" category has been revised in system 09-20-0136 to reflect the designation of a policy-coordinating official who is responsible for ensuring that all reviews and administrative requirements affecting the umbrella systems of records are carried out by the system managers.

C. The "Record Access Procedures" category has been updated to state that requesters may obtain an accounting of any disclosures made of their records. Similarly, the "Contesting Record Procedures" category in the system notices has been revised to make the instructions clearer and more accurate.

D. Editorial changes have been made to several system notices to make them more accurate and easy to understand.

E. Disclosures without consent of subject individuals are permitted by the Privacy Act itself in Section 3(b), as follows:

"(1) to those officers and employees of the agency which maintains the record who have a need for the records in the performance of their duties;

"(2) required under section 552 of this title (the Freedom of Information Act);

"(3) for a routine use as defined in * * * (The Privacy Act and described in the routine use section of the specific notices of systems of records published in the **Federal Register**);

"(4) to the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) pursuant to the order of a court of competent jurisdiction; or

"(12) to a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 [31 U.S.C. 952(d)]."

F. Readers who notice any inadvertent error or omission in CDC system notices are invited to bring them to the attention of: Sara S. Owens, Privacy Act Officer, Centers for Disease Control, 1600 Clifton Road, Bldg. 1, Room B-66, Atlanta, Georgia 30333.

Dated: September 12, 1984.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

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09-20-0156 Cytotechnologists Proficiency Answer Sheets and Test Results (Medicare). HHS/CDC/LPO.
09-20-0157 Clinical Laboratory Technologists Proficiency Answer Sheets and Test Results (Medicare). HHS/CDC/LPO.
09-20-0158 Independent Laboratory Directors Proficiency Answer Sheets and Exam Results (Medicare). HHS/CDC/LPO.
09-20-0159 Records of Subjects in Certification, Testing and Safety Studies of Personal Protective Devices for Hazardous Work Environments. HHS/CDC/NIOSH.
09-20-0160 Records of Subjects in Health Promotion and Education Studies. HHS/CDC/CHPE.
09-20-0161 Records of Health Professionals in Disease Prevention and Control Training Programs. HHS/CDC/CPS.
09-20-0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies. HHS/CDC/CEH.

09-20-0106

SYSTEM NAME:

Specimen Handling for Testing and Related Data. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Infectious Diseases, Building 4, Room B-35, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

San Juan Laboratories, Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936.

Center for Prevention Services, Freeway Office Park, Room 309, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children whose specimens have been submitted to the Centers for Disease Control (CDC) for testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of diagnostic tests involving microbiology, clinical chemistry, hematology, immunology, genetics and pathology.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

For documentation of test results which are returned to submitter. Used between specialty units for research purposes; and for epidemiological investigations, for epidemic causes, prevention, family groupings of diseases, and geographical location of specific diseases; also, used by epidemiologists and researchers in determining drug resistance of specific organisms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has requested the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

To individuals and organizations deemed qualified by the Secretary to carry out quality assessment, medical audits, and utilization review.

The Department is under contract with private firms for the purposes of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Records may be disclosed to Health Departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosures may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original Form—file folders; microfilm copies, computer tapes.

RETRIEVABILITY:

Retrieved by name or designated number furnished by the submitter, CDC identifying number, and/or microfilm number.

SAFEGUARDS:

1. *Authorized Users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC), fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. *Procedural Safeguards:* Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Achives and Records.

RETENTION AND DISPOSAL:

Number of years held at CDC: 10 years. May be transferred to Federal Records Center when no longer needed for evaluation and analysis. Destroyed by paper recycling process after 10 years, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Centers for Infectious Diseases, Building 1, Room 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta GA 30333.

Chief, Dengue Branch, Division of Vector-Borne Viral Diseases, Center for Infectious Diseases, Center for Disease Control, GPO Box 4532, San Juan, Puerto Rico 00936, and Director, Center for Prevention Services, Freeway Office Park, Room 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Room 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who request notification of or access to medical records shall at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Approved public health laboratories, Federal medical facilities, private physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Infectious Diseases, Building 1, Room 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Center for Prevention Services, Freeway Office Park, Room 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Center for Environmental Health, Chamblee Building 29, Room 9A, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, and Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Audits and children with reported diseases and other preventable conditions of pubic health significance; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case reports, line listings, hand sort cards, medical records, questionnaires, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

This record system enables Centers for Disease Control (CDC) officials to better understand disease patterns in the United States, develop programs for prevention and control of health problems, and communicate new knowledge to the health community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identified form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law:

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Records may be disclosed to individuals and organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

The Department is under contract with private firms for the purposes of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Records may be disclosed to Health Departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes and file folders.

RETRIEVABILITY:

By name of individual and by identification number.

SAFEGUARDS:

1. *Authorized Users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening

of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. *Procedural Safeguards:* Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. All data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Record copy of study reports maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed by program officials. Personal identifiers may be deleted from records when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Building 1, Room 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Center for Prevention Services, Freeway Office Park, Room 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Center for Environmental Health, Chamblee Building 29, Room 9A, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, and Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Room 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself or may obtain information concerning participation in epidemiological studies or surveillance activities by contacting the first system manager at the address listed above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the first official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, private physicians, State and local health departments, and other health care providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–20–0147

SYSTEM NAME:

Occupational Health Epidemiological Studies. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

and

Federal Records Center, 3150 Bertwynn Drive, Dayton, Ohio 45439.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial workers exposed to physical and/or chemical agents that may damage the human body in any way. Some examples are: (1) Organic carcinogens, (2) inorganic carcinogens, (3) mucosal or dermal irritants, (4) fibrogenic materials, (5) acute toxic agents including sensitizing agents, (6) neurotoxic agents, (7) mutagenic (male and female) and teratogenic agents, (8) bio-accumulating non-carcinogen agents, and (9) chronic vascular disease-causing agents. Also included are those individuals in the general population who have been selected as control groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical exams, sputum cytology results, questionnaires, demographic information, smoking history, occupational histories, previous and current employment records, urine test records, X-rays, medical history, pulmonary function test records, medical disability forms, blood test records, driver's license data, hearing test results, spirometry results are examples of the records in this system. The specific types of records collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241); Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); Federal Mine Safety and Health Act of 1977, Section 501, "Studies and Research" (30 U.S.C. 951).

PURPOSE(S):

Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases, to determine the cause and prevention of diseases of industrial origin, and lead toward future prevention of occupationally related diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Portion of records (name, Social Security number if know, date of birth, and last known address) may be disclosed to one or more of the sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State or local agency. Cause of death enables NIOSH to evaluate whether excess occupationally related mortality is occurring.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected. For example, records may be released to the Department of Justice in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual.

Records subject to the Privacy Act are disclosed to private firms (contractors) for data entry, computer systems analysis and computer programming services. These contractors promptly return all data entry records. Computer work may be done either on contractor-owned or Government-owned computers. The contractors are required to maintain Privacy Act safeguards.

Test data which indicates the existence of cancer may be provided to the State Cancer Registry where the State has a legally constituted cancer registry program which provides for the confidentiality of information.

Certain communicable diseases may be reported to State and/or local Health Departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer files, card files, microfilm, microfiche, and other files as appropriate.

RETRIEVABILITY:

Name, assigned number, plant name, year tested are some of the indices used to retrieve records from these systems. Other retrieval methods are utilized as individual research dictates.

SAFEGUARDS:

1. *Authorized Users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. *Procedural Safeguards:* Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PPS.hf: 45-13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are maintained from three to twenty years in accordance with retention schedules. Every attempt is made to strip personal identifiers from records and destroy the records when they are no longer needed. Any paper records which are disposed of are shredded or burned and computer tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer,
Division of Surveillance, Hazard Evaluations, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURES:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals the claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Vital status information is obtained from Federal, State and local governments and other available sources selected from those listed in Appendix I. Information is obtained directly from the individual and employer records, whenever possible.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

Appendix I—Potential Sources for Determination of Vital Status

Military Records
Appropriate State Motor Vehicle Registration Departments
Appropriate State Driver's License Departments
Appropriate State Government Divisions of:
  Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging
Indian Affairs, Workman's Compensation, Disability Insurance
Retail Credit Association Follow up
Veterans Administration Files
Appropriate employee union or association records
Appropriate company pension or employment records
Company group insurance records
Appropriate State Vital Statistics Offices
Life Insurance Companies
Railroad Retirement Board
Area Nursing Homes
Area Indian Trading Posts
Mailing List Correction Cards (U.S. Postal Service)
Letters and telephone conversations with relatives
Letters and telephone conversations with former employees of the same establishment as cohort member
Appropriate local newspaper (obituaries)
Social Security Administration
Internal Revenue Service
National Death Index

[FR Doc. 84-25019 Filed 9-24-84; 8:45 am]
BILLING CODE 4160-18-M

Health Resoruces and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS); Health Resources and Services Administration (HRSA), HHS.

ACTION: HRSA is publishing this document to meet the requirements of Pub. L. 97-375, the Congressional Reports Elimination Act. This new statute amends the Privacy Act (5 U.S.C. 552a, section 3(e)(4) to limit republication to revised system notices only.

SUMMARY: HRSA has completed a comprehensive review of each of its system notices which last appeared in the 1983 republication (48 FR 53882-53918, dated November 29, 1983), and has determined that no significant changes have occurred to warrant republication of its system notices at this time.

SUPPLEMENTARY INFORMATION: The routine uses set forth in each system notice describe permissible disclosures outside the Department of records in that system, which may be made without the consent of individuals who are the subject of those records. Additional disclosures without the consent of subject individuals are permitted by the Privacy Act itself in Section 3(b), as follows:

"(1) To those officers and employees of the agency which maintains the records who have a need for the record in the performance of their duties:

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use (as described in the routine use section of each specific system notice);

"(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used soley as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) To an authorized individual pursuant to an order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with Section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f))."

Dated: August 17, 1984.

James A. Walsh,

Associate Administrator for Operations and Management.

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[FR Doc. 84–25243 Filed 9–24–84; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS); Food and Drug Administration (FDA), HHS.

ACTION: FDA is publishing this document to meet the requirements of Pub. L. 97–375, the Congressional Reports Elimination Act. This statute amends the Privacy Act (5 U.S.C. 552(a), section 3(e)(4)) to limit republication to revised system notices only.

SUMMARY: FDA has revised each of its system notices and has revised some this year to enhance specificity and clarify the effects of reorganization. These revisions are minor and have no affect on the public's need-to-know. Therefore, FDA is not republishing any of its system notices at this time.

FDA has added no new systems of records since the 1982 annual publication. One system has been deleted.

FDA is republishing the table of contents of all of its systems of records. A copy of FDA's system notices is available from the FDA Privacy Act Coordinator, HFW–30, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION:

A. General Information:

1. The routine uses set forth in each notice describe permissible disclosures outside the Department of records in that system which may be made without the consent of individuals who are the subjects of those records. Additional disclosures without consent of subject individuals are permitted by the Privacy Act in section 3(b) as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use as (described in the routine use section of each specific system notice);

"(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation of the Administrator of General Services or his designee to determine whether the record has such value;

"(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))." (This "Special Disclosure" statement does not apply to any FDA system of records.)

B. Specific Information:

1. Changes to the data base which do not necessitate republication:

a. The organization designation in the title of the following systems has been changed from HHS/FDA/BRH to HHS/FDA/CDRH:

09-10-0008—Radiation Protection Personnel Monitoring System, HHS/FDA/CDRH.

09-10-0017—Epidemiological Research Studies of the Center for Devices and Radiological Health, HHS/FDA/CDRH.

b. The organizational designation in the title of the following system has been changed from HHS/FDA/BF to HHS/FDA/CFSAN:

09-10-0011—Certified Retort Operators, HHS/FDA/CFSAN.

c. Addition to the Record Access Procedures Category of all system notices that subject individuals may also request an accounting of disclosures that have been made of their records, if any.

2. Deleted System: System 09-10-0012—Association of Official Analytical Chemists (AOAC) Member File, HHS/FDA/AOAC has been deleted because it is no longer necessary for FDA to maintain the records which were contained in this system. This system notice was last published in the **Federal Register**, Vol. 47, No. 198, October 13, 1982, pp. 45421-45422.

Dated: September 5, 1984.

Robert C. Wetherell, Jr.,

Associate Commissioner for Legislation and Information.

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The following table of contents lists all currently active systems of records.

09-10-0002 **Regulated Industry Employee Enforcement Records. HHS/FDA/ACMO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45412-45414.**

09-10-0003 FDA Credential Holder File. HHS/FDA/EDRO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45415.

09-10-0004 Communications (Oral and Written) With the Public. HHS/FDA/ACMO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45415-45416.

09-10-0005 State Food and Drug Official File. HHS/FDA/EDRO, FR, Vol. 476, No. 198, Oct. 13, 1982, p. 45416-45417.

09-10-0007 Science Advisor Research Associate Program (SARAP). HHS/FDA/EDRO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45417-45418.

09-10-0008 Radiation Protection Program Personnel Monitoring System. HHS/FDA/CDRH, FR, Vol. 47, No. 237, Dec. 9, 1982, p. 55425-55426.

09-10-0009 Special Studies and Surveys on FDA-Regulated Products. HHS/FDA/ACMO, FR, Vol. 47, No. 237, Dec. 9, 1982, p. 55426-55427.

09-10-0010 Bioresearch Monitoring Information System. HHS/FDA, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45419-45420.

09-10-0011 Certified Retort Operators. HHS/FDA/CFSAN, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45420-45421.

09-10-0013 Employee Conduct Investigative Records. HHS/FDA/ACMO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45422-45423.

09-10-0015 Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research. HHS/FDA/CDB/OB, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45423.

09-10-0017 Epidemiological Research Studies of the Center for Devices and Radiological Health. HHS/FDA/CDRH, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45423-45425.

09-10-0018 Employee Identification Card Information Record. HHS/FDA/ACMO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45425.

[FR Doc. 84-25244 Filed 9-24-84; 8:45 am]

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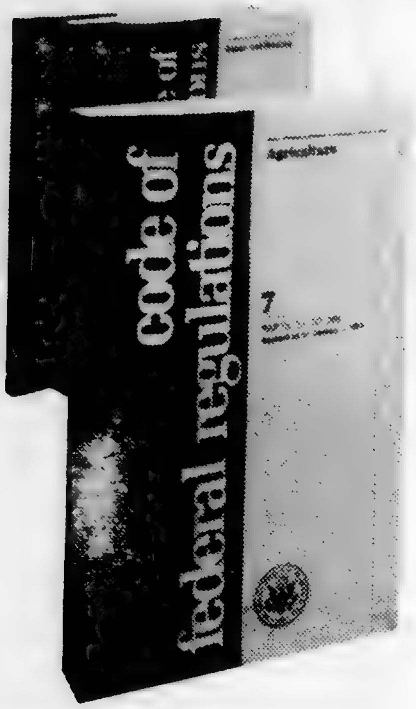

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5239 of September 24, 1984

National Historically Black Colleges Week, 1984

By the President of the United States of America

A Proclamation

The one hundred and three historically black colleges and universities in the United States have contributed substantially to the growth and enrichment of the Nation. These institutions have a rich heritage and tradition of providing the challenging higher education so essential to an individual's full participation in our complex technological society.

Historically black colleges and universities bestow forty percent of all degrees earned by black students. They have awarded degrees to eighty-five percent of the country's black lawyers and doctors and fifty percent of its black business executives. Throughout the years, these institutions have helped many underprivileged students to attain their full potential through higher education.

In recognition of the fact that the achievements and goals of these historically black colleges and universities deserve national attention, the Congress, by Senate Joint Resolution 340, has designated the week of September 23, 1984, as "National Historically Black Colleges Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 23, 1984, as National Historically Black Colleges Week. I urge all Americans to observe this week with appropriate ceremonies and activities to express our respect and appreciation for the outstanding academic and social accomplishments of the Nation's black institutions of higher learning.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25755
Filed 9-25-84; 10:57 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of Sept. 24, 1984, on signing Proclamation 5239, see the *Weekly Compilation of Presidential Documents* (vol. 20, no. 39).

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This amendment will expand the scope and applicability of the Department's uniform rules of practice governing adjudicatory proceedings to include actions initiated under the Potato Research and Promotion Act, as amended (7 U.S.C. 2611, amended Pub. L. 97-244, 96 Stat. 310, effective August 26, 1982). The Potato Research and Promotion Act was amended on August 26, 1982, to authorize assessment of civil penalties and issuance of cease and desist orders by the Secretary of Agriculture against any person found to be in violation of the Act, the Potato Research and Promotion Plan (7 CFR 1207.301 *et seq.*) or the Regulations thereunder (7 CFR 1207.500 *et seq.*). Accordingly, this action will make the Department's uniform rules applicable to the administrative adjudications now authorized under the Act, and will thus permit the orderly conduct of any such adjudications as may be initiated by the Secretary.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250; telephone (202) 447-2615.

SUPPLEMENTARY INFORMATION: This action has been determined to be exempt from the procedure under Executive Order 12291 because it is administrative in nature.

Effective August 26, 1982, the Potato Research and Promotion Act was amended to authorize administrative adjudications to enforce the provisions of the Act, the Plan, and the regulations thereunder, against any person found to be in violation, through the imposition of civil penalties and the issuance of cease and desist orders by the Secretary. The amendments to the Act provide that before any penalty or cease and desist order can be issued the affected person shall be provided with an opportunity for a hearing. Prior to August 26, 1982, the enforcement of violations of the Act and Plan was limited to actions prosecuted in the Federal District Courts. Thus, there was no need for administrative rules of practice before that date.

The Department's uniform rules of practice (7 CFR Part 1, Subpart H), which govern the conduct of adjudicatory proceedings under numerous statutes, have been in effect since February 1, 1977. Accordingly, to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that proceedings initiated under the amended Potato Research and Promotion Act should also be governed by these uniform procedures.

Since 5 U.S.C. 553 does not apply to the promulgation of agency rules of procedure and since existing rules of practice are simply being adopted for this new statutory authority, it has been determined that it is unnecessary to provide an opportunity for the submission of comments on this action. For these same reasons it has been determined that good cause exists to make this action effective upon publication in the **Federal Register**.

In consideration of the foregoing, 7 CFR Part 1, subpart H, is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS SUBPART H—RULES OF PRACTICE GOVERNING FORMAL ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER VARIOUS STATUTES

§ 1.131 [Amended]

Section 1.131(a) is amended by inserting the following statutory reference in the list of statutes in alphabetical order.

Potato Research and Promotion Act, as amended, 7 U.S.C. 2621, Pub. L. 97-244, 96 Stat. 310.

(7 U.S.C. 2611 *et seq.*, as amended, Pub. L. 97-244, 96 Stat. 310, effective August 26, 1982)

Dated: September 20, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-25536 Filed 9-25-84; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-335]

Pink Bollworm Quarantine and Regulations

AGENCY: Animal and Plant Health Inspections Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the "Pink Bollworm Quarantine and Regulations" by quaranting the States of Arkansas and Mississippi because of the pink bollworm, and by designating certain areas in Desha County, Arkansas and Washington County, Mississippi as suppressive areas. This action is necessary in order to prevent the artificial spread of the pink bollworm through the interstate movement of regulated articles. The effect of this action is to impose certain conditions on regulated articles moved interstate from suppressive areas.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on June 27, 1984 (49 FR 26187-26188) set forth an interim rule amending §§ 301.52(a) and 301.52-2a of the Pink Bollworm Quarantine and Regulations (7 CFR 301.52 *et seq.*; hereinafter known as regulations). The document amended the regulations by quarantining the States of

Arkansas and Mississippi because of the pink bollworm, and by designating certain areas in Desha County, Arkansas and Washington County, Mississippi as suppressive areas.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as emergency measure in order to prevent the artificial spread of the pink bollworm through the interstate movement of regulated articles.

Comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situations which were set forth in the document of June 27, 1984, still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

The amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the amendment will have an estimated annual effect on the economy of less than $30,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate of regulated articles from specified areas in Desha County in Arkansas and Washington County in Mississippi. There are hundreds of small entities that move such articles interstate from nonregulated areas in the United States. However, based on information compiled by the Department, it has been determined that fewer than 20 small entities move such articles interstate from the affected areas in Desha County, Arkansas, and Washington County, Mississippi. Further, the overall economic impact from this action is estimated to be less than $30,000.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Pink bollworm.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 26187–26188 on June 27, 1984, is adopted as a final rule.

(Sec. 106, 71 Stat. 33; (7 U.S.C. 150ee); Secs. 8, 9, 37 Stat. 318 as amended; (7 U.S.C. 161, 162); 7 CFR 2.17, 2.51, 371.2(c))

Done at Washington, D.C., this 21st day of September 1984.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-25455 Filed 9-25-84; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1430

Milk Diversion Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The interim rule published in the **Federal Register** on May 16, 1984 (49 FR 20642) is adopted as a final rule without change. Under the provisions of this rule, the Administrator, Agricultural Stabilization and Conservation Service (ASCS), may approve the transfer of dairy cows by a participant in the Milk Diversion Program, which is conducted by the Commodity Credit Corporation, if it is determined that the transfer will not adversely affect the goals of the program.

DATE: Effective September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Telephone (202) 447-5621.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that this rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State and local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to this action has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Assessment is needed.

The title and number of the federal assistance program to which this notice applies are Title—Commodity Loans and Purchases; Number 10,051, as found in the Catalog of Federal Domestic Assistance.

This program activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June, 1983).

The Milk Diversion Program is authorized by section 201(d) of the Agricultural Act of 1949, as amended. The regulations which implemented the program restrict the transfer of dairy cows from the contract unit by a program participant. These regulations provide at 7 CFR 1430.410 that a producer participating in the program cannot sell, lease, or otherwise transfer dairy cows unless the cows: (1) are sold for slaughter, (2) are sold, leased, or transferred to another program participant or (3) are sold and delivered for export.

An interim rule was published in the **Federal Register** on May 16, 1984 (49 FR 20642) which amended § 1430.410 to permit the transfer of dairy cows, in addition to those transfers already authorized in § 1430.410, if the Administrator, ASCS, or his designee, determines that such transfers will not defeat the goals of the Milk Diversion Program. Six comments were received from the general public regarding the interim rule—three of which were from state agricultural organizations and three from individuals. All of these commenters supported the provisions of the interim rule, including one who suggested that an exemption from the transfer restrictions of § 1430.410 should be granted with regard to the transfer of pure-bred cattle by breeders. Based upon a review of the comments received from the general public, it has been determined that the interim rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

Accordingly, the interim rule which was published on May 16, 1984 (49 FR 20642) is hereby adopted as a final rule without change.

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d)); sec. 102(b) of the Dairy and Tobacco Adjustment Act of 1983; and the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*)

Signed at Washington, D.C. on September 14, 1984.

Richard E. Lyng,
Acting Secretary.

[FR Doc. 84-25535 Filed 9-25-84; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 1446

General Regulations Governing 1982 Through 1985 Crops; Peanut Warehouse Storage Loans and Handler Operations (Amendment 2)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule revises 7 CFR 1446.50 *et seq.*, with respect to: (1) The handling of quota peanuts which are substituted for contract additional peanuts used in the domestic edible market; (2) offsets of losses in marketing pools for quota loan peanuts; and (3) the definitions of net weight, fragmented peanuts, peanut products, and raw peanuts. The principal revisions are made to allow for screen size variation and to change the definition of net weight to adopt a uniform excess moisture level for all production areas.

DATES: This rule is effective as of the beginning of the 1984 marketing year for peanuts. Comments must be received on or before November 26, 1984 in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Comments received may be inspected at Room 5750 South Building, USDA, between 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon (ASCS), 202-382-0154. A Final Regulatory Impact Analysis has been prepared and is available upon request.

SUPPLEMENTARY INFORMATION: This Interim Rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State and local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. In addition, this action will not adversely affect enviromental factors such as wildlife habitat, water quality, air quality, or land use and appearance. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Substitution of Quota and Additional Peanuts

Section 358 of the Agricultural Adjustment Act of 1938, as amended, defines quota peanuts as any peanuts produced on a farm having a farm poundage quota that are eligible for domestic edible use, that are marketed or considered marketed from a farm, and that do not exceed the farm poundage quota established for such farm. Additional peanuts are defined by Section 358 as all other peanuts. Except under special circumstances, additional peanuts must be marketed by a handler only for (1) crushing into oil or meal or (2) export.

Current regulations allow handlers, under certain conditions, to export quota peanuts and earn export credits prior to establishing an export obligation. The export obligation is derived from contract additional peanut kernels that are graded by screen size to meet export edible standards and are required to be exported under the supervision of an area marketing association. Also, contract additional peanuts may be used in the domestic market beyond earned credits if the handler provides a letter of credit to assure that the export obligations will be satisfied at a later date. A letter of credit is an agreement between a handler and a lending institution whereby the lending institution guarantees payment on behalf of the handler of any penalties assessed against the handler for failure to export a like quantity of quota peanuts in substitution for contract additional peanuts which are used in the domestic market. In either substitution situation, the substituted quota and additional peanuts must be of the same type, from the same crop, from the same production area and have the same grade screen sizes.

Producers usually market their quota peanuts prior to marketing contract additional peanuts, since quota peanuts usually return the highest dollar per ton. Handlers may have export buyers available prior to the delivery of contract additional peanuts. If substitution were not permitted, the handler might be forced to postpone export sales until contract additional peanuts are available. In order to avoid unnecessary hardship upon the handler, § 1446.58(d) allows the handler to use quota peanuts for the export sale. If quota peanuts are used in the sales transaction, the handler may be given credits for the export sale. At a later date, the handler may sell additional peanuts for domestic uses to the extent there are credits earned on quota peanuts which were used in the export market. On the other hand, a handler may have an opportunity to sell contract additional peanuts into the domestic market prior to having sufficient quantities of quota peanuts available to make the sale. In such cases, § 1446.58(d) permits the handler to use additional peanuts for the domestic sale after a letter of credit has been posted. If additional peanuts are used in such a domestic sales transaction, the handler must then substitute an equivalent amount of quota peanuts for the additional peanuts by marketing quota peanuts for export.

Section 1446.58(d) currently provides that if quota and additional peanuts are substituted for one another, they must be of the same grade screen size. The grade screen size requirement has been the source of complaint from handlers on the ground it is too restrictive. Due to the normal variation in shelled lots of peanuts when substituting quota and additional peanuts, it is difficult, if not impossible, to match each export obligation for each screen size thereby resulting in, at the end of the year, a handler having a small shortage in one or more screen sizes. As a result, in order to meet the requirement that the export obligation be met for each individual screen size, a handler may have to export another complete lot of quota peanuts to make up the small shortage in a particular screen size. A lot contains between 40,000 to 100,000 pounds of shelled peanuts. Since peanuts are required to be marketed by handlers in lot sizes, exporting an additional lot causes the total poundage to far exceed the poundage in the screen size for which there was a shortage. This becomes an added expense to the handler and, to a lesser extent, a drawdown on domestic quota supplies. For these reasons, handlers have requested tolerances in screen sizes if a shortage of peanuts in one screen size is offset by excess export credits of peanuts of a larger, more valuable screen size.

It has been determined that additional flexibility should be permitted to avoid undue restrictions on handlers. This interim rule specifically amends § 1446.58(d) to allow a variance tolerance of 1 percent of the export obligation on certain screen sizes. The screen size for which a tolerance will be allowed are the second and third largest screen sizes for Virginia-type peanuts, Spanish-type peanuts and Runner-type peanuts. The screen sizes for which the 1 percent variance tolerance allowance will be permitted are: (1) for Virginia-type peanuts, $^{15}/_{64}$ x 1 inch and $^{16}/_{64}$ x 1 inch; (2) for Runners, $^{16}/_{64}$ x $^{3}/_{4}$ inch and $^{16}/_{64}$ x 1 inch; and (3) for Spanish peanuts, $^{15}/_{64}$ x $^{3}/_{4}$ inch and $^{16}/_{64}$ x $^{3}/_{4}$ inch.

The fourth type of peanuts grown in the United States are Valencia-type peanuts. Handlers do not normally substitute quota and additional peanuts of the Valencia-type. When substitution of this type of peanuts does occur, they are treated as Spanish peanuts.

The tolerance is not an absolute tolerance, i.e., the export obligation for a particular screen size is not considered to be met just because the credits for export of that screen size are within 1 percent of the export obligation. Rather, any shortages in the applicable screen sizes must be made up by exporting a greater or equal quantity of quota peanuts of a larger screen size. This is to avoid having a handler achieve a competitive or financial advantage through the use of the tolerance in screen sizes. The limitation to larger screen sizes is also designed to minimize any adverse impact on handlers in areas where, due to marketing opportunities and apparent variation in demand for peanuts by screen size, substitution between quota and additional peanuts may not be practical.

The amount of the letter of credit which is required by § 1446.58(d)(2) is not affected by the tolerances for screen size variation which are permitted by this amendment to the regulations. Moreover, in computing penalties, no deduction will be made for the tolerance if the tolerance is exceeded. Thus, for example, if there is a shortfall of 1.5 percent of the export obligation in a screen size for which a tolerance is allowed, the full 1.5 percent shortfall will be subject to a penalty in order to assure maximum program compliance.

This rule, in addition, amends § 1446.58(d) to clarify that the final export date for additional peanuts also applies to quota peanuts which are substituted for additional peanuts for marketing purposes.

Net Gains

The provisions of § 1446.61 whereby losses in a quota pool are offset with certain gains in additional pools have been revised to avoid any suggestion of a limitation as to the extent of any such offsets. The handling of net gains is covered by agreements between peanut area marketing associations and CCC. Section 108A of the Agricultural Act of 1949, as amended, requires a full offset of quota losses from profits from the sales of additional peanuts for domestic food and related uses.

Definition Changes

As set forth in § 1446.52(ee), the definition of "net weight" for peanuts provides for a non-uniform moisture deduction from the gross weight of peanuts when peanuts are marketed in different geographical locations (i.e., 7 percent for peanuts in some location and 8 percent elsewhere). This distinction effectively made Virginia-type peanuts, unlike other peanut types, subject to an 8 percent moisture level in most cases. This has been the source of complaint since it has been argued that this distinction, together with other price support distinctions made between peanut types, has resulted in a competitive disadvantage for Virgnia-type peanuts with other peanut types for certain end uses of peanuts. It has been determined that a uniform moisture level of 7 percent for peanuts marketed from all geographic areas should be adopted: (1) Since USDA data indicates that moisture levels for each peanut type tend to be uniform in all areas; (2) since changes in marketing practices have tended to diminish the importance of moisture differences between types; and (3) because of price considerations set forth in the determination of the 1984-crop price differentials (49 FR 23424). The adoption of a deduction of a uniform moisture level of 7 percent is in response to the request for change in the moisture level from the Virginia-Carolina marketing areas (i.e., the former 8 percent area) and will, as a change from past practice, affect the least quantity of peanuts. Most U.S. peanuts are grown in the regions where a 7 percent moisture level has been applicable in prior years.

In order to improve the administration of the peanut price support regulations, this interim rule amends several other definitions of terms which are found in Part 1446. First, the definition of "fragmented peanuts" in § 1446.52(u) has been amended to incorporate by reference the definition used in the Marketing Agreement for Peanuts (No. 146) which is administered by the Peanut Administrative Committee for the applicable crop year. Thus, if the Peanut Administrative Committee changes its definition of fragmented peanuts, as it did in 1983 by increasing the maximum percent of whole kernels to qualify as fragmented peanuts from 20 to 30 percent, the regulations at 7 CFR Part 1446 will not have to be further amended to reflect such a change for the purpose of consistency in definition.

Also, in § 1446.52(gg), the definition of "peanut products" has been clarified to specifically include in that definition treated seed peanuts and roasted shelled or inshell peanuts. Further, the definition of "raw peanuts" in § 1446.52(mm) has also been clarified to include in that definition pressed peanuts and any other classification of peanuts which is approved by CCC if certain conditions are met.

The interim rule also makes corrections to the list of authorities preceding 7 CFR 1446.50.

Since the marketing of the 1984 crop of peanuts has begun, it has been determined that the provisions of this interim rule must be made effective as of the beginning of the 1984 marketing year. However, comments on this interim rule are requested and must be received no later than 60 days from the date of publication of this interim rule in the **Federal Register** in order to be assured of consideration. A final rule will be published discussing the comments received together with any amendments which are determined to be necessary.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price Support Programs, Warehouses.

Interim Rule

Accordingly, 7 CFR Part 1446, is amended as follows:

1. The citation of authorities immediately preceding 7 CFR 1446.50 is revised to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 101, 108A, 401, 63 Stat. 1051, as amended, (95 Stat. 1254, 63 Stat. 1054, as amended (7 U.S.C. 1441, 1445c-1, 1421); Secs. 359, 375, 52 Stat. 31, as amended, 64, as amended (7 U.S.C. 1359, 1375), unless otherwise noted.

2. Section 1446.52 is amended by revising paragraphs (u), (ee), (gg), and (mm) to read as follows:

§ 1446.52 Definitions.

* * * * *

(u) *Fragmented peanuts.* Peanuts as defined in the outgoing quality regulations of the Marketing Agreement for Peanuts (No. 146) applicable to the crop year in which the peanuts were produced.

* * * * *

(ee) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts: (1) Foreign material; and (2) moisture in excess of 7 percent.

* * * * *

(gg) *Peanut products.* Any products, other than peanut oil and meal, manufactured or derived from peanuts such as, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted shelled or inshell peanuts, and peanut granules.

* * * * *

(mm) *Raw peanuts.* Inshell peanuts, shelled peanuts, pressed peanuts, blanched peanuts or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

* * * * *

3. Section 1446.58 is amended by revising the fourth sentence of paragraph (d)(2) as follows and adding a new paragraph (d)(4) to read as follows:

§ 1446.58 Supervision and handling of contract additional peanuts.

* * * * *

(d) * * *

(2) *Use of additional peanuts for domestic edible uses prior to substitution.* * * * Such evidence must be submitted no later than 30 days after the final date for export as established in §1446.57(e)(2) or § 1446.57(e)(3), or 15 days prior to the expiration of the letter of credit, whichever occurs first. * * *

(3) * * *

(4) *Screen size variation tolerance.* (i) *Screen size variation tolerance and substitution.* For eligible screen sizes, a variation tolerance will be permitted in order to satisfy the substitution requirements for milled peanuts of identical screen size as set forth in paragraphs (d) (1)(ii) and (d) (2) of this section, if: (A) The export credits earned from the exportation of whole kernel quota peanuts are equal to or exceed the total obligation for export of whole kernels from contract additional peanuts; and (B) for eligible whole kernel screen sizes listed in paragraph (d)(4)(ii) of this section, the quantity of export obligation is greater than the export credits by an amount not exceeding 1 percent of the export obligation for that screen size. If the requirements of the preceding paragraphs (d)(4)(i) (A) and (B) of this section are satisfied, excess export credits for peanuts of one or more larger screen sizes may be applied, to the extent available, to offset shortages in a smaller screen sizes for which a tolerance is permitted in paragraph (d)(4)(ii) of this section.

(ii) *Screen size variation tolerance and eligible screen sizes.* Screen size variation and offset of export obligations with excess export credits as provided in paragraph (d)(4)(i) of this section shall be applicable only for the whole kernels that will ride the following slotted screen size openings by type:

Spanish type: $\frac{18}{64}$ x $\frac{3}{4}$ inch (+18), or $\frac{15}{64}$ x $\frac{3}{4}$ inch (+15)
Runner type: $\frac{18}{64}$ x $\frac{3}{4}$ inch (+18), or $\frac{16}{64}$ x $\frac{3}{4}$ inch (+16)
Virginia type: $\frac{18}{64}$ x 1 inch (+18), or $\frac{15}{64}$ x 1 inch (+15).

(iii) *Screen size variation tolerance and letter of credit.* For the purpose of establishing a letter of credit for contract additional peanuts used in the domestic market under paragraph (d)(2) of this section, allowances for screen size variation shall not be considered in determining the dollar amount of the letter of credit.

(iv) *Screen size variation tolerance and penalties.* Should the export obligation exceed the export credits for an eligible screen size listed in paragraph (d)(4)(ii) of this section by an amount greater than 1 percent of the export obligation for that screen size, the handler shall be liable for a failure to export under the provisions of § 1446.59 and the penalty shall be calculated on the total quantities involved in the violation without adjustment for screen size variation tolerances.

* * * * *

4. Section 1446.61 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 1446.61 Pooling and distribution of net gains.

* * * * *

(a) * * *

(2) An amount from the net gains on additional peanuts sold for domestic food and related uses which is equal to the losses incurred in disposing of quota peanuts of the same type and segregation in the same production area.

(b) * * *

(2) An amount of the net gains from the additional pool allocated to the quota pool pursuant to paragraph (a)(2) of this section to offset quota pool losses.

Signed at Washington, D.C. on September 20, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-25457 Filed 9-25-84; 8:45 am]

BILLING CODE 3410-05-M

Office of the Secretary

7 CFR Part 2900

Certification of Essential Agricultural Uses and Requirements; Natural Gas Policy Act of 1978

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: In response to a petition, the Department of Agriculture amends its regulations certifying essential agricultural uses and requirements under the Natural Gas Policy Act of 1978 (NGPA). This amendment adds the production of food-grade citric acid and food-grade enzymes to the list of essential agricultural uses certified by the Secretary of Agriculture.

EFFECTIVE DATE: This amendment will become effective on September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Earle E. Gavett, Director, Office of Energy, USDA, 14th Street and Independence Avenue, SW., Washington, D.C. 20250; Telephone Number: 202-447-2634.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been determined to be "nonmajor".

Under section 401 of the NGPA, the Secretary of Agriculture is required to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) essential agricultural uses of natural gas and the amounts of natural gas for such essential agricultural uses necessary for full food and fiber production.

A final rule containing such certification was issued by the Secretary of Agriculture on May 17, 1979 (44 FR 28782).

The Secretary of Energy and the FERC have incorporated the USDA certification in their rule promulgating and implementing agricultural priority in curtailment plans of interstate pipelines in accordance with the NGPA.

In accordance with 7 CFR 2901.5(b) on June 4, 1984 (49 FR 23061) the Secretary, USDA, issued a proposed rule which would amend USDA certification of essential agricultural uses and requirements to include under 7 CFR 2900.3, SIC Code 2869—Industrial Organic Chemicals (Food-grade Citric Acid and Food-Grade Enzymes) as essential agricultural uses. This proposed amendment is in response to a petition submitted by Miles Laboratories, Inc. (hereinafter "Miles").

Miles proposed that the manufacture of food-grade citric acid and food-grade enzymes, classified in SIC Code 2869—industrial organic chemicals, be certified as an essential agricultural use of natural gas under Section 401(f)(1)(A)—that is, to the extent of all natural gas used in its manufacture whether for process, feedstock or boiler fuel uses. Currently, food grade citric acid and food-grade enzymes are certified under section 401(f)(1)(B) which gives priority for only the process and feedstock natural gas requirements, 44 FR 28786. Boiler fuel use is not protected from curtailment under this section.

The public was invited to participate in any aspect of the proposed amendment by submitting data, views, or arguments with respect to the inclusion of food-grade enzymes in USDA's certification as essential agricultural uses of natural gas. No comments or requests that USDA convene a public hearing were received from the public.

Food-Grade Citric Acid—Food-grade acid is produced by two domestic manufacturers, although Miles states that it alone uses natural gas. At its two plants, Miles uses a maximum of 2,500 Mcf of natural gas per day as boiler fuel. This certification will add, therefore, a maximum of 910 million cubic feet to the total agricultural gas use of 1,392 billion cubic feet per year, less than one-tenth of 1 percent of the interstate gas component identified as essential agricultural use in the May 14, 1979 combined Environmental Impact Statement and Final Impact Statement.

Food-Grade Enzymes—Food-grade enzymes are produced by four major domestic manufacturers who use about 210 million cubic feet of natural gas per year. This certification would add this 210 million cubic feet to the total agricultural gas use of 1,392 billion cubic feet, only about 1 one-hundredth of 1 percent of the interstate gas component identified as essential agricultural use in the May 15, 1979 combined Environmental Impact Statement and Final Impact Statement. This quantity could increase over the next year or two as new plants come on line or old ones convert to natural gas.

Based on the foregoing, USDA has determined that the use of natural gas in the production of food-grade citric acid and food-grade enzymes is a use of natural gas for food processing which is necessary for full food and fiber production.

Earle. E. Gavett, Director, Office of Energy has determined that this action will not have a significant economic impact on a substantial number of small entities since only about 1.1 billion cubic feet of natural gas per year are involved. Small commercial establishments are protected from curtailments by the NGPA which defines them as "high priority users", a priority category above essential agricultural users. Small manufacturing concerns have a priority lower than essential agricultural users but, depending on the pipeline concerned, generally have priorities higher than many other, larger users.

List of Subjects in 7 CFR Part 2900

Agricultural commodities, Alcohol and alcoholic beverages, Animals, Chemicals, Crop services (SIC Code 072), Farm-product raw materials—grain (SIC Code 5153), Fertilizers, Food stores (SIC Code 54), Foods, Forests and forest products, Groceries and related products (SIC Code 514), Irrigation, Leather tanning and finishing (SIC Code 3111), Natural gas, Packaging and containers, Pesticides and pests, Salt, Textiles, Warehouses.

PART 2900—ESSENTIAL AGRICULTURAL USES AND VOLUMETRIC REQUIREMENTS—NATURAL GAS POLICY ACT

§ 2900.3 [Amended]

Accordingly, Chapter XXIX of Title 7, § 2900.3 Code of Federal Regulations is amended by changing, at the end of the "Food and Natural Fiber Processing—Food" list: 2869—Industrial Organic Chemicals (Monosodium Glutamate only) to: 2869—Industrial Organic Chemicals (Monosodium Glutamate, Food-grade Citric Acid and Food-grade Enzymes only).

(Pub. L 95-621, November 8, 1979, 92 Stat. 3350.15, 15 U.S.C 3301 et seq.)

Dated: September 20, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84-25456 Filed 9-25-84; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ASW-28; Amdt. 39-4895 (Predecessor Docket No. 74-NE-38)]

Airworthiness Directives; Sikorsky Aircraft Models S-61L, S-61N, S-61NM, and S-61R Series Helicopters Certificated in all Categories, and S-61A and S-61V Helicopters Certificated in the Restricted Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment amending an existing airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Sikorsky S-61 series helicopters by individual letters. The amended AD requires stringent inspection of the required blade pressure indicators and limits the time in service of any flight to 3 hours for helicopters not equipped with an in-cockpit blade inspection system, or if equipped, with the system inoperative. The AD also extends time in service of any flight to 8 hours for helicopters equipped with an operative in-cockpit blade inspection system, and removes from service main rotor blades which do

not incorporate approved blade pressure indicators. The amended AD is needed to prevent operation with fatigue cracks in the main rotor blade spar which could result in loss of the blade and consequent loss of control of the helicopter.

DATES: Effective September 26, 1984 as to all persons including those persons to whom part was made immediately effective by priority letter AD 74–20–07 R4, issued December 30, 1983, which contained part of this amendment.

Compliance schedule—As prescribed in body of AD.

The Director of the Federal Register approved the incorporation by reference of certain publications in 14 CFR 39.13 effective on September 26, 1984.

ADDRESSES: A copy of the referenced service bulletins may be obtained from United Technologies Corporation, Sikorsky Aircraft Division, North Main Street, Stratford, Connecticut 06601, Attn: S–61 Commercial Product Support Department.

A copy of each of the service bulletins is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Airframe Branch, Boston Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Part, Burlington, Massachusetts 01803, telephone number (617) 273–7329.

SUPPLEMENTARY INFORMATION: On December 30, 1983, priority letter AD 74–20–07 R4 was issued and made effective immediately as to all known U.S. owners and operators of Sikorsky Models S–61L, S–61N, S–61NM, and S–61R series helicopters certificated in all categories, and S–61A (aircraft serial numbers (S/N) 61083, 61087, 61094, and 61161) and S–61V (aircraft S/N 61271) helicopters certificated in the restricted category. This amendment further amends Amendment 39–1971 (39 FR 33791), AD 74–20–07, as amended by Amendments 39–1989 (39 FR 36856), 39–2152 (39 FR 15384), and 39–2439 (39 FR 54424) which required inspection of the main rotor blade for evidence of fatigue cracks in the spar and repair or replacement, as necessary, on Sikorsky Models S–61L, S–61N, S–61NM, and S–61R series helicopters. This amendment was prompted by a report of a recent in-flight fatigue crack of a main rotor blade spar. The amended AD requires an aircraft maintenance record entry for the required blade pressure indicator inspections and limits the time in service of any flight to 3 hours for helicopters not equipped with an in-cockpit blade inspection system, or if equipped, with the system inoperative. These procedural changes were required to reduce the possibility of a missed detection. For helicopters equipped with an operative in-cockpit blade inspection system which supplements the visual inspection system, inspection of the blade pressure indicators and transducers is conducted prior to the first flight of the day with subsequent functional checks of the system electrical circuit every 3 hours' time in service and of the blade pressure indicators and transducers every 8 hours' time in service. In addition, main rotor blades which do not incorporate approved blade pressure indicators are removed from service. Furthermore, the AD, as amended, adds Sikorsky Models S–61A and S–61V by serial numbers to the effectivity paragraph because these models were added to the civil aviation fleet since the issuance of AD 74–20–07.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued December 30, 1983, to all known U.S. owners and operators of certain Sikorsky Models S–61L, S–61N, S–61NM, and S–61R series helicopters certificated in all categories, and S–61A (aircraft S/N's 61083, 61087, 61094, and 61161) and S–61V (aircraft S/N 61271) helicopters certificated in the restricted category. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is further amended by amending Amendment 39–1971 (39 FR 33791), AD 74–20–07, as amended by Amendments 39–1989 (39 FR 36856), 39–2152 (39 FR 15384) and 39–2439 (39 FR 54424) as follows:

1. By revising the product application statement to read as follows:

Sikorsky Aircraft: Applies to S–61L, S–61N, S–61NM, and S–61R, helicopters certificated in all categories, and S–61A (aircraft S/N's 61083, 61087, 61094, and 61161) and S–61V (aircraft S/N 61271) helicopters certificated in the restricted category.

2. By revising the compliance statement to read as follows: Compliance is required as indicated (unless already accomplished).

3. By revising paragraphs (a), (b), (c), (d), (e), (f), and (g) to read as follows:

(a) Remove from service within the next 10 hours' time in service from the effective date of this amended AD:

(1) Any main rotor blade which does not comply with Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions, excluding section 2, Accomplishment Instructions, Part II, Operation, Pilot Information. For main rotor blades which are in compliance, the service life limits are:

(i) 8,000 hours' total time in service for S6117–20101 series blades;

(ii) 9,400 hours' total time in service for S6115–20501, S6115–20601, S6188–15001, and 61170–20201 series blades;

(2) Any military main rotor blade installed on a helicopter certificated in the restricted category which is not equipped with a visual blade pressure inspection system equivalent to that specified in Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions. For military blades which are in compliance, the service life limits shall be those specified in the restricted category approval.

(b) Inspect main rotor blades equipped with approved visual blade pressure indicators but not equipped with an in-cockpit blade inspection system, or if equipped, with the system inoperative, in accordance with paragraphs (c) and (d). For helicopters equipped with an operative in-cockpit blade inspection system, inspect the main rotor blades in accordance with paragraphs (e) and (f).

(c) Within the next 3 hours' time in service after the effective date of this amended AD, unless already accomplished, inspect the visual blade pressure indicators of the following blades of helicopters not equipped with an in-cockpit blade pressure monitoring system (see Sikorsky Service Bulletin No. 61B15–20D), or equipped with such system inoperative:

S6115–20501 Series
S6115–20601 Series
S6117–20101 Series
S6188–15001 Series
61170–20201 Series
61170–20201–062 (S–61A aircraft S/N's 61083 and 61094)
S6115–20201–2 (S–61A aircraft S/N's 61087 and 61161)
S61170–20201–080 (S–61V aircraft S/N 61271),

according to the procedures set forth in Section 2, Part IV, of Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions, and as supplemented by paragraph (d) of this AD.

(1) Conduct visual inspections or checks of blade-mounted pressure indicators from the transmission work platform of the helicopter to ensure that an accurate visual check is conducted.

(2) The visual inspections or checks of blade-mounted pressure indicators shall be conducted by an individual who holds a pilot

certificate with appropriate rating or a mechanic certificate with airframe rating or by a certificated maintenance entity. The person performing this inspection or check shall make entries of the results in the aircraft maintenance record including a description and date of the inspection and the name of the individual performing the inspection along with the certificate number, kind of certificate, and signature.

(3) Each blade with any black or red indication visible in the blade pressure indicator is considered to be unsafe and is restricted from further flight until the cause of the indication is determined and corrected in accordance with the procedures given in Sikorsky Service Bulleting No. 61B15–6P, or later FAA-approved revisions.

Note.—The inspections that are required by paragraph (c) to be performed and recorded may be considered to be "airworthiness checks."

If preventive maintenance action in accordance with Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions, is required as a result of these inspections (airworthiness checks), the subsequent inspections required are considered preventive maintenance that may be performed by persons authorized to perform preventive maintenance under Part 43 of the FAR.

(d) After the initial inspections in accordance with paragraph (c), conduct further inspections in accordance with paragraph (c) prior to the first flight of each day and at intervals not to exceed 3 hours' time in service from the last inspection, except for blades identified with yellow or white circles which are limited to inspection intervals of 1 and 2 hours, respectively.

Helicopter time in service for any single flight in excess of the specified inspection interval is not permitted, and if the time in service since the last inspection will exceed the specified interval during the next flight, the visual inspection must be conducted prior to the flight.

Yellow or white circles and attendant speed restrictions of AD 74–25–05 may be removed if the main rotor blade is refurbished by Sikorsky in accordance with FAA-approved procedures of June 16, 1975.

(e) Prior to the first flight of the day and every 8 hours' time in service thereafter for helicopters equipped with an operable in-cockpit blade pressure monitoring system (see Sikorsky Service Bulletin No. 61B15–20D), and with main rotor blades with serial numbers of 61M–6350–6105 or greater, or which have been refurbished by Sikorsky in accordance with FAA-approved procedures of June 16, 1975, inspect the main rotor blades pressure indicators and pressure transducers of the blade specified in paragraph (c) according to the procedures set forth in Section 2, Part IV of Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions.

(1) The visual inspections or checks of blade-mounted pressure indicators are to be conducted from the transmission work platform of the helicopter to ensure that an accurate visual check is conducted.

(2) The required functional tests and visual checks shall be conducted by an individual who holds a pilot certificate with appropriate rating or a mechanic certificate with airframe rating or by a certificated maintenance entity. The person performing these tests and checks shall make entries of the results of the inspections in the aircraft maintenance record including a description and date of the inspection and the name of the individual performing the inspection along with the certificate number, kind of certificate, and signature.

(3) Each blade with any black or red indication visible in the blade pressure indicator or whose transducer activates the cockpit warning light is considered to be unsafe and is restricted from further flight until the cause of the indication is determined and corrected in accordance with procedures given in Sikorsky Service Bulletin No. 61B15–6P, or later FAA-approved revisions.

(f) After the initial inspections in accordance with paragraph (e):

(1) Conduct functional tests in accordance with the procedures of paragraph (e) of all visual blade pressure indicators and in-cockpit blade inspection system transducers every 8 hours' time in service.

(2) Check the in-cockpit blade inspection system electrical circuit every 3 hours' time in service by use of the system test switch located in the cockpit. An in-flight indication of a failure of the system electrical circuit must be treated in the same manner as an in-cockpit system warning light indication as provided in the Emergency Procedures section of the Rotocraft Flight Manual.

(g) Alternate inspections, repairs, modifications, or other means of compliance which provide an equivalent level of safety to this AD must be approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. In accordance with FAR § 21.197, flight is permitted to a base where the requirements of this AD may be accomplished.

The manufacturer's specifications and procedures (Sikorsky Service Bulletin No. 61B15–6P Revision No. 16, 12/3/81 including Revision No. 12, 6/2/77 & Revision No. 15, 4/21/80; Sikorsky Service Bulletin No. 61B15–20 Revision No. 4, 11/9/77) identified in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to United Technologies Corporation, Sikorsky Aircraft Division, North Main Street, Straford, Connecticut, 06601, Attn: S-61 Commercial Product Support Dept. These documents also may be examined in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 156, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, 76106.

This amendment becomes effective September 26, 1984 as to all persons including those persons to whom part was made immediately effective by priority letter AD 74–20–07 R4 issued December 30, 1983, which contained part of this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, on July 27, 1984.

Note.—The incorporation by reference provisions of this document were approved by the Director of the Federal Register on September 26, 1984. The referenced documents are available at the **Federal Register**.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–25625 Filed 9–25–84; 8:45 am]

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14 CFR Part 39

[Docket No. 84–CE–13–AD; Amdt. 39–4922]

Airworthiness Directives; Cessna 402C, 404, 414A, 421C, 425 and 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 402C, 404, 414A, 421C, 425 and 441 airplanes which requires replacement of nose landing gear actuator rod ends which may be understrength. Failure of these rod ends has resulted in nose gear collapse accidents and airplane damage. Replacement of these rod ends with stronger parts will prevent these occurrences.

EFFECTIVE DATE: November 1, 1984.

Compliance: Required within 200 hours time-in-service after the effective date of this AD.

ADDRESSES: Cessna Multi-engine Customer Care Service Information Letter ME84–10 dated March 9, 1984, pertaining to this subject on Models 402C, 404, 414A, and 421C airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Piston

Aircraft Marketing Division, Wichita, Kansas 67201; Telephone (316) 658–9111. Cessna Conquest Customer Care Service Information Letter PJ84–10 dated March 2, 1984, pertaining to this subject on Models 425 and 441 airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Conquest Marketing Division, Wichita, Kansas 67277; Telephone (316) 946–7550. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Aerospace Engineer, FAA, Aircraft Certification Office, ACE–120W, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the Nippon Micro Bearing, Ltd. rod end in the P/N 9910139 nose gear actuators on certain Cessna Model 400 series airplanes was published in the **Federal Register** on May 21, 1984 (48 FR 21349–21350). Replacement of these potentially understrength rod ends is necessary to prevent failure and subsequent nose gear collapse, loss of aircraft control, and aircraft damage. The cause of the failure is suspected to be high stress-low cycle fatigue, aggravated by faulty rod ends manufactured by one vendor, Nippon Micro Bearing, Ltd. (NMB). The rod ends (MS 21242S–4K) made by NMB fail to incorporate a critical dimension from the Military Standard Data Sheet, which results in an undersized area of the bearing housing, at the most highly loaded section of the rod end. To correct this condition, Cessna has issued two Service Information Letters: PJ84–10 for Models 441 and 425 airplanes and ME84–10 for Models 421C, 414A, 404, and 402C airplanes. These Service Information Letters recommend replacement of the rod ends on P/N 9910139 actuators on all airplanes. Only MIL–B–81935 rod ends made by New Hampshire Bearing, Inc. (NHB) under their P/N ADNE 4JW are acceptable as replacement.

Since the condition described above is likely to exist or develop in other Cessna 400 series airplanes of the same type design, the AD requires replacement or existing rod end bearings with increased strength parts per Cessna Service Information Letters PJ84–10 or ME84–10 as applicable on certain Cessna Model 441, 425, 421C, 414A, 404 and 402C airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. The only commentor concurred with the proposed AD.

Accordingly, the proposal is adopted without change.

Note.—The FAA has determined that this regulation only involves 2,727 airplanes at an approximate one-time cost of $157 for each aircraft or a total one-time fleet cost of $423,039. Few, if any, small entities under the definition of the Regulatory Flexibility Act, will operate more than one of the affected airplanes and the cost thereof, to anyone will not be a significant amount. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Cessna: Applies to Models 402C (S/Ns 402C0001 thru 402C0802); 404 (S/Ns 404–0001 thru 404–0859); 414A (S/Ns 414A0001 thru 414A1003); 421C (S/Ns 421C0001 thru 421C1402); 425 (S/Ns 425–0002 thru 425–0190); 441 (S/Ns 441–0001 thru 441–0333) airplanes certificated in any category.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude collapse of the nose landing gear:

(a) Replace the nose landing gear actuator rod ends on Models 425 and 441 airplanes in accordance with Cessna Service Information Letter (CSIL) PJ84–10 dated March 2, 1984, and on Models 402C, 404, 414A and 421C airplanes in accordance with CSIL ME84–10 dated March 9, 1984.

(b) The aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4400.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on November 1, 1984.

Issued in Kansas City, Missouri, on September 14, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84–25[illegible] Filed 9–25–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket Nos. RM84–6–000, RM84–6–001, and RM84–6–002; Order No. 399]

Refunds Resulting From Btu Measurement Adjustments

Issued: September 20, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending and finalizing its regulations that establish refund procedures for overcharges resulting from Btu measurement adjustments. The rule implements a decision of the United States Court of Appeals for the District of Columbia Circuit. This refund is due November 5, 1984, or in the case of "small" first sellers, May 3, 1985. The first seller and pipeline may choose whether the refund should be paid in a lump-sum cash payment or in billing adjustments over the refund period. However, offsets of this refund and production related costs permitted under section 110 of the Natural Gas Policy Act are prohibited.

This rule provides that interstate pipelines must pass through refunds in a lump-sum cash payment to those customers actually overcharged. Subject to clearance by the Office of Management and Budget, the Commission is also requiring interstate and intrastate pipelines to file refund reports with the Commission describing those refunds received and those refunds still outstanding.

EFFECTIVE DATE: September 20, 1984, except for the refund report requirements (set forth in Ordering Paragraph Nos. E, F, and G and §§ 154.38(h)(3) (vi), (vii), and (viii) of this rule which will become effective December 1, 1984. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date of the refund reporting requirements.

FOR FURTHER INFORMATION CONTACT:

Leslie J. Lawner, Office of General Counsel, Producer Regulation Division, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8511

Joseph R. Hartsoe, Office of General Counsel, Rulemaking and Environmental Law Division, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–5775

SUPPLEMENTARY INFORMATION

Final Rule and Order Denying Rehearing of Interim Rule

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

In the matter of refunds resulting from Btu measurement adjustments; Docket Nos. RM84-6-000, RM84-6-001, and RM84-6-002; Order No. 399.

Issued September 20, 1984.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending and finalizing its regulations that establish refund procedures for overcharges resulting from adjustments to the calculation of the energy content of natural gas (measured in terms of British thermal units (Btu's)) [1] sold pursuant to the Natural Gas Policy Act of 1978. In so doing, the Commission is implementing the decision in *Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission* (*INGAA*).[2]

As a result of the *INGAA* decision, the Commission issued an interim rule on May 3, 1984, requiring refunds of Btu overcharges.[3] Briefly stated, the interim rule requires first sellers to refund the Btu measurement overcharges by November 5, 1984, or in the case of small first sellers, by May 3, 1985. First sellers and pipelines may choose whether the refund should be paid in a lump-sum cash payment or in billing adjustments over the refund period. In either case, the refund obligation is subject to the Commission's interest regulations in §§ 154.67(c) and 154.102(c) and (d). Interstate pipelines must then pass the refunds through in a lump-sum cash payment to those customers actually overcharged. The interim rule also requires both intrastate and interstate pipelines to file refund reports with the Commission describing those refunds received and those refunds still outstanding.

This final rule adopts the requirements of the interim rule with major clarifications or modifications in five areas. First, the rule prohibits offsets of the Btu measurement overcharges (Btu refunds) and production-related costs permitted under section 110 of the Natural Gas Policy Act of 1978 (NGPA). Second, first sellers may defer payment of Btu refund amounts attributable to royalty interest owners until the first seller receives payment from the royalty interest owner, or November 5, 1986, whichever occurs first. First sellers that defer payment of that portion of the Btu refund attributable to royalty interest owners must notify the pipelines of the deferral before the end of the applicable 6- or 12-month refund period. Third, additional reports will be required from intrastate and interstate pipelines in order to monitor these deferred refund amounts. Fourth, the interest owed on Btu refund amounts that were placed in escrow is limited to that interest which accrued in the escrow account on the amount required to be refunded. Finally, a small first seller must notify pipelines if that first seller is going to use the 12-month refund period.

II. Background

In *INGAA*, the court vacated the Commission's regulations that prescribed the method used to calculate the energy content of natural gas for purposes of applying the maximum lawful prices under the NGPA.[4] Those regulations provided that the Btu content of a given volume of natural gas is determined by assuming that the volume of natural gas was under standard test conditions when delivered to a pipeline. Once the Btu content of the natural gas was determined assuming standard test conditions, an adjustment was permitted to reflect the number of Btu's actually delivered to the pipeline system (dry rule).[5]

In vacating these rules, the court held that the Commission's dry rule was fundamentally at odds with the Congressional intent under the NGPA. Specifically, when the NGPA was passed in 1978, it established maximum lawful prices for several categories of natural gas and incorporated in sections 104 and 106(a) of that act area rates that the Commission had established under the Natural Gas Act (NGA). Pursuant to the Commission's NGA regulations (wet rule), the Btu content to a given volume of gas was measured under standard test conditions (saturated) instead of actual delivery conditions. Although this derivation of Btu content tended to overstate the water vapor content which, in turn, caused an understatement in the number of Btu's assumed to be in a given volume of natural gas delivered to a pipeline, it enjoyed widespread industry acceptance and consistent Commission implementation.[6] Hence, the court reasoned that the wet rule was the only method Congress knew for measuring Btu content; and, therefore, it held that Congress incorporated the Btu measurement technique used under the NGA, *i.e.*, the wet rule, into the pricing structure of the NGPA.

The Commission issued a Notice of Inquiry in this docket on January 19, 1984.[7] The interim rule was issued on May 3, 1984, and a public hearing was held on May 24, 1984. The Commission received two petitions for rehearing of the interim rule and it granted rehearing solely for the purpose of further consideration of those petitions.[8] In response to its request for comments in the interim rule, the Commission received seventy written comments.

Numerous commenters generally support the interim rule and urge that it be adopted as the final rule. One commenter urges the Commission to reconsider all of its options to be sure that a refund rule is necessary. Other commenters complain that it will be impossible to comply at reasonable cost with the interim rule's collection and reporting timetable and that the problems created by the interim rule are insurmountable for small producers. Finally, one commenter states that the realities of the natural gas industry and

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[1] Each Btu represents the amount of energy needed to raise the temperature of one pound of water one degree Fahrenheit.

[2] 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984).

[3] Refunds Resulting from Btu Measurement Adjustments, 49 FR 19,293 (May 7, 1984).

[4] These regulations were adopted in Order Nos. 93 and 93–A. Rules Generally Applicable to Regulated Sales of Natural Gas, 45 FR 49,077 (July 23, 1980) (Order No. 93); Order Denying Rehearing and Clarifying Order No. 93, 46 FR 24,537 (May 1, 1981) (Order No. 93–A).

[5] An adjustment was permitted because 1) the gas delivered to a pipeline is seldom saturated with water vapor, as required under standard test conditions; and 2) water vapor contains no available heat energy, and its presence in any given volume of natural gas would reduce the Btu content of the gas by displacing energy-producing hydrocarbons. *See* 18 CFR 270.204 (1983).

[6] Prices were established under the NGA in dollars per thousand cubic feet ($$/Mcf). The Commission then permitted adjustments to the area or national rate for the Btu content of gas measured under the wet rule.

[7] Refunds Resulting From Btu Measurement Adjustments, 49 FR 3198 (Jan. 26, 1984).

[8] Refunds Resulting From Btu Measurement Adjustments; Order Granting Rehearing for the Purpose of Further Consideration, 49 FR 27935 (July 9, 1984).

fundamental fairness warrant changes in the rule.

When the Commission promulgated the dry rule, it believed that the dry rule as an appropriate method permitted by Congress for measuring the Btu content of natural gas under the NGPA. The court in *INGAA* disagreed. We are now left with the task of implementing the court's decision. After careful consideration of the written comments, the views and arguments expressed at the public hearing on May 24, 1984, and the decision in the *INGAA* case, the Commission believes that the interim rule, as modified by this rule, fairly balances the interests of sellers, purchasers, and consumers of natural gas.

III. Producer Refunds to Pipeline

The *INGAA* decision held that the maximum lawful prices under the NGPA must be calculated using the wet rule. The Commission decided in the interim rule that any person who received a price for the first sale of gas in excess of the NGPA ceiling prices calculated using the wet rule must refund the overcharges. Specifically, any first seller that collected revenues in excess of the product of (a) the applicable maximum lawful price established by the NGPA, and (b) the quantity of MMBtu's (million Btu's) determined on the basis of the wet rule (*i.e.*, under standard test conditions), must refund any such excess revenues.[9] To the extent that revenues collected for gas sold in a first sale under the NGPA are less than or equal to the level of revenues thus calculated, and are contractually authorized, no excess revenues would have been collected, and no refunds are due.[10]

Commenters argue that the Commission has the discretion not to order refunds because refunds are not explicitly required by either the NGPA or *INGAA*. These commenters assert that the Commission must weigh equity and the public interest in its retroactive application of the *INGAA* decision and they argue that these considerations render full refunds inappropriate for several reasons. First, commenters argue that seller made countless investment decisions in good faith reliance on the Commission's rules adopted in Order Nos. 93 and 93–A. Second, the *status quo* cannot be restored since insufficient records are available to determine refund liabilities because the records were destroyed, were never kept, or are unorganized. Third, individual consumers will not receive the benefit of the refunds because restitution is not possible. Fourth, the administrative cost of recouping the refunds will be burdensome on first sellers and pipelines. Finally, refunds will discourage new drilling and production and further depress the natural gas production market. In addition, one commenter states that there is a serious question whether the Commission has the power to order these refunds because first sellers relied on the Commission's rules.

The Commission disagrees with these comments. Under the *INGAA* decision, the NGPA, and the Commission's implementing NGPA regulations, the Commission believes that it is legally required to order refunds in this situation. Specifically, the NGPA establishes ceiling prices and makes it unlawful for a first seller to receive a price in excess of the maximum lawful price. If the Commission did not make the measurement rule retroactive and did not require refunds, it would effectively be establishing a ceiling price higher than the maximum lawful prices prescribed in the NGPA. Since the NGPA does not contain any provision allowing the Commission to change the maximum lawful prices except in very limited circumstances,[11] it cannot waive the refund obligation. While the Commission recognizes that there are administrative costs associated with the refund process and that perfect restitution to overcharged customers may not be possible, it believes that the overriding legal considerations require the Commission to establish a refund mechanism that attempts to substantially refund overcharges to consumers.

Commenters assert that the *de minimis* principle for pipeline refunds in the interim rule should be expanded and applied to first sellers and royalty interest owners so as to waive the refund obligation for *de minimis* Btu refund amounts. These commenters suggest *de minimis* amounts of $500 and $2,000 per individual royalty interest owner to significantly reduce the inequities of any refund obligation. Although the Commission is sympathetic to these requests, the Commission believes, for the reasons discussed above, that the NGPA does not provide any legal mechanism for the Commission to waive the refund requirement.

A. Refund Period

The interim rule established two refund periods. Specifically, a 12-month refund period was established for those first sellers who sold a total of ten million Mcf (10 Bcf) or less of gas in both the intrastate and interstate markets in 1983 (small first sellers), and a 6-month refund period was established for all other first sellers.

While many commenters support the 6-month and 12-month refund periods, other commenters argue that these periods were too long. In contrast, some commenters argue that these refund periods are too short to generate refund calculations or to permit verification of the refund obligation and that these refund periods will cause cash flow problems. Commenters also suggest alternative refund periods, such as, expanding the deadlines to two years for all producers, but requiring the payment of estimated refunds within 6 months and final adjustments within 24 months.

The Commission has carefully balanced the need to refund overcharges to consumers as expeditiously as possible against the administrative burdens and potential cash flow problems associated with the refund process. The Commission believes that the 6-month and 12-month refund schedule is an appropriate compromise between these competing interests. First, the natural gas industry has been aware of the pending decision in *INGAA*, and certainly has had the opportunity to prepare for this contingency, for some time. For example, some first sellers and their purchasers escrowed these funds pending review by the U.S. Court of Appeals and the Supreme Court. Second, the refund periods provide the first seller and the pipeline sufficient time to agree on a repayment schedule and to make the payment, if a schedule has not already been worked out.

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[9] Section 270.101(e) imposes a general refund obligation on any person that receives a price in excess of the maximum lawful price under the NGPA 18 CFR 270.101(e) (1983).

[10] For purposes of determining the maximum permissible level of revenues for sales of natural gas subject to section 105(b)(1) of the NGPA, the terms of the contract control, *unless* those terms result in revenues in excess of the level of revenues that would have been collected based on the product of (a) the NGPA section 102 price, and (b) the quantity of MMBtu's determined on the basis of the wet rule (*i.e.* under standard test conditions). In any instance where revenues were collected in excess of the level of revenues determined by the product of (a) and (b), those excess revenues must be refunded. In those instances where the level of revenues collected was less than or equal to the level of revenues determined by the product of (a) and (b), and are contractually authorized, no excess revenues would have been collected, and no refunds are due. In some instances, no refund may be due under this rule but a party may believe a refund is due under the contract. The Commission believes that these disputes are a matter of State law to be resolved in State court.

[11] The Commission does have the authority to establish a higher just and reasonable rate—in other words, a new maximum lawful price—for gas sold under NGPA sections 104, 106, and 109. In addition, the Commission has the authority under NGPA section 107(c)(5) to establish a special price necessary to provide reasonable incentives for producing high-cost gas. However, in order to use these sections as a means of not requiring refunds, the Commission must meet the statutory requirement of demonstrating that the new price is just and reasonable, in the case of sections 104, 106, and 109, or necessary to provide incentives under section 107(c)(5).

With respect to "large" first sellers, such sellers generally should have sufficient cash flow from all operations to pay their refund liability within six months, and should generally be able to borrow funds to the extent their operations do not generate sufficient cash flow. However, in order to accommodate problems unique to many "small" first sellers, an extended 12-month refund period was provided for first sellers who sold a total of ten million Mcf (10 Bcf) or less of gas in both the intrastate and interstate markets in 1983. The Commission believes that, on balance, these considerations justify the 6-month and 12-month refund periods.

With respect to the definition of small first seller, several commenters support using the test used under the NGA as opposed to the one defined in the interim rule. They argue that the NGA test is well established, is easy to monitor, and would reduce the administrative burden on pipelines and producers. Another commenter notes that, under the interim rule definition, fewer first sellers will qualify for the 12-month refund period than under the NGA definition because the interim rule definition includes sales made in both interstate and intrastate markets. This commenter suggests raising the threshold to 12.5 Bcf to compensate for the inclusion of intrastate sales in the definition.

The Commission notes that the NGA definition of small producer and the definition used in the interim rule are intended to serve different purposes. The NGA definition of small producer is used to waive filing requirements under the Commission's NGA regulations. In contrast, the definition of small first seller in the interim rule is used to determine those first sellers that are most likely to have cash flow problems if required to meet a 6-month refund deadline. This definition, unlike the NGA definition, also includes sales in the intrastate market because the Btu refund obligation applies to intrastate as well as interstate sales. Since the NGA definition and the interim rule definition are intended to serve different purposes, the interim rule definition applies to a different group of sellers, *i.e.*, first sellers who sold a total of ten million Mcf (10 Bcf) or less of gas in both the intrastate and interstate markets in 1983.[12] The commenters do not offer any compelling reasons why the interim rule definition would not serve those purposes.

Commenters suggest that the Commission permit pipelines to assume a seller is large, unless the first seller notifies the pipeline otherwise. The Commission has adopted this suggestion because it will facilitate the refund process and help pipelines complete their refund reports without imposing an undue burden on small first sellers. Hence, the rule requires small first sellers who are not making refunds within the 6-month refund period to notify pipelines in writing of their small first seller status by November 5, 1984.

B. Method of Payment

Under the interim rule, first sellers are required to make lump-sum cash payments of the overcharged amounts, unless both the first seller and the pipeline agree to payment through billing adjustments. This approach was taken because both repayment methods have merit and it permits pipelines and first sellers a degree of flexibility in deciding the most advantageous method to refund the Btu overcharges.

One commenter argues that first sellers do not need flexibility because first sellers have had long term use of the money, and have been aware of the pending refund obligation for some time. In addition, another commenter argues that the Commission should permit pipelines flexibility to withhold payments they owe first sellers in order to retire the refund obligation, because a right to withhold guarantees that all refunds are paid.

Although the Commission is aware that first sellers have long term use of the refund money and that first sellers have been aware of a potential refund obligation for some time, it believes that first sellers should have sufficient flexibility to prevent excessive cash flow problems. Similarly, the Commission will not permit pipelines unilaterally to decide to withhold payments because this procedure may unnecessarily cause first sellers to experience severe cash flow problems. Hence, this rule permits the parties to determine which of these methods of payment is best suited to their financial situations.

C. Section 110 Offsets

Since 1983, the Commission has permitted first sellers to retroactively collect production-related cost authorized by contract under section 110 of the NGPA (section 110 costs.[13]) Since the Btu refund period and the surcharge period for section 110 costs are approximately the same, some commenters propose that the Commission should require, or alternatively, permit, first sellers and pipelines to offset Btu refunds and section 110 costs.

Seven commenters oppose the allowance of offsets and nine commenters favor it. In addition one commenter argues that first sellers have a right to offset section 110 costs and Btu refunds. Those commenters favoring offsets argue that it will prevent financial difficulties, that it provides an excellent match between those overcharged for Btu refund amounts and those responsible for the section 110 costs, and that section 110 costs and Btu refunds accrued over the same time period. Those commenters opposing offsets argue that the Btu refund question is final while the section 110 cost issue is in litigation, that the time periods affected by these orders are different, and that section 110 costs are decided on a case-by-case basis.

The Commission intended the procedures for collecting section 110 costs to be self-implementing. In contrast, the Commission has decided that specific refund procedures are necessary for Btu refunds and that this refund procedure should be closely monitored. Because of the strict timetables and other requirements established for the payment of Btu refunds, the Commission is concerned that offsets could undermine contract disputes as to whether a pipeline owes section 110 costs to a first seller. The Commission also believes that permitting offsets of section 110 costs and Btu refunds would complicate an already difficult process and would make Commission monitoring of Btu refunds more difficult. In addition, the Commission is concerned that permitting pipelines and first sellers to offset section 110 costs and Btu refunds could prevent the Btu refunds from reaching as many of the customers actually overcharged as possible. Considering that the section 110 orders are also subject to judicial review, the Commission believes it is more appropriate to segregate the collection of section 110 costs from the Btu refunds. For these reasons, the Commission is prohibiting the offset of section 110 costs and Btu refunds.

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[12] For the purpose of determining eligibility as a small first seller, a first seller need not include sales made as a royalty interest owner or by affiliated entities. The Commission is concerned that an operator may not qualify as a small first seller for refund purposes, but that one or more of the sellers that designated that operator may have qualified as a small first seller as defined in the rule. In this situation, the operator may wait until May 3, 1985, to pay that portion of the Btu refund attributable to those small sellers, but the operator must notify pipelines of this deferral by November 5, 1984.

[13] *See* Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act, 48 FR 5152 (Feb. 3, 1983) (Order No. 94–A) (Final Rule and Order on Rehearing of Order No. 94); 48 FR 24,039 (May 31, 1983) (Order No. 94–C); (Order Denying Rehearing and Denying Petitions for Stay); 49 FR 565 (Jan. 5, 1984) (Order No. 94–E) (Clarification of Order No. 94). *See also,* Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978, and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978, 48 FR 5180 (Feb. 3, 1983) (Interim Rule); 48 Fed. Reg. 44,495 (Sept. 29, 1983) (Order No. 334. Final Rule and Order Granting in Part and Denying in Part Rehearing of Interim Rule); 49 FR 56 (Jan. 3, 1984) (Order No. 334–A, Order Denying Application for Rehearing Of Order No. 334 and Denying Requests for Stay of Order No. 334).

D. Interest

The interim rule adopted the Commission's refund policy, codified in § 270.101(e) (general refund obligation) that requires the first seller to calculate the refund plus interest under § 154.102(c) of its regulations. The interim rule also continued a longstanding Commission policy of waiving the interest payment for that portion of a refund attributable to payment of royalties or taxes to Federal or State governmental authorities unless those governmental authorities make interest payments on those refunds.[14] In addition, a first seller's refund obligation is not satisfied until the interest obligation is satisfied.

Commenters argue that the Commission should waive the entire interest requirement because first sellers were not unjustly enriched, and the overcharged amounts were reinvested in exploration, drilling, and production. These commenters characterize the interest obligation as a tremendous burden and the State that the interest obligation will drive companies out of business. Other commenters argue that the rate of interest is too high, and one commenter suggests using the interest rate on 90-day treasury notes.

The Commission is not persuaded that a valid reason exists for waiving the interest requirement entirely or generally revising the interest rates. In addition, the Commission believes that fairness to consumers and pipelines dictates that first sellers pay interest on the Btu refund amounts at the rate established in the interim rule. As stated in the interim rule, interest charges reflect a reimbursement to the rightful owner of the value of the use of funds held by first sellers. The Commission's existing regulations for calculating interest are used because the Commission believes that these regulations have already balanced the interests of sellers and purchasers.[15]

Some commenters suggest that the Commission limit the interest on Btu refund amounts which were paid into escrow to the interest that accrued in the escrow account, because money held in escrow earned a rate of return different from the prime rate. The Commission agrees that the only interest which should be refunded on escrowed amounts should be the accrued interest in the escrow account, since first sellers did not have use of this money and since an escrow procedure protects the interests of both the consumer and the seller. The Commission believes these are valid reasons for limiting the interest obligation for money paid into escrow to that interest which accrued in the escrow account on the amount required to be refunded. Moreover, this procedure is consistent with § 273.302(e)(2)(ii) of our regulations for interim collections of maximum lawful prices by first sellers pending NGPA well category determinations.[16]

Commenters request clarification on the date interest begins to accrue. Under this rule, interest begins to accrue on the date that the overcharged amount was received by the first seller, except for Btu payments that were paid into escrow and for refunds attributable to payment of royalties or taxes to Federal or State governmental authorities. In the latter situation, interest begins to accure on the date that the first seller receives the refund from the governmental royalty interest owner.

E. Refunds for Section 107(c)(5) Gas

Under NGPA section 107(b), the Commission has the authority to prescribe a higher incentive price for any first sale of high-cost gas to the extent a higher price is necessary to provide reasonable incentive to produce that gas. The Commission has issued such regulations for high-cost tight formation gas,[17] and production enhancement gas.[18]

In the interim rule, the Commission declined to make the necessary section 107(c)(5) finding for raising the ceiling price for such gas to compensate for Btu overcharges. Commenters state that the section 107(c)(5) price should not be reduced because of *INGAA*. They argue that the Commission chose the section 103 price as a convenient marker for setting the price for section 107(c)(5) gas and is not bound to that price.

The Commission believes it has the authority to establish a maximum lawful price for section 107(c)(5) gas based on the Btu content of the gas as delivered provided the statutory finding in section 107(b) is met. However, in establishing incentive prices, the Commission determined that the incentive ceiling price for tight formation gas is the lesser of the negotiated contract price or 200 percent of the section 103 price and that the incentive ceiling price for production enhancement gas is the lesser of the renegotiated price or the section 109 price. Since the section 107 prices were based on sections 103 and 109, the rules applicable to those sections should apply to the section 107 rates that are pegged to those other ceiling rates. Commenters do not offer any compelling reasons to justify a higher ceiling price for section 107(c)(5) gas or any factual data to support the statutory requirements in section 107(b). Accordingly, if a first seller has collected these maximum lawful prices based on the dry rule, refunds are due. Of course, if the contract price is less than the ceiling price, then the contract price is not changed by this rule. To the extent that contract-related rates are set on a dry basis, they must be converted to a wet basis solely for purposes of making the comparison to ensure that the ceiling rate is not breached.

F. Generation of Refund Information

Commenters argue that the rule should require pipelines to supply first sellers a full and complete data sheet of the information necessary to determine the Btu refund amounts. Commenters notes that most first sellers cannot calculate the Btu refunds without information from the pipelines, and they argue that purchasers are in the best position to supply that information. One commenter notes that without an information exchange, the computation and verification of refunds will be a difficult and burdensome task that will cause considerable delay and make the 6-month deadline unrealistic. Other commenters opposed a standard form mandated by the Commission because any data exchange should be left to the parties.

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[14] *See* 18 CFR 273.302(e)(2)(i) (1983); and 49 FR 19293, 19299 (May 7, 1984) (to be codified at 18 CFR 154.102(d)). In the interim rule, the Commission amended § 154.102 to include a new paragraph (d) that was inadvertently removed by Order No. 47. *See* 49 FR 19293, 19295 n.10 (May 7, 1984). The Commission is finalizing this amendment.

[15] A table showing the interest rates applicable to the Btu refund is available from the Commission's Division of Public Information, Rm. 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8118. (Ask for "Btu Refund Interest Rate Table").

[16] 18 CFR 273.302(e)(2)(ii) (1983).

[17] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034 (Aug. 22, 1980).

[18] High-Cost Natural Gas: Production Enhancement Procedures, 45 FR 77421 (Nov. 24, 1980); 48 FR 45097 (Oct. 3, 1983) (Order Granting Rehearing in Part and Denying Rehearing in Part).

One commenter argues that the rule should require that the amount of Btu overcharge be determined by the party responsible for submitting the invoices that includes Btu adjustments. In addition, one commenter argues that purchasers should be required to provide the necessary information in sufficient time to meet deadlines. One pipeline states it will invoice its producers, but argues that first sellers must continue to bear the legal obligation to assure that the calculations are accurate and refunds properly paid. Another pipeline states that it will cooperate with first sellers to determine the correct refund amounts owed plus interest.

The Commission realizes that pipelines typically do the paperwork necessary to prepare the invoices for the gas taken from first sellers. However, we believe that the parties are in the best position to decide who should determine the amounts owed because, in some instances, pipelines require the first seller to do the paperwork to invoice for the gas taken; and, in other instances, the first seller may not have sufficient information to calculate the refund obligation without additional information from the pipeline. The Commission also believes that pipelines and first sellers should cooperate. Specifically, first sellers are liable for the refunds, but pipelines have an obligation under the NGA as part of prudent management to ensure that first sellers pay these refunds, promptly and properly.

G. Refund Payments by Royalty Owners

Many first sellers of natural gas have a contractual agreement with a landowner to pay that owner a royalty payment based on a certain percentage of the proceeds the first seller receives for the natural gas. The interim rule provided that a seller incurs a refund liability for all the proceeds received in a first sale, and that he must refund the entire overpayment, including that percentage originally paid to the royalty owner. However, in those cases where several sellers have designated an operator to both collect revenues and disburse payments covering working interests and royalty interests, the interim rule designates the operator as the one responsible for repayment of the entire refund.

Some commenters argue that operators should not be responsible for refunds attributable to royalty interest owners. Other commenters argue that it is unclear whether royalty interest owners must pay this refund. One commenter asserts that the refund obligation should be placed on the royalty interest owners where it belongs.

Commenters also complain that collecting refunds from royalty interest owners will be impossible because royalty interest owners may have become judgment-proof, the well may have changed ownership, or the well may have been plugged. Other commenters suggest that first sellers and operators should be required to collect refunds on a "best-efforts" basis, and that operators should not be responsible for refunds if the royalty interest owner is unable to pay, if the refund is uncollectible by law, or if the refund is not otherwise collectible from a royalty interest owner.

Two commenters complain that while the amount they are owed by royalty interest owners is large, the cost of collection may exceed this amount. Another commenter argues that operators should be permitted an offset for the costs of collection. Finally, commenters note that one State, Wyoming, is refusing to make any refunds of overpayments of royalties; and that the Department of Interior has time-consuming procedures and may refuse to pay portions of the overpayments of royalties. These commenters argue that the rule should exempt or defer refund amounts attributable to States and the Department of Interior until they pay the royalty amounts they owe.

The Commission recognizes the problems that first sellers may have in recovering money from royalty interest owners. However, receipt of a first sale price in excess of the statutorily-set maximum lawful price is a violation of the NGPA, and the Commission has no authority to adjust these ceilings, except in certain limited circumstances not applicable here.[19] Numerous first sellers collected first sale prices in excess of the maximum lawful prices under the NGPA, since they priced gas based on the Btu content of the gas delivered to the pipeline. Therefore, these sellers incurred a refund liability, and it is their responsibility to refund the entire overpayment, including that percentage paid to royalty interest owners. Some sellers may have placed the Btu overcharge amounts in escrow pending a decision in *INGAA*, and do not face the task of securing refunds from royalty interest owners. For other sellers who failed to foresee this contingency, the Commission believes that securing refunds is a part of doing business. In addition, the Commission does not have jurisdiction over royalty interest owners, and, therefore, it cannot order royalty interest owners to make refunds.[20] Hence, the Commission is not changing the requirement that first sellers are responsible for the entire Btu refund.[21] However, the Commission is aware that operators change and working interests in wells are assigned to others. Therefore, the Commission is clarifying that an operator is responsible for refunds only during that period of time he operated a well and a first seller is responsible for refunds only during that period of time he owned an interest in a well, except as provided otherwise by contract, deed or lease.

While the Commission is not relieving first sellers of their responsibility for the entire Btu refund, the Commission is concerned that first sellers may have difficulty making timely collection of that portion of the Btu refund amounts attributable to some royalty interest owners, including some States and the Department of the Interior. In order to permit first sellers sufficient time to collect these monies, the Commission is permitting first sellers to defer that portion of the Btu refund attributable to royalty interest owners until the first seller receives payment from the royalty interest owner or November 5, 1986, whichever occurs first. However, the Commission stresses that first sellers should make every effort to collect and pay the entire Btu refund within the appropriate 6- or 12-month time limits. The Commission expects that the Department of the Interior will make most of the refunds it owes in a timely manner, especially those refund amounts attributable to the period after November 9, 1981.[22] Those first sellers who defer the royalty interest owner portion of the Btu refund must notify pipelines of the deferral before the end of the applicable 6- or 12-month refund period.

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[19] *See* n.11, *supra.*

[20] *See* Mobil Oil Corp. v. FPC, 463 F.2d 256 (D.C. Cir. 1972), *cert. denied,* 406 U.S. 976 (1972), *reh'g denied,* 409 U.S. 902 (1972), and *reh'g denied* 409 U.S. 903 (1972).

[21] In addition, the Commission has also held single parties responsible for all refunds in other circumstances under the NGA. *See* Tenneco Oil Company v. FPC, 422 F.2d 489 (5th Cir. 1971); and Sauder v. DOE, 648 F.2d 1341 (Temp. Emer. Ct. App. 1981).

[22] *See* Refund Procedures and Order to Pay Royalties, 49 FR 31,779 (Aug. 8, 1984). *See also* 88 Int. Dec. 1090 (1981).

Commission staff will also initiate talks with the Department of the Interior to help facilitate payment of the refunds owed by the Interior Department.

The Commission realizes that a few first sellers who are diligently seeking refunds from royalty interest owners will be unable to meet the November 5, 1986, time limit. In these situations, a first seller may always seek a further deferral of the refund under section 502(c) of the NGPA. However, the Commission is not inclined to grant such applications unless the circumstances and inequities require it. In any event, the first seller must pay interest under the provisions of this rule until the entire Btu refund is paid to the purchaser.

H. Refund Reports by Interstate and Intrastate Pipelines

The interim rule requires interstate and intrastate pipelines that are purchasers in a first sale to file two refund reports. These reports describe the status of the first seller's refund obligation by detailing (1) those first sellers that have made refunds and the amount of refunds received, and (2) those first sellers that have not made refunds, the amount owed, and the reasons for nonpayment. The first report would be filed by December 18, 1984, which is 45 days after the last day of the six-month first seller refund period. The second report would be filed by July 3, 1985, which is 60 days after the last day of the 12-month refund period. Because the State regulatory agencies will be interested in monitoring the refund process, the interim rule requires intrastate pipelines to file a copy of their report with the State agency having jurisdiction over intrastate sales. The interim rule requests comments on the reporting requirements imposed on intrastate pipelines.

Most commenters addressing the intrastate reporting requirements support these requirements because they properly balance the interests of the States, participants and the public. Due to the magnitude of the refunds, the complexity associated with monitoring them, and the long term nature of the overcharges, the Commission is adopting the interim rule reporting requirements for interstate and intrastate pipelines already discussed with the modifications discussed below.[23] Specifically, the Commission recognizes that it would be administratively infeasible to monitor refunds from all natural gas first sellers without the aid of refund reports from interstate and intrastate pipelines. In addition, the Commission intends to institute a comprehensive audit program for all refunds that are still unpaid at the end of the appropriate refund period.

The interim rule also requests comments on the Commission's decision not to require refund reports from all first sale purchasers. Commenters argue that reporting requirements should not be expanded to Hinshaw pipelines or local distribution companies (LDCs). They state that most State commissions already have strict requirements for refunds by LDCs and that the Commission lacks jurisdiction over LDCs to order refund reports. In addition, these commenters assert that refund reports by Hinshaw pipelines and LDCs would impose unnecessary costs and serve no valid purpose, since pipeline reports and Commission audits are sufficient to monitor compliance; and that refund reports would place duplicative and perhaps conflicting demands on LDCs. In contrast, other commenters argue that the final rule should require refund reports from all first sale purchasers in order to monitor the flow of refund monies.

The Commission does not believe that reports from every first sale purchaser are necessary to properly monitor this refund process. In addition to those reasons stated by the commenters, the Commission believes that refund reports from all first sale purchasers are unnecessary because sales of natural gas which are not made to interstate and intrastate pipelines comprise a small proportion of the total sales made in the natural gas market.

One commenters argues that the refund reports should be expanded to include a statement of the total amount due from each first seller with amounts broken down by principal and interest. The Commission believes that the refund reports should separately state principal and interest and that this information is necessary to properly monitor the refund process. Consequently, the reporting requirements are modified to require that refund reports show the amounts of principal and interest received.

As discussed previously, this rule extends the period during which sellers may pay refunds from royalty interest owners. In view of this extension, an additional report will be necessary at the end of that two-year deferral period in order to facilitate the monitoring by the Commission of the refund process. Hence, intrastate and interstate pipelines must file a third and final refund report by January 5, 1987, detailing (1) those first sellers from whom refunds have been received since May 3, 1985, and (2) those first sellers from whom refunds have not been recovered and the reason for the nonpayment.[24]

One commenter argues that any reports by intrastate pipelines should be made only to the appropriate State regulatory agency and not the Commission. Other commenters suggest removing the requirement to give reasons for nonpayment by producers, since the pipeline may not know and finding out will be burdensome and pointless. These arguments are rejected because the Commission needs refund reports from intrastate pipelines to ensure that first sellers comply with this rule. Similarly, the Commission requires pipelines to provide the reasons for nonpayment by a first seller because that information is necessary to monitor Btu refunds and pipelines are in the best position to obtain that information from the first seller.

IV. Pipeline Refunds to Customers

Under the NGA, the Commission has jurisdiction over the rates that interstate pipelines charge to their customers. This rule expands and clarifies the regulations promulgated by the interim rule to pass through any refunds pipelines receive from first sellers and other pipelines.

A. Refund Period and Method of Payment for Interstate Pipelines

The interim rule notes that each pipeline has a mechanism in its purchase gas adjustment clause (PGA) to pass through refunds received from first sellers by reducing the pipeline's unrecovered purchased gas costs, which costs would normally be recovered from the pipeline's customers over the next 6-month period. But, because the Btu refund was accrued over a 5-year period and because the refund amounts are large, the interim rule requires interstate pipelines to make lump-sum cash payments to those customers actually overcharged from December 1, 1978, instead of adjusting their current rates.

Commenters argue that, in addition to those reasons stated in the interim rule, the Commission should use the PGA mechanism for several reasons. First, the PGA mechanism permits pipelines to retain markets by reducing current costs. Second, it reduces accounting and administrative burdens, since pipelines need not establish new procedures to verify, allocate and distribute the Btu refunds. In contrast, other commenters argue that passing the refunds through the PGA mechanism will distort the current and future costs of gas, will cause serious inequities (especially to past customers who do not currently purchase gas), and will delay signals to producers that the market cannot bear the high gas prices already being charged.

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[23] The authority to require these reports is encompassed within the Commission's general authority in section 501(a) of the NGPA "to perform any and all acts * * * as it may find necessary or appropriate to carry out its functions" under the NGPA, which functions include ensuring that the maximum lawful prices are not exceeded in any first sale transaction

[24] This report will be due 60 days after November 5, 1986, or January 5, 1987. But, the second report will be due by June 17, 1985, which is 45 days, instead of 60 days, from May 3, 1985, because the second report is no longer the final refund report.

Similarly, some commenters support the lump-sum refund mechanism based on historical purchases. They argue that lump-sum refunds avoid allocation problems, prevent unfairness, are more accurate, avoid market distortions and provide State commissions with maximum flexibility. Other commenters describe the lump-sum method as fair, equitable and reasonable. In addition, one commenter notes that the lump-sum mechanism will benefit those customers whose conservation efforts decreased their use of gas.

The Commission believes that the use of the PGA mechanism to pass through these refunds could result in inequities. For example, customers which do not now purchase gas from an interstate pipeline would not receive a refund with a PGA passthrough, and it would be unfair if the customers actually overcharged did not receive a refund in the same proportion to their overcharges, given the magnitude and long-term nature of the overcharges.

In contrast, the Commission believes that the lump-sum mechanism is a fair and equitable procedure. Specifically, the lump-sum mechanism ensures that refunds will be made to those customers who overpaid the pipelines, and this mechanism will return the refunds to the ultimate consumer more quickly. Finally, the Commission recognizes that the Btu refund may temporarily disrupt the current gas market. But, the Commission believes that a lump-sum cash payment requirement will disrupt the current natural gas market less than the use of the PGA mechanism, since a lump-sum cash payment is made to those overcharged and does not adjust current prices. For these reasons and for the reasons stated in the interim rule, this rule requires interstate pipelines to make lump-sum cash payments to those customers actually overcharged from December 1, 1978.

The interim rule also requires interstate pipelines to pay Btu refunds to those customers actually overcharged within 15 days of receipt of the refunds from a first seller, or pay interest from the first day the refund was received from the first seller until paid. In order to reduce the administrative burden on pipelines, the interim rule permits pipelines to defer lump-sum payment to its customers until it has accumulated refunds equivalent to one mill per Mcf or Dkt for the pipelines's 1983 annual sales. In no event could the pipeline defer payments for more than 120 days or 30 days after the last refund period. If the pipeline defers payment more than 15 days, the pipeline is liable for interest from the date it receives the refunds from the first seller until the pipeline paid its jurisdictional customers.

The interim rule also notes that, to the extent a pipeline's refunds are *de minimis*, it may request a waiver of the lump-sum payment requirement. In addition, if a pipeline has already paid the first seller the Order No. 93 costs, but has not yet amortized those paid costs, then the interim rule permits the pipeline to offset these unamortized amounts against the jurisdictional portion of the refunds received. Because of the magnitude of the refunds, and for the reasons discussed below, the Commission is adopting these requirements with minor modification.

The Commission notes that pipelines were apparently confused about how to allocate refunds to their customers actually overcharged. Specifically, two commenters argue that pipelines must allocate refunds based on the historical sales made by a pipeline during the period of Order No. 93 overpayments. One commenter will base a customer's refund on the customer's *pro rata* portion of total purchases during the PGA periods in which Order No. 93 amounts were collected.[25] Another commenter asks whether each customer's share of refunds may be based on sales during a representative period compared to total sales during that period. Similarly, commenters are apparently confused on the method for processing refunds received from other pipelines. Specifically, three commenters state that the Commission should clarify or prescribe standards for processing refunds received from other pipelines.

Some commenters argue that the Commission intended for pipelines to refund amounts received from other pipelines in lump sums within 15 days of receipt. One commenter suggests arriving at this result by defining funds received from down-stream pipelines from another pipeline as within the definition of Btu refunds. Another commenter argues that second pipelines are not exempt from lump-sum refunds because the administrative burden is no greater than for first seller refunds. Another commenter asserts that the interim rule is silent on the proper manner to handle refunds received from other pipelines and argues that the PGA mechanism is the best method because it avoids the administrative hardship of continuous lump-sum refunds. In contrast, one commenter argues that using the PGA mechanism for refunds received from other pipelines is contrary to the Commission's goal of distributing refunds to those customers actually overcharged.

The Commission believes that a pipeline and its jurisdictional customers are in the best position to work out a procedure that (1) determines the portion of the aggregate amount of Btu refunds which are due a pipeline's jurisdictional customers actually overcharged based on the proportion of the total Btu refunds originally paid by those jurisdictional customers; and (2) refunds this amount to each jurisdictional customer in the same proportion that each jurisdictional customer originally paid the Btu refund amounts. For example, it may be appropriate for a pipeline to allocate the aggregate of all Btu refunds received from both first sellers and other pipelines based on each customer's purchases during the PGA periods in which Order No. 93 amounts were collected compared to the total sales during that period. Pipelines would then pay this refund to those customers in a lump-sum cash payment. In any event, pipelines are to process Btu refunds received from other pipelines in the same manner as Btu refunds received from first sellers because this procedure will return the Btu refund amounts to those customers actually overcharged.

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[25] Texas Eastern Transmission Corporation (Texas Eastern) requested clarification, or in the alternative, rehearing of the interim rule (Docket No. RM84-6-002). Specifically, Texas Eastern asked whether the interim rule permits pipelines to spread the Btu refunds among customers based on each customers *pro rata* share of purchases, for the period that significant amounts of Order No. 93-A dollars were included in the PGA. If the interim rule did not permit this approach, Texas Eastern requested that the Commission grant rehearing and issue rules in conformity with Texas Eastern's interpretation of the interim rule. Since Texas Eastern's interpretation is a permissible procedure for determining the refunds owned to its jurisdictional customers, the Commission is not treating its filing as a rehearing request. The specifics of Texas Eastern's proposed refund plan which was filed by Texas Eastern in Docket No. RP84-89-000 will be addressed by a separate order to be issued by the Commission in Docket No. RP84-89-000.

Pipelines characterize the 15-day refund period as burdensome, unrealistically brief, impractical, intolerable, and an unreasonable burden. Other commenters argue that 15 days is insufficient time to verify, allocate and distribute the refunds. Commenters suggest several alternative payment schedules that provided longer refund periods. These schedules ranged from 20 days to 12 months.

The Commission is not persuaded by these comments. Fifteen days should be sufficient time to determine the proportion of the aggregate amount of the Btu refunds which are due the pipeline's jurisdictional customers actually overcharged based on the proportion of the total Btu refunds originally paid by those jurisdictional customers and to pay the necessary refund amount. Pipelines that meet this 15-day refund period will have use of this money without reimbursing the rightful owner of the value of the use of these funds. Alternatively, pipelines may always take longer than the 15-day refund period (subject to a maximum 120-day holding period), but they must pay interest from the date of receipt until payment is made to its jurisdictional customers. The Commission believes the requirement that pipelines pay interest from the date of receipt until payment is made, if payment is not made within 15 days, fairly balances the competing interests of consumers and pipelines.

One commenter suggests that the rule permit pipelines to flow through the principle amount of any *de minimis* refunds without interest because the interest calculations are so complex. This rule does not adopt this suggestion. The Commission believes that it would be unfair to consumers to waive interest on *de minimis* amounts, since the Commission does not believe that these interest calculations will be overly burdensome on the pipelines.

Finally, while the Commission does not intend to treat pipelines as guarantors of refunds, the Commission urges the interstate pipelines to actively pursue any refunds owed by first sellers. The Commission believes that these pipelines have an obligation under the Natural Gas Act as part of prudent management to ensure that these refunds are paid promptly and properly.

B. Refund Reports

In addition to those refund reports described earlier, the interim rule requires interstate pipelines to file two additional reports describing the refund payments made to interstate pipeline customers by detailing (1) the actual amounts received, and (2) the total amount the interstate pipeline paid its customers and the basis used to apportion the Btu refund amount among those customers. These reports are due December 18, 1984, and July 3, 1985. These reporting requirements are necessary to ensure that all interstate pipeline customers have received their refunds. In addition, these reports will assist the Commission as well as the interstate pipeline customers in reviewing the refund payments.[26]

Commenters argue that the final rule should require refund reports from every person purchasing gas for resale in order to monitor the flow of refund monies and to assure that refunds have been properly and fairly allocated. In contrast, other commenters argue that reporting requirements should not be expanded to LDCs. In addition, one commenter argues that refund reports concerning customers should show the total amount paid each of the pipeline's customers and the interest due each of the customers as of the date of the report.

The Commission believes it can monitor the flow of Btu refunds without requiring reports from every person purchasing gas for resale. In addition, the Commission believes that the States are in a better position to monitor the LDCs. Hence, the Commission is adopting the interim rule reporting requirements with two modifications. First, the reporting requirements are modified to require that refund reports show the amounts of principal and interest paid. Second, the Commission is requiring an additional refund report from interstate pipelines because first sellers may defer payment of the Btu refund amounts attributable to royalty interest owners. This report is necessary to monitor the refund process to its completion. Thus, interstate pipelines must file refund reports by December 18, 1984, June 17, 1985, and January 5, 1987, detailing (1) the actual Btu refund amounts received by the pipeline and (2) the total Btu refund amounts that the interstate pipeline paid its jurisdictional customers and the basis used to apportion the refund amounts among those customers.[27] The Commission believes that this approach provides the Commission sufficient information to track the refund process without unduly interfering with the traditional jurisdiction of the States over retail sales of natural gas.

V. Refunds at the State Level

Although the Commission stresses its intention that refunds should reach the ultimate consumer, the interim rule only requires refunds as far as intrastate pipelines and interstate pipeline's jurisdictional customers.[28]

One commenter argues that the Commission has the authority and should exercise that authority to return refunds, subject to a rule of reason, to the consumers actually overcharged in the same proportion that those customers were overcharged. Another commenter argues that the absence of State rate regulation over the interstate pipelines' direct sale transactions underscores the need for the Commission to ensure that refunds are paid to direct sale end-users. Other commenters argue that, if States are allowed to determine the methods, procedures, and timing of refunds, there are no assurances that the ultimate consumer will benefit. Alternatively, commenters suggest that the Commission strongly advise the States or provide guidance to the States on how intrastate pipelines and LDCs should refund overcharges to the ultimate consumer. In contrast, commenters argue that the Commission lacks jurisdiction to order refunds by LDCs. Other commenters argue that refunds by LDCs are best left to State agencies.

While the commission stresses that these Btu refunds should be passed through to the ultimate consumer, it has decided against establishing specific refund procedures for LDCs to flow through these refunds. States are better attuned to the needs of its consumers and to local market conditions, and are better equipped to establish and monitor the local refund procedures necessary for the different problems facing a particular State. In addition, establishing specific procedures to flow through refunds at the State level would unnecessarily and unreasonably interfere with the traditional jurisdiction of State commissions over retail sales of natural gas, while imposing significant administrative burdens on this Commission. The Commission has also decided not to establish refund procedures for refunding monies to an interstate pipelines' direct sale customers because it believes that these customers have sufficient direct contact with the pipeline to negotiate a refund schedule.

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[26] The authority to require these reports is section 501(a) of the NGPA. *See* n.23, *supra*.

[27] The last report is due 60 days after November 5, 1986. The second report is due by June 17, 1985, which is 45 days, instead of 60 days, from May 3, 1985, because the second report is no longer the final report.

[28] The Process Gas Consumers Group, the American Iron and Steel Institute, the Council of Industrial Boiler Owners, The Brick Institute of America, and Kimberly-Clark Corporation (Docket No. RM84-6-001) requested rehearing. Specifically, they requested that the Commission modify the interim rule, pursuant to the authority delegated in NGPA section 501 and 504, to require that all Btu adjustment refunds be flowed through to end-users in the same proportion that such users were originally overcharged due to the implementation of the "dry" rule. The Commission denies their petition for rehearing for those reasons discussed in the text that follows.

VI. Miscellaneous

A. Section 502(c) Adjustments

Commenters note that while relief from provisions of this refund order is available under section 502(c) of the NGPA, the Commission should not view the theoretical possibility of this relief as a remedy for any special hardships or inequities which could result from this refund order, but rather, should amend the interim rule to remove such hardships or inequities.

The Commission has sought to implement a refund mechanism that will minimize hardships and inequities. However, it recognizes that, given the amount of refunds and the extensive number of buyers and sellers involved in the refund process, hardships or inequities may occur. The Commission believes that section 502(c) will provide an appropriate mechanism to remedy any hardships and inequities, which may occur, on a case-by-case basis. Although the Commission may not use section 502(c) to change statutory requirements, such as the maximum lawful prices under the NGPA or to reduce the Btu refund amount owed, parties may seek relief under section 502(c) from provisions of these refund procedures which they believe cause special hardships, inequities, or an unfair distribution of burdens. However, the Commission expects few applications of this type and is not inclined to grant them unless the applicant's claim for relief is supported by compelling reasons.

B. Identity of First Seller

One commenter suggests that whenever there are two consecutive "first sales" or an accounting for gas for payment purposes after processing, any Btu refunds should be based on the *second* "first sale." Specifically, the one delivering the residue gas at the tailgate of the plant to the pipeline-purchaser should be responsible for the refunds because of the difficulty of tracing revenues from the wellhead. Another commenter asserts that the rule should be clarified to apply to every kind of "first sale."

The Commission recognizes that in some instances there may be a string of consecutive first sales because of gathering, processing, and transportation agreements. In these situations, the Commission has decided that the refund obligation applies to every kind of first sale, as a first sale is defined under the NGPA,[29] since the Commission has jurisdiction over all first sellers and it would be unfair to hold one first seller responsible for the refund from a string of first sales. Hence, if the seller in a first sale receives revenues in excess of the product of the applicable maximum lawful price under the NGPA and the quantity of MMBtu's determined on the basis of the wet rule, a refund is owed.

VII. Paperwork Reduction Act

The refund reports required under Ordering Paragraph Nos. E, F, and G and §§ 154.38(h)(3)(vi), (vii), and (viii) are information collection requirements that are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and OMB's regulations, 5 CFR Part 1320 F(1984). Comments on these provisions should be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission). Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Attention: Joseph Hartsoe, (202) 357–8033).

VIII. Effective Date

The Commission incorporates the reasoning and findings in the interim rule that good cause exists under the Administrative Procedure Act (APA), 5 U.S.C. 553(b) (1982), for finding that a notice of proposed rulemaking is unnecessary, impracticable and contrary to the public interest. Because this rule adopts and modifies the interim rule and the interim rule is already in effect, the Commission is concerned that, if this final rule were not effective upon issuance, first sellers and pipelines might apply the interim rule in a manner inconsistent with this final rule before this rule becomes effective. Therefore, the Commission finds that good cause exists under the APA, 5 U.S.C. 553(d) (1982), to make this rule effective upon issuance, except for the requirements to file 6-month, 12-month, and 30-month refund reports. These refund reports are information collection requirements under the Paperwork Reduction Act and are subject to OMB approval. Accordingly, the refund report requirements (set forth in Ordering Paragraph Nos. E, F, and G and §§ 154.38(h)(3) (vi), (vii) and (viii) of this rule) will become effective December 1, 1984. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date of the refund reporting requirements.

In consideration of the foregoing, The Commission Orders:

(A) Any first seller that collected revenues in excess of the product of (a) the applicable maximum lawful price established by the NGPA, and (b) the quantities of MMBtu's determined on the basis of § 270.204, shall refund any such excess revenues. This refund shall be paid in full by November 5, 1984, unless the first seller is a small first seller, *i.e.*, a first seller that sold a total of ten million Mcf or less of gas, in both the interstate and intrastate markets, during 1983. A small first seller shall pay the refunds in full by May 3, 1985, but must notify in writing any pipeline to which he owes refunds that he is a small first seller by November 5, 1984, to qualify for this extension. To the extent that revenues for gas sold in a first sale under the NGPA are less than or equal to the level of revenues based on the product of (a) and (b), and are contractually authorized, no refunds are due.

(B) First sellers may defer payment of that portion of the Btu refund attributable to royalty interest owners until the first seller receives payment from the royalty interest owner or November 5, 1986, whichever occurs first. Those first sellers that defer payment of that portion of the Btu refund attributable to royalty interest owners must notify pipelines that some royalty payments are deferred before the end of the applicable 6- or 12-month refund period.

(C) The parties to the first sale transaction may choose the method of payment of this refund except that pipelines and first sellers may not offset Btu refunds and production-related costs permitted under section 110 of the NGPA. Those pipelines that have already begun to collect refunds by using billing adjustments without the consent of the seller can continue this method of payment only if the seller agrees. If the parties cannot agree, payment shall be made in a lump-sum cash payment.

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[29] *See* section 2(21) of the NGPA, 15 U.S.C. 3301(21) (1982).

(D) Interest shall be calculated in accordance with § 154.102 (c) and (d) of the Commission's regulations for refunds except that the interest obligation for money paid into escrow is that interest which accrued in the escrow account on the amount required to be refunded.

(E) By December 18, 1984, intrastate and interstate pipelines shall file a refund report with the Commission detailing (1) those first sellers that have made refunds, and the refund amounts that have been received by the pipeline by separately stating the principal and interest received from each first seller; and (2) those first sellers that have not made refunds, and the refund amounts that have not been received by the pipeline by separately stating the principal and interest due from each first seller, and the reasons for such nonreceipt. Of those first sellers who are small first sellers, as defined in this order, only those who have paid the refund amounts in full need to be identified. Intrastate pipelines shall also file a copy of the report with the State regulatory agency having jurisdiction over such pipeline.

(F) By June 17, 1985, intrastate and interstate pipelines shall file a refund report with the Commission detailing (1) those small first sellers not previously identified that have made refunds, and the refund amounts that have been received by the pipeline by separately stating the principal and interest received from each small first seller, and (2) those small first sellers that have not made refunds, and the refund amounts that have not been received by the pipeline by separately stating the principal and interest due from each small first seller, and the reasons for such nonreceipt. Additionally, any payments received since the date of the pipeline's last report from other than small first sellers shall be included in this report by providing the information required in paragraph (E) above. Intrastate pipelines shall also file a copy of this report with the State regulatory agency having jurisdiction over such pipeline.

(G) By January 5, 1987, intrastate and interstate pipelines shall file a refund report with the Commission detailing (1) those first sellers that have made refunds after May 3, 1985, and the refund amounts received by the pipeline by separately stating the principal and interest received from each first seller, and (2) those first sellers that have not made refunds, the refund amounts that have not been received by the pipeline by separately stating the principal and interest due from each first seller, and the reason for such nonreceipt. In addition, intrastate pipelines shall file a copy of this report with the State regulatory agency having jurisdiction over such pipeline.

List of Subjects in 18 CFR Part 154

Natural gas.

(H) The regulations in Part 154, Subchapter E, Chapter I, Title 18, Code of Federal Regulations are amended as set forth below.

By the Commission. Commissioner Richard dissented in part, with a separate statement to be issued later.

Kenneth F. Plumb,
Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

2. Section 154.38(h) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(h) *Pipeline recovery of the Btu Measurement Adjustments.*

(1) A pipeline which receives Btu refunds shall make refunds in accordance with the provisions of this paragraph, notwithstanding any pipeline tariff provisions to the contrary.

(2) For the purposes of this paragraph, "Btu refunds" means those monies held in escrow accounts and those monies received by the pipeline which are attributable to refunds and interest accrued thereon due in accordance with the August 9, 1983, Court of Appeals decision in *Interstate Natural Gas Association of America* v. *Federal Energy Regulatory Commission*, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984).

(3) A pipeline subject to paragraph (h)(1) shall refund Btu refunds to those jurisdictional customers actually overcharged from December 1, 1978, in accordance with the following:

(i) The pipeline shall first determine the portion of the aggregate amount of the Btu refunds which are due its jurisdictional customers actually overcharged based on the proportion of the total Btu refunds originally paid by those jurisdictional customers;

(ii) The pipeline shall then refund the amount determined in paragraph (h)(3)(i) to each jurisdictional customer actually overcharged in the same proportion that each jurisdictional customer originally paid the Btu refund amounts;

(iii) This refund shall be made in a lump-sum payment to each jurisdictional customer;

(iv) Interest shall be computed in accordance with § 154.67(c) of the Commission's regulations from the date of receipt from a first seller or supplying pipeline to the date the amount is disbursed to its jurisdictional customers, if a pipeline fails to refund the jurisdictional portion of the Btu refunds within 15 days after receipt from a first seller or supplying pipeline;

(v) The pipeline may defer the payment of the jurisdictional portion of any Btu refunds refunded to it until it has accumulated such Btu refunds which cumulatively equal one mill per Mcf (or Dkt) for the pipeline's annual sales during calendar year 1983, at which point the pipeline shall refund the jurisdictional portion of all Btu refunds received in accordance with paragraphs (h)(3) (i), (ii), and (iii) of this section. However, in no event may the pipeline hold such Btu refunds for a period greater than the earlier of 120 days from the date of receipt or 30 days after November 5, 1986. Such deferral shall be subject to the interest requirement in paragraph (h)(3)(iv) of this section;

(vi) The pipeline shall submit to the Commission no later than December 18, 1984, a refund report showing, for each source from which Btu refunds are obtained, the following information:

(A) The total amount of the Btu refunds the pipeline received;

(B) The total amount of interest the pipeline received;

(C) The date(s) the pipeline received the refund(s);

(D) The total amount the pipeline paid to each of its jurisdictional customers;

(E) The total amount of interest the pipeline paid to each of its jurisdictional customers;

(F) The date(s) of the payment(s);

(G) The basis used to determine the payment(s) for each of the pipeline's jurisdictional customers.

(vii) The pipeline shall submit, no later than June 17, 1985, a refund report describing, for each source from which Btu refunds are obtained, those refunds received or paid (including deferred amounts paid) since filing the report under paragraph (h)(3)(vi) of this section. For those refunds subject to this paragraph, this report should show all the information enumerated in paragraph (h)(3)(vi).

(viii) The pipeline shall submit, no later than January 5, 1987, a final refund report describing, for each source from which Btu refunds are obtained, those refunds received or paid (including deferred amounts paid) since filing the reports under paragraphs (h)(3) (vi) and (vii) of this section. For those refunds subject to this paragraph, this report should show all the information enumerated in paragraph (h)(3)(vi).

3. In § 154.102, paragraph (d) as added in the interim rule published May 7, 1984 (49 FR 19299) is made final and republished to read as follows:

§ 154.102 Suspended changes in rate schedules; motions to make effective at end of period of suspension; procedure.

* * * * *

(d) No interest is required to be paid on any portion of a refund which represents payments of royalties or taxes to Federal or State governmental authorities, except to the extent that such authorities pay interest to the first seller when refunding overpayments of royalties or taxes.

[FR Doc. 84-25408 Filed 9-25-84; 8:45 am]

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18 CFR Part 282

[Docket No. RM 79-14]

Order Prescribing Natural Gas Incremental Pricing Thresholds

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978 (Docket No. RM79-14). Order of the Director, OPPR.

Issued: September 21, 1984.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threashold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost theshold prices for the month of October 1984 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1984 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October
Calendar Year 1984										
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352
NGPA section 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797
NGPA section 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428
130% of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	7.230

[FR Doc. 84-25556 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 375

[Docket No. RM84-18-000]

Delegation to the Director of the Office of Hydropower Licensing and the Director of the Office of Electric Power Regulation

Issued: September 6, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: On July 13, 1984, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM84-18-000 concerning delegations to the director of the Office of Hydropower Licensing and the Director of the Office of Electric Power Regulation. This notice corrects an error in the codification of that rule, which appeared in the **Federal Register** of Friday, July 20, 1984, 49 FR 29369.

EFFECTIVE DATE: July 13, 1984.

FOR FURTHER INFORMATION CONTACT: Fred A. Wolgel, Rulemaking and Legislative Analysis Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission issued a final rule in Docket No. RM84-18-000 on July 13, 1984, 49 FR 29369 (July 20, 1984), that erroneously placed subsection (w) under § 375.314 instead of under § 375.308. In addition, a typographical omission occurred in the text of § 375.308(r).

Therefore, the following corrections are made in FR Doc. 84-19164 appearing on 29369 in the **Federal Register** issue of July 20, 1984:

1. In § 375.308(r), the words "small power production and" are inserted immediately following the words "qualifying status for".

2. In § 375.314, paragraph (w) is redesignated as new paragraph (u) in § 375.308.

3. In § 375.314, paragraphs (x) through (ff) are redesignated as paragraphs (w) through (ee).

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25426 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 177 and 178

[Docket No. 84F-0049]

Indirect Food Additives; Polymers; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydrogen peroxide in the sterilization of food contact surfaces prepared from ionomeric resins, ethylene-vinyl acetate copolymers, and certain polyethylene phthalate polymers. FDA is also amending the food additive regulations to provide for the safe use of the potassium partial salt of the ionomeric resins. This action responds to a petition filed by E. I. duPont de Nemours & Co.

DATES: Effective September 26, 1984; objections by October 26, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a noticed published in the **Federal Register** of April 26, 1984 (49 FR 18044), FDA announced that a petition (FAP 4B3783) had been filed by E. I. duPont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that the food additive regulations be amended in 21 CFR 178.1005 to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from ionomeric resins complying with 21 CFR 177.1330, ethylene-vinyl acetate copolymers complying with 21 CFR 177.1350, and certain polyethylene phthalate polymers complying with 21 CFR 177.1630, and to amend 21 CFR 177.1330 to provide for the safe use of the potassium partial salt of the ionomeric resins in addition to the ammonium, calcium, magnesium, sodium, and/or zinc partial salts.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects

21 CFR Part 177

Food additives, Polymeric food packaging.

21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Parts 177 and 178 are amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. Part 177 is amended in § 177.1330 by revising the introductory paragraph to include the potassium partial salt of the ionomeric resins to read as follows:

§ 177.1330 Ionomeric resins.

Ionomeric resins manufactured from either ethylene-methacrylic acid copolymers (and/or their ammonium, calcium, magnesium, potassium, sodium, and/or zinc partial salts), ethylene-methacrylic acid-vinyl acetate copolymers (and/or their ammonium, calcium, magnesium, potassium, sodium, and/or zinc partial salts,), or methacrylic acid polymers with ethylene and isobutyl acrylate (and/or their potassium, sodium and/or zinc partial salts) may be safely used as articles or components of articles intended for use in contact with food, in accordance with the following prescribed conditions:

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

2. Part 178 is amended in § 178.1005 by revising the introductory paragraph and paragraph (e) to read as follows:

§ 178.1005 Hydrogen peroxide solution.

Hydrogen peroxide solution identified in this section may be safely used to sterilize polymeric food-contact surfaces identified in paragraph (e)(1) of this section.

* * * * *

(e) *Conditions of use.* Hydrogen peroxide solution identified in and complying with the specifications in this section may be used by itself or in combination with other processes to treat food-contact surfaces prepared from ionomeric resins complying with § 177.1330 of this chapter, ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter, olefin polymers complying with § 177.1520 of this chapter, and polyethylene phthalate polymers complying with § 177.1630 of this chapter (excluding polymers described in § 177.1630(c)) to attain commercial sterility at least equivalent to that attainable by thermal processing for metal containers as provided for in Part 113 of this chapter.

(2) The packaging materials identified in paragraph (e)(1) of this section may be used for packaging all commercially sterile foods except that the olefin polymers may be used in articles for packaging foods only of the types identified in § 176.170(c) of this chapter, Table 1, under Categories I, II, III, IV-B, V, and VI.

(3) Processed foods packaged in the materials identified in paragraph (e)(1) of this section shall conform with Parts 108, 110, 113, and 114 of this chapter as applicable.

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 26, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective September 26, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food and Safety and Applied Nutrition.

[FR Doc. 84-25433 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin, Roxarsone, and Virginiamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplement to a new animal drug application (NADA) filed by SmithKline Animal Health Products, Division of SmithKline Beckman Corp., providing for an increased level of virginiamycin in the preparation of complete broiler chicken feeds containing combinations of monensin, roxarsone, and virginiamycin.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, has submitted a supplement to its approved NADA 120-724. The NADA provides for the use of a combination of three individually approved premixes for the preparation of complete broiler chicken feeds containing monensin, roxarsone, and virginiamycin. The approved premixes used for the preparation of the complete broiler chicken feeds are Coban® (monensin sodium), 3-Nitro (roxarsone), and Stafac® (virginiamycin). The supplement provides for an increased level (i.e., range) of virginiamycin. The application is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.355 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.355 *Monensin* in paragraph (f)(1)(xx) by revising the number "10" to read "15".

Effective date. September 26, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: September 14, 1984.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-25439 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Custom Feed Services Corp., providing for safe and effective use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Custom Feed Services Corp., 2100 North 13th St., Norfolk, NE 68701, is sponsor of NADA 137-484 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are for making complete swine feeds used for aid in prevention of migration and extablishment, and for removal and control, of large roundworm (*Ascaris suum*) infections; and for aid in prevention of establishment, and for removal and control, of nodular worm (*Oesophagostomum* spp.) infections.

The NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers

Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.485 is amended by adding new paragraph (a)(22) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.485 Pyrantel tartrate.

(a) * * *

(22) To 017473: 9.6 and 19.2 grams per pound, paragraph (e) (1) through (3) of this section.

* * * * *

Effective date. September 26, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: September 14, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-25441 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 881

[Docket No. R-84-981; FR-1599]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the Federal Register on Thursday, May 10, 1984 (49 FR 19925) the implemented changes made by the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Amendments of 1981 relating to the establishment of income limits for eligibility, definition of income, calculation of rent, and reexamination of income in the Section 8 Housing Assistance Payments Programs and related programs. Another correction document was published in the Federal Register on Friday, June 29, 1984 (49 FR 26718). This correction is necessary to insert three words that were omitted from the rule as previously published.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-5654. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Accordingly, the Department is correcting 24 CFR Part 881, as published at 49 FR 19925, as follows:

On page 19944, column three, in the sixth line of § 881.603(c)(2), the words "income between regularly" are added after the word "in".

Dated: September 19, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-25419 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. R-84-1154; FR-1904]

Section 8 Housing Assistance Payment Program: Fair Market Rent Schedules for Existing Housing and Moderate Rehabilitation; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule; correction.

SUMMARY: On July 5, 1984, HUD published interim Fair Market Rent Schedules for its Existing Housing and Moderate Rehabilitation Programs, including space rentals by owners of manufactured homes. (see 49 FR 27658) This interim rule contained two errors, which today's document corrects.

EFFECTIVE DATE: October 1, 1984, retroactive to March 29, 1984 for purposes of calculating the Public Housing Agency earned administrative fee.

FOR FURTHER INFORMATION CONTACT: Ellis V. St. Clair, Economic and Market Analysis Division, Office of Economic Affairs. Telephone (202) 755-5590. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In the interim rule published on July 5, 1984, one jurisdiction (Columbia, MD) was inadvertently omitted and one jurisdiction (Hockley County, TX), contained rents that were lower than they should have been because of a calculating error.

Accordingly, the Department makes the following corrections to FR Doc. 84-17696 appearing on p. 27658 in the issue of July 5, 1984:

1. On page 27663, under Region—3, Baltimore, Maryland Office, add to the end of the list the following entry:

	0 Bedrooms	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms
Columbia, (U)	379	457	531	654	724

2. On page 27681, under Region—6, Lubbock, Texas Office, the entry for Hockley County is corrected to read as follows:

	0 Bedrooms	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms
Hockley County, TX	206	254	300	371	414

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 8, U.S. Housing Act of 1937 (42 U.S.C. 1437(f)).

Dated: September 20, 1984.

Donald A. Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 84-25425 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. N-84-1122; FR 1808]

Indian Preference Statement of Policy

AGENCY: Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Indian Preference Statement of Policy.

SUMMARY: This statement of policy provides guidance concerning the Department's implementation of its regulations governing the preferential employment and training of Indians and the preferential use of Indian contractors and subcontractor on HUD-funded Indian housing projects.

EFFECTIVE DATE: This statement of policy is effective on September 26, 1984. The information collection requirements contained in the statement have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Cyrus Toll, Office of Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-2989. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department is currently developing a proposed rule implementing Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Act) for the Department's Indian housing program. After publication of the proposed rule in the **Federal Register** any public comments received will be considered in developing a final rule which will also be published in the **Federal Register**. The final rule, when effective, will supplant the Department's current Indian housing Indian preference regulations at 24 CFR 905.106, 905.204, and 905.309. Pending issuance of these new regulations, the Department has decided to publish this statement of policy on the implementation of Indian preference in the Indian housing program.

The purpose of this statement is to provide guidance to Indian Housing Authorities (IHAs) and other persons concerned with the implementation of the Department's current Indian preference rules. The statement is intended to respond to questions that have been raised about the implementation of the Department's Indian housing Indian preference requirements, as well as to ensure that Indian preference is implemented uniformly and thoroughly within the Indian housing program.

The Department believes that it is crucial that section 7(b) be implemented in the context of: (1) The purpose of the Indian housing program to provide as many decent, safe, and sanitary housing units as possible, within budget limitations, for families who are ill-housed; and, (2) the self-determination principles of the Act. The policy guidance provided herein is consistent with those principles and with the Department's existing regulations.

This statement clarifies options for IHAs regarding the methods they may use to provide preference. Methods other than those described in the regulations must be recommended for approval by the appropriate HUD Indian Field Office and submitted to the Assistant Secretary for Public and Indian Housing for review. If no adverse action is taken by the Assistant Secretary within 10 working days of receipt, the proposed method is automatically approved and can be implemented. Some options may require a regulatory waiver in accordance with 24 CFR 999.101 as a part of HUD approval. Waivers of regulations require a finding of good cause, must not violate statutory requirements, and may only be granted on a case-by-case basis by the Assistant Secretary for Public and Indian Housing. An IHA could request approval of a method for multiple uses (e.g., to use a given method in the award of the prime construction contract on more than one separate and identifiable projects), but an approved method must be resubmitted for HUD approval if an IHA wishes to use it with respect to a project for which it was not previously approved. The Department's current regulations regarding Indian preference are cited below for ready reference. Following each excerpt are specific policy statements intended to provide guidance concerning appropriate action consistent with the quoted language.

24 CFR 905.204(a)

> (a) Preference in the Award of Contracts. (1) An IHA shall to the greatest extent feasible under this Part give preference in the award of contracts in connection with a Project to Indian Organizations and Indian-owned Economic Enterprises. The following method of providing preference may be used with HUD approval: (i) Advertise for bids or proposals limited to qualified Indian Organizations and Indian-owned Economic Enterprises, or (ii) Use a two-stage procedure: Stage 1. Publish a prior invitation for Indian-owned Economic Enterprises to submit a Statement of Intent to respond to such a limited advertisement when published, and to furnish with the Statement of Intent or within a specified period of time, evidence sufficient to establish their qualifications as an Indian Oganization or an Indian-owned Economic Enterprise in accordance with paragraph (a)(3) of this section. Stage 2. If responses are received from one or more Indian enterprises who are found to be qualified, advertise for bids or proposals limited to qualified Indian Organizations and Indian-owned Economic Enterprises. (2) If an IHA has proceeded in accordance with paragraphs (a)(1)(i) or (a)(1)(ii) of this section and has failed to receive any Statement of Intent or approvable bid or proposal from one or more qualified Indian enterprises, the IHA may advertise for bids or proposals without limiting the advertisement to Indian Organizations and Indian-owned Economic Enterprises and as in all cases shall accept the lowest. (3) A prospective contractor seeking to qualify as an Indian Organization or Indian-owned Enterprise shall submit with or prior to submission of his bid or proposal: (i) Evidence showing fully the extent of Indian ownership and interest. (ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; material or equipment supply arrangements; and management, salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest. (iii) Evidence sufficient to demonstrate to the satisfaction of the IHA and HUD that the prospective contractor has the technical, administrative and financial capability to perform contract work of the size and type involved and within the time provided under the proposed contract (see § 905.211(c)).

(1) Questions have been raised concerning the extent of applicability of the Indian preference requirements; e.g., whether professional service contracts awarded by IHAs are subject to the preference requirements. The Act requires that Indian preference be provided in the award of contracts and subcontracts. Accordingly, the regulatory requirements for providing preference to the greatest extent feasible apply to all contracts and subcontracts in connection with a project, including, but not limited to, contracts for construction, architectural and engineering services, legal services, and materials and supplies. The provision of preference is not a local option.

(2) The methods of providing preference in the award of contracts delineated in 24 CFR 905.204(a)(1)(i), 905.204(a)(1)(ii), or 905.204(a)(2) are appropriate for use for any contract executed by an IHA (e.g., construction, professional services, consultant, materials and supplies). In addition, an IHA could also require that these methods be used by contractors in the award of subcontracts.

(3) Sections 905.204(a)(1) and 905.204(a)(2) describe methods of providing preference in the award of contracts. However, these methods are not the only approvable means of providing a preference. IHAs may use another method of providing preference in the award of Indian housing contracts (see examples A and B below), and also may require a contractor or subcontractor to use such method, provided that the alternate method has been approved by HUD before its use. In determining whether to approve an alternate method, HUD will consider whether the proposed method provides preference to the "greatest extent feasible". In addition, the IHA must first

submit the proposed method to the appropriate unit of Indian local government (e.g., the tribe, the community, the nation, the village) for review and comment and, in reaching its decision, HUD shall consider that body's comments.

Example A: An IHA could propose to require "at least two" Statements of Intent, approvable bids, or approvable proposals, in lieu of the "one or more" provision of §§ 905.204(a)(1)(ii) and 905.204(a)(2). Presumably, such a change would be made in an effort to encourage greater competition. However, whatever the rationale, the IHA's proposed change must be accompanied by an explanation by the IHA of why the use of the "one or more" requirement would be infeasible.

Example B: An IHA could provide for open competition (i.e., not restricting bids or proposals only to Indian organizations and Indian-owned economic enterprises). In this case, Indian respondents would be provided preference in the determination of contract award. For example, a conventional bid contract determination of the lowest responsible bid could provide a price differential for Indian bidders, or a turnkey proposal evaluation could provide extra points for proposals submitted by Indian developers and for the use of Indian subcontractors and Indian employees.

(4) Questions have been raised about whether enterprises need only be 51 percent or more Indian-owned to receive preference, or whether they must also be substantially Indian operated and controlled. The Indian preference requirement is intended to benefit bona fide Indian-owned enterprises. HUD encourages IHAs to establish criteria upon which to determine whether an Indian-owned enterprise bidder or proposer is in fact a bona fide Indian-owned contractor. Section 905.204(a)(3)(ii) sets out several examples of the types of evidence that Indian-owned enterprises must submit to establish their "Indian character". An IHA could require an enterprise seeking Indian preference to establish, to the satisfaction of the IHA, not only that it is 51 percent or more Indian-owned, but also evidence of operation and control showing a substantial Indian involvement in the day-to-day management and business activities of the enterprise, and (as with all enterprises seeking contracts with an IHA) its technical, administrative, and financial capability to perform contract work of the size and type involved, within the time provided under the proposed contract. As IHAs can establish reasonable criteria for evaluating contractors' ability to perform the work and for rejecting those that are not qualified, they can establish reasonable criteria for evaluating contractors' Indian participation, rejecting those who do not qualify for Indian preference.

24 CFR 905.204(b)

(b) Required Contract Clause. The IHA shall incorporate the following clause (referred to as a section 7(b) clause) in each contract awarded in connection with a Project:

(1) The work to be performed under this contract is subject to section 7(b) of the Indian-Self Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preferences and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(2) The parties to this contract shall comply with the provisions of said section 7(b) and all HUD requirements pursuant thereto.

(3) The contractor shall, in connection with this contract, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preference and opportunities for training and employment to Indians.

(4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the IHA, take appropriate action pursuant to the subcontract upon a finding by the IHA or HUD that the subcontractor is in violation of the section 7(b) clause.

(1) An IHA could require a statement from all prospective contractors or developers concerning how they will implement the requirements for Indian preference in subcontracting, employment, and training. On a conventional bid contract the IHA could reject any bid that fails to include such a statement, or that fails to provide a statement determined by the IHA to be adequate. On a turnkey solicitation the IHA could reject proposals which fail to provide an adequate statement or the IHA could include the quality of the statement and the merit of the statement's provisions in its overall evaluation of the proposal. In any case, the IHA must describe, in its bid or proposal specifications, what provisions it expects the statement to include, and the factors to be used in judging the adequacy of the statement. An IHA could also require that such statements be provided by subcontractors to their contractors, and an IHA may require a contractor to reject any bid or proposal by a subcontractor that fails to include an adequate statement, as specified by the IHA in the bid or proposal specifications.

In the proposed rule on Indian preference now under development by the Department, further procedural direction will be provided concerning the steps to be taken to ensure that Indian preference is provided in contracting, subcontracting, employment, and training. In the interim, the Department strongly urges each IHA to develop procedures to assure that the preferences will be provided, and that such mechanisms are spelled out in the bid or proposal solicitation and the contract documents.

(2) The Indian preference law is not, in itself, a directive requiring subcontracting, employment, or training but instead requires that, when such activity is necessary as a part of developing or managing HUD-assisted Indian housing, Indian preference be provided.

(3) To ensure that section 7(b) of the Act is implemented in the award of subcontracts, an IHA could provide lists of pre-qualified Indian-owned economic enterprises and Indian organizations, by specialty (e.g., plumbing, electrical, foundations, supply), which should be given consideration by contractors and subcontractors in meeting their responsibilities for providing preference in their award of subcontracts. The IHA may wish to consider adopting a requirement that, in each specialty area listed, one of the listed entities (or some other Indian entity) be selected by the contractor, provided that at least one Indian entity is capable and has proposed to do the job for a reasonable price as previously defined by the IHA (e.g., not more than five percent greater than the lowest price proposed by a non-Indian entity for the same work).

(4) To ensure that the provisions of section 7(b) are implemented with regard to employment, an IHA could require contractors and subcontractors to hire Indians exclusively in other than "core crew" positions as defined by the IHA, unless, for any given position, the contractor or subcontractor can show that he or she notified the relevant tribe or tribes of the position and otherwise adequately advertised the position, and that no qualified Indians would accept the job.

An example of a definition of "core crew" that an IHA could use is:

(a) An individual who is a paid employee of the contractor or subcontractor at the time the project is bid, or

(b) An individual: (1) who is not currently employed by the contractor or subcontractor but who is regularly employed by the contractor or subcontractor when work is available, and (2) who is employed in a supervisory or other key skilled position.

If an IHA chooses to use a core crew concept, the IHA could require the contractor and subcontractors to list all positions to be included in the core crew in the statement submitted by the contractor or subcontractor (see paragraph 1 of this section) with justification for each of the positions listed for inclusion in the core crew.

24 CFR 905.204(c)

(c) Additional Indian Preference Requirements. An IHA may, with HUD approval, provide for Indian preference requirements in addition to those under § 905.204(a) and the section 7(b) clause requirement under § 905.204(b), as conditions for the award of, or in the terms of, any contract in connection with a Project if the additional Indian preference requirements are consistent with the objectives of the section 7(b) clause. Such Indian preference requirements or (sic) in addition to § 905.204 (a) and (b) may not result in a higher cost or greater risk of non-performance or longer period of performance.

If an IHA has proposed an Indian preference method that provides for additional Indian preference and the method has the potential for increasing cost, risk of non-performance, or period of performance, a waiver of § 905.204(c) must be obtained before the method may be approved and implemented. However, Indian preference methods that are either approved in lieu of the methods listed in the regulation at §§ 905.204(a)(1) or developed to ensure enforcement of the regulatory requirements at 905.204(a)(3) and § 905.204(b) are not considered to be "additional Indian preference requirements" and are not covered by § 905.204(c). Further, Indian preference requirements imposed by an appropriate entity other than an IHA are not subject to the provisions of § 905.204(c).

24 CFR 905.204(d)

(d) Inclusion of All Preference Requirements in Information for Prospective Contractors. With respect to any contract, the information for prospective contractors shall set forth all Indian preference requirements affecting award of, or to be included in the terms of the contract.

All Indian preference-related provisions that will bear upon the award of a contract must be set forth in the bid or proposal specifications. All requirements for the provision of Indian preference with which a contractor or subcontractor will be expected to comply should be set forth in the bid or proposal specifications and in the terms of the contract. An IHA should not impose new or additional requirements (Indian preference or other) which have not been communicated to contractors or developers before the closing date for submission of their bids or proposals. It is advisable for the IHA to cite any applicable local laws in the appropriate solicitation documents; however, the contractor has the ultimate reponsibility for determining and adhering to local requirements (including, but not limited to, any Indian preference requirements) and should contact the appropriate unit of local government directly as to those requirements.

24 CFR 905.309

The provisions of § 905.204 shall apply to contracts in connection with the operation of a Project.

The Indian preference provisions contained in this policy statement shall apply to contracts in connection with the operation of the Indian housing units which are in management.

Other Indian Preference-Related Matters

(1) An IHA may contract or otherwise agree to arrange for its Indian preference oversight responsibilities for the Indian housing program to be handled by an agency of the tribe or other entity. However, final decision making responsibilities are retained by the IHA. If an IHA chooses to assign its Indian perference oversight responsibilities, the IHA shall remain fully responsible for assuring compliance with its Indian preference obligations under the law, the regulations, and the Annual Contributions Contract.

(2) HUD will recognize the applicability of Indian preference requirements, other than those imposed under part 905, which are proposed for use in the HUD-assisted Indian housing program. To the extent that these requirements are properly imposed by an appropriate entity, other than an IHA, and are consistent with Federal law, HUD regulations, and the ACC, HUD will not intervene or disapprove the applicability of such requirements, except in exceptional circumstances as determined by the Assistant Secretary for Public and Indian Housing.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: September 18, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 84-25421 Filed 9-25-84, 8:45 am]

BILLING CODE 4210-33-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-2680-6]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice approves two minor revisions to the air pollution requirements to the South Dakota State Implementation Plan (SIP) which were submitted by the Governor on May 4, 1984. This includes a requirement for significant new sources of lead to meet the Ambient Air Quality Standard for lead and the elimination of the South Dakota ambient hydrocarbon standard. The lead part of this SIP in conjunction with other existing lead monitoring and source data requirements constitutes a complete lead regulation.

DATES: This action will be effective on November 26, 1984 unless notice is received by October 26, 1984 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

The Office of the Federal Register, 110 L Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: William Bernardo, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844-3763.

SUPPLEMENTARY INFORMATION: On May 4, 1984, the Governor of South Dakota submitted a SIP that includes a requirement for significant new sources of lead to meet the Ambient Air Quality Standard for lead prior to receiving a construction permit, and the elimination of the ambient hydrocarbon standard. The lead part of this SIP in conjunction with other existing lead monitoring and source data requirements constitutes a complete State Implementation Plan for lead.

The main change in the South Dakota Air Quality regulations insures that all new sources that emit lead will be required to predict the maximum air quality impact and if necessary control the emissions to insure the lead standard will not be violated. This new regulation in combination with the existing lead monitoring requirements and the certification that no existing lead sources exist or are planned to be built in South Dakota fulfill the requirements of a lead SIP. Upon reviewing the existing lead monitoring data, no violations of the standard were found. EPA concurs with the State of South Dakota action and finds that the submittal meets the requirement for a lead plan.

In addition, the State of South Dakota has eliminated the hydrocarbon Ambient Air Quality Standard and the methods for monitoring hydrocarbons. The hydrocarbon standard was previously dropped by EPA because there are no health effects from hydrocarbons at the level of the standard. Hydrocarbons have been used as an indicator for ozone, for which the standard is retained.

The public is advised that this action will be effective November 26, 1984. However, if we receive written notice October 26, 1984 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw this final action and another will begin a new rulemaking by announcing a proposal of this action and establishing a comment period.

Under Section 307(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from date of publication. This action may not be challenged later in proceedings to enforce its requirements (See Sec. 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference.

Dated: September 19, 1984.

This rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of South Dakota was approved by the Director of the Federal Register on July 1, 1984.

PART 52—[AMENDED]

Title 40 CFR Part 52 of the Code of Federal Regulation is amended as follows:

Subpart QQ—South Dakota

1. In Section 52.2170 paragraph (c)(10) is added as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(10) On May 4, 1984, the Governor submitted a plan revision for lead and repealed the hydrocarbon standard.

[FR Doc. 84-25500 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-6-FRL-2681-1]

State of Arkansas; Designation Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve the State of Arkansas Department of Pollution Control and Ecology (ADPCE) May 3, 1984, request to change Pulaski County's existing non-attainment designation for ozone to attainment. The revision was submitted in order to satisfy the requirements of Section 107 of the Clean Air Act (CAA) and 40 CFR 50.9.

EFFECTIVE DATE: This action is effective on November 26, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to EPA Region 6, Air Branch (address below). Copies of the State's submittal may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270
U.S. Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M. Street, SW., Washington, D.C. 20460
The Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, D.C. 20460
Arkansas Department of Pollution Control and Ecology, Air Division, 8001 National Drive, Little Rock, Arkansas 72209

FOR FURTHER INFORMATION CONTACT: Jill Lyons, State Implementation Plan Section, Air and Waste Management Division, EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-9832.

SUPPLEMENTARY INFORMATION: On May 3, 1984, the ADPCE submitted a State Implementation Plan revision requesting redesignation of Pulaski County to attainment for ozone. EPA developed an evaluation report[1] based on conformance with criteria from the Clean Air Act, as amended, Section 107(d)(5); 40 CFR 50.9, National primary and secondary ambient air quality standards for ozone; and, April 21, 1983 Policy Memorandum—Section 107 Designation Policy Summary. This evaluation report is available for inspection during normal business hours at the EPA Region 6 Office and the other addresses listed above.

A county may be redesignated to attainment if the following three conditions have been met: (1) In eight (8) consecutive quarters, the ambient ozone standard has not been exceeded, (2) at least 75% data capture has been achieved, and (3) a control strategy demonstrating attainment has been developed and implemented.

For Pulaski County, the ozone standard has not been exceeded in the eight (8) consecutive quarters for 1982 and 1983. Based on the National Aerometric Data Bank Quick Look Report, there are no exceeded exceedances of the ozone standard for Pulaski County. EPA review verified the data capture figures (greater than 75%) reported by the ADPCE in its redesignation request. The State had also developed and implemented an EPA approved control strategy (Regulations for the Control of Volatile Organic Compounds) which demonstrated attainment of the standard for ozone (August 15, 1980—45 FR 54336).

Since all conditions have been met for the years 1982 and 1983, EPA is redesignating Pulaski County from non-attainment to attainment.

Since this action is considered to be non-controversial and routine, EPA is approving it without prior proposal. The action will become effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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[1] Evaluation Report for Redesignation of Pulaski County, Arkansas to Attainment for Ozone (O_3).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 1984. This action may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice of final rulemaking is issued under the authority of section 107(d) of the Clean Air Act, as amended 42 U.S.C. 7407(d).

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: September 19, 1984.

William D. Ruckelshaus,
Administrator.

PART 81—[AMENDED]

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.304 Arkansas, the attainment status designation table for Oxidant (O_x) is amended by revising the designation for Pulaski County from "does not meet primary standards" to "cannot be classified or better than national standards." The amended portion of the Arkansas O_x Table for Section 81.304 reads as set forth below.

§ 81.304 Arkansas.

ARKANSAS—O_x

Designated Area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 016:		
Pulaski County		X
Remainder of AQCR		X
* * * * *		

(Sec. 107(d) of the Clean Air Act, as amended; (42 U.S.C. 7407(d)}).

[FR Doc. 84-25407 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-2679-5]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations: Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On October 5, 1978, USEPA designated portions of Summit County, Ohio, as not attaining the primary National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO_2) (See 43 FR 45993). Subsequently, the United States Court of Appeals for the Sixth Circuit overturned a portion of USEPA's nonattainment designation of Summit County and remanded it to the Agency for further development of the record. This action, in response to the Court's remand and requests from the State of Ohio and PPG Industries, Inc., designates part of that area of Summit County affected by the remand as attainment for SO_2.

EFFECTIVE DATE: This final rulemaking becomes effective on October 26, 1984.

ADDRESSES: Copies of the redesignation request and the supporting air quality data are available at the following addresses:

U.S Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Debra A. Marcantonio (312) 886-6088.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act (the Act), the Administrator has designated the NAAQS attainment status for each area of every state. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrants.

On October 5, 1978, USEPA designated two primary nonattainment areas for Sulfur Dioxide (SO_2) in Summit County, Ohio. On September 30, 1980, the United States Court of Appeals for the Sixth Circuit overturned USEPA's designation of Summit County and remanded it to the Agency for futher development of the record. [See *PPG Industries, Inc.* v. *Costle, 630 F. 2d 462 (6th Cir. 1980).*] Although the Court accepted USEPA's use of computer dispersion modeling to determine the attainment/nonattainment status of Summit County, it remanded the designation to USEPA because the proper modeling analysis had not been included in the administrative record at the time of USEPA's action. The analysis consisted of remodeling voluntarily undertaken by the Agency to correct data base errors. The remodeling was completed by the time of the final attainment status designations (October 5, 1978), but was not explicitly included in the record for the promulgation.[1] USEPA was satisfied that the modeling analysis supported the original nonattainment status designation and has included the remodeling analysis in the record of today's rulemaking action.

Since the October 5, 1978 attainment status designation, new data have become available that support a revision of the original nonattainment area boundaries. On December 30, 1981, a request to designate part of Summit County as attainment for SO_2, among other things, was submitted to USEPA on behalf of PPG Industries, Inc. (PPG). On May 17, 1982, the Ohio Environmental Protection Agency (OEPA) also requested that USEPA redesignate a portion of Summit County as attainment for SO_2. PPG's request was based on both Section 307(d)(7)(B) of the Act and Section 4(d) of the Administrative Procedure Act (APA). Because Section 307(d)(7)(B) applies only to certain enumerated actions, not including designations under Section

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[1] USEPA's remodeling and hence, the Court's remand, applies only to one area in the center of Summit County. Today's action only concerns the portion of that area surrounding the PPG facility. The other area affected by the Court's remand is being addressed in a separate action. A second area, in the Northwest corner, was designated nonattainment on the basis of USEPA's modeling for the Cleveland metropolitan area. This modeling was included in the original record, and is not directly affected by today's notice.

107(d) of the Act, USEPA treated the request as a petition for revision of a rule under Section 4(d) of the APA [5 U.S.C. 553(e).] [See *Oljato Chapter of the Navajo Tribe* v. *Train*, 515 F.2d 654 (D.C. Cir. 1975), and *WEPCO* v. *Costle*, 715 F.2d 323, 325 (7th Cir. 1983).] On July 7, 1982, USEPA responded to PPG's petition (47 FR 20572) and agreed to reconsider the nonattainment designation for a portion of Summit County. USEPA indicated that it would take action on the designation after it had had an opportunity to review OEPA's redesignation request for Summit County.

USEPA's Redesignation Policy

USEPA's redesignation criteria, which are summarized in an April 21, 1983, memorandum "Section 107 Designation Policy Summary" from Sheldon Meyers, Director Office of Air Quality Planning and Standards and a December 23, 1983, memorandum "Section 107 Questions and Answers" from G.T. Helms, Chief Control Programs Operation's Branch, include the following requirements: (1) The most recent eight consecutive quarters of quality assured representative ambient air quality data plus evidence of an implemented control strategy that has been federally approved or, (2) the most recent four quarters of representative monitoring data showing no violations and a reference modeling analysis showing that the basic SIP control strategy is sound and is responsible for the recent air quality improvement.

USEPA's Review of Monitoring and Modeling Data

Along with its redesignation request, OEPA submitted ambient air quality data collected during 1981 at eight monitoring sites around the PPG Barberton plant. USEPA has determined that the monitoring network provides adequate spatial resolution in the vicinity of PPG, the dominant source in the Barberton area. The network was designed using all available relevant modeling and monitored data, as well as consideration of on-site meteorology. These data indicate that the maximum impacts from PPG are expected to occur in the northeast quadrant within 2 kilometers (km) of the plant. As a result, several monitors were located within this area. Two monitors were sited on a radial extending to the north, two on a radial to the northeast, and three on a radial to the east. The use of multiple monitors within 2 km on radials in multiple directions provides good spatial coverage of the expected high concentraton area. An eighth monitor, located slightly more than 1 km to the southwest, was established primarily for background purposes.

The 1981 data show that the highest second high 24-hour average concentrations, recorded at PPG Pumphouse and Barberton High School, are 325 and 307 micrograms per cubic meter, respectively, reported as midnight-to-midnight "block" averages.[2] All ambient monitoring data and modeling studies indicate that the constraining standard, in this case, is the 24-hour standard. Ambient monitoring data further indicate no violations of either the 3-hour or annual NAAQS.

Because only four quarters of data are available from the eight-station network near the PPG Barberton plant (and no emission reduction data is available), these 1981 data are not sufficient by themselves to support a redesignation to attainment. However, the extensive 1981 monitoring network showed that the higher constraining concentrations occurred at Barberton High School and PPG Pumphouse, sites which have been in operation for at least three years. Thus, the eight-station network, in addition to providing at least four quarters of quality assured data, demonstrate the "worst-case" representativeness at the monitoring sites where more than eight quarters of data are available. In addition, in 1982 and 1983 the Barberton High School monitor recorded no violations of the SO_2 NAAQS.

It should also be noted that in the last twelve months PPH Industries, Inc., has shutdown the majority of its operations at its Barberton plant. This shutdown has resulted in further reduction of SO_2 emissions in the Barberton area.

In addition to the monitoring data, USEPA considered dispersion modeling analyses performed by USEPA and PPG, the latter was submittedd to USEPA by OEPA on August 27, 1982. These analyses demonstrate that the status quo and allowable emission levels will protect the NAAQS. USEPA's review of the modeling analyses is discussed in detail in the Technical Support Documents available at the regional USEPA Office listed in the **ADDRESSES** section of this notice.

Consequently, the 1981 data from the eight-station network together with the multi-year record from Barberton High School and the PPG Pumphouse monitoring site as well as the modeling data and status quo and allowable emissions, support the redesignation of the area surrounding the PPG Barberton plant in Summit County to attainment for SO_2.

On November 23, 1982, USEPA proposed to designate a larger portion of Summit County, Ohio as primary nonattainment for SO_2 and the following area as attainment for SO_2:

North—Interstate 76
East—Route 93
South—Vanderhoof Road
West—Summit County Line

Six comments requested that the entire County be designated attainment. The comments raised questions about the compliance status of SO_2 sources located in the remaining nonattainment area of the County. On July 17, 1984, (49 FR 28888) USEPA proposed to designate the remaining portion of Summit County affected by the court remand as nonattainment and to redesignate the remaining portions of the County as attainment. USEPA will address those portions of Summit County in a separate final rulemaking action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National Parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 740(d)))

Dated: September 19, 1984.

William D. Ruckelshaus,
Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.336 [Amended]

1. Section § 81.336 is amended by revising the Table for Ohio Sulfur Dioxide and by adding footnotes 2 and 3 as follows:

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[2] USEPA set forth its policy on the use of midnight-to-midnight block averages and running averages for implementation of the SO_2 NAAQS in a memorandum from Kathleen N. Bennett, Assistant Administrator for Air, Noise, and Radiation, to Valdas V. Adamkus, Regional Administrator, Region V entitled, "Use of Running Averages for Determining Compliance with the 24-hour Sulfur Dioxide Standard, (March 24, 1982).

OHIO—SULFUR DIOXIDE (SO_2)

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than National Standards
*	*	*	*	*
Summit:				
Area bounded by the following lines—North—Interstate 76, East—Route 93, South—Vanderhoof Rd., West—Summit County line.				X
Area bounded by the following lines—North—Bath Rd., (48 east to Route 8, Route 8 north to Barlow Rd., Barlow Rd east to county line, East—Summit/Portage County line, South—Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to county line, West—Summit/Medina County line.	X[2]			
The remainder of summit County				X[3]
*	*	*	*	*

[1] * * *

[2] This area remains undesignated at this time as a result of a Sixth Circuit Court remand.

[3] This area was not affected by the court remand

[FR Doc. 84-25380 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[Docket No. 107PA-18; A-3-FRL-2663-1]

Designation of Areas for Air Quality Planning Purposes; Approval of Redesignation of Attainment Status for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval in changing the air quality designation for Area #4 within Allegheny County, Pennsylvania from does not meet primary standards to does not meet secondary standards for Total Suspended Particulates (TSP).

This change is based on eight consecutive calendar quarters of air quality data showing primary attainment.

DATES: This action will be effective on November 26, 1984, unless notice is received by October 26, 1984, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Glenn Hanson, at the EPA, Region III address shown below. Copies of the request for redesignation may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency Region III, Air Programs Branch, Curtis Building—6th and Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Gaughan (3AM11)

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, ATTN: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-Ninth Street, Pittsburgh, PA 15201, ATTN: Roger C. Westman.

FOR FURTHER INFORMATION CONTACT: Michael C. Giuranna at the EPA Region III address shown above or telephone (215) 597-9189.

SUPPLEMENTARY INFORMATION: The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA) a request for redesignation of Area #4 within Allegheny County to does not meet secondary standards for TSP under Section 107 of the Clean Air Act and 40 CFR Part 81. Area #4 is part of the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR).

The air quality data for the first quarter of 1982 through the fourth quarter of 1983 from Allegheny County's two monitoring sites in Area #4, named Flag Plaza and Pittsburgh 8, show no primary violations of the TSP air quality standards. The improvement in air quality in Area #4 is due to the general improvement of industries upwind of the area. These improvements resulted from an EPA approved SIP strategy for the area. Since the primary air quality standards for TSP have been attained for the last eight quarters, this area is being redesignated to "does not meet secondary standards" in accordance with Section 107 of the Clean Air Act and EPA policy requirements for Section 107 redesignations.

EPA has examined the air quality data collected from the sites used to demonstrate primary attainment and found that the data was collected in accordance with all EPA requirements. Accordingly, EPA is approving the Department's request for redesignation to primary attainment.

EPA is today changing the Section 107 attainment status designation for Area #4 within Allegheny County to "does not meet secondary standards" for TSP without prior proposal. The public is advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days from today that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. This subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Conclusion

The Administrator's decision to approve the redesignation was based on a determination that it meets the requirements of Section 107 of the Clean Air Act and 40 CFR Part 81, Designation of Areas for Air Quality Planning Purposes.

§ 81.339 [Amended]

As a result of EPA's decision to approve this redesignation, 40 CFR Part 81, § 81.339 is amended by revising entry V.(B)(1)(c) to read as follows:

PENNSYLVANIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
V. * * *				
(A) * * *				
(B) Allegheny County Air Basin				
(1) * * *				
(a) * * *				
(b) * * *				
(c) McKees Rocks Bridge to the Birmingham Bridge on the Ohio and Monongahela Rivers.		X		
*	*	*	*	*

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrative has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: August 27, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-25801 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4E3034, 4E2991, 3E2914/R696; FRL-2674-8]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of certain pesticide chemicals in or on various raw agricultural commodities. These regulations, permitting maximum levels for residues of the chemicals, were requested by the Interregional Research Project and certain State agricultural experiment stations.

EFFECTIVE DATE: Effective on September 26, 1984.

ADDRESS: Written objections, identified by the document control number [PP 4E3034, 4E2991, 3E2914/R696] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued proposed rules establishing tolerances for certain pesticide chemicals, published in the Federal Register as follows, which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of IR-4 and certain State Agricultural Experiment Stations (AES), had submitted the following pesticide petitions (PP).

1. PP 4E3034. (49 FR 29110, July 18, 1984). AES, Florida. Proposed amending 40 CFR 180.121 by establishing a tolerance for residues of the insecticide *O,O*-dimethyl-*O-p*-nitrophenyl thiophosphate (the methyl homolog of parathion) in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables as defined in 40 CFR 180.34(f) at 1.0 part per million (ppm).

2. PP 4E2991. (49 FR 29111, July 18, 1984). AES, Florida. Proposed amending 40 CFR 180.153 by establishing a tolerance for residues of the insecticide *O,O*-diethyl-*O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate in or on the raw agricultural crop group *Brassica* (cole) leafy vegetables as defined in 40 CFR 180.34(f) at 0.7 ppm.

3. PP 3E2914. (49 FR 29112, July 18, 1984). AES's of Indiana, Massachusetts, Michigan, North Carolina, and Washington. Proposed amending 40 CFR 180.378 by establishing a tolerance for the combined residues of the insecticide permethrin [(3-phenoxy-phenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl) methanol (3-PBA) calculated as the parent in or on asparagus at 1 ppm.

No comments or requests for referral to an advisory committee were received in response to the notices of proposed rulemaking.

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rules. The pesticides are considered useful for the purposes for which the tolerances are sought. There are no regulatory actions pending against the continued registration of the pesticides. Based on the information provided and evaluated, the Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: September 10, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. In § 180.121(b), by adding and alphabetically inserting the raw agricultural crop group *Brassica* (cole) leafy vegetables, to read as follows:

§ 180.121 Parathion or its methyl homolog; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Vegetables, leafy, *Brassica* (cole)	1.0

2. In § 180.153, by removing the commodities broccoli, brussels sprouts, cabbage, Chinese cabbage, cauliflower, collards, kale, and mustard greens and adding and alphabetically inserting the raw agricultural commodity crop group *Brassica* (cole) leafy vegetables, to read as follows:

§ 180.153 O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Broccoli	[1] 0.7
Brussels sprouts	[1] 0.7
Cabbage	[1] 0.7
Cabbage, Chinese	[1] 0.7
* * * * *	
Cauliflower	[1] 0.7
* * * * *	
Collards	[1] 0.7
* * * * *	
Kale	[1] 0.7
* * * * *	
Mustard greens	[1] 0.7
Vegetables, leafy, *Brassica* (cole)	0.7
* * * * *	

[1] [Removed].

3. In § 180.378(b), by adding and alphabetically inserting the raw agricultural commodity asparagus to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Asparagus	1.0
* * * * *	

[FR Doc. 84-24918 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2F2690/R682; FRL-2681-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Dicamba

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide dicamba in or on soybeans at 0.05 part per million (ppm), soybean forage at 0.1 ppm, and soybean hay at 0.1 ppm. This regulation was requested in a petition submitted by the Velsicol Chemical Corp.

EFFECTIVE DATE: Effective on September 26, 1984.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule for dicamba, published in the **Federal Register** of May 9, 1984 (49 FR 19683), which announced that Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL, had submitted pesticide petition PP 2F2690 requesting establishment of tolerances for residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-2-hydroxybenzoic acid in or on the raw agricultural commodities soybeans at 0.05 part per million (ppm), soybean forage at 0.1 ppm, and soybean hay at 0.1 ppm.

The Agency received a comment letter from Mr. Olav Messerschmidt of Velsicol Chemical Corp. suggesting that the Agency revise its potential risk calculations to reflect the proposed use pattern and the known properties of DMNA. In light of (1) the rapid volatilization of DMNA, (2) the rapid breakdown of DMNA in the presence of ultraviolet light, (3) the initial low concentration of DMNA found as an impurity in the dimethylamine salt formulation, and (4) the long period of time between herbicide application and crop planting, any potential for DMNA in soybeans, soybean forage, or soybean hay is virtually nonexistent. By including these additional factors it can be concluded with even greater certainty that any potential risk posed by the presence of the DMNA contaminant clearly presents no public health or safety concern. No further comments were received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Dicamba is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances would protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objection. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(e), 68 Stat. 512 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 12, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.227(b) is amended in the table by alphabetically adding and inserting the following raw agricultural commodities, to read as follows:

§ 180.227 Dicamba; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Soybeans	0.05
Soybeans, forage	0.1
Soybeans, hay	0.1

[FR Doc. 84-25516 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6567

[M-40731]

Partial Revocation of Secretarial Order of May 21, 1906; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 35 acres of land withdrawn for the Bureau of Reclamation for the Huntley Project. This action will restore the lands to surface entry and restore all mineral interest to the Crow Tribe as provided by the Act of August 14, 1958, 72 Stat. 575.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated May 21, 1906, is hereby revoked insofar as it affects the following described land:

Montana Principal Meridian

T. 2 N., R. 27 E.,
  Sec. 35, NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, SW¼NE¼SE¼ and S½SE¼NW¼SE¼;
  Sec. 36, NE¼SW¼SW¼NW¼ and S½SW¼SW¼NW¼.

The area described contains 35 acres in Yellowstone County.

2. At 8 a.m. on October 23, 1984, the public lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on October 23, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. All mineral interests in the above described lands are vested with the Crow Tribe as provided by the Act of August 14, 1958 (72 Stat. 575), and the minerals in the lands are owned by the United States in trust for the Crow Tribe and leasable "under the laws and regulations relating to Indian lands."

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25485 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6568

[I-18880]

Partial Revocation of Public Land Order No. 2588; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 120 acres withdrawn by the Bureau of Reclamation for the Southwest Idaho Water Management Study Area. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

SUPPLEMENTARY INFORMATION: By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2588 dated January 15, 1982, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 1 N., R. 3 W.,
  Sec. 27, SE¼SW¼;
  Sec. 28, E½SE¼.

The area described contains a total of 120 acres in Owyhee County.

2. At 9 a.m. on October 23, 1984, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 23, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on October 23, 1984, the land will be opened to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25487 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6569

[OR-36191, OR-36192, OR-36193]

Public Land Order No. 6463; Correction; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land discription of Public Land Order No. 6463 of September 14, 1983.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6463 of September 14, 1983, in FR Doc. 83-25820 published at page 43175, in the issue of Thursday, September 22, 1983, is corrected as follows: In the legal description on page 43175, under T. 3 S., R. 6 W., "Sec. 10, NE½NE¼," is corrected to read "Sec. 10, NE¼NE¼," and "Sec. 15, NW½NE¼," is corrected to read "Sec. 15, NW¼NE¼."

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25486 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

VOL 49 SS 188 SE 26 1984 UMI

43 CFR Public Land Order 6570

[OR-15667, I-18188]

Public Land Order No. 6391; Correction; Oregon and Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct errors in the land description, acreages, and national forest designation of Public Land Order No. 6391 of May 27, 1983.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr. (Telephone 503-231-6905), Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

In FR Doc. 83-14999 published at pages 25205 and 25206 in the issue of Monday, June 6, 1983, make the following corrections:

On page 25205, the heading should read "Oregon and Idaho; Transfer of Jurisdiction; Addition to Wallowa-Whitman National Forest."

On page 25205, the third line of the Summary should read "and an additional 6,353 acres of Federal * * *"

On page 25205, the seventh line of the Summary should read "also become part of the Wallowa-Whitman * * *"

On page 25205 in paragraph 2 under T. 6 N., R. 47 E., Sec. 21, as reads "E½, SE¼NW¼, and NW¼SW¼" should read "E½, SE¼NW¼, and NE¼SW¼;"

On page 25205 in paragraph 2 under T. 30 N., R. 4 W., Sec. 6, as reads "lots 5, 14, 15, 18, 19, and that portion of lot 4 lying within the Hells Canyon National Recreation Area" should read "lots 4, 5, 6, 14, 15, 16, 18, and 19 and SW¼SE¼;"

On page 25205 in paragraph 2, the acreage for lands in Idaho as reads "1,415 acres" should read "1,556.03 acres * * *"

On page 25205, paragraph 3 should read "Subject to valid existing rights, the lands described in paragraphs 1 and 2 that are in Idaho and in T. 6 N., R. 47 E., W.M., Oregon, are hereby made a part of the Wallowa National Forest, and the lands described in paragraphs 1 and 2 that are in T. 7 S., R. 47 E., T. 6 S., R. 48 E., and T. 7 S., R. 48 E., W.M., Oregon, are hereby made a part of the Whitman National Forest. All the lands described in paragraphs 1 and 2 shall be administered as the Wallowa-Whitman National Forest and shall hereafter be subject to all laws and regulations applicable thereto."

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25484 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6571

[ES-31023]

Revocation of Executive Order No. 4963; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew approximately 3,500 acres of public land pending a determination as to suitability for inclusion in a national forest. The land was made a part of the Hiawatha National Forest in 1962. This action will open the land to appropriate forms of surface disposition only since the Mining Law of 1872 does not apply to the State of Michigan. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 23, 1984.

FOR FURTHER INFORMATION CONTACT: Bettie C. Coombs, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 235-2855.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 4963 of September 17, 1928, which withdrew 3,500 acres in Marquette County, is hereby revoked.

2. The land will remain under the jurisdiction of the Forest Service, in accord with the provisions of the Presidential Proclamation of February 12, 1931 (land transferred to the Hiawatha National Forest by Executive Order No. 10993 of February 9, 1962).

3. At 8 a.m. on October 23, 1984, the land will be opened to such forms of disposition as may by law be made of national forest land subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on October 23, 1984, will be considered as simultaneously filed at that time. Those received thereafter will be considered in order of filing. The land has been and will remain open to the mineral leasing laws.

Dated: September 17, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-25481 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74, 78, and 94

[Gen. Dockets 82-334 and 79-188; FCC 84-389]

Establishment of Spectrum Utilization Policy and Amendment to Commission Rules Regarding Digital Termination Systems

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document contains the Commission's actions in response to *Petitions for Reconsideration* filed in Dockets 82-334 (First Report and Order) and 79-188 (Second Report and Order) both adopted September 9, 1983. These Orders contained various Rules concerning the channeling plan for the 18 GHz frequency band and the reaccommodation of 12 GHz microwave links. This document sets out changes to some of these Rules and also makes various editorial corrections.

EFFECTIVE DATE: August 17, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell (202-653-8177) or James Vorhies (202-653-9097), Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 21

Communication common carriers, Point-to-point microwave, Point-to-multipoint microwave, Transmission.

47 CFR Part 74

Point-to-point microwave, Transmissions.

47 CFR Part 78

Point-to-point microwave, Transmissions.

47 CFR Part 94

Point-to-point microwave, Point-to-multipoint microwave, Transmissions.

Memorandum Opinion and Order

In the matter of establishment of a spectrum utilization policy for the fixed and mobile services' use of certain bands between 947 MHz and 40 GHz. (Gen. Doc. 82-334) and, amendment of Parts 2, 21, 74 and 94 of the Commission's rules to allocate spectrum at 18 GHz for, and to establish other rules and policies pertaining to, the use of radio in digital termination systems and in point-to-point microwave radio systems for the provision of digital electronic message services, and for other common carrier, private radio, and broadcast auxiliary services; and to establish rules and policies for the private radio use of digital termination systems at 10.6 GHz. (Gen. Doc. 79-188).

Adopted: August 8, 1984.

Released: August 17, 1984.

By the Commission: Commissioner Rivera Absent.

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Purpose

1. In this *Memorandum Opinion and Order* we are considering the issues raised in the Petitions for Reconsideration filed in regard to the Reports and Orders in the above two captioned proceedings. Since the issues raised in the petitions relate in some respects to issues in both of the captioned Dockets, we are addressing all issues in this single *Order*. The principal issues raised on reconsideration which must be resolved concern the channeling plan and technical standards adopted for the 18 GHz band and certain aspects of the 12 GHz band fixed service reaccommodation procedure. Additionally, we have found it appropriate to clarify some of the rules adopted in the dockets and we are taking the opportunity to do so at this time.

Background

2. On September 9, 1983, the Commission adopted a *Second Report and Order* in General Docket 79-188, 48 FR 50322 (1983) and a *First Report and Order* in General Docket 82-334, 48 FR 50722 (1983). The purpose of the *Second Report and Order* in Docket 79-188 was to provide spectrum in a segment of the 18 GHz band (specifically, 18.36-19.04 GHz) for use by private and common carrier Digital Termination Systems (DTS) and by private, common carrier and broadcast auxiliary point-to-point operations. The *Second Report and Order* also reallocated part of the 10.6 GHz band, previously allocated exclusively for common carrier DTS, for use by private DTS and by the private operational-fixed service for point-to-point operations.

3. The purpose of the *First Report and Order* in Docket 82-334 was to provide spectrum for the reaccommodation of existing 12 GHz fixed microwave users who must vacate the band in order to permit the implementation of broadcasting-satellite services. Also, this *First Report and Order* completed the allocation of the remaining segments of the 18 GHz band (17.7-19.7 GHz) for private, common carrier, broadcast auxiliary and cable operations.

4. The Commission has received timely filed Petitions for Reconsideration in the above proceedings (*First Report and Order* and *Second Report and Order)* from Association of Maximum Service Telecasters, Inc. (AMST); Ericsson, Inc. (Ericsson); Gill Industries, and Western Communications, Inc. (Gill); Harris Corporation—Farinon Division (Harris); Hughes Aircraft Company—Microwave Communications Products (Hughes-MCP); M/A-COM, Inc. (M/A-COM); Microband Corporation of America (Microband); National Association of Broadcasters (NAB); National Cable Television Assocation, Inc. (NCTA); and Tymnet (Tymnet). The issues raised in these petitions can be grouped into four general categories: (1) Digital Termination Systems (DTS) at 10.6 GHz, (2) 18 GHz channeling plan, (3) 18 GHz technical standards, and (4) reaccommodation of the 12 GHz displaced licensees.

5. Timely filed Comments to the Petitions for Reconsideration were received from Association of American Railroads (AAR); American Petroleum Institute—Central Committee on Telecommunications (API); Cox Communications, Inc. (Cox); County of Los Angeles, California (Los Angeles); Daniels & Associates, Inc., United Artists Cablesystems Corporation and United Cable Television Corporation (Daniels); Ericsson; Harris; Heritage Communications, Inc. (Heritage); Hughes-MCP; Magnum Microwave Corporation (Magnum); Multimedia, Inc. and Channel Two Television Company (Multimedia); Satellite Television Corporation (STC); and Utilities Telecommunications Council (UTC).[1]

6. On January 16, 1984, Ericsson, Harris, Hughes-MCP, M/A-COM, and NCTA filed a *Joint Motion for Extension Of Time* in order that they might be given additional time to design an 18 GHz channeling plan that would satisfy the concerns of each of them while also meeting the objectives of the Commission for the 18 GHz band. In response to this joint motion, the Chief Scientist adopted an *Order Granting Extension Of Time to file Replies* (Memo 1939, Released January 19, 1984) which extended time To File Replies to February 2, 1984. Replies were received from AAR, Ericsson, Harris, Hughes-MCP, Gill, M/ACOM and NCTA. Included in these replies was a suggested "consensus" channeling plan for the 18 GHz band submitted by Ericsson, Harris, Hughes-MCP, M/A-COM and NCTA.

7. In order to obtain additional views on the 18 GHz consensus channeling

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[1] Comments were also received from Hughes Communications Galaxy, Inc. (Hughes-Galaxy) on January 31, 1984, concerning the need for planning to ensure workable arrangements for both satellite and terrestrial users in the 18 GHz band. In response to these Comments, API filed a *Motion to Strike Comments of Hughes Communications Galaxy, Inc.*, stating that the Hughes-Galaxy Comments should be dismissed as an untimely filed Petition for Reconsideration of the Reports and Orders. RCA Network Services, Inc. (RCA) submitted Comments in response to the pleading of Hughes-Galaxy. As Hughes Communications Galaxy comments were improperly filed, we have treated them in the nature of an informal comment. (*cf.* Westinghouse Broadcasting Co., 84 FCC 2d 936, 939 n. 2, 1981.)

plan, the Chief Scientist adopted an *Order Requesting Additional Comments On Specific Technical Matters In Re Petitions For Reconsideration*, 49 FR 7287 (1984). Comments on the consensus channeling plan were received from American Telephone and Telegraph Company (AT&T), Hughes-Galaxy and NCTA. Replies were received from AT&T; Citibank, N.A. (Citibank); Daniels; Ericsson; Hughes-Galaxy; NCTA; Multimedia and Viacom International, Inc. (Viacom).

8. On April 5, 1984, the Commission issued a *Public Notice: Commission Suspends Filing of Applications for 18 GHz Band*, 49 FR 14579 (1984), which stated that no new applications for facilities in the 18 GHz band would be accepted for filing or pending applications processed, pending resolution of the outstanding Petitions for Reconsideration in these two proceedings.[2]

9. Since the issues raised in several petitions in each docket are in several respects interrelated and since some petitions were addressed to both dockets, we have decided to address all issues in this single *Memorandum Opinion and Order*. The issues are discussed according to four categories: Digital Termination Systems; 18 GHz Allocation Plan; 18 GHz Technical Standards; and 12 GHz Reaccommodation Procedure. Findings and decisions on reconsideration follow immediately after the discussion of each issue. Additionally, in reviewing the adopted rules we believe it is appropriate to clarify some existing rules. We are taking the opportunity at this time to make needed changes on our own motion. Several issues have been raised in the Petitions and Comments filed on Reconsideration which cannot be resolved in this item. These issues, along with more general issues already outstanding in Docket 82-334, will be treated in future phases of the Docket, as noted in the following discussion. Appendix A describes the various alternative channeling plans for the 18 GHz band; Appendix B summarizes all rule changes adopted by this Order; and Appendix C contains the actual changes to the rules.

Digital Termination System (DTS) Issues

Private DTS Allocation at 10.6 GHz

10. In the *Second Report and Order* in Docket 79-188, the Commission reallocated DTS channels 4, 7, 9 and 19/20 at 10.6 GHz (i.e., 10.55–10.68 GHz) from common carrier use, in areas where they have not been assigned, to private use according to the following table.

Channel No.	Frequency band (MHz)		Network type
	Nodal	User	
4	10,580.0–10,585.0	10,645.0–10,650.0	Extended
19/20	10,585.0–10,590.0	10,650.0–10,655.0	Do.
7	10,605.0–10,607.5	10,670.0–10,672.5	Limited.
9	10,610.0–10,612.5	10,675.0–10,677.5	Do.

11. Tymnet, in its Petition, opposes the immediate reallocation of the extended network channels from common carrier to private usage and urges the Commission to delay for 18 months the authorization of private use of Digital Electronic Message Service (DEMS) extended network spectrum in the 10.6 GHz band. It argues that common carriers operating DEMS extended networks will not be able to fulfill the "Commission's expectation of national DEMS offerings" due to a lack of spectrum. Also, Tymnet states that 18 GHz spectrum cannot be substituted for that at 10.6 GHz for common carrier purposes due to the vastly different propagation characteristics at 18 GHz. Accordingly, Tymnet states that serious cost penalities may be imposed on extended network carriers that would have to use 18 GHz in lieu of the reallocated 10.6 GHz channels. Tymnet's position received no support in the Comments and Replies.

12. On the other hand, the M/A-COM Petition states that insufficient spectrum has been allocated for private DTS systems at 10.6 GHz. M/A-COM states that although DTS channels 4, 7, 9, 19, and 20 were reallocated to private from common carrier, very little private use will be achieved since these channels are no longer available in any of the larger markets. Thus, M/A-COM proposes that the Commission reallocate, for private DTS use, the spectrum at 10,550–10,565 and 10,615–10,630 MHz. M/A-COM states that although these bands were allocated for point-to-point operations, no manufacturers have produced point-to-point equipment for these channels and, in its opinion, there is little likelihood that such equipment will be manufactured. Since there is a demand for private DTS systems, M/A-COM feels this spectrum should be reallocated for that use.

13. The Commission continues to believe that the public interest will be served by enabling private entities to use DTS frequencies in the 10.6 GHz band. We note that Tymnet has filed construction permit application for DTS facilities using Channel 4 in approximately 49 service areas; 44 of these have been granted. Tymnet and other common carries had ample time to apply for DTS facilities in as many cities as they believed necessary prior to the time of the Commission reallocation of the subject channels for private use. We believe that the benefits of making these channels available for private use outweigh the advantages of continuing to hold this spectrum for common carrier use. In addition, we believe that further common carrier DTS requirements can be filled at 18 GHz, if necessary. However, the eventual private need for DTS channels at 10.6 GHz remains uncertain enough that we are not prepared to make an additional allocation for private DTS, as proposed by M/A-COM.

14. As of this time the internodal link allocation at 10.6 GHz has not been used because few of the initial DTS systems are employing multiple nodes. Other bands, for which equipment is already available, have been used for internodal links instead. DTS operators may have need for the spectrum in the future, however. Consequently, we will not change the DTS or the point-to-point allocations made in the 10.6 GHz bands.

Point-to-Point Emission Mask for DTS Internodal Links

15. Sections 21.106 and 94.71 of the Commission's Rules contain a specific emission mask requirement[3] for 10.6 GHz DTS internodal links. M/A-COM states that with the reallocation of the bands 10,550–10,565 and 10,615–10,630 MHz to other point-to-point services, it is not clear whether the emission mask specified in §§ 21.106 and 94.71 for DTS links continues to apply, since the point-to-point services have a different emission mask. M/A-COM suggests that the Commission should not apply the DTS internodal mask to the 10.6 GHz

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[2] The Commission has received several petitions asking for a limited modification of the suspension order to permit the Commission to continue accepting and processing applications for the point-to-point channels in the 18 GHz band from the following: Harris (*Emergency Petition for Relief from Suspension of Filing and Processing of Applications for 18 GHz Band and for Expedited Action*, April 12, 1984), Ericsson (*Petition for Emergency Relief to Narrow Scope of 18 GHz Suspension Order and for Expedited Action*, April 16, 1984), and TOR Broadcasting Company (TOR) (*Petition for Relief from Suspension of Filing and Processing of Applications for 18 GHz Band*, April 19, 1984). In response to these petitions, the Commission staff issued a *Public Notice: Partial Relaxation of 18 GHz Band Suspension*, 49 FR 19118 (1984), granting in part the requests of Harris, Ericsson and TOR. The effect of this Public Notice was to allow applications to be granted on a secondary basis to point-to-point systems which may be approved pursuant to the revised channeling plan under consideration in this proceeding.

[3] Emission mask requirements generally refer to the Commission's Rules for reducing power from radio equipment on frequencies away from the center of the assigned frequency of operation.

channels which can be used for either internodal or other point-to-point operations.[4]

16. The Commission agrees with M/A–COM that it is unnecessary to continue to have different technical standards for DTS internodal links, as they operate identically to other point-to-point systems. Therefore, we are modifying Parts 21 and 94 to change the emission mask and other technical standards for internodal links in the 10.6 GHz band to conform with the requirements for other point-to-point links.

18 GHz Allocation Plan Issues

Channeling Plan

17. By the combined action of the *First Report and Order* and the *Second Report and Order,* the Commission channelized the 18 GHz band (17.7–19.7 GHz) in accordance with the figure labeled "Adopted Plan" in Appendix A. This plan provided for DTS systems, narrow band channels of several bandwidths for various services, two blocks of channels of 6 MHz bandwidth for cable relay and other compatible systems, and wider band channels of several bandwidths for various services.

18. The Hughes-MCP Petition requests modification of the 18 GHz channeling plan to provide contiguous spectrum for cable operations (i.e., the spectrum composed of 6 MHz wide channels) instead of the two blocks of 36 channels allocated in the *First Report and Order.* Hughes–MCP claims this would cause no impact on DTS operations. To accomplish this, Hughes–MCP presented an alternative channeling plan that moved the cable relay blocks to the upper end of the band so that they would be adjacent to each other.

19. The NCTA Petition notes that in cases where sufficient channel capacity could not be accommodated in a single block of 36 channels, additional sets of equipment would be needed for the additional cluster of frequencies used. This would result in a cost increase for the microwave link. NTCA also presented a channeling plan intended to provide contiguous frequencies for cable operations without affecting existing users or potential point-to-point and DTS users.

20. The M/A–COM Petition states that the channeling plan adopted for point-to-point operations in the 18.46 to 18.94 GHz portion of the band will impose unnecessary costs because the transmit and receive segments are adjacent. Because of this lack of transmit/receive frequency separation, very sharp filters must be used. M/A–COM argues that this type of filter is expensive and that by separating the transmit and receive segments less expensive filters could be used. M/A–COM suggests modifying the channeling plan to provide for a common transmit/receive separation for all point-to-point operations in the 18 GHz band to further reduce equipment costs. M/A–COM presented a channeling plan to accomplish this with the additional benefit of providing contiguous spectrum for cable users.

21. The Comments of both Daniel and Heritage support the need for a contiguous set of 6 MHz channels as proposed by Hughes–MCP, NCTA and M/A–COM. Ericsson's original Comments opposed the Hughes–MCP, NCTA and M/A–COM. Erisson's original Comments opposed Hughes–M/A–COM and NCTA rechanneling plans, stating that the 780 MHz transmit/receive separation suggested by M/A–COM would create more costs, not less, because narrow band filters would still be required. Further, while the plan proposed by Hughes–MCP and NCTA would cause less impact, both plans would require Ericsson to redesign its radios and those costs would have to be passed on to the public.

22. Harris, on the other hand, states that the channeling plan as adopted does not meet the objective important to the cable television interests. Harris also believes the spectrum used by cable systems needs to be contiguous, and thus some modification to the adopted plan is justified. However, Harris states the plans proposed in the Petitions need some modification to accommodate existing equipment and licensees and suggests a compromise plan.

Consensus Plan

23. Several of the petitioners asked for an extension of time to file Replies so that they might design an alternative plan which would satisfy the needs of all concerned parties. The Commission granted that request and, as a result, an 18 GHz consensus channeling plan was submitted during the reply period by Ericsson, Harris, Hughes–MCP, M/A–COM and NCTA (Ericsson, *et al*). These entities claim that they have devised a consensus channel plan which they believe will best serve microwave users and the larger public interest. They state that this consensus plan achieves significant advantages over the 18 GHz channeling plan adopted by the *First Report and Order* and the *Second Report and Order.* These advantages are that narrowband equipment, i.e., using 5, 10 and 20 MHz channels, and DTS radios can be built with a common transmit/receive separation allowing joint use of components—thus reducing costs to users. The plan allows for frequency separations of 120 MHz and 340 MHz for the narrow band channels. Also, cable television systems using 18 GHz to deliver modern high capacity cable service can do so in a contiguous block of 6 MHz channels up to 73 channels; this will mean lower cost, greater reliability, and higher quality service to cable subscribers.

24. The five respondents claim that the consensus channel plan does not change the total bandwidth assigned to any channel group, nor change the impact on sharing with other services listed in the Table of Allocations, nor disrupt existing or prospective users. This consensus channeling plan is also shown in Appendix A, labeled "Consensus Plan."

25. The Commission placed the consensus plan on public notice so that interested parties would have an opportunity to comment. Comments were received from a number of parties and are discussed in the following paragraphs.

26. American Telephone and Telegraph Company's (AT&T) comments state that the consensus plan offers some advantages but also has a serious flaw due to its impact on wide band, i.e., 220 MHz, channel use. AT&T notes that the introduction of DTS service in any geographical area would preclude the future use of 220 MHz channels numbered 5 and 6 (i.e., 18250/19150 MHz vertical and horizontal, respectively) in the same area. AT&T proposed its own alternative channel plan, shown in Appendix A as "AT&T Plan". This plan would permit the continued use of these two 220 MHz channels using the existing pairing arrangement, but it would reduce the spectrum available for 6 MHz channels by 80 MHz while increasing the spectrum available for narrow band channels by 80 MHz. AT&T's plan would also reduce the separation of the transmit and receive frequencies of the

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[4] M/A–COM also states that it is no longer clear that a separate emission mask should apply to DTS nodal and user channels and suggests that the point-to-point emission mask in §§ 21.106(a)(2)(i) and 94.71(c)(2)(i) may well be appropriate for DTS nodal and user transmitters. M/A–COM states that the point-to-point emission mask is more suitable for the wider bandwidths actually being used by DTS transmitters. On April 15, 1984, Local Digital Distribution Company (LDD), a subsidiary of M/A-COM, filed a *Petition for Waiver* requesting waiver of §§ 21.106(a) and 21.120 to permit the installation and use of DTS transmitters which may not meet the emission mask specified in and required by § 21.106(a). On April 23, 1984, NEC America, Inc. (NEC) filed an *Opposition to Petition for Waiver.* The Commission does not feel that a sufficient record has been established to act upon the question of changing the emission mask at this time. This issue will be addressed in a future proceeding.

DTS channels. The spectrum allocated to narrow band and DTS operations would be shifted within the 18 GHz band.

27. AT&T's Reply states that when it filed its comments to the consensus plan, it understood that the 220 MHz channels 5 and 6 would be eliminated. However, NCTA indicated that the consensus plan would actually reposition channels 1B [19590(V) to 18450(V) MHz], 2B [19590 (H) to 18450 (H) MHz], 5B [19150 (V) to 19590 (V) MHz], and 6B [19150 (V) to 19590 (V) MHz]. By such repositioning, the consensus plan would keep channels 5 and 6 available for wide band uses. AT&T maintains that this repositioning has serious adverse technical consequences, since rearrangement of these channels would create intolerable interference problems for the design and operation of high capacity, spectrum efficient, multi-channel, two-way radio relay systems.

28. Ericsson's Reply opposes the AT&T alternative channeling plan, noting that virtually no use has been made of the wide band channels. Further, it believes that new technology for high capacity systems, such as fiber optics, makes it unlikely that demand for these channels will increase greatly. Additionally, the AT&T plan would not fully meet the objectives of the consensus plan.

29. The Commission agrees with the petitioners that even though the adopted channel plan is workable the channeling plan at 18 GHz could be improved to provide a common transmit/receive separation for DTS and narrowband point-to-point operations. In addition by relocating one of the 220 MHz channel pairs contiguous spectrum can be provided for cable television operations at the same time. The Commission believes it would be in the public interest to modify the 18 GHz channeling plan that was adopted in the *First Report and Order* and *Second Report and Order* to provide these benefits. The Commission has before it two alternative plans, the Ericsson *et al* consensus plan and the AT&T plan, both of which meet some of these objectives. The AT&T plan, however, reduces by 80 MHz the spectrum available for cable television operation while, in return, it provides only the possibility of creating one more usable 220 MHz channel pair. AT&T does not present any particular information as to expected usage of 220 MHz channels or as to how AT&T is currently using the band for 220 MHz channel operations.[5] The channeling plan adopted in the *First Report and Order* and the *Second Report and Order* was based partly on the consideration of maintaining three 220 MHz channel pairs. However there has yet to be any significant use of these types of systems and recent technical trends, for example, the increasing use of fiber optics for these high capacity applications, would seem to make their future usefulness questionable. Further, the consensus plan does not eliminate this third channel pair, although the equipment used for the third channel will be more costly. The consensus plan does allow the cable channels to be contiguous, a significant improvement over the adopted arrangement.

30. A key element to the Ericsson *et al* consensus plan is a dual separation plan, i.e., both 120 MHz and 340 MHz, for narrow band operations in the middle portion of the 18 GHz band. This appears to be inconsistent with one of the primary reasons for considering modifying the adopted channeling plan, namely the expected equipment cost reduction which would result from having a standard channel separation for narrow band and DTS channels.[6] Given the cost savings indicated from the 340 MHz separation, it is presumed that all manufacturers will build equipment with this frequency separation. On the other hand, by allowing 120 MHz separated pairs, unpairable channels may result. This situation could potentially result in half the total number of channels being unusable in some geographic areas.

31. We believe that the consensus plan, without the provision for 120 MHz frequency separation, will provide the greatest benefit in consolidating spectrum available for cable relay systems and providing uniform transmit/receive frequency separation for narrowband point-to-point and DTS channels. This channeling arrangement is shown in Appendix A as the "Revised Plan."

32. The negative aspects of revising the channeling plan for 18 GHz include the non-compliance of Ericsson's currently authorized equipment with the revised plan and the treatment of applications already received for DTS systems under the adopted channel scheme. As described below provisions have been made to allow Ericsson to continue marketing equipment that is not in compliance with the existing channeling plan. The revised plan does not change this situation and a grandfathering period will be appropriate under the revised channeling plan as well. The problem of the pending applications can also be resolved without burdening the applicants by using the procedure described in the following paragraphs. Therefore, we are modifying the channeling arrangement for the 18 GHz band in accordance with the revised plan. Changes to Parts 21, 74, 78 and 94 to implement the revised arrangement are contained in Appendix C.

33. The Ericsson *Petition for Reconsideration and Request for Partial Stay* requested that a two year grandfathering period be granted for marketing 18 GHz equipment that does not comply with the frequency separation of the channeling plan adopted in the *Second Report and Order*. The Commission, in an *Order* released December 6, 1983, granted Ericsson a waiver to market equipment that is not in compliance with the adopted channeling plan until December 6, 1985.[7] In response to the Commission's *Order*, Ericsson submitted a *Petition for Reconsideration of Waiver and for Further Relief* on January 5, 1984. Ericsson requested a 10-year period to market its non-complying 18 GHz equipment. Because of the probability of creating unusable channels by the use of such non-complying equipment, we believe it is inappropriate to permit continued long term marketing. We are, therefore, denying Ericsson's request for a 10-year grandfathering period. However, since the issue of marketing non-complying equipment has been pending since December 1983, we think it is equitable to allow Ericsson a full two years to continue market this equipment.[8] Therefore we will extend the marketing period for Ericsson's authorized equipment until two years after this *Memorandum Opinion and Order* is released, in lieu of the December 6, 1985 date.[9]

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[5] The Commission data base reveals that the only licensee of any 220 MHz channel systems is the New York Telephone Company (an operating company of NYNEX) which currently operates a five hop system in Westchester and Rockland Counties, New York using the channel pairs 17,810/19,590 MHz and 18,030/19,370 MHz.

[6] As far as the Commission knows, the provision for 120 MHz separated channels would only be useful for the particular equipment now being manufactured by Ericsson.

[7] *Order Denying Request for Partial Stay and Granting Waiver in Part* in Docket 79-188, 48 FR 55740 (1983).

[8] We recognize that there is little use being made of the 18 GHz band at present. As it is our desire to have equipment available to accommodate the 12 GHz licensees at 18 GHz, we believe it is in the public interest to allow equipment already in production to continue to be available while equipment which does comply with the channeling plan is being developed.

[9] While we are extending the date for marketing, the special licensing conditions imposed in the grant of Ericsson's waiver request remain in effect.

Pending DTS Applications

34. The Commission currently has pending about 600 applications for private DTS systems and about 700 applications for common carrier systems, which would be operated using 18 GHz band frequencies. None of these applications has been granted. The frequencies applied for in these applications are in accordance with the provisions of the *Second Report and Order*. Changes to the adopted channeling plan would normally require modification of these 1,300 pending applications. Sections 1.227(b)(4), 1.962 and 21.23(c) state that if an applicant amends the proposed operating frequency, such an amendment is a "major amendment" and, thus, the application would be considered as newly filed.

35. With regard to this point, Citibank in its comments on the consensus plan has stated that any item reallocating spectrum for DTS use should make clear that the application process will not begin anew for the newly designated channels, nor will pending DTS applications be subjected to an additional public notice period during which competing applications might be filed. It contends that to fail to "grandfather" already pending applications would unfairly penalize those applicants who diligently and properly prepared and filed applications in accordance with the *Second Report and Order*. NCTA agrees with Citibank that if the Commission adopts the consensus plan, applications for DTS frequencies that have already been filed pursuant to the plan previously adopted by the Commission should still be deemed to be valid and accepted applications against which competing applications may not be filed.

36. None of the other commenters objected to this suggestion, and we see no need to reopen the cut-off and public comment periods with respect to the applications already received merely to modify the frequencies to conform to the new channeling plan. The revised plan would only have the effect of realigning the spectrum previously allocated, and it appears that the rechanneling would not cause interference to the operation of any existing stations.[10] Therefore, we will modify pending applications received prior to the release of this *Memorandum Opinion and Order* in the following manner:

From			To		
Channel No.	Nodal (MHz)	User (MHz)	Channel No.	Nodal (MHz)	User (MHz)
1	18360–18370	18940–18950	25	18820–18830	19160–19170
2	18370–18380	18950–18960	26	18830–18840	19170–19180
3	18380–18390	18960–18970	27	18840–18850	19180–19190
4	18390–18400	18970–18980	28	18850–18860	19190–19200
5	18400–18410	18980–18990	29	18860–18870	19200–19210
6	18410–18420	18990–19000	30	18870–18880	19210–19220
7	18420–18430	19000–19010	31	18880–18890	19220–19230
8	18430–18440	19010–19020	32	18890–18900	19230–19240
9	18440–18450	19020–19030	33	18900–18910	19240–19250
10	18450–18460	19030–19040	34	18910–18920	19250–19260

Note.—The 18 GHz channels have been renumbered so that all DTS channels are now sequentially numbered, starting with the 10.6 GHz frequencies.

Sharing of the 18 GHz Band by the Fixed and Fixed-Satellite Services

37. Hughes-Galaxy's comments on the consensus plan state that, with the filing of its application to construct and operate a fixed-satellite system in the 17.7–20.2 GHz band, the Commission must now make provisions to accommodate this new service by planning workable arrangements for both satellite and terrestrial users in the 18 GHz band. The Table of Frequency Allocations currently provides for operation of the fixed-satellite service in the 18 GHz band on a co-equal basis with terrestrial services and Part 25 of the Rules contains a coordination procedure for shared band use by the services. Hughes-Galaxy proposes that a portion of the 18 GHz band should be allocated exclusively for fixed-satellite operations in order to avoid the need to coordinate individual earth stations and to insure users on-site access to its satellite system. Hughes-Galaxy states that the public interest concerns raised regarding shared use of the 18 GHz band must be addressed prior to implementation of any channel plan for terrestrial microwave use of the band.

38. AT&T contends that if the Commission determines that it is appropriate to investigate the issue Hughes-Galaxy raises with respect to the sharing of the 18 GHz spectrum by the fixed and the fixed-satellite services, the Commission should do so in a separately established proceeding designed to explore that issue fully. AT&T is opposed to Hughes-Galaxy's *a priori* solution, i.e., splitting the 18 GHz band to guarantee fixed-satellite access to exclusive spectrum.

39. Ericsson claims that Hughes-Galaxy has not presented evidence in its filings as to why its proposal could not have been presented at any time earlier during the reconsideration phase of these proceedings or even in the original phases of these proceedings. Thus, it feels that the Hughes-Galaxy comments are procedurally deficient and should not be considered.

40. Harris also opposes consideration of the Hughes-Galaxy comments as being beyond the scope of the *Order* requesting additional comments only on the consensus channeling plan. It believes the Commission should proceed with implementing the fixed service in this band, leaving the fixed-satellite proposal for a later decision that might include some sharing of spectrum at 18 GHz. In the meantime, Harris states, the public interest requires spectrum for terrestrial fixed users because of the disruptive loss of the 12.2–12.7 GHz band to DBS.

41. While we agree that the Hughes-Galaxy comments are procedurally deficient, and raise points not entirely properly at issue in the reconsideration phase of this proceeding, we have considered them in light of their potential significance. Under the present allocation, which we are not disturbing, the entire 18 GHz band is shared among the fixed (terrestrial) and various satellite services. Terrestrial users expected in the near future will include many of the 12 GHz licensees who must be reaccommodated after vacating that band for DBS, as well as cable and broadcast auxiliary users seeking to distribute FM-video and users of DTS. Hughes-Galaxy asks that the Commission maintain the possibility of a set of frequencies exclusively for fixed-satellite service within the band. This request could be met by delaying licensing of terrestrial stations in part of the band or placing a condition on licenses issued in the band pending a further allocation for satellite use of the band. However, we lack a sufficient basis or record to delay licensing and the uncertainty attendant on a conditioned license would be an unreasonable burden on the displaced 12 GHz licensees, cable and broadcast auxiliary licensees and other terrestrial users for whom the 18 GHz band is allocated. We believe that the channeling plan described above must be implemented, at this time, to

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[10] An analysis of the Commission's data bases shows that no licenses or construction permits have been granted for operations in the affected band segments of 18,820–18,920 and 19,160–19,260 MHz.

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accommodate immediate demand for spectrum by terrestrial services.

Multipoint Distribution Service Return Links

42. The Microband Petition asks for reconsideration of § 21.901 and 21.903, that require all return channels to terminate at only the Multipoint Distribution Service (MDS) transmitting location. Because of different propagation characteristics at 18 GHz, Microband claims that a single hop link will not be adequate in many cases. Microband requests that the rules should be made flexible enough to permit a licensee to either establish multiple links dedicated to a subscriber or to establish local collection centers. These centers would receive return messages from multiple subscribers and trunk them to a desired terminating point, which may not necessarily be that of the MDS transmitter.

43. Microband also requests reconsideration of the requirement that these 18 GHz return links be licensed under Part 21 point-to-point rules. It claims that the additional time and expense involved in conducting frequency coordination for each link may seriously limit the viability of two-way MDS systems. It suggests that MDS return links from user locations should be handled like return links from a DEMS user station to a nodal station. Accordingly, it desires to be licensed like a DEMS operator, in that a DEMS licensee may install as many user stations as it desires, up to an authorized maximum, without additional Commission authorizations.

44. Hughes-MCP's comments state concern about the proposal by Microband for relaxed coordination requirements, i.e., clearing a channel for a whole geographic area rather than on a link-by-link basis, for 18 GHz MDS return links. Hughes-MCP goes on to state that it appears that Microband is requesting *de facto* exclusive use of a channel in a given geographical area by treating the return links as an omnidirectional service. It points out that even with an extensive set of return links in a metropolitan area, it still may be possible for other users to reuse the same point-to-point channels in the same area when the paths involved have sufficient angular separation.

45. We believe that MDS return links can appropriately be implemented using point-to-point channels in the 18 GHz band. We do not believe that providing explicit frequencies for MDS return links is necessary. As Microband points out, the configuration using 18 GHz links will probably be more complex than a single return channel per out-bound channel. This could mean more than one frequency would have to be made available for each MDS operation. Because point-to-point spectrum in the 18 GHz band is coequally available to Parts 21, 25, 74, 78 and 94 licensees, users must coordinate their usage with all other licensees and applicants. We believe that individually coordinated links will not only ensure equitable access but will improve spectrum utilization over the long run. Thus, we believe it would be inappropriate to permit un-coordinated operations or to make area-wide assignments of 18 GHz point-to-point spectrum for MDS return links. Microband has, however, correctly pointed out that the language of the *Second Report and Order* concerning the allowed use of 18 GHz frequencies for MDS return links implies that these links can only be terminated at the MDS transmitter site. We have made editorial changes to §§21.901 and 21.903 to reflect the fact that MDS licensees may use the 18 GHz frequencies for return links in any way allowed in Subpart 1 of Part 21 governing the point-to-point services.

18 GHz Technical Standards Issues

Spectral Efficiency

46. In the *Second Report and Order* the Commission imposed a long term spectral efficiency standard of 1.0 bits per second per Hertz (bps/Hz) to be effective December 1, 1988 for digital equipment operating in the 18,360–19,040 segment of the 18 GHz band. In the interim, the Commission imposed a standard of 0.6 bps/Hz, effective immediately.

47. Ericsson contends that a spectral efficiency goal at 18 GHz of 1.0 bps/Hz imposes costs in terms of equipment design without a significant offsetting gain in spectrum efficiency. Ericsson believes it would be more reasonable to adopt a standard of 0.7 bps/Hz as a long-term goal, at least for medium-capacity radios providing up to 6.3 Mbps. The design for its Mini-Link 18 transmitter with a 0.7 bps/Hz performance accommodates one 6.3 Mbps stream in a 10 MHz channel. The 0.7 bps/Hz performance, together with the actual frequency stability achieved with this unit, makes it possible to transmit the 6.3 Mbps in the 10 MHz of bandwidth with some margin. There would be very little improvement in this performance if the equipment were to be redesigned to meet the Commission's long-term spectral efficiency standard of 1.0 bps/Hz. For example, probably a more complex modulation scheme would be necessary, and it would be necessary to use bigger antennas, booster amplifiers, or shorter hops. These adjustments would increase the cost of the radio substantially, without any meaningful improvement in system performance.

48. The Harris Petition states that increasing the number of bps/Hz per channel does not increase the number of RF channels available, and in fact, may have a negative impact on frequency reuse. If larger carrier to interference protection ratios are needed for systems employing higher spectral efficiencies, then other uses of these channels may have to be reduced to avoid interference. Harris requests that there be no efficiency requirement before December 1, 1988. It recommends that after December 1, 1988, the requirement for bandwidths of 10 MHz and less should be 0.3 bps/Hz; for bandwidths 10 MHz and greater, the requirement should be 1.0 bps/Hz.

49. Ericsson's comments oppose the Harris proposal of a spectrum efficiency standard of 0.3 bps/Hz, combined with a 0.03% frequency stability, since these standards would not achieve a reasonable degree of frequency efficiency in the band. Hughes-MCP's comments state that bps/Hertz performance is only one small component of overall spectrum efficiency and attempts to regulate this one part will frequently produce unfortunate results, as the several Petitions show.

50. The M/A–COM Petition states that the language governing the change from a 0.6 bps/Hz efficiency standard to a 1 bps/Hz standard on December 1, 1988 could cause substantial confusion and unnecessary costs, and therefore must be clarified. It notes that there is a significant difference between the text of the *Second Report and Order* and the language actually adopted in the Rules to implement the standard, i.e., the text discusses stations authorized while the rules refer to equipment installed and operating. M/A–COM notes this distinction is particularly important for DTS, since a complete system is likely to be only partially installed and operating by December 1, 1988, even though it will be fully authorized.

51. M/A–COM believes that the December 1, 1988 date should not apply to networks and systems that are only partially installed by that time. It points out that under the adopted rules, new DTS subscriber stations installed after December 1, 1988 would have to meet the 1 bps/Hz standard, even if the central node of the system operates at 0.6 bps/Hz. Thus, the rule would have the result of requiring technical incompatibility within the system.

Further, M/A-COM requests clarification as to whether or not the spectrum use standard will be applied to 18 GHz DTS in the same way that is applied to 10 GHz DTS, namely, that frequency reuse is a permissible way to satisfy the standard.

52. We find the manufacturers arguments persuasive that it will be difficult to meet the short term 0.6 bps/Hz standard given the design of existing equipment. Since we are anticipating significant development of new 18 GHz equipment over the next few years, it would be reasonable to not require manufacturers to redesign existing equipment in the near term in order to meet the interim efficiency standard.[11] Therefore, we believe that it is appropriate to postpone the implementation of a specific spectrum efficiency standard until 1988. Hence, we are removing this requirement from the rule.[12] We do not find arguments for loosening or delaying the 1.0 bps/Hz standard, which becomes effective December 1, 1988, persuasive. In fact, based on comments received in the Reconsideration Petitions, we believe that it would be reasonable to apply the future spectrum efficiency standard for digital systems to the entire band.[13] The systems operating in the other portions of the band will have wider bandwidths, and thus should be able to meet the 1.0 bps/Hz transmitter standard, given the five year lead-time.[14] The 1.0 bps/Hz standard, then, will apply for all digital equipment in the 18 GHz band as of December 1, 1988.

53. However, the issue of achievable efficiency for point-to-point communications for lower-speed links may be of concern. For example, if only a low data rate is required and if the minimum practical bandwidth is 5 MHz, the 1 bps/Hz standard may not be achievable; or it may not be desirable from a user's standpoint because he may have to purchase capacity in excess of his actual needs. This particular issue may be addressed again in further phases of Docket 82-334. The related issues of comparable efficiency standards for other (non-digital) modulation may also be examined.

54. On the issue of applying the 1 bps/Hz standard to new nodes on already existing 18 GHz DTS systems after 1988, we believe that some special provisions are needed.[15] The construction authorization for a DTS system is five years. Since additional individual user stations, which must be technically compatible with the already installed nodal station, and nodal stations are often installed some years after the initial facilities, we will allow any facilities authorized before December 1988 to install equipment after 1988 which does not meet the new standard.

55. M/A-COM's comment regarding frequency reuse as a means of achieving the 1 bps/Hz standard appears to confuse the intent of §§ 21.122 and 94.94 with § 21.511 of the rules. Section 21.511 requires that the DTS application include an overall frequency use plan including the total bits/second per unit bandwidth used. Sections 21.122 and 94.94 establish a standard which all transmitters must meet in order to be authorized. The 1 bps/Hz standard applies regardless of how the transmitter is employed in a communication system. We are adding a sentence to §§ 21.122 and 94.94 to clarify that the 1 bps/Hz standard applies independent of the antenna configuration employed or of other factors.

Frequency Tolerance

56. In the *Second Report and Order* the Commission imposed a frequency stability standard of 0.001% for DTS nodal transmitters and a standard of 0.003% for DTS user transmitters operating in the 18 GHz band. For all other 18 GHz uses, a standard of 0.003% was imposed by the *Second Report and Order* and *First Report and Order*. However, the Commission permitted the continued marketing of existing authorized equipment (with a frequency tolerance of 0.03%) until December 1, 1988. Equipment put into operation prior to that date could continue to be used indefinitely.

57. The Harris Petition states that there is no need to impose a frequency tolerance of 0.003% for the 18.36–19.04 GHz band. It believes a frequency tolerance of 0.005% is a more realistic goal and should be an objective for equipment designers after December 1, 1988 for the entire 18 GHz band (i.e., 17.7–19.7 GHz). Harris contends that tight frequency stability does not improve co-channel frequency reuse. Further, since adjacent channel carrier to interference ratios for digitally modulated signals are on the order of 0.0 dB or better, improving stability also has little effect on adjacent channel sharing. For analog modulated signals, Harris notes that the co-channel carrier beat interference determines co-channel sharing possibilities. In lower frequency bands such as 2 or 6 GHz, higher frequency stability may assist in frequency coordination. However, at 18 GHz a 0.005% frequency stability would probably not change the C/I ratio requirement for co-channel frequency coordination.[16]

58. While one manufacturer believes that little spectrum utilization improvement results from requiring a 0.003% tolerance over a 0.005% tolerance, we think that in the longer term the tighter tolerance will lead to improved spectrum utilization. Although Harris states that they believe that the cost penalty of meeting the new standard is significant, no cost data has been provided to us. We note that recently authorized equipment meets the tighter standard. The fact that existing authorized equipment can continue to be marketed until 1988 protects investments in existing equipment production sufficiently and this period provides an adequate length of time for equipment redesign. Therefore, no change is necessary in the frequency stability standards adopted.

Point-to-Point Emission Mask for Parts 74 and 78 Systems

59. M/A-COM's Petition also notes that the Commission did not precisely replicate the digital emission mask previously established in Part 21 for point-to-point operations when it established similar provisions for the emission mask for Part 74 (*Second Report and Order*, Appendix B, p. 13) and Part 78 (*First Report and Order*, Appendix B, p. 17) for transmitters. In particular § 21.106(a)(2)(ii) specifies that attenuation greater than 56 dB is not required for point-to-point operations, but this is not included in §§ 74.535(e)(2)

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[11] Manufacturers have pointed out that modifying existing equipment to meet the 0.6 bpz/Hz interim standard would cause equipment to have to be reauthorized. This would also require the manufacturers to meet the new frequency tolerance standard immediately, even though the Commission currently allows marketing of already authorized equipment not meeting the frequency tolerance standard until 1988. Postponing the implementation of a digital efficiency standard until 1988 will avoid this double redesign problem.

[12] The Harris Petition requested a 5-year period in which to market its equipment that does not meet the 0.6 bps/Hz spectral efficiency factor. The Commission stayed the spectral efficiency requirement in an *Order* in Docket 79-188, 48 FR 55741 (1983), pending the outcome of the Petitions for Reconsideration, to allow marketing existing authorized equipment in the meantime. Since we are staying the implementation of the spectral efficiency requirement until 1988, the Harris request is satisfied in this point.

[13] The standard presently applies only to the center portion of the band.

[14] We make note that some 18 GHz equipment manufacturers are meeting the 1.0 bps/Hz standard on wider channel equipment today.

[15] 10.6 GHz DTS systems are already subject to the 1 bps/Hz requirement, however.

[16] Frequency stability also affects the capacity of the channel, e.g., a looser frequency stability also reduces the number of bps/Hz which can be achieved. Therefore, it is important that standards covering these aspects of a transmitter be established in concert with one another.

or 78.103(c)(2). M/A-COM states full compliance with the language in these sections of Parts 74 and 78 would be impossible with today's test equipment. Harris supports M/A-COM on this issue.

60. The Commission agrees that it is not necessary for the digital emission mask requirements for Parts 74 and 78 to be attenuated more than 56 dB. Parts 74 and 78 are hereby changed to be consistent with the standards set forth in Part 21.

EIRP Limit

61. In the *First Report and Order* the Commission imposed a maximum Equivalent Isotropic Radiated Power (EIRP) of +50 dBW for services under Parts 74, 78 and 94 operating in the 18 GHz bands. No EIRP limit has been imposed for Part 21 services. The Hughes-MCP Petition states that the EIRP for all 18 GHz band systems should be raised from +50.0 dBW to +55.0 dBW, as provided for internationally.[17]

62. The Commission Rules have limited power into the antenna for microwave systems. In the bands above 10 GHz, this limit is +10 dBW for all services. In addition the Private, Broadcast and Cable services have had an antenna output limit, EIRP, imposed. An EIRP limit has also been imposed for common carrier terrestrial systems operating in bands shared with satellite services. In the 18 GHz band, due to propagation losses, an EIRP of +55 dBW will provide for better operation compared to the current +50 dBW limit because larger antennas could be used. As the commenters point out, the +55 dBW EIRP limit on terrestrial systems has been used internationally as a baseline parameter for coordination between fixed and fixed satellite services. In order to be consistent with the international Radio Regulations, we believe it appropriate to impose the +55 dBW limit for Part 21 systems and to raise the allowed EIRP to +55 dBW for other services in the 18 GHz band. We do not believe that this higher limit will substantially affect sharing possibilities between the fixed and fixed-satellite services. Consequently, the rules for Part 21, 74, 78 and 94 systems in the 18 GHz are modified to add an EIRP limit of +55 dBW.

63. With the adoption of the *Second Report and Order* in Docket 80–739,[18], § 2.106 (The Table of Frequency Allocations) of the Commission's Rules was modified to include the domestic implementation of International Footnote 871 by adopting United States Footnote, US254. This imposed a limit on radiated power in the band segment 18.6–18.8 GHz of +35 dBW and limited power into the antenna to −3 dBW.[19] The changes listed in Appendix C add these limits, already in effect, to Parts 21, 74, and 78 and 94 of the Commission's Rules.

Minimum Antenna Gain Requirements

64. In the *Second Report and Order* and *First Report and Order* the Commission imposed a minimum antenna gain of +38 dBi at 18 GHz for Category "A" antennas. This standard would apply to all point-to-point services requiring a Category "A" antenna.

65. The Harris Petition recommends a reduction in the minimum required antenna main lobe gain from 38 dBi to 36 dBi. It says the 38 dBi gain antenna may prove too expensive to allow 18 GHz DTS applications to become cost effective alternatives to 10.6 GHz band assignments. The M/A-COM Petition also requests the antenna gain standard be reduced from 38 dBi gain to 36 dBi for point-to-point systems, since 36 dBi antennas would be less costly.

66. We believe antenna performance is a critical, and generally very cost effective, element in the efficient use of the spectrum. As no substantive new arguments in the form of cost data from antenna manufacturers were presented to justify a change in the adopted rules, relaxation of the antenna standard is not warranted.

12 GHz Reaccommodation Procedure Issues

Continued Use of the 12 GHz Band by the Fixed Service

67. In establishing the Direct Broadcasting Satellite (DBS) service,[20] the Commission decided that sufficient spectrum must be made available quickly to DBS if the public interest goals in authorizing the broadcasting-satellite service in this country are to be fully realized. The 12 GHz band (12.2–12.7 GHz) offered the only means of accomplishing this end since it is the only spectrum suitable for satellite communications for which the necessary equipment would be readily available and in which DBS service was already authorized in the international Table of Allocations. The Commission considered extensively the issues raised by its DBS allocation action with respect to current users of the 12 GHz band. The Commission determined that this 12 GHz spectrum would be available on a protected basis for DBS from the data of adoption of a Report and Order in Docket 82–334. Licensees authorized after this date would be required to protect operating DBS systems from harmful interference; however, licensees authorized as of the date of adoption would not have to provide protection for a period of five years and would be allocated other frequencies. Interference could be avoided, or corrected, through adjustments in system design or technical parameters, such as use of site shielding, power reduction, antenna improvements and rerouting, as well as through changes in operating frequencies. The *First Report and Order* was adopted on September 9, 1983, thus the five year transition period ends as of September 9, 1988.

68. The Harris Petition requests that since it believes there is no realistic alternative spectrum for many potential 12 GHz applicants, as a minimum, all applications at the Commission being processed before the September 9, 1983 cut-off date established by the *First Report and Order* should be granted status entitling them to the special reaccommodation provisions. Harris also states that there is a need to provide a longer transition period than five years to vacate the 12 GHz band.

69. API comments support the Harris position on the need for a longer transition period and go on to state that the Commission should continue to license additional facilities in the 12 GHz band on a primary basis through September 9, 1988. However, it is opposed to expanding the number of stations eligible for the reaccommodation provisions beyond those stations licensed on or before September 9, 1983.

70. In response to the comments of API, Harris states that those links licensed after September 9, 1983 need not be accorded special reaccommodation rights. STC opposes providing primary status to an expanded class of 12 GHz users.

71. The principal of a cut-off date was established by the Commission in

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[17] The international Radio Regulations specify that the maximum EIRP for fixed terrestrial stations in bands shared with the fixed-satellite services above 1 GHz is limited to +55 dBW (EIRP). Article 27, § 2, 2505. In addition there is a limit of +10 dBW on power delivered to an antenna. *Id.* 2508. Limits for the band segment 17.7–18.1 GHz, shared with feeder links for broadcasting-satellites are being further studied. *Id.* 2511.

[18] *Amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979*, 49 FR 2257 (1984).

[19] US254: In the band 18.6–18.8 GHz the fixed and mobile services shall be limited to a maximum equivalent isotropically radiated power of +35 dBW and the power delivered to the antenna shall not exceed −3 dBW.

[20] *Report and Order* in Docket 80–603, 47 FR 31555 (1982).

Docket 80-603 when the direct broadcasting satellite (DBS) service was established and was reaffirmed by the Commission during reconsideration.[21] We continue to believe, for the reasons set forth in the *Report and Order* in Docket 80-603, that the September 9, 1983 cut-off date for determining a fixed licensee's status is appropriate and that a five year transition period will be sufficient for 12 GHz band licensees. This does not mean, of course, that we are insensitive to particular consequences of our actions, nor that we are unwilling to consider requests for special relief where appropriate. Where suitable spectrum is not available in the 13 and 18 GHz bands, waivers will be granted, upon proper showing, to allow use of the 6 GHz band. See the discussion below under "Access to the Private 1.8 GHz and 6 GHz Bands". Taken together, these provisions should provide appropriate remedies for 12 GHz licensees who must relocate. In addition, we are mindful of our special duty to preserve the integrity of public safety needs. *See,* 47 U.S.C. 332(a); section 9 of the Federal Communications Commission Authorization Act of 1983, Pub. L. 98-214, 97 Stat. 1467; *National Association of Broadcasters* v. *Federal Communications Commission et al.*, No. 82-1926, —— F.2d. —— (D.C. Cir., July 24, 1984) slip opinion at 41-42. In our DBS Reconsideration Order, we acknowledged that we have both the duty and the means to address specific safety problems created by proposed relocations from the 12 GHz band. As we stated, this relief could include acceptance of interference to DBS services in specific locations, reimbursement from DBS operators for relocation costs, and extension of the transition period. Accordingly, our decision here is subject to the additional caveat that special relief will be considered upon appropriate request by a public safety entity.

Reaccommodation at 13 GHz

72. In the *First Report and Order* the Commission provided access to the 13 GHz band for displaced 12 GHz private fixed service links licensed prior to September 9, 1983. It provided a channeling plan for use of the 12.7–13.15 GHz segment along with cable and broadcast auxiliary users. The Commission concluded in the *First Report and Order* that the 13 GHz band was technically and economically the best alternative band for the 12 GHz fixed users.

73. The AMST Petition states that permitting the displaced 12 GHz private operational-fixed microwave users to access the 13 GHz band dooms the growth of broadcast auxiliary services. It states that the 13 GHz band is the principal spectrum where growth of the broadcast auxiliary services is both economically and operationally feasible. This spectrum is needed to support electronic new gathering (ENG) as well as studio-to-transmitter link (STL) operations. AMST states that the 13 GHz band should only be used as a last resort, on a case-by-case basis and that displaced 12 GHz users should go to 18 GHz, to channels at 2.5 GHz (2500–2690 MHz), or to other lower spectrum before being permitted access to 13 GHz.

74. The Gill Petition states that the 13 GHz band is saturated, containing 83,000 links by the Commission's own count, and that introduction of the displaced 12 GHz users will disrupt future growth of cable systems. It believes the 12 GHz users should be encouraged not to change frequencies until actual interference to DBS services occurs, and then should move to the 6 GHz band, as a first choice, or to the 18 GHz band.

75. Cox's comments support the petitions of NAB and AMST, claiming that the introduction of additional users in the 13 GHz band would only increase the prospect of congestion and that the displaced 12 GHz licensees' use of the 13 GHz spectrum would be incompatible with the broadcast auxiliary licensees use of the spectrum. Multimedia's comments also support the Petitions of AMST and NAB. On the other hand, the County of Los Angeles' comments oppose any restrictions on the 12 GHz displaced licensees' access to the 13 GHz band.

76. The Commission continues to believe that sufficient spectrum exists in the 13 GHz band for many of those licensees who may wish to use these frequencies to replace 12 GHz systems. These private fixed service links can coexist with cable and broadcast auxiliary stations in the 13 GHz band.[22]

Access to the Private 1.8 and 6 GHz Bands

77. In the *First Report and Order* the Commission also provided access to the private 6 GHz band (6525–6875 MHz) for displaced 12 GHz links licensed prior to September 9, 1983. The issue of access to this band to accommodate future growth requirements and 20 MHz channeling was deferred pending additional studies to be presented in Docket 82-334.

78. The Harris Petition requests that the Commission clarify exactly what spectrum is available for reaccommodation under waiver, as discussed in paragraph 36 of the *First Report and Order,* and to be positive about the granting of waivers to Business Radio Service licensees and 20 MHz channel users for use of the 6 GHz band.

79. The M/A-COM Petition states that increased sharing and wider channels are needed at 6 GHz. It notes Business Radio Service eligibles and other private microwave eligibles with long path length requirements and FM video (20 MHz-wide channel) transmission requirements, whose needs could previously have been met at 12 GHz, now have no spectrum available to satisfy these needs. M/A-COM says that the 18 GHz band does not support adequate path lengths for some applications. The lower frequency private bands do not currently allow channel bandwidths sufficient for FM video. It notes that the Commission has never before adopted a spectrum reallocation plan that would totally deprive a user group of the ability to meet its spectrum needs. Thus, M/A-COM recommends allowing access to the 6 GHz band for these types of users and suggests that it is reasonable to impose a minimum path length requirement on 20 MHz video channels to assure that shorter path lengths are implemented at 18 GHz or higher. M/A-COM suggests that Business Radio Service eligibles should not be permitted to use the 6 GHz band for non-video transmission since other business service needs can be met in already available bands.

80. AAR opposes opening up the 6 GHz band for 20 MHz-wide video channels and Business Radio Service licensees and states that the Commission should defer action on this issue until the congestion study referenced in the *First Report and Order* has been completed. API and UTC oppose opening up the 1.8 GHz (1850–1990 MHz) and 6 GHz bands to Business Radio licensees and the introduction of 20 MHz channel operations because they claim the non-Business Radio licensees need what is left of this spectrum to support long term requirements.

81. Hughes-MCP states that Business Radio Service eligibles should be permitted to transmit video in the 6 GHz band upon showing that 18 GHz is unsuitable; however, applicants should

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[21] *Memorandum Opinion and Order* in Docket 80-603, 94 FCC 2d 741.

[22] While the Commission is continuing its examination of the utilization of the 13 GHz band, and other bands, it is not possible to determine in advance of a specific engineering study whether a particular link can be implemented satisfactorily in a particular frequency band.

be permitted to use 6 MHz bandwidth vestigal sideband AM modulation as well as FM-video modulation.

82. We believe that the question of providing additional access to the 1.8 GHz and 6 GHz bands for Business Radio Service use and providing for 20 MHz-wide channels are part of the larger question of future growth of private services. In the *First Report and Order* we stated that we might take additional actions in Docket 82-334 in the future with regard to spectrum for new private microwave systems. With regard to Harris' request that the waiver approach described in the *First Report and Order* needs to be clarified, we believe that the language in the *First Report and Order* describes the waiver conditions sufficiently for the staff to make the necessary case-by-case determinations.[23] Therefore it does not appear necessary to amplify the conditions for the grant of future waivers.

Frequency Coordination

83. The *First Report and Order* requires that all proposed systems in the 13 GHz band be coordinated with other users in accordance with a uniform procedure that applies to all services.

84. The AMST Petition requests that the coordination procedure outlined in the *First Report and Order* not be imposed on the broadcast auxiliary service stations operating in the 13 GHz band. It states that there is no need to impose this requirement on mobile electronic news gathering (ENG) operations since they are obligated not to cause interference to fixed users. The NAB Petition states that the adopted 13 GHz frequency coordination procedure is unworkable for mobile operations and should only be applicable to fixed operations. It also notes that since mobile stations are secondary to fixed stations in the band segment 12.7 to 13.15 GHz, there is no need for a formal coordination procedure.

85. Cox's comments state that should additional sharing of the 13 GHz band be reaffirmed by the Commission, then the coordination procedure established in the *First Report and Order* must be clarified and adjust to take into account mobile ENG operations.

86. The fact that mobile operations are secondary to fixed operations at 12.7-13.15 GHz does not mean that mobile operations should not be required to coordinate or announce their presence to fixed operations with whom they are sharing the spectrum. A more formal coordination procedure has not been required for the exclusive broadcast auxiliary bands, 1990-2110 MHz and 6875-7125 MHz, because the broadcast industry has been successful in coordinating fixed and mobile use of these bands among affected broadcast entities. However, the 13 GHz band is now shared among several services and we believe that the presence of these additional types of users requires that more formal coordination procedure be followed. We believe the procedure adopted in the *First Report and Order* is not burdensome and, in the absence of demonstrated problems with its application, it need not be changed.

Interference Criteria

87. The Harris Petition requests clarification of the meaning of such terms as "provided no interference is caused to operating Direct Broadcast Satellite systems" and "secondary status" when referring to the relative status of DBS and fixed operations at 12 GHz. It points out that only "harmful interference" is defined in Part 2 of the FCC Rules, and thus it is unclear as to what constitutes interference in this instance.[24] Harris also wants the Commission to define harmful interference in exact mathematical terms.

88. STC supports the Harris request that the Commission establish interference criteria between the fixed service and the broadcasting-satellite service in the 12 GHz band. However, STC feels that this should be done in a separate rule making proceeding.

89. On the issue of clarification of interference between terrestrial and DBS systems, Harris is correct in stating that the *First Report and Order* does not define precisely what the characteristics of any allowable interfering signal could be between these services. It is the Commission's understanding that a subcommittee of the FCC Advisory Committee on Technical Standards for Direct Broadcast Satellite (DBS) Systems is addressing the issue of interference to DBS receivers in the 12.2-12.7 GHz band and will be developing related technical standards.[25] The implementation of such standards will be the subject of future rule making.

90. The Gill Petition states that if the 13 GHz band must be opened up to the 12 GHz users, then specific interference standards (i.e., C/I ratios) should be established by the Commission. With regard to establishment of specific interference criteria for any microwave band, the Commission believes that industry is better equipped to develop standards after considering such issues as required reliability and other factors. The Electronic Industries Association (EIA) has in the past developed such standards for private microwave systems.[26] It is the Commission's understanding that the EIA is currently expanding the scope of its effort to include systems operating in the 13 and 18 GHz bands and that this revision should be completed by the end of 1984. The coordination procedure adopted for the 13 GHz band refers to the EIA standards for appropriate interfernce criteria.

Other issues

Operating Rules for 31 GHz

91. The M/A-COM Petition states that allowing uncoordinated use of the 31 GHz band is urgently needed. It notes that although there was substantial support for the proposals regarding the 31 GHz band in the *NPRM* in Docket 82-334, the Commission took no action. It requested that the Commission adopt necessary rules to permit immediate access to this band on an uncoordinated basis. M/A-COM suggests the following technical standards be imposed: 50 MHz channels with a 0.03% frequency stability. No other comments were received on this issue. The 31 GHz band, as we indicated in the *First Report and Order*, will be addressed in a further item. Therefore the Commission is not taking action at this time concerning the 31 GHz band.

Mobile Only Use in the Band Segment 13.20-13.25 GHz

92. In commenting on the broad issue of mobile ENG use at 13 GHz, the NAB's *Petition for Reconsideration* requests that the band segment 13.20-13.25 GHz be allocated to mobile-only use and that

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[23] Two waivers have been granted to allow 20 MHz-wide video and digital non-Business Radio Service systems in the 6 GHz band, to date, see: EXXON Communications Corporation, WHK401, granted November 25, 1983, file number 707253, *et al* and State of South Carolina, WHK288, granted December 9, 1983, file number 708549, *et al.* Additionally, a waiver has been granted to allow a 10 MHz-wide digital Business Radio Service system access to the 6 GHz band, see: Banco Popular de Puerto Rico, WNEE883, granted April 27, 1984, file number 804561, *et al.*

[24] Part 2, as revised by the *Second Report and Order* in Docket 80-739, now defines interference as "[t]he effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted entry. (RR)"

[25] *Public Notice: Establishment of Industry Advisory Committee on Technical Standards for DBS Service*, Memo 6060, released August 22, 1983.

[26] Electronic Industries Association, *Interference Criteria for Microwave Systems in the Private Radio Services*, Telecommunications Systems Bulletin No 10D, August 1983.

existing fixed operations be grandfathered. It contends this is needed to support a growing ENG requirement and would be consistent with the allocation for the adjacent band 13.15–13.20 GHz.

93. The band segment 13.20–13.25 GHz was not at issue in the *First Report and Order*. NAB's petition to reallocate this band is, therefore inappropriate for consideration here. We have not examined the merits of such a reallocation. Accordingly that portion of the NAB request concerning 13.20–13.25 GHz is being dismissed for the purposes of this *Memorandum Opinion and Order*. However, we will retain the NAB petition as a comment in the docket to be considered at the appropriate time.

Rule Part Clarifications[27]

Digital Termination Systems

94. In our *First Report and Order* in Docket 79–188 we provided for two categories of networks at 10.6 GHz, classified by size.[28] Extended networks consist of DTS facilities in 30 or more SMSAs, while Limited networks contain 29 or fewer SMSAs. The rules governing Extended networks differ in several ways from those for Limited networks. The maximum period of construction for an Extended network is 60 months, while that for a Limited network is 30 months. 47 CFR 21.43(c) (1), (2) and 94.187 (a), (b). The channel width for DTS channels allocated for Extended networks is 5 MHz, while it is only 2.5 MHz for Limited networks. *Id.* § 21.502(a) and 94.189(a); *see* 86 F.C.C. 2d at 371–75. Finally, to obtain a second channel in a given SMSA, an Extended network licensee must show that it has operated its initial channel "at or near capacity," while a Limited network applicant may simultaneously apply for more than one channel on a showing that the service to be provided "will fully utilize all spectrum requested."[29] *Id.* § 21.502(a)(1) and 94.189(a)(iii).

95. When we allocated the additional spectrum at 18 GHz, we did so with the intention that assignments in that band would be "for all DEMS applicants regardless of the size of any intended network an applicant chooses to construct." 47 CFR 21.502(a) and 94.189(a). Our intention was to avoid a dual system at 18 GHz; a network applicant may chose to fashion a network of DTS facilites at these frequencies, composed of as many or a few SMSA's as desired. In addition, an Extended or Limited network applicant or licensee may supplement its network with DTS at 18 GHz for one or more SMSAs. Such supplementation, however, must be done in accordance with the rules governing the network to be supplemented. An Extended network licensee who applies for a second channel at 18 GHz must show that its first channel is operating "at or near capacity."[30] A Limited network licensee or applicant who seeks to add a second channel at 18 GHz must show that the proposed service "will fully utilize all spectrum requested."[31] Of course, these showings must be made at the time of the application for the second channel, whether at 10.6 GHz or at 18 GHz. *See National Microwave Interconnect Co.*, 88 F.C.C. 2d at 1716, 1730 (1982).

96. We note that our rules are open to misinterpretation regarding the showing needed in a second channel application by a licensee or applicant whose initial network consists entirely of 18 GHz DTS facilities. If that network contains 30 or more SMSAs, then it is an Extended network and is governed by the applicable rules for Extended networks, including §§ 21.502 and 94.189(a)(4). Conversely, if that network consists of 29 or fewer SMSAs, then the network is a Limited network subject to all applicable Limited network requirements. By refusing to designate network requirements for 18 GHz channels, we intended to permit each applicant to decide for itself whether to fashion an Extended or Limited network. It must, however, be one or the other.

97. Thus, the Commission will process applications for DTS facilities at 18 GHz in accordance with the representations for the applicant describing the network with which the proposed DTS will be associated. An example will make this clear. Assume that an Extended network licensee applies for a number of 18 GHz DTS facilities, some of which are located in the same cities as DTS facilities in the applicant's 10.6 GHz network. To be eligible in those cities, the applicant must show that its 10.6 GHz facilities in those cities are in fact operating "at or near capacity."[32] Assuming that such a showing is made and a construction permit is granted, the maximum construction time for the DTS facilities will be governed by the associated network. If, for example, the applicant intends to supplement its Extended network with the 18 GHz facilities, they will be considered part of the applicant's original Extended network, and thus the construction period will be set for some period not to exceed 60 months.[33] If, on the other hand, the 18 GHz applications are intended to constitute a separate network, then the maximum construction period will be determined by whether that network is a Limited or Extended network, a distinction that itself will be determined by the number of SMSAs in the 18 GHz network.[34]

98. Finally, we take this opportunity to emphasize that an applicant must co-ordinate its frequency use with adjacent channel users, whether those users are in the point-to-point, private DTS or common carrier DTS services. It must also, of course, co-ordinate with cochannel users to assure that harmful electrical interference is avoided. For example, under § 21.504(c), an applicant must include with its application an interference analysis demonstrating that there will be no unacceptable interference with any other existing or previously proposed TDS whose nodal station is located within 80 kilometers (50 miles) of the co-ordinates of the

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[27] In this section and the following section entitled "Editorial Changes to the Rules" several rules are being amended. These rule changes are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Several of these amendments are either clarifications of existing rules or simply editorial changes to rules previously amended in either the *First Report and Order* or the *Second Report and Order*. While other rules are being amended for the first time in these proceedings in this Order, we find that those rules are either procedural or that good cause exists to excuse compliance with the Administrative Procedure Act, 5 U.S.C. 553(b) (A) and (B). With regard to the latter, we note that the changes are minor and noncontroversial, and in some instances eliminate obsolete provisions. Other rules are being amended in order that they will better reflect current practices.

[28] The *First Report and Order* in Docket 79–188 addressed only common carrier DTS. However, in the *Second Report and Order* we provided for private use of 10.6 and 18 GHz frequencies for DTS, as well, under rules similar to those applying to common carrier. The discussion below, applies to both common carrier and private systems.

[29] To make such a showing, a common carrier Limited network applicant "must at a minimum specify the exact nature of the service(s) to be provided including both the bit and band rate for the channel (or subchannel) used to supply the service and an assessment of the market demand on a city by city basis". National Microwave Interconnect Co., 88 F.C.C. 2d 1716, 1730 (1982).

[30] 47 CFR 21.502(a) and 94.189(a). This would be true whether or not the first channel happened to be in the 10.6 GHz or the 18 GHz band, because it is the nature of the service that governs, and not the frequency of the first channel.

[31] *Id.*

[32] If the applicant's 10.6 GHz network were a Limited one, then it would need to show that the service it will be providing "will fully utilize all spectrum." As noted, however, that showing must be a detailed and specific one."

[33] If the 10.6 GHz network were a Limited one, the maximum period for construction would be 30 months.

[34] The proposed 18 GHz network application must, of course, contain all information necessary for the granting of a network authorization, including that information required by § 21.15(i). We also note that petitions filed by subsidiary companies of companies under common carrier control will be deemed to be filed by the same applicant.

applicant's proposed nodal station. 47 CFR 21.504(c) and 94.193(b).

99. Sections 94.189(e)(i), 94.189(g) and 21.502 (b), (c), e(i) and (e)(ii) discuss a sequence for assigning DTS channels. In practice the Commission has not been able to follow this assignment sequence because applicants must specify in their applications the specific frequency for which they are applying. *See National Microwave Interconnect Co.*, 88 F.C.C. 2d at 1721–24. Therefore, these rule sections are amended to delete the reference to assigning channels in sequential order. Section 94.185 is modified to clarify application submission requirements. The term "interconnected" in § 94.185(c) is changed to "linked" to avoid the connotation of a required connection to the public telephone network.

Editorial Changes to the Rules

Rule Part 21

100. The provision of footnote US258 of the Table of Frequency Allocations are added to § 21.107. This footnote limits EIRP for stations in the 10.6–10.68 GHz band to +40 dbW.

101. When Part 22 of our Rules was created, several of the provisions of Part 21 became obsolete but were not removed. We are therefore deleting from § 21.701 paragraphs (b), (c), (d), (e), (f), (g) and (h). In addition, we are deleting paragraphs (a), (b), (c), (d), (e) and (f) from § 21.703. These changes reflect the fact that only Part 22 Domestic Public Land Mobile licensees are eligible to operate Fixed Systems on the referenced frequencies.

Rule Part 78

102. The *First Report and Order* inadvertantly failed to amend paragraphs (e) and (f) of § 78.18 to reflect changes made in paragraph (a)(4) concerning channels for use with 6 MHz amplitude modulation (AM). These changes are hereby made.

Rule Part 94

103. The *Second Report and Order* inadvertently deleted some wording in § 94.71(b) which was added as part of the *Memorandum Opinion and Order* in Docket 19671, 48 FR 32578 (1983). This omission is hereby corrected. Also the center frequencies listed for the 13 GHz band in § 94.93 contained a typographical error which is hereby corrected. In addition editorial changes are made to § 94.63, 94.185, 94.189 and 94.193 to delete obsolete rule provisions, correct errors in the rules previously adopted for DTS and to re-number subsections.

104. Section 94.3 use the term "Effective Radiated Power (ERP)" and its associated definition: "The product of the antenna power input and the antenna power gain in a given direction over that of an isotropic radiator." On the other hand § 2.1(c) of the Commission's Rules defines ERP as "The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction." The difference between the two definitions is the reference antenna used, isotropic versus half-wave dipole. The current definition used for ERP is correct in the context of Part 94. However, to be consistent with § 2.1(c), the term ERP should be changed to "Equivalent Isotropically Radiated Power (EIRP). We are taking this opportunity to amend § 94.3 to bring it into compliance with § 2.1 by substituting the term EIRP for ERP.

Administrative

105. Accordingly, it is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the *Petitions for Reconsideration* filed by Ericsson, Harris, Hughes-MCP, M/A–COM, Microband and NCTA are granted in part and denied in part for the reasons stated above.

106. Accordingly, it is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the *Petitions for Reconsideration* filed by AMST, Gill, and Tymnet are denied, and the *Petition for Reconsideration* filed by NAB is denied in part and dismissed in part, for the reasons stated above.

107. It is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the *Petitions for Reconsideration of Waiver and for Further Relief*, filed by Ericsson is denied for the reasons stated above.

108. It is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that Parts 21, 74, 78 and 94 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as specified in Appendix C. These amendments become effective upon release of this *Memorandum Opinion and Order* by the Commission.[35]

109. It is ordered, that pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r), that the freeze on the filing and processing of applications for the 18 GHz band is lifted upon release of this *Memorandum Opinion and Order* by the Commission.

110. For further general information contact Donald Draper Campbell, (202–653–8177), or James Vorhies, (202–653–9097). With respect to common carrier issues, contact Stephen Thompson, (202–634–1854); for private radio issues contact Frederick Day (202–634–2443).

Federal Communications Commission.

William Tricarico,

Secretary.

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[35] Pending our consideration of the 18 GHz band channel arrangement, the Commission imposed a "freeze" on the acceptance and processing of new applications. *See Public Notice*, Memo 3401, April 5, 1984. Because we do not wish to maintain the freeze any longer than is necessary, we find good cause to make the rule amendments implementing the revised plan effective without further delay. *See* 5 U.S.C. 553(d)(3). This will enable us to end the freeze and begin accepting and processing applications immediately. Additionally with the action taken in the *Memorandum Opinion and Order*, the petitions of Harris, Ericsson and TOR requesting speical relief from the freeze on application filing suspension (see footnote 2, above) are now moot.

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APPENDIX A

18 GHz Channeling

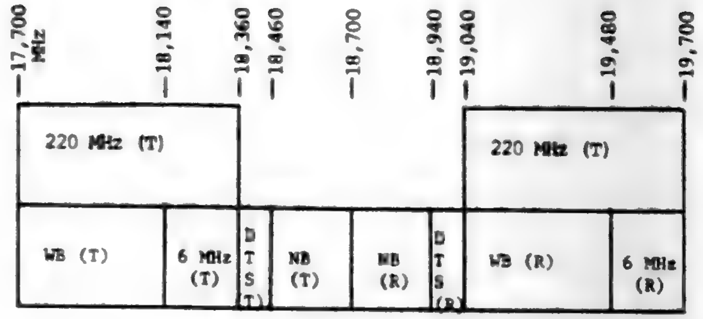
17,700 MHz
18,140
18,360
18,460
18,700
18,940
19,040
19,480
19,700
220 MHz (T)
220 MHz (T)
WB (T)
6 MHz (T)
DTS (T)
NB (T)
NB (R)
DTS (R)
WB (R)
6 MHz (R)

Adopted Plan
(1st R&O Doc. 82-334 and 2nd R&O Doc. 79-188)

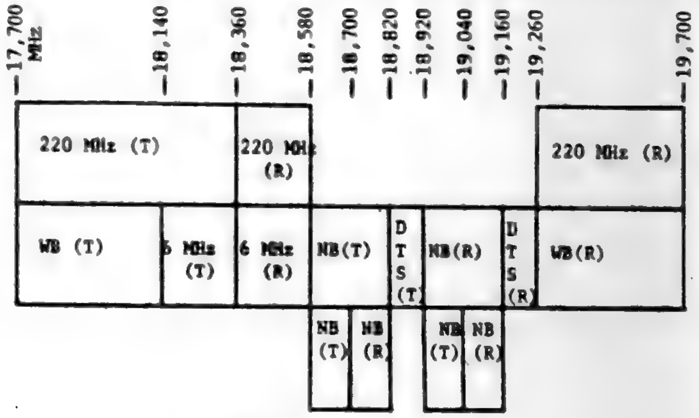
17,700 MHz
18,140
18,360
18,580
18,700
18,820
18,920
19,040
19,160
19,260
19,700
220 MHz (T)
220 MHz (R)
220 MHz (R)
WB (T)
6 MHz (T)
6 MHz (R)
NB(T)
DTS (T)
NB(R)
DTS (R)
WB(R)
NB (T)
NB (R)
NB (T)
NB (R)

Consensus Plan

APPENDIX A con't

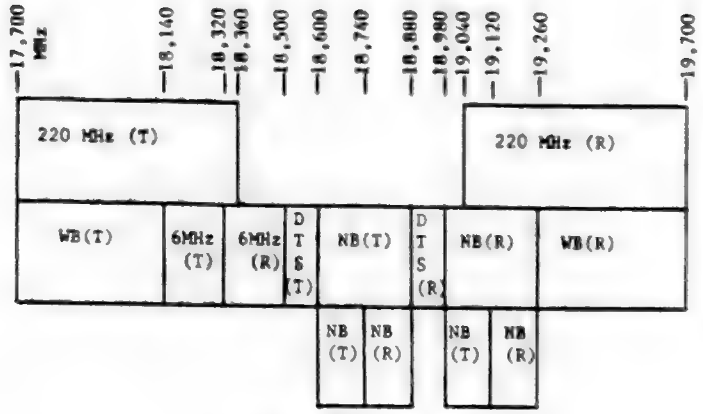
17,700 MHz
18,140
18,320
18,360
18,500
18,600
18,740
18,880
18,980
19,040
19,120
19,260
19,700
220 MHz (T)
220 MHz (R)
WB(T)
6MHz (T)
6MHz (R)
DTS (T)
NB(T)
DTS (R)
NB(R)
WB(R)
NB (T)
NB (R)
NB (T)
NB (R)

AT&T Plan

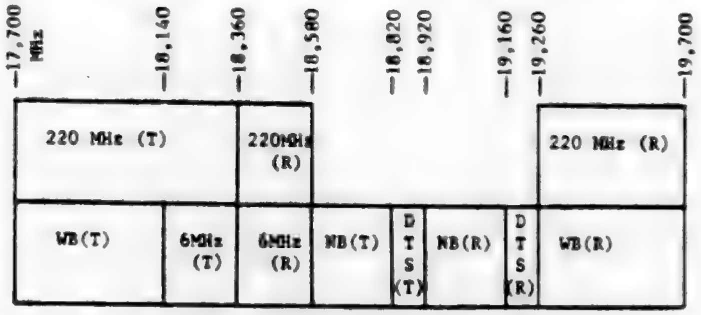
17,700 MHz
18,140
18,360
18,580
18,820
18,920
19,160
19,260
19,700
220 MHz (T)
220MHz (R)
220 MHz (R)
WB(T)
6MHz (T)
6MHz (R)
NB(T)
DTS (T)
NB(R)
DTS (R)
WB(R)

Revised Plan
(Adopted in this MO&O)

KEY:

DTS = Digital Termination Systems
220 MHz = 220 MHz channels
WB = 10, 20, 40 & 80 MHz channels
NB = 5, 10 & 20 MHz channels
6 MHz = 6 MHz channels

(T) = Transmit frequencies
(R) = Receive frequencies

Appendix B.—Summary of Rule Changes Resulting From This Action

A. Part 21 Changes

1. Section 21.101—Frequency tolerance:

Revised to reflect revised channeling plan for the 18 GHz band. There is no change in the frequency tolerance values.

2. Section 21.106—Emission limitations:

Modified to show change of emission limitations for 10.6 GHz point-to-point links.

3. Section 21.107—Transmitter power:

Revised to reflect the implementation of the allocation footnote US254 limiting EIRP in the 18.6–18.8 GHz band segment and to add a limit of +55 dBW in the remainder of the 18 GHz band. Also the point-to-point stations at 10.6 GHz are limited to +40 dBW by the allocations footnote US265.

4. Section 21.122—Microwave digital modulation:

Revised to specify that this standard applies to a transmitter and that the calculation of the bps/Hz is independent of the antenna, frequency reuse, or system configuration. The note applying to the 18 GHz band is modified to remove the 0.6 bps/Hz interim standard.

5. Section 21.502—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to indicate that channels used for internodal link assignments are to be made in accordance with the provisions of Subpart I of Part 21, which apply to point-to-point operations. The channel numbers for DTS channels are revised to run sequentially with the DTS channels in the 10.6 GHz band.

6. Section 21.503—Frequency stability:

Revised to delete redundant frequency stability requirements for DTS internodal links.

7. Section 21.507—Radiated power limitation in the 10,600–10,680 MHz band;

Removes separate emission restriction on point-to-point internodal links.

8. Section 21.701—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band. Also modified to eliminate provisions now covered under Part 22 of the Rules.

9. Section 21.703—Bandwidth and emission limitations:

Modified to reflect revised channeling plan for the 18 GHz band. Also modified to eliminate provisions now covered under Part 22 of the Rules.

10. Section 21.901—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to clarify that licensing of return links is under the fixed service rules in Subpart I of Part 21.

11. Section 21.903—Purpose and permissible service:

Modified to reflect revised channeling plan for the 18 GHz band and the fact that multiple links are permissible.

B. Part 74 Changes

1. Section 74.502—Frequency assignment:

Modified to reflect revised channeling plan for the 18 GHz band.

2. Section 74.534—Power limitations:

Revised to reflect implementation of allocation footnote US254 limiting EIRP in the 18.6–18.8 GHz band segment to +35 dBW and to add an EIRP limit of +55 dBW for the remaining portion of the 18 GHz band.

3. Section 74.535—Emission and bandwidth:

Revised to correct omission of maximum required attenuation.

4. Section 74.602—Frequency assignment:

Modified to reflect revised channeling plan for the 18 GHz band.

5. Section 74.636—Power limitations:

Revised to reflect implementation of allocation footnote US254, limiting EIRP in the 18.6–18.8 GHz band segment to +35 dBW and to raise the allowed EIRP in the remainder of the 18 GHz band from +50 dBW to +55 dBW.

6. Section 74.637—Emission and bandwidth:

Revised to correct omission of maximum required attenuation.

7. Section 74.641—Antenna systems:

Modified to reflect revised channeling plan for the 18 GHz band.

C. Part 78 Changes

1. Section 78.18—Frequency assignments:

Modified to reflect revised channeling plan for the 18 GHz band and amended to make paragraphs (e) and (f) consistent with paragraph (a)(4) of this same section.

2. Section 78.101—Power limitations:

Revised to reflect implementation of allocation footnote US254, limiting EIRP in the 18.6–18.8 GHz band segment to +35 dBW and to raise the allowed EIRP in the remainder of the 18 GHz band from +50 dBW to +55 dBW.

3. Section 78.103—Emission and bandwidth:

Revised to correct omission of maximum required attenuation.

4. Section 78.105—Antenna systems:

Modified to reflect revised channeling plan for the 18 GHz band.

D. Part 94 Changes

1. Section 94.3—Definitions:

Revised to replace the term ERP with the term EIRP; however, the definition used in Part 94 remains unchanged.

2. Section 94.61—Applicability:

Modified to reflect revised channeling plan for the 18 GHz band.

3. Section 94.63—Interference protection criteria for operation-fixed stations:

Modified to reflect revised channeling plan for the 18 GHz band.

4. Section 94.65—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to list the point-to-point channels available in the 10.6 GHz band.

5. Section 94.67—Frequency tolerance:

Modified to reflect revised channeling plan for the 18 GHz band and modified to reflect that internodal links are provided in accordance with the provisions of Subpart C of Part 94.

6. Section 94.71—Emission and bandwidth limitations:

Modified to reflect revised channeling plan for the 18 GHz band and to delete separate requirements for point-to-point channels. Also language reserving the Commission's right to assign bandwidths based on actual requirement, which was inadvertently omitted, is restored.

7. Section 94.73—Power limitations:

Modified to reflect revised channeling plan for 18 GHz and to change ERP (dBm) to EIRP (dBW).

8. Section 94.93—Provisions for Private Operational-Fixed Use of the 12,200–12,700 MHz band:

Revised to correct typographical error in channel center frequencies in table of subparagraph (d)(2), 12.5 MHz channels.

9. Section 94.94—Microwave digital modulation:

Revised to specify that this standard applies to a transmitter and the calculation of the bps/Hz is independent of the antenna, frequency reuse, or how a system is configured. The note applying to the 18 GHz band is modified to remove the 0.6 bps/Hz interim standard.

10. Section 94.185—Applications:

Modified to clarify application requirements.

11. Section 94.189—Frequencies:

Modified to reflect revised channeling plan for the 18 GHz band and to indicate that internodal link assignments are to be made in accordance with the provisions of Subpart C of Part 94. The channel numbers for DTS channels are revised to run sequentially with the DTS channels in the 10.6 GHz band.

12. Section 94.191—Frequency tolerance:

Modified to reflect revised channeling plan for the 18 GHz band.

13. Section 94.193—Interference:

Modified to clarify requirements for interference analysis.

14. Section 94.197—Radiated power limitation in the 10,600–10,680 MHz band:

Revised to indicate the removal of separate EIRP requirement for internodal links.

15. Section 94.15—Policy governing the assignment of frequencies:

Modified to indicate that internodal link assignments are to be made in accordance with the provisions of Subpart C of Part 94.

Appendix C

Chapter I, Parts 21, 74, 78 and 94 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICE

1. Section 21.101 is amended by revising entries between 25 and 40,000 MHz the table in paragraph (a) and its footnote 4 as follows:

§ 21.101 Frequency tolerance.

(a) * * *

Frequency range (MHz)	Frequency tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less [1]
25 to 50	0.002	0.002	0.005
50 to 450	0.0005	0.0005	0.005
450 to 512	0.00025	0.0005	0.0005
512 to 1,000 [3]	0.0005	0.0005	0.005
2,110 to 2,200	0.001		
2,200 to 12,200 [2][4]	0.005	0.005	0.005
12,200 to 17,700	0.03	0.03	0.03
17,700 to 18,820	0.003		
18,820 to 18,920	0.001		
18,920 to 19,700	0.003		
19,700 to 40,000	0.03	0.03	0.03

[1] * * *

[2] * * *

[3] * * *

[4] See § 21.903 for the stability requirements for transmitters used in the Digital Electronic Message Service.

* * * * *

2. Section 21.106 is amended by revising the introductory text of paragraph (a)(3) to read as follows:

§ 21.106 Emission limitations.

(a) * * *

(3) For Digital Termination System channels used in the Digital Electronic Message Service:

* * * * *

3. Section 21.107 is amended by revising the Table in paragraph (b) and adding footnote 3 as follows:

§ 21.107 Transmitter power.

* * * * *

(b) * * *

Frequency range (MHz)	Power (W)
Below 30	50
30 to 50	250
50 to 76	50
76 to 512	[1]250
512 to 10,000	[1]20
Above 10,000	[2][3]10

[1] * * *

[2] * * *

[3] In the band segments 17.7 to 18.6 GHz and 18.8 to 19.7 GHz, band the EIRP is limited to +55 dBW, while in the band segment 18.6 to 18.8 GHz, the EIRP is limited to +35 dBW. In the band segment 18.6 to 18.8 GHz the power delivered to the antenna is limited to −3 dBW. In the band segment 10.60–10.68 GHz the maximum EIRP is limited to +40 dBW.

4. Section 21.122 is amended by revising paragraph (e) including the note as follows:

§ 21.122 Microwave digital modulation.

* * * * *

(e) Microwave transmitters employing digital modulation techniques in the band 17,700–19,700 MHz shall transmit at a bit rate, in bits per second (bps), equal to or greater than the authorized bandwidth in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mbps rate must not require a authorized bandwidth greater than 20 MHz). This bps/Hz standard is independent of the antenna (polarization) used, frequency reuse, or how the system is configured.

Note.—Until December 1, 1988, no minimum bit rate shall apply to the 17,700–19,700 MHz band. Systems authorized prior to that date may install equipment after that date with no minimum bit rate.

5. Section 21.502 is amended by removing Note (2) of paragraph (a); by removing the last sentence of paragraph (d), and revising paragraphs (g) and (h) as follows:

§ 21.502 Frequencies.

* * * * *

(g) Digital Termination System assignments in the 18 GHz band shall be made according to the following plan:

Channel No.	Nodal station frequency band (MHz)	User station frequency band (MHz)
30	18,870–18,880	19,210–19,220
31	18,880–18,890	19,220–19,230
32	18,890–18,900	19,230–19,240
33	18,900–18,910	9,240–19,250
34	18,910–18,920	19,250–19,260

These channel pairs will be assigned in each SMSA and may be subdivided as desired by the licensee.

(h) Internodal link assignments are to be made in accordance with the provisions of Subpart I of Part 21, applying to point-to-point operations.

* * * * *

6. Section 21.503 is amended by revising paragraphs (a) and (b) as follows:

§ 21.503 Frequency stability.

(a) In the frequency band 10,550–10,680 MHz the frequency stability of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.0001%. The frequency stability of each Digital Termination User Station transmitter authorized for this service shall be ±0.0003%.

(b) In the frequency band 17,700–19,700 MHz the frequency stability of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.001%. The frequency stability of each Digital Termination User Station transmitter authorized for this service shall be ±0.003%.

7. Section 21.507 is revised to read as follows:

§ 21.507 Radiated power limitation in the 10,600–10,680 MHz band.

The EIRP of stations in the 10,600–10,680 MHz band must not exceed +40 dBw.

8. Section 21.701 is amended by revising the introductory text of paragraph (a); revising the entries in the table between 17,700 and 19,700 MHz in paragraph (a); revising footnote 10, removing and reserving footnote 14 and removing footnote 16 in paragraph (a); removing paragraphs (b), (c), (d), (e), (f), (g), (h), (j), (k) and (m); by redesignating paragraph (i) as new paragraph (b); by redesignating paragraph (l) as new paragraph (e); and by adding new paragraphs (c) and (d) as follows:

§ 21.701 Frequencies.

* * * * *

(a) Frequencies in the following bands are available for assignment to fixed radio stations in the Point-to-Point Microwave Radio Service.

* * * * *

17,700–18,820 [5][10][15]
18,920–19,160 [5][10][15]
19,260–19,700 [5][10][15]

* * * * *

[10] This band is co-equally shared with stations in the fixed services under Parts 21, 74, 78 and 94 of the Commission's Rules.

* * * * *

[14] [Reserved]

* * * * *

(c) 10,550 to 10,680 MHz.

(1) 2.5 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75

(2) 1.25 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375

(d) 17,700 to 19,700 MHz. Applicants may use either a two-way link or one frequency of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to the procedures required in § 21.100(d). [Note, however, that stations authorized as of September 9, 1983 to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations.]

(1) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(2) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

(3) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Separation	
18145.0	n/a
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(4) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	18565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0
340 MHz Separation	
18585.0	18925.0
18595.0	18935.0
18605.0	18945.0
18615.0	18955.0
18625.0	18965.0
18635.0	18975.0
18645.0	18985.0
18655.0	18995.0
18665.0	19005.0
18675.0	19015.0
18685.0	19025.0
18695.0	19035.0
18705.0	19045.0
18715.0	19055.0
18725.0	19065.0
18735.0	19075.0
18745.0	19085.0
18755.0	19095.0
18765.0	19105.0
18775.0	19115.0
18785.0	19125.0
18795.0	19135.0
18805.0	19145.0
18815.0	19155.0

(5) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0
340 MHz Separation	
18590.0	18930.0
18610.0	18950.0
18630.0	18970.0
18650.0	18990.0
18670.0	19010.0
18690.0	19030.0
18710.0	19050.0
18730.0	19070.0
18750.0	19090.0
18770.0	19110.0
18790.0	19130.0
18810.0	19150.0

(6) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(7) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

(8) 220 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17810.0	18470.0
18030.0	19370.0
18250.0	19590.0

9. Section 21.703 is amended by removing paragraphs (a), (b), (c), (d), (e) and (f); by redesignating paragraph (g) as new paragraph (a) and paragraph (h) as new paragraph (b); and by revising all the entries between 6,425 MHz and 19,700 MHz in the Table in new paragraph (a) as follows:

§ 21.703 Bandwidth and emission limitations.

(a) * * *

10,550 to 10,680	5.0
10,700 to 11,700	40.0
13,200 to 13,250	25.0
17,700 to 18,580	220.0
18,580 to 18,820	20.0
18,820 to 18,920	10.0
18,920 to 19,160	20.0
19,160 to 19,260	220.0

* * * * *

10. Section 21.901 is amended by revising paragraph (e) with as follows:

§ 21.901 Frequencies.

* * * * *

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz are available for assignment to fixed stations in this service for a point-to-point return links from a subscriber's location. Assignments in the 18 GHz band for these return links will be made in accordance with the provisions of Subpart I of Part 21.

11. Section 21.903 is amended by revising the second sentence which begins with "A point-to-point return" in paragraph (a) with the following:

§ 21.903 Purpose and permissible service.

(a) * * * Point-to-point radio return links from a subscriber's location to a MDS operator's facilities may be authorized in the 18,580–18,820 MHz and 18,920–19,160 MHz bands.

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

1. Section 74.502 is amended by revising paragraph (b) as follows:

§ 74.502 Frequency assignment.

* * * * *

(b) The frequency bands 18,760–18,820 and 19,100–19,160 MHz are available for assignment to aural broadcast STL and intercity relay stations and are shared on a co-primary basis with other fixed services under Parts 21, 78 and 94 of the Commission's Rules.

(1) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

Applicants may use either a two-way link or one frequency of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to the procedures required in § 21.100(d).

* * * * *

2. Section 74.534 is amended by adding the following to paragraph (b):

§ 74.534 Power limitations.

(a) * * *

(b) * * * For stations operating in the band 17.7–19.7 GHz, the transmitter output power shall not be greater than necessary to accomplish the function of the system and in any case shall not be greater than 10 watts (peak envelope power); the maximum EIRP shall be limited to +55 dBw except in the band segment 18.6–18.8 GHz were it shall be limited to +35 dBw.

3. Section 74.535 is amended by adding the following to the end of paragraph (e)(2)(i):

§ 74.535 Emission and bandwidth.

* * * * *

(e) * * *

(2) * * *

(i) * * *

[Attenuation greater than 56 decibels is not required.]

* * * * *

4. Section 74.602 is amended by revising the introductory text in paragraph (a) revising paragraph (i) and the associated Tables as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (i) of this section. Additionally, the band 38.6–40.0 GHz is available for assigment without channel bandwidth limitation to TV pickup stations on a secondary basis to fixed stations.

* * * * *

(i) The following frequencies are available for assignment to television STL, television relay stations and television translator relay stations. The provisions of Section 74.604 do not apply to the use of these frequencies. These frequencies are shared on a co-equal basis with other stations in the fixed service (see Parts 21, 78 and 94). Applicants may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 21.100(d).

(1) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(2) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Seperation	
18145.0	n/a
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18353.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(3) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0

(4) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0

(5) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(6) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

5. Section 74.636 is amended by revising paragraph (b) as follows:

§ 74.636 Power limitations.

* * * * *

(b) For operations in the 17.7–19.7 GHz band, the transmitter of a broadcast auxiliary station will be licensed with a peak envelop power ouput not in excess of that necessary to render service and shall in no event shall exceed 10 watts. In the band segments 17.7–18.6 GHz and 18.8–19.7 GHz the EIRP is limited to a maximum of +55 dBw, while in the band segment 18.6–18.8 GHz the EIRP is limited to +35 dBW.

* * * * *

6. Section 74.637 is amended by adding the following to the end of paragraph (c)(2)(i):

§ 74.637 Emission and bandwidth.

* * * * *

(c) * * *

(2) * * *

(i) * * *

[Attenuation greater than 50 decibels is not required.]

* * * * *

7. Section 74.641 is amended by revising the introductory of (a) and the table in paragraph (a)(1) as follows:

§ 74.641 Antenna systems.

(a) For fixed stations operating in the 12,700–13,200 and 17,700–19,700 MHz bands, the following rules apply:

(1) * * *

ANTENNA STANDARDS

Frequency (GHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12.7 to 13.25	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17.7 to 19.7	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	36.0	20	24	28	32	35	36	36

PART 78—CABLE TELEVISION RELAY SERVICE

1. Section 78.18 is amended by replacing the phrase "Groups C, D, E or F" with the the phrase "Groups C, D, E or F and those frequencies listed in paragraph (a)(4)(ii) of this section" in paragraphs (e) and (f); and revising subparagraph (a)(4) as follows:

§ 78.18 Frequency assignments.

(a) * * *

(4) The Cable Television Relay Service is also assigned the following frequencies in the 17,700 to 19,700 MHz band. These frequencies are co-equally

shared with stations in fixed service under Parts 21, 74 and 94 of the Commission's Rules. Applicants may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 21.100(d). These bands may be used for analog or digital modulation.

(i) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(ii) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Seperation	
18145.0	n/a
18151.0	0118367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(iii) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0

(iv) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0

(v) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(vi) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

* * * * *

2. Section 78.101 is amended by revising the paragraph (d) as follows:

§ 78.101 Power limitations.

* * * * *

(d) For stations operating in the band segments 17.7–19.7 GHz, the transmitter output power shall not be greater than necessary to accomplish the function of the system and in any case shall not be greater than 10 watts (peak envelop power); the maximum EIRP shall be limited to +55 dBW except in the band segment 18.6–18.8 GHz where it shall be limited to +35 dBW.

* * * * *

3. Section 78.103 is amended by adding the following to the end of paragraph (c)(2)(i):

§ 78.103 Emission and bandwidth.

* * * * *

(c) * * *
(1) * * *
(i) * * *

[Attenuation greater than 56 decibels is not required.]

* * * * *

4. Section 78.105 is amended by revising the table in paragraph (a)(1) as follows:

§ 78.105 Antenna system.

(a) * * *
(1) * * *

ANTENNA STANDARDS

Frequency (GHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12.7 to 13.25	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17.7 to 18.7	A	n/a	38.0	25	29	33	36	42	55	55
	B	n/a	38.0	20	24	28	32	35	36	36

* * * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. Section 94.3 is amended by revising the term, "Effective Radiated Power (ERP)" and its definition as follows:

§ 94.3 Definitions.

* * * * *

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna. For purpose of this part, EIRP is expressed in decibels referenced to 1 milliwatt (dBm) in the direction of the main beam.

2. Section 94.61 is amended by revising the introductory text and the entries between 17700 and 19700 MHz in the table in paragraph (b) as follows:

§ 94.61 Applicability.

* * * * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed Service:

* * * * *

17700 to 18580	(6) (8) (10) (21) (27).
18580 to 18820	(10) (17) (21).
18820 to 18920	(21) (24).
18920 to 19160	(10) (17) (21).
19160 to 19260	(21) (24).
19260 to 19700	(10) (21) (27).

* * * * *

3. Section 94.63 is amended by removing paragraph (b)(4); and by revising paragraph (a) as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with § 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 10,550–10,680 MHz, 17,700–19,700 MHz, 21,200–21,800 MHz, 22,400–23,000 MHz, 31,000–31,200 MHz or 38,600–40,000 MHz (excluding those frequencies set out in § 94.189), applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter. In addition, when the proposed facilities are to be operated in the bands 2655–2690 MHz or 12,500–12,700 MHz, applications shall also follow the procedures in § 21.706(c) and (d) and the technical standards and requirements of Part 25 of this chapter as regards licensees in the Communication-Satellite Service. See also § 94.77.

* * * * *

4. Section 94.65 is amended by removing paragraph (l) and revising paragraphs (i) and (j) as follows:

§ 94.65 Frequencies.

* * * * *

(i) *10,550–10,680 MHz.* (1) 2.5 MHz maximum authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75

(2) 1.25 MHz maximum authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375

(j) *17700–19700 MHz.* (Note, however, that stations authorized as of September 9, 1983 to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations.)

(1) 2 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	n/a

(2) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

(3) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Seperation	
18145.0	n/a
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(4) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Seperation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19455.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	18565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0
340 MHz Separation	
18585.0	18925.0
18595.0	18935.0
18605.0	18945.0
18615.0	18955.0
18625.0	18965.0
18635.0	18975.0
18645.0	18985.0
18655.0	18995.0
18665.0	19005.0
18675.0	19015.0
18685.0	19025.0
18695.0	19035.0
18705.0	19045.0
18715.0	19055.0
18725.0	19065.0
18735.0	19075.0
18745.0	19085.0
18755.0	19095.0
18765.0	19105.0
18775.0	19115.0
18785.0	19125.0
18795.0	19135.0
18805.0	19145.0
18815.0	19155.0

(5) 20 HMz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0
340 MHz Separation	
18590.0	18930.0
18610.0	18950.0
18630.0	18970.0
18650.0	18990.0
18670.0	19010.0
18690.0	19030.0
18710.0	19050.0
18730.0	19070.0
18750.0	19090.0
18770.0	19110.0
18790.0	19130.0
18810.0	19150.0

(6) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(7) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

5. Section 94.67 is amended by revising the table in paragraph (a) between 10,550 and 19,700 MHz as follows:

§ 94.67 Frequency tolerance.

(a) * * *

10,500 to 10,680	[5] 0.0003
12,200 to 13,150	0.005
13,200 to 13,250	0.03
17,700 to 18,820	[7] 0.003
18,820 to 18,920	0.001
18,920 to 19,700	[5] 0.003

* * * * *

6. Section 94.71 is amended by revising the introductory text and the entries in the Table between 10,550 and 19,700 MHz in paragraph (b) and revising paragraph (c)(3) as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

(b) The maximum bandwidth which will be authorized per frequency assigned is set out in the table which follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that a lesser bandwidth would be sufficient to support an applicant's intended communications.

* * * * *

10,550 to 10,680	5
12,200 to 12,700	10 or 20[5]
13,200 to 13,250	25
17,700 to 18,140	80
18,140 to 18,142	2
18,142 to 18,580	6
18,580 to 18,820	20
18,820 to 18,920	10
18,920 to 19,160	20
19,160 to 19,260	10
19,260 to 19,700	80

(c) * * *

(3) For Digital Transmission System channels:

* * * * *

7. Section 94.73 is amended by replacing the phrase "effective radiated power (ERP)" with the phrase "equivalent isotropically radiated power (EIRP)" in paragraph (a); replacing the phrase "ERP" in footnote 4 with the phrase "EIRP", revising the entries between 928 and 40,000 MHz in the table in paragraph (a)(2) and removing its footnote 7 as follows:

§ 94.73 Power limitations.

(a) * * *

(2) * * *

Frequency band (MHz)	Maximum allowable EIRP[1] (dBW)
928-929	17.
952-960	40.[3]
1,850-2,690	45.[3,4]
6,525-10,550	55.
10,550-10,680	40.[4]
10,680-13,250	50.[3,4]
17,700-18,600	55.
18,600-18,800	35.
18,800-19,700	55.
19,700-40,000	40.[3]
Above 40,000	As specified in authorization.

* * * * *

8. Section 94.93 is amended by revising the Table in paragraph (d)(1) as follows; and renumbering the existing tables in (d) as (i), (ii), and (iii):

§ 94.93 Provisions for private operational-fixed use of the 12,200–12,700 MHz band.

* * * * *

(d) * * *

(1) *Available frequencies.* (i) 6,525 to 6,875 MHz, 10 MHz channels.

* * * * *

(ii) 12,700 to 13,150 MHz, 25 MHz channels.

* * * * *

(iii) 12,700 to 13,150 MHz, 12.5 MHz channels.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12,706.25	12,931.25
12,718.75	12,943.75
12,731.25	12,956.25
12,743.75	12,968.75
12,756.25	12,981.25
12,768.75	12,993.75
12,781.25	13,006.25
12,793.75	13,018.75
12,806.25	13,031.25
12,818.75	13,043.75
12,831.25	13,056.25
12,843.75	13,068.75
12,856.25	13,081.25
12,868.75	13,093.75
12,881.25	13,106.25
12,893.75	13,118.75
12,906.25	13,131.25
12,918.75	13,143.75

* * * * *

9. Section 94.94 is revised as follows:

§ 94.94 Microwave digital modulation.

Microwave transmitters employing digital modulation techniques in the bands 10,550–10,680 and 17,700–19,700 MHz shall transmit at bit rate, in bits per second (bps), equal to or greater than the authorized bandwidth in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mbps rate must not require an authorized bandwidth greater than 20 MHz). In the 17,700–19,700 MHz band, this bps/Hz standard is independent of the antenna (polarization) used, frequency reuse, or how the system is configured.

Note.—Until December 1, 1988, no minimum bit rate shall apply to the 17,700–19,700 MHz band. Systems authorized prior to that date may install equipment after that date with no minimum bit rate.

10. Section 94.185 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 94.185 Applications.

(a) A separate application form must be filed for each Digital Termination Nodal Station. No separate authorization is required for User Stations associated with a licensed Nodal Station. Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

* * * * *

(c) Only those applications which state an intent to provide linked service to users in at least 30 Standard Metropolitan Statistical Areas (SMSA) within 60 months of the granting of the application will be eligible for assignment of any of the frequencies designed as Extended network frequencies in § 94.189(b). All other applications will be eligible for assignment of the frequencies designated for Limited network frequencies in § 94.189(c) or of the frequencies designated for all DTS applicants in § 94.189(e).

11. Section 94.189 is amended by revising paragraph (a); removing paragraphs (d), (g) and (h); removing the last sentence of both paragraphs (e)(1) and (e)(2); redesignating paragraph (e) as paragraph (d); redesignating paragraph (f) as paragraph (e); add new paragraphs (f) and (g) as follows:

§ 94.189 Frequencies.

(a) Each assignment in the 10,550–10,680 MHz band will be for either Extended network or Limited network operation. Assignments in the 17,700–19,700 MHz band will be for all applicants regardless of the size of the network that an applicant intends to construct.

(1) In the 10,550–10,680 MHz band, assignments for Extended network operations will consist of a pair of 5 MHz channels as set out in paragraph (b) of this section. Assignments for Limited network operations will consist of a pair of 2.5 MHz channels as set out in paragraph (c) of this section.

Note.—Application for the assignment of frequencies in the 10,550–10,680 MHz band will only be accepted for channel number 4, 7, 9, and 19/20. These channels are also used by common carrier licenses or are proposed for use by existing permittees and pending applicants under common carrier rules in Part 21.

(2) In the 17,700–19,700 MHz band, assignments for either Extended or Limited network operations will consist of a pair of 10 MHz channels as set out in paragraph (f) of this section.

(3) A Limited network applicant or an applicant for assignment in the 17,700–19,700 MHz band may:

(i) Simultaneously apply for more than one channel pair per SMSA or service area upon a showing that the service to be provided will fully utilize the spectrum requested: and/or

(ii) Simultaneously apply for more than one Nodal Station per frequency per SMSA or service area if such multiple stations are necessary to efficiently provide adequate service coverage.

(4) Extended network licensees may not apply for an additional channel pair until such time as the licensee is operating its initial channel pair at or near capacity.

(5) The same Nodal, or User frequencies may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 94.63 are met.

* * * * *

(f) Digital Termination System assignments in the 18 GHz band, shall be made according to the following plan:

Channel No.	Nodal Station frequency band (MHz)	User station frequency band (MHz)
25	18,820–18,830	19,160–19,170
26	18,830–18,840	19,170–19,180
27	18,840–18,850	19,180–19,190
28	18,850–18,860	19,190–19,200
29	18,860–18,870	19,200–19,210

These channel pairs may be subdivided in bandwidth as desired by the licensee.

(g) Internodal link assignments are to be made in accordance with the provisions of Subpart C of Part 94, applying to point-to-point operations.

12. Section 94.191 is amended by revising paragraphs (a) and (b) as follows:

§ 94.191 Frequency tolerance.

(a) In the frequency band 10,550–10,680 MHz, the frequency tolerance of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.0001%. The frequency tolerance of each Digital Termination User Station transmitter authorized for this service shall be ±0.0003%.

(b) In the frequency band 17,700–19,700 MHz, the frequency tolerance of each Digital Termination Nodal Station transmitter authorized for this service shall be ±0.0001%. The frequency tolerance of each Digital Termination User Station transmitter authorized for this service shall be ±0.0003%.

13. Section 94.193 is revised to read as follows:

§ 94.193 Interference.

(a) All applicants and licensees for Digital Termination Systems shall comply with the interference protection criteria set out in § 94.63.

(b) Each application for a new or modified Digital Termination Nodal Station shall include an analysis of the potential for harmful interference to all other licensed and previously applied for co-channel and adjacent channel stations located within 80 km (50 miles) of the location of the proposed station. Applicants must certify the copies of this analysis have been served on all parties which might reasonably be expected to receive interference above the levels set out in § 94.63 within 5 days of the date the subject application is filed with the Commission.

(c) Each licensee and applicant is expected to engineer their system to be as compatible as reasonably possible with nearby co-channel and adjacent channel systems and to co-operate fully and in good faith to resolve whatever potential incompatabilities may arise.

14. Section 94.197 is revised to read as follows:

§ 94.197 Radiated power limitations in the 10.6 GHz band.

The EIRP of stations in the band segment 10,600–10,680 MHz shall not exceed +40 dBw.

15. Section 94.15 is amended by revising paragraph (i) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(i) Licensees and applicants for Digital Termination Systems will not be subject to the provisions of paragraphs (a) through (h) of this section. They shall comply with the frequency assignment policies and procedures prescribed for Digital Termination Systems in Subpart F of this part.

(Secs. 4(i), 301 and 303(r), Federal Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301 and 303(r))

[FR Doc. 84-24507 Filed 9-25-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40917-4122]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim emergency rule.

SUMMARY: NOAA issues an emergency rule to close the territorial sea off the coast of Oregon between Cape Falcon and Cape Blanco to commerical fishing for salmon other than coho until September 30, 1984. This action is taken to implement a decision by the Secretary of Commerce to preempt the State of Oregon's ocean salmon management authority. This action is intended to conserve ocean salmon stocks and to protect the integrity of the regional fishery management system.

DATES: The emergency rule is effective from 2400 hours local time, September 21, 1984, through 2400 hours local time, September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Kruse (Acting Regional Director, NMFS), 206-392-6150.

SUPPLEMENTARY INFORMATION: Section 306(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), authorizes the Secretary of Commerce (Secretary) to regulate a fishery within State boundaries if he makes two findings: (1) Fishing in the fishery is engaged in predominately within and beyond the fishery conservation zone (FCZ); (2) a State has taken action, the results of which will substantially and adversely affect the carrying out of the fishery management plan (FMP) for the fishery.

NOAA published emergency regulations (49 FR 18853, May 3, 1984) to govern the 1984 ocean salmon fishery. During its deliberations on management measures for the 1984 season, the Pacific Fishery Management Council considered but rejected proposals to increase harvest levels off Oregon.

On August 30, 1984, the Oregon Fish and Wildlife Commission decided to deviate from the management regime established by the FMP by opening Oregon waters between Cape Blanco and Cape Falcon for a September commercial "other than coho" troll salmon fishery. The season in the FCZ closed as scheduled on August 31, 1984.

On September 7, 1984, the Assistant Administrator for Fisheries, NOAA, served notice on the State of Oregon of initiation of a proceeding to preempt Oregon's fishery management authority with respect to commercial fishing in the territorial sea off the coast of Oregon. The proposed rule appears at 49 FR 35815, September 12, 1984.

On September 13, 1984, a hearing was held under 50 CFR Part 619. The portion of the proceedings affecting the area between Cape Falcon and Cape Blanco was expedited in order to close that area promptly and minimize the adverse effects of fishing. The Administrative Law Judge, after considering submissions from the State of Oregon and the Assistant Administrator for Fisheries recommended that the Secretary preempt Oregon's authority between Cape Falcon and Cape Blanco until September 30, 1984. The Secretary has made the requisite statutory findings and issues this emergency rule closing Oregon's waters between Cape Falcon and Cape Blanco until September 30, 1984. The record of the hearing remains open for submission of supplementary evidence, and the Administrative Law Judge will issue at a later date a second set of findings regarding the issue of whether Oregon's departure from the Federal regulations for 1984 warrants preemptive action by the Secretary beyond the area between Cape Falcon and Cape Blanco and beyond September 30, 1984.

This rule is issued under the authority of section 305(e) of the Magnuson Act to respond to the emergency created by Oregon's decision to open its waters for a September commercial fishery. The rule will prevent hooking mortality on coho and undersized chinook that would have been taken incidental to the "other than coho" commercial fishery in Oregon's territorial waters.

Classification

The Assistant Administrator finds that the reasons for preemption and for issuing this emergency rule under section 305(e) of the Magnuson Act also make it impracticable and contrary to the public interest to provide advance notice and opportunity for comment or to delay for 30 days the effective date of this emergency rule, under sections 553 (b) and (d) of the Administrative Procedure Act.

The Administrator of NOAA has determined that this rule is not "major" under Executive Order 12291, and that the situation justifying issuance of this rule under section 305(e) of the Magnuson Act constitutes an emergency situation under section 8(a)(1) of the Executive Order. NOAA has transmitted a copy of this emergency rule and the regulatory impact review prepared on the 1984 emergency regulations to the Director of the Office of Management and Budget.

This emergency rule does not entail any Federal collection of information for purposes of the Paperwork Reduction Act. Because the rule is issued without opportunity for prior public comment, it is exempt from the regular procedures of the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 661

Fisheries, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: September 21, 1984.

A.J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

For the reasons set out in the preamble, 50 CFR Part 661 is amended as follows:

1. The authority citation for Part 661 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 661.3 [Amended]

2. For the reasons set out in the preamble, 50 CFR 661.3 is amended by adding the following sentence to the end of the definition of the term "Fishery Management Area":

* * * * *

* * * In addition, the Fishery Management Area includes the territorial sea off the coast of Oregon between Cape Falcon and Cape Blanco until 2400 hours local time, September 30, 1984.

* * * * *

[FR Doc. 84-25552 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 188
Wednesday, September 26, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Miscellaneous Amendments

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes to revise its Federal Employees Health Benefits (FEHB) regulations to make the effective dates for belated open season enrollments and changes in enrollment retroactive when filed late because of causes beyond an individual's control. This revision would alleviate the financial hardship suffered by individuals who must meet deductibles of two plans in the same calendar year for medical expenses incurred before and after the effective date of the belated change.

DATE: Comments must be received on or before October 26, 1984.

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044; or deliver to Office of Personnel Management, Room 4351, 1900 E Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632-9677.

SUPPLEMENTARY INFORMATION: Regulations now allow belated enrollments and changes in enrollment when individuals are unable, for causes beyond their control, to file within the open season time limits. Such actions are effective on a prospective basis. The regulations also require individuals who incur medical expenses before and after the effective date of the belated change to meet deductibles of two plans in that same calendar year.

OPM is therefore amending its regulations to avoid an adverse impact on individuals and to ensure consistent treatment. The amended regulations would provide that an open season enrollment or change in enrollment, which is filed late because of causes beyond the individual's control, takes effect as if it had been timely filed. The effective date will be either January 1 or the first day of the first pay period in January, if different. (See § 890.306(c) of the current FEHB regulations.) An individual whose employing office accepts his or her reasons for belatedly filing will be required to meet only one deductible for the calendar year.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, OMP proposes to amend Part 890 of Title 5 of the Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. In § 890.201, paragraph (a)(10) is revised, to read as follows:

§ 890.210 Minimum standards for health benefits plans.

(a) * * *

(10) Provide that any covered expenses incurred from January 1 to the effective date of an open season change count toward the losing carrier's prior year deductible. If the prior year deductible or family limit on deductibles of the losing carrier had previously been met, the enrolled individual (and eligible family members) shall be eligible for reimbursement by the losing carrier for covered expenses incurred during the current year. Reimbursement of covered expenses shall apply only to covered expenses incurred from January 1 to the effective date of the open season change. This section shall not apply to any other permissible changes made during a contract year.

* * * * *

2. In § 890.306, paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added, to read as follows:

§ 890.306 Effective dates.

* * * * *

(e) *Belated open season registrations.* When a belatedly filed enrollment registration under § 890.301(d)(1) or an enrollment change under § 890.301(d)(2) is accepted by the employing office under § 890.301(b), it takes effect the same day a timely filed enrollment would.

* * * * *

(5 U.S.C. 8913)

[FR Doc. 84-25580 Filed 9-25-84; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF ENERGY

Office of the Assistant Secretary for Defense Programs

10 CFR Part 1017

Identification and Protection of Unclassified Controlled Nuclear Information

AGENCY: Department of Energy.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Department of Energy (DOE) hereby extends the comment period thirty days from the date of this publication on proposed rules regarding identification and protection of Unclassified Controlled Nuclear Information. This action is in response to a number of requests that an extension be granted to provide additional time to review the proposed rule of August 3, 1984 (49 FR 31236) and to develop comments for submission to DOE.

DATE: Comments in connection with the proposed rule must be received on or before October 26, 1984.

ADDRESSES: Written comments should be sent to the Assistant Secretary for Defense Programs, U.S. Department of Energy, Room 4A-014, Washington, D.C. 20585, Attention: Paul R. Laplante, DP-6. Six copies should be submitted. Copies of comments received may be examined at the DOE Reading Room, 1E-190, James Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul R. Laplante, Office of Policy and Planning (DP-6), Office of the Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-1870 or Ms. Jo Ann Williams, Office of the General Counsel (GC-31), U.S. Department of Energy, Washington, DC 20585, (202) 252-6975.

Issued in Washington, DC, this 14th day of September, 1984.

William W. Hoover,

Assistant Secretary for Defense Programs.

[FR Doc. 84-25513 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-26-AD]

Airworthiness Directives; Beech Models 65-88, 65-90, 65-A90, B90, C90, E90, 100, A100 and B100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Beech Models 65-88, 65-90, 65-A90, B90, C90, E90, 100, A100 and B100 airplanes. It would supersede AD 81-12-01 and require replacement of all cast acrylic cabin windows with stretched acrylic windows. Failures of cast acrylic windows continue to occur although they have been inspected per AD 81-12-01. Since the inspections required by this AD are inadequate to prevent window failures, removel of the cast acrylic windows from service will preclude the safety hazards associated with these failures.

DATE: Comments must be received on or before November 16, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2011 applicable to this AD may be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201 or the Rules Docket at the addresses below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-26-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-26-Ad, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 81-12-01, Amendment 39-4126 (46 FR 29995, 29926) requires inspection of cast acrylic windows on Beech Models 65-88, 65-90, 90, and 100 Series airplanes to prevent failures of these windows. Despite the inspections required by this AD, there have been five additional failures. Cabin window blowouts are hazardous. In addition to the danger of flying plexiglass, there exists the physiological distress of rapid decompression, both to passengers and crew. Loss of airplane control due to pilot incapacitation may result. To prevent such a failure, Beech has issued Mandatory Service Bulletin No. 2011 which calls for replacement of all cast acrylic windows with stretched acrylic within one year. In view of the service history, the FAA finds that AD 81-12-01 is not effective in preventing cast acrylic window failures on the affected airplanes. Since the condition described herein, is likely to exist or develop in other Beech Models 65-88, 65-90, 90 and 100 Series aircraft of the same type design, the proposed AD would supersede AD 81-12-01 and require continual inspection and eventual replacement of all cast acrylic windows in accordance with Beech Service Bulletin 2011.

There are approximately 1,134 airplanes affected by the proposed AD. Labor, material, and downtime for replacing all the cast acrylic windows is estimated to be $2,700 per airplane for a total cost of $3.06 million. The cost per airplane is less than the threshold significant cost amount for those small entities operating one airplane and the FAA has determined, on the basis of the aircraft registration records, that less than 5% of the owners of the affected airplanes own more than one of the affected aircraft and may incur a cost greater than the significant amount threshold.

Therefore, I certify that this proposed action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regualtory docket. A copy of it may be obtained by contacting the Rules Docket at the location given under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Beech: Applies to Models 65-88, (S/Ns LP-1 through LP-26, LP-28 and LP-30 through LP-47); 65-90, 65-A90, B90, and C90 (S/Ns LJ-1 through LJ-880); E90, (S/Ns LW-1 through LW-178); 100 and A100, (S/Ns B-1 through B-226); and B100 (S/Ns BE-1 through BE-8) certificated in any category in which *all* cast acrylic windows have not been replaced with stretched acrylic windows.

Compliance: Required as indicated, unless already accomplished.

To prevent failures of a cast acrylic window and resulting decompression and possible occupant injury, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD or 300 hours TIS after the last inspection per AD 81-12-01 whichever occurs later, and each 300 hours TIS thereafter, and within 50 hours TIS after any stripping and repainting in the area of the window;

(1) Visually inspect each cast acrylic window in accordance with Beech Service Bulletin No. 2011 (SB 2011).

(2) If the above inspeciton discloses any crack, fissure, stress craze or scratch in any window, prior to further pressurized flight, replace this window with a stretched acrylic window of the appropriate part number specified in paragraph (b).

(b) Within one calendar year after the effective date of the AD, replace each cast acrylic window with one of the stretched acrylic windows listed below.

Window	Beech Part No.
Oval, baggage area	50-440014-837 or -838.
Cockpit, side, standard	50-420066-317 or -318.
Cockpit, side, oversize	50-420066-353 or -354.
Round, Cabin	50-420013-1053.

Note: After installing a stretched acrylic window make an appropriate entry in the Aircraft Maintenance Record which, along with previous entries, clearly shows each location at which a stretched acrylic window has been installed.

(c) Upon installation of all stretched acrylic windows per paragraph (b) above this AD is no longer applicable.

(d) Compliance with Paragraphs (a) and (b) of this AD is not required if the pressurization system is deactivated as follows, and the aircraft is operated in accordance with this limitation:

(1) Secure the "Test/Dump" switch in the "Dump" position; and

(2) Fabricate a placard, "CABIN PRESSURIZATION PROHIBITED" of $\frac{3}{16}$-inch or larger letters and install it on the control panel adjacent to pressurization system controls; and

(3) Insert a copy of this AD in the "Limitations" section of the airplane flight manual.

(4) Make an appropriate entry in the Aircraft Maintenance Record showing compliance with this paragraph.

(5) The provisions of this paragraph may be accomplished by the holder of at least a private pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by that person, provided the airplane is not used in air carrier service.

(e) Aircraft may be flown unpressurized in accordance with FAR 21.197 to a location where the inspections/repairs required by this AD can be performed.

(f) An equivalent method of compliance with this AD may be used when approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-continent Airport, Wichita, Kansas 67209 Telephone (316) 946-4400.

This AD supersedes AD 81-12-01, Amendment 39-4126.

(Secs. 313(a), 601 and 603, of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Section 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on September 14, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-25430 Filed 9-25-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905 and 960

[Docket No. R-84-1187; FR-1597]

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Are Involuntarily Displaced, or Are Paying More Than Fifty Percent of Income for Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a statutory directive to give preference in the provision of housing to families eligible for assistance under the Public Housing, Section 8 or Rent Supplement programs who are living in substandard housing, who are involuntarily displaced, or who are paying more than 50 percent of family income for rent. The Congress has determined that these families, because they have the most urgent housing needs, should be treated preferentially in the tenant selection process.

DATE: Comments must be received by November 26, 1984.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Tahash, Office of Multifamily Housing Development, Room 6178, Department of Housing and Urban Development, Telephone (202) 755-5654; Madeline Hastings, Office of Existing and Moderate Rehabilitation, Room 4204, Department of Housing and Urban Development, Telephone (202) 755-5597; and Edward Whipple, Office of Public Housing, Room 6236 Department of Housing and Urban Development, 451 Seventh Street, S.W. Washington, D.C. 20410, Telephone (202) 426-0744. These are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

Statutory Basis

Section 206 of the Housing and Community Development Amendments of 1979 ("HCDA") (Pub. L. 96-153) amended the Public Housing and section 8 Programs under the United States Housing Act of 1937 to provide, in substantially identical language, that tenant selection criteria used by an owner or PHA, as the case may be, must give "preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking" housing assistance. Section 203 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181 (1983 Act)) subsequently amended these authorities to provide that the tenant selection criteria used must give a preference to a third category of families—those who "are paying more than 50 per centum of family income for rent."

Section 203(a)(4) of the HCDA also amended section 101 of the Housing and Urban Development Act of 1965 (Rent Supplement), 12 U.S.C. 1701s, by adding a new subsection (k), which provides that "in making assistance available under this section, the Secretary shall give priority to individuals or families who are occupying substandard housing or are involuntarily displaced at the time they are seeking housing assistance." In addition, section 203(b)(3) of the 1983 Act amended section 101(e)(1)(B) of the Rent Supplement authority by including substantially identical language with respect to families paying more than 50 percent of income for rent. As amended, paragraph (B), now states: "The Secretary shall issue, * * *, certificates as to * * * (B) whether the individual was occupying substandard housing, was paying more than 50 percent of family income for rent, or was involuntarily displaced at the time it was seeking assistance under this section."

Although the rent burden preference is appropriately included in the Rent Supplement provision, the amendment adding the preference affected section 101(e)(1)(B) only, and not section 101(k), the section that Congress had originally enacted to create the preference for those persons occupying substandard housing or involuntarily displaced. *See* section 203(a)(4) of the HCDA. The Department would, however, under this rule, extend the rent burden preference to persons who qualify for assistance under the Rent Supplement program. In doing so, the Department believes the rule would be carrying out the intent of Congress, notwithstanding the failure to include the language in section 101(k) of the Rent Supplement statute.

The amendments to the Public Housing and Section 8 Programs made by section 206 of the HCDA provide for a "preference" to certain classes of families. The comparable amendment by section 203(a)(4) of the HCDA to the Rent Supplement Program provides for a "priority" to the same classes of families. The Department has studied the legislative history to determine whether the Congress intended to impart a meaning to the word "priority" different from that intended by use of the word "preference." Our research has shed no light on the legislative intent in this regard. In view of the apparent unified intent of the several amendments (notwithstanding that they affect different programs), the Department has treated the words synonymously. To avoid ambiguity, the word "preference," and not "priority," is used throughout the rule.

The statutory directive is that the function of selecting tenants, including the giving of the statutory preferences, is the responsibility of the owner or PHA. This responsibility is so fixed under present regulations, and was reaffirmed in the Conference Report accompanying the legislation establishing the original two preferences. The report states in part:

> The priority [or preference] is intended to guide the owner of PHA in determining which potential tenants to select * * * The priority is not intended nor should it be used to allow the Department to direct an owner or PHA to select certain tenants. * * * This provision is not intended to alter the basic responsibility over tenant selection which, under current law, rests solely with the PHA and owner. It is simply intended to have owners and PHAs give priority to meeting the urgent housing needs of those families living in substandard conditions or being involuntarily displaced. [H.R. Rep. No. 706, 96th Cong., 1st Sess. 55, *reprinted in* [1979] U.S. Code Cong. & Ad. News 2414.]

The rule has been drafted to give owners full discretion and authority to select tenants, verify their status, give the preferences, and generally implement all aspects of the rule with minimal Departmental involvement. However, if an owner in the Rent Supplement program requests it, the Secretary will issue a certificate with respect to whether a family is occupying substandard housing, is involuntarily displaced, or is paying more than 50 percent of family income for rent. The Secretary's action here is consistent with section 101(e)(1)(B) of the Rent Supplement Program.

In drafting this proposed rule, the Department has sought to accommodate the statutory demand of the preference provisions within the existing regulatory framework of the Rent Supplement, Public Housing, and section 8 Programs. Thus, although the statutory imperative is to give preference to families who are involuntarily displaced, who are living in substandard housing, or who are paying more than 50 percent of family income for rent, the rule limits the preferences to those families who are "qualified tenants" under 24 CFR 215.20 or "eligible families" under the various section 8 and Public Housing regulations.

The Department has limited the preferences in this manner to ensure that available assisted housing is not denied to "qualified" or "eligible families" as a result of the creation of a separate class of beneficiaries (i.e., families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent) who, being neither otherwise eligible nor qualified, are nonetheless treated preferentially. The rule is specific that, irrespective of a family's preference, if that family did not satisfy the condition precedent of being "qualified" or "eligible", as defined in the relevant programs, the family cannot qualify for admission to a project.

Time for Implementing the Rule

The Department is specifically requesting comment on how much time PHAs and private owners should be given to implement the final rule, which will be published for effect after HUD has reviewed the public comments received on this proposed rule. HUD is considering delaying the effective date for up to 180 days after publication of the final rule. The proposed delay in the implementation of the final rule may be necessary because of administrative problems arising from the final rule's implementation. For example, private owners and PHAs may already have a hierarchical waiting list of qualified and eligible families—a list which would have been prepared without regard to these preferences. These owners and PHAs may need some time to factor in the new preferences, which may result in applicants' positions on the waiting list changing. Or, tenants who may qualify for a preference may not readily be able to furnish the documentation necessary to verify their status. In addition, in the interest of fairness and to ensure that all applicant's are fully informed of the preferences, it may be necessary to delay the effective date of the final rule to allow for the widest dissemination of information regarding the preferences.

Primacy of the Preferences

This rule would implement these three preferences so as to give them primacy over all non-Federal preferences. Therefore, the Department is also specifically requesting comment on the effect and propriety of implementing the three preferences so as to accord such qualifying applicants an absolute preemptive right and a preeminence in the tenant selection process over other applicants holding or entitled to other preferences currently recognized by PHAs and some private owners. For example, present practice followed by most PHAs and sanctioned in existing regulations, allows for some categories of tenents (e.g., veterans) to be preferred over others in the tenant selection process. With the issuance of this proposed rule and its adoption as a final rule, however, non-Federal preferences (i.e., preferences not mandated by Federal law) will be subordinated to these three preferences.

The Department recognizes that it may be administratively unsettling to some PHAs and private owners to change established tenant selection procedures to make them consistent with this rule. However, in view of the explicit statutory creation of these three classes of preferred applicants, the Department believes that it is constrained to provide that these three classes should be chosen over other applicants, irrespective of how many non-Federal preferences other applicants may qualify to receive. Moreover, such a provision, in HUD's view, is fairly responsive to the Congressional solicitude, evidenced in the above-cited language of the Conference Report, for families in the preferred categories.

Accordingly, it is the Department's position that, in the weighting process, an applicant qualifying for any one of these three preferences would outweigh, and therefore be chosen before, another applicant who does not qualify for one of the three preferences, regardless of the combination or aggregation of other (i.e., State- or locally created) preferences enjoyed by the other applicant, and without regard to which applicant applied first, or the length of time the first applicant was on the waiting list.

The rule would not preempt those classes of tenants accorded specific preferential treatment under other Federal regulatorey or statutory authorities. For example, sections 221(f) and 231(f) of the National Housing Act (NHA), 12 U.S.C. 17151(f) and 1715v(f), respectively, authorize the Secretary to adopt procedures to assure that housing provided under these sections "is available to displaced families" (section 221(f)) or to prescribe procedures to secure for handicapped families "preference or priority of opportunity to rent the living units specially designed for their use and occupancy)" (section 231(f)). These statutory requirements are implemented by regulatory provisions at 24 CFR 221.537(c), giving a preference to displacees, and at 24 CFR 231.9, giving a preference to elderly or handicapped persons.

No Double Preference

Because of those preexisting preference provisions (e.g., the preferences under 24 CFR 221.537(c) and 231.9), it is theoretically possible that an applicant may qualify as a displacee under 24 CFR 211.537(c) or under proposed 24 CFR 215.22, since "displacee" may be, in part, defined identically in both sections. Also, it is possible that an applicant will qualify for more than one of the preferences contained in this rule. For example, a person who has been involuntarily displaced may be living in replacement housing that is substandard. There is, however, no "double" preference in such instances. Thus, a displacee who may qualify under either 24 CFR 221.537(c) or proposed 24 CFR 215.22(b) would be treated equally in the tenant selection process with a displacee who qualified under proposed § 215.22(b) only.

Changing From one Preference Category to Another

An applicant who qualifies for a preference but who, before securing assisted housing, loses his ore her qualification for that preference will still be entitled to exercise a preference at the time a unit becomes available if he or she is eligible for another of the statutory preferences at that time. For example, if an applicant originally qualifies for a preference on grounds of involuntary displacement, and as a result of that displacement moves into replacement housing while on the waiting list for housing assistance for which he or she pays more than 50 percent of income for rent, the applicant may demonstrate his or her continuing qualification for a preference by virtue of his or her rent burden. Similarly, an applicant who is occupying substandard housing will not lose his or her preference status if, while on the waiting list, the applicant moves into a standard unit but is forced thereby to pay more than fifty percent of income for rent.

Relationship to Other Statutes

The statutory language is unambiguous that these preferences must be given to eligible applicants, but these preferences are not intended to be applied so as to vitiate other regulatory and statutory objectives. For example, 24 CFR 880.204(c) makes it clear that tenant selection policies shall be in compliance with, among other things, "the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964". Owners and PHAs are, thus, under a continuing obligation to observe all pertinent Federal regulatory and statutory requirements while giving the preference to eligible applicants. *See also* 24 CFR 880.603(d), 881.603(b) and 883.704(b).

Verification Procedures—PHAs and Private Owners

This rule provides procedures that PHAs and owners would follow to verify an applicant's entitlement to a claimed preference. PHAs, because of their experience in administering these programs, and preferences in particular, may adopt their own verification procedures to determine an applicant's eligibility for one of the three preferences. Alternatively, a PHA may opt to use the verification procedures set forth in this rule. Private owners, in contrast, who may have, in most instances, comparatively limited experience in managing assisted housing, are bound to use the verification procedures described in the rule.

However, to avoid unnecessary duplication of effort for both private owners and PHAs, this rule would reference and adopt, where appropriate, the procedures in place for verifying an applicant's eligibility for assisted housing. There are established procedures that would be easily adaptable for application to this rule. For example, HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, and the recently promulgated regulations affecting the definition and examination of family income under the Section 8 Housing Assistance Payments and related programs, and the Public and Indian Housing programs (*see* 49 FR 19926, May 10, 1984 and 49 FR 21476, May 21, 1984, respectively) contain provisions for the verification of family income. Moreover, family income is a criterion for selection and admission to a project. Therefore, since PHAs and owners have to verify a family's gross income for this purpose, they may simultaneously accomplish the companion task of verifying a family's eligibility for a preference for paying more than 50 percent of the family's gross income for rent without HUD's imposing a separate set of procedures.

PHAs and owners would have no obligation under this rule to determine whether there was, at any time, a hiatus in an applicant's status. The Department believes that to impose such a requirement would serve no useful purpose and would be an unnecessary burden on owners and PHAs. Moreover, the relevant HCDA provisions state that the preference is to be given "at the time a family is seeking housing assistance." *See, e.g.*, section 206(b)(1), 42 U.S.C. 1437f(d)(1)(A). Although this language may be susceptible to other interpretations, a fair interpretation is that assistance is sought from the time when a family applies for a unit to the point when housing is actually made available, but that the critical point is when housing is actually made available. Thus, it is legally proper to isolate this critical point in that continuum and to provide that it is at the time when housing is to be made available that the family's entitlement to a preference is to be verified.

The rule would provide, however, significant flexibility in the timing of the required verification. Thus, applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit) by certifying that they are eligible for one of the preferences. The owner would have to accept this certification unless the owner verifies that the applicant is not qualified for the preference. This provision is designed to save the time and expense involved in the production and review of proof of qualification for the preference where the length of time on a waiting list could necessitate subsequent verification before a unit was provided on the basis of the preference. Owners would be permitted, however, to require verification at any time before offering a unit to an applicant. In such a case, the applicant would not be required to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable ground to believe that the applicant no longer qualifies for a preference.

Definitions

Involuntary displacement would be defined to include private and government action, as well as a disaster, resulting in an applicant's vacating his or her unit (but not a proper election not to renew a lease, nor an eviction as a result of a tenant's refusal to accept a transfer in accordance with law). Similarly, under specified circumstances, conversion, sale or closing of an applicant's building (but not a rental increase) would be justifiable reasons for an applicant's leaving his or her building. An applicant who has been involuntarily displaced would qualify for the preference only if he or she is not living in standard replacement housing at the point of certification or verification. Standard replacement housing would be defined as decent, safe, and sanitary housing, not including transient facilities such as motels and hotels. A person would also be considered involuntarily displaced if the displacement will occur within six months of the certification or verification. An applicant's involuntary displacement would be verifiable by documentation from an owner or governmental agency evidencing one of these actions or reasons.

The definition of substandard housing would be written to include, among other things, dilapidated housing or housing without indoor plumbing or a kitchen. Applicants who are living in substandard housing would have this condition verified by a statement from a government entity, such as a code enforcement or public health agency, to the effect that any one of the defects or deficiencies noted in the definition exists.

For purposes of this rule, family income would be defined in terms of "annual income" as defined in the Parts affected by this rule (*see, e.g.*, 24 CFR 215.20(c) and 913.105).

Rent would be defined as the amount, calculated on a monthly basis, that a family pays its landlord or is obligated to pay under its lease plus utilities (excluding telephone) and other housing services (e.g., trash removal). In calculating a family's monthly rent (i.e., rent plus utilities), owners would use a family's average monthly utility costs based on the family's utility bills, furnished by the family, for the most recent 12-month period, or where these bills are not obtainable, for an appropriate recent period, to determine whether a family qualifies for the preference based on the rent burden preference.

PHAs would have the option of using locally derived definitions of "standard replacement housing", "involuntary displacement", "substandard housing", "family income," and "rent", if they are submitted to HUD for approval. If alternate definitions are not approved, the definitions contained in this rule would have to be used.

Miscellaneous

Owners and PHAs would have to inform all applicants, including those on their waiting list, about the availability of the preferences. Applicants already on a waiting list would be considered part of the pool from which tenants would be selected and must be given adequate opportunity to show that they qualify for a preference.

This proposed rule would also amend §§ 880.603(b)(2), 881.603(b)(2), and 883.704(b)(2) to provide that if a family is entitled to a preference, an owner must accept a family's application, notwithstanding that the waiting list is so long that the family may not be offered a unit for the next 12 months. The Department believes that so long as an applicant qualifies for one of these preferences, the length of the waiting list should not deny the applicant the opportunity to be considered at all times for available housing. These sections currently allow an owner to decline taking additional applications if an applicant is not likely to be admitted to the project for the next 12 months.

The rule would also be applicable to the Turnkey III Program under 24 CFR Part 904 and to Indian Housing programs under part 905.

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 23 CFR Part 50, which implement 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule would not constitute a "major rule" as that term is defined in 1(b) of the Executive Order of Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would merely provide for a preferential selection process among assisted tenants, and would not significantly increase the administrative burden on small landlords or PHAs, since documentation of entitlement to the preference would be largely the responsibility of the applicant.

This rule was listed as RIN 2502–AA34 (H–22–80; FR 1597) under the Office of Housing, in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15926) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.103, 14.105, 14.149, and 14.156.

List of Subjects in 24 CFR

Part 215

Grant programs: housing and community development, Rent subsidies.

Part 880

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing.

Part 881

Grant programs: housing and community development, Rent subsides, Low and moderate income housing.

Part 882

Grant programs: housing and community development, Housing, Manufactured homes, Rent subsidies.

Part 883

Grant programs: housing and community development, Rent subsidies, New construction and substantial rehabilitation.

Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

Part 886

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

Part 904, 905, 960

Public housing.

Accordingly, the Department proposes to amend 24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. In part 215, add a new § 215.22, to read as follows:

§ 215.22 Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. Only qualified tenants, as defined in § 215.20, are eligible to receive a preference. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualified for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reason shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is one twelfth of Annual Income, as determined in accordance with § 215.20(c) through (f) of this part.

(i) *Defintion of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(l) of this section).

(k) *Additional verification for applicants receiving Rent Supplemental payments.* If an applicant is to receive financial assistant under section 101 of the Housing and Urban Development Act of 1965, an owner may, at the owner's option, request from HUD verification in the form of a certificate that an individual or family is occupying substandard housing or was (or will be) involuntarily displaced, or is paying more than 50 percent of family income for rent, as those terms are defined in this section. This certification by HUD is issued only when requested by an owner, and only when Rent Supplement assistance is involved.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

2. In § 880.603, paragraph (b)(2) is revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that if a family is entitled to a preference for being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent, an owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants.

* * * * *

3. In part 880, add a new § 880.603a, to read as follows:

§ 880.603a Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant the he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplies by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any

depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner may require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section.)

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

4. In § 881.603 paragraph (b)(2) is revised to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reasons, except that if a family is entitled to a preference for being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent, an owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants.

* * * * *

5. In Part 881, add a new § 881.603a, to read as follows:

§ 881.603a. Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if her or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of their paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of goverment that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in accordance with § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12 month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental recipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or recipts for such services (as provided in paragraph (j) (1) of this section).

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

6. In Part 882, add a new § 882.209a, to read as follows:

§ 882.209a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* When issuing certificates of family participation under § 882.209, a PHA shall give preference to families who are otherwise eligible for a certificate and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the process of awarding certificates, the PHA shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they quality for one of the preferences. PHAs must apply the definitions of "standard replacement housing", "substandard housing", "involuntary displacement", "family income", and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section unless the PHA submits alternative definitions for the Secretary's review and approval. If the Secretary disapproves a PHA's alternative definitions, the PHA shall apply the definitions contained in this section. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section or a PHA may adopt verification procedures of its own.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be given a Certificate of Family Participation before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for a Certificate.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for a Certificate of Family Participation (or thereafter until the time that the Certificate is issued) by certifying to the PHA that they are eligible for one of the preferences described in paragraph (c)(1) of this section. A PHA shall accept this certification unless the PHA verifies that the applicant is not qualified for the preference.

(3) In the case of an applicant who qualifies to receive a Certificate of Family Participation on the basis of a preference, before issuing the Certificate of Family Participation, the PHA shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between application for and issuance of a Certificate, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or some other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include on owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the PHA must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.*

Verification that an applicant is paying more that 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) A PHA shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the PHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. The PHA shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of the family's income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) A PHA shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, the PHA shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (1) of this section).

7. In Part 882, add a new § 882.514a, to read as follows:

§ 882.514a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* When issuing certificates of family participation under this subpart, a PHA shall give perference to families who are otherwise eligible for a certificate and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the process of awarding certificates, the PHA shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences. PHAs must apply the definitions of "standard replacement housing", "substandard housing", "involuntary displacement", "family income", and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section unless the PHA submits alternative definitions for the Secretary's review and approval. If the Secretary disapproves a PHA's alternative definitions, the PHA shall apply the definitions contained in this section. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section or a PHA may adopt verification procedures of its own.

(b) *Primary of the preferences.* An applicant who qualifies for any of the preferences under this section is to be given a Certificate of Family Participation before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (*i.e.*, preferences or priorities not created pursuant to Federal law), or placed on the waiting list, or the time of submission of his or her application for a Certificate.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displace and is not living in standard replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verfication under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for a Certificate of Family Participation (or thereafter until the time that the Certificate is issued) by certifying to the PHA that they are eligible for one of the preferences described in paragraph (c)(1) of this section. A PHA shall accept this certification unless the PHA verifies that the applicant is not qualified for the preference.

(3) In the case of an applicant who qualifies to receive a Certificate of Family Participation on the basis of a preference, before issuing the Certificate of Family Participation, the PHA shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between application for and issuance of a Certificate, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local government body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit; where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or some other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a unable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more criticial defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair, or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payment that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the PHA must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bill are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) A PHA shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the PHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. The PHA shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of the family's income for rent. The use of disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) A PHA shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, the PHA shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

8. In § 883.704, paragraph (b)(2) is revised, to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will pace the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that if a family is entitled to a preference for being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent, an owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants.

9. In part 883, add a new § 883.704a, to read as follows:

§ 883.704a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph, standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency or government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount dur to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

10. In part 884, add a new § 884.214a, to read as follows:

§ 884.214a Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this part, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualificatin for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts of family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and constant authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

11. In Part 886 a new § 886.121a is added , to read as follows:

§ 886.121a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to projects assisted under this subpart, housing owners shall give preference to applicants who are othewise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, which results in the uninhabitability of an applicants unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use, closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen, or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (d), a housing unit is dilapidated if it does not provide safe and adequate shelter and in its present condition endangers the health, safety, or well-being of a family, or if it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more that 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it

designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (1) of this section).

12. In Part 886 a new § 886.321a is added, to read as follows:

§ 886.321a Preference for families involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rents.

(a) *General.* In selecting from among applicants for admission to projects assisted under this subpart, housing owners shall give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, owners shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference.* (1) applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, as appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in the project) by certifying to the owner that they are eligible for one of the preferences described in paragraph (c)(1) of this section. An owner shall accept this certification unless the owner verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the owner shall require that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary, and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement.* An applicant is or will be involuntarily displaced if he or she has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency or government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as defined in § 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the owner must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the family's landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) An owner shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the owner shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency to furnish or release to the owner and to HUD such information as the owner or HUD determines to be necessary. The owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of its income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) An owner shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, an owner shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j)(1) of this section).

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

13. In § 904.104, add a new paragraph (f)(3), to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(f) * * *

(3) The LHA, in selecting from among applicants determined to have a potential for homeownership, shall give a preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than fifty percent of family income for rent. In carrying out this paragraph, the LHA shall follow the procedures set out in § 960.204a of this chapter.

* * * * *

PART 905—INDIAN HOUSING

14. In § 905.406, add a new paragraph (e), to read as follows:

§ 905.406 Selection of MH homebuyers.

* * * * *

(e) The IHA, in selecting from among applicants for MH housing, shall give a preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than fifty percent of family income for rent. In carrying out this paragraph, the IHA shall follow the procedures set out in § 960.204a of this chapter.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

15. In Part 960, add a new § 960.204a, to read as follows:

§ 960.204a Preference for applicants involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(a) *General.* In selecting from among applicants for admission to its projects, each PHA shall give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. As part of the tenant selection process, the PHA shall inform applicants, including those on the waiting list, of the availability of the preferences, and give these persons an opportunity to show that they qualify for one of the preferences. A PHA must apply the definitions of "standard replacement housing", "involuntary displacement", "substandard housing", "family income", and "rent" set forth in paragraphs (c) (5), (d), (f), (h), and (i), respectively, of this section unless the PHA submits alternative definitions for the Secretary's review and approval. If the Secretary disapproves a PHA's alternative definitions, the PHA shall apply the definitions contained in this section. A PHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section or may adopt verfication procedures of its own.

(b) *Primacy of the preferences.* An applicant who qualifies for any of the preferences under this section is to be selected for admission to a project assisted under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more locally created preferences or priorities (i.e., preferences or priorities not created pursuant to Federal law), or place on the waiting list, or the time of submission of his or her application for admission to an assisted project.

(c) *Qualifying for a preference* (1) An applicant qualifies for a preference under this section if (i) the applicant has been involuntarily displaced and is not living in standard replacement housing, or within no more than six months from the date of certification, under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section, is appropriate, the applicant will be involuntarily displaced; (ii) the applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a preference at the time they make application for admission to a project (or thereafter until the time that they are offered a unit in a project) by certifying to the PHA that they are eligible for one of the preferences described in paragraph (c)(1) of this section. A PHA shall accept this certification unless the PHA verifies that the applicant is not qualified for the preference.

(3) Before executing a lease or rental agreement with an applicant who has been offered a unit on the basis of a preference, the PHA shall request that the applicant provide verification that he or she qualifies for a preference described in paragraph (c)(1) of this section by virtue of his or her current status (without regard to whether there was a change in the applicant's preferred status between the certification under paragraph (c)(2) of this section and execution of a rental agreement, including a change from one preference category to another).

(4) If an applicant's qualification for a preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a preference.

(5) For purposes of this paragraph (c), standard replacement housing is housing that is decent, safe and sanitary and is adequate for the family size, but does not include transient facilities such as motels and hotels.

(d) *Definition of involuntary displacement:* An applicant is or will be involuntarily displaced if he or she was vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(1) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(2) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with a public improvement or development program; or

(3) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

For purposes of this paragraph (d)(3), reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or some other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons shall not include an owner's election not to renew a rental agreement or lease, if the election is legally proper, or the eviction of a tenant who refuses to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant' involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(2) of this section; or

(3) Written notice from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(3) of this section.

(f) *Definition of substandard housing.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

For purposes of this paragraph (f), a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing shall consist of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) of this section.

(h) *Definition of family income.* For purposes of this section, family income is monthly income, as determined in accordance with Part 913 of this chapter.

(i) *Definition of rent.* For purposes of this section, rent is defined as the actual amount due, calculated on a monthly basis, under a lease or rental agreement between a family and the family's current landlord, plus any monthly payments that a family makes toward tenant-purchased utilities (except telephone) and other housing services. In calculating a family's payments toward utilities and other housing services, the PHA must use the family's average monthly utility costs, based on the family's utility bills furnished by the family, for the most recent 12-month period, or, where bills are not obtainable for the entire period, for an appropriate recent period.

(j) *Verification of an applicant's income, rent, and utilities payments.* Verification that an applicant is paying more than 50 percent of family income for rent shall consist of documentation supplied by the family of the amounts due to the landlord under the lease or rental agreement and the amounts the family pays for utilities and other housing services, and of the family's income.

(1) A PHA shall verify a family's income in accordance with appropriate regulatory and HUD handbook provisions. As part of this process, the PHA shall require the family head and other such family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. The PHA shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining a family's eligibility for a preference for paying more than 50 percent of the family's income for rent. The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with determining eligibility for the preference.

(2) A PHA shall verify the amount due to the family's landlord under the lease or rental agreement by requiring the family to furnish copies of its most recent rental receipts or a copy of the family's current lease or rental agreement.

(3) To verify the amount a family pays for utilities and other housing services, a PHA shall require the family to provide copies of the family's most recent bills or receipts for such services (as provided in paragraph (j) (1) of this section).

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Sections 203(a) and 206 of the Housing and Community Development Amendments of 1979, 12 U.S.C. 1701s, and 42 U.S.C. 1437d and 1437f, respectively; section 206 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, approved November 30, 1983.

Dated: July 31, 1984.

Samuel R. Pierce, Jr.,
Secretary.

[FR Doc. 84-25422 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 25

[L R-211-76]

Change in Limitations on Gift and Estate Tax Marital Deductions

Correction

In FR Doc. 84-13523, beginning on page 21350 in the issue of Monday, May 21, 1984, make the following corrections:

1. On page 21351, column two, tenth line, "Status" should read "State".

2. On page 21352, column three, second paragraph, thirteenth line, remove the word "gross".

§ 20.2013-4 [Corrected]

3. On page 21353, column two, in Par. 3, last line, "20.20056(c)-2" should read "20.2056(c)-2".

§ 20.2014-13 [Corrected]

4. On the same page, same column, in § 20.2014-3(b), lines three and six "material" should read "marital".

5. And also on the same page, column three, line one, "material" should read "marital".

§ 20.2056(b)-1 [Corrected]

6. On page 21355, column three, line one, "a" should read "as".

§ 20.2056(b)-7 [Corrected]

7. On page 21358, column two, in Example (10), line 6, "installation" should read "installments".

8. On the same page, column three, in Example (14), next to the last line, "if" should read "is".

§ 20.2056(c)-1A [Corrected]

9. On page 21360, column one, in Example (4), line eight, "or" should read "of".

§ 20.2056(c)-2A [Corrected]

10. On page 21361, column two, in § 20.2056(c)-2A, paragraph (a)(1)(ii), line one, remove "any".

11. On the same page, column three, in § 20.2056(c)-2A, paragraph (a)(2), in line six, "if" should read "of"; also in line seventeen, "products" should read "product"and in lines eighteen and nineteen, in the equation, remove "gross estate less".

12. On page 21362, column one, first full paragraph, last line, "the" should read "that".

§ 20.6018-3 [Corrected]

13. On the same page, column three, just before Par. 19, "§ 20.618-3" should read "§ 20.6018-3".

§ 25.2523(b)-1 [Corrected]

14. On page 21366, column one, in § 25.2523(b)-1, paragraph (a)(1), third from the last line, "0" should read "to".

§ 25.2523(e)-1 [Corrected]

15. On the same page, column two, in § 25.2523(e)-1, in the heading, "Martial" should read "Marital"; also on the same page, column three, same section, in paragraph (c)(3) sixth from the last line, "and" should read "any".

§ 25.2523(f)-1 [Corrected]

16. On page 21367, column three, in § 25.2523(f)-1, paragraph (c)(1), third line, "trem" should read "term"; also in paragraph (c)(1)(i), line two, "form" should read "from"; and on page 21368, column two, the paragraph preceding (f) should be correctly designated as "(e)".

17. On page 21369, column two, line eight, "six" should read "four".

§ 25.6019-1 [Corrected]

18. On the same page, column two, in § 25.6019-1, paragraph (a)(2), line seven, delete the period and insert a comma.

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2680-8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on a revision to the Wisconsin State Implementation Plan (SIP). The revision pertains to Chapter NR 410 of the Wisconsin Administrative Code (WAC), and establishes an air permit fee system for Wisconsin. USEPA's action is based on a SIP revision request that was submitted by the State of Wisconsin. The intent of today's rulemaking is to present a discussion of the material submitted by the State, and to provide an opportunity for public comment on the revision and on USEPA's proposed action.

DATE: Comments on this revision and on USEPA's proposed action must be received by October 26, 1984.

ADDRESSES: Copies of the SIP revision are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V office.)

Environmental Protection Agency, Air and Radiation, Region V, 230 South Dearborn Street, Chicago, Illinois 60604
Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster Street, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to (please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

Section 110 of the Clean Air Act (Act) requires that each state establish a plan to implement the National Ambient Air Quality Standards (NAAQS). It further requires that each plan include, among other provisions, a requirement that the state permitting authority charge permit fees (Section 110(a)(2)(K)). These fees must cover the reasonable costs of reviewing and acting upon a permit application, and of implementing and enforcing issued permits. The permit fee requirement applies to any permit issued to any major stationary source under the various programs of the Act.

Section 144.399 of the Wisconsin Statutes authorizes the Wisconsin Department of Natural Resources (WDNR) to establish air permit fees. Public hearings on this issue were held in Wausau, Wisconsin, on December 6, 1983, and in Waukesha, Wisconsin, on December 7, 1983. This new rule was codified under Chapter NR 410 of the WAC, was enacted in Wisconsin by means of Natural Resources Board Order Number A-45-83, and became effective in Wisconsin on May 1, 1984.

Chapter NR 410

On May 25, 1984, the WDNR requested that USEPA incorporates Chapter NR 410 of the WAC, which establishes an air permit fee system for Wisconsin, as a revision to the Wisconsin SIP. Air permit fees would recover the costs of reviewing and acting upon air permit applications, as well as implementing and enforcing the terms and conditions of such permits.

The application fee consists of a basic fee plus any additional fee required for a specific review action (e.g., review of two or more basic emission units, review of nonattainment area sources, review of emissions offset sources). The basic application fee is as follows:

$1,050	construction/replacement of minor source
$800	modification of minor source
$2,550	construction/reconstruction/replacement of major source
$1,400	modification of major source

The additional fee varies, depending on the applicable review action, but ranges from $150 to $1,500. The implementation and enforcement fee is charged on an annual basis. This fee is $500 for a major source and $200 for a minor source.

Conclusion

This proposed revision to the SIP meets the requirement of Section 110(a)(2)(K) of the Clean Air Act, and has been adopted by the State after reasonable notice and public hearing. Although Section 110 of the Act only requires permit fees for major stationary sources, it does not prohibit the State from collecting fees from minor sources. Therefore, USEPA is proposing to approve this revision to the Wisconsin SIP on the basis of Section 116 of the Act, which restricts USEPA from interfering with State measures that go beyond the requirements of the Act (49 FR 13174; April 3, 1984).

Interested persons are invited to submit comments on this action. USEPA will consider all comments received by October 26, 1984.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)))

Dated August 28, 1984.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 84-[illegible] Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-2680-7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA proposes to revise the Total Suspended Particulates (TSP) designation for the City of Milwaukee from primary and secondary nonattainment to secondary nonattainment. The proposed revision would narrow the boundaries of the secondary nonattainment area, and would eliminate the designation of primary nonattainment. This proposed revision is based on a redesignation request from the Wisconsin Department of Natural Resources (WDNR), and on supporting technical data submitted by the Department. Under the Clean Air Act, attainment status designations can be changed if warranted by the available data.

DATE: Comments on this redesignation and on USEPA's proposed action must be received by October 26, 1984.

ADDRESSES: Copies of the redesignation request, the technical support documents, and the supporting air quality data are available at the following addresses (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V office):

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.
Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to (please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Clean Air Act, the

Administrator of USEPA has promulgated a National Ambient Air Quality Standards (NAAQS) attainment status designation for each area of Wisconsin. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the available data warrant such revisions.

USEPA's criteria for Section 107 redesignations are summarized in two policy memoranda: (1) An April 21, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, entitled "Section 107 Designation Policy Summary"; and (2) a December 23, 1983, memorandum from G.T. Helms, Chief of the Control Programs Operation Branch, entitled "Section 107 Questions and Answers." In general, all available information relative to the attainment status of the area should be reviewed. The information should include the most recent eight consecutive quarters of quality-assured, representative ambient air quality data, plus evidence of an implemented EPA-approved control strategy. Any available supplemental information, including air quality modeling, emissions data, and any other pertinent information, should be used to determine whether the monitoring data accurately characterized the worst case air quality in the area.

Background—City of Milwaukee

Section 107 of the Clean Air Act Amendments of 1977 required all States to determine the attainment/nonattainment status of all air quality control regions within the respective States with respect to the NAAQS (42 U.S.C. § 7407). During 1977, Wisconsin recommended to USEPA that parts of the City of Milwaukee be designated as primary and secondary nonattainment areas for TSP. On March 3, 1978 (43 FR 8962), USEPA designated portions of the City of Milwaukee as primary and secondary nonattainment for TSP. USEPA made this determination based on monitoring data showing violations of the TSP NAAQS. These violations were caused primarily by emissions from industrial facilities located within the Milwaukee area. As a result of the nonattainment designation, a construction ban was imposed on Milwaukee pursuant to Section 110(a)(2)(I) of the Clean Air Act.

On March 14, 1983, the Wisconsin Department of Natural Resources (WDNR) requested that USEPA revise the air quality attainment status designation for the City of Milwaukee, from primary and secondary nonattainment to secondary nonattainment only of the TSP NAAQS. The State also requested that the secondary nonattainment area be narrowed to the approximate size of the current primary nonattainment area, and that the designation of primary nonattainment be eliminated.

The WDNR also submitted a Technical Support Document (January 1983) with summaries of the TSP ambient air monitoring data collected from 19 sites during the period 1979–1983. Additional technical information was submitted on May 12, July 29, and September 13, 1983. On March 13, 1984, the WDNR revised its redesignation request, enlarging the size of the proposed secondary nonattainment area. The boundaries of the new secondary nonattainment area would be as follows:

N—Michigan Avenue from corner of 35th Street to Lake Michigan

W—35th Street S from Michigan Avenue to National Avenue, east on National Avenue to 6th Street, S on 6th Street to Becher Street

S—Becher Street E from 6th Street to Lake Michigan

E—Lake Michigan.

These documents, and the reults of USEPA's review of these documents, are available for public inspection at the Region V office listed above.

Air Quality Data

The ambient air quality data show attainment of the primary TSP NAAQS, but not the secondary TSP NAAQS. Eight consecutive quarters of recent data, showing no violations of the primary TSP NAAQS, are available from 19 sites in the Milwaukee area. Based on available monitoring, emissions, meteorological, and modeling data, USEPA has determined that these monitors provide adequate spatial coverage of the area, so the data from these sites are representative of the TSP levels in Milwaukee.

According to information supplied by WDNR, TSP emissions in Milwaukee have been reduced due to control measures that have been implemented by TSP sources in the Milwaukee area, in accordance with the federally approved SIP (48 FR 9860; March 9, 1983). The WDNR stated in a September 13, 1983, letter to USEPA, that most sources were in compliance with the federally approved control strategy. Another reason for the reduction in TSP emissions is the permanent shut-down of Milwaukee Solvay Coke, Marquette Cement, and Minerals Reclamation, which were all large TSP sources located in, or near, the original primary nonattainment area. USEPA believes that these plant closures, and the resulting emission reductions, are a necessary condition of the redesignation.

Consequently, if these sources were to resume operation, then they would have to satisfy the applicable new source review requirements.

Regulatory Issues

On March 9, 1983 (48 FR 9860), USEPA partially approved a Part D TSP State Implementation Plan (SIP) for Wisconsin. The March 9, 1983, rulemaking action did not lift the Section 110(a)(2)(I) major source construction moratorium in the Milwaukee County primary nonattainment area due to USEPA's disapproval of that portion of the plan pertaining to Milwaukee coke battery emissions. USEPA disapproved that portion of the plan because it did not contain an enforceable RACT-level numerical visible emission limitation for charging operations.

As noted above, on March 14, 1983, Wisconsin requested that USEPA redesignate a portion of the City of Milwaukee as secondary nonattainment only. The State has submitted evidence that the TSP levels in this area have decreased due to compliance with the federally approved control strategy (48 FR 9860), and to the permanent shutdown of several large TSP sources, including the only coke battery in the State (Milwaukee Solvay Coke). Final approval of the proposed redesignation would lift the TSP construction moratorium in Milwaukee, because the construction moratorium only applies in primary nonattainment areas.

Conclusion

The ambient air monitoring data show no violations of the primary TSP NAAQS from 1981–1983. The improvement in ambient TSP levels can be attributed to control strategies that have been implemented at the industrial sources located within the Milwaukee area, and to the permanent closure of several major particulate sources. Therefore, USEPA is proposing to approve the redesigation of Milwaukee from primary and secondary nonattainment to secondary nonattainment for TSP.

All interested persons are invited to submit written comments on the proposed redesigation. Written comments received by the date specificed above will be considered in determining whether USEPA will approve the redesignation. After reviewing all the comments submitted, the Administrator of USEPA will publish the Agency's final action on the redesignation in the **Federal Register.**

Under 5 U.S.C. Section 605(b), the administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407)).

Dated: August 22, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-25480 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300100; FRL-2674-6]

Definitions and Interpretations; Proposed Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended by adding certain general crop categories to column A, corresponding specific raw agricultural commodities to column B, and by adding further definitive crops to column B in the case of some general crop categories already listed in column A. This proposal was submitted by the University of California Cooperative Extension Program at Davis, California. These amendments will expand the number of commodities to be covered whenever a tolerance is established for one of the general crop categories listed in column A of 40 CFR 180.1(h).

DATE: Written comments, identified by the document control number [OPP-300100], must be received on or before October 26, 1984.

ADDRESS: Written comments by mail to: Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: The University of California Cooperative Extension Program, 116, B Street, Davis, CA 95616, has submitted an amendment proposed to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, amend 40 CFR 180.1(h) by adding two general crop categories (cabbage and broccoli) to column A, corresponding specific raw agricultural commodities to column B, and by adding further definitive crops to column B in the case of "celery" already listed in column A.

The requestor has indicated the need for clarification of the status of certain specialty crops with respect to existing residue clearances, in order that such crops may be included on pesticide labeling or treated in accordance with existing labeling directions. In some cases, the vegetable in question may be grown and marketed under a different or specialty name which is economically and culturally preferable to the more common name.

The Administrator concurs with the petitioner on the proposed revision of 40 CFR 180.1(h) to: (1) Add the general category "broccoli" to column A and the corresponding specific raw agricultural commodities "broccoli" and "Chinese broccoli (gai lon, white flowering broccoli)" to column B; (2) add the general category "cabbage" to column A and the corresponding specific raw agricultural commodities "cabbage" and "Chinese cabbage (tight-heading varieties only)" to column B; and (3) amend the current definition of "celery" to include "Florence fennel (sweet anise, sweet fennel, finochio) (fresh leaves and stalks only)." These revisions will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general categories to include the specific raw agricultural commodities.

Therefore, the Administrator proposes that 40 CFR 180.1(h) be amended to reflect these changes, as set forth below.

Interested persons are invited to submit written comments on the proposed regulation amendment. Comments must bear a notation indicating the document control number [OPP-300100]. All written comments filed pursuant to this notice will be available in the Information Services Section at address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24959).

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)))

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1(h) be amended by adding and alphabetically inserting definitions for "broccoli" and "cabbage" in Column A and the respective definitive crops in Column B and revising the list of definitive crops for "celery" in column B to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * *	* *
Broccoli	Broccoli, Chinese Broccoli (gai lon, white flowering broccoli).
Cabbage	Cabbage, Chinese cabbage (tight-heading varieties only).
Celery	Celery, Florence Fennel (sweet anise, sweet fennel, finochio) (fresh leaves and stalks only).
* * *	* *

[FR Doc. 84-24680 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300102; FRL-2675-1]

Definitions and Interpretations; Proposed Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended by redefining the crop term "tangerine" to include various related citrus hybrids and by adding definitions for "caneberries" and "squash." These proposed amendments, which will clarify and update the current definition of "tangerines" and which will allow a number of closely-related commodities to be covered whenever a tolerance is established for the agricultural commodity groups "caneberries" and "squash," were submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Written comments, identified by the document control number [OPP-300102], must be received on or before October 26, 1984.

ADDRESS: Written comments by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted requests to EPA on behalf of the IR-4 Technical Committee.

First, that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by revising the current definition of tangerines to include mandarins, tangelos, tangors, tangerines and hybrids of these. Currently tangerines is defined to include only tangelos and tangerines. According to IR-4, tangerines, or mandarins, are characterized by a loose skin that separates readily from the pulp, and by segments which separate readily from each other; they are grown in all citrus areas of the U.S. The tangor is a citrus hybrid resulting from cross-breeding mandarins and sweet oranges and is somewhat intermediate in characteristics. The tangelo is a cross of mandarin and grapefruit or pummelo.

Second, that the Administrator amend 40 CFR 180.1(h) by adding the general crop category loganberries, raspberries, youngberries, and "varieties of these" to column B.

The IR-4 supports this request by pointing out that each of these specific crops is a species of the genus *Rubus* in the family Rosaceae and that they are all very similar physiologically and by virtue of cultivation patterns. Canes may be erect, semi-erect, or trailing. Blackberries are usually heavily-thorned but some thornless varieties are known. Dewberries (sometimes called trailing blackberry) and related varieties (including boysenberry, loganberry, and youngberry) are generally less thorny than blackberries but very similar otherwise. Raspberries are nearly thornless. Fruits are borne in loose clusters on laterals that grow from canes. They consist of numerous small seeds, each imbedded in a juicy pulp, and all adhering to a fleshy base. The base separates from the plant when the fruit in harvested in all cases except for raspberries, in which the base or receptacle is retained on the plant.

Third, that the Administrator amend 40 CFR 180.1(h) by adding the general crop category "squash" to column A and the corresponding specific raw agricultural commodities pumpkins, summer squash, and winter squash to column B. The IR-4 supports this request by pointing out that each of these specific crops is a species of the genus *Cucurbita* in the family *Cucurbitaceae* and that varieties of several species of *Cucurbita* carry the name "pumpkin." Generally, pumpkin is the edible fruit of cucurbits used for feed or food when ripe, and having somewhat coarse, strongly-flavored flesh; winter squash has finer texture and less strongly flavored flesh. Summer squashes are commonly harvested while the rinds on the fruit are soft and tender; otherwise, the plants are essentially similar to those of winter squash and pumpkin.

The Administrator concurs with IR-4 that the revised and new definitions would be appropriate. Therefore, it is proposed that 40 CFR 180.1(h) be amended to reflect these changes, as set forth below.

Interested persons are invited to submit written comments on the proposed regulation amendment. Comments must bear a notation indicating the document control number [OPP-300102]. All written comments filed pursuant to this notice will be available in the Information Services Section at address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24959).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)))

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.1(h) be amended by adding and alphabetically inserting definitions for "caneberries" and "squash" in column A and the respective definitive crops in column B and revising the list of definitive crops in column B for "tangerines" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * *	* *
Caneberries	Blackberries, boysenberries, dewberries, longanberries, raspberries, youngberries, and varieties of these.
* * *	* *
Squash	Pumpkins, summer and winter squash.
Tangerines	Tangerines (mandarins or mandarin oranges), tangelos, tangors, and other hybrids of tangerine with other citrus.
* * *	* *

[FR Doc. 84-24917 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300101; FRL-2674-7]

Definitions and Interpretations; Proposed Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes an amendment to the definition of "beans" found in 40 CFR 180.1(h). The proposed amendment, which would delete *Glycine* sp. (including soybeans) from the definition, is being presented upon the initiative of the Administrator.

DATE: Written comments, identified by the document control number [OPP-300101], must be received on or before October 26, 1984.

ADDRESSES: Written comments by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of January 6, 1982 (47 FR 623), which was intended to clarify and update the definition of "beans" as it appears in 40 CFR 180.1(h). The revised definition of beans included the names of five genera of beans: *Cicer, Glycine, Phaseolus, Vicia,* and *Vigna* spp.

It was subsequently determined that *Glycine* sp. should not have been included in a broad and general definition of "beans" since soybeans, the predominant species of the genus, is an oil seed and may require oil processing studies before a tolerance can be established. Certain pesticides will tend to concentrate in the oil seed processed products. If residues in processed products exceed those in the raw agricultural commodity, separate food additive regulations would have to be established under 21 CFR Parts 193 and 561. Therefore, in order to avoid the possibility of illegal pesticide residues in soybean processed products, "*Glycine* sp. (including soybeans)" needs to be deleted from the definition of "beans" in 40 CFR 180.1(h). The remaining genera of beans are not considered as oil seeds, thus require no oil seed processing studies not food or feed additive regulations.

In examining the definitions in column B for "Beans (dry)" and "Beans (succulent)" in column A, some ambiguity exists as to what "beans" are intended. In order to clarify that beans (dry) and beans (succulent) pertain to those bean crops listed above in column B, the two definitions should be amended by adding the qualifier "above" to the column B definitions.

Based on the information considered by the Agency, it is concluded that the regulation established by revising 40 CFR Part 180 will protect the public health, is necessary to clarify the intention of the definition, and will preclude resulting illegal residues. Therefore, it is proposed that the regulation be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation amendment. Comments must bear a notation indicating the document control number [OPP-300101]. All written comments filed pursuant to this notice will be available in the Information Services Section at address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24959).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)))

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1(h) be amended by revising the list of definitive crops in column B for "Beans", "Beans (dry)", and "Beans (succulent)" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * *	* *
Beans	*Cicer arietinum* (chickpeas, garbanzo beans; *Phaseolus* spp. (including kidney beans, lima beans, mung beans, navy beans, pinto beans, snap beans, and wax beans); *Vicia faba* (broad beans, fava beans); *Vigna* spp. (including asparagus beans, blackeyd peas, and cowpeas).
Beans (dry	All beans above in dry form only.
Beans (succulent).	All beans above in succulent form only.
* * *	* *

[FR Doc. 84-24910 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4E3028/P357; FRL-2681-3]

Acephate; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the insecticide acephate and its cholinesterase-inhibiting metabolite in or on the raw agricultural commodity macadamia nuts. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments identified by the document control number [PP 4E3028/P357], must be received on or before October 26, 1984.

ADDRESS: Written comments by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3028 to EPA on behalf of the IR-4 National Director, Dr. Robert H. Kupelian, and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity macadamia nuts at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a 2-year dog feeding study with a NOEL of 30.0 ppm (0.75 mg/kg), based on the inhibition of plasma, RBC, and brain cholinesterase activity, and a NOEL of 100.0 ppm (2.5 mg/kg) for systemic toxicity; a 28-month rat feeding/oncogenic study with a NOEL of 5.0 ppm (0.25 mg/kg), based on the inhibition of cholinesterase activity in plasma, RBC and brain; a rabbit teratology study with a NOEL of 10.0 mg/kg (highest dose tested); a rat teratology study with a NOEL of 200.0 mg/kg (highest dose tested); and a supplemental acute delayed neurotoxicity study with no effects observed (no leg paralysis) at the 375 mg/kg level.

In a recently conducted micronucleus test (mouse bone marrow), acephate did not display mutagenic activity. There are studies available, however, in which acephate did display such activity (gene mutations in mocroorganisms and DNA repair).

Studies which are lacking but considered desirable include a rat reproduction study, and a delayed neurotoxicity study. A mouse oncogenic study has been submitted and is currently under review. Although there are data gaps for the chemical, the available toxicity data are adequate to support the proposed tolerances because the proposed use will result in an insignificant increase (0.004 percent) in the TMRC to the human diet. As stated in the Federal Register of May 11, 1979 (44 FR 27932), the Agency will generally consider as insignificant an increase in the TMRC of 1.0 percent on less.

The acceptable daily intake (ADI), based on the rat feeding study (NOEL of 0.25 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.25 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.4592 mg/day; the current action will increase the TMRC by 0.00002 mg/day (0.004 percent). Published tolerances utilize 30.61 percent of the ADI; the current action will utilize an additional 0.001 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography with a thermionic detector, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical. Macadamia nuts are not considered animal feed items and, therefore, there is no reasonable expectation of residues in eggs, meat, milk or poultry from this tolerance. There is a restriction against feeding cover crops from treated areas to livestock or allowing animals to graze in treated areas.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.108 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who have registered or submitted on application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3028/P357]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 13, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.108 be amended by adding and alphabetically inserting the raw agricultural commodity macadamia nuts to read as follows:

§ 180.108 Acephate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Macadamia nuts	0.05
* * * * *	

[FR Doc. 84-25517 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 84-09; Notice 1]

Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 206, *Door Locks and Door Retention Components,* that would expand the list of doors that need not conform to the requirements of the standard. Added to the list would be doors with wheelchair lifts that are provided with an audible alarm which would signal the driver when the door is unsecured and the ignition is in the "on" position. When in its stowed position, a wheelchair lift barricades the door and prevents occupant ejection from the vehicle if the door were to open while the vehicle is in motion or involved in a collision. The alarm ensures that the wheelchair lift is in its retracted position and the door is shut while the vehicle is in operation. This proposal is being issued pursuant to a request from a manufacturer for an exemption from FMVSS No. 206.

DATE: *Comment closing dates:* November 26, 1984. *Proposed effective date:* 30 days after publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (Docket hours 8 a.m. to 4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: Thomas Built Buses, Inc. (hereinafter referred to as "Thomas"), has requested an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 206, *Door Locks and Door Retention Components.* Thomas requests that the Standards exclude from its requirements mulitpurpose passenger vehicles which are equipped with wheelchair lifts and which are designed for wheelchair occupants. NHTSA has tentatively decided that this proposal has merit, and is considering amending FMVSS No. 206 to exclude doors with wheelchair lift equipment that are provided with an audible alarm from the standard's requirements.

In May 1982, Thomas asked NHTSA to reconsider the procedure of classifying vehicles as multipurpose passenger vehicles or buses based on designated seating postions. The definition of a bus if found in Title 49 CFR Part 571.3, *Definitions.* In that section, a bus is defined as a passenger motor vehicle designed to carry more than 10 persons. The agency determines passenger carrying capacity by the number of designated seating positions for passengers. When seats on a bus are removed so that the designated seating positions for passengers on the vehicle are reduced to 9 or fewer, the classification of the vehicle changes to a multipurpose passenger vehicle.

Thomas stated that often some of the seats on their buses are removed in order to accommodate wheelchair occupants. The removal of the bus seats results in the passenger seating capacity being reduced to less than 10. Since the vehicle's passenger capacity is less than 10 passengers, the vehicle would be classified as a multipurpose passenger vehicle. However, Thomas argued that the removal of the seats should not affect the vehicle's classification as a bus, since the vehicle was originally "designed" as a bus and resembled a conventional bus. The company also argued that it would be preferable if the vehicle were to remain classified as a bus since it would be subject to the Federal Motor Vehicle Safety Standards applicable to buses, which include the comprehensive school bus safety standards.

Thomas was especially concerned about FMVSS No. 206, *Door Locks and Door Retention Components.* FMVSS No. 206 specifies requirements for side door locks and retention components which apply to passenger cars, multipurpose passenger vehicles, and trucks. This standard does not apply to buses, but does apply to Thomas' vehicles which seat 9 or fewer passengers, since these are multipurpose passenger vehicles. Therefore, Thomas asked in the alternative that Standard No. 206 be amended to exclude multipurpose passenger vehicles which accommodate wheelchair occupants from the Standard's requirements.

The agency has decided to consider amendment FMVSS No. 206 to exclude from its requirments doors which contain wheelchair lifts that are provided with an audible alarm which would signal the driver when the door is unsecured and the ignition is in the "on" position. The proposed amendment would exclude from the requirements of Standard No. 206 such doors on passenger cars, multipurpose passenger vehicles, such as vans, and trucks. Paragraph S4 of Standard No. 206 already excludes from its requirements components on folding doors, roll-up doors and doors that are designated to be easily attached to or removed from motor vehicles manufactured for operation without doors. The agency has tentatively decided to expand this list to include side doors equipped with wheelchair lifts and audible alarms since the wheelchair lifts barricade the door of the vehicle when the door is closed. The lift would prevent occupant ejection from the vehicle if the door were to open while the vehicle is in motion or involved in a collision. The agency has tentatively determined that it is unnecessary to require these doors equipped with wheelchair lifts to comply with the requirments of the Standard since the lifts would prevent ejections of the vehicle's occupants, and since there would be an alarm which would ensure that the door is closed and the lift is in its retracted position. Therefore, the agency believes that an equivalent level of safety is provided by such vehicles.

In the case of passenger cars and vans it is probable that a higher level of safety would be provided as manufacturers would be unlikely to modify their assembly lines for the few vehicles to be equipped with wheelchair lifts and thus these vehicles would continue to comply with the current FMVSS No. 206 requirements as well as having the lift provide protection. Further, the agency has proposed this amendment in order to facilitate the transportation of handicapped or convalescent individuals by removing disincentives, such as that mentioned by the petitioner, in vehicle production for use by such individuals.

Wheelchair lifts are designed so that they are secured in the retracted position by either hydraulic pressure in the extension/retraction cylinders and mechanical latches, or by electrically-operated drive mechanisms. Metal grate floors of lifts are stowed in a vertical position parallel to and in close proximity with the interior surface of the door of the vehicle. In its retracted position, the wheelchair lift could prevent occupant ejection from the vehicle if the door were to open while the vehicle is in motion or involved in a collision. An audible alarm system which is activated if the door is opened while the ignition is in the "on" position would ensure that the wheelchair lift is in its retracted position and the door is shut while the vehicle is in operation. NHTSA proposes that Standard No. 206 exclude wheelchair lift doors when these doors contain such an alarm system. The audible alarm must be loud enough to be heard by the driver.

The agency considered whether Standard No. 206 should be amended to require that each door equipped with a wheelchair lift also be equipped with a barricade to prevent ejection from the vehicle. It was tentatively decided that it was unnecessary to require a separate barricade to the door since the floors of wheelchair lifts are stowed vertically in close proximity to the lift door and can effectively act as a barricade against ejection. The design of the wheelchair lift floors would not be regulated by this amendment because the agency believes that current designs of wheelchair lifts are sufficient to prevent occupant ejection from the vehicle. This amendment would permit the continued use of current wheelchair lift designs and encourage the development of alternative designs. The agency considers the possibility that some wheelchair lift doors may not provide adequate barriers to ejection to be remote, but comments are requested on the issue of whether the level of protection provided by lift doors ought to be regulated.

NHTSA has considered this proposal and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation" nor significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The proposal would exclude certain doors from the standard while imposing requirements which are minimal. The agency estimates that many if not all vehicles equipped with wheelchair lift doors already have alarm systems installed which signal the driver when the door is unsecured.

Amending FMVSS No. 206 as proposed in this notice could result in some slight cost savings to the purchasers of vehicles equipped with wheelchair lifts. Manufacturers of these vehicles would be relieved from complying with the requirements of the Standard for the doors that contain the lifts, and accordingly the costs to comply with the requirements would be eliminated. Further, companies which manufacture multipurpose passenger vehicles designed to accommodate wheelchair occupants could be primarily manufacturers of buses. For example, to accommodate wheelchair passengers Thomas alters its buses by installing a wheelchair lift and removing some of the seats on the vehicle. Since buses are exempt from Standard No. 206 while multipurposes passenger vehicles are not, companies such as Thomas would have to maintain a separate inventory of door locks and door retention components for the doors of their multipurpose passenger vehicles equipped with the lifts. Amending FMVSS No. 206 as proposed in this notice would relieve these manufacturers from the burden of maintaining separate inventories. As these and other restrictions are relieved, it is also possible that more manufacturers would be willing to produce vehicles which are designed to accommodate wheelchair passengers. If this were achieved, the goal of the agency to facilitate the transportation of handicapped passengers would be furthered.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal would have no effect on the human environment since the type, weight, and quantity of materials used in the manufacture of wheelchair lifts and doors equipped with wheelchair lifts would not be significantly changed. No adverse impact on safety is anticipated.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of vehicles equipped with wheelchair lifts are generally not small businesses within the meaning of the Regulatory Flexibility Act. Governmental jurisdictions and small organizations such as hospitals, school systems, and nursing homes, might purchase vehicles equipped with wheelchair lifts. These purchasers would not be significantly affected by this amendment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief

Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.206 [Amended]

In consideration of the foregoing, it is proposed that 49 CFR 571.206, *Door Locks and Door Retention Components*, be amended as follows:

S4 would be revised to read:

* * * * *

S4. *Requirements.* Components on any side door leading directly into a compartment that contains one or more seating accommodations shall conform to this standard. However, components on folding doors, roll-up doors, doors that are designed to be easily attached to or removed from motor vehicles manufactured for operation without doors, and side doors which are equipped with wheelchair lifts and which are linked to an alarm system audible to the driver when the door is open, need not conform to this standard.

* * * * *

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: September 20, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84–25554 Filed 9–25–84; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Parts 571 and 574

[Docket No. 84–10; Notice 1]

New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for rulemaking and notice of proposed rulemaking.

SUMMARY: This notice responds to a petition for rulemaking filed by Michelin Tire Corporation asking the agency to amend its standard applicable to tires for use on motor vehicles other than passenger cars, to permit the required markings to appear at some point other than between the maximum section width and the bead of the tire. Michelin made this request because it has developed a tire where the maximum section width is at the bead. Accordingly, it cannot mark these tires in the location currently required by the standard. The rationale for the requirement that the markings be located in that area was that the agency wanted to ensure that these safety markings were not scuffed off when the sidewall of the tire hit curbs and other objects, and so that accurate information would remain on the sidewall after the tire has been retreaded. Neither of these concerns appears substantial enough to deny a new technology introduction onto the market. Therefore, this notice proposes to require that, for tires where the maximum section width falls within an area not more than one fourth of the distance from the bead to the tire shoulder, the markings appear between the tire bead and the circle formed by all the points half the distance between the tire bead and the tire shoulder. The shoulder is the part of the tire where the sidewall meets the tread.

DATES: Comment Closing Date: Comments on this notice must be received on or before November 13, 1984.

EFFECTIVE DATE: If adopted as a final rule, this amendment would be effective as of the date of publication of the final rule in the **Federal Register**.

ADDRESS: All comments on this notice should refer to the docket and notice numbers for this rulemaking action and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Arturo Casanova, Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–426–1715).

SUPPLEMENTARY INFORMATION: This notice proposes to amend Federal Motor Vehicle Safety Standard No. 119, *New pneumatic tires for motor vehicles other than passengers cars* (49 CFR 571.119) and 49 CFR Part 574, *Tire Identification and Recordkeeping*. Both these sections set forth requirements for marking certain safety information on the sidewall of new tires for use on motor vehicles other than passenger cars.

This action is being taken pursuant to a petition for rulemaking filed by Michelin Tire Corporation (Michelin). In its petition, Michelin stated that it has developed a new tire for truck tires. This single tire would replace the dual tires currently used on the rear axles of truck tractors and trailers. However, to give the single tire the load carrying capability to replace two separate tires, Michelin developed a new profile for the tire. The profile of a normal tire has a maximum section width about halfway down the sidewalls of the tire, and the profile narrows as one moves toward either the bead or the tread of the tire. For this new tire, the maximum section width is at the bead and the tire narrows as one moves from the bead toward the tread.

This agency does not directly regulate the profile of tires, so there was no requirement that Michelin notify this agency of the unique profile of these tires. However, Michelin stated in its petition that the language of Standard No. 119 in effect precludes the introduction of this new tire design. That result arises from the language of section S6.5 of Standard No. 119 which mandates that the necessary safety markings "shall be placed between the maximum section width (exclusive of sidewall decoration or curb ribs) and the bead on at least one sidewall." Since the maximum section width of this new Michelin tire design is at the bead, there is no way to place the safety markings in the required location, and therefore Michelin cannot certify that these tires comply with Standard No. 119.

In response to this Michelin petition, NHTSA has reexamined the reasons that the safety markings are required to appear in this location on the tires. The location requirements for the safety markings in Standard No. 119 were drawn directly from the requirements contained in Standard No. 109, *New pneumatic tires—passenger cars* (49 CFR 571.109). In the preambles to the final rules establishing the location requirements for the safety information to be molded on the sidewall of the tires, the agency explained that it was establishing location requirements for two reasons.

First, the agency stated that the labeling on retreaded tires should use original casing labeling as much as possible, since this reduces the chances of incorrect labeling. Accordingly, the agency required that new tire labeling appear in an area where it would not be buffed off the tire during recapping and similar retreading (37 FR 23536; November 4, 1972).

Second, the agency wanted the safety information to be located in an area where it would not be scuffed off the tire if the tire were rubbed against a curb or other object while parking, loading, etc. By requiring that the safety information appear between the widest part of the tire (the maximum section width) and the bead, NHTSA believed that the information would be less likely to ever be scuffed off the tire, and thus would be available to the user of the tire.

Both these reasons are still valid and to some extent militate against granting the Michelin petition. However, neither of these concerns alone or together is significant enough to justify prohibiting the introduction of a new idea in tires. With respect to the concern that the labeling not be buffed off during standard retreading operations, the agency has always permitted bead-to-bead retreading. In bead-to-bead retreading, the entire sidewall areas and the tread are buffed, and new rubber is applied. The effect of using this retreading process is that *all* of the information labeled on the casing is removed, and the retreader must relabel all of the safety information. While this does raise the possibility that the information could be incorrect, this possibility was not sufficient reason to prohibit a safe and effective retreading process.

Further, it is important to remember that section S6.5 of Standard No. 119 requires that the specified safety information appear on *both* sidewalls of most tires subject to that Standard. On *one* of the sidewalls, the safety information must appear in the specified location. Hence, even if the safety information were scuffed off the outboard sidewall of the tire by curbs or loading docks, that information would still be molded on the inboard sidewall, so that persons servicing or replacing the tire would have the necessary safety information available for inspection.

The agency has tentatively determined that the rationale permitting bead-to-bead retreading should also be applied to this petition. Allowing the safety information to be labeled at a point between the maximum section width and the tread area does give rise to the possibility that some or all of the safety information could be scuffed off the tire if the tire is often rubbed against curbs or loading docks. However, the possibility that the safety information will be scuffed off some of these tires is not sufficient reason for this agency to prohibit the introduction of a new tire concept, which in all other respects can be certified as meeting the requirements of Standard No. 119. Accordingly, this notice proposes to amend our tire regulations to permit these new Michelin tires to have the required safety information labeled on some part of the tire other than between the maximum section width and the bead.

Michelin asked in its petition that Standard No. 119 be amended to specify that when the tire's maximum section width is so close to the bead as to make it impractical to label the safety information between those areas, the manufacturer be required to label the safety information between the tire bead and a point halfway between the bead and the tire shoulder. The tire shoulder is the area where the sidewall meets the tread. The reason for specifying that the safety information appear nearer the bead than the tread is that when a retreading process other than bead-to-bead is used, the safety information from the casing will not be buffed off during the retreading process. Hence, those tires which do not have the safety information scuffed off will have the information available after most retreading operations.

NHTSA agrees that the safety information should be located in an area which maximizes the chances that it will be retained on the sidewall if the tire is retreaded. However, it would be inappropriate and difficult to enforce if the Standard were amended to specify that the safety information need not be labeled between the maximum section width and the bead "if the maximum section width is so close to the bead as to make it impractical" to label the information in that area. Accordingly, this notice proposes to require that when the maximum section width of a tire falls within an area that is between the bead of the tire and one-fourth of the distance from the bead to the shoulder of the tire, the safety information shall be labeled in the area between the bead and one-half of the distance from the bead to the shoulder of the tire.

Further, while Michelin's petition asked for an amendment only to Standard No. 119, NHTSA is also proposing that Figure 1 following 49 CFR 574.5 be amended by the same language, since that Figure also specifies that the tire identification number, which must be molded on each new tire, be located between the maximum section width and the bead of the tire. Without such an amendment, each of Michelin's new tires would violate Part 574.

The agency is also proposing that this amendment become effective on the date of publication of the final rule in the **Federal Register**. This proposed change imposes no obligation on any party. Hence, no leadtime is required for any party to prepare for compliance with the amended language of the Standard and the regulation. The only parties which will be affected by these amendments are those manufacturers which produce a tire with a maximum section width at or near the bead of the tire, and to the best of this agency's knowledge, the ony manufacturer producing such a tire is the petitioner. If adopted, these amendments would simply remove an impediment to the introduction of a new tire design. NHTSA has tentatively determined this constitutes good cause for specifying an effective date sooner than 180 days after publication of the final rule, and proposes that these amendments take effect on the date of publication of the final rule.

NHTSA has analyzed the impacts of this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the anticipated impacts of this proposal if adopted as a final rule would be to remove a burden on those manufacturers wishing to introduce new tire designs. Those manufacturers not wishing to produce such tires will not be affected by this proposal. No impacts are foreseen for tire dealers or the public. Accordingly, a full regulatory evaluation has not been prepared for this proposal.

The agency has also considered the impacts of this proposal as required by the Regulatory Flexibility Act. I hereby certify that this proposal would not have a significant economic impact on a substantial number of small entities. The agency believes that few, if any, of the tire manufacturers qualify as small entities. To the extent that some tire manufacturers may be small entities, those wishing to produce this new tire design will be free to do so, and those which do not choose to produce these tires will be unaffected by this proposal. Small organizations and small governmental units would not be affected by this proposal if adopted as a final rule, nor would tire dealers.

Finally, the agency has considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that it will not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachment may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that Title 49 of the Code of Federal Regulations be amended by amending § 571.119 and Part 574 to read as follows:

PART 571—[AMENDED]

1. Section S6.5 of §571.119 would be revised to read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles other than passenger cars.

* * * * *

S6.5 *Tire marking.* Except as specified below, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decoration or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one half the distance from the bead to the shoulder of the tire, on at least one sidewall. The marking shall be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015, except that the marking depth shall be not less than 0.010 inches in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with Part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat baggage, and special trailer tires.

* * * * *

PART 574—[AMENDED]

2. Figure 1 in § 574.5 of Part 574 is revised to appear as follows:

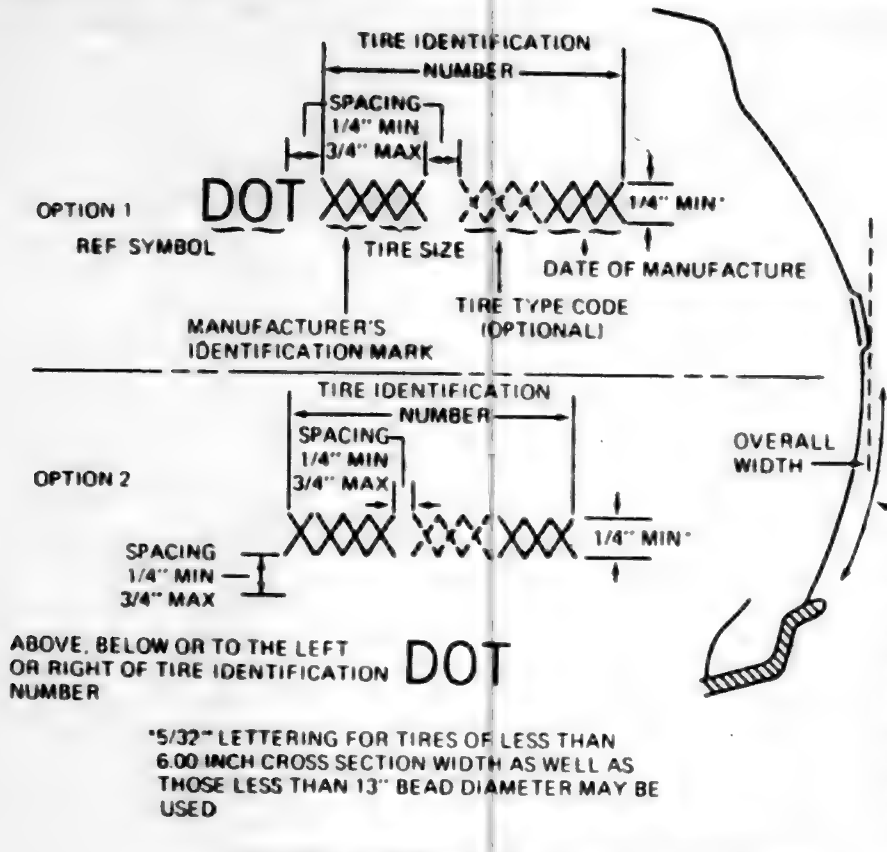
TIRE IDENTIFICATION NUMBER
SPACING 1/4" MIN 3/4" MAX
OPTION 1
DOT XXXX XXXXX
1/4" MIN*
REF SYMBOL
TIRE SIZE
DATE OF MANUFACTURE
TIRE TYPE CODE (OPTIONAL)
MANUFACTURER'S IDENTIFICATION MARK
TIRE IDENTIFICATION NUMBER
SPACING 1/4" MIN 3/4" MAX
OPTION 2
XXXX XXXXX
1/4" MIN*
OVERALL WIDTH
SPACING 1/4" MIN 3/4" MAX
ABOVE, BELOW OR TO THE LEFT OR RIGHT OF TIRE IDENTIFICATION NUMBER
DOT

Locate all required labeling in lower segment of one sidewall between maximum section width and bead so that data will not be obstructed by rim flange, unless maximum section width falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and one-half the distance from the bead to the shoulder so that data will not be obstructed by rim flange.

*5/32" LETTERING FOR TIRES OF LESS THAN 6.00 INCH CROSS SECTION WIDTH AS WELL AS THOSE LESS THAN 13" BEAD DIAMETER MAY BE USED

FIGURE 1 IDENTIFICATION NUMBER FOR NEW TIRES

Notes:

1. Tire identification number shall be in Futura Bold, Modified Condensed or Gothic characters permanently molded (0.020 to 0.040" deep, measured from the surface immediately surrounding characters) into or onto tire at indicated location on one side. (See Note 4)
2. Groups of symbols in the identification number shall be in the order indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.
3. When Type Code if ommited, or partially used, place Date of Manufacture in the unused area.
4. Other print type will be permitted if approved by the administration.

(Secs. 103, 119, and 201, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1421); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 21, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-25555 Filed 9-25-84; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 49, No. 188
Wednesday, September 26, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

September 21, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Papework Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), If applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provided the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submittee directly to: Office of Information and Regulatory Affair, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promtly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Cooperative Service
Annual Survey of Farmer Cooperatives
ACS-14 (A, B, & C)
Annually
Businesses or other for-profit; Small businesses of organizations;
5,883 responses; 1,642 hours; not applicable under 3504 (h)
Ralph M. Richardson (202) 447-8955

Revision

- Agricultural Stabilization and Conservation Service
7 CFR, Part 1430 Dairy Products, Milk Diversion Program ASCS-142, ASCS-143, ASCS-146, ASCS-147, CCC-150, ASCS-148, ASCS-36, ASCS-143-1, ASCS-143-3
Weekly, Quarterly
Individuals or households; 288,500 responses; 66,175 hours; not applicable under 3504(h)
Clarence B. Domire (202) 447-7673

Jane A. Benoit,
Acting Departmental Clearance Officer.

[FR Doc. 84-25534 Filed 9-25-84; 8:45 am]
BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

[Order 84-9-53]

Proposed Revocation of Air Carrier Certificates; Air Chicago, Inc., et al.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause, Order 84-9-53.

SUMMARY: The Board is proposing to revoke the air carrier certificates of Air Chicago, Inc.; Airgo, Inc.; Colonial Airlines, Inc.; Columbia Air, Falcon Airways, Inc.; Great Western Airlines, Inc.; JFC Enterprises, Inc. d.b.a. Concord International Airlines; Sun Pacific Airlines; Sundance International, Inc. d.b.a. Sundance International; Swift Air Charter, Inc.; TRA Airlines, Inc.; and Transwest Air Express for noncompliance with the insurance, reporting, and continuing fitness requirements for certificated air carriers.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings, shall file their objections with the Board and serve them upon the carrier or carriers involved, no later than October 12, 1984.

ADDRESS: Objections should be filed in Docket 42498, and sent to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Collins, Regulatory Analysis Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5216.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-53 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 84-9-53 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-25502 Filed 9-25-84; 8:45 am]
BILLING CODE 6320-01-M

[Docket 42385]

United States-Saudi Arabia; All-Cargo Exemption Proceeding; Oral Argument

The Flying Tiger Line Inc. and Transamerica Airlines, Inc., have requested the Board to hold oral argument in this case. By motion filed September 17, 1984, National Airlines, Inc., opposed oral argument on the grounds that it will delay the case. After reviewing all the materials in this case, the Board has concluded that oral argument would be useful in resolving several major issues in the case. Moreover, the Board has concluded that hearing oral argument will not materially delay the proceeding.

Therefore, notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be heard before the Board on Wednesday, October 3, 1984, at 2:00 p.m. in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Any party wishing to participate in oral argument shall so advise the Board's Secretary, in writing, *on or* *before Friday, September 28, 1984,* together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., September 21, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25587 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-27]

Fitness Determinations of Express Air, Inc. & Prime Air, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determinations—Order 84-9-27, Order to Show Cause.

SUMMARY: The Board is proposing to find that Express Air, Inc. and Prime Air, Inc. are fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to the applicable safety standards.

Responses: All interested persons wishing to repond to the Board's tentative fitness determinations shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 5, 1984.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5090.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-27 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-27 to that address.

By the Civil Aeronautics Board: September 11, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25591 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-51]

Fitness Determination of Island Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-9-51, Order to Show Cause.

SUMMARY: The Board is proposing to find that Island Airlines, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5105.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-51 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-51 to that address.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25589 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-50]

Fitness Determination of Lynbird International, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-9-50, Order to Show Cause.

SUMMARY: The Board is proposing to find that Lynbird International, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5918.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-50 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-50 to that address.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25590 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-49]

Application of Orion Lift Service, Inc., d.b.a. Orion Air for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (84-9-49).

SUMMARY: The Board is proposing to find Orion Lift Service, Inc., d.b.a. Orion Air fit, willing, and able and to issue it certificates of public convenience and necessity under section 401 of the Federal Aviation Act authorizing it to provide interstate and overseas scheduled air transportation and foreign charter air transportation.

DATES: All interested persons wishing to respond to the Board's tentative determination and proposed certificate awards shall file, and serve upon all persons listed below no later than October 9, 1984, a statement of their response, together with a summary of testimony, statistical data, and other material expected to be relied upon to support any objections raised.

ADDRESS: Responses should be filed in Dockets 42318 and 42319 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-49 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-49 to that address.

By the Civil Aeronautics Board: September 18, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-25580 Filed 9-25-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

New Jersey Advisory Committee; Changed Date

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for October 10, 1984, at North Brunswick, New Jersey (FR Doc. 84-25188 on page 37130) has a new meeting date.

The meeting will be held on October 24, 1984. The address and time will remain the same.

Dated at Washington, D.C., September 21, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-25478 Filed 9-25-84; 8:45 am]

Billing Code 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Issuance of Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificates of Review.

SUMMARY: The Department of Commerce has issued export trade certificates of review to Stone Export Trading Company ("Stonex"), Gerhardt's, Inc. ("Gerhardt's") and Med-Tech International, Inc. ("MTI"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on these certificates. Interested parties should submit their written comments, original and five (5) copies, to : Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificates as "Export Trade Certificate of Review, application number 84-00023, 84-00024, and/or 84-00025."

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202-377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Stonex on June 19, 1984 and an application from Gerhardt's on June 22, 1984. The applications were deemed submitted on June 25, 1984. A summary of the applications was published in the Federal Register on July 9, 1984 (49 FR 27963-27965 (1984)). The MTI application was received on June 25 and deemed submitted on June 29, 1984. Notice of this application was published on July 13, 1984 at 49 FR 28951.

Description of Certified Conduct

Based on analysis of the applications and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Stonex, Gerhardt's and MTI meet the four standards of the Act:

Stonex—Application No. 84-00023.

Export Trade

Unbleached kraft packaging and industrial converting paper and paperboard, semi-chemical paperboard, and combination furnish paperboard in any grade or weight (the "Products").

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

I. Stonex may enter into contracts, each with a single U.S. supplier of the Products, to act as that supplier's exclusive export intermediary. Each such contract may:

(1) Provide that, except for sales abroad to converting plants owned by the supplier or an affiliate of the supplier, the supplier will export Products covered by the contract only through Stonex.

(2) Specify, by grade or weight, the quantity of each Product that the supplier will sell to Stonex to export per calendar quarter.

(3) Establish, or give Stonex the exclusive right to establish, the preliminary price which Stonex will pay the supplier for each Product.

(4) Give Stonex the exclusive right to determine the price at which the Products will be sold in the Export Markets.

(5) Provide for quarterly adjustments in payments, credits or debits to the supplier based on the difference between the average price received by Stonex on its export sales of each

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Product and the preliminary price received by the supplier.

(6) Give Stonex the exclusive right to select among the suppliers under contract with Stonex to supply Products for any export sale, to specify the grade and quantity of each Product to be supplied, and to dictate terms of delivery by the supplier(s) selected.

(7) Have an initial term of two years, automatically renewable for one year terms subject to termination by either Stonex or the supplier upon one year's notice; Provided, however, that if the supplier is the terminating party, the supplier may be barred from selling any Product covered by the contract in the Export Markets for up to two years after the date of termination.

II. Stonex may offer the same preliminary price to all suppliers under contract with Stonex.

III. Stonex may, at its sole discretion, contract or refuse to contract with any supplier.

IV. Stonex and its member(s) may meet quarterly to discuss: (a) Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets, to include but shall not be limited to:

(1) Reports and forecasts of sales, prices, terms, customer needs, and product specifications by geographic area in the Export Markets; and

(2) Reports and forecasts of product specifications by customer in the Export Markets;

(b) Information on expenses specific to exporting to the Export markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing);

(c) U.S. and foreign legislation and regulations affecting sales to the Export Markets; and

(d) Quarterly results of Stonex's operations, to include but shall not be limited to:

(1) Complaints and quality problems;

(2) Visits by customers in the Export Markets;

(3) Reports by foreign sales representatives;

(4) Selection of new foreign sales representatives;

(5) Introduction of new member(s);

(6) Matters concerning the contract(s) between Stonex and the member(s);

Provided, however, that in the conduct of such meetings with member(s) other than Stone Container Corporation: legal counsel shall be present; legal counsel will maintain and sign an accurate and complete record of all matters discussed at the meeting; Stonex will retain the records for four years from the date of the meeting and make them available to the Department of Commerce or the Department of Justice upon request; and to the extent that any member operates separate domestic and export sales or marketing units, Stonex will meet only with personnel from that member's export unit.

Members: For purposes of this certificate, Stone Container Corporation of Chicago, Illinois is a "member" within the meaning of section 325.2(k) of the Regulations.

Gerhardt's—Application No. 84-00024

Export Trade

1. *Products.* Gerhardt's expects to trade in diesel fuel injection systems; hydraulic, mechanical, pneumatic and electrical governors; generators and alternators; industrial ignition systems; oilfield engines and parts; and engine accessories, instruments and test devices.

2. *Export-Related Services.* To facilitate export trade in the Products, Gerhardt's also intends to provide advice concerning, and/or to arrange for, financing, including letters of credit, insurance, shipping, utilization of brokers, customer requirements, including bidding requirements, as well as, to provide engineering, technical and retrofitting services and training and marketing advice concerning the Products in connection with export transactions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. Gerhardt's may enter into nonexclusive agreements with individual suppliers to act as an Export Intermediary for Products in Export Trade.

2. Gerhardt's may enter into agreements with individual suppliers of Products wherein:

(a) Gerhardt's may agree to serve as the exclusive Export Intermediary for Products in any Export Market and, in addition, may agree not to represent any competitors of such supplier for Products in any Export Market; and/or

(b) the supplier may agree not to sell, directly or indirectly through any other intermediary, into the Export Markets in which Gerhardt's exclusively represents the supplier as an Export Intermediary.

3. Gerhardt's may enter into nonexclusive agreements with individual entities in which those entities agree to act as Export Intermediaries for Gerhardt's for Products in Export Trade.

4. Gerhardt's may enter into agreements with individual Export Intermediaries whereby:

(a) Gerhardt's may agree to deal in Products in Export Markets exclusively through such Export Intermediaries; and/or

(b) such Export Intermediaries may agree not to represent Gerhardt's competitors in the sale of Products in any Export Markets or not to buy Products from Gerhardt's competitors for resale in any Export Markets.

5. Gerhardt's may, in connection with the sale of Products to Export Markets, purchase Products from suppliers at prices at prices lower than those charged by such suppliers to other purchasers of the Products.

6. Gerhardt's may refuse to sell Products to purchasers located in Export Markets.

MTI—Application No. 84-00025

Export Trade

a. *Products.* X-ray and electromedical equipment (SIC number 3693), analytical and scientific instruments (SIC 38326), surgical and medical instruments (SIC number 3841) and electronic computing equipment (SIC number 3573).

b. *Related Services.*

a. International market research
b. Freight forwarding
c. Documentation
d. Consulting
e. Installation of equipment
f. After-sales equipment maintenance
g. Equipment usage instruction
h. Design, engineering, and construction of medical facilities

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. MTI may enter into nonexclusive agreements with Suppliers individually to act as a broker and/or sales representative for Products and Related Services in Export Trade.

2 MTI may enter into exclusive agreements with Suppliers individually wherein:

(a) MTI agrees not to represent any competitors of such Supplier for Products and Related Services in Export Trade unless authorized by the supplier; and/or

(b) the Supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which MTI exclusively represents the Supplier as sales representative or agent.

3. MTI may enter into exclusive agreements with Export Intermediaries whereby:

(a) MTI agrees to deal in Products and Related Services in the Export Markets only through that Export Intermediary; and/or

(b) that Export Intermediary agrees not to represent MTI's competitors in the Export Markets or not to buy from MTI's competitors for resale in the Export Markets.

4. The agreements described in paragraphs 1 through 3 above may contain price, territorial, quantity, and customer restrictions for the Export Markets.

Definitions

(a) *"Export Intermediary"* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Related Services for Export Trade.

(b) "Supplier" means a person who produces, provides, or sells a Product or Related Service for Export Trade.

(c) "Agreements, with Suppliers individually" means that the agreements have been entered into independently of agreements with other Suppliers.

Members: for purposes of this certificate, transNational, Inc. and Robert D. Keezer, II, both of Washington, D.C., are "members" within the meaning of § 325.2(k) of the Regulations.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202-377-3031.

Dated: September 20, 1984

Richard H. Shay,

Deputy General Counsel.

[FR Doc. 84-25442 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

Appointment of Member to General Performance Review Board

In a notice published in the Federal Register on January 3, 1984 (49 FR 130-131), the National Bureau of Standards (NBS) announced the membership, terms and purpose of the General Performance Review Board (GPRB).

This notice announces a change in the membership of the GPRB through the appointment of Dr. Leslie H. Meredith, Director of Applications, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, Maryland 20771, in place of Mr. Samuel A. Lawrence who has resigned from the GPRB. Dr. Meredith's appointment is effective immediately and his term of membership is to December 31, 1985.

Persons desiring any further information about the GPRB or its membership may contact Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, Maryland, 20899, (301) 921-3555.

Dated: September 20, 1984.

Ernest Ambler,

Director.

[FR Doc. 84-25443 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Charges for Certain Cotton Apparel Products Produced or Manufactured in the Republic of the Philippines

September 21, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 28, 1984. For further information contact Carl Ruths, International Trade Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the Untied States and the Republic of the Philippines, a reconciliation of import data has been undertaken between representatives of the two governments which verified that 2,449 dozen should be charged to the restraint limit for traditional cotton coats in Category 335T instead of the limit for non-traditional cotton coats in Category 335NT. Consequently, in the letter which follows this notice the Chairman of CITA is directing the Commissioner of Customs to deduct 2,449 dozen from import charges to the limit established for Category 335NT and charge it instead to the limit for traditional apparel products in Category 335T. This action will lift an embargo currently affecting imports in Category 335NT.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 21, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of

November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, I request that, effective on September 28, 1984, you deduct 2,449 dozen from charges made to the import restraint limit established for Category 335NT [1] in the directive of December 22, 1983. This amount should be charged instead to the limit established for Category 335T [2] in the same directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles and Apparel.

[FR Doc. 84-25537 Filed 9-25-84; 8:45 am]

BILLING CODE 3510-DR-M

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[1] Namesake 333352.

[2] Namesake 333351.

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the consumer Product Safety Commission has submitted to the Office of Management and budget a request for approval of a proposed collection of information in the form of a consumer usage survey to obtain data on (1) consumer exposure to selected groups of products commonly used in and around the home which contain chlorocarbons and (2) consumer exposure to chemicals (perchloroethylene) from coin-operated dry cleaning facilities.

Many chlorinated hydrocarbons (chlorocarbons) have been shown to be not only carcinogenic but also to be assocated with hepatotoxicity, nephrotoxicity, and central nervous system problems. One of these chlorocarbons, methylene chloride, has been found "to induce a very high incidence of lung and liver tumors in both sexes of mice" in a recently completed National Toxicology Program study. Other chlorinated hydrocarbons, such as methyl chloroform and perchloroethylene, can be substituted for methylene chloride in a number of products. The Commission is concerned about these potential adverse health effects that may be associated with the presence of chlorocarbons in consumer products.

Six categories of consumer products containing chlorocarbon compounds have been identified, and, taking into consideration chlorocarbon content and expected frequency of use, these have been preliminarily ranked in order of importance for consumer exposure as follows:

Product category	Estimated percent of households with product
Paint strippers	5–10
Paint thinners	5–10
Aerosol spray household cleaning agents (for example tub/tile cleaners)	40–60
Aerosol spray paints/varnishes	10–15
Aerosol spray furniture care products	40–50
Aerosol spray laundry treatment products (prewashes/starches, and so forth)	40–50

A contract will be awarded to conduct a survey of a representative sample of consumers who use products in the six groups listed above and also of users of coin-operated dry cleaning establishments. The survey will provide data on how American households use and are exposed to chlorocarbons in consumer products and to perchloroethylene in coin-operated dry cleaning establishments.

The Commission's Directorate for Health Sciences will, at the same time, develop data on the likely exposure to chlorocarbons that would result from use of the identified chlorocarbon-containing products.

The information collected through this survey will enable the Commission staff to do comprehensive exposure modeling and to evaluate the potential household exposures to chlorocarbons in consumer products and to perchloroethylene in dry cleaning establishments. These exposure data are essential for quantitative assessments of potential risks to consumers from the use of consumer products containing these chemicals.

The questionnaires will be administered by telephone to a consumer panel. A screening technique will identify seven separate samples of 173 households for each product category from the panel. Each sample will be balanced to reflect the U.S. population in terms of geography and selected household characteristics. Information about the Proposed Collection of Information:

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Consumer usage survey to measure exposure of households to (1) selected groups of products containing chlorocarbons and (2) perchloroethylene in coin-operated dry cleaning equipment.

Type of request: Approval of new plan.

Frequency of collection: One time.

General description of respondents: Members of consumer panel.

Estimated number of respondents: 1211.

Estimated average number of hours per response: ⅓.

Comments: Comments on this proposed collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and budget, Washington, D.C. 20503; telephone (202) 395-7313. Copies of the proposed collection of information requirement are available from Francine Shacter, Office of Budget and Program Implementation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 19, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-25586 Filed 9-25-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

September 21, 1984.

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 6, 1984, Tuesday, November 13, 1984; Tuesday, November 20, 1984; and Tuesday, November 27, 1984 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meeting may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 55b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–25458 Filed 9–25–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Airlift Cross-Matrix Panel Fact-Finding Trip

September 12, 1984.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will make a fact-finding trip to McMurdo Sound, Antarctica on October 28, 1984. The purpose of this trip is to assess the difficulties encountered by the Military Airlift Command when providing support to the National Science Foundation, McMurdo Base, and to assess their similarities to Military Airlift Command operational problems during national emergencies.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202/697–8404.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–25464 Filed 9–25–84; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Privacy Act of 1974; Amended Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amendments and deletion of systems of records.

SUMMARY: The Department of the Navy proposes to amend six systems of records and delete three in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed actions will be effective without further notice October 26, 1984, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems managers identified in the systems notices.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op–09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 83–109 (48 FR 26029) June 6, 1983
FR Doc. 84–2616 (49 FR 3901) January 31, 1984
FR Doc. 84–2828 (49 FR 4124) February 2, 1984
FR Doc. 84–4906 (49 FR 6967) February 24, 1984
FR Doc. 84–8893 (49 FR 13350) April 4, 1984
FR Doc. 84–8901 (49 FR 13399) April 4, 1984
FR Doc. 84–10509 (49 FR 15601) April 19, 1984
FR Doc. 84–10681 (49 FR 16777) April 20, 1984
FR Doc. 84–14818 (49 FR 23107) June 4, 1984
FR Doc. 84–16521 (49 FR 25507) June 21, 1984
FR Doc. 84–23495 (49 FR 35172) September 21, 1984

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of altered systems reports.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

N01001-4

System name:

Intelligence Reserve Personnel Management File (48 FR 26032) June 6, 1983.

Reason: This system has been incorporated into Navy system notice #N01001–3, "Naval Reserve Intelligence/Personnel File."

N03810-1

System name: Naval Intelligence Management Information System (NIMIS) (48 FR 26073) June 6, 1983.

Reason: This system has been discontinued.

N05238–1

System name:

ADP Budget (48 FR 26086) June 6, 1983.

Reason: This system has been discontinued.

AMENDMENTS

NO1001-3

System name: Reserve Personnel History File (48 FR 26031) June 6, 1983.

Changes:

System name:

Delete the entire entry and substitute with the following "Naval Reserve Intelligence/Personnel File".

Categories of records in the system:

At the end of the entry, add the following phrase: "* * * qualifications for active military duty assignments and military promotions."

Purpose(s):

Add the following new paragraph: "To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program and mobilization planning requirements.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the

Department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Retention and disposal:

Delete the entire entry and substitute with: "Records are maintained as long as the individual is a member of the Naval Reserve Intelligence Program. Records are destroyed when member becomes inactive."

The revised portion of System NO 1001-2 read as follows:

NO1001-3

SYSTEM NAME:

Naval Reserve Intelligence/Personnel File.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information relating to the individual's residence history, education, professional qualifications, occupational history, foreign country travel and knowledge, foreign language capabilities, history of active military duty assignments and military reserve active duty training and background investigation, qualifications for active military duty assignments and military promotions.

* * * * *

PURPOSE(S):

To determine qualifications for members of the Naval Reserve Intelligence Program and to provide a personnel management device for career development programs, manpower and personnel requirements for program activities, assignment of support projects of the reserve program and mobilization planning requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is a member of the Naval Reserve Intelligence Program. Records are destroyed when member becomes inactive.

* * * * *

NO6150-1

System name:

Medical Department Professional/Technical Personnel Development (48 FR 26124) June 6, 1983.

Changes:

System location:

In lines 1, 13 and 14, delete: "Bureau of Medicine and Surgery * * *" and substitute with: "Naval Medical Command * * *" In line 20, delete: "* * * BUMED * * *" and substitute with "* * * COMNAVMEDCOM * * *"

Purpose(s):

Add the following new paragraph: "to manage the Naval Medical Command's education and training activities related to procurement, assignments, professional/specialty/technical training, credentialing, promotion, and all other aspects of the health care personnel management; career development; evaluation of candidates for position of lecturer/consultant; mobilization, planning, and verification of reserve service; surgical team contingency planning; management of physical standards; maintenance of safe occupational/environmental protection standards; and to maintain information of adverse actions or revocations of health care providers; clinical credentials for dissemination to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and activities."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

In lines 3, 4, 6, 11, 14 and 16, delete the acronym "BUMED" and substitute with: "NAVMEDCOM."

System manager(s) and address:

In lines 1 and 2, delete the phrase: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *".

Notification procedures:

In line 7, delete the acronym "BUMED" and substitute with "NAVMEDCOM * * *" In line 21, delete the last sentence in the paragraph.

The revised portions of system NO6150-1 read as follows:

SYSTEM NAME:

Medical Department Professional/Technical Personnel Development.

SYSTEM LOCATION:

Naval Medical Command, Navy Department, Washington, DC 20372; individual's duty station or reserve unit (see Directory of Department of the Navy mailing addresses); Military Sealift Command, Navy Department, Washington, DC 20390; National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132; National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118; Naval Medical Command managed education and training activities (see Directory of Department of the Navy mailing addresses); various colleges and universities affiliated with COMNAVMEDCOM managed education and training activities.

* * * * *

PURPOSE(S):

To manage the Naval Medical Command's education and training activities related to procurement, assignments, professional/specialty/technical training, credentialing, promotion and all other aspects of the health care personnel management; career development; evaluation of candidates for position of lecture/consultant; mobilization, planning, and verification of reserve service; surgical team contingency planning; management of physical standards; maintenance of safe occupational/environmental protection standards; and to maintain information of adverse actions or revocations of health care providers' clinical credentials for dissemination to the various federal and state licensure boards, professional regulation bodies, and appropriate military and civilian organizations and activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Medical Department personnel professional development and training records; Headquarters, NAVMEDCOM records—retained at NAVMEDCOM for duration of member's service, then retired to NPRC, St. Louis for 10 years retention; NAVMEDCOM field activities retained 5 years, then destroyed.

Radiation exposure records; personnel exceeding exposure limits—retained at NAVMEDCOM 50 years, then destroyed; all others—retained 5 years, then destroyed

Surgical support team records; Headquarters, NAVMEDCOM—destroyed upon termination of active duty service NAVMEDCOM field activities—destroyed upon termination of duty at the Medical Department facility.

Curricula vitae of lecturers/Consultants—destroyed upon termination of status at the Medical Department facility.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, DC 20372; Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132; Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118; commanding officers of naval activities, ships and stations.

NOTIFICATION PROCEDURES:

Offices where requester may visit to obtain information of records pertaining to the individual; Potomac Annex, 23rd and E Streets, NW, Washington, D.C., Navy medical centers and hospitals; other Navy health care facilities; and NAVMEDCOM managed education and training facilities.

The individual should present proof of identification such as an I.D. card, drivers license, or other type of identification bearing signature and photograph.

Written requests may be addressed as follows:

Active duty Navy members or civilian employees presently working for the Navy should address requests to the commanding officer of the facility or ship where they are stationed or employed.

Former members of the Navy should address requests to Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63118.

Former civilian employees of the Navy should address requests to Director, National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118.

All written requests should contain full name, rank, SSN, file number (if any), and designator.

* * * * *

NO6150-2

System name:

Health Care Treatment Record System (48 FR 26125) June 6, 1983.

Changes:

Purpose(s):

Add the following new paragraph: "This system is used by officials and employees of the Department of the Navy (and members of the National Red Cross in Navy Health Care Facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps individuals; determining physical qualifications and suitability of candidates for various programs; personnel assignments; adjudicating claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; rendering opinions regarding member's physical fitness for continued naval service; litigation involving medical care provided those categories of individuals covered by this record system; performance of research studies and compilation of statistical data; implementing preventive medicine, dentistry, and communicable disease control programs. Officials and employees of other components of the Department of Defense in the performance of their official duties relating to determining the physical qualifications of applicants; in providing medical care to those categories of individuals covered by this record system; and in the conduct of analyses and research studies."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the entire entry and substitute with the following:

"To officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Naval Service.

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the executive branch agencies.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Naval Service are used must be approved by the Surgeon General of the Navy.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing the local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. Authorized surveying bodies for professional certification and accreditations.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization or government agency, as necessary. Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with the applicable statutes, 21 U.S.C. 1175, 42 U.S.C. 4582, and 5 U.S.C. 552.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

System manager(s) and adddress:

In lines 3, 4, 11 and 12, delete the words: "Chief, Bureau of Medicine and Surgery" and substitute with: "Commander, Naval Medical Command * * *"

Record Access Procedures:

Delete the entire entry and substitute with the following: "The agency's rules for access to records may be obtained from the system manager."

The revised portions of the System NO6150-2 read as follows:

NO6150-2

SYSTEM NAME:

Health Care Treatment Record System

* * * * *

PURPOSE(S):

This system is used by officials and employees of the Department of the Navy (and members of the National Red Cross in Navy Health Care Facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps individuals; determining physical qualifications and suitability of candidates for various programs; personnel assignments; adjudicating claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; rendering opinions regarding member's physical fitness for continued naval service; litigation involving medical care provided those categories of individuals covered by this record system; performance of research studies and compilation of statistical data; implementing preventive medicine, dentistry, and communicable disease control programs. Officials and employees of other components of the Department of Defense in the performance of their official duties relating to determining the physical qualifications of applicants; in providing medical care to those categories of individuals covered by this record system; and in the conduct of analyses and research studies.

ROUNTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CAGEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Naval Service.

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the executive branch agencies.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Naval Service are used must be approved by the Surgeon General of the Navy.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing and local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. Authorized surveying bodies for professional certification and accreditations.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization or government agency, as necessary. Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with the applicable statutes, 21 U.S.C. 1175, 42 U.S.C. 4582, and 5 U.S.C. 552.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Service medical (health and dental) records for active duty and reserve, Navy and Marine Corps: Commander, Naval Medical Command, Navy Department, Washington DC 20372; Commanding Officers, Naval Activities, Ships and Stations, Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 64132.

Inpatient and outpatient treatment records: Commander, Naval Medical Command, Navy Department, Washington, DC 20372; Commanding Officer, Naval Medical Centers and Hospitals or activities having Clinics; Director, National Personnel Records Center, St. Louis, Missouri 63118.

* * * * *

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

* * * * *

NO6150-3

System name:

Naval Health Research Center Data File (48 FR 26127) June 6, 1983.

Changes:

System name:

After the word "Health", add the word "/Dental". Delete the word "Center".

System location:

Delete the entire entry and substitute with: "Naval Medical Research and Development Command, Naval Medical Research Institute and/or Naval Dental Research Institute to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses)."

Categories of individuals covered by the system:

At the beginning of the entry, add the phrase: "For medical:"

Add a new paragraph as follows: "For dental: Navy and Marine Corps personnel on active duty since 1967 to date."

Categories of records in the system:

In line two, after the word: "* * * medical * * *" add the word "* * * dental * * *" In line two, after the word: "* * * records * * *", add the phrase: "* * * results of dental examinations conducted by staff research scientists * * *" In line five, after the phrase: "* * * relating to * * *", add the phrase: "* * * medical and dental * * *". At the end of the entry, add the phrase: "* * * or prior to active duty."

Authority for the maintenance of the system:

Delete the entire entry and substitute with: "10 U.S.C. 50341".

Purpose(s):

Add the following entry: "To research, monitor and analyze the types and frequency of medical and dental diseases and illnesses in Navy and Marine Corps personnel."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the folowing: "The Blanket Routine

Uses that appear at the beginning of the department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

Delete the entire entry and substitute with: "Files are maintained on magnetic tape, flexible and hard disks, paper files, punch cards and optically marked cards."

Safeguards:

Delete the entire entry and substitute with: "Access is restricted to personnel having a need to work with the research data stored. Access is controlled by password for health records stored on magnetic tape. Computerized dental research records contain ID numbers that can be matched to SSN's on code sheets maintained by research personnel."

Retention and disposal:

Delete the entire entry and substitute with the folowing: "Research records are permanent. They are maintained for five years at the activity performing the research and then retired to the Federal Records Center, St. Louis, Missouri."

System managers) and address:

Delete the entire entry and substitute with: "Commanding Officer of the activity in question (see Directory of Department of the Navy Mailing Addresses).

The revised portions of System 6150-3 read as follows:

NO6150-3

SYSTEM NAME:

Naval Health/Dental Research Data File.

SYSTEM LOCATION:

Naval Medical Research and Development Command, Naval Medical Research Institute and/or Naval Dental Research Institute to which individual is assigned (see Directory of the Department of the Navy Mailing Addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

For medical: Navy and Marine Corps personnel on active duty since 1960 to date. Civilians taking part in Operation Deep Freeze, 1964 to date.

For dental: Navy and Marine Corps personnel on active duty since 1967 to date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of information from official medical/dental and personnel records, results of dental examinations conducted by staff research scientists, as well as information dealing with biographical, attitudes, and questions relating to medical and dental health patterns during active service or prior to active duty.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031.

PURPOSE(S):

To research, monitor and analyze the types and frequency of medical and dental diseases and illnesses in Navy and Marine Corps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained on magnetic tape, flexible and hard disks, paper files, punch cards and optically marked cards.

* * * * *

SAFEGUARDS:

Access is restricted to personnel having a need to work with the research data stored. Access is controlled by password for health records stored on magnetic tape. Computerized dental research records contain ID numbers that can be matched to SSN's on code sheets maintained by research personnel.

RETENTION AND DISPOSAL:

Research records are permanent. They are maintained for five years at the activity performing the research and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question (see Directory of Department of the Navy Mailing Addresses).

* * * * *

NO6320-2

System name:

Family Advocacy Program System (48 FR 26129) June 6, 1983.

Changes:

System location:

In lines 1 and 2, delete the words: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *"

Purpose(s):

Add the following new paragraph: To collect and disseminate (to authorized officials), information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the entire entry and substitute with the following:

"To the Executive Branch of government, in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse and neglect.

To the Attorney General of the United States or his authorized representatives, in connection with litigation or other matters under the direct jurisdicational of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

To federal, state or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private organizations and individuals for authorized health research in the interest of the federal government and the public; and authorized surveying bodies for professional certification and accreditation.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

System manager(s) and address:

In lines 1, 2, 6 and 7, delete the words: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *"

Notification procedure:

In lines 9 and 10, delete the words: "* * * Chief, Bureau of Medicine and Surgery * * *" and substitute with: "* * * Commander, Naval Medical Command * * *"

The revised portions of System N06320-2 read as follows:

N06320-2

SYSTEM NAME:

Family Advocacy Program System.

* * * * *

SYSTEM LOCATION:

Central Registry—Commander, Naval Medical Command, Navy Department, Washington, DC 20372. Individual Case Files—Naval Regional Medical Centers, naval hospitals and clinics (formerly dispensaries), and duty stations of the military sponsors (see directory of Department of the Navy mailing addresses).

* * * * *

PURPOSE(S):

To collect and disseminate (to authorized officials), information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Executive Branch of government, in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse and neglect.

To the Attorney General of the United States or his authorized representatives, in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representatives of the Executive Branch agencies.

To federal, state or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private organizations and individuals for authorized health research in the interest of the federal government and the public; and authorized surveying bodies for professional certification and accreditation.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilations apply to this system.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Central Registry—Commander, Naval Medical Command, Navy Department, Washington, DC 20372 and commanding officers of medical treatment facilities under the command of the Commander, Naval Medical Command, where the treatment and reporting occurred.

NOTIFICATION PROCEDURE:

Informational requests should be directed to the cognizant system manager(s). Requests should contain the full name of the individual and social security number of the military or civilian sponsor or guardian, date and place of treatment, and alleged reporting of incident. The requester may visit the office of the Commander, Naval Medical Command, 23rd and E Streets, NW., Washington, DC and the commanding officers of the individual medical treatment facilities to obtain information on whether or not the system contains records pertaining to him or her. Armed Forces I.D. card or other type of identification bearing the picture and signature of the requester will be considered adequate proof of identity.

* * * * *

N06320-3

System name:

BUMED Quality Assurance/Risk Management (48 FR 26130) June 6, 1983.

Changes:

System name:

Delete the acronym "BUMED" and substitute with: "NAVMEDCOM"

System location:

In line 1, delete "Bureau of Medicine and Surgery * * *" and substitute with "Naval Medical Command." Delete lines 4, 5 and 6 in their entirety and substitute with the following: "(see directory of Department of the Navy mailing addresses)."

Purpose(s):

Add the following new paragraph: "This system relates to the Navy Medical Command's Quality Assurance/Risk Management Program. It is used to review the quality and appropriateness of care provided; investigate, analyze, and report accidents, injuries, and other incidents; to identify health care providers with known or suspected problems; and to maintain information of adverse actions or revocations of health care providers' clinical credentials for dissemination to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

System manager(s) and address:

In lines 1 and 2, delete: "Chief, Bureau of Medicine and Surgery * * *" and substitute with: "Commander, Naval Medical Command * * *". In line 6, after the word "facilities" delete the remainder of the entry and substitute with: "(see directory of Department of the Navy mailing addresses)."

Notification procedures:

In line 2, delete the phrase: "* * * Chief, Bureau of Medicine and Surgery * * *" and substitute with: "* * * Commander, Naval Medical Command * * *" In line 8, delete the acronym "* * * BUMED * * *" and substitute with: "* * * COMNAVMEDCOM * * *"

The revised portions of System NO 6320-3 read as follows:

NO6320-3

SYSTEM NAME:

NAVMEDCOM Quality Assurance/Risk Management.

SYSTEM LOCATION:

Naval Medical Command, Navy Department, Washington, DC 20372; health care treatment facilities (see directory of Department of the Navy mailing addresses).

* * * * *

PURPOSE(S):

This system relates to the Navy Medical Command's Quality Assurance/Risk Management Program. It is used to review the quality and appropriateness of care provided; investigate, analyze, and report accidents, injuries, and other incidents; to identify health care providers with known or suspected problems; and to maintain information of adverse actions or revocations of health care providers' clinical credentials for dissemination to the various federal and state licensure boards, professional regulating bodies, and appropriate military and civilian organizations and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's Compilation apply to this system.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Medical Command, Navy Department, Washington, DC 20372. Commanding officer or officers in charge of Navy Medical Department health care treatment facilities (see directory of Department of the Navy mailing addresses)."

NOTIFICATION PROCEDURE:

Requests should be addressed to Commander, Naval Medical Command or commanding officers or officers in charge at the addresses indicated, above. Requests should contain the full name, SSN, and signature of the individual. The individual may also visit COMNAVMEDCOM or the health care treatment facility. Visitors must possess proof of identification such as ID card, driver's license, or other identification showing name and a recent photograph of the individual.

* * * * *

[FR Doc. 84-25450 Filed 9-25-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

American Society for Environmental Education; Restriction on Eligibility of Grant Award

AGENCY: Procurement and Assistance Management Directorate, DOE.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a grant providing support to the American Society for Environmental Education for partial support of a Conference on California Offshore Petroleum. The DOE support under this grant is valued at $10,000 over a seven-month period.

Procurement request number: 01-84FE60564.000.

Project scope: The objective of this grant award is to support the activities of the American Society for Environmental Education and the California Statewide Energy Consortium to provide a forum for Government (Federal, State and local) and the public to exchange factual information concerning the potential damage to California's coastal environment resulting from offshore oil and gas exploration, development and production activities. Eligibility for this grant award is being limited to the American Society for Environmental Education because the science coordination and information sharing activity is an ongoing activity unique to this organization.

FOR FURTHER INFORMATION CONTACT: Thomas E. Brown, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone No.: (202) 252-1026.

Issued in Washington, DC., on September 21, 1984.

Thomas J. Davin, Jr.,

Acting Director Procurement and Assistance Management Directorate.

[FR Doc. 84-25573 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the assignment of uranium enrichment services consisting of 44,413 separative work units in Fiscal Year 1987 and 40,431 separative work units in Fiscal Year 1988, from Svensk Karnbransleforsorjning AB (SKBF) in Sweden to the Japan Atomic Power Company, Japan.

In accordance with section 131 of the Atomic Energy Act of 154, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sonner than fifteen days after the date of publication of this notce.

For the Department of Energy.

Dated: September 21, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-25515 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-80-011]; OFC Case No. 62002-9026-05-12]

Exxon Co., U.S.A.; Modification

AGENCY: Economic Regulatory Administration.

ACTION: Notice and Proposed Modification of an Order Granting Permanent Fuels Mixture Exemption to Exxon Company, U.S.A.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under 10 CFR Part 501, Subpart G to modify the permanent fuels mixture exemption granted by Order ("Order") to a new major fuel burning installation (MFBI), a field erected boiler identified as Boiler SG-501C owned and operated by Exxon Company, U.S.A. (Exxon) at it Baytown, Texas refinery, under the Powerplant and Industrial fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "The Act").

Based upon its review of Exxon's August 20, 1984 modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR 501.102(b), exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the Federal Register (see DATES section, below).

If not responses are received within the established period, the Order modification, as proposed, shall become final upon the expiration of that period without further action by ERA. A detailed discussion of the Order and Exxon's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written responses to ERA's proposed modification of the Exxon Order must be received no later than October 26, 1984.

Unless ERA receives comments adverse to its proposed action within the established comment period, the modification Order shall become final on October 26, 1984; and the modification therein shall become effective on November 26, 1984.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585. OFC-62002-9026-05-12 should be printed on the outside of the envelope and the documents contained herein.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-1730.

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On September 11, 1980, ERA exempted, by Order, Exxon's new field erected boiler, identified as Boiler SG-501C, at its Baytown, Texas refinery from the prohibitiions of section 202 of FUA.[1] The Order was published in the **Federal Register** on September 18, 1980 (45 FR 62179). Subject to the terms and conditions set forth in the Order, the permanent fuels mixture exemption permitted, in a mixture with fluid catalytic cracking unit (FCCU) regenerator fluid gas, the use of natural gas (a refinery blend gas consisting of both petroleum and natural gas) in the new field erected boiler in an amount not to exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit. Exxon's exemption request was filed under the then-effective 10 CFR § 503.38 (45 FR 38276, June 6, 1980) and was granted pursuant to section 212(d) of FUA.

By letter filed with ERA on August 20, 1984, Exxon requested that ERA now modify the Order to delete the annual certification part of the following reporting requirement:

> In accordance with the reporting requirements in § 503.38(d), Exxon will submit an annual reprot to the ERA, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, D.C. 20461, each year on the anniversary of the date Boiler SG-501C is placed in service containing the following:
>
> A certified statement of percentage of natural gas used in this MFBI identifying the actual quantities of FCCU regenerator flue gas and natural gas used during the year, as well as the higher hearing value (in BTU's per MCF) of those fuels. The following report format shall be used:

Fuel type	Amount used (MCF)	BTU equivalent	Percent of annual fuel consumption
FCCU regenerator flue gas			
Natural gas (refinery blend gas)			

The certification must be executed by Exxon's duly authorized representative.

Exon based it modification request upon the fact that since the issuance of the Order with its annual reporting requirements, DOE has issued final rules amending § 503.38(g) of the interim rules to delete therefrom reporting requirements for boilers granted fuels mixtures exemptions (46 FR 59872, December 7, 1981).

As requested, ERA has commenced a proceeding pursuant to 10 CFR 501.101(a), for the modification of the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G.

Having considered the information contained in Exxon's request, along with the other information of record in this proceeding, ERA proposes to modify the original permanent fuels mixture exemption Order as follows:

Modification Order

To: Exxon Company, U.S.A.

Major fuel burning installation	Location	Docket No.
Boiler SG-501C	Baytown, TX.	ERA-FC-80-011 (OFC Case No. 62002-9026-05-12).

Based upon its review of the whole record in the proceeding, ERA has determined that the revision of § 503.38 in the final rules published on December 7, 1981, described supra, constitutes significantly changed circumstances warranting the modification of the original exemption Order, as provided by 10 CFR 501.102 and 501.103.

Accordingly, ERA hereby modifies the Order in Docket Number ERA-FR-80-011 to delete therefrom the annual certification reporting requirement.

Procedures

Parties to the original Order proceeding in Docket No. ERA-FC-80-011, are hereby notified of ERA's proposed modification of the Order exempting Exxon's Boiler SG-501C, Baytown, Texas from the prohibitions in section 202 of FUA and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days after the publication of this Notice in the **Federal Register**. If ERA receives no adverse responses within the alloted comment period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C., September 14, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-25476 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-019; OFC Case No. 52975-9255-20, 21-22]

Turlock Irrigation District; Acceptance of Petition

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition from Turlock Irrigation District, Walnut Substation Peakload Powerplant, for Exemption and Availability of Certification.

SUMMARY: On August 15, 1984, Turlock Irrigation District, Walnut Substation Peakload Powerplant (Turlock) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

Turlock requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of two

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[1] Section 202 of FUA prohibits the use of natural gas or petroleum as the primary energy source by certain new MFBI's.

25.8 MW combustion turbine-generator systems and appurtenant equipment. The proposed units are units to be installed at the Turlock facility in Stanislaus County, California. The powerplant will be capable of burning natural gas and petroleum.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from Turlock at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below:

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.–4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before November 13, 1984. A request for public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels, Programs, Case Control Unit, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-019 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-073, Washington, D.C. 20585, Phone (202) 252-6002

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Turlock has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Stanislaus County, California facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the Turlock petition.

Turlock submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas fired combustion turbine generator will be operated solely as a peakload powerplant.

Turlock also certified that the maximum electrical generation in kilowatt-hours will not exceed the powerplant gross design capacity, 51,600 kilowatts (48,000 kw net capacity) multiplied by 1,500 hours or 38,700,000 kilowatt-hours during any 12 month period.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Turlock has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist submitted by Turlock pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Turlock's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Turlock is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, D.C., on September 14, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-25514 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-674-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 21, 1984.

Take notice that on August 29, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-674-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Northwood Stone & Asphalt Company (Northwood) under the certificate issued in Docket No. CP83-76-000 pursuant to

Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 720 MMBtu equivalent of natural gas per day for Northwood through June 30, 1985. Columbia states that the gas to be transported would be purchased from Energy Management, Inc. (EMI), and would be used as process gas in Northwood's Springfield, Ohio, plant.

It is indicated that Columbia has released certain gas supplies of EMI and that these supplies are subject to the ceiling price provisions of Sections 103 and 107 of the Natural Gas Policy Act of 1978. It is further indicated that Northwood has made arrangements to purchase this released gas from EMI. Columbia states that it would receive the gas from EMI and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving Northwood, near Springfield, Ohio. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) 40.11 cents per dt for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS–1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS–1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25544 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-47-001]

Equitable Gas Co.; Compliance Filing

September 21, 1984.

Take notice that on September 10, 1984, Equitable Gas Company (Equitable) tendered for filing the following sheets to Rate Schedule GS–1 of its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Sixth Revised Sheet No. 6f (effective date—March 14, 1984)

Seventh Revised Sheet No. 6f (effective date—September 1, 1984).

Equitable states that this filing is made in compliance with the Federal Energy Regulatory Commission's (Commission) order issued March 14, 1984 in the above-captioned docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25545 Filed 9-25-84 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP72-149-019, et al.]

Mississippi River Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

September 21, 1984.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 3, 1984. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Aug. 9, 1984	Mississippi River Transmission Corp	RP72-149-019	Report.
Aug. 27, 1984	Tennessee Gas Pipeline Co	RP81-38-009	Do.
Aug. 31, 1984	El Paso Natural Gas Co	TA82-2-33-026	Do.
Sept. 5, 1984	Wyoming Interstate Co	CP79-80-034	Do.
Sept. 11, 1984	Midwestern Gas Transmission Co	RP80-23-017	Do.
Sept. 14, 1984	East Tennessee Natural Gas Co	RP81-53-005 and RP82-124-005	Do.
Sept. 17, 1984	South Georgia Natural Gas Co	RP82-46-005 and RP84-16-002	Do.

[FR Doc. 84-25546 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP77-135-003, CP77-260-003]

Natural Gas Pipeline Company of America, and Texas Eastern Transmission Corp.; Petitions To Amend

September 21, 1984.

Take notice that on August 13, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP77-135-003, and that on August 23, 1984, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP77-260-003, petitions to amend the order issued May 23 1977, as amended, in Docket Nos. CP77-135-000 and CP77-260-000, respectively, pursuant to Section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas between Natural and Texas Eastern at an additional point of delivery in Wharton County, Texas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to an amendment dated September 15, 1983, to the gas exchange agreement, Texas Eastern would deliver exchange gas to Natural at an additional exchange delivery point at the existing point of interconnection between the pipeline facilities of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Natural near Hungerford, Wharton County, Texas. Receipt of gas by Natural would be accomplished by the reduction of deliveries by Natural to Tennessee, for Texas Eastern's account, under the gas exchange agreement dated July 22, 1977, as amended April 29, 1983.

It is stated that exchange of gas at the Wharton delivery point commenced under authority of Natural's blanket certificate issued in Docket No. CP-80-125 and Texas Eastern's blanket certificate issued in Docket No. CP80-156. It is further stated that the exchange of gas at this additional point will not increase the authorized exchange volume of 7,000 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25547 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-673-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

September 21, 1984.

Take notice that on August 29, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-673-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Kraft, Inc. (Kraft), under the certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport an average volume of 4,236 Mcf of natural gas per day on an interruptible basis for Kraft for use in Kraft's Edible Oil Refinery in Champaign, Illinois. Panhandle estimates the peak day volume to be 5,500 Mcf and the annual volume to be 1,546,140 Mcf. Panhandle states that Kraft has entered into a gas purchase contract to purchase gas from Producer's Gas Company (Producer's) to be produced from wells in the State of Oklahoma. It is further stated that Panhandle would receive the gas at existing points of interconnection between Panhandle and Producer's in Custer and Woods Counties, Oklahoma, and redeliver the gas to Illinois Power Company (Illinois) for the account of Kraft at an existing interconnection in Champaign County, Illinois. Illinois would deliver the gas for use in Kraft's facilities. Panhandle also requests that it be granted "flexible authority" to add or delete sources of supply or receipt/delivery points.

Panhandle proposes to charge Kraft a rate based on its currently effective OST tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25548 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-38-000 and TA85-1-38-001]

Ringwood Gathering Co., Tariff Filing

September 20, 1984.

Take notice that on August 29, 1984, Ringwood Gathering Company (Ringwood) tendered for filing Thirty-third Revised Sheet to its FERC Gas Tariff. The proposed effective date for this tariff sheet is October 1, 1984.

Ringwood states this tariff sheet revises its Base Tariff Rate to reflect the increase in the system cost of purchased gas and refund the balance accumulated in the unrecovered purchased gas cost account. Ringwood further states that its projected cost of purchased gas is based on the applicable NGPA rates for October, 1984.

Ringwood indicates that copies of this filing have been mailed to Northwest Central Pipeline Corporation and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25549 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-123-000]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

September 21, 1984.

Take notice that on September 11, 1984 Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Forty-Seventh Revised Sheet No. 7, Substitute Revised Forty-Sixth Revised Sheet No. 7, Second Revised Forty-Fifth Revised Sheet No. 7, Second Revised Sheet No. 16, Second Revised Sheet No. 17, and Second Revised Sheet No. 24 to its FPC Gas Tariff, Third Revised Volume No. 1.

The revised tariff sheets are being filed pursuant to Section 154.111 of the Commission's Rules and Regulations issued in Docket No. RM83-71, Order 380.

Copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25550 Filed 9-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-686-000]

Trunkline Gas Co.; Application

September 21, 1984.

Take notice that on September 4, 1984, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-686-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 10,000 Mcf of natural gas per day for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant propose to implement the terms of a transportation agreement between Applicant and Transco dated March 23, 1984, whereby Applicant has agreed to transport, on an interruptible basis, up to 10,000 Mcf of natural gas per day for Transco for a term until January 1, 1986. Applicant proposes a transportation charge of 17.89 cents per Mcf.

Applicant states that the gas to be transported has been purchased by Transco from Shell Oil Company (Shell) in South Timbalier Area Blocks 299, 300, and 301, offshore Louisiana. This gas would be received by Applicant for Transco's account at an existing point of interconnection between Shell and Applicant in Ship Shoal Area Block 241, offshore Louisiana. Applicant would redeliver the gas to Transco at an existing point of interconnection between Applicant and Transco in Beauregard Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will now serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25551 Filed 9-25-84; 8:45]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of August 13 Through August 17, 1984

During the week of August 13 through August 17, 1984, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Temporary Exception

Norge, Division of Magic Chef, Inc., 8/15/84, HEL-0099

Norge, Division of Magic Chef, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR Part 430 in which the firm sought to produce 500 clothes washing machines with temperature selections not provided for by the energy usage testing regulations. In considering the request, the DOE found that temporary exception relief was necessary to permit the firm to keep its customer commitments and to operate on August 23, 1984, and that the firm met the criteria for temporary exception relief under 10 CFR § 205.125. Accordingly, the temporary exception relief was granted.

Motion for Discovery

Economic Regulatory Administration, 8/15/84, HRD-0198

On January 11, 1984, the Economic Regulatory Administration (ERA) submitted a Motion for Discovery in connection with a Proposed Remedial Order issued to Gulf Oil Corporation on December 30, 1981. In the Motion for Discovery, the ERA sought answers to 23 interrogatories and the production of the corresponding documents. Additionally, the ERA sought the deposition of Lyle G. Armel, a Gulf corporate official.

The DOE concluded that two of the interrogatories should be granted and the corresponding documents produced, but that all other interrogatory requests be denied. The DOE further denied the ERA's deposition request. Thus, ERA's Motion for Discovery was granted in part.

The important matters discussed in this Decision and Order include the necessity of relevance in discovery requests and the general unwillingness on the part of the Office of Hearings and Appeals to grant discovery pertaining to legal rather than factual issues or disputes.

Interlocutory Order

Economic Regulatory Administration, 8/15/84, HRZ-0209

This Decision and Order involves a Motion for Joinder filed by the Economic Regulatory Administration in connection with a Proposed Remedial Order (PRO) issued to Hudson Oil Co. In the Motion for Joinder, the ERA argued that since Hudson Oil Co. and Hudson Refining Co., Inc. were both involved in the purchase, sale and certification of crude oil which is the subject of the PRO, Hudson Refining Co., Inc. should be joined as a party to the PRO and be held jointly and severally liable for the alleged violations. The Hudson firms did not specifically object to the joinder of Hudson Refining, but did object to the ERA's request that Hudson Refining not be provided an opportunity to comment on the PRO. The DOE concluded that Hudson Refining Co., Inc. should be joined as a party to the PRO, and that the firm be permitted to raise its objections to the PRO. The important issues discussed in the decision and order include (i) the effect of bankruptcy on the joinder motion and (ii) whether the trustee in bankruptcy has a right to raise objections to the PRO.

Dismissals

The following submissions were dismissed:

Name and Case No.
Corpening Enterprises, Inc.; HRO-0136, HRH-0017
Norwegian Oil Corp.; DMR-0050
Traco Petroleum Company; HRT-0044

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of

Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 12, 1984.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 84-25473 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 3 Through September 7, 1984

During the week of September 3 through September 7, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

International Systems Marketing, Inc., 9/6/84; HFA-0238

International Systems Marketing, Inc. (ISM) filed an Appeal from a partial denial by the DOE Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal the DOE found that a portion of the document which ISM had requested was properly withheld under FOIA Exemption 5. The DOE determined that the withheld material contained pre-decisional evaluations and that release of this material would be contrary to the public interest because such disclosure might inhibit the future exchange of written preliminary evaluations within the DOE.

Remedial Order

Reinauer Petroleum Company, 9/4/84, HRO-0105

Reinauer Petroleum Company objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to the firm on November 19, 1982. In the PRO, the ERA found that Reinauer violated the DOE regulations by overcharging its customers in sales of leaded and unleaded motor gasoline. The primary objections raised by Reinauer were that (i) the equal application (deemed recovery) rule applicable to reseller-retailers is procedurally and substantively invalid, (ii) there was no regulation covering sales of unleaded gasoline during the audit period, (iii) the sequence of recovery of current increased product costs and non-product costs used in the audit is improper, and (iv) the ERA incorrectly calculated Reinauer's pre-audit period banked costs. The Office of Hearings and Appeals rejected Reinauer's arguments with respect to the equal application rule, the regulations governing sales of unleaded gasoline, and the sequence of recovery of current increased product costs and non-product costs. It granted the firm's objections with respect to the ERA's method of calculating the firm's bank of unrecouped increased product costs and indicated that the firm was not required by the regulations to recover all banked costs prior to recovering increased non-product costs. Accordingly, OHA remanded the PRO to ERA for action consistent with the Decision and Order.

Dismissals

The following submissions were dismissed.

Name and Case No.

George's Auto Sales; RF21-11089

Mobil Oil Corp.; HRO-0014, HRO-0022, HRO-0023, HRO-0030, BRO-1148, HRD-0184, HRD-0140, HRD-0139, HRD-0154, HRD-0153, HRD-0220, HRZ-0206, HRH-0140, HRH-0139, HRD-0172, HRH-0154

Copies of the full text of these decisions and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 12, 1984.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 84-25475 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 17 Through August 24, 1984

During the Week of August 17 through August 24, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585

Dated: September 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 17 through Aug. 24, 1984]

Date	Name and location of applicant	Case No.	Type of submission
July 19, 1984	Marathon Oil Co., Washington, DC	HRX-0107	Supplemental Order. If Granted: The Office of Hearings and Appeals would issue a Supplemental Remedial Order regarding the "extrapolated overcharges" alleged in the May 1, 1979, Proposed Remedial Order issued to Marathon Oil Co. (Case No. DRO-0195).
July 20, 1984	Economic Regulatory Administration, Washington, DC	HRX-0106	Supplemental Order. If Granted: The Office of Hearings and Appeals would issue a Supplemental Decision to the June 22, 1984, Remedial Order issued to Marathon Oil Co. (Case No. DRO-0195) regarding recalculations relating to the Elnora Central Field Unit and the West Delta Field.
Aug. 17, 1984	J&M Distributing, East Greenwich, RI	HEE-0101	Exception to the Reporting Requirements. If Granted: J&M Distributing would not be required to file form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report"
Aug. 20, 1984	Harry Jacobs & Associates, Inc., Chattanooga, TN	HEE-0100	Exception to the Reporting Requirements. If Granted: Harry Jacobs & Associates, Inc. would not be required to file form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report".
Do	Lunday-Thagard Co., Washington, DC	HED-0231	Motion for Discovery. If Granted: Discovery would be granted to Lunday-Thagard Oil Co. in connection with the Application for Exception filed by the Department of Interior (Case No. HEE-0096).
Do	do	HEZ-0216	Interlocutory Order. If Granted: Certain Department of Energy employees would be barred from participating in the Department of Interior's Application for Exception proceedings (Case No. HEE-0096).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Aug. 17 through Aug. 24, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Do	do	HEZ-0217	Interlocutory Order. If Granted: The Department of Interior's Application for Exception (Case No. HEE-0096) would be removed from the Office of Hearings and Appeals and referred to the Federal Energy Regulatory Commission for adjudication.
Do	Mobil Oil Corp., Washington, DC	HEF-0506	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with Apr. 19, 1984, Consent Order with Mobil Oil Corp.
Aug. 21, 1984	John R. Selby, Inc., La Mesa, CA	HFA-0240	Appeal of an Information Request Denial. If Granted: The July 20, 1984, Freedom of Information Request denial issued by the Albuquerque Operations Office would be rescinded, and John R. Selby, Inc. would receive access to all records, reports, correspondence, and memoranda pertaining to Contract No. DE-AC32-82AL18467.
Aug. 22, 1984	Dennis J. Sadowski, Cleveland, OH	HFA-0241	Appeal of an Information Request Denial. If Granted: The July 17, 1984, Freedom of Information Fee Waiver Request Denial issued by the Albuquerque Operations Office would be rescinded, and Dennis J. Sadowski would receive a waiver of fees associated with a request for information regarding the White Train.
Aug. 23, 1984	Texakota, Inc., Houston, TX	HRS-0045 and HRT-0045.	Request for Stay and Temporary Stay. If Granted: Texakota, Inc. would receive a stay and a temporary stay of the firm's obligation to file its Statement of Objections in response to a Proposed Remedial Order issued to Texakota, Inc. (Case No. HRO-0213).
Aug. 24, 1984	Crown Central Petroleum Corp., Washington, DC	HFA-0242	Appeal of an Information Request Denial. If Granted: The Mar. 6, 1984, Freedom of Information Request Denial issued by the Office of Special Counsel would be rescinded, and Crown Central Petroleum Corp. would receive an explanation for the withholding of certain portions of the documents found to be responsive, as well as a more thorough search for documents.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 17 to Aug. 20, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
Aug. 20, 1984	Amoco/Utah	RQ21-114.
Do	Gulf/Huval Baking Co	RF40-58.
Do	Gulf/Harlan L. Cook	RF40-59.
Do	Gulf/Roy A. Muegnug	RF40-60.
Do	Amoco, Belridge & Palo Pinto/DC	RQ21-115, RQ6-116, and RQ5-117.
Aug. 21, 1984	Gulf/Grasso's Olneyville Gulf, Inc	RF40-61.
Do	Amoco/E.P. Nisbet	RF21-12356.
Aug. 22, 1984	Gulf/Gainsboro Oil Co., Trust	RF40-62.
Do	Gulf/Arnold P. Freedman	RF40-63.
Do	Willis/Michalak Tire	RF41-3.
Do	Amoco/Howard Brown Oil, Inc	RF21-12357
Do	do	RF21-12358.
Aug. 23, 1984	Gulf/Reynolds Petroleum Sales	RF40-64.
Do	Gulf/Irene Prisco	RF40-65.
Do	Gulf/Marty's Service	RF40-66.
Do	Gulf/L.R. Voynow	RF40-67.
Do	Gulf/Kenneth H. Mattis, Inc	RF40-68.
Do	Gulf/Elmore Oil Co., Inc	RF40-69.
Do	Gulf/H.S. Shuler Co. District	RF40-70.
Aug. 24, 1984	Gulf/ITT Continental Baking Co	RF40-71

[FR Doc. 84-25474 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 24 Through August 31, 1984

During the Week of August 24 through August 31, 1984, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be agrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 18, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 24 through Aug. 31; 1984]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 27, 1984	Osborne Energy Corp., Los Angeles, CA	HRR-0094	Request for Modification/Rescission. If Granted: The June 21, 1984, Decision and Order (Case No. HRD-0132) issued to Osborne Energy Corp. and E.O. White would be modified regarding the firm's discovery request.
Aug. 28, 1984	Texakota, Inc., Houston, Texas	HRZ-0218	Interlocutory Order. If Granted: The Mar 12, 1984, Proposed Remedial Order issued to Texakota, Inc. (Case No. HRO-0213) would be dismissed.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 24 to Aug. 31, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
Aug. 27, 1984	Amoco/Pennsylvania	RQ21-118.
Do	Belridge/Three Affiliated Tribes	RQ8-119.
Aug. 28, 1984	Amoco/Three Affiliated Tribes	RQ21-120.
Do	Gulf/E. McAloose	RF40-72.
Do	Gulf/John Mooney	RF40-73.
Aug. 27, 1984	Gulf/Modern Oil Co., Inc.	RF40-74.
Aug. 29, 1984	Texas Oil & Gas Corp./Columbia LNG Corp.	RF42-1.
Do	Morris Rosenthal	RF40-75.
Aug. 30, 1984	Gulf/Ever Ready Co.	RF40-76.
Do	Wills Marina Gas Dock	RF41-4.
Do	Texas Oil & Gas Corp./Amoco	RF42-2.
Do	Gulf/Colonial Tank Transport	RF40-77.
Aug. 31, 1984	Gulf/Ray Widener Motor Lines, Inc.	RF40-78.
Do	Gulf/H.F. Campbell & Sons, Inc.	RF40-81.
Do	Gulf/Lyons Transportation Lines	RF40-79.
	Gulf/P. Wajer & Sons Express	RF40-80.

[FR Doc. 84-25470 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of Aug. 31 Through Sept. 7, 1984

During the week of August 31 through September 7, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Date: September 20, 1984.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 31 through Sept. 7, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 23, 1983	Gulf Oil Corp., Washington, DC	HRD-0232	Motion for Discovery. If granted: Discovery would be granted to Gulf Oil Corp. in connection with the firm's Statement of Objections to the May 19, 1983, Proposed Remedial Order issued to the firm (Case No. HRO-0171).
Sept. 26, 1983	do	HRZ-0219	Interlocutory Order. If granted: The May 19, 1983, Proposed Remedial Order issued to Gulf Oil Corp. (Case No. HR-0171) would be dismissed.
Sept. 4, 1984	Daniel Hirsch, Santa Cruz, CA	HFA-0243	Appeal of an Information Request Denial. If granted: Daniel Hirsch would receive access to deleted portions of requested documents regarding nuclear weapons.
Sept. 6, 1984	Daniel D. Yue, Bethesda, MD	HFA-0244	Appeal for an Information Request Denial. If granted: The Aug. 23, 1984, Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and David D. Yue would receive a waiver of fees for all of the documents requested.
Do	Office of Special Counsel/Texaco Inc., Washington, DC	HRZ-0220	Interlocutory Order. If granted: The affidavit of O.R. Carter submitted by Texaco Inc. in August 1982 would be stricken from the record in the Proposed Remedial Order proceeding (Case No. DRO-0198).
Aug. 7, 1984	The Knoxville Journal, Knoxville, TN	HFA-0245	Appeal of an Information Request Denial. If granted: The Aug. 6, 1984, Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and the Knoxville Journal would receive a waiver of fees for the information requested.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 31 to Sept. 7, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
Sept. 4, 1984	Gulf/Waldensian Bakeries, Inc	RF40-83.
Aug. 31, 1984	Gulf/R.M. O'Connell, Inc	RF40-82.
Sept. 4, 1984	Gulf/M.W. McRady & Co., Inc	RF40-84.
Do	Gulf/Horn's Motor Express, Inc	RF40-85.
Do	Gulf/CCC Hydraulic Service, Inc	RF40-86.
Do	Gulf/Vern's E-Z-GO Station #17	RF40-87.
Do	Willis/Howard Neon & Plastic Displays	RF41-5.
Do	Amoco/Devil's Lake Sioux Tribe	RQ21-12.
Sept. 5, 1984	Gulf/Schrof Oil Co	RF40-88.
Sept. 6, 1984	Gulf/Don's Gulf Service	RF40-89.
Do	Gulf/W.E. Jersey & Sons, Inc	RF40-90.
Sept. 7, 1984	Gulf/Harvey J. Bremer	RF40-92.
Do	Gulf/H&L Oil, Inc	RF40-91.

[FR Doc. 84-25471 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Period of August 20 through August 31, 1984

During the period of August 20 through August 30, 1984 the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 18, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Houston Oil & Refining Company, Houston, Texas, HRO-0245 Crude Oil

On August 27, 1984, the State of Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to Houston Oil & Refining Company (Houston Oil) on July 26, 1984. On September 9, 1984, Houston Oil of Houston, Texas, also filed a Notice of Objection to the PRO. In the PRO the Office of Enforcement found that during the period June 1979 through August 1980, Houston Oil charged prices in excess of its actual purchase prices in violation of 10 CFR 212.186, 210.62(c) and 205.202, and violated 10 CFR 212.183 in the pricing of crude oil. According to the PRO, the violation resulted in $68,581,401.23 of overcharges.

Marion Corporation, Mobile, Alabama, HRO-0246 Crude Oil

On August 27, 1984, the State of Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Special Counsel of the Economic Regulatory Administration (ERA) issued to Marion Corporation on May 24, 1984. In the PRO, the ERA charges the firm with violations during the reporting period September 1979 through December 1980 in connection with the firm's reporting of its crude oil receipts under the Entitlements Program, 10 CFR 211.67. According to the PRO, the entitlements violation amounted to $57,995,152 plus interest.

United Independent Oil Company Tocoma, Washington, Boise, Idaho; HRO-0249 Crude Oil

On August 27, 1984, the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711, filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Special Counsel of the Economic Regulatory Administration (ERA) issued to the United Independent Oil Company (United) on July 27, 1984. On August 31, 1984, United, Post Office Box 2115, Tacoma, Washington 98401, also filed a Notice of Objection to the Proposed Remedial Order. In the PRO the ERA found that during May 1977, United violated 10 CFR 211.67 (e)(2) and (e)(3) in connection with the reporting of its crude oil receipts and runs to stills under the Entitlements Program. According to the PRO the entitlements violation resulted in $404,323.00 of overcharges.

[FR Doc. 84-25472 Filed 9-25-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30245; FRL-2675-3]

Certain Companies; Applications to Register Pesticide Products; NOR-AM Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by October 26, 1984.

ADDRESS: By mail submit comments identified by the document control number [OPP-30245] and the file number, attention Product Manager (PM) named in each application at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTRACT: *By mail:* Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 17—Timothy Gardner.	Rm. 209, CM#2 (703-557-2690).	EPA, 1921 Jefferson Davis Hwy.—Arlington, VA 22202.
PM 21—Henry Jacoby.	Rm. 229, CM#2 (703-557-1900).	Do.
PM 32—Auturo Castillo.	Rm. 244, CM#2 (703-557-3964).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in any Previously Registered Products

1. File Symbol: 45639-OU. Applicant: NOR-AM Chemical Co., 3509 Silverside Road., PO Box 7495, Wilmington, DE 19803. Product name: Prochloraz Technical. Fungicide. Active ingredient: Prochloraz (N-N propyl-[2-(2,4,6,trichlorophenoxy) ethyl]-1 H-imidazole-1-carboxamide) 95%. Proposed classification/Use: General. For use in formulating fungicides only. (PM 21)

2. File Symbol: 39967-T. Applicant: Mobay Chemical Corp., Penn-Lincoln Parkway West, Pittsburgh, PA 15205. Product name: Preventol A4-S. Fungicide. Active ingredient: *N,N*-Dimethyl-*N'*-phenyl-(*N'*-

fluorodichloromethylithio) Sulfamide 90%. Proposed classification/Use: General. For use in oil, alkyd and resin based paint and primer formulations. (PM 21)

3. File Symbol: 38906-RL. Applicant: Glyco Inc, Williamsport, PA 17701. Product name: Dantobrom P. Disinfectant. Active ingredients: 1-Bromo-3-chloro-5,5-dimethylhydantoin 60.0%, 1,3-dichloro-5,5-dimethylhydantoin 27.4%, and 1,3-dichloro-5-ethyl-5-methylhydantoin 10.6%. Proposed classification/Use: General. For use in swimming pools. Type registration: Conditional. (PM 32)

II. Products Involving a Changed Use Pattern

File Symbol: 50534-RLA. Applicant: SDS Biotech Corp., Animal Health Business, Painesville, OH 44077. Product name: Extrin® WP. Insecticide. Active ingredient: Cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate 13.9%. Proposed classification/Use: General. To include in its presently registered use new use for agriculture use only. Type registration: Conditional. (PM 17)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: September 4, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-24924 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66112; FRL-2674-2]

Certain Pesticide Products; Intent To Cancel Registrations; Hess and Clark, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Distribution or sale of these products after the effective date of cancellation will be considered a violation of the Act unless continued registation is requested.

EFFECTIVE DATE: October 26, 1984.

ADDRESS: *By mail, submit comments to:* Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, Excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: *By mail:* Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
134-47	Hess and Clark New Dry Fly Killer	Hess & Clark, Inc., 7th and Orange Sts., Ashland, OH 44805	July 7, 1970.
318-39	Russell's Granular Lawn Fungicide	Gerald S. Russell, 25-16 50th St., Woodside, Long Island, NY 11377	Oct. 12, 1964.
352-334	Du Pont Londax G Weed Killer Granules	E.I. du Pont de Nemours & Co., Wilmington, DE 19898	Oct. 24, 1967.
352-345	Du Pont Londax L Weed Killer Emulsifiable Liquid	......do	Nov. 10, 1969.
373-95	Residex Direx E.C	Residex Corp., 225 Terminal Ave., Clark, NJ 07066	Nov. 18, 1968.
410-72	Franklin Kilzol Disinfectant for Farm and Ranch Sanitation	Franklin Laboratories, Inc., P.O. Box 669, Amarillo, TX 79105	May 1, 1972.
410-78	Franklin Fly Bait	......do	Apr. 23, 1973.
541-190	Puritan #2462	Puritan/Churchill Chemical Co., P.O. Box 2305, Station D, Atlanta, GA 30318	Apr. 8, 1966.
572-211	Lawn-A-Magic "D-KRAB-R Plus Prills"	Rockland Chemical Co., Inc., P.O. Box 809, West Caldwell, NJ 07006	Oct. 16, 1968.
802-423	Miller's Kelthane-Diazinon 44D	The Chas. H. Lilly Co., 7737 NE. Killingsworth, Portland, OR 97218	Oct. 27, 1967.
802-472	Miller's Home and Patio Insect Spray	......do	Feb. 14, 1972.
909-71	Cooke Fly-No Insect Spray, Pressurized	Cooke Laboratory Products, 2515 South Yates Ave., Commerce, CA 90040	Feb. 25, 1969.
1057-54	Mintol XL Fragrant Mint Disinfectant	The C.B. Dolge Co., Westport, CT 06880	May 22, 1972.
1145-75	Bovinol Stock Spray with Vapona Insecticide	Amoco Oil Co., 910 South Michigan Ave., Chicago, IL 60680	June 4, 1962.
1145-139	Bovinol Ciovap	Amoco Oil Co., 200 East Randolph Dr., Chicago, IL 60601	June 1, 1973.
1157-32	Moorman's Household Insect Killer	Moorman Manufacturing Co., 1000 North 30th St., Quincy, IL 62301	Mar. 16, 1970.
1157-40	Moorman's Fly Bait	......do	Oct. 26, 1972.
1266-119	Banish Liquid Concentrated Residual Insecticide	Malter International Corp., P.O. Box 6099, New Orleans, LA 70114	Sept. 4, 1974.
1748-92	Certox P-40 Wood Preserver	York Chemical Co., Inc., 116 Fulton Ave., Garden City Park, NY 11040	May 16, 1967.
1748-94	Certox P-5 Wood Preserver	......do	Sept. 6, 1967.
1990-440	Woodbury Back Rubber	Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116	July 26, 1963.
4959-31	Acidyne	West Agro-Chemical, Inc., P.O. Box 1386, Shawnee Mission, KS 66222	June 18, 1969.
5535-84	Gro Well Chinch Bug Killer Diazinon Spray	J. & L. Adikes, Inc., 182-12 93d Ave., Jamaica, NY 11423	Aug. 29, 1972.
5748-3	Hot Shot Fly Bait	Conwood Corp., P.O. Box 217, Memphis, TN 38101	Nov. 4, 1957.
7150-5	DI-BEX For Veterinary Use Only	Amco Drug Products Co., Inc., P.O. Box 10, North Olmsted, OH 44070	Dec. 5, 1969.
7246-7	Watch Ready To Use Roach Spray	Kemco Chemical Co., 313 Lilac St., Houston, TX 77009	June 18, 1968.
7790-1	Kel-San Big K Mint Disinfectant	Kel-San Products Co., P.O. Box 789, Knoxville, TN 37916	Sept. 27, 1962.
7943-13	Lawn Life Chinch Bug Control	Kaiser Agricultural Chemicals, Prospect Plains Rd., Cranbury, NJ 08512	May 31, 1967.
9129-4	Resid-A-Cide	The Southland Corp., Chemical Division, 2841 Pierce St., Dallas, TX 75233	June 14, 1968.
9313-21	Rose Brake	Rose Chemical Products Inc., P.O. Box 23375, Columbus, OH 43223	Mar. 14, 1973.

Registration No.	Product name	Registrant	Date registered
9779-115	Riverside Dithane M-45 Sevin 10 Dust	Riverside Chemical Co., unit of Terra Southern Corp., P.O. Box 171367, Memphis, TN 38117.	June 19, 1968.
9931-16	So-Pro-Co Air-O-Phene	Hanco Manufacturing Co., Inc., P.O. Box 4476, Memphis TN 38104	Apr. 7, 1976.
12310-29	Delete	Misco International Chemicals, Inc., 1021 South Noel Ave., Wheeling, IL 60090	Jan. 20, 1963.
18433-4	LL-7 Super Residual Spray	Lee Chemical Corp., 2800 Taft Ave., Orlando, FL 32804	Mar. 4, 1975.
36686-2	Dexan® SC	CH. Dexter Division, The Dexter Corp., 1 Elm St., Windsor Locks, CT 06096	Feb. 10, 1978.
45957-1	Kill-A-Roach Powder	Pacific Research Associates, Inc., 524 Oakdale Dr., Sierra Madre, CA 91024	Aug. 11, 1981.

The Agency has agreed that each cancellation shall be effective October 26, 1984, unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Sale or distribution of any quantity of any of these products produced after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66112]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended, 86 Stat. 973, 89 Stat. (751), 7 U.S.C. 136))

Dated: September 8, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-24915 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180658; FRL-2675-2]

Emergency Exemptions; California Department of Food and Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the 10 States listed below, during the period of June 22, 1984 to July 31, 1984. Also listed are eight crisis exemptions initiated by seven States. These exemptions are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and crisis exemption for the name of the contact person. The following information applies to all contact people.

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of methamidophos on safflowers to control beet armyworm, yellow-striped armyworm and lygus bugs; July 19, 1984 to May 31, 1985. (Gene Asbury)

2. Colorado Department of Agriculture for the use of methidathion on field corn to control Banks grass mites and two-spotted spider mites; July 16, 1984 to September 1, 1984. (Jim Tompkins)

3. Minnesota Department of Agriculture for the use of fenvalerate on sunflowers to control cutworms, sunflower beetles, banded sunflower moths, sunflower moths and seed weevils; July 22, 1984 to August 31, 1984. Minnesota had initiated a crisis exemption for this use. (Jack E. Housenger)

4. Mississippi Department of Agriculture for the use of benomyl on grain sorghum to control fusarium head mold; July 31, 1984 to September 30, 1984. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of October 20, 1982 (47 FR 46747). (Jack E. Housenger)

5. Missouri Department of Agriculture for the use of methiocarb on wine grapes to control depredating birds; June 22, 1984 to November 30, 1984. (Gene Asbury)

6. Nebraska Department of Agriculture for the use of sethoxydim on potatoes to control annual grasses; July 12, 1984 to August 31, 1984. (Libby Welch)

7. New Jersey Department of Environmental Conservation for the use of sethoxydim on cabbage, cantaloupes, cucumbers, and lettuce to control large crabgrass, fall panicum, barnyardgrass and foxtail spp.; July 16, 1974 to October 1, 1984. New Jersey had initiated a crisis exemption for this use except lettuce. (Jack E. Housenger)

8. New Jersey Department of Environmental Protection for the use of methiocarb on wine grapes to control bird depredation; July 6, 1984 to November 30, 1984. (Gene Asbury)

9. New Mexico Department of Agriculture for the use of monocrotophos on field corn and corn grown for seed to control Banks grass mite; July 6, 1984 to October 31, 1984.

10. Oklahoma Department of Agriculture for the use of monocrotophos on field corn and corn grown for seed to control Banks grass mite; July 6. 1984 to August 31, 1984. (Libby Welch)

11. Texas Department of Agriculture for the use of monocrotophos on field corn and corn grown for seed to control Banks grass mite; July 6, 1984 to November 30, 1984. Texas had initated a crisis exemption for this use. (Libby Welch)

Crisis exemptions were initiated by the:

1. Alabama Department of Agriculture and Industries on June 26, 1984, for the use of anilazine on watercress to control leaf spot. Since it was anticipated that this program would be needed for more than 15 days, Alabama has requested a specific exemption to continue it. The need for this program is expected to last until October 31, 1984. (Libby Welch)

2. Arkansas State Plant Board on July 26, 1984, for the use of methiocarb on

wine grapes to control depredating birds. The need for this program has ended. (Gene Asbury)

3. California Department of Food and Agriculture on July 30, 1984, for the use of carbaryl on home garden crops to control Japanese beetles and gypsy moths. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until July 30, 1985. (Jim Tompkins)

4. Michigan Department of Agriculture on June 25, 1984, for the use of sethoxydim on onions to control weeds. The need for this program has ended. (Gene Asbury)

5. Michigan Department of Agriculture on June 25, 1984, for the use of fluazifop-butyl on onions to control weeds. The need for this program has ended. (Gene Asbury)

6. New Mexico Department of Agriculture on July 3, 1984, for the use of sodium chlorate as a dessicant on wheat. The need for this program has ended. (Jim Tompkins)

7. Texas Department of Agriculture on June 29, 1984, for the use of sodium chlorate as a dessicant on wheat. The need for this program has ended. (Jim Tompkins)

8. Wisconsin Department of Agriculture, Trade and Consumer Protection on July 3, 1984, for the use of mancozeb on wild rice to control brown spot. Since it was anticipated that this program would be needed for more than 15 days, Wisconsin has requested a specific exemption to continue it. The need for this program is expected to last until September 30, 1984. (Jim Tompkins)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: September 4, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-24916 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50619A FRL-2675-4]

Issuance of an Experimental Use Permit, Zoecon Industries; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice; correction.

SUMMARY: This notice corrects an experimental use permit, issued to Zoecon Industries, No. 2724-EUP-39, that was published in the **Federal Register** of June 29, 1984 (49 FR 26805).

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2400).

SUPPLEMENTARY INFORMATION: In FR Doc. 84-17370, appearing at page 26805 in the **Federal Register** of June 29, 1984, EPA issued an experimental use permit to Zoecon Industries. Various data were incorrectly listed. The EUP is corrected to read as follows:

2724-EUP-39

Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 50 pounds of the insecticide N-(mercaptomethyl)phthalimide S-(O,O-dimethylphosphorodithioate) in ear tags on beef cattle to evaluate the control of Gulf Coast ticks, face flies, horn flies, spinose ear ticks, and stable flies. A total of 5,000 head of cattle are involved; the program is authorized only in the States of California, Florida, Indiana, Kentucky, Mississippi, New Mexico, Oklahoma, Pennsylvania, and Texas. The experimental use permit is effective from May 25, 1984 to May 25, 1986. A permanent tolerance for residues of the active ingredient in or on cattle has been established (40 CFR 180.261).

Dated: September 7, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-24923 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/41]

Linuron; Special Review of Certain Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces that EPA is initiating a Special Review of all pesticide products containing the active ingredient linuron [3-(3,4-dicholorophenyl)-1-methoxy-1-methylurea]. EPA has determined that linuron is oncogenic in rats and mice and meets or exceeds the risk criterion as described in 40 CFR 162.11. Accordingly, a Special Review of products containing linuron is appropriate to determine whether registration of these products should be permitted to continue and, if so, under what terms and conditions. During the Special Review process, EPA will carefully examine the risks and benefits of using linuron products and will determine the necessity for regulatory actions.

DATE: Comments, evidence to rebut the presumption in this Notice, and other relevant information must be received on or before November 13, 1984.

ADDRESS: Written comments identified as "OPP-30000/41," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment containing material claimed to CBI must be submitted with the CBI portions deleted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Ingrid M. Sunzenauer, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 717, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

SUPPLEMENTARY INFORMATION: The term "Special Review" is the name now being used by EPA for the process previously called the Rebuttable Presumption Against Registration (RPAR) process. Modifications in the process will be proposed in regulations in the near future. Until other applicable final regulations are adopted, the present Special Review will adhere to RPAR procedures now in effect and set forth in 40 CFR 162.11.

EPA has determined that a Special Review will be conducted for all pesticide products containing linuron as an active ingredient. EPA has also determined that data necessary to refine the Agency's risk assessment must be developed on an accelerated basis, and that interim precautionary labeling is required to reduce risk during the Special Review process.

Issuance of this Notice means that potential hazards associated with the use of linuron have been identified. These hazards will be examined further to determine the nature and extent of the risk, and considering the benefits of linuron, whether such risks pose an unreasonable adverse effect.

A document entitled "Guidance for the Interim Registration of Pesticide Products Containing Linuron" (Guidance Document) has been issued. (This document is also referred to as a Registration Standard.) The Guidance Document is available to the public from the above-identified contact person. This document explains the basis of EPA's decision to start a Special Review and also contains references, background information, data requirements, and other information pertinent to the continued registration of pesticides containing linuron.

I. Initiation of a Special Review

A. General

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et. seq.*). Before a product will be registered, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide." (FIFRA Section 2(bb)). The burden of proving that a pesticide meets this standard for registration is on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard of registration, then the Administrator may cancel the registration under section 6 of FIFRA.

The Agency has created an administrative process for fully evaluating whether a pesticide may no longer satisfy the statutory standard for registration. This Special Review (RPAR) process provides an informal procedure through which EPA may gather and evaluate information about the risks and benefits of a pesticide's use. It also provides a means by which interested members of the public may comment on and participate in EPA's decision making process. The regulations governing this process are set forth at 40 CFR 162.11.

A Special Review (RPAR) is begun when EPA determines that a pesticide meets or exceeds one or more of the risk criteria set out in the regulations (40 CFR 162.11(a)(3)). The Agency announces its commencement of the Special Review by issuing a notice of determination for publication in the **Federal Register**, which is also called a Position Document (PD) 1. In addition, registrants of affected products will receive notice by certified mail. Registrants and other interested persons are invited to scrutinize the basis for the Agency's decision to initiate the Special Review and may submit data and information to show that the Agency's determination of risk was in error. Registrants and users may also suggest methods to reduce risks of use of the pesticide to acceptable levels. In addition to addressing risk issues, commenters are encouraged to submit evidence and discussions of the biologic, economic, social, and environmental costs and benefits of the use of the pesticide.

Following the initiation of the Special Review, the pesticide use or uses of concern will enter the public participation stage of the Special Review process. Registrants and interested members of the public may submit written comments, information, or request public discussions on the Agency's proposed actions and/or other proposals for additional or alternative actions. Registrants may submit information indicating that linuron does not pose a health risk to man or the environment and/or that the benefits exceed the risks associated with linuron use. Interested members of the public may submit information concerning the risks and benefits associated with the use of linuron. The public participation stage is described in more detail in Unit V.

If risk issues are not satisfactorily resolved, EPA will proceed to evaluate the risks and benefits of linuron and to propose actions in PD 2/3 to reduce the risks. After obtaining comments from the Scientific Advisory Panel, the Secretary of Agriculture, registrants, and the public of the PD 2/3, EPD will issue a PD 4 containing EPA's final regulatory position. If EPA determines that the risks of use exceed the benefits, EPA will issue a notice of intent to cancel the registration of products intended for such use. The notice may propose cancellation or identify for specific uses certain changes in the composition, packaging, application methods and/or labeling of the product which would reduce the risks to acceptable levels.

A notice initiating a Special Review is not a notice of intent to cancel the registration of a pesticide, and a Special Review may or may not lead to cancellation. A notice initiating a Special Review is an announcement of EPA's concern about the safety of a pesticide's use, and only after carefully considering the risks and benefits of a pesticide and determining that the pesticide will cause unreasonable adverse effects on man or on the environment, will EPA issue a notice of intent to cancel.

B. Presumption

EPA has determined that the use of pesticide products containing linuron has exceeded the risk criteria in 40 CFR 162.11(a)(3)(ii)(A). That section provides that a Special Review (RPAR) shall be conducted if the use of a pesticide "induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure. . . ." On the basis of the scientific studies and information summarized in the Guidance Document, EPA has concluded that linuron has exceeded this risk criterion.

Specifically, data indicate that linuron induces dose-related tumors in rats. In a 2-year study male rats developed interstitial cell testicular adenomas. The frequency of these adenomas increased with the dose, and the increase was statistically significant for the two higher dose groups. Information was insufficient to indicate the extent that these tumors might be related to endocrine changes.

The 2-year study mouse showed a statistically significant increase in hepatocellular adenomas in the highest dose group for female mice, but only borderline statistically significant hepatocellular adenomas for male mice and only for the lowest dose group.

The Agency used the multi-stage model to calculate a preliminary risk analysis based on the rat study. This study was used as a basis for the risk calculations because it contained the most sensitive and the most definitive dose-related increase in tumors.

The Agency calculated three estimates for the potential dietary exposure of linuron. These dietary estimates assume a uniform distribution of treated crops among the U.S. population and an average daily consumption of those crops by individuals. Although an individual's exposure could vary considerably depending upon eating habits and geographic location, the values are considered representative for the total U.S. population over a lifetime.

The first estimate was based on the tolerances and assumed that residues are at 100 percent of these levels. Tolerances are the maximum residue levels permitted on crops by the Agency. The second estimate used the maximum residues expected and is based on actual residue levels found in the field. The third estimate was based on the maximum residue expected multiplied by a rough estimate of percent crop treated. This resulted in giving a more realistic estimate of the residues which may reach humans through the diet. This estimate resulted in a dietary risk of 2 × 10−⁵, which the Agency has determined is significant. The following Table 1 presents the results from all three estimates:

TABLE 1.—ONCOGENIC RISK FROM DIETARY EXPOSURE TO LINURON

Assumption	TMRC[1] (milligram per day)	Risk
100 pct. tolerance	0.3248	1×10^{-3}
MRE[2]	0.0790	4×10^{-4}
MRE[2] × percent of crop treated	0.0057	2×10^{-5}

[1] Theoretical maximum residue contribution.
[2] Maximum residue expected.

The Agency is aware that dietary exposure through water contamination is possible. Limited monitoring data collected in 1983 in northwestern Ohio shows the presence of linuron at low levels in surface and tap water. However, additional data are needed to assess the potential exposure and risk from linuron in drinking water. The Agency will assess this issue during the Special Review.

Non-dietary risk was also calculated. The Agency limited the non-dietary exposure analysis for linuron to the major use site, soybeans. To estimate exposure, the Agency used a surrogate study from Monsanto Company, which was based on alachlor application to soybeans. The type of formulation and method of application of alachlor are the same as for linuron. Thus, the surrogate study should provide adequate information to assess applicator exposure for linuron. The application rate for linuron is one fourth the rate of alachlor in all formulations for soybean application.

The Agency used the following assumption to estimate linuron exposure to a soybean farmer. Potential exposure for a farmer as an applicator, mixer/loader, or both were calculated. Use by commercial applicators was not included.

(1) The farmer is a 70-kg man.

(2) As an applicator, the farmer may treat a 100-acre plot per day and may treat up to 600 acres per year. Consequently, he may be exposed to linuron from 1 to 6 days per year.

(3) As a mixer/loader, the farmer may be exposed for approximately 15 minutes per tank and may be expected to load five tanks per day for 100 acres.

(4) Respiratory exposure is not estimated because the values calculated for the inhalation exposure for alachlor are statistically insignificant compared to those for dermal exposure values.

(5) The Agency assumes a lifetime exposure of 30 working years.

(6) In the absence of data, the Agency assumes 100 percent dermal penetration.

The Agency calculated three exposure estimates. The first estimate represents maximum exposure because it assumes the farmer is not wearing protective clothing. In the surrogate data, dermal exposure was assessed by measuring alachlor residues on gloves or gauze pads.

The second estimate assumes the farmer is wearing protective clothing, including rubber gloves and one-piece coveralls. The Agency assumes the protective clothing reduces exposure 80 percent. Some pesticide will still filter in around the edges of the collar, cuffs, and hems. Based on the surrogate data, the gloves are assumed to reduce exposure 97 percent. Exposure to unprotected areas such as face, back of the neck, front of the neck, and "V" of the chest will also result.

The third estimate assumes the farmer is wearing protective clothing as in the second estimate, but that none of the pesticide filters in. It is assumed that those areas protected by the clothing have 100 percent protection. However, exposure to the unprotected areas still results.

The three applicator exposure estimates are presented in the following Table. 2:

TABLE 2.—LINURON DERMAL EXPOSURE FOR A FARMER DURING GROUND APPLICATION TO SOYBEANS

Estimate	Units mg/kg	mg/hr	mg/kg/hr	mg/kg/lb.	mg/kg/day	Annual exposure range[3] (1day/yr to 6 days/yr) mg/kg/yr	Average daily exposure[2] (1day/yr to 6 days/yr), mg/kg/day	
1st estimate:								
Mixer/loader	0.21	61	0.88	0.0093	1.056	1.056—6.336	2.9×10^{-3}	1.7×10^{-2}
Applicator	0.007	0.45	0.0064	0.00032	0.032	0.032—0.192	8.8×10^{-5}	5.3×10^{-4}
Combined[1]					1.088	1.088—6.528	3.0×10^{-3}	1.8×10^{-2}
2d estimate:								
Mixer/loader	0.024	7	0.10	0.0011	0.12	0.12—0.72	3.3×10^{-4}	2.0×10^{-3}
Applicator	0.0013	0.064	0.0012	0.000059	0.0056	0.0056—0.036	1.6×10^{-5}	9.5×10^{-5}
Combined[1]					0.13	0.13—0.76	3.5×10^{-4}	2.1×10^{-3}
3d estimate:								
Mixer/Loader	0.0058	1.7	0.025	0.00026	0.030	0.030—0.18	8.1×10^{-5}	4.9×10^{-4}
Applicator	0.00015	0.0097	0.00014	0.0000068	0.00066	0.00066—0.004	1.8×10^{-6}	1.1×10^{-5}
Combined[1]					0.03	0.03—0.19	8.3×10^{-5}	5.0×10^{-4}

[1] (Applicator mg/kg/day) + (mixer/loaders mg/kg/day).
[2] As an applicator, the farmer may treat a 100-acre plot per day and may treat up to 600 acres per year. Consequently, he may be exposed to linuron from 1 to 6 days per year.
[3] Annual exposure range over 365 days.

Using the multi-stage model, the Agency calculated the non-dietary oncogenic risk to farmers applying linuron. This model is a statistical means to estimate the potential lifetime risk. The figures resulting from the model vary slightly from those in the Guidance Document because they incorporate the label changes concerning protective clothing required by that document. The oncogenic risk to a farmer applying linuron to soybeans using ground application is presented in the following Table 3:

TABLE 3.—ONCOGENIC RISK TO A FARMER APPLYING LINURON TO SOYBEANS USING GROUND APPLICATION

Estimate	Risk (1 day per year)	Risk (6 days per year)
1st estimate:		
Mixer/loader	4×10^{-4}	2×10^{-3}
Applicator	1×10^{-5}	7×10^{-5}
Combined	4×10^{-4}	3×10^{-3}
2d estimate:		
Mixer/loader	5×10^{-5}	3×10^{-4}
Applicator	2×10^{-6}	1×10^{-5}
Combined	5×10^{-5}	3×10^{-4}
3d estimate:		
Mixer/loader	1×10^{-5}	7×10^{-5}
Applicator	3×10^{-7}	2×10^{-6}
Combined	1×10^{-5}	7×10^{-5}

In the Guidance Document the Agency determined the most reasonable estimate to be the first one, in which the farmer does not wear protective clothing. However, in the Guidance Document the Agency required registrants to revise labeling for all uses to include protective clothing. Thus, the most reasonable estimate for exposure to linuron assumes applicators are wearing protective clothing. Since linuron will likely filter in around the edges of the collar, cuffs, hem, and tops of the gloves, the second estimate is the most realistic one. In addition, it is likely that a farmer will mix, load, and apply linuron. This results in a risk of 5×10^{-5} to 3×10^{-4}. The Agency has determined that this risk is significant.

Because of the Agency's concerns, the Guidance Document also required registrants to change labeling to include a warning statement that linuron causes tumors in laboratory animals, and to indicate that linuron's classification is changed to "restricted use." Under section 4 of FIFRA this means that only certified applicators trained for and familiar with pesticide use, or persons under their direct supervision, will be able to use linuron. This restricted use classification applies to all use patterns and application techniques.

The Guidance Document requires registrants to submit approximately 50 studies which will be used to refine the Agency's risk analysis. Included are toxicology, residue chemistry and applicator exposure studies, as well as environmental fate and product chemistry studies needed to characterize the potential for linuron to contaminate water. EPA is requiring that these studies be conducted within 6 months to 2 years, depending on the test. Most are due within one year or less and will be included in PD 2/3. Once the comments to the PD 2/3 have been analyzed, EPA will determine whether to delay the PD 4 to include the results from the longer term studies. Studies not included in the PD 4 would be reviewed when they are submitted and any necessary changes to the Agency's regulatory position would be proposed, if appropriate.

As discussed in the Guidance Document, all currently registered products will remain registered while the Special Review is in progress. Thus, the Agency is deferring final decisions on the reregistration of any products containing linuron as a sole active ingredient until the Agency concludes the Special Review. The Agency will not register any new uses of linuron until the Special Review is completed. The Agency will also not consider approving the pending requests for tolerances for linuron on sugar and lettuce or issue any new tolerances during the Special Review.

C. Rebuttal Criteria

All registrants, applicants for registration, and other interested members of the public are invited to submit evidence either to support or to rebut the presumption that linuron causes oncogenic effects in rats and may cause such effects in humans. Under 40 CFR 162.11(a)(4)(iii) the presumption initiating a Special Review must be rebutted by proving, in the case of acute and chronic toxicity criteria, "that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error."

D. Benefits Information

The Agency will perform a benefits analysis for linuron during Special Review. The following information briefly summarizes the benefits of linuron.

E. I. duPont de Nemours, Inc. is the major producer of the technical product. Griffin Corporation and Drexel Chemical Company currently hold the other technical registrations. Estimates of domestic production are considered trade secret or proprietary under section 10 of FIFRA.

Linuron is a herbicide used mainly on soybeans, but is also federally registered for use on carrots, celery, asparagus, corn (field and sweet), cotton, parsnips, potatoes, sorghum, and winter wheat. Registered non-food sites include golf course fairways, golf tee areas, sod fields, fencerows, highway rights-of-way, streets, alleys, and vacant lots. Linuron is currently used in Michigan, under a State local need registration, for weed control in hybrid poplar plantings. In 1982, a FIFRA section 18 emergency exemption was granted to the State of Massachusetts for use of linuron on 300 acres of dry bulb onions to control galinsoga and other broadleaf weeds.

None of the alternative soybean herbicides for linuron control the same spectrum of weeds. If linuron is not used in certain situations, it is claimed that certain weeds may not be controlled or more than one alternative may be needed to obtain equal control. Treatment costs may increase, if linuron is not available.

The most used alternative to linuron on soybeans is the triazine herbicide, metribuzin. The cost per acre for metribuzin is nearly the same. It is claimed that linuron is very effective on weeds in sandy and sandy loam soil with less thn 2 percent organic matter, while metribuzin is restricted from use on such soils. Metribuzin may also not be used on certain varities of soybens. In addition it is claimed that linuron will control the triazine-resistant weeds pigweed and lambsquarter.

The seond most used alternative to linuron on soybeans is bentazon. The cost per treated acre is approximately 52 percent higher than linuron. Acifluorfen is another alternative which costs approximately 24 percent more than linuron per acre. Both of these herbicides are more limited in their weed spectrum than linuron have no residual control, and proper timing of application is more critical. Chloramben and Dyanap® (naptalam plus dinoseb) are the two other alternatives and cost 6 and 11 percent more per are, respetively. Dyanap® must be applied just as soybeans are emerging and offers no residual control. These alternatives control a more limited spectrum of weeds than linuron.

In addition to submitting evidence to rebut the presumptions of risk in the Special Review, 40 CFR 162.11(a)(5)(iii) provides that a registrant or applicant "may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use." If the presumption of risk is not rebutted, the benefits evidence submitted by registrants, applicants, and other interested persons will be considered by the Administrator when determining the appropriate regulatory action.

Registrants, applicants or other interested persons who desire to submit benefits information should consider submitting information on the following subjects along with any other relevant information they desire to submit:

1. Identification of the biological and economic importance of linuron uses,

incuding market studies and estimated quantities applied for those uses.

2. Identification of alternative chemical and non-chemical methods for all registered uses and application techniques, including any associated health effects and potential for water contamination.

3. Determination of the change in costs to linuron users of obtaining equivalent pest control with available substitute products or management techniques.

4. Assessment of the expected changes in level of efficacy, crop yield, crop quality, crop injury, harvesting efficiency and environmental impacts associated with the use of alternative control measures.

5. Identification of increased or reduced risks associated with the mixing, loading, applying, and disposing of alternative chemicals, and of other hazards associated with their potential increase in use if linuron were not available. Describe application equipment types, percent use of protective tractor cabs, protective clothing, and mixing/loading/disposing procedures for the alternative chemicals.

6. Identification of cultural practices, spray applications, and other factors that impact on farmworker exposure to linuron and any alternative cultural or Integrated Pest Management practices, which might limit the use of linuron.

II. Additional Grounds for Review

In the Guidane Document EPA is requiring, pursuant to section 3(c)(2)(B) of FIFRA, that additional product chemistry, toxicology, ecological effects, residue chemistry and environmental fate studies of linuron be submitted. Upon receipt of these studies, they will be reviewed to determine the extent to which other adverse effets may be associated with the use of this chemical.

III. Rebuttal Submission Procedures

All registrants and applicants for registration are being notified by certified mail of the Special Review being initiated on their products containing linuron.

The registrants and applicants for registration will have 45 days from the date this notice is received or until November 13, 1984 (whichever is later) to submit evidence in rebuttal to the Agency's presumption. Other interested parties may submit comments during the same period.

IV. Duty To Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. Registrants of linuron products must immediately submit any published or unpublished information, studies, reports, analyses, or reanalyses regarding any linuron effects in animal species or humans, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data should be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. Registrants should notify EPA of any studies on linuron currently in progress, their purpose, the protocol, the approximate completion date, a summary of all results observed to date, the name and address of the laboratory performing the studies, and a statement as to whether these studies are being conducted in accordance with the Good Laboratory Practices specified in 48 FR 53946.

V. Public Comment Opportunity

During the time allowed for submission of rebuttal evidence, specific comments are solicited on the presumptions set forth in this Notice and in the Guidance Document. In particular, any documented episodes of adverse effects on humans or domestic animals should be submitted to the Agency as soon as possible. Any information as to any laboratory studies in progress or completed should be submitted to the Agency as soon as possible with a statement as to whether those studies are in compliance with the Good Laboratory Practices specified in 48 FR 53946. Specifically, information on any adverse toxicological effects of linuron, its impurities, metabolites, and degradation products is solicited. Similarly, submission of any studies or comments on the benefits from the use of linuron is requested. All comments and information and analyses, which come to the attention of EPA, may serve as a basis for final determination of regulatory action following the Special Review.

All comments and information should be sent to the address given above, preferrably in triplicate, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation [OPP-30000/41].

During the comment period, interested members of the public or registrants may request a meeting to discuss the risk issues and methods of reducing risks. Prior to such meetings, the Agency will place an agenda and list of meeting participants in the public docket. Any member of the public interested in obtaining a copy of the agenda prior to the meeting with the Agency to discuss issues in connection with this Special Review should notify the contact person listed in this Notice. Any records pertaining to such meetings, including minutes, agendas, and comments received will be filed under docket number OPP-30000/41.

Dated: September 13, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-25100 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL-2671-7]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment: Fiscal Year 1985.

SUMMARY: This notice sets forth the allotment to the States of the $2.4 billion appropriated on July 18, 1984, by Pub. L. 98-371 for the municipal wastewater treatment works construction grants program.

Section 205(c)(2) of the Clean Water Act (the Act) provides that sums authorized to be appropriated for Fiscal Year 1985 be allotted to the States in accordance with the table added to that section by Pub. L. 97-117.

Through promulgation of this notice, the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States for grants for the construction of municipal wastewater treatment works.

DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold B. Speiser, Program Policy Branch, Municipal Construction Division, Office of Water Program Operations, (202) 382-7377.

SUPPLEMENTARY INFORMATION: Pub. L. 98-371 appropriated $2.4 billion to fund the construction grants program in Fiscal Year 1985. As required by section 205(c)(2) of the Clean Water Act (the Act), funds appropriated for Fiscal Year 1985 are hereby allotted on the basis of the percentages listed in the table added to section 205(c)(2) by Pub. L. 97-117. The percentages were applied to the $2.4 billion to determine the actual dollar amount allotted to each State.

The table of allotments reflects a revised[*] formula first used in Fiscal

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[*] The new formula uses the following weights: needs categories I, II and IV b = 50%; needs categories I, II, III, IV, and V = 25%; 1976 population = 25%.

Year 1983 and conforms to section 205(e) of the Act, which requires that no State shall receive less than one half of one percent of a total allotment. The table appears at the end of this notice.

The $2.4 billion is allotted as follows:

FY 1985 State Allotment Based on $2.4 Billion Appropriation

[In thousands]

	Ratio	Dollars
Alabama	.011398	27,355
Alaska	.006101	14,642
Arizona	.006885	16,524
Arkansas	.006668	16,003
California	.072901	174,964
Colorado	.008154	19,569
Connecticut	012487	29,969
Delaware	004965	11,916
District	.004965	11,916
Florida	.034407	82,577
Georgia	.017234	41,362
Hawaii	.007895	18,948
Idaho	.004965	11,916
Illinois	.046101	110,643
Indiana	.024566	58,959
Iowa	.013796	33,110
Kansas	.009201	22,082
Kentucky	.012973	31,135
Louisiana	.011205	26,892
Maine	007788	18,691
Maryland	.024653	59,168
Massachusetts	.034608	83,060
Michigan	.043829	105,191
Minnesota	.018735	44,964
Mississippi	.009184	22,041
Missouri	.028257	67,817
Montana	.004965	11,916
Nebraska	.005214	12,513
Nevada	.004965	11,916
New Hampshire	.010186	24,446
New Jersey	.041654	99,970
New Mexico	.004965	11,916
New York	.113097	271,436
North Carolina	.018396	44,151
North Dakota	.004965	11,916
Ohio	.057383	137,721
Oklahoma	.008235	19,764
Oregon	.011515	27,636
Pennsylvania	.040377	96,906
Rhode Island	.006750	16,200
South Carolina	.010442	25,061
South Dakota	.004965	11,916
Tennessee	.014807	35,537
Texas	.038726	92,943
Utah	.005371	12,890
Vermont	.004965	11,916
Virginia	.020861	50,067
Washington	.017726	42,542
West Virginia	.015890	38,136
Wisconsin	.027557	66,137
Wyoming	.004965	11,916
Samoa	.000915	2,196
Guam	.000662	1,588
N. Marianas	.000425	1,020
Puerto Rico	.013295	31,908
Pac. Tr. Ter	.001305	3,132
Virgin Isles	.000531	1,274
U.S. Totals	.999996	2,400,000

These allotments are available for obligation until September 30, 1986. After that date, unobligated balances will be realloted under section 205(d) of the Act (40 CFR 35.2010). Grants from the allotments may be awarded after October 1, 1984, and following the issuance of advices of allowance to the EPA Regional Administrators by the Comptroller of EPA.

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-25498 Filed 9-25-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons On Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): K/S A/S Norske Cruise, A/S Norske Cruise and Helge Naarstad A/S, c/o Sea Goddess Cruises Limited, 5805 Blue Lagoon Drive, Miami, Florida 33126.

Dated: September 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25523 Filed 9-25-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No	Name/address	Date revoked
1025	American Union Transport Florida, Inc., Box 522037, Miami, FL 33152.	Sept. 2, 1984.
2720	Anthony Hayden, d.b.a. World Consultations Co., 33 Rector St., New York, NY 10006.	Sept. 8, 1984
1738	Transpacific Air Cargo, Inc., 714 South Isis Ave., Inglewood, CA 90301.	Sept. 8, 1984
1829	Nittler Forwarding, Inc., 426 Route 130, Dayton, NJ 08810	Sept. 12, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-25524 Filed 9-25-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Gaylord Bankshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conficts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 1984.

A. **Federal Reserve Bank of Kansas** City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gaylord Bankshares, Inc.*, Gaylord, Kansas; to acquire Valley Insurance Agency, Gaylord, Kansas, thereby engaging in the activity of acting as agent for the sale of general insurance in a town with a population not exceeding 5,000, where the holding company or its

subsidiaries are otherwise engaged in business.

Board of Governors of the Federal Reserve System, September 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25450 Filed 9-25-84; 8:45 am]

BILLING CODE 6210-01-M

The International Commercial Bank of China, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specificially any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The International Commercial Bank of China*, Taipei, Taiwan, Republic of China; to become a bank holding company by acquiring 93.328 percent of the voting shares of The Chinese American Bank, New York, New York.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Kingston Bancshares, Inc.*, Kingston, Ohio; to become a bank holding company by acquiring 80 percent of the voting shares of Kingston National Bank, Kingston, Ohio.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Consolidated Bancshares, Inc.*, Chattanooga, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Volunteer Bank & Trust Company of Hamilton County, Chattanooga, Tennessee.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Equitable Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Equitable Bank, Dallas, Texas.

2. *Houston City Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens National Bank-West, Houston, Texas.

3. *Morton Financial Corporation*, Morton, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Morton Bancshares, Inc., Morton, Texas, thereby indirectly acquiring First State Bank, Morton, Texas.

Board of Governors of the Federal Reserve System, September 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25451 Filed 9-25-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 11]

Change to Federal Travel Regulations

Corrections

In FR Doc. 84-22610 beginning on page 33937 in the issue of Monday, August 27, 1984, make the following corrections:

1. On page 33938, in the first column, in the second line of the heading preceding the last paragraph, "Allowances" should read "Allowance".

2. On the same page, in the same column, the third line of the last paragraph, "1984" should read '1983".

3. On the same page, in the second column, the last line of the first full paragraph, "1984" should read "1983".

BILLING CODE 1605-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84P-0297]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Purity Baking Co. to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences, Food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 26, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Purity Baking Co., Decatur, IL 62525.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard or identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of the U.S. RDA of vitamin B-6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115 with the exception of these deviations.

The permit provides for the temporary marketing of 400,000 pounds per week of the product. The test product will be distributed in the States of Illinois, Indiana, and Missouri. The test product is to be manufactured at the Purity Baking Co. plant, Rockford, IL 61104.

The principal display panel of the label states the product name as "enriched special formula bread", and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's for nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than December 26, 1984.

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25440 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0285]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of increased levels of 1,2-dibromo-2,4-dicyanobutane as a preservative in the manufacture of paper and paperboard that may contact food.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3814) has been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of increased levels of 1,2-dibromo-2,4-dicyanobutane as a preservative in the manufacture of paper and paperboard that may contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25432 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84C-0298]

Coopervision, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Coopervision, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of the colored polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination, with poly(hydroxyethylmethacrylate) for coloring contact lenses.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 4C0187) has been filed by Coopervision, Inc., 2801 Orchard Pkwy., San Jose, CA 95134, proposing that the color additive regulations be amended to provide for the safe use of the colored polymeric reaction products formed by chemically bonding certain dyes, used singly or in combination with poly(hydroxyethyl methacrylate) for coloring contact lenses. The dyes are: C.I. Reactive Blue 11, CI. Reactive yellow 86, and C.I. Reactive Blue 163.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25438 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0300]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer in ethylene terephthalate polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3822) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that the food additive regulations be amended to provide for the safe use of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer in ethylene polymers, complying with 21 CFR 177.1630, intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25437 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0301]

Celanese Engineering Resins; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Celanese Engineering Resins has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the polyoxymethylene copolymer as an article or component of articles intended for repeated food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3784) has been filed by Celanese Engineering Resins, a division of Celanese Corp., 26 Main St., Chatham, NJ 07928, proposing that § 177.2470(c)(2) *Polyoxymethylene copolymer* (21 CFR 177.2470(c)(2)) be changed to provide for the safe use of the polyoxymethylene copolymer with a minimum number average molecular weight of 15,000 for the copolymer rather than the 20,000 as presently listed.

The agency has determined under § 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is a technical change to an existing regulation and is categorically exempt from the need to submit an environmental assessment.

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25436 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0286]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of the General Electric Co., proposing that the food additive regulations be amended to remove the restrictions that limit the use of poly(tetramethylene terephthalate) intended for use in contact with nonalcoholic foods.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 292-474-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3788) has been filed on behalf of the General Electric Co., c/o 1150 17th St. NW., Suite 1000, Washington, DC 20036, proposing that some limitations in § 177.1660 *Poly(tetramethylene terephthalate)* (21 CFR 177.1660) be removed. The petition would remove the restrictions that limit poly(tetramethylene terephthalate) to use in contact with nonalcoholic foods, and to exposure time and temperature of not more than 180 °F and 24 hours if the food-contact article is over 0.010 inch thick.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25435 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0287]

Radiation Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Radiation Technology, Inc., has filed a peition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to control insect and microbial contamination in certain dried herbs, dried spices, and dried vegetable seasonings.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4M3812) has been filed by Radiation Technology, Inc., Lake Denmark Rd., Rockaway, NJ 07866, proposing that Part 179 (21 CFR Part 179) of the food additive regulations be amended to provide for the safe use of a cobalt 60 or cesium 137 source of gamma radiation to control insect and microbial infestation in certain dried herbs, dried spices, and dried vegetable seasonings at doses not to exceed 1 megarad.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: September 17, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-25434 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records for the completion of State Medicaid quality control (MQC) reviews, HHS/HCFA/BQC No. 09-70-2003. We have provided background information about the proposed system in the "Supplementary Information" section below. HCFA invites public comments, by October 26, 1984, with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB), on September 19, 1984.

The new system of records including routine uses will become effective November 19, 1984, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Officer, Office of Management and Budget, Health Care Financing Administration, Room G-Z-N-2, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Stephen A. Synder, Bureau of Quality Control, Health Care Financing Administration, Room 239, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone 301-597-1309.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 1903(u) of the Social Security Act (42 USC 1396b(u)) which was enacted by section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248. The implementing regulation is 42 CFR 431.804(c)(6) (48 FR 54224, December 1, 1983). The purpose of this system of records is to provide the data necessary for the HCFA Administrator to project or establish a State's error rate if the State refuses to complete a timely valid MQC sample or individual reviews.

The HCFA Administrator shall establish the error rate directly, contractually, or through such other arrangements as (s)he may find appropriate. The system will contain information on the eligibility of sample case beneficiaries acquired through case record reviews and field investigations and on Medicaid payments for these beneficiaries.

A Basic Ordering Agreement is being prepared. At this time contractors have not been selected.

In order to fulfill the objective and complete tasks in this project, HCFA directly or through its contractor, must have individually identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses"—that is, disclosures that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicaid program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: September 19, 1984.

Carolyne K. Davis,

Administrator.

SYSTEM NAME:

Completion of State Medicaid Quality Control (MQC) Reviews, HHS/HCFA/BQC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA central office or regional offices. (See Attachment A). A contractor site will be determined when and if the contract is executed. Contact the systems manager for the location of the contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Sampled Medicaid beneficiaries in the District of Columbia and all States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents (e.g., resource, income payment relating to the eligibility, and payment status of Medicaid beneficiaries).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1903(u) of the Social Security Act (42 USC 1396b(u)) was enacted by section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), P.L. 97-248.

Implementing regulation 42 CFR 431.804(c)(6) (48 FR 54224, December 1, 1983).

PURPOSE:

To complete State MQC sample reviews for any State that fails to complete: (1) A timely and valid MQC sample, or (2) individual reviews required to make a projection of their error rate or determine their actual error rate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To the contractor which will use this information to conduct the reviews.

2. To the State Medicaid agency which refused to complete the sample.

3. To collateral contacts to verify client eligibility. Collateral contacts are contacts with third parties that include but are not limited to contacts with private individuals, banks, insurance companies, nursing homes, private businesses, Federal agencies and any entity that can provide information necessary to derive at a definitive eligibility decision and determine the payment status of the beneficiary.

4. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary name, social security number or other unique identifier by HCFA or the State.

SAFEGUARDS:

HCFA and/or the contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, if required, HCFA and/or the contractor will initiate automated data processing (ADP) system security procedures required by DHHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hard copy records will be maintained. Disposal occurs three years from the last action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Quality Control, Health Care Financing Administration, Room 200, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists write to the System Manager at the address indicated above. Specify name, address, and State.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current).

RECORD SOURCE CATEGORIES:

Data is collected from the beneficiary and collateral contacts. Collateral contacts are contacts with third parties that include but are not limited to contacts with private individuals, banks, insurance companies, nursing homes, private businesses, Federal agencies, and any other entity that can provide information necessary to arrive at a definitive eligibility decision and determine the payment status of the beneficiary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Central and Regional Office Addresses

1. Central Office Address: Bureau of Quality Control, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207.

2.HCFA Regional Office Addresses:

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
John F. Kennedy Federal Building, Room 1309, Boston, Massachusetts 02203
NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands
26 Federal Plaza, Room 38-130, New York, New York 10007
PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
P.O. Box 7760, Philadelphia, Pennsylvania 19101
ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee
101 Marietta Street, Suite 602, Atlanta, Georgia 30223
CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Suite A-835, Chicago, Illinois 60604
DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1200 Main Tower Building, Room 2400, Dallas, Texas 75202
KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska
New Federal Office Building, Room 235, 601 East 12th Street, Kansas City, Missouri 64106
DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Federal Office Building, 5th Floor, 1961 Stout Street, Denver, Colorado 80294
SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada
Federal Office Building, 100 Van Ness Avenue, 20th Floor, San Francisco, California 94102
SEATTLE REGION—Alaska, Idaho, Oregon, Washington
2901 Third Avenue, Mail Stop 406, Seattle, Washington, 98121.

[FR Doc. 84-25444 Filed 9-25-84; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Proposed Redesignation of Health Service Area XI in Illinois

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice of extension of dates to apply for health systems agency designation in Illinois health service area XI.

SUMMARY: This notice announces the decision of the Administrator, Health Resources and Services Administration, to extend the dates for applying for designation as the health systems agency for the new southwestern Illinois health service area.

DATE: For entities interested in applying for designation as a health systems agency, the date for filing letters of intent is extended from September 12, 1984 to October 12, 1984 and submission of applications is extended from November 13, 1984 to December 13, 1984.

ADDRESS: Application materials may be obtained from the Regional Health Administrator, HHS Regional Office V, 300 South Wacker Drive, Chicago, Illinois 60606, 312-353-1385.

FOR FURTHER INFORMATION CONTACT: John F. Belin, Director, Division of Agency Operations and Management, BHMORD, 5600 Fishers Lane, Room 9A-19, Rockville, Maryland 20857, 301-443-6680.

SUPPLEMENTARY INFORMATION: On September 5, 1984 Governor James Thompson requested that the Department extend the dates for filing letters of intent and submission of applications by 30 days each to allow additional dialogue in deference to the needs of the citizens in the area, and in the best interest of health planning in Illinois.

Dated: September 21, 1984.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 84-25650 Filed 9-25-84; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-84-1452]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number..

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Program; Required Annual Contributions/Initial Estimate of Cost/Total
Office: Housing
Form number: HUD-52671, 52672 and 52673
Frequency of submission: On Occasion
Affected public: State or Local Governments
Estimated burden hours: 8,000
Status: Revision
Contact: Myra Newbill, HUD, (202) 755-7707, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 30, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems..

[FR Doc. 84-25424 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1453]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this propsal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposed described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the infomation collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Rental Rehabilitation Program
Office: Community Planning and Development
Form number: None
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 42,779
Status: Revision
Contact: Frances Bush, HUD (202) 755-6296, Robert Neal, OMB (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Delelopment Act, 42 U.S.C. 3535(d).

Dated: August 27, 1984.

Dennis F. Geer,

Directors Office of Information Policies and System,

[FR Doc. 84-25423 Filed 9-25-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paper Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313.

Title: 25 CFR Part 36, Requests for Waiver of Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations.
Abstract: Provide a basis for equitable evaluation of requests from tribal governments and school boards, to waive academic standards for schools providing education to Indian children.
Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Tribes and school boards.
Annual Responses: 33.
Annual Burden Hours: 330.
Bureau Clearance Officer: Jim Pinkerton, (202) 343-3574.

Dated: September 14, 1984.

Kenneth L. Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-25486 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Colorado; Official Change of address

AGENCY: Bureau of Land Management, Interior.

ACTION: Official Change of Address.

SUMMARY: The official address of the Bureau of Land Management, Colorado State Office, is changed to read as follows: Bureau of Land Management, Colorado State Office, 2020 Arapahoe Streeet, Denver, Colorado 80205.

This change will not affect filing periods, payments applications, or other documents which must still be filed in accordance with Title 43, Code of Federal Regulations, Section 1821.2; 2–1; 2–2; and 1822.1; 1–1; 1–2.

Kannon Richards,

State Director.

[FR Doc. 84–25480 Filed 9–25–84; 8:45 am]

BILLING CODE 4310–JB–M

Idaho; Public Land Sale; Correction

The following corrections are made to a Notice of Realty Action published in the **Federal Register** on August 6, 1984, on page 31343, Column 2, for Public Land Sale I–20705:

In the "Summary" section, the 20th line is corrected to read: and BL–056199.

In the "Date and Address" section, the date is corrected to read: October 9, 1984.

Dated: September 13, 1984.

J. David Brunner,

Associate District Manager.

[FR Doc. 84–25479 Filed 9–25–84; 8:45 am]

BILLING CODE 4310–GG–M

Intent To Amend the Whitewater Management Framework Plan, Grand Junction Resource Area, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Amendment to Whitewater Management Framework Plan, Grand Junction Resource Area, Colorado.

SUMMARY: In accordance with 43 CFR Part 1600 and Pub. L. 94–579, the Bureau of Land Management, Grand Junction District, Grand Junction Resource Area proposes to prepare a planning amendment to the Whitewater Management Framework Plan (MFP). The amendment is in response to the August 12, 1981 land exchange proposed by Ute Water Conservancy District that would affect the following described lands.

Selected Land (public):

Mesa County

T. 10 S., R. 96 W. 6th Principal Meridian
  Sec. 9: NE¼SW¼NE¼, SE¼SW¼NE¼, SW¼SW¼NE¼, SE¼NE¼, N½SW¼, SW¼SW¼, N½SE¼;
  Sec. 10: W½SW¼NW¼, NE¼NW¼, SW¼NW¼, S½NW¼NW¼, NW¼SW¼;
  Sec. 16: NW¼NW¼.

Offered Land (private):

Mesa County

T. 10 S., R. 96 W. 6th Principal Meridian
  Sec. 5: SE¼SE¼;
  Sec. 6: E½SW¼, W½SE¼, SE¼SE¼: portions within
  Sec. 7: N½NE¼: portions within
  Sec. 8: N½N½, SW¼NE¼.

Issues identified, and to be addressed in the plan amendment, include loss of public recreational use of the selected lands, Ute's terminal water storage reservoir, and water quality. The scoping process consisted of a Public Notice filed September 2, 1981, public tour of the amendment area on November 21, 1981, and a 30-day comment period on a draft environmental assessment released July 15, 1982. Additional scoping will consist of a 30-day comment period from the date of this notice. Written comments, submitted within this 30-day period, which identify new issues will be considered and incorporated into the final environmental assessment and plan amendment. A 30-day protest period will be held on the final plan amendment prior to implementation.

Planning criteria consist of: (1) Determining whether the selected lands are suitable for disposal by exchange; (2) determining if offered lands will benefit management of public lands if acquired; and (3) determining if the public interest will be served by making the exchange.

The plan amendment is being prepared through the use of an interdisciplinary team with expertise in the following areas: lands, minerals, hydrology, soils, wildlife, recreation, cultural resources, visual resources, and vegetation.

Those wishing to comment on the proposed amendment, or to obtain additional information, should contact: Forest Littrell, Area Manager, Grand Junction Resource Area, 764 Horizon Drive, Grand Junction, CO 81501 within 30 days of this notice. The Whitewater MFP and draft EA are available for public review at the office and address noted above.

Dated: September 17, 1984.

Wright C. Sheldon,

District Manager.

[FR Doc. 84–25483 Filed 9–25–84; 8:45 am]

BILLING CODE 4310–JB–M

Colorado; Filing of Plats of Survey

September 19, 1984.

The plats of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., September 19, 1984.

The plat, in two sheets, representing the dependent resurvey of the east, west, and north boundaries, the sudivisional lines, certain mineral claims, and the survey of the subdivision of certain sections, T. 2 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 684, was accepted September 10, 1984.

The plat representing the dependent resurvey of a portion of the east boundary, subdivisional lines, and subdivision of sections 11U, 12U, and 13U, T. 34 N., R. 4 W., South of the Ute Line, New Mexico Principal Meridian, Colorado, Group No. 744, was accepted September 10, 1984.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing a dependent resurvey of the Base Line (south boundary), the north and west boundaries, the subdivisional lines, and the survey of the subdivision of certain sections, T. 1 N., R. 99 W., Sixth Principal Meridian, Colorado, Group 562, was accepted September 10, 1984.

The plat representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 14, and the boundaries of Mineral Survey No. 325, Great Arkansas Placer, and the metes-and-bounds survey of certain lots in sections 13 and 14, T. 48 N., R. 12 E., New Mexico Principal Meridian, Colorado, Group 693, was accepted September 10, 1984.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 84–25527 Filed 9–25–84; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Notice of Finding of No Significant Impact on the Program for Evaluation of Mitigation Strategies for Acidified Surface Waters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service intends to evaluate five or six of the most promising techniques for mitigating effects of acid precipitation on aquatic systems. These studies are in accordance with the Fish and Wildlife Act of 1956 that directs a program of continuing research and information

services on fish and wildlife matters. Techniques to be tested at about 45 sites include the addition of alkaline materials, creation of refugia within systems and stocking of depleted systems. States cooperating in this program will be given guidelines regarding conduct of the research. Techniques that prove acceptable will be described in guidance manuals to be prepared after the research phase.

Alternatives considered include: (1) Proposed action, (2) fewer techniques at fewer sites, (3) more techniques at more sites, (4) efforts focused on watersheds rather than aquatic systems, (5) literature review and monitoring as a supplement to ongoing mitigation programs, and (6) no action.

Based on a review and evaluation of the information contained in the environmental assessment, we have determined that the proposed program is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Our decision will not be final until 30 days following publication of this notice. The environmental assessment can be viewed at 1375 K Street, NW., Room 401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David M. Smith, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202/343-5452).

Dated: September 21, 1984.

Robert A. Jantzen,

Director.

[FR Doc. 84-25477 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Salem Maritime National Historic Site, Salem, MA; Historic Leasing

AGENCY: Salem Maritime National Historic Site, National Park Service, Interior.

ACTION: Notice of historic leasing.

NOTICE: The National Park Service is seeking proposals from private individuals or firms to lease historic waterfront property at Salem Maritime National Historic Site, Salem, Massachusetts. The property to be leased includes 150, 800, and 2100 foot long wharfs. Interested parties should address inquiries to Historic Property Realty Officer, Land Resources Division, National Park Service, 15 State Street, Boston, Massachusetts 02109, (617) 223-3780. Request for Proposals will be available by September 20, 1984. Phase 1 proposals will be due no later than 5:00 p.m., November 23, 1984.

Dated: September 14, 1984.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 84-25449 Filed 9-25-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than October 9, 1984. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwood, (202) 632-3378, IRM/PE, Room 708B, SA-12, Washington, D.C. 20523.

Date Submitted: September 14, 1984.
Submitting Agency: Agency for International Development.
OMB No.: 0412-0011.
Form No.: AID 1010-2.
Type of Submission: Extension.
Title: Application for Assistance—American Schools and Hospitals Abroad.

Purpose: This information collection is used by U.S. sponsors in applying for grant assistance from the American Schools and Hospitals Abroad (ASHA). ASHA is a competitive grant program under AID, designed to provide assistance to selected U.S. sponsors for the exclusive benefit of their overseas institutions worldwide. The program receives an annual budget appropriated by Congress under Section 214 of the Foreign Assistance Act, as amended.

Date Submitted: September 14, 1984.
Submitting Agency: Agency for International Development.
OMB No.: None.
Form Nos.: AID 1380-1, 1380-5, 1380-12, 1380-16, 1380-18, 1380-45, 1380-57B, 1380-69, 1380-76, 1380-88, 1381-1, 1381-4.
Type of Submission: New.
Title: Participant Training Data.

Purpose: This collection of forms are required to aid in the implementation of the AID Participant Training Program. They are used to provide data on foreign nationals and their prospective training while in the U.S. Respondents include the AID Missions, U.S. government employees, contractors, and non-profit organizations.

Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: September 14, 1984.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 84-25463 Filed 9-25-84; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-221 and 222 (Preliminary)]

Certain Cast-Iron Pipe Fittings From Brazil and India

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigations Nos. 701-TA-221 and 222 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil and India of non-alloy cast-iron pipe and tube fittings other than for cast-iron soil pipe, provided for in items 610.62, 610.65, 610.70, and 610.74 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of Brazil and India.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carpenter, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0399.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on September 18, 1984, by the Cast Iron Pipe Fittings Committee.[1]

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[1] The 5 member producers of this committee are Stanley G. Flagg & Co., Inc., ITT-Grinnell, Stockham Valves & Fittings Co., U-Brand Corp., and Ward Foundry Div. of Clevepak Corp.

The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petition, or by November 2, 1984 (19 CFR 207.17).

Participation.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in these investigations. Any party submitting a document in connection with the investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before October 16, 1984, a written statement of information pertinent to the subject matter of these investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 12, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW, Washington, D.C. Parties wishing to participate in the conference should contact Robert Carpenter (202–523–0399), not later than October 5, 1984, to arrange for their appearance. Parties in support of the imposition of countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection.—A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 21, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25566 Filed 9–25–84; 8:45 am]

BILLING CODE 7020-01-M

[Investigation No. 337-TA-195

Certain Cloisonne Jewelry; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 4) terminating the above-captioned investigation with respect to respondent The Answer, Ltd. on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATION: On June 28, 1984, complainant Laurel Burch, Inc., and respondent The Answer, Ltd. filed a joint motion to terminate the investigation as to respondent The Answer, Ltd. on the basis of a settlement agreement. The presiding officer issued an ID granting the joint motion for termination on August 23, 1984. No petitions for review or comments from Government agencies or the public were received.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Judith Czako, Esq., Office of the General Council, U.S. International Trade Commission, telephone 202–523–3395.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

Issued: September 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25560 Filed 9–25–84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-201 (Preliminary)]

Egg Filler Flats From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of molded egg filler flats of pulp (but not of paper or of paperboard), provided for in item 256.70 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 3, 1984, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by Keyes Fibre Co., Stamford, CT., and Packaging Corp. of America, Evanston, IL, alleging that molded egg filler flats of pulp are being sold in the United States at LTFV and that an industry in the United States is materially injured or threatened with material injury by reason of such imports. Accordingly, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

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[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes not participating.

Notice of the institution of the Commission's investigation and of the public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on August 15, 1984 (49 FR 32693). The conference was held in Washington, D.C. on August 24, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on September 17, 1984. A public version of the Commission's report, Egg Filler Flats from Canada, (inv. No. 731–TA–201 (Preliminary), USITC Publication 1577, September 1984) contains the views of the Commission and information developed during the investigation.

Issued: September 17, 1984.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-25671 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–187]

Certain Glass Construction Blocks

Notice is hereby given that the prehearing conference in this proceeding scheduled for October 2, 1984, and the hearing scheduled to commence immediately thereafter (49 FR 25319) are cancelled.

The prehearing conference is rescheduled to commence at 9:00 a.m. on October 22, 1984, in Room 6311 at the Interstate Commerce Commission Building at 12th & Constitution Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this Notice in the **Federal Register**.

Issued: September 20, 1984.

Janet D. Saxon,
Administrative Law Judge.

[FR Doc. 84-25567 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–171]

Certain Glass Tempering Systems; Commission Decision Not To Review Initial Determination; Deadline for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination (ID) that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation and interested government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure. 19 CFR 210.53–56.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation in response to a complaint filed by Glasstech, Inc., on October 11, 1983, to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain glass tempering systems including frictionally driven oscillating roller hearth furnaces into the United States, or in their sale, by reason of alleged (1) infringement of claims 39–42 of U.S. Letters Patent 3,806,312 ('312 patent), or (2) infringement of claim 1 of U.S. Letters Patent 3,994,711 ('711 patent), the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The two respondents in the investigation are AB Kyro OY, a corporation of Finland, and Tamglasss, Inc., a Pennsylvania corporation which is a wholly-owned subsidary of AB Kyro OY.

On June 4, 1984, the parties stipulated that issues relating to the '312 patent were dismissed from this investigation with prejudice against complainant as to the respondents, but without prejudice to the introduction by any party of evidence relating to the '312 patent relevant to issues relating to the '711 patent.

On August 16, 1984, the presiding officer issued an ID that there is a violation of section 337 in the importation and sale of the glass tempering systems under investigation. Specifically, the presiding officer determined that the '711 patent is valid, that it is being infringed under the doctrine of equivalents, and that the importation of the infringing product has the effect and tendency of substantially injuring an efficiently and economically operated domestic industry.

Respondents filed a petition for review of the ID with respect to the issues of validity and infringement of the '711 patent and of substantial injury. Complainant filed a reply to respondents' petition for review. No other petitions or agency comments were received.

Written Submissions

Inasmuch as the Commission has found that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond, if any which should be imposed.

The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interested, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day which is fourteen (14) days after publication of this notice in the **Federal Register.**

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadline stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly.

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Hannelore V. M. Hasl, Esq., Office of General Counsel, United States International Trade Commission, telephone 202–523–0259.

Issued: September 17, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25570 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–183]

Certain Indomethacin; Extension of Time for Commission Decision on Whether To Order Review of Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the date by which the Commission must decide whether to review the presiding officer's initial determination (ID) designating the above-captioned investigation more complicated has been changed from September 19, 1984, to October 11, 1984, so that the Commission can first determine whether to review a subsequent ID granting a motion for summary determination and terminating the investigation.

Authority: 19 U.S.C. 1337 and 1337a; 19 CFR 210.53(h).

SUPPLEMENTARY INFORMATION: The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 and 19 U.S.C. 1337a) in the importation or sale of certain indomethacin. See 49 FR 6811 (Feb. 23, 1984). The imported indomethacin allegedly is manufactured abroad by a process that would infringe claims 1, 2, 4, and 7 of U.S. Letters Patent 3,629,284 if the process were practiced in the United States.

On August 20, 1984, the presiding officer issued an ID (Order No. 37) designating the investigation more complicated. The presiding officer determined that a more complicated designation was warranted in light of (1) the number of parties, (2) the complexity of the subject matter, (3) anticipated difficulty in obtaining required information, and (4) due process considerations. On August 24, 1984, complainant Merck & Co. filed a petition for review of the ID. The Commission investigative attorney and four respondents subsequently filed responses opposing Merck's petition.

On August 30, 1984, respondent Mylan Pharmaceuticals, Inc., filed Motion No. 183–59 for summary determination and an order terminating the investigation. Mylan argued that the patent in controversy has expired because of a terminal disclaimer. On September 11, 1984, the presiding officer issued an ID (Order No. 41) granting Mylan's motion and terminating the investigation.

Under § 210.53(h) of the Commission's rules, an ID becomes the determination of the Commission 30 days after the date of service of the ID, unless the Commission orders a review within 30 days of the date of filing of the ID or extends the deadline for deciding whether to order review. The 30-day deadline for the Commission to determine whether to review the ID designating the investigation more complicated is September 19, 1984. The 30-day deadline for the Commission to decide whether to review the ID terminating the investigation is October 11, 1984. In order to first determine whether to review the termination ID, the Commision has decided to change the deadline for determining whether to review the "more complicated" ID to October 11, 1984.

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, Docket Section, 701 E Street NW., Washington, D.C. 20436 telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: N. Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436; telephone 202–523–0311.

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–25564 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–183 (Final)]

Large Diameter Carbon Steel Welded Pipes From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from Brazil of carbon steel welded pipes, over 16 inches in outside diameter, provided for in item 610.32 of the Tariff Schedules of the United States, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–183 (Final) under section 735(b) of the act (19 U.S.C.

1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final dumping determination in this case on or before November 13, 1984, and the Commission will make its final injury determination by January 2, 1985 (19 CFR 207.25).

EFFECTIVE DATE: September 5, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–523–0399), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On May 7, 1984 the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured by reason of alleged LTFV imports of large diameter carbon steel welded pipes from Brazil. The preliminary investigation was instituted in response to a petition filed on March 21, 1984, by counsel on behalf of Berg Steel Pipe Corp. of Panama City, Florida.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c)).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on November 5, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m., on November 20, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 9, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m., on November 15, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 15, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with 207.22 (19 CFR § 207.22). Posthearing briefs must conform with the provisions of §207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 27, 1984.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 27, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR part 201).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 21, 1984.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 84–25569 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–181]

Certain Meat Deboning Machines; Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the initial determination (Order No. 16) (I.D.) amending the complaint and notice of investigation to add allegations of infringement of claim 4 of the patent in controversy in the above-captioned investigation.

SUPPLEMENTARY INFORMATION: The Commission received one petition for review of the I.D. but no comments from Government agencies.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0311

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.22 and 210.53 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.22 and 210.53).

By order of the Commission.

Issued: September 20, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84–25563 Filed 9–25–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-198]

Certain Portable Electronic Calculators; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 11) terminating the above-captioned investigation with respect to respondent Sears, Roebuck & Co. on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATION: On August 10, 1984, complainant Texas Instruments, Inc., respondent Sears, Roebuck & Co. and the Commission investigative attorney filed a joint motion to terminate the investigation as to respondent Sears, Roebuck & Co. on the basis of a settlement agreement. The presiding officer issued an ID granting the joint motion for termination on August 24, 1984. No petitions for review or comments from Government agencies or the public were received.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

Issued: September 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25562 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-185]

Certain Rotary Wheel Printing Systems; Commission Decision Not To Review Initial Determination Terminating Olympia Werke Aktiengesellschaft and Olympia U.S.A., Inc.

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (ID) to terminate Olympia Werke Aktiengesellschaft and Olympia U.S.A., Inc. as respondents in the above-captioned investigation based on a settlement agreement.

SUPPLEMENTARY INFORMATION: Notice of the ID was published in the **Federal Register** of August 30, 1984, 49 FR 34421. No petition for review was filed, nor were any comments from Government agencies or the public received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: George Holoch, Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (a), (c), and (h).

Issued: September 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25561 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-186]

Certain Tennis Rackets; Commission Decision Not To Review Initial Determination Terminating Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to terminate Rossignol Ski Co., Inc., and Skis Rossignol, S.A. (the Rossignol respondents), as respondents in the above-captioned investigation on the basis of a settlement agreement.

SUPPLEMENTARY INFORMATOIN: On July 7, 1984, complainant Prince Manufacturing Co., and the Rossignol respondents filed a motion (Motion No. 186-20) to terminate the Rossignol respondents as respondents in the investigation on the basis of a settlement agreement. The Commission investigative attorney supported the motion.

On August 9, 1984, the presiding officer issued an ID (Order No. 19) granting the motion. The Commission received neither a petition for review of the ID nor comments from the public or other Government agencies.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, telephone 202-523-0499.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (c) and (h).

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25572 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

Vitamin K From Spain; Request for Public Comment on Termination of Countervailing Duty Investigation

AGENCY: International Trade Commission.

ACTION: Request for comments on proposed termination of countervailing duty investigation under section 104(b) of the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone 202-523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the countervailing duty order on vitamin K from Spain (T.D. 76-321). Notice of the countervailing duty order was published on November 16, 1976, in the **Federal Register** (41 FR 50419).

The Commission received a letter on September 11, 1984, from Heterochemical Corp., the original

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petitioner for the countervailing duty order, stating that it withdraws its request for the imposition of countervailing duties under the above-referenced countervailing duty order.

In light of the legislative history of section 704(a) of the Tariff Act of 1930 indicating Congress' expectation that the Commission will permit public comment prior to termination, the Commission requests written comments from persons concerning the proposed termination of the investigation on vitamin K from Spain. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the **Federal Register**.

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25566 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

[332-194]

World Trade Flows in Major Agricultural Products

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1322(g)) for the purpose of gathering and presenting information on world trade flows in major agricultural products.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell C. Grant, principal analyst (telephone 202-724-0099), or Mr. David L. Ingersoll, Chief, Agriculture, Fisheries, and Forest Products Division (telephone 202-724-0068), U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

At the request of the United States Senate Committee on Finance, the Commission has instituted investigation No. 332-194 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of examining world trade flows involving major U.S. agricultural products to determine trade patterns, what shifts have taken place, and the reasons for the trade patterns and shifts. The study will also examine U.S. and world trade in broad commodity areas (e.g., grains, oilseeds, animal products, fruits, and vegetables).

The Committee requested that the Commission's report on this investigation should include, to the extent possible, information with respect to those factors affecting overall agricultural trade, as well as the position of the United States in world agricultural trade. The study should focus on such factors of competition as commodity cycles, wage rates, exchange rates, transportation costs, trade barriers, government targeting practices, and other pertinent factors. The report should further examine the impact of shifts in world agricultural trade on U.S. trade, and the implications of such shifts.

Written Submissions

Although there is no public hearing scheduled for this study, interested persons are invited to submit written statements concerning the investigation by October 31, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedures* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: September 18, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-25565 Filed 9-25-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-No. 125X)]

Rail Carriers, Illinois Central Gulf Railroad Company; Abandonment Exemption; Madison County, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Illinois Central Gulf Railroad Company of 6.57 miles of track in Madison County, TN, subject to standard labor protective conditions.

DATES: This exemption shall be effective on October 26, 1984. Petitions for reconsideration must be filed by October 16, 1984. Petitions for stay must be filed by October 9, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-43 (Sub-No. 125X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative, Richard M. Kamowski, Esq., 233 N. Michigan Avenue, Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 18, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-25553 Filed 9-25-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lambert N. DePompei, M.D.; Revocation of Registration; Denial of Application

On June 22, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Lambert N. DePompei, M.D. of Detroit Family Practice, 8413 Lake Avenue, Cleveland, Ohio 44102, an Order to Show Cause proposing to revoke Dr. DePompei's DEA Certificate of Registration AD5126873 and to deny his pending application for registration. The Order to Show Cause that was sent by registered mail to Dr. DePompei was returned to DEA unclaimed. However, a copy of the Order to Show Cause was also sent by registered mail to counsel for Dr. DePompei. DEA received the return receipt which indicated that the Order to Show Cause was delivered to and accepted by the lawyers on June 27, 1984. Dr. DePompei failed to respond to the Order to Show Cause within 30 days of its receipt as set forth in the Order to Show Cause. Therefore, Dr. DePompei was deemed to have waived his opportunity for a hearing. 21 CFR 1301.54 (a) and (d). Accordingly, the

Administrator enters his final order in this matter. 21 CFR 1316.67.

The Administrator finds that on August 13, 1982, Dr. DePompei was indicted by the Cuyahoga County Grand Jury on four counts of Trafficking in Drugs in violation of Ohio Revised Code Section 2925.03. These four counts involved the following controlled substances: biphetamine, Eskatrol, methaqualone and Demerol. Dr. DePompei was also indicted on twenty-nine counts of Possession of False or Forged Prescriptions in violation of Ohio Revised Code Section 2925.23. These counts involved the sale by Dr. DePompei of Schedule II prescriptions for controlled substances which were false or forged.

At the state criminal trial in this matter the prosecution offered the testimony of an organized crime figure who described his relationship with Dr. DePompei. The witness testified that Dr. DePompei wrote at least 200 prescriptions for controlled substances using fictitious names. He gave these prescriptions to orgnaized crime members who in turn sold them. At the trial, Dr. DePompei admitted his actions, but said that he was threatened by the organized crime members. This explanation did not excuse Dr. DePompei's illegal activities. Instead of succumbing to these threats, DePompei could have contacted law enforcement authorities, but he did not.

Consequently, after a jury trial, Dr. DePompei was found guilty of all four counts of trafficking in drugs and of twenty-seven of the twenty-nine counts of possession of false or forged prescriptions. Dr. DePompei was sentenced to serve mandatory actual incarceration for seven years at the Columbus Correctional Facility, Columbus, Ohio. He could serve as much as twenty-five years at the facility. These are all felony convictions relating to controlled substances. Therefore, there is a lawful basis for the revocation of Dr. DePompei's registration and for the denial of his pending application for registration. 21 U.S.C. 824(a)(2).

Since Dr. DePompei did not offer evidence of any mitigating circumstances, the Administrator has no choice but to revoke Dr. DePompei's registration and to deny his pending application. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Cretificate of Registration AD5126873, previously issued to Lambert N. DePompei, M.D., be, and it hereby is, revoked. Any pending applications for registration are hereby denied, effective October 26, 1984.

Dated: September 21, 1984.

Francis M. Mullen, Jr.,
Administrator.

[FR Doc. 84-25508 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-09-M

Gilbert Miller, M.D.; Denial of Application

On June 22, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Gilbert Miller, M.D. (Respondent) of 1077 Northern Boulevard, Roslyn, New York 11576, proposing to deny Respondent's application for registration under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Miller's controlled substance-related felony conviction. In a letter dated July 20, 1984, Respondent specifically waived his opportunity for a hearing pursuant to 21 CFR 1301.54(c). The Administrator enters this final order on the record as it appears. 21 CFR 1301.54 (d) and (e).

The Administrator finds that on May 3, 1978, Respondent was convicted in the United States District Court for the Southern District of New York of unlawful distribution of Schedule II controlled substances, in violation of 21 U.S.C. 841(a)(1). This is a felony conviction relating to controlled substances. Subsequent to his conviction, Respondent applied for a DEA Certificate of Registration on January 22, 1979. The then Administrator of DEA issued an Order to Show Cause proposing to deny this application. There was a lawful basis for the denial under 21 U.S.C. 824(a)(2). *Serling Drug Company*, Docket No. 74-12, 40 FR 11918 (1975); *Raphael C. Cilento, M.D.*, Docket No. 79-2, 44 FR 30466 (1979); *Thomas W. Moore, Jr., M.D.*, Docket No. 79-13, 45 FR 40743 (1980). Following a hearing on the issues raised by the Order to Show Cause, the then Administrator ordered the denial of Respondent's January 22, 1979, application for registration. This order was published in the **Federal Register**, Volume 45, No. 207, at page 70350, on Thursday, October 23, 1980.

Respondent executed another application for registration on December 5, 1983. It is this application that is the subject of this final order. By waiving his opportunity for a hearing, Respondent has not presented any new evidence that would justify the Administrator granting Respondent's application. The facts remain the same as those previously found to exist by the then Administrator and published in the **Federal Register** on October 23, 1980. Respondent issued prescriptions for controlled substances to a cooperating individual. There was evidence that the Respondent believed that the individual intended to use the prescriptions to obtain drugs for illegal sale to others. Respondent also sold an undercover DEA Agent prescriptions for both methaqualone and Biphetamine. Dr. Gilbert issued these prescriptions after performing a perfunctory physical examination on the agent. The Administrator has not been convinced that Respondent is now more qualified to hold a DEA registration than he was in 1980.

Accordingly, having concluded that there is a lawful basis for the denial of Respondent's application for registration and having further concluded that under the circumstances in this case the application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application of Gilbert Miller, M.D. for registration under the Controlled Substances Act, be, and it hereby is, denied, effective October 26, 1984.

Dated: September 21, 1984.

Francis M. Mullen, Jr.,
Administrator.

[FR Doc. 84-25500 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-19]

Michael A. Rush, D.P.M.; Denial of Application

On July 12, 1982, the then-acting Administrator of the Drug Enforcement Administration (DEA) issued to Michael A. Rush, D.P.M. (Respondent), of Hollywood, Florida, an Order to Show Cause proposing to deny the Respondent's pending application for registration. The Order to Show Cause was predicated, pursuant to 21 U.S.C. 824(a)(2), on Respondent's conviction of felony offenses relating to controlled substances. The Respondent filed a request for a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge Francis L. Young.

Following the hearing in this matter, Judge Young issued his opinion, recommended ruling, findings of fact and conclusions of law, and a recommended decision. Copies of the judge's opinion were sent to the Respondent and to counsel for the

Respondent and for the Government. Neither side filed exceptions to the judge's findings and conclusions. However, the Respondent did file a motion to vacate the Administrative Law Judge's recommended decision. This motion was denied by the Administrative Law Judge.

Subsequently, pursuant to 21 CFR 1316.65(c), the entire record of these proceedings was transmitted to the Administrator. The Administrator now issues his final order in this matter, based on findings of fact and conclusions of law as are hereinafter set forth.

The Administrator finds that the Respondent was a subject of an indictment handed up by a Grand Jury of the United States District Court for the District of Connecticut. The indictment charged that from on or about January 1, 1979, and continuing until on or about April 20, 1979, in the District of Connecticut and elsewhere, Respondent and several other persons conspired, in violation of 21 U.S.C. 846, to import into the United States from the Bahamas a controlled substance, marihuana, a violation of 21 U.S.C. 952; and to possess a controlled substance, marihuana, with intent to distribute it, in violation of 21 U.S. C. 841(a)(1). On November 14, 1980, following a jury trial in the U.S. District Court for the District of Connecticut, Respondent was convicted as charged and was sentenced to a term of imprisonment of three years and was required to pay a committed fine of $15,000. The Respondent served about one year of confinement in the Federal Detention Facility at Elgin Air Force Base, Florida, and then spent 81 days in a half-way house in Fort Lauderdale. While at the half-way house, Respondent began to reestablish himself in the community and in the practice of his profession of podiatry. He was released from the half-way house program in September 1982. Respondent has paid his fine and, in the course of the criminal proceedings, forfeited the sum of $33,000 to the Government.

On March 20, 1981, the United States Court of Appeals for the Second Circuit affirmed the Respondent's conviction. See, *United States* v. *Rush*, 666 F.2d 10. In its *Per Curiam* opinion, the Court of Appeals noted that Respondent had "lent a total of $25,000 in two transactions to his co-conspirators to finance the purchase of marihuana from sources in the Bahamas." Respondent's "co-conspiratiors repaid the principal amount of the loan and $15,000 in interest. The proceeds of the loan were used to import marihuana on at least three occasions. The marihuana was distributed in Florida." During the trial and in the hearing in this matter, Respondent contended that he had no knowledge of the use to which the proceeds of the loan were to be put. On appeal, however, according to the Court's opinion, he conceded that he had such knowledge. According to the appellate opinion, Respondent supplied cash which made the illegal venture possible and he financed this venture at an exorbitant and usurious profit, knowing full well the source of the repayment he received. He acted in a secretive and clandestine fashion, obtaining first a mortgage note reflecting a ten percent rate of interest. That note was recorded. A second mortgage note was prepared for $10,000 which required payment of $20,000 in five days. "For obvious reasons, that [second] note was not recorded." The Court of Appeals further noted that the "surreptitious nature of the loans was evidenced not only by Rush's omission to record the usurious mortgage note but also by his method of withdrawal and replenishment from his bank account. He withdrew a total of $20,000 net to finance the loans, and, although his profits amounted to $40,000, he redeposited only $10,000 so as to show no additional income." The Respondent claimed lack of knowledge of the purpose of the money he loaned was contradicted by the testimony of two of his co-conspirators, it was disbelieved by the jury in his criminal trial and by the Administrative Law Judge in this matter, and it is deemed unworthy of belief by the Administrator.

The Respondent is a practicing podiatrist in Hollywood, Florida. He has published articles and papers and has lectured on sports and health-related topics before diverse audiences. He has appeared on radio and television. He has been active in various professional and civic organizations. He is married and has four children. The record in this matter contains six affadavits attesting to the Respondent's good character and reputation in the community.

The Respondent is a practicing doctor and a highly visible advocate of physical fitness and good health habits. Yet he willingly engaged in a criminal conspiracy whose ultimate goal was to illegally import and distribute marihuana in total disregard of the public health consequences of those criminal acts. It matters not that the Respondent never intended to touch, or even see, the load of contraband. The person who provides financing for such an operation is every bit as culpable as the pilot who flies it into the country or the dealer who sells it on the street.

Furthermore, it is wholly irrelevant that the crimes of which Respondent was convicted were not in any way connected with his activities as a DEA registered practitioner. The governing statute, 21 U.S.C. 824(a) speaks only of a felony relating to any substance defined as a controlled substance. This agency has consistently held that such offenses are grounds for the revocation or denial of a DEA registration. See, *Aaron A. Moss, D.D.S.*, Docket No. 80–2, 45 FR 72850 (1980), where a dentist was denied registration after he was convicted of acting as a courier smuggling cocaine into this country; *Raymond H. Wood, D.D.S.*, Docket No. 82–32, 48 FR 48727 (1983), in which a dentist's registration was revoked after he had been convicted of conspiring to possess with intent to distribute large quantities of marihuana; and *Tilman J. Bentley, D.O.*, Docket No. 82–22, 49 FR 35049 (1984), wherein a physician's registration was revoked as a result of his conviction for conspiring to illegally manufacture methaqualone tablets.

There is a lawful basis for denial of the Respondent's application for registration. As the Administrative Law Judge stated in his opinion in this matter, Respondent's "boldly two-faced approach to his responsibilities as a doctor leaves scant room for confidence that [he] can be trusted with control over abusable drugs . . ." Accordingly, pursuant to the authority delegated to the Administrator of the Drug Enforcement Administration by 21 U.S.C. 823 and 824, and 28 CFR 0.100, the Administrator hereby orders that the application of Michael A. Rush, D.P.M., be, and it hereby is, denied.

The Administrator observes that the Respondent has been without a DEA registration since June, 1981, and that he has been back in practice in his community since September, 1982. Thus, the Respondent has had about two years in which to demonstrate that he has recommitted himself to the professional responsibilities which he previously abandoned. Should the Respondent decide to reapply for registration, he will again be given an opportunity to be heard in support of his application. In such a hearing, the Administrator will be most interested in learning whether the Respondent has publicly repudiated his criminal past and whether he has used his highly-visible position as a health professional to help educate his community with respect to the consequences of drug abuse. Such evidence would greatly assist the Administrator in determining whether the Respondent can again be entrusted with responsibilities of a registration.

Dated: September 21, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-25507 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Investigation

Advisory Policy Board of the National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on October 17 and 18, 1984, from 9 a.m. until 5 p.m. at the Olde Colony Inn, First and North Washington Streets, Alexandria, Virginia.

The major topics to be discussed include:

(1) Status report on the phased testing and future development of the Interstate Identification Index.

(2) Proposed dissemination of missing person data to the National Center for Missing and Exploited Children.

(3) Presentations of proposals recommended by state and local users of the NCIC System to enhance the quality and completeness of records in the System.

(4) Results of the random survey to measure the benefits derived from the use of the NCIC Wanted Person File.

The meeting will be open to the public with approximately 25 seats available for seating on a first-come-first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-324-2606.

Dated: September 19, 1984.

William H. Webster,

Director.

[FR Doc. 84-25408 Filed 9-25-84; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB); Substituted Guidelines for BLS Approval Number 1220-0029

Background

On July 20, 1984 (49 FR 29484), the Bureau of Labor Statistics (BLS), U.S. Department of Labor, announced in the **Federal Register** in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35) that it was proposing a revision in its recordkeeping package for the Log and Summary of Occupational Injuries and Illnesses (OSHA No. 220) and Supplementary Record of Occupational Injuries and Illnesses (OSHA No. 101). The proposal consisted of revised recordkeeping guidelines, Recordkeeping Guidelines for Occupational Injuries and Illnesses, which BLS made available to the public for comment.

Substitution

After reviewing the public comments, the BLS has decided to substitute the guidelines which have been in effect since 1978, Report 412-3, "What Every Employer Needs to Know About OSHA Recordkeeping", for the proposed guidelines as part of the recordkeeping package. OMB has approved the continued use of the existing log and summary (OSHA No. 200), supplementary record (OSHA No. 101), and Report 412-3. In doing so, OMB has assigned control number 1220-0029 to each of the forms, and to Report 412-3.

The BLS and OMB took this action to assure the quality, continuity, comparability and integrity of the BLS statistical series, while affording the Bureau the time needed to evaluate the comments submitted by the public. With OMB approval of Report 412-3, BLS feels that it can and will provide the public further opportunity to participate in the revision process without disrupting the collection of consistently accurate statistics for 1984 and 1985.

Signed at Washington, D.C. this 24th day of September, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-25716 Filed 9-25-84; 9:18 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of Labor Surplus Areas is effective October 1, 1984.

SUMMARY: The purpose of this notice is to announce the annual list of Labor Surplus Areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service (Attention: TEES), 601 D Street, NW., Washington, D.C. 20213. Telephone: 202-376-6753.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in Labor Surplus Areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as Labor Surplus Areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as Labor Surplus Areas pursuant to the criteria specified in the regulations and to publish annually a list of Labor Surplus Areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a Labor Surplus Area under Subpart A. Thus, Labor Surplus Areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

Pursuant to those regulations the Assistant Secretary of Labor is publishing below the annual list of Labor Surplus Areas for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C., on September 19, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985

Eligible labor surplus areas	Civil jurisdictions included
Alabama	
Autauge County	Autauga County.
Baldwin County	Baldwin County.
Barbour County	Barbour County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Blount County	Blount County.
Bullock County	Bullock County.
Butler County	Butler County.
Calhoun County	Calhoun County.
Chambers County	Chambers County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Coffee County	Coffee County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Coosa County	Coosa County.
Covington County	Covington County.
Crenshaw County	Crenshaw County.
Cullman County	Cullman County.
Dale County	Dale County.
Dallas County	Dallas County.
De Kalb County	De Kalb County.
Dothan City	Dothan City in Houston County.
Elmore County	Elmore County.
Escambia County	Escambia County.
Etowah County	Etowah County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Geneva County	Geneva County.
Greene County	Greene County.
Hale County	Hale County.
Henry County	Henry County.
Balance of Houston County	Houston County less Dothan City.
Jackson County	Jackson County.
Balance of Jefferson County	Jefferson County less Birmingham City.
Lamar County	Lamar County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Limestone County	Limestone County.
Lowndes County	Lowndes County.
Macon County	Macon County.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobil City	Mobile City in Mobile County.
Balance of Mobile County	Mobile County less Mobile City.
Monroe County	Monroe County.
Montgomery City	Montgomery City in Montgomery County.
Morgan County	Morgan County.
Perry County	Perry County.
Pickens County	Pickens County.
Pike County	Pike County.
Randolph County	Randolph County.
Russell County	Russell County.
Shelby County	Shelby County.
St. Clair County	St. Clair County.
Sumter County	Sumter County.
Talladega County	Talladega County.
Tallapoosa County	Tallapoosa County.
Tuscaloosa City	Tuscaloosa City in Tuscaloosa County.
Balance of Tuscaloosa County.	Tuscaloosa County less Tuscaloosa City.
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.
Alaska	
Angoon Division	Angoon Division.
Bethel Division	Bethel Division.
Bristol Bay Borough Division	Bristol Bay Borough Division.
Fairbanks Division	Fairbanks Division.
Haines Division	Haines Division.
Kenai-Cook Inlet Division	Kenai-Cook Inlet Division.
Ketchikan Division	Ketchikan Division.
Kodiak Division	Kodiak Division.
Kuskokwim Division	Kustokwim Division.
Matanuska-Susitna Division	Matanuska-Susitna Division.
Outer Ketchikan Division	Outer Ketchikan Division.
Prince of Wales Division	Prince of Wales Division.
Seward Division	Seward Division.
Sitka Division	Sitka Division.
Skagway-Yakutat Division	Skagway-Yakutat Division.
Southeast Fairbanks Division	Southeast Fairbanks Division.
Upper Yukon Division	Upper Yukon Division.
Valdez-Chitina-Whittier	Valdez-Chitina-Whittier.
Wade Hampton Division	Wade Hampton Division.
Wrangell-Petersburg Division	Wrangell-Petersburg Division.
Yukon-Koyukuk Division	Yukon-Koyukuk Division.
Arizona	
Apache County	Apache County.
Cochise County	Cochise County.
Coconino County	Coconino County.
Gila County	Gila County.
Graham County	Graham County.
Greenlee County	Greenlee County.
La Paz County	La Paz County.
Mohave County	Mohave County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Yuma County	Yuma County.
Arkansas	
Ashley County	Ashley County.
Bradley County	Bradley County.
Chicot County	Chicot County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Conway County	Conway County.
Crawford County	Crawford County.
Crittenden County	Crittenden County.
Cross County	Cross County.
Desha County	Desha County.
Drew County	Drew County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Garland County	Garland County.
Grant County	Grant County.
Greene County	Greene County.
Hot Spring County	Hot Spring County.
Jackson County	Jackson County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Nevada County	Nevada County.
Newton County	Newton County.
Ouachita County	Ouachita County.
Perry County	Perry County.
Phillips County	Phillips County.
Pike County	Pike County.
Pine Bluff City	Pine Bluff City in Jefferson County.
Poinsett County	Poinsett County.
Polk County	Polk County.
Pope County	Pope County.
Prairie County	Prairie County.
Randolph County	Randolph County.
Scott County	Scott County.
Searcy County	Searcy County.
Balance of Sebastian County	Sebastian County less Fort Smith City.
Sharp County	Sharp County.
St. Francis County	Francis County.
Stone County	Stone County.
Texarkana City	Texarkana City in Miller County.
Van Buren County	Van Buren County.
White County	White County.
Woodruff County	Woodruff County.
California	
Amador County	Amador County.
Baldwin Park City	Baldwin Park City in Los Angeles County.
Butte County	Butte County.
Calaveras County	Calaveras County.
Colusa County	Colusa County.
Compton City	Compton City in Los Angeles County.
Del Norte County	Del Norte County.
El Cajon City	El Cajon City in San Diego County.
El Dorado County	El Dorado County.
El Monte City	El Monte City in Los Angeles County.
Fairfield City	Fairfield City in Solano County.
Fresno City	Fresno City in Fresno County.
Balance of Fresno County	Fresno County less Fresno City.
Glenn County	Glenn County.
Humboldt County	Humboldt County.
Imperial County	Imperial County.
Inglewood City	Inglewood City in Los Angeles County.
Balance of Kern County	Kern County less Bakersfield City.
Kings County	Kings County.
Lake County	Lake County.
Lancaster Coty	Lancaster City in Los Angeles County.
Lassen County	Lassen County.
Los Angeles City	Los Angeles City in Los Angeles County.
Lynwood City	Lynwood City in Los Angeles County.
Madera County	Madera County.
Mariposa County	Mariposa County.
Mendocino County	Mendocino County.
Merced County	Merced County.
Modesto City	Modesto City in Stanislaus County.
Modoc County	Modoc County.
Mono County	Mono County.
Balance of Monterey County	MOnterey County less Salinas City.
Napa City	Napa City in Napa County.
National City	National City in San Diego County.
Nevada County	Nevada County.
Oakland City	Oakland City in Alameda County.
Oxnard City	Oxnard City in Ventura County.
Pico Rivera City	Pico Rivera City in Los Angeles County.
Placer County	Placer County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Plumas County	Plumas County.
Pomona City	Pomona City in Los Angeles County.
Richmond City	Richmond City in Contra Costa County.
Riverside City	Riverside City in Riverside County.
Balance of Riverside County	Riverside County less Riverside City.
Sacramento City	Sacramento City in Sacramento County.
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
San Bernardino City	San Bernardino City in San Bernardino County.
Balance of San Bernardino County.	San Bernardino County less Ontario City. Rancho Cucamonga City. San Bernardino City.
Balance of San Joaquin County.	San Joaquin County less Stockton City.
Santa Cruz County	Santa Cruz County.
Shasta County	Shasta County.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
Balance of Solano County	Solano County less Fairfield City. Vallejo City.
Balance of Sonoma County	Sonoma County less Santa Rosa City.
South Gate City	South Gate City in Los Angeles County.
Balance of Stanislaus County	Stanislaus County less Modesto City.
Stockton City	Stockton City in San Joaquin County.
Sutter County	Sutter County.
Tehama County	Tehama County.
Trinity County	Trinity County.
Balance of Tulare County	Tulare County less Visalia City.
Tuolumne County	Tuolumne County.
Yolo County	Yolo County.
Yuba County	Yuba County.
Colorado	
Archuleta County	Archuleta County.
Chaffee County	Chaffee County.
Clear Creek County	Clear Creek County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Delta County	Delta County.
Eagle County	Eagle County.
Fremont County	Fremont County.
Garfield County	Garfield County.
Lake County	Lake County.
Las Animas County	Las Animas County.
Mesa County	Mesa County.
Mineral County	Mineral County.
Moffat County	Moffat County.
Montezuma County	Montezuma County.
Montrose County	Montrose County.
Otero County	Otero County.
Ouray County	Ouray County.
Park County	Park County.
Pueblo City	Pueblo City in Pueblo County.
Balance of Pueblo County	Pueblo County less Pueblo City.
Saguache County	Saguache County.
San Juan County	San Juan County.
Connecticut	
Ansonia Town	Ansonia Town.
Bristol City	Bristol City.
Killingly Town	Killingly Town.
Plymouth Town	Plymouth Town.
Putnam Town	Putnam Town.
Thomaston Town	Thomaston Town.
Thompson Town	Thompson Town.
Torrington City	Torrington City.
Winchester Town	Winchester Town.
Delaware	
Wilmington City	Wilmington City in New Castle County.
District of Columbia	
Washington, DC City	District of Columbia.
Florida	
Bay County	Bay County.
Calhoun County	Calhoun County.
Collier County	Collier County.
De Soto County	De Soto County.
Franklin County	Franklin County.
Glades County	Glades County.
Gulf County	Gulf County.
Hardee County	Hardee County.
Hendry County	Hendry County.
Hernando County	Hernando County.
Hialeah City	Hialeah City in Dade County
Indian River County	Indian River County.
Jackson County	Jackson County.
Lake County	Lake County.
Miami Beach City	Miami Beach City in Dade County.
Miami City	Miami City in Dade County.
Okeechobee County	Okeechobee County.
Polk County	Polk County.
Putnam County	Putnam County.
St. John County	St. John County.
St. Lucie County	St. Lucie County.
Sumter County	Sumter County.
Washington County	Washington County.
Georgia	
Albany City	Albany City in Dougherty County.
Atkinson County	Atkinson County.
Bartow County	Bartow County.
Brantley County	Brantley County.
Butts County	Butts County.
Calhoun County	Calhoun County.
Chattooga County	Chattooga County.
Crawford County	Crawford County.
Crisp County	Crisp County.
Elbert County	Elbert County.
Fannin County	Fannin County.
Floyd County	Floyd County.
Glascock County	Glascock County.
Gordon County	Gordon County.
Haralson County	Haralson County.
Lincoln County	Lincoln County.
Macon County	Macon County.
McDuffie County	McDuffie County.
McIntosh County	McIntosh County.
Meriwether County	Meriwether County.
Murray County	Murray County.
Oglethorpe County	Oglethorpe County.
Pierce County	Pierce County.
Polk County	Polk County.
Randolph County	Randolph County.
Spalding County	Spalding County.
Stewart County	Stewart County.
Talbot County	Talbot County.
Taliaferro County	Taliaferro County.
Terrell County	Terrell County.
Turner County	Turner County.
Union County	Union County.
Upson County	Upson County.
Warren County	Warren County.
Wayne County	Wayne County.
Wilcox County	Wilcox County.
Worth County	Worth County.
Idaho	
Adams County	Adams County.
Bear Lake County	Bear Lake County.
Benewah County	Benewah County.
Blaine County	Blaine County.
Boise County	Boise County.
Bonner County	Bonner County.
Boundary County	Boundary County.
Canyon County	Canyon County.
Clearwater County	Clearwater County.
Fremont County	Fremont County.
Gem County	Gem County.
Idaho County	Idaho County.
Kootenai County	Kootenai County.
Lemhi County	Lemhi County.
Lewis County	Lewis County.
Power County	Power County.
Shoshone County	Shoshone County.
Valley County	Valley County.
Illinois	
Adams County	Adams County.
Alexander County	Alexander County.
Aurora City	Aurora City in Du Page County, Kane County.
Bond County	Bond County.
Boone County	Boone County.
Bureau County	Bureau County.
Calhoun County	Calhoun County.
Chicago City	Chicago City in Cook County.
Christian County	Christian County.
Cicero City	Cicero City in Cook County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Coles County	Coles County.
Balance of Cook County	Cook County less Arlington Heights City, Chicago City, Cicero City, Des Plaines City, Elgin City, Evanston City, Mount Prospect Village, Oak Lawn City, Oak Park City, and Skokie City.
Crawford County	Crawford County.
Cumberland County	Cumberland County.
De Witt County	De Witt County.
Decatur City	Decatur City in Macon County.
Des Plaines City	Des Plaines City in Cook County.
East St. Louis City	East St. Louis City in St. Clair County.
Edgar County	Edgar County.
Effingham County	Effingham County.
Elgin City	Elgin City in Cook County, Kane County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamilton County	Hamilton County.
Hancock County	Hancock County.
Hardin County	Hardin County.
Henderson County	Henderson County.
Henry County	Henry County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jersey County	Jersey County.
Jo Daviess County	Jo Daviess County.
Johnson County	Johnson County.
Joliet City	Joliet City in Will County.
Kankakee County	Kankakee County.
Kendall County	Kendall County.
Knox County	Knox County.
La Salle County	La Salle County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Logan County	Logan County.
Balance of Macon County	Macon County less Decatur City.
Macoupin County	Macoupin County.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Mason County	Mason County.
Massac County	Massac County.
McDonough County	McDonough County.
McHenry County	McHenry County.
Mercer County	Mercer County.
Montgomery County	Montgomery County.
Moultrie County	Moultrie County.
Ogle County	Ogle County.
Peoria City	Peoria City in Peoria County.
Balance of Peoria County	Peoria County Less Peoria City.
Perry County	Perry County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Piatt County	Piatt County.
Pike County	Pike County.
Pope County	Pope County.
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Randolph County	Randolph County.
Richland County	Richland County.
Rock Island County	Rock Island County.
Rockford City	Rockford City in Winnebago County.
Saline County	Saline County.
Scott County	Scott County.
Shelby County	Shelby County.
Balance of St. Clair County	St. Clair County less East St. Louis City.
Stark County	Stark County.
Stephenson County	Stephenson County.
Tazewell County	Tazewell County.
Union County	Union County
Vermilion County	Vermilion County.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Waukegan City	Waukegan City in Lake County.
Wayne County	Wayne County.
White County	White County.
Whiteside County	Whiteside County.
Balance of Will County	Will County less Joliet City.
Williamson County	Williamson County.
Woodford County	Woodford County.
Indiana	
Adams County	Adams County.
Anderson City	Anderson City in Madison County.
Bartholomew County	Bartholomew County.
Blackford County	Blackford County.
Cass County	Cass County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Daviess County	Daviess County.
De Kalb County	De Kalb County.
Dearborn County	Dearborn County.
Decatur County	Decatur County.
Balance of Delaware County	Delaware County less Muncie City.
Evansville City	Evansville City in Vanderburgh County.
Fayette County	Fayette County.
Floyd County	Floyd County.
Fountain County	Fountain County.
Franklin County	Franklin County.
Fort Wayne City	Fort Wayne City in Allen County.
Fulton County	Fulton County.
Gary City	Gary City in Lake County.
Gibson County	Gibson County.
Grant County	Grant County.
Greene County	Greene County.
Hammond City	Hammond City in Lake County.
Harrison County	Harrison County.
Henry County	Henry County.
Howard County	Howard County.
Huntington County	Huntington County.
Indianapolis City	Indianapolis City in Marion County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jay County	Jay County.
Jefferson County	Jefferson County.
Jennings County	Jennings County.
Knox County	Knox County.
La Porte County	La Porte County.
Balance of Lake County	Lake County less Gary City. Hammond City.
Lawrence County	Lawrence County.
Balance of Madison County	Madison County less Anderson City.
Marshall County	Marshall County.
Martin County	Martin County.
Miami County	Miami County.
Muncie City	Muncie City in Delaware County.
Newton County	Newton County.
Noble County	Noble County.
Ohio County	Ohio County.
Orange County	Orange County.
Owen County	Owen County.
Parke County	Parke County.
Perry County	Perry County.
Pike County	Pike County.
Porter County	Porter County.
Randolph County	Randolph County.
Ripley County	Ripley County.
Rush County	Rush County.
Scott County	Scott County.
Shelby County	Shelby County.
South Bend City	South Bend City in St. Joseph County.
Spencer County	Spencer County.
Starke County	Starke County.
Steuben County	Steuben County.
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
Terre Haute City	Terre Haute City in Vigo County.
Tipton County	Tipton County.
Union County	Union County.
Vermillion County	Vermillion County.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Wells County	Wells County.
White County	White County.
Whitley County	Whitley County.
Iowa	
Appanoose County	Appanoose County.
Benton County	Benton County.
Balance of Black Hawk County.	Black Hawk County less Waterloo City.
Buchanan County	Buchanan County.
Butler County	Butler County.
Chickasaw County	Chickasaw County.
Clinton County	Clinton County.
Davenport City	Davenport City in Scott County.
Davis County	Davis County.
Delaware County	Delaware County.
Des Moines County	Des Moines County.
Dubuque City	Dubuque City in Dubuque County.
Balance of Dubuque County	Dubuque County in Dubuque City.
Emmet County	Emmet County.
Fayette County	Fayette County.
Floyd County	Floyd County.
Jackson County	Jackson County.
Lee County	Lee County
Marshall County	Marshall County.
Monroe County	Monroe County.
Sac County	Sac County.
Van Buren County	Van Buren County.
Wapello County	Wapello County.
Waterloo City	Waterloo City Black Hawk County.
Kansas	
Montgomery County	Montgomery County.
Kentucky	
Allen County	Allen County.
Barren County	Barren County.
Bath County	Bath County.
Bell County	Bell County.
Boone County	Boone County.
Boyd County	Boyd County.
Boyle County	Boyle County.
Bracken County	Bracken County.
Breathitt County	Breathitt County.
Breckinridge County	Breckinridge County.
Bullitt County	Bullitt County.
Butler County	Butler County.
Caldwell County	Caldwell County.
Carlisle County	Carlisle County.
Carter County	Carter County.
Casey County	Casey County.
Clay County	Clay County.
Clinton County	Clinton County.
Crittenden County	Crittenden County.
Edmonson County	Edmonson County.
Elliott County	Elliott County.
Estill County	Estill County.
Fleming County	Fleming County.
Floyd County	Floyd County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Garrard County	Garrard County.
Graves County	Graves County.
Grayson County	Grayson County.
Greenup County	Greenup County.
Harlan County	Harlan County.
Hart County	Hart County.
Henderson County	Henderson County.
Henry County	Henry County.
Hickman County	Hickman County.
Hopkins County	Hopkins County.
Jackson County	Jackson County.
Balance of Jefferson County	Jefferson County less Louisville City.
Johnson County	Johnson County.
Knott County	Knott County.
Knox County	Knox County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leslie County	Leslie County.
Letcher County	Letcher County.
Lewis County	Lewis County .
Lincoln County	Lincoln County.
Livingston County	Livingston County.
Logan County	Logan County.
Louisville City	Louisville City in Jefferson County.
Magoffin County	Magoffin County.
Marion County	Marion County.
Marshall County	Marshall County.
McCreary County	McCreary County.
McLean County	McLean County.
Meade County	Meade County.
Menifee County	Menifee County.
Mercer County	Mercer County.
Metcalfe County	Metcalfe County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
Muhlenberg County	Muhlenberg County.
Nelson County	Nelson County.
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Owensboro City	Owensboro City in Daviess County.
Owsley County	Owsely County.
Pendleton County	Pendleton County.
Perry County	Perry County.
Pike County	Pike County.
Powell County	Powell County.
Pulaski County	Pulaski County.
Robertson County	Robertson County.
Rockcastle County	Rockcastle County.
Rowan County	Rowan County.
Russell County	
Simpson County	Simpson County.
Spencer County	Spencer County.
Todd County	Todd County.
Union County	Union County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Whitley County	Whitley County.
Wolfe County	Wolfe County.
Louisiana	
Acadia Parish	Acadia Parish.
Alexandria City	Alexandria City in Rapides Parish.
Allen Parish	Allen Parish.
Ascension Parish	Ascension Parish.
Assumption Parish	Assumption Parish.
Avoyelles Parish	Avoyelles Parish.
Beauregard Parish	Beauregard Parish.
Bienville Parish	Bienville Parish.
Balance of Bossier Parish	Bossier Parish less Bossier City. Shreveport City

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Caddo Parish	Caddo Parish less Shreveport City.
Balance of Calcasieu Parish	Calcasieu Parish less Lake Charles City.
Caldwell Parish	Caldwell Parish.
Catahoula Parish	Catahoula Parish.
Claiborne Parish	Claiborne Parish.
Concordia Parish	Concordia Parish.
De Soto Parish	De Soto Parish.
East Carroll Parish	East Carroll Parish.
East Feliciana Parish	East Feliciana Parish.
Evangeline Parish	Evangeline Parish.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Iberia Parish	Iberia Parish.
Iberville Parish	Iberville Parish.
Jackson Parish	Jackson Parish.
Jefferson Davis Parish	Jefferson Davis Parish.
La Salle Parish	La Salle Parish.
LaFourche Parish	LaFourche Parish.
Lake Charles City	Lake Charles City in Calcasieu Parish.
Livingston Parish	Livingston Parish.
Madison Parish	Madison Parish.
Monroe City	Monroe City in Quachita Parish
Morehouse Parish	Morehouse Parish.
Natchitoches Parish	Natchitoches Parish.
Balance of Quachita Parish	Quachita Parish less Monroe City.
Pointe Coupee Parish	Pointe Coupee Parish.
Balance of Rapides Parish	Raides Parish less Alexandria City.
Red River Parish	Red River Parish.
Richland Parish	Richland Parish.
Sabine Parish	Sabine Parish.
Shreveport City	Shreveport City in Bossier Parish. Caddo Parish.
St Bernard Parish	St. Bernard Parish.
St Helena Parish	St. Helena Parish.
St James Parish	St. James Parish.
St. John Baptist Parish	St John Baptist Parish.
St Landry Parish	St. Landry Parish.
St Martin Parish	St. Martin Parish.
St Mary Parish	St. Mary Parish.
St. Tammany Parish	St. Tammany Parish.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.
Terrebonne Parish	Terrebonne Parish.
Union Parish	Union Parish
Vermilion Parish	Vermilion Parish.
Vernon Parish	Vernon Parish.
Washington Parish	Washington Parish.
Webster Parish	Webster Parish
West Baton Rouge Parish	West Baton Rouge Parish.
West Carroll Parish	West Carrol Parish.
Winn Parish	Winn Parish.
Maine	
Androscoggin County	Androscoggin County.
Aroostook County	Aroostook County.
Oxford County	Oxford County.
Somerset County	Somerset County.
Waldo County	Waldo County
Washington County	Washington County.
Maryland	
Allegany County	Allegany County.
Baltimore City	Baltimore City.
Calvert County	Calvert County.
Caroline County	Caroline County.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Kent County	Kent County.
Somerset County	Somerset County.
Washington County	Washington County.
Worcester County	Worcester County.
Massachusetts	
Ashburnham Town	Ashburnham Town in Worcester County.
Ashby Town	Ashby Town in Middlesex County.
Athol Town	Athol Town in Worcester County.
Ayer Town	Ayer Town in Middlesex County.
Belcherton Town	Belcherton Town in Hampshire County.
Berkley Town	Berkley Town in Bristol County.
Blandford Town	Blandford Town in Hampden County.
Charlemont Town	Charlemont Town in Franklin County.
Charlton Town	Charlton Town in Worcester County.
Chelsea City	Chelsea City in Suffolk County.
Chester Town	Chester Town in Hampden County.
Chesterfield Town	Chesterfield Town in Hampshire County.
Cummington Town	Cummington Town in Hampshire County.
Dighton Town	Dighton Town in Bristol County.
Eastham Town	Eastham Town in Barnstable County.
Erving Town	Erving Town in Franklin County.
Fall River City	Fall River City in Bristol County.
Falmouth Town	Falmouth Town in Barnstable County.
Fitchburg City	Fitchburg City in Worcester County.
Florida Town	Florida Town in Berkshire County.
Gardner Town	Gardner Town in Worcester County.
Gloucester City	Gloucester City in Essex County.
Hancock Town	Hancock Town in Berkshire County.
Hanson Town	Hanson Town in Plymouth County.
Hardwick Town	Hardwick Town in Worcester County
Harwich Town	Harwich Town in Barnstable County.
Holland Town	Holland Town in Hampden County.
Hopedale Town	Hopedale Town in Worcester County.
Hubbardston Town	Hubbardston Town in Worcester County.
Hull Town	Hull Town in Plymouth County.
Huntington Town	Huntington Town in Hampshire County.
Lawrence City	Lawrence City in Essex County.
Marion Town	Marion Town in Plymouth County.
Middlefield Town	Middlefield Town in Hampshire County.
Milford Town	Milford Town in Worcester County.
Millbury Town	Millbury Town in Worcester County.
Millville Town	Millville Town in Worcester County.
Monroe Town	Monroe Town in Franklin County
New Beford City	New Bedford City in Bristol County.
New Salem Town	New Salem Town in Franklin County.
Newbury Town	Newbury Town in Essex County.
North Adams Town	North Adams Town in Berkshire County.
Oakham Town	Oakham Town in Worcester County.
Orange Town	Orange Town in Franklin County.
Oxford Town	Oxford Town in Worcester County.
Phillipston Town	Phillipston Town in Worcester County.
Plainfield Town	Plainfield Town in Hampshire County.
Provincetown Town	Provincetown Town in Barnstable County.
Rockport Town	Rockport Town in Essex County.
Royalston Town	Royalston Town in Worcester County.
Salisbury Town	Salisbury Town in Essex County.
Savoy Town	Savoy Town in Berkshire County.
Shirley Town	Shirley Town in Middlesex County.
Sturbridge Town	Sturbridge Town in Worcester County.
Sutton Town	Sutton Town in Worcester County.
Taunton City	Taunton City in Bristol County.
Tollan Town	Tolland Town in Hampden County.
Truro Town	Truro Town in Barnstable County.
Uxbridge Town	Uxbridge Town in Worcester County.
Wales Town	Wales Town in Hampden County.
Ware Town	Ware Town in Hampshire County.
Wareham Town	Wareham Town in Plymouth County.
Warwick Town	Warwick Town in Franklin County.
Webster Town	Webster Town in Worcester County.
Wellfleet Town	Wellfleet Town in Barnstable County.
Wendell Town	Wendell Town in Franklin County.
West Newbury Town	West Newbury Town in Essex County.
Westport Town	Westport Town in Bristol County.
Winchendon Town	Winchendon Town in Worcester County.
Worthington Town	Worthington Town in Hampshire County.
Michigan	
Alcona County	Alcona County.
Alger County	Alger County.
Allegan County	Allegan County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Barry County	Barry County
Battle Creek City	Battle Creek City in Calhoun County.
Bay County	Bay County.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Balance of Calhoun County	Calhoun County less Battle Creek City.
Cass County	Cass County.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton County	Clinton County.
Clinton Township	Clinton Township in Macomb County.
Crawford County	Crawford County.
Dearborn Heights City	Dearborn Heights City in Wayne County.
Delta County	Delta County.
Detroit City	Detroit City in Wayne County.
Dickinson County	Dickinson County.
Balance of Eaton County	Eaton County less Lansing City.
Emmet County	Emmet County.
Farmington Hills City	Farmington Hills City in Oakland County.
Flint City	Flint City in Genesee County.
Balance of Genesee County	Genesee County less Flint City.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.
Grand Traverse County	Grand Traverse County.
Gratiot County	Gratiot County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.
Jackson County	Jackson County.
Kalamazoo City	Kalamazoo City in Kalamazoo County.
Kalkaska County	Kalkaska County.
Balance of Kent County	Kent County less Grand Rapids City. Wyoming City.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lansing City	Lansing City in Eaton County. Ingham County.
Lapeer County	Lapeer County.
Leelanau County	Leelanau County.
Lenawee County	Lenawee County.
Livingston County	Livingston County.
Luce County	Luce County.
Mackinac County	Mackinac County.
Balance of Macomb County	Macomb County less Clinton Township, Roseville City, St Clair Shores City, Sterling Heights City, and Warren City.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Menominee County	Menominee County.
Midland County	Midland County.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.
Montmorency County	Montmorency County.
Muskegon County	Muskegon County.
Newaygo County	Newaygo County.
Balance of Oakland County	Oakland County less Farmington Hills City, Pontiac City, Royal Oak City, Southfield City, Troy City, and Waterford Township.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Oscoda County	Oscoda County.
Otsego County	Otsego County.
Ottawa County	Ottawa County.
Pontiac City	Pontiac City in Oakland County.
Presque Isle County	Presque Isle County.
Roscommon County	Roscommon County.
Roseville City	Roseville City in Macomb County.
Royal Oak City	Royal Oak City in Oakland County.
Saginaw City	Saginaw City in Saginaw County.
Balance of Saginaw County	Saginaw County less Saginaw City.
Sanilac County	Sanilac County.
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
Southfield City	Southfield City in Oakland County.
St. Clair Shores City	St. Clair Shores City in Macomb County.
St. Clair County	St. Clair County.
St. Joseph County	St. Joseph County.
Sterling Heights City	Sterling Heights City in Macomb County.
Taylor City	Taylor City in Wayne County.
Tuscola County	Tuscola County.
Van Buren County	Van Buren County.
Warren City	Warren City in Macomb County.
Balance of Washtenaw County.	Washtenaw County less Ann Arbor City.
Waterford Township	Waterford Township in Oakland County.
Balance of Wayne County	Wayne County less Dearborn City, Dearborn Heights City, Detroit City, Livonia City, Redford Township, Taylor City, and Westland City.
Westland City	Westland City in Wayne County.
Wexford County	Wexford County.
Wyoming City	Wyoming City in Kent County.
Minnesota	
Aitkin County	Aitkin County.
Becker County	Becker County.
Carlton County	Carlton County.
Cass County	Cass County.
Clearwater County	Clearwater County.
Cook County	Cook County.
Crow Wing County	Crow Wing County.
Duluth City	Duluth City in St. Louis County.
Hubbard County	Hubbard County.
Isanti County	Isanti County.
Itasca County	Itasca County.
Kanabec County	Kanabec County.
Koochiching County	Koochiching County.
Lake County	Lake County.
Le Sueur County	Le Sueur County.
Mahnomen County	Mahnomen County.
Marshall County	Marshall County.
Meeker County	Meeker County.
Mille Lacs County	Mille Lacs County.
Morrison County	Morrison County.
Pine County	Pine County.
Red Lake County	Red Lake County.
Roseau County	Roseau County.
Sherburne County	Sherburne County.
Balance of St. Louis County	St. Louis County less Duluth City.
Wadena County	Wadena County.
Mississippi	
Adams County	Adams County.
Alcorn County	Alcorn County.
Amite County	Amite County.
Attala County	Attala County.
Benton County	Benton County.
Biloxi City	Biloxi City in Harrison County.
Bolivar County	Bolivar County.
Calhoun County	Calhoun County.
Chickasaw County	Chickasaw County.
Choctaw County	Choctaw County.
Claiborne County	Claiborne County.
Clarke County	Clarke County.
Clay County	Clay County.
Coahoma County	Coahoma County.
Copiah County	Copiah County.
Covington County	Covington County.
George County	George County.
Greene County	Greene County.
Grenada County	Grenada County.
Hancock County	Hancock County.
Balance of Harrison County	Harrison County less Biloxi City.
Holmes County	Holmes County.
Humphreys County	Humphreys County.
Itawamba County	Itawamba County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jefferson Davis County	Jefferson Davis County.
Jones County	Jones County.
Kemper County	Kemper County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leflore County	Leflore County.
Lincoln County	Lincoln County.
Lowndes County	Lowndes County.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Neshoba County	Neshoba County.
Newton County	Newton County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Pearl River County	Pearl River County.
Perry County	Perry County.
Pike County	Pike County.
Pontotoc County	Pontotoc County.
Prentiss County	Prentiss County.
Quitman County	Quitman County.
Scott County	Scott County.
Sharkey County	Sharkey County.
Simpson County	Simpson County.
Smith County	Smith County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahatchie County.
Tate County	Tate County.
Tippah County	Tippah County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Union County	Union County.
Walthall County	Walthall County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Wilkinson County	Wilkinson County.
Winston County	Winston County.
Yalobusha County	Yalobusha County.
Yazoo County	Yazoo County.
Missouri	
Audrain County	Audrain County.
Benton County	Benton County.
Bollinger County	Bollinger County.
Butler County	Butler County.
Carter County	Carter County.
Cedar County	Cedar County.
Clark County	Clark County.
Crawford County	Crawford County.
Dallas County	Dallas County.
Daviess County	Daviess County.
Dent County	Dent County.
Douglas County	Douglas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Grundy County	Grundy County.
Hickory County	Hickory County.
Howell County	Howell County.
Iron County	Iron County.
Jefferson County	Jefferson County.
Kansas City	Kansas City in Clay County. Jackson County. Platte County.
Laclede County	Laclede County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Linn County	Linn County.
Livingston County	Livingston County.
Macon County	Macon County.
Madison County	Madison County.
Maries County	Maries County.
Marion County	Marion County.
McDonald County	McDonald County.
Miller County	Miller County.
Mississippi County	Mississippi County.
Moniteau County	Moniteau County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
New Madrid County	New Madrid County.
Oregon County	Oregon County.
Pemiscot County	Pemiscot County.
Perry County	Perry County.
Pettis County	Pettis County.
Pike County	Pike County.
Ralls County	Ralls County.
Randolph County	Randolph County.
Reynolds County	Reynolds County.
Ripley County	Ripley County.
Scott County	Scott County.
Shannon County	Shannon County
St. Joseph City	St. Joseph City in Buchanan County.
St. Louis City	St. Louis City.
St. Francois County	St. Fancois County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Ste. Genevieve County	Ste. Genevieve County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Texas County	Texas County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Wright County	Wright County.
Montana	
Deer Lodge County	Deer Lodge County.
Flathead County	Flathead County.
Glacier County	Glacier County.
Granite County	Granite County.
Jefferson County	Jefferson County.
Lincoln County	Lincoln County.
Meagher County	Meagher County.
Mineral County	Mineral County.
Park County	Park County.
Ravalli County	Ravalli County.
Sanders County	Sanders County.
Silver Bow County	Silver Bow County.
Wibaux County	Wibaux County.
Nebraska	
Box Butte County	Box Butte County.
Colfax County	Colfax County.
Lincoln County	Lincoln County.
McPherson County	McPherson County.
Nevada	
Carson City	Carson City.
Churchill County	Churchill County.
Balance of Clark County	Clark County less Las Vegas City.
Esmeralda County	Esmeralda County.
Eureka County	Eureka County.
Humboldt County	Humboldt County.
Lander County	Lander County.
Las Vegas City	Las Vegas City in Clark County.
Lincoln County	Lincoln County.
Lyon County	Lyon County.
Storey County	Storey County.
White Pine County	White Pine County.
New Hampshire	
Coos County	Coos County.
New Jersey	
Bayonne City	Bayonne City in Hudson County.
Camden City	Camden City in Camden County.
Cape May County	Cape May County.
Balance of Cumberland County.	Cumberland County less Vineland City.
East Orange City	East Orange City in Essex County.
Elizabeth City	Elizabeth City in Union County.
Balance of Hudson County	Hudson County less Bayonne City, Jersey City, Union City.
Jersey City	Jersey City in Hudson County.
Newark City	Newark City in Essex County.
Passaic City	Passaic City in Passaic County.
Paterson City	Paterson City in Passaic County.
Trenton Cry	Trenton City in Mercer County.
Union City	Union City in Hudson County.
Vineland City	Vineland City in Cumberland County.
New Mexico	
Balance of Bernalillo County	Bernalillo County less Albuquerque City.
Catron County	Catron County.
Cibola County	Cibola County.
Colfax County	Colfax County.
Eddy County	Eddy County.
Grant County	Grant County.
Luna County	Luna County.
McKinley County	McKinley County.
Mora County	Mora County.
Rio Arriba County	Rio Arriba County.
San Juan County	San Juan County.
Den Miguel County	San Miguel County.
Taos County	Taos County.
Valencia County	Valencia County.
New York	
Buffalo City	Buffalo City in Erie County.
Cattaraugus County	Cattaraugus County.
Cayuga County	Cayuga County.
Chautauqua County	Chautauqua County.
Chemung County	Chemung County.
Chenango County	Chenango County.
Clinton County	Clinton County.
Balance of Erie County	Erie County less Amherst Town, Buffalo City, Cheektowaga Town, Hamburg Town, Tonowanda Town, and West Seneca Township.
Essex County	Essex County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Genesee County	Genesee County.
Greene County	Greene County.
Hamburg Town	Hamburg Town in Erie County.
Hamilton County	Hamilton County.
Herkomer County	Herkumer County.
Jefferson County	Jefferson County.
Lewis County	Lewis County.
Montgomery County	Montgomery County.
Balance of Niagara County	Niagara County less Niagara Falls City.
Niagara Falls City	Niagara Falls City in Niagara County.
Orleans County	Orleans County.
Rochester City	Rochester City in Monroe County.
Schuyler County	Schuyler County.
St. Lawrence County	St. Lawrence County.
Steuben County	Steuben County.
Utica City	Utica City in Oneida County.
Warren County	Warren County.
Wayne County	Wayne County.
West Seneca Township	West Seneca Township in Erie County.
Wyoming County	Wyoming County.
North Carolina	
Alamance County	Alamance County.
Anson County	Anson County.
Ashe County	Ashe County.
Avery County	Avery County.
Beaufort County	Beaufort County.
Bertie County	Bertie County.
Bladen County	Bladen County.
Brunswick County	Brunswick County.
Burke County	Burke County.
Caswell County	Caswell County.
Cherokee County	Cherokee County.
Clay County	Clay County.
Cleveland County	Cleveland County.
Columbus County	Columbus County.
Davie County	Davie County.
Duplin County	Duplin County.
Edgecombe County	Edgecombe County.
Franklin County	Franklin County.
Graham County	Graham County.
Halifax County	Halifax County.
Haywood County	Haywood County.
Hoke County	Hoke County.
Hyde County	Hyde County.
Iredell County	Iredell County.
Johnston County	Johnston County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Martin County	Martin County.
McDowell County	McDowell County.
Mitchell County	Mitchell County.
New Hanover County	New Hanover County.
Northampton County	Northampton County.
Pender County	Pender County.
Person County	Person County.
Richmond County	Richmond County.
Robeson County	Robeson County.
Rockingham County	Rockingham County.
Rutherford County	Rutherford County.
Sampson County	Sampson County.
Scotland County	Scotland County.
Surry County	Surry County.
Swain County	Swain County.
Tyrrell County	Tyrrell County.
Vance County	Vance County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Wilson County	Wilson County.
Yancey County	Yancey County.
North Dakota	
Rolette County	Rolette County.
Sioux County	Sioux County.
Ohio	
Adams County	Adams County.
Akron City	Akron City in Summit County.
Allen County	Allen County.
Ashland County	Ashland County.
Ashtabula County	Ashtabula County.
Athens County	Athens County.
Auglaize County	Auglaize County.
Belmont County	Belmont County.
Brown County	Brown County.
Balance of Butler County	Butler County less Hamilton City.
Cantaon City	Canton City in Stark County.
Carroll County	Carroll County.
Champaign County	Champaign County.
Cincinnati City	Cincinnati City in Hamilton County.
Balance of Clark County	Clark County less Springfield City.
Clermont County	Clermont County.
Cleveland City	Cleveland City in Cuyahoga County.
Clinton County	Clinton County.
Columbiana County	Columbiana County.
Columbus City	Columbus City in Franklin County.
Columbus City	Columbus City in Fairfield County.
Coshocton County	Coshocton County.
Crawford County	Crawford County.
Darke County	Darke County.
Dayton City	Dayton City in Greene County. Montgomery County.
Defiance County	Defiance County.
Elyria City	Elyria City in Lorain County.
Erie County	Erie County.
Balance of Fairfield County	Fairfield County less Columbus City
Fayette County	Fayette County.
Fulton County	Fulton County.
Gallia County	Gallia County.
Geauga County	Geauga County.
Guernsey County	Gurensey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Henry County	Henry County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Knox County	Knox County.
Lake County	Lake County.
Lawrence County	Lawrence County.
Licking County	Licking County.
Logan County	Logan County.
Lorain City	Lorain City in Lorain County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Lorain County	Lorain County less Elyria City. Lorain City.
Balance of Mahoning County	Mahoning County less Youngstown City.
Mansfield City	Mansfield City in Richland County.
Marion County	Marion County
Medina County	Medina County
Meigs County	Meigs County.
Mercer County	Mercer County
Miami County	Miami County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Morrow County	Morrow County.
Muskingum County	Muskingum County.
Noble County	Noble County.
Ottawa County	Ottawa County.
Paulding County	Paulding County.
Perry County	Perry County.
Pike County	Pike County.
Portage County	Portage County.
Preble County	Preble County.
Putnam County	Putnam County.
Balance of Richland County	Richland County less Mansfield City.
Ross County	Ross County.
Sandusky County	Sandusky County.
Scioto County	Scioto County.
Seneca County	Seneca County.
Shelby County	Shelby County.
Springfield City	Springfield City in Clark County.
Balance of Stark County	Stark County less Canton City.
Toledo City	Toledo City in Lucas County
Balance of Trumbull County	Trumbull County less Warren City.
Tuscarawas County	Tuscarawas County.
Union County	Union County.
Van Wert County	Van Wert County.
Vinton County	Vinton County.
Warren City	Warren City in Trumbull County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Williams County	Williams County.
Wood County	Wood County.
Wyandot County	Wyandot County.
Youngstown City	Youngstown City in Mahoning County.
Oklahoma	
Adair County	Adair County.
Atoka County	Atoka County.
Choctaw County	Choctaw County.
Coal County	Coal County.
Haskell County	Haskell County.
Hughes County	Hughes County.
Latimer County	Latimer County.
Le Flore County	Le Flore County.
Lincoln County	Lincoln County.
Love County	Love County.
McCurtain County	McCurtain County.
McIntosh County	McIntosh County.
Nowata County	Nowata County.
Okfuskee County	Okfuskee County.
Okmulgee County	Okmulgee County.
Ottawa County	Ottawa County.
Pawnee County	Pawnee County.
Pittsburg County	Pittsburg County.
Pushmataha County	Pushmataha County.
Seminole County	Seminole County.
Sequoyah County	Sequoyah County.
Oregon	
Baker County	Baker County.
Clatsop County	Clatsop County.
Columbia County	Columbia County.
Coos County	Coos County.
Crook County	Crook County.
Curry County	Curry County.
Deschutes County	Deschutes County.
Douglas County	Douglas County.
Grant County	Grant County.
Harney County	Harney County.
Hood River County	Hood River County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Josephine County	Josephine County.
Klamath County	Klamath County.
Lake County	Lake County.
Balance of Lane County	Lane County Less Eugene City.
Lincoln County	Lincoln County
Linn County	Linn County.
Malheur County	Malheur County.
Balance of Marion County	Marion County less Salem City.
Balance of Polk County	Polk County less Salem City.
Portland City	Portland City in Clackamas County, Multnomah County, and Washington County.
Salem City	Salem City in Marion County. Polk County.
Tillamook County	Tillamook County.
Umatilla County	Umatilla County.
Union County	Union County.
Wallowa County	Wallowa County.
Wasco County	Wasco County.
Wheeler County	Wheeler County.
Yamhill County	Yamhill County.
Pennsylvania	
Adams County	Adams County.
Balance of Allegheny County	Allegheny County less Penn Hills Township. Pittsburgh City.
Allentown City	Allentown City in Lehigh County.
Altoona City	Altoona City in Blair County
Armstrong County	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Bethlehem City	Bethlehem City in Lehigh County. Northampton County.
Balance of Blair County	Blair County less Altoona City.
Bradford County	Bradford County.
Briston Township	Bristol Township in Bucks County.
Butler County	Butler County.
Cambria County	Cambria County.
Cameron County	Cameron County.
Carbon County	Carbon County.
Centre County	Centre County.
Clarion County	Clarion County.
Clearfield County	Clearfield County.
Clinton County	Clinton County.
Columbia County	Columbia County.
Crawford County	Crawford County.
Elk County	Elk County.
Erie City	Erie City in Erie County.
Balance of Erie County	Erie County less Erie City.
Fayette County	Fayette County.
Forest County	Forest County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Greene County	Greene County.
Huntingdon County	Huntingdon County.
Indiana County	Indiana County.
Jefferson County	Jefferson County.
Juniata County	Juniata County.
Balance of Lackawanna County.	Lackawanna County less Scranton City.
Lawrence County	Lawrence County.
Lebanon County	Lebanon County.
Balance of Lehigh County	Lehigh County less Allentown City. Bethlehem City.
Balance of Luzerne County	Luzerne County less Wilkes-Barre City.
Lycoming County	Lycoming County.
McKean County	McKean County.
Mercer County	Mercer County.
Mifflin County	Mifflin County.
Monroe County	Monroe County.
Balance of Northampton County.	Northampton County less Bethlehem City.
Northumberland County	Northumberland County.
Penn Hills Township	Penn Hills Township in Allegheny County.
Pittsburgh City	Pittsburgh City in Allegheny County.
Potter County	Potter County.
Reading City	Reading City in Berks County.
Schuylkill County	Schuylkill County.
Snyder County	Snyder County.
Somerset County	Somerset County.
Sullivan County	Sullivan County.
Tioga County	Tioga County.
Union County	Union County.
Venango County	Venango County.
Warren County	Warren County.
Washington County	Washington County.
Westmoreland County	Westmoreland County.
Wilkes-Barre City	Wilkes-Barre City in Luzerne County.
Wyoming County	Wyoming County.
York County	York County.
Puerto Rico	
Adjuntas Municipio	Adjuntas Municipio.
Aguada Municipio	Aguada Municipio.
Aguadilla Municipio	Aguadilla Municipio.
Aguas Buenas Municipio	Aguas Buenas Municipio.
Aibonito Municipio	Aibonito Municipio.
Anasco Municipio	Anasco Municipio.
Arecibo Municipio	Arecibo Municipio.
Arroyo Municipio	Arroyo Municipio.
Barceloneta Municipio	Barceloneta Municipio.
Barranquitas Municipio	Barranquitas Municipio.
Bayamon Municipio	Bayamon Municipio.
Cabo Rojo Municipio	Cabo Rojo Municipio.
Caguas Municipio	Caguas Municipio.
Camuy Municipio	Camuy Municipio.
Canovanas Municipio	Canovanas Municipio.
Carolina Municipio	Carolina Municipio.
Catano Municipio	Catano Municipio.
Cayey Municipio	Cayey Municipio.
Ceiba Municipio	Ceiba Municipio.
Ciales Municipio	Ciales Municipio.
Cidra Municipio	Cidra Municipio.
Coamo Municipio	Coamo Municipio.
Comerio Municipio	Comerio Municipio.
Corozal Municipio	Corozal Municipio.
Dorado Municipio	Dorado Municipio.
Fajardo Municipio	Fajardo Municipio.
Florida Municipio	Florida Municipio.
Guanica Municipio	Guanica Municipio.
Guayama Municipio	Guayama Municipio.
Guayanilla Municipio	Guayanilla Municipio.
Guaynabo Municipio	Guaynabo Municipio.
Gurabo Municipio	Gurabo Municipio.
Hatillo Municipio	Hatillo Municipio.
Hormigueros Municipio	Hormigueros Municipio.
Humacao Municipio	Humacao Municipio.
Isabela Municipio	Isabela Municipio.
Jayuya Municipio	Jayuya Municipio.
Juana Diaz Municipio	Juana Diaz Municipio.
Juncos Municipio	Juncos Municipio.
Lajas Municipio	Lajas Municipio.
Lares Municipio	Lares Municipio.
Las Marias Municipio	Las Marias Municipio.
Las Piedras Municipio	Las Piedras Municipio.
Loiza Municipio	Loiza Municipio.
Luquillo Municipio	Luquillo Municipio.
Manati Municipio	Manati Municipio.
Maunabo Municipio	Maunabo Municipio.
Mayaguez Municipio	Mayaguez Municipio.
Moca Municipio	Moca Municipio.
Morovis Municipio	Morovis Municipio.
Naguabo Municipio	Naguabo Municipio.
Naranjito Municipio	Naranjito Municipio.
Orocovis Municipio	Orocovis Municipio.
Patillas Municipio	Patillas Municipio.
Penuelas Municipio	Penuelas Municipio.
Ponce Municipio	Ponce Municipio.
Quebradillas Municipio	Quebradillas Municipio.
Rincon Municipio	Rincon Municipio.
Rio Grande Municipio	Rio Grande Municipio.
Sabana Grande Municipio	Sabana Grande Municipio.
Salinas Municipio	Salinas Municipio.
San German Municipio	San German Municipio.
San Juan Municipio	San Juan Municipio.
San Lorenzo Municipio	San Lorenzo Municipio.
San Sebastian Municipio	San Sebastian Municipio.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Santa Isabel Municipio	Santa Isabel Municipio.
Toa Alta Municipio	Toa Alta Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Trujillo Alto Municipio	Trujillo Alto Municipio.
Utuedo Municipio	Utuedo Municipio
Vega Alta Municipio	Vega Alta Municipio.
Vega Baja Municipio	Vega Baja Municipio.
Vieques Municipio	Vieques Municipio.
Villalba Municipio	Villalba Municipio.
Yabucoa Municipio	Yabucoa Municipio.
Yauco Municipio	Yauco Municipio.
Rhode Island	
Bristol Town	Bristol Town.
Central Falls City	Central Falls City
Coventry Town	Coventry Town.
East Providence City	East Providence City.
Johnston Town	Johnston Town.
New Shoreham Town	New Shoreham Town.
Pawtucket City	Pawtucket City.
Providence City	Providence City.
Warren Town	Warren Town
West Warwick Town	West Warwick Town.
Woonsocket City	Woonsocket City.
South Carolina	
Abbeville County	Abbeville County
Aiken County	Aiken County
Allendale County	Allendale County
Anderson County	Anderson County
Bamberg County	Bamberg County.
Barnwell County	Barnwell County.
Cherokee County	Cherokee County.
Chester County	Chester County
Chesterfield County	Chesterfield County
Clarendon County	Clarendon County.
Colleton County	Colleton County
Darlington County	Darlington County
Dillon County	Dillon County.
Florence County	Florence County
Georgetown County	Georgetown County.
Greenville City	Greenville City in Greenville County.
Greenwood County	Greenwood County.
Hampton County	Hampton County.
Horry County	Horry County.
Jasper County	Jasper County
Kershaw County	Kershaw County
Lancaster County	Lancaster County.
Laurens County	Laurens County.
Lee County	Lee County
Marion County	Marion County.
Marlboro County	Marlboro County.
McCormick County	McCormick County.
North Charleston City	North Charleston City in Charleston County.
Oconee County	Oconee County.
Orangeburg County	Orangeburg County
Pickens County	Pickens County.
Saluda County	Saluda County.
Sumter County	Sumter County.
Union County	Union County.
Williamsburg County	Williamsburg County.
York County	York County.
South Dakota	
Buffalo County	Buffalo County.
Corson County	Corson County
Dewey County	Dewey County
Shannon County	Shannon County
Todd County	Todd County.
Tennessee	
Anderson County	Anderson County
Bedford County	Bedford County
Benton County	Benton County
Bledsoe County	Bledsoe County
Blount County	Blount County.
Bradley County	Bradley County.
Campbell County	Campbell County.
Cannon County	Cannon County.
Carroll County	Carroll County.
Carter County	Carter County.
Chattanooga City	Chattanooga City in Hamilton County.
Chester County	Chester County.
Claiborne County	Claiborne County.
Clarksville City	Clarksville City in Montgomery County.
Cocke County	Cocke County.
Coffee County	Coffee County.
Crockett County	Crockett County.
Cumberland County	Cumberland County.
DeKalb County	DeKalb County.
Decatur County	Decatur County.
Dickson County	Dickson County.
Dyer County	Dyer County.
Fayette County	Fayette County.
Fentress County	Fentress County.
Franklin County	Franklin County.
Gibson County	Gibson County.
Giles County	Giles County.
Grainger County	Grainger County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamblen County	Hamblen County.
Hancock County	Hancock County.
Hardeman County	Hardeman County.
Hardin County	Hardin County
Hawkins County	Hawkins County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Henry County	Henry County
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Johnson County	Johnson County.
Knoxville City	Knoxville City in Knox County.
Lake County	Lake County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Loudon County	Loudon County.
Macon County	Macon County
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Maury County	Maury County.
McMinn County	Mc Minn County.
Mc Nairy County	Mc Nairy County.
Meigs County	Meigs County.
Memphis City	Memphis City in Shelby County.
Monroe County	Monroe County.
Balance of Montgomery County.	Montgomery County less Clarksville City.
Morgan County	Morgan County.
Overton County	Overton County.
Perry County	Perry County.
Pickett County	Pickett County.
Polk County	Polk County.
Putnam County	Putnam County.
Rhea County	Rhea County.
Roane County	Roane County
Robertson County	Robertson County.
Rutherford County	Rutherford County.
Scott County	Scott County.
Sequatchie County	Sequatchie County.
Sevier County	Sevier County.
Smith County	Smith County.
Stewart County	Stewart County.
Sullivan County	Sullivan County.
Sumner County	Sumner County.
Tipton County	Tipton County.
Trousdale County	Trousdale County.
Unicoi County	Unicoi County.
Union County	Union County.
Van Buren County	Van Buren County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Wilson County	Wilson County.
Texas	
Angelina County	Angelina County.
Baytown City	Baytown City in Harris County.
Beaumont City	Beaumont City in Jefferson County.
Brownsvill City	Brownsville City in Cameron County.
Calhoun County	Calhoun County.
Balance of Cameron County	Cameron County less Brownville City.
Camp County	Camp County.
Cass County	Cass County.
Dimmit County	Dimmit County.
El Paso City	El Paso City in El Paso County.
Balanc of El Paso County	El Paso County less El Paso City.
Galveston City	Galveston City in Galveston County.
Balance of Galveston County	Galveston County less Galveston City.
Garza County	Garza County.
Henderson County	Henderson County.
Balance of Hidalgo County	Hidalgo County less McAllen City.
Jasper County	Jasper County.
Jim Hogg County	Jim Hogg County.
Killeen City	Killeen City in Bell County.
La Salle County	La Salle County.
Laredo City	Laredo City in Webb County.
Longview City	Longview City in Gregg County.
Marion County	Marion County.
Matagorda County	Matagorda County.
Maverick County	Maverick County.
Mc Allen City	McAllen City in Hidalgo County.
Morris County	Morris County.
Newton County	Newton County.
Balance of Nueces County	Neuces County less Corpus Christi City.
Orange County	Orange County.
Polk County	Polk County.
Port Arthur City	Port Arthur City in Jefferson County.
Presidio County	Presidio County.
Reeves County	Reeves County.
Sabine County	Sabine County.
San Augustine County	San Augustine County.
San Jacinto County	San Jacinto County.
Starr County	Starr County.
Texarkana County	Texarkana City in Bowie County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Val Verde County	Val Verde County.
Willacy County	Willacy County.
Zapata County	Zapata County.
Zavala County	Zavala County.
Utah	
Carbon County	Carbon County.
Duchesne County	Duchesne County.
Garfield County	Garfield County.
Grand County	Grand County.
Juab County	Juab County.
Kane County	Kane County.
Ogden City	Ogden City in Weber County.
Piute County	Piute County
San Juan County	San Juan County.
Sanpete County	Sanpete County.
Summit County	Summit County.
Uintah County	Uintah County.
Wasatch County	Wasatch County.
Wayne County	Wayne County.
Vermont	
Essex County	Essex County.
Orleans County	Orleans County.
Virginia	
Alleghany County	Alleghany County.
Bland County	Bland County.
Brunswick County	Brunswick County.
Buchanan County	Buchanan County
Buena Vista City	Buena Vista City.
Caroline County	Caroline County.
Carroll County	Carroll County.

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LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM OCT. 1, 1984 THROUGH SEPT. 30, 1985—Continued

Eligible labor surplus areas	Civil jurisdictions included
Charlotte County	Charlotte County.
Covington City	Covington City.
Craig County	Craig County.
Danville County	Danville County.
Dickenson County	Dickenson County.
Dinwiddie County	Dinwiddie County.
Essex County	Essex County.
Franklin City	Franklin City.
Giles County	Giles County.
Grayson County	Grayson County.
Greensville County	Greensville County.
Halifax County	Halifax County.
Highland County	Highland County.
Hopewell City	Hopewell City.
King and Queen County	King and Queen County.
Lancaster County	Lancaster County.
Lee County	Lee County.
Lunenburg County	Lunenburg County.
Northumberland County	Northumberland County.
Nottoway County	Nottoway County.
Page County	Page County.
Patrick County	Patrick County.
Pittsylvania County	Pittsylvania County.
Pulaski County	Pulaski County.
Richmond County	Richmond County.
Rockbridge County	Rockbridge County.
Russell County	Russell County.
Smyth County	Smyth County.
South Boston City	South Boston City.
Surry County	Surry County.
Sussex County	Sussex County.
Tazewell County	Tazewell County.
Warren County	Warren County.
Waynesboro City	Waynesboro City. Westmoreland County.
Wise County	Wise County.
Wythe County	Wythe County.
Washington	
Adams County	Adams County.
Asotin County	Asotin County.
Benton County	Benton County.
Chelan County	Chelan County.
Clallam County	Clallam County.
Clark County	Clark County.
Columbia County	Columbia County.
Cowlitz County	Cowlitz County.
Douglas County	Douglas County.
Everett City	Everett City in Snohomish County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County	Grays Harbor County.
Jefferson County	Jefferson County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County	Pend Oreille County.
Balance of Pierce County	Pierce County less Tacoma City.
Seattle City	Seattle City in King County.
Skagit County	Skagit County.
Skamania County	Skamania County.
Balance of Snohomish County.	Snohomish County less Everett City.
Spokane City	Spokane City in Spokane County.
Balance of Spokane County	Spokane County less Spokane City.
Stevens County	Stevens County.
Tacoma City	Tacoma City in Pierce County.
Thurston County	Thurston County.
Whatcom County	Whatcom County.
Yakima City	Yakima City in Yakima County.
Balance of Yakima County	Yakima County less Yakima City.
West Virginia	
Barbour County	Barbour County.
Berkeley County	Berkeley County.
Boone County	Boone County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Balance of Cabell County	Cabell County less Huntington City.
Calhoun County	Calhoun County.
Clay County	Clay County.
Doddridge County	Doddridge County.
Fayette County	Fayette County.
Gilmer County	Gilmer County.
Grant County	Grant County.
Greenbrier County	Greenbrier County.
Hampshire County	Hampshire County.
Hancock County	Hancock County.
Hardy County	Hardy County.
Harrison County	Harrison County.
Huntington City	Huntington City in Cabell County. Wayne County.
Jackson County	Jackson County.
Balance of Kanawha County	Kanawha County less Charleston City.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Marion County	Marion County.
Marshall County	Marshall County.
Mason County	Mason County.
McDowell County	McDowell County.
Mercer County	Mercer County.
Mineral County	Mineral County.
Mingo County	Mingo County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Pendleton County	Pendleton County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Balance of Wayne County	Wayne County less Huntington City.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Wood County	Wood County.
Wyoming County	Wyoming County.
Wisconsin	
Ashland County	Ashland County.
Bayfield County	Bayfield County.
Buffalo County	Buffalo County.
Burnett County	Burnett County.
Balance of Calumet County	Calumet County less Appleton City
Balance of Chippewa County	Chippewa County less Eau Claire City
Clark County	Clark County
Columbia County	Columbia County.
Crawford County	Crawford County.
Dodge County	Dodge County.
Door County	Door County.
Douglas County	Douglas County.
Florence County	Florence County
Fond du Lac County	Fond du Lac County.
Forest County	Forest County.
Grant County	Grant County.
Green Bay City	Green Bay City in Brown County.
Green Lake County	Green Lake County
Iowa County	Iowa County.
Iron County	Iron County.
Jackson County	Jackson County.
Janesville City	Janesville City in Rock County.
Jefferson County	Jefferson County.
Juneau County	Juneau County.
Kenosha City	Kenosha City in Kenosha County.
Kewaunee County	Kewaunee County.
Lincoln County	Lincoln County.
Manitowoc County	Manitowoc County.
Marathon County	Marathon County.
Marinette County	Marinette County.
Marquette County	Marquette County.
Menominee County	Menominee County.
Milwaukee City	Milwaukee City in Milwaukee County.
Monore County	Monroe County.
Oconto County	Oconto County.
Oneida County	Oneida County.
Balance of Outagamie County.	Outagamie County less Appleton City.
Pepin County	Pepin County.
Polk County	Polk County.
Price County	Price County.
Racine City	Racine City in Racine County.
Balance of Racine County	Racine County less Racine City.
Richland County	Richland County.
Balance of Rock County	Rock County less Janesville City.
Rusk County	Rusk County.
Sauk County	Sauk County.
Sawyer County	Sawyer County.
Taylor County	Taylor County.
Trempealeau County	Trempealeau County.
Vernon County	Vernon County.
Vilas County	Vilas County.
Washburn County	Washburn County.
Washington County	Washington County.
Waukesha City	Waukesha City in Waukesha County.
Waupaca County	Waupaca County.
Waushara County	Waushara County.
Wyoming	
Lincoln County	Lincoln County.

[FR Doc. 84-25495 Filed 9-25-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

DATE: October 9, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review Bicentennial Conferences applications, submitted to the Office of the Bicentennial, for projects beginning after January 2, 1985.

The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84-25557 Filed 9-25-84; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On August 13, 1984 (49 FR 32288), the National Science Foundation published a notice in the **Federal Register** of a permit application received. On September 17, 1984 a permit was issued to: Alfred F. Giddings.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 84-25467 Filed 9-25-84; 8:45 am]

BILLING CODE 7555-01-M

Directorate for Science and Engineering Education (SEE); Revised List of States Electing Review of SEE Programs Eligible for Review Under E.O. 12372

SUMMARY: This notice identifies those states that have notified the NSF, as of August 31, 1984, that they have elected to review the programs of the Foundation's Directorate for Science and Engineering Education that are eligible for review under E.O. 12372 ("Intergovernmental Review of Federal Programs"). These programs are described at Federal Catalog of Domestic Assistance No. 47.063. All activities under that number are eligible for state review except the following: Research in Teaching and Learning; Presidential Awards for Excellence in Science and Mathematics Teaching; and Studies and Analysis. The following list supersedes the one published in the **Federal Register** on December 7, 1983 (48 FR 54915).

Nine states have been added to the list of reviewing states effective October 1, 1984. They are: California, Hawaii, Maine, Massachusetts, Missouri, North Dakota, Ohio, Pennsylvania, and U.S. Virgin Islands. Proposals from these states received by the NSF on or after October 1, 1984, must have been submitted to the state's single point of contact (SPOC) before submission to the NSF. (Proposals from all other listed states are already required to have been submitted to the state's SPOC.)

Several changes have been made to the names and telephone numbers of states' SPOCs. The following list is believed correct as of August 31, 1984.

EFFECTIVE DATE: This list of states and identifications of states' single points of contact in this notice supersedes the list contained in the notice published December 7, 1983 ("Notice of Clarification on SEE Programs Eligible for Review under E.O. 12372; and States Electing Review"). This notice does not affect the eligibility of the programs set forth in that notice for review under E.O. 12372.

This notice is effective for all proposals submitted to eligible SEE programs that are received by the NSF on or after October 1, 1984.

FOR FUTHER INFORMATION CONTACT: Questions relating to NSF's implementation of E.O. 12372 should be directed to the NSF Intergovernmental Review Officer at (202) 357-7880. This is not a toll-free number.

Charles H. Herz,

General Counsel.

September 14, 1984.

States Electing To Review Eligible NSF Science and Engineering Education Activities (as of Aug. 31, 1984)

CALIFORNIA: Office of Planning and Research, 1400 Tenth Street, Sacramento, CA 95814, (916) 445-0282

CONNECTICUT: Intergovernmental Review, Coordinator, Comprehensive Planning Divisions, Office of Policy and Management, 80 Washington Street, Hartford, CT 06106-4459, (203) 566-4298

DELAWARE: Francine Booth, Executive Department, Thomas Collins Building, Dover, DE 19903, (302) 736-4204

HAWAII: Mr. Kent M. Keith, Director, Department of Planning and, Economic Development, P.O. Box 2359, Honolulu, HI 96804, (808) 548-3085, [For information contact: Hawaii State Clearinghouse, (808) 548-3085]

INDIANA: Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, IN 46204, (317) 232-5604

KENTUCKY: Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, (502) 564-2382

LOUISIANA: Michael J. Jefferson, Assistant Secretary, Department of Urban and, Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, LA 70804, (504) 925-3722

MAINE: State Planning Office, Intergovernmental Review Process, State House Station 38, Augusta, ME 04333, (207) 289-3261

MASSACHUSETTS: Executive Office of Communities, and Development, 100 Cambridge Street, Room 1401, Boston, MA 02202, (617) 727-3264

MICHIGAN: Carol Hoffman, Director, Office of Business and Community, Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, MI 48909, (517) 378-8363

MISSOURI: Missouri Federal Assistance, Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129 Capitol Building, Jefferson City, MO 65102, (314) 751-4834 or 751-2345

NEBRASKA: Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, NE 68509, (402) 471-2414

NEVADA: Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, NV 89710, (702) 885-4420

NEW HAMPSHIRE: Mr. David G. Scott, Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, NH 03301, (603) 271-2155

NEW JERSEY: Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West Street, Trenton, NJ 08625, (609) 292-6613, [Correspondence and questions: Nelson S. Silver, State Review, address as above: (609) 292-6613]

NEW MEXICO: Mr. Peter P. Pence, Director, Department of Finance and, Administration, State of New Mexico, 515 Gaspar, Santa Fe, NM 87503, (505) 827-3885

NEW YORK: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224, (518) 474-1605, [NOTE: NY will start review of eligible DSEE programs 9/30/84.

NORTH DAKOTA: Office of Intergovernmental, Assistance, Office of Management and Budget 14th Floor—State Capital, Bismarck, ND 58505, (701) 224-2094

OHIO: State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 39th Floor, Columbus, OH 43215, (614) 466-0699, [For information contrat: Leonard E. Roberts, Deputy Dir.]

OKLAHOMA: Office of Federal Assistance, Management, 4545 North Lincoln Boulevard, Oklahoma City, OK 73105, (404) 528-8200

PENNSYLVANIA: Pennsylvania International Council, P.O. Box 1288, Harrisburg, PA 17108, Attention: Charles Griffiths Executive Director (717) 783-3700

SOUTH CAROLINA Danny L. Cromer, Grant Service, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, SC 29201, (803) 758-2417

SOUTH DAKOTA: Jeff Stroup Commissioner of the Bureau of International Relations Second Floor, Capitol Building Pierre, SD 57501, (605) 773-3661

TENNESSEE: Sarah Lee W. Terry, Director, Grant Review Program, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, TN 37219, (615) 741-1676.

VERMONT: State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, VT 05602, (802) 828-3326

VIRGINIA: Robert H. Kirby, Intergovernment Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, VA 23211, (804) 786-1921

WASHINGTON: Washington Planning and Community Affairs North and Columbia Building, Olympia, WA 98504 (206) 753-2200

WISCONSIN: Secretary Doris J. Hanson Wisconsin Department of Administration, 101 South Webster Street—GEF 2 Madison, WI 53702, (608)266-1212

WYOMING: Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, WY 82002 (307) 777-7574

DISTRICT OF COLUMBIA: Pauline Schneider, Director Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004 (202) 727-6265

U.S. VIRGIN ISLANDS: Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas, VI 00801, (809) 724-0001

NORTHERN MARINA Islands: Planning and Budget Office, Office of the Governor, Saipan, CM 96950

[FR Doc. 84-25459 Filed 9-25-84; 8:45 am]

BILLING CODE 7555-01-M

Directorate for Scientific, Technological, and International Affairs (STIA); Revised List of States Electing Review of STIA Programs Eligible for Review Under E.O. 12372

SUMMARY: This notice identifies those states that have notified the NSF, as of August 31, 1984, that they elect to review the Intergovernmental Science and Technology Program (Federal Catalog of Domestic Assistance No. 47.036) of the Foundation's Division of Research Initiation and Improvement in the Directorate for Scientific, Technological, and International Affairs under E.O. 12372 ("Intergovernmental Review of Federal Programs"). The Foundation designated that program as eligible for review in a notice ("Programs Eligible for Inclusion under E.O. 12372") published in the **Federal Register** on June 24, 1983 (48 FR 29366).

Seven states have been added to the list of reviewing states effective October 1, 1984. They are: Alabama, California, Hawaii, Maine, Massachusetts, Ohio, Pennsylvania, and U.S. Virgin Islands. Proposals from these states received by the NSF on or after October 1, 1984, must have been submitted to the state's single point of contact (SPOC) before submission to the NSF. (Proposals from all other listed states are already required to have been submitted the state's SPOC.)

Several changes have been made to the names and telephone numbers of states' SPOCs. The following list is believed correct as of August 31, 1984.

EFFECTIVE DATE: This notice is effective for all proposals submitted to eligible STIA programs that are received by the NSF on or after October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Questions relating to NSF's implementation of E.O. 12372 should be directed to the NSF Intergovernmental Review Officer at (202) 357-7680. This is not a toll-free number.

Charles H. Herz,

General Counsel.

September 14, 1984.

States Electing To Review NSF Intergovernmental Science and Technology Program (as of Aug. 31, 1984)

ALABAMA: Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, AL 36105-0939

ARIZONA: Office of Economic Planning and Development, State of Arizona, Jo Stephens, Director, Local Government Assistance ATTN: Arizona State Clearinghouse 1700 W. Washington Street, Room 205, Phoenix, AZ 85007, (602) 255-5004

ARKANSAS: State Clearinghouse, Office of Intergovernmental Services, Department of finance and Administration, P.O. Box 3278, Little Rock, AR 72203, (501) 371-2311

CALIFORNIA: Office of Planning and Research, 1400 Tenth Street, Sacramento, CA 95814, (916) 445-0282

CONNECTICUT: Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, CT 06106-4459, (203) 566-4298

DELAWARE: Executive Department, Thomas Collins Building, Dover, DE 19903, ATTN: Franchine booth, (302) 736-4104

FLORIDA: Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, FL 32301 (904) 488-8114

GEORGIA: Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, GA 30334, (404) 656-3855

HAWAII: Mr. Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, HI 96804 (808) 548-3085

ILLINOIS: Tom Berkshire, Office of the Governor, State of Illinois, Springfield, IL 62706, (217) 782-8639

INDIANA: Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, IN 46204, (317) 232-5604

KENTUCKY: Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, (502) 564-2382

LOUISIANA: Michael J. Jefferson, Assistant Secretary, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, LA 70804, (504) 925-3722

MAINE: State Planning Office, Intergovernmental Review Process, State House Station #38, Augusta, ME 04333, (207) 289-3261

MARYLAND: Guy W. Hager, Director, Maryland State Clearinghouse, for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, MD 21201-2365, (301) 383-7875

MASSACHUSETTS: Executive Office of Communities, and Development, 100 Cambridge Street, Room 1401, Boston, MA 02202, (617) 727-3264

MICHIGAN: Carol Hoffman, Director, Office of Business and Community, Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, MI 48909, (517) 378-8363

MISSOURI: Missouri Federal Assistance, Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, MO 65102

MONTANA: Agens Fipperman, Intergovernmental Review, Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, MT 59620, (406) 444-5522

NEBRASKA: Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, NE 68509, (402) 471-2414

NEVADA: Ms. Linda A. Ryan, Director, Office of Community Services, Capitol

Complex, Carson City, NV 89710, (702) 885-4420

Note.—Correspondence and questions concerning this state's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, (702) 885–4420.

NEW HAMPSHIRE: Mr. David G. Scott, Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, NH 03301, (603) 271–2155

NEW JERSEY: Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West Street, Trenton, NJ 08625, (609) 292–6613

[Correspondence and questions should be directed to: Nelson S. Silver, State Review Process, address as above; (609) 292–0803]

NEW MEXICO: Mr. Peter P. Pence, Director, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, NM 87503, (505) 827–3885

NEW YORK: Director of the Budget, New York State

[**Note:** Correspondence and questions to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224, (518) 474–1605]

NORTH CAROLINA: Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, NC 27611, (919) 733–4131

OHIO: Leonard E. Roberts, Deputy Director, State Clearinghouse, Office of Budget Management, 30 East Broad Street, 39th Floor, Columbus, OH 43215, (614) 466–0699

OKLAHOMA: Office of Federal Assistance, Management, 4545 North Lincoln Boulevard, Oklahoma City, OK 73105, (405) 528–8200

OREGON: Intergovernmental Relations Divisions, State Clearinghouse, Executive Building, 155 Cottage Street, NE., Salem, OR 97310, (503) 373–1998

PENNSYLVANIA: Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, PA 17108, Attention: Charles Griffiths, Executive Director, (717) 783–3700

SOUTH CAROLINA: Danny L. Gromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, SC 29201, (803) 758–2417

SOUTH DAKOTA: Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations Second Floor, Capitol Building, Pierre, SD 57501, (605) 773–3661

TENNESSEE: Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, TN 37219, (615) 741–1676

TEXAS: Bob McPherson, State Planning Director, Office of the Governor, Austin, TX 78711, (512) 475–6156

VERMONT: State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, VT 05602, (802) 828–3326

VIRGINIA: Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, Post Office Box 1422, Richmond, VA 23211, (804) 786–1921

WASHINGTON: Washington Planning and Community Affairs Agency, North and Columbia Building, Olympia, WA 98504, (206) 753–2200

WEST VIRGINIA: Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, WV 25305, (304) 348–4010

WISCONSIN: Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street—GEF 2 Madison, WI 53702 (608) 266–1212

WYOMING: Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, WY 82002, (307) 777–7574

DISTRICT OF COLUMBIA: Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, (202) 727–6265

U.S. VIRGIN ISLANDS: Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas, VI, 00801 (809) 724-7900

NORTHERN MARIANA ISLANDS: Planning and Budget Office, Office of the Governor, Saipan, CM 96950

[FR Doc. 84–25469 Filed 9–25–84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Subcommittees on Reliability and Probabilistic Assessment/Limerick Units 1 and 2; Meeting

The ACRS Subcommittees on Reliability and Probabilistic Assessment/Limerick Units 1 and 2 will hold a combined meeting on October 9 and 10, 1984, 1717 H Street, NW, Washington, DC.

The meeting will be for the most part open to public attendance. However, a portion of the meeting will be closed to discuss proprietary information relating to the Limerick risk assessment and matters relating to the details of the Security Plan for the Limerick Generating Station.

The agenda for subject meeting shall be as follows:

Tuesday, October 9, 1984, Room 1046—1:00 p.m. until the conclusion of business

Wednesday, October 10, 1984, Room 1046—8:30 a.m. until the conclusion of business

The Subcommittees will continue their review of the probabilistic risk assessment for the Limerick plant and review the Philadelphia Electric Company's application for a license to operate the Limerick Generating Station.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the intitial portion of the meeting, the Subcommittees, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the Philadelphia Electric Company, the NRC Staff, their consultants, and other invited persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., Edt. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 21, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84–25580 Filed 9–25–84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-294]

Michigan State University; Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Facility Operating License No. R-114 for Michigan State University (the licensee) which renews the license for operation of the training and research reactor located in East Lansing, Michigan. The facility is a non-power reactor that has been operating in the non-pulsing mode at power levels not in excess of 250 kilowatts (thermal). The renewed Operating License No. R-114 will expire on February 15, 1998.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on December 20, 1977 at 42 FR 63829. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG-1084) for the renewal of Facility Operating License No. R-114 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment for the renewal of Facility Operating License No. R-114 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on September 14, 1984 at 49 FR 36180.

For further details with respect to this action, see (1) the application for amendment dated September 19, 1977, as supplemented, (2) the Finding of No Significant Environmental Impact, (3) Amendment No. 5 to License R-114, (4) the Commission's related Safety Evaluation Report (NUREG-1084), and (5) Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Copies of NUREG-1084 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Bethesda, Maryland, this 19th day of September 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 84-25631 Filed 9-25-84; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.54, "Spent Fuel Heat Generation in an Independent Spent Fuel Storage Installation," presents a method acceptable to the NRC staff for calculating conservative values of heat generation rates for use as design input for an independent spent fuel storage installation.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 19th day of September 1984.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 84-25528 Filed 9-25-84; 8:45]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 405, 1129 Twentieth Street, NW., Washington, D.C. 20527; Telephone (202) 653-2818.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-7231.

Summary of Form Under Review

Type of Request: Revision
Title: Application for Political Risk Investment Insurance
Form No.: OPIC-52
Frequency of Use: 275 per annum
Type of Respondent: U.S. investor
Standard Industrial Classification Codes: All
Description of Affected Public: U.S. companies investing overseas
Number of Responses: 275
Reporting Hours: 500
Federal Cost: $10,000
Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses)

Pursuant to OPIC's statute, OPIC must screen each applicant for investment insurance in order to determine the eligibility of the investor, assess the political risks of the project, and calculate the economic and development effects of the project in the host country and in the U.S. The OPIC Form 52 enables OPIC to collect this information in order to carry out Congress' mandate to manage the program prudently and to assure that no project is supported which has a significant adverse effect on U.S. employment.

Dated: September 17, 1984.

Leo H. Phillips, Jr.,

Office of the General Counsel.

[FR Doc. 84-25465 Filed 9-25-84; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21335; File No. 600-5]

Full Registration as a Clearing Agency; Boston Stock Exchange Clearing Corp.; Order

September 20, 1984.

I. Introduction and Summary

This Order concerns Boston Stock Exchange Clearing Corporation's ("BSECC") application for registration as a clearing agency under the Securities Exchange Act of 1934 (the "Act").[1] On December 1, 1975, the Commission granted BSECC registration as a clearing agency for a period of eighteen months and instituted proceedings to determine whether to grant or deny BSECC full registration as a clearing agency under the Act.[2] Subsequently, the Commission extended BSECC's temporary registration on a number of occasions, with the most recent extension to expire on September 30, 1984.[3] During the past several years, BSECC significantly altered its operations. Because of these operational changes, BSECC requested an extension of its temporary registration in order to revise its rules, by-laws and procedures. That revision is now substantially complete and the Commission has reviewed BSECC's updated by-laws, rules and procedures.

The Commission monitored BSECC carefully and extensively over the past few years as it altered its operations and procedures. The Commission also conducted a comprehensive review of BSECC's revised rules, by-laws, procedures and amended Form CA-1 to ensure that BSECC's rules and procedures substantially satisfy the Act and the Division of Market Regulation's (the "Division") Standards for Registration as a Clearing Agency (the "Standards").[4] During the Commission's review of BSECC's registration application, BSECC requested exemption from three of the Standards: (1) The internal accounting control report; (2) the fair representation standard; and (3) one aspect of the clearing fund contribution requirement.

As discussed below, the Commission is granting BSECC's exemption requests subject to certain undertakings. On the basis of its review of BSECC's application, rules, by-laws and procedures, the Commission believes that BSECC substantially satisfies the requirements of the Act and the Standards. Accordingly, the Commission is approving BSECC's application for full registration as a clearing agency, subject to certain undertakings noted below.

II. Discussion

1. BSECC's Services

BSECC offers its members a variety of trade comparison, clearance, settlement and limited depository services, most of which rely on the services of the National Securities Clearing Corporation ("NSCC") and the Depository Trust Company ("DTC"). For BSECC members that are NSCC members, BSECC collects trade data regarding trades executed on the BSE floor and transmits that data to NSCC for processing. For BSECC members that are not NSCC or DTC members, BSECC provides access to NSCC and DTC through BSECC sponsored accounts. As part of this sponsorship, BSECC guarantees member trades and collects and pays members' daily settlement obligations at NSCC and DTC. BSECC also provides a variety of services for member BSE specialists. In addition to transmitting trade data to NSCC, BSECC offers related clearance and settlement services to BSE specialists, guarantees their settling trades and provides those members with daily clearance and settlement reports. BSECC also offers member BSE specialists financing services to meet their daily settlement obligations. BSECC offers institutional members access to DTC's Institutional Delivery System and collects and pays members' daily DTC settlement obligations. Finally, BSECC provides institutional members safeguarding and settlement services for non-DTC eligible securities.

2. The Internal Accounting Control Report

The Standards require a clearing agency to "furnish annually to participants an opinion report prepared by its independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting control for the period since the last such report."[5] The scope of the study and evaluation covers all clearing agency activities performed for participants, particularly trade recording, transaction processing and depository services.[6] The scope of the study, moreover, must be sufficient to provide reasonable assurance that any material weakness existing during the period since the last report would be discovered. The accountant's report must describe any material weakness discovered and any corrective action taken or proposed to be taken.[7]

BSECC requested a one year phase-in period to implement the annual for-the-period requirement. BSECC proposed that, for fiscal 1985, it will obtain an opinion from its independent accountant respecting BSECC's internal controls for a period of three months. Thereafter, BSECC proposed to comply with the Standards regarding an annual for-the-period internal accounting control report.

The Commission is granting BSECC's request for a one year exemption to implement the annual for-the-period requirement. BSECC has undergone significant changes over the last several years. As a result of those changes, DTC now performs virtually all the depository functions previously performed by the New England Depository Trust Company ("NESDTC") and NSCC performs much of the securities transaction processing for BSECC. Therefore, as a practical matter, much of BSECC's activity is subject to review by NSCC's and DTC's auditors, incidentally, as part of their work. BSECC has also taken a number of steps to strengthen its internal accounting control system including establishing an internal audit department and an audit committee. Accordingly, the Commission believes BSECC and its independent accountant could benefit from additional time to implement a full annual-period review of, and report on, BSECC's system of internal accounting control. In the interim, BSECC will obtain a three month period report similar in scope to DTC's three month period report previously approved by the Commission.

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[1] *See* Sections 17A(a)(2) and 19(a) of the Act (15 U.S.C. 78q-1(a)(2) and 78s(a)) and Rule 17Ab2-1(c)(1) (17 CFR 240.17Ab2-1(c)(1)) thereunder.

[2] *See* Securities Exchange Act Release No. 11875 (Nov. 26, 1975), 40 FR 55910 (Dec. 2, 1975).

[3] *See* Securities Exchange Act Release No. 20222 (Sept. 23, 1983), 48 FR 45107 (Oct. 3, 1983).

[4] *See* Section 17A(b)(3)(A)-(I) of the Act, 15 U.S.C. 78q-1(b)(3)(A)-(I); Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) ("Standards Release").

[5] *See* Standards Release, 45 FR at 41925.

[6] Securities Exchange Act Release No. 19744 (May 9, 1983), 48 FR 21889 (May 13, 1983). Excluded from the scope of the study and evaluation, however, would be clearing agency corporate functions, such as payroll accounting.

[7] *See* Standards Release, 45 FR at 41926, for a discussion of the definition of "material weakness."

3. Fair Representation

Section 17A(b)(3)(C) of the Act requires that the clearing agency provide shareholders and participants a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs. Although the Standards describe several methods by which a clearing agency may comply with the fair representation standard, the Standards emphasize that each clearing agency's procedures must be evaluated on a case-by-case basis.[8] The Commission, however, believes that, at a minimum, fair representation requires that the entity responsible for nominating individuals to the clearing agency's board of directors should be obligated to nominate directors with a view toward assuring fair representation of the interest of shareholders and a cross-section of the member community.[9]

BSECC's Board of Directors is composed of the five members of BSE's Executive Committee, three of which are BSECC members. To ensure fair representation of the clearing member community, BSECC has agreed to amend its by-laws to ensure that a majority of BSECC's directors will be BSECC members. Moreover, BSECC's nominating committee will have an obligation to solicit names for possible nomination from all segments of the BSECC member community and to select BSECC directors with a view toward assuring fair representation of a cross-section of BSECC members.

The Commission believes that BSECC's proposal is sufficient to assure the fair representation of BSECC members. Moreover, nearly all BSECC members are BSE members, and, therefore, by virtue of their BSE membership, they can participate in the selection process.[10]

4. Collecting Additional Clearing Fund Contributions

The Standards require a clearing agency's clearing fund to be composed of contributions based on a formula, applicable to all users, that assesses the risk to the clearing agency arising from each member's use of clearing agency services.[11] The Standards contemplate that member clearing fund contributions would include two components: a minimum contribution and additional contributions, if necessary, that reflect the particular risks associated with each member's use of the clearing agency's services. The Standards emphasized the second component because each member's contribution to the clearing fund represents one of the clearing agency's primary protections against financial loss in the event of that member's insolvency.

BSECC requested an exemption from the mandatory collection of additional clearing fund contributions. Although BSECC requires each member to contribute $6,000 to BSECC's clearing fund and calculates additional clearing fund contributions using such a formula, BSECC does not collect those additional clearing fund contributions from members that may have some additional obligation. BSECC believes that the $6,000 contribution requirement is adequate to cover current member risks because member activity levels are such that collecting additional clearing fund contributions would contribute few additional monies to the clearing fund.[12] Nonetheless, because member activity levels can change, BSECC has agreed to monitor, on a monthly basis, both member activity levels and related clearing agency risks and to collect additional contributions if warranted.

Particularly in light of the reduced scope of BSECC's clearing agency activities, the Commission believes this alternative is adequate under the Act and is granting BSECC an exemption from this Standard. First, BSECC's rules authorize BSECC to collect from members additional clearing fund contribution and, if necessary, to obtain further assurances to protect it from the risk of a member's insolvency. Even more crucial to the Commission's consideration is the assurance that BSECC will review, regularly and continuously, member clearing fund contributions and, if warranted, collect additional contributions.

III. Conclusion

Based on the foregoing, the Commission believes that BSECC has substantially satisfied the requirements of the Act and the Standards for registration as a clearing agency and should be granted full registration subject to the limitations, undertakings, exemptions and other qualifications outlined above.

It is therefore ordered, pursuant to Sections 17A(a)(2) and 19(a) of the Act and Rule 17Ab2-1(c)(2) thereunder, that BSECC is granted full registration as a clearing agency.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25494 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

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[8] Securities Exchange Act No. 200221 (September 23, 1983, 48 FR 45167 (October 3, 1983) ("Full Registration Order").

[9] *See* Standards Release, 45 FR 41923.

[10] The Commission approved a somewhat similar nomination and selection process involving the Philadelphia Stock Exchange ("Phlx") and the Stock Clearing Corporation of Philadelphia ("SCCP"), whereby Phlx's nominating committee, in effect, selected SCCP's Board of Directors. Likewise, Phlx's nominating committee was obligated "to make nominations with a view toward assuring fair representation of the interest of shareholders and of a cross-section of the community of participants." *See* Full Registration Order, 48 FR at 45174.

[11] *See* Standards Release, 45 FR 41929.

[12] The $6.000 minimum clearing fund contribution is comparable to the minimum set at other clearing agencies.

[Release No. 23428; 70-7013]

The Connecticut Light & Power Co; Proposal To Enter Into Reimbursement Agreement Providing For Letters of Credit; Exception From Competitive Bidding

September 20, 1984.

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut, 06037, a wholly owned subsidiary of Northeast Utilities, a registered holding company, has filed a proposal pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

CL&P has a 4.05985% joint ownership in the Seabrook nuclear generating project, ("Seabrook Project"). On May 14, 1984, CL&P and the other joint owners of the Seabrook Project ("Seabrook Participants") adopted a resolution ("Resolution") which, among other things, required each of the Seabrook Participants to provide to each other a plan for financing its ownership share of the cost of completing Seabrook Unit I and for seeking any necessary approvals and consents. The Resolution also required that each Participant's plan provide assurance acceptable to other Seabrook Participants that financing of the portion of the assumed completion cost of the Seabrook Participant submitting the plan will be available. On June 23, 1984, the Seabrook Participants determined that the financing plan of each of the Seabrook Participants, including CL&P, was acceptable.

CL&P proposes to enter into two separate reimbursement agreements ("Reimbursement Agreements"), one with Chemical Bank and the other with

Manufacturers Hanover Trust Company ("Banks"). Each Reimbursement Agreement will provide for the Bank to issue its irrevocable standby letter of credit ("Letters of Credit") for the account of CL&P, naming as beneficiary the disbursing agent or another entity acting for the Seabrook Participants. The Letters of Credit to be provided by the Banks will cover the entire presently estimated maximum amount of CL&P's obligation with respect to Seabrook Unit 1. Based on the estimated maximum cash cost of $1.3 billion to complete the construction of Seabrook Unit 1, CL&P's 4.05985% share would be a maximum of $52.778 million. The amount of the Letter of Credit to be issued by Chemical Bank would be $25 million, and the amount of the Letter of Credit to be issued by Manufacturers Hanover Trust Company would be $27.778 million. Seabrook Unit I expenditures by CL&P before the date of issuance of the Letters of Credit will reduce the initial aggregate amount of the Letters of Credit on a dollar-for-dollar basis. After the issuance, the amounts of the Letters of Credit will decrease each month by the amount of CL&P's payment that month of its share of Unit 1 construction costs. The Letters of Credit would be effective from the date of issuance (expected to be approximately December 31, 1984) until October 1, 1987, or until the aggregate amount covered by the Letters of Credit has been paid by CL&P and verified by the disbursing agent for the Seabrook Participants, or until Seabrook Unit 1 is completed or cancelled as verified by the disbursing agent, whichever occurs first. The Letters of Credit could be cancelled if the first mortgage bonds of CL&P should be assigned a rating of A- or above from both Moody's and Standard & Poor's. The Letters of Credit will not be cancellable due to material adverse changes, including any changes to the expected date or forecasted cost of completing Seabrook Unit 1.

Each Letter of Credit will provide that if the disbursing agent gives the issuing Bank a statement to the effect that CL&P has failed to pay all or a portion of the construction payments billed to CL&P for Seabrook Unit 1, and if the other conditions contained in the Letters of Credit are satisfied, then on the demand of the disbursing agent the Banks will make the appropriate current payments into the disbursing agent's account or will immediately escrow to the account of the disbursing agent the entire remaining face value of the Letters of Credit at that time and charge CL&P for a corresponding loan ("Loan").

The Reimbursement Agreements will provide that CL&P will repay the amounts of any Loans within 90 days after the date on which such Loans are made, together with interest at the Banks' respective prime rates. If any Loans are not repaid when due, the interest rate on all amounts remaining unpaid will be increased to a rate two percentage points above the Banks' respective prime rates. For undertaking to issue the Letters of Credit, the Banks will be entitled to be paid commissions at the rates of .50% per annum (in the case of Chemical Bank) and .65% per annum (in the case of Manufacturers Hanover Trust Company) of the initial amounts of the respective Letters of Credit from September 15, 1984 until the date of issuance of the Letters of Credit. From and after the issuance of the Letters of Credit, the Banks will be entitled to be paid commissions at the rates specified above, calculated on the basis of the average daily amount available to be paid under the respective Letters of Credit. CL&P will also agree to pay the Banks for their reasonable costs and expenses with respect to the Letters of Credit.

CL&P requests an exception from the competitive bidding requirements of Rule 50 (b) and (c) pursuant to Rule 50(a)(5) stating that the nature of the obligations makes competitive bidding inappropriate.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 15, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact and/or law that are disputed. A person who so requests will be notifed of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25493 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21336; File No. 600-19]

New England Securities Depository Trust Co.; Order Granting Request for Withdrawal and Termination as a Clearing Agency

September 20, 1984.

I. Introduction

This Order concerns the withdrawal and termination of the New England Securities Depository Trust Company's ("NESDTC") temporary registration as a clearing agency under the Securities Exchange Act of 1934 (the "Act").[1] On September 24, 1976, the Commission granted NESDTC registration as a clearing agency for a period of eighteen months and instituted proceedings to determine whether to grant or deny NESDTC full registration as clearing agency.[2] Subsequently, the Commission, by Order, extended NESDTC's temporary registration on a number of occasions, with the most recent extension to expire on September 30, 1984.[3] On December 1, 1982, NESDTC ceased to do business as a clearing agency. Subsequently, NESDTC requested the cancellation of its temporary registration and withdrawal of its application for full registration pursuant to Section 19(a)(3) of the Act. The Commission has reviewed the nature and extent of NESDTC's residual activities and liabilities and has obtained from BSE what it believes are the necessary assurances to protect any rights and obligations NESDTC may have relative to its participants.

II. Discussion

NESDTC no longer performs any services and has no participants, officers, employees, accounts with banks or other clearing agencies, or securities or dividend activities. The depository functions previously performed by NESDTC are performed by the Depository Trust Company ("DTC") and the Boston Stock Exchange Clearing Corporation ("BSECC"), NESDTC's sister clearing corporation. Virtually all certificates held at NESDTC have been transferred to DTC. A few remaining non-depository eligible securities have been transferred to BSECC, which will perform depository functions for those securities.

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[1] *See* Sections 17A(a)(2) and 19(a) of the Act (15 U.S.C. 78q-1(a)(2) and 78s(a)) and Rule 17Ad2-1(c)(1) (17 CFR 240.17Ab2-1(C)(1)) thereunder.

[2] Proceedings regarding NESDTC's registration as a clearing agency were instituted on June 23, 1977.

[3] Securities Exchange Act Release No. 20222 (Sept. 23, 1983), 48 FR 45167 (Oct. 3, 1983). NESDTC consented to an extension of its temporary registration to afford the Commission time to review the nature and extent of residual activities and liabilities, if any, and to determine whether additional steps or undertakings must be made by NESDTC or the Boston Stock Exchange, Inc. ("BSE") before granting deregistration.

NESDTC's assets were transferred to Boston Stock Exchange Research, Inc. ("BSER") and NESDTC's clearing fund was transferred to BSECC.[4] BSER is a wholly-owned subsidiary of BSE that researches, resolves and pays claims against NESDTC. Since 1982 BSER has researched and resolved over 150 stock dividend claims, 100 bond interest claims and 900 cash dividend claims totalling over $727,000. As of July 31, 1984, BSER had available $500,843 to pay outstanding claims against NESDTC.

BSE has agreed to guarantee any remaining NESDTC liabilities (after BSER exhausts NESDTC's assets), up to $312,992.35. The Commission believes that BSE's limited guarantee is sufficient because all significant claims against NESDTC have been resolved and remaining claims are relatively insubstantial. There are currently outstanding 6 stock dividend claims totalling $40,000 and 46 cash dividend claims totalling $7,200. BSE has undertaken that for at least five years after December 1, 1982 (the date NESDTC ceases to perform depository functions), BSER will continue to research and pay valid claims against NESDTC up to the extent of NESDTC's remaining assets at BSER and BSE's guarantee.

Section 19(a)(3) of the Act provides in part that a self-regulatory organization may "withdraw from registration by filing a written notice of withdrawal with the Commission." Section 19(a)(3) also provides that if the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, "the Commission, by order, shall cancel its registration." Based upon the undertakings discussed in this Order and the representations made by BSE, the Commission has determined that granting NESDTC's request for withdrawal from registration as a clearing agency would be consistent with the requirements of the Act. The Commission further finds that NESDTC has ceased to do business in the capacity specified in its registration application and accordingly has determined to cancel its temporary registration, effective September 30, 1984.

The Commission believes, however, that it would be appropriate to require NESDTC, BSE and BSER to retain and, at the Commission's request, produce certain records that registered clearing agencies must maintain under Rule 17a-1 (a) and (b).[5] Specifically, the Commission believes that BSE and BSER should maintain records necessary to research claims concerning participants' past securities transactions and positions at NESDTC. In this regard, BSE and BSER, through BSE's counsel, have undertaken to maintain and make available for Commission inspection NESDTC's records for at least five years after NESDTC ceased doing business as a clearing agency. As noted above, BSE and BSER have also undertaken to continue researching, resolving and paying claims against NESDTC to the extent of NESDTC's remaining assets and BSE's limited guarantee.

III. Conclusion

On the basis of the foregoing facts and representations it is ordered that:

(1) Effective September 30, 1984 NESDTC's request for withdrawal from registration be granted and its registration as a clearing agency be cancelled; and

NESDTC, through BSE and BSER, shall maintain records necessary to research future claims regarding participants' past securities transactions and positions for at least five years after NESDTC ceased to do business and are to provide those records, upon request, to the Commission during that period of time.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25491 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21334; File No. SR-CSE-84-2]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change

September 20, 1984.

The Cincinnati Stock Exchange, 209 Dixie Terminal Building, Cincinnati, Ohio, 45202, submitted on July 10, 1984 copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Article II, Section 5.2 of the CSE constitution to increase the maximum number of Proprietary Memberships from 75 to 200. The Exchange also proposes to amend Article II, Section 10.1 to set the annual membership meeting on the fourth Thursday in April. In addition, the Exchange, pursuant to Amendment No. 1 submitted on July 20, 1984, would change Section 3.2 of Article VI to require that the Chairman appoint the Nominating Committee for the Board of Trustees not less than 30 nor more than 90 days prior to the annual membership meeting and that such members' terms would be one year. In addition, the CSE rule proposal would amend Article II, Section 10.4 to permit Access Participants to vote, but only in the election of any proposed trustee who is an Access Participant or a partner, officer or director thereof, and Article V, Section I to limit to two the number of trustees who are Access Participants.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 21223, August 9, 1984) and by publication in the **Federal Register** (49 FR 32821, August 16, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25492 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12932]

Chrysler Financial Corp.; Application and Opportunity for Hearing

September 20, 1984.

Notice is hereby given that Chrysler Financial Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeships of Manufacturers Hanover Trust Company ("MHTC") under a 1983 indenture which was qualified under the Act, and two new indentures, which have not been qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as trustee under the three indentures.

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[4] The monies transferred to BSECC's clearing fund were credited to each BSECC member as part of that member's clearing fund contribution.

[5] 17 CFR 240.17a-1 (a) and (b).

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On November 22, 1983, the Applicant filed a Registration Statement (Registration No. 2–88008), covering $300,000,000 principal amount of 13–1/4% Notes Due 1988 (the "13-1/4% Notes").

2. The 13-1/4% Notes were issued pursuant to an Indenture, dated as of December 15, 1983, between MHTC, as Trustee, and the Applicant (the "1983 Indenture").

3. On January 18, 1984, the Applicant filed a Registration Statement (Registration No. 2–88931), covering $300,000,000 principal amount of Medium-Term Notes of varying interest rates and dates of maturity (the "Medium-Term Notes").

4. The Medium-Term Notes were issued pursuant to an Indenture, dated as of January 15, 1983, between MHTC, as Indenture Trustee, and the Applicant (the "January 1984 Indenture").

5. The 13-1/4% Notes and the Medium-Term Notes are secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Agreement among the same parties and dated as of the same date (in each case as amended by Agreement dated as of August 15, 1983).

6. The Applicant is not in default in any respect under the 1983 Indenture or the January 1984 Indenture or under any other existing Indenture.

7. On June 21, 1984, the Applicant filed a Registration Statement (Registration No. 2–91782) covering the proposed issue of $1,500,000,000, principal amount of Senior Debt Securities, of varying interest rates and dates of maturity (the "Senior Debt Securities").

8. The Senior Debt Securities will be issued pursuant to a trust indenture to be qualified under the Act between the Applicant and an indenture trustee. The Applicant desires to appoint MHTC as indenture trustee under such indenture (the "June 1984 Indenture").

9. The Senior Debt Securities will be secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Company, as trustee, and the Trust Agreement among the same parties and dated as of the same date (in each case as amended by Agreement dated as of August 15, 1983).

10. The 13–1/4% Notes, the Medium-Term Notes and the Senior Debt Securities (assuming the January and June 1984 Indenture are qualified) will be identically secured and of equal rank.

11. Each Indenture contains a cross-default provision allowing the Trustee, MHTC, to accelerate 10 days after notice to Applicant of a default and acceleration under another indenture or agreement.

12. Pursuant to the Security Agreement dated as of May 15, 1980, Wilmington Trust Company as the holder of the collateral under each Security Agreement has a trustee's obligation to treat all holders of debt secured thereunder equally and ratably and would dispense a pro rata portion of the trust estate to MHTC as Trustee under 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture.

13. The Applicant is filing this application pursuant to secton 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture (which has been qualified under the Act), the June 1984 Indenture (which application is currently pending, File No. 22–13164), and the January 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures.

Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the 1983 Indenture, the June 1984 Indenture and the January 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives notices of hearing and waives hearing and waives any and all rights to specific procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public References Room, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested persons may, not later than October 15, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law of fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84–25576 Filed 9–25–84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22–13164]

Chrysler Financial Corp.; Application and Opportunity for Hearing

September 20, 1984.

Notice is hereby given that Chrysler Financial Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeships of Manufacturers Hanover Trust Company ("MHTC") under a 1983 indenture which was qualified under the

Act, and two new indentures which have not been qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as trustee under the three indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On November 22, 1983, the Applicant filed a Registration Statement (Registration No. 2-88008), covering $300,000,000 principal amount of 13¼% Notes Due 1988 (the "13¼% Notes").

2. The 13¼% Notes were issued pursuant to an Indenture, dated as of December 15, 1983, between MHTC, as Trustee, and the Applicant (the "1983 Indenture").

3. On January 18, 1984, the Applicant filed a Registration Statement (Registration No. 2-88931), covering $300,000,000 principal amount of Medium-Term Notes of varying interest rates and dates of maturity (the "Medium-Term Notes").

4. The Medium-Term Notes were issued pursuant to an Indenture, dated as of January 15, 1983, between MHTC, as Indenture Trustee, and the Applicant (the "January 1984 Indenture").

5. The 13¼% Notes and the Medium-Term Notes are secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Agreement among the same parties and dated as of the same date) in each case as amended by Agreement dated as of August 15, 1983).

6. The Applicant is not in default in any respect under the 1983 Indenture or the January 1984 Indenture or under any other existing Indenture.

7. On June 21, 1984, the Applicant filed a Registration Statement (Registration No. 2-91792) covering the proposed issue of $1,500,000,000 principal amount of Senior Debt Securities, of varying interest rates and dates of maturity (the "Senior Debt Securities").

8. The Senior Debt Securities will be issued pursuant to a trust indenture to be qualified under the Act between the Applicant and an indenture trustee. The Applicant desires to appoint MHTC as indenture trustee under such indenture (the "June 1984 Indenture").

9. The Senior Debt Securities will be secured under the Security Agreement dated as of May 15, 1980 among the Applicant, Chrysler Credit Corporation, Chrysler Leasing Corporation and Chrysler Overseas Capital N.V., and Wilmington Trust Company, as trustee, and the Trust Agreement among the same parties and dated as of the same date (in each case as amended by Agreement dated as of August 15, 1983).

10. The 13¼% Notes, the Medium-Term Notes and the Senior Debt Securities (assuming the January and June 1984 Indentures are qualified) will be identically secured and of equal rank.

11. Each Indenture contains a cross-default provision allowing the Trustee, MHTC, to accelerate 10 days after notice to Applicant of a default and acceleration under another indenture or agreement.

12. Pursuant to the Security Agreement dated as of May 15, 1980, Wilmington Trust Company as the holder of the collateral under such Security Agreement has a trustee's obligation to treat all holders of debt secured thereunder equally and ratably and would dispense a pro rata portion of the trust estate to MHTC as Trustee under 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture.

13. The Applicant is filing this application pursuant to section 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture (which has been qualified under the Act), the January 1984 Indenture (which application is currently pending, File No. 22-12932), and the June 1984 Indenture are not so likely to invoke a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures.

Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specific procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested persons may, not later than October 15, 1984, request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25075 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23426 (70-7019)]

Eastern Utilities Associates and Montaup Electric Co.; Proposals To Enter Into Reimbursement Agreement Providing for a Letter of Credit Secured by an Unconditional Parent Guarantee; To Issue and Sell Short-Term Note; Exception From Competitive Bidding

September 20, 1984.

Montaup Electric Company ("Montaup"), an electric generating subsidiary of Eastern Edison Company, a wholly owned retail electric subsidiary of Eastern Utilities Associates ("EUA") a registered holding company, P.O. Box 2333, Boston, MA 02107, and EUA propose a transaction subject to sections 6(a), 7, 9(c) and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

EUA and Montaup propose to enter into a Reimbursement Agreement ("Agreement") with The Chase Manhattan Bank, N.A. ("Chase") and other banks, with Chase as agent, providing for the issuance by Chase to Montaup of an irrevocable standby letter of credit ("letter") in an amount up to $37.1 million, naming as beneficiary the Seabrook Project Disbursing Agent or other appropriate entity as may develop. The purpose of this letter is to finance Montaup's 2.9% ownership share of the Seabrook Project as set forth in the Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units dated May 1, 1973 ("Seabrook Agreement"). The initial amount of the letter will decrease each month by the amount of Montaup's payment of its share of Unit 1 construction costs. The letter will authorize the beneficiary to draw under it if Montaup fails to make in full a payment due under the Seabrook Agreement. If requested by the banks following an event of default, the beneficiary will draw the full amount remaining under the letter. This amount will be deposited with Chase, as escrow agent, in an escrow account. A drawing under the letter will obligate Montaup to reimburse Chase, plus interest of 2% over the prime rate, forthwith, for the amount drawn. Montaup will pay a letter of credit fee of .50% per annum, increasing to .75% per annum on the earlier of December 31, 1984 and the date the letter is delivered by Montaup to the beneficiary, calculated monthly on the amount available to be drawn under the letter. Various conditions, covenants and events of default for the letter and the Agreement are described in the Commitment Letter dated August 16, 1984. The letter will terminate on October 1, 1987, unless cancelled earlier with the consent of the beneficiary.

The Agreement will require EUA to unconditionally guarantee Montaup's obligations under such Agreement. Upon the occurrence of certain events, as set forth in a Commitment Letter dated August 16, 1984, EUA will be required to deposit with Chase in a cash collateral account an amount equal to the remaining amount available to be drawn under the letter of credit.

In the event EUA is required to deposit funds with Chase in a cash collateral account, EUA will be required to secure the Notes by depositing an amount of cash equal to the then outstanding principal amount of the Notes. EUA requests authorization for the temporary investment of such cash in certain debt and equity instruments as will be approved by this Commission.

To enable EUA to deposit cash with Chase in the cash collateral account and to deposit cash as security for the Notes, if such deposits are required, EUA proposes to issue short-term notes to banks, and to pay such notes by the issuance of renewal notes at any time during the period from January 1, 1985 through October 1, 1987. The aggregate principal amount of such short-term notes outstanding at any one time will not exceed the sum of the amount required at such time to be deposited or remain on deposit with Chase and the amount required at such time to be deposited or remain on deposit as security for the Notes. These short-term notes either (i) will bear interest at the floating prime rate (13% as of September 11, 1984), will have maximum maturities of nine months, and will be subject to prepayment at any time without premium or (ii) will bear interest at available money market rates (which will always be less than the prime rate), will have maximum maturities of sixty days, and will not be prepayable.

Sections 10.5, 10.6, and 10.7 of EUA's note agreement ("Note Agreement") for $22.5 million, 10¼% Senior Notes due March 1, 1999 (as authorized in HCAR No. 20916 dated February 7, 1979 and HCAR No. 21056 dated May 22, 1979) ("Notes"), contain limitations on funded debt, guarantees, and liens. The transactions proposed by EUA in this proposal are outside the limitations of the Note Agreement. However, the Note Agreement allows for a waiver of those limitations if EUA obtains letters of waiver and amendment from at least 75% of the Note holders as required by section 15 of the Note Agreement. EUA states that it expects to obtain those letters.

Montaup requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the proposed obligations of Montaup and EUA arising from the Agreement and letter. Montaup states that compliance with the requirements in paragraphs (b) and (c) of Rule 50 is not necessary or appropriate in the Public interest or for the protection of investors or consumers to assure the maintenance of competitive conditions, the receipt of adequate consideration or the reasonableness of any fees or commissions to be paid.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 15, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25578 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6922]

Guilford Mills, Inc.; Application To Withdraw From Listing and Registration

September 20, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

A Commission notice dated September 12, 1984 specifying the reasons alleged for withdrawal of the security from listing and registration and requesting public comment thereon inadvertently indicated that such action was requested with respect to the

Midwest Stock Exchange, rather than the Amex.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25577 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21337 (SR-Phlx-84-17)]

Philadelphia Stock Exchange, Inc.; Filing of Proposed Rule and Order Granting Accelerated Approval of Proposed Rule Change

September 20, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 11, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA., 19103, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Phlx is proposing to extend its pilot program [1] relating to implementation of a system for the execution, processing and reporting of standard odd-lot market orders to purchase or sell shares in American Telephone & Telegraph Co. ("AT&T") and the equity shares created as a result of the AT&T divestiture [2] from its scheduled expiration date of August 21, 1984 to February 21, 1985. In its original filing implementing the pilot (File No. SR-Phlx-83-19), Phlx noted that in light of the increase in odd-lot order volume anticipated as a result of the divestiture, Phlx was implementing procedures to ensure maximum capacity for odd-lot order processing as well as to provide for efficient clearance and settlement of these transactions. The Exchange has stated in its filing that the procedures detailed in its original filing will remain in effect, for the duration of the extended pilot program.

Under the pilot program, no odd-lot differentials are charged on an odd-lot market order. Standard odd-lot market orders in AT&T and the divestiture issues received prior to the opening of trading or after a regulatory trading halt are executed at the New York Stock Exchange ("NYSE") opening or re-opening prices while standard odd-lot orders received after the NYSE opening are executed at the PACE quote. After a non-regulatory halt, if the Exchange decides to continue trading, standard odd-lot market orders continue to be executed at the PACE quote, but if the Exchange decides to halt trading and to resume trading upon resumption of trading on the NYSE, standard odd-lot market orders received after the halt and prior to the resumption of trading are executed at the reopening price on the NYSE.

In its filing Phlx states that the pilot program establishes a more efficient means of pricing and that the program's extension will provide Phlx with an opportunity to further assess the results of the pilot pricing system under market conditions before making a determination as to what formal modifications are appropriate in this area. According to Phlx, in providing for efficient execution, reporting, clearance and settlement of odd-lot orders, the proposed rule change is consistent with sections 11(a)(1) and 17(A)(1) of the Act which encourage the use of new data processing and communications techniques, creating the opportunity for more efficient and effective market operations.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-PHLX-84-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot program was scheduled to expire on August 21, 1984. An extension of the pilot program will provide Phlx with the additional time necessary to study and evaluate the efficiencies achieved by the pilot program as well as to determine whether to submit a formal codification of procedures under the pilot. Therefore, the Commission believes it is appropriate to extend the pilot program until February 21, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25579 Filed 9-25-84; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Matching Program To Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System publishes the following information concerning revision of the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources. This revision of the report published in 49 FR 7687 (March 1, 1984) incorporates additional sources of records of registration age men.

FOR FURTHER INFORMATION CONTACT: Lawrence Roffee, Management Services, Selective Service System, Washington, D.C. 20435, Phone 202-724-0872.

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[1] The pilot program approved on November 18, 1983 is described in File No. SR-Phlx-83-19 (Securities Exchange Act Release No. 20398, November 18, 1983; 48 FR 53777, November 29, 1983).

[2] The following issues are affected by the pilot procedures under the pilot program: American Telephone & Telegraph Co., Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation and U.S. West, Inc.

Dated: September 20, 1984.

Thomas K. Turnage,

Director of Selective Service.

Report Concerning SSS Matching Program to Identify Registration Violators

Pursuant to OMB Memorandum dated May 11, 1982, concerning "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System submits the following information concerning its revision to the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against the records of the Social Security Administration, the Internal Revenue Service, the Defense Logistics Agency, the United States Coast Guard, the Veterans Administration, the Immigration and Naturalization Service, Federal Aviation Administration, State and local government agencies, commercial enterprises, and private individuals.

Authority

The authority under which this program is conducted are Sections 10(b)(5) and 12(e) of the Military Selective Service Act (50 U.S.C. App. 451 et seq.); and Presidential Proclamation 4771, 45 FR 45247 (July 3, 1980).

Purpose

This matching program is a continuing program to identify those persons who are in violation of the registration requirements of section 3 of the Military Selective Service Act (50 U.S.C. App. 453).

Procedure

The matching procedure for the program includes the following steps:

(1) The Social Security Administration, State and local government agencies, Veterans Administration, Department of Defense, Federal Aviation Administration, and commercial mailing list firms provide the Selective Service System the following information as available: the name, social security account number, date of birth, and address of each male born in the year of birth of the age groups which are required to register.

(2) The data received from the various record sources is compared to the Selective Service Registrant Registration Record System (SSS–10) to eliminate those men who have registered. Pending further matching and confirmation, the names on the lists that are not matched with the Selective Service record of registrants constitute the Selective Service Suspected Violator Inventory System (SSS–8) containing the names of suspected violators.

(3) The Selective Service Suspected Violator Inventory System (SSS–8) is then compared to the record systems of the Defense Logistics Agency and the U.S. Coast Guard containing the names of personnel on active duty with the armed forces. The names of persons who are on active duty with the armed forces are removed from the Suspected Violator Inventory System.

(4) Letters and registration forms are mailed to individuals in the Selective Service Suspected Violator Inventory System. Records not containing addresses may then be matched by Internal Revenue Service to their Individual Master File (IRS–24.030) to determine the most current addresses. (Authority: 26 U.S.C. 6103(i)(2)). The Internal Revenue Service then mails letters and registration forms to the individuals.

(5) Those who respond by registering are entered into the Selective Service Registrant Record System (SSS–10). Those who fail to respond or refuse to register are reported to the Department of Justice for further investigation and possible prosecution. Those who respond but are determined to be exempt from registration pursuant to sections 3(a) and 6(a) (1) and (2) of the Military Selective Service Act (50 U.S.C. App. 453, 456) are so identified.

Record Systems

The record systems that are matched against the SSS–8 are:

(1) Selective Service System Record System No. SSS–10 "Registrant Registration Records (post-1979) SSS" published in 45 FR 30587 (May 8, 1980);

(2) Social Security Administration Record System No. 09–60–0058 "Master Files of Social Security Number Holders HHS SSA OEER" published in 46 FR 53784 (October 30, 1981);

(3) Internal Revenue Service Record System No. IRS 24.030 "Individual Master File (IMF)" published in 46 FR 16463 (March 12, 1981);

(4) U.S. Coast Guard, Record System No. DOT/CG 624 "Personnel Management Information System (PMIS)" published in 46 FR 59741 (December 7, 1981);

(5) U.S. Coast Guard, Record System No. DOT/CG 678 "Reserve Personnel Management Information System (Automated)" published in 46 FR 59741 (December 7, 1981);

(6) Defense Logistics Agency Record System No. S 322.10 DLA–LZ "Defense Manpower Data Center Data Base" published in 46 FR 40556 (August 10, 1981);

(7) Veterans Administration Record System No. 45VA23 "Veterans Assistance Discharge System (VADS)—VA" published in 47 FR 370 (January 5, 1982);

(8) Federal Aviation Administration, Record System No. DOT/FAA 802 "Airmen Certification System", published in 46 FR 59782 (December 7, 1981);

(9) State and local government records; and

(10) Lists acquired from private concerns and individuals.

Start and End Dates

The matching program began June 1, 1982. The program will continue indefinitely unless registration under the Military Selective Service Act is terminated by the President or by statute.

Safeguards

Safeguards afforded the records involved are:

(1) Records are available to authorized Selective Service personnel only. Authorized personnel include the Director, Deputy Director, Associate Director for Operations, Associate Director for Management Services, the General Counsel, computer operators involved in processing the information, and other personnel specifically authorized to have access to the information by the Director, the Deputy Director, the Associate Directors or the General Counsel to have access to the information.

(2) Computer files are maintained at the Joint Computer Center at Great Lakes, Illinois.

(3) Building is secured and patrolled after normal business hours.

(4) Security guards for the building allow access to authorized personnel only.

(5) Computer room is secured with cypher locks.

(6) Terminal access to the computer system is restricted to those with valid user ID and password.

(7) A Customer Information Control System requires an additional password for interactive access to data base information.

(8) A software security package protects access to data in the system.

Disposition of Records

At the completion of the program for each year group, source records are returned to source agencies by registration year group, if requested; or destroyed pursuant to any prior agreement between the Selective Service System and any respective source agency; or disposed of pursuant to Chapters 21 and 33 of the Federal Records Act of 1950 (44 U.S.C. 2101 et seq.).

Congressional Notice

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

[FR Doc. 84-25452 Filed 9-25-84; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Arizona; Region IX Advisory Council; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 11:00 a.m., on Thursday, October 25, 1984, at the China Doll Restaurant, Seventh Avenue and Osborn, Phoenix, Arizona, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 3030 North Central Avenue, Suite 1201, Phoenix, Arizona 85012, telephone (602) 241-2206.

Dated: September 19, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-25505 Filed 9-25-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0199]

Northern Capital Corp.; Application for License To Operate as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1984)) by Northern Capital Corporation, 50 South LaSalle Street, Chicago, Illinois 60675 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act) as amended (15 U.S.C. 661 et seq.) and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholder are:

Name and address	Title or relationship	Percent of ownership
George M. Richmond, 5202 North Magnolia, Chicago, IL 60640	President, Director	
Donald H. Choate, 72 Cumberland Dr., Deerfield, IL 60015	Secretary	
Thomas P. Marrie, 1100 North Lake Shore Dr., Chicago, IL 60611	Treasury, Director	
Miklas Bubnovich, 1660 North LaSalle, Chicago, IL 60614	Assistant Secretary	
Charles H. Barrow, 2735 Colfax St., Evanston, IL 60201	Director	
John W. Hogge, 621 Turner Ave., Glen Ellen, IL 60525	do	
Peter H. Kingman, 128 South Madison Ave., La Grange, IL 60525	do	
Edward Byron Smith, Jr., 90 Ahwahee Rd., Lake Forest, IL 60045	do	
John B. Snyder, 592 Cherry St., Winnetka, IL 60093	do	
The Northern Trust Company, 50 South LaSalle St., Chicago, IL 60675.	Shareholder	100

Northern Trust Corporation, a bank holding company, owns all the outstanding capital stock of the Northern Trust Company, other than directors' qualifying shares. Harold Byron Smith has a sole or shared voting power and/or sole or shared investment power as to an aggregate of 665,926 shares or 13.58 percent of the outstanding common stock of Northern Trust Corporation.

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: September 17, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-25520 Filed 9-25-84; 8:45 am]

BILLING CODE 8025-01-M

Utah; Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Salt Lake City, Utah, will hold a public meeting at 9:00 a.m., on Tuesday, October 16, 1984, at the Utah State Capital Legislative Chambers, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah (801) 524-5800.

Dated: September 19, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-25506 Filed 9-25-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP84-2; Notice 2]

General Motors Corp; Grant of Petition for Exemption From Notice and Remedy for Inconsequentiality Noncompliance

This notice grants the petition by General Motors, Corp., of Warren, Michigan (GM) to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment.* The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 14, 1984, and an opportunity afforded for comment (49 FR 1670).

The noncompliance is found on 1287 1984 model Buick LeSabre, Regal, and Electra passenger cars. The Type 2A1 headlamps installed on these vehicles may contain a halogen bulb in which the upper beam filament of 45 watts exceeds the maximum design wattage of 43 watts specified in paragraph S4.1.1.33 of Standard No. 108. The noncompliance results from a manufacturing error in which the upper (40 watts) and lower beam filaments (45 watts) were reversed. The noncompliance affects all the left hand headlamps of the 1287 vehicles, but only 657 of the right hand ones.

GM argued that the noncompliance is inconsequential because the headlamps otherwise meet all requirements of Standard No. 108. Operation of headlamps on uppper beam "will result in a nominal increase in load of 10 watts, which is well within the load carrying capacity of the headlamp circuits of the vehicles."

No comments were received on the petition.

The agency has analyzed GM's representations that, notwithstanding the reversal of the filaments, the design life and photometric requirements of Standard No. 108 are met, and has found no reason not to accept them. Further, the increase in load of 10 watts may be deemed nominal and should not compromise the load carrying capacity of the headlamp circuits of the vehicles. Accordingly petitioner has met its burden of persuasion that the noncompliance with Standard No. 108 herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

The engineer and attorney principally responsible for this notice are Jere Medlin and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 20, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-25503 Filed 9-25-84; 8:45]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the sames the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954[.

Bahrain
Iraq
Jordan
Kuwait
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Ronald T. Pearlman,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 84-25502 Filed 9-25-84; 8:45 am]

BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 546; Ref: ATF O 1100.101A]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 1, Basic Permit Requirements Under the FAA Act

Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF O 1100.101, Delegation Order—Delegation to the Assistant Director (Regulatory Enforcement) of Authorities of the Director in 27 CFR Part 1, dated December 13, 1978, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to basic permit requirements under the Federal Alcohol Administration Act. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To prescribe all forms, including permits, required by Part 1, under 27 CFR 1.3 and 27 CFR 1.5.

b. To prescribe the form for persons to use to make application for basic permits to engage in any of the operations specified in 27 CFR 1.20 through 27 CFR 1.22; and to require applications to be accompanied by affidavits, documents, and other supporting data, under 27 CFR 1.25.

c. To issue instructions for verification of any document, under 27 CFR 1.56.

5. *Redelegation.* The authorities in paragraph 4 above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

6. *For Information Contact.* David M. Purcell, Procedures Branch, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202) 566-7602.

7. *Effective Date.* This delegation order becomes effective on September 26, 1984.

Approved: September 17, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-25460 Filed 9-25-84; 8:45 am]

BILLING CODE 4810-31-M

Office of Revenue Sharing

Final Date for Adjustment Demands and Close of Data Definitions

AGENCY: Office of Revenue Sharing, Treasury Department.

ACTION: Data and allocation notice.

SUMMARY: This notice announces that on September 30, 1984 the Revenue Sharing allocations to eligible governments for Entitlement Period Fourteen will become final, unless a demand for adjustment has been received by September 30, 1984, and that the data definitions will become final on that date for Entitlement Period Sixteen. This notice also serves as a demand by the Office of Revenue Sharing for allocation adjustments under the Revenue Sharing Act.

DATE: September 30, 1984 effective date.

FOR FURTHER INFORMATION CONTACT: Matthew Butler, Manager, Data and Demography Division, Office of Revenue Sharing, 2401 E Street, NW., Washington, D.C. 20226; telephone (202) 634-5166.

SUPPLEMENTARY INFORMATION: The Revenue Sharing Act, specifically 31 U.S.C. 6702(c) (Pub. L. 97-258; 96 Stat. 1012) provides that for entitlement periods beginning after December 31, 1976, no adjustment shall be made in a government's payments for an entitlement period, unless a demand for adjustment has been made by the recipient government or the Secretary of the Treasury within one year after the end of that entitlement period. Under authority delegated to the Director of the Office of Revenue Sharing by the Secretary (31 CFR 51.1), I hereby make a demand to change the amount of entitlement funds of all Revenue Sharing recipient governments for Entitlement Period Fourteen (October 1, 1982–September 30, 1983) to reflect corrections in governments' payments on the basis of the final Period Fourteen allocations, as provided for by the Revenue Sharing Act (31 U.S.C. 6702(c)).

A recipient local government may make a demand for allocation adjustment for Entitlement Period Fourteen until September 30, 1984. A demand accompanied by adequate supporting documentation pending on the September 30, 1984 deadline will be researched and a written decision on the data challenge will be rendered. Any government which receives a data change as a result of an adjustment demand will be eligible for an adjustment to its allocation, and will be notified of any adjustment amount at the completion of the adjustment process.

The Office of Revenue Sharing will send "Recipient Account Statement" forms to all Revenue Sharing recipient governments during December 1984. These forms will include information about the data used to calculate each goverments' allocations, adjustments from prior periods, and the entitlement amount for Entitlement Period 16 (October 1, 1984–September 30, 1985).

In accordance with § 51.23(a) of the Revenue Sharing regulations, the Office of Revenue Sharing also announces that the data definitions upon which the allocations are based for Entitlement Period 16 (October 1, 1984–September 30, 1985) will become final on September 30, 1984. These data definitions were published in the **Federal Register** on June 13, 1984 (49 FR 24481).

According to § 51.23(b) of the Revenue Sharing regulations, the data definitions include the provisions of the Revenue Sharing Act (31 U.S.C. 6709(a)(3) formerly, 31 U.S.C. 1228(e)(2)(B)), the "Memphis Rule." This provision allows the governor of a State to certify for the computation of local tax effort, that certain county sales taxes are eligible to be credited to local governments in the county. That certification must be received by the Office of Revenue Sharing on or before September 30, 1984 to be effective for Entitlement Period 16.

Authority

This notice is issued under the authority of the Revenue Sharing Act (31 U.S.C. 6701–6724) formerly the State and Local Fiscal Assistance Act of 1972, as amended (31 U.S.C. 1221 *et seq.*) and Treasury Department Order No. 224, January 26, 1973 (33 FR 3342) as amended by Treasury Department Order No. 103–1 dated March 18, 1982.

Dated: September 20, 1984.

Michael F. Hill,

Director, Office of Revenue Sharing.

[FR Doc. 84–25461 Filed 9–25–84; 8:45 am]

BILLING CODE 4810-28-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The Agency form number if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 20, 1984.

By direction of the Administrator:

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Reinstatement

1. Department of Medicine and Surgery.
2. Request for Consent to Release of Drug Abuse, Alcoholism or Alcohol Abuse or Sickle Cell Anemia Information from Medical Records.
3. 10–5345.
4. On occasion.
5. Individuals or households.
6. 421,908.
7. 21,095.
8. Not Applicable.

[FR Doc. 84–25462 Filed 9–25–84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 188
Wednesday, September 26, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M–411 amdt 1, 9/18/84]

Notice of Deletion of Item and Addition of Item at the September 18, 1984 Meeting.

TIME AND DATE: 10:00 a.m., September 18, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

13. Commuter carrier fitness determination of Air Caribe International, Inc.; Docket 42394, Emergency Exemption of Air Caribe to operate as a commuter pending completion of its fitness review and Docket 42401, Application for fitness review. (BDA)

25. Discussion of Greek Negotiations. (BIA)

STATUS:

13 Open.
25 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673–5068.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84–25686 Filed 9–24–84; 4:06 am]
BILLING CODE 6320–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 26, 1984.

LOCATION: Third Floor Hearing Room 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. First Aid Labeling of Hazardous Household Products

The staff will brief the Commission on issues related to appropriate first aid labeling of certain hazardous household products. Particular attention will be devoted to first aid treatments which are recommended following alkali poisoning.

2. Regional Directors Meeting/Briefing on Field Investigations

The Regional Directors will meet with the Commission to discuss various issues including field investigations.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20227, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 84–25586 Filed 9–24–84; 8:56 am]
BILLING CODE 6355–01–M

3

FEDERAL COMMUNICATIONS COMMISSION

September 20, 1984.

Deletion of Agenda Item From September 26 Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the September 26, 1984, Open Meeting and previously listed in the Commission's Notice of September 19, 1984.

Agenda, Item No., and Subject

Common Carrier—5—Title: Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands (CC Docket No. 83–1376). Summary: The Commission will consider the Petition filed by General Communication Incorporated seeking interim relief pending the development of a long term resolution of the issues raised in the *Notice of Inquiry* in this Docket.

Issued: September 20, 1984.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84–25672 Filed 9–24–84; 4:06 pm]
BILLING CODE 6712–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is herby given that at 3:42 p.m. on Thursday, September 20, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Century National Bank, Jacksonville, Florida, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, September 20, 1984; (2) accept the bid for the transaction submitted by Barnett Bank of Jacksonville, National Association, Jacksonville, Florida; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting ws practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 21, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84–25641 Filed 9–24–84; 1:12 pm]
BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, October 1, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendation, pursuant to section 10(b) of the Federal Deposit Insurance Act, that the Corporation examine a certain state member bank:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 24, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25684 Filed 9-24-84; 8:45]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the Provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, October 1, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Fireside Thrift Company, an operating noninsured industrial bank located at 401 Warren Street, Redwood City, California.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,108-L: Algoma Bank, Algoma, Wisconsin

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Penn Square Bank, National Association, Oklahoma City, Oklahoma, NR-391 (Memo dated August 22, 1984)

Summary Audit Report re: United Southern Bank of Clarksville, Clarksville, Tennessee, AP-359 (Memo dated September 6, 1984)

Summary Audit Report re: National Bank of Odessa, Odessa, Texas, AP-363 (Memo dated September 7, 1984)

Summary of Two Liquidation Site Audits: The First National Bank of Danvers, Danvers, Illinois, AP-357; First Commerce Bank of Hawkins County, Rogersville, Tennessee, AP-358 (Memo dated September 10, 1984)

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 24, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25685 Filed 9-24-84; 4:06 pm]

BILLING CODE 6714-01-M

7

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System

TIME AND DATE: 9:15 a.m., Friday, September 21, 1984.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

Matters to be Considered: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25559 Filed 9-21-84; 4:49 pm]

BILLING CODE 6210-01-M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-45]

TIME AND DATE: 10:00 a.m., Thursday, October 4, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.

4. Petitions and complaints: a. Certain surgical implants for internal fixation (Docket No. 1095).

5. Consideration of the FY 86 budget proposal.

6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-25558 Filed 9-21-84; 4:49 pm]
BILLING CODE 7020-02-M

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NUCLEAR REGULATORY COMMISSION

DATES: Weeks of September 24, 1984, and October 1, 8, 15, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 24

Thursday, September 27

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 1

Tentative

Tuesday, October 2

10:00 a.m.
Briefing/Possible Vote on UCS 2.206 Petition on TMI-1 Emergency Feedwater (Public Meeting)

2:00 p.m.
Continuation of 9/5 Discussion of Indian Point Probabilistic Risk Assesment (Public Meeting)

Wednesday, October 3

2:00 p.m.
Discussion of Reexamination of Exemption Process (Public Meeting)

Thursday, October 4

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Callaway-1 (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 8

Tentative

Tuesday, October 9

10:00 a.m.
Discussion of Severe Accident Program for Nuclear Power Reactors—Revised Policy Statement (Public Meeting)

2:00 p.m.
Discussion of Proposed Rule on Decommissioning Nuclear Facilities (Public Meeting)

Wednesday, October 10

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, October 11

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 12

10:00 a.m.
NUMARC Briefing on Fitness for Duty, Training and Requirements for Senior Managers (Public Meeting)

Week of October 15

Tentative

Tuesday, October 16

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting) (Tentative)

2:00 p.m.
Discussion of QA Report to Congress (Public Meeting)

Thursday, October 18

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

Presentations by Parties on Board Order in Shoreham scheduled for September 21, *cancelled.*

Discussion of Remaining Questions on Backfitting scheduled for September 21, *cancelled.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634-1410.

September 21, 1984.

John C. Hoyle,
Office of the Secretary.

[FR Doc. 84-25687 Filed 9-24-84; 4:06 pm]
BILLING CODE 7590-01-M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of September 24, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, September 25, 1984, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 25, 1984, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Chapter 11 proceeding.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272-2091.

Shirley E. Hollis,
Acting Secretary.

September 20, 1984.

[FR Doc. 84-25642 Filed 9-24-84; 1:11 pm]
BILLING CODE 8010-01-M

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federal register

Wednesday
September 26, 1984

Part II

Environmental Protection Agency

40 CFR Parts 152, 157, 158, and 162

Pesticide Registration and Classification Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 157, 158 and 162

[OPP-30071; FRL 2604-1(b)]

Pesticide Registration and Classification Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal would extensively revise and reorganize EPA's procedural regulations on pesticide registration. Current regulations describe registration and compensation procedures, classification of pesticides for restricted use, special review procedures, child-resistant packaging requirements and labeling requirements. The Agency believes that these proposed revisions will update and simplify registration procedures, clarify requirements for pesticide producers, and effect regulatory efficiencies for the Agency. A related proposal on labeling appears elsewhere in today's **Federal Register**.

DATE: Written comments on this proposed rule should be submitted on or before December 26, 1984. Comments should be identified with the notation "OPP 30071".

ADDRESS: Submit written comments to:

By mail: Information Services Section, Program Management and Support Division (TS–757C0, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

SUPPLEMENTARY INFORMATION: (OMB Control Number 2000–0012.)

I. Introduction

A. Authority

This proposed regulation is published under the authority of sections 3, 6, 12, 19 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. 136 through 136y.

B. Background

FIFRA sec. 3 requires that pesticide products be registered with EPA prior to entering commerce. Regulations to implement the registration provision were promulgated in 1975, with amendments and additions in 1978 and 1979. Those regulations [40 CFR Part 162] address all aspects of pesticide registration, including procedures for registration, the different types of registration, data required to support registration, compensation for use of data, labeling requirements, child-resistant packaging requirements, and pesticide classification.

Amendments to FIFRA enacted in 1978 directed EPA to reregister all pesticides and, within nine months after enactment, to prescribe simplified procedures for the registration process. EPA issued an Advance Notice of Proposed Rulemaking in the **Federal Register** of December 26, 1979 (44 FR 76311) announcing the Agency's intention to propose revisions to its existing regulations in order to carry out Congress' mandate and to improve the regulations in other ways. Comments received in response to the Advance Notice, together with EPA's experience and policy decisions over the past several years, form the basis for these proposed revisions.

C. Purpose of Proposed Revisions

This proposal would extensively revise current regulations for the following purposes:

1. To update procedures and requirements to coincide with FIFRA amendments enacted since 1975.

2. To consolidate the various regulations issued since 1975 into a coherent organizational sequence. Regulations being incorporated include those on:

a. Registration procedures, issued as supplemental guidelines on September 9, 1975 (40 FR 41788).

b. Classification of pesticides by regulation, issued on February 9, 1978 (43 FR 5786), and subsequent additions to those rules.

c. Child-resistant packaging, issued on March 9, 1979 (44 FR 13022), revisions issued on January 4, 1984 (49 FR 380) and further revisions proposed on January 4, 1984 (49 FR 423).

d. Conditional registration, issued as interim final rules on May 11, 1979 (44 FR 27932), and reissued as final rules on July 26, 1983 (48 FR 34000).

e. Procedures to ensure protection of data submitters' rights, issued on August 1, 1984 (49 FR 30884).

3. To divide the current regulations in 40 CFR Part 162 into logical units, by separating data, labeling, and packaging requirements from administrative procedures. Data requirements have been proposed separately as Part 158 of Title 40. See the **Federal Register** of November 24, 1982 (47 FR 53192). Revisions to current labeling regulations are being proposed today as new Part 156. Packaging requirements are proposed today as new Part 157. The Agency plans to revise the Rebuttable Presumption Against Registration procedures currently located in § 162.11 (a) and (b), and to issue them as a proposed rule.

4. To effect regulatory efficiencies, by eliminating or changing sections to reflect EPA's practical experience in registering pesticides over the last 8 years.

5. To rewrite the rule in clearer and more readable language.

A discussion of the major elements of this proposal follows. Since the regulation has been reorganized and renumbered, and since certain current sections have been combined, divided, or eliminated, derivation and distribution tables have been prepared to enable readers to compare the current regulations with the proposed revisions. These tables appear in Unit XVIII of this preamble.

EPA proposes to move the majority of the material contained in Subpart A of Part 162 to Part 152 and to create a new Part 157 to contain packaging requirements. References in this preamble use the new designations.

II. Scope

Subpart A of Part 152 would set out the scope of the regulation and its applicability to pesticide products of various types. Subpart B would enumerate certain exemptions to the requirements of FIFRA.

A. Definitions

Current § 162.3 would be revised to add new definitions, to delete unnecessary or obsolete ones, and to clarify existing definitions. In general, definitions pertaining to labeling requirements would be transferred to proposed Part 156. Definitions that are used throughout Part 152 would be included in the principal definitions section of Subpart A. Definitions that apply to only one subpart would be located at the beginning of that subpart. Changes of note include the following:

1. The term "distribute or sell" and its grammatical variations would be defined. These terms are used in the Act to define the activities concerning pesticides to which FIFRA applies and at which point the Agency is authorized to regulate. This proposal defines the term to encompass the term "released for shipment," which is used in defining EPA's inspection authority under FIFRA sec. 9. The term "released for shipment" has not been used in FIFRA regulations before, but has been defined in policy statements in the same manner as proposed here.

2. Under FIFRA section 3(b)(1) products may be shipped between establishments "operated by the same producer" without registration. The current definition encompasses both establishments owned by a single producer, and also establishments operated under contract to a producer, but which may be owned by another person. In this proposal, the Agency would define the phrase "operated by the same producer" to limit it to establishments owned or leased by a single company. Limiting the definition in this manner EPA believes would reflect the intent of Congress in FIFRA section 3(b)(1) and the clear sense of the phrase.

The provision for shipment between one producer and another under contract for processing, packaging and labeling (permitted without registration under the current definiton of "operated by the same producer") would be continued by specific exemption in § 152.30. The contractual exemption is discussed later in this preamble.

3. The term "domestic application" would be replaced with the terms "residential use" and "institutional use," to allow better delineation of the applicability of certain requirements, (such as child-resistant packaging, which is required for products labeled for residential use but not for products labeled for institutional use). The definition of residential use would include those areas contained in the "domestic" use definition that clearly relate to household use sites, and would include also pre-school and day care facilities where small children spend time. Institutional use would include larger facilities such as hospitals, office buildings, commercial establishments, and schools at the elementary or above level, which the Agency believes have different pesticide use and exposure patterns. The Agency requests comments on whether these definitions are adequate for the purpose of this regulation, or whether they should be modified, and in what ways, to be more useful. In particular, EPA would like comment on whether day care and preschool facilities should be encompassed by the residential use definition.

B. When Registration Is Required

Under FIFRA sec. 3, a pesticide must be registered before it can be distributed or sold. FIFRA section 2(u) defines a pesticide in terms of its intended use against a pest, or its use for pesticidal purposes. Whether a substance is a pesticide that must be registered depends on the interpretation of pest, pesticidal purpose, and the intent of use of a product as a pesticide.

The term "pesticide" has different meanings in different portions of the Act. In some places it is used as a general term to describe substances which are subject to the Act. In other places, it is used to mean a particular pesticide product that is distributed or sold, and which, according to FIFRA section 3, must be registered. This proposal will use the term "pesticide" in its general sense; the term "pesticide product" will be used to describe a particular pesticide in the form in which it is (or will be) registered and marketed, including the product's composition, packaging and labeling.

The proposal further elaborates on the meaning of concepts ("pest," "pesticidal purpose," and "intent" that the Agency uses in deciding whether a substance is a pesticide product which must be registered. Sections 152.8, 152.10, and 152.15 of the proposal would set out exclusions from registration based on these factors.

First, a pesticide product may be subject to registration only if it is intended for use against a pest (or for use as a plant regulator, desiccant or defoliant). The Administrator must define those organisms deemed to be pests for the purposes of the Act. Section 152.5 would define as pests vertebrates, invertebrates, insects, fungi, weeds, and microorganisms which are deleterious to man or the environment.

Second, a pesticide product will be subject to registration only if it is intended to produce a "pesticidal effect." A substance may function against a pest without having a pesticidal effect. An example would be a product used for survey and detection purposes rather than pesticidal purposes. Section 152.10 lists products which do not have a pesticidal effect, and therefore are not required to be registered.

Finally, it is not enough that a substance have a "pesticidal effect" on a "pest;" the substance must also be "intended" to have that effect. Thus, a substance is a pesticidal product that may be subject to registration if, regardless of whether it actually has a pesticidal effect, it is intended to be used for a pesticidal purpose. The determination of intent is a separate test for the requirement for registration, and is central to the decision of whether a product is required to be registered.

Section 152.15 would describe the circumstances under which the Agency will presume that a substance is being distributed and sold with the intent that it be used as a pesticide. Clearly, either express or implied claims or representations by the seller, such as labeling or advertising, would be evidence of intent. However, the Agency believes that, in the absence of claims, a product may be considered to be a pesticide if the seller or distributor is aware of the intended uses of the product as a pesticide. This may be the case either because there are no other significant uses of the product, or because other circumstances of the sale and distribution are such that he should reasonably know the ultimate use of the product as a pesticide.

C. Exemptions Under FIFRA

FIFRA section 25 authorizes the Administrator to exempt from any or all provisions of FIFRA a pesticide for which he can make a determination that the pesticide either is adequately regulated by another Federal agency or is of such a character that regulation under FIFRA is not necessary.

The Agency is given the latitude to determine the scope of an exemption under FIFRA section 25. Although a producer may be relieved of the provisions of all or any sections of FIFRA by an exemption, as a practical matter only two levels of exemption are viewed as cost-efficient for both Agency and producer: exemption from all provisions of FIFRA or exemption from the registration requirements of FIFRA section 3. This proposal contains two sections devoted to exemptions. These sections would be used to list pesticides exempted partly or wholly from FIFRA based on determinations of "adequate regulation by other Federal agencies" or "character unnecessary to be regulated under FIFRA."

The Agency is proposing to exempt (or to continue exemptions of) several categories of products which it believes do not need to be regulated under FIFRA. First, EPA has previously exempted pheromones and pheromone traps and some biological pest control agents; those exemptions are included. A second category is that of preservatives for biological specimens, which are used in specialized situations where knowledge and experience of the users minimize the possibility of harmful exposure to the pesticide.

Third, the Agency proposes specifically to incorporate into § 152.25 the exemption in FIFRA section 2(v), for vitamin-hormone horticultural products that are both: (1) Not intended for pesticidal purposes, and (2) non-toxic in the undiluted packaged concentration, i.e., as distributed and sold. EPA believes that such products are generally not used for pesticidal purposes. Further, the Agency believes that the "non-toxic" criterion can be practically expressed by limiting the exemption to products that would be in Toxicity Categories III or IV as defined by proposed Part 156, and that are not used where there would be a likelihood of residues on food from application. EPA realizes that products in Toxicity Categories III and IV are not necessarily "non-toxic;" however, the Congress clearly intended to exempt products of relatively low acute toxicity from the requirements of FIFRA. Further, the Agency believes that limiting the exemption to preclude the dietary route of exposure will adequately protect the public from possible chronic effects of these products. Thus, the exemption would be conditioned on low acute toxicity of the actual product as sold, coupled with a restriction to use on non-food crop sites.

Finally, the proposal would exempt, in a manner analogous to pheromones, food products that are not combined with toxicants, but are used as attractants.

D. Distribution or Transfer Exempt From Registration

Section 152.30 proposes the exemption of certain classes of pesticides from the FIFRA section 3 registration requirement. These exemptions are administrative in nature, for situations when registration is considered impractical or unnecessary to carry out the purposes of the Act.

Paragraph (a) of this section contains the provisions of FIFRA section 3(b)(1) authorizing an exemption from registration for pesticides transferred between registered establishments operated by the same producer. The definition of "operated by the same producer" in this proposal is narrower than that in the current regulations, such that the statutory exemption would no longer be defined to permit transfers on a contractual basis.

Paragraph (b), however, proposes to exempt pesticides transferred for further processing, packaging or labeling of the pesticide. A producer would be permitted under this exemption to contract out any or all of his production operations, as long as he is the registrant of the product that ultimately is distributed. In addition, the registrant must be the owner of the pesticide at all stages of its processing, packaging, and labeling, and no sale, distribution or other change in ownership would be legal.

Unregistered pesticides could be transferred under contract only between the owner/registrant and a processor. An unregistered pesticide could not be transferred from a producer to an owner/registrant (even under contract). The practical effect would be that a product would have to be registered prior to any transfer representing a sale or change in ownership.

III. Application Procedures

Subpart C describes the contents and form of an application for registration or amended registration under FIFRA section 3. (Subpart C does not cover applications for reregistration, which are addressed in Subpart D.) The procedures proposed in this subpart are generally those currently contained in § 162.6, but would be reorganized and clarified by this proposal. Some current provisions would be eliminated to make the process more efficient and less burdensome.

A. Amendments Not Requiring Agency Approval

Proposed § 152.42(b) (1) and (2) describe certain registration changes that may be made without the approval of the Agency. Some of these would require that the registrant notify the Agency, but the registrant would not have to await Agency approval before shipping or distributing the product. EPA has considered the types of amendments to registrations that commonly occur, and would eliminate Agency review of certain amendments that are not essential to Agency determinations on health, safety or the adverse effects of pesticide use.

The proposal would include among those requiring notification but not review and prior approval (paragraph (b)(1)) the requirements pertaining to distributor products currently found in § 162.6(b)(4). The requirements are not changed; however, the proposal reflects the status of distributor products as variations of the registered product, and the distributor as the agent of the registrant. The proposal does not state the specific requirements for distributor products unless they would be different from those applicable to other registered products. Thus, the provisions in current § 162.6(b)(4) stating that the distributor product must have the same composition, same producer, same labeling, and same registration number as the registered product would be omitted as superfluous. The requirement that the distributor's company number appear on the label in conjunction with the registration number would be retained.

Notifications to the Agency under this paragraph would not be considered applications under FIFRA, and therefore would not be subject to the procedures of FIFRA section 3(c)(1)(D). However, the notifications would be considered reports under FIFRA sec. 12(a)(2)(M), and thus falsification would be a violation of the Act.

B. Separate Applications

Proposed § 152.45 enumerates certain conditions of the product proposed for registration that require the applicant to submit separate applications, as opposed to a single application, for registration. The current requirement in § 162.6(b)1) is that a separate application must be submitted for each pesticide product. Exceptions to this rule, e.g., products with variations in composition for which a single application may be made, are currently contained in § 162.21(a). In the proposed regulation both the rule and its exceptions are included in the same section, § 152.45. The exceptions have been expanded to include combinations of pesticide and non-pesticide components and alternate formulations which meet certain conditions.

The principal difference between the current regulation and the proposal is that the variations in product formulation that do not need separate registration are related to the stated certified limits of the product, required to be submitted by proposed Part 158, published in the **Federal Register** of November 24, 1982 (47 FR 53192). Variations in product formulation would be permitted under the same application, (and subsequently under the same registration) provided they were within the originally stated certified limits of the active and inert ingredients, and the variations would not affect the safety of the product, or necessitate labeling variations.

C. Contents of Applications

Section § 152.50 would describe what information must be submitted with an application for new or amended registration. This proposal would combine most of the provisions of current §§ 162.6 and 162.165 and incorporate pertinent parts of §§ 162.41 through 162.47.

1. Requirement Retained From Current Regulations

The basic requirements for application content have been retained from the current regulations. Each application would have to include information on identity of the applicant and product and on product composition. The applicant would be required to submit labeling and material demonstrating compliance with FIFRA section 3(c)(1)(D) requirements. Further, the applicant would have to submit data so that the Agency could make determinations concerning unreasonable adverse effects under FIFRA section 3(c)(5) or (7). In addition, if applicable, statements concerning classification, child-resistant packaging, requirement for tolerances, and adverse effects data would be required. These requirements are scattered throughout current regulations, and are consolidated here for the first time.

2. Requirements for Satisfaction of Data Requirements

Proposed § 152.50 states that applicants must satisfy two related sets of requirements concerning the submission and citation of data, which the Agency uses for two distinct purposes. The first set of requirements would direct applicants to submit materials showing that they have complied with FIFRA section 3(c)(1)(D). Under FIFRA section 3(c)(5)(B), the Agency must determine that an applicant has submitted all required materials and that they comply with the requirements of the Act. The procedures for complying with FIFRA section 3(c)(1)(D) are located in Subpart E.

The second set of data requirements concerns the submission or citation of data needed by the Agency to make various types of registration determinations. FIFRA section 3(c)(5)(C) and (D) authorize EPA to register products unconditionally if EPA can determine that the product and its uses do not cause unreasonable adverse effects. In its discretion, the Agency may instead register products conditionally under FIFRA section 3(c)(7) if EPA can determine that the product and its uses do not increase the risk of unreasonable adverse effects. Data needed to make determinations with respect to unreasonable adverse effects are specified in proposed Part 158, and § 158.30 specifies when applicants and registrants must submit such data. Accordingly, § 152.50 refers an applicant to Part 158 to determine which, if any, data must be submitted with his application to enable the Agency to make its determination under FIFRA section 3(c)(5) (C) or (D), or 3(c)(7).

The applicant would be required to provide with his application a non-confidential summary of the data submitted, the results shown, and how the results support the application.

The Agency believes that applicants for registration should be subject to the same requirement to submit reports concerning known adverse effects as is imposed upon registrants by FIFRA section 6(a)(2). Accordingly, § 152.50(j) would include this requirement.

IV. Reregistration

The Registration Standards process was extensively discussed in the Advance Notice of Proposed Rulemaking (ANPR) issued in the **Federal Register** of December 26, 1979 (44 FR 76311). Since the ANPR was issued, the registration Standards process has been modified to introduce greater efficiency. The Agency issued several additional notices in the **Federal Register** describing the implementation of the Registration Standards process, including the list of the first 55 chemicals for which standards would be developed, published in the **Federal Register** of April 18, 1980 (45 FR 26370), a description of the cluster scheme, published in the **Federal Register** of November 14, 1980 (45 FR 75488), an explanation of the Data Call-In Program, published in the **Federal Register** of October 7, 1980 (45 FR 66736, and a notice of availability of the ranking of clusters, published in the **Federal Register** of January 27, 1982 (47 FR 3770). The Agency has considered the comments submitted in response to the ANPR; EPA's response to these comments is provided in this unit of the preamble. Also included here is a summary of the Registration Standards process as it now functions, and a discussion of the reregistration procedures contained in this proposal.

A. Response to Comments on ANPR

1. The Transition to a Registration Standards System

A number of commenters were concerned that the reregistration system described in the Advance Notice would be so cumbersome and time-consuming that its benefits would not justify the delays that implementation might cause in the reregistration process. EPA's experience in having issued over 60 Standards indicates that the transition to a Registration Standard system has been accomplished in an orderly manner. The new system makes two important changes: data are organized and evaluated more systematically, and information and regulatory decisions are carefully documented independent of the process of registering or reregistering individual products.

Other commenters believed that EPA would allow the registration process to be temporarily halted during the implementation phase. This has not happened: EPA's resources are allocated separately to registration and reregistration activities, and the Agency operates the Registration Standards process in parallel with other registration activities. In addition, the Agency expects that the Registration Standards system will ultimately enable EPA to process many registration actions more efficiently once Registration Standards are developed for those chemicals.

2. Consistency With FIFRA Requirements

Some commenters questioned whether the reregistration system described in the Advance Notice complies with FIFRA section 3, which they said requires EPA to make registration and reregistration determinations on a product-by-product basis. The Agency believes that the Registration Standards program does not conflict with the Act and that Registration Standards will actually enhance Agency decision making. The Registration Standards process differs from previous practice only in the manner in which the information supporting these determinations are developed and organized. Once a Standard has been developed, the Agency will continue to review and approve registration and reregistration applications on an individual basis. The resources required to evaluate an application for registration of a product covered by a Standard, however, should be considerably less than those required for a product not covered by a Standard.

3. Legal Status of Registration Standards

The Advance Notice discussed two alternatives for defining the legal status of a Registration Standard and explained the consequences in terms of the type of review available to an applicant or registrant who wishes to challenge the Agency's determination on a pesticide registration. The first alternative considered Standards to be non-regulatory statements of the Agency's position; the second, as regulations to be promulgated under notice-and-comment procedures. Under the former, an applicant or registrant whose registration was threatened with cancellation, for example, would be entitled to a full adjudicatory hearing on the merits of an Agency decision to deny or cancel reregistration. Under the latter, there would be a right to a hearing, but the prior notice-and-comment procedures of rulemaking would limit the issues that could be litigated. In this case, the hearing would be for the purpose of determining only whether the Standard applied to the products in question and whether the product registrations complied with the standard.

Commenters generally favored a system under which Registration Standards would not be developed as rules governing reregistration but would instead be statements of the position EPA would take in acting on applications for registration, reregistration, or amendment. The Agency concurs with these comments and believes that the alternative would raise legal questions concerning the scope of the hearing right under sections 3(c) (6) and 6(b). Accordingly, Registration Standards are Agency position documents, which do not constitute a final Agency determination pertaining to any particular pesticide application or registration. The issuance of a Standard, therefore, does not create the right to request an Agency hearing; such requests are proper only after a registration action is taken under the Standard.

In these circumstances, it serves no real purpose to distinguish between "interim" and "final" Registration Standards, as was discussed in the Advance Notice. A Standard may be used in making registration decisions, even though the Agency intends to update or revise the Standard after issuance. No Standard is "final" in the sense that a regulation is final after promulgation. The regulatory position expressed in a Standard will be reevaluated when additional uses of chemical are proposed, the Agency receives new data, or for any other reason deemed necessary by the Agency, but this reevaluation will not be conducted as notice-and-comment rulemaking.

4. Rejection Criteria for the Data Call-In Program

In the Advance Notice and in the notice announcing the Data Call-In Program, EPA discusses its intention to define criteria for evaluating studies submitted to satisfy applicable data requirements. Such criteria, termed Rejection Criteria, would serve to identify those long-term chronic studies that could not form the basis for reregistration decisions because of obvious deficiencies in data reporting or methodology. Many commenters objected to this approach, stating that the application of criteria could not adequately substitute for a case-by-case scientific evaluation of each study. EPA still believes that the concept of rejection criteria has merit, and is considering the possibility of establishing such criteria.

5. Minor Uses

Several commenters asked whether EPA will give special consideration to registration actions pertaining to minor uses. In the application of the Data Call-In program and in the establishment of data requirements under Registration Standards, the Agency considers the potential extent of use and exposure to man as well as the cost impact of developing the required data to support these products, as required by FIFRA section 3(c)(2)(A).

6. Consideration of Benefits

Some commenters took exception to EPA's statement in the Advance Notice that the Registration Standards process would not normally include an expensive quantification or discussion of benefits for chemicals which do not meet any of the special review criteria. These commenters argued that FIFRA requires EPA to evaluate the risks and benefits of each pesticide or pesticide use in making registration and reregistration determinations.

EPA agrees that a consideration of benefits is a necessary component in making the determination whether a pesticide or use will perform its intended function without causing unreasonable adverse effects on the environment. Determining the reasonableness of any risk of an adverse effect requires EPA to consider benefits of pesticide uses, but the analysis of benefits must be considerably more detailed when EPA has definite information that a pesticide use may pose a significant risk, i.e., information indicating that a special review criterion has been exceeded.

If EPA has no indication of adverse effects, the analysis of benefits will be more limited. In the Registration Standards process, EPA's evaluation of benefits is commensurate with the type and severity of the hazard indicated by the available pertinent data.

A few commenters asserted that EPA lacks the authority to impose restrictions to reduce the risks posed by the uses of a pesticide if the benefits of such uses are clearly established and no special review criteria are exceeded. EPA disagrees with these comments. If reduction of risk can be achieved with little or no reduction in benefits, or if the cost of the risk reduction measure is low compared to the potential benefits of that action, then the risk of an adverse effect is clearly unreasonable. Because FIFRA sec. 6 authorizes the Agency to cancel the registration of products which cause unreasonable adverse effects, the agency is well within its authority to impose a requirement that would reduce risks to a reasonable level.

7. Maintenance of a Registration Standard

The Advance Notice listed four possible occurrences that could necessitate amending a Registration Standard: (1) When EPA wishes to incorporate new information developed since the Standard was issued; (2) when it becomes apparent, at some time after a Standard is issued, that additional data are required to maintain registrations under the Standard; (3) when new information comes to the attention of the Agency that indicates a potential for significant risk to health or the environment; and (4) when a registrant seeks to register a product or use beyond the scope of the existing Standard.

Commenters generally agreed that EPA should amend Registration Standards when there are indications such as those listed above. A few commenters assumed that EPA, exercising its authority under FIFRA section 6(a) to review registrations every 5 years, would conduct a review of each Registration Standard every 5 years as well. The Agency believes this to be unnecessary and time-consuming if done on a routine basis. Review of the Standard as the result of registration amendments will assure that Standards receive adequate review. Furthermore, EPA will reconsider its regulatory position if new information suggests the need to do so; for example, if information on potential adverse effects on health or the environment are submitted by a registrant in accordance with FIFRA section 6(a)(2).

8. Inert Ingredients

The Advance Notice sought comment on the manner in which EPA should evaluate the safety of inert ingredients used in pesticide formulations. Some commenters questioned EPA's authority to regulate such substances; others referred to the regulation of such substances under other statutes. In general, the comments were in favor of a system whereby the Agency presumes that inert ingredients do not cause or increase the risk of adverse effects. EPA is concerned that some inert ingredients could pose significant risk, and does not agree that existing regulation assures the safety of all such substances. The Agency is currently developing a tiered, interdisciplinary scheme of tests for evaluating inert ingredients, focusing initially on mammalian toxicology and residue analysis in food and feed. As part of this scheme, the Agency would identify inert ingredients deemed to be innocuous and exempt from testing requirements.

B. Summary of the Registration Standards Process

The Registration Standards Program is EPA's approach to the reassessment and reregistration of pesticide products as mandated by FIFRA section 3(g). The intent of that section is to require EPA to ensure that existing products meet current EPA requirements for registration.

1. The Agency's approach to reassessment of previously registered chemicals has been a long-term strategy, involving three steps:

i. Identification and review of problem chemicals through the high-priority special review process;

ii. Completion of the data base for such chemicals through the Data Call-in Program; and

iii. Systematic reassessment of the chemicals not singled out for special review through the Registration Standards program, using, when available, new data generated as a result of the Data Call-in program.

The Special Review process is a review process to identify pesticides which meet or exceed certain risk criteria, and therefore may pose unreasonable adverse effects. Through this informal review, the Agency examines the risks and benefits of these pesticides, and determines what regulatory actions to take to reduce risks. Special reviews, begun in 1975, have been completed for the majority of the originally indentified problem chemicals, and now is being integrated into the Registration Standards program. Of 84 chemicals identified for special review, 75 have completed the special review process.

The Data Call-in program fills a second critical need in our reassessment strategy. During the early years of the special review program, and in planning for the Registration Standards program, it became clear to the Agency that its data base needed for reassessment of risks and benefits was inadequate by modern standards. Studies addressing chronic health effects were lacking, often not because of failure by the industry to submit such data when the product was first registered, but simply because data requirements had increased over the years. The majority of chemicals that were to be reviewed had been registered prior to 1975, when fewer data requirements were in place.

The Data Call-in program is intended to fill that gap. By notifying registrants before the Agency's reassessment is to be done, essential chronic health data can be developed and made available for that review. By 1985, the Agency believes that its early Data Call-in efforts will begin to show results in the Registration Standards program.

Having dealt with obvious problem chemicals through the special review process, and having initiated a program to acquire needed data upon which to base its review of the remaining chemicals, the Agency has begun the final stage of its reassessment—the Registration Standards program. In the Registration Standards program, the Agency undertakes a thorough review of the scientific data base underlying pesticide registrations, and makes broad regulatory decisions for a group of pesticide products containing the same active ingredient rather than on a product-by-product basis. An estimated 600 standards will be developed covering most of the currently registered pesticide products. This approach is intended to simplify and streamline the regulatory process for both the Agency and pesticide registrants and to assure the public that all registrations are supported by a complete and valid scientific data base.

To process approximately 600 active ingredients through Registration Standard review, active ingredients with similar uses have been divided into 48 groups, or clusters. The Agency adopted this use cluster approach based on considerations of market competition, availability of in-depth data on use alternatives should the need for an intensive review arise, and efficient use of EPA resources. The clusters were ranked by applying production, human exposure, and ecological exposure factors.

2. A Registration Standard is optimally developed in four phases: (i) Data Call-In, (ii) Data gathering, (iii) Data evaluation, and (iv) Development of the Standards and Guidance Package.

i. *Data Call-In.* The Data Call-In Program operates under the authority of FIFRA section 3(c)(2)(B), which provides that the Agency may require the submission of data in support of continued registration. Under the Data Call-In Program the Agency requires registrants to provide needed long-term chronic toxicity studies before the initiation of the Registration Standard review. Because of the time needed for development and submission of long-term studies (3 to 4 years), the chemicals reviewed in the early years of the Registration Standards program have been evaluated without the benefit of the prior call-in of long term data.

The four types of long-term toxicological data which are addressed by the Data Call-In Program are chronic feeding, oncogenicity, reproduction, and teratogenicity studies. Under the Data Call-In Program, the Agency first determines which of the four types of chronic test data are required for the pesticide, based on its use patterns and other factors. The Agency's files are checked to ascertain that none of those data have been submitted, and the registrants notified that they must initiate testing to fill those data gaps. Because of limited Agency resources and the need to use them most efficiently, data currently in Agency files are not reviewed to determine their acceptability; therefore, when the full Registration Standard review is completed, some of these studies may need to be replaced. Waivers may be requested by applicants for such reasons as limited exposure and low production, irrelevance of the data requirements, or cancellation of specific uses.

If a registrant does not comply with the Data Call-In notice and is not granted a waiver, the Agency may issue a Notice of Intent to Suspend under FIFRA section 3(c)(2)(B). Once a pesticide registration is suspended, the registrant is not permitted to distribute his product(s) until he complies with the terms of the notice. A suspension notice is rescinded when the Agency is informed that the registrant has complied with the notice requirements.

Data Call-In notices are being issued at the rate of 70 or more active ingredients per year. Registration Standard reviews are being conducted at the rate of 20 or 30 active ingredients per year. Therefore, the Data Call-In Program will be completed well ahead of the Registration Standards reviews.

ii. *Data gathering.* Chemicals are scheduled for review approximately 6 months to a year before the Agency begins its review. Once the schedule is established, all manufacturing use producers, and formulators who do not buy the active ingredient as a registered technical source, are asked to provide an updated description of the manufacturing process.

As the initial step in the actual review process, the Agency prepares a bibliography of all data in Agency files pertaining to the chemical, except that in most cases efficacy data are not included because the Agency is no longer required to make a finding of efficacy for many product. The bibliography also includes any Government-conducted studies (such as National Cancer Institute studies) and other primary source material identified by Agency scientists. The Agency attempts to ensure that the bibliography is complete and accurate, and that listings are not duplicated.

When the final bibliography of pertinent studies has been compiled, Agency scientists identify those studies they believe are necessary for their review; these studies are retrieved from Agency files and reviewed. The data gathering phase lasts about 5 months.

Concurrent with the bibliography development, use information is developed, including all current use patterns, and, to the extent possible, potential uses for which registration is likely to be sought in the near future. Registrants are asked to assist in identifying potential new use patterns.

iii. *Data evaluation.* Each chemical is reviewed by a Project Support Team, which is managed by a Registration Product Manager, and includes use experts, data retrieval experts, and scientists in various disciplines. At the outset of the Data Evaluation phase, the Project Support Team meets to exchange information on the chemical from a regulatory and scientific perspective. These meetings are designed to provide background from which the scientists can conduct their review. Knowledge of the regulatory history, the growth patterns of the chemical's use, the completeness of the data base, and any past regulatory or health problems will help focus the review and increase its effectiveness.

In the Data Evaluation phase, scientists review data in each of five disciplines: Product chemistry, environmental fate, residue chemistry, toxicology, and ecological effects. Efficacy data are reviewed if necessary. The scientists document their reviews of each relevant study and prepare a summary of what is known about the chemical in their respective disciplines. Scientists also identify gaps in the data base which should be filled to enable a complete scientific assessment to be made. The Agency's proposed Part 158 data requirements are used as the basis for determination of data gaps, although, based on knowledge of the particular use patterns of the chemicals and the results of the initial reviews, additional data gaps may be identified.

If the analysis of the data shows a special review criterion has been met or exceeded, the standard may be issued noting that a special review is being or will be initiated.

Depending on the number of studies to be reviewed, the Data Evaluation phase lasts from 6 to 10 months.

iv. *Development of the Standard and issuance of Guidance Package.* At the completion of the Data Evaluation phase, the Agency establishes a regulatory position for the chemical, that is, what compositions, levels of active ingredient, formulation types, and uses are registrable under the Standard and whether restrictions on use (such as use only by certified applicators or farmworker safety restrictions) are needed. The Agency also states the rationale for each regulatory decision and determines the data which must be submitted to complete the review. Included in this phase is a reassessment of all tolerances or other clearances under the Federal Food, Drug and Cosmetic Act (FFDCA). If warranted, the Agency will propose to increase or decrease the tolerance levels or note the need for other actions under the FFDCA.

Finally, the scientific summaries, the regulatory position and supporting rationale, the tolerance assessment, data requirements, and conditions of continued use of the chemical are compiled into a Registration Standard.

For the purposes of reregistration, a Guidance Package is prepared for registrants, containing the regulatory position and rationale, data requirements and bibliography. Reregistration may be granted when the registrant agrees to submit missing data, submits an updated statement of his formulation, complies with any regulatory restrictions placed on the pesticide, satisfies Agency data submission requirements under FIFRA section 3(c)(1)(D), and provides labeling reflecting the results of product chemistry and acute toxicity studies.

Study reviews and scientific summaries are placed in Agency records for retrieval during subsequent reviews of the chemical. Copies of the Registration Standard, the study reviews, and the science summaries are available to the public under the Freedom of Information Act, subject to the provisions of FIFRA section 10.

C. Reregistration Procedures

Proposed Subpart D (§§ 152.60 through 152.79) describes the procedures the Agency will use for the reregistration of currently registered pesticide products, as mandated by FIFRA section 3(g). The procedures are generally analogous to those for new registration. Reregistration of a manufacturing use product will normally follow the issuance of a Registration Standard for the pesticide, but end use products may be reregistered under a variety of circumstances, including special call-in or under the procedures of the Label Improvement Program. The Agency would notify current registrants of the need to submit an application for reregistration. The contents of the application are referenced to § 152.50. The Agency's review would encompass the same considerations as for new unconditional or conditional registration, and the approval would be granted based on the criteria in §§ 152.112 or 152.113, depending on whether additional data were determined to be necessary. The reregistration would be issued under the authority of FIFRA section 3(g).

Unlike its denial of an application for new registration, however, the Agency would issue a notice of intent to cancel the registration if the registrant failed to submit his application for reregistration. The registrant receiving a notice of intent to cancel would have 30 days to comply with the Agency's requirements or to request a hearing on those requirements to which he objected. The proposal specifies that, during the pendency of any hearing, the registrant would have to comply with requirements not at issue.

V. Procedures for Satisfying Data Requirements

Subpart E describes the materials that an applicant must submit to fulfill the Agency's data requirements under FIFRA section 3(c)(1)(D). Subpart E was issued as a final rule and published in the **Federal Register** of August 1, 1984 (49 FR 30884).

VI. Agency Review of Applications

Subpart F would describe the Agency's review of applications for registration or amended registration, including notification via **Federal Register** publication of certain types of application, disposition of applications that are incomplete, the bases for approval of unconditional and conditional registrations, and the grounds for denial of an application. The provisions of this subpart are generally those currently in effect, with certain clarifications of existing policy.

A. Incomplete Applications

The proposal would make clear that an application that is incomplete for any reason would not be reviewed by the Agency. The applicant would be notified, and allowed 75 days in which to complete the application or correct initial deficiencies. The 75-day time frame was established by FR Notice 75-4, dated August 27, 1975, and is now proposed to be included in the regulation. PR Notice 75-4 would be revoked upon promulgation of this rule.

B. Standard for Review of Applications

Proposed § 152.111 makes it clear that EPA has the discretion to review applications either under FIFRA section 3(c)(5) for unconditional registration, or under FIFRA section 3(c)(7) for conditional registration. The proposal states that the Agency will consider applications under the standards of FIFRA section 3(c)(5) only if a new chemical is proposed, or if the Agency decides that such review is warranted. EPA will review all other applications under section 3(c)(7) of the Act. In the past, conditional registration applications have comprised the bulk of Agency registration actions, and EPA expects that this will continue to be the case in the future.

Proposed §§ 152.112 through 152.114 describe the criteria by which the Agency would approve applications unconditionally under FIFRA section 3(c)(5) and conditionally under FIFRA section 3(c)(7). Section 152.114 contains in regulations for the first time the criteria for approval of conditional registration of products containing new active ingredients under FIFRA section 3(c)(7)(C). Section 152.115 describes the conditions normally imposed on registrations issued under FIFRA section 3(c)(7).

VII. Obligations and Rights of Registrants

Proposed Subpart G describes in one location both the obligations of the registrant with respect to his product and the Agency, and the rights that accrue to him as a result of the registration of his product. The proposal describes two specific obligations that would be imposed on registrants. First, the registrant would have a continuing obligation to ensure that the Agency could contact him if necessary. This would involve updating his name and address, and, if necessary, those of his authorized agent. The Agency believes that a correct name or address is a form of information that may be required to continue or maintain the registration in effect under FIFRA section 3(c)(2)(B), and proposes to use the suspension penalty provided by that section if the information is not submitted in a timely manner. If the Agency is unable to contact the registrant after two attempts by certified mail, the Agency will, after 90 additional days, suspend all registrations of the registrant involved. Reinstatement could be accomplished at any time that the registrant complied by submitting his correct name and address.

This proposal is intended to permit EPA to purge its files periodically of registrants who have gone out of business or moved without notifying the Agency. EPA makes a diligent effort to locate registrants in addition to sending correspondence by certified mail, but currently lacks a suitable regulatory mechanism to remove such producers from its listings. EPA does not believe that suspension of registration if the registrant cannot be located is an unduly harsh penalty, since reinstatement is automatic upon submitting the information.

Second, the proposal would incorporate as § 152.125 the statutory requirement of FIFRA section 6(a)(2) that a registrant inform the Agency of any adverse effects of his product(s) on man or the environment.

The remaining sections of proposed Subpart G pertain to the rights accorded a registrant. The basic right provided by registration is that a pesticide product may legally be sold and distributed in commerce.

Proposed § 152.128 describes the Agency's policy with respect to distribution of the product as labeled. A registrant would continue to be permitted to distribute and sell under his currently approved labeling. However, when that labeling was changed at his request, this section would limit the time that products bearing old labeling could continue to be distributed. Current regulations in § 162.6(b)(3)(iv) permit distribution of a product under any labeling accepted over a 5-year period. EPA believes that 5 years is an inordinately long time for labels to continue to be used after an amendment. Five-year old labels, which may be obsolete because of repeated amendment by the registrant, or because of changing technology or new health or safety information, may be misleading to the user. Moreover, the Agency's experience is that obsolete labels create confusion in enforcement when several previously accepted labels are found in channels of trade. Accordingly, the Agency proposes that, if a registrant amends his accepted label, he should be permitted a year to distribute or sell previously labeled product. EPA believes that this period of time is sufficient to exhaust stocks of old labeling. In submitting an application to amend his label, the registrant has indicated his intention and desire to change his label, and could be expected upon approval to do so as soon as possible. Moreover, a year would be consistent with current Agency policy that permits the distribution and sale of products after voluntary cancellation for a period of one year. EPA would like comment on whether this period of time is sufficient, or whether a shorter or longer period of time should be allowed. Based on comments received, EPA may adopt a different time frame for permissible use of previously approved labeling.

If the Agency requires that labels be revised, as a result of its reviews for reregistration, special review, or other label review processes, the Agency would specify the period of time that old labels may continue to be used.

A further right accorded to a registrant is that of transferring his registration to another person without having to obtain a new registration. The Agency has no legal obligation to permit or recognize the transfer of a registration merely because the registrant desires to sell the product to another producer. Obtaining registration for a "me-too" product is a relatively simple matter for a pesticide producer. However, if the Agency did not permit transfer of products between pesticide producers, it is likely that its files would soon be burgeoning with duplicate "me-too" products. Registrants who wish to stop producing or marketing a product often fail to request cancellation of the registration. Transfer of the unwanted registration therefore alleviates to a certain extent the recordkeeping problems of the Agency.

The Agency proposes to establish conditions for the transfer of registrations that are consistent with practices in transferring other assets of a business. The Agency would thereby avoid common problems that have arisen in the past in making such transfers. Requests for transfer may be made for a variety of reasons, including the sale of the company, its pesticide product line, or the rights to one or more pesticide products; the reorganization of the company; or the bankruptcy of a company and subsequent legal proceedings. The Agency does not wish to be embroiled in the resolution of complex questions of ownership of a pesticide registration. Nor, however, can it permit such questions to result in a situation where the Agency cannot ascertain the identity of the true registrant who is responsible for the product under the Act.

The Agency therefore proposes that transfer or registration be accomplished by submitting a transfer agreement describing relevant information about the transfer (financial details need not be supplied). A transfer would be irrevocable, once accomplished, i.e., the transferor could not retain any rights, title, or interest in the registration. Nor could the transferred registration serve as collateral or security for any loan arrangement, such that it could revert to the ownership of the transferor automatically, or without the knowledge and approval of the Agency. In addition to the transfer agreement, the transferor would have to submit a notarized statement that the transfer was legally proper, and that it met all applicable State, local and, if necessary, court-ordered requirements.

After receipt of the appropriate documents, and if the transfer meets the requirements, the Agency would record the transfer. Subsequently, the Agency would regard the transferee as the legal registrant for all purposes under section 3 of the Act.

Transfer of rights to exclusive use of data or compensation under FIFRA section 3(c)(1)(D) is considered to be a separate transaction from transfer of the registration itself, entailing fewer requirements. Subpart E (49 FR 30884) provides procedures for the transfer of data rights; those proposed for the transfer of registration parallel those in § 152.98.

Finally, the proposal would incorporate the current policy under which the registrant has the right to request the cancellation of his product's registration. If he does not wish to continue to distribute and sell the product, and does not wish to transfer the registration to another producer, he should request cancellation.

VIII. Other Agency Regulatory Activities Affecting Registrations

Proposed Subpart H summarizes for registrants, applicants, and prospective applicants other regulatory activities associated with the registration process. In considering an application for registration, and after registration has been issued, the Agency may take other actions affecting the registration that are authorized under other sections of FIFRA. These activities either do not apply to all applications or all registrations, as do those in Subparts C, D, and E, or are conditioned upon the occurrence of certain circumstances. A registrant would be able to scan Subpart H, and, if he finds that any of the activities mentioned would apply to his product, may refer to the more detailed requirements in the referenced subparts. Some of the Agency's actions (cancellation and suspension of registrations) do not warrant an entire subpart and would be contained complete in Subpart H.

Activities summarized in this unit, together with their referenced subpart in Part 152 (if any) include the following:

1. Classification—Subpart I.
2. Submission of information to maintain registration.
3. Reregistration—Subpart D.
4. The Special Review Process—to be proposed serparately.
5. Cancellation of registration.
6. Suspension of registration.
7. Child-resistant packaging—new Part 157.
8. The Label Improvement Program—Subpart J.
9. Coloration and discoloration requirements—Subpart K.

IX. Classification of Pesticides

Proposed Subpart I combines the requirements currently found in §§ 162.11(c) 162.30, and 162.31 for the classification of pesticides for restricted use. The Agency also is proposing several changes in the requirements.

A. Criteria for Restriction

The Agency has restructured the criteria for restricted use to reflect that its concerns are directed to the identification and classification of products that need restriction rather than products that should be unrestricted. Current regulations in § 162.11(c) set criteria which, if met place a product in general use classification. Section 152.175 would state the criteria which, if met, would warrant classifying a product for restricted use.

The Agency also proposes a single set of criteria that would apply both to the new products and to previously registered products. Current regulations in § 162.11(c) establish artificial distintions between these two types of products.

The Agency is proposing in § 152.175 a number of changes in the toxicity criteria under which a product becomes a candidate for restricted use classification. To assist readers, a table comparing the current criteria and the proposed criteria has been included in this unit of the preamble.

1. The proposal would add oral toxicity as a restricted use criterion for uses other than residential and institutional use. The Agency believes that the potential for inadvertent ingestion exists even with those use patterns not in a residential or institutional setting and would therefore consider formulations with an acute oral LD_{50} of 50 mg/kg or less (Toxicity Category I) for restricted use.

2. The criteria for non-target organism exposure for outdoor uses would be independent of the criteria for human exposure. Under current § 162.11(c)(1)(iii), criteria for non-target organism toxicity apply only if the criteria for human toxicity are first exceeded. Under the proposal, a product could be a candidate for restricted use based solely on its toxicity to non-target organisms.

3. The criteria for non-target species would be expanded to establish additional criteria for granular products, which would reflect the peculiar nature of the hazard to be expected from their use. Such products often exhibit toxicity to birds and/or mammals from direct ingestion of the product remaining on the soil surface, rather than as residues on foliage or other food sources. Accordingly, the Agency is proposing specific toxicity criteria based on the acute toxicity of the product to birds and/or mammals. These criteria would be independent of the current residue criteria which would be retained.

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TABLE--COMPARISON OF CURRENT AND PROPOSED CRITERIA FOR RESTRICTION

Criteria	Current	Proposed
	DOMESTIC	RESIDENTIAL/INSTITUTIONAL
	Product is candidate for unrestricted if:	Product is candidate for restricted if:
Oral toxicity	>1.5 g/kg on product as diluted for use	$\leq$1.5 g/kg on product as diluted for use
Dermal toxicity	>2000 mg/kg on formulated product	$\leq$2000 mg/kg on formulated product
Inhalation toxicity	>2 mg/l on product as formulated	$\leq$0.5 mg/l on product as formulated[1]
Eye irritation	Current Toxicity Categories III and IV	Current Toxicity Categories I and II
Skin irritation	Current Toxicity Categories III and IV	Current Toxicity Categories I and II
	NON-DOMESTIC	ALL OTHER USES
	Product is candidate for unrestricted if:	Product is candidate for restricted if:
Oral toxicity	None	$\leq$50 mg/kg on product as formulated
Dermal toxicity	(1) >200 mg/kg on formulated product (2) >16 g/kg on product as diluted into mist or spray	(1) $\leq$200 mg/kg on formulated product (2) $\leq$16 g/kg on product as diluted for use
Inhalation toxicity	>0.2 mg/l on product as formulated	$\leq$0.05 mg/l on product as formulated[1]
Eye irritation	Current Toxicity Categories II, III and IV	Current Toxicity Category I
Skin irritation	Current Toxicity Categories II, III and IV	Current Toxicity Category I

Criteria	Current	Proposed
	OUTDOOR USE	OUTDOOR USE
	Product is candidate for unrestricted if:	Product is candidate for restricted if:
Mammalian toxicity	Occurs as residue at <1/5 acute oral LD_{50}	Same, except $\geq$1/5 acute LD_{50}
Bird subacute toxicity	Occurs as residue at <1/5 subacute dietary LC_{50}	Same, except $\geq$1/5 subacute dietary LC_{50}
Aquatic organism toxicity	Occurs in water at <1/10 acute LC_{50}	Same, except $\geq$1/10 acute LC_{50}
Bird acute toxicity	None	For granular products, acute mammalian or avian LD_{50} of formulated product $\leq$ 50 mg/kg

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[1] Equivalent to current requirement. Refer to proposed Part 156 for discussion of changes in criteria for inhalation Toxicity Categories.

EPA notes that these criteria are used for the purpose of screening products as candidates for classification for restricted use, and that the Agency, in deciding ultimately to restrict a product, may take into account exposure factors not expressly delineated in regulations. As an example, the Agency might take into account in deciding whether or not to restrict a product the fact that it was packaged in such a small quantity as to preclude exposure to a toxic amount.

B. Restriction to Certified Applicators Vs. Other Regulatory Restrictions

This proposal has been organized to clarify the Agency's authority under FIFRA section 3(d)(1)(C)(i) to restrict products to use by certified applicators only, and its authority under FIFRA section 3(d)(1)(C)(ii) to impose other restrictions by regulation. The criteria contained in § 162.11(c) are clearly identified as applicable only under the former authority.

The Agency's authority under FIFRA Section 3(d)(1)(C)(ii) to restrict pesticide products is not limited by considerations of toxicity, as is restriction to certified applicators under FIFRA section 3(d)(1)(C)(i). The Agency may, if warranted, propose other criteria for restriction that might not be toxicity-based.

C. Advertising of Restricted Use Products

Under FIFRA section 12(a)(2)(E), it is a violation of the Act to advertise a restricted use pesticide without giving the classification of the product. The Agency is proposing in § 152.170 additional requirements pertaining to the advertising of restricted use products to help clarify the responsibility of registrants in this area. These would expand the requirement of current § 162.30(i)(5) that written advertising state the restricted use classification of the product either 120 or 270 days after the effective date of restriction, depending on whether the advertising was in final printed form.

First, the proposal would specify that the advertising limitations apply equally to printed, broadcast, and telephone advertising, and would further specify how the requirement could be satisfied for each of these media. Second, the requirements for advertising would become effective 270 days after imposition for currently registered products and immediately upon registration for new products. The effect of this provision is that the current 120-day effective date for printed advertising would be extended to 270 days. Thus distribution and sale at the retail level of a properly labeled product and the advertising of that product would be subject to the same 270-day time frame.

X. Label Improvement Program

Subpart J (§§ 152.180 through 152.199) is a new proposal based on EPA's current Label Improvement Program policy instituted by **Federal Register** notice of June 5, 1980 (45 FR 37884).

The Agency proposes in Subpart J some minor revisions in the process to reflect its evolution since 1980. First, a Label Improvement Program notice sent to registrants would not necessarily require the submission of an application for amended registration. The Agency has found that it can accomplish many label revisions of a specific nature without reviewing the labels for compliance. Certification to the Agency is proposed as an option. Certification will strengthen the enforcement capability of the Agency to monitor compliance. The proposal specifies the contents of a certification statement and the time frame likely to be imposed for its submission. The Label Improvement Program is intended to be a flexible program to meet changing needs in labeling of pesticides, without exceeding the bounds of existing regulations. The proposed procedures are thus general in nature, but include all the procedural elements necessary for registrant compliance.

XI. Coloration and Discoloration

Subpart K (§§ 152.200 through 152.219) retains unchanged the provisions of current § 162.13 requiring that certain highly toxic pesticides be colored or discolored to minimize the possibility that they might be mistaken for foodstuffs.

EPA would like comment on whether the current provisions are adequate for the protection of the public. Should the list of pesticides required to be colored/discolored be expanded, reduced, or deleted altogether in favor of general criteria for coloration/discoloration? If general criteria would be preferred, what factors should be used? Should requirements for other types of sensory warning, such as addition of odorous compounds to fumigants, be added?

The Agency is proposing to add to this section a requirement that any product for treating seed contain a dye, or that the labeling specify addition of a dye during the seed treatment process. EPA believes that dyeing seed would minimize the possibility that treated seed could inadvertently be fed to animals used for food without appropriate tolerances having been obtained for such use.

Seed is normally treated to control storage pests before planting or soil pests after planting, including bacteria, fungi, insects, nematodes, and vertebrates. Recent experimental work has demonstrated that weed control is feasible by coating seeds with herbicides.

The seed treatment policy contained in § 152.215 was first issued as PR Notice 70–24, dated October 28, 1970, and has been applied on a case-by-case basis since that time. Inclusion at this time will complement the Food and Drug Administration policy that treated grain seed be dyed, and the U.S. Department of Agriculture's regulations, which require that treated seed packaged for interstate shipment be labeled to indicate that the seed has been treated. Accordingly, the Agency proposes to incorporate this policy into its regulations. PR Notice 70–24 would be revoked upon final promulgation of this regulation.

Finally, the Agency proposes to require that granular products applied to the soil be brightly colored to contrast with the soil. Coloration of these products would assist farmers in soil incorporation, and, it is believed, would deter wildlife and birds from ingesting the granules, which are often indistinguishable from other soil components and seeds.

XII. Intrastate Products

This proposal generally would continue in effect the requirements in the existing regulations concerning intrastate pesticides, including requirements for child-resistant packaging which became effective in 1981. Intrastate pesticides are those sold or distributed solely in a single State. The 1972 amendments to FIFRA for the first time required these products to be federally registered. EPA, as a matter of enforcement discretion in its 1975 regulations (§ 162.17) allowed the continued sale and distribution of intrastate pesticides not registered under FIFRA, provided that they were registered under State law, and that the producers of such pesticides had timely submitted a Notice of Intent to Apply for Federal Registration. In addition to continuing these provisions, the proposal also would prohibit sale and distribution of unregistered intrastate pesticides containing active ingredients for end uses which have been cancelled or suspended.

The proposal would establish a date (December 31, 1988) by which all intrastate pesticide products would be required to be registered. In addition, the proposal would identify a number of occasions when EPA will require the producer of an intrastate pesticide to submit a full application for Federal registration in advance of that date. Moreover, the regulation would make it clear that EPA's enforcement discretion allowing the distribution of an unregistered intrastate pesticide does not extend to situations where the producer has failed to submit a required application or where EPA has denied the application.

XIII. Devices

Subpart M states the requirements applicable to pesticide devices, by reference to the Act and to specific Parts of Title 40 of the Code of Federal Regulations.

XIV. Requirements for Information on Pesticide Composition

A. Proposed Requirements

The Agency proposes to create a new Subpart R in Part 152, and to locate in it requirements for the submission of certain pesticide composition data as part of the application for registration. These requirements have previously appeared in substantially the same form in the Agency's Pesticide Assessment Guidelines for product chemistry. Portions of this proposal have also been issued as proposed rules in 40 CFR Part 158.

Under this section, applicants would be required to submit: (1) A complete identification of the composition of the product—a Confidential Statement of Formula listing ingredients by chemical and common name, nominal concentration and certified limits; (2) a description of the beginning materials used to make the pesticide; (3) a detailed explanation of how the product is manufactured; and (4) a discussion of the possible formation of impurities in the product, based on the applicant's knowledge of the beginning materials and manufacturing process. By issuing these requirements as rules rather than non-binding guidelines, the Agency expects to reduce confusion about the types and amount of information required to evaluate the composition of a pesticide.

In order to evaluate fully a product for registration, the Agency must know the composition of the pesticide. Section 152.344 would require an applicant to identify each active ingredient, each intentionally added inert ingredient, and in certain cases, impurities that may be present in the product while it is being distributed in commerce. Identification of an ingredient would include a variety of information: for all ingredients, the chemical name, common name, and Chemical Abstract Service (CAS) Number; for active ingredients and intentionally added inert ingredients, the purpose or function of the ingredient; and for active ingredients, the molecular weight (or range), as well as other means of identification.

In addition to identifying the ingredients in his product, the applicant would also be required to provide certified limits for the ingredients listed in the statement of formula as specified in § 152.352. Upper and lower limits would be required for each active and intentionally added inert ingredient. In addition, for some types of products, an upper certified limit would be required for certain impurities. The upper certified limit would be the maximum (and the lower certified limit would be the minimum) amount of the ingredient that may legally be present in the product at any time while it is in commerce. It is the applicant's responsibility to establish his own certified limits, taking into account his quality control capabilities and limitations, source materials, and other factors that might affect the certified limits.

The Agency proposes to continue the requirements for certified limits as currently proposed in 40 CFR 158.110. In particular, the Agency will ask for certified limits for impurities only if they either: (1) Are associated with an active ingredient in the product and would be expected to constitute more than 0.1 percent of the technical chemical, or (2) are considered toxicologically significant. The first group of impurities are those the Agency expects would be most likely to pose possible risks. Therefore certified limits would be required routinely for those substances. The second group would be identified on a case-by-case basis, taking into account information on the amount of the ingredient and on the toxicity of the impurity or compounds having a similar chemical structure.

The rules would also continue the distinction between end use products not produced by an integrated formulation system—generally these are products which qualify for the "formulator's exemption" for all of the active ingredients in the product—and all other pesticide products. Because products not produced by an "integrated formulation system," as defined in proposed § 152.342(e), are less likely to contain toxic impurities, other than those known to be present in their beginning materials, these products are subject to less stringent requirements for information on pesticide composition. EPA can adequately evaluate the composition of these products because the Agency has access to reliable information on the composition of the pesticides used in the manufacture of such end use products.

The comprehensive listing of ingredients required by § 152.344 would be used in a variety of ways to assure that the pesticide product is acceptable for registration. First, EPA would review the Confidential Statement of Formula to determine whether the applicant's product contained any ingredient in an amount that could cause unreasonable adverse effects on the environment. EPA would also use pesticide composition data when reviewing applications for conditional registration to determine whether applicants' products are "identical or substantially similar to any currently registered pesticide * * * or differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment * * *." In nearly every case, this determination would involve a comparison of the composition of an applicant's pesticide to that of other registered products. Finally EPA would compare data on pesticide composition with information on the composition of materials used in toxicity and other kinds of studies. This comparison could indicate whether the test material adequately represents an applicant's product.

In addition to a list of ingredients and certified limits, EPA proposes to require certain information which would allow Agency staff to perform an independent evaluation of the composition of the product. Two of the most basic pieces of information needed to determine the composition of a pesticide product are the identity and, so far as feasible, the composition of the materials used to produce the product. Section 152.346 would require an applicant to identify each "beginning material" (each separate raw or processed material) used to produce his product, and to supply certain information on the beginning material. Specifically, the applicant would be required to submit a copy of available technical specifications by which the supplier of a beginning material describes its composition, properties, an/or toxicity, as well as any other information available to the applicant concerning the composition of the beginning material. If a beginning material is a registered pesticide product, it would be sufficient simply to identify the product by its registration number.

The proposed requirements concerning the description of beginning materials are a change from the 1978 proposed Product Chemistry Guidelines.

In that proposal, an applicant would have been required to provide "the identity and the percent composition by weight of each substance present in the material [and] the expected variation in composition (to the extent that this information is reasonably ascertainable) . . . ." The requirement did not take into account the fact that a producer who purchased his beginning materials would not have firsthand knowledge of the composition of those materials, and that therefore, he might be required to conduct difficult and expensive chemical analysis of beginning materials. The Agency now proposes that an applicant be required to submit only the information (of the types specified) which is available to him. The rule would not require an applicant to perform periodic chemical analysis of his beginning materials.

The second kind of information necessary to evaluate the composition of a pesticide is a description of the manufacturing process for the product. Section 152.348 specifies the kinds of information that would be contained in this description. Among other things, the description would include: a statement of the order in which beginning materials are added and their relative amounts; a description of the physical conditions controlled during the manufacturing process; a description of any purification procedures; and a description of any quality control measures. In addition, a flow chart showing the intended chemical reactions during each step of the process would be required.

Together the description of beginning materials and of the manufacturing process identify the major variables affecting the composition of a pesticide product. The Agency's chemists can review this information together with other information to determine whether the applicant's product will contain the ingredients and conform to the certified limits listed in the Confidential Statement of Formula.

Finally, § 152.350 would require the applicant to submit a theoretical discussion of the impurities that might be present in his pesticide and to explain how such impurities could be formed. Applicants would be required to address impurities which either have been detected by analysis of samples of the product or are expected to be present in quantities equal to or greater than 0.1 percent of the pesticide formulation.

EPA expects the theoretical discussion would serve several functions. The Agency would learn what kinds of impurities the applicant expects will be present in his product as it is distributed in commerce. EPA could independently evaluate this information to determine whether other impurities might be present in the pesticide. In addition, the thoroughness of the theoretical discussion might indicate how reliable other pieces of information supplied by the applicant might be. Finally, the list of impurities generated by the theoretical discussion could be used as the basis for required sample analyses.

The theoretical discussion would be based on the information concerning beginning materials and manufacturing process required by §§ 152.346 and 152.348. Different requirements would be established for end use pesticides not produced by an integrated formulation system and all other pesticides (end use pesticides produced by an integrated formulation system and manufacturing use pesticides). Applicants seeking to register end-use products not produced by an integrated formulation system would be subject to less stringent requirements since the impurities associated with an active ingredient in such a product will almost always be the impurities present in the pesticide products used as manufacturing sources for their products.

B. Need for Rulemaking

As noted, the contents of Subpart R have appeared in earlier Agency rulemaking notices. In 1978 EPA proposed rules which were quite similar to those being proposed here. See the **Federal Register** of July 10, 1978 (43 FR 29696). The primary differences between the 1978 proposal and Subpart R are in the scope of the requirements for certified limits on impurities and for identification of the composition of beginning materials. Portions of the 1978 proposal were subsequently reissued as a proposed rule on November 24, 1982 (47 FR 53192). The proposed regulations include sections corresponding to proposed § 152.342 (refer to proposed § 158.108(c)), proposed § 152.344 (refer to proposed § 158.108(b)), proposed § 152.352 (refer to proposed § 158.110), and proposed § 152.354 (refer to proposed § 158.112). The remaining material from the 1978 proposal has been published in the Agency's Pesticide Assessment Guidelines. As explained below, the Agency now believes that additional portions of this Guidelines material should be issued as rules.

The decision to issue these data requirements by rulemaking, rather than as part of the Pesticide Assessment Guidelines, represents a change in Agency policy. After publication of the 1978 proposal, the Agency decided to limit the rule to establishing specific registration data requirements, and to place the proposed revisions concerning acceptable methods for conducting required studies in non-binding guidance documents, collectively referred to as the Pesticide Assessment Guidelines. The purpose of this scheme was to promote efficient testing and to reduce costs by allowing applicants and registrants more flexibility in designing and executing satisfactory studies.

Applying this general policy to the proposed product chemistry requirements, the Agency assigned most of the material to the Pesticide Assessment Guidelines. The Agency recognized, however, that the portions of the product chemistry requirements concerning pesticide composition differed from other types of data requirements. Unlike toxicity and other types of scientific studies, there is no established, generally accepted set of test protocols comprising the "composition" of a pesticide. Thus, in the preamble to the 1982 proposal, the Agency requested comment on the possibility of again issuing rules containing requirements for detailed information about pesticide composition.

Public comments on the 1982 proposal have convinced the Agency that it is appropriate to promulgate rules requiring information on pesticide composition. Only representatives of the pesticide industry commented on this issue, and all opposed using rulemaking to establish the requirements for information on pesticide composition. Nonetheless, most of the same commenters also submitted extensive suggestions for revisions of the provisions of the Pesticide Assessment Guidelines that specified the information needed on the composition of a pesticide. Not only did comments show some confusion about the extent to which the Guidelines were advisory or mandatory, but they also reflected a keen interest in the nature of the requirements for pesticide composition information. Because there is no single, generally accepted understanding about the kinds of information needed on the composition of a pesticide, the Agency determined that it would be appropriate to clarify through rulemaking exactly what types of information EPA would require to evaluate a product and to give all interested parties a further opportunity to express their views on these requirements.

XV. Special Review Process

Regulations pertaining to the special review of pesticides (previously referred to as the Rebuttable Presumption

Against Registration or RPAR process) are currently contained in § 162.11(a) and (b). The Agency is considering changes to the criteria and procedures for the special review process at this time, and intends to issue a proposal to revise these regulations.

XVI. Child Resistant Packaging Requirements

New Part 157 would contain the child-resistant packaging requirements currently found in § 162.16. The Agency has recently issued, published in the **Federal Register** of January 4, 1984 (49 FR 380) final rules revising the criteria and procedures for child-resistant packaging and has proposed a size-based exemption for child-resistant packaging requirements, published in the **Federal Register** of January 4, 1984 (49 FR 423). Those provisions would be renumbered and designated as Subpart B of Part 157.

That rule required various types of recordkeeping to demonstrate that a package would meet the effectiveness standards, but failed to include a similar requirement with respect to records demonstrating that the compatibility and durability standards are met. This proposal would correct that oversight in § 157.39(d). EPA is proposing no other changes in child-resistant packaging requirements.

XVII. Format of Data Submitted to the Agency

The Agency is proposing to revise 40 CFR Part 158, which defines the data requirements applicable to pesticide registration, by adding new sections establishing format requirements for the data submitted to the Agency. The Agency currently receives a considerable quantity of data in conjunction with its review of registration actions, and will be receiving even more as the Agency's Data Call-In, and reregistration activities accelerate. The Agency can most efficiently review these massive amounts of data if they are submitted in a format that facilitates retrieval and review.

Section 158.32 would require that studies be distinctly identified. Each individual study would have a title page containing identifying information about the study, the pesticide, and the person or organization that conducted the study. Each study would have to be accompanied by a certification in accordance with the Good Laboratory Practice standards of 40 CFR Part 160. All studies submitted at the same time for the same Agency action would be required to be accompanied by a transmittal document identifying all submitters of the material, the Agency action for which the data are submitted, and a bibliography of all studies contained in the transmittal.

In addition, the Agency is proposing format requirements to facilitate EPA compliance with the requirements of FIFRA sec. 10. That section requires that EPA not release certain types of confidential business information. To enable the Agency to recognize such submissions quickly and easily, applicants would be directed to submit material which is clearly and appropriately identified as protected from disclosure.

FIFRA section 10(d) defines as data that may not be disclosed by the Agency the identify and test methods for inert ingredients in pesticides, and manufacturing and quality control processes. Other data submitted to the Agency may generally be disclosed if the Agency determines under FIFRA section 10(b) that it is not trade secret, and provides 30-day notification to the submitter of EPA's intent to release it.

If the Agency is efficiently to administer its responsibilities under the Freedom of Information Act and make pesticide health and safety data available to the public, it must ensure that data not disclosable under section 10(d) are separated from other data that may be released. Under interim procedures published in the **Federal Register** of December 19, 1978 (43 FR 59060), the applicant is responsible for marking and separating claimed confidential information at the time of submission.

This procedure has not worked satisfactorily in practice, however, because most data submitters assert a claim of confidentiality for all data submitted, without regard to whether it is defined in section 10(d) as disclosable or not. The data submitter is not required to segregate further the data according to its status under section 10. The result is that a data submission generally consists of a mixture of data that may and may not be released. The Agency's policy is to deny claims of confidentiality which pertain to data which are disclosable under section 10(d)(1). When a request for release is received, the Agency has borne the burden of reviewing the data and separating or obliterating that information which is non-disclosable under section 10(d)(1) (A), (B), and (C) from that which the Agency has determined may be released. This is costly and time-consuming and the source of considerable delay in responding to requests under the Freedom of Information Act.

The Agency believes that Congress did not intend that all-inclusive claims of confidentiality should be allowed to impede the release of information which it specifically defined as releasable. Consequently, the Agency is proposing to revise its proposed Part 158 rules to require that a data submitter be required to mark any information which he claims is non-disclosable under section 10(d)(1) (A), (B) or (C) and to separate it from the remainder of the submission. He also may assert a claim of confidentiality for any of the data under section 10(b). If the Agency rejects the 10(b) claim (as is routinely done in the majority of cases), the information covered by the 10(b) claim could be released to a requester promptly. If the submitter fails to identify and separate the 10(d) information, the Agency would not assume any obligation to do so itself, and would release all the information once any 10(b) claim had been resolved. The data submitter would be assumed to have waived his claim of confidentiality for such information.

Section 158.33 would require that information claimed as trade secret under section 10(d)(1) (A), (B), or (C) of the Act be submitted separately and identified by numerical reference within the study. FIFRA section 10(d) defines the types of information that may not be released by the Agency, including manufacturing process, quality control, and identity of and test methods for inert ingredients in a pesticide product. Information not separately submitted and identified as trade secret would be releasable to the public in accordance with Freedom of Information procedures. Information claimed as trade secret under other sections of FIFRA sec. 10 (such as 10(b)) would not have to be submitted separately, but would have to be clearly marked within the body of the study. Separate data confidentiality claims statements (required for each study) would have to be submitted for information claimed to be confidential under section 10(d)(1) (A), (B), and (C) and that claimed confidential under other sections.

In order to distinguish studies that are not marked because they do not contain confidential information from those not marked because they were submitted to the Agency prior to these requirements being established, the Agency is proposing to establish an effective date for §§ 158.32 and 158.33. These sections would become effective for all data received by the Agency approximately 60 days after the effective date of the final rule. A **Federal Register** document will specify the exact effective date.

EPA is also considering requiring registrants to screen previously submitted data and either make or waive confidentiality claims for that data. Identification of the trade secret information in all of EPA's data would greatly facilitate processing of requests under the Freedom of Information Act. Studies could be returned to submitters (in microfiche form) in conjunction with the issuance of a Registration Standard or special review. Data submitters would be required to identify those portions of each study that they claim meet the criteria of FIFRA section 10(d)(1)(i) (A), (B), and (C). EPA would like to receive comment on whether such a plan would be feasible (particularly on a phased basis) the costs likely to be incurred, and the problems that might be foreseen if such a program were instituted.

XVIII. Relationship of Proposal to Current Regulations

The following tables compare the current regulations found in 40 CFR Part 162 with those being proposed today. The first table shows where material originally in Part 162 would be located under this proposal, or indicates why it is no longer needed. References to proposed Part 156 appear in a companion document elsewhere in today's **Federal Register**.

DISTRIBUTION TABLE

Old section	New section
162.1	152.1.
162.2	Deleted; redundant.
162.3	152.3, except as noted.
(a)	Deleted; unnecessary.
(e)	Deleted; unnecessary.
(j)	Deleted; unnecessary.
(k)	See definition of "new use"—152.3(q).
(l)	See definition of "residue"—152.161(c).
(m)	See definition of "residential use"—152.3(w).
(n)	Deleted; unnecessary
(o)	Deleted; unnecessary
(q)	Moved to Labeling definitions—152.2(b).
(r)	Deleted; unnecessary.
(s)	Moved to Labeling definitions—152.2(c).
(v)	Deleted; unnecessary.
(w)	See definition of "residue"—152.161(c).
(x)	Deleted; unnecessary.
(y)	Deleted; unnecessary.
(z)	Deleted; unnecessary.
(aa)	Deleted; unnecessary.
(bb)	Deleted; unnecessary.
(cc)	See definition of "outdoor use"—152.161(b).
(ee)	152.5.
(gg)	Deleted; unnecessary.
(ii)	Deleted; unnecessary.
(jj)	Deleted; unnecessary.
(kk)	See definition of "residue"—152.161(c).
(ll)	See definition of "dietary LC-50"—152.161(a).
(mm)	Deleted; unnecessary.
(nn)	152.3(c), (d), and (e), and 152.161(a).
(oo)	Moved to Labeling definitions—152.2(i).
(pp)	Deleted; unnecessary.
(qq)	Deleted; unnecessary.
(rr)	Deleted; unnecessary.
162.4(a)	152.15.
(b)	152.15.
(c)(1)–(5), (6)	152.8 and 152.10 deleted.
162.5(a)	152.15.

DISTRIBUTION TABLE—Continued

Old section	New section
(b)(1)–(5)	152.30.
(b)(6)	152.20(b).
(c)	152.20(a).
162.6(a)(1)	152.40.
(a)(2)–(4)	152.50(b).
(a)(5)	152.104 and 152.105.
(b)(1)	152.45, 152.50.
(b)(2)	152.50, except (b)(2)(i)(C)(2)—moved to 158.27.
(b)(3)	152.42(b), 152.50.
(b)(4)	152.42(b)(1)(i).
(b)(5)	Subpart D, §§ 152.60 through 152.79.
(b)(6)	152.102, except (b)(6)(ii)—deleted; unnecessary.
(c)	Deleted; obsolete and unnecessary.
162.7(a)	152.100.
(b)	Deleted; unnecessary.
(c)	152.110.
(d)(1)	152.107.
(d)(2)	152.112.
(d)(3)	152.112.
(d)(4)	Deleted.
(e)	152.111.
(f)	152.118.
(q)	152.119 (published in the FEDERAL REGISTER of August 1, 1984 (49 FR 30884).
162.8(a)	152.50(g)(2).
(b)	152.50(j).
(c)	152.107(c).
162.10	Proposed 40 CFR Part 158.
162.11(a)	Deleted; new regulations will be promulgated.
(b)	Deleted; new regulations will be promulgated.
(c)	Subpart I, §§ 152.160 through 152.179.
162.12	Deleted; not relevant to registration procedures.
162.13	Subpart K, §§ 152.200 through 152.219.
162.14	152.5.
162.15	Subpart M, § 152.240.
162.16	Proposed Part 157, Subpart B.
162.17	Subpart L, §§ 152.220 through 152.239.
162.21(a)	152.45.
(b)	Proposed part 156, Subpart P.
162.22	Deleted; obsolete.
162.23	Deleted obsolete.
162.30	Subpart I, §§ 152.160 through 152.179.
162.31	Subpart I, § 152.171.
162.41 through 162.47.	Deleted redundant and obsolete.
162.60	158.27.
162.160 through 162.177 (Subpart E).	Subsumed in Subparts C, E, F, and H pertaining to submission, review, and disposition of applications.

The following table shows how material in this proposal is derived from Part 162:

DERIVATION TABLE

New section	Old section
152.1	162.1.
152.3	162.3, except as noted.
(i)	162.5(c)(2).
(j)	New.
(k)	162.15.
(l)	162.9–7(c).
(o)	New.
(p)	New.
(s)	162.16(b)(l).
(v)	New.
(w)	New.
152.5	162.14.
152.8(a)	162.3(ff)(2)(ii).
(b)	162.3(ff)(ii)(ii) and (13)(ii).
(c)(1)	162.4(c)(5).
(c)(2)–(4)	New.
152.10(a)	162.4(c)(l).
(b)	162.3(ff)(3)(ii).
(c)	162.4(c)(2), (3), and (4).
(d)	New.
(e)	New.
152.15(a)	162.4(b).
(b)	New.
(c)	New.
152.20(a)	162.(c)

DERIVATION TABLE—Continued

New section	Old section
(b)	162.5(b)(6).
152.25(a)	162.5(d).
(b)	New.
(c)	New.
(d)	162.3(ff)(3)(i)(B).
152.30(a)—(f)	162.5.
(g)	New.
152.40	162.6(a).
152.42(a)	162.6(b)(2).
(b)(l)	New.
(b)(2)	New.
152.45, except (d)	162.6(b)(l), 162.21(a).
(d)	New
152.50	162.6(b)(2).
(b)	162.6(a).
(c)	New.
(d)	New
(e)	162.6(b)(2)(i)(C).
(f)	162.6(b)(2) and (3), 162.165(b)(2).
(g)(l)	162.6(b)(l).
(g)(2)	162.8(a)(l), 162.163.
(h)	162.16(e)
(i)	162.6(b)(2)(i)(D), 162.165(b)(5).
(j)	162.8(b).
(k)	New
152.55	New.
Subpart D §§ 152.60—152.79.	New.
152.100	New.
152.102	162.6(b)(6).
152.104	162.6(a)(5).
152.105	162.6(a)(5).
152.107	162.7(d).
152.108	New.
152.110	162.7(c).
152.111	162.7(d)(l), 162.7(e).
152.112	162.7(d)(2) and (3).
152.113	162.167(a) and (b).
152.114	New.
152.115	162.167(c).
152.117	New
152.118	162.7(f), 162.167(e).
Subpart G	New.
Subpart H, except § 152.148.	New.
152.148	162.11(a) and (b), 162.177.
Subpart I, except §§ 152.170, 152.171 and 152.175.	162.30.
152.170	162.11(c).
152.171	162.31.
152.175	New.
Subpart J	New.
Subpart K, except §§ 152.215 and 152.218.	162.13
152.215	New.
152.218	New.
Subpart L	162.17.
Subpart M	162.15.
Subparts N through Q [Reserved].	162.15.
Subpart R	New.
Part 157	162.16.
158.27	162.60.
158.32	New.
158.33	New
158.1001	162.60

XIX. Statutory Review

In accordance with FIFRA section 25, this proposal was submitted to the Secretary of Agriculture (USDA), the Scientific Advisory Panel (SAP), and the House Committee on Agriculture and Senate Committee on Agriculture, Nutrition and Forestry for comment. No comment was received from either Congressional Committee.

A. USDA Comments and Agency Response

1. USDA asserted that the language of § 152.15 would redefine the statutory definition of pesticide. As stated in the preamble, the definition of pesticide in FIFRA section. 2(u) depends in part on the "intent" of the seller or distributor, but the Act does not indicate how EPA is to determine such intent. Section 152.15 sets forth the factors that the Agency would consider in determining intent of a seller or distributor, and if intent is found to be present, would subject the product to the requirements of the Act. EPA does not view that section as expanding the statutory definition, but merely clarifying and interpreting it.

2. USDA suggested, with reference to § 152.25(d), that the rule exempt food products as ingredients in pesticide products, without a limitation that they be the sole ingredient in an attractant product. In this way, the exempt food product could either be used as a sole active ingredient product unregulated under FIFRA, or could be combined with any toxicant in a product that would be required to be registered solely because of the presence of the toxicant. USDA cites as their reason for this suggestion that fact that, under FIFRA section 24(c), an active ingredient may not be registered by a State unless contained in, or derived from, a product that is federally registered. Unless the food by itself is exempted, a combination product containing that food mixed with a federally registered toxicant would not be permitted under section 24(c).

The exemption for food products in § 152.25(d) is an exemption under FIFRA section 25(b) from all FIFRA requirements, and thus extends to registrations under section 24(c) as will as section 3. Thus, any food product not containing a toxicant need not be registered under FIFRA section 3 or section 24(c). Moreover, by extension, the food product is also exempted from the requirement under FIFRA section 24(c) regulations that it be contained in or derived from a federally registered product in order for it to be used in a State-registered product that does contain a toxicant. Thus, the exemption contained in § 152.25(d) accomplishes what USDA has suggested by done.

USDA also suggested that the wording of the exemption be modified to include "chemically synthesized" as well as naturally occurring" foods. Since the Agency believes that all foods are described by these terms, the proposal has been revised to delete the "naturally occurring" language. The section now exempts "foods."

3. USDA expressed some concerns about the Agency's proposal that products intended for treating seeds be dyed, and that granular products be dyed (Subpart K).

a. USDA speculated that there might be substantial costs associated with the requirement to dye seeds and granular products. EPA believes that any costs associated with these requirements would be minimal. The cost of including a dye in a pesticide product would be no more than the cost of including any other adjuvant, such as an emulsifier. The cost of dyeing the seed at the time of treatment would be minimal, since the dye would be added at the same time as the pesticide treatment. EPA has required dyeing of treated seed since 1970 on a case-by-case basis, and the Agency has had no indications in that time from pesticide producers or users of seed treatment products that the requirement has been economically burdensome.

b. USDA also expressed concern that dyeing of seeds and granulars might make such products more attractive to children, thereby increasing rather than decreasing hazards. On the other hand, USDA acknowledged that colored seeds and granules might enhance application efficiency by avoiding overlaps.

EPA acknowledges that there is a possibility that children might find treated and dyed seeds and granules attractive if accessible. Storage and use are the primary points where children might have access to the treated and dyed materials. We believe, however, that the hazzards to children from storage will be minimal. Proper storage of treated and dyed seeds and granular products under lock and key will largely preclude access by children. Granular products intended for residential use that are toxic enough to be of concern would be packaged in child-resistant containers.

Children are also unlikely to have routine or frequent access to treated and dyed seeds in use situations. Treated seed is normally not exposed on the soil surface, but planted under the soil, and thus is unavailable to a curious child.

Granular products, on the other hand, may be applied to the soil surface, and thus might be available to a child. In an agricultural situation, EPA considers remote the probability that children would have access to treated fields at a time when the granules are applied, and that coloration would therefore not present a significant increased hazard. On the other hand, EPA agrees that, if coloration of granules does make them more attractive to children, residential use of a granular product (such as for lawn use) might pose an increased hazard. However, EPA believes that such hazards may be addressed on a case-by-case basis through the Agency's review of individual products.

c. USDA suggested that the requirement to dye seeds be limited to those for use on seed that may be fed to animals, and, additionally, to those where the seed are capable of being dyed. EPA has not adopted this suggestion. Most seed treatment products are registered for use on a large variety of seed types, including those likely to be used for animal feed (such as grain), and others not so likely to be used for animal feed (such as vegetable seeds). The USDA suggestion would be practical only if products intended for treatment of seeds that could potentially be diverted for animal feed or that could feasibly be dyed were required to be separately registered from other types of seed treatment products. EPA believes that this would neither be efficient from an administrative standpoint, nor desirable from the perspective of the registrant and seed treater. The proposal does, however, provide that registrants may seek an exemption from the requirement if they believe it justified.

d. Finally, in response to a request for comments on the possible addition of odorous compounds as a warning signal in some products, USDA suggested that such requirements might necessitate residue tolerances being set for the compounds. USDA also suggested that the Agency determine which odorous compounds are available and evaluate them to determine whether use might increase overall hazard. These comments will be reviewed together with other comments on the subject, and the final rule will discuss the outcome of the review.

4. USDA commented that the language of the definition of "new use" that applies the term to any use pattern resulting in an increase in the level of exposure would encompass almost any additional use pattern. EPA agrees and has inserted the word "significant" to describe the increased levels of exposure of concern to the Agency.

5. USDA suggested that § 152.10(b) include a statement that products used for survey and detection purposes only, and not combined with a pesticidal toxicant, be permitted to be registered under FIFRA section 24(c) (by itself or in combination with other pesticidal ingredients) without necessarily being included in a federally registered product (refer to the discussion under Item 2 for a discussion of the FIFRA

section 24(c) requirement). The Agency has not adopted this suggestion.

The use of a product only for survey and detection purposes is not one of pesticidal effect or intent, according to § 152.10. This is true only if the product being used is not combined with a toxicant. Once the product has been combined with a pesticidal component, the product is no longer solely for survey and detection purposes, but has pesticidal effects as well. Thus the survey and detection criterion cannot be met when a product is combined with a toxicant.

Nor is the Agency willing to treat the "products" in a manner analogous to that for foods in § 152.25(d). Foods are pesticides that have been specifically exempted under FIFRA section 25(d) because they are innocuous enough not to warrant FIFRA regulation. The same cannot be said of the "products" in § 152.10. These is no limitation on such products, which may not be innocuous compounds. EPA is not willing to exempt such products entirely from FIFRA oversight, but acknowledges that when used alone for survey or detection purposes, they do not have a pesticidal effect, and it that specific situation, are not required to be registered as pesticides.

6. USDA suggested that the language of § 152.50(j) requiring an applicant to submit adverse effects data be limited to "valid" factual data. This requirement is intended to parallel that of FIFRA section 6(a)(2), under which registrants are required to submit such data. In that case, the statute does not limit the requirement to "valid" data. EPA believes that to do as USDA suggests would be an improper limitation of the statutory requirement, and would leave to applicants and registrants the decision of whether adverse effects data are valid. The Agency has the responsibility of deciding the validity of the adverse effects data. The Agency's policy statements referred to in § 152.50(j) fully explain the Agency's policies on adverse effects data.

7. USDA commented that, before the Agency takes action to suspend a product's registration for failure to keep the Agency notified of a current address, the Agency should seek to verify the company's status. The Agency currently engages in several activities of this type. When an item is returned to the Agency as undeliverable, the Agency's contractor automatically attempts to verify whether the company is still in business by checking phone directories for the last known address. Failing verification by this means, the Regional Office is requested to physically inspect the address and make enquiries of neighboring businesses to determine the whereabouts or fate of the company. Only after these have failed would the Agency suspend the registrations.

8. USDA asserted that the non-target hazard criterion for restriction of a pesticide (§ 152.170(c)(1)(iv)) was vague and open to interpretation. USDA also suggested replacing this criterion with one that is based on the statutory term "unreasonable adverse effects." EPA recognizes that the criterion is general and open to interpretation. However, phrasing the criterion in terms of the statutory unreasonable adverse effects would not be a practical alternative, and EPA believes, would actually be more general rather than more explicit. The statutory term is used to trigger a number of actions by the Agency, including both restriction and cancellation. The criterion in § 152.170(c)(1)(iv) for non-target hazard is intended to interpret and clarify the meaning of "unreasonable adverse effects" in the context of restriction. (In a similar manner, criteria for special review also clarify the term "unreasonable adverse effects" as a trigger for possible cancellation.)

The non-specific language was originally intended to allow the Agency discretion in deciding whether a product should be a candidate for restricted use. The qualitative nature of the criterion was (and still is) necessary because large scale non-target effects are often difficult to quantify and definitive criteria cannot be devised that cover all the possible effects of concern to the Agency. The Agency has retained a general screening criterion for non-target effects, but has modified the language somewhat for clarification.

9. USDA suggested that the Label Improvement Program should allow an opportunity to comment on label changes before the requirements are imposed. The Label Improvement Program is intended to implement existing labeling requirements, as for example, those in the related labeling proposal in today's **Federal Register**. Registrants would already have had sufficient opportunity for comment on any labeling revisions. Moreover, EPA intended to design the Program to be able to respond rapidly to labeling concerns, and a required comment period might delay corrective actions. The Agency may, of course, provide additional opportunity for comment before issuing a Label Improvement Notice, and does accept comments after issuance.

10. USDA inquired as to what is meant by a "normal adult" in the "child-resistant packaging" definition in § 157.21(b). Child-resistant packaging is defined in that section as being packaging that a normal adult can open but that a child cannot. For the purposes of child-resistant packaging, the Agency relies on the CPSC testing scheme in 16 CFR 1700.20, which defines the adult testing group as comprising adults ages 18 to 45 with no overt physical or mental handicaps, 70 percent of whom are female. These are the "normal adults" referred to in the definition.

B. SAP Comments and Agency Response

1. The SAP questioned the use of the terms "significant" and "serious" in various criteria for the restriction of pesticides (§ 152.170). Such terms, they commented, were ambiguous and could lead to legal challenges. EPA agrees that the terms are not quantitative. These terms are used to allow the Agency discretion in examining whether to restrict use of a product to certified applicators. The criteria in § 152.170 are screening criteria that lead to a further evaluation of the uses of the pesticide to determine whether restriction would be beneficial in mitigating unreasonable adverse effects. Some pesticides may not meet any of the quantitative criteria set out in § 152.170, but still may have undesirable effects that should trigger consideration for restricted use.

EPA does not believe that the use of the terms in this way will subject the Agency to legal challenges. The terms have been used in the same manner since 1979 without legal challenge. Moreover, EPA believes it unlikely that legal challenges will ensure, since the terms are used only in preliminary criteria that have no direct regulatory consequences, but merely trigger further evaluation by the Agency. Under the licensing scheme of FIFRA, legal challenges would occur only when the Agency took regulatory action affecting the pesticide products.

2. The SAP also questioned, in connection with the restricted use criteria, the practicality of using acute dietary exposure as a factor to indicate hazard to wildlife. Their concern apparently was the accuracy of estimated pesticide levels in the diet of wildlife. EPA recognize the uncertainty in attempting to accurately estimate the levels of pesticide actually occurring in wildlife diets. The Agency's Office of Research and Development is working to improve these methods. The Agency believes that its dietary exposure models, upon which the estimates are based, are the best scientific mechanisms currently available for assessing potential short term acute toxicity.

3. The Panel viewed the proposed product chemistry information requirements (Subpart R) as expanding data requirements in this area. The Panel stated that the Agency had not advanced a convincing argument that these data were needed for regulatory purposes.

The Agency would not characterize these as new requirements. They are contained in the Agency's product chemistry data requirements proposed in 40 CFR 158.120, as published in the **Federal Register** of November 24, 1982 (47 FR 53192). Moreover, the Agency has been requesting data of this sort for several years in conjunction with special reviews, Registration Standards, and new chemicals. EPA also recognizes that these requirements are highly controversial, and believes that specific comment will be useful in delineating the scope of the requirements (refer to the discussion of these requirements in Unit XIV of this preamble).

EPA believes that these are the types of product chemistry data needed to establish the identity of inert ingredients, and particularly the impurities, in pesticide products, so that the Agency is equipped to make future regulatory decisions if necessary. Without this information, the Agency would be unable to respond rapidly and decisively to indications of hazards posed by these substances in pesticide products, or action would be delayed pending receipt of such data. The presence of dioxins in phenoxy pesticides, or of DDT-related compounds in dicofol might be undetected and unregulated were this information not readily available to the Agency. EPA believes it prudent to anticipate the need for such information, and obtain it from the applicant at the time of registration, rather than seeking it under FIFRA sec. 3(c)(2)(B) after registration.

Moreover, EPA believes that product chemistry data of the types that would be required by Subpart R are routinely developed by pesticide producers, and thus the data requirements impose little, if any, additional cost on registrants. The Agency's "Regulatory Impact Analysis of Data Requirements for Registering Pesticides under the Federal Insecticide, Fungicide and Rodenticide Act," developed in support of Part 158, addresses these costs in detail.

4. The SAP commented that the document does not contain requirements for storage stability of pesticides and pesticide products between production and use. While the requirements of Subpart R pertain only to the identification of the pesticide, its beginning materials, inerts and impurities, Part 158 contains data requirements on storage stability of the pesticide. If such data demonstrate that a product's composition changes significantly over time, or that degradation into potentially more toxic compounds may occur, the Agency may require additional toxicity testing on the product or its degradates.

5. The SAP stated that the term "integrated formulation system" (defined in § 152.342(d)) is unclear and confusing. EPA has used this term and discussed its meaning in various regulatory documents over the past several years. The best description and discussion of the term appears in the preamble to the proposed Product Chemistry Guidelines, issued in the **Federal Register** of July 10, 1978 (43 FR 29701). In its simplest form, the term refers to a formulation system using a pesticide which is not registered with the Agency before its incorporation into an end use product. For such products, the process impurities and contaminants may be unknown (and unregulated) because the Agency cannot legally regulate such products until they become part of a pesticide product that is sold or distributed in commerce. In order to obtain needed information about impurities and contaminants of pesticides so used, the Agency must establish special requirements that apply to the regulated products into which an unregistered pesticide is incorporated. Such regulated products are described as being produced by an "integrated formulation system." A new term was necessary since these products are not adequately characterized by existing terms.

6. The SAP stated that the term "toxicological significance," used in conjunction with the certification of limits for impurities in § 152.352, was open to interpretation, and suggested that it be delimited in some way. The term is used to allow Agency discretion to require the more stringent certified limits set out in that section if warranted. In EPA's view, toxicological significance is a function both of toxicity characteristics and potential exposure. Neither of these is easily quantified; hence the Agency finds it difficult to establish a better criterion for when EPA might impose the additional requirements of § 152.352. Comments and suggestions are invited on this topic.

XX. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this proposed revision of Part 162 is not a major regulation as defined by E.O. 12291.

The proposed revisions are primarily a reorganization and clarification of existing procedural regulations. The Agency is also proposing certain additions reflecting Agency policies that have been applied in the past on a case-by-case basis, but which have previously been stated only in non-regulatory policy documents. These proposed revisions are not so extensive as to trigger the criteria of E.O. 12291 that would classify the regulation as major.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

XXI. Regulatory Flexibility Act

This proposed regulation has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act and it has been determined that this proposal does not contain provisions which would have a significant adverse impact on a substantial number of small entities. Since the revisions would clarify the procedural requirements for registration, and generally would reduce the number of submissions needed to be submitted to the Agency to obtain and maintain registration, the regulations would be less burdensome to small businesses than are the regulations they would supersede. Other small entities, such as organizations and local governmental units, are not affected by these revisions since they seldom seek registration of pesticide products. For these reasons, I hereby certify that the proposed revisions to 40 CFR Part 162 do not have a significant impact on a substantial number of small entities.

XXII. Paperwork Reduction Act

Under the Paperwork Reduction Act, EPA must identify any regulation, and must obtain clearance from the Office of Management and Budget (OMB) for any such collection activities. All information collection activities under this proposal have been approved by the OMB under OMB Control Number 2000-0012.

List of Subjects in 40 CFR Parts 152, 157, 158, and 162

Administrative practices and procedures, Data requirements, Packaging, Pesticides and Pests, Recordkeeping and reporting requirements.

Dated: September 18, 1984.

William D. Ruckelshaus,

Administrator.

Therefore, it is proposed that Chapter I of Title 40 be amended as follows:

1. By adding Subparts A through D, F through M, and R to existing Part 152, to read as follows:

PART 152—PESTICIDE REGISTRATION AND CLASSIFICATION PROCEDURES

Subpart A—General Provisions

sec.
152.1 Scope.
152.3 Definitions.
152.5 Pests.
152.8 Products that are not pesticides because they are not for use against pests.
152.10 Products that are not pesticides because they do not have a pesticidal effect.
152.15 Pesticide products required to be registered.

Subpart B—Exemptions From FIFRA Requirements

152.20 Exemptions for pesticides regulated by another Federal Agency.
152.25 Exemptions for pesticides of a character not requiring FIFRA regulations.
152.30 Pesticides that may be transferred, sold or distributed without registration.

Subpart C—Registration Procedures

152.40 Who may apply.
152.42 When applications are required.
152.45 Products for which separate applications must be submitted.
152.50 Contents of application.
152.55 Where to send applications and correspondence.

Subpart D—Reregistration Procedures

152.60 General.
152.65 Application for reregistration.
152.70 Agency response to application.
152.75 Hearing.

Subpart F—Agency Review of Applications

152.100 Scope.
152.102 Publication.
152.104 Completeness of applications.
152.105 Incomplete applications.
152.107 Review of data.
152.108 Review of labeling.
152.110 Time for Agency review.
152.111 Choice of Standards for review of applications.
152.112 Approval of registration under FIFRA section 3(c)(5).
152.113 Approval of registration under FIFRA section 3(c)(7)—products that do not contain a new active ingredient.
152.114 Approval of registration under FIFRA section 3(c)(7)—products that contain a new active ingredient.
152.115 Conditions of registration.
152.117 Notification to applicant.
152.118 Denial of application.

Subpart G—Obligations and Rights of Registrants

Sec.
152.122 Currency of address of record and authorized agent.
152.125 Submission of information pertaining to adverse effects.
152.128 Distribution under approved labeling.
152.130 Transfer of registration.
152.135 Voluntary cancellation.

Subpart H—Agency Actions Affecting Registrations

152.140 Classification of pesticide products.
152.142 Submission of information to maintain registration in effect.
152.144 Reregistration.
152.146 Special review of pesticides.
152.148 Cancellation of registration.
152.150 Suspension of registration.
152.152 Child-resistant packaging.
152.154 Label Improvement Program.
152.156 Coloration and discoloration of products.

Subpart I—Classification of Pesticides

152.160 Scope.
152.161 Definitions.
152.164 Classification by regulation.
152.166 Labeling of restricted use products.
152.168 Advertising of restricted use products.
152.170 Criteria for restriction to use by certified applicators.
152.171 Pesticides restricted to use by certified applicators.
152.175 Restrictions other than those relating to use by certified applicators.

Subpart J—Label Improvement Program

152.180 General.
152.185 Notification and submission to Agency.
152.187 Time for submission.
152.190 Combined applications.
152.195 Compliance after approval of application.

Subpart K—Coloration and Discoloration of Pesticides

152.200 General.
152.205 Coloring agent.
152.207 Arsenicals and barium fluosilicate.
152.210 Sodium fluoride and sodium fluosilicate.
152.215 Seed treatment products.
152.216 Granular products for outdoor use.
152.218 Exceptions.

Subpart L—Intrastate Pesticide Products

152.220 Scope.
152.225 Application for Federal registration.
152.230 Sale and distribution of unregistered intrastate pesticide product.

Subpart M—Devices

152.240 Requirements for devices.

Subparts N–Q [Reserved]

Subpart R—Product Chemistry Data Requirements

152.340 General.
152.342 Definitions.
152.344 Pesticide composition information.
152.346 Description of beginning materials.
152.348 Description of manufacturing process.

Sec.
152.350 Discussion of formation of impurities.
152.352 Certification of ingredient limits.
152.353 Certified limits for additional ingredients and impurities.
152.354 Enforcement analytical method.

Authority: Secs. 3, 25(a)(1) and 25(c)(3), as amended (Pub. L. 92–516, 92 Stat. 819; 7 U.S.C. 136 through 136y).

Subpart A—General Provisions

§ 152.1 Scope.

Part 152 establishes regulations for the registration and reregistration of pesticide products under FIFRA section 3, and for associated regulatory activities affecting registration. These latter regulatory activities include procedures governing satisfaction of data requirements (Subpart E), the classification of pesticide uses (Subpart I), and the revision of labeling under the Agency's Label Improvement Program (Subpart J). This part also sets forth requirements for the coloration or discoloration of certain pesticides (Subpart K) and references the general requirements applicable to nonfederally registered intrastate products (Subpart L) and devices (Subpart M).

§ 152.3 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section. Terms defined by the Act are provided for reference.

(a) "Act" or "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136–136y).

(b) "Active ingredient" means:

(1) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient that will prevent, destroy, repel, or mitigate any pest.

(2) In the case of a plant regulator, any ingredient which, through physiological action, will alter the growth processes of plants or the product thereof.

(3) In the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant.

(4) In the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(c) "Acute dermal LD_{50}" means a statistically derived estimate of the single dermal dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(d) "Acute inhalation LC_{50}" means a statistically derived estimate of the concentration of a substance that would cause 50 percent mortality to the test population under specified conditions.

(e) "Acute oral LD_{50}" means a statistically derived estimate of the single oral dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(f) "Administrator" means the Administrator of the United States Environmental Protection Agency or his delegate.

(g) "Agency" means the United States Environmental Protection Agency (EPA), unless otherwise specified.

(h) "Applicant" means a person who applies for a registration, amended registration, or reregistration, under FIFRA Section 3, or a designated agent for the applicant.

(i) "Biological control agent" means any living organism applied to or introduced into the environment to prevent, destroy, repel, or mitigate the population or biological activities of another organism declared to be a pest by the Administrator.

(j) "Distribute or sell," and other grammatical variations of the term, such as "distributed or sold" and "distribution or sale" refer to the acts of distributing, selling, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State. Distribution is deemed to have occurred if a product has been packaged and labeled in the manner in which it will be shipped, or if it has been stored in an area where finished products are ordinarily held for shipment.

(k) "Device" means any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.

(l) "End use product" means a pesticide product whose labeling (1) includes directions for use of the product (as distributed or sold, or after combination by the user with other substances) for controlling pests or defoliating, desiccating or regulating plants, and (2) does not state that the product may be used to manufacture or formulate other pesticide products.

(m) "Final printed labeling" means the label or labeling of the product when distributed or sold. Final printed labeling does not include the package of the product.

(n) "Inert ingredient" means an ingredient that is not an active ingredient. The term includes both impurities and intentionally added inert ingredients.

(o) "Institutional use" means any application of a pesticide in or around property or a facility that functions to provide a service to the general public, including but not limited to: (1) Hospitals and nursing homes, (2) schools other than pre-schools and day care facilities, (3) museums and libraries, (4) sports facilities, and (5) office buildings.

(p) "Manufacturing use product" means any pesticide product that is not an end-use product.

(q) "New use," when used with respect to a product containing a particular active ingredient, means:

(1) Any proposed use pattern that would require the establishment of, or the increase in, a tolerance under the Federal Food, Drug and Cosmetic Act;

(2) Any aquatic, terrestrial, outdoor, or forestry use pattern, if no substantially similar product containing that active ingredient is currently registered for a use in that use pattern; or

(3) Any additional use pattern that would result in a significant increase in the level of exposure, or a change in the route of exposure, to that active ingredient of man or other organisms.

(r) "Operated by the same producer," when used with respect to two establishments, means that both establishments are owned by, or leased for operation by and under the control of, a single person or company. The term does not include establishments operated by different persons or companies, regardless of contractual agreements between such persons.

(s) "Package" or "packaging" means the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use or storage. The term does not include any shipping or bulk container used for transporting or delivering the pesticide unless it is the only such package.

(t) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, or intended for use as a plant regulator, defoliant or desiccant; but not including any article (1) that is a new animal drug under FFDCA section 201(w), or (2) that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or (3) that is an animal feed under FFDCA section 201(x) that bears or contains any substance described by paragraph (t)(1) or (2) of this section.

(u) "Pesticide product" means a pesticide in the particular form (including composition, packaging and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide when distributed or sold with the pesticide.

(v) "Registration Standard" means a document, documents or other information source specifying the Agency's position on registration of a category of pesticide products containing a specific ingredient, or combination of ingredients.

(w) "Residential use" means use of a pesticide directly:

(1) On humans or pets,

(2) In, on, or around any structure, vehicle, article, surface, or area associated with the household, including but not limited to areas such as out-buildings, non-commercial greenhouses, pleasure boats and recreational vehicles, or

(3) In any preschool or day care facility.

§ 152.5 Pests.

Each of the following types of organisms is declared to be a pest when it exists under circumstances that make it deleterious to man or the environment:

(a) Vertebrate animals other than man;

(b) Invertebrate animals (other than internal parasites of living man or other living animals), including but not limited to insects and other arthropods, nematodes, and mollusks such as slugs and snails;

(c) Plants growing where not wanted, including mosses, algae, liverworts, and all plants of higher orders, and plant parts such as roots;

(d) Fungi, bacteria, viruses, and other microorganisms, other than those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, and drugs (as defined in section 201(g)(1) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 321(g)(1)).

§ 152.8 Products that are not pesticides because they are not for use against pests.

The substances or articles described in this section are not pesticides because they are not intended for use against pests, as defined in § 152.5.

(a) A product intended for use only for the control of fungi, bacteria, viruses or other microorganisms in or on living man or animals, and labeled accordingly.

(b) A product intended for use only for control of internal invertebrate parasites or nematodes in living man or animals, and labeled accordingly.

(c) Products of the following types intended only to aid the growth of desirable plants:

(1) Fertilizer products not containing pesticides.

(2) Plant nutrient products, consisting of one or more macronutrients or micronutrient trace elements necessary to normal growth of plants and in forms readily usable by plants.

(3) Plant inoculant products consisting of microorganisms applied to the plant or soil for the purpose of enhancing the availability or uptake of plant nutrients through the root system.

(4) Soil amendment products containing a substance or substances added to the soil for the purpose of improving soil characteristics favorable for plant growth.

§ 152.10 Products that are not pesticides because they do not have a pesticidal effect.

A product that does not prevent, destroy, repel, or mitigate a pest, or does not defoliate, desiccate or regulate the growth of plants, is not considered to have a pesticidal effect. Unless a pesticidal claim is made, the following products or articles are not considered to be pesticides:

(a) Deodorizers, bleaches, and cleaning agents.

(b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly.

(c) Articles or substances treated with pesticides to protect the articles or substances themselves, for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation.

(d) Products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as certain pruning paints for trees.

(e) Products intended to force bees from hives for the collection of honey crops.

§ 152.15 Pesticide products required to be registered.

No person may distribute or sell any pesticide product that is not registered under the Act, except as provided in §§ 152.20, 152.25 and 152.30. A pesticide is any substance (including any mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest (see § 152.5) or use as a plant regulator, defoliant, or desiccant. A substance is intended for a pesticidal purpose, and thus is a pesticide, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or

(2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or

(b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for a pesticidal purpose (by itself or in combination with any other substance), or (2) use for manufacture of a pesticide; or

(c) The person who distributes or sells the substance knows or should reasonably know that the person(s) to whom the substance is distributed or sold will use the substance for a pesticidal purpose.

Subpart B—Exemptions from FIFRA Requirements

§ 152.20 Exemptions for pesticides regulated by another Federal Agency.

The pesticides or classes of pesticide listed in this section are exempt from all requirements of FIFRA. The Agency has determined, in accordance with FIFRA sec. 25(b)(1), that they are adequately regulated by another Federal agency.

(a) *Certain biological pest control agents.* (1) Except as provided by paragraph (a)(3) of this section, all biological control agents are exempt from FIFRA requirements.

(2) If the Agency determines that an individual biological control agent or class of biological control agents is no longer adequately regulated by another Federal agency, and that it should not otherwise be exempted from the requirements of FIFRA, the Agency will revoke this exemption. If it does so, paragraph (a)(3) of this section will be amended accordingly.

(3) The following biological control agents are not exempt from FIFRA requirements:

(i) Living organisms taxonomically defined as viruses;

(ii) Living organisms taxonomically defined as bacteria, actinomycetes, rickettsia, mycoplasmas, or 1—forms of bacteria.

(iii) Living organisms classified as members of the animal subkingdom *Protozoa.*

(iv) Living organisms taxonomically defined as fungi.

(v) Living organisms classified as members of Class I, *Schizophyceae,* of Division I of the Plant Kingdom, *Protophyta,* including blue-green algae, as described in the 8th edition of "Bergey's Manual of Determinative Bacteriology."

(b) *Certain human drugs.* A pesticide product that is offered solely for human use and is also (1) a new drug within the meaning of FFDCA section 201(p), or (2) an article that has been determined by the Secretary of Health and Human Services not to be a new drug by a regulation establishing conditions of use for the article, is exempt from the requirements of FIFRA. Such products are subject to regulation in accordance with the Federal Food, Drug, and Cosmetic Act and implementing regulations.

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

The pesticides or classes of pesticides listed in this section have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

(a) *Pheromones and pheromone traps.* Pheromones and identical or substantially similar compounds labeled for use only in pheromone traps and pheromone traps in which those compounds are the sole active ingredient(s).

(1) For the purposes of this paragraph, a pheromone is a compound produced by an arthropod which, alone or in combination with other such compounds, modifies the behavior of other individuals of the same species.

(2) For the purposes of this paragraph, a synthetically produced compound is identical to a pheromone only when their molecular structures are identical, or when the only differences between the molecular structures are between the stereochemical isomer ratios of the two compounds, except that a synthetic compound found to have toxicological properties significantly different from a pheromone is not identical.

(3) When a compound possesses many characteristics of a pheromone but does not meet the criteria in paragraph (a)(2) of this section, it may, after review by the Agency, be deemed a substantially similar compound.

(4) For the purposes of this paragraph, a pheromone trap is a device containing a pheromone or identical or substantially similar compound used for the sole purpose of attracting, and trapping or killing, target arthropods. Pheromone traps are intended to

achieve pest control by removal of target organisms from their natural environment and do not result in increased levels of pheromones or identical or sustantially similar compounds over a significant fraction of the treated area.

(b) *Preservatives for biological specimens.* (1) Embalming fluids.

(2) Products used to preserve animal or animal organ specimens, in mortuaries, laboratories, hospitals, museums and institutions of learning.

(3) Products used to preserve the integrity of milk, urine, or blood samples for laboratory analysis.

(c) *Vitamin hormone products.* Vitamin hormone horticultural products consisting of mixtures of plant hormones, plant nutrients, inoculants, or soil amendments, which meet the following criteria:

(1) The product, in the undiluted package concentration at which it is distributed or sold, meets the criteria for Toxicity Category III or IV (refer to 40 CFR 156.42 for Toxicity Categories); and

(2) The product is not intended for use on food crop sites, and is labeled accordingly.

(d) *Foods.* Products consisting of foods and containing no toxicants, which are used to attract pests.

§ 152.30 Pesticides that may be transferred, sold or distributed without registration.

Unregistered pesticides may be distributed or sold, or otherwise transferred, as described by this section.

(a) *A pesticide transferred between registered estalishments operated by the same producer.* An unregistered pesticide may be transferred between registered establishments operated by the same producer. See § 152.3(r). The pesticide as transferred must be labeled in accordnce with 40 CFR 156.105.

(b) *A pesticide transferred for processing, packaging, or labeling.* An unregistered pesticide may be transferred if:

(1) The transfer is solely for the purpose of further processing, formulating, packaging or labeling the pesticide to become a pesticide product that is registered;

(2) The pesticide is owned by the transferor;

(3) The finished product is registered by the transferor and will be sold or distributed only by him or a distributor as his agent;

(4) The transfer is between registered establishments; and

(5) The pesticide as transferred is labeled in accordance with 40 CFR 156.105.

(c) *A pesticide distributed or sold under an experimental use permit.* An unregistered pesticide may be distributed or sold in accordance with the terms of an experimental use permit issued under FIFRA section 5, if the product is labeled in accordance with 40 CFR 172.6.

(d) *A pesticide transferred solely for export.* An unregistered pesticide may be transferred within the United States solely for export if:

(1) It is prepared and packaged according to the specifications of the foreign purchaser; and

(2) It is labeled in accordance with 40 CFR 156.110.

(e) *A pesticide distributed or sold under an emergency exemption.* An unregistered pesticide may be distributed or sold in accordance with the terms of an emergency exemption under FIFRA section 18, if the product is labeled in accordance with 40 CFR 156.112.

(f) *A pesticide transferred for purposes of disposal.* An unregistered pesticide may be transferred solely for disposal in accordance with FIFRA section 19 or an applicable Administrator's order. The product must be labeled in accordance with 40 CFR 156.115.

(g) *Existing stocks of a formerly registered product.* A cancelled or suspended pesticide may be distributed or sold to the extent and in the manner specified in an order issued by the Administrator concerning existing stocks of a formerly registered pesticide.

Subpart C—Registration Procedures

§ 152.40 Who may apply.

Any person may apply for new registration of a pesticide product. Any registrant may apply for amendment of the registration of his product.

§ 152.42 When application are required.

(a) *New product registration.* Any person who wishes to obtain an initial registration for a pesticide product must submit an application for new registration, containing the information specified in § 152.50. An application for new registration must be approved by the Agency before the product may legally be distributed or sold.

(b) *Amended registration.* Except as provided in paragraph (b) (1) and (2) of this section, a registrant who wishes to make changes in a product's composition (except changes that comply with § 152.45), labeling, or packaging must submit an application for amended registration, containing the information specified in §152.50, as applicable. An application for amended registration must be approved by the Agency before the product, as modified, may legally be distributed or sold.

(1) *Changes needing Agency notification, but not approval.* A registrant may make the following changes to his registered product's composition, labeling or packaging if he notifies the Agency before the product is distributed or sold. The registrant need not obtain Agency approval of any such amendment, but may distribute or sell the product, as changed, as soon as he has notified the Agency of the change. Notification under this paragraph is considered a report filed under the Act for the purposes of FIFRA section 12 (a) (2) (M).

(i) A change in the brand name and the name and address appearing on the label to those of a distributor; provided, that the company number assigned to the distributor appears on the label in conjunction with the EPA registration number.

(ii) A revision of the label format consistent with 40 CFR Part 156 and involving no change in the precautionary statements or in the directions for use.

(iii) Change in the package size and label net contents, provided no change in use directions or requirement for child-resistant packaging would ensue.

(iv) Addition or substitution of brand names.

(v) A change in the source of the beginning materials or the manufacturing process of the product, provided that the certified limits for the active and inert ingredients would not vary as a result of the change.

(2) *Changes not needing Agency approval or notification.* The following changes may be made in a product's composition, labeling or packaging without notification to or approval by the Agency:

(i) Change in the source, but not the identity, of any intentionally added inert ingredient.

(ii) Correction of typographical or printing errors on the labeling.

(iii) Revision of non-mandatory label statements, consistent with 40 CFR Part 156 of this chapter, including additions or changes required by other Federal statutes or agencies.

(iv) Change on the label of the name or address of the registrant, except for a change resulting from transfer of ownership which requires Agency approval in accordance with § 152.130.

(Approved by the Office of Managment and Budget under Control Number 2000–0012.)

§ 152.45 Products for which separate applications must be submitted.

An application for registration or amended registration may not have as its subject more than one pesticide product. Except as provided in paragraphs (a) through (d) of this section, a pesticide product shall have a single, specified composition, i.e., the active and inert ingredients specified in the Confidential Statement of Formula, each ingredient being within the certified limits stated therein. If a product has multiple formulations as permitted by paragraphs (a) through (d) of this section, the composition of each formulation shall be stated on a separate Confidential Statement of Formula as required by § 152.50(e).

(a) A pesticide-fertilizer combination product may be registered as a single product with variations in the identity and amount of its fertilizer components, if the application rate of the pesticide active ingredient remains constant and the same precautionary labeling is appropriate for each allowable variation in composition.

(b) A pesticide-feed combination product may be registered as a single product with variations in the identity or amount of its feed components, if the dosage rate of the pesticide active ingredient per unit weight or per animal is constant and the same precautionary labeling is appropriate for each allowable variation in composition.

(c) A pesticide-pigment combination product may be registered as a single product with variations in the identity or amount of its pigment component, if the same precautionary labeling is appropriate for each allowable variation in compostion.

(d) Any other type of pesticide product may be registered as a single product with allowable variations in the identity or amount of inert ingredients, if the following conditions are met:

(1) The certified limits of the active ingredient do not change;

(2) The required labeling for each of the proposed variations is the same;

(3) None of the proposed variations affects the safety of the product, including the persistence of residues of the active ingredients(s);

(4) If the product is to be used on food or feed, each inert ingredient has been cleared under the Federal Food, Drug and Cosmetic Act; and

(5) Each proposed variation is consistent with any applicable Registration Standard.

§ 152.50 Contents of application.

Each application for registration or amended registration shall include the following information, as applicable:

(a) *Application form.* An application form must be completed and submitted to the Agency. Application forms are provided by the Agency, with instructions as to the number of copies required and proper completion.

(b) *Identity of the applicant*—(1) *Name.* The applicant must identify himself. An applicant not residing in the United States must also designate an agent in accordance with paragraph (b)(2) of this section to act on behalf of the applicant on all registration matters.

(2) *Authorized agent.* An applicant may designate a person residing in the United States to act as his agent if an applicant wishes to designate an agent, he must send the Agency a letter stating the name and United States address of his agent. The applicant must notify the Agency if he changes his designated agent. This agency relationship may be terminated at any time by the applicant by notifying the Agency in writing.

(3) *Address of record.* The applicant must provide an address in the United States for correspondence purposes. The U.S. address provided will be considered the applicant's address of record, and EPA will send all correspondence concerning the application and any subsequent registration to that address. It is the responsibility of the applicant to ensure that the Agency has a current and accurate address. Refer to § 152.122.

(4) *Company number.* If an applicant has been assigned a company number by the Agency, the application must reference that number.

(c) *Summary of the application.* Each application must include a list of the data submitted with the application, together with a brief description of the results of the studies and a statement of reasonable grounds why the application should be approved. The summary must state that it is releasable to the public after registration in accordance with § 152.119.

(d) *Identity of the product.* The product for which application is being submitted must be identified. The following information is required:

(1) The product name;

(2) The EPA Registration Number, if currently registered;

(3) The trade name(s) (if different);

(4) Any company code numbers (optional).

(e) *Composition of the product.* The composition of the product for which the application is being submitted must be stated. The information required by Subpart R must be submitted. Refer to § 152.45 for information on which formulations must be registered separately, and which may be combined a separate Confidential Statement of Formula must be submitted for each separate formulation.

(f) *Draft labeling.* Each application for new registration must be accompanied by five (5) legible copies of draft labeling (typescript or mock-up). Each application for amended registration that proposes to make any changes in the product labeling must be accompanied by five (5) legible copies of draft labeling incorporating the proposed labeling changes. If the proposed labeling change affects only a portion of the labeling, such as the use directions, the applicant may submit five copies of the portion of the label which is the subject of the amendment.

(g) *Registration data requirements.* (1) An applicant must submit materials to demonstrate that he has complied with the FIFRA section 3(c)(1)(D) and Subpart E of this part with respect to satisfaction of data requirements, to enable the Agency to make the determination required by FIFRA section 3(c)(5)(B).

(2) An applicant must also furnish any data specified in 40 CFR Part 158, in accordance with the requirements of § 158.30, which are required by the Agency to determine that the product meets the standards for registration stated in FIFRA sections 3(c)(5)(C) and (D) or 3(c)(7). All studies must be conducted in accordance with the requirements of 40 CFR Part 160, Good Laboratory Practice Standards, and the statement required by 40 CFR 160.12 must be submitted with the data.

(h) *Certification relating to child-resistant packaging.* If the product meets the criteria for child/resistant packaging, the applicant must submit a certification that the product will be distributed in child/resistant packaging. Refer to 40 CFR Part 157 for the criteria and certification requirements.

(i) *Request for classification as general or restricted use.* If the applicant wishes to request a classification different from the established by the Agency, he must submit a request for such Classification and information supporting the request.

(j) *Adverse effects data.* Each application shall state whether the applicant is aware of any factual information regarding unreasonable adverse effects of the pesticide on man or the environment, which would be required to be reported under FIFRA section 6(a)(2) if the product were registered. If the applicant states that he is aware of such information, he must submit it as part of his application. Such information may consist of, for example, published or unpublished laboratory studies (whether or not such studies have been completed) and human.

animal or non-target plant accident experience, as described in Agency statements of policy issued in the **Federal Register** of August 23, 1978 (43 FR 37611), and July 12, 1979 (44 FR 40716).

(k) *Statement concerning tolerances.* If the proposed labeling bears instructions for use of the pesticide results or may be expected to result, directly or indirectly, in pesticide residues in or on food or feed (including residues of any active ingredient, metabolite, or degradation product), the applicant must submit a statement indicating whether such residues are authorized by tolerances, exemptions from the requirement of a tolerance, or food additives regulations issued under FFDCA sec. 408 or 409. If such residues have not been authorized, the application must be accompanied by a petition for establishment of appropriate tolerances, exemptions from the requirement of a tolerance, or food additive regulations in accordance with 40 CFR Part 180.

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§ 152.55 Where to send application and correspondence.

Applications and correspondence relating to registrations should be mailed to the Registration Division (TS-767C), U.S. Environmental Protection Agency, Washington, D.C. 20460. Persons who wish to hand-deliver applications should contact the Registration Division to determine the location for delivery.

Subpart D—Reregistration Procedures

§ 152.60 General.

FIFRA section 3(g) requires that all currently registered pesticide products be reregistered. To facilitate the reregistration of products, EPA has instituted a program for the review of each pesticide active ingredient, the data supporting registration of products containing that active ingredient, and its uses. This review normally culminates in the issuance of a Registration Standard. The Standard will explain the Agency's position on the registrability of products containing the active ingredient(s), assess the acceptability of existing tolerances, and list additional data or information that must be submitted to complete the reregistration review.

§ 152.65 Application for reregistration.

(a) When the Agency is prepared to reregister products containing a specified active ingredient or combination of ingredients, it will notify the registrant by certified mail and will inform him of the specific requirements and the timeframes for submission of an application for reregistration.

(b) After receiving notice, the registrant is required to submit an application for reregistration within the timeframes specified in the notice. The application must comply with § 152.45 with respect to the need for separate applications.

(c) The application must contain the information required by § 152.50(a) through (h), and (k), unless such information is already on file with the Agency and is current and accurate. A new Confidential Statement of Formula must be submitted with each application.

(d) At the time that the Agency requires submission of an application for reregistration, it may also issue to registrants of affected products a notice under FIFRA section (3)(c)(2)(B) requiring the submission of data. The applicant must state in his application for reregistration that he has complied with the terms of that notice.

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§ 152.70 Agency response to application.

(a) *Approval of application.* The Agency will approve an application for reregistration when it determines that the registrant has complied with the instructions in the Agency's notice, and that the production meets the criteria for registration stated in § 152.112 or § 152.113, as applicable. Any application which pertains to a product with uses, labeling, packaging, and composition that conform to the applicable Registration Standards(s) will be considered to meet the criteria for registration.

(b) *Time for compliance after approval.* If the Agency approves the application, it will notify the registrant of such approval. The notice of approval will specify the time permitted for modification of product composition, labeling and packaging of products shipped or distributed in commerce.

(c) *Notice of intent to cancel.* If a registrant fails to submit an application within the time allowed, or submits an application that does not conform to Agency requirements, the Agency will issue a notice of intent to cancel the registration, unless within 30 days, the registrant:

(1) Submits a complete and correct application;

(2) Corrects the deficiencies in his previously submitted application; or

(3) Requests a hearing, as provided by § 152.75.

§ 152.75 Hearing.

The rights of a registrant following the issuance of a notice of intent to cancel are described in § 152.148.

Subpart F—Agency Review of Applications

§ 152.100 Scope.

The Agency will follow the procedures in this subpart for all applications for registration, except an application for registration of a pesticide that has been the subject of a previous Agency cancellation notice. The Agency will follow the procedures of Subpart D of 40 CFR Part 164, in evaluating any application that meets the criteria of 40 CFR 164.13. Generally, that section applies to any application for registration of a pesticide for a use that has been prohibited by the Agency following the issuance of a cancellation notice.

§ 152.102 Publication.

The Agency will issue in the **Federal Register** a notice of receipt of each application for registration of a product that contains a new active ingredient or that proposes a new use.

§ 152.104 Completeness of applications.

The applicant is responsible for the accuracy and completeness of all information submitted in connection with the application. The Agency will review each application to determine whether it is complete. An application is incomplete if any pertinent item specified in § 152.50 has not been submitted, or has been incorrectly submitted (e.g., application forms have not been signed).

§ 152.105 Incomplete applications.

The Agency will not begin or continue the review of an application that is incomplete. If the Agency determines that an application is incomplete or that further information is needed in order to complete the Agency's review, the Agency will notify the applicant of the deficiencies and allow the applicant 75 days to make corrections or additions to complete the application. If the applicant believes that the deficiencies cannot be corrected within 75 days, he must notify the Agency within those 75 days of the date on which he expects to complete the application. If, after 75 days, the applicant has not responded, the Agency will terminate any action on such application, and will treat the application as if it had been withdrawn by the applicant. Any subsequent submission relating to the same product must be submitted as a new application.

§ 152.107 Review of data.

(a) The Agency normally will review data submitted with an application if they have not previously been submitted to the Agency.

(b) The Agency normally will review other data submitted or cited by an applicant only:

(1) As part of the process of reregistering currently registered products;

(2) When acting on an application for registration of a product containing a new active ingredient; or

(3) When the Agency determines that it would otherwise serve the public interest.

(c) If the Agency finds that it needs additional data in order to determine whether the product may be registered, it will notify the applicant as early as possible in the review process.

§ 152.108 Review of labeling.

The Agency will review all draft labeling submitted with the application for compliance with the requirements of 40 CFR Part 156. If the applicant submits only that portion of the labeling proposed for amendment, the Agency may review the entire label, as revised by the proposed changes, in deciding whether to approve the amendment. The Agency will not approve final printed labeling, but will selectively review it for compliance with 40 CFR Part 156.

§ 152.110 Time for Agency review.

The Agency will complete its review of applications as expeditiously as possible. Applications involving new active ingredients, new uses, petitions for tolerance or exemptions, or consultation with other Federal agencies normally will take longer than applications for substantially similar products and uses.

§ 152.111 Choice of standards for review of applications.

The Agency has discretion to review applications under either the unconditional registration criteria of FIFRA section 3(c)(5) or the conditional registration criteria of FIFRA section 3(c)(7). The type of review chosen depends primarily on the extent to which the relevant data base has been reviewed for completeness and scientific validity. EPA conducts data reviews needed to support unconditional registrations on a chemical-by-chemical basis, according to an established priority list. Except for applications for registration of a new active ingredient or in special cases where it finds immediate review to be warranted, the Agency will not commence a complete review of the existing data base on a given chemical in response to receipt of an application for registration. Instead the Agency will review the application using the criteria for conditional registration in FIFRA section 3(c)(7) (A) and (B).

§ 152.112 Approval of registration under FIFRA section 3(c)(5).

EPA will approve an application under the criteria of FIFRA section 3(c)(5) only if:

(a) The Agency has determined that the application is complete and is accompanied by all materials required by the Act and this part, including, but not limited to, evidence of compliance with Subpart E of this part;

(b) The Agency has reviewed all relevant data in the possession of the Agency (see §§ 152.107 and 152.111);

(c) The Agency has determined that no additional data are necessary to make the determinations required by FIFRA section 3(c)(5) with respect to the pesticide product which is the subject of the application;

(d) The Agency has determined that the composition of the product is such as to warrant the proposed claims for it, if efficacy data are required by Part 158 for the product;

(e) The Agency has determined that the product will perform its intended function without unreasonable adverse effects on the environment, and, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment;

(f) The Agency has determined that the product is not misbranded as that term is defined in FIFRA section 2(q) and Part 156, and its labeling and packaging comply with the applicable requirements of the Act, this part, and Parts 156 and 157;

(g) If the proposed labeling bears directions for use on food, animal feed, or food or feed crops, or if the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in pesticide residues (including residues of any active or inert ingredient or the product, or of any metabolite or degradation product thereof) in or on food or animal feed, all necessary tolerances, exemptions from the requirement of a tolerance, and food additive regulations have been issued under FFDCA sec. 408, sec. 409 or both; and

(h) If the product, in addition to being a pesticide, is a drug within the meaning of FFDCA section 201(q), the Agency has been notified by the Food and Drug Administration (FDA) that the product complies with any requirements imposed by FDA.

§ 152.113 Approval of registration under FIFRA section 3(c)(7)—products that do not contain a new active ingredient.

(a) Except as provided in paragraph (b) of this section, the Agency will approve an application for registration or amended registration of a pesticide product, each of whose active ingredients is contained in one or more other registered pesticide products, only if the Agency has determined that:

(1) It possesses all data necessary to make the determinations required by FIFRA section 3(c)(7) (A) or (B) with respect to the pesticide product which is the subject of the application (including, at a minimum, any data needed to characterize any incremental risk that would result from approval of the application);

(2) Approval of the application would not significantly increase the risk caused by already registered products containing the same active ingredient(s) and

(3) The criteria of § 152.112(a), (d), and (f) through (h) have been satisfied.

(b) *Prohibition on conditional registration of new uses.* Notwithstanding the provisions of paragraph (a) of this section, the Agency will not approve the conditional registration of any pesticide product for a new use if:

(1) The pesticide is the subject of a special review, based on a use of the product that results in human dietary exposure; and

(2) The proposed new use involves use on a major food or feed crop, or involves use on a minor food or feed crop for which there is available an effective alternative registered pesticide which does not meet the risk criteria associated with human dietary exposure. The determination of available and effective alternatives shall be made with the concurrence of the Secretary of Agriculture.

§ 152.114 Approval of registration under FIFRA section 3(c)(7)—products that contain a new active ingredient.

An application for registration of a pesticide containing an active ingredient not in any currently registered product may be conditionally approved for a period of time sufficient for the generation and submission of certain of the data necessary for a finding of registrability under FIFRA section 3(c)(5) if the Agency determines that:

(a) Insufficient time has elapsed since the imposition of the data requirement for that data to have been developed;

(b) All othe required test data and materials have been submitted to the Agency;

(c) The criteria in § 152.112 (a), (b), (d), and (f) through (h) have been satisfied;

(d) The use of the pesticide product during the period of the conditional registration will not cause any unreasonable adverse effect on man or the environment; and

(e) The registration of the pesticide product and its subsequent use are in the public interest.

§ 152.111 Conditions of registration.

(a) *Substantially similar products and new uses.* Each registration issued under § 152.113 shall be conditioned upon the submission or citation by the registrant of all data which are required for unconditional registration of his product under FIFRA section 3(c)(5), but which have not yet been submitted, no later than the time such data are required to be submitted for similar pesticide products already registered. If a notice requiring submission of such data has been issued under FIFRA section 3(c)(2)(B) prior to the date of approval of the application, the application must submit or cite the data described by that notice at the time specified by that notice. The applicant must agree to these conditions before the application may be approved.

(b) *New active ingredients.* Each registration issued under § 152.114 shall be conditioned upon:

(1) The applicant's submission of remaining required data in accordance with a schedule approved by the Agency;

(2) The failure of the data when submitted to demonstrate (alone, or in conjunction with other data) that the product or one or more of its uses meets or exceeds any of the risk criteria established by the Agency to initiate a special review.

(3) *Other conditions.* The Agency may establish, on a case-by-case basis, other conditions applicable to registration to be issued under FIFRA section 3(c)(7).

(4) *Cancellation if condition is not satisfied.* If any condition of the registration of a product is not satisfied, the registration will be cancelled under FIFRA section 6(e) and § 152.148.

§ 152.117 Notification to applicant.

The Agency will notify the applicant of the approval of his application by a Notice of Registration for new registration, or a letter in the case of an amended registration.

§ 152.118 Denial of application.

(a) *Basis for denial.* The Agency will deny an application for registration if the pesticide product does not meet the criteria for registration under either FIFRA section 3(c)(5) or 3(c)(7), as specified in §§ 152.112 through 152.114.

(b) *Notification of applicant.* If the Agency determines that an application should be denied, it will notify the applicant by certified letter. The letter will set forth the reasons and factual basis for the determination with conditions, if any, which must be fulfilled in order for the registration to be approved.

(c) *Opportunity for remedy by the applicant.* The applicant will have 30 days from the date of receipt of the certified letter to take the specified corrective action. During this time the applicant may request that this application be withdrawn.

(d) *Notice of denial.* If the applicant fails to correct the deficiencies within the 30-day period, the Agency may issue in the **Federal Register** a notice of denial which sets forth the reasons and the factual basis for the denial.

(e) *Hearing rights.* Within 30 days following the publication of the notice of denial, an applicant, or any interested person with written authorization of the applicant, may request a hearing in accordance with FIFRA section 6(b). Hearings will be conducted in accordance with 40 CFR Part 164.

Subpart G—Obligations and Rights of Registrants

§ 152.122 Currency of address of record and authorized agent.

(a) The registrant must keep the Agency informed of his current name and address of record. The Agency will first attempt to contact the registrant by certified mail. If the letter is returned as undeliverable, the Agency will issue legal notice in the **Federal Register,** under FIFRA section 3(c)(2)(B), requiring that the registrant submit his current name and address within 90 days. After 90 days, the Agency will issue in the **Federal Register** a notice of intent to suspend any or all registrations of the registrant after 30 days. Upon expiration of the 30 days, the Agency will suspend such products. A product suspended because of failure of the registrant to submit this information will be reinstanted if the registrant subsequently notifies the Agency of his current name and address of record.

(b) The registrant must also notify the Agency if he changes his authorized agent.

§ 152.125 Submission of information pertaining to adverse effects.

If at any time the registrant receives or becomes aware of any factual information regarding unreasonable adverse effects of the pesticide on man or the environment that has not previously been submitted to the Agency, he shall, in accordance with FIFRA section 6(a)(2), immediately provide such information to the Agency, clearly identified as FIFRA section 6(a)(2) data. Such information concludes, but is no limited to, published or unpublished laboratory studies (whether or not such studies have been completed) and human, animal or non-target plant accident experience. Refer to Agency interpretations and statements of policy isued in the **Federal Registers** of August 23, 1978 (43 FR 37611) and July 12, 1979 (44 FR 40716).

§ 152.128 Distribution under approved labeling.

(a) A registrant may distribute or sell a registered product with the labeling currently approved by the Agency.

(b) A registrant may distribute or sell the product under labeling bearing any subset of the approved uses, provided that in limiting the uses listed on the label, no changes would be necessary in precautionary statements, use classification, or packaging of the product.

(c) If the product labeling is amended on the initiative of the registrant, by submission of an application for amended registration, the registrant may distribute or sell under the previously approved labeling for a period of one year after approval of the revision, unless an order issued under FIFRA sec. 6 provides otherwise. The Agency will not normally require that products not in the physical possession of the registrant be relabeled. Refer to § 152.42(b).

(d) If a product's labeling is revised, as a result of the issuance of a Registration Standard, a Label Improvement Program notice, or a notice concluding a special review process, the Agency will specify in the notice to the registrant the period of time that previously approved labeling may be used. The Agency will normally make such label changes effective as of a date certain or a future date the product is distributed or sold by the registrant. Unless stated otherwise in the notice, the Agency will not apply the requirement retroactively such that product not in the physical possession of the registrant must be relabeled.

§ 152.130 Transfer of registration.

(a) A registrant may transfer the registration of a product to another person without the requirement of a new application for registration by that other person if the parties submit to the Agency the documents listed in paragraphs (b) and (c) of this section, and receive Agency approval as described in paragraph (d) of this section.

(b) Persons seeking approval of a transfer of registration must provide a document signed by authorized representatives of the registrant (the transferor) and the person to whom the registration is transferred (the transferee) that contains the following information:

(1) The name, address and State of incorporation of the transferor;

(2) The name, address and State of incorporation of the transferee;

(3) The name(s) and EPA registration number(s) of the product(s) being transferred;

(4) A statement that the transferor transfers irrevocably to the transferee all right, title, and interest in the EPA registration(s) listed in the document;

(5) A statement that the transferred registration(s) shall not serve as collateral or otherwise secure any loan or other payment arranged or executory promise, and that the registration(s) shall not revert to the transferor unless a new transfer agreement is submitted to and approved by the Agency;

(6) A description of the general nature of the underlying transaction e.g., sale, bankruptcy (no financial information need be disclosed);

(7) A statement that the transferor and transferee understand that any false statement may be punishable under 18 U.S.C. 1001; and

(8) An acknowledgement by the transferee that his rights and duties concerning the registration will be deemed by EPA to be the same as those of the transferor at the time the transfer is approved.

(c) In addition, the transferor must submit to the Agency a notarized statement affirming that:

(1) The person signing the transfer agreement is authorized by the registrant to bind the transferor;

(2) No court order prohibits the transfer, and that any required court approvals have been obtained; and

(3) The transfer is authorized under Federal, State and local law and relevant corporate charters, bylaws or partnership agreements.

(d) If the required documents are submitted, and no information available to the Agency indicates that the information is incorrect, the Agency will approve the transfer without requiring that the transferee obtain a new registration. The Agency will notify the transferor and transferee of its approval.

(e) The transfer will be effective on the date of Agency approval. Thereafter the transferee will be regarded as the registrant for all purposes under FIFRA.

(f) Rights to exclusive use of data or compensation under FIFRA section 3(c)(1)(D) are separate from the registration itself and may be retained by the transferor, or may be transferred independently in accordance with the provisions of § 152.98. If the registrant as the original data submitter wishes to transfer data rights at the same time as he transfers the registration, he may submit a single transfer document containing the information required by this section for both the registration and the data.

(Approved by the Office of Management and Budget under Control Number 2000–0012.)

§ 152.135 Voluntary cancellation.

(a) A registrant may request at any time that his registration be cancelled. A request for voluntary cancellation must include the registrant's name and address, the product name(s), the EPA registration number(s) involved, and the signature of the registrant or his authorized representative. EPA will send a notice of cancellation by certified mail to the registrant. After the effective date of the cancellation, the Agency will normally permit the distribution and sale of existing stocks of the cancelled product for one year.

(b) Voluntary cancellation of a product applies to all products distributed under that registration number. The registrant is responsible for ensuring that distributors under his cancelled registration are notified and comply with the terms of the cancellation.

Subpart H—Agency Actions Affecting Registrations

§ 152.140 Classification of pesticide products.

The Agency may, as part of the registration or reregistration of a pesticide, or by issuing a regulation, or by an order under FIFRA section 6 classify a product, its uses, or a class of products or uses for restricted use, in accordance with the criteria and procedures in Subpart I of this part.

§ 152.142 Submission of information to maintain registration in effect.

FIFRA section 3(c)(2)(B) authorizes the Agency to require that a registrant submit information necessary to maintain his registration in effect. Such information may consist of data on the chemistry, efficacy, toxicity, environmental fate, environmental effects or other characteristics of the product or its ingredients, or on the exposure of organisms to the product or its ingredients, or other information necessary to support the continued registration of the product. If the Agency determines that additional data are necessary in order to maintain a registration in effect, the procedures set out in FIFRA section 3(c)(2)(B) will be used.

§ 152.144 Reregistration.

Under FIFRA section 3(g), the Agency must evaluate all currently registered pesticides against the standards of FIFRA section 3(c)(5) or 3(c)(7) and reregister those that meet systematic review of pesticides that culminates in the issuance of a Registration Standard for products containing a specified active ingredient. The registrant of a product may be required to change the product's composition, labeling, packaging, or uses in order to be reregistered and to maintain his registration in effect. The procedures for reregistration are found in Subpart D of this part.

§ 152.146 Special review of pesticides.

The Agency has established a special review process to identify and evaluate pesticides that may cause unreasonable adverse effects on man or the environment when used in accordance with label directions or widespread and commonly recognized practice. If the Agency determines that the product or its uses may cause unreasonable adverse effects, or that the risks posed by the pesticide outweigh its benefits, the Agency may initiate cancellation proceedings under § 152.148.

§ 152.148 Cancellation of registration.

(a) *Grounds for cancellation.* The Agency may issue a notice of intent to cancel the registration of a product, or to cancel the registration unless it is amended as specified in the notice, if:

(1) The composition, labeling, or packaging of the product, or other materials required to be submitted, do not comply with the Act;

(2) The pesticide, when used in accordance with label directions, or widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment;

(3) A registrant fails to initiate or pursue appropriate action toward meeting any conditions imposed on the registration;

(4) A registrant fails to meet any conditions imposed on the registration;

(5) A registrant fails to comply with the provisions of Subpart I of this Part for a product that has been classified for restricted use; or

(6) A registrant submits to the Agency a false statement concerning compliance of any study with the Good Laboratory Practices requirements of 40 CFR Part 160.

(b) *Notice of intent to cancel.* The Agency will, by certified mail, notify the registrant at the address of record of the Agency's intent to cancel, and will state the reasons for the proposed cancellation. The Agency will also issue in the **Federal Register** a notice of its intent to cancel a registration.

(c) *Opportunity for corrections.* The registrant may, within 30 days of his receipt of the notice or publication in the **Federal Register**, whichever is later, submit an application to amend his registration to make any corrections identified in the notice.

(d) *Hearing request.* (1) The registrant may, within 30 days of the registrant's receipt of the notice or publication in the **Federal Register**, whichever is later, request that a hearing be held. The registrant may request a hearing on any or all of the Agency's requirements, as stated in the Agency's notice of intent to cancel. If he does so, the registrant must state in his request the specific requirements he objects to, and the reasons for his objection. He need not comply with the requirements in dispute until a final hearing decision has been issued. The registrant must, however, within the time frames allowed for other registrants, comply with all other Agency requirements that are not at issue.

(2) Any other person adversely affected by the proposed cancellation may, within 30 days of publication in the **Federal Register**, request that a hearing be held.

(3) If a request for a hearing is received, the hearing will be conducted according to FIFRA section 6(d) or 6(e) and 40 CFR Part 164.

(e) *Effective date of cancellation.* (1) If no hearing request is timely received and the registrant fails to make required corrections in a timely manner, the cancellation shall be effective at the end of 30 days from the date of publication in the **Federal Register** or receipt by the registrant, whichever is later.

(2) If a hearing is requested to challenge the cancellation, and thereafter the cancellation is sustained, it shall be effective immediately upon issuance of the final Agency order in the proceeding.

(f) *Effect of cancellation.* After the effective date of cancellation, sale or distribution of a cancelled product by the registrant will be considered a violation of FIFRA section 12(a)(1)(A) or 12(a)(2)(K). The Agency will specify in the notice of final cancellation whether existing stocks of the product may be sold and distributed, what conditions of sale, distribution and use (if any) have been established, and the date after which such sale and distribution will no longer be permitted.

(g) *Reinstatement of registration.* The Agency will reinstate a cancelled registration if the registrant can show that the cancellation was the result of Agency clerical or administrative error, or that the Agency failed to follow the procedures of this section in canceling the registration.

§ 152.150 Suspension of registration.

(a) *Grounds for suspension.* The Agency may issue a notice of intent to suspend the registration of a product if:

(1) Under FIFRA section 6(c), the Agency determines that suspension is necessary in order to prevent an imminent hazard during the time necessary for cancellation or change in classification proceedings.

(2) Under FIFRA section 3(c)(2)(B), a registrant has failed, within the time required:

(i) To take steps to provide data necessary for continued registration;

(ii) To participate in a procedure for reaching agreement concerning joint development of data or in an arbitration proceeding; or

(iii) To comply with the terms of any agreement or arbitration decision.

(b) *Procedures for suspension.* The Agency will suspend products in accordance with the provisions of 40 CFR Part 164, Subpart C, or FIFRA section 3(c) (2) (B), as applicable.

(c) *Effect of suspension.* After the effective date of suspension, the distribution or sale of a suspended product, except in accordance with the terms of the suspension notice, will be considered a violation of FIFRA section 12(a) (2) (J).

§ 152.152 Child-resistant packaging.

The Agency has established criteria, standards and recordkeeping requirements for the packaging of certain products in child-resistant packaging. Refer to 40 CFR Part 157.

§ 152.154 Label Improvement Program.

The Agency may review the labeling of a product or class of products for the purpose of determining the continued adequacy and consistency of such labeling with the requirements of 40 CFR Part 156. If the Agency determines, as a result of such review, that labeling revisions are necessary, the Agency will notify each registrant of an affected product, by certified mail, and require that the changes be made. The procedures the Agency will follow in the Label Improvement Program are contained in Subpart J of this part.

§ 152.156 Coloration and discoloration of products.

The Agency has established requirements for the coloration or discoloration of certain pesticide formulations. The pesticides affected and the requirements may be found in Subpart K of this part.

Subpart I—Classification of Pesticides

§ 152.160 Scope.

(a) *Types of classification.* A pesticide product may be unclassified, or it may be classified for restricted use or for general use.

(b) *Kinds of restrictions.* The Agency may restrict a product or its uses to use by certified applicators, as described in FIFRA section 3(d) (1) (C). The Agency may also prescribe by regulation other forms of restriction relating to the product's composition, labeling, packaging, or approved uses.

(c) *Procedures.* The Agency may classify products or uses by regulation. Refer to § 152.164. Alternatively, the Agency will conduct reviews, and may classify products or uses individually or as a class in one or more of the following circumstances:

(1) As part of the review of an application for new registration of a product containing an active ingredient not contained in any currently registered product;

(2) As part of the review of an application for a new use of a product, if any existing use of that product have previously been classified for restricted use.

(3) As part of the process of developing or amending a registration stand for a pesticide.

(4) As part of any special review of a pesticide.

(5) If the Agency determines at any time that a restriction on the use of a pesticide product is necessary to avoid unreasonable adverse effects on the environment.

(d) *Manufacturing use product.* A manufacturing use product is not subject to the provisions of this subpart.

§ 152.161 Definitions.

In addition to the definitions in § 152.3, the following terms are defined for the purposes of this subpart:

(a) "Dietary LC_{50}" means a statistically derived estimate of the concentration of a test substance in the diet that would cause 50 percent mortality to the test population under specified conditions.

(b) "Outdoor use" means any pesticide application that occurs outside enclosed manmade structures or the consequences of which extend beyond enclosed manmade structures, including, but not limited to, pulp and paper mill water treatments and industrial cooling water treatments.

(c) "Residue" means the active ingredient(s), metabolite(s), or degradation product(s) that remain in the crops, soil, water or any other component of the environment, including man, after the application of a pesticide.

§ 152.164 Classification by regulation.

(a) *Restricted use classification groups.* The Agency may identify a group of products having common characteristics or uses and may, by regulation, classify for restricted use some or all of the products or uses included in that group. Such a group may be comprised of, but is not limited to, products that:

(1) Contain the same active ingredients.

(2) Contain the same active ingredients in a particular concentration range, formulation type, or combination of concentration range and formulation type.

(3) Have uses in common.

(4) Have other characteristics, such as toxicity, flammability, or physical properties, in common.

(b) *Time frames for compliance*—(1) *Submission to the Agency.* Within 60 days after the effective date of the final rule classifying a product or use of a registered product as restricted, the registrant must submit to the Agency one of the following:

(i) A copy of the amended label and any supplemental labeling to be used as an interim compliance measure.

(ii) A certification statement that the registrant will comply with the labeling requirements prescribed by the Agency within the time frames prescribed by the regulation.

(iii) An application for amended registration to delete the uses which have been restricted, or to "split" the registration into two registrations, one including only restricted or all uses, and the other including only uses that have not been classified.

(2) *Distribution and sale.* (i) No product with a use classified for restricted use by a regulation may be distributed or sold by the registrant or producer after the 120th day after the effective date of such regulation unless the product:

(A) Bears an approved amended label which complies with 40 CFR 156.62;

(B) Bears a sticker containing the product name, EPA registration number, and any terms of restricted use imposed by the Agency, or

(C) Is accompanied by supplemental labeling bearing the information listed in paragraph (b)(2)(i)(B) of this section.

(ii) If the registrant chooses to delete the restricted uses from his product label, in accordance with paragraph (b)(1)(iii) of this section, that product may not be distributed or sold after the 180th day after the effective date of such regulation unless the product bears amended labeling with the restricted uses deleted.

(iii) Notwithstanding paragraphs (b)(2)(i) and (ii) of this section, after the 270th day after the effective date of the regulation, no registrant or producer may distribute or sell a product that does not bear the approved amended label. After that date, stickers and supplemental labeling described in paragraph (b)(2)(i) are no longer acceptable.

(3) *Sale by retailer.* No product with a use classified for restricted use by a regulation may be distributed or sold by a retailer or other person after the 270th day after the effective date of the final rule unless the product bears a label or labeling which complies with paragraph (b)(2)(i) of this section.

§ 152.166 Labeling of restricted use products.

A product that has been classified for restricted use must be labeled in accordance with the requirements of 40 CFR 156.52 or other Agency instructions. The Agency will permit the use of stickers or supplemental labeling as an alternative to the use of an approved amended label. These alternatives may be used on products distributed or sold for 270 days after the effective date of the classification for restricted use, after which date the approved amended label must be used.

§ 152.168 Advertising of restricted use products.

(a) Any product classified for restricted use shall not be advertised without including in the advertisement a statement of its restricted use classification.

(b) The requirement in paragraph (a) of this section shall apply to:

(1) Printed brochures, pamphlets, circulars and similar material;

(2) Advertisements in newspapers, magazines, newsletters and other printed material in circulation to the public;

(3) Advertisements on radio, television, other broadcast media, or by telephone.

(c) The requirement may be satisfied for printed material by inclusion of the statement "Restricted Use Pesticide," or the terms of restriction, enclosed within a solid block outline, in a prominent position in the advertisement. The requirement may be satisfied with respect to broadcast or telephone advertising by inclusion in the spoken broadcast of the words "Restricted use pesticide," or a statement of the terms of restriction.

(d) The requirements of this section shall be effective:

(1) After 270 days after the effective date of restriction of a product that is currently registered, unless the Agency specifies a shorter time period;

(2) Upon the effective date of registration of a product not currently registered.

§ 152.170 Criteria for restriction to use by certified applicators.

(a) *General criteria.* An end-use product will be restricted to use by certified applicators (or persons under their direct supervision) if the Agency determines that:

(1) Its toxicity exceeds one or more of the specific hazard criteria in paragraph (b) or (c) of this section, or evidence described in paragraph (d) of this section substantiates that the product or use poses a serious hazard that may be mitigated by restricting its use to certified applicators;

(2) Its labeling, when considered according to the factors in paragraph (e)(2) of this section, is not adequate to mitigate these hazard(s);

(3) Restriction of the the product to use only by certified applicators would decrease the risk of adverse effects; and

(4) The decrease in risks of the pesticide as a result or restriction would exceed the decrease in benefits.

(b) *Criteria for human hazard*—(1) *Residential and institutional uses.* A pesticide product intended for residential or institutional use will be considered for restricted use classification if:

(i) The pesticide, as diluted for use, has an acute oral LD_{50} of 1.5 g/kg or less;

(ii) The pesticide, as formulated, has an acute dermal LD_{50} of 2000 mg/kg or less;

(iii) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.5 mg/liter or less;

(iv) The pesticide, as formulated, is corrosive to the eyes (causes irreversible destruction of ocular tissue) or results in corneal involvement or irritation persisting for more than 7 days;

(v) The pesticide, as formulated, is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe irritation (severe erythema or edema) at 72 hours; or

(vi) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic, chronic or delayed toxic effects on man as a result of single or multiple exposures to the product ingredients or residues.

(2) *All other uses.* A pesticide product intended for uses other than residential or institutional use will be considered for restricted use classification if:

(i) The pesticide, as formulated, has an acute oral LD_{50} of 50 mg/kg or less;

(ii) The pesticide, as formulated, has an acute dermal LD_{50} of 200 mg/kg or less;

(iii) The pesticide, as diluted for use, has an acute dermal LD_{50} of 16 g/kg or less;

(iv) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.05 mg/liter or less;

(v) The pesticide, as formulated, is corrosive to the eyes or causes corneal involvement or irritation persisting for more than 21 days;

(vi) The pesticide, as formulated, is corrosive to the skin or causes severe skin irritation persisting for more than 72 hours; or

(vii) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic toxicity, chronic toxicity, or delayed toxic effects on man, as a result of single or multiple exposures to the product ingredients or residues.

(c) *Criteria for hazard to non-target species*—(1) *All products.* A pesticide product intended for outdoor use will be considered for restricted use classification if:

(i) When used according to label directions, application results in residues in the diet of exposed mammalian wildlife, immediately after application, such that:

(A) The level of residues equals or exceeds one-fifth of the acute dietary LC_{50}; or

(B) The amount of pesticide consumed in one feeding day (mg/kg/day) equals or exceeds one-fifth of the mammalian acute oral LD_{50};

(ii) When used according to label directions, application results, immediately after application, in residues in the diet of exposed birds at levels that equal or exceed one-fifth of the avian subacute dietary LC_{50};

(iii) When used according to label directions, application results in residues in water that equal or exceed one-tenth of the acute LC_{50} for non-target aquatic organisms likely to be exposed; or

(iv) Under conditions of label use or widespread and commonly recognized practice, the pesticide may cause discernible adverse effects on non-target organisms, such as significant mortality or effects on the physiology, growth, population levels or reproduction rates of such organisms, resulting from direct or indirect exposure to the product ingredients or residues.

(2) *Granular products.* In addition to the criteria of paragraph (c)(1) of this section, a pesticide intended for outdoor use and formulated as a granular product will be considered for restricted use classification if:

(i) The formulated product has an acute avian or mammalian oral LD_{50} of 50 mg/kg or less as determined by extrapolation from tests conducted with technical material or directly with the formulated product; and

(ii) It is intended to be applied in such a manner that significant exposure to birds or mammals may occur.

(d) *Other evidence.* The Agency may also consider evidence such as field studies, use history, accident data, monitoring data, or other pertinent evidence in deciding whether the product or use may pose a serious hazard to man or the environment that can reasonably be mitigated by restriction to use by certified applicators.

(e) *Alternative labeling language.* (1) If the Agency determines that a product meets one or more of the criteria of paragraphs (b) or (c) of this section, or if other evidence identified in paragraph (d) of this section leads the Agency to conclude that the product should be considered for restricted use classification, the Agency will then determine if additional labeling language would be adequate to mitigate the identified hazard(s) without restricted use classification. If the labeling language meets all the criteria specified in paragraph (e)(2) of this section, the product will not be classified for restricted use.

(2) The labeling will be judged adequate if it meets all the following criteria:

(i) The user, in order to follow label directions, would not be required to perform complex operations or procedures requiring specialized training and/or experience.

(ii) The label directions do not call for specialized apparatus, protective equipment, or materials that reasonably would not be available to the general public.

(iii) Failure to follow label directions in a minor way would result in few or no significant adverse effects.

(iv) Following directions for use would result in few or no significant adverse effects of a delayed or indirect nature through bioaccumulation, persistence, or pesticide movement from the original application site.

(v) Widespread and commonly recognized practices of use would not nullify or detract from label directions such that unreasonable adverse effects on man or the environment might occur.

§ 152.171 Pesticides restricted to use by certified applicators.

The following uses of pesticide products containing the active ingredients specified have been classified for restricted use and are limited to use by or under the direct supervision of a certified applicator:

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
Acrolein	As sole active ingredient. No mixtures registered.	All uses	Restricted	Inhalation hazard to humens. Residue effects on avian species and aquatic organisms.
Acrylonitrile	In combination with carbon tetrachloride. No registration as the sole active ingredient.	do	do	Other hazards—accident history of both acrylonitrile and carbon tetrachloride products.
Aldicaro	As sole active ingredient	Ornamental uses (indoor an outdoor).	do	Other hazards—accident history
	No mixtures registered	Agricultural crop uses	Under further evaluation	
Allyl alcohol	All formulations	All uses	Restricted	Acute dermal toxicity.
Aluminum phosphide	As sole active ingredient. No mixtures registered.	do	do	Inhalation hazard to humans.
Azinphos methyl	All liquids with a concentration greater than 13.5 pct.	do	do	Do.
	All other formulations	do	Under further evaluation	

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
Calcium cyanide	As sole active ingredient. No mixture registered.	do	Restricted	Do.
Carbofuran	All concentrate suspensions and wettable powders 40% and greater.	do	do	Acute inhalation toxicity.
	All granular formulations	Rice	Under evaluation	
	All granular and fertilizer formulations	All uses except rice	do	
Chlorfenvinphos	All concentrate solutions or emulsifiable concentrates 21% and greater.	All uses (dmestic and nondomestic).	Restricted	Acute dermal toxicity.
Chloropicrin	All formulations greater than 2%	All uses	do	Acute inhalation toxicity.
	All formulations	Rodent control	do	Hazard to non-target organisms.
	All formulations 2% and less	Outdoor uses (other than rodent control).	Unclassified	
Clonitralid	All wettable powders 70% and greater	All uses	Restricted	Acute inhalation toxicity.
	All granulars and wettable powders	Molluscide uses	Restricted	Effects on aquatic organisms.
	Pressurized sprays 0.55% and less	Hospital antiseptics	Unclassified	
Cycloheximide	All formulations greater than 4%	All uses	Restricted	Acute dermal toxicity.
	All formulations 0.027% to 4%	do	Under evaluation	
	All formulations 0.027% and less	Domestic uses	Unclassified	
Demeton	1 pct fertilizer formulation, 1.965 pct granular formulation.	All uses, including domestic uses	Restricted	Domestic uses: Acute oral toxicity. Acute dermal toxicity. Nondomestic outdoor uses. Residue effects on avian and mammalian species.
	All granular formulations, emulsifiable concentrates and concentrated solutions.	All uses	do	Acute dermal toxicity. Residue effects on mammalian and avian species.
Dicrotophos	All liquid formulations 8% and greater	All uses	Restricted	Acute dermal toxicity; residue effects on avian species (except for tree injections).
Dioxathion	All concentrate solutions or emulsifiable concentrates [2] greater than 30%.	do	do	Acute dermal toxicity.
	Concentrate solutions or emulsifiable concentrates [2] 30% and less and wettable powders 25% and less.	Livestock and agricultural uses (non-domestic uses only).	Unclassified	
	All slutions [2] 3% and greater	Domestic uses	Restricted	Do.
	2.5% solution [2] with toxaphene and malathion.	All uses	Under evaluation	Acute dermal toxicity.
Disulfoton	All emulsifiable concentrates 65% and greater, all emulsifiable concentrates and concentrate solutions 21% and greater with fensulfothion 43% and greater, all emulsifiable concentrates 32% and greater in combination with 32% fensulfothion and greater.	do	Restricted	Acute inhalation toxicity.
	Non-aqueous solution 95% and greater	Commercial seed treatment	Restricted	Acute dermal toxicity.
	Granular formulations 10% and greater	Indoor uses (greenhouse)	do	Acute inhalation toxicity.
Endrin	All emulsions, dusts wettable powders, pastes, and granular formulations 2 pct and above.	All uses	Restricted	Acute dermal toxicity. Hazard to nontarget organisms.
	All concentrations less than 2 pct	do	do	Hazard to nontrget organisms.
EPN	All liquid and dry formulations greater than 4%.	do	do	Acute dermal toxicity, acute inhalation toxicity; residue effects on avian species.
		Aquatic uses	do	Effects on aquatic organisms.
Ethoprop	Emulsifiable concentrates 40% and greater.	All uses	do	Acute dermal toxicity.
	All granular and fertilizer formulations	All uses	Under evaluation	
Ethyl parathion	All grandular and dust formulations greater than 2 pct, fertilizer formulations, wettable powders, emulsifiable concentrates, concentrated suspensions, concentrated solutions.	do	Restricted	Inhalation hazard to humans. Acute dermal toxicity. Residue effects on mammalian, aquatic, avian species.
	Smoke fumigants	do	do	Inhalation hazard to humans.
	Dust and graular formulations 2 pct and below.	do	do	Other hazards—accident history.
Fenamiphos	Emulsifiable concentrates 35% and greater.	do	do	Acute dermal toxicity.
Fensulfothion	Concentrate solutions 63% and greater, all emulsifiable concentrates and concentrate solutions 43% and greater with disulfoton 21% and greater, all emulsifiable concentrates 32% and greater in combination with disulfoton 32% and greater.	do	Restricted	Do. Acute inhalation toxicity.
	Granular formulations 10% and greater	Indoor uses (greenhouse)	do	Do.
Fluoroacetamide/1081	As sole active ingredient in baits. No mixtures registered.	All uses	Restricted	Acute oral toxicity.
Fonofos	Emulsifiable concentrates 44% and greater.	do	do	Acute dermal toxicity.
	Emulsifiable concentrates 12.6% and less with pebulate 50.3% and less.	Tobacco	Unclassified	
Hydrocyanic acid	As sole active ingredient. No mixtures registered.	do	Restricted	Inhalation hazard to humans.
Methamidophos	Liquid formulations 40% and greater	do	Restricted	Acute dermal toxicity; residue effects on avian species.
	Dust formulations 2–5% and greater	do	do	Residue effects on avian species.
Methidathion	All formulations	All uses except nursery stock, safflower and sunflower.	do	Do.
	All formulations	Nursery stock, safflower and sunflower.	Unclassified	
Methomyl	As sole active ingredient in 1 pct to 2.5 baits (except 1 pct fly bait).	Nondomestic outdoor-agricultural crops, ornamental and turf. All other registered uses.	Restricted	Residue effects on mammalian species.
	All concentrated solution formulations	do	do	Other hazards-accident history.

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
	90 pct wettable powder formulation (not in water soluble bags).	...do	...do	Do.
	90 pct wettable power formulation in water soluble bags.	...do	Unclassified	
	All granular formulations	...do	...do	
	25 pct wettable powder formulations	...do	...do	
	In 1.24 pct to 2.5 pct dusts as sole active ingredient and in mixtures with fungicides and chlorinated hydrocarbon, inorganic phosphate and biological insecticides.	...do	...do	
Methyl bromide	All formulations in containers greater than 1.5 lb.	All uses	Restricted	Do.
	Containers with not more than 1.5 lb of methyl bromide with 0.25 pct to 2.0 pct chloropicrin as an indicator.	Single applications (nondomestic use) for soil treatment in closed systems.	Unclassified	
	Containers with not more than 1.5 lb having no indicator.	All uses	Restricted	Do.
Methyl parathion	All dust and grandular formulations less than 5 pct.	...do	...do	Other hazards-accident history. All foliar applications restricted based on residue effects on mammalian and avian species.
	Microencapsulated	...do	...do	Residue effects on avian species. Hazard to bees.
	All dust and granular formulations 5 pct and greater and all wettable powders and liquids.	...do	...do	Acute dermal toxicity. Residue effects on mammalian and avian species.
Mevinphos	All emulsifiable concentrates and liquid concentrates.	...do	...do	Do.
	Psycodid filter fly liquid formulations	...do	...do	Acute dermal toxicity.
	2 pct dust	...do	...do	Residue effects on mammalian and avian species.
Monocrotophos	Liquid formulations 19% and greater	...do	...do	Residue effects on avian species. Residue effects on mammalian species.
	Liquid formulations 55% and greater	...do	...do	Acute dermal toxicity. Residue effects on avian species. Residue effects on mammalian species.
Nicotine (alkaloid)	Liquid and dry formulations 14% and above.	Indoor (greenhouse)	...do	Acute inhalation toxicity.
	All formulations	Applications to cranberries	...do	Effects on aquatic organisms.
	Liquid and dry formulations 1.5% and less.	All uses (domestic and nondomestic).	Unclassified	
Paraquat (dichloride) and paraquat bis(methyl sulfate).	All formulations and concentrations except those listed below.	All uses	Restricted	Other hazards. Use and accident history, human toxicological data.
	Pressurized spray formulations containing 0.44 pct Paraquat bis(methyl sulfate) and 15 pct petroleum distlates as active ingredients.	Spot weed and grass control	Unclassified	
	Liquid fertilizers containing concentrations of 0.025 pct paraquat dichloride and 0.03 percent atrazine; 0.03 pct paraquat dichloride and 0.37 pct atrazine, 0.04 pct paraquat dichloride and 0.49 pct atrazine.	All uses	...do	
Phorate	Liquid formulations 65% and greater	...do	Restricted	Acute dermal toxicity Residue effects on avian species (applies to foliar applications only). Residue effects on mammalian species (applies to foliar application only).
	All granular formulations	Rice	...do	Effects on aquatic organisms.
Phosacetim	Baits 0.1% and greater	All uses	Restricted	Hazard to non-target species. Residue effects on mammalian species. Residue effects on avian species.
Phosphamidon	Liquid formulations 75% and greater	...do	...do	Acute dermal toxicity. Residue effects on mammalian species. Residue effects on avian species.
	Dust formulations 1.5% and greater	...do	...do	Do.
Picloram	All formulations and concentrations except tordon 101 R.	...do	...do	Residue effects on mammalian species. Hazard to nontarget organisms (specifically nontarget plants both crop and noncrop).
	Tordon 101 R forestry herbicide containing 5.4 pct picloram and 20.9 pct 2,4-D.	Control of unwanted trees by cut surface treatment.	Unclassified	
Sodium cyanide [2]	All capsules and ball formulations	All uses	Restricted	Inhalation hazard to humans.
Sodium fluroacetate	All solutions and dry baits	...do	...do	Acute oral toxicity. Hazard to nontarget organisms. Use and accident history.
Strychnine	All dry baits, pellets and powder formulations greater than 0.5 pct.	...do	...do	Acute oral toxicity. Hazard to nontarget avian species. Use and accident history.
	All dry baits, pellets and powder formulations.	All uses calling for burrow builders.	...do	Hazard to nontarget organisms.
	All dry baits, pellets and powder formulations 0.5 pct and below.	All uses except subsoil	...do	Do.
	...do	All subsoil uses	Unclassified	
Sulfotepp	Sprays and smoke generators	All uses	Restricted	Inhalation hazard to humans.
Tepp	Emulsifiable concentrate formulations	...do	...do	Inhalation hazard to humans. Dermal hazard to humans. Residue effects on mammalian and avian species.
Zinc Phosphide	All formulations 2% and less	All domestic uses and nondomestic uses in and around buildings.	Unclassified	
	All dry formulations 60% and greater	All uses	Restricted	Acute inhalation toxicity.

Active ingredient	Formulation	Use pattern	Classification [1]	Criteria influencing restriction
	All bait formulations	Non-domestic outdoor uses (other than around buildings).	do	Hazard to non-target organisms.
	All dry formulations 10% and greater	Domestic uses	do	Acute oral toxicity.

[1] "Under evaluation" means no classification decision has been made and the use/formulation in question is still under active review within EPA.
[2] Percentages given are the total of dioxathion plus related compunds.
[3] (NOTE—M-44 sodium cyanide capsules may only be used by certified applicators who have also taken the required additional training.)

§ 152.175 Restrictions other than those relating to use by certified applicators.

The Agency may by regulation impose restrictions on a product or class of products if it determines that:

(a) Without such restrictions, the product when used in accordance with warnings, cautions and directions for use or in accordance with widespread and commonly recognized practices of use may cause unreasonable adverse effects on man or the environment; and

(b) The decrease in risks as a result of restricted use would exceed the decrease in benefits as a result of restricted use.

Subpart J—Label Improvement Program

§ 152.180 General.

(a) The Agency's Label Improvement Program (LIP) is a continuing program for the purpose of upgrading pesticide labeling for three purposes:

(1) To reduce risks associated with the use of the pesticide;

(2) To improve the enforceability of the instructions by eliminating ambiguities and clarifying language; and

(3) To promote consistency in labeling of similar products.

(b) The LIP program is intended to function within existing regulations, policies, and procedures, and not to implement new requirements. The purpose is to achieve rapid response to labeling problems identified by the Agency, the States, user groups or the public.

(c) The procedures the Agency will use in administering the LIP program and the procedures that registrants must follow to comply with the program are described in this subpart. When an application for amended registration is required of registrants, the Agency will follow the same procedures as for submission and review of applications for other amendments.

§152.185 Notification and submission to Agency.

When the Agency initiates an LIP activity, it will notify each affected registrant by certified mail of the specific revisions to be made to his product label. The notice will require that the registrant take one of the following actions:

(a) Submit an application for amended registration for Agency approval before distributing or selling products bearing the amended labeling. If an application for amended registration is required, the registrant must submit to the Agency within a specified time the following information:

(1) An application form;

(2) Five copies of draft labeling incorporating the required changes;

(3) In some cases, a Confidential Statement of Formula (on a form provided by the Agency);

(b) Make the required changes within a given time frame, which may be a date certain or a non-specific date, and certify to the Agency that he had done so. If a certification statement is required, the registrant must submit a statement containing the following information:

(1) A certification that he has made, or will make within the allotted time frame, the changes specified in the LIP notice;

(2) A recitation of the changes to be made;

(3) The date on which the changes were or are expected to be accomplished, if a date certain was not stated in the notice;

(4) The name, title and signature of the registrant or his authorized representative;

(5) An agreement that all product labels, including all distributor product labels, will be revised.

(c) Make the required changes without submission of application or certification.

§ 152.187 Time for submission.

(a) The notice to the registrant will specify a time frame for submission of materials to the Agency. Normally, not less than 60 days will be allowed for an application and not less than 30 days for a certification statement.

(b) If the required materials are not submitted within the stated time, the Agency may initiate a cancellation proceeding under FIFRA section 6(b) and § 152.148 of this part.

§ 152.190 Combined applications.

A single application may respond to two or more LIP notices when the time periods for response overlap. Time frames for submission and compliance will be calculated from the later of the LIP notices.

§ 152.195 Compliance after approval of application.

An LIP notice to registrants will clearly specify when product labeling must be revised. The date will normally be not less than 6 months from the date of the notice or date of approval of an application, but the Agency may establish shorter time frames and permit the use of stickers or supplemental labeling as an interim compliance measure. After the date specified, a product may not be distributed or sold by the registrant (or any supplemental distributors included under his registration) without bearing the approved amended label, sticker, or supplemental labeling if permitted.

Subpart K—Coloration and Discoloration of Pesticides

§ 152.200 General.

Section 25(c)(5) of the Act authorizes the Administrator to prescribed regulations requiring coloration or discoloration of any pesticide if he determines that such requirement is feasible and necessary for the protection of health and the environment. The Agency uses the Munsell Book of Color as a color standard.

§ 152.205 Coloring agent.

The coloring agent must produce a uniformly colored product not subject to change beyond the minimum requirements specified in this subpart during ordinary conditions of distribution and storage and must not cause the product to be ineffective or result in adverse effect to non-target organisms when used as directed.

§ 152.207 Arsenicals and barium fluosilicate.

Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than 6 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

§ 152.210 Sodium fluoride and sodium fluosilicate.

(a) Products containing sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than 2 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

(b) A product containing sodium fluoride shall be exempt from the requirements of this section if:

(1) It is intended and labeled for use as a fungicide solely in the manufacture or processing of rubber, glue, or leather goods.

(2) Coloration of the pesticide in accordance with said requirements will be likely to impart objectionable color characteristics to the finished goods;

(3) The pesticide will not be present in such finished goods in sufficient quantities to cause injury to an person; and

(4) The pesticide will not come into the hands of the public except after incorporation into such finished goods.

§ 152.215 Seed treatment products.

(a) Pesticide products intended for seed treatment use for the control of bacteria, weeds, fungi, insects, nematodes and vertebrate animals, and for which no tolerances or other clearances under the Federal Food, Drug, and Cosmetic Act have been obtained in animals used for food purposes, must contain an EPA-approved dye to impart an unnatural color to the seeds.

(b) The following products are exempt for the requirement of paragraph (a) of this section:

(1) Products intended and labeled for use solely by commercial seed treaters, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process;

(2) Products intended and labeled for use solely as at-planting or hopper box treatments;

(3) Products which are gaseous in form or contain volatile liquids which are used for fumigation of seed.

(c) EPA-approved dyes are those listed in 40 CFR 180.1001 (c) and (d). Upon written request additional dyes will be considered for inclusion in this listing.

§ 152.216 Granular products for outdoor use.

Granular products intended for terrestrial outdoor use must be colored with with an EPA-approved dye so as to contrast clearly with the color of the soil to which they will be applied. Such products may not be colored or discolored to white, black, brown, or neutral earth tones. Bright primary colors (such as reds, oranges, yellows, blues, greens) must be used for maximum contrast.

§ 152.218 Exceptions

(a) Notwithstanding other provisions of this subpart, the Agency may exempt a product from the requirements of this subpart, or may permit other hues to be used for any particular purpose, if it determines that use of the prescibed hues is not feasible for such purpose and is not necessary for the protection of health and the environment.

(b) Any pesticide product specified in this subpart which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dryer as a mothproofing agent, and which would not be suitable for such use if colored, and which will not come into the hands of the public except when incorporated into a fabric, is exempt from the requirements of this subpart.

Subpart L—Intrastate Pesticide Products

§ 152.220 Scope.

This subpart applies to any pesticide which is distributed or sold solely within a single State (hereafter designated an "intrastate product") and:

(a) For which a Notice of Application for Federal Registration (EPA Form 8570–8) containing the following information was filed with EPA by October 4, 1975 (or as extended by the Agency):

(1) The name and mailing address of the registrant;

(2) The name of the State in which the product is registered;

(3) The State registration number (if any) of the product;

(4) The product name;

(5) A list of the product's active ingredients in descending order by weight;

(6) The type and broad use pattern of the product; and

(7) Two complete copies of the labeling as approved by the State;

(b) Which does not contain an active ingredient intended for any end-use that has previously been cancelled or suspended by the Agency for substantive reasons; and

(c) Which is registered under a State pesticide registration law.

§ 152.225 Application for Federal registration.

(a) Each current intrastate producer who has submitted a "Notice of Application for Federal Registration" must, no later than July 31, 1988, submit a full application for Federal registration complying with the requirements of this Part 152.

(b) The Agency may, at time before that date, require the producer of an intrastate product to submit an application for Federal registration of his product.

(c) The Agency will require the producer of an intrastate product to submit an application for Federal registration if the intrastate product contains the same active ingredient and is intended for the same or a substantially similar end use as federally registered products which are subject to:

(1) A notice of Rebuttable Presumption against Registration (RPAR) of special review;

(2) A notice under FIFRA section 3(c)(2)(B) requiring the submission of data in support of Federal registration;

(3) A regulation or notice classifying the product for restricted use under FIFRA section 3(d)(1)(C); or

(4) A notice requiring the Federal registrant to submit an application for reregistration of his product.

(d) If the Agency requires the submission of an application for registration of an intrastate product prior to July 31, 1988, the Agency will notify the producer of the intrastate product in writing, and will specify a date by which the application must be submitted.

§ 152.230 Sale and distribution of unregistered intrastate pesticide product.

(a) An intrastate product which is not federally registered may continue to be sold or distributed solely within a single State until December 31, 1988, provided that

(1) Such product complies with FIFRA section 12(a)(1) (D) and (E), in accordance with the definitions contained in:

(i) FIFRA section 2(q)(1) (A) through (G); and

(ii) FIFRA section 2(q)(2)(A), (C) (i) through (iii), and (D).

(2) The producer of such product has submitted a timely application for Federal registration of the pesticide, if he has been notified by the Agency to do so;

(3) The Agency has not issued in the **Federal Register** a notice of denial of an application for registration of such product under FIFRA section 3(c)(6); and

(4) The Agency has not issued a notice of intent to cancel or suspend federally registered pesticide products containing the same active ingredient and intended for the same (or substantially similar) end uses as such intrastate product.

(b) After December 31, 1988, no intrastate product may be sold or distributed unless it is federally registered.

Subpart M—Devices

§ 152.240 Requirements for devices.

A device is not required to be registered under FIFRA section 3. The Agency has issued a policy statement concerning its authority and activities with respect to devices, which was published, in the **Federal Register** of November 19, 1976 (41 FR 51065). A device is subject to the requirements set forth in:

(a) FIFRA section 2(q)(1) and 40 CFR 156.118, with respect to labeling;

(b) FIFRA section 7 and 40 CFR Part 167, with respect to establishment registration and reporting;

(c) FIFRA section 8 and 40 CFR Part 169, with respect to books and records;

(d) FIFRA section 9, with respect to inspection of establishments;

(e) FIFRA sections 12, 13, and 14, with respect to violations, enforcement activities, and penalties;

(f) FIFRA section 17, with respect to import and export of devices;

(g) FIFRA section 25(c)(3), with respect to child-resistant packaging; and

(h) FIFRA section 25(c)(4), with respect to the Agency's authority to declare devices subject to certain provisions of the Act.

Subparts N–Q [Reserved]

Subpart R—Product Chemistry Data Requirements

§ 152.340 General.

This subpart describes the product chemistry data requirements that apply to all products proposed for registration, amended registration, or reregistration. The information specified in this subpart must be submitted with each application for new registration or amended registration or for reregistration if it has not been submitted previously or if the previously submitted information is not complete and accurate. If a registrant proposes to change the composition of his product in any way that would necessitate revision of the information required by this subpart, he must apply for amended registration.

§ 152.342 Definitions.

The following terms are defined for the purposes of this subpart:

(a) "Beginning material" means any substance used in making the product which constitutes or contains any of the product's active or intentionally added inert ingredients or which constitutes or contains a chemical precursor of any such ingredient.

(b) "Impurity" means any substance in a pesticide product other than an active ingredient or an intentionally added inert ingredient, including beginning materials, side reaction products, contaminants, and degradation products.

(c) "Impurity associated with an active ingredient" means:

(1) Any impurity present in the technical grade of the active ingredient; and

(2) Any impurity which forms in the pesticide formulation through reactions between the active ingredient and other substances in the formulation or packaging of the product.

(d) "Integrated formulation system" means a process for producing an end use product through the use of any substance which contains an active ingredient and which:

(1) Is not a registered pesticide product; or

(2) Was produced or acquired in a manner that does not permit its inspection by the Agency under FIFRA section 9(a) prior to its use in the process.

(e) "Intentionally added inert ingredient" means any ingredient of a pesticide formulation (other than an active ingredient) which is intentionally made a part of the formulation to serve some useful function.

(f) "Nominal concentration" means the amount of an ingredient which is expected to be present in a typical sample of a pesticide.

(g) "Technical grade of an active ingredient" means a material:

(1) Which contains an active ingredient;

(2) Which contains no other intentionally added ingredient, other than one use for synthesis or purification of the active ingredient; and

(3) Which is produced on a commercial or pilot-plant scale.

§ 152.344 Pesticide composition information.

Information on product composition is normally supplied by completing a Confidential Statement of Formula form provided by the Agency. The following information is required:

(a) For each active ingredient, intentionally added inert ingredient and impurity, the name and nominal concentration, and certified limits in accordance with § 152.352.

(b) For each active ingredient and intentionally added inert ingredient, the chemical name from the Chemical Abstracts Index of Nomenclature, the Chemical Abstracts Service (CAS) Registry Number, and the common name (if any).

(c) For each active ingredient, the molecular, structural and empirical formulae, the molecular weight or weight range, and any experimental or internal code number assigned to the ingredient.

(d) The purpose of each active ingredient and intentionally added inert ingredient.

§ 152.346 Description of beginning materials.

Each application must include a description of the beginning materials used to produce the pesticide, including the following information:

(a) If the beginning material is a registered product, the registration number of the product;

(b) For each other beginning material:

(1) The name and address of the manufacturer or producer of the beginning material or, if that information is not known by the applicant, the name and address of the supplier of the beginning material;

(2) Each brand name, trade name, or similar commercial designation of the beginning material used by the manufacturer, producer, or supplier of the beginning material;

(3) A copy of all available technical specifications, data sheets, and other documents by which the manufacturer, producer, or supplier of the beginning material describes its composition, properties, or toxicity; and

(4) All other information which the applicant has available to him concerning the qualitative and quantitative composition of the beginning materials.

§ 152.348 Description of manufacturing process.

Each application must include an accurate and current description of the process used to manufacture or formulate the pesticide. The description must contain the following information:

(a) A statement of whether the process is a batch or continuous process;

(b) The relative amounts of beginning materials and the order in which they are added;

(c) A description of the equipment used to produce the pesticide which may influence its composition;

(d) A description of the physical conditions (e.g., temperature, pressure, humidity) which are controlled during each step of the process in order to influence the pesticide's composition, and the parameters that are maintained;

(e) A statement of whether the process for producing the pesticide involves intended chemical reactions (that is, combination of beginning materials which are expected to react with each other to produce an active ingredient or intentionally added inert ingredient);

(f) A flow chart with chemical equations of each intended chemical reaction occurring at each step of the process and the duration of each step;

(g) A description of any purification procedures, including procedures to recover or recycle starting materials, intermediates, or the final product; and

(h) A description of measures taken to assure the quality of the final pesticide, including procedures involving the equipment used for blending components and for filling and packaging.

§ 152.350 Discussion of formation of impurities.

Each application must include a discussion of the impurities that may be present in the product, and why they may be present. The discussion should be based on established chemical theory and the information submitted in accordance with §§152.346 and 152.348. The types of impurities which must be discussed are the following, as applicable:

(a) *Manufacturing-use products and end-use products produced by an integrated formulation system.*

(1) Each impurity which the applicant believes may be present in his pesticide product at a level equal to or greater than 0.1 percent (1000 ppm) of the technical grade of the active ingredient, based on his knowledge of:

(i) The composition (or composition range) of each beginning material which he uses to produce any active ingredient of his pesticide;

(ii) The composition (or composition range) of each beginning material containing an active ingredient which he purchases (or otherwise obtains from another) and uses to produce his pesticide;

(iii) The composition (or composition range) of each intentionally added inert ingredient of his pesticide;

(iv) The impurities which he knows are present, or believes are likely to be present, in the materials listed in paragraph (a)(1)(i) through (iii) of this section, and the known or presumed level (or range of levels) of those impurities;

(v) The substances which result from the intended (main) reactions and side reactions which occur in the manufacturing and formulation of his pesticide, and the relative amount of each such substances produced;

(vi) Degradation of any of the product's active ingredients after production of the pesticide but prior to its use, and post-production reactions between any of the pesticide's active ingredients or intentionally added inert ingredients and any other components of the pesticide or its packaging;

(vii) Migration of components of packaging materials into the pesticide;

(viii) Contaminants resulting from earlier use of production equipment to produce other products or substances; and

(ix) The process control, purification and quality control measures he uses; and

(2) Each other impurity which was found to be present in any analysis of the pesticide he has conducted.

(b) *End-use products not produced by an integrated formulation system.* (1) Each impurity which may be present in his pesticide product at a level equal to or greater than 0.1 percent (1000 ppm) of the technical grade of the active ingredient, based on his knowledge of:

(i) The carryover of impurities present in any registered product which serves as the source of any of his pesticide's active ingredients (the level of such impurities in the registered source need not be discussed or quantified);

(ii) The carryover of impurities present in the intentionally added inert ingredients of his pesticide;

(iii) Reactions occurring during the production of his pesticide between any of its active ingredients, between the active ingredients and intentionally added inert ingredients, or between the active ingredients and the production equipment;

(iv) Post-production reactions between any of the pesticide's active ingredients and any other component of the pesticide or its packaging;

(v) Migration of packaging materials into the pesticide; and

(vi) Contaminants resulting from earlier use of equipment to produce other products or substances.

(2) On a case-by-case basis, the Agency may require further discussion of possible chemical reactions involving other ingredients.

§ 152.352 Certification of ingredient limits.

Each registration must be supported by a certification that each upper and lower limit established in accordance with paragraph (a), (b), or (c) of this section will be maintained for all product distributed or sold. The range between the upper and lower certified limits for each active ingredient and each intentionally added inert ingredient should be based on a consideration of the variability of each of these ingredients when normal quality assurance procedures are used in the production process. The limits stated for each ingredient must not greatly exceed its actual variability in the product. The following certified limits must be stated:

(a) For each manufacturing use product that contains no intentionally added inert ingredients (i.e., that consist only of the technical grade of the active ingredient):

(1) For each active ingredient, an upper and lower limit;

(2) For each impurity (or group of structurally similar impurities) associated with an active ingredient that either was indicated in the discussion required by § 152.350 as being potentially present, or that was found to be present in any sample, at a level equal to or greater than 0.1 percent by weight, an upper limit; and

(3) For each impurity (or group of structurally similar impurities) associated with an active ingredient that either was indicated in the discussion required by § 152.350 as being potentially present, or was found to be present in any sample, at a level less than 0.1 percent by weight, an upper limit if the impurity is determined to be of toxicological significance.

(b) For each manufacturing use product containing any intentionally added inert ingredient and each end use product produced by an integrated formulation system:

(1) For each active ingredient, an upper and lower limit;

(2) For each intentionally added inert ingredient, an upper limit;

(3) For each impurity (or group of structurally similar impurities) associated with an active ingredient that was either indicated in the discussion required by § 152.350 as being potentially present, or was found to be present in any sample, at a level equal to or greater than 0.1 percent by weight, an upper limit;

(4) For each impurity (or group of structurally similar impurities) associated with an active ingredient that was either indicated in the discussion required by § 152.350 to be potentially present, or was found to be present in any sample, at a level less than 0.1 percent by weight, an upper limit if the impurity is determined to be of toxicological significance; and

(5) For each impurity (or group of structurally similar impurities) not associated with an active ingredient, an upper limit if the impurity is determined to be of toxicological significance.

(c) For each end use products not produced by an integrated formulation system:

(1) For each active ingredient, an upper and lower limit;

(2) For each intentionally added inert ingredient, an upper limit; and

(3) For each impurity (or group of structurally similar impurities) not associated with an active ingredient, an upper limit if the impurity is determined to be of toxicological significance.

§ 152.353 Certified limits for additional ingredients and impurities.

The Agency may require, on a case-by-case basis, any or all of the following:

(a) More precise limits;

(b) Certified limits for additional ingredients;

(c) More thorough explanation of how the certified limits were determined;

(d) Certified upper limits for impurities which will be present at levels less than 0.1 percent (1000 ppm) of the product; or

(e) A narrower range between the upper and lower certified limits than that proposed by the applicant.

§ 152.354 Enforcement analytical method.

An analytical method suitable for enforcement purposes must be submitted for each active ingredient in the product, and each other ingredient or impurity that is determined to be toxicologically significant.

2. By adding Part 157, to read as follows:

PART 157—PACKAGING REQUIREMENTS FOR PESTICIDES AND DEVICES

Subpart A—[Reserved]

Subpart B—Child-Resistant Packaging

Sec.

157.20 General.
157.21 Definition.
157.22 When required.
157.25 Products classified for restricted use.
157.27 Unit packaging.
157.30 Voluntary use of child-resistant packaging.
157.32 Standards.
157.34 Certification.
157.36 Exemptions.
157.39 Recordkeeping requirements.

Authority: Sec. 25(a)(1) and (c)(3), as amended Pub. L. 92–516, 92 Stat. 819 (7 U.S.C. 136 through 136y).

Subpart A—[Reserved]

Subpart B—Child-Resistant Packaging

§ 157.20 General.

This subpart prescribes requirements for child-resistant packaging of pesticide products. The requirements are established under the authority of FIFRA Section 25(c)(3), which authorizes the Administrator to establish standards with respect to the package, container or wrapping in which a pesticide or device is enclosed in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated under the Act.

§ 157.21 Definitions.

Terms used in this subpart shall have the following meanings:

(a) "Appropriate," when used with respect to child-resistant packaging, means that the packaging is chemically compatible with the pesticide contained therein.

(b) "Child-resistant packaging" means packaging that is designed and constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time, and that is not difficult for normal adults to use properly.

(c) "Practicable," when used with respect to child-resistant packaging, means that the packaging can be mass produced and can be used in assembly line production.

(d) "Technically feasible," when applied to child-resistant packaging, means that the technology exists to produce the child-resistant packaging for a particular pesticide.

(e) "Unit packaging" means a package that is labeled with directions to use the entire contents of the package in a single application.

§ 157.22 When required.

A pesticide product must be distributed and sold in child-resistant packaging complying with § 157.32 if the product meets all of the following criteria:

(a) Based upon testing with an appropriate test species, it meets any of the following toxicity criteria:

(1) The pesticide has an acute oral LD_{50} of 1.5 g/kg or less;

(2) The pesticide has an acute dermal LD_{50} of 2000 mg/kg or less;

(3) The pesticide has an acute inhalation LC_{50} of 0.5 mg/liter or less, based upon a 4-hour exposure;

(4) The pesticide is corrosive to the eye (causes irreversible destruction of ocular tissue) or causes corneal involvement or irritation persisting for 21 days or more;

(5) The pesticide is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe skin irritation (severe erythema or edema at 72 hours; or

(6) The pesticide or device has such characteristics that, based upon human toxicological data, use history, accident data or such other evidence as is available, the Agency determines there is serious hazard of accidental injury or illness which child-resistant packaging could reduce;

(b) Its labeling either directly recommends residential use or reasonably can be interpreted to permit residential use;

(c) It has not been restricted to use by or under the direct supervision of a certified applicator; and

(d) It has not been exempted in accordance with § 157.36.

§ 157.25 Products classified for restricted use.

Notwithstanding the provisions of § 157.22, the Agency may require the use of child-resistant packaging if the product is classified for restricted use only by or under the direct supervision of a certified applicator and the Agency determines that the product or device poses a risk of serious accidental injury or illness which child-resistant packaging could reduce. If the Agency makes such a determination, it will notify the registrant in writing and provide a short statement of the basis of its determination. The registrant will then have 30 days to show in writing why his product should not be in child-resistant packaging. Thereafter the Agency will determine whether to require the product to be distributed only in child-resistant packaging and will so notify the registrant.

§ 157.27 Unit packaging.

Pesticide products distributed or sold as an aggregate of one or more unit packages and meeting the criteria of § 157.22 must be distributed or sold in child-resistant packaging either for each unit package or for the outer retail container which contains the unit packages. Child-resistant packaging is not required for both the outer package and the unit packages unless the Agency determines, on a case-by-case basis, that it is necessary for risk reduction.

§ 157.30 Voluntary use of child-resistant packaging.

A registrant whose product is not required to be in child-resistant packaging may distribute or sell his pesticide product in child-resistant packaging. If he does so, that packaging must meet the standards for child-resistant packaging stated in § 157.32. The registrant must certify to this effect in accordance with § 157.34, and must retain the records required by § 157.39.

§ 157.32 Standards.

(a) *Effectiveness standard.* The child-resistant packaging, when tested by the protocol specified in 16 CFR 1700.20, shall meet the effectiveness specifications in 16 CFR 1700.15(b).

(b) *Compatibility standard.* The child-resistant packaging must continue to meet the effectiveness specifications of paragraph (a) of this section when in actual use as a pesticide container. This requirement may be satisfied by appropriate scientific evaluation of the compatibility of the substance with the child-resistant packaging to determine that the chemical and physical characteristics of the pesticide will not compromise or interfere with the proper functioning of the child-resistant packaging and that the packaging will not be detrimental to the integrity of the product during storage and use.

(c) *Durability standard.* The child-resistant packaging must continue to meet the effectiveness and compatibility standards of paragraphs (a) and (b) of this section for the reasonably expected lifetime of the package, taking into account the number of times the package is customarily opened and closed. This requirement may be satisfied by appropriate technical evaluation based on physical wear and stress factors of the packaging, the force required for activation, and other relevant factors.

§ 157.34 Certification.

(a) *General.* (1) The registrant of a pesticide product required to be in child-resistant packaging shall certify to the Agency that the package meets the standards of § 157.32.

(2) Certification must be submitted with each application for new registration, if applicable. A previous certification pertaining solely to the closure of the child-resistant package does not comply with the requirements of this section. A certification that complies with the requirements of this section must be submitted for each currently registered product subject to the requirement for child-resistant packaging by October 1, 1984.

(b) *Contents of certification.* The certification must contain the following information:

(1) The name and EPA registration number of the product to which the certification applies, the registrant's name and address, the date, and the name, title and signature of the company official making the certification.

(2) A statement that the packaging that is being used for the product will meet the standards of § 157.32. The statement, "I certify that the packaging that will be used for this product meets the standards of 40 CFR 157.32," will suffice for this purpose.

§ 157.36 Exemptions.

(a) *General.* The Agency may, on a case-by-case or class basis, grant an exemption from the requirements of this subpart, provided that the Agency first determines that such an exemption would be in the public interest. An exemption may be withdrawn by the Agency at any time if the lack of child-resistant packaging results in serious illnesses or injuries to children.

(b) *Requesting an exemption.* An applicant or registrant who wishes to request an exemption from the requirement of child-resistant packaging must submit two copies of the following information:

(1) The name, address and telephone number of the requester;

(2) The name and registration number (or file symbol) of the product(s) for which the exemption is requested;

(3) A description of the package and the size(s) for which the exemption is requested; and

(4) Documentation supporting the request for exemption, including the length of time for which the exemption is requested.

(c) *Exemption based upon lack of toxicity.* The Agency may grant an exemption from the requirements of this subpart if the registrant or applicant demonstrates to the Agency's satisfaction that the hazards indicated by the toxicity criteria in § 157.22(a) are not indicative of the risk to man. If granted, an exemption shall apply to other products of substantially similar composition. A notice will be issued in the **Federal Register** stating the nature of and reasons for the exemption.

(d) *Exemption based upon technical factors.* The Agency may grant an exemption from the requirements of this subpart based upon technical considerations. If granted, the exemption will be for a specified length of time, and will apply to other products of substantially similar composition and intended uses. A notice of the granting of an exemption will be issued the **Federal Register**. In considering whether to grant an exemption, the Agency will consider, among other things, the following:

(1) Whether the toxicity of the product is such that it should not be allowed to be distributed or sold except in child-resistant packaging.

(2) Whether child-resistant packaging is technically feasible, practicable, or appropriate. An exemption may be granted if the Agency determines that any one of these criteria has been met.

(3) Whether the composition or use pattern of the product necessitates a particular form of packaging for proper use.

(4) Whether child-resistant packaging that is technically feasible, practicable, and appropriate is available for the product or can reasonably be made available to the registrant in sufficient quantities to meet his packaging needs. This determination does not include a consideration of whether the packaging would be adaptable to a registrant's existing package or packaging equipment.

(5) Whether the registrant has made a timely and good faith effort to obtain child-resistant packaging for the product.

(6) If child-resistant packaging which is technically feasible, practicable, and appropriate is not yet available, when such packaging is likely to be available.

(e) *Exemption based upon package size.* (1) Except as provided in paragraph (e)(2) of this section, the Agency hereby grants an exemption from the requirements of this subpart for each product that is distributed or sold in packages having the net contents specified in the following table:

TABLE--SIZE LIMITS FOR WHICH PACKAGES ARE NOT REQUIRED TO BE DISTRIBUTED OR SOLD IN CHILD-RESISTANT PACKAGING

If the product type is:	The following sizes are not required to be distributed or sold in child-resistant packaging if the net contents are measured by:	
	Volume (for liquids)	Weight (for non-liquids)
Insecticide	> 1 gallon	> 40 pounds
Rodenticide	> 1 gallon	> 40 pounds
Herbicide	> 5 gallons	> 75 pounds
Fungicide	> 5 gallons	> 75 pounds
Antimicrobial (except swimming pool chemicals)	> 5 gallons	> 10 pounds
Swimming pool chemicals	> 15 gallons	> 100 pounds

(2) Notwithstanding the general exemption granted by paragraph (e)(1) of this section, the Agency may require that a product packaged in a size exceeding that listed in the table be distributed or sold only in child-resistant packaging if the Agency determines that the product is, or is intended to be, distributed or sold to homeowners or other members of the general public. If the Agency makes such a determination, it will notify the registrant in writing and provide a short statement of the basis of its determination. The registrant will then have 30 days to show in writing why his product should not be in child-resistant packaging. Thereafter the Agency will determine whether to require the product to be distributed only in child-resistant packaging and will so notify the registrant.

(3) A product that, except for the size limitations set out in the table, would be required to be in child-resistant packaging, must bear the following statement on the front panel of the label, in capital letters and in type size at least as large as that used for the child hazard warning ("Keep Out of Reach of Children"): "This package is not child-resistant."

§ 157.39 Recordkeeping requirements.

For as long as the registration of a pesticide product required to be in child-resistant packaging is in effect, the registrant must retain the records listed in this section. The registrant must, upon request by the Agency, make them available to Agency representatives for inspection and copying, or must submit them to the Agency.

(a) A description of the package, including a description of:

(1) The container and its dimensions and composition.

(2) The closure or child-resistant mechanism, including the name of its manufacturer and the manufacturer's designation for the closure or the physical working of the child-resistant packaging mechanism.

(b) A copy of the certification statement required by § 157.34.

(c) One of the following types of records verifying that each package for the product is child-resistant:

(1) Test data on the package based on the CPSC protocol in 16 CFR 1700.20.

(2) Test data, not conforming to the protocol in 16 CFR 1700.20, or a set of measurements on the package, together with an explanation as to why such data or measurements demonstrate that the package is child-resistant.

(3) Test data, whether or not conforming to the protocol in 16 CFR 1700.20, on a different package, together with an explanation of why such data demonstrate that the package being used is child-resistant.

(4) Written evidence that verifies that testing on the package has been conducted according to the protocol in 16 CFR 1700.20. Written evidence may be:

(i) A letter or literature from the packaging supplier;

(ii) A letter from the facility that conducted the testing; or

(iii) A specification in the contract between the registrant or applicant and the packaging supplier;

(5) When the container and closure are purchased separately by the registrant:

(i) Information of the kinds described in paragraph (c) (1) through (4) of this section showing that the closure is child-resistant; and

(ii) A written explanation of why the container is child-resistant; and

(iii) Information showing that the closure and container are compatible with each other, and a written explanation of why the resulting package is child-resistant.

(6) A combination of the above.

(d) Records verifying that the container meets the compatibility and durability standards of § 157.32.

(Approved by the Office of Management and Budget under Control Number 2000-0407.)

PART 158—DATA REQUIREMENTS FOR REGISTRATION

3. By adding §§ 158.27, 158.32, 158.33 and 158.1001 to proposed Part 158 published on Nov. 24, 1982 (47 FR 53192) and corrected on Jan. 18, 1983 (48 FR 2142), to read as follows:

§ 158.27 Determination of active and inert ingredients.

(a) It is the responsibility of the applicant to determine whether any ingredient is active or inert with respect to pesticidal activity. An ingredient will be considered active if:

(1) The ingredient has the capacity by itself, and when used as directed at the proposed use dilution, to function as a pesticide; or

(2) The ingredient has the ability to elicit or enhance a pesticidal effect in another compound whose pesticidal activity is substantially increased due to the interaction of the compounds. Compounds which function simply to enhance or prolong the activity of an active ingredient by physical action, such as stickers and other adjuvants, are not generally considered to be active ingredients.

(b) The Agency may require any ingredient to be designated as an active ingredient if the Agency finds that it meets the criteria in paragraph (a) of this section for determining active ingredients.

(c) The Agency has concluded that the ingredients listed in § 158.1001 normally have no independent pesticidal activity when included in antimicrobial products, and thus normally are properly classified as inert ingredients of such products. The Agency may determine, on an individual product basis, or the applicant may demonstrate to the Agency's satisfaction, however, that any ingredient listed in § 158.1001 is pesticidally active. In such case, the ingredient shall be listed as an active ingredient on the product label and on the Confidential Statement of Formula.

§ 158.32 Requirements for data submission.

(a) *Transmittal document.* All data submitted at the same time and for review in support of a single administrative action (e.g., an application for registration, reregistration, experimental use permit, or in response to a requirement for data under the authority of FIFRA section 3(c)(2)(B)) must be accompanied by a single transmittal document including the follwing information:

(1) The identify of the submitter, of all joint submitters, or of the agency for joint submitters, as applicable;

(2) The date of the submission;

(3) The identifying number (if known) of the Agency action in support of which the data are being submitted, such as the registration number or file symbol, petition number, experimental use permit number, or registration standard review; and

(4) A bibliography of all specific documents included in the submission and covered by the transmittal.

(b) *Individual studies.* (1) All data must be submitted in the form of individual studies. Each study should normally address a single data requirement, and be listed separately in the bibliography.

(2) Each study must include the following elements in addition to the study itself:

(i) A title page, as described in paragraph (c) of this section;

(ii) A Statement of Data Confidentiality Claims and, if desired, a Supplemental Statement of Data Confidentiality Claims, in accordance with § 158.33; and

(iii) A certification with respect to Good Laboratory Practice standards, in accordance with 40 CFR 160.12.

(iv) If the original study is not in the English language, a complete and accurate English translation under the same cover.

(3) Two identical copies of each study must be submitted. The copies must be on uniform pages of white paper 8½ x 11 inch size, and have a print quality suitable for microfilming.

(c) *Contents of title page.* Each individual study must have a title page bearing the following identifying information:

(1) The title of the study, including identification of the substance(s) tested and the test name or data requirement addressed;

(2) The author(s) of the study;

(3) The date the study was completed;

(4) If the study was performed in a laboratory, the name and address of the laboratory and any laboratory project numbers or other identifying codes;

(5) If the study is a commentary on or supplement to another previously submitted study, full identification of the other study which it should be associated in review; and

(6) If the study is a reprint of a published document, all relevant facts of publication, such as the journal title, volume, issue, inclusive page numbers, and date of publication.

(d) *EPA document identification number.* Each study will be assigned an EPA Master Record Identification (MRID) number, of which the submitter will be promptly notified. This number should be used in all further communications with the Agency about the study.

(e) *Reference to previously submitted data.* Data which have previously been submitted need not be resubmitted unless specifically requested by the Agency. If an applicant or registrant wishes the Agency to consider such data in the review of an Agency action, he should cite the data by providing:

(1) The title or adequate description of the study;

(2) The transmittal information required by paragraph (a) (1), (1), and (3) of this section; and

(3) The MRID number assigned in accordance with paragraph (d) of this section.

§ 158.33 Procedures for claims of confidentiality of data.

(a) *General.* A data submitter must clearly identify any information for which he wishes to assert a claim of confidentiality under FIFRA sec. 10. The procedures in this section must be followed to assert a claim of confidentiality.

(b) *Claims of confidentiality for information described by FIFRA sec. 10(d)(1) (A), (B), and (C).* Any information claimed to be confidential under FIFRA section 10(d)(1) (A) through (C) must be submitted in accordance with the following procedures:

(1) The information must be contained in a separate attachment to the study. If any information is included in the body of the study rather than in the confidential attachment, the submitter waives a claim of confidentiality for such information under FIFRA section 10(d)(1) (A), (B), or (C).

(2) The attachment must have a cover page which is clearly marked to indicate that the material contained in the attachment falls within the scope of FIFRA section. 10(d)(1)(A), (B), or (C).

(3) Each item in the attachment must be numbered. For each item, the submitter must cite the applicable portion of FIFRA section 10(d)(1) (A), (B), or (C) on which the claim of confidentiality is based. In addition, for each item, the submitter must provide a list of page numbers in the study where the item is cited (i.e., identified by number).

(4) Each item in the attachment must be referenced in the body of the study by its number in the attachment.

(5) The following statement must appear on the Statement of Data Confidentiality Claims: "Information claimed confidential on the basis of its falling within the scope of FIFRA section 10(d)(1) (A), (B), or (C) has been removed to a confidential appendix, and is cited by cross-reference number in the body of the study." The statement must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

(c) *No claim of confidentiality under FIFRA 10(d)(1) (A), (B), or (C).* If no claim of confidentiality is being made for information described by FIFRA section 10(d)(1) (A), (B), or (C), or if such information is not contained in the body of the study, the Statement of Data Confidentiality Claims must include the following statement: "No claim of confidentiality is made for any information contained in this study on the basis of its falling within the scope of FIFRA section 10(d)(1) (A), (B), or (C)." This statement must bear the name, title and signature of the submitter or his properly designated agent, and the date of signature.

(d) *Claim of confidentiality for information not described by FIFRA section 10(d)(1) (A), (B), or (C).* Any information not described by FIFRA section 10(d)(1) (A), (B), or (C) for which a claim of confidentiality is made must be submitted in accordance with the following procedures.

(1) The information must be clearly marked in the body of the study as being claimed confidential;

(2) A separate Supplemental Statement of Data Confidentiality

Claims must be submitted identifying by page and line number the location within the study of each item claimed confidential, and stating the basis for the claim.

(3) The Supplemental Statement of Data Confidentiality Claims must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

§ 158.1001 Ingredients considered inert when used in antimicrobial products.

The following substances are designated inert ingredients within the meaning of FIFRA section 2(m) when used in antimicrobial pesticide products:

Substance	Uses
Acetone	Solvent.
Alkyl * amino betaine (46 percent C_{12}.24 percent 3_{14}. 10 percent C^{16}, 6 percent C^{10}, 7 percent C_8, 5 percent C_{18}.	Corrosion Inhibitor/Surfactant.
Alkyl monoethanolamide	Emulsifier.
Aluminum chloride	Detergent.
Aluminum hydroxybenzenesulfate sulfonate.	Emulsifier.
Aluminum powder	Filler.
Ammonium carbonate	Detergent.
Ammonium citrate	Sequesterant.
Ammonium lauryl sulfonate	Emulsifier.
Ammonium oleate	Detergent/Emulsifier.
Ammonium oxalate	Detergent.
Amyl acetate	Diluent.
Borax	Detergent.
Butyl alcohol, tertiary	Solvent/Odorant
Carbon	Carrier/Absorbent.
Castor oil	Emulsifier.
Citric acid	Sequesterant.
Diethanolamine dodecylbenzene sulfonate.	Detergent.
Dimethyl phthalate	Perfume.
Disodium monoethanolamine phosphate.	Emulsifier.
Dodecyl benzene sulfonic acid.	Detergent.
Essential oils	Perfume.
Ethanol (ethyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Ethanolamine	Emulsifier.
Ethanolamine dodecylbenzene sulfonate.	Detergent.
Ethoxylated lanolin	Ointment base.
Ethylenediamine	Emulsifier.
Ethylenediaminetetraacetic acid (including all salts and derivatives.	Sequesterant.
Fumaric acid	Sequesterant.
Gluconic acid	Buffer.
Isooctyl phenoxy polyethoxy ethanol.	Surfactant.
Isopropanol (isopropyl alcohol	Solvent, except in tinctures or where sole or major active ingredient.
Isopropyl myristate	Solvent.
Juniper tar	Odorant.
Lauryl alcohol	Detergent/Odorant.
Lauryl methacrylate	Emulsifier.
Limonene	Odorant/Perfume.
Magnesium chloride	Builder.
Magnesium lauryl sulfate	Detergent.
Magnesium silicate	Odor absorbent.
Menthol	Perfume.
Methanol (methyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Methyl ethyl ketone	Solvent.
Methyl salicylate	Perfume/Odorant.
Mineral oil, mineral seal oil or white mineral oil.	Lubricant.
Monoethanolamides of the fatty acids of coconut oil.	Emulsifier.
Monosodium phosphate	Emulsifier/Buffer.
Morpholine	Corrosion inhibitor.
Nonylphenoxypolyethoxyethanol..	Suractant.
Octylphenol	Nonionic surfactant.
Oil of citronella	Perfume/Odorant.
Oil of eucalyptus	Perfume.
Oil of lemongrass	Perfume.
Oleic acid	Solvent.
Petroleum distillate, oils, hydrocarbons, also paraffinic hydrocarbons, aliphatic hydrocarbons, paraffinic oil.	Lubricant/Solvent.
Polyoxyethylene sorbitol, mixed ether ester of.	Emulsifier.
Polyvinylpyrolidone	Emulsifier.
Potassium bisulfate	Builder.
Polyvinylpyrrolidone	Emulsifier.
Potassium bisulfate	Builder.
Potassium carbonate	Detergent.
Potassium dodecylbenzenesulfonate.	Anionic detergent.
Potassium laurate	Emulsifier.
Potassium myrisate	Emulsifier.
Potassium *N*-(*a*-(nitroethyl) benzyl) ethylenediamine.	Emulsifier.
Potassium phospatae, tribsic	Sequesterant.
Potassium ricinoleate	Emulsifier.
Potassium toluene sulfonate	Detergent.
Potassium xylene sulfonate	Detergent.
Propanol (propyl alcohol)	Solvent, except in tinctures or where sole or major active ingredient.
Soap	Detergent.
Sodium acetate	Buffer.
Sodium alkyl (100 percent C^{9}): benzenesulfonate..	Detergent.
Sodium bicarbonate	Detergent.
Sodium carbonate	Detergent.
Sodium chloride	Builder.
Sodium decylbenzene sulfonate.	Detergent.
Sodium diacetate	Sequesterant.
Sodium dihydroxyethylglycine	Chelate/Buffer.
Sodium diisopropylnaphthalene sulfonate.	Detergent.
Sodium di. (monoethanolamine) phosphate.	Emulsifier.
Sodium dodecylbenzene sulfonate (May be active as a sanitizer in dishwashing formulations).	Detergent.
Sodium dodecyl diphenyl oxide sulfonate.	Perfume.
Sodium glycolate	Sequesterant.
Sodium laurate	Detergent.
Sodium N-lauroylsarcosinate	Detergent.
Sodium lauryl sulfate	Detergent.
Sodium metasilicate	Detergent.
Sodium *N*-methyl-*N* oleoyl taurate.	Emulsifier.
Sodium mono and dimethyl naphthalene sulfonate.	Detergent.
Sodium oleate	Emulsifier.
Sodium phosphate	Emulsifier/Buffers.
Sodium salt of Turkey Red Oil	Emulsifier.
Sodium sesquicarbonate	Detergent.
Sodium silicate	Detergent.
Sodium sulfate	Detergent.
Sodium sulfonated oleic acid	Emulsifier.
Sodium thiosulfate	Builder.
Sodium toluene sulfonate	Detergent.
Sodium tripolyphosphate	Sequesterant.
Sodium xylene sulfonate	Detergent.
Tetrapotassium pyrophosphate.	Sequesterant.
Tetrasodium pyrophosphate	Emulsifier.
1,1,1,-Trichloroethane	Diluent.
Triethanolamine	Emulsifier.
Triethanolamine dodecylbenzene sulfonate.	Detergent.
Triethanolamine laurate	Emulsifier.
Triethanolamine lauryl sulfate	Emulsifier.
Triethanolamine myristate	Emulsifier.
Triisopropanolamine	Emulsifier.
Triethanolamine	Emulsifier.
Trisodium phosphate	Detergent.
Turkey red oil	Emulsifier.
Undecylenic acid	Perfume.
Xylene	Solvent.
Zirconium oxide	Dye.

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Subpart A and E—[Removed]

4. By removing Subparts A and E of Part 162.

[FR Doc. 84-25226 Filed 9-25-84; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 156 and 167
Labeling Requirements for Pesticides and Devices; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 167

[OPP-30052; FRL 2604-1(a)]

Labeling Requirements for Pesticides and Devices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise and expand its regulations for the labeling of pesticide products and devices under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA). The proposed regulation states the labeling requirements for pesticides required to be registered and provides recommendations for labeling when no requirement is imposed. Requirements are also proposed for pesticide products whose labeling is subject to Agency regulation under the misbranding provisions of the FIFRA, but which are not required to be registered. This subpart would describe the requirements for the format and placement of the label, and the relationship of its various elements. It would also establish requirements for the content of pesticide labels, the scientific criteria, if any, on which specific requirements are based, and, when necessary, the specific wording to be used. The Agency believes that this revision will provide for pesticide producers a comprehensive description of pesticide labeling requirements, and will result in better quality pesticide labeling for users.

DATE: Written comments on this proposed rule should be submitted on or before December 26, 1984. Mark comments with the notation OPP-30052.

ADDRESS: Submit written comments to: By mail: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental protection Agency, 401 M St., SW, Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submited for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-0592).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

This part would establish comprehensive regulations for the form and content of pesticide product labeling, and is issued under the authority of sections 2, 3(c), 5, 6, 7, 9, 10, 12, 17, 18, 19, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA" or "the Act"), 7 U.S.C. 136 through 136y. It would apply both to pesticides required to be registered and to pesticides not subject to registration requirements but for which the Agency has authority to regulate labeling.

The statutory standard that is the basis for Agency regulation of pesticide labeling is contained in section 2(q) of FIFRA, which defines a "misbranded" pesticide and enumerates specific labeling deficiencies that constitute misbranding. The regulations interpret and elaborate upon the statutory standard.

The Agency is empowered to enforce its labeling requirements pursuants to its authority to regulate pesticide distribution and sale. FIFRA sec. 3 requires that a pesticide be registered prior to distribution and sale. As a prerequisite to registration, the labeling of the pesticide must comply with the requirements of the Act. Failure to comply with the labeling requirements may result in a denial of an application for registration or may provide grounds for cancellation of the registration of the pesticide under FIFRA sec. 6.

In addition, section 12(a)(1) (E) and (F) of FIFRA provide that it is unlawful to distribute or sell a pesticide or device that is misbranded. (The Act does not define a "misbranded" device, but EPA interprets the pesticide misbranding provisions to apply to devices.)

The Agency has issued regulations under section 5 of FIFRA establishing labeling requirements for pesticides distributed and sold under experimental use permits. These labeling requirements are currently set out in 40 CFR 172.6. This part includes room for the section 5 labeling regulations should the Agency decide to transfer them to this part at a future time.

The regulations in 40 CFR Part 166 for emergency exemptions do not currently include labeling requirements. Section 156.112 of this part establishes requirements for products shipped in accordance with an emergency exemption.

B. Background

In the **Federal Register** of July 3, 1975 (40 FR 28242), EPA issued final regulations ("the 1975 regulations") for the registration and classification of pesticides. These regulations, codified as 40 CFR Part 162, Subpart A, included requirements for the labeling of registered products in § 162.10.

Since the 1975 regulations on registration were published, FIFRA has been amended three times, in 1975, 1978, and 1980. The 1978 amendments included provisions directly affecting labeling, and others having broad implications for labeling:

1. Unregistered pesticides produced for export only are now required to bear a statement that they are not registered in the United States (FIFRA sec. 2(q)(1)(H)).

2. FIFRA sec. 2(ee) was added to define the term "to use any registered pesticide in a manner inconsistent with its labeling." It is a violation of the law to use any registered pesticide in a manner inconsistent with its labeling. That section expressly excludes certain types of use from the definition.

3. FIFRA sec. 3(c)(5) was amended to permit the Administrator to register a pesticide without determining whether its composition is such as to warrant the proposed claims for it. The Agency issued conditional registration regulations, which were published in the **Federal Register** of May 11, 1979 (44 FR 27932), that waived the requirement to submit efficacy data for all but public health pest claims and new uses of chemicals whose registrations have been cancelled, suspended, or placed under special review. The Agency issued a rule, published in the **Federal Register** of July 26, 1983 (48 FR 34000), that extended the efficacy data waiver to additional pesticide products. Under the waiver, the Agency no longer reviews efficacy data upon which use directions are based for new products or new uses of existing products. Without this initial product performance data, the Agency is compelled to monitor more closely the content of use

directions on labels. Label use directions directly relate to the potential for exposure from the use of pesticides. If a pattern of inaccurate, outdated, or ambiguous use directions is determined to be a major problem, the Agency will require the submission of efficacy data on an individual basis or for a group of common products.

In the **Federal Register** of June 25, 1975 (40 FR 26802), EPA issued proposed guidelines describing data and labeling requirements for pesticides. These were intended to supplement the labeling regulations mentioned earlier in the use directions area. The Agency proposed to add a new section pertaining to labeling, focusing primarily on requirements for use direction labeling for various types of products. In response to the 1975 proposal, over 80 sets of comments were received relating directly to the labeling portion. These comments have been considered in drafting this new subpart. However, due to the broad expansion in scope of this new proposal and the extensive restructuring that has occurred in its development, some of the comments no longer appear pertinent. EPA believes that the comments have been adequately considered, but if not, commenters are invited to reiterate their comments at this time. In preparing the final regulations EPA will address issues raised by commenters.

A Label Improvement Program has been initiated to bring older registered products into compliance with the requirements of current § 162.10. In addition, labeling changes, including many in this proposal, may be required on a case-by-case basis at any time an application for registration, amended registration or reregistration is submitted, or if the Agency issues a notice of intent to cancel the registration of a product.

C. Scope and Organization of Part 156

As noted previously in Unit I.A. Authority, Part 156 would prescribe, for all pesticides for which the Agency has authority to regulate labeling, the form and contents of the label, and the relationship of label components. In the context of registration, where data requirements are the basis for labeling statements, this part would relate label requirements and criteria to the data supporting registration.

Part 156 would not specify the circumstances when labeling must be submitted or revised, the responsibility of registrants and producers to maintain label accuracy and integrity, or the administrative and procedural requirements of submission, Agency review, and approval of labeling. Finally, it would not address the legal or enforcement consequences of failure to adhere to these requirements. These aspects of labeling are addressed in procedural regulations currently found in 40 CFR Part 162, Part 166, and Part 172. Elsewhere in today's **Federal Register**, a related proposal to revise and renumber Part 162 is being issued.

This proposal primarily addresses labeling of products required to be registered, since the most extensive labeling requirements are imposed on such products. Section 3(c) (5) of FIFRA sets forth the statutory requirement for registration with respect to labeling, as follows:

> The Administrator shall register a pesticide if he determines that, when considered with any restriction imposed under subsection (d)—* * * (B) its labeling and other material required to be submitted comply with the requirements of this Act; * * *.

1. The requirements for labeling that "complies with the requirements of the Act" are encompassed within the statutory definition of misbranding, found in FIFRA sec. 2(q). This definition establishes as misbranded a pesticide that, among other things, does not bear a label containing:

a. The name of the product;

b. The name and address of the producer, registrant, or person for whom produced;

c. A net weight statement;

d. An ingredients statement;

e. A use classification;

f. Registration and establishment numbers assigned to the product and producing establishment, respectively; or

g. Use directions.

Furthermore, required labeling statements must be prominent and conspicuous and may not be false or misleading. It is important to note that, although many of the misbranding requirements relate only to registered products, the term "misbranded" applies to any pesticide, whether subject to registration or not (and, by extension, to devices).

2. In addition to labeling requirements for registered products, Part 156 proposes labeling requirements for pesticides not required to be registered and for devices. Because these requirements often parallel those for registered products, they are cross-referenced except where differences exist. The following classes of products would be included:

a. Products shipped between establishments operated by the same producer.

b. Products intended solely for export.

c. Products shipped under an emergency exemption.

d. Products shipped for disposal under FIFRA sec. 19.

e. Devices.

Subpart A of these proposed regulations contains general requirements that apply to all or most products. Subpart B describes product identification requirements, Subpart C precautionary statements, and Subpart D use directions and restrictions. Subpart E proposes requirements for specialized labeling situations. Subpart F proposes requirements for products not subject to registration. Subpart P prescribes performance standards and resulting labeling requirements for antimicrobial products. If labeling requirements are in the future prescribed for other specific types of products they would be located in subparts beyond Subpart P.

D. Relation to Current Labeling Regulations

Labeling requirements for registered products are currently prescribed in § 162.10 of the registration regulations (40 CFR Part 162). Requirements for the labeling of products to be used under an experimental use permit are contained in 40 CFR Part 172. Labeling requirements for other pesticides and devices are not currently prescribed by regulation.

This part is intended to serve as the principal source of labeling requirements for pesticide products. The Agency is revising its procedural regulations in Part 162 (see the related document being proposed today), and will retain and amplify in that part provisions concerning the submission, review, and approval of labeling.

II. Major Provisions of This Proposal

A. Format of Label

The Agency believes that standardizing the placement of certain elements of the label makes label information readily identifiable, thereby encouraging users routinely to read and observe label directions and precautions. For the most part, this proposal would retain the format requirements of the 1975 regulations with respect to required placement of label elements and grouping of common or related elements.

With respect to contrast, the Agency would require that the label text contrast with the background with respect to color, and would recommend the use of dark-colored text on a lighter background. The Agency would reserve the right to reject color combinations that are not clearly contrasting. Two additional clarifying requirements have been added in this section:

1. If the container is transparent, the color of the label text must clearly contrast with the contents of the container, rather then the container itself; and

2. When the product label is required to bear the word POISON in red, surrounding text may not be in red.

The Agency proposes in this revision to convert its type size requirements from U.S. units to metric units. Section 156.10(c) expresses label dimensions in metric units and letter height in absolute millimeters rather than "points." Specification in absolute units is in keeping with the requirements of other agencies having labeling statutes, such as the Federal Hazardous Substances Act and the Fair Packing and Labeling Act. The metric equivalents are based on the established conversion factors of 72 points to one inch and one inch to 25.4 millimeters, rounded to the nearest one-half millimeter. The following table shows the differences in the proposed type size requirements compared to those in the current regulations.

TABLE A—TYPE SIZE REQUIREMENTS FOR PESTICIDE LABEL TEXT IN PROPOSED PART 156 IN METRIC UNITS

Square inch (current requirement)	Approximate square centimeters (proposed requirement)	Type size requirement for—			
		Signal word and restricted use statement		Child hazard warning	
		Current	Proposed	Current	Proposed
Column [1](1)	(2)	(3)	(4)	(5)	(6)
<5	<30	6	2.0	6	2.0
>5–<10	>30–<60	10	3.5	6	2.0
>10–<15	>60–<100	12	4.0	8	3.0
>15–<30	>100–<200	14	5.0	10	3.5
>30–<60	>200–<400	18	6.5	12	4.0
>60	>400	24	8.5	18	6.5

[1] Only colums 2, 4, and 6 appear in Table 1 of § 156.10

Further, the Agency proposes to discontinue the requirement that the heading for the Storage and Disposal statement appear in the same type size as the required for the child hazard warning. Since the storage and disposal heading is but one of many headings required or used on the label, there appears to be no logical reason to single it out for particular type size requirements. Instead, EPA proposes to require that all required headings, including that for the storage and disposal instructions, be distinguished from text by use of a contrasting color, larger type size, different type face, or other means of ensuring prominence.

Finally, the Agency would like comment on the possibility of permitting registrants to provide (and segregate on the label) information that was not required by regulations or by the Agency. The registrant could in this way provide additional information to users, provided that it is not misleading or inconsistent with other label statements. A registrant also could choose to voluntarily restrict the product's use in ways not required by the Agency. Although such statements could not be enforced under the misuse provisions of FIFRA sec. 12, users and State pesticide enforcement officials could distinguish those restrictions which the Agency explicity requires from those that it suggests or recommends, or that are registrant-imposed.

B. Use of Symbols

Section 156.10 of these regulations would permit, but would not require, the use of graphic symbols on pesticide labels as an accompaniment to the labeling text.

The Agency recognizes that symbols can be a valuable tool in communicating information on chemical characteristics and hazards to illiterate people, or those who may not speak or read English as their primary language. Moreover, EPA is aware that numerous symbol systems have been devised both by organizations and individual countries to facilitate communication of hazard information in international commerce. Nevertheless, EPA believes it would be inappropriate to endorse (or require the use of) any single symbol system at this time. If, in the future, standardization of international labeling criteria and requirements (a goal that the Agency supports) is achieved through international cooperation, and a unified set of symbols developed, the Agency may adopt and prescribe the use of such symbols on pesticide labels.

The Agency is also considering, and would like specific comment on, a system that would use colored bands at the bottom of the label to identify the acute toxicity level of the product. Such a system has been recommended for use by South American, Central American, and Caribbean nations by the Plant Protection Directors of those nations, at a regional consultation on the Harmonization of Registration and Labeling sponsored by the Inter-American Institute for Cooperation on Agriculture. The color band scheme would use the colors red, yellow, blue and green (in that order from highest to lowest toxicity) as a band along the base of the label, equal to 15 percent of the width of the label. The colored band would be supplemented by wording within the band indicating the toxicity category designation of the product, signal words, and, if applicable, the skull and crossbones symbols.

C. Product Identification

Section 156.20 would require that the name of a pesticide product appear on the front panel of the label, would state requirements relating to unique and duplicative names, and would specify naming practices considered false or misleading.

Section 156.22 would require that a product label indicate the broad pesticidal functions of the product, so that a purchaser unfamiliar with pesticides will not knowingly purchase a product that will not serve his needs. Most product labels already provide this information in one or another acceptable form.

Section 156.24 would establish requirements with respect to the name and address appearing on the label. The Agency is proposing two modifications in the requirements from those currently in effect. Section 162.10 of the 1975 regulations permits the name and address on the label to be that of the "producer, registrant, or person for whom produced." Since the purpose of having a name and address on a pesticide label is to enable the user to direct questions or problems to the person responsible for the product, the Agency believes that the name of the producer on the label is not sufficient for this purpose. Accordingly, this section would require that the name appearing on the label be that of the registrant (or distributor). Nothing would preclude the registrant or distributor from also including the name of the producer of the product if he so desires. A clarification has also been proposed that a foreign registrant who is required to have a U.S. agent for administrative and correspondence purposes, must include the name and address of the registrant and not the agent on the label.

Section 156.36 would prescribe requirements pertaining to the net contents statement on the label. These regulations propose changes in the requirements for the declaration of net contents, so that pesticide labels conform more closely to those of non-pesticide products. The following revisions are proposed:

1. Elimination of current requirements with respect to the form of the net contents statement. The net contents may be expressed in any reasonable manner, provided that the units chosen are appropriate to the size of the package. Products in compliance with the requirements of the Fair Packaging and Labeling Act, as found in 16 CFR Part 500, would be considered to be in compliance with the requirements of FIFRA.

2. Addition of requirements (consistent with those in 16 CFR Part 500) for the declaration of net contents on the outer container of a multi-unit package, whose unit packages are not intended for separate retail sale. Currently, there are no specific requirements for declaring the number or net weight of the individual unit packages, although many products bear such statements.

3. A provision permitting, but not requiring, metric units in lieu of, or in precedence to, U.S. units. Although the use of metric units in both labeling and packaging is voluntary, their use is strongly encouraged by the Agency when practicable.

D. The Ingredients Statement

Under the provisions of 40 CFR 158.120, proposed in the **Federal Register** of November 24, 1982 (47 FR 53192), an applicant would be required to determine and submit to the Agency the upper and lower limits on the amount of each active ingredient present in his product. Since the lower certified limit would actually be present in the product only a small percentage of the time, the Agency proposes in this subpart that the label declaration of active ingredient percentage be the amount of active ingredient found in a typical sample of the product (the "normal concentration"). The nominal concentration will always be within the stated certified limits for the active ingredient.

Use of the nominal concentration as the label declaration of active ingredients would not represent a change in Agency policy. Current regulations require that the lowest percentage which may be present be stated, within the limits of good manufacturing practice. The certified limits required for each active ingredient are intended to encompass the "good manufacturing practice" variations referred to in current regulations, so that the lower certified limit represents the lowest amount that may be present. The lower certified limit would be used as the enforceable lower limit on product composition for purposes of FIFRA section 12(a)(1)(C), while the nominal concentration appearing on the label would be the routinely achieved concentration used for calculation of dosages and dilutions.

It is important for registrants to note that certified limits for active ingredients are not considered to be trade secret information under FIFRA section 10(b). In this respect they will be routinely provided to States for enforcement purposes, since the nominal concentration appearing on the label will not represent the enforceable composition for purposes of section 12(a)(1)(C).

The Agency also proposes to establish an order or precedence of common names used in the ingredients statement. Previously, the only common name acceptable on the label was that approved by the American National Standards Institute (ANSI). If there was no ANSI name the chemical name alone was to be used. Many older pesticides do not have ANSI common names. The Agency believes that the length and complexity of most chemical names prevents users from recognizing and becoming familiar with those pesticides. Therefore, the proposal would permit the use of common names established by the International Standards Organization (ISO), the British Standards Institute (BSI), or an established technical association in the absence of an established ANSI common name. New pesticides never before registered would be required to have a common name for use on the label.

E. Elimination of Mandatory Expiration Dating

The 1975 regulations required that, if a product's composition was known to change significantly after manufacture, the label must bear an expiration date after which the product could not be sold or used. Under this proposal, a registrant would no longer be required to use an expiration date. However, the product would have to meet all composition claims while in channels of trade, and registrants might wish to use an expiration date on the label to limit potential enforcement action for product deterioration.

Anticipated product deterioration would also affect the label directions for use. In developing use directions for a product that degrades rapidly, the registrant should make allowances for any changes in efficacy resulting from the constantly decreasing percentage of active ingredient. Many products known to deteriorate are used against pests of public health significance, where product ineffectiveness due to inadequate label dosages could have serious health consequences. Proposed § 156.72(i)(6) would require that the use directions instruct the user how to compensate for the lower level of active ingredient present at the time of use, such that the user could ascertain the correct dosage and proper use conditions at any time during which the product may be legally used.

F. Toxicity Category Revisions

EPA is proposing in this part to revise the Toxicity Category criteria for dermal toxicity and for eye irritation potential, to clarify the wording of the Toxicity Category criteria for dermal irritation, and to make the inhalation criteria consistent with the test methods advocated by the Registration Guidelines.

The Agency is proposing to revise the criteria for Category IV toxicity for dermal exposure. The 1975 regulations established a lower limit for Category IV dermal toxicity as 20,000 mg/kg. Since that time, the Agency has become aware that in many cases such a high level of test material cannot reasonably be achieved on the skin of the test species. Consequently, a registrant who believes that his product is in Toxicity Category IV cannot easily demonstrate that fact through testing, and his product is assigned to Toxicity Category III. In its Registration Guidelines, the Agency has recommended that dermal toxicity testing be conducted with 5000 mg/kg of test substance, the maximum that can realistically be achieved. Accordingly, the Agency is proposing to assign products to dermal Toxicity Category IV based on the 5000 mg/kg test level.

EPA is also proposing to add to the dermal irritation criteria clarifying language intended to provide better guidance on the application of the criteria. The addition of clarifying language would not in any way increase or decrease the stringency of the criteria.

The Agency further proposes to change the eye irritation criteria. Until 1975, the Agency had no published eye irritation criteria nor any Toxicity Categories assigning signal words for eye irritation potential. Unpublished criteria were applied to products for the purpose of labeling. These criteria were subsequently adopted in the Agency's 1975 regulations (40 CFR 162.10(h)(1)).

and were established on the basis of the best information available at the time.

In 1976, the Consumer Product Safety Commission, which administers the Federal Hazardous Substances Act, requested that the National Academy of Sciences (NAS) revise its 1964 document entitled "Principles and Procedures for Evaluation the Toxicity of Household Substances," commonly known as the NAS 1138 publication. In conjunction with that revision, the Soap and Detergent Association submitted a study on toxicity test procedures that included a comprehensive study [1] on eye irritation effects of substances known to be injurious to the eye. One of the more significant conclusions of the study was the following:

> For adequate evaluation of the effects produced by introducing chemicals into the eyes of animals, the observation period must extend up to three weeks. Some injuries may not be evident until after 3 days have passed, and many lesions undergo significant healing within 21 days.

The study proposed a classification scheme for eye irritation severity based on a three-week observation period, and recommended that the reversibility of the effects within the period be considered a factor in classifying substances. The proposed scheme defines four categories of eye irritation encompassing: (1) Corrosive or severe irritation; (2) substantial harm, but reversible within 21 days; (3) moderate irritation reversible in less than 7 days; and (4) essentially inconsequential effects. The results of this study were endorsed and adopted in the revised NAS 1138 publication issued in 1977.[2]

In 1979, EPA adopted the eye criteria of the NAS as one of the determinants of whether a pesticide product should be packaged in child-resistant packaging as required by 40 CFR 162.16, and stated its intention to incorporate these eye criteria into the registration regulations defining Toxicity Categories. See the **Federal Register** of March 9, 1979 (44 FR 13022). Accordingly, the Agency is proposing in Table 1 of § 156.42 new Toxicity Categories for eye irritation.

This revision might affect products that are assigned to Toxicity Categories I and II. Proiducts currently in Categories III and IV would not be affected, since the criterial for those categories are essentially unchanged.

Note also that the term "corneal opacity" which is used in the current regulations would be replaced with the term "corneal involvement." This revision recognizes that corneal opacity is only one facet of corneal injury and healing of the injured tissue.

In conjunction with the change in criteria, EPA would incorporate into the hazard warnings for the new categories a description of the actual degree of severity of the effects to be expected, and so proposes to included in Table 4 of § 156.52(b) language that reflects the category terminology adopted in the NAS 1138 publication.

As a third revision, EPA is proposing to revise inhalation criteria to reflect the test methods recommended in the Registration Guidelines. Current labeling categories provide for the following Toxicity Categories:

Category I—LC_{50} up to 0.2 mg/l
Category II—LC_{50} from 0.2 mg/l through 2 mg/l
Category III—LC_{50} from 2 mg/l through 20 mg/l
Category IV—LC_{50} greater 2 than 20 mg/l

Exposure durations are not specified; however, in practice these concentrations have been based on one-hour exposures and the exposure levels have been based on a calculated concentration. The Registration Guidelines in Subdivision F recommend 4-hour exposures and actual concentration levels, for the following reasons:

1. One-hour exposures do not allow time for equilibration of the atmospheres within the chambers, and the concentrations within the chambers are much lower than indicated by the nominal concentration estimates.

2. The nominal concentration, especially for aerosols, is not an accurate measure of the actual inhalable concentration, and is often off by a factor of 10 to 100 (or higher).

3. The short 1-hour exposure does not readily lend itself to adequate sampling of the atmospheres for concentrations and particle sizes. Moreover, the four-hour exposures are more conservative in evaluating possible acute exposures in humans.

Most inhalation exposures obey Haber's Law, which states that the product of the exposure time and the cocentration is a constant. Therefore the proposal, in defining a 4-hour exposure period instead of the 1-hour period commonly used in the past, also reduces the Toxicity Category criteria by a factor of four. Applicants who choose test methods using an exposure time other than 4 hours should be aware that the inverse relationship of exposure concentration and exposure time will be maintained in applying the criteria, i.e., if testing is conducted for two hours, the criteria for the categories will be doubled.

The Agency is considering ways in which it might establish a chronic effects labeling scheme. EPA acknowledges the difficulties inherent in addressing chronic effects, for which quantitative criteria are often not feasible or self-evident. Additional difficulties may arise in attempting to translate those effects into a practical labeling scheme. EPA efforts are still in a formative stage, and the Agency would like comment on the feasibility of chronic effects labeling, possible ways of implementing a scheme within the framework of FIFRA, and possible language that could be used to convery accurately the nature and risks of chronic effects.

G. Statement of Practical Treatment

Section 156.48 would require that a statement of practical treatment appear on the labels of most pesticide products. Products in Toxicity Categories I, II, and III by any route of exposure would be required to bear information on measures that can or should be taken when excessive exposure occurs. Separate information would be required for those treatments that the average person can undertake, and those that can be provided only by medical personnel or physicians. A "Note to Physician" would be mandatory for products in Toxicity Category I, or products possessing characteristics for which specific medical treatment is essential or singularly beneficial.

Practical treatment statements for Toxicity Category I routes of exposure are currently required to appear on the front panel of the label, preferably contained in a blocked paragraph. The agency woud prefer that all practical treatment statements appear on the front panel, but since label space may not always permit this ideal placement, practical treatment statements for Categories II and III could be placed with the general precautionary statements on a side or back panel of the label. In this case, a referral statement on the front panel would be required. The heading "Practical Treatment" or "First Aid," would be permitted, but the paragraph could not be titled "Antidote" unless a specific antidote is available. Typical and currently recommended practical treatment statements are provided in Tables 1 through 5 of § 156.52.

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[1] Green, W.R., J.B. Sullivan, R.M. Hehir, and L.G. Scharpf. 1976. A systematic comparison of chemically induced eye injury in the albino rabbit and rhesus monkey. In Appendix C of: Submission to the National Academy of Sciences by the Soap and Detergent Association on Toxicity Test Procedures, with Appendices A–F. Soap and Detergent Association, Washington, DC.

[2] Committee for the Revision of NAS Publication 1138, Committee on Tox., Nat. Res. Council. 1977. Principles and Procedures for Evaluating the Toxicity of Household Substances. Pp. 1–9, 23–55. Prepared for the Consumer Product Safety Commission. National Academy of Sciences, Washington, D.C.

H. Labeling Requirements for Inert Ingredients

FIFRA authorizes EPA to regulate all ingredients used in pesticide products, including inert ingredients that are not in themselves pesticidally active. These include solvents, emulsifiers, defoaming agents, perfumes and fragrances, propellants, diluents of all sorts, and similar ingredients whose presence in the formulation is ancillary to its pesticidal function. The definition in FIFRA section 2(m) of such ingredients as "inert" is intended only to distinguish them from those that are pesticidally active, and in no way signifies that they are toxicologically or chemically inert. Inert ingredients may or may not be hazardous by themselves, or in combination with other ingredients.

Because the identity of an inert ingredient is protected from disclosure by FIFRA sec. 10(d)(1)(C), a prerequisite for labeling identification of such ingredients is that the Agency make a finding that "disclosure is necessary to protect against an unreasonable risk of injury to health or the environment." EPA believes that this criterion is clearly met when the presence of an inert ingredient contributes significantly to the overall acute hazard of the product.

Required label statements would take the form of identification of the ingredient, precautionary statements to address the particular hazard of the inert ingredient, or more commonly, both. Table 1 of § 156.50 lists specific inert ingredients and proposed label requirements for products containing them. The table would be expanded to include other inert ingredients as the need arises.

The Toxic Substance Control Act (TSCA) regulates chemicals that are also used as inert ingredients in pesticide products. If data development is required under TSCA for a chemical that is an inert ingredient in pesticide products, such data may serve as the basis for label statements under FIFRA. If labeling regulations are issued under sec. 6 of TSCA, the Agency would consider applying those requirements to chemicals used as pesticide inert ingredients to the extent possible within the framework and authority of FIFRA.

I. Human Hazard Precautionary Statements

Section 156.52 proposes requirements for human hazard precautionary statements, and their location and format, if applicable. The section consists primarily of a series of tables specifying precautionary statements pertaining to:

(1) Signal word; (2) precautionary measures to avoid or reduce the possibility of injury; and (3) instructions on practical treatment or other remedial steps to take if exposure occurs.

The statements and format requirements proposed in this section are largely unchanged from those in the 1975 regulations in 40 CFR 162.10(h)(2)(i), but have been expanded and are better organized. Practical treatment measures recommended by the Agency have been added.

The statements are provided as a guide, but are those that would be commonly required for pesticide products in the prescribed Toxicity Categories. Because it is impossible to prescribe in these Tables exact statements for all combinations of ingredients, formulation types, and uses, the statements would be considered the minimum acceptable ones, and not inclusive of all statements that might be required. The need for additional precautionary statements or modified ones would be determined on a case-by-case basis.

A new § 156.52(c) has been added that would require a statement concerning respirator use for a pesticide that is highly toxic or toxic (Category I or II) by the inhalation route of exposure. The respirator requirement has been applied on a case-by-case basis for several years, but without being linked to specific toxicity criteria. EPA now believes that a required statement is necessary in this regard. To ensure that respirators provide adequate protection, only respirators approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health for pesticide use could be recommended on the label.

J. Environmental Hazard Precautionary Statements

Section 156.55 proposes requirements for environmental hazard statements (non-target species such as fish, aquatic invertebrates, wild mammals, birds, and beneficial insects) most of which were originally established in the 1975 regulations. Retaining the basic criteria and toxicity statements prescribed in present 40 CFR 162.10(h)(2)(ii), this section would prescribe acute toxicity criteria for labeling pertaining to honeybees, based on data that would be submitted in accordance with proposed 40 CFR 158.155 (Non-target insect data requirements). In addition, in the intervening period since the 1975 regulations were published, the Agency's responsibilities under the Endangered Species Act of 1975 have been carefully spelled out in regulations issued by the Department of the Interior (50 CFR Part 402). EPA has instituted a process for evaluating hazards to endangered species in consultation with the Departments of the Interior and Commerce—a process that may result in labeling statements of a restrictive nature. Finally, recent Agency labeling requirements have been shifted away from non-specific label statements that rely on interpretation by the user. It is increasingly clear, both from a legal and an enforcement standpoint, that label statements must contain a precise description of parameters that define the permitted use of the product.

Environmental hazard statements are of three types: those where explicit wording can be prescribed for all or most outdoor use products; those which derive primarily from the known toxicity of the active ingredient in outdoor use products based on testing that would be required by proposed 40 CFR 158.145 and 158.155; and those which are dependent on an evaluation of the product's hazards, use patterns, potential exposure, and other factors. These last generally take the form of use restrictions, and are generally prescribed on a case-by-case basis. Refer to § 156.76, Restrictions on Use.

The testing requirements of 40 CFR Part 158 allow the Agency to determine whether criteria for labeling statements of toxicity to fish, birds and mammals, aquatic invertebrates and honeybees are met. The 1975 regulations contained the same criteria concerning toxicity to fish, birds and mammals as are proposed here. The aquatic invertebrate criterion is new. Subdivision L of the Registration Guidelines describes recommended data protocols for beneficial insects (pollinators, aquatic insects, and predators), the honeybee being of primary concern. Of the beneficial insects, acute toxicity data are generally available only for the honeybee. Data requirements for other non-target insects are at a formative stage; therefore, toxicity categories and label statements prescribed by this part are limited to honeybees. As data requirements for other non-target insects are developed, additions and modifications to this part will be made to accommodate required labeling.

The Agency also proposes to modify the effluent discharge statement for products having uses that result in effluent discharges either directly into surface waters of the U.S. or indirectly into a sewer system. Examples of such products are those for formulating use, industrial treatment, cooling towers, pulp and paper mills, and leather tanning operations. Point source discharges (such as from a single site) are generally governed by the issuance of a National Pollutant Discharge Elimination System (NPDES) permit that may regulate the level or type of pollutants allowed to be discharged. Sewage treatment facilities that discharge are also required to have NPDES permits.

Since 1977 the Agency has required a statement prohibiting discharge into U.S. surface waters except in accordance with an NPDES permit. This language was used in the belief that pesticides contained in such discharges would be considered in setting the standards for each individual permit, or that in the absence of specific language in the permit, no discharge was permitted. This is apparently not so. A common misunderstanding of the NPDES system is that substances not mentioned in permits are not permitted to be discharged. In fact, the opposite is true: If a substance is not specifically mentioned in the NPDES permit, it may be discharged without limitation. Therefore the 1977 language would in most cases result in no control over the discharge of any particular pesticide.

The proposed language would not require that an NPDES permit set quantitative limits on the amount or concentration of pesticide that could be discharged in an effluent. Other general controls, such as good management practices, may be sufficient. Therefore, the label statement merely requires that the pesticide be "identified and addressed" in the NPDES permit.

Facilities that discharge pesticide-containing effluent to a sewer system are not required to obtain NPDES permits (the sewer system authority must obtain the permit). Therefore the label statement that applies to direct discharge operations is not appropriate for these indirect dischargers. Nonetheless, pesticides from industrial sources can seriously disrupt the operation of biological wastewater treatment plants by inhibiting biological activity or creating sludge contamination problems. If passed through the sewer system into a receiving stream or river, the pesticide may have effects on aquatic organisms. The Agency has increasingly become aware of problems from indirect discharge facilities, and proposes a label statement that would require pesticide users to notify their receiving sewer system authority prior to discharging. The form and consequence of this notification would not be prescribed by a label statement, but notification would allow the municipal system to be knowledgeable about the pesticides that are received by their facilities.

K. Flammability Statements

Existing regulations in 40 CFR 162.10(h)(2)(iii) require the term "flammable" for any product whose flash point, as determined by testing conducted in accordance with 40 CFR Part 158, falls between 20°F and 80°F. In order to be consistent with regulations issued under the Hazardous Materials Transportation Act, and with proposed regulations under the Federal Hazardous Substances Act, the upper limit would be extended from 80°F to 100°F. Products whose flash points fall at or below 20°F (extremely flammable) and those above 100°F would not be affected by this change. A product with flash point between 80°F and 100°F would, under this proposal, bear labeling of greater stringency than before. Tables 1 and 2 of § 156.58 reflect this change.

At the same time, EPA is proposing to permit a declaration of non-flammability on labels under specified circumstances. Claims for non-flammability have in the past been considered implied safety claims and therefore misleading statements. In some use situations, the knowledge that a product is nonflammable is not only beneficial but essential in the use and handling of the product. Examples of such use situations are in and around electrical machinery, around power lines and in hospital operating rooms. Provided that the factual statement is not applied to products that have no reasonable expectation of flammability under any circumstances, such as water-based products, and provided that the statement is not emphasized in a manner that implies safety, a product meeting the standards set out in this section could be labeled as "non-flammable." The Agency would reserve the right to determine whether the claim is reasonable, after review of the composition and uses of the product, and the data submitted to support the claim.

L. Classification Statements

Section 3(d) of FIFRA requires that each pesticide product be classified for restricted use or general use. The 1975 regulations require that a statement of classification appear on the label. The Agency now believes that the phrase "general use" is potentially misleading if a user infers from the statement that the product may be used for "general" purposes not listed on the label. The Agency believes that the intent of the statute to distinguish between products whose uses are restricted and those products whose uses are not restricted can be effected by labeling of those that are restricted. Section 156.62 proposes that products classified for restricted use bear a statement to that effect; products classified for general use would not be permitted to bear a statement of classification. The few products that may have been classified by the Agency for general use would be granted ample time to make the change, and use up old stocks of labels bearing the general use classification statement.

Further, the Agency proposes to modify the restricted use statement, by changing the text to read, "For retail sale to and use only by a Certified Application for uses authorized by his certification, or by persons under his direct supervision."

In the context of restriction of pesticide use, the Agency is considering establishing, probably under the authority of section 3(d)(1)(C)(ii), a series of defined user categories, such as pest control operator, arborist, and the like, that could be used by either the Agency or the registrant to restrict the use of a product when desired or deemed necessary. Unlike the certified applicator program currently in use under FIFRA sec. 3(d)(1)(C)(i), the use of these categories on labels would not necessarily result from any toxicity considerations, but might encompass considerations such as product performance, specialized equipment needs, or particular expertise.

Designations of this nature have been used on labels, both with and without Agency sanction, for a number of years. Before the inception of the certified applicator program, the Agency itself imposed such restrictions on products having toxicity characteristics that made their availability to the general public unacceptable. Since 1975, the Agency has generally used the certified applicator program when it wished to restrict a product's use, because of its clear authority to regulate and enforce certified applicator restrictions. However, the Agency has continued to accept voluntary registrant restrictions, adhering to the logic that the registrant must have good reason for desiring to limit the sale and distribution of his product, and recognizing that such restrictions also reduce exposure potential and environmental effects. The problem that arises with such voluntary restrictions is that the States, who have primary authority for enforcement of misuse under FIFRA sec. 12(a)(2)(G), cannot always discern from the label statements who the intended users of the product are. The States have also relied heavily on the certified applicator program, and have defined categories of certified applicator, but have not generally defined categories of users who are not certified applicators. Designation of additional categories of users could be used to bridge the gap between products which are available for use by anyone, and those that must be restricted because of toxicity considerations to certified applicators.

The Agency will be working with the States through the State FIFRA Issues Research and Evaluation Group (SFIREG) to develop candidate user categories that could be adopted by the Agency and the States. Meanwhile, the Agency would like comment on this subject, particularly as to potential user categories, and criteria for defining such user categories.

M. Reentry Restrictions

The 1975 regulations in § 162.10(i)(2)(viii) specify that each pesticide product must bear a reentry interval statement that meets the requirements of 40 CFR Part 170, Worker Protection Standards for Agricultural Pesticides, which provides standards for farm worker protection and notification. Briefly, Part 170: (1) Prohibits application of pesticides when unprotected persons are in the treatment area; (2) prohibits an owner or lessee from permitting reentry into treated fields by unprotected workers until exposure to the pesticides has been generally reduced by drying of sprays or settling of dusts; (3) establishes minimal time intervals for 12 specific chemicals, during which no reeentry is permitted without protective clothing; (4) provides that more stringent reentry restrictions may be established by States; (5) provides that more stringent reentry requirements contained on an individual pesticide label shall take precedence; and (6) requires oral or written warning to workers. EPA has developed data requirements upon which to base accurate and realistic reentry interval statements. Subdivision K of the Registration Guidelines addresses the factors involved in assessing exposure to workers after application of a pesticide, the types of data needed to make the assessment, and approaches for estimating appropriate reentry intervals based on data.

EPA is proposing in this part to continue in effect the 1975 labeling requirements based on Part 170. Because, however, the 1975 regulations did not specify the form or wording of label statements that met the requirements of Part 170, it has been difficult for registrants to comply with the 1975 regulations. Section 156.67 proposes statements for all products intended for outdoor agricultural use using hand labor.

The statements being proposed are consistent with those required by PR Notice 83–2, issued March 29, 1983. Products would have to be labeled with statements concerning exposure of persons in treated areas, reentry intervals if established by Part 170 or the Agency, warnings to workers, and, if products are in Toxicity Category I or II, certain statements in Spanish for the benefit of field workers who are not literate in English. The Agency would like comment on whether Spanish language requirements should be expanded to include products in Toxicity Categories III and IV.

EPA believes that oral warnings or posting of agricultural fields and outdoor areas, and placarding of structures and vehicles, are a necessary adjunct to labeling to ensure that persons who do not have access to the label information are at least made aware of the application of and potential exposure to the pesticide. Section 156.67(a)(7) would provide that the label require oral or written warnings or posting and would prescribe the content of any posting statement.

Part 170 is targeted specifically to "farm workers performing hand labor operations in fields after ground * * *, aerial, or other types of application of pesticides." However, EPA does not believe that reentry hazards should be perceived only as an agriculturally oriented problem. Adequate protection should be offered to all workers regardless of use situation. Fumigation in enclosed spaces, in particular, has the potential for serious harm if entry is gained into the treatment area without proper precautions. Accordingly, 40 CFR Part 158 requires exposure data for certain indoor fumigant uses, and § 156.67 correspondingly would require label statements pertaining to entry into fumigated areas such as structures and vehicles.

EPA is currently reevaluating its Part 170 rules, and intends to propose new standards for farmworker protection in the future. To the extent that the new standards would require modifications to the labeling requirements of § 156.67, EPA would revise this rule.

Reentry restrictions provided by Part 170 are not appropriate to indoor fumigant applications. Therefore, the label statements contemplated by Part 170 would not be required by this section. Other more appropriate statements are included in § 156.67(b).

N. Disposal Statements

In 40 CFR Part 165, Subpart C, Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers, issued in 1975, EPA described recommended storage and disposal practices for pesticides and their containers. Since 1975, EPA has required on labels a series of disposal statements consistent with the prohibitions and recommended practices of that subpart. Data requirements to enable the Agency to define acceptable disposal methods for individual pesticides will in the future be proposed for inclusion in Part 158.

Since the issuance of Part 165 recommended procedures, the Resource Conservation and Recovery Act (RCRA) has been enacted, and a series of implementing regulations promulgated under its authority. Pesticide and container disposal may be regulated under both FIFRA and RCRA. The 1975 regulations require that acceptable disposal practices be stipulated on the pesticide label. A user who fails to follow label disposal instructions has misused the pesticide in violation of FIFRA sec. 12(a)(2)(G).

The labeling requirements proposed in this section are designed to be as consistent with RCRA as is possible under the FIFRA regulatory scheme. Because FIFRA requires that the Agency make determinations of health and safety on an individual product basis, EPA proposes to apply certain of the hazardous waste criteria based on pesticide formulation characteristics rather than generic or sole active ingredient characteristics used under RCRA rules. (The reference to "active ingredient" in RCRA regulations does not conform to that under FIFRA. "Active ingredient" under FIFRA refers to a pesticidally active ingredient, whereas under RCRA, "sole active ingredient" refers simply to the principal component of the product—as if the product were generically composed only of that ingredient.)

Briefly, the Agency would apply the toxicity criteria of 40 CFR 261.11(a)(2) for listing acutely hazardous ingredients on the RCRA "E" list to pesticide formulations as proposed for registration. Similarly, the Agency would apply the criteria in 40 CFR 261.21 through 261.23 for flammability, corrosivity, and reactivity to pesticide formulations as proposed for registration. On the other hand, EPA would use the "F" list (40 CFR 261.33(f)) generically as the basis for labeling a pesticide formulation as a toxic waste. A product would be labeled as a toxic waste if it contained any of the ingredients on the F list in any concentration. Similarly, the Agency would consider the 14 chemicals listed in 40 CFR 261.24 because of extraction procedure (EP) toxicity (a test for potential leachability under landfill conditions) on a generic basis.

The Agency believes that a product-specific approach is not only feasible but preferable under FIFRA. The Act requires that the Agency evaluate and register pesticide formulations, most of which are mixtures of ingredients that currently are regulated under RCRA only as generic or sole active ingredients. In order to evaluate the product for registration, the Agency requires the submission of considerable data on the toxicological and physical characteristics of the pesticide formulation, and on each separate active ingredient in the formulation (or the technical product from which it is derived), but not generally for ingredients that are pesticidally inert. With specific formulation data in hand, the Agency is in a position to judge a pesticide formulation as a whole against hazardous waste criteria. Thus in many cases an accurate determination can be made that the product as distributed and sold commercially (a "commercial chemical product" in RCRA parlance) would or would not be a hazardous waste if disposed of.

First, the Agency proposes that products that meet the listing criteria of § 261.11(a)(2) be labeled as "acutely hazardous wastes." Under RCRA, the criteria of that section are used as the basis for the "E" list of commercial products that are acutely hazardous if they contain the listed ingredient as a sole active ingredient. A pesticide formulation that contains a relatively small amount of a single E-listed ingredient (a "sole active ingredient"), and yet as a formulation does not meet the acute toxicity criteria, could nonetheless, under RCRA regulations, be considered an "acute hazardous waste," subject to all the disposal requirements applied to acute hazardous wastes. The Agency believes that a strict interpretation of the RCRA E list, without consideration of the concentation limits of the listed hazardous ingredient in a diluted formulation mixture, results in inaccurate characterization of many commercial pesticide products as acute hazardous wastes. The consequence is that unwarranted disposal burdens are imposed on pesticide users.

On the other hand, EPA believes that there may be pesticide formulations that would meet the acute toxicity listing criteria, but which, because the active ingredients are either not E-listed or are present in mixtures that do not meet the definition of "sole active ingredient," are not regulated under RCRA. This could create potential risks by disposal in a non-approved manner. This proposal would remedy this situation, since all pesticide products would be evaluated against the acute toxicity criteria, regardless of whether they contained an E-listed ingredient or were a component of a mixture. In summary, EPA believes that designation of pesticides as acute hazardous wastes will be more accurately, consistently, and comprehensively administered if toxicity criteria are directed at all pesticides formulations as proposed for registration and not just at the formulations containing E-listed ingredients as sole active ingredients.

The Office of Solid Waste and Emergency Response is developing a proposal that would address mixtures as acute hazardous wastes under RCRA. (Mixtures are not currently regulated as hazardous wastes under RCRA.) Because acute toxicity data on mixtures are rarely available (pesticide mixtures are the exception), the proposal would base the E-list determination upon LD_{50} values extrapolated from those of the components of the mixture.

Second, under RCRA, hazards other than acute toxicity are addressed by applying a number of factors specified in 40 CFR 261.11(a)(3) to a group of chemicals known or believed to pose hazards. (Appendix VIII of 40 CFR Part 161). Those chemicals which are distributed and sold as commercial products are placed on the RCRA "F" list (40 CFR 261.33(f)). The Agency believes that when addressing chronic effects where quantitative hazard limits are either not feasible or not scientifically tenable, the Agency should evaluate products on a generic basis. In some cases, such as carcinogenicity, the Agency's position is that there is no lower concentration limit below which an ingredient does not pose the hazard. Thus any amount of a carcinogen in a product would be sufficient to warrant designation as a toxic waste. This proposal would designate any product that contains an F-listed chemical in any amount as a "toxic waste" on the basis of that ingredient.

Finally, any product (not limited to generic or single active ingredients) may be a hazardous waste under RCRA if it meets certain physical/chemical hazard characteristics defined in Subpart C of 40 CFR Part 261 (flammability, corrosivity, reactivity and Extraction Procedures (EP) toxicity). Pesticide regulations in 40 CFR Part 158 require the submission of data on product flammability, corrosivity, and, if applicable, reactivity. These criteria would be applied to the pesticide formulation as the basis for a "hazardous waste" labeling statement.

Data are not required by Part 158 for the EP toxicity test in 40 CFR 261.24 (although a test for leaching potential is required), so the Agency cannot evaluate individual pesticide formulations at the time of registration to determine whether they meet the EP toxicity test. Nor would the EP toxicity test be applicable to a pesticide formulation, since it was intended to identify toxic constituents (i.e., single active ingredients) of concern. EPA would, therefore, adopt the same generic approach as it would for F-listed chemicals, except that products containing the § 261.24 ingredient would be identified on the label as "hazardous wastes."

Products would be identified on the label as "acutely hazardous," "toxic," or "hazardous" wastes, in that order of precedence. Thus, a product that meets the criteria for more than one labeling designation would be labeled with the designation of highest concern. A product that, as a formulation, met the criteria for "acute hazardous" identification, would be labeled as such, regardless of the presence of any F-listed or § 261.24 ingredient. A product containing a pesticide that was both F-listed and in § 261.24. (as is the case with three pesticides) would be labeled as a "toxic waste" rather than a "hazardous waste." Products containing pesticides which met neither the criteria for "acutely hazardous" designation nor that for "toxic" designation, would be designated as "hazardous" wastes if they met the flammability, corrosivity, or reactivity criteria (as a formulation) or contained any amount of a § 261.24 ingredient. Although this last would categorize some products as hazardous wastes that might not meet the EP toxicity test criteria, applicants would be free to conduct the EP toxicity test to demonstrate that fact, which could serve as the basis for modification of the disposal statement.

In summary, § 156.70(c) lists criteria which, if met, would cause a pesticide product to bear statements alerting the user to the hazardous nature of any wastes, and requiring disposal in accordance with State or Federal requirements for such products. The criteria are:

1. The product is in certain Toxicity Categories defined in § 156.42. This criterion incorporates the listing criteria

for the E list of acutely hazardous wastes of § 261.11(a)(2), including acute oral and dermal toxicity corresponding to Toxicity Category I, and acute inhalation toxicity criteria corresponding to Toxicity Categories I and II. In addition, § 261.11(a)(2) states that if a product is "* * * capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness," it may be listed on the E list. The Agency believes that pesticides that are corrosive to eye or skin or cause severe eye irritation for more than 21 days (Toxicity Category I) clearly meet this latter criterion, and has proposed to include such products in this section.

2. The product contains any substance listed in 40 CFR 261.33(f) (the F list). The F list contains substances that are considered hazardous, but do not meet the acute toxicity criteria of the E-list. Hazards addressed on the F-list include lesser acute hazards, chronic hazards such as carcinogenicity, mutagenicity and teratogenicity, and physical/chemical hazards such as ignitability, reactivity or corrosivity.

3. The product exhibits the characteristic of flammability, corrosivity, reactivity, or contains a pesticide listed in 40 CFR 261.24. These characteristics are indicators of physically or chemically hazardous properties that would render a product a hazardous waste.

The disposal statements prescribed by Table 1 of § 156.70 would not instruct the user exactly how to dispose of his waste pesticide product, other than by legal use in accordance with the label instructions. Legal disposal of a hazardous waste under RCRA depends not only on product composition and characteristics, but also on user identity and quantity of pesticide waste generated. Label statements that address these factors for a single product cannot be easily devised. The label statements, therefore, refer the user to his EPA Regional Office or State Environmental Control Agency for information on proper and legal disposal.

Distinguishing between hazardous waste and non-hazardous waste is necessary only for pesticide disposal. For pesticide containers, which may also be classified as hazardous wastes under RCRA, the label statements in Table 2 of § 156.70 would obviate the need for RCRA hazardous waste disposal procedures. If label statements for container disposal are followed, the container could be disposed of by normal procedures under Subtitle D of RCRA (at the use site or in regular solid waste facilities such as landfills, for example).

The Agency recognizes that a single set of statements, regardless of flexibility, cannot address the multiplicity of containers and pesticide types currently registered. Moreover, disposal practices are often further regulated at the State or local level. Section 156.70(e) therefore would permit registrants to propose alternative statements, consistent with RCRA, that express the available disposal options with greater definition. Moreover, as the Agency receives and evaluates data leading to specific disposal methods for pesticides, the labels of such products would be required to be modified to provide more exact information on acceptable methods of disposal.

O. Specific Use Directions and Restrictions

Section 156.72 would establish the types of information required in the use directions of any product. Section 156.76 would set out use restrictions that might be imposed. Neither is intended to describe detailed requirements applicable to specific types of products. Guidance on use directions specific to product type may be found in Subdivisions 101 through 106 of the Registration Guidelines. The only exception is that antimicrobial products of public health significance would be required to be labeled according to efficacy performance standards in Subpart P of this Part.

For the most part, §§ 156.72 and 156.76 proposed labeling requirements that incorporate requirements imposed in the past only on a case-by-case basis. However, several points in this section are noteworthy:

1. Labels would be required to express clearly the sites of use intended by the registrant. Specific data requirements for exposure to various segments of the user and non-target populations are still in development. In the absence of exposure data, EPA may need to use the label descriptions of the intended sites of use to identify and assess the possible exposure paterns to be expected.

2. Products intended for aerial, mist blower, or ground hydraulic application would, when data demonstrate significant determental effects, be required to bear instructions on methods of reducing pesticide spray drifts. This requirement necessarily would be imposed on a case-by-case basis, dependent upon the toxicity of the product to man and non-target species, its phytotoxicity, its proposed use patterns, and application technique.

The Agency would like comment on the possibility of requiring "downstream" labeling of consumer products treated with pesticides. The Agency believes that treated substances or articles have repeated or regular human contact should bear statements of the potential hazard of the product. The Agency could accomplish this under FIFRA by requiring that a pesticide product designed to be incorporated in a substance or article must be labeled with a statement requiring the subsequent user (the manufacturer of the treated material) to label the consumer product with a statement that the material had been treated with the pesticide. The downstream manufacturer would be in violation of the misuse provisions of FIFRA if he failed to label the materials as specified on the labeling. EPA contemplates that this requirement might be imposed for products intended for incorporation into materials such as fabrics and textile goods intended for human clothing (diapers and socks for example), wood articles having substantial human contact (toilet seats), indoor paints, mattresses and rugs. EPA notes that OSHA regulations require downstream labeling of chemicals used in the workplace, and views the labeling of pesticide-treated consumer materials as an analogous regulatory situation. Comments are welcomed, together with suggestions as to how best to delineate, both in regulation and on the label, the universe of consumer products for which labeling statements would be appropriate.

P. Labeling of Products Not Required to be Registered

FIFRA authorizes the Agency to regulate the labeling of all pesticides and pesticidal devices. The misbranding provisions of FIFRA sec. 2(q) do not distinguish a registered product from an unregistered product in applying the misbranding criteria.

The Agency has not chosen previously to promulgate specific regulations interpreting the misbranding provisions of FIFRA as they apply to unregistered pesticides. Subpart F would describe affirmative requirements that will ensure that products not required to be registered nonetheless maintain labeling standards comparable to those for registered products. The Agency believes that setting out affirmative requirements would be beneficial for producers of such products, who would then be able to ascertain whether they were in compliance with the misbranding provisions of the Act.

The affirmative requirements of these sections are derived from §§ 162.5 and 162.15 of the 1975 regulations, which delineated the misbranding provisions of FIFRA applicable to non-registered products of various types, and from previous Agency interpretations and policy statements.

Q. Efficacy Performance Standards

Subpart P (§§ 156.300 through 156.380), Labeling of Antimicrobial Products, proposes labeling requirements for certain antimicrobial products. The efficacy performance standards upon which the proposed statements are based are derived from the testing requirements of proposed 40 CFR Part 158. Antimicrobial products are identified on the label as sterilizers, disinfectants, sanitizers, or bacteriostats, depending on their level of antimicrobial activity. A product that does not meet the performance standard of Subpart P for a particular level of activity (sterilizer, disinfectant, or sanitizer) could not be identified as such on the label. This would not preclude its being labeled for any lesser degree of activity if it met the performance standard for that lesser activity level.

Section 156.305(b), Limited efficacy claims, has been changed to reflect new policy. In the past the products which were considered within this section were usually effective against a group of organisms such as gram negative organisms. The Agency has concluded that a claim based on killing gram negative organisms only is meaningless to the user since he is not able to determine what spectrum of organisms are in fact present on objects to be disinfected. The Agency therefore proposes to allow such limited claims only if the user clearly can discern from the label the organism he wants to control and the label can provide directions on where and how to control that particular pathogenic organism without being misleading.

III. Implementation

After promulgation, this revised rule would be implemented for existing products primarily through the reregistration program mandated by FIFRA sec. 3(g). EPA would apply the rules to products as they are required to be reregistered over a period of several years. This gradual implementation will allow ample time for registrants (including those whose products are registered by States under FIFRA sec. 24(c)) to make required label revisions without unduly burdening individual registrants, or disrupting the supply of pesticides.

Additionally, the Agency may selectively implement certain provisions of this rule through its Label Improvement Program. This program, instituted on June 5, 1980 (45 FR 37884), is a mechanism by which the Agency can focus its labeling efforts on potentially hazardous or unenforceable label deficiencies affecting a group of common products.

Finally, the rule would be applicable to new products registered after the effective date.

IV. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has conducted a Regulatory Impact Analysis and has determined that this proposal is not a major regulation. This proposal does not require additional persons to label pesticide products. Pesticide products are required to be labeled by the Act itself. Part 156 describes the content and format of the label necessary to comply with the Act and to allow persons to use pesticides and pesticide devices safely. Based on current costs for printing of new labels of $500 to $1,000 per product, the cost for relabeling the approximately 40,000 registered products would be $20 million to $40 million. Since only about one-eighth of the products are amended or reregistered each year, the annual cost would be between $2.5 million and $5 million.

The underlying data supporting labeling statements are submitted to satisfy the requirements of proposed Part 158, for which a comprehensive Regulatory Impact Analysis has been prepared. Compliance with this proposed regulation:

1. Would not result in an annual effect on the economy of $100 million or more.
2. Would not result in significant increases in costs to individual companies or users.
3. Would not have a significant impact on a substantial number of small entities.
4. Would result in benefits to pesticide users through consistency and completeness of pesticide labeling information.

This proposal was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

V. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, each proposed regulation is to be accompanied by a Regulatory Flexibility Analysis or by a certification that no such analysis is necessary because the regulation, if promulgated, will not have significant economic impact on a substantial number of small entities. The Agency has conducted a preliminary analysis, and has determined that a Regulatory Flexibility Analysis is not required. That analysis concluded that for small businesses (fewer than 500 employees), the cost of compliance with this proposal would be 0.5% of estimated sales per product. This percentage is not considered significant. For this reason, I hereby certify that the proposed Part 156 regulations on Labeling Requirements for Pesticides and Devices do not have a significant impact of a substantial number of small entities.

VI. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2000–0483. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

VII. Statutory Review

In accordance with FIFRA section 25, this proposal was submitted to the U.S. Department of Agriculture for comment. USDA comments and EPA responses to those comments are addressed below.

1. USDA stated its opinion that the proposal underestimates the costs of complying with the labeling provisions, asserting that that the primary costs of relabeling lie not in the printing of labels but in the design and execution of the label. The Regulatory Impact Analysis conducted for this proposal addressed these costs, and, based on discussions with industry personnel, the Agency estimates the cost of developing new printing plates ranges from $1,000 to $2,000 per product. For all 40,000 registered products this amounts to a one-time cost of $40 to $80 million to the industry. Since, however, the revisions will be accomplished over a period estimated at 8 years, the annualized cost will be between $5 and $10 million. This is viewed as an upper bound, since there will be a certain number of registrants who seek amended registration regardless of the new requirements, and thus would revise their labels for rasons unrelated to this proposal.

2. USDA also commented that, although it agrees with the Agency's goal of prescribing labeling that will encourge users to read the label, and will promote understanding, the length and detail of the label information may have the opposite effect. EPA acknowledges that the amount of information on labels is extensive and that its length and complexity have increased over the years. The phenomenon, however, can only partly be attributed to the Agency's labeling regulations.

The labeling reqirements in this proposal are derived from the misbranding provisions of the Act that require that labeling be "adequate to protect health and the environment." This broad general mandate means that labeling requirements must be compehensive. Moreover, the label, under FIFRA, serves both as an information vehicle and as the standard for enforcement of many of the Act's provisions. The enforcement aspect of labeling tends to increase the amount and complexity of detail needed on labels.

On the other hand, the industry often has reason to include additional label informtion, quite apart from the requirements of the statute and Agency regulations. Marketing considerations and potential liability are factors contributing to increased label complexity that are not of direct concern to EPA. The desire to expand the uses for which a product is registered means that an individual product, particularly one for agricultural use, may be registered for dozens of uses, each with directions and restrictions on use. Expanding usage of a single product is often more desirable from a marketing perspective (and usually easier to accomplish) than registering a number of similar products, each with fewer uses. For liability reasons, companies often voluntarily provide additional information on the label, particularly in the area of precautionary statements.

Taken together, these various factors do result in labeling of greater length, detail and complexity than is desirable from a user point of view. EPA shares USDA's concerns in this area. EPA is exploring ways in which label information may be provided more efficiently and effectively from a user standpoint, and welcomes suggestions and comments on possible ways of accomplishing this goal.

Copies of this proposal were supplied to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate. Neither Committee commented on the proposal.

Copies of this proposal were submitted to the FIFRA Scientific Advisory Panel (SAP) for review. The SAP, in reviewing the proposed revisions to the Toxicity Categories (§ 156.42), waned to know where and how chronic toxicity is considered in categorizing pesticides into groups.

The toxicity categorizations in § 156.42 are based on acute toxicity criteria only; they ae not intended to encompass subchronic and chronic toxicity. The toxicity categories are a convenient reference point for regulating pesticides when acute hazards are of concern. EPA may also impose special labeling pertaining to subchronic or chronic hazards on an individual chemical basis. This has been done primarily when the Agency has identified a potential risk for a chemical based on subchronic or chronic hazard, conducted a risk/benefit analysis, and concluded that the risks of one or more uses are outweighted by the benefits of those uses. In this case, the product registrations for that use have been continued, but often with the requirement that the label bear statements of the nature of the hazard.

List of Subjects in 40 CFR Part 156 and Part 167

Environmental protection, Labeling, Pesticides, Recordkeeping and reporting requirements.

Dated: September 18, 1984.

William D. Ruckelshaus,

Administrator.

Therefore, it is proposed that 40 CFR be amended as follows:

1. By adding Part 156, to read as follows:

PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

Subpart A—General Provisions

Sec.
156.1 Purpose, scope and applicability.
156.3 Definitions.
156.5 Requirement for labeling.
156.7 Placement of label.
156.10 Format of label.
156.15 False and misleading statements.

Subpart B—Product Identification

156.20 Product name.
156.22 Pesticide type.
156.25 Identification of registrant.
156.27 Optional identification elements.
156.30 Product registration number.
156.31 Producing establishment number.
156.34 Ingredients statement.
156.36 Net weight or measure of contents.

Subpart C—Warnings and Precautionary Statements

156.40 Content and format.
156.42 Toxicity category.
156.44 Signal word.

Sec.
156.46 Child hazard warning.
156.48 Statement of practical treatment.
156.49 Note to physician.
156.50 Inert ingredient labeling.
156.52 Human hazard precautionary statements.
156.55 Environmental hazard statements.
156.58 Physical/chemical hazard statements.

Subpart D—Use Directions and Restrictions

156.60 General.
156.62 Classification statement.
156.64 Misuse statement.
156.67 Worker protection statements.
156.70 Storage and disposal statements.
156.72 Directions for use.
156.76 Restrictions on use.

Subpart E—Specialized Labeling

156.80 Manufacturing use products.
156.87 Unit packaging.

Subpart F—Labeling of Products Not Required to be Registered

156.105 Products shipped between registered establishments.
156.110 Products for export only.
156.112 Products shipped under an emergency exemption.
156.115 Products shipped for disposal only.
156.118 Pest control devices.

Subparts G Through O—[Reserved]

Subpart P—Labeling Requirements for Certain Antimicrobial Products

156.300 Sterilizers for use on hard surfaces.
156.305 Disinfectants for use on hard surfaces.
156.310 Fungicides for use against human pathogenic fungi.
156.315 Virucides.
156.320 Tuberculocides.
156.325 Phenol coefficient.
156.330 Products for use against other microorganisms.
156.335 Sanitizers for hard non-food contact surfaces.
156.340 Sanitizers for hard food contact surfaces.
156.345 Products providing residual activity for use on hard surfaces.
156.350 Laundry additives.
156.355 Fabric and textile products.
156.360 Air sanitizers.
156.365 Toilet bowl and urinal treatments.
156.370 Human drinking water treatments.
156.375 Swimming pool water treatments.
156.380 Health-related and non-health-related claims for antimicrobial products.

Authority: Secs. 2, 3, 5, 6, 7, 9, 10, 12, 17, 19, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136-136y

Subpart A—General Provisions

§ 156.1 Purpose, scope, and applicability.

(a) *Purpose.* The purpose of Part 156 is to describe the content of the label and labeling for pesticide products that is necessary to comply with statutory requirements and that, if adhered to by users, will protect public health and the environment from unreasonable adverse effects.

(b) *Scope.* This part specifies acceptable physical characteristics of the label and labeling, including requirements pertaining to placement, size, color, and typography. Further, this part describes the content of labeling, including product identification, hazard warning statements, use directions, and restrictions on use.

(c) *Applicability.* (1) The requirements of this part apply to all pesticide products and devices.

(2) At the time of an application for registration or amended registration, an applicant or registrant may present evidence to demonstrate that a particular requirement or labeling statement prescribed by this part is inappropriate for his product because of special circumstances of composition, use or packaging. Based on such evidence, the Agency may waive or modify a requirement, or may permit alternative labeling statements to be used.

(d) *Use of terms.* Mandatory specifications are indicated by the use of the terms "must", "shall", "may not", and ". . . is not acceptable". Where requirements are not imposed, Agency-preferred, recommended or optional labeling is indicated by the terms "may" and "should".

(e) *Enforcement*—(1) *Misbranding.* Except as specified by FIFRA sec. 12(b), it is unlawful under FIFRA sec. 12(a)(1)(E) and (F) to distribute, ship, or sell a misbranded pesticide product or device. Misbranding is also a basis for denial or cancellation of registration of a pesticide product. A misbranded pesticide or device is one bearing labeling that does not conform to the requirements of FIFRA sec. 2(q). Any pesticide product or device that does not comply with the requirements of this part is considered by EPA to be misbranded within the meaning of FIFRA sec. 2(q). Information not required by this part on a product label does not necessarily constitute misbranding; however, if such information is misleading or violates other specific requirements, the product may be deemed misbranded.

(2) *Misuse.* FIFRA sec. 12(a)(2)(G) provides that it is unlawful to use a registered pesticide in a manner inconsistent with its labeling. This applies not only to labeling statements and information required by this Part, but also to precautions, directions, and restrictions that are voluntarily included on labeling by the registrant. The user who fails to follow any label instructions may be held to be in violation of the misuse provisions of the Act.

§ 156.3 Definitions.

Words and terms used in this part have the meanings set forth in the Act and in 40 CFR 152.2. In addition, the following terms are defined for the purposes of this part:

(a) "Bulk container" means any mobile or stationary container used for transporting or storing pesticides in quantities greater than 55 gallons liquid or 100 pounds solid or semi-solid. The term includes, but is not limited to, tank trucks, cargo vessels, railroad tank cars, rail freight cars, storage tanks, and "nurse tanks." The term excludes containers used in the application of pesticides after dilution by the user.

(b) "Front panel" means the larger of the following:

(1) That portion of the area of a pesticide container that is ordinarily visible to the purchaser under the usual conditions of display for sale; or

(2) An area not less than 25 percent of the surface excluding the shoulder, neck and handle if these are part of the container.

(c) "Immediate container" means that container which is directly in contact with the pesticide or device.

(d) "Label" means the written, printed or graphic matter on or securely attached to the outer or immediate container of the pesticide or to the device.

(e) "Labeling" means the label and any technical bulletin, material safety data sheet, brochure, circular, leaflet, pamphlet, insert, printed advertising or any other printed or graphic matter to which reference is made on the label, or which accompanies the product at any time in distribution or sale. Advertising material not accompanying the product is not considered labeling.

(f) "Outer container" means a container or wrapper that is not in direct contact with the pesticide product, in which single or multiple immediate containers or unit packages are distributed.

(g) "Securely attached," when used with respect to a label, mean that:

(1) The label is not detachable from the immediate or outer container without destruction or defacement of the printed or graphic matter contained thereon; or

(2) The label can reasonably be expected to remain affixed to the immediate or outer container during the time that the product is held for distribution, sale, and use, under the conditions likely to be encountered during that time.

(h) "Trademark" means any word, letter, or symbol used in connection with a pesticide product or device which distinctly identifies the origin or ownership of the article or substance to which it applies.

(i) "Use" means any activity covered by the pesticide label including, but not limited to, application of a pesticide, mixing and loading, storage of pesticides and pesticide containers, disposal of pesticides and pesticide containers, and reentry into treated areas.

§ 156.5 Requirements for labeling.

(a) *Registered pesticide products.* Each pesticide product registered under FIFRA sec. 3 or 24(c) shall bear a label or labeling, the contents and form of which shall conform to the requirements of this part.

(1) An end use product shall be labeled in accordance with this part, as applicable. The instructions provided in the latest edition of Subdivision H of the Registration Guidelines are acceptable to comply with §§ 156.72 and 156.76.

(2) A manufacturing use product shall be labeled in accordance with § 156.80.

(3) A unit package shall be labeled in accordance with § 156.87.

(b) *Devices and non-registered pesticide products.* Each unregistered pesticide product or device that may be legally distributed or sold, or transferred without prior registration (see § 152.30) shall bear labeling, the contents and form of which shall conform to the requirements of this part as specified below:

(1) If the product is to be transferred between two registered establishments operated by the same producer, or for further processing, packaging or labeling, in accordance with § 152.30(a) or (b), the labeling shall meet the requirements of § 156.105.

(2) If the product is to be distributed or sold in accordance with the terms of an experimental use permit under 40 CFR Part 172, the labeling shall meet the requirements of that part.

(3) If the product is to be transferred solely for export to another country, the labeling shall meet the requirements of § 156.110.

(4) If the product is to be transferred in accordance with an emergency exemption, the labeling shall meet the requirements of § 156.112.

(5) If the product is to be transferred solely for purposes of disposal, the labeling shall meet the requirements of § 156.115.

(6) If the product is a device, as defined by FIFRA sec. 2(h), the labeling shall meet the requirements of § 156.118.

(7) If the product has been exempted from registration under FIFRA sec. 3 by a regulation issued under FIFRA sec. 25(b) that requires that the product be labeled, the labeling shall meet the requirements established by that regulation.

(c) *Failure to label correctly.* (1) If the pesticide product or device does not bear a label, the product is misbranded under FIFRA secs. 2(q)(2)(C), and 12(a)(1) (E) and (F).

(2) If the pesticide product or device bears labeling that fails to conform to the requirements of this part, the product is misbranded under FIFRA sec. 2(q)(1)(E), and may be misbranded under other provisions of FIFRA sec. 2(q).

§ 156.7 Placement of lable.

(a) *Immediate container.* Except as provided by paragraphs (c) and (d) of this section, the label must be displayed on or be securely attached to the immediate container of the pesticide product.

(b) *Outer container.* If the immediate container is enclosed in a wrapper or outer container through which the label cannot be clearly read at the time of retail sale, the label must also be displayed on or be securely attached to such wrapper or outside container.

(c) *Bulk container*—(1) *In transit.* A pesticide in transit in a bulk container must meet the requirements of 49 CFR Part 170 through 189, with respect to placement and content of labeling. In addition, a copy of the pesticide labeling must either be attached to the papers that accompany the shipment and left with the consignee at the time of delivery, or be attached to the immediate bulk container.

(2) *In storage.* A pesticide product stored in a bulk container that remains in the custody of the user, must have a copy of the labeling securely attached in the immediate vicinity of the discharge control value.

(3) *Distribution from bulk container.* If a pesticide product is distributed directly from a bulk container to a container provided by an individual user, the distributor must securely attach a copy of the labeling to that container.

(d) *Unit package.* A product distributed in unit packages shall bear a label on both the unit package and the outer container.

§ 156.10 Format of labeling.

(a) *Placement and prominence of labeling elements.* (1) Any word, statement, design or graphic representation required to appear on the labeling, either by this part or on a case-by-case basis for individual products, shall be located as prescribed in this part, unless the Agency states otherwise. Designation of location may be specific, such as "on the front panel," or may be in relation to other labeling statements and designs, such as "in the use directions".

(2) If no specific location is designated, or if the inclusion of the information is optional on the part of the registrant, the information may be placed in any reasonable location on the labeling. An optional statement or design shall not be placed so as to crowd, obscure, or obliterate required information, nor may it detract from required information by size, color, configuration, or prominence.

(3) All words, statements, graphic representations, and designs required by the Act and this part must be clearly legible to a person with normal vision. They shall be displayed with such conspicuousness that they would likely to encourage the ordinary individual to read the labeling under customary conditions of purchase and use. Unless approved by the Agency, statements shall run parallel to the bottom of the container as normally displayed for purchase. Statements shall not be placed along seams of cans or folds of bags.

(b) *Contrast.* (1) All required text must appear on a solid background of a contrasting color. The Agency encourages the use of dark colored text (black, or dark primary colors) against a light background (white, yellow, grey, beige) for maximum contrast; however, light text on a darker background is acceptable. Labeling shall not be imprinted on highly reflective surfaces, such as Mylar or aluminum foil.

(2) All required text of labeling that is lithographed onto a glass bottle or embossed onto a plastic container must be in a color which clearly contrasts with the color of the container. If the container is transparent, the text must contrast with the contents of the container. For example, a clear glass bottle containing a brown liquid shall be labeled in a color that contrasts with brown.

(3) The labeling of a product required to bear the word POISON in red shall not have the majority of its text in red. This paragraph is not intended to preclude incedential use of red in illustrations or graphic designs, nor the skull and crossbones in red. The Agency may prescribe the use of the color red on other labeling on a case-by-case basis.

(c) *Type size and form.* (1) All required text must be at least 2 mm in size (based on the height of the upper case letters). A larger type size materially enhances the legibility of the label and is desirable. A sans-serif type face is preferred. All required headings must be distinguished from the label text by use of a color contrasting with the text, larger type size, different type face, or similar means of differentiation.

(2) Minimum type size requirements in relation to front panel size are given in Table 1 for the following labeling elements: the signal words, child hazard warning ("Keep Out of Reach of Children"), and the statement RESTRICTED USE PESTICIDE (when required).

TABLE 1—TYPE SIZE REQUIREMENTS FOR PESTICIDE LABELING

Front panel size (Sq. cm)	Minimum type size for "Restricted Use Pesticide" (if required) and signal work in capital letters. (mm)	Minimum type size for "Keep Out of Reach of Children" (child hazard warning) (mm)
Up to 30	2.0	2.0
Over 30 to 60	3.5	2.0
Over 60 to 100	4.0	3.0
Over 100 to 200	5.0	3.5
Over 200 to 400	6.5	4.0
Over 400	8.5	6.5

(3) Paragraphs should be indented, with at least two spaces between paragraphs for increased legibility. The body of the text should be printed in lower case. Capital letters, bold face type, underlining, italics, or other forms of emphasis should not be used indiscriminately throughout the labeling but should be reserved for headings or areas where particular attention by users is sought, such as use limitations or special hazards.

(d) *Language to be used.* (1) All required text must be in the English language, except as provided in paragraph (d)(3) ot this section. The Agency may require that labeling be provided in a second language.

(2) At the registrant's option, and in addition to labeling in English, the labeling may contain information in a second language. If bilingual text is used, the following statement must appear in the second language on the front panel of the label: "If you cannot read English, do not use this product until instructed on its proper use." In addition to this statement, any or all of the text may be provided in the second language. The Agency encourages registrants to provide bilingual labeling for products distributed or sold in areas where large numbers of users are not literate in English.

(3) The label of a product distributed and sold solely for use in Puerto Rico,

whose English translation has been approved by the Agency, may be solely in Spanish, provided that a statement in English similar to, "If you cannot read Spanish, do not use this product until properly instructed", appears on the front panel.

(4) Labeling in a second language must be a complete and accurate translation of the English text, and must comply with format and presentation requirements of this section.

(5) Bilingual labeling requirements for products intended solely for export are contained in § 156.110.

(e) *Use of symbols.* (1) The labeling may bear pictorial or graphic symbols in addition to text. The Agency encourages the use of symbols that enhance user comprehension, particularly in the area of hazard warnings. Because of the multiplicity of symbols currently in use, the Agency prefers the use of existing systems rather than the development of new ones.

(2) An optional symbol may be located in any position on the labeling, provided that it does not crowd, obscure, or detract from required text. A symbol may not be used in lieu of text. A symbol may be used only with accompanying explanatory text, and must be placed in close proximity to such text.

(3) Symbols required by other Federal agencies, e.g., U.S. Department of Transportation, may be used on labeling, provided they are clearly distinguished from information required by this part.

§ 156.15 False and misleading statements.

(a) *Warranty and warranty disclaimer statements.* A statement on pesticide labeling warranting any aspect of the product or its use, or disclaiming or limiting the operation of a warranty, shall not contain any false or misleading statements. A statement will be considered false or misleading if it contradicts, negates, or detracts from any labeling statement required by the Act or regulations, including but not limited to:

(1) In the case of a warranty statement,

(i) Stating or implying that the product may be used in any manner that would be inconsistent with the labeling within the meaning of FIFRA sec. 2(ee).

(ii) Stating that information on the labeling is provided voluntarily by the manufacturer, when in fact such information is required by the Act and regulations to appear in the labeling.

(iii) Warranting the product composition for a period of time shorter than that during which the product may be legally sold, taking into account any expiration date on the labeling.

(iv) Using the term "guaranteed" without stating what is guaranteed.

(2) In the case of a warranty disclaimer or limitation statement, disclaiming or limiting liability for damages when the product is used in accordance with the labeling direction; provided, however, that a warranty disclaimer may state limitations of liability for damages caused by circumstances, such as unforeseen post-usage weather conditions, over which neither the manufacturer nor the user has any control.

(b) *Statements relating to the composition of the product.* Statements relating to the composition of the product must be consistent with the ingredients statement appearing on the front panel. Refer to § 156.34 for further information on the ingredients statement.

(1) References in the product name to the composition of the product, such as "granular", "WP", or "EC", must be accurate. A wettable powder must contain wetting agents, and an emulsifiable concentrate must contain an emulsifier. Any numbers immediately preceding letters such as "G", "EC", "L", "WP", or "D" have customarily been associated with the percentage or weight of active ingredient of the product; therefore, any number associated with these letters must accurately reflect the composition of the product.

(2) Words or phrases implying that a product possesses unique characteristics because of its composition are not acceptable. Examples of such terminology are, "unique formula," or "strongest on the market." The claim "new" may be used on the labeling of a product of new composition for a period of 6 months following approval of the labeling; however, the word "new" may not be a part of the product name of record.

(3) Vague or non-specific terms implying unstated benefits related to higher concentrations or greater percentage of active ingredient are not acceptable. Examples of such terms include, but are not limited to, "professional strength," "extra strength," "extermination strength," "hospital grade," and "hospital strength."

(4) The term "professional" applied to users is not acceptable unless qualified to describe specifically the professional user group intended. The non-specific phrase "For professional use only" or any variation of that phrase is not acceptable in any circumstances.

(c) *Statements concerning the effectiveness of the product as a pesticide or device.* Claims relating to product effectiveness may not be false or misleading in any particular. Examples of types of statements which are considered to be misleading with respect to any product are given below:

(1) Claims which imply total eradication or elimination of pests, including terms such as "100% effective," "rid," "free," "eliminates," "eradicates," "guaranteed to kill all," "sure kill," "dead sure," "kills virtually all," "weed-free," and "conquers." These and similar terms may be used in conjuntion with sterilizers and disinfectants, or in other circumstances when the claimant is required to provide evidence of complete kill in order to obtain registration.

(2) Claims which imply or state a percentage of pest control which is not valid, such as "kills 90% of [pest]." The claimed levels of efficacy must be determined by product testing.

(3) Terms implying that protection will extend for an indefinite period, such as "bug-proof", "germ-proof", "roach-proof", "mouse-proof", and "long-lasting control". The duration of effectiveness should be established by testing, and included on the labeling.

(4) Non-specific terminology or comparative words without valid comparison, such as "great new weapon," "the most notable advance in pesticides since . . ." "hard-to-kill" (weeds, rats, etc.), and "better and more effective."

(5) Superlatives, such as "perfect," "paramount," "ultimate," "ideal," and "superior," except that such words may be used in the product name when accompanied by the qualifier "Brand," (e.g., "Superior Brand Disinfectant").

(6) Claims for indirect or secondary benefits in the following situations:

(i) Claims implying that benefits will derive solely from use of the pesticide, when other factors contribute in equal or greater measure. An unacceptable claim in this respect is that a product will "improve production" or "produce larger animals."

(ii) Claims of indirect benefits, where the relationship between the direct benefit and the indirect benefit is not clearly established. For example, claims for control of disease vector pests are not acceptable if the conditions of transmission of the disease via the pest have not been clearly established.

(iii) Claims that indirect benefits are direct benefits. For example, labeling may not state that an insecticide will prevent the spread of plant disease viruses (indirect benefit), when in actuality the pesticide controls the insect host of the virus (direct benefit). Labeling may, however, provide properly worded information on the circumstances under which indirect benefits may be expected. For example, an insecticide labeling may state that the product controls ticks that may transmit Rocky Mountain spotted fever.

(7) Dosages or dilution rates not consistent with package size. Directions for diluting 5 lbs. of product in water are not acceptable on a package that contains only 2 lbs. of product. Similarly, unless otherwise provided in this part, the directions shall not provide for a single application of more product than the package contains.

(8) Illustrations or graphics that imply a greater range of effectiveness than can be demonstrated, e.g., pictures of sites or pests for which the product is not registered.

(9) Illustrations showing exaggerated or undocumented toxic or behavioral effects of the pesticide on the pest, such as depiction of a pest exhibiting physical symptoms not representative of the effects of the product, or an animal repellent showing a dog or cat fleeing in terror from a treated object.

(10) Claims of benefits that are negated or contradicted by other labeling information.

(d) *Statements relating to the non-pesticidal purpose of product.* Labeling may not contain false or misleading statements unrelated to the pesticidal nature of the product. For example, the labeling of a multi-purpose disinfectant-cleaner may not bear false, exaggerated, or misleading claims concerning the cleaning power of the product. Examples of such false or misleading statements are: "Cleans twice as fast as other brands;" and "The most powerful cleansing agent known to man." Similarly, products which are pesticide-drug combinations, pesticide-fertilizer mixtures, or pesticide-nutrient mixtures may not make misleading claims concerning the drug, fertilizer, or nutrient action or value of the product.

(e) *Language stating or implying that the product is recommended or endorsed by any agency of the Federal Government.*

(1) Unqualified phrases such as "approved by * * *" or "recommended by * * *" are not acceptable.

(2) The EPA registration number and EPA establishment number may not be highlighted by type size, placement, color, or prominence so as to imply endorsement by EPA.

(3) References to Federal agencies that do not imply approval or endorsement are acceptable. An example would be "Tuberculocidal—Permitted for use by the Animal Health Programs, Veterinary Service, APHIS, USDA, in official disinfection programs involving domestic animal housing and transportation facilities." An example of an unacceptable statement is: "Product X has been found to be very effective for the control of imported fire ants and Japanese beetle in Federal-State quarantine programs."

(4) The labeling of a product intended for use in USDA-inspected meat and poultry plants, and for which evidence of approval by the Food Safety and Inspection Service (FSIS) has been submitted to the Agency, may include the following statement: "Authorized for use in edible product areas of official establishments operating under the Meat, Poultry, Shell Egg Grading and Egg Products Inspection Programs".

(5) Reference to cooperative extension services or agricultural experiment stations is acceptable under certain conditions. Refer to § 156.72 (i)(4) and (j)(3) for information on these conditions.

(6) The labeling of any product restricted to use by Federal or State authorities must so state.

(f) *A true statement sued in such a way as to give a false or misleading impression.* Labeling statements which are literally true but have the potential for misleading the user constitute misbranding. Examples are given below:

(1) Statements relative to composition indirectly implying safety of the product:

(i) "Contains all natural ingredients."

(ii) Reference to clearances under the Federal Food, Drug and Cosmetic Act.

(2) Superfluous information not relevant to the uses appearing on the labeling, such as:

(i) The statement "oil soluble" on labeling which bears no directions for dilution with oil.

(ii) Claims for pests not found at the use sites on the labeling, such as the inclusion of weeds found only at aquatic sites on a herbicide product bearing no directions for use on aquatic sites. Similarly, claims for pests not found in the United States on a product sold and distributed in the U.S. are considered misleading.

(g) *Claims as to the safety of the pesticide or its ingredients in any form.* (1) Use of terms and phrases such as "safe," "non-toxic," harmless to pets and humans," "low in toxicity," "will not harm beneficial insects," "no health hazard," and variations or homonyms thereof are not acceptable.

(2) A statement that a product "contains no (name of chemical)" is not acceptable with respect to an active ingredient. The presence or absence of an active ingredient may be ascertained from the ingredients statement.

(3) A statement that a product "contains no (name of chemical)" with respect to an inert ingredient (not separately identified in the ingredients statement) may be permitted (upon written request, and for a limited period of time) if:

(i) The ingredient is the subject of a proposed or final regulation or other written determination based on hazard considerations, which notice prohibits all use, or use in pesticide products specifically; and

(ii) The product may legally be distributed in commerce for a finite period of time, as, for example, the time between issuance of a regulation and its effective date, or the time allowed for distribution of remaining stocks.

(4) Terms such as "non-flammable" and "non-combustible" are generally not acceptable; for exceptions, refer to § 156.58(b).

(5) Terms implying safety to the environment, such as "ecologically compatible", are not acceptable. The term "biodegradable" may be used only in conjunction with a detergent as, for example, "The detergent in this product is biodegradable".

(6) Graphics which negate or contradict required safety statements are not acceptable. Pictures of children or illustrations such as toys or candy which might be appealing to children are not acceptable.

Subpart B—Product Identification

§ 156.20 Product name.

(a) The label of each individually registered pesticide product shall bear a product name that distinguishes it from all other registered pesticide products of the same producer or registrant. The product name shall appear on the front panel of the label and on any labeling.

(b) The product name shall be descriptive of the product's ingredients, formulation type, quantity of ingredients, or function, or a combination of these. For example, the name Parathion 2-E is suitable for a product containing 2 lbs/gallon of parathion in an emulsifiable concentrate formulation.

(c) A trademark may be used as part of the product name, but if the trademark refers to a particular ingredient in the product, it shall not be used in the name of any product not containing that ingredient.

(d) The letters listed below shall be used in a product name only with the designated meanings:

A (or AS)	Aqueous (suspension).
D	Dust.
E (or EC)	Emulsifiable (concentrate).
F	Flowable
G	Granular.
L	Liquid.
W (or WP)	Wettable (powder).

(e) A number may be used in a product name to distinguish among products or to describe the quantity of an ingredient in the product. If a number is intended to refer to the quantity of an ingredient, it must be consistent with the ingredients statement.

(f) Any product name or additional brand name that has been recorded by the Agency for that product may appear on the label and labeling of the product when sold or distributed.

(g) No name, brand, or trademark under which a pesticide product is marketed or distributed may be false or misleading in any particular. Registration of a trademark with the U.S. Patent Office is not evidence that such trademark is not misleading under FIFRA; a registered trademark name may be in violation of FIFRA. Examples of names that are considered false or misleading include:

(1) A name that implies efficacy against a pest not named on the labeling (e.g., "Roach Killer," if the product is not registered for cockroach control).

(2) A name that implies broader effectiveness or a higher level of efficacy than has been demonstrated (e.g., "Kill All").

(3) A name that is misleading with respect to the composition of the product (e.g., "Malathion 10% WP" must be a wettable power containing 10 percent malathion).

(4) A name that includes words or any variations of words implying safety or non-toxicity of the product, such as "Saf-T."

§ 156.22 Pesticide type.

(a) The type of pesticide must be identified on the front panel of the label. Standard and commonly recognized terms shall be used, such as "insecticide", "herbicide", "defoliant", "algicide", "sterilizer", or "bacteriostat." If the product is a combination product, the label must identify all intended use types. If the product is intended for incorporation or impregnation into non-pesticide substances or articles, the label must indicate not only the pesticide type, but also the substances or articles into which it is to be incorporated.

(b) The pesticide type may be stated in one of the following ways:

(1) As part of the product name on the front panel (e.g. "ABC 10% Malathion Dust Insecticide").

(2) As a separate phrase or statement below the product name (e.g., "A bacteriostat for use in the preservation of water-based paints," or simply "An insecticide").

(c) A product for incorporation into non-pesticide substances or articles must use the separate phrase given in paragraph (b)(2) of this section.

§ 156.24 Identification of registrant.

(a) *Name*—(1) *Registrant name.* The name of the registrant or distributor (as agent of the registrant) must appear on the labeling of the pesticide product. Both names may appear on the labeling, provided that the name of the registrant for the product is clearly indicated.

(2) *Contact name.* The name required by paragraph (a)(1) of this section should convey sufficient information to allow a user to contact the appropriate department of the firm. It is desirable that a company with several divisions producing pesticides designate the specific division or other entity responsible for the particular pesticide. For example, "Jones Chemical Company, Animal Products Division."

(b) *Address.* (1) The address must provide sufficent information to direct a user to the company. The address must include the city, State and zip code of the company, and a street address. If the street address is contained in the telephone directory of the listed city, a post office box number may be used on labeling.

(2) The registrant may list several addresses, provided the principal address to contact for information regarding the product is clearly indicated.

(3) A foreign registrant must provide the foreign address of the company. Labeling may, in addition, bear the name and address of the U.S. agent for information purposes.

§ 156.27 Optional identification elements.

A registrant may include on labeling additional company identification elements, such as company logos, lot or code numbers identifying particular batches of products, dates of label preparation, or the Universal Product Code. Such identification elements shall not detract from or obscure required information.

§ 156.30 Product registration number.

(a) *Requirement.* The label must bear the registration number assigned to the product, preceded by the phrase "EPA Registration No." or "EPA Reg. No." The registration number consists of the company number of the registrant followed by a hyphen and a sequential number designating the individual product, e.g., "EPA Reg. No. 9151-156" (company number-sequential product number). The label of a distributor product must bear the registration number of the product, followed by the distributor's company number (company number-sequential product number-distributor company number).

(b) *Location of the registration number.* The registration number must appear on the label and on any labeling for the product. The preferred location on the label is the bottom of the front panel. The number must run parallel to other print, and must be in a type size and style similar to other print on that part of the labeling on which it appears. The registration number may not appear in such a manner as to imply endorsement or recommendation of the product by the Agency.

§ 156.31 Producing establishment number.

(a) *Requirement.* Every pesticide product or device shall bear the producing establishment registration number of the final establishment at which the product was produced. (Establishment numbers are assigned upon request to the Agency.) The number shall be preceded by the phrase "EPA Est." or "EPA Establishment." Labeling shall not bear the establishment number of any intermediate establishment.

(b) *Location of establishment number.* The EPA establishment number may be displayed on the label, labeling, or immediate container of the pesticide product. The type size and form for the number must be comparable to that used for the EPA registration number. If the establishment number is placed on the immediate container, it must be on the container itself, and not only on the lid, cap, or any other appendage which is not permanently a part of the container. The establishment number must also appear on the wrapper or outer container if the number on the immediate container cannot be clearly read through such wrapper or outer container.

(c) *Form of the establishment number.* The EPA establishment number shall be expressed as (company number)—(two-letter State designation)—(sequential number within State). An example would be 123-MA-2, indicating the second establishment within the State of Massachusetts for the company whose number is 123. Multiple establishment numbers may be listed, provided that it is clear at which establishment the product was produced. The format of multiple establishment numbers may be varied with the approval of the Pesticides Branch in the EPA Region where the producing establishment is located. The EPA establishment number may not be combined with the EPA registration number.

§ 156.34 Ingredients statement.

(a) *Requirement.* The label must bear a statement of the ingredients in the product. The statement must include the name and percentage by weight of each active ingredient and the total percentage of all inert ingredients (including impurities of the active ingredient), and shall meet the requirements of paragraphs (b) through (h) of this section, as applicable.

(b) *Location of the ingredients statement.* The ingredients statement normally must appear on the front panel of the label. The Agency may, upon written request, grant permission to place the ingredients statement on the back or side panel of the label when the pesticide is packaged in extremely small or irregularly shaped containers, or when the ingredients statement is unusually long.

(c) *Form of the ingredients statement.* (1) The ingredients statement must contain the following items:

(i) The headings "ACTIVE INGREDIENT(S)" and "INERT INGREDIENTS," both aligned to the same left margin, and in the same type size and form.

(ii) The name of each active ingredient, in accordance with paragraph (d) of this section.

(iii) The nominal concentration of each active ingredient and the total percentage of inert ingredients, in accordance with paragraph (e) of this section.

(2) A "blind label," which lists all ingredients in order of descending amount without giving the percentage of each, is not acceptable.

(3) The active ingredients and percentages may be listed in column or, if the label space is limited, in paragraph form. If a column form is used, the percentages shall be aligned according to decimal place. An example of each type follows:

	Percent
Active ingredients	81.7
Common name (chemical name)	56.4
Common name (chemical name)	22.1
Common name (chemical name)	3.2
Inert ingredients	18.3

Active Ingredients: Common name (chemical name) 56.4%; common name (chemical name) 22.1%; common name (chemical name) 3.2% Total active ingredients 81.7%
Inert Ingredients: 18.3%

(d) *Names to be used in the ingredients statement*—(1) *Common name.* Each active ingredient must be identified by an accepted common name, if there is one, in the order of precedence of use specified in paragraph (d)(2) of this section, followed by the chemical name in accordance with paragraph (d)(3) of this section. An active ingredient never before registered must have a common name for use in the ingredients statement.

(2) *Order of precedence of common names.* The following order of precedence shall be used for common names:

(i) A common name established by the American National Standards Institute (ANSI). Persons wishing to establish a common name should write to the Secretary, K-62 Committee, American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

(ii) A common name established by the International Standards Organization (ISO).

(iii) A common name established by the British Standards Institution (BSI). Information on the International Standards Organization and British Standards Institution accepted common names may be obtained for the British Standards Institution, 2 Park Street, London, England.

(iv) A common name established by an appropriate technical association in the United States, such as the Weed Science Society of America.

(v) A common name established by the Administrator, under FIFRA sec. 25(c)(6).

(3) *Chemical name.* Immediately following the common name, the chemical name must appear. If there is no common name, the chemical name alone must be used. Chemical names must be given according to the nomenclature of the Chemical Abstracts Service of the American Chemical Society. Persons wishing to verify the correct chemical name for an ingredient should write to the Nomenclature Director, Chemical Abstracts Service, The Ohio State University, Columbus, Ohio 43210.

(4) *Descriptive name.* If there is no accepted common name and no specific chemical name for an ingredient, the ingredients statement must contain a descriptive name approved by the Agency. Examples are "derris resins," "tobacco other than nicotine," and "petroleum distillates."

(5) *Trademark name.* A trademark name may not be used in the ingredients statement unless the name has been approved as a common name by the Administrator under the authority of FIFRA sec. 25(c)(6). Trademark names and other information concerning a particular ingredient may appear by reference to a footnote to the ingredients statement.

(e) *Expression of percentages.* (1) The percentage of each active ingredient shall be the nominal concentration. The nominal concentration is the amount of active ingredient in a representative sample of the product produce in accordance with good manufacturing practice by the process described in the application for registration. The nominal concentration will always be within the certified limits for the ingredient. Sliding scales, ranges, or the certified limits, e.g., 23–25 percent, may not be used on the label.

(2) The stated percentage of the total inert ingredients shall be such that the percentages of active and inert ingredients total 100 percent. The term "100%" need not be expressed as part of the ingredients statement.

(f) *Additional statements in the ingredients statement.* (1) If a pesticide contains arsenic in any form, the ingredients statement must contain a substatement of the percentages of total and water soluble arsenic, both expressed as elemental equivalent. Examples of typical wording follow:

(i) "Total arsenic, all in water soluble form, expressed as elemental: ——%."

(ii) "Total arsenic, as elemental arsenic: ——%; Water soluble arsenic, as elemental arsenic: ——%."

(2) The ingredients statement of a product whose active ingredient is a salt, ester, or amine of an acid must include a statement giving the percentage of acid equivalent, an example of which follows:

	Percent
Active ingredient: Dimethylamine salt of 2,4-D *	
Inert ingredients	

* Contains 22.1% acid equivalent of 2,4-D or 2 lbs. 2,4-D acid per gallon

or

* Equivalent to 22.1% 2,4-D or 2 lbs. 2,4-D acid per gallon.

(3) Equivalency statements are useful, but not required for metallic and halogen compounds.

(4) the label shall include a statement of the weight of active ingredient per unit volume of product if the product is intended for agricultural use and the dosages are expressed in volumetric terms. A statement similar to "contains —— pounds of active ingredients per gallon" (or other suitable weight and volume units) is acceptable. The expressed conversions shall be as accurate as is practical. Decimals should

not be rounded to the next highest whole number.

(g) *Identification of inert ingredients.* (1) If the Administration determines by regulations or on a case-by-case basis that any inert ingredient poses a hazard to man or the environment, that ingredient must be identified on the label. A statement in or in close proximity to the ingredients statement similar to, Contains (name of ingredient)" is sufficient. In addition, special precautionary statements may be prescribed with respect to such ingredients. Refer to § 156.50 for a listing of those inert ingredients which must be so identified, and for the specific precautionary labeling required for each.

(2) Except as provided by paragraph (g)(l) of this section, if any inert ingredient is identified on the label, all inert ingredients must be identified in descending order by weight. The percentage of the inert ingredients need not be listed.

(h) *Ingredients statements for products of biological origin.* (1) The ingredients statement for a product whose active ingredient is a biological organism rather than a chemical substance must identify the organism by the most explicit accepted scientific name (genus, species, and strain). The statement must declare the number of viable organisms or colony-forming units (e.g., spores) per unit measures of ingredients. An example follows:

	Percent
Active ingredients: a mixed culture of not less than 100 million viable spores of either *Bacillus popilliae* or *Bacillus lentimorbus* or both per gram of powder	
Inert ingredients	

(2) If the product's action derives from a combination of a biological organism and a toxin of biological origin (e.g., *Bacillus thuringiensis*), or if it is not readily demonstrable whether the active component is a viable organism (e.g., nuclear polyhedrosis virus), the active ingredient must be stated in an acceptable and generally recognized bioassay unit. An example follows:

	Percent
Active ingredient: *Bacillus thuringiensis* Berliner —— International Units of potency per mg. (equivalent to —— billion International Units of potency per pound (quart) of the product	
Inert ingredients	

(3) the ingredients statement for a product whose active ingredient is a naturally occurring plant regulator, for which quantitative chemical methods and units are not available, such as cytokinen, auxin, or gibberellin, must be stated in an acceptable and generally recognized bioassay unit. For example, the active ingredient may be stated as "Cytokinen (equivalent to 200 ppm kinetin activity)" or "Auxin (equivalent to 150 ppm indoleacetic acid activity)."

(4) The Agency may approve alternate forms of ingredients statement for products containing ingredients of biological origin, if such statements are consistent with the purposes of the Act.

(i) *Optional expiration date.* The labeling may bear a date beyond which the product may not legally be sold or used. A statement such as, "Not for sale or use after (date)" may be used for this purpose. The labeling may also bear the date of manufacture of the product as a reference for such a statement, e.g., "Not for sale or use after six months from date of manufacture."

(j) *Optional statement of feed and fertilizer analysis.* A registrant may include in labeling a statement of feed or fertilizer composition, which may vary according to the requirements of individual State laws. The statement must be separate from the pesticide ingredients statement, and must not detract from or obscure the required pesticide labeling statements.

§ 156.36 Net weight or measure of contents.

(a) *Requirement.* The net weight or measure of contents of the product must appear on the label or container. The stated net weight or contents must be measured exclusive of container or wrappers and shall be the average content, unless specifically stated to be the minimum content.

(b) *Units of measure.* (1) The net contents may be stated in standard U.S. units, metric units, or both. Either may predominate or be emphasized by means of placement, type size, or form, but the predominant unit must be consistent with the package size unit, e.g., metric units may not predominate on a package containing a quart of product.

(2) Units must be appropriate to the size of the package. For example, a package containing less than one pound, gallon, kilogram or liter must be expressed in smaller appropriate units, e.g., ounces, quarts, grams or milliliters.

(c) *Form of statement.* Unless otherwise specified in this section or by the Agency, any method of expressing the net weight or contents is acceptable.

(d) *Net contents statement for multi-unit packages.* The net contents statement of a multi-unit package containing unit packages (not intended to be sold separately) must include, on the labeling of the outer container:

(1) The number of individual unit packages contained in the package;

(2) The net weight or contents or each unit package; and

(3) The net weight or contents of the total package. For example, a package containing four individual bait boxes may state "4 bait boxes 100 grams each. Total 400 grams." A container of individually wrapped tablets may state "50–15 gm tablets. Total 750 gms." Individual unit packages are not required to bear a net contents statement.

(e) *Location of the net contents statement.* (1) The net contents statement may be located either on the label, labeling, or container. If on the label, the preferred location is the lower third of the front panel. If on the container, it must be in close proximity to the label text, and may not appear only on the top, bottom, or lid of the immediate container or outer container, if there is one.

(2) The net contents of a product being transported or stored in a bulk container must appear on the shipping papers accompanying the product, or on the labeling attached to the bulk container.

(f) *Fair Packaging and Labeling Act.* Any net contents statement that meets the requirements of the Fair Packaging and Labeling Act, as set out in regulations in 16 CFR Part 500, satisfies the requirements of paragraphs (b), (c), and (d) of this section.

(g) *Variations in net content.* Variation above minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good manufacturing practice. Variation below a stated minimum is not permitted. In no case shall the average content of the packages in a shipment fall below that stated average content.

Subpart C—Warnings and Precautionary Statements

§ 156.40 Content and format.

(a) *General.* The label of each pesticide product shall bear warnings and precautionary statements with respect to human, environmental, and physical or chemical hazard posed by the product, in accordance with this subpart. Statements required by this subpart include the signal word, child hazard warning, statements of practical treatment, and general precautionary statements. Required environmental hazard statements include toxicity to nontarget fish, mammals, birds, aquatic invertebrates, beneficial insects, and plants. Required physical and chemical hazard statements primarily include flammability, but may also include characteristics such as explosiveness, reactivity, or oxidizing capability. The Agency may require on a case-by-case basis, that additional hazard statements appear on the label, such as statements pertaining to chronic hazards.

(b) *Front panel statements.* All required front panel warning statements must be grouped together, must run parallel to other print on the label, and must appear with sufficient prominence to make them unlikely to be overlooked. The signal word and the child hazard warning are subject to the type size requirements specified in Table I of § 156.10. Surrounding the front panel warning statements with a solid line (blocking) is suggested as a means of lending prominence to these statements.

(c) *Side or back panel statements.* Precautionary statements must be grouped together on the label and appear under the general heading "Precautionary Statements." They must be further delineated into "Hazards to Humans and Domestic Animals," dealing with humans, pets, and livestock; "Environmental Hazards," addressing fish, birds, wildlife, aquatic invertebrates, plants, and beneficial insects; and "Physical/Chemical Hazards," including flammability hazards.

(d) *Referral statement.* If precautionary statements, including the Environmental Hazard and Physical and Chemical Hazard statements, appear on panels other than the front panel, the front panel must contain a referral statement in language similar to "See additional precautionary statements on side/back panel." This referral statement may be combined with that required for the Statement of Practical Treatment, if applicable. Any or all precautionary statements may be located in the front panel statements.

§ 152.42 Toxicity category.

The label of each pesticide product msut include the warning statement required for the toxicity category to which the product has been assigned, based on its acute toxicity (oral LD_{50}, dermal LD_{50}, inhalation LC_{50}, skin and eye effects). A product is assigned to one of four toxicity categories for each hazard indicator. Table 1 lists the toxicity categories for each acute indicator, and the criteria for each, Category I being of greatest toxicity and Category IV least. The overall toxicity category of the product is determined by the greatest hazard shown for any of the acute indicators listed in the following table:

Table 1—Toxicity Category Criteria

Hazard indicators	Category I	Category II	Category III	Category IV
Oral LD_{50}	Up to and including 50 mg/kg.	>50 thru 500 mg/kg	>500 thru 5000 mg/kg	>5000 mg/kg.
Dermal LD_{50}	Up to and including 200 mg/kg.	>200 thru 2000 mg/kg	>2000 thru 5000 mg/kg.	>5000 mg/kg.
Inhalation LC_{50} (actual chamber concentration measured for a 4-hour exposure.	Up to and including 0.05 mg/liter.	>0.05 thru 0.5 mg/liter	>0.5 thru 5 mg/liter	>5 mg/liter.
Eye effects	Corrosive (irreversible destruction of ocular tissue) or corneal involvement or irritation persisting for more than 21 days.	Corneal involvement or irritation clearing in 8–21 days.	Corneal involvement, or irritation clearing in 7 days or less.	Minimal effects clearing in less than 24 hours.
Skin effects	Corrosive (tissue destruction into the dermis and/or scarring).	Severe irritation at 72 hours (severe erythema or edema).	Moderate irritation at 72 hours (moderate erythema).	Mild or slight irritation (no irritation or slight erythema).

§ 156.44 Signal word.

(a) The signal word ("DANGER," "WARNING," or "CAUTION") of the Toxicity Category to which the product is assigned must appear on the front panel of the label beneath the heading "Precautionary Statements" on the side panel as required by § 156.52, and on any labeling. The words "Danger", "Warning", and "Caution" may not appear in labeling in any other location, unless required by the Agency.

(b) The label of a product assigned to Toxicity Category I based on acute oral, dermal, or inhalation toxicity is required to bear the signal word "DANGER". In addition, the word "POISON" (in red) together with the skull and crossbones must appear in close proximity to the signal word.

(c) The label of a product assigned to Toxicity Category I solely on the basis of eye or skin irritation effects is required to bear the signal word "DANGER". The skull and crossbones and word "POISON" are not required for such products.

(d) The label of a product assigned to Toxicity Category II is required to bear the signal word "WARNING".

(e) The label of a product assigned to Toxicity Category III or IV is required to bear the signal word "CAUTION".

(f) The label of a product in any Toxicity Category may not bear the signal word assigned to a category of lesser toxicity, unless the Agency determines that the testing upon which that categorization was based is not truly indicative of the toxicity of the product to humans.

(g) The label of a product in any Toxicity Category may not bear the signal word assigned to a category of greater toxicity, unless the Agency determines that:

(1) The testing upon which that categorization was based is not truly indicative of the toxicity of the product to humans; or

(2) Based on accident reports or other information, the product requires the higher signal word to prevent unreasonable adverse effects.

§ 156.46 Child hazard warning.

(a) A child hazard warning statement must appear on the front panel of the label, on a separate line above the signal word, unless a waiver has been obtained in accordance with paragraph (c) of this section. The child hazard warning must also appear in any product labeling. The child hazard warning may not be juxtaposed with the signal word (i.e., WARNING: Keep Out of Reach of Children) so as to give the impression that the signal word applies only to child hazards.

(b) The child hazard warning normally required on products is "Keep Out of Reach of Children." If this warning would not be appropriate because of the circumstances of the intended use pattern, the Agency may permit a child hazard warning that more accurately reflects the form and use of the product. For example, a dog or cat collar, where the normal use of the product permits access by children, may bear the child hazard warning, "Do not allow children to play with collar."

(c) Upon written request of the registrant, the Agency will consider waiving the requirement for a child hazard warning. To support a waiver request, the product must be approved for use by or on small children and infants, or the applicant must demonstrate that the likelihood of contact with children in distribution, marketing, storage, or use is extremely remote.

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§ 156.48 Statement of practical treatment.

(a) *Requirement.* A statement of practical treatment is required on the label of each pesticide product assigned to Toxicity Category I, II, or III. Instructions must address each route of exposure (oral, dermal, inhalation, eye and skin effects) that assigns the product to Toxicity Category I, II, or III. A statement is not required for any route of exposure in Toxicity Category IV. Instructions for various routes of exposure may be combined when appropriate.

(b) *Placement of statement.* (1) The statement of practical treatment for each route of exposure falling into Category I shall appear on the front panel of the label, grouped with the signal word and child hazard warning. Blocking is suggested as a means of emphasizing the statements.

(2) The statement of practical treatment for routes of exposure not falling into Category I may appear on the front, side, or back panel. In this case, the statements must be set apart from other precautionary statements on the panel. A referral statement on the front panel must be used when practical treatment statements appear elsewhere on the label.

(c) *Format of statement.* (1) The heading "Practical Treatment" or "First Aid" must precede the statement in all cases. The heading "Antidote" shall not be used, unless a specific antidote is recommended.

(2) The statements should be brief and in clear, simple, straightforward language so that the average person can easily and quickly understand the instructions.

(3) The statements should be segregated according to the various routes of exposure. Routes of greater hazard, requiring the most urgent treatment, should be listed first. For example, a product whose primary hazard is eye irritation, with lesser effects from oral, dermal, and inhalation toxicity, should appear as follows:

IF IN EYES, ...
IF SWALLOWED, ...
IF ON SKIN, ...
IF INHALED, ...

(d) *Nature of statements.* (1) A recommended practical treatment measure should generally be appropriate for all levels of exposure to the pesticide that result in acute toxic effects.

(2) The statement should be appropriate for persons of all ages who might be expected to be exposed, or should distinguish between treatments for differing ages, e.g., children vs. adults.

(3) The recommended practical treatment should be one that any reasonably competent individual is capable of performing. Procedures for which medical personnel or specialized equipment are required should be reserved for a "Note to Physician."

(4) The treatment should have few or no harmful effects.

(5) If there is a specific antidote for the pesticide, information on its use should be included.

(6) If inducing vomiting is recommended as a practical treatment measure, salt or salt solutions shall not be recommended as the emetic agent.

§ 156.49 Note to physician.

A "Note to Physician" must be included on the label for:

(a) All products in Toxicity Category I, and

(b) Any product containing an ingredient that produces physiological effects requiring specific antidotal or medical treatment. Examples of this latter category are cholinesterase inhibitors (such as carbamates and phosphorothioates), metabolic stimulants (such as dichlorophenols), and anticoagulants (such as warfarin). The Note to Physician must appear near the Statement of Practical Treatment, but clearly distinguished from it. Appropriate items for the Note to Physician are technical information on symptomatology, use of supportive treatments to maintain life functions, an medications that may counteract the specific physiological effects of the pesticide. A company telephone number may be provided to give medical personnel access to specialized medical advice.

§ 156.50 Inert ingredient labeling.

(a) When an inert ingredient has been determined by the Agency, by regulation or on a case-by-case basis, to pose an acute or other hazard, or to contribute significantly to the overall hazard of the product, the label must:

(1) Identify the inert ingredient by common name, if there is one, or by chemical name, in close proximity to the ingredients statement (a statement such as "Contains———" is acceptable for this purpose);

(2) Include specific precautionary statements required by ths subpart or by the Agency; and

(3) If required by the Agency, include specific practical treatment statements pertaining to the inert ingredient.

(b) Any product containing an inert ingredient listed in Table 1 must include the specified information on the label:

TABLE 1—REQUIRED LABELING FOR INERT INGREDIENTS

Substance	Limitations	Required labeling
Carbon tetrachloride		1. Identification. 2. Skull and crossbones and word POISON in red. 3. Statement: "DANGER". May be fatal if swallowed or inhaled. 4. Appropriate practical treatment statement.
Methanol	4 percent or more	1. Identification. 2. Skull and crossbones and word POISON in red. 3. Statement: "DANGER. Methanol may cause blindness. Fatal if swallowed. Avoid breathing spray mist or vapors. Avoid contact with skin." 4. Appropriate practical treatment statement.
Petroleum distillates (when inert)	10 percent or more	1. Identification. 2. Appropriate practical treatment statement.
Sodium nitrite		1. Identification.

§156.52 Human hazard precautionary statement.

(a) *Heading.* Human hazard precautionary statements must be immediately preceded by the signal word, if the statements appear on other than the front panel, and by the heading, "Hazards to Humans and Domestic Animals." If the use pattern precludes reasonable expectation of exposure to domestic animals, the phrase "* * * and Domestic Animals" may be omitted from the heading.

(b) *Acute hazard precautionary statements.* (1) Tables 1 through 5 illustrate typical human precautionary statements that must normally appear on labels. These tables are organized by route of exposure and Toxicity Category, and include the appropriate signal word and typical statements of practical treatment.

(2) Because these tables do not express all the hazards of specific products, and because toxic effects other than acute effects are not addressed, modification or expansion of precautionary statements may be necessary to reflect specific hazards of a given pesticide product. Tables 1 through 5 follow:

TABLE 1—PRECAUTIONARY STATEMENTS FOR ACUTE ORAL INGESTION HAZARD

Toxicity category	Signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment [1]
I LD$_{50}$ up to and including 50 mg/kg	Danger	Yes	Fatal if swallowed. Wash thoroughly with soap and water after handling and before eating, drinking, or using tobacco.	*If Swallowed:* Call a physician or Poison Control Center. Drink 1 or 2 glasses of water and induce vomiting by touching back of throat with finger. Do not induce vomiting or give anything by mouth to an unconscious person.[2]
II LD$_{50}$ >50 thru 500 mg/kg	Warning	No	May be fatal if swallowed. Wash thoroughly with soap and water after handling and before eating, drinking or using tobacco.	Same as above.
III LD$_{50}$ >500 thru 5000 mg/kg	Caution	No	Harmful if swallowed. Wash thoroughly with soap and water after handling.	Do.
IV LD$_{50}$ greater than 5000 mg/kg	do	No	None required	None required.

[1] Statements of practical treatment will be significantly different for products containing petroleum distillates or which are corrosive since the induction of vomiting may be contraindicated, depending on the overall oral toxicity of the product.

[2] An alternate statment may be used, for example: "*If swallowed:* Call a physician or Poison Control Center. Drink 1 or 2 glasses of water and induce vomiting by touching back of throat with finger, or, if available, by administering syrup of ipecac. Do not induce vomiting or give anything by mouth to an unconscious person."

TABLE 2—PRECAUTIONARY STATEMENTS FOR ACUTE DERMAL ABSORPTION HAZARD

Toxicity category	Signal word	Skull and crossbones and posion required	Precautionary statements	Statements of practical treatment
I LD$_{50}$ up to and including 200 mg/kg.	Danger	Yes	Fatal if absorbed through skin. Do not get in eyes, on skin, or on clothing. Wear protective clothing and rubber gloves. Wash thoroughly with soap and water after handling and before eating, drinking, or using tobacco. Remove contaminated clothing and wash before reuse.	*If on skin:* Wash with plenty of soap and water. Get medical attention.
II LD$_{50}$ >200 thru 2000 mg/kg	Warning	No	May be fatal if absorbed through skin. Do not get in eyes, on skin, or on clothing. Wear protective clothing and rubber gloves. Wash thoroughly with soap and water after handling and before eating, drinking, or using tobacco. Remove contaminated clothing and wash before reuse.	Same as above.
III LD$_{50}$ >2000 thru 5000 mg/kg	Caution	No	Harmful if absorbed through skin. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling.	Do.
IV LD$_{50}$ >5000 mg/kg	do	No	None required	None required.

TABLE 3—PRECAUTIONARY STATEMENTS FOR ACUTE INHALATION HAZARD

Toxicity category	Signal word	Skull and crossbones and "Poison" required	Precautionary statements and requirements	Statements of practical treatment
I				
LC_{50} up to and including 0.05 mg/l (actual chamber concentration measured for a four-hour exposure).	Danger	Yes	Fatal if inhaled. Do not breathe dust (vapor or spray mist). [Identify specific respiratory protective device approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.] Remove contaminated clothing and wash before reuse.	*If inhaled:* Remove victim to fresh air. If not breathing, give artificial respiration, preferably mouth-to-mouth. Get medical attention.
II				
LC_{50} >0.05 thru 0.5 mg/l (actual chamber concentration measured for a four-hour exposure).	Warning	No	May be fatal if inhaled. Do not breathe dust (vapor or spray mist). Wear a mask or pesticide respirator jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health. Remove contaminated clothing and wash before reuse.	Same as above.
III				
LC_{50} >0.5 thru 5 mg/l (actual chamber concentration measured for a four-hour exposure).	Caution	No	Harmful if inhaled. Avoid breathing dust (vapor or spray mist). Remove contaminated clothing and wash contaminated clothing and wash before reuse.	Must be determined on an individual basis, depending on site of use.
IV				
LC_{50} greater than 5 mg/l (actual chamber concentration measured for a four-hour exposure.	do	No	None required	None required.

TABLE 4.—PRECAUTIONARY STATEMENTS FOR EYE IRRITATION HAZARD

Toxicity category	Signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment
I				
Corrosive (irreversible destruction of ocular tissue); or corneal involvement or irritation persisting for more than 21 days.	Danger	No	Corrosive.[1] Causes irreversible eye damage. Do not get in eyes or on clothing. Wear goggles, face shield, or safety glasses).[2] Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	*If in eyes:* Hold eyelids open and flush with a steady, gentle stream of water for 15 minutes *If swallowed:* Drink promptly a large quantity of milk, egg white, gelatin solution, or, if these are not available, large quantities of water. Avoid alcohol. *Note to Physician:* Probable mucosal damage may contraindicate the use of gastric lavage.
II				
Corneal involvement or irritation clearing in 8-21 days.	Warning	No	Causes substantial but temporary eye injury. Do not get in eyes or on clothing. Wear (goggles, face shield, or safety glasses).[2] Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	Same as above, except omit Note to Physician.
III				
Corneal involvement or irritation clearing in 7 days or less.	Caution	No	Causes (moderate) eye injury (irritation). Avoid contact with eyes or clothing. Wash thoroughly with soap and water after handling.	*If in eyes:* Flush eyes with plenty of water. Call a physician if irritation persists.
IV				
Minimal effects clearing in less than 24 hours.	do	No	None required	None required.

[1] The term "corrosive" may be omitted if the product is not actually corrosive, as demonstrated by testing.

[2] Choose appropriate form of eye protection. Recommendation for goggles or face shield is appropriate for industrial, commercial, or institutional uses. Safety glasses may be recommended for residential uses.

TABLE 5—PRECAUTIONARY STATEMENTS FOR DERMAL IRRITATION HAZARD

Toxicity category	signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment
I				
Corrosive (tissue destruction dermis and/or scarring).	Danger	No.	Corrosive. Causes burns. Do not get in eyes, on skin, or on clothing. Wear protective clothing and rubber golves.[1] Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	*If on skin:* Wash with plenty of soap and water. Get medical attention. *If swallowed:* Drink promptly a large quantity of milk, egg white gelatin solution, or if these are not available, large quantities of water. Avoid alcohol. *Note to Physician:* Probable mucosal damage may contraindicate use of gastric lavage.
II				
Severe irritation at 72 hours. (severe erythema or edema).	Warning	No.	Causes skin irritation. Do not get on skin or on clothing. Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse.	Same as above, except omit Note to Physician
III				
Moderate irritation at 72 hours (moderate erythema).	Caution	No	Avoid contact with skin or clothing. Wash thoroughly with soap and water after handling.	*If on skin:* Wash with plenty of soap and water. Get medical attention if irritation persists.

TABLE 5—PRECAUTIONARY STATEMENTS FOR DERMAL IRRITATION HAZARD—Continued

Toxicity category	Signal word	Skull and crossbones and "Poison" required	Precautionary statements	Statements of practical treatment
IV Mild or slight irritation at 72 hours (no irritation or slight erythema).	......do	No.	None required	None required.

[1] Need for gloves must be determined on an individual basis. Some products cause blistering if confined under clothing.

(3) If a product exhibits differing degrees of acute effects by several routes of exposure, a composite precautionary statement and statements of practical treatment must be developed by combining the statements from the table.

(c) *Respirator statement.* (1) A respirator statement is required on the label of each end-use product assigned to Toxicity Category I or II on the basis of inhalation toxicity.

(2) The label of a product in Toxicity Category I on the basis of inhalation toxicity must identify and require the use of a specific type of respiratory protective device that will provide protection to those exposed to the pesticide. Specific model designations may also be included. Only respirators jointly approved by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) under ther provisions of 30 CFR Part 11 for either Supplied Air Respirators (Subpart J) or Pesticide Respirators (Subpart M) may be specified on the label. A list of approved respirators entitled, "NIOSH Certified Equipment List as of (date)," is published periodically by NIOSH. A copy of the latest edition of this publication may be obtained at a charge from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(3) The label of a product in Toxicity Category II on the basis of inhalation toxicity must bear the statement, "Wear a respirator jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health for pesticide application." The label may also identify a specific model of respirator.

(d) *Optional emergency information.* Emergency information, in addition to that required by this subpart, may be included on the label. Such information may instruct the user how to contact the company or the National Response Center in care of accident, spill, or other emergency. A registrant may include (or the Agency may require) a telephone number for access to emergency information.

§ 156.55 Environmental hazard statements.

(a) *Requirement.* Statements pertaining to hazard to fish, mammals, birds, aquatic invertebrates, beneficial insects, and endangered species are required on the label of a product intended for outdoor use. The required statements are based on the results of tests required by 40 CFR 158.145 and 158.155.

(b) *Placement.* (1) A statement that applies to the majority of use patterns on the label should generally appear in the side or back panel Precautionary Statements, under the heading "Environmental Hazards."

(2) A statement associated with a specific use pattern, site of application, application technique, time of application, or geographic location should be placed in the general Directions for Use section, or in close association to the applicable use directions.

(c) *Environmental contamination statement.* (1) Except as provided by paragraph (c)(3) of this section, each product intended for outdoor use must bear the statement "Do not contaminate water by cleaning of equipment or disposal of wastes." This statement must appear in the Precautionary Statements section.

(2) Each product intended for outdoor use (unless application to water or wetlands is specified on the label) must bear the statement, "Do not apply directly to water or wetlands."

(3) Each product for use in cooling towers, pulp and paper mills, or similar sites where the pesticide may be contained in effluent discharges from the site (which may be governed directly or indirectly by the issuance of a National Pollutant Discharge Elimination System (NPDES) permit), is required to bear the following statement:

> Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or public waters unless this product is specifically identified and addressed in an NPDES permit. Do not discharge effluent containing this product to sewer systems without previously notifiying the sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of the EPA.

This statement must appear in the general Directions for Use.

(d) *General toxicity statements.* Products intended for outdoor use that exhibit toxicity to various nontarget animals as demonstrated by the toxicity tests required by § 158.145, must bear toxicity statements (which shall be located in the Precautionary Statements section of the label) as follows:

(1) If the mammalian acute oral LD_{50} is 100 mg/kg or less, or the avian acute oral LD_{50} is 100 mg/kg or less, or the avian subacute LD_{50} is 500 ppm or less, the label must bear the statement, "This pesticide [or product] is toxic to wildlife."

(2) If the fish acute LD_{50} is 1 ppm or less, the label must bear the statement "This pesticide [or product] is toxic to fish."

(3) If the aquatic invertebrate acute LD_{50} is 1 ppm or less, the label must bear the statement, "This pesticide [or product] is toxic to aquatic invertebrates."

(4) The term "toxic" in the statements must be replaced with "extremely toxic * * * [Fish and/or wildlife] in treated areas may be killed," if field studies or accident history demonstrates that the use of the pesticide may result in fatality to birds, fish, aquatic invertebrates or mammals. The Agency will apply this requirement on a case-by-case basis.

(5) If the product exhibits toxicity in more than one wildlife or aquatic category, the required statements may be combined i.e., "This pesticide is toxic to fish and wildlife." If a product exhibits toxicity to both fish and aquatic invertebrates, only the statement for fish in paragraph (d)(2) of this section need be used.

(e) *Use restrictions.* The toxicity statements in paragraph (d) of this section are the minimum acceptable for any product requiring environmental hazard statements. If a product is toxic or extremely toxic and an environmental hazard is associated with a specific use pattern, site, application technique, geographic location, or other use-related parameter, use restrictions may be required. Examples of some frequently required statements, together with the conditions that trigger their required use, are given below:

(1) For pesticides with aquatic uses: "Consult your State Fish and Game Agency before applying this product to public waters to determine if a permit is needed for such application."

(2) For granular pesticides that are extremely toxic: "Cover or incorporate granules that are spilled during loading or are visible on soil surface in turn areas."

(3) For products for use on non-aquatic sites that require a toxicity statement under paragraph (d) (2) or (3) of this section: "Drift and runoff from treated areas may be hazardous to aquatic organisms in neighboring areas."

(4) For swimming pool algicides and slimicides containing chlorine: "Chlorine must be allowed to dissipate from treated pool water before discharge. Do not make any chlorine application within 24 hours of discharge."

(5) For products containing instructions for use as seed treatments: "Dispose of excess treated seed by burial away from bodies of water."

(f) *Endangered species.* (1) Based on data submitted in accordance with §§ 158.135, 158.145, and 158.155 and upon recommendations of the Office of Endangered Species, Department of the Interior, or the National Marine Fisheries Service, Department of Commerce, the Agency may require, on a case-by-case basis, specific restrictions for the protection of endangered species.

(2) Statements may take the form of geographical limitations, timing, frequency, or application restrictions, or buffer zones to protect sensitive areas. If required, such statements will be located in the use directions.

(3) In no case may a pesticide label bear directions for use against an endangered species as a pest.

(g) *Beneficial insect cautions*—(1) *Requirement.* Beneficial insect cautions are required on the label of a product if:

(i) The pesticide is toxic to beneficial insects, as shown by data developed in accordance with § 158.155; and

(ii) The product is intended for foliar application to agricultural crops, forests, shade trees or ornamentals, or for mosquito abatement.

(2) *Toxicity criteria.* Pesticide products are classified according to the acute toxicity of their active ingredient(s) to beneficial insects based on data required by § 158.155. The following Table 1 sets out the toxicity groupings and required label statements for honeybees:

TABLE 1.—HONEYBEE TOXICITY GROUPS AND CAUTIONS

Toxicity group	Precautionary statement if extended residual toxicity is displayed	Precautionary statement if extended residual toxicity is not displayed
I Product contains any active ingredient with acute LD_{50} of 2 micrograms/bee or less.	This product is highly toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds if bees are visiting the treatment area.	This product is highly toxic to bees exposed to direct treatment on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds while bees are actively visiting the treatment area.
II Product contains any active ingredient(s) with acute LD_{50} of greater than 2 micrograms but less than 11 micrograms/bee.	This product is toxic to bees exposed to direct treatment or residues on blooming crops or weeds. Do not apply this product if bees are visiting the treatment area.	This product is highly toxic to bees exposed to direct treatment. Do not apply this product while bees are actively visiting the treatment area.
III All others	No bee caution required.	No bee caution required.

(3) *Precautionary statements.* The appropriate precautionary statement given in Table 1 of this section must be placed in the Environmental Hazards section of the label precautionary statements. The statements in Table 1 are categorized according to toxicity groupings, and further subdivided to delineate products that exhibit extended residual toxicity.

(4) *Use-related restrictions.* Pesticide products that are highly toxic to bees (Group I products) and that bear directions for use on certain specific sites are required to bear additional precautionary statements. These auxiliary statements should appear in the use directions for the particular crop or site rather than in the precautionary statements. Statements are required for the following crops:

(i) Foliar application to alfalfa, peas, or beans: "Do not apply if the crop or weeds in the treatment area are in bloom."

(ii) Foliar application to corn: "Do not apply to corn during the pollen shed period."

(iii) Foliar application to listed fruit trees (apple, cherry, peach, plum, citrus): "Do not apply when trees or substantial numbers of weeds in the orchard (grove) are in bloom."

§ 156.58 Physical/chemical hazard statements.

(a) *Flammability statement.* Precautionary statements relating to flammability of a product are required on the label if the product meets the criteria given in Tables 1 or 2 of this section. Tables 1 and 2 also list the statements to be used. These statements are to be located in the side or back panel precautionary statements section, preceded by the heading "Physical/Chemical Hazards". No signal word is used in conjunction with the flammability statements. Tables 1 and 2 follow:

TABLE 1—FLAMMABILITY STATEMENTS FOR NON-PRESSURIZED PRODUCTS

Flash point at or less than 20°F.	Extremely flammable. Do not use or store near fire, sparks, or heated surfaces. Do not use in the vicinity of pilot lights.
Flash point greater than 20°F and less than 100°F.	Flammable. Do not use or store near heat sources or open flame. Do not use in the vicinity of pilot lights.
Flash point at or greater than 100°F and less than 150°F.	Do not use or store near heat or open flame.
Flash point at 150°F or greater.	No statement required.

TABLE 2—FLAMMABILITY STATEMENTS FOR PRESSURIZED PRODUCTS

Flash point at or less than 20°F or if there is a flashback at any degree of valve opening.	Extremely flammable. Do not use or store near fire, sparks, or heated surfaces. Do not use in the vicinity of pilot lights. Contents under pressure. Do not puncture or incinerate container. Exposure to temperatures above 130°F may cause bursting.
Flash point greater than 20°F and less than 100°F; or if the flame extension is more than 18 inches at a distance of 6 inches from the flame.	Flammable. Do not use or store near heat sources, sparks, or open flame. Do not use in the vicinity of pilot lights. Contents under pressure. Do not puncture or incinerate container. Exposure to temperatures above 130°F may cause bursting.
All other pressurized containers.	Contents under pressure. Do not use or store near heat or open flame. Do not puncture or incinerate container. Exposure to temperatures above 130°F may cause bursting.

(b) *Criteria for declaration of non-flammability.* The label of a product that meets the following criteria for non-flammability may bar the term "non-flammable" or "non-flammable (gas, liquid, etc.)":

(1) If a gas or mixture of gases, it does not ignite when a lighted match is paced against the open cylinder valve.

(2) If a liquid, it has a flash point greater than 350°F (177°C).

(3) If an aerosol, it meets all of the following criteria:

(i) The flame extension is zero inches, and there is no flashback, with the valve opening at a distance of 6 inches from the flame.

(ii) The flash point of the non-volatile liquid component is greater than 350°F (177°C).

(c) *Location of declaration of non-flammability.* The phrase may appear as a substatement to the ingredients statement, or on a back or side panel, but shall not be highlighted or emphasized (as with an inordinately large type size) so as to constitute a safety claim.

(d) *Other phsical/chemical hazard statements.* When data submitted in accordance with § 158.120 demonstrate hazards of a physical or chemical nature other than flammability, appropriate statements of hazard must be included on the label. Such statements may address hazards of explosiveness, oxidizing or reducing capability, reactivity or corrosivity.

Subpart D—Use Directions and Restrictions

§ 156.60 General.

(a) *Placement*—(1) *Label.* Unless otherwise specified in this section, all information required by this Subpart D may be placed in any location on the label of the product.

(2) *Labeling.* All information required by this Subpart D may appear in labeling (e.g., brochures, pamphlets), instead of on the label, provided that:

(i) Such labeling is securely attached to the pesticide container, or placed within the outer container or wrapper; and

(ii) The label bears a statement similar to, "Use only in accordance with directions in the enclosed circular."

(b) *Heading.* The heading "Directions for Use" or similar wording denoting instruction to the user must be used.

§ 156.62 Classification statement.

(a) *Products classified for restricted use.* (1) If the uses of a product have been classified for restricted use only by certified applicators under FIFRA section 3(d)(1)(C), the label must bear the phrase "RESTRICTED USE PESTICIDE" at the top of the front panel. The phrase must be in capital letters, and must appear in a type size at least as large as that required for the signal word. Type size requirements are found in Table 1 ot § 156.10(c)(2). The phrase (and accompanying terms of restriction, if required) must appear prominently above the product name, company logo, or other text or graphic matter so that it is unlikely to be overlooked during the customary conditions of purchase or use. If labeling is also used for Directions for Use, the restricted use phrase and terms of restriction must also appear at the top of such labeling.

(2) If the phrase "RESTRICTED USE PESTICIDE" is required, directly below it must appear a statement of the terms of the restricted use. If use is limited to certified applicators, the statement shall read, "For use only by a certified applicator for uses authorized by his certification, or by persons under his direct supervision."

(3) Blocking the restricted use statements within a solid line is suggested as a means of emphasis.

(b) *Products classified for restricted used and bearing other unrestricted uses.* The label of a product bearing restricted uses may bear unrestricted uses. The product, however, must be labeled in accordance with the requirements of paragraph (a) of this section, as if all uses were restricted. The labeling may not distinguish between uses classified for restricted use and those not so classified.

(c) *Products bearing only uses not classified or classified for general use.* The labeling of a product bearing only uses that are not classified or which are classified for general use may not bear a statement of classification.

§ 156.64 Misuse statement.

(a) The labeling of each product shall bear one of the following misuse statements:

(1) "It is a violation of Federal law to use this product in a manner inconsistent with its labeling."

(2) "Federal law prohibits use of this product in a manner inconsistent with its labeling."

(b) The misuse statement shall appear as a separate paragraph directly beneath the heading of the Directions for Use portion of the labeling, and shall be distinct from other text in the Directions for Use.

§ 156.67 Worker protection statements.

(a) *Outdoor agricultural products involving hand labor.* The labeling of each product for outdoor agricultural use on crops involving hand labor shall meet the following requirements:

(1) The labeling shall bear the following statement: "Do not apply this product in a manner as to expose workers or other persons either directly or through drift. The area being treated must be vacated by unprotected persons."

(2) If the product is assigned to Toxicity Category I or II, the front panel signal word must appear in Spanish as well as English.

(3) If the product is assigned to Toxicity Category I or II, the statement, "Si usted no lee ingles, no use este producto hasta que el etiqueta haya sido explicado ampliamente," must appear in close proximity to the Spanish signal word. [Translation: "If you cannot read English, do not use this product until the label has been fully explained to you."]

(4) If a specific reentry interval has been established by 40 CFR Part 170, or has been established by the Agency based on data submitted in accordance with Subdivision K of the Registration Guidelines, the labeling must include that reentry interval. A reentry interval established based on data in accordance with Subdivision K takes precedence if there is a conflict with 40 CFR Part 170. The following statement must be used: "Do not enter or allow entry into treated areas within —— (hours/days) after treatment unless protective clothing is worn." [The reentry interval in 40 CFR 170.3(b)(2) or that established by application of Subdivision K is to be placed in the blank space.]

(5) If no specific reentry interval has been established in 40 CFR Part 170 or in accordance with Subdivision K, the following reentry statement must appear in labeling: "Do not enter or allow entry into treated areas without protective clothing until (sprays have dried/dusts have settled)."

(6) Labeling must also include a statement advising that State reentry restrictions may be more stringent than federally established ones. The following is an acceptable statement for this purpose: "State or local reentry regulations may be more restrictive than those stated on this label."

(7) Labeling must bear a statement prohibiting use unless written or oral warnings have been given to workers in an appropriate language or unless areas to be treated have been posted at usual points of entry. The statement shall require that such posting or warning include, at a minimum, the following information, in an appropriate language:

(i) The signal word and, if required for the product, the skull and crossbones symbol (for posting);

(ii) A statement that the area has been treated with a named pesticide;

(iii) The date of treatment;

(iv) The date or time when safe reentry may be accomplished;

(v) A warning not to enter the treated area without protective clothing until the date specified; and

(vi) A telephone number for further information.

(8) An example of an acceptable posting statement would be, "WARNING. Area treated with (name of pesticide) on (date). Do no enter without protective clothing until (date/time of reentry). For further information call (telephone number)."

(9) Reentry restrictions must appear in the Directions for Use portion of labeling. Specific reentry intervals should be associated with the use(s) to which they are applicable.

(b) *Products for treating structures and vehicles.* The labeling of each product intended for fumigation of structures or vehicles must bear:

(1) A statement requiring the placarding of the treated structure or vehicle at doors and other access points with the following:

(i) The signal word, and, if required for the product, the skull and crossbones symbol;

(ii) The statement "Area under fumigation. Do not enter."

(iii) The date of fumigation;

(iv) The name of the fumigant used;

(v) An emergency telephone number; and

(vi) The name and address of the fumigator.

(2) Complete instructions for aeration of the treated area, including the required use of a suitable detector to determine when the area is safe for reentry.

(3) A statement that the warning placards are not to be removed until aeration has been completed in accordance with the instructions provided.

(c) *Required statement for truck and van fumigants.* The labeling of each product intended for fumigation of trucks, vans and trailers must bear the following statement: "Do not move trucks, vans, or trailers during fumigation. Aerate in accordance with label instructions before moving."

§ 156.70 Storage and disposal statements.

(a) *Location and format.* Storage and disposal statements shall be grouped together in the Directions for Use portion of labeling. Products labeled for home and garden use by homeowners only do not require a heading for the statements. All other products shall bear the heading "Storage and Disposal." Storage and disposal statements must be set apart from other directions for use. Blocking is suggested for this purpose.

(b) *Storage instructions.* Labeling must bear storage and handling instructions, based on a consideration of the conditions that might alter the form or composition of the pesticide or that might affect the container and its ability to continue to function properly. Such instruction should describe, when applicable:

(1) Acceptable ranges of temperature and humidity, and the effect of excesses of heat, sunlight, friction or contaminating substances or media on the product;

(2) Acceptable physical conditions of storage of the product, such as positioning of the container, measures to avoid breakage, crushing, shock, friction or moisture penetration, stacking height, and separation of pesticides during storage to prevent cross-contamination of other pesticides, fertilizer, food, and feed.

(3) Proper handling of the pesticide and container, including how to move the container within the storage area, how to open and close the container properly (particularly for partially used containers), and measures to prevent contamination upon opening or closing.

(4) What actions to take if the container is damaged in any way, or if the pesticide is leaking or has been spilled, and what precautions to take to minimize exposure if any of these has occurred.

(5) If the product is for residential or institutional use, instructions for locked storage and warnings against transfer of the pesticide from its original container.

(c) *Pesticide disposal statement.* (1) The labeling of each product intended for residential or institutional use (and in a size appropriate to that use) must bear a disposal statement similar to that for RESIDENTIAL AND INSTITUTIONAL PRODUCTS in Table 1 of this section.

(2) The labeling of each other product that meets any or the criteria in paragraph (c)(2) (i) through (iii) of this section must bear the statement given in that paragraph, together with the pesticide disposal statements given for HAZARDOUS WASTE in Table 1 of this section. If the product meets more than one criteria, it must bear the statement denoting highest hazard (acutely hazardous > toxic > hazardous).

(i) The product is assigned to Toxicity Category I on the basis of acute oral or dermal toxicity, or skin or eye irritation potential, or Toxicity Category I or II on the basis of acute inhalation toxicity. Any such product shall bear the statement, "Pesticide wastes are acutely hazardous."

(ii) The product contains any ingredient listed in 40 CFR 261.33(f). Any such product shall bear the statement, "Pesticide wastes are toxic."

(iii) The product meets any of the criteria for a hazardous waste in 40 CFR 261.21 through 261.23, or contains any ingredient listed in 40 CFR 261.24 for EP toxicity. Any such product shall bear the statement, "Pesticide wastes are hazardous."

(3) The labeling of each other product not meeting the criteria of paragraph (c)(2) of this section must bear the pesticide disposal statements given for NON-HAZARDOUS WASTE in the following Table 1:

TABLE 1—PESTICIDE DISPOSAL STATEMENTS

Residential and institutional use products.	Securely wrap original container in several layers of newspaper and discard in trash.
Hazardous waste	Pesticide wastes are [acutely hazardous/toxic/hazardous]. Dot not contaminate water, food, or feed by storage or disposal. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. Dispose of excess or waste pesticide by use according to label directions, or contact your State Pesticide or Environmental Control Agency or the Hazardous Waste representative at the nearest EPA Regional Office for guidance.
Non-Hazardous waste	Do not contaminate water, food, or feed by storage or disposal. Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility.

(d) *Container disposal.* (1) If a product is intended and labeled for residential use, its labeling must bear the statement, "Do not reuse empty container (or bottle, can, jar, bag). (If bottle, can, or jar) Rinse thoroughtly before discarding in trash. (If bag) Discard bag in trash. (If aerosol) Replace cap and discard in trash. Do not incinerate or puncture." The container disposal statement may be combined with that required for pesticide disposal to eliminate redundancy.

(2) The labeling of each other product must bear a container disposal statement appropriate to the type of container. Unless modifications to statements are approved by the Agency, the statements in the following Table 2 shall be used:

TABLE 2.—CONTAINER DISPOSAL STATEMENTS

Container type	Disposal statement
Metal containers	Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or by other approved State and local procedures.
Plastic containers	Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, by incineration or, if allowed by State and local authorities, by burning. If burned, stay out of smoke.
Glass containers	Triple rinse (or equivalent). Then dispose of in a sanitary landfill, or by other approved State and local procedures.

TABLE 2.—CONTAINER DISPOSAL STATEMENTS—Continued

Container type	Disposal statement
Fiber drums with liners	Completely empty liner by shaking and tapping sides and bottom to loosen clinging particles. Empty residue into application equipment. Then dispose of liner in a sanitary landfill or by incineration if allowed by State and local authorites. If drum cannot by reused[1], dispose of in the same manner.
Paper and plastic bags	Completely empty bag into application equipment. Then dispose of bag in a sanitary landfill, by incineration or, if allowed by State and local authorites, by burning. If burned, stay out of smoke.
Large compressed gas cylinders.	Return empty cylinder for refilling (or similar wording).

[1] Manufacturer may replace this phrase with one indicating whether and how fiber drum may be reused.

(e) With the approval of the Agency, alternative statements based on data, or on special packaging types or product characteristics may appear on labeling. Each alternative disposal statement must include a pesticide disposal statement consistent with the requirements of the Resource Conservation and Recovery Act (RCRA), and a container disposal statement also consistent with RCRA requirements.

§ 156.72 Directions for use.

(a) *Requirement.* (1) Unless exempted by paragraph (a) (2) or (3) of this section, all end use products are required to bear specific directions or instructions for use, conforming to the requirements of paragraphs (b) through (i) of this section, and of Subpart P of this part in the case of antimicrobial products.

(2) A product limited to use by highly trained professionals such as veterinarians and physicians is not required to bear specific directions for use, provided that:

(i) The label clearly states on the front panel that the product is for use only by veterinarians or physicians;

(ii) The product is also a drug or animal drug that is regulated as such under the provisions of the Federal Food, Drug, and Cosmetic Act.

(3) A manufacturing-use product is exempt from the requirement for detailed directions for use. Refer to § 156.80 for labeling requirements for manufacturing-use products.

(b) *Inclusion of directions for use under a special local needs registration.* (1) A product registered under FIFRA sec. 3 may bear directions for "special local need" uses approved by individual States under FIFRA sec. 24(c), provided that:

(i) Such instructions are clearly distinguished on the labeling from other use directions, such as by enclosing them within a solid outline (blocking);

(ii) The statement, "For use only in (insert name(s) of State)" is included; and

(iii) The special local need (SLN) number assigned by each State in included.

(2) Use directions for special local needs uses must conform to the requirements of §§ 156.72 and 156.76.

(c) *Physical and chemical properties of the product.* In all cases where the pesticide is intended to be incorporated or impregnated into a non-pesticide substance or article, the use directions must include information pertinent to the treatment and use of the finished product into which the pesticide is incorporated. Such information should include:

(1) The physical and chemical properties of the product, such as volatility, stability under conditions of use, photodegradation, or leachability; and

(2) The beneficial results and any detrimental effects that may be expected from the application of the pesticide to the material or article to be treated, such as discoloration, or increased strength, flexibility, or shelf life duration.

(d) *Compatibility with other pesticides.* The use directions should indicate any physical compatibility problems that might be encountered when use with other pesticides in tank mixes is a common practice. If the directions recommend use with fluid fertilizers, a procedure for a "jar" type compatibility test should be included in labeling.

(e) *Adjuvants.* If the product is to be used only with a specific adjuvant, the directions must name that adjuvant, and must provide specific directions for use with that adjuvant.

(f) *Mixing or dilution.* The directions for use must include instructions for mixing or diluting the product unless the product is in a ready-to-use form. Directions for use of any equipment necessary to perform the mixing or dilution must be included. Instructions must include:

(1) Order of mixing, if necessary to proper use;

(2) Identification of the diluent(s) and solvents that may be used, if other than water.

(3) Quantity of each diluent to be used (dilution ratio);

(4) Concentration of final spray;

(5) Need for agitation to maintain suspension;

(6) Special precautions to use when mixing; and

(7) If the container is to be triple rinsed, a statement to add the rinse water to the spray mixture before adding the total volume of water required by the use instructions. The information in paragraph (f) (1) through (7) of this section may appear as general instructions where applicable to all uses, or may be listed separately with each applicable use.

(g) *Sites of applications.* (1) The directions for use must state the site(s) of application, e.g., the crops, animals, areas, or articles to be treated. The site designation must clearly characterize the use pattern so that the Agency can ascertain and evaluate the exposure likely to result from application to that site, and the user can determine the legal use(s) of the product. For example, labeling must distinguish between:

(i) Residential and non-residential sites (e.g., home garden or commercial agricultural application; residential application or institutional application).

(ii) Field and greenhouse sites, if either might reasonably be inferred by the user.

(iii) Indoor and outdoor areas, if either might reasonably be inferred by the user.

(iv) Food crop and non-food crop areas, if either might reasonably be inferred by the user.

(v) Terrestrial and aquatic areas, if either might reasonably be inferred by the user.

(2) If intended for incorporation into non-pesticide items, the ultimate usage of the treated articles or substances, such as "canvas for tents and awnings," or "plastic for non-food, non-human contact articles." All-inclusive or broad terminology without qualification as to the type or ultimate use of the finished product is not acceptable.

(3) The Agency encourages applicants and registrants to consult "EPA Site Categories for Preparing and Coding Pesticide Labeling," a comprehensive listing of acceptable site terminology developed for consistency in characterizing pesticide use sites. Microfiche copies are available at a charge from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. When requesting copies, ask for "Set B of Pesticide Information on Microfiche," NTIS accession number PB80-921900.

(h) *Target pest or objective.* (1) The target pest(s) or intended physiological action must be identified in the directions for use, and generally must be clearly associated with each site to which it applies. In some cases, such as with residential use products, it may be acceptable to group common pests with a group of sites where those pests may be encountered, if the product is intended for application to each site/pest combination. For example, it may be appropriate to group cabbage looper, imported cabbageworm, and diamondback moth with cabbage, broccoli, brussels sprouts, and cauliflower.

(2) Pests or situations for which the pesticide may be ineffective should be identified. The user should be advised of action to take if ineffectiveness is encountered.

(i) *Dosage rate.* (1) Use directions must specify the effective dosage rate or range for each site and pest combination. If a dosage range is stated, the directions must describe the circumstances in which the higher and lower rates are to be used, as, for example, "Use the higher rate and shortest time interval when heavy pest populations are present," or "Use the lower rate on sandy soils and the higher rate on muck soils."

(2) Dosage rates must be expressed in units of measurement appropriate to the formulation, container size, if necessary, and use site. Examples of appropriate terms would be: amount of product per unit surface area ("1 pound per acre"); amount per unit volume of solvent or diluent, together with total volume to be applied ("One ounce per gallon. Apply to runoff."); duration of exposure at a given concentration ("10 second dip in 0.5% solution"); amount per unit volume of space ("one ounce per 1000 cubic feet"); amount per linear distance ("one pound per 100 feet of row" or "1 oz per 150 feet of row); amount per unit weight ot animal ("one ounce per hundredweight"); or for certain pressurized products, the length of time of spraying at a specified distance from a surface ("10 seconds at a distance of 10–12 inches").

(3) Agricultural pesticides with directions for row treatments must specify the dosage rate in terms of the amount per unit of linear row distance (e.g., "2 oz/1000 linear feet of row") and, when applicable, the band width and row spacing. Row spacings must be stated when the possibility of overlapping treated areas exists. The equivalent amount per unit area for specific row spacing (e.g., "1 pound/acre for 36-inch rows") may be included.

(4) The directions must clearly instruct the user how to achieve acceptable results when the pesticide is applied according to the label dosage rates. However, when a dosage range is provided, the labeling may refer the user to the State Extension Service or State Fish and Game Agency for supplementary guidance in selecting the proper dosage rate within the range for local conditions.

(5) The dosage rate may not exceed the net contents of the product, as packaged.

(6) If the amount of any active ingredient is likely to decrease as a result of deterioration of the product, and the product is intended for use against pests of public health significance, the dosage rate must be adjustable to take this into account. Either of the following is acceptable:

(i) The directions for use may relate dosages to a stated date of manufacture. The use directions may contain a statement such as "If used over —— months after date of manufacture, use an additional —— ounces of product per gallon of water," or the directions may include a table of dosage or dilution variation at periodic intervals after the date of manufacture.

(ii) The directions for use may prescribe the use of test kits or other readily available methods that allow the user to determine the appropriate dosage.

(j) *Timing and frequency of application.* (1) The timing of application, number of applications necessary, and frequency of application must be stated in the directions for use. Dates, number of days before or after planting, last application, emergence or harvest, stage of growth of crop, stage of growth of pest, abundance of the pest(s), indicators of pest appearance, or economic threshold levels may be used to describe timing and frequency of application.

(2) If repeat applications are recommended, directions must include the recommended intervals between treatments (or other indicators of repeat treatment) and the total quantity of product that can legally be applied per growing season.

(3) The directions must clearly instruct the user how to achieve acceptable results when the pesticide is applied according to timing and frequency instructions on the label. However, reference may be made to consult the "State Agricultural Experiment Station, or State Extension Service Specialists" for supplementary information on local pest abundance, integrated pest management procedures, or appropriate local timing of application.

(k) *Method of application.* (1) Clear, specific instructions on how to apply the pesticide are required in the directions for use. Such instructions shall include:

(i) Mixing, dilution, and loading instructions;

(ii) Designation of the type of equipment or apparatus to be used, if necessary for the proper application of the pesticide, or, alternatively, a description of the necessary application parameters, to enable the user to select appropriate equipment for use;

(iii) Calibration instructions for equipment, if necessary;

(iv) Application procedures pertaining to delivery of the proper dosage or dilution coverage and to minimize drift and other undesirable application effects; and

(v) Ancillary procedures to be followed before, during, or after pesticide application so that the user will achieve the intended results, and to minimize exposure to the pesticide. They may include pre-cleaning or preparation of the application site, or watering material into the ground, or sealing the application site (such as with fumigants).

(2) If the pesticide is packaged in or with the apparatus to be used, directions for use of the apparatus must be included. For example, a product used in a pesttrapping device must bear instructions for use of the specified trap, as well as directions for placement of the trap. If the pesticide can be used only with a specific apparatus or type of equipment, the labeling must so state, and provide directions for use of the product with that apparatus.

(3) For agricultural pesticides and those intended for large areas, such as forests, right-of-way, or mosquito abatement, the directions must provide separate directions for ground and aircraft application. Ground instructions must specify the type of ground application equipment (hydraulic, air blast). Aircraft instructions must state whether fixed-wing or helicopter (rotary-wing) aircraft are to be used. Special methods, such as irrigation system applications, must also be separately described.

(4) If aerial application is not intended, and specific directions provided, the labeling must bear a statement prohibiting such application.

§ 156.76 Restrictions on use.

The directions for use must include any prohibitions, warnings, or restrictions on use necessary to prevent unreasonable adverse effects or ineffectiveness, or to ensure that residue tolerances will not be exceeded. Such statements may be located in the general directions for use if of general applicability to the use of the pesticide, or in close proximity to the specific directions for the use.

(a) *Preharvest or preslaughter interval.* The interval (time period) between application of a pesiticide on a crop, animal, or site, and its safe harvest or use for feed or food is required to appear on labeling when data indicate that, without such restrictions, illegal residues may result from use of the pesticide. The interval is generally expressed in a statement such as "Do not apply within 8 days of harvest" or "Withdraw animals from treatment one week prior to slaughter."

(b) *Rotational crop restrictions.* (1) The labeling must include a restriction limiting rotation (or replanting after crop loss) for a specified period of time after pesticide application (not to exceed 18 months) if data submitted in accordance with § 158.26 indicate that:

(i) Residues remaining in soil will result in adverse effects to following crops; or

(ii) Residues remaining in soil will result in residues in the following crop where there is not tolerance, or in excess of an established tolerance for the following crop.

(2) An example of a typical statement would be "Do not plant crops other than corn or sorghum within 12 months after application."

(c) *Geographic restrictions.* (1) Geographic restrictions may be necessary in any of the following situations:

(i) Efficacy testing indicates that the product is not effective in all areas of the country. Statements may limit use to regions or States where effectiveness has been demonstrated, e.g., "For use only in Louisiana, Texas, Arkansas, and Mississippi," or "Southeastern U.S. only."

(ii) An endangered species, or the critical habitat of an endangered species, would be jeopardized by use of the pesticide as proposed on the label. Endangered species restrictions prohibit use in specific counties or other narrowly drawn geographical areas where the endangered species would be jeopardized.

(iii) Residue data submitted in support of a tolerance are not representative of all areas where the crop is grown, or indicate that residues may exceed the established tolerance level in particular areas.

(iv) Data indicate that, without geographical restrictions, unreasonable adverse effects on the environment, such as groundwater contamination may result.

(2) Upon written request, and with the approval of the Agency, the label may bear geographic restrictions desired by the registrant.

(d) *Phytotoxicity (crop safety) warnings.* (1) A statement similar to "Since phytotoxicity has not been evaluated on all possible crop varieties, it is recommended that varietal responses be tested on a few plants prior to full scale applications" should be included in use directions for products intended for use on crops or crop planting sites, if applicable.

(2) When temporary crop injury such as stunting, discoloration, or malformation would be expected to occur, the use directions must advise the user of this expected injury. When some degree of crop stand loss results from pesticide application, even if such loss is considered economically acceptable, this effect must be clearly indicated in the use directions.

(e) *Performance restrictions.* If specific environmental conditions, such as cultural, crop management or chemical use practices, would detrimentally affect product performance, the labeling must identify the conditions and the expected effects. Conditions may include soil conditions, (moisture, pH, texture, organic matter), meteorological conditions, (precipitation, drought, temperature, wind) and cultural practices (tillage, cultivation, irrigation).

(f) *Nontarget area plant cautions.* If a pesticide is readily transported during or after application to nontarget areas through air (via spray drift, volatilization) or water (via leaching, lateral movement in soil, runoff, drainage or irrigation), and has been shown to possess phytotoxic properties, label precautions on possible adverse effects to nontarget plants are required. The nature and duration of any effects (temporary, permanent, or seasonal) should be described.

(g) *Spray drift restrictions*—(1) *General.* When drift may cause adverse effects which the Agency deems significant on organisms outside the intended site of application, either directly or indirectly through contamination of the soil or water, the labeling must advise the user of these effects and must provide recommendations to minimize drift and drift hazard. Drift-related use directions, recommendations, precautions, and limitations should be included for all pesticides applied by, but not limited to, aerial, mist blower, sprinkler irrigation and hydraulic ground applications.

(2) *Content.* Use directions should describe general meteorological conditions, recommended equipment operation and adjustments, and adjuvants and carriers necessary to minimize pesticide drift.

(3) *Specific statements.* General use directions must include the following statements:

(i) For all outdoor applications of sprays and dusts: "Do not apply when weather conditions favor drift from the target area. Coarse sprays are less likely to drift. Increase spray volumes by increasing nozzle orifice diameter rather than by adding more nozzles or increasing nozzle pressure."

(ii) For aerial applications: "Do not use nozzle cores which disperse spray into fine or mist droplets. For crosswind swath applications, begin the first swath on the downwind side of the treatment area, with successive swaths progressing upwind."

(iii) For aerial applications and mist blowers (air carriers): "Do not apply when temperature inversion ceilings are likely to exist."

Subpart E—Specialized Labeling

§ 156.80 Manufacturing use products.

(a) *General.* This section prescribes requirements for labeling of manufacturing use pesticides. Unless otherwise stated in paragraphs (b) through (n) of this section, the requirements of Subparts A through D apply to all manufacturing use products. The general requirements are enumerated here for reference.

(b) *Name, brand, or trademark.* The requirements of § 156.20 apply.

(c) *Identifying phrase.* An identifying phrase must appear beneath the product name. The phrase must indicate that the product is only for formulation of other pesticides and the type of pesticide (insecticide, for example).

(d) *Name and address of the registrant.* The requirements of § 156.24 apply.

(e) *EPA registration number.* The requirements of § 156.30 apply.

(f) *EPA establishment number.* The requirements of § 156.31 apply.

(g) *Ingredients statement.* The requirements of § 156.34 apply.

(h) *Net contents.* The requirements of § 156.36 apply.

(i) *Precautionary statements.* (1) Except as specified in paragraph (i) (2), (3), and (4) of this section, the requirements of Subpart C apply.

(2) The child hazard warning "Keep Out of Reach of Children" is not required on the label of manufacturing use product.

(3) If all precautionary statements are grouped together on the front panel, the heading "Precautionary Statements" and the signal word required by § 156.52 below that heading may be omitted. The referral statement may be omitted if all precautions appear on the front panel.

(4) The environmental hazard statements required under the heading "Environmental Hazards" are limited to the following:

(i) A statement of relative toxicity to appropriate organisms for hwich testing required by 40 CFR 158.145 indicates a potential hazard, e.g., "This product is toxic to fish and wildlife."

(ii) The statement, "Do not discharge effluent containing this product directly into lakes, streams, ponds, estuaries, oceans or public waters unless this product is specifically identified and addressed in an NPDES permit. Do not discharge effluent containing this product to sewer systems without previously notifying the sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of the Environmental Protection Agency."

(j) *Classification statement.* No statement of use classification with respect to use by certified applicators is required or permitted on the labeling.

(k) *Misuse statement.* The misuse statement must appear on the label of a manufacturing use product. The misuse statement must also appear in any labeling in which instructions for formulation appear, located immediately following the heading for such instructions. The wording of the misuse statement is the same as that given in § 156.64.

(l) *Reentry interval statement.* No reentry interval statement is required on the labeling of a manufacturing use product.

(m) *Directions for use.* Detailed instructions for formulating may be omitted from the labeling of a product intended for formulating other registered pesticides, provided that:

(1) The labeling includes the following:

(i) Information pertinent to the needs of the formulators, including, but not limited to, physical and chemical properties, of the product. If such information is stated in labeling rather than directly on the product label, a reference statement such as "Refer to Technical Bulletin X for formulating and other information" must appear on the label.

(ii) A statement that each formulator is responsible for obtaining EPA registration for his end use product(s). Labeling for the manufacturing use product may include sample labels of registered end use products as guidance for formulators. Labeling may not include specimen labels for end use products not registered by the Agency.

(2) Information on the composition, toxicity, methods, of formulation, limitations and restrictions, and effectiveness of the product for pesticide purposes is readily available to the formulator from sources other than the labeling.

(n) *Storage and disposal statements.* The labeling of a manufacturing use product is required to bear appropriate statements of pesticide storage and disposal. Refer to § 156.70 and Tables 1 and 2 of that section for requirements.

§ 156.87 Unit packaging.

(a) *Requirement.* Each unit package shall bear a label conforming to the requirements of paragraph (b) of this section. The outer container in which the unit packages are distributed and sold shall bear labeling conforming to the requirement of paragraph (c) of this section. An individual water-soluble unit package which is further enclosed in a foil or plastic wrapper on a one-to-one basis may be labeled on the foil or plastic wrap.

(b) *Contents of label of unit package.* The label of each individual unit package shall include the following information:

(1) A statement of the active ingredient(s). Each active ingredient must be identified by name, unless the Agency has approved a statement including only the names of the principal or most hazardous ingredient(s). The statement of active ingredients need not meet the requirements for an ingredients statement of § 156.34, but may simply declare "Contains (name of ingredient)." No percentages or statements of inert ingredients are required.

(2) The appropriate signal word.

(3) The skull and crossbones (if required).

(4) The child hazard warning, "Keep Out of Reach of Children."

(5)The EPA Registration Number.

(6) The phrase "RESTRICTED USE PESTICIDE" if the product has been so classified.

(7) A reference statement to the label of the outer package for directions and precautions.

(c) *Contents of label of outer container.* The outer container label or labeling must fully comply with the requirements of Subparts A through D. In addition, the front panel of the container must bear the following statement in a prominent position: "Do not remove packages from container except for immediate use."

(d) *Prominence and optional information.* The information required by paragraph (b) of this section must appear in type of 2 mm or greater. The manufacturer may, at this option, add additional information on the unit package when size permits, providing it does not detract from the prominence or legibility of the required information.

Subpart F—Labeling of Products not Required to be Registered

§ 156.105 Products shipped between registered establishments.

(a) *General.* 40 CFR 152.30 exempts from the registration requirement certain pesticides being transferred between registered establishments. Such unregistered pesticides are subject to certain misbranding provisions of FIFRA sec. 2(q). This section sets out the labeling requirements for such products.

(b) *Contents of label.* The label shall bear each of the following items.

(1) The name and address of the producer of the pesticide being shipped, meeting the requirements of § 156.24.

(2) The establishment number of the producing establishment from which shipped. This number is not necessarily the same establishment number as that which will appear on the final product being produced at the second establishment. A product produced at Establishment A and shipped to Establishment B for further formulation and then to Establishment C for packaging into the retail product must bear, successively:

(i) The number of Establishment A during transport to Establishment B.

(ii) The number of Establishment B during transport to Establishment C; and

(iii) The number of Establishment C, the final establishment, on the retail package.

(3) An ingredients statement complying with the requirements of paragraph (b)(3) (i) or (ii) of this section.

(i) If the product is being shipped in final form, i.e., no further formulation or composition changes are to be made prior to distribution or sale of retail packages, the ingredients statement shall comply in all respects with § 156.34.

(ii) If the pesticide is being shipped for further formulation or processing, the ingredients statement shall include the name of each active ingredient, and the percentage of each to the nearest whole percentage.

(4) The net weight or measure of the contents of the product, consistent with the requirements of § 156.36.

(5) Hazard warning statements, conforming to the requirements of Subpart C with respect to signal word, use of the word "POISON" and skull and crossbones symbol and human, environmental, and physical/chemical hazard statements.

(c) *Exemption from requirement for directions for use.* Specific directions or restrictions on use, formulation, or packaging of the product being shipped between registered establishments are not required to appear on labeling.

(d) *Additional labeling requirements.* The following sections of this part apply to products being shipped between registered establishments.

(1) Section 156.7, Placement of label.

(2) Section 156.10 (a)(3), (b)(1), (c)(1), and (d), concerning prominence, legibility, contrast, type size, and language to be used.

(3) Section 156.15, False and misleading statements, except for paragraph (a), Warranty disclaimer statements.

§ 156.110 Products for export only.

(a) A pesticide product, device, or active ingredient used in producing a pesticide that is intended solely for export must be labeled with the following information:

(1) In English or the language of the importing country:

(i) The name and address of the registrant, or if unregistered, or the producer, in accordance with § 156.24;

(ii) The producing establishment number, in accordance with § 156.31;

(iii) A statement of net weight or contents, in accordance with § 156.36; and

(iv) A statement of use classification, if classified for RESTRICTED USE on the basis of toxicity to man or the environment. The terms of the U.S. restriction need not be included.

(2) In English and the language of the importing country:

(i) An ingredients statement, in accordance with § 156.34;

(ii) Warning or precautionary statements, in accordance with Subpart C of this part;

(iii) If in Toxicity Category I on the basis of acute oral, dermal, or inhalation toxicity, the following:

(A) The skull and crossbones (in red or black);

(B) The word POISON (in red) on a background of distinctly contrasting color; and

(C) A statement of practical treatment, in accordance with § 156.48.

(iv) If the product is unregistered, the statement, "Not registered for use in the United States of America."

(b) Labeling of a registered product will be considered to satisfy the requirements of paragraph (a)(1) of this section and the English language requirements of paragraph (a)(2) of this section if the label or labeling otherwise complies with the requirements of this part.

(c) If the information required by this section would conflict with the requirements of the importing country, any or all of the information may instead be included in labeling that is attached to or accompanies the product container or shipping container, provided that the product is labeled according to the requirements of the importing country.

§ 156.112 Products shipped under an emergency exemption.

(a) *Registered product.* A registered product must bear the labeling approved in conjunction with its registration.

(b) *Unregistered product.* An unregistered product must bear labeling that complies with the specifications in the authorizing exemption notice. Such labeling will normally be one of the following:

(1) Labeling meeting the requirements of Subparts A through D of this part, but not including §§ 156.72, Directions for use, and 156.76, Restrictions on use;

(2) Labeling approved in conjunction with the issuance of an experimental use permit under FIFRA sec. 5; or

(3) Labeling reviewed and approved by the Agency in conjunction with the request for exemption.

(c) *Directions for use.* (1) In all cases, directions for use of the product must be in accordance with the terms and conditions of the authorizing exemption notice, and must be available to the user at the time of use. Use directions may be contained in labeling (which may include the authorizing exemption notice itself) distributed with the product.

(2) The use directions should include the year or growing season for which use is authorized, and the name of the State to which the exemption has been granted.

§ 156.115 Pesticides shipped for disposal only.

(a) *General.* FIFRA section 19 provides that the Administrator shall, if requested by the owner of a pesticide, arrange for disposal of a pesticide that has been cancelled following suspension under FIFRA section 6(c). Regulations contained in 40 CFR Part 165, Subpart B, provide that the owner of the pesticide must transport the pesticide to an acceptance location for transfer to the Agency.

(b) *Labeling requirements for a product being shipped for disposal.* A product being shipped to an acceptance location by its owner, and thereafter being shipped by the Agency to a disposal site, shall bear a label containing the following information:

(1) The name and address of the registrant, or if unregistered, the producer of the product, in accordance with § 156.24;

(2) The establishment number, if any, of the establishment at which the product was produced, if the product remains in the original unbroken container, or at which the product was repackaged for disposal, if the contents have been transferred to another container for disposal purposes.

(3) An ingredients statement, in accordance with § 156.34.

(4) Warning and precautionary statements, in accordance with Subpart C of this part, including the following:

(i) The signal word;

(ii) If highly toxic (Toxicity Category I) by virtue of acute oral, dermal or inhalation toxicity, the skull and crossbones and the word "POISON" (in red), together with an appropriate statement of practical treatment or first aid; and

(iii) Precautionary statements addressing the human, environmental, and physical or chemical hazards of the product.

(5) A statement, that shall at least partially obliterate any directions for use on the label, that the product is for disposal only and not for pesticide use.

(6) If the product is a hazardous waste, as defined by 40 CFR 261.11, or as listed in § 261.33 (e) or (f), it shall also bear the statement in 40 CFR 262.32, i.e., "HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency." A sticker or additional labeling may be used for this purpose.

(7) The required information must not be false or misleading in any particular, and must meet the prominence requirements of § 156.10.

(c) The label of a product for disposal only is acceptable if the labeling meets the requirements of Subparts A through D of this part and it bears the disposal statements given in paragraph (b) (5) and (6) of this section.

§ 156.118 Pest control devices.

(a) *Defintion.* A pest control device is any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest. Equipment used for the application of a pesticide, when sold separately from such pesticide, is not considered to be a device. Examples of devices subject to the labeling requirements of this section are electromagnetic and ultrasonic pest control devices, and "glue boards."

(b) *Exemption.* The following devices are exempt from the requirements of this section:

(1) Those that depend for their effectiveness more upon the performance of the person using the

device than on the performance of the device itself, such as rat and mouse traps, fly swatters, and tillage equipment for weed control.

(2) Those that operate only to entrap vertebrate animals, such as fish traps.

(c) *Required labeling information.* The following information must be included on each device, its wrapper, or its package:

(1) *Name, brand or trademark.* The label of a device whose function is not obvious must include a name, brand or trademark, and an indication of the function of the device.

(2) *Name and address of the producer or distibutor.* The name and address of the producer of the device must be provided on the label. Refer to § 156.24 for further information on name and address requirements.

(3) *EPA establishment number.* The label of each pest control device must bear the establishment registration number assigned under FIFRA section 7. This number may appear in any location on the label or on the device itself. If the device is contained in a wrapper or outer container through which the establishment number cannot be clearly read; the establishment number must also appear on such outer container or wrapper. Refer to § 156.31 for further information on the display of the EPA establishment number. The establishment number may not be highlighted or emphasized by size, color or typography to imply Agency approval or endorsement.

(4) *Precautionary statements.* The label must identify any hazards posed in using the product, and must provide adequate warnings and use limitations that, if adhered to, will protect against or minimize such hazards. Hazards may include, but are not limited to, structural (such as sharp edges), mechanical (such as rapidly moving parts), electrical, high temperature, radiation, chemical, or noise.

(5) *Directions for use.* Directions for use of the product must include, at a minimim, the following information:

(i) *Site of use.* Where the device is intended to be used, positioned, or located.

(ii) *Activation.* Instructions on how to install or activate, and, if necessary, deactivate the device if it would not be self-explanatory or obvious to the user.

(iii) *Target pest.* The pest(s) the device is intended to destroy, capture, repel, or affect, and the results that may be expected (death, entrapment, repellency, inactivation).

(iv) *Restrictions or limitations on use.* Any specific circumstances under which the device should not be used, or that would limit the effectiveness of the device. If the duration of the effectiveness is limited, the length of time the device can be expected to be effective must be indicated. If the product would not be effective in certain situations that might reasonably be encountered in use, a statement to this effect must be included.

(d) *False and misleading statements.* The labeling of a pest control device shall not contain any statement that is false or misleading in any respect. Examples of false and misleading statements may be found in § 156.15.

Subparts G Through O—[Reserved]

Subpart P—Labeling Requirements for Certain Antimicrobial Products

§156.300 Sterilizers for use on hard surfaces.

Product labeling may bear "sterilizer" or "sporicidal" claims if:

(a) The product meets the standard in paragraph (b) of this section, when tested by at least two laboratories,one of which is independent of the registrant; and

(b) The product, when tested by the method in § 91–2(a) of Subdivision G of the Registration Guidelines or its equivalent, kills the test spores on all 720 carriers used in the tests.

§ 156.305 Disinfectants for use on hard surfaces.

(a) *Performance requirement.* Product labeling may bear claims as a "disinfectant" if, when tested by the appropriate method in section 91–2 (b), (c), or (d) of Subdivision G of the Registration Guidelines or its equivalent, kills the test microorganisms on 59 out of 60 carriers of each set to provide significance at the 95 percent confidence level.

(b) *Limited efficacy claims.* The labeling of a disinfectant which is effective against specific microorganisms only (e.g. Herpes virus, influenza virus, cold (rhino) viruses) must clearly denote these limitations. Furthermore, such limitations must be readily understandable and shall not be misleading to the user.

(c) *General or broad-spectrum efficacy claims.* Labeling claims of effectiveness as a "General Disinfectant" and representations that the product is effective against a broad spectrum of microorganisms are acceptable if the product is effective against both Gram-positive and Gram-negative test microorganisms.

(d) *Hospital or medical environment efficacy claims.* Labeling claims for use on surfaces in hospital or medical environments will be accepted only for those products that have been demonstrated to be effective for general or broad-spectrum disinfection (see paragraph (c) of this section) and additionally against *Pseudomonas aeruginosa.* Claims such as "hospital disinfectant" or "for hospital use" are acceptable. Claims such as "hospital grade" or "hospital strength" are not acceptable.

§ 156.310 Fungicides for use against human pathogenic Fungi.

(a) *Performance requirement.* Product labeling may bear claims of effectiveness against pathogenic fungi if the product kills all fungal spores by one of the following test methods:

(1) The AOAC Fungicidal Test (see section 91–2(e)(1) of Subdivision G of the Registration Guidelines) or its equivalent; or

(2) The AOAC Use Dilution Method or AOAC Germiciadal Spray Products Test, modified to conform to appropriate elements of the AOAC Fungicidal Test (see § 91–2(e)(3) of Subdivision G of the Registration Guidelines) or its equivalent.

(b) *Claims against pathogenic fungi.* The statement that a product is effective against "athlete's foot" is not acceptable. If the product is effective against the causative organism (*Trichophyton mentagrophytes*) in appropriate areas such as shower room floors, locker room benches, or bath mats, the label may bear a statement such as "kills athlete's foot fungi on inanimate surfaces."

§ 156.315 Virucides.

(a) *Performance requirement.* Product labeling may bear claims as a "virucide" against designated human pathogenic viruses if, when tested according to the method in section 91–2(f) of Subdivision G of the Registration Guidelines or its equivalent, the product:

(1) Inactivates the virus at all dilutions when no cytotoxicity is observed in the assay system; or

(2) Reduces the viral titer by at least a 3–log magnitude when cytotoxicity is observed in the assay system.

(b) *Virucidal claims.* The unqualified claim "virucidal" is not acceptable. The claim "virucidal" must be qualified by designating each specific virus against which the product has been tested and shown to be effective, and to indicate that the activity occurs only on inanimate surfaces.

§ 156.320 Tuberculocides.

(a) *Performance requirement.* Product labeling may bear claims as a "tuberculocide" against *Mycobacterium* *tuberculosis* if, when tested by the appropriate method in section 91–2(g) of Subdivision G of the Registration Guidelines or its equivalent:

(1) The product kills the test microorganisms on all carriers; and

(2) No growth occurs in any of the inoculated tubes of the two additional required media.

(b) *Tuberculocidal claims.* The labeling of a product claiming disinfection of inhalation therapy equipment and pulmonary diagnostic equipment but which has not been tested for effectiveness against *Mycobacterium tuberculosis* must bear the following statement: "This product has not been tested for effectiveness against *Mycobacterium tuberculosis,* and must not be relied upon when a tuberculocidal product is desired."

§ 156.325 Phenol coefficient.

The phenol coefficient, as determined by the AOAC Phenol Coefficient Test in section 91–2(h) of Subdivision G of the Registration Guidelines or its equivalent, is permitted to appear on labeling only if:

(a) The product is a disinfectant, with use directions adequate to support a disinfection level of antimicrobial activity; and

(b) The phenol coefficient, when multiplied by 20, provides the effective use dilution of the product [as confirmed by the AOAC Use-Dilution Method (see section 91–2 (a), (b), or (c) of Subdivision G) or its equivalent]; and

(c) The phenol coefficient is determined on the pesticide as formulated, rather than the active ingredient(s).

§ 156.330 Products for use against other microorganisms.

(a) *Performance requirement.* Product labeling may bear disinfectant claims against specific microorganisms other than designated test species if, when tested by the appropriate method of section 91–2(i) of Subdivision G of the Registration Guidelines or its equivalent:

(1) The product kills the test microorganism on all carriers; and

(2) Plate count data on appropriate culture media demonstrate that a concentration of at least 10^4 microorganisms survived the carrier drying step in untreated controls.

(b) *Claims against other microorganisms.* Substantiated claims of effectiveness of a product against specific microorganisms other than the designated test microorganism(s) are permitted, but not required, provided that the target pest is likely to be present in or on the recommended use areas and surfaces and thus may present a potential problem.

§ 156.335 Sanitizers for hard non-food contact surfaces.

(a) *Performance requirement.* Product labeling may bear "sanitizing" claims for use on non-food contact surfaces if, when tested by the method in section 91–2(j) of Subdivision G of the Registration Guidelines or its equivalent, the product achieves a reduction of at least 99.9 percent over the parallel control count.

(b) *Claims.* The labeling of a product intended for use on non-food contact surfaces which does not eliminate, but significantly reduces, the numbers of target microorganisms must be clearly represented and qualified as being effective at the sanitizing level only. Examples of acceptable labeling claims are: "Sanitizes", "Significantly reduces", or "Reduces the number of bacteria by 99.9%." Products recommended for use in critical hospital or medical environments that are not effective at the sterilizing or disinfecting level must bear a labeling disclaimer statement such as: "This product is not a disinfectant or sterilizer".

(c) *Fogging applications.* Representations such as "germicidal fogging" and "disinfectant fogging" are not acceptable. Claims for fogging applications of disinfectants to sanitize room surfaces are acceptable.

(d) *Circulate-in-place (CIP) applications.* Claims for CIP applications as "germicidal" or "disinfecting" are not acceptable. Claims for CIP applications to sanitize the surfaces of the systems are acceptable.

§ 156.340 Sanitizers for hard food contact surfaces.

(a) *Performance requirement*—(1) *Halide chemical products.* The labeling of a product formulated with iodophors, mixed halides, or chlorine-containing chemicals may bear claims for "sanitizing" food contact surfaces if, when tested by the method in section 91–2(k)(1) of Subdivision G of the Registration Guidelines or its equivalent, the product concentrations show equivalence of activity to 50, 100, and 200 ppm of available chlorine. (The test standard is sodium hypochlorite.)

(2) *Other chemical products.* The labeling of a product formulated with other chemicals, such as quaternary ammonium compounds, anionic detergent-acid compounds, and chlorinated trisodium phosphate, may bear claims for "sanitizing" food contact surfaces if, when tested by the method in section 91–2(k)(2) of Subdivision G of the Registration Guidelines or its equivalent, the product achieves a 99.999 percent reduction in the number of each test microorganism within 30 seconds.

(b) *Claims.* Claims for a use pattern of "one-step" cleaning and sanitizing are not acceptable for food-contact surfaces.

§ 156.345 Products providing residual activity for use on hard surfaces.

(a) *Performance requirement.* Product labeling may bear residual "self-sanitizing" claims (that can be identified as related to human health) if, when tested by the criteria in section 91–2(m) of Subdivison G of the Registration Guidelines or its equivalent, the product achieves at least a 99.9 percent reduction in numbers of test microorganisms on the treated surface(s) over those on the parallel control surface(s).

(b) *Claims.* Label claims pertaining to residual "self-sanitizing" or "bacteriostatic" surfaces (i.e., reduction in numbers, or inhibition of the growth, respectively, of specific microorganisms that may be present or that may be subsequently deposited on hard surfaces) must be related to the presence of moisture on surfaces that are likely to become wet under normal conditions of use. Labeling must also indicate the duration of effectiveness of the treatment. Only self-sanitizing claims can be identified as related to human health considerations.

§ 156.350 Laundry additives.

(a) *Disinfecting pre-soak*—(1) *Performance requirement.* Product labeling may bear claims as a "disinfectant" for pre-soaking fabrics prior to laundering if, when tested by the AOAC Use Dilution Method as described in section 91–2 (b), (c), or (d) of Subdivision G of the Registration Guidelines (modified to include organic soil as in section 91–30(e)(4) of subdivision 5) or its equivalent, the product kills the test microorganisms on 59 out of 60 carriers of each set.

(2) *Claims.* Labeling must distinguish between products recommended as soaking treatments prior to laundering and products recommended as additives in actual laundry operations. Pre-soaking claims are applicable only to products which have been shown to be effective as "one-step" cleaner-disinfectants for hard surfaces in the presence of moderate amounts of organic soil (e.g., "pre-soak diapers for 10 minutes to disinfect").

(b) *Non-residual laundry additives*—(1) *Performance requirement.* (i) The labeling of a product intended as a laundry additive may bear claims for "disinfection" if, when tested by the method in section 91–4(a)(2) Subdivision G of the Registration Guidelines or its equivalent, the product prevents growth of each test microorganism in fabric subcultures or laundry water subcultures.

(ii) The labeling of a product intended as a laundry additive may bear claims for "sanitizing" if, when tested by the method in section 91–4(a)(3) of Subdivision G of the Registration Guidelines or its equivalent, the product causes at least 99.9 percent reduction in numbers of each test microorganism over the control count for both fabric and laundry water.

(2) *Claims.* The labeling of a product recommended as a laundry additive must differentiate between claims to provide non-residual disinfection and to sanitize during the laundry operation (e.g., "disinfects laundry in wash water," "sanitizes laundry in the final rinse water").

(c) *Residual laundry additives*—(1) *Performance requirement.* The labeling of a product intended as a laundry additive may bear residual "self-sanitizing" claims (that can be identified as related to human health) if, when tested by the method in section 91–4(a)(4) of Subdivision G of the Registration Guidelines or its equivalent, the product demonstrates a reduction of at least 99.9 percent in numbers of each test microorganism over the zero-time control and the parallel untreated control.

(2) *Claims.* Claims for residual antimicrobial activity on laundered materials or articles are acceptable only when such materials are likely to become and remain wet (for example, diapers and bed linens of incontinent persons) during normal conditions of use and storage (e.g., "provides self-sanitizing residual activity against pathogenic microorganisms on bed linens in the presence of wet contamination").

§ 156.355 Fabric and textile products.

(a) *Carpet sanitizers—performance requirement.* The labeling of a product intended as a carpet treatment may bear claims as a "sanitizer" if, when tested by the method in section 91–4(b) of Subdivision G of the Registration Guidelines or its equivalent, the product demonstrates a 99.9 percent reduction in numbers of test microorganisms over the scrubbed control.

(b) *Mattress and upholstered furniture treatments—performance requirement.* The labeling of a gas or fumigant product intended for treatment of mattresses, upholstered furniture, pillows, and similar objects may bear claims as a "sterilizer," and "disinfectant," or "sanitizer" if, when tested against the criteria in section 91–4(c) of Subdivision G of the Registration Guidelines or its equivalent, the product meets the performance requirement specified:

(1) In § 156.300(a) for sterilizers; or

(2) In § 156.305(a) for disinfectants; or

(3) In § 156.335(a) for sanitizers.

(c) *Fabric impregnating treatments*—(1) *Performance requirement.* The labeling of a product intended for impregnating fabrics may bear residual "self-sanitizing" claims if, when tested by the method in section 91–2(m) of Subdivision G of the Registration Guidelines or its equivalent, the product achieves at least a 99.9 percent reduction in numbers of test microorganisms on the treated fabric(s) over those on the zero-time control and the parallel untreated control.

(2) *Claims.* Claims must be limited to residual self-sanitizing levels of activity in the presence of moisture. Labeling must indicate the duration of effectiveness of the residual activity.

§ 156.360 Air sanitizers.

(a) *Performance requirement.* The labeling of a product intended for the treatment of air in enclosed spaces may bear claims as a "sanitizer" if, when tested by the appropriate method in section 91–5 of Subdivision G of the Registration Guidelines or its equivalent, the product meets one of the following standards:

(1) If the product contains glycols, a vapor concentration of 50 percent saturation or more in the air of the test enclosure; or

(2) If the product does not contain glycols, a reduction of at least 99.9 percent of test microorganisms over the parallel untreated control in the air of the test enclosure.

(b) *Claims.* Claims that a product prevents diseases, or provides any other health protection, whether expressed or implied, are not acceptable. Claims must clearly indicate the mitigating nature of the activity, such as "Temporarily reduces the number of airborne bacteria."

§ 156.365 Toilet bowl and urinal treatments.

(a) *Surface treatments*—(1) *Performance requirement.* The labeling of a product intended for toilet bowl and urinal surface treatment may bear "disinfecting" or "sanitizing" claims if, when tested by the appropriate method in section 91–2 (b), (c), (d), or (j) of Subdivision G of the Registration Guidelines or its equivalent, the product meets the performance requirement specified in:

(i) Section 156.305(a) for disinfectants; or

(ii) Section 156.335(a) for sanitizers.

(2) *Claims.* Claims for disinfecting or sanitizing toilet bowl and urinal surfaces are acceptable. Claims for disinfecting the hidden trap and claims for solutions in the tank to disinfect or sanitize the bowl surface each time the toilet is flushed are not acceptable.

(b) *Water treatments*—(1) *Performance requirement.* The labeling of a product intended for treating toilet bowl and urinal water may bear "sanitizing" claims (that can be identified as related to human health) if, when tested by the method in section 91–7(b) of Subdivision G of the Registration Guidelines or its equivalent, the product demonstrates at least a 99.9 percent reduction in numbers of test microorganisms over the zero-time control and the parallel untreated control.

(2) *Claims.* Claims for products of this type must either pertain to sanitizing activity or aesthetic benefits commonly associated with control of odor, slime, or other aesthetic problems in toilet and urinal bowl water. Examples of acceptable claims are: "Inhibits the production of ammoniacal odors produced by bacteria in toilet and urinal bowl water," "Controls unsightly slime formation produced by bacteria in toilet and urinal bowl water," and "Sanitizes toilet bowl water." Only sanitizing claims can be identified as related to human health considerations.

§ 156.370 Human drinking water treatments.

(a) *Emergency water supplies—performance requirement.* The labeling of a product intended for emergency treatment of drinking water may bear a claim as a "disinfectant" if, when tested by the method in section 91–8(a)(2) of Subdivision G of the Registration Guidelines or its equivalent, the product kills all test microorganisms in the water.

(b) *Water purifier units—performance requirement.* The labeling may bear claims for "purification" of raw water if, when tested by the method in section 91–8(a)(3) of Subdivision G of the Registration Guidelines or its equivalent, the product eliminates the microbial pollution from the water.

§ 156.375 Swimming pool water treatments.

The labeling of a product intended for treatment of swimming pool water may bear claims for "disinfection" if, when tested according to the laboratory and field methods in section 91-8(c)(1) of Subdivision G of the Registration Guidelines or its equivalent, the product meets both of the following criteria:

(a) *Laboratory test.* The product meets or exceeds the performance of the sodium hypochlorite control against each test microorganism.

(b) *Field test.* Not more than 15 percent of the samples collected fail to meet all of the following bacterial indices:

(1) The standard plate count at 35 °C does not exceed 200 colonies per 1.0 ml.

(2) The most probable number of coliform bacteria is less than 2.2 organisms per 100 ml. If the membrane filter test is used, there shall be no more than 1.0 coliform organism per 50 ml.

(3) The most probable number of enterococcal organisms is less than 2.2 organisms per 100 ml. If the membrane filter test is used there shall be no more than 1.0 enterococcal organism per 50 ml.

§ 156.380 Health-related and non-health-related claims for antimicrobial products.

The Agency will use the following criteria to determine whether or not the labeling of an antimicrobial agent bears claims of human health significance:

(a) Products bearing labeling claims to control specific microorganisms infectious for man, such as *Staphylococcus aureous, Mycobacterium tuberculosis,* sand *Pseudomonas aeruginosa,* are considered to be directly related to human health.

(b) All sterilizers, hospital disinfectants, swimming pool water disinfectants, human drinking water disinfectants and purifiers, and food-contact surface sanitizers are human health-related, whether or not control if infectious microorganisms is specifically claimed.

(c) Veterinary and animal premise disinfectants are considered human health-related if microorganisms that are infectious for both man and animals are involved, such as *Staphylococcus aureus* and *Pseudomonas aeruginosa.* Microorganisms that are solely pathogenic for animals (such as canine distemper virus and hog cholera virus) are not considered human health-related.

(d) Claims for products as disinfectants or sanitizers are considered to include or imply effectiveness against microorganisms infectious for man. Such claims must be expressly qualified (e.g., "odor-causing bacteria" or "slime-forming bacteria") in order to remove implications of human health significance. In addition, if the intent of the claim is not clearly defined, a labeling disclosure of ineffectiveness of the product against health-related micro-organisms may be required (e.g., "This product has not been demonstrated to be effective against microorganisms infectious for man").

(e) Since elimination or significant reduction in numbers of microorganisms (sterilization, disinfection, sanitization) must be demonstrated before a product is considered acceptable for claims against microorganisms infectious for humans, or for use in medical or sickroom environments, products bearing claims for effectiveness at the bacteriostatic (inhibition of growth) level are not acceptable for such uses. Bacteriostatic claims are acceptable only for products expressly recommended for control of microorganisms of only economic or aesthetic significance, e.g., spoilage bacteria and ordor-causing bacteria.

(f) Slime and ordor control agents, preservatives, algicides, and other products expressly claiming control of microorganisms of economic or aesthetic significance are not considered to be human health-related, but are nevertheless subject to the requirements for accurate label claims and adequate directions for a practical pattern of use.

PART 167—REGISTRATION OF PESTICIDE PRODUCING ESTABLISHMENTS AND SUBMISSION OF PESTICIDES REPORTS

2.a. By revising the heading of Part 167 to read as set forth above.

§ 167.4 [Removed]

b. By removing § 167.4

(Sec. 2, 3, 5, 6, 7, 9, 10, 12, 17, 19, and 25 of the Federal Insecticide, Fungecide, and Rodenticide Act, as amended, 7 U.S.C. 136–136y)

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Part IV

Environmental Protection Agency

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40 CFR Parts 122, 124, and 125

National Pollutant Discharge Elimination System Permit Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 124, and 125

[OW-FRL-2532-8]

National Pollutant Discharge Elimination System Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 19, 1980, the Environmental Protection Agency published final rules which consolidated the regulations and procedures for five EPA permit programs including the National Pollutant Discharge Elimination System (NPDES) permit program under section 402 of the Clean Water Act (CWA). Following promulgation of these Consolidated Permit Regulations, petitions for review of various aspects of these regulations were filed in several federal courts and were subsequently consolidated into a single action in the United States Court of Appeals for the District of Columbia Circuit (*NRDC* v. *EPA*, and consolidated cases, No. 80-1607 (D.C. Cir., filed June 2, 1980)). On June 7, 1982, EPA entered into a settlement agreement on Clean Water Act issues with numerous industry petitioners. Under the terms of that settlement, EPA agreed to propose changes to the May 19, 1980 regulations to reflect the resolution of issues in the settlement. EPA also agreed to take such action as may be necessary to suspend several sections of the regulations pending completion of final rulemaking. Accordingly, EPA proposed amendments to the NPDES sections of the Consolidated Permit Regulations on November 18, 1982. At the same time, EPA proposed to suspend portions of these regulations and related provisions of the NPDES application forms to correspond with proposed changes to the regulation agreed to in that settlement.

After considering numerous comments submitted on the proposed changes, EPA has developed the amended NPDES regulations which are promulgated in final form today. Today's action also represents the final rulemaking on the proposed suspensions. No final action had been taken previously since the most expeditious manner of resolving all outstanding issues was to complete rulemaking on the suspension issues as well as the others at the same time.

Today's rulemaking also contains final regulations for determining whether a facility is a new source. EPA suspended the existing new source criteria and proposed revisions to these regulations on September 9, 1980 (40 FR 59317).

DATES: The effective date of this regulation is October 26, 1984.

In accordance with 40 CFR 100.01 (45 FR 26098, April 17, 1980), these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on October 10, 1984. In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before November 26, 1984. The effective date of these regulations will not be delayed by consideration of such comments.

The modified information requirements contained in §§ 122.29(c)(5), 122.41(l)(1), 122.42(a), 122.45(b), 122.62(a), and 124.5 have not been approved by the Office of Management and Budget (OMB) and they are not effective until OMB has approved them.

ADDRESS: Comments of a technical and nonsubstantive nature should be addressed to: William Diamond, Permit Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: William Diamond, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone: (202) 426-4793.

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I. BACKGROUND

On June 7, 1979, EPA published final regulations establishing program requirements and procedures for the NPDES program. A week later, on June 14, 1979, a number of petitioners representing major industrial trade associations, several of their member companies, the Natural Resources Defense Council (NRDC), and Citizens for a Better Environment filed petitions for judicial review of the regulations. Also on June 14, 1979, EPA published proposed regulations consolidating the requirements and procedures for five EPA permit programs. These included the NPDES program under the Clean Water Act (CWA), the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), State "dredge or fill" programs under Section 404 of the CWA, the Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

Final Consolidated Permit Regulations (CPR) were published on May 19, 1980. These consolidated regulations were challenged in court. Petitions for review were filed in several U.S. Courts of Appeal and subsequently consolidated in the District of Columbia Circuit (*NRDC* v. *EPA*, and consolidated cases [No. 80-1607, filed June 2, 1980]). The petitions for review of the final NPDES regulations published June 7, 1979, were joined with this action. In response to these challenges, on September 9, 1980 EPA suspended the criteria for determining whether a discharge is a new source (40 FR 59317). On the same day, EPA proposed regulations to replace the new source criteria (45 FR 59343).

EPA held extensive discussions with all litigants on the remaining issues raised in the petitions and subsequently signed four separate settlement agreements with the industry parties. One agreement covered only the UIC program, one covered the HWM program under RCRA, one covered the NPDES program, and the fourth covered issues which were common to at least two of the three permit programs involved in the litigation along with the definition of "new discharger" and its relationship to mobile drilling rigs under the NPDES program. Today's final rulemaking completes action initiated as a result of the settlement of NPDES issues.

The NPDES Settlement Agreement was reached after two years of intensive negotiations between EPA and the industry groups challenging the regulations. Industry litigants had raised approximately 47 issues affecting both substantive and procedural requirements in the NPDES regulations.

EPA signed the NPDES Settlement Agreement with industry petitioners on June 7, 1982. The settlement covered 27 of the 47 issues raised by industry litigants challenging the NPDES permitting portions of the Agency's regulations. Nine other issues were covered under the Common Issues Settlement Agreement. Of the nine, three related specifically to the NPDES permit program while the remaining six covered generic requirements common to all EPA permit programs. The remaining issues were determined either to be inappropriate for review except in the context of individual permit issuance or not capable of resolution among the parties. Additionally, no resolution was reached on other issues raised by the environmental group petitioners.

Under the terms of the NPDES Settlement Agreement, EPA agreed to propose revisions to the NPDES regulations. EPA also agreed to include certain language in the preamble to the proposed revisions that reflected the intent of the agreement. Finally, EPA agreed to take action necessary to suspend certain provisions, primarily relating to permit application requirements. The parties to the settlement agreed to withdraw their challenges to the regulations to the extent EPA promulgates final regulations and preamble language substantially the same as and not altering the meaning of the language agreed to in the settlement agreement.

EPA received comments from many interested persons, including some of the parties to the settlement agreement, requesting that the rules be changed in ways different from those set forth in the agreement. EPA has considered carefully all such comments and has made changes in response to these.

On those issues in which final action differs from that proposed, industry litigants may decide to continue their challenges in court. Petitioners, the Natural Resources Defense council and Citizens for a Better Environment, are not parties to the settlement agreement. Their challenges to provisions of the reagulations may not be withdrawn as a result of today's final promulgation of changes to parts of the regulations. Certain industrial petitioners have also indicated an intention to litigate certain NPDES issues raised in their petitions that were not resolved by the settlement agreement and not covered by the proposed rules. In addition, two of the industry parties (Mobil Oil Company and the American Iron and Steel Institute (AISI)) did not join in the settlement of the net/gross issue (40 CFR 122.45(h) [CPR 122.63(h)]) and AISI did not join in the settlement of the total metals issue (40 CFR 122.45(c) [CPR 122.63(c)]). (See discussion below of citing format.)

EPA published proposed rules implementing the settlement agreement on November 18, 1982 (47 FR 52072). At the same time, proposed suspensions were also published (47 FR 52093). The comment period for the proposed rule closed on January 17, 1983. EPA received approximately 85 comments from numerous industries and trade associations, eight States and four environmental groups. Most of these comments were concentrated on a few issues such as the toxics control strategy, storm water discharges, anti-backsliding, and the construction prohibition for new sources.

The proposed changes in the regulations resulted from the settlement of challenges under the CWA to provisions of the regulations affecting the NPDES program. However, some of the changes to Part 124 affect RCRA, PSD, and UIC programs as well. EPA solicited comments on the extent to which the November 18, 1982 proposed changes to these sections should affect RCRA, PSD, and UIC permitting. No comments were received on this issue. Today's rulemaking implements several procedural changes to Part 124, Procedures for Decision-making, which minimally affect the RCRA, PSD, and UIC permit programs.

On April 1, 1983, EPA published final rules "deconsolidating" the Consolidated Permit Regulations (48 FR 14146 [April 1, 1983]). The rule was published as a technical amendment to the regulations, and resulted in no substantive revisions. Under the deconsolidation, the permit regulations for each of the five programs appear in different portions to Chapter 40 of the Code of Federal Regulations. The NPDES regulations remain in Parts 122 and 123 (Part 124 was not affected by the revision and still applies to all of the programs). The deconsolidation of the NPDES regulations resulted in a renumbering of the provisions in Parts 122 and 123. Since the November 18, 1982 proposed regulations were published as revisions to the Consolidated Permit Regulations and the April 1 revisions completely renumbered the NPDES portions of the Consolidated Permit Regulations in Part 122, the format used in this preamble generally includes the Consolidated Permit Regulations (CPR) citation in brackets following the new (April 1) NPDES citation. For example: § 122.21 [CPR § 122.53]. This approach should help to eliminate confusion.

Today's final regulations reflect a final Agency determination on the proposed changes after full consideration of the comments received. To facilitate understanding, the rulemaking package includes in Part II of this preamble ("Final Regulations") for each part of the regulation EPA proposed to change a detailed discussion of the original regulation, the November 18, 1982 proposed change, the reasons for the proposal, the Agency's response to comments, and the final Agency determination.

Today's action also revises the portion of the NPDES regulations establishing criteria for new sources. As stated above, as a result of the challenge to the Consolidated Permit Regulations, EPA suspended the new source criteria (45 FR 59317) in the regulations and proposed substitute criteria. Because the revision to the new source criteria was initiated as a result of the challenge to the regulations, we have included the final action in this rulemaking.

For certain issues, today's final action is identical to the November 18, 1982, proposal, and thus consistent with the NPDES Settlement Agreement. However, some of the proposed rules have been modified, in some cases to retain existing regulatory requirements, as a result of EPA's review of the issues and the public comments received on the proposal.

The implementation of the changes made to the NPDES permit program as a result of today's rulemaking affects one of the permit application forms (Form 2c). To assist the public in understanding these changes, EPA is publishing the revised Form 2c along with this rulemaking. However, because many States and EPA regional offices have large supplies of existing Form 2c, it is both administratively and economically impractical to immediately convert to the new permit application form. Therefore, the old permit application Form 2c will continue to be used until all have been used up and/or until copies of the revised Form 2c permit application can be furnished to the States and EPA regional offices. Since permit applicants must comply with the changes in the NPDES permit program resulting from today's rulemaking, applicants should cross out the sections of the existing Form 2c which no longer apply and insert the new information required. States and EPA regional offices may wish to prepare an addendum to the permit application Form 2c which explains the changes in reporting requirements.

II. FINAL REGULATIONS

A. Toxics Control Strategy (40 CFR 122.21 [CPR § 122.53], 122.42 [CPR § 122.61], 122.44 [CPR § 122.62], 122.62 [CPR § 122.15])

The Agency proposed a number of changes to regulatory provisions that are part of the Agency's overall strategy for controlling toxic pollutant discharges under the NPDES program. EPA previously discussed its Toxic Control Strategy in issuing the final Consolidated Application Forms (45 FR 33516, May 19, 1980). The NPDES effort to regulate the discharge of toxic pollutants is extensive. To assist readers in understanding how the proposed revisions and today's final rule fit into this strategy, it is appropriate to provide the public with a statement of the NPDES Toxic Control Strategy. Before discussing the changes to the regulations, today's preamble will outline some of the major objectives of the strategy.

(1) Background

Congress established the basis for controlling toxic discharges in the Federal Water Pollution Control Act Amendments of 1972 (FWPCA). Section 307(a) of the FWPCA required EPA to develop a list of toxic pollutants for which the Agency would establish effluent standards. These standards (or discharge prohibitions) were to be established on a pollutant-by-pollutant basis within 180 days of listing as a toxic pollutant. EPA has established section 307(a) standards for only six toxic pollutants since 1972.

Concerned about the Agency's perceived lack of emphasis on controlling toxic pollutants and lack of progress in establishing section 307(a) standards, the Natural Resources Defense Council (NRDC) file suit. The parties entered into a Consent Decree which subsequently formed the basis for the Agency's regulation of toxics. *NRDC* v. *EPA*, 8 E.R.C. 2110 (D.D.C. 1976). Under the Consent Decree, EPA would supplement the 307(a) standard approach with regulation of pollutant discharges, including toxics, through effluent limitation guidelines promulgated for industrial categories or subcategories. EPA was to establish effluent limitation guidelines reflecting the Best Available Technology Economically Achievable (BAT) to control a list of 65 classes of toxic pollutants in each of 21 primary industrial categories defined in the Consent Decree (the 65 classes were subsequently expanded to 129 toxic pollutants and the 21 industry categories were further subdivided into 34 categories). Congress, in the 1977 Clean Water Act Amendments, adopted the Consent Decree approach towards controlling toxic pollutant discharges.

In August 1978, EPA proposed NPDES regulations to implement the requirements of the Consent Decree and the 1977 CWA amendments. These regulations, published as final NPDES regulations on June 7, 1979, for the first time focused on obtaining adequate information on toxic pollutants through the permit application process. The final Consolidated Permit Regulations promulgated May 19, 1980, retained the NPDES provisions relating to the control of toxic pollutants.

The Agency's NPDES Toxic Control Strategy, which was discussed in detail in the preamble to the Consolidated Permit Application Forms, consists of three central elements.

First, the agency established a comprehensive process for identifying, reporting the presence of and gathering data on toxic pollutants in discharges. In addition to EPA's effluent limitation guideline effort, this activity is implemented through the NPDES permit application requirements. Permit applicants are required to identify the presence of toxic pollutants, and in certain circumstances, must submit data indicating the quantities and concentrations of pollutants present. To ensure that the data accurately describe the discharge, sampling methods and minimum sampling requirements are also specified.

The second element of the Toxic Control Strategy is to establish specific effluent limitations in NPDES permits. Permit limitations are generally based either upon promulgated effluent limitation guidelines (technology-based limits) or State water quality standards (water quality-based limits). In the absence of or in combination with a promulgated guideline, EPA establishes technology-based limitations on a case-by-case basis under section 402(a)(1) of the CWA based on the permit writer's best professional judgment. EPA establishes permit effluent limitations on individual toxic pollutants or "indicator" pollutants that will assure adequate treatment of toxics (e.g. COD, TSS, TOC, etc.). Where these are inadequate, permit limitations may be established in terms of effluent toxicity.

The third element of the strategy is to ensure that the permitting authority receives adequate information concerning the discharge during the term of the permit and has the ability to adjust the permit if necessary. All permits require dischargers to monitor their effluent for pollutants (including toxic pollutants) limited in the permit and to report the results. These reports enable the permitting authority to determine compliance by the permittee. In addition, permittees generally must provide notice of new or potential discharges of toxic pollutants. The Director can then decide whether a change in the permit is necessary to control the modified discharge. The regulations specify the circumstances under which permits can be modified.

EPA has authority to request additional information to supplement permit applications or later compliance monitoring reports where necessary to carry out the objectives of the Act.

The regulations implementing the Toxic Control Strategy reflect a balance between the need for adequate information to control the discharge of toxic pollutants and the burden these requirements impose on the regulated public. The existing rules represent the Agency's initial decision on the appropriate balance. Litigants sued EPA because they disagreed with that decision. The November 18, 1982 proposal allowed the Agency to solicit public comment on possible changes to the existing rule. Today's final rule represents EPA's decision on what is necessary to provide adequate environmental protection yet not unduly burdensome or unproductive. EPA has adopted some of the litigation settlement proposals as final rules. The changes adopted today will not inhibit the Agency's ability to carry out any of the elements in its Toxic Control Strategy.

(2) Quantitative Data Requirements (40 CFR 122.21(g)(7) [CPR § 122.53(d)(7)])

EPA's strategy for gathering specific information on toxic pollutants in existing industrial discharges relies primarily upon application Form 2c. Most important, the application requires disclosure of the presence and, for some pollutants, the quantities of specified pollutants in the discharge.

EPA proposed several changes to the quantitative data requirements of the application form. A brief overview of all the application data requirements will put these changes in perspective.

All applicants must test for and report quantitative data for seven listed conventional and nonconventional pollutants (§ 122.21(g)(7)(i) and Item V–A in Form 2c). The Director may waive testing for any or all of these pollutants for individual dischargers in certain circumstances.

In addition, all applicants must provide information on the presence of toxic pollutants in accordance with a scheme set forth in the regulation. In established testing requirements for toxic pollutants (metals and organic chemicals, with the addition of cyanide and total phenols), EPA balances the likelihood of the presence of the pollutants against the costs and burdens for applicants to analyze the effluent. It is unnecessary to require all applicants to test for all pollutants. In some industries there is no reasonable expectation that certain pollutants are present. Therefore, mandatory testing for any toxic pollutants applies only where EPA data (gathered primarily through the effluent guidelines development process) have indicated a likelihood that the pollutant will be present in the discharge. Testing requirements for toxic pollutants fall into two groups.

First, all process discharges in primary industrial categories must be tested for the presence of metals, cyanide and total phenols (§ 122.21(g)(7))(ii) and Item V–C of Form 2c.) However, testing is not required for all organic toxic pollutants in all primary industry categories. The specific organic pollutants for which an industy must test are listed in the regulations according to the fractions tested by the analytical procedure which uses gas chromatography/mass spectrometry (GC/MS). For example, organic chemical facilities are required to analyze for all fractions, while coal mining operations are not required to test for any organic chemicals by this provision of the regulations.

Second, in addition to the mandatory testing explained above, *all* industrial dischargers must report quantitative data for any toxic pollutant that they know or have reason to believe is present in the discharge. A similar requirement applies to certain listed conventional pollutants, twenty-one nonconventional pollutants, and radioactivity. (§ 122.21(g)(7)(iii)(B) and Item V–B of Form 2c).

In addition to the toxic pollutant testing explained above, each applicant must indicate whether it knows or has reason to believe that certain hazardous substances or asbestos are discharged, and briefly explain why. Each applicant must also identify the presence of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it uses or manufactures certain listed substances or expects TCDD to be in its discharge.

(a) Mandatory Testing

1. *Existing rules.* As mentioned above, the NPDES regulations require all applicants to submit quantitative data for three conventional pollutants (BOD, Total Suspended Solids, and pH) and four nonconventional pollutants (Chemical Oxygen Demand, Total Organic Carbon, Ammonia, and Temperature). (§ 122.21(g)(7)(i) and Item V–A of Form 2c). Testing is required since these pollutants are commonly found in many different types of discharges and tend to be indicative of the nature of a discharge. Applicants may request the Director to waive this requirement for one or more of the pollutants. As discussed, there is also mandatory testing for toxic metals and organic pollutants required for process discharges from primary industrial categories (§ 122.21(g)(7)(ii)), but changes were not proposed to these provisions.

2. *Proposed changes.* EPA proposed to clarify the provision allowing the Director to waive the testing requirement for the seven listed conventional and nonconventional pollutants. The proposal stated that in order to obtain the waiver, the applicant must demonstrate that the reduced reporting will still provide the Director with sufficient information to write adequate permit limitations. Additionally, the proposal would make it clear that requests for waivers could be submitted not only for individual facilities, but also for an entire industry category or subcategory. Waiver requests for an entire category or subcategory of discharges should be submitted to the Director, Office of Water Enforcement and Permits.

3. *Comments and responses.* EPA received no comments on this proposal.

4. *EPA action.* The final rule clarifying the waiver provision is adopted as proposed.

(b) Testing Potentially Required—Toxic Pollutants

1. *Existing regulations.* All permit applicants must report quantitative data on any listed toxic pollutant and certain conventional and nonconventional pollutants the discharger knows or has reason to believe are present in the discharge (§ 122.21(g)(7)(iii)(A) and (B) [CPR § 122.53(d)(7)(iii)]; Items V–B and V–C of Form 2c). This testing is in addition to the mandatory testing for toxic pollutants of process discharges in primary industry categories. Testing requirements for toxic pollutants are established to ensure that permitting authorities receive adequate information on the presence of toxic pollutants in a discharge. This information enables permit writers to establish appropriate limitations to control pollutants that may be of concern. Permitting authorities are not required to establish effluent limitations for all toxic pollutants on which a discharger reports quantitative data under the "know or have reason to believe" standard. In general, EPA does not intend that information supplied in the application process automatically trigger the establishment of effluent limitations. Rather, it allows the permit writer to make appropriate judgments about the need for such limitations. The regulations require the establishment of permit limitations if the pollutants are or may be discharged above the technology-based levels applicable to the discharge (as specified in effluent limitations guidelines or developed through the permit writer's best professional judgment) or, before today's revision, if they are used or manufactured at the permitted facility (see Part A. (5), below).

2. *Proposed changes.* Industry litigants were concerned that the toxic pollutant testing requirements were too extensive. They felt the regulation was unclear on how applicants should determine whether pollutants are "believed to be present" and that it failed to address *de minimis* quantities of pollutants. Industry contended the "believed to be present" provision required them to test, unnecessarily, for *all* pollutants that could be present in any amounts, simply to assure that the applicant would not be liable for incomplete and false reporting. In response to these concerns,

EPA proposed to establish a threshold level below which testing would not be required. Applicants would be required to submit quantitative data only for those toxic pollutants that they know or have reason to believe are present in the discharge at levels exceeding 100 μg/1 (parts per billion (ppb)). For four pollutants (acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-,4,6-dinitrophenol), EPA proposed a higher threshold of 500 ppb. If an applicant knew or believed a toxic pollutant was present at less than the threshold level, the applicant could either submit quantitative data or simply explain why the applicant thought it was in the discharge. As noted in the preamble, and reflected in the proposed regulation, this cut-off would not apply to testing for process discharges in the primary industry categories.

The threshold levels in the proposal were seen as a compromise between industry's desire for a level that would eliminate testing for pollutant discharges in extremely small amounts and concentrations and EPA's need to have sufficient data to identify the presence of pollutants which should be controlled through permit limitations. This is particularly important because in accordance with section 402(k) of the CWA, a permittee is deemed to be in compliance with the CWA if he meets the requirements and limitations of his permit. Thus, pollutants not prohibited or limited by the permit can be discharged unless and until the permit is modified. EPA acknowledged in the preamble that EPA water quality criteria indicate that many of the pollutants required to be analyzed are known to cause significant adverse impact to aquatic organisms and human health at levels of 100 ppb or less (47 FR 52075, November 18, 1982).

EPA also based the 100 ppb upon an assessment of GC/MS methods 624 and 625 (as proposed December 3, 1979, 44 FR 69464). In general, those methods indicated a detection limit of 10 ppb or less for most toxic pollutants. For purposes of the application proposal, EPA then multiplied those limits by a factor of 10 as a rough measure to respond to concerns about analytical variability. EPA described this variability factor as "conservative," based upon Agency analytical experience. The higher threshold for four specific toxic pollutants was based upon the same proposed test methods, although a smaller variability factor was added since there is far less analytical variability at higher concentrations.

The proposal was intended primarily to minimize analytical burdens on applicants, while still providing permit writers with adequate information to evaluate a discharge and write appropriate effluent limitations. EPA's concern about the suitability of this proposed revision led the Agency to specifically request in the preamble that the public comment on the appropriateness of establishing threshold levels and whether 100 ppb was a reasonable level.

3. Comments and responses. This provision generated a great deal of comment. Several commenters opposed the 100 ppb threshold level. Several States that have been administering the NPDES program commented that threshold levels were inappropriate and applicants should submit quantitative data for any toxic pollutant they know or have reason to believe is present in the discharge in any amount. They felt that extensive application data on toxic pollutants are essential to any effective toxic pollutant control program and that the cost of testing is not excessive relative to the information gained. Several pointed to statements in EPA's own preamble that many pollutants are toxic below 100 ppb. One State commenter suggested that applicants should be required to submit quantitative data unless the Director specifically waives the requirement for an individual facility. Industry commenters supported the threshold concept. They suggested that it should be extended to other requirements and that the testing threshold should be raised to 250 ppb, or even higher. They argued that the analytical variability of samples taken at low concentrations resulted in imprecise date which should not be used in establishing permit effluent limitations.

After careful review of the comments and of the possible impacts of a 100 ppb threshold, we have concluded that the proposed threshold was too high. Requiring applicants to submit quantitative data on any pollutant that they know or have reason to believe is present in the discharge will supply permit writers with information that is often necessary in developing appropriate permit conditions, including monitoring and reporting requirements. This is consistent with the purpose of the application to provide permitting authorities with sufficient information to fully evaluate the discharge. Permitting authorities can use the data to identify pollutants that may be of concern and in appropriate cases, to control them through effluent limitations in the permit.

The Agency recognizes that quantitative data at extremely low levels may have some uncertainties, although those uncertainties are more likely to concern accuracy of specific *quantitative* readings than to involve any false positive readings of pollutants that actually are not present. Nonetheless, even at levels where the accuracy of the data may be somewhat uncertain, analytical information is useful to the permitting authority as a screening technique to identify the presence of a pollutant and supply an estimate of its concentration. Permit writers will be aware of any uncertainty as to the accuracy of the data submitted on the application. If more precise information is necessary to set permit limitations, the permit writer can request additional quantitative data through a gas chromatography (GC) test tailored to a specific pollutant. These GC test methods provide more accurate data at much lower levels than the GC/MS test methods which dischargers will generally use and at much less cost.

Industry's concern that there is a level below which quantitative data are of little value does have some legitimacy; but it is most significant only at levels low enough to trigger some likelihood of "false positives." Therefore, EPA has decided to retain the threshold concept, but to set it at a level where the data are sufficiently accurate to be useful and the value of the data is not outweighed by the burden of testing imposed on the applicant. After the review of the available information, the Agency has decided that a threshold of 10 ppb best achieves this balance.

There are several reasons why the Agency is establishing this new threshold level. As several commenters observed, a number of toxic pollutants are acutely toxic at levels below 100 ppb. EPA water quality criteria indicate that many of the organic toxic pollutants (e.g. chlordane, aldrin) are either carcinogenic or acutely toxic at levels well below 100 ppb (in a number of cases, toxic effects occur below both GC and GC/MS detection limits). The criteria also indicate that many of the toxic metals have effects at levels near or below 10 ppb (e.g., cadmium, hexavalent chromium). Under the proposal, permit writer would only be able to obtain data on these toxic pollutants if the permittee expected discharge at or above 100 ppb, well in excess of the levels where health or aquatic effects occur. Several States approved to administer the NPDES program commented that given these toxicity levels, it is important to require a submission of data at lower levels. On reconsideration, EPA agrees that data on these toxic pollutants at low levels may be necessary for comprehensive evaluation of a discharge and establishment of permit limits.

The proposed threshold level was designed to take into account the possibility of imprecision and analytical variability associated with testing for toxic pollutants at levels near detection limits. EPA based the proposed threshold on method detection limits for the proposed GC/MS methods 624 and 625 (see 44 FR 69464, December 3, 1979), since multi-pollutant GC/MS testing will generally be used to report quantitative data on toxic pollutants. To take into account analytical variability, EPA added a variability factor of ten to the general detection limit of 10 ppb, which resulted in a proposed threshold of 100 ppb (for 4 pollutants with higher detection limits, a lower variability factor was set, resulting in a 500 ppb threshold).

The final rule contains an application testing threshold at 10 ppb, based in large part upon the detection limits in the proposed GC/MS test methods (see above), without the addition of the variability factor of ten. The proposed methods indicate that most organic toxic pollutants can be detected in waste water at that level (see 44 FR 69532, December 3, 1979). (For the four toxic pollutants discussed above that cannot be detected at 10 ppb the Agency is establishing a higher threshold at 100 ppb.) EPA recognizes that the 10 ppb threshold is based upon proposed methods rather than final rules. However, since the testing threshold is intended as a general number for testing purposes, the proposal is sufficiently accurate as a basis for the threshold. Moreover, more recent Agency data on these test methods confirm these detection limits and, in fact, indicate that GC/MS detection limits are actually lower.

The final rule is based upon a determination that it is unnecessary to include a variability factor above the detection limit in the testing threshold. While such a factor may be appropriate in some cases, such as in the establishment of effluent limitations since compliance is based upon these limits, a similar degree of precision is not necessary in establishing a testing threshold for permit applications, particularly since the data often serve a screening function. In fact, variability factors incorporated into the application threshold deprive permit writers of valuable information. The application is intended to obtain complete information on the discharge, thus enabling permit writers to determine the parameters for which permit limits must be set. This can be accomplished even if the initial data are somewhat imprecise due to alleged analytical variability since the permit writer will still have enough information to evaluate the discharge and can take such factors into account at the time of establishing permit limitations. If more precise data are needed to establish permit limitations at levels where variability may be a concern, the permittee is free to submit such data and the permit writer retains the authority to request additional data on the toxics, such as through more accurate GC testing.

Furthermore, in developing method detection limits, EPA has already considered analytical variability to some degree. Thus, adding a variability factor of ten to the detection limits compounds the consideration of analytical variability. In light of concerns expressed by commenters that the 100 ppb threshold would deprive permit writers of application data necessary to fully evaluate a discharge, it is not appropriate to add this second variability factor.

The Agency has also determined in rulemaking published subsequent to the November 18, 1982 proposal, that not only detection, but quantification of toxic pollutants below 100 ppb is possible, thus further confirming EPA's reliance on the 10 ppb figure. The proposed effluent limitations guideline for the Organic Chemicals Manufacturing Point Source Category contains limitations for a number of organic chemicals at the 50 ppb level (48 FR 11828, March 21, 1983). Moreover, as stated in the preamble to that proposal, EPA recognizes that with careful analytical techniques, toxic pollutants can be quantified below the levels at which limits were proposed (48 FR 11839). The limitations on the discharge of Total Toxic Organic (TTO) pollutants in the final Effluent Guidelines for the Electroplating and Metal Finishing Point Source Categories are based upon adding all quantifiable values of the 113 toxic organic pollutants over 10 ppb to determine whether the discharge complies with the TTO limitations. (48 FR 32462, July 15, 1983.) For most of the organic toxic pollutants, the Final Development Document for the Metal Finishing effluent guideline indicates that 10 ppb is an appropriate quantification level. EPA also proposed limitations for one toxic pollutant, N-nitrosodi-n-propylamine, at one ppb and numerous other toxic pollutants at levels between 20 and 50 ppb in the Pesticide Chemicals Guideline (47 FR 53994, November 30, 1982). The Agency recently made available for comment data on the Pesticides Category that would set limitations on a number of pollutants in the 10 ppb to 20 ppb range (49 FR 24492, June 13, 1984).

For four toxic pollutants (acrolein, acrylonitrite, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol), EPA is establishing a higher application testing threshold of 100 ppb (EPA had proposed 500 ppb). The proposed GC/MS test methods indicate that two of these pollutants are detectable at 100 ppb and the others (the phenolic compounds) at 250 ppb. However, the same proposal indicated that both of the phenolic compounds were detectable using GC methods at levels well below 100 ppb (44 FR 69487, December 3, 1979). Thus if applicants expect concentration below the GC/MS detection limit, they can perform GC analysis to obtain the precise data.

Finally, while analytical variability may be higher for samples taken at extremely low concentrations, it is not necessary or appropriate to eliminate all uncertainties by setting a relatively high concentration as the threshold. Since the establishment of too high a threshold could trigger a large number of supplemental requests for information to be submitted to the permit writer, this could substantially delay permit issuance and create significant additional burden on both applicants and permit writers. EPA concluded that it would be appropriate and desirable to set a threshold that will enable permitting authorities in most cases to rely on data submitted from applicants without extensive supplemental information requests.

The threshold level does not mean that permit limitations should necessarily be set for all pollutants present at 10 ppb, nor that it may never be appropriate to set limitations below this level. The submission of data, whether under § 122.21 (g)(7)(iii), (g)(7)(ii) [CPR § 122.53(d)(7) (iii), (ii) (for specified GC/MS fractions), or otherwise, does not automatically trigger the establishment of effluent limitations for the pollutants reported. Before setting technology-based limitations on pollutants present in the discharger's effluent at any level, the permit writer must consider whether the appropriate technology can reduce the pollutants in question to that level, and whether the analytical uncertainty and variability that may exist are so significant that the imposition and enforcement of specific limitations at that level may be unreasonable.

Clearly, for the reasons set forth above, the 250 ppb threshold proposed by some commenters is too high.

One commenter submitted data concerning the fact that analytical variability may be a problem even at 100 ppb. The Agency recognizes that analytical variability is more likely at lower levels. However, as discussed above, EPA does not consider it appropriate to add a variability to the threshold for *application* purposes.

Commenters also questioned EPA's proposal to require toxics testing under the "know or have reason to believe" standard only for routine or frequent discharges. On reconsideration, EPA is persuaded that all toxic pollutant discharges should be tested under the "know or have reason to believe" standard, not just those discharged on a routine or frequent basis. As stated above, the application is intended to provide a complete picture of the permitted facility once every five years. For permit writers fully to evaluate the discharge and impose appropriate permit controls, complete information on the discharge is essential. Even if permit effluent limitations are inappropriate due to the non-routine nature of the discharge, permit writers could determine that control through Best Management Practices (BMP) requirements are necessary or that additional monitoring is warranted. Therefore, the final regulation will apply to all toxic pollutant discharges and eliminate the proposed limitation for only routine or frequent discharges.

One State commenter expressed concern that the 100 ppb application testing threshold would require permit writers to impose additional monitoring requirements to verify the quantities of pollutants reported as being discharged below the threshold. EPA believes that the lower threshold adopted in today's final rules lessens any need to require permit monitoring to verify application information. EPA recognizes, of course, that some State permitting authorities may require pre-application testing for all pollutants the discharger may know or have reason to believe are present. States have the authority to adopt this approach or to request additional data on any pollutant identified in the application and to impose additional monitoring requirements during the permit term.

Another commenter stated that the proposed application testing threshold would interfere with the imposition and enforceability of effluent limitations below the threshold. This concern is also applicable to the lower threshold adopted today. EPA emphasizes that the application testing threshold is established only for triggering a requirement to test for particular toxic pollutants in the application process and it in no way restricts the levels at which effluent limitations can be set for specific pollutants in the permit. Most pollutants can be detected and quantified accurately at the 10 ppb using GC/MS for multi-pollutant analyses. Pure GC methods for a single pollutant frequently are quantifiable well below this level. Determining appropriate effluent limitations involves considering treatment technology as well as possible analytical variabilities when testing a pollutant. Effluent guidelines are developed based on analysis of the treatment capabilities for an industry category. Permit limitations often will be set at levels different from the application testing threshold.

One commenter questioned the basis on which applicants would determine whether a pollutant was likely to be present above the threshold level without testing. Under the regulation, each discharger must assess the likelihood that a particular toxic pollutant will be discharged above the threshold levels. Applicants may base their assessments on available information on the discharge, including their own experience and knowledge. In some cases, applicants can rely upon previous monitoring data for the pollutant, while in others, new testing may be necessary. EPA expects the applicants to consider, among other things, the age and amount of available data, the levels measured in the past, and any changed circumstances that would suggest the need for additional testing. Of course, the permit writer can always request testing for pollutants if he determines it is necessary to evaluate the discharge.

Several commenters stated that the proposed 100 ppb threshold should be applicable to the mandatory testing requirements for process discharges in primary industries as well as testing under the "know or have reason to believe" standard. As discussed above, § 122.21(g)(7)(ii) [CPR § 122.53(d)(7)(ii)] imposes a mandatory duty on applicants in primary industrial categories to test for the presence of certain toxic pollutants as specified in the regulation. The commenters stated that EPA's rationale, that 100 ppb was a technically achievable measurement level using "conservative" variability factors, was also applicable to these discharges.

The mandatory testing requirements for each primary industry category are based upon a review of data on the likelihood that a particular pollutant will be discharged, rather than the more speculative "know or have reason to believe" standard. Because of this difference, an application testing threshold is inappropriate. EPA, in developing effluent limitations guidelines, conducted extensive sampling of primary industries and this information was used in developing the mandatory testing requirements. In fact, EPA set these mandatory testing requirements based upon whether the toxic pollutants appeared in concentrations above 10 ppb. (See discussion in preamble to the Consolidated Application Forms, 45 FR 33516, May 19, 1980.) EPA periodically revises the testing requirements in the NPDES regulations, based upon consideration of this or any new data. For example, EPA suspended testing in certain categories where further data indicated that toxic pollutants were not likely to be present in all facilities within the category (see discussion of suspensions below). In recognition that it may be more burdensome for applicants to predict what pollutants may be discharged, EPA has established a threshold to relieve applicants of some of the testing burdens. Because of the greater degree of certainty of the presence of pollutants in primary industry process discharges, relief in the form of a threshold is not justified.

Another commenter requested that EPA clarify the status of suspensions of the mandatory testing requirements for organic toxic pollutants. EPA suspended mandatory testing requirements for all organic toxics in the Coal Mining Point Source category on January 8, 1981 (46 FR 2054) and for some or all organic toxic pollutants in the Textile Mills, Ore Mining and Dressing and Porcelain Enameling Point Source Categories on April 20, 1981 (46 FR 22584). On July 1, 1981, EPA also suspended mandatory testing for some or all organic toxic pollutants in the Gum and Wood Chemicals; Leather Tanning and Finishing; Paint and Ink Formulation; Photographic Supplies; Petroleum Refining; Pulp, Paper and Paperboard; and Steam Electric Power Generating Point Source Categories (46 FR 35090). These requirements are still suspended. EPA intends to propose regulations in the future that will make the changes to the mandatory testing a permanent regulation change.

4. EPA Action. In response to public concerns over the 100 ppb threshold provision, today's rule modifies the proposal. The final rule requires applicants to submit quantitative data for any toxic pollutant they know or have reason to believe is present in the discharge above 10 ppb. For four pollutants (acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6 dinitrophenol), we are establishing a higher threshold of 100 ppb. Applicants must continue to identify any toxic pollutant they know or have reason to believe is present but below these threshold levels applicants have the option to either supply quantitative data or explain why the pollutant is known or believed to be discharged.

Several persons requested that we clarify whether the inclusion of the requirement to sample and test the parameter "total phenols" in Item V–C of NPDES Form 2c is intended to classify total phenols as a toxic pollutant. While all other pollutants covered by Item V–C are toxic pollutants, EPA recognizes that this parameter (total phenols) using the 4-aminoantipyrine (4AAP) standard method, measures both toxic and non-toxic pollutants. Total phenols are covered in Item V–C merely for the purpose of specifying the type of testing and reporting that is required. EPA is modifying the Title to Appendix D to Part 122 to clarify that total phenols are included in Item V–C only for testing purposes and not to classify the parameter as a toxic pollutant.

Therefore, an applicant would be eligible for a variance under sections 301(c) or 301(g) from a BAT permit limit on total phenols upon a demonstration (*e.g.*, by GC or GC/MS) that either those toxic phenolics listed under section 307(a) of the CWA are not present or that each section 307(a) toxic phenolic present is at a level below that required by BAT or is directly controlled by a BAT effluent limitation. Where limitations on total phenols (as measured by 4AAP) are being used to control section 307(a) toxic pollutants not otherwise limited in the permit, a variance cannot be granted unless the total phenols limitation as an indicator for control of the toxic pollutants is replaced by another indicator pollutant not the subject of the variance request or individual limits are placed on the toxic or conventional pollutants in question.

(c) Certain Conventional and Nonconventional Pollutants

1. Existing rules. Section 122.21(g)(7)(iii)(B) [CPR 122.53(d)(7)(iii)(B)] and Item V–B of Form 2c require applicants to submit quantitative data for certain conventional and nonconventional pollutants identified in the regulations (Part 122, Appendix D, Table IV) if they know or have reason to believe the pollutant is present in the discharge. Like the other testing requirements, this provision is intended to supply adequate information on the contents of the discharge to establish permit conditions.

2. Proposed change. As with the testing requirements for toxic pollutants, industry litigants were concerned that this requirement was overly broad in that it required testing for every pollutant believed present, regardless of the amount. In response, the Agency again proposed to establish a screening criterion for testing purposes. Since a concentration-based threshold was inappropriate for a number of the pollutants in this group, EPA proposed that applicants be required to submit quantitative data only if the pollutants were either directly or indirectly (through an indicator) limited in an applicable, promulgated effluent limitation guideline. Under the proposal, permitting authorities would rely upon guidelines to indicate when pollutants were of concern and would supplement data through subsequent requests to the applicant. If quantitative data were not required because the pollutant was not limited in a guideline, applicants would still be required to identify any pollutants that they know or have reason to believe are present and explain why the pollutants are expected in the discharge.

3. Comments and responses. Most commenters expressed general support. However, one stated that all dischargers should be required to submit data on pollutants that they have used, handled, or generated within the previous five years, or which they know or have reason to believe are present in the discharge. Because the potential for extensive, potentially unneeded testing is great and the pollutants subject to this application requirement are not among the 126 toxic pollutants of primary concern, we consider this suggestion overly broad. While information on such pollutants may be useful, after general consideration of testing burdens and the value of the information in setting permit conditions, we have concluded that for these pollutants it is not always necessary to require extensive up front submission of testing results through the application form unless they are limited by a guideline. The Director may still obtain quantitative data if he determines that additional information is necessary. Otherwise, data on pollutants regulated by a guideline and a narrative description of the reason other pollutants in this category are expected to be discharged should provide sufficient information to develop adequate permit limitations.

Another commenter observed that in the case of discharge categories for which no effluent limitations guideline has been promulgated, no testing is required by the proposal. It is true that the proposal would not require testing for such discharges as part of the application. However, the applicants must still identify these pollutants expected to be present in the discharge and explain why they are present. If additional information is needed to decide whether to establish effluent limitations, the Director can use his authority under § 122.21(g)(13) [CPR § 122.53(d)(13)] to obtain the additional information. EPA expects that in these cases, the Director will closely examine the circumstances surrounding the discharge, including the applicant's explanation of why the pollutant is expected to be present, and request information whenever pollutants may be of concern.

4. EPA action. EPA is adopting the modification to § 122.21(g)(7)(iii)(A) as proposed. The change will reduce testing requirements for many dischargers, while not affecting EPA's ability to obtain necessary information concerning the pollutants. Since applicants must still submit quantitative data whenever the applicable effluent limitation guideline regulates the pollutant, EPA can write adequate permit conditions for many of the more significant discharges without additional requests for information. For discharges not covered by effluent limitation guidelines, the permitting authority may rely upon its authority to request additional information to ensure that adequate data are available to establish permit limitations. The final rule is a reasonable compromise between the need to avoid extensive, unnecessary testing and the need to assure that enough information is readily available to allow the Director to develop an appropriate permit.

(3) Sampling (40 CFR 122.21(g)(7) [CPR § 122.53(d)(7)])

1. *Existing rules.* Section 122.21(g)(7) specifies the type of sampling that applicants are required to perform to obtain quantitative data required by the application. Under the regulation, applicants must use 24-hour composite samples for all testing, except that grab samples must be taken for seven named pollutants (pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform).

2. *Proposed changes.* EPA's sampling requirements were considered too restrictive by a number of litigants. EPA proposed to revise the sampling requirements to allow the expanded use of grab samples in three cases. Grab samples in lieu of composite samples

would be allowed for holding ponds and other impoundments with a retention time of over 24 hours. Applicants could also use grab samples for storm water discharges, but would be required to take one grab sample for each hour of discharge up to a minimum of four grab samples for discharges of four or more hours duration. The proposal would also allow the Director to waive composite sampling if the applicant demonstrates that use of an automatic sampler is infeasible and that the minimum of four grab samples would be representative of the discharge. The proposed changes were intended to allow greater sampling flexibility where use of grab samples would still provide representative data and to recognize the impracticalities of obtaining composite samples of storm water discharge.

3. *Comments and responses.* All comments received supported the proposal. Several persons stated that there was no need to specify a particular sampling method where other methods can produce reliable data. EPA is convinced it *is* appropriate to specify these methods because sampling methods affect the reliability and accuracy of analytical data submitted on the application. For most discharges, EPA requires composite samples since these samples usually produce the most reliable and representative data for assessing the environmental impact of the discharge over time. The existing regulations require grab samples for seven pollutants because storage of the sample for the time to take a 24-hour composite sample makes evaluation of the parameter difficult or impossible (e.g., temperature). EPA recognizes that in certain cases where applicants can generate reliable data through other methods, it is appropriate to increase flexibility. Therefore, EPA will now allow grab samples for storm water discharges because the unpredictable and infrequent nature of such discharges makes composite sampling very difficult. EPA is also allowing grab samples for holding ponds or other impoundments with 24-hour retention time and, at the Director's discretion, other discharges if use of an automatic sampler is infeasible. The one grab sample minimum for holding ponds or other impoundments applies both to holding ponds at the end of the treatment system and to those that are themselves treatment systems. This change should reduce sampling costs for applicants while not appreciably reducing the reliability of the application data.

One commenter supported EPA's proposed change as it affects storm water discharges. Composite sampling may not be possible for some storm water discharges and hourly sampling (for the first 4 hours) up to a minimum of four grab samples should be sufficient to accurately reflect the discharge. The regulations do not specify any particular time during each hour that applicants must test although applicants must take samples that are representative of the discharge. Since, in many instances, the first discharge of pollutants after a rainfall is the most significant, applicants should wherever feasible, take their first grab sample during the first quarter hour of storm water discharge.

4. *EPA action.* For the reason stated above, today's final rule is adopted as proposed.

(4) Potential Discharges (40 CFR 122.21(g)(10) [CPR § 122.53(d)(10)])

1. *Existing rules.* The NPDES regulations require permit applicants to list any toxic pollutant that is expected to be discharged during the following five years at more than twice the level reported in the application. The requirement is intended to provide notice of anticipated discharges to allow permit writers to establish limitations at the time of permit issuance and ensure installation of adequate control technology prior to changes in the discharge.

2. *Proposed changes.* Litigants argued that acurate prediction of future discharges was exteremely difficult. They also stated that changes in discharge levels were inherent given the analytical variability in pollutant testing. They feared the requirement could mean that failure to properly predict or report on such changes would expose them to liability for filing an incorrect application. EPA proposed to delete § 122.21(g)(10) since the information on potential discharges, although useful, was not essential to writing adequate permits. Additionally, EPA relied upon § 122.42(a) [CPR § 122.61(a)], under which permittees would be required to notify the Director during the term of the permit of toxic pollutant discharges exceeding five times the application value, thus allowing permit modification if necessary.

3. *Comments and responses.* One commenter objected to the deletion of this application requirement, stating that the information allows establishment of permit limits and installation of control equipment prior to discharge. Several other commenters supported the proposal stating that accurate prediction was impossible given analytical variability.

EPA agrees that the establishment of permit limitations and installation of any appropriate treatment equipment prior to the discharge or increased discharge of toxic pollutants is an important goal. However, exact prediction of future discharges is not always possible, and only in some cases will information on future discharges be sufficient to allow the permit writer to establish such limitations at the time the permit is issued. Therefore, the burden on applicants of predicting future discharges does not appear justified in light of the generally speculative nature of making future discharge level predictions. Under § 122.42(a), permittees must notify the Director whenever the routine or frequent discharge of a toxic pollutant exceeds the higher of 100 ppb or five times the value reported in the application. This should generally be sufficient to allow the Director to modify the permit to impose permit limitations or other conditions if appropriate. In addition, most significant increases will also be associated with process changes that dischargers must still report under §§ 122.42(a) or 122.41(l)(1) [CPR § 122.7(l)(1)]. Of course, applicants are encouraged to provide the permit writer with any relevant information on planned new or increased discharges expected during the term of the permit being sought (usually five years).

4. *EPA action.* For the reasons stated above the final rule adopts the provision as proposed and deletes § 122.21(g)(10). (A new paragraph § 122.21(g)(10) is added by revisions to the storm water regulation. See B., below.)

(5) Used or Manufactured pollutants (40 CFR 122.21(g)(9) [CPR § 122.53(d)(9)], 122.42(a)(2) [CPR § 122.61(a)(2)], 122.44(e)(1)(ii) [CPR § 122.62(e)(1)(ii)], 122.62(a)(13) [CPR § 122.15(a)(ix)])

1. *Existing rules.* Four provisions of the NPDES regulations relate to application, notification, and control requirements for pollutants that the discharger uses or manufactures as intermediate or final products or byproducts. These requirements affect all aspects of the Toxic Control Strategy.

Applicants must identify all toxic pollutants that the applicant does or expects to use or manufacture within the next five years (§ 122.21(g)(9) [CPR § 122.53(d)(9)] and Item VI of Form 2c). Examination of such pollutants can assist in the establishment of permit limitations by supplementing quantitative data that the discharger has submitted. The NPDES regulations also require the Director to establish permit limitations on all toxic pollutants that the discharger does or may use or manufacture § 122.44(e)(1)(ii)) [CPR § 122.62(e)(1)(ii)]. Permitees must notify the Director whenever they begin or expect to begin to use or manufacture a toxic pollutant that was not reported in the permit application (§ 122.42(a)(2) [CPR § 122.61(a)(2)]. Based on such information, the Director has authority to modify the permit to then include limits for these toxic pollutants (§ 122.62(a)(13)) [CPR § 122.15(a)(5)(ix)]).

2. *Proposed changes.* A number of litigants objected to EPA's regulations dealing with used or manufactured toxic pollutants, suggesting that EPA had authority only to regulate the discharge of pollutants. Since not all pollutants that are used or manufactured by a permittee are necessarily discharged, EPA determined that the requirements might be unnecessarily broad. Although EPA did not agree that it lacked authority to regulate such pollutants, EPA proposed to delete all four provisions relating to the use or manufacture of toxic pollutants and thereby avoid unnecessary application requirements, and the imposition of permit limitations on pollutants that are not discharged. EPA concluded that requirements in the permit application for obtaining data on the actual discharge of pollutants and authority to impose permit limitations on any of these pollutants would provide adequate control of toxic pollutants.

3. *Comments and responses.—a. Comments on application and notification requirements.* Several commenters opposed the deletion of the application and notice requirements. One State indicated that EPA should retain the existing regulations to allow imposition of permit limitations and installation of control technology prior to discharge. Several others commented that, at a minimum, information on toxic pollutants currently used or manufactured was necessary. Another State added that the information from the application was very useful during inspections of a permittee. Other commenters supported the elimination of the application requirement to predict future use or manufacture due to the difficulty of making such predictions. These commenters also supported the proposal as it related to permit conditions and notification requirements stating that it is more appropriate to concentrate on pollutant discharges than on their use or manufacture.

EPA has carefully considered the comments and concluded that the proposal to delete all four provisions went too far in eliminating regulation of used or manufactured toxic pollutants. Since pollutants that are used or manufactured at a facility frequently have some potential to be discharged, even if unintentionally, it may be appropriate to regulate them. Information on the use or manufacture of pollutants allows permit writers to establish appropriate conditions to control the discharge of pollutants. These controls may take the form of permit effluent limitations on the pollutant. In some cases, permit writers may determine that the imposition of Best Management Practices (BMP) conditions in permits will be a more effective means to control the pollutant by reducing the possibility of actual discharge. (For example, BMPs may be appropriate where a potential for discharge exists due to leaks or spills from storage facilities.) Quantitative data requirements will generally not provide information on all used or manufactured toxic pollutants since the applicant may not have reason to believe the pollutants will be discharged. Thus, permit writers would not have adequate data to impose limitations on these pollutants. Additionally, as the commenter noted, this information can assist authorities in performing compliance inspections.

However, instead of requiring speculative prediction of future use or manufacture and notification when the discharger begins to use or manufacture a toxic pollutant, the regulations will only require applicants to submit information on toxic pollutants currently (at the time of application) used or manufactured. This will be sufficient for permit writers to impose adequate permit limitations since the permit must be renewed at least once very five years. The notification of pollutant use or manufacture during the entire permit term is more burdensome than the one time application requirement and has been eliminated to reduce permittee burdens.

EPA recognizes that for some dischargers the obligation to report all used or manufactured toxic pollutants may be difficult or even impossible to meet, particularly when there are numerous toxic components in a substance. For example, applicants that use chemical solvents purchased under a brand name may be unaware of or unable to ascertain the specific toxic pollutant components that are in the solvent. To reduce these burdens, the regulation will allow the Director to modify or waive the requirement to list all used or manufactured toxics pollutants if the applicant can demonstrate that it would be overly burdensome. For example, the Director could modify the application provision for a discharger to require only a listing of solvents by brand name and then use the information, along with other information available to him (such as toxicity testing results or water quality data), in conjunction with his best professional judgment, to decide whether more exact information is needed. Even where the waiver is granted, the Director can use his authority under (§ 122.21(g)(13) [CPR 122.53(d)(13)]) to request additional information where necessary. This change will reduce burdens for many applicants, without reducing the Director's ability to obtain needed information.

While data on future use and manufacture might also be useful to allow the imposition of permit limitations prior to any potential for discharge, this value is outweighed by the burdens it creates for applicants. Some applicants will be unable to predict future use or manufacture of toxic pollutants, making the information of little value because of its speculative nature. The permitting authority should still receive notice when the permittee has reason to believe these pollutants will be discharged at or above 100 ppb (see § 122.42(a)(1)), and the Director may then impose such permit conditions as are necessary.

One commenter supporting the proposed change to the application stated that the existing requirement to report used or manufactured toxic pollutants in the permit application could lead to the divulgence of confidential business information. Data on currently used or manufactured pollutants are needed to ensure that the permit contains adequate conditions to control potential or actual discharges. Since the CWA specifically provides that application forms must be available to the public (section 402(j)), EPA has no discretion to keep portions of the application confidential (see § 122.5(c) [CPR § 122.19(c)]). EPA recognizes the possibility that some confidential information may be included in the listing of used or manufactured pollutants. However, EPA believes that the need for this information to assure adequate environmental protection in general outweighs the burden to applicants. EPA, therefore, will continue to require submission of data on current use or manufacture. The Agency expects, however, that some of the commenter's concerns may be alleviated by the deletion of the requirement that permittees predict future use or manufacture. In addition, the Director can exercise his discretion in truly burdensome situations to modify or waive the requirement to list all pollutants currently used or manufactured where this information is not necessary to establishing permit limitations.

b. Comments on permit limitations. Several commenters supported the proposed deletion of the requirement that permits contain limitations on all toxic pollutants the permittee does or may use or manufacture. Because it requires effluent limitations even when the Director determines that they are unnecessary or where other means to control pollutant discharge, such as BMPs, are more appropriate, the Agency agrees that this regulation is unnecessary and overly restrictive and that it is better to allow the Director discretion in determining what limitations are appropriate. The Director still must impose limitations on any pollutant regulated by an applicable guideline and has authority under § 122.44 to impose permit limitations on any pollutant that may be of concern.

Another commenter supported the proposed deletion of the requirement to impose permit limitations, but suggested that we modify § 122.44(e)(1)(i) [CPR § 122.62(e)(1)(i)] which requires the Director to impose permit limitations on any pollutant that may be discharged at levels above BAT. The suggested modification was to require the establishment of such limitations for pollutants discharged at levels below BAT, but above water quality standards. Since permitting authorities have adequate authority to impose any limitations that are necessary to ensure compliance with State water quality standards (§ 122.44(d), [CPR 122.62(d)]) it is unnecessary to modify the regulation as suggested.

4. *EPA action.* For most of the provisions, the final regulation is identical to the proposal. Sections 122.42(a)(2), 122.44(e) (i) and (ii), and 122.62(a)(13) are deleted by today's rule. However, in response to commenters' concerns, EPA will retain the requirement that applicants list all toxic pollutants that are currently used or manufactured as an intermediate or final product or byproduct (§ 122.21(g)(9)—Item IV of Form 2c). Applicants will no longer be required to predict future use or manufacture. The regulation will also allow the Director to modify or waive the currently used or manufactured application requirements if the applicant can demonstrate that it would be overly burdensome.

(6) Toxics Notification (40 CR 122.42(a) [CPR § 122.61(a)])

1. *Existing rules.* The third element of the Toxic Control Strategy is the provisions for obtaining follow-up information concerning discharges during the permit term. One mechanism for providing such information is § 122.42(a) [CPR § 122.61(a)] which requires all industrial permittees to notify the Director when an activity has occurred or will occur that will result in the discharge of a toxic pollutant that is not limited in the permit. The permittee must provide such notice if the discharge exceeds the higher of 100 ppb (or 250 ppb for four pollutants identified in the regulation) or five times the concentration level reported for the pollutant in the application. This report is intended to ensure notification of new or increased toxic pollutant discharges during the permit term and allow for any appropriate permit modification.

2. *Proposed changes.* Industry litigants alleged that the regulation required continual notification because of the analytical variability when testing for the presence of pollutants at 100 ppb. This provision was not intended to require notification of daily fluctuations in pollutant readings, but rather to require notice of actual changes in the amount of the pollutants being discharged. EPA therefore proposed to modify the regulation to more accurately reflect the intent. Permittees would be required to notify the Director of the discharge of toxic pollutants exceeding threshold levels (the higher of 100 ppb or five times the concentration reported in the application) but only for toxic pollutants discharged on a routine or frequent basis, since these discharges are most appropriately controlled through permit limitations.

The proposal also required permittees to report nonroutine or infrequent discharges of a toxic pollutant not limited in the permit, if a single occurrence exceeds 10 times the value reported in the application, or 500 ppb, whichever is greater. EPA stated that infrequent and nonroutine discharges are still of concern, but are not as likely to be controlled through permit limitations.

3. *Comments and responses.* Several commenters supported the proposal because it would eliminate unnecessary burdens and concentrate on discharges that have a regulatory significance. EPA agrees that the proposal will eliminate burdens for dischargers, although the Agency would not characterize non-routine and infrequent discharges as lacking regulatory significance. The notification requirement is intended to provide information on new or increased toxic pollutant discharges thereby allowing the imposition of permit limitations (see 45 FR 33521, May 19, 1980). Non-routine and infrequent discharges may still be significant, not due to a continuing discharge problem, but rather because many of these discharges are pollutant spills or other irregular events. However, since permitting authorities are less likely to modify the permit to impose limitations to control such discharges, EPA has established a higher threshold for reporting those toxic discharges. This higher threshold will reduce reporting burdens for permittees, while still alerting the Director to possible problems with the discharging facility that would require permit modification. In addition, permittees may have an independent obligation to report the spill situations not addressed by the NPDES permit under section 311 of the CWA.

Several commenters supported the proposal preamble statement that the notification requirement was not intended to require continuous monitoring. The Agency reiterates that the notification requirements of this provision are not intended to impose on a permittee a burden of continuous monitoring throughout the term of the permit. Rather, if the permittee discovers through any means available (*e.g.,* routine monitoring required by the permit, independent monitoring done by the permittee, or a professional judgment that a reasonable potential for discharge exists based on a knowledge of changes in the facility or process operations) that it now expects toxic pollutants not limited in the permit to be discharged, the permittee must notify the Director. In determining whether a discharge is routine or frequent within the level specified, the permittee should examine the circumstances of the discharge and the operations of its facility or activity to determine whether additional self-monitoring is necessary to make an accurate determination of whether it is routine or frequent.

One commenter stated that threshold levels were inappropriate for notifications of the new discharge of toxic pollutants. While EPA recognizes that requiring dischargers to report any discharge of new toxic pollutants would provide the maximum possible information, this could impose an extremely large burden on permittees to report toxic pollutants at extremely low levels. Unlike the permit application which requires the submission of information only once every five years, permittees must report throughout the permit term under the notification requirement whenever a toxic pollutant is discharged. Therefore, the Agency has established a notification level to relieve dischargers from having to report all new discharges. The threshold level is set to require reporting a toxic discharge not limited in the permit in excess of 100 ppb or when the discharge of a pollutant exceeds five times the value reported on the application.

One commenter suggested that EPA impose permit limitations based upon the discharge values reported in the application. The Agency proposed such an application-based permit limit approach twice, and rejected it on the basis of extensive public comment. (See 45 FR 33516, May 19, 1980; 44 FR 34346, June 14, 1979; 43 FR 37078, August 21, 1978). EPA's decision was based on the inadequacy of data on wastestream variability and the problem of batch processes. EPA also concluded that the application-based approach could have imposed severe monitoring costs on applicants and permittees and that a more focused approach was preferred. The Agency continues to support the reasoning for the decision.

Several commenters claimed that the higher notification level could result in significant pollutant discharges without notification. In addition, these commenters suggested that the lack of a definition of routine or frequent discharge could also allow discharges without notification. EPA recognizes that some discharges below 500 ppb may be significant. However, the primary purpose of § 122.42(a) is to provide information on new or increased dischargers that may warrant permit modification. Since discharges subject to the higher threshold are infrequent and non-routine, the Director is generally less likely to modify the permit to impose limitations. Therefore, EPA has established a threshold at which the significance of the discharge increases the likelihood of permit modification.

EPA would also like to clarify the meaning of routine or frequent discharges. The lower threshold levels apply to any discharge that is either routine or frequent, not necessarily both. Routine discharges are those that occur on some regular basis (whether once a week or four times a year). This does not mean that routine discharges are only those that occur with clockwork regularity. Any discharge that the permittee expects will occur as a result of normal plant operation is likely to be routine. Thus, a facility that has a large holding pond from which it discharges several times a year would be subject to the routine discharge standard.

Discharges that occur mor than twice a year are frequent, whether or not they are routine. One-time spills are an example of infrequent discharges. These infrequent discharges are less likely to be controllable through permit limitations.

4. *EPA action.* After review of the comments, EPA has decided to promulgate the rule as proposed. Section 122.42(a) requires an existing industrial permittee to notify the Director when some activity has occurred or will occur causing it to discharge toxic pollutants which were not previously limited in the permit. In general, when such a discharge of a toxic pollutant occurs on a routine or frequent basis, the permittee must notify the Director if that discharge exceeds 5 times the level reported in the permit application form, or 100 ppb, whichever is higher. The permittee must also notify the Director when any one occurrence of a discharge exceeds 10 times the reported value or 500 ppb, whichever is greater.

(7) Toxicity Limits (§ 125.3(c)(4))

1. *Existing rules.* Most NPDES permit effluent limits are expressed as numeric limitations for specific pollutants. In addition to limiting specific chemicals, several generic pollutant parameters which simultaneously measure the effect of a number of distinct chemical substances are commonly limited (e.g., biochemical oxygen demand (BOD), chemical oxygen demand (COD), color, etc.). The NPDES regulations also authorize effluent limitations expressed in terms of effluent toxicity. Under the regulations, toxicity limits must reflect appropriate requirements of the Act (e.g., technology-based requirements or water quality standards). Toxicity limitations are useful where chemical limitations are either inadequate or infeasible (see 45 FR 33523, May 19, 1980). Permitting authorities determine compliance with toxicity limitations through biomonitoring of the effluent.

2. *Proposed changes.* Industry litigants had questioned the appropriateness of setting effluent toxicity permit limitations, particularly in the absence of an Agency policy. There was also some concern over the accuracy with which these limitations could be established and compliance measured. At the time of proposal, EPA was studying toxicity testing and its role in the NPDES program. EPA, therefore, proposed to delete § 125.3(c)(4) until we could complete our review and develop a policy for using toxicity-based permit limitations. Recognizing the usefulness of toxicity data as an assessment device in evaluating wastewater discharges, EPA continued to encourage its use for this purpose. Nevertheless, until EPA could develop a policy towards using biomonitoring and toxicity-based permit limitations, the use of actual toxicity-based limitations was discouraged.

3. *Comments and responses.* Several commenters stated that there is adequate information to justify the use of toxicity limitations in conjunction with other limits. These commenters argued that in many cases toxicity testing is a more valid approach than attempting to address all of the chemical pollutants and provides the only means to assess the actual impact to receiving water biota. One commenter also observed that toxicity-based limits created flexibility to use all available information to set limits. Other commenters expressed concern that the state of the art was not adequately developed for effective use of toxicity-based limitations.

Since the proposal, EPA has extensively considered the use of toxicity as a parameter for evaluating the effects of discharges and establishing permit limitations. EPA has concluded that toxicity testing is sufficiently refined to be used in setting effluent limitations, and has developed a policy for using toxicity testing in conjunction with chemical limitations to achieve water quality standards. This policy was issued on February 3, 1984 and published in the **Federal Register** (49 FR 9016, March 9, 1984). The policy explains that, in addition to enforcing specific numerical criteria, EPA and the States will use biological techniques and available data on chemical effects to assess toxicity impacts. In many cases, imposing effluent toxicity limits will be a better (and more feasible) means to prevent adverse water quality impacts and control toxic pollutants than attempting to address all of the individual chemicals in the effluent. Toxicity limitations can be particularly effective in controlling the cumulative impact of toxic pollutants in complex effluents. Additionally, as one commenter observed, site-specific characteristics of the receiving waters can also affect pollutants' toxicity. Analytical methods and information are available to determine controls to reduce toxicity through toxicity reduction evaluations. Therefore, EPA has decided to make no change in the regulation.

States commenting on the proposal were opposed to the change, arguing that they had effectively used toxicity limits for years. These States feared that EPA's revision would undermine their ability to use this permit and enforcement mechanism. EPA recognizes that many States have successfully used permit limitations based on overall effluent toxicity and that the proposed deletion of the regulation authorizing toxicity limits and our preamble statements discouraging their use could undercut these State efforts. EPA's intention was only to announce EPA's plan to limit use of toxicity limitations prior to development of a formal policy, not to affect State use of toxicity limitations. EPA has now issued a policy to strongly encourage States to use both chemical and biological techniques, including consideration and elimination of total toxicity, to assess and control toxic pollutants.

Several commenters argued that EPA has no authority to prescribe toxicity permit limitations. The Agency has consistently taken the opposite position. EPA has authority to impose toxicity permit limitations either on a case-by-case basis under section 402(a)(1) or as necessary to implement State water quality standards. The definition of effluent limitations in section 502(11) does not indicate that the limitations must be either numerical or identify a particular pollutant. Additionally, toxicity limitations are similar to other generic pollutant parameters controlled in effluent limitations guidelines and used in permits, such as BOD, some of which are expressly authorized by the CWA (see section 304(a)). Similarly, toxicity limitations are also authorized when necessary under section 301(b)(1)(c) to meet State water quality standards. Section 308 of the CWA clearly authorizes EPA to require the generation of any information reasonably necessary to carry out its responsibilities; it specifically authorizes requirements for biological testing and other information as needed to establish permit limits.

Two commenters objected to the use of toxicity permit limitations in the absence of approved section 304(h) test methods. The absence of approved section 304(h) test methods is not sufficient reason to refrain from using available methodologies, since it does not mean that there are not well-established analytical procedures. Permitting authorities should use their judgment in determining which methods to use. In requiring toxicity monitoring or specifying a permit toxicity limitation, the regulatory authority must specify in the permit the analytical methodology to be used until methods are established under 304(h). EPA has successfully used this approach for a number of years for the priority pollutants for which there are not yet approved test methods.

One commenter stated that toxicity limits could subject discharges to changing treatment requirements which may include technologies different from those contemplated by an applicable effluent limitations guideline. The CWA requires compliance with two principal requirements: technology-based standards and water quality standards. EPA and the States will use biological techniques and available data on chemical effects to evaluate and control toxicity impacts primarily to achieve water quality standards. Therefore, the use of toxicity to define water quality requirements does not impose any burdens not already required by the CWA. To the extent toxicity limitations are technology-based, the permitting authority must consider the statutory factors in the development of the limitations, as required for any other technology-based limitation.

4. EPA action. As noted, the primary reason for proposing to delete the regulation was the absence of a formal EPA policy for the use of toxicity limits. EPA issued a policy which develops an integrated strategy for use of biological and chemical discharge control methods. Issuance of the policy will also replace our statement in the proposed rule discouraging use of toxicity limits. To enable EPA to implement the policy now issued, today's final rule retains the existing regulation authorizing the use of toxicity effluent limitations.

B. Storm Water Runoff Discharges (40 CFR 122.21 [CPR § 122.53], 122.22 [CPR § 122.6], 122.26 [CPR § 122.57])

1. Background. The appropriate means of regulating the discharge of storm water into the waters of the U.S. has long been a matter of concern to EPA. In its first attempt to resolve the issue, EPA, in 1973, distinguished among various types of storm water. At that time, the Agency promulgated regulations which exempted certain sources, among them storm water runoff discharges uncontaminated by industrial or commercial activity, from the requirement to obtain an NPDES permit. EPA maintained that, although these discharges fell within the definition of point source, they were ill-suited for inclusion in the NPDES permit program and better dealt with through non-point source controls. It was reasoned that pollutants are best eliminated from storm sewers by "process changes" which prevent pollutants from entering rainwater runoff rather than by treating the discharge by the traditional "end-of-pipe" NPDES permit method. In addition, EPA determined that to issue permits to the tremendous number of storm water sources would be adminstratively unworkable within the framework of the NPDES permit program.

Shortly thereafter, the Natural Resources Defense Council (NRDC) challenged EPA's authority to exempt categories of point sources from permit requirements under the CWA (*NRDC, Inc.* v. *Train,* 396 F. Supp. 1393 (D.D.C. 1975)). The U.S. District Court for the District of Columbia held that EPA could not lawfully exempt discharges which it identifies as point sources from regulation under the NPDES permit program. Although denying EPA the authority to exempt point sources from permit requirements, the Court did recognize the Agency's substantial discretion to define what activities constitute point and non-point sources. Furthermore, in response to EPA's administrative burden argument, the Court recognized EPA's discretion to use administrative devices, such as area permits, to manage its workload. (Id. at 1401–2).

On appeal, the U.S. Court of Appeals for the D.C. Circuit affirmed the lower court decision. (*NRDC* v. *Costle,* 568 F.2d 1369 (D.C. Cir. 1977)). On March 18, 1976, in response to the Court decision in *NRDC* v. *Train,* EPA published final storm water regulations which required NPDES permits for all storm water discharges, other than rural runoff, which the Agency contended was better considered non-point sources. Changes to these regulations were reflected in the separate storm sewer regulations published on June 7, 1979, 44 FR (40 CFR 122.79); re-published on May 19, 1980 at 40 CFR 122.57, 45 FR 332290.

2. Existing rules. Section 122.26 [CPR § 122.57] describes those storm water runoff discharges which are considered "point source" discharges under the CWA and thus are subject to NPDES permitting requirements. Two types of storm water discharges are identified. First, a "separate storm sewer" is defined as a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff which is located in an urbanized area as designated by the Bureau of the Census or which is designated by the Director on a case-by-case basis as a "separate storm sewer" for any of the reasons discussed in § 122.26(c). A second type of storm water discharge is a conveyance which discharges storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil from areas used for industrial or commercial activities. Such conveyances are not considered "separate storm sewers," but are nonetheless considered point sources which must obtain NPDES permits. A conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which does not fit within either of the above described categories is not considered a point source and need not obtain an NPDES permit.

Dischargers of storm water that are defined as point sources are required to apply for a permit and to submit the same information required of all existing industrial and commercial sources, such as discharge location and flow quantities. Analytical requirements are also set forth in the application. Applicants must submit information about the presence of pollutants in the discharge and, in some cases, quantitative data are required. (See discussion of application and testing requirements in Toxics Control Strategy section of the preamble.)

3. Proposed changes. Despite EPA's efforts to formulate an environmentally sound and administratively workable approach for the permitting of point source storm water runoff discharges, a number of litigants challenged the storm water provisions of the May 19, 1980 regulations. Industry representatives argued that EPA had not gone far enough in excluding storm water dischargers from the NPDES program. They asserted that most storm water discharges pose no significant environmental danger and therefore should not be considered point sources subject to permitting requirements. The Agency's use of the term "contaminated" to decide which storm water discharges are not "separate storm sewers" was also challenged as being overbroad and ambiguous. Finally, industry claimed that the permit application testing requirements for those storm water discharges classified as point sources were inappropriate and unduly burdensome.

Citing EPA's limited resources and the magnitude of its permit issuance tasks, industry questioned the value of EPA's accumulation of storm water runoff data via the application form. It is widely recognized that permitting of storm water runoff discharges not associated with industrial/commercial facilities is a low priority in EPA permit issuance and enforcement actions. The extremely large number of storm water runoff discharges potentially encompassed by the existing regulations represents an enormous permit writing burden. Even with the use of resource saving devices such as general permits, just developing the basis for permit terms and conditions for such a disparate group of sources is an enormous task. Industry claimed that EPA and the States would never get to this task in most cases, thereby making pointless industry's costly gathering and submission of application data. In light of the vast disparity among different types of storm water runoff discharges with respect to size, flow amounts, the seriousness of the pollutant loadings, and the economic feasibility of control measures, industry urged the Agency to adopt a new approach to the control of storm water.

Based upon the settlement agreement resulting from almost two years of negotiations, EPA proposed a new approach to the permitting of storm water discharges. (See 47 FR 52073.) In the November 18, 1982 proposal, EPA attempted to balance the environmental concerns associated with storm water discharges, the practical limitations of the NPDES permit as a tool for regulating storm runoff, and the realities of limited government resources. Elsewhere in the November 18 **Federal Register** notice, EPA proposed the suspension of certain existing application and testing requirements for storm water discharges pending completion of final rulemaking. The Agency took this step in recognition that its final action might make this potentially large and costly data base unnecessary.

a. Definitions. A central element of the proposal was the definition of those storm water runoff discharges which were point sources and thereby required to obtain NPDES permits. EPA attempted to distinguish between storm-related discharges that were best suited to control by permits as point sources and those that were not. In making this determination, EPA relied upon its authority under the CWA to define what are point sources and what are nonpoint sources (*NRDC, Inc.* v. *Costle,* 568 F.2d. 1369 (D.C. Cir. 1977), on appeal from *NRDC, Inc.* v. *Train,* 396 F.Supp. 1393 (D.D.C. 1975)).

In the proposal, the term "separate storm sewer" was eliminated and replaced with the term "storm water discharge." A storm water discharge was defined as a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff that is either:

(1) Contaminated by contact with process wastes, raw materials, toxic pollutants, hazardous pollutants listed in Table V of Appendix D to Part 122, or oil and grease; or

(2) Designated as a storm water discharge by the Director.

A conveyance or system of conveyances operated primarily for the purposes of collecting and conveying storm water runoff that did not constitute a "storm water discharge" under this definition would not be considered a point source. This new definition was based on the determination that the excluded discharges were generally *de minimis* sources of pollution that Congress did not intend the Agency to regulate as point sources through the NPDES permit program.

Combined sewer discharges were not affected by the November 18 proposal.

b. Application requirements. The November 18 proposal also reduced the NPDES permit application requirements as they applied to point source storm water runoff discharges. Although under the proposal NPDES permits were required for "contaminated" storm water discharges, most such discharges were expected to pose far less environmental concern than typical industrial discharges for which the application requirements were designed. The belief was expressed in the proposal preamble that extensive testing and reporting would not be needed in order to issue adequate storm water permits.

The amount of information an individual applicant would be required to submit depended upon the particular category of storm water discharge involved. EPA divided those storm water discharges defined as point sources into two broad groups based upon their assumed potential for significant pollution problems. The first group were those which were likely to pose the relatively more significant pollution problems. Therefore, the proposed regulation subjected them to more extensive application and testing requirements. This first group consisted of three categories of storm water discharges:

(1) Those subject to specific effluent limitations guidelines or toxic pollutant effluent standards;

(2) Those designated as significant contributors of pollution by the Director under § 122.26(c); or

(3) Those located at industrial facilities in areas immediately adjacent to the industrial plant or in plant associated areas, if there was a potential for a significant discharge of runoff contaminated by contact with process wastes, raw materials, toxic pollutants or hazardous substances.

The third category covered conveyances which discharged rain runoff that had the potential for becoming contaminated by contact with raw materials, intermediate or finished products, wastes, or substances used in production or treatment operations. The term "plant associated areas" included areas such as industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or product loading and unloading areas. The term excluded commercial areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, since contamination from process operations was not expected to occur there.

These Group I discharges would be required to submit NPDES applications that complied with all the requirements of § 122.21 [CPR § 122.53], and EPA permit application Forms 1 and 2c, with one exception. Group I applicants would generally not be required to submit *quantitative* sampling and analysis data. They were only required to indicate (in Items V–B and V–C of EPA application Form 2c) whether they believed any of the listed pollutants were present or absent and briefly describe why. Group I applicants would not be required under the proposal to test for pollutants they believed to be present. However, they were still required to test for seven listed conventional and nonconventional pollutants (§ 122.21(g)(7)(i)(A)—Item V–A of Form 2c). It was felt that this less expensive conventional pollutant testing would serve to alert the permit writers to possible significant pollution problems where they could request further testing for toxic and non-conventional pollutants. This approach was considered more economically and environmentally practicable than requiring Group I dischargers to test for the full range of conventional and non-conventional/toxic pollutants.

Group II consisted of all point source storm water discharges required to be permitted under § 122.26 that were not included in Group I. While these sources might be "contaminated", EPA asserted that since they were removed from pollutant generating commercial or industrial facilities, they would, logically, present less significant pollution problems than those in Group I. The reduced likelihood of the presence of significant amounts of pollutants justified even fewer application requirements. The proposed rules required only basic information necessary to identify the type, number and location of Group II storm discharges. The proposal eliminated all testing for and identification of pollutants for Group II.

In recognition of the intermittent and seasonal nature of storm water discharges, EPA further proposed that both Group I and Group II be allowed to estimate the average flow of their discharge. This estimate was to be based upon actual prior experience and the applicant would have to indicate the rainfall event upon which the estimate was based.

An additional simplification was proposed concerning the signatory requirements for Group II. Sections 122.22 (a) and (b) [CPR § 122.6 (a) and (b)] specify who is required to sign permit applications. EPA proposed to amend §122.22(b) to allow permit applications for Group II storm water dischargers to be signed by a duly authorized representative of the person or position identified in § 122.22(a) as responsible for signing applications. EPA decided this was appropriate since Group II storm discharges are much less complex than most point source discharges.

To allow sufficient time for both EPA and permittees to implement procedures reflecting the final promulgation of regulations covering storm water discharges, EPA proposed that existing unpermitted point source storm water dischargers be given six months from the date new final storm water regulations were issued to submit applications. For a discharger designated by the Director as a "storm water discharge" under § 122.26(c), the application would not be due until six months from the date of notification of its designation.

Finally, EPA proposed to revise § 122.26(a) to clarify that one permit could be issued covering all storm water discharges that are part of a storm water discharge system. In this case, each owner or operator of a discharge would be identified in an application form submitted by the owner or operator of the portion of the system discharging directly into the waters of the U.S. Any permit written to cover more than one owner or operator would have been required to identify the limitations applicable to each discharge and could not, without the source's consent, have imposed limitations on a source for discharges from another source.

On June 23, 1982, in conjunction with the settlement agreement on the storm water issues, EPA issued a non-enforcement letter. The letter indicated that while the proposal was pending, it was EPA's policy not to take enforcement action against storm water discharges other than those covered by an existing NPDES permit, subject to effluent limitations guidelines or toxic pollutant standards, or designated as a significant contributor of pollution. The "non-enforcement" policy also did not apply to existing enforcement actions.

To be covered by the policy, storm water dischargers must submit new or amended applications, within six months after promulgation of new, final amended storm water regulations or within six months of designation as a storm water discharger under § 122.26(c).

4. Comments and responses. Its protracted gestation and thoughtful preparation notwithstanding, the storm water proposal generated more comment and controversy than almost any other section of the November 18 notice. Generally, trade associations and industries agreed with the proposed changes or stated they did not go far enough, while States and environmental groups opposed the proposal. Despite the numerous comments, there are only two major issues—which storm water discharges are point sources; and, what are the appropriate application and testing requirements for those that are.

a. Definitions. The most hotly contested portion of the proposed rulemaking is the same fundamental issue that has been disputed for over a decade. That is, what, if any, storm water discharges should be defined as point sources and thereby be subject to NPDES permit requirements. The Agency's proposal to classify as point sources those storm water discharges that are contaminated by contact with certain wastes, materials or pollutants received some support. However, it was also criticized on legal, technical, practical, and administrative grounds. Finally, a number of commenters stated that the proposal was flawed because it lacked sufficient clarity and specificity.

Those commenters supporting the proposal saw it as a common sense approach which appropriately focussed NPDES storm water permitting activities on discharges of concern. Several claimed that Congress did not intend the CWA to require regulation through NPDES permits of *de minimis* sources of pollutants and that the "contamination" screening criteria was a step in the right direction.

Comments criticizing the Agency's proposal as not going far enough emphasized several points. A number of commenters felt the proposal was still too all-encompassing and would classify as point sources some discharges, such as parking lots, which should not, and could not effectively, be controlled through the permit process. These comments were linked to concerns about EPA and States' ability to process thousands of applications from what were characterized as very minor discharges. Questions were also raised as to whether EPA had any practical treatment processes in mind for these discharges. On the other hand, one commenter stated the proposal was too narrow in limiting "contamination" to a select list of pollutants and materials.

The use of the term "contamination" was criticized as being vague and ambiguous. Several commenters requested clarification in the form of a definition. They asked that specific threshold levels of pollutants; which would constitute contamination, and thereby trigger the permit requirement; be added to the regulation. Others questioned whether any acceptable, generic criteria could be established, and suggested that only case-by-case determinations on whether a discharge was a point source were appropriate.

These administrative and technical comments were bolstered on both sides by legal arguments. Those supporting a narrow use of the permit program for controlling storm water discharges contended that "pollutants" associated with storm water discharges were often naturally occurring and pandemic and that the CWA permit program was not intended to deal with this type of pollution problem but rather with pollutants relating to manufacturing and industrial processing. They asserted that Congress had specifically created non-point source provisions in the CWA to address the low pollutant levels and widespread occurrences often associated with runoff from rainstorms. In opposition to this approach, other commenters claimed the CWA requires storm water runoff to be regulated through the permit process regardless of the level of pollutants present in such discharges. This assertion notwithstanding, these same commenters questioned whether the Agency had a legally sufficient and technically supported basis for the distinction contained in the proposal.

The Agency recognizes that commenters have raised a number of legitimate issues with its proposal. However, although some uncertainty may exist about which specific discharges are properly classified as point sources, certain fundamental precepts are clear. Among these is that the best approach to deal with storm water related pollution problems, and the approach most consistent with the CWA, clearly falls between the extreme positions of not regulating any storm water discharges through the permit process, or of using NPDES permits to control all storm water which may potentially contain any pollutants. The Agency approach, set forth in the proposal, was a well-reasoned attempt at striking a balance. Under the CWA, Congress recognized that there are separate problems related to point and non-point sources of water pollution and different means to address them. Different sections of the Act deal with these distinct sources. Runoff from rain storms is best controlled as a point source in certain cases and as a non-point source in others. The Agency has the authority and the discretion to determine how this division should be made. In the preamble to the proposal, EPA cited the decision in *NRDC, Inc.* v. *Train,* 568 F.2d 1369 (D.C. Cir. 1977) in support of this authority. In their comments on the storm water proposal, NRDC alleged that EPA had improperly cited that case. NRDC is correct that in *NRDC, Inc.* v. *Train* the Court held that where the Agency defines a discharge as a "point source" it has no authority to exclude that source from the NPDES permit requirement. However, the Court in *NRDC, Inc.* v. *Train* additionally recognized that EPA has discretion to identify which sources are appropriately classified as point sources and which as non-point sources. This interpretation is upheld in subsequent cases, a number of which cite a statement by Senator Muskie in the 1971 debate on the FWPCA, "[G]uidance with respect to the identification of 'point sources' and 'non-point sources' . . . will be provided in regulations and guidance by the Administrator." (117 Cong. Record 38, 816 [1971]) Without the flexibility provided by this discretion, EPA would be hindered in its efforts to establish the most effective controls for various types of rain runoff.

Although EPA maintains that it has statutory authority to delineate between point and non-point sources, it does agree that to some extent both the existing regulation and the proposal were unclear. Further, EPA agrees that the proposal may have classified as non-point sources certain discharges which are best controlled under the NPDES permit program as point sources. The final regulation clarifies the point source/non-point source delineation as it applies to storm water runoff. Since EPA is persuaded by commenters that the proposal went too far in narrowing coverage of storm water under the NPDES permit program, the final rule maintains approximately the same coverage as the existing regulation.

The final rule classifies as a point source any storm water discharge which is located in an urbanized area, discharges from land or facilities used for industrial or commercial activities, or is designated by the Director as a point source. The data analyzed by the Agency to date do not support the proposed broad exclusion of storm water discharges from coverage as point sources. The final rule, therefore, retains comprehensive coverage of storm water discharges through the NPDES permit program. While EPA recognizes that in many cases these discharges may be better controlled as non-point sources, as several commenters pointed out, EPA may not exclude discharges without some basis. In fact, information currently available to the Agency, such as data recently available from EPA's Nationwide Urban Runoff Program (NURP) study, support the broad coverage of storm water discharges.

That study indicated there are both existing and potential pollutant problems with urban storm water runoff. NURP found significant instances of high levels of heavy metals (especially copper, lead and zinc) in urban runoff. Freshwater water quality standards (chronic) were exceeded for lead (94% of all samples), copper (82%), zinc (77%) and cadmium (48%). Nationwide, BOD loadings from runoff were estimated as comparable to that from secondary POTWs, while TSS loadings were estimated to be a factor of 10 higher than loadings from POTWs. Fecal coliform levels also indicated significant impacts from urban storm runoff, especially from runoff into lakes and shellfish harvesting areas. NURP considered a number of simple technologies which may significantly reduce levels of pollutants, although no economic analyses have been done.

Today's final regulation retains the classification of rural runoff as non-point sources. The Agency is convinced that most rural runoff cannot be effectively regulated by NPDES permits. In those cases where it can be, the regulations specifically classify the discharges as point sources (such as animal feedlots) or the Director has the authority to individually designate a discharge as a storm water point source. This is also consistent with Congressional intent that agricultural runoff be uniformly regulated through non-point source controls. This is indicated by the 1977 Clean Water Act amendments which exempted irrigation return flows from the point source definition. Congress' intent was to treat return flows similar to natural agricultural runoff, which was then already exempted by the Agency from point source control:

> * * * return flows from irrigated agriculture are indistinguishable from any other agricultural runoff, which may or may not involve a similar discrete point of entry into a watercourse. All such sources regardless of the manner in which the flow

> was applied to the agricultural lands, and regardless of the discrete nature of entry point, are more appropriately treated under the requirements of section 208 * * *.

Senate Report, 4 Legis. Hist. Vol. 4, 668 (1977). See also Senate Debate of Conference report, 4 Legis. Hist. 527–8.) Consistent with this intent, EPA has excluded rural runoff that is not discharged from industrial or commercial lands or facilities.

EPA will continue to review existing information, including NURP data and any other available studies to determine appropriate control measures for storm water discharges. If these data indicate that further exclusions may be appropriate, EPA will propose such exclusions in the future.

Some improvement of clarity has been achieved by the repalcement of the old terms, "separate storm sewer" (existing regulation) and "storm water discharges" (proposal) with the more descriptive "storm water point sources". The existing regulation defined three different types of storm water discharges, two of which were point sources. The final regulation has only two categories—storm water point sources, which are subject to permit requirements as point sources, and other storm water discharges, which are not classified as point sources unless designated. EPA also agrees with the commenters who challenged as vague the use of the terms "contact," "contaminate," and "significant" in the proposed definitions of storm water point sources and Group I storm water discharges (proposed § 122.57(b) (1) and (2)). Some of these commenters wanted EPA to set numerical limits to define the point at which storm water became "contaminated;" however, the Agency lacks sufficient data to do this. To alleviate confusion, the final rule does not use these terms, but rather defines storm water point sources based solely on objective measures (i.e., by geographic criteria, rather than by the internal nature of the storm water).

On a related matter, other commenters requested that storm water discharges caused by diversion around an industrial facility, those contaminated by oil and grease, discharges from parking lots, and storm water discharges at natural gas compressor stations be classified as non-point sources. Although diversions from undistrubed areas around an industrial or commercial activity would not be considered industrial or commercial facility runoff for purposes of the storm water point source definition, nonetheless, they will be considered point sources if they are located in urbanized areas or designated a significant runoff source. With regard to discharges contaminated only by oil and grease, EPA has generally dropped the concept of contamination, so this point is now moot. No data or information were submitted to support the claims that parking lot runoff is not a pollution problem and therefore should be excluded from permit coverage. In fact, data from NURP indicate that discharges from parking lots may indeed present a problem and, therefore, EPA is maintaining coverage of such discharges as point sources. Similarly, no sufficient data were submitted to eliminate specific industrial categories from the point source definition. Therefore, EPA cannot exclude natural gas facilities that would otherwise fall within the definition of point sources.

Another commenter wished to exclude discharges that may be covered under the provisions of 40 CFR Part 112 (Spill Prevention Control and Countermeasure plans—SPCC). EPA disagrees. The provisions of Part 112 are meant to generally minimize the amount of pollutants that may need to be disposed of, by providing management practices to minimize spills. They do not replace the specific NPDES requirements necessary to control pollutant discharge levels when the resulting drainage is discharged into navigable waters.

Several commenters suggested the use of general permits to cover classes of storm water discharges, such as those discussed above. EPA agrees that this is an idea worthy of consideration and suggests that dischargers raise the concept with their permitting authority.

One commenter wanted more specification of the process by which storm water would be designated as a point source by the Director under § 122.26(c). This is a case-by-case decision which is highly site-specific and will be made by the Director on the basis of all information available, including application data. Of course, where the Director finds existing data are inadequate to make such a designation, he may request additional data from the owner or operator, including analytical testing, or may initiate data gathering on his own.

EPA recognizes that maintaining the broad coverage of the existing regulations will result in some burden for dischargers and the Agency. Lack of Agency resources and higher permitting priorities will mean that in many cases discharges which are classified as storm water point sources will not receive permits in the near future and will contribute to the backlog of minor permits. Nonetheless, this classification scheme will best allow the Agency to identify and target those storm water discharges which are amenable to NPDES permit control.

b. Application requirements. Comments on the proposed changes in the application and testing requirements for storm water point sources ranged from strong support to strong opposition. The two-tiered application approach was commended by many commenters as a practical recognition of the lesser likelihood of serious amounts of pollutants being present in Group II discharges. Generally, industry claimed it made little sense to require the same information for thousands of minor, intermittent storm water point sources as is required for process wastestreams. Thus, supporters stated the proposed changes would be substantial improvements by eliminating unnecessary analytical data and paperwork requirements, particularly the toxic testing requirements. Industry commenters asserted there was a limited likelihood that toxic pollutants would be present at levels of concern. These commenters pointed to the high costs and difficulty of obtaining samples that proved to have little value. Additionally, many commenters claimed that even though some rain discharges might be point sources, they were environmentally insignificant and, accordingly, less application data were needed. Supporters of the proposal also indicated that it was preferable to supplement data through requests to sources for additional information than to require thousands of sources to submit extensive data that would not be used.

Opponents of the proposal claimed the reduction in application testing requirements for rain runoff discharges deprived the permit writer of the information necessary to make a rational determination on appropriate permit terms and conditions. Several commenters questioned the logic of eliminating the requirement to monitor for toxics, especially since the proposed Group I classification on its face indicated there was a potential for discharge of toxic materials. EPA's claim that Group I testing data for conventional pollutants, such as BOD and TSS, would alert the permit writer to possible significant pollution problems was characterized as an "ignorance is bliss" policy. Commenters challenged the Agency position on the basis that these pollutants fail to identify potential long term toxicity problems. A number of commenters also criticized the use of the phrase "potential for significant discharge" in the criteria identifying Group I as unduly vague. The minimal requirements for Group II were opposed as inadequate even to carry out the Agency's professed purpose of being able to confirm that these discharges should not be classified as Group I. Commenters claimed that with no quantified discharge data required it would not be possible to assess environmental impacts.

Finally, a commenter challenged the adequacy of the record to support the Agency's classification scheme and proposed reductions in testing.

Based upon the extensive comments, EPA has reexamined the storm water point source application requirements. The Agency is persuaded that in some respects the proposal went too far in eliminating application requirements. The final rule retains a two-tiered application approach, although both the distinguishing factors and the application requirements are modified. Group I storm water point sources are any sources subject to effluent limitations guidelines or toxic pollutant effluent standards, designated by the Administrator under § 122.26(c), or located at an industrial plant or in plant associated areas. These areas include any lands immediately adjacent to an industrial plant and such areas as industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, and material or product loading and unloading areas. Any storm water point source discharge from these areas is considered Group I, irrespective of pollutants in the discharge. The final rule does not adopt the distinction based upon pollutants that EPA proposed. Generally, because of the greater presence and prevalence of industrial material and wastes in these areas, these discharges are more likely to contain higher levels of pollutants than other storm water point sources. For example, storm water discharges covered by effluent guidelines are included in Group I since the promulgation of the guideline represents the Agency's determination that there may be pollutant problems. Areas separate from the plant's industrial activities are excluded from Group I. Thus, commercial areas, such as office buildings and their accompanying parking lots, are excluded from Group I because they are separate from the industrial plant. All Group I storm water point sources will be required to comply with the same application requirements as other industrial point sources (as outlined in § 122.21 (f) and (g)) [CPR §§ 122.4(d) and 122.53(d)] and must submit both Application Forms 1 and 2c.

All other storm water point sources will be considered Group II dischargers. Under new § 122.21(g)(10), these dischargers are exempted from the requirement to submit Form 2c and need not submit the topographic map required by Form 1 (§ 122.21(f)(7) [CPR § 122.7(d)(7)]). However, to provide permit writers with information on the discharge, Group II storm water dischargers must provide a brief narrative description of the discharge that identifies the nature of the discharge; the drainage area, including the size and nature of that area; the receiving waters; and any treatment applied to the discharge. This information is easy to obtain and should be adequate for permit writers to determine whether a source should be designated as a Group I storm water point source.

The Agency had decided to adopt the two-tiered application approach for several reasons. EPA's resources for permitting storm water point sources are limited; the Agency and States approved to administer the NPDES program are unable to issue permits to all of these dischargers at this time. However, as discussed above, these storm water discharges are point sources under the CWA, subject to permit requirements. To balance these competing concerns, the final rule will focus application requirements upon the discharges that EPA's experience and common sense indicate are relatively more significant and reduce application burdens for other sources. Group I storm water point sources are more likely to be issued permits in a timely manner and full information is therefore required. In many cases, these sources are specifically regulated by an effluent limitations guideline, such as in the Ore Mining and Dressing Point Source Category (47 FR 54598, December 3, 1982). Permit writers will generally include permit limits for storm water outfalls covered by a guideline along with the other limits in the facility's permit. Given the likely delay in permitting Group II sources, full permit application data submitted at this time would probably be stale and useless by the time resources are available to begin permit processing. When a permitting authority prepares to issue permits to these Group II sources, it can request additional, current information. To require full Form 2c information and quantitative data in advance of that time is pointless and unnecessarily burdensome.

EPA has rejected the requests to adopt or go beyond the proposal in reducing the application requirements for Group I [commenters suggested exemption from the longitude/latitude provisions in Form 2c, Item I (§ 122.21(g)(1) [CPR § 122.53(g)(1)]) or the conventionals testings in Item 5–A of that form (§ 122.21(g)(7)(i))]. These requests are inconsistent with EPA's decision that Group I storm water point sources are sufficiently significant to submit all application materials. These data will provide permit writers with adequate data to assess the storm water discharge and impose appropriate limitations.

EPA also agrees with the logic that data on toxic pollutants should be required where such pollutants are likely to be present. It is unlikely that data on these conventional pollutants will be adequate to identify the presence of such pollutants, much less to allow permit writers to establish permit limits. As in other situations, where testing for these seven pollutants is unnecessary, permittees may request a waiver under § 122.21(g)(7)(i)(B).

Several commenters requested that oil and gas production facilities be specifically designated Group II storm water sources because they are of little environmental concern. No information has been submitted which justifies this statement. In addition, EPA has concluded that the best approach to storm water discharge is to establish application requirements based upon the likelihood that pollutants of concern may be present. Therefore, proximity to industrial facilities is a major criteria for inclusion in Group I. This applies equally to oil and gas facilities as to other industrial facilities.

c. Other provisions. Several persons supported the proposal to allow storm water dischargers to estimate the flow of the discharges rather than reporting the average flow as now required by § 122.21(g)(3) [CPR § 122.53(d)(3)]. Since storm water generally flows intermittently, making it difficult to obtain average flow data, EPA agrees with the commenters that it is appropriate to modify the application requirements to allow flow estimation. Applicants will have to identify the rainfall event on which the estimate is based. In addition, EPA has modified the final rule in response to a comment to require storm water dischargers to indicate the method of estimation used. The modified flow reporting requirements will not reduce information necessary to issue permits or to evaluate storm water impacts.

Several commenters supported the proposal to allow permit applications for Group II storm water discharges to be signed by a duly authorized representative of the person or position identified in § 122.22(b). Since these discharges are generally less complex than other storm water discharges, we agree that it is appropriate to modify the signatory requirements. To relieve Group II storm water dischargers of application burdens further, today's final rule is modified as proposed. No commenters opposed the proposal.

Commenters also suggested that EPA extend the revised signatory requirements to Group I dischargers as well as Group II's. EPA does not agree that such extension is appropriate. Group I dischargers are subject to different, more detailed application requirements. Given the more serious nature of the application, it is appropriate to obtain higher level corporate involvement in the application process so as to ensure corporate responsibility.

5. EPA action. EPA is committed to a workable and environmentally sound approach to the control of storm water discharges, recognizing both the strengths and the limitations of the NPDES permit and non-point source programs. Today the Agency is promulgating a clear definition of storm water point sources as those which are located in urbanized, industrial, commercial areas, or are designated by the Director. It is also promulgating a two-tier application system which will enable permitting agencies to gather sufficient data to set priorities for storm water permitting and minimize the burden on regulated facilities.

EPA has retained the scope of the existing regulation defining which dischargers are point sources and are thus required to obtain a permit. The final rule defines a storm water point source as a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff which is located in an urbanized area as designated by the Bureau of the Census or which discharges runoff from industrial or commercial facilities or areas or which is designated as a storm water point source by the Director. EPA has deleted the term "contaminated" as vague and confusing. In essence, the regulations will consider as point sources all storm water discharges located in urbanized commercial, or industrial areas regardless of the amount or type of pollutants they contain. EPA has adopted this approach for two reasons. First, the Agency has no information to indicate that currently regulated storm water discharges are not contributors of pollutants subject to regulation as point sources. To the contrary, preliminary analysis of data from the National Urban Runoff Program indicates that such discharges generally contain pollutants of concern, such as toxic pollutants and others, and may be best controlled under the NPDES program. Second, there is no reason to extend the current definition, since the Agency's analysis of data has not indicated that sources excluded from classification as point sources under the existing regulations are contributors of pollutants of concern that should be covered by NPDES permits.

Storm water point sources will be required to submit application information to enable permit writers to set priorities for permit issuance and to establish adequate permit conditions. All storm water discharges coming in contact with plant associated areas (as defined in the regulation) will be required to submit application form 1 and form 2c, as will storm water discharges regulated by an effluent limitation guideline or effluent standard. In addition, any other storm water discharges may be required by the Director to submit complete applications. These discharges will be classified as Group I storm water point sources. All other storm water discharges (Group II) will be exempted from the requirements of § 122.21(g) [Form 2c] and will only be required to submit Form 1 and a brief discription of type and extent of area drained and any effluent treatment. As described above, the Director may require other information on a case-by-case basis.

As part of this rulemaking, the Agency is also revoking the non-enforcement letter issued as part of the Settlement Agreement. That letter stated that EPA would not take enforcement actions against certain storm water dischargers for failure to have a permit so long as a permit application is filed within six months of promulgation of final rules or of designation as a storm water discharge. Within six months of the effective date of this regulation all Group I storm water dischargers which have not already submitted applications are required to submit complete NPDES applications, including both Form 1 and Form 2c; all Group II storm water discharges must submit only Form 1.

The Agency is promulgating as final rules two of the proposed changes. The requirement that permit applicants submit flow data is modified for storm water dischargers by amending § 122.21(g)(10)(ii) to allow such dischargers to estimate the flow if they identify the storm water event and method of estimation upon which the estimate is based. The Agency has also modified the application signatory requirements for storm water dischargers to allow applications for Group II storm water dischargers to be signed by a duly authorized representative of the person or position identified in § 122.22(a) as responsible for signing applications.

C. Construction Prohibition (40 CFR 122.29(c)(4), (c)(5)[CPR § 122.66(c)(4), (c)(5)])

1. Existing rules. EPA's issuance of an NPDES permit to a new source is subject to the National Environmental Policy Act of 1969 (NEPA). Section 511(c)(1) of the Clean Water Act states that "Except for * * * the issuance of a permit under section 402 of this Act for the discharge of any pollutant by a new source as defined in section 306 of this Act, no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of [NEPA]." Compliance with NEPA may involve the preparation of an Environmental Impact Statement (EIS) if the issuance is determined to be a major federal action significantly affecting the environment. As is discussed elsewhere in today's preamble, EPA has the authority to impose permit conditions, including non-water quality related conditions, or deny a permit based upon the EIS (see discussion in Part F., below).

EPA has implemented the requirements of section 511(c)(1) through several provisions of the NPDES regulations. Several sections of the regulations authorize the imposition of EIS-related conditions in NPDES permits, or the denial of permits based upon the EIS. (See §§ 122.7(g) [CPR 122.12(g)], 122.29(c)(3) [CPR 122.66(c)(3)], and 122.44(d)(9) [CPR 122.62(d)(9)] as discussed below.) In addition, in accordance with a long-standing Agency policy, § 122.29(c)(4) generally prohibits on-site construction of a new source for which an EIS is required until after final Agency action in issuing an NPDES permit that incorporates EIS-related requirements. Section 122.29(c)(5) requires an applicant to notify the Regional Administrator if the applicant commences construction in violation of this prohibition.

The "ban" on pre-permit construction of a new source is far from absolute. The regulations allow construction to commence prior to final permit issuance if the applicant executes a legally binding written agreement to comply with all EIS-related conditions. In addition, the Regional Administrator has discretion to allow pre-permit construction to commence if he determines that it will not cause significant or irreversible adverse environmental impacts. In exercising his discretion, the Regional Administrator may, for example, allow pre-permit construction after reaching agreement with the applicant on any appropriate mitigative measures. Regional Administrators have used this authority to allow construction prior to permit issuance in a number of instances. Thus, the pre-permit construction ban does not actually bar construction where there are appropriate safeguards to protect against environmental harm. In addition, although construction in violation of the ban is a cause for denial of a new source permit application, denial is not required. A decision to deny a permit application based on violation of the construction ban will depend upon the Agency's evaluation of all factors, including the degree of environmental harm and mitigating measures taken by the applicant.

EPA established the pre-permit construction ban to ensure that it could fulfill its obligations under NEPA in issuing new source permits. EPA has relied upon the pre-permit construction ban to ensure that its statutorily required NEPA review had substantive meaning. Because important issues in many NEPA reviews are facility siting and construction-related impacts, if review takes place after construction has been commenced or completed, the review may be meaningless as to these issues. These impacts could be adequately considered during or after construction only if the significant expenditures of the applicant are ignored or if restoration of the environment was physically possible. Because this would be difficult, undesirable, and perhaps impracticable, EPA has used the pre-permit construction ban, along with the discretionary waiver, to ensure review is completed prior to construction, unless appropriate conditions can be imposed.

The Agency has taken the position, since 1976, the EPA has authority to prohibit construction of a new source prior to issuance of a permit containing EIS-related conditions. (See General Counsel Opinion No. 76–18, September 23, 1976; the General Counsel concluded that: "Congress could not have intended that [the NEPA review] be a hollow one or one of extremely limited value. The case law that has developed under NEPA is clear in requiring an agency to consider all of the reasonable alternatives to its proposed action * * *. The only way the Administrator can meaningfully consider [facility siting alternatives] in an NPDES proceeding is to perform his evaluation prior to the construction of the facility." (See also former 40 CFR § 6.906, 42 FR 2454, January 11, 1977). Pre-permit construction was expressly prohibited in both the June 7, 1979 NPDES regulations (§ 122.47(c), 44 FR 32854) and the May 19, 1980 Consolidated Permit Regulations (§ 122.66(c), 45 FR 33290).

2. Proposed rule. Industry litigants challenged EPA's authority to impose the pre-permit construction ban. They argued that the ban would delay construction of new sources, particularly since any administrative hearings on the permit must also be completed prior to construction. Industry also stated that the pre-permit construction ban would create inconsistencies between EPA and approved States that do not have State laws comparable to this Federal requirement. In response to these concerns, EPA proposed to eliminate the pre-permit construction ban and allow on-site construction to commence prior to permit issuance without approval by EPA or imposition of NEPA-related conditions. However, EPA noted that in performing the balance of costs and benefits required by NEPA, EPA would not consider any costs "which might be incurred by the applicant in restoring the site or in altering construction plans" no matter how substantial these costs might be. (See proposed § 122.66(c)(4), 45 FR 52091, Nov. 18, 1982.) Industry would commence construction before permit issuance entirely at its own risk, and EPA would issue, deny, or condition the permit based upon the NEPA review as if no construction had commenced. EPA's proposal was based in part on the fact that the CWA explicitly requires that EPA regulate discharges, not the construction of facilities that may discharge. Consistent with deleting the pre-permit construction ban, EPA also proposed to delete the requirement that applicants give notice of construction prior to permit issuance (§ 122.29(c)(5)).

3. Comments and responses. A number of commenters addressed the legality of the pre-permit construction ban. Several environmental groups stated that the proposed rule would unlawfully curtail EPA's opportunity to exercise its NEPA responsibilities and would violate NEPA, since an Agency may not take action that would foreclose reasonable alternatives to the proposed action, have significant adverse effects on the environment, or unfairly prejudice future decisions. One environmental group added that since site selection is frequently a major issue, serious and avoidable damage could result from the elimination of the pre-permit construction prohibition. Industry commenters supported the proposal, and alleged that EPA had no authority to impose the pre-permit construction ban since the CWA regulates discharges, not construction. Several argued that since a permit is still a prerequisite to discharge, EPA can carry out its obligations prior to pollutant discharge. Others argued that private facility construction is not a Federal action subject to NEPA. Industry comments also addressed the discriminatory impact of the pre-permit construction ban and its potential to delay construction activities.

Upon consideration of all the comments and a reexamination of the statute and case law, the Administrator has determined that the pre-permit construction ban is authorized by both the CWA and NEPA and that it is the most effective mechanism to enable EPA to carry out its obligation under section 511(c)(1) of the CWA. While the CWA clearly requires EPA to regulate discharges of pollutants, section 511(c)(1) also requires EPA to comply with NEPA in the issuance of NPDES permits to new sources. Under section 501(a), the Administrator is given authority to promulgate such regulations as are necessary to carry out his functions under the Act. In addition, NEPA clearly supplements the factors which EPA must consider in its decisionmaking and authorizes the Agency to take action based on its evaluation. E.g., *United States* v. *King Fisher Marine Service*, 640 F. 2d 522, 523 (5th Cir. 1981, *Calvert Cliffs Coordinating Committee*, v. *AEC*, 449 F. 2d 1109, 1115, 1128 (D.C. Cir. 1973).

EPA believes it can more effectively carry out its NEPA review if construction has not yet commenced, unless the Regional Administrator exercises his authority to allow construction to proceed prior to completion of an EIS. (The discretionary waiver provides needed flexibility to assure that construction is not unduly delayed where the review is not likely to involve irreparable harm to the environment.) A construction ban is necessary to ensure that NEPA's requirement for a comprehensive evaluation of all environmental effects of a project is not frustrated.

In order to do a comprehensive review as envisioned by NEPA, EPA must consider all reasonable alternatives to the proposed action. Once extensive on-site construction work has begun, some alternatives to the proposed action may be foreclosed, thus reducing the value of that review. One alternative to be evaluated is whether the environment at the specific site should be altered by the proposed construction. Even where construction is appropriate, the manner and timing of construction may be legitimate factors for consideration. Options affecting significant environmental matters such as land use, aesthetics, historic preservation, and air quality might also be precluded to the extent construction is allowed to proceed. To allow construction to proceed prior to completion of an EIS could limit the Administrator's alternatives for action. The cost of remedial measures and site restoration is incalculable once irreparable alterations have already taken place. Even in circumstances where remedial measures or relocation to another site may be physically possible, it would be extremely difficult, if not impossible, for EPA to require this where the applicant has made significant capital investments in the project. EPA would also have to consider delays in the commencement of operation that would result if EPA made a permit decision that was inconsistent with the construction under way. EPA would find it difficult to ignore these factors in making its permit decision, especially since they would put the equities on the applicant's side. These considerations do not enter into the permitting process if the NEPA review and permit issuance is completed prior to construction.

As one commenter pointed out, the pre-permit construction ban is also consistent with the Council on Environmental Quality NEPA regulations (40 CFR Part 1506). These regulations establish general criteria that Agencies should follow in conducting NEPA reviews. Section 1506.1(a) of the NEPA regulations states that until an Agency issues a record of decision (including an EIS), no action should be taken which would limit the choice of reasonable alternatives or have an adverse environmental impact. The pre-permit construction ban ensures that EPA follows these guidelines.

EPA recognizes that all uncertainties for permit applicants are not eliminated under the existing regulations, since even if the Regional Administrator allows pre-permit construction, there is no guarantee that the final permit will be consistent with that construction. However, under the scheme in the existing regulations it is more likely that EPA and the applicant can consider the possible impacts of the construction prior to its commencement and can better coordinate the construction with the probable EIS outcome. These agreements will help avoid delays in operation that may result if there is no agreement and EPA subsequently makes a decision that is inconsistent with construction.

Several commenters stated the pre-permit construction ban would cause delays. Discussions with EPA Regional Offices, however, identified only a few instances in which applicants claimed that the ban actually resulted in construction delay. In some of these cases no actual delay occurred since the Regional Administrator exercised his discretionary waiver of the ban to allow construction to proceed. Very few facilities should have actual construction delays due to the construction ban. Moreover, most new sources for which an EIS would be prepared are large; there is substantial "lead time" between the planning and the construction of the facility that would allow EIS completion and permit issuance. Alternatively, the applicant could begin construction after entering into a binding legal agreement with the Regional Administrator, committing to meet certain conditions as needed to assure environmental protection. It is EPA's experience that this process provides adequate flexibility to avoid inappropriate results in specific cases.

EPA agrees with commenters who stated that private facility construction is not a Federal action. However, the CWA recognizes EPA's issuance of an NPDES permit to the facility as the Federal action which subjects it to NEPA. Construction of a discharge source generally proceeds in reliance on future Federal action: the issuance of an NPDES permit which is clearly within the Agency's jurisdiction. Without the permit the source would be unable to operate as intended. Thus, EPA's pre-permit construction review is not an attempt to control private activity per se, nor to expand the Agency's organic jurisdiction, but rather to protect the Agency's jurisdiction by preserving an unaltered balance of cost and benefit factors, as envisioned by NEPA.

In response to comments about the discriminatory impact of the pre-permit construction ban, there are at least six approved NPDES States which have State legal authorities comparable to the EPA pre-permit construction ban. Thus, contrary to the comment that the pre-permit construction ban applies only in States not approved to administer the NPDES program, construction is prohibited prior to final consideration of the environmental review in some cases where EPA is not the permitting authority. Even though there is some inconsistency since all States do not have a pre-permit construction ban, this is a natural result of the variation among State laws and would not provide sufficient justification to modify a requirement of federal law necessary to carry out EPA's independent statutory responsibilities. There would be some difference between States regardless of what action EPA takes on this regulation.

4. EPA action. In light of the comments, and EPA's reevaluation of legal authorities related to the duty to comply with NEPA, the Administrator has determined that retention of the prepermit construction ban and the notice of construction prior to permit issuance is appropriate. In conducting a review under NEPA, EPA must ensure that all results of that review are considered.

Moreover, the proposal would have required EPA to ignore the costs of prior construction or site restoration. As we discuss above, such a position would be very difficult to carry out in practice and would be inconsistent with the normal Agency practice, which is to consider all relevant facts available to the decisionmaker prior to final action. The decisionmaker should not ignore substantial capital expenditures and possible severe adverse economic impacts when determining whether to issue a permit. Accordingly, after a full evaluation, EPA has determined, with one exception, not to modify the existing rules on this issue.

EPA is making one change from the proposal to clarify that violation of the ban is grounds for denial of the permit. Section 122.29(c)(5) already implies that permits may be denied due to on-site construction. However, we are modifying that provision to make it clear that EPA considers violation of the construction ban to be grounds for permit denial. Consistent with existing policy, EPA will consider all factors relating to the facility in making its permit decision.

D. Anti-backsliding (40 CFR 122.44, 122.62 [CPR §§ 122.15, 122.62])

1. Existing rules. The Clean Water Act controls the discharge of pollutants through the application of technology-based effluent limitations or more stringent water quality-based standards. All existing dischargers were required to comply with effluent limitations based upon the best practicable control technology currently available (BPT) by July 1, 1977, under section 301(b)(1) of the Clean Water Act (CWA). By July 1, 1984, dischargers must comply with limitations reflecting the best available technology economically achievable (BAT), or in the case of "conventional" pollutants, the best conventional pollutant control technology (BCT), under section 301(b)(2). This scheme of imposing increasingly stringent pollution control requirements illustrates the Act's national goal of encouraging reasonable further progress towards eliminating the discharge of all pollutants. Section 101(a)(1).

EPA is directed to implement technology-based requirements primarily through the development of national effluent limitation guidelines (guidelines) for categories of point source discharges. In the absence of applicable guidelines, NPDES permits are issued on a case-by-case basis under section 402(a)(1) of the CWA, establishing effluent limitations based on the permit writer's best professional judgment (BPJ) of what constitutes the appropriate technology requirement (BPT, BAT, or BCT). In developing these BPJ limitations, permit writers must consider the same factors (set out in section 304(b) of the CWA) that would be used in the development of an effluent limitation guideline.

In order to implement the Act's goal of continued further progress towards eliminating pollutant discharges EPA established an "anti-backsliding" policy reflected in the NPDES regulations at 40 CFR 122.44(1) [CPR § 122.62(1)]. See *U.S. Steel* v. *Train* 556 F.2d 822, 842 (7th Cir. 1977). This provision prohibited the reissuance of an NPDES permit with limitations, standards, and conditions less stringent than those in the previous permit unless the circumstances on which the previous permit had been issued had materially and substantially changed and constituted cause for permit modification or revocation. With respect to BPJ permit limitations which were more stringent than subsequently promulgated effluent limitation guidelines, "backsliding" was prohibited, except in limited circumstances set forth in the regulations.

2. Proposed changes. Industry litigants questioned EPA's authority to impose BPJ technology-based permit limitations more stringent than effluent limitation guidelines. They asserted that once promulgated, the limitations established by a guideline should replace case-by-case permit limitations. They also considered the anti-backsliding policy inequitable, arguing that permittees who had accepted BPJ limitations developed prior to guideline limitations are required to meet more stringent control requirements.

EPA disagreed with the challenge to the legality of the policy. However, in response to the equity concerns, EPA proposed to eliminate its anti-backsliding policy for BPJ permits where it subsequently promulgates an applicable effluent limitation guideline with limitations less stringent than those imposed in the permit. Under the proposal, EPA would, upon the request of the permittee, be required to modify EPA-issued BPJ permits to reflect the less stringent guideline limitations. Although States were free to provide similar relief, no mandatory obligation to modify State-issued BPJ permits to reflect less stringent guideline requirements was proposed, since Section 510 of the CWA authorizes States to impose more stringent requirements. EPA also proposed to apply the new policy to existing permits during their terms by adding a new cause for permit modification consistent with the above approach.

In explaining its proposed abandonment of the "antibacksliding policy", EPA stated that the national effluent limitation guidelines should be applied equally to all dischargers, rather than penalizing, or placing at a competitive disadvantage, those companies within an industry that had received a BPJ permit before guidelines promulgation. The revised policy would also facilitate issuance of second round BPJ permits that might otherwise be challenged in evidentiary hearings.

3. Comments and response. Many commenters addressed the legality of the antibacksliding policy. Supporters of the proposal stated that EPA had no authority to impose limitations, standards, or conditions more stringent than those in applicable law and regulations. They reasoned that after an effluent limitation guideline is promulgated, EPA must include limitations based upon that guideline in permits, in lieu of previously established more stringent case-by-case permit limitations.

Opposing commenters stated that deletion of the antibacksliding policy was inconsistent with the statutorily prescribed goal of continued further progress toward attaining the Act's goal of fishable/swimmable waters. Commenters also argued that the deletion would violate the individual permit process required by section 402(a)(1) by allowing case-by-case limitations to be relaxed even where the discharger can meet the limits at acceptable cost, where the permittee has exhausted or waived its opportunity to challenge those limits, or where the discharger already has achieved those limits. Commenters, focusing on relaxation of BPJ permits based upon BPT, stated that the BPJ permits represented the Agency's determination of BPT and therefore, BAT cannot be less stringent. However, under the proposal this could be possible if BAT guidelines were less stringent than previously established BPJ limitations.

It is EPA's position that the CWA provides the Administrator with the authority to prohibit backsliding from a case-by-case permit when a guideline is subsequently promulgated. While the CWA does not explicitly establish an antibacksliding requirement, such a requirement is a logical outgrowth of the CWA's requirements and goals. Effluent limitation guidelines are calculated for industrial categories, and represent the minimum limitations that each facility within the industry should be capable of attaining if it installs the appropriate control technology. Guidelines are generally calculated with a 99% confidence level. Therefore, if a discharger exceeds the effluent limitations established by the guideline regulation, there is a 99% certainty that it was caused by discharger error rather than statistical variation. To achieve this certainty, the limitations in an effluent guideline must be established at a level that all dischargers within the industrial category can meet after the installation of pollution control equipment. Although many dischargers should be able to attain more stringent limitations, this approach to guideline development ensures that the standard can be achieved by all facilities. It is well established that EPA has authority to set technology-based limitations required by section 301 of the CWA through industry-wide regulations, provided that limited allowance is made for variation in industrial plants. *E. I. duPont de Nemours and Co.* v. *Train* 430 U.S. 112, 97 S.Ct. 965, 975 (1977).

In the absence of guidelines, EPA has the authority to establish permit limitations on a case-by-case or BPJ basis under section 402(a)(1). In issuing a BPJ permit, permit writers must consider all of the statutory factors that pertain to the promulgation of a guideline (whether BPT, BAT, or BCT). (See discussion of the Agency's BPJ authority in section F of the preamble.) When EPA issues a BPJ permit, it establishes the Agency's determination of the appropriate technology-based limitations for the facility. See *U.S. Steel Corp.* v. *Train, supra.* Moreover, since it is calculated on a case-by-case basis, a BPJ determination can be tailored to the relevant circumstances and capabilities of the permittee and thereby inherently incorporates any necessary allowance for variations in individual plants. It would be inconsistent with that process to replace such limitations with less precisely calculated limitations. EPA's subsequent issuance of effluent limitations guidelines does not invalidate the detailed BPJ determination of BPT or BAT/BCT made at the time of permit issuance. To adopt the policy that a subsequently issued less stringent effluent limitation guideline should replace BPJ established permit limits would cast an undeserved pall of uncertainty on BPJ permits. Such a policy could have a chilling effect on the issuance of permits in advance of guideline promulgation since the possibility would exist of a burdensome permit modification process.

A prohibition on backsliding for BPJ permits is also consistent with reasonable further progress towards controlling pollutant discharges. If a BPJ permit has been issued, a modification (or reissuance) to reflect subsequently promulgated less stringent guidelines would be inconsistent with the section 301(b)(2)(A) requirement that BAT represent reasonable further progress towards achieving the goals of the Act. Only in limited circumstances where it is demonstrated that the original BPJ limitations cannot technically be achieved despite all good faith efforts, might some allowance be legitimate. EPA has provided corrective measures for dealing with such situations in its existing regulations.

In relation to this, however, EPA does not completely agree with the commenter who stated that it was impermissible to allow backsliding where permittees had met their limits, could meet the limits at acceptable cost, or had waived or exhausted their opportunity to challenge their permits. Although backsliding, in general, is inconsistent with the Act for permittees who can or are meeting permit limitations, the anti-backsliding provision should not limit the Director when the previous case-by-case limitations prove to be an incorrect assessment of the discharger's capabilities. The regulations, therefore, create two exceptions from the policy. Permittees may obtain less stringent limitations when, despite installation and proper operation and maintenance of the necessary treatment system, they are unable to meet a BPJ permit. (§ 122.44(1)(2)(i) [CPR § 122.62(1)(2)(i)].) Today's rulemaking will also allow permits to be modified during their term in these cases. Additionally, permittees that can only meet their BPJ limitations at unreasonable costs should be able to obtain less stringent limitations. Therefore, today's regulation provides relief to a permittee that can meet its current permit effluent limitations only with operation and maintenance costs wholly out of proportion to those of average facilities covered by a subsequent guideline for the category. For dischargers with permits based upon guidelines, EPA already allows relief if the removal costs are wholly disproportionate from those considered in developing the guideline. EPA will now allow qualifying facilities to request permit modification (or reissuance) with less stringent limitations under a similar standard although the permit may not be less stringent than the subsequent guideline. The final rules thus create a new cause for permit modification. In light of this, the status of the permit and whether challenges to it have been exhausted are not appropriate considerations. However, if the facility is able to meet its BPJ limits with reasonable costs, it is consistent with the case-by-case process to require the permittee to continue to achieve those limits.

Several commenters argued that the anti-backsliding policy was unfair to permittees that accept BPJ permits and that these permittees should not be penalized. These commenters pointed out that permittees that contest case-by-case permits may be rewarded. Another commenter countered that EPA had not demonstrated that the anti-backsliding policy would place BPJ permittees at a competitive disadvantage.

It is possible that some case-by-case permittees will attempt to delay the permitting process in the hope that they will obtain less stringent limitations. However, as we explained above, a BPJ permit represents the Agency's determination of the appropriate technology-based limitations applicable to an individual facility. It would be inconsistent with the goals of the Act for the Agency to reverse that decision solely because a permittee may try to delay a permit process in hopes of achieving a more favorable result. In addition, the Agency received no specific data from commenters in support of the allegation that the anti-backsliding policy created a competitive disadvantage.

Commenters agreed with EPA's statement in the proposal that the anti-backsliding policy could result in challenges to second round NPDES permits. EPA acknowledges that it cited this concern in the November 18, 1982 preamble as support for the proposed elimination of the anti-backsliding policy. At the time, EPA expected to issue many of the second round permits on a case-by-case basis and anticipated that many would be challenged. Since then, a great deal of progress has been made in promulgating effluent limitations guidelines. In addition, EPA's second round industrial permit issuance policy assigns highest priority to permits that will be based on water quality standards more stringent than technology standards. In other cases, if promulgation of a guideline is expected, EPA will generally defer permit issuance rather than issue a BPJ permit. Thus, it now appears that far fewer permit challenges will result from the anti-backsliding policy than had been anticipated.

Two commenters pointed out that the Agency's retention of § 122.44(l)(2) [CPR § 122.62(l)(2)] (which sets out specific instances under which BPJ permits may be reissued with less stringent limitations) was inconsistent with the proposed revision and ought to be deleted. EPA agrees with the commenters that the retention of this language was inconsistent with the proposal. However, since today's final rule does not eliminate the anti-backsliding policy as it applies to BPJ permits, it is unnecessary to delete § 122.44(l)(2).

One commenter stated that since the proposed rule appeared in § 122.62(a) [CPR § 122.15(a)] "Cause for Permit Modification", we should clarify that the change would also apply to permit renewal and revocation and reissuance. The commenter's question reflects a misunderstanding of § 122.62(a). Section 122.62(a) states that if the permittee agrees, each of the causes for permit modification also constitutes cause for permit revocation and reissuance. The proposal would also have applied to renewal through § 122.44(l)(1) which states that permits may be renewed with less stringent limitations if there is cause for permit modification under § 122.62.

A single commenter stated that dischargers covered by revised water quality standards should also be able to obtain less stringent limitations at reissuance. The existing NPDES regulations already contain provisions that allow this change. Section 122.62(a)(3) allows permit modification if the permit is based upon a water quality standard or promulgated effluent limitation guideline and that standard or guideline is made less stringent. This also applies to reissuance through § 122.44(l).

Another commenter stated that we should clarify that the term "effluent limitations guidelines" in the proposed rule and in § 122.62(a)(3) includes New Source Performance Standards (NSPS). Thus, if EPA wrote a permit based upon an NSPS that was subsequently modified or revised, the permittee could request permit modification to obtain less stringent limitations. The commenter further argued that since the permittee would no longer be a new source, EPA could not apply NSPS to these permittees, but would be required to include BAT conditions.

The suggested interpretation of § 122.62(a)(3) and the proposed rule is inconsistent with the existing regulations. The NPDES regulations define the term "effluent limitations guidelines" as regulations published under section 304(b) of the CWA. (See § 122.2 [CPR § 122.3].) Effluent limitations guidelines thus include BAT, BPT, and BCT guidelines, but not NSPS which are promulgated under section 306 of the CWA. The reference to "standards" in § 122.62(a) is clearly intended to refer to water quality standards and not NSPS. Thus, by the terms of this regulation, sources covered by an NSPS are subject to the Agency's current anti-backsliding policy.

The regulation is supported by section 306 of the CWA which requires that NSPS reflect the greatest degree of effluent reduction determined to be achievable through the application of the best available demonstrated control technology. NSPS are only applicable to sources which are constructed after proposal or promulgation of an NSPS (see 40 CFR 122.2). This is because NSPS are intended to impose state-of-the-art technology upon new sources which are capable of constructing their facilities to meet such requirements. Limiting the circumstances by which these NSPS can be modified once imposed on a facility is consistent with Congressional intent that NSPS represent the "maximum feasible control of new sources," S. Rep No. 92–414, p. 58 (1971), Leg. Hist. 1476. See also *E. I. duPont de Nemours & Co.* v. *Train* 430 U.S. 112 (1977) (a variance procedure for NSPS is inappropriate).

Promulgation of a subsequent "new" NSPS by the Agency does not justify elimination of the anti-backsliding policy. It is clear under the statute that a later promulgated NSPS would not apply to "existing" new sources since the "existing" new source was constructed prior to the promulgation or proposal of the "new" NSPS. Furthermore, the promulgation of the "new" NSPS does not withdraw or revise the original standard for an "existing" new source since by its terms it only affects "new" new sources whose construction commenced after its promulgation. Thus, the commenter's statement that the promulgation of a subsequent NSPS converts the "existing" new source into an existing source subject to BAT effluent limitations is incorrect. Rather, the existing NSPS remains applicable to sources that were constructed after its promulgation but before a new NSPS is issued. Modification of permit limitations based upon the existing NSPS to reflect later promulgated NSPS would be inappropriate.

Only in a situation where the new NSPS was intended to withdraw or revise, in whole or in part, the previous NSPS because of some error or infeasibility might an exemption from the anti-backsliding be legitimate. See, for example, the recent proposed changes to the NSPS for coal mine point sources. 49 FR 19240 (May 4, 1984). However, a change to the NPDES regulations at 40 CFR 122.62(a) to modify the anti-backsliding policy to generally allow for backsliding with respect to NSPS would require reproposal to allow for public coment since the issue was not raised by the November 18, 1982 proposal. Since the Agency considers it appropriate to retain the anti-backsliding policy for NSPS, EPA is not proposing such a change.

One commenter stated that EPA cannot allow backsliding to BCT guidelines where the inital BPJ/BPT permit limitations are more stringent than the guideline limitations. This commenter misconstrues the existing regulations which now contains an exception from the anti-backsliding policy allowing BPJ permit limitations to be made less stringent to conform to a later promulgated BCT effluent limitation guideline (§ 122.44(l)(2)(iii) [CPR § 122.62(l)(2)(iii)]). EPA included this exception in the June 7, 1979 NPDES regulation, reasoning that it would only be available in a small number of cases and that it was in accord with Congressional intent that BCT, rather than BAT, represent the highest level of treatment applicable to conventional pollutants (44 FR 32864, June 7, 1979).

On reevaluation, the Agency recognizes that the BCT exception as explained in the 1979 preamble in inconsistent with the general intent of the anti-backsliding policy to prevent unwarranted "backsliding" in pollution control. EPA agrees with the commenter's statement that BCT must in all cases be at least as stringent as BPT, whether BPT is in a guideline or in a BPJ permit. Moreover, requiring permittees to maintain the level of control imposed by BPT requirements would not be contrary to Congressional intent with respect to control of conventional pollutants. Under section 301(b)(1), all dischargers are required to comply with BPT requirements by 1977. BPT is intended to be the floor for purposes of determining BCT requirements whether BPT was established by guideline promulgation or by a permit writer's best professional judgement.

Due to the inconsistency in our current regulations, EPA is considering revising the BCT exception to make it consistent with the rest of the anti-backsliding policy. The Agency is currently working on a BCT methodology and has not yet promulgated any BCT guidelines. Additionally, it is unclear whether there are any BPJ permits more stringent than BPT or BCT guidelines that will present a real backsliding issue. Therefore, the Agency will assess the need to correct the anti-backsliding policy in conjunction with issuance of a final BCT methodology. If BCT guidelines are likely to allow backsliding, EPA will propose a revision to correct the anti-backsliding regulation at that time.

Finally, one commenter supported the proposal on the grounds that it would allow EPA to correct previous errors. This provision is not intended to provide general authorization to correct previous errors. EPA already has authority to correct BPJ permit limitations when they are unachievable. As noted above, existing § 122.44(l)(2)(i) allows the reissuance of permits with less stringent limitations if permittees install and properly operate and maintain the necessary BPJ limits. Elsewhere in this rulemaking, we are extenting this policy to apply to *modification* of BPJ permits. Under today's revision, the permitting authority will also be able to modify (or reissue with less stringent limitations) BPJ permits upon promulgation of subsequent guidelines when they can only be achieved with costs wholly disproportionate to those considered in the guidelines, although the revised limits may not be less stringent than the guideline.

4. EPA action. Based upon EPA's review of the comments and the requirements of the CWA, the Agency has decided to retain the current anti-backsliding policy with one exception. The regulation will now allow BPJ permits to be made less stringent if the permittee can demonstrate that its removal costs are wholly disproportionate to those considered in a subsequently promulgated effluent guideline. This demonstration should be equivalent to the similar showing in variance requests from guidelines-based permit limitations (see § 125.31(b)(3)).

Generally, the BPJ permit limitations are based upon technology that is widely known and not different from that considered in guideline development. Permit writers usually

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know the approximate removal costs at the time the limitations are established. However, in some cases, technology may be installed that requires unexpected and inordinate operation and maintenance costs to meet the guideline. In these cases, we will revaluate the previous determination and allow the permit to be modified to reflect removal costs that are not wholly disproportionate to those on which the guideline is based (although in no event may the limitations be made less stringent than the guideline without a variance).

EPA would like to clarify one final point on the new information exception to the anti-backsliding policy in the existing regulations. For purposes of implementing the anti-backsliding provision in § 122.44(l) for a reissued permit, where limitations in the expiring permit were based on water quality standards, "information" under § 122.62(a)(2) may include alternative grounds (including necessary methodology; mathematical parameters, and other assumptions) for translating water quality standards into water quality-based limitations.

E. Disposal to Wells, POTW's, or by Land Application (40 CFR 122.50 [CPR § 122.65])

1. Existing rules. The existing regulation sets forth a formula for adjusting mass-based permit effluent limitations for those dischargers that do not dispose of all their wastes to waters of the United States. The purpose of the formula is to assure that if part of a discharger's total process wastewater flow is diverted to wells, land application or POTWs, the remaining wastes discharged to surface waters are subject to technology-based requirements notwithstanding the diversion. Mass-based limitations are adjusted proportionally to the percentage of the wastewater disposed into a well, a POTW, or by land application. Thus technology-based effluent limitations cannot be met merely by diverting most of the wastestream by one of these three methods.

The existing regulation does not limit or prevent a discharger from disposing of part or all of its wastewater to a well, by land application or to a POTW. That decision is clearly within the discretion of the discharger. The provision simply recognizes that the NPDES permit program of the CWA focuses on control of that waste *actually* discharged to waters of the United States. Therefore, limitations calculated upon the assumption that a facility's entire wastewater flow would be discharged to waters of the United States must be adjusted to reflect the fact that only a portion of it is in fact being discharged. This technical adjustment is accomplished through use of the formula in the existing regulation. The regulation does not regulate, directly or indirectly, the wastewater that is diverted. No limits are placed on the amount of wastewater that may be diverted, nor upon how that waste is treated or disposed of. Generally, such activities are outside the scope of the NPDES program.

The existing regulations also provide that, if a discharge to a well, POTW, or by land application "changes the character or treatability" of the pollutants being discharged to receiving waters, the effluent limitation can be made more stringent than required by application of the adjustment formula established in the regulations. This provision was originally included in response to comenters' concerns that a strict application of the formula would otherwise allow a discharger to inject concentrated wastes into a well, to a POTW, or by land application and then discharge relatively dilute wastes to surface water with little or no treatment.

2. Proposed changes. Industry litigants complained that the adjustment formula in the regulation unlawfully and unfairly discriminated against some forms of treatment in favor of others. They claimed that their diversion of wastewater to land application, a POTW or a well was, in fact, treatment of that waste for purposes of the Clean Water Act and that therefore no adjustment of their permit limits was necessary or appropriate. Industry supported this assertion by contending that since mass-based permit limits are based on a discharger's level of production and not the volume of wastewater discharged, reduced flow was not grounds for different permit limits. The litigants further argued that the adjustment formula was flawed. They alleged that it assumes pollutant load to be uniform over all flow rates and treatment plant efficiency to be linear; litigants opined that treatment plant efficiency might decline when flow is reduced.

In the settlement with industry litigants, EPA agreed to propose their approach for public comment.

Consistent with that agreement, the proposal would amend the regulations to recognize land application and well disposal as forms of treatment, under the NPDES program, that prevent wastes from reaching waters of the U.S. Therefore, technology-based limitations would not be adjusted if part of the wastestream was disposed of in a well or by land application. The remaining wastes directly discharged would be allowed the full wasteload limitation.

The proposal, however, retained the adjustment formula for industries which discharge a portion of their wastes into POTWs, since pollutants from a POTW *will* (indirectly) be discharged into waters of the U.S. However, the adjusted effluent limitation could be further adjusted under the proposal if the effluent limitations yielded by the formula would require a greater degree of effluent reduction (taking into account both reduction of the POTW and reduction at the permittee's facility) than would have been required if the industry has treated and discharged all its wastes directly to the receiving waters.

Furthermore, the proposal removed the "change the character or treatability" provision which would have allowed the effluent limitation to be made more stringent if the wastewaters directly discharged were not representative of the total waste flow. This provision would have been superfluous under the proposal.

3. Comments and responses. Several commenters supported the proposed rule and reiterated litigant contentions that well injection and land application are forms of treatment and that the existing regulation unlawfully discriminated against such forms of treatment. One commenter believed EPA should not be concerned about the impacts of diverted wastewater because other programs such as the UIC, pretreatment, and RCRA programs should adequately protect the environment. Other commenters objected to well injection and land application being considered forms of treatment. They stated that the overall effect of such an interpretation would be an increase of pollutant discharges to the waters of the U.S. and to the environment. These commenters pointed out that both disposal into wells and land application may ultimately result in contamination of ground and surface waters. One commenter stated that the proposal could lead to the situation where a facility discharged all but the guideline amounts to land or wells and then discharged the remainder to surface waters, untreated. Similarly, another commenter claimed that the proposal would allow a municipality to discharge raw sewage from a portion of its population if wastes from the remainder of its population are disposed of on land or by discharge to another municipality.

Other commenters objected to land application being considered treatment that prevents wastes from reaching wastewaters of the U.S., since surface runoff from the application area would convey applied pollutants to receiving waters. One commenter objected to EPA's "novel" approach, stating that underground injection cannot be considered a form of treatment, and, in fact, is more properly regarded as a substitute for treatment.

After reviewing comments received and reevaluating the issues, the Agency has decided to retain the existing regulation. If all the effluent limitations guidelines and permit limitations were expressed solely in terms of concentration, there would be no need for the adjustment formula contained in the existing regulation. If a discharger sent half of his wastewater to an injection well or land application, a concentration-based limit would assure the same level of treatment of wastewater directly discharged as would have been applied to the total wastestream. However, to preclude dilution as a substitute for treatment and to encourage flow reduction (such as recycling of process water) at the industrial facility, effluent limitation guidelines are often expressed solely in terms of mass. While mass-based limits address the problems related to dilution, such limits do not similarly assure a consistent level of treatment for dischargers who reduce flow by well injection, land application, or routing to a POTW. By retaining the existing regulation, EPA ensures that the regulatory approach to both mass-based and concentration-based limits is consistent.

The policy in the existing regulation is also consistent with the development of effluent guidelines. Production-based mass limits in effluent limitations guidelines are based upon the assumption that total process flows would be directly discharged. In the guideline development process, the treatment technology is evaluated and a concentration limit determined. The concentration limit is then multiplied by the process flow per unit of production. The result of this multiplication is the mass limit per unit production. If some of the process flow is diverted, it is necessary to adjust the above calculation since the mass guideline limit is based upon the total process flow. (While flow reduction techniques may also reduce process flow to the treatment facility, there is no diversion of wastewater containing pollutants; since pollutant loads are not changed, adjustment is unnecessary.) The existing regulation makes the necessary adjustment by revising the limitation to reflect the amount of wastewater directly discharged.

Furthermore, the adjustment of mass-based permit limitations accords with the intent of the CWA. Section 402(a)(1) authorizes the Administrator to issue a permit for the "discharge of any pollutant" upon the condition that the discharge meets the requirements of, *inter alia,* section 301. It is clear from the Act that the "discharge of a pollutant," as defined in section 502(12), must comply with the technology-based standards of section 301. If part of a discharger's process wastewater is released to the environment in a manner that is not a "discharge of a pollutant," e.g., into a POTW or by land application, then it would be inappropriate to allow the discharger to escape the technology-based requirements of section 301 in the section 402 permit for the remaining flows. The existing regulation requires the same degree of treatment to the wastewater directly discharged as would have been applied to the total wastewater. As noted, this is also the same degree of treatment that would be required if EPA had included concentration-based limits. Dischargers should not be given a credit merely because EPA chose to encourage flow reduction by solely limiting pollutant mass. To give a discharger "credit" because he disposed of the rest of his wastewater into an injection well or by land application would be inconsistent with the intent of the CWA to apply technology-based limits to all discharges to waters of the U.S. The statute requires technology-based limits for "discharges of pollutants" without regard to whether all or only some process wastewater is discharged.

Waste disposal through land application and discharge to wells also presents environmental risks of an unknown dimension. Surface impoundments and water treatment lagoons that handle other than hazardous wastes are not extensively regulated by the Agency. EPA's recently completed Surface Impoundment Assessment indicates that many such facilities have the potential to and do contaminate groundwater. About 40% of municipal and industrial impoundments are located in areas with thin or permeable soils or over aquifers currently used or that could be used for drinking water. The impact of land application systems upon groundwater is not yet known, although recent information indicates some environmental threat. Also, some land application systems are designed to lead to sheet runoff to surface waters, which would be classified as a non-point source not subject to NPDES permitting. Although well injection will ultimately be regulated by the Underground Injection Control (UIC) Program, the UIC program is not yet fully implemented in most States, and requirements for some varieties of wells have not yet been specified. In light of the risks, well injection and land application should not be considered treatment for the purpose of avoiding recalculation of mass-based permit limitations, since they could ultimately result in increased release of uncontrolled pollutants to the environment. The present uncertainty and potential for harm as well as the fact that NPDES permit writers are not equipped to evaluate the effectiveness or environmental impacts of these means of disposal is another reason EPA has decided not to allow credit.

Contrary to one commenter's view, EPA does not intend or expect its action today to discourage land application or well injection where these are appropriate. Dischargers can still dispose of any part of their wastewater by land application or well disposal. The NPDES regulations are neutral and are not intended to either encourage or discourage other disposal options. If a portion of a discharger's process wastewater is disposed into a well or by land application, the proposal would have allowed the remaining wastewater to be directly discharged with the same total mass of pollutants as if *all* the wastewater were directly discharged. In some, perhaps many cases, this would mean that the discharge itself would not be treated at all. Such a result would be inconsistent with the basic technology-based approach of the CWA.

One commenter asserted that the existing regulation would, in effect, penalize a discharger for her investment in wells or in land application by requiring more stringent treatment of the wastewater actually discharged to the waters of the U.S. EPA does not agree because, as indicated above, the regulation does not require *more* stringent treatment but simply a proportionate level of treatment for the portion which is directly discharged. If a facility chooses to dispose of some wastewater by land application or other means instead of discharging it directly, that decision is most likely based on a weighing of all relevant factors, one of which is the relative costs. The Agency is not concerned with this industrial cost balancing, but rather with ensuring that *whatever* amount of wastewater the facility ultimately decides to discharge is treated to a level consistent with the CWA requirements. Consistent with this approach, the costs of disposal into a well, POTW, or by land application will not be considered appropriate costs in determining control measures which constitute BPT, BAT or BCT in BPJ determinations.

In a similar vein, it has been asserted by a commenter that the Agency has not considered the economic achievability of complying with an effluent guideline limitation if that limitation has been adjusted to reflect reduced flow. This assertion is incorrect. The determination of economic achievability for an effluent limitations guideline also applies to the adjusted limitation.

When technology-based effluent limitations guidelines are developed, the Agency estimates the costs for investment and operation of a treatment system. If plant-specific costs are estimated, the size of the treatment system reflects the amount of the facility's wastewater. This amount of wastewater flow may reflect the facility's current flow or a reduced flow that the Agency believes can be achieved through process changes such as recycling. In either case, the costs of the treatment system reflect those that will allow the facility to comply with the effluent guideline limitation. These costs are the basis of the economic impact analysis, which is used to determine economic achievability.

If a discharger chooses to reduce wastewater flow by disposal practices such as well injection, a smaller or less extensive treatment system should be required and the end result will still be economically achievable. In fact, the discharger would likely not make such a change unless it results in cost savings. It is reasonable to assume that in exercising its discretion to select wastewater disposal practices, a facility will not choose a more costly option than is necessary. EPA should not adjust the regulations to benefit dischargers that choose a more expensive method of disposal.

Other commenters point out that the proposed rule would be unfair to dischargers tht discharge directly because a comparable degree of treatment would not be required for those using land application or an injection well. EPA agrees that in some circumstances inequities could result if a competitor were able to avoid treatment costs by disposing of part of his wastewater to a well or by land application. In addition, the proposal would lead to inequities between dischargers with concentration-based limits and those with mass-based limits, since concentration-based limits remain applicable, unchanged, even if a portion of the wastewater is land applied or injected to wells.

Another concern raised by commenters was in reference to the existing provision which provides EPA with the authority to make the limitations more stringent under Part 125, Subpart D, if discharges to wells, POTWs or by land application change the "character or treatability" of the pollutants discharged to receiving waters. One commenter pointed out that the proposal never provided a reason for omitting that provision. The proposal to provide treatment "credits" for disposal into wells, by land application and for the amount of effluent reduction at a POTW, would have eliminated the need for the "character or treatability" provision. Since EPA has decided not to proceed with the proposed approach, it is appropriate to maintain that provision.

A few commenters stated that the existing regulation assumes that the efficiency of a treatment plan is linear, but in fact the efficiency declines when process flow is reduced. Generally, EPA's experience is that efficiencies of treatment systems are linear in relation to flow. Effluent guidelines regulate large and small plants based upon a linear model; the discharge limit is based upon the size of the plant reflected by its production level and process wastewater flow. In fact, contrary to the commenters' suggestions, EPA expects that, in most instances, if the flow is reduced, the efficiency of an existing treatment plant would increase because of the greater retention time of the wastewater by the treatment facility.

However, in certain circumstances the efficiency of a treatment plant may decline when process flow is reduced. This might occur, for example, if disposal of highly concentrated wastewater to a well, POTW or by land application leaves a discharger with highly diluted wastewater to be treated. It is also possible that the situation might arise where the efficiency of a plant declines merely because the process flow is reduced. If application of the adjustment formula would lead to removal costs which would be wholly out of proportion to the removal costs considered during development of the national limits, then the discharger may be eligible for a further adjustment under Part 125, Subpart D fundamentally different factor variance procedure. For this reason, today's rulemaking clarifies that the effluent limitations may be further adjusted under Part 125, Subpart D to make them either more or less stringent if disposal to a well, POTW or by land application changes the character or treatability of the pollutants being discharged to receiving waters. This clarification should alleviate the concerns of commenters who pointed out that a reduction in flow rate may decrease efficiency or that the existing regulation assumes that pollutant loads are uniform over all flow rates.

In the case of discharges to POTWs, the proposal would have allowed effluent limitations to be adjusted if the effluent limitations yielded by the formula would require a greater degree of effluent reduction (taking into account both reduction at the POTW and at the permittee's facility) than would have been required if the industry had treated and discharged all its wastes directly to the receiving waters.

Several commenters supported the proposed approach for POTWs. Another commenter pointed out that this provision is equivalent to "removal credits" which provide a discharger into a POTW with an allowance for the treatment achieved by the POTW. However, the commenter stated that it does not have any of the detailed showings and other safeguards required under the removal credit program in 40 CFR 403.7. Consistent with the approach taken with respect to well disposal or land application, the final regulation applies mass-based guidelines to the wastewater to be directly discharged into waters of the U.S. If part of the total wastewater is disposed of elsewhere (e.g., into a POTW), it should be dealt with in the context of other regulatory programs. For example, discharges to POTWs must meet categorical pretreatment standards and other local limits imposed on industrial dischargers by the municipal treatment authority. Wastewater disposed into a POTW may be eligible for a removal credit under a pretreatment program and will be dealt with in that context.

4. EPA action. After analyzing the comments received and reevaluating our proposal, we have decided to retain our long-standing policy expressed in the existing regulation. In response to comments, however, we have clarified the regulation to allow less stringent limitations if the character or treatability of discharged wastewater is changed.

It should also be clarified that when information comes to the attention of the permitting authority concerning a discharger reducing the flow upon which a permit is based by well injection, land application or discharge to a POTW, this constitutes grounds for permit modification as new information under 40 CFR 122.62(a)(2) [CPR § 122.15(a)(2)].

F. Best Professional Judgment (BPJ) and Draft Development Documents and Treatability Manual

1. Best Professional Judgment (BPJ) (40 CFR 124.56(b)(1), 125.3(c) (2), (3), 125.3(d)).—*a. Existing rules.* Effluent limitations may be established on a case-by-case basis under section 402(a)(1) of the Clean Water Act in the absence of applicable effluent limitations guidelines, or in addition to effluent limitations guidelines if these guidelines do not control pollutants of concern or particular wastestreams at a facility. Permits containing case-by-case effluent limitations are based on a permit writer's "best professional judgment" (BPJ) and represent the appropriate statutory requirement—"best practicable control technology currently available" (BPT), "best conventional pollutant control technology currently available" (BCT), or "best available technology economically available" (BAT)—for that particular facility.

Because "BPJ" permit effluent limitations and conditions operate in the absence of, or in addition to, effluent limitations guidelines authorized under section 304(b) of the Clean Water Act, permit writers are required to apply the appropriate statutory factors in that section when imposing technology-based effluent limitations in permits on a case-by-case basis. The current regulations clearly state this obligation by requiring permit writers when writing BPJ permits to "apply the appropriate factors listed in section 304."

b. Proposed changes. Industry litigants were concerned that permit writers would not address these statutory factors unless expressly listed in the regulation. They were also concerned that permit writers would not explain the basis for their case-by-case determinations unless the regulation expressly required that their bases be set forth in the fact sheet required by § 124.56. EPA responded to these concerns by proposing to list the section 304(b) factors in proposed § 125.3(d) and to specifically reference the fact sheet in proposed § 125.3 (c)(2) and (c)(3). EPA also proposed a conforming revision to § 124.56(b)(1).

c. Comments and responses. Industry groups supported the proposed changes contending that listing the statutory factors would help ensure that permit writers follow the proper methodology in setting BPJ effluent limitations. They also claimed that requiring the fact sheet to set forth the basis for BPJ limitations would make it easier for applicants to comment on draft BPJ permits and for courts to review challenges to these permits. Two States administering the NPDES program objected to the proposal on the grounds that it would impose a burdensome requirement on the administering agency and, if followed literally, could make the fact sheet a larger document than the permit.

Sections 124.8 and 124.56 of the current NPDES regulations require permit writers to prepare a fact sheet for every draft permit for a major NPDES facility or activity. In accordance with these provisions, a fact sheet must include calculations or other necessary explanations of the derivation of specific effluent limitations and conditions, including a citation to applicable effluent limitations guidelines or where not applicable, an explanation of how alternative limits were developed. (For minor dischargers the permit writer must prepare a statement of basis (40 CFR 124.7). Although less detailed than a fact sheet, a statement of basis still requires an explanation of the derivation of the permit conditions.) States opposing the proposal apparently believed that reference to the fact sheet in proposed § 125.3 (c)(2) and (c)(3) imposed some greater burden of justification for BPJ limitations. The intent was merely to point out the requirements of §§ 124.8 and 124.56 of BPJ situations. To avoid misunderstanding, EPA has deleted the reference to the fact sheet in proposed § 125.3 (c)(2) and (c)(3) as redundant with existing §§ 124.8 and 124.56. The final regulation retains the section 304(b) statutory factors a permit writer must consider when setting technology-based effluent limitations on a case-by-case basis. Although BPJ permit writers are required to consider these factors whether or not they are listed in the regulations, the Agency agrees it is more efficient and effective to restate them in the regulations.

One commenter requested that permit writers be specifically instructed in § 125.3 to use the proposed BCT methodology (47 FR 49176 et seq., October 29, 1982) in determining BPJ–BCT effluent limitations. Since the BCT methodology has not yet been finalized, it would be inappropriate to reference it in this rulemaking. However, permittees and permit writers should be aware that once EPA establishes a BCT methodology, permit writers must apply this methodology in establishing BPJ permit limitations.

d. EPA action. Based on an evaluation of the comments in light of our BPJ permit experience, EPA will retain the list of statutory factors but has not adopted the fact sheet portion of the proposal.

2. Draft Development Document and Treatability Manual (40 CFR 125.3(c)(2)).—*a. Existing rules.* The current regulation includes EPA draft or proposed development documents or guidance in a parenthetical clause as examples of available information a permit writer must consider when making case-by-case determinations of technology-based effluent limitations.

b. Proposed changes. Industry parties to the settlement agreement were concerned that permit writers would do more than just *consider* development documents and guidance when writing BPJ permits. They feared that permit writers would be bound by these documents which, in their opinion, often contained faulty data. Additionally, litigants claimed that if permit writers are required to consider draft development documents and guidance, there would be no incentive for EPA to finalize effluent limitation guidelines. In response to these concerns, EPA proposed to delete the parenthetical reference to the documents in § 125.3(c)(2)(i), and stated in the preamble to the proposal that although not bound by EPA draft or proposed development documents or guidance, permit writers must consider all pertinent information, including these documents, in developing case-by-case effluent limitations.

c. Comments and responses. We received two comments on this issue. Both supported the proposed deletion of the parenthetical clause and stated that this change would ensure that undue weight would not be given to these documents.

d. EPA action. The final regulation does not contain the parenthetical clause. EPA continues to support the position taken in the preamble to the proposal that in establishing case-by-case permit limitations under section 402(a)(1) of the CWA, permit writers are not bound by EPA draft or proposed development documents or guidance. Permit writers should consider all pertinent information, including these documents, when developing case-by-case effluent limitations, just as they must consider significant comments and criticisms of the data they contain.

G. Net/Gross Limits (40 CFR 122.45(g)) [CPR § 122.63 (g), (h)]

1. Existing rules. The issue of whether and to what extent net/gross credits should be granted arises because of what appears to be a fundamental dichotomy. Industry has argued that dischargers are not responsible for removing pollutants already present in their intake water. (See *Appalachian*

Power Co. v. *Train*, 545 F.2d 1351, 1377 (4th Cir. 1977)). This should lead, they contend, to simple subtraction of intake pollutant values from effluent values when setting permit limits and measuring compliance. However, effluent limitations guidelines (guidelines) and other technology-based permit limitations are written on a gross basis without any such subtraction, because within a broad range of influent pollutant concentrations, treatment systems typically reduce pollutants to a certain level. Pragmatically, therefore, technology-based limits should be achievable regardless of the amount of intake pollutants. To grant a net/gross credit may give an unfair advantage to facilities with measurable levels of pollutants in their intake waters. Such facilities, by relying on intake credits, could "comply" with effluent limitations by utilizing a lower level of treatment than their competitors on cleaner streams—frequently a far lower level of treatment than that designated by EPA as BAT. Furthermore, intake pollutants rarely simply pass through a facility and all its associated intake and/or effluent treatment without some removal and/or complicated exchange of pollutants. In particular, generic pollutant parameters, such as total suspended solids or biochemical oxygen demand, frequently measure very different things in the influent and effluent. Thus, a simple subtraction of intake pollutants often does not make sense and would result in relaxing control standards in inappropriate circumstances.

The existing rule was intended to provide an allowance for intake pollutants considering the circumstances described above. Credits are available for pollutants to the extent that they are not removed by intake and effluent treatment systems. Also, to qualify for a credit, the intake water must come from the "same body of water" as that which receives the discharge. Additionally, pollutant parameters in the effluent must be physically, chemically and biologically identical to those found in the influent. These and other conditions are intended to address the problems described above and to limit the use of net credits to appropriate circumstances.

2. Proposed changes. Industry litigants were concerned that the restrictions in the existing rule severely limited the availability of net credits. For example, most pollutants change form in some way as they pass through a facility, and thus it is nearly impossible to provide exact physical, chemical, and biological identity between intake and effluent pollutants. EPA, for its part, was concerned that permitting authorities were overlooking the need for careful application of net credits due to the excessive complexity of the existing rule. Therefore, the proposal dropped many of the existing restrictions in an attempt to respond to both these concerns. They were replaced by a statement that net credits would be given only where necessary to meet applicable technology-based limitations. In place of the demonstration of exact equivalency of pollutant parameters in influent and effluent, three alternative demonstrations of substantial similarity were provided. The "same body of water" restriction was dropped. (See 47 FR 52080–81, November 18, 1982.) Both th existing rule and the proposal reflected the efforts of many parties to deal with many individual situations of concern. In both cases, this led to detailed and lengthy regulations and preamble discussions. The settlement agreement resulted in such a complicated proposal that EPA became concerned, after reviewing public comments on the proposal, that the proposed changes failed to simplify the net/gross provision so that it might be properly understood and implemented.

3. Comments and responses. The most controversial aspect of the net/gross issue was the removal of the "same body of water" restriction. Industry comments were strongly in favor of removal of this restriction while environmental groups and government organizations were strongly opposed. One government organization stated that it was aware of several instances in which contaminated groundwater was being used for non-contact cooling water and discharged to cleaner surface water without treatment. During the development of the existing rule, EPA was particularly concerned with fresh water discharge to estuaries. Several of the environmentalist and government organizations gave hypothetical examples in support of retention of the restriction. Industry commenters claimed that water quality standards were sufficient to protect receiving water while those opposed to the proposal pointed out that standards are often inadequate, especially for toxic pollutants. While EPA agrees with this latter argument, we also note that in some limited cases the same body of water restriction may not be appropriate. One example might be a case where intake waters are taken from a relatively clean tributary of a relatively dirty body of water and discharged to the latter body, possibly adjacent to where the tributary itself flows into the large body. Therefore, EPA has decided to retain the same body of water restriction but with some discretion available to the permitting authority to waive the requirement on a case-by-case basis. EPA agrees with the commenters who said that water quality standards are often inadequate since many States have not yet developed specific limitations on toxic pollutants, and hence meeting water quality standards is not alone a sufficient condition for this waiver.

One commenter stated that the proposed regulations have too many restrictions and give too much discretion to the permit writer. The commenter said industry is not responsible for removing pollutants in the intake water and that EPA should provide for simple subtraction of all intake pollutants from effluent standards. For the reason stated above, EPA cannot accept this argument. Intake pollutants do not pass through intake treatment systems, facilities, and effluent treatment systems unchanged. Thus, simple subtraction would amount to a relaxation of standards that were based on a determination of what technology can achieve, without taking into account the true removals the technology accomplishes. Another industrial commenter stated that EPA should "continue to allow a full credit * * and * * * not use a threshold test." The commenter misinterprets the current regulation which does not allow a full credit, but only a credit after consideration of removal in intake and effluent treatment systems. Today's regulation replaces that complicated calculation with a more simple approach of granting credit as needed to meet technology-based standards.

Several commenters stated that the proposal was too complex. As indicated above, EPA agrees and, in today's final rule, has attempted to simplify the regulations and preamble explanation. A State agency commented that discretion regarding net credits should be left to the permitting authority. EPA agrees that the permitting authority is best positioned to decide when net credits are appropriate and has significantly simplified the regulation and preamble to further this principle.

A commenter representing a water treatment plant supported the proposed changes to the net/gross rules and argued that raw water clarifier sludge and filter backwash should be allowed to be discharged back to the stream. A State maintained that this was an unwarranted exemption from NPDES requirements. The existing regulation has been interpreted by some as imposing an absolute ban on clarifier sludge discharges, although on its face it only bans net credits for such discharges. The proposal was interpreted to allow these discharges without restriction, except for restrictions required to meet water quality standards.

After review of all of the comments on this issue, EPA has decided that both extreme positions are undesirable. Discharge requirements for discharges of raw water clarifier sludge and filter backwash are best determined at the local permitting level after consideration of the appropriate technology-based effluent limits and water quality standards. Since there are no national guidelines for these discharges, they must be limited on a case-by-case basis according to the permit writer's Best Professional Judgment (BPJ), with more stringent limits if necessary to meet water quality standards. The particular technology used to determine BPJ technology-based effluent limits depends on the application of the statutory criteria for different levels of control, for example, best practicable or best conventional technology. These regulations are intended neither to ban such discharges nor to prohibit permit authorities from imposing such a ban in specific cases where this is the appropriate standard for control.

An environmental group commented that the proposed tests for similarity of generic pollutants may not be adequate to fulfill the objectives of the Clean Water Act, especially with regard to water quality. Their concern was that generic pollutants in the influent which were composed of relatively non-toxic constituents would be credited against more harmful constituents in the effluent. On the other hand, an industrial commenter said that the proposed tests to show substantial similarity of generic pollutant parameters are much more reasonable than the existing rule. In general, EPA believes that the "substantial similarity" approach (as opposed to demonstration of identical chemical, physical and biological characteristics) appropriately provides greater flexibility to permit writers in considering requests for net credits, but nevertheless provides adequate protection against environmental harm. However, EPA agrees that strict application of only one of the three tests for demonstrating substantial similarity suggested in the proposal, in some cases, may not provide adequate protection. Therefore, the three tests of the proposal have been replaced in today's final regulation with a more flexible regulation which relies more heavily on the exercise of judgment by the permit writer. The tests specified in the proposal may still be considered by permit writers. However, other alternatives may be required where necessary for adequate protection.

An industrial commenter asked for more flexible specification of the definition of "control system" arguing that net credits should be available in cases where the control strategy intended to be employed to meet permits limits involves management practices, such as a chlorine minimization program, rather than physical treatment technology. As explained in the preamble to the proposal, control system means any control measures considered by permit writers in developing effluent limitations which are applied by the permittee to wastestreams in order to meet the technology-based limitations and standards established in the permit. This includes measures such as chlorine minimization programs. This regulation is not intended to require the installation of specific treatment technology in all cases (e.g., in many cases it may not be necessary, or even useful, to run noncontact cooling water or raw water clarifier sludge through the same treatment system designed for process waters). Nor would this regulation bar a permitting authority from requiring treatment technology, other controls, or zero discharge in a particular case. In considering net credit requests permit writers should examine the control measures that were intended to be employed to meet the applicable permit limits.

Another industrial commenter wanted net credits to be available for water quality-based standards. A State also raised water quality concerns. The proposed regulation included a section stating that the regulation did not preclude consideration of intake pollutants in setting water quality based limits. For the following reasons, EPA is deleting this section as unnecessary. This regulation deals only with technology-based standards. The Clean Water Act's requirement to protect and enhance water quality is not conditioned on factors such as intake water quality and it would be inappropriate for EPA to impose such a condition. Eligibility for a net credit under these regulations does not imply any right to violate water quality standards. However, EPA recognizes that implementation of water quality-based standards is a complex balancing and consideration of many facilities and many factors and that, in setting water quality based permit limitations, a permit writer may take into account the presence of intake water pollutants, as appropriate. Of course, in any case limits must be adequate to meet the water quality objectives of the Clean Water Act when considered along with control requirements for other dischargers to the stream.

An environmental group maintained that the provision that dischargers need not incur significant additional expense to remove intake pollutants amounts to an economic variance which is illegal under the Clean Water Act. EPA does not agree with this contention. EPA is not authorizing variances from the applicable effluent limitations based on the costs to a particular permittee to meet these. Rather, EPA is recognizing that in meeting these limitations the permittee should not be responsible for additional incidental removal of intake pollutants where this would result in significant additional costs. EPA believes this comports with the Fourth Circuit ruling in *Appalachian Power*. In addition, we note that net credits are only available to the extent needed to meet applicable limitations.

4. EPA action. The issue of net/gross credit presents difficult problems. While in certain circumstances credits may be appropriate, there are abundant possibilities for abuse. Attempts by EPA to deal with this situation in complicated and detailed regulations do not seem to have resolved these problems and may have unduly restricted the legitimate use of net credits. Therefore, EPA has decided to restructure the regulation, preserving the best of the existing rule and settlement proposal, but simplifying it and providing for more discretion by the local permitting authority. This should make the granting of net/gross credits on a reasoned basis more workable and less arbitrary.

Three particular situations merit specific comment. First, "proper" operation of the control system as required in § 122.45(g)(1)(ii) could arguably be interpreted to require the permittee to incur significant additional expense (such as additional chemical cost) to treat as much of the pollutant present in the effluent as the system is capable of removing. EPA intends that if the permittee would incur significant additional expense above those contemplated in the development of effluent limitations in achieving the incidental removal of intake pollutants the discharger should qualify for a credit to account for these. EPA cannot place a precise figure on what is a "significant" additional cost. This determination must be made on the basis of site-specific information during the individual permit process. Similarly, when a company is adding a pollutant (e.g., chlorine) only during certain times, it need not continuously operate the system intended to remove that pollutant, but rather only needs to operate as necessary to remove the pollutant added, if it would require significant additional expense to add more chemicals to also control the pollutants present in the intake water.

Second, raw water clarifier sludges and filter backwash, if discharged, are subject to NPDES regulations as are any other discharges of pollutants. Consideration must be given to any additions to the intake water by the permittee, such as the use of flocculants. Since, as described above, EPA believes that these discharges are best dealt with outside the context of net/gross, the language in the proposal concerning raw water clarifier sludges has been deleted. Further, to avoid the improper use of the net/gross regulation to avoid appropriate technology-based limitations on these discharges, a provision has been added to remove them from coverage under net/gross.

Third, a large volume of non-process water, such as non-contract cooling water, is frequently combined with a relatively small volume of process water. An otherwise appropriate grant of net credits for the non-process water could conceivably lead to outfall limits so high as to mask inadequate process water treatment. If a net credit is deemed appropriate in such a situation, the permit writer should set additional limits, under § 122.45(g)(2), to assure proper removal of process water pollutants. These limits may cover the generic pollutants immediately after the process water treatment system or more specific process water pollutants at the outfall. Finally, ineligibility of a facility for net/gross credits under this regulation does not affect that facility's right to apply for a fundamentally different factor (FDF) variance.

H. Total Metals (40 CFR 122.45(c) [CPR § 122.63(c)])

1. *Background.* Metals in water occur in both dissolved and solid forms. There are three methods for measuring the level of metals in water. Each of these methods will give a different result depending upon the amounts of metals which are in each form. The total metals method uses a strong acid digestion to dissolve solids and measures both dissolved and solid metals. The dissolved metals method uses filtration to remove solids and measures only dissolved metals. The total recoverable metals method is an intermediate method which uses a weak acid treatment to dissolve readily soluble solids and filtration to remove residual solids. Details of these methods may be found in the publication "Methods for the Chemical Analysis of Water and Wastewater", EPA-600/4-79-020, March, 1979.

Decisions on how to measure metals in effluents must be made when establishing permit limitations and compliance monitoring requirements. These decisions are complicated by the chemical and biological processes that occur when effluents combine with receiving waters. Additionally, what ultimately happens to these pollutants in the receiving waters is very complex. Metals in solid form may dissolve and, although somewhat less likely, metals in dissolved form may change to solid. (See "Water Related Environmental Fate of 129 Priority Pollutants", EPA-440/4-79-029a.)

2. *Existing rules.* The current regulation takes the conservative approach of regulating metals as total metals, unless otherwise specified in a nationally promulgated effluent limitations guideline (guideline) or the permit writer in setting case-by-case permit limitations determines that a different method of measurement is appropriate. This approach is based on the assumption that all solid metals have the potential to dissolve and adversely affect the environment.

3. *Proposed changes.* Industry litigants claimed that only dissolved metals were environmentally significant and, therefore, that the appropriate method of measurement should be dissolved metals. EPA disagreed with this claim because of the complex chemical and biological processes that occur when effluents combine with receiving waters. For example, metals in the effluent of an electroplating facility that adds lime and uses clarifiers will be a combination of solids not removed by the clarifiers and residual dissolved metals. When the effluent from the clarifiers, usually with a high pH level, mixes with receiving water with a significantly lower pH level, these solids instantly dissolve. Measuring dissolved metals in the effluent, in this case, would underestimate the impact on the receiving water. Measuring with the total metals method required by the existing regulations, on the other hand, would assure no violation of water quality. Furthermore, proper sizing and operation of the clarifiers is a necessary part of the technology of reducing metals to acceptable levels. Measuring dissolved metals in the effluent would mask any inadequacies in the clarification step.

EPA, therefore, proposed a lesser relaxation of the existing rule, using total recoverable metals as the general standard, unless otherwise specified in a guideline or the permit writer determines other measures are appropriate. This standard for determining the level of metals in the effluent would measure dissolved metals plus that portion of solid metals which can easily dissolve. This is intended to measure metals which are or may easily become environmentally active, while not measuring those which may be expected to settle out and remain inert.

4. *Comments and responses.* An industrial commenter wanted the use of the total recoverable metals method extended to cases where guidelines are based on total metals. However, as stated in the preamble to the proposal, data using total metals and that using total recoverable metals are not interchangeable. Therefore, EPA could only change the guidelines measurement method based on compilation of a new data base. This would be a large and extensive undertaking and would adversely affect EPA's ability to address important priorities. Such a disruption to program implementation is unwarranted and would conflict with court ordered deadlines. Where guidelines specify total (or dissolved) metals, that is the method to be used.

Several commenters stated that data based on total recoverable metals are not readily available. This is generally true at this time. Where effluent data based on total metals are being used to set permit limits (such as treatability manual data used for a "best professional judgment" determination), the permit writer may need to gather additional comparison effluent data using both methods. Data involving water quality standards is quite a different case. Analytical methods used to set water quality standards are not uniform and often vary within, as well as among, States. Consequently, when using data based on water quality standards to set effluent limitations, permit writers may discover that these data were derived from any of the three methods of measuring metals in the receiving water. However, because of the complex processes that occur when effluents combine with receiving waters, it is not possible to relate directly the form of the metals in the effluent to those in the receiving water. Therefore, it is not necessary to use the same analytical method used in developing the water quality standards for developing effluent limitations. EPA's intent in promulgating this regulation is to endorse the total recoverable method as the best predictor of effluent impact on water quality. Using the total recoverable method to set water quality-based effluent limitations is independent of the method used to develop water quality standards for the receiving water.

Several commenters asserted that this standard is not sufficiently environmentally protective since metals excluded from total recoverable metals (but included in total metals) could eventually dissolve and affect water quality. A particular concern was an accumulation of slowly dissolving solid metals on the bottom of a water body. There are little or no data available on such long term environmental effects. To some extent these slowly dissolving solids will either disperse or be covered over, lessening any potential impacts. EPA has concluded that the total recoverable metals method is the most reasonable approach because it gives results that best approximate the amount of metals that are likely to produce water quality impacts. While all the metal measured by the total metals method could eventually dislsove, the portion of total metals represented by total recoverable metals is a better measure of potential adverse environmental impact.

An industry commenter asked that the phrase "dissolved or valent or total" in § 122.45(c)(1) [CPR § 122.63(c)(1)] and 122.45(c)(2) be revised to "dissolved or ionic or valent or total" and that the word "dissolved" in § 122.45(c)(3) be expanded to "dissolved or ionic." The commenter wished to make these sections include specific simple or complex metal ions. (A complex metal ion is a combination of a metal with other chemical compounds.) EPA agrees in part with this comment. The term "valent" in § 122.45(c) (1) and (2) is intended to include simple or complex metal ions. Section 122.45(c)(3) is also applicable to simple or complex metal ions. However, the commenter wished to use the sections to encourage the regulation of specific simple or complex ions. EPA disagrees that the regulation of metals as specific simple or complex ions is useful or desirable. The general standard to be applied is *total* recoverable metal, since metals may change form in receiving waters or elsewhere in the environment. Also, the NRDC consent decree [8 ERC 2120 (D.D.C. 1976)] requires EPA to regulate all compounds containing the specified toxic metals. While some complex ions have strong bonds, many are weak and easily convert to other forms, especially when passing from an effluent to the receiving water. Therefore, it is important to control all ions containing the metal. Also, practical difficulties would arise since the analytical methods for distinguishing specific simple or complex metal ions are often complicated, sensitive, and prone to error. The single known example of a case where it may be useful to regulate a specific ionic form is hexavalent chromium. The strongly oxidized state of this highly toxic ion makes its formation from other chromium in the environment essentially impossible. Furthermore, hexavalent chromium limits are frequently used in addition to total chromium limits, rather than as a substitute for total chromium.

5. *EPA action.* EPA is today promulgating, unchanged, the proposed regulation. By choosing a total recoverable metals standard, the use of dissolved metals limits is being strongly discouraged, especially for toxic metals. Except where otherwise provided in guidelines, or where required in highly unusual cases to implement the Clean Water Act, metals limits in permits should be stated as total recoverable metals.

I. Actual Production § 122.45(b)(2) [CPR § 122.63(b)(2)]

1. *Existing rule.* The existing regulation requires production-based permit limits to be based upon a reasonable measure of actual production, not upon the design capacity of the facility. This requirement is intended to assure that facilities operating below full capacity are treating their wastewater to the extent required by the Clean Water Act's technology-based treatment requirements, rather than enjoying relaxed limits due to unused production capacity. Such an approach also assures equity among facilities in the same industry, regardless of their design capacity.

2. *Proposed changes.* Industry litigants expressed concern that, especially for cyclical industries which are currently in a slump, estimates of projected production should be allowed where the historical measures of actual production may not be reasonable predictors of future production. They also were concerned that should production increase beyond the level on which the permit was based, the permit modification process might not be fast enough to respond to the need for a higher production based limit in the permit. The proposal, recognizing the unique nature of the auto industry, in which demand is extremely volatile and the Director may not be able to modify permits to increase effluent limitations with sufficient speed to allow increased production, provides for alternate effluent limitations for that industry. The proposal requires EPA, and allows States, to write alternate permit limits for the automotive manufacturing industry if the applicant satisfactorily demonstrates that its actual production is substantially below maximum production capability and there is a reasonable potential for an increase above actual production during the permit term. Under the proposal, a permit could be written providing more than one permit limitation—one based on the discharger's current production level and one or more based on potential increased production rates. For example, a hypothetical automotive plant with historic production of 60% of capacity might have a permit limit on pollutant "X" of 2 pounds per day. The alternate limits might be 2.5 pounds per day for production from 61–80% of capacity, and 3 pounds per day for 81–100% of capacity. If the plant's production for a month was in the higher range, then it could discharge up to the corresponding higher effluent limitation. The proposal also required monthly notice of anticipated production increases.

In addition, the preamble to the proposal clarified that the operative requirement is that the permit be based on a reasonable measure of actual production and the examples cited in the regulation are not meant to be all-inclusive, but are merely illustrative.

3. *Comments and responses.* Many commenters supported the concept of alternate permit limitations as allowing companies to respond quickly to changes in the market. Several commenters suggested that the concept also be applied to other industries besides the auto industry. EPA agrees that alternate permit limits may be useful in developing permits for other industrial categories and therefore has revised the final regulation to explicitly provide that EPA and the States have the discretion to adopt such limitations. Use of alternate limits is mandatory only where EPA writes permits for discharges associated with the automotive manufacturing industry if the discharger makes the requisite demonstration. Only the automotive industry has clearly demonstrated the need for the alternative limits. In all other situations, alternate limits will be used at the discretion of the permit writer, although dischargers may request the use of such limits. For approved NPDES States, the use of

alternate permit limitations is discretionary even for the automotive manufacturing industry.

It should also be noted that alternate permit limitations may also be appropriate where a decrease in production is expected to occur during the term of the permit, such as in industries where the production reported on the application is significantly higher than the long term production. Today's rulemaking clarifies that, on a case-by-case basis, the permit writer may provide for alternate limits based upon possible declining production.

EPA anticipates that alternate permit limitations will be used in instances where historical production levels are not indicative of expected future production. The alternate limits approach, however, is not a substitute for the permit modification process or a cure-all for other problems, such as bypass situations, which are addressed separately in the regulations. Alternate permit limitations are appropriate only when production is expected to change so substantially during the permit term that a single set of permit limitations could not adequately cover all the production levels. Permit writers, however, are not required to consider all possible contingencies or to address all anticipated fluctuations in production rates with alternate limits.

As pointed out by one commenter, although providing increased flexibility, the regulatory change will require increased technical supervision to ensure that permit conditions are not violated. Therefore, when they are used, the alternate permit limitations generally should be based upon a tiered approach, providing, for example, 2 or 3 alternative limits based upon reliably anticipated ranges of production levels. Because of the administrative and enforcement difficulties, the permit should generally not entail the use of a continuum of effluent limitations based upon all possible production levels up to capacity. However, permit writers have the flexibility to include a continuum where appropriate, such as for industries likely to have daily production fluctuations that cannot adequately be accounted for otherwise.

Another commenter suggested that the permit contain limits on both pounds per day of pollutant per unit production (essentially a continuum), and pounds per day based on production capacity or recent historic or projected production, in order to avoid the requirement to report at the beginning of each month when production is expected to rise to higher alternate levels. We have not chosen this approach since, as discussed above, it is more difficult to effectively regulate and monitor compliance of dischargers using permit limits based upon a continuum. Should a permit writer, however, on a case-by-case basis find such an approach useful, the regulations provide sufficient latitude. In addition, as discussed below, the final regulation has addressed the reporting requirements concern and reduced the reporting burden to a minimum. Furthermore, notification of increased production levels is not required when the permit includes a continuum, rather than a tiered approach.

Several other commenters thought that the reporting requirements should be changed. One commenter thought that it may not always be possible to give advance notice two business days before each month of production increases. Although a discharger may not always be certain that production will change two business days before the ensuing month, he nevertheless will know whether there is a reasonable likelihood. It is a good business practice to conduct advance planning of production levels on at least a monthly basis so that production personnel, materials and other factors can be coordinated. Since the notification process is only two days in advance of monthly production change, information concerning the likelihood of a change should be readily available to the permittee. If the permittee thinks there is a reasonable likelihood that production will increase, he should submit a notice indicating the anticipated production level, otherwise he would not be eligible for the higher limit. The notification requirement may also benefit permittee pollution control programs since it will encourage permittees to effectively plan and coordinate their pollution control programs and production levels.

Of course, when the discharger submits notification, the higher limit applies only if the production actually increases. If production does not increase, the permittee must comply with the limitations applicable to the actual production for the period. Thus, permittees are not rewarded for overestimating future production. EPA and States will track compliance against limitations corresponding to actual production, irrespective of any notices submitted by permittees. To track compliance in any other way would be unfair to permittees or would benefit dischargers that inflate production values.

The notification requirement applies whenever a permittee wants to be eligible for a discharge limit other than the lowest limit in the permit. The notice, however, does not have to be limited to an ensuing 30 day period, as EPA proposed, if the discharger expects to qualify for a higher limitation over a longer period of time. For example, if a discharger expects to be producing at a higher level for six months, the Agency sees no reason for requiring notification before each month. When submitting the notice of future discharge levels, the permittee should specify the period of time for which the higher anticipated level will apply. If the period covered by the notice extends beyond the ensuing month, then the notice should specify the reasons why the higher production level is anticipated. A new notice is required (1) to cover a period or production level not covered by a prior notice or (2) if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice. Permitting authorities will assume that the facility is operating at the higher level (except for possibly an interim month) until the end of the noticed period or until a new notice is received indicating production at an even higher level (although compliance will still be tracked against the actual production levels).

The notices will provide inspectors with the knowledge of the levels at which the facility expects to operate at the time inspections are performed. The discharge monitoring report (DMR) for each period must contain the level of production that actually occurred. Dischargers must also identify on the DMR the permit limits that correspond to the actual production level, since EPA will track compliance against such limits.

Furthermore, to obtain the actual production figures and determine applicable limits for compliance monitoring purposes as soon as possible, it will usually be appropriate for dischargers with alternate permit limits to submit DMRs on at least a monthly basis. EPA does not expect monthly submission to result in a change in total reporting burdens, since the dischargers most likely to have alternate limits are generally major facilities with monthly DMRs requirements in their current permits.

One commenter objected to the reporting and publicizing of anticipated production schedules and actual production figures. Anticipated production information is vital to the permit writer if the Agency is to provide alternate permit limits. Actual production figures also must be reported to EPA in order for EPA to determine compliance with the appropriate discharge limit. Although this information would be available to the public upon request, EPA does not plan to publish the information. However, to restrict access to this information would prevent the public from evaluating compliance.

A few commenters pointed out that the preamble to the proposed regulations was helpful in clarifying the "reasonable measure of actual production" standard. As stated in the preamble to the proposed regulation, § 122.45(b)(2) [CPR § 122.63(b)(2)] requires that production based permit effluent limitations be based on some "reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years." As stated in the preamble to the proposal, the operative requirement of this provision is that the permit be based on a reasonable measure of actual production. The examples given are simply examples, and merely illustrate typical acceptable measures. Other measures of actual production are entirely acceptable if the Director finds them "reasonable". To clarify that the examples are not the operative requirement, EPA has deleted them from the final rule. The regulations will now only require use of a reasonable measure of actual production.

In addition, the alternate permit limitations approach should avoid the controversial nature of determining actual production. Instead of having permit limitations potentially based upon a "worst case scenario", i.e., the period of maximum production, alternate limitations allow the limitations to correspond to varying production levels. Thus, when alternate limits are used, average production measures can be used as one reasonable measure of actual production, unless an effluent limitations guideline specifies otherwise. For example, the alternate permit limitations approach would allow permit writers to take into account changes in production levels using long-term average values, instead of relying on a short-term maximum level of production to cover normal day-to-day variations.

One commenter provided specific descriptions of two facilities which he thought met the criteria of the examples of a "reasonable" measure provided in the preamble. It is not appropriate to respond to specific permit situations in the context of these general regulations since all the facts of the situation may not be available.

One commenter objected generally to the use of mass-based (as opposed to concentration-based) limits and particularly those based on production. Permit writers are encouraged to express limits in terms of both mass and concentration. Mass-based limits are necessary and encouraged to prevent the use of dilution as a means of treatment and also, where water quality is limiting, control total loadings in regard to the assimilative capacity of the receiving water body. Concentration-based limits ensure proper operation of treatment facilities regardless of raw wastewater load and protect against water quality impacts where pollutant concentration is important (e.g. toxic pollutants). The amended regulation provides the procedural means for implementing production-based limits. Comments about the appropriateness of a production-based limit should be submitted during the comment period for the relevant effluent guideline or where the limit is not based on a guideline, for the draft permit.

4. EPA action. EPA has expanded the proposal. The final regulation allows industries other than automotive manufacturing to be covered by alternate permit limitations and alternate limits to be written if there is an expected increase or decrease in production levels during the permit term.

J. Imposition of Water Quality Conditions Stayed by a Court or Agency (40 CFR 122.44(d)(3) [CPR § 122.62(d)(3)])

1. Existing rules. Section 401 of the CWA requires EPA, before issuing an NPDES permit, to obtain from the State in which the discharge originates a certification that the discharge, under the terms of the permit, will comply with State legal requirements, including water quality standards. If the State waives certification or fails to act within a "reasonable period of time (which shall not exceed one year)," then EPA may issue the permit without certification.

Section 124.53 of the NPDES regulations provides that the State will be deemed to have waived certification of the conditions in a draft permit if it has not responded within a specified time, not to exceed sixty days, unless the EPA Regional Administrator authorizes a longer period. This waiver period assures that the issuance of NPDES permits is not delayed until State certification issues are resolved in all cases. Generally, sixty days have proven to be a reasonable and achievable time frame for certification.

In addition, § 122.44(d)(3) [CPR § 122.62(d)(3)] provides that if a State certification is stayed by a court or State board or agency, EPA shall include conditions in the permit which may be necessary to comply with section 301(b)(1)(C) of the Clean Water Act. Section 301(b)(1)(C) requires NPDES permits to include any more stringent limitations established under State law or regulations or any other Federal law, including those necessary to meet water quality standards.

2. Proposed changes. EPA proposed that, if a State certification is stayed by a court or by a State board or agency, States would have sixty days in which to submit the certification before the certification is deemed waived. The proposal responded to the industry litigants' concern that if EPA issues the permit without giving the State an opportunity to resolve its proceedings, the State's proceedings would effectively be moot. The proposed regulation would allow a State an opportunity to complete its review proceedings prior to the issuance of the permit.

3. Comments and responses. Some commenters recognized the proposed rules as a reasonable compromise between EPA's interest in prompt permit issuance and the permittee's interest in ensuring that his permit incorporates finally effective State requirements which may have been revised as a result of their being challenged. Other commenters questioned EPA's authority to deem certification waived within sixty days as being inconsistent with section 401(a)(1) of the Act. They suggested a longer period of time (e.g., from six months to a year) is warranted, since it is unlikely that a State could complete judicial or administrative proceedings in sixty days.

According to the legislative history of this provision, the State certification procedure was included in the CWA to provided a State water pollution control agency an opportunity to determine whether or not effluent limitations established for dischargers in an EPA issued permit are at least as stringent as any applicable State requirements. (See Senate Consideration of the Report of the Conference Committee, October 4, 1972, 93rd Cong., 2d Sess. (1972), reprinted in Environmental Policy Decision of the Library of Congress, A Legislative History of the Water Pollution Control Act Amendments of 1972, 93rd Cong., 1st Sess., 176, Serial No. 93–1, hereinafter referred to as Legislative History.) Section 401(a)(1) requires the Agency to provide a reasonable period of time, not to exceed one year, before State certification is deemed waived. The waiver provision of section 401 was provided to assure that a State's inaction would not frustrate the application for a federal permit. See H.R. Rep. No. 92-911, 920 Cong., 2d Sess., 22 (1972) reprinted in Legislative History, p. 809.

In choosing a "reasonable time period", the Agency had to balance the opportunity for a State agency to evaluate and assure compliance with State requirements, the permittee's interest in assuring that its permit reflects State regulations which may ultimately be revised as a result of their being challenged, and the goals of the Clean Water Act to assure prompt permit issuance and compliance with statutory deadlines. In § 124.53 EPA chose sixty days as the waiver period, agreeing with commenters that delays caused by the State certification process to the NPDES program would be unwarranted if a year were allowed for certification. See 44 FR 32880 (Revision of NPDES regulations, June 7, 1979). Consistent with that determination, today's rulemaking would provide another sixty day period prior to issuance of the permit if the certification is stayed by a court or State board or agency.

EPA recognizes that in some instances States will not be able to resolve their proceedings in sixty days or even in one year, the maximum time allowed under section 401(a)(1) of the CWA. In some cases, however, States can complete review proceedings quickly. EPA has concluded that it is reasonable to allow sixty days from the staying of a certification for a State to resolve issues. This time frame is consistent with the original certification period provided in § 124.53 and is based on the same balancing of interests reflected therein.

It is important that NPDES permits be issued in a timely fashion to assure compliance with the Act and, where necessary, to avoid unwarranted delays in the construction and operation of new facilities. No evidence has been submitted to EPA demonstrating that a six-month time period, or any other alternative period, would assure resolution of a significantly larger number of State proceedings so as to warrant delays in the NPDES permit issuance process.

Sixty days is a minimum time period and does not preclude EPA from delaying permit issuance if it is apparent the State decision is imminent. On a case-by-case basis, EPA has the discretion to wait and incorporate the State decision. In addition, even if EPA chooses to proceed, if a modified State certification is received prior to final Agency action on the permit, the permit will be modified to issuance, if necessary, to be consistent with the certification. See § 124.55.

Regardless of whether a State has certified or waived certification, EPA has an independent obligation to include in permits limitations necessary to comply with State law. See section 301(b)(1)(c) of the CWA and Decision of the General Counsel No. 58 (March 29, 1977). Any permit issued by EPA must protect the State's interest by assuring compliance with State standards. In addition, the permittee's interests are protected even after EPA has issued the permit. If the State proceedings determined that a State standard which has been incorporated into the permit is invalid, the permittee may seek a permit modification.

One commenter stated that the proposal provides a discharger opposed to conditions of State certification with the incentive to intentionally delay State proceedings. The commenter suggested that the certification should not be deemed waived if the State is unable to complete judicial or administrative proceedings due to the discharger's failure to cooperate.

EPA disagrees that its proposal provides an unfair incentive for intentional delays. EPA's ability to proceed with permit issuance after 60 days, regardless of whether State proceedings have been completed, in most cases will eliminate any advantage to delay. In situations where a discharger is delaying solely because it believes a determination by EPA will be more advantageous, EPA does have the ability to extend the 60 day period to allow more time to complete State proceedings. In addition, the new regulation in fact makes it more difficult for a discharger to avoid the State certification requirements because it provides the State with an additional sixty days in which to complete State proceeedings beyond that provided in the current regulations. However, we caution that EPA should not become involved in findings of fact as to whether lack of resolution of a State's proceedings is due to a discharger's failure to cooperate.

One commenter suggested that alternative means, such as the State/EPA agreement, be used to deal with permit certification "log jams" that may occur. EPA recognizes that the State/EPA agreement and other means may be needed to assure timely State certification and this is not precluded by the regulations. It is always preferable, from EPA's standpoint as well as the States, to have State certification prior to EPA's issuance of a permit and EPA will continue to work to assure that this is done. The regulations, however, are needed to assure a consistent method of dealing with the unusual case of procedural delay.

4. EPA action. Based on review of the proposal and the comments, the amendment is promulgated as proposed.

K. Incorporation of NEPA-based Conditions in Permits (40 CFR 122.7(g) [CPR 122.12(g)], 122.29(c)(3) [CPR 122.66(c)(3)], 122.44(d)(9) [CPR 122.62(c)(9)], 124.85(e), 124.121(f))

1. Existing rules. Under section 511(c) of the CWA, the issuance of an NPDES permit to a new source is subject to review under the National Environmental Policy Act of 1969 (NEPA). This may require the preparation of an Environmental Impact Statement (EIS). Several sections of the NPDES regulations deal with the incorporation of EIS-related conditions in new source NPDES permits. Section 122.44(d)(9) [CPR § 122.62(d)(9)] provides that when EPA is the permitting authority, new source permits shall incorporate requirements, conditions or limitations under NEPA and section 511 of the CWA. Similarly, § 122.29(c)(3) [CPR § 122.66(c)(3)] requires Regional Administrators to issue, condition, or deny new source permits after a NEPA review, including an EIS, if prepared. Section 122.47(g) [CPR § 122.12(g)] notes that NEPA may require the inclusion of EIS-related conditions, as described in § 122.29(c)(3).

2. Proposed changes. In response to litigants' concerns that NEPA could not legally be used as broadly in the permit process as EPA regulations provided, EPA proposed several changes. First, EPA proposed to modify §§ 122.7(g), 122.29(c)(3), and 122.44(d)(9) to clarify that NEPA cannot be used to review effluent limitations or other requirements established by the CWA or to set such effluent limitations. Section 511(c)(2) of the CWA expressly prohibits the use of NEPA for such purposes. EPA also proposed to revise these sections to explain that, in all other respects, the regulations take no position on the circumstances under which NEPA conditions (other than effluent limitations) may be imposed in NPDES permits. The proposal was intended to eliminate the implication that EIS-related conditions must be incorporated in permits and to allow the appropriateness of EIS-related conditions (including whether any such conditions should be incorporated) to be resolved in the context of specific permit issuance.

EPA also proposed a new section to its evidentiary hearing rules (§ 124.85(e)) to provide that evidence of environmental impacts of a facility may be submitted at an evidentiary hearing concerning a new source subject to NEPA if the evidence would be relevant to the Agency's obligations under § 122.29(c)(3). This proposal would also apply to Non-Adversary Panel Procedure (NAPP) hearings through a revision to § 124.121(f). (The existing evidentiary and NAPP hearing regulations contain no specific provisions concerning the admission of evidence on environmental impacts.) In addition, for sources that hold final RCRA, PSD, UIC, or ocean dumping permits, the proposal would also bar the admission of evidence and cross-examination related to environmental issues that were or could have been considered in the permitting proceedings for these permits. Under the proposal, the Presiding Officer would have the discretion to admit portions of the record from those permit proceedings in order to fulfill evaluation obligations. The proposal was intended to avoid having an evidentiary or NAPP hearing on an NPDES permit subject to NEPA become a forum for reexamination of decisions under other statutes to which NEPA does not apply. The proposed rule would thus limit the scope of evidence that could be submitted at hearings to the scope of analysis required under NEPA.

3. Comments and responses. One commenter supporting the proposal states that EPA has no authority to include EIS-related conditions in permits. Several others added that EPA could only impose NEPA conditions related to the permitted discharge. An opposing commenter objected that the proposed change violates NEPA and reverses EPA's previous interpretations that EPA could condition or deny a permit based upon non-water quality impacts.

After careful consideration of these comments and the statutes, the Administrator has determined that NEPA, in conjunction with the CWA, authorizes the Agency to deny or impose conditions, including non-water quality related conditions, in NPDES permits on the basis of the NEPA review. Section 511(c)(1) makes clear Congress' intent that NEPA applies to the issuance of an NPDES permit to a new source. That review might be meaningless if EPA had no authority to consider and act upon its results. Thus, EPA has consistently taken the position that EPA can take appropriate actions by conditioning or denying the permit to mitigate or prevent unacceptable environmental impacts identified by the EIS. This position is supported by the legislative history of the CWA and NEPA case law. (See Opinions of the General Counsel Nos. 76-18 and 76-19 (September 23, 1976).)

The authority to include conditions related to the EIS would also apply to non-water quality impacts identified in the EIS. Section 511(c) does not limit the scope of the NEPA review, except to prohibit EPA from reviewing or establishing effluent limitations. EPA interprets this to imply that the Agency may consider all other results of the environmental review. The Administrator may impose appropriate non-water quality conditions using his authority to condition or deny permits under section 402(a)(1) of the CWA.

The proposed regulation would not change this position. NEPA does not mandate that EPA take any particular action as a result of a NEPA review, but rather grants the Agency discretion to determine what action is appropriate. EPA's change to the provisions related to NEPA conditions will still authorize EPA to impose such conditions. The only changes will be (1) to allow questions of whether particular permit conditions based upon the EIS are appropriate or authorized to be resolved in the permit issuance process and (2) to remove any implication that EPA must always include such conditions.

A commenter asserted that NEPA requires that EPA consider using more stringent effluent limitations to satisfy NEPA requirements. It was suggested that "there may be circumstances in which, for an individual site, more stringent effluent limitations ought to be considered since they may provide a better balance of costs and benefits than would non-water quality conditions that EPA could impose in the permit. Since this suggestion directly conflicts with the language of section 511(c)(2), EPA concludes that it would not be permissible under the statute. EPA may consider the entire EIS in deciding whether to issue or deny an NPDES permit or include mitigating measures other than effluent limitations, but EPA has no authority to establish or review effluent limitations based upon the NEPA review. More stringent limitations may not be imposed if not otherwise authorized by the CWA. EPA does have authority to impose limitations in addition to those in an applicable New Source Performance Standard (NSPS), under section 402(a)(1) using the permit writer's best professional judgement (BPJ), if an NSPS does not address a particular waste stream or pollutant present in the discharge and it is determined such controls are necessary. (See discussion above, Part F.) In such a case, NEPA would not be the basis for establishing such BPJ limitations, but rather EPA would develop such limitations as necessary to meet the requirements of the CWA, using information from the EIS in addition to other sources. EPA can also impose limits more stringent than an NSPS where necessary to comply with water quality standards or address other water quality concerns, even if the EIS was used to identify the impacts.

Another commenter stated that the proposal conflicted with the New Source Performance Standards for the Ore Mining and Dressing Point Source Category (40 CFR Part 440; 47 FR 54598, December 3, 1982). That standard specifically exempted the Quartz Hill Molybdenum Project from coverage under the standard (§ 440.100(b)) to allow full consideration of non-water quality environmental impacts through an EIS the NEPA review was triggered by the Alaska National Interest Lands Conservation Act, not the CWA). (See 47 FR 54601, December 3, 1982). The commenter stated that the proposed change would eliminate all possible bases for the development of an NPDES permit.

EPA does not agree that the revision will make permit issuance impossible. The Quartz Hill Project is not a new source within the definition of § 122.2 [CPR § 122.3], since it is specifically excluded from the Ore Mining NSPS and is not covered by another NSPS. Therefore, the NPDES permit for the facility will be based on the permit writer's BPJ under section 402(a)(1) of the CWA and the Director may include such conditions as are necessary to comply with the Act. In issuing the permit, the Director may use all available information to determine what effluent limitations are necessary to meet the requirements of the CWA. This information could include the EIS.

Several commenters opposed EPA's proposed limitations on the admission of evidence at evidentiary and NAPP hearings. One of these suggested that issues that were not raised in the prior permit decision should not be barred in the NPDES permit hearings. Another suggested that the Presiding Officer should be authorized to make an independent determination of whether to allow admission of evidence. EPA has concluded that these suggestions could allow undue complication of NPDES proceedings. The proposal eliminates unnecessary duplication of effort and relitigation of issues while still ensuring that EPA meets its NEPA review responsibilities. EPA does not interpret the limited applicability of NEPA to new source NPDES permit proceedings under section 511(c) to authorize reexamination of determinations made by EPA under other statutes to which NEPA does not apply. For example, PSD determinations, like all EPA determinations under the Clean Air Act, are exempted by statute from NEPA's EIS requirements. (See section 7(c)(1) of the Energy Supply and Environmental Coordination Act, 15 U.S.C. 793(c)(1).) The limitation on the admission of evidence also carries out Congress' directive in Section 101(f) of the CWA that "the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government."

In response to the comments, EPA has modified the final rule to clarify that the limitations on the admission of evidence at EPA hearings applies only where the previous permit proceedings were held by EPA. EPA cannot delegate its NEPA responsibilities to States. *Stuebing* v. *Brinegar* 511 F.2d (2nd Cir. 1975); *Greene County Planning Board* v. *FPC* 455 F.2d 412 (2nd Cir. 1972), *cert. den.* 409 U.S.C. 849 (1972). Therefore, EPA can limit admission of evidence that could have been submitted at a previous hearing on a permit for the facility under a different program only if the permit was issued by EPA. States approved to administer other permit programs may make decisions on such other permits that address issues relevant to EPA's NEPA review. However, since these issues were previously considered only by the State, evidence on these issues is admissible at an EPA-held hearing for a new source. Otherwise, EPA would have impermissibly authorized the State to carry out EPA's NEPA responsibilities.

4. EPA action. The language of today's final rule is the same as the proposal, except for the revision to § 124.85(e) clarifying that the limits on admissibility at hearings of evidence on environmental impacts applies only if the issues could have been raised at prior EPA hearings. Sections 122.47(g), 122.29(c)(3), and 122.44(d)(9) have been revised as proposed to make clear that, under section 511(c)(2) of the CWA, NEPA cannot be used to review effluent limitations or other requirements established under the CWA or to set such limitations. These revised provisions now make clear that, in all other respects, the regulations take no position on particular circumstances under which NEPA conditions (other than effluent limitations) may be imposed in NPDES permits. These revisions do not substantively change EPA's authority to impose EIS-related conditions.

EPA will continue to impose EIS-related conditions in permits in appropriate circumstances. For example, conditions have been used to limit the times of the year during which discharges are authorized where such discharges may have an impact upon fish spawning. EPA has also used EIS-related conditions to require consultation with appropriate State officials by coal mine operators in archeologically important areas. Where a NEPA review indicates that such conditions are appropriate, EPA will use them.

New § 124.85(e) provides that evidence on environmental impacts of a facility may be submitted at a hearing for a new source subject to NEPA if the evidence would be relevant to the Agency's obligations under § 122.29(c)(3). That section, in turn, requires EPA, to the extent allowed by law, to conduct an evaluation of significant environmental impacts of the proposed action. Thus, the scope of the evidence on environmental impacts admissible at a NPDES hearing turns ultimately on the scope of analysis required by NEPA.

In order to minimize delay and duplication of effort, § 123.85(e) also provides that where a source holds a final EPA-issued RCRA, PSD, UIC, or ocean dumping permit, no evidence may be admitted nor will cross-examination be allowed with respect to issues that were considered or could have been considered in those permit proceedings, even as to matters that may have been within the proper scope of NEPA analysis. In such cases, the Presiding Officer may (to the extent required by NEPA) instead admit relevant portions of the record of the PSD, RCRA, UIC, or ocean dumping proceedings. This evidence may be necessary to perform the balancing of costs and benefits required by NEPA.

L. Compliance Schedule Prohibition (40 CFR 122.47, 122.29(d)(4) [CPR §§ 122.10, 122.66(d)(4)])

1. Existing rule. The current regulations treat new sources, new dischargers and recommencing dischargers differently from existing sources and do not allow them to be placed on compliance schedules to meet permit limitations. Permits issued to existing sources may contain compliance schedules, but new sources, new discharge and recommencing dischargers must install and start up all pollution control equipment prior to discharger and comply with their permit limitations within the shortest feasible time, not to exceed 90 days following commencement. The current regulations treat these dischargers differently because new sources and new dischargers have never operated under a previously issued permit and, like recommencing dischargers which begin to discharge after terminating operations, are considered to be in a better position than existing sources to install and "start up" their equipment and meet their permit limitations. Existing sources, on the other hand, may need additional time to upgrade their treatment technology to meet new permit limitations.

2. Proposed changes. Industry litigants challenged the compliance schedule prohibition on the grounds that it was too inflexible and did not address the situation when EPA issued or revised requirements after a facility began to construct but before it began to discharge. Industry argued that such a facility should be given a reasonable time to adjust its equipment to comply with newly issued or revised requirements. In response to these concerns, EPA proposed to allow permits issued to new sources, new dischargers and recommencing dischargers to include compliance schedules which allow those dischargers to meet their permit limitations within a reasonable time after discharge begins rather than in all cases at the time of discharge. Under the proposed regulations, reasonable compliance schedules could be issued to new sources and new dischargers if requirements were issued or revised after construction began but less than three years before they begin to discharge. Because construction is not an issue with recommencing dischargers, the proposal allowed them to be placed on compliance schedules if requirements were issued or revised less than three years before discharge recommences.

3. Comments and responses. We received five comments on the proposal. All comments were from industry and all supported the proposed change. One commenter suggested that we should conform the proposed change to the section on new sources and new dischargers.

4. New action. Based on the comments received, we are promulgating the final regulation as proposed and cross-referencing it in § 122.29(d)(4) [CPR § 122.66(d)(4)] (New sources and new dischargers).

M. Notice of Physical Alterations or Additions (40 CFR 122.41(1)(l) [CPR § 122.7(1)(l))]

1. Existing rule. The existing rule requires the permittee to give notice to the Director of any planned physical alteration or addition to the permitted facility. The rule was based on the rationale that notice of such changes would enable the Director to decide whether a permit modification was necessary.

2. Proposed changes. The proposed regulation would require permittees to give notice to the Director of physical alterations or additions which could significantly change the discharge. The proposal further provides that this notice applies to pollutants for which the Director would not otherwise receive notice through (1) compliance reporting for pollutants limited in the permit or (2) notification of toxics under § 122.42(a)(1) [CPR § 122.61(a)(1)]. The proposal recognized that many industrial facilities frequently undergo physical alteration or additions which are minor and have little or no impact on a permittee's discharge and thus, reporting all such changes would be unnecessarily burdensome. Notice of only those changes which could result in significant changes to the permitted facility's discharge should provide EPA or the State permitting agency sufficient information to determine the need for permit modification.

3. Comments and responses. EPA received ten comments, all supporting the proposal. Several commenters stated that most alterations and additions to industrial facilities are minor and have little impact on the permittee's disharge. Several other commenters felt that the existing rule created an unnecessary reporting burden on permittees. Some commenters noted that the proposal ensured that EPA would receive sufficient information to assess permit compliance and to decide whether permit modifications are necessary.

Commenters also contended that the existing rule exceeded EPA's authority under the CWA. EPA does not agree that the original rule exceeded EPA's authority under the CWA, since EPA has broad authority under section 308 of the Act to require recordkeeping and reporting. However, EPA has concluded that notice of every physical alteration or addition is unnecessary, since many changes have little impact on a permittee's discharge and would create an unnecessary reporting burden. Under the final regulation, EPA will still be kept informed of significant changes to the permitted facility which could result in a permit modification.

One commenter asked that the word "significantly" modify both "change" and "increase." EPA interprets "significantly" to modify both verbs, making such a change unnecessary.

4. EPA action. EPA is promulgating the final rule as proposed, with some minor clarifications. The rule will provide the Director with sufficient information for evaluating permit compliance or the need for permit modification, without imposing unnecessary reporting requirements. The second sentence of § 122.41(l)(1) has been split into two sentences to clarify Agency intent that the toxics notification under § 122.42(a) [CPR § 122.61(a)] and reporting on pollutants limited in the permit are separate requirements that do not depend on a significant change in the nature of or increase in the quantity of pollutants discharged. EPA has also added a sentence to clarify the Agency's intent that any change to the permitted facility which may result in a new source must be reported to the Director, allowing him to make a new source determination. Without such notice EPA may not become aware of changes to an existing facility which would be subject to new source performance standards.

EPA has also deleted "For NPDES permittees," since under the deconsolidated regulations this provision only applies to NPDES permittees. Finally, the reference to § 122.42(a)(1) [CPR § 122.61(a)(1)] has been changed to reflect the renumbering sequence of the April 1, 1983 deconsolidation.

N. Signatories to Reports (40 CFR 122.22(b)(2) [CPR § 122.6(b)(2)])

1. Existing rules. Under the NPDES regulations, all reports required by permits, and any other information requested by the Director, must be signed by a principal executive officer of a corporation or a duly authorized representative of the executive officer (§ 122.22(b)(2) [CPR § 122.6(b)(2)]). The authorization may be to either a person occupying a specified position or a named individual having responsibility for the overall operation of the regulated facility or activity. The signatory requirement is intended to ensure that the corporation is legally accountable for the information submitted. The signature on reports or authorization by a principal executive officer provides this accountability.

2. Proposed rules. Industry litigants complained that the signatory requirement was overly restrictive. Many companies have environmental managers who have responsibility within the corporation for ensuring compliance with environmental laws. Litigants argued that these managers would best be able to judge the accuracy and completeness of NPDES reports since they are often in charge of the personnel who do the monitoring and sampling. EPA accepted the litigants' contentions and proposed to allow the principal executive officer to authorize an individual or position having overall responsibility for environmental matters for the company to sign reports.

3. Comments and responses. All twelve comments received on this proposed revision supported the change. Commenters supported the idea that environmental managers were the most logical persons to sign reports since they are knowledgeable of the subject area. They suggested that the change would contribute to the accuracy of the reports, while ensuring high level attention to the facility's activities. EPA agrees with commenters that environmental managers will, in many cases, have the best knowledge of the company's facility. Since these managers must still have overall environmental responsibility within the company, and since their authorization to sign the report must come from a principal executive officer, the proposal will also ensure corporate responsibility.

Two commenters, citing the preamble discussion of the proposal (47 FR 52075), questioned whether the signatory provision applied to environmental managers at an individual facility within a company. They suggested that if it did not, the regulation should be further modified. The preamble to the proposed regulation did use language which might have implied that individuals with overall responsibility for a particular facility could be delegated authority to sign reports. EPA's intent, however, was to allow authorization only to an environmental manager having overall responsibility within a company. This would not normally include persons or positions that have responsibility for environmental matters at an individual facility, or even an operating division of a large corporation. This is necessary to assure high level corporate knowledge of and responsibility for a corporation's pollution control operations. Even though environmental managers of individual facilities may have greater personal familiarity with the discharging facility, these individuals may not have sufficient authority to direct activities and responsibilities within the corporation or require changes to corporate procedures which guarantee that all necessary actions are taken to assure accurate reports and compliance.

Several commenters advocated that EPA modify the signatory requirements for permit applications to allow a person with the level of responsibility for signing reports to sign the applications. EPA addressed signatories for applications under a separate settlement agreement with industry litigants and promulgated final regulations. A discussion of the issue can be found at 48 FR 39611 *et seq.*, September 1, 1983.

4. EPA action. EPA is adopting a final rule equivalent to the proposal. This action is consistent with the Agency's action concerning signatories for permit applications (see § 122.22(a), 48 FR 39611, September 1, 1983) in that EPA intends to relax the burdens of the signatory requirement where adequate responsibility is ensured. However, unlike the revision to application signatory requirements, this rulemaking will allow environmental managers having overall responsibility for a corporation to sign reports if authorized. The less stringent requirement for reports will provide additional relief, but still ensure responsibility.

O. Bypass (40 CFR 122.41(m) [CPR § 122.60(g)])

1. Existing rules. The NPDES regulations prohibit bypass, which is defined as the intentional diversion of waste streams from any portion of a treatment facility. The regulation thus requires permittees to operate their entire treatment facility at all times. There are, however, exceptions to the strict prohibition on bypass even where effluent limitations may be violated as a result. Bypass may be excused if the bypass was unavoidable to prevent loss of life, personal injury or severe property damage and there were no feasible alternatives to the bypass. The "no feasible alternatives" provision is not satisfied if the permittee could have installed adequate back-up equipment as preventative maintenance or to prevent a bypass which occurred during normal periods of equipment downtime.

The prohibition of bypass applies even where the permittee does not violate permit limitations during the bypass. However, permittees may bypass if they do not exceed effluent limitations and if the bypass was for essential maintenance to assure efficient facility operations.

The bypass provision was intended to accomplish two purposes. First, it excused certain unavoidable or justifiable violations of permit effluent limitations, provided the permittee could meet the bypass criteria. Second, it required that permittees operate control equipment at all times, thus obtaining maximum pollutant reductions consistent with technology-based requirements. Without such a provision, dischargers could avoid appropriate technology-based control requirements.

2. Proposed changes. Industry litigants argued that as long as a permittee complies with the effluent limitations in its permit, no further obligations are incurred. These litigants asserted that a decision to bypass treatment equipment is, and should be treated as, a part of the permittee's discretion in selecting how to treat his waste. At most, additional monitoring should be required during these periods of "in compliance" bypassing to assure permit limits are being met. Litigants from the oil and gas industry argued that even a requirement to monitor effluent during a bypass to ensure it was within permit limitations was too difficult and expensive at offshore facilities. They claimed the cost of transporting samples onshore for analysis would be a unique and significant burden on them.

In response to these concerns, EPA proposed to amend the provision prohibiting bypass where the resultant effluent is in compliance with permit limitations. The proposal would allow any bypass which does not cause a violation of permit limitations or other permit conditions. However, to ensure that permit limitations are, in fact, not exceeded during the bypass, the proposed amendment would require permittees to monitor all affected discharge points at the time of any bypass. In response to claims by offshore oil and gas facilities that they had special circumstances, the proposal allowed the Director to waive additional monitoring requirement if the permittee could otherwise demonstrate that effluent limitations will not be exceeded during the bypass.

EPA also proposed to revise the provision that the "no feasible alternatives" condition is not met if the permittee could have installed adequate back-up equipment. The proposal clarified that this provision is not intended to require the installation of back-up equipment in all cases merely because such equipment could prevent the need for a bypass. Rather, backup equipment would be required where the exercise of reasonable engineering judgment indicated that backup equipment was appropriate to prevent bypass during anticipated periods of equipment downtime or preventive maintenance.

3. Comments and responses. In general, industry supported the settlement agreement provision, while State environmental offices and environmental groups opposed the proposal. There are two issues involved in this bypass provision. The first is whether bypass should be allowed when no violation of permit effluent limits results. The second is under what circumstances a permittee must install backup equipment to avoid bypasses during periods of equipment downtime or preventive maintenance.

Supporters of the proposal on the first issue claim there is no justification for prohibiting bypasses that do not cause a violation of permit limits. They argued that the November 18 proposal provides more flexibility in operation and maintenance without decreasing water quality and possibly reduces a facility's operating costs. One commenter supported the relaxation arguing that under the existing regulation an industry might have to shut down operations in order to comply with its NPDES permit even though it was meeting its permit limitations.

Commenters opposed to the proposal stated that a bypass of treatment equipment should be allowed only during essential maintenance and unavoidable breakdown periods and/or only under stated conditions upon approval of the Director. To do otherwise, it was argued, might encourage facilities to "experiment" by eliminating certain unit processes in an effort to cut costs, with potentially disastrous impacts. This group of commenters contended that the CWA intended permittees to fully and effectively operate at all times wastewater treatment equipment installed to achieve permit limits. The proposed provision was regarded as negating this requirement to properly operate and maintain wastewater treatment facilities. Several States pointed out that allowing treatment systems to bypass or run at lower efficiencies, as long as effluent limits or water quality standards are met, undermines the concept of technology-based standards and well-run treatment systems.

The only comment on the provision concerning back-up equipment was a request for clarification of what constitutes "reasonable engineering judgment."

The range of comments on this issue and further analysis convinced EPA that the November 18 proposal on bypass needed further refinement.

EPA believes that the restriction on bypasses where permit limits are being met is necessary for several reasons. EPA's effluent limitations guidelines and standards-setting process are predicted upon the efficient operation and maintenance of removal systems. A number of the effluent limitations guidelines and standards upon which NPDES permits are based do not contain specific limitations for all of the pollutants of concern for the given industry. For example in the aluminum forming industry, toxic metals such as cadmium, nickel, copper, lead, and selenium found in this industry's wastewaters are not specifically regulated. The data available to EPA show that effective control of these pollutants can be obtained by controlling the discharge of the pollutants regulated by the standard (i.e., chromium, zinc, and aluminum) to levels achievable by the model treatment technology upon which the effluent guideline limits are based. Effluent limitations guidelines imposed on the pulp, paper and paperboard industry are based, in part, upon biological treatment and several pollutants of concern are not specifically regulated due to their effective removal of good biological treatment. Resin acids, fatty acids, bleach plant derivatives, and chloroform are found in wastewaters from plants in this industry and are found to be effectively controlled by efficient biological treatment. If bypass of treatment equipment is allowed, there is no assurance that these unlimited pollutants will be controlled, even though those specifically limited still meet permit limitations.

Similarly, permit writers who establish permit limitations based on their best professional judgment (BPJ) generally evaluate the relevant treatment system and often decide that limitations on all pollutants of concern are not necessary. This may be because, as in the effluent limitations guidelines process, it is determined that limitations on only some of the pollutants will provide adequate control of remaining pollutants so long as treatment equipment is properly operated and maintained. This eliminates the need to impose numerous pollutant limitations and corresponding monitoring requirements which are burdensome and costly to the permittee. It may also be that the treatment system will remove some pollutants to de minimis levels or levels which are difficult to accurately detect. Again the permit writer may determine that it is unnecessary to limit such pollutants which properly run treatment systems will remove. If bypasses of treatment equipment are allowed, it is possible that all pollutants of concern will not receive the level of control anticipated in the establishment of permit limitations.

Several commenters raised questions related to the extent of additional monitoring which would be necessary if bypass up to permit limits was authorized. Some disagreed with the need for special treatment for oil and gas facilities. EPA's decision not to change the existing regulations render this issue moot. Nonetheless, the Agency believes it is appropriate to respond to certain comments on the issue. EPA is persuaded that the special provision allowing offshore oil and gas facilities to dispense with monitoring during periods of bypass was unjustified. Very few oil and gas facilities are situated such that it is unusually or unduly difficult and costly to maintain contact with mainland entities. Considering the unlikelihood that other demonstrations of compliance could be adequately made and the potential for serious adverse cumulative impacts from noncompliance by offshore facilities, EPA now believes the special treatment of these facilities was inappropriate.

The second major bypass issue was when back-up equipment is required to prevent bypass. The only comment on the provision was a request for clarification of what constitutes "reasonable engineering judgment." EPA has concluded that the term "reasonable engineering judgment" by its very nature requires a case specific determination and should not be defined in the regulation because of the complex circumstances that arise in individual cases.

4. EPA action. Today's final rule differs from the November 18 proposal. EPA is retaining the existing provision which prohibits bypass even if effluent limitations are not exceeded except for essential maintenance to assure efficient operation of the treatment facility. As described previously, bypassing may affect the effective removal of pollutants of concern which may not be specifically limited in the permit, but which are intended to be controlled.

In cases where in-process changes are made to eliminate or reduce pollutants limited in the permit, the permittee has the opportunity to petition the permitting authority to modify the permit limits. In addition, where a permittee wishes to permanently alter his treatment equipment, for example to replace an outdated component with more efficient, cost-effective equipment, a permit modification may be requested. At that time, the permitting authority may review the appropriateness of the request and the potential impacts of any changes to ensure all pollutants of concern continue to be adequetely controlled.

Generally, maintenance is that which is necessary to maintain the performance, removal efficiency and effluent quality of the pollution control equipment. However, for purposes of this section, it is necessary to distinguish between maintenance that is "essential" and that which is routine. Further, a distinction must be drawn between what is considered essential maintenance for industrial treatment systems and that for publicly-owned wastewater treatment plants (POTWs). Industrial facilities usually experience periods of nonprocess operation during which the facility operator can carry out the recommended maintenance procedures contained in the operation and maintenance manual for the facility and/or maintenance advised by the design engineer. Maintenance that can be performed during periods of nonprocess operation at an industrial treatment facility is considered to be routine maintenance, not essential maintenance. However, repairs and maintenance that cannot wait until the production process is not in operation would be deemed essential. If, for example, the seal on a valve malfunctions or a pipe bursts during production hours at an industrial facility and the facility operator bypasses that particular unit process in order to perform corrective maintenance, such maintenance would be considered essential. Of course, economic consideration alone would not be sufficient reason to qualify maintenance as essential.

Unlike most industrial facilities, POTWs are required to operate continuously. Therefore, maintenance must normally be conducted while the treatment facility is in operation. In this situation, it is often unavoidable to bypass certain equipment during maintenance. These maintenance activities would generally be classed as essential. However, since POTWs frequently have capacity exceeding normal loadings, maintenance can normally be conducted during periods of lower flow with no loss in treatment plant performance.

Seasonal effluent limitations which allow the facility to shut down a specific pollution control process during certain periods of the year are not considered to be a bypass. Any variation in effluent limits accounted for and recognized in the permit which allows a facility to dispense with some unit processes under certain conditions is not considered bypassing.

The bypass provision covering back-up equipment is promulgated as proposed. EPA believes that the existing provision could be interpreted to require unnecessary auxiliary treatment facilities. Necessary auxiliary facilities are those back-up systems which should have been installed in the exercise of reasonable engineering judgment to prevent a bypass from occurring during normal periods of equipment downtime or preventive maintenance.

P. Upset Defense (40 CFR 122.41(n), [CPR § 122.60(b)])

1. Existing rules. Several Courts have ruled that since the equipment underlying technology-based limitations is inherently subject to failure for reasons beyond the control of the operator, EPA must allow for upsets in applying these standards. *See Marathon Oil Co.* v. *EPA,* 564 F.2d 1253 (9th Cir. 1977); *FMC Corp.* v. *Train,* 539 F. 2d 973 (4th Cir. 1976). (For a full explanation of applicable case law, see 44 FR 32863, June 7, 1979.) An upset is an exceptional incident in which there is a temporary and unintentional noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee (§ 122.41(n)(1)[CPR § 122.60(h)(1)]). For example, a power failure may cause a treatment system not to function, resulting in a permit violation before the facility can halt its discharge. Section 122.41(n) recognizes an upset as an affirmative defense to an enforcement action for violations of technology-based permit limitations. To establish an upset defense, a permittee must notify EPA of its occurrence within five days and, in any enforcement action, must demonstrate the specific cause of the upset and that the violation was beyond the permittee's reasonable control. Since permittees must develop the information necessary to establish the defense at the time of the upset, the demonstration requirements serve to encourage permittees to examine the treatment facility and to take steps to prevent future noncompliance resulting from the cause of the upset.

2. Proposed changes. Industry litigants argued that the upset defense should also apply to violations of water quality-based limitations, since compliance with these standards also depends upon technology. EPA proposed a change to extend the upset defense to permittees that violate water quality-based permit limitations. The proposal would require the permittee to demonstrate that instream water quality standards were achieved in all stream segments, and for all parameters that could have been affected by the discharge. EPA explained that it was not required to provide an upset defense for water quality standards, since the CWA requires strict compliance with water quality standards, regardless of the efficiency of treatment technology. Nevertheless, EPA reasoned, there was no reason to penalize a discharger that can prove the occurrence of an upset if water quality standards were met despite noncompliance with permit requirements.

EPA also proposed to modify the requirement that permittees demonstrate the specific cause of the upset. Litigants were concerned that identification of specific causes would make the defense useless in many cases. To prevent an overly literal application of this requirement that might require a discharger to produce a scientifically impossible level of proof, EPA proposed to delete the word "specific."

3. Comments and responses. A number of commenters supported the proposal, stating that dischargers should not be penalized for an upset that violates water quality-based permit limits, but not water quality standards. Another commenter supporting the proposal stated that EPA should not require permittees to demonstrate that water quality standards were maintained throughout the upset. Several other commenters questioned the feasibility of implementing the proposal and, in particular, whether it would be possible for permittees to make the required demonstration.

After reevaluating the proposal in light of the comments on implementation, it is apparent that it is not practical to extend the upset defense to violations of water quality-based limitations. Failures of pollution control equipment can occur on water quality limited stream segments. However, water quality standards are established to protect uses of the water, and are legally required to be met all times. See CWA section 310(b)(1)(C). Any defense for upsets must ensure that water quality standards are achieved at all times throughout the upset. The proposal to establish an upset defense in permits, consistent with the CWA emphasis on protection and enforcement of water quality, would require a showing that water quality standards continued to be achieved in all stream segments, and for all pollutants, potentially affected by the discharge. Permittees would be required to begin monitoring the receiving waters as soon as the upset occurred and to continue to monitor until it was certain that the upset could no longer cause a violation of the water quality standards in the stream segment. To establish the defense, permittees would need to do continuous monitoring on all stream segments that may be affected. If permittees were unable to perform such monitoring, they would be unable to use the defense.

Although the proposal would seemingly allow permittees to claim an upset defense, the costs, burdens, and technical difficulty of establishing that water quality standards were not violated would make the defense nearly impossible for permittees to establish. Since upsets are by definition unexpected, gaps in monitoring would inevitably occur at the onset of the upset condition. Gaps in the monitoring record could create uncertainty as to whether the permittee had complied with water quality standards at all times. In addition, questions could arise as to whether the permittee had monitored all appropriate stream segments. Monitoring and analytical costs for permittees trying to establish an upset defense are likely to be very high for all but minor upsets (for such upsets, EPA is likely to use its enforcement discretion anyway).

Since it would be almost impossible for a permittee to establish the upset defense, the proposed extension would be illusory; adding a provision to the regulations that suggests the existence of such a defense would merely create confusion. This does not mean that dischargers will be penalized whenever an equipment failure that is not within the operator's control occurs. FPA will continue to evaluate such discharges on a case-by-case basis and use its discretion in deciding whether to bring an enforcement action. This approach is more realistic than allowing an affirmative defense for upset that for most purposes cannot be substantiated by the requisite showing for water quality standard protection.

Several States opposed the proposal, suggesting that for violations of water quality-based permit limitations, the NPDES permitting authority should exercise its discretion to determine whether an upset was justifiable. One State went further to suggest that the entire upset provision be deleted and that enforcement discretion should be applied to all permit violations, with permittees left to establish their own defense. For upsets that result in violations of technology-based standards, EPA believes the upset provision is a more reasonable approach which is fully consistent with all legal opinions on the issue. Although most courts have concluded that EPA could rely on its enforcement discretion and need not provide a formal upset provision, EPA continues to believe that all parties will benefit from allowing permittees an opportunity to present their claims in a formal judicial proceeding. The upset provision also comports with those decisions which have required some form of upset relief. (For a more thorough discussion of applicable case law, see 44 FR 32863 (June 7, 1979)). However, EPA agrees that reliance on enforcement discretion is best with respect to violations of water quality-based permit limitations.

Several persons commented on the proposed deletion of the word "specific" from § 122.41(n)(3)(i) [CPR § 122.60(h)(3)(i)]. Most supported the proposal, but one suggested the change was unnecessary. EPA believes the clarification is desirable since it will eliminate confusion over the meaning of § 122.41(n)(3)(i). This revision clarifies that the regulation does not require investigation to an impossible degree of certainty. For example, there may be cases where biological activity is disrupted in a treatment system, where no change in raw waste characteristics could be identified, and where a thorough investigation by the permittee could not identify the precise cause of the change resulting in the violation. Such evidence could be adduced to show the "cause" required by the regulation, even though the precise cause eluded detection.

EPA would also like to clarify whether a demonstration of "cause" of an upset required under § 122.41(n) can be based upon circumstantial evidence rather than direct evidence. It is EPA's intent that any demonstration of cause acceptable as proof of fact in court be available to a permittee seeking to utilize the upset defense. Proof of fact may be made through circumstantial as well as direct evidence. Indeed, circumstantial evidence may be all that is available. However, it is not enough simply to show that normal operating procedures were followed at the time effluent limitations were exceeded. The regulation requires at least a thorough investigation of the causes of an incident. Obviously, a claim of upset will be disfavored where previous violations have occurred and no efforts or insufficient efforts were made to identify and remedy the cause or causes.

One commenter felt that the upset defense should be available without limitation to all water quality limited dischargers in order to be consistent with the Agency's proposal of October 29, 1982 to revise regulations governing the adoption of water quality standards. The Agency has since promulgated water quality regulations different from the October 29, 1982 proposal (see 48 FR 51400 *et seq.*, November 8, 1983).

4. EPA action. In view of the comments, we have reevaluated the proposed revisions to § 122.41(n) and decided to retain the existing regulations, except for the minor clarifying revision to the requirement that permittees demonstrate the cause of an upset (§ 122.41(n)(3)(i)). The affirmative defense of upset will thus only apply to violations of technology-based permit limitations. The upset defense is not available to permittees for violations of water quality-based permit conditions. EPA will rely on prosecutorial discretion and the facts surrounding the upset to determine whether to institute an enforcement action in any such case.

Q. Proper Operation and Maintenance (40 CFR 122.41(e) [CPR § 122.7(e)])

1. Existing rule. The existing regulations require all permittees to properly operate and maintain their treatment systems. The regulations provide several specific examples of proper operation and maintenance (O & M). This gives permittees notice of their responsibilities and gives permit authorities an additional enforcement tool when permittees are negligent. The ultimate objective is to reduce pollution by ensuring that treatment facilities operate at maximum efficiency.

2. Proposed changes. Industry litigants challenged these regulations on the grounds that their specificity improperly infringed upon internal plant management. They also were concerned with language stating that backup equipment must be properly operated and maintained could be interpreted to require such equipment in all cases. In response, EPA proposed to delete most of the specific examples of proper O & M and to clarify that this provision did not impose a requirement to install backup equipment. The proposed deletion of the examples was not intended to remove any obligation of the permittee to properly operate and maintain its treatment equipment but rather to provide greater flexibility to ensure that this is done. The backup provision would still require *available* backup systems to be properly operated and maintained.

3. Comment and responses. Six comments were received on this proposal. Five comments were from industry and supported the change, generally citing the litigants' concerns discussed above. One State agency objected to the proposal on the grounds that it gave too much discretion to the permittee to decide what constitutes proper O & M, and stated that backup systems could be reasonably required in some cases. With regard to this comment, EPA has concluded that flexibility is justified and that the proposal still provides adequate environmental protection. The change is not meant to imply that the examples in the existing regulations are no longer considered elements of proper O & M. Permittees remain accountable for any O & M failings, as determined by the permitting authority, even if they occur in those areas deleted from the current regulations. With regard to the comment that installing backup equipment may often be reasonable, EPA agrees and emphasizes that such installation may still be required on a case-by-case basis by the permitting authority. Permit writers are also encouraged to be specific in formulating proper O & M requirements in the permit, especially where poor or inadequate O & M practices have caused problems in the past. This should help to avoid disputes later as to the degree of discretion allowed the permittee.

4. EPA action. The proposal does not restrict the permitting authority either in taking action for improper O & M or from requiring backup equipment to be installed on a case-by-case basis. It merely deletes certain examples of proper O & M and makes clear that installation of backup equipment is not a universal requirement. The final regulation is therefore promulgated as proposed.

R. Mistake and Failure of Technology To Meet Best Professional Judgment (BPJ) Limits as Grounds for Permit Modification (40 CFR 122.62(a) (16), (17) [CPR § 122.15(a)(5)])

1. *Existing rules.* The current regulations provide limited causes for modifying a permit during its term. These causes do not include as grounds for permit modification either correction of mistakes made at the time of permit issuance or failure of technology on which effluent limits were based to achieve the effluent limitations imposed in a best professional judgment (BPJ) permit. Under the current regulations, a permittee would have no immediate redress for BPJ permit limitations which appropriate, properly installed and operated treatment technology could not meet. A permittee would have to wait until its permit expired and was renewed before it could become eligible for different effluent limitations. In the case of technical mistakes, such as errors in calculations, or mistaken interpretations of law, the permittee would have no redress under the existing regulation expect to correct

typographical errors. The Agency's anti-backsliding policy (§ 122.44(l) [CPR § 122.62(l)]) would prohibit reissuing a permit with less stringent limitations (See discussion in Part C, above).

2. Proposed changes. Industry parties to the settlement agreement were concerned that permittees may remain in violation of their permits for years before a change of effluent limitations could be obtained in a renewed permit. They were also concerned that technical mistakes could never be corrected since a reissued permit would be required to be as stringent as the original BPJ permit under the Agency's anti-backsliding policy. In response to this concern, EPA proposed to make both mistaken permit conditions and failure of technology to achieve BPJ limitations causes for permit modification.

3. Comments and responses. We received six comments on this proposal; all from industry and all favorable. In general, commenters stated that it was practical and fair for EPA to allow permits to be modified when mistakes are discovered and when properly installed and operated technology required by the permit fails to meet BPJ limitations.

One commenter requested that water quality-based permits be allowed to be modified when there has been a failure of approved technology. This commenter proposed that such a modification of the permit should only be effective until the water quality standards can be reconsidered by the appropriate agency.

Water quality standards are developed by the States, and issued, after approval by EPA, to protect designated uses for particular water bodies or streams. NPDES permits must include water quality-based limitations where the applicable technology-based limitations, whether derived from effluent limitation guidelines or on a BPJ basis, are not stringent enough to ensure compliance with the applicable water quality standards. At the point water quality standards are implemented in the permit issuance process, permit writers do not have the flexibility to reconsider the water quality standards to determine whether they are appropriate or technically achievable. To authorize the modification of an NPDES permit on the basis of BPJ considerations so that it no longer ensures compliance with existing water quality standards clearly cannot be allowed. In addition, to grant the permittee's request pending reconsideration of the water quality standards would result in a de facto change to the standards that is neither within EPA's authority nor appropriate. Rather, the commenter's request should be dealt with in the State's standard setting process. Where a change has been agreed upon by the State, and approved by EPA, provisions for modifying an NPDES permit have already been provided for in the NPDES regulations at 40 CFR 122.62(a)(3) [CPR § 122.15(a)(3)].

One commenter was particularly concerned that the preamble discussion of the proposal drew an overly restrictive interpretation of the types of mistakes which would be grounds for permit modification. This commenter was especially concerned about permits written for new facilities well in advance of start-up and operation. The commenter urged that new information obtained about the particular situation surrounding a discharge be grounds for permit modification. The NPDES permit regulations already provide for permit modification in the event new information, which was not available at the time the permit was issued, is obtained after permit conditions have been established and where the information would have justified the inclusion of different limits at the time the permit is issued. See § 122.62(a)(2) [CPR § 122.15(a)(2)]. This cause adequately provides for permit modification in the circumstances reported by the commenter. However, if the permit was based on a promulgated new source standard, the permittee would be unable to obtain a permit modification (See Anti-backsliding discussion).

4. EPA action. As stated in the preamble to the proposal, whether a mistake results in overly lenient or overly stringent permit conditions, it makes sense to authorize permit modifications to correct the mistake. It also makes sense to modify permit conditions when the treatment technology upon which BPJ effluent limitations are based has been properly installed and operated but nonetheless fails to meet those limitations. In both cases, EPA acknowledges that it is unfair to force a permittee to remain in violation until the permit expires and is renewed. The change will allow EPA to correct earlier errors in permit conditions, such as the inclusion of incorrect compliance dates. The final regulation is promulgated as proposed.

S. Non-adversary Panel Procedures (40 CFR Part 124, Subpart F)

The Administrative Procedure Act (APA) allows decisions on the initial grant of a license or variance to be made by procedures less adversarial than traditional court room procedures, even where a formal hearing is required. Hearings on initial licensing are exempt from formal evidentiary hearing requirements for a number of reasons, most importantly because the complex policy decisions in initial licensing are more akin to rulemaking than adjudication. Additionally, initial licensing decisions do not involve accusation of wrongdoing and, therefore, do not require "separation of functions" within the agency or an initial decision by a statutorily independent individual, such as an administrative law judge (ALJ).

EPA's non-adversary panel procedures for initial licensing were originally promulgated for the NPDES program on June 7, 1979, and revised to include other permit programs on May 19, 1980. Conceived as an innovative and efficient means of resolving disputed scientific and technical issues, these procedures depart from traditional evidentiary procedures in which adversaries present separate cases to an ALJ on a challenge to a final permit decision. Under the non-adversary procedures, participants present their views and arguments to a panel of EPA experts during a two-phased hearing on a draft permit. During the "legislative" phase, the panel explores issues and asks questions. Cross-examination can be ordered during the "adjudicative" phase if certain threshold conditions are met. After the hearing, the panel prepares a recommended decision which may be appealed to the Administrator, whose decision constitutes final agency action subject to judicial review.

1. Applicability of panel hearing procedures to initial licensing permits and variances (40 CFR 124.111).—a. Existing rules. Non-adversary panel procedures are not mandatory. The current regulations grant the Regional Administrator the option to use either these procedures or traditional evidentiary hearing procedures for initial licensing and first grants of a variance. We acknowledge that panel hearings may not always be suitable for initial decisions, especially if the factual issues involved make the decisionmaking more akin to adjudication than to rulemaking. For these reasons, EPA made the decision to make use of non-adversary procedures dependent upon the discretion of the Regional Administrator.

b. Proposed changes. Industry litigants objected in general to the concept of non-adversary panel procedures, claiming that the procedures violate the formal hearing requirement of the Clean Water Act, that variance decisions do not constitute initial licensing, and that Congress never intended the initial licensing section of the APA to apply to sharply contested issues of fact such as in NPDES permit proceedings. Specifically, litigants objected to the Regional Administrator's unilateral ability to invoke non-adversary procedures. EPA disagreed with industry's legal arguments and maintained its position that panel procedures are legal and provide an efficient, expeditious means of resolving technical and scientific issues. However, persuaded that panel hearings might not prove useful if invoked upon unwilling participants, EPA proposed that permit applicants must consent to the Regional Administrator's decision to use the panel procedures.

c. Comments and responses. EPA received eight comments on this issue, all favorable to the proposal. Some commenters repeated claims of illegal procedures and violations of procedural due process. EPA is unpersuaded by these legal arguments and continues to believe that non-adversary panel procedures for an initial grant of a permit or variance are authorized by the APA. (See 44 FR 32887–32891, June 7, 1979, for more detailed discussion of EPA's legal opinion.) Other commenters endorsed the non-adversary panel procedures, citing cost effectiveness, quicker permitting, better informed presentation of technical issues, and greater opportunity for public participation as the advantages of panel hearings. Nonetheless, they felt that use of such procedures should only be with the consent of the applicant.

d. EPA action. Based in part on an analysis of the legal arguments submitted by commenters and on a reevaluation of the role of panel hearings, EPA has decided to retain the regulation in its current form. Non-adversary panel procedures do not restrict the rights of applicants for first grants of permits or variances, and, therefore, the Agency considers it inappropriate to grant such applicants the authority to veto the informed decision of a Regional Administrator to convene a panel hearing. There is no evidence at all that Regional Administrators have invoked or will invoke panel hearings in inappropriate situations. Regional Administrators are in a better position than permit or variance applicants to decide whether certain procedures will aid decisionmaking or expedite permit issuance. For this reason, the sole authority to invoke the non-adversary panel procedures should remain with the Regional Administrator.

2. Role of panel members in panel hearings (40 CFR 124.120).—a. Existing rules. As stated above, the APA exempts from initial licensing a number of evidentiary hearing requirements, including the concept of "separation of functions" within the agency. This allows initial licensing decisions to be "institutional" rather than adjudicatory and allows EPA to draw on the training and experience of a number of agency employees, including persons who participated in developing the draft permit. The current EPA regulations restrict the number of permit writers on a panel and require that there be at least two panel members who did not participate in developing the draft permit.

b. Proposed changes. Industry parties to the settlement agreement objected to permit writers as panel members on the grounds that it deprives permit applicants of any independent review of the draft permit by the agency, and violates the hearing requirements of the APA. In response to industry's objections, EPA proposed to limit panel members to EPA employees who did not participate in developing the draft permit. As stated in the preamble to the proposal, EPA disagrees with industry's legal arguments on this issue, but proposed the change to avoid the appearance of unfairness.

c. Comments and responses. Comments received on this issue supported the proposal to exclude permit writers as panel members.

d. EPA action. The final regulation is promulgated as proposed.

3. Scope of cross-examination (40 CFR 124.121 (a), (b)).—a. Existing rules. The existing regulations allow cross-examination in a non-adversary panel hearing solely on factual issues. (See § 124.121(a).) The regulation was intended to limit the scope of cross-examination on non-factual issues, since these issues can be better resolved through oral arguments and written presentations. See 44 FR 32886, June 7, 1979.

b. Proposed changes. Litigants were concerned that the limitations would prevent cross-examination on factual issues related to policy decisions. EPA, therefore, proposed to relax the restriction and allow cross-examination on policy questions, but only to the extent required to disclose the factual basis for the permit requirements. The proposal was intended to clarify that all factual judgments are eligible for cross-examination, whether or not they are related to policy judgments.

c. Comments and responses. All comment received supported EPA's proposal. Several commenters argued that there is no basis for treating cross-examination in panel and evidentiary hearings differently. EPA disagrees with this view. The APA allows decision on the grant of an initial license or variance under procedures less adversarial than either courtroom or formal evidentiary hearings. Non-adversary panel hearings are initial licensing proceedings within the APA. However, while the law allows for different limitations on cross-examination, EPA believes it is reasonable to allow limited cross-examination on policy issues where necessary to resolve material factual issues.

d. EPA action. The final regulation on the scope of cross-examination is promulgated as proposed. The new regulation will extend to panel hearings the scope of cross-examination provisions now applicable to evidentiary hearings (§ 124.85(b)(16)). The regulation provides in § 124.121(b) (and in § 124.85(b)(16)), that no cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements. This does not preclude cross-examination on facts which form the basis for EPA policy, if such cross-examination relates to the factual basis for permit requirements. Thus, for example, if it were EPA policy to require a specified frequency of monitoring for dischargers of certain pollutants, and if a permittee challenged such a proposed monitoring requirement in a permit subject to a hearing, the permit applicant would be allowed to cross-examine a witness on the factual basis for the required monitoring frequency or why the policy was applied to the applicant's situation. The witness (or EPA counsel) would not be able to terminate the examination simply by answering that the required frequency was EPA "policy."

T. Evidentiary Hearing Procedures

1. Obligation to submit evidence and raise issues (40 CFR 124.13, 124.14, 124.76).—a. Existing rules. The current regulations require all reasonably ascertainable issues to be raised and available arguments and supporting information to be submitted during the public comment period on a draft permit. If not raised or submitted during the public comment period, this information will not be allowed to be introduced in an evidentiary hearing without good cause. The purpose of these procedures is to encourage resolution of issues at the time comments are submitted on a draft permit, rather than in the far more burdensome context of an evidentiary hearing, and to link that hearing directly to the preceding stages of permit issuance.

b. Proposed changes. Both environmental and industry litigants objected to these requirements on the grounds that the restriction on when evidence may be submitted conflicted with the formal hearing requirements of the Administrative Procedure Act. As a practical matter, litigants argued that the restrictions force parties to engage in "evidentiary overkill" when they disagree with permit terms at the draft permit stage. In response to these concerns, EPA proposed to require only that all reasonably ascertainable issues and available arguments to be raised during the public comment period. Generally, supporting information would not be required to be submitted during the comment period. Rather, all supporting material and factual grounds would be submitted during the public comment periods only if the Regional Administrator either believes that the permit will be contested or elects to reopen the public comment period. In either case, the Regional Administrator would have to determine that submission of evidence during the public comment period would expedite decisionmaking and therefore, require the upfront submission of supporting material in the public notice. If the Regional Administrator either decides that the permit will not be contested or elects not to reopen the public comment period, submission of supporting material and factual grounds would be allowed during an evidentiary hearing.

c. Comments and responses. The six comments EPA received on this proposal were from industry which generally supported the change. The American Petroleum Institute specifically endorsed the language in the preamble to the proposal which stated that Regional Administrators would most likely apply these procedures for submission of all information during the initial comment period primarily for major permits, such as for new factories or nuclear power plants, which are likely to be contested and which will involve complex technical issues.

d. EPA action. Based on these comments, the final regulation is promulgated as proposed. Section 124.14(a)(3) authorizes the Regional Administrator to require the submission of all evidence during the initial comment period where it reasonably appears that issuance of the permit will be contested and "collapsing the comment period" (i.e., requiring this information during the comment period) may substantially expedite the decisionmaking process. Collapsing the comment periods in this manner may impose greater burdens on participants in the permitting process. Accordingly, the Regional Administrators should exercise this discretion with care. Also, Regional Administrators are encouraged to consult with permit applicants and other known interested persons before exercising their discretion to collapse the comment periods. Such consultation will tend to ensure that the decision is an informed one.

2. Ex Parte Communications (40 CFR 124.78(a)(1)).—a. *Existing rules.* The Administrative Procedure Act (APA) prohibits agency decisionmakers in formal hearings from engaging in *ex parte* discussions of the merits with "interested person outside the agency," 5 U.S.C. 557(d) The APA also contains a "separation of functions" provision which requires that no one involved in "investigative or prosecuting functions" may participate or advise in the decision, recommended decision, or agency review * * *" 5 U.S.C. 554(d). The purpose of both requirements is to safeguard the administrative process and ensure impartial decisionmaking.

The current regulations refer to persons involved in "investigative or prosecuting functions" as members of the "agency trial staff" and, thereby, subject them to the *ex parte* rules during evidentiary hearings. Non-EPA witnesses are subject to *ex parte* prohibitions because they are considered "interested persons outside the agency." Under the current regulations, EPA witnesses in evidentiary hearings are not automatically included as part of the agency trial staff, nor are they considered "interested person outside the agency" for the purposes of *ex parte* communications.

b. Proposed changes. Industry parties to the settlement agreement objected to the special treatment afforded to EPA witnesses and claimed that these regulations violated the APA and that EPA's failure to designate its evidentiary hearing witnesses as part of the agency trial staff could result in improper *ex parte* contacts between those witnesses and the decisional body. In response to these concerns, EPA proposed to include as a member of the agency trial staff any EPA employee, consultant or contractor, who is either called as a witness by EPA or assisted in developing the draft permit that is the subject of the hearing. The preamble to the proposal emphasized, however, that EPA does not believe that this step is required by law. As stated in the preamble to the current regulations, witnesses from within EPA are subject to the "separation of functions" provision only if they have performed "investigative or prosecuting" functions. (45 FR 33415, May 19, 1980). However, in order to avoid any appearance of unfairness, EPA proposed the above revision.

c. Comments and responses. EPA received three comments on this proposal which were from industry and supported the proposed change.

d. EPA action. The final regulation is promulgated as proposed.

U. Deferral of Hearing on New Source Determination (40 CFR 122.21(k)(4) [CPR § 122.53(h)(4)])

The Clean Water Act treats new sources differently from existing sources. New sources are subject to new source performance standards (NSPS) promulgated pursant to section 306 which reflect the greatest degree of effluent reduction achievable through the application of best available demonstrated control technology (BADT). Existing sources, on the other hand are subject to different, often less stringent, technology-based effluent limitations, representing either best practicable control technology (BPT) or best available technology (BAT) or best conventional technology (BCT). The issuance of an NPDES permit to a new source may also constitute a major Federal action significantly affecting the quality of the human environment, triggering the environmental impact statement provisions of the National Environmental Policy Act (NEPA). (CWA section 511(c)). For these reasons, the decision of whether a facility is a new source (new source determination) is as important to the discharger as it is to the Agency. If dischargers or third parties disagree with the Agency's decision they may challenge the new source determination in an evidentiary hearing.

1. Existing rule. The current regulations allow the Regional Administrator to defer an evidentiary hearing on a new source determination until after a final NPDES permit decision is reached. The purpose of the regulation is to allow EPA to combine challenges to the final NPDES permit decision with challenges on the new source determination, and thus save Agency resources by conducting one evidentiary hearing.

2. Proposed changes. Litigants were concerned that deferral of a hearing on the new source determination could lengthen the permitting process and increase their costs if the original decision was changed in the hearing. EPA, therefore, proposed to authorized the Regional Administrator to defer an evidentiary hearing on a new source determination only if all parties to the hearing agreed. The proposal would recognize that an early new source hearing could benefit the permit applicant by informing him of whether he would have to comply with BAT effluent guideline limitations or the generally more stringent new source performance standards. To defer such a hearing might later subject the applicant to potential additional construction costs to comply with new source requirements. The applicant might also be subject to unreasonable expense and delays caused by a NEPA evaluation, which was begun by EPA and later determined to be unnecessary by the hearing decision.

3. Comments and responses. The four commenters on this issue all supported the EPA proposal, noting that the Regional Administrator should not be allowed to defer the new source hearing where any party requested an early hearing. The commenters stated that an early hearing on a new source determination would resolve the important question of what treatment standards the facility must be constructed to meet. Three of the commenters were concerned that a deferred hearing would force the applicant to comply with costly additional new source requirements at the end of the permit issuance process (presumably when the facility plans to begin operation). Two commenters when the facility plans to begin operation). Two commenters also noted that an early hearing would help to resolve EPA's obligations under NEPA, since new sources requiring EPA-issued permits are subject to NEPA environmental review requirements.

EPA agrees that the permit applicant should not have to wait until the end of the permit issuance process for a final determination on whether he will be subject to treatment requirements for existing sources or new sources. Otherwise, there may be cases where the applicant designs a facility to meet requirements for existing sources, and subsequently learns that further costs must be allotted to meet a more stringent new source performance standard before the facility can begin operation. An early hearing on the new source determination would also allow EPA to begin its NEPA review work as early as possible, and to limit possible NEPA delays in issuing the final new source permit. In other cases, the early hearing could avoid the necessity of performing a potentially costly NEPA review.

4. EPA actions. EPA is promulgating the final rule as proposed. A timely hearing on the new source determination will provide permit applicants with greater certainty on the applicable treatment requirements, and on the costs to meet these requirements. The rule will also allow EPA to complete any required NEPA review (if the facility is a new source) at an early stage and thus limit delays in permit issuance. It will also resolve whether a facility is prohibited from constructing the source due to EPA's pre-permit construction ban (§ 122.29(c)(4) [CPR § 122.66(c)(4)], See Part C, above). These benefits override any additional burdens on EPA to conduct separate new source and permit hearings.

V. New Source Criteria (40 CFR 122.29(b) [CPR § 122.66(b)])

1. Existing rules. On May 19, 1980, EPA published criteria for new source determinations (40 CFR § 122.66(b)) under the NPDES program as part of its Consolidated Permit Regulations (45 FR 33290). Under that regulation a discharger would be classified as a new source if it was a new facility, if it totally replaced an existing source, or if the construction at the site of an existing facility changed the nature or quantity of pollutants discharged. The classification of a facility as a new or existing source is important because under the CWA existing sources are subject to best available technology (BAT) and best conventional technology (BCT) requirements, while new sources are subject to the generally more stringent new source performance standards (NSPS) under section 306 of the CWA. This distinction is based on the concept that new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Section 122.2 [CPR § 122.66(b)] is intended to ensure that all sources are properly classified.

2. Proposed changes. On September 9, 1980, EPA suspended CPR §122.66(b) (1) and (2) (45 FR 59317). This suspension responded to industry criticism that the language of the third criterion (CPR §122.66(b)(1)(iii)) was overly broad and could be interpreted as classifying some structures as new sources that more appropriately should be considered as modifications of existing sources. On the same day, (45 FR 59343), EPA proposed that, in those situations where there was new construction but less than total replacement at existing facilities, the classification decision should be based on the degree to which the constructed facility functions independently of the existing source. The substantial independence test was aimed at ascertaining whether an existing source which undertakes major construction that legitimately provides it with the opportunity to install the best and most efficient production processes and wastewater treatment technologies should be required to meet new source performance standards at that facility. Because EPA had already suspended the rule and proposed a new rule at the same time that settlement negotiations on the Consolidated Permit litigation began, EPA removed the issue from the scope of settlement discussions. However, to combine the two NPDES rulemakings, EPA is adopting the final new source criteria with the balance of the NPDES litigation issues.

3. Comments and responses. During the public comment period, EPA received twenty-one comments. Most of the commenters approved of the "substantial independence" test as a means of looking at the functional relationship between the existing facility and new facility.

One commenter suggested that further clarification was needed on the meaning of "substantially independent," and suggested a list of factors that should be considered in making such a determination. EPA agrees that such a clarification would help in making new source determinations. Today's amendment, therefore, adds two factors to be examined in deciding if new processes are substantially independent of existing facilities.

The first factor is the degree of integration of a new process with existing processes. Under this first factor, if the new facility is fully integrated into the overall existing plan, the facility will not be a new source. For example, a plant may decide to improve the quality of a product by installing a new purification step into its process, such as a new filter or distillation column. Such a minor change would be integral to existing operations and would not require the facility to be reclassified as a new source. However, on the other extreme, if the only connection between the new and old facility is that they are supplied utilities such as steam, electricity, or cooling water from the same source or that their wastewater effluents are treated in the same treatment plant, then the new facility will be a new source.

Four commenters argued that if a new process or plan uses existing wastewater treatment equipment, for that reason alone it should not be considered a new source. EPA disagrees with these comments. The legislative history of the CWA indicates that new source requirements were intended to apply where new construction allows flexibility to incorporate new pollution control technology. The fact that a facility can be constructed to utilize an existing waste treatment plant does not address the issue of whether new technology could have been installed. To allow the use of an existing wastewater treatment system, by itself, to preclude the application of new source requirements would frustrate clear statutory intent.

One of the commenters went further and claimed that EPA had no legal authority to impose new requirements in this situation. The commenter argued that if a new facility's discharge is conveyed to waters of the United States through an existing waste treatment system, this new facility cannot itself be classified as a separate point source under the CWA. This claim is contradicted by language of the Act and by case law. A newly constructed facility can clearly meet the statutory definition of "source," which covers any "building, structure, facility, or installation from which there is or may be the discharge of pollutants" (section 306(a) of the Act). When a similar claim was raised in *Mahelona* v. *Hawaiian Electric Co.*, 9 ERC 1625 (D. Hawaii 1976), the Court held that the point source was the facility generating the discharge, not the system treating it.

The second clarifying factor that EPA has added is the extent to which the construction results in facilities or processes that are engaged in the same general type of activity as the existing source. Under this second factor, if the proposed facility is engaged in a sufficiently similar type of activity as the existing source, it will not be treated as a new source. For example, if a plant begins to produce a new product, e.g., nylon synthetic fiber, which is very similar to the product currently being produced by that plant, e.g., polyester synthetic fiber, using equipment that is essentially the same as the existing production equipment, this would likely be considered an existing source. However, if a plant producing a final product, e.g., polyester synthetic fiber, adds new equipment to produce the raw materials for that product, e.g. teraphtalic acid or ethylene glycol, the proposed structure would likely constitute a new source. Of course, to the extent the construction results in facilities engaged in the same type of activity because it essentially replicates, without replacing, the existing source, the new construction would result in a new source.

The proposed regulation provides that if there is no independently applicable new source performance standard a source being classified as a new source under this section would be considered a new discharger. Several industry commenters, all of whom are parties to the litigation, questioned EPA's authority for the new discharger category. EPA continues to believe that EPA has authority to establish the new discharger classification. By such classification EPA is not requiring new dischargers to meet new source performance standards. EPA has merely devised appropriate procedural and substantive requirements for issuing a discharger its first NPDES permit. (See also amendments to the new discharger definition—48 FR 39619, September 1, 1983.)

One commenter further argued that a new facility at the site of a plant in existence before October 18, 1972, could never fit the definition of "new discharger" because there will have been discharges from the existing plant at the site prior to October 18, 1972. This comment misinterprets the definition of "new discharger" in § 122.2 [CPR §122.3]. A new discharger includes a new facility at any site at which "it," the *new facility*, had not discharged pollutants before October 18, 1972; the fact that there may have been discharges from another facility at that same site is irrelevant.

Several commenters suggested that EPA should consider whether the new facility *actually* operates substantially independently of the existing facility, not whether it *could* operate substantially independently, as stated in the preamble to the September 9, 1980 proposal (45 FR 59344). EPA agrees with this interpretation and will so apply the substantial independence test. Because language suggesting a contrary interpretation appeared in the preamble to the proposed rule, no change in the regulatory language is necessary. The test in § 122.29(b)(1)(iii) [CPR § 122.66(1)(iii)] will continue to be whether the processes of the new facility *are* substantially independent.

One commenter suggested that "totally independent" should be substituted for "substantially independent." EPA disagrees with this comment, since it could be argued that any new building, structure, facility, or installation at the same site as an existing facility has some *de minimis* relation to that existing facility.

Some commenters suggested that modernization by means of total replacement of process or production equipment should not result in a new source determination unless it results in the discharge of significant new pollutants. EPA disagrees. Total replacement effectively involves the construction of a new facility, which Congress intended to make subject to new source requirements. An entirely new plant built at the site of an existing plant it totally replaces is no less a new source than the same plant built at a greenfield site, and should be required to build in new source treatment technology.

In a similar situation, if a facility replicates an existing facility, the fact that it shares or uses common land with another source does not prevent it from being considered a new source. The same criteria would be applied on a case specific basis. Thus, if a power company builds a new, but identical and completely separate power generation unit at the site of a similar existing unit, the new unit will be a new source. However, if a facility increases capacity merely by adding additional equipment in one or two production steps to remove a "bottleneck," it will not be a new source. For example, a plant which uses a four step process to convert ethylene oxide into ethylene glycol may increase capacity by installing additional equipment in steps 1 and 3. Such an expansion is likely to be a modification of the existing plant.

One commenter suggested that the phrase in proposed § 122.66(b)(1)(iii), "and it meets the definition of new source in [§ 122.2 [CPR §122.3]]," should more clearly modify all three items under (b)(1). EPA agrees and has placed this phrase at the beginning of (b)(1). This commenter also suggested that the two sentences beginning "A source meeting * * *" be made a separate paragraph (b)(2), with the succeeding paragraphs of (b) renumbered. EPA also agrees with this reformatting and has so amended the regulation. The NPDES new source criteria will apply to all industries where new source performance standards have been proposed or promulgated, except where new source definitions or criteria are otherwise specified in the industry effluent limitation guideline regulations. At the present time only two industries have such specific criteria—(1) the definition of new source in the wet process hardboard subcategory of the Timber Products effluent limitations guideline (See 46 FR 45382, October 13, 1982); and (2) the criteria for new source determinations in the Coal Mining effluent limitations guideline (See 46 FR 8260, January 26, 1981).

4. EPA action. In the final rule, EPA has retained the proposed substantially independent test to ascertain whether construction at the site of an existing source, which does not involve total replacement of process or production equipment, would result in a new source. EPA has clarified this test by adding the following factors which should be considered in making the determination of whether construction at an existing facility results in processes that are substantially independent and therefore qualify as a new source: (1) The extent to which the new facility is integrated with the existing plant; and (2) the extent to which the new facility is engaged in the same general type of activity as the existing source.

W. Modification of NPDES Permits (40 CFR 122.62, 122.63 [CPR §§ 122.15, 122.17])

1. Existing rules. The NPDES permit regulations specify causes for permit modification. In general, permits are not modified to incorporate changes made in regulations during the term of the permit. This is to provide some measure of certainty to both the permittees and the Agency during the term of the permits. Thus, the changes made in today's final promulgation of regulations, with few exceptions, do not affect or provide cause for modification of existing permits. Permittees must comply with the terms of their permits, even if those terms might be different than the requirements of subsequent regulations. See CWA section 402(k).

2. Proposed changes. Industry litigants were concerned that current regulations would preclude modification of permits to incorporate changes made by today's regulations. Thus, in order to allow current permittees to benefit from today's final rules, EPA proposed to add a new subsection to § 122.62 [CPR § 122.15] allowing NPDES permits that became final after March 9, 1982, to be modified to conform to the final rules concerning bypass, actual production, total metals, and discharge into POTWs, wells, or by land disposal. (Specific discussions on each of these final rules appear above.) In order to prevent the administrative burden that would result if all currently issued permits were eligible for modification, EPA proposed to allow modification only for permits issued after March 9, 1982, and limited those provisions for which modification was available. Otherwise, permit modifications would create a severe administrative burden and divert Agency resources better spent in reissuing permits.

A permittee seeking modification would be required to demonstrate that it qualifies for the modification and that good cause exists to modify the permit. A permittee would also have to request modification within 90 days of the issuance of a final rule. The good cause requirements calls for the permittee to show something more than that it qualifies for the modification since such a showing must be made in any modification request. For example, the permittee might show good cause by demonstrating that the modification would result in cost savings, reduce energy consumption, allow the use of simpler or more reliable control technologies, or otherwise significantly alleviate the burdens imposed by its current permit terms and conditions, including permit limits.

EPA also proposed to add a new subsection to § 122.63 [CPR § 122.17] allowing modifications to incorporate certain newly modified provisions to be processed as minor permit modifications. These provisions are: proper operation and maintenance, planned facility change, bypass, upset, and toxics notification. (For specific discussions on each of these, see above.) Changes to a permit to reflect these revised rules could, under that proposal, be processed through the streamlined minor modification procedure which does not require public notice and comment. These provisions do not require recalculation of permit limits; they merely add boilerplate language to the permit. Therefore, full notice and opportunity for comment and public hearings on the changes to a specific permit are not essential. The notice and opportunity for comment on today's final rule have provided for adequate public participation on these provisions.

3. Comments and responses. Five comments were received on the modification of NPDES permits portion of the proposal. The commenters supported the proposal because it was believed it would prevent unnecessary applications for evidentiary hearings by applicants. The changes were viewed as conserving administrative resources while allowing a greater number of permittees to benefit from EPA's proposed revisions.

One commenter advocated allowing permits to be modified if the existing NPDES permit has been extended pending the issuance of a "second-round" permit; or if the permit is currently the subject of an enforcement proceeding which would be rendered moot by today's revisions; or if the permit has been subject to noncompliance problems which would be eliminated by today's revisions.

Permits which have "expired" cannot be modified. While expired permits may be continued in effect beyond the permit terms under the Administrative Procedure Act and § 122.6 [CPR § 122.5], these permits may only be changed by reissuance. The other two situations advocated by the commenter concern violations of existing regulations or permit conditions. To allow broad retroactive application of permit revisions thereby rendering moot enforcement and noncompliance actions would thwart the intent of the CWA and the NPDES permit regulations. Permit conditions must be met during the term of the permit. And, in the situations described, a violation of permit conditions has occurred and enforcement or noncompliance actions have been deemed warranted. Subsequent changes in the regulation do not change the fact that violations of permit conditions occurred under the applicable regulations.

4. EPA action. EPA agrees that the modification of permits to conform to today's regulations is appropriate in order to prevent unnecessary administrative hearings and litigation. The cutoff date precludes unnecessary modifications that could place a strain on Agency or State resources. Therefore, the proposal is adopted in the final regulations. However, since some of the subjects listed in the provisions qualifying for modifications under today's rulemaking are not being changed in accordance with the settlement agreement and instead EPA is retaining the existing regulations, there is no need to provide a cause for modification of permits for those provisions. Section 122.62 covers only actual production and total metals. Section 122.63 covers only operation and maintenance, planned facility change, one specific provision relating to bypasses, and toxics notification.

III. EFFECTIVE DATE

Section 553(d) of the Administrative Procedure Act (APA) generally requires publication of a substantive rule not less than 30 days before its effective date. The purpose of this requirement is to allow sufficient lead time to prepare for compliance with new regulatory requirements. EPA considers today's rulemaking of sufficient complexity and import that the regulations shall not go into effect until October 26, 1984.

IV. EXECUTIVE ORDER 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments generally make the regulations more flexible and less burdensome for affected permittees. For some provisions they make no change from the existing regulations. These regulations do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute major rulemakings. This regulation was submitted to OMB for review.

V. PAPERWORK REDUCTION ACT

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit to the Director of OMB for review and approval, new or revised requirements for collection of information. The amendments promulgated today generally decrease or eliminate requirements for the collection of information. The revised information collection requirements in this rule are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

VI. REGULATORY FLEXIBILITY ACT

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's amendments to the regulations generally make the regulations more flexible and less burdensome for permittees. For some provisions they make no change from the existing regulations. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 125

Water pollution control, Waste treatment and disposal.

(Clean Water Act, 33 U.S.C. 1251 *et seq.*)

Dated: September 4, 1984.

Alvin L. Alm,

Acting Administrator.

1. The heading for Part 122 is revised to read as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1a. Section 122.21 is amended by designating the existing paragraph (c) as (c)(1) and adding new paragraphs (c)(2) and (f)(9), by revising paragraphs (f)(7), (g)(7) introductory text, (g)(7)(i)(B), (g)(7)(iii), (g)(9), (g)(10), and (k)(4) to read as follows:

§ 122.21 Application for a permit (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) * * *

(2) Any existing storm water discharger under § 122.26 that does not have an effective permit shall submit an application by March 26, 1985. Any discharger designated under § 122.26(c) shall submit an application within 6 months of notification of its designation.

* * * * *

(f) * * *

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. Group II storm water discharges, as defined in § 122.26(b)(3), are exempt from the requirements of paragraph (f)(7) of this section.

* * * * *

(9) For Group II storm water dischargers (as defined in § 122.26(b)(3)) only, a brief narrative description of:

(i) The drainage area, including an estimate of the size and nature of the area;

(ii) The receiving water; and

(iii) Any treatment applied to the discharge.

(g) * * *

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this subparagraph. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours, and a minimum of one to four (4) grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample shall be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of four grab samples for discharges lasting four or more hours. In addition, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i) * * *

(B) The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(i)(A) of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

* * * * *

(iii)(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(ii) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for pollutants listed in Table II of Appendix D (the organic toxic pollutants).

* * * * *

(9) *Used or manufactured toxics.* A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue the permit.

(10) *Storm water point source exemption.*

(i) An applicant that qualifies as a Group II storm water discharger under § 122.26(b)(3) is exempt from the requirements of paragraphs (f)(7) and (g) of this section, unless the Director requests such information.

(ii) For the purpose of paragraph (g)(3) of this section, storm water point sources may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation that the estimate is based on.

(iii) The Director may require additional information under paragraph (g)(13) of this section, and may request any Group II storm water dischargers to comply with paragraph (g) of this section.

* * * * *

(k) * * *

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under Subpart E of Part 124 within 30 days of issuance of the public notice of the initial determination. If all parties to the evidentiary hearing on the determination agree, the Regional Administrator may defer the hearing until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

* * * * *

2. Section 122.22 is amended by revising paragraph (b) introductory text and (b)(2) to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) All reports required by permits, other information requested by the Director, and all permit applications submitted for Group II storm water discharges under § 122.26(b)(3) shall be signed by a person described in paragraph (a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

* * * * *

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

* * * * *

3. Section 122.26 is revised to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Storm water point sources, as defined in this section, are point sources subject to the NPDES permit program. The Director may issue an NPDES permit or permits for discharges into waters of the United States from a storm water point source covering all conveyances which are a part of that storm water discharge. Where there is more than one owner or operator of a single system of such conveyances, any or all discharges into the storm water discharge system may be identified in the application submitted by the owner or operator of the portion of the system that discharges directly into waters of the United States. Any such application shall include all information regarding discharges into the system that would be required if the dischargers submitted separate applications. Dischargers so identified shall not require a separate permit unless the Director specifies otherwise. Any permit covering more than one owner or operator shall identify the effluent limitations, if any, which apply to each owner or operator. Where there is more than one owner or operator, no discharger into the storm water discharge may be subject to a permit condition for discharges into the storm water discharge other than its own discharges into that system without its consent. All dischargers into a storm water discharge system must either be covered by an individual permit or a permit issued to the owner or operator of the portion of the system that directly discharges. (See § 122.21(c)(2) for application deadline for existing storm water point sources.)

(b) *Definitions.* (1) "Storm water point source" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which:

(i) Is located at an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974);

(ii) Discharges from lands or facilities used for industrial or commercial activities; or

(iii) Is designated under paragraph (c) of this section. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits, but are not "storm water point sources".

(2) "Group I storm water discharge" means any "storm water point source" which is:

(i) Subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards;

(ii) Designated under paragraph (c) of this section; or

(iii) Located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas and material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.

(3) "Group II storm water discharge" means any "storm water point source" not included in paragraph (b)(2) of this section. (See § 122.21(g)(10) for exemption from certain apllication requirements.)

(4) A conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which does not constitute a "storm water point source" under paragraph (b)(1) of this section is not considered a point source subject to the requirements of CWA.

(5) Whether a system of conveyances is or is not a storm water point source for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA. See 40 CFR 35.925–21.

(c) *Case-by-case designation of storm water discharges.* The Director may designate a conveyance or system of conveyances primarily used for collecting and conveying storm water runoff as a storm water point source. This designation may be made to the extent allowed or required by EPA promulgated effluent limitations guidelines for point sources in the storm water discharge category or when:

(1) A Water Quality Management plan under section 208 of CWA which contains requirements applicable to such point sources is approved; or

(2) The Director determines that a storm water discharge is a significant contributor of pollution to the waters of the United States. In making this determination the Director shall consider the following factors:

(i) The location of the discharge with respect to waters of the United States;

(ii) The size of the discharge;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

4. Section 122.28 is amended by revising paragraph (a)(2) as follows:

§ 122.28 General permits (applicable to State NPDES Programs, see § 123.25).

(a) * * *

(2) *Sources.* The general permit may be written to regulate, within the area described in paragraph (a)(1) of this section, either:

(i) Storm water point sources; or

(ii) A category of point sources other than storm water point sources if the sources all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes;

(C) Require the same effluent limitation or operating conditions;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

* * * * *

5. Section 122.29 is amended by revising paragraphs (b), (c)(3), and (d)(4), redesignating paragraph (c)(5) as (c)(5)(ii) and adding a new paragraph (c)(5)(i) to read as follows:

§ 122.29 New sources and new dischargers.

* * * * *

(b) *Criteria for new source determination.*

(1) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in § 122.2, and

(i) It is constructed at a site at which no other source is located; or

(ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraphs (b)(1) (i), (ii), or (iii) of this section is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 122.2.

(3) Construction on a site at which an existing source is located results in a modification subject to § 122.62 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (b)(1) (ii) or (iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under § 122.2 has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

(c) * * *

(3) The Regional Administrator, to the extent allowed by law, shall issue, condition (other than imposing effluent limitations), or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse impacts of the proposed action and a review of the recommendations contained in the EIS or finding of no significant impact.

* * * * *

(5)(i) The commencement of on-site construction in violation of paragraph (c) of this section shall constitute grounds for denial of a permit.

* * * * *

(d) * * *

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit

containing a compliance schedule under § 122.47(a)(2)

* * * * *

Subpart C—Permit Conditions

6. Section 122.41 is amended by revising paragraphs (e), (l)(1), (m)(4)(i)(B), and (n)(3)(i) to read as follows:

§ 122.41 Conditions applicable to all permits.

* * * * *

(3) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

* * * * *

(l) *Reporting requirements.*—(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in § 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under § 122.42(a)(1).

* * * * *

(m) * * *

(4) * * *

(i) * * *

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

* * * * *

(n) * * *

(3) * * *

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

* * * * *

7. Section 122.42 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(iii), and (a)(2) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

* * * * *

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7); or

* * * * *

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) Five hundred micrograms per liter (500 μg/l);

(ii) One milligram per liter (1 mg/l) for antimony;

(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21(g)(7).

(iv) The level established by the Director in accordance with § 122.44(f).

* * * * *

8. Section 122.44 is amended by revising paragraphs (d)(3) and (d)(9); by removing paragraph (e)(1)(ii); and by redesignating paragraph (e)(1)(i) as paragraph (e)(1), to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) * * *

(3) Conform to the conditions to a State certification under section 401 of the CWA that meets the requirements of § 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the Agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the CWA;

* * * * *

(9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and section 511 of the CWA, when EPA is the permit issuing authority. (See § 122.29(c)).

* * * * *

9. Section 122.45 is amended by revising paragraphs (b)(2), (c), and (g), deleting paragraph (h), and redesignating paragraphs (i) and (j) as (h) and (i) to read as follows:

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2)(i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(ii)(A)(*1*) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(*2*) *For the automotive manufacturing industry* only, the Regional Administrator shall, and the State Director may establish a condition under paragraph (b)(2)(ii)(A)(*1*) of this section if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(B) If the Director establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

(*1*) The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(*2*) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under paragraph (b)(2)(ii)(B)(*1*) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(*3*) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(c) *Metals.* All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:

(1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or

(3) All approved analytical methods for the metal inherently measure only its dissolved form (*e.g.*, hexavalent chromium).

* * * * *

(g) *Pollutants in intake water.*

(1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.

(5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

* * * * *

10. Section 122.47 is amended by revising paragraph (a)(2) to read as follows:

§ 122.47 Schedules of compliance.

(a) * * *

(2) The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

* * * * *

11. Section 122.49 is amended by revising paragraph (g) as follows:

§ 122.49 Considerations under Federal law.

* * * * *

(g) The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, may require preparation of an Environmental Impact Statement and consideration of EIS-related permit conditions (other than effluent limitations) as provided in § 122.29(c).

12. Section 122.50 is amended by revising paragraph (a)(2) to read as follows:

§ 122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State NPDES programs, see § 123.25).

(a) * * *

(2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

* * * * *

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

13. Section 122.62 is amended by removing paragraph (a)(12), redesignating paragraphs (a) (13), (14), and (15) as (a) (12), (13), and (14) respectively and adding new paragraphs (a) (15), (16), (17), and (18) to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

(15) When the permittee's effluent limitations were imposed under section 402(a)(1) of the CWA and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitations be made less stringent than the subsequent guideline.

(16) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(17) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(18) When the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following regulations issued under that Settlement Agreement:

40 CFR 122.45(b)
40 CFR 122.45(c)
40 CFR 122.50

* * * * *

14. Section 122.63 is amended by adding a new paragraph (f) to read as follows:

§ 122.63 Minor modifications of permits.

* * * * *

(f) When the permit becomes final and effective on or after March 9, 1982, conform to changes respecting §§ 122.41(e), 122.41(l), 122.41(m)(4)(i)(B), 122.41(n)(3)(i) and 122.42(a) issued September 26, 1984.

Appendix D—NPDES Permit Application Testing Requirements (§ 122.21)

15. Appendix D of Part 122 is amended by revising the heading for Table III to read as follows:

Table III: Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements

16. Section 124.13 is revised to read as follows:

§ 124.13 Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Regional Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under § 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time.)

17. Section 124.14 is amended by redesignating paragraphs (a) through (d) as (b) through (e) and by adding a new paragraph (a) to read as follows:

§ 124.14 Reopening of the public comment period.

(a)(1) The Regional Administrator may order the public comment period reopened if the procedures of this paragraph could expedite the decisionmaking process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Regional Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than sixty days after public notice under paragraph (a)(2) of this section, set by the Regional Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than twenty days after the date set for filing of the material, set by the Regional Administrator.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) shall apply.

(3) On his own motion or on the request of any person, the Regional Administrator may direct that the requirements of paragraph (a)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.

* * * * *

Subpart D—Specific Procedures Applicable to NPDES Permits

18. Section 124.56 is amended by adding a new paragraph (b)(1)(iv) to read as follows:

* * * * *

§ 124.56 Fact sheets.

(b) * * *

(1) * * *

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3).

* * * * *

Subpart E—Evidentiary Hearings for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

19. Section 124.76 is revised to read as follows:

§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.

In any case where the Regional Administrator elected to apply the requirements of § 124.14(a), no evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit, unless good cause is shown for the failure to submit it. No issues shall be raised by any party that were not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues or introduce new information shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.15; or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced. Good cause exists for the introduction of data available on operation authorized under § 124.60(a)(2).

20. Section 124.78 is amended by revising paragraph (a)(1) to read as follows:

§ 124.78 Ex parte communications.

(a) * * *

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate, and present the evidence, arguments, and position of the Agency in the evidentiary hearing or nonadversary panel hearing. Any EPA employee, consultant, or contractor who is called as a witness by EPA trial staff, or who assisted in the formulation of the draft permit which is the subject of the hearing, shall be designated as a member of the Agency trial staff;

* * * * *

21. Section 124.85 is amended by adding a new paragraph (e) to read as follows:

§ 124.85 Hearing procedure.

* * * * *

(e) *Admission of Evidence on Environmental Impacts.* If a hearing is granted under this Subpart for a new source subject to NEPA, the Presiding Officer may admit evidence relevant to any environmental impacts of the permitted facility if the evidence would be relevant to the Agency's obligation under § 122.29(c)(3). If the source holds a final EPA-issued RCRA, PSD, or UIC permit, or an ocean dumping permit under the Marine Protection, Research, and Sanctuaries Act (MPRSA), no such evidence shall be admitted nor shall cross-examination be allowed relating to: (1) Effects on air quality, (2) effects attributable to underground injection or hazardous waste management practices, or (3) effects of ocean dumping subject to the MPRSA, which were considered or could have been considered in the PSD, RCRA, UIC, or MPRSA permit issuance proceedings. However, the presiding officer may admit without cross-examination or any supporting witness relevant portions of the record of PSD, RCRA, UIC, or MPRSA permit issuance proceedings.

Subpart F—Non-Adversary Panel Procedures

22. Section 124.120 is amended by revising paragraph (a) as follows:

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more EPA temporary or permanent employees having special expertise or responsibility in areas related to the hearing issue, none of whom shall have taken part in formulating the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership, at the discretion of the Regional Administrator, may change or may include persons not employed by EPA.

* * * * *

23. Section 124.121 is amended by revising paragraphs (a)(1), (b) and (f) to read as follows:

§ 124.121 Opportunity for cross-examination.

(a) * * *

(1) The disputed issue(s) of material fact. This shall include an explanation of why the questions at issue are factual, the extent to which they are in dispute in light of the then existing record, and the extent to which they are material to the decision on the application; and

* * * * *

(b) After receipt of all motions for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each request. No cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements, or on questions of law, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in permit issuance proceedings. Orders granting requests for cross-examination shall be served on all parties and shall specify:

* * * * *

(f) The provisions of §§ 124.85(d)(2) and 124.84(e) apply to proceedings under this Subpart.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

24. Section 125.3 is amended by revising paragraph (c)(2), redesignating paragraphs (d) through (g) as (e) through (h) and adding a new paragraph (d) to read as follows:

§ 125.3 Technology-based treatment requirements in permits.

* * * * *

(c) * * *

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in § 125.3(d) and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

(ii) Any unique factors relating to the applicant.

* * * * *

(d) In setting case-by-case limitations pursuant to § 125.3(c), the permit writer must consider the following factors:

(1) For BPT requirements:

(i) The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

(ii) The age of equipment and facilities involved;

(iii) The process employed;

(iv) The engineering aspects of the application of various types of control techniques;

(v) Process changes; and

(vi) Non-water quality environmental impact (including energy requirements).

(2) For BCT requirements:

(i) The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

(ii) The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

(iii) The age of equipment and facilities involved;

(iv) The process employed;

(v) The engineering aspects of the application of various types of control techniques;

(vi) Process changes; and

(vii) Non-water quality environmental impact (including energy requirements).

(3) For BAT requirements:

(i) The age of equipment and facilities involved;

(ii) The process employed;

(iii) The engineering aspects of the application of various types of control techniques;

(iv) Process changes;

(v) The cost of achieving such effluent reduction; and

(vi) Non-water quality environmental impact (including energy requirements).

* * * * *

BILLING CODE 6560-50-M

INSTRUCTIONS — FORM 2c

Application for Permit to Discharge Wastewater

EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL OPERATIONS

This form must be completed by all applicants who check "yes" to item II-C in Form 1.

Public Availability of Submitted Information.

Your application will not be considered complete unless you answer every question on this form and on Form I. If an item does not apply to you, enter "NA" *(for not applicable)* to show that you considered the question.

You may not claim as confidential any information required by this form or Form I, whether the information is reported on the forms or in an attachment. This information will be made available to the public upon request.

Any information you submit to EPA which goes beyond that required by this form or Form I you may claim as confidential, but claims for information which is effluent data will be denied. If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice to you. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations at 40 CFR Part 2.

Definitions

All significant terms used in these instructions and in the form are defined in the glossary found in the General Instructions which accompany Form 1.

EPA ID Number

Fill in your EPA Identification Number at the top of each page of Form 2c. You may copy this number directly from item I of Form I.

Item I

You may use the map you provided for item XI of Form I to determine the latitude and longitude of each of your outfalls and the name of the receiving water.

Item II-A

The line drawing should show generally the route taken by water in your facility from intake to discharge. Show all operations contributing wastewater, including process and production areas, sanitary flows, cooling water, and stormwater runoff. You may group similar operations into a single unit, labeled to correspond to the more detailed listing in item II-B. The water balance should show average flows. Show all significant losses of water to products, atmosphere, and discharge. You should use actual measurements whenever available; otherwise use your best estimate. An example of an acceptable line drawing appears in Figure 2c-I to these instructions.

Item II-B

List all sources of wastewater to each outfall. Operations may be described in general terms *(for example, "dye-making reactor" or "distillation tower")*. You may estimate the flow contributed by each source if no data are available. For stormwater discharges you may estimate the average flow, but you must indicate the rainfall event upon which the estimate is based and the method of estimation. For each treatment unit, indicate its size, flow rate, and retention time, and describe the ultimate disposal of any solid or liquid wastes not discharged. Treatment units should be listed in order and you should select the proper code from Table 2c-1 to fill in column 3-b for each treatment unit. Insert "XX" into column 3-b if no code corresponds to a treatment unit you list. If you are applying for a permit for a privately owned treatment works, you must also identify all of your contributors in an attached listing.

Item II-C

A discharge is intermittent unless it occurs without interruption during the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. A discharge is seasonal if it occurs only during certain parts of the year. Fill in every applicable column in this item for each source of intermittent or seasonal discharges. Base your answers on actual data whenever available; otherwise, provide your best estimate. Report the highest daily value for flow rate and total volume in the "Maximum Daily" columns *(columns 4-1-2 and 4-b-2)*. Report the average of all daily values measured during days when discharge occurred within the last year in the "Long Term Average" columns *(columns 4-a-I and 4-b-I)*.

Item III-A

All effluent guidelines promulgated by EPA appear in the Federal Register and are published annually in 40 CFR Subchapter N. A guideline applies to you if you have any operations contributing process wastewater in any subcategory covered by a BPT, BCT, or BAT guideline. If you are unsure whether you are covered by a promulgated effluent guideline, check with your EPA Regional office *(Table 1 in the Form 1 instructions)*. You must check "yes" if an applicable effluent guideline has been promulgated, even if the guideline limitations are being contested in court. If you believe that a promulgated effluent guideline has been remanded for reconsideration by a court and does not apply to your operations, you may check "no."

Item III-B

An effluent guideline is expressed in terms of production *(or other measure of operation)* if the limitation is expressed as mass of pollutant per operational parameter; for example, "pounds of BOD per cubic foot of logs from which bark is removed," or "pounds of TSS per megawatt hour of electrical energy consumed by smelting furnace". An example of a guideline not expressed in terms of a measure of operation is one which limits the concentration of pollutants.

Item III-C

This item must be completed only if you checked "yes" to item III-B. The production information requested here is necessary to apply effluent guidelines to your facility and you cannot claim it as confidential. Report quantities in the units of measurement used in the applicable effluent guideline. The production figures provided must be based on actual daily production and not on design capacity or on predictions of future operations. To obtain alternate limits under 40 CFR 122.45(b)(2)(ii), you must define your maximum production capability and demonstrate to the Director that your actual production is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

Item IV-A

If you check "yes" to this question, complete all parts of the chart, or attach a copy of any previous submission you have made to EPA containing same information.

Item IV-B

You are not required to submit a description of future pollution control projects if you do not wish to or if none is planned.

Item V-A, B, C, and D

The items require you to collect and report data on the pollutants discharged for each of your outfalls. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following general instructions apply to the entire item.

General Instructions

Part A requires you to report at least one analysis for each pollutant listed. Parts B and C require you to report analytical data in two ways. For some pollutants, you may be required to mark 'X' in the "Testing Required" column *(column 2-a, Part C)*, and text *(sample and analyze)* and report the levels of the pollutants in your discharge whether or not you expect them to be present in your discharge. For all others, you must mark 'X' in either the "Believe Present" column or the "Believe Absent" column *(columns 2-a or 2-b, Part B, and columns 2-b or 2-c, Part C)* based on your best estimate, and test for those which you believe to be present. *(See specific instructions on the form and below for Parts A through D.)* Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, maintenance chemicals, inter-

FORM 2C — INSTRUCTIONS *(continued)*

ITEM V — A, B, C, and D *(continued)*

mediate and final products and byproducts, and any previous analyses known to you of your effluent or similar effluent. *(For example, if you manufacture pesticides, you should expect those pesticides to be present in contaminated stormwater runoff.)* If you would expect a pollutant to be present solely as a result of its presence in your intake water, you must mark "Believe Present" but you are not required to analyze for that pollutant. Instead, mark an 'X' in the "Intake" column.

A. Reporting. All levels must be reported as concentration and as total mass. You may report some or all of the required data by attaching separate sheets of paper instead of filling out pages V-l to V-9 if the separate sheets contain all the required information in a format which is consistent with pages V-l to V-9 in spacing and in identification of pollutants and columns. *(For example, the data system used in your GC/MS analysis may be able to print data in the proper format.)* Use the following abbreviations in the columns headed "Units" *(column 3, Part A, and column 4, Parts B and C)*.

Concentration		**Mass**	
ppm	parts per million	lbs	pounds
mg/l	milligrams per liter	ton	tons *(English tons)*
ppb	parts per billion	mg	milligrams
ug/l	micrograms per liter	g	grams
		kg	kilograms
		T	tonnes *(metric tons)*

All reporting of values for metals must be in terms of "total recoverable metal," unless:

(1) An applicable, promulgated effluent limitation or standard specifies the limitation for the metal in dissolved, valent, or total form; or

(2) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium); or

(3) The permitting authority has determined that in establishing case-by-case limitations it is necessary to express the limitations on the metal in dissolved, valent, or total form to carry out the provisions of the CWA.

If you measure only one daily value, complete only the "Maximum Daily Values" columns and insert '1' into the "Number of Analyses" column *(columns 2-a and 2-d, Part A, and column 3-a, 3-d, Parts B and C)*. The permitting authority may require you to conduct additional analyses to further characterize your discharges. For composite samples, the daily value is the total mass or average concentration found in a composite sample taken over the operating hours of the facility during a 24-hour period; for grab samples, the daily value is the arithmetic or flow-weighted total mass or average concentration found in a series of at least four grab samples taken over the operating hours of the facility during a 24-hour period.

If you measure more than one daily value for a pollutant and those values are representative of your wastestream, you must report them. You must describe your method of testing and data analysis. You also must determine the average of all values within the last year and report the concentration and mass under the "Long Term Average Values" columns *(column 2-c, Part A, and column 3-c, Parts B and C)*, and the total number of daily values under the "Number of Analyses" columns *(column 2-d, Part A, and columns 3-d, Parts B and C)*. Also, determine the average of all daily values taken during each calendar month, and report the highest average under the "Maximum 30-day Values" columns *(column 2-c, Part A, and column 3-b, Parts B and C)*.

B. Sampling: The collection of the samples for the reported analyses should be supervised by a person experienced in performing sampling of industrial wastewater. You may contact your EPA or State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. Any specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc. The time when you sample should be representative of your normal operation, to the extent feasible, with all processes which contribute wastewater in normal operation, and with your treatment system operating properly with no system upsets. Samples should be collected from the center of the flow channel, where turbulence is at a maximum, at a site specified in your present permit, or at any site adequate for the collection of a representative sample.

For pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform, grab samples must be used. For all other pollutants 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period of greater than 24 hours. For stormwater discharges a minimum of one to four grab samples may be taken, depending on the duration of the discharge. One grab must be taken in the first hour *(or less)* of discharge, with one additional grab *(up to a minimum of four)* taken in each succeeding hour of discharge for discharges lasting four or more hours. The Director may waive composite sampling for any outfall for which you demonstrate that use of an automatic sampler is infeasible and that a minimum of four grab samples will be representative of your discharge.

Grab and composite samples are defined as follows:

Grab sample: An individual sample of at least 100 milliliters collected at a randomly-selected time over a period not exceeding 15 minutes.

Composite sample: A combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24 hour period. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. Four (4) *(rather than eight)* aliquots or grab samples should be collected for VOA. These four samples should be collected during actual hours of discharge over a 24 hour period and need not be flow proportioned. Only one analysis is required.

The Agency is currently reviewing sampling requirements in light of recent research on testing methods. Upon completion of its review, the Agency plans to propose changes to the sampling requirements.

Data from samples taken in the past may be used, provided that:

All data requirements are met;

Sampling was done no more than three years before submission; and

All data are representative of the present discharge.

Among the factors which would cause the data to be unrepresentative are significant changes in production level, changes in raw materials, processes, or final products, and changes in wastewater treatment. When the Agency promulgates new analytical methods in 40 CFR Part 136, EPA will provide information as to when you should use the new methods to generate data on your discharges. Of course, the Director may request additional information, including current quantitative data, if she or he determines it to be necessary to assess your discharges.

C. Analysis: You must use test methods promulgated in 40 CFR Part 136; however, if none has been promulgated for a particular pollutant, you may use any suitable method for measuring the level of the pollutant in your discharge provided that you submit a description of the method or a reference to a published method. Your description should include the sample holding time, preservation techniques, and the quality control measures which you used. If you have two or more substantially identical outfalls, you may request permission from your permitting authority to sample and analyse only one outfall and submit the results of the analysis

FORM 2C — INSTRUCTIONS *(continued)*

ITEM V — A, B, C, and D *(continued)*

for other substantially identical outfalls. If your request is granted by the permitting authority, on a separate sheet attached to the application form, identify which outfall you did test, and describe why the outfalls which you did not test are substantially identical to the outfall which you did test.

D. Reporting of Intake Data: You are not required to report data under the "Intake" columns unless you wish to demonstate your eligibility for a "net" effluent limitation for one or more pollutants, that is, an effluent limitation adjusted by subtracting the average level of the pollutant(s) present in your intake water. NPDES regulations allow net limitations only in certain circumstances. To demonstrate your eligibility, under the "Intake" columns report the average of the results of analyses on your intake water *(if your water is treated before use, test the water after it is treated)*, and discuss the requirements for a net limitation with your permitting authority.

Part V-A

Part V-A must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. However, at your request, the Director may waive the requirement to test for one or more of these pollutants, upon a determination that available information is adequate to support issuance of the permit with less stringent reporting requirements for these pollutants. You also may request a waiver for one or more of these pollutants for your category or subcategory from the Director, Office of Water Enforcement and Permits. See discussion in General Instructions to item V for definitions of the columns in Part A. The "Long Term Average Values" column *(column 2-c)* and "Maximum 30-day Values" column *(column 2-b)* are not compulsory but should be filled out if data are available.

Part V-B

Part V-B must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. You must report quantitative data if the pollutant(s) in question is limited in an effluent limitations guideline either directly, or indirectly but expressly through limitation on an indicator *(e.g., use of TSS as an indicator to control the discharge of iron and aluminum)*. For other discharged pollutants you must provide quantitative data or explain their presence in your discharge. Upon request the Director, Office of Water Enforcement and Permits, may waive the requirement to test for pollutantsfor an industrial category or subcategory. Your request must be supported by data representative of the industrial category or subcategory in question. The data must demonstrate that individual testing for each applicant is unnecessary, because the facilities in the category or subcategory discharge substantially identical levels of the pollutant or discharge the pollutant uniformly at sufficiently low levels.The "Long Term Average Values" column *(column 3-c)* and "Maximum 30-day Values" column *(column 30b)* are not compulsory but should be filled out if data are available.

Part V-C

Table 2c-2 lists the 34 "primary" industry categories in the left-hand column. For each outfall, if any of your processes which contribute wastewater falls into one of those categories, you must mark 'X' in "Testing Required" column *(column 2-a)* and test for (I) all of the toxic metals, cyanide, and total phenols, and (2) the organic toxic pollutants contained in Table 2c-2 as applicable to your category, unless you qualify as a small business *(see below)*. The organic toxic pollutants are listed by GC/MS fractions on pages V-4 to V-9 in Part V-C. For example, the Organic Chemicals Industry has an asterisk in all four fractions; therefore, applicants in this category must test for all organic toxic pollutants in Part V-C. The inclusion of total phenols in Part V-C is not intended to classify total phenols as a toxic pollutant. If you are applying for a permit for a privately owned treatment works, determine your testing requirements on the basis of the industry categories of your contributors. When you determine which industry category you are in to find your testing requirements, you are not determining your category for any other purpose and you are not giving up your right to challenge your inclusion in that category *(for example, for deciding whether an effluent guideline is applicable)* before your permit is issued. For all other cases *(secondary industries, nonprocess wastewater outfalls, and non-required GC/MS fractions)*, you must mark "X" in either the "Believed Present" column *(column 2-b)* or the "Believed Absent" column *(column 2-c)* for each pollutant. For every pollutant you know or have reason to believe is present in your discharge in concentrations of 10 ppb or greater, you must report quantitative data. For acrolein, acrylonitrile, 2, 4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, where you expect these four pollutants to be discharged in concentrations of 100 ppb or greater, you must report quantitative data. For every pollutant expected to be discharged in concentrations less than the thresholds specified above, you must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. At your request the Director, Office of Water Enforcement and Permits, may waive the requirement to test for pollutants for an industrial category or subcategory. Your request must be supported by data representatives of the industrial category or subcategory in question. The data must demonstrate that individual testing for each applicant is unnecessary, because the facilities in question discharge substantially identical levels of the pollutant, or discharge the pollutant uniformly at sufficiently low levels. If you qualify as a small business *(see below)* you are exempt from testing for the organic toxic pollutants, listed on pages V-4 to V-9 in Part C. For pollutants in intake water, see discussion in General Instructions to this item. The "Long Term Average Values" column *(column 3-c)* and "Maximum 30-day Values" column *(column 30-b)* are not compulsory but should be filled out if data are available.You are required to mark "Testing Required" for dioxin if you use or manufacture one of the following compounds:

(a) 2,4,5-trichlorophenoxy acetic acid, (2,4,5-T);

(b) 2-(2,4,5-trichlorophenoxy) propanoic acid, (Silvex, 2,4,5-TP);

(c) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate, (Erbon);

(d) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate, (Ronnel);

(e) 2,4,5,-trichlorophnol, (TCP); or

(f) hexachlorophene, (HCP).

If you mark "Testing Required" or "Believed Present," you must perform a screening analysis for dioxins, using gas chromotography with an electron capture detector. A TCDD standard for quantitation is not required. Describe the results of this analysis in the space provided; for example, "no measurable baseline deflection at the retention time of TCDD" or "a measurable peak within the tolerances of the retention time of TCDD." The permitting authority may require you to perform a quantitative analysis if you report a positive result. The Effluent Guidelines Division of EPA has collected and analyzed samples from some plants for the pollutants listed in Part C in the course of its BAT guidelines development program. If your effluents are sampled and analyzed as part of this program in the last three years, you may use these data to answer Part C provided that the permitting authority approves, and provided that no process change or change in raw materials or operating practices has occurred since the samples were taken that would make the analyses unrepresentative of your current discharge.

Small Business Exemption: If you qualify as a "small business," you are exempt from the reporting requirements for the organic toxic pollutants, listed on pages V-4 to V-9 in Part C. There are two ways in which you can qualify as a "small business." If your facility is a coal mine, and if your probable total annual production is less than 100,000 tons per year, you may submit past production data or estimated future production *(such as a schedule of estimated total production under 30 CFR § 795.14(c))* instead of conducting analyses for the organic toxic pollutants. If your facil-

FORM 2C — INSTRUCTIONS *(continued)*

ITEM V — A, B, C, and D *(continued)*

ity is not a coal mine, and if your gross total annual sales for the most recent three years average less than $100,000 per year *(in second quarter 1980 dollars)*, you may submit sales data for those years instead of conducting analyses for the organic toxic pollutants. The production or sales data must be for the facility which is the source of the discharge. The data should not be limited to production or sales for the process or processs which contribute to the discharge, unless those are the only processes at your facility. For sales data, in situations involving intracorporate transfer of goods and services, the transfer price per unit should approximate market prices for those goods and services as closely as possible. Sales figures for years after 1980 should be indexed to the second quarter of 1980 by using the gross national product price deflator *(second quarter of 1980* = 100). This index is available in *National Income and Product Accounts of the United States (Department of Commerce, Bureau of Economic Analysis).*

Part V-D

List any pollutants in Table 2c-3 that you believe to be present and explain why you believe them to be present. No analysis is required, but if you have analytical data, you must report it.

Note: Under 40 CFR 117.12(a)(2), certain discharges of hazardous substances *(listed in Table 2c-4 of these instructions)* may be exempted from the requirements of section 311 of CWA, which establishes reporting requirements, civil penalties and liability for cleanup costs for spills of oil and hazardous substances. A discharge of a particular substance may be exempted if the origin, source, and amount of the discharged substances are identified in the NDPES permit application or in the permit, if the permit contains a requirement for treatment of the discharge, and if the treatment is in place. To apply for an exclusion of the discharge of any hazardous substance from the requirements of section 311, attach additional sheets of paper to your form, setting forth the following information:

1. The substance and the amount of each substance which may be discharged.
2. The origin and source of the discharge of the substance.
3. The treatment which is to be provided for the discharge by:
   a. An onsite treatment system separate from any treatment system treating your normal discharge;
   b. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above; or
   c. Any combination of the above.

See 40 CFR §117.12(a)(2ind (C), published on August 29, 1979, in 44 FR 50766, or contact your Regional Office *(Table 1 on Form 1, Instructions)*, for further information on exclusions from section 311.

Item VI

This requirement applies to current use or manufacture of a toxic pollutant as an intermediate or final product or byproduct. The Director may waive or modify the requirement if you demonstrate that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue your permit. You may not claim this information as confidential; however, you do not have to distinguish between use or production of the pollutants or list the amounts. Under NPDES regulations your permit will contain limits to control all pollutants you report in answer to this question, as well as all pollutants reported in Item V at levels exceeding the technology-based limits appropriate to your facility.

Item VII

Self explanatory. The permitting authority may ask you to provide additional details after your application is received.

Item IX

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(12) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, ... shall upon conviction, be punished by a fine of no more than $10,000 or by imprisonment for more than six months, or both."

40 CFR Part 122.22 requires the certification to be signed as follows:

(A) *For a corporation:* by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policyor decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 *(in second-quarter 1980 dollars)*, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegation of authority to responsible corporate officers identified in §122.22(a)(1)[illegible] The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate position under §122.22(a)(1)(ii) rather than to specific individuals.

(B) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(C) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal Agency includes (i) the chief executive officer of the Agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the Agency *(e.g., Regional Administrators of EPA)*. Applications for Group II stormwater dischargers may be signed by a duly authorized representative *(as defined in 40 CFR 122.22(b))* of the individuals identified above.

CODES FOR TREATMENT UNITS

PHYSICAL TREATMENT PROCESSES

1—A	Ammonia Stripping
1—B	Dialysis
1—C	Diatomaceous Earth Filtration
1—D	Distillation
1—E	Electrodialysis
1—F	Evaporation
1—G	Flocculation
1—H	Flotation
1—I	Foam Fractionation
1—J	Freezing
1—K	Gas—Phase Separation
1—L	Grinding *(Comminutors)*
1—M	Grit Removal
1—N	Microstraining
1—O	Mixing
1—P	Moving Bed Filters
1—Q	Multimedia Filtration
1—R	Rapid Sand Filtration
1—S	Reverse Osmosis *(Hyperfiltration)*
1—T	Screening
1—U	Sedimentation *(Settling)*
1—V	Slow Sand Filtration
1—W	Solvent Extraction
1—X	Sorption

CHEMICAL TREATMENT PROCESSES

2—A	Carbon Adsorption
2—B	Chemical Oxidation
2—C	Chemical Precipitation
2—D	Coagulation
2—E	Dechlorination
2—F	Disinfection *(Chlorine)*
2—G	Disinfection *(Ozone)*
2—H	Disinfection *(Other)*
2—I	Electrochemical Treatment
2—J	Ion Exchange
2—K	Neutralization
2—L	Reduction

BIOLOGICAL TREATMENT PROCESSES

3—A	Activated Sludge
3—B	Aerated Lagoons
3—C	Anaerobic Treatment
3—D	Nitrification—Denitrification
3—E	Pre—Aeration
3—F	Spray Irrigation/Land Application
3—G	Stabilization Ponds
3—H	Trickling Filtration

OTHER PROCESSES

4—A	Discharge to Surface Water
4—B	Ocean Discharge Through Outfall
4—C	Reuse/Recycle of Treated Effluent
4—D	Underground Injection

SLUDGE TREATMENT AND DISPOSAL PROCESSES

5—A	Aerobic Digestion
5—B	Anaerobic Digestion
5—C	Belt Filtration
5—D	Centrifugation
5—E	Chemical Conditioning
5—F	Chlorine Treatment
5—G	Composting
5—H	Drying Beds
5—I	Elutriation
5—J	Flotation Thickening
5—K	Freezing
5—L	Gravity Thickening
5—M	Heat Drying
5—N	Heat Treatment
5—O	Incineration
5—P	Land Application
5—Q	Landfill
5—R	Pressure Filtration
5—S	Pyrolysis
5—T	Sludge Lagoons
5—U	Vacuum Filtration
5—V	Vibration
5—W	Wet Oxidation

TABLE 2C-1

TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS INDUSTRY CATEGORY*

INDUSTRY CATEGORY	GC/MS FRACTION[1]			
	Volatile	Acid	Base/Neutral	Pesticide
Adhesives and sealants	X	X	X	—
Aluminum forming	X	X	X	—
Auto and other laundries	X	X	X	X
Battery manufacturing	X	—	X	—
Coal mining	X	X	X	X
Coil coating	X	X	X	—
Copper forming	X	X	X	—
Electric and electronic compounds	X	X	X	X
Electroplating	X	X	X	—
Explosives manufacturing	—	X	X	—
Foundries	X	X	X	—
Gum and wood chemicals	X	X	X	X
Inorganic chemicals manufacturing	X	X	X	—
Iron and steel manufacturing	X	X	X	—
Leather tanning and finishing	X	X	X	X
Mechanical products manufacturing	X	X	X	—
Nonferrous metals manufacturing	X	X	X	X
Ore mining	X	X	X	X
Organic chemicals manufacturing	X	X	X	X
Paint and ink formulation	X	X	X	X
Pesticides	X	X	X	X
Petroleum refining	X	X	X	X
Pharmaceutical preparations	X	X	X	—
Photographic equipment and supplies	X	X	X	X
Plastic and synthetic materials manufacturing	X	X	X	X
Plastic processing	X	—	—	—
Porcelain enameling	X	—	X	X
Printing and publishing	X	X	X	X
Pulp and paperboard mills	X	X	X	X
Rubber processing	X	X	X	—
Soap and detergent manufacturing	X	X	X	—
Steam electric power plants	X	X	X	—
Textile mills	X	X	X	X
Timber products processing	X	X	X	X

*See note at conclusion of 40 CFR Part 122, Appendix D (1983) for explanation of effect of suspensions on testing requirements for primary industry categories.

[1] The pollutants in each fraction are listed in Item V—C.

X = Testing required.

— = Testing not required.

TABLE 2C-2

TOXIC POLLUTANTS AND HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY APPLICANTS IF EXPECTED TO BE PRESENT

TOXIC POLLUTANT

Asbestos

HAZARDOUS SUBSTANCES

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxyacetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid

HAZARDOUS SUBSTANCES

Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine

HAZARDOUS SUBSTANCES

Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfonate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
TDE (Tetrachlorodiphenyl ethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofon
Triethanolamine
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

TABLE 2C-3

HAZARDOUS SUBSTANCES

1. Acetaldehyde
2. Acetic acid
3. Acetic anhydride
4. Acetone cyanohydrin
5. Acetyl bromide
6. Acetyl chloride
7. Acrolein
8. Acrylonitrile
9. Adipic acid
10. Aldrin
11. Allyl alcohol
12. Allyl chloride
13. Aluminum sulfate
14. Ammonia
15. Ammonium acetate
16. Ammonium benzoate
17. Ammonium bicarbonate
18. Ammonium bichromate
19. Ammonium bifluoride
20. Ammonium bisulfite
21. Ammonium carbamate
22. Ammonium carbonate
23. Ammonium chloride
24. Ammonium chromate
25. Ammonium citrate
26. Ammonium fluoroborate
27. Ammonium fluoride
28. Ammonium hydroxide
29. Ammonium oxalate
30. Ammonium silicofluoride
31. Ammonium sulfamate
32. Ammonium sulfide
33. Ammonium sulfite
34. Ammonium tartrate
35. Ammonium thiocyanate
36. Ammonium thiosulfate
37. Amyl acetate
38. Aniline
39. Antimony pentachloride
40. Antimony potassium tartrate
41. Antimony tribromide
42. Antimony trichloride
43. Antimony trifluoride
44. Antimony trioxide
45. Arsenic disulfide
46. Arsenic pentoxide
47. Arsenic trichloride
48. Arsenic trioxide
49. Arsenic trisulfide
50. Barium cyanide
51. Benzene
52. Benzoic acid
53. Benzonitrile
54. Benzoyl chloride
55. Benzyl chloride
56. Beryllium chloride
57. Beryllium fluoride
58. Beryllium nitrate
59. Butylacetate
60. n-Butylphthalate
61. Butylamine
62. Butyric acid
63. Cadmium acetate
64. Cadmium bromide
65. Cadmium chloride
66. Calcium arsenate
67. Calcium arsenite
68. Calcium carbide
69. Calcium chromate
70. Calcium cyanide
71. Calcium dodecylbenzenesulfonate
72. Calcium hypochlorite
73. Captan
74. Carbaryl
75. Carbofuran
76. Carbon disulfide
77. Carbon tetrachloride
78. Chlordane
79. Chlorine
80. Chlorobenzene
81. Chloroform
82. Chloropyrifos
83. Chlorosulfonic acid
84. Chromic acetate
85. Chromic acid
86. Chromic sulfate
87. Chromous chloride
88. Cobaltous bromide
89. Cobaltous formate
90. Cobaltous sulfamate
91. Coumaphos
92. Cresol
93. Crotonaldehyde
94. Cupric acetate
95. Cupric acetoarsenite
96. Cupric chloride
97. Cupric nitrate
98. Cupric oxalate
99. Cupric sulfate
100. Cupric sulfate ammoniated
101. Cupric tartrate
102. Cyanogen chloride
103. Cyclohexane
104. 2,4-D acid (2,4-Dichlorophenoxyacetic acid)
105. 2,4-D esters (2,4-Dichlorophenoxyacetic acid esters)
106. DDT
107. Diazinon
108. Dicamba
109. Dichlobenil
110. Dichlone
111. Dichlorobenzene
112. Dichloropropane
113. Dichloropropene
114. Dichloropropene-dichlopropropane mix
115. 2,2-Dichloropropionic acid
116. Dichlorvos
117. Dieldrin
118. Diethylamine
119. Dimethylamine
120. Dinitrobenzene
121. Dinitrophenol
122. Dinitrotoluene
123. Diquat
124. Disulfoton
125. Diuron
126. Dodecylbenzesulfonic acid
127. Endosulfan
128. Endrin
129. Epichlorohydrin
130. Ethion
131. Ethylbenzene
132. Ethylenediamine
133. Ethylene dibromide
134. Ethylene dichloride
135. Ethylene diaminetetracetic acid (EDTA)
136. Ferric ammonium citrate
137. Ferric ammonium oxalate
138. Ferric chloride
139. Ferric fluoride
140. Ferric nitrate
141. Ferric sulfate
142. Ferrous ammonium sulfate
143. Ferrous chloride
144. Ferrous sulfate
145. Formaldehyde
146. Formic acid
147. Fumaric acid
148. Furfural
149. Guthion
150. Heptachlor
151. Hexachlorocyclopentadiene
152. Hydrochloric acid
153. Hydrofluoric acid
154. Hydrogen cyanide
155. Hydrogen sulfite
156. Isoprene
157. Isopropanolamine dodecylbenzenesulfonate
158. Kelthane
159. Kepone
160. Lead acetate
161. Lead arsenate
162. Lead chloride
163. Lead fluoborate
164. Lead flourite
165. Lead iodide
166. Lead nitrate
167. Lead stearate
168. Lead sulfate
169. Lead sulfide
170. Lead thiocyanate
171. Lindane
172. Lithium chromate
173. Malathion
174. Maleic acid
175. Maleic anhydride
176. Mercaptodimethur
177. Mercuric cyanide
178. Mercuric nitrate
179. Mercuric sulfate
180. Mercuric thiocyanate
181. Mercurous nitrate
182. Methoxychlor
183. Methyl mercaptan
184. Methyl methacrylate
185. Methyl parathion
186. Mevinphos
187. Mexacarbate
188. Monoethylamine
189. Monomethylamine
190. Naled
191. Napthalene
192. Napthenic acid
193. Nickel ammonium sulfate
194. Nickel chloride
195. Nickel hydroxide
196. Nickel nitrate
197. Nickel sulfate
198. Nitric acid
199. Nitrobenzene
200. Nitrogen dioxide
201. Nitrophenol
202. Nitrotoluene
203. Paraformaldehyde

TABLE 2C-4

HAZARDOUS SUBSTANCES *(continued)*

204. Parathion
205. Pentachlorophenol
206. Phenol
207. Phosgene
208. Phosphoric acid
209. Phosphorus
210. Phosphorus oxychloride
211. Phosphorus pentasulfide
212. Phosphorus trichloride
213. Polychlorinated biphenyls (PCB)
214. Potassium arsenate
215. Potassium arsenite
216. Potassium bichromate
217. Potassium chromate
218. Potassium cyanide
219. Potassium hydroxide
220. Potassium permanganate
221. Propargite
222. Propionic acid
223. Propionic anhydride
224. Propylene oxide
225. Pyrethrins
226. Quinoline
227. Resorcinol
228. Selenium oxide
229. Silver nitrate
230. Sodium
231. Sodium arsenate
232. Sodium arsenite
233. Sodium bichromate
234. Sodium bifluoride
235. Sodium bisulfite
236. Sodium chromate
237. Sodium cyanide
238. Sodium dodecylbenzenesulfonate
239. Sodium fluoride
240. Sodium hydrosulfide
241. Sodium hydroxide
242. Sodium hypochlorite
243. Sodium methylate
244. Sodium nitrite
245. Sodum phosphate (dibasic)
246. Sodium phosphate (tribasic)
247. Sodium selenite
248. Strontium chromate
249. Strychnine
250. Styrene
251. Sulfuric acid
252. Sulfur monochloride
253. 2,4,5-T acid (2,4,5-Trichlorophenoxyacetic acid)
254. 2,4,5-T amines (2,4,5-Trichlorophenoxy acetic acid amines)
255. 2,4,5-T esters (2,4,5-Trichlorophenoxy acetic acid esters)
256. 2,4,5-T salts (2,4,5-Trichlorophenoxy acetic acid salts)
257. 2,4,5-TP acid (2,4,5-Trichlorophenoxy propenoic acid)
258. 2,4,5-TP acid esters (2,4,5-Trichlorophenoxy propanoic acid esters)
259. TDE (Tetrachlorodiphenyl ethane)
260. Tetraethyl lead
261. Tetraethyl pyrophosphate
262. Thallium sulfate
263. Toluene
264. Toxaphene
265. Trichlorofon
266. Trichloroethylene
267. Trichlorophenol
268. Triethanolamine dodecylbenzenesulfonate
269. Triethylamine
270. Trimethylamine
271. Uranyl acetate
272. Uranyl nitrate
273. Vanadium pentoxide
274. Vanadyl sulfate
275. Vinyl acetate
276. Vinylidene chloride
277. Xylene
278. Xylenol
279. Zinc acetate
280. Zinc ammonium chloride
281. Zinc borate
282. Zinc bromide
283. Zinc carbonate
284. Zinc chloride
285. Zinc cyanide
286. Zinc fluoride
287. Zinc formate
288. Zinc hydrosulfonate
289. Zinc nitrate
290. Zinc phenolsulfonate
291. Zinc phosphide
292. Zinc silicofluoride
293. Zinc sulfate
294. Zirconium nitrate
295. Zirconium potassium flouride
296. Zirconium sulfate
297. Zirconium tetrachloride

TABLE 2C-4 *(continued)*

LINE DRAWING

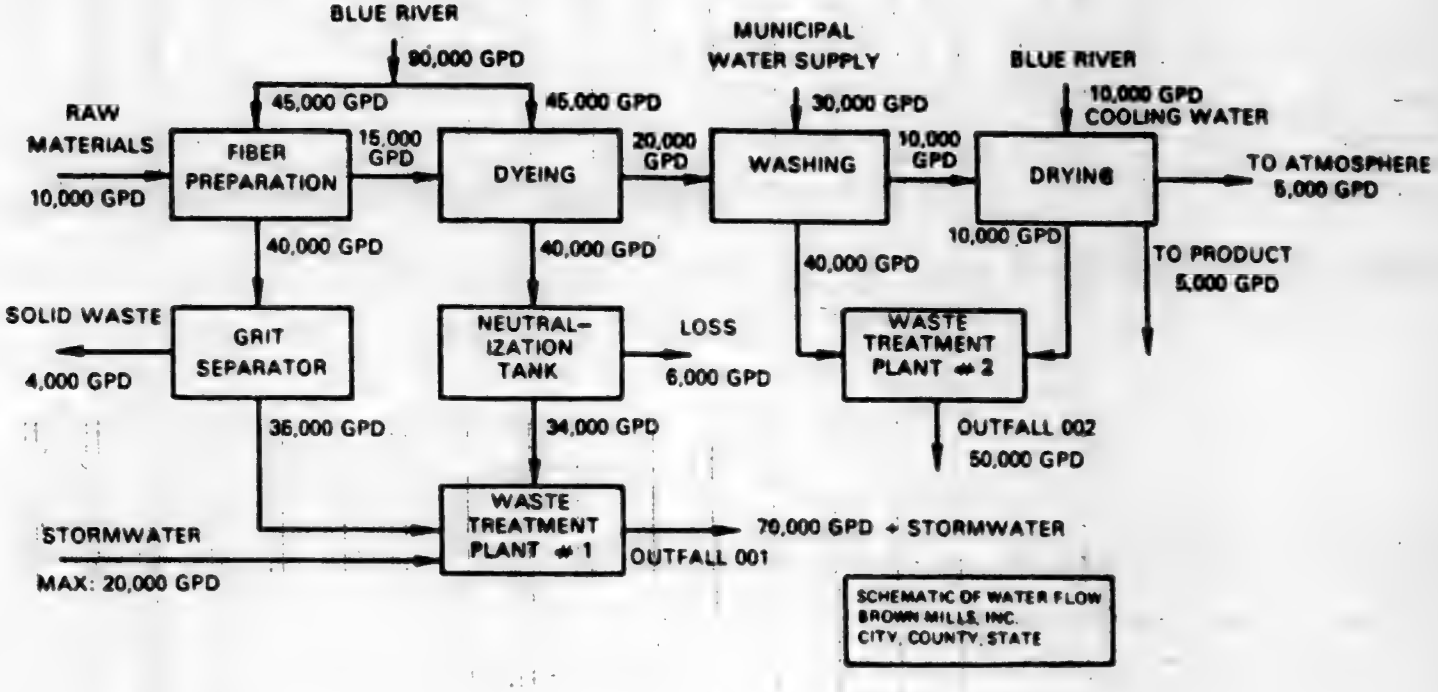
BLUE RIVER
90,000 GPD
45,000 GPD
45,000 GPD
MUNICIPAL WATER SUPPLY
30,000 GPD
BLUE RIVER
10,000 GPD COOLING WATER
RAW MATERIALS
10,000 GPD
FIBER PREPARATION
15,000 GPD
DYEING
20,000 GPD
WASHING
10,000 GPD
DRYING
TO ATMOSPHERE 5,000 GPD
40,000 GPD
40,000 GPD
40,000 GPD
10,000 GPD
TO PRODUCT 5,000 GPD
SOLID WASTE
4,000 GPD
GRIT SEPARATOR
NEUTRAL-IZATION TANK
LOSS
6,000 GPD
WASTE TREATMENT PLANT #2
OUTFALL 002
50,000 GPD
36,000 GPD
34,000 GPD
STORMWATER
MAX: 20,000 GPD
WASTE TREATMENT PLANT #1
70,000 GPD + STORMWATER
OUTFALL 001
SCHEMATIC OF WATER FLOW
BROWN MILLS, INC.
CITY, COUNTY, STATE

FIGURE 2C-1

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

Please print or type in the unshaded areas only.

FORM **2C** NPDES

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY

APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER

EXISTING MANUFACTURING, COMMERCIAL, MINING AND SILVICULTURAL OPERATIONS

Consolidated Permits Program

I. OUTFALL LOCATION

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. OUTFALL NUMBER *(list)*	B. LATITUDE			C. LONGITUDE			D. RECEIVING WATER *(name)*
	1. DEG.	2. MIN.	3. SEC.	1. DEG.	2. MIN.	3. SEC.	

II. FLOWS, SOURCES OF POLLUTION, AND TREATMENT TECHNOLOGIES

A. Attach a line drawing showing the water flow through the facility. Indicate sources of intake water, operations contributing wastewater to the effluent, and treatment units labeled to correspond to the more detailed descriptions in Item B. Construct a water balance on the line drawing by showing average flows between intakes, operations, treatment units, and outfalls. If a water balance cannot be determined *(e.g., for certain mining activities)*, provide a pictorial description of the nature and amount of any sources of water and any collection or treatment measures.

B. For each outfall, provide a description of: (1) All operations contributing wastewater to the effluent, including process wastewater, sanitary wastewater, cooling water, and storm water runoff; (2) The average flow contributed by each operation; and (3) The treatment received by the wastewater. Continue on additional sheets if necessary.

1. OUT-FALL NO *(list)*	2. OPERATION(S) CONTRIBUTING FLOW		3. TREATMENT	
	a. OPERATION *(list)*	b. AVERAGE FLOW *(include units)*	a. DESCRIPTION	b. LIST CODES FROM TABLE 2C-1

OFFICIAL USE ONLY *(effluent guidelines sub-categories)*

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

C. Except for storm runoff, leaks, or spills, are any of the discharges described in Items II-A or B intermittent or seasonal?

☐ **YES** *(complete the following table)* ☐ **NO** *(go to Section III)*

1. OUTFALL NUMBER *(list)*	2. OPERATION*(s)* CONTRIBUTING FLOW *(list)*	3. FREQUENCY		4. FLOW				
		a. DAYS PER WEEK *(specify average)*	b. MONTHS PER YEAR *(specify average)*	a. FLOW RATE *(in mgd)*		b. TOTAL VOLUME *(specify with units)*		c. DURATION *(in days)*
				1. LONG TERM AVERAGE	2. MAXIMUM DAILY	1. LONG TERM AVERAGE	2. MAXIMUM DAILY	

III. PRODUCTION

A. Does an effluent guideline limitation promulgated by EPA under Section 304 of the Clean Water Act apply to your facility?

☐ **YES** *(complete Item III-B)* ☐ **NO** *(to to Section IV)*

B. Are the limitations in the applicable effluent guideline expressed in terms of production *(or other measure of operation)*?

☐ **YES** *(complete Item III-C)* ☐ **NO** *(go to Section IV)*

C. If you answered "yes" to Item III-B, list the quantity which represents an actual measurement of your level of production, expressed in the terms and units used in the applicable effluent guideline, and indicate the affected outfalls.

1. AVERAGE DAILY PRODUCTION			2. AFFECTED OUTFALLS *(list outfall numbers)*
a. QUANTITY PER DAY	b. UNITS OF MEASURE	c. OPERATION, PRODUCT, MATERIAL, ETC. *(specify)*	

IV. IMPROVEMENTS

A. Are you now required by any Federal, State or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

☐ **YES** *(complete the following table)* ☐ **NO** *(go to Item IV-B)*

1. IDENTIFICATION OF CONDITION, AGREEMENT, ETC.	2. AFFECTED OUTFALLS		3. BRIEF DESCRIPTION OF PROJECT	4. FINAL COMPLIANCE DATE	
	a. NO.	b. SOURCE OF DISCHARGE		a. REQUIRED	b. PROJECTED

B. OPTIONAL: You may attach additional sheets describing any additional water pollution control programs *(or other environmental projects which may affect your discharges)* you now have underway or which you plan. Indicate whether each program is now underway or planned, and indicate your actual or planned schedules for construction. ☐ **MARK "X" IF DESCRIPTION OF ADDITIONAL CONTROL PROGRAMS IS ATTACHED**

CONTINUE ON PAGE 3

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

CONTINUED FROM PAGE 2

V. INTAKE AND EFFLUENT CHARACTERISTICS

A, B, & C: See instructions before proceeding – Complete one set of tables for each outfall – Annotate the outfall number in the space provided.
NOTE: Tables V-A, V-B, and V-C are included on seperate sheets numbered V-1 through V-9.

D. Use the space below to list any of the pollutants listed in Table 2c-3 of the instructions, which you know or have reason to believe is discharged or may be discharged from any outfall. For every pollutant you list, briefly describe the reasons you believe it to be present and report any analytical data in your possession.

1. POLLUTANT	2. SOURCE	1. POLLUTANT	2. SOURCE

VI. POTENTIAL DISCHARGES NOT COVERED BY ANALYSIS

Is any pollutant listed in Item V-C a substance or a component of a substance which you currently use or manufacture as an intermediate or final product or byproduct?

☐ YES *(list all such pollutants below)* ☐ NO *(go to Item VI-B)*

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

VII. BIOLOGICAL TOXICITY TESTING DATA

Do you have any knowledge or reason to believe that any biological test for acute or chronic toxicity has been made on any of your discharges or on a receiving water in relation to your discharge within the last 3 years?

☐ YES *(identify the test(s) and describe their purposes below)* ☐ NO *(go to Section VIII)*

VIII CONTRACT ANALYSIS INFORMATION

Were any of the analyses reported in Item V performed by a contract laboratory or consulting firm?

☐ YES *(list the name, address, and telephone number of, and pollutants analyzed by, each such laboratory or firm below)* ☐ NO *(go to Section IX)*

A. NAME	B. ADDRESS	C. TELEPHONE *(area code & no.)*	D. POLLUTANTS ANALYZED *(list)*

IX. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. NAME & OFFICIAL TITLE *(type or print)*	B. PHONE NO. *(area code & no.)*
C. SIGNATURE	D. DATE SIGNED

PLEASE PRINT OR TYPE IN THE UNSHADED AREAS ONLY. You may report some or all of this information on separate sheets *(use the same format)* instead of completing these pages.
SEE INSTRUCTIONS.

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

V. INTAKE AND EFFLUENT CHARACTERISTICS *(continued from page 3 of Form 2-C)*

OUTFALL NO.

PART A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

1. POLLUTANT	2. EFFLUENT							3. UNITS *(specify if blank)*		4. INTAKE *(optional)*		
	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
a. Biochemical Oxygen Demand *(BOD)*												
b. Chemical Oxygen Demand *(COD)*												
c. Total Organic Carbon *(TOC)*												
d. Total Suspended Solids *(TSS)*												
e. Ammonia *(as N)*												
f. Flow	VALUE		VALUE		VALUE					VALUE		
g. Temperature *(winter)*	VALUE		VALUE		VALUE			°C		VALUE		
h. Temperature *(summer)*	VALUE		VALUE		VALUE			°C		VALUE		
i. pH	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM				STANDARD UNITS				

PART B - Mark "X" in column 2-a for each pollutant you know or have reason to believe is present. Mark "X" in column 2-b for each pollutant you believe to be absent. If you mark column 2a for any pollutant which is limited either directly, or indirectly but expressly, in an effluent limitations guideline, you must provide the results of at least one analysis for that pollutant. For other pollutants for which you mark column 2a, you must provide quantitative data or an explanation of their presence in your discharge. Complete one table for each outfall. See the instructions for additional details and requirements.

1. POLLUTANT AND CAS NO. *(if available)*	2. MARK 'X'		3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
	a. BELIEVED PRESENT	b. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
			(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
a. Bromide (24959-67-9)														
b. Chlorine, Total Residual														
c. Color														
d. Fecal Coliform														
e. Fluoride (16984-48-8)														
f. Nitrate–Nitrite *(as N)*														

ITEM V-B CONTINUED FROM FRONT

1. POLLUTANT AND CAS NO. *(if available)*	2. MARK 'X'		3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
	a. BELIEVED PRESENT	b. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
			(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
g. Nitrogen, Total Organic *(as N)*														
h. Oil and Grease														
i. Phosphorus *(as P)*, Total (7723-14-0)														
j. Radioactivity														
(1) Alpha, Total														
(2) Beta, Total														
(3) Radium, Total														
(4) Radium 226, Total														
k. Sulfate *(as SO_4)* (14808-79-8)														
l. Sulfide *(as S)*														
m. Sulfite *(as SO_3)* (14265-45-3)														
n. Surfactants														
o. Aluminum, Total (7429-90-5)														
p. Barium, Total (7440-39-3)														
q. Boron, Total (7440-42-8)														
r. Cobalt, Total (7440-48-4)														
s. Iron, Total (7439-89-6)														
t. Magnesium, Total (7439-95-4)														
u. Molybdenum, Total (7439-98-7)														
v. Manganese, Total (7439-96-5)														
w. Tin, Total (7440-31-5)														
x. Titanium, Total (7440-32-6)														

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EPA I.D. NUMBER *(copy from Item 1 of Form 1)*	OUTFALL NUMBER

CONTINUED FROM PAGE 3 OF FORM 2-C

PART C - If you are a primary industry and this outfall contains process wastewater, refer to Table 2c-2 in the instructions to determine which of the GC/MS fractions you must test for. Mark "X" in column 2-a for all such GC/MS fractions that apply to your industry and for ALL toxic metals, cyanides, and total phenols. If you are not required to mark column 2-a *(secondary industries, nonprocess wastewater outfalls, and nonrequired GC/MS fractions)*, mark "X" in column 2-b for each pollutant you know or have reason to believe is present. Mark "X" in column 2-c for each pollutant you believe is absent. If you mark column 2a for any pollutant, you must provide the results of at least one analysis for that pollutant. If you mark column 2b for any pollutant, you must provide the results of at least one analysis for that pollutant if you know or have reason to believe it will be discharged in concentrations of 10 ppb or greater. If you mark column 2b for acrolein, acrylonitrile, 2,4 dinitrophenol, or 2-methyl-4, 6 dinitrophenol, you must provide the results of at least one analysis for each of these pollutants which you know or have reason to believe that you discharge in concentrations of 100 ppb or greater. Otherwise, for pollutants for which you mark column 2b, you must either submit at least one analysis or briefly describe the reasons the pollutant is expected to be discharged. Note that there are 7 pages to this part; please review each carefully. Complete one table *(all 7 pages)* for each outfall. See instructions for additional details and requirements.

1. POLLUTANT AND CAS NUMBER *(if available)*	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
METALS, CYANIDE, AND TOTAL PHENOLS															
1M. Antimony, Total (7440-36-0)															
2M. Arsenic, Total (7440-38-2)															
3M. Beryllium, Total, 7440-41-7)															
4M. Cadmium, Total (7440-43-9)															
5M. Chromium, Total (7440-47-3)															
6M. Copper, Total (7440-50-8)															
7M. Lead, Total (7439-92-1)															
8M. Mercury, Total (7439-97-6)															
9M. Nickel, Total (7440-02-0)															
10M. Selenium, Total (7782-49-2)															
11M. Silver, Total (7440-22-4)															
12M. Thallium, Total (7440-28-0)															
13M. Zinc, Total (7440-66-6)															
14M. Cyanide, Total (57-12-5)															
15M. Phenols, Total															
DIOXIN															
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (1764-01-6)				DESCRIBE RESULTS											

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER *(if available)*	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION – VOLATILE COMPOUNDS															
1V. Acrolein (107-02-8)															
2V. Acrylonitrile (107-13-1)															
3V. Benzene (71-43-2)															
4V. Bis *(Chloromethyl)* Ether (542-88-1)															
5V. Bromoform (75-25-2)															
6V. Carbon Tetrachloride (56-23-5)															
7V. Chlorobenzene (108-90-7)															
8V. Chlorodibromomethane (124-48-1)															
9V. Chloroethane (75-00-3)															
10V. 2-Chloroethylvinyl Ether (110-75-8)															
11V. Chloroform (67-66-3)															
12V. Dichlorobromomethane (75-27-4)															
13V. Dichlorodifluoromethane (75-71-8)															
14V. 1,1-Dichloroethane (75-34-3)															
15V. 1,2-Dichloroethane (107-06-2)															
16V. 1,1-Dichloroethylene (75-35-4)															
17V. 1,2-Dichloropropane (78-87-5)															
18V. 1,3-Dichloropropylene (542-75-6)															
19V. Ethylbenzene (100-41-4)															
20V. Methyl Bromide (74-83-9)															
21V. Methyl Chloride (74-87-3)															

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EPA I.D. NUMBER *(copy from Item 1 of Form 1)*	OUTFALL NUMBER

1. POLLUTANT AND CAS NUMBER *(if available)*	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION — VOLATILE COMPOUNDS *(continued)*															
22V. Methylene Chloride (75-09-2)															
23V. 1,1,2,2-Tetrachloroethane (79-34-5)															
24V. Tetrachloroethylene (127-18-4)															
25V. Toluene (108-88-3)															
26V. 1,2-Trans-Dichloroethylene (156-60-5)															
27V. 1,1,1-Trichloroethane (71-55-6)															
28V. 1,1,2-Trichloroethane (79-00-5)															
29V. Trichloroethylene (79-01-6)															
30V. Trichlorofluoromethane (75-69-4)															
31V. Vinyl Chloride (75-01-4)															
GC/MS FRACTION — ACID COMPOUNDS															
1A. 2 Chlorophenol (95-57-8)															
2A. 2,4-Dichlorophenol (120-83-2)															
3A. 2,4-Dimethylphenol (105-67-9)															
4A. 4,6-Dinitro-O-Cresol (534-52-1)															
5A. 2,4-Dinitrophenol (51-28-5)															
6A. 2-Nitrophenol (88-75-5)															
7A. 4-Nitrophenol (100-02-7)															
8A. P-Chloro-M-Cresol (59-50-7)															
9A. Pentachlorophenol (87-86-5)															
10A. Phenol (108-95-2)															
11A. 2,4,6-Trichlorophenol (88-06-2)															

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER *(if available)*	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION — BASE/NEUTRAL COMPOUNDS															
1B. Acenaphthene (83-32-9)															
2B. Acenaphtylene (208-96-8)															
3B. Anthracene (120-12-7)															
4B. Benzidine (92-87-5)															
5B. Benzo *(a)* Anthracene (56-55-3)															
6B. Benzo *(a)* Pyrene (50-32-8)															
7B. 3,4-Benzofluoranthene (205-99-2)															
8B. Benzo *(ghi)* Perylene (191-24-2)															
9B. Benzo *(k)* Fluoranthene (207-08-9)															
10B. Bis *(2-Chloroethoxy)* Methane (111-91-1)															
11B. Bis *(2-Chloroethyl)* Ether (111-44-4)															
12B. Bis *(2-Chloroisopropyl)* Ether (102-60-1)															
13B. Bis *(2-Ethylhexyl)* Phthalate (117-81-7)															
14B. 4-Bromophenyl Phenyl Ether (101-55-3)															
15B. Butyl Benzyl Phthalate (85-68-7)															
16B. 2-Chloronaphthalene (91-58-7)															
17B. 4-Chlorophenyl Phenyl Ether (7005-72-3)															
18B. Chrysene (218-01-9)															
19B. Dibenzo *(a,h)* Anthracene (53-70-3)															
20B. 1,2-Dichlorobenzene (95-50-1)															
21B. 1,3-Dichlorobenzene (541-73-1)															

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EPA I.D. NUMBER (*copy from Item 1 of Form 1*)	OUTFALL NUMBER

CONTINUED FROM PAGE V-6

1. POLLUTANT AND CAS NUMBER (*if available*)	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE (*optional*)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (*if available*)		c. LONG TERM AVRG. VALUE (*if available*)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION — BASE/NEUTRAL COMPOUNDS (*continued*)															
22B. 1,4-Dichlorobenzene (106-46-7)															
23B. 3,3'-Dichlorobenzidine (91-94-1)															
24B. Diethyl Phthalate (84-66-2)															
25B. Dimethyl Phthalate (131-11-3)															
26B. Di-N-Butyl Phthalate (84-74-2)															
27B. 2,4-Dinitrotoluene (121-14-2)															
28B. 2,6-Dinitrotoluene (606-20-2)															
29B. Di-N-Octyl Phthalate (117-84-0)															
30B. 1,2-Diphenylhydrazine (*as Azobenzene*) (122-66-7)															
31B. Fluoranthene (206-44-0)															
32B. Fluorene (86-73-7)															
33B. Hexachlorobenzene (118-74-1)															
34B. Hexachlorobutadiene (87-68-3)															
35B. Hexachlorocyclopentadiene (77-47-4)															
36B. Hexachloroethane (67-72-1)															
37B. Indeno (*1,2,3-cd*) Pyrene (193-39-5)															
38B. Isophorone (78-59-1)															
39B. Naphthalene (91-20-3)															
40B. Nitrobenzene (98-95-3)															
41B. N-Nitrosodimethylamine (62-75-9)															
42B. N-Nitrosodi-N-Propylamine (621-64-7)															

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION – BASE/NEUTRAL COMPOUNDS *(continued)*															
43B. N-Nitrosodiphenylamine (86-30-6)															
44B. Phenanthrene (85-01-8)															
45B. Pyrene (129-00-0)															
46B. 1,2,4 - Trichlorobenzene (120-82-1)															
GC/MS FRACTION – PESTICIDES															
1P. Aldrin (309-00-2)															
2P. α BHC (319-84-6)															
3P. β-BHC (319-85-7)															
4P. γ-BHC (58-89-9)															
5P. δ-BHC (319-86-8)															
6P. Chlordane (57-74-9)															
7P. 4,4'-DDT (50-29-3)															
8P. 4,4'-DDE (72-55-9)															
9P. 4,4'-DDD (72-54-8)															
10P. Dieldrin (60-57-1)															
11P. α Endosulfan (115-29-7)															
12P. β Endosulfan (115-29-7)															
13P. Endosulfan Sulfate (1031-07-8)															
14P. Endrin (72-20-8)															
15P. Endrin Aldehyde (7421-93-4)															
16P. Heptachlor (76-44-8)															

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EPA I.D. NUMBER *(copy from Item 1 of Form 1)*	OUTFALL NUMBER

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1. POLLUTANT AND CAS NUMBER *(if available)*	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
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federal register

Wednesday
September 26, 1984

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Implementation of SAFER Propulsion System Recommendations; Advanced Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24251; Notice No. 84-17]

Implementation of SAFER Propulsion System Recommendations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This notice announces the FAA's preliminary intention to amend the airworthiness standards for transport category airplanes by adding a standard requiring fuel system protection during post-crash ground fires, and by requiring design features which would assure shutoff of engine fuel when post-crash ground fires occur. This proposal is the result of information from public hearings on aircraft fire safety and recommendations by the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee. The objective of this rulemaking activity is to develop airworthiness standards which would provide protection against fuel tank explosions following a post-crash ground fire and which would assure engine fuel supply shutoff to reduce the fire hazard from spilled fuel. The purpose of this advance notice is to gain public participation in identifying and selecting a regulatory course of action by inviting interested persons to submit specific comments and arguments regarding this proposal.

DATES: Comments must be received on or before January 25, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24251, 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. Comments must be marked: Docket No. 24251. Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James Walker, Policy and Procedures Branch (ANM-111), Regulations and Policy Office, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Comments Invited

This ANPRM is being issued under the FAA's policy for early public participation in rulemaking proceedings. An ANRPM is issued when it is found that reasonable outside inquiry is needed to identify and select a tentative or alternative course of action, or where it would be helpful to invite public participation in identifying and selecting a course of action.

Interested persons are invited to participate in these preliminary rulemaking procedures by submitting written data, views, or arguments. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Comments are invited relating to the environmental, energy, or economic impact that might result from adopting these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. If it is determined to be in the public interest to proceed with further rulemaking after considering the available data and comments received in response to this notice, a Notice or Proposed Rulemaking will be issued. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24251." The postcard will be dated, time stamped, and returned to the commenter.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this ANPRM. Persons interested in being placed on a mailing list for future ANPRMs or NPRMs should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

As a result of information from public hearings on aircraft fire safety, the FAA established the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee in June 1978, to "examine the factors affecting the ability of the aircraft cabin occupant to survive in the post-crash environment and the range of solutions available." The Committee consisted of 24 representatives of a wide range of aviation and general public interests. The technical support groups included approximately 150 of the world's top experts in fire research, accident investigation, materials development, and related fields. The Committee focused primarily on the problems of fuel spillage and cabin fire protection and looked into related aspects of post-crash survival.

The Committee reviewed worldwide transport aircraft accidents that have occurred since 1964 involving post-crash fuel tank explosions and identified 15 that were considered impact-survivable. The fuel tanks were initially undamaged in four of these accidents; two involved ground fires which propagated through the wing tank vent system into the fuel tanks and ignited the fuel vapors resulting in explosions; and two involved failure to stop fuel flow through a ruptured engine feedline downstream of the shutoff valve, which increased the ground fire intensity and externally heated the fuel tanks, causing explosions. The Committee concluded that the tank explosions could have been prevented or substantially delayed in these four accidents by design changes that have subsequently been developed and are included in this proposal. The remaining 11 tank explosion accidents involved major structural damage and large quantities of fuel spillage. The Committee concluded there was a low probability that any design change would have prevented or reduced the explosions that occurred in these accidents. Fuel tank explosions have a more severe effect on safe evacuation than post-crash fires alone since the explosions tend to intensify the local fire which, in turn, impedes or prevents safe evacuation.

The Committee considered that vent flame arrestors or surge tank explosion suppression systems used in some current airplanes to protect against lightning-induced ignition at fuel vent outlets might also be able to delay propagation of ground fires and the resulting explosions in undamaged fuel systems by providing additional time for passenger evacuation. The Committee also considered a design practice in use on some current airplanes which provides closure of the fuel tank-to-engine shutoff valve with the engine fuel control shut off during the normal engine shutdown process. It was concluded that this could also greatly increase the probability of engine fuel supply shutoff in post-crash fires.

Vent flame arrestors and surge tank explosion suppression systems are used in some aircraft to protect against flame propagation due to lightning-induced ignition at fuel vent outlets on the undersurface of the wing near the wing tips in compliance with § 25.954 of the Federal Aviation Regulations (FAR), adopted August 11, 1967. Both of these systems are envisioned by the Committee as being capable of providing compliance with the requirements contained in proposed § 25.975(a)(7) and thereby minimize the possibility of flame propagation from ground fires. The effectiveness of these systems in a ground fire environment, however, has not been fully developed.

A flame arrestor consists of a stainless steel web of quenching cells or channels and is installed in the vent tube near the outlet at the undersurface of the wing. When a combustion wave enters a relatively cold quenching channel, heat from the flame front flows into the channel wall at a rate exceeding the rate of heat generation so that the temperature decreases and the combustion reaction ceases. However, if the total heat capacity of the arrestor is designed to accommodate the brief duration of combustion caused by a lightning strike and the arrestor is subjected to a sustained ground fire, the temperature of the arrestor will increase rapidly to a value where the arrestor will fail and the flames will penetrate the arrestor and propagate into the fuel tanks. Therefore, an arrestor designed for lightning-induced ignition may not provide protection against propagation of ground fires. To comply with proposed § 25.975(a)(7), it would be necessary to design an arrestor to prevent flame penetration and propagation through the vent system for a period of time equal to the time required for an external fire to heat the fuel and vapors in the wing tank to its ignition temperature or to heat the undersurface skin of the wing tank to ignite the vapors, whichever is greater. This period of time would be longer than the time it takes for a ground fire to propagate through an unprotected vent system.

One airplane manufacturer has conducted some flame holding tests on flame arrestors with 0.03 and 0.05 inch cell sizes at various hexane/air vapor outflow velocities. For the 0.03 inch cell size, tank ignition did not occur after 6.5–9.0 minutes of downstream flame exposure, depending upon the outflow velocity. Ignition occured for the 0.05 inch cell size at all outflow velocities tested with the minimum time for tank ignition occurring after 2.0 minutes of flame exposure. These test data indicate that flame propagation through the fuel vent and fuel tank explosions can be delayed by the use of vent flame arrestors which have been developed for that purpose.

An explosion suppression system includes a flame radiation sensor in the vent outlet tube to detect an oncoming flame front and to activate a one-shot fire extinguishment discharge system in a surge tank for automatic suppression of the combustion process when it reaches the tank. This system can provide fuel tank vent explosion protection during ground fires similar to a properly designed flame arrestor if provision is made for a multiple-shot extinguishment capability. This would require continued availability of electrical power to enable sensing of repeated flame fronts induced by an external fire and triggering of timely extinguishment discharges. In addition, the system must be capable of effective operation at elevated temperatures due to an external fire.

In one incident of a survivable crash, the tank-to-engine fuel shutoff valve was not closed by pulling the fire shutoff handle which allowed fuel to escape through a ruptured engine feedline and expand the ground fire. A design change following the accident was made in the fuel shutoff system to provide a redundant fuel tank shutoff valve actuation method under emergency conditions. Some airplanes currently incorporate the additional capability to close the fuel tank shutoff valve when the fuel shutoff lever on the throttle quadrant is moved to the cutoff position. This design practice or similar designs can easily be employed in all transport airplanes and is encompassed within this proposal.

On the basis of the considerations discussed above, the Committee made the following recommendations to the FAA (Reference SAFER Final Report, Vol. 1, No. FAA–ASF–80–4):

1. Amend Part 25 of the FAR to require fuel tank vent protection during ground fires by adding a new § 25.975(a)(7) to read: "Each vent to atmosphere must be designed to minimize the possiblity of external ground fires being propagated through the vent line to the tank vapor space, providing that the tank and vent structure remain intact."

2. Amend Part 25 of the FAR to require design practices that maximize the probability of engine fuel supply shutoff in potential fire situations.

The FAA generally concurs with the Committee's recommendations. The rule changes preliminarily proposed in this notice, in response to the Committee's recommendations, would require protection, in the case of survivable crashes, against propagation of post-crash ground fires through the intact fuel tank vent system into the fuel tanks, thereby preventing fuel tank explosions caused by this ignition source. They would also provide increased assurance of fuel tank shutoff valve actuation following an accident, thereby preventing release of fuel through a ruptured engine feedline from starting, expanding, or intensifying a ground fire. These measures would reduce the post-crash fire and explosion hazards and increase occupant survivability. The proposals are considered technically feasible and cost-effective, although further development and subsantiation will be necessary to verify the effectiveness of flame arrestor or explosion suppression system technology.

Economic Evaluation

The FAA expects that the most cost effective method of meeting the proposed new ground fire protection requirement will be an improved vent flame arrestor now used to comply with existing lightning protection requirements. Procurement and maintenance costs and the installed weight of this system are likely to be relatively low compared to an explosion suppression system. Costs are expected to be minor to incorporate designs for complying with the proposal to improve the probability of engine fuel supply shutoff in potential fire situations. Questions of an economic nature relating to these proposals are included for comment. If it is determined that further rulemaking is appropriate, an NPRM and full regulatory evaluation will be issued containing an analysis of the costs and benefits of the proposed rules.

Request for Information

Persons responding to this notice are invited to specifically address the following questions and supply any other information considered pertinent to the FAA's decision in further rulemaking on this subject. Additionally, comments should address the proposed rule changes.

1. What safety benefits would be derived from the proposed rules?
2. What would the environmental impact be?
3. How would the proposed rules impact energy resources?
4. What alternative solutions would be equally effective?
5. Can modifications to existing equipment and fuel systems used for fuel system lightning protection be made to apply to the new regulation and what would be the estimated cost savings over a new system?
6. Should a flame arrestor test procedure and performance level be required? If so, what is a reasonable and representative requirement?
7. Should a flame suppression system test procedure and performance level be required? If so, what is a reasonable and representative requirement?
8. What would be the estimated cost for flame arrestor components and their installation?
9. What is the estimated life cycle cost for the flame arrestor system? Include costs for components, installation and maintenance, and the expected weight penalty.
10. What would be the estimated cost for purge tank flame suppression system components and their installation?
11. What is the estimated life cycle cost for a purge tank flame suppression system? Include component costs, installation and maintenance, and the expected weight penalty.
12. What would be the estimated cost for the dual shutoff feature and installation for the fuel tank shutoff valve requirement?
13. What is the estimated life cycle cost for the dual shutoff feature for the fuel tank shutoff valve requirement and its weight penalty?
14. How soon will production hardware be available for installation?
15. Should the proposed rule also apply to newly manufactured models of previously type certificated airplanes?
16. Should consideration be given to retrofitting transport airplanes in service?

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 25 of the Federal Aviation Regulations (14 CFR Part 25) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. By amending § 25.975 by adding a new paragraph (a)(7) to read as follows:

§25.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) Each fuel system must be designed to minimize the possibility of external ground fires being propagated through the vent system and any other openings to fuel tank vapor spaces, providing the tank and vent system components and structure remain intact.

2. By amending § 25.1189 by adding a new paragraph (i) to read as follows:

§ 25.1189 Shutoff means.

* * * * *

(i) The engine and auxiliary power unit (APU) fuel supply and fuel crossfeed systems shall be designed to provide a positive or otherwise redundant means of isolating the tank fuel to prevent fuel spillage or discharge during post-crash groun fire condition.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.45)

Note: This ANPRM seeks information from interested persons, including manufacturers and users of transport category airplanes and components, the general public, both foreign and domestic, and foreign airworthiness authorities in developing a proposed new airworthiness standard. Preliminary evaluation indicates that this document is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) since information is being requested, and no economic or regulatory impact is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on the comments received as a result of this notice.

Issued in Seattle, Washington on September 4, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-25429 Filed 9-25-84; 8:45 am]

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federal register

Wednesday
September 26, 1984

Part VI

Department of Labor

Employment and Training Administration

20 CFR Ch. V

Unemployment Insurance Service
Proposed Quality Control Program;
Advance Notice of Proposed Rulemaking

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Ch. V

Unemployment Insurance Service Proposed Quality Control Program; Under Secretary's Order No. 4-75, Dated April 16, 1975 (40 FR 18515) (5 U.S.C. 553) Interpreting and Applying Sections. 303 (a)(1) and (a)(6) and 303(b)(2) of the Social Security Act (42 U.S.C. 503 (a)(1), (a)(6), and 503(b)(2)

AGENCY: Employment and Training Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Employment and Training Administration (ETA) will publish a Notice of Proposed Rulemaking in December 1984 or January 1985 to establish a permanent Quality Control (QC) program in the State Employment Security Agency (SESA) Unemployment Insurance (UI) system. The design of a QC system has been mandated by the Secretary of Labor and the President's Fiscal Year 1985 Budget includes provision for a UI QC program. The establishment of a UI QC program is a major initiative to reduce administrative errors in the UI system. ETA is publishing this notice to inform interested persons of its intentions.

DATE: Written comments must be received by the close of business on October 26, 1984.

ADDRESS: Submit comments to Carolyn M. Golding, Q.C. Task Force Director, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Q.C. Task Force Director, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Room 7112, Washington, D.C. 20213. Telephone: 202-376-6636.

SUPPLEMENTARY INFORMATION:

Introduction:

The Federal/State unemployment insurance program has two major functions—the collection of employer payroll taxes and the payment of UI benefits to eligible workers. State employment security agencies collect employer taxes and determine individual eligibility for benefits in accordance with State employment insurance laws. Provisions in the Social Security Act and the Federal Unemployment Tax Act set requirements for State laws.

Statement of Problem

Random Audit results from 15 States show that nationwide a significant percentage of benefit payments for calendar year 1982 were in error. Under the Random Audit Program, States select a small sample of intrastate claims paid each week and determine the accuracy of the payment. Only partial data is available as to the magnitude of the revenue problem. These data indicate sizable lost revenue resulting from delinquent employer contributions, delayed identification of new employers, and untimely deposit of employer taxes. These losses are occurring at the same time that the UI system is heavily in debt. As of August 31, 1984 outstanding loans totaled $9.7 billion.

UI Objective for QC

The objective is to design and implement a system of data formatting and analysis precise and detailed enough to support the development and execution of corrective action plans to reduce the number and amount of inaccurate benefit payments (underpayments and overpayments), and corrective action plans to improve revenue collections in States. Key to the attainment of this objective is the collection and analysis of data that is timely and detailed. The QC principles address known limitations of Random Audit and reflect considerations as to appropriate Federal/State roles as well as resource, timing and capacity constraints.

QC Foundations: Within the framework of QC objectives and principles, the foundation for the detailed QC design and implementation activity planned for the next several years will have the following major characteristics:

—States will have primary responsibility for drawing samples, calculating error rates and initiating corrective action.

—There will be a strong Federal oversight role to ensure consistency of procedures and integrity of data.

—Sample sizes will be increased incrementally, where necessary, to increase the precision and confidence of the data. Alternative data collection and sampling methods will be tested to reduce costs and improve precision.

—Within resource and benefit/cost considerations, QC will target its resources on the permanently authorized programs of greatest size, on programs which are the Secretary's special responsibility and programs funded from Federal resources.

—Pilot tests will be conducted for the revenue and interstate programs, not currently measured by Random Audit.

—QC will be phased-in incrementally over 3 years consistent with resource, timing and capacity constraints.

Signed this 20th day of September 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

[FR Doc. 84-[illegible] Filed 9-25-84; 8:45 am]

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